

5-7-1973

Docket Entry 202 - Filed Answers of Lummi Indian Tribe to Interrogatories to Plaintiff-Intervenor

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FILED BY THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MAY - 7 1973

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JULY 10 1973
By [Signature]

1 DAVID E. RHEA
2 ASMUNDSON, RHEA & ATWOOD
3 220 BNB Building
4 Bellingham, Washington 98225
5 Telephone: (206) 733-3370
6
7 Attorneys for Washington Reef
8 Net Owners Association

9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,
12 et al,

13 Plaintiffs,

14 vs.

15 STATE OF WASHINGTON, et al,

16 Defendants.

CIVIL NO. 9213

INTERROGATORIES TO
PLAINTIFF-INTERVENOR
LUMMI INDIAN TRIBE

17 COMES NOW the WASHINGTON REEF NET OWNERS ASSOCIATION, an
18 unincorporated Association, and pursuant to the Federal Civil
19 Rules of Procedure submits the following Interrogatories to the
20 Lummi Indian Tribe, Plaintiff-Intervenors:

21 1. QUESTION. Please state in full all locations which are
22 claimed to be its "usual and accustomed fishing places and stations
23 within and contiguous to the western portion of the State of
24 Washington", as referred to in Item 3 of Plaintiff-Intervenor's
25 First Cause of Action.

26 ANSWER:

27 Answers to all Interrogatories on
28 attached sheets.

29 Interrogatories to Plaintiff-
30 Intervenor Lummi Indian Tribe

31
32
ASMUNDSON, RHEA & ATWOOD
ATTORNEYS AT LAW
SUITE 220 BELLINGHAM NATIONAL BANK BUILDING
BELLINGHAM, WASHINGTON 98225
TELEPHONE 733-3370

202

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3 2. QUESTION. Please specify, in detail, the "certain
4 sites within the area above described, which sites are peculiarly
5 suitable for reef net fishing" as referred to in the final para-
6 graph of said Item 3.

7 ANSWER.
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18 3. QUESTION. State, as far as is known to you, how many
19 members have owned and operated reef net boats, as set forth in
20 lines 4 through 6 of Item 4 of your First Cause of Action, for
21 each year of the past ten years.

22 ANSWER:
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27 4. QUESTION. How many "reef net boats" were owned and
28 operated by members of the Lummi Tribe at the time of the 1855
29 Treaty and where were the "usual and accustomed grounds and
30 stations" upon which they were used?

31 ANSWER.
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Interrogatories to Plaintiff-
Intervenor Lummi Indian Tribe

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5. QUESTION. Please describe, in detail, the vessels which were used by members of your tribe for reef netting operations prior to 1855 and the manner of their operation.

ANSWER.

6. QUESTION. What is the basis for, and source of your information relating to, your answers to the preceding two interrogatories?

ANSWER.

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4 7. QUESTION. What is the basis for your contention, in
5 Item 3 of your prayer for relief, that the State of Washington
6 should be restrained and prohibited from issuing licenses purporting
7 to authorize non-members of the Lummi Indian Tribe to engage in
8 reef net fishing at places which are "usual and accustomed grounds
9 and stations" of your tribe, in view of the language appearing in
10 the Treaty of 1855 that any rights conferred upon the tribe by the
11 Treaty shall be exercised "in common with all citizens of the
12 Territory"?

13 ANSWER.
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26 DATED this 26th day of March, 1973.

27 Respectfully submitted,

28 ASMUNDSON, RHEA & ATWOOD
29

30 BY David E. Rhea
31 DAVID E. RHEA
32 Of Attorneys for Defendant-
Intervenor, Washington Reef
Net Owners Association

Interrogatories to Plaintiff-
Intervenor Lummi Indian Tribe

ANSWERS OF LUMMI INDIAN TRIBE TO INTERROGATORIES
SUBMITTED BY
WASHINGTON REEF NET OWNERS ASSOCIATION

1. QUESTION. Please state in full all locations which are claimed to be its "usual and accustomed fishing places and stations within and contiguous to the western portion of the State of Washington", as referred to in Item 3 of Plaintiff-Intervenor's First Cause of Action.

