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The Evolution of Management of the Canadian Pacific Salmon Fishery

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There is only one reference to fisheries in the British North America Act of 1867 (the BNA Act), the act of the United Kingdom parliament uniting the provinces of Canada, Nova Scotia, and New Brunswick into the Dominion of Canada.[1] That is in the list of legislative powers assigned to the federal government where legislative jurisdiction over "Sea Coast and Inland Fisheries" is given exclusively to the Parliament of Canada. From this it appears fisheries anywhere in Canada or its territorial waters would be completely a federal responsibility, the provinces having no role in allocation, management, or regulation. While exclusive federal control may have been intended, the history of the allocation of fishery rights through English common law, where the right to fish may be a public right or a proprietary right, appears to have been overlooked in making this legislative allocation. The proprietary right to fish, a right associated with the ownership of property, gave the provinces a role in fisheries when the BNA Act assigned legislative jurisdiction over property to the provincial parliaments and transferred to them all lands previously owned by the provinces and colonies joining confederation.

The failure of the BNA Act to appreciate the well-established proprietary right to fish, when placing legislative authority with the federal government while giving control over property to the provinces, left responsibility for fisheries unclear. This muddle inevitably led to disputes as each level of government attempted to increase their role in fisheries. A series of court references, spread over fifty years, was necessary to allocate and delineate jurisdiction and authority. Both levels of government wished to expand their role, viewing fisheries as a source of revenue from licence fees and taxes, a basis of regional development, and, in some cases, a way of distributing favours.

The fact that the right to fish may not only be public, open to all, but may also be proprietary, where the right is restricted to assigned individuals, arises from historical practice and precedent. Precedents developed in English common law, precedents which applied to Canada as a group of former English colonies.[2] Initially, treating all fisheries as proprietary and assigning exclusive use to individuals was a common method of allocating rights to fish; later a public right to fish emerged. Fisheries, both in tidal and non-tidal waters, were originally vested in the Crown as owner of the soil of the whole kingdom. The crown or government, as the original owner of all land, was the first owner of all fisheries and could allocate rights to fisheries along with the allocation of rights to land.[3]

The granting of fishing rights by the monarch for both tidal and non-tidal waters was common before the signing of the Magna Carta in 1215.[4] Granting the right to fish was similar to granting land. Often ownership of the shoreline also gave ownership of the water bed and thus the right to the fishery. The fishery was regarded as part of the output of the bed of the water in which the fish were found. Unless otherwise specified, common law assumed that the owner of land abutting a river or lake, the 'riparian owner', owned up to the middle of the bed of the river or lake and the right to any fishery above this underwater land. For tidal waters, before the reign of King Henry II (1154-1189) many fisheries were granted to subjects by the Crown, while others

were retained by the Crown and dealt with as parcels of manors still remaining parts of the Crown estates, “the public right to fish in such waters having been supposed to be excluded..."[5] .

The evolution of the public right to fish in tidal waters begins with the signing of the Magna Carta in 1215 even though the Magna Carta never mentions a public right to fish. Fishing is referred to in chapter 33: “Henceforth all fish-weirs shall be completely removed from the Thames and the Medway and throughout all England, except on the sea coast.”[6] Although this chapter may appear to result from a dispute over fishing, its real purpose was to remove impediments to river navigation. The objective was freedom of navigation, not freedom of fishing. Waterways were then the primary means of transport but could be blocked by fish weirs and other fixed fishing apparatus. Londoners had a particularly interest in the Thames as a transportation route, this chapter confirms their previous right to destroy fish weirs on the Thames.[7] Courts and writers, however, have mistakenly used the prohibition of fish weirs as a basis for not allowing private fishing rights in tidal waters, the Thames and Medway being tidal rivers.

After the Magna Carta a distinction emerges between fishing in non-tidal waters and fishing in tidal waters. Proprietary fishing rights continue in non-tidal waters, a public right to fish evolves for tidal waters. The fish-weir chapter of the Magna Carta was enlarged in scope over the years “until it is almost unrecognizable”, being "judicially expanded to bar the king from granting private fisheries in tidal waters"[8] Limiting proprietary rights in tidal waters was, of course, not what was intended by the Magna Carta signatories.

In creating the public right to fish in tidal waters courts recognised proprietary fishing rights in other waters and determined where each right applies. A 1610 case concluded that the King, and thus the public, owned the fishery in the tidal portions of a navigable river, the riparian landowners owned the fishery in rivers that were both nontidal and nonnavigable, but did not decide who had the fishery in the non-tidal part of a navigable river.[9] MacGrady cites an 1868 judgement stated that tidality and navigability were technically equivalent in law, thus crown ownership of river beds and public fishing rights would apply to all tidal and navigable rivers.[10] Moore and Moore, however, summarising the extent of the public right to fish in the United Kingdom as of 1903, state that only in tidal waters does a public right to fish exist.[11]

By the time of Canadian confederation in 1867 English common law had settled that there were both proprietary rights to fish and a public right of fishing, even though the public right was mistakenly derived from the Magna Carta. The public right existed in tidal waters and navigable rivers, proprietary rights existed elsewhere.[12] Proprietary rights were vested in the owners of non-tidal, non-navigable river beds. Initially the crown or government, as the first owner of all land, owned the beds and the fishing rights in these waters. Thus jurisdiction over fisheries depends on who has legislative authority, for public fishing, and who owns the land, for the allocation of proprietary fishing rights.

Although common in early England, the ownership of stream and lake beds and the accompanying proprietary right to fish need not be included with a land grant and can be held as separate proprietary rights.[13] Canadian provinces, as owners of crown land, did not usually include adjacent river, stream, or lake beds in their grants of the adjacent land, retaining

ownership of the beds of water bodies, fishing rights, and the water itself. Thus the common law riparian rights have been greatly changed by statute law.[14]

The Writing of the British North America Act

The Canadian confederation may be viewed as a uniting of provinces where the provinces as former colonies turned over various rights, property, and sources of revenue to the federal government. The BNA Act of 1867 defines the Canadian confederation, including the allocation of powers and property to the federal and provincial governments.[15]

The BNA Act had to deal with jurisdiction over fisheries, both for conservation and revenue purposes. The provinces entering confederation had their own legislation governing fisheries, there was a clear need for government to play a role in the conservation of fisheries, and fishery licence fees and taxes were possible sources of revenue. Since, by 1867, both proprietary and public rights to fishing were firmly established in English common law, any discussion and assignment of fisheries jurisdiction should consider both types of fishery rights.

Unfortunately both rights to fish were not recognised in the BNA Act, with the only mention of fisheries occurring in section 91(12) which assigns exclusive legislative jurisdiction over "Sea Coast and Inland Fisheries." to the federal parliament. If only a public right to fish existed the federal government would have complete jurisdiction over fisheries. With proprietary rights to fish also having legal status and no mention of these rights in the Act, their allocation depended on the allocation of property and property rights in general, the provinces were given jurisdiction over and ownership of property. Section 92(5) granted the provinces exclusive legislative power over “The Management and Sale of the Public Lands belonging to the Province” and therefore over adjacent water beds and the associated fishing rights. Section 92(13) gave the provinces legislative authority over "Property and Civil Rights in the Province". Under section 109 all "Lands, Mines, Minerals, and Royalties" belonging to the provinces at the time of the union were retained by them, with a few exceptions, such as property for defence and harbours placed under federal ownership. Section 117 states that "The several provinces shall retain all their respective Public Property", not disposed of in the Act or needed for defence. The BNA Act allocated to the provinces ownership of and legislative jurisdiction over most of the property within the provinces, including the beds of water bodies within their boundaries. Since proprietary fisheries are attached to the bed of the watercourse, these fisheries fell under provincial ownership and jurisdiction.[16] Jurisdiction and ownership were further confused by “The Third Schedule” of the BNA Act which listed “Provincial Public Works and Property to be the Property of Canada.” The list included “Rivers and Lake Improvements” and “Lands set apart for general Public Purposes.”[17]

Early drafts of the terms of confederation for the provinces and colonies of British North America dealt with fisheries in a much less ambiguous manner. As the provinces and colonies met together, in 1864 in Charlottetown and Quebec City and in 1866 in London, England, amendments led to the puzzling placing of fisheries in the BNA Act. A report on the first meeting in Charlottetown in 1864 stated there was agreement that the federal legislature was to be given control of “sea fisheries” and the local or provincial legislatures were to be given control of “inland fisheries”.[18] This division would have closely approximated the division

between fisheries where a public right to fish had been established, sea fisheries, and fisheries where proprietary rights existed, inland fisheries. Future jurisdictional disputes would likely have been minimised.

