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# THE RIGHT TO TRADITIONAL LIFE: THE STRUGGLE FOR NATIVE HUNTING AND FISHING RIGHTS

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## **Abstract**

This research report examines the ongoing struggle for Native American groups to maintain their traditional hunting and fishing rights. Since the establishment of the United States federal government these rights have been continuously eroded through use of congressional legislation, as well as federal court rulings. These decisions have had devastating effects on the economic, social, and spiritual well being of many of these Native American groups. This piece will attempt to provide an accurate chronology of critical events, which has led to the depredation of these rights. In addition, it will provide a possible blueprint unto how the country of the United States, along with the various Native American entities, should assess these problems into the 21<sup>st</sup> century. By providing the historical background of these laws and court ruling, this piece hopes to make evident the base causes and forces, which has led to this ever-growing issue. In closing this paper will seek to make aware the general population on this issue not only as it pertains to Native American's but to the population at large.

Since the advent of colonial rule, the courts have been used to hinder the rights of Native Americans. This been prevalent in the restrictions placed on the fishing and hunting rights of Native Americans. These rights are usually included in the concept of usufructuary rights. "An usufructuary right is a right of enjoyment, enabling a holder to derive profit or benefit from property that either is titled to another person or which is held in common ownership, as long as the property is not damaged or destroyed".<sup>1</sup> Restrictions on these usufructuary rights of Native tribes have often been upheld by the courts and have been used to extinguish the traditional way of life for many Native peoples. These laws and decisions, which restrict hunting and fishing rights, restrict Native Americans from living as they have for thousands of years. This paper will examine; basic ideas and legislation which formed the basis for Native American hunting and fishing rights; influential court decisions that have affected these rights (both positively and negatively), and how these court decisions have affected the way of life for many Indian nations.

One piece of legislation that continues to affect Native hunting and fishing rights is U.S. Senate Bill 18. The main component of SB 18 is it establishes the right of "eminent domain authority" in any territory currently inside the boundaries of the jurisdiction of the United States. Eminent domain authority is "the legal right of an entity, whether governmental or non-governmental, to seize private property for public use, public safety or, in some cases, economic development, in exchange for fair and reasonable compensation to the owner."<sup>2</sup>In essence, this bill allows the government, as well as certain private organizations, to claim the property of private citizens (or organizations) as long as: 1) Fair compensation is made for the property taken, and 2) The property is deemed necessary for the welfare of the general community. This is important because the wording of the Bill allows the interpretation that Tribal Reservation lands fall within this realm of eminent domain authority.

Though the basic nature of this bill seems threatening to Native hunting and fishing rights, a provision is included within the bill which directly affects how Tribal property should be handled with respect to the bill's authority. To summarize, this provision states that 'the

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<sup>1</sup> Nies, Judith. Native American History. New York: Ballantine, 1996.

<sup>2</sup> Middleton, Beth Rose. Trust in the Land: New Directions in Tribal Conservation. Tucson: University of Arizona, 2011 Ch.3

organization acting upon its right of eminent domain authority, must consult with the respecting Tribe, should they encroach upon their property.<sup>3</sup> This Bill provides guidelines for when Native Tribes should be consulted, along with under what provisions they should be able to reject the doctrine of eminent domain authority; including places with intense spiritual meaning, as well as areas crucial to their Native way of life.<sup>4</sup> The provisions within this Senate Bill are often used as instructional guidelines in the establishment or removal of Native hunting and fishing rights.

The other piece of legislation that affects Native hunting and fishing rights includes the various Tribal Termination Acts enacted by the U.S. government. Indian Tribe termination was the policy of the United States from the mid-1940s to the mid-1960s. During this era, the U.S. government passed many Termination Acts, whose main intention was to grant Native Americans all the rights and privileges of citizenship, thereby, reducing their dependence on a bureaucracy, which had a well-documented history of being extremely corrupt and inefficient. Though these pieces of legislation were supposedly in the best interest of the Native people they governed, the Acts had far reaching effects, which would later be used to restrict the rights of Native Tribes as sovereign nations. In cases such as *Kimball v. Callahan, 1974* (discussed later), various parties would use the Termination Acts and citizenship movement as evidence that these Native Tribes forfeited their access to things such as exclusive hunting and fishing rights. The idea that Termination Acts abolished rights guaranteed to Native tribes by their earlier treaties is one of the major problems tribes would have to overcome in their quest for reserving Native hunting and fishing rights.

