

(7) Federal Register Notice of Final Determination

- February 02, 1987

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination That the Samish Indian Tribe Does Not Exist as an Indian Tribe

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary has determined that the Samish Indian Tribe, c/o Mr. Kenneth C. Hansen, P.O. Box 217, Anacortes, Washington 98221, does not exist as an Indian tribe within the meaning of Federal law.

This notice is based on a determination following a review of public comments on the proposed finding that this group does not meet three of the criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

A notice of the proposed finding to decline to acknowledge the Samish Indian Tribe was published in the **Federal Register** on Thursday, November 4, 1982 (page 50110, Volume 47, No. 214). The comment period required by the regulations (25 CFR 83.9(g)) was delayed several times in order to allow for the resolution of several issues concerning a Freedom of Information Act request by the Samish. The 120-day comment period began January 8, 1986. It was extended in May and again in August, and closed December 1, 1986.

The Samish submitted detailed reports, evidence, and arguments on August 7 in response to the proposed finding. Limited additional materials were submitted by letter of November 20. Letters of support were received from several private parties and two organizations in Washington State. These letters, however, contained little or no new evidence or argument not already considered in the proposed finding. A memorandum of support was received from the former Superintendent of the Bureau's Western Washington Agency, who had been part of a 1974 Bureau evaluation of Samish eligibility for recognition. The petitioner's response included a more detailed affidavit from this individual.

A letter opposing the petitioner was received from the legal representative of the Tulalip Tribes of Washington State. 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 Part 83. It contained no significant evidence concerning whether or not the Samish met the requirements of the regulations themselves.

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 some deficiencies were noted in the 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, and thus met criterion g.

The proposed finding concluded that the membership of the group consisted 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.

The proposed finding concluded that separate political functioning, derived from the independent village, gradually ended in the 1920s and 1930s, as the older generation of leadership died off and the Samish gradually became part of the emerging Swinomish and Lummi reservation communities. 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 the members, who had little affiliation with each other outside of the context of the organization. Therefore, the group was found to not meet criterion c of the regulations.

Based on the genealogical evidence available for the proposed finding, 42 percent of the petitioner's membership was 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. Therefore, the group was found to not meet criterion e of the regulations.

No evidence in the response to the proposed finding was presented 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 who were Indian descendants (as characterized above) or that this continued after the 1940s. No evidence was presented supporting 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 somewhat clearer evidence that a nonreservation Samish community had persisted longer after the end of the New Guemes village shortly after 1900 than had been previously determined. It also tended to support a conclusion that traditional Samish leaders within the Swinomish Reservation community functioned within the reservation's emerging political institutions and as well as being leaders of the Indian community Samish and that this continued to some degree until the 1940s.

The Samish submitted the results of a survey of a sample of the membership to measure the degree of social interaction within the group, 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.

There was little new data concerning the social character of the Indian descendants in the past. The petitioner contended that the Indian descendant portion of their membership's almost universal marriage to non-Indians for the past several generations 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.

Insufficient evidence was presented to show that the portion of the membership that was enrolled on a reservation or derived from such families was socially distinct from those reservation communities. The proposed finding concluded that these Samish had been merged into the reservation communities for several generations, even though some separate identity as Samish had been maintained. There was somewhat better evidence than previously available that a sharp distinction is made on the Lummi, but not concerning the Swinomish Reservation. Re-evaluation of the evidence also indicated that this portion of the Samish membership constituted about a quarter rather than a tenth of the petitioner's enrollment.

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 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 cases which were determined to be eligible for acknowledgment. Other comparisons are discussed in the report prepared to support this determination.

Based on additional evidence and arguments provided, we conclude that three additional family lines can trace their ancestry to the historic Samish tribe. One of the three family lines traces to a Noowhaha ancestor who had probably been incorporated in the Samish tribe in historic times and therefore should be considered to be of ancestry from the historic tribe. The total membership meeting the requirements of criterion e therefore changed from 58 to 74 percent.

As a result of the new evidence and re-evaluation of previous data, the factual conclusions in the final determination differ in some respects from those in the proposed finding. While the re-examination resulted in changes in factual conclusions concerning the history and character of the petitioner, these were not sufficiently different to warrant a change in the determination concerning any of the three criteria that the petitioner previously did not meet.

The arguments and evidence presented, some additional staff research, and re-evaluation of previously available data do not provide a basis for changing the conclusion in the proposed finding that the Samish do not meet three of the criteria for Federal Acknowledgment. It is determined therefore that the Samish do not meet the requirements necessary under Federal law for a government-to-government relationship with the United States.

In accordance with 25 CFR 83.9(j) of the Acknowledgment regulations, an analysis was made to determine what, if any, option other than acknowledgment would be available under which the petitioning group could make application for services and other benefits as Indians. No alternatives were found due to the lack of social and political cohesion of the group. Some individual members may be eligible now

or may become eligible in the future for enrollment with the recognized Swinomish or Lummi Tribes.

This determination is final and will become effective 60 days after the date on which this notice appears in the Federal Register unless the Secretary of the Interior requests reconsideration pursuant to 25 CFR 83.10(a-c).

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

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