At the Quebec conference later in 1864 this allocation of responsibility for fisheries was proposed, but then amended. A motion on the law-making powers of the general or federal legislature included “sea fisheries” as within federal jurisdiction. A motion proposed on the law-making powers of local or provincial legislatures included “inland fisheries” as within provincial jurisdiction, but an amendment that the provincial fisheries clause read “sea coast and inland fisheries” was proposed by a Prince Edward Island delegate and approved.[19] As Prince Edward Island had little in the way of “inland fisheries”, this amendment would give the PEI legislature a role in fisheries. While Nova Scotia, New Brunswick, and Quebec saw Confederation as a way of resisting American incursions into their waters, Prince Edward Island benefited from the American fisheries. After confederation Canadian customs regulations made PEI, which did not join the original federation, attractive to American fishermen. Innis suggests that for PEI it was "...more profitable to handle transshipments of American fish and to engage in American trade than to engage in the fishery" and the "divergent interests of Prince Edward Island as regarded the fishery contributed to her delay in entering Confederation..."[20]

The report on the Quebec conference includes a further amendment as the power to make laws respecting “Sea Coast and Inland Fisheries” was given to both the federal parliament and provincial parliaments.[21] There is no indication of the source or reason for this last amendment. Of course fisheries was one of many issues to be decided, the whole process involved trade-offs with other issues and lack of full knowledge of the future implications of a particular decision. The resolutions from the Quebec meeting became the basis for the BNA Act.[22]

The final meeting before confederation was in London, England in late 1866. Now only representatives of the provinces which had decided to federate were present: Canada (formed by the 1840 union of Upper Canada and Lower Canada), New Brunswick, and Nova Scotia. Some changes were made to the Quebec resolutions before they were formed into the BNA Act of 1867; one was moving “Sea Coast and Inland Fisheries” from concurrent to exclusive federal jurisdiction.[23] Concern about American exploitation of Canadian fisheries was likely the reason for now assigning fisheries exclusively to the federal government. Charles Tupper, the Premier of Nova Scotia, pointed out that, with the recent (March 1866) termination of the Reciprocity Treaty by the US, American fishermen no longer had a right to fish in Canadian waters. For their better protection fisheries should be an exclusive responsibility of the central Parliament.[24] Fishing was a major industry in the Maritime provinces and gaining the protection of a united British North America was a strong argument for confederation.

The allocation of responsibility for fisheries is obviously incomplete and ambiguous. Legislative and executive responsibility is not matched with proprietary ownership. In non-tidal waters, where the right to fish is proprietary, initially attached to the bed of a watercourse and owned by a province, the federal government was given the right to pass legislation while not owning the resource. Federal legislation could be thwarted by provincial allocations, similarly provincial allocations could be affected by federal regulations. While federal legislative powers could not generate ownership, provincial proprietary powers could be used to generate certain

legislative and executive powers. In tidal waters, however, with an established public right to fish the legislative jurisdiction allocated to the federal government would appear to be unchallenged by provincial proprietary rights, but even here disputes arose. By ignoring the two rights to fish, public and proprietary, the BNA Act made both the federal and provincial governments responsible for fisheries with potentially overlapping responsibilities, likely not what was intended.[25]

Fisheries after Confederation

After confederation, using powers assigned to them and sometimes some assumed by them, both federal and provincial governments frequently sought to maximize their role in fisheries. Provinces, perhaps because of their better view of local industry, often justified their actions by alleging federal mismanagement and neglect. Inevitably, jurisdictional conflicts arose, usually when a participant in a fishery was caught between federal and provincial actions and charged with a breach of one government's law while conforming to the other's. The constitutional validity of a law or regulation was sometimes raised in defence and either the court case or a judicial reference eventually determined the validity of the legislation or regulation. Behaviour not confirming to the constitution only ceased after judicial review, a government's behaviour not in conformity with the BNA Act could continue for some time before it was challenged and reviewed. Although attempts were made to negotiate differences and amend legislation, often the only way to clarify jurisdictional authority was through the courts.

Following confederation the federal government assumed a dominant role in fisheries administration, from fresh water fishing to fish processing. But over the next seventy years this power would be curtailed. The first federal Fisheries Act, passed in 1868, assumed authority over all fishing. The act was derived from the fisheries acts previously used by the provinces joining confederation.[26] The pre-confederation acts contained clauses empowering the governments to issue fishery leases and licences for fisheries and fishing at any location, tidal or non-tidal, the new federal legislation had similar clauses.[27] Before powers and property were divided at confederation the provinces and colonies had both local legislative authority and proprietary rights, no jurisdictional conflict between legislative authority and proprietary rights could arise. Confederation separated legislative authority and property rights for fishing but the federal government, assuming complete control and authority over all fisheries, with its exclusive legislative authority, took up where the provinces joining confederation left off. Proprietary rights to fish, to be administered by the provinces, were ignored in the initial federal legislation.

British Columbia Joins Confederation

British Columbia joined Canada in 1871, just as the first salmon canneries were starting on the Fraser River. Under the terms of union the provisions of the BNA Act applied to BC in the same way they applied to the other provinces, BC was treated as if it was one of the original provinces united by the BNA Act.[28] There were, however, two unique provisions of the terms of union which were to have important consequences in fisheries administration. One was the clause that "Canada will assume and defray the charges for the following services:...Protection and Encouragement of Fisheries.", fisheries was specifically included in the list of expenses the federal government was to be responsible for. This was sometimes contended by the province to

mean that the Dominion should bear all fisheries expenses while the province received the revenue.[29] Also, the government of Canada agreed to start building a railway to BC, in return BC agreed to give the federal government public lands lying alongside the railroad, up to twenty miles on either side of the line, for which the federal government would pay the province $100,000 per year. This land, known as the railway belt, was significant for the salmon fishery as the railway followed parts of two major salmon spawning rivers.

After joining Canada the provincial government experienced financial difficulties. The federal government had assumed the colonies' debt at the time of union but for most of the rest of the nineteenth century the province ran a deficit. The debt reached $7.4 million in 1898 and $12.5 million by 1903. Many believed that the BC could not continue under the original terms of union. Contests over fisheries administration were part of the province's wish to better the terms of union, the province correctly pointing out that BC fisheries was one of the areas where federal revenues exceeded expenditures.[30]

The First Case, 1882

An 1882 court case was the first in which federal authority in fisheries was challenged.[31] The case arose after the federal government, acting under its 1868 Fisheries Act, granted a lease for salmon angling on a section of the Miramichi River in New Brunswick. The lessee, however, found that land adjacent to this section of the river had previously been granted by the provincial government. The owner of the land had, in turn, given others permission to fish there. When the lessee prevented those with permission from the land owner from fishing, they brought a successful action for damages against the lessee. New Brunswick courts did not recognize the federal lease. The embattled lessee then successfully sued the federal government for compensation for loss of the lease. The federal government appealed to the Supreme Court of Canada.[32]

The case raised the question of whether the federal government had complete control of all fisheries of Canada, particularly where proprietary rights to fish existed. The Supreme Court ruled that the rights to fish in non-tidal parts of rivers were different than the rights in tidal parts. A public right did not exist in non-tidal parts of rivers, here riparian owners, the owners of the river banks, had the exclusive right to fish. The bed of the nontidal stream was owned by the riparian landowner, unless otherwise granted. The output of the bed of the stream, the fishery, was thus the exclusive right of the property owner. The federal government could not grant rights to fish in the non-tidal parts of rivers, but could grant fishing rights in the tidal portions of rivers. The Chief Justice, giving the majority opinion of the Supreme Court, wrote: "I cannot discover any intention to take from provincial legislatures all legislative power over property and civil rights in fisheries...and so give to the parliament of Canada the right to deprive the province or individuals of their right of property therein."[33]

After the 1882 Judgement

Encouraged by the 1882 decision, particularly the suggestion that their property rights may result in some legislative rights, provinces aspired to a wider role in fisheries, beyond allocating fishing rights for proprietary fisheries. Ontario, in particular, sought greater control

over fisheries as part of an overall campaign to increase provincial authority.

The provincial actions were a direct challenge to the assumed responsibility of the federal government; the federal cabinet initiated a further reference to the Supreme Court of Canada.[34] The reference to the Supreme Court took place in 1895 to determine the validity of conflicting laws on fisheries passed by the federal government and the provinces, particularly Ontario, but overlapping legislation had also been passed by Quebec and Nova Scotia.

The Supreme Court judgement in 1896 further restricted federal action in fisheries. The federal claim that the Great Lakes and other navigable waters were a federal responsibility under "Lands set apart for Public Purposes" in item 10 in the Third Schedule of the BNA Act, was rejected. Furthermore, the land between the high and low water marks on tidal waters belonged to the provincial government, except where specifically awarded to the federal government, such as public harbours.[35]

The 1898 Case

Both the federal government and the provinces appealed to the Judicial Committee of the British Privy Council, which, before 1949, was the highest court of appeal for Canada. A judgement was delivered May 1898. The Privy Council ruling widened the 1882 judgement of the Supreme Court of Canada. While the 1882 judgement confined itself to fishery rights for rivers, the 1898 judgement dealt with the broader issue of proprietary rights in all fisheries and the respective powers of the federal and provincial governments.[36]

The ruling reinforced and emphasized provincial proprietary rights in fisheries, the provinces retained the property rights they had before confederation and could continue to grant proprietary rights in the same way they did before confederation, "Whatever proprietary rights in relation to fisheries were previously vested in private individuals or in the provinces respectively remained untouched by...[the BNA Act]. Whatever grants might previously have been lawfully made by the provinces in virtue of their proprietary rights could lawfully be made after...[the BNA Act] came into force."[37]

The federal government's exclusive legislative authority to issue fishery regulations and restrictions was confirmed. The "...enactment of fishery regulations and restrictions is within the exclusive competence of the Dominion legislature and is not within the legislative powers of provincial legislatures." "...all restrictions or limitations by which public rights of fishing are sought to be limited or controlled can be the subject of Dominion legislation only."[38] Recognising that "At the same time it must be remembered that the power to legislate in relation to fisheries does necessarily to a certain extent enable the Legislature so empowered to affect proprietary rights."[39] This legislative authority, however, could not go so far as to grant proprietary rights in fisheries.[40]

Despite the exclusive federal authority to enact fishery regulations and restrictions, the provinces also had a legislative role in fisheries. "...it does not follow that the legislation of provincial legislatures is incompetent merely because it may have relation to fisheries." The province, under their legislative authority for property and civil rights and the management and

sale of public lands, could set “the terms and conditions upon which the fisheries which are the property of the Province may be granted, leased, or otherwise disposed of.” Also, “the rights which, consistently with any general regulations respecting fisheries enacted by the Dominion Parliament, may be conferred...[by allocating proprietary rights] appear proper subjects for provincial legislation...”[41] The province my legislate on the allocation of their proprietary fisheries and, as long as consistent with federal legislation, the rights of the holders of these fishing rights.

