

REPORT ON THE SKOKOMISH INDIAN RESERVATION
TIDELANDS BOUNDARY QUESTION:
ANTHROPOLOGICAL AND HISTORICAL EVIDENCE

Prepared for: SKOKOMISH INDIAN TRIBE

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December 1, 1978

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I. INTRODUCTION

The tidelands of the present Skokomish Indian reservation provided a rich and varied supply of resources to the Skokomish Indians before, during, and after treaty times. Seals, herring, salmon, ducks, geese, gulls, and a variety of shellfish and other species were taken in the tidelands and tidal waters near the mouth of the Skokomish River and westward along the shore of Hood Canal.

Information regarding these species and Indian reliance on them has been recorded by Indian agency personnel located at the Skokomish Indian reservation, by ethnographers who have described Skokomish Indian economy and in depositions and testimony of Skokomish tribal members.

This report reviews briefly some of the foregoing (and other) source materials in order to indicate the nature of several marine species available in the tidelands and tidal waters of the Skokomish Reservation, the use made of these by the Skokomish Indians, and the intent of the United States and the Indians with respect to the inclusion of the tidelands within the reservation.

The only full length ethnography of the Skokomish (Twana) is Elmendorf's "Structure of Twana Culture" based on field research beginning in the late 1930's and spanning a period of nearly twenty years. In the course of his work Elmendorf recorded information on species taken in tidal areas, methods of harvesting, and use of these species by the Indians.

However, as Elmendorf noted, his data are limited by the fact that all his informants were male "and matters primarily concerning female activities were often slightly treated." (Elmendorf 1960:8). Shellfish harvesting and processing were primarily female occupations as were the harvesting and processing of herring spawn, sea gull feathers, marine plants and certain other products taken in the tidal area.

In recent years Karen James has been able to fill in lacunae in the ethnographic record through her interviews with elderly and knowledgeable Skokomish women. The information supplied by these women materially increases our knowledge and understanding of Indian use of the tidelands and tide waters of the Skokomish Indian Reservation.

James has related her findings to those recorded in Elmendorf's published work and her data and analysis are contained in a separate report. In order not to duplicate her excellent and detailed study of Indian use of the Sko-

komish tidelands, the ethnographic section of this report focusses primarily on information provided by Elmendorf in testimony before the Indian Claims Commission in 1956. Elmendorf's testimony clarifies his view of the relative importance of tidal resources in the economy of the Twana.

When the District Court heard evidence relating to the Skokomish tidelands in Skokomish v. France in 1960, Elmendorf was not called to testify nor was his testimony before the Indian Claims Commission made available to the District Court. The pages of Elmendorf's testimony before the Indian Claims Commission which relate to Indian use of the tidelands are attached herewith as Appendix 1.

No evidence was presented to the District Court in Skokomish v. France to document the intent of the United States in locating the Skokomish Indian Reservation on the shore of Hood Canal. Documentation is provided here to illustrate the reasons given by Governor Isaac I. Stevens in 1855 and by subsequent Indian Department officers for the location of the Reservation.

Evidence was presented to the District Court in Skokomish v. France which purported to show that the Skokomish tidelands could not have supported an abundance of shellfish at treaty times. Documentation is provided here from records of the Mason County Board of Shore and Tide Lands Appraisers which indicate the status of shellfish

populations in the area in the 1890's and earlier.

Finally, no evidence was presented to the District Court in 1960 to show that either the United States or the Indians had ever before asserted that the tidelands were a part of the Skokomish Reservation. Documentation is provided here to show that such assertions were made on behalf of the Indians in 1902 when the State of Washington first offered these tidelands for sale. Further documentation is provided to show that the Indians of the Skokomish Reservation over the years have consistently repeated their understanding and belief that the tidelands were included in the Reservation.

Testimony by elderly Skokomish who had been at the treaty ground in 1855 was taken in 1927 in the case of Duwamish et al v. United States. These witnesses testified to their understanding that the tidelands had been reserved for the exclusive use of the Indians. Relevant documentation from that case is attached herewith as Appendix 8.

Additional documentation illustrating tribal assertion of tideland ownership in 1944 is discussed in the body of the report and is attached as Appendix 3.