The final idea that contributes to modern decisions and laws about Native hunting and fishing rights is the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP). This declaration was presented in an effort to establish “guidelines for Nations in the dealings and treatment of aboriginal peoples.”<sup>5</sup>

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<sup>3</sup> Beckham, Stephen Dow. *Oregon Indians: Voices from Two Centuries*. Corvallis, Or.: Oregon State UP, 2006

<sup>4</sup> Middleton, Beth Rose. *Trust in the Land: New Directions in Tribal Conservation*. Tucson: University of Arizona, 2011

<sup>5</sup> Myers, Gary D. "Different Sides of the Same Coin: A Comparative View of Indian Hunting and Fishing Rights in the United States and Canada." *UCLA Journal of Environmental Law & Policy* (1991): n. pag. Print

U.N.D.R.I.P condemned many actions that were pervasive in U.S.-Indian relations in previous decades. These actions range from issues of grave repatriation and freedom of Native religion, to traditional hunting and fishing rights. One distinctive aspect of the U.N. declaration is that it was not initially adopted by either the United States or Canada (nations with large populations of indigenous peoples). Despite this blatant factor, the United Nations Declaration on the Rights of Indigenous Peoples has become a driving force in the establishment of the rights of indigenous peoples, including those rights that are associated with traditional hunting and fishing practices.

A main factor in any court decisions involving Native hunting and fishing rights is the treaties that many Indian nations signed with the United States throughout their history. The rights provided for by these treaties, or treaty rights, may provide guaranteed hunting and fishing rights for the tribes involved. To get a basic understanding of these treaty rights and how they affect modern hunting and fishing court decisions, we will examine a few court cases in which treaty rights of usufructuary were cited by the Native Tribe in question.

In many cases, the courts have been used as a tool of Native Americans, by which they can retain their hunting and fishing rights. One example of a tribe exercising its treaty right of guaranteed hunting and fishing can be found among the Umatilla, Walla Walla, and Cayuse peoples of Oregon. These tribal groups are discussed together because they currently share the Umatilla Reservation in northeastern Oregon. In 1855 the U.S. Government and the Cayuse, Umatilla, and Walla Walla Tribes signed a treaty. In this treaty, the tribes ceded more than “6.4 million acres to the U.S. in exchange for a parcel of land designated as the Umatilla Indian Reservation, which the tribes would retain as a permanent homeland.”<sup>6</sup> Another portion of the treaty would be used to **reserve** the right of the tribe to fish, hunt, and gather traditional foods and medicines throughout the ceded lands. It is important to use the term reserve here, as these tribes were not given the right to hunt and fish on these lands, rather those who negotiated the Treaty of 1855 wished to “**maintain** these rights so that the tribe's future generations would be able to exercise their traditions and customs.”<sup>7</sup> Thanks to the

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<sup>6</sup> Myers, Gary D. "Different Sides of the Same Coin: A Comparative View of Indian Hunting and Fishing Rights in the United States and Canada." *UCLA Journal of Environmental Law & Policy* (1991): n. pag. Print

<sup>7</sup> Beckham, Stephen Dow. *Oregon Indians: Voices from Two Centuries*. Corvallis, Or.: Oregon State UP, 2006

provisions in the treaty, the Cayuse, Umatilla, and Walla Walla Tribes reserved their right to hunt and fish within the 6.4 million acres of ceded land in modern day Oregon and Washington.