One section of the Fisheries Act was declared to be ultra vires, "not within the jurisdiction of the Dominion Parliament to pass it" since it "empowers the grant of fishery leases conferring an exclusive right to fish in property belonging not to the Dominion but to the Provinces."[42] The Ontario Act, to the extent that it regulated the methods of fishing was not valid, only the federal government may legislate for the regulation, protection, and preservation of fisheries

The judgement noted that both levels of government may tax the fisheries. Since the federal government has, under section 91 of the BNA Act, the power to "raise money by any mode or system of taxation", within this power the federal government can impose a "tax by way of license as a condition of the right to fish." Section 92 which allows the provincial legislature to "impose the obligation to obtain a license in order to raise a revenue for provincial purposes", does not detract from the federal taxing power. The judgment mentions the possible inconveniences with taxes imposed on the same subject matter by different authorities but "The [Lordships] have no doubt however that these would be obviated in practice by the good sense of the legislatures concerned."[43] Their Lordships optimism about federal and provincial cooperation was not always borne out in practice.

With its emphasis on provincial proprietary rights and a provincial legislative role in fisheries arising from these proprietary rights, the ruling appeared to enhance the provincial role in fisheries. By stating that the provinces still held whatever proprietary rights in fisheries they held before confederation and that whatever grants of rights they made before confederation could still be made, the Privy Council suggested that the provinces could allocate fishery rights in the same way they did as provinces and colonies before confederation when all fisheries were under their jurisdiction and before a central government was given legislative authority over fisheries.[44] The ruling did not mention that provincial proprietary rights are limited by the long-established public right of fishing in tidal waters, a right where the authority of the federal government would appear to be unchallenged. Provincial proprietary rights previous to confederation were not defined, leaving the provinces to claim they extended into tidal waters. These unsettled issues would lead to years of dispute.

Provincial and Federal Views of the 1898 Judgement

The provinces regarded the judgement as allowing them to expand their authority over fisheries. Since the decision did not determine what property rights in the fisheries were vested in the provinces prior to confederation, provinces on tidal waters claimed that before confederation they owned not only the fisheries in the tidal portions of estuaries and rivers and but also in the sea within the three-mile territorial limit.[45] The BC government took an expansive view,

contending that the 1898 judgement “decided that inland and tidal fisheries were the property of the Provinces; that, in a general way, fish, as a property or asset, would seem to belong to the provinces; ... [even though] jurisdiction in respect to legislation and the right to licence was not defined, and the rights in regard to fishing within the three-mile limit were not specifically determined...The province contends that the fish, being the property of British Columbia, it has the right to prescribe where, when, and how its licensees may take its fish, subject to any regulations made by the Dominion authorities."[46] The province claimed ownership of both inland and tidal fisheries, and the right to regulate these fisheries, subject to federal regulations.

The federal government was, of course, less pleased with the decision. The Solicitor General wrote: "...the Judgement of the Privy Council is so opaque in expression and confused in arrangement, that it is almost impossible to speak positively as to its application." He went on quickly, however, to argue that provincial proprietary rights were restricted to inland waters: "The provinces have no property in sea fisheries nor can private individuals acquire any. Fishing in the sea is by Magna Carta open to all and no exclusive rights in such fisheries can be granted."[47] The federal position was that provincial proprietary rights were restricted to inland waters.[48] Any right up to the three mile limit "is in the nature of a jurisdiction, exercisable by the Crown representing the State, and not in any way to be regarded as a proprietary right of the Provinces, and any jurisdiction which the Provinces may have exercised as Colonies, automatically passed to the Dominion.”[49]

Arrangements with provinces after 1898

While control of tidal fisheries was disputed, it was clear that responsibility for inland non-tidal fisheries was to be shared. This was a gain for the provinces, the provinces now had the clear authority to allocate the right to fish in non-tidal waters although the federal government remained responsible for fisheries regulation in all waters.[50] The provincial power over property rights in non-tidal waters was not disputed by the federal government and it agreed, for administrative efficiency, to transfer administration of many non-tidal fisheries to the provinces.[51] Here the provinces would allocate rights to fish and administer regulations, the regulations, however, would be subject to federal approval. Rather than have two authorities involved and as non-tidal fisheries administration could often be combined with other provincial duties, single administration was often more efficient. Several provinces, however, wished to go beyond this, demanding that rights in tidal fisheries be handed over to them.[52] Various interim arrangements were made, pending judicial clarification.

In 1899 administrative control, but not legislative authority, for non-tidal fisheries was delegated to Ontario. In Quebec the federal government handed over the administration of fisheries in inland waters and rivers, but kept jurisdiction over the outer Gulf of St. Lawrence fisheries. In 1899 New Brunswick, Nova Scotia, and Prince Edward Island agreed to leave fisheries administration in coastal waters and the tidal portions of rivers with the federal government, pending a judicial reference to decide the ownership of fisheries in these waters. The federal government would collect revenues, these revenues would go to the provinces if they are found to have jurisdiction in tidal areas.[53] Fisheries in other waters remained with these provinces.

Disputes Between the Federal and British Columbia Governments

In British Columbia uncertainty left by the 1898 judgement would now lead to fifteen years of conflict between the federal and BC governments. Early in the period the provincial government, facing difficult financial circumstances, used its apparently enhanced legal position in fisheries as a lever to try and improve the terms of union. The province offered to lease its assumed rights to the federal government. An interim arrangement, with federal administration of tidal fisheries but revenue sharing with the province, pending judicial clarification, was agreed to. But the BC government was later frustrated by federal stalling on actually sharing revenue. With local support BC then moved into tidal fisheries administration. The federal government took much more notice when provincial requests were backed by action. Later in the period, with a stronger provincial economy, the province offered to take over all fisheries. Finally, in 1913 another court reference better defined federal and provincial roles and responsibilities.

In 1900, emboldened by the 1898 decision and continuing with its campaign to better the terms of union, British Columbia Premier Dunsmuir wrote to Prime Minister Laurier with a number of complaints, among them fiscal relations between the governments, railway development, immigration, and fisheries. The Premier contended that the jurisdiction of the province was greatly extended by the 1898 decision and the BC government now feels considerable responsibility for the development of the fishery. The province complained that the federal government had done little for the fishery, taking more in revenue from the fisheries than it had spent on it, the Premier contending that in 1898-99 federal expenditure for fisheries was $8,500 while revenue was $46,000.[54]

In January 1901 a delegation, the first of many, went to Ottawa, again seeking improvements in the terms of union. While there the Premier wrote to the Minister of Marine and Fisheries with a proposal to settle "matters in dispute between the two governments." About the fisheries he stated that the right of the province to fisheries within territorial waters up to the three mile limit "is still an open question, with, I am advised, a strong probability in our favour in case of a reference to the Courts."... "The fish as a property or asset would seem to belong to the province."..."no doubt that the provinces are entitled to a very much larger share of control, though not of regulation, and to obtain revenue by licensing." The premier conceded that the Dominion government with its experience and administrative apparatus in place "can, at least for a few years to come, more economically and with greater efficiency continue the work of your Department than could the province", at the same time stating that "the administration of the fisheries has not always given entire satisfaction to the Province of British Columbia", the province's fisheries "have not received the consideration which their importance warranted."[55]

The premier suggested that, after the 1898 case, while it appears the federal and provincial spheres of influence could only be settled by a number of court cases involving litigation and delay, it would be better to settle the matter by agreement. The premier goes on to suggest an agreement, starting with the statement that federal fishery revenue in BC from 1872 to 1900 was about $300,000, while expenditures were about $175,000. At the same time fishery expenditures in the eastern provinces have exceeded revenues. Fisheries in BC are underdeveloped and, as they develop, fishery licence revenues will increase, likely to reach $100,000 per year. Thus "We are agreeable...to recommend to the Government of British

Columbia that in lieu of an annual payment of $50,000 by the Dominion to the province the control of the fisheries be allowed to rest exclusively in the Dominion.." Despite the use of the phrase “in lieu of” the province was offering to allow the federal government to administer fisheries in return for an annual payment. The federal government does not seem to have taken this proposal too seriously as two months later the Prime Minister had not even replied.[56]

The complaints and concerns of the provincial government were backed by action. In 1899, with no fisheries department or office and little direct knowledge of the fisheries, the provincial government hired John Pease Babcock, the deputy chief of the California Board of Fish Commissioners, to survey BC fisheries, particularly the Fraser River salmon fishery. For Babcock, who had been involved in the re-stocking of the Sacramento River, this was the start of a long association with British Columbia. After Babcock’s survey, the BC government felt federal efforts to protect the salmon fishery were inadequate and established an office responsible for fisheries in 1900.[57]

Salmon canners encouraged provincial action. In April 1901 a delegation representing 60 of the 74 canners met with the provincial cabinet. A letter from the secretary of the B.C. Canners Committee followed on April 23 asking the provincial government to negotiate with the federal government to take over the fisheries of the province.[58] As an encouragement, the canners were reported to have pointed out that federal revenue from fisheries was four times the expenditures. They suggested that the provincial government levy fees on fishing boats and the output of canneries, using the money for hatcheries, stream clearance, and preventing illegal fishing. One hatchery a year should be built to maintain the supply of fish.[59] Canners were willing to contribute to the province, through special taxes, funds for salmon protection and preservation.[60] The position of the canners was wired to the Prime Minister who now did reply, by telegram, that the federal government was not willing to buy provincial rights or surrender federal rights to the province.[61]

