

# High Country News

For people who care about the West

[Return to this article](#)

## California's Hupa tribe wars over fish

by Matt Jenkins

On a mid-October afternoon at the bottom of a sheer canyon on Northern California's Trinity River, a Hupa Indian named Amos Pole babies a jet boat against the rushing current. For the Hupas, this craggy chasm is a sort of psychic power spot. Dense stands of fir crowd down to the edge of the river, where, in late fall, chinook salmon idle in deep pools before continuing their exhausting journey upstream to their spawning grounds.

Today, Pole is taking water temperature readings for the tribal government, but he, like many Hupas, frequently comes down to the river to fish. Some 2,500 Hupas live on the 12-square-mile Hoopa Valley Indian Reservation tucked into a fold in the Klamath Mountains. (Thanks to an orthographic quirk, the people themselves are "Hupa," while the valley is spelled "Hoopa.") The Trinity River runs through the middle of the reservation, and the river's spring and fall runs of salmon figure large in the history and identity of the people.

Salmon fishing here is largely an extended form of sharing. Rights to use specific fishing holes have been handed down within families from generation to generation, but they are also often loaned to friends in exchange for a couple of fish. Fishermen preserve much of their catch by smoking it over smoldering alder fires, and often give fish away to relatives.

But things are changing. Because of a series of limits and outright fishing bans, Northern California's open-ocean salmon fishermen have barely been able to fish the past three years. Paradoxically, that has opened a window of opportunity for fishermen on the Hoopa Reservation, 42 miles up the river from the coast, to sell their fish to outside buyers. Commercial fishing has surged: In 2006, the tribe had no commercial fishery to speak of; three years later, Hupa fishermen sold three-quarters of their catch to off-reservation buyers.

This stretch of the river -- known simply as "the Gorge" -- was packed with nets last summer, Pole recalls. "I was dodging nets," he says. "You could actually come down here and see the fish stacked up" trying to get through.

The sudden surge in commercial fishing has opened painful rifts within the tribe. There's widespread resentment that only an elite few have benefited from the sale of the tribe's fish. "The way it is, only a few families are profiting off of our resources here," says Pole. He's critical of Hupas who sell fish to outsiders when many tribe members can't get salmon themselves. "You have to feed your people first."

But that's not all. Many of the Hupas who are making money from the fishery are the very tribal government employees ostensibly charged with managing the tribe's hard-won allocation of fish.

According to records from the tribal police and a wholesale fish company, Mike Orcutt, the director of the tribal fisheries department, has made more money from the commercial fishery than anyone else on the reservation. Daniel Jordan, the director of the tribe's self-governance office, which advises the tribal council, has also sold fish off the reservation, as have at least three other fisheries department employees. And many Hupas charge that Orcutt, Jordan and other fisheries employees did their best to conceal the fact that there were opportunities to market the fish. "This was a clandestine commercial fishery," says Lyle Marshall, a former tribal chairman. "And if you look at the list of people who fished, they're either employees of the fisheries department or their relatives; or the (tribal) chairman's relatives; or the self-governance director's relatives. Nobody else knew about it."

**In the grand scheme** of the millions of salmon that are caught from California to Alaska each year, the Hupas' fish are a drop in the bucket. Last year, the tribe was allotted just 6,920 fish.

That may not seem like a lot, but those fish were hard-won. The Hupas' right to fish is tied to a "reserved right" implicitly created when the reservation was established in the 19th century. But in the late 1970s, tensions rose between white commercial fishermen and Indian tribes, and the Hupa and neighboring Yurok Tribe were blamed for a precipitous decline in salmon populations. In a series of incidents known as "the fish wars," the federal government deployed officers to the reservation to keep the Indians off the water. "They brought in helicopters. They brought in boats. They had M-16s and they were ripping up and down the river like it was Vietnam," remembers Marshall.

But ultimately it became clear that the Indians' role in the salmon decline was minimal, and a series of court decisions affirmed the two tribes' combined right to half the "harvestable" salmon in the river. (A substantial percentage of each year's returning salmon must be allowed to return to their home streams to spawn.) In the decades since, the Hupas have gained a reputation as tough advocates for restoring salmon runs in the Trinity, whose natural flow had been destroyed by dams and water-diversion projects for Central Valley farms.

Traditionally, the Hupas have primarily caught fish for "subsistence and ceremony." But for decades, on and off, the tribe has also eyed its salmon as a potential, and much-needed, source of income. By all accounts, no one has more tirelessly promoted commercial fishing than Mike Orcutt and Daniel Jordan, the tribal self-governance coordinator. "We've been sitting on a gold mine for years," says Orcutt. But, he adds, "we couldn't even get anybody interested until three years ago."

Ironically, the tribe's big break came amid a disastrous meltdown for the salmon fishermen who steam out to sea from California's northern coast. Salmon populations native to California's Central Valley, farther down the coast, have plummeted dramatically. Because those fish commingle with more plentiful Trinity and Klamath River salmon in the ocean, sea-going fishermen along the North Coast inadvertently, but inevitably, catch fish from the more imperiled southern runs. To protect the Central Valley fish, the entire ocean fishery in California was shut down in 2008. That happened again in 2009. In 2010, fishing was allowed again, but the season was so abbreviated that it might as well have never happened.

Because the Hoopa Valley Reservation is inland, however, fishermen there can continue to fish in the Trinity River despite the open-ocean bans. The Central Valley runs never enter the Trinity, so there's no chance of catching them.

**As a result**, commercial fishing on the reservation has taken off. In 2008, a company called Wild Planet Foods, based on the coast nearby, began buying fish from Hupa fisherman. By the next year, Hupas sold nearly three-quarters of the fish they caught. Yet only about 27 Hupas fished commercially, and the fact that off-reservation wholesalers were interested in buying fish was not widely known.

