

## Highliners and Moneymakers: Understanding Accommodation and Resistance in the Sto:lo Commercial Fishery

Kimberly Linkous Brown

*University of British Columbia*

**Abstract:** Sto:lo fishers maintain that they are the original commercial fishers. However fisheries regulations enacted in 1888 pushed commercial fishing for the Sto:lo to margins outside the law. The Sto:lo continue to fish and engage in the commercial activity of fishing. Programs arising from a new Aboriginal Fisheries Strategy adopted in 1992 provided for a commercial opportunity after 100 years of fishing outside the margins of the law. Sto:lo fishers continue to fight for an Aboriginal right to fish and continue to protest regulations that turned the everyday economic activity of fishing into a criminal act. Questions and conflicts arise over the place of this legally sanctioned commercial fishery as it relates to Sto:lo tradition. Some writing on this subject, describe the outlaw fishery as one of resistance to regulation. Others maintain it falls outside the realm of tradition in particular as regards capital accumulation. As a part of my discussion I seek to describe how the legal commercial fishery is as much an act of resistance conducted within the bounds of tradition as the outlaw fishery. Additionally, I seek to demonstrate that capital accumulation as a result of participation in the legal, commercial fishery is indeed embedded in tradition.

**Keywords:** Aboriginal right to fish, Indian Food Fishery, commercial fishery, Pilot Sales Program, resistance, accommodation, capital accumulation

### Introduction

In early July of 2002, the prospect for a sales agreement was bleak. By mid month it would be determined—no agreement would be signed. The sale of any salmon caught by an Aboriginal person would have to be conducted in the shadows.

Flash forward to early July 2003; a sales agreement is signed. Sto:lo fishers would be able to sell their catch without the fear of prosecution and without the fear of losing their boats, trucks, nets, totes and fish. Fishers awaited word as to when the river would be open for fishing under the newly signed sales agreement. But on July 28, 2003 the word they got was “NO.” The prospect of a legal, in-river commercial fishery was gone when Judge Kitchen ruled

that, among other things, the Aboriginal fishery was a race based fishery and therefore illegal under the Charter of Rights and Freedoms.<sup>1</sup> Fisheries and Oceans responded by withdrawing the agreement.

Flash forward again as new agreements are negotiated each year.

Collected oral histories refer to stories told by Elders of a time when the Sto:lo went to the river to fish whenever they needed. Sto:lo would fish any time of day, any day of the week. Sto:lo Elders talked of their parents trading with the members of local

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<sup>1</sup> *R. v Kapp et al.* 2003 BCPC 279 (Kitchen Prov. Ct. J). The ruling was reversed by appeal on June 27, 2008 – *R. v. Kapp* [2008] 2 S.C. R. 483, 2008 SCC 41.

non-aboriginal communities for goods they could not produce. A Sumas Band Elder spoke of his parents regularly trading and selling fish with the local farmers to obtain eggs, butter and milk (Silver 2002). June Quipp from the Cheam Band notes, “As far as I can remember my dad was in the business to buy and sell fish which he passed on” (Aboriginal Fisheries Journal 2000:3).

However, in the years subject to intense regulation, federal mandates have determined how, when and where Aboriginal peoples could fish as well as the disposition of their catch. Fisheries regulations implemented in the 1880s banned the sale of Aboriginal fish and resulted in the creation of the categories of “food fishing” and “commercial fishing.” These categories became firmly entrenched in the industrial fishery at the mouth of the Fraser River and were actively contested by the Aboriginal peoples fishing in the upper reaches of the river.

Additional regulations in 1888 contained more comprehensive controls over fishing as well as penalties for violations. Protected in the regulations was an Aboriginal right to fish for food. Specific language contained in the regulations upheld the food fishery declaring that “Indians were to, at all times, have liberty to fish for the purpose of providing food for themselves, but not for sale, barter, or traffic” (Canada 1888). This cast in stone the concept of a separate fishery for food and a separate fishery for commerce. While simultaneously accepting and rejecting their place in the margins of this fractured fishery, Sto:lo people have consistently maintained that their Aboriginal right to fish could not be divided into these false categories that separated the economic and social components of their way of life. Rather, they have fought to keep intact the social and economic aspects of the fishery by sharing fish with family and friends as part of ceremonies and by selling and trading fish with the newcomers to their land. Ultimately, this paper documents and argues that sale, exchange, and gifting of salmon are all intrinsic aspects of a Sto:lo fishery. There is no one more unique or authentic practice. Because sale and commercial fishing practices are often presented as somewhat less than authentic this paper pays particular attention to the ways in which commercial

fisheries practices are inherently as Sto:lo as the so-called food fishery.

