

Since time immemorial, Indigenous people have lived in the Pacific Northwest. For thousands of years, salmon was a staple of life and the foundation of tribes' culture, economy and religion.

In the 1850s, Washington Territory Gov. Isaac Stevens negotiated treaties between the U.S. government and the tribes, who ceded most of their lands but reserved the right to fish at "all usual and accustomed fishing places."

The legal history of the Stevens Treaties and *U.S. v. Washington*

TREATY SIGNINGS

December 26, 1854

Treaty of Medicine Creek

January 22, 1855

Treaty of Point Elliott

January 26, 1855

Treaty of Point No Point

January 31, 1855

Treaty of Neah Bay

June 9, 1855

Treaty with the Yakama

July 1, 1855 & January 25, 1856

Treaty of Olympia

STATE OVERSTEPS

1889

The first Washington State Legislature creates the office of Fish Commissioner to manage the fisheries of the state. For the next quarter of a century, state lawmakers and local authorities attempt to regulate tribal fisheries in violation of tribes' treaty-reserved rights.

May 16, 1905

In the first major fishing rights case to reach the United States Supreme Court, *U.S. v. Winans*, the justices hold that treaty Indians had reserved the right to cross non-Indian lands to fish at "usual and accustomed" places and that treaties are to be interpreted the way Indians had understood them.

January 11, 1946

Milo Moore, Washington state director of fisheries, meets with representatives of the Northwest Federation of American Indians to discuss cooperation in fishing matters and to ask Indians to obey state fishing laws. He does not get the cooperation he hoped for, and instead, "Prominent Indians from many tribes spoke on fisheries matters, and it was the general opinion that pollution, dams and water diversion were mainly responsible for the decline in salmon population."

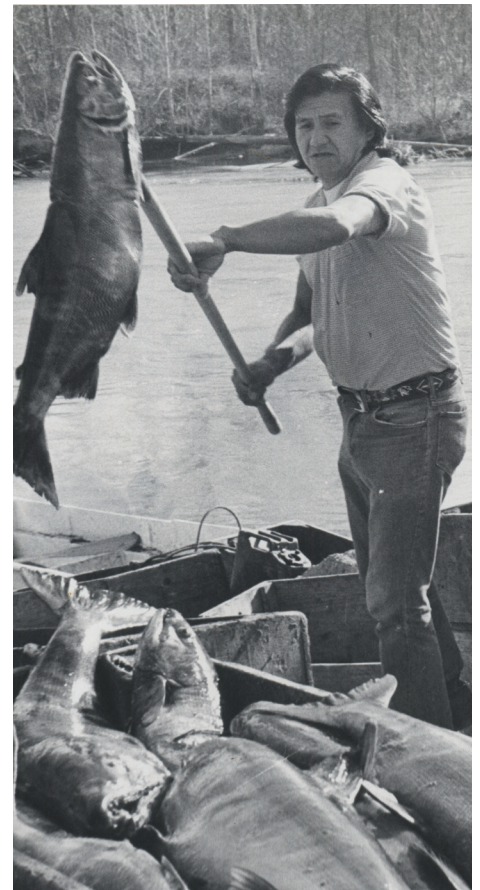
November 4, 1963

Washington departments of Fisheries and Game file suit in state court to establish state authority to prohibit net fishing by Indians off-reservation. The state wins. However, by the 1960s, Northwest Indians are more militant and organized than in the past. With the support of the Bureau of Indian Affairs, the Department of Justice and tribal lawyers, tribes commence a series of legal actions to counter the state's efforts to eradicate treaty fishing rights. The ensuing physical confrontations and legal battles lead to *U.S. v. Washington*.

GOING TO COURT

May 27, 1968

The Supreme Court, in *Puyallup Tribe of Indians v. Department of Game* (Puyallup I), holds that the state of Washington could restrict Indian net fishing when necessary for conservation of the resource, and returns the case to state court to determine if existing regulations are "necessary."



Billy Frank Jr. harvests fish in 1973.