Resentment over the situation broke into the open last June, when a Hupa discovered several nets -- set by Orcutt and his brother -- where he usually set his own. That discovery soon made its way onto Facebook and sparked an emotional special session of the tribal council in September.

Many tribal members' bitterness has been stoked by the fact that, as fisheries director, Orcutt already makes close to \$100,000 a year. In 2009, Orcutt, his brother, Kevin, and his wife, Vivienna, sold more than 800 fish to Wild Planet, for about \$32,000. Last year, the family made \$19,000 selling fish to the company -- accounting for more than half the fish that Hupa tribe members sold to it.

Orcutt is unapologetic about his participation in the commercial fishery. The money he made wasn't all that significant, he says: "Nobody was making a million dollars on it or anything."

Yet relative wealth is measured in far smaller increments on a reservation where average per capita income is \$9,908 and the unemployment rate is somewhere around 60 percent. The controversy is as much about fairness and equity as it is about fish. Even though every tribal member theoretically has an equal share in the reservation and its natural resources, that ideal is hardly borne out in practice. And nowhere is it easier to see that than in the Gorge.

Because the Gorge is the first place that salmon migrating upstream cross onto the reservation, it is a kind of fisherman's mother lode. The farther upstream a Hupa's fishing spot, the fewer he typically catches, because many fish have already swum into the gantlet of successive nets downstream.

But to fish the Gorge, you need a jet boat, which can navigate shallow riffles. And jet boats can cost as much as \$50,000. "Ninety-nine percent is only accessible by boat, and there's only a few guys that have boats," says Jude Hostler, who himself fished commercially in 2009. Most of the Hupas who fish commercially own their own jet boats.

The tribal chairman, Leonard Masten, is unsympathetic to the argument that Hupas who fish in the Gorge are shutting out those who can't. "People like myself, that choose to spend their money on a boat rather than something else, should I be criticized for that?" he says. "We have other people around here that want to bitch and complain, but they don't want to get off their ass and buy a boat."

**Among the Hupas**, there are considerable differences of opinion about whether it's even legal for individual tribe members to sell fish off the reservation. In 1989, Hupa voters passed a referendum that allowed a "tribally operated commercial fishery," and directed the tribal council to formulate an ordinance to regulate that fishery. Yet the fishing ordinance was never amended and, other than for a one-time trial run in 1991, specific regulations have never been written for a commercial fishery. Today, the fishing ordinance posted on the tribe's website clearly says the activity is prohibited.

Tom Schlosser, the tribe's attorney, says commercial fishing was legalized by the 1989 referendum -- but beyond that, it gets complicated. "Clearly, the people passed a referendum measure, and that hasn't been rescinded. So that's a matter of tribal law," he says.

"Now exactly what it means," he adds, "is an internal tribal issue."

By most accounts, both Orcutt and Jordan have played a crucial role in defending the tribe's interests in the often hard-ball game of water politics. They are not shy about making that point themselves. "The reason why those fish are there today is because we fought for them," says Jordan. "We have absolutely been successful in getting this tribe what it deserves."

But the two men have also advanced a dubious argument that their personal fishing helps the tribe. Since 1991, there have been only three years in which Hupa fishermen caught the tribe's full allocation of salmon. Orcutt and Jordan frequently warn that the tribe might find itself in a use-it-or-lose-it situation: If Hupas can't demonstrate a need for their full allocation of fish, some may be re-allocated to other tribes.

By developing a market off the reservation for Hupa fish, Orcutt says, he's helping to ensure that as much of the Hupa's share of fish is caught as possible. "We're going to take this fish and show we have a demonstrated need," he says.

Masten, the tribal chairman -- whose niece, critics are quick to point out, is Orcutt's wife, Vivienne -- doesn't disagree. "We would be shooting ourselves in the foot," he says, "if we were to start prosecuting our own tribal members for something we've been fighting for here our whole lives -- fishing rights."

But Schlosser says there isn't a precedent for a tribe losing its fishing allocation because it consistently falls short of its annual quota. "Use-it-or-lose-it' is not a concept that applies here," he says. "It's just not a relevant issue."

And Lyle Marshall and other tribe members take a decidedly dimmer view. "For our tribal leaders to stand up and say, 'We did this for you, to protect your rights,' that's laughable," Marshall says. "It was 100 percent profit for them."

**This past summer's** controversy has revealed a clash of visions about what to do with the fish that the tribe fought so hard for. "The demand for fish has created, all of a sudden, this dispute over traditional values," says Allie Hostler, the communications coordinator for the tribal fisheries department. "This is a huge issue for our people. It's a turning point."

For now, the tribe is trying to figure out what to do this year. Last fall, council member Marcellene Norton proposed the establishment of a tribal fish commission to develop specific regulations for a commercial fishery. Byron Nelson, the tribe's vice chairman, is one of the leading critics of the new wave of commercial fishing. He thinks it's time to revisit the 1989 referendum in which voters OK'd commercial fishing in the first place. "The ballot said, 'a tribally controlled commercial fishery,'" he says. "What we had in mind was the old traditional fish dam" -- a log structure built to block fish from migrating upstream. "We would have everyone participate, and everyone would get fish."

The fishing issue is sure to figure prominently in the tribal elections this April. Meanwhile, Danny Jordan is unrepentant about fishing for commercial sale when the runs begin coming up the Trinity this spring. "We are the die-hard people that are saying, 'Come hell or high water, we are going to protect this tribe's fishing rights,'" he says. "If it comes down to Mike Orcutt and I being the front leaders of that, I guess we're going to be doing that."

© High Country News