### Setting the Stage

Sales agreements arising out of a new Aboriginal Fisheries Strategy developed in the early 1990s provided for the legal sale of in-river, Aboriginal-caught salmon for the first time in since 1888. The first opportunity to fish under the agreements was in 1992. The Pilot Sales Program was a component of the new Aboriginal Fisheries Strategy adopted in 1992 and arising out of the Sparrow case (*R v. Sparrow* 1990). It provided for the legal sale of salmon caught under negotiated agreements and allotments. Initially the Department of Fisheries and Oceans (DFO) did not mandate the number of bands needing to sign an agreement before fishing could take place. However as the program continued, signing thresholds were set with Fisheries and Oceans requiring all 24 Sto:lo Bands to sign. For a number of years the Sto:lo did not participate in the program because the band signature threshold could not be met, many bands refusing to sign because they maintained the agreements represented an infringement on their Aboriginal right to fish. The agreements are no longer referred to as Pilot Sales Agreements. They are now wrapped in the new title of Economic Opportunity Fishery Licenses and signature thresholds are no longer enforced.

Sto:lo fishers such as Ken Malloway and Lester Ned maintain that they are the original commercial fishers and that their Aboriginal right to fish includes the right to trade, sell or barter their catch. For these men and others like them the agreements are seen as a means of legally continuing their traditional commercial fishery, albeit constrained by regulation. This paper respects this longstanding Sto:lo view through a detailed consideration of the fishery within its historical and contemporary trajectory.

Prior to 1992, commercial fishing was conducted in the shadows of the law. An examination of the Aboriginal business of fishing illustrates the historical tensions created through the reckoning and regulation of Aboriginal fishing practices (Bierwert 1999). Describing a river fishery conducted outside of the law, Bierwert writes:

Fishing legally has meant fishing in prescribed places within the enforced hours with limited technology, cutting off the noses and dorsal fins of the cats [to mark them as Indian fish]... In fact fishing has long exceeded these limitations and involved a variety of renegade practices (keeping alive a considerable knowledge of the river), and hauling contraband (unmarked) fish in sacks or plastic garbage bags for sale to dealers. [Bierwert 1999:224]

Distinguished here is the cultural practice of fishing from the business of fishing under legally negotiated sales agreements. The practical business of fishing includes discussions of profit and loss, crew payments, capital expenditure, overhead, preparation for the prospect of legally sanctioned commercial fishery and even the preparation for the prospect of illegal commercial fishing. In essence, Sto:lo commercial fishing takes place within a space bounded by tradition and state regulation; a space shaped by the inherent hegemony of the colonial and post-colonial situation. It is on this space that I concentrate my discussion of Sto:lo commercial fishing. By drawing on past field work I seek to illustrate that while the calendar of fishing has changed what shapes the Sto:lo fishery has not been altered by time.

Sto:lo responses to regulation and government interference into their way of life have ranged from overt acts of rebellion to the simple act of feeding one's family. Relying on Roseberry's (1996:79) call to explore hegemony not as a finished monolithic ideological formation but as a problematic contested political process of domination and struggle, I address the Aboriginal right to fish as conducted under the auspices of negotiated agreements or government licensing requirements and how this fits within a context of accommodation and resistance. Explored is how the right to fish as conducted under the auspices of negotiated agreements can be viewed as mechanisms of cultural reproduction. In his discussion of livelihood and resistance among peasants in Peru, Gavin Smith (1989) describes how the connection with the prehistoric past and present ways of life reflects not just the production of a livelihood, but the political protection of the conditions necessary for the continued reproduction of a way of life.

Smith (1989) demonstrates that acts of resistance and rebellion cannot be viewed as outside the creation of culture. These acts must be viewed as a mechanism of cultural reproduction or more specifically the protection of a livelihood which is interconnected with a social identity that must be viewed in connection within the specific history/prehistory and economy as well as within the context of a global history and economy (Smith 1989).