The BC government took further action. On May 1, 1901 a B.C. Fisheries Act was introduced in the legislature, providing for a Board of Fishery Commissioners to be appointed to make regulations for the management, conservation, and regulation of fisheries.[62] The bill, which also provided for hatchery construction and taxing cannery output to build the hatcheries, passed within a week.[63]

The Modus Vivendi of 1901

After the passage of the Fisheries Act the Attorney General for BC informed the federal Minister of Marine and Fisheries on June 1, 1901 that the BC government was now ready to assume the its duties as defined by the Privy Council judgement of 1898 and bring the act into force. Reminding Ottawa that the fishing season was approaching, the province asked for matters to be arranged to avoid any friction that might interfere with the industry.[64]

This got an immediate response. Two days later, on June 3, 1901, the federal Minister of Marine and Fisheries responded by telegram with a proposed modus vivendi, similar to arrangements made with eastern provinces.[65] On June 15, 1901 Attorney General Eberts replied to the Minister of Marine and Fisheries, accepting the arrangement. The modus vivendi was

renewed annually from 1902 to 1906 until April 5, 1907 when the BC government decided not to renew or continue the arrangement.[66]

With the modus vivendi Ottawa and Victoria agreed on provincial control of the non-tidal fisheries, which the 1898 judgement stated belonged to the province and were not a matter of dispute. For tidal or seacoast fisheries there will eventually be a test case but in the meantime the federal government will retain control. If the courts decide in favour of the province the excess of revenues over expenses will go the province. For fisheries in rivers up to the point the river flows into the sea, where both governments were thought to have legal rights, the federal government will maintain control paying a share of the net receipts to the province. While this may have been satisfactory to the governments at the time, the proposed division of licence fees was surprisingly vague; the terms “net receipts” and “such proportion...as may be agreed upon” are used but open to a variety of interpretations. The province was only guaranteed a proportion of the licence fees for the river fisheries, with the possibility of additional revenue if there was a favourable court ruling. The federal offer should be read in light of the fact that the federal government owned the land and the proprietary fishing rights in the railway belt, a block which included major portions of the important salmon spawning rivers, the Fraser and Thompson. Little would change in administration, but the agreement provided for sharing some revenue and operating the fisheries until jurisdictional responsibilities were clearer.[67]

The federal government regarded British Columbia’s claim to the Pacific fisheries as relatively weak. Most salmon fishing was carried out in tidal waters where the federal government had a strong claim for jurisdiction. Where the province may have some proprietary claim, the area between high and low tide, little fishing was carried out. There were no valuable inland fisheries in the lakes and rivers as in Ontario and Quebec.[68] The BC situation was regarded as different from other provinces due to “vast salmon fishery which is carried on to a large extent in the estuaries of the rivers” and, of course, "immensely greater" revenues collected. Thus, as proposed and agreed to in the modus vivendi, the federal government maintained control over the major river estuaries.[69]

BC Moves Towards its own Administration

After the first season operating under the modus vivendi British Columbia sought its share of licence fees. In April 1902 the province asked for an accounting of its share and payment, the first of many requests for payment.[70] The federal government replied that the request would be considered, but, according to the provincial government, nothing further was heard. Despite this, in June 1902 the provincial government asked that the modus vivendi be continued for the 1902 season, which the federal government agreed to.[71]

This would be the pattern for the next five years; the province would ask for their share of the net revenue from the modus vivendi; the federal government would stall, sometimes using the vague wording of the agreement to give figures suggesting there was no net revenue to be shared; but the province would annually ask that the modus vivendi be continued. The province, although talking confidently, did not have an unassailable legal position to control tidal fisheries. Further, with minimal staff the province was not in a position to take over full administration and likely hoped that, with minimal effort, they may obtain some revenue.

At the same time the province was building its own fisheries administration, an action thought to assist the province in bargaining with the federal government. In February 1902 the Premier withdrew the offer to transfer the fishing rights of the Province to the federal government for a payment of $50,000 per year.[72] In June the BC Fisheries Act was amended to enable the province to make regulations, issue leases and licences, levy taxes on output, and appoint guardians, all the powers necessary for an independent fisheries administration.[73]

In February of 1903 the Premier and Attorney General visited Ottawa and met with the Prime Minister to discuss various matters outstanding between the province and the federal government, including a settlement of the money owed BC under the modus vivendi.[74] In a letter to the Prime Minister they again mention the federal government's excess of receipts over expenditures, money the province is entitled to, that nothing has been done for the development of the fisheries, and BC's as yet unexercised right to collect taxes from the fisheries. The province then offers to assume management of the fisheries without cost to the Dominion "with a better local knowledge of the industry and the conditions which given its success, we are in a better position to understand the requirements [of the industry]." Although this appears to be an extraordinary offer now, given the cost of fisheries management, in an era where net revenues were possible the offer does not seem so reckless. Likely knowing the federal government would not accept the offer, the province again asks for the modus vivendi to be extended until there is a final decision on fishery rights, but asks for a definite agreement on the proportion of revenue to be paid to each government. With the federal government collecting the revenue, the vague wording of the agreement made it difficult for the province to press its case.[75]

The federal attitude to this request was to try and minimize the amount owed to the province. A Marine and Fisheries memo pointed out the difficulties in defining what the B.C. government should get, claiming fees for licences for fishing below low water mark, outside the mouths of rivers, and up to and beyond the three mile limit should be excluded from consideration. Information presented for 1900-01 and 1901-02 show that federal revenues were $94,138 and patrol and hatchery expenses $74,645, leaving an excess of revenues over expenditures of $19,493. Including construction and operating expenditures of $80,100 for coastal patrol steamers, however, resulted in expenditures exceeded revenues.[76]

The province, of course, disputed the federal interpretation of the amount due them, pointing out that expenditures for the construction of fish hatcheries, as these are capital and not operating costs, and expenditures for patrolling beyond the three mile limit should be charged to the federal government. If hatchery construction expenses were removed about half of revenues would be payable to the province. The province proposed that, in the future, half of licence receipts be paid to the province.[77] The federal government conceded to itself that the cost of construction of hatcheries was an abnormal expense and that it likely improper to ask the local government to assist in the protection of the offshore sea fisheries. Ottawa also concedes internally that the BC proposal to take half of receipts for licenses is reasonable.[78] Despite these concessions the federal government did nothing about settling the issue.

In 1907 the province, frustrated by the lack of a settlement on the modus vivendi and claiming the fish are the property of the province from which they should derive "a very considerable revenue," moved to increase its role in fisheries.[79] The first step was terminating the

modus vivendi, decided by the cabinet on April 5, 1907. The federal government still maintained it was impossible to settle modus vivendi claims until the legal rights to jurisdiction were clear to decide the portion of the funds belonging to the province.[80]

The province then proclaimed their Fisheries Act, passed by the legislature in 1901 and amended in 1902. The 1902 amendments allowed the province to prohibit fishing in any area except with a provincial licence. Proclamation of the Act was not immediately followed by regulatory action by the provincial government, the federal government continued to issue fishing licences.[81]

After the provincial action the federal government was more focussed on resolving the dispute with BC about fishing rights. Discussions were held with the province about the federal government buying-out the province, "all rights of fisheries to be transferred to the Dominion, [with the] Dominion [to] take over provincial hatcheries and pay the province for its outlays." This was discussed by the Premier and the federal Minister of Inland Revenue in October 1907 in Victoria. The cost was expected to be low as the provincial government had only established one h hatchery.[82] In December 1907 the federal Minister proposed to cabinet that a formal proposal be submitted to BC with the understanding that the claim of the province to share in revenues collected from fish licences under the modus vivendi would be "considered and disposed of on its merits."[83] Despite this offer, the Premier informed the Prime Minister in November that the province has "...decided to exercise our jurisdiction in fisheries" pointing out that his government "had done everything possible to have the matter settled" and "it was not in the interest of this industry that the matter should be left open any longer."[84]

B.C. Licenses Canneries

In March of 1908 the Canneries Revenue Act was passed by the BC legislature. Canneries now required provincial licences to operate, costing $100 per establishment plus $100 per canning line for up to four lines.[85] Although the ostensible reason for the Act was to raise revenue a major purpose was to limit the number of canneries in the north. Before issuing a cannery licence, the provincial government was to get a report on whether the new cannery would lead to over-fishing, "whether it will interfere seriously with the business of canneries already operating and who are accepting our boat-rating [a form of fishing licence limitation] and have invested large sums of money." The provincial policy is to "limit the number of canneries in an area to make sure that those operating can make a profit and to protect fish"..."if the canneries are operating at a loss they will evade your regulations and they will make inroads upon your capital stock of fish." Limiting entry was justified for conservation. The province slams past federal policy:"The history of the industry on this coast is replete with ... instances of a disregard of the vested interests by the Dominion officials at the instance of some partisan..."[86]

The federal government also instituted cannery licencing in 1908. A federal order-in-council was passed requiring a licence and payment of a fee. According to the provincial government both actions were taken at the urging of canners; certainly the established canners would benefit from limiting entry into the industry. Canners said they would limit the number of fishing boats if government would limit the number of canneries. A three man commission was established by the canners to set "boat ratings", allotments of boats to each cannery, for 1908 and

1909.[87] The province regarded the federal government as following their actions, since before 1908 neither government required a licence for a cannery. Licencing canneries, however, had been recommended by the federally-appointed Fisheries Commission of 1905-07, primarily for conservation purposes.[88]

