

タイトル	HONORING THE LIFE AND SPIRIT OF THE PACIFIC SALMON (4) : Legal Systems to Protect Salmon in the United States and Japan
著者	SUZUKI, Hikaru
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**HONORING THE LIFE AND SPIRIT  
OF THE PACIFIC SALMON (4):  
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SUZUKI Hikaru

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#### — The Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act)

The Columbia River is the largest river in the American West and one of the most important salmon rivers in the United States. Almost at the same time that hydroelectric power dams construction was started in 1933 in the Columbia River and its tributaries, Congress started to prevent fish from being affected by those dams. Congress enacted the original Fish and Wildlife Coordination Act in 1934 to protect, rear, stock, and increase the supply of game and fur-bearing animals, as well as to study the effects of domestic sewage, trade wastes, and other polluting substances on wildlife.<sup>252</sup> The Bonneville Project Act in 1937 declared the importance of taking countermeasures for salmon protection.<sup>253</sup> The Fishery Conservation and Management Act of 1976 also requires administrative agencies to give fish and wildlife “equal consideration” in making and enforcing a hydroelectric power plan.<sup>254</sup> However, these statutes did not put brakes on hydroelectric power dam construction. The number of salmon and other anadromous fish kept on decreasing. Congress enacted a new Act in 1980 recognizing that the impact on fish and wildlife from hydroelectric power dams on the Columbia River and its tributaries is extraordinarily serious and that current statutes such as the Federal Power Act and the original Fish and Wildlife Coordination Act do not mitigate the impact enough.

The Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act)<sup>255</sup> has several purposes. Some relate to conserving electric power, and the development of electric power and renewable resources within the Pacific Northwest.<sup>256</sup> One explicit purpose is to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of

the Columbia River and its tributaries, particularly anadromous fish.<sup>257</sup>

The Pacific Northwest Electric Power Planning and Conservation Act establishes the Pacific Northwest Electric Power and Conservation Planning Council as a regional agency.<sup>258</sup> As will be seen later, the main mission of the Council is to prepare and adopt a regional conservation and electric power plan and a program to protect, mitigate, and enhance fish and wildlife. Two persons, appointed by each of the states of Idaho, Montana, Oregon, and Washington, constitute the Council for three-year terms.<sup>259</sup> Although created by federal law, the Council is not a federal agency; this reflects the belief that the people in the watershed should be the primary decision-makers.

Every five years, the Pacific Northwest Electric Power and Conservation Planning Council adopts a regional conservation and electric power plan.<sup>260</sup> Prior to such adoption, public hearings must be held in each Council member's state on plan or substantial, non-technical amendments to the plan proposed by the Council for adoption.<sup>261</sup> The plan must give priority to resources that the Council determines to be "cost-effective."<sup>262</sup> Priority must be given: "first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources."<sup>263</sup> To accomplish its priorities, the Pacific Northwest Electric Power Planning and Conservation Act requires the plan to include seven elements, such as model conservation standards.<sup>264</sup> The plan sets forth a general scheme for implementing conservation measures and developing resources to reduce or meet the obligations of the Administrator of the Bonneville Power Administration. At this time, the Act requires the Council to consider four elements, including "protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat, including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish."<sup>265</sup>

In addition to the regional conservation and electric power plans, the Pacific Northwest Electric Power and Conservation Planning Council must adopt a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries. "Because of the unique history, problems, and opportunities presented by the development and operation of hydroelectric facilities on the Columbia River and its tributaries, the program, to the greatest extent possible, shall be designed to deal with that river and its tributaries as a system."<sup>266</sup> Prior to development or review of the plan, the Council must request, in writing, from the federal and the region's state fish and wildlife agencies and from the region's appropriate Indian tribes, recommendations for: (A) measures which can be expected to be implemented by the Administrator of the Bonneville Power Administration and other federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries; (B) establishing objectives for the development and operation of such projects on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife; and (C) fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation, and enhancement of anadromous fish at, and between, the region's hydroelectric dams.<sup>267</sup> Then the Council develops a program on the basis of such recommendations, supporting documents, and views and information obtained through public comment and participation, and consultation with the agencies, tribes, and customers.<sup>268</sup>

Moreover, the program must: (A) complement existing and future activities of the federal and state fish and wildlife agencies and Indian tribes in the region; (B) be based on the best available scientific knowledge; (C) use the least costly alternative means of achieving biological objectives, where alternatives are equally effective; (D) be consistent with the legal rights of Indian tribes; (E) provide for

improved survival of anadromous fish at hydroelectric facilities and sufficient flows between facilities to improve fish production, mitigation, and survival.<sup>269</sup>

The Administrator of Bonneville Power Administration must use the Administration's fund and applicable laws to protect, mitigate, and enhance fish and wildlife projects of the Columbia River and its tributaries.<sup>270</sup> The Administrator and other federal agencies must provide equitable treatment for fish and wildlife in comparison with the other purposes of facilities and take the Pacific Northwest Electric Power and Conservation Planning Council's program into account as much as possible at each stage of decision-making.<sup>271</sup> They are also to consult and coordinate activities with the Secretary of the Interior, the Administrator of the National Marine Fisheries Service, state fish and wildlife agencies in the region, appropriate Indian tribes, and affected project operators in carrying out their responsibilities.<sup>272</sup>

An earnest attempt to harmonize power development with anadromous fish conservation in the Pacific Northwest rivers started in the 1980s. The Pacific Northwest Electric Power Planning and Conservation Act established an independent plural regional agency, the Pacific Northwest Electric Power and Conservation Planning Council, with a special mission to make a regional conservation and electric power plan and fish and wildlife program cooperate with related agencies, Indian tribes, organizations, and the general public. However, the Council could not meet people's expectations at the beginning because it was almost perplexed and paralyzed by various conflicting opinions from all conceivable aspects. The National Marine Fisheries Service in the Department of Commerce and the Forest Service in the Department of Agriculture also had a hard time with the difficult mission. On the other hand, the number of salmon has decreased sharply with the advance of power development. Some kinds of salmon began to be designated as endangered species or threatened species one by one according to the Endangered Species Act.<sup>273</sup> The Council, the National Marine Fisheries Service, and the

Forest Service took about fifteen years and had to experience many lawsuits against them before they began to comply with the law.

Dr. John Volkman, a former general counsel of the Pacific Northwest Electric Power and Conservation Planning Council (1985-99), says: "People disagree over how well the Northwest Power Act (the Pacific Northwest Electric Power Planning and Conservation Act) has worked to help protect salmon and steelhead. I believe it has helped, but it has not solved the problem. The Act establishes a way for the parties contending over the Columbia River and its fish, hydropower and other uses to cooperate to address problems. The problems, however, are fundamental and the parties' willingness to cooperate to address them is limited. The Act creates a useful place to generate dialogue (in some ways like the U.N.) but it doesn't resolve these fundamental problems."<sup>274</sup>

## (2) Japan

There is no single statute for watershed planning or management in Japan. There are some statutes controlling forests, rivers, and wildlife, but they are not connected each other.

The Forest Act of 1951 mentions about the idea of watersheds. The Act requires a prefectural governor to make forest management plans for every watershed area within his or her jurisdiction.<sup>275</sup> However, it cannot be said to protect watersheds from the nature conservation point of view. One of the aims of introducing the watershed management idea in forest management is to deal with a forest as a unit from the upstream area to the downstream area. For example, in the case that an upstream forest is protected to maintain a source of water supply for the downstream cities, towns, and villages, a prefectural governor may ask the residents of the downstream area to pay for the maintenance expenses of the upstream forest. Another aim of introducing the watershed management idea in forest management is to rationalize forest management work and to improve lumber productivity. Watershed management



is expected to make the individual forest owner, the national government, local governments, and private persons, into a single body in order to improve forest management work efficiency. For example, they can cooperate on the ground in promoting forest mechanization and forestry road construction, or balancing between demand and supply for forest manpower. However, it is uncertain whether such forest management under watershed idea have realized on a nation scale.