### **The Sto:lo, Tradition and the Aboriginal Right to Fish**

The complex relationship between the river's salmon resource and the Sto:lo people has been observed and described by ethnographers, archaeologists and historians. For thousands of years before Europeans arrived in British Columbia, Aboriginal economies depended heavily on the prolific salmon migrations into their territories; this resource being processed and used for personal consumption, trade and ceremony (Newell 1993:3). Ethnographic and archaeological data support the importance of salmon in the Sto:lo diet as well as its importance in Aboriginal economies (Barnett 1938; Chisholm et al 1983; Crosby 1907; Duff 1952; Fort Langley Journal 1827; Hewes 1947; Kew 1992; Hill-Tout 1902, 1904; Lamb 1966). Historical accounts refer to a time when Sto:lo fishers actively sold their catch, first to operators of the Hudson's Bay Company saltry, and later, to commercial canners (R. Carlson 1994; Duff 1952; Crosby 1907; Fort Lanley Journal; Kew and Griggs 1991; Lamb 1966; M. Smith 1947; Suttles 1960, 1987; Teit 1900; Ware 1977, 1983).

Very early ethnographic sketches of Coast Salish people, of which the Sto:lo belong, provide detailed information of villages, place names, material culture, fishing, hunting, social order, kinship terminology, and marriage customs. Notes Wilson Duff, the Sto:lo were divided into a considerable number of local groups or 'tribes,' each of which claimed a stretch of river-bank or an important tributary (1952:19). Extended family relationships were important carrying with them access rights to resources and responsibilities towards those resources. Identification was with family first above band. The family constitutes the corporate/economic unit. The concept of band iden-

tity is a by-product of the creation of reserves and the implementation of the Indian Act. This view seems to be held by the Sto:lo themselves:

It's hard to use the concept of "my band" because this was all our living room. Here, from one end of the river to the other because we're back and forth Hunting and fishing, traveled different places. The designation of bands was a European concept. [Personal communication, Sto:lo fisher from *Shxw'w'hamel*]

This difference between the Sto:lo and the state as to the collective unit of power and action poses problems as regards the fishery in that communal licenses were issued to the individual bands as part of the new Aboriginal Fishery Strategy. Band offices then issued designation cards to band members for fishing. Further complicating the issue was the fact that in the courts Aboriginal rights are considered communal rights, shared by all members of an Aboriginal group rather than being specific to an individual person. How resource issues are settled then becomes problematic when identification is with family first rather than the band. It is further complicated by the fact that family lines cross band lines.

Writing on Coast Salish peoples, Wayne Suttles identifies a specific form or social organization of property holding kin-group (1963:513). It was this group or its head, rather than any of the residential groups, who owned the most important ceremonial rights and the most productive natural resource or fishing sites. Both Duff and Suttles discuss the concept of social rank among the Coast Salish. According to Duff, social rank was measured in terms of respect (1952:80). Those respected individuals who also possessed exceptional skill as hunters or fishers were called *siya:m*. *Siya:m* were usually of upper-class lineage, having had access to special training due to their high class status (1952:81). Suttles focuses on the concept of class among the Coast Salish (1955, 1958, 1960, 1963, 1974, 1987). According to Suttles, within most communities there seem to have been three distinct social classes. The majority of the community were identified as high class, a somewhat smaller group indentified as low class and a still smaller class often occupying its own section of the community (1987:17). Notes Suttles, this lower class consisted

of people who "had lost their history" and hence had no claim to the most productive resources of the area, in particular fishing sites (1987:17). As explained by Ken Malloway, the fact that some contemporary Sto:lo fishers had gained some measure of wealth from the salmon fishery was simply a reflection of a past class system that existed prior to white settlement.

The emergence of the industrial fishery in British Columbia and the subsequent regulations that followed to ensure the steady growth of the canning industry worked to alienate the Sto:lo from the resource on which they had long relied. When British Columbia joined Canada in 1871 changes in the Aboriginal fishery were imminent, as the first salmon-canning factory appeared that same year. By 1919 there were 97 canneries on the coast from the Fraser River to the Nass River, on Vancouver Island and in the Queen Charlottes (Pearse & Larkin 1992:151). Initially there was no government regulation of any kind over Aboriginal fishing (Newell 1993:46). Reuben Ware refers to this period between 1858 and 1880 as a time of non-regulation and protection of Aboriginal rights with no restrictions (1983:12). According to Newell regulations were minimal so as to allow growth of the salmon-canning industry (1993:46). The government acknowledged the role of Aboriginal people in the growth of the salmon-canning industry and regulations indicated in particular that they had the right to carry on their traditional fisheries (Newell 1993:46).

