

**(6) Final Determination Documents**

**- January 30, 1987**

Report on Final Determination Against

FEDERAL ACKNOWLEDGMENT

of the

SAMISH INDIAN TRIBE

Prepared in response to evidence and arguments submitted by the petitioning group and other interested parties in response to the Proposed Finding published November 4, 1982.

Approved: 

Dated: 1/30/87

REPORT ON FINAL DETERMINATION AGAINST FEDERAL ACKNOWLEDGMENT  
OF THE SAMISH INDIAN TRIBE

I. RECOMMENDATION

The Branch of Acknowledgment and Research recommends that a final determination be made that the Samish Indian Tribe not be acknowledged as an Indian tribe entitled to a government-to-government relationship with the United States. It further recommends that a letter of such determination be forwarded to the petitioner, the governor and attorney-general of the State of Washington and other interested parties. It also recommends that a notice of final determination that the Samish do not exist as an Indian tribe within the meaning of Federal law be published in the Federal Register.

II. INTRODUCTION

Background

The proposed finding to decline to acknowledge the Samish as an Indian tribe was published in the Federal Register November 4, 1982. The Samish initially petitioned for recognition June 13, 1975, before establishment of the acknowledgment regulations (25 CFR 83), which became effective in October 12, 1978. The documented petition prepared under the regulations was submitted October 12, 1979. Additional documentation was received between May 1980 and March 1981. Active consideration of the petition was begun October 27, 1980. The period of active consideration was suspended between June 1981 and April 1982 because of government-wide limitations on travel and other Branch commitments.

The report on the proposed finding was of limited length and without footnotes. Staff technical reports were not finalized and published. This abbreviated format was adopted beginning with the case immediately prior to the Samish because of limitations of staff and resources. It was discontinued after the subsequent finding because it did not provide as adequate a basis for petitioners to evaluate proposed findings as was desirable. At the request of the legal representatives of the Samish, a footnoted version of the Samish report was completed in December 1983. In addition, the rough draft technical reports by the staff anthropologist-ethnohistorian, sociologist and genealogist were provided to the Samish as a discretionary release as part of the Bureau's response to their Freedom of Information Act request. (No separate historical report was written). The petitioner's response addresses the draft technical reports as well as the summary report on the proposed finding.

Initiation of the normal 120-day period provided in the regulations for comment on the proposed finding was delayed many times, and the comment period itself was extended twice, primarily at the request of the petitioner. The primary reason for extension was to allow for resolution of questions arising from the Samish request of November 23, 1982, under the Freedom of Information Act for all documents and other materials relating to the proposed finding. In excess of 5000 pages were provided to the petitioner in July, 1983, after resolution of appeals concerning payment of fees for this material. The petitioner was also provided with materials in March 1983 concerning staff analysis of genealogy and addresses. These were specially prepared in response to their request.

Initiation of the comment period continued to be delayed after the response to the Samish Freedom of Information Act Request, pending resolution of the Samish appeal of the withholding of certain documents containing materials of a private or predecisional nature from the documents requested for release. An October 30, 1984, ruling by the Office of the Solicitor upheld the withholding of all but one category of these documents. The remaining category, notes of field interview research, had been withheld for reasons of privacy and confidentiality and to protect the Branch of Acknowledgment and Research's ability to conduct such research in future cases. The fieldnotes were remanded to the Bureau for further consideration under advice contained in the Solicitor's Memorandum of Opinion. Copies of the fieldnotes, edited in accord with the Solicitor's advice, were provided to the Samish on January 8, 1986. As a result of another Samish appeal, a release of additional materials from the fieldnotes was made September 23, 1986, based on revised guidance from the Solicitor's office.

The period for comment on the proposed finding began January 8, 1986, with the release of the fieldnotes. An extension of the comment period until August 7 was made in May 1986 at the request of the Samish, because of the death of the researcher preparing the Samish response to the proposed finding. Additional requests for materials under the Freedom of Information Act were received June 3, July 30, and August 15, 1986. A further extension of the comment period, until December 1, was made August 1, 1986, as a result of a request from the Samish through their representative in Congress. This was to allow for consideration in their response of materials released to them as a result of their latest requests or as a result of their appeal concerning the fieldnotes. The Bureau agreed in September, 1986 to close the comment period before December 1 if the petitioner requested this. A request to close the comment period was received November 21, too late to close the comment period earlier than the previously established date.

#### Samish Response to the Proposed Finding

The petitioner submitted a response to the proposed finding on August 7, 1986, consisting of a narrative with supporting exhibits, anthropological and other reports, and a summary of a social survey of a sample of their membership. Slightly corrected versions of the anthropological reports were submitted September 16. Additional materials were submitted by letter of November 20. The latter consisted of additional analysis of data from the social survey, an updated address list of the membership, and some genealogical materials.

The November 20 submission resulted from a November 7, 1986 meeting between acknowledgment staff researchers, the Samish chairman, and the petitioner's most recent researcher to discuss the proposed finding. This meeting was held as a result of a request from the Samish through the offices of Representative Swift of Washington State and was attended by a member of the Congressman's staff. The meeting was held to discuss possible additional data or arguments that could be provided to the Branch of Acknowledgment and Research prior to the beginning of their evaluation of the Samish response and preparation of a recommended final determination. Based on a cursory review of the materials submitted in August and discussions in and before the meeting with the Samish chairman and researcher, the Branch staff identified additional data which it believed would be useful in making the final determination and which could strengthen the petitioner's arguments. The petitioner by letter of November 20 informed the Bureau that they had changed their initial decision and had

decided to decline to submit any additional data beyond a limited additional analysis of the social survey and a few other items. These were submitted with the November 20 letter.

The Acknowledgment staff had previously met with the petitioner's chairman in January 1986 and in February 1986 with Dr. Wayne Suttles, who has aided the petitioner's research, to discuss the proposed finding and the kinds of evidence that might be suitable to respond to it. In July 1986 a telephone discussion on the same subject was held between an Acknowledgment staff member and the petitioner's attorney, chairman, and present researcher.

#### Other Responses to the Proposed Finding

Since the proposed finding was published, letters in support of acknowledgment of the Samish were received from several individuals and from the Pacific Northwest Regional Council of the American Friends Service Committee and the Church Council of Greater Seattle. These letters, however, contained little or no new evidence or argument not already considered in the proposed finding. A memorandum of support of acknowledgment was received in 1983 from the former Superintendent of the Western Washington Agency, who had participated in a 1974 evaluation by the Bureau of the eligibility of the Samish and other unrecognized western Washington tribes for recognition. The petitioner's August 7 submission includes a more detailed affidavit from this individual.

A letter opposing acknowledgment of the Samish and the other unrecognized western Washington petitioners was submitted August 2, 1983, by the law firm of Bell and Ingram, representing the recognized Tulalip Tribes of Washington. Enclosed with it was testimony given by the Tulalip Tribes at a July 21, 1983, Senate Select Indian Committee oversight hearing on the Acknowledgment process. It contained an argument that the 1979 decision in U.S. v. Washington that the Samish were not a political continuation of the treaty-signer precluded the Department from making a decision on acknowledgment under 25 CFR 83. It contained no significant evidence concerning whether or not the Samish met the requirements of the regulations themselves.

#### Summary of the Proposed Finding

The proposed finding concluded that the Samish met criteria a, d, f and g of the Acknowledgment regulations. Criterion a was met because various entities with some links to each other and some consistency in membership had been identified as Samish throughout history. Criterion d, submission of a governing document and criteria for membership, was technically complied with, although there were some deficiencies in the group's statement of membership criteria. Only 9 percent of the membership was enrolled with a recognized tribe, hence criterion f was met. The group was found to have not been terminated or forbidden the Federal relationship by act of Congress, hence it met criterion g.

The membership of the group was found to consist predominantly of Indian descendants who had not maintained substantial social contact with each other nor formed or been part of a cohesive Indian community since the 19th century. The independent Samish village which existed in the 19th century dissolved in the first decade of the 20th century and it was concluded that its members merged into the Lummi and Swinomish Reservation communities in the succeeding decades. Therefore, the group was found to not meet criterion b of the regulations.

Separate political functioning derived from the independent village was concluded to have gradually ended in the 1920s and 1930s, as the older generation of leaders died and the Samish gradually became part of the emerging reservation communities and their institutions. The present petitioner organization and earlier organizations formed in 1913 and 1926 were primarily for claims purposes and did not function as tribal political authority for their members, most of whom had little affiliation with each other outside of the context of these limited organizations.

Based on the genealogical evidence available for the proposed finding, 42 percent of the petitioner's membership were unable to satisfactorily document Samish Indian ancestry for acknowledgment purposes. Therefore the petitioner was found to not meet the requirement in criterion e that the membership consist of individuals tracing ancestry from the historic tribe or from historic tribes which had combined and formed a single autonomous entity. Twenty-two percent of the membership was found to have only ancestry from the Noowhaha tribe. Another 10 percent was found to have other Indian ancestry, and the Indian ancestry of the remaining 10 percent was undetermined.

