Summary under the Criteria and Evidence for

Final Decision on Judicial Remand

Against Acknowledgment of the

Duwamish Tribal Organization

Reconsideration of September 2001 Final Determination

Prepared in response to the United States District Court's March 22, 2013, remand to the Department of the Interior on the Final Determination issued September 25, 2001, on a petition submitted to the Assistant Secretary – Indian Affairs for Federal acknowledgment as an Indian Tribe

Approved: JUL 24 2015
(Date)

Assistant Secretary – Indian Affairs

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ACRONYMS and/or ABBREVIATIONS in THIS REPORT

ASIA	Assistant Secretary – Indian Affairs
ATR	Anthropologist's Technical Report
BAR	Branch of Acknowledgment and Research
BIA	Bureau of Indian Affairs
CFR	*Code of Federal Regulations*
COIA	Commissioner of Indian Affairs
DOI	Department of Interior (Department)
DTO	Duwamish Tribal Organization (petitioner)
FR	Federal Register
FD	Final Determination
FD on Remand	Final Decision on Remand
GTR	Genealogist's Technical Report
HTR	Historian's Technical Report
IBIA	Interior Board of Indian Appeals
ICC	Indian Claims Commission
IRA	Indian Reorganization Act
NFAI	Northwest Federation of American Indians
OFA	Office of Federal Acknowledgment
PF	Proposed Finding
RFD	Reconsidered Final Determination
SOL	Office of the Solicitor, Department of the Interior

ISSUES RELEVANT TO THE FINAL DECISION ON REMAND

Bases for the Final Decision on Remand

On March 22, 2013, the Western Washington District Court vacated the Assistant Secretary – Indian Affairs' (ASIA or Assistant Secretary) Final Determination (FD), dated September 25, 2001, that declined to acknowledge the Duwamish Tribal Organization (DTO) as an American Indian tribe. The Court remanded the decision to the Department of the Interior (Department), ordering it to "consider the Duwamish petition under the 1994 acknowledgment regulations or explain why it declines to do so." The Court referred to former Acting ASIA Michael J. Anderson's January 19, 2001 unsigned hand edited draft decision ("Anderson Draft 2001") to acknowledge the DTO and stated, "Whatever the significance of that document, it clearly gave decision makers in the Department notice that consideration of the DTO petition under both sets of regulations might be appropriate" (Coughenour 3/22/2013, 18). The Court then concluded that the "Department's failure either to consider the Duwamish petition under both sets of guidelines or to provide some explanation for its differing treatment of the Duwamish and Chinook petitions, violated the fundamental norms of administrative procedure and was arbitrary and capricious" (Coughenour 3/22/2013, 18). The court did not address the merits of the decision under the criteria in the FD.

The United Stated filed a notice of appeal and a settlement was executed on May 5, 2014. The Ninth Circuit granted the motion to dismiss the appeal voluntarily on June 9, 2014. This Final Decision on Remand (FD on Remand) addresses the Court's procedural concerns by reevaluating the evidence in the record under the provisions of the 1994 revised regulations. It also includes an evaluation under the 1978 regulations, as well as references to the 1978 regulations to explain or clarify how the Department evaluated evidence in the 1996 Proposed Finding (PF) or in the 2001 FD, now superseded by this FD on Remand. Finally, this FD on Remand also refers to the Anderson draft. Anderson left the draft unsigned, and had not signed the required three copies of the Federal Register notice before the change in the Administration. Because the agency action was still pending within the Department when the new Administration took office, the new Administration became responsible for its content. For the reasons stated in the Federal Register notice on the FD, the new administration did not accept the Anderson draft and issued the FD not to acknowledge the DTO (66 FR 49966 [October 1, 2001]). This FD on Remand should be read together with the Summary under the Criteria and the technical reports that make up the PF. Unless otherwise specified, citations to the regulations in this report are to the 1994 revised regulations.

The PF identified the evidence that was sufficient to meet the mandatory criteria at 83.7(d), 83.7(e), 83.7(f), and 83.7(g) of the 1978 regulations; however, it also identified periods for which the evidence was insufficient to demonstrate the DTO had been identified as an "Indian entity" as required under criterion 83.7(a). It also discussed the lack of evidence concerning the continuous

existence of a "distinct American Indian community" and "tribal political influence or authority" as required under criteria 83.7(b) and 83.7(c) of the 1978 regulations.[1]

This FD on Remand concludes that the DTO petitioner does not meet criteria 83.7(a), 83.7(b), and 83.7(c) under either the 1978 or the 1994 regulations. This FD on Remand is based on a consideration of the evidence and arguments submitted with the DTO's petition for Federal acknowledgment as an Indian tribe, in DTO's response to the PF, and in third-party comments on the PF. The DTO did not respond to the third-party comments. Additionally, this FD on Remand evaluates any new evidence the DTO or third parties submitted to the Interior Board of Indian Appeals (IBIA) and to the Secretary following IBIA review. Finally, this FD on Remand is based on evidence submitted to the court and is based in part on the evidence the Department's researchers located or generated to verify and evaluate the petitioner's claims before the PF and FD.

The Department did not provide procedures by which the petitioner or others could provide any new argument or evidence before issuing the final decision on remand. The court did not order or reference any procedures for the Department to use during the decisionmaking process on remand. The court's decision, however, referenced both the FD and the Reconsidered Final Determination (RFD) on the Chinook Indian Tribe and the hand edited draft on the DTO, all of which included an evaluation under both the 1978 and 1994 acknowledgment regulations, 25 CFR Part 83. Each of these court-cited documents was based on the same evidence submitted during the administrative process under the 1978 regulations, through and including any review before the IBIA. In this remand, the Department treats the DTO in the same manner as the petitioners in the decisions and draft decisions referenced by the court by relying on the evidence submitted previously under the 1978 regulations and through the IBIA process.

The IBIA review process included in the 1994 regulations was available to petitioners proceeding under the 1978 regulations when the revised regulations became effective. The IBIA review process expressly provides the opportunity for petitioners and interested parties to submit new evidence to the IBIA. The DTO availed itself of the IBIA review process but offered no additional evidence either to the IBIA or subsequently in its briefs before the Secretary.

The 1994 regulations maintain the seven mandatory criteria contained in the 1978 regulations. The standards of proof did not change, i.e., the 1978 regulations require as comprehensive a record as the 1994 regulations. Therefore, reopening the record on remand is not justified based on the regulatory revisions.

The remand by the Court is in the context of the 1994 regulations. Those regulations explicitly prohibit re-petitioning. Submission of new or additional evidence by the petitioner following a

[1] The 1994 regulations did not change the standard of proof for weighing evidence. As the preamble to the 1994 regulations states, "additional language has been added to clarify the standard of proof," which would continue to be that "facts are considered established if the available evidence demonstrates a reasonable likelihood of their validity" (59 FR 9280).

final and effective final determination is tantamount to re-petitioning and therefore cannot be accepted. We note also that the Anderson draft that was favorable to the DTO was based on the same evidence as presented for its evaluation under the 1978 regulations.

Finally, the court in its decision of January 10, 2010, found that it could take judicial notice of all but one of the documents referenced by the Duwamish for addition to the record and that notes on the last referenced document were already part of the record. The court found no requirement to add the referenced sources of law and document to the administrative record. This FD on Remand, however, considered those documents.

On May 29, 2014, the Department published in the Federal Register a proposed rule revising Part 83 (79 FR 30766-30781). On October 28, 2014, K&L Gates on behalf of the petitioner requested that the petition be reviewed under the proposed revised regulations and "be put on hold" with other acknowledgment petitions. It argued that it was the lead signatory of the 1855 Treaty of Point Elliott and also requested that the record on remand be reopened, which request is addressed above (Freedman, 10/28/2014). The Muckleshoot Tribe responded by letter dated November 7, 2014 (Reich, 11/7/2014). The Muckleshoot denied that the petitioner was the lead signatory, citing *United States v. Washington* and arguments presented in *Hansen v. Salazar*. Further, the Tribe cited findings in the PF and FD that were inconsistent with a favorable conclusion under the proposed revised regulations and pointed out that unlike other petitioners in the administrative process, DTO had proceeded to a FD, and the Department was subject to a court order. Muckleshoot objected to a reopening of the record. The DTO replied, arguing that it had a "statutory right" to proceed under the yet to be adopted "2015 regulations" and replying to other Muckleshoot arguments (Freedman, 12/24/2014).

The provisions cited by DTO were part of a proposed rule and provide no "statutory right" to proceed under regulations that are not yet in effect. A fundamental problem identified in the PF and FD was the DTO formed in 1925 and was not a continuation of the D'Wamish and other allied tribes. A second fundamental problem was that the DTO did not provide sufficient evidence of community or political influence and authority at any time, even after it formed in 1925. The DTO would still face these fundamental problems under the revisions to Part 83.

The DTO petitioner is not similarly situated to other petitioners "on hold" pending the issuance of revised regulations. It has exhausted the Part 83 process, including review by the Secretary following IBIA proceedings. Its decision was final and effective, subject to judicial review. The fact that the FD was vacated based on the procedural issues, does not justify another review based on yet to be final regulations. The DTO is the only petitioner on remand, and no other petitioner before the Department is similarly situated. It has had the benefit of a PF, FD, IBIA, and Secretarial review, and now a FD on Remand, all of which reach the same ultimate conclusion. The Department has also determined that its resources are better allocated to petitioners who have yet to receive a final agency decision. The DTO has been reviewed under both the 1978 and 1994 regulations.

The Court decision referenced the Chinook RFD. The table on the following page includes a brief chronology of the Chinook and DTO decisions.

Brief Chronology of the Chinook and Duwamish Petitions

Decision Document	Regulations Applied	ASIA & Date Signed	FR Notice Date	Comments
Duwamish PF Not to acknowledge	1978	Deer 6/18/1996	6/28/1996	Duwamish requested to continue under the 1978 regulations.
Chinook PF Not to acknowledge	1978	Deer 8/11/1997	8/22/1997	Chinook initially requested to continue under the 1978 regulations.
Chinook FD To acknowledge	1978+1994	Gover 1/3/2001	1/9/2001	Chinook requested consideration under the 1994 regulations.[2] Three interested parties requested reconsideration before the IBIA.
Duwamish Anderson Draft To acknowledge	1994	[1/19/2001]	none	Incomplete, unsigned (retained some language evaluating the petition under the 1978 regulations)
Chinook IBIA decision		8/1/2001		Referred issues to Secretary as possible grounds for reconsideration of FD
Duwamish FD: Not to acknowledge	1978	McCaleb 9/25/2001	10/1/2001	Duwamish requested reconsideration before IBIA.
Chinook Secretary Referred		11/6/2001		Secretary referred issues to the ASIA as possible grounds for reconsideration of the Chinook FD
Duwamish IBIA decision		1/4/2002		Referred issues to Secretary as possible grounds for reconsideration of FD
Duwamish Secretary Did Not Refer		5/8/2002		FD final and effective 5/8/2002
Chinook RFD: Not to acknowledge	1978+1994[3]	McCaleb 7/5/2002	7/12/2002	RFD final and effective 7/5/2002

All of the Department's published findings and the IBIA decisions are available online at the ASIA's Web site: www.bia.gov/whoweare/ASIA/OFA.

[2] Chinook FD 2001, 2.

[3] The Chinook RFD evaluated the evidence under both the 1978 and 1994 regulations "to resolve the questions raised in this case [Chinook] about whether the result would be different under the 1994 revised regulations than under the original 1978 regulations" (Chinook RFD 2002, 3).

ADMINISTRATIVE HISTORY

Administrative History Leading to the Proposed Finding

The Duwamish Indian Tribe (Duwamish Tribal Organization, DTO), headquartered in Seattle, Washington, filed a letter dated June 7, 1977, expressing its intent to petition for Federal acknowledgment as an Indian tribe. The BIA published notice of this letter of intent in the Federal Register (FR) on January 2, 1979 (44 FR 116). The DTO submitted a documented petition in November 1987 and provided additional materials in 1988 and 1989 to supplement its petition. The Branch of Acknowledgment and Research (BAR) conducted a preliminary review of these materials to determine if the petition was ready for active consideration.[4] The BAR's letter on April 20, 1990, notified the DTO of "obvious deficiencies" that needed to be addressed in order for the petition to be considered "ready" for active consideration. The petitioner submitted additional materials and the Department placed the DTO petition on active consideration on May 1, 1992. During active consideration of the DTO petition BAR's research team conducted a field visit in June 1992 and the DTO submitted an additional genealogical report in that same month. The PF was due to be issued in 1993; however, several administrative problems interrupted the schedule, and the ASIA extended the period for active consideration until those problems were resolved and the research team could complete its review and analysis.

During the transition from the 1978 regulations to the 1994 regulations, the Department offered each petitioner with completed petitions an opportunity to choose which version of the regulations would be used in evaluating its petition. The DTO opted for a review under the 1978 regulations (Maxwell-Hansen 4/5/1994). The Department therefore proceeded with the evaluation under the 1978 regulations.[5] At no time during the active consideration for either the proposed or final determinations did the DTO request it be reviewed under the provisions of the 1994 regulations.

The team of experts in anthropology, genealogy and history assigned to the petition evaluated the evidence. Its evaluation was peer reviewed by other experts within the BAR that resulted in a recommended PF from BAR to the ASIA. The Duwamish PF includes three technical reports along with the Summary under the Criteria and Evidence. This PF described the analysis and evaluation of the evidence submitted by the petitioner, any third parties, and gathered by BAR during the evaluation process. Following review by officials in BIA and the Office of the

[4] At the time of the PF in 1996, BAR, within the Office of Tribal Services in the Bureau of Indian Affairs (BIA), was principally responsible for administering the regulations, 25 CFR Part 83. It became the Office of Federal Acknowledgment (OFA) under the ASIA on July 28, 2003. The duties and responsibilities of OFA remained the same as those of BAR. In this FD on Remand, OFA should be read to mean BAR when discussing activities conducted prior to July 28, 2003. The acronym "BAR" appears in quoted materials and elsewhere in this report if necessary to maintain clarity.

[5] On September 25, 2001, Assistant Secretary Neal A. McCaleb affirmed the PF and issued a FD declining to acknowledge the DTO as an Indian tribe under the 1978 regulations.

Solicitor, and briefing of the ASIA, the ASIA made the decision in the PF not to acknowledge the petitioner as an Indian tribe (BAR Briefing Paper, 3/1/1996). Assistant Secretary Ada Deer signed the PF on June 18, 1996. Decisions on Federal acknowledgment of Indian tribes are made by ASIA, under the authority delegated to him or her by the Secretary of the Interior.

The Department published notice of the PF to decline acknowledging the DTO as an Indian tribe in the Federal Register on June 28, 1996 (61 FR 33763). This finding was based on a determination that the petitioner met criteria 83.7(d), 83.7(e), 83.7(f), and 83.7(g), but did not meet criteria 83.7(a), 83.7(b), and 83.7(c) of the acknowledgment regulations (25 CFR Part 83, 1978). The 1978 regulations, in accordance with section 83.9(g), gave the petitioner and third parties 120 days to submit statements and evidence to rebut or support the evidence relied upon in the 1996 PF.

Administrative History since the Proposed Finding

After publication of the PF in 1996, the DTO requested, and the Department granted, four extensions to the DTO deadline for submitting its comments on the PF. In a letter dated December 22, 1997, the Department notified the petitioner that it would grant no further extensions, and the reply period closed January 21, 1998. The DTO had a total of 570 days to prepare its comments on the PF.[6]

The Department's policy allowed petitioners who had opted to continue under the 1978 regulations, such as the DTO petitioner, to benefit from the §83.10(k) provisions in the 1994 regulations and respond to third party comments. Thus, DTO had a 60-day period to respond to third party comments. That response period closed March 23, 1998.[7] The BAR notified the DTO on February 28, 2000, that the BAR had assigned staff researchers to begin work on the Duwamish FD.

On December 22, 2000, BAR sent its draft recommended FD denying acknowledgment simultaneously to the ASIA, to the Director of the Office of Tribal Services in BIA, and the Office of the Solicitor (SOL).[8] The BAR concluded that the totality of the evidence in the record did not overcome the deficiencies noted in the PF. The BAR recommended that the DTO petitioner did not meet the requirements of criteria 83.7(a), 83.7(b) and 83.7(c). The BAR

[6] Under §83.10(i) of the 1994 regulations, a petitioner has 180 days to submit arguments and evidence to support or rebut the PF, and the ASIA has the discretion of extending the comment period an additional 180 days with a showing of good cause.

[7] On February 23, 2000, OFA received an "out-of-time" comment from Stephen Dow Beckham, entitled "Puget Sound Geography, Duwamish Place Names Recorded in 1919-22 by Theodore Talbot Waterman," which is now evaluated in this FD on Remand.

[8] At the time of the 2001 draft DTO FD, BAR (now OFA) was a Branch under the Director of the Office of Tribal Services in the Bureau of Indian Affairs.

prepared the decision document (Summary under the Criteria) and the accompanying charts, which together described the evidence under each of the mandatory criteria.

On January 16, 2001, BAR staff members met with Acting ASIA Anderson to discuss the Duwamish FD and answered his questions (BAR Memorandum to the File, 1/22/2001 and 1/29/2001). The BAR finalized the surname packet with the recommended FD declining to acknowledge the Duwamish petitioner. The Office of Tribal Services in BIA surnamed the recommended FD on January 17, 2001, and the SOL surnamed it on January 18, 2001.

On January 18, 2001, Anderson informed BAR that he planned to issue a positive FD for the Duwamish (Anderson to Fleming 1/18/2001, 11:36 am).[9] The next day, he provided his Federal Register notice for the Duwamish FD to BAR, and subsequently his handwritten edits on the December 22, 2000, recommended FD. The BAR prepared the decision documents and delivered it to the Acting ASIA for his signature (BAR Memorandum 1/22/2001 and 1/29/2001). This packet included a "Memorandum of Non-concurrence" from BAR (BAR Memorandum 1/19/2001).

Anderson did not sign his draft or the required three copies of the Federal Register notice before his term as Acting ASIA ended. Because the agency action was still pending within the Department when the new Administration took office, the new Administration became responsible for its content, and for the reasons stated in the Federal Register notice on the FD, the new administration did not accept Anderson's draft and issued the FD not to acknowledge the DTO (66 FR 49966, October 1, 2001).

The new Administration reviewed the Acting ASIA's unsigned draft as well as BIA's recommended FD. Neal A. McCaleb, the ASIA in the new Administration, completed his review and signed the FD on September 25, 2001. The Federal Register published his decision on October 1, 2001. The final determination found "that the DTO has not submitted sufficient evidence to meet criteria 83.7(a), (b), and (c)" (66 FR 49966-49967). Therefore, the DTO

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[9] ASIA McCaleb would reject Anderson's interpretation of the 1925 and other legislative acts (McCaleb 2002, 15). See the Chinook RFD for additional details. The RFD concluded that the January 2001 FD "improperly departed from the standards contained in the acknowledgment regulations, and cannot be sustained without a more complete explanation" (Chinook RFD 2002, 1). In particular,

> under either the 1978 or the 1994 regulations, the Final Determination misinterpreted the effect and evidentiary character and weight to be given the 1911, 1912, and 1925 legislation [the Quinault Allotment Act and two claims acts]. Further, the FD improperly departed from prior Departmental interpretations and the historical evidence regarding those statutes in construing them as strong evidence of Federal acknowledgment within the meaning of the acknowledgment regulations. (Chinook RFD 2002, 15)

Therefore, the "precedent" Anderson attributed to the Chinook finding and relied on in his draft on Duwamish was never in effect for the Department. The Chinook FD was never final and effective.

petitioner did not meet all seven mandatory criteria under Part 83, and he declined to acknowledge it as an Indian tribe.

On December 31, 2001, the DTO petitioner, as the "Duwamish Tribe of Washington," filed a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the provisions of Section 83.11 of the 1994 regulations. The DTO did not submit any new evidence with its IBIA appeal.

The IBIA's January 4, 2002, order docketed and dismissed the DTO's request for lack of jurisdiction (37 IBIA 95). The IBIA referred two issues to the Secretary of the Interior:

(1) Whether the January 19, 2001, action taken by the Acting Assistant Secretary
(2) was a final determination to acknowledge Petitioner; and
(3) if so, whether the September 25, 2001, final determination should be retracted and the January 19, 2001, final determination reinstated. (37 IBIA 95)

Pursuant to 25 CFR §83.11(f)(4), the petitioner submitted comments to the Secretary of the Interior on the referral on March 11, 2002. No other parties commented on the IBIA referral.

On May 8, 2002, Secretary of the Interior Gale A. Norton declined to request that the ASIA reconsider the FD against acknowledgment of the DTO (Secretary's Decision Document 5/8/2002). Secretary Norton's memorandum to the Assistant Secretary analyzed the issues referred to her as possible grounds for reconsideration, referenced the procedural flaws associated with the Anderson draft, and considered that the Department's Office of the Inspector General (OIG) investigated the surrounding circumstances.[10] She expressed that she was "satisfied that the Duwamish Final Determination conforms to the OIG's findings on this matter" and that she did "not want to disturb the OIG's final report" (Secretary's Decision Document 5/8/2002).

The Department's September 25, 2001 Final Determination declining to acknowledge the Duwamish Tribal Organization as an Indian tribe became effective on May 8, 2002.

On May 7, 2008, "Cecile Hansen, in her capacity as Chairwoman of the Duwamish Tribe, and the Duwamish Tribe" petitioned for judicial review and other relief in the U.S. District Court for the Western District of Washington at Seattle (Hansen 5/7/2008 originally filed as *Hansen v. Kempthorne now Hansen v. Jewell*). This Final Decision on Remand is issued in response to the judicial review (Coughenour 3/22/2013, 18).

[10] Investigative Report, "Allegations Involving Irregularities in the Tribal Recognition Process and Concerns Related to Indian Gaming," pages 5-7, U.S. Department of the Interior Office of Inspector General, Feb. 2002 (IG Report 2/2002).

Overview of the 1996 DTO Proposed Finding

The ASIA found in the PF that under the 1978 regulations, the DTO met criteria 83.7(d), 83.7(e), 83.7(f), and 83.7(g), but did it not meet criteria 83.7(a), 83.7(b), and 83.7(c) (DTO PF Summary, 1-20).

- Under criterion 83.7(a) the PF determined that the historical Duwamish tribe met criterion 83.7(a) before 1900, but the DTO petitioner, having formed in 1925, met criterion 83.7(a) only intermittently since 1939.

- Under criterion 83.7(b) the PF found that the DTO was not the continuation of the historical Duwamish tribe and did not meet criterion 83.7(b) at any time.

- Under criterion 83.7(c) the PF found that the DTO was a new organization established in 1925 and therefore did not meet criterion 83.7(c) at any time before that date, nor did the DTO arise out of an earlier organization. In addition, the petitioner did not meet criterion 83.7(c) at any time thereafter.

- Under criterion 83.7(d), the PF found that the DTO petitioner submitted a copy of its governing document and membership requirements, thus meeting this criterion.

- Under criterion 83.7(e), the PF found that about 99 percent (386 of 390) members on the petitioner's 1992 membership list demonstrated descent from historical Duwamish Indians. Therefore, the petitioner met criterion 83.7(e).

- Under criterion 83.7(f), the PF found that there was no evidence that a significant proportion of the petitioner's membership belonged to any federally recognized tribe. Therefore, the petitioner met criterion 83.7(f).

- Under criterion 83.7(g), the PF found that neither the petitioner nor its members were the subject of congressional legislation that expressly terminated or prohibited the Federal relationship. The petitioner, therefore, met criterion 83.7(g).

The PF's Summary under the Criteria described how the Department weighed evidence available to that date to determine whether the DTO met each of the mandatory criteria under the 1978 regulations. A substantial body of evidence, derived from a variety of sources rather than a single document, provided the foundation for the PF. The Summary under the Criteria did not specifically describe every piece of evidence relied upon; rather, it summarized how the evidence did or did not meet the criteria. The technical reports, however, did discuss the weighing of specific evidence.

New Materials Considered for the FD on Remand

The FD on Remand takes into consideration all materials in the administrative record at the time of the FD, materials before the IBIA and before the Secretary when on May 8, 2002, the Secretary

declined to refer any issues to the ASIA, and materials that were submitted in the court proceedings. The OFA did not itself locate any new documents for the FD on Remand.

Petitioner's Response to PF
The petitioner's response to the PF consisted of a narrative report by the DTO attorney, Dennis J. Whittlesey, which BAR received on January 21, 1998, and corrections to that report received on the same day. The petitioner also submitted several categories of materials in response to the PF evaluation under criteria 83.7(a), 83.7(b), or 83.7(c).

Materials submitted in conjunction with criterion 83.7(a) included Dr. Kenneth D. Tollefson's affidavit dated January 2, 1998, his curricula vitae, and his seven articles published between 1989 and 1996.

The petitioner submitted reports by Linda M. Dombrowski and Dr. Stephen Dow Beckham concerning criterion 83.7(b). Dombrowski's report, "Continuity of Duwamish Tribal Membership," was dated January 1998. Beckham's report, "Duwamish Indian Tribe: Tribal Initiatives, 1896-1935 and the Continuity of Membership," was dated January 1998. Appendices were attached to both of these reports.

The petitioner submitted a report by Dr. Michael D. Roe, "Duwamish Indian Modern Community," in conjunction with discussion of criterion 83.7(c), and a copy of Roe's curricula vitae.

The petitioner submitted 47 file folders of genealogical charts and data in an "Exhibits Volume." The petitioner identified some of the individuals named in these charts as being on various membership lists for either the historical Duwamish tribe or the present-day DTO.

On February 23, 2000, the BAR received a comment after the close of the public comment period. This comment was a report prepared for the petitioner by Stephen Dow Beckham, dated September 30, 1999, and entitled "Puget Sound Geography: Duwamish Place Names Recorded in 1919-22 by Theodore Talbot Waterman." Pursuant to Section 83.10(l)(1), the comment was not considered in the preparation of the FD. This submission, however, was considered for the PF and is not "new" evidence. The bibliography for the PF cited the personal papers of T. T. Waterman at the National Anthropological Archives at the Smithsonian Institution in Washington, D.C. Beckham cited Waterman's "Puget Sound Geography" as "MS No. 1864"(Beckham 9/30/1999), which appears to be identical to Waterman's papers in "Box 1864 National Anthropological Archives, Smithsonian Institution, Washington, D.C.," cited in the PF.

Third-Party Comments
The third party comments to the PF consist of four letters BAR received between October 10, 1996, and February 21, 1997. Individuals submitted three of the letters, and the Tulalip Tribes of Washington, a federally recognized Indian tribe in western Washington, submitted one letter. These comments were not extensive. The petitioner did not respond to the materials submitted by third parties.

Petitioner's Evidence Submitted to the Court
Appendix I in this FD on Remand consists of a chart summarizing the exhibits attached to the DTO court filings: 114 exhibits in Plaintiff's Motion for Summary Judgment, Document 96, filed November 16, 2012, and 17 exhibits in Plaintiff's Motion for Summary Judgment on First Cause, Document 69 filed April 13, 2012. Very few of these documents are actually new to the record, but are general research materials, such as previous acknowledgment findings or general reference works. Sections dealing with the criteria in this FD on Remand discuss these documents where relevant.

Third-Party Evidence Submitted to the Court
The only third party submitting court documents was the federally recognized Muckleshoot Indian Tribe, which submitted three documents, all of which were in the record for the DTO 2001 FD. Appendix I to this FD on Remand also lists these three documents. They are discussed under criterion 83.7(f).

UNAMBIGUOUS PREVIOUS FEDERAL ACKNOWLEDGMENT

Section 83.8 in the 1994 Regulations

The Department may evaluate a petitioner under section 83.8 of the 1994 regulations if the petitioner provides substantial evidence of unambiguous previous Federal acknowledgment (83.8(a)). First, the petitioner must show that the Federal Government took an action with a historical[11] Indian group "clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States" (83.1). Second, the petitioner must show it is the same group as the previously acknowledged historical Indian tribe, or it evolved as a group out of that tribe.

The DTO petitioner has already received a PF and a FD (now vacated) under the 1978 regulations, and the Department has thoroughly evaluated the evidence that relates to previous acknowledgment in those decision documents. Both earlier findings identified a Duwamish treaty tribe, as does this FD on Remand. However, the evidence does not show that the DTO is a continuation of the historical Duwamish tribe or that it evolved as a group out of the historical tribe. Even though its current members descend from the historical Duwamish tribe, the DTO does not meet the second requirement to proceed under section 83.8. The evidence did not demonstrate that the DTO could advance a claim to be part of the "D'Wamish and other allied tribes" with which the Federal Government had a political relationship after treaty times. Additionally, the DTO ancestors did not leave the historical tribe as a group soon after the treaty and participate in group activities between 1855 and the first decades of the 1900s.[12]

DTO's Relationship to the Historical Duwamish Tribe

The Federal Government treated with the historical Duwamish Indian tribe and other allied Indian tribes at the 1855 Treaty of Point Elliott. The DTO petitioner claims to be the continuation of the Duwamish treaty tribe. The petitioner, however, must demonstrate it is a continuation of that treaty tribe or has evolved as a group from it to benefit from its previous recognition under section 83.8 of the 1994 regulations.

