

TOUGH QUESTIONS ON INDIAN FISHING

BY THE NORTHWEST INDIAN FISHERIES COMMISSION

Listed below are answers to some of the questions being raised about Treaty Indian fishing rights, 50 percent catch limits, competitive advantages and steelhead, to name a few. The Northwest Indian Fisheries Commission and its member tribes hope that a candid discussion of these questions will lead to a fuller understanding of the issues and a rapid solution to the unresolved problems.

DO INDIANS GET SPECIAL ADVANTAGES?

In most ways, Indians do not enjoy any of the special advantages many imagine they receive. Indian fishermen are regulated by tribal governments for protection of the fisheries, just as non-treaty fishermen are regulated by the state. But unlike non-Indians, Indian fishermen have a treaty-guaranteed property right to fish that goes beyond any state or even federal law. For both moral and practical reasons, the first Europeans to arrive in America recognized the Indian's rights to their tribal lands and properties. In 1778, the Continental Congress declared that Indian lands and property could never be taken without Indian consent. When the U.S. Constitution was drafted, Congress was given the power to make treaties -- and the treaties were made "supreme law of the land." Thus, when northwest Indians retained their fishing right and agreed to give up claim to this land, the agreement was, and still is, backed by the U.S. Constitution.

WHY DID THE U.S. DISTRICT COURT SPLIT THE SALMON CATCH 50-50 BETWEEN INDIANS AND NON-INDIANS?

The division is not so much between Indian and non-Indians as it is between tribal and state governments, treaty and non-treaty parties. It must be remembered that at the time the treaties were signed, Indians were catching almost all of the fish. But under the treaties, Indians agreed to share the fishery "in common" with all citizens. This, in the language of the time, made Indians and settlers, in effect, equals when it came to sharing the resource. Each group was entitled to one-half. Eventually, settlers were regulated by their state governments, but tribes were not legally subject to state regulations because they are separate political entities with special contracts, or treaties, with the U.S. Government. The courts decided that tribal governments and the state government, as co-equals, should each be entitled to one-half of the available harvest.

HOW IS INDIAN FISHING REGULATED IF NOT SUBJECT TO

STATE JURISDICTION?

Tribal governments regulate Indian fishing according to rules imposed by the U.S. District Court. Every tribe adopts fishing regulations in accordance with sound fisheries management. The tribes and the state work together in drafting their fisheries regulations. Tribes must hire or have available to them a fisheries biologist to assist in drafting regulations and monitoring the fishery. They must also have the capability to enforce their regulations and prosecute violators. Every precaution is taken to protect the valuable fisheries resource.

WHY IS IT NECESSARY TO RESTRICT NON-TREATY FISHING TIME?

Basically, interpretation of the treaty dealt with an opportunity to catch the fish. Under the treaties and the law, both Indians and non-Indians must have an equal opportunity to catch half of the available fish. An opportunity must include both time, availability and fishing power. Before the Boldt decision, Indians were unable to catch their share of the fish because most of a run had been caught before it reached Indian nets. Thus Indians were forced to close their fisheries in order to allow spawners to go upstream. In addition, Indians did not have the fishing power to compete with large non-Indian fleets. Now, non-treaty fisheries must share the conservation burden with the tribes. They must allow enough fish to pass through their fisheries so that Indian fishermen have a chance to fish without having to close for conservation. In order to allow treaty fishermen an equal opportunity, they are often given more fishing time because their fishing power is less than that of the large state fleet. But there is still a long way to go before Indians are actually catching 50 percent.

ARE THERE OTHER FACTORS AFFECTING THE INDUSTRY BESIDES TREATY RIGHTS?

Yes. Even before the courts reaffirmed Indian fishing rights, over-licensing and environmental damage had severely hurt the industry. It was, and still is, a case of too many fishermen and too few fish. Certainly, an increased Indian fishing effort, even though Indians have caught far less than their 50 percent share, has tended to reduce the numbers of fish available to others. As a result, Indians have undertaken vigorous enhancement programs and endorsed and urged boat buy-back and other financial assistance programs that will ease the impact on non-treaty fishermen.

WHY SHOULD A MID-19TH CENTURY TREATY BE ENFORCED SO SUDDENLY TODAY?

First, the treaties have not been enforced suddenly. For almost a decade, courts have ordered the state of Washington to recognize the treaties. Court

decisions added nothing to the treaties. They simply reaffirmed them. It is similar to the length of time it took to affirm the right to vote. Women didn't get the vote until 1920. And the "one man, one vote" rule didn't come until 1964 -- all under a Constitution 200 years old!

