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## **State has duty to maintain aboriginal fish runs**

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A U.S. District Court has ruled that aboriginal treaty rights require the State of Washington to repair culverts built under roadways that impede salmon migration. The ruling could have broader implications in Canada, according to an SFU historian involved in the case.

A report by SFU professor Joseph Taylor, written at the request of 20 regional tribes and describing the historical context of salmon habitat, and attitudes when treaties were negotiated, became part of the judge's summary decision in their favour.

Says Taylor, who holds a Canada Research Chair at SFU: "This ruling has critical relevance, as the treaties are now interpreted as compelling an ecological duty upon the state, not only to respect aboriginal rights to fish, but to ensure that viable runs are maintained by the state." The tribes claim the culverts are hindering fish passage and diminishing the number available for harvest. The trial is proceeding this week, focusing on the technical problems of repairing existing culverts.

The tribes argued that the culverts close off at least 249 linear miles of stream, which would provide more than 1.5 million square meters of productive rearing habitat for juvenile fish. They estimate that clearing the blocked culverts would result in an increase in production of 200,000 fish. Taylor adds that because the runs are also fished by commercial fishers in B.C. and Alaska the ramifications move beyond the U.S. He says the decision will have relevance to the state of negotiations between First Nations and the B.C. and federal governments concerning court cases and land claims. "There are clear implications in this decision for events in B.C., where the land claims process continues because the British and Canadian governments did not ratify treaties with aboriginal groups in the province," Taylor notes.

While the two countries differ in certain aspects of aboriginal rights and law, he says both stem from the same basic legal culture concerning territorial acquisition. "When it comes to the specific treaties, there is some strong evidence that American representatives borrowed their language from documents previously written by James Douglas of the Hudson's Bay Company, and modern tribal organizations on both sides of the border are very clearly paying attention to each other's tactics in these common concerns."

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