The River Act of 1964 also mentions watershed management, but the purpose is to manage water resources efficiently, not to protect the watersheds from the nature conservation point of view. Although the Act itself has no provision directly aimed to protect the natural watershed environment, it has a provision for a Watershed Commission composed of citizens and specialists. The Commission is to submit to the Minister of Land and Transportation or a prefectural governor an opinion (comment) when the Minister or prefectural governor makes a river adjustment plan.<sup>276</sup> The Watershed Commission is expected to encourage the Minister and a prefectural governor to consider watershed management from the environmental conservation point of view. However, whether the Watershed Commission's comment is adopted in a river adjustment plan is left to the Minister's personal discretion.<sup>277</sup>

### **(3) Summary**

A systematic statute is vital to managing watersheds since watersheds contain a large area including various elements such as forests, rivers, seashores, marshes, aquatic animal, plant, and other life, an inanimate environment, and human life. In Japan, it seems quite difficult for national administrative agencies, which do not systematically manage watersheds now, to draft such a bill in cooperation with each other because there is a severe jurisdictional dispute between administrative agencies. As will be seen later, a disinterested board should be established in the Diet in order to conduct

interdisciplinary research about watershed management and draft a bill for a Watershed Management Act. In this research, the United States' Pacific Northwest Electric Power Planning and Conservation Act of 1980 would be an excellent model for Japan.

## **B. Protection of Native Rights**

### **1. The United States**

Indian people have experienced many turns and twists since European people “discovered” North America. To appreciate Indian rights, it is necessary to understand correctly the historical change of Indian rights through treaties, federal legislation, governmental policies, and important cases of the United States Supreme Court, the Ninth Circuit Court, and federal district courts.

By the early 1800s the United States had determined a set of principles to manage Indian affairs.<sup>278</sup> The principles were expressed in the treaties made between Indian tribes and the United States government and some federal statutes passed from 1790 to 1834.<sup>279</sup> In 1830 the Indian Removal Act was enacted to force Indian people residing in any of the states or territories to move to the west of the Mississippi.<sup>280</sup> In such ways, little by little, many Indian people were “lawfully” driven to the west.<sup>281</sup>

However, the westward migration of European settlers made for great discord with Indian people. In the 1850s, some treaties were concluded between Indian tribes or bands and the United States government in order to revoke the rights of Indian people, establish a peaceful relationship, open the Indian people's land to European homesteaders, and to civilize the Indian society. Many Indian reservations came into existence as a result of these treaties, some agreements, and other federal actions, and basically the rights of Indian people were good for the reservations only.

The Indian Appropriation Act was enacted in 1871, and the treaty-making approach ended.<sup>282</sup> In other words, relations with

Indian people would be governed by statutes and executive orders and not by treaties after 1871.<sup>283</sup> In 1887 the Dawes General Allotment Act was enacted. The Act divided communal land into individual 160-acre allotments so that many Indian societies were broke up in a landownership sense.<sup>284</sup>

The Indian policy of the United States made a great turn in the New Deal of the 1930s. The era trying to resolve “Indian problem” forcibly was over and it was already a new era of coexistence and respect for each other. The United States began to think better of the Indian’s self-governing communities. The Indian Reorganization Act was enacted in 1934 that ended the allotment policy, prohibited any transfer of Indian land or shares in the assets of tribal corporations, and set up a loan fund for purposes of economic development.<sup>285</sup> The Indian policy shifted from the Reorganization policy (1928–1945), the Termination policy (1945–1961), to the Self-Determination policy (1961–present). Today, tribes are recognized as sovereign governments with broad, but not unlimited, authority over their reservations.

With the United States government policy toward Indian people has drastically changed with the times, their traditional culture, including salmon fishing, was also greatly influenced by the change in government policy. They could not continue salmon fishing in their traditional way.

In the Pacific Northwest, Indian people have certain fishing rights on the basis of treaties developed in the late 1850s. After the Washington Territory was established in 1853, fourteen treaties were concluded between Indian tribes and the United States government, owing to the first territorial governor Isaac Stevens.<sup>286</sup> It is important that each of those treaties stated that tribes would be guaranteed the right to fish at their “usual and accustomed grounds and stations in common with the citizens of the territory.” In 1859, the Treaty with Yakama was concluded. Article III of the treaty states: “the exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said

confederated tribes and bands of all Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the territory, and of erecting temporary building for curing them.”<sup>287</sup>

Although these treaties recognized Indian fishing rights at their usual and accustomed grounds and stations, particularly at the sites located off their reservations, they were opposed by the states and non-Indian fishermen for a long time, until step by step they were upheld by Judge Belloni,<sup>288</sup> Judge Boldt,<sup>289</sup> and the United States Supreme Court finally in 1979. A series of cases made it clear that tribes’ off-reservation fishing rights are valid and they have rights to take up to fifty percent of the fish passing the tribes’ off-reservation sites.<sup>290</sup>

The tribal management system of salmon developed rapidly soon after the tribes’ treaty-based fishing rights, which were finally affirmed by the United States Supreme Court in 1979. These Pacific Northwest Indian tribes now play a vital role as co-manager in all kinds of comprehensive salmon management projects, together with federal, state, local governments, industry, and the general public.

There are at least two noteworthy tribal organizations for fishery management in the Pacific Northwest. The Northwest Indian Fisheries Commission in Olympia, Washington, was established in 1974 to assist treaty Indian tribes in conducting orderly and biologically-sound fisheries and to provide member tribes with a single, unified voice on fisheries management and conservation issues.<sup>291</sup> The tribes select commissioners who develop policy and provide direction. The Commission employs about fifty full-time employees in the Administration, Fishery Service, Habitat Service, and Information and Education Service divisions and about fifty biologists. Each member tribe also has its own on-reservation fisheries office.<sup>292</sup>

Another important tribal organization is the Columbia River Inter-Tribal Fish Commission in Portland, Oregon. Funded from the Department of the Interior (50%), the Pacific Salmon Treaty of 1986

(30%), and the Bonneville Power Foundation for particular projects (10–20%), it is the technical support and coordinating agency established in 1977 for fishery management policies of the Columbia Basin's four treaty tribes. The board consists representatives from each tribe. Having many excellent professional staff such as biologists, hydrologists, economists, and computer technicians, the Commission also plays a vital role in salmon management, particularly in the Columbia River. Especially, the Commission takes an active part in conservation of the Columbia River under the Fish and Wildlife Program of the Pacific Northwest Electric Power Planning and Conservation Act of 1980.<sup>293</sup>