Photo: Tom Thompson

July 8, 1969

In *Sohappy v. Smith*, 14 Yakama tribal members file suit against Oregon's regulation of off-reservation fishing. The U.S. and the Yakama, Warm Springs, Umatilla and Nez Perce tribes also sue to enforce Indian off-reservation fishing rights in *U.S. v. Oregon*. The federal court combines the two cases.

U.S. District Judge Robert Belloni decides in *Sohappy v. Smith* that treaties must be read to reflect the intent of the tribes, with strong protection of tribal off-reservation fishing rights. He rules that tribes must have a "fair share" of the salmon resource.

September 18, 1970

The federal government files *U.S. v. Washington*, challenging the state's interference with tribal harvest through discriminatory regulation and enforcement, on behalf of seven federally recognized tribes: Hoh, Makah, Muckleshoot, Nisqually, Puyallup, Quileute and Skokomish.

October 19, 1970

Quinault files to intervene in the case.

January 14 & 18, 1971

Yakama and Lummi file motions to intervene.

February 17, 1971

No party opposes motions to intervene that also include the Squaxin and Sauk-Suiattle tribes.

April 1, 1971

Upper Skagit files its motion to intervene.

June 4, 1971

The Stillaguamish Tribe of Indians files to intervene.

August 13, 1971

The Muckleshoot, Squaxin Island, Sauk-Suiattle, Skokomish and Stillaguamish tribes amend the complaint: If the tribes have a right to fish in common with the citizens of the United States, then the tribes have the implied right to have habitat for the fish protected.

November 19, 1973

The U.S. Supreme Court decision in *Washington Department of Game v. Puyallup Tribe* (Puyallup II) upholds the Indian right to net fish commercially for steelhead and returns the case to state courts to determine allocations.

TURNING POINT: Boldt decision

February 12, 1974

Judge George Boldt's ruling in *U.S. v. Washington*—in what is commonly referred to as the Boldt decision—reaffirms the tribes' treaty-reserved rights to harvest salmon and steelhead. The decision also recognized the tribes as co-managers of salmon and other fish.

The tribes of Washington had ceded their land to the United States, but reserved the right to fish as they had always done, including fishing at traditional locations that were off their reservations.

May-September 1974

Seven more tribes intervene in *U.S. v. Washington* during the appellate process: the Swinomish Indian Tribal Community, Tulalip Tribes, Suquamish Tribe, Port Gamble Clallam Indians (now Port Gamble S'Klallam Tribe), Lower Elwha Band of Clallam Indians (now Lower Elwha Klallam Tribe), Nooksack Indian Tribe and Jamestown S'Klallam Tribe.

Article in Northwest Indian News following Judge George Boldt's decision in February 1974.

June 24, 1974

A charter committee meets in Seattle to develop a constitution and bylaws for the Northwest Indian Fisheries Commission (NWIFC).

The charter charges the commission with giving the treaty tribes "the capability of speaking with a single voice on fisheries management and conservation matters."

January 14, 1975

Judge Boldt prohibits Washington from excluding hatchery-produced steelhead from the Indian treaty entitlement on rivers other than the Puyallup, pending final determination of that question by a federal court.

April 8, 1975

Judge Boldt expands the *U.S. v. Washington* decision to herring and approves a sac-roe herring fishery management plan for 1975 that allocates equal shares of the off-reservation commercial catch to Indians and non-Indians.

Boldt's Name 'Synonymous with Rights'

By BRUCE VAN BROCKLIN

He was born in Chicago and moved to the state of Montana as a child, but it was in a Tacoma courtroom that the name George Hugo Boldt was to become synonymous with Indian treaty fishing rights, for in February, 1974, the federal district court judge's ruling that Western Washington treaty Indians were entitled to up to 50% of the harvestable salmon catch set off a shock wave which swept the nation.

Judge Boldt's historic ruling came after three long years of study of the facts surrounding the 1850's treaties signed by the U.S. government and Western Washington tribes. Reflecting on the case, *U.S. v. Washington*, Judge Boldt said, "In the early days of our country, the judges who first spoke on Indian rights have always had such a profound sense of guilt in taking away the Indians' livelihood that they made plans for them to have other places to go and fish.

