Fish, Politics and Treaty Rights: Who Protects Salmon Resources in Washington State?

CHARLES F. BROCHES

The salmon was at the centre of Pacific Northwest Indian culture. It was the staple of the tribal diet, a form of currency in their precapitalistic economy, and the focus of their spiritual life.[1] During the negotiations of the first Washington treaties, with the first territorial governor, Isaac Stevens, in 1854, the only point tribal leaders insisted upon was their right to take fish at the traditional places.[2] While Stevens did not intentionally allow the Indians any rights he thought unnecessary, he did come to understand that securing any kind of agreement depended on assuring the Indians of their continued right to fish. All six treaties covering the western half of Washington State included language such as the following, from the Treaty of Medicine Creek: "The right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in common with all other citizens of the territory."[3]

The Indians, however, were happy neither with the treaties nor with the abuses of the newly arriving white settlers. Sparked by the attempted arrest of an Indian leader named Leshai, an Indian war broke out in the winter of 1855-56 and lasted eight months. The Indians' plight was soon desperate. When attempts by Leshai to reach an honourable settlement were met with calls from Stevens and other members of the territorial government for the total extermination of the Indian population, the tribal chiefs decided that one last battle should be fought. On 26 January 1856, the Indians launched their attack on Seattle. Two white settlers and several Indians were killed before the attackers were driven off by the settlers and a navy sloop. Leshai and his followers escaped to refuge

[1] American Friends Service Committee, *Uncommon Controversy* (Seattle: University of Washington Press, 1970), chap. 1.

[2] *Ibid.*, pp. 18-25. For a useful overview of treaties between the United States and the Indian tribes see Francis C. Prusha, ed., *Documents in U.S. Indian Policy* (Lincoln, Nebraska: University of Nebraska Press, 1975), and Wilcomb E. Washburn, *The American Indian in the United States: A Documentary History*, 4 volumes (New York: Random House, 1961).

[3] "Treaty of Medicine Creek," in Washburn, vol. 4, p. 2489.

east of the Cascades. The "Battle of Seattle" was the last major violence west of the mountains between Indians and settlers. The tribes now resigned themselves to their reservations and sought to avoid further conflict.[4]

Federal Politics and Indian Policy

Much of the policy development which affects Indians has taken place in the national capital, through the actions of either the Bureau of Indian Affairs (BIA) or the United States Congress. Established in 1824, the BIA is the oldest bureau in the federal government. While the bureau is charged with managing Indian affairs, the policies which it has pursued have reflected the variations in Congressional and Presidential priorities and preferences. The Bureau's primary responsibilities are to provide such services as education, medical care, housing and economic development. As a civilian agency, the BIA was never responsible for "pacification" programs, but it was made responsible for the subtly different task of maintaining law and order on the reservations.[5] Indian reservations are lands held in trust by the federal government for the Indians, with the BIA having the legal status of trustee agent (as well as a guardianship role as parens patriae to the Indians). Reservation land is not subject to state or local government laws or taxes. It is to be managed by the tribes under general federal statutes or under specific regulations authorized by the BIA or the local Indian agent. The land cannot be leased, sold or exploited without the consent of the tribe's trustee — the BIA. The trustee relation is important because it has long provided the framework through which federal policy flows to the tribes. In particular, the BIA as trustee is mandated to protect hunting, fishing, mineral and water rights which were retained when reservations were established.[6]

In both theory and practice, the BIA is responsible to the Congress. The "plenary" power of Congress is almost total. Congress, for example, can abrogate a treaty as long as the affected tribes are compensated for their loss of property and rights.[7] Courses of action taken by the Congress itself may thus provide the dominant theme in federal Indian policy. In reality, however, Congress devotes little attention to Indians — and when

[4] Gordon Newell, *Rogues, Buffoons, and Statesmen* (Seattle: Hangman Press, 1975), pp. 25-30.

[5] Felix Cohen, *Handbook of Indian Law* (Albuquerque: University of New Mexico Press, 1940, 1967), pp. 89-90.

[6] *Ibid.*, p. 94.

[7] See, e.g., *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

it does devote attention it tends to do so in terms either of excessively minor and specific issues or of extremely broad policy. It must also be remembered that policy which comes from Congress is not always consistent either with previous laws or with the needs of the tribes. However, as will be shown subsequently, both the BIA and the Congress are constrained by another important actor in the American political system — the courts.

