1964

Regulation of Commercial Salmon Fisherman: A Case of Confused Objectives

Ralph W. Johnson
University of Washington School of Law

Follow this and additional works at: https://digitalcommons.law.uw.edu/faculty-articles

Part of the Natural Resources Law Commons

Recommended Citation

This Article is brought to you for free and open access by the Faculty Publications at UW Law Digital Commons. It has been accepted for inclusion in Articles by an authorized administrator of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.
Regulation of Commercial Salmon Fishermen

A Case of Confused Objectives

BY RALPH W. JOHNSON

Last year some 30,000 United States and Canadian commercial fishermen roamed the coastal waters of the North Pacific in the time-honored tradition of their forefathers hunting for salmon. The picture they presented was colorful and interesting, but remarkably inefficient! If it were not for extensive “featherbedding” laws, they would have been automated out of existence fifty years ago. Roughly 27,000 of them were unnecessary; they could have stayed on shore without any reduction in the total catch and with a distinct improvement in the management of the resource.

To be blunt, the salmon boat fisherman is as obsolete as the buffalo hunter. The “secret”-traps and weirs; they make salmon catching absurdly easy and can be operated at 1/20 to 1/30 the boat-catching costs. Hunting for salmon on the high seas is like chasing bees in a meadow. Why not wait until the bees return to their hive, or until the salmon return to their spawning stream? Hunting for salmon with boats makes economic sense as a temporary palliative to an unemployment problem; it makes economic nonsense as a permanent industry in a competitive society in a competitive world.

Why is such gross inefficiency allowed to continue? The surprising answer is that state laws insist upon it. Alaska, Washington, and Oregon—and British Columbia too—all have laws barring traps and weirs. The laws go even further; they bar many new devices designed to increase efficiency, such as sonar, monofilament gill nets, spotter aircraft, and even large fishing vessels. The original idea was to give everyone a chance at the fish. Everyone now has his chance, if he promises to fish with one hand tied behind his back. Such featherbedding laws are anomalous in a society which prides itself on economic efficiency and in a world where foreign fishing fleets adopt new fishing techniques almost as fast as they can be conceived.

An additional effect of these “spread the catch” laws has been to force the salmon fishermen into a severe, but completely unnecessary, economic crisis. Although some say this crisis is caused by a shortage of fish, the facts prove otherwise. Annual catch statistics during the postwar period have remained about the same. The problem is that the number of fishermen has increased. For some types of fishing, the number of fishermen has more than doubled in this period. The total annual income of the industry remains high, but the income per fisherman is dangerously low. If depreciation on boats and equipment is taken into account, most fishermen actually operate at a net loss.

The remarkable fact about the plight of the salmon fishermen is that it could be solved so easily. Yet fear of losing jobs prevents these men, as well as those who would help them, from considering the most obvious solutions. Scientists can, of course, increase the number of fish, but not very much. The real answer lies in limiting the number of fishermen. If the solution suggested in this article were to be adopted, none of the present fishermen would lose his job. All would, in fact, be assured of an increased income within a very short time and a guaranteed healthy, if not “fat,” economic status within a few years.

Why is it so easy to catch salmon with traps and weirs? Part of the reason is the salmon’s spawning and travel habits. Although in their lifetime salmon roam vast distances over the Pacific, sometimes going as far as the Siberian coast, they return to the stream of their birth to spawn and die. On the high seas they are scattered and difficult to find, but when ap-
proaching and entering the mouths of their spawning streams, they are packed together like pebbles on a beach.

Rivers sometimes look solid with salmon at the height of a run. Catching the fish at such times is ridiculously easy. A weir, or fence of nets, can be strung across a river near its mouth, forcing the salmon toward a single small passage to one side. As the fish enter this passage, they can be guided into a small basin for collection and canning; some, of course, are permitted to escape for spawning. A trap can be set either in the mouth of a stream or in salt water nearby. It consists of a net fence strung on piling across the path of the returning fish. This fence takes up only a part of the passageway. In order to continue upstream, the salmon are forced to swim into a small opening into a net pen and are easily scooped out later for canning.

There is nothing speculative or experimental about traps and weirs. Traps were used effectively in Alaska long before they were banned by law in 1959. Weirs have been used extensively by biologists in rivers which offer many kinds of engineering obstacles. The Russians, whose Siberian salmon runs equal our own North American runs, use weirs and traps instead of boats to catch most of their salmon.

One of the salmon industry's main troubles comes from the fact that no one owns the salmon, either on the high seas or in the rivers. Other resources, such as timber, land, minerals, and livestock, are owned by someone, and in the nature of things the owner harvests them so as to bring himself the most profit. This owner tends to use the most efficient machinery and the fewest men possible to harvest his wheat, cut his timber, and mine his ore. He would be thought foolish if he hired five times as many men as necessary and used 19th-century techniques. Yet that is just what happens in the salmon industry. No one owns the salmon, and no one insists on economic efficiency—otherwise weirs and traps would take over. As it is, far too many boats and fishermen are brought into the industry. Everyone is required by law to use antiquated and inefficient fishing techniques so that all can be kept busy. The fishery management agent must become an "inefficiency expert" in order to devise new ways to restrict the increasing fleet.