The Provincial Regulations

The province quickly moved to establish its fisheries administration. An order-in-council was approved on April 23 setting out provincial fisheries regulations. Fishery overseers were appointed for the major salmon fishing areas; provincial constables were appointed as *ex officio* fishery overseers in other areas. Licences were issued and fees collected from fishermen, trap operators, canneries, and other fish packers.[89] The total fees collected were $20, 172 in 1908 but $33,340 in 1909, with 62% of the fees from fishermen in 1908 and 70% in 1909.[90] The province still hoped to maintain the federal contribution to fisheries administration arguing that under the Terms of Union, unlike the other provinces, the federal government has an obligation to protect and encourage fisheries, and thus the province should not contribute anything to federal expenditures on hatcheries and patrolling.[91]

In introducing its regulations the province stated that "...the Privy Council having established our claim to the property, we have decided to enforce our jurisdiction by selling the right to take our fish..." Provincial licences were required for all fishermen and all those operating traps. Provincial licences were valid over the whole coast, unlike federal licenses which were valid in only one area. Provincial regulations for the Fraser River included more restrictive fishing times than federal regulations to "save the situation before it is too late", but federal fishing times were to be used in other parts of the province. Revenue was to be used only for fisheries. "...now that we ae proceeding to enforce our jurisdiction and to see that our fish resources are properly preserved it is, of course, necessary to obtain means for this purposes by charging a license to the fishermen and cannerymen to whom we sell our fish....we quite expect that the moneys collected from the source of licence fees will hardly be sufficient for the work we propose to do in the way of properly maintaining our fisheries."[92]

Fishermen Caught Between Regulations

With the start of the 1908 salmon fishing season fishermen faced both federal and provincial regulations, which unfortunately differed. On the Fraser River, the major salmon river, federal regulations allowed sockeye fishing after July 1, the province only after July 9. Once the season opened federal regulations allowed fishing in the upper river after 6 a.m. Monday following the weekend closure, the province only after 6 p.m. Monday; in the lower river federal regulations allowed fishing only after midnight Sunday, the province after 6 p.m. Sunday.[93] Provincial officials were somewhat extravagant in their claims about the impact of their fishing regulations, stating that the "Dominion awoke to the necessity for action and regulations similar to those imposed by us were adopted" but, even for the Fraser River, the provincial and federal regulations were not much different and elsewhere federal regulations were followed.[94]

Conflicts immediately arose. In early July a federal fisheries officer on the Fraser River reported that fishermen were being "harassed" by provincial officers. On July 4 he reported that

four fishermen were threatened with arrest and banning from fishing by provincial officers for lack of a provincial licence. On July 9 he again reported that provincial officers prevented fishermen holding both provincial and federal licences from fishing for Sockeye before July 10, when the provincial season was to open.[95]

The first report of a prosecution was on July 24 when fisherman John Kendall and two others were charged with fishing without a provincial licence. The prosecution, after proving they were fishing without a provincial licence, argued that the provincial government is the owner of fish in provincial waters and can attach conditions to licences. Counsel for the defendants, stating that the Fraser River is tidal and navigable, argued that the provincial government cannot attach conditions to a licence but can only issue a licence in order to raise revenue; fishing in tidal waters is a public right and the province has no right to grant such a fishery. But Kendall and the others were convicted and each fined $10. In a second case four fishermen were charged for fishing at times prohibited by the province but allowed by federal regulations. All were convicted and fined $10 plus $2 costs. [96]

Some fishermen were then charged with violating federal regulations, while conforming to provincial regulations. Four fishermen were charged for fishing on Sunday before midnight, allowed under provincial regulations but not under federal. In a hearing on July 25 before a federal inspector all pleaded guilty and were fined $25. One of the fishermen stated "...Mr North, a Provincial Fisheries Officer, told him to go out at six o'clock on Sunday evening, and that if he got into any trouble the provincial government would defend him." Other fishermen also stated that if they got into trouble the province would protect them and pay any expenses.[97] Provincial backing is likely the reason the fishermen pleaded guilty; the province may have been trying to provoke a test case.

Further prosecutions occurred. By mid-August forty fishermen had been prosecuted for breaching provincial regulations and twelve for breaching federal regulations. The "enforcement of conflicting regulations has resulted in a heavy loss of time and money to fishermen." The fishermen met with the premier and officials to protest against actions of provincial government[98] In August Kendall, who now had both provincial and federal licences, was again convicted, for fishing at a time prohibited by provincial regulations but allowed by federal regulations.

Kendall appealed both convictions, fishing without a provincial licence and breaking provincial regulations, to the county court. His counsel argued that the provincial licence imposed regulations and fishermen were excused from taking out such a licence since the province did not have the right to impose regulations. The province contended that the rivers and fish in them are the property of the province and the province can therefore prohibit fishing. This does not interfere with the federal right as the right to regulate only occurs once the province has decided how its property can be used. Interestingly, the province argued that even though the Magna Carta provides for a public right of fishing in tidal waters, the province may repeal the Magna Carta, either directly or by implication.[99]

The judgement, given in October 1908, referred to the 1898 Privy Council ruling that the province may impose a licence in order to raise revenue but the enactment of fishery regulations is a power of the federal legislature only. The question then is whether the provincial Fisheries Act

and its regulations are direct taxation to raise revenue or legislation regarding fisheries. The judge concluded that the provincial act's “essence is the regulation of the times when, places where, and implements with which fishing may be carried on. Indeed the licence fee seems a mere incident"..."regulations imposing this licence fee are ultra vires." The first conviction, for fishing without a provincial licence, was quashed. The second conviction, for breaking provincial regulations, was also quashed. Only the federal legislature may enact fisheries regulations, the judge ruled. Even if the provincial regulations were intra vires, the federal regulations override them.[100]

The province then appealed to the Appeal Court of B.C. The lawyer for Kendall argued that the federal government had sole legislative power over fisheries and that the land and river were within federal jurisdiction as they were in the railway belt and a harbour. Provincial arguments were based on provincial ownership of the province’s rivers, the Magna Carta provision of a public right to fish in navigable waters having been repealed by the province’s fisheries legislation. Both appeals were dismissed. Provincial fishing regulations were ultra vires and the convictions for fishing out of hours and for fishing without a licence both remained quashed.[101] After this the province continued to issue licences but with fishing governed by federal regulations.[102]

With the province issuing licences and collecting fees, the federal government now seemed prepared to try and settle the province’s claims under the modus vivendi, hoping to have the province vacate fisheries administration. Previously the federal government claimed they could not settle the province’s claims since relative jurisdictions and powers to issue licences were not set.[103] But the modus vivendi recognised there were unsettled jurisdiction questions and included ways to accommodate them. BC claimed part of the licence revenue collected by federal government for the period 1901-7, there was no claim after 1907 when BC began collecting its own licence fees. By federal accounting, for 1901 to 1907 inclusive, the federal total revenue for salmon licences and leases, trap licences, and sturgeon licences was $320,459. Federal expenditures, excluding fish breeding and patrol vessels used to exclude foreign fishermen, was $208,185, leaving a net balance of $112,274.[104] B.C. offered to accept half of this amount in full settlement of its modus vivendi claims. The province would not, however, accept money on condition that the fisheries be handed over to the federal government with no further litigation; but the jurisdiction issue should be referred to the courts.[105]

The federal Minister, “not aware of any reason why these proceeds should be divided otherwise than upon the basis of equality," recommended to cabinet that the proposed settlement made by the province be accepted. Payment of $56,137, half of the net proceeds, was approved and, in September 1910, a cheque sent to the B.C. government.[106] The federal government may have thought the payment would ease tensions, but the province was reported to regard the payment "...to be an acknowledgement that British Columbia has the power of regulation through the sale of its rights in the fish or by direct taxation"[107]

Another Reference to the Supreme Court

By June of 1910 the federal and provincial governments had agreed on a reference to the Supreme Court of Canada, a request of the province when settling their modus vivendi claim.[108]

Although the Kendall cases were one of the catalysts for the reference the reference dealt with general questions about the fishery rights of the province and was not based on a particular court case. Arguments were presented to the Court in 1912 by attorneys for Canada, British Columbia, and most other provinces. The Court was asked if British Columbia could grant, by way of lease, licence, or otherwise, the exclusive right or any right to fish in various waters: tidal or non-tidal but navigable waters in the Railway Belt; the sea below low water level within three nautical miles of the coast; the gulfs, bays, channels, and arms of the sea; and estuaries of rivers within the province. The answer for the Railway Belt was negative, no right could be granted by the province. For the other areas the court ruled that the province could not grant exclusive rights, but the court did not answer the question of provincial rights with respect to rights to fish, other than exclusive.[109] Exclusive rights could not be granted by the province in tidal or navigable waters, but the question of other forms of the right to fish was left hanging. The province, faced with this unfavourable ruling, appealed to the Privy Council.

