



LAWS, TREATIES, AND SNAKE RIVER SALMON RECOVERY

Many laws and treaties exist to help protect imperiled salmon – but they haven't always been fully enforced

The statutes and treaties requiring restoration of the Snake River and its salmon and steelhead have a long history. This reflects the importance of salmon to Northwesterners and the nation. The oldest of the treaties, with Columbia Basin Indian tribes, date back to 1855 and 1856. A more recent treaty, the Pacific Salmon Treaty between Canada and the United States, was signed in to 1985. Two federal laws protecting the Snake River and its salmon, including the Endangered Species Act and the Clean Water Act, date to the early 1970s. The Northwest Power Act, which calls for balancing salmon protections with hydroelectric generation, was enacted in 1980.

Despite extensive protections through statute and treaty, four Snake River salmon and steelhead stocks are considered in danger of extinction, and one, Snake River coho salmon, went extinct in the 1980s. Strong laws are necessary, but not always sufficient, to recover salmon – salmon need the public to help ensure that federal and state agencies enforce the laws already on the books.

Indian Treaties

Salmon play a central role in the spiritual and cultural identity of many Columbia River Basin Indian Tribes and are also an important component of tribal economies. In 1855-56, the U.S. government signed treaties with the Tribes guaranteeing them the "right of taking fish" at their usual and accustomed fishing sites in return for 40 million acres of land. The U.S. Supreme Court has ruled that this entitles the tribes to half of the Columbia Basin salmon harvest.

The Tribes have a strong legal argument that treaty fishing rights prohibit actions that reduce fish harvests to levels below those necessary for the treaty tribes to make a "moderate living." Thus, unless runs are restored to harvestable levels (they are currently only a small fraction of those levels), the federal government remains vulnerable to legal action by the Columbia River tribes. To date, there is no evidence harvestable Snake River salmon and steelhead runs can be restored with the lower Snake River dams in place.

In short, saving "museum piece" salmon runs will not be enough to meet tribal treaty obligations. Restoring harvestable stocks is the only solution. If harvestable stocks are not restored, federal taxpayers could be on the hook to compensate the tribes for their lost right to harvest salmon. The tribes refuse, on moral and religious grounds, to estimate what that compensation might be, but others have pegged it between \$6 and \$12 billion. This is far higher than the cost of restoring salmon by removing the four lower Snake River dams.

Pacific Salmon Treaty

More recently, the U.S. - Canada Pacific Salmon Treaty of 1985 required that "each Party shall conduct its fisheries and its salmon enhancement programs so as to ... provide for each Party to receive benefits equivalent to the production of salmon originating in its waters." This is particularly important because national boundaries are irrelevant to salmon; they don't stay in their home waters. Those originating in Canadian waters are often caught off of Alaska, and many salmon originating in Alaska, Washington, Oregon, and California are caught in Canadian waters.

As a result of the decline in salmon from American rivers and streams, in 1999 Canada and the U.S. amended the Pacific Salmon Treaty to further reduce harvest levels of ocean fisheries. Tribal, recreational, and commercial fishers have seen further job and income losses as a result. Restoration of Columbia and Snake river salmon runs is essential under both tribal and the Canadian treaties.

Endangered Species Act

The Endangered Species Act of 1973 is a powerful tool for forcing stronger action to protect and restore Snake River salmon. The statute requires the federal government to first prevent extinction and then recover at-risk species.

Snake River salmon and steelhead were already well below historical numbers by the time the lower Snake River dams were constructed, but the completion and continued operation of the dams has pushed remaining Snake River stocks to the brink of extinction. In 1991, Oregon Trout and the Shoshone-Bannock Indian Tribe filed petitions to list Snake River fall chinook and Snake River sockeye salmon under the Endangered Species Act. The National Marine Fisheries Service (NMFS) subsequently listed both populations. By 1999, twelve different stocks of Columbia Basin salmon and steelhead were listed, four in the Snake and eight in the Columbia.

Full enforcement of the survival and recovery standards of the Endangered Species Act remains a challenge due to political resistance by current and past administrations. In the mid-1990s, NMFS concluded that federal dams and reservoirs were jeopardizing Snake River salmon, but the measures proposed to avoid jeopardy weren't up to the task, and salmon runs continued declining. In 2000, a detailed salmon plan (or biological opinion) for the Columbia and Snake rivers was issued, but in 2003 the plan was ruled illegal in federal court and a revision was ordered. The revised salmon plan came out in late 2004, was even weaker than the 2000 plan, and was invalidated by the same court that threw out the 2004 plan. In 2008, the Bush administration rewrote the plan, and the Obama administration is currently defending the Bush plan in court. The judge overseeing the case has promised more severe consequences if he determines that the 2008 plan does not comply with Endangered Species Act requirements.

Clean Water Act

Growing public awareness and concern for controlling water pollution led to enactment of the Clean Water Act in 1972. In addition to chemical pollution, the Clean Water Act also regulates thermal pollution, or water temperature, for the protection of aquatic environments.

In 1997, Oregon and Washington water quality agencies as well as the federal Environmental Protection Agency determined that the reservoirs behind the lower Snake River dams were in violation of Clean Water Act temperature and dissolved gas standards. Studies have shown that high water temperatures in the reservoirs, especially in late summer and early fall, significantly reduce the survival of out-migrating juvenile salmon and steelhead. High temperatures also harm returning adult salmon and steelhead.

Short of removing the dams, no inexpensive solutions exist to remedy these temperature problems. Indeed, to satisfy laws and treaties both old and new, the best solution is to remove the four lower Snake River dams and allow the Snake River's salmon and steelhead populations to rebuild naturally.

Northwest Power Act

The Northwest Power Act was passed in 1980 as a component of the Federal Power Act. The Act seeks to ensure that the hydropower production is balanced with the maintenance of healthy fish and wildlife populations in the Columbia Basin, including salmon and steelhead. The Act establishes the Northwest Power and Conservation Council and directs the Council to adopt a regional energy conservation and electric power plan and a program to protect, mitigate and enhance fish and wildlife in the Columbia and Snake rivers and their tributaries. The Act also sets forth provisions the Administrator of the Bonneville Power Administration must follow in selling power, acquiring energy resources, implementing energy conservation and efficiency measures, and setting electricity rates.