

WASHINGTON'S SALMON MANAGEMENT AFTER RECENT COURT DECISIONS ON INDIAN RIGHTS

Duane E. Phinney
Washington Department of Fisheries
Olympia, Washington 98504

Abstract.

In February 1974, U.S. District Court Judge Boldt issued a decision on Indian treaty fishing rights that has drastically altered the salmon fisheries of Washington state and the management of these runs. In addition to a prescribed share of the runs, treaty tribes were granted certain fishery management rights. Salmon management has evolved from a system in which the Washington Department of Fisheries was the sole authority to one in which Indian tribes have a significant role. Violation of fishing regulations has become a major problem, and catch statistics are losing accuracy. Non-Indian fisheries have been cut back to provide more fish to Indian fishermen. The decision raised more new questions than it answered, and these have been the subject of litigation.

INTRODUCTION

In February 1974, U.S. District Court Judge George H. Boldt issued a decision on Indian treaty fishing rights that has had a dramatic impact on Puget Sound salmon (Oncorhynchus sp.) fisheries and the manner in which they are managed. The purpose of this report is to describe these impacts and the changes that have occurred.

BACKGROUND

The "Boldt Decision" on Indian treaty fishing rights, more formally Final Decision No. 1 rendered by Judge George H. Boldt of the United States District Court for Western Washington in U.S. v Washington Civil No. 9213, was the culmination of a long history of legal events with recent cases relative to the issues occurring in Washington, Oregon, and Idaho since 1963. The decision was issued February 1974 following a lengthy trial in response to a suit filed September 1970 by the U.S. Department of Justice at the request of the Department of Interior acting as trustees for several treaty Indian tribes. In January 1976, the U.S. Supreme Court declined to review the case, thereby allowing the decision to stand.

Fourteen Indian tribes were initially involved as plaintiffs with 13 tribes allowed to enter subsequently as intervenors. Defendants were initially Washington Departments of Fisheries (WDF) and Game. The Washington Reef Net Owners' Association was allowed to participate as a defendant with several non-Indian commercial and sports groups participating as amicus curiae.

The decision on off-reservation fishing rights was based on a series of treaties between the U.S. Government and Washington Indian tribes in the mid-1850's. All contained language similar to that in the Medicine Creek Treaty: i.e., "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." Judge Boldt ruled that the treaties were not a grant of rights to Indians but rather a grant of rights from Indians to non-Indians, with those rights not granted reserved to themselves. Indian fishing, then, is a right as contrasted to non-Indian fishing, which is a privilege granted by the State.

The geographic area to which the Boldt Decision applies (the case area) is Puget Sound drainages and the Washington coast north of Grays Harbor. Under a subsequent preliminary injunction, however, Judge Boldt required the State of Washington to treat Grays Harbor as being within the Case Area as a Quinault Tribe was found to have fishing rights within the area. Most tribes are situated in Puget Sound. A similar ruling by Federal District Court Judge Robert Belloni in a case involving Columbia River treaty Indian tribes contains most aspects of the Boldt Decision. This discussion is specific to Puget Sound because this is where changes have been most drastic. Coastal areas north of Grays Harbor have not been affected as drastically because non-Indian fisheries historically did not operate in these rivers and estuaries and Indian fisheries have been the sole commercial harvester of those fish that escape the ocean fisheries.

CATCH SHARING

There are many aspects of the Boldt Decision, the most publicized of which has been the catch-sharing formula, whereby Judge Boldt allocated 50% of the harvestable salmon and steelhead runs, in addition to their on-reservation, subsistence, and ceremonial catches, to the Indians.

The following hypothetical example is given to illustrate the manner in which the sharing concept has been defined by the court.

