

Turning the Tide:
Clams and Colonialism in the Salish Sea, 1925-1994

By

Gordon Robert Lyall
B.A., University of Victoria, 2011
M.A., University of Victoria, 2013

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We acknowledge and respect the lək̓ʷəŋən peoples on whose traditional territory the university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical relationships with the land continue to this day.

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Abstract

Featuring an ethnohistory of two Coast Salish communities — the Suquamish Tribe in Washington State and the W̱SÁNEĆ Nation in British Columbia — this dissertation is a transborder study of Indigenous shellfish harvesting and foreshore rights in the Salish Sea across the twentieth century. It explores the history of the interface between land and sea within the context of treaty rights to resources and Indigenous nations' sovereignty over marine habitats. This study also turns the ethnographic lens on the settler population. Using tools offered by recent scholarship on settler colonialism, it helps explain why the general public has resisted treaty and Aboriginal rights to fisheries and other resources.

This dissertation also reveals Coast Salish nations' responses to settler encroachment of their foreshores and state disruption of their management of the marine environment throughout the twentieth century and offers two community studies to illustrate how local Indigenous communities have re-shaped relationships between Indigenous peoples and settlers on the Salish Sea. The first study examines Suquamish's right to shellfish under the Point Elliott Treaty and affirmed by the 1994 Rafeedie decision, as well as the interrelated 1980s tidelands case for ownership of the beaches attached to the Port Madison Reservation. The second examines W̱SÁNEĆ people's defense of Saanichton Bay from a marina development, when the STÁ,UTW (Tsawout) community wielded its Douglas Treaty rights in *Claxton v. Saanichton Marina*, 1987. Utilising Karl Jacoby's concept of a "moral ecology," this study argues that by ignoring Indigenous Knowledge regarding marine resource management, and by creating an overly complex regulatory scheme guided by principles of capitalism, settler officials on both sides of the border missed opportunities to avoid some of the greatest challenges to marine health and resource survival in the Salish Sea.

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Introduction: A Salish Sea History

Walk on almost any shoreline in the Salish Sea when the tide is low and you will see little jets of water erupting from under the sand and rock. Although it seems that this is the moment when the millions of clams — that inhabit the complex substrate called a beach — are calling out to us to pay attention, in fact they are just rinsing their siphons in preparation of their next meal, filtering plankton from the incoming tide. Otherwise, these legions of mollusks, the food of coastal Indigenous peoples for millennia, real buried treasure, go unobserved, unnoticed, and forgotten.

The vital importance of salmon fishing to Pacific coast inhabitants is widely acknowledged, but shellfish have not received their fair due. Suquamish fisheries manager Tony Forsman agrees. “I remember us growing up and stuff, clam digging being much more prevalent and important, to me it seemed, as much as salmon fishing.” Further, he recalls, “stories before I was born here in Suquamish and my dad, you know, telling stories about clam digging and going fishing on the tides.”¹ STÁ,UTW (Tsawout) Elder Earl Claxton adds that shellfish are a communal resource: “Through all time when the tide went out, the saying was that ‘the table was set.’ And what that meant, no matter how poor you were, if you had no money or anything, you could still come down to the beach and gather a feast for your family and eat like a king.”² State regulation of salmon and stock depletion over the last 150 years greatly increased the need for healthy shellfish. As Forsman explains: “because of the discriminatory, regulatory system, and the lack of respective treaty rights... salmon fishing had really almost become... non-existent

¹ Tony Forsman, interview by Gordon Lyall, 23 July 2019, Suquamish, Washington State, USA. See introduction to Tony Forsman in Appendix A.

² Earl Claxton Jr., interview by Gordon Lyall, 27 June 2020, Victoria, BC, Canada. See introduction to Earl Claxton Jr. in Appendix A.

with tribal members.” “But clam digging,” he maintains, “has always has been a constant, major, activity of the tribes.”³ The management of shellfish resources for many coastal Indigenous populations represents the most reliable means of food security and is therefore also of vital importance to their health and culture.

Thus, while salmon have occupied the attention of coastal denizens, as well as officials and scholars, shellfish have been at the centre of a struggle that is equally important, if not equally publicized. Shellfish represent a struggle to regain ownership of the millions of hectares of intertidal zones that have been missed in all the attention to land claims and fishing rights. When tribal nations in Washington State called for recognition of shellfish harvesting rights in the early 1980s, fisheries director Bill Wilkerson observed that “the shellfish claims have created problems over and above anything dealt with in the Indian fishing cases so far.” This was, he explained, because shellfish harvesting rights involve more than just the right to catch and make use of a resource: shellfish harvesting rights engage the very core of Indigenous-settler relationships — property rights over land as well as the resources. As Wilkerson noted, disputes over the right to harvest shellfish took place on privately-owned as well as publicly-owned and Indigenous-owned beaches.⁴ Who has the right to exploit resources on, or under, someone’s property have been central questions since European settlement in North America began.

This dissertation features community studies of two Indigenous groups in the Salish Sea region and their efforts to secure control over one small but important portion of their Aboriginal and treaty rights. The Suquamish Tribe in Washington State and the WSÁNEĆ Nation in British Columbia represent two sides of an invisible line that separates the United States and Canada. Facing an incredibly complex system of settler resource management and control, both

³ Forsman, 23 July 2019.

⁴ Adele Ferguson, “Indians claim rights to area shellfish,” *Bremerton Sun*, 31 January 1984, 1.

communities have successfully engaged government in court over their reserved rights to harvest shellfish, skillfully navigating multiple jurisdictions of governance to gain official recognition of treaty rights while asserting sovereignty over their territories.

There are other striking similarities between these two communities as well. For example, both communities currently have reserves (Canada) and reservations (US) on Salish Sea peninsulas. [Maps 1-4] Neither of these peninsulas have a major river for salmon harvest (although there are a few salmon-bearing creeks on both). Both the Suquamish and the W̱SÁNEĆ adapted to the exigencies of their environment by developing specialised fishing technologies suited for marine fishing and cultivated kinship networks for harvesting rights across the Salish Sea. Both fished in the San Juan Islands and the mouth of the Stó:lō (Fraser) River as a result. The W̱SÁNEĆ developed highly specialized SXOLE (reef-net) fishing technology to fish salmon from family-owned sites on the islands as well as at Boundary Bay, and the Suquamish caught herring around the islands and salmon near the mouth of the Fraser River. Both communities had their access to these resources violently disrupted after the creation of the international border in 1846. W̱SÁNEĆ fishers lost access to family-operated SXOLE sites at San Juan and the Suquamish no longer fished or traded on the Fraser River. Because neither group has a large salmon-bearing stream in their territory, and the new boundary had severed their accustomed access to this resource, access to other marine resources, such as shellfish, became vital to community health and survival.

Both communities also have a significant relationship with their respective national governments in the form of a treaty. In the 1850s, both entered into agreements with colonial officials: the Suquamish signed the Point Elliott Treaty with Territorial Governor Isaac Stevens in 1855, one of seven treaties generally referred to as the “Stevens Treaties.” The W̱SÁNEĆ

signed the North Saanich Treaty and the South Saanich Treaty with then governor of Vancouver Island Colony James Douglas in 1852, which were two of 14 treaties generally referred to as the “Douglas Treaties.” The W̱SÁNEĆ treaties are particularly noteworthy because not all Coast Salish nations in BC have signed treaties. W̱SÁNEĆ fiercely defend the rights affirmed in their treaties and have refused to participate in the modern BC Treaty Commission process (BCTC), fearing that it will override their current agreements.⁵ The Suquamish and the W̱SÁNEĆ have both used their treaties to deftly navigate inter-governmental conflicts over resource and marine use and to assert their sovereignty over certain beaches and the right to harvest from others.

This dissertation explores marine resource access and management in the Salish Sea within the context of these historic treaties and questions of national boundaries. Treaties are foundational agreements between Indigenous peoples and settlers for relationships and co-existence on Indigenous land. When considered in the context of settler access to Indigenous land, treaties are the central documents that outline the agreed upon parameters for settlement. How these documents have been interpreted by subsequent generations varies greatly. Both settlers and Indigenous peoples hold great value in their own interpretations of a treaty’s meaning. Historian Megan Harvey notes that treaties then are “the most powerful stories a nation can tell.”⁶ Both sides employ these stories to assert their understanding of a treaty’s purpose and how it functions. These stories have changed over time and communication breakdown between these groups has largely been due to the differing interpretation of this function.

⁵ Overlapping claims from other communities through the BCTC have already infringed on these rights. Earl Claxton Jr., interview by Gordon Lyall, 6 March and 27 June 2020, Victoria, BC, Canada; Harriet VanWart, “A Bibliography and Discussion of Douglas Treaty Materials: Phase One of Research on the Tsawout First Nation’s Douglas Treaty,” (MA thesis, University of Victoria, 2001), 42.

⁶ Megan Harvey, “Living Well Through Story: Land and Narrative Imagination in Indigenous-State Relations in British Columbia,” (PhD dissertation, University of Victoria, 2017), 81.

In general, Indigenous groups have viewed treaties through their relational function. Michi Saagiig Nishnaabeg scholar Leanne Betasamosake Simpson asserts that treaties are “ultimately about a relationship.” She points to the example of a mother breastfeeding as “the very first treaty” — a relationship of sharing and nurturing. This is the key aspect of treaties, according to Simpson: treaties “must benefit both sovereign independent nations to be successful.”⁷ Cree activist Chief Harold Cardinal reminded Canadians in the 1970s that Indigenous peoples have their own memory of the treaties informed by their laws. “When the treaty was signed,” he explained, “our elders understood it to be a treaty of friendship, a kind of partnership.”⁸ For Indigenous peoples, the signing of treaty is a story about co-operation and mutual benefit that has not been honored by the settler state.

For Canadian and American settlers, on the other hand, “treaty” has become synonymous with land transfers. While Indigenous peoples have viewed treaties in terms of relationships, settlers have generally defined the treaties in terms of “extinguishment” and “certainty” over land title. As Simpson observes, settlers are “taught that treaties are legal agreements through which Indians ceded our lands for cash.” She interprets the general settler view of treaties as a type of “receipt for a business transaction.”⁹ This powerful story does not easily reconcile with stories of friendship and mutual benefit. Lummi Nation leader Lisa Wilson observes that settlers in Washington State tend to believe treaties only apply to Indigenous peoples. She points out that the Point Elliott Treaty of 1855 which her ancestor’s signed is “everybody’s treaty, which means that it is the responsibility of all of us—Native and non-Native—to work together to maintain

⁷ Leanne Betasamosake Simpson, *Dancing on Our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence*, (Winnipeg: ARP Books, 2011), 106-107.

⁸ Harold Cardinal, *The Rebirth of Canada’s Indians*, (Edmonton: Hurtig Publishers, 1977), 92.

⁹ Simpson, *Dancing on Our Turtle’s Back*, 106.

it.”¹⁰ Anthropologist Eva Mackey adds that settlers also often view treaties as “an object” instead of as a “process.” She suggests that settlers should avoid the view of treaty as a “noun” and “learn to conceptualize and experience treaty-making as a verb” because it is “an historical and ongoing, exploratory and often uncertain process of building relationships for which non-Indigenous people must also take responsibility and in which they must engage.”¹¹ Wilson and Mackey both argue for an active view of treaties, one that changes over time and requires ongoing negotiation between the descendants of the original signers.

While there are differing opinions on their meaning, treaties carry significant weight in both Canada and the United States.¹² In the US context, the Northwest Indian Fisheries Commission (NWIFC) noted that treaties were (and continue to be) the “supreme law of the land, protected by the U.S. Constitution.”¹³ The Supremacy Clause of the US Constitution holds that for any treaty the federal government enters into with another sovereign nation (in this case the Coast Salish tribal nations who controlled what is now Washington State), those laws supersede any internal legislation such as state or municipal laws. Settlers and Coast Salish nations fiercely debated the relevance and strength of this clause throughout the twentieth century. This issue became the central point of contention during the so-called “fish wars” of the 1960s and 1970s.¹⁴ Settlers

¹⁰ Melvinjohn Ashue, Jean Dennison, Joshua L. Reid, and Lisa Wilson. “What Is at Stake for Washington’s Native Nations Today.” *Pacific Northwest Quarterly*, 111, 1, (Winter 2019/2020): 35.

¹¹ Eva Mackey, *Unsettled Expectations: Uncertainty, Land and Settler Decolonization*, (Black Point, Nova Scotia: Fernwood Publishing, 2016), 141.

¹² Alexandra Harmon, “Introduction: Pacific Northwest Indian Treaties in National and International Historical Perspective,” In *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, Alexandra Harmon, eds. (Seattle: University of Washington Press, 2009), 8.

¹³ Suquamish Tribal Archives [Hereafter STA], Northwest Indian Fisheries Commission, 1979, Volume 1, File 1, “Fish and the Future: An Indian Perspective,” 1979.

¹⁴ Ralph Munro, interview by Gordon Lyall, 2 August 2019, Olympia, Washington State, USA; Bremerton Sportsmen’s Club to John Cunningham, 16 March 1978, University of Washington Special Collections [hereafter UWSC], Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 178, File 15, “Boldt Decision,” 1978; Jack Cunningham to Henry M. Jackson, 12 Sept 1977, UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 253, File 18, “WA. ST. Matters Fishing,” 1977-10 to 1977-12; Statement to Commission by Slade Gorton, 19 Oct 1977, Washington State Archives [hereafter WSA], Attorney General, State, 89-12-1546, Volume 488, File 6, “U.S. Civil Rights Commission,” 1977 to 1978.

often ignored or forgot the Supremacy Clause while arguing for equal rights of every American and the rejection of Indigenous peoples as putative “super citizens.” The Coast Salish tribal nations, on the other hand, reminded both the government and the public that their treaty rights “were neither gifts from the government nor special rights that just kind of coalesced in some way,” as Snohomish historian Joshua L. Reid explains, they are rights that their ancestors reserved for them in perpetuity and superseded state or individual rights.¹⁵

In Canada, governments signed treaties predominantly with Indigenous peoples east of the Rocky Mountains (often called the “numbered treaties,” which extend slightly over the Rockies into a small portion of BC) to delineate reserve boundaries and open up the rest of the land to Canadian settlement. These treaties contain many promises from the federal government — including the provision of supplies, annuities, and privacy on their lands — that have been broken.¹⁶ Because these numbered treaties have determined what land in Canada is reserved for Indigenous peoples or open for settlement, there is a recent growth of a Canadian identity claim that Canadians are all “treaty people.” Current discourse on the meaning of treaties in Canada now includes debates over whether this notion is correct, or even ethical. Anthropologist Brian Noble, for example, asserts that through all this “treaty people” talk, the word “treaty” has become “debased.” Flippant use of the concept, along with the broken promises and shallow respect for the principles of reciprocity that are essential to Indigenous peoples’ understandings of treaties, has made claims of “treaty peoples” a settler instrument for the naturalization of the colonizing process. “In short,” he claims, “it has been colonized.”¹⁷ Political scientist Kiera

¹⁵ Ashue, Dennison, Reid, and Wilson. “What Is at Stake for Washington’s Native Nations Today,” 37.

¹⁶ Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*, (Don Mills, Ont: Oxford University Press, 2009), 147.

¹⁷ Brian Noble, “Treaty Ecologies: With Persons, Peoples, Animals, and the Land,” In *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings*, Michael Asch, John Borrows and James Tully, eds. (Toronto: University of Toronto Press, 2018), 322.

Ladner further points out that a fundamental flaw in the use of “treaty people” is that “we are *not* all Treaty peoples.” Large portions of Canada are unceded Indigenous territory and groups that did sign treaties never surrendered their sovereignty over the land and sea.¹⁸ This is the case in much of the Salish Sea. While treaties were signed between the Coast Salish tribal nations and the US government in the 1850s (Stevens Treaties), only 14 agreements were made between the Hudson’s Bay Company and Indigenous communities on Vancouver Island during the same period (Douglas Treaties). Two modern treaties between the provincial government and Coast Salish communities (Tsawwassen First Nation, 2009; Tla’amin Nation, 2016) have been signed and additional Coast Salish First Nations are in other stages of the BC Treaty Commission process. Further, scholars and the public have debated the purpose of the Douglas Treaties since their creation with some believing that they were land transfers and others believing they were peace treaties with no official conveyance of land title. On the Salish Sea, then, it is inaccurate to say we are “all treaty people.”

Scholarly analysis of the Stevens and Douglas treaties has focused largely on their validity as treaties and what the meaning of specific language was and how it informs court interpretations in the twentieth century.¹⁹ In British Columbia, lawyer Thomas Berger initiated this conversation in the modern era when he prepared to defend two Snuneymuxw hunters charged with illegal hunting on Vancouver Island in the 1960s. Berger concluded that the 14 agreements Douglas signed with Indigenous groups on Vancouver Island were indeed treaties that protected certain

¹⁸ Kiera L. Ladner, “150 Years and Waiting: Will Canada Become an Honourable Nation?” In *Surviving Canada: Indigenous Peoples Celebrate 150 Years of Betrayal*, Kiera L. Ladner and Myra J. Tait, eds. (Winnipeg: ARP Books, 2017), 400-401.

¹⁹ For example, Harriet VanWart, in her MA project in partnership with STÁ,UTW First Nation, provides “an overview and analysis of secondary and published primary sources that interpret the meaning of the Douglas treaties.” VanWart, “A Bibliography and Discussion of Douglas Treaty Materials,” 2.

rights and the courts agreed.²⁰ Treaties, and the lack of treaties, in BC are also bound up in the land question. Recognizing a lack of treaties, when the colony of British Columbia joined confederation Canada in 1871, officials debated over whether or not the issue of Indigenous title to the land had been extinguished.²¹ The lieutenant-governor of British Columbia, Joseph Trutch, was adamant that such title never existed, which prompted Premier William Tolmie in 1875 to move for the publication of all government documents related to this question. The *Papers Connected with the Indian Land Question, 1850-1875*, contains many documents, including copies of the Douglas Treaties, that affirm Indigenous title and offers, according to political scientist Paul Tennant, a “permanent antidote to Trutch’s revisions of history.” Yet this publication was not readily available to the public until the BC Archives reprinted it in 1985.²² The non-disclosure of these documents, which Indigenous leaders called into question in the early twentieth century, constitutes a part of what legal scholar Neil Vallance considers an “active silencing” of the rights contained in the Douglas Treaties.²³ The crucial function of this silencing is, according to Harvey, to promulgate a “historical amnesia in BC about the legal illegitimacy (to say nothing of the moral illegitimacy) of the creation of British Columbia.”²⁴ As this dissertation will show, the W̱SÁNEC offered an antidote to this amnesia when they asserted their treaty rights over Saanichton Bay. Their efforts inspired greater victories for Indigenous peoples in the provincial and federal courts, such as *Delgamuukw v. British Columbia*, 1997, and

²⁰ Eric Jamieson, *The Native Voice: The Story of How Maisie Hurley and Canada’s First Aboriginal Newspaper Changed a Nation*, (Halfmoon Bay, BC: Caitlin Press, 2016), 246-248; “Appeal filed in Indian treaty case,” *Daily Colonist*, 24 October 1963, 41; VanWart, “A Bibliography and Discussion of Douglas Treaty Materials,” 14.

²¹ See British Columbia. Legislative Assembly, *Papers Connected with the Indian Land Question 1850-1875*, 1876.

²² Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*, (Vancouver: UBC Press, 1990), 47, 49 and 110.

²³ *Ibid.*, 107; Neil Vallance, “Sharing The Land: The Formation of the Vancouver Island (or ‘Douglas’) Treaties of 1850-1854 in Historical, Legal and Comparative Context,” (PhD dissertation, University of Victoria, 2015), 5 and 242-243.

²⁴ Harvey, “Living Well Through Story,” 6-7.

triggered official responses to the question of land and treaty rights in British Columbia. They effected a positive shift in Coast Salish nations' relationships with the government over the last thirty years, seen recently in greater state acknowledgement of legal duties to consult and the passing of the *Declaration on the Rights of Indigenous Peoples Act*, which ostensibly aligns BC policy with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

US scholars and courts have likewise grappled with the meaning of the Stevens Treaties, most notably in the monumental federal court decision in *U.S. v. Washington* (known as the “Boldt Decision”) in 1974. District Appellate Judge George Boldt, in his interpretation of the fishing clause in the Stevens Treaties, allocated 50% of harvestable fishing catches to treaty tribes in Washington State. He was heavily persuaded by the federal government's evidence, and particularly the testimony of expert witness, anthropologist Dr. Barbara Lane. He based his interpretation of the treaty on nineteenth-century dictionary definitions as well as Lane's evidence and Indigenous peoples' testimony on their understanding of the treaties.²⁵ Boldt's decision caused widespread resentment among the settler population. Citizens sent thousands of letters to government officials, many offering their interpretation of what the treaty language means.²⁶ Treaty definitions were also at the centre of litigation over reservation ownership disputes and the right for Indigenous communities to police both Indigenous and non-Indigenous peoples on their reservations.²⁷ The Suquamish community study shows how these disputes over the control of the reservation intersect with marine management and harvesting rights through

²⁵ Fay G. Cohen, *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights*, (Seattle: University of Washington Press, 1986), 10-11.

²⁶ UWSC, Brock Adams papers, 1965-1976, 1096-001, Volume 18, File 3, “Indian Fishing #2,” 1974; UWSC, Brock Adams papers, 1965-1976, 1096-001, Volume 18, File 4, “Indian Fishing,” 1973 to 1974; UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 15, “Boldt Fishing Decision,” 1976; WSA, Dept. of Game, AR-20081022-01, Volume 56, File 1, “Boldt decision, correspondence,” 1974. [As well as about dozen more archival files].

²⁷ For example, *Oliphant v. Suquamish Indian Tribe* (1978).

the inter-related issues of treaty language and the settler drive for resource extraction and land settlement.

Often these discussions on the meaning of treaties are siloed to each respective side of the border. In 2004, however, at a conference called the *Pacific Northwest Indian Treaties in National and International Historical Perspective*, scholars recognized the shared histories of these treaties.²⁸ In a more recent study, Neil Vallance likewise employs the Stevens Treaties as a “lens” or a “keyhole” to interpret the significant aspects of the Douglas treaty signings. He notes one glaring distinction between the United States and the British treaty processes at the time: while US officials documented the negotiations they had with Indigenous treaty signers, the Hudson’s Bay Company officials never did this for the Douglas treaties.²⁹ Official minutes of the US ceremonies recorded the speeches delivered by Coast Salish chiefs and offer a window into tribal understanding of these agreements. On Vancouver Island, by contrast, conventional interpretations of the Douglas Treaties were derived from the extremely minimal memoirs left by colonial observers. Harriet VanWart observes that these interpretations all view the treaties solely as a “purchase” of Indigenous land. W̱SÁNEĆ oral histories, however, describe the treaty not as a land purchase but as an agreement for friendly relations.³⁰ TI,IMELTE, Chief David

²⁸ For example, legal scholars Hamar Foster and Alan Grove delve into the inspiration Governor James Douglas may have taken from early American court decisions when drafting his treaty forms on Vancouver Island in the 1850s. While Douglas Harris looks for influences from the American Boldt Decision on later Canadian court decisions, such as *R v. Sparrow* (1990) which recognised an Aboriginal right to a food fishery in British Columbia. While neither of these studies are definitive in their conclusions, both make compelling cases for the existence of shared policy between the two settler governments as they facilitated the settlement of their respective colonies. John Borrow, “Foreword,” In *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, Alexandra Harmon, eds. (Seattle: University of Washington Press, 2009), viii; Hamar Foster and Alan Grove, “Trespassers on the Soil’: United States v. Tom and a New Perspective on the Short History of Treaty Making in Nineteenth-Century British Columbia,” In *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, Alexandra Harmon, eds. (Seattle: University of Washington Press, 2009), 89-127; Douglas C. Harris, “The Boldt Decision in Canada: Aboriginal Treaty Rights to Fish on the Pacific,” In *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, Alexandra Harmon, eds. (Seattle: University of Washington Press, 2009), 128-153.

²⁹ Vallance, “Sharing The Land,” 140 and 154.

³⁰ VanWart, “A Bibliography and Discussion of Douglas Treaty Materials,” 2 and 30-32.

Latasse, who witnessed the signing of the Saanich Treaties of 1852, informed Victorians in 1934 that the treaties, in his view, may have been “an agreed rental of Saanich,” which was then “unpaid for eighty years” but it was “[n]ever, never,” he insisted, a surrender of the “title to their land for a few blankets.”³¹ No government minutes exist to corroborate this position, which leaves room for greater speculation on both sides of the debate. Yet, WSÁNEĆ Nation’s position is consistent with the general Indigenous perspective and the tribal nations’ position on the Stevens Treaties outlined above — that Indigenous leaders reserved rights for themselves and their descendants by entering into *relationships* with the colonial officials.

While land is a central concern in most debates over treaty interpretations, Coast Salish peoples have arguably placed a greater emphasis on what these treaties say about fishing rights.³² Coast Salish nations have asserted their rights over their maritime territory vigorously over the last 150 years, and construct an identity as fishers rather than hunters.³³ Both the Douglas and Stevens treaties contain language regarding the protection of Indigenous fisheries. The Douglas Treaties guarantee the right to “carry on [their] fisheries as formerly,” and the Stevens Treaties codify that Coast Salish tribal nations have “the right of taking fish at usual and accustomed grounds and stations... in common with all citizens of the Territory.”³⁴ The interpretation of these clauses has been the central concern of court cases on both sides of the border.

³¹ Frank Pagett, “105 Years in Victoria and Saanich! Chief David Recalls White Man’s Coming; 80 Years’ Rent Unpaid,” *Victoria Daily Times*, 14 July 1934, 1m and 8m.

³² Similarly, much of the conversation on Indigenous title generally relate to the land and not the sea. One exception is C. Rebecca Brown and James I. Reynolds legal study on “Aboriginal title to Sea Spaces” in which they compare legal context between Canada, Australia, and the United States to examine the potential for courts to recognize Indigenous title to marine spaces. C. Rebecca Brown and James I. Reynolds, “Aboriginal Title to Sea Spaces: A Comparative Study,” *U.B.C. Law Review*, 37, 1 (2004): 449-453.

³³ Coast Salish Gathering, “About the Gathering,” *Coast Salish Gathering*, <http://www.coastsalishgathering.com/about-gathering> (accessed 20 July 2020); Dianne Newell, *Tangled Webs of History: Indians and the Law in Canada’s Pacific Coast Fisheries*, (Toronto: University of Toronto Press, 1993), 29; Joshua L. Reid, *The Sea is My Country: The Maritime World of the Makahs, an Indigenous Borderlands People*, (New Haven: Yale University Press, 2015).

³⁴ “North Saanich Treaty” in British Columbia. Legislative Assembly, *Papers Connected with the Indian Land Question 1850-1875*, 1876, 170; “Treaty Concluded at Point Elliott” in Office of Indian Affairs, Edward G.

Many scholars have addressed the issue of fishing rights in the context of treaties as well as in the absence of treaties (as in the case of much of British Columbia). Yet these studies engage almost exclusively with salmon fishing.³⁵ For shellfish harvesting, it is important to put Coast Salish nations' assertions of rights and settler-government policy within the context of treaty fishing rights because in the eyes of Indigenous peoples and settler courts, "shellfish are fish."³⁶ Coast Salish nations invoked both the Douglas and the Stevens treaties in their court battles over their rights to manage and harvest these resources on their government-sanctioned reserves and reservations as well as across their wider territories beyond these reserves.

The court cases that are featured in this dissertation's two community studies both hinged on the application of the treaty fishing clauses in these treaties. They are evidence of Indigenous nations' engagement with settler governments in ways that have changed legislation and public sentiment. The WSÁNEĆ asserted "to fish as formerly" as a means to protect their rights over Saanichton Bay in the 1980s, and the Suquamish applied "to fish in common," along with a secondary clause known as the "shellfish proviso," to their tidelands case in the 1980s and

Swindell Jr., *Report on Source, Nature, and Extent of the Fishing, Hunting and Miscellaneous Related Rights of Certain Indian Tribes in Washington and Oregon Together with Affidavits Showing Location a Number of Usual and Accustomed Fishing Grounds and Stations*, 1942, 460-461.

³⁵ American Friends Service Committee, *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians*, (Seattle: University of Washington Press, 1975 [1970]); Patricia Marchak, Neil Guppy, and John McMullan, eds., *Uncommon Property: The Fishing and Fish-Processing Industries in British Columbia*, (Toronto: Methuen, 1987); Daniel Boxberger, *To Fish in Common: The Ethnohistory of Lummi Indian Salmon Fishing*, (Seattle: University of Washington Press, 2000 [1989]); Newell, *Tangled Webs of History*; Douglas C. Harris, *Fish, Law and Colonialism: The Legal Capture of Salmon in British Columbia*, (Toronto: University of Toronto Press, 2001), 3; Douglas C. Harris, *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849-1925*, (Vancouver: UBC Press, 2008), 14; Douglas C. Harris, "A Court Between: Aboriginal and Treaty Rights in the British Columbia Court of Appeal," *BC Studies*, 162 (Summer 2009): 145; Daniel L. Boxberger, "Lightning Bolts and Sparrow Wings: A Comparison of Coast Salish Fishing Rights in British Columbia and Washington State," *Native Studies Review*, 9, 1 (1993-1994): 6; Russel Lawrence Barsh, "Ethnogenesis and Ethnonationalism from Competing Treaty Claims," In *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, Alexandra Harmon, eds. (Seattle: University of Washington Press, 2009), 216; Nicholas Xumthoult Claxton, "ISTA SCIANEW, ISTA SXOLE 'To Fish as Formerly': The Douglas Treaties and the WSANEC Reef-Net Fisheries," In *Lighting the Eighth Fire: The Liberation, Resurgence, and Protection of Indigenous Nations*, Leanne Betasamosake Simpson, eds. (Winnipeg: ARP Books, 2008), 47.

³⁶ "Order Granting Plaintiff Tribes' Summary Judgement Motion that Shellfish are Fish," 31 August 1993, WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, "Shellfish," 1992 to 1995; Forsman, 23 July 2019.

participation in *Boldt* (Phase III) in the late 1980s and early 1990s. Anthropologist Barbara Lane, who had a working relationship with the WSÁNEĆ and the Suquamish in both cases, testified during *Boldt* hearings that Article 3 in the Point Elliott Treaty (the shellfish proviso) was a unique component to the treaty and that it was likely included “because of the heavy dependence of the Indians in the area on fish and shellfish for their staple food.”³⁷ This “dependence” and great value Coast Salish nations place on their shellfish rights has translated into action that has re-shaped governmental policy and Indigenous-settler relations in profound ways. For example, legal scholar Douglas Harris notes that in *Claxton v. Saanichton Marina, 1987*, the Supreme Court of BC “conferred enforceable rights” to the fishing clause in the Douglas Treaties — a victory that would be the beginning of more fishing rights gains in the following decades.³⁸ The Rafeedie decision (*Boldt* Phase III) of 1994, similarly acknowledges the existence of significant commercial shellfish rights for treaty tribes in Washington State.

Yet it is more than just governments that Coast Salish nations have battled for control over beaches and harvesting. Settler individuals and corporations around the Salish Sea have asserted their rights to the tidelands as well, purchasing waterfront land in Washington State, or leasing Crown foreshores in British Columbia to obtain usufructuary ownership over certain beaches. In addition to these private holdings, there are also public beaches regulated by the State of Washington and the province of British Columbia. Public beaches have also been contested spaces of harvest, which further informs relationships between settlers and Indigenous peoples in the region.

³⁷ WSA, Attorney General, State, 89-6-785, Volume 768, File 7, “Deposition of Barbara Lane,” 1979-12-05.

³⁸ Harris, “A Court Between,” 147.

In this dissertation, I ask how has this competition over the meaning of treaty rights affected a key part of the Coast Salish world: shellfish and their marine environment? How has this debate shaped the current status of our shorelines and shellfish beaches? To answer these questions, I probe the intersections between treaties, shellfish harvesting, foreshores, Indigenous-settler relationships, and the environment, across the twentieth century. By using ethnohistorical tools and concepts from environmental history, I examine what the course of these intersections means to the general well-being of the Salish Sea bioregion.

Protection of the environment and marine-related industry involves more than just conserving endangered salmon and orca populations. Shellfish are an excellent litmus test for environmental health because they are filter feeders and extremely sensitive to the contents of the marine environment. While the chemicals and biotoxins that poison humans may not be poisonous to the shellfish themselves, the very presence of dangerous levels of human-made toxins in these organisms is a strong indicator of an unsustainable relationship between humans and environment. Acidification of the ocean (OA), exacerbated by global warming, is particularly concentrated in the Salish Sea making it a “canary in the coal mine” according to the chair of the Puget Sound Partnership.³⁹ In response to increasing OA, recent studies have explored the possibility of shellfish aquaculture to counteract some of the effects of acidification.⁴⁰ Thus, the ongoing destruction of shellfish habitats and the historical dependency of Indigenous

³⁹ Judith Lavoie, “The Race for Adaptation in an Increasingly Acidic Salish Sea,” *The Narwhal*, 12 March 2018, <https://thenarwhal.ca/race-adaptation-increasingly-acidic-salish-sea/>; Kathryn L. Sobocinski, *The State of the Salish Sea*, (Bellingham: Salish Sea Institute, Western Washington University, 2021), 2; Nina Bednaršek, Jan A. Newton, Marcus W. Beck, Simone R. Alin, Richard A. Feely, Natasha R. Christman and Terrie Klinger, “Severe biological effects under present-day estuarine acidification in the seasonally variable Salish Sea,” *Science of the Total Environment*, (2020): 1-17; Nina Bednaršek, Greg Pelletier, Anise Ahmed and Richard A. Feely, “Chemical Exposure Due to Anthropogenic Ocean Acidification Increases Risks for Estuarine Calcifiers in the Salish Sea: Biogeochemical Model Scenarios,” *Frontiers in Marine Science*, 7, 580 (July 2020): 1-19.

⁴⁰ David B. Williams, *Homewaters: A Human and Natural History of Puget Sound*, (Seattle: University of Washington Press, 2021), 172.

communities on shellfish create conflict sites that have previously been underexamined due to alarm over salmon and orca depletion.

While state biologists have deemed many shellfish harvesting areas unsafe for human consumption on both sides of the border [Maps 10-11], Indigenous community members have often chosen to ignore their warnings. And where state officials have sought to create marine parks and limit the harvest of shellfish in order to avoid population depletions, locals have had differing opinions on how to harvest and how much. Environmental historian Karl Jacoby describes these community actions as part of a “moral ecology.” In the context of American state park creation and environmental conservation measures in the late nineteenth and early twentieth centuries, Jacoby observes that moral ecologies served as a “counterpoint to the elite discourse about conservation, a folk tradition that often critiqued official conservation policies, occasionally borrowed from them, and at other times even influenced them.” He argues that moral ecologies offer “a vision of nature ‘from the bottom up,’ one that frequently demonstrates a strikingly different sense of what nature is and how it should be used.”⁴¹ The concept of moral ecologies is central to this study.

How Coast Salish peoples view the proper use of tidelands and the management of shellfish populations is based on thousands of years of experience. The conflicting moral ecologies between Coast Salish nations and settler-colonial management of tidelands demonstrates a great challenge to reconciliation efforts and marine environment conservation. Where Coast Salish peoples’ opinions differ from state policy is of great interest but also where they agree can illuminate key aspects of how humans in the Salish Sea have collectively shaped their surrounding environment. One example of this is the general support for a couple of invasive

⁴¹ Karl Jacoby, *Crimes against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation*, (Berkeley: University of California Press, 2014 [2001]), 3.

shellfish species with a tacit acceptance of the Pacific oyster (previously known as the Japanese oyster) as a superior species to the native (or *Olympia*) oyster and, with a few exceptions, neither the state nor local communities have complained about the Pacific oyster's takeover of local beaches.⁴² Similarly, the manila clam (a by-product of the introduction of the Pacific oyster) has also thrived throughout the Salish Sea with nearly everyone's acceptance. With these introduced species, however, has come new shellfish predators, such as the Japanese oyster drill.

Additionally, environmental changes have resulted in the near-extinction of local sea star populations that were once viewed as a pest because of the sea star's fondness for shellfish suppers, but are also considered a "keystone species" predator that ensures a healthy intertidal ecosystem.⁴³ Human engineering of the marine environment with the introduction of these new shellfish species are evidence of how shellfish-related activities have altered the Salish Sea. While seemingly banal, sedentary, and at the mercy of humans and the ocean, shellfish species have had impacts on the marine environment and how humans have managed this environment in often unacknowledged ways. These impacts in turn have shaped how humans have negotiated control over the beaches that are home to these creatures.

Shellfish harvesting and tideland rights also mark a critical shift in Coast Salish nations' relationships with colonial governments and their ability to control their resources and title rights. "Too often," Megan Harvey observes, scholarly analysis of Indigenous communities' relations with settler states "have treated Indigenous Peoples as reactors to, rather than

⁴² In Europe, by contrast, many people view Pacific oysters as an invasive species. See Roger J.H. Herbert, John Humphreys, Clare J. Davies, Caroline Roberts, Steve Fletcher and Tasman P. Crowe, "Ecological impacts of non-native Pacific oysters (*Crassostrea gigas*) and management measures for protected areas in Europe," *Biodiversity and Conservation*, 25 (2016): 2835-2865.

⁴³ Biologist Robert Paine identifies sea stars as a "keystone species" due to their role in the trophic system of the Salish Sea. The decline of sea stars to a wasting disease, brought on by pollution and global warming, has resulted in an overpopulation of green urchins which have decimated crucial kelp cover for thousands of marine species. Williams, *Homewaters*, 102-103.

influencers of, state policies.”⁴⁴ In the case of WSÁNEĆ and Suquamish shellfish harvesting rights, both communities utilised their treaty relationships with federal governments to correct unjust and illegal local regulations that set new, more Indigenous-inspired policy for resource management and marine use. Therefore, this story is about how two Indigenous communities, who share historical kinship across two sides of a settler-created boundary, asserted their treaty rights in a way that has shifted government policy and the relationships between inhabitants of the Salish Sea.

Relationships and Research

Like the oft-overlooked bivalves, settlers in the Salish Sea tend to know more about the peoples whose territory lie somewhere else rather than the Coast Salish peoples at home. This is largely due to the ethnographic record. In the early to mid twentieth-century, anthropologists paid less attention to the Coast Salish nations in general, and the Suquamish and the WSÁNEĆ specifically, than they had to neighbouring Indigenous peoples such as the Haida, Kwakwaka’wakw and Tsm’syen.⁴⁵ This is likely due to Coast Salish peoples proximity to major centres of settlement and a misconceived settler perception of Coast Salish peoples assimilation into the urban centres during anthropologists’ search for “authentic Indians.”⁴⁶ For the Suquamish, before the preparation of evidence in the *US v. Washington* hearings of the 1970s, only two ethnographic studies of the community had been conducted: one by T.T. Waterman in

⁴⁴ Harvey, “Living Well Through Story,” 27.

⁴⁵ Crisca Bierwert, *Brushed by Cedar, Living by the River: Coast Salish Figures of Power*, (Tucson: The University of Arizona Press, 1999), 15; Jack Horne, “WSANEC: Emerging Land or Emerging People,” *The Arbutus Review*, 3, 2 (2012): 6.

⁴⁶ Paige Raibmon, *Authentic Indians: Episodes of Encounter from the Late Nineteenth Century Northwest Coast*, (Durham, NC: Duke University Press, 2005); Andrew Nurse, “Marius Barbeau and the Methodology of Salvage Ethnography in Canada, 1911-1951,” In *Historicizing Canadian Anthropology*, Julia Harrison and Regna Darnell, eds. (Vancouver: UBC Press, 2006), 52-64.

the 1910s and the other by Warren Snyder in the late 1960s for the Indians Claims Commission.⁴⁷ This research has since been supplemented by a greater amount of “grey” literature from anthropologists and other experts such as Barbara Lane, on behalf of the communities, and Herbert C. Taylor Jr., for the state and intervenors, made in preparation for the *US v. Washington* hearings. For the W̱SÁNEĆ, Diamond Jenness started a significant study in 1935 that he never completed nor published.⁴⁸ Wayne Suttles later wrote a PhD dissertation on “Straits Salish” economic life in 1951, which was submitted as evidence in the American Indians Claims Commission, while Homer Barnett published an ethnographic study in 1955.⁴⁹ Both the Suquamish and the W̱SÁNEĆ have conducted community-based projects which have resulted in oral history collections and educational materials.

For the ethnographic portions of this study, I rely on these early studies as well as the community-based literature and oral histories. While scholars have been critical of early anthropology, largely due to its positivism and associative racialized logics of white supremacy, the work of Barnett, Jenness, Suttles, and Lane have been praised by subsequent scholars for their attention to detail, respectful engagement with the communities, and use of ethnohistorical approaches that values both the continuity of social and cultural structures while at the same time acknowledging the impact of change over time on these structures. The communities with whom

⁴⁷ STA, Barbara Lane, 1977-7-5, Volume 1, File 1, “Report on the Port Madison Indian Reservation Tidelands Boundary Question Historical and Anthropological Evidence,” 1977-02; STA, Gail Thompson, 1993-7-2, Volume 1, File 1, “Aboriginal Use of Shellfish by Puget Sound Area Indian Groups,” 1993-05-24; STA, Randall Schalk, 1993-7-1, Volume 1, File 1, “Anthropological and Historical Evidence Pertaining to Suquamish Shellfish Usage,” 1993-09-16.

⁴⁸ Barnett Richling, eds., *The W̱SÁNEĆ and their Neighbours: Diamond Jenness on the Coast Salish of Vancouver Island, 1935*, (Oakville, Ont: Rock’s Mills Press, 2016), vi.

⁴⁹ Ralph A. Barney, “The Indian Claims Commission,” In *The Economic Life of the Coast Salish of Haro and Rosario Straits*, Wayne P. Suttles, (New York: Garland Publishing Inc., 1974), 13; David Agee Horr, “Preface,” In *The Economic Life of the Coast Salish of Haro and Rosario Straits*, Wayne P. Suttles, (New York: Garland Publishing Inc., 1974), 6-7; Homer G. Barnett, *The Coast Salish of British Columbia*, (Eugene, Oregon: University of Oregon Press, 1955).

these scholars worked also rely on these scholars' studies.⁵⁰ I supplement these materials with oral history interviews with community Elders who generously shared their insights with me.⁵¹ As a non-Indigenous settler historian, I am in no way an expert on Indigenous peoples' culture or history. While I do my best to provide an ethnohistorical overview for context, I encourage readers to seek out Indigenous nations' perspectives on these subjects.

For the oral history portion of my project, I have tried to maintain a relationship of reciprocity and community-engagement as outlined by ethnohistorians Keith Carlson and John Lutz and archaeologist David Schaepe in their model of "new ethnohistory." Carlson, Lutz and Schaepe offer a list of components for community-engaged research that includes the requirement for the research to be "both meaningful to and accessible to the community being researched." Adam Gaudry adds that "the next steps" in community-engaged research is to find ways to support "Indigenous research practice" and communities' "research self-sufficiency." For my project, I address these calls by making all of my research materials available to the communities for their own use in a database that is shared with my contacts via a password-protected University of Victoria web host.⁵²

I have also been attentive to the historical concerns of the community so that I can respond to their questions in this study. This, in a large part, is why the study is about shellfish and not

⁵⁰ Alexandra Harmon, "Coast Salish History," In *Be Of Good Mind: Essays on the Coast Salish*, Bruce Granville Miller, eds. (Vancouver: UBC Press, 2007), 47; Keith Carlson, John Lutz and David Schaepe, "Introduction: Decolonizing Ethnohistory," In *Towards a New Ethnohistory: Community-Engaged Scholarship Among the People of the River*, Keith Thor Carlson John Lutz, David Schaepe, Naxaxalhts'i Albert "Sonny" McHalsie, eds. (Winnipeg: University of Manitoba Press, 2018), 10.

⁵¹ Please see Appendix A, "Community Participants" for short biographies and details on contributions.

⁵² Carlson et al., "Introduction: Decolonizing Ethnohistory," 26-27; Adam Gaudry, "Epilogue: Next Steps in Indigenous Community-Engaged Research: Supporting Research Self-Sufficiency in Indigenous Communities," In *Towards a New Ethnohistory: Community-Engaged Scholarship Among the People of the River*, Keith Thor Carlson John Lutz, David Schaepe, Naxaxalhts'i Albert "Sonny" McHalsie, eds. (Winnipeg: University of Manitoba Press, 2018), 255; For information on the Text Encoding Initiative (TEI) and Extensible Markup Language (XML) please see: Elena Pierazzo, *Digital Scholarly Editing: Theories, Models and Methods*. (Lyon: Hyper Articles en Ligne, 2014); TEI Consortium, eds. *TEI P5: Guidelines for Electronic Text Encoding and Interchange*. TEI Consortium, 2019, <http://www.tei-c.org/Guidelines/P5/>.

salmon or other aspects of Indigenous-settler relationships in the Salish Sea that I find intriguing. When I started this project, I had only a general idea of what I wanted to know about my home in the Salish Sea. I wanted to understand better some of the most crucial aspects of our history that inform current relationships existing today. Living on the sea, it became clear to me that the marine environment is a key factor in articulations of identity and forging of relationships in the region. This gave me a broad research interest as I navigated archival and community records. When the Suquamish Tribal Council approved my research request and invited me to visit their community in 2019, I had an inchoate understanding of shellfish as an underexamined component to the larger story of marine resource management in the Salish Sea. Thanks in part to conversations I had with a couple local researchers at the British Columbia Archives, I had already begun to make notes on shellfish records but nothing more than general flags to possibly delve a little deeper into these records. A moment of synergy ignited when I first met Lydia Sigo, archivist of the Suquamish Tribal Archives (STA) and geoduck diver. As we chatted in the archives on a hot summer day, she gave me an overview of Suquamish fishing rights and relationships with settler communities. During this discussion, she said to me, “you know what you should be focused on, you should look into our shellfish harvesting rights. That story needs to be told.” Instantly, all the shellfish records, tentatively flagged on archival finding aids, jumped up the hierarchy of importance on my research schedule. In this way, my research is guided by the community — shellfish harvesting rights is the aspect of Suquamish history they have identified as the one they wish to be explored.

In addition to oral history interviews, I consulted archival records from federal, provincial, and state institutions, as well as the STA. With the exception of the STA, records held in these institutions predominantly reflect settler perspectives, largely from a government point-of-view,

but also from the public in the form of letters of complaint sent to officials. I also conducted a survey of newspapers to gain insights into public sentiments and discourse surrounding fishing rights in Washington State and British Columbia. The most valuable of these newspapers is the *Native Voice*. While the corpus of newspapers examined are predominantly settler-owned and operated, the *Native Voice* was the newspaper organ of the Native Brotherhood of BC, a fishing organization that operates on the BC coast, and its content generally reflects Indigenous nations' perspectives on fishing, land title, and other rights.⁵³ Crucially, *Native Voice* contains Indigenous peoples reactions from BC to the fish wars in Washington State and shows evidence of the continued transborder connections Coast Salish communities maintained throughout the twentieth century despite the existence of a state-imposed political border.

This dissertation traces Indigenous peoples' shellfish harvesting and foreshore rights in the Salish Sea across the twentieth century. Chapter 1 provides a brief ethnohistory of the Suquamish and the WSÁNEĆ in particular and Coast Salish peoples in general with an emphasis on shellfish harvesting. It highlights Indigenous fisheries and their post-contact efforts to control these fisheries. This chapter ends, and the next begins, around 1925. This date marks a key shift in the shellfish industry with the introduction of the Pacific oyster from Japan. With new lucrative marketing potential, settler interest in securing foreshore property dramatically increased along with settler appetite for beaches fronting Indigenous land.

Chapter 2 turns to Indigenous fishing rights post-1925 with an emphasis on shellfish activity and settler encroachment on the tidelands. It monitors changes in policy on both sides of the border concerning the rights to usage of beaches and how various instances of settler

⁵³ Jamieson, *The Native Voice*, 11.

development on the beaches exacerbated Indigenous communities' loss of resource harvest and management. Suquamish and W̱SÁNEĆ shellfish harvesting and defense of their rights during this period are highlighted as well as how this activity intersected with general trends in politics and public discourse on Indigeneity and nationalism.

Chapter 3 shifts to the greater context of fishing rights in the 1970s. This was a pivotal decade for Indigenous-settler relations in the Salish Sea because it was both a period of incredibly dynamic political action by Indigenous peoples on both sides of the border as well as a period of intense conflict between settlers and Indigenous groups in what US pundits have dubbed the “fish wars,” centered on the monumental Boldt Decision of 1974. While the Boldt Decision is well documented in US history, an exploration of Canadian responses to the decision, as well as how settler-colonial states continue to operate in the “post”-colonial era, offers new insights into the conversation. Tracing Washington State’s journey to co-management and British Columbia’s path to a commercial fishery policy called the Aboriginal Fisheries Strategy, as well as how these transits intersected, offers evidence of continual state violence against Indigenous communities but also the resurgence of Indigenous nations’ cross-border management strategies. This and the following chapter also focus the ethnohistorical lens on white fishermen, property owners, and voters revealing their motives and methods of resistance to Indigenous fisheries and property rights.

Chapter 4 offers the first of two community studies. Within the environment of the Boldt Decision and fish wars, the Suquamish Tribe wrestled with local settlers for control of the Port Madison Reservation on Kitsap Peninsula. Amid violent conflicts on the beaches, the Suquamish leveraged their federally recognized treaty rights to take the state to court (*US and Suquamish vs. Dorwin AAM et al.*) over their rights to the foreshore that bordered its reservation. They also

joined other tribes in Phase III of the Boldt Decision litigating for shellfish harvesting rights across Puget Sound.

Chapter 5 is the second community study. In the 1970s, settler developers approached the STÁ,UTW community about a marina project at Saanichton Bay beside Tsawout reserve (IR2). The community did not approve. Despite this setback, developers pushed on in the early 1980s. WSÁNEĆ Nation and allies demonstrated against construction and then litigated against the company (*Claxton vs. Saanichton Marina*) using their Douglas Treaty rights to protect their bay from destruction.

These community studies connect shellfish harvesting and foreshore rights to the greater issues of fishing rights and Indigenous nations' resistance to colonialism in the late twentieth century. The conclusion unpacks these connections and the legacy of the court decisions. It also addresses possible lessons for healthier relationships and beaches on both sides of the border. Most studies of Indigenous-settler relations in British Columbia and Washington State focus on only one side of the international border, privileging settler nation-states as social units and ignoring the existing Indigenous nations' networks of kinship and resource management that predate and continue to operate across the international border. These studies also tend to focus on either land rights or fishing rights. Aside from the fact that they miss the transnational context, most existing studies likewise miss the link that connects land and fishing rights.⁵⁴ A history of tidelands and shellfish rights in the Salish Sea explores a number of borders:

⁵⁴ Legal Historian Douglas Harris observes that “a clear distinction between land and fisheries is problematic.” He points out that “indigenous fishing technologies, such as weirs, dip nets, and reef nets, were land-based and, as such, were inseparable from the adjoining land, foreshore, or bed of the body of water.” Harris, *Landing Native Fisheries*, 38; Ethnohistorian Josh Reid also observes that most scholarship of Indigenous concepts of “tenure” have limited their analysis to “terrestrial spaces” which results in a “terrestrial perspective” that “overlooks those indigenous peoples, such as the Makahs, who vested marine rather than terrestrial spaces and resources with their most valued tenure rights.” Reid, *The Sea is My Country*, 137-138.

Indigenous nations and settler; Canada and the United States; and the vitally important interface between land and sea — beaches — the borderlands between Indigenous land and fishing rights.

Terminology

Indigenous peoples - general and specific

Generally, my dissertation will follow terminology conventions outlined by Gregory Younging in, *Elements of Indigenous Style: A Guide for Writing By and About Indigenous Peoples*.¹ “Indigenous peoples” is the convention when referencing an undefined or large category of society whose ancestors were the first peoples of this land. Where possible, I will be as specific as I can when referencing Indigenous peoples. Another collective identity is “Coast Salish peoples.” The adjective “Coast Salish” generally refers to people who speak fourteen Salishan dialects and reside in an area that stretches from the Columbia River in Oregon and Washington State up the Fraser Valley to the Fraser Canyon around the town of Yale over to the eastern side of Vancouver Island from Campbell River down to the south end back along the west coast of Puget Sound in Washington State.² [Maps 1, 4] Historian Alexandra Harmon notes that while the term “Coast Salish” is coined by non-Indigenous academics, it acknowledges the historical kinship relationships that early anthropologists observed.³ While the term “Indian” still finds acceptance in the United States, I avoid using it except when referencing historical use on either side of the border or terminology that has a legal context designated by the federal government of Canada in the *Indian Act* and related government-type documents from both countries. These contextual terms include: “Indian Reserves” (IR) as official designations of reserve land and “Indian bands” as a state-recognized sub-category of Indigenous groups. The use of these terms reveals the historical and legal context of colonial designations that have

¹ Gregory Younging, *Elements of Indigenous Style: A Guide for Writing By and About Indigenous Peoples*. (Edmonton: Brush Education, 2018).

² Harmon, “Coast Salish History,” 31.

³ *Ibid.*, 30.

remained stable over time. “Tribe” is used by Indigenous groups in the US, but it is not commonly used by groups in Canada. Tribe will be used in the context of community self-designations in the US or in quoted material.

Settler (WENITEM)

The use of “settler” can be just as contentious as the use of Indigenous-related terms. There are many non-Indigenous peoples who do not identify with the word for various reasons. Some commentators, for example, argue that Black Americans, whose ancestors were forcibly brought to North America, as well as other non-white immigrants who have been disproportionately disadvantaged by dominant political classes of white Anglo-Saxons, cannot be considered beneficiaries of settler colonialism and therefore not “settlers.” Others have acknowledged that, while the structure of settler-colonial society unequally benefits white settlers, the participation of all “arrivants” in the dispossession of Indigenous land should also be critically analyzed.⁴ Discussions on the various roles of all immigrants in settler colonialism are incredibly important — but beyond the scope of this study. In awareness of these discussions, it is important to be clear that the use of settler in this study is confined to white settlers and not other arrivants who have been marginalized within the colonizing process.

Sociologist Emma Battell Lowman and Geographer Adam Barker “position Indigenous and Settler as identities ‘always in relationship.’” Both are fluid identities that overlap and are never isolated from the other due to the conditions of settler colonialism. Further, it is useful to

⁴ Candace Fujikane, “Introduction Asian Settler Colonialism in the U.S. Colony of Hawai’i,” In *Asian Settler Colonialism: From Local Governance to the Habits of Everyday Life in Hawai’i*, Candace Fujikane and Jonathan Y. Okamura, eds. (Honolulu: University of Hawai’i Press, 2008), 1-42; Dean Itsuji Saranillio, “Why Asian settler colonialism matters: a thought piece on critiques, debates, and Indigenous difference,” *Settler Colonial Studies*, 3, 3-4 (2013): 280-294; Jodi A. Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism*. (Minneapolis: University of Minnesota Press, 2011), xix; Noenoe K. Silva, presentation at American Studies Association Conference: Building as We Fight, 7 November 2019, Honolulu, Hawai’i, USA.

recognise that representations of these two groups are in flux, suggesting the impermanence of the hegemonic relationships they often reflect. Lowman and Barker, for instance, see these identities as “non-binary” in an effort to avoid essentialist statements about either group or “the establishment of ‘Manichean duals’ or ‘master-slave dialectics.’” In other words, Lowman and Barker resist “the assertion that identity groups are bounded by rigid behavioural or familial structures, never to meet or interact.”⁵ So, while settlers are forever in a relationship with Indigenous peoples on colonized lands, both groups have the power to shape these relationships and their own identities.

In order to avoid falling into traps of “Manichean duels” that simplify the relationship as settler/bad and Indigenous/good (as well as other equally unproductive stereotypes), I have opted to refer to settlers with the SENĆOŦEN word “WENITEM” in the following chapters of this dissertation. This approach is inspired by historian Chris Arnett’s use of the Hulqumínum word “Hwunitum” to describe settlers in his study of the dispossession of Quw’utsun’ territory in the nineteenth century.⁶ While Arnett discusses his orthographic convention for the term Hwunitum, he does not elaborate on his rhetorical strategy for its use.⁷ I discuss below why I believe WENITEM is a useful term.

WENITEM means “those who came out of no where, or all of a sudden.” It is the WSÁNEĆ version of Hwunitum, which has the same meaning but may also carry a second meaning, “the hungry ones” or “those we need to feed or support.”⁸ This term is also similar to the Stó:lō

⁵ Emma Battell Lowman and Adam J. Barker, *Settler: Identity and Colonialism in 21st Century Canada*, (Winnipeg: Fernwood Publishing, 2015), 16-17.

⁶ Chris Arnett, *The Terror of the Coast: Land Alienation and Colonial War on Vancouver Island and the Gulf Islands, 1849-1863*, (Vancouver: Talon Books, 1999), 11.

⁷ *Ibid.*, 10.

⁸ Earl Claxton Jr., interview by Gordon Lyall, 6 March 2020, Victoria, BC, Canada.

Halq'eméylem word “Xwelítém,” which means “the hungry ones, or the starving ones.”⁹ The Suquamish southern-dialect Lushootseed word for settlers is “pastəd” which means “person from Boston.”¹⁰ While this differs from WĒNITEM, the northern-dialect Lushootseed word “hwultum,” which means “Caucasian, people from the saltwater,” bears more resemblance.¹¹ I choose WĒNITEM because that is who I am — a WĒNITEM who is privileged to live and work on the unceded territories of the Lək'wəḡən and WSÁNEĆ peoples.

I also choose WĒNITEM because the use of SENĆOFEN helps de-centre some of my inclinations towards framing the history in ways that highlight settler perspectives. WĒNITEM stands out to an audience who has perhaps become accustomed to the use of “settler” terminology. Seeing “WĒNITEM” instead of “settler” may further remind readers that colonization of this land was not inevitable nor a natural step in democratic progress. Finally, I choose WĒNITEM for the intriguing connection it has to the secondary meaning of Hwunitum, as identified by Earl Claxton Jr., which is “those we need to feed or support.” This secondary meaning helps move the discussion of Indigenous-settler relations from one of purely adversarial relationships to one of dialogue and mutual need. If we see WĒNITEM not simply as settlers who are solely invested in genocide and environmental destruction but as people who are in need of guidance from those who have had thousands of years of experience nurturing relationships with the environment, then we can keep the channels open for transformative dialogue.

⁹ Keith Thor Carlson, *The Power of Place the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism*. (Toronto: University of Toronto Press, 2010), 161.

¹⁰ Lena Purser-Maloney, conversation with Gordon Lyall, 13 July 2020, Pacific Northwest.

¹¹ Zalmi ?esweli Zahir, *A Lushootseed Analysis of a 1877 Dictionary by George Gibbs*, (Puyallup: Zahir Consulting Services, 2009). <http://www.puyalluptriballanguage.org/resources/GibbsFinal4.pdf>.

Salish Sea

The Salish Sea is an 18,000 square kilometre inland sea, with 7,470 kilometres of shoreline, that sits on a “coastal trough” known as the Georgia-Hecate Depression which formed about 150 million years ago.¹² Its three main hydrological components are known as the Juan de Fuca Strait, Puget Sound, and the Georgia Strait. [Maps 1, 4] Its main arterial river is the Stó:lō (Fraser) River which pours into the sea with such volume that it influences the tides from the sea’s entrance at the Juan de Fuca Strait to its entrance at Queen Charlotte Sound.¹³ “Nutrient traps” that are formed by the mixing of the Fraser’s organic and non-organic materials in concentrated amounts at its estuary have “long formed the nuclei for human settlements and industrialization, as well as providing fertile agricultural land and convenient transportation routes.”¹⁴ Salish Sea dependence on the Fraser for ecological health and the subsequent ways that humans have harnessed this relationship, through resource harvesting and the transportation of goods, make it an example of what environmental historian Richard White conceptualises as an “organic machine.”¹⁵ The bio-function of the sea operates within natural parameters as well as within the relationship humans have with this machine. Population growth pushes these parameters to their limits which threaten the machine’s function.¹⁶

The oldest known name for this sea comes from a Lushootseed word, “x̣wəlč” (Whulge), meaning a “stretch of saltwater.” It is an onomatopoeic word designed to sound like the waves as they lap up on the shore.¹⁷ The term “Salish Sea” is recent, coined by Bert Webber in the 1980s

¹² Department of Fisheries and Oceans, Richard E. Thomson, *Oceanography of the British Columbia Coast*, 1981, 6; Emily Vance, “10 years after Salish Sea is named, experts say united front on conservation still distant,” *CBC News*, 13 September 2020, <https://www.cbc.ca/news/canada/british-columbia/salish-sea-10-years-1.5719577>.

¹³ Thomson, *Oceanography of the British Columbia Coast*, 13.

¹⁴ *Ibid.*, 17-18.

¹⁵ Richard White, *The Organic Machine: The Remaking of the Columbia River*. (New York: Hill and Wang, 1996).

¹⁶ Environmental Protection Agency and Environment Canada, *Joint Statement of Cooperation on the Georgia Basin and Puget Sound Ecosystem*, 2000, 2.

¹⁷ Williams, *Homewaters*, 3.

and first submitted to the Washington State Board on Geographic Names and the BC Geographical Names Office in 1990. Webber viewed the name as a way to address the issue of conservation and marine management across the international border by recognizing the fact that the three bodies of water constitute a single ecosystem.¹⁸ The idea had support from various members of society including environmental activist Briony Penn who promoted the name in her work as well as in the creation of the *Salish Sea: A Community Atlas*.¹⁹ The name has also captured the imaginations of local publishers who produced a “Salish Sea Activity book” to spread the concept within public education systems.²⁰ The name has had the support of many, but not all, Coast Salish observers.²¹

Geographers Brian Tucker and Reuben Rose-Redwood have argued that a renaming process such as the recent naming of the Salish Sea is a “performative act.” While encouraging to reconciliation efforts between settlers and Indigenous peoples of the region by acknowledging the long-standing relationships Coast Salish nations have had with the waterway and the land connected by it, the naming may merely promote Indigenous culture, “while providing no actual exchange of power or opportunity for increased levels of self-determination.”²² While a promising step towards responsible stewardship of the Salish Sea, the renaming has done very little to create the cooperative transborder environmental management that the Coast Salish communities and Weber hoped to realize.²³

¹⁸ Brian Justin Tucker, “Inventing the Salish Sea: Exploring the Performative Act of Place Naming off the Pacific Coast of North America,” (MA thesis, University of Victoria, 2013), 9.

¹⁹ Brian Tucker and Reuben Rose-Redwood, “Decolonizing the Map? Toponymic Politics and the Rescaling of the Salish Sea,” *The Canadian Geographer*, 59, 2 (2015): 201.

²⁰ Tucker, “Inventing the Salish Sea,” 85 and 90.

²¹ *Ibid.*, 102 and 139-140; Tucker and Rose-Redwood, “Decolonizing the Map?,” 203-204.

²² Tucker and Rose-Redwood, “Decolonizing the Map?,” 203-204.

²³ Vance, “10 years after Salish Sea is named.”

Shellfish

Shellfish are invertebrate sea creatures with exoskeletons. They can be mollusks, crustaceans, and echinoderms. There are many kinds of shellfish in the Salish Sea. The primary species that are considered in this study are harvested commercially and for private use: oysters (native - *Ostrea lurida*; and Pacific - *Crassostrea gigas*), clams (butter - *Saxidomus gigantea*; razor - *Siliqua patula*; littleneck - *Protothaca stamineais*; manila - *Venerupis philippinarum*; geoduck - *Panopea generosa*); and Dungeness crabs (*Cancer magister*).²⁴

While modern biologists and officials have recognized the “commercial importance” of shellfish in the Salish Sea, shellfish have historically been downplayed or ignored by anthropologists when studying Indigenous peoples’ economies and subsistence.²⁵ Betty Meehan suggests that this may be because women and children predominantly collected shellfish and the practice therefore was of less interest to anthropologists who were busy documenting the “exploits of the active male hunters of the same society,” or, in the case of Coast Salish peoples, salmon fishers. She comments that the “very characteristics of shellfish gathering itself may have exacerbated the apparent lack of interest in it. For the unmotivated observer it is an unspectacular, unobtrusive and humdrum activity, which tends to go unnoticed in the wider fabric of the hunting life.”²⁶ Judith Williams suggests that “[d]espite mention of clams in a number of indigenous stories, it’s possible clams were so ubiquitous in Native life they were

²⁴ Coast Salish communities harvest many more shellfish species such as chitons and sea urchins, this study is limited to mainly commercial species due to their greater role in the historical narrative.

²⁵ Department of Fisheries and Oceans, N.F. Bourne and K.K. Chew, “*The Present and Future for Molluscan Shellfish Resources in the Strait of Georgia-Puget Sound-Juan de Fuca Strait Areas*,” [in] *Review of the Marine Environment and Biota of Strait of Georgia, Puget Sound and Juan de Fuca Strait: Proceedings on the Marine Environment, January 13 & 14, 1994*, 1994, 209; Aboriginal Relations and Economic Measures Land and Water British Columbia, Brian Kingzett and Ruth Salmon, *First Nations Shellfish Aquaculture Regional Business Strategy: BC Central and Northern Coast*, 2002, s10-p4.

²⁶ Betty Meehan, *Shell Bed to Shell Midden*, (Canberra: Australian Institute of Aboriginal Studies, 1982), 7.

ignored by researchers in favour of the wonder of the salmon return and its ceremonies.”²⁷ While some biologists have been dismissive of the caloric value shellfish harvesting offers foragers, Meehan insists that because “shellfish are collected consistently, they provide a small but constant source of fresh protein, the importance of which should not be underestimated.”²⁸ Shellfish, in fact, are a critical source of protein and essential fatty acids as well as sources of iron, zinc, and copper, which are found in higher quantities than in finfish.²⁹

Shellfish are also a worldwide staple. As Meehan notes, the “ubiquity” of shell middens around the world demonstrates how important shellfish diets are to coastal societies and stand as “fitting monuments to yet another unappreciated contribution made by women to the maintenance of human society.”³⁰ Evidence of “clam gardens” up and down the coast demonstrate that Indigenous peoples not only harvested but cultivated and, in a sense, farmed shellfish for thousands of years.³¹ They are also a vital component in holistic ecological health in the Salish Sea. First, shellfish such as the native Olympia oysters (known colloquially as “Olys”), are marine “engineers” which can convert intertidal habitat into reefs that “attract a host of other organisms and prevent erosion by attenuating wave energy.” They act as filters, “cleaning” the Salish Sea by “removing suspended solids, nutrients, microbes, and phytoplankton, as well as by sequestering toxins such as PCBs and pesticides.”³² Shellfish also

²⁷ Judith Williams, *Clam Gardens: Aboriginal Mariculture on Canada’s West Coast*, (Vancouver: New Star Books, 2006), 48.

²⁸ Meehan, *Shell Bed to Shell Midden*, 160.

²⁹ Kieran D. Cox, Hailey L. Davies, Katie H. Davidson, Travis G. Gerwing, Sarah E. Dudas and Francis Juanes, “Shellfish subsidies along the Pacific coast of North America,” *Ecography*, 43 (2020): 674.

³⁰ Meehan, *Shell Bed to Shell Midden*, 171-172.

³¹ BC Ministry of Environment, Bjorn O. Simonsen and Alison Davis, *Water Quality: Saanich Inlet Study Report on First Nations Consultation*, 1995, 45; Rosemary E. Ommer, *Coasts Under Stress: Restructuring and Social-Ecological Health*, (Montreal: McGill-Queen’s University Press, 2007), 328; Williams, *Clam Gardens*; Nicole Smith, Dana Lepofsky, Ginevra Toniello, Kieth Holmes, Louie Wilson, Christina M. Neudorf and Christine Roberts, “3500 years of shellfish mariculture on the Northwest Coast of North America,” *PLOS One*, 14, 2 (February 2019): 1-18.

³² Williams, *Homewaters*, 167.

contribute vital “marine subsidies” to terrestrial ecosystems which are carried by a variety of vectors such as marine birds, coastal mammals and humans. Shell fragments, animal excrement, marine mammal carcasses, spawning fish, and macroalgae deposits all introduce shellfish into terrestrial ecosystems. These marine-derived nutrients are rich in nitrogen, phosphorus and lipids which add these elements to the soil and promote healthy productive growing environments.³³ Due to their hard exoskeletons, shellfish deposits of calcium to the terrestrial environment occur over millennia and “may influence forest ecosystems on boundless timescales.” As a recent study explains: “nutrients accumulate within coastal ecosystems by forming large mounds in the high intertidal, being incorporated into the root systems of the surrounding flora, or being deposited on hill tops by various vectors. Especially, calcium that is released slowly from degrading shells and is commonly deficient in forested ecosystems.” This “slow release” of calcium facilitates a decrease in soil acidity creating “favourable conditions for microbial activity.”³⁴ Therefore, shellfish are not only a vital part of marine health but of terrestrial health as well.

Both Suquamish and WSÁNEĆ Elders confirm the importance of shellfish to community health. This importance only grew across the twentieth century as access to salmon fisheries diminished through state regulation and stock depletion. Williams points out that governmental policy has affected community access to pelagic species to such an extent that “some families [are forced] to rely heavily on clams.”³⁵ The marine health and the effects of human waste and pollution has therefore disproportionately affected coastal Indigenous communities who rely on seafood for survival. As Dorothee Schreiber explains: “The health concerns of local First Nations people seem much broader in scope and extend to shellfish, fish spawn, marine mammals,

³³ Cox et al., “Shellfish subsidies along the Pacific coast of North America,” 668-669.

³⁴ Ibid., 674-678.

³⁵ Williams, *Clam Gardens*, 48.

seabirds, and other foods more rarely consumed by non-native people.”³⁶ The toxin-bearing phenomenon known as “red tide,” which is due to dinoflagellate (a type of phytoplankton) blooms eaten by the molluscan filter-feeders, is completely harmless to the shellfish themselves, but makes shellfish toxic to humans. Some locals believe that increased industrialization and added pollution to the Salish Sea has dramatically increased the frequency that these natural blooms occur which has affected Indigenous communities’ harvesting opportunities.³⁷

Tidelands/Foreshores

Tidelands (or foreshores) are the interface between land and sea.³⁸ They are generally acknowledged to be the area between the mean high and low tide mark.³⁹ A common type of tideland is known as a beach. Oceanographer Richard E. Thompson defines beaches as “an accumulation of unconsolidated sediments (sand, shingle, cobbles, other fragmented rock) that extends from a physiographic change such as a sea cliff or series of dunes, or from the seaward limit of permanent vegetation, to the furthest point offshore where sediments can be carried by the waves.”⁴⁰ But not all tidelands in the Salish Sea are beaches, some are rocky outcrops or rocky reefs. The “broken shoreline” of the Salish Sea described by anthropologist Wayne Suttles as “at one place a gravel beach, at another a spit of fine sand, and at a third a jagged face of rock” means that not all shellfish locations are easily accessible and makes the need for healthy

³⁶ Dorothee Schreiber, “Our Wealth Sits on the Table: Food, Resistance, and Salmon Farming in Two First Nations Communities,” *The American Indian Quarterly*, 26, 3 (Summer 2002): 366.

³⁷ Thomson, *Oceanography of the British Columbia Coast*, 8; Claxton Jr., 27 June 2020.

³⁸ “Tideland” and “foreshore” are used interchangeably but “tideland” appears to be more commonly used in the United States and “foreshore” in Canada.

³⁹ Library and Archives Canada [hereafter LAC], Canada, R11344, Volume 1665, File 9, “Supreme Court Decision regarding Ownership of the Bed of the Strait of Georgia and Related Areas,” 1982; LAC, Canada, RG10, Volume 15, File 987-31-7-4-2-1, “Foreshore rights - North Shore Harbour Commission - Musqueam IR #2,” 1948-11 to 1967-08; WSA, Fisheries Dept., 98-A-229, Volume 6, File 6, “Shellfish,” 1991 to 1992.

⁴⁰ Thomson, *Oceanography of the British Columbia Coast*, 28.

shellfish beaches even more crucial to communities that depend on them for health and economy.⁴¹

In Washington State, shellfish harvesting and resource management on public beaches is controlled by the state and, unlike most coastal states in the US, private beaches are owned by property owners.⁴² Some beaches, such as those at naval bases are controlled by the federal government. Stakeholders have contested the ownership of beaches in front of reservations due to the General Allotment Act (or Dawes Act) of 1887, which divided reservations into individual family plots, some of which were then sold to settlers creating “checkerboard” reservations of Indigenous tribal nations and settler ownership.⁴³ In British Columbia, the province manages the commercial sale of shellfish, while the federal government manages the act of harvesting and the health of shellfish stocks. The province owns all foreshores (called Crown land) and leases these holdings to individuals and corporations. In the first seventy-five years of British Columbia’s history, the provincial and federal governments contested the ownership over foreshores fronting Indigenous reserves. At the end of the nineteenth century, the federal Department of Justice gave its opinion that the foreshores belonged to the province, but First Nations had riparian rights which limited the province’s ability to alienate them.⁴⁴ However, if the reserve lay in the Canadian Pacific Railway belt, then the federal government held title to the low water mark.⁴⁵

⁴¹ Wayne Suttles, “Variation in Habitat and Culture on the Northwest Coast,” In *Coast Salish Essays*, Wayne Suttles, (Seattle: University of Washington Press, 1987), 33.

⁴² Williams, *Homewaters*, 160.

⁴³ Lydia Sigo, conversation with Gordon Lyall, 22 July 2019, Suquamish, Washington State, USA.

⁴⁴ A. Power, Acting Deputy Minister of Justice to the Secretary, Department of Indian Affairs, 8 July 1898. LAC, Canada, RG10-B-8, Volume 11194, File 4, “Dept. of Justice Opinions – Vol. 2,” 1890 to 1900; E.L. Newcombe, Deputy Minister of Justice, to the Deputy Superintendent General of Indian Affairs, 28 February 1905. LAC, Canada, RG10-B-8, Volume 11195, File 1, page 94, “Dept. of Justice Opinions – Vol. 3,” 1900 to 1910; E.L. Newcombe to D.C. Scott, 29 February 1924. LAC, Canada, RG10-B-8, Volume 11195, File 3, pages 247-249, “Dept. of Justice Opinions – Vol. 4,” 1911 to 1938.

⁴⁵ W.E. Ditchburn to H. Graham, 24 July 1931. LAC, Canada, RG10, Volume 11041, File 3-3-5 & 3-3-6 pt. B, Reel T-16085, “Chief Inspector of Indian Agencies/Indian Commissioner for BC – Cowichan Agency – Foreshore rights on various reserves (Shannon file),” 1918 to 1938

Both governments negotiated these terms in the early twentieth century and agreed that the province would consult with the federal government before any decision regarding foreshores adjacent to reserves could be made, effectively giving the federal government control over them on behalf of First Nations.⁴⁶

While foreshores utilized for land-based resource extraction purposes such as log booming are discussed, my focus is on the beaches that are home to shellfish. The details of these contests for control of these beaches, and how treaties define this relationship, are central questions of this study.

⁴⁶ See the following correspondence letters: Frank Pedley to W.S. Gore, 11 March 1905. LAC, Canada, RG-10, Volume 7549, File 33,162-7, "Bella Coola Agency – Correspondence Regarding the Disposal of Foreshore Fronting on Indian Reserves," 1905 to 1940; W.S. Gore to Frank Pedley, 23 March 1905. BCA, British Columbia, Dept. of Lands, GR-0440, Volume 117, Reel B06137, page 465, "Lands Department Executive records," 1872 to 1918; Secretary, Department of Indian Affairs to A.W. Vowell, 18 December 1906. LAC, Canada, RG10, Volume 3911, File 111,246, "Leasing of Foreshores in Front of Indian Reserves," 1894 to 1906; J.D. McLean to A. Johnston, 27 March 1911. LAC, Canada, RG42-B-1, Volume 337, File 13183, "High and low water mark – Legal rights," 1895 to 1922; W.E. Ditchburn to J.C. McIntosh, 19 April 1921 and W.E. Ditchburn to Alfred H. Lomas, 24 November 1925. LAC, Canada, RG10, Volume 11041, File 3-3-5 & 3-3-6 pt. B, Reel T-16085, "Chief Inspector of Indian Agencies/Indian Commissioner for BC – Cowichan Agency – Foreshore rights on various reserves (Shannon file)," 1918 to 1938; W.E. Ditchburn to the Secretary, Department of Indian Affairs, 16 November 1929. LAC, Canada, RG10, Volume 11002, File 974/31-4-14-11, Reel T-3952, "Indian Commissioner for British Columbia – Cowichan Agency – Correspondence re road through Malahat I.R. No. 11 and ferry terminus within boundaries of Malahat I.R.," 1924 to 1929. The two governments ratified this arrangement in the Scott-Cathcart Agreement of 22 March 1929: C.C. Perry to Chief Joe Nimnim, 23 September 1931. LAC, Canada, RG10, Volume 11041, File 3-3-5 & 3-3-6 pt. B, Reel T-16085, "Chief Inspector of Indian Agencies/Indian Commissioner for BC – Cowichan Agency – Foreshore rights on various reserves (Shannon file)," 1918 to 1938.

