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'This Ruling Gives Us Hope': Supreme Court Sides With Tribe in Salmon Case

By John Eligon

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SKAGIT RIVER, Wash. — There was a time when the murky waters of the Skagit River offered bountiful salmon harvests to the Swinomish Indians of Washington State. They could fill an entire boat with one cast of the net back then, and even on a slow day, they could count on hauling in dozens of fish.

But on a cloudy morning last month, the tribal community chairman, Brian Cladoosby, was having no luck. Drifting in his 21-foot Boston Whaler, he spotted his 84-year-old father, Michael, standing in yellow overalls in another boat, pulling an empty net from the water.

“Where’s the fish, Dad?” the son asked.

That has been the dominant question for years among the Swinomish and other Native Americans, who have seen their salmon harvests dip by about 75 percent over the past three decades.

But on Monday, they got reason to hope that their salmon harvests would tick back up.

The Supreme Court, in a 4-to-4 deadlock, let stand a lower court’s order that the state make billions of dollars worth of repairs to roads that had damaged the state’s salmon habitats and contributed to population loss.

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It was a momentous outcome in a decades-long legal battle that drew attention because of its implications for Native American treaty rights and state sovereignty.

“This ruling gives us hope that the treaty we signed was not meaningless, and the state does have a duty to protect this most beautiful resource,” Mr. Cladoosby, 59, said on Monday.



Mr. Cladoosby, right, with his father, Michael. Ruth Fremson/The New York Times

Swinomish tribe members fished on the Skagit River in May. Fishing days, once frenetic, are now a waiting game. Ruth Fremson/The New York Times

The case involved the Stevens Treaties, a series of agreements in 1854-55 in which tribes in Washington State gave up millions of acres of land in exchange for “the right to take fish.” In the 1970s, the state sought to control where Native Americans could fish, and tribal members asserted their treaty rights through acts of civil disobedience (some called the protests “The Fish Wars”) and litigation.

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Federal courts soon affirmed that the tribes had the right to make “a moderate living” from fishing the waters their ancestors fished before colonization and to co-manage fishing resources with the state.

Implicit in the treaties, courts would later rule, was a guarantee that there would be enough fish for the tribes to harvest. Destroying the habitat reduces the population and thus violates the treaties, courts have ruled.

The case decided on Monday was brought by the federal government in 2001, joined by the tribes. They argued that Washington State had harmed salmon habitats by building culverts — below-road channels and structures — in a way that prevented salmon from swimming through and reaching their spawning grounds. Federal courts ordered Washington to fix most of the culverts by 2030, an effort that a state spokesman said on Monday would cost about \$2.4 billion.

Washington State, which was supported by groups representing real estate, home building, agricultural and other commercial interests, argued that the rulings infringed on states’ rights to decide how to use their land.

“State and local government and private property owners would lose a great deal of control over land-use decisions, over water and other key factors that could conceptually affect the number of fish,” Robert McKenna, a former state attorney general, said in a phone interview.

The issue may yet return to a courtroom in the future. Justice Anthony M. Kennedy recused himself, because the issue had come before him when he was a judge on the United States Court of Appeals for the Ninth Circuit, more than 30 years ago. With a 4-to-4 tie, the Supreme Court did not write an opinion on the underlying merits of the case. But the outcome should serve as a warning for governments that have for generations abused the resources that Native Americans rely on, Mr. Cladoosby said.

“If land-use policies in the State of Washington have been negatively impacting salmon and being a cause of their decline, most definitely they should feel they need to sit down and work with tribes,” he said on Monday.

For the Swinomish, concerns about salmon come down to essential needs: their food and their livelihoods, as well as their culture and way of life.

Fishing at Lone Tree Point on the Swinomish Reservation in 1963.
Tom Brownell/Museum of History and Industry -- Swinomish Tribal Archive

The Swinomish once fished from June through December. Now, with the low stock, they get about 35 days of fishing a year. Ferd Brady/Swinomish Tribal Archive

Fishing days, once frenetic, now look more like this: Mr. Cladoosby dropping a wooden anchor and bright orange buoy into the water and slowly backing his vessel from one bank toward the other to spread a plastic net across the river.

Sitting in folding chairs near the stern, his wife, Nina, and one of their daughters, Mary, peered at the water, looking for the slightest blip in the net — a sign that a fish had been snarled.

It is a wait that, these days, can seem endless.