### **An Era of Regulation Emerges**

When examining the implementation of fisheries regulations it is important to consider how regulation altered traditional economic patterns and hindered the development of new ones. As described by Newell, the salmon canning industry represented a new economic opportunity compatible with traditional economic activities (1993:65). Aboriginal fishers were, initially, the backbone of the emerging canning industry. However, by the late 1880s Aboriginal people were being seen as a major obstacle to cannery profits and fisheries officials were pressed by cannery owners to introduce new regulations to license the industrial fishery. Direct competition for fish between commercial canners and Aboriginal

domestic fisheries was evident by the turn of the century (Notzke 1994:45). The 1888 regulations were designed to reduce the competition between Aboriginal fishers and cannery owners and required that the fishers acquire licenses to fish commercially. This fishing was to be conducted only in tidal waters. It was under this new regulation that “the economic use of salmon by Sto:lo and other Aboriginal peoples was outlawed” (Glavin 1993). Subsequent regulation saw significant restrictions on Aboriginal fishing. As the needs of the canneries escalated, so did the restrictions on Aboriginal fishing. Aboriginal peoples lost control and management over the fisheries as new waves of regulation were continually introduced and the number of fishing days were significantly reduced. Beginning in 1962 the number of allowable fishing days would continually be reduced to the point when in 1980 no fishing was allowed from the end of June to mid July (Brown 2005).<sup>2</sup>

The restriction on allowable fishing days was only one of the ways Sto:lo fishers were assaulted by fisheries regulations. Fisheries officers would enter the homes of Sto:lo fishers to count the number of fish caught and processed as well as stopping them in town to search their car trunks for fish (Douglas 1985). Equally troubling to Sto:lo fishers was the requirement that all salmon taken under the Indian Food Fishing (IFF) license (the only license available to in-river Aboriginal fishers) be marked by the licensee after capture enabling Fisheries officers to immediately determine the circumstances under which the fish had been caught (Brown 2005). This was particularly important if the fish were found in the hands of non-Aboriginals. Other restrictions included a limited transportation area for Aboriginal-caught salmon. Imaginary boundaries were established throughout Sto:lo territory over which Aboriginal-caught salmon could not be transported. Again, this restriction was designed to curtail the sale, trade or barter of in-river, Aboriginal-caught salmon.

As early as 1888 various Sto:lo chiefs protested government interference in their fishery (Dyck 1994). Protests would continue throughout the 19th, 20th

and into the 21st centuries. In 1968 Aboriginal people pressed for an end to the federal regulation of their fishing rights and in 1971 demanded an end to Fisheries officers seizing fish from their homes. Hostilities escalated when in 1983 Aboriginal fishers decried the use of raids on their homes in an effort to lay poaching charges. In 1986 violence erupted between Fisheries officers and Sto:lo fishers on the Fraser at Gill Bay when Sto:lo fishers protested the closure of the river and set their nets. In 1988 Aboriginal fishers from various bands headed to the Fraser River at Rosedale with plans to defy the regulations governing the so-called Indian Food Fishery. The protest was part of a coast wide protest fishery marking the 100th year of regulation creating the separate food fishery and effectually diminishing traditional Aboriginal economies (*Globe & Mail* 1988). Protests and arrests would continue when in late May of 1989, Melvin Malloway was arrested near Yale after exercising his Aboriginal right to fish. Malloway’s nets, boat, motor, trailer and catch were seized (*Chilliwack Progress* 1989b). In all, about 90 percent of the 280 charges laid by Chilliwack Fisheries officers in the summer of 1989 involved Aboriginal fishers setting their nets when the food fishery was closed (*Chilliwack Progress* 1989a).

### **Highliners, Moneymakers, and the Aboriginal Right to Fish**

Sto:lo fishers such as Ken Malloway and Lester Ned have been fighting for an Aboriginal right to fish and the right to a legal commercial fishery for many years. Both are known in the Sto:lo communities as successful commercial fishers and both are leaders in the cause of the Aboriginal right to fish. In his capacity as the first Fisheries Portfolio holder for the newly formed Sto:lo Nation, Lester Ned has fought for an Aboriginal right to fish that includes the ability to legally sell salmon. As a member of the first negotiation team, Lester pressed for agreements that would allow Sto:lo fishers an opportunity to make a living off the fisheries resource. As a fisher who sold his catch in the years prior to the initiation of the sales agreements in 1992, Lester Ned has worked to secure a fishery free of arrest and the possible loss of fish and equipment. This is very important to Lester Ned

2 The number of allowable fishing days continues to fluctuate from zero to three depending on the conservation needs determined by Fisheries and Oceans.

whose capital investment of \$160,000 is great when compared with that of most Sto:lo fishers.

