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March 2, 2009

## **BY FACSIMILE TRANSMISSION AND FIRST CLASS MAIL**

John Carlson, Jr., Executive Director  
California Fish & Game Commission  
1416 Ninth Street  
P.O. Box 944209  
Sacramento, CA 94244-2090

Donald Koch  
Department of Fish and Game  
1416 Ninth Street  
Sacramento, CA 95814

*Re: Petition for Administrative Rulemaking*

Dear Director Koch and Members of the Commission:

The following organizations (“Petitioners”) hereby petition the Fish and Game Commission (“Commission”) and Department of Fish and Game (“Department”), pursuant to Government Code § 11340.6, to immediately repeal a portion of Title 14, § 7.50(b)(91.1)(b)(2) of the California Code of Regulations:

Bedrock Prospectors  
Eastern Oregon Mining Association  
Greenhorn Grange  
High Desert Treasure Club  
Klamath Basin Alliance  
North Central Washington Prospectors  
North American Miners Association, Inc.  
People for the USA Grange  
Public Lands for the People Inc.  
Resources Coalition  
The New 49’ers, Inc.  
Waldo Mining District  
Washington Prospectors Mining Association  
Willamette Valley Miners

Specifically, Petitioners seek the repeal of an exception to the General Area Closures set forth in § 7.50(b)(91.1)(b)(2): “Exception: members of the Karuk Indian Tribe listed on the

current Karuk Tribal Roll may fish at Ishi Pishi Falls using hand-held dip nets.” The Commission has authority to grant this Petition pursuant to, *inter alia*, §§ 200 & 316.5 of the Fish and Game Code.

Petitioners take this step with extreme reluctance, but cannot remain silent while their own activities in the vicinity of this fishery, with no adverse impact on fish whatsoever, are threatened by the Tribe and Department. Specifically, the Tribe and Department appear to contend that status of fishery resources in the area is so dire that any and all human activity which fish biologists speculate may injure fish—except intentional killing of the fish for human consumption—must be shut down. The Tribe, Commission and Department are actively involved in efforts to restrict other economic activities in the Klamath Basin, including but not limited to local agriculture, logging, mining and hydroelectric generation. Indeed, the Tribe has commenced one federal and two state lawsuits and has repeatedly sought legislative and administrative actions attempting to destroy federally-protected mining rights. At the same time, the Commission and Department continue to authorize, and the Tribe continues to conduct, an unregulated dipnet fishery with substantial direct, immediate, and adverse impacts on fishery resources—the fish are killed for human consumption.

### **Impact of the Ishi-Pishi Fishery**

Overfishing is a well-understood mechanism for injury to anadromous fish populations. The starting point for preventing overfishing is monitoring catch. Unfortunately, the Department has failed to provide meaningful oversight of the Karuk fishery at Ishi-Pishi Falls. A September 22, 2002 article in the *Los Angeles Times* (Exhibit 1), reports that the fishery is conducted in “a gray area of the law” and that “[n]o one officially keeps track of the 2,000 or so salmon that the tribe can take in a good year”:

“Right now, their fish are not even ‘paper fish,’” said Neil Manji, a senior fisheries biologist for the California Department of Fish and Game. “Anything they catch, it’s kind of like ghost fish.”

In the article, tribal leader Leaf Hillman is quoted to explain why the fish aren’t counted:

“Then it would have to come out of someone’s allocation somewhere,” said Leaf Hillman, the tribe’s natural resources director. “No one talks about it because no one wants to deal with it. People have been satisfied for many, many years to pretend the issue doesn’t exist.”

The article suggests that a single netter can catch a hundred salmon in a day, which “far exceeds the legal three fish daily catch for a single fisherman”. One local resident in Happy Camp is prepared to testify that the Karuks are sufficiently adept at catching salmon in their dipnets that the only limiting factor in how many fish are killed is how many fish they are willing or able to pack out of the Falls area.

