

Years After the Boldt Decision; "The Right of Taking Fish at Usual- Ruling reshaped fishing, tribal rights - Echoes of landmark case linger

[JOHN DODGE THE OLYMPIAN](#)

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If the landmark court ruling known as the Boldt decision has an epicenter, it very well could be the lower Nisqually River watershed on the Thurston County border.

That's the home of the treaty tree, which stands sentinel over the site where Washington Territorial Gov. Isaac Stevens and South Sound tribes signed the Medicine Creek Treaty of 1854.

Thirty years ago this Thursday, U.S. District Court Judge George H.

Boldt handed down a shocker of a decision, relying on that treaty to all but assure Western Washington treaty tribes a right to half of the harvestable salmon and steelhead in the region.

It's also the home of Frank's Landing, a 6-acre riverfront parcel where Indian activists, borrowing a page from the civil rights movement, staged fish-ins in the early 1960s to draw attention to their yet-to-be-accepted treaty right to fish.

And it's the birthplace of Billy Frank Jr., the charismatic, leather-faced Nisqually Indian who has devoted his life to keeping his tribe and others connected to the salmon and their rivers.

Legal scholars call the Boldt decision -- based on U.S. vs. Washington -- one of the most significant natural resource rulings in Pacific Northwest history, reshaping state fisheries and the way salmon are managed.

For Western Washington treaty tribes and nontribal fishers alike, the ruling hit home in much the same way the U.S. Supreme Court ruling in *Brown vs. Board of Education* did 50 years ago in the Deep South, said former state Department of Fisheries director Bill Wilkerson.

But in many respects the promise of the Boldt decision is unfulfilled. Salmon are in decline. Prices for fresh-caught fish are rock bottom. And many tribal members remain shackled in poverty.

"We're getting further away from salmon recovery," Frank said. "Natural resources are so low on the totem pole, nobody cares."

An activist is born

When Frank talks, most people listen.

Born on the Nisqually River in 1931, he started fishing -- and getting arrested by

Billy Frank Jr., a Nisqually Indian whose life is inextricably linked to the Nisqually River and the Boldt decision, stands beneath the dugout canoe he used to fish for salmon as a young man. Mounted on the wall at the Wa-He-Lut Indian School at Frank's Landing, it was confiscated by state Department of Game wardens during an Indian "fish-in" in 1964 and not returned to Frank until 1980, a year after the U.S. Supreme Court upheld the Boldt decision. ...

Jerry Menge and Thomas Keeley fish Friday at Blue Creek Hole on the Cowlitz River. Menge says he doesn't object to Judge Boldt's ruling to reapportion the salmon catch, but he doesn't like the use of nets, both commercial and Indian.

state police -- at the age of 14.

Staying true to his conviction that his people had a treaty right to fish in the river, he kept on fishing, one of a handful of Indian activists who bucked the system in the face of racism, harassment and beatings.

Fifty arrests and a two-year stint in the Marine Corps later, the strong-willed, defiant man pushed and pulled Indian treaty fishing rights to the forefront.

The fish-ins and culture clashes reached a crescendo in 1970 at a fish encampment on the Puyallup River in Pierce County. Using tear gas and clubs, about 200 state game wardens and police broke up the camp and arrested 60 Indians and their supporters.

"I was there," Frank recalls. "And so was U.S. Attorney Stan Pitkin."

Rankled by the state's strong-arm tactics, Pitkin filed a lawsuit against the state on behalf of the tribes nine days later.

It was a tribal dream come true, an opportunity for a fair trial on the merits of the 1854-55 treaties signed by the tribes and Territorial Gov. Stevens, Frank recalls.

"We'd been trying to get the feds to take the case for years and years," he said.

The judge assigned to the case was George Boldt, a law-and-order judge, avid sports fisherman, and Eisenhower appointee who had no previous experience in Indian law.

Central to the U.S. vs. Washington case was the treaty clause that read: "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the territory."

In his ruling, Boldt relied on an 1828 Webster's American Dictionary definition of "in common with" to mean, in essence, 50 percent of the catch.

Overnight, American Indians -- who made up 1 percent of the state population and had been limited to 5 percent of the fish harvest -- had the right to catch half the harvestable salmon and steelhead.

The decision outraged state officials and nontribal sports and commercial fishers alike. Their steadfast belief was that the treaty words meant that Indians had the same rights to fish as all citizens of the state, subject to state fishing rules and regulations.

Now, 30 years later, bitterness over the ruling remains in some nontribal circles, but nothing like what existed at the time. Much of the acrimony is based on the fish runs they say have been strangled by tribal netting. That's left fewer good fish for the recreational anglers.

The Boldt decision still rankles John Hendrick of Oakville, but he tries to laugh about it. Hendrick, who fishes for steelhead five days a week on the Cowlitz River, hooked a fish at the Blue Creek Hole Friday afternoon, but it wasn't what he hoped for.

"It's a Boldt fish!" Hendrick said when he saw the sucker flopping around at the

end of his line.

Impact on business

The Boldt decision was among the factors that led to major reductions in the nontribal commercial fishing fleet.

For instance, ocean trollers, which fish for salmon with hooks and lines, numbered 3,090 in 1978, but are down to about 160 today, Hoquiam commercial fisherman Doug Fricke said. And only about 50 of those boats are active in the fishery, which is much more heavily regulated than it was 30 years ago.