ANSWER: While it is not possible to pinpoint every fishing site used by the ancestors of the present Lummi Tribe of Indians prior to the Treaty of Point Elliott, it is feasible to delimit the general area of their traditional fishing operations and within the general area to designate certain sites as important or principal fishing locations.

The traditional fishing areas extended from what is now the Canadian border south to Anacortes. The ancestors of the present Lummi Tribe of Indians trolled for salmon in the salt waters of Haro and Rosario Straits and in the salt waters contiguous to the San Juan Islands. In addition, they speared them in the bays and streams of the mainland, and took them by means of weirs and traps in the rivers throughout the entire territory mentioned above. (There were, in addition, other important fisheries, including halibut banks, but this answer is limited to salmon, including steelhead fisheries.)

The pre-treaty Lummi, along with the Semiahmoo and Samish, both of whom were subsumed with the Lummi at the Treaty of Point Elliott, also owned reef-net locations in the San Juan Islands, off Point Roberts, off Lummi Island and Fidalgo Island.

The reef netting grounds off Point Roberts were the largest in the entire area and were situated within the aboriginal territory of the Semiahmoo. They were used not only by the Semiahmoo but also by Saanich, Lummi, and other Indians.

1 The grounds off Village Point, Lummi Island were second in size
2 to the Point Roberts grounds. A number of the Lummi signers of the Point
3 Elliott Treaty owned reef net locations off Village Point.

4 The main Samish location was off Iceberg Point, Lopez Island in
5 the San Juans. Other Samish and Lummi locations were located off the
6 southern shores of Lopez. The Samish also fished with reef-nets off Langley
7 Point on Fidalgo Island.

8 Other Lummi reef-net grounds were located off Shaw Island, Orcas
9 Island, Waldron Island, and off Cherry Point on the mainland.

10 The Birch Point grounds off Birch Bay lay within the aboriginal
11 territory of the Semiahmoo people.

12 It should be noted that the foregoing description includes the tradi-
13 tional fishing areas of the Semiahmoo and the Samish, both of whom were
14 considered by the United States to be part of the post-treaty Lummi Tribe,
15 and the present Lummi Tribe includes the descendants of the pre-treaty
16 Semiahmoo and Samish groups.

17 2. QUESTION. Please specify, in detail, the "certain sites
18 within the area above described, which sites are peculiarly suitable for reef
19 net fishing" as referred to in the final paragraph of said Item 3.

20 ANSWER. Only a limited number of sites are peculiarly suitable
21 for reef net fishing and because of this ownership of the locations was a
22 valuable property right handed down from father to son.

23 The sites were usually located a short distance from shore on a
24 kelp covered reef. Many of the best locations were situated opposite to a
25 headland that caused a backward sweep of the tidal current. Outside loca-
26 tions could be used in deeper water, but these required some compensatory
27 arrangements in net construction, especially in floor line arrangement.
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Answers - 2

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ZIONTZ, PIRTLE & FULLER
ATTORNEYS AT LAW
3101 SEATTLE-FIRST NATIONAL BANK BLDG.
SEATTLE, WASHINGTON 98104
MAIN 3-1233

1 Similarly, some locations could be "built", that is, artificially enhanced to
2 simulate more choice locations by the tying on of beach grass, etc. to the
3 lines.

4 Factors limiting site location included the rate of the current, which
5 if too swift would not allow the gear to remain in a proper place, and
6 exposure to wind action, which would reduce visibility if the surface were
7 too choppy.

8 The prime limiting factor, of course, was that the sites had to be
9 located so as to intercept the migrating sockeye.

10 3. QUESTION. State, as far as is known to you, how many members
11 have owned and operated reef net boats, as set forth in lines 4 through 6 of
12 Item 4 of your First Cause of Action, for each year of the past ten years.

13 ANSWER. Two members.

14 4. QUESTION. How many "reef net boats" were owned and
15 operated by members of the Lummi Tribe at the time of the 1855 Treaty and
16 where were the "usual and accustomed grounds and stations" upon which they
17 were used?