[11] According to section 83.1 Definitions of the 1994 regulations, "Historically, historical, and history means dating from first sustained contact with non-Indians."

[12] While the Chinook presented some evidence of community between 1854 and 1920, the Duwamish did not (Chinook RFD, 2002, 78). Similarly, the Snoqualmie Tribal Organization through external identifications presented evidence of Federal recognition of a government-to-government relationship "clearly and continually from 1859, when the United States Senate and the President ratified the Treaty of Point Elliott, to sometime between 1955 and 1961" (Snoqualmie FD, 1997, 1).

The 1855 treaty created four Indian reservations. For about 70 years, BIA and Congressional appropriation acts referred to the tribes on these treaty reservations as the "D'Wamish and other allied tribes," language that had appeared in the treaty. Over time, the various tribes on each of these reservations combined and reorganized their separate tribal business committees. By 1925, a consolidated government on each reservation administered the business interests and resources of the formerly separate tribal entities on each reservation.

The four consolidated tribes currently bear the names of the four reservations: Lummi Tribe of the Lummi Reservation, Suquamish Tribe of the Port Madison Reservation, Swinomish Indian Tribal Community, and Tulalip Tribes. These reservation treaty tribes are located in western Washington and are the continuation of the "D'Wamish and other allied tribes" referred to by the 1855 treaty and in subsequent appropriation legislation.

In addition, a few Duwamish tribal members moved onto Muckleshoot Reservation, currently known as the Muckleshoot Indian Tribe, established under a different treaty, because they did not want to move to the west side of Puget Sound.[13] Thus, five Federal tribes have had many descendants of the historical Duwamish tribe among their members from the date they were established to the present. These five Indian tribes have continuously maintained their Federal relationships; they have current as well as previous acknowledgment. The DTO members and their ancestors, however, generally, never enrolled, and are not enrolled presently, in these five recognized tribes.[14] The DTO ancestors were not among the "D'Wamish and other allied tribes" which populated four of these reservations after the 1855 negotiations and received appropriations through legislation.[15] Thus, the Federal relationship with the "D'Wamish and other allied tribes" is not evidence for the DTO.

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[13] The PF explained why Muckleshoot became home to some Duwamish:

> . . . because the Duwamish resisted moving across the Sound to Port Madison, Agent Simmons recommended that they be persuaded to settle on an expanded Muckleshoot reservation (Simmons 7/1/1860). . . . established by executive order in 1857. Although that reservation had been created to carry out the 1854 treaty of Medicine Creek, Simmons argued that it should be considered a reserve for the tribes of the Point Elliott treaty. When the Muckleshoot reservation was re-defined by executive order in 1874, however, the order and its background correspondence did not explicitly provide the reserve for Duwamish use (Kappler 1904, 1:918; Smith 4/8/1874). The Swinomish, Lummi, and Tulalip reserves all were expanded in 1873 by executive order, and the Lummi order did specify that the lands of that reserve were "for the use and occupation of the Dwamish and other allied tribes of Indians" (Kappler 1904, 1:917, 925-926). The Indian Office did consider the Muckleshoot reserve to be under the jurisdiction of the Tulalip Agency, together with the four treaty reservations. In 1874, the Indian Office thus stated that the Tulalip Agency provided five reservations of 52,648 acres for a population of 3,900 (Smith 11/1/1874). (DTO PF HTR 1996, 58)

[14] The section of this report on criterion 83.7(f) discusses the less than 3 percent of the DTO membership that appears to be enrolled at Muckleshoot.

[15] In court pleadings, the petitioner claims that all other tribes that brought claims under the 1925 claims act are now acknowledged. They state that Snohomish and Skykomish are not recognized as independent tribes, but as

Additionally, the petitioner did not demonstrate it evolved as a group out of the historical treaty tribe. The DTO petitioner needed to provide some evidence that it represented a group of Duwamish who broke away from the historical tribe and that these DTO ancestors participated in group activities. The available evidence indicates that, even though its members descend from the historical treaty tribe, the DTO petitioner and its members did not socially interact after leaving the historical tribe.

Instead, the evidence shows that individuals, and individual families left the tribe one by one. Some of the families left before 1855. The DTO ancestors dispersed throughout western Washington, where, as isolated families, they established separate homes before the 1880s. For more than 80 years, evidence does not show these individuals and families had contact or acted together in a separate Indian entity that would formally organize as the DTO in late 1925. A few families participated in Thomas Bishop's Northwest Federation of American Indians (NFAI), an intertribal claims organization. Charles Satiacum, who was closely associated with Bishop, listed them on a 1915 document with other Duwamish descendants. Indian Agent Charles Roblin, who created a schedule of unenrolled Indians between 1917 and 1919, listed others. None of these efforts represents actions of a separate and distinct Duwamish entity composed of DTO ancestors who left the Duwamish tribe together and would evolve to become the DTO.

By the 1880s, most of DTO's Duwamish ancestors born before 1855 had died or left the historical tribe. Between 1880 and 1925, there is little evidence of social or political interaction among the petitioner's ancestors, including those born before 1855. In late 1925, a few Duwamish descendants set up the DTO, comprised of individuals from throughout western Washington, most of whom were not on reservations, and therefore, not a part of the "D'Wamish and other Allied Tribes," named in congressional appropriations. It was not until 1939 that outsiders identified this organization as a Duwamish Indian entity.

The evidence contrasts with that of the Snoqualmie petitioner, which presented evidence that it continued to be part of the Snoqualmie tribe acknowledged by the Treaty of Point Elliott in 1855 until the organization of the tribal government on the Tulalip Reservation. After the formation of the reservations government, the Snoqualmie Tribal Organization, then known as Jerry Kanim's Band, left the reservation in a group and eventually became acknowledged as a separate, non-reservation tribal entity (Snoqualmie FD 1997, 2).

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component parts of the Tulalip Tribes, and that Whidbey Island [Lower] Skagit, and Kikiallus are also not independently recognized, but are two of the four historical tribes making up the federally-recognized Swinomish Indians of the Swinomish Reservation (Pls. Opp'n 1 n.2.). So too, the Duwamish are recognized as a component of four currently recognized tribes. The petitioner Snohomish Tribe of Indians was denied Federal acknowledgment in 2003 and the decision upheld in court. *Evans and Snohomish Tribe of Indians v. Salazar,* 2011 U.S. Dist. LEXIS 34909 (W.D. Wash. 2011).

Anderson Draft's Language Concerning Section 83.8

The Anderson draft did not expressly analyze the petitioner under section 83.8, for previous acknowledgment. Although his draft crossed out the PF's factual conclusions that bear on whether the petitioner may be evaluated as a previously acknowledged tribe, he did not explain what evidence he relied on to make the proposed modifications. The draft notes "The PF found that these 19th century identifications of a historical Duwamish tribe did not identify the petitioner" but "This FD finds that it [DTO] evolved from the historical Duwamish tribe. The FD finds that it is an evolution from the Historical tribe, given that tribe's character with the nature of their historical circumstances" (Anderson Draft 2001, 16).

The Acting ASIA did not explain how or when the petitioner evolved out of the historical Duwamish Indian tribe, which continued primarily on the four reservations set up under the 1855 treaty, or how he addressed the evidence discussed above that DTO's ancestors left the historical tribe as individuals. He then used Federal relationships, legislation, and other evidence pertaining to the reservation tribes before 1925 as evidence that the petitioner continuously existed and met criteria 83.7(a), 83.7(b), and 83.7(c), for the years before 1925. He maintained that the evidence about appropriation legislation for the "D'Wamish and other allied tribes" on the reservations to 1923 allows DTO "to overcome the limited" evidence to demonstrate the criteria and "finds under re-examination greater weight in the statutory history outlined by petitioner" (Anderson Draft 2001, 17-27).[16]

The Department concludes that the 1925 claims legislation is not a basis for unambiguous Federal acknowledgment (Anderson Draft, 20). This conclusion is based on the extensive analysis provided of this statute in the Chinook RFD, pp. 15-16; 28-32. The language of the statute must be evaluated in the context of its specific effect and function. As provided in the Chinook RFD, the 1925 legislation sought to allow claims against the United States based on historical events and historical tribes, "whether or not those tribes still existed as tribes" (Chinook RFD, 30). For descendants to organize for purposes of bringing a claim did not require that it be organized as, or function as, a political or governmental entity, and as such, is not evidence of unambiguous Federal acknowledgment.

The Department agrees that appropriation legislation represents unambiguous Federal acknowledgment, but it is of the federally recognized "D'Wamish and other allied tribes" represented by four reservations. The DTO and its ancestors, however, were not part of the "D'Wamish and other allied tribes," because they had left those tribes as individuals or individual families before 1880, and there is no evidence that they continued to connect, politically or socially, to those reservation entities the appropriations served.

[16] Anderson based his weighing of evidence on the Chinook 2001 FD that was not yet final. Subsequently, the Chinook Reconsidered FD rejected the evidentiary weight previous ASIA Kevin Gover gave to claims legislation before the ICC, which Anderson relied on for this DTO draft.

The 2001 draft continues, "While we will not presume continuity of tribal relations, neither should we presume abandonment of tribal relations" (Anderson Draft 2001, 21). The draft, however, did not address the burden of proof the regulations place on petitioners, including those petitioners that were previously recognized. Even though the 1994 regulations reduce and streamline the evidentiary burden for previously acknowledged petitioners by reducing the periods during which petitioners must meet some criteria, they still place a burden of proof on petitioners to satisfy the criteria under the reasonable likelihood regulatory standard of proof. See 83.6(d), which states: "[t]he Department cannot accord acknowledgment to petitioners claiming previous acknowledgement without a showing that the group is the same as one recognized in the past." 59 FR 9282. The draft did not cite any evidence showing how DTO ancestors were part of the "D'Wamish and other allied tribes" between 1855 and 1925 or 1939, and the evidence showed them living elsewhere.

Summary under Section 83.8

The evidence does not support the petitioner's claims of unambiguous previous Federal acknowledgment. First, it was not part of the "D'Wamish and other allied tribes" with whom the Federal Government had a relationship. The petitioning group is not the same entity as the historically acknowledged tribe. Nor does the evidence support the contention that, as a group, DTO evolved out of the historical Duwamish tribe, or out of a later continuation of that historical Indian tribe, and participated in group activities at various times from 1885 to about 1925. Therefore, the petitioner may not be evaluated under section 83.8 for previously acknowledged petitioners, and must satisfy the seven mandatory criteria as provided at section 83.7(a) through 83.7(g). Even if it were a previously recognized tribe, it would not meet criteria 83.7(a) through (c) as modified by section 83.8(d)(1) through (3).

Even if the DTO petitioner were evaluated under section 83.8 of the 1994 regulations–the expedited provision for previously unambiguously recognized tribes–the result would not differ from the findings under section 83.7 of the 1978 and 1994 regulations. The following criterion-by-criterion discussion explains this statement further:

Criterion 83.7(a), under the 1978 regulations, requires outside observers to have identified the petitioning group since the claimed historical Indian tribe's first sustained contact with non-Indians. Under the 1994 regulations, criterion 83.7(a) was modified to require identification since 1900. However, as modified by section 83.8(d)(1), criterion (a) requires the petitioning group to have been identified as an Indian entity on a substantially continuous basis since the last date of Federal acknowledgment. In the case of the DTO petitioner, there is little difference between the date of first sustained contact in the mid-1850s and the date of the 1855 treaty. Therefore, the evaluation under criterion 83.7(a), as modified by section 83.8(d)(1), under the 1994 regulations and the evaluation under the 1978 regulations are essentially the same. Because outside sources did not identify the petitioner between 1855 and 1939, it would not meet criterion 83.7(a) as modified by 83.8(d)(1). The evaluations of DTO under both regulations found that outside sources did not identify the petitioner as a separate entity at any time before 1939. Therefore, the evaluation of DTO, if it had qualified as a previously recognized tribe, would not meet 83.7(a), as modified by 83.8(d)(1), of the 1994 regulations.

Criterion 83.7(b), under the 1978 regulations, requires the petitioning group to have been a distinct community since the claimed historical Indian tribe's first sustained contact with non-Indians. Criterion 83.7(b), as modified by section 83.8(d)(2) under the 1994 regulations, requires the petitioning group to demonstrate it was a distinct community "at present." The modification of this criterion under section 83.8 limits the period of evaluation but does not change the requirements of the criterion for that period. For the period "at present," the evaluation of this criterion under the 1994 regulations, as modified by section 83.8, is the same as the evaluation for the "at present" period under the 1978 regulations. The DTO petitioner did not meet criterion 83.7 (b) "at present" under either the 1978 regulations or the 1994 regulations. Therefore, the evaluation of DTO, if it had qualified as a previously recognized tribe, would have found that the petitioner did not meet section 83.7(b) as modified by section 83.8(d)(2), of the 1994 regulations.

Criterion 83.7(c), under the 1978 regulations, requires the petitioning group to have exercised political influence or authority over its members since the claimed historical Indian tribe's first sustained contact with non-Indians. This criterion, as modified by section 83.8(d)(3) under the 1994 regulations, requires the petitioning group to demonstrate it exercised political influence or authority over its members for a period defined as "at present." The DTO petitioner did not meet criterion 83.7(c) under either regulation at any time, including the present, and no knowledgeable observers identified leaders of a DTO entity before 1939. Therefore, the evaluation of DTO, if it had qualified as a previously recognized tribe, would have found that the petitioner did not meet section 83.7(c), as modified by section 83.8(d)(3), of the 1994 regulations.

SUMMARY CONCLUSIONS UNDER THE CRITERIA FOR THE FD ON REMAND

The DTO petitioner has not been identified as an Indian entity from first sustained contact to the present. The evidence in the record is not sufficient to show outside identification of an entity antecedent to the petitioner from 1855 to the present, on a substantially continuous basis, as required by the 1978 regulations. In addition, the evidence provided is not sufficient to show by a reasonable likelihood that external observers identified the petitioner as an Indian entity from 1900 to the present on a substantially continuous basis as required by the 1994 regulations. The DTO has been identified as an Indian entity only from 1939 to the present. The DTO petitioner does not meet criterion 83.7(a) under either the 1978 or the 1994 regulations.

The evidence in the record is not sufficient to show that the petitioner meets the requirements of criterion 83.7(b) for community at any time since the DTO was founded in 1925. The evidence is insufficient to show that it was a continuation of a previously existing community, or that it evolved as a group from the historical Duwamish tribe. Even though the petitioner's individual members descend from an Indian tribe that inhabited the southern Puget Sound region at the time of the 1855 treaty, its ancestors (primarily Duwamish women and their non-Indian spouses) soon dispersed throughout western Washington. By the 1880s, the evidence does not show that their descendants maintained a distinct social community. The petitioner's ancestors also did not remain part of the historical Duwamish tribe, which moved to four Federal reservations, and they did not evolve as a group from the historical tribe into the DTO, which first formed in late 1925.

This FD on Remand evaluated all of the evidence anew and found that it did not show by a reasonable likelihood that a substantial portion of the petitioning group inhabits a specific area, or lives in a community viewed as American Indian and distinct from other populations in the area at any time, as required by the 1978 regulations. Neither does the evidence demonstrate that a "predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present," as required by the 1994 regulations. Therefore, the petitioner has not satisfied the requirements of criterion 83.7(b) in the 1978 or in the 1994 regulations.

The evidence in the record does not overcome the inadequacies found in the PF for political authority under criterion 83.7(c) for political authority or influence. For example, there is no discussion of, or supporting evidence showing group members involved in making decisions, resolving conflicts, running events and programs, or undertaking any other activities, which would reveal political processes from 1925 to the present. The Department's analysis shows a minority of individuals were represented on both Satiacum's 1915 list and later DTO membership lists. Furthermore, the majority of the individuals on the 1915 list could not be linked, even with the expanded analysis to include "close relatives," to later DTO membership lists. The evidence in the record does not change the conclusion in the PF that the petitioner does not meet criterion 83.7(c) at any time. This analysis is equally applicable to the 1994 regulations. Therefore, the petitioner has not satisfied the requirements of criterion 83.7(c), under the 1978 and the 1994 regulations.

The petitioner met criteria 83.7(d), 83.7(e), 83.7(f), and 83.7(g) for the PF. There is no new evidence in the record that would alter the findings in the PF for these four criteria. The petitioner has a governing document that describes its membership requirements and governance (83.7(d)). About 99 percent of its membership has demonstrated descent from the historical Duwamish tribe as it existed before the 1880s (83.7(e)). No significant percentage of the membership belongs to a federally recognized Indian tribe (83.7(f)), and finally, Congress has not forbidden or terminated a Federal relationship with the petitioner or its members (83.7(g)).

CRITERION 83.7(a)

The Differences between the 1978 and the 1994 Regulations

Criterion 83.7(a), under the 1978 regulations, requires outside observers to have identified the petitioning group since the claimed historical Indian tribe's first sustained contact with non-Indians, in this case in the 1850s.[17] To meet this criterion, under the 1994 regulations, the petitioner must demonstrate outside identifications from 1900 to the present. Since the section 83.8 modifications for previously acknowledged petitioners do not apply here,[18] the evaluation of criterion 83.7(a) under the 1994 regulations begins at 1900. The 1994 regulations retain the principle requirement of "substantially continuous."

The Proposed Finding

The PF for the DTO petitioner concluded that external identifications of the petitioner "have been found only for the years since 1939" (DTO PF Summary 1996, 4). The PF noted that outside observers in the 1850s and the Federal Government in 1855 treaty negotiations identified a historical Duwamish Indian tribe. Identifications of the "D'Wamish and other allied tribes" of the 1855 treaty continued for 75 years following the treaty, but those identifications applied to the federally recognized Indian tribes of the treaty reservations (Lummi, Port Madison, Swinomish, and Tulalip) not to the DTO petitioner. There is no evidence that the ancestors of the DTO petitioner, as a group, were part of these reservation entities or evolved as a group from them. Therefore, identifications of "D'Wamish and other allied tribes" on reservations do not pertain to the DTO petitioner.[19]

In addition, observers identified two traditional Duwamish villages on the Black and Cedar Rivers as late as 1900, but there is no evidence that the ancestors of the DTO petitioner were part of these

[17] Russians, British, Americans, and others were visiting Puget Sound and establishing fur-trading outposts decades before the 1850s; however, these visits were not permanent. The fur trade and other sporadic contacts influenced Indian lives in Puget Sound, but the mid-1850s will be used here as the date of "first sustained contact" under the regulations.

[18] In the case of the DTO petitioner, there is little difference between the date of first sustained contact in the mid-1850s and the date of the 1855 treaty. Therefore, the evaluation of criterion 83.7(a) under the 1994 regulations, as modified by §83.8, if they were applied to the DTO petitioner, and the evaluation under the 1978 regulations are essentially equivalent and begins in the mid-1850s. Because the overall provision for previous acknowledgment requires petitioners to demonstrate criterion 83.7(b) only at present, §83.8 requires that identification of the petitioner be made continuously since the point of last Federal acknowledgment.

[19] Some of the petitioner's earliest ancestors may have been members of the Indian tribes they were born into before and during treaty times, but they did not constitute a distinct group, either within those tribes or as they separately left their natal Indian tribes, and their descendants did not come together to form the DTO until decades later. Thus, it was only in 1939 that outsiders first identified a DTO entity.

villages or that they evolved to become the DTO organization. Therefore, outside identifications of these villages do not pertain to the DTO petitioner. The identifications made of the petitioner since 1939 did not portray it as having a continuous existence from the historical Duwamish Indian tribe at first sustained contact in the mid-1850s, from the reservation Indian tribes where treaty Duwamish resided, or from the Duwamish villages of about 1900. Nor did any other evidence establish that continuity. In summary, a lack of identifications of a DTO petitioner at any time before 1939 means that the petitioner has not been identified on a "substantially continuous" basis "from historical times until the present," as the 1978 regulations require, or since 1900, as the 1994 regulations require.

The Final Decision on Remand

This FD on Remand evaluates all the evidence or analysis in the record to determine if it demonstrates by a reasonable likelihood that the DTO petitioner was identified as an "American Indian entity" from 1900 to the present, as the 1994 regulations require. Evidence does not demonstrate that outside observers identified the DTO petitioner as an American Indian entity at any time before 1939. This evaluation, like the PF, finds that the reservation entities that were continuously identified as "D'Wamish and other allied tribes" between 1900 and 1924, or by their consolidated reservation names, were not the petitioner. The villages noted on maps located on the Cedar and Black River most likely did not exist after 1907, but at any rate, they were not the petitioner. Qualifying identifications of the DTO entity begin to appear in contemporaneous documents only after 1939.

The main issues under criterion 83.7(a) under both the 1978 and 1994 regulations are that there are no identifications of the DTO before 1939. Additionally, identifications of the "Duwamish" and "D'Wamish and allied tribes" were not of the petitioner because most of the petitioner's ancestors, as individuals or as families, had already left identified Duwamish entities by the 1880s, and were not part of Duwamish entities that outside sources identified between 1900 and 1939. Moreover, since the DTO did not form until 1925, it could not have been identified.

Evidence in the record for the FD, when evaluated and weighed together, does not overcome the deficiencies identified in the PF under criterion 83.7(a) of the 1978 regulations. Additionally, the evidence does not meet criterion 83.7(a) of the 1994 regulations.

Comments on the PF under Criterion 83.7(a)

The Petitioner's Comments

Articles by Kenneth Tollefson the DTO's Anthropologist since 1986
The DTO bases its response to the PF primarily on an affidavit of its own anthropological researcher, Mr. Kenneth Tollefson, who states that in his "professional opinion," the petitioner meets the criteria. The researcher's affidavit does not cite any examples of contemporaneous identification of the DTO petitioner as an Indian entity by outside observers.
The researcher states that his research has revealed "a continuous identification of the [Duwamish] tribe by outside entities, etc." but he does not specifically cite these identifications

nor include transcripts of oral histories or other evidence he relied upon (Tollefson 1998).

As a codification of prior practice, the 1994 regulations state that a documented petition must contain "detailed, specific evidence" in support of its request for acknowledgment (§83.6(a) [1994]). The regulations also state that a documented petition "must include thorough explanations and supporting documentation" in response to the criteria (§83.6(c) [1994]).

Apparently, in support of the affidavit, the petitioner submitted seven articles its researcher published.[20] The Department's researchers consulted these seven articles and determined that only two of them specifically address the Duwamish, and neither of them deals directly with the issue of specific identifications of DTO between 1900 and 1939.[21]

The two articles that deal with the Duwamish are a 1989 article, "Political Organization of the Duwamish," and a 1995 article, "Duwamish Tribal Identity and Cultural Survival." Both articles give examples of outside observers, including historians and anthropologists describing an aboriginal village near modern Renton, Washington and discussing the historical Duwamish tribe, as it existed at the time of first sustained contact with non-Indians (Tollefson 1989 and 1995b). This evidence was not new. The PF concluded that the first Federal officials and non-Indian settlers in western Washington Territory identified a historical Indian tribe of Duwamish Indians, including the Renton village site. It also found that later historians, anthropologists, and the Indian Claims Commission (ICC) determined that a historical Duwamish tribe existed at the time of first sustained contact with non-Indians (DTO PF Summary 1996, 2-3; DTO PF HTR 1996, 4-10, 26-29; DTO PF ATR 1996, 7-31).

These and other identifications of a historical Duwamish treaty tribe, reservation entities, and villages on the Black and Cedar Rivers are not of the petitioner. The PF found the DTO petitioner formed only in late 1925 and had not evolved as a group continuously from earlier Duwamish entities. Neither the researcher's affidavit nor the articles provide any evidence to demonstrate that the DTO is a social and political continuation of the historical tribe, the reservation entities, or the Black and Cedar River villages, or that it evolved out of those entities.[22] Thus, identifications of these historical entities are not identifications of the DTO petitioner whose ancestors were elsewhere.

[20] For a discussion of the other articles, see "Tollefson Articles" a work paper produced by OFA researchers.

[21] In addition, Tollefson's affidavit did not include two of the seven articles among his list of his "research on the Duwamish Tribe. . . " (Tollefson 1998). The Department reviewed all of his articles for purposes of the FD on Remand.

[22] In addition, these two published articles make the same general statements that the petitioner's narrative for the PF made. Tollefson began consulting with the DTO on acknowledgment in 1986, according to his affidavit. The PF already evaluated these statements as part of the narrative.

Although the 1978 regulations require identifications of the petitioner as American Indian or aboriginal since first sustained contact, the amended 1994 regulations require identification of an American Indian entity since 1900. Thus, identifications of any sort before 1900 are not required under the 1994 regulations. This DTO researcher's published articles do not change the conclusions of the PF under the 1978 regulations, and they do not provide evidence of identifications of the petitioner required for the 1900-to-1939 period under the 1994 regulations.

The Anderson draft found that each of Tollefson's articles were "probative, in combination" with other evidence. However, the draft does not provide any detail for this conclusory sentence, cite other "combining" evidence, nor explain how the articles that did not reference the petitioner's ancestors provided the required identifications of the petitioner under the 1994 regulations.

Identification of Duwamish as an Indian entity in 1953 by Congress and BIA

The PF found "Both Congress and BIA identified this organization as an Indian entity in 1953" and explicitly accepted this evidence as an identification of a DTO Indian entity (DTO PF Summary 1996, 3). The petitioner alleges that the PF "elected to ignore" this 1953 identification. (DTO Response 1998, 13). The PF Historical Technical Report, however, discussed this evidence in detail (DTO PF HTR 1996, 66-68). That technical report also showed that the identifications made in the 1953 congressional report were inconsistent with some references identifying Duwamish Indians as the Indians of the four treaty reservations and that congressional staff, but not BIA, listed a Duwamish organization in that year. Other evidence showed that BIA dealt with an organization of Duwamish descendants in 1953 only for the limited, specific purposes of claims. Nonetheless, it is an accepted identification of the DTO for 1953.

Newspaper articles in 1916; and 1924

The petitioner submitted newspaper articles from 1916 in response to the PF. They refer to Charles Satiacum's attempts to obtain allotments or monetary compensation for Duwamish descendants. The PF discussed Satiacum's efforts and his 1915 list, which includes a few of the petitioner's ancestors. The petitioner submitted copies of a December 24, 1916, newspaper article from Tacoma. It relates that Special Agent Charles Roblin has "completed his work with the Duwamish Tribe" and recounts the history of the aboriginal Duwamish tribe as told by intertribal claims activist Thomas Bishop. The article states that, "Charles Satiacum, is now recognized chief of the remnants of this once powerful branch of the old Salishan Indians. . . ." It also states "The Duwamish tribe is now disbanded. . . ." An article of December 19, 1916, also from a Tacoma paper, describes the Duwamish, "its forces reduced and scattered" (*Tacoma Daily News* 1916; *Tacoma Sunday News and Ledger* 1916).[23]

[23] Both the 1978 and the 1994 regulations provide that evidence denying a group is an Indian entity will not be viewed as dispositive. Although this article provides that the "Duwamish tribe is now disbanded" and uses the word "remnants," as indicating nontribal, this article does not prevent an identification of the DTO. Furthermore, the Department has accepted the word "remnants" as an outside identification of an Indian entity in past cases. In this case, however, the identification of "remnants," although accepted as an outside identification of an Indian entity comprising persons on Satiacum's list, does not identify the DTO petitioner.

The identifications of a "Duwamish tribe" and "remnants of this once powerful branch of the Old Salishan Indians," meaning the people associated with Satiacum, are not identifications of the DTO petitioner, because the composition of the two groups differs significantly. The PF technical reports evaluate the persons listed by Satiacum in 1915, as well as the "enrollment" process of Indian Agent Charles Roblin referenced in the articles and "Chief Rogers," a described Duwamish leader, who lived on the Port Madison Reservation. The reports conclude that only a small portion of the petitioner's members had an ancestor listed by Satiacum in 1915, and they constituted only a small portion of the Indians listed. When describing the persons around Satiacum, this article identifies remnants of a Duwamish tribe, a disbanded Duwamish tribe, and a once powerful branch of the Salishan Indians. These identifications of Satiacum's activities and those associated with him are not identifications of the DTO petitioner.

