

Politicizing Our Waters: An Examination of the Boldt Decision's Role in Anti-Indian Activism

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By

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## Introduction

The Indigenous peoples of the Pacific Northwest have known the region as their home for millennia, with cultures that flourished well before the arrival of Europeans and subsequent colonial pursuits. The cultures that have endured the countless occurrences of violence, exploitation, and the treaty making circuit spearheaded by Isaac I. Stevens, the first territorial governor of the Washington territory, have a long-established history linked to the region's landscape and resources. The multitude of species of salmon and trout holds a special place among the others for its importance in Indigenous diets and spirituality. This resource was of so much importance that the Treaty of Medicine Creek (1854), which was designed to strip away the agreeing tribes' title to millions of acres of land, at the very least assured that the right to take fish would be protected when fishing in common with other citizens of the territory at all "usual and accustomed grounds and stations."<sup>1</sup>

Over a hundred years later, the United States was facing the pressure of political strife abroad and at home, with Washington State facing a crisis of its own between the state's ability to regulate its resources and commerce clashing with the tribes' attempts to exercise the rights guaranteed in the treaties signed long before. The aforementioned Treaty of Medicine Creek (1854) became a point of contention in the landmark case *United States v. Washington* (1974), which included the hotly debated Boldt Decision. This case became highly influential when Judge George H. Boldt issued the decision that the tribes that agreed to the terms of the treaty had a right to an equal share of the salmon harvest.<sup>2</sup> This ruling was celebrated by Indigenous

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<sup>1</sup> Charles Joseph Kappler and United States, *Indian Affairs: Laws and Treaties*, LLMC-digital Series (Washington: G.P.O., 1904), 661-664.

<sup>2</sup> Suzan Harjo, ed., *Nation to Nation: Treaties Between the United States and American Indian Nations* (Washington, DC: Smithsonian Books, 2014), 179.

peoples of the Pacific Northwest, especially those that participated in the Fish-In Movement in the 1960s to mid-1970s, for it assured that the tribes of the region would have access to the resources vital to their ways of life.

However, not all took kindly to Judge Boldt's ruling. Notably, Washington State's elected leaders resisted the decision and attacked the Indigenous nations that had succeeded in their effort to affirm the rights laid out by the treaties by using laws and language to further suppress tribes after *U.S. v. Washington* (1974). Private organizations with interests in salmon and steelhead runs also took measures to resist the Boldt Decision with the most brazen attempts orchestrated by sport fishing organizations that had staked a claim to the fish within Washington's lakes and rivers. In the aftermath of the decision, sport fishing organizations came to the forefront of a movement designed to combat the tribal claims to fishing within Washington State and the judicial power of Judge Boldt. From political demonstrations that violated the law laid out by Boldt to cartoons and newspaper advertisements utilized to sway public opinion against Boldt, and the tribes involved, these organizations were champions of a cause spurred by a judicial ruling they believed unfairly treated the non-Indigenous people of Washington State.

It is interesting to note that clubs and fishing publications were not always at odds with tribes and their fishing rights; instead, they spent much of their time combatting commercial interests in Washington waters. Many anti-Indigenous organizations within the state of Washington began as politically emboldened sport fishing clubs, and it is their political involvement before Boldt that catches the eye for its attention on industry rather than the tribes of Washington. The subsequent changing of course once tribes began exercising their rights

lends credence to the idea that *U.S. v. Washington* (1974) along with the Boldt Decision were catalysts for sparking anti-Indian<sup>3</sup> activism within the Pacific Northwest.

### Methodology

To inform this paper, a various number of sources have been utilized in order to get as full a scope as possible. Much of the material presented comes from the University of Washington's Special Collections, namely the Kenneth McLeod Papers, 1932-1987, which provided the bulk of the material presented. The collection includes large amounts of sources that shed greater light on the subject of anti-Indian activism with each piece of evidence. To give some context, Kenneth McLeod was an avid sport fisherman who took an active role in resisting commercial fishing interests, the Boldt Decision, and tribal influence in the Pacific Northwest with varying degrees of success and organizations. The material from this collection includes correspondence between McLeod and state officials, newspaper articles, cartoons collected by McLeod, advertisements, various records of McLeod's organizations, and magazine articles published by McLeod or in the magazine *Pacific Sportsman* and *Northwest Sportsman* that McLeod edited. Along with these papers, various political documents that concern Washington officials and legal battles provide additional information.

The correspondence between McLeod and Washington State officials is important to this paper because it presents evidence that a substantial number of elected officials within Washington State viewed the Boldt Decision as an abridgement of the state's right to govern its waterways and gives clues to how many of these officials accepted the idea that tribal governments unequally benefited from the decision. Newspaper articles give a glimpse into the

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<sup>3</sup> "Anti-Indian" is one of the most commonly used terms used to refer to activism or legislation that actively seeks some diminishment of the power of tribal governments and Indigenous peoples. For the purpose of this paper the term "Indian" will refer to the United States' legal classification of Indigenous people.

events of the Boldt resistance, including organized protests along with stories of Judge Boldt hung in effigy on occasion with photographic evidence to back up their stories. Similar to newspaper articles in their approach of spreading information, magazine articles stand apart because these articles were published by people within sport fishing organizations, giving readers a chance to view their political engagement from the point of view of the fishers.