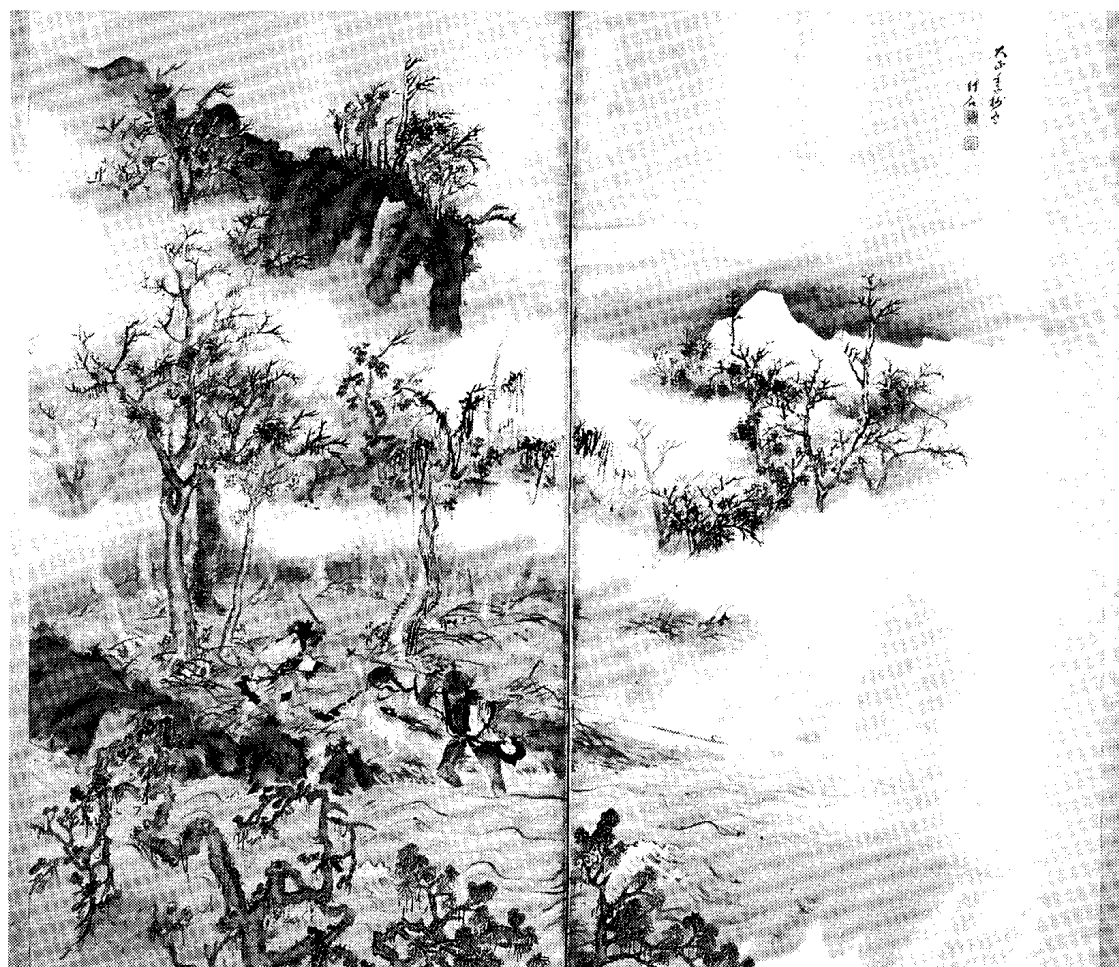
These organizations contributed much towards the enactment of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 and the conclusion of the United States—Canada Pacific Salmon Interception Treaty of 1985. Cooperating with the federal and state governments, experts, and citizens, these tribal organizations play important parts in protecting and restoring salmon.

The Indian tribes' fishing rights, which were assured in the treaties concluded between the United States government and Indian tribes in the 1800s, had been trespassed for over a century until the United States Supreme Court approved their rights in the 1970s. Now Indian tribes, recognized by the treaties, have fishing rights and their own self-government system. They render great services to salmon protection, in cooperation with administrative agencies and citizens, by studying the ecology of salmon, running hatcheries, restoring several species of salmon to the Columbia Basin, and enlightening tribal members and the general public on salmon. The statutes, which have provisions to respect Indian tribes' salmon culture and require federal and states governments to participate with Indian tribes in various salmon projects, are also important to assure that tribe have legal status to be involved in such activities.

## 2. Japan

The Ainu people used to inhabit a large area including Tohoku district, Hokkaido Island, Sakhalin, and the Kurile Islands. Their peaceful life began to be influenced by Japanese people in the middle of the fifteenth century, and it was destroyed in a thoroughgoing way when the Japanese government started its invasion of Hokkaido Island in the middle 1800s.

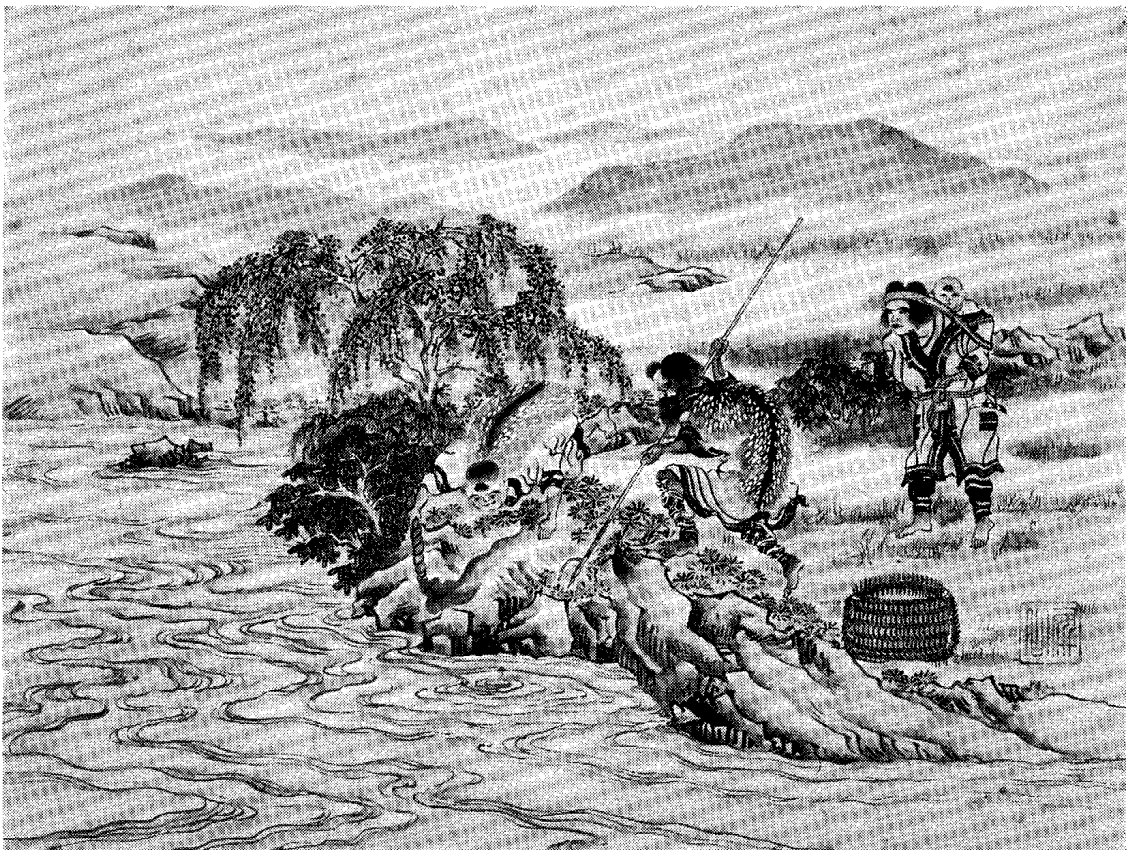
In 1869 in the Meiji era (1867–1912), the Japanese government established the Kaitaku-shi, an administrative agency, to administer the affairs of Hokkaido Island. Through the Kaitaku-shi, the Japanese government carried out an aggressive assimilation policy against the Ainu people. The Japanese government totally looked



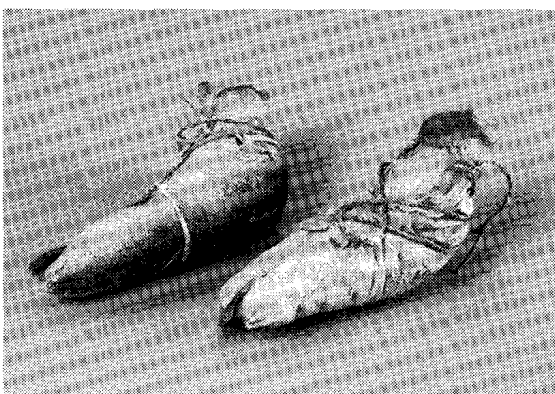
**Plate 1.** Chikuseki Kido, *Sakeryozubyobu*, 1912, Historical Museum of Hokkaido

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down upon the Ainu people as uncivilized and barbaric aborigines, so that no treaty was concluded between the Ainu people and the Japanese government in the process of the aggression by the Japanese government. In 1871, the Ainu people were forced to register their names in the Japanese family register and to use the Japanese language although they had their own traditional Ainu