#### Summary of the Final Determination

The proposed finding concluded that the Samish did not meet criteria b, c, and e of the Acknowledgment regulations (25 CFR 83). The arguments and evidence presented, and re-evaluation of previously available data, do not provide a basis for changing the conclusion in the proposed finding that the Samish petitioner does not meet criteria b, c and e. It is determined therefore that the Samish do not meet three of the seven criteria for Federal acknowledgment and, therefore, do not meet the requirements for Federal acknowledgment as an Indian tribe.

Results of a survey of a sample of the membership to measure the degree of social interaction within the group were submitted by the Samish in response to the conclusion that most of the membership had little social contact with each other. Because of deficiencies in design of the survey and because the sample was unrepresentative in one important respect, the survey data did not provide an adequate basis to conclude that extensive social interaction occurred within the membership and that the membership formed a community. Most of the survey questions focused on participation in formal activities of the organization or were ambiguous with regard to the kinds of activities being measured. The sample of respondents was disproportionately made up of present or former members of the council or employees or their immediate relatives. Despite this, between a third and a half of those responding to the questions indicated no activity or none beyond their immediate family. Responses to some of the questions did indicate the probability of a significant degree of interaction characteristic of a tribal community among the limited portion of the membership who lived on or were derived from a reservation. Responses to a few of the questions did indicate some wider interaction between families, but the limited degree of this, together with the limitations of the questions and sample, did not provide a basis for changing the conclusions in the proposed finding that the present-day membership did not meet the requirements of criterion b.

Insufficient evidence was presented that the portion of the membership that was enrolled on a reservation or derived from such families was socially distinct from the reservation communities they were associated with. There was somewhat

better evidence than previously that a sharp distinction is made on the Lummi Reservation, but no significant additional evidence concerning the Swinomish Reservation. It was found further that the percentage of the membership who were socially part of an Indian community, as opposed to Indian descendants with little or no contact or affiliation with such a community, was larger than had been considered. The proposed finding determined that 9 percent of the membership was also enrolled with a recognized tribe. However, the percentage of the membership from these family lines, or else from a Samish family line enrolled in or affiliated with a Canadian band, was 23 percent. An additional 7 percent were Noowhaha associated with reservation communities or Canadians whose specific Indian ancestry was undetermined. Survey data submitted with the response tended to support the conclusion in the proposed finding that the Samish families maintained substantial contact with each other.

The petitioner contended that the almost universal marriage to non-Indians for the past several generations by the Indian descendant portion of the membership was equivalent to the aboriginal Samish cultural pattern and that therefore this should not be considered as evidence of a lack of cohesiveness as a community. The aboriginal pattern of almost universal marriage outside the tribe, at least among the higher-ranking families, functioned in an intertribal system to provide a network of kinship-based social ties influencing residence, economics and alliance. It was in no way comparable to marriage outside Indian society, dispersed among a vastly larger population, which created no such ties. There was little new data concerning the social character of the Indian descendants in the past.

The response contained comparisons of the interpretation of several aspects of the Samish case with interpretations of purportedly similar situations in other Acknowledgment findings. The petitioner's contention that the Samish case had not been treated in a comparable fashion was not accurate, and was found in most instances to be based on a misinterpretation or misstatement of the findings in the other cases. The response incorrectly stated that, unlike other cases, only formal organization was evaluated in judging the existence of tribal political process. Both formal and informal processes were evaluated to the extent the limited data made possible. The limited function of the several Samish organizations, to pursue claims, was not found comparable to other cases where a tribe with functioning political processes pursued claims as one activity. The extent of marriage within the group or with other Indian groups was not comparable to that in other Acknowledgment cases which were determined to be eligible of acknowledgment. Other comparisons are discussed in the following sections of this report.

In the proposed finding, many of the individual family lines had been found to lack adequate evidence of ancestry from the historic Samish tribe. Based on additional evidence, it is concluded that for two additional family lines the preponderance of evidence now supports a conclusion that they can trace their ancestry to the historic Samish tribe. It was determined further that the ancestor of an additional, Noowhaha family line had probably been incorporated into the Samish tribe in historic times. This family is therefore considered to be of ancestry from the historic tribe. The total of the membership meeting the requirements of criterion e has changed therefore from 58 to 74 percent.

No evidence was presented in the proposed finding supporting a conclusion that the traditional Samish leaders who may have continued to function to some extent as late as the 1940s were the leaders of the vast majority of the

membership of the 1926 and 1951 organizations, most of whom were Indian descendants (as characterized above) or Canadian Indians, or that traditional leaders continued to function after the 1940s. No evidence was presented to support a conclusion that the present petitioner organization, formed in 1951, had functioned as a tribal political body and would meet the requirements of criterion c. The new and re-evaluated data provided clearer evidence that a nonreservation Samish community persisted for a longer period after the end of the New Guemes village soon after 1900 than previously had been apparent. It also tended to support a conclusion that traditional Samish leaders within the Swinomish Reservation community functioned both within the reservation's emerging political institutions and as leaders of the Indian community Samish as well and that this continued to some degree until the 1940s.

### III. CRITERION B - SOCIAL COHESION AND COMMUNITY

#### Samish Response

In response to the proposed finding that the Samish membership did not constitute a "community" under the regulations, and therefore did not meet criterion b, the Samish presented several kinds of arguments and evidence. The evidence consisted primarily of results of a survey taken of a sample of the membership to determine the kinds and degree of social interaction occurring within the present-day group. The Samish arguments included comparisons with treatment of community "cohesion" in other acknowledgment determinations, with particular regard to patterns of marriage outside the membership and the geographic distribution of the group's members. The response also presented arguments based on the nature of intermarriage and community among the Samish aboriginally and examined the concept of community itself from a general perspective.

#### Discussion of Community

The Samish request a definition of standards for community, asking in part how much and what kind of social interaction distributed in what manner among the membership are necessary for a group to meet criterion b. Because of the wide variance among petitioners in size, social structure, geographical and historical circumstances, cultural background, and the like, it is not possible or appropriate to define a simple, universal, and especially a quantitative standard for community which would be applicable to all cases. The general characteristics discussed below are essential (and applicable across a diversity of situations) to insure the "tribal character" of the petitioner and that it is maintaining group interaction, i.e., that the petitioner is more than a group of descendants having little or no social connection with each other.

Certain kinds of interaction are characteristic of a tribal community (as well as other kinds of small, close-knit communities). The kinds of relationships are ones of social intimacy (rather than distance) and importance--e.g., kinship, close friendship, etc., or ones that may involve religion. They are not predominantly or solely formal or casual ones. This interaction is frequently embodied in part in social institutions such as kinship organization, economic relationships, regular gatherings, events or celebrations, and the like. Relationships are "multiplex," i.e., there are multiple and varied kinds of relationships between individuals. In contrast, members of a formal organization normally have only common relationships deriving from their membership and participation in the organization and interact only in the context of that organization's activities.

There characteristically are differences in how tribal community members interact with each other compared with their interaction with non-members--i.e., certain kinds of important interaction are treated differently when non-members are involved, or are less frequent or less desirable (e.g., in some societies, marriage, eating dinner at your house, seeing a person dressed informally, discussion of certain topics, etc.). This does not preclude substantial or even frequent interactions of some kinds with nonmembers. There may even be some limited extension of some intimate relationships outside the community.

Geographical propinquity is not in itself a requirement for acknowledgment, though it may be an indicator of community (see discussion below of comparisons with other cases). The degree and kind of social interaction occurring between group members is the essential factor. Interaction among members may be evaluated in the light of geographic factors influencing it.

Interaction of the nature described is normally broadly distributed among the membership in tribal communities. That is, significant interaction occurs not just within immediate families or close kinsmen only but across family lines and other social subdivisions. Although the major portion of the membership characteristically is involved in such group interaction, less than 100 percent of a group normally exhibits the tight interaction that might ideally be seen. The concept of social "core" used in some findings takes into account some of this variance in degree of interaction within a group. Most "non-core" members have significant connection with the core, if not with each other. There is also characteristically substantial variance between individuals within families, between families, and over periods of time.

#### "Core Group"

It was concluded in the proposed finding that the Samish membership did not have a "core group." A portion of the membership consisted of certain family lines which, it was concluded, had continued to function within Indian society and had maintained substantial social interaction among themselves. It was concluded further, however, that this constituted only a very small percentage of the group, i.e., the 9 percent enrolled with a recognized tribe (in this case the Swinomish and Lummi Reservations), and that historically these families had become socially part of the reservation communities in which they have resided. As is the case on many reservations where there are members derived from more than one tribe, identity as Samish still functioned in some contexts and at some times. However, it was concluded that those reservation Samish enrolled with the petitioner did not constitute a group that was distinct from the reservation community as a whole.