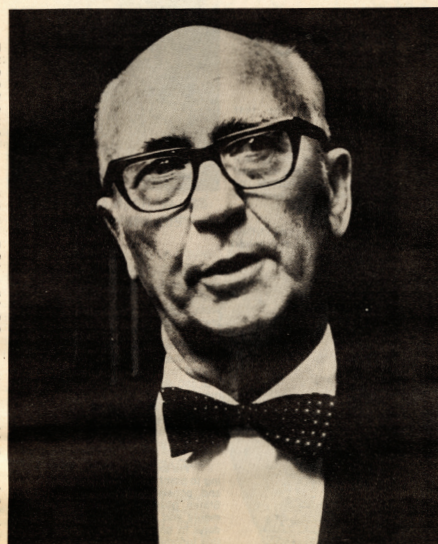
"It's always been that way, all down through the years, I know, I read those decisions."

On July 2, 1979, the U.S. Supreme Court agreed. In a convincing 6-3 ruling, it upheld virtually all of Boldt's 1974 decision, save a disagreement over counting on-reservation fish catches as part of the Indians' total share.

On hearing of the high court's ruling, the 75-year-old judge said, "It brings me, in my decision, to a conclusion. It is, for me, the end of my decision-making. I'm totally withdrawn from the court now, and no longer in a position to say anything 'yes' or 'no' about it."

Amid the non-Indian calls for impeachment and the considerable acrimony engendered by the 1974 decision, little has been said publicly of the man who bore the heat of the Indian fishing rights controversy.

After moving to Montana, Boldt graduated from the University of Montana and practiced law in that state, as



RETIRED FEDERAL DISTRICT JUDGE GEORGE BOLDT
His cases touched underworld, taxes, and tribal realities

During his more than 20 years on the bench, he developed a reputation for fairness, but firmness. In the '60's he was named by Chief Justice Earl Warren to a panel of federal judges in charge of

In 1970, he presided over the trial of the Seattle Seven Conspiracy where he declared a mistrial, ruling the actions of the defendants had prejudiced the jury.

In 1971, President Nixon called upon Boldt to head a special Pay Board—a position which exposed him to national criticism as he enforced anti-inflationary wage guidelines.

The Indian rights decision on fishing, however, was to bring the most intense public opposition. Bumper stickers calling for his impeachment and such pedestrian outcries as "Judge Boldt is an Indian giver" sprouted all around the Sound.

Those busily organizing to impeach the judge most likely had no knowledge of the University of Puget Sound trustee's former activities in behalf of minorities. In his World War II service as an Army Colonel with the OSS in Burma, Boldt had admonished his troops for making derogatory racial statements about Japanese in the presence of Nisei (American-born Japanese) soldiers on the base.

In February, 1979, near the fifth anniversary of his historic decision and two weeks before a Supreme Court hearing to review his findings, the Tacoma justice announced he was relinquishing his jurisdiction over the fishing rights case. He asked U.S. District Court Judge Walter McGovern, in Seattle, to assign another judge to the case, citing personal health reasons.

At the time, the two major daily newspapers in Western Washington, the *Post-Intelligencer* and the *Seattle Times*, published editorials praising Boldt's "Firmness, Fairness, and Intellect." Barely five months later, the United States Supreme Court, in a ruling which read like a recitation of Boldt's scholarship, vindicated the retired justice.

The ball is now clearly in the State's court and one can reasonably assume that an aged, but alert, Tacoma resident will be watching closely with a well-



Steelhead are released from a Puyallup hatchery into Clarks Creek in April 1981.

June 4, 1975

The 9th U.S. Circuit Court of Appeals upholds Judge Boldt's ruling in *U.S. v. Washington*.

July 19, 1975

Judge Boldt orders the state to permit Indians to fish with any type of gear during the entire period open to U.S. fishermen under International Pacific Salmon Fisheries Commission regulations.

