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## 40 years after Boldt, the fight goes on over fewer and fewer fish

Our respective “share” of the state’s salmon has long been dictated by an infamous, split-the-baby formula established by federal judge George Hugo Boldt. His decision was one of the most spectacular plot twists in the history of U.S. resource management.

By [Ron Judd](#)  
Seattle Times staff reporter

NUMB IS your enemy. It is useful, yes, as a short-term masker of pain. But in a crisis, it can put you in the drink. The point was driven home one recent morning as I stood alone, knee-deep in the Nooksack River, casting a jig into the icy waters flowing from the glacial shoulders of Mount Baker.

It was late November 2013, and I was engaging in my annual Northwest-native-white-guy rite, my “One Lousy Chum” Puget Sound subsistence-fishery test. To wit: If the brain trust that manages Pacific salmon does its job well enough for me to drag one lousy chum from my local stream to my smoker the week before Thanksgiving, I’ll keep paying my taxes.

Fortunately for the department of revenue, an hour’s worth of casts finally paid off as the foam float carrying my baited jig disappeared beneath the cold water and a powerful, familiar yank awoke my right arm. Pulling my rod upward, I set the hook firmly, grinning so maniacally in anticipation that a painful cramp shot through my frozen chin.

The chum salmon — I recognized it by its typically snotty behavior — swam deep, pointed its nose upstream and powered forward, settling in for the fight. My reel squealed as line peeled off until I worked the drag down enough to slow the fish’s charge up the still-sleeping Nooksack Valley.

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Northwest tribes fished Columbia River salmon runs at Celilo Falls for generations before the falls were inundated by construction of the Dalles Dam. Shares of salmon harvests on the river remain hotly contested today, in a political environment where struggling fish stocks and fishermen also compete with agriculture and other industries for valuable Columbia River water.

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Step 1: accomplished.

Step 2: problematic. Backing up toward the bank, my numb feet suddenly felt as useful as blocks of firewood. Stumbling, I put one hand and one knee in the frigid water, then stood up and splashed over to the bank. There, I pulled on the rod and was stunned to find the big chum still connected.

Beautiful.

Any Pacific salmon is a silver-coated bullet of pure muscle, all of it activated by an unfathomable will. Over a lifetime of fishing, I am still amazed by the sheer power of the fish. This one was no exception, staying deep and conserving its energy until I finally yarded it into the shallows, where it thrashed wildly.

It was a hen, 8 or 10 pounds, fresh from the salt a few miles downstream, lovely in its bright-silver/tiger-striped early spawning phase. I often catch and release salmon, particularly wild species. But I wanted this one. Clipping a gill to bleed the fish, I offered it my customary, silent blessing and pulled the hook from its lip.

Twenty years ago, this would have been another happy fishing moment, soon forgotten in the rush to the next. But these days, it is a ritual I spend more time pondering. I can't get past this deep-brain fear that every salmon I'm lucky enough to wrestle to the bank might be my last.

IT IS POSSIBLE that the worst depths of the plunge in survival rates for Pacific Northwest salmon are behind us. Given our track record, consider me a skeptic.

I'm a river guy. These days, the Nooksack is my local stream. But I've been around, having grown up on the Snoqualmie and fished most of the rivers emptying into Puget Sound and the Pacific Ocean. Like a lot of natives, I have been after salmon and their cousins, steelhead, since I was old enough to cast. For most of my 50 years, I have done so alongside other natives — Native Americans — who fish with nets.

Our respective "share" of the state's salmon has long been dictated by an infamous, split-the-baby formula established 40 years ago this week by a federal judge named George Hugo Boldt. Back then, in the face of salmon wars that ultimately escalated into gunfire, he used a 19th-century dictionary definition of the treaty term "in common with" to mean "equal," as in, tribes were legally entitled to half the state's harvestable salmon returning to "traditional waters." It was one of the most spectacular plot twists in the history of U.S. resource management.

That was 1974, and I was not quite 11 years old. Perhaps because it has been the law of the land for all my memory, I have never wasted much time questioning the Boldt decision's fairness. In a local newspaper career of nearly 30 years, including a decade working as this publication's outdoors reporter, I've written frequently about fisheries issues, often defending that treaty right in opinion pieces — frequently to the rabid consternation of some sport-fishing friends.