WHAT ABOUT STEELHEAD? AREN'T THEY A GAME FISH THAT CAN ONLY BE CAUGHT BY SPORTSMEN WITH A HOOK AND LINE?

It must be recalled that steelhead became a "game" fish only after the state passed a law to that effect in 1925. Before that time, it was a commercial fish like any other salmonid, caught by all fishermen. Now state citizens, under state jurisdiction, are restricted by their laws which make it a game fish. However, Indians have traditionally netted steelhead, particularly for their winter livelihood. Indians were netting steelhead when the treaties were signed and they retain that right today. But some tribal groups have indicated a willingness to restrain their net fishing for steelhead in an effort to ease present tensions, providing arrangements can be made for an alternate winter fishery. In addition, the tribes are using their fisheries programs to research and enhance the steelhead resource so that eventually there will be more fish for everyone and so that the precious native runs we now have will not be destroyed forever.

HAS JUDGE BOLDT BEEN PARTIAL TO INDIANS?

Careful examination indicates Judge Boldt is partial only to the U.S. Constitution, the law and the future of the fishery resource. The fact that the parties to fishery lawsuits are Indians and non-Indians has nothing to do with it. All judges -- state and federal -- are bound to uphold the U.S. Constitution. And the Constitution says plainly that, "...all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." And the treaties gave Indians the right to take "fish...in common with all citizens of the Territory..." Judge Boldt followed a long Constitutional tradition in making his rulings, and the three judges of the Ninth Circuit Court of Appeals in San Francisco unanimously upheld his decision in a long and detailed opinion of their own. Nine other judges of the Ninth Circuit later also supported the decisions by refusing to hear any further arguments on the case. The U.S. Supreme Court likewise was satisfied that the matter did not require further review,

MANY ARGUE THAT INDIAN NETS DESTROY FISH RUNS. IS THAT TRUE?

No way. It was the Indian, after hundreds and hundreds of years of fishing, who maintained the runs which non-Indians started exploiting and severely

depleted in the past sixty to seventy years. Before affirmation of the treaties, Treaty Indians only caught about 5 percent of the commercial salmon. Now they average only about 14 percent of the catch in Washington while non-treaty fishermen catch 86 percent of the total. Nor is there any evidence that Indians have destroyed the fishery. Thorough investigation of such charges over a three-year period of litigation in U.S. vs. Washington revealed a complete absence of any credible evidence that members of Treaty Tribes had damaged the perpetuation of any anadromous fishery. On the contrary, Treaty tribes have employed fishery biologists, adopted their own fishing regulations, instituted their own enforcement programs and launched extensive enhancement programs to expand the fishery for all fishermen -- treaty and non-treaty, sport and commercial.

DO THE TRIBES HAVE ENHANCEMENT PROGRAMS LIKE THE STATE?

In addition to protecting watersheds under their control where fish spawn naturally, Treaty Tribes in this area operate 19 hatchery facilities. This year (1977) the tribes have planted 26 million salmon and steelhead. Next year, Indians will plant 53 million salmon and steelhead which, when mature, will be available for all fishermen to catch. This compares to an expected 1978 state plant of 150 million fish. And to put those totals in further perspective, there are 1,400 Indians permitted by tribes to fish, compared to 5,700 non-treaty commercial fishermen in the treaty area.

HAVE INDIANS ALWAYS USED FISH FOR COMMERCIAL PURPOSES?

Yes. Indians have always caught fish commercially. Even before the white man arrived, fish were a basic element in Indian trade. Fish were used extensively as an exchange for other goods. The commercial aspect of the Indian fishery was also an important part of treaty negotiations. Those involved in negotiations recognized the contribution Indian fishermen had made to the territorial economy because Indians then caught most of the fish used even by non-Indians. They hoped to encourage Indians to expand the industry.

SO WHAT CAN ANYONE DO TO SUPPORT THE INDIANS AND THEIR TREATY RIGHTS?

First of all, you can let community leaders know that Indians do have support within the community. Opposition to Indian treaty rights and the Indian fishing efforts has been extremely vocal. Let leaders know that not everyone agrees with the opposition view.

Secondly, join any group that endorses the Indian position and give it

whatever support you can.

Third, after you've familiarized yourself with the issues, let others around you know how you view the situation. Many people -- hearing only one side -- believe there is only one side. And nothing could be further from the truth. Speaking out, even privately, can make an important difference.

WHERE CAN I LEARN MORE ABOUT THE INDIAN FISHERY PROGRAMS?

Write the Northwest Indian Fisheries Commission,
2625 Parkmont Lane S.W.,
Olympia, WA 98502.

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