Cartoons are pieces of pop culture that carry a certain manipulative element that can be used to shape the opinions of those that view them for their ease of access and understanding. The McLeod collection includes a group of cartoons that showcase the resentment held toward Judge Boldt and the tribes. Many of these cartoons draw their political arguments from racist notions of unequal rights that will be explained in more detail later. In a similar realm as the cartoons, a small collection of advertisements offer insight into the many avenues taken to push against the *U.S. v. Washington* (1974) decision.

Finally, the government documents utilized here include statements made by Washington U.S. senators. National level court cases provide information on the means by which Washington pursued legal action against the Boldt Decision and Indigenous fishing claims, along with cases that are subject to being contested within Washington State in the modern day.

### Literature Review

The Boldt Decision has been a popular subject among scholars whose research interests focus on the state reactions and unease regarding the case, the prelude to the case, or how the Boldt Decision influenced Indigenous peoples in the Pacific Northwest. Much of this scholarship began to be published in the mid-1990's, nearly twenty years after the case was settled, which allowed researchers to collect enough information regarding the build up to the trial, the trial

itself, and some of the effects the Boldt Decision had on communities with a particular focus on Indigenous communities. However, scholarship on the movement that resisted Boldt and the tribes remains scarce and tends to focus on the language of groups formed to promote American conservative ideologies and specific events during the resistance period. Washington State is home to a massive sports fishing industry and at the time of the Boldt Decision, the fishing groups of the state vehemently opposed sharing their claim to the salmon and trout supply in the state and began working alongside the state of Washington and organizations to nullify treaty rights for Indigenous peoples.

The article "Treaty Rights: Twenty Years after the Boldt Decision," by Jovana J. Brown examines the effects of the Boldt Decision twenty years after the fact and provides a brief history on the tribal and state relationship with the case and each other.<sup>4</sup> For example, tribal governments faced difficulty when attempting to exercise their rights, agreed upon over a hundred years earlier through treaties, in the initial years after the Boldt Decision. Though these rights were affirmed in federal court, some Washington State officials, including former attorney general Slade Gorton, pretended as if the decision had not occurred, thus halting the efforts of Indigenous organizations to reassert their claims.<sup>5</sup> This opposition on the part of the state was not kept a secret among officials. Brown notes that the Governor of Washington at the time, Dixy Lee Ray, upon learning that the Boldt Decision was upheld in the Supreme Court, was quoted as having been fearful of further rulings that sided with tribes because Washington State would

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<sup>4</sup> Jovana J. Brown, "Treaty Rights: Twenty Years after the Boldt Decision," *Wicazo Sa Review* 10, no. 2 (1994): 2, <https://www-jstor-org.offcampus.lib.washington.edu/stable/1409130>.

<sup>5</sup> Ibid.

have increasingly less influence in areas concerning Washington's ecology.<sup>6</sup> State government pushback against the federal decision was a key part of the reaction towards Boldt. It encouraged the negative reaction to spread from state senators to the governor and furthered the cause of sport fishing organizations against the tribes as these organizations had an opportunity to align themselves with people of power within the state.

The immediate aftermath of the case is an interesting time in Pacific Northwest history because of the level of lawlessness exercised by anti-Boldt and anti-Indian activists that took a direct stance against federal law. Much of this resentment stems from the history non-Indian fishers had with their share of the fisheries catch, in that they held almost all claim to fishing in Washington. But after Boldt, they were forced by law to share with the tribes who had a very small claim before. Bruce E. Johansen in *Native Americans Today: A Biographical Dictionary*, deals with how the Boldt Decision sparked controversy between Indigenous and non-Indigenous fishermen.<sup>8</sup> This controversy is seen to have had severe negative effects regarding the relationship between the two opposing groups, the tribes and the sport fishing industry, with the ruling being celebrated as a victory by the former and reviled by the latter who viewed it as an affront on their own rights. This piece of scholarship's focus on the ordinary citizen's role in challenging federal law reveals how adamant the beliefs of these people were as violent actions, such as the vandalism of Indigenous fishing equipment and the open opposition of law enforcement, were not uncommon occurrences among these groups.<sup>9</sup> Johansen also points out that opposition to the settlement reached by Judge Boldt took non-physical forms, such as

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<sup>6</sup> Ibid.

<sup>8</sup> Bruce E. Johansen, *Native Americans Today: A Biographical Dictionary* (Santa Barbara, Calif.: Greenwood Press, 2010), 28.

<sup>9</sup> Ibid.

rumors about Judge Boldt that attempted to smear his reputation by attacking his sanity and integrity, along with language utilized by those that sought to abrogate the treaties.