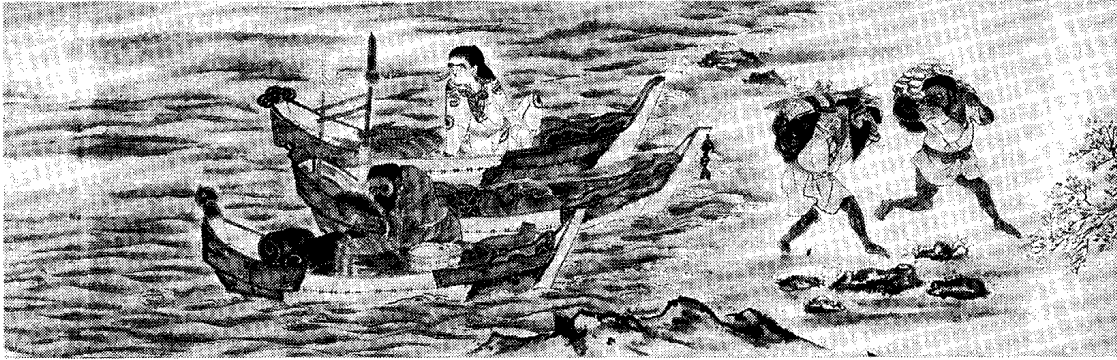


**Plate 2.** Byozan Hirasawa, *Marekkuryozu*, 1822-1876, Historical Museum of Hokkaido

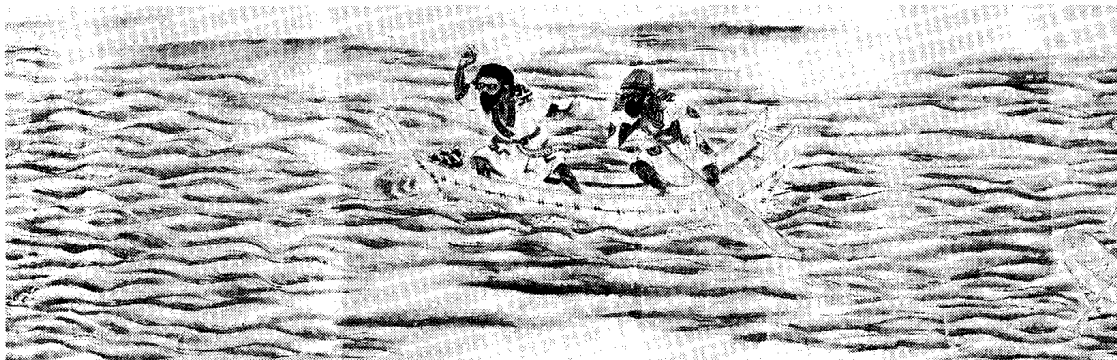


**Plate 3.** *Sakekawakutsu* (Salmon skin shoes), 1984, Historical Museum of Hokkaido





**Plate 4.** Teishin Kodama, *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*, 1751-1764, Historical Museum of Hokkaido

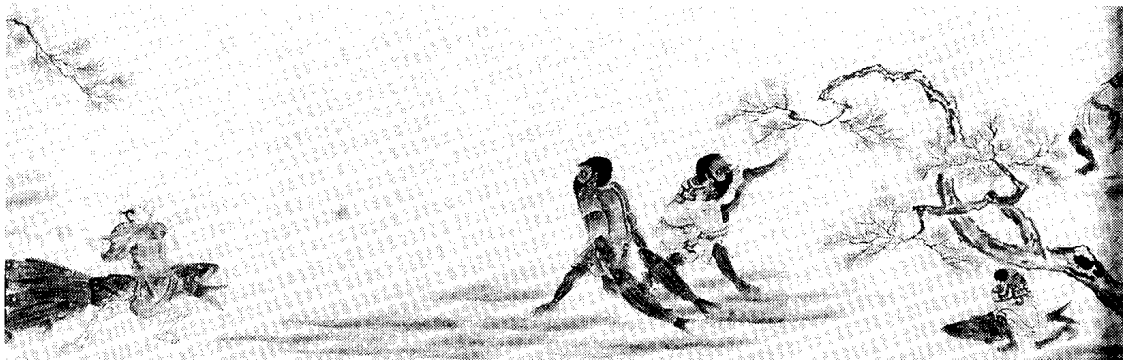


**Plate 5.** Teishin Kodama, *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*, 1751-1764, Historical Museum of Hokkaido



**Plate 6.** Teishin Kodama, *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*, 1751-1764, Historical Museum of Hokkaido





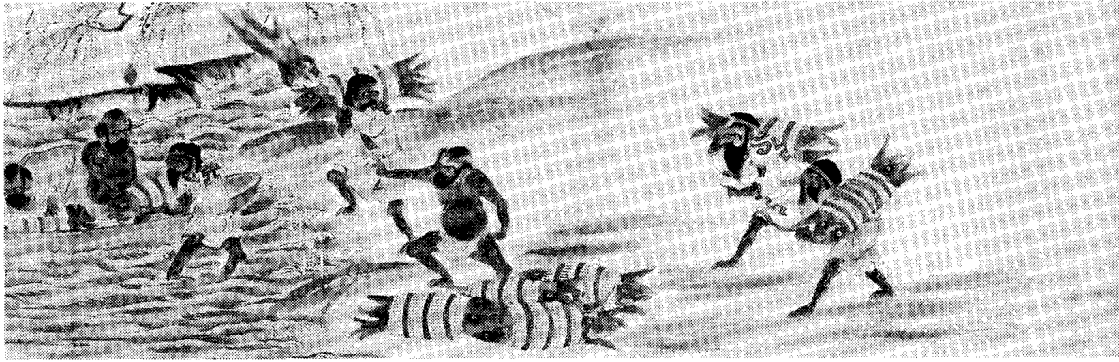
**Plate 7.** Teishin Kodama, *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*, 1751-1764, Historical Museum of Hokkaido



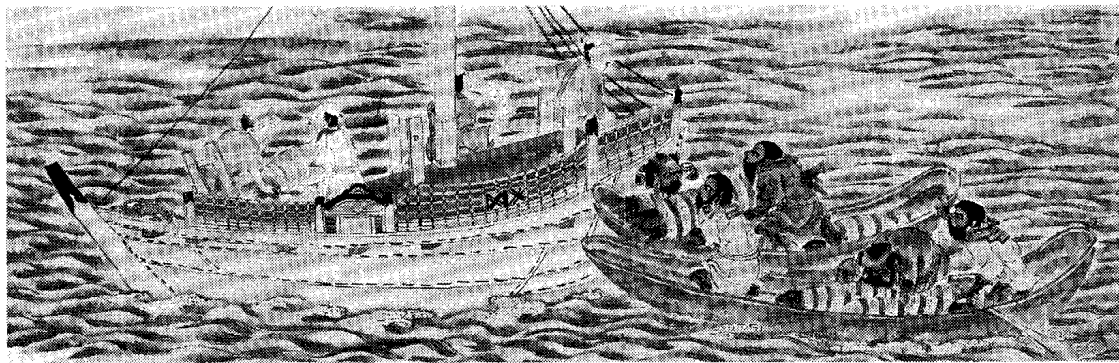
**Plate 8.** Teishin Kodama, *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*, 1751-1764, Historical Museum of Hokkaido



**Plate 9.** Teishin Kodama, *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*, 1751-1764, Historical Museum of Hokkaido



**Plate 10.** Teishin Kodama, *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*, 1751-1764, Historical Museum of Hokkaido



**Plate 11.** Teishin Kodama, *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*, 1751-1764, Historical Museum of Hokkaido

\* Ainu people caught salmon in many ways. For example, plates 1 and 2 show Marekku (wooden harpoon with a hook) fishing, and plates 4 to 11 show net fishing. Plates 4 to 11 are selections from a roll picture, *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*. On *Ezokokugyobafuzokuzumaki (A Scene in the Ezo fishing ground)*, see generally Shotaro Hayashi, *Beach seine fishing as seen in paintings — An introduction of “A scene in the Ezo fishing ground” painted by KODAMA Teishin* —, 35 *The Memoirs of the Historical Museum of Hokkaido (Preliminary Report of the 5th Excavation Survey in 1995)* 41 (1996).

language. The Ainu people originally made their livings by hunting and gathering in the wild areas. However, the use of the Ainu's traditional bows and arrows for hunting was forbidden in 1876 and the Ainu people were ordered to use hunting guns instead. Deer hunting for their food was also forbidden in 1889. The Japanese government gave houses and agricultural implements to the Ainu people to force them to start a new "cultivated" life based on agriculture. Deprived of language and traditional life style, the Ainu people almost lost their ancestral culture.