However, a mere fifty years after the signing of this treaty, the usufructuary rights of the Umatilla people would be brought into debate in *United States v. Winan*. This case arose due to Lineas and Audubon Winans use of a “fish wheel”, a device used in rivers or large streams, capable of catching fish (in this case salmon) by the ton.<sup>8</sup> The Winans brothers obtained a license from the State of Washington to operate said fish wheel, however, the wheel seriously depleted the supply of fish reaching the Umatilla peoples, as well as other Native Tribes. Perhaps the most crucial aspect of the fishing wheel incident is that the brothers “forcibly prevented the Yakama Indians from crossing the land recently purchased by the brothers, blocking their passage to the traditional fishing grounds of the tribe.”<sup>9</sup> This is important as the Treaty of 1855 directly guaranteed those at the Walla Walla Council “the right of taking fish at all usual and accustomed places in common with the citizens of the territory.”<sup>10</sup> Therefore, the brothers’ refusal to allow the Yakama Indians from crossing their land, this preventing them from being able to reach their traditional fishing grounds, directly interfered with the rights reserved to them in the Treaty of 1855. The United States Circuit Court for the District of Washington ruled in favor of the Winan brothers, claiming that their exclusive property rights granted them the right to prohibit the Umatilla and Yamaka peoples from crossing their land. The Supreme Court in 1969 would eventually reverse this decision in *Sohappy v. Smith*, citing that “At the treaty council the United States negotiators promised, and the Indians understood, that the Yakamas would forever be able to continue the same off-reservation food gathering and fishing practices as to time, place, method, species and extent as they had or were exercising.”<sup>11</sup> The Winans brothers’ use of the fish wheel and use of force in preventing the Yamaka and Umatilla

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<sup>8</sup> Beckham, Stephen Dow. *Oregon Indians: Voices from Two Centuries*. Corvallis, Or.: Oregon State UP, 2006

<sup>9</sup> Film by Ben Kempas ; produced by Joachim Schroeder ; written, photographed and directed by Ben Kempas. *Upstream battle [videorecording] : a case study in Native American fishing rights*. Hamilton, NJ : Films for the Humanities & Sciences, c2009

<sup>10</sup> Film by Ben Kempas ; produced by Joachim Schroeder ; written, photographed and directed by Ben Kempas. *Upstream battle [videorecording] : a case study in Native American fishing rights*. Hamilton, NJ : Films for the Humanities & Sciences, c2009

<sup>11</sup> Beckham, Stephen Dow. *Oregon Indians: Voices from Two Centuries*. Corvallis, Or.: Oregon State UP, 2006

peoples from crossing their land clearly violated the meaning of the Treaty of 1855 allowing the Supreme Court to rule in favor of the Native Tribes and establish their fishing rights in the area.

Another example of a tribe that had provisions in its treaty regarding the maintaining of hunting and fishing rights was the Ojibwe Tribe (also known as Chippewa), based in what is modern day Wisconsin and Minnesota. The Ojibwe people have signed several treaties with the United States throughout their history, but the ones of most interests to us here are the Treaties of 1837 and 1842. The Treaty of 1837 was the first treaty in which the Ojibwe agreed to cede part of their land holdings to the United States. A final provision within this treaty reasserted the Ojibwes right to hunt, fish, and gather wild rice on ceded lands. Both parties, however, agreed this to due to increasing pressure from white settlers and the U.S. government, the Ojibwe's was forced to cede the remainder of their land in the Treaty of 1842. The initial plan for this treaty was to relocate the Ojibwe to another area and establish them unto a reservation there; in addition, the Ojibwe "would reserve their right to hunt, fish, and gather on the lands they ceded to the United States until they left the area."<sup>12</sup> However, another provision in the treaty established that for the document to be binding, "all Ojibwe bands in Upper Michigan, Wisconsin, and Minnesota had to agree to the provisions."<sup>13</sup> Despite pressure from federal commissioners, the Ojibwe "refused to sell the land until the United States guaranteed that the Ojibwe could remain on their current homelands and continue to use lands already ceded to the United States."<sup>14</sup> The federal commissioners agreed to establish four Ojibwe reservations in Wisconsin and the treaty was agreed upon.

The Treaties of 1837 and 1842 are crucial components in the 1989 decision of the courts, which has become known as the Voigt Decision. In the Voigt Decision, the treaty rights guaranteed to the Ojibwes would be called into question as it pertains to their right to fish off reservation. The issue of treaty rights exploded in northern Wisconsin during the 1980's as more and more members of Ojibwe tribes began to exercise their right to hunt and fish outside their reservations. While many court decisions existed which had addressed the Ojibwe right to off-reservation fishing, it was not until 1989 that the

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<sup>12</sup> Nies, Judith. *Native American History*. New York: Ballantine, 1996

<sup>13</sup> Nies, Judith. *Native American History*. New York: Ballantine, 1996

<sup>14</sup> Nies, Judith. *Native American History*. New York: Ballantine, 1996.

