TREATY RIGHTS AND NATURAL RESOURCES MANAGEMENT

MODULE 1 - DEREK MARKS
Derek Marks-MS Fisheries Science

Timber Fish & Wildlife Manager
Fish Biologist
Tulalip Tribes

Current duties: Manage TFW Program, oversees Injunction Implementation, P-in-the-A, and other duties as assigned.

Background & Experience: Derek’s background is in fish biology/ecology. He has a Bachelor’s degree in biology from CWU and a Master’s degree in Fisheries Science from Texas Tech where he was the first to describe the life history strategy of two endemic threatened minnows in the Brazos River, TX. He’s gained valuable experience working on multi-agency and international recovery programs for white sturgeon and pacific salmon. He’s spent time as a private consultant, paving his way through western Washington prior to seeing the light and working for the better good of the Treaty Tribes of WA. Derek has worked for tribes for the last 17 years (13 for Tulalip). He is multifaceted and resists staying in his lane. Derek has lead research projects, designed and implemented restoration efforts, $.75M lidar data acquisitions, and boasts one of the best TFW Programs in the State. Derek likes those that do their jobs well.

Education: Texas Tech Univ, MS—Fisheries Science

Personal interests: Derek is married and has 2 boys, lives on Camano Is., and enjoys hunting, raising native plants, cooking, and just about anything else that interests him.

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Derek Marks

Treaty Rights and Tribal Natural Resources Management

This module will inform Fish Passage designers, inspectors, engineers, biologists, geologists, and others on the critical importance of understanding and acknowledging Tribal Treaty Rights, the rights of tribes as co-managers of our natural resources in the State of Washington, and some of the history of how this came to be.
Treaty Rights and Tribal Natural Resources Management

Derek Marks
Tulalip Tribes
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Some History

• For ~ 10,000 years

Tribes and the Marine Ecosystem

• Native people are part of the natural ecosystem
• "The water is our land"
• "When the tide is out, our table is set."
• If the ecosystem ceases to function, the culture is gone

Photo courtesy of Randy Kinlay, Lummi Nation
Some History

- For ~ 10,000 years
- June 4, 1792

First Contact

http://www.engr.washington.edu/things-bytan/index.cfm

http://www.mrwain.com/~mreuter/history/encounter.html

Some History

- For ~ 10,000 years
- June 4, 1792
- January 22, 1855
At Treaty Time

- Tribes devastated by disease
- Great tribal interest in the treaty
  - Si-ahl 1854 speech was part of the negotiation
  - 2300 attended Point Elliott signing
- Settlers waiting for treaty to be signed
- Non-Indian fishing quickly ramped up

Ceded Areas

- Medicine Creek Treaty (Dec 26, 1854)
- Point Elliott Treaty (Jan 22, 1855)
- Point No Point Treaty (Jan 26, 1855)
- Neah Bay Treaty (Jan 31, 1855)
- Quinault Treaty (Jul 1, 1855)

Terms of the Treaties

- Tribes gave up
  - title to land
  - right to make war on U.S.
- Tribes received
  - small reservations
  - small monetary payments
  - protection by the U.S. government
- Tribes retained
  - a portion of fishing, hunting and gathering rights
Treaty-Retained Rights

- “...fish at usual and accustomed grounds and stations... in common with all citizens of the territory...”
- hunt and gather on “open and unclaimed lands” (Article 5)

A portion of the above rights were retained by the tribes. The rest were granted by the tribes to the US and its citizens.

Some History

- For ~ 10,000 years
- June 4, 1792
- January 22, 1855
- February 12, 1974

Changing US Policy

- Isolation (1850s-1880s)
- Assimilation (1890s-1920s)
- Self-Government (1930s-1940s)
- Termination (1950s)
Increased Fishing Conflicts

Day 1 Fish Passage and Stream Restoration Training

Boldt Decision

- Reviewed all previous cases
- Filled in missing pieces
  - "In common with" means 50-50 sharing of harvestable
  - "Usual and Accustomed fishing grounds and stations" defined
  - "Management authority and responsibility defined"
- Phase II
  - Gave right to hatchery fish
  - Right to protect habitat for fish though later overturned...tribes asked to bring a specific damage claim
- Culvert Case
  - Gave right to provide fish access to habitat
  - Upheld by US Supreme Court

Usual and Accustomed Fishing Areas: Tulalip Tribes Example

- Different for every tribe, overlapping
- Tribal fishing is confined to the U&A area. Can’t go outside.
- Generally defines extent of fisheries management interest
Principles of Co-management

• Tribes and State share authority and responsibility for the resources

• One shared resource
  • Shared management objectives
  • Shared data
  • Joint management plans

• Tribes and State are self-regulating
  • Promulgate own regulations pursuant to mgt. plans
  • Enforce own regulations

Tribal Natural Resource Management

• Tribal members participate in full cycle of management
• Tribes sit on, and lead, international, national, state, and local groups

Fish Passage—Engineering a Stream (and Habitat?)
Removing the Barriers

Productive Recovery

Calling back the salmon spirit