

Who gets to fish? This has long been a topic of controversy in the Northwest. Whether we look at Indian vs white fishermen, or at sports vs. commercial interests, there is much at stake. Because your students and their families may have strong positions on salmon allocation issues, it may be tempting to avoid discussing them with your students at all. But these issues are very much a part of life in the Puget Sound region today. Is it fair to your students to skirt them? Even more important, your students need to recognize that there may be several valid sides to complex issues, and that all positions need to be respected in working toward a resolution of conflict.

The Boldt Decision of 1974, which radically changed the allocation of salmon between Indian and non-Indian fishermen is one such issue. Because many of us are not aware of the historical events which led up to this decision, the following background may be helpful.

Contact with Europeans and Americans brought major changes to the lives of Indians. Not the least of these changes was the settlement of the Puget Sound region.

The United States government had recognized much earlier that land must first be legally acquired from the Indians before it could be homesteaded by settlers. With the Northwest Ordinance of 1787, the government adopted a policy which at least on paper recognized the rights of Indians to their land and livelihoods.

"The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights, and liberty they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them."

In 1854 and 1855, territorial governor Isaac Stevens negotiated a series of treaties securing from the Indians major land claims including nearly all of Puget Sound and extensive portions of Washington, Idaho, and Montana. In exchange, the tribes were guaranteed "The right of taking fish at usual and accustomed grounds and stations . . . in common with all citizens of the United States." This right was evidently of enormous importance to the Indians, since it was practically all they received in exchange for more than 100,000 square miles of land.

TEACHER BACKGROUND

Language barriers may have made much of the treaty incomprehensible to the Indians, but Steven's own promise to Indians assembled at the signing of the Point No Point Treaty was very clear: "This paper secures your fish."

Initially, the Indians had little competition from settlers for the fish. Before the technology of fishing changed, Indians greatly surpassed white fishermen in fishing skills, and until the middle of the 19th Century, Indians supplied virtually all the commercial demand for salmon among Whites. But the invention of the canning process changed all that. By the end of the 19th Century, canneries in Washington easily claimed more salmon than the Indians did. Cannery-bound salmon was harvested primarily by non-Indians, using gill nets, purse seines, or on rivers, fish wheels and traps. Fishing became highly lucrative, and not surprisingly, competition broke out among newly arriving immigrant groups for this prized resource. Before long, fishing boats were pushing their competition further and further offshore in order to get at the fish before the others could. The Indians, working the rivers with traditional methods, were the losers.

Before the turn of the century it was already evident that the salmon runs were in danger of being over-fished. By 1877 the State of Washington had begun to regulate fishing by limiting the times and places where fishing could take place. Increasingly, however, the state chose to apply its strictest limitations to the places where Indians traditionally fished. It began by prohibiting fishing in and around each Puget Sound tributary. Then it restricted the methods which could be used. In 1937 the passage of Initiative 77 eliminated all fixed gear: traps, fish wheels, beach seines and set nets, ie. the methods used predominantly by Indians. It also closed the interior of Puget Sound to all commercial fishing except within the boundaries of the reservation themselves.

At the same time that the fishing catch was undergoing redistribution, other forces were threatening the runs themselves. Dams erected on Puget Sound tributaries were built without any provision for fish to pass, eliminating hundreds of square miles of spawning habitat, and entire runs of salmon were subsequently lost. Early logging practices which used streams to transport logs were devastating to spawning beds, and more recent methods which create densely roaded clearcuts have not been much better. Agriculture has placed still a further demand on salmon through water diversion projects which interfere with salmon migrations, and cause water quality degradation. In short, both the salmon, and the Indians who depended on them were becoming increasingly imperiled by development in the Northwest.

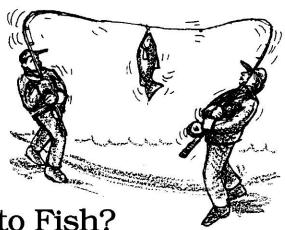
In spite of these assaults, Northwest Indians continued to fish, resisting government efforts to assimilate them into other trades. Increasingly, they looked to the courts to help them reestablish their right to the salmon they felt they had been promised. The lawsuit brought by the Federal government on behalf of 14 Washington tribes against the State of Washington, which resulted in the Boldt Decision, was only the culmination of a series of lawsuits brought by Indians over the course of many years.