By letter dated December 29, 2005, in a letter directed to Director Koch in his former capacity as Regional Manager for the North Coast Region, petitioners formally requested, pursuant to the California Public Records Act, all records of the Department “concerning the subject of fishing by the Karuk Tribe or its members . . .”. The request was reiterated and

expanded by letter of January 23, 2006, ultimately producing a statement from the Department's attorney, Mr. Stephen Puccini, that no responsive documents, other than the fishing regulations themselves, existed.

Petitioners have also made recent inquiry of (1) the Department's representatives, who have confirmed that the Department does not review, and does not even possess, records of Karuk Tribal harvest, (2) federal fish regulators, who also do not review or possess records of Karuk Tribal harvest; and (3) the Karuk Tribe itself, which professes to have no records. The Department is essentially permitting the Karuk Fishery to operate without any oversight or estimate of harvest impacts. Given the lack of any monitoring data, and the direct mortality involved, it is entirely possible that this fishery is causing more damage to protected salmon stocks than all other activities in the Klamath Basin combined, which ought to make it a very high priority for the Commission and Department to address.

It should be noted that dipnetting, like other adult harvests of salmon, includes the harvest of mature, egg-laden females returning to spawn. The loss of a single such adult female is literally thousands of times more important to the population dynamics of salmon than the loss of eggs, fry or even juvenile salmon rearing in the river before outmigration, because the females typically produce thousands of eggs and fry.

### **CEQA Violations**

Pursuant to § 21100 of the Public Resources Code, the Commission or Department is required to prepare and certify an environmental impact report "on any project which they propose to carry out or approve that may have a significant impact on the environment". The Department did prepare an EIR in 2006 addressing Inland Sport Fishing Regulations, but it did not even address the Karuk Tribal Fishery.

The Commission and Department may contend that the regulations authorizing unregulated Karuk fishing are exempt from any requirement that an EIR be prepared pursuant to § 21080.5 of the Public Resources Code and 15 C.C.R. § 15251(b), but it is doubtful that the provision can qualify for this exemption as the Commission and Department must prepare substitute written documentation meeting various criteria under § 21080.5.

The Ishi Pishi Falls fishery manifestly has a significant effect on the environment, and the Commission and Department have manifestly failed to "minimize any significant adverse effect on the environment" (*see* § 21080.5(d)(2)(A) & 3(A)). Indeed, based on the Department's response to the Public Records Act requests discussed above and other inquiries, the Commission and Department have failed to conduct any environmental analysis whatsoever concerning this fishery. Even if the Commission and Department do have lawful authority to grant special rights under California law to Karuk tribal members (*but see infra*), it is entirely irresponsible for those rights to be granted without a careful study and regulation of the environmental impacts.

While petitioners would prefer not to put a stop to Tribal fishing, in view of the Department's strategy of regulating nearly all other productive activity in the area out of existence on account of salmon declines, stopping Karuk fishing (other than in compliance with generally applicable fishing regulations) is the only responsible thing to do until a full

CEQA or other legally-sufficient review is completed to determine the impacts. The Department must pursue a regulatory approach that prevents continuing harm to threatened fishery resources and prevents unnecessary harm to other economic activities which support *all* local communities and cultures in and around Siskiyou County.

### **Unlawful Taking of Listed Species**

Coho salmon in the Klamath River are listed as a federally-protected threatened species, 50 C.F.R. § 223.102(a)(10), and any take of such fish (with an intact adipose fin) is a violation of federal law, 50 C.F.R. § 223.203(a). They are also listed as threatened under California law. 14 C.C.R. § 670.5(b)(2)(E).

According to a November 2005 report on the Karuk Tribal diet (excerpt, Figure 5, attached as Exhibit 2), 3.2% of Karuk households reported harvesting “11 to 50” coho, and 11.1% of Karuk households reported harvesting “10 or less” coho in the 2004-2005 season, a season in which catches were reportedly at “record lows”. A 2006 master’s thesis at Humboldt State University (excerpt, Figure 1, attached as Exhibit 3) reports that 30% of the tribal households harvested coho.

Petitioners are unaware of any documentation concerning very recent harvests, consistent with the Department’s grossly irresponsible “ghost fish” approach to Karuk Tribal harvest. However, representatives of Petitioners have observed the harvests at Ishi Pishi Falls in recent years, including years in which coho salmon were ostensibly protected as an endangered species, and have not observed the Karuk Tribal members making any attempt to distinguish between listed and unlisted fish, or fish with or without an intact adipose fin.