The Samish case differs from the acknowledgment cases where a social "core" was identified. In other cases, there were "core" and the "noncore" populations which were drawn from the same immediate family lines. That is, part of particular families were in close interaction with other parts of the tribe, while other parts of the same families maintained significantly less contact, often for geographical reasons. They did, however, have significant ties to their own relatives within the core. Families living away from the home community usually included older members who had lived originally in the home community. In contrast, the Samish membership contains two different sets of families. One set were non-reservation Indian descendants with few kin or other ties among themselves or other direct evidence of nonformal interaction. All but the very oldest individuals were several generations from an ancestor who had lived in an Indian community. This set of families was further judged to have little or no contact with the Indian community (i.e., reservation) Samish (outside of some contact in formal, organizational contexts).

Re-evaluation of the evidence indicates that the Samish family lines historically associated with reservations or Indian communities constitute approximately 23 percent of the Samish membership. (About a quarter of the 23 percent is accounted for by a Samish family enrolled or affiliated with a Canadian Reserve). Only 29 percent of these reservation Samish are enrolled

with either the Lummi or Swinomish reservations or on a Canadian reserve. This population is thus considerably larger than it was characterized in the proposed finding, where it appeared that only the 9 percent of the membership enrolled with a reservation fell into this category. An additional 7 percent of the membership are Noowhaha associated with the Lummi or Upper Skagit tribes or Canadians whose specific Indian ancestry could not be established.

The petitioner, however, has presented no substantial new evidence to counter the evidence used in the proposed finding that those individuals associated with the multi-tribal Swinomish Reservation do not constitute a distinct group within that reservation community. Some of those families associated with the Lummi Reservation reportedly live in a distinct area and experience substantial social distinction from the Lummi membership. A small amount of additional evidence to support this was submitted in the response. However, members of these families have held political office or jobs with the Lummi Reservation government and have also participated prominently in the Shaker church on that reservation.

It is not entirely certain why so many of these families are not enrolled on the reservations when parents or close relatives are. Many do not appear to be resident on the reservation, though living nearby. The Swinomish Tribe's enrollment criteria limit access to membership by individuals not born to reservation residents, even when substantial ties to the reservation community exist. There is, overall, still not sufficient evidence that these family lines living on or affiliated with either reservation, whether enrolled or not, constitute a distinct group from the rest of the reservation community.

The proposed finding also concluded that interaction between reservation Indian and descendant family lines was largely limited to formal contexts, i.e., annual meetings and the like. A few of the Indian descendant individuals who were highly active in the formal organization of the petitioner were exceptions to this. The oral history data presented in the response as well as in the petition were limited, but appear to support this conclusion concerning the Indian descendants in the past as well. Descriptions of attendees at weddings and similar events of reservation families did not include Indian descendants. The survey data submitted (see below) do not satisfactorily demonstrate substantial present-day interaction between the two groups of families.

#### Geographical Distribution

The petitioner's response devotes considerable attention to the degree of geographic dispersal of its membership, arguing that it is comparable to the distribution found in the membership of other groups acknowledged under 25 CFR 83 and also with some recognized tribes. As the response itself notes, however, in other acknowledgment cases, such as Grand Traverse Ottawa and Timbi-Sha Shoshone, a home settlement remained, as well as a social core of membership. Nonresidents, not necessarily "non-core" socially, were relatively recent outmigrants from the home settlement (see also above). Thus the geographical distribution of the membership expressed as a percentage of members within a geographic radius by the Samish response is not necessarily equivalent to that found elsewhere. No social (or geographic) core was established to exist in the Samish case (see above). Nor, as discussed elsewhere, was it shown that social interaction as a community was and had been occurring within the 74 percent of the membership that, the petition indicated, was living within a 60 mile radius of Samish Island. The response gave a figure of 78 percent within 90 miles of Anacortes.

The response argues further that the aboriginal settlement pattern of the Samish was more dispersed and involved considerably more mobility and fluidity than that of many other North American Indian tribes. It was not demonstrated, however, that the current Samish membership maintains a pattern of social contact and associated social institutions equivalent to that extant in the pre-treaty period. Although fluid in composition, villages and tribal units (of a nonpolitical nature) were identifiable (Suttles 1951; Riley n.d.).

#### Survey Data on Social Interaction

In response to the proposed finding that most of the membership had little or no interaction or contact with each other, the petitioner conducted a telephone survey of a sample of 60 of its membership. The questionnaire for the survey consisted of eight questions intended to measure social interaction within the membership.

The petitioner indicated that some bias could be expected in any telephone survey because people without telephones may differ in some respect from the population as a whole. The sample of individuals, although not stratified by family line, was reasonably representative of family lines and of reservation Samish versus Indian descendants. The sample, however, contained a disproportionate number of individuals who had been officers (e.g., council or committee members) or employees of the organization (about one-third of the sample) or their immediate families (an additional one-third). Thus two-thirds of the sample were persons who could be expected to be disproportionately in contact with and knowledgeable about the petitioner, especially about organizational activities. Such individuals could be expected to show a relatively high rate of interaction and participation in response to questions, like those on the survey, which tended to measure participation in formal activities of the Samish organization itself rather than social interaction within a community. Addresses were missing for about 20 percent of those on the address list submitted with the response. Few of the latter individuals were included in the survey.

The questions on the survey present some deficiencies for generating useful data concerning community interaction. Several of the questions were directed at, or appeared likely to elicit responses about, participation only in a narrow sense, i.e., about the formal activities of the Samish organization (e.g., council meetings, programs, education classes, etc.). In addition, the meanings of some of the terms used in the questions were ambiguous, and no followup questions were used to clarify the types of interaction meant by a respondent in his answer. Information on frequency of interaction and distribution of an individual's activities over time was very limited. In its November 7 meeting with the Samish, the Acknowledgment staff requested a more adequate survey and offered to provide detailed suggestions. This offer was declined by the Samish by their letter of November 20.

Despite the large proportion of the sample active or previously active in tribal offices and the like, between a third and a half of the sample indicated no interaction or none outside their immediate family in their responses to six of the questions. (Two questions did not allow for this distinction). The data indicated that the individuals answering in this manner were more or less the same for each of the six questions, but the presentation of the data did not allow confirmation of this.

Twenty-two of the 60 surveyed answered that they had never attended meetings (question 2) and 23 stated they were not active in "tribal matters" (question 1). Twenty-one had not contacted the tribal office for any of the reasons listed with question 7. Concerning who they knew that was "active in the tribe" (question 6), 30 either named only someone from their immediate family or named no one. In response to question 8, which asked what other families the respondent or his family "was involved with," 30 named either none or only their own family line. Question 5, concerning attendance at "traditional social or religious gatherings," had the smallest number of respondents with no significant interaction, 19. This reflected the much higher proportion of the "reservation Samish" families who responded positively in comparison to the other questions.

Question 1 asked if the respondent was "active in tribal matters," and included a list of activities, all but one clearly involving organizational activities. (It was not possible to determine for this or any of the questions how many responses a particular individual made). Seventeen of the 38 answering yes to this question, including some reservation Samish, named "tribal council" and "council meetings." The proposed finding did not dispute that some members of reservation Samish families have been active in organizational affairs.

Questions 2 and 3 asked, respectively, if the respondent attended "tribal meetings" and if they voted at these meetings. This is clearly confined to formal organizational activities. Twenty-two and 23 out of 60, respectively, responded negatively to these questions. Positive responses were reasonably well distributed across family lines and in themselves, were it not for the unrepresentative sample, would give some indication of a reasonably high level of activity in the organization itself. No data were presented concerning frequency of attendance or distribution over time, making the responses effectively the "best case," i.e., rare attendance and close involvement, and present and past activity, were classified the same.

Question 6 asked who the respondent knew who was "active in the tribe." Question 8 asked what Samish families or individuals the respondent had "any involvement with." Neither of these phrases has a clear meaning. The nature of the contact in question 8 was not clear, given the phrasing of the questions, though it appears to be the most likely of any of the survey questions to measure informal interaction within the membership of the group. It was not possible to determine how many from each line had named other families, nor whether they named one or many individuals in the other family. In response to both of the questions, 30 individuals either named no one (9 and 11 respectively) or only someone from their own family line. Thus half showed no significant contact. Among the other 30, contact outside of the respondent's own family line was reasonably broad and well distributed, with very similar patterns in response to both questions. A reasonable amount of contact of some kind among this part of the sample occurred between Indian descendant and reservation Samish lines.