Development of the Salmon Fishery

After treaties were signed and ratified, the national policy of the BIA was to develop reservation agriculture as a means of pacifying the Indians and thus easing the entry of settlers. BIA officials believed also that agriculture would provide economic self-sufficiency and help integrate the Indians into white society. The policy made especially little sense in the Pacific Northwest, where the Indians had always been fishermen. As early as 1865 the Indian agent for the Olympic Peninsula suggested that fishing could be developed as a means of providing self-sufficiency and as a means of achieving BIA objectives — and with far less social readjustment. The national office rejected the suggestion. Agricultural development, no matter how ill-suited to the Pacific Northwest Indian culture, remained the dominant policy for the next century.[8]

While federal policy makers were ignoring the potential benefits available to the tribes from commercial salmon fishing, entrepreneurs were eagerly developing the abundant marine resources of Washington State. With the transcontinental railroad and improvements in food canning technology, east coast and foreign markets opened up. Commercial development proceeded rapidly. There were forty-one canneries in the state by 1915.[9] At this time the average annual salmon catch in Washington State waters exceeded ten million fish. But during the next decade the catch declined due to overfishing and habitat destruction caused by logging, urbanization and industrial pollution. By 1929 the catch was down to 6.7 million fish.

The state government, however, chose not to restrict logging and other habitat despoiling activities, but instead to develop hatchery programs to replace the lost fish. Today the Washington State Department of Fisheries operates twenty-eight hatcheries and annually plants more than 150

[8] American Friends Service Committee, pp. 41-42.

[9] United States Commission on Civil Rights, *Indian Tribes: A Quest for Continuing Survival* (Washington, D.C.: Government Printing Office, 1981), p. 64.

million fry.[10] To improve the situation, both resource managers and the public supported regulations designed to decrease the efficiency of commercial fishing activity. Among the principal targets of the new regulations were "terminal" operations, such as river netting and trapping, which often prevented the salmon from advancing upstream to spawn. Still, the hatcheries have not proven as successful as mother nature. By the late 1970s an average of 7.5 million salmon were being caught annually.[11]

Among those harmed by the regulations were many tribal fishermen, who were still attempting to catch fish in traditional ways at traditional locations. While it can be argued that the State was not seeking to deny treaty rights, but rather to establish uniform control over the fishery, the result was that the tribes found the regulations at odds with their special set of treaty rights. The major battleground for testing the validity of the State's policies was provided by the courts. Indeed, in a series of cases dating from 1905[12] the courts found themselves called upon to determine the meaning of the twenty-seven words quoted earlier from the Treaty of Medicine Creek.

Treaty Interpretation

From the earliest days of the republic to the present, courts have been called upon to interpret the meaning of treaties made between the federal government and the treaty tribes. The standards to be employed in any judicial examination of a treaty were first set forth by Chief Justice John Marshal of the United States Supreme Court in *Worschester v. Georgia.*

> The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered in their later sense.[13]

Flowing from this early judgment, two elements in treaty interpretation have been upheld with great consistency and regularity by the Supreme Court. First, there has been the assumption that the Indians "were a weak and dependent people who had no written language and were

[10] Washington State Department of Fisheries, *Salmon and Salmon Hatcheries* (Olympia: WDF, 1978), p. 19.

[11] U.S. Commission on Civil Rights, p. 64.

[12] *United States v. Winnans,* 198 U.S. 371 (1905); *United States v. Washington* (Phase II), Ninth Circuit Court of Appeals, Slip Opinion in No. 81-3111, decided 3 November 1982.

[13] 10 U.S. 261 (1810).

wholly unfamiliar with the forms of legal expression,"[14] and therefore the court has assumed that all points in confusion or controversy should be resolved in favour of the Indian. Second, there has been the assumption that before the Indians ceded land, rights or resources to the federal government they belonged solely to the Indians. Thus, if any right or resource is not mentioned in a treaty it is assumed to remain in Indian hands unless the Congress explicitly acts to remove it from the tribe. Therefore traditional treaty interpretation by the Supreme Court would lead a judge to conclude that the Washington Indians did not give up their right to fish — that they had only permitted non-Indians to fish alongside them.[15] Judicial and political history was such, however, that this traditional interpretation was not made applicable to the Washington treaties until quite recently.

