

9 – Against the Current

By Beth Hege Piatote

1974: Native American activists fight for fishing rights in Franks Landing, Washington.

Between 1789 and 1871, the U.S. government made 371 treaties with Indian nations. To Native peoples, these were - and still are - sacred agreements. The treaties often involved the surrender of land in exchange for certain protections by the federal government. But time and time again, the United States violated the agreements, trampling Indian rights. Native peoples have constantly struggled to make the U.S. government honor its treaty obligations, often without success.

For generations, Indians in the Pacific Northwest were locked in a battle with state agencies over the tribes' treaty fishing rights. In the 1960s and '70s, that battle turned into a full-scale war during a series of confrontations on Northwest rivers and streams as Native peoples fought to protect not just their livelihoods but their traditional way of life.

One day in 1945, a 14-year-old Nisqually Indian boy named Billy Frank Jr. went to his favorite fishing spot at the mouth of the river that ran past his home in western Washington. The place was called "Frank's Landing" after his family, and he had fished there many times.

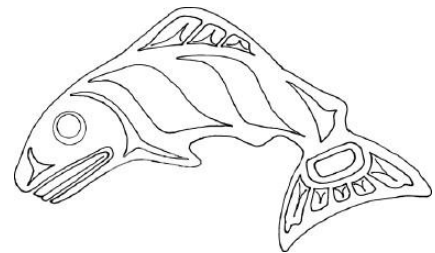
Also on the river that day were state game wardens. But it wasn't fish the wardens were looking to catch. It was Indians.

The state officials were arresting Native Americans for fishing, despite their treaty rights to do so. The state claimed that treaties made 100 years earlier between Native peoples and the U.S. government only protected the tribes' rights to fish on their reservations. But since the Nisqually reservation had been taken over by the U.S. Army to build a fort during World War II, the Nisqually had no choice but to seek other fishing areas. The Nisqually people believed that their forced removal shouldn't mean an end to their treaty rights to fish.

Billy Frank had walked out of his house that day into the middle of a conflict that would last 30 years. Despite his age, Frank was hauled off to jail like every other tribal fisher at Frank's Landing. During the next three decades, he and dozens of other Northwest Indians would be arrested many more times. They would face endless harassment, threats, racist attacks, loss of property and even violence. They would spend thousands of dollars on bail, fines and attorney's fees. And eventually, after years of fighting against a strong current of prejudice and misunderstanding that threatened their very survival, Northwest Native peoples and their rights would see a new day.

The fishing rights conflict between the tribes and the state governments of Washington and Oregon actually began many years before Billy Frank Jr. was arrested for the first time - years before he was even born. The controversy was part of a larger history dating back to the time when the region's indigenous peoples first made canoes and fished freely in their homeland.

Billy Frank - like all Northwest Indians - belongs to a long tradition that sees fishing as central to existence. In fact, most Northwest tribes call themselves "salmon people" for their particular relationship to the fish. In their belief system, salmon are sacred, a source of spiritual strength as well as physical nourishment. Native cosmology is full of images of fish - revealed in art, ceremony and traditional stories that link the salmon and human behavior. Northwest Native peoples have old traditions that are still carried out today to honor and protect the salmon.



Before White settlers arrived in the Northwest, Native fishers relied on nets, fishing weirs (special nets set in rivers and streams), traps and spears to capture salmon. Over-fishing was never a problem, partly because the technology didn't allow for it, and partly because it was impractical for the semi-nomadic lifestyle of the Northwest people. In addition, it was generally not a cultural value to over-consume, particularly a sacred creature like the salmon.



The lives of the Native people and the salmon changed dramatically when White settlers, lured by the U.S. government's promises of "free" land for homesteaders, streamed into the Northwest during the mid-19th century. Isaac Stevens, appointed governor of the Washington Territory and superintendent of Indian affairs, was charged with negotiating treaties with the Native nations, overseeing the settlement of the area by Whites and completing a survey of the land for potential railway routes.