Question 7, concerning whether the tribal office was contacted, reflected only formal organizational activities. There was no measure of frequency or when contact was made. Much of the contact was in person. The most frequent reason given was "tribal business," which was not defined. Like question 2, the responses here would suggest a reasonably high level of activity within the organization but the character of the sample and the lack of time and frequency measures prevent verification of this.

Question 5 asked about attendance at "traditional social or religious gatherings," with three religious and four social categories provided. Consistent with the proposed finding, the reservation Samish showed a higher response to this than any other question. All fifteen of them in the sample responded positively and had a much higher rate of participation in traditional religious activities than did the descendants. A maximum of seven Indian descendants (of a total of 45) responded positively about participation in one of the traditional religious activities. Indian descendant participation in "social gatherings" (excluding funerals) was considerably higher, though still a little less than the reservation Samish. The category of "funeral" did not distinguish between those of immediate family and those of distant kin or other family lines, hence the significance of these responses could not be determined. Nineteen of 45 descendants indicated no involvement in any activity.

Responses to question 5 come closest to providing good evidence of social interaction within the membership which would reflect a community. Nonetheless, a third of the respondents had no activity, even given the nature of the sample. A stronger conclusion cannot be reached, given the responses to the other questions which either do not appropriately address community interaction or indicate a low level of social interaction within the group.

Question 4 asked for the respondent's "major source of information on Samish affairs." The latter term was undefined. Categories for response were supplied. No provision was included for having "no major source" and the data do not indicate whether or not there were any non-respondents. Individuals frequently named more than one source. Fifty-one members named the newsletter as a source and 37 named "family members." Only 11 named "other Samish," a surprisingly small proportion given the large number who attended meetings and served on the council. The data confirms the importance of the newsletter as a source, but not its exclusivity (only 13 named solely the newsletter). The responses do not indicate extensive communication between members, but the question is not well designed to examine this.

In summary, the survey data had two major flaws, a focus on formal activities of the Samish organization, which doesn't reflect the presence or absence of character as a tribal community, and a sample with a disproportionate number of individuals who were highly active in the organization. Despite the character of the sample, between a third and a half of those sampled showed little or no activity of whatever kind. There was limited data suggesting some contact between descendant and reservation Samish families, but it does not distinguish between widespread social interaction and contact with those full-blood individuals active in the organization itself. The latter has been characteristic of the Samish organization since its inception. The proposed finding's conclusion that the reservation Samish were relatively cohesive and culturally distinct is somewhat borne out by the survey. The data on participation in "traditional" activities supports this characterization of these families and lends some support to the petitioner's claim of activity of this kind by the descendants as well. Overall, the survey data does not support a change in the proposed finding that the Samish membership does not form a distinct community within which significant interaction occurs, and has occurred, frequently and involves most of the membership.

### Intermarriage

The proposed finding concluded that among the Indian descendant families there had been essentially no intermarriage with each other, with other Samish families or with other Indians since the initial marriage between a pioneer white man and an Indian woman in the 1860's or 1870's. This pattern of consistently marrying non-Indians applied to about 75 percent of the current membership and was part of the data that formed the basis for the conclusion that most of the membership had little social connection or ties with a tribal body. Ancillary data indicated that while some kin ties may have been maintained with immediate relatives within Indian society in the first generation or two, the descendants of these marriages lived and functioned as non-Indians within non-Indian society and were identified by that society as non-Indians.

The Samish argue that marriage outside the tribe was the standard social pattern in aboriginal Coast Salish Indian society and that therefore their current intermarriage patterns were consistent with aboriginal ones and could not be used to show a lack of community. Based on standard ethnographic sources for the area, the proposed finding did conclude that in pre-treaty times marriage outside the winter village and the tribe was very common, and was probably the preferred practice for high-ranking families. It provided the basis for access to fishing rights, alternate residence and alliance across wide areas. It was thus the basis of social connections of long standing, fundamental to the functioning of the society. While ties were thus spread over a wide area, they were nonetheless multiple and reinforcing, in part because of the large number occurring over many generations and with multiple ties between the same kinship groups and households. To a large degree, intertribal marriage remains a standard practice within Indian communities in the Puget Sound region.

The function of intermarriage aboriginally in Coast Salish cultures was to establish and maintain a wide set of strong, important social relations, based on kinship, across a wide area, extending well beyond the loosely defined political and tribal units characteristic of the area. All available evidence indicates that post-contact intermarriage with whites had no such function (except for a few in the first decade or two of post-treaty times) and created no such social ties. Diffused in the much larger non-Indian population and less close-knit non-Indian society, with no body of institutions based on such kinship rights, and cutting across the major social barrier between Indian and non-Indian society, there is no reason to believe that the almost universal marriages outside Indian family lines, for multiple generations, were in any way equivalent to aboriginal patterns.

In the proposed finding, the lack of intermarriage within the membership or into Indian communities supported the other data indicating a lack of social cohesion and community. However, this would not be as significant if there were other, strong data showing the existence of a "community" as discussed above. The petitioner provides a number of comparisons with treatment of marriage outside the tribe in other acknowledgment findings, contending that treatment of this in other cases was not consistent with that in the Samish proposed finding. Their characterization of the cited cases is not correct. In the Jamestown Clallam case, marriage outside the tribe was noted as an aboriginal pattern, as it was in Samish. Extensive marriage with non-Indians was a phenomenon of recent rather than early generations in the Jamestown families, and was neither "excused" nor considered to support the tribe's

meeting the acknowledgment criteria. A similar situation existed and a similar interpretation was made in the case of the Tunica-Biloxi. The early "half-breed" community from which the Poarch Band of Creeks is derived was unequivocally a part of the early Creek Nation, and was culturally and socially quite distinct from non-Indian society. The Timbi-Sha Shoshone and Grand Traverse Ottawa were tightly intermarried communities which still maintained extensive, aboriginally derived practices of marriage to related tribes or bands, with little intermarriage with non-Indians.

The Noowhaha (or "Stick Samish")

The proposed finding concluded that Samish and Noowhaha had been distinct tribes. The relationship between the Noowhaha and the Samish was a factor in two portions of the proposed finding. One portion concerned criterion e, which requires descendency from an historic tribe, or tribes which had historically "combined and functioned as an autonomous entity." The other portion was concerned with the character of the membership enrolled in the 1926 Samish organization and the significance of this to criteria b (community) and c (political authority).

Two of the Indian descendant families and two reservation families could demonstrate only Noowhaha ancestry. They were thus included in the 42 percent of the membership which was found to not trace ancestry from the historic Samish tribe. Some other families, including some individuals who sometimes identified themselves as Noowhaha, had mixed Samish and Noowhaha ancestry, and were not counted in this 42 percent. Because of the social character of the Indian descendants tracing to Noowhaha, there was no basis for determining that their individual families might nonetheless have become incorporated into the post-treaty Samish tribe (and their descendants thereby qualify under criterion e) (see Section IV). As a consequence, the Noowhaha Indian descendants were concluded to form part of the large body of Indian descendants enrolled in the Samish organizations formed after 1925, but not to be substantially connected with a functioning Samish tribal body.

It is clear from the data in the petition and that developed by the Acknowledgment staff in preparing the proposed finding that, regardless of the character of any merging which may have occurred, a sharp distinction was made within the 1913, 1926, and 1951 Samish organizations between Samish and those identified as Noowhaha who were within the membership. Examples include the idea of "putting the two Samishes together" in the 1913 Northwest Federation Branch, appointment of a special Noowhaha representative in the 1926 organization, extensive discussion in the 1950s whether to enroll Noowhaha, and temporary movements in the 1970s and 1980s by members of the Samish organization to assert Noowhaha status as a separate tribe. The petitioner's response includes no information contesting this conclusion and contains some data about this distinction not dissimilar from that used for the proposed finding.

The petitioner's response acknowledges the correctness of the conclusion in the proposed finding that in historic times many of the Noowhaha became integrated into the Upper Skagit, a recognized tribe. Noowhaha presence in that tribe from the early 20th century was not referred to in the petition. Re-evaluation of the previous data also indicated that some of the few reservation Noowhaha enrolled in the current organization were probably socially affiliated with the reservation Samish while others were probably not.

In its response to the proposed finding, the petitioner offers no rebuttal to the conclusion that the Noowhaha language was distinct from Samish (and thus at least somewhat indicative of social distinction) and that there were differences in their economies. The response stresses the amount of intermarriage and economic cooperation between the two tribes. The proposed finding reached a similar conclusion. However, it did not find this substantially different than Samish relations with other tribes or intertribal relations elsewhere in the Puget Sound area.

The response also confirms the proposed finding's conclusion that the Noowhaha had a distinctive relationship to the Samish, in that they had a distinctly lower social status. The response notes that this was not an uncommon relationship between tribal units in the Northwest.