In the first treaty fishing rights case emanating from Washington, the United States Supreme Court held that treaty guarantees made during the territorial period continued after Washington became a state in the Union, but that the state did have some authority to regulate treaty fishing off reserves. The extent of this authority was not made explicit, however. In 1916 the Washington State Supreme Court upheld the arrests and convictions of treaty Indians for fishing off-reservation out of season and without state licences — thus the court held that the state had the power to regulate off-reservation fishing by treaty Indians.[16] The State Supreme Court based its decision on a United States Supreme Court decision originating in New York. It must be noted, however, that substantial differences existed between the New York and Washington treaties. The Washington treaties referred to fishing as a "right" while the New York treaty referred to a "privilege."[17] The error in legal reasoning resulted in a series of Washington State Supreme Court decisions curtailing treaty right fishing.[18] By 1934 it was recognized by the solicitor of the Department of the Interior, the parent department of the Bureau of Indian Affairs, that state law and state court decisions were systematically denying treaty tribes an opportunity to fish and were thus driving them ever deeper into poverty; but the federal government, while

[14] *United States v. Washington,* 384 F. Supp. at 313. As Felix Cohen observes, "A cardinal rule in the interpretation of Indian treaties is that ambiguities are resolved in favor of the Indians." (Cohen, p. 37.)

[15] *United States v. Washington,* 384 F. Supp. at 334.

[16] *State v. Towessnute,* 89 Wash. 478 (1916) and *State v. Alexis,* 89 Wa 492 (1916).

[17] U.S. Commission on Civil Rights, p. 65.

[18] E.g., *State v. Meinock,* 115 Wash. 528 (1941).

sympathetic to the needs of the tribes, did not seek to alter state law or policy. Rather, it allowed the right to fish to remain a legal fiction for a quarter of a century while it awaited a suitable test case.

The federal government, however, did come to the legal defence of an Indian convicted in state court in 1942 for fishing without a state licence. In this case the federal government argued that the licence requirement violated a treaty. The United States Supreme Court held that although state regulation of treaty fishing was permissible for conservation purposes the state had not demonstrated a link between state licence requirements and conservation.[19] The state's regulatory monopoly was thus set back considerably.

The State Supreme Court, however, continued to follow its previous policy preferences, while the federal courts continued to seek to restrain state regulatory authority from undermining treaty rights. In a series of cases dating from the late 1950s through 1977 the Puyallup tribe battled with the state's Department of Game over the regulation of steelhead fishing. The United States Supreme Court ultimately provided a reasonable set of standards by which the state could, in a non-discriminatory fashion, regulate treaty fishing for steelhead.[20]

During the sixties and seventies three noteworthy developments occurred relating to the salmon fishery. First, following the lead of the civil rights movement, treaty rights supporters organized public demonstrations, including sit-ins featuring such celebrities as Marlon Brando, to emphasize their demands. Second, a growing militancy emerged among non-Indian fishermen in support of abolition of reservation and treaty fishing rights. Third, there came to be a growing sense among federal officials and tribal leaders that there was a need to move away from an isolated case approach to treaty problems in order to attain a general solution applicable in both Oregon and Washington — eventually the federal government brought suit against each of the two states. The Oregon case produced a federal lower court decision in 1979 allocating approximately equal shares of Columbia River and Oregon coastal salmon runs to treaty and non-treaty fishermen.[21] While important, the decision did not raise major controversy. Oregon filed and lost a routine appeal and then went about seeking to implement the decision. Across the border in Washington State matters went very differently. In Washington an

[19] *Tulee v. Washington*, 315 U.S. 681 (1942).

[20] *Puyallup Tribe v. Department of Game*, 433 U.S. 165 (1977).

[21] 302 F. Supp. 889 (1979). See also Comment, "Sohappy v. Smith: Eight Years of Litigation over Indian Fishing Rights," 56 *Oregon Law Review* (1977), p. 680.

extremely well organized political and legal battle against treaty rights raged from 1974 through 1979.

United States v. Washington

The case of *United States v. Washington* was filed in United States District Court for Western Washington in September 1970 by the federal Justice Department at the request of the Department of the Interior and on behalf of the fourteen Indian tribes residing in the district.[22] The suit was filed against the Washington State Department of Fisheries, the Washington State Game Commission and the Reef Net Owners Association. The case was heard by Judge George H. Boldt.