18 ANSWER. The above question has two parts. We do not know
19 how many "reef net boats" were owned and operated by members of the
20 Lummi Tribe at the time of the 1855 Treaty. To the best of our knowledge,
21 no written records are extant which include a count of Lummi boats engaged
22 in reef netting operations either in the years immediately preceding or
23 subsequent to the Point Elliott Treaty.

24 The second part of the question has to do with the locations at which
25 reef net operations were conducted. It is possible to answer this part of the
26 question with some degree of completeness.

27 Reef net locations identified as in Lummi territory include the
28 following: off Fisherman's Bay, Lopez Island, off Village Point, Lummi

1 Island, off Squaw Bay, Shaw Island, West Beach, Orcas Island, off Point
2 Doughty, Orcas Island, off Fishery Point, Waldron Island, off the west
3 shore of Lummi Island and off Cherry Point on the mainland. :

4 Additional locations were located off Charles Island, off Iceberg
5 Point, Lopez Island, Watmough Head, Lopez Island, off Langley Point,
6 Fidalgo Island. These were in Samish territory and as explained in the
7 answer to Interrogatory No. 1, the Samish were subsumed with the Lummi
8 under the treaty of Point Elliott, so their identification as Samish or Lummi
9 depends upon whether the question refers to the pre-treaty Lummi, or the
10 Lummi entity which is entitled to the benefits of said treaty.

11 Point Roberts locations, off Cannery Point, were claimed by Lummi
12 to be used by them in pre-treaty as well as historic times. As noted
13 earlier, the Point Roberts grounds are in Semiahmoo territory. Again,
14 some members of the present Lummi Tribe are of Semiahmoo descent, and
15 the Semiahmoos were also subsumed with the Lummi at the Treaty of
16 Point Elliott.

17 5. QUESTION. Please describe, in detail, the vessels which were
18 used by members of your tribe for reef netting operations prior to 1855 and
19 the manner of their operation.

20 ANSWER. So far as I am aware, there is no documentation prior
21 to 1855 which includes a description of the canoes used for reef netting and
22 the manner of their operation. However, we do have accounts recorded in
23 post-treaty times which purport to describe the traditional gear in use
24 prior to 1855. These descriptions are from two sources: (1) Indian testimony
25 from individuals claiming to have used such gear prior to 1855 and (2) non-
26 Indian eyewitness descriptions of gear in use after 1855. These accounts are
27 in essential agreement as to the nature of the vessels and their mode of
28 operation.

Answers - 4

1 There is no reason to suppose that the gear used after 1855 differed
2 materially from that used prior to 1855 apart from several features of
3 construction. After the introduction of steel, metal cutting edges were sub-
4 stituted for stone tools in the construction of the canoes. This substitution
5 occurred fairly rapidly. For a rather longer period, nets and lines made of
6 native plant materials were favored over those of non-Indian manufacture, but
7 by the turn of the century, native lines of steamed cedar withes and nets from
8 willow bark twine were largely replaced by introduced cord and rope.

9 The canoes used for reef netting were specialized craft. They
10 were larger overall than ordinary fishing canoes and had a flat stern and a
11 wide bow. The dimensions of a model acquired by the National Museum of
12 Canada in 1889 are given on the attached drawing and indicate the shape and
13 proportions of the vesssel. The sketch does not show the raised platform
14 in the stern from which the lookout kept watch for migrating salmon
15 swimming toward the net.

16 The gear operated in the following manner: A single reef net gear
17 consisted of two canoes anchored parallel and at some distance apart with
18 a net suspended between them. The lines holding the canoes apart could
19 be rapidly adjusted so as to allow the boats to swing together when the filled
20 net was to be lifted. Two of the anchor lines formed a V-shaped lead with
21 the opening facing the current. The fish entered with the current and when
22 the watchman sighted their approach he signalled the crew to lift the net.
23 The net was emptied into one of the canoes and the net lowered again
24 allowing the canoes to swing apart back to their original position.