The language touched upon in Johansen's work becomes the center point of "In the Name of Equal Rights: 'Special' Rights and the Politics of Resentment in Post-Civil Rights America," by Jeffery R. Dudas.<sup>10</sup> Dudas' focus on the language of legal conservative activists gives greater insight into power inherent within certain words, which can do much to transform the arguments and presentation of the organizations that use them. Words and phrases, such as "unconstitutional," "special rights," and "supercitizen," supplemented the vocabulary of citizens and high-ranking Washington State officials alike in their attempts to fight the gains made by Indigenous peoples from the 1960s to the 1980s.<sup>11</sup> Language provides the bedrock for how individuals or organizations represent themselves and how they are perceived in the public sphere. Utilizing terms such as "special" and "super" in conjunction with rights and citizens caters to a population raised within the United States. This is due to the Constitution's promotion of the establishment of rights that are meant to apply to all citizens of United States without benefitting or denying a specific population of citizens under the Fourteenth Amendment. The intended effect of this language is that the rights affirmed by the Boldt Decision and rights granted by the plethora of treaties with U.S. tribes can be painted in a negative light for "unequally" benefitting Indigenous peoples and, by extension, can be interpreted as violating the equal protections laid out within the U.S. Constitution.<sup>12</sup> The ironic aspect of this use of language

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<sup>10</sup> Jeffrey R. Dudas, "In the Name of Equal Rights: 'Special' Rights and the Politics of Resentment in Post-Civil Rights America," *Law & Society Review* 39, no. 4 (2005): 743, <http://www.jstor.org.offcampus.lib.washington.edu/stable/3557636>.

<sup>11</sup> Johansen, *Native Americans Today*, 28.

<sup>12</sup> Jeffrey R. Dudas, "In the Name of Equal Rights," 743.

is that Article VI, Section II of the Constitution better known as the Supremacy Clause, establishes that treaties made by the United States are to be treated as the “supreme Law of the Land,” and goes on to say that judges in all states will follow the laws and regulations laid out within treaties.<sup>13</sup> With the Supremacy Clause in mind, it is clear that Washington State officials and organizations (and those of any state) that openly defy treaty rights are in fact in violation of the Constitution that they stand behind.

### Historical Context

A decade before the Boldt Decision significantly altered the political landscape of Washington state, activism on the part of Indigenous peoples and organizations such as the American Indian Movement (AIM) worked to form the basis of the Red Power Movement that was focused on bringing Indigenous social issues to the forefront of American politics. Locations such as Alcatraz Island that was occupied by AIM in 1969 and Frank’s Landing served as representations of Indigenous efforts to support their treaty rights in the mid-1960s to 1970s.<sup>14</sup> Frank’s Landing served as an encampment for Indigenous protestors and their “fish-ins” similar to the “sit-ins” of the Civil Rights Movement that openly opposed Washington state’s usage of the U.S. Public Law 280 passed in 1953 which granted select states jurisdiction over criminal and civil matters that were once under the control of tribal governments.<sup>15</sup> Washington became notorious amongst Indigenous communities for including the regulation of Indigenous hunting

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<sup>13</sup> U.S. Constitution, art. 6, sec. 2, cl. 2.

<sup>14</sup> Kent Blansett, *Journey to Freedom: Richard Oakes, Alcatraz, and the Red Power Movement* (New Haven: Yale University Press, 2018), 170.

<sup>15</sup> *Ibid.*, 178-179.

and fishing rights within its own interpretation of Public Law 280 to further the state's own financial interests.<sup>16</sup> The continued Indigenous protest against the state's violation of the treaties culminated into what would be known as the "fishing wars" that helped launch the activist and political career of Billy Frank Jr. from the Nisqually tribe who spearheaded the campaign in the mid-1960s at Frank's Landing.

The Boldt Decision came at the climax of tensions between the Washington state, the involved tribes, and non-Indigenous people that had some stake in the fishing claims. Boldt recognized that this issue had a complicated history that dated back to the mid-19<sup>th</sup> century which would require multiple phases of judicial involvement to settle. To remedy this history, Boldt split the ruling into two phases, with the first phase known as the "Boldt Decision" that concerned the interpretation of the treaties signed by Isaac Stevens in the 1850s and the allocation of Washington's fish resources, and the second phase that still has some portions being debated today concerning the state's role in maintaining the environmental health of fish runs in the state.<sup>17</sup>

### Prior Political Involvement

Fishing for sport in the Pacific Northwest is an incredibly popular hobby for the region's vast number of fishing areas which have also proved important to commercial interests. Sports fishing is popular enough in the state of Washington that in 2009, sports fishing generated \$1.1

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<sup>16</sup> Ibid.

<sup>17</sup> Lewis Kamb, "Boldt Decision 'very much alive' 30 years later," *Seattle Post-Intelligencer*, February 11, 2004. <https://www.seattlepi.com/local/article/Boldt-Decision-very-much-alive-30-years-later-1136821.php> (accessed March 5, 2019).

billion in yearly revenue for the state.<sup>18</sup> The profit from sport fishing would explain one side of the state's aggression against the Boldt Decision about thirty years prior since the state would consider preserving a large revenue generator over affirming treaty rights agreed upon a little over a hundred years before. But while the state government holds a significant role in state politics and the Boldt Decision likewise, it is ultimately the power vested in the citizens of the state that can have significant influence in state politics as seen with ordinary tribal members sparking one of the most controversial court cases in Washington State history. Sport fishing organizations and activists recognized this power while the contention of *U.S. v. Washington* (1974) was underway, and well before the Washington Fishing Wars.

