

Treaty Rights in the Pacific Northwest

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Judge George H. Boldt ruled in 1974 that Pacific Northwest Treaty Tribes reserved 50% of the Northwest fisheries by their treaties with the United States Government (USG). The Indians' rights over their USG recognized lands and resources were not extinguished when the USG annexed them. The Indians "reserved" some of their rights affecting their lands and resources in their treaties. The Supreme Court upheld the decision in 1979. Principles of co-management of resources, established by the Boldt Decision, have been applied to other Tribal resources since then.

In *US vs. Washington*, 1974 (384 F.Supp.312) Judge Boldt found "that the following statements are now well established in fact and law":

". . . all Treaties made under the Authority of the United States, shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
(Article VI of the US Constitution)

". . . the treaty must . . . be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."

"The language used in the treaties with the Indians should never be construed to their prejudice . . . How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction."

"Valid treaties of course are as binding within the territorial limits of the States as they are elsewhere throughout the dominion of the United States."

"Each of the basic fact and law issues . . . must be . . . interpreted in the spirit and manner directed in the above quoted language of the United States Supreme Court."

"The treaty was not a grant of rights to the Indians but a grant of rights from them – a reservation of those not granted."

"The treaty negotiations were with the tribe. They reserved rights, however, to every individual Indian, as though named therein . . . And the right was intended to be continuing against the United States and its grantees as well as against the State and its grantees. That those rights are also reserved to the descendants of treaty Indians, without limitation in time . . ."

Many Americans assume that the United States' treaties with Indians were a grant of rights to the Indians. Judge Boldt makes it clear, it is exactly the opposite. Therefore, many ask, "Who received treaty rights?" The answer is simple: the settlers, and their descendants, received the treaty rights. Settlers gained the right to settle on what the USG recognized as Indian lands. The Tribes, under threat of violence, were coerced into giving up title to their lands (ceded) for many promises in their treaties. But everything that was not explicitly given up was reserved for future generations, like the co-management of natural and cultural resources as well as access to usual and accustomed places. Oddly, in America, it is usually the descendants of settlers who complain about "treaty rights".