Under present laws anyone who can afford to buy a boat and nets can fish for salmon. Such freedom of entry suggests a free enterprise industry. But when the fisherman starts to work, he finds that he is subjected to extensive legal regulation. He is controlled by regulations designed not only to conserve the supply of salmon, i.e., to care for the biological needs of the fish, but also to cut down on his efficiency and thus spread the supply of fish among as many persons as possible.

The ingenuity of these "spread the catch" regulations is remarkable. As noted above, Alaska, Washington, Oregon, and British Columbia ban weirs and traps. In Alaska, fishermen who operate purse seines, i.e., nets that draw around schools of fish much like a large draw-string purse, are barred from using boats more than 50 feet long. This law, incidentally, reputedly caused the loss of several ships recently in Alaskan waters when fishermen tried to use them for crab fishing, but were unable to manage the vessels in the winter storms.

The Alaskan gill netters, whose floating nets snag the salmon's gills, have to use even smaller vessels (under 32 feet) if they intend to fish in the world-famous Bristol Bay off Alaska. Nor can they use the newly designed monofilament gill nets which are nearly invisible to the fish; these nets catch too many salmon. Until the 1950's fishermen in the highly valuable Bristol Bay red salmon fishery were required by law to use sailboats. Alaskan trollers can put only four lines in the water at a time, even though they can handle several more quite easily.

Alaskan laws also say that, no matter what kind of gear the fisherman uses, he can have only one “set” aboard at a time. And he must take care to have the “right” gear, because complex “area” regulations require different gear for almost every area. In some places he can use only “set nets,” in others “drift gill nets,” and in others “troll lines.”

The state of Washington harasses the fishermen with similar regulations. For example, Washington regulations bar the use of such fine salmon locating devices as sonar and spotter aircraft and such excellent catching devices as monofilament gill nets. In Oregon coastal waters the fishermen fare even worse. They are banned from using anything except trolling gear. In all three states the fishermen find that overcrowding means they can fish only one or two days each week. The rest of the time their boats are idle. Salmon fishing is conducted for only a few weeks each year, and the fishermen must seek other employment or draw unemployment compensation during the remainder of that year.

Regulating the commercial salmon fishing industry by the same set of objectives used to
regulate sportsmen is not conducive to economic efficiency, and yet that is just what is being done. Sports fishing laws are designed to let as many people as possible catch fish. To the sportsman the number or net value of the fish he catches is of little importance; it is the "fishing" he is after. He is liable to go out at dawn and stand for hours waist deep in a frigid stream, trying to catch the "lunker" he thinks is under an old log. Presumably, commercial salmon fishermen have different goals, such as earning a living.

The effect of the "spread the catch" laws on the number of commercial salmon fishermen has been dramatic. Perhaps most important is the remarkable increase in the number of fishermen. For example, by 1957, 637 gill netters fished for sockeye salmon in northern Washington water as compared with 322 in 1953 and only 46 in 1945. And the number of salmon purse seiners in Puget Sound shot up from 121 in 1945 to a high of 452 in 1961.

Salmon fishing laws are made by the states, not by the federal government. This might seem anomalous in view of the fact that salmon spend most of their lives on the high seas, outside state waters. But they always return to their native inland spawning streams, and by long established tradition this has been enough to give the states exclusive control over them. Of course, prior to Alaskan statehood, the Department of the In-
terior made the laws for the territory; now the Alaska legislature and Department of Fish and Game have this responsibility. The federal government pays for extensive research about salmon and, of course, negotiates fishery treaties with other Pacific Rim countries, but it does not really regulate the fishermen except in those few cases where treaties are concerned. An interstate commission, the Pacific Marine Fisheries Commission, formed by compact among Washington, Oregon, and California, with Alaska joining in 1962, encourages cooperative management and research, but it has no power to adopt or enforce laws. The only effective legal control is held by state legislators and fishery department officials.

Legislators are faced with a special problem by the superefficient traps and weirs. For some lawmakers the most important fact about such devices is that none of them is allowed in Washington, Oregon, Alaska, or British Columbia (except a few operated by Indians under treaty); thus there are no weir or trap operators whose voice and vote demand recognition. For others, with a longer view of the economy of the region, this prohibition is not an adequate answer. Nonetheless the political realities must be reckoned with.

In Alaska another important factor shapes political views about these devices. Until banned in 1959, most of them were owned by out-of-state canneries. For many years these cannery owners exploited the salmon runs far beyond their renewal capacity, thus causing long-range damage. Unfortunately, the stigma of this history has stuck with the traps and weirs and has contributed significantly to their banishment.

For obvious reasons canneries have long been proponents of fixed gear, especially when they operate the gear for themselves. Trap-caught fish are of higher quality, because they are handled less, and make a better canned product. Fish caught by cannery employees are cheaper than boat-caught salmon, as are fish caught by independent fishermen. But cannery owners do not carry the political weight of the boat fishermen, and they currently have enough trouble in their relationships with the fishermen without waving this particular red flag.