Petitioners also note that the current draft of the “Karuk Tribe Department of Natural Resources Eco-Cultural Resources Management Plan”<sup>1</sup> does not specify any protections whatsoever for coho salmon, referring only to the goal “protect activities in tributaries that contribute to the quality and availability of spawning, rearing and migration habitat, for Threatened and Endangered, anadromous, and resident fish populations”. The Plan acknowledges that:

“Fish harvested include; [*sic*] Fall Chinook Salmon, Fall Winter and early Spring Run Steelhead, Coho Salmon, Crayfish, Trout and Pacific Lamprey. *Many of the listed fish are harvested at Ishi Pishi Falls*, while all are harvested to a lesser extent at many locations throughout the Karuk Aboriginal Territory. Ishi Pishi Falls is currently the only place traditional salmon fishing methods are consistently practiced and known by management agencies and the general public.” (Emphasis added.)

Indeed, the Plan acknowledges that no uniform obeisance is given to the Endangered Species Act, noting that some “Karuk Tribal members continue to practice traditional fishery management practices”, including some who “refuse to purchase fishing licenses”, while “many others [*assertedly*] go by the regulatory policies of the California Department of Fish and Game”.

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<sup>1</sup> <http://karuk.us/dnr/pdf/Public%20releaseECRMP%20May%202006.pdf>

For all these reasons, it can safely be presumed that Karuk Tribal members are regularly engaged in a widespread and wanton unlawful take of listed species in violation of federal law, a violation to which the Department has contributed through its failure to provide any specific guidance or oversight to the fishery at Ishi Pishi Falls. Even if Tribal members do not kill and consume the coho themselves, their action of indiscriminate dipnetting constitutes an unlawful “take” within the meaning of the ESA, for “take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”. 16 U.S.C. § 1532(19). *See also* Fish and Game Code § 2080 (parallel California prohibition)

A number of recent cases demonstrate that governmental entities that authorize conduct that results in take of listed species can be indirectly liable for such take. Many of these cases have relied upon § 9(g) of the Federal Endangered Species Act, which makes it unlawful for any person “to attempt to commit, solicit another to commit, or cause to be committed, any offense” prohibited by the Endangered Species Act. *E.g., Strahan v. Coxe*, 127 F.3d 155 (1st Cir. 1997) (Massachusetts liable for authorizing commercial fishing). Petitioners expect to give notice, pursuant to 16 U.S.C. § 1540(g), of intent to sue the Commission and Department for violations of § 9(g) if the Petition is rejected.

### **The Need for Fishery Restrictions**

Ishi Pishi Falls is located just upstream from where the Salmon River branches off from the mainstem Klamath River. The Tribe and Department have sought to severely limit and shut down suction dredge mining in numerous areas above the Falls, ostensibly to protect anadromous fish spawning in the area. Local agricultural interests face crippling and potentially insurmountable permitting requirements, again spearheaded by the Tribe and Department, which are ostensibly invoked to protect Klamath River anadromous fish. The Tribe, Commission and Department even seek to remove large hydroelectric dams providing significant public benefits notwithstanding (1) the historic compatibility of such projects with large and healthy fish runs,<sup>2</sup> and (2) massive and adverse impacts to salmon habitat through toxic sediment releases against which all other human activities in and around the Klamath River pale by comparison.

In particular, fish runs were perceived as adequate for decades after the last dam was constructed on the Klamath River, during a time when agricultural and mining operations were of a substantially larger scale with assertedly greater impacts on fisheries. It is fundamentally irrational and unfair to permit unregulated fisheries of the type that destroyed Klamath salmon runs in the first place (then unrestricted cannery operations at the mouth of the river) to persist while destroying large sectors of other economic activity with no appreciable effect on run sizes.

