

UNDERSTANDING TRIBAL TREATY RIGHTS IN WESTERN WASHINGTON



TRIBAL SOVEREIGNTY

- Tribal sovereignty refers to tribes' right to:
- Self-governance;
- Define membership;
- Manage tribal property;
- Regulate business and domestic relations;
- Recognizes a government-to-government relationship between tribes and federal government.

WHAT IS A TREATY?

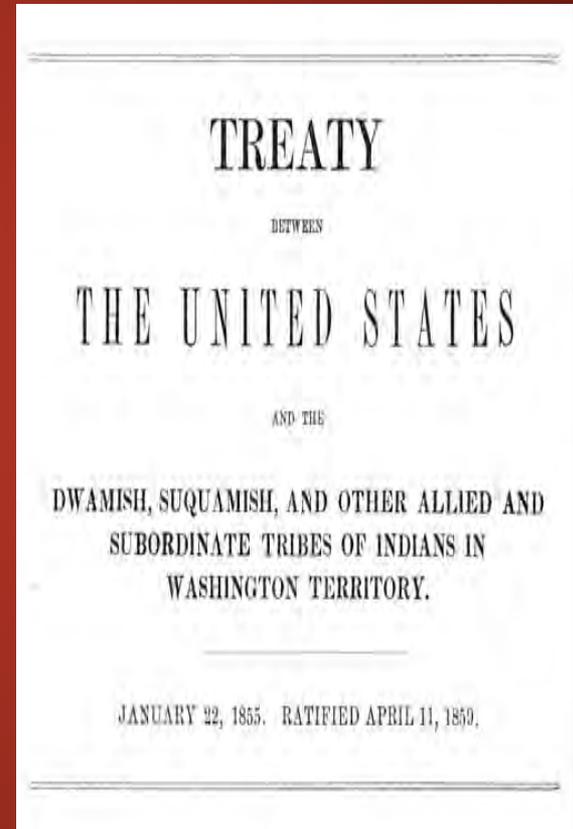
- Legally binding agreement between two or more sovereign nations
- President can enter into treaties with advice, consent of Senate.
- All treaties must be ratified by the Senate and become statutes.

U.S. CONSTITUTION ARTICLE VI, SECTION 2

“The Constitution . . . of the United States and 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.”

U.S. / TRIBAL TREATIES

- U.S. recognizes tribal existence as sovereign nations and rightful owners of the land and resources.
- To open way for peaceful settlement, U.S. enters into treaties with tribes as sovereign governments



STEVENS TREATIES, 1854-55

- Treaty of Medicine Creek
- Treaty of Neah Bay
- Treaty of Olympia
- Treaty of Point Elliott
- Treaty of Point No Point

WHAT WAS PROMISED IN THE TREATIES?

- In exchange for land, tribes received certain promises from the U.S. including reservation homelands for their exclusive use and occupancy; protection of right to fish, hunt and gather.
- “ ...the right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the territory ...”

THE 'FISH WARS'



THE "FISH WARS"

- State refuses to recognize treaty-reserved rights and arrests tribal members fishing off-reservation.
- Decades of strife lead to “**Fish Wars**” of the 1960s and '70s.
- Only recourse for tribes was to seek legal remedy.

U.S. V. WASHINGTON

BOLDT DECISION, FEB. 12, 1974

- Tribes have right to fish in **all usual and accustomed places.**
- Tribes are **co-managers** of the resource and are entitled to 50% share of the harvestable fish.
- State can regulate Indian fishing **only if it proves a conservation need;** non-Indians must be regulated first.

UPHELD BY SUPREME COURT

The state refused to implement Boldt's ruling until 1979 when the Supreme Court largely upheld the decision.

“...other than some desegregation cases in the South, the civil disobedience by Washington State officials is the single greatest act of defiance of federal law witnessed in this century.”

U.S. V. WASHINGTON PHASE II ORRICK DECISION 1980

- Treaty tribes' share includes hatchery fish;
- Tribes have implicit right to have fish protected from environmental degradation.

HOH V. BALDRIGE, 1981

- Salmon must be managed river system by river system, run by run to protect the treaty right.
- State and tribes must mutually develop long-term plans with practical rules for management and allocation of salmon.