Court exhibits included a newspaper article published January 17, 1924, headlined "Puget Sound Tribes Want Pay; Indian Delegates Reach Capitol." It describes a delegation arriving in Washington, D.C., to testify before Congress for the Hadley Bill, which would extend the statute of limitations, thereby "permitting the Indians to sue the government in the Court of Claims." None of the delegation is identified as "Duwamish." However, according to the articles,

> The delegation officially represent the Northwest Federation of American Indians, which has, Wilbur said, 3,000 members and includes such large tribes as the Lummis, Skagits, Suquamish, Snoqualmie, Snohomish, Duwamish and Nooksack, as well as a number of small bands. (Ex. 45, Seattle *Daily Times* 1924)

Many other documents indicate that the Duwamish "large tribe" mentioned here is a claims organization comprising Duwamish from reservations as well as others who are not residing on reservations or allotments. This identification is not of DTO. The identification of the Northwest Federation of American Indians, an inter-tribal claims organization, is also not an identification of DTO.

In conclusion, the new evidence from newspaper articles does not change the PF, even when weighed with other evidence. They do not demonstrate the petitioner meets criterion 83.7(a) in 1916, which falls within the 1900 to 1939 period lacking identifications under the 1994 regulations and before 1939 under the 1978 regulations.

Roblin's Roll

The technical reports and PF discuss the lists of the unenrolled Indians of Washington State that Agent Roblin produced in 1919 (DTO PF Summary, 3; DTO PF HTR, 41-45). The petitioner maintains that although Roblin was not instructed to identify tribes, his 1917 notice to potential enrollees was directed to members of Indian tribes (DTO 1998, 13). However, the petitioner's quotation from Roblin shows that he asked potential enrollees to show *either* that they were a member of an Indian tribe *or* that they were descended from a tribal member. Roblin's letter to the Commissioner of Indian Affairs in January 1919 explains, "I was instructed to make an enumeration and enrollment of the unattached Indians of Western Washington, and to prepare and submit schedules of such Indians, arranged by families and tribes" [Emphasis added.](Roblin

1/31/1919). Thus, contrary to the petitioner's interpretation, individual descendants could be included on Roblin's lists without being a member of a tribe or group.

Roblin's January 31, 1919 letter to the Commissioner of Indian Affairs describes the settlements and conditions of several western Washington bands. Roblin identifies Indian non-reservation entities comprising "unenrolled Indians." For example, he identifies "a settlement of Nootsak." He describes Cowlitz "settled along the upper reaches of the Cowlitz River" and intermarried with the Yakima. He refers to Skagit Indians and "Indians of affiliated tribes and bands, on the Skagit, Sauk and Suiattle Rivers." He locates "Snoqualmie Indians in Snohomish and King Counties … around Tolt, Falls City, and the towns in that district," where they reside in "Indian settlements." He locates Clallam at "Jamestown, Clallam County, Washington, where their largest settlement still is," and "by sufferance only, on lands owned by white men." He describes Chinook, Shoalwater Bay, and associated bands, which "have kept up their 'tribal relations' and communal life," living in "a number of small Indian settlements." Finally, he names "Mitchell Bay," which had "inextricably mixed" with Canadian and Alaska Indians. He does not include in his list or narrative discussion, which repeatedly gives thumbnail sketches identifying tribal entities, any specific reference to a Duwamish entity (specifically a DTO entity), or describe any settlements or a general area or river valley, bay, or mountain area where they tend to live, as he does for the other Indian groups (Roblin 1/31/1919).

Roblin does refer to

> . . . many members of other tribes, in the Puget Sound area especially, who are not allotted; and some few who are not enrolled. I have prepared schedules of those I found who are not enrolled, but have excluded from the schedules those who are now enrolled, even though not allotted. (Roblin 1919)

It is in this context that Roblin listed unenrolled individuals of the "D'Wamish Tribe." He was unable to make any general description of an Indian entity comprising these individuals who identify as Duwamish descendants. Placed in context with other evidence, especially the Federal censuses and addresses included on Roblin's list, the "unenrolled D'Wamish" are not associated either with a geographical locale or with an entity that Roblin was able to describe. Roblin found about 150 Duwamish descendants living in 27 different localities scattered in 12 counties throughout Washington State, and 2 descendants in Portland, Oregon.[24] This dispersed

[24] As instructed, Roblin listed the individuals in "families," beginning with the Indian descendant family head, living or deceased, whom Roblin usually identified as "full" or "half-blood." The names of children and often the grandchildren followed the head's name. In some cases, the parent and children were all at the same address, e.g., Joseph E. James and two sons in Bellingham, Whatcom County. However, families with grown children and grandchildren included the addresses of their separate residences. For example, Jennie or Jane Garrison was the "full-blood" who lived at Fairview, Kitsap County, in 1919. Her five children and their children resided in Ferndale, Whatcom County; Manette, Port Blakely, and Suquamish, Kitsap County; and Quilcene, Jefferson County. Julia Whatulach, who married non-Indian Humphrey O'Bryant about 1856, was "deceased" on Roblin's Roll, but her children and grandchildren were living on San Juan Island, in Clallam, Whatcom, Skagit, and King Counties, Washington, and in Portland, Oregon.

distribution reflects what Roblin describes as the large number of applicants for allotments on Quinault, who

> are descendants of Indian women who married the early pioneers of the country and founded families of mixed-blood 'Indians.' In many cases these applicants and families have never associated or affiliated with any Indian tribe or tribes for several decades or even generations. (Roblin 1919)

Less than 10 percent of the names on the Roblin Roll were on the petitioner's "Constitutional Enrollment List F/Y 1926" (39 of 398). Only 29 names on the Roblin Roll were on the DTO's 1951 membership list (a.k.a. "Peter James Enrollment List F/Y 1950") that identified 399 members. Another 29 names in 1951 had a parent or grandparent on the Roblin Roll. Therefore, Roblin's list did not identify a Duwamish entity that is the petitioner or from which the petitioner evolved. The petitioner's response to the PF on this issue provides no basis for changing the factual conclusion of the DTO PF that Roblin's 1919 list identified unenrolled individual Indian descendants rather than a Duwamish entity. Roblin's instructions and report do not meet the requirements of criterion 83.7(a) for the Duwamish petitioner under either the 1978 regulations or the 1994 revisions.

Third Party Comments[25]

Commenter James Bergsma of Kent, Washington, submitted a five-page comment and copies of historical maps (Bergsma 1996). Bergsma notes documentary evidence of references to an Indian village on the Black River in an 1869 petition by non-Indian settlers and an 1879 [1870] visit to the village by Federal agents. He provides two historical maps, dated 1877 and 1890, of an Indian village on the Black River near its junction with the Cedar River (Bergsma 1996, 1-2, 4; exhibits). There is no evidence that connects these pre-1900 identifications of Indian villages on the Black and Cedar Rivers to a DTO entity after 1900, and therefore, these village identifications do not qualify as identifications of DTO under the 1978 regulations. The 1994 regulations do not require pre-1900 identifications.

Bergsma also provides a copy of a 1907 survey map, which locates an "Indian village" near Tukwila, just northwest of present-day Renton, Washington. This map does not identify this village as Duwamish. It is also unknown whether the map refers to an Indian village existing in 1907, rather than to a historical and deserted archaeological village site. In addition, there is no evidence that such a village, even if it still existed in 1907, represented a group associated with the DTO petitioner's known ancestors. Moreover, the Federal censuses enumerated the petitioner's ancestors elsewhere in 1900 and 1910.

[25] Three other third parties submitted comments (Giese 2/18/1997; Gleeson 2/20/1997; Tulalip Tribes 2/21/1997), which do not address the requirements of criterion 83.7(a), or the conclusions of the PF on criterion 83.7(a).

Bergsma claims that this 1907 map shows that the "Duwamish maintained a tribal presence throughout the area" at least until 1916, when the level of Lake Washington was lowered, affecting the historical Black River settlement site (Bergsma 1996, 3; Exhibit). This 1907 map does not provide evidence that a settlement existed or events occurred after 1907, or that "a tribal presence" existed then or later. Thus, this survey map does not identify the DTO petitioner as an Indian group in 1907 or any more recent date. Therefore, this 1907 map does not provide an identification of the petitioner, under either the 1978 regulations or the 1994 revisions.

The PF Historical Technical Report already discusses the villages and the documentary evidence noted by Bergsma (DTO PF HTR 1998, 27, 29-30), and the maps he provides are consistent with the conclusions of the PF. Thus, Bergsma's evidence from the 19th century reinforces some of the findings of the technical reports and the PF for that period, under the 1978 regulations, but does not deal with the underlying problem that these identifications do not pertain to the DTO petitioner.

Department's Evaluation

The petitioner claims to link, without a break in continuity, to the Duwamish tribe of Indians who lived in the southern Puget Sound area before 1855. These Indians lived at the confluence of the Black, Cedar, and Duwamish Rivers south of Lake Washington, and along the Green and White Rivers, around Lake Washington, along the eastern shore of Puget Sound in the area of Elliott Bay. Numerous historical records identified these Indians and their geographical territories. In 1855, Federal negotiators combined the Duwamish and other Indian tribes or bands into confederated "D'Wamish and other allied tribes" for the purposes of making a treaty.

The Federal Government continued to identify and deal with these treaty Indians on the reservations as the "D'Wamish and other allied tribes," and appropriated funds for "D'Wamish and other allied tribes" until 1923. The Government continues to deal with the reservation tribes. The petitioner, as a group, was not part of these entities, which most of the petitioner's ancestors had left before 1880. Therefore, Government documents and various appropriations legislation pertaining to those reservation tribes, whether referring to "D'Wamish and other allied tribes" or the actual reservation names, are not identifications of the DTO. The PF did not find contemporary government documents or other records that deal with or identify the DTO petitioner as a Duwamish entity before 1939, when identifications of the entity that is the DTO petitioner began.

The PF found that the petitioner formed DTO in late 1925 when eight Duwamish descendants announced their "intention of forming" an organization. The DTO's membership, leadership, and activities differed substantially from the historical Duwamish tribe, the reservation entities where Duwamish moved, and villages identified in the 1800s, all of which various documents identified before 1900. Not until 1939, did outside observers identify the new organization–the DTO petitioner–as an Indian entity. The petitioner already submitted sufficient evidence under criterion 83.7(a) for the period following 1939 for the PF under both the 1978 and the 1994 regulations. Thus, to meet criterion 83.7(a), the petitioner needed to submit external

identifications from the mid-1850s to 1939 for the 1978 regulations and from 1900 to 1939 under the 1994 regulations.

The petitioner's new submissions in response to the PF for purposes of criterion 83.7(a) included an affidavit by Kenneth Tollefson, the petitioner's researcher since 1986, and seven of his journal articles. A petitioner's researcher is not considered an outside observer under the regulations. The affidavit, dated January 2, 1998, maintains that the petitioner is "the successor in interest to a political continuation of the historical treaty signers of the Point Elliott Treaty of 1855." This 1998 affidavit fails as an identification of the petitioner on two counts. An outside observer did not make it, and it does not address the 1900-to-1939 period when evidence is lacking.

In addition, the seven articles by Tollefson, submitted by the petitioner, do not provide evidence to modify the PF. Only two of the articles are about a Duwamish group or Duwamish groups, and none of these articles identifies the DTO between 1900 and 1939.

The petitioner submitted two newspaper articles not already in the record concerning Satiacum's participation in intertribal efforts to obtain allotments or monetary compensation for Duwamish descendants in 1915. The PF thoroughly discussed this organization and found it did not represent the same organization as the petitioner's organization, which eight individual Indian men began organizing a decade later in 1925. As identifications for Satiacum's 1915 claims effort, they do not apply to the petitioner. These newspaper articles, therefore, do not identify the petitioner's organization and are not evidence to meet criterion 83.7(a) under both the 1978 and 1994 regulations.

The petitioner also proposed new analysis or reasserted previous claims concerning the 1953 identifications of the petitioner's organization by Congress and BIA. These identifications, however, were accepted in the PF, and are accepted here, for 1953. Therefore, they support the PF, which determined that outsiders identified the petitioner in the 1950s.

Bergsma submitted local newspaper articles that identified the DTO as an Indian entity in the 1990s (Bergsma 1996). This new evidence agrees with the PF that, in the 1990s, outsiders identified the petitioner as an Indian group. It does not change the PF that the DTO petitioner was not identified as an Indian entity on a substantially continuous basis from historical times to the present, because it does not provide identifications dating before 1939.

Acting ASIA Anderson's draft does not cite to new evidence for the time periods lacking identifications of a DTO entity, but mistakenly conflated annual appropriations bills between 1860 and 1923 to the "D'Wamish and other allied tribes in Washington," which concerned the funding of four reservation tribes, as if it applied to the DTO petitioner (Anderson Draft 2001). The evidence, however, shows that the petitioner was not part of these tribes and the draft did not discuss any evidence that showed otherwise. This evidence, therefore, is not an identification of the petitioner but of Indian entities that are not the petitioner.

The evidence in the record, such as Roblin's 1919 descriptions and Federal censuses, shows that the petitioner's ancestors lived dispersed throughout many western Washington counties and were

not enrolled in any Duwamish group. The available evidence leads to the conclusion that these appropriation bills did not pertain to the DTO petitioner or its ancestors and, therefore, cannot be used to demonstrate by "a reasonable likelihood of the validity of the facts," the DTO petitioner meets criterion 83.7(a). Since this evidence is not about the petitioner, it is not acceptable evidence.[26] The acts appropriating money for the "D'Wamish and other allied tribes" is not evidence for DTO under criteria 83.7(a) under either the 1978 or the 1994 regulations.

The petitioner has the burden, under both sets of regulations, to provide sufficient evidence under the criteria. Here, a "lack of evidence" is not the petitioner's only deficiency. The evidence the DTO submitted, and the Department's researchers located, points to the conclusion that the ancestors of the current petitioner's ancestors had left the historical Duwamish tribe (to which the Federal appropriation acts repeatedly refer) beginning in the 1850s and decades before 1900. The petitioner's ancestors were scattered throughout Washington from as early as the 1850s and do not appear to have interacted with each other or with reservation tribes. In addition, since the DTO was not formed until 1925, it could not be identified.

Summary Conclusion under Criterion 83.7(a)

The evidence in the record is insufficient to demonstrate continuous identification of the petitioner by external observers from historical times to the present, under the 1978 regulations. The available evidence does not show by a reasonable likelihood that external observers identified the petitioner between 1900 and 1939. Therefore, the petitioner does not meet the requirements of criterion 83.7(a) under either the 1978 regulations or the 1994 regulations.

[26] We find no evidentiary support for the statement in the Acting ASIA's draft that the historical Duwamish Indian tribe, mentioned repeatedly in congressional appropriations, reorganized as the DTO in late 1925, and it represents a continuation of the historical tribe (Anderson Draft 2001, 21).

CRITERION 83.7(b)

The Difference between the 1978 and 1994 Regulations

Criterion 83.7(b), under both the 1978 regulations and the 1994 regulations, requires the petitioning group to have been a distinct community since the claimed historical Indian tribe's first sustained contact with non-Indians.

The 1994 regulations included several provisions under criterion 83.7(b) to codify existing practices in the 1978 regulations. The burden of proof remained on the petitioner, and the standard of proof continued to be reasonable likelihood.

The 1994 revisions identify some types of specific evidence as sufficient to demonstrate community, without providing other evidence. These types of evidence, sometimes called "high evidence," apply to petitioners that demonstrate an element set forth at 83.7(b)(2)(i)-(iv). Petitioners that can demonstrate this type of evidence maintain community at a level sufficient to meet the regulations. A "cross-over" provision allows petitioners with this kind of evidence to meet criterion 83.7(c) for political authority for the same time. (83.7(c)(3)).

The DTO petitioner did not have "high evidence" in any period. It did not demonstrate, at any time, that most of its members resided in an exclusive Duwamish settlement and that other members maintained contact with them. It claimed that some small "family enclaves," such as the multi-ethnic Sackman logging settlement, were Indian communities, although not specifically Duwamish. The existence of isolated "family enclaves" does not demonstrate that a petitioner meets criterion 83.7(b) at the time the settlement existed, especially since there is no evidence that the isolated families interacted socially or joined in group activities. There was no evidence that the petitioner's ancestors or present members married within the group or spoke the Duwamish language. The petitioner did not provide any other type of "high evidence" described at 83.7(b)(2) for any time period.

The 1994 regulations list nine kinds of evidence for demonstrating community, but note that petitioners could also use other kinds of evidence, 83.7(b)(1)(i)-(ix). The types of evidence in this list are not different from the types of evidence that the Department has weighed when making decisions under the 1978 regulations. Petitioners, such as the DTO, that cannot show evidence sufficient in itself, may utilize a combination of "supporting evidence" to show continuous community. The DTO petitioner did not provide any evidence that in combination demonstrated its members maintained social relationships indicative of an existing community at any time, under either the 1978 or 1994 regulations.

Proposed Finding

The PF under the 1978 regulations found that the available evidence did not show that the DTO petitioner demonstrated that it had maintained a distinct community from historical times to the present. It found that, before 1925, when the DTO was first established, the petitioner's ancestors

had little or no interaction either with the Indians of the historical Cedar and Black River settlements in the southern Puget Sound area, which no longer existed in the early 1900s, or with Duwamish who had already moved to the reservations. It also found that, after 1925, the petitioner's members, outside of the annual meetings, interacted only with individuals from their own families. Finally, it found that the petitioner's current members do not maintain a community that is distinct from the surrounding non-Indian population.

The Final Decision on Remand

The DTO petitioner does not meet criterion 83.7(b) under the 1978 or the 1994 regulations because the evidence is not sufficient to demonstrate continuous existence of a community by a reasonable likelihood standard at any time using either evidence described at 83.7(b)(2) and/or some combination of evidence described in 83.7(b)(1).

Comments on the PF under Criterion 83.7(b)

The Petitioner's Comments

In response to the PF, the petitioner provided evidence attempting to demonstrate that:

1. The petitioner's ancestors were part of the historical Duwamish tribe before and after 1898;

2. Satiacum's 1915 list and the post-1926 lists of individuals identified as Duwamish that were created by the DTO represent a single and continuous entity at different points in time; and

3. The petitioner has maintained a community under the regulations between 1925 and the present.

The remainder of this section evaluates the evidence for criterion 83.7(b) under these topics chronologically.

DTO Ancestors' Links to the Historical Duwamish Tribe before or after 1898 to 1925
The DTO PF found no evidence of off-reservation Duwamish settlements after 1896 (DTO PF Summary 1996, 6). It also found that the petitioner's ancestors were widely distributed in non-Indian communities and isolated family homes in the Puget Sound region following marriages to pioneer men in the 1850s and 1860s (DTO PF Summary, 6-7). The evidence was insufficient to show that the petitioner's ancestors interacted with each other or with the historical Duwamish tribe comprising those Duwamish living on reservations or in Indian settlements that existed before 1900. The PF and the vacated FD under the 1978 regulations discussed various documents, which identified and described the historical Duwamish Indians living on reservations and in off-reservation Indian settlements. Because evidence available for those findings did not show the DTO petitioner's ancestors interacting in significant ways with these historical

Duwamish, evidence concerning the reservation and Indian settlements did not apply to the petitioner.

In its response to the PF, the petitioner and its researchers continue to discuss and present evidence about historical Duwamish as if it pertains to the petitioner, but do not provide any justification in facts for that evidence to apply to the petitioner's ancestors. The evidence submitted in response to the PF, including that submitted to the court, does not demonstrate social ties and significant interactions between the DTO and the reservation tribes. Any evidence was limited to individual families not representative of the DTO.

Citing a published article by its researcher Mr. Kenneth Tollefson, an anthropologist, the petitioner's comment and response to the PF states that after settlers arrived in the Duwamish area in 1850, they appropriated land and resources from the Duwamish tribe and undermined its political economy, reducing its "chiefdoms" to isolated "family enclaves" (Tollefson 1992). These general historical circumstances, however, do not negate the regulatory requirements to demonstrate continuous existence of a community under criterion 83.7(b).

In this case, available records track the petitioner's ancestors but provide few details of social interactions. As described in the PF, the petitioner descends primarily from Indian women who married non-Indian pioneers between the mid-1850s and 1875 (DTO PF ATR 1996, 45; DTO PF 1996 7).[27] The couples in these marriages founded extended families that dispersed throughout western Washington. Their families separated from other Duwamish descendants, whether the latter were residing off or on reservations. The Department found no evidence under 83.7(b)(1) or b(2) that showed a community of DTO's ancestors between 1856 and 1925.

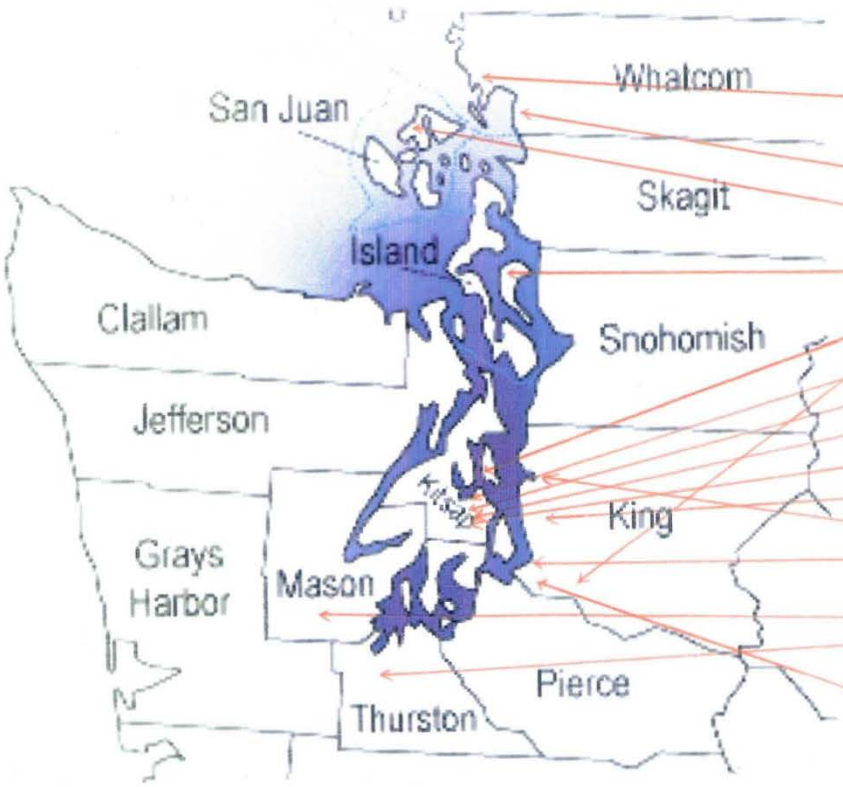
The DTO's interpretation of historical events pertaining to its ancestors is not accurate or complete, even considering circumstances of contact. For example, the DTO's researcher describes only two of what he portrays as isolated "family enclaves," and he locates them in the Puget Sound region after the 1850s.[28] The census documentation, however, documents the dispersed settlement patterns of DTO ancestors. By 1880, when Federal censuses enumerated Duwamish households, the petitioner's ancestors resided in 11 counties, lying far north of Seattle, in Whatcom and San Juan counties, and in the counties surrounding Puget Sound. In the few instances where more than one of these families resided in the same county, they did not live in proximity to one another. This evidence appears to show that contact events influenced the DTO

[27] About 84 percent of the DTO membership (297 of 355 on the 1991 list) descends from just five Duwamish women. In all, about 95 percent of the membership descends from marriages between non-Indian pioneers and Duwamish women. The children of these marriages did not marry one another or marry Duwamish descendants.

[28] The petitioner's use of "family enclaves," implies a possible grouping of houses or a small area inhabited by an extended family residing in several households. This is an inaccurate description of the actual household distribution, as reflected on Federal censuses. The distribution is more accurately described as single households located within the greater non-Indian population. The term "family enclaves" is a misnomer if it means to imply that one or several families lived together on separate territory and were distinct from the surrounding population.

ancestors in individualized ways and not as members of a group. There was no evidence of social interaction, and thus, the evidence presented regarding "family enclaves" is not evidence of community among the DTO.

Moreover, the PF found that, unlike DTO ancestors, many historical Duwamish Indians maintained contact with one another or with those who moved to reservations, despite the influence of settlers in the area (DTO PF Summary 1996, 5-6). The available evidence does not demonstrate by a reasonable likelihood that the petitioner's actual ancestors were in contact with the historical Duwamish tribe or its members after 1900, and they appear to have lost contact earlier.



Location of DTO's Claimed Ancestors in 1880's per Federal and Indian Censuses

Founding Ancestral Couple's Surnames	Location in 1880
James=Descannun (m. 1889)	
James	Lummi Reservation
Descannun	Lummi Reservation
O'Bryant=Whatulach (m.1856)	Ship Harbor, Whatcom Co.
Seymour=Seeameeya (m.1843)	Orcas Island, San Juan Co.[1]
Siddle=John (m.1885)	
Julia John	Camain/Camaño Is., Island Co.
Lyman Siddle	White River, King Co.
Fowler=Jacobs (m. 1859)	Port Blakeley, Kitsap Co.
Sackman=Sancho (m. 1856)	Port Orchard, Kitsap Co.
Eley=Bend (m.1876)	Port Orchard, Kitsap Co.
Garrison=Jane (m. 1843)	Port Orchard, Kitsap Co.
Napoleon=Parker (m.1880)	Port Orchard, Kitsap Co.
Solomon=Ann (m. 1874)	Cedar River, King Co.
Moses=Kweedot (m. 1862)	Duwamish Pct. King Co.
Tuttle=Kennum (m. 1863)	Milton Pct, King Co.
Hawk=Hines (m. 1894)	
Hawks *aka* Smith	Skokomish Res., Mason [1886
Hines	Chehalis] [1886]
Bagley=SeeSee (m. *ca.* 1905)	[not located in 1880's]
Scheuerman =Curley (m.1864)	Salmon Bay Pct. King Co.
Tswalwood=Kapheentin (m. 1885)	[not located in 1880's]
Tswalwood	
Kapheentin	

[1] Their daughters live on Orcas Island with husbands.

The petitioner's well-documented pattern of out-marriages shows that generally, the DTO ancestors did not marry either historical Duwamish Indians, residing on four reservations, or each other.[29] Such evidence is not "patterned out-marriage with other Indian populations" that could be evidence acceptable under (b)(1)(i).

In response to the PF, the petitioner submitted additional argument concerning "family enclaves." In a 1992 academic article, its researcher describes one "family enclave" where an extended ancestral DTO family lived (Tollefson 1992, 214-215). Non-Indian, Daniel Sackman, who had married an Indian woman named Marie (Sanko or Sanchos, according to the petitioner) headed this logging settlement and interacted with the Garrisons, another family headed by a non-Indian pioneer and a Duwamish woman that resided near the Sackmans from 1860 to 1880.[30] The DTO researcher maintains that the "Sackman logging community" was a Duwamish Indian community:

> Many of Marie's relatives settled around the Sackmans and formed a Duwamish community based upon logging and their traditional subsistence economy. Daniel Sackman, a white man, served as cultural broker and advocated for the settlement. Three Sackman sons married local Indians, inherited their father's logging business, and perpetuated their community and the Duwamish culture . . . some twenty or thirty Indians usually resided in the community. (Tollefson 1992, 212)

This statement maintains that "other Indians" were present without specifying their tribal affiliations. Evidence evaluated in the PF shows, however, that the community where the Sackmans lived and worked from 1860 through 1890 was a multi-ethnic logging community, not an exclusive Indian or Duwamish community. People of Asian, African, and European heritage, and Indians from several Indian tribes, lived there. Furthermore, the petitioner did not submit documentary evidence that supports its researcher's contention that, between 1860 and 1916, the Garrisons and the Sackmans were interacting with Indians from the Lake Fork, Lake

[29] The PF makes clear that the out-married women whose children subsequently married other Duwamish Indians or into any of the various western Washington tribes are not ancestors of the petitioner; rather, they were members of federally recognized tribes (DTO PF Summary 1996, 7; DTO PF ATR 1996, 79).

[30] Henry Moses (1900-1969) and Myron Overacker (1898-1976) deny in a circa 1963 interview that Duwamish resided in logging camps on the western side of Puget Sound, where the Sackman and Garrison families were located, and where the petitioner has claimed exclusive Duwamish settlements or family enclaves existed (Moses and Overacker 1997). The 1860 Federal census shows "D. Sackman" in Dwelling #276 and John Garrison in Dwelling #283 in Port Orchard, Kitsap County. The 1870 Federal census shows "Daniel Sackman" was in Dwelling #20 and John Garrison was in Dwelling #23 in Port Orchard, Kitsap County. The 1880 Federal census enumerates John Garrison and family still in Port Orchard Precinct, recorded about 10 dwellings away from Joseph Sackman, one of Daniel's sons. Daniel Sackman was in Port Blakeley Precinct, Kitsap County, on the 1880 census. The "dwellings" cited here are not house numbers, but the census enumerator's designation of the order in which he visited the dwellings in his jurisdiction (1860 Census, WA, Kitsap Co., 1870a, 1880b).