With respect to suction dredge mining, the Department is well aware, from its participation the case of *Karuk Tribe v. Department of Fish and Game*, and the record therein,

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<sup>2</sup>Petitioners acknowledge that coho runs have never been large and healthy, but that status long preceded most Klamath Dams. As far back as the 1912-13 season, only an estimated 49 coho were taken at the Klamathon racks, an egg-taking facility that effectively blocked all salmon runs. *See* [http://www.dfg.ca.gov/fish/documents/SAL\\_SH/SAL\\_Coho\\_StatusNorth\\_2002/SAL\\_Coho\\_StatusNorth\\_2002\\_D.pdf](http://www.dfg.ca.gov/fish/documents/SAL_SH/SAL_Coho_StatusNorth_2002/SAL_Coho_StatusNorth_2002_D.pdf) (number refers to female coho).

of the lack of any evidence that miners have so much as injured a single anadromous fish in this area—or anywhere else. The Tribe and Department have sought action against suction dredge mining on the basis of speculation by biologists that some effects of suction dredge mining are adverse to salmonid habitat, and further speculation that the adverse impacts outweigh the beneficial ones. Yet repeated studies have failed to demonstrate any measurable link between such impacts and salmonid populations. Most notably, Professor Bayley’s study showed that even when the impacts of unlawful mining (dredging into banks, etc.) are considered, no effect can be measured. Numerous other studies have failed to demonstrate any adverse population impacts whatsoever from the rural agricultural and forestry activities being regulated out of existence by the Department.

It is a well-established principle of California law that human activities are to be restricted pursuant to the environmental laws only to the extent required to mitigate their adverse effects on California Fish and Wildlife. The California Endangered Species Act specifically provides that agencies shall develop measures that avoid jeopardizing listed species “while at the same time maintaining the project purpose [here suction dredging, agriculture, hydroelectric generation and other important productive activity] to the greatest extent possible” (Fish & Game Code § 2053); where mitigation measures are required of private parties, “the measures or alternatives required shall be roughly proportional in extent to any impact on those species that is caused by that person” (*id.* § 2052.1). The general principle of limiting restrictions to the minimal extent necessary is also incorporated into CEQA, and made expressly applicable to judicial relief such as the injunction the existing parties propose to have this Court enter. *See* Public Resources Code § 21168.9(b) (court’s orders “shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division”).

The Department’s and Tribe’s support for additional restrictions upon suction dredge mining and other activities, notwithstanding their inability to demonstrate actual and *measurable* impacts upon salmonid species, suggests that the status of local anadromous fish populations is sufficiently dire that there can be no justification for the continued wholesale slaughter of these fish for private gain. In the case of the threatened coho, both the United States and the State of California have found these fish are likely to become an endangered species.

A recent report by California Trout<sup>3</sup> identifies several other runs of anadromous fish in the Klamath River Basin “regarded as in danger of extinction within the next 50-100 years,” including Klamath Mountains Province summer steelhead and Klamath-Trinity spring chinook. Harvest of wild steelhead is restricted for every other California fishing group except the Karuk Tribe at Ishi Pishi Falls. Of particular importance with respect to the fishery at Ishi Pishi falls are “dwindling populations of spring chinook in Elk, Indian, [and] Clear . . . Creeks . . .”—upstream from the Falls. The experts engaged by California Trout concluded that “[r]emoval of even a small number from the population by [means of harvest] presumably has an effect . . .”.

Petitioners assume that the Commission and Department, in evaluating this petition, will also utilize the extensive records already before the Commission and Department concerning the status of anadromous fish runs in the Klamath River, and that petitioners need not provide the Department with the information already in its own files. If this assumption is incorrect, please advise us and we will supplement the Petition.

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<sup>3</sup> Available at <http://www.caltrout.org/SOS-Californias-Native-Fish-Crisis-Final-Report.pdf>.

In any event, the status of fish runs as revealed by the regulatory efforts of the Commission and Department (outside the context of the Karuk Tribal fishery) does not afford the Department and Commission a factual basis for continuing to authorize an unregulated fishery on the Klamath River. It is particularly irrational for the Department to suffer this fishery while pursuing extensive regulation against other interests in the Klamath Basin whose impacts on the fish are too small to be measured—while allowing the Karuk Tribe an unlawful right to unregulated takings which may be the most significant continuing causative factor in declines of protected fish. It is also a gross failure of the duty of the Commission and Department's duty as trustee to protect the State's fish and wildlife resources "held in trust for the people of the state by and through the Department". (Fish and Game Code § 711.7(a).)