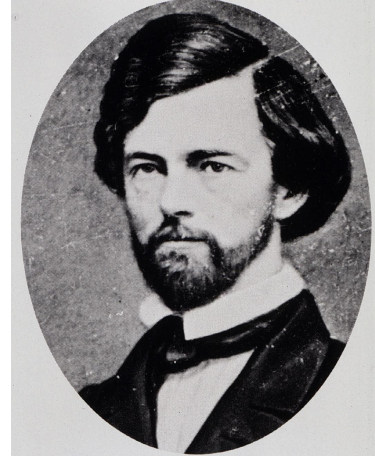
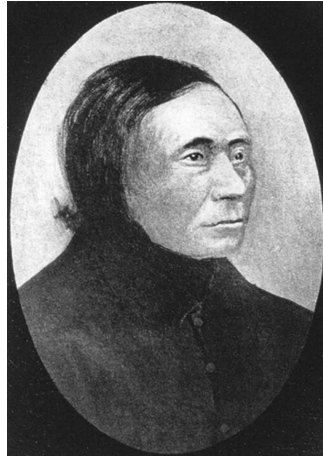
The treaty-making process between Stevens and the Indians was flawed in several ways. First, the Native nations did not operate with a centralized form of government. Stevens addressed this problem by simply appointing "chiefs" to sign for their people, a move unpopular among some tribal members who then refused to participate in any talks. Another challenge was finding a common language in which to negotiate. The Chinook language, a trade language of only about 500 words, was used in the negotiations. The combination of limited vocabulary and huge cultural differences between Native and White concepts of ownership left much to be desired in a meeting of equal nations.

Even so, Stevens was able to deliver six major treaties in as many months, which covered the western half of the state and involved some 6,000 Native communities. Through these agreements, the tribes lost millions of acres of land. But the treaties did reserve Northwest Indians' right to fish, which was central to their culture. In treaties penned between December 1854 and July 1855, the language guaranteed the Native people "The right of taking fish at usual and accustomed grounds and stations ... in common with all citizens of the United States."

At that time, the Indians fished for both their own subsistence and for commerce with the non-Native settlers, and it was understood that this commercial enterprise would be protected. As he presented the treaties, Stevens himself promised: "This paper secures your fish." But a problem arose that perhaps no one at the treaty signings could have anticipated: the depletion of fish runs. The first decline of the salmon runs began just a decade after the treaties were signed, with the establishment of canneries in the Northwest. Over the next 100 years, other

forces threatened the salmon: commercial over-fishing, an explosion of sports fishing, the damming of rivers for electrical power, destructive logging practices and pollution. Some salmon species became extinct.

The scarcity of fish became the driving force behind a grueling succession of legal battles between Natives and Whites as they found themselves competing for a dwindling resource.



(Left) Nisqually Chief Leschi led a brief, unsuccessful uprising against Governor Stevens in 1855-56. (Right) As governor of the Washington Territory, Isaac Stevens oversaw the negotiation of treaties with the Native nations.

The earliest settlement of a fishing dispute in court occurred in 1887, when the Yakama Indians challenged a homesteader named Frank Taylor for building a fence along the Columbia River that blocked the Yakamas' access to fish in a "usual and accustomed" place. The Washington Territory court ruled in favor of the Yakamas and ordered the fence to be removed.

During the next century, Natives would see the scales of justice tip back and forth like a seesaw. Several cases that followed the Yakama ruling would deal severe blows to Native interests. In a devastating Washington Supreme Court decision in 1916, a judge ignored the binding agreement of treaties, saying that the court considered Native people "incompetent occupants" of the land, and that "the Indian was a child, and a dangerous child of nature, to be both protected and restrained. In his nomadic life, he was to be left, as long as civilization did not demand his region. When it did demand his region, he was to be allotted a more confined area. ... These arrangements [the treaties] were but an announcement of our benevolence." Thus, the judge concluded, the Indians had no legal standing.