	<u>No. fish</u>
Adjusted Washington ocean troll catch (non-Indian)	1,000
Adjusted Washington ocean sport catch (non-Indian)	1,000
Adjusted Puget Sound sport catch (non-Indian)	500
Predicted run to Puget Sound (available to Indian and Non-Indian net fisheries)	8,000
Escapement needs	- <u>1,000</u>
Total <u>harvestable</u> run	9,500
Projected on-reservation catch (Indian)	1,000
Projected subsistence and ceremonial catch (Indian)	<u>500</u>
Total <u>shareable</u> run	8,000
Indian catch	
50% share	4,000
On-reservation	1,000
Subsistence and ceremonial	<u>500</u>
Total	5,500

Non-Indian catch

Troll	1,000
Ocean sport	1,000
Puget Sound sport	500
Puget Sound net	<u>1,500</u>
Total (50% of shareable run)	4,000

The Ocean troll catch and sport catches in the example are "adjusted". The Boldt Decision is in terms of the number of fish that would have returned to Indian fishing areas in the absence of catches by prior fisheries over which the State has jurisdiction. Thus, catches of Canadian and non-Washington United States citizens (i.e., Oregon, California, and Alaska) are completely excluded from the calculations. Furthermore, some of the fish caught by troll and sport fisheries would have died of natural mortality or been caught by Canadian fisheries and therefore not have reached the usual and accustomed areas. Thus, the number of fish caught in sport and troll fisheries are adjusted for this fact in the calculations for catch sharing. The Indian ceremonial, subsistence, and on-reservation catches are not part of the shareable run; therefore, the Indian share is greater than 50% of the harvest in terms of these adjusted numbers. In the example, there are 1,500 fish available for harvest by Puget Sound non-Indian net fisheries and 5,500 for Indian fisheries. These then are the numbers on which Puget Sound net regulations for this run are formulated. A similar set of numbers is calculated for the run of each species to each of six basic management units in Puget Sound. For 1977, Judge Boldt altered the sharing formula for Puget Sound salmon runs, reducing the Indian share somewhat.

For Columbia River runs, tribes have recently agreed to a different sharing formula. Treaty rights extend only to those runs originating upstream of Bonneville Dam. Indians have agreed to accept a sharing formula that provides them with 60% of the fall chinook entering the Columbia River destined to pass Bonneville Dam, with the Indian share including ceremonial and subsistence catches. Since many fish from this stock are taken in the ocean by non-Indian troll and sport fisheries, the Indian share is considerably less than they are entitled to under the court decision. Reduced Indian shares of other salmon species, other chinook races and steelhead were also negotiated.

Prior to the Boldt Decision there was no specific Indian share. Indians fished primarily on-reservation under tribal regulations on those fish that had passed all prior non-Indian fisheries. Under a free permit issued by WDF, Indians could also fish off-reservation under the same regulations as licensed non-Indian fishermen. Additionally, for several years prior to initiation of U.S. v Washington, some exclusive Indian fisheries had been provided under State Regulations.

MANAGEMENT

Pre-Boldt Management

Prior to the Boldt Decision, salmon management in Washington was relatively uncomplicated compared to the present. Except for Indian reservations, WDF was the single management body. All technical aspects of management were performed solely by WDF.

General pre-season forecasts were prepared with expected run strength normally expressed as "good", "poor", or some other relative term. Pre-season regulations were established to accommodate the expected run strength, and relatively few in-season adjustments of regulations were promulgated. Escapement goals were either non-existent or, usually, unrealistically high. Since management wasn't geared to achieving these goals, this didn't really matter. Broad areas of Puget Sound were generally open to fishing.

Present Management

Although the following discussion describes present Puget Sound salmon management, not all changes are a result of the Boldt Decision. Shortly after the Boldt Decision, a new WDF Director was appointed by the Governor. He reorganized the Department and made new individuals responsible for salmon management functions. Many of the old ways would have disappeared regardless of the Boldt Decision. On the other hand, without the trauma of the Boldt Decision, the new Director and subsequent reorganization may not have occurred. Regardless, present salmon management in Washington has undergone radical change.