Testimony by tribal members with respect to the Indian use and understanding of tideland ownership was again given in 1960 in Skokomish v. France. That testimony is not discussed here as it is analyzed in detail in the James report.

The material included in this report is not intended to provide full coverage of the subject matters treated. This report is selective in two ways. First, material has been included in an effort to correct deficiencies in the record which was available to the District Court in 1960 in its review of tidelands ownership. Second, material has been excluded in order to avoid unnecessary repetition of information to be addressed in the accompanying expert reports.

II. INDIAN USE OF THE SKOKOMISH TIDELANDS

The Skokomish Indians made intensive use of the tidelands around the mouth of the Skokomish River and westward along the shore of Hood Canal. They did so both before and after the establishment of the Skokomish Indian Reservation at that locale.

Considerable evidence regarding Indian use of the area is contained in Elmendorf's monograph on Twana culture. That work was placed in evidence before the District Court. However, the court did not have the opportunity to question the author in order to ascertain the proper weight to be given to various statements which occur in scattered places and separate contexts in the book. Serious misunderstandings and misinterpretations of the data resulted. These could have been avoided had Elmendorf been present to be

questioned or if the record of his testimony before the Indian Claims Commission had been made available to Judge Boldt.

For example, Judge Boldt made the following finding in Skokomish v. France

- "18. Shell fish were used by the the Indians at the time of the treaty and executive order, but to a limited extent, and more as a delicacy, and the livelihood of the Indians was not dependent in material degree upon shell fish or any type of fishing on or from the tidelands in issue."

The above finding relied upon a reading of the data in Elmendorf's work, but Elmendorf's testimony and the testimony of Dr. Carroll Riley, the government's expert witness before the Claims Commission are in direct conflict with the above finding.

In his testimony before the Indians Claim Commission Dr. Elmendorf made it clear that shell fish constituted an important element in the native diet.

He noted that women regularly travelled to the southern part of Hood Canal in the summer in order to dry supplies of clams for winter food stores.

"The reason they would go down here for latter April and May is that clam digging, which was done by the women, is especially good in the early season in the southern Hood Canal region and not good until later in the northern area. . . .

The women would dig clams, gather other mollusks, and preserve some of the clams, butterneck and cockle clams parti-

cularly, by roasting and smoking, as stores. While they were doing that the men, the half-grown and adult males in the family would be fishing at this time of year probably trolling in the Canal or hunting inland.

A great deal of the food obtained by these operations was preserved . . . the real purpose of the food search was not to get enough to eat but to provide surplus stores for winter use.

So as fish were smoked and meat was dried and clams were dried, they were preserved very often extremely neatly in baskets and other containers and cached or stored in family owned stores near the camp. Now, from time to time these stores which were really the important business, they were the things the family was providing, would provide throughout the summer, they were ferried back to the winter village where large caches were set up for each household and they were stored there.

(R 51-52)

Elmendorf proceeded to explain that families continued to move camp along the Canal all summer in order to harvest and process shellfish, fish, and game for the winter food supply. The amount of shellfish processed over the summer months by the women constituted a significant part of the food supply. Elmendorf noted both the abundance and variety of shellfish harvested along the shores of Hood Canal.

Actually shellfish were pretty abundant on both shores of the Hood Canal for its entire area, more than fifty miles on one side and fifty or more miles back, but there were certain areas where shellfish were better than others and certain kinds occurred rather than other varieties. . .

Quite a variety of shell fish were taken, three major varieties of clams -- large goeduck clams at least as large as two fists were taken at low tide, mussels and other kinds of mollusk were obtained. I should add crabs here. They were abundant particularly in the southern drainage area. (R 75)

Elmendorf noted that salmon was the single most important source of food for the Skokomish. Clams, mollusks, and shellfish were second in importance. These last, in his opinion, probably provided more bulk than either land game or sea mammals.

Salmon, particularly salmon taken in weirs, was the single most important source of food. It furnished the largest source of food.

Mollusks, sea mammals which includes seal and porpoise were important although they bulk less so than salmon.

Land game was also a major source and probably furnished more bulk food than sea mammals, possibly less than clams, mollusks and shell fish. (R 175)

Clearly Elmendorf's ranking of the importance of shellfish in the native diet does not square with the District Court finding that shellfish were used to "a limited extent, and more as a delicacy".