### **A Special Rights Fishery for the Karuk Tribe Is *Per Se* Unlawful**

The law also does not permit such a fishery. The United States Government terminated federal recognition of the Karuk Tribe pursuant to Public Law 588 of August 13, 1954, making no provision, as it sometimes did with respect to other Native American Tribes, for recognition of any continuing Tribal fishing rights. While the Assistant Secretary for Indian Affairs of the U.S. Bureau of Indian Affairs determined in 1978 to deal with the tribe for the limited purpose of providing federal benefits, *see* 13 I.B.I.A. 76, 78 (Jan. 8, 1985), the Assistant Solicitor for Indian Affairs confirmed in 1994 that the tribe possessed no federally-reserved fishing rights (Memorandum, M.J. Anderson to W. Shake, U.S. Fish & Wildlife Service, Mar. 7, 1994). More recently, Congress specifically rejected proposed H.R. 2875, to grant federal fishing rights to the Karuk Tribe.

The powers of the Commission and Department are limited by Article 4, § 20 of the California Constitution to "such powers relating to the protection and propagation of fish and game as the Legislature sees fit", and the Legislature's delegation of "the power to regulate the taking or possession of . . . fish" is limited "to the extent and in the manner prescribed" in the Fish and Game Code. Fish & Game Code § 200.

No provision of the Code or other California statute authorizes any special fishing rights for members of the Karuk Tribe. Where the Legislature has conferred special fishing rights on Native American tribes, the Legislature has done so specifically, and only for tribes with federally-recognized fishing rights, under conditions that carefully regulate and limit the harvest. *E.g.*, Fish and Game Code § 7155 (regulating Yurok harvest).

Nor does any provision of California law purport to afford the Commission or Department general authority or administrative discretion to recognize Native American Tribes or define the scope of Tribal rights.<sup>4</sup> Fish and Game Code §§ 16500-541 does afford the Department authority to enact regulations concerning tribal fishing consistent with any agreement or compact with the Yurok or Hoopa Tribes, but it does not extend to the Karuk Tribe, and given the absence of any such agreement, is irrelevant in any event.

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<sup>4</sup> In those cases where California officials have been authorized to deal with Native American Tribes, the scope of their authority has been limited to dealing with "federal recognized Indian Tribes on Indian lands in California in accordance with federal law". Cal. Const. Art. 4, § 19.

Article 1, § 25 of the California Constitution vests the right to fish in “the people” generally, and Article 1, § 7 specifically declares that “a citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens” and generally provides “equal protection of the laws”. Simply put, even if the Legislature had purported to grant the Commission or Department power to grant special fishing rights to a class of California citizens without regard to any special federal rights—here the Karuk Tribe—the California Constitution would not permit such special treatment.

Such special treatment also runs afoul of federal supremacy principles insofar as the grant of unrestricted rights to harvest endangered and other federally regulated salmon would interfere with the policies of the federal regulatory scheme over tribal harvest. *Cf., e.g., White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) (federal supremacy displaces Arizona attempt to levy taxes on federally-regulated tribal harvest activities).

### Conclusion

For the foregoing reasons, it is imperative to eliminate the Karuk Tribal fishery at Ishi Pishi Falls unless and until an Act of Congress provides federally-protected fishing rights for members of the Tribe. It is our understanding that pursuant to Government Code § 11340.7(a) or otherwise, the Department should notify petitioners of its response to the petition within 30 days. Petitioners will take the lack of a response after that time period as a denial of the Petition, or if the Petition is otherwise denied, commence legal proceedings against the Department and Commission. We urge the Commission and Department to accept the Petition and move forward with appropriate rulemaking proceedings to remove the Karuk fishery exemption from its sportfishing regulations. This notice is also issued pursuant to § 388 of the Code of Civil Procedure and § 21167.7 of the Public Resources Code.