About 15 minutes went by. Nothing. Nina and her husband pulled the net back into the boat, and they repeated the cycle. Buoy and anchor in the water, then the net, then the wait.

Eventually, the top of the net flickered, and Mr. Cladoosby and his daughter sprang into action. They pulled the net out of the water, and a fish writhed around in it. But it was not exactly what they were hoping for. It was a steelhead trout, not a king salmon. While tribal members can sell kings for \$8 per pound, they do not sell steelheads, mainly just using them for food.

After a morning of nothing but empty nets — water hauls, as they call them — Mr. Cladoosby took a break, tying his boat to his father's. Snacking on potato chips and pieces of garlic-seasoned smoked salmon from an earlier catch, they reminisced.

His father recalled fishing with his own father in row boats.

Brian said that his first memory of going fishing was as a young boy, when he fell asleep on a boat and his father picked him up by the ankles and dunked him in the water. When he was in his midteens, a fishing trip in tribal waters with his father turned scary when a white man pulled up next to them, drew a gun and said, "Pick up your net or I'll shoot you."

Salmon remains an integral part of life for Mr. Cladoosby's family and his tribe. Ruth Fremson/The New York Times

Mr. Cladoosby dropped off salmon he caught at the tribe's fish plant in Skagit County.

Ruth Fremson/The New York Times

The father and son got out of there.

Even today, tribal members say, non-Native fishers try to perpetuate an inaccurate narrative that Native Americans fish as much as they want, whenever they want.

In fact, the Swinomish have greatly curbed their fishing. They used to fish pretty much nonstop from June through December. But now, with the low stock, they get only about 35 days of salmon fishing a year. The tribal salmon harvest in western Washington peaked at 5.3 million in 1985, but was down to 1.3 million last year.

Removing the culverts may not save the Swinomish's traditional way of life — intensive agriculture, timber practices and climate change are also depleting salmon stocks — but Mr. Cladoosby said the Supreme Court ruling was a step in the right direction.

The tribe, which has about 1,000 members, has diversified its sources of income. It owns a casino, gas stations and a golf course. It leases a part of its reservation, which has about 3,000 residents, to a community of upscale homes with picturesque views overlooking the Salish Sea. Even those who make a living on fishing now pursue other species beyond salmon, like crab, shrimp and halibut.

Still, salmon remains king. The Cladoosby family eat salmon just about every day — a deep freezer at their home holds a hefty supply of sockeye, king and smoked salmon. The day before this fishing trip, Mr. Cladoosby attended the funeral of his goddaughter, who died of an opioid overdose. The tribe served 400 pounds of salmon at the funeral. Every Wednesday the seniors get barbecued salmon at the Swinomish community center.

And just two days after the Cladoosby fishing trip, 600 pounds of skewered salmon were crackling over alderwood on a 15-foot long grill behind the tribe's community center. It was the annual First Salmon ceremony, the unofficial kickoff to the fishing season. But only 100 pounds of the salmon was from the Swinomish; the rest they had to buy from another tribe.

Wearing a cone-shaped, cedar-woven hat, Mr. Cladoosby stood before hundreds of people in the community center at the First Salmon ceremony and, weeks before the Supreme Court decision came, acknowledged the urgency of the moment.

Tribe members gathered for a ceremony to offer prayers for the boats and fishermen.

Ruth Fremson/The New York Times

A salmon basket was dropped into the water during the blessing. Ruth Fremson/The New York Times

“We’re in a war,” he told them. “We have battles that we fight. We’re going to win some, we’re going to lose some. I think it’s safe to say that everyone in this room today has the same goal as us in mind, to make sure we protect that wild Skagit salmon.”

Mr. Cladoosby then led hundreds in a march down to the waterfront, where speakers emphasized the importance of salmon.

“We’re still fighting over very few fish,” said Lisa Janicki, a Skagit County commissioner.

And then, four salmon carcasses were taken out to sea on fishing boats and dropped into the water — tradition holds that they would go and tell the other salmon how well the tribe treated them.

“We pray that our fishermen come home safe and for a bountiful run in salmon,” Joseph Williams, a tribal fisherman, said before a salmon was placed into the blue, rolling ocean.

The Supreme Court decision might be one small answer to that prayer.

Correction: June 11, 2018

An earlier version of this article erroneously described the steelhead fish. It is a type of trout, not salmon.

Follow John Eligon on Twitter: @jeligon

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