Management since the Boldt Decision has become much more complex. Precise pre-season run strength forecasts are developed. Escapement goals are meticulously computed. Rigorous analysis of catch statistics is utilized to estimate run strength in-season. Pre-season regulations are established after careful analysis of expected effort, past catch per effort statistics, and other parameters. Pre-season regulations are carefully manipulated in-season to accommodate actual (as opposed to forecast) run strength to achieve the established escapement goals. Technical aspects of management are carefully documented in written reports.

Instead of management solely by WDF, Indian tribes have been given certain rights and responsibilities to manage Indian fisheries and to participate in development of the technical aspects of management. Most tribes have hired biologists to assist them in these duties. The number of biologists now involved in Puget Sound salmon management has ballooned. WDF has 31 biologists and full-time technicians directly involved in the various aspects of Puget Sound salmon management. The number employed by the tribes far exceeds this number. One small tribe, for example, has about 12 part-time fishermen and a fisheries staff (including three enforcement officers) of nine people. In 1977, this tribe caught only 2,700 salmon of a total Puget Sound catch of 5.3 million. The U.S. Fish & Wildlife Service also provides technical assistance to the tribes. For Puget Sound runs, the cost of managing, enforcing, and enhancing the runs may well exceed the value of the fish to Puget Sound net fishermen.

Judge Boldt retained jurisdiction over case area salmon management to insure that Indian treaty rights were realized in fact as well as on paper. Under this continuing jurisdiction, the management rules have continually evolved. This discussion is in terms of those extant for 1977. Somewhat different facts apply to management beginning in 1978 under a court order adopted August 1977, primarily giving Indian tribes more voice in the various technical aspects.

Puget Sound salmon runs are comprised of a mixture of natural and hatchery returns of each species. Because of greater survival of hatchery fish, vis a vis the naturally spawning segment of the run, it takes a smaller percentage of a hatchery return for

spawning purposes to maintain the run. Therefore, hatchery returns can be harvested at a higher rate. Since natural and hatchery returns overlap in timing, the fishing rate in each area applies equally to both segments of the run. Additionally, Puget Sound is divided into six primary management units. Somewhat different harvest rates are usually appropriate for runs of a given species to each of these. Runs for each of these management units are mixed together as they enter Puget Sound. As the fish pass through the Sound, various runs begin to drop out until finally each run is separate.

The problem, then, is to manage the fisheries to achieve the unique harvest rate appropriate for each segment of the run. This is accomplished by keeping the harvest rate in each area through which more than one run passes at or below the rate appropriate for the weakest segment. The high fishing rate necessary to fully harvest hatchery returns is applied in the area immediately adjacent to the hatchery stream. In this manner, the impact on natural runs by these high fishing rates is minimized.

To acquire catch data in a timely manner for use in management, WDF established a computerized "soft data system". WDF, tribal, and USFWS catch samplers gather catch information directly from the buyers. The information is telephoned to Olympia and entered in the system. Catch data sufficiently accurate for in-season management are thus made quickly available to WDF managers and to tribal representatives with a terminal to access the system. These preliminary statistics are replaced by final "hard" catch statistics at the end of the year.

Every two weeks, estimates of sport catches are made for each of the catch reporting areas from sport fishery sampling data. The estimates are corrected at the end of the year by punch card statistics.

An extensive communications network has been established to immediately inform the fishermen, processors, and interested organizations of regulation changes. A toll-free number is always available with a recording detailing current regulations.

Procedures for establishing technical basis for management

Prior to the fishing season, agreement must be reached between WDF and tribal representatives on escapement goals. Because of the number and location of hatcheries, the fact that hatchery and natural runs overlap in time and area, and because hatchery runs can be harvested at a much higher rate, the first step is to decide which areas will be managed to provide full harvest of hatchery returns. In these latter areas, some natural runs will receive less than full escapement. Because of the time lag between juvenile release and adult return, any change in plan relative to management to meet a hatchery escapement goal must be made prior to release of juveniles. For natural runs, the escapement goal is established as that number of spawners which will, on the average, maximize the biomass of juvenile outmigrants. These have been fairly well established, and only minor annual adjustments are needed. Hatchery escapement goals are established to meet hatchery program goals.