August 20, 1975

U.S. District Judge Belloni issues a supplemental order in *U.S. v. Oregon*, declaring that treaty tribes must have an opportunity to harvest up to 50% of Columbia River fall chinook that the states allow to be taken by all user groups and which are destined to return to the tribes' usual and accustomed fishing places.

October 20, 1975

The state files a petition for the U.S. Supreme Court to review decisions made by lower courts in *U.S. v. Washington*.

October 21, 1975

In subsequent rulings, Judge Boldt prohibits or limits Indian on-reservation fishing in several instances where he found such restriction necessary to ensure adequate spawning.

October 22, 1975

Judge Boldt rules that he has jurisdiction to restrict Indian on-reservation fishing on runs affected by his decree when necessary or to preserve the runs. The Puyallup and Nisqually tribes appeal this ruling to the 9th Circuit.

October 27, 1975

Judge Boldt names a Fisheries Advisory Board consisting of one state representative and one Indian representative to attempt to reach agreement on fisheries regulatory matters prior to submission to the court for judicial determination.

Judge Boldt also orders the state to allow Indians to take a greater share of the 1975 harvestable chum salmon

as an “equitable adjustment” for the “substantial and significant” denial of their opportunity to take an equal share of coho salmon after state courts hampered enforcement against unauthorized nontreaty fishing in direct violation of the federal court’s order.

January 26, 1976

The Supreme Court declines to review *U.S. v. Washington*, thereby reaffirming Judge Boldt’s decision and the ruling of the 9th Circuit.

January 28, 1976

The 9th Circuit affirms Judge Belloni’s May 8, 1974, order that Columbia River treaty tribes are entitled to 50% of the harvestable runs destined to reach the tribes’ usual and accustomed fishing grounds and stations.

February 1977

In *U.S. v. Oregon*, the federal court approves a five-year plan for an in-river harvest-sharing formula between non-Indian and Indian fisheries. The plan fails because it does not include controls on ocean harvests or specific measures to replace fish runs destroyed by development.

March 1977

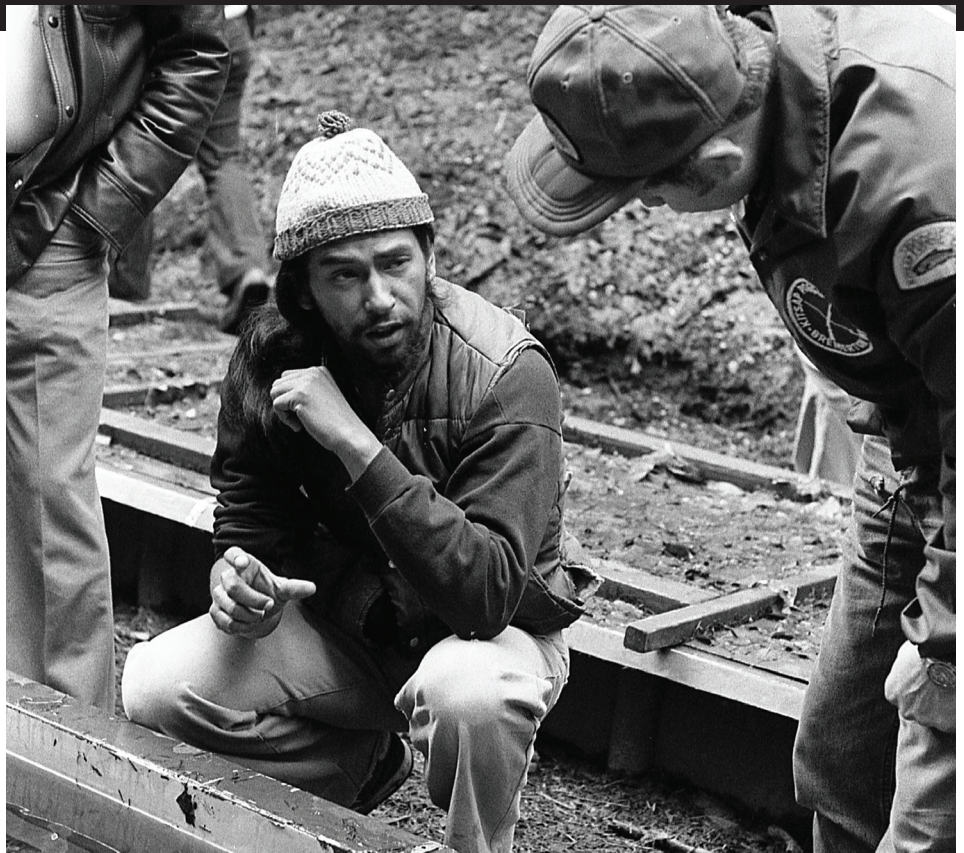
The Yakama, Warm Springs, Umatilla and Nez Perce tribes create the Columbia River Inter-Tribal Fish Commission.