Further, Elmendorf noted that the tidelands about the mouth of the Skokomish River were an important locale for several kinds of fishing. Seals, herring, and salmon were all taken near the mouth of the Skokomish River.

". . . at this time herring run started to come in either along the mouth of the Hamma Hamma River or along the flats of the mouth of the Skokomish, and there would be opportunity not only of catching herring and collecting herring roe but seal trapping, catching salmon, trolling and spearing in the salt water. There would be intensive use of this area. (R 52) (Emphasis added)

The reference to "catching herring and collecting herring roe" in the passage above requires explanation. Two separate fisheries are meant. Schools of herring were netted, raked, or scooped out of the water as they approached the Skokomish tideflats to spawn. Alternatively, they were captured in several kinds of tidal impounding traps. These were built out from shore in salt water at low tide level. Fish swam into them at high tide and were trapped inside as the tide receded. (Elmendorf 1960:76-77)

The collection of herring roe refers to a completely separate fishery. It does not refer to a sac roe fishery in which roe are removed from impounded fish, but rather to the collection of spawn deposited on substrate which were weighted and placed in tidal waters by the Indians. (Elmendorf 1960:83, 122) According to information collected by James, cedar boughs and white fir branches were used by the Skokomish. (James 1978:61)

Seals and salmon were also taken in the tidal waters near the mouth of the Skokomish River. Seal fol-

lowed the schools of herring and were taken in the tidal impounding traps mentioned above. Salmon were taken as they congregated around the mouth of the Skokomish River prior to their ascent of the river to spawn. (R 72-73)

Elmendorf testified as the Skokomish Tribe's expert anthropological witness in the Indian Claims Commission proceedings. The government's expert witness was Dr. Carroll Riley. Riley also testified that the waters of the reservation were intensively used by the Indians.

The government attorney questioned Riley with respect to the factors considered in selecting the location of the Skokomish Reservation. In the course of that inquiry the following exchange occurred.

"Q Did they try to place the reservation at the place of subsistence and utilization by the Indians involved?

A Certainly the lower Skokomish River and the adjacent canal is one of the areas of heavy use aboriginally and at reservation times." (R 285)

Karen James has pursued ethnographic studies at Skokomish for nearly a decade. Her careful and detailed report (James 1978) materially expands our understanding of Indian use of the Skokomish tidelands. Her report documents the importance of the tidelands and tide waters of the reservation for a variety of fisheries in addition to those reported by Elmendorf.

The opinions of both expert witnesses, Elmendorf and Riley, and the evidence reported by James are contrary to the finding of the District Court that "the livelihood of the Indians was not dependent in material degree upon shell fish or any type of fishing on or from the tidelands in issue."

The court cited statements in Elmendorf's published work which stressed the primacy of river caught salmon in the Twana diet and the importance of the river fishery especially for those groups living along the Skokomish River. The court concluded that fishing and shell fish collecting in tidal areas was of minor importance especially for those people whose villages were located along the rivers.

In his testimony before the Indian Claims Commission, Elmendorf specifically noted that the people who lived along the Skokomish River used the tidal areas just as intensively as people whose villages were sited on the salt water. Elmendorf stated that only one Twana group, the people living at the Vance Creek village, were inland oriented and traded land game for salt water products.

"The Vance Creek people would correspond to the inland, up-river economy, inland and up-river type of Smith.

The other groups, for instance, there are the salt water type. This includes groups not only located the river in the winter but the Skokomish who used the salt

water and used the canal shore just as intensively as groups like the Quilcene who were on the bay. (R 181) (emphasis added)

The importance of fresh shellfish in the diet of the Indians of the Skokomish Reservation is reflected in the following report which was filed in 1870. Dr. David N. Egbert, the physician stationed at the Skokomish Reservation reported on the diet of the Indians under his care.

"In the spring and summer they have their clams, oysters, mussels, barnacles, roots, berries, and fresh and dried fish, -- in the winter they have dried salmon, fresh seal, beaver, roots, &c. and as each one comes in season they have their feasts. . . ." (Egbert 1870)

The court's conclusion that the Skokomish tidelands were not an important source of shellfish relied in part on expert testimony that the physical geography of the tidelands and the salinity of the tidewaters were incapable of supporting shellfish in usable quantities.