The response also offers, however, some evidence that more than a status difference was involved, i.e., a patron-client relationship in which the Samish protected the Noowhaha. The evidence submitted by the Samish initially, including some interview data taken in the 1950s, was re-examined by the Acknowledgment staff. Some of that interview data contained examples where non-Samish Indians characterized the two tribes as being a single entity or having combined (Suttles c.1946-50). In addition, there were several historical documents where individual Noowhaha are referred to as "Samish," one by an individual clearly knowledgeable about the tribes (McTaggart 1914), although most historical documents made the distinction. Thus there is some basis for concluding that in pre-treaty times the two had more than the usual degree of association. Criterion e, however, contains the requirement that the tribes in question have combined as an autonomous political unit. The association between the two tribes described in the response did not have this character. Therefore, this historical linkage does not meet the requirements of criterion e.

The discussion in the response, and in previous petition materials, of the 19th century New Guemes Samish village indicated it included some Noowhaha. Ethnographic and census data offered by the original petition and the response indicated that some individual Noowhaha families had thus become incorporated into the Samish tribe. This did not show a merging of the entirety of the two tribes into an autonomous unit, or into a single unit of any kind. The response also speculates that the rise of the Noowhaha leader Pateus in immediate pre-treaty times gave the Noowhaha higher status and thus increased intermarriage between them and the Samish. This did not show a political merging and the anthropological report in the response did not claim one. Therefore the Samish and Noowhaha did not become merged into a single tribal political body in the period immediately before and after the 1855 Point Elliot Treaty which marks the beginning of substantial non-Indian contact in the area, or in subsequent decades.

The response argues that historical combination of tribes was approached in a different manner in the Tunica-Biloxi and Poarch Band of Creeks findings than in the Samish case. In the Tunica case, an historical combination occurred by the 1820s, under a single hereditary chief. This combination did not encompass all of the historical Biloxi. The Creek Federation was a single, if somewhat decentralized, political body which began to incorporate villages from many tribes by the early 1700s. Neither case provides a parallel to the Noowhaha-Samish relationship.

As discussed, some Noowhaha families, possibly more than can be identified, became incorporated into the Samish tribe in the latter 19th century. In the case of one of the Noowhaha-derived Indian descendant families, the Blackintons, the draft anthropological report written in preparation of the proposed finding speculated that the "founding" Noowhaha ancestor might have become affiliated with the Samish on Guemes Island in the later 19th century. Based on a re-evaluation of the previous evidence, plus minor additional evidence, we conclude that there is a reasonable basis for this conclusion. The ancestry of this family is therefore now considered to be included within the requirements of criterion e. This re-evaluation provided no basis for changing the conclusion in the proposed finding concerning the social character of the descendants of this family line as not having maintained social affiliation with a tribal body.

#### The Distinction between Indian Descendants and Reservation Samish

The proposed finding concluded that the Indian descendants had little social cohesion within themselves and little social contact with the reservation Indian families. It noted that a sharp distinction was made by individuals in the two categories and that conflict had sometimes occurred between the two groups. The Samish response argues that this distinction is comparable to the factional divisions noted within the Narragansett, Tunica-Biloxi and Grand Traverse Ottawa tribes, all of which were found to meet the acknowledgment criteria. In the latter cases, the divisions were manifestations of consistent alignments of tribal members in political conflicts within a single tightly-knit social community. Factional members had many social ties connecting them. In the Samish case, a social distinction was made between Indian families and a large body of people with little social connection with them or with each other.

#### The 1926 "Samish Tribe" Enrollment

The proposed finding concluded that the 1926 Samish Tribe organization, and the character of the enrollment of members therein, was "far beyond any concept of a tribal community." This was based in part on the fact that it included large numbers of Indian descendants, many of whom, further, had no apparent Samish tribal ancestry. Oral history concerning this and parallel enrollments of other Indian claims-oriented organizations in Washington State at the time indicated that the organizers did not see themselves as "enrolling a tribe." (The character of the 1926 organization is discussed further under criterion c). Further data on this were requested from the Samish, but not supplied, during the period for comment on the proposed finding.

The response argues that this interpretation of the 1926 enrollment conflicts with the interpretation made in the Jamestown Clallam case, in which a 1926 roll prepared by the Clallams for claims purposes was treated as an enrollment of a well-defined tribal community. In the Jamestown Clallam case, the enrollment was in fact narrowly limited by the committee of tribal leaders reviewing applicants to individuals maintaining tribal relations with the community. Many applicants of flawless Clallam ancestry were rejected. The Bureau, in accepting the roll, put on it a number of applicants rejected by the committee who had been born in but had subsequently left the Clallam communities. The character of the Clallam roll therefore appears to be the opposite of the 1926 Samish roll.

It is less difficult to accept an interpretation that the 1926 enrollment represented individuals whom the older Samish on the enrollment committee regarded as related or otherwise connected with the reservation Samish than to conclude that it represented a community of Indians. Reexamination of the family history of many of those enrolled in 1926 shows that the original Indian ancestor was often still living at that time or had died within the past decade. Thus the enrollment of descendants in these families may reflect a recognition of some kinship ties with those families, which were less distant than they became in the succeeding several generations. Since the 1926 organization saw itself as "merging the two Samishes," this would explain the enrollment of Noowhaha descendants whether they were affiliated with a tribal community at that time or not.

#### IV. CRITERION C - TRIBAL POLITICAL AUTHORITY

The proposed finding concluded that the Samish had not exercised tribal political influence or other authority over its members from earliest historical times until the present. It concluded that the Samish tribe had continued to function as an autonomous political body from the time of the 1855 Treaty until at least the first decade of the 20th century. With the dissolution of the independent village on Guemes Island in that era, most of the Samish and the Samish leaders became residents on the Swinomish or Lummi Reservations. The proposed finding found that there was little indication of a consistently functioning Samish tribal political unit after about 1920, although there was some degree of identified Samish leadership until at least 1935. It concluded that as the multi-tribal population of the Swinomish Reservation increasingly came to form a unified community after about 1920, the surviving Samish leaders functioned within that context, including roles in formal organizations which arose within the reservation community. The Samish leadership and the reservation Samish were also active in the formation of the governmental institutions of the Swinomish Reservation and continued to participate in its institutions afterwards.

The proposed finding concluded further that the 1926 Samish Tribe organization and the earlier Anacortes Branch of the Northwest Federation of Indian Tribes (formed in 1913) were not political organizations of the Samish as the petition had indicated. Virtually all of their recorded activities had to do with claims. The enrollment in the 1926 organization was concluded to be far broader (and of a different character) than a tribal community (see above). Almost half of the enrolled membership were Indian descendants. Many others were Canadian Indians of no known social connection with the Samish. Although some of the Samish reservation leaders played a dominant role in the 1926 organization, there was no indication that most of the broad membership were their followers except within the narrow context of either of these organizations.

The proposed finding concluded that there was no evidence that the large majority of the membership of the 1951 Samish Tribe organization, i.e., the petitioner, had any contact with or role in the choosing of the leadership of the organization. It also concluded there was no evidence that most of the membership participated in or contributed to the decisions formulated by the council. Because of the character of the membership, there was little ground for inferring such elements of tribal political process were occurring. No significant factual evidence or argument was presented in the Samish response upon which to re-evaluate these factual conclusions.

The proposed finding concluded that the 1926 organization ended in 1935 with the conclusion of the Duwamish et al. claims case. The correlation of its initiation in 1926 and its end in 1935 with the beginning and ending of claims activities was part of the evidence that it did not have the broad political nature the petitioner appeared to claim for it.

The proposed finding stated that no documentary record was found of leadership of the group after the end of the 1926 Samish Tribe organization, even in records between 1935 and 1950 showing representation of other nonreservation groups in that era. The technical reports supporting the proposed finding found that the traditional leaders surviving into this era participated in the formation of the Swinomish Reservation tribal government formed in 1935 under the Indian Reorganization Act. There were very limited, general indications in

the oral history available for the proposed finding that there were meetings of some Samish which continued between 1935 and 1951. This evidence was far from sufficient to conclude the continuance of political process of a separate Samish tribe.

There was no evidence available for the proposed finding that the 1951 organization, had, outside of the relatively narrow functions of the organization, leaders which affected the members or were regarded by the membership as their leaders or their representative. The response admitted the functions of the organization were initially to pursue the Samish claim filed that year before the Indian Claims Commission (Hansen et al 1986). The functions were somewhat broadened in later years to include seeking Federal acknowledgment and to administer various grants and programs, and the organization was at times treated by various agencies as representing Samish interests. Unlike the traditional leadership which may have existed to a limited extent until the 1930s for the reservation Samish (see below), the leaders of the 1951 organization exercised no known influence in areas like dispute resolution, control of behavior or formation of group consensus.