SHELLFISH CASE

RAFEEDIE DECISION, 1994

- Shellfish harvesting rights at “usual & accustomed” places are the same as those for salmon; Shellfish are “fish” under the treaties.
- Includes the right to harvest shellfish on state/private tidelands.

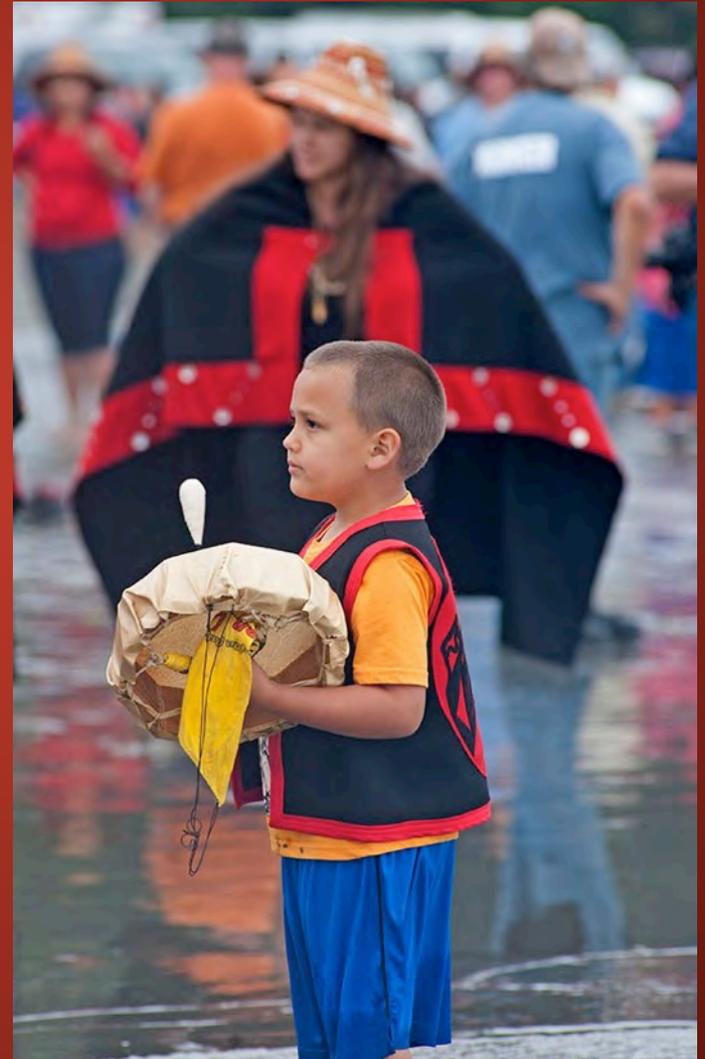
CULVERT CASE



CULVERT CASE

- Phase II of *U.S. v. Washington* confirmed that for treaty rights to have meaning there must be salmon for tribes to harvest.
- Tribes file suit in 2001 to force state to repair failing, fish-blocking culverts.
- In 2013 Judge Martinez orders state to repair nearly 600 culverts over the next 17 years.
- 2018: U.S. Supreme Court affirms lower court's decision (9th circuit).

TREATY RIGHTS AT RISK



TREATY RIGHTS AT RISK

- Salmon populations declining steadily since Boldt decision, mainly because of lost and damaged spawning and rearing habitat.
- Trend shows no signs of improvement despite ESA listings, decades of effort and huge financial investment.
- Tribal harvest reduced to pre-Boldt levels. Some tribes have lost their fundamental ceremonial and subsistence fisheries.

TREATY RIGHTS AT RISK

- Tribal treaty rights being rendered meaningless by loss of salmon for harvest.
- Federal government has an obligation to exercise trust responsibility to tribes and to recover salmon.
- Through the Treaty Rights at Risk initiative, tribes seek coordinated federal leadership, alignment of federal programs, and a halt to disparate application of salmon conservation measures.

IMPACTS OF DECLINING RESOURCE

- Without fish to harvest, the treaties would be abrogated.
- Tribal cultures, communities and economies are at grave risk.