United States Supreme Court upheld a lower court ruling that favored the Ojibwe. In the Voigt Decision, the court ruled “The 1837 and 1842 treaties between the United States and the Ojibwe guaranteed Ojibwe rights to hunt and fish off-reservation without regulation by the State of Wisconsin.”<sup>15</sup> Though this was a tremendous victory for the establishing of Ojibwe fishing rights, it was not the last time that the fishing and hunting rights guaranteed to them in the Treaties of 1837 and 1842 would be called into question.

The fishing rights acknowledged for the Ojibwe Tribe in the Voigt Decision would again be called into question in the case of *Minnesota v. Mille Lacs Band of Chippewa Indians*. In this controversial case on Native American hunting and fishing rights, the Mille Lacs Band of Ojibwe Indians sued the state of Minnesota for violating their usufructuary rights for the land they ceded in the Treaties of 1837 and 1842. This case resulted due to an 1850 Executive Order by President Taylor, which ordered the removal of the Mille Lacs Band and revoked their usufructuary rights. Later in this conflict, a treaty was signed in 1855, which reestablished reservation lands for the Mille Lacs Band. This 1855 treaty however, did not include provision concerned with usufructuary rights. This landmark case in Native American treaty rights questioned if the federal government is able to cancel previous treaty law (like that established by the Treaties of 1837 and 1842) by use of an Executive Order. In March 1999 the court ruled in favor of the Mille Lacs Band stating “the 1850 Executive Order was ineffective to terminate the Mille Lacs Band's usufructuary rights, that the Mille Lacs Band did not relinquish its 1837 treaty rights in the 1855 treaty, and that the Mille Lacs Band's usufructuary rights were not extinguished when Minnesota was admitted to the Union.”<sup>16</sup> The case of *Minnesota v. Mille Lacs Band of Chippewa Indians* has become a landmark case in the protection of Native American usufructuary rights.

A particularly interesting case that relates to Native hunting and fishing rights is *Kimball v. Callahan (1969)*. This case is especially interesting as it deals with the rights of Native Americans after the Termination Act had affected them. This case is a prime example of the conflict between the guaranteed treaty rights of Native Americans (in

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<sup>15</sup> Fixico, Donald Lee. *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources*. Niwot, CO: University of Colorado, 1998

<sup>16</sup> Cook, Curtis, and Juan David. *Lindau. Aboriginal Rights and Self-government: The Canadian and Mexican Experience in North American Perspective*. Montreal: McGill-Queen's UP, 2000.



this case the Klamath Tribe of Washington State) and the Klamath Termination Act, which “severed all federal supervision over the Klamath, Modoc, and Yahooskin Bands of Indians, more commonly known as the Klamath Tribe.” Due to this Act, the state of Washington refused the rights of the Klamath Tribe to fish on the land, which had been their reservation prior to the Termination Act. The Klamath tribe as a whole, and nine individual members, sued on the basis that their original treaty reserved their fishing rights on their (former) reservation lands. The actual wording of the treaty describes the tribes’ rights as “the exclusive right of taking fish in the streams or lakes, from said reservation” referring to the lands originally set aside for the Klamath people in this same treaty.<sup>17</sup> Therefore, in its most basic essence, this case calls into question whether the Termination Act completely abolished the fishing rights granted to the Klamaths by their original treaty. The state of Washington argued that the Termination Act overrode the earlier treaties due to the Supremacy Clause of *Public Law 83-280*, which claimed that certain states had jurisdiction over any criminal offenses perpetrated by or against Natives in “Indian Country”.<sup>18</sup> This would give the state jurisdiction over unlawful fishing, which they claimed the Klamaths would be perpetrating. However, an earlier statute passed by Congress would sway this case in favor of the Klamaths’ right to fish on their former reservation. The Klamaths’ saving grace would be a clause in *Public Law 280* which stated “nothing in this section.... shall deprive any Indian, or Indian Tribe, band or community, of any right, privilege, or immunity afforded under Federal Treaty, agreement, or statute with regard to hunting, trapping, or fishing in the control, licensing, or regulation thereof.”<sup>19</sup> Due largely to this provision, the Court ruled in favor of the Klamath Tribe and members, granting them their continued right to fish/hunt on their original reservation lands. Though this case could be seen as a victory for Native hunting and fishing rights, it did not determine the issue of which was superior, Treaty Rights vs. Federal legislation such as the Termination Acts.