Beginning in the 1930s, anglers across Washington would often engage in state politics by seeking the support of elected officials or the general public for specific initiatives that benefitted their interests.<sup>19</sup> A 1932 article from the sport fishing magazine, the *Pacific Sportsman*, entitled "State Game Control Wins In Evergreen State," provides some insight into the political work prior to Boldt. The article celebrates Kenneth McLeod's role in waging "a great battle for the success of Initiative 62."<sup>20</sup> The initiative itself concerned the removal of county Fish and Game departments to centralize fish and game departments and related matters into a single state-run Fish and Game Department. This is because before the initiative went into effect, each county within Washington State had its own department that dealt with matters relating to fish and game, which tended to result in confusion over differing rules and regulations

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<sup>18</sup> Washington Department of Fish & Wildlife (WDFW), 2009. *Fish, Wildlife, and Washington's Economy*, WDFW Publication, Olympia, Washington.

<sup>19</sup> "State Game Control Wins in Evergreen State," *Pacific Sportsman*, December 1932, 12.

<sup>20</sup> *Ibid.*

between counties.<sup>21</sup> While McLeod and the other anglers' role in passing the initiative is somewhat vague in the article, their mention in the magazine shows that sport fishermen had political experience and were actively engaged in Washington politics. In the case of Initiative 62, the state gained greater control over the waters within the state, and according to McLeod, anglers would benefit from a better managed economic system within the state Fish and Game department that would lower the prices of permits and lead to an abundance of fish in Washington streams.<sup>22</sup>

Before sport fishers became involved in the issue of treaty rights, these outdoors-minded people were actively involved in the preservation of the Pacific Northwest's ecosystems that was home to the fish they prized. In 1931, a measure to establish a diversion dam in Deer Creek located in Washington's Snohomish County faced extreme pressure from fishers like McLeod since it would disrupt the spawning of fish important to the ecosystem.<sup>23</sup> The plan for this dam came at a time with an increase of hydraulic resources that required the implementation of dams to provide energy as well as jobs for growing communities. Though despite providing cheap energy, plans to build dams in Washington streams faced adversity for their negative effect on habitats with organizations such as the Commercial Club of Arlington based in Arlington, WA seeing to a commitment to preserve streams and rivers like Deer Creek and the Stillaguamish River that runs through Arlington, WA.<sup>24</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> "We Won't Play," *The Northwest Sportsman*, July 1931, 4.

<sup>23</sup> "What Washington Needs," *The Northwest Sportsman*, June 1931, 8.

<sup>24</sup> Ibid., 9.

### Formulation of Ideology

A key piece to understanding how fishers and Washington State officials presented their arguments is to understand the basis for their arguments, and their plan for approaching the dispute over treaty rights. Creating set goals, using popular media, and winning the cooperation of state officials significantly contributed to how anti-Boldt and anti-Indian organizations furthered their agendas. The Washington State Political Action Committee (WSPAC) had a clearly defined action plan to dismantle the regulations set by the Boldt Decision and, in turn, the treaties involved in the decision.<sup>25</sup> According to a memo sent to members of WSPAC, the first priority in its battle against Phase I of the Boldt Decision was to spur public opinion against the Boldt Decision, to create defined distinctions within Washington's population that would prove useful in further organization against Judge Boldt and tribal governments.<sup>26</sup> The next step in the WSPAC's process was to garner the support of other industries within the state of Washington by first informing them that Boldt carried wider consequences that stretched beyond the issues of the fishing industry, then making it clear to powerful members of separate industries that the main problem had stemmed from an overextension of power from federal judges, and finally, attempting to spark fear among other industries in Washington with a declaration that further industries would face regulation dictated by federal judges.<sup>27</sup> The third and final step in the WSPAC memo was to petition Washington State's congressional delegation to lead an effort to

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<sup>25</sup> Jeffery R. Dudas, *The Cultivation of Resentment: Treaty Rights and the New Right* (Stanford, CA: Stanford University Press, 2008), 71.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

remove the regulations set in the Boldt Decision.<sup>28</sup> This broad action plan was successful in its first priority. In 1976, the *Seattle Times* reported that in a poll of 470 residents within the Puget Sound region, almost fifty-percent opposed the Boldt Decision, as compared to twenty-six-percent in favor. The remaining percentage polled had not decided or simply had no opinion.<sup>29</sup> This report shows the effectiveness of the plan created by the WSPAC and the persuasive element to the equal rights rhetoric that this committee along with other like-minded fishers and state officials touted.