Sincerely,



James L. Buchal  
Counsel to Petitioner The New 49'ers, Inc.

cc: Jerry Brown, Attorney General



## Los Angeles Times News

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Archive for Sunday, September 22, 2002

# Tribe Forgoes Law in Quest for Salmon

By Don Thompson

September 22, 2002 *in print edition B-8*

Bare-chested, his thick braid trailing midway down his back, Rony Reed straddled a slick boulder at the edge of Ishi Pishi Falls while balancing an awkward 18-foot-long dip net.

He is one of little more than a dozen veteran Karuk tribal fishermen keeping alive a tradition passed from father to son for thousands of years.

It's practiced now in a gray area of the law.

No one officially keeps track of the 2,000 or so salmon that the tribe can take in a good year, despite all the lawsuits and the millions of dollars spent to monitor and replenish the seasonal salmon runs on northwest California's Klamath River and its tributaries. In a bad year, the second largest tribe in California can catch as few as 400 fish.

"Right now, their fish are not even 'paper fish,'" said Neil Manji, a senior fisheries biologist for the California Department of Fish and Game. "Anything they catch, it's kind of like ghost fish."

Federal legislation that would have legitimized the tribe's salmon catch fell victim to the Klamath Basin farmers' water crisis last year. The tribe hopes to try again soon.

Around the time of the Gold Rush, the Karuks were herded into the Hoopa Valley Indian Reservation with the Hoopa and Yuroks near the mouth of the Klamath.

The tribe's nearly 3,200 members have long since migrated back upriver to their ancestral riverside homes in the Klamath Mountains as far east as Yreka, but get no

percentage of the three tribes' official salmon allocation.

That has caused tension between the tribes, although they have united in a common fight to get more water from Klamath Basin and Central Valley farmers.

It also led occasionally, since the 1960s, to Karuks being arrested for fishing illegally, although that hasn't happened since the mid-1990s.

Given the religious and political land mines, neither the state nor federal government has been eager to block the Karuk's fishing. But while the tribe keeps track internally, its salmon take isn't officially recorded.

"Then it would have to come out of somebody's allocation somewhere," said Leaf Hillman, the tribe's natural resources director. "No one talks about it because no one wants to deal with it. People have been satisfied for many, many years to pretend the issue doesn't exist."

The Karuk culture is centered on Ishi Pishi Falls, where the rushing Klamath River narrows for a quarter of a mile and creates a natural barrier to salmon migrating to the ocean or upriver to spawn and die. It's the only area where the tribe now takes its fish.

The falls are created by the sacred mountain that the Karuks call Auich and others call Sugarloaf.

"It's the cradle of our civilization, where we came from when humans were transformed," Hillman said.

The tall, wooded bluff is home to Duck Hawk, a peregrine falcon that watches over the world in tribal teachings. A falcon shrieked out its call repeatedly as it circled overhead, which Hillman considered a good omen.

But Reed's dip net soon broke, before he could catch a spring-run salmon. He tried again to demonstrate with an 11-foot-long net used to teach a child. It too soon broke against the rocks as he jammed it into the frothing whitewater.

The fall salmon run is best now, Reed said. On a good day, in a good year, a veteran netter can catch a hundred salmon, working to exhaustion. That far exceeds the legal three-fish daily catch for a single fisherman, but traditionally it makes sense for the tribe to send its best fishermen to catch as many as they can.

It's a man's job, by tradition. It's considered taboo – and bad luck – for a woman even to observe the fishing.

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Most salmon are given away fresh; tribal tradition calls for the fisherman to share his catch with whomever asks, even if that means splitting half a fish. The remainder is smoked into jerky, Reed said: "They call that Indian candy."

"When my sons were babies, I took them down to the falls," Reed said. "It's been handed down from generation to generation – thousands of generations."

His youngest son, 2-year-old Ramy, recently learned one of his first words: "aama," Karuk for "salmon."

His 7-and 8-year-old sons will begin practicing with short nets this fall. His older sons, ages 16 and 17, are studying the fishery this summer as part of a junior biologist program. His 14-year-old daughter is learning traditional ways at cultural camps.