Privy Council Judgement of 1913

Fifteen years after the disruptive 1898 ruling of the Privy Council another judgement of the Privy Council was rendered in 1913.[110] The reference to the Privy Council was again on questions of provincial fishery rights, not on a particular court case, the questions asked were the same as those asked of the Supreme Court. The ruling emphasized and confirmed the public right to fish in tidal waters. "... in the case of tidal waters (whether on the foreshore or in estuaries or tidal rivers) the exclusive character of the title is qualified by ... [a] paramount title which is *prima facie* in the public...the subjects of the Crown are entitled as of right not only to navigate but to fish in the high seas and waters alike...it has been unquestioned law that since Magna Charta [that] no new exclusive fishery could be created by Royal grant in tidal waters, and that no public right of fishing in such waters, then existing can be taken away without competent legislation. This is now part of the law of England and their Lordships entertain no doubt that it is part of the law of British Columbia."[111]

Addressing the question of regulation and control of public fishing in tidal waters, the BNA Act designation of sea coast and inland fisheries as within the exclusive legislative authority of the Parliament of Canada confers "an exclusive right on the Dominion to make restrictions or limitations by which public rights of fishing are controlled."[112] Since fishing in tidal waters in British Columbia was a public right at confederation and when BC joined Canada, "the object and the effect of these legislative provisions were to place the management and protection of the cognate public rights of navigation and fishing in the sea and tidal waters exclusively in the Dominion Parliament, and to leave the province no right of property or control in them."[113] Fishing in tidal waters, which includes the foreshore, creeks, estuaries, and tidal rivers, was under the exclusive legislative control of the federal government, the province had neither property rights nor legislative authority in tidal waters.

The questions put to the Privy Council about the authority of the BC government to grant fishing rights in tidal waters were all answered in the negative. In tidal waters the public right was governed by the federal government's exclusive legislative authority. Below the low water mark and in the gulfs, bays, channels, arms of the sea, and estuaries of the rivers a public right to fish exists which is under the exclusive legislative authority of the federal government.

The 1913 judgement reiterated but greatly clarified the 1898 judgement. Instead of focussing on provincial property rights, the public right to fish in tidal waters and the federal legislative authority for tidal waters was emphasized. With no property rights in tidal waters the province had no role and no jurisdiction over sea coast and tidal estuary fisheries. Although not addressed by the Privy Council, the only area in the province where the provincial government had authority to grant fishing rights was non-tidal waters outside the railway belt, where the provincial government owned the fishery property rights.[114] The establishment of unimpeded authority in tidal waters was a clear gain for the federal government.

Impact of the 1913 Judgement

The federal government, with its jurisdiction over fisheries in tidal waters confirmed, stated that "...licences, except possibly as a mere matter of local taxation, will be required only from the [federal] government." The federal government took advantage of the ruling to raise licence fees, previously lowered for gillnetters when the provincial government brought in its fees in 1908. Now, justified by the fact that their expenditures are twice as large as revenues, the federal government decided to restore gillnet licences to $10 and double fees for traps, purse seines, and drag seines.[115] The province indicated that it would continue to collect licence fees as a form of direct taxation.[116]

The province tried to be as positive as possible. The BC Commissioner of Fisheries stated that the powers exercised in the past by the provincial fisheries department have not been curtailed by the Privy Council judgement, the judgement removes uncertainty about the relative jurisdictions of the federal and provincial governments. The province still has the right to raise revenue through licences which the province will continue to do.[117] A provincial Fisheries Tax Act was passed to be used in place of the Fisheries Act.[118] Provincial fishery revenues were much greater than expenses. A history of the Department discusses provincial licence fees set at "comparatively low rates... generating a relatively modest $20,000 in total revenue...[which] greatly exceeded administrative costs...."By the 1920s revenues had increased to approximately $40,000 and in the 1930s to over $100,000. Administration costs during this period never exceeded $35,000."[119] Between 1915 and 1924, for example, the B.C. Department of Fisheries collected $294,273 and spent $143,523, a net gain of $150,750.[120] In 1922 the Assistant to the Commissioner, noting that the industry had agreed to fees for the “protection, betterment, and preservation of the salmon fisheries” and that only 47 percent of fees collected had been spent on fisheries suggests fees be reduced.[121]

As of 1914 both the federal and provincial governments had staffs. The federal government had a staff of fishery officers covering all fishery districts. The provincial government maintained fish hatcheries, conducted scientific investigations, and supervised conditions on spawning beds. The federal government did make some effort to avoid doing the same work as the provincial government. The contribution of the provincial government was acknowledged, the Minister of Marine and Fisheries stating: "...I see nothing to be gained by needless duplication of work. I was aware that your [BC] Department was making an annual survey of the salmon rivers, and as I felt assured it would be adequate, I did not have one made."[122]

While the 1913 case settled the question of fisheries jurisdiction for BC and the maritime

provinces, Quebec contended that, since the decision was based on the Magna Carta and English common law, which did not apply to Quebec, the decision did not affect Quebec. The federal and Quebec governments agreed to a further court reference in 1915, heard in 1917, "under authority of a provincial statute which was obtained for that purpose." The decision was adverse to the federal contention and was appealed to the Privy Council. The decision of the Privy Council, delayed by World War I and delivered in November 1920, reversed the lower court judgement and was favourable to the federal case. The substance of the judgement was that "there is a public right of fishery, over which the Federal authorities have exclusive jurisdiction, not only in the navigable tidal waters but in the non-tidal portions of the streams that are navigable as well, thus including valuable salmon and other fisheries."[123] In 1922, however, the administration of practically all Quebec coastal fisheries was transferred to the province. Quebec was made responsible for the administration of the regulations made under the federal Fisheries Act. Since most fishing was done by nets attached to bottom and the 1920 judgement gave both governments overlapping jurisdiction, the federal government felt a friendly agreement with Quebec would be best for conservation.[124] An additional reason may also have been that there were with few French-speaking managers in the federal service at that time.[125]

Jurisdiction over Fish Processing

A further judgement of the Privy Council was delivered in 1929, after proceeding through lower courts and the Supreme Court.[126] This case delineated federal and provincial responsibilities for fish processing. Under the Fisheries Act, the federal government had regulated fish processing by licencing fish canneries and fish curing establishments. The case arose after a British Columbia canner established a floating salmon cannery and proceeded to move it from place to place on the BC coast as the salmon runs came into each area. Other salmon canneries, with fixed plants, objected and the federal government would only grant a licence if the floating cannery were left in one location for the whole season. This condition would negate the benefits of a floating cannery and the authority of the federal government to licence fish canneries as part of its legislative control over fisheries was challenged.

The Supreme Court and Privy Council found this exercise of jurisdiction by the federal government over fish processing to be ultra vires. The Privy Council judgement stated that the "Dominion contention which sought to embrace jurisdiction over the conversion of fish into marketable commodities reached beyond what the constitutional mandate could support...trade processes by which fish when caught are converted into a commodity suitable to be placed on the market cannot upon any reasonable principle of construction be brought within the scope of the subject expressed by the words "sea coast and inland fisheries." It is not necessary for the federal government to have fish plant licencing in order to regulate the fishery. "once the fish are out of the water and appropriated for conversion to a particular use in the marketplace they become property, outside the purview of federal regulation but under the subject of property and civil rights in the province"[127]

Non-tidal fisheries administration in B.C.

The administration of the non-tidal fisheries of B.C. evolved with increased activity in these fisheries and administrative changes for other fisheries. In 1900, with little use, there was

little need for administering non-tidal fisheries. As the need developed the federal government extended its administrative service to the administration of sports fisheries in those non-tidal waters used by salmon; after 1908 the province also extended its jurisdiction in non-tidal waters. Subsequently various co-operative arrangements were made. In 1937 the federal government discontinued supervision of sports fisheries in non-tidal waters and in October 1937 transferred its sport fish hatcheries to the provincial government at no cost[128]

Currently there is an overlap between federal and provincial jurisdictions over inland fisheries. Jurisdictional responsibility is divided between the two levels of government. The federal government can regulate on fishing seasons, quotas, size limits, and tackle. The province may determine who can fish, the privileges of fishing, and the fees to be paid. To simplify administration responsibility for the administration of federal legislation is delegated to provincial governments who administer both federal and provincial legislation. The provincial governments may recommend that changes be made to federal fisheries regulations, the amendments are considered by the federal government and passed as Orders-in-Council. This fulfills the federal constitutional responsibility for regulation and conservation of all fisheries in Canada.[129] Provincial governments may combine fisheries management with other wildlife management and recreation administration.

Summary and Conclusion

By 1930 federal and provincial jurisdictional roles in fisheries were settled. Although the BNA Act of 1867, by failing to account for property rights in fishing, introduced a source of conflict between federal and provincial governments, judicial rulings eventually gave each level of government the limits to their responsibility. Unfortunately the 1898 judgement had led both provincial governments and the federal government to believe that provincial authority was broader than was ultimately decided. For a time the BC salmon fishery was subject to a dual administration, with duplication of effort and lack of clear responsibility. Participants in the industry were confused, with cases of fishermen fined for violating one set of regulations while complying with the other. Responsibilities were also clarified through mutual agreements, such as those for the administration of purely non-tidal fisheries; these were not transfers of powers but done primarily for administrative convenience and efficiency.[130]

As of 1930, it was clear that the federal parliament has exclusive legislative authority over fisheries, both coastal and inland, under the BNA Act of 1867, but this did not also give the federal government any property rights in fisheries. For the provinces there was no explicit mention of responsibility for fisheries but the BNA Act gave them exclusive power to make laws respecting "The management and sale of the public lands belonging to the province." and “Property and Civil Rights in the Province.” As property rights in fisheries exist in non-tidal waters, provincial powers over property allow provinces to legislate on the allocation of these fisheries and the conditions of the allocation. But provincial allocations are subject to regulations enacted by the federal parliament under its overall legislative authority. Both governments, however, may tax fisheries.

In tidal waters property rights for fisheries do not exist and thus the federal government has exclusive jurisdiction in both allocating and regulating fisheries. The only possible conflict in

tidal fisheries occurs when fishing gear, such as traps, must be permanently attached to the sea bed. With the inshore sea bed owned by the province, permission must be obtained from the province and the province can set conditions for granting permission.