As has Lester Ned, Ken Malloway has fought hard for the legal right to sell his catch also participating in the negotiations in 1992 when the first sales agreement was implemented.<sup>3</sup> Ken Malloway began fishing on his own as a teenager, and he has always sold salmon.<sup>4</sup> Even as a teenager Ken Malloway was outspoken regarding an Aboriginal right to legally sale salmon. Since that time, Ken Malloway has continued to fight for the Aboriginal right to fish, a right that he maintains includes the right to sell his catch. Quoting Ken: “I don’t make any bones about selling fish. I always have and always will. I’m not the first, my father wasn’t the first, my grandfather wasn’t the first” (*Chilliwack Progress* 1988b).

Ken Malloway’s fight has resulted in thousands of dollars in legal fees and the loss of nets and salmon. In February of 1989 Ken was set to appear in court on charges of illegally selling fish. His defense hinged on the constitutional right to fish; the challenge based on the evidence that natives historically sold and bartered fish as recorded specifically in the Fort Langely Journals (1998), and that as a result, natives have an Aboriginal right to fish.

### Highliners in the Canyon

Ken Malloway has been referred to as a “highliner” by Fisheries and Oceans officers. Highliner is the commercial fishermen’s term for their own elite, the skippers and crews who bring in the biggest hauls. Ken has fished all his life, primarily in the Fraser Canyon in the stretch of the river five miles above Yale identified by Duff as Sto:lo fishing territory

(1952). His mother’s now-abandoned dry rack can still be seen in its spot at Lady Franklin Rock, which marks the “official” entrance into the canyon. Ken’s stories of fishing in the canyon make clear that it isn’t just about the money (to be made); it is about a way of life and sharing that way of life with future generations.

As a teenager, Ken would hop the CN freight train that made its way from Chilliwack through the canyon. The run through the canyon was Wednesday and Saturday and according to Ken “you had to be ready, have all your fished packed up the hill, because you never knew what time the train would be coming through.” The payment for train passage into the canyon was six sockeye. Over the years Ken Malloway earned enough to purchase a boat, upgrading when funds permitted until he acquired the boat he now operates which is a 20 foot, flat bottom aluminum craft—a current investment of approximately \$20,000 including motor (Brown 2005).<sup>5</sup>

Nearly two thirds of the Sto:lo fishery is conducted in the Fraser Canyon in the stretch of the river located five miles about Yale (Duff 1952). Three families were repeatedly mentioned as canyon highliners: Commodore, Jimmie and Malloway. According to Ken Malloway the number is four: Commodore, Jimmie, Malloway and Malloway (Brown 2005). A number of years ago he set out on his own, operating his own boat with his own family crew. While this may appear as a break in family ties, it is not. Kinship ties form the base of Sto:lo social order and this fact is reflected in way that the canyon fishery is conducted by families such as the Malloways. The nuclear family often makes up fishing crews. Extended family members were also relied upon as crew. But more importantly, family ties provided access to prime fishing spots and in some cases were essential to the ability to participate in the fishery. Ken fishes with his immediate family who work as paid crew while the remainder of the siblings in this very large family fish with his brother Melvin Malloway. Ken describes the role of family in fishing:

3 At the time of my fieldwork in 2002, Ken Malloway was co-chair of the BC Aboriginal Fisheries Commission, manager of the Sto:lo Fisheries Committee and a member of the Fraser Panel of the Pacific Salmon Commission.

4 Ken told me stories of how as a teenager, he made enough money by selling salmon at \$2.00 each to purchase a number of cars he hoped to eventually “fix up.” The cars began to clutter his mom’s front yard and after repeated requests from his mom to “do something about the cars” had gone unheeded, she had the cars hauled away. Kenny smiled as his told me, “I had some real classics, woulda been worth a lot of money today.”

5 Ken Malloway purchased his current boat in 1991 prior to the launching of the Pilot Sales Program in 1992. A new motor was purchased in 2002.

You should really get a picture of my brother Melvin's boat. He's got an accounting of everyone's catch painted all around the boat. I don't know what he's going to do when he runs out of room. Paint the boat and start over, I guess.

Ken notes that some of his siblings did fish with him at times or he would fish for them. On one occasion in the summer of 2002 when I fished with Ken, one of his sisters and his stepdaughter made up his crew. For the most part the crew worked while Ken talked of fishing in the canyon over the years. Numerous times his sister would have to remind him of the task at hand as newly caught salmon were being returned to the river, a distracted Ken neglecting to pull them from the net.