"We're teaching our children as best we can," Reed said.

Harold Tripp is one of the tribe's master fishermen at age 51.

As a child, he learned from his elders how to cut 18-foot-long fir poles and lash them into a frame, how to bend supple white oak branches over a fire to form a three-foot hoop at the end of the fir poles, and how to string within that hoop a 6-foot-long cone-shaped, hand-tied cotton net.

The rig becomes absurdly heavy when sopping wet and containing a flopping 30-pound salmon. So a second man, called the "clubber," stands by the fisherman's side ready to grab the fish – and the fisherman, if he starts to slide into the swirling rock-strewn rapids.

"You've got to be smarter than the fish, is what they told me when I started," Tripp said. "You've got to be sneaky because they see you, they hear you, they know you're there."

As important is learning "the medicine" – private prayers, spiritual and physical preparation before fishing begins, often accompanied by sprinkling herbs on the water.

"This all ties into our religious beliefs because we believe we have to get fish to our people," Tripp said. "It's a spiritual connection – it's a spiritual food."

Tripp is passing on the traditions, and the medicine, to his own son now. Phillip, 11, already has caught 11 salmon.

Despite legal questions over the tribe's fishing, Tripp and others believe that they have

no choice.

"From the beginning of time, we've always fished here," Tripp said. "Our religious beliefs are if we don't eat some of the fish, there won't be any more fish.

"I have to rely on faith – we do our medicine and we catch our fish," he said. "My grandmother told me as long as one person believes, we're still going to be out here."

In August, the Karuks gathered near their sacred falls for a war dance over the river's future – but a war dance with a difference. Non-tribal community members, environmentalists and anyone who wished were invited to attend, as they have been the last four years.

"Before you go to war, you try to figure out how not to go to war," Reed said.

Traditionally, enemies would repeatedly challenge each other within the fire-lit dance circle, he said, "and you don't walk away from the dance until you have a solution."

Reed and his sons were among the dancers donning feathers and war paint as brother challenged brother, father challenged son, friend challenged friend, symbolically working through conflict and toward unity.

"In the end, everybody jumps out there [together], dancing and praying to the Creator," Reed said.

"We're basically praying to the Creator to make things right along the river," he said. "We're asking the Creator for guidance and wisdom to carry on our traditions, and deal with contemporary problems."

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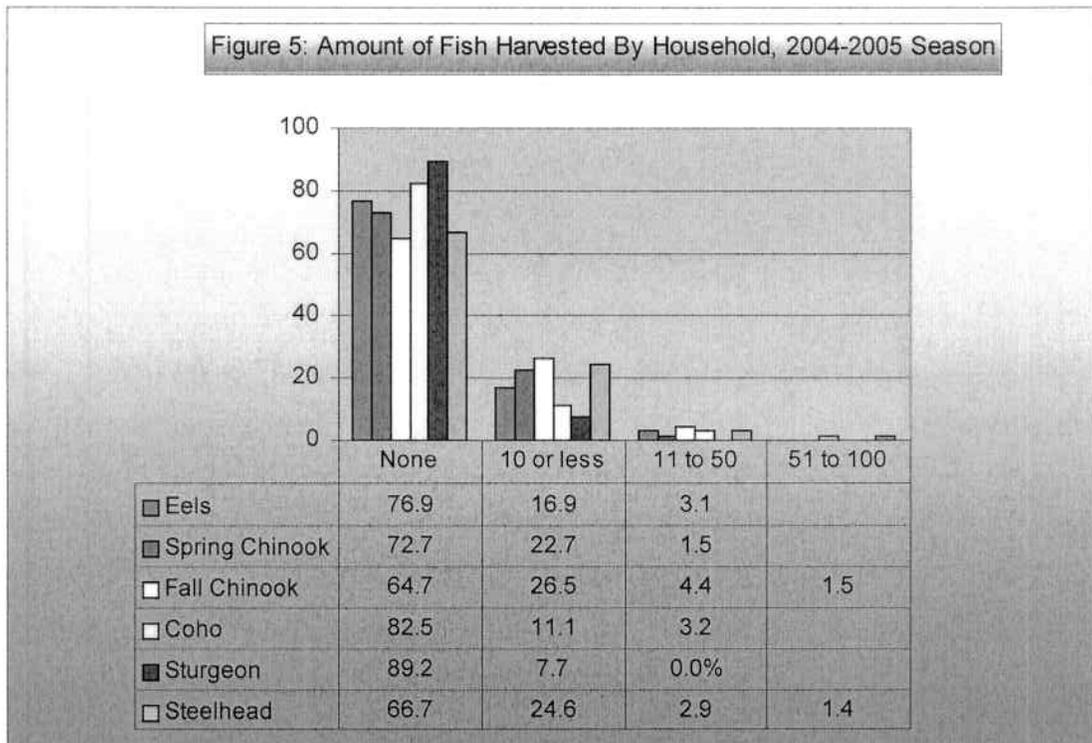
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25 percent in 2004. Note that because respondents are of different ages they were teenagers in different decades. Age breakdown of the data would presumably produce even more extreme shifts in diet for elders.