Chapter 1. Salt Water People: Fisheries and Shellfish on the Salish Sea

According to Suquamish history, beings that could take many forms and change these forms as they wished, inhabited this world before human existence. Dukibel, the Changer, then decided to make a “firm order” of all things in the world.¹ As the changelings settled into the shapes of animals, plants, rocks, and everything else in the world, Dukibel also placed humans on the earth who sought to find their place by honoring the Creator and listening to the beings that had existed before them.² Dukibel placed the Suquamish people at Puget Sound. The name “Suquamish” comes from the Lushootseed word “D’Suq’Wub,” or “Place of the Clear Salt Waters,” which is the name of their main village site on the shore of Agate Passage. The community lived all throughout what is now known as Kitsap Peninsula and across Puget Sound, including a permanent village site at Pioneer Square in Seattle.³ Their villages consisted of cedar longhouses that housed many families. The most well-known village site, D’Suq’Wub, had the largest longhouse on Puget Sound known as “Old Man House.”⁴ [Maps 2, 4]

Suquamish are historically related to the Duwamish. The two groups shared territory, and their alliance is best remembered by Chief See-athl’s leadership over both tribes in the mid-nineteenth century. These two tribes harvested at the same berry patches, the same clam beds, and shared fishing locations. This relationship gave Suquamish access to salmon fisheries on Lake Washington.⁵ Customarily, Suquamish also fished on Hood Canal, but a neighbouring

¹ Suquamish Tribe, “History & Culture,” *Suquamish Tribe*, <https://suquamish.nsn.us/home/about-us/history-culture/> (accessed 18 October 2020).

² Ibid.

³ Leonard Forsman, “We continue to build on Chief Seattle’s legacy,” *Seattle Times*, 22 August 2019, <https://www.seattletimes.com/opinion/we-continue-to-build-on-chief-seattles-legacy>.

⁴ History of the Suquamish Tribe and The Suquamish Tribe Today, from 1981 Suquamish Tribal Calendar in STA, Suquamish Tribal Cultural Center, 80-81, Volume 1, File 1, “Box of newspaper clippings,” 1980 to 1981.

⁵ STA, Leonard Forsman, 2-25-82, Volume 1, File 1, “Preliminary Report on Usual and Accustomed Fishing Rights of the Suquamish and Duwamish Indians in Lake Washington and its Drainages,” 1982-02-25.

tribal nation has contested in the courts their claim to Hood Canal as a “usual and accustomed” fishing site.⁶ After the creation of Washington State, a resource-access regime once regulated by kinship alliances, became internecine conflicts over dwindling marine resources in negotiations with State Fisheries for recognition of their ancestral fisheries. Nevertheless, the Suquamish and their neighbours continue their relationships with the land and sea according to their customs and acknowledgement of the Creator’s gift.

The W̱SÁNEĆ are the “Emerging People” or “raised up.”⁷ Long ago, when the seawaters rose for several days to dangerous levels, the people had to go to their canoes and tie them all together. They tied their canoes to an arbutus tree at the top of a mountain as the water continued to rise. A raven appeared to the people and told them the flood would soon end. As the waters retreated, a child noticed raven circling and exclaimed: “NI QENNET TTH WSANEC” or “Look what is emerging!” An old man pointed to the emerging land and said: “that is our new home, WSANEC, and from now on we will be known as the WSANEC people.”⁸ The W̱SÁNEĆ, like the Suquamish, are “salt water people.”⁹ According to XEMFOLTW, Nicholas Claxton, the W̱SÁNEĆ “did not distinguish land from water but, rather, that all of it was [their] homeland.”¹⁰ They have called the Saanich Peninsula their home for generations because that is where their permanent winter villages were located; however, the territory of the W̱SÁNEĆ, called

⁶ WSA, Attorney General, State, AR-20070628-05, Volume 15, File 17, “Transcript of Hearing - Phase 1,” 1983-06-06; WSA, Attorney General, State, AR-20130806-03, Volume 1, File 24, “Indian Issues Shellfish,” 1985 to 1992; STA, Ray Forsman, 2013, Volume 1, File 1, “Complaint and request for relief/primary rights in Hood Canal,” 2013; Forsman, 23 July 2019; Sigo, 22 July 2019.

⁷ Janet Poth, eds., *Saltwater People as told by Dave Elliott Sr.: A Resource Book for the Saanich Native Studies Program*, (Saanich: School District 63, 1990 [1983]), 14; Horne, “WSANEC: Emerging Land or Emerging People,” 8.

⁸ Paraphrased from version by Kevin P. Paul in Horne, “WSANEC: Emerging Land or Emerging People,” 8.

⁹ Poth, *Saltwater People*, 15; Nicholas XEMFOLTW Claxton, presentation at Indigenous Resurgence on the Water: Revitalizing the Saanich Reef Net Fishery, 29 November 2016, Victoria, BC, Canada.

¹⁰ Nicholas XEMFOLTW Claxton and John Price, “Whose Land is it? Rethinking Sovereignty in British Columbia,” *BC Studies*, 204 (Winter 2019/20): 118.

“ÁLENENEĆ,” includes the Gulf Islands, the San Juan Islands, and stretches across the Strait of Georgia to the mouth of the Fraser River and Boundary Bay where WŚÁNEĆ families had SXOLE (reef net) fishing locations.¹¹ [Maps 3-4]

The WŚÁNEĆ historically organized themselves in family units, or TEXTA’N.¹² The Canadian government labelled these family units “bands” under the *Indian Act*. While the government recognizes five WŚÁNEĆ bands, there were six TEXTA’N before the creation of Canada: STÁ,UTW (Tsawout), WJOŁŁLP (Tsartlip), BOKEĆEN (Pauquachin), WŚÍKEM (Tseycum), MÁL,EXEŁ (Malahat), and WLUMI (Lummi). As STÁ,UTW Elder Earl Claxton Sr. explained at the *Claxton v. Saanichton Marina* hearings, WLUMI reside in what is now a part of the United States and the strong family connections, while not entirely severed, have been greatly diminished.¹³

The disconnection of family is an example of how the creation of the international border has caused violence to the social structure and kinship network of Coast Salish peoples. By drawing new political boundaries with no consideration to the Coast Salish world, settler-colonial states have disrupted their relationships, as well as their culture and systems of resource management. These political boundaries cut across different levels of society nationally and locally. As historian Paige Raibmon comments: “[c]olonialism had drawn lines dividing Aboriginal people from one another, an international line divided them into ‘Canadian’ Indians and ‘American’ Indians, while intranational lines divided them into ‘reservation’ and ‘non-reservation’ Indians. These lines hindered movement, curtailing not only personal freedom but cultural practice.”¹⁴

¹¹ Poth, *Saltwater People*, 16; Claxton and Price, “Whose Land is it?,” 118; Walter C. Grant, “Description of Vancouver Island,” *Journal of the Royal Geographic Society*, XXVII (1857): 301.

¹² Supreme Court of British Columbia [hereafter SCBC], *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 1 September 1987, 18-19.

¹³ *Ibid.*, 17.

¹⁴ Raibmon, *Authentic Indians*, 103.

Starting in the 1990s, the BC Treaty Commission, designed to reach “final agreements” between the settler-state and First Nations in British Columbia over title to the land, has created more of these “intranational lines,” as Coast Salish communities compete with kin for territory in overlapping claims.¹⁵ Anthropologist Justin Fritz suggests that, because territorial and jurisdictional claims on each side of the border cannot be “overlapped,” cross-border relationships between Coast Salish peoples may flourish as they “exploit” a “*symbolic impermeability* of the border.”¹⁶ This is true to a certain extent; however, international resource contests, such as competition over the Fraser River sockeye, which swim through both sides of the border and are regulated by the International Pacific Salmon Fisheries Commission, plunges Coast Salish kin groups back into conflict over resources that were once managed along family relationships un beholden to an “imaginary line.” The harvesting and protection of marine resources, including shellfish, that was once a part of a comprehensive Coast Salish world have fallen under a new regime of political and jurisdictional boundaries.

Shellfish have long been an important staple in the Coast Salish diet that includes a diverse set of marine life, wild game, wild roots, and berries. In Puget Sound, it is estimated that Coast Salish communities harvested 93 different shellfish species.¹⁷ While their appearance is not as spectacular as the salmon runs, shellfish represent a reliable and essential part of Coast Salish diet. Claxton Sr. explained, during his court testimony, that while salmon were “very sacred,” digging clams were “a very everyday sort of thing.”¹⁸ Anthropologist Herbert C. Taylor, who represented Washington State during the Boldt hearings, acknowledged that while salmon was

¹⁵ Justin Fritz, “The SWELSWÁLET of the WSÁNEĆ Nation: Narratives of a ‘Nation (Re)Building Process,’” (MA thesis, University of Victoria, 2017), 80.

¹⁶ *Ibid.*, 114.

¹⁷ NWIFC, “From Time Immemorial: The Story of Shellfish and The Tribes,” No date. In UWSC, Brock Adams papers, 1947-1993, 1096-016, Volume 56, File 5, “NW Indian Fisheries Commission,” 1992.

¹⁸ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 21.

well respected, “[m]ollusks were, perhaps, even more important than fish to the tribes inhabiting the inland waters of Washington State.” He cited two main reasons for the ethnographic emphasis on salmon over shellfish: first, shellfish were largely gathered by women while men were the predominant informants in early anthropological studies; and second, the presence of shellfish throughout the year made them paradoxically invisible to researchers. “We tend to ignore the common-place and emphasize the spectacular,” he observed. In Taylor’s opinion, however, “mollusks may in fact have been the staple food of southern Puget Sound.” While not a “status food” such as salmon, he contended that “shellfish probably contributed an equal proportion to the diet and were more reliable as a food source.”¹⁹ Scholars have thus debated whether the caloric intake of shellfish compared to energy expenditure in harvest is a satisfactory ratio for the survival of communities.²⁰ Nevertheless, the ubiquity of shellfish along the Salish Sea and the relative ease of access undoubtedly makes it an invaluable resource.²¹ Shellfish have been crucial when salmon runs were low or when coastal communities faced other food scarcities. Shellfish therefore were historically a dependable harvest.²² And while Coast Salish peoples have relied on shellfish for subsistence, Earl Claxton Jr. and his father have both made clear on many occasions that they “love to eat” shellfish.²³ Clam bakes are highly anticipated

¹⁹ WSA, Attorney General, State, 94-A-11, Volume 336, File 8, “Working File - Shellfish,” 1985 to 1988.

²⁰ Gail Thompson, for example, in her report to the Office of the Attorney General, State of Washington, repeatedly contend that there is a lack of “efficiency” in shellfish harvesting due to the low amount of protein to high amount of human energy expenditure ratio. STA, Gail Thompson, 1993-7-2, Volume 1, File 1, “Aboriginal Use of Shellfish by Puget Sound Area Indian Groups,” 1993-05-24.

²¹ STA, Barbara Lane, 1984-7-0011, Volume 1, File 1, “Summary Report- Indian Use of Shellfish in Western Washington and the Indian Treaties of 1854-1855,” 1984-05-10; Cox et al., “Shellfish subsidies along the Pacific coast of North America,” 674.

²² STA, Barbara Lane, 1984-7-0011, Volume 1, File 1, “Summary Report- Indian Use of Shellfish in Western Washington and the Indian Treaties of 1854-1855,” 1984-05-10.

²³ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 34; Claxton Jr., 27 June 2020.

social events where shellfish harvesters, some known to the W̱SÁNEĆ as “super harvesters,” can share their delicious treats with the rest of the community.²⁴

According to W̱SÁNEĆ Elder John Elliott the origin of shellfish on the Salish Sea happened when the creator, XÁLS, changed people into “places, lands and beings.” He explains:

Some people did not want to be changed, and when they heard the creator was coming, they went down to the beach and dug some holes and hid themselves. The creator overheard them and came to where they were hiding and asked why they were hiding. They told him that they did not want to be changed. The creator said that if he was to change them, that it was for the good of all people, and then changed them into clams.²⁵

Elliott further reveals that the word “XÁLS” is contained in the SENĆOTEN word for the act of digging clams. “KEXÁLS,” he says, “is a word that reminds us of the origin, I am going to dig, caused by the creator- a gift from the creator... XÁLS and the ways of the sea told us how to live with others, eat well and prosper through sharing and trade.”²⁶ Shellfish harvesting is then an intimate connection with the land and a reminder of the profound mystery of existence, something community members can be thankful for as they enjoy a beach’s bounties. The act of harvesting is a direct human connection to the interface between land, sea, and life.

Anthropologist Barbara Lane characterizes the act of shellfish harvesting as “largely a social activity.” She explains: “[s]hellfish expeditions were social events which often brought people of

²⁴ Gulf Island National Park Reserve, Joni Olsen, *2014-2015 W̱SÁNEĆ Clam Garden Restoration Project Final Report: Caring for and KEXALS-Digging Clams in the W̱SÁNEĆ Territory*, 2019, 15.

²⁵ *Ibid.*, 4.

²⁶ *Ibid.*, 4.

different communities together and provided opportunities for relaxed and pleasurable social interaction.”²⁷ Wayne Suttles adds that activities such as shellfish harvesting could be done individually but they were “more productive” when people worked together.²⁸ For the W̱SÁNEĆ, the sharing of marine harvests with family members and community is a fundamental aspect of their culture.²⁹ Historically, women primarily harvested and prepared shellfish, and children helped as well. According to Suquamish Elder Lawrence Webster, men would occasionally help dig clams, but they “never helped” with the cooking of them.³⁰

Coast Salish peoples have many implements for taking shellfish. For clams, a digging stick is often used.³¹ For more mobile species, such as crabs and shrimps, beach seines, dip nets, and basket traps are used. W̱SÁNEĆ harvesters also collect crabs by walking along the beach when the tide is out, scooping up Dungeness crabs with a long-hooked stick called a EQIYN and in one motion tossing the crabs into baskets on their back in a process called ÁMEĆEN, or “wading for crabs,” which is also the name of the ideal location for this activity at Taylor Point on Saturna Island.³² Rakes are also used to collect STLO,EM (cockles).³³ [Figure 1]

Shellfish harvesting in the Salish Sea can be done year-round, which makes it an essential part of Coast Salish peoples’ seasonal subsistence cycles. These cycles are not hunter-gatherer activities as characterized by earlier anthropologists, which gave a misguided impression that Indigenous peoples were “nomadic,” but rather examples of specialized resource use within the

²⁷ STA, Barbara Lane, 1984-7-0011, Volume 1, File 1, “Summary Report- Indian Use of Shellfish in Western Washington and the Indian Treaties of 1854-1855,” 1984-05-10.

²⁸ Wayne P. Suttles, *The Economic Life of the Coast Salish of Haro and Rosario Straits*, (New York: Garland Publishing Inc., 1974), 485.

²⁹ Tsawout First Nation, Peter Evans, Beth Keats and Dave King, *Tsawout Marine Use Study*, 2015, 10.

³⁰ STA, Kitsap County Museum, 1975, Volume 1, File 1, “Interview of Lawrence Webster,” 1973-03-19.

³¹ Olsen, *2014-2015 W̱SÁNEĆ Clam Garden Restoration Project*, 11; STA, Suquamish Tribal Cultural Center, G-1-03, Volume 1, File 1, “Suquamish Tribal Oral History Project. Interview of Martha George,” 1982-01-27.

³² Claxton Jr., 27 June 2020, Victoria; SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 28-29 and 37.

³³ *Ibid.*, 42.

confines of a known and claimed territory.³⁴ Historically, while available year-round, bivalves were taken once a year from the most productive sites during these cycles. Clams were dug more easily at low tides in the summer. December and January were periods of low harvesting activity as most individuals participated in winter dances and other ceremonies.³⁵ [Figure 2]

Coast Salish nations and other Indigenous groups of the Salish Sea not only harvest shellfish but manage shellfish beds as well. Archeologists have found evidence of Kwakwaka'wakw “clam gardens” in the Salish Sea at Kanish and Waiatt Bay on Quadra Island as well as on the Gulf Islands.³⁶ In bays protected from wind and high currents, terraced rock formations have been discovered that date back 3,500 years. It is estimated that these cultivated shellfish habitats increased shellfish populations up to 50%.³⁷ While not much is yet known about what kind of management practises were used, modern techniques used by the W̱SÁNEĆ offer insights into how these clam beds were cultivated. In a recent clam garden restoration project at W̱ENÁ,NEĆ (Fulford Harbour) on Salt Spring Island, and on SXEXEĆO,FEN (Russel Island), W̱JOŁEŁP Joni Olsen describes how community members construct clam garden rock walls and tend to these gardens with guidance from “knowledge holders.” First, large “head sized” boulders are lined up at low tide in a sheltered inlet or bay. The location of this wall is crucial; if it is too high up the intertidal zone, it could crush clams that live there. Once the wall is created, clam spat can either be distributed or the bed can be left to naturally occurring reproduction. Large rocks may be left, but smaller rocks should be removed as they could “smother” baby clams. A technique

³⁴ NWIFC, “From Time Immemorial,” No date. In UWSC, Brock Adams papers, 1947-1993, 1096-016, Volume 56, File 5, “NW Indian Fisheries Commission,” 1992; Harris, *Landing Native Fisheries*, 6.

³⁵ Evans et al., *Tsawout Marine Use Study*, 10 and 12; Wayne Suttles, “Variation in Habitat and Culture on the Northwest Coast,” In *Coast Salish Essays*, Wayne Suttles, (Seattle: University of Washington Press, 1987), 34.

³⁶ Williams, *Clam Gardens*, 37; Smith et al., “3500 years of shellfish mariculture,” 3; Keith Holmes, Kieran Cox, Amy R. Cline, Marco B.A. Hatch, Morgan J. Black, Anne K. Salomon, Dana Lepofsky, Nicole F. Smith and Sarah Dudas, “Ancient Ecology: The Quadra Island Clam Gardens,” *Fisheries*, 45, 3 (March 2020): 152.

³⁷ Smith et al., “3500 years of shellfish mariculture,” 14.

called “turning and fluffing” the sand can be done at every tide. Fluffing helps spat settle, adds air, and turns up food for the clams to eat. Other plants, such as seaweed, and animals, such as otters and seals, are also crucial elements to a successful garden. Seaweed acts as a filter from pollutants and, while taking some clams for themselves, otters and seals turn the sand making room for new growth. Purple sea urchins’ milt acts as a fertilizer. Olsen explains that W̱SÁNEĆ management of clam beds is “actually a symbiotic relationship with the landscape, increasing biodiversity and increasing food sources not only for themselves but for other animal species.”³⁸ This holistic approach marks a defining feature of Coast Salish nations’ management that differs from modern W̱ENITEM practices of species conservation which often destroy animal populations that compete for the resources such as the otter and seals.³⁹ Without these creatures turning the sand to promote shellfish growth, and depositing shellfish further inland, which supplements nutrient deficiencies in terrestrial ecosystems, the overall health of the shellfish beds and the surrounding environment suffers.⁴⁰

Communities often bake clams in pit cooks. They dig a wide shallow pit on the beach, start a fire inside it, and then place rocks on top to heat up. Once the rocks are hot, clams are placed directly on top and covered with kelp blades, or fir boughs, to steam the clams. The clam shells open in the steam and the clam is then either consumed immediately or scooped out and hung on thin sticks by the fire to brown. Most shellfish are eaten cooked; however, some are occasionally eaten raw.⁴¹ Horse clams can also be cooked on open fire and then sun dried until they cure. The

³⁸ Olsen, *2014-2015 W̱SÁNEĆ Clam Garden Restoration Project*, 8.

³⁹ Even orcas were seen as pests who threatened the salmon industry before live captures and display of the whales in the 1960s and 1970s endeared them to the public. See: Jason Colby, “The Whale and the Region: Orca Capture and Environmentalism in the New Pacific Northwest.” *Journal of the Canadian Historical Association*, 24, 2 (2013), 429-430.

⁴⁰ Cox et al., “Shellfish subsidies along the Pacific coast of North America,” 670.

⁴¹ Olsen, *2014-2015 W̱SÁNEĆ Clam Garden Restoration Project*, 13; Suquamish Tribal Archives, Suquamish Tribal Cultural Center, G-1-03, Volume 1, File 1, “Suquamish Tribal Oral History Project. Interview of Martha George,” 1982-01-27; Lydia Sigo, conversation with Gordon Lyall, 27 February 2022, Pacific Northwest.

horse clams are soaked in water to soften them before consumption.⁴² Shellfish are also easily stored. They can be smoked or dried and stored year-round to be used as needed. Drying shellfish makes them portable and they were “one of the most important economic items” to be traded to inland communities.⁴³ Earl Claxton Sr. recalled helping his grandmother prepare clams for trade by hanging them on cedar strings. “As a child,” he recollected, “I used to like to break some of the dried clams and I could remember my grandmother getting angry with me because she didn’t want these clams disturbed or even parts taken off of it, because these clams were going to be used for trade.”⁴⁴ Clam shells are also useful as spoons or vessels to carry fire embers or food. Spirit dancers make ceremonial rattles from shells. Sharp mussel shells can be used for cutting as well as for the blades of harpoon heads. Coast Salish peoples also used mussel shells as pincers while twisting nettle-fiber twine and made white paint from crushed butter clam shells mixed with dog fish oil.⁴⁵

Widespread Coast Salish communities’ consumption and use of shellfish is evident by the ubiquity of shellfish middens found throughout the Salish Sea. As anthropologist Herbert C. Taylor observes, “[n]o man lies to his garbage heap—certainly not in matters of diet.” He contends that in Puget Sound “it is probably true that salmon was the single most important source of protein, but it is clear that mollusks ran a close second and that these, in varying degree, were available throughout the year.”⁴⁶ While some anthropologists have downplayed the existence of middens as evidence of their value because shells preserve over longer periods of time than other skeletal remains, their existence nevertheless proves that shellfish have always

⁴² STA, Suquamish Tribal Cultural Center, G-1-03, Volume 1, File 1, “Suquamish Tribal Oral History Project. Interview of Martha George,” 1982-01-27; Sigo, 27 February 2022.

⁴³ John Elliott in Olsen, *2014-2015 WSÁNEĆ Clam Garden Restoration Project*, 13.

⁴⁴ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (C)*, 2 September 1987, 6.

⁴⁵ Suttles, *The Economic Life of the Coast Salish*, 225; Olsen, *2014-2015 WSÁNEĆ Clam Garden Restoration Project*, 14.

⁴⁶ WSA, Attorney General, State, 04-A-96, Volume 4, File 4, “Indian Litigation - Anthro. Report,” 1984.

been an important resource.⁴⁷ Suquamish harvesting sites included ǰilt' (Port Gamble), ʔalabag^{wəb} (Liberty Bay), Blake Island, Sinclair Inlet, Bremerton City Park, Dyes Inlet, and various beaches on Bainbridge Island.⁴⁸ [Map 5] Out of “hundreds” of WSÁNEĆ harvesting sites, Olsen lists as key sites: SXEXEĆO, FEN and WENÁ, NEĆ, where the clam garden restoration project operates, as well as SDÁ, YES (Pender Island), WJOŁŁP (Saanich Inlet), ČTESEU- KĚLSET (Sydney Island) and Saanichton Bay.⁴⁹ [Map 6]

Like family-controlled salmon sites, Coast Salish communities consider shellfish harvesting beaches to be under the jurisdiction of certain families.⁵⁰ As sociologist Patricia Marchak comments, Indigenous peoples “allowed the environment to be owned and managed by kinship or territorially located groups. Ownership rights included allocation of access and harvest rights

⁴⁷ STA, Gail Thompson, 1993-7-2, Volume 1, File 1, “Aboriginal Use of Shellfish by Puget Sound Area Indian Groups,” 1993-05-24; Teresa Trost, Randall Schalk, Mike Wolverton, and Margaret A. Nelson, “Site-Specific Salmon Fisheries on the Central Coast of British Columbia,” In *The Archaeology of North Pacific Fisheries*, Madonna L. Moss and Aubrey Cannon, eds. (Fairbanks: University of Alaska Press, 2011), 277.

⁴⁸ WSA, Attorney General, State, AR-20070628-05, Volume 15, File 17, “Transcript of Hearing - Phase 1,” 1983-06-06; STA, Gail Thompson, 1993-7-2, Volume 1, File 1, “Aboriginal Use of Shellfish by Puget Sound Area Indian Groups,” 1993-05-24.

⁴⁹ Olsen, 2014-2015 *WSÁNEĆ Clam Garden Restoration Project*, 12. There appears to be no SENĆOŦEN word for Saanichton Bay. There are words that describe various points along the bay such as: “TEXTÁĆ”, a point in the lagoon on the bay; “Í, EKĚN”, the lagoon there; “TE, TÁYET”, the little bay where the creek empties, and also the name of an old village site; and “TIXĚN”, Cordova Spit. [See John Elliot’s placenames map (Map 3 in dissertation) and list in Poth, *Saltwater People*, 20 and 26, as well as Timothy Montler’s list of SENĆOŦEN placenames, <http://saanich.montler.net/WordList/placenames.html>.] Montler has “Í, EKĚN” as the name of the bay, but after conversations with staff and community members at WSÁNEĆ Council, I discovered that this is more accurately the name of the lagoon there as per Elliot’s list. In *Saltwater People*, Elliott refers to Í, EKĚN as a “nice lagoon.” He explains that “KEN describes a protected harbour or lagoon when talking about placenames.” WSÁNEĆ Elder Eric Pelkey says that all the waters in the region are referred to as “TELİLJE”, but this is not a name for the bay itself. [Justin Fritz, Policy/Negotiations Manager, WSÁNEĆ Council, conversation with Gordon Lyall, 18 January 2022, Victoria, BC, Canada.] During the *Claxton v. Saanichton Marina* hearings, Earl Claxton Sr. testified that the SENĆOŦEN word for the bay was “ALEN.” It is likely that this is a shortened version of “Á, LEN, ENEĆ” which would mean the community simply calls the bay “home”. [Supreme Court of British Columbia, *Claxton v. Saanichton Marina. Proceedings at Trial (C)*, 2 September 1987, 4.]

⁵⁰ STA, Gail Thompson, 1993-7-2, Volume 1, File 1, “Aboriginal Use of Shellfish by Puget Sound Area Indian Groups,” 1993-05-24; Olsen, 2014-2015 *WSÁNEĆ Clam Garden Restoration Project*, 5; Susan Roy, *These Mysterious People: Shaping History and Archaeology in a Northwest Coast Community*, (Montreal and Kingston: McGill-Queen’s University Press, 2010), 152; Keith Thor Carlson, “Innovation, Tradition, Colonialism, and Aboriginal Fishing Conflicts in the Lower Fraser Canyon,” In *New Histories for Old: Changing Perspectives on Canada’s Native Pasts*, Susan Neylon and Theodore Binnema, eds. (Vancouver: UBC Press, 2007), 147-148; Ommer, *Coasts Under Stress*, 43; Harris, *Landing Native Fisheries*, 16.

to fish and use of the caught fish, the exclusion of outsiders, and means required for proper management.”⁵¹ Yet W̱SÁNEĆ harvesters do not view it as a matter of “ownership” but as a relationship with the resource site and a responsibility to take care of it.⁵² This is an important distinction that offers a window into the moral ecology of marine resource management from Coast Salish peoples’ perspective. Coast Salish nations’ stewardship of marine life and beaches demands that there is a balance between conservation and harvest. This management includes community access to family-managed beaches whenever there is a need for it; access is generally open to all who shared kinship ties to the community. For example, in 1911, the Indian Agent for the Cowichan Agency, W.R. Robertson, testified during a court case regarding a W̱ENITEM’s attempt to pre-empt land on Malahat IR11, that for Coast Salish communities, “[i]t is a matter of courtesy, they never make objection to go and dig clams on the beach of another’s reserve.” Under Canadian law, if the M̱ÁL,EXEŁ Nation requested Robertson to “order [non-member harvesters] away,” he would “have to do that.” But the W̱SÁNEĆ community welcomed the Ḵw’amutsun woman whom Robertson observed clamming on their reserve.⁵³ Far from mere “courtesy,” however, open access to shellfish is a core aspect of Coast Salish moral ecologies over the resource. Geographer Emma S. Norman observes that the common adage “when the tide is out, the table is set” is a “fundamental part of the traditional family-based tenure practices for harvesting this resource [shellfish].” Before the creation of Canada and the United States, when Coast Salish families needed to support themselves, they were able to harvest without the

⁵¹ Patricia Marchak, “Introduction: Uncommon Property,” In *Uncommon Property: The Fishing and Fish-Processing Industries in British Columbia*, Patricia Marchak, Neil Guppy, and John McMullan, eds. (Toronto: Methuen, 1987), 4.

⁵² Fritz, “The SWELSWÁLET of the W̱SÁNEĆ Nation,” 48-49; Janice Rose Knighton, “The Oral History of the 1852 Saanich Douglas Treaty: a treaty for Peace,” (MA thesis, University of Victoria, 2004), 30.

⁵³ Court Transcript, 26 February 1912. Supreme Court of British Columbia, *Gosnell v. Provincial Minister of Lands*. LAC, Canada, RG10, Volume 11028, File SRR-3, Reel T-3967, “Special Reference Records - Largely copies of background records concerning Indian matters in BC,” 1885 to 1922.

encumbrance of any imposed seasonal restrictions because the beaches were under the care of community leaders and almost always safe to eat and in sufficient supply.⁵⁴

Use of shellfish for economic purposes fits easily in the Coast Salish model for harvesting as well, because, unlike capitalist extraction models, the conservation element is a foundational principle to ensure maximum community benefit. Because Coast Salish moral ecologies are a holistic view that considers other aspects of the ecosystem along with the needs of a particular resource, Coast Salish communities' beach management harmonises with a wide array of subsistence and economic activities. As environmental historian Joseph E. Taylor has demonstrated, Indigenous fishers have long had the technology to decimate salmon runs, but they did not endanger the sustainability of the runs, not due to any innate quality of environmental sensitivity, often associated with WENITEM concepts of the "ecological Indian," but because of the ways Indigenous peoples managed their territories and honored the reciprocal relationships they maintained with the environment.⁵⁵ Different WENITEM commercial interests, such as salmon, forestry and mining, have often competed with each other to the detriment of the overall ecological health, while Coast Salish peoples' management has emphasised a bio-regional approach.⁵⁶

The historical wealth of shellfish in the Salish Sea is also revealed through European observations during early explorations and colonial policies set by the first WENITEM officials. Barbara Lane notes that the volume of references to Indigenous nations' shellfish harvesting in

⁵⁴ Emma S. Norman, *Governing Transboundary Waters: Canada, the United States, and Indigenous Communities*, (London: Routledge, 2015), 111.

⁵⁵ Joseph E. Taylor, *Making Salmon: An Environmental History of the Northwest Fisheries Crisis*, (Seattle: University of Washington Press, 1999), 13-14, 23-24 and 36.

⁵⁶ Richard Rajala, "'Streams Being Ruined From a Salmon Producing Standpoint': Clearcutting, Fish Habitat, and Forest Regulation in British Columbia, 1900-45," *BC Studies*, 176 (Winter 2012/2013): 93.

early Spanish and English logs and journals is “striking.”⁵⁷ A half-century later, when Washington Territory Governor Isaac Stevens signed treaties with the Salish tribes around Puget Sound, the Indigenous leaders ensured that their rights to shellfish would be preserved. Article 5 of the Treaty of Muckleteoh or Point Elliott, guarantees to the tribes, including the Suquamish, “[t]he right of taking fish at usual and accustomed grounds and stations... together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, [t]hat they shall not take shell-fish from any beds staked or cultivated by citizens.”⁵⁸ The clause regarding shellfish is known as the “shellfish proviso.” Lane argues that this clause shows the importance of shellfish to both Indigenous communities and WENITEM.⁵⁹

Why there is no similar reference to shellfish in the Saanich Treaties, signed between WSÁNEĆ leaders and Vancouver Island Governor James Douglas, is a mystery. Certainly, shellfish were of no less importance to WSÁNEĆ than Suquamish, so their absence from the treaty text raises questions. Some scholars and community members have speculated that the Saanich Treaties were signed on “blank” pieces of paper upon which Douglas later added language borrowed from the Treaty of Waitangi, signed between colonial officials and Māori in New Zealand.⁶⁰ If this was indeed the case, then Douglas, who had received instructions from the Colonial Office in London to secure land on Vancouver Island for settlement by introducing a colonization scheme through the Hudson’s Bay Company (HBC), clearly did not consider the

⁵⁷ STA, Barbara Lane, 1984-7-0011, Volume 1, File 1, “Summary Report- Indian Use of Shellfish in Western Washington and the Indian Treaties of 1854-1855,” 1984-05-10.

⁵⁸ Swindell Jr., *Report on Source, Nature, and Extent of the Fishing, Hunting and Miscellaneous Related Rights*, 1942, 461.

⁵⁹ STA, Barbara Lane, 1984-7-0011, Volume 1, File 1, “Summary Report- Indian Use of Shellfish in Western Washington and the Indian Treaties of 1854-1855,” 1984-05-10.

⁶⁰ Horne, “WSANEC: Emerging Land or Emerging People,” 10; Arnett, *The Terror of the Coast*, 37.

protection of shellfish rights an important part of “extinguish[ing] the Indian title” to the island.⁶¹ Another reason could be that both parties understood that the clause acknowledging W̱SÁNEĆ “liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly” would logically apply to all marine species including shellfish.⁶² This discrepancy over the presence of shellfish within the treaty text has created different experiences by Suquamish and W̱SÁNEĆ in the courts when they have asserted their rights to control resources on tidelands. While Suquamish and tribal lawyers argued with state lawyers over the definition of treaty language regarding shellfish such as “staked or cultivated” beaches, W̱SÁNEĆ Nation and their lawyers argued for the inclusion of shellfish in their treaty rights to “fish as formerly.” Both sides have asserted that their rights to fish and harvest extends to commercial purposes.

For Coast Salish communities, there has never been a distinction between fishing for food and commercial fishing.⁶³ When the HBC first set up trading posts on the Columbia River, lower Fraser River, and on Puget Sound, Coast Salish peoples travelled to forts to trade salmon, which was salted and shipped in barrels to markets in Hawai’i.⁶⁴ In 1854, Washington Governor Isaac Stevens observed that “[t]he Indians on Puget Sound... catch most of our fish, supplying not only our people with clams and oysters but salmon to those who cure and export it.”⁶⁵ While these arrangements were mutually beneficial, early W̱ENITEM observers foresaw difficulties

⁶¹ Foreign Office to Anonymous 1849, CO 305:1, 635. *The Colonial Despatches of Vancouver Island and British Columbia 1846-1871*, Edition 2.1, ed. James Hendrickson and the Colonial Despatches project. Victoria, B.C.: University of Victoria. <https://bcgenesis.uvic.ca/V495PA03.html>.

⁶² British Columbia, *Papers Connected with the Indian Land Question 1850-1875*, 170.

⁶³ Reuben M. Ware, *Five Issues Five Battlegrounds: An Introduction to the History of Indian Fishing in British Columbia*, (Sardis: Coqualeetza Education Training Centre, 1983), 7; D. Bruce Johnsen, “A Culturally Correct Proposal to Privatize the British Columbia Salmon Fishery,” *George Mason University School of Law*, Working Paper Series, Paper 8 (2004): 31 and 34; Alicja Muszynski, “Major Processors to 1940 and Early Labour Force: Historical Notes,” In *Uncommon Property: The Fishing and Fish-Processing Industries in British Columbia*, Patricia Marchak, Neil Guppy, and John McMullan, eds. (Toronto: Methuen, 1987), 47.

⁶⁴ Ken Malloway, interview by Gordon Lyall, 28 January 2020, Abbotsford, BC, Canada; “A Chronology of Important Events in the B.C. Salmon Fishing Industry.” BC Archives [hereafter BCA], Marine Resources Branch, GR-1118, Volume 7, File 14, “West Coast Salmon Fleet,” 1972 to 1973.

⁶⁵ Isaac Stevens to Commissioner of Indian Affairs, 30 Dec 1854, quoted in Cohen, *Treaties on Trial*, 38.

surrounding Indigenous fishing rights. Captain Walter C. Grant, who settled in BC, wrote in his travel memoir of Vancouver Island, that “[a]s the Colonial population increases, which, however, it is not likely to do very rapidly under the auspices of the Hudson Bay Company, the red man will find his fisheries occupied, and his game, on which he depended for subsistence, killed by others: the fisheries will probably cause the first difficulty, as all the tribes are singularly jealous of their fishing privileges, and guard their rights with the strictness of a manorial preserve.”⁶⁶ Undoubtedly, the HBC installation of a fishing station in 1851 garnered W̱SÁNEĆ and Lummi attention. It is possible that community members made up a part of the construction team’s “Indian crew” and likely that both groups contributed to this station’s annual export of 2000 to 3000 barrels of salted salmon during the 1850s.⁶⁷

While protective of fishing secrets and locations, Coast Salish salmon fishers became very active in early commercial salmon operations on the Fraser and in Puget Sound in the 1870s. The first cannery in BC opened at Annieville on the Fraser in 1870 and the first in Puget Sound at Mukilteo in 1877.⁶⁸ From 1882 to 1887, nearly all fishing licence holders in the Fraser River fishery were Indigenous fishers, which demonstrates the canneries’ dependence on this labour.⁶⁹ Coast Salish peoples crossed the new border to work at whichever canneries offered them the best opportunities and because the work was seasonal, Coast Salish peoples found that participating in the cannery industry worked well with their other subsistence and ceremonial activities.⁷⁰ With a relatively small W̱ENITEM population, Indigenous peoples’ labour was vital

⁶⁶ Grant, “Description of Vancouver Island,” 304.

⁶⁷ Cicely Lyons, *Salmon Our Heritage: The Story of a Province and an Industry*, (Vancouver: Mitchell Press Ltd. 1969), 64-65.

⁶⁸ “A Chronology of Important Events in the B.C. Salmon Fishing Industry.” BCA, Marine Resources Branch, GR-1118, Volume 7, File 14, “West Coast Salmon Fleet,” 1972 to 1973.

⁶⁹ Harris, *Landing Native Fisheries*, 132.

⁷⁰ Lissa K. Wadewitz, *The Nature of Borders: Salmon, Boundaries, and Bandits on the Salish Sea*, (Seattle: University of Washington Press, 2012), 72-73.

for the fledgling industry to be profitable.⁷¹ Ethnohistorian John Lutz observes that, despite contemporary claims of “lazy Indians,” and scholarly assessments that Coast Salish peoples did not actively engage in the wage economy after the fur trade era, they in fact were highly sought out labour by nineteenth- and early-twentieth century capitalists. Indigenous peoples participated in a wage labour economy alongside their customary economies, creating what Lutz defines as a “moditional” economy.⁷² Capitalists, therefore, petitioned the government to legislate in ways that forced more Indigenous peoples’ participation in wage labour economies. The most notable of this kind of legislation was the devastating Potlatch Ban of 1885, which outlawed Indigenous nations’ ceremony and, effectively, their prestige economy.⁷³ As ethnohistorian Keith Carlson explains in the context of Stó:lō fishing on the Fraser: “Without large-scale potlatch naming ceremonies families could not effectively communicate (and thereby reassert) their claims to hereditary property, the most important being canyon fishing sites. As a result, old intertribal and intrafamily disputes became accentuated, while other entirely new ones emerged.”⁷⁴ The feast system was an integral component of transferring family ownership along with the management of fishing spots and a casualty of the new colonial regime.⁷⁵ Without this system of governance, Coast Salish groups became dependant on the new capitalist economy for survival.

In order to gain Indigenous peoples’ participation in the wage labour economy, WENITEM capitalists sometimes supported Coast Salish peoples harvesting methods as long as those methods meant more fish for their canneries. For example, when the Canadian government

⁷¹ Rolf Knight, *Indians at Work: An Informal History of Native Labour in British Columbia 1858-1930*, (Vancouver: New Star Books, 1996 [1978]), 113; Boxberger, “Lightning Bolts and Sparrow Wings,” 1.

⁷² John Lutz, *Makuk: A New History of Aboriginal White Relations*, (Vancouver: UBC Press, 2009), 23.

⁷³ *Ibid.*, 8, 31, 37, 42 and 93-94.

⁷⁴ Carlson, “Innovation, Tradition, Colonialism,” 159.

⁷⁵ Evelyn Pinkerton, “Indians in the Fishing Industry,” In *Uncommon Property: The Fishing and Fish-Processing Industries in British Columbia*, Patricia Marchak, Neil Guppy, and John McMullan, eds. (Toronto: Methuen, 1987), 261.

limited the number of salmon traps authorised for use in 1894, salmon canning operators, such as J.H. Todd & Sons, lobbied for the use of “sualo” or “Swalo” nets (reef nets) by Coast Salish fishers who were contributing to the sockeye salmon pack. They recognized that this type of fishing technology was “not particularly destructive” to salmon populations, which countered the typical governmental disdain for Indigenous nations’ fishing technologies such as reef nets and weirs.⁷⁶ Regarding an arrangement for W̱SÁNEĆ SXOLE fishing at SDÁ, YES, the company offered to secure licenses for Old Jim Silwahan, his son Tom and son-in-law Charlie at \$10 each, if they could be allowed to fish “for sale” at Bedwell Harbour.⁷⁷ The Department of Marine and Fisheries position, however, was that “[v]ery likely nothing can be done until Parliament amends the statute at present in force absolutely forbidding their use. Whether such change if made would allow for the use of reef nets will depend upon the conditions under which purse seines are allowed.”⁷⁸ In this case, the federal system of governance in Canada which centralized fisheries policies in the hands of bureaucrats in Ottawa, greatly damaged Coast Salish communities on the west coast. By grouping reef nets with other net types that were considered illegal, federal officials ignored local Indigenous Knowledge on the benefits of this technology in favour of country-wide regulations.

The federal government’s fisheries policy at the turn of the century also greatly hindered coastal Indigenous communities’ economic prospects as it continued to prohibit the use of SXOLE for anything but food fishing. In 1902, during a Royal Commission on the use of trap

⁷⁶ LAC, RG10, Volume 1340, File 312-G, “J.H. Todd and Son to Lomas,” 1896-02-19; LAC, RG10, Volume 1340, File 338-G, “J.H. Todd and Son to Lomas,” 1896-03-05; LAC, RG10, Volume 1340, File 367-G, “J.H. Todd and Son to Lomas,” 1896-03-28; “A Chronology of Important Events in the B.C. Salmon Fishing Industry.” BCA, Marine Resources Branch, GR-1118, Volume 7, File 14, “West Coast Salmon Fleet,” 1972 to 1973.

⁷⁷ LAC, RG10, Volume 1340, File 312-G, “J.H. Todd and Son to Lomas,” 1896-02-19; LAC, RG10, Volume 1340, File 338-G, “J.H. Todd and Son to Lomas,” 1896-03-05.

⁷⁸ LAC, RG10, Volume 1365, File 571-N, “Robertson to J.H. Todd and Sons,” 1903-05-02; LAC, RG10, Volume 1365, File 602-N, “Robertson to J.H. Todd and Sons,” 1903-05-11; LAC, RG10, Volume 1367, File 164-N, “Robertson to Sword,” 1904-06-19.

nets in Juan de Fuca Strait, Songhees Chief George Cooper, testified that “Thomas of the Saanich Indians says they have used the swallow nets from early days and make their living by it. They do not want it interfered with.”⁷⁹ That same year, federal fisheries informed lawyer H.D. Helmcken, who represented the Beecher Bay First Nation at Sooke, that their position had not changed: Coast Salish fishers may use reef nets “for the use of the Indians only” and not “for sale either directly or indirectly.”⁸⁰ In 1904, however, the Department of Marine and Fisheries reversed course momentarily, allowing reef nets in Juan de Fuca in order to compete with American fishing of Fraser River salmon (another example of how the border could dictate WENITEM resource management decisions).⁸¹ By 1916, reef nets were again outlawed as “fish traps.” Somehow, J.H. Todd & Sons managed to obtain trap licences despite this ban.⁸² Competition from WENITEM reef netters, on the American side of the border, further challenged Coast Salish marine fishers who once fished on both sides.⁸³

Most of the US commercial catch of the Fraser River fishery came from sites that once belonged to WSÁNEĆ at Boundary Bay and on the San Juan Islands.⁸⁴ In the 1890s and 1900s, Washington State government issued significantly more fish trap licences to WENITEM cannery

⁷⁹ BCA, GR-0213, Volume 1, File 3, “Commission On The Salmon Fishing Industry In British Columbia - Evidence Sessions 13-16,” 1902; “A Chronology of Important Events in the B.C. Salmon Fishing Industry.” BCA, Marine Resources Branch, GR-1118, Volume 7, File 14, “West Coast Salmon Fleet,” 1972 to 1973.

⁸⁰ LAC, RG10, Volume 1343, File 178, “Vowell to Robertson,” 1902-07-28; LAC, RG10, Volume 1343, File 244, “Vowell to Robertson,” 1904-06-04.

⁸¹ “A Chronology of Important Events in the B.C. Salmon Fishing Industry.” BC Archives, Marine Resources Branch, GR-1118, Volume 7, File 14, “West Coast Salmon Fleet,” 1972 to 1973.

⁸² Historian Mickey Fitzgerald speculates it is highly likely that the company exchanged political support to certain provincial officials during an election cycle for an exclusive right to trap licences. Mickey Fitzgerald, “The Rise and Demise of J.H. Todd and Sons, British Columbia’s Enduring Independent Salmon Cannery,” (MA thesis, University of Victoria, 2015), 50-51. See also: John S. Lutz, “Work, Wages and Welfare in Aboriginal-Non-Aboriginal Relations, British Columbia, 1849-1970,” (PhD dissertation, University of Ottawa, 1994), 264; Poth, *Saltwater People*, 60; Fritz, “The SWELSWÁLET of the WSÁNEĆ Nation,” 1.

⁸³ BCA, GR-0213, Volume 1, File 3, “Commission On The Salmon Fishing Industry In British Columbia - Evidence Sessions 13-16,” 1902; Boxberger, *To Fish in Common*, 75 and 89; Suttles, *The Economic Life of the Coast Salish*, 214.

⁸⁴ Wadewitz, *The Nature of Borders*, 76-78.

operators than Canada did, threatening resource stocks. Although the US Bureau of Indian Affairs (BIA) created reservations in Washington State, in part, as a recognition of Coast Salish tribal nations' need to have access to fisheries, the state Department of Fisheries refused to allow any exclusive rights to tribes, which allowed WENITEM fishers to overwhelm off-reserve fishing locations. During this period, fisheries officials saw "to fish in common" as language that supported WENITEM access to Indigenous nations' fisheries as opposed to protection of their fishing rights. As Commissioner of Indian Affairs D.M. Browning commented in 1895: "Inch by inch [Indigenous fishers] have been forced back by the whites from the best fishing grounds and not allowed to fish with the whites in common as provided in the treaty.... They have borne this denial with patience, but urged that they be restored to their ancestral and treaty rights."⁸⁵ From the early settlement to the middle of the twentieth century these inches became feet and feet became yards as Coast Salish tribal nations were further marginalized to small on-reservation fisheries until they protested en masse in the 1960s.

Industrialization and Asian immigration to the Pacific Northwest further undermined Coast Salish nations' marine sovereignty. Coastal Indigenous fishers in BC sometimes supported Japanese-Canadian fishers on the Fraser River but also protested the number of fishing licenses issued to these Issei fishers.⁸⁶ As historian Lissa Wadewitz observes: "In addition to losing their best fishing locations to industrial traps and increasingly well-capitalized, mechanized fishing boats, competition from Asian and white workers in the canneries meant fewer jobs for both Indian fishermen and their wives."⁸⁷ Douglas Harris points out that Coast Salish fishers did not

⁸⁵ Quoted in Taylor, *Making Salmon*, 136.

⁸⁶ Issei were first-generation Japanese immigrants to Canada. Percy Gladstone, "Native Indians and the Fishing Industry of British Columbia," *The Canadian Journal of Economics and Political Science*, XIX, 1 (Feb 1953): 28; Knight, *Indians at Work*, 14; Harris, *Landing Native Fisheries*, 129 and 135; Wadewitz, *The Nature of Borders*, 111; Harold Sinclair, "Japs Jeopardise Indians' Livelihood," *Native Voice*, February 1949, 14.

⁸⁷ Wadewitz, *The Nature of Borders*, 87.

oppose canneries per se; many canneries offered them new markets for their catch as well as employment. But they did object to “the loss of control of particular fisheries – those that their people had owned, managed, and exploited in some cases for centuries. They received wages for their labour, but not rent from resources that the Canadian state had assumed for itself and then allocated to the owners of capital.”⁸⁸ State assertion of control over the fisheries mirrored WENITEM challenges to Indigenous title rights by denying these communities the ability to generate wealth from their property.

In British Columbia, fisheries officials considered leveraging Indigenous community access restrictions to support general assimilation goals. The British Columbia committee of the Fisheries Advisory Board, for example, issued resolutions to Ottawa in which they recommended that fishing licences should be issued only to Indigenous fishers “who had renounced their rights as Indians, became enfranchised and had left the reserve according to the provisions of the Indian Act.”⁸⁹ By 1917, Coast Salish fishers were required to purchase permits to fish at any time, including for their food fisheries.⁹⁰ In Washington State, 1916 also represented a “black year for Indian fishing rights.” The US government viewed three court decisions (*State v. Towessnute*, *State v. Alexis*, *Kennedy v. Becker*) as a sign that Coast Salish tribal nations in Washington “no longer had a lawful right to fish outside of their reservations except as permitted by state law.” In 1925, Washington State declared the steelhead trout to be a “game fish” reserved for “recreational use only.”⁹¹ In a short period, between the signing of treaties with colonial governments and the rise of WENITEM commercial fisheries at the turn of the twentieth

⁸⁸ Harris, *Fish, Law and Colonialism*, 76.

⁸⁹ BCA, Provincial Dept. of Fisheries, GR-0435, Volume 117, File 1183, “Eastern Oysters,” 1913 to 1927.

⁹⁰ “Indians lose fishing case,” *Victoria Daily Times*, 18 July 1979, 49.

⁹¹ Northwest Indian Fisheries Commission, *Tribal Report to the Presidential Task Force on Treaty Fishing Rights in the Northwest*, 1977, 20; Fay G. Cohen, *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights*, (Seattle: University of Washington Press, 1986), 56-57.

century, Coast Salish tribal nations lost their ability to control the fisheries and were almost entirely removed from the industry.

The creation of the US-Canadian border contributed significantly to this dispossession. Before its creation, Suquamish and W̱SÁNEĆ fishers enjoyed access to many fishing sites across the Salish Sea. With the imposition of the border in 1846, W̱ENITEM governments dramatically curbed their mobility and access to these resources.⁹² Dave Elliott contended that the W̱SÁNEĆ loss of family-owned SXOLE sites “nearly destroyed” their communities. According to W̱SÁNEĆ oral histories, the Canadian and US governments promised them that they would be able to travel back and forth across the border unhindered; however, neither government “kept that promise very long.” Elliott observed that “Washington made laws over our Federal laws, British Columbia made laws over those Federal laws too, and pretty soon we weren’t able to go there and fish. Some of our people were arrested for going over there.”⁹³ The Suquamish lost access to the Fraser River salmon fishery where they had traded at Fort Langley when the HBC established a post there.⁹⁴ While the border did afford some opportunities for both Indigenous and W̱ENITEM fishers to sell their catches to canneries on opposite sides of the line for greater profits, these advantages largely ended with the establishment of International Pacific Salmon Fisheries Commission (IPSFC) in the 1930s which regulated how salmon were conserved and managed between the two nations.⁹⁵

The growth of commercial salmon fishing along with the hindrance of movement across the border, made marine resources adjacent to reservations/reserves of even greater importance to

⁹² Simonsen and Davis, *Water Quality*, 3; Bruce Miller, “The ‘Really Real’ Border and the Divided Salish Community,” *BC Studies*, 112 (Winter 1996/97): 72.

⁹³ Poth, *Saltwater People*, 59.

⁹⁴ STA, Barbara Lane, 1974-7-0002, Volume 1, File 1, “Identity, Treaty Status and Fisheries of the Suquamish Tribe of the Port Madison Reservation,” 1974-12-15.

⁹⁵ Wadewitz, *The Nature of Borders*, 7 and 68.

Coast Salish communities. With salmon populations already at a rapid decline, especially after the disastrous Hells Gate slides of 1913 and 1914 on the Fraser River, the necessity of healthy shellfish and other marine stocks became paramount. Shellfish health in Puget Sound, however, had been in jeopardy since 1855, largely due to the pollution created by sawmills and pulp mills which covered shellfish beds in silt and other toxic substances.⁹⁶ By 1907, lumber mills on Granville Island had turned what Stó:lō poet Lee Maracle calls “the Snauq [False Creek] supermarket” from a bountiful harvesting location “into a garbage dump.”⁹⁷

Where shellfish were not contaminated, Coast Salish peoples continued to harvest for both food and economic purposes. They harvested clams for home and for sale at town markets.⁹⁸ Tony Forsman recalls that his ancestors would collect an assortment of clams at the beach near Old Man House and store them until a cannery boat would come to purchase their harvest for five cents a pound.⁹⁹ Earl Claxton Jr. remembers digging with his grandparents and parents on Saanich Peninsula and then driving to Chinatown in Victoria to sell their shellfish along with rock cod.¹⁰⁰ In 1896, a Tulalip Agency clerk reported that “[c]lam digging for Seattle market [was] common” for Suquamish harvesters.¹⁰¹ According to Indian Agent Peter Byrne, S̓k̓w̓x̓w̓ú7mesh women on Burrard Inlet were “exceedingly industrious” during this period and made “a lot of money out of clams.” At the Royal Commission on Indian Affairs for the Province of British Columbia (McKenna-McBride Royal Commission) from 1913 to 1916, which evaluated the size and productivity of Indian Reserves in BC, Byrne reported that “[e]very

⁹⁶ STA, Barbara Lane, 1984-7-0011, Volume 1, File 1, “Summary Report- Indian Use of Shellfish in Western Washington and the Indian Treaties of 1854-1855,” 1984-05-10; WSA, Attorney General, State, AR-20101215-01, Volume 3, File 5, “U.S. v WA Plaintiff’s Pretrial Stmt.,” 1994.

⁹⁷ Lee Maracle, *First Wives Club: Coast Salish Style*, (Penticton, BC: Theytus Books, 2010), 21.

⁹⁸ Forsman, 23 July 2019; Claxton Jr., 6 March 2020.

⁹⁹ Forsman, 23 July 2019.

¹⁰⁰ Earl Claxton Jr., 6 March 2020.

¹⁰¹ Alexandra Harmon, *Reclaiming the Reservation: Histories of Indian Sovereignty Suppressed and Renewed*, (Seattle: University of Washington Press, 2019), 193.

morning at 7 o'clock you will see them coming into Vancouver with their basket of clams on their back and selling them." When asked if Skwxwú7mesh would make successful farmers, Byrne doubted it because of community members' dedication to fishing and clamming. He elaborated: "you would be surprised at the revenue that these women derive from the sale of clams; at 4 a.m. you will see them crossing the ferry each with a basket of clams on their back which they sell to the whites for 25 or 30c and with this money they purchase their groceries and go home."¹⁰² Revenue from shellfish harvesting constituted an important aspect of Indigenous communities' moditional economies.

The convenience of harvesting near home meant that communities were protective of their access to the beaches closest to their reserves and reservations. While the Canadian government held these reserves in trust for Indigenous communities, American authorities during this period sought to sell this land to individuals. The General Allotment Act of 1887 (Dawes Act), which historian Alexandra Harmon calls the "keystone" of the US assimilation program, granted citizenship status to all Indigenous individuals who accepted land allotments and relinquished their tribal connections.¹⁰³ This allotment process affected Coast Salish nations abilities to control their tidelands and shellfish rights. When WENITEM bought waterfront allotments from Indigenous individuals, they believed that they also owned the adjacent tidelands, despite Coast Salish nations assertions that the beaches were tribal property.¹⁰⁴ WENITEM privatized these beaches and often regulated access to their resources. While the Washington State Department of Fisheries recognized WENITEM ownership of beaches, the question of Indigenous nations'

¹⁰² "Meeting with Agent Peter Byrne of the New Westminster Agency at the Board Room, Victoria, on Tuesday, January 25th, 1916," Royal Commission on Indian Affairs in British Columbia, Testimonies. BCA, MS-1056, Volume 1, File 4, "Cowichan Agency, part 1," 1913.

¹⁰³ Alexandra Harmon, *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound*, (Berkeley: University of California Press, 2002), 138.

¹⁰⁴ WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 7, File 3, "Bureau of Indian Affairs - Washington Task Force, Notes of Meetings with Indians," 1961.

ownership of the beaches adjacent to their reservations was contested throughout the twentieth century.

In a report to the Washington State attorney general, during a court case to determine Suquamish's claim to the tidelands adjacent to the Port Madison Reservation, historian Robert E. Ficken articulated the state's position. According to Ficken, "[w]hen the reservation was allotted in the 1880s... tidelands were not included in the land turned over to individual Indians. Since a basic purpose of the allotment process was to end the communal way-of-life of the Indians," Ficken argued "there would have been no sense in maintaining the tidelands as common property."¹⁰⁵ The allotment process at Port Madison resulted in about 51 allotments of 160 acres each. The federal government expected Suquamish families to move from their home at Old Man House and onto these allotments. With rich tidelands full of marine life and easy access to fishing, however, the Suquamish instead built houses around Old Man House and stayed in their prime location. In 1904, the federal government moved these families from their homes and purchased 70 acres of the 110-acre Old Man House site for a naval fort to protect the Puget Sound Naval Shipyard at Bremerton in Sinclair Inlet. The Navy never built the fort, but the government did sell the Old Man House site to a private developer in the 1930s.¹⁰⁶ The loss of the Old Man House site, as well as various allotments sold to WENITEM buyers, began a long period of Suquamish and WENITEM beach conflicts and litigation to determine who had rights to manage and harvest shellfish on the beaches attached to the reservation.

¹⁰⁵ WSA, Attorney General, State, 04-A-96, Volume 4, File 34, "Port Madison Reservation," 1985.

¹⁰⁶ Washington State subsequently purchased an acre of this property from the developer, which included the Old Man House, and turned it into a state park until the Suquamish Tribe regained it in 2005. Leonard Forsman, interview by Gordon Lyall, 20 August 2019, Suquamish, Washington State, USA; Alexandra Harmon, *Reclaiming the Reservation*, 186.

In British Columbia, the province owned all foreshores as provincial Crown land, but if the foreshore was connected to a reserve, the province was required to negotiate with the federal government before it could dispose of the property.¹⁰⁷ As such, any citizen had a right to take shellfish from provincial beaches as long as they did so according to regulations in the federal *Fisheries Act*, and as long as the foreshore was not leased to a private individual.¹⁰⁸ Other than a very brief period from 1871 to 1879, land grants were never free in BC.¹⁰⁹ The provincial government, however, engaged in what Robert Edgar Cail, in his study on the BC land disposal process, has called an “attack upon the natural resources.”¹¹⁰ BC issued leases for timber, mineral, and foreshore operations very liberally and many provincial leaders engaged in land speculation for personal gains.¹¹¹ The government readily approved foreshore lease requests for “fishing purposes,” for log booming, or for railway depots, during this period.

The issuing of Crown grants for foreshore presented an obstacle to Coast Salish communities seeking to restore lands lost during the creation of BC reserves in the late 1800s. For example, during the McKenna-McBride Royal Commission, when the Shíshálh Nation asked for an enlargement of Sechelt Bay IR2, the Indian Agent did not recommend their request to the commission because “Crown grants have been issued to the lands referred to.” Agent Byrne also rejected a request for clam beds on SDÁ, YES because the beach was “Crown Granted.” Yet, if a

¹⁰⁷ This was due to the riparian rights of the Indigenous community who own the reserve: J.D. McLean to A. Johnston, 27 March 1911. LAC, Canada, RG42-B-1, Volume 337, File 13183, “High and low water mark – Legal rights,” 1895 to 1922; W.E. Ditchburn to J.C. McIntosh, 19 April 1921 and W.E. Ditchburn to Alfred H. Lomas, 24 November 1925. LAC, Canada, RG10, Volume 11041, File 3-3-5 & 3-3-6 pt. B, Reel T-16085, “Chief Inspector of Indian Agencies/Indian Commissioner for BC – Cowichan Agency – Foreshore rights on various reserves (Shannon file),” 1918 to 1938.

¹⁰⁸ BCA, Provincial Dept. of Fisheries, GR-0435, Volume 116, File 1160, “Shellfish,” 1937.

¹⁰⁹ Robert Edgar Cail, “Disposal of Crown Lands in British Columbia, 1871-1913,” (MA thesis, University of British Columbia, 1956), 60-61.

¹¹⁰ *Ibid.*, abstract.

¹¹¹ Robert Edgar Cail, *Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871-1913*. (Vancouver: UBC Press, 1974), 14.

beach was “reported vacant” and “valuable on account of [a] clam beach,” Byrne recommended extending the size of a reserve to include “the rights of the clam beach.” In the case of a WENITEM pre-emption on land claimed by the Tla’amin First Nation, Byrne recommended that the Tla’amin have access to clam beds as long as the “cut-out” of the pre-emption does not include “Mr. Nelson’s improvements,” explaining that Nelson, “has his own little houses and improvements there, and [Byrne did not] want to do any hardship to Mr. Nelson.”¹¹² Byrne’s priorities are revealed here. While it was his duty as an Indian Agent to protect the interests of Indigenous communities within his district, Byrne ensured that settler pre-emptions remained undisturbed before access to clam beds were granted.

During this period of land speculation, WENITEM interest in BC beach resources was limited. In 1884, federal officials recommended that the province issue a foreshore lease to A.J. McLellan so that he could “cultivate and produce oysters” on the Gorge Inlet above Victoria Harbour. The next year, they recommended that the province grant a foreshore lease to the Stz’uminus Nation at Oyster Bay for the price of \$100 per annum instead of the \$365 per annum lease rate.¹¹³ In general, foreshore lease requests came to the province from individuals who desired marine access for “fishing purposes” to catch salmon or herring, and needed the foreshore for the construction of a wharf. The volume of these applications alarmed local canning companies who protested the provincial government’s liberal granting of these foreshore leases. The ABC Packing company, for example, enclosed a copy of the *Daily Colonist* listing 140 applications for foreshore rights and reminded the Chief Commissioner of Lands and Works

¹¹² “Meeting with Agent Peter Byrne of the New Westminster Agency at the Board Room, Victoria, on Tuesday, January 25th, 1916,” Royal Commission on Indian Affairs in British Columbia, Testimonies. BCA, MS-1056, Volume 1, File 4, “Cowichan Agency, part 1,” 1913.

¹¹³ LAC, RG2-1, Volume A-1-A, File OIC-1883-0589, “OIC-1883-0589,” 1883-04-02; LAC, RG2-1, Volume A-1-A, File OIC-1894-0909, “OIC-1894-0909,” 1894-03-26 to 1894-03-30.

that members of the Fraser River Cannery Association had already petitioned Premier James Dunsmuir to slow down the granting of the applications so that the canning companies could protect their control over the “extremely limited” trap locations in the waters touching these foreshores.¹¹⁴ Because these foreshore applications left beaches relatively untouched, Coast Salish peoples continued to harvest throughout much of the Salish Sea.

When Indigenous harvesters collected shellfish near growing WENITEM centres, however, they faced more opposition. In 1913, Stz’uminus Edward Sweeney used his time at the McKenna-McBride Commission to request “the privilege of being allowed to take oysters from the beds in front of [his] home at any time.” He informed the commissioners that the oysters were the “means of [his] living.” According to Sweeney, the owner of the Ladysmith Drug Store had prevented him from taking oysters planted in front of Sweeney’s home because Sweeney did not have a licence. Sweeney argued that he had purchased a licence for 15 years prior but had been told by an official that after nine years of owning a licence, he would no longer need one to take oysters.¹¹⁵ In this case, faulty information regarding the increasingly complex management jurisdictions of shellfish on so-called Crown foreshores had put Sweeney’s rights to harvest the resource in doubt. He used the opportunity of an official commission regarding land allocations to ask for some clarity on the question.

With liberal state leasing of foreshore for “fishing purposes,” Coast Salish nations’ efforts to preserve fishing rights came under threat during this period. The Stó:lō, who never signed treaties in the colonial era, were quite attuned to the process of colonization and sent memorials and petitions to colonial officials, the Queen, and the Canadian government regarding the

¹¹⁴ BCA, Lands Branch, GR-1440, Volume B02737, File 5323-02, “Holland to Chief Commissioner of Lands and Works,” 1902-08-01; BCA, Lands Branch, GR-1440, Volume B02737, File 5343-02, “ABC Packing Co. to the Chief Commissioner of Lands and Works,” 1902-07-29.

¹¹⁵ BCA, MS-1056, Volume 1, File 6, “Cowichan Agency, part 3,” 1913.

protection of their title to the land and rights to resources. For example, their 1867 petition to Governor Seymour, asking him to “protect [their] lands,” insisted that the Stó:lō should “fish where our fathers fished.”¹¹⁶ Stó:lō historian Naxaxalhts’i, Albert (Sonny) McHalsie, has shown how colonialism, and the introduction of new fishing regimes and technologies, completely disrupted family-owned fishing locations on the Fraser River and created a new order of management.¹¹⁷ For the W̱SÁNEĆ, their Douglas Treaty offered some protection of their rights. During the Indian Reserve Commission of the late-nineteenth century, when the boundaries of reserves were surveyed and codified into federal law, commissioner Gilbert Malcom Sproat raised concerns over a W̱ENITEM’s pre-emption at the mouth of S,ELEKTEL (Goldstream River) at Saanich Inlet, because this pre-emption interfered with the W̱SÁNEĆ right to “fish as formerly.”¹¹⁸ Sproat also pointed out that those Coast Salish groups who had not signed treaties with the colonial government, such as the Quw’utsun, who according to Sproat, “never ceased to complain that agreements were made with their neighbours and not with them,” made these groups more vulnerable to fishery regulations such as a ban on salmon weirs.¹¹⁹

While many Coast Salish groups rightfully protested the erosion of their fisheries and loss of the rights, those with Douglas Treaties, such as the W̱SÁNEĆ, also faced W̱ENITEM encroachment on protected areas. In May 1919, W̱SÍKEM Chief Edward Jim called a meeting of the chiefs and councillors of the W̱SÁNEĆ communities to discuss an application made by Lieutenant Leonard S. Higgs to pre-empt land on Pender Island IR8 on SDÁ,YES under the

¹¹⁶ Seymour, Governor Frederick to Carnarvon, Earl 19 February 1867, CO 60:27, no. 3710, 237. *The Colonial Despatches of Vancouver Island and British Columbia 1846-1871*, Edition 2.1, ed. James Hendrickson and the Colonial Despatches project. Victoria, B.C.: University of Victoria. <https://bcgenesis.uvic.ca/B67033.html>.

¹¹⁷ Naxaxalhts’i Albert (Sonny) McHalsie, “We Have to Take Care of Everything That Belongs to Us,” In *Be of Good Mind: Essays on the Coast Salish*, Bruce Miller, eds. (Vancouver: UBC Press, 2008), 99.

¹¹⁸ Harris, *Landing Native Fisheries*, 25.

¹¹⁹ LAC, RG10, Volume 3662, File 9756-1, “Cowichan Agency - Correspondence Regarding a British Columbian Government Crown Grant of Land Allotted to the Cowichan Indians,” 1878 to 1880; Harris, *Fish, Law and Colonialism*, 127.

Soldiers Settlement Act. The federal government recognized IR8 as a WSÍKEM and STÁ,UTW reserve, but the community considered it a communal camp site for fishing purposes. Federal agents were supportive of awarding uncultivated Indigenous land to veterans of World War I and considered uncultivated reserves “eye sores” and a “source of criticism on the part of the public.” Seizing on Higg’s application, Superintendent W.E. Ditchburn attempted to apply sub-section 3 of the *Indian Act* which allowed the lease of reserve land to WENITEM when a “band or [an] individual neglects cultivation.” After “careful consideration,” however, WSÁNEĆ leaders rejected the application. The WSÁNEĆ community was not interested in losing any more land or access to resources. As Chief Jim explained, “[w]hen the Royal Commission was sitting at Tsarlip [sic] Reserve they asked if we would sell any of our Reserve, we all went against it and in one voice. Never to sell an inch of our Reserve or land.” Jim further clarified that “[w]e are asking for more land instead of selling.” He asked Ditchburn to tell Higgs that they hoped Higgs would not harbour “any hard feelings towards us Saanich Indians for not granting his request” and signed off telling Higgs in Chinook jargon: “Kana sum Tloos Tilicum Kopa yaka. Helo sa-lit Tumtum, spoze Nainish saanich tilicum Tloose wawa. Tla ha we yea Tilicum,”¹²⁰ which translates in English to: “Always a good friend to him. Not angry-spirited, (and) when seeing the Saanich people, have good words. Goodbye, friend.”¹²¹ WSÁNEĆ leaders were determined to protect their reserves and the rights that their ancestors had reserved for them when they entered into treaties with the colonial government.

¹²⁰ Chief Edward Jim to W.E. Ditchburn, 26 May 1919. LAC, RG10-C-II-4, Volume 11303, File 1919, “Cowichan - Saanich Lease (Higgs),” 1919.

¹²¹ Transcription provided by linguist David Douglas Robertson (conversation with Gordon Lyall, 16 April 2022). Robertson also offers a modern spelling of this text: “kwánisəm lúsh tilixam k^hupa yaka. hílu sálik-s-təmtəm. spus nánich sénich-tílixam, lúsh wáwa. łaxáwya, tílixam.” For a review of some of Robertson’s expert work on Chinook jargon please see his PhD dissertation: David Douglas Robertson, “Kamloops Chinuk Wawa, Chinuk pipa, and the vitality of pidgins,” PhD dissertation, University of Victoria, 2011.

The WSÁNEĆ defense of their property on SDÁ,YES marks a rare victory for Coast Salish nations during a period that featured the systematic exclusion of Indigenous peoples from marine resources and the general erosion of land rights. Legal historian Douglas Harris notes that by 1925, the governments of Canada and BC had finalized a reserve creation process that assumed coastal peoples could sustain themselves on marine resources. At the same time, Indigenous peoples' participation in the Fraser River commercial fishery was limited to about a few dozen licence holders out of roughly 1000 to 1500 licences and federal fisheries policies further restricted coastal Indigenous communities' ability to fish for subsistence.¹²² “These two legal constructs — the Indian reserve and the Indian food fishery,” says Harris, “were two of the principal instruments of state power and colonial control in British Columbia... Their intent and effect were to set aside fragments of traditional territories and fisheries for Native peoples, opening the remainder to immigrants. In short, the reserves and food fisheries were the colonial state’s pinched concessions to the prior rights of Native peoples.”¹²³ In Washington State, the federal government supported fisheries regulations that denied tribes’ off-reservation fishing rights and the ability to control their fishing on reservation. Faced with these draconian measures that endangered community health by limiting access to salmon and land-generated wealth, many turned to the shellfish resources of the beaches for survival.

Shellfish from pre-contact to the early twentieth century remained an integral aspect of Coast Salish life. While a commercial Olympia oyster industry flourished in Washington State, Coast Salish communities’ ability to harvest shellfish close to home continued in relative stability when

¹²² Harris, *Landing Native Fisheries*, 135; Gladstone, “Native Indians and the Fishing Industry of British Columbia,” 23.

¹²³ Harris, *Landing Native Fisheries*, 4 and 9.

compared to access to the salmon fisheries.¹²⁴ The creation of the international border in the Salish Sea, however, placed constraints on this access. Communities such as the Suquamish could no longer gather shellfish on canoe journeys across the sea if it meant crossing the “imaginary line.” WENITEM privatization of beaches in Washington State and their aggressive protection of their property also eroded harvesting opportunities. And WENITEM jurisdictional concerns in BC between federally controlled marine resources and provincial foreshore ownership meant that complex regulation policies over shellfish harvesting entangled Coast Salish communities in the colonial regime when they harvested from public beaches owned by the “Crown.”

Pollution also destroyed native shellfish beds in burgeoning commercial and residential centres. For example, in 1914, Inspector of Fisheries E.P. Hickman reported that the oysters at Esquimalt Harbour had been “mostly covered with a thick coat of a slimy mud deposit [and a] large number of dead and young oyster were amongst those we inspected.”¹²⁵ Increasing levels of pollution at the larger centres forced communities to rely on more remote beaches, making boat, or other vehicle, ownership another expense incumbent on harvesters. Not solely a concern for Coast Salish communities, WENITEM also viewed the loss of native shellfish such as the Olympia oyster with alarm. When evaluating the status of this species, biologists worried that the oysters were in an existential crisis which would destroy the commercial industry.¹²⁶ But the arrival of the Pacific oyster, a foreign shellfish species, offered new opportunities to survive and thrive on Salish Sea beaches from the 1920s to the 1960s, before greater pollution and state regulations again threatened Coast Salish communities’ access. As Coast Salish nations’

¹²⁴ Williams, *Homewaters*, 159-160.

¹²⁵ E.P Hickman to D.N. McIntyre, 13 February 1914. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 117, File 1182, “Eastern Oysters,” 1918 to 1927.

¹²⁶ “Disease Menaces Olympia Oyster,” *The Province*, 15 December 1929, 17.

harvesting and foreshore rights intersected with mid-twentieth century trends in Indigenous fishing rights and state policy, their relationships with WENITEM continued to evolve.

Chapter 2. Foreshores and Fish Wars: Coast Salish Nations' Rights on Land and Sea

From the 1920s to the mid 1970s, conditions on the beaches and relationships between Coast Salish peoples and WENITEM became antagonistic as competition for land and resources increased and the health of the marine ecosystem deteriorated. The introduction of a foreign shellfish species from Japan, the Pacific (or Japanese) oyster, brought new economic opportunities for both groups and altered the intertidal environment.¹ Yet growing populations in urban centers around the Salish Sea generated greater pollution, which in turn threatened the ability of coastal communities to sustain themselves on marine resources. During this period, control of the foreshore intertwined with overarching Coast Salish nations' assertions of fishing, treaty, and title rights, and rejection of government assimilationist strategies such as American Termination and the Canadian White Paper policy.

From the introduction of the Pacific oyster to the fishing rights struggles of the 1960s and 1970s, this chapter explores divergences between state policy and Coast Salish moral ecologies revealing how WENITEM colonization of marine spaces in the mid-twentieth century unfolded in a similar manner on both sides the border, dispossessing Coast Salish nations of their Aboriginal right to the fisheries, and other rights, through identical methods with very different results. In the United States, fishing tensions heightened to moments of violence and resulted in a Supreme Court decision that dramatically altered marine tenure and power dynamics in Puget Sound. In Canada, state suppression of Indigenous leaders' ability to litigate for land rights in

¹ According to environmental historian David B. Williams, these oysters were initially called Japanese oysters, but after white owners purchased oyster beds previously owned by Japanese oyster farmers, they changed the name to Pacific oyster to disassociate the product with its origin due to the anti-Japanese climate of the time. Williams, *Homewaters*, 162.

British Columbia and a lack of treaties resulted in no similar court case or fishing policy. This chapter demonstrates how conflicts over the foreshores were not a contest for land or fishing rights, but for both. Foreshore ownership, and the rights to the resource therein, lays at the heart of settler colonialism in the Salish Sea and has shaped the current relationships between Coast Salish peoples and WENITEM in the region.

In the mid-nineteenth century, commercial shellfish harvesting was limited to Olympia oysters but comparable in scale to early salmon markets until the introduction of canneries in the 1870s.² In 1861, Washington Territory officials encouraged investment in oysters by offering tidelands to individuals willing to plant them. Yet, the governor's power to grant tidelands to settlers proved *ultra vires* (beyond the scope of his powers) as the federal government held all territorial tidelands in trust until statehood. Following statehood, Washington State enacted the 1895 *Bush and Callow Acts* to allow for the purchase of state tidelands solely for oyster planting and cultivation. At the end of the century, "oystermania" had washed over the United States, and Western Europe, resulting in a multi-million-dollar industry.³ In Washington State, this thriving industry was short-lived. By the turn of the century, a "mysterious infection" was killing native oysters in Puget Sound. Scientists were baffled at the sudden and rapid depletion of the Olympia oyster and feared that whatever was destroying the stocks may soon spread to other marine animals.⁴ Oyster producers required a solution to their stock predicament.

The answer came in the form of an introduced oyster species. In 1912, or 1913, Japanese settlers brought the Pacific oyster (*Ostrea Gigas*) to the Salish Sea; and by 1925, WENITEM

² Ibid., 159.

³ Williams, *Homewaters*, 158-162.

