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Citation Information

Arnett, Howard G., "Fisheries Management in the Regional and International Contexts: Columbia River Basin" (1988). *Natural Resource Development in Indian Country (Summer Conference, June 8-10)*. <https://scholar.law.colorado.edu/natural-resource-development-in-indian-country/16>

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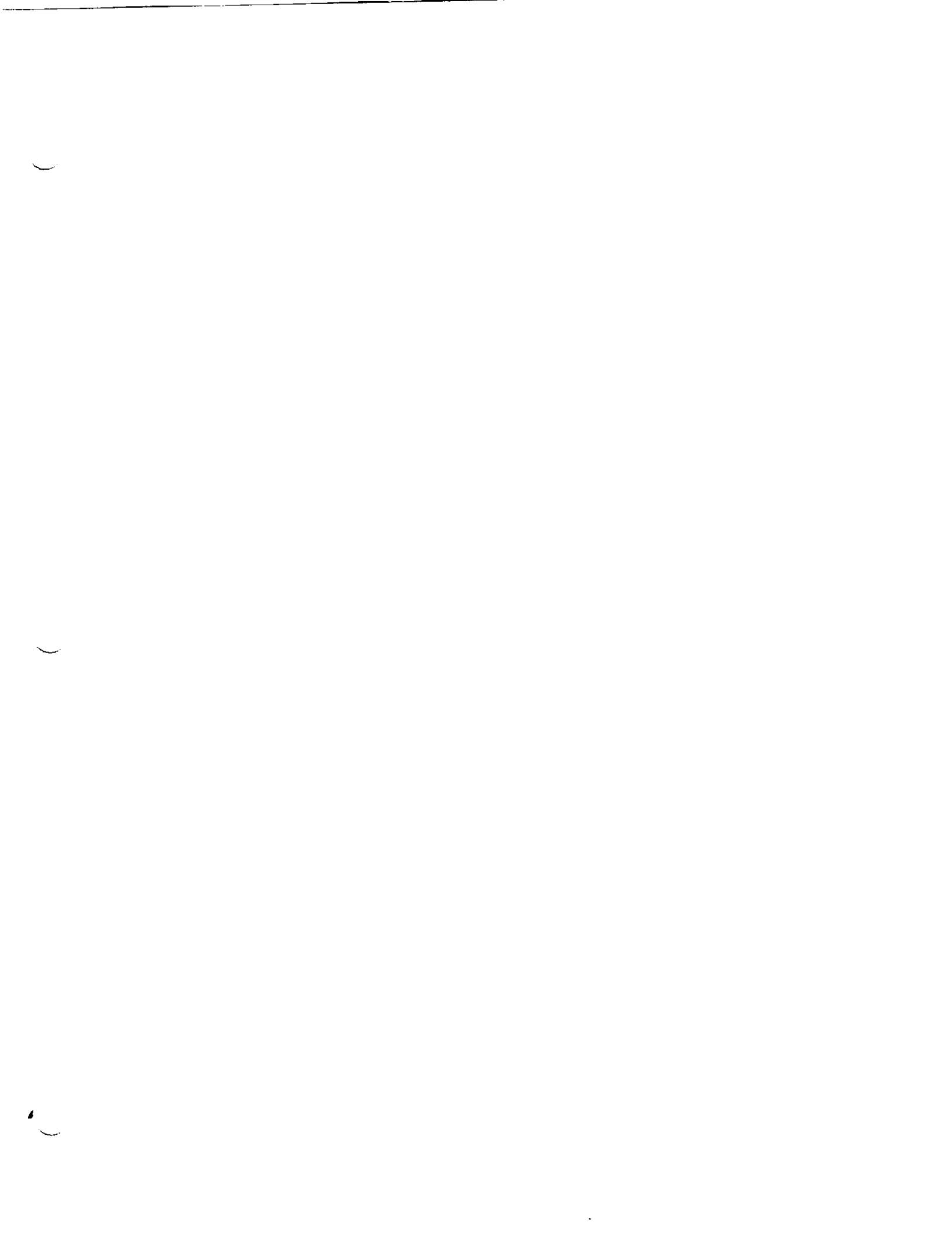
**FISHERIES MANAGEMENT
IN THE REGIONAL AND INTERNATIONAL CONTEXTS
COLUMBIA RIVER BASIN**