This more leisurely approach to the fishery was in sharp contrast to the Pilot Sales Program fisheries. Fishing under the sale agreements resembled that of the industrial fishery at the mouth of the river. Openings were generally shorter with fishing being conducted around the clock to make the most of the short time on the river. With the decreased number of hours available for fishing, nets were "hot-picked" or checked and emptied more frequently. Landing and counting sites had been set up at various points along the river to comply with the terms of the Pilot Sales Program. This meant that fishers had shorter distances to travel to offload and dispose of their catch as buyers lined up on the fishing grounds to purchase fish. According to Ken Malloway, even though the openings were shorter, the prospect for good numbers were good if one fished hard enough. The prospect of making large sums of money in one weekend were also very good. It was reported that one fisher made over \$30,000 one weekend handling over a dozen nets. The discussion centered on the fisher's ability to buy a new minivan, a new boat and outboard, and send his family on a shopping spree (Bierwert 1999:252). While the fisher was not identified, Ken acknowledged that the discussion was probably referring to him. Notes Ken, "I bought my wife a new van and took my kids to the Edmonton Mall. I bought her another van the next year, 1994. She's still driving that one." He went on to comment on the perception within the community of his wealth, simply stating, "You've seen my truck, it's

a piece of shit." When questioned on the number of nets he fished, Ken snidely remarked, "Well if you believe the rumors, 23." Ken explained that he would, at times, fish for other family members leading to the rumors of excessive fishing.<sup>6</sup>

When considered in the context of a family fishery, the prospect for large cash hauls must be viewed in a light similar to that of the industrial fishery at the mouth of the river. As explained by Ken Malloway, on an exceptional weekend—good year, good allocation—his brother Melvin would make \$70,000. It must be remembered that several family members are involved and the money generated from the fishery is divided among the family members. As Ken notes, "Melvin's boat launch resembles a village, our family is so large." While Ken's family crew may be considerably smaller than his brother Melvin's, expenses in the form of gas, lodging, and food are factored into the bottom line when calculating the real income from the sale fishery. While for Ken Malloway fishing in all years is a business, however it was in the sales agreement years that the fishery took on the appearance of a business.

### **Bona Fide Commercial Fisherman**

The business of fishing need not be separated from the Sto:lo tradition of fishing whether conducted illegally in the shadows of night or legally in the light of day. Lester Ned jokingly refers to himself as a bona fide commercial fisherman because he holds a commercial license. Lester Ned operates a thirty-foot gillnetter (bow picker) just below the Mission Bridge under an A-I (Area E) Aboriginal commercial license he has held for about 25 years and for which he pays \$380 annually to maintain.<sup>7</sup> Lester Ned estimates

6 In 1996, Ken Malloway faced three charges of fishing more than one additional net on three different occasions in 1995 (*Chilliwack Progress* 1996). Ken noted that this was an attempt on DFO's part to discredit him and that other similar charges were laid against other canyon highliners. This charge and those laid against the other highliners were dismissed two days before each of the scheduled court dates.

7 Notes Dennis Brown, these licenses were issued in response to Aboriginal claims of marginalization in the fishing industry. As a result Ottawa introduced a special Aboriginal-only salmon license category (2005:72).

the value of this boat and license at approximately \$160,000. Lester's capital expenditures in his boat and processing facility are the exception rather than the rule among the Sto:lo fishers in the area above the Mission Bridge where the majority of the Sto:lo reserves lie. In addition to fishing under his A-1 commercial license, Lester also fishes under the Sumas Band's communal food-fishing license.<sup>8</sup> Lester's position in the fishery is unique for a number of reasons in addition to his A-1 commercial license. In 1986/87 DFO approached Lester Ned about relocating his fishery from Devil's Run to avoid the further taking of co-migrating steelhead. He agreed to relocate from Devil's Run if DFO would allow him to operate a drift net above the Mission Bridge. In an effort to save the wild steelhead, DFO agreed to do so on a trial basis and Lester was issued a license to drift above the Mission Bridge.<sup>9</sup> Prior to 1990 Lester fished his traditional spot at Devil's Run, the traditional fishing spot for the Sumas Band community when participating in Aboriginal fisheries. In contrast to the family fishing exhibited by the very large Malloway family and other canyon highliner families, Lester Ned fishes alone and outside of Sumas territory.

Lester's entrepreneurial approach to the salmon fishery is clearly evident. However, for Lester fishing is a Sto:lo activity integral to his identity as Sto:lo. Lester Ned frequently reflects on fishing at his family site at Devil's Run, where his father fished before him. He considers it an obligation to provide salmon to band Elders and others who are not able to fish.