To be sure, when wearing my river-guy neoprene costume, I have had my doubts. Still do. Not about Boldt's fairness, but about its practical effectiveness in a time when an alarming number of Puget Sound wild (as opposed to hatchery-reared) salmon have, since the late 1990s, barely clung to existence on the federal Endangered Species list. The list of "threatened" stocks includes the wild chinook of both forks of the Nooksack River.

My view from that river — a once-stupendous fish producer before logging and lower-valley diking took their tolls — is probably not unique: I see stuff that makes me wonder who's driving the bus of salmon management. This came into sharp focus in the fall of 2012, when my One Lousy Chum test fishery came up dry. So, like many fishermen who wind up chasing fish at the tail end of their journey, I began looking around and asking questions.

Over many months, I observed gill nets belonging to members of the Lummi and Nooksack tribes stretched across the river. Occasionally I saw remnants of abandoned nets, some containing dead fish. I also encountered another man scoping out the river who bragged about cutting the tribal nets.

I did not see — and frankly never do — enforcement officers keeping watch over any of this.

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Acting as a private citizen, and contacting my local Fish and Wildlife office repeatedly, I quickly got the impression that the state had no idea how many fish were being taken from this river, what kind, by whom or when. All of this showed me how dangerously easy it is, from a stream-bank vantage point, to slip into the us-versus-them mindset that every fishery is a competition, and that any fish I let pass in front of me surely will be killed by someone else.

I wondered: Had Boldt really wrought a Wild West in our salmon harvest, where the vaunted “comanagement” by the state and tribes really amounted to, at best, separate-but-equal management, or at worst, little management at all?

I SOUGHT answers from people, tribal and non-, who know Washington fisheries intimately.

Some consensus — a rarity in this field — did emerge: The Boldt decision isn’t really to blame for the precipitous place we’ve found ourselves; it might even have delayed the inevitable “endangered” listing a bit. In fact, a serendipitous byproduct of this forced marriage was the creation of a two-pronged spear that *could*, in theory, be thrust at the real enemy: salmon habitat loss.

I also heard broad agreement on another point: Few people outside the tribal/state fish-management “bubble” understand what goes on with the state salmon fishery. And much of what they do see is deceiving. As someone often stuck in the middle of combatants in the long-running salmon-loss blame game, I can vouch for this disconnect — and offer reasons for it.

Fisheries management is a maddening tangle of competing interests, squishy science and unknown variables — all disincentives to in-depth reporting. On top of this is the veritable harrumphing circus elephant in the room: The core issues of treaty rights and salmon survival are rarely discussed with any candor in public forums because people are afraid they’ll be labeled as racist.

I have my own theory about this: A lot of those who complain loudest about treaty fishing rights in general, and tribal gill nets in particular, *are* racist. But most are not. And the latter group’s ideas and questions about fish policy are rarely heard because they fear being lumped with the former. This also applies to many journalists and policymakers.

Result: We are inundated with media accounts of the countless obstacles a salmon faces over its long journey from spawning gravel to sea and back — with never so much as a *hint* of acknowledgment that the same fish can still wind up dead, 10 minutes from the spawning finish line, in a gill net plainly visible to even the most nearsighted Mr. Magoo. The message — especially when the public is being asked to make further sacrifices to save fish habitat — could not be more mixed: Do we care about salmon or not?

The eggshell-dancing around tribal netting is understandable. But it simply fuels flames of misunderstanding and suspicion. So at the risk of upending the fundamental balance of the universe, grab onto something solid as we talk briefly about gill nets.

THEY KILL indiscriminately. Unlike purse seines, dip nets, fish traps, reef nets or other traditional means of harvest, gill nets drown fish. Thus, even when net fishermen carefully target a hatchery species or healthy wild run deemed expendable, they invariably kill some other salmon or steelhead that are not.

This is the rub with sport fishermen. Most think they’ve bent over backward to allow the passage of endangered salmon by fishing selectively — using barbless hooks and other special gear, in truncated seasons, to aid in the release of threatened wild salmon (hatchery fish are marked by a clipped fin).