Salmon has been vital to the Ainu people in spiritual, economical, religious, and educational senses. The Ainu people have called salmon "the God of fish" and have treasured salmon from time immemorial. Their affection toward salmon resembles that of the American Indian people. However, the Ainu people have no right to catch salmon at all. The Kaitaku-shi mercilessly began regulating salmon fishing in 1873<sup>294</sup> and salmon fishing was completely prohibited at all rivers in the Sapporo area, Hokkaido Island, in 1878.<sup>295</sup> Since then, the Ainu people have had no right to catch salmon. There was an opportunity to enact an Act regarding their basic fishing rights, but the bill was eviscerated before being passed as follows.

In 1930, the Ainu people formed an organization to recover their dignity and traditional culture as a different race from Japanese people. In 1984, the organization drafted a bill providing the Ainu people's right to assure their social and economical standing, and submitted it to the Hokkaido government and the Hokkaido prefectural assembly. The Hokkaido government, the Hokkaido prefectural assembly, and the Ainu organization appealed in 1988 to the Japanese government to enact the bill to assure the Ainu people's rights.<sup>296</sup> In 1997, an Act for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture was enacted.<sup>297</sup> However, the Act has no provision regarding the Ainu people's rights.<sup>298</sup>

Under the present legal system as mentioned above, salmon

fishing in the inland water areas is forbidden for both the Ainu people and Japanese people. It is possible for a fishermen's association to request a prefectural government fishing right if the fishermen's association is concerned in fish reproduction,<sup>299</sup> but there is no such association at present. In an extraordinary case, a prefectural governor may allow, at his or her discretion, the Ainu people to catch salmon for their religious ceremony use, but this special permission does not mean that the Ainu people possesses any fishing right.

The Ainu people are in no position to be engaged in salmon research programs or in salmon reproduction for lack of funds and technique. Unlike the American Indian tribes, the Ainu people are far from salmon management.<sup>300</sup>

### 3. Summary

It is a well-known fact that native people in Japan, the Ainu, have a traditional custom to catch salmon. It is a quite similar tradition to that of American Indians. Culturally, religiously, and economically, salmon have been very important natural resources for the Ainu people. The related statutes regarding salmon fishing, however, have no protection for such native people's tradition.

The Japanese people should recognize aborigines' human rights and respect their traditional culture. The Hokkaido government fully calls on the whole world to make efforts to protect aborigines' human rights, citing the United Nations' decisions on aborigines of 1992 and 1993, the International Labor Organization Treaties of 1957 and 1989, the International Covenant of Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights.<sup>301</sup> Professor Morihiro Ichikawa points out in his article that there is a good possibility of recognizing the Ainu people's human rights, including fishing rights, on the grounds of Article 27 of the International Covenant of Civil and Political Rights and Article 13 of the Constitution of Japan.<sup>302</sup> The Japanese government should know the fact that, as compared with the current situation of the American

Indian people in the Northern Pacific states in the United States, the Ainu people are poorly protected. American Indians are guaranteed to have fishing rights under some historical written treaties between the Indian tribes and the United States government and play an important role in wide-scale and long-term projects of wild salmon protection. In contrast, the Ainu people have been deprived of their basic human rights, including fishing rights, by the Japanese government since the middle of fifteenth century. The Ainu people are not able to manage their own lives, let alone salmon.

The United States' system presents a good model for Japan. The Japanese government must recognize the wretched condition of the Ainu people without a moment's delay and enact an Act to protect their human rights as aborigines. The Japanese government also should ask the Ainu people's advice on salmon and make a full effort to establish a system to research and protect wild salmon in cooperation with the Ainu people, who know salmon far better than Japanese people.

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## Notes

252. An Act To promote the conservation of wild life, fish, and game, and for other purposes, Pub. L. No. 121, Chap. 55, 48 Stat. 401 (1934).
253. An Act To authorize the completion, maintenance, and operation of Bonneville project for navigation, and for other purposes, Pub. L. No. 329, Chap. 720, 50 Stat. 731 (1937); Pub. L. No. 429, Chap. 47, 54 Stat. 47 (1940); Pub. L. No. 550, Chap. 673, 60 Stat. 701 (1946).
254. An Act To provide for the conservation and management of the fisheries, and for other purposes, Pub. L. No. 94-265, 90 Stat. 331 (1976).
255. 16 U.S.C. §839-839h (2000). "Pacific Northwest", "region", or "regional" means "(A) the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of

Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and (B) any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator (of the Bonneville Power Administration) on December 5, 1980 which has a distribution system from which it serves both within and without such region.” 16 U.S.C. §839a (14) (2000). An Act To assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes, Pub. L. No. 96-501, §3 (14), 94 Stat. 2697, 2700 (1980).

256. 16 U.S.C. §839 (1) (2000); Pub. L. No. 96-501, §2 (1), 94 Stat. 2697, 2697 (1980). The term “renewable resource” means “a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.” 16 U.S.C. §839a (16) (2000); Pub. L. No. 96-501, §3 (16), 94 Stat. 2697, 2698-2700 (1980).
257. The Pacific Northwest Electric Power Planning and Conservation Act provides that anadromous fish are “of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries.” 16 U.S.C. §839 (6) (2000); Pub. L. No. 96-501, §2 (6), 94 Stat. 2697, 2698 (1980).

The Pacific Northwest Electric Power Planning and Conservation Act provides its four purposes. First one is “to assure

the Pacific Northwest of an adequate, efficient, economical, and reliable power supply.” 16 U.S.C. §839 (2) (2000); Pub. L. No. 96-501, §2 (2), 94 Stat. 2697, 2697 (1980). Second is “to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in (A) the development of regional plans and programs related to energy conservation, renewable resources, other resources, and protecting, mitigating, and enhancing fish and wildlife resources, (B) facilitating the orderly planning of the region’s power system, and (C) providing environmental quality.” 16 U.S.C. §839 (3) (2000); Pub. L. No. 96-501, §2 (3), 94 Stat. 2697, 2697-2698 (1980). The term “Indian tribe” means “any Indian tribe or band which is located in whole or in part in the region and which has a governing body which is recognized by the Secretary of the Interior.” 16 U.S.C. §839a (11) (2000); Pub. L. No. 96-501, §3 (11), 94 Stat. 2697, 2699 (1980). Third is “to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region’s electric power requirements, including the amortization on a current basis of the Federal investment in the Federal Columbia River Power System.” 16 U.S.C. §839 (4) (2000); Pub. L. No. 96-501, §2 (4), 94 Stat. 2697, 2698 (1980). The term “customer” means “anyone who contracts for the purchase of power from the Administrator (of the Bonneville Power Administration).” 16 U.S.C. §839a (7) (2000); Pub. L. No. 96-501, §3 (7), 94 Stat. 2697, 2699 (1980). The term “consumer” means “any end user of electric power.” 16 U.S.C. §839a (5) (2000); Pub. L. No. 96-501, §3 (5), 94 Stat. 2697, 2699 (1980). Fourth is to insure “(A) that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning,

conservation, supply, distribution, and use of electric power shall be construed to be maintained, and (B) that Congress intends that this chapter not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this chapter.” 16 U.S.C. §839 (5) (2000); Pub. L. No. 96-501, §2 (5), 94 Stat. 2697, 2698 (1980).

258. 16 U.S.C. §839b (a); Pub. L. No. 96-501, §4 (a) (1), 94 Stat. 2697, 2700 (1980).

259. 16 U.S.C. §839b (a) (2) (B) (2000); Pub. L. No. 96-501, §4 (a) (2) (B), 94 Stat. 2697, 2701 (1980). With respect to the members initially appointed, “each Governor shall designate one member to serve a term of two years and one member to serve a term of three years.” However, regularly “each member appointed to the (Pacific Northwest Electric Power and Conservation Planning) Council shall serve for a term of three years,” except as otherwise provided by State law. The chairman of the Council will be selected from the members by themselves. 16 U.S.C. §839b (a) (3) (2000); Pub. L. No. 96-501, §4 (a) (3), 94 Stat. 2697, 2701 (1980).