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NATURAL RESOURCE DEVELOPMENT IN INDIAN COUNTRY

**Natural Resources Law Center
University of Colorado
School of Law**

June 8-10, 1988



**FISHERIES MANAGEMENT
IN THE REGIONAL AND INTERNATIONAL CONTEXTS
COLUMBIA RIVER BASIN**

Howard G. Arnett

I. Introduction

A. Summary

Twenty years ago, the Warm Springs, Yakima, Umatilla and Nez Perce tribes initiated litigation to determine the nature and scope of their off-reservation treaty fishing rights on the Columbia River and its tributaries. Since then, the four tribes have established through litigation, federal legislation and international treaties their right to regulate not only their own fisheries, but also the right to participate in fisheries management and enhancement decision-making throughout the salmon's migratory range.

This outline explains the role of the four Columbia River treaty tribes in regional and international fisheries' management. After an introductory description of the salmon and steelhead resource, the geography, the actors, and the rules governing the various decision-making processes, the outline then discusses the foundations of tribal management authority and how that authority is exercised. Finally, the outline discusses the recently executed Columbia River Fish Management Plan and the role it plays in implementing tribal management authority in regional and international decision-making.

B. General References

1. Case Law

- a. Sohappy v. Smith, 302 F. Supp. 899 (D.Or. 1969)
- b. U.S. v. Washington, 384 F.Supp. 312 (W.D. Wash. 1974)
- c. Washington v. Commercial Fishing Vessel Association, 443 U.S. 658 (1979)
- d. Confederated Tribes, et al. v. Baldrige, 605 F.Supp. 833 (W.D. Wash. 1985)
- e. U.S. v. Oregon, 666 F.Supp. 1461 (D.Or. 1987).

2. International treaties

- a. Treaty, January 28, 1985, United States-Canada Concerning Pacific Salmon

3. Statutes

- a. Pacific Salmon Treaty Act of 1985, 16 USC § 3031-3644.
- b. Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 USC § 839, et seq.
- c. Magnuson Fishery Conservation and Management Act, 16 USC §§ 1801, et seq.

4. Law Review Articles

- a. Yanagida, "The Pacific Salmon Treaty," 81 American Journal of International Law, 557 (1987)
- b. Morisset, "The Legal Standards for Allocating the Fisheries Resource," 22 Idaho L.Rev., 609 (1985-86)
- c. Lothrop, "The Misplaced Role of Cost Benefit Analysis in Columbia Basin Fishery Mitigation," 16 Envtl.L. 517 (1986)
- d. Jensen, "United States-Canada Pacific Salmon Interception Treaty: An Historical and Legal Overview," 16 Envtl.L. 363 (1986)
- e. Harrison, "The Evolution of a New Comprehensive Plan for Managing Columbia River Anadromous Fish," 16 Envtl.L. 705 (1986)
- f. Wilkinson & Conner, "The Law of the Pacific Salmon Fishery: Conservation and Allocation of a Transboundary Common Property Resource," 32 U.Kan.L.Rev., 17 (1983)

II. Overview

A. The biology and geography of Columbia River salmon and steelhead

The anadromous fisheries resource of the Columbia River Basin includes various types of chinook salmon, coho salmon, steelhead trout, and sockeye salmon. These fish spawn in the wild and at fish hatcheries located throughout the Columbia River Basin, some more than six hundred miles from the Pacific Ocean. After spawning, the fish migrate to the Pacific Ocean, where they spend most of their adult lives. The various species of salmon and steelhead spend from one to six years maturing in the ocean, and range from northern California to western Alaska in their migratory patterns. They are subject to fishing pressures throughout their migratory range. While in the ocean, the chinook and coho stocks are subject to ocean commercial troll and recreational fisheries operating out of ports in northern California, Oregon, Washington, Alaska and British Columbia. When the fish return to the Columbia River to spawn and complete their life cycle, they are subject to fishing pressures in the mainstem Columbia River from non-Indian commercial and sports fisheries as well as Indian commercial, ceremonial and subsistence fisheries. In addition, they are harvested in Columbia River tributaries by non-Indian sportsmen and Indian subsistence fishermen.