⁴ "Disease Menaces Olympia Oysters," *Vancouver Daily Province*, 15 December 1929. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1148, "Shellfish," 1928 to 1929.

were breeding this “new, large, fast growing, and delicious oyster” with vigor.⁵ According to Gerard T. Mogan, President of Bay Point Oyster Farms in Seattle, the Pacific oyster offered the burgeoning industry “a rather decadent condition” of revenue. The American wrote a letter to the BC Provincial Fisheries Department in 1929 lauding the success of his operations and to assuage concerns that the new oyster would bring “certain pests dangerous to the native oyster industries.” In Mogan’s view, the concerns were commercial, based on “personal and competitive reasons,” and he believed that the new oyster would not harm the native species.⁶ His assurance of the new oyster’s compatibility with native species was timely given the latter’s precarious situation. For capitalists like Mogan, the new species appeared as a panacea for commercial interests because of its hardiness and resistance to disease. Citing University of Washington biologist Trevor Kincaid, Mogan assured provincial officials that the Pacific oyster could “successfully defend itself” against “enemies known to destroy the native oyster.” Kincaid’s conclusion was that “the planting of [the Pacific oyster] in suitable environments is based upon sound biological and economic considerations, and should contribute in an important measure to the development of the latent resources of Pacific County and the state at large.” Bolstered by his belief in modern science, Mogan described to the department the success that he had at Samish Flats and Willapa Harbor as testament to his claims.⁷

Provincial officials were skeptical. The year prior to receiving Mogan’s letter, they had asked the Washington Department of Fisheries what methods the department deployed to make sure no

⁵ R.G. McMynn, Memo “Re: Control of Exotic Aquatic Plants & Animals,” 9 December 1974. BCA, Fish and Wildlife Branch, GR-1114, Volume 75, File 50-00-1974-1975, “Fish – General, Native Indian Fisheries,” 1974 to 1975; Harvey C. McMillin to John Babcock, 31 October 1929. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1149, “Shellfish,” 1929. WENITEM also introduced the Eastern oyster from the Atlantic, but it was not very successful and the Pacific oysters’ success eliminated any need to seriously attempt cultivation.

⁶ Gerald T. Mogan, “New Variety of Oyster for British Columbian Waters,” 1929. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1149, “Shellfish,” 1929.

⁷ Ibid.

“undesirable” animals were introduced along with the Pacific oyster. The Washington State Supervisor of Fisheries, Charles R. Pollock, replied on September 29, 1928, that Professor Kincaid kept a “very close watch” on shellfish planted at Samish flats and would publish a paper on his findings soon.⁸ On October 31, 1929, after reviewing Mogan’s letter sent to him by the Provincial Fisheries Department, US aquatic biologist Harvey C. McMillin warned John Babcock at the Provincial Fisheries Department that the “history of transplantations will give one good grounds for discouraging the moving of any species to new places” because the “success of the imported species has been at the expense of another native of the place.” He suspected Mogan’s enthusiasm for introduced species was not backed by biological study and that oyster seed faced “very serious damage” from invasives species.⁹ Indeed, “oyster pests” had already “gained a foothold” in the beds across the Salish Sea. Particularly, the Japanese oyster drill (*Ocenebra japonica*) was “extremely devastating to oyster populations.” In addition to drills, imported Pacific oyster seed carried, the flatworm (*Pseudostylochus astreophagus*) another “serious pest,” and the wood borer (*Limnaria tripunctata*), less serious but “not looked upon favourably.”¹⁰

The introduction of new predators to shellfish populations caused divisions between native oyster harvesters and those cultivating the new breed. In 1928, the Provincial Department of Fisheries requested that Stedman H. Gray, editor of the *Pacific Fisherman*, solicit Kincaid for an article outlining the “considerable agitation” between growers of the Pacific oyster and harvesters of the native species who accused the former of introducing the “borers and other

⁸ John Babcock to Charles R. Pollock, 21 September 1928. Charles R. Pollock to John Babcock, 29 September 1928. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1148, “Shellfish,” 1928 to 1929.

⁹ Harvey C. McMillin to John Babcock, 31 October 1929. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1149, “Shellfish,” 1929.

¹⁰ R.G. McMynn, Memo “Re: Control of Exotic Aquatic Plants & Animals,” 9 December 1974. BCA, Fish and Wildlife Branch, GR-1114, Volume 75, File 50-00-1974-1975, “Fish – General, Native Indian Fisheries,” 1974 to 1975.

enemies of the native oysters.” The department sent a similar inquiry to a local cultivator at Ladysmith, BC, who had introduced the Pacific oyster there. In both letters, the government asked for insight to help them weigh the cost/benefits between introducing an invasive species with its associated menaces and the advantages of a shellfish that “grows faster, is large and better and far more profitable.”¹¹

In addition to shellfish-predator species, a new seaweed (*Sargassum muticum*) arrived with the Pacific oyster and became the dominant algae in the upper subtidal region in the Salish Sea, frustrating many mariners by wrecking propellers and catching fishing gear. In a 1974 report, R.G. McMynn, Director of the Provincial Marine Resource Branch, noted that this seaweed had wide ranging ecological effects on the Salish Sea, almost completely replacing some important native seaweeds, including eel grass, which are critical components in the phosphorous cycle of the sea. The new seaweed, while an excellent farm fertilizer, deprives other marine plants of the phosphorus nutrient.¹² The eel grass threatened by the new seaweed is a vital home to intertidal marine life including the crabs caught by W̱SÁNEĆ harvesters. The W̱SÁNEĆ continue to advocate for eel grass bed health and protect them from development and pollution.

State control over the introduction of the Pacific oyster, however, had become a moot point. As Mogan pointed out, officials were asking “to lock the barn door after the horse had been stolen.”¹³ A WENITEM named Walter Jones had introduced Pacific oysters to Ladysmith Harbour in 1925 and his oyster clutches had already multiplied significantly, with “natural”

¹¹ Department of Fisheries to Stedman H. Gray, 18 October 1929. Assistant to the Commissioner to Walter Jones, 16 October 1929. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1150, “Shellfish,” 1929 to 1930.

¹² R.G. McMynn, Memo “Re: Control of Exotic Aquatic Plants & Animals,” 9 December 1974. BCA, Fish and Wildlife Branch, GR-1114, Volume 75, File 50-00-1974-1975, “Fish – General, Native Indian Fisheries,” 1974 to 1975.

¹³ Gerald T. Mogan, “New Variety of Oyster for British Columbian Waters,” 1929. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1149, “Shellfish,” 1929.

spawns occurring in 1932.¹⁴ By this time, provincial fisheries looked to US operations in Puget Sound and saw great potential for the oyster industry in BC. Noting that marine conditions for growing in BC were “as favorable” as those in Hood Canal, a memo to the Commissioner of Fisheries contained recommendations for relaxed regulations on foreshore leases to match American production because the current system offered “no encouragement to undertake the costly initial development of non-productive areas.” The memo suggested a five-year lease “free of charge” to those looking to start a Pacific oyster operation. The government also observed that, after the “rapid development” and purchase of tidelands in Washington State, there was “increased interest” from Americans in BC waters.¹⁵ Two years later, the Pacific Biological Station in Nanaimo ran a cultivation experiment and discovered that Pacific oysters, unlike native and Eastern oysters, “thrive[d]” in BC’s marine conditions.¹⁶ Encouraged by the synergy of commercial interest and scientific backing, the province opened up BC beaches to Pacific oyster cultivation.

Coast Salish harvesters generally welcomed the introduction of the Pacific oyster, and it remains the most common commercial oyster in the Salish Sea.¹⁷ The new oyster offered an alternative marine resource as Indigenous communities’ access to salmon continued to be under threat by fisheries regulations and financial barriers. As Douglas Harris observes, by 1920

¹⁴ BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1149, “Shellfish,” 1929; BCA, Provincial Dept. of Fisheries, GR-0435, Volume 117, File 1180, “Eastern Oysters,” 1918 to 1927; Howard Macdonald Stewart, *Views of the Salish Sea: One Hundred and Fifty Years of Change around the Strait of Georgia*, (Madeira Park, BC: Harbour Publishing Co., 2017), 162.

¹⁵ Memo. To the Hon. The Commissioner of Fisheries, 30 December 1930. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1151-2, “Shellfish,” 1931 to 1932.

¹⁶ “Japanese Oysters Thrive in B.C. Areas,” *Fisheries News Bulletin*, February 1932, 2-3. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1152, “Shellfish,” 1932.

¹⁷ As of 2013, 94% of oysters harvested in Washington State were Pacific oysters. Williams, *Homewaters*, 163. There is little in the archival record to suggest coastal Indigenous communities did not welcome this introduction. The introduced species have helped communities commercially as well. For example, the Suquamish Tribe has successfully marketed manila clams for a long time after its introduction. Tony Forsman, 23 July 2019.

Indigenous peoples' participation in the Fraser River commercial fleet had become "almost insignificant."¹⁸ The Canadian government also prohibited Coast Salish peoples from fishing at two important Fraser River locations at Hell's Gate and above Mission Bridge.¹⁹ Further, the increasing cost of fishing gear, largely due to innovations in technology which small-scale operators, including most Indigenous fishers, could not afford, made it more difficult to run salmon operations.²⁰ As the world entered a global depression in the 1930s, the beaches provided both Coast Salish communities and WENITEM with marine resources relatively cheap to harvest. Competition over who controlled the oyster and clam beds began in earnest as the value of shellfish for economic and personal consumption rose.

WENITEM who staked claims to Salish Sea shellfish beds during this period gravitated towards Coast Salish communities' harvesting locations. For example, D.J. Thomas, an immigrant from South Wales who settled "near the Indian Reserve at Nanaimo," sent a petition regarding oyster leases at Ladysmith. After a lease holder had "got drunk slected [sic] out and contracted a cold and died shortly after," Thomas bought the lease only to discover that a shingle mill and smelter had ruined its oyster bed. Thomas informed officials that he searched for another beach where "the Indians had all left" on Chemainus Bay. After hearing news of a commission on BC fisheries, he hoped that officials would grant him the leases currently owned by another WENITEM near the reserve.²¹ Similarly, F. Donaldson petitioned the government for "Oyster beds to rent." The Fisheries Department replied that he must apply to the Superintendent

¹⁸ Harris, *Landing Native Fisheries*, 135.

¹⁹ Gladstone, "Native Indians and the Fishing Industry of British Columbia," 23.

²⁰ Evelyn Pinkerton, "Indians in the Fishing Industry," In *Uncommon Property: The Fishing and Fish-Processing Industries in British Columbia*, Patricia Marchak, Neil Guppy, and John McMullan, eds. (Toronto: Methuen, 1987), 261; Joseph Forester and Anne Forester, *Fishing: British Columbia's Commercial Fishing History*. (Saanichton: Hancock House Publishers, 1975), 54; Percy Gladstone, "Native Indians and the Fishing Industry of British Columbia," *The Canadian Journal of Economics and Political Science*, XIX, 1 (Feb 1953): 24.

²¹ D.J. Thomas to Henry Cathcart, 6 December 1929. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1148, "Shellfish," 1928 to 1929.

of Lands for leases of unoccupied oyster beds as long as it was *not* “on a beach fronting an indian reservation.”²² The Maikawa Oyster Company of Vancouver also subleased foreshore in Fanny Bay from Kagetsu Logging Company, who in turn leased the foreshore from the E & N Railway for \$1 per acre. Most of the E & N land on Vancouver Island, such as the foreshore at Fanny Bay, sat on unceded Indigenous territory. Because the provincial government strongly desired a railway connecting northern mining settlements to the southern capital in Victoria, it offered this land to the E & N for next to nothing along with special exemptions from provincial regulations such as foreshore leases. For this reason, the E & N could allow operations by Asian immigrants, such as Maikawa, to “develop oyster beds contrary to the terms of the Governmental leases which prohibit the employment of Orientals and exact fee of \$5.00 per acre.”²³ By 1936, there were 45 oyster leases in British Columbia, almost entirely within the Salish Sea.²⁴ [Maps 7-9] In addition to operations on these privately leased beaches, WENITEM also harvested on the public beaches and occasionally viewed Indigenous communities’ beaches as a part of these communal harvest sites.

Some Coast Salish communities accepted this encroachment in the context of economic conditions in the 1930s. We-Wai-Kai Chief Harry Assu, for example, recalled “a lot of non-Indian men, some with families” who built shacks and squatted along the reserve at Cape Mudge on Quadra Island. The community welcomed these temporary neighbours. “Those were hard times for us,” explained Assu, “and we were all in it together.”²⁵ When it came to WENITEM encroachment, however, compassion had to be matched with caution. In 1930, and again in

²² J.P. Babcock to F. Donaldson, 14 August 1928. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1148, “Shellfish,” 1928 to 1929.

²³ Frank DeGrey to H.E. Young, 18 October 1934. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1158, “Shellfish,” 1935 to 1936.

²⁴ BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1159, “Shellfish,” 1936.

²⁵ Harry Assu and Joy Inglis, *Assu of Cape Mudge: Recollections of a Coastal Indian Chief*, (Vancouver: UBC Press, 1989), 66.

1931, the Indian Agent for the Cowichan Agency, H. Graham, wrote to the provincial government regarding the protection of Indigenous communities' clam beds from "American interests." He implored both the provincial Fisheries Department and the Department of Lands to "understand the serious question from the Indian stand point" and to see that "it is possible for a White man to come in and practically wipe out a clam bed fronting their home in a very short time." Because these communities depended "so largely on clams for their food," he asked that the beaches be protected.²⁶ In response, the Fisheries Department suggested that Graham follow the WENITEM example and secure a lease for the beaches from the Department of Lands. Perhaps, officials suggested, the department could issue a lease "without fee." The Department of Lands questioned this strategy, because, in its opinion, this approach gave "the Indians control of considerable area of foreshore of the lower Coast which not only contains clam beds but may be highly desirable in the future for use for industrial or other lines." They also worried that relinquishing control would harm commercial use and development of the foreshore.²⁷

During the economic depression, the Department of Lands was eager to lease out clam beds for commercial purposes even if coastal Indigenous communities depended on them. For example, in 1934, Graham, reported to the Department of Indian Affairs (DIA) that a large public clam bed that the Snuneymuxw First Nation primarily utilised had "been a source of contention for a number of years" and that "different White men who make their living through buying up clams, have been trying to lease [it] in order to get control." He observed that the provincial Department of Lands planned to grant the lease "which would cut out the Indians

²⁶ H. Graham to Commissioner of Fisheries, 8 December 1930. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1150, "Shellfish," 1929 to 1930. H. Graham to Minister of Lands, 29 June 1931. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1151-1, "Shellfish," 1930 to 1931.

²⁷ H. Cathcart to Department of Fisheries, 9 July 1931. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1151-1, "Shellfish," 1930 to 1931.

entirely from earning a few dollars at a time when they are badly in need of it.”²⁸ While the Department of Lands desired a large number of foreshores to be leased for commercial harvest, the provincial Fisheries Department maintained that “unquestionably” clam beds in front of “occupied” reserves should be preserved for Indigenous harvesters but wondered which reserves qualified as “occupied.”²⁹ From the WENITEM vantage point, Coast Salish communities needed to demonstrate occupancy and continual use in order to preserve their land from state-sanctioned industrialization. This position neglected to appreciate both the existing treaties on Vancouver Island and Coast Salish nations’ customary use that did not require a constant human presence to determine ownership.

WENITEM encroachment came by land as well as by sea. In 1936, C.C. Perry, the Assistant Indian Commissioner for BC, wrote to the Deputy Minister of Lands regarding complaints about WENITEM trespassing on reserves to dig clams on the beach. Perry wondered if the Coast Salish communities had the same riparian rights as WENITEM property owners to prevent trespassers from crossing their properties for any purpose. He reminded the minister that the Department of Lands had “from time to time” assured the DIA that “no disposition whatever of foreshores fronting Indian reserves” would be made without their “concurrence.” He then described “anxiety” among Indigenous communities and urged cooperation to relieve the “somewhat aggravated question of trespass on the reserve foreshores.” In reply, the Deputy Minister of Lands, Henry Cathcart, agreed that the question of clam digging had been under review for a long time but had no sympathy for Indigenous nations’ desire to protect their

²⁸ H. Graham to C.C. Perry, 3 February 1934. LAC, Canada, RG10, Volume 11041, File 3-3-5 & 3-3-6 pt. B, Reel T-16085, “Chief Inspector of Indian Agencies/Indian Commissioner for BC – Cowichan Agency – Foreshore rights on various reserves (Shannon file),” 1918 to 1938.

²⁹ Department of Fisheries to Deputy Minister of Lands, 15 July 1931. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1151-1, “Shellfish,” 1930 to 1931.

property. In his view, “indiscriminate digging [was] taking place along the whole coast without any privileges being granted for the purpose. Indians as well as whites [were] participating in this work.” He believed that Indigenous harvesters did not “confine themselves to the foreshore in front of their reserves but go elsewhere wherever clams may be available.” He confessed to being unaware of any provincial or federal regulations that restricted WENITEM access to Indigenous communities’ beaches. Revealing his priority, Cathcart complained that a “great deal of the clams [were] being exported and without any revenue accruing to the Province.”³⁰

Provincial officials showed little concern over who collected shellfish or where so long as the province collected duties for commercial exports. This emphasis on capital and the commodification of shellfish resources exemplified the WENITEM position fueling colonialism in the Salish Sea.

Perhaps aware of provincial concerns over export duties, the WENITEM public leveraged this worry in attempts to secure larger portions of shellfish resources for themselves. Responding to citizens’ letters of complaint regarding a clamming operation in Esquimalt Harbour, federal fisheries Inspector J.C. Scott reported to his superiors that Ignace Hynek’s export operations were “strictly legal” and cleared the Victoria Customs Office.³¹ Scott also noted that Hynek operated on a beach previously dug “in a small way by Indians for years” and employed Ləkʷəŋən harvesters who dug in a manner that, in Scott’s opinion, did the beaches “more good than harm.” Scott suspected that complaints came from “picknickers” and others who wished to preserve public access to local clams. The Assistant Commissioner of the Provincial Fisheries Department, George Alexander, thanked the federal officials for their reports, and on further

³⁰ C.C. Perry to H. Cathcart, 1 December 1936. H. Cathcart to C.C. Perry, 11 December 1936. BCA, Commercial Fisheries Branch, GR-1378, Volume 8, File 8, “Indian fisherman and Indian rights,” 1936 to 1949.

³¹ J.A. Motherwell to George Alexander, 11 June 1936. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1159, “Shellfish,” 1936.

investigation also found that a recent complaint he received was “not founded on fact.” He noted WENITEM confusion regarding how commercial shellfish harvesters operated - a symptom of the complexities of cross-jurisdictional and transnational regulation of marine resource management.³² Coast Salish communities on both sides of the international border had to navigate these complexities to secure their own access to shellfish. Groups with treaties, such as the Suquamish and WSÁNEĆ, reminded federal officials of the governments’ fiduciary duties to protect these agreements from state and provincial regulations.

The complexities of official jurisdiction over shellfish and habitat also flummoxed authorities. In a Provincial Fisheries report on the status of clam beds, the author noted “a somewhat confused state of affairs” existed between the federal and provincial governments over jurisdiction of shellfish beds. Questions over the “legality of leases,” the author reported, caused some WENITEM cultivators to “disregard the rights of others.” At Oyster Harbour (later Ladysmith) specifically, harvesters depleted the beaches due to practices of subleasing with harvesters demonstrating little regard for sustainability or re-seeding. [Map 8] Local harvesters also complained to the government about Walter Jones and his Vancouver Oyster and Fish Company, accusing him of exploiting Indigenous groups by using the beaches in front of their reserves for cultivation and harvest and employing them to harvest from other “beds not belonging to him.”³³ In 1937, DIA Agent Graham wrote to the department for clarity on “a ruling as to the Indians rights to take clams from the foreshore off their reserves.” He had written earlier in the year after local WENITEM had “doubted whether the Indians had the sole right to dig these clams.” Graham reminded the department that the “clam bed situation [was] an

³² J.A. Motherwell to George Alexander, 11 June 1936. George Alexander to J.A. Motherwell, 13 June 1936. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1159, “Shellfish,” 1936.

³³ “Appendix to the Report on the Oyster beds of Oyster Harbour.” BCA, Provincial Dept. of Fisheries, GR-0435, Volume 117, File 1180, “Eastern Oysters,” 1918 to 1927.

important one to the Indians now.”³⁴ In reply, D.M. MacKay, the Indian Commissioner for B.C. informed Graham that he doubted “if digging clams on these foreshores by whites constitutes trespass under the Indian Act,” but after the 1929 Scott-Cathcart agreement, which finalized the transfer of reserve land from BC to Canada, he believed that “commercial digging of clams could be prevented” by both governments. He instructed Graham to report any cases of WENITEM commercial operations in front of reserves.³⁵ The long, drawn-out, dispute between Canada and BC over the boundaries of reserves in British Columbia, and foreshore ownership, had created a general lack of understanding among government officials and the public alike when it came to the resources of these beaches.

While government officials negotiated access to beaches, they also scrutinized Coast Salish peoples’ harvesting activity. In March 1936, Inspector Scott investigated WENITEM allegations that WSÁNEĆ crabbers had been taking undersized crabs at SKTÁMEN (Sidney Island) and that their harvesting methods threatened the species. Scott reported: “We found two Indians canoes fishing crabs in the Sidney Island Lagoon, each canoe having about a dozen crabs all of which were males and of legal size.” He then visited STÁ,UTW reserve and found “live crabs in crates, which with one or two exceptions were of legal size.” He concluded, “the taking of undersized crabs... I have investigated this complaint (from Mr. Tyler who has a small ranch on the island) before, and at that time found that the Indians at Saanichton were keeping them alive in a large live crate off Saanichton reserve and were feeding them on salmon and cod heads and clams with the expressed intention of keeping them until they reached the proper size limit.” He

³⁴ H. Graham to D.M. MacKay, 24 November 1937 and H. Graham to the Secretary, Department of Indian Affairs, 7 July 1937. LAC, Canada, RG10, Volume 11041, File 3-3-5 & 3-3-6 pt. B, Reel T-16085, “Chief Inspector of Indian Agencies/Indian Commissioner for BC – Cowichan Agency – Foreshore rights on various reserves (Shannon file),” 1918 to 1938.

³⁵ D.M. MacKay to H. Graham, 9 December 1937. LAC, Canada, RG10, Volume 11041, File 3-3-5 & 3-3-6 pt. B, Reel T-16085, “Chief Inspector of Indian Agencies/Indian Commissioner for BC – Cowichan Agency – Foreshore rights on various reserves (Shannon file),” 1918 to 1938.

added, “[t]he Indians have attempted at times to [sell] undersized crabs, but I do not believe our retailers here will take them as I frequently inspect and measure any questionable crabs in the stores.” Regarding STÁ,UTW crabbing methods, Scott reported Tyler had complained to him that “the lagoon on Sidney Island was once thickly populated with crabs but due to people, particularly the Indians, using flares, artificial lights and crab-forks, they have decimated the crab population to such a degree that very few remain.”³⁶ Upon investigation, Inspector Scott discovered that when community members caught crab in the winter they lit pitch fires in their canoes and lifted crabs from the eel grass beds with long-handled fork that had prongs bent at a right-angle to the handle. Revealing a double-standard in regulation enforcement, Scott noted that “a white fisherman [had] attempted to take crabs at night by using a car searchlight, but he was unsuccessful as the lighted radius was too small.” Fisheries Commissioner Alexander wondered if officials should “prevent the use of artificial lights, torches, or flares in these fishing operations” but Scott, after consulting another WENITEM crab fisher named Musclow who had no complaints about Indigenous crabbers, gave “no objection” to STÁ,UTW methods.³⁷ While WENITEM officials accepted Coast Salish peoples’ crabbing methods in this instance, the existence of this conversation reveals that the government considered itself ruling manager of the marine resources adjacent to Indigenous land and thought little of Coast Salish peoples’ customary practices.

Coast Salish communities did not share the governments’ view on jurisdiction over marine resources adjacent to their reserves. During his investigation, Scott faced resistance to this position and to his presence on Indigenous territory. “At Saanichton Reserve,” he reported, “one

³⁶ George Alexander to J.A. Motherwell, 3 March 1936. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1159, “Shellfish,” 1936.

³⁷ George Alexander to James Motherwell, 3 March 1936, J.C. Scott to J.F. Tait, Supervisor of Fisheries, 26 March 1936. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1159, “Shellfish,” 1936.

Indian insisted we had no authority to trespass on the Reserve. Being unable to convince him otherwise, I accompanied Mr. Graham, Indian Agent to the Reserve today, where we visited Chief Louis Pelkey's residence and called in the interested crab fishermen." Graham then made Scott's "authority quite clear to the Indians," asserting state power over Indigenous property and their methods of crab resource management including the keeping of undersized crabs for later sale.³⁸ The community resisted this imposition. As W̱SÁNEĆ Elder Gabriel Bartleman later explained, carrying permits to fish was not a part of the community's C'ELA'NEN, or "way of life;" therefore they rejected W̱ENITEM regulatory instruments such as permits.³⁹

The Coast Salish communities organized their responses to encroachment of their beaches and state regulation of the fisheries during this period. In the mid-1930s, for example, when federal fisheries officials told the W̱SÁNEĆ that they could no longer harvest clams in Saanich Inlet for commercial sale, the community held a meeting to discuss "Douglas's promise" or "Douglas's word" — their colloquial term for the treaty their ancestors signed with Governor James Douglas in 1852. Bartleman recalled that the community sold their clams from Sidney and Mill Bay to the Sidney Cannery but "the Fisheries somehow decided that they would close that area," thereby denying the W̱SÁNEĆ their treaty rights and C'ELA'NEN.⁴⁰ [Figure 3] George Warren of the Victoria Chamber of Commerce had requested the closure to preserve the "few good beaches" for public use other than fisheries.⁴¹ While officials contemplated a special permit for the

³⁸ J.C. Scott to J.F. Tait, Supervisor of Fisheries, 26 March 1936. BCA Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1159, "Shellfish," 1936.

³⁹ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (C)*, 41; SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 22.

⁴⁰ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (C)*, 38-42; Knighton, "The Oral History of the 1852 Saanich Douglas Treaty," 15 and 30; The Saanich Canning Company opened in 1909 and most of the clams it purchased were "dug out of the sand, mostly at Sidney and Saanich Inlet, by the Indians, who take them over in their launches to the Sidney cannery." George M. Watt, "Successful Saanich Industries." *Daily Colonist*, 17 February 1929, 39.

⁴¹ James Motherwell to J.P. Babcock, 9 September 1932. J.P. Babcock to James Motherwell, 10 September, 1932. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1155, "Shellfish," 1934.

W̱SÁNEĆ to collect claims in Saanich Inlet, community harvesters continued to collect clams “in the moonlight,” demonstrating Coast Salish communities determination to assure their access to the resource. Enforcing the new regulations, fisheries officers confronted these harvesters, confiscated their digging sticks and “clams were dumped on the beach.”⁴² This prohibition of Indigenous fishers’ commercial clamming aligned with colonial policies of assimilation and the commodification of natural resources for the exclusive benefit of W̱ENITEM. As labour historian David Camfield argues, it was “precisely the undermining of land-based subsistence production by settler-colonial dispossession that threatened the livelihood of Indigenous families” and forced them into the W̱ENITEM wage-labour economy or to seek government assistance. Further, he notes that “paid or unpaid, Indigenous labour – above all, that of Indigenous women – was frequently treated by white society as unimportant.”⁴³ The closure of clam harvesting, a secondary interest to most canneries, disproportionately harmed Indigenous communities such as the W̱SÁNEĆ.

W̱SÁNEĆ leaders recognized that their ability to protect their resources could be greatly enhanced by federal recognition of title to their lands. On April 5, 1932, Simon Pierre and a delegation of W̱SÁNEĆ chiefs and councillors presented a statement by TI,IMELTE, Chief David Latasse, to the federal Department of Indian Affairs (DIA) testifying that their Elders did not tell them much about the Saanich Treaty signed with the HBC in 1852, but one thing they knew for certain was that the treaty was “not to sell land or surrender any Territory rights.”

[Figure 4] At this time, the W̱SÁNEĆ asked for the treaty to be “deleted” for two reasons: first they believed the treaty was “made in the dark;” and second (perhaps best explaining this curious

⁴² SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (C)*, 38-40; BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1155, “Shellfish,” 1934.

⁴³ David Camfield, “Settler Colonialism and Labour Studies in Canada: A Preliminary Exploration,” *Labour/Le Travail*, 83 (Spring 2019): 163.

action) they wanted “to be recognized by the Authority similar as other Indian tribes in the Province of British Columbia.” Indian Commissioner Ditchburn had recently informed them that non-treaty Indigenous communities in BC would be receiving a federal payment, agreed upon in the final negotiations with the province over the transfer of Indigenous nations’ reserve ownership to the federal government, as a way to compensate for the lack of treaties made prior to BC’s confederation with Canada. W̱SÁNEĆ worried they would not receive those funds because they had a treaty. The W̱SÁNEĆ assured the DIA that they did “not mean to say, that we want the land back. No! - as it is settled by the settlers;” rather, they reiterated that they wanted the government to “favor” them with “compensation as [the government] saw fit.”⁴⁴ Indigenous communities’ need for government assistance such as this had increased noticeably due to state regulations on fisheries and stock depletion, which marginalized coastal communities from economic opportunities.

In response to increasing pressures from state regulation of the fisheries, Indigenous groups in British Columbia also explored pan-Indigenous organization to support themselves economically and to protect their access to marine resources. On December 13, 1931, delegates from seven coastal Indigenous communities in BC met at Lax-Kw’alaams (Port Simpson) to draft a constitution for a new organization called the Native Brotherhood of British Columbia. To avoid prosecution under a 1927 federal law banning Indigenous people in BC to raise funds for legal fees regarding lands claims, their constitution never mentioned Aboriginal rights but described the organization’s purpose as the improvement of the “socio-economic position of Indian

⁴⁴ W.E. Ditchburn memo to the Commissioner’s Office, 5 April 1932, Chief David Latasse, testimony, 4 April 1932, and Chiefs to Commissioner Ditchburn, 4 April 1932. LAC, RG10-C-II-4, Volume 11303, File 974-1-9, “Indian Commissioner for British Columbia - Cowichan Agency - Correspondence re 1851 treaty between Saanich Indians and Hudson’s Bay Co. - Including petition re validity of treaty,” 1932.

people.”⁴⁵ By the mid 1930s, the Brotherhood had nearly 500 members and reached Coast Salish communities in 1938.⁴⁶ Often in alliance with United Fishermen’s and Allied Workers’ Union (UFAWU), sometimes at odds, the Brotherhood mainly worked to promote and protect Indigenous commercial fishing operations by negotiating fish prices with local canneries and organizing a social safety net for lean and low-priced years such as the 1968 Indian Fishermen’s Assistance Program.⁴⁷ In 1946, the Brotherhood also organized an official news organ, *The Native Voice*, which not only listed salmon prices, reported on strike activity, and published regulation notices, but also addressed issues such as land rights, human rights, citizenship, and Indigenous community connections across North America.⁴⁸ Chief Harry Assu explained in his memoir that “The Native Brotherhood has meant everything to the Indians. We get together in convention every year and handle our legal problems and anything else that comes up.” He maintained, “[t]hat’s where we plan for the future.”⁴⁹ The Brotherhood provided coastal communities with a network that withstood state efforts to suppress Indigenous political movements in British Columbia.

The Native Voice also served as a conduit for transborder connections. Many of its Indigenous contributors wrote from the United States and the paper reported on US governmental assimilationist policies and Washington State fishing issues.⁵⁰ The newspaper also gave a

⁴⁵ Tennant, *Aboriginal Peoples and Politics*, 116; Jamieson, *The Native Voice*, 49.

⁴⁶ Jamieson, *The Native Voice*, 50-51.

⁴⁷ Will McKay and Ken Ouellette, “IFAP,” *Native Voice*, March 1979, 5 and 12; Environment Canada, M.J. Friedlaender, *Economic Status of Native Indians in British Columbia Fisheries*, 1975, 13-14; Eric Jamieson, *The Native Voice: The Story of How Maisie Hurley and Canada’s First Aboriginal Newspaper Changed a Nation*, (Halfmoon Bay, BC: Caitlin Press, 2016), 108.

⁴⁸ Guy R. Williams, “Your Organization and your ‘Voice.’” *Native Voice*, December 1946, 7; O.D. Peters, “Citizenship.” *Native Voice*, March 1947, 12; Tennant, *Aboriginal Peoples and Politics*, 119; Jamieson, *The Native Voice*, 11 and 15-16.

⁴⁹ Assu and Inglis, *Assu of Cape Mudge*, 81.

⁵⁰ For example: Big White Owl, “Modern White Has Been Prone to be Culturally Self-centered,” *Native Voice*, July 1949, 10-11; Chief Shup-She, “Hands Across the Border,” *Native Voice*, February 1950, 8 and 10; “U.S. Indians Fight River Fishing Ban,” *Native Voice*, October 1965, 1.

platform for non-Indigenous allies such as its editor Maisie Armytage-Moore to support Indigenous causes. While Armytage-Moore, and other non-Indigenous contributors, tended to speak for the communities they supported in a manner considered co-opting Indigenous voice, the paper nonetheless featured the writing of WENITEM who were passionate about correcting colonial wrongs in a time when such support was a rarity in the public realm. For example, a WENITEM contributor named H. Glynn-Ward submitted a poem called “Dirge of the Salish,” to *Native Voice* in 1947. His poem elegantly places the reader in the shoes of the colonially down-trodden: “He walks the street with listless heavy tread,” Glynn-Ward began, “in white men’s words and smiling promises/ that with years have proved an empty thing... The clams are fat, the tide is low... [but] all the fertile wealth of earth and sea/ That fed and clothed him through the centuries/ Are now no longer his.”⁵¹ Glynn-Ward honed in on the unsung hero of marine-resource dependence: not the heavily regulated salmon but the humble shellfish. On both sides of the border, state regulations clashed with Coast Salish moral ecologies over where, when, and how to harvest both salmon and shellfish, leaving Coast Salish peoples, in Glynn-Ward’s words, “limited by laws and licences” and “unwanted stranger[s] in [their] native land.”⁵² Glynn-Ward recognized that state regulation of Indigenous peoples’ harvesting techniques and access to fisheries as well as a generally unsympathetic WENITEM population had pushed Coast Salish communities further to the margins of society.

The battle over fisheries access heightened in Washington State with the state’s 1925 law to designate steelhead trout a game fish that could not be sold commercially. This decision meant more hardship for treaty fishers who caught salmon crossing their treaty-defined fishing spots on

⁵¹ H. Glynn-Ward, “Dirge of the Salish,” *Native Voice*, September 1947, 13.

⁵² *Ibid.*, 13.

reserve.⁵³ As Coast Salish fishers saw no difference between the steelhead and so-called commercial species, this law was incompatible with their moral ecologies and made their subsequent fishing of the trout to support themselves an illegal act. They called on the federal government to intervene and enforce their Stevens Treaties rights, but the federal policy at the time was to downplay communal property and tribal rights, deferring to state fishery policies. By 1935, Indigenous fishers in Washington State took less than 3.3 percent of the total salmon harvest.⁵⁴

Coupled with the ban on commercial catch of steelhead, the Western Washington tribes, like their kin in British Columbia, turned to the beaches to stay alive. Suquamish Elder Lawrence Webster recalled “[a]t that time, you could dig clams the year around and there was a lot of beach to dig, so you didn’t really go hungry if you could get to the beach and do a little fishing on the side.” Suquamish had options for sale of their shellfish harvest as well. If Webster did not feel up for a trip to Seattle, he could “haul clams up to Poulsbo and put it on the auto freight at night and then go clam digging the rest of the night.” He received two dollars for a hundred-pound sack of clams. Butter clams, which Webster considered the local favourite, were a little less lucrative. “But,” Webster recalled, Suquamish harvesters could dig a couple hundred pounds of little necks and “maybe a sack” of butter clams in one tide. “So,” he explained, “we managed to stay alive.”⁵⁵ Suquamish harvesters, which now included a large portion of men from the

⁵³ Cohen, *Treaties on Trial*, 67.

⁵⁴ Daniel L. Boxberger, “The Not So Common,” In *Be Of Good Mind: Essays on the Coast Salish*, Bruce Granville Miller, eds. (Vancouver: UBC Press, 2007), 60.

⁵⁵ STA, Suquamish Tribal Cultural Center, W-1-04, Volume 1, File 1, “Suquamish Tribal Oral History Project. Interview of Lawrence Webster,” 1981-09-30; STA, Suquamish Tribal Cultural Center, W-1-16, Volume 1, File 1, “Suquamish Tribal Oral History Project. Interview of Lawrence Webster,” 1982-05-20.

community, effectively engaged in commercial and sustenance shellfish harvesting to support themselves and the community.⁵⁶

Webster witnessed significant encroachment on Suquamish beaches in the 1930s. “Oh we had a lot a’ argument,” he said, “but the people weren’t too particular then at that time, but it kept getting worse all the time till now you can hardly land a boat on the beaches without somebody hollering at you.” At the beginning of the decade, Suquamish harvested the entirety of the shores along Bainbridge Island, but the growth of commercial harvesting by both WENITEM and other tribes pushed Suquamish to “travel a little further.” Added to this, the sale of the Old Man House site by the government to private interests after World War I also created conflict between WENITEM and Suquamish harvesters on the beaches in front of the Port Madison Reservation. When asked in an interview if he was ever “hassled” collecting shellfish on these beaches, Webster replied, “[y]es, we were hassled by non-Indians over here on the Pass. Because they... when the property was let go outta trust the state started selling the beaches to whoever bought the lot. And I think it was in the thirties, or maybe a little later, that we had to hassle with them.” Commenting on some of the absurdity of the conflicts, he recalled WENITEM “trying to keep the people from even walking on the beach when the tide was out.”⁵⁷ WENITEM views on beach use, which considered private property rights paramount, challenged Coast Salish moral ecologies of resource management and communal harvesting systems. By leaving some beaches unharvested, WENITEM property owners potentially damaged the sustainability of the resource

⁵⁶ While historically Coast Salish shellfish harvesters were women and children (see Terminology and Chapter 1), at some point roughly in the 1930s, more men actively engaged in the harvest. This change is likely due to a number of factors including: decreasing access to salmon fisheries due to state regulations, rising cost of salmon operations, large unemployment for men during the depression of the 1930s, and perhaps other more subtle societal changes within communities during this period. A gender analysis of shellfish harvesting from the nineteenth century to the mid-twentieth century would shed more light on this phenomenon.

⁵⁷ STA, Suquamish Tribal Cultural Center, W-1-16, Volume 1, File 1, “Suquamish Tribal Oral History Project. Interview of Lawrence Webster,” 1982-05-20.

for communities that depended on them because overpopulated beaches could also suffer ecologically.

Rising economic production at the end of the 1930s, stimulated by state industrialization in response to World War II, meant further entrenchment of fishing regulations. Military operations during this period limited Suquamish access to marine resources which included a new staple species. When Suquamish James Forsman returned from the war, he found that the shellfish markets had shifted. Butter clams were no longer a preference and manila clams (*Venerupis philippinarum*) “were more prevalent.” Cultivators introduced the manila clam at the same time as the Pacific oyster seed but not by any design. Exporters had accidentally transported manila clam spat along with the oysters, and the clams spread rapidly throughout the Salish Sea. They did not compete for the same habitat as native littlenecks or butter clams and quickly became a favourite of both Indigenous and non-Indigenous harvesters because of their texture, taste, and marketability.⁵⁸ For the Suquamish, both the Pacific oyster and manila became major food and revenue sources.⁵⁹ Again, a major factor in the dependence on these new species was decreasing Suquamish access to off-shore marine resources through salmon stock depletion and state regulatory schemes.

At the end of the war, Fisheries Director Milo Moore wrote to Lloyd Shorett, a King County attorney, that “military restrictions” placed in November 1942, which closely monitored vessel traffic in Puget Sound, had prevented a Suquamish member named John Adams from fishing near his home. Adams had alerted Moore’s office to the “hardship” this placed “upon the Indians

⁵⁸ R.G. McMynn, Memo “Re: Control of Exotic Aquatic Plants & Animals,” 9 December 1974. BCA, Fish and Wildlife Branch, GR-1114, Volume 75, File 50-00-1974-1975, “Fish – General, Native Indian Fisheries,” 1974 to 1975.

⁵⁹ Manilas have a longer shelf-life and they opened up fully when steamed which gives a nicer presentation at the dining table. Forsman, 23 July 2019.

living on the Suquamish Reservation.” The department gave Adams a special permit to fish within 300 feet off-shore between Snyder’s Creek and the north tip at Point Jefferson, but in Moore’s view this permit brought Suquamish fully under state jurisdiction. He regarded Indigenous customary fishing practices as transgressions on state-sanctioned resource management. “It would appear to this office,” he complained “that Mr. Jack Adams and Mr. Benjamin George, Indians residing in the Suquamish Reservation, were attempting to take advantage of the generous treatment extended to them by this office.”⁶⁰ Moore’s concern centered on a purported “100,000 pounds of herring” caught by Adams, which raised conservation concerns among department staff members. While Moore presented a seemingly balanced conservationist argument when he asserted that “fishing regulations in the waters of the state and on the clam beaches of the State of Washington [should] be strictly enforced, regardless of whether the fishermen are whites or Indians,” the manner in which his department meted out these regulations are evidence of what Trisha Kehaulani Watson refers to as “eco-colonialism.” Officials leveraged rhetoric of conservation along with the uneven issuing of special allowances, such as Adams’s permit, to bring Indigenous fishing regimes under the full control of the state.⁶¹ An eco-colonial regulatory scheme descended on the beaches as well.

In 1942, Washington State’s Acting Fisheries Director E.M. Benn stopped at Bremerton on his way to Grayland to help Inspector Gates “check his beaches.” He “noted a lot of private ground clams shipped by indians who live on the Suquamish Reservation.” Because the harvesters took clams from tidelands bordering the reservation, Benn suspected they were taken

⁶⁰ Moore to Shorett, 17 October 1945. WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 39, File 1, “Suquamish,” 1942 to 1969.

⁶¹ Benn, Chief Inspector to Gates, fisheries inspector, 17 October 1946. WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 39, File 1, “Suquamish,” 1942 to 1969; Trisha Kehaulani Watson’s “eco-colonialism” is explained in Norman, *Governing Transboundary Waters*, 106.

from what he considered state land and sent Gates to the courthouse to investigate. Gates reported back that all the tidelands bordering the Suquamish Reservation were considered state tideland. Therefore, Benn concluded, “for years these people have been dodging the tax.” His investigation also revealed “one white man” who claimed his shellfish from state beaches were “private land clams.”⁶² WENITEM invested in a land policy that viewed private property ownership as the means for individuals to control beach resources, providing they paid their property taxes. To support this system, the state endeavoured to sell property previously reserved to Indigenous groups that had been converted to title lots in the 1887 General Allotment Act.

In 1944, the State of Washington began to sell the tidelands adjacent to allotments on the Port Madison Reservation. Yet the state was not willing to recognize any title or treaty rights the Suquamish held. When the Department of Public Lands received a request from Oakley Maxwell, the assistant Vice-President of the National Bank of Commerce, who wanted to purchase the tidelands in front of his property, the Assistant Commissioner of Public Lands for the State of Washington Frank Yates wrote to the Commissioner of Indian Affairs asking if the title to the Port Madison Reservation had “been extinguished” and what rights did the Suquamish still have to the tidelands? Walter V. Woehlke, Assistant to the Commissioner of Indian Affairs, responded with excerpts from the Point Elliott Treaty, the Executive Order of October 21, 1864 that increased the size of the reservation, and the decision in *US v. O’Brien* regarding Squaxin Island tidelands. Woehlke asserted that the “reservation has never been extinguished” and the Suquamish retained all their treaty rights. He also noted that there was nothing in the treaty language or in the executive order that specifically delineated whether Suquamish rights “extended to high or low water mark.” He reminded the Department of Lands of Suquamish’s

⁶² E.M. Benn to Stanley Phillips, Chief Inspector, 30 January 1942. WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 39, File 1, “Suquamish,” 1942 to 1969.

long-time use and occupancy of the area.⁶³ Ignoring the BIA's refusal to "admit that the State of Washington has any right to sell the tide lands abutting this Reservation," however, the state agreed on June 6 to sell the property to Maxwell for the asking price. In acknowledgement of the sale, the Department of Lands warned Maxwell of the BIA's position, but assured him that the state is "of the opinion that the Indians do not have any rights to the tide lands in front of those properties that had been acquired by individuals." The state then included a clause to the sale relieving them of any legal responsibility should Suquamish make a claim on the tidelands and offered Maxwell a chance to withdraw his application. Maxwell agreed to the new clause, which would become a standard title subject in state tideland sales thereafter.⁶⁴

As Washington State sold beaches to individual property owners, Suquamish went to the US Congress to assert their jurisdictional rights over them. At the congressional sub-committee investigating Indian Affairs in 1944, Lawrence Webster demanded that control over tidelands in front of their reservation be restored to Suquamish. He told the commission: "State Officers frequently chase members of tribe, some of them descendants of Chief Seattle, off our beaches... When the Indian agent receives word of such arrests the cases are invariably dropped, but we feel it is a mistake and ask clear title to our beaches."⁶⁵ The position of the State Department of Fisheries and the Kitsap County Land Assessor, however, was that "the tide lands in question are owned by the State of Washington, and, therefore, Indians are given the same rights and privileges as other citizens of the State of Washington in the digging of clams and other use of such tide lands." Fisheries Director Fred Foster further declared that his department was

⁶³ Woelke to Yates, 26 May 1944. STA, Barbara Lane, 1977-7-5, Volume 1, File 1, "Report on the Port Madison Indian Reservation Tidelands Boundary Question Historical and Anthropological Evidence," 1977-02.

⁶⁴ STA, Barbara Lane, 1977-7-5, Volume 1, File 1, "Report on the Port Madison Indian Reservation Tidelands Boundary Question Historical and Anthropological Evidence," 1977-02.

⁶⁵ Fred J. Foster, Fisheries Director, to congressmen, 6 October 1944. WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 39, File 1, "Suquamish," 1942 to 1969.

“opposed to granting the Indians any rights which they do not now enjoy over the streams, rivers, and tide lands of the State of Washington, as the Indians have in the past and are at the present time depleting the fish and other marine resources enjoyed jointly by the Indians and other citizens of the state.”⁶⁶ Again, officials invoked conservation principles in an eco-colonial manner as a means to secure state control over Coast Salish nations’ resources. Within the logics of the settler-state, the resources required conservation and protection from Indigenous harvesters to support capital and WENITEM commercial enterprises.

More conflict on the beaches ensued. On June 21, 1944, fisheries inspector Earl Gate wrote that he had “checked clam digging on tide land bordering the Suquamish Indian Reservation” and submitted a list of names of community members who were known to be selling their clams in Seattle. He advised the Department of Fisheries that he had “warned [Suquamish harvesters] not to ship anymore clams during closed season and explained that the tide lands bordering the reservation was not part of the reservation and was subject to State regulations.”⁶⁷ Following Gate’s visit, on July 7, 1944, a delegation of Suquamish members went to the Department of Fisheries and, in a show of support for a blind community member, accepted the state’s decision to impose clam harvesting closures as long as the state would give special permissions to Virgil Temple so that he could sell shellfish year-round. Acting Chief Inspector Benn allowed Temple the exemption from closed seasons.⁶⁸ While the Suquamish acquiesced to state regulations regarding closed seasons in order to secure special accommodations, they continued to assert their rights to the beaches in the ongoing federal Indian Claims Commission (ICC).

⁶⁶ Ibid.

⁶⁷ Gates to Foster and Benn, 21 June 1944. WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 39, File 1, “Suquamish,” 1942 to 1969.

⁶⁸ E.M Benn to Earl Gates, 7 July 1944. WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 39, File 1, “Suquamish,” 1942 to 1969.

Suquamish assertion of tideland ownership during the ICC gave the state Department of Lands some hesitation regarding the sales of allotments and tidelands to private land owners. According to Barbara Lane, by 1948 the “tone” of the department had changed. They made prospective buyers aware of potential Indigenous tribal nations’ claims to this land and informed these buyers that the state was “rather reluctant” to sell the land because of “the possibility of a controversy with the Indians.”⁶⁹ On July 18, 1950, the Department of Lands instructed one prospective buyer that they had received reports that “in some cases the Indians have been treated rather unkindly by some of the purchasers of tide lands in front of parts of this Indian Reservation.” The department also noted that “so far the Indians have been very patient and there has been no serious controversy.”⁷⁰ Suquamish may have exercised “patience”; however, they certainly did not sit idly by or wait for Washington State to recognize their rights, they organized and called upon the federal government to honor its treaty obligations.

On March 11, 1950, the Suquamish Tribal Council held a meeting to discuss their rights to shellfish. They unanimously agreed that the shellfish proviso of their Point Elliott Treaty was a right to harvest shellfish guaranteed by law. They also quoted the recent opinion of the Commissioner of Indian Affairs in a letter to the Commissioner of Public Lands stating that “[w]ith regard to the tide lands, which you contemplate surveying, you are advised that such lands as well as the uplands, which were allotted in 1886, were occupied and used by the Indians long before that date and before statehood (1889).” The Tribal Council also recognized that they had ceded the Old Man House site to the government in 1905, but they insisted that the agreement was never to be “construed to deprive the said Indians of the Port Madison Indian

⁶⁹ STA, Barbara Lane, 1977-7-5, Volume 1, File 1, “Report on the Port Madison Indian Reservation Tidelands Boundary Question Historical and Anthropological Evidence,” 1977-02.

⁷⁰ Ibid.

reservation of any benefits to which they are entitled under existing treaties or agreements.” The Tribal Council resolved that their “[a]ncestors secured their living hunting and fishing and this right has not to [their] knowledge been terminated by any act of Congress,” which gave them legal right to “hunt and fish and to take shellfish at all times of the year for [their] own use.”⁷¹ Thus, the Council asserted its sovereignty over its resources and reminded the government of its treaty responsibilities.

The community had an urgent need to collect shellfish year-round. Suquamish Elder Lawrence Webster described a “spell” in the 1950s when “things were pretty poor.” He recalled that community members were still “digging clams for a living,” but again WENITEM “started tryin’ to run [them] off — they even had the sheriff over there. And they found out that they didn’t own it.” Webster then mused, “I think they knew it all the time — they just wanted to get rid of us. So we dug all that winter on that beach.” In the summer of 1950, the state threatened legal action against Suquamish who attempted to cross and fish from tidelands fronting Port Madison. As both sides mounted their legal cases, the state expressed their alarm to federal attorneys over organized action by Indigenous nations noting that “the Indians are having a convention in Bellingham and [they] trust that there is no insurrection contemplated.”⁷² Tensions between Coast Salish communities and their moral ecologies of communal access to shellfish resources with WENITEM concepts of private property ownership became untenable during this period as politicians sought to privatize land and resources and convert tribal community members into American individuals.

⁷¹ Resolution, 14 March 1950. WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 39, File 1, “Suquamish,” 1942 to 1969.

⁷² STA, Barbara Lane, 1977-7-5, Volume 1, File 1, “Report on the Port Madison Indian Reservation Tidelands Boundary Question Historical and Anthropological Evidence,” 1977-02.

The sale of tribal lands was an essential component of the removal of Indigenous communities from tidelands in Washington State. In the middle of the 1950s, a housing development sprung up at Chief Seattle's old village with restrictive covenants to prohibit the sale of a house to anyone with "Indian blood." WENITEM who had bought property at this site then restricted Coast Salish communities' access to the tidelands.⁷³ The Suquamish community continued to dig, however, despite confrontations with property owners. Webster remembered when the Suquamish community "went out there again a year or so later," to dig for sale to the cannery at Port Townsend, the community "[h]ad the same problem." The home owners "wanted to chase us off again."⁷⁴ According to historian Alexandra Harmon, by 1956, access to shellfish was the "sole problem" Suquamish representatives brought to the Indian Commissioner when he visited individual tribes for the ICC. She suggests that the paucity of records regarding government action on this request indicates that the federal government did little to help.⁷⁵ It is likely that the new federal policy of assimilation known as "Termination," also guided government decisions on tribal rights such as marine resource access in ways that minimized the value of collective rights.

The greatest threat to tribal nations' territorial sovereignty and treaty-reserved rights during this period was the federal government's assimilation policy. In 1953, US Congress passed House Concurrent Resolution 108, commonly known as the "Termination Act."⁷⁶ The US government designed the termination policy to remove their responsibility of Native Americans and to make property-owning individuals of all Indigenous peoples by eliminating tribal

⁷³ Harmon, *Reclaiming the Reservation*, 188 and 206-208.

⁷⁴ STA, Suquamish Tribal Cultural Center, W-1-16, Volume 1, File 1, "Suquamish Tribal Oral History Project. Interview of Lawrence Webster," 1982-05-20.

⁷⁵ Harmon, *Reclaiming the Reservation*, 208.

⁷⁶ William G. Robbins and Katrine Barber, *Nature's Northwest: The North Pacific Slope in the Twentieth Century*, (Tucson: University of Arizona Press, 2011), 138.

governments and reservations and ending treaty rights. “Too often,” commented Indigenous leader Vine Deloria Jr., “termination has been heavily disguised as a plan to offer the Indian people full citizenship rights.” He observed that Indigenous people had full citizenship rights since the *Citizenship Act* of 1924.⁷⁷ What the government meant by citizenship was assimilation and the break-up of communal rights. Termination made tribal tidelands ownership seem archaic to fisheries officials. If Indigenous peoples were to be assimilated into the greater society, all tribal lands would also be converted into private holdings, and there would be no need for collective shellfish sites.

In 1952, in preparation for the *Termination Act*, the Superintendent of the Western Washington Agency reported that all tribes under his jurisdiction, with the exception of the Lummi and Swinomish, were capable of handling their own affairs and recommended the extinguishment of their status and reserve.⁷⁸ Immediate Coast Salish tribal nations’ reactions to termination were mixed. They held a “great apprehension” over the correct response, but no Western Washington tribe was willing to give up treaty fishing rights.⁷⁹ Historian Richard White notes that tribal nations’ opposition to termination became a “bedrock of tribal politics.” Coast Salish nations joined Indigenous peoples across the country to re-assert their sovereignty over their land and resources. Further, he observes that an “ironic result” of the termination policy was that it created “a skilled group of lawyers attracted to Indian law by the large fees available through the Indian Claims Commission,” who honed their legal talents for success in later court battles over sovereignty and treaty rights.⁸⁰

⁷⁷ Vine Deloria Jr., *Custer Died for Your Sins: An Indian Manifesto*, (Norman: University of Oklahoma Press, 1987 [1969]), 75-76.

⁷⁸ WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 7, File 3, “Bureau of Indian Affairs - Washington Task Force, Notes of Meetings with Indians,” 1961.

⁷⁹ Northwest Indian Fisheries Commission, *Tribal Report to the Presidential Task Force*, 209.

⁸⁰ Richard White, *“It’s Your Misfortune and None of My Own”: A History of the American West*, (Oklahoma: University of Oklahoma Press, 1991), 580-581.

While US termination policy attempted to cast Coast Salish nations into the melting pot, Canadian policy during the 1950s similarly sought to assimilate Indigenous peoples. On January 18, 1950, the federal government moved the Indian Affairs portfolio to the new Department of Citizenship and Immigration. This move signaled that the federal government determined the primary goal for both immigrants and Indigenous peoples was Canadian citizenship. Prime Minister Louis St. Laurent explained that the move would help “make Canadian citizens of those who come here as immigrants and to make Canadian citizens of as many as possible of the descendants of the original inhabitants of this country.”⁸¹ Indigenous communities in Canada remained wary of government attempts to impose citizenship. On the advent of Indigenous peoples’ enfranchisement in 1960, Minister of Citizenship and Immigration Ellen Fairclough reassured those “who fear[ed] that granting the right to vote may mean loss of Indian status, treaty or other rights.” She maintained that these fears, which were similar to termination fears south of the border, were “entirely groundless.”⁸² Sk̓wx̓wú7mesh Chief Andrew Paull, however, viewed the enfranchisement movement as a time “for all Indians to unite, to fight, and to strengthen and stiffen our fight against extermination by assimilation.”⁸³ Theorist Lorenzo Veracini defines this settler-colonial method of dispossession as a “transfer by executive termination” and a “transfer by assimilation.” In these modes, Indigenous peoples are legislated out of existence through agreements between the state and Indigenous peoples who have “rejected their traditional communities and ‘individualised’ their land.”⁸⁴ Paull, and other

⁸¹ Heidi Bohaker and Franca Iacovetta, “Making Aboriginal People ‘Immigrants Too’: A Comparison of Citizenship Programs for Newcomers and Aboriginal Peoples in Postwar Canada, 1940s-1960s,” *Canadian Historical Review*, 90, 3 (September 2009): 428.

⁸² Ellen Fairclough, “Native Indians Need Have No Fear Of Losing Status or Rights by Vote,” *Native Voice*, February 1960, 4.

⁸³ Percy (Andy) Paull, “Now is Time For Fighting,” *Native Voice*, November 1961, 9.

⁸⁴ Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview*, (New York: Palgrave Macmillan, 2010), 37-38, 49.

Indigenous leaders, were cognizant of this process and put their communities on alert for assimilationist policies in sheep's clothing.

Privatization and state control of shellfish beaches played a significant part in the assimilation policies of the colonial nation-states. Coast Salish nations were aware of these connections and strategized their responses. For groups like the Suquamish and W̱SÁNEĆ, official recognition of their treaty fishing rights was paramount as they contended with local encroachment and regulatory policy. At a meeting on November 23, 1944, called to address multiple W̱ENITEM requests to purchase portions of the W̱SÁNEĆ reserve on SDÁ,YES, the chiefs answered government questions regarding which band “owned” each of the thirteen W̱SÁNEĆ reserves, but then turned to matters concerning them most. Indian Agent R.H. Moore reported that “[f]ishing at Goldstream and certain restrictions connected therewith was the cause of much discussion” and “[c]lam digging restrictions along the north shore of the Saanich Arm, below Ferry Landing was also discussed at length and complaints of discrimination against the Indians cited.”⁸⁵ W̱SÁNEĆ faced dual pressures of W̱ENITEM desire for their property and aggressive confrontations on the beach. Earl Claxton Sr. later recalled an incident at A'MEC'EN on Pender Island when “a man came down with a gun and told me I was to get off that beach because that was private property. I guess I wasn't moving too fast because he mentioned that I should leave right now.” Claxton supposed this man was defending some kind of “foreshore rights,” but he wasn't sure.⁸⁶ Like the Suquamish, W̱SÁNEĆ demonstrated “patience” when dealing with state officials. Claxton described another encounter when crabbing on SK'FÁMEN with his father from a small boat, raking crabs as the creatures crawled along the eel grass beds. A fisheries

⁸⁵ R.H. Moore, “Meeting Held at Saanich I.R. No. 1 of Chief's And,” 23 November 1944. LAC, RG10, Volume 9171, File B-53, “Cowichan Agency - Saanichton Band - General,” 1944 to 1945.

⁸⁶ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 47.

officer came alongside their boat and told them that they needed a commercial fishing licence to gather crab, or they would be charged for fishing without a licence. While his father had previously asserted Douglas Treaty fishing rights at a similar confrontation at S, ELEKTEL over salmon, this time, his father bought the licence to avoid facing charges.⁸⁷

As WSÁNEĆ and Suquamish history during this period shows, protection of Coast Salish moral ecologies required sustained effort in the face of continual state attempts to supersede their sovereignty and WENITEM willingness to violently suppress customary harvesting. In 1953, for example, when the province designated Goldstream a provincial park, the WSÁNEĆ again reminded the government of their treaty rights to it as they had in the 1930s.⁸⁸ The WSÁNEĆ also joined other Indigenous groups in their assertions of ownership over foreshores. On July 20 and 21, 1955, WJOELP Chief Dave Elliott participated in a meeting of BC Chiefs and DIA agents at Vancouver to discuss the *Indian Act*. While topics ranged from the education of their children, enfranchisement, liquor laws, the status of Indigenous women married to white men, and the election of chiefs and band councils, one Chief acknowledged the hard times facing coastal communities as cannery companies repossessed fishing vessels from those who were behind on their payments. Chief Paull noted that “[c]onditions were better back in the early 1900’s, we didn’t have so many whitemen breathing down our necks. Used to be able to go down to the creek and hook a salmon whenever we got hungry.” He insisted that a “[d]enial of food” would result in community sickness and that officials only gave Indigenous fishers permits “when they know the fish is not there.” Realizing that survival meant access to all marine resources, another Indigenous delegate asked the government what the “shore rights” in front of reserves were in regard to high and low tide. Agent Brown informed him that Indigenous

⁸⁷ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (C)*, 7-9.

⁸⁸ Brian O’Connell, “Saanich Tribes Have Problem For Convention,” *Native Voice*, February 1953, 8.

peoples' rights extended only to the highwater mark or "where the [land] vegetation ceases." Chief Paul then asserted Indigenous nations' riparian rights, which the agent explained were different from foreshore rights. Chief Simon Pierre then offered "a long story" about how he had been told that "the foreshore rights extended down to low water mark." Connecting the importance of foreshore rights to fishing access, a Kwakwak'awakw chief also asked if his coastal community could apply for foreshore rights. Because some of his community's reserves were on rocky beaches and the land offered "no place to dig gardens," the chief wondered if they could have a foreshore right akin to an easement allowing them to go out to the sea and fish tax free as a prairie farmer would walk out of their house and grow their produce for sale exempt from a tax. "Up the coast we could go from our house right out to sea and fish," he explained.⁸⁹ It is unlikely the government officials seriously considered this request. By this point, coastal communities such as the W̱SÁNEĆ had become increasingly skeptical of W̱ENITEM promises.

At the end of the decade, the STÁ,UTW denied a W̱ENITEM application to develop 365 acres of their land on IR2 citing a "[l]ack of faith in the word of white men," as their primary reason for this rejection. Chief Edwin Underwood observed that there was "plenty" of open land outside of the reserve for W̱ENITEM to build upon. He considered the preservation of W̱SÁNEĆ trees to be a benefit to the community and to W̱ENITEM as well. He warned: "Some day soon the people of Victoria will drive all the way out here to look at those trees. There won't be any others left."⁹⁰ Shortly after he rejected the application, in 1961, Chief Underwood demanded STÁ,UTW receive all their land back or fishing rights. He leveraged W̱SÁNEĆ claims to the land surrounding their reserve to regain their SXOLE fishery, which the federal

⁸⁹ Conference re Indian Act, Vancouver B.C., 20 and 21 July 1955. LAC, RG10-C-II-4, Volume 11303, File 208-1-8, "ICBC - Indian Act," 1955 to 1956.

⁹⁰ "Tsaout Indians Reject Land Development Plan," *Native Voice*, July 1959, 1.

government outlawed in the 1910s. “Indian givers want to take back North Saanich” read the lede of a *Vancouver Sun* article, playing on racialized stereotypes and revealing the WENITEM author’s opinion on the matter.⁹¹ Similarly, the *Daily Colonist* reported that a “Saanich Indian chief” was “on the warpath about fishing rights.” The *Sun* explained: “Chief Edwin Underwood of the Tsaout Reserve near Brentwood said the redskins are seeing red because the pale face, scalped them of their fishing rights.” Chief Underwood mainly desired to have the SXOLE fishery back, but he also offered to buy the land his ancestors had purportedly sold to the HBC in 1852 for the same price the company paid – “49 pounds, 13 shillings, four-pence about \$143.” Underwood offered a choice: “Give back our rights or our country.”⁹² The demands fell upon deaf ears and tensions between Indigenous peoples’ and WENITEM fishing interests along the Salish Sea further intensified across the decade.

On March 13, 1949, the Stó:lō, a Coast Salish group whose territory encompasses an area from the Fraser Canyon to the mouth of the Fraser River and down into Washington State, held a meeting at Chawathil (called Katz at the time) to protest the blame WENITEM had placed on them for salmon depletion. Chawathil Chief O.D. Peters wrote a letter to the Department of Fisheries stating that it would be “ridiculous to presume or believe that the near depletion of fish was caused by the Native Indians.” He called on the department to cease the fishing regulations on their food fishery and to include Indigenous leaders on any government decisions regarding salmon. Recognizing that conservationist rhetoric constituted essential ammunition in the government’s arsenal, Seabird Island Chief Harry Joseph pointed out that “[t]here was no such thing as near depletion of salmon till industry was established.” He then asked, “Why did the

⁹¹ “Indians Want Their Land Back: Or Fish Rights,” *Vancouver Sun*, 16 January 1961, 12.

⁹² “Give us fish rights or sell back Saanich,” *Daily Colonist*, 15 January 1961, 9; “Indians Want Their Land Back: Or Fish Rights,” *Vancouver Sun*, 16 January 1961, 12.

Indian not deplete the salmon when there were five to six times the present Indian population?”⁹³

Joseph, and other Stó:lō leaders, could clearly see how state officials wielded conservation rhetoric to limit Indigenous fishers’ access to the fisheries and that bureaucratic claims of Indigenous overharvesting were nothing more than racist deflections.

Coast Salish nations on both sides of the border understood that conservation policies regulating their fisheries breached either treaty-affirmed fishing rights or unextinguished Aboriginal rights to unceded territory and its resources. In Washington State, the 1942 court decision of *Tulee v State of Washington* recognized a treaty right to fish but gave the state the right to regulate this fishery for conservation purposes. From 1942 to 1968, this would be the state’s general position and the federal government declined to intervene on the tribes’ behalf. Because the State Department of Fisheries considered its own regulations and closures to be “reasonable and necessary,” Anthropologist Daniel Boxberger asserts that conflicts between the state and tribal fishers then became “inevitable.”⁹⁴ State regulations restricting tribal access to off-reservation fishing further provided tinder to the flammable situation. In a government investigation of tribal claims to fish off-reservation during the 1940s, Edward G. Swindell found that local groups held a deep conviction, transmitted generationally from their Elders, that their treaty rights to fish extended beyond the reservations. Believing such claims to be false, he recommended “education of the Indians as to the precise nature and present extent of such limited non-reservation rights as they now possess.” Further, he declared, “[u]nless such action is taken, the younger Indians, as a consequence of listening to their elders relate of the old rights and the oft-repeated promises of the treaty commissioners, cannot help but become inoculated with the idea that because of the treaties they were endowed with special privileges over those

⁹³ “Dept. of Fisheries Blames Indians for Salmon Depletion,” *Native Voice*, March 1949, 15.

⁹⁴ Boxberger, *To Fish in Common*, 132.

possessed by other citizens.”⁹⁵ Swindell articulated a key WENITEM fear in Washington State: that treaty rights made “super citizens” of Indigenous peoples, which undermined their own rights as US citizens. In Swindell’s opinion, colonial education of Indigenous youth on US citizenship and equal rights would dissuade them from making claims to non-reservation resources.

As public concerns over treaty rights grew, the state routinely prosecuted Indigenous fishers for fishing off-reservation. In one high-profile case, after Washington State failed to prove that Puyallup Bob Satiacum’s and James Young’s protest fishery in 1954 hurt conservation efforts, the State Supreme Court dropped the charges against them in 1957. This legal victory emboldened tribes in western Washington to increase their fishing activities across the state.⁹⁶ WENITEM sports fishermen then “vented their anger by acts of violence; cutting the Indians’ nets, pushing their boats into the river, pulling off their outboard motors and throwing them into the river, breaking the windows of Indian cars and threatening physical harm to Indian fishermen.”⁹⁷ A cold war had become hot as WENITEM commercial and sports fishers argued for the eco-colonial logic of conservation over Coast Salish nations assertions of a moral ecology based on a long historical knowledge of marine resource management. The start of the 1960s saw rising violence at off-reservation fishing locations and little change on the tidelands.

From 1950 to 1970, the number of Indigenous-owned fishing vessels in Puget Sound fell by two-thirds, thus making beach access to shellfish even more of a priority to communities.⁹⁸ The closing of a number of fish canneries around British Columbia further pushed Coast Salish

⁹⁵ Swindell Jr., *Report on Source, Nature, and Extent of the Fishing, Hunting and Miscellaneous Related Rights*, 107.

⁹⁶ Northwest Indian Fisheries Commission, *Tribal Report to the Presidential Task Force*, 26; Cohen, *Treaties on Trial*, 67-68.

⁹⁷ Northwest Indian Fisheries Commission, *Tribal Report to the Presidential Task Force*, 26.

⁹⁸ Boxberger, “Lightning Bolts and Sparrow Wings,” 5.

fishers away from salmon and towards the beaches and reliance on government-sponsored welfare programs.⁹⁹ The Native Brotherhood reported at its December 1960 convention that the salmon fishing season had been “the worst in 50 years.” That same year, the *Daily Colonist* reported that “[h]undreds of Indians on the west coast of Vancouver Island face starvation this winter and near-starvation conditions face Indians in the southern Vancouver Island area.”¹⁰⁰ Historian Paige Raibmon contends that the DIA could have “bankrolled” Indigenous fishers during these lean times because there were federal funds available to do this. “Instead,” she observes, “Indian Affairs chose to support agricultural projects, and so few Aboriginal fishers received help from the DIA.”¹⁰¹ In Victoria, the Member of the Legislative Assembly for Saanich met with six chiefs and seven councillors at Chief Mungo Martin’s potlatch house in Thunderbird Park to discuss the situation. “Throughout the area Indians face a hard winter,” said Songhees Chief John Albany, as meeting members sat around a central fire, heating a large pot of clam chowder. Albany pointed out that fishing and clam digging were the main source of income for his community. “We had one time a full, open season for digging clams,” he explained. “Now, through regulations, it is only seven months... They tell us the clams are no good from June to November but the Indians feel the clam is really at its prime then.” The *Daily Colonist* added that “[a]long the Saanich Peninsula and in Esquimalt, Indians are facing a very hard winter because of poor commercial fishing, a spear-fishing ban and a June to November ban on commercial clam-digging.”¹⁰² In response to Coast Salish nations’ concerns, Minister of Citizenship and Immigration Ellen Fairclough, assured the country that her department would

⁹⁹ Lutz, “Work, Wages and Welfare,” 352-353.

¹⁰⁰ Jamieson, *The Native Voice*, 219-220; “Indians Fear Starvation as Winter Approaches: Ask Relief from Restrictions Against Fishing, Clam-Digging,” *Daily Colonist*, 18 October 1960, 1.

¹⁰¹ Paige Raibmon, “‘Handicapped by distance and transportation’: Indigenous Relocation, Modernity and Time-Space Expansion,” *American Studies*, 46, 3/4 (Fall-Winter 2005): 368-369.

¹⁰² “Indians Fear Starvation as Winter Approaches: Ask Relief from Restrictions Against Fishing, Clam-Digging,” *Daily Colonist*, 18 October 1960, 1.

investigate, but dismissed allegations of “actual hunger.”¹⁰³ Fairclough missed the point. Coast Salish leaders argued that state regulation of their fisheries had impacted both their commercial and subsistence harvesting in ways that violated their treaty and Aboriginal rights.

In 1962, lawyer Henry Castellou Jr. tied fishing, foreshores, and the land question together in his advice to Indigenous groups in BC on how to assert their rights. He suggested that they needed a claims commission like the US ICC, in operation since the 1940s, to review these questions. He explained, “It is also beyond question that the Coast Indians were given small reserves so that they might earn their living from the sea, or from the gathering of seafood in the form of clams, oysters, crabs, crayfish, etcetera, when the tide was out in front of their reserves.” He recommended film crews produce educational material “showing Indians placing their nets out in front of their reserves... catching fish for smoking purposes, so that these losses to other reserves can be emphasized.” Recognizing that “a gravel yard and other municipal activities have ruined the clam beds of the Burrard Indian Reserve,” Castellou suggested that the “Burrard Indians at North Vancouver must be canvassed with all those Indians who have collected clams for sale in the past signing affidavits to this effect.”¹⁰⁴ In a sense, he called on coastal Indigenous communities to dig their metaphorical trenches in the war against colonialism along their shellfish beaches.

On the other side of the border, the Suquamish, too, engaged state channels to assert their rights to tidelands. At a meeting held by a BIA Task Force to investigate hunting and fishing rights, on August 2, 1961, at the Port Madison Reservation, Chairman of the Suquamish Tribal Council Charles Lawrence informed the room that Suquamish’s “primary resource [was] clam

¹⁰³ “Fairclough: Actual Hunger Not Possible,” *Daily Colonist*, 18 October 1960, 1.

¹⁰⁴ Henry Castellou Jr, “The B.C. Indian Land Question: BC Natives Must Act Immediately,” *Native Voice*, December 1962, 7-8.

digging.” He emphasized that clams were “the only source of income in the winter” for his community. Describing “no clam digging” signs that WENITEM property owners had placed on the beaches, he asserted that the Suquamish had rights to dig on tidelands “even after the property leaves their ownership.” He asked the federal government to step in and protect their treaty rights. Responding to termination policy pressures, Lawrence also expressed his concern that if reservation jurisdiction was transferred to the state, Indigenous tribes would lose all their treaty rights. Lawrence recognized that “clarification” on hunting and fishing rights, “including the type of gear allowed, the type of fish they could catch, and where are their usual and accustomed fishing grounds” would alleviate a great deal of tensions.¹⁰⁵ The Task Force agreed that Coast Salish tribal nations “traditionally collected shellfish in the area between high and low tides.” It also agreed with the tribe’s position that the federal government “intended for their reservations to include the tidelands.” Yet the Task Force observed that some treaties and executive orders creating reservations had indicated Indigenous harvesting to the low water line, while others, including the Point Elliott Treaty, did not. Therefore, the Task Force concluded that the federal government’s “failure to clarify the tidelands question has seriously handicapped the Indians in cultivating and using the shellfish resource.” It recommended that the termination policy be abandoned “as an unqualified objective for all these tribes” and to “provide the Indians assistance in solving their complex legal problems and in developing their human and natural resources.”¹⁰⁶ It had become clear to some federal bureaucrats that assimilation was unlikely to be successful and that the US government should then support tribal rights.

¹⁰⁵ WSA, Department of Fisheries – Indian Affairs, 87-5-607, Volume 7, File 3, “Bureau of Indian Affairs - Washington Task Force, Notes of Meetings with Indians,” 1961.

¹⁰⁶ Ibid.

While federal officials considered these proposals, the Washington State Department of Fisheries and Department of Game (which regulated steelhead sports fishery) clamped down on Indigenous fishers in Washington's rivers. In January 1962, over thirty fisheries officers, aided by a reconnaissance plane, seized the tackle, gear, and boats of six Nisqually fishers and charged them with illegal gillnetting. Asserting their treaty right to fish, the Nisqually then pleaded not guilty in court.¹⁰⁷ The following month, fisheries wardens arrested three Muckleshoot fishers on the Green River for illegal fishing.¹⁰⁸ According to the Northwest Indian Fisheries Commission, the "fish wars" in Washington State then "reached sizeable proportions by 1964."¹⁰⁹ Inspired by direct action tactics utilised by Civil Rights activists such as sit-ins, Washington State tribes engaged in a protest fishery, calling their demonstrations "fish-ins."¹¹⁰ The media on both sides of the border offered plenty of coverage on the subject. In BC, for example, the *Native Voice* reported that the Muckleshoot, Nisqually, and Puyallup "Fish-ins" were a "battle for Indian rights to fish in off reservation rivers in the State of Washington" that had resulted in "at least two skirmishes" between tribal fishers and enforcement officers.¹¹¹ Frank's Landing, on the Nisqually River, became a particular battleground where Nisqually leader Billy Frank Jr. and Assiniboine-Sioux Hank Adams squared off with enforcement officers and the National Guard.¹¹² Celebrity allies joined the fray. At 2:00 am on March 2, 1964, Adams alerted reporters that actor Marlon Brando would participate in the fish-ins at Puyallup River.¹¹³ [Figure 5]

¹⁰⁷ Bradley G. Shreve, "'From Time Immemorial': The Fish-In Movement and the Rise of Intertribal Activism," *Pacific Historical Review*, 78, 3 (2009): 412.

¹⁰⁸ Matthew Klinge, *Emerald City: An Environmental History of Seattle*, (New Haven: Yale University Press, 2007), 225.

¹⁰⁹ Northwest Indian Fisheries Commission, *Tribal Report to the Presidential Task Force*, 28.

¹¹⁰ Shreve, "'From Time Immemorial,'" 404.

¹¹¹ "U.S. Indians Fight River Fishing Ban," *Native Voice*, October 1965, 1.

¹¹² Trova Heffernan, *Where the Salmon Run: The Life and Legacy of Billy Frank Jr.*, (Seattle: University of Washington Press, 2012), 61-62; Donald L. Fixico, *Indian Resilience and Rebuilding: Indigenous Nations in the Modern American West*, (Tucson: The University of Arizona Press, 2013), 125.

¹¹³ Heffernan, *Where the Salmon Run*, 74.