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8 "Food fishing" is a term Lester takes great exception to, contending that the separate designations of food and commercial are government constructs holding no validity to the Sto:lo. He prefers the term "Native fishing." When I conducted my first interview with Lester on July 9, 2002, he noted that as of that date there had been no opportunities for fishing under his commercial license—no openings.

9 Regulations enacted in the late 19th and early 20th centuries rendered illegal any time of fishing other than set-net fishing in the Fraser River above Mission Bridge. As noted earlier, this is the area in which the majority of Sto:lo reserves lie.

## Summary and Analysis

In spite of the law, Sto:lo fishers have sold their catch. Local newspapers periodically reported "Tons of Seizures" and sting operations launched to uncover the black market trade in salmon. It was reported that in one season Chilliwack Fisheries officers seized approximately eight tons of salmon valued at about \$60,000, plus close to 400 illegal nets and several outboard motors, boats, cars and trucks (*Chilliwack Progress* 1988a). Reports reveal that in some years as many as 160 charges were laid against more than 60 individuals. Fines for those charged were sometimes as high as \$5000 plus the forfeiture of a vehicle. On top of having to pay fines and forfeit vehicles, fishermen also faced the loss of their food fishing license. Sales agreements provide for protection of those items essential to the economic activity of fishing, while also offering an opportunity to participate fully in the capitalist mode of production and receive all its benefits.

It was during the sale years from 1992-1997 that large sums of money were made by some Sto:lo fishers. Notes Ken Malloway, this accumulation of wealth was not new to the Sto:lo. Commenting on Suttles (1974, 1987) comparison of class designation in Sto:lo society as resembling an inverted pear, Malloway described the system as a bit more complex than that mirroring somewhat the present day, larger Canadian society. There was an upper class, middle class, lower class/slave class. Ken noted that mobility from middle/lower class was possible through the accumulation of wealth. As he explained, extraordinary fishing ability afforded one method of ascension to a higher class. However, this could be a bit problematic in that lower class individuals were designated as such because "they did not know their past or family" and hence had no connection to the rights afforded by family connections to resources. Nevertheless, the point Ken was striving to make was that wealth, specifically the concentration of wealth in the hands of a few, was indeed a part of Sto:lo social order. He gave an example his uncle Frank Malloway's Halq'eméylem name, which means "one who gives big potlatches." According to Ken this name, going back 500 years, demonstrates the fact that "obviously some Chilliwack people were rich." Bierwert, writing

on the accumulation of wealth by some Sto:lo fishers, notes that roughly 10 percent of the fishers took about 40 percent of the catch (1999:252).

This notion of the accumulation of wealth as anathema to Sto:lo social order is a theme present in discussions of accumulation of wealth by some within the Sto:lo community as well as by some outside the Sto:lo community. It is possible that these discussions hinge on the definition of “communal right” as it was set out in the language incorporated in the individual sales agreements negotiated each year. Central to this argument is that the issuance of “communal licenses” was to each **Band**. Based on that argument, the issuance of a “communal license” dictated that the catch or subsequent profits generated from the catch belonged to the **Band** as a whole rather than the individual and that fishers had an obligation to ensure that all **Band** members shared in that profit. According to Ken, while some contended that the communal right meant everyone was to have an equal share, that notion was not consistent with the Sto:lo past. Ken Malloway went on to comment that “everyone has equal opportunity, but some fish harder than others and some have better fishing spots. We are not communists.”

For the Sto:lo, the fishing industry as well as participation in the larger capitalist economy have long been a part of Sto:lo life. Historical records reflect the Sto:lo fishers as entrepreneurs, initiating trade relations with the Hudson’s Bay post at Fort Langley long before commercial canning reached the Fraser. That history is not lost on Ken Malloway and Lester Ned. Both refer to this early business relationship with HBC when they talk of the importance of a Sto:lo commercial salmon fishery. Sto:lo fishers such as Ken Malloway and the other canyon highliners as well as Lester Ned have always sold their catch even in the pre-Pilot Sales Program years. Long standing supplier/customer relations had existed for several generations, quite often being ‘passed down’ through the family. There existed a black market in Aboriginal-caught salmon that existed as well as the informal economy surrounding the sale of Aboriginal-caught salmon. Also existing were the long standing agreements between buyers and seller, arrangements that were often handed down within

the family. Aboriginal fishers had their regular customers (Bierwert 1999:244). At times these customer arrangements were disrupted by participation in Pilot Sales Program fisheries.