The response contains some additional evidence concerning political functioning between 1900 and 1950. Most of the new information is oral history collected from living individuals. The response focuses largely on informal political leadership and processes, outside of formal organizations. No additional information, and only limited argument, was presented concerning the proposed finding conclusion that the Samish Tribe organization formed in 1951 was not a political body, nor concerning the similar conclusion about the 1926 Samish tribe organization.

The additional information in the response concerns the traditional leaders surviving after the dissolution of the New Guemes village. The response argues that many of the leaders discussed in the proposed finding continued to function as leaders of a distinct Samish group after that date, as well as functioning within the emerging governmental and social institutions of the Swinomish Reservation. In conjunction, it was shown that a more sizeable non-reservation Samish Indian population (i.e., not Indian descendants) continued to exist in larger numbers for a longer period than previously available data indicated (i.e., as late as the 1930s).

The response contains a small amount of additional oral history that meetings of some undetermined kind continued in the interval between 1935 and 1950. It points out that the old leaders lived as late as 1948 and cites some examples of their leadership. The additional information in the response concerning the functioning of these traditional leaders, and the information indicating some kind of meetings after 1935, along with the additional information concerning Samish leadership between the end of the New Guemes village and 1935, provides some support for concluding that separate tribal political process among the "reservation" Samish may have continued until 1948. However, the examples cited in the response concerned only the reservation Samish and not the three-fourths of the membership (if this is judged by current enrollment) which was made up of Indian descendants. There was no evidence submitted that this political pattern carried over into the 1951 organization, formed after the death of the last of these traditional leaders, or that political influence was broadly exercised either by or outside this organization. The additional information would not affect the proposed findings' conclusion concerning the nature of the 1926 organization.

The response argues that the proposed finding focused too exclusively on formal organizations and ignored evidence of informal political processes, in contrast with other findings. The proposed finding on the Samish, and the staff research in preparation for it, considered all available evidence of any form of political process or structure. The petition presented only limited evidence concerning nonformal political processes. It stressed the formal organizations, treating the 1926 Samish Tribe organization and the earlier Northwestern Federation Branch as the political organization of the Samish tribe at those times and the enrollment of the 1926 organization as representing the tribe's membership at that time. Some of the conclusions in the proposed finding therefore addressed these arguments. The response does not repeat the assertions in the petition concerning the tribal political nature of these organizations.

No additional information was offered concerning the conclusion that the vast majority of those enrolled in the 1926 Samish Tribe organization were not in a political relationship with the surviving traditional leaders, to whatever extent the latter continued functioning. This majority consisted of the many Indian descendants (about 50 percent), some Noowhaha, and four or five Canadian family lines.

There is additional information and argument in the Samish response that one of the Canadian families enrolled in the 1926 organization (Underwood) maintained and maintains substantial contact with the Indian community Samish. This evidence supports a conclusion that this family probably maintained a political relationship with the Samish leaders in the 1920s and 1930s.

The petitioner argues that in other findings, pursuit of claims was taken as positive evidence of the existence of tribal political process. In itself, the particular function of pursuing a claim does not allow a distinction between an organization of individuals or descendants that might have been formed to pursue claims and a tribal body seeking to implement the wishes of its membership. In the Jamestown Clallam finding, cited by the petitioner, the actions taken by its council in pursuit of their claim was evaluated in the context of a clear tribal community with functioning political leadership encompassing all its members.

The other comparisons made do not make clear the extent and kind of evidence of political process and authority used in those findings. The response's statement of comparison with the Poarch Band of Creeks case contains substantial inaccuracies. The pursuit of claims by the Creek Nation East of the Mississippi organization in the Poarch Creek case was not considered to be evidence that political processes functioned within the Poarch community. The finding made a careful distinction between the Poarch community itself and the far larger and more diffuse membership of the Creek Nation, which did, however, include most Poarch Band members. The finding also concluded that while the Poarch leadership played the major role in the Creek Nation organization, tribal political processes existed within the Poarch Band itself. The responses' comparison with the Narragansett finding states that "the only organized political activity of the Narragansetts from 1901 to 1934 had been 'continued effort to pursue several land claims.'" This misstates the finding in that case. The Narragansett determination contained a detailed discussion of political processes and leaders between 1901 and 1934, an era when a formally constituted tribal council did not exist.

In the Grand Traverse Band case, continuity of political process was inferred for some eras on the basis of clear, strong political process at the beginning and end of an era, together with limited data about political process within those time spans. There further was clear evidence of a very strongly defined, cohesive community within which this political process occurred. In the finding on the Timbi-Sha Shoshone, a relatively culturally traditional Indian tribe, it was not the existence of a community as the response claims but the retention of a settlement in a specific area of Death Valley National Monument in the face of great pressures exerted against the tribe by the National Park Service that was cited as one of several bases for inferring political processes for maintenance of group consensus.

## V. CRITERION E - ANCESTRY FROM THE HISTORIC TRIBE

### Samish Response

The proposed finding reported that 42 percent of the group's members were unable to document Samish Indian ancestry to the satisfaction of the Secretary. Of this number, 32 percent were found to be Indians of other tribal ancestry, specifically Noowhaha 22 percent, Snohomish 3 percent, and Mitchell Bay 7 percent. An additional 10 percent were Indian but of undetermined ancestry. The petition asserted that the Noowhaha had combined with the Samish in the 1920s and that they have functioned as an autonomous entity since that time. The proposed finding, based on evidence initially presented and on staff research, did not support such a merger. Therefore, the 22 percent who were of Noowhaha ancestry could not be counted as descendants of the historic Samish tribe.

The proposed finding, published in 1982, found that 58 percent of the petitioner's current membership could establish their descent from the historic Samish tribe. The balance of the membership--42 percent--were unable to establish their descent from the historic tribe. Therefore, the petitioner was determined not to meet the requirements of criterion e.

New evidence and arguments submitted by the petitioner have not provided sufficient evidence to reverse the Bureau's preliminary finding that the Samish do not meet criterion e. Evidence submitted, however, does support significant changes in previous findings regarding individual family lines which trace to Mary Blackinton, Boston Tom, and Cowegian.

### Evaluation of Samish Data

Re-evaluation of the genealogical findings in light of new evidence and arguments in the petitioner's response and the anthropological re-evaluation concerning one of the Noowhaha-derived families (see Section III) provides a revised overall conclusion that 74 percent (up from 58%) of the membership can document their Samish ancestry to the satisfaction of the Secretary. However, 26 percent are still determined to be of other Indian ancestry but not of documented Samish ancestry. Therefore, the petitioning Samish organization does not meet criterion 83.7(e) of the regulations.

Family lines previously determined to be Indian but of other than Samish ancestry were re-examined in the light of new material submitted by the petitioner along with some limited additional research by the Acknowledgment staff. Specific findings regarding the group's ancestry are summarized in the following table and are discussed as separate categories in subsequent paragraphs.

Analysis of Petitioner's Ancestry  
for Acknowledgment Purposes

<u>Tribal Ancestry</u>	Percent of Membership	
	<u>Previous</u>	<u>Revised</u>
"Historic Samish"	58 %	74 %
"Other Indian":	42 %	26 %
Mitchell Bay	7 %	7 %
Noowhaha	22 %	11 %
Snohomish	3 %	3 %
Tribe not established	10 %	5 %
	(42 %)	(26 %)

Mitchell Bay Ancestry

No new evidence was submitted to warrant a change in the previous finding that 43 members of the Samish organization are of Mitchell Bay/San Juan Band ancestry.

Noowhaha Ancestry

The proposed finding reported that 130 members (22%) of the group were of Noowhaha Indian ancestry. It concluded further that the Noowhaha tribe had not combined with the historic Samish tribe and therefore documented Noowhaha ancestry per se could not be used to establish Samish eligibility--this finding has not changed.

The anthropological re-evaluation of previous evidence and minor new evidence finds that there is a reasonable basis to conclude that Mary Blackinton, a Noowhaha woman living on Guemes Island, had become affiliated with the Samish on the Island in the 19th century (see Section III). Therefore, 63 members of the petitioning group previously categorized as Noowhaha are now determined to be descendants of the "historic Samish tribe." This determination has the effect of reducing the total number of members listed as Noowhaha from 130 to 67 and increasing the number who trace to the "historic Samish tribe" by 63.

Snohomish Ancestry

No new evidence was submitted to warrant a change in the previous finding that 18 members of the Samish organization are of Snohomish ancestry.

Tribal Ancestry "Not Established"

The proposed finding reported that 59 members were Indian but had been unable to document Samish ancestry to the satisfaction of the Secretary. This figure has subsequently been revised downward to 27 based on substantive new evidence and/or arguments regarding the ancestry of Boston Tom and Cowegian.