“All actions and decisions of the (Pacific Northwest Electric Power and Conservation Planning) Council shall be by majority vote of the members present and voting. The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of (A) a majority of the members appointed to the Council, including the vote of at least one member from each State with members on the Council; or (B) at least six members of the Council.” 16 U.S.C. §839b (c) (2) (2000); Pub. L. No. 96-501, §4 (c) (2), 94 Stat. 2697, 2704 (1980).

“The (Pacific Northwest Electric Power and Conservation Planning) Council shall establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as



is relevant to the Council's development and amendment of a regional conservation and electric power plan." 16 U.S.C. §839b (c) (11) (2000); Pub. L. No. 96-501, §4 (c) (11), 94 Stat. 2697, 2705 (1980). "The Council may establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions and responsibilities." 16 U.S.C. §839b (c) (12) (2000); Pub. L. No. 96-501, §4 (c) (12), 94 Stat. 2697, 2705 (1980). In case the Council establishes such voluntary advisory committees, the Council shall ensure that the membership for any advisory committee shall, "to the extent feasible, include representatives of, and seek the advice of, the Federal, and the various regional, State, local, and Indian Tribal Governments, consumer groups, and customers." 16 U.S.C. §839b (c) (13) (2000); Pub. L. No. 96-501, §4 (c) (13), 94 Stat. 2697, 2705 (1980).

"To obtain such information and advice as the (Pacific Northwest Electric Power and Conservation Planning) Council determines to be necessary or appropriate to carry out its functions and responsibilities, the Council shall, to the greatest extent practicable, solicit engineering, economic, social, environmental, and other technical studies from customers of the Administrator (of the Bonneville Power Administration) and from other bodies or organizations in the region with particular expertise." 16 U.S.C. §839b (c) (8) (2000); Pub. L. No. 96-501, §4 (c) (8), 94 Stat. 2697, 2704 (1980).

"The Administrator (of the Bonneville Power Administration) and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the (Pacific Northwest Electric Power and Conservation Planning) Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable." 16 U.S.C. § 839b (c) (9) (2000); Pub. L. No. 96-501, §4 (c) (9), 94 Stat. 2697, 2704 (1980).

The Secretary (of Energy) shall establish the (Pacific North-

west Electric Power and Conservation Planning) Council as a Federal agency if “the Council is not established and its members are not timely appointed in accordance with subsection (a) of this section, or if, at any time after such Council is established and its members are appointed in accordance with subsection (a) of this section (A) any provision of this chapter relating to the establishment of the Council or to any substantial function or responsibility of the Council (including any function or responsibility under subsection (d) or (h) of this section or under section 839d (c) of this title) is held to be unlawful by a final determination of any Federal court, or (B) the plan or any program adopted by such Council under this section is held by a final determination of such a court to be ineffective by reason of subsection (a)(2)(B) of this section.” 16 U.S.C. §839b (b) (1) (2000); Pub. L. No. 96-501, §4 (b) (1), 94 Stat. 2697, 2702 (1980).

At any time beginning one year after the regional conservation and electric power plan and the program to protect, mitigate, and enhance fish and wildlife are both adapted, “the (Pacific Northwest Electric Power and Conservation Planning) Council shall be terminated by the Secretary (of Energy) 90 days after the Governors of three of the States referred to in this subsection jointly provide for any reason to the Secretary a written request for such termination.” 16 U.S.C. §839b (b) (5) (A) (2000); Pub. L. No. 96-501, §4 (b) (5) (A), 94 Stat. 2697, 2703 (1980). “Upon such termination of the Council, the functions and responsibilities of the Council set forth in subsection (h) of this section shall be transferred to, and continue to be funded and carried out, jointly, by the Administrator (of the Bonneville Power Administration), the Secretary of the Interior, and the Administrator of the National Marine Fisheries Service, in the same manner and to the same extent as required by such subsection and in cooperation with the Federal and the region’s State fish and wildlife agencies and Indian tribes referred to in subsection (h) of this section and the Secretary (of the Interior) shall provide

for the transfer to them of all records, books, documents, funds, and personnel of such Council that relate to subsection (h) matters.” 16 U.S.C. §839b (b) (5) (B) (2000); Pub. L. No. 96-501, § 4 (b) (5) (B), 94 Stat. 2697, 2703 (1980).

260. The Pacific Northwest Electric Power and Conservation Planning Council shall prepare, adopt, and promptly transmit to the Administrator of the Bonneville Power Administration a regional conservation and electric power plan within two years after the Council is established and the members are appointed. “The adopted plan, or any portion thereof, may be amended from time to time, and shall be reviewed by the Council not less frequently than once every five years.” 16 U.S.C. §839b (d) (1) (2000); Pub. L. No. 96-501, §4 (d) (1), 94 Stat. 2697, 2705 (1980).
261. “A public hearing shall also be held in any other State of the region on the plan or amendment thereto, if the (Pacific Northwest Electric Power and Conservation Planning) Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which may be developed in that State and which the Administrator (of the Bonneville Power Administration) may seek to acquire.” 16 U.S.C. §839b (d) (1) (2000); Pub. L. No. 96-501, §4 (d) (1), 94 Stat. 2697, 2705 (1980).
262. 16 U.S.C. §839b (e) (1) (2000); Pub. L. No. 96-501, §4 (e) (1), 94 Stat. 2697, 2705 (1980). “Cost-effective” means “that such measure or resource must be forecast (i) to be reliable and available within the time it is needed, and (ii) to meet or reduce the electric power demand, as determined by the (Pacific Northwest Electric Power and Conservation Planning) Council or the Administrator (of the Bonneville Power Administration), as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.” 16 U.S.C. §839a (4) (A) (2000); Pub. L. No. 96-501, §3 (4) (A), 94 Stat. 2697, 2698 (1980).

263. 16 U.S.C. §839b (e) (1) (2000); Pub. L. No. 96-501, §4 (e) (1), 94 Stat. 2697, 2705 (1980).
264. The plan shall include the following elements which shall be set forth in such detail as the (Pacific Northwest Electric Power and Conservation Planning) Council determines to be appropriate: “(A) an energy conservation program to be implemented under this chapter, including, but not limited to, model conservation standards; (B) recommendation for research and development; (C) a methodology for determining quantifiable environmental costs and benefits under section 839a(4) of this title; (D) a demand forecast of at least twenty years (developed in consultation with the Administrator (of the Bonneville Power Administration), the customers, the States, including State agencies with ratemaking authority over electric utilities, and the public, in such manner as the Council deems appropriate) and a forecast of power resources estimated by the Council to be required to meet the Administrator’s obligations and the portion of such obligations the Council determines can be met by resources in each of the priority categories referred to in paragraph (1) of this subsection which forecast (i) shall include regional reliability and reserve requirements, (ii) shall take into account the effect, if any, of the requirements of subsection (h) of this section on the availability of resources to the Administrator, and (iii) shall include the approximate amounts of power the Council recommends should be acquired by the Administrator on a long-term basis and may include, to the extent practicable, an estimate of the types of resources from which such power should be acquired; (E) an analysis of reserve and reliability requirements and cost-effective methods of providing reserves designed to insure adequate electric power at the lowest probable cost; (F) the program adopted pursuant to subsection (h) of this section; and (G) if the Council recommends surcharges pursuant to subsection (f) of this section, a methodology for calculating such surcharges.” 16 U.S.C. §839b (e) (3) (2000); Pub. L. No. 96-501, §

4 (e) (3), 94 Stat. 2697, 2706 (1980).