Most people agree that saving wild stocks is important: They’re a living link to an ancient ecosystem that, once severed, can’t be re-established. So if the goal is preserving wild fish, why should the tribes be the only ones still fishing nonselectively?

Tribal leaders such as Billy Frank Jr., a man for whom I have tremendous respect, dispute the very premise of that question. They say gill net “by-catch” is no greater than the incidental kill inflicted by sloppy sport anglers in catch-and-release fisheries. Natives also have fished with some version of gill nets forever and plan to continue to, because the Boldt decision gave them “a legal, property right to those fish,” notes Mike Grayum of the Northwest Indian Fisheries Commission.

Beyond that, gill-net catches tend to make a big, negative splash because the tribe is the proverbial “caboose” in a very long harvest chain, taking all its fish at once, in plain sight. Generally, this netting is timed to avoid incidental catch of endangered fish (something many non-Indians dispute). Many net fisheries, in fact, are timed specifically to capture a run of hatchery fish that the tribe itself has produced. One of these is the six-days-a-week summer net fishery for coho on the Nooksack.

But with the de facto news blackout on netting — worsened by the state and tribes’ seemingly abject inability to communicate who is fishing and why — anglers on the bank never know that. They only

see dead fish.

WHERE DOES all that leave us?

Unfortunately, with some degree of distrust all around — none of it conducive to salmon recovery. After months of interviews, history books and spreadsheets, I don't blame tribal gill nets for the dry run of my 2012 One Lousy Chum fishery. A more likely culprit was a sudden hunger among commercial fishermen, both tribal and nontribal, for the once-ignored chum, fueled by a high wholesale price — up to \$8 a pound — for roe to make caviar.

It is worth acknowledging that the tribes, not the state or sport anglers, are preaching the gospel of improved salmon habitat in the other Washington — wielding the long-reserved threat of a new lawsuit that could finally enforce the “Boldt II” extension of treaty rights to habitat protection, by any means.

This specter is the greatest remaining shadow cast by Boldt today. In a practical sense, the decision's 50-50 split has been shoved to the background for years now, says Pat Pattillo, a 36-year veteran of the fish-allocation wars at the state Department of Fish and Wildlife. The new driver is the Endangered Species Act. Fishing seasons are shaped to allow a large share of endangered Puget Sound wild chinook to reach spawning gravel — without killing so many “incidentally” that the feds shut things down altogether.

Both tribal and sport fishermen, meanwhile, continue to fill freezers with catches composed largely of hatchery fish, themselves seen by conservationists as an alarming threat to wild stocks because of interbreeding.

The surprising upshot: Total catches in recent years have been nowhere close to the 50-50 Boldt mandate, Pattillo says. Respective shares of the 2 million to 7 million Washington salmon caught annually over the past decade often swing wildly in favor of one side or the other. In a contest that once prompted gunfire, the numbers today go largely unnoticed.

A COUPLE DAYS after my successful 2013 test, that One Lousy Chum — actually a beautiful, wild fish from one of the few remaining healthy runs in a once-fertile river left nearly barren by farming and logging — is resting in my Big Chief smoker. The aroma takes me back to the basement of my grandfather, who engaged in the same ritual. I watch the smoke rise, and I wonder.

I wonder whether lingering distrust over netting will prevent state tribes from gathering the necessary political oomph to turn their commendable message about habitat protection into action. I wonder why the tribes can't see the value, at least in terms of public perception and coalition-building, of inching toward more selective harvest methods, even though they're not obligated to do so.

I wonder, still, whether the harvest-hungry monster wrought by Boldt might be a dangerous anachronism from a time when the critical issue was dividing a relative abundance of fish. I wonder whether scantily monitored gill-netting, and even catch-and-release sport fishing, where any threatened fish are present, is simply flying too close to the sun.

Most of all, I worry that this emotionally charged mess of salmon entanglements has worn too many of us down. Most of us claim to love the wild Pacific salmon. Few of us want to pay its true cost. And time is not on our side: As the fish that might be the truest indicator species for our cherished Northwest way of life hovers on the brink, 40 years of divisiveness has robbed us of hope.

I think about that malaise, that uncomfortable numbness, and I worry.

In a crisis, numb is your enemy. On a river, it could cost you a fish. In a river system, it just might take them all.

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