It is interesting to see the ways step one of the WSPAC plan was executed, with the most shamelessly offensive and effective methods being the use of newspaper political cartoons. This popular form of media proved useful in presenting the Boldt Decision and the involved tribes as having either misused their power or having “special rights.” A cartoon published in the *Seattle Times* on December 23, 1963, titled “Redmen Want Powwow With Great White Father” (Figure 1), predates the Boldt Decision protesting phase, but illustrates the beliefs of those within the resistance. The comic depicts a caravan of Indigenous caricatures calling for non-obtainable benefits, such as claiming the entirety of Washington’s fisheries, trading the reservations for the city of Seattle, and demanding jobs, such as bank vice-presidencies and liquor board chairmanship. Apart from the stereotypical depictions of Indigenous people, this comic is only one among a plethora of similarly politically minded media that painted the tribes as making unreasonable demands. Such cartoons would help set the stage for the resistance endeavors undertaken by those who bought into these political ideals.

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid., 72.

Some Washington State public officials ranked among those who sought drastic changes to federal policy regarding Indigenous people. Attorney general Slade Gorton was one of these officials who attempted to do away with portions of Indian law that did not directly benefit the state. With a special rights ideology, the attorney general, through the years, had failed to achieve the substantial changes that he wanted, but he was ultimately successful in delaying the implementation of the regulations that he opposed for nearly a decade by using Washington state and U.S. courts to appeal the decision.<sup>30</sup> Particularly dangerous to treaty rights was the pervasiveness of the opposition, and the threat of federal courts that had the power to decide the fate of the rights guaranteed by Boldt in *United States v. Washington* (1974) and by Stevens before him in the Treaty of Medicine Creek (1854).

### Anti-Indian and Boldt Activism

Over two decades, claims regarding fishing rights covered a number of stages that ranged from a more diplomatic approach to reach an agreement to more aggressive and violent approaches to further the angler agenda. One of the more interesting approaches for its outside-of-the-box methodology was an attempt made by U.S. Senator Warren G. Magnuson to pass resolutions S.J. Res. 170 and S.J. Res. 171 on April 17, 1964, which concerned a small amount of unregulated fishing that supposedly created disorder within Washington fisheries.<sup>31</sup> Magnuson stated on the floor of the U.S. Senate that S.J. Res. 170 would grant Washington State the right to regulate fishing outside of American Indian reservations for conservation purposes. In addition,

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<sup>30</sup> Dudas, *The Cultivation of Resentment*, 75.

<sup>31</sup>Statement Made by Warren G. Magnuson on the Floor of the United States, 17 April 1964, MS-2487-005, Box 1, Statements 1964-1981, Kenneth McLeod Papers, University of Washington Libraries, Special Collections, Seattle, WA (hereafter cited as McLeod Papers).

he made it clear that if regulation were to occur, it would be applied equally to all citizens of Washington.<sup>32</sup> Magnuson, well-versed in U.S. politics, took a lawful approach when addressing the treaty rights of Indigenous peoples in Washington. S.J. Res. 171 would have authorized an attempt to purchase Nisqually fishery claims to circumvent a lengthy court battle between the state and tribal governments by providing an estimated \$918,444.68 in monetary compensation.<sup>33</sup> This was not the first attempt by politicians to purchase Indigenous fishing claims nor would it be the last. Former senator Slade Gorton would attempt a similar method of securing Washington's power of the waters in the region.<sup>34</sup> The tribes that were offered monetary compensation were wary of accepting the proposal as they viewed it as another method of terminating their federal recognition. While this may have been a disappointment to state officials, the tribes had good reason to be cautious. In 1954, Congress ended federal recognition of 110 tribes.<sup>35</sup> Termination at this time was another method by which the United States government sought to assimilate Indigenous peoples into mainstream American culture. By ending any sort of recognition of the terminated tribes, the United States government eliminated any federal aid and land claims established by past treaties. This attempt at assimilation, while not as brutish as the residential boarding school system, still posed a serious threat to Indigenous cultures. Their claims to their original lands were necessary to preserving their culture; any further loss of land would compromise their way of life.

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Johansen, "Native Americans Today," 28.

<sup>35</sup> Michael C. Walch, "Terminating the Indian Termination Policy," *Stanford Law Review* 35, no. 6 (1983): 1185-1186.

While government officials took a judicial and legislative approach to resisting the Boldt Decision, anglers would take a more hands-on approach to combat the tribal government and Judge Boldt himself. Following the Boldt Decision, campaigns that sought the resignation of Judge Boldt or threats made on his life began to gain traction and popularity throughout Washington as his decision was viewed as a detriment to non-Indigenous citizens and as an overextension of judicial power. Included in this battle against Boldt was the creation of a political action committee (PAC) called the “Freedom From Federal Judges Fund” that promoted the idea that federal judges inhibit American ideals of freedom.<sup>36</sup> An undated advertisement for this PAC notes the coming of the second court proceedings regarding *U.S. v. Washington*, commonly referred to as “Boldt II.”<sup>37</sup> This PAC requested signatures of inflamed citizens to petition for the resignation of Judge Boldt. The advertisement justifies this action by stating that the initial decision had been responsible for the decimation of steelhead runs and attempted to spur greater fear within the public by declaring that if the planned provision of Boldt II were to be enacted, then Washington State tribal governments would gain the power to veto any private activities within the watershed treaty rivers.<sup>38</sup> If this decision were to be the case, then Washington State and sport fishers alike would then have to recognize tribal governments as partners for any new project to be planned in the waters that the treaties mentioned. Sport fishers and the state feared the prospect of having to answer to tribal governments since they had claim over the fish decades before Boldt. The advertisement also refers to a decline in the steelhead population, which shows that organizations such as the “Freedom From Federal Judges Fund”

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<sup>36</sup> “Impeach Judge Boldt? No! He should resign!,” Advertisement, MS-2487-005, Box 1, Subject Series: Political Action Committee, McLeod Papers.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

used ecological conservation to appeal to a Washington population that was keen on exploring and engaging with the state's bounty of land and wildlife.