Though the courts have often been used as a tool to reinforce Native hunting and fishing rights, not all court decisions on

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<sup>17</sup> Beckham, Stephen Dow. *Oregon Indians: Voices from Two Centuries*. Corvallis, Or.: Oregon State UP, 2006

<sup>18</sup> Nies, Judith. *Native American History*. New York: Ballantine, 1996.

<sup>19</sup> Beckham, Stephen Dow. *Oregon Indians: Voices from Two Centuries*. Corvallis, Or.: Oregon State UP, 2006

this matter have had a positive effect on these rights. One case that is often cited as being perhaps the worst decision for Native hunting and fishing rights is *Montana v. United States*, decided in 1981. Non-tribal members on tribal lands based this controversial case on the question of the Crow Nation's authority to regulate hunting and fishing. This case represents a complex issue as it delves into the question of tribal sovereignty versus the authority of the federal and state governments. This case arose due to the Crow Tribal Council enacting of Resolution Tribal Edict No. 74-05 I. The purpose of this edict was to "restrict fishing in response to increasing food prices and tribal enrollment, coupled with decreasing supplies of fish and game on the reservation."<sup>20</sup> This edict began to cause friction when James Junior Finch, a non-tribal member, went fishing in areas under tribal authority in open defiance of the tribal resolution. The question of *Montana v. United States* brings into question whether Indian Nations (such as the Crow), have the authority to prosecute non-tribal members for offenses, which violate their tribal law. This well-known case brought to the forefront the issue of Native hunting and fishing rights.

After several rounds of appeals by both sides, this case would eventually find itself being heard before the U.S. Supreme Court. In March 1981 the court sided against the Crow Nation. The Court would rule that the "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation."<sup>21</sup> Citing the previous case of *Oliphant v. Suquamish Indian Tribe*, the court would claim that the tribe only had the authority to regulate issues of civil authority in which the non-tribal party agreed to enter into a consensual contract. Obviously in the situation of Mr. Finch, the non-tribal fisherman had never entered into this sort of contract, which would convey this sort of relationship. One justice would explain his decision by explaining "Congress did not intend for tribes to exercise criminal jurisdiction over

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<sup>20</sup> Film by Ben Kempas ; produced by Joachim Schroeder ; written, photographed and directed by Ben Kempas. Upstream battle [videorecording] : a case study in Native American fishing rights. Hamilton, NJ : Films for the Humanities & Sciences, c2009

<sup>21</sup> Film by Ben Kempas ; produced by Joachim Schroeder ; written, photographed and directed by Ben Kempas. Upstream battle [videorecording] : a case study in Native American fishing rights. Hamilton, NJ : Films for the Humanities & Sciences, c2009

non-Indians.”<sup>22</sup> This view and the decision of the court in *Montana v. United States* would not only have a negative effect on the fight for tribal sovereignty, but also on the battle for Native hunting and fishing rights.

Similar to many other issues, one way that Native Tribes have sought to reaffirm their Native hunting and fishing rights is through intertribal relations. Intertribal relations are a mode of strategy in which members of separate Indian Nations work together in an effort to achieve a common goal. One example where this pertains to Native hunting and fishing rights is the work of the Inter-Tribal Sinkyone Wilderness Council. The Wilderness Council, more commonly known as the ITSWC, is a consortium of ten federally recognized tribes from northern California. This multi-tribal organization was formed in the 1980's due to the actions of a timber company, Georgia-Pacific, which was attempting to log ancient coastal redwoods in the Sinkyone area of northern California, with the approval of the California Department of Forestry (CDF). In response, native people from the area, the International Indian Treaty Council, the Sierra Club and the Environmental Protection Information Center (EPIC) all sued in order to prevent the harvest of these redwoods. In its decision, the California Court of Appeals handed down its ruling for the Sinkyone people stating that the CDF had violated California's environmental laws. In addition, the Court ruled, "The CDF's response addressing sufficiency of measures to mitigate damages to Native American archaeological sites was inadequate." <sup>23</sup> As a result of this legal battle over the logging of these redwood trees, the Inter-Tribal Sinkyone Wilderness Council was formed. Intertribal organizations like the ITSWC are very crucial in the ongoing fight for the preservation of Native hunting and fishing rights.