Exclusive legislative authority over fisheries does not give the federal parliament the right to legislate respecting provincial property when legislating in the fisheries area. Thus, fish processing is a provincial responsibility because of provincial legislative responsibility for property and civil rights. The inspection of fish going into inter-provincial or international trade and the related processing facilities, however, is an obligation of the federal government, as part of its responsibility for matters beyond a single province.[131]

Currently the province, either through constitutional authority or agreement with the federal government, is responsible for managing the oyster and clam industries, trade and commerce within the province including inspecting fish sold within the province, and licensing fish processors and buyers. The provinces also licences aquaculture and supports the industry with research and technology development, veterinary services, and health inspections. The British Columbia Ministry of Environment, Lands, and Parks administers and manages the freshwater and sport fisheries of the province.[132]

Endnotes

1. The British North America Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), renamed the Constitution Act, 1867 by the Constitution Act, 1982.

2. The courts have stated that those sections of the English common law which are applicable and suitable also apply to those parts of Canada that were settled as British colonies.

3. Howarth (1987), p. 6-11; Moore and Moore state that granting rights to the fishery was very common when land was granted by the monarch to barons, the fishery grant would be for the whole stream when the river flowed through the land but only extend to mid-stream when the land granted was one bank of the river. (Moore and Moore (1903), p. 29)

4. Very early on, before the Crown granted the right to a tidal or non-tidal fishery, the public may have had the right to fish there. Once the fishery had been granted the public could be excluded.(Moore and Moore (1903), pp. 26, 150-1)

5. Moore and Moore (1903), p. 26.

6. Translation from Holt (1992), pp. 459, 461.

7. Commentators on the Magna Carta make the point that fish weirs were obstructing river traffic and were to be removed as a

convenience to navigation. Dickinson (1955), p. 23; McKechnie (1914), pp. 343-345; Swindler (1965), pp. 307-8.

8. MacGrady (1975), p. 555.

9. Ibid., p. 581.

10. Ibid., p. 585.

11. Moore and Moore (1903), pp. 95-8.

12. The absence of proprietary rights in both tidal waters and navigable waters was not generally applied in Canada. The 1913 Privy Council judgement included only tidal waters as having a public right to fish. La Forest states that although there is some legal opinion that the public right to fish also exists in non-tidal navigable waters, the majority view is that there is no public right to fish in non-tidal waters. (La Forest (1973) p. 196)

13.According to Scott historically fishery rights were not automatically included with land grants. The fishery rights may have been separated and granted to others, those receiving the rights from the crown may have, in turn, granted their fishery rights to others. (Scott (1988), p 292)

14. Rueggeberg and Thompson (1984), pp. 7, 71.

15. Thompson (1974), pp. 1969-70.

16. The British North America Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), renamed the Constitution Act, 1867 by the Constitution Act, 1982.

17. La Forest (1969), p. 77.

18. Lieut.-Governor A. H. Gordon to Edward Cardwell, 26 September 1864 [A report on the Charlottetown Conference of September 1864 based on conversations with participants], reproduced in Browne (1969), pp. 40-49.

19. Hewitt Bernard's Minutes of the Quebec Conference, 10-29 October 1864, reproduced in Browne (1969), pp. 55-93. The minutes report motions, amendment, and decisions but not the discussion.

20. Innis (1954) pp. 361-4.

21. Report Of Resolutions adopted at a Conference of Delegates from the Provinces of Canada, Nova Scotia, and New Brunswick, and the Colonies of Newfoundland and Prince Edward island held at the City of Quebec, 10th October 1864, as the Basis of a proposed Confederation of these Provinces and Colonies, reproduced in Browne (1969), pp. 154-165.

22. A thorough discussion of the advantages and disadvantages of assigning regulatory powers to different levels of government is presented in Scott (1982).

23. Reesor (1992), p. 50.

24. Hopkins (1968), p. 160.

25. Fairley (1980) and Thompson (1974) present good discussions of the failures of the BNA Act in the area of fisheries.

26. E. E. Prince, an early Dominion Commissioner of Fisheries, states that "the first federal fisheries act was largely...an assimilation of existing laws [of the provinces], and whole clauses were bodily transferred" (Prince (1920), p. 169). Vanderzwaag states that the Act extended many aspects of pre-confederation Province of Canada statutes to New Brunswick and Nova Scotia. (Vanderzwaag (1983), p. 197.)

27. National Archives of Canada (hereafter NAC), Records of the Department of Fisheries and Oceans: RG 23, vol. 124, file 164(4), Acting Deputy Minister of Marine and Fisheries to Deputy Minister of Justice, 5 November 1909.

28. Section 146 of the BNA Act of 1867 gave the Parliament of Canada the power to admit additional provinces. British Columbia was admitted by Imperial Order in Council, dated the 16th day of May, 1871, effective July 20, 1871. The Order in Council was renamed the British Columbia Terms of Union by the Constitution Act, 1982.

29. B.C. Bureau of Provincial Information (1910) p. 16.

30. Johns (1935) also discusses the arguments for "better terms", including the grievance over fisheries’ revenues and expenditures.(p. 68 and pp. 187-191)

31. The Queen v. Robertson. 6 S.C.R. 52 (1882).

32. Fairley (1980), pp. 270-2; Parisien (1972), pp. 1-2; and Thompson (1974), pp.1973-4 present discussions of this case.

33. Quotation given in Fairley (1980), p. 272.

34. Thompson (1974), p. 1975.

35. Re Provincial Fisheries (1895), 26 S.C.R. 444; referred to in La Forest (1973) pp. 27, 240-1.

36. Attorney General for Canada v. Attorneys General for Ontario, Quebec, and Nova Scotia (Fisheries) [1898] A.C. 700. At 709-10 (P.C.); NAC, RG 23, vol. 124, file 164(5) Judgement of the Lords of the Judicial Committee of the Privy Council, 26 May 1898. See Fairley (1980) pp. 272-6; Ozere (1961), p. 798; Parisien (1972), pp. 3-8; Thompson (1974), pp. 1974-6; and Varcoe (1965), pp. 174-5 for discussions of the judgement.

37. Judgement of the Privy Council, 1898, p. 3.

38. Ibid., p. 4.

39. Ibid., p. 4.

40. The federal government had also argued that the Third Schedule of the BNA Act, which listed *Rivers and Lake Improvements* and *Lands set apart for public purposes* as provincial public works and property to be the property of Canada, transferred proprietary rights in rivers to the federal government. The judgement stated that only the improvements and not the rivers were transferred to the Dominion.

41. Ibid., pp. 4-5.

42. Ibid., p. 3.

43. Ibid., p. 3.

44. Quotes from the 1898 Judgement of the Judicial Committee of the Privy Council.

45. McMynn (1965), Appendix A, Copy of a letter from W.A. Found, Deputy Minister of Fisheries to G.S. Wismer, Attorney General of BC, 3 June 1938.

46. B.C. Bureau of Provincial Information (1910), p. 16.

47. NAC, RG 23, vol 124, file 164 part c, Solicitor General to L.M. Davies, Minister of Marine and Fisheries, 24 December 1898.

48. NAC, RG 23, vol. 1048, file 721-8-4(1), Memorandum Status of Fisheries Question Between the Province of British Columbia and the Dominion Government, 4 January 1908.

49. NAC, RG 23, vol. 123, file 164(3), Memorandum for the Honourable L.P. Brodeur - Conference With Provincial Premiers, 6 October 1906.

50. Fairley (1980), p. 273

51. Parisien (1972) presents a detailed discussion of the delegation of administrative control to provinces.

52. Ozere (1961), p. 798.

53. Parisien (1972), pp. 8-9, quoting Department of Fisheries and Oceans archival documents; NAC, RG 23, vol. 124, file 164(4), Acting Deputy Minister of Marine and Fisheries to Deputy Minister of Justice, 5 November 1909; NAC, RG 23, vol. 123, file 164(3), Memorandum for the Honourable L.P. Brodeur - Conference With Provincial Premiers, 6 October 1906.

54. Johns (1935), p. 71; Parisien (1972), p. 9.

55. NAC, RG 23, vol. 124, file 164(3), James Dunsmuir, Premier of BC, to Louis Davies, Minister of Marine and Fisheries, 23 January 1901.

56. Johns (1935), pp. 80-1.

57. Alexander (1952), pp. 204-5.

58. Johns (1935), p. 82.

59. Victoria Daily Times, April 23, 1901.

60. Public Archives of British Columbia (hereafter PABC), Records of the Department of Fisheries: GR 435, box 67, file 637, Assistant to the Commissioner to Commissioner of Fisheries, 8 November 1922. Several sources suggest canners' support for provincial action was because the canners disagreed with certain federal policies, most likely the failure of the federal government to limit the number of canneries. (Carrothers (1941), p. 38; Officer (1955); Western Fisheries, January 1955). Certainly the canners were in favour of more hatcheries.

61. Johns (1935), p. 83. Laurier also replied that a further decision on fishery rights should be obtained from the Privy

Council.

62. Johns (1935), p. 83; Victoria Colonist, May 2, 1901.

63. Vancouver Province, May 8, 1901. The original act focussed on establishing hatcheries, which the canners had requested. Provincial powers were expanded when the act was amended in 1902.

64. NAC, RG 23, vol. 1048, file 721-8-4(1), W.A. Found to E.A. Newcombe, Deputy Minister of Justice, 3 January 1914.

65. NAC, RG 23, vol. 124, file 164(4), W. J. Bowser, BC Commissioner of Fisheries, to L.P. Brodeur, Minister of Marine and Fisheries, 11 June 1908.

66. NAC, RG 23; vol. 1048 file 721-8-4[sub 1], Re: Proposed Settlement of Questions as to Fishery Rights in British Columbia, 20 October 1907.