Washington, Green/White Rivers, or the reservations where Duwamish resided.[31] Finally, the evidence is insufficient because even if the ancestral families lived in small isolated areas, the evidence does not show that these households linked socially and evolved between 1856 and 1925 into a distinct DTO entity (83.7(b)(2)(1)). The PF found that evidence did not show the Sackman family generally interacting with other Duwamish Indians, even if they communicated with the Garrison family and lived in the same multi-ethnic community. The evidence in response to the PF does not provide evidence of a community antecedent to DTO.

The PF stressed that there is little evidence that the people identified as "Duwamish" in historical records and often discussed in the petitioner's narratives actually interacted with the DTO petitioner's ancestors. The Federal Register notice for the PF states in 1996, these historical Duwamish eventually moved to reservations and do not have descendants on the petitioner's current membership list (61 FR 33763). Thus, the activities of these people do not provide evidence for the DTO.

In partial response, the petitioner submitted several sets of excerpts extracted from Catholic Church records compiled to show that some of its ancestors were interacting with other historical Duwamish Indians at Catholic missions. Utilizing Satiacum's 1915 list as a guide for identifying Duwamish ancestors by surname, the petitioner's historical researcher Stephen Dow Beckham copied 13 items, dating from 1876 through 1899, from the Catholic Church chancery office. This is not noteworthy evidence because Satiacum's list does not represent the DTO petitioner.[32]

The historical researcher maintains the selected records demonstrate:

> . . . not only the concentration of Duwamish families in specific missions and parishes, they document the connections of family and friendship. This is seen clearly in the sponsors and witnesses to marriages and baptisms. The church became another place where Duwamish families affirmed and renewed their ties in the early twentieth century. (Beckham 1998, 41)

The evidence, however, does not show what the researcher claims.

First, the records held by each chancery come from various parishes in the diocese. The abstracts do not include the name of the parish, only the name of the priest and the physical place where the event, either a baptism or a marriage, occurred: Port Madison (4), Port Washington Bay (4),

[31] Only "Lula Sackman" and her children and two Garrisons are on Satiacum's 1915 list. "Lula" is Lulu McPhee ("1/2 Duwamish" per Roblin) who married Joseph W. Sackman. None of the other Sackman brothers or their wives (Indian or not) and children, appear on Satiacum's list. As explained later in this report, Annie and Elizabeth Garrison on Satiacum's list are not the petitioner's ancestors.

[32] In two instances, the DTO researcher abstracted records for individuals with the same surnames as individuals on Satiacum's 1915 list (Contraro/Contrero and Kanim), but no one with both the same first names and surnames is on the 1915 list.

Seattle (1), Lummi (1), "the Forks," (1), and Tulalip (2). Thus, Beckham's abstracts appear to refer to events from six different parishes. In addition, only three parishes hosted more than one event.[33] Sometimes four years elapsed between the events memorialized in the documents, which also list many non-Duwamish individuals. These occasional events do not show that Duwamish individuals and DTO ancestors were interacting regularly in Catholic Churches. The Department does not find that 13 events in 6 different parishes over 16 years shows a "concentration" of Duwamish families as argued by DTO. These abstracts more likely represent the Indian communities and reservations where the events took place.

Most importantly, the Department could not connect the names included in the analysis to the DTO petitioner. Most, if not all, of those listed are historical Duwamish Indians who moved to reservations in the late 19th century. They do not have descendants in the current petitioner or on the 1926 DTO list.[34] The families appearing in these records lived on either Port Madison or Muckleshoot Indian reservations by 1911 and not in households comprising individuals who would later become part of the petitioning group.[35] The evidence by itself or combined with other evidence does not describe a social network comprising DTO ancestors or link them to the historical Duwamish tribe. Thus, this submission did not indicate that petitioner's ancestors interacted with one another as part of an off-reservation Indian community, with communities where Indians lived, or with reservation Duwamish Indians.

Another of the petitioner's researchers, Linda Dombrowski, analyzed records created between 1888 and 1893 at the St. George's School, near Auburn, Washington (just north of Puyallup

[33] Eleven of the 13 abstracts are of events that occurred between 1881 and 1889, with one baptism at Tulalip in 1876 and one at Lummi in 1892. Beckham compared the names on the 1915 Satiacum list with the entries in the Catholic records. Satiacum's list was not a membership list of DTO or a precursor to the DTO organization. Beckham did not include the witnesses and sponsors or godparents and did not include residences/home parish of either the bride or groom (in marriage records) or of the parents (in baptismal records), information that typically appears in Catholic records, nor did he assert that such information was absent from the original records. Thus, his limited abstracts and incomplete information do not support his claims.

[34] For example, Adams, Dixon, and Kitsap were not on the 1926 list and have no descendants in the current petitioner (DTO PF ATR 1996, 97). As provided in the PF "[T]he names of some families, who appeared on the 1915 list, did not appear at all on the 1926 list. These names included Adams (6), Alexis (1), Dominic (13), Rogers (12), John (8), and Satiacum (8). . . They were all families, originally from the Lake Fork, Lake Washington, and White, Cedar, and Green River areas, which later went to the Port Madison, Muckleshoot or Puyallup Reservations. Other names included Young (12), whose family lived in the Puyallup area (Waterman 1920); Kitsap (4), who were relatives of the Rogers at Port Madison; and Dixon (8). These names denoted known family lines of Duwamish descendants who had, in many cases, enrolled on nearby reservations. Their absence from the 1926 list … supports a difference in social character between the organizations listed in 1915 and 1926" (DTO PF ATR 1996, 97).

[35] The petitioner did not include an analysis showing how the individuals listed in these records are related to the petitioner; therefore, the Department performed a simple analysis by cross-referencing genealogical materials already in the record. Two of the abstracted records are for two names that appear on Satiacum's 1915 list: Annie Garrison and Anthony James. One of two Anna/Annie Garrisons could be the woman on the 1915 list: Anna, the daughter of John and Jane Garrison and Annie Henry, the wife of Benjamin Garrison. Anna Garrison, daughter of John and Jane Garrison has 11 descendants in the petitioner, but Benjamin and Annie (nee Henry) Garrison do not have any descendants in the DTO. Likewise, Anthony James (likely the brother of Peter J. James), does not have descendants in the DTO.

Reservation) for purposes of criterion 83.7(b).[36] She abstracted information from these records, using "the 1915 list of Duwamish members as a checklist," that is, Satiacum's 1915 list, which is not a DTO list.[37] The section that Dombrowski abstracted is actually captioned "Puyallup Reservation," not one of the four reservations where the historical Duwamish removed after the treaty. This finding further illustrates that many of the individuals listed on Satiacum's 1915 list were already residing on the Puyallup and other Reservations, and were not a precursor to the DTO.

None of the individuals mentioned in Dombrowski's analysis appear to be ancestors of the petitioning group, although some may be collateral relatives, thus further limiting the evidentiary value of the analysis. Some of the selected entries named sponsors who do not appear to be from the family of the baptized individual. A review of the relationships of sponsors to various individuals could be useful evidence of community, but it does not deal with the petitioner's ancestors. This analysis does not show that the petitioner's ancestors interacted with the Puyallup Reservation or Indians living near it.

The DTO historian Steven Dow Beckham also analyzed data from the archives of the St. George's Mission School. He extracted certain records according to the last name of the individual, apparently without ascertaining if the individual was an ancestor or collateral ancestor of DTO members (Beckham1998). He "extracted" these names by checking them against Satiacum's 1915 list, rather than against a list of the petitioner's members in 1926 or of petitioner's ancestors. He lists the names under the school years "1909-10" and "1922-23." Many of the 42 separate names appear several times over several years. Beside each name is listed either "Puyallup," "Muckleshoot," or "Suquamish." The list did not identify anyone as "Duwamish."

The Department analyzed the names on this list to determine if there were ties between the DTO ancestors and the reservation tribes. Only six of the 42 individuals (14 percent), however, appear on 1926 and later listings of DTO members. These six individuals are children and grandchildren of Lyman Siddle and Julia (John) Siddle, who are both Duwamish Indian descendants. The remaining 36 individuals appear to be individuals who, after 1915, were not documented as involved with the DTO organization created in late 1925 or in activities that the new DTO may have had after that date. These individuals, including the six Siddles, appear to be closely associated with the Muckleshoot Reservation.

Of the 42 separate individuals named on the DTO's historian's list, only 2 appear on both Satiacum's 1915 list and the DTO 1926 list: Walker James, Jr. and Hazel Siddle. Among the parents of these students, only Hazel Siddle's father, David, appears on any list of the petitioner's members after 1925. These documents, therefore, do not illustrate that the petitioner's ancestors

[36] C. DeDecker and P. F. Hylebos, 1888-1893. Archives, [Catholic] Chancery Office, Seattle, WA.

[37] The Department found that only 22 out of 318 of the individuals identified as "Duwamish" on Satiacum's 1915 list have an association with the DTO petitioner. Dombrowski's analysis supports the Department's findings that Satiacum's list does not represent a membership of a group that is a forerunner to DTO.

were involved with the St. George's School, except in two cases. This petitioner has not shown that others on this school list had either Duwamish ancestry or descendants in the petitioner. They most likely were members of the reservations associated with this school.

The petitioner states that the St. George's School, near Muckleshoot Reservation, records from 1903 to 1939 show the Siddle family of the DTO interacting with individuals on the reservations (Beckham 1995, 41).[38] In particular, the Siddle family maintained some on-reservation connections longer than others did. The PF states:

> . . . the Siddles were part of the first category of pioneer marriage descendants, i.e., of second-generation pioneer marriage descendants who married into Indian families and eventually enrolled on Indian reservations. Again, only six descendants . . . are represented in today's DTO membership. The Siddles thus differed from second-generation pioneer marriage descendants who married into other families of pioneer marriage descendants, or married non-Indians. These latter two types of descendant categories . . . comprise over 93 percent of today's DTO membership. (DTO PF ATR 1996, 59)

In short, the PF found that the evidence regarding the Siddles was not representative of the remaining families in DTO. The DTO submitted new data and analysis of Catholic and school records as part of its response, but these materials actually support the PF's evaluation. These records, even in combination with other evidence, do not show a predominate portion of the petitioner interacting with the historical Duwamish tribe. The records show that the Duwamish descendants who were connected with the historical Indian tribe and interacting with the reservation communities at Muckleshoot, Nisqually, or Puyallup, generally differed from the individual descendants and families who would form the DTO petitioner in late 1925.

The petitioner tried to connect some of its other ancestors at the turn of the 20th century to the historical Duwamish tribe, but the PF could not verify these claims. For a specific example, the PF Anthropology Technical Report (DTO PF ATR 1996) examined the petitioner's statement that a close relationship existed between Dr. Jack Bigelow, reputed to have been a late 19th-century Duwamish leader, and the child Myron T. Overacker (Dr. Jack Bigelow's great-grandnephew),[39] who would become involved in DTO leadership after 1926. More than 25 years elapsed between the 2 purported leadership terms. In addition, because Doctor Jack died on July 4, 1901, and Myron Overacker was born July 3, 1898, any relationship would have been brief no matter how intense. The DTO anthropologist's report, quoted in the ATR for the PF, states:

> Ann Rasmussen (Kennum), a pioneer marriage descendant, and member of today's petitioning group, maintained that the Shaman Dr. Jack was her great uncle, and

[38] These are Stephen Dow Beckham's notes from Catholic Church records, XI, St. George's School, Archives, [Catholic] Chancery Office, Seattle, Washington. He selected the excerpts using the "1915 list of Duwamish Indians . . . as a checklist."

[39] Dr. Jack's sister, Tyee Mary Kennum, was the great-grandmother of Myron T. Overacker.

> that her father Myron Tuttle Overacker, 'had a great love for Dr. Jack,' and used to see him 'when he. . .was small'. . . Further information about interaction between Dr. Jack and those around him would be very important in characterizing social and community life among pioneer marriage descendants and Lake Fork residents. (DTO PF ATR 1996, 51-52)

The Department's evaluation however, shows that while Myron Tuttle Overacker, as a young child, may have interacted with reservation Indians and with Dr. Jack until his death, the evidence does not show that Overacker's children, such as Ann Rasmussen, continued interacting with them. The 1900 Federal census Indian Schedule identified Dr. Jack Bigelow and his parents as Yakima. Myron Overacker was also allotted on the Yakima Reservation, where treaty Duwamish generally did not go. As such, the evidence does not characterize social and community life among DTO ancestors that includes Lake Fork residents or connections between the DTO as a whole and the historical "D'Wamish and other allied tribes."

The petitioner specifically responded to the PF's statements about Myron Overacker's relationship to his great-grandmother's brother, Dr. Jack Bigelow, by submitting an anonymous, unsigned letter. The petitioner's researcher states this letter was from the Overacker family papers, which indicates that a cousin of the Overacker family most likely wrote it to his or her relative Charlie Hamilton. The salutation reads "dear cousin." No information on the letter indicates who wrote it or its date, probably before 1901, the year Dr. Jack Bigelow died. It does not identify the "cousin" to whom it is written. It incidentally asks: "Please tell me how is doctor Jack and his [nephew]" (Anonymous circa 1898 to 1901).

The DTO maintains it shows that a mutually influential relationship existed between Dr. Jack Bigelow and the Overackers before 1901 (Beckham 1996, 54). Even if the researcher's claims were accurate, the letter's contents would be too limited to demonstrate that the Overackers, or other Duwamish-to-pioneer marriage descendants, were involved in a significant social relationship with Dr. Jack and others, who were not relatives, in the late 1890s. Rather, the letter implied the possibility of familial ties. Other evidence in the record does not alter this conclusion.

The petitioner also submitted a series of correspondence concerning the probate of Kitty Bigelow, which will be discussed under criterion (c). These documents tend to reinforce the PF that the petitioner's ancestors were not in contact with other Indians and demonstrate that they may not have been in contact with distant relatives (including second and third cousins) of their own extended families comprising their Duwamish relatives, usually founded around treaty times by a Duwamish woman married to a non-Indian. The PF found that the Federal census returns for 1910 and 1920 did not show any off-reservation Duwamish settlements remaining in the White and Green River area. The PF cited other evidence to support this conclusion. Reservation censuses list many Indians who had resided in these traditional settlements during the last quarter of the 19th century, indicating where the former residents had moved. The historical Duwamish had often moved to, or affiliated with, the Port Madison Reservation after 1856, the Lummi and Muckleshoot Reservations after 1857, and the Puyallup Reservation during the 1880s and 1890s.

In contrast, the 1900 Federal census locates the petitioner's Duwamish ancestors in many different enumeration precincts in which only one or two households contained Duwamish ancestors of the petitioner. In 1919, Roblin's survey found the off-reservation Duwamish descendants living at 27 different Post Office addresses distributed throughout the Puget Sound region. Thus, the PF found that three reliable sources (Indian Population schedules, Federal population censuses, and Roblin's reports) show the petitioner's Duwamish ancestors widely dispersed in an area spanning more than 150 miles north-to-south and on both sides of Puget Sound, more than 50 miles west-to-east. Thus, evidence concerning the "D'Wamish and other allied tribes," or evidence concerning the settlements in the White and Green River area, is not evidence of the DTO.

The petitioner continues to claim that its members lived in small groups throughout the historical Duwamish territory and that they maintained connections to each other before and after 1900 (Beckham 1998, 58). To support its position, it submitted charts compiled by its historian Stephen Dow Beckham. From the 1910 Federal Census, he extracted names of people he believed were Duwamish to include on the chart. He then added information about them. The chart's column headings include "Name," "Sex," "Race," "Age," "Status," and "Notes" (Beckham 1998, Appendix C). He states the chart shows the "names . . . listed alphabetically with notes confirming relationships to others enumerated in this census" (Beckham 1998, Appendix C).

The Department's evaluation of this analysis finds that it shows the persons listed lived with or near very close relatives, usually in a nuclear family, not near to Duwamish from other families or other lines of descent. The kin named in the "notes" column are close kin from nuclear families. The Department's evaluations presume that "first-degree kin,"—siblings, parents, children, grandparents and grandchildren—interact socially with each other. Thus, this chart does not provide additional evidence. The notes do not reveal a social network linking distantly related or unrelated extended DTO families, which would be evidence of community.[40] The petitioner's submissions actually support the PF, rather than refute its findings.

The petitioner's response includes a transcription of a circa 1963 interview with 2 elderly men, Henry Moses (1900-1969) and Myron Overacker (1898-1976).[41] The discussion, based on what

[40] The 21 families on the chart lived in 16 separate enumeration districts. No more than two families lived in any single district. This information does not show interactions among different extended families. According to the residences ascribed in the censuses, the chart reveals that unrelated extended families, representing different lines of Duwamish descent, were not living near one another in groups or settlements. The compiled information on the chart does not show that any distinct off-reservation communities of Duwamish existed after 1900. It does not reveal households or "enclaves" that contained individuals from different lines of Duwamish descent. Finally, the information does not define a network of socially interacting off-reservation Duwamish comprising DTO ancestors.

[41] Henry Moses has no descendants and thus no descendants in DTO. When he died intestate, the probate determined that his only possible living heir was his wife, implying that he had no living descendants. There is one person on the DTO 1991 list who is a descendant of a collateral relative or in-law of Moses, but there is no ancestry chart or Indian history chart showing through whom she may connect to Henry Moses. Myron Overacker is a descendant of Abner

their parents told them, or what they had gleaned from published sources, primarily concerns the 19th century (DTO Response to PF 1998, Exhibit 40). Discussion about activities before 1900 provides evidence, when combined with other documentary sources, for a historical Duwamish community at or near Renton, King County, Washington, in 1900, but it does not provide evidence for the existence of a community between 1900 and the date of the interview in 1963.

The two men discuss sometimes-conflicting accounts by older relatives or journalists about events before they were born. When they discuss Dr. Jack Bigelow, they refer to newspaper articles about him, rather than personal experiences or eyewitness accounts. The interviews contain almost no discussion of their own experiences from 1906 to 1963. They discuss historical individuals who were not Duwamish and Duwamish who do not link to the DTO petitioner. Accordingly, they are not sufficient evidence to describe a community associated with the petitioner before or after 1925. These interviews, thus, did not provide evidence of community between 1906 and 1963.

In 1919, Indian Agent Charles Roblin created a list or schedule of unenrolled Indians in western Washington who could trace their ancestry to treaty tribes (Roblin 1/31/1919). This issue is discussed further in DTO PF GTR 1996, 36; and in this report under criterion 83.7(a). This list included about 150 individuals with Duwamish ancestry.

The petitioner holds that those identified with Duwamish ancestry on the Roblin Roll were part of an off-reservation Duwamish entity, the DTO. With regard to the Roblin Roll, one of the DTO researcher's states:

> Roblin's data included some four thousand landless Indians from forty tribes averaging approximately 13% full-bloods per tribe. . . 36% for the Duwamish, almost three times the average for the forty tribes in the survey. . . . The Roblin blood quantum data provide an objective means for determining which groups were affiliating with Indian tribes. If the Duwamish and Snoqualmie were merely descendants of Indian women who married white pioneers, then the Roblin roll would have shown them to possess only one-eighth Indian blood quantum levels in 1919 some three generations after the 1850s pioneers arrived. (Tollefson 1992, 212)

This analysis is irrelevant, however, because only a few of these persons are ancestors of the DTO membership. The about 150 unaffiliated Duwamish on Roblin's Roll constitute only 26 family units (a single person, or parent, children, grandchildren in some combination) headed by either half or full bloods. Seventeen of the family units have no family member appearing on the 1926 DTO list, leaving 9 of the family units with family members appearing on both lists (Roblin Roll and the DTO 1926 list). Of these 9 families represented on both lists, only 5 have descendants in

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Tuttle and Anna Kennum. Myron Overacker has two descendants on the DTO membership list. Abner and Anna (Kennum) Tuttle have 119 descendants in the DTO.

the current membership. The DTO researcher's statistics drawn from Roblin, thus, are not representative of the DTO ancestors or of the DTO membership today.

The issue of blood degree raised by the petitioner's researcher applies to all 26 of these Roblin Roll families. High degrees of Duwamish blood indicates social interaction among Duwamish at the time of the person's birth, but not necessarily among those on the roll, as shown also by the age of those individuals. The Department's analysis indicates that Roblin records an estimated 33 percent of the individuals on his list of unenrolled Duwamish as "full-bloods." However, for these statistics to assist the petitioner in demonstrating community, the petitioner must connect these individuals on the Roblin Roll to the 1926 DTO list, and demonstrate that those on the 1926 list interacted, such as through marriage or social interaction, which the petitioner does not do.

Departmental analysis found that only a very few elderly individuals listed by Roblin as "full-blood" Duwamish actually link to the DTO's 1926 list. The few DTO individuals listed as "full-blood" by Roblin were elderly heads or founders of an extended family. Two of the individuals listed by Roblin with links to DTO in 1926 were actually deceased in 1926. The full-blood status of these elderly individuals indicates that their parents interacted with other Indians but is not evidence that the generation listed in 1919 or 1926 did so. DTO presented no evidence that the founding members of the DTO had interacted prior to 1926. Absent evidence of community during the time period prior to 1925, the DTO failed to satisfy 83.7(b).

In conclusion, the petitioner did not submit evidence or analysis in response to the PF, or before the IBIA, the Secretary, or the Court, that establishes its ancestors were part of the historical Duwamish tribe after 1880 and before 1925. Under the 1978 and 1994 regulations, there is insufficient evidence to show by a reasonable likelihood that the DTO maintained community between 1880 and 1925.

The evidence submitted in response to the DTO PF provides no basis for changing its factual conclusions made under the 1978 regulations. Similarly, the evidence is insufficient under the 1994 regulations to demonstrate criterion 83.7(b) for community before 1925.

Lack of Continuity between Families on Satiacum's 1915 List and DTO's 1927-1934 List

The PF found that the Satiacum's1915 list and the DTO's lists from 1927 to 1934 represented two different organizations. In particular, the 1915 list represented on and off reservation Duwamish, and there was a lack of continuity between it and the post 1925 lists of DTO, with no reservation Duwamish. Despite this problem, the petitioner's researcher repeatedly treated Satiacum's list as a membership list for a Duwamish organization that was a forerunner to DTO.

On December 22, 1915, Charles Satiacum and others meeting in Tacoma, Washington, formed a board of directors of the "Duwamish Tribe of Indians." The introduction to Satiacum's list states,

> This Board of Directors shall have the authority; and shall select the true members of the said Duwamish Tribe, and submit the same to the Honorable Commissioner of Indian Affairs; through the Northwestern Federation of American Indians. (Satiacum 12/23/1915)

The Northwestern Federation of American Indians (NFAI) was an intertribal claims organization headed by Snohomish descendant Thomas Bishop (Snohomish FD 2003, 91-92; Roblin 1/31/1919). Satiacum's board members were from throughout Washington, including Marietta, Tacoma, Auburn, Renton, Sequomish, Suquamish, and Olympia. These men apparently compiled a list of the "members of the Duwamish tribe of Indians to this date." There are 318 names on the 1915 list, but no family relationships, ages, or residences to distinguish individuals of the same or similar names.[42] No documents from this meeting help to explain its purpose or refer to any previous group.

The petitioner submitted several lists created during the early organization of DTO beginning in late 1925. A heading on the first page of the 1926 "Constitutional Enrollment List," reads "Enrollment of the Unallotted Indians of the Duwamish Tribe Under the Mukiltoe [*sic*] Treaty, on Point Elliott, of January 22, 1855." The DTO also submitted a copy of a similar list that has a cover sheet that bears a different title: "Re-enrollment of the Duwamish Tribe from December 23, 1915. And Enrollment of the Duwamish Tribe January 27 and to May, 1934, by Enrollment Council and Peter J. James, Chairman of the Council." The latter title relates Satiacum's 1915 list to the DTO list. There are 416 names on the 1927-1934 list, which is almost identical to the 1926 "Constitutional Roll," except for the addition of children born since that enrollment and some persons noted as deceased (since 1926).[43]

In its response to the PF, the petitioner submitted a table entitled, "Duwamish Indians Found in Fourteenth census and on 1915 (Satiacum's) and 1927-34 Lists," created by DTO's historian Stephen Dow Beckham (Beckham 1998, Appendix D). It shows selected people whom the 1920 Federal census enumerated. The researcher states that he has picked names of individuals reputed to be Duwamish who "appeared on special Indian Schedules; others appeared on the regular population schedules."[44] His stated purpose in submitting this chart is to "confirm[] relationships

[42] For example, the Annie Garrison may be Anna/Annie Garrison Henry (1882-1920, wife of Leroy Henry), the daughter of John and Jane/Jennie Garrison, or Annie Henry Garrision (1896-aft. 1938), the wife of Benjamin Garrison, the son of John and Jane/Jennie Garrison. By 1915, Annie Garrison had been married to Leroy Henry for about 15 years and, if present to sign a membership list or was otherwise well-known to the compilers of the list, would most likely have been listed by her married name. None of her children or other Garrison siblings are on the 1915 list, and neither is her mother, Jane or Jennie (1840-1931), who was a Duwamish/Suquamish Indian, head of the Garrison family, and still alive in 1915.

[43] In fact, the names and ages from 1926 are the same on both lists. For example, the first name on both lists "Mrs. Mary Steward" is 54 years old on the 1926 and on the 1927-1934 lists. There are some undated annotations to the 1927-1934 list. For example, "father of Mae Slade [and] Mildred Slade" is written following the name Archie Slade, and "Deceased" is written after the name "Abner J. Hamley," which also has a line through it. The author of the annotations is not revealed, but may be Peter J. James, the first "leader" of the DTO and allotted on the Lummi Reservation.

[44] There are no separate Indian schedules for 1920. The 1900 and 1910 Federal censuses had special schedules for "Indians, living on reservations or in tribal relations, and also by the enumerators in certain counties containing a considerable number of Indians" (U.S. Census Bureau "Instructions for filling out the Special Indian Schedule," 1910).

to others enumerated in this census." He transcribes information from the 1920 Federal census, but does not identify which of the individuals were on the 1915 list, on the 1926 list, or on both. He does not link any of the individuals on the 1920 Federal census to a parent or sibling who might be on either or both lists. It seems that he is maintaining that persons appearing on the 1915 list but not the 1926 list or on the 1926 list but not of the 1915 list could be linked through individuals enumerated in the census. Presumably, the census would show individuals listed in 1915 living with or near individuals listed in 1926 and vice versa. However, he did not provide this complete analysis.

This DTO researcher lists 38 households in which individuals he identifies as Duwamish on Satiacum's 1915 list reside in 1920, according to Federal census enumerations. Similarly, he lists individuals on the DTO lists created between 1926 and 1934 and notes where they reside in 1920. It does not appear that these households necessarily have descendants in the current DTO membership. To "confirm relationships with other individuals," he lists in a column after each name the names of persons with whom each person appears on the census. In every case, the individuals are with their own nuclear family members. The selected individuals' households on the 1920 Federal census are dispersed.[45] The Department accepts that members of nuclear families interact socially under both the 1978 and the 1994 regulations, but requires petitioners to demonstrate community beyond nuclear families. The evidence as presented does not demonstrate community among Duwamish families on Satiacum's 1915 list and DTO's 1926 list.

The petitioner submitted another chart created by DTO's researcher entitled, "People not on 1915 or 1927-34 Lists but appearing to be Connected to Those Who were so Listed." The researcher's purpose in submitting this material is to "confirm[] relationships to others enumerated in this [1920] census" for the 35 individuals he selected. However, he does not denote exact relationships between these individuals on the census and individuals on Satiacum's 1915 list and DTO's 1926 or 1927-34 lists, stating only that the names appear to be connected, apparently based on similarity of surname. As such, it is not evidence to demonstrate community for 83.7(b) under either the 1978 or the 1994 regulations.

In conclusion, the evidence and data arranged by the petitioner, and the analysis of the evidence by DTO's historical researcher, do not demonstrate that petitioner was a community before 1925.

Community since 1925 to the Present

The PF found that the petition materials combined with materials located during the Department's evaluation do not provide sufficient evidence of community, at any time since 1925. The petitioner has not demonstrated its ancestors maintained community with the Indians of the

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[45] Eleven households are at the Port Madison Indian reservation, in Kitsap County, and the remaining 27 households are dispersed in 20 other enumeration districts in many counties. Only four of these districts have in them more than a single household on Beckham's chart. These include Muckleshoot (3 households), Skokomish (2 households), Lake Sammamish, where some Snoqualmie were living (2 households), and the Sackman logging camp (2 households).

historical Duwamish settlements, with those Duwamish who moved to reservations, or with each other.