African-American comedian and Civil Rights activist Dick Gregory joined Brando in the demonstrations.¹¹⁴ Revealing the conspicuous racism of the time, enforcement officers allowed Brando to leave the protest fishery on his own accord while they arrested Gregory who then spent over a month on a hunger strike in a jail cell at the Thurston County courthouse. Recognizing an unfolding public relations nightmare, the attorney general informed Governor Albert Rosellini that they needed to “get that son of a bitch out of jail. He could die over there.” But because Gregory had been arrested by the county, it was out of the governor’s control. Governor Rosellini then rejected petitions to pardon and release Gregory.¹¹⁵ Eventually Rosellini did secure a deal for Gregory’s release to prevent Gregory from succumbing to hunger.¹¹⁶

Public demonstrations and violence continued throughout the decade. On March 3, 1964, thousands of people gathered at the Washington State capital to advocate for Indigenous fishing rights. Organizers delivered speeches, Makah dancers performed, and the event enjoyed widespread media coverage.¹¹⁷ As a young public servant, former Secretary of State Ralph Munro recalls the chaos surrounding legislature at the time, as protestors would disrupt proceedings from the galleries and security would be ordered to “haul them out.”¹¹⁸ In October 1965, violence broke out again on Nisqually River at Frank’s Landing, as state officers overturned a Nisqually boat as an “emotion-charged battle of paddles, sticks, and stones ensued.”¹¹⁹ In March 1966, enforcement officers arrested four Muckleshoot gill-netters on Green River near Neely’s Bridge who were convicted for illegal off-reservation fishing.¹²⁰ And in May

¹¹⁴ Cohen, *Treaties on Trial*, 73-75; Sherry L. Smith, *Hippies, Indians, and the Fight for Red Power*, (New York: Oxford University Press, 2012), 33; Heffernan, *Where the Salmon Run*, 74.

¹¹⁵ Cohen, *Treaties on Trial*, 75.

¹¹⁶ Munro, 2 August 2019.

¹¹⁷ Shreve, ““From Time Immemorial,”” 403.

¹¹⁸ Munro, 2 August 2019.

¹¹⁹ American Friends Service Committee, *Uncommon Controversy*, 110.

¹²⁰ Vine Deloria Jr., *Indians of the Pacific Northwest: From the Coming of the White Man to the Present Day*, (Golden, Colorado: Fulcrum Publishing, 2012 [1977]), 127.

of that year, about fifty people marched in a “Treaty Trek” to bring public attention to Muckleshoot fishing rights.¹²¹ [Figure 6]

Fishing protests and fishing in defiance of state laws as a means to assert Indigenous nations’ sovereignty over marine resources were not unique to Washington State. As anthropologist Crisca Bierwert observes, “[o]n both sides of the border Salish people fished on their rivers, outside of permitted openings, often literally in the dark, eluding confrontation and public protest alike.” Bierwert asks if this form of fugitive fishing consisted of mere acts of “covert opportunism of people on the economic margins” or as “assertions of agency by people acting within their rights?”¹²² While the term “covert opportunism” is a mischaracterization of Coast Salish peoples’ fishing activities, the answer to her question is both.¹²³ As BC lawyer Tom Rhodes observed in 1965, “[f]ishing regulations [were] making Indian life a some-eat-some-don’t proposition”¹²⁴ Coast Salish communities needed to fish, whether the state recognized their rights or not. In the early 1960s, Pacheedaht Chief Charles Jones was fishing on San Juan River when a game warden reported him to the police who arrested him a week later. Jones served ten days in jail for catching a single salmon.¹²⁵ In 1969, the BC Supreme Court heard a case for a couple other Pacheedaht fishers convicted of unlawful possession of salmon on the Sooke River. The fishers asserted their Douglas Treaty right to fish. In his decision, Justice Brown labelled the Douglas Treaty a “larcenous arrangement” concocted by the HBC for profit and determined that legal interpretations of the document should be “in favour of the exploited Chiefs,” but decided

¹²¹ Smith, *Hippies, Indians*, 23.

¹²² Bierwert, *Brushed by Cedar*, 242.

¹²³ Lydia Sigo points out that the term “covert opportunism” is misleading as it suggests that Coast Salish nations capitalized on poor fisheries enforcement instead of acting within their “inherent rights” to fish. Sigo, 27 February 2022.

¹²⁴ “Lawyer Charges Fishing Laws Hurt Indians,” *Native Voice*, May 1965, 3.

¹²⁵ Chief Charles Jones and Stephen Bosustow, *Queesto, Pacheenaht Chief by Birthright*, (Nanaimo: Theytus Books, 1981), 54.

that the federal *Fisheries Act* superseded Douglas Treaty rights and upheld the conviction.¹²⁶

Court decisions continued to favor state policy over community rights by supporting regulation enforcement in the name of conservation.

With the backing of the courts, Canada further set policy detrimental to Indigenous peoples' fishing. In 1967, after the federal Department of Fisheries and Oceans (DFO) unilaterally closed Indigenous fishing on the Fraser River, Stó:lō leaders convened a committee at Seabird Island to protest the policy. Chief William Mussel Jr. explained to the group that the government had "treated us as irresponsible citizens." He suggested, "a more just and co-operative decision could have been made by the fisheries department, if they had consulted the Indians on their needs and knowledge. The Indians are the first ones on which the door is closed, figuring they are the weakest link in the chain." The committee listed a litany of "petty harassments" such as the stopping of "cars driven by Indians, and the trunks opened and the contents thrown on the road for the drivers to pick up later." Enforcement officers surveilled homes around the clock and even followed one woman in the middle of the night as she went to an outhouse 50 yards from her house.¹²⁷ Minister of Fisheries H.J. Robichaud, however, assured Minister of Indian Affairs and Northern Development Arthur Laing that his investigations into the matter did not reveal any "cases of harassment or embarrassment of the Indians by Fishery Officers or the R.C.M.P."¹²⁸ Yet, media reports of DFO enforcement contradicted Robichaud's confidence that DFO officers conducted themselves honorably or with any compassion for the Indigenous communities they disturbed.

¹²⁶ Newell, *Tangled Webs of History*, 146.

¹²⁷ Kitty Bell, "Aboriginal Rights 'Violated': Indians Protest Closure," *Native Voice*, July 1967, 1 and 5; "Fishing Closure Causes Anger," *Native Voice*, July 1967, 2.

¹²⁸ Robichaud to Laing, 4 January 1968. LAC, BAN-1999-1431-6, Volume 49, File 1-18-11-3-P4, "Game & Fisheries Laws British Columbia," 1965 to 1967.

The Stó:lō also rejected discriminatory regulations that forced them to cut off the nose and fins of their fish to mark them. A teenager at the meeting, speaking in public for his first time, Tzeachten Ken Malloway, stood up and addressed the Regional Director. He nervously unfolded a prepared statement, but as his hands began to shake, he put it down and spoke from the heart. He told the panel: “As far as I’m concerned what you’re doing is violating my human rights... what you’re doing, you don’t do this to the sports fishery, and you don’t do this to the commercial fishery. You don’t make them mark their fish.” According to Malloway, the Regional Director then told him, “Mr. Malloway... that’s quite a compelling argument” and called it the “most lucid argument” he heard that evening suggesting that Malloway was “probably right.” The government might be violating his human rights and the law.¹²⁹ The government cancelled this regulation a couple decades later, but it continued to circulate as a reasonable fisheries policy through government recommendations following its cancellation.¹³⁰

While government officials closely monitored Indigenous fishing with eco-colonial techniques, such as enumerating marked salmon and enforcing conservation closures on their fisheries, marine health deterioration further depleted dwindling fish populations. In the 1960s, diminishing salmon runs (caused largely by habitat loss from urbanization, deforestation and hydroelectric development as well as by commercial overharvest), and the loss of shellfish to pollution, threatened Coast Salish peoples’ health and livelihoods.¹³¹ In 1965, the provincial Marine Resources Branch recognized the great threat human sewage and industrial waste

¹²⁹ Malloway, 28 January 2020.

¹³⁰ For example, in 2005, a Standing Committee on Fisheries and Oceans recommendations to the DFO included “Regulatory Support for the Enforcement Function” by having “All salmon harvested under a Food, Social and Ceremonial license be clearly identified upon capture. This could be accomplished by the previous practice of cutting off the nose and dorsal fin of the fish immediately upon capture.” In Tom Wappel, *Here we go again... or the 2004 Fraser River Salmon Fishery: Report of the Standing Committee on Fisheries and Oceans*. Ottawa: Parliamentary Information and Research Service, 2005.

¹³¹ Newell, *Tangled Webs of History*, 123 and 126; BCA, Marine Resources Branch, GR-1118, Volume 16, File 5, “Production summaries,” 1965 to 1975.

presented to marine resources. It considered industrial pollution to be the most dangerous to salmon and admitted that “shellfish resources have been endangered or eliminated by municipal domestic sewage” by depriving the seawater of adequate oxygen levels and making shellfish consumption hazardous.¹³² Political opposition members criticized provincial Health Minister Eric Martin for the dumping of raw sewage in the Salish Sea citing “shellfish grounds pollution on the east coast of the Island as evidence of laxity.”¹³³ For Coast Salish peoples in BC, polluted sea water compounded hardships associated with inadequate infrastructure and government aid. In 1966, for example, the WJOLELP community lacked clean drinking water. Engineer M.B. Pierce expressed his disbelief in a letter to the Indian Affairs Branch, observing, “[i]t is rather appalling that most of the people in this band should be living in poverty when they are immensely rich in property.”¹³⁴ On July 13, 1967, W.I. Coplick, Chief of the Engineering and Construction Division, in charge of reviewing development needs on Tsartlip IR1, reported that increased pollution from sewage into Brentwood Bay, along with a lack of current in the bay, meant “a more refined sewage disposal system” would be required.¹³⁵ The combination of polluted marine resources and a lack of water mains highlighted the dire need for ecological health surrounding the community.

For coastal Indigenous groups, health and safety also included access on and off the beaches that fronted reserves. Offshore installations presented obstructions and hazards to Coast Salish peoples on the sea. Predominantly, these obstructions comprised of logging booms. For example,

¹³² BCA, Marine Resources Branch, GR-1118, Volume 8, File 9, “Report commercial fisheries,” 1965.

¹³³ Al Arnason, “Raw Sewage Ruining Shellfish, Martin told,” *Victoria Colonist*, clipping, no date. BCA, Marine Resources Branch, GR-1118, Volume 16, File 5, “Production summaries,” 1965 to 1975.

¹³⁴ M.B. Pierce to W. Robinson, 2 Feb 1966. LAC, RG10, Volume 52, File 974-8-19-20-1-1, “South Saanich IR #1 - Physical planning of communities - Land use study,” 1966-06 to 1968-12.

¹³⁵ W.I. Coplick, Chief, Engineering and Construction Division, 13 July 1967. LAC, RG10, Volume 52, File 974-8-19-20-1-1, “South Saanich IR #1 - Physical planning of communities - Land use study,” 1966-06 to 1968-12.

on September 3, 1964, Superintendent of Indian Affairs R.H.S. Sampson informed D. Borthwick, Superintendent of Lands:

We have continued to receive periodic complaints from the Indians, the most recent of which was yesterday. Mr. James Jim, an elderly man, was travelling by boat at dusk on the inside of a log boom which was moored immediately off the reserve. He struck a wire which apparently anchored the booms to the shore line of Kuper Island [Penelakut Island]. His boat was damaged and it cost him \$22.00 for repairs which he reports are not fully satisfactory... I am personally aware that booms are moored in Clam Bay quite close to the shore line of Kuper Island and that they remain there sometimes for extended periods. This interference with the Indians' riparian rights should not be condoned and I would like to know if any specific action can be taken by your Department to ensure that the consent of Indians is obtained before any more booms are moored in Clam Bay.¹³⁶

The following March, the B.C. Tugboat Owner's Association issued a "Notice to Members" informing its group that "Indian residents of Kuper Island have complained from time to time about the navigation channel immediately north of Kuper Island being blocked by booms moored in the towboat reserve... this is an extreme hazard to boats." The notice added: "it is also reported that the booms are not lighted, and on more than one occasion small boats have run into the booms in the dark. The hazard to the boats' occupants is obvious."¹³⁷ Any action on these

¹³⁶ Sampson to Borthwick, 3 September 1964. LAC, RG10, Volume 53, File 974-31-7-1, "Foreshore – Lease," 1962-08 to 1969-04.

¹³⁷ B.C. Towboat Owners' Association, "Notice to Members," 10 March 1965. LAC, RG10, Volume 53, File 974-31-7-1, "Foreshore – Lease," 1962-08 to 1969-04.

requests was slow. Three years later, Sampson reported to Borthwick that “repeated attempts were made by the Indian people to have something done about a bad situation. You will also see that Indian lives and property have been endangered by the presence of unlighted booms and insecurely moored booms in Clam Bay over the years.” He regretted that the Quw’utsun had not kept a “record of the offences,” but in his opinion there was “ample evidence that the privileges of Provincial Foreshore Reserve No. 33 [were] being flagrantly and openly abused.”¹³⁸

Log booms not only presented a transportation danger, they also threatened the health of the marine environment. As historical geographer Howard Stewart explains: “The biggest problem was that the bark shed from the endless abrasion of boomed logs accumulated on the sea floor.” This accumulation leads to a deficiency of dissolved oxygen which aquatic animals depend on to live. “In a healthy system,” he notes, “this oxygen is put into the system when marine plants photosynthesise and stream flows bring in new oxygen. Quantities of bark accumulating and breaking down, however, caused a very high biochemical oxygen demand (BOD) — it used up oxygen in sea water.” All the wood debris from the booms and barges would sink to the bottom of the sea destroying the habitat while also poisoning the “bottom-feeding organisms that ingested this woody material.” In addition to this, the booms also blocked available light to “bottom-dwelling marine vegetation.”¹³⁹ From debris to the blockage of sunlight, log booms negatively affected the health of the sea as they piled up along the coastline.

By the end of the decade, nearly two million cubic metres of timber were held in “water storage.”¹⁴⁰ Groups such as Quw’utsun Nation questioned the necessity of these booming grounds in front of their reserves. After community member Bob Daniels, the sole inhabitant of

¹³⁸ Sampson to Indian Commissioner, 20 June 1967. LAC, RG10, Volume 53, File 974-31-7-1, “Foreshore – Lease,” 1962-08 to 1969-04.

¹³⁹ Stewart, *Views of the Salish Sea*, 188.

¹⁴⁰ *Ibid.*, 188.

Kilpahlas IR3, began negotiations with Falt Towing Company for a boom site, the Cowichan Band Council issued a Band Council Resolution on March 4, 1969, declaring that they “object[ed] to the proposed booming grounds applied by Falt Towing Ltd. for some of the foreshore at Cowichan Bay fronting on property owned by Mr. Robbie Daniels because this interferes with our riparian rights and this area is also used for recreational activities, active and passive, and for fishing, clam digging, etc.” The community had allies in the Amalgamated Conservation Society who also wanted to keep “such a fine piece of property as Reserve Number 3” free of commercial activity. The Band Council agreed with “non-Indian residents that this land should be maintained, as is, for tourist development.”¹⁴¹ This alliance marked a moment of agreement between Coast Salish First Nations and neighbouring WENITEM over the proper use of the foreshore adjacent to Indigenous reserves.

Other Coast Salish groups, the Musqueam for example, were not opposed to the use of the foreshore for booming purposes but expected to be properly compensated for its use. In 1966, H. T. Vergett, Head, Land Surveys & Titles Section, wrote to the Indian Commissioner: “It seems that the Indians hope to obtain an increase in the riparian fees by direct negotiation with the firms using the foreshore lands. The Harbour Commissioners consider the amount of the fee, which is unspecified in the letter, to be excessive.” Vergett feared that the matter would go to court.¹⁴² J. S. Alsbury, Chairman of the North Fraser Harbour Commissioners, expressed similar concerns after Chief Willard informed him of the Musqueam’s intent. Alsbury reminded the DIA of the

¹⁴¹ Cowichan Band Council, Band Council Resolution, 4 March 1969. R.J. Rogerson, secretary, Amalgamated Conservation Society to DIAND, 18 Feb 1969. LAC, RG10, Volume 53, File 974-31-7-1, “Foreshore – Lease,” 1962-08 to 1969-04.

¹⁴² Vergett to Indian Commissioner, 29 June 1966. LAC, RG10, Volume 15, File 987-31-7-4-2-1, “Foreshore rights - North Shore Harbour Commission - Musqueam IR #2,” 1948-11 to 1967-08.

province's "endeavours to collect revenue which the Province is entitled to receive."¹⁴³ Indian Agent J.C. Letcher reported at length on the matter:

The Indians, through their legal adviser, decided they should take a stand and it seems apparent that no authority, including the province, have made any issue of ownership and that all concerned feel the Indians may own the tidal flats... On discussing ownership of the tidal flats, Mr. Sparrow suggests that the Indians side of the picture has not properly been stated. He advises that an Indian, Mr. Fred James, was used as interpreter for the Royal Commission of 1913-1916 and he spoke on behalf of the then Chief Johnny. On the date of the inspection or interview at Musqueam the incoming tide was possibly at three quarter flood and the tidal flats were a sea of high grass making the appearance of land. When the plea was made for more land, the Commissioners remarked — look at all the land out there which you aren't using. The Indians suggested — you should walk out there and see for yourself. It was agreed that the area could however be included in the reserve, right to the low water mark, as the area provided fishing, material for basket weaving of rugs, mattresses and clothing etc. There was also a beneficial use of the grass and even the roots of the reeds were chewed.¹⁴⁴

Letcher concluded that "[t]he Band therefore had the understanding the tidal flats belonged to the Band and did not realize there was any doubt concerning this until log booming started in the

¹⁴³ Alsbury to Arneil, 8 June 1966. LAC, RG10, Volume 15, File 987-31-7-4-2-1, "Foreshore rights - North Shore Harbour Commission - Musqueam IR #2," 1948-11 to 1967-08.

¹⁴⁴ J.C. Letcher to Indian Commissioner, 24 June 1966. LAC, RG10, Volume 15, File 987-31-7-4-2-1, "Foreshore rights - North Shore Harbour Commission - Musqueam IR #2," 1948-11 to 1967-08.

area adjacent to the reserve.” He also reported that when Musqueam had sold cordwood that broke off from the booms to support themselves during the winter, “some log owners prosecuted the Indians and two were jailed, thus indicating to the Band there was some dispute about land ownership.” He observed that after these arrests, the Harbour Commissioners intervened and negotiated foreshore permits with Musqueam “on the understanding, according to [the Musqueam], that their land title went out to low water mark, which is the main right bank of the Fraser River.”¹⁴⁵ Again, confusion over jurisdiction of the foreshore in British Columbia, complicated Musqueam’s ability to control what happened to the beach adjacent to their reserve.

Across Coast Salish nations’ territory, Indigenous groups strengthened their claims to the foreshore. For example, the Sk̓wx̓wú7mesh, whose reserves overlook Burrard Inlet and Howe Sound, fought successfully in 1961 for the “protection of their ancient foreshore rights” when they blocked the National Harbors Board from leasing the foreshore fronting North Shore IR1 to a subsidiary of Lafarge Cement of North America for a cement plant. Displeased with what Sk̓wx̓wú7mesh leader Cliff Paul called an attempt “to steal a million dollars worth of foreshore rights from the Squamish Indians,” the community “quickly massed before the ancient Church and marched across the Pacific Great Eastern tracks, men, women, and children, in a public demonstration of their opposition to the work proceeding on Reserve Property.” Sk̓wx̓wú7mesh also wired their protest and a resolution to the Minister of Citizenship and Immigration. A week later, the provincial government cancelled the lease and the company began dismantling the previous construction. Ed Nahanee, Business Agent of the Native Brotherhood, and spokesman for the Progressive Sons and Daughters of the Squamish Tribe, pointed out that because two other firms had leases on waterfront property adjacent to their reserves, it was critical that they

¹⁴⁵ Ibid.

won this fight as “there are other foreshore lands belonging to the Squamish people that the National Harbors Board will undoubtedly declare as its own.”¹⁴⁶ Thus, the protection of foreshore rights remained a crucial component in Coast Salish nations’ sovereignty over marine resources and their economic survival.

Innovation in harvesting techniques also threatened shellfish health. Since the early twentieth century, the BC Department of Fisheries received frequent requests for permission to use “some sort of mechanical arrangement for digging clams.” As Commissioner of Fisheries George Alexander explained in 1944, “sometimes it is a specially designed ploughing apparatus, while at other times it is something else, depending on the particular ideas of the person. Most of these ideas, if practicable, involve the digging of clams below low-water mark.”¹⁴⁷ Largely for conservation purposes, the government denied these requests.¹⁴⁸ Officials recognized that mechanical means of digging also meant the loss of income for harvesters, especially those from Indigenous communities. The DIA, for example, worried that mechanical diggers would “mean that a great number of Indians who gather clams for various canneries will be very adversely affected” and biologist Ferris Neave contended that the “permitting of mechanical digging might take the fishery largely out of the hands of the Indians, who at present are the chief producers.”¹⁴⁹ Despite an official disdain for mechanical diggers, innovators found ways to introduce them to the beaches. In the 1960s, Indigenous and WENITEM harvesters made public

¹⁴⁶ “Protests Halt Reserve Work: Harbors Board Lease Cancelled As Natives, Public Join Forces,” *Native Voice*, August 1961, 1 and 5.

¹⁴⁷ George Alexander to Ferris Neave, 21 October 1944. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 116, File 1167, “Shellfish,” 1935 to 1944.

¹⁴⁸ George Alexander to A.V. Olsen, 25 November 1935. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1159, “Shellfish,” 1936.

¹⁴⁹ W.E. Ditchburn to J.P. Babcock, 23 March 1928. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 115, File 1155, “Shellfish,” 1934; Ferris Neave to George Alexander, 25 October 1944. BCA, Provincial Dept. of Fisheries, GR-0435, Volume 116, File 1167, “Shellfish,” 1935 to 1944.

complaints about machine dredging operations.¹⁵⁰ T'Sou-ke Chief James Cooper, for example, spoke to news reporters after a mechanical operation tore through a local beach in Sooke. "The machine is ruining an awful lot of clams," he contended. "It rips the neck of the clam, and kills it. A lot of boys here get their income from clamming." Cooper concluded, "it seems a shame these clams should be ruined to line the pockets of one man."¹⁵¹ In response to the emergence of these machines, W̱SÁNEĆ Chief Underwood organized a meeting of "all Island Indian tribes" to mount an official protest against the clam dredge.¹⁵² The mechanization of shellfish harvesting process presented yet another threat to the intertidal environment which affected community members' ability to support themselves from the resource.

By the end of the 1960s, coastal Indigenous communities' protection of shellfish beaches and access to marine resources were intertwined with identity politics and cultural resurgence. Historian John Lutz observes that, economically speaking, Indigenous peoples had "hit bottom" during this period, with many on welfare and over 60 percent of families living below the poverty line.¹⁵³ In spite of these hardships, and in response to them, Indigenous peoples in both the United States and Canada revitalized their culture and activism in the late 1960s and the 1970s. Yellowknives Dene political scientist Glen Coulthard observes that American Red Power movements, such as the Washington State fish-ins, the occupations of Alcatraz and Wounded Knee, and the Trail of Broken Treaties march, predominantly organized by the American Indian

¹⁵⁰ BCA, Marine Resources Branch, GR-1118, Volume 16, File 5, "Production summaries," 1965 to 1975.

¹⁵¹ Patrick O'Neil, "Clam Carnage on Beach Stirrs Sooke Protests," *Daily Colonist*, 27 February 1965, 29.

¹⁵² BCA, Marine Resources Branch, GR-1118, Volume 16, File 5, "Production summaries," 1965 to 1975; For testimony regarding Suquamish complaints about machine dredgers destroying clam beds at Silverdale, see Suquamish Tribal Archives, Suquamish Tribal Cultural Center, P-6-03-1-2, Volume 1, File 1, "Suquamish Tribal Oral History Project. Interview of Earl Peck," 1982-07-07.

¹⁵³ Lutz, *Makuk*, 289.

Movement (AIM), inspired similar movements in Canada.¹⁵⁴ A young activist at the time of these movements, Secwepemc Art Manuel, explained that his generation was “profoundly affected” by AIM as it “provided a kind of romantic outlaw image that was irresistible to younger people.”¹⁵⁵ Grassroots and militant groups, such as the Native Alliance for Red Power in Vancouver who patrolled downtown streets to protect urban Indigenous peoples and, in a display of transborder solidarity, went down to Nisqually to participate in the fish-ins, were complemented with pan-Indigenous organizations such as the National Indian Brotherhood led by Cree Harold Cardinal and Secwepemc George Manuel.¹⁵⁶ Cardinal observed “sporadic indications” that the growing “red power faction of Canada” paralleled the Black Power movement in the United States.¹⁵⁷ Indigenous activism in Canada galvanized during this period, spurred on by significant legal gains of 1973 in the *Calder v. British Columbia* case, which acknowledged Indigenous title pre-existent to European settlement and the James Bay Cree injunction against a hydroelectric dam in their territory. Indigenous rights leadership, however, faced a “turbulent” decade of energy politics surrounding oil and mineral claims in northern Canada and fishing rights on the Pacific coast.¹⁵⁸

In addition to environmental and commercial challenges, First Nations in Canada also faced renewed assimilationist policies at the end of the 1960s. These policies would challenge Indigeneity and Aboriginal rights in the country, which included the right to protect shellfish

¹⁵⁴ Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, (Minnesota: University of Minnesota Press, 2014), 4-5; Smith, *Hippies, Indians*, 86-96 and 172-174; Bierwert, *Brushed by Cedar*, 238; Fixico, *Indian Resilience and Rebuilding*, 124-126.

¹⁵⁵ Arthur Manuel and Grand Chief Ronald M. Derrickson, *Unsettling Canada: A National Wake-Up Call*, (Toronto: Between the Lines, 2015), 37.

¹⁵⁶ Glen Sean Coulthard, “A Fourth World Resurgent,” In *The Fourth World: An Indian Reality*, George Manuel and Michael Posluns, (Minneapolis: University of Minnesota Press, 2019 [1974]), xxi-xxii and xxv; Manuel and Derrickson, *Unsettling Canada*, 35-37.

¹⁵⁷ Harry Cardinal, *The Unjust Society*, (Madeira Park, BC: Douglas and McIntyre, 1999 [1969]), 30.

¹⁵⁸ Coulthard, *Red Skin, White Masks*, 4-5.

beaches from encroachment. In June 1969, the Canadian government released the Statement of the Government of Canada on Indian Policy — commonly known as the “White Paper.” Art Manuel considered the release of this policy as the moment where the “modern [Indigenous] struggle begins” in Canada.¹⁵⁹ The federal government held that “special treatment” of Indigenous communities had disadvantaged these groups and outlined its primary goals as abolishing the *Indian Act* and removing Indian status to make all citizens of Canada equal. While the White Paper, according to the government, encouraged “the Indian people to be free – free to develop Indian cultures in an environment of legal, social and economic equality with other Canadians,” Indigenous leaders recognized this move as the culmination of Canadian assimilationist goals that would strip them of their heritage as well as their Aboriginal rights to land and resources.¹⁶⁰

Coulthard identifies the White Paper as the “central catalyst around which contemporary Indigenous self-determination movement coalesced.”¹⁶¹ Coast Salish organizations such as the Southern Vancouver Island Tribal Federation, were quick to act. They met with the North American Indian Brotherhood of B.C. and the B.C. Indian Homemakers Association for a series of “Indian Consultation Meetings” held initially at Tsartlip, Tsawout, and other W̱SÁNEĆ community halls, as well as at Songhees, and then across British Columbia throughout the summer of 1969. The committee issued a final report to community members and the provincial government stating that no action should be taken regarding the White Paper until they have been consulted and the BC “Land Question” addressed.¹⁶² The committee saw troubling

¹⁵⁹ Manuel and Derrickson, *Unsettling Canada*, 27.

¹⁶⁰ *Ibid.*, 29-31.

¹⁶¹ Coulthard, *Red Skin, White Masks*, 4-5.

¹⁶² Donald Moses, “Final Report: Indian Consultation Meetings,” 1969. BCA, Dept. of the Provincial Secretary, GR-1661, Volume 37, File 5, “Federal Provincial Co-ordinating Committee on Indian Affairs,” 1969.

implications in the White Paper policy for their land and resource rights. “The Government Policy wants the Indian to manifest his pride,” the committee noted. “The policy says, do your thing, practice your culture, be an Indian. But you can only fish and hunt when I tell you so.” They pointed out that pollution and overfishing had endangered their ability to hunt and fish and that the government’s practice “[t]o slowly curtail the hunting and fishing for food rights of one people, so that others may be amused for the sport of it; is completely immoral.” At Seabird Island, the committee declared that Indigenous peoples in BC “want[ed] their reserves, their hunting, fishing and any other rights guaranteed; this is what we mean by being full Canadian citizen.” The White Paper’s definition of citizenship did not guarantee these rights “other than paying taxes and maybe some fishing rights.” All groups agreed that they needed to keep their reserves and that the government should support their efforts to develop the bits of land and resources, like shellfish, attached to them.¹⁶³

While the government saw the White Paper as a policy ensuring equality, Indigenous groups framed it as an assault on their identity and sovereignty over land and resources. The following year, the Union of B.C. Indian Chiefs (UBCIC) rejected the White Paper and called for a recognition of “all rights due Indians,” including “land title, foreshore, water and riparian rights, forest and timber, hunting and fishing on a year-round basis, mineral and petroleum, and all other rights basic to Indian life that are acquired hereditary, historical; usufructuary, moral, human or of legal obligation.”¹⁶⁴ They also called for “[n]ew or revised legislation” to allow Indigenous peoples to “obtain fish for food without the necessity of a permit, at any time from any lake, river, stream, or inlet and from beyond the surf line, to include shellfish, herring spawn and oolichan, with no restrictions as to age or sex.” Emphasising the need for WENITEM to

¹⁶³ Ibid.

¹⁶⁴ Union of B.C. Indian Chiefs, *A Declaration of Indian Rights: The B.C. Indian Position Paper*, 1970, 4.

understand and respect Indigenous moral ecologies, they asserted that “[m]ethods of fish and wildlife conservation should be left to our own discretion.”¹⁶⁵ Born out of the White Paper controversy, the UBCIC continues to defend Aboriginal rights and title in BC to this day.¹⁶⁶

In the early 1970s, protest fisheries continued to be a preferred method for bringing greater public attention to the Indigenous position. Historian Dianne Newell observes that fishing protests in BC coincided with the larger revival of Indigenous rights activism on both sides of the border.¹⁶⁷ Inspired by direct action in Washington State, in 1970, the Stó:lō held a “fish-in” to draw public attention to their fishing struggles.¹⁶⁸ Acknowledging the inspiration from Red Power movements and fish-ins in the United States, political scientist Paul Tenant asserts that 1973 became the year that the “contemporary era of British Columbia Indian political protest began.”¹⁶⁹ The Quw’utsun engaged in another fish-in at Cowichan River that year. Led by organizer Gordon Elliott, the community put a traditional weir into the river at the Quamichan reserve. Elliott also invited Minister of Fisheries Jack Davis to a salmon barbeque to accept the community’s brief on their fishing grievances and told media that the protest weir would remain until “Indian fishing regulations are eased” or the community caught enough salmon “to last them through the winter.” While community members supported the weir, the Band Council did not “give it official sanction.”¹⁷⁰ The DFO enforcement officers did not interfere with Quw’utsun operations that summer, seemingly acknowledging the community’s authority over the river. The following year, however, the department charged nine Quw’utsun for fishing or possessing fish on the Cowichan River during a closed season.¹⁷¹

¹⁶⁵ Ibid., 13.

¹⁶⁶ The Union of B.C. Indian Chiefs, “Mandate.” <https://www.ubcic.bc.ca/mandate>.

¹⁶⁷ Newell, *Tangled Webs of History*, 147.

¹⁶⁸ Bierwert, *Brushed by Cedar*, 238.

¹⁶⁹ Tennant, *Aboriginal Peoples and Politics*, 174.

¹⁷⁰ “Indians trap fish,” *Vancouver Sun*, 4 September 1973, 39.

¹⁷¹ Harris, *Fish, Law and Colonialism*, 183.

While state repression of Indigenous fishers occurred on both sides of the border, the degree of violence differed. At the end of the 1960s, the fish wars in Washington State boiled over. In 1968, Frank's Landing activists and supporters staged protests at the Temple of Justice and the Thurston County courthouse. A young Puyallup woman spoke to the crowd with tears streaming down her face. "I don't know what's wrong with [Governor] Dan Evans!" she declared. "And I don't know what's wrong with [State Fisheries Director] Thor Tollefsen! Why is it that they keep practicing genocide on my people?"¹⁷² Hank Adams delivered "A Citizen's Letter to His Governor" in which he warned Evans that Frank's Landing would be protected by armed guards ready to shoot state department trespassers. He announced that they would honor federal warrants but nothing issued by the State of Washington or Thurston County Courts.¹⁷³ On September 9, 1970, several hundred local police and Washington State troopers arrested 60 Puyallup fishing rights activists hitting them with tear gas and clubs. [Figure 7] The tribal fishers carried guns and knives and one lobbed a firebomb.¹⁷⁴ Then, in a climatic moment in the saga, on January 19, 1971, a couple of WENITEM shot Hank Adams in the stomach while he slept in a car near the Puyallup River to monitor a set-net. Adams claims that one of the two men who shot him said, "You . . . Indians think you own everything." Police dismissed his account of events and refused to investigate the case, claiming that Adams must have shot himself.¹⁷⁵ In light of the recent violence, the federal government decided to step in and litigate on behalf of the treaty tribes in order to find a peaceful settlement to the fishing conflict. The ensuing court

¹⁷² Heffernan, *Where the Salmon Run*, 107-108.

¹⁷³ Hank Adams, Survival of American Indians Association, to Governor Daniel J. Evans, 17 October 1968. In American Friends Service Committee, *Uncommon Controversy*, 209-210.

¹⁷⁴ Smith, *Hippies, Indians*, 39.

¹⁷⁵ Cohen, *Treaties on Trial*, 81; Shreve, "From Time Immemorial," 432.

case resulted in the most significant court decision (the Boldt Decision) regarding Indigenous fishing rights on the Pacific coast.

From the introduction of the Pacific oyster and the decline of the commercial salmon fishery to the Boldt Decision, Coast Salish communities' dependence on shellfish increased while their access became further restricted due to pollution and a variety of state policy decisions and public actions regarding ownership and use of the foreshore. Coast Salish nations' preservation of their foreshore rights and the health of shellfish resources on both sides of the border became inextricably linked to assertions of fishing rights. While the Canadian and American governments utilised similar instruments and tactics to enforce colonial regulations over the fisheries such as conservation rhetoric and assimilation policies, and Indigenous nations' means of resistance such as protest fisheries and pan-Indigenous organization were also similar, the results were different on each side of the border. Through fish-in demonstrations and other forms of direct action, Indigenous activists and their allies in the United States, pushed the American government towards acknowledgement of a fundamental treaty right to fish in Washington State that would carry over to shellfish rights in the following decades. In Canada, where treaties were not signed with every coastal group, the same recognition of fishing rights did not occur. Yet the Boldt Decision affected Coast Salish nations' rights to shellfish and tidelands on that side of the border as well. Canadians and Indigenous peoples then negotiated its influence on policy and fishing actions for the rest of the twentieth century.

Chapter 3. “Super Citizens” and Salmon Commissions: The Boldt Decision and Fishing Rights on Both Sides of the Imaginary Line

When Justice George H. Boldt issued his decision in *United States v. Washington* on February 12, 1974, allocating 50% of all commercially harvestable fish in Washington State to treaty tribes, he dramatically altered the power dynamics over marine resource management between Coast Salish tribal nations and WENITEM in the Pacific Northwest. Coast Salish fishers immediately organized to regulate and manage their fisheries under their own moral ecologies in a new relationship with state regulatory bodies. They formed the Northwest Indian Fisheries Commission (NWIFC) as an inter-tribal organization to co-manage fisheries resources with the state and to facilitate Indigenous fishing.¹ At the same time, the Boldt Decision infuriated many WENITEM in Washington State. WENITEM protested outside legislatures, organized their own protest fisheries, and sent thousands of letters to government offices complaining about the decision.

While many studies have examined this decision from a legal, political, journalistic, and economic perspective, this chapter will take an ethnohistorical approach to examine how the decision altered relationships between Coast Salish peoples and WENITEM on both sides of the border. Utilising recent settler-colonial studies that acknowledge that the term “settler” can be used as an analytic, I turn the ethnographic lens on WENITEM to understand the great anger and anxiety WENITEM expressed after this decision.² Washington State WENITEM deployed an array of arguments that can be categorized into five types: first, an argument of citizenship,

¹ Northwest Indian Fisheries Commission, “About us.” <https://nwifc.org/about-us/>. (accessed 24 January 2021).

² Lowman and Barker, *Settler*, 2.

equality, and the primacy of individual rights; second, a racialized argument that Indigenous peoples squandered welfare handouts and would similarly destroy marine resources; third, a fiscal argument that asserted treaties were merely a commodity that could be purchased for the right price; fourth, a constitutional argument that the federal government was acting as a “dictatorship;” and finally, if failing with the first four, ad hominem attacks on the “crack-pot” Judge Boldt and his competence.³ Understanding WENITEM ethnohistory during this period, explains why it became so important for coastal Indigenous nations to protect their access to marine resources and the beaches that are home to shellfish at the end of the twentieth century.

The second goal of this chapter is to analyze the decision in a transborder context. It was impossible for Canadians around the Salish Sea to ignore the vitriol south of the border. This chapter includes views from British Columbia and analyzes federal and provincial policy designed to avoid similar legal claims by Indigenous nations to fishing rights. When Canada and the United States negotiated a new Pacific Salmon Treaty (PST) in the early 1980s, Canada had recently completed a federal investigation of Indigenous fishing rights and the salmon conservation crisis. While the United States entered into an era of co-management between state and tribal authorities that informed their participation at these international meetings, the Canadian government actively silenced Indigenous nations’ efforts to have a larger voice in salmon management. How US co-management compared to Canadian approaches, such as the Aboriginal Fishing Strategy, is considered here with respect to Coast Salish nations’ assertions of sovereignty over fisheries.

³ G.O. Price to Henry Jackson, 17 Sept 1975. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 15, “Boldt Fishing Decision,” 1976.

On February 12, 1974, after a four-year trial and deliberation, Judge Boldt ruled that the treaty tribes' right to "fish in common with all citizens of the Territory," as delineated in the Stevens Treaties, meant that the tribes had the right to half of the fishing resources. Scholars observe that Boldt was highly impressed by the evidence presented by the federal government's expert witness anthropologist Barbara Lane.⁴ Lane, who resided in Victoria, BC, and also worked with Coast Salish communities in Canada, was a well-respected authority on Salish ethnohistory and participated as an expert witness in many later Boldt hearings to determine each tribe's usual and accustomed fishing locations.⁵ While many scholars have hailed the Boldt Decision as a landmark court ruling for Indigenous rights in North America, it angered most WENITEM commercial and sport fishers and their allies in Washington State because it abruptly reversed a century-long takeover of Salish Sea resources. Described by journalist Don Hannula as the "first wave of acrimony," WENITEM protesters "lapped at the courthouse steps" in demonstrations in Tacoma and Olympia. On one such occasion in March, 1974, more than 700 sports fishers marched in protest with banners that read: "Sportsmen's rights torn to a shred, screwed by a Boldt without any head," and "Hi there, I'm Judge Boldt and I hate white fishermen." [Figure 8] Later in the evening, protesters used a gillnet cork line to hang the judge in effigy.⁶ Automobiles sported bumper stickers reading: "Nuts to Boldt" and "Can Judge Boldt—Not Salmon."

WENITEM also illegally fished in their own protest fisheries, which resulted in skirmishes with

⁴ Cohen, *Treaties on Trial*, 10; Deloria Jr., *Indians of the Pacific Northwest*, 127-128; Boxberger, "The Not So Common," 71-73; Forsman, 23 July 2019; Leonard Forsman, 20 August 2019.

⁵ WSA, Attorney General, State, AR-20070628-05, Volume 2, File 9, "Transcript of Hearing - Phase 1," 1973-09-07; WSA, Attorney General, State, AR-20070628-05, Volume 3, File 4, "Barbara Lane Series - Declaration B. Lane," 1988; WSA, Attorney General, State, AR-20070628-05, Volume 3, File 40, "Barbara Lane Series - Opinion of Barbara Lane," 1987-07-29; Chemainus First Nation Communications Department, "Tributes paid to Warriors of the past," *Coast Salish Gathering Newsletter*, 27-29 February 2008, 4-5; "Barbara Lane's Address: Indians Win Fishing Rights," *Native Voice*, January 1975, 5 and 8; Heffernan, *Where the Salmon Run*, 13; Tony Forsman, interview by Gordon Lyall, 20 August 2019, Suquamish, Washington State, USA.

⁶ Don Hannula, "The Boldt Decision: Ten Years Later: George Boldt, man of principle," *Seattle Times*, 12 February 1984, A16.

fisheries enforcement officers who were unaccustomed to regulating the WENITEM fishery in a manner previously used primarily on Indigenous fishers.⁷ Conflict between state and citizens resulted in bloodshed two years later, on October 24, 1976, when a state enforcement officer shot a gillnetter named William Carlson.⁸

Of the five types of arguments WENITEM made against the Boldt Decision, perhaps the cleverest and most insidious was the first: the argument that treaty rights went against American values of equality before the law. By claiming that all people should be equal citizens, WENITEM absolved themselves of any colonial wrongdoing by depicting themselves as promoters of a just society. Often letter writers to the government pointed out to their elected officials that the United States was a democracy and that any recognition of treaty rights made “super citizens” of Indigenous peoples which was incompatible with the ideals of individualism and equal rights. For example, one letter writer to Senator Henry Jackson wrote: “It seems that everywhere one turns these days, unless he is a member of some minority group, his rights are being infringed upon in order to give ‘super rights’ to others.”⁹ Another urged Jackson to support Congressman Jack Cunningham’s proposed bill to “end Indian treaties and have equality for all citizens alike” calling it an “intolerable situation here in Washington State with Indian ‘super’ citizens.”¹⁰ When Tulalip Tribe Fish Patrol Officers confronted WENITEM fishers preparing to fish during a closure, they received the “usual comments” from the fishers asking if the fishing was “open to super humans?”¹¹ Suquamish fisheries manager Tony Forsman never understood

⁷ Cohen, *Treaties on Trial*, 15.

⁸ UWSC, Warren Grant Magnuson Senate papers, 1969-1980, 3181-005, Volume 185, File 3, “Salmon Fisheries - Boldt Decision,” 1975 to 1977.

⁹ A. Lyle Thrall to Henry Jackson, 5 Oct 1977. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 154, File 18, “Boldt (George) Decision,” 1977.

¹⁰ A.B. Decker to Henry Jackson, 21 Sept 1977. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 154, File 18, “Boldt (George) Decision,” 1977.

¹¹ WSA, Attorney General, State, AR-20070628-05, Volume 12, File 19, “Transcript of Hearing - Phase 1,” 1976-10-11.

this perspective. “What’s so super-citizen when you’ve got 50 percent unemployment,” he asked, “and one of the highest infant-death rates around?”¹² An ethnohistorical approach supported by settler-colonial studies can help answer Forsman’s question as the perspective stems from WENITEM desire to legitimate their settlement of Indigenous land.

The equality position was so effective because it rang true to many WENITEM who did not view themselves as responsible for the colonial dispossession that happened 120 years earlier. Indeed, most were also unaware of the systematic state efforts to dispossess Indigenous fishers that followed. Their ignorance allowed them to overlook their own privilege while falsely perceiving it elsewhere. Educators Eve Tuck and K. Wayne Yang identify this process as “moves to innocence” in which WENITEM “problematically attempt to reconcile settler guilt and complicity, and rescue settler futurity.” Moves to innocence, they explain, assist WENITEM in relieving themselves of guilt or responsibility while retaining land, power and privilege.¹³ When WENITEM called Indigenous peoples “super citizens,” they lamented the loss of power and privilege they once enjoyed and made a case for equality in order to recover these losses while upholding American values.

Tuck and Yang offer a taxonomy of different moves to innocence labelling the first “settler nativism,” in which WENITEM “locate or invent a long-lost ancestor who is rumored to have had ‘Indian blood,’ and they use this claim to mark themselves as blameless in the attempted eradications of Indigenous peoples.”¹⁴ Lorenzo Veracini describes this as a “narrative transfer,” where some WENITEM even claim that they are an Indigenous person due to their birth place.¹⁵

¹² Richard W. Larsen, “The Boldt Decision: Ten Years Later: The dawn of cooperation,” *Seattle Times*, 12 February 1984, A17.

¹³ Eve Tuck and K. Wayne Yang, “Decolonization is not a metaphor,” *Decolonization: Indigeneity, Education & Society*, 1, 1 (2012): 3 and 10.

¹⁴ *Ibid.*, 10.

¹⁵ Specifically, “Narrative transfer (IV).” Veracini, *Settler Colonialism*, 42.

In an instance of this behaviour, one writer told Senator Warren Magnuson in 1974, shortly after the Boldt Decision, “[n]ow, I feel that my native born rights and the rights of my native born son and wife are being discriminated against in favor of the American Indian. Most of whom are younger than I, and were not even on this earth when I was born, on the shores of the waters of Puget Sound, the waters of which I have been denied the right to fish.”¹⁶ False claims of Indigeneity served WENITEM by making tribal nations’ rights seem unnecessary in a country where everyone is putatively “Indigenous.”

Similar to this narrative transfer was the claim that the new policy disadvantaged white fishers unfairly. WENITEM complained that the Boldt Decision was “racial discrimination” against white fishers, seemingly with no sense of irony in the context of nearly a hundred years of state persecution of Indigenous fishing — a history never taught to them in the public school system.¹⁷ The Washington State government responded to white citizens’ concerns over financial losses by issuing a Senate Rules Committee delegation to Washington D.C. in order to request that Congress review “the legal rights of the Indian as an American citizen with respect to such areas as taxation and equality under the law.”¹⁸ Washington State also appealed the Boldt Decision to the Supreme Court, which upheld the decision with a 6 to 2 vote on July 2, 1979.

The loss of fishing quotas presented economic hardships to fishing families and a state-sponsored vessel buy-back scheme only provided a band-aid to a growing population of struggling fishers. These losses understandably fueled a great deal of the resentment. A mother of a fisher wrote to inform Senator Magnuson that her son would fish even if it meant arrest, to

¹⁶ Ervin C. Palmer to Warren Magnuson, 19 Sept. 1974. UWSC, Warren Grant Magnuson Senate papers, 1969-1980, 3181-005, Volume 184, File 34, “Salmon Fisheries - Boldt Decision,” 1975 to 1977.

¹⁷ Dick and Carolyn Calhoun to Henry Jackson, 14 Oct 1977. Tom Philpott, president, Washington Reef Net Owners Association, to Jackson, 30 Sept 1977. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 154, File 18, “Boldt (George) Decision,” 1977.

¹⁸ John A Cherberg, Lieutenant Governor, Washington State Senate to Brock Adams, 2 December 1976. UWSC, Brock Adams papers, 1965-1976, 1096-001, Volume 22, File 11, “Fishing Matters #1,” 1975 to 1976.

“show how desperate this situation is.”¹⁹ Retired USAF Colonel Carl H. Larson sent several letters to his congressman describing his concerns over the situation. In one letter, he reported, “[m]y neighbour across the street from our Suquamish waterfront property, a commercial fisherman forced to sell his boat and equipment, his home and look for gainful employment elsewhere to support his family of 3 elementary school grade boys.” He added that a real estate agent had informed him the “Indian situation at Suquamish had seriously affected the market.”²⁰ By the mid 1970s, the postwar economic boom ended with employment at a historic nadir comparable to the 1930s depression. Historian Jefferson Cowie notes that the 1970s represented a pivotal transition in US society from the New Deal era of big government and social spending to an ethos of small government and fiscal conservatism which had negatively impacted the well-being of white working-class men and their families. Unions, labour movements, and the “vibrant organizing drives that had once promised a new day for workers” had been “reduced to a trickle” and the working class suffered disproportionately from the economic downturn.²¹ Many WENITEM conflated economic hardships with perceived notions of an unequal society that privileged its Indigenous population. “Why do we have to give the Western Washington Indians our right to make a living fishing?” asked Mrs. Tom Pomeroy, adding, “Indians have always had special rights to fish over the white man.”²² Another called Indigenous peoples in Washington State, a “bunch of racketeers... They are too lazy to work like the rest of us have to

¹⁹ Mrs. Norm Gilbert, registered voter, to Warren Magnuson, no date. UWSC, Warren Grant Magnuson Senate papers, 1969-1980, 3181-005, Volume 184, File 34, “Salmon Fisheries - Boldt Decision,” 1975 to 1977.

²⁰ Carl Larson to Henry M. Jackson, 1 Feb 1976. UWSC, Brock Adams papers, 1965-1976, 1096-001, Volume 75, File 17, “Conservation - Indian Fisheries, Boldt Decision,” 1975 to 1976.

²¹ Jefferson Cowie, *Stayin’ Alive: The 1970s and the Last Days of the Working Class*, (New York: The New Press, 2010), 11-12.

²² Mrs. Tom Pomeroy to Warren Magnuson, 1974. UWSC, Warren Grant Magnuson Senate papers, 1969-1980, 3181-005, Volume 184, File 34, “Salmon Fisheries - Boldt Decision,” 1975 to 1977.

work to pay our taxes.”²³ “The indians, because of their national origin, are allowed to have their cake (U.S. Citizenship) and eat it too (special rights you and I don’t have),” wrote another who also believed that “[t]oday’s indians bear little resemblance, except maybe physically, to their ancestors... the noisy ones, are only trying to get all they can for nothing from our government. The sad thing is we keep giving it to them.”²⁴ The down-trodden citizen angle served WENITEM who wished to dissociate themselves from the harms of colonialism well, as it transformed them into the victims.

Probably no WENITEM better exemplifies the victim position than former state Fisheries Director Milo Moore. In a 1974 report on “Pacific Northwest Indians,” he offered his opinions in light of the Boldt Decision. “Pacific Northwest Indians never had it so good, under U.S. aid to minority Administration,” he declared. Playing on the ideal of equality while commenting on AIM protest occupations of government buildings, Moore continued: “It has become a sad situation, where well educated Indian leaders show so little interest in abiding by the U.S. constitution and public laws. And the aggressive acts of Indians in tearing apart public properties of the U.S. Bureau of Indian Affairs and other public services, indicates a need for members of Congress and the National administration to bear down for full compliance and respect of law to secure the rights of all citizens; and to protect against further lawlessness and the plundering of public funds.” He lamented a “near endless flow of taxpayers dollars and public contributions to help the poor Indians,” arguing that “there appears no end to objectives of Indian people to take the unsuspecting Americans for financial assistance and civil rights beyond the bounds of the

²³ Howard E. Mason to Jackson, 7 December 1975. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 18, “Boldt Fishing Decision,” 1976.

²⁴ Jan D. Gano to “Scoop”, 1976. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 252, File 10, “Boldt Decision,” 1976.

United States Constitution, and laws adopted for ordinary citizens.”²⁵ Moore’s last point seeps into the second type of WENITEM reaction to the Boldt Decision, which was a position of racial superiority.

The WENITEM sense of racial superiority centered on what Veracini labels another form of narrative transfer, wherein “indigenous people are represented as hopelessly backward, as unchanging specimen of a primitive form of humanity inhabiting pockets of past surrounded by contemporaneity.”²⁶ Again, Moore represented this position well when he stated: “Across this nation Indians cry to the public and the Congress, the white man stole our lands, our natural resources in fish and game, and drove us to despair [sic] confined to allotted Indian lands... They (the Indians) have chanted the poor Indian story, to arouse sympathetic appeal, and to inspire writers of books and stories of tragedies of the past, and today, to beg or steal every benefit possible under the guide-lines set by educated Indians and non-Indian leaders, now active in all parts of the country.” He continued: “When Lewis and Clark made their way west and surveyed this land, the living conditions and ways of Indian people, they said they had never seen a more backward, a more lazy, and a more useless band of Indians.” In conclusion, he argued that “Indian welfare before the coming of white settlers was so bad there is no comparison to any such existence today. They fought among neighbouring tribes, stole another tribe’s fish, their women and maintained little respect for anyone, according to history of the area.”²⁷ Moore’s last point exemplifies WENITEM tendencies to highlight violence in Indigenous history in order to

²⁵ Milo Moore report, 1974. UWSC, Warren Grant Magnuson Senate papers, 1969-1980, 3181-005, Volume 185, File 3, “Salmon Fisheries - Boldt Decision,” 1975 to 1977.

²⁶ Veracini, *Settler Colonialism*, 41.

²⁷ Milo Moore report, 1974. UWSC, Warren Grant Magnuson Senate papers, 1969-1980, 3181-005, Volume 185, File 3, “Salmon Fisheries - Boldt Decision,” 1975 to 1977.

make false claims about Indigenous people's current ability to function as a society, again without the slightest acknowledgement of historical European and settler violence.

Moore and those who followed his line of thinking demonstrate the intersections between settler colonialism and white supremacy. "If privilege and racism are the symptoms, white supremacy is the disease," says geographers Ann Bonds and Joshua Inwood. White supremacy, they argue, "connects the discursive construction of race to the structural, material, and corporeal production of white racial hegemony."²⁸ By framing Indigenous peoples as incapable of taking care of themselves while simultaneously overexploiting natural resources, WENITEM positioned themselves as paternal care-givers who had been spurned by their wards with the Boldt Decision. This position also allowed them to appear as martyrs, another "move to innocence." According to one letter writer, Indigenous peoples had "100 years — 5 generations — to adjust to a new way of life but they accept all its benefits and shoulder but few of its responsibilities." The writer believed that Indigenous peoples exhibited "an eagerness to take advantage of any legal loophole that they stand to profit by such as the sale of fireworks, tax-free cigarettes and game fish — all illegal as far as non-Indians are concerned — and then duck behind their treaty rights for protection." "It is time," the author determined that treaties were "amended to apply to current conditions" or the government should "nullify treaties entirely."²⁹ Drawing from equal citizenship rhetoric, this second type of reaction leaned heavily on the belief that WENITEM already supported Indigenous peoples who did not need the added fishing rights. In an extreme example, one letter writer told Jackson, "[a]s a sport fisherman, I have thousands of dollars invested in a boat and related equipment; I am not about to see it fall into disuse to provide

²⁸ Ann Bonds and Joshua Inwood, "Beyond White Privilege: Geographies of White Supremacy and Settler Colonialism," *Progress in Human Geography*, 40, 6 (2015): 720.

²⁹ E. Smith to Warren Magnuson, 19 April 1974. UWSC, Warren Grant Magnuson Senate papers, 1969-1980, 3181-005, Volume 184, File 35, "Salmon Fisheries - Boldt Decision," 1975 to 1977.

further drinking money for a pack of Indians.” He added, “[w]ith the amount of money you people and our gov’t squander on useless social programs I think you could afford to buy all these Indians all the cheap wine they could drink and an old beater of a car a couple times a year. This certainly would be the most economically feasible way to handle the problem if not sociable acceptable. I don’t care how you do it but we want these Indians off our back and quickly.” He finished by reminding Jackson that “not too many Indians bother to vote.”³⁰ Even if all Indigenous individuals did vote, the overwhelming WENITEM population had made minorities of Indigenous communities in Washington State and the democratic system often threatened their treaty rights.³¹

The idea that Indigenous peoples could be paid off was popular among the WENITEM population and represents the third type of reaction they held. This third reaction that WENITEM had to the Boldt Decision derived from the first two and a desire for “equality” among American citizens. WENITEM in Washington State often asked if government officials could simply “buy out the Indian’s rights” or “abrogate the Indian Treaties.”³² One letter writer asserted that Congressman Cunningham’s treaty-abrogation bill, euphemistically called the Native American’s Equal Opportunity Act, made “so much sense” because it would “save the average tax-payer so much money and aggravation over the long haul.” The writer continued, “if the current American generation is asked to continue to pay for all of the inequities visited by prior generations, we will be bankrupt even sooner than the pessimists among us already expect.”³³

The belief that treaties could be bought or abrogated supports Leanne Simpson’s assertion that

³⁰ G.O. Price to Jackson, 17 Sept 1975. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 15, “Boldt Fishing Decision,” 1976.

³¹ Ashue, Dennison, Reid, and Wilson. “What Is at Stake for Washington’s Native Nations Today,” 36-37.

³² David N. Allen to Don Bonker, 27 Jan 1976. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 15, “Boldt Fishing Decision,” 1976.

³³ Douglas F. Glant, President and CEO, Pacific Group, to Henry Jackson 15 Sept 1977. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 154, File 18, “Boldt (George) Decision,” 1977.

WENITEM view treaties as a kind of “receipt for a business transaction.”³⁴ Many WENITEM held the belief that with the right amount of money, treaty rights, such as the 1850s Stevens Treaty, or rights guaranteed by the Royal Proclamation of 1763, could be purchased by governments and done away with, then, as this position goes, all citizens will be equal.

Through the act of paying taxes, WENITEM in Washington State often viewed themselves as the employer of governments and officials. For example, one writer suggested that “Judge Boldt should be fired for failure to adhere to the wishes of his employers, the tax payers.”³⁵ When government acted against their wishes WENITEM felt, to quote another writer, that as a “citizen, voter, taxpayer” they were “being ignored” which made the writer “a down-ridden [sic] U.S. citizen” and “an oppressed citizen.”³⁶ In another example, the Peoples Rights Association declared in February 1976 that if “we, the common people, and the sportsmen, can not get action to stop the Indian from fishing the rivers for commercial purposes, then we must take steps to remove the politicians from their dynasties and replace them with people who are more concerned with the welfare of all the people and the preservation for our nations resources.”³⁷

WENITEM perceptions of government oppression are also examples of the fourth kind of reaction they had to the Boldt Decision: claims that it was part of an undemocratic turn in the country. Most WENITEM viewed the Boldt Decision as a flagrant betrayal of the political mandate set by the majority of voters. In hyperbolic fashion, letter writers accused the government of actions that “smacks of a dictatorship of the worst kind” and made claims of “Nazi Storm Troopers” being sent to “enforce the order of Judge Boldt for the protection of

³⁴ Simpson, *Dancing on Our Turtle's Back*, 106.

³⁵ Howard E. Mason to Jackson, 7 December 1975. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 18, “Boldt Fishing Decision,” 1976.

³⁶ Robert L. Andersen to Henry Jackson, 1978. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 254, File 19, “Fishing,” 1978.

³⁷ Gary L. Todd, “Member Peoples Rights Assoc.,” no addressee on letter, 12 Feb 1976. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 15, “Boldt Fishing Decision,” 1976.

Indian treaty fishing rights on Puget Sound when our own Washington State Supreme Court says this is wrong.”³⁸ Another writer lamented in an open letter to the US Supreme Court that “[i]n 1770 and 1941 it was a FOREIGN power that was guilty of infamy, but in 1974 and 1976 it is our OWN Federal Courts that have darkened the skies of this alleged Democracy. Thanks to YOU, we start the first month of our 200th Bicentennial with this sad plea — WHAT DO WE HAVE TO CELEBRATE?” A refugee from “Tito’s dictatorship” asked Senator Jackson, “[n]ow, Sir, what country is this: democratic USA or a thuggish communistic country.”³⁹ Whether fascist or communist, WENITEM could not seem to agree, but they knew it was dictatorial.

Perhaps the most sinister letters came in the form of threats. More than a few of those who wrote to their elected leaders informed them that “THE SILENT MAJORITY IS COMING TO LIFE!”⁴⁰ They would notify recipients that they “represent[ed] the silent majority in this area” complaining that the “Federal Government must begin to realize the ‘Silent Majority’ have a minimal amount of rights... because [of] a few Federal Judges who feel immune to the majority opinion and think they can single-handedly bring about equality at the expense of anyone in their path.”⁴¹ Historian Michael Kazin observes that this “silent majority” consisted of middle-class

³⁸ Dick and Carolyn Calhoun to Henry Jackson, 14 Oct 1977. Jack L. and Lois A. Hansen to Jackson, 18 Sept 1977. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 154, File 18, “Boldt (George) Decision,” 1977.

³⁹ Ken McLeod, “An Open Letter to Members of the United States Supreme Court.” UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 17, “Boldt Fishing Decision,” 1976. Ante Tony Elezovic to Henry Jackson, 17 Sept 1977. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 154, File 18, “Boldt (George) Decision,” 1977.

⁴⁰ Harold Tollefson to Brock Adams, 22 Jan 1976. UWSC, Brock Adams papers, 1965-1976, 1096-001, Volume 75, File 16, “Conservation - Indian Fisheries, Boldt Decision,” 1975 to 1976. Harold Tollefson to Henry Jackson, 22 Jan 1976. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 17, “Boldt Fishing Decision,” 1976.

⁴¹ Lad A Flowers to Henry Jackson, 8 July 1976. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 252, File 10, “Boldt Decision,” 1976. Paul W. Brendle II, President, Drywall Supply, no date. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 253, File 18, “WA. ST. Matters Fishing,” 1977-10 to 1977-12.

people who, since the 1930s, “nominally voted Democratic” but during the course of the 1950s and 1960s with the growth of New Deal-inspired government-funded social programs as well as legislation on Civil Rights and voting rights, “no longer felt their income and cultural status were secure in a society that seemed to be unraveling.”⁴² Historian Lisa McGirr adds that the rise of the New Right during this period attracted many at the political center because this conservative movement had “jettisoned white supremacy and staunch segregationism in favor of a philosophy of individual rights, private property, and homeownership.” Therefore, a “softer ‘color-blind’ conservative ethos gained wide national traction.”⁴³ As one letter writer explained, “I do not support the favoring of Indian Fishing over any other national group.”⁴⁴ This “color-blind” political position exemplifies Tuck and Yang’s moves to innocence as it asserts that it is not the individual citizen who holds racist views, it is the government with its racist decision-making. Further, by depicting the government as dictatorial, all immoral acts against Indigenous peoples were not those of the public or individuals but of a sinister government that had turned its evil upon the helpless taxpayer. Thus, many saw the Boldt Decision as “an ILLEGAL DOCUMENT” and a “BAD LAW” and called for “the impeachment of Judge George Boldt for his unconstitutional manner.”⁴⁵

Questions surrounding Boldt’s competence to adjudicate the case represent the fifth way WENITEM responded to the Boldt Decision. “Judge George Boldt has turned into a raving

⁴² Michael Kazin, *The Populist Persuasion: An American History*, (Ithica, New York: Cornell University Press, 1998), 223; Ira Katznelson, *When Affirmative Action was White: An Untold History of Racial Inequality in Twentieth-Century America*, (New York: W.W. Norton & Company, 2005).

⁴³ Lisa McGirr, *Suburban Warriors: The Origins of the New American Right*, (Princeton: Princeton University Press, 2015 [2001]), xiii.

⁴⁴ Paul W. Brendle II, President, Drywall Supply, no date. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 253, File 18, “WA. ST. Matters Fishing,” 1977-10 to 1977-12.

⁴⁵ Loren Bergh to Lloyd Meeds, 12 December 1975. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 145, File 15, “Boldt Fishing Decision,” 1976.

maniac!” exclaimed one letter writer.⁴⁶ Another couple declared Boldt, “so impartial [sic] to ‘Indian Rights’ that he is incompetent to rule on any case.” They outlined several outcomes of Boldt’s ruling including that he had “deified” the courts, “threatened” other court judges and the Director of Fisheries, and “created chaos” in the fishing industry. They also asserted that Boldt, and other purportedly activist judges, such as those who ruled in favour of desegregationist bussing programs in northern American cities, “created bigotry among our people.”⁴⁷ This particularly intriguing example of a move to innocence places blame on Boldt for making the letter writers bigots. Another letter writer accused Senator Jackson of sitting on his “fat duff” while letting Washington State’s “God given natural resources be destroyed by a senile judge named George Boldt.” Perhaps more menacingly, the writer informed Jackson that he was “sick of being a second class citizen” and attached a promotional photo of Jackson with his family adding a postscript: “You do have a nice family.”⁴⁸ Another particularly angry letter encapsulates all five reactions:

Personally, I devote my time to two basic things. First, my school work and second fishing... I caught only one steelhead. One FUCK’IN FISH for all my time. Who in the hell got Bolt [sic] in the courts. 50 bucks says he is secretly hitched to a squaw... I have two brothers that love fishing; hell the suckin Indians won’t leave a dam fish for them. I wish you will do your best efforts to solve me and all other sportsmans which fish OUR NATIVE RIVERS.”

⁴⁶ John. M Schutt to Jackson, 27 August 1977. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 253, File 18, “WA. ST. Matters Fishing,” 1977-10 to 1977-12.

⁴⁷ Jack L. and Lois A. Hansen to Jackson, 18 Sept 1977. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 154, File 18, “Boldt (George) Decision,” 1977.

⁴⁸ Bob Heirman to Henry Jackson, 1976. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 252, File 10, “Boldt Decision,” 1976.

The author concluded, “P.S Judge Bologna or was it Bolt [sic] is a pervert.” Judge Boldt became representative of WENITEM loss of power and privilege and thereby the focus of a great deal of anger.

In general, WENITEM responses to the Boldt Decision remained defiant throughout the 1970s. Many resented the curtailment of their power and privileges and were not shy about voicing their discontent. Their reaction and behavior rippled across the Salish Sea and did not go unnoticed on the Canadian side of the border. Canada took a different approach to the issue of Indigenous fishing rights while always keeping an eye on how marine resource management and social relations in Washington State evolved in response to the decision. In the late 1980s, sociologist Patricia Marchak observed: “The impact of [the Boldt Decision] went beyond the American fisheries: it clearly had implications for how Canada dealt with its land and fisheries claims and affected the expectations and demands of natives in B.C.”⁴⁹ Regarding Indigenous peoples’ observations, Bierwert adds: “The transformations in the western Washington Native fishery were highly visible to Indians in Canada, where Salish fishing people kept on bootlegging salmon.”⁵⁰ Both officials and Indigenous peoples in British Columbia received regular intelligence from their American contacts which influenced their actions.

Barbara Lane, the influential expert witness in the hearings for *United States v. Washington*, became an important source of information for Indigenous fishers in British Columbia. At the forty-first annual convention of the Native Brotherhood of British Columbia in December 1974, Lane addressed the delegates as the keynote speaker. The Boldt Decision, she told her audience,

⁴⁹ Patricia Marchak, “‘Because Fish Swim’ and Other Causes of International Conflict,” In *Uncommon Property: The Fishing and Fish-Processing Industries in British Columbia*, Patricia Marchak, Neil Guppy, and John McMullan, eds. (Toronto: Methuen, 1987), 166.

⁵⁰ Bierwert, *Brushed by Cedar*, 240.

“is of special interest to members of the Native Brotherhood not only because Indian fishing rights are involved,” she explained, “but also because some of the fisheries which are affected by the decisions are shared by Washington and British Columbia fishermen.” Lane informed the delegates that the Brotherhood had made available a booklet from the United States Department of the Interior, “giving background information on Indian Fishing Rights in the northwestern United States.” Therefore, she observed, many First Nations in BC were “familiar with the way in which the case has preceded.” Lane also connected the Douglas and Stevens Treaties, noting that the two governors corresponded before Stevens wrote the treaties for Washington Territory, which resulted in shared ideals over treaty making and reserve allocations. “Both men,” she contended, “thought that some Indians did not require much land because they got their living from the sea and from the rivers.” Importantly, Lane informed the crowd that if the NWIFC, created by the Boldt-case area treaty tribes to provide policy, technical assistance, and management coordination amongst themselves, “demonstrates that it can successfully manage the Indian fisheries in western Washington, then those people who have argued over the years that Indians cannot be controlled over their own affairs ‘because they are not ready’ will be proven wrong again.” Lane then outlined the stakes: “Who will share what portion of a limited and sadly diminished resource?” and “[w]ho will have a say in controlling and regulating access to that resource?” She argued that the two were tied together and was hopeful that “[r]ecognition of Indian rights in the Pacific salmon fishery may prove to be one of the most hopeful developments in protection of the resource.”⁵¹ Lane recognized how important Indigenous Knowledge was to the overall health of the salmon resource and to the Salish Sea in general.

⁵¹ “Over 2,000 Members: Brotherhood Meet Biggest, Best Yet,” *Native Voice*, December 1974, 1-2; “Barbara Lane’s Address: Indians Win Fishing Rights,” *Native Voice*, January 1975, 5 and 8.

The Brotherhood rose to Lane's call. A month after Lane's keynote address, Charles Shaw, writing for the *National Fisherman*, reprinted in *Native Voice*, reported that the "U.S. federal court decision currently under appeal, guaranteeing treaty Indians the right to more than half the sport and commercial fish in Washington, has encouraged British Columbian Indians in their campaign to have similar privileges extended to them by Canada."⁵² Nisga'a Chief James Gosnell, chairman of the Brotherhood, told members at the annual convention that Indigenous people in BC "should be entitled to more than 50 per cent of the harvestable fish in British Columbia waters."⁵³ Noting Lane's close relationship with Indigenous groups on both sides of the border, Shaw further reported that Lane "said the ruling affecting Indians in the State of Washington has special significance for B.C. Indians who share the same fishing grounds in some cases." Lane recognized that while "Canadian laws differ from the American law," the Boldt Decision "should influence any B.C. settlement" on fishing rights.⁵⁴ Indeed, Indigenous fishers in BC soon increased their claim beyond what Boldt had ordered in Washington State.

In 1976, the *Daily Colonist* reported that "B.C. native Indian fishermen have declared ownership of the entire coastal fishery." According to the article, the Native Brotherhood announced in June of that year that they would support "the general claims of tribal groups on land which was never surrendered to civil authority." In an example of Coast Salish moral ecology that promoted marine resource sharing, or possibly in resignation that WENITEM would not relinquish control without guaranteed access, the Brotherhood promised that "the Indians are prepared to negotiate sharing their resources with their fellow Canadians." Repeating Gosnell's position, they indicated that they "may hold out for a bigger share than the 50 per cent of the

⁵² "Boldt Decision: Some Reactions: Influence on Canada," *Native Voice*, February 1975, 6.

⁵³ Gosnell was fond of saying that Indigenous Peoples owned BC "lock, stock and barrel." Claxton Jr., 6 March 2020; "Boldt Decision: Some Reactions: Influence on Canada," *Native Voice*, February 1975, 6.

⁵⁴ "Boldt Decision: Some Reactions: Influence on Canada," *Native Voice*, February 1975, 6.

Washington State Coastal fishery awarded to United States Indians by District Court Judge George Boldt two years ago.”⁵⁵ In the absence of treaties, most coastal groups based their claims on an Aboriginal right to fish.

The lack of treaties signed between colonial officials and Indigenous groups in British Columbia created a question over fisheries that could not be solved through legal interpretations of treaty language. Instead of interpreting the treaty as Judge Boldt had done, for many coastal groups in BC the courts could only look at fisheries as an Aboriginal right. For these communities, the question of fishing rights was also inextricably linked to the question of land rights and sovereignty. During this period, both the Canadian government and provincial government were unwilling to talk about land rights, despite a Supreme Court ruling in *Calder v. the Queen* (1973) which left open the question of Indigenous title to the land via a split decision against the Nisga’a. With the inability to have treaty rights interpreted by the courts, and a denial of Indigenous title, Indigenous leaders pursued other means of asserting their rights.

In 1974 and 1975, Indigenous peoples in BC again took to direct action to call attention to their fishing rights. As Paul Tenant describes: “Placard-carrying Indians marched down main streets [and] took fish in defiance of federal regulations.”⁵⁶ The Sk̓wx̓wú7mesh community asserted their sovereignty over fish crossing their territory when they banned WENITEM from fishing on Squamish River at their reserve. Sport fishers complained to elected officials, and some accused the Sk̓wx̓wú7mesh of hiding “illegal netting.” One letter writer suggested to provincial Minister of Recreation and Conservation Jack Radforth that “[i]t is common knowledge the Indians are drift netting and selling both salmon and steelhead from the Squamish.” Radforth replied that it was within Sk̓wx̓wú7mesh rights to restrict access to their

⁵⁵ “Indians lay claim to entire B.C. Coastal fishery,” *Daily Colonist*, 26 June 1976, 1.

⁵⁶ Tennant, *Aboriginal Peoples and Politics*, 179.

reserve; however, he hoped they had “sound reasons for doing so.”⁵⁷ Similarly, in 1976, the Qualicum community erected “no trespass” signs on Big Qualicum River in an effort to deter sport fishers from poaching fish eggs. WENITEM critics of the action rationalized what the *Native Voice* termed sports fishers’ “abusive egg taking practice” by claiming that there were “too many coho” in the river. In response to WENITEM rejection of Coast Salish moral ecologies, the *Voice* replied to critics that “[a]ll citizens of this province, and that includes Indians, share the responsibility of being concerned about the proper management and disposal of our natural resources.” The same article blasted another WENITEM editorialist for calling the Boldt Decision a “weird ruling” declaring the reference a “show of disrespect and a contempt of the courts in the U.S.” The article concluded that “[i]t should not be the case for an Indian to be accused of revolt and confrontation when he acts in a legal fashion to protect natural resource from abuse. Nor should court rulings in favour of Indian fishing rights be regarded as ‘weird.’”⁵⁸ Clearly, the Boldt Decision weighed heavily upon both WENITEM and Coast Salish nations’ positions on marine resource management and sovereignty in BC.

The federal government’s response to Indigenous nations’ fishing claims was not to negotiate fishing rights but to find a technocratic solution to ecological and political problems by attempting to increase salmon stocks in hopes that more fish would pacify Indigenous communities. In 1976, the federal government canvassed the public on salmon enhancement proposals and, based on general support for the program, launched the Salmonid Enhancement Program (SEP) in 1977. SEP progress reports outlined a “Native Program” that would not be merely a “collection of SEP activities that happen to relate to Native people.” Rather, the

⁵⁷ D. Woods to Jack Radforth, 12 Feb 1974. Jack Radforth to Mr. D Woods, Richmond, 18 March 1974. BCA, Fish and Wildlife Branch, GR-1114, Volume 75, File 50-00-1974-1975, “Fish – General, Native Indian Fisheries,” 1974 to 1975.

⁵⁸ “Stop Poaching: Restrict Access to Big Qualicum,” *Native Voice*, February 1976, 1-2.

government “consciously designed” their “Native Program” as a “deliberate effort on the part of policy makers to implement a program with two main purposes: 1. To help the SEP achieve one of its explicitly stated goals, namely, to contribute to the well-being of Native people in British Columbia. 2. To help Native people make use of the opportunities that will result from SEP.”⁵⁹ As state-run hatcheries and other enhancement projects had failed in the past, the government needed to prove to Indigenous communities that this program was different.⁶⁰ The government then commissioned a study on Indigenous fishing and SEP program which produced a report in 1978.⁶¹

The 1978 SEP report offered some revealing observations. While evaluating the Native Brotherhood’s 1976 claim to the fishery, analysts Christine Cummins, Michael Friedlaender, and Douglas Williams, noted the “connection between the food fishery and Native land claims.” They suspected that the “aboriginal right embodied in the food fishery is just one of the rights an overall settlement of land claims and aboriginal rights claims can be expected to deal with,” adding that discussions with the Brotherhood would hopefully be done in coordination with the “land claims settlements of all coastal bands in British Columbia.” The analysts also observed “[t]he situation in Washington State, although historically and legally entirely different, is sometimes taken as a model by Native fishermen in British Columbia.”⁶² They pointed out that, thanks to the Boldt Decision, enhancement programs in Washington State meant that Indigenous fishers enjoyed “greatly increased opportunities for Indians to earn a living from fishing,” which

⁵⁹ Environment Canada. “Objectives of the SEP Native Program,” 12 August 1977. BCA, Environment and Land Use Committee. Secretariat, GR-1002, Volume 37, File 4, “Salmonid Enhancement Program - Native Programme,” 1977 to 1978.

⁶⁰ For analyses of early-twentieth century hatchery programs see Taylor, *Making Salmon* and Mathew D. Evenden, *Fish versus Power: An Environmental History of the Fraser River*. (Cambridge: Cambridge University Press, 2004).

⁶¹ Christine Cummins, Michael Friedlaender, and Douglas Williams, “Impact of the Salmonid Enhancement Program on Native People,” February 1978. BCA, Environment and Land Use Committee. Secretariat, GR-1002, Volume 37, File 4, “Salmonid Enhancement Program - Native Programme,” 1977 to 1978.