March 22, 1979

Judge Boldt approves an interim plan for implementation of his decision in *U.S. v. Washington* and appoints a fisheries technical advisor and a designated master, who is assigned to hear subsequent matters in specialized cases.

July 2, 1979

In *Washington v. Washington State Commercial Passenger Fishing Vessel*, the Supreme Court upholds *U.S. v. Washington*, ruling that the treaties secured the tribes a right to harvest a share of each run of anadromous fish that passes through tribal fishing areas.



David Mills, a Suquamish Tribe fisheries technician, gives a tour of the Cowling Creek Hatchery to sport fishermen from the Kitsap Poggie Club in the 1980s.

AN EVOLVING BATTLE

1980-82

Columbia River, Puget Sound and Washington Coast tribes sue the U.S. Secretary of Commerce over ocean fishing regulations because a large percentage of treaty fish were being caught in waters managed by the Department of Commerce. The federal government is ordered to regulate ocean fisheries to ensure that a reasonable number of salmon reach tribal fishing places.

September 26, 1980

In the first ruling of *U.S. v. Washington*, Phase II, Judge William Orrick holds there is a duty imposed upon the state, as well as the U.S. and third parties, to refrain from degrading fish habitat to an extent that would deprive the tribes of their moderate living needs. Orrick also prohibits the state from damaging fish habitat and includes hatchery-raised fish in the allocation to Indians.

October 12, 1984

The tribes and state receive an 18-month stay of proceeding in *U.S. v. Washington*, Phase II, to negotiate the Timber/Fish/Wildlife (TFW) Agreement.

March 1985

President Ronald Reagan and Canadian Prime Minister Brian Mulroney sign the U.S./Canada Pacific Salmon Treaty, which reduces Canadian and Alaskan harvest of Columbia River salmon and adds tribal representation to the international decision-making body.

April 29, 1985

In the state’s appeal of the Phase II decision, the 9th Circuit agrees that the state has treaty duties to protect habitat and affirms that hatchery fish are part of Indian/non-Indian fishing allocations but reverses a previous declaration on habitat, saying that the state’s duties depend on the facts of particular habitat-altering activities.

May 8, 1986

The U.S., state and tribes meet to discuss a tentative settlement for Phase II. There is no settlement, but the tribes and state secure a stay of the proceedings for 12-18 months.

1989

The tribes are willing to dismiss without prejudice *U.S. v. Washington*, Phase II, and seek cooperative resolution of environmental impacts to salmon habitat. After being denied protection of resources and fish habitat, the tribes are forced back into court to defend treaty-protected rights on a case-by-case basis.

June 23, 1993

Judge Barbara Rothstein dismisses without prejudice *U.S. v. Washington*, Phase II. All parties support this motion. Though Phase II was dismissed, the U.S. or tribes could reinstitute habitat-related litigation in the future.

December 20, 1994

In a subproceeding of *U.S. v. Washington*, Judge Edward Rafeedie declares tribal off-reservation shellfishing rights.

"The fact that some species were not taken before treaty time—either because they were inaccessible or the Indians chose not to take them—does not mean that their right to take such fish was limited. Because the 'right of taking fish' must be read as a reservation of the Indians' pre-existing rights, and because the right to take any species, without limit, pre-existed the Stevens Treaties, the court must read the 'right of taking fish' without any species limitation."