The extent to which the state could regulate off-reservation fishing by treaty Indians was the basic issue in the case. The question of on-reservation fishing was not raised, as all parties conceded that the Indians had exclusive control over fishing on their reservations. A subsidiary issue involved allegations that the state had long discriminated against members of the treaty tribes who were engaged in off-reservation fishing. Several additional issues, including those of access to hatchery fish and responsibility for protection of the environment, were combined into a second phase of litigation and dealt with separately.

Judge Boldt issued his opinion in February 1974. He found that the Indian tribes covered by the treaties had historically fished for trade, as well as for subsistence and ceremonial purposes; and that one of the main conditions in the negotiation of treaties in the 1850s was that the Indians agreed to give up large areas of land and to reside on reservations in return for being able to continue to fish at their usual and accustomed stations. More substantively, the judge found that the state had encouraged non-Indian fishermen to enter the industry and had used conservation measures to reduce the advantage of Indians and to aid non-Indian fishermen. As he stated:

> Enforcement of state fishing laws and regulations against treaty Indians fishing at their usual and accustomed places has been in part responsible for prevention of the full exercise of Indian treaty rights. . . .[23]

For example, some tribal fishermen had been avoiding their traditional fishing places because of state enforcement practices which included seizure of fish and gear as well as psychological intimidation and general harassment. The judge also found that

[22] 384 F. Supp. 312 (1974).

[23] *Ibid.*, at 388.

the regulations of the Department of Fisheries, as presently framed and enforced, in many instances allow all or a large portion of the harvestable numbers of fish from given runs to be taken by persons with no treaty rights before such runs can reach many of the plaintiff tribes' usual and accustomed fishing places to which the treaties apply.[24]

Thus the judge held that many of the state's regulations were "in violation of the treaty-secured rights of the plaintiff tribes and their members."[25] The judge held that treaty rights applied to all runs passing the usual and accustomed fishing places. Thus he included salmon of the Fraser River run in British Columbia, as the run travels through traditional Indian fishing places in American waters.

To remedy the violation of Indian treaty rights, the judge issued an injunction directing the state to "take all appropriate steps" within its jurisdiction to control non-Indian fishing at the usual and accustomed fishing stations of the treaty tribes so that the tribes would receive an equal share of the fishing opportunity.[26] The notion of "sharing equally" derived directly from the judge's interpretation of what had been meant originally by the phrase "in common" as it appeared in the Treaty of Medicine Creek. It followed that Indians had received through the treaty "the opportunity to take up to 50% of the harvestable fish that may be taken by all fishermen."[27] For practical purposes the decision meant that the Indians and the State of Washington would each have the opportunity to regulate 50 percent of the salmon catch.[28]

In light of the political climate of the case itself and of the forceful presence of the commercial fishing industry in Washington State politics, it is not surprising that the state's political leaders, led by the Attorney-General, opted to work to overturn Judge Boldt's decision rather than to implement it. Working to overturn the decision involved, on the one hand, working within the judicial system and, on the other, working through the national and state legislatures. Congress, of course, had the power to pass legislation reversing the Boldt decision, but the state's representatives in Congress showed no immediate desire to introduce serious legislation — although a few bills, apparently designed to create a favourable impression back home, were introduced. At the state legislature the goals of the anti-treaty groups were the passage of remedial

[24] *Ibid.*, at 393.
[25] *Ibid.*, at 413.
[26] *Ibid.*, at 433.
[27] *Ibid.*, at 343.
[28] *Ibid.*, at 343-44.

legislation beneficial to the commercial fishing industry, and the blocking of any effort to authorize administrative regulations which would implement the Boldt decision.

Within the judicial system the state first appealed the case to the Circuit Court of Appeals, but the court affirmed Judge Boldt's decision and remanded the case back to the judge's district Court for it to exercise continued jurisdiction.[29] The state then sought to have the United States Supreme Court issue a writ of certiorari — that is, to have the court review the decision on its own initiative. Getting the court to proceed in this manner is notably difficult, especially when only one of the parties in dispute is in favour of the procedure. In 1975, following the Circuit Court's decision, the Departments of Justice and the Interior were opposed to the procedure. The United States Supreme Court denied the request without comment and the case remained in the hands of Judge Boldt.