⁶² *Ibid.*

had “stimulated their interest in enhancement to increase the harvest.” In BC, they realized, “under the current laws and fishery regulations, this is not possible. Bands which operate enhancement projects will receive only marginal (or no) economic benefits from the increased production of fish.” The government would therefore be required to finance SEP projects and present them as employment opportunities. The analysts then considered the benefits of more Indigenous peoples’ participation in fisheries management in light of events south of the border. After witnessing the new Washington State regime and the NWIFC’s assertion of Coast Salish moral ecologies on commercial fishing, the analysts realized “[n]ative managed projects have the greatest potential for contributing to community satisfaction and community stability.”⁶³ Therefore, they recommended that the government design the SEP program to raise “tribal pride,” by creating work programs in local communities, which would ideally circumvent any further Boldt-type claims to the fishery.⁶⁴ Instead of formally extending an invitation to Indigenous leaders to regulate their own fisheries, however, the federal solution was to have local operations of SEP projects within the government framework, and many of these projects received inadequate funding.⁶⁵

While increased federal funds to Indigenous communities certainly benefited local economies, many Indigenous groups were unhappy with the manner in which the federal and provincial governments rolled out the program. In a position paper on the SEP, the Indian Homemakers Association and the Native Food Fish & Wildlife Committee, both located in the Fraser Valley, accused the government of creating “dummy committees” of Indigenous participants to “cover

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ BCA, Environment and Land Use Committee. Secretariat, GR-1002, Volume 38, File 1, “Salmonid Enhancement Program - Public Participation – Correspondence,” 1976 to 1977; Bob Joseph, “Salmonid enhancement or Government enhancement,” *Native Voice*, January 1977, 16; “P.T.A. and S.E.P.,” *Native Voice*, January 1978, 15-16; Mark Hume, “Island Indians get \$400,000 salmon grant,” *Victoria Daily Times*, 23 August 1978, 39.

indiscretions of others or to use [their] influence to delude our native people.” They refused to participate in the program, calling it a “charade” and accused government officials of “saying Indian lands are of strategic importance, but Indian aboriginal right to fish is not.”⁶⁶ Other Indigenous commentators suggested that local communities, instead of gaining in fish and revenue, were subsidising a failing federal program.⁶⁷ By 1979, the SEP programs faced financial difficulties. Nine Indigenous projects that commenced the year prior had endured 50% budget reductions and communities saw employment drop by 60% as a result of the cuts. Indigenous leaders now warned their communities to be wary of government deception and “false promises.”⁶⁸ Indigenous groups staged demonstrations on January 11, 1979, at the Georgia Street Courthouse and then again on March 1, 1979, in front of the Fisheries Regional Office. [Figure 9] The Native Brotherhood supported the first demonstration while on the second occasion, the Nimpkish, Sts’Ailes and Snuneymuxw First Nations requested that political organizations stayed at home.⁶⁹

Along with complaints over the SEP program, Indigenous groups continued to assert their rights to salmon. The St’at’imc First Nation, for example, took a recent court decision as an affirmation of their right to manage salmon throughout their territory. When provincial court Judge William Diebolt convicted Bradley Bob, in early August 1979, of fishing without a license during a closure, he decided that because Bob fished at his reserve, Bob had certain rights to the fish. Diebolt granted Bob “an absolute discharge” ruling that “once fish reach the reserve, the Indians have a right to them.” Indigenous leaders, such as the president of the Union of B.C.

⁶⁶ Position Paper of the Fraser Valley Food Fish and Wildlife Committee and the Indian Homemakers’ Association of B.C. – SEP. BCA, Environment and Land Use Committee. Secretariat, GR-1002, Volume 37, File 4, “Salmonid Enhancement Program - Native Programme,” 1977 to 1978.

⁶⁷ Alex Whitecross, “They’re Your Fish,” *Native Voice*, December 1979, 14.

⁶⁸ “S.E.P. faces cutbacks,” *Native Voice*, February 1979, 11.

⁶⁹ “Food Fish Demonstration,” *Native Voice*, February 1979, 1; “S.E.P. Demonstration,” *Native Voice*, March 1979, 3.

Indian Chiefs (UBCIC), George Manuel, were pleased and the community hinted that they would create their own bylaws to enforce local management of salmon. UBCIC lawyer Louise Mandell noted that the decision could indicate Indigenous peoples in BC were headed towards fish management.⁷⁰ Manuel observed that the decision meant that “if Indians develop a coherent fisheries management scheme, their fishing would be beyond the jurisdiction of the fisheries department.”⁷¹ Yet some WENITEM disagreed with UBCIC’s interpretation of the decision. “Mr. Manuel is in effect doing what Judge William Diebolt of the provincial court in Lillooet cautioned him and others not to do,” explained an editorialist, “interpret as precedent the ruling in the case of Bridge River Indian.” The author conceded, however, that “[g]iven that the Squamish Indian band has already taken advantage of an Indian Act provision to pass bylaws controlling fishing on parts of the Squamish, Capilano, and Seymour rivers, and that the Cowichan Indians are considering the same thing, Mr. Manuel’s confidence would not seem to be too out of line.” The author then proposed that Diebolt’s decision “rests in conciliation” as long as “the Indians are ready, willing, and eager, as Mr. Manuel says they are, to set up conservation programs in cooperation with the federal fisheries department and other fishermen.”⁷² The author’s emphasis on conservation suggests that they believed a large portion of the responsibility for stock protection rested with Indigenous communities and not with commercial and sports fishers.

The St’at’imc were more interested in reasserting their own authority over salmon. Later that month, Chief Victor Adolph told reporters that his community would consider arresting and charging with trespass any federal fisheries officers who came on the Fountain Band reserve.

⁷⁰ “Landmark ruling in Indians’ favor,” *Daily Colonist*, 3 August 1979, 46.

⁷¹ “Indian fishing victory considered just first win,” *Vancouver Sun*, 3 August 1979, A7.

⁷² “Fishing trip,” *Vancouver Sun*, 4 August 1979, A4.

“We’re mad. There’s going to be trouble, there’s going to be action,” he said a few days later, after receiving a letter from federal fisheries informing the St’at’imc community that the DFO would enforce a closure on the reserve for conservation purposes.⁷³ On August 24, federal enforcement officers took surveillance photos of the river at the reserves and on August 29, tensions came to a head when officers attempted to force Arthur Adolph, the chief’s son, onto a helicopter to arrest him. Adolph struggled with the officers who attempted to restrain him three times before letting him go when Chief Adolph arrived.⁷⁴ The next month, as their “rebuttal” to community accusations of harassment by officials, federal fisheries officials offered to “move heaven and earth” to guarantee an Indigenous food fishery, as long as conservation priorities were first met.⁷⁵

In light of St’at’imc assertion of fishing rights, Coast Salish and Interior Salish nations convened to discuss their relationships with fisheries officials. Nlaka’pamux Chief Nathan Spinks spoke at a September meeting at Lytton. He noted that while his community had not “engaged in any organized defiance of the fisheries officers, as did their brothers last month at Lillooet,” he had serious concerns about DFO surveillance of community fishing. He related stories of “fisheries officers, who roam the highways, watching with cameras and binoculars,” noting that the officers would “go up and down the rivers in powerful boats. They arrest band members and take away their boats and gear — while white sports fishermen,” he claimed were, “merely tagged for violation.” At a meeting at Hope, Chawathil Chief Ron John added, “sockeye time is when the fisheries officers start bothering us.” He explained the fundamental issue

⁷³ “Indians plan to fight fishing ban in court,” *Vancouver Sun*, 21 August 1979, B10; “Angry Indians threaten ‘trouble’ over enforcement of fishing ban,” *Vancouver Sun*, 24 August 1979, A1-A2.

⁷⁴ “Many ‘shots’ fired as Indians face white men in fish wars,” *Vancouver Sun*, 25 August 1979, A10; “Chief comes to rescue fishing son,” *Vancouver Sun*, 1 September 1979, A3; “Lots of shots fired but no one injured,” *Daily Colonist*, 26 August 1979, 36; “Fisheries men, Indians scuffle,” *Daily Colonist*, 2 September 1979, 9.

⁷⁵ “\$46,260 spent to arrest 6,” *Vancouver Sun*, 11 September 1979, A17; Tom Koch, “Indians offered help by fisheries officials,” *The Province*, 14 September 1979, A4.

regarding Coast Salish nations' sovereignty over fish resources: "I think that is one of the biggest gripes that Indians do have... we never have given up our fishing rights." Chief P.D. Peters elaborated that from the community perspective, state officials had asked them to let fish go by their reserve for three days, which the community did for good relations with the government, "then all of a sudden they made it law." Chawathil member Doreen Bonneau brought up the question of marking Indigenous-caught fish. "Why don't they make the commercial fishermen mark the fish?" she asked. "Why should I mutilate the fish?" Another community member asked if Chawathil would defy fisheries officials like the St'at'imc? No one answered the question as a flurry of complaints against enforcement officers continued. At a subsequent press conference, the federal Indian Fisheries Coordinator cited issues in Washington State regarding salmon management to discourage greater participation by Indigenous communities in Canadian regulatory schemes. "Fisheries management would get even more complicated, perhaps impossible," he declared. "It just wouldn't work."⁷⁶ While Coast Salish leaders sought transborder dialogue and recognition of their rights to the fisheries, Canadian officials leveraged international allocation negotiations to deny Indigenous fishers' access.

The DFO's attempt to arrest Arthur Adolph revealed federal approval of enforcement methods that resembled Washington State tactics during the pre-Boldt fish wars. Historian Dianne Newell observes that "armed police raids on Indian fishing camps, confiscation of gear, cars, and fish, and imposition of fines and criminal charges for contraventions of the Fisheries Act" in the 1970s and 1980s, became "routine" for Indigenous communities in BC. She found that no evidence supported the "strong and persistent rumours of massive overfishing and large

⁷⁶ Neale Adams, "Fisheries rules destroys traditional ways of Indians," *Vancouver Sun*, 20 September 1979, A16; Neale Adams, "Fish War threatens," *Vancouver Sun*, 21 September 1979, A10.

illegal sales of Indian-caught food fish,” yet the aggressive enforcement continued.⁷⁷ [Figure 10] For example, at 7:00 am, Wednesday morning, January 12, 1983, camera crews and reporters “pierced” the dawn silence at the Musqueam reserve with their “high powered television lights,” as seventy armed men pounded on doors and bedroom windows. “Sleepy-eyed pajama-clad people” found themselves swarmed. Amid the chaos “a parade of two trucks ceremoniously dragged off impounded vehicles,” while police cars blocked off all roads leading out of the reserve. Raids were simultaneously staged at Stó:lō and Lílwat reserves, but the DFO tagged Musqueam for media exposure. Regional Director Wayne Shinnars and the DFO charged one hundred and twenty-nine Indigenous individuals under Section 37 of the British Columbia Fishery regulations and 61(1) of the federal *Fisheries Act*. The charge was illegal sale of fish and the penalty was a fine of up to \$5,000 and possibly one year in prison. DFO officers confiscated the salmon as well.⁷⁸

According to the *Native Voice*, the “raids were the climax of a four-month top-secret undercover operation” conducted by the DFO. One Indigenous observer described the event as a clear case of entrapment:

A man who called himself Gary Miles began coming around the reserve during the first week of September saying he was interested in purchasing food fish. He called on some band members at their own homes as many as three or four times and left calling cards carrying his name and the name of a business called “The Alberta Fishing Company.” He said it wouldn’t be worth his while unless he

⁷⁷ Newell, *Tangled Webs of History: Indians and the Law in Canada’s Pacific Coast Fisheries*, (Toronto: University of Toronto Press, 1993), 4.

⁷⁸ “D.F.O. Raids Sting Natives,” *Native Voice*, January 1983, 1, 3 and 15.

could purchase 500 or more fish and that if he could be provided with over 800 fish, his price would be raised from \$6 per fish to \$7.⁷⁹

The *Native Voice* concluded that this “was obviously a ploy to implicate as many individuals as possible with the least expenditure of time and energy.” According to the community, Miles also became “one of the boys.” He drank beer and partied with many of the community members. He won their friendship and confidence and was invited to numerous community activities.⁸⁰

DFO officials stated that they undertook the operation in order to address public criticism of their “failure to put a halt to poaching on the Fraser River.” Shinnars denied allegations of discrimination and charges that the operation was purposefully directed against Indigenous people. He also denied that his department used methods of entrapment. In response, Edwin Newman, of the Native Brotherhood, sent a letter to Prime Minister Pierre Trudeau asking for a public inquiry into the DFO’s recent conduct pointing to glaring double standards that privileged WENITEM. “We challenge the need for using 70 armed officers prepared to shoot and kill Indian people, in conducting a pre-dawn raid on Indian reserves from Musqueam to Lillooet,” he wrote. “Would individuals living in Shaughnessy or Mt. Royal have been served appearance notices in a similar manner?” He also asked, “[a]s Department of Fisheries & Oceans already has enforcement officers (under the Fisheries Act), we wonder why it was necessary to use other enforcement agencies, such as the RCMP, in this raid.”⁸¹ [Figure 11] Escalating tensions along

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

with significantly diminishing chinook salmon populations compelled the federal government to act.⁸²

Partly in a response to Indigenous fishing activity, but also to address questions of salmon stock depletion, the federal government initiated an investigative commission into the Pacific fisheries in 1981. Economist Peter Pearse was named chair of the commission and it became known as the Pearse Commission. The commission heard testimonies from hundreds of communities and organizations such as the Native Brotherhood who presented a brief in the summer of 1981. In its brief, the Brotherhood contended that “[t]o cover up mismanagement of the fisheries D.F.O. encourages racist and unjust attacks upon Indian people by leading the public to believe that Indian fishing is a major obstacle to safeguarding salmon stocks” and reported that “D.F.O. statistics show that only 2% of the total fish caught was done by Indian food fishing.” Native Brotherhood Chair Ed Newman reminded the commission that “at one time Indian fishing was 100 per cent of the total,” indicating their fundamental position that Indigenous peoples had never ceded fisheries ownership and management.⁸³ Throughout the year, the majority of coastal Indigenous communities also made submissions to the commission that were inspired by the Boldt Decision.⁸⁴ Patricia Marchak observed that the decision “clearly had an impact on Canadian Indian expectations and demands.” Therefore, she explained, “[n]umerous Indian briefs to the commission suggested that Indian bands be given special allocations of fish.” The federal government then “entertained” a proposal “to give half or more of all fishing rights to native groups... during the debates following publication of the Pearse

⁸² See Peter H. Pearse, *Turning the Tide: A New Policy for Canada's Pacific Fisheries*, final report for the Commission on Pacific Fisheries Policy, Fisheries and Oceans Canada: Vancouver, 1982.

⁸³ “Native Brotherhood Presents Brief to Pearse Commission,” *Native Voice*, September 1981, 1 and 9.

⁸⁴ “Summary of submissions to Dr. Pearse by native groups,” *Native Voice*, September 1981, 9.

Commission report.”⁸⁵ In 1982, Pearce released the commission’s final report entitled, *Turning the Tide: A New Policy for Canada’s Pacific Fisheries*. It recommended many changes to the management and structure of Pacific fisheries including a greater role for Indigenous communities.⁸⁶ WENITEM fishers, however, decried “discrimination in reverse.”⁸⁷ As tensions over the report’s recommendations mounted, in November 1985, the Brotherhood resolved to assert ownership of only 50% of the fishery, to match Indigenous fishers south of the border, and called for a joint management system similar to the one in development in Washington State.⁸⁸

The co-management system that arose from the Boldt Decision in Washington State had become a benchmark for cooperative marine resource management between Indigenous and non-Indigenous fishers in the Salish Sea. While some groups in Canada viewed it as a model for better relationships between Indigenous fishers and the state, this system was not without its challenges. In the early 1980s Washington State, tribal and state fisheries entered a second phase of resource management under the Boldt Decision, called Phase II, which focused on questions of environmental protection and survival of the salmon. In response to Phase II recommendations, the US government initiated a task force that ultimately created the Timber Fish Wildlife (TFW) agreement in 1986 to regulate the forestry industry in ways that protected spawning habitats. Indigenous leaders were very supportive of TFW and it received positive attention from those in Canada who viewed the TFW and treaty rights as “unique tools to

⁸⁵ Patricia Marchak, “Conclusion: Uncommon History,” In *Uncommon Property: The Fishing and Fish-Processing Industries in British Columbia*, Patricia Marchak, Neil Guppy, and John McMullan, eds. (Toronto: Methuen, 1987), 357.

⁸⁶ *Ibid.*, 357.

⁸⁷ Ron Rose, “Ottawa Favours Indians, Fisherman’s Group Says,” *Native Voice*, December 1983, 14.

⁸⁸ Patricia Marchak, “Organization of Divided Fishers,” In *Uncommon Property: The Fishing and Fish-Processing Industries in British Columbia*, Patricia Marchak, Neil Guppy, and John McMullan, eds. (Toronto: Methuen, 1987), 247.

preserve rivers.”⁸⁹ Yet stakeholders entered this new era of co-management with an uneasy truce. Tensions between WENITEM and tribal fishers had not entirely disappeared. On the ten-year anniversary of the Boldt Decision, NWIFC fisheries manager Tony Forsman attempted to move on from the anger of the previous decade. “As far as we’re concerned, the legal BS is over,” he said, “the name of the game is one word: ‘cooperation.’”⁹⁰ A year prior, Forsman had reassured WENITEM sports fishers in Kitsap County, who attended a seminar at the Tribe’s community center at Suquamish, that the NWIFC had “no intention of totally closing down Puget Sound (to sports fishing).” An audience of 60 sports fishers received Forsman’s message gratefully. “All the arguing about the 50-50 split enacted by the Boldt decision, and the recent concern about the sports fishery, are wasting emotion and energy and taking away from the real issue,” Forsman reminded them: “whether salmon are going to survive.”⁹¹ While tensions between WENITEM and Indigenous fishers created obstacles for co-management, the question of salmon survival meant that both sides faced the same crisis.

WENITEM were not willing to give up old grudges. In the fall of 1983, a group known as the Steelhead-Salmon Protection Action for Washington Now (S/SPAWN) organized a renewed effort to overturn the Boldt Decision. In 1984, the group, labelled by media as “the Boldt Revolt,” introduced to state legislature a proposition called Initiative 456 calling for the state to ignore federal regulations regarding natural resources and petitioned the federal government to make steelhead a national game fish. They also declared “no citizen can be denied access to or use of natural resources for reasons based on race, sex, origin, or cultural heritage.”⁹² Supporters

⁸⁹ “Indian Tribes are co-managers of Pacific Northwest,” *Native Voice*, August 1988, 10-11; Malloway, 28 January 2020.

⁹⁰ Richard W. Larsen, “The Boldt Decision: Ten Years Later: The dawn of cooperation,” *Seattle Times*, 12 February 1984, A17.

⁹¹ “Sports fishing: Local tribe opposes blanket shutdown,” *Kitsap County Herald*, 5 January 1983, A1.

⁹² Dale Ward, “The Boldt Revolt,” *Seattle Times*, 25 March 1984, A21; WSA, Dept. of Game, AR-20081022-01, Volume 9, File 7, “Indian Fishing, publicity,” 1987; Cohen, *Treaties on Trial*, 184-185; William B. Collins,

of the initiative, led by Senator Slade Gorton, who as attorney general from 1969 to 1981 had led the state's opposition to tribal fishing rights and the Boldt Decision, continued to label Indigenous peoples "super citizens" and called for steelhead to be "reserved for sportsmen of all races on an equal-treatment basis."⁹³ When a state delegation presented the initiative to US Congress, a "bipartisan coalition of six Washington congressman," responded with a "terse statement denouncing Initiative 456" for its divisiveness and attack on treaty rights.⁹⁴ Historian Carlos Schwantes notes that many observers viewed Initiative 456 as a signal "that the Pacific Northwest was growing more conservative and less tolerant of diversity after half a century of movement in the other direction."⁹⁵ In the context of settler colonialism, however, Initiative 456 seems less a unique shift in the political landscape and more a testament to core values shared by WENITEM regarding property and treaty rights.

While Coast Salish tribal nations in Washington State faced continued aggression from WENITEM fishers, they also engaged in transborder negotiations over catch allocations that affected their treaty rights. Because the territories of the Coast Salish nations had been disrupted by the creation of the international border, the new Washington State co-management scheme faced jurisdictional challenges from Canada over allocations. Questions surrounding treaty tribes' allocation of 50% of salmon crossed into the administrative waters of the International Pacific Salmon Fisheries Commission, which regulated fisheries shared between Canada and the

Assistant Attorney General to Senator Leo K. Thorsness, 6 Nov 1990. WSA, Fisheries Dept., 98-A-229, Volume 6, File 1, "Shellfish," 1990.

⁹³ Larry Van Goethem, "They're Scalping America's Wildlife", *Sporting Classics*, July/Aug 1987. WSA, Dept. of Game, AR-20081022-01, Volume 9, File 7, "Indian Fishing, publicity," 1987; Bennet Mark, "The other side of a complex issue," *Seattle Times*, 12 February 1984, A17; Eric Pryne "Gorton's Indian fishing-ban bill rapped at Senate hearing," *Seattle Times* 12 July 1984, A8.

⁹⁴ Scott Maier, "The anti-Boldt initiative gets a 'no' vote from congressmen," *Seattle Post-Intelligencer*, 1 November 1984, F2.

⁹⁵ Carlos Arnaldo Schwantes, *The Pacific Northwest: An Interpretive History*, (Lincoln: University of Nebraska Press, 1996 [1989]), 166.

United States. After the Boldt Decision, many fishers wondered if the 50% allocation formula included salmon that originated in Canadian waters. Judge Boldt ruled that they did.⁹⁶ Yet Boldt and federal BIA officials received little cooperation from the IPSFC.⁹⁷ “From its inception, the International Pacific Salmon Fisheries Commission has adamantly refused to recognize any rights of American Indian fishermen,” the NWIFC declared in 1977. They asserted that a key aspect of the commission’s “consistent refusal to grant the Indians any special rights” was the “product of Canadian fear that its own native people will demand special fishing rights.”⁹⁸ Official correspondence regarding the SEP and fishing regulations outlined above supports NWIFC’s speculation. Indigenous fishers in BC were also critical of the Treaty Commission and supported their kin from across the border. For instance, when the Canadian Chairman of the IPSFC, Rod Hourston, sent letters to US Secretary of State Henry Kissinger in July 1975 protesting the Boldt Decision, the Native Brotherhood of B.C. condemned his actions and demanded that Hourston “respect the fishing rights of Washington Indians.” The Brotherhood argued that the “Canadian delegates of the Commission seem to have chosen to ignore the lawful rights of the six Washington Indian Tribes.... thus hindering the six Tribes of Washington from carrying out their aboriginal fishing rights.” The Brotherhood also expressed its anger at the IPSFC’s “arrogant actions.” By sending the letters without the Brotherhood’s consent, the Commission ignored Indigenous fishing interests in BC and the Brotherhood’s role as advisors to the Commission.⁹⁹

When the IPSFC broke down at the end of the 1970s, bitter negotiations between the countries continued into the 1980s. In 1985, the two nations finally reached an agreement and

⁹⁶ Cohen, *Treaties on Trial*, 86-87.

⁹⁷ “Indians Take A Boldt Upright Decision,” *Native Voice*, August 1975, 3.

⁹⁸ Northwest Indian Fisheries Commission, *Tribal Report to the Presidential Task Force*, 46.

⁹⁹ “Indians Take a Boldt Upright Decision,” *Native Voice*, August 1975, 3.

signed the Pacific Salmon Treaty. Under the PST, Coast Salish fishers in Washington were guaranteed their Boldt formula allocations, and Coast Salish fishers in Canada were granted a set number of sockeye each year as part of an Indian Food Fishery (IFF) exemption.¹⁰⁰ As journalist Terry Glavin observed more than a decade later, however, the PST “failed its objectives” to control overfishing. Both sides continued to argue and further failures in negotiation resulted in more fish wars throughout the decade and the first half of the 1990s.¹⁰¹

During this era of shifting control over marine resources, Indigenous groups re-connected historical networks to foster transborder cooperation. In 1976, for example, the *Native Voice* reported “high optimism” regarding Canada-US negotiations because “Indians on both sides of that imaginary line have agreed to exchange and review ideas and information through newsletters, telephone conversations and conferences.” They asserted their belief that “both Canada and the U.S. are going to benefit from these exchanges.”¹⁰² Indeed, Tzeachten Chief Ken Malloway recalls, as an Indigenous member of the Pacific Salmon Commission, a crucial moment when government talks over the Pacific Salmon Treaty stalled and Coast Salish delegates were called upon to utilise their kinship relations to resolve a dispute created by the international border. When Canadian delegates had asked for a reduction in the early Stuart sockeye fishery, the “Lummi Tribe who fished them as well, didn’t want to give up on them,” Malloway explains. “They said that they had a right to them and they were going to fish them no matter what.” Malloway describes the actions he took based on Coast Salish peoples’ kinship and protocols:

¹⁰⁰ Lorraine Loomis, Commissioner, NWIFC, “U.S. Voting Member, Fraser River Panel”, to William Gordon, National Marine Fisheries Service, 28 May 1986. WSA, Fisheries Dept., 05-A-282, Volume 35, File 16, “Indian Affairs - NWIFC #1,” 1986; Dennis Brown, *Salmon Wars: The Battle for the West Coast Salmon Fishery*, (Madeira Park, BC: Harbour Publishing, 2005), 66.

¹⁰¹ David Suzuki Foundation, Terry Glavin, *Last Call: The Will to Save Pacific Salmon*, 1998, 20-21.

¹⁰² “Canada/U.S. Negotiations,” *Native Voice*, June 1976, 1.

And so a couple of us from Stó:lō Nation and Simon Lucas, who was the co-chair of the BC Aboriginal Fisheries Commission, set up a meeting with the Lummi Tribe... We went to meet with them to talk about the early Stuart sockeye and about our concerns and about trying to get everybody to hold off on the fisheries on them to try and rebuild the run. And they were still dragging their feet a bit. They wouldn't agree to it. So what I suggested, "will you come up with us to Prince George and meet with the Carrier-Sekani Tribal Council Elders? That's where the fish come from, north of Prince George." I said, "will you come with us and meet with them?" And they said, "ok." So we all piled in our vehicles and drove up there, a caravan going up there, highway up to Prince George. And we sat down with the Elders, and we talked to the Elders. We had already talked to them earlier. They talked to the Lummi Tribe about their concern about the fish. And so the Lummi Tribe agreed not to fish them. They said, "we'll hold off until they are safely by. We won't fish them."¹⁰³

Malloway explains further how kinship connections survived colonialism and continue to be of great benefit to resource management:

So the Lummi Tribe agreed to hold off. But at the time there was a lot of things going on, the Pacific Salmon Commission, and Pacific Salmon Treaty talks going on. And some of them are buddies in the commercial fishery and the recreation

¹⁰³ Malloway, 28 January 2020.

fishery were pretty mad at us for even talking to the Lummi Tribe because they are Americans, eh. And we said, “well they might be Americans, but they’re our family.” They’re just a short way across the border. Before the border was there, there was a lot of commerce between our tribe and their tribe and there was lots of inter-marriages in between their tribe and our tribe... So we have all these connections with them. We said, “we’re not really talking to Americans, we’re talking to our family, we’re talking to our cousins.”

Malloway describes a meeting in which this kinship connection proved more effective than state channels of communication and challenged WENITEM confidence in their own negotiation tactics:

And one of the meetings that we had with the Pacific Salmon Commission folks and the... commercial fishing guys, they were really really mad at us for talking to the Americans, eh. And we said, “well we have talked to them and we met with them a number of times. They came up to Prince George and have met with Carrier-Sekani Elders and have agreed not to fish the early Stuart sockeye.” And it completely blew them away, and they were going “well how did you do that?” We said, “well we talked to them. And then when we couldn’t get them to budge, we got them up to talk to the Elders. And the Elders asked them to please help them out and try to help out and to get these fish by.” And so the commercial fishermen before the meeting started, and during the meeting, were saying that what we did was treason talking to those people over there eh... And he said to Simon Lucas,

“you should be hung.” And Simon Lucas said, “I am hung!” And the guy said, “what?” He said, “I am!” And he said, “you know what I mean Simon.” “I know what you mean.” And he [Lucas] said “there’s people over there that are our family, they’re our relatives... We were all connected before you people showed up and put your border here, we’re all connected. So if we’re going talk to them, we’ll talk to them. We don’t need your permission. We don’t need you to give us a blessing whether we should talk to our own family or not. It’s none of your business.” But the commercial guys couldn’t believe that we got them to back off because the meetings they had with Lummi, they were not fruitful.¹⁰⁴

Malloway credits Billy Frank and the NWIFC for a great deal of the cross-border connection and for sharing valuable insight on negotiating fishing rights with governments. “We had dealings with the Lummi Tribe but we also had meetings with Billy Frank Jr. who was the head of the Northwest Indian Fisheries Commission,” says Malloway, “Billy Frank came up here in the ‘80s to talk to us about the Boldt Decision and about the court case.” Throughout the decade, Malloway, then chair of the BC Aboriginal Peoples’ Fisheries Commission, “worked with Billy Frank pretty closely and folks at the Northwest Indian Fisheries Commission, pretty closely over the years. They helped out quite a lot.” The NWIFC became a crucial ally for Coast Salish nations in BC. In November 1987, for example, the BC Aboriginal Fisheries Commission contacted the NWIFC for advice on “co-management” and to “obtain input into different ways the tribes deal with the state, on dispute resolution processes, and the changing context of the

¹⁰⁴ Ibid.

Fraser River traditional fishery.”¹⁰⁵ Importantly for Coast Salish nations in BC, Frank also believed that those who had not signed any treaty were in a position for 100% of the fishery.¹⁰⁶ Frank and the NWIFC fine tuned co-management throughout the 1980s. It was never perfect due to lingering tensions with non-Indigenous fishers and inter-tribal disputes on overlapping claims of usual and accustomed fishing sites; it was, however, a significant shift in the balance of power over fisheries in Washington State that provided a model for fishing rights cases in BC.

While the tides of power shifted on one side of the border, Coast Salish peoples in British Columbia continued to be arrested for illegal fishing.¹⁰⁷ In August 1988, while the *Native Voice* praised Washington State for co-management and the TFW agreement, about 45 Musqueam fishers who had “cast their nets to protest what they described as DFO’s arbitrary limits on their food fishery” faced charges for their defiance of federal regulations.¹⁰⁸ This case was heard while a larger Musqueam case (*R. v. Sparrow*) was also ongoing. After Ronald Sparrow had been arrested for fishing with too long of a net in 1984, the Musqueam Nation defended Sparrow and challenged the state arguing that fisheries enforcement had violated their Aboriginal rights protected under the *Constitution Act, 1982*. On May 31, 1990, they won a significant Supreme Court of Canada decision that backed Indigenous rights to BC’s salmon resources over all other fishing interests. In a 6-0 decision, the Supreme Court sided with Musqueam by finding that Indigenous peoples cannot be prevented from fishing, except for conservation purposes. The judges ruled that fish must be allocated to Indigenous fishers before all other user groups and Musqueam fisheries coordinator Joe Becker interpreted the ruling to mean that Indigenous

¹⁰⁵ NWIFC meeting Muckleshoot Tribal Center, 11 December 1987. WSA, Dept. of Game, AR-20081022-01, Volume 4, File 2, “Boldt Decision Phase II,” 1986 to 1988.

¹⁰⁶ Malloway, 28 January 2020.

¹⁰⁷ Tony Forsman, 20 August 2019.

¹⁰⁸ “Indian Tribes are co-managers of Pacific Northwest,” *Native Voice*, August 1988, 10-11; Karen Gram and Gary MacDonald, “Indians facing charges over illegal fishing,” *Vancouver Sun*, 22 August 1988, A1-A2.

fishing rights included the right to sell fish. Yet Fisheries Council of British Columbia president Michael Hunter disagreed with that interpretation. And fisheries officials agreed.¹⁰⁹ Even with this win, WENITEM refusal to acknowledge Indigenous peoples' rights to shared control over salmon allocations led to more protest fisheries by Coast Salish communities in the early 1990s.

In the face of dwindling salmon stocks and state persecution, coastal Indigenous groups united to protect their access to the fisheries. "One time enemies," according to the *Native Voice*, "the Haida joined with the Musqueam Nation in a show of unity to defy the DFOs unfair fishing allocations on Canada Day 1991. The day started off with Musqueam fishers setting their nets into the Fraser River as the Haida set their ocean going canoes at the mouth of the Fraser." While DFO officers monitored the fishing, they did not enter the reserve to observe the selling of salmon to Indigenous and non-Indigenous buyers later that day. The Haida canoes eventually reached the Musqueam shores and representatives from the Gitksan, Wet'suwet'en, Haida, Stó:lō, Nuu-chah-nulth, as well as members of the South Island Tribal Council, St'at'imc Nation, and non-Indigenous people greeted them. Tim Isaac explained that "[t]he gathering publicly demonstrated the need of First Nations to use their traditional resources not only for their survival but to prosper in the dominant settler society."¹¹⁰ Through ceremony, coastal First Nations in BC reminded the governments and the public that they had a long-standing relationship with the sea and its resources, a relationship that should not be undermined by state regulation.

In response to the *Sparrow* decision, the federal government unveiled the Aboriginal Fisheries Strategy (AFS) in 1992. The AFS aimed to increase economic opportunities for Indigenous communities, and at the same time maintain stability and profitability in the

¹⁰⁹ Terry Glavin, "Musqueam Indians Win Landmark Fish Decision," *Vancouver Sun*, 31 May 1990, A1-A2.

¹¹⁰ Tim Isaac, "Former enemies unite against DFO," *Native Voice*, July 1991, 12-13.

commercial and recreational fisheries. That year, the federal government concluded more than 80 agreements, involving 57 communities, under this program which gave these communities the ability to sell their salmon for the first time in 100 years.¹¹¹ This step towards sovereignty for Indigenous nations over their fisheries corresponded with a devastating case of missing fish. That same year, shortly after Fisheries Minister John Crosbie made major cuts to the DFO budget, 800,000 Fraser River sockeye mysteriously did not return to spawn as expected. According to former United Fishermen's and Allied Workers' Union (UFAWU) rep Dennis Brown, "many in the commercial fishing sector maintained that poaching under the guise of the AFS was the prime cause of missing fish."¹¹² When the DFO announced on August 24, 1992, that the entire south coast sockeye fishery would close for the season for conservation purposes, about 200 non-Indigenous fishers "formed a flotilla on the river not far from the DFO's New Westminster office convinced that the AFS pilot sales program had caused the fiasco, and that the DFO had failed to enforce the program."¹¹³ [Figure 12] Indigenous leaders refuted these charges. An investigation by Peter Pearse and Peter Larkin into the disappearance of salmon in the Fraser River concluded that while there was "unusually intensive fishing in the river that year, they were unable to say who took the missing fish."¹¹⁴ DFO officials pointed to rising temperatures in the Fraser River for increased "pre-spawn mortality" rates.¹¹⁵ Pearse also recognized that the missing fish had become a "highly sensitive issue" as the lower Fraser Indigenous groups who were authorized to manage their own fisheries had created an organization for this purpose which alarmed WENITEM fishers.¹¹⁶

¹¹¹ "The Aboriginal Fisheries Strategy: Answers to your Questions," *Native Voice*, January 1993, 23; Brown, *Salmon Wars*, 70.

¹¹² Brown, 63.

¹¹³ *Ibid.*, 73.

¹¹⁴ "Report finds intensive fishing caused losses of Fraser Sockeye," *Native Voice*, November 1992, 10.

¹¹⁵ Brown, *Salmon Wars*, 63.

¹¹⁶ "Report finds intensive fishing caused losses of Fraser Sockeye," *Native Voice*, November 1992, 10.

Much like the tribal nations in Washington State that formed the NWIFC after the Boldt Decision, Coast Salish groups in British Columbia also created fishing organizations to engage *Sparrow* and the AFS. For instance, Stó:lō communities formed the Lower Fraser Fishing Authority, which later became the Lower Fraser Fishing Alliance (LFFA). Chief Malloway representing Stó:lō Nation, Chief Sam Douglas the Stó:lō Tribal Council, and Chief Joe Becker from Musqueam acted as co-chairs of the committee. Chief Malloway recalls that they had a pretty tiny budget. They hired four biologists and employed three journalists to wage a media fight against the “sporties and the commercial guys.”¹¹⁷ Regarding the missing sockeye, Chief Ernie Crey, a LFFA member, vehemently denied that Indigenous fishers had anything to do with it. And Chief Becker considered the protests of non-Indigenous fishers to be “the same old racist cant.” He clarified, “[w]e have scrupulously observed our quotas as spelled out in the pilot program adopted this year.”¹¹⁸ Like WENITEM in Washington State who rejected co-management, many in BC vilified the AFS as “reverse racism.” In the context of Black and White relations in the United States, multicultural educator Robin DiAngelo argues that the qualifier “reverse” is “nonsensical” because “everyone has prejudice and everyone discriminates.” When WENITEM cried “reverse racism,” they ignored the essential component of racism that makes it an effective weapon, which was its relationship to a “historical system of institutional power.”¹¹⁹ WENITEM fishers continued to be supported by the state in their fishing efforts; however, salmon were not returning to historic levels and so the state closed more and more fisheries as a consequence, which meant unemployment and more anger in the fisheries.

¹¹⁷ Malloway, 28 January 2020.

¹¹⁸ Brown, *Salmon Wars*, 74.

¹¹⁹ Robin DiAngelo, *White Fragility: Why It's So Hard for White People to Talk About Racism*, (Boston: Beacon Press, 2018), 20 and 24.

Missing sockeye became a stream too far for many fishers and their families who then sought others to blame.

Contemplating the missing sockeye controversy in 1992, members of the UFAWU gathered at a local boat shop to discuss what to do about the Aboriginal Fisheries Strategy. One union member expressed the feelings of many other WENITEM when he called the AFS pilot sales program “a form of racial discrimination” against non-Indigenous fishers. The UFAWU had previously disagreed with a group called the Pacific Fishermen’s Defence Alliance because of its strategy to block Indigenous rights in the courts. But now the union believed it saw major abuses occurring within the AFS program and had no choice but to speak out. UFAWU members then pressured their leadership to protest the AFS pilot sales program. According to Brown, the “union’s officers agreed to get involved, but made it clear that the UFAWU was opposed to a flawed fishing policy, not the advancement of Native rights.”¹²⁰ Similar to anti-treaty groups in Washington State that rejected the Boldt Decision, WENITEM fishers in BC used language that down-played the racism behind its disapproval of Canada’s new fisheries policy.

By 1993, a group called the B.C. Fisheries Survival Coalition coordinated effective media campaigns and lobbied against Indigenous fisheries. When asked about this group and its euphemistic name, Chief Malloway almost choked. “We had a lot of fights with those guys,” he explained. The Coalition received support from wealthy figures such as Jim Patterson, who owned much of the commercial salmon fleet, and it actively campaigned to publicly blame Indigenous fishers for everything that went wrong in the salmon industry. Terry Glavin and Suzanne Fortier, journalists working for the LFFA, demonstrated to their employers that the

¹²⁰ Brown, *Salmon Wars*, 76.

Coalition members lied regularly when they made public comments about the Indigenous fishery. They kept track of everything the Coalition did and said.¹²¹

In response to the conflict, Minister of Fisheries John Crosbie, organized a series of meetings at the Dunsmuir Hotel called Dunsmuir Process. “So we’re fighting with the Survival Coalition.” Chief Malloway recalls. “And I called them on it at a meeting. I pointed at this guy and I said, ‘you’re a fucking liar.’” Malloway continues:

I said, “you lied about us on TV... we have all the video tapes. We have them right here.” I said, “your honour, pop them in that machine over there. I can show that you guys are a bunch of liars. You lied to the DFO.” And he said, “Kenny, we had to lie to get you out of the water.” I said, “you’re admitting you’re a liar?” “Yeah. But I’m telling the truth now.” [...] So we nailed them pretty good on that.”

Survival Coalition members typically outnumbered Indigenous fishers about two to one on the Fraser River, where they rammed and swamped Indigenous peoples’ boats. Tensions during this period flared up again at a meeting during the Dunsmuir Process when members of both sides of the table threatened physical violence.¹²²

Reminiscent of the “Boldt revolt” protests in Washington State, WENITEM fishers in BC assembled in large crowds to voice their displeasure with the government. On September 15, 1995, about two hundred WENITEM commercial fishers towed a gillnet boat through downtown Vancouver and hung a net across a busy street, blocking traffic. Then they turned their attention

¹²¹ Malloway, 28 January 2020.

¹²² Ibid.

to DFO's West Hastings Street office tower, where they "unhinged the heavy security doors, pulled them down, broke into DFO's headquarters and occupied the place before being served with a court order to leave." According to Glavin: "The Fisheries Survival Coalition, enlivened by rhetoric about 'rights based on race,' rallied the public around the spectre of a federal government, acting out of some politically correct motive, taking fish away from their families and handing it over to Indigenous people."¹²³ [Figures 13-14] Tactically, these fishers utilised equality rhetoric to complain about a loss of power over contested fisheries rights.

On August 9, 1997, the Musqueam and Stó:lō conducted another AFS pilot sales fishery in the Fraser Canyon. In response, two hundred members of the BC Fisheries Survival Coalition launched a protest fishery in the lower part of the river. The DFO arrested three of the "ringleaders," and chained their vessels to the dock at Steveston. DFO Fraser River manager Dick Carson informed reporters later that day: "When you start disrupting the management of the fishery in this way, it's effectively playing Russian Roulette with the resource. And that's one thing we won't take lightly. We can't."¹²⁴ Just as Washington State fisheries officers in the 1970s found themselves regulating a non-compliant WENITEM fishery, the federal officers in BC found themselves wielding conservation rhetoric against intransigent fishers who protested what they viewed as an assault on their rights.

In January 1998, BC Supreme Court Judge Howard Thomas sentenced Reform Party MP John Cummins for a "protest fishery" against the AFS program. Judge Thomas convicted Cummins but also found that there was no legal basis for an Indigenous-only fishery. The

¹²³ Terry Glavin, *Dead Reckoning: Confronting the Crisis in Pacific Fisheries*, (Vancouver: Douglas and McIntyre, 1996), 124.

¹²⁴ Brown, *Salmon Wars*, 207.

Survival Coalition and their allies viewed this as a victory.¹²⁵ Chief Ernie Crey, refuted this perspective in an op-ed:

The light sentence given Cummins for illegally fishing demonstrates a failure on the part of the court to appreciate the dangers inherent in the kind of protests he has inspired... In past fishing seasons, Fisheries Survival Coalition members have attempted to swamp aboriginal boats, shouted racial epithets over the radio and laid waste to aboriginal boat trailers... Emboldened by remarks of a provincial court judge who said he could not find support in law for the sale of fish caught in aboriginal fisheries, Cummins may now think he has the blessing of the court to flout the law. While the Fisheries Survival Coalition can pretend it achieved victory as a result of the judge's remarks, the truth is that fishery officers arrested Cummins for breaking the law and Judge Thomas convicted him of doing so. Nothing fancy about it at all.¹²⁶

Crey concluded: "As repugnant as members of the Fisheries Survival Coalition may find these arrangements between First Nations and the fisheries department, my best advice to them is to get over it."¹²⁷ Easier said than done. Co-management was never an easy reconciliation between Indigenous peoples and WENITEM in Washington State and the Canadian approach of AFS resulted in an even more contentious relationship as it never officially recognized any treaty or Aboriginal right to fish commercially but allowed a state-monitored commercial sales project to

¹²⁵ Christopher Harvey, "Why John Cummins's fishery fight was everybody's fight," *Vancouver Sun*, 29 January 1998, A19.

¹²⁶ Ernie Crey, "MP Cummins picked a fight he cannot win," *Vancouver Sun*, 24 February 1998, A13.

¹²⁷ *Ibid.*

avoid acknowledgement of sovereignty for Indigenous nations over their fisheries. The seeming contradictions in this policy confused many stakeholders resulting in more acrimony in BC over resource management at the end of the twentieth century.

The Boldt Decision had wide-ranging effects on both sides of the border and resulted in an array of WENITEM reactions from anger and resentment to fear. Coast Salish peoples' responses to this decision were also diverse and they applied the ruling widely. As they navigated a new regulatory order, coastal Indigenous communities continued to collect shellfish. Washington State's experiments with co-management and British Columbia's fishing conflicts held significant influence over their shellfish harvesting at the end of the century. The surrounding political and social climate informed their efforts to protect shellfish habitat from increasing pollution and further WENITEM encroachment of their foreshores. As Evelyn Pinkerton and Martin Weinstein observed in 1995, fishing conflicts between WENITEM and Coast Salish communities were "most intense in the more sedentary fisheries, such as crab, prawn, clams, etc.," because depletion had caused the "catch per unit effort" of shellfish to be too low for reliable sustenance, thus endangering community health and survival.¹²⁸ One response by Coast Salish nations to the Boldt Decision then included efforts to reassert their control over foreshores and their resources through discourse on treaty rights and an Aboriginal right to fish which, in their view, included all marine species.

When WENITEM reactions to the Boldt Decision are viewed within the constructs of settler colonialism, the need for Coast Salish nations to protect their foreshore from WENITEM development and property speculation becomes apparent because it was more than simply an

¹²⁸ David Suzuki Foundation, Evelyn Pinkerton and Martin Weinstein, *Fisheries that Work: Sustainability Through Community-Based Management*, 1995, 18.

issue of property rights but also an issue over sovereignty and the right to be stewards of resources such as shellfish. Secondly, understanding the transborder effects of the decision better situates analysis of Coast Salish nations' defense of foreshores in BC during this period because it places their foreshore rights in the context of marine resource management and Indigenous moral ecologies over the fisheries. The high value Coast Salish communities place on shellfish is evident in Suquamish and W̱SÁNEĆ protection of their foreshores in the 1970s and 1980s. While the Suquamish shellfish case, which culminated in the 1994 Rafeedie decision, stemmed from the Boldt Decision of 1974, the W̱SÁNEĆ case occurred within the climate of the decision and ongoing fisheries conflicts in British Columbia that culminated in the *Sparrow* decision and the Aboriginal Fisheries Strategy. Both cases resulted in influential court decisions that further entrenched Indigenous rights within the legal frameworks of Canada and the United States.

Chapter 4. “Shellfish are fish”: Suquamish Stand on Tidelands and Fisheries

In the second half of the twentieth century, the Suquamish Tribe significantly strengthened its territorial control and management of marine resources. This chapter examines Suquamish governance over the Port Madison Reservation, the tidelands connected to it, as well as over its usual and accustomed shellfish harvesting sites across Puget Sound. Tribal leadership engaged the state, through the Indian Claims Commission and the Boldt Decision court processes, to reenergize community strength and provide economic opportunity for its members. Suquamish then asserted Coast Salish moral ecologies over shellfish management by harvesting according to community-sanctioned methods and regulations, selection of sites, and thresholds for healthy marine conditions, in defiance of public and state opposition. The tribe affirmed authority over its marine territory by securing court acknowledgment of its Point Elliott Treaty rights to the resource.

This chapter also analyzes WENITEM responses, both local and official, to Suquamish resurgence. Some WENITEM officials and interest groups contested these efforts as vigorously as they did the Boldt Decision. WENITEM resistance to Indigenous peoples' fishing rights is evidence of an entrenched settler-colonial structure and the continuing politics of white supremacy in the Pacific Northwest throughout the twentieth century. Yet, by arguing for recognition of treaty rights to shellfish during the Boldt Phase III hearings, affirmed by the 1994 Rafeedie decision, tribal nations in Washington State rejected the colonial logics of white supremacy and altered this structure, shifting some of the power balance back to Coast Salish nations' stewardship of marine resources.

In the 1960s, during the chaos of the fish wars, the Suquamish Tribe formalized its jurisdictional powers over the Port Madison Reservation. In 1965, the community utilized federal funds to organize a Tribal Council, which then reviewed its jurisdictional capabilities over treaty-protected lands.¹ Under the *Indian Organization Act* of 1934, fifty-six Tribe members elected a council, which signed a constitution drafted by the BIA. Eight years later, in 1973, the Suquamish Tribal Council “adopted a law and order code asserting tribal territory jurisdiction as an act of self-determination over all Indians and non-Indians and their land within the Reservation.” The US secretary of the interior, however, did not approve of the code.² Undeterred, the council organized a tribal police force to assert control over their home. This then had major implications for relationships with the WENITEM population living at Port Madison, where fisheries tensions divided the two groups.

The first serious test of Suquamish policing powers came in 1973 at the Chief Seattle Days festival. After sixty years of the local American Legion organizing the festival, the Suquamish Tribal Council took control of the event. The council assigned their newly appointed police force to secure the safety of all participants that summer.³ During the festivities, an intoxicated WENITEM named Mark Oliphant harassed a group of campers. Tribal police officers attempted to restrain Oliphant, but he resisted and assaulted the officers. Oliphant contested his subsequent arrest in court, arguing that as an American citizen and “non-Indian” he was not subject to tribal authority.⁴ A second petitioner named Daniel Belgarde joined Oliphant in the case. Suquamish Tribal Police had arrested Belgarde in 1974, after a high-speed car chase in which Belgarde

¹ Harmon, *Indians in the Making*, 1.

² WSA, Attorney General, State, 90-5-713, Volume 695, File 5, “Reference - Indians Oliphant v. Suquamish Indian Tribes,” 1985.

³ Leonard Forsman, 20 August 2019; WSA, Attorney General, State, 90-5-713, Volume 695, File 5, “Reference - Indians Oliphant v. Suquamish Indian Tribes,” 1985.

⁴ WSA, Attorney General, State, 90-5-713, Volume 695, File 5, “Reference - Indians Oliphant v. Suquamish Indian Tribes,” 1985.

crashed his car into a roadblock setup by the officers.⁵ The case went to the highest court and on March 6, 1978, the Supreme Court of the United States decided that “an Indian tribe does not have inherent power to exert criminal jurisdiction over non-Indians on reservation.”⁶ Justice William Rehnquist wrote the majority opinion while Justice Thurgood Marshall offered a dissenting opinion that Indigenous tribes had “retained sovereignty,” which included the “right to try and punish all persons who commit offenses against tribal law within the reservation.”⁷

Historian Alexandra Harmon observes that the *Oliphant v. Suquamish Indian Tribe* decision had “far-reaching implications for Indian communities and their relations with other Americans” and that the ruling “became an essential consideration in any dispute or public discourse about the nature of Indian tribes, their relationship to the United States, their powers as political entities, and the significance of Indian reservations.” Harmon notes that the most detrimental effect of this ruling was that it “cast doubt on tribes’ ability to manage community affairs ranging from economic enterprise and natural resource use to domestic relations and public health.”⁸

WENITEM observers viewed this decision as an encouraging sign that “the pendulum [was] about to swing back from such extremes as the Boldt decision.”⁹ While Coast Salish tribal nations in Washington State negotiated co-management schemes with state fisheries officials, indicating that Indigenous marine sovereignty had new currency within state regulatory policy, WENITEM at Port Madison, resenting this shift in the power balance, ardently resisted Suquamish authority over the reservation.

⁵ WSA, Attorney General, State, 90-5-713, Volume 695, File 5, “Reference - Indians *Oliphant v. Suquamish Indian Tribes*,” 1985.

⁶ Nixon Handy, Deputy Attorney General (Washington State), “Environmental Regulation in Indian Country,” presentation for Environment Committee on Indian Jurisdiction, 1988. WSA, Attorney General, State, AR-20130806-03, Volume 1, File 17, “Indian Issues Indian Affairs Working Group (NAAG),” 1987 to 1991.

⁷ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

⁸ Harmon, *Reclaiming the Reservation*, 3.

⁹ “Senators Speak On Indian Claims Case,” *Bremerton Sun*, 22 March 1978, 36.

That the *Oliphant* decision emboldened WENITEM to ignore Indigenous officials is evident in Suquamish difficulties to prosecute WENITEM offenders in Port Madison after the case. Traffic violations, for example, became a constant battleground. The Suquamish Tribal Council introduced a traffic code in June 1982 to regulate “civil infractions” across their reservation. In the first ten months, the result was a “clear downward trend in accidents on the reservation.” In 1983, however, the council suspended the code due to WENITEM complaints that had resulted in a state investigation of the matter.¹⁰ State support for the avoidance of penalty by WENITEM who flagrantly drove at excessive speeds, or while intoxicated, reveals the structure and racialized logics of settler-colonialism.¹¹ As one traffic violator protested: “since I’m a white female, [the Tribal Police] had no authorization to ticket me.”¹² Despite evidence of well-acknowledged crimes, the non-Indigenous public preferred the denial of Indigenous nations’ sovereignty over the lawful prosecution of WENITEM offenders. To counteract a loss of fishing privileges, they took other victories where they could such as the right to ignore Indigenous law.

Tensions between Suquamish and WENITEM heightened considerably in the aftermath of the Boldt Decision, and WENITEM residents at Port Madison feared a loss of control over their private property along with marine resources in the Salish Sea. Often these two issues intersected. In 1976, for example, Colonel Carl H. Larson wrote to Representative Joel M. Pritchard that, while attending a “Fishermen’s protest” at Suquamish, he noted there was a “cloud on the title of all ‘fee simple’ patent property within the initial boundaries of the

¹⁰ Sasha Harmon, Tribal Attorney to Kenneth G. Bell, 15 October 1985. WSA, Attorney General, State, 04-A-96, Volume 3, File 24, “Indian Litigation - Suquamish Traffic citations,” 1987.

¹¹ Bonds and Inwood point out, both white supremacy and settler colonialism inform US dynamics of racialization and privilege. Bonds and Inwood, “Beyond White Privilege,” 715.

¹² Beth Lathrop to C. Danny Clem, 6 September 1985. WSA, Attorney General, State, 04-A-96, Volume 3, File 24, “Indian Litigation - Suquamish Traffic citations,” 1987.

reservation.”¹³ A couple years prior, WENITEM residents had petitioned “the President and the Congress of the United States to relieve them of the recent assertions of jurisdiction by the Suquamish Tribal Government over the petitioners on their fee patent lands.”¹⁴ According to Larson, the residents’ “mood” had become increasingly “foul.”¹⁵ In the summer of 1977, WENITEM also rejected a Suquamish Tribal Council “building moratorium,” which they viewed as a tribal effort “to assert civil jurisdiction over the non-Indian residents of the Port Madison reservation.” In response to this move, Kitsap County Commissioner John Horsely wrote to Congress that the “entire Port Madison reservation should be excluded from the definition of ‘Indian country’ since it contains an essentially non-Indian community.”¹⁶ The status quo Horsely described was a symptom of American colonialism. After the nineteenth-century Dawes Act carved up the Port Madison Reservation, portions of this Indigenous territory subsequently became the property of non-Indigenous home owners. This colonial process became the justification to deny Suquamish sovereignty over its territory, land that the Tribe’s ancestors had reserved for its “exclusive use” through the Point Elliott Treaty.¹⁷

While WENITEM at Port Madison celebrated the *Oliphant* decision, they worried it may only be a small victory. As one resident wrote to Congressman Norm Dicks: “the majority of the people in this town [were] overjoyed,” but they feared that there would be “an attempt to

¹³ Carl H. Larson to Representative Joel M. Pritchard, 4 February 1976. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 252, File 10, “Boldt Decision,” 1976.

¹⁴ John Horsely, Kitsap County Commissioner to Henry Jackson, Warren Magnuson and Norm Dicks, memo ahead of meeting on 28 July 1978, Suquamish Indian/Non-Indian Land-Use Jurisdiction Dispute, with enclosure, “Status of the Port Madison Indian Reservation.” UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 254, File 25, “Indians,” 1978.

¹⁵ Carl H. Larson to Representative Joel M. Pritchard, 4 February 1976. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 252, File 10, “Boldt Decision,” 1976.

¹⁶ John Horsely, Kitsap County Commissioner to Jackson, Magnuson and Dicks, memo ahead of meeting on 28 July, Suquamish Indian/Non-Indian Land-Use Jurisdiction Dispute. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 254, File 25, “Indians,” 1978.

¹⁷ Governor’s Office of Indian Affairs, “Treaty of Point Elliott, 1855.” *Access Washington*. <https://goia.wa.gov/tribal-government/treaty-point-elliott-1855> (accessed 26 December 2021).

overturn the decision.” The letter writer held the common belief that there was “no limit to the funding the Indians are able to get and will probably fight to the bitter end.” She also expressed a “secret hope” that the Suquamish Tribal Council would move their office from the “eye-sore” in town to the new location at Agate Pass. Demonstrating that peculiar position of innocence which suggests average WENITEM had no agency in the settlement process, she then thanked Dicks for what he had “already done for us non-Indians who *find ourselves* living over here.”¹⁸ Rather illogically, the writer suggested that those who purchased property on an Indigenous reservation had no idea that questions of tribal sovereignty and the ability to enforce tribal laws and resource regulations could ever happen there. Just as ignorance cannot be a defense in a court of law, a lack of education on the part of WENITEM did not free them from the responsibilities of living on Indigenous land. This uncertainty surrounding jurisdictional powers, property rights, and fishing rights shaped the relationships between the Suquamish and their non-Indigenous neighbours.

Suquamish Chairman Leonard Forsman recalls his time as a teenager during the 1970s as one in which Indigenous children had to “stick together.” Some WENITEM teachers fished in the summer and therefore questioned the Boldt Decision publicly. Suquamish youth congregated with Port Gamble S’klallam in a school-sanctioned “Indian Club.” Forsman explained, “[w]e kind of hung together, and would be willing defend our principles.” In general, however, Forsman found that many of the student body held “progressive” values, so there were not too many confrontations.¹⁹ On the sea, however, the waters were not as calm. Forsman’s older cousin, Ray Forsman, experienced violence first hand when he fished under the new Boldt-

¹⁸ Emphasis added. Mildred R Stoddart to Norm Dicks, 14 March 1978. UWSC, Henry M. Jackson, Senate papers, 1965-1983, 3560-005, Volume 178, File 15, “Boldt Decision,” 1978; Tuck and Yang, “Decolonization is not a metaphor,” 3.

¹⁹ Leonard Forsman, 20 August 2019.

mandated regulatory regime. On August 10, 1975, for instance, Forsman received a request from the US Federal Hatchery at Quilcene to harvest hatchery chum salmon. He informed officials that he “couldn’t do it unless the government provided ‘armed’ federal marshals to protect [him] from the State of Washington aka ‘Jefferson County’ sheriffs and Washington State Fisheries.” The government agreed to supply two “armed agents in uniform.” Yet, according to Forsman, “[w]ithin two hours of commencing the harvest, ‘four’ boats from ‘four’ directions approached [his] boat the ‘Carol Ann H’ with shotguns bearing. The officers boarded the boat and were met by the two federal agents who escorted them back off the boat... they logically explained that this was a ‘federal hatchery’ and not anything under Washington State control.” Forsman reported that “on exiting the vessel, more than one sheriff and State fish cop told [him] they would ‘get me.’” In July 1976, state enforcement officers boarded Forsman’s boat at Diamond Point and “at ‘gunpoint’ forfeited [his] fish” as well as threatened him with jail or a ticket. Forsman called it “[s]tate sponsored harassment from a ‘state of the union.’ One of the 50 states using their armed sheriffs to get me out a fishery.”²⁰ Suquamish fisheries enforcement officers Bob Jones and John Tice concurred with Forsman’s depiction of the tension. Reporters described the men’s work, ensuring “law and order among the Indian and non-Indian commercial fishermen,” as “pretty dangerous.” Tice commented: “The Boldt Decision is as a powder keg.” Almost all the fishers they encountered on Puget Sound carried a gun.²¹ For Forsman, a Vietnam veteran, the memory of having a shotgun pointed at him during this confrontation had lasting effects. “The mental stress of loss to Suquamish,” he reflected in a memorial to the government, “is here and has never left our conscience. We pray for the return and use of our lands and

²⁰ STA, Ray Forsman, 2013, Volume 1, File 1, “Complaint and request for relief/primary rights in Hood Canal,” 2013.

²¹ Jim Rothgeb, “Riding Herd On Judge Boldt’s Spread,” *Bremerton Sun*, 5 November 1981, 12.

waters.”²² While the Boldt Decision recognized the treaty rights to the fisheries reserved to tribal nations, state enforcement officers and the general public often resisted their moral and legal obligations to the treaty covenant.

The fishery tensions carried over to the beaches at Suquamish as well. Community members continued to harvest shellfish and viewed the recent Boldt Decision as an affirmation of their right to the resource. [Figure 15] In the wake of more disagreements between Indigenous shellfish harvesters and upland property owners, the Suquamish Tribal Council resolved to assert its control over customary harvesting sites. When the federal government approached the Suquamish to discuss the closing of the ICC, the council opted for a claim to regain control of the tidelands adjacent to Port Madison reservation.²³ Initially, Suquamish leadership considered making a claim to the Old Man House site, but based on advice from anthropologist Barbara Lane — that the Old Man House transaction appeared on paper as a “land sale” — the council opted to assert a claim to the tidelands instead.²⁴ On December 29, 1982, the Tribal Council released a press statement declaring that the Suquamish had “filed an action in the United States District Court for Western Washington seeking to affirm that the tidelands within the Port Madison Indian Reservation and bordering on Puget Sound are owned by the United States government in trust for the Suquamish Indian Tribe” and that the “tidelands of the Port Madison Reservation were reserved for the Suquamish Tribe in the Point Elliott Treaty and subsequent executive orders. Neither the Tribe nor the United States has ever authorized the sale of any of the Reservation tidelands.” The release further stated, “[i]t is not the intention of the Suquamish Tribe to unreasonably limit access to Reservation tidelands by non-Indians or to necessarily

²² STA, Ray Forsman, 2013, Volume 1, File 1, “Complaint and request for relief/primary rights in Hood Canal,” 2013; Ray Forsman, conversation with Gordon Lyall, 13 August 2019, Olympia, Washington State, USA.

²³ Tony Forsman, 20 August 2019; Leonard Forsman, 20 August 2019; Harmon, *Indians in the Making*, 1.

²⁴ Leonard Forsman, 20 August 2019.

require removal of existing structures that trespass on the tidelands. The Suquamish Tribe's primary concern [was] to ensure that the tidelands [were] managed consistent with the purpose for which the reservation was established: as a homeland designed to provide food and a basis of commerce through fishing, shellfish production and other traditional uses." The council concluded that it was its "wish" to see "both during and after this litigation the Suquamish Indian people and non-Indian residents of the Port Madison Indian Reservation continue to live in peace and harmony and to work for the benefit of our community with mutual respect."²⁵ Suquamish leadership hoped that both Indigenous and non-Indigenous citizens would acknowledge with respect their reaffirming of Coast Salish laws over community and resource management. "The main thrust of it is that Indians have not been able to dig clams on the tidelands because the property owners ran them off," Tony Forsman explained to Dan Williams of the *Kitsap County Herald*, "access, not ownership, [was] the main goal of the tribe" but it had become apparent that recognition of their treaty right to Port Madison beaches would be necessary to guarantee this access.²⁶ That same year, the Suquamish Tribe enacted a shellfish ordinance in order to set "harvest limits and procedures to both protect and monitor the resource." As the Tribal Council explained: "With Tribal unemployment exceeding 30%, the Suquamish Tribe has a unique and critical interest in protecting the shellfish resource—the primary purpose of the Shellfish Ordinance." The council made clear that the ordinance applied to both tribal community members and non-members who were instructed to obtain a tribal permit to collect shellfish.²⁷

²⁵ The Suquamish Tribe, "Information Regarding Federal Tidelands Lawsuit," 29 December 1982. UWSC, Brock Adams papers, 1947-1993, 1096-016, Volume 53, File 15, "Indian Affairs Suquamish," 1987 to 1990.

²⁶ Dan Williams, "Property Owners Concerned: Suquamish seek return of tidelands." *Kitsap County Herald*, 5 January 1983, 1.

²⁷ The Suquamish Tribe, "Fact Sheet on the Shellfish Ordinance Adopted August, 1982. UWSC, Brock Adams papers, 1947-1993, 1096-016, Volume 53, File 15, "Indian Affairs Suquamish," 1987 to 1990.

Most WENITEM residing at Port Madison were less concerned with the shellfish, however, and more with the beaches that were home to the shellfish. In their view, the ability to dictate what happened to the shellfish belonged to those who owned the beaches as private property. They devised an array of responses from legal to political lobbying to block Suquamish from accessing or regulating the tidelands adjacent to Port Madison. One particularly insidious WENITEM strategy to deny Suquamish title to the tidelands was to cast doubt on the lineage of tribal members. As historian Alexandra Harmon, who had previously served as the lawyer who represented the Suquamish in the tidelands case, notes, the State of Washington and “several hundred holders of state deeds,” challenged Suquamish historical identity by contending that the “modern” Suquamish Tribe was not “the entity that concluded the treaty but a recent creation of the federal government” and that “the original Suquamish Tribe ceased to exist a few decades after Chief Seattle signed the treaty on its behalf.”²⁸ Their argument represents an example of what historian Paige Raibmon has observed as a non-Indigenous public’s search for “authentic Indians,” which places Indigenous peoples within an ethnographic present, thereby casting pre-contact Indigenous peoples as “true” Indigenous, and their descendants somehow as no longer possessing that identity or character.²⁹ According to WENITEM defenders in the tidelands case, authentic Suquamish no longer existed due to intermarriage with non-Indigenous people and because they had changed so much from their ancestors with the adoption of modern sensibilities. Therefore, the argument goes, these Suquamish descendants did not have a claim to any customary harvesting sites. In the context of the *Delgamuukw* trial in British Columbia, which ruled on Gitksan and Wet’suwet’en title rights, political scientist Paul Tennant has referred to this argument over “authentic Indians” as the “pizza argument.” To claim that modern

²⁸ Harmon, *Indians in the Making*, 1.

²⁹ Raibmon, *Authentic Indians*, 3-12.

Suquamish are not entitled to treaty rights because they do not resemble their ancestors is much like arguing that “an Irishman becomes an Italian upon eating pizza.”³⁰ This erasure of Indigeneity represents another settler-colonial strategy to delegitimize Indigenous peoples’ claims to the land. WENITEM utilised colonial knowledge regimes that systematically categorized Indigenous peoples in restrictive ways, in order to undermine Indigenous communities’ claims based on identity.

While preparations were made for the court hearings, conflicts on the beaches became more common. “Suquamish seems like such a quiet town to be the center of a political storm,” the *Bremerton Sun* exclaimed. Reverend Richard Kroll told the paper that “[e]motions [were] very high... There’s a lot of anger and fear... It would be sad if our community got caught up in violence.”³¹ Near the end of March 1985, the *Sun* published an article describing gunshots fired near Suquamish beach harvesters. Responding to claims that the shots were targeted, WENITEM property owners alleged that the harvesters had yelled obscenities at them prior to the incident but denied that any of the shots were fired directly at the community members. Both sides disputed the details of the incident.³² In an earlier article, a WENITEM man involved in the incident, Pierce Davis, stood defiant with arms crossed for a photo. [Figure 16] According to the *Sun*, Davis led “an association of non-Indian Suquamish property owners combatting the lawsuit” and admitted that some of his “verbal altercation[s]” with Suquamish harvesters had been “ugly.”³³ Davis also lobbied government officials, complaining to Governor Booth Gardner that “[s]ince the filing of this lawsuit, Indians have repeatedly trespassed on private property,

³⁰ Tennant, *Aboriginal Peoples and Politics*, 15; Raibmon, *Authentic Indians*, 9.

³¹ JoAnne Marez, “Lawsuit divides Suquamish neighbours.” *Bremerton Sun*, 28 March 1983, 11.

³² “Indians, landowners differ on beach incident.” *The Sun*, 22 March 1985, 8.

³³ JoAnne Marez, “Suquamish clamming enrages landowners.” *The Sun*, 15 March 1985, no page number. STA, Suquamish Tribal Cultural Center, 1985, Volume 1, File 1, “Box of newspaper clippings,” 1985 to 1985.

upland and tidelands, and have committed theft by removing shellfish from tidelands privately owned, and in the face of repeated protests from the owners.”³⁴ Davis expressed “frustration at not being allowed to meet with the government officials involved in the Suquamish case,” causing the Attorney General’s Office to arrange a personal meeting to further hear his complaints.³⁵ The Deputy Attorney General Christine O. Gregoire met with Davis a few days later, on May 28, and promised that she would forward Davis’s complaints to the governor’s policy advisor and make efforts to avoid any further meetings with Suquamish representatives that may appear to Davis as “secret negotiation.”³⁶ State officials demonstrated that they had no intention of alienating Davis or other non-Indigenous property owners at Port Madison.

To further assuage WENITEM anger at Port Madison, state fisheries officer Phil Worcester informed the *Sun* that he had confiscated shellfish from Indigenous harvesters on “private property” in some cases but not when “the clammers [were] already off the beach.”³⁷ Some residents did not see these measures as sufficient to protect private interests. Kitsap County officials then offered to “step into the breach left by state fisheries officers, who [had] been told to avoid arresting persons for clam digging violations.” Kitsap County prosecutor C. Danny Clem promised “he [would] prosecute those arrested... both for trespassing on privately owned beaches to dig and digging where health officials say the shellfish likely are polluted.”³⁸

Suquamish fisheries director Tony Forsman agreed that the tribe didn’t want tribal harvesters

³⁴ Pierce W. Davis, President of the Association of Property Owners and Residents of the Port Madison Area, to Governor Gardner, 21 March 1985. WSA, Attorney General, State, 04-A-97, Volume 2, File 16, [Loose in Box], 1982 to 1987.

³⁵ Christine Gregoire to Pierce W. Davis, 24 May 1985. WSA, Attorney General, State, 04-A-97, Volume 2, File 16, [Loose in Box], 1982 to 1987.

³⁶ Christine Gregoire to Pierce W. Davis, 7 June 1985; Christine Gregoire to Laird Harris, 7 June 1985. WSA, Attorney General, State, 04-A-97, Volume 2, File 16, [Loose in Box], 1982 to 1987.

³⁷ JoAnne Marez, “Suquamish clamming enrages landowners.” *The Sun*, 15 March 1985, no page number. STA, Suquamish Tribal Cultural Center, 1985, Volume 1, File 1, “Box of newspaper clippings,” 1985 to 1985.

³⁸ JoAnne Marez, “County authorities will begin policing clamming violations,” *The Sun*, 1 May 1985, 1 and 8.

“digging on polluted beaches either,” acknowledging that “some of the clammers [were] intoxicated and there’s a lot of vulgar language used,” which he did not think homeowners should “have to put up with.” He informed the press that the Tribal Council told community harvesters to avoid confrontation because “it’s not worth it.”³⁹ In an effort to explain Coast Salish fishers’ harvesting techniques, Suquamish harvester Marlin George told the *Sun*: “we try to stagger the beaches so we won’t be digging the same place each year. We knew it (the beach near Davis and [Port Madison resident] Mrs Smith) was about ready to harvest.” He added, “[i]f the clams aren’t harvested... they will overpopulate. Homeowners are not taking clams in sufficient quantities to cultivate the beaches properly.” He reported that the clams were growing too large and it was, “hard to market them.” Marlin assured readers that community harvesters were “careful to use a public access and not to trespass on private property to reach the beaches,” but reiterated that the beaches belonged to the Suquamish. In response, the WENITEM property owners put up “private property” signs and held that these signs qualified the beaches as “staked and cultivated by citizens,” as delineated in the Stevens Treaties.⁴⁰

That same month, the Suquamish Tribal Council issued a press release on the “beach incidents.” The council announced that it was “concerned with recent incidents involving tribal member clam digging on the Port Madison Reservation” and urged “both Indian and non-Indians involved in the incidents to show constraint and to prevent any possible confrontations.” Chairman Bennie J. Armstrong maintained that “the right of harvesting clams within the original reservation boundaries is expressly reserved by treaty... Clam harvesting is and will continue to be an important income source for tribal members.” He added that it should “be made clear” that the Suquamish right to “on-reservation clam digging” was “not the only issue involved in the

³⁹ Ibid.

⁴⁰ “Indians, landowners differ on beach incident.” *The Sun*, 22 March 1985, 8.

impending tidelands lawsuit.”⁴¹ The question of sovereignty over the reserve lay at the heart of the matter. Tony Forsman also observed that property ownership framed the conflict. WENITEM were “not concerned with just clams,” Forsman argued: they also wanted “to take away tribal property.” Indeed, the question of Indigenous title to treaty land and unceded territory underwrites most conflicts in settler-colonial states. Calling it “the most widely misunderstood issue in the country,” he acknowledged that a great deal of anger came from a lack of knowledge about treaty rights and the history of Indigenous-settler relations in the United States.⁴²

WENITEM responses to this tidelands case resembled the alarm over fish-ins in the 1960s and the 1974 Boldt Decision. Many connected the shift in fishing dynamics since Boldt with the general state of their relationships with Indigenous communities. For example, a journalist from Kitsap County and frequent commentator on Indigenous rights, Adele Ferguson, wrote: “as is plain to see, things not only aren’t getting better ten years down the road from the Boldt Decision, they are getting worse.”⁴³ Another WENITEM called “tribal spokesman, Tony Forsman... very voluble in claiming nothing more is intended, but the undercurrent among the Indians is that this suit is just the opening wedge.” She further raised the alarm that “after [the Suquamish] win this suit they intend to acquire, first the waterfront properties and then the uplands eventually forcing all whites off the reservation.”⁴⁴ Ferguson, and her editorialist, exemplified WENITEM fears that their ability to control or even remain on their property had been compromised. Despite an unwavering belief in their fee simple property rights, their fear

⁴¹ The Suquamish Tribe, press release, 15 March 1985. STA, Suquamish Tribal Cultural Center, 1985, Volume 1, File 1, “Box of newspaper clippings,” 1985 to 1985.

⁴² “Indians, landowners differ on beach incident.” *The Sun*, 22 March 1985, 8.

⁴³ Adele Ferguson, “Ten years down the road from Boldt.” *The Sun*, no date or page number. STA, Suquamish Tribal Cultural Center, 1984-2, Volume 1, File 1, “Box of newspaper clippings,” 1984 to 1984.

⁴⁴ *Ibid.*

over potential property loss suggests the existence of WENITEM anxiety that their land ownership may not have been as legally justifiable as they originally believed.

Extending WENITEM ownership over the beaches required state validation. To gain this recognition, upland property owners made regular calls to fisheries officials seeking state prosecution of tribal harvesting. State officials heeded these calls for prosecution. On July 25, 1986, for instance, when Suquamish teenagers Philip and Steven Holt, and several of their cousins, donned headlamps to dig clams under the cover of darkness in hopes of avoiding confrontations with upland property owners, their activities did not go unnoticed. “We were digging clams and [enforcement officers] came running at us without flashlights or nothing,” Steve Holt testified at a court hearing, “We didn’t know who it was and they came running at us and we attempted to run. They caught us, pulled us up the beach and handcuffed us and took us up to a car and confiscated our boat, motor, took our coats, our clam forks, our headlamps, everything.”⁴⁵ On another occasion on May 3, 1988, at Oyster Bay, enforcement officers “got ahold of the boat.” They instructed the Holts “to come back in.” According to Holt: “we came back in and then they threw us in the mud and handcuffed us.” Holt further testified: “he grabbed my hair and threw me in the mud and handcuffed me.” At the same hearing, Dean Allen Harvey pointed to a glaring double standard. “If you’re digging with a white guy,” he complained, “they’ll take the Indian away to jail and write the white guy a ticket.” In total, the Holt’s identified “nine instances in which they and others, including non-Indians, were contacted and either released, cited or arrested by law enforcement officials.” They also hinted that some of these confrontations were a bit of a game. When asked what the fisheries officers said to him, Philip Holt replied, “Not much. How’s it going? That’s what they always say. He likes catching

⁴⁵ *Holt (Suquamish) et al. v. Kitsap County*, 28 February 1990. In Washington State Archives, Attorney General, State, AR-20101215-01, Volume 3, File 6, “U.S. v WA Background Box Vol II,” 1990 to 1993.

me... [he] took our clams, took us to juvie.” When asked who had authorized them or their relatives to harvest across Bainbridge Island, the Holts responded that it had been fisheries manager Tony Forsman.⁴⁶

When asked about this authorization years later, Forsman recalls that the Holts had been “pushing the envelope.” He elaborates: “[t]hey were frustrated by the lack of movement in the lawsuit [Boldt Phase III]. In these lawsuits you got to have all your ducks in a row.” For trials such as the tidelands case and the shellfish proceedings of the Boldt Decision, litigants had to have their “act together” and their “evidence ready,” and he explains this “just took a long time... the lawyers were just going to not rush into it. And there was no rushing them.”⁴⁷ In his role as fisheries manager, Forsman was “pulled in many different directions at this time,” trying to balance regulatory demands with the needs of the tribe while they waited for action in the courts. The Tribal Council had tasked Forsman with the unenviable position of “keep[ing] the lid on things until it got settled.”⁴⁸ The Holts, however, were determined to litigate on their own, which the Tribal Council did not recommend. Tribal lawyers had had “had several meetings with them encouraging them not to do that.” Forsman explains:

You know, for real sound legal principles. They could have got cut to pieces in court. And their case probably would have been dismissed. Or we could have got some bad law. It’s just not an individual’s treaty right. It’s a tribal treaty right. No one individual holds a property right in their hands. But some of them think they do. The more entitled ones. It’s not theirs. It’s the Tribe’s. Important culturally

⁴⁶ Ibid.

⁴⁷ Tony Forsman, 20 August 2019.