“Model conservation standards to be included in the plan shall include, but not limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation. Model conservation standards shall reflect geographic and climatic differences within the region and other appropriate considerations, and shall be designed to produce all power saving that are cost-effective for the region and economically feasible for consumers, taking into account financial assistance made available to consumers under section 839d(a) of this title. These model conservation standards shall be adopted by the (Pacific Northwest Electric Power and Conservation Planning) Council and included in the plan after consultation, in such manner as the Council deems appropriate, with the Administrator (of the Bonneville Power Administration), States, and political subdivisions, customers of the Administrator, and the public.” 16 U.S.C. §839b (f) (1) (2000); Pub. L. No. 96-501, §4 (f) (1), 94 Stat. 2697, 2706-2707 (1980).

265. The (Pacific Northwest Electric Power and Conservation Planning) Council must consider these four elements: “(A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat, including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish, and (D) other criteria which may be set forth in the plan.” 16 U.S.C. §839b (e) (2) (2000); Pub. L. No. 96-501, §4 (e) (2), 94 Stat. 2697, 2706 (1980).
266. 16 U.S.C. §839b (h) (1) (A) (2000); Pub. L. No. 96-501, §4 (h) (1) (A); 94 Stat. 2697, 2708 (1980).
267. 16 U.S.C. §839b (h) (2) (2000); Pub. L. No. 96-501, §4 (h) (2), 94 Stat. 2697, 2708 (1980). “Such agencies and tribes shall have 90 days to respond to such request, unless the (Pacific Northwest

Electric Power and Conservation Planning) Council extends the time for making such recommendations. The Federal, and region's, water management agencies, and the region's electric power producing agencies, customers, and public may submit recommendations of the type referred to in paragraph (2) of this subsection. All recommendations shall be accompanied by detailed information and data in support of the recommendations." 16 U.S.C. §839b (h) (3) (2000); Pub. L. No. 96-501, §4 (h) (3), 94 Stat. 2697, 2708 (1980).

"The (Pacific Northwest Electric Power and Conservation Planning) Council shall give notice of all the recommendations and shall make the recommendations and supporting documents available to the Administrator (of the Bonneville Power Administration), to the Federal, and the region's, State fish and wildlife agencies, to the appropriate Indian tribes, to Federal agencies responsible for managing, operating, or regulating hydroelectric facilities located on the Columbia River or its tributaries, and to any customer or other electric utility which owns or operates any such facility. Notice shall also be given to the public. Copies of such recommendations and supporting documents shall be made available for review at the offices of the Council and shall be available for reproduction at reasonable cost." 16 U.S.C. §839b (h) (4) (A) (2000); Pub. L. No. 96-501, §4 (h) (4) (A), 94 Stat. 2697, 2708 (1980).

"The (Pacific Northwest Electric Power and Conservation Planning) Council shall provide for public participation and comment regarding the recommendations and supporting documents, including an opportunity for written and oral comments, within such reasonable time as the Council deems appropriate." 16 U.S.C. §839b (h) (4) (B) (2000); Pub. L. No. 96-501, §4 (h) (4) (B), 94 Stat. 2697, 2709 (1980).

268. 16 U.S.C. §839b (h) (5) (2000); Pub. L. No. 96-501, §4 (h) (5), 94 Stat. 2697, 2709 (1980). "The program shall consist of measures to protect, mitigate, and enhance fish and wildlife affected by

the development, operation, and management of such facilities while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent such measures are designed to achieve improved protection and mitigation.” 16 U.S.C. §839b (h) (5) (2000); Pub. L. No. 96-501, §4 (h) (5), 94 Stat. 2697, 2709 (1980).

269. 16 U.S.C. §839b (h) (6) (2000).

270. “Expenditures of the Administrator (of the Bonneville Power Administration) pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.” 16 U.S.C. §839b (h) (10) (A) (2000); Pub. L. No. 96-501, §4 (h) (20) (A), 94 Stat. 2697, 2710 (1980).

271. “The Administrator (of the Bonneville Power Administration) and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall (i) exercise such responsibilities consistent with the purposes of this chapter and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment for such fish and wildlife with the other purposes for which such system and facilities are managed and operated; (ii) exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the (Pacific Northwest Electric Power and Conservation Planning) Council under this subsection. If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate, and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall

- be borne by the Administrator in accordance with this subsection.” 16 U.S.C. §839b (h) (11) (A) (2000); Pub. L. No. 96-501, §4 (h) (11) (A), 94 Stat. 2697, 2710-2711 (1980).
272. 16 U.S.C. §839b (h) (11) (B) (2000); Pub. L. No. 96-501, §4 (h) (11) (B), 94 Stat. 2697, 2711 (1980).
273. For example, in 1991 and 1992, the National Marine Fisheries Service listed the three Snake River stocks and determined that the Columbia River stock was extinct. For the Endangered Species Act decisions by the National Marine Fisheries Service, see 56 Fed. Reg. 58619 (November 20, 1991) (Endangered Status for Snake River Sockeye); 57 Fed. Reg. 14653 (April 22, 1992) (Threatened status for Snake River Spring/Summer and Fall Chinook); 56 Fed. Reg. 29553 (June 27, 1991) (lower Columbia River Coho).
274. E-mail from Dr. John Volkman to Suzuki Hikaru (April 22, 2003). To know more detail idea of Dr. Volkman, see John M. Volkman, *How Do You Learn From a River?: Managing Uncertainty in Species Conservation*, 74 Wash. L. Rev. 719 (1999); John M. Volkman, *The Endangered Species Act and the Ecosystem of Columbia River Salmon*, 4 Hastings W.-N. W. J. Envtl. L. & Policy 51 (1997); John M. Volkman & W. E. McConnaha, *Through a Glass, Darkly: Columbia River Salmon, the Endangered Species Act and Adaptive Management*, 23 Envtl. L. 1249 (1993). As to Northwest Power Planning Act, see Wilkinson, *supra* note 26, at 210-211; Michael C. Blumm, *NEPA Meets the Northwest Power Act (and prevails)*, 25 Nat. Resources J. 1005 (1985); Michael C. Blumm, *The Northwest's Hydroelectric Heritage: Prologue to the Pacific Northwest's Energy Planning Conservation Act*, 58 Wash. L. Rev. 175 (1983); Roger D. Mellem, *Darkness to Drawn? Generating and Conserving Electricity in the Pacific Northwest: A primer on the NPPCA*, 58 Wash. L. Rev. 245 (1983); Henry M. Jackson, *The Pacific Northwest Energy Planning and Conservation Act — Solution for a Regional Dilemma*, 4 U. Puget Sound L. Rev. 7 (1980).



275. §5, the Forest Act, Law No. 249 of 1951.
276. It is important to mention that the Watershed Commission is not always established. The Watershed Commission is established only when the Minister of Land and Transportation or a prefectural governor wants to know public opinion about his or her river adjustment plan. §16-2 (3), the River Act, Law No. 167 of 1964. There was no opportunity for the general public to participate until the River Act was revised in 1997. This is the only opportunity for the general public to participate administrative river management activity, and the chance is narrowly limited.
277. There is already an aggressive Watershed Commission: the Yodo River Suikei Watershed Commission in Osaka. In January 2003, the Watershed Commission proposed the Minister of Land and Transportation a new watershed management plan with the key notes of flood control, irrigation, environmental protection, and public participation. Although this Watershed Commission is highly valued among the general public, whether its proposal is adopted in the actual plan is left the Minister's personal discretion.
278. Royal Proclamation of 1763 by King George III declared the territory beyond the eastern mountain ranges off limits to settlement and reserved to the tribes of the region. Although the Proclamation ceased when thirteen original colonies declared their independence from Great Britain in 1776, the legacy of the Proclamation was sifted into the early Indian policy. They considered purchasing Indian's lands to be a proper way in preference to driving them by force out of their country. In 1783, Commander-in-Chief, George Washington recommended Mr. James Duane, then head of the Committee of Indian Affairs of the Continental Congress, that: "In a word there is noting to be obtained by an Indian War but the soil they live on and this can be had by purchase at less expense, and without that bloodshed, and those distresses which helpless Women and Children

are made partakers of in all kinds of disputes with them.” George Washington to James Duane (September 7, 1783), quoted in David H. Getches, Charles F. Wilkinson & Robert A. Williams, Jr., *Cases and Materials on Federal Indian Law* 85 (4<sup>th</sup> Ed., West 1998). Then the time of treaties came.

