

Boldt Decision ‘Very Much Alive’ 30 Years Later (published 2/11/04)

UPPER SKAGIT RESERVATION – When the decision came down three decades ago – the decision that would change everything – Scott Schuyler was a 10-year old kid mesmerized by the glamour of it all: The skillful handling of skiff and gear. The bountiful harvests from the river named for his people. The fish and money trading hands on the river’s banks – a culmination of a hard day’s work and a hard-fought victory decades in the making.

“Back in the heyday after the Boldt Decision,” Schuyler says now, “it was kind of glamorous. Seeing our fishers pull their boats in, buyers backing their trucks up to the bank and handing over a roll of bills.”

Like Schuyler, a generation of tribal fishermen have since grown up under the landmark Boldt Decision – the federal court ruling handed down 30 years ago today that sent shock waves through this state and beyond.

Hailed by some legal experts as the most significant ruling on Native treaty law in the past century, U.S. District Judge George Boldt’s ruling held that the United States’ mid-1850s treaties with Washington tribes provided that Indians always were entitled to half the salmon and steelhead harvest in their traditional fishing grounds off reservations.

Boldt ruled that Washington state virtually had no authority over tribal fishing; in fact, it was the tribes that ceded to non-Indian settlers the rights to fish – not the other way around. The decision also would instate tribes as “co-managers” with the state over Washington’s salmon fisheries resources.

For sport and commercial fishermen, Boldt’s ruling amounted to blasphemy – “special rights,” they argued, that afforded a group making up less than 1 percent of Washington’s population far too large a slice of the fisheries pie.

But for tribes, whose members battled, demonstrated, got arrested and were jailed over more than two decades during what would become known as the “fish wars,” Boldt’s ruling was total victory.

It had immediate economic and cultural benefits across reservations, restoring pride to struggling tribes that re-invested in fisheries and used money netted from catches to help build tribal governments and enhance reservation infrastructures. These benefits are what drew so many Native people back to their reservations – and what drew Schuyler’s family back to the Upper Skagit.

But today, for young members of Schuyler’s tribe based in the North Cascade foothills above Sedro-Woolley, the allure of salmon fishing isn’t what it used to be.

Marked by dwindling fish runs and a commercial market undercut in recent years by cheaper, farmed Atlantic salmon, the bounties and buyers are long gone. “There’s a handful of people still hanging on to the legacy,” said Schuyler, now 40, with two children of his own. “But now, the kids see grandpa drive 20, 30 miles to knock on doors, just to find someone to sell his catch to. Of course, they’re not following in his footsteps like they once did – not into an industry with an outlook so dismal.”

Dwindling Returns

Since the peak of Washington's tribal fisheries in the mid-1980s, the Upper Skagit Tribe's salmon fleet had dwindled from 50 boats to fewer than 10, Schuyler says. A point of even the lowest quality of his tribe's salmon that once could fetch 90 cents or more now garners maybe a dime – if it can be sold at all.

Thirty years after Boldt, the Upper Skagit's salmon fortunes are not unique: Overall, Puget Sound treaty tribes have experienced an 80 percent erosion in fishing fleets since the heyday of the '80s, according to the Northwest Indian Fisheries Commission.

And tribal salmon catch figures today mirror those of the pre-Boldt era in the early 1970s when the state still restricted tribal fishers from the bulk of Washington's catch.

For tribes, it's a reversal of fortune -- caused by a declining market, environmental effects and other forces – that one Indian fisheries commission employee calls a "horrific irony" to the Boldt legacy.

But Schuyler still plies the age-old practice of his people, pulling fish from the green waters of the Skagit. Only now, as natural resources manager for his tribe, he spends most days coordinating rather than catching – managing hatchery operations, habitat preservation, and other fishery conservation issues.

He represents today's generation in tribal fisheries during an era focusing not on activism, quotas or economic empowerment, but on recovery, protection and co-management of a fading cultural icon: Northwest salmon.

Thirty years later, there's no question that Western Washington tribes still hail the Boldt Decision. Nor is there doubt the 203 page decision remains a document of precedence that still reverberates loudly as a legal foundation for indigenous-rights cases in courtrooms near and far.

But the tumult that surrounds the immediate pre- and post-Boldt era has quietly faded. It plays out not in the guts-and-glory stands of yesteryear, but rather, it's in the complexities of Endangered Species Act guidelines for threatened Puget Sound chinook.

It's in local, county and state wrangling over water rights and land use decisions. And, it's found in the sub-proceedings over habitat degradation issues and other parts of the milestone U.S. v. Washington case that have never fully been decided.

Said Billy Frank, Jr., the Nisqually Indian elder and activist who rose to prominence during the tumultuous fish wars: "It's not about fighting over fish or numbers anymore. That kind of fighting is done."

Although the pre- and post-Boldt turmoil among tribes, the state, commercial and sport fishers has been well documented, the unique system of co-management over fisheries that come out of the case never has been much of a headline-grabber.

It's not sexy, but the cooperative system between tribes and the state today guides everything from pre-season fish forecasts and seasonal catch limits to hatchery releases and cooperative restoration projects. But it took nearly a decade after Boldt to get to there.

"In the early days after Boldt, we were more like accountants than fish biologists," said Rich Lincoln, a state Fish and Wildlife Department policy director who started with the agency about the time of the Boldt Decision.

Because the ruling for the first time defined harvest quotas, state biologists initially concentrated on counting fish – something they really hadn't done well before, Lincoln said.