25 The details of net construction varied according to local site
26 conditions -- i. e., depth of water, whether on a natural kelp covered reef
27 or artificially simulated one, and placement of gear. The differences con-
28 sisted in the number of buoys, side lines and floor lines. The net was dyed

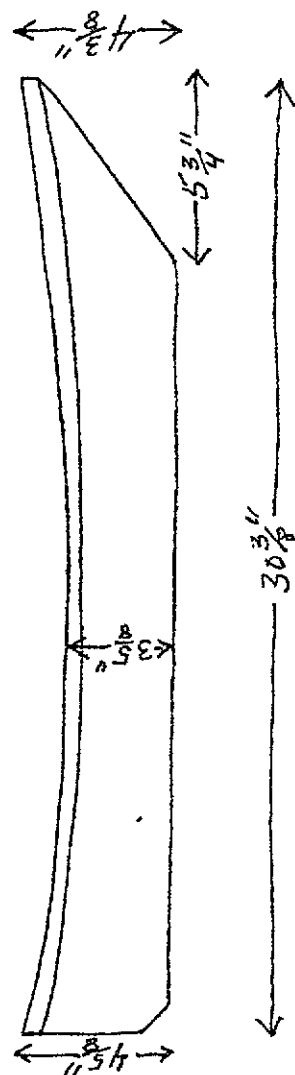
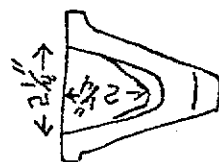
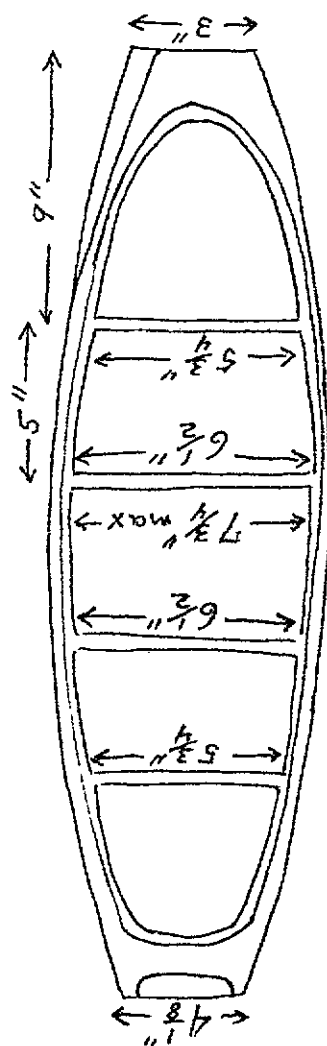
Answers - 5

McRae
ZIONTZ, PIRTLE & ~~ELDER~~
ATTORNEYS AT LAW
2101 SEATTLE-FIRST NATIONAL BANK BLDG.
SEATTLE, WASHINGTON 98104
MAIN 3-1235

1 a dark color so as to be less visible to the fish. The mesh was such that
2 the fish were not gilled, but only held in the net. Construction was such
3 that the fish could swim clear of the net, but they tended to become en-
4 trapped. The net was placed so that the tide running against it caused it
5 to bag, or purse. The depth at which it was set was controlled by the
6 side lines manipulated by the crew of the two canoes. Reportedly up to
7 3,000 salmon were taken on a single run of the tide.
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Answers - 6

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ZIONTZ, PIRTLE & ~~FOOTE~~
ATTORNEYS AT LAW
3101 SEATTLE-FIRST NATIONAL BANK BLDG.
SEATTLE, WASHINGTON 98104
MAIN 3-1233



Dimensions from model of
Coast Salish reef netting
canoe in Nat Mus Can
Collection, VII G 149. Collected
by F. Boas, Songhees, 1889.

1 6. QUESTION. What is the basis for, and source of your informa-
2 tion relating to, your answers to the preceding two interrogatories?

