

FISHERIES LAW 396 SYLLABUS – Sept. 2006

Sept. 5 **Introductions**

Sept. 7 no class

Sept. 12 **State of The Fisheries**

Ray Hilborn et al, [“State of the World’s Fisheries”](#) (2003) 28 *Annual Review of Environment and Resources* 15.1-15.40.

Donald M. McRae and Peter H. Pearse, [Treaties and Transition: Towards a Sustainable Fishery on Canada’s Pacific Coast](#) (April 2004), chps. 1 & 2.

First Nations Panel on Fisheries (Russ Jones, Marcel Shepert, Neil Sterritt), [Our Place at the Table: First Nations in the B.C. Fishery](#) (May 2004), chp. 2 – 2.4 (pp. 8-35).

Sept. 14 & 19 **Aboriginal Fisheries Law**

Traditional

Steven Romanoff, “Fraser Lillooet Salmon Fishing” in Hayden ed., *A Complex Culture of the British Columbia Plateau* (Vancouver: UBC Press, 1992), 241-257. [Course Materials]

Douglas C. Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001), 14-27, 61-65. [Course Materials]

Keith Thor Carlson, “History Wars: Considering Contemporary Fishing Site Disputes,” in *A Stó:lö-Coast Salish Historical Atlas*, Carlson editor, (Vancouver: Douglas & McIntyre, 2001), Plate 19. [Course Materials]

Contemporary

[Aboriginal Communal Fishing Regulations](#), SOR/93-332

R. v. Haines, [2003] 1 C.N.L.R. 193 (B.C.P.C.), paras. 1-99, 117-121, 135-164. [Course Materials]

[Northwest Tribal Treaty](#) (11 February 1991)

Douglas C. Harris, “Indigenous Territoriality in Canadian Courts” in Ardith Walkem and Halie Bruce, *Box of Treasures of Empty Box? Twenty Years of Section 35* (Penticton, B.C.: Theytus Books, 2003). [Course Materials]

Sept. 21, 26, 29 **Fisheries Jurisdiction**

Domestic

Constitution Act, 1867, [s. 91\(12\)](#) “Sea Coast and Inland Fisheries”

Harris, *Fish, Law, and Colonialism*, 39-49, 66-78. [Course Materials]

R. v. Robertson (1882), 6 S.C.R. 52, (Ritchie, C.J., 52-61, 109-21). [Course Materials]
In Re Provincial Fisheries, [1895] 26 S.C.R. 444, (Strong, C.J., 444-49, 522-35). [Course Materials]
AG BC v. AG Canada, [1914] A.C. 153 (HL), (Viscount Haldane, 153-4, 161-75). [Course Materials]

International Law

Guest Speaker: [Professor Ian Townsend-Gault](#)

Hugo Grotius, *The Freedom of the Seas or the Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, Ralph Magoffin, trans., James Brown Scott, ed. (New York: Oxford University Press, 1916), 25, 27-31. [Course Materials]

Cornelius van Bynkershoek, *De Dominio Maris Dissertatio - The Dissertation on the Sovereignty of the Sea*, Ralph Magoffin, trans., James Brown Scott, ed. (New York: Oxford University Press, 1916) (1744), 41-45. [Course Materials]

United Nations Convention on the Law of the Sea [Readings TBA]

Canada - [Ocean's Act](#)

The Limits of Federal Jurisdiction

[Fisheries Act](#), R.S.C., c. F-14.

Gulf Trollers Association v. Canada (Minister of Fisheries and Oceans), [1987] 2 F.C. 93 (F.C.A.).

[Ward v. Canada](#), [2002] 1 S.C.R. 569.

Oct. 3, 5 Common Law of Fisheries

[R. v. Nikal](#), [1996] 1 S.C.R. 1013; 3 C.N.L.R. 178, paras. 1-84.

Public Right to Fish

[R. v. Gladstone](#), [1996] 2 S.C.R. 723; 4 C.N.L.R. 65, para. 67.

Mark D. Walters, "[Aboriginal Rights, Magna Carta and Exclusive Rights to Fisheries in the Waters of Upper Canada](#)" (1998) 23 Queen's L.J. 301, pages 301-05; 313-26.

[Fisheries Act](#), R.S.C., c F-14, s. 7.