The fundamental elements of the federal program were: “(1) Protection of Indian rights to their land by setting definite boundaries for the Indian Country, restricting the whites from entering the area except under certain controls, and removing illegal intruders; (2) Control of the disposition of Indian lands by denying the right of private individuals or local governments to acquire land from the Indians by purchase or by any other means; (3) Regulation of the Indian trade by determining the conditioned under which individuals might engage in the trade, prohibiting certain classes of traders, and actually entering into the trade itself; (4) Control of the liquor traffic by regulating the flow of intoxicating liquor into the Indian Country and then prohibiting it altogether; (5) Provision for the punishment of crimes committed by members of one race against the other, in order to remove the occasions for private retaliation which led to frontier hostilities; (6) Promotion of civilization and education among the Indians, in the hope that they might be absorbed into the general stream of American society.” Francis Paul Prucha, *American Indian Policy in the Formative Years: Indian Trade and Intercourse Acts, 1790–1834*, p. 1–3, 43–50 (1962), quoted in Getches, Wilkinson & Williams, *supra* note 278, at 88.

279. Getches, Wilkinson & Williams, *supra* note 278, at 88. The first law was enacted on July 22, 1790. An Act to regulate trade and intercourse with the Indian tribes, Chap. XXXIII, 1 Stat. 137, 137–138 (1790). It was a temporally act so that it was re-acted in 1793 and in 1799; An Act to regulate Trade and Intercourse with the Indian Tribes, Chap. XIX, 1 Stat. 329, 329–332 (1793); An Act to regulate Trade and Intercourse with the Indian Tribes, and to preserve Peace on the Frontiers, Chap. XXX, 1 Stat. 469,

469-474 (1796); An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, Chap. XLVI, 1 Stat. 743, 743-749 (1799); An Act to regulate trade and Intercourse with the Indian tribes, and to preserve peace on the frontiers, Chap. XIII, 2 Stat. 139, 139-146 (1802); An Act to regulate trade and Intercourse with the Indian tribes, and to preserve peace on the frontiers, Chap. CLXI, 4 Stat. 729, 729-735 (1834). These Trade and Intercourse Acts succeeded in controlling private parties' land transactions with Indians to some degrees, while huge tracts of land in eastern states such as Maine, New York, and Connecticut were acquired by states in transactions with tribes in violation of these Acts. However, white people's desire to acquire Indian lands knew no limitation, particularly in the southern states. Getches, Wilkinson & Williams, *supra* note 278, at 91, 94.

280. An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi, Chap. CXLVIII, 4 Stat. 411, 411-413 (1830) (codified as amended as 25 U.S.C. §174 (1988)). The Act provided that "it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States, west of the river Mississippi, not included in any state or organized territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there; and to cause each of said districts to be so described by natural or artificial marks, as to be easily distinguished from every other." Chap. CXLVIII, 4 Stat. 411, 411-412 (1830).
281. There are three important early cases of the United States Supreme Court about the legal position of Indian people against the United States. In 1823, the United States Supreme Court decided that, after European discovery, "the rights of the origi-

- nal inhabitants were necessarily impaired” and “rights to complete sovereignty were necessarily diminished.” *Johnson v. M’Intosh*, 21 U.S. (8 Wheat.) 543, 574. Nevertheless, native tribes had “rights of occupancy,” which made it illegal for settlers to move on to Indian lands. *Johnson v. M’Intosh*, 21 U.S. (8 Wheat.) 574, 584-85. See generally Felix S. Cohen, *Handbook of Federal Indian Law* 471-528 (Bobbs-Merrill 1982). Then in 1831, Indian Nations were characterized as “domestic dependent nations,” and the United States’ relationship with tribes was described as “resembling that of a ward to his guardian.” *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831).
282. A rider added to the Indian Appropriations Act of 1871 provided as follows: “—hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contact by treaty.” Getches, Wilkinson & Williams, *supra* note 278, at 152.
283. *Antoine v. Washington*, 420 U.S. 194 (1975) quoted in Getches, Wilkinson & Williams, *supra* note 292, at 152.
284. An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes, Chap. 119, 24 Stat. 388, 388-391 (1887).
285. An Act To conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes (Indian Reorganization Act of 1934), Pub. L. No. 383, Chap. 576, §§1, 4, and 10, 48 Stat. 984, 984-986 (1934).
286. About Isaac Stevens, see Wilkinson, *supra* note 9.
287. Treaty between the United States and the Yakama Nation of Indians. Concluded at Camp Stevens, Walla-Walla Valley, June

- 9, 1855, Ratified by the Senate, March 8, 1859. Proclaimed by the President of the United States, April 18, 1859, Article III, 12 Stat. 945, 952-953 (1855).
288. *Unites States v. Oregon*, 302 F. Supp. 899 (D. Or. 1969).
  289. *Unites States v. Washington*, 384 F. Supp. 312 (W. D. Wa. 1974).
  290. *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 696 n. 36 (1979). It is important that this principle does not automatically apply to the tribal fishing cases in Alaska and California.
  291. The Northwest Indian Fisheries Commission consists of many tribes: Nisqually, Squaxin Island, Puyallup, Jamestown S’Klallam, Port Gamble S’Klallam, Lower Elwha Klallam, Skokomish, Swinomish, Sauk-Suiattle, Upper Skagit, Tulalip, Makah, Stillaguamish, Muckleshoot, Suquamish, Nooksack, Lummi, Quinault, and Quileute. More information upon the Northwest Indian Fisheries Commission is available at <<http://www.nwifc.org/>>.
  292. Wilkinson, *supra* note 9, at 26.
  293. Interview with Dr. Charles Hudson, Public Information Manager of CRITFC, and Dr. Mike Matylewich, Fisheries Scientist of CRITFC (Portland, Oregon, November 11, 2003). The Columbia Basin’s four treaty tribes include the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederation Tribes of the Umatilla Indian Reservation, the Confederation Tribes and Bands of the Yakima Nation, and Nez Perce Tribe. More information upon the Columbia River Inter-Tribal Fish Commission is available at <<http://www.critfc.org/>>.
  294. Proclamation of August 29, 1873. Ichikawa, *supra* note 47, at 288 (note 268).
  295. Proclamation of December 17, 1878. Ichikawa, *supra* note 47, at 288 (note 268).
  296. The Hokkaido government, the Hokkaido prefectural assembly, and the Ainu organization appealed to the Japanese government: (a) to declare the Ainu people’s right under the Constitution of

- Japan; (b) to enforce the activity to protect the Ainu people's human rights; (c) to support the activity to succeed, protect, and diffuse the Ainu language and Ainu culture; (d) to establish a fund to promote the Ainu people's activities of their own; and (e) to establish a council including an Ainu representative as its member to continuously discuss the Ainu policy and the industrial policy to promote their economically independent.
297. Act for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture, Law No. 52 of 1997.
298. The Japanese government did not recognize the Ainu people's right on the ground of the understanding as follows: (a) there had not been a certain doctrine about native people's rights in the world; and (b) there are still sharply divided opinions between governments in the world in the definition of native people, their collective rights, and their self-determination rights.
299. §27, the Fishing Act, Law No. 267 of 1949.
300. As compared with average Japanese people, the Ainu people have low standings of living. In 1999, the Hokkaido government conducted a research on the actual condition of Utari's (Ainu people's) life. The result of the research proved that the proportion of the people on welfare in the Ainu people is twice as much as average Japanese people. It also proved that the thirty percent of the Ainu people found it difficult to make their livings. More information upon the research is available at the Ainu Affairs Office of the Hokkaido government, *Discrimination against Ainu and a gap between the Japanese and Ainu's standards of living are still found in our life*, <<http://www.pref.hokkaido.jp/life.kseikatu/ks-soumu/soumuka/ainu/jittai.html>>.
301. §§10 and 127, the Fishing Act, Law No.267 of 1949.
302. Ichikawa, *supra* note 47, at 295–300.