The efforts within the state legislature proved somewhat more successful, in that the failure to modify state law to implement the orders of Judge Boldt led to a conflict between the Circuit Court of Appeals, which continued to support the judge, and the Washington State Supreme Court, which continued to follow its own practice of interpreting the treaty language as giving a mere right to fish rather than to harvest any given percentage of the catch. The complex of litigation placed the state Department of Fisheries in the difficult position of trying to serve three masters: the United States District Court of Judge Boldt, the Washington State Supreme Court, and the state legislature. Given the nature of state politics, the Department found itself tied more closely to the legislature and the state court rather than to the District Court.

In the circumstances, the Indians and the Department of Justice had to return periodically to Judge Boldt seeking additional orders directing the various state agencies or fishing interests to comply with the original ruling. During the summer of 1978 the judge concluded that the state and the non-treaty users of the salmon resource were either incapable of enforcing his orders or unwilling to do so. He therefore ordered federal officials to assume regulatory authority, under his direction, over the salmon fishery both inside and outside of Puget Sound.[30]

[29] 520 F. 2d 676 (1975).

[30] Civil Order No. 9213, "Preliminary Injunction re: enforcement of limitations on non-treaty salmon fisheries for 1978 and subsequent season" (Western District of Washington, 6 June 1978).

Shortly after the judge assumed full regulatory authority, several of the state's Congressional delegation apparently concluded that review by the United States Supreme Court was both necessary and desirable. The state and fishing interests naturally were of the same view. Pressure was now put upon the Departments of Justice and the Interior to reverse their earlier opposition to Supreme Court review. At least partially in response, the Justice Department decided no longer to oppose a review.

On 16 October 1978, the Supreme Court announced it would hear several appeals based on *U.S. v. Washington*, including one based on the merits of the decision.

The Supreme Court Decision

The United States Supreme Court was the only agency perceived by all of those involved to be "above politics." It was the agency looked to now for a solution to the salmon fishery controversy. It could determine if the District Court's interpretation of the treaty was correct. It could also determine if the remedies utilized by the District Court were appropriate.

The Supreme Court announced its decision on 2 July 1979. The Court held that the District Court had correctly interpreted and applied the treaties. The court made only one significant modification — that fish caught on the reservations would be included in the tribal portion of the harvest.

The Supreme Court came to its decision by a vote of six to three, with Chief Justice Burger and Justices Stevens, Brennen, White, Marshal and Blackmun forming the majority. Justice Stevens wrote the majority opinion. He stated that the court believed that the phrase "in common with" had to be applied to the unique status of the coastal Indians. He rejected the state's contention that the language only granted equal access to any citizen, stating that "the phrasing of the clause quite clearly avoids placing each individual Indian on an equal footing with each individual citizen of the State," and that the right does not belong to individual Indians, but rather "it was the tribes that were given a right . . . a class right to a share of fish. . . ."[31] Justice Stevens summarized the court's findings as follows:

> In our view, the purpose and language of the treaties are unambiguous; they secure the Indians' right to take a share of each run of fish that passes through tribal fishing areas. . . . Notwithstanding the bitterness that this liti-

[31] 443 U.S. 658 (1979) at 679.

gation has engendered, the principal issue involved is virtually a "matter decided" by our previous holdings.[32]

Noting that the Fraser River run "passes through certain usual and accustomed places" Justice Stevens and the majority held that the treaty tribes possessed a right to an apportionment of the run. Lacking evidence of the sort they could act upon, the court sidestepped deciding if the International Pacific Salmon Fishing Convention had been violated.[33]

As to the appropriateness of Judge Boldt's most controversial action, that of taking control of the fishery, the court quickly ended any speculation that a state may ignore the decisions of a federal court. Stevens stated that "the Federal court unquestionably has the power to enter the various orders that state officials and private parties have chosen to ignore, and even to displace local enforcement of those orders if necessary to remedy the violations of federal law found by the court."[34]

The decision of the court in upholding the opinion and actions of Judge Boldt is clear and direct. Justice Stevens and the rest of the majority gave the federal government and the treaty tribes a substantial victory.