This fear of Washington tribes accumulating power sparked anger and resentment among those with interest in non-Indigenous fishing. The anger created was then directed at Judge Boldt and at the tribes involved. A *Seattle Daily Times* article, dated September 11, 1978 and titled "Boldt-Protest Fleet Delays Ferry," covered an anti-Boldt and anti-Indian protest held in Friday Harbor located in the San Juan Islands. Rallies at this time were not a new form of resistance, as protests became common occurrence in the region earlier in the decade, even interrupting President Gerald Ford's 1976 visit in Seattle.<sup>39</sup> The demonstration itself, organized by John McLeod (relationship unknown to Kenneth McLeod) under the banner of the Fishermen's Equal Rights Group, incorporated a total of seventy-five fishing boats and other watercrafts to block a ferry leaving Friday Harbor.<sup>40</sup> While the demonstration only delayed the ferry by twenty minutes (which the ferry made up) before being dispersed by Coast Guard and State Patrol officers, the method of protest and the comments of the sympathizers in the ferry along with the demonstrators tell much about the political climate at the time. One boat named "Liberty" floating among the crowd of protesting vessels made clear of its criticism of Judge Boldt and the tribes with signs painted on the ship itself reading "Shove it Boldt," "Non-Indian & Proud of it!," and "Indians are racist" among other signs of the same vein (Figure 2). This fishing vessel with its signs displays the opinions of the anglers that converged on the area and showcases the more

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<sup>39</sup> Fay G. Cohen, *Treaties on Trial* (Seattle, WA: University of Washington Press, 1989), 89.

<sup>40</sup> *Seattle Daily Times*, September 11, 1978, 14, NewsBank, <https://infoweb-newsbank-com.offcampus.lib.washington.edu/apps/news/document-view?p=WORLDNEWS&docref=image/v2:127D718D1E33F961@WHNPX-12E7EF4E13B47A32@2443763-12E69DF1F279D224@13-12E69DF1F279D224@>.

racially charged beliefs that underlined the efforts of the sport fishers. Anglers used boats such as these to halt the ferry and carry out the symbolic demand that the ferry could only pass by if fifty-percent of the passengers were “Indians.”<sup>41</sup> They sometimes carried other objects of protest. One of these objects depicted Judge Boldt hanged in effigy with a sign that read “A dead Boldt is a good Boldt” (Figure 3), which was only one of many attempts to attack the judge. He had been the center point for rumors that questioned his character, even going so far to assume that he had taken bribes and even had an Indigenous mistress.<sup>42</sup> Those aboard the ferry had comments of their own that highlight the mood at the time. One passenger even called for violence, reflecting the attitudes of those that hung Boldt in effigy. He said, “The Negroes didn’t accomplish anything in the civil-rights movement until there was violence.”<sup>43</sup> This quotation, while it misunderstands the power of the non-violent approach to protest that the Civil Rights Movement engaged in with great success, also carried with it the idea that the protesters compared themselves to the likes of Dr. Martin Luther King Jr. or Fannie Lou Hamer, though with an ecological preservation façade and a discriminatory underbelly.

John McLeod, the organizer of the Friday Harbor protest, was quoted as saying, “All we want is to be treated equally. There can’t be separate laws for separate races. Everyone has to be the same.”<sup>44</sup> He also carried on to say that his organization would continue their protest unless “government-enforced racial discrimination ends,” though it is unclear if he did in fact organize

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<sup>41</sup> *Seattle Daily Times*, September 11, 1978.

<sup>42</sup> Johannsen, *Native Americans Today*, 28.

<sup>43</sup> *Seattle Daily Times*, September 11, 1978.

<sup>44</sup> *Ibid.*

more protests.<sup>45</sup> The sport fishers who engaged in these acts tended to see themselves as having been discriminated against. They used the terminology previously mentioned by Dudas also seen during the Friday Harbor protest as one disgruntled passenger and third-generation fisherman said, “I don’t think he should create a super class of people.” This statement referred to the tribes and the claims affirmed by the Boldt Decision.<sup>46</sup> By having referred to Indigenous people as a super class, the anonymous passenger ignored centuries of history and attempted to sway the opinions of readers as he compared treaty rights to an unequal agreement that harmed the majority of non-Indian fishers. Dudas would note this position as having the power to negate the efforts of minority groups.<sup>47</sup> By attempting to begin the process of treaty nullification, these anglers rejected any claim to fish other than their own and made their opinions most often heard by placing all of their misfortune on the changing of laws that they did not consider in their best interest.