On February 12, 1974, after a lengthy examination of the history of the Indian fishing rights conflict, Judge Boldt announced his ruling. He had interpreted the original treaty phrase "in common with" to mean "sharing equally," or 50:50. He directed the State, not only to allow the tribes 50% of the fish, but to delegate to them an important role in managing the salmon fishery.

This ruling has had an enormous impact on Indians and non-Indian fishing interests alike. For non-Indians, it transformed fishing in Puget Sound overnight from a profitable occupation to a very marginal one, and many fishermen went out of business altogether. At the time of the ruling, non-Indian fishermen reacted with anger and often noncompliance. Resistance is still heard among non-Indian commercial and sportsfishing groups; however, with time, acceptance of the decision is slowly being achieved.

The change it has made for Indians has been very great. It has brought gradual economic improvement to a financially disadvantaged segment of society. New employment opportunities have given Indian youth a future within their reservations, where before they were forced to leave the reservation to find work. A new spirit of purpose and pride is present in reservations today, which is kindling a rediscovery of the native heritage throughout Washington's native peoples. Finally, the role Indians have taken in salmon management has brought increasing respect from whites who see them managing salmon resources effectively. The Boldt Decision may not be entirely responsible for all these changes, but it has contributed to them in a substantial way.

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Lesson Plan

Who Gets to Fish?

Student Objectives:

The students will explore how the allocation of salmon between Indians and non-Indians has been affected by the Boldt Decision, and they will look at how this court ruling has affected both groups fishing in Puget Sound.

Materials:

One copy per student, WHO GETS TO FISH?

Procedure:

The student pages and follow-up questions are designed to stand alone as way of introducing the Indian fishing rights issue to your students. You are encouraged to add to this brief presentation from your own experience or from information in the teacher background. Here are some other things you could do, depending on your comfort with the issue and your sense of the appropriateness of these activities for your class.

Before the lesson:

1. Before introducing the salmon allocation issue as it relates to Indians, give your students a somewhat parallel, but unrelated situation to consider. The situation might be an actual historic event in which an agreement or treaty (not involving Indians) was broken, possibly a situation during the American Revolution. Or you could present an entirely fictitious situation, as in the example provided below. Brainstorm as a class some of the arguments supporting either side of the conflict, then divide the class into two teams representing the two positions, to argue against one another. In calling on individuals to raise points, alternate between the two teams. If one side seems to have all the good arguments, have the teams then switch sides and represent the other position.

Possible topic:

The Martin and the McCoy families live on opposite sides of Baldy Mountain. They both cut wood from the mountain, and for centuries they have argued that the other family is taking too much of the wood. To try to put an end to the bickering, 50 years ago Grandpa Martin and Grandpa McCoy agreed that the Martins would cut only hemlock trees and the McCoys would cut only fir trees. This agreement worked for a while, but over the last 50 years the 20th Century has come to Baldy Mountain. The Martins have long since removed all the hemlock trees from the mountainside. In fact they started a saw mill and have been

selling lumber for a good profit. The McCoys, on the other hand, have been more moderate with fir trees, cutting only a few here and there for fire wood and needs around the house. Now the Martins are expanding their business. The housing market is booming and they can get an excellent price for lumber, especially the fir on Baldy Mountain. In expanding their mill, they are able to create new jobs in the area, maybe even jobs for the McCoys. To do this, they have begun to take some of the more valuable fir trees off the mountain. After all, neither Grandpa Martin nor Grandpa McCoy is around any more, and that agreement was made only on a handshake.

As you might expect, this is <u>not</u> all right with the McCoy family, who value the trees standing, and who have watched in horror as the Martins first removed all the hemlock and now are going to work on the fir.

What arguments do the Martins use to support their position? What arguments to the McCoys use?