In its response, the petitioner submitted a selection of papers pertaining to Kitty Bigelow's inheritance of her husband "Dr. Jack" Bigelow's homestead.[46] Jack Bigelow died in 1901; Kitty Bigelow died about 1908. The petitioner claims that these papers demonstrate that the petitioner's members had a relationship with Jack Bigelow, whom a local historian, writing in 1929, described as "the right hand man" to Chief William, a leader of the Cedar River Duwamish before 1900 (DTO PF ATR 1996, 51). The materials, created between 1924 and 1939, do not demonstrate community. The BIA correspondence concerning the inheritance of the property involves individuals in a single family only and, as such, does not contribute new information about community among other Duwamish families.

The probate is on the Agency's agenda a month later, when Commissioner John Collier directs Upchurch to arrange a hearing to settle this issue. The BIA is primarily concerned that the State has improperly administrated an individual trust property (an individual Indian allotment), and it asks how the BIA can fix this jurisdictional mistake. Letters from 1935 and 1936 reveal that, even if the state court erred in probating Bigelow's land, the BIA would be inclined to uphold its decision (Collier 12/23/1935, Melzner 2/4/1936; Bogle, Bogle & Gates 1/31/1939).

These materials concern an individual allotment and do not demonstrate community outside Jack Bigelow's relatives and family. This collection of documents in combination with other evidence involving Jack Bigelow provides evidence that actually undermines the petitioner's claims that he or his relatives were socially tied to a Duwamish tribe or to a DTO petitioner.

The petitioner submitted a letter dated November 15, 1935, written to Myron T. Overacker that, it claims, confirms a wide set of familial and tribal connections. The typewritten letter bears a Tulalip Indian Agency return address. "Effie" signed it. A handwritten notation attributes this letter to an Overacker author, although the text itself does not identify the author "Effie" by surname, by relationship to addressee Myron Overacker, or by tribal affiliation. The letter makes the following statements about other people, "My daddy and Uncle are over here the other day," "how is lil Ann," and "Emily Allick is staying with mom. She lost her son not very long ago. He just graduated from Public High School at Coupeville. Imagine it broke her up pretty much" ("Effie" [Overacker] 11/15/1935). Of these, "Lil Ann" and "Emily Allick" likely refer to DTO members, namely Myron Overacker's six-year-old daughter, Anna Overacker, and Emily (Percival) Kittle/Allick, respectively. However, this single letter by an unknown author does not

[46] The summary of Dr. Jack Bigelow's Indian homestead explains that "Jack Bigelow, Dr. Jack or Leo E. Taku, deceased Indian Homesteader . . . received a Homestead Certificate on Government Lots 9 and 10, of Section 24, Township 23, North, Range 5 E.W.M. of King County, State of Washington under the Act of Congress of July 4th, 1884." The restricted Homestead patent was dated August 18, 1897, but was not filed for record until July 27, 1927. "The above subject died on July 4th, 1901, leaving Kitty Bigelow, his widow, as his only heir" (Bogle, Bogle & Gates 1/31/1939). After the death of Kitty Bigelow, letters from the Indian Agency identified Dr. Jack Bigelow's nieces and nephew, who survived him as his heirs.

demonstrate community between the Overackers and other Duwamish, and there is no other evidence, which when combined with it, demonstrates community.

The collection of documents dealing primarily with the Overacker family in the 1930s did not provide evidence of community among DTO members under either the 1978 or the 1994 regulations. The evidence pertains to a single extended family and tends to show that members were not in close contact.

Community Activities after 1934

DTO's anthropological researcher Kenneth Tollefson's 1992 article, "The Political Survival of Landless Puget Sound Indians," states that DTO member David Fowler (1868-1946)[47] made an annual trek to Dewatto (where his grandfather had lived) to "get their winter supply of salmon and venison" in the mid-1930s. The DTO researcher maintains, "others came also from Renton, Seattle, and Tracyton. They stayed with Fowler hosts," but the research does not name these "others" nor provide documents or interview transcripts to support his statements (Tollefson 1992, 216-217). His article also mentions the Sackmans in Tracyton, but gives no description of the Sackmans interacting with Fowlers or other Duwamish descendants. Contacts appear limited to family members.

The available evidence does not demonstrate if several extended families came together or how many families in the DTO membership participated. There is no claim that the DTO organized these subsistence activities. No evidence in the record reveals a community of DTO members in the mid-1930s.

The same Tollefson article states that 79 percent of respondents (138 of 175) said that they had participated during recent times in tribal meetings, Indian spiritual practices, bingo, bone games, powwows, Indian naming, canoe races, conferences, potlatches, and other gatherings (Tollefson 1996b, 135). The PF found that although DTO has sponsored cultural and revitalization projects since the 1980s, in fact, very few members are involved, the small core of leaders plan and put on events without member in-put, and usually the funding and other support originates in non-profit and governmental organizations, not DTO. Both the 1978, as applied, and the 1994 regulations, as explicitly stated at section 83.7(b)(vii), include cultural practices, but petitioners must provide evidence of group participation in cultural activities.[48] The article does not provide detail of when cultural activities occurred and the level of attendance in such activities. Because the researcher implies these events were recent, documentation should have been relatively easy to obtain.

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[47] David Fowler, enrolled at Port Madison, does not appear on any DTO membership list during his lifetime. He and his first wife were both Indians and are buried at Suquamish (Reservation) Memorial Cemetery in Kitsap County. In fact, he was on the Roblin Roll as Snoqualmie, and none of his children are on any of the DTO lists, including the current membership list. The DTO members descend through three of David's siblings.

[48] Language, functioning and distinct kinship systems, distinct religious institutions, and rituals and celebrations are examples of such cultural activities that occur within a group setting.

The evidence in the record, including oral histories and other materials, indicate that DTO members' participated in Duwamish cultural activities rarely, people other than DTO members organized them, and only a few DTO members attend. The scattered limited references to individual DTO members attending "traditional" events do not demonstrate community by the petitioner's members.

Nature of Kinship and Social Ties within DTO

In 1986, the petitioner's anthropologist took a survey of 54 adults (Tollefson 1995b, 91). He found that 69 percent reported they had 1/8 Duwamish descent.

This 1986 survey has methodological flaws. The "shared symbols" to which the anthropologist refers are too general and stereotypical to be meaningful evidence for showing a distinct DTO community existed. For example, questions asked whether the respondent cared about the environment and how much and how often he or she ate salmon. Such questions do not provide evidence of community.

The petitioner's survey data concerning, for example, eating salmon does not provide evidence of a community. In modern contexts, other petitioners, demonstrating community through the use of salmon or other types of fresh water fish or seafood, have included evidence of several different types of shared activities.[49]

The DTO survey did not reveal any community-based activities associated with salmon or fishing. Enjoying salmon at home on a monthly or weekly basis does not demonstrate community and does not distinguish the petitioner from most inhabitants of the Pacific Northwest. Because the asserted "cultural values" discussed in the Roe report are not specific to DTO members, not based on their membership in a DTO community, and do not distinguish them from many others of other heritages living in the Pacific northwest, it is not evidence of a DTO community.

As provided in the Federal Register notice for the Duwamish PF, "Since 1925, the social activities of the petitioner's members with other members, outside the organization's annual meetings, took place within their own extended families, but not with members outside their own family lines" (61 FR 33763). The petitioner submitted an article by one of its researchers that states that about 63 percent of individuals had "contact with one or two Duwamish households (outside their treaty families) in the past ten years" (Tollefson 1996b, 134). Underlying data to support this conclusion did not accompany this article. This report, when the evidence in it is combined with

[49] Some of these shared activities involving fishing used as evidence by petitioners include group-organized fishing ventures (Shinnecock oystering, Pamunkey shad roe fishery) and Cowlitz -led lobbying for fishing rights and laws). Note that DTO members did not follow-up on participating in salmon management plans during the *U.S. v. Washington* litigation after the DTO leader died, even though DTO was an intervener in the case. Other examples are a tribal salmon "feed" at the beginning or end of the fishing season (Snoqualmie), and a salmon component to the tribal food bank maintained to help indigent members (Snoqualmie).

other evidence from the 1930s, does not show by a reasonable likelihood that the petitioner is a community as defined under either the 1978 or 1994 regulations.

Another of the petitioner's researchers, Michael D. Roe, a psychology professor, makes statements based on a survey, which he says shows a number of "cultural values" which include attitudes such as "commitment to Duwamish way of life, attendance at Duwamish gatherings, skin color, preference for Indian food" (Roe 1998, 23).[50] He arranges them in a hierarchy according to the number of positive answers each category received to determine what topic or issue statements are most widely accepted by the survey respondents, a non-representative and very small number of DTO leaders. He compares the responses from an earlier survey in 1983 to those in 1996 and finds "although there were slight drops in magnitude of the mean ratings between the 1983 and 1996 surveys, the order of the hierarchies remained quite similar." The respondents are not named and no data is available to evaluate the accuracy of Roe's evaluations. He does not show how the DTO members enact these general and stereotypical "values" in actual group activities.

If a researcher could show that a petitioner's members shared specific and distinct "cultural values" based upon on-going interactions, then this evidence could be used to demonstrate criterion 83.7(b). In addition, the surveys on which the researcher bases his statements are methodologically flawed and statistically insignificant. Failing to provide specific evidence of significant interaction, significant social relationships or informal social interaction broadly among the members of the group, the DTO presented a series of abstract concepts that did not provide evidence of social interaction of the petitioner's current and past members or ancestors.

Cultural Activities that Indicate the Maintenance of a Community

The petitioner's researcher questioned "six council members and two executive officers" about whether they would maintain a requirement of Duwamish ancestry for membership. Because they answered "yes," he believes this shows "a rigid descent boundary" (Tollefson 1992, 110). There are 355 individuals in the DTO.

Since 99 percent of the current membership descends from a Duwamish ancestor, the group clearly maintains a boundary based on descent. However, maintaining a social boundary under criterion 83.7(b) refers to maintenance of an actual social boundary as revealed through interactions within a group, not merely a belief that a descent boundary should be maintained. Such a social boundary requires that members interact with other members, whether or not they are in the same family. Social boundaries to demonstrate criterion 83.7(b) would be based on documentation of activities, which indicate individual members actually interact with other members in ways which are different from the ways they interact with non-members, regardless of the group's membership requirements.

[50] Although the petitioner submitted Michael Roe's study in reference to criterion 83.7(c), OFA evaluated it also in the context of criterion 83.7(b) when pertinent.

The Petitioner's Participation in Commemorative Events and Pow-wows

Activities need not be viewed by the public as "Indian" to be evidence under 83.7(b). In other acknowledgment cases, petitioners have demonstrated that a representative number of members organized and attended petitioner-organized activities. They considered these activities significant to their group's cultural expression, even though they were not unique to Indian culture (e.g., holding Christian church socials, controlling the taxes in a New England town, socializing in segregated dance halls, and undertaking church cemetery clean-ups).

The petitioner's researcher Michael Roe extracts information from interviews with 14 present or former council members and reorganizes it into a survey format (Roe 1998, 11-12). Data based on a sample limited to 14 council members—less than 4 percent of the total membership of 355—is not necessarily representative of the membership as a whole. [51]

For example, using the same data source, this researcher notes that

> . . . .seven of the respondents noted their participation in elements of American Indian spirituality. These elements included living in harmony with all God's creation (i.e., all my relatives), power of spirit creatures . . . and many different types of traditional ceremonies. (Roe 1998, 11-14)

Seven of 14 individuals is a very small data set, and the results do not reveal the patterns of participation for the DTO membership of 355 individuals in Native American religious ceremonies, particularly within the DTO group.[52]

Participation in religious institutions, whether derived from Native American or other traditions,[53] are accepted as evidence under criterion 83.7(b) if a representative distribution of members of the petitioning group interact with one another in a distinct institution which is predominantly under the control of the petitioner (Mashpee, Mohegan, Poarch Creek, Pamunkey, Pokagon, Shinnecock, Snoqualmie, and others). DTO's repeated statements about identity, supported only by unrepresentative survey results, do not provide evidence that a substantial portion of the petitioning group's members participate in shared and distinct DTO activities.

Participation in Revitalization Projects

The PF stated:

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[51] Other petitioners have shown distinct cultural patterns practiced within an institution associated with their groups (the Mohegan and Shinnecock churches, the Jena Choctaw language, or the Pamunkey shad fishery). The Snoqualmie participation in Shaker religious practices indicated that they were involved in a regional cultural network.

[52] Even for this group, however, participation was minimal. One person had been to a smokehouse ceremony, and five had attended potlatches.

[53] Any religious tradition as instituted by the petitioner is acceptable evidence under the regulations. The majority of petitioners practice Christianity.

> Members of the petitioner reported involvement as individuals in efforts at revitalization of Duwamish culture. . . . Duwamish Tribal Organization members cited examples of learning the Salish language and participating in one name-giving ceremony and in canoe building projects. However, participation in all these activities was limited to only three or four individuals. All of these individuals are from a single family line and are a part of the organization's leadership. (DTO PF Summary 1996, 11)

The petitioner's response to the PF did not include evidence showing wide participation by the group's membership. The petitioner did not submit lists of individuals involved in these classes, did not show the petitioner's members involved in organizing heritage events, and did not send in sign-in sheets and minutes from meetings, where the group made decisions concerning cultural projects and grant applications. The DTO researcher points out that in the survey responses "[o]nly [the petitioner's] role in preserving the tribe's culture and heritage received more than 50% acknowledgment by the participants" (Roe 1998). The "belief" that preserving heritage is important by more than 50 percent of the survey sample is good evidence for community only if the beliefs of individuals are realized through the petitioner's group activities. However, in this case, the evidence shows only very few members from a single family actually involved in heritage activities. Evidence of individual beliefs about the importance of heritage does not substitute for evidence showing heritage projects in a DTO group context.[54]

The Existence of a Social Core or Social Networks

The Federal Register notice for the PF stated:

> The petitioner's current members do not maintain a community that is distinct from the surrounding non-Indian population. No geographical area of concentrated settlement provides them with a social core. The group's geographical dispersion is consistent with other evidence showing the members do not maintain, and have not maintained significant social contact with each other. (61 FR 33763)

In response, Roe discusses an abstract theory of Thomas Bender:[55]

> . . . a network of social relations marked by mutuality and emotional bonds; which include a limited number of people in restricted social space or network, who have mutual access to one another, who share understandings and sense of obligation, and who also may find themselves in conflict with one another at times . . . . [such a network] does not require dwelling in close proximity to one another. (Roe 1998, 32)

[54] As part of the record before the Court, the petitioner submitted the 2009 year-end report document on the appeal for money to support the Duwamish Longhouse and Cultural Center. Like other coverage of activities involving the construction of the Duwamish Longhouse and Cultural Center, the information is not specific and does not reveal the extent of member participation in important areas, including decision-making and monetary management, policy, program management and design, etc. Although planning and construction of a longhouse and cultural center could be evidence of community, it, alone, is not sufficient to satisfy 83.7(b).

[55] Michael Roe's report appears to relate to criterion 83.7(b), even though the petitioner submitted it under criterion 83.7(c).

The 1978 and 1994 acknowledgment regulations do not require that a petitioner's members live in geographical proximity. Bender's definition of community as a social network is very close to the definition of community in both regulations. The Department's interpretation of the regulations in previous acknowledgment evaluations has not required members to live in "close proximity to one another."[56]

Petitioners usually demonstrate that they are a community by utilizing non-geographical evidence such as actual interaction, distinct social networks, conflict and resolution of conflict, decision-making, cooperative and reciprocal relationships, and similar activities which are close, if not analogous, to those described in the DTO researcher's quote.

The petitioner, however, has not submitted such evidence, whether geographical or non-geographical, that demonstrates the petitioner maintains social networks connecting most of the DTO members, sustains reciprocal obligations incorporating most of the membership, or undertakes other social activities, including conflict, sufficient to meet the regulations. The DTO presented a series of theoretical abstract concepts of community, identity, acculturation, and assimilation, unsupported by evidence of actual interaction by DTO members. These abstract concepts did not demonstrate actual social interaction of the petitioner's current and past members or ancestors.

The Summary under the Criteria for the PF found that:

> . . . activities recalled by today's members . . . shared gift giving, cooperative hunting, and summertime berry picking . . . took place . . . among brothers, sisters, aunts, uncles, nieces, and nephews, not among members outside of their own extended families. Today's members did not have contact with other members outside their own extended families until they were adults, and then only in the restricted setting of Duwamish Tribal organization meetings. (DTO PF Summary 1996, 9)

Petitioners may submit kinship evidence to demonstrate community. Kinship interactions that may be useful evidence of a community often connect petitioner's members from different extended families. Crisscrossing kinship connections should generate over time a network of ties and obligations. Some members may be peripheral to the group while others form a close-knit core or even several inter-related cores. The DTO petitioner presents evidence of the everyday

[56] Where they do live in close proximity (Poarch Creek or Jena Choctaw), meaning a "village-like setting" or "exclusive neighborhood," the Department assumes that interaction existed without requiring other evidence. This practice was codified in the revised regulations of 1994 in 83.7(b)(2)(i). The 1994 regulations provide that there is sufficient evidence of "community" if "More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community."

interactions of individuals only in their own families, which does not show the existence of a kin-based community encompassing the petitioner's membership as a whole.[57]

According to DTO researcher Roe, "[c]learly the dominant social networks described by these participants were within their extended Duwamish families" (Roe 1998, 27). This position agrees with the PF. He believes that "family ties permeate the social world of the Duwamish, such as funerals and weddings, and many informally socialize with Duwamish who are family. Most came to know of their Duwamish roots and cultural heritage through teaching and socialization within the family context (Roe 1998, 33).

DTO, however, did not submit evidence to support this researcher's description of active family or kin-based interactions "that permeate the social world of the Duwamish" beyond their own extended families. Most Americans interact within limited extended family groupings, meaning groups of individuals who descend from the same set of grandparents or great-grandparents and various in-laws, and such evidence does not demonstrate distinct community. The regulations require interaction within the petitioning group.

The petitioner's researcher postulated that the Duwamish interacted with other Indians:

> Beyond the Duwamish tribe, seven participants described significant relationships to other Indian peoples, such as the Suquamish, Snohomish, Muckleshoot, and Puyallup. These connections often were through relatives or friends. Also, seven respondents described participation in pan-Indian events, such as Pow-wows. (Roe 1998, 17)

The only evidence he gave to support this statement was that 7 of 355 of the petitioner's members had "significant" interactions with other Indians. The Department's analysis showed six or seven individuals, representing only one family line, participated in these kinds of activities. The activities of a small number of individuals from one family do not provide sufficient evidence that the petitioner was part of the reservation "D'Wamish and allied tribes" or that DTO interacts with a larger Indian community in Puget Sound. This evidence is insufficient to change the conclusions of the PF that

[57] An anecdote concerning an elderly woman to whom other Duwamish brought fish when she was ill suggests informal social interactions. This anecdote is in the petitioner's response. The context of the narrative indicates that the individuals involved were old when the narrator was a child, placing the events in the early 20th century. The report gives no names or other details (DTO 1995, 16-17). This example is not well documented, because the individuals involved are not named. The story content tends to imply that the individual discussing the events was related to other Duwamish only through elderly individuals who died early in the 20th century. This single example of an informal welfare effort may be an example of the kind of activity that would be evidence to meet criteria 83.7(b) or 83.7(c) under both the 1978 or the 1994 regulations. However, to be useful, such evidence would have to be typical of relationships among group members and to occur repeatedly. This single recollection provides very limited data. The data available do not demonstrate whether such interactions were characteristic of interactions for a predominant proportion of the membership and whether these kinds of informal activities occurred in the present, a century ago, and the intervening decades.

> [t]here is . . . no evidence that the petitioner's members from 1925 to the present have interacted with reservation Indians, attended potlatches, or visited reservations. The only exception is when, in the past as children, they accompanied their parents and grandparents. (DTO PF Summary 1996, 9)

Miscellaneous Issues

Roe questions a general requirement of the regulations that petitioners demonstrate continuous existence. Roe maintains it is necessary to look only at "endpoints," taking the position that a Duwamish tribe existed historically and the petitioner claims to be the Duwamish tribe and so exists now. He assumes that similarities at the "endpoints" allow an assumption of continuity between the endpoints. He states:

> These participants demonstrate continuity and synthesis in their endpoints of acculturation. Continuity is evident in their 'characteristic Duwamish' attitude and behavior toward a personal natural world, American Indian cultural symbols, and in their participation in a variety of cultural practices. (Roe 1998, 34)

The Department does not accept Roe's conclusion.

Past determinations have not accepted the comparison of "endpoints," as sufficient evidence to show a petitioner has existed continuously. The 1994 regulations require that documented petitions "include thorough explanations and supporting documentation in response to all periods" (83.6 (c)). The 1994 regulations also explain that the "existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time" (83.6(e)). An almost 150-year gap in evidence to demonstrate community does not meet the 1994 regulations or the standards applied under the 1978 regulations. This "endpoint" theory is not acceptable evidence to demonstrate community under the regulations, even if community were shown at present.

Roe maintains that acculturation is not synonymous with assimilation (Roe 1998). This is correct; however, the issue here is whether the Duwamish petitioner has maintained a distinct community continuously, whether or not acculturated. The 1978 and 1994 regulations and their past applications have not penalized petitioners who have largely acculturated (taken on the culture of a dominant society) and may even appear to their neighbors to be somewhat assimilated (become an integral part of the dominant society). The issue is whether they have maintained on their own a separate and distinct social community at least in some significant respects. Thus, the Department has accepted petitioner-controlled institutions that may appear to be non-Indian in cultural origin, such as Christian churches, zydeco dance halls, or a small town government, as evidence that a petitioner has maintained community. Most petitioners, including those that the Department has acknowledged through the acknowledgment regulations, live and work in the dominant society, and the Department evaluates evidence in this context. The problem the DTO petitioner has is that they have not demonstrated any distinct DTO community at all.

The 1994 regulations also clarified the 1978 regulations by providing some forms of evidence that in itself demonstrates the petitioner meets criterion 83.7(b). One form of this evidence is that "at

least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to language, kinship organization, or religious beliefs and practices" (83.7(b)(2)(iii)). The kind of cultural practices accepted under this paragraph of the regulations are extremely significant and extend throughout a predominant portion of the membership. They include speaking a North American Indian language, maintaining a distinct kinship terminology, or supporting a particular religious institution and rituals that are distinct from the surrounding population.

Maintenance of cultural practices over time depends on the group's continued existence. For example, Indian languages are maintained within a linguistic community where children learn it and, as adults, they pass it along to their own children. The existence of a distinct linguistic community comprising speakers of an Indian language marks a continuously existing community. The use of a unique kinship terminology and/or an operating clan or moiety system that defines relationships among a group's members, like language, also marks a continuously existing community. These practices may characterize the group for only part of its history, often during the years following contact, and are not required. The evidence of cultural practices the petitioner submitted, every example involving only an individual, his or her immediate family, or two or three people, do not depend on the existence of the petitioner's social group. Thus, the DTO petitioner has not presented the type of evidence described at 83.7(b)(2)(iii).

The Anderson draft under criterion 83.7(b) did not rely on the kinds of specific evidence discussed above from past acknowledgment precedent and merely relied upon and asserted that the family was the arena in which the individual Duwamish acted out his or her identity for their whole lives. This statement, however, does not reflect the requirements of criterion 83.7(b) that a group's members act together within a community and that their identification be "collective," not on an individual or family basis. Anderson accepted that isolated families without links to other DTO families demonstrated the petitioner met criterion (b). He did not actually evaluate any specific evidence in the context of the criterion but crossed out the weighing of evidence in the recommended decision on which his edits appear. The draft, therefore, was an incomplete and inconsistent evaluation. For example, the draft stated that the DTO members and its ancestors were not acting together and had become highly dispersed and rarely met. Nevertheless, without further explanation concerning the lack of any evidence of interaction among DTO's ancestors and other evidence indicating they did not interact, the ASIA's draft concluded that, this collection of individual descendants has continuously existed as a community within the meaning of the regulations (Anderson 2001, 25, 48).

The Acting ASIA's draft "alternatively" relied on Congressional appropriations for reservation tribes (Anderson 2001, 48). The appropriations were directed at tribes, in which neither the petitioner nor its members' ancestors were enrolled. Thus, the evidence relied upon pertained to a group or groups that are not the petitioner. The draft also relied upon claims legislation available to all individual Duwamish descendants, whether or not enrolled in a tribe or a member of the petitioner. Past acknowledgment decisions have not, however, found that individuals who met only for the purpose of applying for individual claims, represent the community that meets the requirement of criterion 83.7(b).

Summary Conclusion under Criterion 83.7(b)

Even though the petitioner's individual members descend from an Indian tribe that inhabited the southern Puget Sound region at first sustained contact in the mid-1850s, its ancestors (primarily Duwamish women and their non-Indian spouses) soon dispersed throughout western Washington, and by the 1880s, their descendants did not maintain a distinct community comprising a dispersed off-reservation population. They also did not remain part of the historical Duwamish tribe, which moved to four Federal reservations, and they did not evolve from the historical Indian tribe to become the DTO after 1925. The available evidence does not establish by a reasonable likelihood that a substantial portion of the petitioning group inhabited a specific area or lived in a community viewed as American Indian and distinct from other populations in the area at any time, as required by the 1978 regulations. This FD on Remand evaluated all of the evidence anew and found that it did not show by a reasonable likelihood that a "predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present," as required under the 1994 regulations.[58] Therefore, the petitioner has not satisfied the requirements of criterion 83.7(b) under either the 1978 or the 1994 regulations.

[58] Even assuming the petitioner were previously recognized, because it has not submitted sufficient evidence to show it meets criterion 83.7(b) at any time under either the 1978 or the 1994 regulation, it also would not meet criterion 83.7(b) for community at present under §83.8(d)(2) for previously acknowledged petitioners.

CRITERION 83.7 (c)

The Differences between the 1978 and 1994 Regulations

Criterion 83.7(c), under both the 1978 and 1994 regulations, requires the petitioning group to demonstrate it has exercised political influence or authority over its members from historical times to the present. Under both regulations, the Department has determined that "historical times," begins with first sustained settlement by non-Indians, in this case the mid-1850s. Thus, the basic requirements of criterion 83.7(c) are essentially equivalent under both regulations.

The 1994 regulations at 83.8(d)(3) made a modification to the requirements of criterion 83.7(c) for previously acknowledged petitioners. Since the DTO was not previously acknowledged, this change does not affect the petitioner. Another difference between the 1978 and 1994 regulations for demonstrating political authority are provisions for petitioners with evidence for demonstrating criterion 83.7(c) that is sufficient in itself for certain periods. The aim of explicitly stating how the Department would weigh such evidence was to speed up evaluations and reduce the amount of evidence petitioners would need to submit. This type of "high" evidence (see 83.7(c)(2)) usually applies to groups with land, group owned and managed resources that it must allocate, or with evidence of economic cooperation and dispute settlement. This "high" evidence may be used as "cross-over" evidence for meeting criterion 83.7(b) in the same period. "High" evidence for community—listed at 83.7(b)(2)—may provide "cross-over" evidence for meeting criterion 83.7(c). The DTO petitioner did not provide any of this type of "high" evidence for any period.

The Proposed Finding

The PF concluded that the petitioner evolved from an organization formed in 1925, which did not demonstrate it was a continuously existing group and had maintained political influence over its members throughout history until the present. It noted that a historical Duwamish tribe under the 1855 Treaty of Point Elliott continued to exercise political influence at a traditional village site until 1896 and on the four reservations established by the treaty (DTO PF Summary 1996, 12). The PF also concluded there was partial evidence of the existence of an off-reservation political entity involved in claims as part of the intertribal NFAI for the period from 1915 to 1917.

The available evidence did not demonstrate continuity between any of these Duwamish entities and the DTO (DTO PF Summary 1996, 13-15). The DTO did not evolve from these earlier entities. Individual Duwamish descendants began to organize only in late 1925. Most of these descendants had no demonstrated political connection to other Duwamish descendants who were part of the four reservations or off-reservation villages, with the people listed on Satiacum's 1915 list, or with each other. Furthermore, the petitioner did not demonstrate political authority and influence within a group of descendants on the DTO membership lists after 1925.

Evidence about the DTO was limited mostly to the years after 1939 during claims initiatives. The major reason for the petitioner's inability to meet criterion 83.7(c) after 1925 were findings that

the DTO organization played only a limited role in its members' lives. It undertook only claims activities. (DTO PF Summary 1996, 15-16).

Comments on the Proposed Finding

The Petitioner's Comments

In response to the PF, the petitioner submitted DTO historian Stephen Dow Beckham's report entitled "Tribal Initiatives, 1896-1935 and the Continuity of Membership." It reviewed Duwamish political activities and leadership between 1896 and 1935 (Beckham 1998) and cites to evidence in the PF record, rather than new evidence. It repeats positions already made for the PF, rather than responding to the Department's evaluation of the evidence.

