

7-9-1973

Docket Entry 277 - Filed Intervenor- Defendants Washington Reef Net Owners Association requests for admissions to Plaintiffs and intervenor-Plaintiffs, Lummi Indian Tribe

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JUL 9 1973

EDGAR SCOTLAND, CLERK

[Signature] Deputy

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UNITED STATES DISTRICT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, et al.)

CIVIL NO. 9213

Plaintiffs,)

vs.)

STATE OF WASHINGTON, et al.,)

Defendants.)

INTERVENOR-DEFENDANT'S
WASHINGTON REEF NET OWNERS
ASSOCIATION REQUESTS FOR
ADMISSIONS TO PLAINTIFF AND
INTERVENOR-PLAINTIFF,
LUMMI INDIAN TRIBE

COMES NOW Intervenor-Defendant Washington Reef Net Owners Association and, pursuant to Rule 36 of the Federal Rules of Civil Procedure and the Stipulated Pre-trial Schedule heretofore entered in this court April 24, 1973, and herewith submits the following requests for admissions to plaintiff and to intervenor-plaintiff, Lummi Indian Tribe, with regard to various issues of this case:

1. No enrolled member of the Lummi Tribe has within the past twenty years applied to the Department of Fisheries of the State of Washington, or any other agency, for a license to reef net anywhere in the waters referred to in paragraph 3 of the First Claim for Relief in their Complaint in Intervention herein.

2. No enrolled member of the Lummi Tribe has within the past twenty years been denied the right to work as a crew member on a reef net in said area if he met the same qualifications as to age and health as did the other crew members working in the area.

3. No enrolled member of the Lummi Tribe has in the past twenty years been refused the right to purchase reef net gear and related equipment from any owner thereof desirous of selling.

Wash. Reef Net Owners Assoc. Requests
for Admissions to Plaintiff and Intervenor-
Plaintiff, Lummi Indian Tribe

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1 4. No enrolled member of the Lummi Indian Tribe has been
2 in the past twenty years denied, either by the State of Washington
3 or other reefnetters operating in the area above referred to, the
4 right to build, or have built for him, reef net boats, nets and
5 related equipment and thereafter use the same in any of the usual
6 and customary locations for reefnetting not already in use.

7 5. Reef net operations in the area above referred to have
8 at all times been conducted on a basis which makes no discrimination
9 as to whether the owner, operator, or crew member is Indian or
10 non-Indian.

11 6. The distances between gear fixed by legislation of the
12 State of Washington and the regulations of the Department of
13 Fisheries are necessary for purposes of conservation of the runs
14 of salmon utilizing such routes for their migratory cycles.

15 7. Neither the defendant State of Washington nor the
16 intervenor-defendant Department of Fisheries in any manner, by
17 administrative rule or legislation, allocates, or attempts to
18 allocate, rights to any given location in which reefnetting is
19 feasible or desirable.

20 8. In the past twenty years, and particularly in the last
21 six years, feasible and practical locations in which qualified
22 operators could catch salmon by reef net operations have^{been}/available
23 and unused at various points in the waters above referred to.

24 9. That no regulations, from any source whatsoever, or
25 actions by intervenor-defendant Washington Reef Net Owners Associa-
26 tion prevented enrolled members of intervenor-plaintiff, Lummi
27 Indian Tribe, from utilizing such locations in the usual and
28 customary fashion for such operations.

29 10. In pre-Treaty times, the tribes referred to in Lummi
30 Indian Tribe's Complaint in Intervention herein would not, according

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32 Wash. Reef Net Owners Assoc. Requests
for Admissions to Plaintiff and Intervenor-
Plaintiff, Lummi Indian Tribe

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1 to such contemporary sources as are now available, attempt to
2 pursue the methods of fishing now designated as "reef-netting" in
3 a prior user's location until he had abandoned it or moved away
4 and thereafter other users were free to operate at or near such
5 locations.

6 11. Such pre-Treaty tribes held no "ownership" of such
7 locations for reef net fishing as is contemplated by post-Treaty
8 and present concepts of the meaning thereof.

9 12. Such "locations" for reef netting operations were not
10 of a fixed nature but, rather, were of a generalized nature, i.e.,
11 "on the south side of Village Point" or "off Point Roberts", etc.

12 13. The equipment used by the tribes in pre-Treaty times
13 for what is presently referred to as "reef netting" is substantially
14 different from the equipment now used for such operations.

15 14. The equipment now used for reef netting, due to far
16 heavier anchors and the use of steel cables, is capable of use
17 in places which would not have been feasible nor possible for
18 pre-Treaty tribes with the equipment then possessed by them.

19 15. Modern reef netting operations, and the equipment used
20 in connection therewith are accurately and fully described in the
21 deposition of John Robert Brown, taken May 17, 1973, commencing
22 at line 6, page 55, thereof and through line 4, page 64.

23 16. The reference to use of polaroid glasses and height of
24 towers and plastic strips later in said deposition also is a
25 correct statement of present reef netting methods.

26 DATED this 6th day of July, 1973.

27 Respectfully submitted,

28 ASMUNDSON, RHEA & ATWOOD

29
30 By

David E. Rhea
DAVID E. RHEA

31 Of Attorneys for Washington Reef
32 Net Owners Association

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