2. How does it feel to have the rules change? Surely everyone has been in a situation where they thought they knew where they stood, but suddenly the rules were changed. Have the students describe any such situations they have been in, and discuss how it felt. You can even create such a situation by setting up a set of classroom rules, and then changing them.

Following the lesson:

- **3.** After they have written answers to the student questions, involve the class in a discussion of their answers. Or you may look through their answers and read aloud some which show varying points of view or especially interesting perspectives.
- **4.** Play FISH GAME again, but this time add a new condition. Before the game, identify three people (or teams) to fish as Indian tribal members. These individuals will fish every day. All others will fish only on even-numbered fishing days.

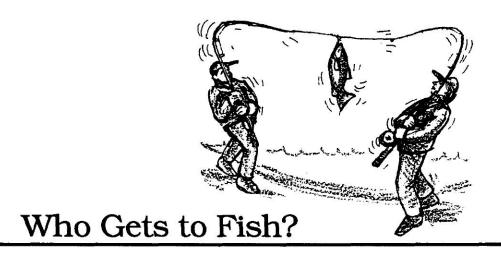
After playing this version of FISH GAME discuss with your class the following questions:

- How much better off were the individual tribal fishermen as a result of the fishing-days rule? Will this advantage last long if other tribal members, attracted by the new law, start fishing too?
- Was it harder for the Department of Fisheries to do its job as a result of the fishing-days rule? Why?
- How did the fishing-days rule affect the total salmon catch of both groups?

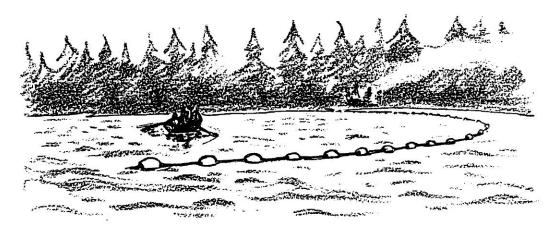
The issues presented here represent only one part of the salmon allocation problem. One highly controversial issue not presented here is the intense conflict between sports fishing and commercial fishing interests over the non-Indian portion of the salmon catch. As suggested in the introduction, you are encouraged to supplement these activities with news stories as they appear in the press, and to have your students watch for them also. These conflicts are far from resolved and the effects of the various solutions are likely to be widespread.

Answer Key

- 1. Judge Boldt studied the history of Indians in Washington and knew they lived by fishing before the arrival of white settlers. He looked in the original treaty signed between the Indians and the U.S. Government over 100 years ago in which the Indians had traded land for the continuing right to fish. He decided this treaty meant to divide the fish equally between Indians and non-Indians.
- 2. The Indians maintained that fishing was their traditional way of life. They felt the government had not kept its promise to protect the right to fish which the treaty of 1852 had established. They believed the State of Washington was specially favoring white fishermen in its decisions about where and how salmon could be caught.
- 3. Non-Indian fishermen claimed fishing was a tradition for them too. They argued that the Indians were just a small group. Why should such a small group have the right to such a large share of the fish? They maintained that this decision was descriminating against non-Indians.
- 4. Answers may vary.
- 5. The Boldt Decision has given the Indians a way of earning a good living within their own communities. It has given Indians an important role in managing salmon stocks throughout the state. It has also helped Indians to rediscover pride in their history and culture.
- **6.** Non-Indian fishermen have seen their share in the salmon fishery decline since the Boldt Decision. Most non-Indians who fish in Washington supplement their incomes with other work,



While his grandfather rows out into the river current, John carefully guides the gill net off the bow of the wooden skiff. When the net is fully paid out, John pushes overboard a large rock which will anchor that end of the net in the river channel. The other end of the net is tied to the shore. They examine the gentle curve of the net across one third of the river's width. Its position is good. As the evening light dims, they row back to their campsite on the near shore. There they will wait for the fish to arrive. With other family members, they build their campfire, cook their supper, and quietly talk. They will share fishing stories from years past as they listen for the sound of fish in their nets.