Additionally, the other technical needs for management must be agreed upon. These include methods for pre-season, predictions of anticipated run strength, methods for assessing run strength in-season, and methods for calculating actual escapements. Finally, agreement must be reached as to the adjusted catch estimates for the troll and sport fisheries that will be used in the allocation formula.

Pre-season predictions are based on historic relationships between biological parameters and adult returns. Different relationships are used for each species because of differences in life history and other factors. For example, since coho salmon (O. kisutch) spend a year in freshwater prior to migrating to the ocean, the amount of rearing area limits production. The amount of rearing area varies with summer stream flow levels. Thus there is a good relationship between summer stream flows and subsequent adult returns. Returns of hatchery salmon are predicted on the basis of numbers, size, and time of release of juveniles.

In-season estimates of run strength generally are based on analysis of catch and effort statistics. With few exceptions, fish appear on the spawning grounds where they can be counted long after the entire run has passed through the fishing areas and timely adjustment of regulations is not possible.

Actual escapements are estimated in most instances by counting fish or redds in key spawning areas. These counts are multiplied by factors determined for each aspect and area to extrapolate total escapement.

Prior to each run, WDF distributes a status report for each species presenting the technical data for management: run size estimates, escapement goals, predicted harvest, timing of the run through the various Puget Sound areas and other management recommendations such as harvest rates for the various areas, special closures needed, mesh size requirements, and the like. These status reports then become the basis upon which fisheries are to be established.

Technical disputes between tribal and WDF biologists are considered by the Fisheries Advisory Board established by Judge Boldt. The Board consists of the Court's Technical Advisor (currently Dr. Richard Whitney of the University of Washington) and a representative of WDF and the tribes. WDF and tribal representatives serve on an ad hoc basis. If the dispute cannot be solved through the Board, a court hearing in front of Judge Boldt may be required.

Procedures for establishing regulations

The manner in which treaty and non-treaty fisheries are regulated is carefully prescribed in various Orders of U.S. District Court by Judge Boldt. Additionally, the State Administrative Procedures Act specifies steps WDF must follow.

Indian regulation of Indian fishing

Indian regulation procedures are established in various orders of Judge Boldt. Each tribe regulates its own fishermen within its usual and accustomed area, the area which Judge Boldt ruled the Indians had fished at treaty times and thus can now fish. To begin with, all areas are closed unless opened by properly adopted regulations filed with the Court and WDF. At least 42 days prior to the entry of the run, tribes must furnish WDF their proposed off-reservation regulations. WDF comments back to the tribe if necessary, and final regulations, hopefully incorporating WDF comments, are adopted and filed. Emergency regulations can be adopted during the season under prescribed notice and filing procedures. Upon meeting certain requirements, a tribe qualifies to be what Judge Boldt termed self-regulating. Those tribes so classed are not bound by this procedure and may adopt regulations without coordination with the State; consultation with the State is encouraged but not mandatory. There currently are two self-regulating tribes, neither of which is in Puget Sound.

With 23 of the 27 case area tribes being located in Puget Sound, a plethora of regulations is generated. Because the usual and accustomed fishing areas of individual tribes almost always overlap with that of other tribes, several tribes have fishing rights in almost every portion of Puget Sound. Thus, there may be regulations of several tribes extant for a certain area, potentially all different. Some of the tribes have tried to consolidate their regulations for mutual fishing areas but much confusion exists, and regulations for an individual tribe may conflict with the common regulations. It is a full-time job for one WDF employee to perform a bookkeeping function on tribal regulations. A WDF computer system, accessible by affected parties, keeps regulation information current.