November 4, 1996

The Makah Tribe secures a win in a subproceeding regarding Pacific whiting and rockfish. The ruling reaffirms that the "right of taking fish" applies to all species found in "usual and accustomed fishing grounds and stations," whether or not those species were taken at treaty time.

March 16, 1999

The U.S. Department of the Interior adds nine salmon runs in the Pacific Northwest to the endangered species list. They join 15 others that are already listed.

Listed as endangered:

Upper Columbia River spring chinook

Listed as threatened:

Puget Sound chinook

Lower Columbia River chinook

Lake Ozette sockeye

Hood Canal summer chum

Lower Columbia River chum

Mid-Columbia River steelhead

Upper Willamette River chinook

Upper Willamette River steelhead

Between 1985 and 2000, the tribes support the development of cooperative management approaches including TFW, Sustainable Forestry Roundtable, Forests and Fish Law, Chelan Agreement and State-Tribal Environmental Memorandum of Understanding.



A chum salmon swims back to the Skokomish Tribe's Enetai Hatchery in November 2021.

FOCUS ON FISH PASSAGE

June 16, 2000

After several situations where the state refuses to work cooperatively, plaintiff tribes raise concerns about fish-blocking culverts and the failure of the state to protect the treaty-reserved rights of the tribes.

October 26, 2000

A formal mediation process is initiated for culvert concerns.

January 12, 2001

Twenty-one northwest Washington tribes, joined by the United States, ask the U.S. District Court to find that the state has a treaty-based duty to preserve fish runs and habitat, and to compel the state to repair or replace culverts that impede salmon migration.

March 5, 2002

Fishing groups challenge National Marine Fisheries Service regulations and annual allocations of Pacific whiting to the Makah Tribe. The court interprets treaty language as entitling the tribes "to take fifty percent of the salmon and other free-swimming fish in the water controlled by Washington."

August 22, 2007

Federal District Court Judge Ricardo Martinez issues a summary judgment holding that while culverts impeding fish migration are not the only factor impacting habitat, building and maintaining culverts that impede salmon migration diminished the size of the runs and thereby violated Washington state's obligations under the Stevens Treaties.

August 23, 2007

The court rules that state culverts that block fish and diminish salmon runs violate Indian treaty fishing rights. The ruling rests on historical facts that the state never disputed: Washington tribes refused to sell their land until they were assured a continued supply of fish in the treaties. "This paper secures your fish," Gov. Isaac Stevens had told the tribes.



A box culvert is removed in August 2014 to improve fish passage at the mouth of Chico Creek.

In essence, non-Indians paid for 5 million acres of Indian land by promising to protect Indian fisheries.

March 29, 2013

The court orders the state to significantly increase efforts to remove and replace state-owned culverts that block salmon and steelhead by 2030.

September 2013

In consultation with the tribes, the state files lists of fish barriers to be corrected by the departments of Transportation, Natural Resources, Parks, and Fish and Wildlife.

June 27, 2016

The 9th Circuit affirms the decision requiring the state to correct its barrier culverts. This reaffirms the fundamental principle that treaty rights to take fish include protecting and restoring fish habitat, and that the state's barrier culverts violate those rights.

October 2016

The departments of Natural Resources, Parks, and Fish and Wildlife meet the deadline to fix barrier culverts.

May 19, 2017

The 9th Circuit rejects the state's petition to rehear its decision.

January 12, 2018

The U.S. Supreme Court accepts a petition to review the case on the state's appeal.

April 18, 2018

Arguments are heard in Supreme Court.

June 11, 2018

The Supreme Court affirms the 9th Circuit decision, upholding the injunction ordering the state to repair its fish-blocking culverts.

February 2024

Treaty fishing rights, fisheries regulations, access to fishing places, and habitat protection—as affirmed in *U.S. v. Washington*—routinely shape legislative and regulatory decisions.

The tribes party to *U.S. v. Washington* commemorate the 50th anniversary of the Boldt decision as they continue to exercise their treaty-protected rights and steward the environment for the benefit of everyone in the Pacific Northwest.