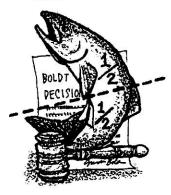
John and his grandfather are members of one of Puget Sound's Indian tribes. Their ancestors were highly skilled fishermen who fished this river for thousands of years. In recent years it has not been so easy, however. In fact, during most of this century, it has been very difficult for Indians to make a living fishing.

When white settlers first arrived in Puget Sound, salmon runs were bountiful. But as the Northwest was settled, overfishing and environmental damage took its toll, and salmon runs declined. To protect the salmon, the Department of Fisheries sharply restricted how and where people could fish. But very often, it was the Indians' ways of fishing which were restricted most. John's family and other

Indians were left only a small part of the returning fish. Like many other members of his tribe, John's father left the reservation to work as a custodian for the U.S. Navy, because he could not find work at home.

The Indians knew that in 1852, over 100 years ago, their people had signed a treaty with the U.S. Government which traded large amounts of Indian land for the right to continue fishing in the places their ancestors had always fished.

John's uncle, Thomas was among a group of Indians who were angry that most Indians were no longer able to make a living as fishermen. Thomas felt that the State of Washington was ignoring the treaty agreement of 1852 by allowing white fishermen to catch most of the salmon -- and by allowing many salmon streams to be destroyed by development. Thomas and other tribal members hired lawyers, and in 1974 they sued the State of Washington. They demanded that the State honor the Indians' right to a share of the fish.



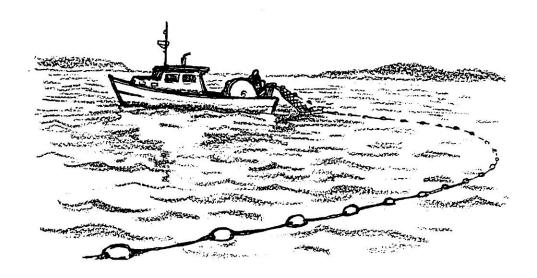
This famous lawsuit has become known as the Boldt Decision, after the Judge who heard the case. Judge Boldt studied the historical facts of the case for many months before making his decision. He carefully read the treaty of 1852, which stated that Indians would be allowed to fish

"... in their usual and accustomed places, in common with the other citizens of the United States ..."

Judge Boldt decided this sentence meant that the salmon should be shared equally between Indian and white fishermen. He ruled that Indians would be allowed to catch one half the State's salmon harvest.

John has held a tribal fishing permit since he turned 14 last year, allowing him to fish with his family. He and his family will probably not get rich as fishermen, but if they are careful to protect their salmon runs they can count on making a good living.

John's grandfather is proud to have John and his other grandchildren showing so much interest in fishing. But he is also pleased with other things he sees. He sees John and his friends practicing some of the fine art and woodworking skills, of which Northwest Indians were once such masters. They are learning to carve and race traditional canoes. They are rediscovering traditions and values from the earlier Indian culture, and best of all, they are feeling pride in being Indians today.



Todd and his dad own a gillnet boat and fish throughout the Puget Sound area. Their net, like John's net, is set to hang in the water and catch salmon of only a certain size. But Todd and his dad fish under different rules than John and his grandfather. Their net may only be set in open water and they may only fish at very specific hours on certain days during the fishing season.

Before the Boldt decision was handed down, Todd's dad was allowed many more days to fish, and he was able to make a good living as a fisherman in Puget Sound. After the Boldt decision, he was not able to support his family fishing alone. He works as a carpenter at times when he cannot go fishing.

Although Todd enjoys helping his dad fish, he will probably not become a fisherman himself.

Questions:

1. Why did Judge Boldt rule that the Indians were entitled to half the fish caught in Washington?

2. What arguments do you think the Indians had in support of their side?

3. What arguments do you think the non-Indian fishermen had on their side?

- 4. If you had been the judge, how would you have ruled?
- **5.** What have been some of the effects of the Boldt Decision on Washington's Indians?

6. What have been some effects of the Boldt Decision on non-Indian fishing in Washington?