Harris, *Fish, Law, and Colonialism*, 27-33. [Course Material]

Oct. 10, 12 Fisheries Management and Licensing Regimes

Licensing Regimes

Peter H. Pearse, *Turning the Tide: A New Policy For Canada's Pacific Fisheries* (September 1982), chp. 7, (pp. 75-85). [Course Material]

Individual Transferable Quotas

Richard Apostle, Bonnie McCay, and Knut H. Mikalsen, *Enclosing the Commons: Individual Transferable Quotas in the Nova Scotia Fishery* (St. John's, Nfld.: Institute of Social and Economic Research, 2002), pp. 7-8, 11-16. [Course Material]

[Treaties and Transition, chapter 5.](#)

Laura Jones, "Case Study 4: Halibut" in Jones and Miriam Bixby, *Managing Fish: Ten Case Studies from Canada's Pacific Coast* (Vancouver: The Fraser Institute, 2003). [Course Material]

Questioning Individual Transferable Quotas

[Our Place at the Table](#), chapter 5.

Dennis Brown, *Salmon Wars: The Battle for the West Coast Salmon Fishery* (Madeira Park, B.C.: Harbour Publishing, 2005), chp. 6, (pp. 88-115). [Course Material]

Oct. 17, 19, 24, 26 Aboriginal & Treaty Rights to Fish**Aboriginal Rights**

Constitution Act, 1982, [s. 35, "Aboriginal and Treaty Rights"](#)

[R. v. Sparrow](#), [1990] 1 S.C.R. 1075.

[R. v. Van der Peet](#), [1996] 2 S.C.R. 507, paras. 1-6, 15, 20, 30-31, 43-80, 84-94.

[R. v. Gladstone](#), [1996] 2 S.C.R. 723, paras. 1-5, 20-29, 39-86.

Douglas C. Harris, ["Aboriginal Rights to Fish in British Columbia"](#) (October 2005) [Course Material]

Historic Treaty Rights

[R. v. Marshall](#), [1999] 3 S.C.R. 456.

[R. v. Marhsall](#), [1999] 3 S.C.R. 533 (motion for rehearing and stay).

[Douglas Treaties](#)

Douglas C. Harris, "Fishing 'As Formerly' and 'In Common': The Boldt Decision and the Interpretation of Treaty Rights to Fish in British Columbia" (2006) [Course Material]

Modern Treaty Rights

Nisga'a Final Agreement, [Chapter 8 - Fisheries](#)

[Nisga'a Nation Harvest Agreement](#)

Aboriginal Fisheries Strategy

[Aboriginal Communal Fishing Regulations](#), SOR/93-332

[R. v. Kapp](#) (2006), B.C.C.A. 277.

Nov. 2 Musqueam Field Trip

Pacific Salmon Treaty

[Pacific Salmon Treaty](#)

M.P. Shepard and A.W. Argue, *The 1985 Pacific Salmon Treaty: Sharing Conservation Burdens and Benefits* (Vancouver: UBC Press, 2005), chps. 1, 5, 7. [Course Material]

International Pacific Halibut Commission

[International Pacific Halibut Commission – “History”](#)

Nov. 16, 21, 23 Environmental Law – Protecting Fish For and From Fishers

Habitat Protection

Fisheries Act, ss. [34](#), [35](#), & [36](#)

R. v. Fowler, [1980] 2 S.C.R. 213.

R. v. Northwest Falling Contractors, [1980] 2 S.C.R. 292.

David Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003), pages 196-208. [Course Material]

Protecting Fish From Fishers

Canada – [Species at Risk Act](#)

David Boyd, *Unnatural Law*, pages 181-195. [Course Material]

Fisheries and Ocean Canada – [“Aquatic Species at Risk”](#)

[Cultus Lake Sockeye](#)

[Sakinaw Law Sockeye](#)

[Interior Fraser River Coho](#)

British Columbia - Wildlife Act

Convention on International Trade in Endangered Species (CITES)

Guest Speaker: [Dr. Amanda Vincent](#) (TBC)

Nov. 28 Aquaculture

David VanderZwaag, Gloria Chao, Marck Covan, [“Canadian Aquaculture and the Principles of Sustainable Development: Gauging Law and Policy Tides and Charting a Course”](#) (2002) 28 Queen’s L.J. 279-285, 297-334.

Charlie Smith, [“Researcher Vindicated by Crown’s Report”](#), *The Georgia Straight* (24 August 2006).

Nov. 30 Review Class