Those interested in the preservation of Native hunting and fishing rights, like the ITSWC, face a variety of issues in their quest to reserve these rights. Perhaps the most well known example of environmental activists clashing with tribal members on hunting and fishing rights is the controversy over the “whaling issue.” Though several tribes in the U.S. and Canada traditionally relied on whales for food, spiritual practices, and other resources, the main focus of this conflict has centered on the Makah tribe of the Pacific Northwest. For the Makah

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<sup>22</sup> Film by Ben Kempas ; produced by Joachim Schroeder ; written, photographed and directed by Ben Kempas. *Upstream battle [videorecording] : a case study in Native American fishing rights*. Hamilton, NJ : Films for the Humanities & Sciences, c2009

<sup>23</sup> Middleton, Beth Rose. *Trust in the Land: New Directions in Tribal Conservation*. Tucson: University of Arizona, 2011

people whales were “a form of sustenance, used for clothing and the making of fine handicrafts.”<sup>24</sup> This issue gained prominence in 1998 when the Makah began a program to resume their tradition of whaling. Immediately the tribe faced fierce opposition from environmental and animal rights groups such as the Sea Shepherd Conservation Society and The Progressive Animal Welfare Society (PAWS).<sup>25</sup> Organizations such as PAWS claimed that the Makah intend to sell whale meat on the open market and “do not have a need to hunt the gray beast because the animal is not necessary to the survival of the people.”<sup>26</sup> The Makah nation refuted this vigorously and began a campaign to bring their struggle to the forefront of Native issues. In a letter printed in the *Seattle Times*, the president of the whaling commission, Keith Johnson, explains that “the claims of these groups are unfounded due to the tribe being bound to tribal and federal law not to sell any whale meat.” The Makah people also claim that the right to whale was explicit in the Treaty of Neah Bay in 1855. Through the efforts of the tribe, and thanks in large part to the Treaty of Neah Bay, the Makah people have been granted the legal right to continue their whaling practices (with restrictions). Despite these legal victories, the Makah people still face enormous pressure from environmental groups such as PAWS, which condemns these whaling practices as “thoughtless and savage.”<sup>27</sup>

One issue that gains a significant amount of attention is the conflict between the rights of Native tribes and the views and ideas of many environmental groups who disapprove of many of these traditional practices. An example that we in the United States may be familiar with is whether Native tribes should be able to hunt bald eagles (or other endangered species) if the Native peoples in question traditionally hunted this animal. This issue was called into question when the Northern Arapaho Tribe sued in order to gain permission to kill two bald eagles in order to conduct their religious ceremony. This caused much outrage in the environmental activist community because the bald eagle had been on the endangered species list for quite some

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<sup>24</sup> Middleton, Beth Rose. *Trust in the Land: New Directions in Tribal Conservation*. Tucson: University of Arizona, 2011

<sup>25</sup> Coté, Charlotte. *Spirits of Our Whaling Ancestors: Revitalizing Makah and Nuuchah-nulth Traditions*. Seattle: University of Washington, 2010

<sup>26</sup> Coté, Charlotte. *Spirits of Our Whaling Ancestors: Revitalizing Makah and Nuuchah-nulth Traditions*. Seattle: University of Washington, 2010

<sup>27</sup> Coté, Charlotte. *Spirits of Our Whaling Ancestors: Revitalizing Makah and Nuuchah-nulth Traditions*. Seattle: University of Washington, 2010

time. This is an ongoing situation as the Arapaho's traditional ceremony continues to be protested by environmental activists who don't believe that the Arapaho's religious freedom grants them the right to kill an animal that appears on the endangered species list.