The petitioner responded to criterion 83.7(c) with Michael D. Roe's report entitled "Duwamish Indian Modern Community" (Roe 1998). Roe's report deals primarily with beliefs and attitudes of DTO members in recent years and seems to relate more to criteria 83.7(a) and 83.7(b) than to criterion 83.7(c). This report is primarily a discussion of academic theory, rather than of evidence relevant to the acknowledgment criteria. It contains only eight pages about "tribal participation." These pages consist almost exclusively of tables of the priorities and goals of a small selection of the petitioner's members, rather than evidence of a group's political activities. Roe does not comment directly on the Department's PF.

In addition, anthropologist Kenneth Tollefson's articles touch on information that seems to fall under criterion 83.7(c). The petitioner's response maintains that the Department ignored a number of Tollefson's articles, including his article on chiefdoms (DTO Response 1998, 10 n.10). The PF HTR discussed the DTO anthropologist's work (DTO PF HTR 1996, 8). The previous sections of this report also discuss these articles as they relate to criteria 83.7(a) and 83.7(b).

These responses of the DTO researchers tend to incorrectly characterize the PF, the Department's evaluation of evidence, and the regulation, itself, and then argue against the mischaracterizations rather than directly respond to the PF.

The Petitioner's Ancestors and the Duwamish Tribe before 1898 to 1925

The evidence available for the PF shows that leaders of the historical Duwamish tribe maintained tribal political influence over some of the ancestors of the petitioner until 1896. The PF presumed that out-marrying Duwamish women of the first generation remained Duwamish tribal members until their deaths.[59] There is no evidence that the relationship continued to exist in later generations.

[59] The petition's documentation and BIA evaluation research provided information suggesting that a few members may have maintained political relationships with the historical Indian tribe as late as 1917.

Several of the Tollefson articles promote theories concerning the existence of a Duwamish "chiefdom" before and during treaty times. This discussion of pre-treaty times does not deal with the petitioner's fundamental problem. Most DTO ancestors had broken off tribal relations, some even before the treaty, when they and their descendants married non-Indians and, over time, lost contact not only with Duwamish entities on or off reservations but also with other unaffiliated Duwamish descendants.

Tollefson's article "Political Organization of the Duwamish" maintains that after European settlers arrived in 1850, they appropriated the land and resources of the Duwamish and undermined its political economy, reducing earlier political entities to "isolated communities" and "enclaves" of Indian families. The petitioner did not submit new evidence to show that the "isolated communities" interacted politically with each other or with the Duwamish Indians who were living on reservations or in Indian communities.

The anthropologist's articles describe the specific example of the Sackman logging community. There is no evidence in the record that Daniel Sackman acted in any capacity on behalf of a historical Duwamish Indian tribe, or acted on behalf of other similarly situated mixed families, or more specifically those ancestors who would become DTO.

The PF found there was evidence that Chief William was a leader of the Lake Fork Duwamish, but petitioner's ancestors were not part of the Lake Fork community. The PF found no evidence of political activity as a group, either on or off reservations, between the death of William in 1896 and Satiacum's 1915 organization, where Satiacum and William Rogers prepared a list of Duwamish individuals (PF Summary, 13). The PF further found that the 1925 organization was not a political entity, that the membership was not involved and that its officers and council did not influence the group (DTO PF Summary 15). Beckham's report does not provide specific examples of political influence between 1896 and 1915. He maintains only that, after the death of Chief William in 1896, the chief's nephew William Rogers replaced him between 1896 and 1915 (Beckham 1998, 7).[60] Beckham describes no leadership activities of Rogers prior to 1915, and the petitioner provides no new documents for the FD between 1896 and 1915 relating to Duwamish political leadership and DTO ancestors.

The court exhibits include a newspaper article from the August 29, 1913, edition of the *Seattle Daily Times* entitled "Tillikums will pay tribute to Chief Seattle" (*Seattle Daily Times* 8/29/1913 & 1924). It describes a memorial at Suquamish Reservation honoring Chief Seattle. Representatives of various tribes and non-Indians came to the reservation by ferryboat from Seattle. It describes "Jack Davis, William Rogers, and George Ewye, of the Suquamish, Duwamish, and Kitsap tribes respectively" as "Tyees," Chinook Jargon for leader or boss. They led various dancing, magic, and other demonstrations. "Queen Annie Rogers," described

[60] William Rogers is identified as Suquamish, a resident of the Suquamish Reservation in 1922, according to documents submitted in court (House of Representatives 1922, 26). The PF HTR found him allotted at Port Madison (PF HTR 23, 45,) and enumerated as Suquamish, PF HTR 33. The PF did not find him to be a leader of a DTO predecessor entity.

as Duwamish, and Peter Rogers participated, but the article names no other Duwamish. However, William Rogers has no descendants on any DTO list of members, present or past.

The DTO historian maintains that a Duwamish group "mounted a successful political program to secure direct [congressional] appropriations" for its members (Beckham 1998, 30). The historical technical report for the PF surveyed the history of congressional appropriations between 1880 and 1923 on behalf of the "D'Wamish and other allied tribes" who treated at Point Elliott in 1855 and the four reservations created by the treaty (DTO PF HTR 1996, 22-23). The PF Historical Report states:

> While the appropriations were being made for the support of the Duwamish and the other treaty tribes, officials of the Office of Indian Affairs testified before Congress that these funds were necessary for 'Indians who reside on four widely separated reservations' (House of Representative 1922).

The petitioner's historian, as well as the Anderson draft, erroneously equates the "D'wamish" mentioned in these appropriations with the DTO petitioner which first formed after these appropriations ended and was not affiliated with the "four widely separated reservations," where both the Duwamish and other "allied tribes" were. The DTO researcher maintains that the appropriations made in the ten years between 1905 and 1915 were explicitly for the "D'Wamish Indians" rather than for the "other allied tribes" (Beckham 1998, 30). The evidence which he cites from the appropriation statutes, however, shows that all of those acts used the language "D'Wamish and other allied tribes" (Kappler 1913,3,48, 133, 245, 301, 344, 420, 446, 549, 584). The evidence, thus, does not support the contention that these were "nine special appropriations . . . exclusively benefitting the Duwamish Tribe," or benefitting the DTO petitioner or possible antecedents (Beckham 1998, 30).

The Anderson draft accepted DTO's assertions that the appropriations for "D"Wamish and other allied tribes" referred to a DTO entity, without citing any evidence. No evidence in the record indicates that any entity that was the petitioner or its ancestors participated in political activity to secure these congressional appropriations. No evidence in the record shows a DTO entity or predecessor entity during this period of appropriations acts, 1905-1923. The evidence does not support the claims of the petitioner or the Acting ASIA because the "D'Wamish and other allied tribes" in the legislation refers to the four Point Elliott Treaty reservations, which were home to all the 1855 treating tribes, not only Duwamish, and which did not include the DTO. No DTO entity was included in these appropriations.

The DTO historian also contends that the Duwamish cooperated with visiting anthropologists and scholars "to carry out a commitment to preserve their history and culture in the years after 1896" (Beckham 1998, 31). He notes the anthropological research of George Dorsey between 1898 and 1900, the "ethnogeographical" research on place names of Thomas Waterman about 1920, and the literary research of Arthur Ballard from 1916 to 1929 (Beckham 1998, 31-36). He also lists publications of Herman Haeberlin and Franz Boas, and the manuscript field notes of John Peabody Harrington (Beckham 1998, 36-37). With the exception of Boas, whose article was a linguistic study, all of these scholars were cited and considered in the technical reports for the PF

(DTO PF ATR 1996, 7, 9, 11-16, 23-26, 32-34, 37-40, 51-52, 54, 59, 70-73, 84; DTO PF HTR 1996, 6, 30-31).

The DTO did not provide new evidence about the leadership, if any, of William Rogers before 1914, congressional appropriations before 1914, or anthropological research between 1898 and the mid-1920s, and thus has provided no basis for changing the conclusions of the PF for that period. The DTO historian's evaluations of leaders, appropriations, and anthropological research during the period before 1914 furnishes no evidence of the political activities of ancestors of DTO members or, the maintenance of political influence of leaders over DTO members. The DTO had not yet formed. Accordingly, there is not sufficient evidence to demonstrate criterion 83.7(c) under the 1978 or 1994 regulations.

Political Activities of Satiacum from 1914 to 1917 and the Roblin Enrollment Process

Between 1914 and 1916, the DTO historian maintains that a Duwamish group undertook political activities to obtain a reservation and to protect fishing rights (Beckham 1998, 7-16). His sources are affidavits made in 1914 or 1915 by William Rogers, James Moses, and Charles Satiacum, and an account of a 1916 meeting between the Department and Thomas G. Bishop, the president of the NFAI.

The PF technical reports discussed these affidavits, the notes of this meeting, and these historical events (DTO PF HTR 1996, 45-49; and DTO PF ATR 1996, 79-88). These particular affidavits by three men do not demonstrate political authority. The only actions are those of Thomas G. Bishop, a Snohomish Indian, who lead an intertribal organization. Beckham presents this intertribal activity, erroneously, as Duwamish tribal activity by a group that would become the DTO.

Three men, "Charley Satiacum," "Chief William Rogers," and "James Moses," compiled a list in 1915 on behalf of Duwamish who had resided on the Black, White, and Cedar Rivers in what was known in 1915 as West Seattle. (DTO PF HTR 1996, 45-48, 52-55; DTO PF ATR 1996, 81-82, 86, 95-103). This list's creation was part of the inter-tribal effort lead by Thomas Bishop. The 1915 list of members referred to Charles Satiacum as "chief" and William Rogers as "sub-chief" (Beckham 1998, 61). Beckham lists William Rogers as "chief" from 1896 to 1915, and Satiacum as the successor of Rogers in 1915 and "chief" from 1915 to 1925 (Beckham 1998, 7). However, Court of Claims testimony names Rogers the successor of Satiacum, and cites Waterman's 1920 field notes to imply that Rogers (not Satiacum) was considered a "chief" in 1920 (Beckham 1998, 5-6). Beckham does not explain how "chief" Rogers became subordinate to "chief" Satiacum in 1915, or how a transition of leadership occurred at that time. Because Satiacum's 1915 listing of Duwamish differs significantly from the names on the DTO's 1926 list of members, created a decade later, and none of these men or their descendants are involved in the DTO in 1926, it does not demonstrate by a reasonable likelihood that they were DTO leaders. These men appear to be politically active in Bishop's inter-tribal claims efforts, but no evidence shows they were leaders of an organization in 1915 that would become DTO by 1926.

The DTO historian contends that the 1915 membership list was incomplete, citing its reference to members "to this date." He characterizes the list as a work "in progress" that "was part of an

unfolding project of the tribe to enumerate its members" (Beckham 1998, 62). Beckham's argument is that Satiacum's 1915 list was an initial DTO list, which later expanded into a more complete 1927–1934 list by an ongoing process of enrollment. The evidence does not support this contention.

An attorney, known as "Judge" Arthur Griffin, acting on behalf of the descendants of the historical Duwamish in the claims case, wrote to C. F. Hauke in the Indian Office in Washington, D.C.:

> Three members of a committee of eight Duwamish Indians called on me and informed me an enrollment would soon be taken of the remaining members of the Duwamish tribe, and that bill would be introduced in congress authorizing a settlement between the government and the remaining members of the Duwamish tribe involving their rights to allotments of land or a cash settlement in lieu thereof. (Griffin 8/8/1916)

The three members probably included Rogers and Satiacum, although not James Moses, who died before April 1915. The technical reports for the PF demonstrated, however, that the 1926 and later listings were not a continuation of this enrollment (DTO PF HTR 1996, 52-55; and DTO PF ATR 1996, 95-103). No later list was located that shows whether the individuals on Satiacum's list were allotted lands or compensated, but the BIA and Federal censuses list many of the individuals listed as Duwamish on Satiacum's list residing on reservations before and after 1915. These people and their descendants do not appear on DTO's membership lists. These facts lead to the conclusion that Satiacum's 1915 list merely records descendants of the historical Indian tribe whether or not they were members of the reservation tribes or part of the general population. The named leaders seeking land allotments or cash settlements, thus, were not leaders of the DTO. These documents do not show continuity of leadership in 1915 between Rogers and Satiacum and do not demonstrate an implied continuity of membership lists after 1915.

The petitioner's only new substantive evidence (submitted as part of its 1998 response) about the years prior to the present are a pair of newspaper articles about a Duwamish meeting in December 1916, at the start of the Department's project to list the unenrolled Indians of Washington State (Tacoma *Daily News* 12/19/1916; Tacoma *News-Ledger* 12/24/1916). The anthropological technical report for the PF specifically referred to this meeting (DTO PF ATR 1996, 91). Beckham notes that these Tacoma newspapers referred to Charles Satiacum as a "leader of the Duwamish Indians" who had called people together for a meeting with Indian Agent Charles Roblin (Beckham 1998, 16-19). These newspaper articles provide some evidence that outsiders attributed leadership to Satiacum and an ability to summon people to meet. Thus, they indicate the existence of some political influence among some Duwamish descendants in 1916. However, the persons listed on Satiacum's 1915 list represented only a very few of the petitioner's ancestors: only 22 of 318 on Satiacum's list have descendants in the DTO. Further, the evidence has not demonstrated that the petitioner has evolved from a group with a membership defined by this 1915 list. Therefore, any leadership displayed by Charles Satiacum would have been within the context of a much larger claims organization, not the DTO that formed in 1926.

The technical reports for the PF described the Roblin enrollment process (DTO PF HTR 1996, 41-45; and DTO PF ATR 1996, 88-93). According to Roblin, his "instructions are to enroll and report those Indians of the Western Washington Indian tribes who are not now enrolled at any of our Agencies." Beckham maintains that a 1917 letter by Roblin reveals that he "was assisting the Duwamish Tribe in its own enrollment efforts" because he mentioned sharing information with the Duwamish claims attorney. However, Roblin's letter indicates that he was not assisting them in claims, and that the only information he proposed to share with the attorney concerned Indians already enrolled on reservations (Beckham 1998, 63-64). Roblin decided he would collect the names of already enrolled Indians that were incidentally sent to him and turn them over to the claims attorney, "Judge Griffin of Seattle."

Roblin complains that Thomas Bishop of NFAI is "creating confusion and encouraging [the belief that] any Indian who is not allotted should be enrolled by me." He writes to the attorney of Matilda Siddle that he is not including her on his roll but will forward her materials to Judge Griffin. He denied that he would enroll all Duwamish descendants: "that is not the purpose of my work," which has "nothing whatever to do with the matter of allotment."

At best, Roblin's letter refers to an attorney's activities, and to the activities of an inter-tribal claims effort, but denies his own involvement in that claims effort. After completing his task in 1919, Roblin explained, "I was instructed to make an enumeration and enrollment of the unattached Indians of western Washington, and to prepare and submit schedules of such Indians, arranged by families and tribes. I have the honor of forwarding such schedules herewith" (Roblin 1/31/19). Although Roblin's task was primarily to locate homeless, "unaffiliated," Indians, there was no evidence that Roblin was assisting a DTO entity's enrollment of members.

Beckham notes that Attorney Arthur Griffin and a committee of Duwamish entered into a contract in December 1917, which provided that he would represent them in a claim against the United States. The technical reports for the PF described the attorney contract and attorney Griffin's activities (DTO PF HTR 1996, 16, 48-49; DTO PF ATR 1996, 87-88). Although the technical report noted that this claim sought land, Beckham emphasizes that Griffin presented the Duwamish claim as a request for land, not just for a cash settlement (Beckham 1998, 20-23). This distinction is largely irrelevant. The petitioner's researcher describes this attorney's activities, rather than presenting new evidence about a group's activities and political processes and, thus, does not provide evidence to demonstrate criterion 83.7(c).

DTO's historian contends that, between 1917 and 1925, the Duwamish "mounted a political campaign to secure a jurisdictional act" to submit a claim to the U.S. Court of Claims (Beckham 1998, 23). He also describes that effort, however, as one in which Thomas Bishop of NFAI mounted the lobbying effort to obtain such a bill. The historical technical report for the PF described the legislative history of the Jurisdictional Act of 1925 (DTO PF HTR 1996, 55-56). The DTO's historian's account adds a few new details to the legislative history of jurisdictional

bills. However, it merely reviews the bills and presents no evidence that there were activities of DTO leaders or members to obtain such an act.[61]

The PF noted that there was partial evidence of group political activity on only three occasions between 1896 and 1925, all of which occurred in the period from December 1915 to December 1917 (DTO PF Summary 1996, 13-14).[62] First, in December 1915, a Duwamish organization under the leadership of Charles Satiacum created a membership list of 361 individuals. Second, in March 1916, 184 individuals signed a resolution requesting the Northwest Federation of American Indians to lobby on behalf of the Duwamish. Finally, in December 1917, a committee of Duwamish and attorney Arthur Griffin approved a contract. The petitioner's response has added evidence about Satiacum's political influence in summoning people to a meeting with Agent Roblin in December 1916. Thus, to the extent that the record for this case contains limited evidence of political influence it related mostly to Satiacum's 1915 organization, which evidence does not show was a precursor to the DTO petitioner. Such evidence is insufficient to demonstrate political influence of authority for the petitioner.

The Post-1925 DTO and its Membership Lists between 1925 and 1934

The technical reports for the PF discussed a 1925 constitution of a Duwamish organization (DTO PF HTR 1996, 49-51; and DTO PF ATR 1996, 93-95). The DTO historian notes the existence of that constitution, provides information about its eight signers, lists its statement of purpose, and claims that it stated purposes beyond the pursuit of claims (Beckham 1998, 24-28). He asserts that the signers claimed a link to the past with a reference to "Business Councils of the early days" (Beckham 1998, 26). The historical technical report noted, however, that the constitution and signers did not claim any continuity from Satiacum's 1915 organization (DTO PF HTR 1996, 49). The DTO researcher suggests there was continuity between the 1925 DTO leaders and the 1915 organization, but the PF technical reports found a lack of continuity of a predominant portion of the membership from 1915 to 1926 (DTO PF HTR 1996, 52-55; DTO PF ATR 1996, 95-103). The PF also discussed the constitution's signers and purposes, which acknowledged that the constitution stated some purposes other than claims.

The PF concluded that the character of the political organization of the post-1925 DTO indicated that the DTO was not a continuation of an earlier tribal organization, even though both had a constitution and officers. The petitioner's anthropologist maintains that this 1925 governing

[61] DTO's exhibits during the court proceedings included testimony by Bishop and Griffin before a Senate Committee on Indian Affairs on March 29, 1918. Bishop describes a large group of Indians whom he claims to represent and describes them: "We have five thousand seven hundred and odd who are not members of such tribes, but who think they have some rights or some claims there. These are agriculturalists, woodsmen, farmers, etc. If they have rights they want to know it, and if they have not they want to know it" (Senate 1918). This description does not provide evidence of a DTO entity or political processes within it.

[62] The petitioner's response has provided no new evidence about the 1914–to–1915 affidavits, the 1915 membership list, or the 1917 attorney contract, and minimal new information about a 1916 meeting related to the Roblin enrollment project and the jurisdictional bills to authorize a claims suit between 1917 and 1925.

document provides officers with characteristics he believes are based on traditional leadership roles (Tollefson 1995b, 90). The author attempts to show that

> [s]ome additional powers of a traditional Puget Sound chief (Sieb) were retained in the new Duwamish Constitution through the office of the 'president' of the tribe − currently referred to as the tribal chairperson. . . . the Duwamish Tribe never replaced the office of tribal chief and so created the office of president (chairperson) with special powers much like that of an aboriginal chief . . . The . . . chairperson, much like their former chiefs, serves for a term of life, represents the Tribe in public functions, participates in council decisions, approves new members, calls tribal meetings, has veto powers over the council, and presides at tribal council meetings. (Tollefson 1995b, 90)

The problem as discussed in the PF Summary under the Criteria is that the post-1925 organization and its leaders

> . . . played a very limited role in the lives of its members. . . . This business [at annual meetings after 1939] consisted of a formal action to elect officers, accept new members, endorse attorney contracts, or delegate members to attend inter-tribal meetings." (DTO PF Summary 1996, 15)

The PF questioned whether the chief actually performed functions as provided in the written document, because there was no evidence he did. The problem raised in the PF was that DTO, no matter how it was organized on paper, did not make non-claims decisions, hold regular meetings, maintain a membership list, undertake welfare and cultural projects, or function as an Indian entity in many ways after its founding in 1925.

Because the evidence discussed in the PF indicated that the post-1925 leaders played very limited roles or no role in the everyday lives of DTO members, new evidence would have to be submitted to show otherwise. The petitioner did not submit such new evidence in its response to the PF, in its appeal to the IBIA, or in its filings before the Court. Most of the documents submitted as court filings support the PF's finding. The petitioner's researchers make the same assertions rejected in the PF, without submitting evidence to support their position.

The DTO historian maintains that the Duwamish hired an attorney in 1925 to pursue claims against the United States, and renewed that contract in 1933 (Beckham 1998, 29-30). The historical technical report for the PF discussed both the 1925 attorney's contract and the 1933 contract renewal (DTO PF HTR 1996, 56-57). Beckham contends that continuity exists between the 1925 and 1933 contract signers and the individuals on Satiacum's 1915 list, which Beckham misrepresents as the 1915 "Duwamish membership list." Analysis of this and other relevant evidence in the technical reports found a lack of continuity between Satiacum's 1915 list and the DTO's 1926 membership list (DTO PF HTR 1996, 52-55; DTO PF ATR 1996, 95-103).[63]

[63] The technical reports for the PF thoroughly analyzed a 1926 list of individuals, apparently the first DTO list of members (DTO PF HTR 1996, 51-55; DTO PF ATR 1996, 94-103). The DTO historian refers to "other lists of members" developed between 1926 and 1934. He contends that the lists created between 1926 and 1934 "were the next evolution" of the petitioner's membership list which began in 1915 with Satiacum and extended through 1919

The petitioner claims that the PF underestimated the importance of the Sackman family as DTO leaders in the early 20th century. (See previous discussion of Sackmans under criterion 83.7(b) in this FD on Remand). A table in Tollefson's 1995 article shows "Sackman representatives on the Tribal Council," beginning with Maurice Sackman (1925-51) (Tollefson 1995b, 100). The article asserts that even though the Sackman logging community was located across Puget Sound from Seattle, it always maintained political ties with the "Duwamish Tribal Council" before 1925. It is accurate to say that the Sackmans have been part of the post-1925 DTO. However, only one Sackman family (Lulu McPhee Sackman and her children) appears on Satiacum's 1915 list and three families (Joseph W. [and wife Lulu], Isaac S., and Davis H. and their children) were on the Roblin Roll. (See the discussion of the Sackman family under criterion 83.7(b) in this FD on Remand for additional details). However, as the Historical Technical Report for the PF pointed out ". . . the Sackman family of Kitsap County emerged to prominence in the 1926 list," not before (DTO PF HTR 1996, 55).

These individuals were not part of a DTO social or political entity that dealt with significant issues or played a significant role in individual members' lives before 1925. Any evidence about the Sackman family and their possible relationships to other Duwamish were discussed in detail in the PF. Although the Sackman family members have participated in DTO affairs since 1926, a relationship to the historical Duwamish tribe before 1925 or 1915 is not demonstrated even though a depiction of their life and work in a multi-ethnic logging camp in Kitsap County has been documented and submitted as evidence. (See above). No new evidence changes the original finding under the 1978 regulations or in this FD on Remand under the 1994 regulations.

The petitioner has provided no new evidence about the 1925 constitution, the 1925 and 1933 contracts with a claims attorney, or any new membership lists after 1925. The discussion of the constitution, contracts, and membership lists during the 1925 to 1935 period provides no evidence of the political activities of DTO's members, political influence over members by leaders, or a bilateral political relationship between members and leaders.

Linda Dombrowski, a researcher who worked with a number of petitioners through grants to the Small Tribes Organization of Western Washington (STOWW), submitted 47 exhibits in manila files on the petitioner's behalf. She makes specific statements to show that there was more

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with Roblin. He also states that the creation of Duwamish membership lists after 1926 was an informal process (Beckham 1998, 66-67). That a group's membership process was informal rather than formal has no impact on an evaluation of criterion 83.7(c), so long as the petitioner can describe the political processes involved. If the 1926 list of members, or later lists of members, were an "evolution" of the 1915 list of members, then most members on the 1915 list, except those who had died in the interim, should have been included on the later lists, or a reasonable explanation supported by evidence would explain discrepancies. The technical reports for the PF demonstrated, however, that this was not the case for the 1926 list (DTO PF HTR 1996, 52-55; DTO PF ATR 1996, 95-103). In addition, other information provides context for understanding the creation of the two lists and corroborates the finding that Satiacum's 1915 list, Roblin's 1919 list and the DTO's lists beginning in 1926, do not enumerate members of a single DTO organization at different points in time. Beckham's report does not demonstrate continuity between these lists.

continuity in membership between the 1915 and 1926 membership lists than revealed by analysis in the PF.

Dombrowski claims that the Department's "Appendix D" of the PF,[64] comparing names from both 1915 and 1926 lists, failed to account for (i) ages, (ii) deaths, (iii) name changes, and (iv) the effects of those phenomena. The PF acknowledged these factors.

The PF found "[o]nly 19 percent (60 of 319) of the named members of the 1915 list appeared on the 1926 list as well," but allowed that this calculation,

> . . . underestimates the actual persistence of members . . . from 1915 to 1926. Some 1915 members did not appear on the 1926 list because they had died during the intervening decade. Spellings of names were inconsistent and typing errors were frequent on these lists, so some names on the two lists may not have been recognized as those of a single individual, and some name changes due to marriage between 1915 and 1926 may have been missed. (DTO PF HTR 1996, 52)

Dombrowski, nevertheless, claims that the Department ignored the impact of mortality factors between 1915 and 1926, including Spanish influenza, small pox, and World War I. Dombrowski's analysis included narrative summaries, arranged by individual persons or family groups, in which statements were given or evidence cited (but not furnished) for births, marriages, and deaths or probable deaths (Dombrowski 1998). She also submitted a database printout of persons appearing in lists from 1915 to 1951 (DTO Response 1998, Exhibit 42), a report of deceased members (DTO Response 1998, Exhibit 41), and annotated descendant tree charts for selected families (DTO Response 1998, Exhibits 1-39).

In her analysis, she reorganized the existing data in several ways. She took into consideration births, deaths, and name changes to raise the percentage of persons on the 1915 list who appear on the later lists from 19 percent to 25 percent. She then attempted to raise the overlap even more by making presumptions that equated kin, including distantly related kin. She presumed that the appearance of a descendant of an extended family founder on any of the lists would demonstrate continuity. In other words, she equated descendants of a founding ancestor on her lists even though the descendants could be more distant relatives, such as second or third cousins, or adult siblings without any history with DTO. Even accepting her figures, her reworking of the data, and her questionable presumptions, her recalculations never significantly changed the levels of overlap, either as the percentage of persons on the 1915 list who appear on or connect to kin of the later lists, or as the percentage of persons on the 1926 and 1927–34 lists on or connected through kin to the 1915 list. Her calculations do not demonstrate continuity between the two organizations. See further discussion, Appendix II.

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[64] The document initially labeled "Appendix D" was not included as an appendix to PF or the vacated FD. It is OFA's working draft of an alphabetical list of the names that appear on either Satiacum's 1915 list (tagged with an "x") or the DTO's 1926 list (tagged by age given on the 1926 list), and under the column labeled "Both," an "x" to indicate OFA's analysis that the name appeared on both lists. This draft included only those persons aged 12 and older on the 1926, who thus could have been named on the 1915 list.

The Petitioner's Claims about the IRA.

The petitioner continues to claim that the DTO turned down the Indian Reorganization Act (IRA) in 1935. One articles states:

> When the Indian Reorganization Act (IRA) was passed in 1934, the Duwamish turned it down for two reasons; first because they had previously adopted a constitutional form of tribal government in 1925. . . ; and second, because the Tribal Council refused to let them stipulate how the money was to be spent. (Tollefson 1996b, 328)

This interpretation is not correct. The Act allowed only those groups that held land in common to vote to reject the IRA. The DTO did not hold land, never voted on the IRA, and never turned it down. The BIA Superintendent at Tulalip held conferences with seven tribal groups and claimed that the result was the acceptance of the bill when put to a vote by every tribe under his jurisdiction (BIA Indian Census, Tulalip Agency 1935, 5-6). The census recapitulation of tribes in his jurisdiction did not list a DTO entity (BIA Indian Census, Tulalip Agency 1935, 9-37). He, thus, did not include the DTO among the seven voting tribes. After the Act passed, the government did not give the DTO the option of voting on the IRA. No new data was submitted which would alter the PF's conclusions on this topic.