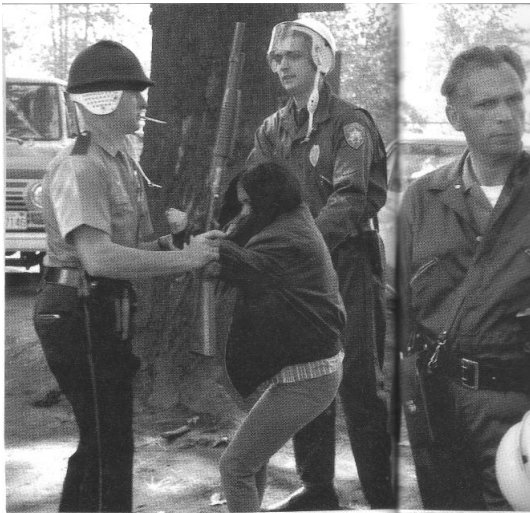
Other court cases in the early half of the 20th century tried to balance fishing resources among Native, commercial and sport fishing interests. The courts gradually granted states the right to regulate fishing in the form of requiring licenses. But Native peoples challenged these provisions; their fishing rights, they argued, had been assured by the U.S. government in exchange for vast tracts of land. State governments did not have the power to restrict these federal guarantees.

The U.S. Supreme Court supported this argument in 1941, when it overturned a state court ruling that convicted a Yakama man of fishing without a license. The justices ruled that the state could not require Indians with treaty rights to abide by state regulations except for the purpose of conservation. But this ruling was widely ignored by state fish and game authorities, and they began to arrest tribal fishers who didn't have licenses. It was precisely this issue that

landed 14-year-old Billy Frank in jail in 1945. Before long, the state's jails would be filled with Indians who chose civil disobedience as a path to justice.

As questions of regulation went back and forth in the courts over the next 20 years, the frontlines of the fishing rights battle shifted to the rivers and streams of Washington and Oregon. Inspired by the "sit-ins" organized by African Americans in the 1950s and '60s to end segregation in the South, Native Americans in the Pacific Northwest began to organize "fish-ins" along the rivers of the Puget Sound. They defied state regulations and continued to fish in their "usual and accustomed" places, determined to exercise their treaty rights.

State game wardens were equally determined to stop them. They organized stakeouts to catch Indians violating fishing regulations. State agents hid behind bushes and ambushed Indians as soon as they dropped their nets in the water. Sometimes dozens of officers descended on a handful of Indians, roughing them up before making arrests.



Many of the demonstrations took place at Frank's Landing on the Nisqually River. "They [state officials] watched us 24 hours day," Billy Frank later recalled. "They confiscated every boat and net we had. We always made our nets, and we just kept making more. We were always ready to make more, to go back to jail." Frank's own traditional dugout canoe, a prized family possession, was seized during one skirmish on the water.

Sometimes the encounters turned violent. One night, a fight broke out between 27 Indians staging a fish-in and 80 game officials - wielding nightsticks and blackjacks - who had come to stop it. Two children nearly drowned during the battle when game wardens capsized the canoe they were in.

As news of the protests spread, members of Indian activist groups around the country joined the fish-ins and provided some much-needed financial aid. Non-Indian sympathizers also came to lend their support. The involvement of celebrities such as actors Marlon Brando and Jane Fonda and social activist and comedian Dick Gregory attracted even greater media attention to the full-fledged "fishing wars" that were now raging in the Pacific Northwest.



Actor Marlon Brando and Puyallup tribal leader Bob Satiacum just before Brando's arrest during a fish-in.

In the fall of 1970, the battle over treaty rights would reach a dangerous climax. By this time, protesters had set up fishing camps at several sites along the rivers and streams of the Northwest. On the banks of the Puyallup River in Washington, a group of about 200 Indians and some White supporters had established one such camp from which they launched a series of fish-ins.

On several occasions, game wardens raided the site. To protect themselves, Indians organized an armed guard around the camp, an act that greatly provoked game wardens and local police officers. On September 9, some 100 law enforcement agents - wearing riot gear and wielding guns - descended on the camp. Shots rang out and a full-scale riot erupted. Officers beat the Indians with clubs and tossed tear gas into the crowd. One Indian protester threw a firebomb at a wooden bridge that spanned the river, sending it up in flames. Police arrested 55 adults and five youths and forced the rest of the protesters to abandon the site. Soon after the bloody encounter, officials bulldozed the fishing camp.

But the images of officials brutally attacking Indian protesters - images that had been beamed via television satellite into living rooms around the nation - weren't so easily erased. Among those shocked by what they saw were White House officials. The violent confrontation marked a crucial turning point in the fishing wars.