On-reservation regulations can be adopted without following the described procedure.

State regulation of Indian fishing

There are two basic reasons for which the State may regulate off-reservation Indian fishing: allocation and conservation.

Whenever such regulation will (1) increase the opportunity for non-Indians to take more of the harvestable portion of the run and (2) not result in over-escapement, the State may close or curtail the Indian off-reservation commercial fishery when that fishery has taken its share of the harvestable portion of the run. In the latter part of 1977, however, Judge Boldt removed from WDF the authority to regulate Indians for allocation. Such regulations now have to be requested of U.S. District Court. Since most Indian fisheries occur in rivers and river mouth areas after the non-Indian fishery has already occurred, allocation closures of Indian fisheries are seldom needed.

The State further has the power to regulate off-reservation fishing to the extent reasonable and necessary for conservation of the resource. For this purpose, conservation is defined to mean perpetuation of the species at present levels, as opposed to wise use. Such State regulation must not discriminate against Indians, must be the least restrictive possible to protect the resource and must meet appropriate due process standards. Affected tribes are first given the option of adopting necessary regulations themselves. In those cases in which tribes disagree with the State's analysis, State regulations are adopted. State conservation regulations supersede any conflicting tribal regulation.

The tribes have legal recourse within the court, after attempting to resolve the dispute through the Fisheries Advisory Board, with respect to any State regulation they feel is unwarranted or unjust. Since 1975, there have been well over 100 emergency conservation orders adopted by WDF for Indian off-reservation fisheries, nearly all of which established regulations for several areas. None of these were successfully challenged in court by the tribes.

For those tribes considered self-regulating, the State must apply to the court for allocation and conservation regulations in off-reservation areas.

Since Indians are entitled under the Decision to on-reservation catches over and above the 50% allocation, on-reservation regulation by WDF is limited to that necessary for conservation purposes. Unlike conservation or allocation regulations for off-reservation fishing, however, the State must request such on-reservation conservation measures of the U.S. District Court. Again, a request is first made of the involved tribes to

institute needed regulations voluntarily, if not done, the Fisheries Advisory Board is consulted before going to court. In 1975, the Department asked the court to close five specific on-reservation fisheries when the tribe had not done so and conservation could not be complete without such closures. On each occasion, a temporary restraining order was issued by the court, stopping fishing until a hearing on the facts could be held. After such hearings, the court closed three of the fisheries, reduced another by half, and the need for the fifth closure had passed by the time a hearing could be scheduled.

At least partly due to our success in obtaining these closures, only two reservation closures have been requested since 1975. Both were obtained. This is not to say, however, that reservation regulations have always been appropriate. The amount of time required to prepare for and participate in the court hearings means that only the most important needs can be addressed. Further, the burden of proof placed upon WDF to prove the conservation need in such cases makes it possible to successfully achieve a closure only in extreme cases, when it can be legally proved the regulation is necessary.

State regulation of non-Indian fisheries

The simplified account given of the interaction between State and tribal fishing regulatory bodies hopefully gives a little insight to the complexity of Indian salmon fishery regulation in Washington. As complex as the above account is, complications the decision has imposed on regulation of non-Indian fisheries are equally so in a legal and administrative sense.

Pre-season regulations are adopted for non-Indian fisheries following a public hearing at which public testimony is taken with respect to proposed regulations. Public testimony is considered and final regulations are adopted at a short public hearing, usually within a few days. The Director has authority to adopt emergency regulations without a public hearing on short notice. Numerous such orders are promulgated each year to respond to the biological needs of the resources and orders from State and Federal courts.

The basic requirement imposed on WDF by the Boldt Decision is to provide more salmon to the Indian fisheries. This can be done by reducing the non-Indian catch or increasing the supply of fish for all user groups. The latter is, obviously, a more palatable option, and steps have begun in this direction through enhancement. Returns from such enhancement are down the road a few years, however. Thus, the former option is that which is being employed.