The Latest Decisions

The Boldt decision did not address two questions which, as indicated earlier, were examined in a second round of litigation in the District Court. These questions, concerning the Indian share of hatchery fish and the responsibility for environmental protection, were heard with Judge William Orrick presiding.[35] Judge Orrick issued his opinion in September 1980. He ruled that the treaty tribes were entitled to 50 percent of hatchery fish passing through their usual and accustomed fishing places. He reasoned that fish from hatcheries not only compete with natural stocks of salmon for food, but are also replacement fish for those lost because of environmental degradation. Secondly, and much more importantly, Orrick found that the tribes' right to "take fish" implied a right to protect the fishery from environmental damage. He argued that the

[32] *Ibid.*

[33] Comment, "Accommodation of Indian Treaty Rights in an International Fishery: An International Problem Begging for an International Solution," 54 *Washington Law Review* (1979), p. 403.

[34] 443 U.S. 695-96 (1979).

[35] 506 F. Supp. 187 (1981).

result of this finding was to give the tribes a "veto" over any development which might have an adverse impact on a tribe's fishing rights.[36]

The state appealed to the Circuit Court of Appeals which, in November 1982, granted partial victories to both the tribes and the state.[37] The appeals court upheld Judge Orrick's ruling about hatchery fish but reversed his ruling about environmental protection.[38] The court concluded, on the basis of precedent and empirical observation, that the interests and responsibilities of the tribes and of the state intersected insofar as protecting the salmon fishery is concerned. In reaching this conclusion, the court indicated something of the federal judiciary's expectations about state-tribal relations.

> The State argues that this case should not be decided on the assumption that the State will destroy the entire fishery resource unless prevented by an environmental right. We agree. . . . More importantly, it is not in the State's interest to allow the fish to decline. To do so injures treaty Indians and others alike. . . . The political clout of over 6,600 non-Indian commercial fishermen and 280,000 sport fishermen will require the State to manage the fish responsibly. After [previous decisions] and our holding today, the interests of the non-Indian fishermen and the Indians, whose previous divergence has given this sometimes bitter dispute its force, are inextricably linked.[39]

The Appeals Court may have succeeded in refining the issues, but it did not succeed in clearing the air or ending the litigation. Appeals to the United States Supreme Court are now being prepared by both sides.

The Future: Will Salmon be Protected?

Despite decades of legal battles, and despite Supreme Court Justice Stevens' finding that the principal issue was a "matter decided," the effort continues in Washington State to clarify the specific nature of salmon fishing treaty rights. The rulings in the various cases, however, contain strong hints that the judiciary is tiring of the seemingly endless cycle of treaty litigation — Stevens' "matter decided" comment implies that the Supreme Court has no desire to continue re-refining and re-applying a set of previous decisions. Moreover, Stevens' opinion can be read with little difficulty as one less concerned with treaty rights of Pacific

[36] *Ibid.*

[37] *United States v. Washington* (Phase II), Ninth Circuit Court of Appeals, Slip Opinion in No. 81-3111, decided 3 November 1982.

[38] *Ibid.*, pp. 5204-11. Note particularly footnotes nos. 16-22 explaining the misapplication of precedents.

[39] *Ibid.*, pp. 5208-09.

Northwest Indians than with maintaining the authority and legitimacy of the federal courts which decided the case. The Supreme Court opted to review only when it deemed review essential to settle the conflict and protect the authority of the federal courts, and Stevens saved his most pointed comments for those who fought against the implementation of Judge Boldt's decision. The court system itself, however, cannot be expected to slow or stop the flow of cases.

In 1980 Congress enacted the Salmon and Steelhead Enhancement and Conservation Act.[40] It holds some promise of providing a co-operative approach bringing together federal, state, tribal and user groups to develop solutions without the judiciary, with its coercive power, looking over their shoulders. It provides for a Salmon and Steelhead Advisory Commission, which has now been formed and funded. The Commission's objective is to design a management plan for the fishery. The parties involved are encouraged to co-operate by the promise of federal aid if a plan can be developed and implemented. While it is too early to judge the success of the Commission, it is at least one positive non-judicial effort to settle portions of the treaty rights conflict. Nevertheless, even if the courts have tired of the conflict, and even if the efforts of the Salmon and Steelhead Advisory Commission show signs of success, it will take only one dissatisfied party to bring the issues back to court.

[40] Public Law 96-561 (1980).