The ubiquitous consumers might also seem to have an interest in the matter, especially if they came to believe that the reduction in catching costs would be reflected in lower retail prices. But consumers are too poorly informed and organized to make their voices heard by the politicians on this complex issue.

On the other hand, the salmon boat fishermen have a strong and effective political voice. These men depend upon the salmon for their livelihood. They have big investments in boats and gear and often have long and respected family traditions of commercial fishing. Understandably, they fear competition, especially from such formidable fish-catchers as weirs and traps. In addition, because they are bound by interlocking family, job, and social ties to the halibut and bottom fish fishermen, they can usually count on the support of these compatriots.

What about the sportsmen; where do they stand on fixed gear? For the most part, they are little concerned about the matter, because they fish for different kinds of salmon than do commercial fishermen. There is, however, competition for kings, silvers, and pink salmon in the coastal waters of the state of Washington and in a few other places. To the extent that this competition exists, the sportsmen have done badly at protecting their own interests. In Washington in 1934 they lent their support to an initiative banning weirs, traps, and other fixed gear in all state waters, apparently under the impression that such devices reduced the number of fish available for sport fishing. In the long run they...
defeated themselves. Most sport fishing is done in salt water, close to shore, shortly before the fish enter the spawning streams; much of this is in Puget Sound, near Seattle. Commercial fishing is also done in salt water, but farther away from the spawning streams—outside the sport-fishing grounds. It is obvious that if commercial fishing were limited to weirs in the mouths of spawning streams, the sportsmen would have more fish to catch.

Most fisheries biologists prefer traps and weirs to boats. Such devices offer much better opportunities for studying and managing the fish. Salmon can be closely observed, precisely counted, and accurately separated for spawning or canning as they go through weirs and traps.

Boat fishing, on the other hand, does not permit such careful management. Boats roam the sea at will. If enough boats happen upon a salmon run, they can decimate it in a few hours. Naturally, when fishermen are netting salmon, they are reluctant to be selective about their catch. Even if they wanted to, they would have the greatest difficulty in distinguishing the salmon of one run from those of another. Salmon runs frequently mix while at sea, and there is no practicable way for the fisherman to tell whether the fish he is catching come from one, two, or a dozen runs. A ton of salmon taken by a boat may represent a significant part of one run toward a small stream or an insignificant part of several runs headed for large streams. Even if the fisherman could distinguish the fish in different runs, it would be asking too much of him to do so under normal fishing conditions.

The plight of the salmon fisherman is somehow reminiscent of the plight of the locomotive firemen whose battle with the railroads has recently received so much national publicity. When diesel locomotives were adopted, the firemen who formerly stoked coal were no longer needed; when, because of a union-management argument, they could not be discharged, they were said to be “featherbedded.” The law that prohibits traps and weirs in the salmon industry not only keeps obsolete fishermen employed, but, in requiring the use of boats when better devices are available, in effect makes the fishing industry keep the “steam locomotives” too.

In 1963 the Washington state legislature recognized the problem of overcrowding in the fishing industry and asked a team of biologists, economists, and lawyers to make a study of possible solutions. Their report concluded that from 1/3 to 1/2 of the fishing boats were unnecessary for the harvesting of fish. Because of the surplus of boats, the earnings of nearly all the fishermen were “severely depressed, despite record or near record runs of the most valuable species, the sockeye.” Virtually the same predicament exists in Alaska, British Columbia, and Oregon.

Obviously, the solution to the problem is not suddenly to bar half or two-thirds of the fishermen from further fishing or to dislocate a major labor force by a hasty change in laws and regulations allowing any kind of gear to be used. Remedies must be applied which recognize the industry’s present situation. Alaska, for example, has a large labor force currently engaged in boat fishing for salmon or in closely related and dependent work. Washington and Oregon are, to a lesser degree, in the same position. Salmon boat fishing carries with it a respected tradition; some families in Alaska and the Pacific Northwest have earned their living by salmon fishing through several generations. Precipitate action would be unfair to them and might create a significant unemployment problem.

There is a better solution, one which would not dislocate the labor force and which would guarantee the industry a healthy condition within a reasonably short time. A licensing system could be devised which would bar newcomers from the field. Men presently engaged in fishing would not be affected. They could continue in operation as long as they wished. As existing boats became obsolete, or as fishermen retired or transferred to other work, they would not be replaced. The salmon fleet would gradually dwindle in size, but would improve in economic health. Those fishermen who remained in the industry would have a highly profitable business. They would be able to use increasingly efficient gear such as monofilament gill nets, sonar, and larger vessels.

A decision about reintroducing traps and weirs will probably have to await a change in the employment situation in Alaska, Oregon, and Washington. It will also have to await a radical change in the political climate in these states, because at the moment the commercial fishermen are strong enough to kill any rational dialogue about their use—and can be expected to do just that. It is not, however, too early to start planning for the day when this situation will be changed.