B. The actors

The principal actors are the four Columbia River treaty tribes (Warm Springs, Yakima, Umatilla and Nez Perce), their coordinating body (Columbia River Intertribal Fish Commission), other tribes that harvest Columbia River anadromous fish (Shoshone-Bannock tribes, Colville tribe, ocean-fishing tribes), state fisheries management agencies from Oregon, Washington, California and Alaska, the federal agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service, Pacific Fisheries Management Council, North Pacific Fisheries Management Council, Bureau of Indian Affairs, Bonneville Power Administration, U.S. Army Corps of Engineers), foreign fisheries management agencies (Canadian Department of Oceans and Fisheries) and international fisheries management agencies (Pacific Salmon Commission).

C. Ground Rules for Tribal Management Authority

The fisheries management authority of the four Columbia River Treaty tribes derives from four sources: federal court decisions, federal statutes, an international treaty, and cooperative intergovernmental agreements.

III. Foundations of Tribal Management Authority

A. Tribal fisheries

The tribes regulate their own fisheries, either exclusively or concurrently with state and/or federal regulatory agencies. U.S. v. Washington, 384 F.Supp. 312, 340-342 (W.D. Wash. 1974); Settler v. Lameer, 507 F.2d 231 (9th Cir. 1974)

B. Non-Indian fisheries

The tribes are able to participate in decisions concerning non-Indian fisheries based on the need to regulate these fisheries to satisfy treaty Indian allocation requirements. Washington v. Commercial Fishing Vessel Association, 443 U.S. 658 (1979); Magnuson Fishery Conservation and Management Act, 16 USC § 839, et seq.; Confederated Tribes v. Baldrige, 605 F.Supp. 833 (W.D. Wash. 1985); United States/Canada Pacific Salmon Treaty.

C. Fisheries enhancement activities

The tribes participate in decisions concerning enhancement and habitat protection of Columbia River fisheries based on treaty rights, federal statutory authority and environmental litigation. United States v. Washington, 506 F.Supp. 187 (W.D. Wash. 1980) (Phase II); Confederated Tribes of the Umatilla Indian Reservation v. Alexander, 440 F.Supp. 553 (D.Or. 1977); State of Idaho and National Wildlife Federation, et al. v. Herrington et al. (BPA Intertie litigation); Pacific Northwest Power Planning and Conservation Act of 1980, 16 USC § 839, et seq.

**IV. The 1988 Columbia River Fish Management Plan --
A Comprehensive Framework for Exercising Tribal
Management Authority**

A. Background

The four Columbia River treaty tribes, the states of Oregon and Washington, and the United States

recently entered into a comprehensive fisheries management agreement. The agreement, called the Columbia River Fish Management Plan, was negotiated pursuant to a 1983 federal court order and took four and a-half years to complete. The plan succeeds a 1977 five-year agreement and one-year management agreements for the 1985, 1986 and 1987 fishing seasons. U.S. v. Oregon, 769 F.2d 1410, 1417-18 (9th Cir. 1985); U.S. v. Oregon, 666 F.Supp. 1461 (D.Or. 1987)

B. Elements of the plan

The plan is divided into two broad sections: harvest management and production management. The harvest sections describe how treaty and nontreaty fisheries in the mainstem of the Columbia River and in the Pacific Ocean allocate and manage the various runs of Columbia River anadromous fish. The production section of the plan describes how enhancement and production plans will be developed for each subbasin of the upper Columbia system. The production plan is designed to implement the Northwest Power Planning Council's regional fish and wildlife program for Columbia River salmon and steelhead stocks.

C. Status of the plan

The plan is presently before the federal court in U.S. v. Oregon on a motion by the signatory parties for an order approving the plan. Two parties to U.S. v. Oregon, the State of Idaho and the Shoshone-Bannock tribes, did not sign the plan and have filed objections asking the court not to approve the plan. In addition, one of the ocean treaty troll tribes, the Makah Tribe of Washington, has moved to intervene in U.S. v. Oregon and also objects to the plan. Further, numerous user groups and fishery organizations have objected to the plan.

D. Conclusion

The future of tribal management authority over the Columbia River salmon and steelhead resource depends upon the outcome of the court proceeding concerning approval of the Columbia River Management Plan. If the plan is approved, the management authority of the four Columbia River treaty tribes will be assured for at least the next decade. If the plan is not approved, the Columbia River tribes are likely in the future to exercise their management authority through litigation rather than negotiation.