At the heart of the problem of reducing non-Indian fisheries to comply with the Boldt Decision is the question of whether WDF can establish regulations whose purpose is to allocate the catch. State courts, including the State Supreme Court, have held that it cannot. Until the 1977 season, a common scenario was as follows. The Department would adopt regulations that had the effect of allocating fish to Indians. That is, non-Indian fishing would be closed but Indians would be able to continue fishing. Non-Indian fishermen would file for, and receive from a County Superior Court, a temporary restraining order or injunction precluding such regulation. WDF would adopt and file regulations to accommodate the State court order. Indians would immediately file for and receive a contrary order from Judge Boldt, who might also enjoin the State court from issuing further orders. State Supreme Court was the next step.

In 1977, a decision from the State Supreme Court ordered the Department to adopt regulations only for conservation purposes. Pre-season regulations were adopted on this basis. U.S. District Court countered with an order that purported to remove control of the Indian share of the run from State control. The theory was that since WDF had no control over fish that Judge Boldt had allocated to Indians, any non-Indian closures would be to achieve necessary escapement and would thus be considered by State courts as necessary for conservation. Regulations were altered per this order. Non-Indian fishermen obtained an injunction from County Superior Court which ordered the Department to establish non-Indian regulations on the basis of total fish, including those Judge Boldt said belonged to Indians. This was done. Judge Boldt then issued an order to the Department to announce only those regulations (despite what was actually adopted) that would achieve the ordered allocation. Additionally, he enjoined fishermen to fish only according to the announced regulations. Those fishing except as per announced regulations would then be cited for contempt of U.S. District Court. Since the order to WDF did not conflict with State Court orders, which only addressed what regulations could be adopted, this order was accommodated. An appeal to the State Supreme Court by non-Indian fishermen followed but no decision has yet been delivered. Federal and State officials were ordered to enforce the injunction against the fishermen. Many were arrested for violating the injunction.

ENFORCEMENT

Prior to the Boldt Decision, enforcement of commercial salmon fishing regulations was not a great problem. Fishermen generally obeyed regulations because they believed they were necessary to perpetuate the runs.

Enforcement of Puget Sound commercial salmon regulations has now become a virtual nightmare. Non-Indian fishermen, especially gillnetters, now generally ignore allocation closures knowing that State courts will not convict them. When it is necessary to adopt an allocation closure for Indians, Indian fishermen likewise continue to fish.

Furthermore, in some instances, fishermen perceived conservation closures as clandestine allocation closures and began to violate them. Finding that it was profitable to violate conservation closures, wholesale illegal fishing began throughout Puget Sound. Patrol officers are spread so thin that most violators go unarrested. Those that are arrested generally either forfeit bail or receive a small fine.

Fishermen keep track of movements of patrol boats by radio, and know when to retrieve their gear so they are not fishing when the patrol boat arrives. In several instances, gillnetters harassed and rammed patrol vessels, endangering patrol officers' lives and damaging their boats. This type of activity culminated in an incident in which a patrol officer shot and severely wounded the operator of a large gill net boat bearing down on the much smaller patrol craft.

Many Indian fishermen likewise began to ignore regulations, and enforcement efforts have likewise been inadequate. Nearly all tribes have their own enforcement officers.

As a result of the wholesale illegal fishing and misreporting of catches, it has become difficult to correct catch statistics to reflect what actually occurred. Since historic catch statistics are relied upon heavily for in-season management to estimate run size, we will lose some of our technical capabilities for future years.

Prosecution of those arrested for violating fishing closures has become increasingly difficult. It has become impossible to gain a conviction for violation of an allocation closure, and enforcement officers have stopped issuing citations. Fishermen arrested for violating conservation closures commonly claim the closure was for allocation. Because of the complexities of Puget Sound salmon management, this is often a defense plausible to a layman. WDF management biologists must testify as to the conservation need for the regulation in most trials, a time-consuming activity. Some judges routinely dismiss charges on minor technicalities even for violations of conservation regulations.