"We don't agree with the Boldt decision, but it's the law," Fricke has said over the years.

Fricke continues to make a living on the ocean waters by fishing for salmon, tuna and crab.

"The nontribal fishermen have come to understand that there are tribal harvesters and nontribal harvesters and they both need to work together to protect and restore salmon habitat," Fricke said.

But that's not all. The 19 Western Washington treaty tribes were thrust into the role of managing the salmon resource on equal footing with the state.

"Boldt went way out on a limb -- he said the tribes should manage their own fisheries," Nisqually tribe natural resources director David Troutt said. "It was such a huge opportunity for us."

Legal battles

The ruling was fought on the water and in the courtroom by nontribal fishers and the state.

"There was illegal fishing all over Puget Sound -- from Bellingham Bay to the Nisqually River," Frank said of the post-Boldt years. "The commercial fishermen kept fishing and the state wouldn't enforce the law. The fish weren't making it back to the rivers."

Nontribal fishermen levy similar charges against the tribal fishermen.

Hendrick said the first years of Boldt were painful, as nets filled the rivers and runs of salmon and steelhead plummeted, leaving suckers for sport anglers.

"They netted the daylights out of the Chehalis," said Hendrick, who has fished Washington rivers since 1963. "I just stopped fishing the river."

It wasn't until after 1979 -- the year the U.S. Supreme Court upheld the Boldt decision -- that co-management between the state and tribes began. They took on the serious work of estimating run sizes and sharing the salmon harvest from the ocean to the rivers.

"By the early 1980s, people were trying to come together," former state Department of Fish and Wildlife Director Bob Turner said. "It was all about changing the attitudes of people and building a culture of trust."

Then in the 1990s, the state and tribes shifted focus to protecting and enhancing salmon habitat, propelled by dwindling salmon runs that had resulted from poor ocean survival, habitat loss, historic over-harvesting of certain stocks and the impact of hydroelectric dams and hatcheries on wild salmon runs. By 1994, things were so bad, most salmon fishing in the region was curtailed for the year.

In recent years, salmon returns and salmon fishing has rebounded, due in large part to improved ocean survival and more care taken to harvest hatchery fish and let wild salmon escape to return to streams to spawn. The Endangered Species Act listing of Puget Sound chinook and six other salmon and steelhead populations in 1999 galvanized support for salmon recovery like never before.

Fishing has improved in Western Washington during the past five years or so, and the tribes and the state seem to be working to restore steelhead and salmon runs, Hendrick agreed. "The Chehalis has gotten a little better," Hendrick said. "The Wynoochee and the Satsop are pretty good."

More fish, less money

Ironically, as support for saving salmon has grown, the price for their catch is lower than at the time of the Boldt decision. Fishermen blame the decline on a glut of farm-raised fish in the marketplace.

"I was getting \$2.50 to \$3 a pound for spring chinook in 1974," Fricke said. "It was \$1.50 to \$2 a pound last year."

"The price was better 30 years ago," agreed Nugie Kautz, a Nisqually tribal fisherman who has fished the river since 1957. "It's worse than it was before the Boldt decision."

Before the Boldt decision, Kautz would fish at night to avoid arrest and constantly had his nets confiscated by game wardens, one of whom he and Frank saved from drowning in a logjam during the fish-ins at Frank's Landing in 1964.

"We had a lot of fish before the Boldt decision," Kautz said. "I used to be able to make money."

Still, Kautz, 65, can be found on the water every tribal fishing season, setting his nets in search of chinook, coho and winter chum.

"I'll keep fishing -- I got nothing else to do," Kautz said. "If I didn't fish, I'd probably flop over dead."

Tribal members who don't fish are glad Kautz still does.

"If we get fish hungry, Nugie takes care of us," Sheila McCloud said.

Upholding a legacy

Frank, who spent many a harrowing day on the river with Kautz, remains the chair of the of the Northwest Indian Fisheries Commission, a position he's had on behalf of the treaty tribes for almost 25 years. At 72, he shows no signs of letting go of his role as the tribes' goodwill ambassador and staunchest voice for salmon recovery.

"I hope I'm good for another 50 years," he says, followed by his infectious laugh. He's only half- kidding. His father lived to be 104.

Frank is the first to say the Boldt decision was a godsend for the tribes, helping them build the infrastructure they need to manage their fishing and restore the habitat.

"I'm really proud of our tribes," he said. "We have more biologists and scientists than the state does."

At the same time, he is quick to say that the promise and potential of the Boldt decision have not been fulfilled. Puget Sound population growth, pollution, dwindling state funding for natural resource agencies, and the never-ending battle to keep enough cool, clean water in the rivers and streams for fish have taken their toll.

But for every message cloaked in pessimism are actions of hope and vision from a remarkable man who turned himself from a "get- arrested guy" into tribal leader.

To drive the point home, he talks with enthusiasm about his plans this year to return to the Nisqually River to teach his youngest son how to prepare and cast a net to catch fish.

"Even if we just fish a couple of days, that's OK," he said. "I guess it means I've come full circle."

John Dodge covers the environment and energy for The Olympian. He can be reached at 360-754-5444 or jdodge@olympia.gannett.com.

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