New Correspondence from the 1930s

The petitioner submitted a letter to Myron T. Overacker from "Effie" written on stationary of the Tulalip Indian Agency in November 1935 ("Effie" [Overacker] 11/15/1935). Effie is not identified, but from the tone and discussion of family news and Tulalip events, she appears to be a family member or close friend. She writes:

> There is a tribal meeting tonight. Mr. LaVatta is here for it. Mr. Upchurch is leaving for Portland tonight. He forgot all about it until the last minute, and he is to have a meeting up at Swinomish tomorrow, too, but just had to go to Portland. ("Effie" [Overacker] 11/15/1935)

This letter's reference to a "tribal meeting" does not explain the purpose of the meeting, nor does it specify what tribe is meeting. Since "Effie" appears to be associated with the Tulalip Agency, and LaVatta and Upchurch are BIA employees, it is most likely that the tribal meeting involves the Tulalip Reservation. As "Effie" explained in the opening paragraph of her letter, Mr. LaVatta was a BIA Field Agent "whose business is to place Indian men and women in positions," and she thought Myron Overacker might be interested in a job announcement for an auto mechanic. It is quite likely that the "tribal meeting" Mr. LaVatta would be attending was to discuss employment opportunities for Tulalip Indians. However, the lack of specificity diminishes this document's value as evidence in this acknowledgment case, and it does not show social or political relationships extending among members of DTO.

The petitioner submitted a 1939 letter written by M.D. Sackman to Myron Overacker. It includes an attachment entitled "Duwamish Indian enrollment under Point Elliot Treaty." The letter states, "my friend I have copied the enrollment of the Duwamish Tribe of American Indians for your

convenience as a councilman of said Tribe . . .” (Sackman 8/6/1939). However, the attachment appears to be a handwritten copy of the circa 1927-1934 list that has already been considered.

New Evidence Submitted for the 1950s and 1960s: Fishing Rights and Claims Activities
The example in the PF of a 1950s fishing rights case illustrated a lack of interest among the general membership and some leaders about taking political action on this issue. The available evidence shows that a decision to intervene on an important fishing rights case was made by the DTO chairman on his own. After his death, no members participated in completing the paperwork, which would have given members temporary fishing rights (61 FR 33763).

A June 1954 transcript of the Duwamish annual meeting contained in “Continuity of Duwamish Tribal Membership” by STOWW researcher Linda Dombrowski relates that people discussed health issues, the Cushman Hospital, and fishing cards. However, this evidence, standing alone, does not demonstrate political authority.

In his article “The Political Survival of Landless Puget Sound Indians,” the DTO anthropologist claims that in 1962,

> . . . the money [claims award of $62,000] was never given to the Duwamish tribe. Instead, the Federal government made a per capita disbursement to approximately 1,148 descendants of Duwamish Indians, some 75 percent of whom were neither on the tribal rolls nor had any ties to the Duwamish Tribe (Tollefson 1992, 123).

This reference to the “Duwamish Tribe” conflates DTO with the much larger group of Duwamish claimants before the Indian Claims Commission, some of whom were most likely members of federally recognized Indian tribes. Substantial correspondence indicates that the BIA was concerned that the DTO, a dues paying organization, would cut out qualifying Duwamish descendants, many of whom lived on reservations and had not paid dues to DTO. These facts concerning the Duwamish claims are not pertinent to DTO meeting the acknowledgment regulations. It is possible that groups that did not receive tribal funds could become recognized as long as they met the criteria at 83.7(a)–(g). DTO did not.

The DTO, in meetings with Agency personnel, insisted that they had a right to distribute the money only to its members and their children, who constituted only a small percentage of Duwamish descendants. The Federal Government rejected this stance and distributed funds to all the individual descendants and not to the DTO as a tribal entity. The reservation tribes with Duwamish descendants received tribal disbursements. The PF found that the DTO’s stance during the claims disbursement was that of a claims organization only, not an Indian tribe. By submitting this 1992 article as part of its response, the petitioner continues to advance the interpretation that the Duwamish descendants, who were not members of DTO, had given up tribal relations with “their tribe” (DTO) when they joined reservation tribes, leaving the DTO to represent the historical Indian tribe. This theory is backwards as it was DTO’s ancestors who left the tribe as individual families.

Survey Data Submitted and Analyzed by DTO Researchers

The PF found insufficient evidence of informal leadership or political influence within the DTO outside the formal structure of its constitution (61 FR 33763). DTO's governing documents describe a formal government structure, but evidence did not show activities between leaders and members. Even evidence that the formal procedures operated is absent. There is no indication of a council and leadership responding to members' concerns, of council or committee meetings, of policy initiatives, or of other group sponsored activities. Evidence of informal political influence is also absent. There are no factions, arguments revealing different viewpoints about important topics, and no pressures from members to achieve a specific result. The petitioner's claims of informal political processes, including influence within extended families, are not verified. These observations apply to both the modern period since 1990 and for the decades preceding 1990.

An example of claimed informal leadership was DTO's anthropologist's discussion of Frank Fowler II's purported leadership of the Fowler extended family. He maintains that Fowler's position on the Board of Directors linked directly to representation of this family and Fowler had been "groomed" for this position (Tollefson 1987, 129). However, the DTO submitted no evidence demonstrating that Frank Fowler or any other DTO members consulted with their extended family members concerning issues of importance to the group. A chart in a 1992 article reported that some Fowlers maintained regular contact with Frank Fowler (Tollefson 1992). No specific, documented examples demonstrated how family lines played an effectual part in DTO's overall political processes. DTO submitted no new evidence demonstrating the members from one family discussed its positions on issues with the head of any other DTO family, or that extended family leaders applied political influence to shape policies, execute activities, or inform the leadership of family members' shared concerns.

The 1992 article also states that, in a survey of members, 57 percent said that they had talked to other members about "tribal concerns," 27 percent said they had voted in "tribal elections," and 11 percent had been elected or appointed to council or office (Tollefson 1992, 135). Without additional evidence, however, this survey has little evidentiary value.

In another article, Tollefson maintains that many of "the accouterments of the chiefdoms still cling to Duwamish political organization, and Renton continues to symbolize the center of their former way of life" (Tollefson 1995b). The location of the organization in Renton is significant, according to Tollefson, as it was the traditional center for the Duwamish. That individuals may feel historically connected to the location of a historical Indian tribe does not, in itself, demonstrate that the tribe exerts political authority or that this authority is the same as that which was asserted there historically. General assertions of similarity in the form of political authority during the present and past, in the absence of additional documentation, is not enough to establish political authority.

The DTO anthropologist maintains, "The 1925 Duwamish Tribal Constitution, presently in force, designates six heads of six drainage systems as they apparently once did, they do serve as representatives of several 'historic treaty families'" (Tollefson 1995b, 105). The PF showed that six different river drainages have not been represented on the DTO business council from 1925 to the present and some of these aboriginal river drainages are not represented in the current

membership (DTO PF ATR 1996, 134). The petitioner's named leaders are predominantly from the Fowler and Garrison family lines. They are the descendants of Chief Seattle's mother, Scholitza. One is a non-Indian spouse. However, even if the six areas had been represented, the evidence does not refute the PF that the DTO "exercised no meaningful influence or authority over its members" (61 FR 33763).

DTO's assertions of preserved cultural continuities are general in nature and thus do not establish that its present-day political structure reflects a specific traditional tribal pattern of political influence, governance, or other authority over its members as an autonomous entity. The petitioner did not submit and the Department's researchers did not find evidence that demonstrates political authority.

The petitioner submitted psychologist Michael Roe's study entitled "Duwamish Indian Modern Community" in an envelope labeled "Materials Submitted in Conjunction with Discussion of Criterion 83.7(c)." Most of the information in this report relates to criterion 83.7(b). (See the discussion of Roe's materials in that section above). Roe's analysis reworks some data in the record when the PF was issued, but also discusses other data from 1996. From these combined sources he extrapolates a statistical analysis. However, this methodology of combining a number of different data sources causes problems. Roe himself states:

> Undoubtedly the samples in these four studies overlapped. Also, it was not possible to ascertain how representative these samples were of the larger Duwamish membership . . . With these two recent studies in particular, it is fairly likely that they provide reasonable representations of the active membership of the tribe. (Roe 1998, 10)

DTO researcher Roe is therefore aware that the data sets used in his analysis may not be comparable. The sources of data do not appear in his bibliography. The Department's researchers find that the sample is too small, the content of the four studies are not comparable, and there are unknown overlaps among the respondents. An individual is likely to be represented two or three times in the sample, which would mean that the sample may be even smaller than claimed.[65] The data set, therefore, has little evidentiary value.

[65] The following specific example illustrates the problems of evaluating this study. It presents two of Tollefson's questions, one for 1987 and one for 1996. The 1987 question asks, "How many times have you contacted the Duwamish Tribe office in the past ten years? The choices are "1-2, 3-4, 5-6, 7-8, 9-10, 11+." The 1996 question was "How often have you contacted or been contacted [by] the Duwamish Tribal Office?" (Roe 1998, 28). The answers are "weekly, monthly, quarterly, yearly, and never." Ninety percent answered either weekly, monthly, quarterly, or yearly. This question shows why this survey displays problems in methodology. The possible choices in the 1996 survey may determine the relatively high positive response of 90 percent concerning communications with the petitioner's office. The study design may determine the responses because the answers available in the 1996 questionnaire forced the respondents to respond that they had contact with the office at least once a year or never. Many possible and likely answers between once a year and never were not available for the interviewee to select.

The Department's Evaluation

The PF found that the petitioner did not maintain at any time tribal political influence or authority over its members. It found that DTO was created in late 1925, and has limited its activities to pursuing claims for its dues-paying members, and only a tiny fraction of the membership ran the organization.

Additionally, the PF found that annual meetings consisted of a formal presentation of the claims situation and motions to elect officers, or endorse attorney's contracts. Other group activities such as those concerning culture, welfare, governance, money-raising, subsistence activities, language maintenance, births, deaths, memorials, land acquisition, planning, and the maintenance of cemeteries, religious buildings, community centers, or other institutions of any kind were not discussed. The 1978 and 1994 regulations do not require active participation in all of these activities. Petitioners need to show, however, similar kinds of activities as set forth in the regulations. The petitioner submitted no evidence of members' participation. Even council members appeared uninvolved.

The petitioner's submission in its response to the PF, in its appeal to the IBIA, and in its court filings fail to fix the inadequacies discussed in the PF. The response lacks new specific data and examples concerning possible political influence or authority. For example, there is no discussion of decision-making, conflict resolution, undertaking and running events and programs, or the functioning of any other activities, which would reveal political processes from late 1925 to the present.

The PF was unable to link the petitioner after 1925 with any Duwamish organization that was documented before that time. Department researchers conducted a statistical analysis of various membership lists and a comparison of leaders that showed that a minority of the individuals named on Satiacum's 1915 list appeared on lists prepared for the DTO petitioner's organization after 1925. See Appendix II. The PF noted that a more careful analysis showing the relationships of close relatives who may appear on the lists might demonstrate that a higher proportion of individuals on the two lists are linked. Linda Dombrowski provided data on individuals to show in which cases individuals from a single "family line" may appear on both lists, even though single individuals themselves may not. The Department genealogist performed further analysis based on this new submission. She found that by including close relatives in the analysis, a larger proportion, but still a minority, of individuals on these lists could show they were linked to both the lists of Duwamish created before 1920 and lists of members created by the DTO after 1925, either on their own or through a close relative. However, the new analysis concludes that the evidence is insufficient when weighed with the other available evidence to demonstrate political influence or authority within the petitioner; the DTO does not meet criteria 83.7(c).

The petitioner proposed that the Fowler family, led by Frank Fowler II, consulted family members in decision-making. However, the evidence pertaining to the Fowler family or to other families did not support the petitioner's assertions that its council organization represented families associated with specific river drainages. Other descriptions of pre-treaty era political organization did not pertain to the DTO petitioner from 1925 to the present.

The Anderson draft accepted the petitioner's claims notwithstanding their inaccuracies and lack of evidentiary support. For example, the draft accepted the petitioner's assertion that the claims organization, of which some of the DTO petitioner's ancestors were a part, was on behalf of a tribal entity that pursued non-claims goals, including whether the Duwamish would organize under the Indian Reorganization Act, and charitable pursuits. In fact, the evidence in the record is to the contrary and the Anderson draft does not refer to any other evidence nor detailed reasoning that would support his findings. The evidence in the record is inconsistent with the conclusions in the 2001Anderson draft.

Summary Conclusion under Criterion 83.7(c)

The DTO petitioner, which began to organize in late 1925, has not provided, nor has the Department been able to formulate, a statement of facts establishing that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity from historical times until the present, as required by both the 1978 and 1994 regulations.[66]

The evidence and statements submitted in response to the PF under criterion 83.7(c) do not change the finding that the petitioner does not meet criterion 83.7(c) for political authority. There is insufficient evidence of political influence or authority under both the 1978 and the 1994 regulations. Therefore, the DTO has not satisfied the requirements of criterion 83.7(c).

[66] The 1994 regulations make special provisions for previously recognized tribes in demonstrating criterion 83.7 (c). Although the DTO claims it was previously recognized by the Treaty of Point Elliot in 1855, the Department has rejected that claim. However, even if it were found that the DTO were previously acknowledged, it still would not meet the new provisions of the 1994 regulations at 83.8(d)(3) which reads, "The group meets the requirements of the criterion in §83.7 (c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in §83.7 (c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identifications, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in §83.7(c)." The DTO did not demonstrate political authority or influence "at present," as discussed above. Further, there was no substantially continuous historical identification by authoritative external sources of leaders as permitted under 83.8(d)(3). Thus, the petitioner would need to demonstrate political authority and influence under 83.7, which DTO fails to do, as discussed above. Therefore, DTO would not meet criterion (c), even if it had unambiguous previous federal acknowledgment.

CRITERION 83.7(d)

The Differences between the 1978 and the 1994 Regulations

There are no significant changes in the requirements of criterion 83.7(d) between the 1978 and 1994 regulations. The PF determined that the DTO submitted a copy of its current governing document, the 1925 "constitution and by-laws," which fully described its governance procedures and membership requirements, thereby meeting the requirements of criterion 83.7(d).

The Department's Evaluation

The petitioner and third parties did not provide comments or additional submissions pertaining to this criterion. Former Acting ASIA Anderson, did not edit or comment on criterion 83.7(d) in his unsigned draft. There is no basis to alter the conclusions of the PF under the 1994 regulations.

Summary Conclusion Under Criterion 83.7(d)

The petitioner provided a copy of its governing document that describes its membership criteria and how it governs itself. This satisfies the criterion under both the 1978 and the 1994 regulations. Therefore, this FD on Remand affirms the PF conclusion and finds the DTO meets criterion 83.7(d).

CRITERION 83.7(e)

The Difference between the 1978 and 1994 Regulations

Both the 1978 and 1994 regulations make clear that the requirement of criterion 83.7(e) is that the petitioner's membership consists of individuals who descend from a historical Indian tribe, or historical tribes that combined. The essential element of requiring the petitioner to demonstrate descent from the historical Indian tribe did not change between 1978 and 1994.

The Proposed Finding

The PF concluded that approximately 99 percent (386 of 390) of the petitioner's members on its 1991 and 1992 membership lists descended from the historical Duwamish Indian tribe as it existed "before 1880."[67] The PF found that the petitioner had identified Indian individuals in 16 different families as its Duwamish progenitors. The Department's analysis of "the family trees, petition documents, statement of findings regarding the 1966 judgment claims, probate records, and census records" confirmed that these progenitors "were a part of the Duwamish population that existed before 1880" (DTO PF GTR 1996, 2). The PF found that the DTO met the requirements of criterion 83.7(e) under the 1978 regulations.

The Final Decision on Remand

The Current Membership

This FD on Remand uses the petitioner's 1991 and 1992 membership lists to evaluate whether the petitioner meets criterion 83.7(e). These two lists were used also for the 1996 PF and 2001 vacated FD and the Acting ASIA draft.[68] The petitioner did not provide any membership lists created after 1992 in its response to the PF.

The Petitioner's Comments on the PF under Criterion 83.7(e)

Criterion 83.7(e) of the 1994 regulations, in part, requires the petitioner to submit ". . . a copy of each available former list of members based on the tribe's own defined criteria." The petitioner submitted three former lists of members in the response period. These lists are dated: 1927-34, 1939 list, and 1976.

The petitioner had already submitted nine other membership lists, which had served as the basis for the PF on criterion 83.7(e) (DTO PF Summary 1996, 19). In the narrative submitted for the PF, the petitioner referred to a tenth membership list made by Peter James in May 1934, but did

[67] The 2001 vacated FD erroneously identified the PF membership list as "1995" (DTO FD 2001, 66). The PF was issued in 1996, relying on the 1991 (355 members) and 1992 (390 members) membership lists.

[68] Acting ASIA Anderson did not edit or add comments under criterion 83.7(e) in his draft FD.

not submit a copy of it, and the Department's researchers did not otherwise locate such a list for the PF evaluation (DTO PF GTR 1996, 10).[69] Although the petitioner's response to the PF implies its belief that the Department's researchers had possessed and analyzed this list prior to the PF, the petitioner nevertheless supplied a copy of the list in question during the response period (Dombrowski 1998, 5). The title page of this list reads: "Re-enrollment of the Duwamish Tribe from December 23, 1915, and Enrollment of the Duwamish Tribe January 1927 and to May, 1934, by Enrollment Council and Peter J. James, Chairman of the Council" (hereinafter "1927-34 list"). Each subsequent page heading reads "Enrollment of the Unallotted Indians of the Duwamish Tribe Under the Mukiltoe [*sic*] Treaty, on Point Elliott, of January 22, 1855." It appears that the title page was added somewhat later than the date the list was created, but when it was added is not known. (See the additional analysis of this "1927-34 list" under criterion 83.7(b) in this report.)

The petitioner furnished, cited, and analyzed the 1927-34 list as part of its response to issues involving demonstrating continuity from the historical tribe that the PF raised in the evaluation of DTO under criteria 83.7(a) and 83.7(b). The DTO researcher describes the two remaining lists as "two additional updated Duwamish rolls" found in the course of the petitioner's research (Dombrowski 1998, 31), which are analyzed below. In submitting the 1939 and the 1976 lists, the DTO petitioner is addressing the requirement to submit all former membership lists if available.

The 1927-34 List [70]

The 1927-34 list was submitted under a cover sheet which appears to be a photocopied list of exhibits ("DU-1 through DU-20") admitted on October 28, 1975, in Case 9213 (*U.S. v. Washington*); this membership list is itemized thereon as exhibit "DU-11." The 1927-34 list contains 416 typed names, although it bears the handwritten total of "410" names. An unidentified person wrote four names on the last page, under the "410" total. The 1927-34 list includes 30 names not found on the 1926 membership list, which had 398 names on it and was reviewed for the PF.[71] Half of these new names on the 1927-34 list represent children under age eight who may have been born after the 1926 list had been made (depending upon the accuracy of their reported ages, and the date at which each was added to the 1927-34 list). Conversely, the 1926 membership list identifies three persons, presumably alive in 1926, who are not recorded on

[69] The petition documents for the PF includes the title page to this list, but the typed list which follows it is identical to the 1926 membership list.

[70] The administrative record includes "working papers" for the 2001 FD with additional analyses comparing the 1915, 1926, and 1927-34 membership lists, with the additional genealogical claims and data the petitioner submitted. The OFA researchers used these analyses in evaluating the merits of the petitioner's "continuity of membership" presentation in response to the PF under 83.7(a) and 83.7(b).

[71] See OFA working paper entitled "1926 vs. 1927-34." Two of those 30 members (viz, Annie Jack Lobelean and Laura Siddle Carville or "Courville") appeared on the earlier 1915 membership list, although under their birth names. Neither one has descendants in the DTO.

the 1927-34 list, and who may also be deceased by the time the 1927-34 list was created.[72] The ages recorded for persons on the 1926 list did not change when recorded on the 1927-1934 list. The 1927-34 list is most likely a 1934 update of the earlier 1926 list. Since the lists are so similar, the 1927-1934 list does not change the evaluation of similar and apparently related lists described in the PF or this FD on Remand.

The 1939 List

The second of the three former lists of members is a handwritten transcription of the 1927-34 list (minus ages) M. D. Sackman made of "the enrollment of the Duwamish Tribe," and sent to Myron Overacker on August 6, 1939 (Sackman 8/6/1939; or Ex. 43). It contains 436 names, according to the numbering sequence appearing on the list. The creation date of the original list from which this transcription was made is not known, although the Department presumes the transcription dates to be sometime after 1937—the last estimated date of the original—to shortly before August 1939, when Sackman sent the letter. This second list includes seven members, whom a handwritten notation on the 1927-34 list had described as "deceased" or "dead"[73] and an eighth person, whom the 1926 list noted was "deceased."[74] Thus, if the notations are correct on the earlier lists, this 1939 list contains the names of eight individuals who had been dead for between 5 and 13 years. These facts indicate that this membership list had not been updated as births and deaths happened.

The 1976 List

The third of the three former lists of members consists of 128 typed names, representing adult members of DTO as of June 1, 1976, as submitted in *U.S. v. Washington* ("Boldt Case" above) on May 28, 1976.[75] The June 1, 1976, list contains each member's town and state of residence and a comment noting degree of Duwamish or other Indian blood.

This list appears to address issues that the PF raised in evaluations of criteria 83.7(a), (b), and (c), rather than 83.7(e). The petitioner's researcher claimed:

> The BAR findings indicated that the Duwamish Tribe [did] not submit a roll as part of the Boldt Case and weighed this as evidence of lack of tribal participation and interest in fishing rights as evidenced by other Washington tribes participating

[72] The 1926 list included the names of 10 persons who were deceased before that date. Those names are not on the 1927-34 membership list. See OFA working paper "1926 vs. 1927-34" for additional analysis.

[73] Namely (in order of appearance), Hazel Siddle, Ada James, Silas Hawk, David Daniel, Nellie Overacker, Abner J. Hamley, and Donald Hamilton.

[74] Bessie Bell Robertson was annotated "dc'd" on the 1926 membership list, yet is listed on the 1939 membership list with no mortality qualifier.

[75] The date on this list may be in error or post-dated since it was filed in Court on May 28, 1976.

> in the Boldt Case at that time. Apparently, the list was late but it was produced. (Dombrowski 1998, 31)[76]

The presence or lack of a DTO membership list in the record for *U.S. v. Washington* has no bearing on the DTO petitioner satisfying the requirements for criterion 83.7(e). The 1976 list is additional evidence of the composition of the DTO membership at that time. It does not add new evidence that would change the conclusions in the PF under either the 1978 or 1994 regulations.

The Department's Evaluation

Aside from the petitioner's additional former lists of members, the Department did not receive additional information to augment or challenge the positive finding for criterion 83.7(e) in the PF for this criterion. The evidence in the record continues to demonstrate that about 99 percent of the petitioner's members (386 of 390 in 1992) descend from the historical Duwamish Indian tribe as it existed before 1880.

Summary Conclusion under Criterion 83.7(e)**.**

The petitioner provided a 1992 membership list that identifies 390 members, including 42 "pending members." The Department's researchers have verified that about 99 percent (386 of 390) of the members have demonstrated descent from the historical Duwamish tribe as it existed before the 1880s. The reevaluation of the evidence under the 1994 regulations in this FD on Remand affirms the conclusions of the PF that was issued under the 1978 regulations, and finds that under both the 1978 and 1994 regulations, the DTO petitioner meets criterion 83.7(e).

[76] This appears to refer to the DTO PF ATR 1996, 128.

CRITERION 83.7(f)

The Differences between the 1978 and the 1994 Regulations

There is no significant change in the requirements of this criterion under 1994 regulations for purposes of the evaluation of DTO. The provision for "certain conditions" in the 1994 regulations do not apply to the DTO petitioner.

The Proposed Finding

The PF under the 1974 regulations for the DTO petitioner concluded that there was no evidence that a significant percentage of the petitioner's members belong to any federally-recognized tribe. The petitioner met criterion 83.7(f).

Third-Party Comments in *Hansen v. Salazar*

The Muckleshoot Indian Tribe submitted an amicus brief in opposition to plaintiff's motion for summary judgment on December 14, 2012, in *Hansen v. Salazar* (*now Hansen v. Jewell*). In response to argument by DTO that its members lost benefits, Muckleshoot cited Charles "Manny" Oliver, Jr.'s own testimony that he was an enrolled member of the federally recognized Suquamish Indian Tribe.[77] Muckleshoot quoted an exhibit in *U.S. v. Washington*, which was also in the administrative record for the DTO. This exhibit is entitled "Combination of 1942 and 1979 Suquamish rolls compared with 1971 Duwamish Judgment Roll and Lane Report." It contains analysis that identifies individuals of Duwamish ancestry who were on the 1942 and 1979 Suquamish rolls. The report shows DTO Chairwoman Cecile Ann (Oliver) Hansen and her brother Charles "Manny" Oliver, Jr., on both the 1942 and 1979 Suquamish rolls and identifies their great-grandmother, Jane Garrison, as their "Duwamish Ancestor" (Anonymous 5/10/1988, 28 *in* PFR-APF-V012-D0014). Muckleshoot concluded that Cecile Ann (Oliver) Hansen and her brother Charles "Manny" Oliver:

> . . . were considered enrolled members of the federally recognized Suquamish Indian Tribe as early as 1942, and therefore entitled to federal benefits available to Indian people without regard to membership in the Duwamish group or the Department's determination that the Duwamish group is not an Indian tribe. (Reich 12/4/2012, 21)

The implication is that at least some members of DTO, including its leaders, may be enrolled in Federal tribes.

[77] Muckleshoot's interest in Manny Oliver's status appears to be based on his relationship as a full brother of the DTO Chairwoman, Cecile (nee Oliver) Hansen. Manny Oliver enrolled with Suquamish at Muckleshoot in the 1970s; he died in 1998. The brief did not identify other individuals on Muckleshoot rolls who have Duwamish ancestors and/or may be enrolled with the DTO.

The Department's Evaluation

To confirm or refute Muckleshoot's allegation that Cecile Hansen is, or is eligible to be, a member of the federally recognized Suquamish Indian Tribe, OFA reviewed BIA censuses of Tulalip, Muckleshoot, and Quinault Reservations. Using the Oliver family ancestry charts the Duwamish petitioner provided for the PF, OFA researchers confirmed the names of Cecile (nee Oliver) Hansen's parents and found they were considered members of federally recognized tribes. Her father, Charles H. Oliver (Quinault-Cowlitz) and his parents Sampson Oliver (Cowlitz-Chinook) and Cecelia Johnson (Chinook-Quinault) were allotted lands on Quinault. Cecile Hansen's mother Margaret Katherine Henry ("Snohomish-Duwamish") was recorded on Tulalip Reservation censuses with her parents Roy Henry (Snohomish) and Anna Garrison until her marriage, and is buried on Tulalip Reservation. Margaret's father, Leroy or Roy Henry, was allotted land on Tulalip (BIA 1885-1940; Tulalip 1930, 17). Hansen's maternal grandmother, Anna Garrison, was not allotted land. She is the daughter of Jane Garrison, the "Duwamish ancestor" referred to on the Suquamish rolls in Muckleshoot's brief. It is through Jane (a.k.a. Pa'ipaic) Garrison that Hansen claims descent from the historical Duwamish Indian tribe.

Although he had been involved in his sister's DTO organization, Manny Oliver, a fisherman, testified that he officially enrolled in the federally recognized Suquamish Indian Tribe at Muckleshoot (Oliver Interview 1992, 85-88). Given the tribal ancestry outlined above, it appears that the Oliver siblings were eligible to enroll with the Suquamish Indian Tribe and perhaps at least two other tribes (Cowlitz and Snohomish) in western Washington. OFA did not find any other DTO member with such ties to the reservation tribes.[78]

The PF did not find a "significant percentage" of the DTO are enrolled in federally recognized tribes. No significant comment was submitted in response to the PF or to court filings.

Summary Conclusion under Criterion 83.7(f)

This FD on Remand affirms the PF that the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. Therefore, under either the 1978 or the 1994 regulations this FD on Remand affirms the conclusion of the PF that the petitioner meets the requirements of criterion 83.7(f).

[78] Jane Garrison has 11 descendants in the DTO. Muckleshoot did not identify any other descendants of Jane Garrison who may be on its membership rolls. Manny Oliver stated "A lot of my cousins and even my sisters are enrolled here [at Tulalip]" (Oliver Interview 1992, 85). Such a small representation of the DTO membership (11 of 355 or about 3 percent) by the Garrison family with federally recognized tribes does not change the analysis that DTO is not a continuation of the historical "D'Wamish and other allied tribes" who moved to the reservations. See additional analysis under criterion 83.7(b) in this FD on Remand.

CRITERION 83.7(g)

The Differences between the 1978 and the 1994 Regulations

There are no significant differences in the language or requirements of criterion 83.7(g) under the 1994 regulations. The Department's interpretation and application of criterion 83.7(g) are the same under either set of regulations.