Boston Tom - New evidence coupled with limited additional research by the staff was sufficient to reverse the preliminary finding regarding the ancestry of Boston Tom. The preliminary finding was that while there was no question that Boston Tom was Indian, the evidence regarding tribal ancestry was conflicting. The primary evidence to support a finding "for" Samish initially rested on genealogical information about the family provided in 1927 by agency farmer William McCluskey. This information conflicted with a 1918 affidavit given by Boston Tom's son to Special Agent Charles Roblin. Several new pieces of

evidence were provided. One was a recent affidavit from the Boston Tom's great grandson (born 1916) who speaks fluent Samish (Underwood 1986). He learned Samish from his maternal grandfather, Boston Tom's son, with whom he lived following the death of his mother when he was 12 years old. Additional evidence was obtained from two pages of the preface of a Canadian Ethnology Service Paper to be published by the National Museums of Canada in 1986. The paper in preparation by linguist Brent D. Galloway is entitled A Phonology, Morphology, and Classified Word List for the Samish Dialect of Straits Salish. In the preface, Galloway points out the "Until 1983 linguists had thought that the last speakers of Samish were dead" (Galloway 1986).

Additional information was obtained to validate Farmer McCluskey's knowledge of Boston Tom's genealogical background (McCluskey 1927). The 1880 Special Indian Census reports Farmer McCluskey as being of Lummi and White ancestry and of sufficient age to possibly have grown up with David Tom (Boston Tom's son and Indian Agent Roblin's affiant) (Bureau of the Census 1880: Enum. Sh. 3). This information was further verified by a 1893 Indian Office report which lists McCluskey as an employee of the Tulalip Agency on June 30, 1893 (Tulalip Agency 1893: 560).

In light of the new evidence the family line of Boston Tom, with its 27 descendants in the present-day Samish group, is determined to be of Samish ancestry for acknowledgment purposes.

Cowegian - A re-examination of documents provided in the petition and in subsequent submissions in light of arguments provided leads to a determination that Cowegian, who was of Cowichan ancestry, was part of the New Guemes Village and was therefore incorporated in the "historic Samish tribe." This revises a previous finding that the five descendants of Cowegian in the current Samish organization were of other Indian ancestry that was not part of the "historic Samish tribe."

#### Summary conclusion regarding descent from historic tribe

Seventy-four percent of the petitioner's members are considered to be of documented Samish ancestry or the descendants of other Indians who are understood to have been incorporated into the "historic Samish tribe" on Guemes Island in the late 19th century (i.e., the descendants of Mary Blackinton and Cowegian).

More than one-fourth of the group's members have not established their ancestry from the historic Samish tribe, thus the membership of the Samish petitioner can not be said to "consist of individuals who have established, using evidence acceptable to the Secretary, descendance from a tribe which existed historically..." as required by 25 CFR 83.7(e). While some allowance may reasonably be made for individuals who are unable to document their ancestry or for other factors, the members in question here include many who are documented to be of other Indian ancestry with no historical connection with the "historic Samish tribe." Therefore, the Samish petitioner does not meet criterion e.

#### Samish rolls vs. rolls used by other tribes

The petitioner alleges that in making the proposed finding Samish rolls were considered "...more suspect than rolls prepared for the same kinds of purposes

by other tribes, or by the Bureau on tribes' advice" (Samish Indian Tribe 1986a:I:19). The petitioner's rolls were not considered "suspect" but rather were evaluated in their own light in terms of the circumstances under which they were created, just as any other group's rolls have been evaluated in the past.

The petitioner states that their 1953 list was rejected "on the grounds that 'no information is available to show what type of evidence, other than the council's statement, was used to establish the Samish ancestry of members listed'" (Samish Indian Tribe 1986a:I:19). The above internal quote from the proposed finding was simply a statement of fact and not an indictment of the list. The 1953 list is in actuality perhaps the most accurate statement by the Samish of the group's actual membership at the time. The Samish petition provided a current membership list as well as eight former lists. The proposed finding noted that considerable fluctuation existed among these lists; the fluctuations suggest a lack of continuity and stability in the membership of the Samish organizations. For example, the 1953 roll (prepared by the Samish council in response to the agency's request for a list to be used to issue "blue cards" for Treaty hunting and fishing privileges) differs significantly from the group's current membership roll. Our research shows that families that appear on the current roll and can trace their ancestry back to the historic Samish tribe generally appear on the 1953 list. However, those on the current roll whose ancestry has been determined to be from other Indian tribes or not otherwise established do not appear on the 1953 roll. Discrepancies between the current membership roll and the 1953 roll raise legitimate questions concerning the continuity and stability of the membership.

The petitioner's response to the proposed finding also draws comparisons among rolls submitted by the Samish and rolls evaluated in other, successful petitions. Significant differences exist here too. The Samish response compares the Samish roll to the 1926 Clallam claims distribution roll used by the Jamestown Clallams, the 1907 Durant Roll used by the Grand Traverse Band of Ottawa-Chippewa, and similar rolls used by other successful petitioners. (For a detailed comparison of the Samish roll and the 1926 Jamestown Clallam roll, refer to the discussion of "The 1926 Enrollment" under Criterion B.)

The referenced claims distribution rolls of other petitioners were prepared by Federal or State officials for official purposes and are supported by claims applications, other official rolls, and/or testimony taken at or near the time the rolls were prepared. The Samish rolls were prepared by the Samish petitioner for varying reasons and their size and composition fluctuate accordingly. Rolls of the 1920s and 1930s appear to relate to Samish participation in the Duwamish claims case and include a number of families no longer associated with the group. The "1926/27 Enrollment Information" list was prepared for the Samish Federal acknowledgment petition and is based on information obtained from individual enrollment questionnaires submitted for claims purposes in the 1926-27 period. (Only 12 enrollment questionnaires were provided in petition and response materials.) Like the other Samish rolls of the twenties and thirties, the "1926/27 Enrollment Information" list includes a number of families no longer associated with the petitioning group as well as a number who appear to be Indians of other tribal ancestry which has not been documented as part of the historic Samish tribe. The 1953 roll was prepared for "blue cards" and is a fairly accurate representation of families present in the current group who have been able to establish their descent from the historic Samish tribe.

During the time when the Samish petition was under active consideration, agency staff were preparing a claims distribution roll of persons believed to be eligible for the pending Samish claims award. This roll was withdrawn to the Central Office in 1982, while still in draft form, when Acknowledgment research suggested that new evidence, not previously available to agency staff, might provide conflicting data concerning the tribal ancestry of certain families. This Samish claims distribution roll is still in draft form and no other Samish claims distribution roll is known to exist.

Ancestry charts were received on November 21, 1986, for 80 members who have been added to the group's current membership roll since the proposed finding was published in 1982 (Samish Indian Tribe 1986b). A cursory examination of these charts suggests that 45 percent are likely to be able to trace to family lines found in the historic Samish tribe. However, 55 percent are from lines that have not established their descent from the historic Samish tribe: 15 percent are of Noowhaha, Snohomish or Mitchell Bay ancestry; 40 percent descend from families that have been unable to document Samish ancestry.

Roblin Schedule of Unenrolled Indians of Western Washington

The Samish response states that the Acknowledgment staff relied too heavily on materials gathered by Special Agent Charles Roblin. In 1916, Roblin was charged with creating a list of the homeless and landless (unenrolled) Indians of Western Washington. Little information existed on them in agency records. In response to outside pressures, the Office undertook an enrollment of these unenrolled Indians

...with the distinct understanding that such an enrollment would not be a recognition of any claims made by the Indians; but [would be] an endeavor to have the record show what their claims were" (Roblin 1926; ASIA 1982c).

A number of the Indians interviewed and enrolled by Roblin are the "original ancestors" of many of the petitioner's family lines and/or were members of their immediate families. Given the nature and purpose of Roblin's work and the fact that the individuals had nothing to gain by identifying their ancestry as any one tribe over another, their 1917 and 1918 testimony and affidavits as to their own ancestry are considered more reliable than recent affidavits taken for the acknowledgment petition from individuals several generations removed from the "original ancestor."

The Samish response also questions Roblin's apparent understanding of the Samish and "Stick Samish" as bands of other Indian tribes stating

Roblin's own correspondence makes it clear that his list was not exhaustive: he was dealing only with applications for allotments on the Quinault Reservation, and he had no contact with Indians who chose not to move there (Samish Indian Tribe 1986a:I:20).

This statement is believed to be incorrect based on correspondence from Roblin to Superintendent W.F. Dickens (May 10, 1926):

First, I was to investigate and report on applications for adoptions into the Quinaielt (sic) tribe...Second, (and this duty was entirely separate from the first) I was to investigate and report on unenrolled Indians of Western Washington (emphasis added)...(Roblin 1926).