Enforcement of the injunction Judge Boldt issued against individual fishermen was likewise difficult and most cases brought before him to date were dismissed. It was necessary to prove that each cited fisherman had been given notice of the injunction, and it was difficult to meet the legal burden of proof in this respect.

CHANGES IN THE FISHERIES

There have been several changes wrought in both Indian and non-Indian fisheries.

Indian fisheries have expanded both in time and area. Indian fishing fleets consist of far fewer units of gear than non-Indian fleets. Therefore, they can hope to catch their full share of fish only by fishing more time than non-Indians. A typical fishing week might provide one day for non-Indians and five days for Indians. Instead of being restricted to reservation areas except when open to all fishermen, Indians now have greatly expanded fishing areas, both in marine and river waters.

Several tribes have no reservation so previously had no fishery except those of non-Indians. Most of these tribes had few or no fishermen previously but now have many more. Even in most of those tribes where individuals previously had reservation fisheries, the number of fishermen increased with the additional fishing privileges.

Non-Indian fishermen have had fishing time and areas reduced commensurate with increases in Indian fisheries. Because a major portion of the non-Indian share has been taken in the ocean, Puget Sound net fisheries have borne the burden of catch reductions necessary to increase the Indian catch. For the 1976 coho run, for example, the entire non-Indian share had been taken by ocean fisheries, and Puget Sound net fishermen were not allowed to fish. The ocean fisheries are managed by the Pacific Fishery Management Council, established under the Fishery Conservation and Management Act of 1976, which established the 200-mile limit. Ocean fishing interests have successfully blocked meaningful reductions in their fishery.

To reduce the numbers of non-Indian fishing gear units, a moratorium has been placed on new commercial fishing license sales. A Federally-funded "buy-back" program has been instituted to allow some of those wishing to leave the fishery to sell their vessel and license to the State.

SPORT FISHERY MANAGEMENT

Changes have been instituted for Puget Sound sport fisheries also, but they have been less severe than those in the commercial fishery.

WDF operates under the philosophy that sport and commercial fisheries have very different management objectives, the objective of commercial fishery management being to maximize catch in terms of dollars or pounds whereas the objective of sport fishery management is to maximize recreational opportunity. This is a commonly held distinction. Because of the different objectives, different rules (size limits, bag limits, seasons, etc.) apply to each fishery.

The Puget sound marine sport fishery historically has been open year-round with liberal bag and size limits. In 1975, WDF was forced during the summer and fall commercial seasons to exactly match sport fishery openings to those of commercial fisheries. Thus, numerous openings and closures were announced by emergency regulations. The results were chaos in the fishery. People were not able to determine where or when they could fish. Newspapers commonly carried closure announcements but not openings. Vacations that had been long-planned around a fishing trip were ruined, and WDF was swamped with numerous calls from, it appeared, each and every one of the more than 500,000 Washington sport salmon fishermen.

Ironically, most of these closures on sport fisheries were not necessary to insure adequate adult salmon escapements, a fact WDF always knew but could not convince Indians and the court. Adult salmon near their home stream in Puget Sound generally do not bite well, and the sport fishery catches relatively few adults. The sport fishery instead is supported by immature salmon, mostly chinook, that are still feeding and thus more apt to "bite".

Beginning in 1976, WDF refused to manage the sport fishery in such a manner, and the court did not insist. Instead, the policy has been to close any sport fishery whose target is a species with a conservation need. Other sport fisheries are allowed to continue even if an incidental catch of the problem species occurs. Closed areas and time are anticipated in advance and included in the annual regulation pamphlet as much as possible so emergency regulations are minimized. Additionally, a 20-inch size limit was instituted for chinook salmon, to reduce the sport catch and increase the number of adults available for spawning and commercial harvest. Previously, 50% of the Puget Sound sport catch of chinook was less than 20 inches in length.