Despite the fact that up to 50% of tribal members report that they fish for Fall Chinook, 40% fish for Eel and Spring Chinook and over 20% for Coho and Sturgeon, as reported in Figure 5 below, most of those fishing in each household are not actually catching very many fish.



In the 2004 - 2005 season fishing for eels (Pacific Lamprey and other Lamprey species), Spring and Fall Chinook Salmon, Coho and Sturgeon all reached record lows. As indicated in Figure 5, most households that caught salmon, steelhead, eels, and sturgeon report catching ten or fewer, and no households report catching more than 50 eels, Fall or Spring Chinook Salmon. Furthermore, forty percent of tribal members report that there are species of fish that their family gathered which they no longer harvest. As indicated in Figures 6a, b and c, for most of these species the decline is quite recent. Over half of respondents report that Spring Chinook became an insignificant source of food

It is six species of salmon, ... at one time, and ... our steelhead and then our lampreys, our eels, our green sturgeon, our white sturgeon, the candle fish – all of these things. It is our supermarket. You guys noticed when you drove in here you didn't see no Safeways. So our ability to live here in permanent habitation in our homeland for thousands of years was dependent on these resources. They provided it for us year-round. The river provided it for us year-round.

Leaf Hillman in his statement to the Federal Energy Regulatory Commission during the Karuk Government to Government Meeting, 2005

Contemporary Karuk peoples depend on a variety of fish species obtained from the Klamath River system (Figure 1) as was often expressed in interviews and further supported by survey data. Fifty-nine percent of individuals surveyed reported that someone in their household gathered steelhead for food, while 50 percent of individuals responded that fall chinook was gathered for food in their household. Eel was also gathered by a considerable percent of respondents, with 40 percent of individuals reporting that someone in their household actively attempted to harvest eel.

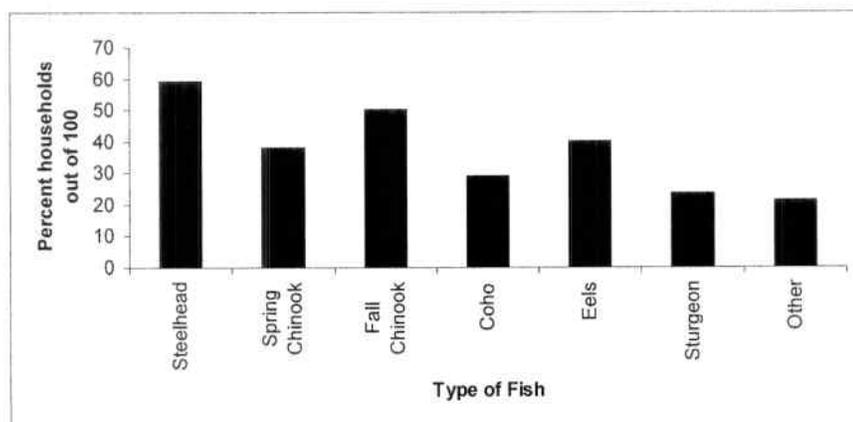


Figure 1 Percent of households that currently gather fish for food