Washington State was not helpful in the attempt to enforce the Boldt Decision, since the ruling was unfavorable to the state government’s economic interests. State officials who acted as if the Boldt ruling did not exist added to the issue. They would also take legal action against Indigenous fishers, which was only effective in that they spurred greater resistance among Washington sport fishing organizations as the state now acted as a governing body that protected those that defied federal jurisdiction. Public disobedience became commonplace amongst anglers, which led to many protesters maintaining fisheries that operated on days that were to be reserved for Indigenous treaty fishers, thereby illegally taking a share of fish strictly forbidden

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Dudas, “Equal Rights,” 2.

by federal law.<sup>48</sup> Washington's apathy toward this illegal catch worried those sent to enforce the rules of the Boldt Decision. One federal task force appointed by President Jimmy Carter in 1977 noted that the fishers had lost their faith in the courts and law enforcement since these institutions had not represented their interests and did little to stop the illegal fishing.<sup>49</sup> With a general sense of lawlessness in the air, the ability of law enforcement to take care of illegal fishing dramatically declined as the number of defiant sport fishers increased. Thus, it was perhaps no accident that these fishers were able to catch an estimated 183,000 illegal fish in 1977, worth around \$1.4 million.

Washington officials, including the State Patrol, hardly enforced the Boldt Decision and the local judges who may have seen a rare case of illegal fishing would do more to protect the perpetrator than to follow the federal protocol laid out by Judge Boldt.<sup>50</sup> Given the lack of interest displayed by state officials who should have enforced the ruling, it is no surprise that federal enforcement officers, such as the Coast Guard were harassed. Coast Guard vessels were rammed by fishing vessels and, in at least one instance, a Coast Guardsman was shot.<sup>51</sup>

State officials seemed only to utilize the law when it would benefit themselves by harming Indigenous claims followed by applause from sport fishers across the Pacific Northwest. Under the guise of environmental protection, some officials focused on outlawing equipment, such as gill nets that were commonly used by Indigenous fishers. One particular congressman in 1978, Don Bonker, in correspondence with Kenneth McLeod, stated that he was confident that

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<sup>48</sup> Dudas, *Cultivation of Resentment*, 70.

<sup>49</sup> *Ibid.*, 71.

<sup>50</sup> *Ibid.*

<sup>51</sup> Johansen, *Native Americans Today*, 28.

Indian net harvesting of steelhead could be abolished through negotiations.<sup>52</sup> This correspondence shows that the state worked alongside sport fishers to fight tribes both regarding their claims to the fish and their actual ability to catch the fish as promised in the treaties. However, it should be considered that Congressman Bonker did not necessarily pursue complete nullification of treaty rights, because he made it clear when writing back to McLeod that he did not believe it could be possible.<sup>53</sup> This comment is significant in that shows that in place of a large anti-Indian victory, such as the overturning of Boldt or tribal rights protected by treaties, some of those who championed the ideals of conservative ideologies sought small victories that would still potentially harm Indigenous fishing.

It should be noted that not all sport fishers and their allies worked in lock step during the protests against the Boldt Decision. Indigenous and non-Indigenous individuals took issue with the controversy surrounding the Decision, and the Boldt Decision itself. A passenger on the ferry involved in the previously mentioned Friday Harbor protest was quoted as saying, “This is all so stupid to me... There ought to be a better way.”<sup>54</sup> This passenger and her comment seem representative of a population that simply had very little investment in the Boldt Decision itself and, therefore, saw the commotion as ultimately unnecessary. Some of those among the Indigenous population who supported treaty rights saw the Boldt Decision as a loss since it federally mandated that fifty percent of the catch was to be reserved for non-Indigenous fishers. Before contact, the Indigenous peoples of the Pacific Northwest had enjoyed and cared for one

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<sup>52</sup> Incoming letter from Don Bonker to Kenneth McLeod, 17 Nov. 1977, MS-2487-005, Box 1, Incoming Letters A-L, McLeod Papers.

<sup>53</sup> Ibid.

<sup>54</sup> *Seattle Daily Times*, September 11, 1978.

hundred percent of the salmon and steelhead runs since time immemorial.<sup>55</sup> Plus, not all non-Indigenous fishers fished illegally. Many may not have agreed with Judge Boldt, but they still respected his decision and chose to follow federal law rather than openly defy it.<sup>56</sup> These people may not have been the most active or vocal about their opinions, but their opinions are worth mentioning as they show that this case was overshadowed by powerful organizations that crowded out those that did not have a large support base.