⁴⁸ Tony Forsman, conversation with Gordon Lyall, 2 February 2022, Pacific Northwest.

and very very important legally. I mean, that's treaty law. And this case [was] based on it, that it's a tribal right. Still have a lot people out there that think they should be able to do what they want when they want, and the state be damned, the Tribe be damned. But that's just how the law is.⁴⁹

During their defense, the Holt's grandmother, Mable R. Cordero, grounded her grandchildren's action in the customs of their ancestors. "I remember both my parents and my grandparents digging clams to feed the family," she testified in an affidavit. "They also dug clams for family gatherings, or for family elders. My mother also smoked clams for winter."⁵⁰ The Holt's mother, Linda Holt, added that her grandparents, "often dug over a 100 pounds of clams at a time." She described "large family gatherings, with a lot of people to feed, and also would send clams home with the family visiting from out of town. My grandfather also dried a good deal of their clam harvest and preserved them for the winter months." She recalled that the boys had "spent a great deal of time with [her] grandfather when they were little. He taught them about the various kinds of shellfish in the area, and the areas to dig them in" adding that her grandfather had been "very strict with both [herself and her] sons about proper conservation of the clam beds and the importance of moving around a great deal to different beaches to give the beds time to replenish and not exhaust any one particular clam bed."⁵¹ The Holts framed their case within their understanding of Suquamish moral ecologies of shellfish management. While they "pushed the envelope" and possibly upset the collective Suquamish effort to assert shellfish

⁴⁹ Tony Forsman, 20 August 2019.

⁵⁰ Mable R. Cordero, affidavit, *Holt and Holt v. Kitsap County*, 4 May 1988. WSA, Attorney General, State, AR-20101215-01, Volume 3, File 8, "U.S. v WA Misc. Background Box Vol I," 1993.

⁵¹ Linda L. Holt, affidavit, *Holt and Holt v. Kitsap County*, 2 May 1988. WSA, Attorney General, State, AR-20101215-01, Volume 3, File 8, "U.S. v WA Misc. Background Box Vol I," 1993.

rights, their actions were understandable within what they believed to be their right to the resource through their treaty-confirmed access. Within their interpretation of the treaty language regarding the taking of shellfish, they insisted that they had “never harvested shellfish in [their] life on any beach that was either staked or cultivated.”⁵²

The Holts rarely shied away from asserting their treaty rights to the beaches within Suquamish territories. On June 10, 1988, in another example of the cat and mouse game played between them and the state, fisheries enforcement officers arrested the Holts and relations Randi Purser and Richard Purser after they had been harvesting on a “private residential beach” on Manzanita Bay, Bainbridge Island. When Tony Forsman arrived at the scene, he described the situation as “tense.” According to Forsman, Randi Purser had been worried that her boat would be confiscated, so she fled “by jumping in her boat after voluntarily going back to the Brownsville boatramp, where the Holts were apparently arrested. She said that no one asked her to stay around, was not advised of her being arrested, and didn’t want to stick around to find out, so she left.” The officers then asked Forsman to secure the return of Purser so that they could charge her. Placed in a predicament, Forsman negotiated with the state over regulations within Suquamish protocols of shellfish harvesting. As he explained: “Since we had a verbal agreement (I thought) with the state to not arrest tribal members if they were legally digging under tribal regulation (which I believe they were) I felt we could salvage this situation with the state officer.” He convinced Purser to return with him, believing that he would be able to come to an agreement with the officers. However, the enforcement officers instead “apprehended” Purser and a struggle ensued. Forsman commented: “the two sheriff deputies that had a hold of her were treating her rather roughly, and threw her against the car several times. It seemed excessive to

⁵² Steven L Holt and Philip R. Holt Jr., affidavits, 4 May 1988. WSA, Attorney General, State, AR-20101215-01, Volume 3, File 8, “U.S. v WA Misc. Background Box Vol I,” 1993.

me, since Randi is a rather small girl, and these two male deputies were quite a bit bigger.” Her brother, Rich Purser, then “ran to the scene of the altercation, protesting the rough treatment of the officers in handling his sister’s arrest. He was warned by the deputies to back off or he also would be arrested.” Despite the warning, Purser continued to protest and the deputies arrested him for assault. In light of these events, Forsman realised that “it [had] become clear to me that the state and county authorities have declared war on tribal member clam harvesting.”⁵³

During this war over shellfish, the Suquamish Tribal Council regularly reminded officials and the public of the importance of the resource to the community and of their treaty harvesting rights. In a letter to the governor, for instance, Forsman explained, “[t]he fact that the harvest of shellfish, especially clams, has remained such a widespread activity of Tribal people in Puget Sound attests to its importance.” He continued, “[e]ven aggressive enforcement by State and local law enforcement agencies have not dampened the spirits or discouraged Indians from exercising their way of life. I personally know of a particular Indian who has been cited seven times, and has served three separate jail terms, an indication of the perseverance of the local native clam diggers.”⁵⁴ Thanks to the Boldt Decision, Coast Salish harvesters had gained confidence in their rights to marine resources and, with federal backing, the power balance shifted in favour of Indigenous nation’s claims. Yet, WENITEM stakeholders had dug in at the beaches using state law to enforce their property rights. Both sides again turned to the courts to interpret nineteenth century treaties and to answer the question of how colonial treaties applied to the modern context.

⁵³ Tony Forsman memo to Jon Bugher, Tribal Administrator, 20 June 1988. WSA, Attorney General, State, AR-20101215-01, Volume 11, File 6, “U.S. v WA Forsman Dep,” 1988 to 1993.

⁵⁴ Tony Forsman to Dave McCraeny, Office of the Governor, 23 Aug 1985. WSA, Attorney General, State, 04-A-97, Volume 2, File 16, [Loose in Box], 1982 to 1987.

As beach conflicts continued, the hearings for the tidelands case began. On April 3, 1987, after five years of preparation, the United States District Court opened hearings for *United States of America, and Suquamish Indian Tribe v. Dorwin Aam et al.* The trial was held over a brief period of twelve days with a hectic schedule.⁵⁵ Both sides presented evidence and testimony from expert witnesses. The Suquamish hired prominent anthropologist Barbara Lane to be their primary witness in the case. Leonard Forsman recalls assisting her during the trial as well as transporting community members to the hearings. He describes one particular day:

During the tidelands case, we had this old beat-up van that was like used for everything from taking people to the doctor and going to softball tournaments. It was a vehicle the tribe had. I was driving that over to the trial every day. And we were on a break, [Barbara Lane] goes “I need this document.” And so I said, “you need a ride?” She had a car but somebody dropped her off or something. So we bombed over to her house over there from the federal court... she went into her office... we were digging through these cardboard boxes to find this document. And jumped back in, we had to get back like within a half hour because court just took a recess. Seemed like a half hour or hour that we had, and I remember bombing through Seattle to get her back to court in time. Pretty comical. That was the tidelands case.⁵⁶

⁵⁵ Julie McCormick, “No hint of tidelands ruling given as trial goes to judge,” *The Sun*, 22 April 1987, no page number. UWSC, Brock Adams papers, 1947-1993, 1096-016, Volume 53, File 15, “Indian Affairs Suquamish,” 1987 to 1990.

⁵⁶ Leonard Forsman, 20 August 2019.

Concurrent to the tidelands case, public questions regarding the management of shellfish and access across Puget Sound also increased. A month after the tidelands hearings, attorney general Ken Eikenberry met with the Washington State Trollers to discuss the status of shellfish negotiations between the state and tribal fishers. The negotiations had been initiated to avoid litigation over the resource. “We’ve just finished the trial in a more important case, involving tidelands along the Port Madison Reservation in Kitsap County,” he told the audience at the Ocosta Elementary School Gym. Eikenberry articulated the commonly held WENITEM view, often attributed to the principles of philosopher John Locke, that property only became truly owned through some sort of development of the land. “As you can well imagine,” he explained, “much of the land in private ownership has been improved, with bulkheads and in some cases even houses being built on the land.” He predicted a “favorable decision,” in the tidelands case and called upon the audience to “petition the President for a Commission to review the impact of federal Indian policy on non-Indians!” Eikenberry also urged their help to “redress” tribal authority over reservations.⁵⁷

Four months after the tidelands hearing and deliberations, Justice Gordon Thompson Jr. rendered his decision. Thompson decided that the Suquamish Tribe had demonstrated that community members “depended upon resources obtained from tidelands for their survival.” He also found that they “conceived of tidelands adjacent to their reserve as containing resources for their exclusive use” and that “[o]nce the reservation was enlarged, the tidelands adjacent to the reserve encompassed a significant, although less than a majority, of their most important tideland resource procurement sites.” In Thompson’s opinion, however, the Suquamish had not

⁵⁷ Ken Eikenberry presentation to the Washington State Trollers, Ocosta Elementary School Gym -- Westport, 17 May 1987. WSA, Attorney General, State, 90-5-713, Volume 695, File 1, “Reference - Indian Miscellaneous Memos,” 1986.

demonstrated that “the language of the grant in the treaty could be construed to include tidelands within the boundaries of the reserve.” Further, he decided, “that even if the grants in the treaty and the executive order could be construed to include tidelands, there existed a public exigency which would have required the United States to depart from its general policy against conveying lands beneath the body of a navigable water.” Finally, he ruled that they had failed to show that “United States’ officials were aware that the case area tidelands contained resources of vital importance to the Suquamish Indian Tribe at the time of the grant in the Treaty or at the time of the grant in the Secretarial Order.” Regarding Lane’s testimony, Thompson concluded that “Dr. Lane fail[ed] to cite any documentary basis to conclude that the United State’s negotiators even considered access to tidelands at the Port Madison Reservation.”⁵⁸ Thompson then intellectually colonized Suquamish worldviews and understanding of their relationship with their territory when he determined that they “did not normally rely on shellfish and other resources gathered from the disputed tidelands, but instead relied on salmon, shellfish and other food sources from traditional hunting, fishing, and food gathering locations *away from the reservation.*”⁵⁹ In sum, Judge Thompson acknowledged how important shellfish were but couldn’t see how that should affect WENITEM legal definitions of individual property rights. He agreed with the state’s expert witness Robert E. Ficken who contended that reservations had not been established to promote Indigenous communities’ fishing practices but to “eradicate those practices,” which was a dubious argument given the fact that fishing rights were affirmed in the Stevens Treaties. According to Ficken, however, it would have been “absurd” for US government officials to

⁵⁸ *Memorandum Decision, US and Suquamish vs. Dorwin AAM et al.*,

⁵⁹ Emphasis added. Subproceeding, “Memorandum in support motion for order to clarify and define each tribe’s claim as to its usual and accustomed shellfish harvesting areas and species,” in *U.S. v. Aam*, (9th Cir. 1989). WSA, Fisheries Dept., 98-A-229, Volume 6, File 7, “Shellfish Litigation,” 1990 to 1991.

include tidelands as part of the reservation.⁶⁰ His position put the onus on the colonized treaty signers to have explicitly connected the shellfish referenced in the shellfish proviso to their reservation instead of on Governor Stevens and his government who wielded the military power to dictate the boundaries of the reserve.

Suquamish Chairwoman Georgia George denounced the tidelands decision as a “regression in state politics.” She likened shellfish beaches to farms and pointed to a lack of consistency in WENITEM values noting that, at the time, there was a great deal of public concern over mid-west farmer’s loss of farmlands, but not over Suquamish loss of ownership over the beaches adjacent to Port Madison Reservation. “Well, this is the land where our farms are,” she stated. George felt confident that the tribe’s appeal would be successful. Yet the Suquamish lost its subsequent appeal in 1990.⁶¹ In light of the co-management fisheries framework, and the “strides” Washington State and tribes had taken to “settle fishing rights disputes,” George viewed the tidelands decision as a detriment to new negotiations between Coast Salish tribal nations and government officials over shellfish resources.⁶² The decision strained these relationships which, in turn, shaped the negotiations between the tribes and the state over shellfish rights during Boldt Phase III. The concurrent shellfish negotiations would also break down, resulting in another court trial.

Within the Boldt-ordered fishing management scheme, tribal nations in western Washington negotiated shellfish rights with state officials during the 1980s. Both sides believed that securing shellfish harvesting for Indigenous peoples on government-owned beaches could mitigate further

⁶⁰ Robert E. Ficken, PhD, “Government Policy and the Early History of the Port Madison Reservation: A Brief Report,” April 1985. WSA, Attorney General, State, 04-A-96, Volume 4, File 34, “Port Madison Reservation,” 1985.

⁶¹ United States of America, and Suquamish Indian Tribe v. Dorwin Aam, et al. 887 F.2d 190 (9th Cir. 1990), <https://www.courtlistener.com/opinion/530336/united-states-of-america-and-suquamish-indian-tribe-v-dorwin-aam-ingvard/>

⁶² “Suquamish: tidelands are our farms.” *The Sun*, 5 September 1987, A1 and A4.

conflicts with upland property owners and possibly avoid more costly court hearings. In this way, the shellfish negotiations were linked to the tidelands case. Shellfish rights and tidelands were two separate court cases, but the outcome and handling of one had impacts on the other. State officials were aware of this intersection and tailored their strategy accordingly. In 1985, at the beginning of the shellfish negotiations, the Washington State Attorney General's Office, circulated a memo to define the office's position on shellfish. The office outlined as its goals:

(1) to make sure that private owners of tidelands, on or off reservation, can keep Indians off the tidelands, if the Indians try to go on in purported pursuit of a treaty-entitlement to shellfish; (2) to avoid any legal positions regarding shellfish which would diminish our chances of victory in the tidelands cases; and (3) perhaps most importantly, to keep the Indian share of the off-reservation shellfish resource within reasonable bounds.⁶³

Unlike the earlier Boldt hearings, Washington State officials did not have a unified position on shellfish. Fisheries Director Bill Wilkerson, for example, was much more willing to negotiate with the Northwest Indian Fisheries Commission than his predecessors.⁶⁴ Private citizens viewed Wilkerson's willingness to negotiate as a sign that he would offer the "plum" of shellfish "to the Indians in order to avoid the '3rd World War' as the Fisheries people say." One letter writer informed Eikenberry that he considered "the current Wilkerson/ Gardner gambit to give the

⁶³ Tim Malone memo to Chris Gregoire, 29 May 1985. WSA, Attorney General, State, 94-A-11, Volume 336, File 8, "Working File - Shellfish," 1985 to 1988.

⁶⁴ Bill Wilkerson testimony to Senate Natural Resources Committee, 10 March 1986. WSA, Attorney General, State, 04-A-97, Volume 2, File 16, [Loose in Box], 1982 to 1987; "Fisheries in bind on Indian clamming issue," *The Sun*, 29 June 1985, 9; John Evensen to Eikenberry, no date. WSA, Attorney General, State, 94-A-11, Volume 336, File 8, "Working File - Shellfish," 1985 to 1988; Heffernan, *Where the Salmon Run*, 186.

Indians all the clams and oysters on state land... plain ludicrous.”⁶⁵ In another vitriolic missive, C. Danny Clem accused Wilkerson’s successor, Joseph R. Blum, of only “addressing the needs of the Indians with regard to shellfish gathering” instead of taking a balanced approach. Clem also resented Blum’s accusation that Clem had “a mindset which was 10-15 years old and which was no longer appropriate for the negotiation table.” In Clem’s opinion Blum had a “mindset” that was “contrary to the state of the law.”⁶⁶ This division within state officials strengthened the treaty tribes’ ability to reassert Coast Salish tribal nations control over fisheries regulation.⁶⁷

During negotiations, the Suquamish Tribal Council outlined their position. “For generations, Tribes of the Puget Sound Area have harvested and gathered clams, for both subsistence and commercial uses,” Tony Forsman delineated in a brief on behalf of the Tribe. “The activities of Indians gathering shellfish has been hampered somewhat throughout the years, mainly by the State of Washington’s consistent enforcement action against Indians harvesting shellfish,” Forsman added. “Owners of private tidelands have reported Indians digging on their beaches, although their tidelands may have been grossly under-utilized, and in danger of being poisoned because of over-abundance of clams.” Forsman informed officials that “[t]here [were] many misconceptions about the off-reservation clam harvesting issue.” He explained: “One is the question of property rights and the harvest of clams. It should be made clear that the Tribes are not seeking property or title to property in this issue.” Forsman recognised a common confusion over the two legal cases. “The issue,” he clarified, “has been confused with lawsuits filed on several reservations concerning the ownership of tidelands on-reservation. It should be made

⁶⁵ John Evensen to Eikenberry, no date. WSA, Attorney General, State, 94-A-11, Volume 336, File 8, “Working File - Shellfish,” 1985 to 1988.

⁶⁶ C. Danny Clem, Kitsap County Prosecuting Attorney, to Joseph Blum, 13 Aug 1987. WSA, Attorney General, State, 04-A-97, Volume 2, File 16, [Loose in Box], 1982 to 1987.

⁶⁷ Tony Forsman, 20 August 2019.

clear that the issue of on-reservation tidelands disputes and the issue of off-reservation clam harvesting is separate and distinct issues, not to be confused.”⁶⁸ But the confusion was understandable given how closely related the question of treaty shellfish rights intersected with questions regarding Indigenous sovereignty and the right of WENITEM to control the beaches. Many WENITEM grew anxious that *any* shellfish harvesting, including off-reservation at state and federal parks, would signal a tribal right to what they considered their beaches.

To relieve pressure on the beaches in front of private properties, shellfish negotiators adopted a strategy to give Coast Salish harvesters access to federally-owned beaches. They hoped this access would ease community reliance on the beaches in front of WENITEM houses. Most of these federal beaches were owned by the US Navy, which brought military officials into the negotiations over access. Active community harvesting became the driving force in the pace of these negotiations. As Tony Forsman explains, access to beaches, like the ones on Navy-controlled Indian Island had been initiated by Suquamish harvesting activity on the island. Members were, according to Forsman, “going up there and sneaking around. And that was serious because it’s a federal Navy base. So there’s all kinds of security issues.” To address the situation, tribal negotiators went to the Pentagon to discuss what could be done to make this activity safer. “What a maze,” Forsman recalls:

We got sent all through the bureaucracy. We finally met with the guy, the Navy civilian guy and he goes “well we don’t care.” He says “it’s all up to the captain, at the base out there. We don’t care. Whatever you can work out with him is fine.”

You know, cool — I wish we had known that before we had to be out there. So

⁶⁸ Tony Forsman, “Off-reservation Clam Harvesting,” Briefing paper, 23 April 1985. WSA, Attorney General, State, 94-A-11, Volume 336, File 8, “Working File - Shellfish,” 1985 to 1988.

we go back, first time we went to a captain, red neck, and pretty much said, “Fuck you. You’re not coming on to my base.” So we were thinking how are we going to deal with that? We were talking to [Congressman] Norm Dicks and folks. The good thing about those guys is they rotate out, right. They’re not there forever. They do their tour and they’re gone. So we kind of waited him out and then if I recall, the next captain who came in was super cool. And he said, “of course you should be out there digging clams. But we got security issues.” The issue of security always came up. So we worked that out. We got agreements. We would get security they would escort tribes in. There was only a limited number of diggers they would allow. So we worked all through that. So that was a S’klallam, Skok[omish], and Suquamish gig. You know we co-ordinated the harvest there. It worked out pretty well. The major problem there at times was, it was primarily a littleneck clam resource, which don’t market as well as manilas. Some of the beaches had manilas. Some of the beaches were better than others. The Navy had a biologist, the base biologist, and we worked with him. As I recall, it worked out pretty good.⁶⁹

Often shellfish buyers met community harvesters right outside the gate of the Navy base, and they would sell their clams immediately.⁷⁰ The Suquamish Tribe issued regulations for harvesters on Indian Island emphasizing that only littlenecks, manilas, and butter clams could be taken from the beaches, and, because of the security issues related to operating on a military

⁶⁹ Tony Forsman, 20 August 2019.

⁷⁰ Ibid.

installation, harvesters were instructed that there would be “[n]o sightseeing, hunting, fishing, brushpicking, NO CAMERAS, [and] NO SCREWING AROUND.”⁷¹

In 1990, Norm Dicks reported to the BIA that the “state of Washington, The U.S. Navy... and the Suquamish Indian Tribe have been working together for the past two and a half years on a successful cooperative project which has made tribal clam harvest on the Navy-controlled Indian Island a reality.” He added that this “cooperative project has not been without costs, however.” Along with a “significant amount of staff time which has been and continues to be necessary for the management and harvest planning of the Indian Island clam resource,” Dicks asked the agency for a remittance of \$35,000 in lost revenue to the Navy — as it formerly auctioned the clams to commercial harvesters. He reminded the BIA that it had agreed to add this expense to the department’s budget.⁷²

While agreements for tribal access to Indian Island marked a positive step in relationships between the state and Indigenous harvesters, talks between the two sides ultimately broke down. This was largely due to what was happening on the beaches. The Suquamish Tribe informed the state that “contributing to the breakdown in talks was the aggressive enforcement action taken by local law enforcement authorities in arresting and harassing tribal members during their harvest activities,” explaining that, during negotiations, “the State agreed to not aggressively enforce State law on tribal members, as long as they were not digging in de-certified areas, or private lands on which land owner objected to tribal harvesting. Local authorities, however, would not recognize such agreements.” The Tribe identified one of the “biggest problem areas” as “Kitsap County for the Suquamish... So serious and outrageous were some arrests, that several members

⁷¹ Suquamish and Tulalip regs for Indian Island, 21 June 1989. WSA, Fisheries Dept., 98-A-229, Volume 6, File 2, “Shellfish,” 1989.

⁷² Norm Dicks to BIA Officials, 1990. WSA, Fisheries Dept., 98-A-229, Volume 6, File 1, “Shellfish,” 1990.

are considering bringing civil law suits against county authorities.” Therefore, it regretted the “only alternative” was to get a court interpretation of their treaty right to shellfish.⁷³

On May 19, 1989, the treaty nations initiated new court proceedings over tribal fishing rights for shellfish. The media dubbed this new lawsuit the “surlly offspring of a contentious parent, the Boldt decision” and “Son of Boldt.”⁷⁴ The tribal nations requested that “the federal court determine the nature and extent of any off-reservation treaty rights to harvest shellfish,” stating that they sought “a declaration that they have a right to gather all species of shellfish, and that they may gather shellfish from tidelands regardless of the ownership or use of those tidelands.”⁷⁵ While the tidelands case centered on ownership of the beaches adjacent to the reservation, which assured access to shellfish, Boldt Phase III specifically addressed treaty rights to shellfish on any beach not “staked or cultivated by citizens.”⁷⁶ The two questions, however, remained intertwined for stakeholders.

When private land owners became aware of state negotiations with treaty tribes over shellfish and the subsequent lawsuit, they immediately organized in opposition of treaty shellfish rights. Two prominent groups, the United Property Owners of Washington (UPOW) and the Shellfish Growers of Washington State rose to the forefront of the challenge. The former represented citizens worried about their property rights and were closely aligned with S/SPAWN (the group that created the anti-treaty steelhead Initiative 456) and the latter represented WENITEM

⁷³ Tony Forsman, Coordinator Washington State Inter-Tribal Shellfish Committee, “Summary of State of Washington/Puget Sound Tribes; Negotiation of Treaty Shellfish Harvesting Rights.” UWSC, Brock Adams papers, 1947-1993, 1096-016, Volume 54, File 6, “Indian Affairs - Shellfish,” 1989 to 1990.

⁷⁴ Scott Sunde, “Waterfront owners alarmed by indian suit over shellfish,” *Seattle Post-Intelligencer*, 26 December 1990, D1 and D3; Jim Simon, “‘Son of Boldt’ Tribes reaching to establish shellfish rights,” *Seattle Times*, 18 August 1989, A1-A2.

⁷⁵ A-G letter to Brock Adams, 15 Feb 1990, and memorandum, 13 Feb 1990, on Shellfish Treaty Rights Litigation. UWSC, Brock Adams papers, 1947-1993, 1096-016, Volume 54, File 6, “Indian Affairs - Shellfish,” 1989 to 1990.

⁷⁶ Governor’s Office of Indian Affairs, “Treaty of Point Elliott, 1855.” Access Washington. <https://goia.wa.gov/tribal-government/treaty-point-elliott-1855> (accessed 26 December 2021).

commercial interests.⁷⁷ In 1990, UPOW announced its shock when it discovered that “the State Fisheries Department had already granted to the Tribes (we think illegally) special rights to harvest shellfish on State Park beaches.”⁷⁸ UPOW members feared that shellfish harvesting and agreements made without a court ruling on the issue would again threaten their property rights. “UPOW continues to receive numerous reports from our members of tribal Indians attempting to dig shellfish without permission on private beaches in many parts of Western Washington,” Chairman Alan L. Montgomery and Executive Director Barbara M. Lindsay declared. Based on remarks from a “leading tribal fisheries official,” they also believed that “tribal members intend to do this regardless of what the court rules.”⁷⁹

They weren’t entirely wrong. Adele Ferguson reported that year from a meeting between the Point No Point Treaty Council, Barbara Lindsay (representing UPOW), and the Department of Fisheries, that Tony Forsman had thrown down the “gauntlet” when he declared treaty tribes had “dug for generations on public and private beaches and will continue to do so for generations to come, regardless of the outcome (in court).” He concluded that everyone should “learn to live with it.”⁸⁰ UPOW framed the shellfish case as an attempt to strip them of control over their property. “A few years ago,” Montgomery and Lindsay explained, “very few waterfront owners knew about or understood the lawsuit in which sixteen local Indian tribes have claimed they are entitled to harvest privately owned shellfish, to trespass across privately owned waterfront properties to get to the shellfish, and that they are entitled to some form of veto power over what

⁷⁷ Bob Turner to Governor Gardner, 26 June 1990. WSA, Fisheries Dept., 98-A-229, Volume 6, File 7, “Shellfish Litigation,” 1990 to 1991.

⁷⁸ UPOW newsletter, December 1990. WSA, Dept. of Game, AR-20081022-01, Volume 4, File 25, “Tribal Shellfish Negotiations,” 1990 to 1992.

⁷⁹ Barbara Lindsay was also executive director of S/SPAWN. Laura Parker, “Attempt to Overturn Boldt Fish Decision Splits Sportsmen’s Groups.” *Seattle Post-Intelligencer*, 17 December 1983, A4; UPOW newsletter, December 1990. WSA, Dept. of Game, AR-20081022-01, Volume 4, File 25, “Tribal Shellfish Negotiations,” 1990 to 1992.

⁸⁰ Adele Ferguson, “Tribe intends to dig clams no matter what courts rule.” *The Sun*, 22 October 1990, A6.

owners may do with their properties.”⁸¹ This kind of fear, unfounded as the Suquamish Tribe promised many times, illustrates how WENITEM resistance to shellfish rights was enveloped in a much more primal fear surrounding the ontological certainty of their right to own land on an Indigenous reservation. The mere presence of Indigenous harvesters cast doubt on the legitimacy of their ownership.

UPOW renewed WENITEM calls for the abrogation of Indigenous treaties as a measure to preserve the current power dynamics regarding access and control of the beaches, but initially did not wish to be a part of the shellfish negotiations. According to the Attorney General’s Office, the group had “made demands that could not be accepted and they had chosen not to participate.”⁸² UPOW received regular updates on the shellfish negotiations, however. Montgomery and Lindsay were also never reticent to vocalize their stance in newsletters and letters to officials. For instance, after the government extended two “interim shellfish management agreements,” which allowed the Suquamish and Point No Point Treaty Council to continue harvesting on Indian Island beaches, UPOW, “nearly went ballistic” having caught “wind” of it.⁸³ The Attorney General’s Office received this reaction well as it also viewed the new agreements to be overly generous, believing that the federal government had offered “the tribes the moon, and a golden cow to jump it with.” The office gauged UPOW’s reaction as an

⁸¹ UPOW newsletter, December 1990. WSA, Dept. of Game, AR-20081022-01, Volume 4, File 25, “Tribal Shellfish Negotiations,” 1990 to 1992.

⁸² See for example the National Lawyers Guild letter to Washington State Attorney-General’s office asking them to stop collaborating with “anti-Indian, anti-treaty groups” like UPOW, “in their efforts to abrogate treaty rights.” 19 July 1993. WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, “Shellfish,” 1992 to 1995; John Hough memo to Ken Eikenberry, 17 July 1992; Hough to Eikenberry, 1 July 1992. WSA, Attorney General, State, AR-20130806-03, Volume 1, File 24, “Indian Issues Shellfish,” 1985 to 1992.

⁸³ Joe Blum to Members of the State Shellfish Caucus, 14 November 1990. WSA, Fisheries Dept., 98-A-229, Volume 6, File 1, “Shellfish,” 1990; Robert C. Hargreaves to Ken Eikenberry, 24 May 1991. WSA, Attorney General, State, AR-20130806-03, Volume 1, File 24, “Indian Issues Shellfish,” 1985 to 1992.

indication that it would have their support.⁸⁴ UPOW was never an easy ally for the state, however, as the group remained single-minded in their lobbying efforts with little vision for larger questions surrounding treaty rights beyond how it affected private property. One inter-department memo nicely captures the exhaustion officials felt: “Barbara Lindsay called today. Please don’t behead the person bringing this news!”⁸⁵ Lindsay proved to be highly protective of UPOW’s role representing private property interests. When the deputy attorney general wrote to Eikenberry regarding certain “private groups” that had intervened in the impending lawsuit over shellfish, he reported that, during a meeting between “the State players” and the property owners, “Barbara Lindsey [sic] became somewhat defensive.” Lindsay staunchly resisted a collaborative effort stating that “her group could adequately represent private tideland owners and there was no need to get the views of owners not included in UPOW.”⁸⁶ UPOW’s tight grip on the anti-treaty movement at Port Madison meant there was little acknowledgement of treaty responsibilities within their arguments for fee simple rights over tribal rights.

Despite a self-image as underdogs, Barbara Lindsay and UPOW enjoyed a great deal of state support. Letters from elected officials to UPOW promised that they would, to quote attorney general Eikenberry, “vigorously continue the preparation of the shellfish litigation in defense against the claims being made by Indian tribes upon public and private property.”⁸⁷ Senator Slade Gorton, the infamous anti-Boldt Decision politician, informed Lindsay that he would, “remain fully committed to the [state’s] underlying principals of the negotiations” and he would

⁸⁴ Robert C. Hargreaves to Ken Eikenberry, 24 May 1991. WSA, Attorney General, State, AR-20130806-03, Volume 1, File 24, “Indian Issues Shellfish,” 1985 to 1992.

⁸⁵ Note to Koe, 27 December 1989. WSA, Attorney General, State, AR-20130806-03, Volume 1, File 24, “Indian Issues Shellfish,” 1985 to 1992.

⁸⁶ John Hough to Ken Eikenberry, 26 February 1992. WSA, Attorney General, State, AR-20130806-03, Volume 1, File 24, “Indian Issues Shellfish,” 1985 to 1992.

⁸⁷ Ken Eikenberry to Barbara Lindsay, 7 April 1992. WSA, Fisheries Dept., 98-A-229, Volume 6, File 9, “Negotiated Settlement Correspondence,” 1992 to 1993.

refuse “any settlement which creates a right of access for tribal shellfish gathering on private lands which is not voluntarily agreed to by the owners of the land.”⁸⁸ Along with private lunch meetings with the attorney general, Lindsay also enjoyed an invitation by Gorton to visit him in Washington D.C. for a tour of the White House and several federal departments.⁸⁹ UPOW also successfully lobbied Congressman Dicks to abandon a federal budget appropriation for \$400,000 that would have gone to tribal fisheries for shellfish management.⁹⁰

In April 1992, UPOW informed the Department of Fisheries that they would like to participate in the shellfish case.⁹¹ Initially, the court denied UPOW’s application to intervene. The court had previously denied two private landowners from intervening in 1989 but allowed the Puget Sound Shellfish Growers to join in 1990. The Attorney General’s Office lamented that the “unsuccessful effort by UPOW to intervene [was] likely to result in increased demands on us to represent their interests in the litigation.” As evidence of this, John Hough reported that he “had a call yesterday afternoon from Kathy Guillium [sic] to insist that we do our utmost to protect her constitutional property rights. She also expressed a concern that Bob Hargreaves was not experienced enough to properly handle the case in its present posture.” Yet, Hough noted that the “plus side of this is that UPOW should be very active on the hill in helping us get additional funding for the case.”⁹² Indeed, WENITEM lobbying efforts flooded officials with letters.

⁸⁸ Slade Gorton to Barbara Lindsay, UPOW, 28 May 1992. WSA, Fisheries Dept., 98-A-229, Volume 6, File 9, “Negotiated Settlement Correspondence,” 1992 to 1993.

⁸⁹ Robert C. Hargreaves to Ken Eikenberry, 24 May 1991. John Hough memo to Ken Eikenberry, 17 July 1992. “Joyce”, memo to Ken, 24 January 1990. WSA, Attorney General, State, AR-20130806-03, Volume 1, File 24, “Indian Issues Shellfish,” 1985 to 1992.

⁹⁰ “Shellfish dispute: property owners claim one round.” *The Sun*, 1 November 1990, B1.

⁹¹ UPOW to Joseph R. Blum, Department of Fisheries, 20 April 1992. UWSC, Brock Adams papers, 1947-1993, 1096-016, Volume 87, File 12, “Native American - Fishing Rights [II],” 1991 to 1992.

⁹² John W. Hough to Christine Gregoire, 28 January 1993. WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, “Shellfish,” 1992 to 1995.

Just as letters rejecting the Boldt Decision written in the mid-1970s revealed widely held WENITEM beliefs, the letters of complaint, such as those from Kathleen Gwilym and her husband Herald of the Bretland Road Association, reveal more of their deepest anxieties.⁹³ “This whole ridiculous matter angers me as it would anyone with common sense or anyone who has worked honestly for what they have, as opposed to those looking for hand outs or government supported land grabbing scams,” one writer cried. Another wondered, “[i]f native Americans can legally trespass on my property how do I determine in the middle of the night which ones are native Americans and which ones are common thieves?” Many writers expected the State of Washington to “STOP this SCAM!!!”⁹⁴ WENITEM, afraid for their property rights, again reached into the colonial toolkit to wield straw-man arguments over government aid to Indigenous communities as well as false narratives about the loss of citizenship rights in order to delegitimize treaty claims to shellfish.

A 1992 survey conducted by the Washington State University on behalf of the Fisheries Department, proved to be just as revealing of WENITEM sentiment at the time. Many of the anonymous survey participants expressed a general feeling that, to quote one respondent, “[t]he citizenry has gone too far in granting 2% of the population of the state (the Indians) by giving them 50% of some of the natural resources which included salmon and now shellfish.” Under the protection of anonymity, many respondents shared their belief that it was not right “Indians should have the run of the water... They kill more than they harvest they should get jobs.” One respondent asserted, “[t]hey should take the Indians and shoot them all.” If Indigenous harvesters

⁹³ Kathleen Gwilym to Christine Gregoire, 27 January 1993; Herald J. Gwilym, Bretland Road Association, to Christine Gregoire, 4 January 1994. WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, “Shellfish,” 1992 to 1995.

⁹⁴ David E. Rose to Christine Gregoire, 28 November 1993, WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, “Shellfish,” 1992 to 1995.

trespassed on private property, owners should “should shoot all of them twice.” Another felt that “the natives have all their opportunities of the whites but they are lazy and all they want is something given to them. We’ve given them enough already.” Some opposed the general animosity, however, stating that “the Indians are being screwed. Think they would take better care of resource than we would... [signed] waterfront owners,” and that Indigenous harvesters were “very welcome on my beach.” But the vast majority of respondents expressed anger at the continuation of Boldt Decision proceedings and desired the representation of private interests at the hearings.⁹⁵ The courts would eventually accept these calls. With the aid of the Attorney General’s Office, twenty-six property owners affiliated with UPOW won their appeal to the federal Ninth Circuit Court of Appeals and intervened in the case.⁹⁶

Instead of a speedy trial, the shellfish sub-proceeding stalled a number of times under Judge Robert Coyle. To get things moving, the court dismissed Coyle and called upon Judge Edward Rafeedie to hear the case. Many welcomed this decision. *The Fishermen’s News*, for example, reported that Rafeedie “blew into Seattle late in January to give the tribal shellfish case a much-needed, turbo-powered kick in the butt,” adding that “[t]he warp speed with which Rafeedie dispensed judicial direction of this case couldn’t be any more opposite of the pace set by U.S. District Court Judge Robert Coyle.”⁹⁷ Rafeedie heard the shellfish proceeding over thirteen days in April 1994.⁹⁸ The deputy attorney general considered Rafeedie “a very practical, no nonsense

⁹⁵ WSA, Fisheries Dept., 98-A-229, Volume 6, File 17, “Data Book WSU,” 1992-08.

⁹⁶ John W. Hough to Herald J. Gwilym. 11 January 1994. WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, “Shellfish,” 1992 to 1995.

⁹⁷ Fishermen’s News, “Tribal Shellfish Case: ‘Maybe it’s a waste of time...’,” Editorial, March 1993, no page number. WSA, Fisheries Dept., 98-A-229, Volume 6, File 10, “Negotiated Settlement Clippings,” 1989 to 1993.

⁹⁸ Eugene S. Hunn, “Ethnobiology in Court: The Paradoxes of Relativism, Authenticity, and Advocacy,” In *Ethnoecology: Knowledge, Resources, and Rights*, Ted L. Gragson and Ben G. Blount, eds. (Athens, Georgia: The University of Georgia Press, 1999), 1.

judge who seems inclined to treat the tribes as any other litigant.”⁹⁹ According to ethnobiologist Eugene S. Hunn, who participated in the hearings as an expert witness, ethnographic testimony from the Boldt Phase I hearings were crucial to Rafeedie’s determination of “usual and accustomed” fishing grounds for the tribes.¹⁰⁰ In addition, Barbara Lane and historian Richard White served as “star witnesses” supporting the tribal case.¹⁰¹ On December 20, 1994, Rafeedie gave his decision. He agreed with the tribes that “shellfish are fish” and therefore ruled that the Boldt Decision formula did indeed apply to the harvesting of them. He ordered all parties to negotiate arrangements for tribal access to state beaches including some of those owned by private commercial shellfish companies.¹⁰² Following this, on January 12, 1995, Governor Mike Lowry asked to “communicate” with Indigenous fisheries officials “on a government-to-government basis regarding the recent federal court decision interpreting the scope of the tribes’ treaty rights to harvest shellfish.”¹⁰³ Co-management had officially been applied to shellfish.

When the State of Washington agreed to negotiate on shellfish under the new ruling, WENITEM stakeholders again cried foul. With letterhead stating, “Urgent—Urgent—Urgent! Re: in-court proceedings, immediate response required,” Bill Taylor, president of the Puget Sound Shellfish Growers, wrote to attorney general Christine Gregoire, “[y]esterday in court your attorney brazenly defied your stated policies on settlement of the shellfish dispute. The Puget Sound Shellfish Growers are shocked and alarmed, and urge you, in the strongest possible

⁹⁹ John W. Hough to Christine Gregoire, 28 January 1993. WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, “Shellfish,” 1992 to 1995.

¹⁰⁰ Hunn, “Ethnobiology in Court,” 2.

¹⁰¹ *Ibid.*, 2.

¹⁰² “Order Granting Plaintiff Tribes’ Summary Judgement Motion that Shellfish are Fish,” Sub-proceeding No. 89-3, *United States of America et al. v. State of Washington et al.* 31 August 1993; “Memorandum Opinion and Order,” Sub-proceeding No. 89-3, *United States of America et al. v. State of Washington et al.* 20 December 1994; Hunn, “Ethnobiology in Court,” 1; Klingle, *Emerald City*, 257.

¹⁰³ Governor Mike Lowry to Tribal Government Leader, 12 January 1995. WSA, Attorney General, State, AR-20130805-05, Volume 17, File 119, “Governor Lowry & 4 Corners re: shellfish,” 1995-01-12.

terms, to correct and explain this immediately.” According to Taylor, Washington State had refused to allow for tribal harvest on state park beaches as part of the Rafeedie settlement, which then opened up the commercial beaches for potential negotiation. “Worse, your lawyers argued the Growers were not innocent parties at all,” he continued, “and had no right to rely on the titles or representations from the State that encouraged their farming.”¹⁰⁴ In an example of Veracini’s narrative transfer in which WENITEM claim Indigeneity to legitimate their ownership of North America, another angry citizen wrote to Congressman Dicks, “I have lived on Puget Sound my entire life. In fact, my mother 43 years ago barely made it to Swedish Hospital in time or I would have been born on the ferry boat. I suppose these facts qualify me as a ‘native.’” He continued, “[t]he purpose of my letter to you is to discuss the unbelievable decision which has been rendered by Judge Rafeedie against the tax paying property owners of the region.”¹⁰⁵ Another wrote: “I understand that a group of Indians are trying to take half (hopefully not all), of my Grandma Carol’s business.” The writer seemingly understood, however, that “an old Indian tribal treaty” meant that Coast Salish tribal nations had never surrendered their right to “gather shellfish from any beach in the state, public or private.”¹⁰⁶ In response to the vitriol, Billy Frank Jr. of the NWIFC reminded officials that the tribes “did not ‘gain’ the right to take fish off-reservation in the treaties. The tribes always had those rights.”¹⁰⁷

In 1998, nearly four years after Rafeedie’s decision, the Appeals Court, “reaffirmed” the treaty tribes’ shellfish harvesting rights from “‘all usual and accustomed’ areas throughout Puget

¹⁰⁴ Bill Taylor, president, Puget Sound Shellfish Growers to Christine Gregoire, 9 May 1995. WSA, Attorney General, State, AR-20130805-05, Volume 19, File 43, “Shellfish Growers,” 1995-06-09.

¹⁰⁵ Donald J. DeHope to Norm Dicks, 8 March 1995. WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, “Shellfish,” 1992 to 1995.

¹⁰⁶ Sarah Wilson to Christine Gregoire, 28 May 1995. WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, “Shellfish,” 1992 to 1995.

¹⁰⁷ Billy Frank, NWIFC, to Janet Reno, 1 March 1995. WSA, Attorney General, State, AR-20130731-01, Volume 76, File 11, “Shellfish,” 1992 to 1995.

Sound, Hood Canal and the Strait of Juan de Fuca.” Frank Jr. declared that the ruling “clearly reaffirm[ed] the tribes treaty rights to an equal sharing of shellfish resources in western Washington.” Tony Forsman added that the decision “allow[ed] tribal fishing industry a fair chance to compete.”¹⁰⁸ Treaty tribes and state officials then applied co-management principles to shellfish. Coast Salish nations on the American side of the Salish Sea had gained greater authority over the management of all marine resources.

The tidelands case and the shellfish case were two separate, but intrinsically linked, court cases in which the Suquamish asserted their customary and treaty rights to tribal land and shellfish resources. The question of a treaty right to shellfish could not be decoupled from questions over sovereignty and Indigenous title to the land that is home to the resource. As Tony Forsman recognized: “organized opposition to the tribes from groups such as United Property Owners of Washington wasn’t directed at shellfish.” He told reporters in 1998 that he believed UPOW was “far more interested in overturning treaty rights. That’s their main motivation, not shellfish.” He added that it was “kind of ironic how property owners are fighting this, because treaty rights are (our) property rights.”¹⁰⁹ Leonard Forsman adds that property owners and the state had “used the Rafeedie case, which hadn’t been argued or adjudicated [yet], to win the tidelands case.” He explains, “the private landowner’s attorneys said ‘well these Indians didn’t need to own the tidelands in front of their reservation. Because they could harvest clams any where they want. Under the treaty they were allowed to harvest in their usual and accustomed areas so they wouldn’t have needed to own these tidelands because they can pretty much harvest anywhere they want to.’” The court in the tidelands case ruled that Suquamish did not need to

¹⁰⁸ Dennis Wilken, “Property rights or treaty rights?” *Kitsap Weekly*, 25 February 1998, B1-B2.

¹⁰⁹ *Ibid.*

own the tidelands adjacent to their reservation because they were negotiating outside of that hearing to have an overarching right to access regardless of ownership.¹¹⁰

Having lost the tidelands case, Tony Forsman views the Rafeedie decision “a 95% win.” He explains:

I think the tribes got the short end of the stick on the shellfish rights because the property rights issue... The judge came down in favour of the tribes on everything. I mean, he pretty much applied Boldt principles to everything else, the other shellfish species. But not clams. And he made accommodations for private tideland owners. That clearly was an issue with him. Whether they be growers or private tideland owners, right. So when he finally came down with the decision he put a lot of restrictions on tribal access. Tribes could get access, but we had to do a survey. Then you had to have an agreement. You get an agreement with the property owners on when, where, and how you had to set up harvest. You had to work at it. It's still 50/50. So there had to be deals worked out with the land owner. All this added cost. And extra burden to get harvest. So I really question just how much the tribes got out of that.¹¹¹

According to a recent study, the tribes have benefitted from the shellfish agreements born out of the Rafeedie decision. An analysis of economic outcomes found that “revenue transfers” from non-Indigenous shellfish harvesters to tribal harvesters from 1998 to 2010 had been “substantial” but that these gains were “neither as rosy for the treaty tribes, nor as

¹¹⁰ Leonard Forsman, 20 August 2019.

¹¹¹ Tony Forsman, 20 August 2019.

bleak for non-Indian fishers, as anticipated at the time of the decisions.”¹¹² Compromise became the key to the new shellfish co-management regime. As Forsman explained above, Coast Salish resource managers work closely with state officials as well as private and commercial interests to gain access to beaches. Harvesters make arrangements with upland property owners before arriving on a beach in front of their home, and only the agreed upon 50/50 ratio can be taken.¹¹³ While generally the arrangements have worked well, there are still moments of misunderstanding or WENITEM refusal to cooperate with tribal harvesters.¹¹⁴

Suquamish biologists and leaders also work closely with the Washington State Health Department to ensure that shellfish harvested for commercial purposes are taken from beaches certified for public safety. This has not always been an easy alliance as Suquamish determination of suitable shellfish for harvest within their own moral ecologies has not always matched the state’s qualifications. For instance, the Department of Health had many negotiations with the Suquamish Tribe over tribal harvesting on beaches in Dyes Inlet that were de-certified due to pollution from municipalities and naval bases. Most Suquamish harvesters deemed the beaches safe. The tribe strove to find balance between supporting its tribal right to regulate its own fisheries while keeping the state from prosecuting their harvesters even though Tribal leaders did not believe the state had “the data to support what they were doing.”¹¹⁵ In June 1990, despite its misgivings, the Tribe

¹¹² Dominic P. Parker, Randal R. Rucker and Peter H. Nickerson, “The Legacy of United States v. Washington: Economic Effects of the Boldt and Rafeedie Decisions,” In *Unlocking the Wealth of Indian Nations*, Terry L. Anderson, eds. (London: Lexington Books, 2016), 217.

¹¹³ Tony Forsman, 20 August 2019; Leonard Forsman, 20 August 2019; Vivianne Barry, conversation with Gordon Lyall, 21 August 2019, Poulsbo, Washington State, USA.

¹¹⁴ Leonard Forsman, 20 August 2019.

¹¹⁵ Tony Forsman, 20 August 2019; Eric Slagle to State Shellfish Caucus, 2 April 1990. WSA, Fish and Wildlife, 03-A-27, Volume 2, File 12, “Suquamish Indian Tribe,” 1987 to 1992; Hal Dygart (DSHS), Regarding Dyes Inlet. WSA, Attorney General, State, 04-A-97, Volume 2, File 15, “Indian Shellfish Press,” 1988; Tony Forsman to

indicated to the department that it had “stepped up enforcement of tribal shellfish harvesting in open areas” which had led to the prosecution of a group of community members including Randi Purser and Phillip Holt.¹¹⁶ The Department of Health’s use of biology to assist state control over Indigenous nations’ harvesting rights can be seen as a form of eco-colonialism when they utilised their data to unilaterally decertify beaches that the Suquamish considered safe. The Tribe has recently worked with the state, however, to have a lot of these beaches re-certified.¹¹⁷

The Suquamish Tribe successfully asserted greater authority over their territory in the second half of the twentieth century. Through the organization of a tribal council and the assertion of their treaty rights in court, it gained important control over its affairs. Along with coordinating access to beaches, the Suquamish Tribal Council administers a wide range of daily life at Port Madison; it continues to run Chief Seattle Days, bringing Coast Salish kin from both sides of the border together for the celebrations; the Suquamish Tribal Police still enforce bylaws on the reservation; and the council operates a successful seafood plant and casino resort at Agate Pass, both of which generate important wealth for the community. WENITEM responses to this change have been mixed with moments of resistance as well as acceptance. While relationships between the Suquamish community

Maryann Guichard, Shellfish Section, Department of Health, 22 June 1990. WSA, Fisheries Dept., 98-A-229, Volume 6, File 8, “Shellfish Litigation,” 1989 to 1990; WSA, Attorney General, State, AR-20101215-01, Volume 9, File 6, “U.S. v WA Plews Dep,” 1993-10-21; WSA, Attorney General, State, AR-20101215-01, Volume 3, File 2, “U.S. v WA State’s Health Exhibits,” 1993.

¹¹⁶ Tony Forsman to Maryann Guichard, Shellfish Section, Department of Health, 22 June 1990. WSA, Fisheries Dept., 98-A-229, Volume 6, File 8, “Shellfish Litigation,” 1989 to 1990; Stephen J. Holman, lawyer, to Tony Forsman, 17 May 1988. WSA, Attorney General, State, AR-20101215-01, Volume 11, File 6, “U.S. v WA Forsman Dep,” 1988 to 1993; Letter to Tony Forsman regarding the decertification of Dyes Inlet 1987. WSA, Attorney General, State, AR-20101215-01, Volume 2, File 1, [No Title], 1993. Gerald E. Lukes to Don Miles, 11 Jan 1988 and a study sent to Tony Forsman, 20 May 1988. WSA, Attorney General, State, AR-20101215-01, Volume 2, File 2, [No Title], 1987 to 1993.

¹¹⁷ Forsman, 23 July 2019.

and their WENITEM neighbours have improved, the underlying question of property rights and ownership of the beaches has lingered in people's memories. The balance of power on the reservation has shifted back to Suquamish to a certain extent, but larger questions of compatibility between Coast Salish moral ecologies and settler-colonial society remain. Pollution, for example, continues to threaten the resource and undercuts community efforts to maintain the health of shellfish habitat.¹¹⁸ As the *Seattle Times* reported in 1992: “[t]ime is running out for shellfish... Forty percent of Puget Sound’s commercial shellfish acreage is now closed or restricted because of water quality.”¹¹⁹ Environmental and jurisdictional challenges set the parameters under which Suquamish leaderships can manage shellfish and other marine resources. With the court battle over access behind them, the struggle over habitat health and preservation of all marine life continues on both sides of the border.

¹¹⁸ “Proposed legislation seeks to Stem the Tide of shellfish bed pollution,” *The News Tribune*, 9 February 1992, A1; Sigo, 22 July 2019.

¹¹⁹ “Toxin threatens clam harvest again.” *Seattle Times*, 1992, no page number. UWSC, Brock Adams papers, 1947-1993, 1096-016, Volume 56, File 5, “NW Indian Fisheries Commission,” 1992.

Chapter 5. “Our way of life on the Bay, cannot be measured in dollars”: W̱SÁNEĆ Defense of Saanichton Bay

During the fish wars of the 1960s and 1970s, the W̱SÁNEĆ Nation sought state recognition of their Douglas Treaty right to control the fisheries attached to their reserves. Community leaders such as Chief Edwin Underwood reminded governments and the public of “Douglas’s word,” his “promise” to protect their access to land and sea, “for the use of our children, and for those who may follow after us.”¹ Guided by Coast Salish moral ecologies, including an acute concern over pollution, W̱SÁNEĆ leaders voiced their concern over increasing contamination of the marine environment which had become highly visible to both Indigenous and non-Indigenous observers.² Rising pollution across the Salish Sea had decreased the availability of safe harvesting sites in British Columbia. Declining shellfish habitat then exacerbated competition over Crown foreshores between all harvesters (Indigenous and non-Indigenous) and disproportionately harmed communities like the W̱SÁNEĆ that had reserves in close proximity to urban settlements.

When W̱ENITEM entrepreneurs attempted to build a marina at Saanichton Bay, in front of Tsawout IR2, threatening the bay’s delicate ecosystem, community members strongly opposed the development on ecological grounds. W̱SÁNEĆ wielded the Douglas Treaty as a “sword” to protect their bay, gain state recognition of their rights, and assert sovereignty over their foreshores. Within the context of ongoing fish wars as well as W̱ENITEM encroachment on Indigenous communities’ beaches and rising pollution, this history reveals the challenges of

¹ “North Saanich Treaty” in British Columbia. Legislative Assembly, *Papers Connected with the Indian Land Question 1850-1875*, 1876, 170.

² Stewart, *Views of the Salish Sea*, 21, 154, 163, 177-183.

reconciling Coast Salish moral ecologies with WENITEM industrialization and urbanization, but also suggests a path forward in which Indigenous peoples' ecological knowledge and territorial sovereignty can be supported by the state for the benefit of all residents of the Salish Sea.

WENITEM populations in the Salish Sea rose significantly during the postwar era, especially around major urban centres like Metro Vancouver, Seattle, and to a lesser extent Victoria. With increasing populations came further development of infrastructure and shoreline armoring along the coast, in the form of seawalls and other concrete structures, which negatively altered the beach habitat.³ This development had a dramatic effect on nearby Indigenous communities such as the WSÁNEĆ who had little desire for WENITEM infrastructure on their beaches. Prior to this period, the foreshores in WSÁNEĆ territory were relatively unaltered by commercial development compared to their Lək̓ʷəŋən counterparts closer to the capital of Victoria. A cannery at Sidney, a military base at Patricia Bay, and a ferry line from WJOLELP (Brentwood Bay) to MÁL,EXEŁ (Mill Bay), built in the 1930s, were the largest structures connected to their waters. While the MÁL,EXEŁ community had initially contested the construction of the ferry terminal, federal officials only offered them “access and ingress” over the foreshore, and installed the terminal despite community disapproval.⁴ Community members then viewed the

³ David B. Williams writes: “Armoring was first practiced by farmers and industrialists, but since the 1970s, the practice is most widespread among private landowners seeking to protect their beachside homes. Initially seen as relatively benign, the seven hundred miles of bulkheads and seawalls in Puget Sound... Armoring shrinks beaches by changing wave dynamics and preventing the inland movement of the shoreline. The consequent reduction of space and burial of the upper beach leads to reduced accumulation of drift logs and beach wrack (tide-deposited debris), which provide habitat for insects, worms, and amphipods.... a loss of the natural connection between land and water has few benefits in the long run.” Williams, *Homewaters*, 17.

⁴ Stewart, *Views of the Salish Sea*, 100-101; P. Philip to Alfred H. Lomas, 31 July 31 1924. LAC, Canada, RG10-C-III-1, Volume 9169, File B-39, “Cowichan Agency – Malahat Band – General,” 1922 to 1941; Alfred H. Lomas to the Provincial Public Works Department, 1 August 1924. LAC, Canada, RG10, Volume 11002, File 974/31-4-14-11, Reel T-3952, “Indian Commissioner for British Columbia – Cowichan Agency – Correspondence re road through Malahat I.R. No. 11 and ferry terminus within boundaries of Malahat I.R.,” 1924 to 1929

ferry as another example of WENITEM cupidity and false promises. Reasonably, WSÁNEĆ leadership became suspicious of subsequent construction on foreshores in front of their reserves.

In the mid 1960s, new WENITEM infrastructure on the foreshores further limited WSÁNEĆ access to shellfish resources. A marina at ILEĆEN (Bedwell Harbour) on SDAY,ES (Pender Island) prevented community harvesters from collecting sea urchins and clams, as well as several marinas between Sidney and Swartz Bay and two ferry terminals on the peninsula for passengers to the mainland and Washington State.⁵ Likewise, harvesters had enjoyed access to shellfish at WJOĒĒP until a marina had been constructed there. As Elder Cecilia Thomas explained, the community dug clams for sale from the beach at WJOĒĒP during the 1960s until the marina polluted the waters, making shellfish inedible. Twenty years after its construction, state officials sanctioned the beach as unsafe for harvesting due to pollution.⁶ Protection of remaining shellfish beaches became a priority for community leaders. WSÁNEĆ sovereignty over these beaches included three interconnected aspects of resource management: protection of marine environment from pollution; protection of shellfish beds attached to reserves from WENITEM encroachment; and protection of their state-recognized access to Crown foreshores. Establishing state and public recognition of these protocols became paramount as wild shellfish stocks dwindled and the WENITEM commercial oyster industry grew.

The 1960s marked a period of significant growth in BC's oyster industry.⁷ Historical geographer Howard Stewart notes that WENITEM viewed their access to Pacific oysters as their "birthright" and Indigenous harvesters became "incensed" at the encroachment on their beaches while a "rapidly growing fleet of pleasure boaters and other recreationists continued to take wild

⁵ SCBC, *Claxton v. Saanichton Marina. Affidavit of George Underwood*, 4 December 1985, 3.

⁶ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (D)*, 3 September 1987, 59-60.

⁷ Stewart, *Views of the Salish Sea*, 163.

oysters from beaches.”⁸ The federal and provincial governments also wrestled over jurisdictional rights as they attempted to disentangle the competing interests on the beaches.⁹ Often, official regulation policy ignored the interests of the Indigenous communities. In 1966, for example, when the provincial government released new regulations on oyster harvesting, coastal groups, such as the Kwawkwalth Tribal Council and the Westcoast Allied Tribes, met and issued a “Resolution of Protest” that the regulations interfered with their Aboriginal right to harvest, and were “not in the best economic interest to the Indian people of B.C. who use this harvesting of shell fish as a means of supplementing income.” Asserting Coast Salish moral ecologies, the Allied Tribes resolved that “harvesting of shellfish be based on the same principle as has been done in the past by the Indian people.”¹⁰ In reply, BC Commercial Fisheries Branch director R.G. McMynn suggested to the Allied Tribes that a possible exemption from the regulations could be given for oysters on beaches in front of reserves but not for provincial Crown foreshores.¹¹ In a memo to DFO Regional Director W.R. Hourston, McMynn then complained: “This business of the Indians is beginning to become a little bit annoying to say the least. Particularly, when one feels that their ‘aboriginal rights’ are really not at stake as far as I can see. I think that if the permit system is made so that it does not apply to that Crown foreshore fronting Indian Reserves that’s as far as we need to go... If they do wish to harvest wild oysters on Crown foreshore, I still see no reason why they should be treated any differently than the white man.”¹²

In June 1966, the Vancouver Island Tribal Federation issued another resolution regarding the

⁸ Ibid, 164.

⁹ Ibid., 163.

¹⁰ Kwawkwalth Tribal Council, Resolution of Protest and Westcoast Allied Tribes, 18 March 1966. Jack Peter, Westcoast Allied Tribes, to J.V. Boys, 2 May 1966. BCA, Marine Resources Branch, GR-1118, Volume 16, File 2, “Correspondence - permits,” 1965 to 1975.

¹¹ R.G. McMynn to Westcoast Allied Tribes, 1 June 1966. BCA, Marine Resources Branch, GR-1118, Volume 16, File 2, “Correspondence - permits,” 1965 to 1975.

¹² R.G. McMynn to W.R. Hourston, 27 June 1966. BCA, Marine Resources Branch, GR-1118, Volume 16, File 2, “Correspondence - permits,” 1965 to 1975.

oyster regulation stating that the permit season was too short, cost of permits too high, and there was too much paperwork involved for harvesters.¹³ WENITEM officials appear to have been unmoved from their position; they maintained that only the foreshore in front of reserves warranted any special consideration, undermining Coast Salish communities' ability to continue customary harvest and resource management across the sea.

As a representative of the Westcoast Allied Tribes, WSÁNEĆ Chief Edwin Underwood made sure his community's voice was heard in the bureaucratic forums. On July 18, 1966, the provincial Commercial Fisheries Branch met with the federal Department of Fisheries and the Department of Indian Affairs to negotiate new oyster regulations. The province's position was that no state infringement on Indigenous rights to shellfish existed in BC. During the meeting, McMynn argued that because the province only permitted the commercial harvest of Pacific Oysters, which was an introduced species, an "infringement of aboriginal rights was hardly an issue involved." Yet he did concede that harvesting permits for oysters should not include the taking of oysters from foreshores fronting reserves. DIA officials added that if foreshores attached to reserves were to be protected this would have to be "specifically spelled out in the Regulations." The committee agreed to add language to that effect in the regulations.¹⁴ Voicing his long-held stance that "if Indians take wild oysters from any other crown foreshore other than that fronting an Indian reserve they then should be expected to abide by the same regulations as the white man," McMynn added that Indigenous harvesters should be subject to the oyster regulation and "treated in the same manner as all other applicants for permits."¹⁵ Chief

¹³ Vancouver Island Tribal Federation, resolutions, 19 June 1966. BCA, Marine Resources Branch, GR-1118, Volume 16, File 2, "Correspondence - permits," 1965 to 1975.

¹⁴ BCA, Marine Resources Branch, GR-1118, Volume 16, File 1, "Oyster regulations and policy," 1966 to 1975.

¹⁵ R.G. McMynn to R. Kendall, Indian Affairs Branch, 22 March 1966. In BCA, Marine Resources Branch, GR-1118, Volume 16, File 2, "Correspondence - permits," 1965 to 1975; BCA, Marine Resources Branch, GR-1118, Volume 16, File 1, "Oyster regulations and policy," 1966 to 1975.

Underwood did not object to this, “as long as the foreshore fronting reserves was protected for the use of the Indians living on these reserves.”¹⁶ Underwood understood that compromise was required to ensure his community could protect its beaches from WENITEM encroachment.

The beaches located closest to urban centres, such as WSÁNEĆ’s, remained the most vulnerable to WENITEM encroachment and environmental destruction. In 1971, anthropologist Katherine Mooney conducted a survey of Indigenous groups on southeast Vancouver Island and found that increasing population and urbanization had curtailed their access to “subsistence foods,” diminishing their ability to carry out customary harvesting and resource-sharing methods.¹⁷ In principle, state legislation protected Indigenous communities’ foreshores from this encroachment; authorities, however, rarely enforced this agreement on the beaches. In 1969, for example, commercial fisheries inspector A.G. Karup wrote to the DFO: “It has come to our attention that commercial oyster pickers have been taking oysters from foreshore fronting Indian Reserves.” Upon DIA advice, Karup advised WENITEM harvesters to acquire from Indigenous communities a Band Council Resolution to authorize the use of their beaches.¹⁸ Yet this policy never materialized into any serious prosecution of illegal WENITEM harvesting. As encroachment increased, shellfish beaches along the Salish Sea became a battle ground for resource access.

Internecine WENITEM competition for harvesting sites increased during this period as well. After the federal fisheries “abolished” a closed season for razor clams, butter clams, littleneck clams and mussels in 1966, opening them up for average harvesters, WENITEM activity on the beaches spiked. This had a polarizing effect on harvesters and other locals in the area. For

¹⁶ BCA, Marine Resources Branch, GR-1118, Volume 16, File 1, “Oyster regulations and policy,” 1966 to 1975.

¹⁷ Lutz, *Makuk*, 267.

¹⁸ A. G. Karup to W. Winsby, District Protection Officer, 10 July 1969. BCA, Marine Resources Branch, GR-1118, Volume 16, File 2, “Correspondence - permits,” 1965 to 1975.

example, one Union Bay man cancelled his oyster permit after he received “a number of complaints from residents and other people in the Thetis Island area.”¹⁹ At Deep Bay, a “watchman of Crown Zellerbach” chased a harvester off the beach with a shotgun.²⁰ Similarly, an angry property owner complained about oyster harvesters on the beach in front of his house declaring: “At this moment there are three young men picking oysters in front of my place... If they clean the area off, I’ll shoot them. Perhaps you could clarify the situation before I pull the trigger.”²¹ Nanaimo residents complained about commercial harvesting at Piper’s Lagoon, a “favourite clam digging spot;” and the Gabriola Ratepayers and Residents Association reported a “speedy depletion of oyster beds” on Gabriola Island.²² Famed US Army photographer, David Conover, who owned property on Wallace Island, filed multiple requests to provincial authorities about oysters being “wiped out” by harvesters which led to a police investigation of Conover’s alleged intimidation of beach harvesters. Police reports recorded that Conover threatened to “shoot holes” in harvester’s boats. In response, the harvesters promised menacingly to return to the island with “lots of manpower.”²³ Other residents on Wallace Island also complained about “horrible people” harvesting with commercial permits; and accused the fisheries officials of clandestine support of what they perceived to be overharvesting, calling the officials’ surveillance methods “real 007 stuff.” Frank G. Cope, the Inspector of Fisheries, reported that Conover and his allies had “far exceeded” their “poetic licence” within their hysteric complaints,

¹⁹ BCA, Marine Resources Branch, GR-1118, Volume 16, File 1, “Oyster regulations and policy,” 1966 to 1975.

²⁰ BCA, Marine Resources Branch, GR-1118, Volume 16, File 2, “Correspondence - permits,” 1965 to 1975.

²¹ W.M Gill to D.W. Smith, 25 July 1975. BCA, Marine Resources Branch, GR-1118, Volume 16, File 2, “Correspondence - permits,” 1965 to 1975.

²² Frank J. Ney to W. Kenneth Kiernan, 30 March 1972 and June Harrison, secretary, Gabriola Ratepayers and Residents Society, to Bob Williams, 5 June 1975. BCA, Marine Resources Branch, GR-1118, Volume 16, File 2, “Correspondence - permits,” 1965 to 1975.

²³ BCA, Marine Resources Branch, GR-1118, Volume 16, File 4, “Applications for permits,” 1973 to 1974; BCA, Marine Resources Branch, GR-1118, Volume 8, File 10, “infractions and complaints shellfish,” 1971 to 1975.

noting that a “[c]onsiderable tonnage of oysters remain on the beaches of Wallace Island.”²⁴

With the commercial value of shellfish on the rise, many living along the coast became hypersensitive to beach foraging and other shoreline activities.

Upland homeowners’ complaints against harvesting were also racially targeted. For instance, one writer reported that the beach at Deep Bay was “literally swarming with Chinese people, who were obviously gathering oysters to sell in their restaurant premises.”²⁵ In 1973, a conservation officer reported that “large numbers of clams” were being taken from vacant Crown foreshores at Boundary Bay. “More than 600 Horse Clams... were harvested by three people in one day,” the officer reported. “Only the necks were cut off, the body being left in the sand to die.” The officer complained that “the Italian people have taken all the Little Neck and Cockle Clams until they are now practically extinct, having taken even those smaller than the size of a dime for the past five years.”²⁶ While the federal government had no restrictions on shellfish harvesting for “domestic use,” the province, which held jurisdiction over Crown foreshores, merely collected these complaints and did little to resolve conflicts other than to send letter writers copies of current harvesting regulations.

British Columbians also directed their complaints at Indigenous harvesters. In a petition to the Minister of Lands, Forest and Water Resources, Robert Williams, residents at Ladysmith complained about the Four Seasons Hotel and its hiring of Indigenous harvesters to supply its restaurant. Residents bemoaned that the oyster beds had been “stripped” and that the hotel was “deliberately” desecrating a public beach. To be clear, the petitioners claimed that their

²⁴ Frank G. Cope to R.G. McMynn, “Re: Commercial Oyster Picking on Wallace Island Permit #791,” 23 February 1973. BCA, Marine Resources Branch, GR-1118, Volume 16, File 4, “Applications for permits,” 1973 to 1974.

²⁵ Ruth J. Masters to Dept. Lands, Forests and Water Resources, 2 April 1970. BCA, Marine Resources Branch, GR-1118, Volume 8, File 10, “infractions and complaints shellfish,” 1971 to 1975.

²⁶ D.R. Udy to G.A. West, Regional Director, Fish & Wildlife Branch, 16 July 1973. BCA, Fish and Wildlife Branch, GR-1114, Volume 47, File 30-05-1973, “Commercial Fisheries,” 1973.

objections were “not directed toward the Indian people but rather to the shortsightedness of the department for issuing a license to ANYBODY for commercial rape of the oyster beds.”²⁷

Another writer described an incident in which, “an Indian with a gang of helpers removed several hundred sackloads of oysters by boat to Cowichan Bay completely stripping part of the bed which is now barren.”²⁸ Upon investigation, the RCMP and fisheries officials found an “oyster controversy” at Cowichan Bay where a disgruntled resident sabotaged the boats of WENITEM harvesters. Officials couldn’t believe that WENITEM residents would “stoop to such tactics” and therefore suspected that it had been the “local Indians” who also “utilize[d] these beds.”²⁹ Their suspicions reveal racist assumptions held by local authorities and their unwillingness to learn how the new harvesting regulations had affected Coast Salish fishers’ harvesting and moral ecologies over marine resource management. The *Native Voice* also reported the enforcement of fishery regulations on Indigenous clam harvesters in the Salish Sea during this period, calling the charges against the harvesters “all vague.”³⁰

Increased WENITEM harvesting also contributed to deteriorating sanitary conditions and the destruction of shellfish habitat. One observer reported incidents of “clam bed abuse on Gabriola Island.”³¹ Submitting photographic evidence, another letter writer informed their local MLA of cars and trucks driving on the beaches, destroying clam beds, and polluting the beach with oil.³²

[Figure 17] British Columbians recognised an alarming rise of marine pollution and its effects on

²⁷ Petition from Ladysmith residents to Honourable Robert Williams, 8 March 1973. BCA, Marine Resources Branch, GR-1118, Volume 8, File 10, “infractions and complaints shellfish,” 1971 to 1975.

²⁸ James E. Fairweather to Fish and Game Branch, 7 March 1967. BCA, Marine Resources Branch, GR-1118, Volume 8, File 10, “infractions and complaints shellfish,” 1971 to 1975.

²⁹ A. G. Karop, “Cowichan Bay Oyster Controversy,” 17 March 1967. BCA, Marine Resources Branch, GR-1118, Volume 8, File 10, “infractions and complaints shellfish,” 1971 to 1975.

³⁰ “Clam Digging Regulations,” *Native Voice*, February 1976, 5.

³¹ R. G. McMynn to W. K. Kiernan, 5 April 1972. BCA, Marine Resources Branch, GR-1118, Volume 16, File 1, “Oyster regulations and policy,” 1966 to 1975.

³² Frank J. Ney to W. Kenneth Kiernan, 30 March 1972. BCA, Marine Resources Branch, GR-1118, Volume 16, File 1, “Oyster regulations and policy,” 1966 to 1975.

shellfish harvesting. In 1974, complaining that “oysters are not as plentiful,” a professional engineer offered his services to the provincial government and proposed a “preliminary low-cost Pollution Indicator survey, utilizing trace element analyses of sea-bottom sediments in the foreshore areas of the Georgia Depression.” He recommended that the testing be done “in proximity to a small Indian village, such as one finds on the Gulf Islands, so as to encourage maximum participation by our native people” and enclosed his proposal to “determine the heavy metal content in the older pre-industrial aged silts of the Georgia Depression to find out just how much of a garbage dump this place has become in the last hundred years!”³³ Ecologists and concerned citizens recognized that, as an inland sea, the Salish Sea was more susceptible to sewage and industrial waste than the open ocean. While the province created the Pollution Control Board in 1956, it remained relatively ineffective in controlling waste throughout the 1960s and 1970s.³⁴ The sum of increased harvesting and pollution made Coast Salish nations’ protection of their beaches even more crucial.

In light of WENITEM encroachment on Indigenous communities’ foreshores as well as increasing pollution and the associated loss of harvesting sites such as WJOLELP and ILEĆEN, WSÁNEĆ leaders concerted their efforts to protect Saanichton Bay at Tsawout IR2. The beach at Saanichton Bay was a highly valued harvesting site for WSÁNEĆ. As Elder Earl Claxton Sr. explained, the bay is well protected from south wind by TIXEN (Cordova Spit); this shelter allows for fishing and hunting to be conducted when the weather made fishing on more open water too dangerous.³⁵ The bay’s eel grass beds are home to Dungeness crab and the shoreline

³³ Robert Chaplin, P.Eng., to Jack Radforth, 18 March 1974. BCA, Marine Resources Branch, GR-1118, Volume 12, File 34, “Pollution Control Board and Branch,” 1973 to 1974.

³⁴ Stewart, *Views of the Salish Sea*, 177-189.

³⁵ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 58; WSA, Attorney General, State, AR-20070628-05, Volume 3, File 40, “Barbara Lane Series - Opinion of Barbara Lane,” 1987-07-29.

hosts Indigenous clams like S'OXE (butter clams) and STLO,EM (cockles).³⁶ STLO,EM could be taken all year round, which makes them particularly valued.³⁷ Some WSÁNEĆ families have a special connection to these native shellfish. WJOLELP May Sam's father, for example, designed a unique pattern for their Cowichan sweaters featuring a STLO,EM shell with its nose curled up, and this pattern continues to be a part of their family's heritage into the twenty-first century.³⁸ Elders such as Cecilia Thomas took children to harvest shellfish in order to "teach them everything that [they] have been taught. How to respect every seafood there is. Shell clams, shell fish and everything." They also taught children which crabs were male and female so that they can return the female to the water as well as placing a limit on crabs for sustainability. Children were also instructed how to shuck the shellfish on the beach, leaving the muscle inside and returning the shell back from where it was obtained to encourage other invertebrates to make use of it; this was an important lesson on "how to respect seafood."³⁹ Thus, Coast Salish moral ecology assures shellfish sustainability and a healthy ecosystem.

Preserving a healthy beach meant keeping human traffic and development low. Aaron Sam, a STÁ,UTW crab fisher, explained how the community maintained a regular presence at Saanichton Bay to regulate this fishery. "If a stranger comes into our fishery," he clarified, "my father or I will observe whether the person is known to us or whether that person interferes with the crabs or the crab traps or with the fish habitat or if there is any pollution left by the person on the Bay such as beer bottles or garbage." They would report any infractions to their Band Councillor. Increased WENITEM traffic to Saanichton Bay, and other shellfish-bearing beaches, threatened WSÁNEĆ ability to "maintain any control over the crab resource or [their] rules

³⁶ Olsen, *2014-2015 WSÁNEĆ Clam Garden Restoration Project*, 4.

³⁷ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (C)*, 54.

³⁸ Christine Welsh. "The Story of Coast Salish Knitters," National Film Board of Canada, 2000.

³⁹ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (D)*, 50-51.

governing its harvesting.”⁴⁰ Addressing the threat, community leadership looked for ways that they could make their sovereignty over the bay clear to outsiders.

In the late 1960s, the STÁ,UTW community considered constructing their own marina at Saanichton Bay. But at council meetings regarding the proposal, “all the Elders spoke against it,” and the idea was dropped.⁴¹ While the community rejected the idea, it held greater sway among WENITEM developers on Vancouver Island. In 1974, entrepreneur Bob Wright and his business associates at Saanichton Marina Limited, a subsidiary of the Oak Bay Marina Group, began environmental testing on Saanichton Bay as an initial step in the process of building a 500-birth marina in the well-protected bay. On July 12, 1974, fisheries biologist T.R. Andrews reported to the provincial Lands Branch that he had investigated the bay and found that the eel grass beds provided “excellent habitat for crabs of which 12 Dungeness crabs, ranging from 3"-7" in size were observed.” He doubted that the muddy bottom could support “edible clams” but found that “[n]earer the shore the bottom is littered with clam shells of the genera *Mya* and *Macoma* - typical of muddy bottoms. A few butter clam shells were also observed signifying the presence of potential habitat for the edible clams.” Andrews reported that he had “read the material on the Saanichton Marina Project and question[ed] some of the comments on the ocean current of the area.” He was “concerned that the formation of a breakwater [would] disrupt the natural ocean flows and cause sedimentation, probably resulting in a change in the species of the benthic infauna. Dredging will of course destroy the benthic community.” He hoped that “measures will be taken to ensure that the ecology of the bay, outside of the area occupied by the marina, will not be disrupted.”⁴² While his report did not dissuade the Marina Group from pursuing

⁴⁰ SCBC, *Claxton v. Saanichton Marina. Affidavit of Aaron Sam*, 26 November 1985, 2-3.

⁴¹ Claxton Jr., 6 March 2020.

⁴² T.R. Andrews, Fisheries Biologist, to John Sexter, Senior Biologist, Lands Branch, 12 July 1974. BCA, Marine Resources Branch, GR-1118, Volume 13, File 9, “Saanichton Bay Marina Development,” 1974.

development, his concern over environmental damage to the bay validated the STÁ,UTW Elders' position when they rejected the proposal a half decade prior.