Fish-tagging systems expanded, computer models developed, genetic programs engineered, and fish-count methodologies adopted – all in an effort to figure out how many salmon and steelhead were returning each season.

Some say all the early emphasis on salmon counting impeded the shift toward preservation. Still, without it, Lincoln said, the state would never have been in a position to effectively manage for conservation without really knowing the state of the Northwest salmon.

"Before (Boldt), there was no . . . management plan in this state – zero," added Frank, still as much a spitfire today, as chairman of the Northwest Indian Fisheries Commission, as he was as an activist during the fish wars.

After the decision came, "everybody still was talking about the 50-50 (quote), just looking at the controversy," he said. "If we would've focused more on co-management in the beginning, we'd be way farther ahead today."

Effective co-management between treaty tribes and state developed slowly, through "years of friction," Lincoln said. Tribal and state fisheries officials had trouble deciding on the simplest of management strategies. And cases swamped a dispute resolution board.

"Early cooperation wasn't a simple task," Lincoln said. "Suddenly, there were 20 different tribes to work with. No one really knew how to progress.

About a decade after the Boldt ruling – with establishment of the Puget Sound Salmon Management Act and the North of Falcon and Pacific Fisheries Management Council processes to determine salmon management roles and pre-season forecasts – common guidelines ultimately were found, effectively ushering in co-management.

About the same time co-management began coming together, tribal fisheries peaked. Tribes had invested heavily in building up fleets, and catches soared to record levels. "In six or seven months, I could make enough money so I didn't have to work the rest of the year," said Glen Edwards, a Swinomish Indian gillnetter who now serves as a tribal senator.

Unlike inner-river tribes such as the Upper Skagit, treaty tribes that traditionally fished in Puget Sound's salt water, like the Swinomish, could fetch higher prices for their fresher ocean catches. "A guy could make \$20,000 a night," Edwards said. "One night, I had 1,300 sockeye in my boat. That's at \$3 or \$4 per pound - in 1980s dollars."

Some commercial and sport fisherman argue tribal fishing in the '80s instigated the dramatic declines in fish runs seen in recent years. But former commercial fisherman Mark Cedergreen disagrees.

The Boldt case indeed increased Indian salmon takes during a time when the fishery already was declining, says Cedergreen, now director of the Westport Charterboat Association. But at the same time, down cycles in ocean conditions, population growth, development and other environmental degradations contributed to dwindling runs, he said.

"When someone says we'd be sailing off to Valhalla today if it weren't for tribal fishing," said Cedergreen, an active foe of the Boldt Decision, who later worked with tribes on salmon management issues, "it's at best ignorant and at worst disingenuous."

Today, it's largely habitat preservation issues - not harvest numbers - that drive the Boldt saga forward.

Decision lives on

"The debate on salmon management and catches that were pretty much litigated to death year after year has finally smoothed over," said Phil Katzen, an Indian law attorney who represented several tribes during the original case.

"But the Boldt litigation is still very much alive today."

In his 1974 ruling, the issues involved in *U.S. v. Washington* were so complex, Boldt split the case into two pieces. Phase I - what's come to be known as the "Boldt Decision" - dealt with treaty interpretation and allocation: what the treaties tribes signed with Territorial Gov. Isaac Stevens in the 1850s really guaranteed them for fishing.

The second phase, known as "Boldt II," dealt with environmental issues: What was the state's obligation to protect fish habitat, ensuring the tribes' rights to fish in perpetuity?

Boldt left that issue to be taken up at a later date. It eventually was in 1980, when the 9th Circuit Court of Appeals ruled Washington had an obligation to take "reasonable steps" to protect fish habitat.

But two years later, the court vacated its ruling, saying the case was based on theoretical arguments rather than concrete ones. Tribes had to find an actual case example to show how the state was destroying salmon habitat to pursue the issue.

In 2001, tribes believed they did - filing a federal suit known as the "culvert case." It asserts that thousands of state culverts have been choking off salmon runs for years. So far, that case has been postponed from trial, as the state and tribes now negotiate the matter.

While over the years, the Boldt Decision has expanded to just about every harvested fish species, salmon and steelhead remain at the heart of the issue.

A matter of identity

Long before Boldt, the U.S. Supreme Court once observed that salmon “were not much less necessary to the existence of the Indians than the atmosphere they breathed.”

And even in these days of a depressed salmon market, tribes here still regard salmon in terms of their cultural identity. Although in recent years, shellfish harvests have eclipsed salmon as a more viable economic fishery, each treaty tribe continues to work toward recovery.

“We’re not through with this fishery,” Frank said. “We have always fished salmon, and we always will.”

For Schuyler’s Upper Skagit Tribe, that means keeping tribal fisherman on the river however they can. These days, that means the Upper Skagit is buying its own tribal fishers’ catch at a loss – subsidizing salmon fishing simply to “maintain our identity as a people,” he said.

At one time, a lone tribal fisherman here could make \$30,000 or more in a season. Now the tribe’s entire salmon fishery can take in half that in a year, Schuyler said.

As a kid, Schuyler tagged along at the heels of his mother, Doreen Malone - a central figure in the post-Boldt days who helped treaty tribes set up fisheries enforcement courts to meet requirements of the landmark ruling. Years later, Schuyler would succeed his mom as the manager in charge of Upper Skagit fisheries.

Now, his own kids tag at Schuyler’s heels during his daily duties.

“I see this as generational,” Schuyler said. “Boldt gave us opportunities and responsibilities to help sustain the salmon fishery forever. I chose to follow into that. I just want to make sure that my kids will one day have that choice, too.”