67. Parisien (1972), p. 10.

68. NAC, RG 23, vol. 124, file 164B, Memorandum British Columbia's Case Re Fishery Rights, 17 October 1903.

69. NAC, RG 23, vol. 1048, file 721-8-4[sub 1], Re: Proposed Settlement of Questions as to Fishery Rights in British Columbia, 20 October 1907.

70. NAC, RG 23, vol. 123, file 164(3), Richard McBride to Wilfrid Laurier, 22 November 1907.

71. NAC, RG 23, vol. 124, file 164(4), W.J.Bowser, BC Commissioner of Fisheries to L.P. Brodeur, Minister of Marine and Fisheries, 11 June 1908.

72. Johns (1935), p. 92.

73. Vancouver News-Advertiser, June 5 1902. The activity of the provincial government did not, of course, go unnoticed. An official of the Department of Marine and Fisheries specifically commented that the BC government was going beyond its jurisdiction in establishing a hatchery at Lillooet. (Vancouver Province, December 17, 1902)

74. NAC, RG 23, vol. 124, file 164, part B, Memorandum Re Sentiment of Fisheries Question, 31 May 1904.

75. NAC, RG 23, vol. 124, file 164A, EG Prior and DM Eberts to Wilfrid Laurier, 3 February 1903.

76. NAC, RG 23, vol. 124, file 164, part B, Memorandum British Columbia Fisheries. 5 February 1903.

77. NAC, RG 23, vol. 124, file 164, part B, Memorandum Proposal of British Columbia Government Re: Fisheries, 6 February 1903.

78. NAC, RG 23, vol. 124, file 164, part B, Memorandum Proposal of British Columbia Government Re: Fisheries, 6 February 1903.

79. NAC, RG 23, vol. 123, file 164(3), Report to His Excellency The Governor General in Council from the Minister of Marine and Fisheries, 31 December 1907.

80. NAC, RG 23, vol. 123, file 164(3), Submission to cabinet by the Minister of Marine and Fisheries, 31 December 1907.

81. NAC, RG 23, vol. 123, file 164(3), Extract from a letter from the Acting Premier of British Columbia, 7 June 1907.

82. NAC, RG 23, vol. 1048, file 721-8-4[sub 1], Re: Proposed Settlement of Questions as to Fishery Rights in British Columbia, 20 October 1907.

83. NAC, RG 23, vol. 123, file 164(3), Submission to cabinet by the Minister of Marine and Fisheries, 31 December 1907.

84. NAC, RG 23, vol. 124, file 164(4), W. J. Bowser, Commissioner of Fisheries, to L.P. Brodeur, Minister of Marine and Fisheries, 11 June 1908.

85. Victoria Colonist, March 3, 1908.

86. PABC, GR 435, box 39, file 340, BC Commissioner of Fisheries to J. D. Hazen, Minister of Marine and Fisheries, 9 December 1911.

87. PABC, GR 435, box 64, file 597, undated memo.

88. PABC, GR 435, box 65, Commissioner of Fisheries to Premier, 10 April 1912.

89. Commissioner of Fisheries Report for 1908, p. I5.

90. Ibid.; Commissioner of Fisheries Report for 1909, p. I21. 1909 was a ‘big year’ on the Fraser.

91. Vancouver Province, April 18 1908. In the article the province was quoted as claiming it was asserting its jurisdiction

"under a decision of the Privy Council."

92. PABC, GR 435, box 64, file 599, Memo to Commissioner of Fisheries, Report on Inquiry re Dominion-Provincial Control of Fisheries, n.d., ca. 1908.

93. NAC, RG 23, vol. 124, file 164(4), Brief Comparison of the Federal and Provincial Fishery Regulations for British Columbia, 7 August 1908.

94. PABC, GR 435, box 65, Commissioner of Fisheries to Premier, 10 April 1912

95. NAC, RG 23, vol. 124, file 164(4), Fishery officer at New Westminister telegrams to Ottawa, 4 and 9 July 1908.

96. NAC, RG 23, vol. 124, file 164(4), A. Whealler to Deputy Minister of Justice, 24 July 1908. Whealler was a lawyer in private practice who was asked by the federal Inspector to watch the cases and report but took no part in them.

97. NAC, RG 23, vol. 124, file 164(4), A. Whealler to Deputy Minister of Justice, 27 July 1908.

98. Vancouver News-Advertiser, August 14, 1908.

99. NAC, RG 23, vol. 124, file 164(4), A. Whealler to Deputy Minister of Justice, 28 September 1908.

100. NAC, RG 23, vol. 124, file 164(4), Untitled [Judge Howay ruling on Kendall appeals], 12 October 1908.

101. NAC, RG 23, vol. 124, file 164(4), F. C. Wade to E. L. Newcombe, Deputy Minister of Justice, 18 December 1908; Vancouver News-Advertiser, December 15, 1908. The eventual appeal to the Privy Council was not based specifically on the Kendall cases but on the legal issues which had arisen in the dispute. (Vancouver Province, March 12, 1909)

102. NAC, RG 23, vol. 124. file 164(4), Memorandum Re Relative Fishery Rights in British Columbia Following the Privy Council Decision of 1898, 12 April 1910.

103. NAC, RG 23, vol. 124, file 164(4), Memorandum Re Relative Fishery Rights in British Columbia Following the Privy Council Decision of 1898, 12 April 1910.

104. In computing revenues there was no dispute over including revenues and costs for fisheries in estuaries, river mouths, and inlets. Initially the federal government excluded trap licence revenue as being outside these areas but, at provincial insistence, included it, justified on the basis that the province may have the legislative authority to levy trap net licences and that traps were in waters which may be proprietary waters of the province. (NAC, RG 23, vol. 124, file 164(4), Report of the Committee of the Privy Council, approved on April 13, 1910)

105. NAC, RG 23, vol. 124, file 164(4), Memorandum Re Relative Fishery Rights in British Columbia Following the Privy Council Decision of 1898, 12 April 1910.

106. NAC, RG 23, vol. 124, file 164(4), Report of the Committee of the Privy Council, approved on April 13, 1910; NAC, RG 23, vol. 124, file 164(5), Memo, 30 September 1910; NAC, RG 23, file 164(5), A. Johnson, Deputy Minister of Marine and Fisheries, to Deputy Minister of Finance for BC, 12 October 1910.

107. Vancouver Province, April 29, 1910.

108. Victoria Daily Times, August 8, 1910.

109. NAC, RG 23, vol. 124, file 164(5), In the Supreme Court of Canada, February 18, 1913; Victoria Colonist, April 21 1913; Fairley (1980) p. 274..

110. NAC, RG 23, v. 1048, file 721-4-8[1], Department of Marine and Fisheries file copy of the Judgement of the Lords of the Judicial Committee of the Privy Council, delivered the 2nd of December 1913; Attorney General for British Columbia v. Attorney General for Canada (British Columbia Fisheries Reference) [1914] A.C. 153. 15 D.L.R. 308 (P.C. 1913).

111. Ibid., pp. 9-12.

112. Ibid., p. 14.

113. Ibid., p. 15.

114. La Forest (1969), pp. 155-157 Thompson (1974), pp. 1976-7; and Varcoe (1965), pp 175-6 comment on the ruling.

115. Pacific Fisherman, "The Fisheries of British Columbia", February 1914; Vancouver Daily News, January 21, 1914

116. NAC, RG 23, vol. 1048, file 721-8-4(1), Memorandum Re Proper Measures for Bringing Administration of Fisheries in British Columbia and Quebec in line with recent Privy Council Decision, 12 January 1914.

117. Pacific Fisherman, "The Fisheries of British Columbia", February 1914; Vancouver Province, January 24, 1914; PABC, GR 435, box 67, J.P. Babcock to Deputy Provincial Secretary of Nova Scotia, 16 August 1918.

118. Vancouver Province, March 2, 1914.

119. British Columbia. Ministry of Agriculture, Fisheries, and Food. (1994) p. 45.

120. PABC, GR 435, box 67, file 639, Provincial net revenue, 1915-24.

121. PABC, GR 435, box 67, file 637, Assistant to the Commissioner to Commissioner of Fisheries, 8 November 1922. The major expenses for BC were administration, research, and construction and operation of the Seton Lake hatchery from 1903 to 1915.

122. NAC, RG 23, vol. 1048, file 721-8-4(1), J. D. Hazen, Minister of Marine and Fisheries, to W. J. Bowser, BC Commissioner of Fisheries, 26 February 1914.

123. Annual Report of the Fisheries Branch, Department of Marine and Fisheries for 1920.

124. Parisien (1972), pp. 20-2.

125. In 1982 the federal government regained control because of Quebec’s mismanagement. Quebec did not send statistics to the federal government, allowed an increased number of fishing vessels despite federal advice to the contrary, and banned non-Quebeckers from a Quebec fishing zone. Vanderzwaag (1983), p. 196.

126. Attorney-General for Canada v, Attorney-General for B.C. (Fish Canneries), [1930] A.C. 111. [1929] 3 W.W.R. 449, [1930] 1 D.L.R. 194 (P.C. 1929)

127. Fairley (1980), pp. 227-9.

128. W. A. Found, Deputy Minister of Fisheries, to G. S. Wismer, BC Attorney General, 3 June 1938, reproduced in McMynn (1965), Appendix A.

129. Ozere (1961), p. 799.

130. Increasing levels of activity on the BC coast and thus increasing threats to salmon and their habitat have resulted in sections being added to the Fisheries Act to protect the fish and their habitat.

131. Hogg (1992), p. 727; Thompson (1974), p. 1979.

132. British Columbia Ministry of Agriculture, Fisheries, and Food (1994) p. 47.

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