STÁ,UTW leaders also had a list of concerns. Tsawout Reserve Business Manager Gus A. Underwood wrote to Central Saanich officials that the marina proposal was a “great concern to the Indian people of the Tsawout Band.”⁴³ The community believed that a marina at Saanichton Bay would bring:

- 1) Loss of shell fishing (pollution); 2) loss of duck hunting; 3) loss of fish spawning due to oil etc. pollution going up creek; 4) loss of herring row [sic] spawning on creeks edge as oil slime on water during high and low tides; 5) loss of safe swimming area for children; 6) continuous oil and debris being washed to reserve shoreline; 7) loss of undisturbed beauty in Saanichton Inlet; 8) possibility of flooding meadow land at the K.O.A. campgrounds (Re; 1500 ft. Breakwater to be constructed); 9) endangering safe swimming at K.O.A. pond due to oil slicks; 10) continuous upkeep of K.O.A. Meadowland due to oil slicks during high and low tides.⁴⁴

Underwood requested that Saanich officials “look into our problems before construction begins.”⁴⁵ In response to their list, Wright hired oceanographic consultant Jack L. Littlepage to address each item with a rebuttal. Regarding the loss of shellfish harvesting, Littlepage referred to a survey conducted by Dobrocky SEATECH which reported “no evidence of any number of

⁴³ Gus A. Underwood Jr. to F. Durrand, 27 May 1974. BCA, Marine Resources Branch, GR-1118, Volume 13, File 9, “Saanichton Bay Marina Development,” 1974.

⁴⁴ Ibid.

⁴⁵ Ibid.

large clams.” In Littlepage’s view, the “proposed breakwater/marina complex would provide both substrate and food” that could “actually increase populations of crabs, herring, squid, flounders and other organisms.” Regarding oil and debris, Littlepage promised that “only light, volatile hydrocarbons and motor oil will be available at the marina” and the Saanichton Marina company would agree to keep the beaches “free from all debris.” In response to the community’s concern over the “loss of undisturbed beauty,” Littlepage passed it off as “a social question [that] will be referred to the consultants in that field.” Finally, Littlepage expressed his regret that he could not meet with the community in person as it may have assisted him to determine if there were any “real” or “potential” environmental concerns surrounding the construction of a marina.⁴⁶ His expression of regret indicates that he recognized at some level the value of Indigenous Knowledge or Indigenous moral ecologies, but officials or developers at the time rarely engaged with that knowledge and WENITEM faith in Western sciences prevailed.

To contend with the Oak Bay Marina Group’s scientific studies, the community commissioned a consultancy group to conduct an environmental impact assessment of their own. The study included a variety of community-engagement techniques in order to equip STÁ,UTW with tools “to use in opposing the construction of a marina that would disrupt their traditional use of the bay.” The techniques included: “training members of the Tsawout band to carry out a user survey of the bay, obtaining legal affidavits from users of the bay, interviewing members of the band, attending public band meetings and meetings of the band council, and having drawings made by indians to show the physical character of the bay before and after the marina

⁴⁶ Jack L. Littlepage to Gus A. Underwood Jr., 22 July 1974. BCA, Marine Resources Branch, GR-1118, Volume 13, File 9, “Saanichton Bay Marina Development,” 1974.

development.”⁴⁷ In light of this study and community concerns, STÁ,UTW leaders ultimately regarded the sum of potential issues too large to overcome. They invoked the “terms” of the 1852 Douglas Treaty in a “political action” to assert their right to the resources attached to their reserve and declined to support the proposed marina project. In turn, the New Democrat Party (NDP) government rejected Wright’s application in 1975.⁴⁸

Following their rejection of the marina, STÁ,UTW leaders shifted their efforts to prevent Central Saanich from installing a sewage plant at Turgoose Point on the north end of the bay. The town council planned to run the plant through Turgoose Point which would have discharged outfall into the bay. Sewage into Saanich Inlet on the other side of the peninsula had already contaminated shellfish and other marine life, and the community were appalled that the same thing might happen at Saanichton Bay. To prevent this, the community were obligated to accept a sewage treatment facility that ran through their reserve and discharged in the water laying east of Cordova Spit.⁴⁹ According to Earl Claxton Jr., the mayor of Central Saanich promised that the water would be so pristine that “you can put a glass there and take a drink from it.” In response, his chief said to the mayor: “well you take the first glass, and I’ll take the second.” But both knew the claim was ridiculous and the water toxic, because, while the facility did treat human waste, it did not treat any other hazardous materials that could be poured down the drains.⁵⁰

Due to rising pollution, the provincial Department of Health and federal DFO also closed a number of beaches along Saanichton to harvesting. Elders recalled a time when red tide only arrived “once a year” but its frequency had increased and many viewed this as a consequence of

⁴⁷ Westwater Research Centre at the University of British Columbia, “report,” no date. BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 8, File 6, “Fraser River Estuary Study - General File #2,” 1977.

⁴⁸ “Tsawout Indians stop marina,” *Native Voice*, January 1986, 9.

⁴⁹ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 56-57.

⁵⁰ Claxton Jr., 27 June 2020.

urban development.⁵¹ Community leaders gained the support of larger Indigenous groups in the province, such as the Union of BC Indian Chiefs, and made policy recommendations to the governments of Canada and BC that “protect[ed] all bodies of water from Pollution.”⁵² Thus, they took a proactive community approach, engaging state frameworks, to reassert their authority over the marine environment.

In the late 1970s, British Columbia and local municipalities along the Georgia Strait eagerly tested the industrial and transport capacities of the Salish Sea. Public and government watchdogs monitored the environmental impacts of these developments. While conservation groups, such as the non-governmental organization Scientific Pollution and Environmental Control Society (SPEC), focused on protecting foreshores and habitat as nature sanctuaries, Indigenous leaders recognized that the drive to designate portions of the foreshore as protected zones had a disproportionate burden on their communities. Many coastal communities that had foreshores were asked to give up the use of their property in the name of conservation. For example, after the Roberts Bank Coal Port facility opened in 1970, the federal National Harbours Board looked to expand the port and officials initiated a joint-government review of the impacts of this development and other proposals on the Fraser River estuary.⁵³ As a part of these studies, the Land Use Work group submitted a “concern” it had regarding an “Indian claim to the foreshore.”⁵⁴ At a meeting with the Fraser River/Estuary study steering committee on June 15, 1978, Musqueam Chief Delbert Guerin raised the “question of intertidal zone” as well as his

⁵¹ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 58; Claxton Jr., 27 June 2020.

⁵² Union of BC Chiefs, to Gus Underwood, 16 May 1977 and UBCIC to Fred Walchi, Regional Director, 16 May 1977. BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 15, File 3, “Native Peoples: General Correspondence - File #2,” 1979.

⁵³ Vancouver Port Authority, *History of Development at Roberts Bank - An Overview*, 2004, 5.

⁵⁴ Fraser River/Estuary Study, “Work Group Concerns.” BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 10, File 2, “Fraser River Estuary Study - Steering Committee - Correspondence & General - File # 2,” 1978.

concern regarding insufficient treatment of sewage at Iona [Island].” The committee told him that the province held “jurisdiction” of the intertidal zones, but Guerin responded by requesting “explicit Federal support in negotiating with the Province” because the Musqueam “view[ed] these lands as belonging to them.”⁵⁵ In a letter to the committee, Guerin claimed Musqueam’s “ownership of the foreshore of [their] reserve on Point Grey,” reminding the committee that “[b]oth the Federal and Provincial governments [were] aware of the historical and legal basis for this claim.” He added that the community also had “a special interest” in the “future” of the Fraser River estuary. He called for greater inclusion of the community’s perspectives in usage planning and for a recognition that reserves were “special jurisdictional units” within the area of study.⁵⁶

Musqueam leaders also recognized that use-planning without their input threatened their ability to assert sovereignty and moral ecologies over the foreshores attached to their land. The steering committee conceptualised “Indian lands on the Estuary” as “prime habitat lands” to be designated for “conservation and habitat” allowing the rest of the estuary to be developed for WENITEM profit. This would have prevented Musqueam from enjoying similar economic opportunities if they wished to develop themselves.⁵⁷ In response to Guerin, the committee “tentatively” classified the question of Indigenous communities’ foreshores in the Fraser River

⁵⁵ L. A. Smithers, Region Director, DFO, to G. E. Simmons, Chairman, Fraser River Steering Committee, 15 June 1978. BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 10, File 2, “Fraser River Estuary Study - Steering Committee - Correspondence & General - File # 2,” 1978; Vancouver Port Authority, *History of Development at Roberts Bank*, 5.

⁵⁶ Chief Delbert V. Guerin to G. E. Simmons, 28 June 1978. BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 10, File 2, “Fraser River Estuary Study - Steering Committee - Correspondence & General - File # 2,” 1978.

⁵⁷ L.A. Smithers, Region Director, DFO, to G. E. Simmons, Chairman, Fraser River Steering Committee, 15 June 1978. BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 10, File 2, “Fraser River Estuary Study - Steering Committee - Correspondence & General - File # 2,” 1978.

estuary a “grey area.”⁵⁸ WENITEM willingness to volunteer Indigenous territory for the role of habitat conservation offers yet another example of eco-colonialism. By confining Indigeneity to a strictly environmentalist role, officials and the public denied the community a voice in shaping their own identity and political power over land and resource use.

While WENITEM environmentalist groups had eco-colonial tendencies, they also served as crucial conduits for public awareness of industrial impacts on the marine environment.⁵⁹ SPEC, for instance, circulated a pamphlet entitled “Save the Fraser,” which was accessible to a wide audience. Acknowledging a few government conservation efforts, SPEC nevertheless lamented: “We are losing the Fraser.” The pamphlet reminded readers that “[n]ot long ago” people could swim in that portion of the Fraser River but pollution had ended this practice. “This pollution limits our ability to use the river for recreation activities, harms our fish and reduces aquatic food sources.” SPEC noted that “[g]athering shellfish on beaches between Burrard Inlet and White Rock has been banned for years now because of contamination.”⁶⁰ The Westwater Research Center at the University of British Columbia also acknowledged the high value of the Fraser River estuary and its resources including shellfish. In its report to the provincial Land Use committee, it stated that “estuarine and related coastal environments are among the most biologically productive natural or artificial (agricultural) ecosystems in the world.” Westwater estimated that “over 70 percent of the world catch of fish and shellfish is taken within twelve miles of shore,” which made the extensive estuary of vital importance to harvesters and overall

⁵⁸ “The Fraser River Estuary Study: An Outline of the Main Points of the Report on Progress and Future Program (Phase 1 Report),” second draft. L. A. Smithers, Region Director, DFO, to G. E. Simmons, Chairman, Fraser River Steering Committee, 15 June 1978. BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 10, File 2, “Fraser River Estuary Study - Steering Committee - Correspondence & General - File # 2,” 1978.

⁵⁹ Norman, *Governing Transboundary Waters*, 105-106.

⁶⁰ Society Promoting Environmental Conservation, “Save the Fraser.” BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 8, File 5, “Fraser River Estuary Study - General File #1,” 1976 to 1977.

health of the Salish Sea ecosystem. Westwater's investigation on pollution in the Fraser River found a "lack of information" as a "major weakness in the capability of management institutions to control pollution effectively in either the short or long-term." It added that "Native peoples own substantial areas of the B.C. shorelands and their use of coastal resources has been fundamental to their culture and lifestyle, it will, therefore, be particularly important that coastal resource management institutions be capable of assessing the impacts of development on these peoples." The report noted that STÁ,UTW's impact survey of Saanichton Bay during the Oak Bay Marina Group's attempt to construct a marina indicated "the particularly difficult problems involved in assessing impacts on native peoples" and outlined a variety of approaches used for community-engaged research.⁶¹ These studies recommended greater conservation efforts and had influence over the committee charged with evaluating the proposed superport at Roberts Bank.

While the steering committee for the Roberts Bank superport project leaned toward conservation and pollution control, the North Fraser Harbour Commission (NFHC) complained about the committee's interim report expressing the NFHC's "disappointment with the contents." The port manager called the report's conclusions "very weak," viewing them as "biased in favour of those Agencies interested in the River and the Estuary for fish, wildlife, recreation, water quality, etc." He argued that the report "made absolutely no reference to the most basic and evident fact that the River is a major avenue of commerce" nor did it acknowledge the "great economic impact on many communities in the Lower Mainland area."⁶² Eventually the Harbour

⁶¹ Westwater report, no date. BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 8, File 6, "Fraser River Estuary Study - General File #2," 1977.

⁶² Kenneth J. McEwan, Port Manager, North Fraser Harbour Commission, to J. O'Riordan, study coordinator, Ministry of the Environment, 31 May 1978. BCA, British Columbia. Environment and Land Use Committee. Secretariat, GR-1002, Volume 8, File 4, "Fraser River Estuary Study - Correspondence File #2," 1977 to 1978.

Commission would have its day. After initially rejecting the proposal to further develop Roberts Bank, the Land Use committee reviewed an amended proposal and then allowed dredging to commence for an expansion to the Roberts Bank facility in 1981.⁶³ The new superport at Roberts Bank challenged Coast Salish nations' sovereignty over the marine spaces of the Salish Sea with increased tanker traffic and further loss of valuable estuary habitat.

The Roberts Bank superport signalled the clear policy shift during the 1980s in favour of commercial development in the Salish Sea. A decade after the NDP government rejected Bob Wright's bid to build a marina at Saanichton Bay, Premier Bill Bennett's more industry-friendly Social Credit government reversed the decision and granted permits to Wright along with a fee simple grant to the foreshore.⁶⁴ The proposed marina included the construction of a dike, the paving of a section of beach for a parking lot, a breakwater, dredging of the basin, and the transplantation of eelgrass beds from the bay to the outer side of Cordova Spit.⁶⁵ [Figure 18] The transplanting of the eel grass beds satisfied the DFO's policy of "no net loss," but when the grass failed to thrive on the outer side of Cordova Spit as promised, due to winter winds and currents that washed them out, the company pushed rebar into the sand and tied the eel grass to the rebar declaring it a "successful eel grass transplant."⁶⁶ When asked by reporters about the current developments, attorney Louise Mandell remarked: "So at the same time the province approved logging on Lyell Island [Haida territory], it was attempting to provoke the people of the Stein area [Nlaka'pamux territory] and the Tsawout people by approving the development of areas

⁶³ Vancouver Port Authority, *History of Development at Roberts Bank*, 9.

⁶⁴ Louise Mandell, interview by Gordon Lyall, 3 December 2021, Victoria, BC, Canada.

⁶⁵ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (A)*, 31 August 1987, 3-4.

⁶⁶ "No net loss" is a DFO principle established in 1986, in the department's *Policy for Management of Fish Habitat*. The Department strove to "balance unavoidable habitat losses with habitat replacement on a project-by-project basis so that further reductions to Canada's fisheries resources due to habitat loss or damage may be prevented." Quoted in Joseph Gough, *Managing Canada's Fisheries: from early days to the year 2000*, (Sillery, Quebec: Septentrion, 2006), 384; Claxton Jr., 6 March 2020.

which had remained undeveloped.”⁶⁷ STÁ,UTW enlisted Mandell’s services to mount a legal challenge to the marina development. They asked her for advice on an injunction, but she explained that they could not get an injunction on “something that might happen.” The community had to wait until actual construction of the marina had commenced.⁶⁸

The STÁ,UTW were, however, determined not to allow any construction. With the support of local church groups and other residents opposed to commercial development, the STÁ,UTW camped in front of the construction crew hired to build a road from the bluff down to the bay below.⁶⁹ As Louise Mandell explains, blockades are an essential enactment of Indigenous law in the face of colonization. Recently, during protests against pipeline expansions, Indigenous activists told Mandell, “in Indigenous culture, we are our law walking... in your practices and your relationships, and in the way that you conduct yourself... when we block the road, that’s our law. We’ll put our body where our law is.”⁷⁰ While an action was required in order to obtain a legal injunction against the Oak Bay Marina Group, the STÁ,UTW also worked within the parameters of their own Indigenous law to defend their sovereignty over the bay.

The camp held back construction for about three months. During their stand, the community prepared “all [their] traditional foods,” including clam chowder and salmon they harvested from the bay, serving them “around the fire” at the camp site.⁷¹ The blockade stood strong on multiple occasions when crews attempted to build. On November 5, 1985, for instance, the camp blocked an excavator from going down to the bay. Wright’s executive assistant Brian Dean Strongitharm addressed Gus Underwood, informing him that the company had permits to dig. Underwood

⁶⁷ “Tsawout Indians stop marina,” *Native Voice*, January 1986, 9.

⁶⁸ Claxton Jr., 6 March 2020; Mandell, 3 December 2021.

⁶⁹ Claxton Jr., 6 March 2020; Hamar Foster, “The Saanichton Bay Marina Case: Imperial Law, Colonial History and Competing Theories of Aboriginal Title,” *U.B.C. Law Review*, 23, 3 (1989): 637-638.

⁷⁰ Mandell, 3 December 2021.

⁷¹ Claxton Jr., 6 March 2020.

simply told Strongitharm that “they were not prepared to allow the Marina to go ahead at any expense.” When the construction company tried to commence road work again on the 13th, STÁ,UTW made a similar defense of their beach and “rather than being confrontational” the company again retreated.⁷²

Frustrated with the blockades, the Marina Group strategized the best way to accomplish test drilling of the bay. It opted to commence the tests on a day forecasted to be bitterly cold.⁷³ Early on the morning of November 25, around 4:00 or 5:00 am, the company brought a clamshell bucket marine dredging machine down to the water in -17° Celsius weather with blizzard conditions. While community members slept, a young paper boy saw the machine going down the access road. He threw his papers to the ground and ran to the camp. “Wake up! Wake up!” He yelled, “They’re coming in!” The sleepy blockaders, rose to the boy’s call wondering what to do. “Well go out and get your boats and get out there,” the boy instructed. Recalling these events nearly forty years later, Earl Claxton Jr. remarks: “It was quite a thing for that young fellow, he was about maybe 15 or something.”⁷⁴ Claxton slept in the band office at the time:

I was sleeping on the couch, and then all of sudden, bang, the door bangs open, and just a flood of people came storming in to the band office. So, I got up right away, and I got one shoe on, and then I had to go and start phoning, our lawyers, and Indian Affairs, Fisheries and Oceans. Phoning all over the place, let them know that this was starting to go on. So, I think there were about three hours, out there trying to stop the digging. And our people couldn’t stop them. And I was in

⁷² SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (A)*, 27.

⁷³ Claxton Jr., 27 June 2020.

⁷⁴ Claxton Jr., 6 March 2020.

the office and I was talking with our lawyer, Louise Mandell, and she asked if anybody was taking pictures. And I said, I had a camera, she said “well get out there then.” So I walkie-talkied a boat and told them to come in right away, and they came in and one guy jumped off and I jumped on. And I looked out on the bay from the boat. And I could see the dredger’s dark form through the snow. The snow was going sideways. And I told the driver to get us out there. And we went out and I started taking photographs.⁷⁵

The first test dredges commenced about 7:30 in the morning. By the time the second and third test pits had been dug, around 9:00 am, community vessels had surrounded the dredger. The dredging operator then “had to be somewhat careful in placing the clamshell so as not to capsize some of the boats.”⁷⁶ By noon, the dredger had completed eight test holes when Claxton had seen enough.⁷⁷ He watched as community member Phil Paul attempted to jam his paddle into the clam-bucket. At that moment the dredging operator began to move the dredge. “They picked up their crane,” Claxton recalls, “and the front of [Paul’s] boat hooked on to the cables, and his boat went up in the air about 45 degrees or so, or more, and it let go and it slapped on the water.” Claxton watched as Paul hung on to the side of his boat when it hit the water. At that moment, Claxton realized he “had to do something.” As the operator put the clamshell bucket on the deck of the barge, Claxton called to his driver to get him up to the dredge. He scrambled to the front of the boat and, as soon as he was within range, launched himself onto the barge and climbed up the cable.⁷⁸ The *Native Voice* reported, “[h]ad the dredging crew continued their work Claxton

⁷⁵ Claxton Jr., 6 March 2020.

⁷⁶ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (A)*, 26.

⁷⁷ *Ibid*, 27.

⁷⁸ Claxton Jr., 6 March 2020.

would have drowned.”⁷⁹ Claxton clung on in the blizzard, refusing to come down. As he stared the dredge operator straight in the eyes, the operator “put his head down, shook his head, and turned the engine off.”⁸⁰

While Claxton held his position on the dredger, the lawyers representing the Marina Group telephoned Mandell and informed her about the company’s permits, asking for her assistance in removing Claxton from the machine. “I just said ‘of course,’” Mandell recalls, “‘if you get the dredger out of the bay, then I am sure we can get Earl out of the dredger!’”⁸¹ Strongitharm then called upon the RCMP officer who had been watching the events from the James Island ferry dock at Turgoose Point. Sergeant Mann joined Strongitharm, who then read from a letter stating that the company had the permits to carry out their digging. Strongitharm later told the court that his efforts to convince the community of the company’s right to dredge came “to no avail;” the community remained resolute. Again, Strongitharm yielded and shut the operation down “so that the clamshell and the operator sat idle.”⁸² Claxton and the STÁ,UTW community had put their lives on the line to stop the destruction of their bay from the Marina Group’s dredging operations demonstrating their dedication to the defense of their marine territory.

Reflecting on the danger of this situation over thirty years later, Claxton was visibly shaken by the residual trauma of the day; and he took a moment to collect himself. The dredger showdown had been a transformative event for him. On that day, he had stopped the destruction of the bay in a moment of land (and water) defense that honored his ancestors. “I think on that day I became a SXÍXI warrior,” he explains. “And a SXÍXI warrior’s the masked dancer of the village. And the SXÍXI warriors were the protectors of the village... my dad said the ØSI,ÁLTEN and the

⁷⁹ “T sawout Indians stop marina,” *Native Voice*, January 1986, 9.

⁸⁰ Claxton Jr., 6 March 2020.

⁸¹ Mandell, 3 December 2021.

⁸² SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (A)*, 27.

people in the long house, he said, they fall down and become helpless whenever there's danger and it's up to the SXÍXI to protect the village. So, I am a SXÍXI warrior and I feel like that day I became one.”⁸³ Within WSÁNEĆ customs and protocols, Claxton fulfilled a solemn duty to protect the community; this duty extends to the protection and care of the land and water. Within WSÁNEĆ worldviews this is a spiritual and practical responsibility.

In the aftermath of dredging at Saanichton Bay, the beach became littered with dead shellfish. As Ray Sam recalled, “I went down to my crab fishery after the dredger had left. The beach area had a sludge on it which I believe came from the silt around the test holes. I walked in during low tide and saw around one test hole a number of broken dead crab and literally hundreds of dead shrimp and hundreds of clams that had been dug up.”⁸⁴ Speaking to reporters, Claxton noted that the “considerable damage to the marine life in the bay” had been “very traumatic for the elders of the band.” He revealed that “[m]any of our elders wept as they watched the bay being dredged, it was an extremely tough day for all of us.”⁸⁵ The community won its temporary injunction however. The Oak Bay Marina Group abandoned further testing until the question of treaty rights and WSÁNEĆ’s legal right to protect the foreshores attached to their reserves had been determined by the courts.⁸⁶

Along with a chance for the WSÁNEĆ to assert their treaty rights, the impending court case also offered Indigenous communities in British Columbia a test case for the extension of existing Aboriginal title rights to marine spaces. A year following the standoff at Saanichton Bay, a BC lawyer recognized this connection. In September 1986, attorney Mark Salter warned readers of

⁸³ Claxton Jr., 6 March 2020.

⁸⁴ SCBC, *Claxton v. Saanichton Marina. Affidavit of Ray Sam*, 29 November 1985, 4-5.

⁸⁵ “Tsawout Indians stop marina,” *Native Voice*, January 1986, 9.

⁸⁶ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (A)*, 27; “Tsawout Indians stop marina,” *Native Voice*, January 1986, 9.

the *Native Voice* that “Non-natives claimed more than land, they also claimed the sea.” He opined: “Aboriginal title should include resources of the sea... Every elder I have talked to tell me traditional territories include water, whether it be the sea, bays or estuaries.” Salter recognized that Indigenous nations held title to their territories, including marine spaces, but non-Indigenous commercial interests had “exploited the resources” and disregarded Indigenous nations’ “jurisdiction.”⁸⁷ While exposing the logical fallacy of the now-discredited Doctrine of Discovery, he pointed out further that there were “no first nations in B.C., who have surrendered aboriginal title to the sea or the land and there is no proposition in law that [said] aboriginal title has been extinguished or Indian people were forced to surrender the land or sea.” Yet he observed that “the government continue[d] to grant rights, harass people, allocate harvests and jail people for exercising their aboriginal rights.” He also warned that the “federal and provincial governments [were] making political deals to divide the sea and its resources.” The courts, he observed, had already determined that the “Georgia Strait, Juan de Fuca Strait and Johnston Strait [were] properties of the province” and that “off-shore waters and seabeds belong[ed] to Canada,” but he pointed to the STÁ,UTW defense of Saanichton Bay as an example of successful resistance to non-Indigenous developers infringement on an Indigenous community’s property rights.⁸⁸

The WSÁNEĆ also built from the foundation of the Saanichton Bay defense to re-assert their sovereignty over their territory. On January 8, 1987, BOKÉCEN Chief Norman Williams, WJOLELP Chief Samuel Sam, WSÍKEM Chief David Bill, and STÁ,UTW Chief Louis Claxton issued the “Saanich Territorial Declaration,” accompanied by a map with SENĆOTEN placenames. “We, the Saanich Indian People,” the Chiefs declared, “hold the absolute rights and

⁸⁷ “Sea resources part of aboriginal title says lawyer,” *Native Voice*, September 1986, 3.

⁸⁸ *Ibid.*

title to our Territorial Homeland.”⁸⁹ Recognising the common WENITEM interpretation of the Douglas Treaties as land transactions, they stated: “We do not recognize any past attempts to separate us from our homeland. We recognize that there were Treaties of Peaceful Co-existence entered into with the early settlers but this did not involve the sale of rights or land.”⁹⁰ Their “Territorial homelands,” which “encompass all our spiritual places, medicine and fruit gathering places, fishing stations, hunting and trapping areas, winter and summer homesites, burial sites, meditation places and all territories in between these places outlined on our territorial map,” rightfully remained under their stewardship. Asserting this sovereignty, the chiefs promised that “[t]he sacred connection the SENĆOŦEN speaking people have with their homeland establishes our Territorial Title and can never be broken by the Federal or Provincial Government by Acts of Parliament or by any Canadian Court of Law.” The WŚÁNEĆ issued their declaration in order to “stop the erosion of our culture, our land, our rights and to also establish a clear understanding of our territorial title to our homelands.”⁹¹ This declaration is evidence of the community’s dedication to asserting their moral ecologies over territory and resources and it was also politically timely. As XEMFOLTW (Chief Nick Claxton) and John Price point out, British Columbia was preparing to engage First Nations in lands claims after years of denying the existence of Indigenous title. According to XEMFOLTW, the WŚÁNEĆ designed this declaration to make their stance clear ahead of any negotiations with the Province. However, “[l]ike many Nations, the WŚÁNEĆ left treaty talks after it became apparent that the government

⁸⁹ WŚÁNEĆ Nation, “Saanich Indian Territorial Declaration,” *History & Territory*, <https://wsanec.com/history-territory/>. (accessed 27 June 2021).

⁹⁰ Harriet VanWart observes that almost exclusively scholarly and official interpretations of the Douglas Treaties is they were land transfers, the WŚÁNEĆ perspective however is that they were peace treaties, not a surrender of land. VanWart, “A Bibliography and Discussion of Douglas Treaty Materials”; WŚÁNEĆ Nation, “Saanich Indian Territorial Declaration,” *History & Territory*, <https://wsanec.com/history-territory/> (accessed 27 June 2021).

⁹¹ WŚÁNEĆ Nation, “Saanich Indian Territorial Declaration,” *History & Territory*, <https://wsanec.com/history-territory/>. (accessed 27 June 2021).

was determined to extinguish their sovereign rights over their traditional territory,” through the BC Treaty Commission process.⁹² Nevertheless, W̱SÁNEĆ leaders made a loud statement with the “Saanich Territorial Declaration,” which carried them into the trial hearings for the marina development at Saanichton Bay.

After securing a temporary injunction, the hearings for *Claxton v. Saanichton Marina* occurred at the Supreme Court of British Columbia over a two-week period in September 1987. Justice Kenneth E. Meredith presided over the trial. The community had little faith in the court, however, believing that “even when [they] win, [they] lose in the courts,” but were encouraged by Snuneymuxw’s 1965 Supreme Court win (*Regina v. White and Bob*) in which Snuneymuxw utilised their Douglas Treaty to prevent the prosecution of two community hunters arrested for hunting during a closed season.⁹³ W̱SÁNEĆ’s counsel, Louise Mandell, however, could not believe that after the BC Supreme Court had found in favor of White and Bob, ruling that the Douglas Treaties did indeed bind the Crown to a treaty relationship with the communities, here they were twenty years later arguing for the same treaty rights. Mandell explains that during this period of her career, there was a regular cycle of an “extinguishment narrative” and “treaty denial” that Crown lawyers repeatedly utilised in order to deny the existence of Indigenous title in BC based on two false doctrines of discovery and *terra nullius*. Her instructions from Indigenous clients were to have the courts recognize Indigenous title and treaty rights and to finally put an end to the extinguishment narrative.⁹⁴

Like the Coast Salish nations in Washington State, the W̱SÁNEĆ litigants also enlisted the services of Barbara Lane. Unlike the US hearings for *US v. Washington*, however, the court

⁹² Nicholas XEMFOLTW Claxton and John Price, “From the Colonial Past to the Racist Present: Indigenous resurgence in a province like no other,” *Times Colonist*, 11 April 2021, Islander 2-4.

⁹³ Claxton Jr., 27 June 2020.

⁹⁴ Mandell, 3 December 2021.

debated the admission of Lane’s testimony in a tortured discussion over whether her statements in an expert report were “opinions,” “arguments,” or “facts” and if she had the authority to give opinions to the court. After this lengthy debate, STÁ,UTW’s counsel opted to “abandon tendering” Lane’s full report and submitted only the final portion on “the Tsawout people and their fisheries,” which the defendants and the court accepted. Both counsels also agreed that it would not be necessary for Lane to testify.⁹⁵ Mandell also recommended that community member Linda Underwood assist the court stenographer with the orthographic conventions of the SENĆOTEN language. The two devised a number system to indicate commonly used SENĆOTEN words; when community witnesses used their language, the numbers would be recorded for later transcription of the hearing. The court agreed to this proposal and community members were able to articulate their position within their own cultural parameters.⁹⁶ The defense team consisted of provincial lawyers representing Crown lands and the corporate interests and federal lawyers representing fisheries interests. Ultimately, the provincial lawyers argued that its issuance to the Marina Group of the fee simple Crown grant to the foreshore superseded the Douglas Treaty right because they believed the treaty was not binding on the Province.⁹⁷ Their strategy relied on the use of historical documents, particularly, a collection of correspondence between the colony of Vancouver Island and the Colonial Office in London. Historian Jim Hendrickson had recently compiled this collection of official correspondence and had it transcribed on a relatively new format — the word processor. The court marvelled at

⁹⁵ WSA, Attorney General, State, AR-20070628-05, Volume 3, File 40, “Barbara Lane Series - Opinion of Barbara Lane,” 1987-07-29; WSA, Attorney General, State, AR-20070628-05, Volume 3, File 41, “Barbara Lane Series - Testimony of B.L./ Saanichton v. Claxton,” 1987-09-08; SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 13-14; SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (E)*, 8 September 1987, 50-54; SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (F)*, 9 September 1987, 2; Hamar Foster, conversation with Gordon Lyall, 6 September 2019, Victoria, BC, Canada.

⁹⁶ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 15.

⁹⁷ Mandell, 3 December 2021.

Hendrickson's ability to easily call up references to text strings in the documents such as "Indian" and "aboriginal title," as the court desired, using this technology.⁹⁸

While the defense took a historical documentation approach, the W̱SÁNEĆ framed their case on the principles of ĀELÁÑEN, TEXTA'N, and SYESES. According to Earl Claxton Sr., ĀELÁÑEN is W̱SÁNEĆ "heritage" or their "way of life." They argued that their ĀELÁÑEN had been disrupted through the colonization of their territory and the marina would be a further infringement on their right to preserve it. TEXTA'N is "something that a family belongs to," akin to family property and ownership rights but not in the same sensibility as Western-based concepts of property ownership.⁹⁹ As Joni Olsen explains:

While each W̱SÁNEĆ family belongs to certain harvesting sites, some sites were shared with other families that had permission to use them through family ties or other arrangements. Families had the right to do this. Families harvest clam garden sites and the yield of the harvest is preserved, stored, shared and traded. Belonging to a harvesting site creates a responsibility to the family for the care of the site. It is important to show up and care for the clam gardens on time and prepared, it is also important for workers and harvesters to practice good work habits and to always work safely. Be respectful to each other while working, all work that takes place should be done in a respectful way. Because it was our ancestors that were changed it is our responsibility to take care of them. We understand these places as gardens that need to be cultivated.¹⁰⁰

⁹⁸ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (K)*, 1 September 1987, 13-14.

⁹⁹ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 12-13.

¹⁰⁰ Olsen, *2014-2015 W̱SÁNEĆ Clam Garden Restoration Project*, 5.

Finally, SYESES is W̱SÁNEĆ “history that’s been handed down from generation to generation.”¹⁰¹ Like the defense team, the W̱SÁNEĆ used their history as the basis of their claim. The W̱SÁNEĆ relationship to Saanichton Bay is then shaped by their ĊELÁNEN, TEXTA’N, and SYESES, which combined compose their law.

During the hearings, a group of Elders’ testimonies established their long-term and historical use of the resources. Their lawyers highlighted the contributions of a select group of the witnesses: Earl Claxton Sr. outlined the principles of W̱SÁNEĆ law, described W̱SÁNEĆ seasonal rounds, and used a map to indicate the customary hunting and fishing grounds; Gabriel Bartleman explained W̱SÁNEĆ perspectives on the Douglas Treaty and “what the oral history of the people is in terms of Douglas’ interaction with their people”; Ray Sam, the community’s “best crab fisherman,” spoke on “the abundance of resources that are present in the Bay and harvested by the people and relied on by the people”; Elsie Claxton explained the “reliance of the people on the resources in the Bay by describing food preparation and the community involvement in the Bay and along the beaches of the Bay”; and Herb Pelkey gave testimony on duck hunting.¹⁰² Community members’ affidavits also attested to their reliance on the marine resources of Saanichton Bay and that a marina would “interfere with the food system of [their] people.” George Underwood testified, “it is my view that our Indian Reserve, precious to our people for centuries because we could feed ourselves from our door step, will lose its value if we cannot fish and hunt in and around Saanichton Bay.”¹⁰³ Ray Sam added the community required Saanichton Bay not only for “livelihood and subsistence but also for its cultural and spiritual

¹⁰¹ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (B)*, 26.

¹⁰² *Ibid.*, 12-13; SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (E)*, 10.

¹⁰³ SCBC, *Claxton v. Saanichton Marina. Affidavit of George Underwood*, 2-4.

importance.” As an example, Sam explained that “when there is a death, the whole family goes down to the Bay to be bathed in the salt water and scrubbed with rose nettles.” Saanichton Bay is well-suited for ceremony because the bay faces the eastern rising sun. Ceremonial dancers also used the bay to “submerge themselves in the salt water” and then get scrubbed with cedar boughs. Because these ceremonies require privacy, the marina would effectively end these practices.¹⁰⁴ Victor Underwood Sr. stated that “the gathering and eating of food from Saanichton Bay” filled him with “pride and with deep memories;” it was a “very special place” and a “source of solitude and peace.” He concluded, “[w]e use the Bay to gain strength spiritually and emotionally and I am nourished from it.”¹⁰⁵

The community grounded their actions throughout the trial within their spirituality. It was a transformative experience for Louise Mandell. “You can’t really talk about the Saanichton Marina case without honouring the intense spirituality that was part of the movement,” she explains. “And it was so formative for me as a young lawyer to, you know, advance through prayer and ceremony, to watch people... to feel guided, not just by our clients, which we really were, but to feel the influence of the ancestors... just the beauty of our inter-connectedness... it isn’t the stock and trade of the law. Most people, most lawyers I know don’t have that experience.”¹⁰⁶ Mandell, as the community’s legal counsel and ally, learned through W̱SÁNEĆ protocols how to engage the state legal system from an Indigenous peoples’ perspective, which likely has played a significant role in her successful legal career.¹⁰⁷

¹⁰⁴ SCBC, *Claxton v. Saanichton Marina. Affidavit of Ray Sam*, 4.

¹⁰⁵ SCBC, *Claxton v. Saanichton Marina. Affidavit of Victor Underwood Sr.*, 26 November 1985, 2.

¹⁰⁶ Mandell, 3 December 2021.

¹⁰⁷ Louise Mandell is a founding partner of Mandell Pinder LLP which has litigated ground-breaking cases in Canadian law such as *R. v. Sparrow*, *Delgamuukw vs. British Columbia*, and *Haida Nation et al. v. British Columbia (Minister of Forests) et al.* <https://www.mandellpinder.com/our-story/>.

During the trial, the community asserted that the Douglas Treaty gave them the right to control what happened to the environment where they hunt and fish. The W̱SÁNEĆ wielded the treaty in a way that made this court case unique in British Columbia judicial history and Indigenous rights. As legal scholars Hamar Foster and Neil Vallance observe, it was the first time that an Indigenous community used their treaty as a “sword instead of a shield.”¹⁰⁸ Up to this point, Indigenous groups that had a Douglas Treaty had only used their treaty for defense, “not always successfully,” against charges of illegal hunting and fishing. “In other words,” says Foster, “as a shield.” In *Claxton v. Saanichton Marina*, the STÁ,UTW used the Saanich Treaties proactively to stop the development of the marina: “instead of being defendants, they were the plaintiffs.”¹⁰⁹ Hence, “a sword” and not a “shield.” Vallance adds that the case was unique in that it was a civil proceeding and not a criminal one.¹¹⁰

During the trial, the court considered the environmental and cultural impacts of a 500-berth marina at Saanichton Bay. When asked how the proposed marina would affect her, Cecilia Thomas testified that her home, possessing a “lot of affection in it,” would be “greatly disturbed.” She predicted a loss of privacy, as well as her people’s “ways,” and the pollution would be a “disaster.” When asked to elaborate on the privacy aspect, Thomas explained that the traffic induced by a marina would disrupt the community’s ability to perform ceremonies on the beach such as funerals and “when a young girl first becomes a woman and a boy becomes a man, and those new dances before they can go in the water.”¹¹¹ In an affidavit, Victor Underwood Sr., explained: “Saanichton Bay is a sanctuary for our people, a source for our food and a vital place for our recreation. The Bay is the place which we have left to pass to our children; the resources

¹⁰⁸ Foster, 6 September 2019; Vallance, “Sharing The Land,” 284.

¹⁰⁹ Hamar Foster, conversation with Gordon Lyall, 8 February 2020, Victoria, BC, Canada.

¹¹⁰ Vallance, “Sharing The Land,” 284.

¹¹¹ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (D)*, 58-59.

are able to feed them continuously for generations and generations. The Bay will be lost to us if a marina is developed there. Our way of life on the Bay, cannot be measured in dollars.”¹¹²

WSÁNEĆ made clear that the losses associated with a marina would be wide-ranging and that financial compensation could not offset the negative impacts.

For Justice Meredith to better understand the issues, both sides agreed that it would be beneficial if the judge visited Saanichton Bay. Crown counsel P.J. Pearlman suggested: “My Lord, that you look at the bay from a number of different points.” Pearlman assured the court he would be “quite content” if Meredith “had an opportunity to examine that bay and the reserve and indeed the foreshore to the north of the reserve.” In response, Justice Meredith mused, “I won’t be arrested by the band if I’m caught in trespass?” Pearlman could not give “any assurances in that regard whatsoever.” STÁ,UTW counsel member Stan Guenther agreed, however, that it was a “fair proposal.” He clarified, “not the part about being arrested, but the part about viewing that whole of the bay, and I think we can provide those assurances, if that is of any assistance. Yes, we’re in agreement with that proposal.” Before Guenther could finish his thought, Meredith interjected: “Well, I’d drive out right now. What’s the tide like now?”¹¹³

Instead of driving out, the teams arranged for Meredith to be transported via water to the bay for a marine view. STÁ,UTW members organized a boat for Meredith, and the lawyers went out on another boat.¹¹⁴ Earl Claxton Jr. explains the significance of this event: “So, there was three boats, maybe four because there was federal, provincial, lawyers, two sets of lawyers, one for province and one for feds, and ours of course. So, I think that when the judge saw really how close it was, that was one of the things that helped turn it for us.” In Claxton’s opinion, seeing

¹¹² SCBC, *Claxton v. Saanichton Marina. Affidavit of Victor Underwood Sr.*, 4.

¹¹³ WSA, Attorney General, State, AR-20070628-05, Volume 3, File 41, “Barbara Lane Series - Testimony of B.L./Saanichton v. Claxton,” 1987-09-08.

¹¹⁴ Claxton Jr., 27 June 2020.

the bay caused Meredith to realize that the seabed could not be occupied by WENITEM in any way that would not endanger STÁ,UTW's treaty right to fish.¹¹⁵ Mandell agrees that the visit marked a turning point in the case. "When he did agree to a viewing, he showed up in a suit and his pocket watch," she recalls, "everybody made sure he saw lots. People were roasting clams in pits on the beach, and preparing their boats, and they took him out in the boat, and gave him a tour around. I think he got a feeling for how intimate Saanichton Bay is... not just the lives, [but] on the table of every single person who lives in that community."¹¹⁶ In respect of the language in the Saanich Treaties, Meredith saw that the community had a right to "carry on [their] fisheries as formerly," which would have been violated by a marina.

Several weeks later, Meredith decided in STÁ,UTW's favour. He found that the "issues in these actions [were] relatively narrow and uncomplicated," and concluded that STÁ,UTW had "the right to resist because the proposed marina would diminish in extent the fishery (i.e., the fishing ground) contractually reserved to predecessors of the band." He also ruled that "the commitment of the Crown to the preservation of the whole of the fishery has conferred upon the Indians a very important right continuing to the present day." Therefore, he concluded, the "grant of a licence of occupation leading to the construction of a breakwater and marina would constitute an injury, an erosion of that right. The injury would be irreparable." He granted the permanent injunction and awarded them payment for the cost of their legal actions. Meredith did not, however, recognize STÁ,UTW's "exclusive right" to the resources of the bay.¹¹⁷

¹¹⁵ Ibid.

¹¹⁶ Mandell, 3 December 2021.

¹¹⁷ SCBC, *Saanichton Marina Ltd. v. Claxton. Claims. CanLII 2805*, 8 October 1987, 1 and 11.

In the Court of Appeal, Crown lawyers representing the Oak Bay Marina Group made four countering arguments, although the first was dismissed in a preliminary motion. Hamar Foster outlines the four arguments as:

(a) that the Saanich Treaty was not in any way binding upon the Crown because it was made, not by the Crown, but by the Hudson's Bay Company; (b) that the trial judge erred in finding that the Saanich Treaty granted to or recognized in the Tsawout a contractual right to fish in the bay that is in the nature of a proprietary right superior to the Crown's right to the seabed; (c) that the trial judge erred in interpreting the term 'fisheries' in the Treaty as meaning both an activity and geographically defined fishing grounds ; and, (d) that the trial judge erred in finding that the proposed marina would cause irreparable harm to the Tsawout fishery.¹¹⁸

The Crown was unsuccessful in its appeal, however, and the Appeals Court reaffirmed WSÁNEĆ treaty rights to preserve their marine resources from destruction. Writing immediately after the decision, Foster summarized the significance of the decision: first it confirmed Meredith's judgment that the WSÁNEĆ had their Indigenous fishing rights guaranteed by the Douglas Treaties; second it suggested that there were opportunities to explore colonial legal history in relation to New Zealand; third "it provide[d] an unusual example of the B.C. government's approach to native land rights and of its continuing refusal, even in a treaty case, to accept the implications of recent judicial decisions on the legal nature of aboriginal title;" and

¹¹⁸ Foster, "The Saanichton Bay Marina Case," 639.

fourth, the participation of church groups and neighbours showed that “public disenchantment with policies that favour commercial and industrial interests over environmental protection is not confined to wilderness regions.” “In other words,” Foster wrote, “add Saanichton Bay to South Moresby, Meares Island and the Stein Valley.”¹¹⁹ This last point is of particular note. As Foster recognized, direct action and environmental movements have often been associated with wilderness and remote settings. But Salish Sea communities like the WSÁNEĆ and other Coast Salish nations that reside close to urban and industrial settings and rely on marine resources, face an equally great challenge to protect the ecological health of the environment that is home to these resources. Foster did disagree with one aspect of the decision, however. While the courts found in WSÁNEĆ’s favour, Foster was critical of its interpretation of treaty rights as a right conferred unto them by the sovereignty of the Crown. As Foster comments: “because the Tsawout have lived and fished on Saanichton Bay ‘for as long as anyone knows,’ their right to their fishery is an aboriginal right, recognized at common law and... confirmed by treaty.”¹²⁰ While the case was in large part a victory for WSÁNEĆ, their “exclusive use” of the bay had been denied and the courts still only recognized treaty rights within a colonial frame of Crown sovereignty. Further, the Court of Appeals also ruled that the community’s treaty right “does not amount to a proprietary interest in the seabed,” which served to put the question of their sovereignty over marine spaces in some doubt. However, lawyers C. Rebecca Brown and James I. Reynolds contend that the Court made this ruling “without any analysis;” in their view, the judgement “does not stand for the proposition that there can be no Aboriginal title to sea

¹¹⁹ Ibid., 629.

¹²⁰ Ibid., 649; VanWart, “A Bibliography and Discussion of Douglas Treaty Materials,” 39.

spaces.”¹²¹ Brown and Reynolds see this case as an example of Canada finally recognizing and grappling with the issue of Indigenous title to “sea space.”¹²²

After the defense of Saanichton Bay, British Columbians immediately wondered what the decision meant for Indigenous rights across the province. As Foster commented: “The implications of the Saanichton Bay Marina case for other treaty Indians remains to be seen, especially when one considers that Saanichton Bay is only one of many traditional fishing places on southern Vancouver Island.”¹²³ Questions over rights intersected with those regarding the viability and ecological health of marine resources. In 1990, the *Native Voice* reported on a “heated debate over damage to the environment caused by dioxins and furans and its effect on traditional foods.” Biologists had discovered that these toxins in fish and crabs were linked to cancer and birth defects. They determined local shellfish in Nanaimo had “unacceptably high levels of the dioxins and furans.” The closures of shellfish harvesting in the area meant “the loss of traditional sources of food.” Indigenous harvesters now needed to “travel to areas which [were] safe or buy their traditional food from a store. Contamination of fish and marine mammals [was] proving costly to native people who must pay for their staple food items.” At a meeting in Nanaimo, the “question of compensation for the loss of food was raised.” While many recognised pulp and paper mills as the largest polluters, the *Native Voice* warned that “Native communities considering the development of a marina must take into consideration several factors which will impact on the way of life of the people.” They implored communities to consider a range of impacts a marina would have on the local environment — whether a proposed marina would be “situated near a traditional food harvesting area? Will dredging or

¹²¹ Brown and Reynolds, “Aboriginal Title to Sea Spaces,” 456.

¹²² *Ibid.*, 454-456.

¹²³ Foster, “The Saanichton Bay Marina Case,” 649.

filling for the marina damage valuable fish habitat areas? What controls will be put in place to reduce pollution caused by moored boats and fueling depots?”¹²⁴ In the next edition, an editorialist asked: “Can we still save the Fraser and the Gulf of Georgia from extinction as a food source?” Pointing to the fact most of the sewage treatment plants on the lower Fraser River were primary treatment only (not to mention that Victoria pumped raw sewage into the Strait of Juan de Fuca), the author expressed his resignation that it was “a known fact that the Gulf of Georgia has been used as a place to dump unwanted materials.” He asked, “are we to assume the contaminated soils from the Expo site are going to find their way there too?” While many blamed government officials for a lack of enforcement on pollution, calling for more regulations on sewage treatment, the author also suggested that “[r]esponsibility must also be borne by the public at large as we allowed our elected governments to continue with environmentally damaging policies.” He called for a “state of emergency” with funds made available for revitalization efforts “in the same manner when war is declared.”¹²⁵

Preventing the construction of the marina was only one part of the puzzle to securing a healthy environment for community harvests. While STÁ,UTW had won the right to continue their harvest of marine resources at Saanichton Bay, the battle against pollution remained. “I can remember when I was younger, all along this here was a real good place to dig clams,” Earl Claxton Jr. told reporters at Saanichton Bay in 2015. “No matter how poor you were, you could still come down and dig clams and get crabs and feast like a king.” Since that time, however, “a number of factors have made the shellfish along the Saanich Peninsula inedible, including runoff, geese droppings, and a regional sewage treatment plant placed in the community years

¹²⁴ M. Nahanee, “First Nations aware of environmental problems,” *Native Voice*, January 1990, 12 and 26.

¹²⁵ Doug Massey, “Saving Our Waters,” *Native Voice*, March 1990, 2.

ago.”¹²⁶ Considering marine resources to be an “antidote to prevalent health issues in the community such as anemia and diabetes,” STÁ,UTW members argue that shellfish are “as much medicine as they are food.”¹²⁷ Thus, contamination has led to more than a loss of food, it contributed to the loss of a set of community values.

In order to combat this change, WSÁNEĆ leaders continue to call for greater authority over all marine resources in their territories. A recent clam garden restoration project at WENÁ,NEĆ (Fulford Harbour) and SXEXEĆO,ƧEN (Russell Island) features the guidance of Elders, or “knowledge holders,” who have insisted on their involvement with the project because they did not feel that the government was “adequately taking care of the beaches and the clams.” Joni Olsen explains that “WSÁNEĆ harvesters recognize that a healthy clam garden depends on consistence care and harvesting activity. WSÁNEĆ presence is necessary in order to protect the rights of their community, their elders and the children generations to come.”¹²⁸ WSÁNEĆ presence at Saanichton Bay has never been an issue. Instead, the community requires WENITEM support in order to clean up the waterways and to keep them clean; this means respecting WSÁNEĆ authority over the beaches. As Claxton contends, DFO officers often prevent Coast Salish harvesters from digging, while rarely rehabilitating the marine environment enough to remove clam contamination and reopen the beaches.¹²⁹

A lack of shellfish has disrupted WSÁNEĆ harvesting methods designed to support the entire community. Within Coast Salish moral ecologies, certain community members identified as “superharvesters” provide an essential service to the community by sharing marine catches with

¹²⁶ Megan Thomas, “Tsawout First Nation welcomes help to restore traditional shellfish harvest: Long-standing problem with contamination prevents people from eating clams,” *CBC News*, 15 December 2015, <https://www.cbc.ca/news/canada/british-columbia/tsawout-first-nation-welcomes-help-to-restore-traditional-shellfish-harvest-1.3365251>.

¹²⁷ Evans et al., *Tsawout Marine Use Study*, 10.

¹²⁸ Olsen, *2014-2015 WSÁNEĆ Clam Garden Restoration Project Final Report*, 3.

¹²⁹ Claxton Jr., 27 June 2020.

other households and for ceremonial gatherings.¹³⁰ In this way, these superharvesters perform a customary role in modern society. Also called “providers,” these superharvesters “adhere to a set of beliefs and practices when gathering for longhouse events, including gathering resources from particular islands for certain families.”¹³¹ A recent marine use study found that: “Harvesting and sharing the products of the Salish Sea with family members, friends, and other community members is a constituent component of Tsawout’s subsistence economy and culture. It is elemental and foundational to how this urban First Nation asserts and maintains its cultural identity.”¹³² Thus, the harms of pollution are not merely a loss of food stuffs, or medicine, but a loss of culture as well. Cultural loss would be detrimental not only to the community but also to a WENITEM population that is reviewing its relationship with Indigenous peoples in light of the Truth and Reconciliation Commission findings and Indigenous community resurgence.

Along with the *Sparrow* decision in 1990, the successful defense of Saanichton Bay marks a shift in state recognition of Indigenous and treaty rights in Canada. Earl Claxton Jr. considers *Claxton v. Saanichton Marina* a “bedrock decision.” [Figure 19] He views it as a “stepping stone” for all subsequent Indigenous rights cases in British Columbia, such as *Delgamuukw v. British Columbia*. Indeed, the case represents crucial court recognition of Indigenous treaty rights in British Columbia and suggests that marine spaces can be considered in questions over Indigenous title and sovereignty. Mandell confirms that this victory was the beginning of the end of the Crown’s extinguishment narrative which was finally defeated in *Delgamuukw*. While there have been what Mandell calls “the dying gasps” of the extinguishment argument in more modern cases such as *Tsilhqot’in Nation v. BC*, the narrative that started in 1973 with *Calder* began to

¹³⁰ Evans et al., *Tsawout Marine Use Study*, 9.

¹³¹ *Ibid.*, 10.

¹³² *Ibid.*, 10.

significantly crumble after STÁ,UTW’s victory in *Claxton v. Saanichton Marina*. Mandell observes that this case helped shift the legal paradigm. “Because now the title and treaty rights are recognized and they’re given constitutional space to grow,” she says. “And the courts have said that jurisdiction is not exhaustively divided between Crown governments. That there’s a space for Indigenous governance. So we’ve got a shared sovereignty paradigm which has evolved as a result of the defeat of the extinguishment argument. And Saanichton Marina played a role in that narrative arc.”¹³³

During his testimony at the hearings, Chief Louis Claxton shared with the court his “vision of the future” for the STÁ,UTW community:

I’d like to see Saanichton Bay the way it is for our generations to come. I know when I was starting out in life that’s how I earned my living and I want to have — I want our generations to come to have the same chance that we had... to have the bay supply them with the food. There is no way we can measure the amount of food that we have got out of there in dollars. It’s always been there and when we want the food we go there. It has always been there.¹³⁴

The revitalization of the WSÁNEĆ SXOLE fishery is an example of how the community has translated this court affirmed right to their customary fisheries in order to harvest marine resources within Coast Salish moral ecologies.¹³⁵ The WSÁNEĆ have further defended the marine environment by testifying in the recent National Energy Board hearings for the proposed

¹³³ Mandell, 3 December 2021.

¹³⁴ SCBC, *Claxton v. Saanichton Marina. Proceedings at Trial (E)*, 16.

¹³⁵ Claxton, “ISTA SCIANEW, ISTA SXOLE,” 53-56; Fritz, “The SWELSWÁLET of the WSÁNEĆ Nation,” 1.

expansion of the Trans Mountain Pipeline and engages the Crown “on several fronts, including the Gulf Islands National Park Reserve, the National Marine Conservation Area Reserve, and the Federal Reconciliation Exploratory Tables.”¹³⁶ Thus, the community is engaging multiple state channels in order to assert their territorial sovereignty and to help keep the environment healthy for future generations.

Some WENITEM in British Columbia are also realizing the value in recognizing Coast Salish nations’ sovereignty over Indigenous territory. For instance, the District of Central Saanich is in the process of returning TIXEN, which had been excluded from the Tsawout IR2 and held as a municipal parkland, back to the STÁ,UTW community.¹³⁷ Also, the Land Conservancy of British Columbia has recently arranged to have SISÇENEM (Halibut Island) purchased from a private owner and given to the WSÁNEĆ to preserve its unique Garry Oak ecosystem with its “original wildlife and flora.” WJOELP Chief Don Tom praised the news, stating: “It shows that reconciliation doesn’t have to wait for government’s lead and that we can all do our part to protect the environment and help heal the WSÁNEĆ people.”¹³⁸ This news suggests that the re-establishment of WSÁNEĆ law and sovereignty over marine resources in their territorial waters is possible as well.

In the second half of the twentieth century, throughout fish wars, WENITEM encroachment on shellfish beaches, and rising pollution, the WSÁNEĆ maintained a strong defense of their foreshores and fisheries that culminated in a legal victory in *Claxton v. Saanichton Marina*.

¹³⁶ Claxton and Price, “Whose Land is it?” *BC Studies*, 204 (Winter 2019/20): 121.

¹³⁷ District of Central Saanich, “TIXEN,” *Central Saanich*, <https://www.centralsaanich.ca/our-community/first-nations/tixen> (accessed 27 November 2021)

¹³⁸ “Small island off B.C. coast returned to local First Nation,” *CBC News*, 7 March 2021, <https://www.cbc.ca/news/canada/british-columbia/small-island-off-b-c-coast-returned-to-local-first-nation-1.5939962>.

Reflecting on the case, XEMFOLTW asserts that his community did not allow the marina development because it would have “impeded our way of life.”¹³⁹ The successful defence of Saanichton Bay reenergized WSÁNEĆ community members and their win stands as a reminder to WENITEM of legitimate Indigenous nations’ claims to marine resources in the Salish Sea. The courts, which operate within the legal framework of the colonizers, have since recognised other infringements on Indigenous rights and title in BC, further throwing the legality of Crown sovereignty over British Columbia and its marine spaces in question. The general sentiments of the public have also aligned with this evolution in judicial opinion with greater reconciliation efforts in the twenty-first century. The events featured in this chapter therefore played a significant role in these conversations and triggered a momentous adjustment to the settler-colonial structure in BC.

¹³⁹ Nicholas XEMFOLTW Claxton, presentation at Whose Land? Rethinking Sovereignty in “British Columbia”, 27 March 2019, Victoria, BC, Canada.

Conclusion: Walking Together along the Salish Sea

Like many academic studies, this dissertation delineates a journey. It traces my explorations as a scholar through the archival record visiting national, provincial, and state repositories; as a beachcomber across local tidelands; and most importantly, as a guest in Indigenous territory. The goal of this journey has been to better understand the region I call home and to connect the general themes of its history to places not often thought of as centres of conflict and reconciliation, such as the foreshores. This study has focused on the history of shellfish, an important marine resource that previously under-examined by historians, who have given far greater attention to the iconic salmon resources and other more mobile marine species. Shellfish and their habitats are ubiquitous along the shorelines of the Salish Sea; their unremarkable presence in the landscape paradoxically renders them nearly invisible to many beach goers. Despite this seeming banality, shellfish beaches have been a highly active space, managed and protected by Indigenous peoples for thousands of years. More recently, WENITEM have introduced new shellfish species and drastically altered access and management to these resources as well as the ecological health of their habitats. After contact, Indigenous nations' management of and sovereignty over the most productive shellfish-bearing foreshores have been challenged by a rapidly evolving and inconsistent state management scheme driven by a capitalist economy. These uneven regulatory policies have been compounded by rising pollution, which has poisoned many shellfish beaches rendering these valuable proteins toxic to human consumption. It is easy to miss this history when sitting on a beach watching the tide roll in.

I went to Saanichton Bay one morning in May 2021 to connect myself more materially to the place I had recently been writing about. [Figure 20] I was reminded of how Ray Sam described

Saanichton Bay as a place for ceremony due to its orientation to the rising sun, and so it felt important to go in the morning. The timing seemed propitious. I had recently had a dream about Earl Claxton Jr. When I told him about it the next morning, he took my dream as a sign that we should meet again. I told him of my plans to be at Saanichton Bay, and he agreed to join me. I arrived early to take a solo walk around the bay. Endeavouring to remain present in the moment, observing as many details as I could, I trekked from the public path (originally built by the Oak Bay Marina Group as an access road) over to the STÁ,UTW side of the bay, where the creek winds through mud flats into the sea. Walking back, I stopped to ground myself better in this place. As soon as I stopped moving, the beach came alive. It started with a little spurt of water from the sand. Like a fountain, the jet came from a buried clam. While I had seen clams spit many times before, I found it momentous to see it once more. Again, it erupted with a bigger spray. Then I caught another little spurt just over from the first, then another, and another. Amid the organic fountain display, I glimpsed little shore crabs wrestling and jostling each other as they scavenged the beach. A baby sculpin darted in and out of rocks at the shoreline. I heard a duck quack in the distance, which reminded me of the WSÁNEĆ duck hunt at Saanichton Bay for food and ceremonial purposes.¹ What appeared to be a quiet beach from a distance became a lively scene upon closer view. I wondered what all this would have looked like if a marina had been installed at this spot? Certainly, my chances of witnessing this performance on the beach would have been much slimmer.

When Claxton arrived, I set out some camping chairs on the beach and we soaked in the sun. Little spurts of water shot up in front of us as the beach continued its routine. Had the Marina Group won their case, the spot where we sat would have been a parking lot. Now we chatted

¹ Earl Claxton Jr., interview by Gordon Lyall, 15 May 2021, Victoria, BC, Canada.

once more about STÁ,UTW's defense of the bay. This story held greater significance as we enjoyed the relative peace of an uncrowded beach. Thanks to STÁ,UTW and their allies, the beach remains a quiet spot for contemplation. Claxton confirms that ceremonial bathing still takes place here.² Community members still harvest crab, catch sea-run cutthroat trout and the chum that has returned to the nearby creek, and they still hunt ducks. Claxton remains grateful that he helped secure these Douglas Treaty rights for his community.³ But due to pollution, the community does not often collect the clams it once enjoyed here.

After Claxton left, I resumed my walk and thought about the current state of shellfish at Saanichton Bay. Scanning the beach, I saw countless fragments of shells scattered over the rocks; the mudflats were marked by hundreds of little holes indicating burrowing invertebrates — both signs of a thriving shellfish population. Wildlife feasts on these natural spoils, yet no people benefit from this abundance while the beach remains closed to human consumption. Much like the story of Tantalus, these shellfish exist all around but remain unattainable to the communities that had enjoyed them for thousands of years. Sadly, this is the situation I noted on a lot of the beaches closest to the two communities that I worked with for this research.

In August 2019, as I concluded my research at the state archives in Olympia, I strategized the last leg of my Washington State research trip. Originally, I planned to return to Seattle to review more records at University of Washington Special Collections. Yet, after taking inventory of what I had from that repository and from the state archives, it became clear to me that I did not need more from the archival record. What I really needed was to bring this research back to Suquamish and hear more of the community perspective on it and give them an opportunity to speak to new questions I had uncovered. Tony Forsman generously agreed to meet for a follow-

² Ibid.

³ Ibid.

up interview and so did his brother, Chairman Leonard Forsman. I loaded my car and headed back up Puget Sound. Instead of taking the Google Maps-suggested route up the I-5 through Tacoma, I opted for the quieter route on the 101 to the 3, which hugged the basin of Puget Sound and symbolically completed a circuit of the Sound for me, starting at Suquamish heading over to Seattle, down to Olympia (where I also spent a couple enjoyable afternoons at Frank's Landing with a descendant of Billy Frank Jr., as well as a peaceful morning walk around ancient Squaxin fishing weirs and clam harvesting sites at Ralph Munro's Mud Bay estate on Eld Inlet), and back up to Suquamish.

At the beginning of this journey, when I first stopped at Suquamish, Tony Forsman generously offered to put me up for a night at their luxurious Suquamish Clearwater Casino Resort, by far the best accommodations I had the whole trip. On the trip back, however, I opted for a more economical option at a motel in neighbouring Poulsbo. One morning I walked up and down a series of hills until I found myself in a little fishing village at the heart of the town. Having almost zero knowledge of this place, I was surprised by the façades of the little shops in the town centre. The majority of these shops had a medieval Scandinavian motif; or they were built to look like what one would assume a Viking structure would have looked like. Little side streets were named after Scandinavian monarchs from the past. Reading the signage, I learned that sometime in the 1950s, a bank was the first to do this, in homage to the town's population of Scandinavian immigrants who predominantly laboured in the fishing industry. As the fisheries diminished, looking for new economic opportunities, the town took on this identity to support a fledgling tourist industry. As I walked past a giant bonfire pit at Liberty Bay Waterfront Park beside the marina, I left the European vision of the city and entered a quiet trail. This trail followed the beach along Liberty Bay, every beach access marked by a highly-visible sign:

“DANGER: TOXIC SHELLFISH... Shellfish harvesting closed on this beach;” the beach was de-certified and shellfish were not safe for consumption. These signs have become all too familiar to me; for example, the one on the access path at Saanichton Bay, or the ones I see when I walk similar trails in North Saanich close to Tseycum Reserve at Warrior Point on Patricia Bay; the warning “Shellfish area closed” is a fixture down on these beaches. I wondered if shellfish beaches beside marinas or near urban centres in the Salish Sea could ever be safe for human consumption again? It would require profound change in the relationships people have with each other and the natural environment.

Since I started this study, I have seen signs that the relationships between Coast Salish communities and WENITEM are improving. But there is still a lot of work to do. Leonard Forsman says that “[i]n some ways,” these relationships are “better and some ways they’re not. Especially when it comes to the clam digging.” He sees an “undercurrent” of “concern or anxiety” on the part of WENITEM “about the fact that the Tribe is able to access these resources in a way that’s different from theirs.” He shares a recent story that begins with a successful cleaning of Dyes Inlet, which allowed Suquamish to harvest there again after years of closure due to polluted water. “Tribes had been working with the local government and other local governments to try to clean up the water so the clams could become certified for harvest,” Forsman explains:

So, we were able to do this down in Dyes Inlet. And at the end of the Rafeedie decision you enter a lease then on private property. It was a process — you own waterfront you own the tidelands, then they go out and do a survey and then they say, “all right we’re going to come in and take half your clams.” And so, “we’re

going to come in and do that.” We had one guy get pretty upset. A guy I went to school with. Who never expressed that to me at any time. I think he came home, and he was drunk, he saw a bunch of people on his beach. And he just started yelling “why are you f-ing Indians on this beach?” You know, “get off this beach.” And it was kind of interesting because he’s a fireman. And the chief of the fire department called me up and said, “hey I just wanted to give you a head’s up... we’re dealing with this. And we’re pretty upset that this happened.” So, it was good of the fire chief to reach out to me before, and the guy got notified of it, and he got disciplined for it. So, it was a little weird that that happened. That was kind of an underlying resentment that’s still out there... [We] even had a former teacher get upset on our method of harvest, felt like it was too aggressive. “I can see somebody coming in and getting a bucket or two every once in a while. But to send 50 people on the beach all at once to take them all, this is inappropriate.” So, this was kind of interesting in that respect.⁴

Forsman’s story points to the systematic nature of settler colonialism and white supremacy. Whether they realize it or not, WENITEM of all walks of life, at various socio-economic levels, and in positions of authority, or well-respected members of society, are wrapped up in a process of dispossession and genocide. These undercurrents of racism function to normalize settler colonialism by portraying Indigenous peoples as unworthy or undeserving of political power and access to resources. A few days after the 2019 Chief Seattle Days, Chairman Forsman published an article in the *Seattle Times* highlighting the significance of this event. “At a time of division

⁴ Leonard Forsman, 20 August 2019.

among peoples and increasing threats to our ecosystems,” he explained, Chief Seattle’s “teachings are as relevant today as ever.” He noted that the arrival of Coast Salish dignitaries at this year’s festival was “marked by the appearance of a humpback whale.” In his view, the whale “reminded us of our ancient connection to the Salish Sea, and of the threat to marine life posed by sewage spills, industrial runoff and tanker traffic. The water is heating as the climate changes, and it is becoming acidic. The starfish that once lined our beaches are gone; salmon are scarce, and our orca relatives are in danger of extinction.” Forsman reminded the general public that “[w]ith the backing of the 1974 Boldt Decision and subsequent court decisions, our right to fish and gather shellfish was recognized by government agencies, the courts and law enforcement. Our right as a sovereign government to operate tribal businesses, including a casino and resort, made our economic revival possible.”⁵ This question of sovereignty, or the right to assert Coast Salish moral ecologies over marine resources, is the central axis of this story.

The legacies of *Claxton v. Saanichton Marina* in 1987 and the Rafeedie decision in 1994 centre on this question of sovereignty over marine resources. The W̱SÁNEĆ Nation and the Suquamish Tribe both asserted their rights through treaty. These cases mark state recognition of W̱SÁNEĆ’s right to “fish as formerly” and Suquamish’s right to “fish in common.” How far these rights have transformed into control over marine resources by Coast Salish nations varies across the Salish Sea. While the W̱SÁNEĆ at Saanichton Bay won their right to the foreshore, they were not given any exclusive rights to the marine resources contained within. On the other side of the border, the Suquamish lost their bid to assert sovereignty over their beaches at Port Madison but won a managing stake in half the marine resources in their usual and accustomed

⁵ Leonard Forsman, “We continue to build on Chief Seattle’s legacy.” *Seattle Times*, 22 August 2019, <https://www.seattletimes.com/opinion/we-continue-to-build-on-chief-seattles-legacy>.

fishing places. This discrepancy is due to nationalism and the creation of two nation states divided by an arbitrarily drawn international border. On the US side of the border, the “legalization” of treaty fishing indicated a crucial “transition” for Coast Salish nations “from harvesters to managers of the resource,” a responsibility that is extended to shellfish with the Rafeedie decision.⁶ Coast Salish nations on the Canadian side of the border have far less clarity on their rights to these resources. For example, while the federal DFO has often acknowledged that greater input from Indigenous leaders in policy would strengthen relationships between the Crown and Indigenous peoples, to date the highly regulated Aboriginal Fisheries Strategy allowing a small commercial sale of Indigenous “food fish,” and a moderate livelihood fishery on the Atlantic coast, remain the closest Canada has come to developing a co-management scheme for marine resources.

In BC, the question of marine sovereignty is also tightly bound to that of Indigenous title to the land and sea.⁷ As Mandell observes, the courts agreed with the WSÁNEĆ that the Douglas Treaty right to “fish as formerly” was not merely to protect the act of putting a net in the water, it’s the right “to protect that place in order to do your fishery.” In her opinion, that aspect of the legal victory “will be the most durable in terms of using the treaty not just as a shield [but also] as a sword to say that the treaty right is a proactive positive right to protect the land and the fish and use this case as a precedent to stand on that ground.”⁸ Shortly after *Claxton v. Saanichton Marina*, Tennant noted that Indigenous leaders interpreted the lack of treaties and no official extinguishment of Indigenous title as proof that they owned the land.⁹ During this same period, Nisga’a leader James Gosnell declared: “We are the true owners of British Columbia. The

⁶ Northwest Indian Fisheries Commission, *Tribal Report to the Presidential Task Force*, 49.

⁷ Brown and Reynolds, “Aboriginal Title to Sea Spaces,” 492.

⁸ Mandell, 3 December 2021.

⁹ Tennant, *Aboriginal Peoples and Politics*, 13.

Indians across the province own everything—the rivers, the trees, the bugs, the animals. You name it. Subsurface rights, the air, the rain, the whole shot.”¹⁰ Gosnell often proclaimed that Indigenous nations in British Columbia owned the land “lock, stock, and barrel.”¹¹ This wholesale claim to the land includes sovereignty over shellfish beaches. The Heiltsuk First Nation, for example, have initiated a case against a US company after its tugboat spilled thousands of litres of pollutants into the sea at Gale Pass in their territory. Along with compensation for damages to the clam garden, the community is asking the court to clarify whether Aboriginal title “also applies to the seabed and foreshore, the part of a shore between the water and developed land.”¹² While this question of Indigenous nations’ sovereignty over beaches as an Aboriginal right is currently being tested in the courts, for Coast Salish groups with a Douglas Treaty right, such as the W̱SÁNEĆ, *Claxton v. Saanichton Marina* sets a lawful precedent protecting their access to marine resources and their ability to prevent harmful land use in their territory. This gives W̱SÁNEĆ certain advantages over other coastal groups in negotiations with governments and they will further benefit from a positive decision in the Heiltsuk case. Yet, while the signing of treaty with colonial officials has offered communities some security against state-sanctioned encroachment, it has not made them immune from other symptoms of settler colonialism such as competing claims over land, water, and resources.

Coast Salish nations on both sides of the border, with or without treaties, are often in a competition with each other to gain state-recognition of access to resources. For Puget Sound groups with a Stevens Treaty, inter-tribal claims to “usual and accustomed” (U and A) fishing

¹⁰ Quoted in Tennant, *Aboriginal Peoples and Politics*, 13.

¹¹ Quoted in Tennant, *Aboriginal Peoples and Politics*, 13; Claxton Jr., 6 March 2020.

¹² Emilee Gilpin, “Heiltsuk sue Canada on behalf of their nation, ‘the coast and all Canadians,’” *Canada’s National Observer*, 10 October 2018, <https://www.nationalobserver.com/2018/10/10/news/heiltsuk-sue-canada-behalf-their-nation-coast-and-all-canadians>.

grounds pits kin against kin in lengthy negotiations over access. It is “very frustrating,” Tony Forsman explains. “We fought more amongst ourselves—that’s always been the case. They would get pretty bad.” The delineation of U and As have been “ever changing” according to Forsman. “You know, there’s been court decisions that’s taken away, they appeal them and they’re given back. And it just causes a lot of problems. I think over all it’s [that] you’re trying to match what a tribe thinks their cultural beliefs are versus what their allocation should be. And it’s round hole square peg.”¹³ These overlapping U and As are an example of how colonial governments have disrupted Coast Salish nations’ management regimes and introduced confusion as to who has access where and under what authority. As Forsman points out, modern fisheries regulations are rarely compatible with the Coast Salish system they compete with, making negotiations over allocations within the boundaries of customary harvest locations a problematic exercise.

Similarly in BC, during the modern BC Treaty Process, designed to gain “certainty” on Indigenous land claims by “extinguishing” them through treaty, overlapping claims have eroded the strength of W̱SÁNEĆ’s Douglas Treaty rights. As Earl Claxton Jr. explains: “when the treaty process came along, the government accepted claims from all of them, everyone. And they didn’t care if they overlapped or covered other areas. So our entire territory has been claimed by outside groups during this new process. They asked us to tear up our treaty and go into the process. But we said ‘no! We’re not going to do that.’”¹⁴ W̱SÁNEĆ leaders understand that, while historically the governments have failed to live up to Douglas’s “word,” the existence of the treaty provides them with leverage in the courts. But what about Coast Salish groups that do not have a Douglas Treaty? Many observers look to the interpretation of the Stevens Treaties by

¹³ Forsman, 23 July 2019.

¹⁴ Claxton Jr., 6 March 2020.

US courts, particularly the iconic Boldt Decision, and wonder why Canadian courts have yet to reach similar conclusions regarding fisheries allocations and management? Or why federal fisheries have not followed Washington State's lead?

Over the last thirty years, a plethora of internal reports and external studies for the DFO have pointed out this glaring cross-border difference. Indigenous leaders have likewise highlighted the disparity. In 1990, for example, Chiefs Simon Lucas and Ken Malloway wrote to federal officials regarding a conference to discuss "Aboriginal Title and Treaty Rights, Co-management and Sea Claims." The chiefs expressed frustration that no officials had committed to the meeting, obligating them to reschedule multiple times.¹⁵ In 2006, the Pacific Fisheries Resource Conservation Council observed that "unlike British Columbia, a landmark decision by the [Washington] State Court in 1974 ruled that aboriginal people were entitled to a set percentage of all the harvestable fish swimming through State waters. The figure arrived at was 50 per cent, or half of all the harvestable fish."¹⁶ Two years prior, the First Nation Panel on Fisheries recommended that "half of all the fisheries resources in B.C. [be] allocated to First Nations."¹⁷ For years, Indigenous fishers on the west coast of Canada have called on the state to recognize their Aboriginal right to fish as a sovereign right or at the very least give them co-management like their relations south of the border.

Co-management has bearing on more than simply access to resources and management of fish stocks. Input from Indigenous leadership on marine protected areas (MPA) speaks to the larger issue of sovereignty over marine spaces as well as the potential for reconciling WENITEM land

¹⁵ Simon Lucas and Ken Malloway, BCAPFC, to Jim Fulton, 15 March 1990. LAC, James Ross Fulton, R5284, Volume 114, File 2, "Fisheries - Aboriginal Peoples Fisheries Commission, B.C., Native Fishing Association, Licencing System," 1989 to 1990.

¹⁶ Pacific Fisheries Resource Conservation Council, Kerri Garner and Ben Parfitt, *First Nations, Salmon Fisheries and the Rising Importance of Conservation*, 2006, 2.

¹⁷ First Nation Panel on Fisheries, Russ Jones, Marcel Shepert and Neil J. Sterrit, *Our Place at the Table: First Nations in the B.C. Fishery*, 2004, 59.

and water use with Coast Salish moral ecologies.¹⁸ As W̱SÁNEĆ Elder Dave Elliott Sr. recognized: “It’s all a part of Land Claims. People think we are just claiming land. What I am saying is that people have a right to a good life; not just Indian people, but all people... It’s not just a matter of getting land back, but of getting a whole system back that we can all share.”¹⁹ Some observers, however, have asked if there will even be enough resources left to share? W̱JOŁEŁP Elder Tom Sampson laments: “We managed these lands for thousands of years, but now there’s nothing left to manage but a crisis.”²⁰ Similarly, Billy Frank Jr. often told colleagues and the US government that “treaty rights don’t mean a bloody thing if you don’t have any fish.”²¹ Shellfish fit into this picture both as a victim of marine pollution as well as a palliative for salmon depletion.