To truly understand the complexity of this issue, you must look not only at the issues of Native hunting and fishing rights, but also at the devastating effects that restricting these rights can have on Native tribes not only economically, but also culturally and spiritually as well. The most glaring of these issues is obviously the economic problems that occur due to a restriction in Native hunting and fishing rights. Though it is wrong to generalize these peoples as obtaining their sustenance from one outlet, many of these Native peoples continue to depend on fish and wildlife to maintain their way of life and "economic prosperity".<sup>28</sup> The removal of the hunting and fishing rights of Native Nations can have wide ranging repercussions, which can severely harm and even devastate these tribes. One tribe in which the economic effects of the loss of hunting and fishing rights are clearly evident is the Menominee Indian Tribe of Wisconsin. The issues for the Menominee people began April 30, 1961 when they fell victim to the Termination Acts. According to federal and state governments, Tribal Termination effectively abolished the hunting and fishing rights guaranteed to the Menominee people by their earlier treaties. The loss of their hunting and fishing rights (along with other losses) would devastate the economy of the Menominee people for many years following the Termination Acts. The removal of these guaranteed hunting and fishing rights resulted in diminished standards of living for the members of the tribe. For example, the tribe had to close the hospital and some schools in response to the lack of a productive industry. During this period, Menominee County, Wisconsin, was the poorest and least populated Wisconsin county at the time. "Tribal crafts and produce alone could not sustain the community, and the tax base, lacking industry, could not fund basic services for the Menominee."<sup>29</sup> Tribal funds, which totaled \$10 million in 1954, dwindled to \$300,000 by 1964. Struggles such as those suffered by the Menominee are just one example of the economic

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<sup>28</sup> Beckham, Stephen Dow. *Oregon Indians: Voices from Two Centuries*. Corvallis, Or.: Oregon State UP, 2006

<sup>29</sup> Myers, Gary D. "Different Sides of the Same Coin: A Comparative View of Indian Hunting and Fishing Rights in the United States and Canada." *UCLA Journal of Environmental Law & Policy* (1991)

hardships that many Native Tribes face as a result of the loss of fishing and hunting rights.

Though economic issues are often brought to the forefront of these battles over Native hunting and fishing rights, it is also important to recognize the cultural and in some cases spiritual aspects that these rights have on Native peoples. Historian Hilary Stewart portrayed the devastating effects that restrictions on these traditional practices could have on the psyche of individual Natives and Tribal Nations as a whole when she stated “The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed.”<sup>30</sup> Mrs. Stewart’s quote is an attempt to show that by restricting Native hunting and fishing rights (which are typically guaranteed to them by their treaties), the government is restricting the Native way of life, which is just as important to them as the air they breathe. In addition, these hunting and fishing traditions are often so woven into the fabric of the society of these respective Native Tribes, that the prevention of these traditional activities creates a “disconnect between the Tribal members and their traditional cultural ways.”<sup>31</sup> Maintaining traditional hunting and fishing rights continues to be important not only due to economic and legal reasons, but also to avoid the cultural disconnect that could occur should these rights be taken away.

Since the 1960’s, many strides have been made in the acknowledgement of Native hunting and fishing rights. Through the efforts of Native leaders, as well as justice-centered non-Native humanitarians, Native hunting and fishing rights have become recognized with increasing regularity. Despite this progress, factors such as the ideas and legislation which developed the basis for Native American hunting and fishing rights and influential court decisions that have affected these rights (both positive and negative), continue to be debated by those in the affected areas. As this issue continues to be disputed it is important to realize not only the economic effects that the abolishment of these rights have on Native peoples, but also the

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<sup>30</sup> Myers, Gary D. "Different Sides of the Same Coin: A Comparative View of Indian Hunting and Fishing Rights in the United States and Canada." *UCLA Journal of Environmental Law & Policy* (1991)

<sup>31</sup> Stewart, Hilary. *Indian Fishing: Early Methods on the Northwest Coast*. Seattle: University of Washington, 1977.

devastation of the affected Tribes spiritual and cultural life. For many Native Tribes, the right to hunt and fish guaranteed to them in their Tribal Treaties not only affects their right to thrive as sovereign entities, but their very right to live as they have for thousands of years.

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