3 ANSWER. The information for the preceding two questions has
4 been supplied by Dr. Barbara Lane, anthropologist, who has provided the
5 following bibliography as the source material for her answers:

- 6 Boas, Franz. Model of Coast Salish reef netting canoe. National Museum
7 of Canada. Collection VII G. 149. Collected by F. Boas in 1889.
- 8 Gibbs, George. Indian Nomenclature of Localities in Washington and Oregon
Territories. 1853. National Anthropological Archives MS #714.
- 9 Gibbs, George. Letter to Hon. Archibald Campbell, Commissioner. North-
10 west Boundary Survey, dated Camp Simiahmoo, August 28, 1857.
National Archives RG. 76.
- 11 Kwina, Henry. Affidavit. United States v. Alaska Packers Association.
12 United States Circuit Court. District of Washington. Northern
Division. 1895.
- 13 Kwinooks, John. Affidavit. United States v. Alaska Packers Association.
14 United States Circuit Court. District of Washington. Northern
Division. 1895.
- 15 Suttles, W. P. Post-Contact Culture Change among the Lummi Indians.
16 B. C. Historical Quarterly, Vol. XVIII, Nos. 1 and 2, Jan. -Apr.
1954.
- 17 Shaw, B. F. Affidavit. United States v. Alaska Packers Association. U.S.
18 Circuit Court. District of Washington. Northern Division. 1895.
- 19 Stern, Bernard J. The Lummi Indians of Northwest Washington. Columbia
University Contributions to Anthropology, vol. 17, New York, 1934.
- 20 Sumptilino, Jack. Affidavit. United States v. Alaska Packers Association.
21 U. S. Circuit Court, District of Washington. Northern Division.
1895.
- 22 Winthrop, Theodore. The Canoe and the Saddle or Klallam and Klickitat.
23 (J. H. Williams, edition). Tacoma. 1913.

24 7. QUESTION. What is the basis for your contention, in Item 3
25 of your prayer for relief, that the State of Washington should be restrained
26 and prohibited from issuing licenses purporting to authorize non-members
27 of the Lummi Indian Tribe to engage in reef net fishing at places which are
28 "usual and accustomed grounds and stations" of your tribe, in view of the

Answers - 7

ZIONTZ, PIRTE & ~~MOORE~~ *McKUSSET*
ATTORNEYS AT LAW
3101 SEATTLE-FIRST NATIONAL BANK BLDG.
SEATTLE, WASHINGTON 98104
MAIN 3-1255

1 language appearing in the Treaty of 1855 that any rights conferred upon the
2 tribe by the Treaty shall be exercised "in common with all citizens of the
3 Territory"?

4 ANSWER. To the extent that a state reef net license purports to,
5 and in effect does, authorize the construction and use of a device which gives
6 exclusive possession of the fishing places to non-Indians and excludes members
7 of the Lummi Tribe, it is unlawful. See U.S. v. Winans, 198 U.S. 371 (1905)

8 DATED this 1 day of May, 1973.

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STATE OF WASHINGTON)
13) ss.
COUNTY OF WHATCOM)

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Jim McKay, being first duly sworn on oath, deposes and says:

That he is the Chairman of the Plaintiff Lummi Business Council and
as such is authorized to answer Interrogatories on behalf of plaintiff; that he
has read and made answer to the foregoing Interrogatories, knows the
contents and believes the same to be true.

SUBSCRIBED and SWORN to before me this 1 day of May,

1973.

Andrew Cartwright
Notary Public

Answers - 8

ZIONTZ, PIRTLE & MORISSET
ATTORNEYS AT LAW
3101 SEATTLE-FIRST NATIONAL BANK BLDG.
SEATTLE, WASHINGTON 98104
MAIN 3-1255

ALVIN J. ZIONTZ
ROBERT L. PIRTLE
MASON D. MORISSET
BARRY D. ERNSTOFF

ZIONTZ, PIRTLE & MORISSET
ATTORNEYS AT LAW
3101 SEATTLE-FIRST NATIONAL BANK BUILDING
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MAY 7 - 1973

Office of Clerk
U. S. District Court
Tacoma, Washington

May 3, 1973

Clerk of the U.S. District Court
Western District of Washington
Courthouse and Post Office Bldg.
Tacoma, Washington

Re: United States of America, et al., vs.
State of Washington, et al. Civil No. 9213

Dear Sir:

Enclosed for filing please find Answers of Lummi Indian
Tribe to Interrogatories submitted by Washington Reef
Net Owners Association, and Affidavit of Mailing.

Thank you for your attention to this.

Very truly yours,

ZIONTZ, PIRTLE & MORISSET

Alvin J. Ziontz
Alvin J. Ziontz /vc

Enclosures

AJZ/vc