For Coast Salish tribal nations in Puget Sound, a recent study has found that the “growing revenues from shellfish have offset the falling revenue from salmon, and real tribal harvest revenues have remained roughly constant.”²² Tony Forsman rates Suquamish shellfish production, including a wild geoduck harvest as well as oyster and manila clam culture, very highly.²³ As a testament to their success, the Suquamish Tribe recently opened a retail store for fresh shellfish. [Figure 21] “By opening this up,” Chairman Leonard Forsman explains, “we

¹⁸ As environmental planner Allison Osterberg observes, in the context of marine protected areas (MPA), “[t]he legal status of tribes as co-managers of marine resources in Puget Sound differs markedly from the status of tribes in other areas that have created MPA networks.” She notes that a “lack of inclusion or respect of tribal interests” has negatively affected attempts to gain consensus on the ecological preservation of certain marine spaces. “In Canada,” she adds, “First Nations tribes were excluded from the initial development and implementation of the national network of MPAs, however... some tribes are now involved in regional marine planning efforts.” Puget Sound MPA Network, Allison Osterberg, *Developing a Network of Marine Protected Areas in Puget Sound: A Synthesis Report on Challenges, Opportunities, & Policy Options*, 2012, 39.

¹⁹ Poth, *Saltwater People*, 81.

²⁰ Quoted in Chemainus First Nation Communications Department, “Coast Salish message at Georgia Basin conference,” *Coast Salish Gathering Newsletter*, 27-29 February 2008, 9.

²¹ Malloway, 28 January 2020.

²² Parker et al., “The Legacy of *United States v. Washington*,” 196.

²³ Forsman, 23 July 2019; Jessie Darland, “Seafood store gets tribe’s traditional foods back into the community.” *Kitsap Sun*, 9 January 2020, <https://www.kitsapsun.com/story/news/2020/01/09/suquamish-seafoods-opens-new-retail-store-off-highway-305/4425109002/>.

hope that we can support our tribal fishermen and carry on this tradition so that we can expand and diversify beyond geoduck, and now we have oysters, and now we have retail and we really look forward to that.” For Forsman, the new store is “also a good way for [Suquamish] to get these traditional foods back in our community and have them available for our cultural purposes, but also the general public who enjoy having traditional foods that are regional.” He also recognizes that Suquamish Seafoods assists the community with “food security.”²⁴ To support this industry and overcome the depletion of wild salmon and shellfish stocks, Suquamish have effectively utilised aquaculture to enhance their revenue and food resources.

Coastal Indigenous groups in British Columbia have also looked to shellfish aquaculture as a means to gaining food security. Without a Boldt-type court ruling to bolster their claim to resources, however, the results have been uneven. In 1989, a Price Waterhouse study found that the “proportion of Natives employed in aquaculture” was “relatively small.” It estimated that twenty Indigenous people were engaged in salmon farming and another twenty “employed by oyster growing operations.” Two groups in the Salish Sea (Tla’amin Nation at Powell River and the Quw’utsun on Penelakut Island) were “actively involved in the culture of oysters.”²⁵ By the 1990s, the commercial shellfish industry had become even more attractive as salmon stocks declined. At the end of the century, the industry was worth approximately \$100 million with 1,900 clam diggers operating on BC’s coast.²⁶ In 2006, legal scholars Chris Tollefson and Robert Scott found that Indigenous communities’ participation in shellfish aquaculture still “remain[ed]

²⁴ Jessie Darland, “Seafood store gets tribe’s traditional foods back into the community.” *Kitsap Sun*, 9 January 2020, <https://www.kitsapsun.com/story/news/2020/01/09/suquamish-seafoods-opens-new-retail-store-off-highway-305/4425109002/>.

²⁵ “Economic Impacts of Native Participation in the British Columbia Fishing Industry” by the Native Fishing Association, A Price Waterhouse Assessment, July 1989. LAC, James Ross Fulton, R5284, Volume 114, File 2, “Fisheries - Aboriginal Peoples Fisheries Commission, B.C., Native Fishing Association, Licencing System,” 1989 to 1990.

²⁶ Gough, *Managing Canada’s Fisheries*, 464.

fledgling.” They calculated that “approximately 490 hectares of the 3,000 hectares currently involved in shellfish farming [was] held by BC bands.”²⁷ While a contemporary study found that shellfish aquaculture provided “well-paying, permanent, year round employment in rural and coastal areas where jobs [were] scarce and the percentage of displaced resource workers [was] high,” Tollefson and Scott argued that the BC Treaty negotiations interfered with Indigenous communities’ participation in aquaculture by creating uncertainty over the ownership of these resources.²⁸

While aquaculture within the economic sphere appears novel, Coast Salish communities have managed healthy clam gardens for thousands of years.²⁹ WJOELP political scientist Joni Olsen contends that “[p]roper beach care is essential to the health of a clam garden.” Olsen also points out that, within WSÁNEĆ management practice, it is “important to encourage other plant and animal species to live in the garden, these interdependent relationships support the health and abundance of all species in the inter-tidal zone.”³⁰ The Suquamish likewise manage clam beds in their U and A harvesting sites. The Tribal Council hires biologists to assess the beaches, and determine whether to harvest or re-plant seed when needed. Some beaches require harvesting to avoid over-population of the beach.³¹ The neighbouring Swinomish Tribe recently announced its intention to build the “first clam garden south of the Canadian border.” For community leaders, “clam gardens epitomize a sense of place and an active, respectful, and responsible connection to the land.” Clam gardens can also “lead to increased productivity and biodiversity and may help reduce wave action from rising sea levels and mitigate other effects of climate change;” thus

²⁷ Chris Tollefson and Robert Scott, “Charting a Course: Shellfish Aquaculture and Indigenous Rights in New Zealand and British Columbia,” *BC Studies*, 150 (Summer 2006): 12.

²⁸ *Ibid.*, 12.

²⁹ Williams, *Clam Gardens*, 119.

³⁰ Olsen, *2014-2015 WSÁNEĆ Clam Garden Restoration Project*, 9.

³¹ Leonard Forsman, 20 August 2019.

providing “a local, place-based method to address one of the most significant modern ecological concerns: ocean acidification.”³² Marine biologists have recently recognized the high value of coastal Indigenous peoples’ methods and characterize clam gardens as a “future-focussed management practice, that ensures food security for generations to come,” which stand “in sharp contrast to the short-sighted way that many of our natural resources are managed in today’s industrial age.”³³ While western science is not always a friend to Indigenous Knowledge,³⁴ these recent developments are evidence that marine science experts now see a positive role for coastal Indigenous practices in modern management programs.

Recent partnerships to restore clam beds on the Gulf Islands bring encouraging signs of co-management, yet W̱SÁNEĆ have also observed “[s]tories of commercial, sometimes illegal harvesters taking 2500 lbs of clams as they travel through the islands and up the Saanich inlet in the early hours of the morning.” These poachers exhaust the beaches, “[e]verything is getting over fished,” Olsen says.³⁵ A recent discovery of illegal crabbing in English Bay and a pandemic-related increase in illegal clam harvesting in BC’s lower mainland provide more examples of continuing conflicts and confusion regarding access to shellfish in the Salish Sea.³⁶ Olsen adds that “[b]eaches are exposed to the ferry wake and are degrading faster than they have before, [harvesters] can’t even get in two or three days what they use to be able to harvest in half a day.” On top of this daily degradation, an uncharacteristic heat wave in 2021, that scientists have attributed to climate change and fear may be more common in the future, recently destroyed

³² Williams, *Homewaters*, 172.

³³ Smith et al., “3500 years of shellfish mariculture on the Northwest Coast of North America,” 15.

³⁴ See for example Paul Nadasdy, *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal-State Relations in the Southwest Yukon*. (Vancouver: UBC Press, 2003) and Julie Cruikshank, *Do Glaciers Listen? Local Knowledge, Colonial Encounters, and Social Imagination*. (Vancouver: UBC Press, 2005).

³⁵ Olsen, *2014-2015 W̱SÁNEĆ Clam Garden Restoration Project*, 15.

³⁶ Jon Hernandez, “Free divers stumble upon illegal crab traps off Vancouver beach,” *CBC News*, 7 May 2021, <https://www.cbc.ca/news/canada/british-columbia/free-divers-illegal-crab-traps-vancouver-1.6017308>.

over a billion shoreline animals in the Salish Sea.³⁷ In light of these ongoing environmental and poaching challenges, Olsen admits that in order to “prevent confrontation with the Department of Fisheries and other fishermen, it has become a practice to keep live tanks hidden so that upon an emergency there are clams, crabs and urchins to give to families in need, a live tank also filters sand and toxins out of the clam.”³⁸ In this way, W̱SÁNEĆ apply their moral ecology over marine resources by protecting their catch from outsider intervention in order to support community members. These assertions of sovereignty come at a time when W̱ENITEM cross STÁ,UTW territory on a daily basis.

In October 2020, the STÁ,UTW blockaded the Patricia Bay Highway, which runs through their reserve, connecting the Swartz Bay ferry terminal to Victoria. Earlier in the year, they closed down the same conduit, in solidarity with the Wet’suwet’en Land Defenders, a group of hereditary chiefs protecting Wet’suwet’en territory from the construction of a natural gas pipeline. This time, the STÁ,UTW blockaded the highway in solidarity with the Mi’kmaq fishers in Nova Scotia, who have been battling with the government and settler fishers over access to the lucrative lobster industry. Mi’kmaq access and right to a “moderate livelihood” fishery is protected by their 1752 Peace and Friendship Treaty, which was affirmed by the Supreme Court of Canada in the 1999 *Marshall* decision. But recent conflicts between settlers and Mi’kmaq fishers have boiled over into violence and arson revealing the uncertain value settlers give to these historic agreements. The morning of the Pat Bay highway blockade, Eric Pelkey, STÁ,UTW’s communications officer, went on the radio to inform the public that the community showed solidarity with the Mi’kmaq “because we have the same problem here. We have a

³⁷ Alex Migdal, “More than a billion seashore animals may have cooked to death in B.C. heat wave, says UBC researcher,” *CBC News*, 5 July 2021, <https://www.cbc.ca/news/canada/british-columbia/intertidal-animals-ubc-research-1.6090774>.

³⁸ Olsen, *2014-2015 W̱SÁNEĆ Clam Garden Restoration Project*, 15.

Douglas Treaty that is being suppressed... violated by provincial and federal governments. We want the government to come to the table to let us enter the economy again... we are suffering the same thing.”³⁹ At the 2017 Douglas Treaties conference, lawyer Robert Janes argued that it was “nice to look at treaties as documents in history, but they are supposed to be looked at as ongoing agreements.”⁴⁰ Janes’s idea is an example of a WENITEM adopting the Indigenous peoples’ perspective on the function of a treaty. To work with a treaty within this framework would mean guaranteeing Indigenous treaty rights not only through direct access to the treaty-enforced resources but also by continuing to maintain healthy resource habitat for the benefit of generations to come.

Often these concepts of treaty responsibilities are forgotten when it comes to fisheries management on the beaches. Earl Claxton Jr. points out that federal authorities still patrol WŚÁNEĆ beaches, “if they see our people digging on the beach, they’ll go there and dump the clams out.” Instead of honoring the Douglas Treaty, and ensuring a healthy environment for the WŚÁNEĆ to “fish as formerly,” DFO expenditures largely “enforce their rules.” In Claxton’s opinion, they are “not using the money to try and rehabilitate the clam contamination.”⁴¹ WŚÁNEĆ still gather clams, despite the “harvesting prohibited” signs, because they don’t fully trust government officials to be properly monitoring their beaches. Community members “don’t believe [the DFO] when they say that it’s contaminated,” says Claxton. “They think they’re just making it up so that they won’t go and fish. So, they still go out and do it anyway. But that’s from years and years of mistrust, I guess you would say.”⁴² When the community sees little

³⁹ “Adam Stirling Show,” *CFAX 1070*, 23 October 2020, radio broadcast.

⁴⁰ Robert Janes, presentation at First Nations, Land, and James Douglas: Indigenous and Treaty Rights in the Colonies of Vancouver Island and British Columbia, 1849-1864, 26 February 2017, Victoria, BC, Canada.

⁴¹ Claxton Jr., 27 June 2020.

⁴² Claxton Jr., 15 May 2021.

efforts to clean up the water, and instead only sees the occasional enforcement of year-round closures, it tends to view the state's priorities as colonial control over the resource rather than a desire to ensure the resource's ecological health.

State enforcement of regulations works in tandem with rising pollution to restrict Indigenous communities' access and ability to practice customary harvesting on the beaches. Geographer Howard Macdonald Stewart observes that "more than half" of the Salish Sea coastline in Georgia Strait is closed to shellfish harvesting.⁴³ [Map 10] Claxton laments that his community's "shellfish diet has been disappearing from our communities because the waters are being polluted... Fisheries and Oceans aren't there to protect things like that. They should be using their resources that they have and their mandate and their power to try and rehabilitate the clam, many of the clams that are used to eat." He feels that the DFO has "dropped the ball in that regard. Because it would not only benefit our people, I think, but I think the WENITEM people would benefit from being able to collect clams and eat clams."⁴⁴ Concerned citizens and scientists also view shellfish as "sentinels of change" and an "indicator" of the overall health of the Salish Sea. In their view, if people cannot eat the shellfish then the water is "dirty."⁴⁵ The STÁ,UTW community has recently taken matters into their own hands to improve the quality of the water at Saanichton Bay. In 2015, it took over the operation of the sewage treatment plant in order to "improve what enters the ocean."⁴⁶ It is the community's hope to fulfill the words of the

⁴³ Stewart, *Views of the Salish Sea*, 266.

⁴⁴ Claxton Jr., 27 June 2020.

⁴⁵ Sobocinski, *The State of the Salish Sea*, 39; Emma S. Norman, "Locating the Border in Boundary Bay: Non-Point Pollution, Contaminated Shellfish, and Transboundary Governance," In *Placing the Border in Everyday Life*, Reece Jones and Corey Johnson, eds. (London: Routledge, 2014), 83.

⁴⁶ Megan Thomas, "Tsawout First Nation welcomes help to restore traditional shellfish harvest: Long-standing problem with contamination prevents people from eating clams," *CBC News*, 15 December 2015, <https://www.cbc.ca/news/canada/british-columbia/tsawout-first-nation-welcomes-help-to-restore-traditional-shellfish-harvest-1.3365251>.

Central Saanich mayor who once promised that a person could hold a glass at the end of the pipe and take a drink. “That’s our dream,” reflects Claxton, “to get to that state.”⁴⁷

Suquamish harvesters have also had a “major problem with pollution,” particularly at Dyes Inlet. To correct this, the Tribe has worked with both the US Navy and local officials to get “a lot of areas re-certified.” Tony Forsman sees a “resurgence of clam harvesting there.” He explains: “We now have oysters, an oyster farm, in Dyes Inlet, tumblebag oysters. And there’s been an increase in harvest of manila clams. Tribes have been seeding it. And there’s a lot more activity.” Forsman and Suquamish harvesters work with the county and state to monitor water quality. “It has improved some,” Forsman notes; however, he also realizes, “it’s always a danger.”⁴⁸ [Map 11]

Contaminated shellfish also impact the greater coastal ecosystem. A recent study has found that declines in shellfish populations “will undoubtedly have far-reaching consequences.” Therefore, the study concludes that “there is a need to understand the extent that shellfish-derived nutrients contribute to terrestrial ecosystems, if the diverse coastal ecosystems shellfish have supported for millennia are to be maintained.”⁴⁹ This study suggests that the destruction of the beaches will have disastrous effects on the adjacent land as well which could result in cascading ecological catastrophes. It also supports Indigenous leaders’ calls to view the environment and its resources holistically instead of as independent harvestable commodities. “Non-tribal people look at it as just their piece of the pie,” Lummi Randy Kinley reflects, “[w]e, as Indians, look at the whole.”⁵⁰

⁴⁷ Earl Claxton Jr., 15 May 2021.

⁴⁸ Forsman, 23 July 2019, Suquamish.

⁴⁹ Cox et al., “Shellfish subsidies along the Pacific coast of North America,” 679.

⁵⁰ Debra Lekanof, “Speaking to Government,” *Coast Salish Gathering Newsletter*, October 2008, 2.

Because the Salish Sea is a unified ecosystem, its future health is also dependant on transborder connections. Coast Salish leaders offer valuable insight into co-operative management of the Salish Sea and its resources. Founded in 2007, the Coast Salish Gathering (CSG), described as “an historic renewal of ancient relationships,” offered its services in this pursuit. The Gathering called on “leaders from both sides of the international border” to unite “over common concerns about the environmental damage that is changing the way of life lived by all creatures of the world.” Both Suquamish and W̱SÁNEĆ have had an active role in the CSG which views the current degradation of marine health in the Salish Sea as “a stark warning of what may be coming for all of us – the *mustimuhw* [people] – if we don’t change our ways.”⁵¹ CSG members have also pointed out that jurisdictional and trans-national issues that plague the management of a sea bifurcated by an international border, and further divided between levels of governance in a federal system, has made this issue almost unnecessarily complex. Incompatible state regulatory schemes are compounded by the myriad of public and commercial stakeholders who all demand access to the resources.⁵²

Critics of co-management in Washington State also see new problems arising in this contest for control over marine resources. In their view, an undesirable swing in the power dynamics has occurred. While conducting research in Washington State, I interviewed Randall Babich, a W̱ENITEM fisher from Gig Harbour who is deeply critical of the Boldt Decision and tribal co-management. According to Babich, a shift in state policy has created a new power imbalance in favour of tribal nation management. “They pretty much get what they want, much to our chagrin,” he argues. “It becomes very, very difficult. The Indians demand this and demand that

⁵¹ Ray Harris and Debra Lekanof, “For the environment’s sake.” *Coast Salish Gathering Newsletter*, 24-26 January 2007, 1-3.

⁵² Debra Lekanof, “Speaking to Government.” *Coast Salish Gathering Newsletter*, October 2008, 2.

and the state folds.”⁵³ Leonard Forsman argues that this interpretation is “inaccurate in some levels.” Forsman clarifies that “tribal co-management is much more unified and much more focused primarily on a commercial harvest... Whereas the non-Tribal has more competing forces within it between the sport fishery, the commercial fishery and then also the forces of habitat protection.” Forsman still observes significant WENITEM scapegoating of Indigenous fisheries to distract from overfishing and non-Indigenous fishing conflicts.⁵⁴

In Washington State, co-management, won through court recognition of treaty rights, is a cornerstone of this new structure of working together. Even Babich agrees that treaties should be sacrosanct and that Indigenous communities should not surrender their rights for any price. “I think that’s a good thing,” he says, “because many of the tribes have very strong cultural heritage connection to the salmon. I mean, like I said, they were here first. They did make their living from the sea. And I have no problem with that.” For Babich, the concern is how to navigate an even more complex regulatory scheme in a way that is environmentally sustainable. A shift in allocation does not necessarily address this. “What I have a problem with,” he says, “is how do we work together so there’s fish for the future? For your kids, my kids, and down the road for their kids? We work in such a way that it is harmonious and sustainable in this growing Washington Puget Sound environment.”⁵⁵ In Washington State, government officials and Indigenous leaders grapple with these questions, through the Boldt process — with the Phase II (habitat) proceedings and initiatives like Timber-Fish-Wildlife, which regulated the timber industry with a consideration for the protection of salmon spawning habitats, on a relatively even playing field.

⁵³ Randall Babich, interview by Gordon Lyall, 3 August 2019, Gig Harbour, Washington State, USA.

⁵⁴ Leonard Forsman, 20 August 2019.

⁵⁵ Babich, 3 August 2019.

In British Columbia, this relationship is less equal. Geographer Roxanne Paul has identified a recent “co-management relationship” between W̱SÁNEĆ and DFO officials. Yet she notes that “[i]mprovements to communication, collaboration and information sharing between DFO resource managers, Goldstream hatchery operators and Saanich First Nations with regards to decisions made about Goldstream salmon stocks are... necessary.”⁵⁶ More recently, at a panel on Indigenous peoples’ approaches to climate change, W̱SÁNEĆ Elder Marylin Olsen-Page, reports that W̱SÍKEM has an agreement with DFO to work with marine biologists. Knowledge keepers will inform the monitoring of ships in the area, which she exclaims to be “huge!”⁵⁷ In Canada, it appears that there is perhaps movement towards co-management, suggesting that Coast Salish peoples and W̱ENITEM on both sides of the border are striving for a new relationship on the Salish Sea. Reconciliation, perhaps, looms on the horizon.

This study has shown some of the ways in which settler-colonial management of marine resources and their stewardship of the Salish Sea has negatively impacted Coast Salish communities. It is largely a story of broken treaty promises and the destruction of fish stocks. But it also suggests that there are ways forward to repair damages done if W̱ENITEM, or “the people they have to support or feed,” work together with Coast Salish communities to integrate Indigenous Knowledge and moral ecologies into government policy and management systems. Cooperation requires active listening from W̱ENITEM leaders. “Canadians aren’t circle people, and therein lies the problem,” contends Waabishki Ma’iingan legal scholar Aaron Mills. “Instead

⁵⁶ Roxanne Paul, “Counting on their Migration Home: An Examination of Monitoring Protocols and Saanich First Nations’ Perspectives of Coho (*Oncorhynchus kisutch*), Chinook (*O. tshawytscha*) and Chum (*O. keta*) Pacific Salmon at Goldstream River and Saanich Inlet, Southern Vancouver Island, British Columbia,” (MSc thesis, University of Victoria, 2006), iv.

⁵⁷ Marylin Olsen-Page, presentation at Living Lands + Indigenous Climate Solutions, 14 February 2021, Victoria, BC, Canada.

of growing from the earth, they're progressing away from it." Chippewas of Nawash legal scholar John Borrows maintains that reconciliation between settler and Indigenous peoples requires a "collective reconciliation with the earth." To find this reconciliation, WENITEM leaders may discover a "source of rapprochement" within Indigenous legal traditions which "embody rich and vibrant insights and include deep intellectual and social resources that can help us care for the natural world."⁵⁸ Reconciliation in this context entails more than just apologies for historical injustices; it requires accepting a shared responsibility for the environmental health of our homes, and a learning through Indigenous law.

On the beaches, this reconciliation process began when the colonial governments on both sides of the border recognized their legal obligations under the Stevens and Douglas Treaties. Coast Salish peoples have yet to find WENITEM acknowledgement of these rights to be fully satisfactory, however, and there is still a lot of work to be done, including better public education on the significance of the treaties. Still, there are signs that relationships are changing in positive directions. For example, Indigenous canoe pullers who participate in the annual Canoe Journey that traverses the Salish Sea once reported conflicts on privately owned beaches when they made non-scheduled stops. More recently, after positive public campaigns raising awareness of the Canoe Journey, these pullers share stories of being invited for coffee or to use the washroom instead of being chased off the beaches.⁵⁹ [Figure 22] Emma Norman writes: "In years past, bitter racism fuelled by fishing rights issues made the waterways and beaches of the Salish Sea Basin a hostile environment for many Coast Salish members. Now, with the fish wars less heated, the fish allocation policies relatively normalized, and the reduction of commercial fishers

⁵⁸ John Borrows, "Earth-Bound: Indigenous Resurgence and Environmental Reconciliation," In *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings*, Michael Asch, John Borrows and James Tully, eds. (Toronto: University of Toronto Press, 2018), 49.

⁵⁹ Norman, *Governing Transboundary Waters*, 139-140.

(and fish), a new generation exists where respect mostly trumps racism.”⁶⁰ Earl Claxton Jr. likewise believes that there is a great opportunity for reconciliation. Acts such as inviting Indigenous canoe travellers for coffee are steps towards this goal. Showing respect for the treaties, by guaranteeing Indigenous communities access to marine resources as well as recognition of Indigenous-owned shellfish beaches, and respect for their privacy is also key. So is the protection of these habitats from pollution. Finally, understanding from Indigenous Knowledge Keepers exactly what Coast Salish moral ecologies are is a crucial part of reconciliation. The more WENITEM seek out Indigenous Knowledge, the more likely they will understand how important it is to find a balance between the commercial industry and sustainability. “I believe that we must walk together to heal,” Claxton concludes, “both the Saanich and ‘The People that Appeared from Nowhere or all of a Sudden.’ Education both ways is the answer.”⁶¹

⁶⁰ Ibid., 139-140.

⁶¹ Earl Claxton Jr., conversation with Gordon Lyall, 7 July 2020, Victoria, BC, Canada.

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Appendix A: Community Participants

Earl Claxton Jr., is a STÁ,UTW Elder. He is a botanical expert and mentor at PEPÁKEN HÁUTW Program, a native plant nursery, food garden, and educational centre located at WJOLELP near the base of LÁU,WELNEW (Mount Newton). Claxton is also a prominent defender of Saanichton Bay who became a SXÍXI warrior when he helped the community successfully protect the bay from a marina development in the 1980s.

XEMFOLTW, Nick Claxton, is elected Chief of STÁ,UTW and an education professor at the University of Victoria. Claxton shared a list of archival material he identified regarding reef-nets in the historical record that I pulled at the BC Archives for this research and is my contact for community access to all of my research materials.

Leonard Forsman is Chairman of the Suquamish Tribal Council. He has held this position since 2005. He worked previously as an archeologist and historian. He also participated in the shellfish and tidelands cases as a researcher.

Tony Forsman is the general manager of the Suquamish Seafoods plant. He was formerly the Northwest Indian Fisheries Commission's Fisheries Director representing tribal fisheries in negotiations with the state and setting tribal fishing regulations and policy.

Ray Forsman is a Suquamish fisherman. He served in the navy during the Vietnam War and experienced violent conflicts during the 1970s fish wars in Washington State. He offers valuable insights from the perspective of a community fisher who directly experienced conflicts with fisheries officers during the 1970s.

Lydia Sigo is the archivist of the Suquamish Tribal Archives and a geoduck diver. Lydia was my first point of contact with Suquamish, and I am grateful for her welcome to the community and preparation of archival materials for my review when I arrived.

People outside of these communities who have also been interviewed and consulted:

Wileleq, Chief Ken Malloway, is a Stó:lō hereditary chief of the Tzeachten First Nation. He has been actively engaged in land management, fishing rights, and Indigenous rights for most of his life. He has served on many committees including: Management Committee for CN Twin Tracking court case; Interior Indian Fisheries Commission; BC Aboriginal Fisheries Commission; AFN National Fisheries Committee; Lower Fraser Fisheries Alliance; Fraser Panel member of the Pacific Salmon Commission; and others. Chief Malloway's insights have been invaluable, shedding light on recent fishery coalitions, relationships between Indigenous fishers and settlers, Indigenous nations' relationships across the border, as well as the perspectives of Coast Salish nations that did not sign a treaty with the colonial government in the nineteenth century.

I have also had interviews and valuable conversations with non-Indigenous fishers, politicians, lawyers, legal scholars, archaeologists, and marine biologists, who have all assisted me in understanding various aspects of this complex history.

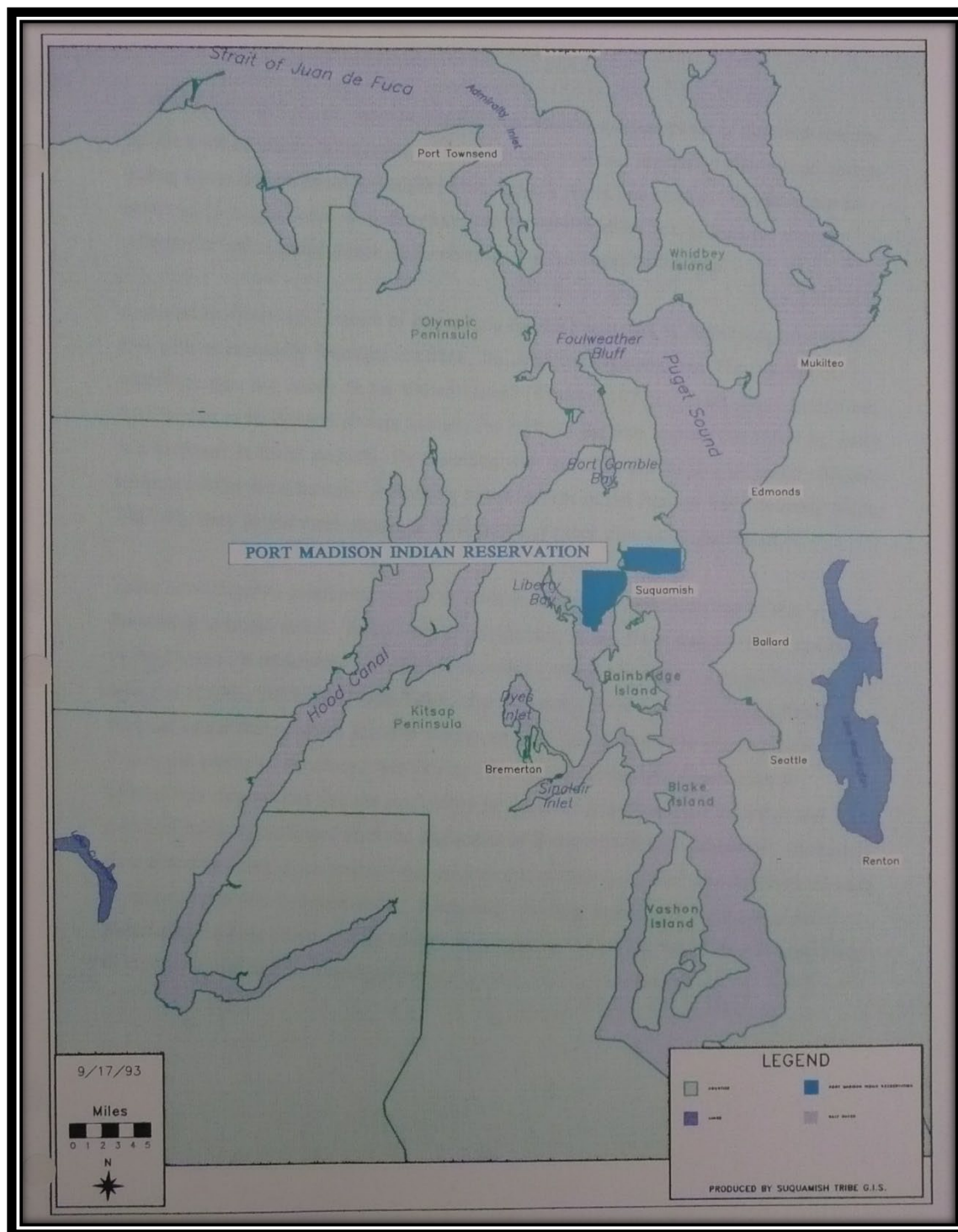
Appendix B: Maps

Map 1: Salish Sea



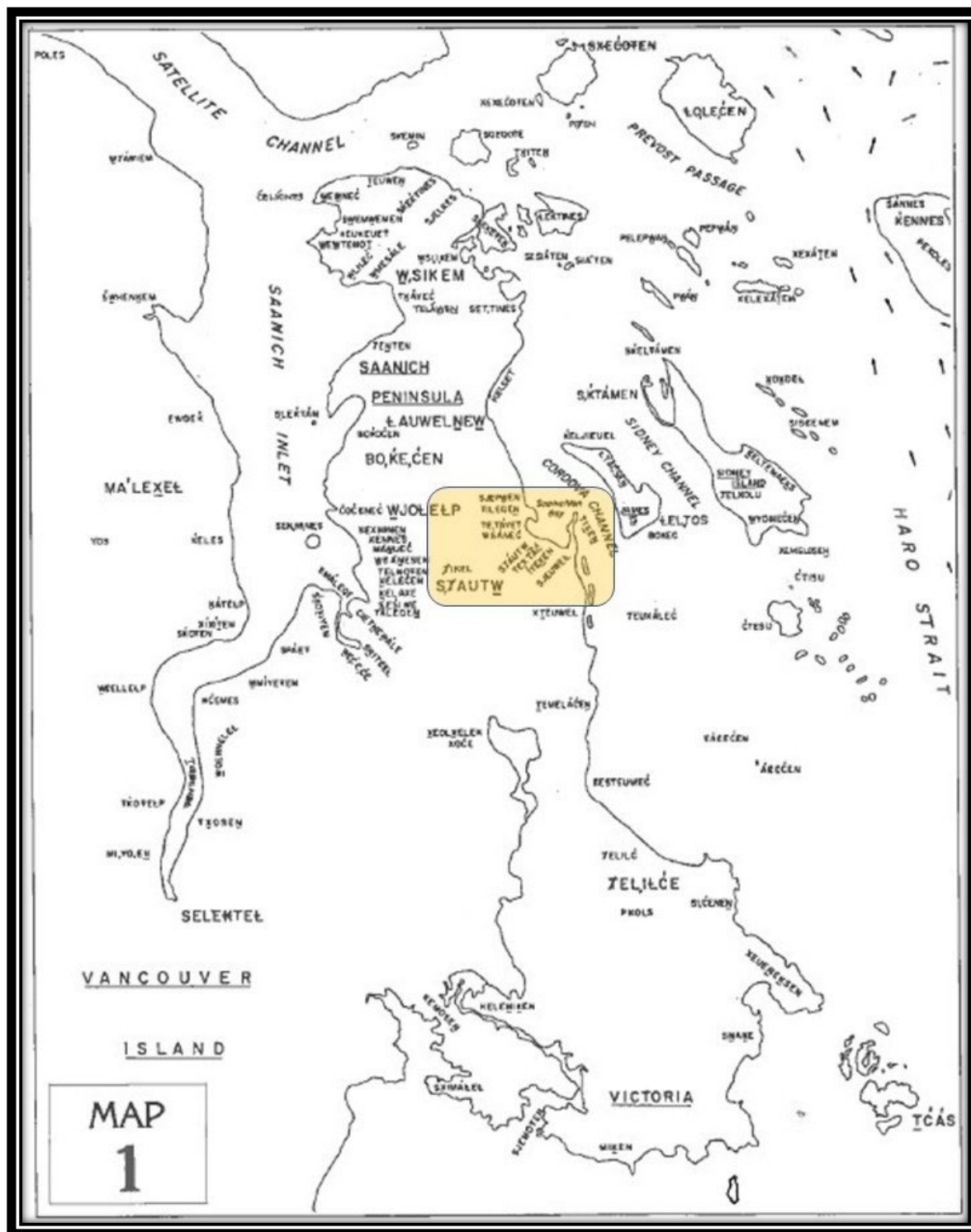
Deborah Reade, <https://legacy.uvic.ca/gallery/salishcurriculum/coast-salish-territories-maps>.

Map 2: Port Madison Reservation



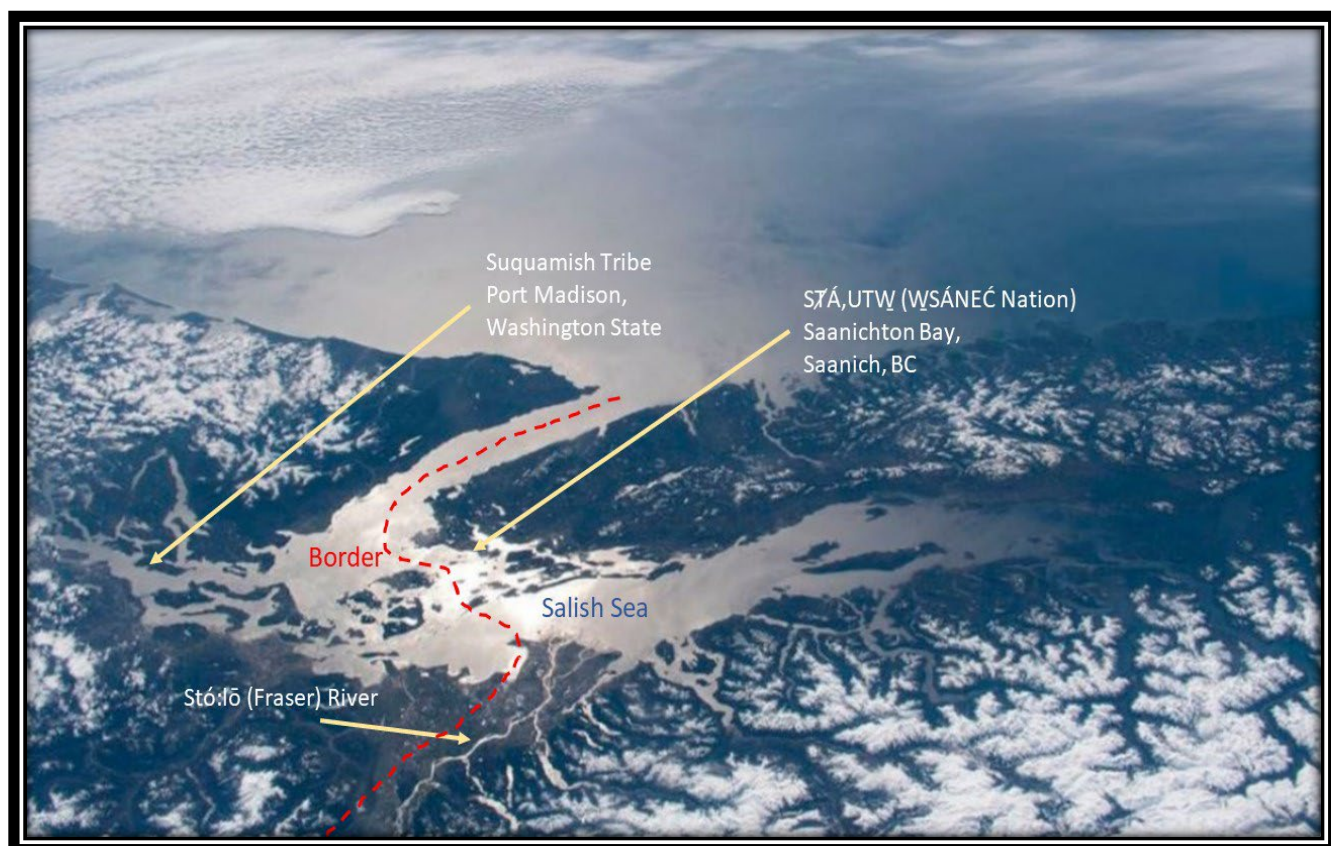
Randall F. Shalk, "Anthropological and Historical Evidence Pertaining to Suquamish Shellfish Usage." Seattle: Suquamish Tribe, 1993.

Map 3: STÁ,UTW Reserve No. 2 and Saanichton Bay



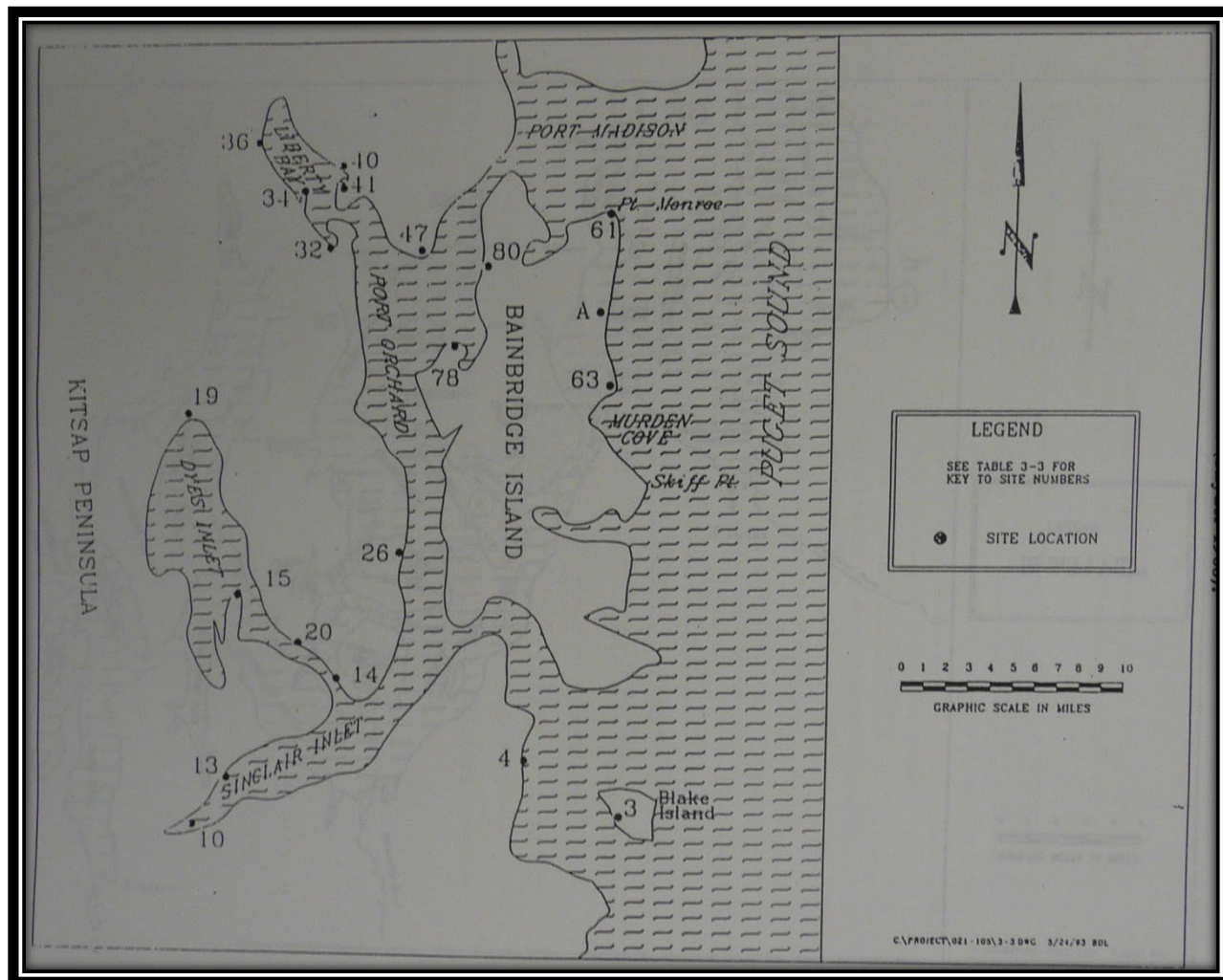
Poth, Janet, eds. *Saltwater People as told by Dave Elliott Sr.: A Resource Book for the Saanich Native Studies Program*. Saanich: School District 63, 1990 [1983].

Map 4: Salish Sea Showing Communities, Stó:lō (Fraser River), and International Border



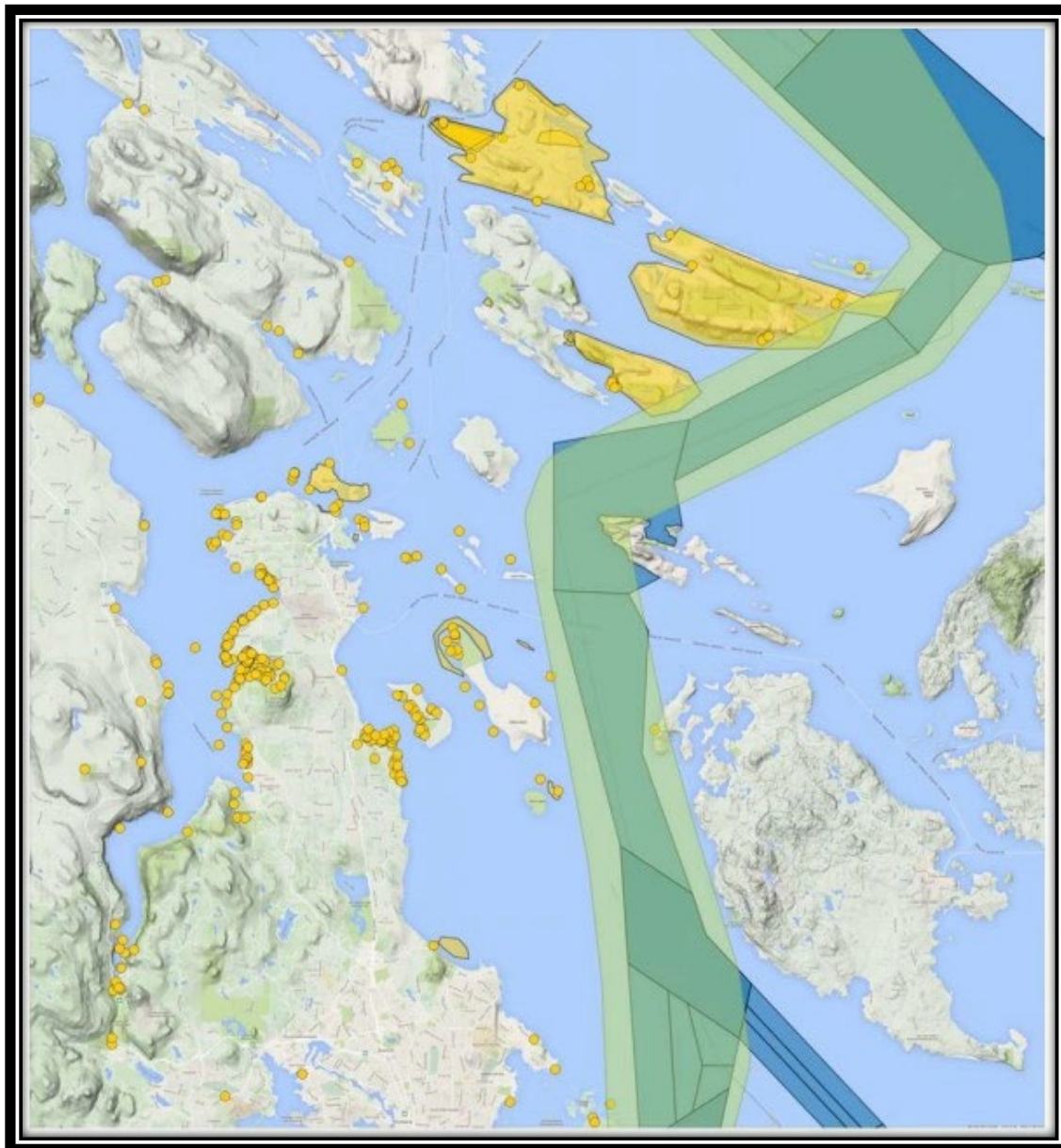
Base layer provided by National Aeronautics and Space Administration, 14 April 2020,
<https://www.nasa.gov/image-feature/the-strait-of-juan-de-fuca-and-the-salish-sea>.

Map 5: Suquamish Shellfish Harvesting Sites



Based on Warren Snyder's research with Suquamish for the ICC in 1968. Gail Thompson, "Report of Findings: Aboriginal Use of Shellfish by Puget Sound Area Indian Groups," Seattle: Office of the Attorney General, 1993.

Map 6: WSÁNEĆ Shellfish, Plant, and Berry Harvesting Sites



Trailmark Systems and Consulting, "Pauquachin Traditional Marine Use Study." Victoria: Pauquachin First Nation, 2015.

Map 7: BC Oyster Licenses in the Salish Sea, 1936



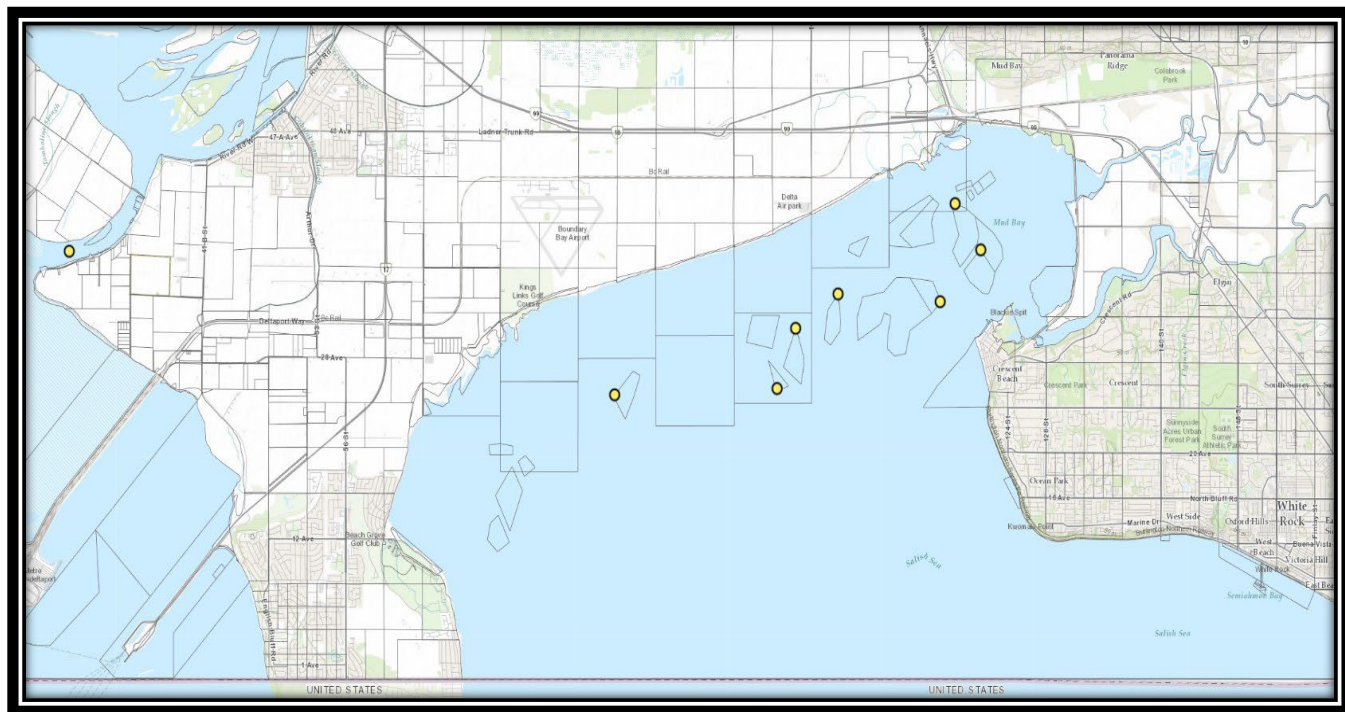
Created by author using iMapBC.

Map 8: Oyster Licenses at Oyster Harbour (Ladysmith), 1936



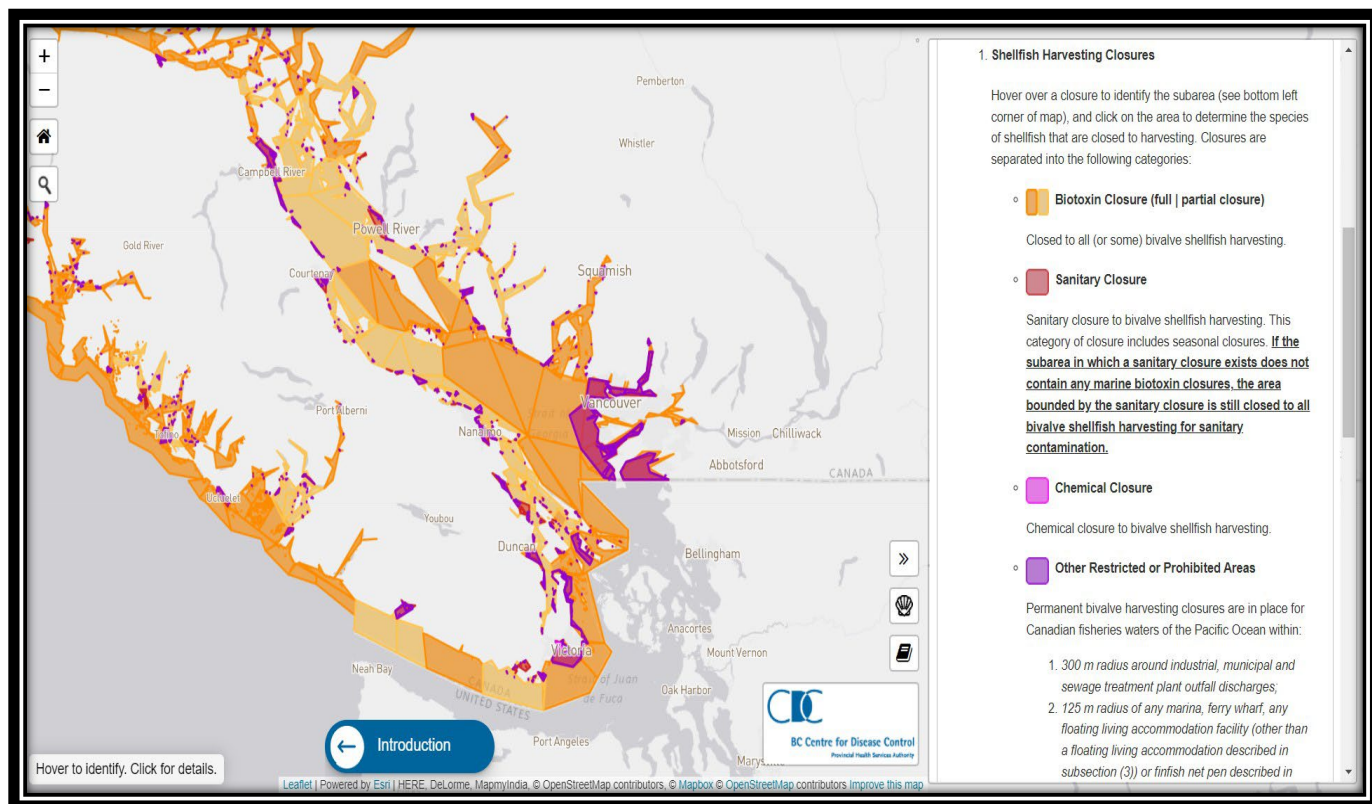
Created by author using iMapBC.

Map 9: Oyster Licenses at Boundary Bay, 1936



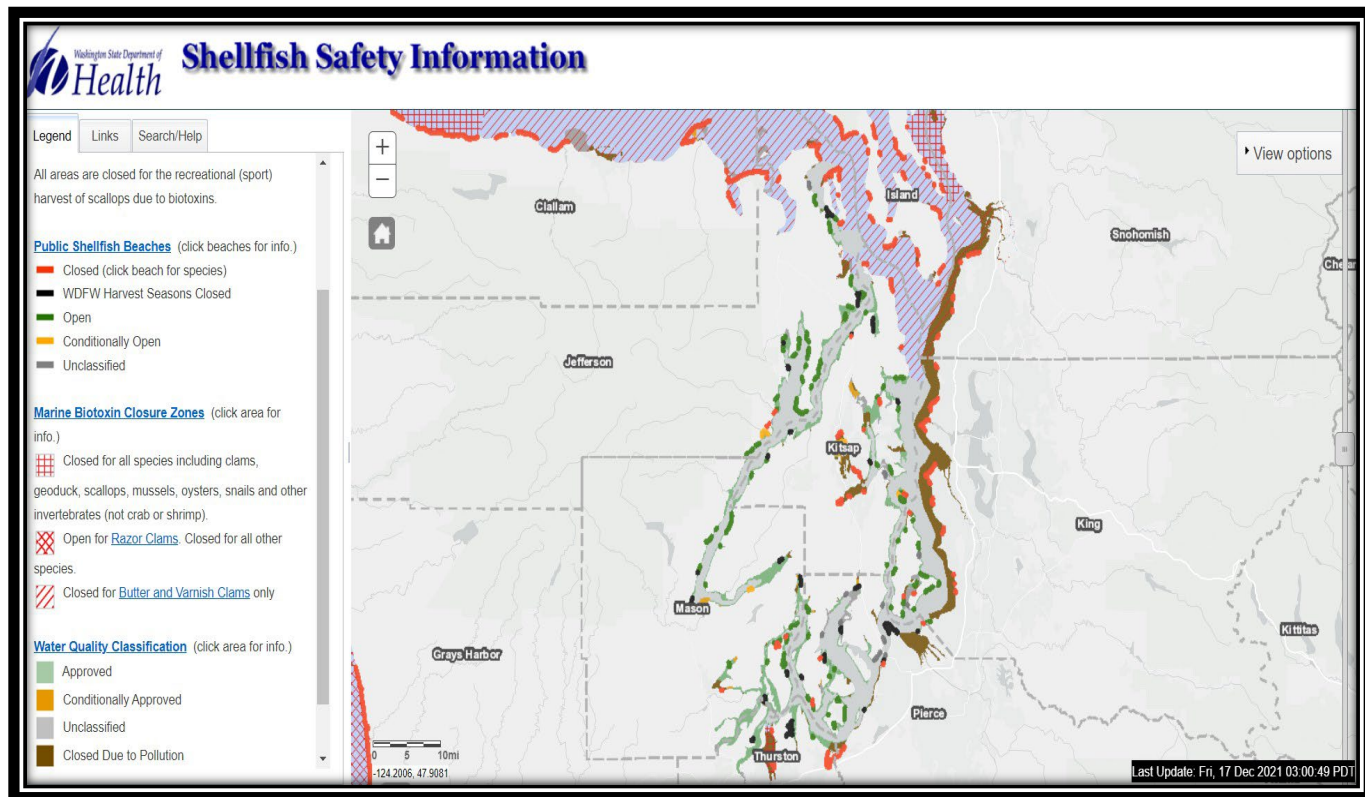
Created by author using iMapBC.

Map 10: BC Shellfish Closures, December 2021



BC Centre for Disease Control, <https://maps.bccdc.ca/shellfish/>.

Map 11: Washington State Shellfish Closures, December 2021



Washington State Department of Health, <https://fortress.wa.gov/doh/biotoxin/biotoxin.html>.

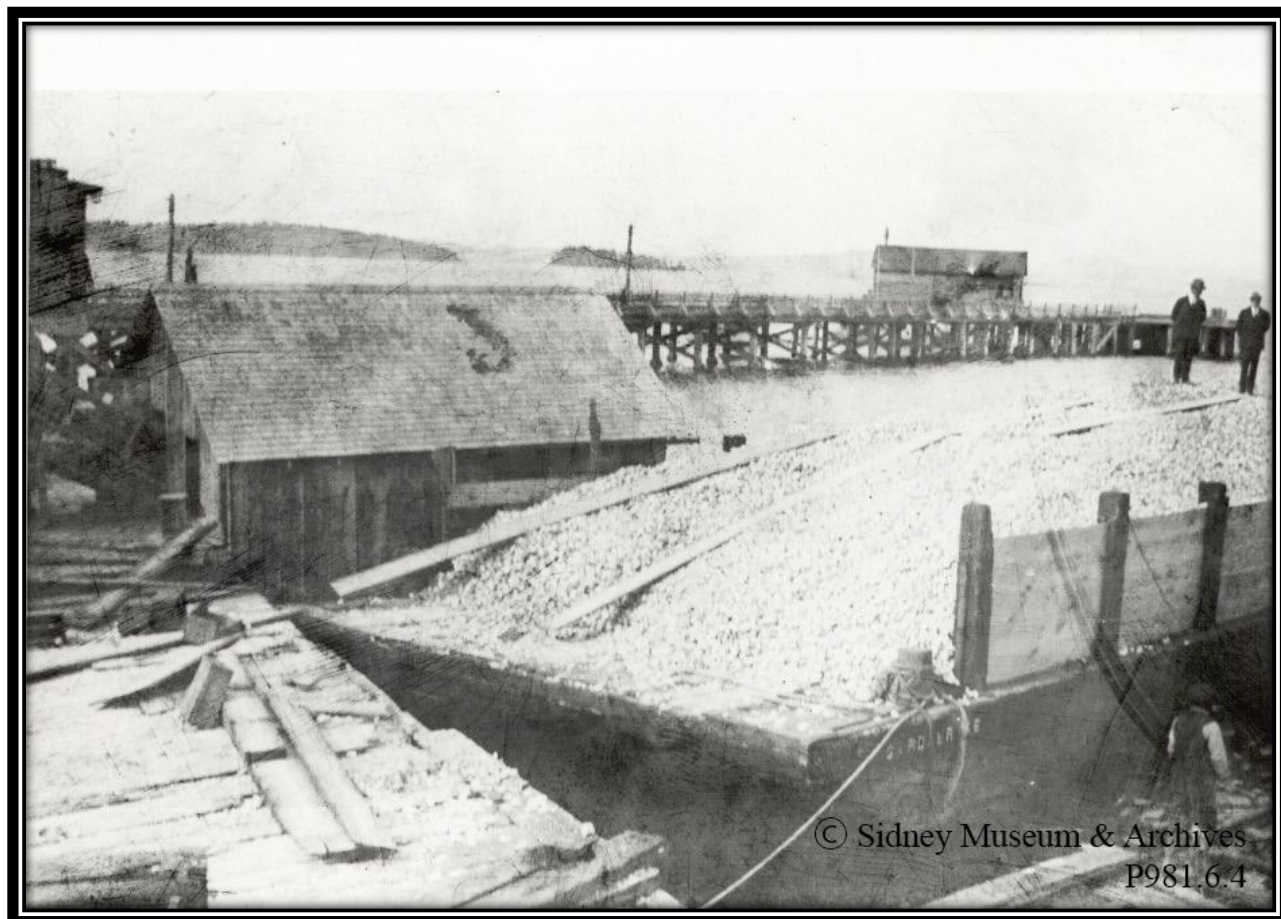
Appendix C: Figures

Figure 1: Clam Diggers, Salish Sea



William G.R. Hind, "Aboriginal people gathering shellfish." [1863]. McCord Museum:
<http://www.mccord-museum.qc.ca/en/collection/artifacts/M607>.

Figure 3: Saanich Canning Company



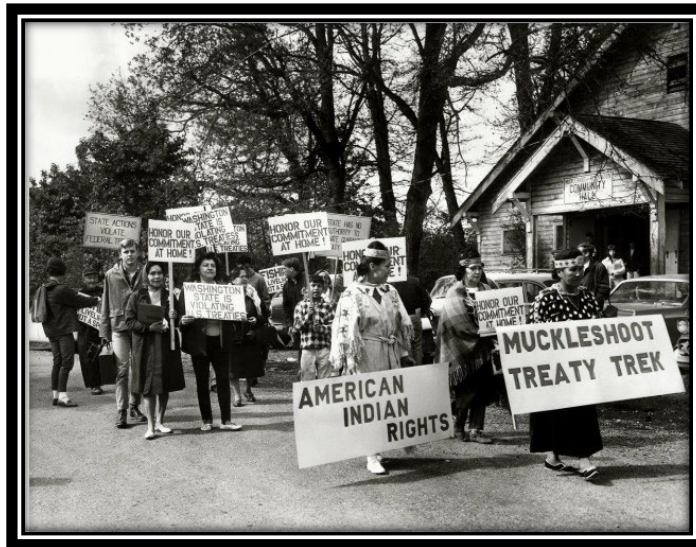
Sidney Museum Archives, P981.6.4.

Figure 5: Robert Satiacum and Marlon Brando during a 1964 protest



Richard Heyza, *Seattle Times*. Smithsonian National Museum of the American Indian, “The Fish Wars,” <https://americanindian.si.edu/nk360/pnw-fish-wars/index.cshtml>.

Figure 6: Muckleshoot Demonstration, May 1966



Larry Dion, May 1966, *Seattle Times*. Smithsonian National Museum of the American Indian, “The Fish Wars,” <https://americanindian.si.edu/nk360/pnw-fish-wars/index.cshtml>.

Figure 7: Puyallup Allison Bridges arrested during a September 1970 raid on a fishing encampment



Photo credit, Dolores Varela Phillips. Smithsonian National Museum of the American Indian, "The Fish Wars," <https://americanindian.si.edu/nk360/pnw-fish-wars/index.cshtml>.

Figure 8: Demonstrators protest the Boldt Decision, September 1976



*Seattle Times, September 1976. Cohen, Fay G. *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights*. Seattle: University of Washington Press, 1986.*

Figure 9: 'S.E.P. Demonstrations'



"S.E.P. Demonstration." *Native Voice*, March 1979, page 3.

Figure 10: 'Fish war threatens'



"Fish war threatens," *Vancouver Sun*, 21 Sept 1979, A10.

Figure 11: 'D.F.O. Raids Sting Natives'



"D.F.O. Raids Sting Natives," *Native Voice*, January 1983, page 1.

Figure 12: 'Gillnetters with nets protest [federal] mismanagement of Fraser sockeye'



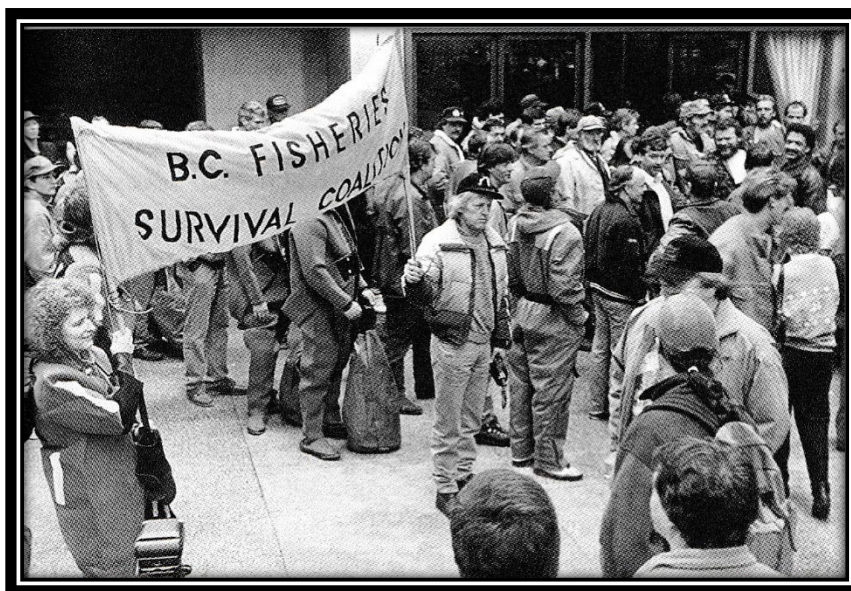
SFU Digitized Collections, MSC179-03531.

Figure 13: 'Sail-in on Fraser River demanding inquiry into missing sockeye'



SFU Digitized Collections, MSC179-03591.

Figure 14: 'Fishermen rally outside hearings... on the Aboriginal Fishing Strategy, Vancouver 1992'



Brown, Dennis. *Salmon Wars: The Battle for the West Coast Salmon Fishery*. Madeira Park, BC: Harbour Publishing, 2005.

Figure 15: Suquamish Shellfishing

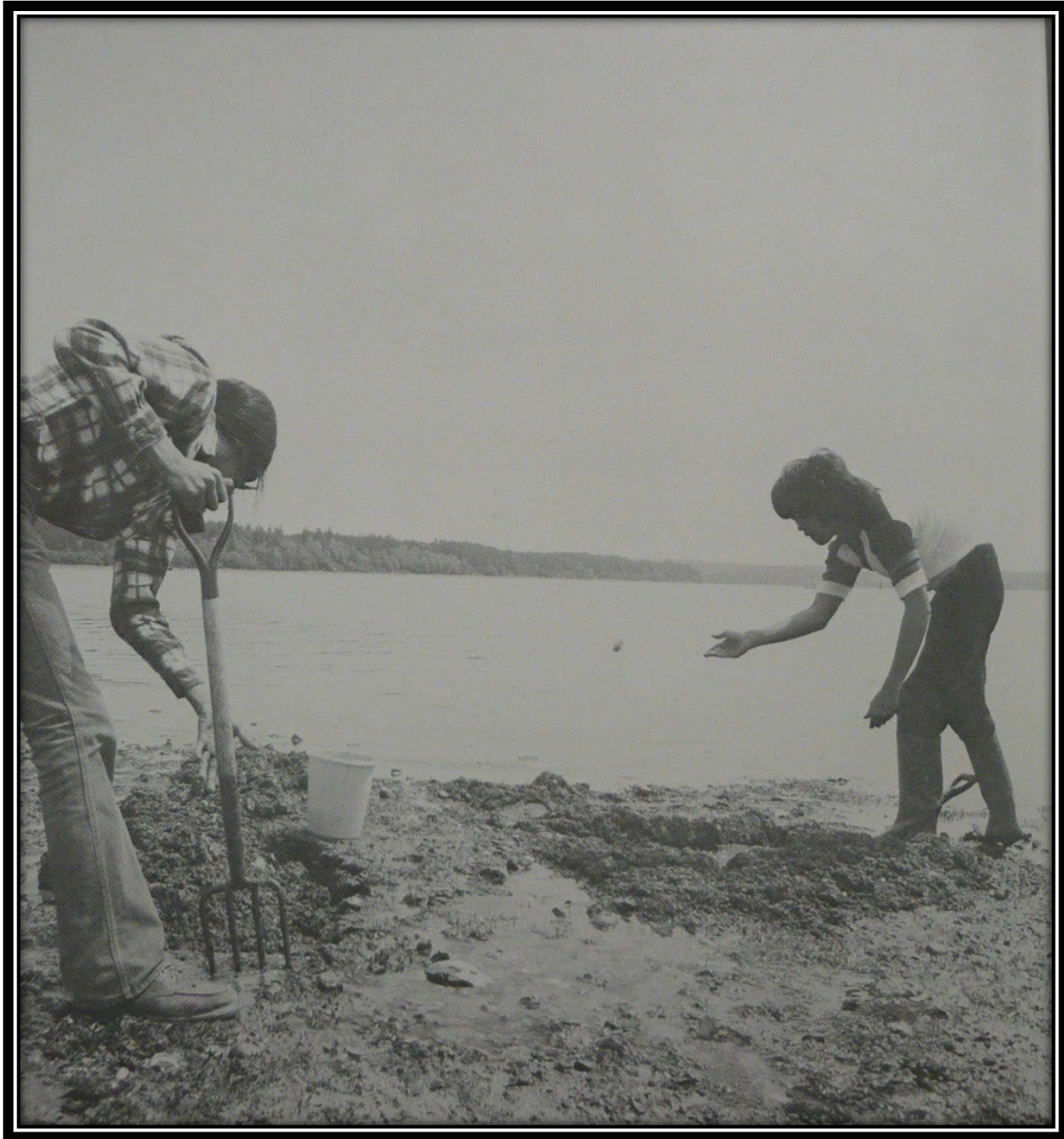


Photo by Yasu Osawa. Jeanne Heuving, "Suquamish Today." Seattle: United Indians of All Tribes Foundation, 1979.

Figure 16: 'Suquamish clamming enrages landowners'

THE SUN / FRIDAY / MARCH 15, 1985

Suquamish clamming enrages landowners

By JoAnne Marez
Sun Staff Writer

Attempts by Suquamish Indians to harvest claims on the privately-owned beaches on the Port Madison Indian Reservation this week have erupted into confrontations between landowners and tribal members.

The clashes have worsened tensions between the tribe and the homeowners, and fisheries officials admit they are concerned that violence might erupt.

"I'm very worried that someone is going to get hurt," said Fisheries Officer Phil Worcester Thursday night. "It's happened before over a lot less."

Relations between the Indians and non-Indians have been tense since the tribe filed a lawsuit in December 1982, seeking to reclaim the tidelands. The suit has adversely affected property values on the reservation, homeowners say. The case will not be tried until March 1986.

Bob Peterson, Suquamish tribal administrator, said the tribe is looking into this week's situation but "at this time I don't have any comments I would care to make to the press."

None of the Indians digging in that area could be reached. Worcester said most do not have phones and list post office boxes for their addresses.

Kitsap County Prosecutor Dan Clem said this morning he'll start prosecuting for criminal trespass and assault, if necessary.

"And I mean either party," he said. "I won't let this get out of hand."

Property owner Pierce Davis confronted Indian clam diggers during low tides both Tuesday and Wednesday. Thursday night he saw the Indians working toward his beach and called Kitsap County Sheriff's deputies before they got to his place. It was the second time this week he's called deputies, but no arrests have been made.

Davis heads an association of non-Indian Suquamish property owners combating the lawsuit.

Worcester also was called Thursday night as were Suquamish tribal police.

"I contacted Vince Adams, Marlin George and his wife, Melanie," Worcester said. "Marlin and Melanie do business as George's Seafood. Melanie had about 30 pounds of little neck clams and I saw two bags full of better clams. There were two other partially filled sacks of little necks."

Worcester said he has been confiscating clams from some Indians on private property in other areas but in this case the clambers already were off the beach, so he didn't. The clambers left peacefully.

Earlier confrontations this week have been anything but peaceful.

Davis confronted Adams and two other clam diggers Tuesday afternoon at low tide and said the verbal altercation that ensued was "ugly. I guess I don't want to talk about it much. I stood my ground and told them to get off my beach. Eventually they did."

Wednesday he confronted another group of Indian clam diggers, he said, and one "did his damndest to provoke me. I stood at my property line and didn't budge. There were a lot of words exchanged but they don't scare me and I'm not going to yield on this."

Wednesday afternoon Davis staked his beach and erected a sign prohibiting Indians from clamming on the beach. He cited a section of the Point Elliot Treaty between the government and the Suquamish tribe that says Indians may not gather shellfish on beaches that have been

Please see CLAMMING on Page 2



Staff photos by Steve Zugswardt

Tensions on the Suquamish waterfront have been increasing as Suquamish Indians have stepped up clamming on the beaches of private property owners on the reservation.



Property owner Pierce Davis posted his beach Wednesday.

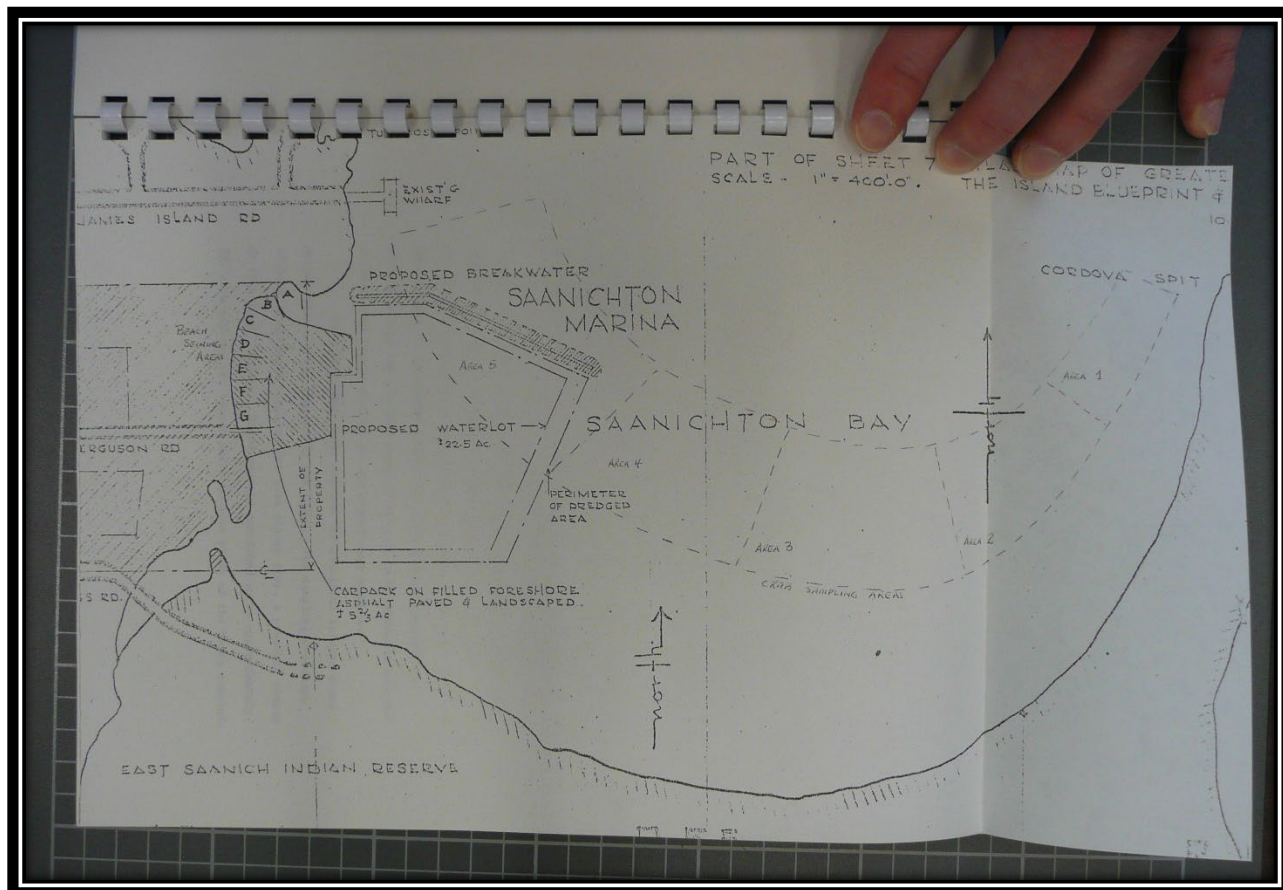
JoAnne Marez, "Suquamish clamming enrages landowners." *The Sun*, 15 March 1985.

Figure 17: Vehicles parked on clam-bed at False Narrows



BC Archives, Marine Resources Branch, GR-1118, Volume 16, File 1, "Oyster regulations and policy," 1966 to 1975.

Figure 18: Plan of Saanichton Bay Marina



Dobrocky Seatech Ltd. "Biological Sampling in Saanichton Bay July and August 1974." BC Archives, Marine Resources Branch, GR-1118, Volume 13, File 9, "Saanichton Bay Marina Development," 1974.

Figure 19: Earl Claxton Jr. at Saanichton Bay



Photo by Gordon Lyall.

Figure 20: Saanichton Bay facing southeast



Photo by Gordon Lyall.

Figure 21: Suquamish Seafoods



Jessie Darland, “Seafood store gets tribe’s traditional foods back into the community,” *Kitsap Sun*, 9 January 2020.

Figure 22: Canoe Race at Chief Seattle Days, Old Man House, 2019



Photo by Gordon Lyall.