As the debate rages within the larger Canadian commercial fishing economy as to the place of an in-river, Aboriginal commercial fishery, Ken Malloway and Lester Ned continue to seek to make a living as fishermen, as participants in the larger society in which they find themselves by relying on the traditions of the smaller Sto:lo society to which they belong. With an expanded access to the fishery for Ken Malloway through his large kin network and corresponding access to fishing sites and for Lester Ned via his Aboriginal commercial license and access to the industrial fishery, a perception is created of wealth accumulation through a “legal sale” fishery that some claim is not a traditional Sto:lo practice. Emerging are two distinct dialogues: one within the smaller Sto:lo society juxtaposing tradition and participation in a legally sanctioned fishery, the other between Sto:lo fishers and the larger society offering protected economic opportunities.

Just as with the connections to the larger economy through the black market fishery, the connection to the larger economy as part of legally sanctioned fisheries cannot be overlooked. As Ken Malloway explained, it is the desire to participate in the larger economy without the fear of arrest and the loss of vehicles and equipment that they seek. Participation in legally sanctioned fisheries places Sto:lo fishers such as Ken Malloway and Lester Ned squarely within the larger economy and the security of its structure and polity, while allowing them to also contribute to the smaller Sto:lo economy and its structure and polity: tradition. Participation in legally sanctioned fisheries locates Sto:lo fishers in a space between tradition and regulation; affirming the Aboriginal right to fish through their participation in two economies. For Ken Malloway, Lester Ned and other Sto:lo fishers the action of fishing is not singly defined by the particular license or conditions under which fishing is practiced. The practice of fishing conducted within the confines of the law does not deny the relevance of the practice as it contributes to the act of resistance any more than participation in the practice of out-

law fishing defines the conditions of resistance or as described by G. Smith (1989, 1999) the reproduction of culture. In short, resistance and livelihood become two sides of the same coin, inseparable and joined by tradition. What is observed is the shifting of the conditions under which resistance, rebellion and agency are manifest and how they are realized in connection with Sto:lo tradition and social identity when viewed as part of an emerging history that is connected with a specific history/prehistory and economy within a context of a global history and economy (G. Smith 1989, 1991, 1999).

By examining legal fishing as it relates to an opportunity to make a living within a context of resistance and accommodation, the existing relationship between tradition and capital accumulation is indeed valid within Sto:lo social order. Fishers such as Ken Malloway and Lester Ned who not only participate in the sales agreements, but push each year for their signature, challenge the notion that the agreements represent an infringement on the Aboriginal right to fish. While these agreements may set limits on the practice of fishing, the Aboriginal right to fish exists whether agreements are in place or not. These fishers also challenge the notion that participation in sales agreements should be viewed as less than traditional. Fishing as a traditional practice is not singly defined by the conditions under which the fishery is conducted but rather also by how the individual fisherman identifies himself, especially through his place in the community and the fishery. Lester Ned is indeed a Sto:lo fisher whether fishing from his “lazy white man’s” boat under his A-1 Aboriginal commercial license or in his band’s spot at Devil’s Run.

Perceptions and misperceptions of wealth and access to the fishery have placed some Sto:lo fishers within the space between tradition and regulation. Traditionally fishing had indeed been bound by regulation, albeit it from within Sto:lo society rather than from without. Respected individuals, *siya:m*, as well as family connections to fishing grounds worked to determine who fished where and how. As canning progressed on the Fraser, state regulation replaced traditional rules for fishing. Fisheries regulations created a site of power and corporate enterprise at odds with the Canadian state as well as with other Sto:lo

fishers as commercial fishing continued among the Sto:lo both illegally and legally (Bierwert 1999). Outlaw fishing as a practice came to be for some, a form of resistance to the repressive politics of the state (Bierwert 1999:245). Can it not be said that participation in the legal sale of salmon represents its own form of resistance when viewed as a mechanism of cultural reproduction or more specifically the protection of a livelihood that is interconnected with a social identity?

A glimpse into the Sto:lo way of life as described by ethnographers such as Wilson Duff is of families travelling to the canyon to fish. It is a picture of entire families congregating in camps to cut and hang sockeye from family racks as the canyon winds flow through the bright red strips. This picture can be juxtaposed with that of full totes of salmon ready to be deposited at DFO-mandated landing sites, where shiny silver unprocessed sockeye are turned into hard cash. The red colour so visible from the many racks along the river’s edge remains hidden. Both are pictures of the Sto:lo way of life. Both are pictures of tradition. Both are pictures of a life.... lived. Fishing is the essence of Sto:lo identity and life. Sto:lo people have fought to keep intact the social and economic aspects of their fishery. Fishing represents not only a livelihood or a way of making a living but a life lived.

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