The Proposed Finding

The PF under the 1978 regulations concluded that there is no evidence that the petitioner was subject to congressional termination legislation (DTO PF Summary 1996, 20). The DTO petitioner met the requirements of criterion 83.7(g).

The Department's Evaluation

No new evidence has been submitted or discovered to challenge the conclusion of the PF. The petitioner's response to the PF does not address criterion 83.7(g). None of the third party comments addresses the requirements of criterion 83.7(g) or the conclusions of the PF on criterion 83.7(g). Under either the 1978 or the 1994 regulations, this FD on Remand affirms the conclusion in the PF that the DTO petitioner has met the requirements of criterion 83.7(g).

Summary Conclusion under Criterion 83.7(g)

There is no evidence that the petitioner or its members have been explicitly terminated or forbidden a Federal relationship by an act of Congress. Therefore, under either the 1978 or the 1994 regulations, the petitioner meets the requirements of criterion 83.7(g).

APPENDIX I

EXHIBITS in Declaration of Jonathan H. Harrison in Support of Plaintiff's Motion for Summary Judgment on First Cause, Document 69, filed 4/13/2012

Ex. #	Title	FAIR #	OFA Comment
1	Anderson Draft 1/19/2001	025-501-RFR-V001-D0008	Selected pages only: signature page, & pp. 1,4, 17-21, 48-50
2	DTO Proposed Finding signed by ASIA Ada E. Deer 1/18/1996	DUW-V001-D004	Selected pages only: signature page & pp. 4-5, 17-19 of the Summary; 4-23, 26-31, 45-60 of HTR; pp. 141-151 of ATR
3	DTO FD signed by ASIA Neal A. McCaleb 9/25/2001	DUW-V001-D006	Selected pages only: signature page, and pp. i-iii; 1-4, 49
4	Chinook FD signed by Kevin Gover 1/3/2001		ASIA Finding, available on-line [IBIA returned to the Secretary for reconsideration] Selected pages only: signature page and pp. 1-11
5	Chinook RFD signed by ASIA Neal A. McCaleb 7/5/2002		ASIA Finding, available on-line [Reconsidered FD replaces the 1/3/01 FD] Selected pages only: title page and pp. 58-62
6	25 CFR Part 83 (2/25/1994 FR notice) Copy printed from Westlaw	[complete copy in ACR-FDD-V002-D0048]	General Reference Work available on-line. Copy of the preamble only
7	43 Stat 390, 68th Congress, Sess. 1; 6/5/1924	025 PFR-HPF-V008-D0117	
8	U.S. Senate Journal of the Executive Proceedings; 4/5/1918	025-PFR-HPF-V008-D0051	
9	79 Ct. Cl. 530; * 1934 US Court of Claims Lexi 272[Duwamish, Lummi, et.al.] 6/4/1934 from LexisNexis		Available on-line. 39 pp.
10	U.S. Court of Claims Request for Findings in F-275; *Duwamish, Lummi, et al. v. U.S.*		Arthur Griffin filing: "action …pursuant to 2/12/1925 Act of Congress 43 Stat 896" [poor copy] pp. 827-829, 924-927[79]
11	U.S. Court of Claims in F-275; "objections to findings," no date, in *Duwamish, Lummi, et*		Plaintiff's objections to findings pp. 1525-1527

[79] Available via the website of the Universities Libraries of the University of Oklahoma, Digital Libraries. http://digital.libraries.ou.edu/utils/getfile/collection/cornish/id/1657/filename/1658.pdf

	al. v. U.S.		
12	Draft Acknowledgment Precedent Manual, comp. BAR, 3/1/2002		General Reference Work, available on-line. "an incomplete working draft" Updated 2005 version also on-line. Selected pp i-iii, 1, 23, 38
13	Satiacum's 1915 List	025-PFR-HPF-V008-D0065	
14	Peter James Enrollment list ca 1950-1951	[see PFR-GPF-V010-D0006]	BAR annotated version is in FAIR; 2 pp of names and addresses, partially visible stamp shows it was received at Tulalip Ind[ian Agency]July 195[missing]
15	Anderson's draft FR notice [unpublished] with 1/19/2001	[same as 025-ACR-FDD-V002-D0088]	Surname page "noted", FAIR numbers not visible on Ex. 16, but the same documents; appears to be the copy sent to DTO in response to its FOIA
16	Email S. Keep to E. Blackwell 1/23/1001	[same as 025-ACR-FDD-V002-D0144]	Email has redactions "Not in scope of FOIA Request" appears to be the copy sent to DTO in response to its FOIA
17	DTO "Petition for Reconsideration" sent to IBIA, 12/31/2001	[same as 025-DUW-V001-D0001]	DTO's IBIA request rec'd in BAR 1/3/2002

EXHIBITS in Plaintiff's Motion for Summary Judgment, Document 96, filed 11/16/2012

Ex. #	**Title**	**FAIR #**	**OFA Comment**
1	DTO PF 6/18/1966, in 5 parts	DUW-V001-D004	
2	DTO FD 9/25/2001, in 3 parts	DUW-V001-D006	
3	1924 House Hearings, on HR 2694		Senate reports on same are in the record
4	1915- re Duwamish and Allied Tribes & affidavit of C. Satiacum/ T. Bishop witness	PFR-GPF-V004-D0642	
5	Indian Affairs report to Sec of Interior, Report #134, 1857	PFR-HPF-V006-D0006	
6	Indians burned out -article Seattle Press-Times - 1893	DUW-PFD-V008-D0075	
7	1905 Comm Ind Affairs report	PFR-HPF-V008-D0039	
8	1894 Comm Ind Affairs report	PFR-HPF-V008-D0033	
9	1902 Comm Ind Affairs report	PFR-HPF-V008-D0037	
10	Sells to Roblin 11/27/1916	PFR-APF-V017-D0013	
11	Snoqualmie PF 4/26/1993		ASIA Finding, available on-line
12	1894 Matthias Estate/ Graham v Matthias		

	[re children out of wedlock as heirs]		
13	Rebecca Fitzhenry aff./app. For allotment ca. 1918 - Bishop-Roblin	PFR-APF-V017-D0071	
14	Seattle Post-Intelligencer 1905 Seattle's Indian Neighbors	PFR-HPF-V002-D0035	
15	Satiacum's 1915 list	PFR-GPF-V006-D0262	
16	Seattle Post-Intelligencer 1906- Indian John Potlatch	PFR-APF-V022-D0074	
17	Seattle Post-Intelligencer 1906-Lake John/Indian John holding potlatch	PFR-APF-V072-D0075	
18	Unidentified newspaper -gathering at Chief John Seattle's -date not visible	PFR-APF-V022-D0072	
19	Bishop meeting with Hauke, Indian Office 5/19/1916	DUW-PFD-V007-D0002	
20	Story of Seattle by Bagley, 1916	DUW-PFD-V008-D0060	
21	Seattle and Environs 1852-1924, Hanford	DUW-PFD-V008-D0030	
22	Seattle Post Intelligencer, Potlatch at Tulalip, 1/23/1913	PFR-APF-V022-D0071	
23	Indian Parade honoring Seattle, ca 1915	DUW-PFD-V009-D0026	
24	Seattle Daily Times, " Tilikums will pay tribute to Seattle" 8/29/1913, pt 1		
25	Seattle Daily Times, " Tilikums will pay tribute to Seattle" 8/29/1913, pt 2		
26	Buchanan to CIA 9/5/1913	PFR-HPF-V008-D0077	
27	Sells to Buchanan 10/11/1913	PFR-HPF-V008-D0078	
28	Bishop's appeal 1913	PFR-APF-V021-D0036	
29	House subcommittee on Indian Affairs investigation 10/1/1944		
30	Griffin to Hauke 7/8/1916	DUW-PFD-V009-D0029	
31	Misc. news articles from Tacoma Library	PFR-APF-V022-D0047	
32	Photo of Satiacum et al re Roblin enrollment	DUW-PFD-V009-D0024	
33	Tacoma Sunday news Ledger same photo & article	DUW-FDD-V004-D0064	
34	Peter J. James' Roblin app. 1917	PFR-APF-V017-D0021	
35	Nellie Overacker, Roblin app. 1917	PFR-GPF-V006-D0181	
36	Roblin to Reynolds, instructions 6/28/1917	PFR-GPF-V002-D0035	
37	Roblin Roll 1919 for Duwamish	DUW-PFD-V005-D0003	
38	Satiacum et al hiring Griffin 1917	PFR-GPF-V007-D0002	
39	Seattle Daily Times, "Explains Indian law" 4/13/1920		
40	Hearings on HR 2423 & HR 2424 1922		
41	Resolution, Northwestern Federation of American Indians, 12/10/1921	PFR-HPF-V003-D0161	2 copies labeled "Ex. 41"
42	Senate Hearings on S. 3663 et al, 1918		
43	Sec. of War to Boyd, 2/8/1854	PFR-HPF-V008-D0051	
44	Court of Claims Chart, K&L Gates LLP		

	& bills regarding claims (88 pp)		
45	Seattle Daily Times 1/17/1924		
46	Survey of Conditions of Indians, Senate sub comm. 6/1/1931		
47	Upchurch mtg at Tulalip re Griffin's contract 3/31/1933	PFR-HPF-V007-D374	
48	Attorney contract 1933	DUW-PFD-V010-D0003	
49	Upchurch to Everett Herald newspaper 1934 re NFAI	PFR-HPF-V007-D0350	
50	Sec of Int. to Thomas, chrman of Senate Comm. on Indian Affairs May 1939	PFR-HPF-V008-D0070	
51	DTO constitution 1925	DUW-PFD-V009-D0043	
52	1926 "Constitutional enrollment list"	PFR-APF-V023-D0051	OFA researcher copy/ comments
53	OFA draft report comparing the 1915 and 1926 lists	PFR-APF-V024-D0004	OFA researcher copy of names on 1915 or 1926 & ages per 1926 list
54	Charles Kittle, Roblin app. 1917	PFR-APF-V017-D0027	
55	Alex Morris, Roblin App. 1917	PFR-APF-V017-D0103	
56	Minutes of DTO mtg to oppose S-2755, 1934	DUW-PFD-V010-V0006	
57	Minutes of NFAI 7/15/1939	PFR-HPF-V003-D0079	
58	Minutes of DTO council 6/24/1950	DUW-PFD-V010-D0049	
59	DTO minutes Jun 1954	DUW-PFD-V010-D0076	
60	DTO minutes 6/17/1961	DUW-PFD-V010-D0100	
61	DTO minutes Jun 1954	DUW-FDD-V004-D0058	
62	P. James to Upchurch 7/1/1939 re hiring an attorney to pursue claims	PFR-HPF-V008-D0085	
63	Hearing of Senate Indian Affairs subcommittee on Swinomish Res. 10/1/1944 re tribes with no reservations	PFR-HPF-V007-D0060	
64	P. James, DTO, against S-2755	PFR-MPF-V003-D0112	
65	DTO, treasurer's report 6/18/1966	DUW-PFD-V010-D0141	
66	Frank fowler Interview transcription 1992	PFR-APF-V009-D0011	
67	Minutes DTO mtg 1950	DUW-PFD-V007-D0024	
68	Minutes DTO 6/21/1952	DUW-PFD-V019-D0005	
69	Minutes DTO 6/16/1951	PFR-GPF-V004-D0076	
70	Minutes DTO 6/20/1953	PFR-GPF-V004-D0028	
71	Minutes DTO 10/13/1977	DUW-PFD-V011-D0047-	
72	Minutes DTO 1/3/1978	DUW-PFD-V019-D0034	
73	Minutes DTO 7/21/1977	DUW-PFD-V011-D0046	
74	Minutes DTO 5/6/1986	DUW-PFD-V011-D0126	
75	Minutes DTO 12/12/1987	DUW-PFD-V007-D0061	
76	Minutes DTO 12/4/1990	DUW-PFD-V019-D0204	
77	Minutes DTO 11/7/1984	DUW-PFD-V011-D0115	
78	Minutes DTO 6/7/1988	DUW-PFD-V011-D0140	

79	Minutes DTO 1/7/1986	DUW-PFD-V007-D0052	
80	Minutes DTO 8/19/1987	DUW-PFD-V007-D0057	
81	Minutes DTO 10/6/1987	DUW-PFD-V007-D0058	
82	Minutes DTO 6/2/1987	DUW-PFD-V007-D0056	
83	Minutes DTO 10/6/1987	DUW-PFD-V022-D0198	
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87	Minutes DTO 6/14/1978	DUW-PFD-V007-D0041	
88	Minutes DTO 9/24/1981	DUW-PFD-V011-D0086	
89	Minutes DTO 11/4/1986	DUW-PFD-V019-D0159	
90	Minutes DTO 2/5/1991	DUW-PFD-V019-D0206	
91	DTO newsletter 5/1980	PFR-APF-V022-D0031	
92	DTO newsletter 6/1979	PFR-APF-V022-D0035	
93	ICC DTO v US doc#109, request for Findings of Fact, etc 11/21/1956	PFR-MPF-V001-D0010	
94	Cohen's Handbook of Federal Indian Law, 2012 ed.		General Reference Book
95	Felix S. Cohen's *Handbook of Federal Indian Law* [yr?]		General Reference Book
96	Miami of Indiana FD, portions 6/9/1992		ASIA Finding, available on-line
97	Regs, Guidelines, Policies, for Federal Acknowledgment, 25 CFR 83, formerly 25 CFR 54 [Pt. 1, Pt 2, Pt. 3]		General Reference Book
98	Jamestown Clallam PF 5/16/1980		ASIA Finding, on-line
99	Samish FD 8/31/1995		ASIA Finding, on-line
100	Chinook FD, Gover's, 1/3/2001		ASIA Finding, on-line
101	Chinook RFD 7/5/2002		ASIA Finding, on-line
102	"Appendix Item #5" letters from Griffin to Hauke and affidavits of Duwamsih in 1914-1915 [Satiacum]	[PFR-GPF-V004-D0642]	Affidavits same as PFR-GPF-V004-D0642
103	Indiv. history card, Maj Hamilton 1911		
104	Major Hamilton, Roblin app. 1917	PFR-APF-V017-D0096	
105	Samish PF 10/27/1982		ASIA Finding, available on-line
106	Cowlitz PF 2/12/1997		ASIA Finding, available on-line
107	Appeal for money to support the Duwamish Longhouse & Cultural Center 2009 yr end report		
108	Snohomish FD 12/1/2003		ASIA Finding, available on-line
109	Steilacoom FD 3/12/2008		ASIA Finding, available on-line
110	Cecile Ann Oliver interview 10/13/1984	PFR-APF-V009-D0004	
111	Manny Oliver interview 6/9/1992	PFR-APF-V009-D0016	
112	Rays & Dick Fowler interview 6/13/1992	PFR-APF-V009-D0013	

113	Email from Scott Keep to SOL re issuing DTO, 9/13/2001	ACR-FDD-V002-D0042	
114	Letter from McKay Chadwell, PLLC, Seattle, re DTO FD; 4/3/2001	ACR-RFR-V001-D0072	

Exhibits in Amicus Muckleshoot Indian Tribe Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, Document #102 [Reich's Second Declaration] filed 12/14/2012

Ex. #	**Title**	**FAIR #**	**OFA Comment**
[1]	Assist. Sec. of Interior Anderson to Speaker of the House re distribution of judgment funds to Duwamish Tribe of Indians, 8/10/1965	DUW-PFD-V010-D0138	In administrative record for the PF 3 pp.
[2]	Combination of 1942 and 1979 Suquamish Rolls compared with 1971 Duwamish Judgment Roll and Lane Report [Pltf. Ex. *in* SU-SM-44]	PFR-APF-V012-D0014	In administrative record for the PF 3 pp. [1, 2, & 28]
[3]	U.S. House Questionnaire on Tribal "Organization of Duwamish Indian Tribe Organization" 5/15/1953	PFR-HPF-V003-D0150	In administrative record for the PF 9 pp.

Appendix II

The 16 Progenitor Families and the 1915 Satiacum List

There are 318 named individuals representing about 50 separate families on the 1915 list Charles Satiacum and his board of directors "selected" as "the true members of the Duwamish Tribe" (Satiacum and Rogers 12/23/1915 *in* DTO PF GTR 1996, 8).[80] The exact number cannot be determined because some entries included "and children" without specifying the names or numbers of the children. The PF found 22 individuals on the 1915 list who have descendants in the DTO's membership (DTO PF GTR 1996, 8). The 22 individuals with DTO descendants represent about 7 percent (22 of 318) of the individuals on the 1915 list.[81] Thus, 93 percent of the persons Satiacum listed in 1915 have no descendants in the DTO petitioner.

About 18 percent (63 of 355) of the 1991 DTO members, descend from individuals on the 1915 Satiacum list. They are descendants of persons surnamed Bagley (10 descendants in DTO), Scheuerman (8), Hawk (8), Tswalwood (1), James (8), Siddle (2), "Lula Sackman & chil." (26). Lula Sackman appears to be on the 1915 list in her own right as a Duwamish Indian, not based on her daughter-in-law relationship to Daniel Sackman and Maria Sancho.[82] According to the evidence compiled for the Duwamish judgment roll, Lula Beatrice McPhee (1880-1969) is the great-granddaughter of "Princess Angeline aka Mary Telasa [who] is the daughter of Chief Seattle 1/2 Suquamish and 1/2 Duwamish and LaDaila, Duwamish Indian and a daughter of a Duwamish Chief" (Sackman, Maria Sancho *in* JFA 1970; PFR-APF-V007-D0035 *in* FAIR). Lula's husband, Joseph W. Sackman (1858-1944), was not on the 1915 list, nor were the other sons or grandchildren of Daniel and Maria (Sancho) Sackman. Thus, the 26 descendants of Joseph W. and Lula B. (McPhee) Sackman, currently in the DTO membership, have an ancestor on Satiacum's 1915 list, but the 48 descendants of David H. or Isaac Sackman, both of whom are

[80] The PF Genealogy Report identified 328 individuals on the 1915 Satiacum list. Recalculations for the FD and this FD on Remand eliminated duplicates and incomplete names such as "____ Jack," resulting in 318 named individuals on the 1915 list. See the Work Paper with this FD on Remand that first appeared as Appendix A in the 2001 FD for OFA's analysis of the Dombrowski's "Continuity of Duwamish Tribal Membership." Her research provided likely identifications of individuals who were unnamed, but implied by the "and children" that follows some of the named individuals on the 1915 list. Her identifications and analysis raises the number of individuals represented on the 1915 list to 368.

[81] The PF said there were 22 "ancestors" on the 1915 list; however, that count includes a parent and children who were adults named on the 1915 list. For example, Peter J. James and his eight children were on the 1915 list, but only two of whom, Walter and Josephine, have descendants in the DTO. Therefore, there are three James "ancestors" on the 1915 list, although it is really only one progenitor family, that of Peter J. James.

[82] The DTO did not identify Seth McPhee and Ena DeShaw (1865-1946, a Duwamish descendant), the parents of Lula McPhee, as a progenitor family. Neither did the DTO identify separate Duwamish ancestry for the parents of two other progenitor couples. Both husbands and wives in the Siddle/John and Moses/Kweedot couples were Duwamish.

also DTO ancestors, do not. Other claimed progenitors of the DTO, who are not on the 1915 list, although alive then, are Tuttle (119 descendants in DTO), Fowler (24), O'Bryant (30), Eley (20), Seymour/Moore (8), Solomon (0),[83] and Napoleon (1). Thus, the most populous families in the DTO do not have ancestors on the 1915 Satiacum list.

OFA's analysis does not confirm that "Annie Garrison" on the 1915 list is the petitioner's ancestress Anna (nee Garrison) Henry. John and Jane Garrison's daughters, Anna and Betsey/Bessie, were married long before Satiacum compiled the list in 1915. If they were on that list, they would likely have been listed, as other married women were, under their married names "Annie Henry" and "Elizabeth Williams."[84] Their mother, Jane (a.k.a. Pa'ipaic) Garrison (1838-1931), a claimed Duwamish ancestress, is not on the 1915 Satiacum list or on the 1926 DTO list, although she was still living in Kitsap County.

It is more likely that "Annie Garrison" on the 1915 list is Annie (nee Henry) who married Benjamin Garrison before 1915, and "Elizabeth Garrison" is Lizzie (nee Pulsifer), the wife of Joseph Garrison.[85] Thus, as in-laws, these women are not descendants of Jane Garrison, and neither woman is a demonstrated ancestor of the current petitioner. Benjamin and Joseph Garrison do not have descendants in the DTO. Garrison descendants in the DTO membership do not descend from anyone listed on the 1915 list. Thus, descendants of Anna (nee Garrison) Henry, including DTO chairwoman Cecile Hanson, do not have an ancestor on Satiacum's 1915 list.[86]

The 16 Progenitor Families and the 1926 List

The petitioner provided a copy of its "1926 Constitutional Enrollment" for the PF, which identifies 398 men, women, and children by name and age.[87] The names appear to be arranged in

[83] Solomon may have had a descendant or descendants on earlier DTO membership lists, and the petitioner continued to include him as a claimed progenitor, although he has no living descendants on the 1991-1992 membership lists.

[84] The 1915 list identified many other married women by their spouse's surname, not by their maiden names.

[85] It was difficult to untangle these families, but Department researchers used the petitioner's descent charts for the Garrison family, and records publically available through the internet, including Federal censuses and BIA censuses, to distinguish the two Anna/Annie Garrisons and two Elizabeth/Lizzie Garrisons. The petitioner's researcher, Linda Dombrowski in her Exhibit 28, introduces another possible identification for Annie and Lizzie Garrison on the 1915 list: Annie Nason, wife of William Garrison, and her daughter Elizabeth, who were on the Port Gamble BIA census in 1917 and BIA censuses of the Muckleshoot Reservation 1919-1937.

[86] If "Annie Garrison" in 1915 is Annie (Garrison) Henry, rather than the wife of Benjamin Garrison, then adding her 11 descendants to the Department's calculations would raise the total to about 21 percent (74 of 355) of the DTO members credited as having e an ancestor on the 1915 list, but over 79 percent (281 of 355) of the DTO members do not.

[87] The PF found this list may have been compiled or completed much later than 1926, because it included names of children born as late as 1931.

nuclear family groups with the names of a parent or parents followed by names of children and, in some cases, grandchildren (DTO PF GTR 1996, 9).[88] About 91 percent (323 of 355) of the DTO membership have a direct ancestor on the 1926 list. Those direct ancestors appear in about 40 nuclear family households representing 12 of the DTO's progenitor families: Tuttle (10 households), Sackman (6), Fowler (4), James (3), Scheuerman (4), O'Bryant (4), Seymour (2), Hawk (3), Bagley (1), Siddle (1), Tswalwood (1), and Garrison (1). The PF noted that, even within a single family, not all of the 398 persons identified in 1926 have descendants in the DTO. For example, John and Emily (Hines) Hawk and seven of their children are on the 1926 DTO list, however, only two, Ione and Silas, have descendants in the DTO. Other Hawk siblings also had children, but they do not have descendants in the DTO (DTO PF GTR 1996, 10). The Peter J. James family is another example. There are 33 Jameses [Peter J., wife Ada, and children or grandchildren] in about 10 nuclear family units or households, but only two children, Josephine (nee James) Oliver and Walter James, have descendants in the DTO.

For this FD on Remand, the Department calculates there are about 135 heads of house (nuclear families) on the 1926 list, and estimates that about 56 of these 135 households in 1926 are siblings or collateral relatives of the petitioner's direct ancestors. [89] However, 39 other families (almost 30 percent, 39 of 135) on the 1926 list do not have any descendants in the current petitioner (DTO PF GTR 1996, 9-10). Department researchers could not link any of the individuals in these 39 families to the petitioner's known ancestors or to later DTO lists. For the most part, the Roblin Roll did not identify these individuals as Duwamish.[90]

Department researchers looked at the BIA censuses created between 1885 and 1940, which are now available online at Ancestry.com, for the names of individuals on the 1926 DTO list. This search found some of the petitioner's direct ancestral families were on various tribal censuses in the early 1900s, 1920s, and 1930s. Some of the petitioner's Scheuerman, Bagley, and Sackman ancestors were on the Tulalip Reservation censuses,[91] and some James and Siddle ancestors were

[88] The PF found that "[a]ll families in the current membership, except Eley, Garrison, Napoleon, and Solomon, had at least one direct ancestor on the 1926 Constitutional roll" (DTO PF GTR 1996, 10). The FD on Remand corrects part of this statement. One Garrison on the 1926 list has one descendant in the DTO. She is "Mrs. Ione Henry Ryner" (1902- [aft. 1930]), daughter of Annie (nee Garrison) Henry, who has one descendant in DTO in 1991-1992. Only 9 percent (32 of 355) DTO members descend from these four unlisted progenitor families.

[89] There may be more than 135 nuclear families since adult children (over 18) are listed under the parent's name, even though that "child" was likely to be married and not living with the parents. Minors on the 1926 list who married later and now have descendants in the DTO are not counted as separate households when calculating descent from the families on the 1926 list. The PF calculated there are about 207 adults (18 and over) on the 1926 list, so potentially, there could be as many as 207 households.

[90] The surnames Andrews, Daniel, Kittles, and Moses appear on Roblin's 1919 "Schedule of Unenrolled Indians [of the] D'Wamish Tribe" and on the 1926 DTO list, but they do not have descendants on the 1991-1992 DTO membership lists.

[91] Scheuerman was Snohomish, Bagley was Swinomish, and the three Sackman brothers and their descendants were recorded as Swinomish, Snohomish, or "Unattached - Tulalip" Indians on the Tulalip Reservation censuses (BIA 1885-1940).

on the Muckleshoot Reservation censuses. One direct DTO ancestor was on each of the following censuses: Skokomish (Hawk); Port Madison (Garrison), and Yakima (Overacker). Other families or individuals on the 1926 DTO list, who are not direct ancestors of the DTO, were also on the BIA censuses in the same 1900s-1930s time period. The following compilation identifies the reservations or tribes where the 1926 DTO list places DTO progenitor families, and, in parentheses, the number of such families in each place: Puyallup (2), Tulalip (8 in addition to the 3 ancestors named above), Muckleshoot (3 in addition to the 2 ancestors named above), Port Madison (2 in addition to the 1 named above), Yakima (2 in addition to the 1 named above), Lummi (2), Quinault (1), Clallam (1), and Chelalis/Toholah (1). Department researchers were not able to find about 45 of the families on the 1926 list, including 12 of the petitioner's direct ancestors, on any of the BIA censuses (BIA Indian Census Rolls 1885-1940) in the years between the 1900s and 1930s or on the Indian Population schedules of the Federal census in 1900 or 1910.

When Department researchers found these individuals on the Federal censuses, they were living among the general population, and for the most part, were identified as "W" for "White." For example, OFA's census review found the 1926 DTO list names Babich, Dorotich, Skansie, Gilich, Jerezich, Novak and Zulyevic in Gig Harbor, Pierce County in 1910-1930 censuses. The men, who were from "Austria and Dalmatia" (1910) or Yugoslavia (1930), primarily worked in shipping and harbor labor. In the Federal population Schedule of 1910, their wives were "W" for white, but the birthplaces for the wives' mothers were listed as "Can[adian] Ind" or "Wash[ington] Ind." No tribes were listed. These families were also on the 1927-34 DTO list, were not on later DTO membership lists, and apparently do not have descendants in the DTO membership. OFA did not pursue identifying tribal origins for these and other individuals on the 1926 DTO list with no descendants in the current petitioner.[92]

The 1926 DTO list may be the founding list of members of the DTO; however, as described in the PF and confirmed in this FD on Remand, the 1926 list does not represent the continuation of the historical Duwamish tribe coming forward in time after the treaty (DTO PF Summary 1996, 3-4, 7-8). Neither does the 1926 DTO list represent a continuation of the 1915 list of Satiacum's organization since there are only about 55 names common to both lists (75 individuals if included are the named children of families listed in 1915 who were also listed in 1926 as among the unnamed children in 1915). Only four families that were on both the 1915 and 1926 lists have descendants in the DTO membership: Scheuerman (8 descendants), Bagley (10), James (8), and Lulu (McPhee) Sackman (26). Thus, only about 14 percent (49 of 355) of the 1991-1992 DTO membership descend from individuals on both the 1915 and 1926 lists. (See the discussion under criterion 83.7(b) in the PF and in this FD on Remand for details.)

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[92] Even some of the petitioner's Duwamish ancestors were listed as "White" in some census years. In 1920, Joseph and Lula Sackman and children were identified as "W" on the enumeration sheet, but the enumerator wrote in the margins, "This family are half and quarter breed Indians" (1920 Census, WA, Kitsap Co., Traceyton Pct.).

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