For decades, the tribes had urged the federal government to intervene in the conflict between state officials and Northwest peoples. Up to this point, U.S. officials had done little on Indians' behalf. But on September 18, 1970, nine days after the battle on the Puyallup River, the U.S. Justice Department filed a comprehensive lawsuit against the State of Washington for interfering with tribal fishing rights. Fourteen Northwest tribes were named as co-plaintiffs in the suit.

District Judge George Boldt, who was assigned the case, reportedly grouched to a law clerk, "I don't want to hear any more of these damn Indian fishing cases." But he pursued the task with a thoroughness no one else had bothered with before: For months on end, he spent his nights and weekends reading Indian treaties and fishing rights cases dating back to the 19th century.

He learned something very interesting in the process. At the time of the 1854 treaties, fishing "in common with" meant "sharing equally" in the catch. In his landmark ruling of February 12, 1974 - known thereafter as the "Boldt decision" - the judge declared that Indians were entitled to 50 percent of the fish that came to "usual and accustomed places." He ruled that the tribes could manage their own fisheries. He said that the state's earlier restrictions on Indian fishing were unlawful and refuted the idea that the Indian fishing threatened the resources for sportsmen.

Boldt's ruling was met with fury by those who opposed it. Anti-Indian forces such as the Ku Klux Klan, John Birch Society and sport-fishing associations assailed his decision. Some made it personal, burning Boldt's image in effigy and accusing him of having an Indian mistress. Non-Indian sport fishers harassed Indians, vandalizing their gear and ramming into their boats on the water. Still, the decision prevailed, and, in 1979, the Supreme Court affirmed Boldt's ruling.

It was a tremendous victory for Native peoples, not just in the Northwest but around the nation. Their success in defending their treaty rights brought a renewed sense of Native pride and hope that the Boldt decision would set an important precedent in similar cases. In fact, the Northwest tribes' triumph sparked a wave of Indian activism in other parts of the country, as Native peoples continued to demand recognition of long-ignored treaty rights.

But another chapter remained to be written in the history of the Northwest fishing wars, one that is still being written today. The court ruling had affirmed tribal fishing rights and

established Indians as co-managers with state and federal agencies of this resource. The Native victory would mean nothing, however, if fish runs continued to decline. It was time to recognize that all of their fates - Native fishers, White fishers and the salmon themselves - were intertwined. Indians and Whites needed to work together to protect the fish and their habitat.

Billy Frank Jr. still bears scars from some of the attacks he endured during the fishing wars. But like many others on both sides of the conflict, he has been able to put old animosities behind him. In 1974, Frank founded and became the first chairman of the Northwest Indian Fisheries Commission, a coalition of 19 tribal entities that works with government groups to restore salmon habitat.

"Rather than fighting, we're negotiating," says Frank, who now works cooperatively with the same fish and game agencies who sent him to jail more than 40 times. "Rather than suing each other, we're putting together teams and combining resources to properly manage the natural resources we all depend on."

As a symbol of both sides' commitment to a new partnership, Frank points to a traditional dugout canoe - his canoe - that is now on display at Wa He Lut Indian School at Frank's Landing, the site of so many "fish-ins" during the 1960s and '70s

"In 1974, while I was working with the state and everybody, they always said, "We're going to try to find your canoe," says Frank, who hadn't seen his boat since it was taken by state officials during a demonstration in 1964. "Then in 1980 on my birthday, they brought it back to me. They had found it in a warehouse in Seattle."

It had been 16 years. Even though the boat's wood had rotted to the point that it could no longer go on the river, Frank took it home.

"This boat tells a story," Frank says, "that there is recognition and understanding, a better understanding of the tribal side and of the state of Washington side. That they can understand better what the canoes mean to us. That we can sit at the table and start gaining a little trust with one another."

The veteran fishing rights activist remembers his father, Billy Frank Sr., once saying that if the salmon disappeared, there would be no more Indians. Billy Frank Jr. is not about to let that happen. He continues to devote his energies to preserving the fish runs and his people's cultural identity.

Moving from a situation of confrontation to cooperation hasn't happened overnight, Frank points out, and many challenges still lie ahead.

"It takes a lot of patience," Frank says, "but there's more good people than bad people, and the system will work if we all get in there and take part and stay committed. That's the only way we can get our salmon back and get our waters clean again."

*This article is reprinted by from the Teaching Tolerance curriculum kit
A Place at the Table.*