### Conclusion

The Boldt Decision is a landmark case that has set the standard for fishing law and regulations within the Pacific Northwest since 1974. The controversy that surrounded the case has been the subject of research for decades now, with many scholars currently adding to the literature on the subject. Politics in Washington state were forever altered by Judge Boldt's decision. It is because of this decision and its beneficial nature toward the tribes living in Washington that sport fishers turned against Judge Boldt and the tribes involved. Some, under the guise of environmental protection, and others, with a more avaricious motive, took measures to defame Judge Boldt, overturn the Boldt Decision through public and legislative avenues, and assault tribal claims to fishing rights. A great deal of the methods employed by state legislators, state officials, and anglers were racially motivated, with the worst of racist ideologies showcased in cartoons that utilized stereotypical imagery along with bigoted phrases that were meant to influence the local population. They also encompassed the pseudo-white supremacist connotations seen in some of the statements of Boldt protestors.

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<sup>55</sup> Cohen, *Treaties on Trial*, 88.

<sup>56</sup> *Ibid.*

The Boldt Decision remains an influential case and has served as a reference point for activists on both sides of treaty rights discussions. Much of the scholarship requires further attention; for instance, sport fishers often gathered under organizations that focused on abrogating the treaties or pushing legislation created to cut Indigenous people from their traditional resources. Washington has housed many anti-Indian organizations and these organizations often changed names and rebranded themselves once the group proved ineffective. It was also common for individuals in these groups to become active members of broader organizations, such as S/SPAWN, Interstate Congress for Equal Rights and Responsibilities (ICERR), and the still active Citizens Equal Rights Alliance (CERA) which usually held onto notions of absolute equality meaning an erasure of all legally mandated privileges to marginalized groups even if it meant the nullification of treaties.<sup>57</sup> Some organizations continue to carry on the fight against treaty rights, with CERA maintaining a powerful voice. Generally, those affected by the Boldt Decision, still hold strong opinions for or against the decision, with many non-Indigenous people engaged in Washington fishing harboring resentment against Boldt and the incorporated tribes. For Washington tribes involved in this case, the Boldt Decision allowed them to develop stronger forms of sovereignty and self-determination. However, the same is true for sport fishers and Washington officials who wish these treaties would disappear, which carried into a larger movement set against the tribes within Washington and the United States.

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<sup>57</sup> Montana Human Rights Network, *Drumming Up Resentment: The Anti-Indian Movement in Montana* (Helena, MT: Montana Human Rights Network, 2000), 7.

## Epilogue

Today, tribal governments working within the state of Washington act as partners with the state in order to come to decisions that should better represent the whole of Washington's people. However, the controversy that surrounded *U.S. v. Washington* (1974) has had an impact on sport fishers, environmental activists, and some Washington State officials who have been emboldened by the legacy of the Boldt Decision and have taken measures to suppress traditional Indigenous customs for differing reasons. There are still sport fishers that view the Boldt Decision along with treaty rights as an abridgement of equality and have shifted their focus on a national level by joining forces with organizations like CERA to lend their talents to battle tribes and federal laws that benefit Indigenous peoples.<sup>58</sup> Environmental activists, such as Paul Watson and the Sea Shephard crew, have been critical of Makah whale hunting in the past. Environmental activists' desires to protect whales have clashed with Indigenous tribes who wish to reestablish their culture of whale hunting. This conflict climaxed in 1999 with a standoff between the Sea Shephard and the Makah in Neah Bay, caused by the Sea Shephard's crusade against whaling.<sup>59</sup> Recently, a twenty-year old case regarding Washington State's culverts and their hindrance of salmon spawning reached the U.S. Supreme Court in 2018. The court decided in favor of the tribes and ordered Washington to fix the culverts. Despite many individuals and multiple courts agreeing that culverts have a damaging effect on the state's salmon and steelhead runs, Washington's current attorney general, Bob Ferguson, has resisted the courts and the tribes similar in manner to one of his predecessors, Slade Gorton. However, Washington's current

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<sup>58</sup> *Drumming Up Resentment*, 40.

<sup>59</sup> Christopher Dunagan, "Hunters become the Hunted," *The Kitsap Sun*, October 5, 1998.

governor, Jay Inslee, has stated that he does not agree with Ferguson on this case.<sup>60</sup> The battle over treaty rights are almost always up for contention, and these cases demonstrate that such battles will continue well into the twenty-first century.

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<sup>60</sup> Lynda V. Mapes, “Supreme Court Showdown: Washington’s Attorney General vs. Tribes Over Salmon Habitat,” *The Seattle Times*, April 17, 2018.



News item: Representatives of the state's 47 Indian tribes and 18,000 Indians will go to the State Capitol Tuesday to protest their plight

Figure 1. *Redmen Want Powwow With Great White Father (Rosellini)*, December 23, 1963, Political cartoon. From the Seattle Civil Rights & Labor History Project, <http://depts.washington.edu/civilr/fish-ins.htm>.



Figure 2. *Protesting Fishing Vessel in Friday Harbor, Sept. 11, 1978*, Digital image. From the *Seattle Daily Times*, <https://infoweb-newsbank-com.offcampus.lib.washington.edu/apps/news/document-view?p=WORLDNEWS&docref=image/v2:127D718D1E33F961@WHNPX->



Figure 3. *Judge Boldt Hanged in Effigy*, Sept. 11, 1978, Digital image. From the *Seattle Daily Times*, <https://infoweb-newsbank-com.offcampus.lib.washington.edu/apps/news/document->

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