New evidence provided in the petitioner's response to dispute testimony given to Roblin by the "original ancestors" of the petitioner's family lines, or their immediate kin, was limited to recent affidavits which generally were not considered sufficient to outweigh the preponderance of other available evidence.

#### 1880 Special Census of Indians

The petitioner submitted copies of a Special Census of Indians taken in 1880 which included 14 Samish households and 1 Stick Samish household living on Guemes Island (Bureau of the Census 1880). The petitioner states that anthropologist Wayne Suttles who researched the families comprising the New Guemes Village on Guemes Island in the 1940's has been able to identify several names in the 1880 schedules. The petitioner's response, however, did not provide information tying specific families to specific schedules. Based on a cursory examination, the Acknowledgment staff was able to identify on the census a few families that appear in Suttles' description of the historic Samish village. The portion of the 1880 Special Census which lists 14 households of Samish Indians counters statements in the proposed finding that no historical roll exists showing the Samish as a group. The petitioner did not use the 1880 Special Census for genealogical purposes.

## VI. OTHER ISSUES

The Samish response raises several issues outside of the question of whether the Samish meet the requirements of the 25 CFR 83. The response argues that the Samish are already a recognized tribe, since they were recognized by the Treaty of Point Elliot in 1855 and only Congress can terminate a treaty relationship. They claim that they were wrongfully terminated by administrative action and that the Secretary of the Interior never made an administrative decision to terminate the trust relationship.

The Ninth Circuit Court decision against the recognition of the Samish in U.S. v. Washington (1981) specifically rejected the argument that they could benefit from a presumption of continued existence solely because their ancestors belonged to treaty tribes. The Samish claim they have maintained independent tribal status since treaty times. The proposed finding concluded that independent tribal organization, as an off-reservation village, ended in the first decade of the 20th century and that most of the Samish became part of the Swinomish or Lummi Reservations. This final determination does not substantially alter the conclusion that the Samish have not maintained independent tribal status since treaty times.

The Samish contend that they were continuously recognized by the Federal government until the time of the first decision in U.S. v. Washington, in 1974. They assert that they were "terminated" at that time by being declared an unrecognized tribe. The proposed finding concluded that they had not been separately recognized since at least 1900. Lists of reservation and "landless" non-reservation recognized tribes under Bureau jurisdiction from 1900 to 1950 do not list the Samish. For a few years after 1951, when the Samish organization was formed, they and other unrecognized groups in western Washington were to some degree treated as recognized by the local bureau agency. Some local agency actions treated them in the same manner as the recognized tribes, while other local and central office actions clearly treated them as unrecognized.

The response contains no significant additional evidence concerning continued recognition of the Samish after the end of the New Guemes village. No evidentiary grounds exist therefore for changing the factual conclusion in the proposed finding that there was no recognition of a separate Samish tribe after the end of the New Guemes village, although many Samish were members of recognized tribes after that date.

The Samish response also raises the issue of whether the 1979 decision in U.S. v. Washington that the Samish and four other unrecognized tribes were not political continuations of or political successors in interest to the treaty-signers would preclude the Department from making a decision on acknowledgment under 25 CFR 83. This question was discussed in a meeting between the Samish chairman and the Assistant Secretary - Indian Affairs in February 1982. As a result, the Assistant Secretary made a decision to continue the work evaluating whether the Samish petition met the requirements of 25 CFR 83 on the basis of the factual evidence, irrespective of the possible legal effects of the court's decision. Any consideration of the possible effect of the court's decision was deferred until the factual determination was completed. Because the proposed finding and this final determination concluded

that the Samish did not meet the requirements of 25 CFR 83 and the final determination therefore denied Federal acknowledgment on that basis, it was unnecessary to consider whether or not the court decision had a preclusive effect.

## SOURCE MATERIALS AND REFERENCES CITED

Note to Readers: Citations in the Final Determination Report which do not appear below will be found in the lists of sources attached to the Proposed Finding.

## Assistant Secretary - Indian Affairs (ASIA)

- 1979 Proposed Findings for Federal Acknowledgment of the Grand Traverse Band of Ottawa and Chippewa Indians as an Indian Tribe. October 18. Federal Register Vol. 44, No. 203, p. 60171. Including Memorandum of October 3 and accompanying Anthropological, Genealogical and Historical Reports.
- 1980a Determination for Federal Acknowledgment of the Grand Traverse Band of Ottawa and Chippewa Indians as an Indian Tribe. March 25. Federal Register Vol. 45, No. 50, pp. 10021-22.
- 1980b Proposed Findings for Federal Acknowledgment of the Jamestown Clallam Tribe of Indians as an Indian Tribe. May 30. Federal Register Vol. 45, No. 106, p. 36525. Including Memorandum of May 16 and accompanying Anthropological, Genealogical and Historical Reports.
- 1980c Proposed Findings for Federal Acknowledgement of the Tunica-Biloxi Indian Tribe of Louisiana. December 5. Federal Register Vol. 45, No. 248, p. 84872. Including Memorandum of December 4 and accompanying Anthropological, Genealogical and Historical Reports.
- 1980d Final Determination for Federal Acknowledgment of Jamestown Clallam as an Indian Tribe. December 12. Federal Register Vol. 45, No. 241, p. 81890.
- 1981 Final Determination for Federal Acknowledgment of the Tunica-Biloxi Indian Tribe of Louisiana. July 27. Federal Register Vol. 46, No. 143, p. 38411.
- 1982a Proposed Finding for Federal Acknowledgment of the Death Valley Timbi-Sha Shoshone Band. Federal Register Vol. 47, No. 49, p. 10912. Including Memorandum of February 9 and accompanying Anthropological and Genealogical Reports.
- 1982b Proposed Finding for Federal Acknowledgment of the Narragansett Indian Tribe of Rhode Island. August 13. Including Memorandum Report of July 29. Federal Register Vol. 47, No. 157, p. 35347.
- 1982c Proposed Finding Against Federal Acknowledgment of the Samish Indian Tribe. November 4. Federal Register Vol. 47, No. 214, p. 50110. Including Memorandum report of October 27. (footnoted version December 1983).
- 1982d Final Determination for Federal Acknowledgment of the Death Valley Timbi-Sha Shoshone Band of California. November 4. Federal Register Vol. 47, No. 214, p. 50109.

- 1983 Final Determination for Federal Acknowledgment of the Narragansett Indian Tribe of Rhode Island. February 10. Federal Register Vol. 48, No. 29, p. 6177. Correction February 23 in Federal Register Vol. 48, No. 37, p. 7640.
- 1984a Federal Acknowledgment of the Poarch Band of Creeks; Proposed Finding. January 9. Federal Register Vol. 49, No. 5, p. 1141. Including accompanying Memorandum of December 29 and Historical, Genealogical and Anthropological Reports.
- 1984b Final Determination for Federal Acknowledgment of the Poarch Band of Creeks. June 11. Federal Register Vol. 49, No. 113, p. 24083.
- Branch of Acknowledgment and Research
- 1982a "Anthropological Report on the Samish Tribe." First Draft. September 15. (unrevised staff technical report used in preparation of Samish proposed finding).
- 1982b Untitled Sociological Report on Samish Tribe. First Draft. No date. (unrevised staff technical report used in preparation of Samish proposed finding).
- Bureau of the Census
- 1880 Special Indian Census. NARA, RG 29, Scientific, Economic and Natural Resources Branch Microfilm #357, roll 2, "Indians not Resident on a Reservation," schedules 75-1/2 through 106. (Schedules 92-106 in Samish Indian Tribe 1986a).
- Galloway, Brent D.
- 1986? A Phonology, Morphology, and Classified Word List for the Samish Dialect of Straits Salish. Pages vi and vii from preface to prepublication copy of Canadian Ethnology Service Paper. National Museums of Canada. In Samish Indian Tribe 1986a.
- Hansen, Mary, et al.
- 1986 Affidavits of Mary Hansen and others. In Samish Indian Tribe 1986a.
- McCluskey, William
- 1927 Letter to Superintendent F.A. Gross. January 31. (Submitted in original petition). (Discusses ancestry and descendants of Boston Tom).
- Samish Indian Tribe
- 1986a Samish Petition for Federal Acknowledgment, § 83.9(g) Comment. August 7. (Petitioner's response to Proposed Finding. Part I, Narrative. Part II, Appendices.)
- 1986b Addenda to Samish Indian Tribe 1986a. November 20. (Additional Analysis of Social Survey of Samish Membership, Charts of 80 additional enrollees, current address list of membership and other materials).
- 1986c "Inconsistent Application of Standards by the Branch of Federal Acknowledgment." Appendix F, Samish Indian Tribe 1986a.

## Tulalip Agency

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Commissioner of Indian Affairs. p. 560. Washington, D.C.

## Underwood, Victor Sr.

1986 Affidavit. August 6. In Samish Indian Tribe 1986a.