No expert testified on behalf of the tribe with respect to these matters. There is clear and credible historical documentation to show that the tidelands of the Skokomish Reservation supported abundant populations of native oysters in the 1890's and that oyster areas had been even larger in earlier years.

The Mason County Board of Tide and Shore Land Appraisers examined the tidelands along Hood Canal in 1894. They found good natural beds at the mouth of the Skokomish River.

The natural oyster grounds were sufficiently important to be set apart as State oyster reserves. The relevant pages of the Record of Natural Oyster Bed Reserves is attached herewith as Appendix 4.

Indian testimony, historical evidence, and anthropological opinion all support the view that the tidelands around the mouth of the Skokomish River and adjacent areas of Hood Canal constituted a major resource area for the Indians of the Skokomish Indian Reservation.

III. THE INTENT OF THE UNITED STATES IN LOCATING THE SKOKOMISH INDIAN RESERVATION AT SKOKOMISH RIVER AND THE SHORE OF HOOD CANAL

The Skokomish Reservation was established under the terms of the Treaty of Point No Point which was negotiated January 26, 1855. Governor Isaac I. Stevens negotiated the treaty on behalf of the United States. In an official report which was published later that same year, Governor Stevens explained how the location for the Skokomish Reservation was selected.

"There are some small streams flowing into the sound from the west, which it is not necessary particularly to advert to in this connexion; but a considerable stream flows into Hood's Canal near its head--the Skokomish river. There is a large quantity of tide prairie near the mouth of this stream, and it has been selected as an Indian reserve, for it abounds in the food of which the Indians are fond." (Stevens 1855)

The above report makes it clear that the location was reserved with the intent of insuring the Indians a continuing supply of their traditional foods. It is evident from the materials presented in the previous section of this report and in the extensive materials contained in the James report (James, 1978) that the waters and tidelands of the reservation provided most of the native food supply.

The value of the reservation to the Indians lay primarily in its water resources. This is noted by subsequent officials of the Indian Department as well as by Stevens. C.H. Hale, Superintendent of Indian Affairs for Washington Territory reported to the Commissioner of Indian Affairs in 1862 relative to the Skokomish Indian Reservation as follows

"The opportunities for fishing are good, especially with the aid of nets, which is a very important feature, and adds much to the value of this location as a residence for Indians." (Hale 1862)

In 1874 the agent in charge of the Skokomish Reservation wrote to the Commissioner of Indian Affairs regarding the feasibility of enlarging the Skokomish Reservation so as to accommodate the Indians of the Puyallup Reservation. The agent had been asked to examine the Skokomish Valley in this connection. In his reply, Eells recommended the reservation of additional shoreline in order to provide expanded fishing opportunity.

"In addition to the complete valley of the Skokomish river there should be several miles of shore along the Canal attached to the reservation to give them opportunity for fishing during the winter season." (Eells 1874)

The entire text of the Eells letter is attached herewith as Appendix 5.

Eells' recommendation that several miles of additional shore along Hood Canal should be reserved underscores the importance of the tidelands fisheries and the understanding that the tidelands were included within the reservation. The inclusion of the entire Skokomish river valley would have provided additional miles of river frontage and thus greater opportunity for river fisheries. If access to Hood Canal for salt water fishing was what Eells had in mind, this was already available from the reservation as it was then constituted. The only reason for reserving additional miles along the shore of the Canal would have been to reserve additional tideland and tidewater fisheries.

The Indians of the Puyallup Reservation were not removed to the Skokomish Reservation and so the proposed enlargement of the Skokomish Reservation did not take place. Nevertheless, the Eells letter quoted above documents the understanding of the Indian agent that the tidelands and tidewaters were included within the reservation. His proposal was to extend the reservation fishing areas which already existed along the Canal.

The understanding on the part of the officers of the Indian Service that the tidelands were included in the Reservation was enunciated clearly at the time that the State first offered the tidelands for sale. The Superintendent of Indian Affairs for Washington immediately protested the State's action on the grounds that the tidelands were a part of the Skokomish Reservation and that the tidelands were tribal property. This occurred in 1902.

The following series of letters documents the assertion of tribal ownership by the Superintendent and the subsequent events which led to the sale of the Skokomish tidelands by the State to non-Indians.

In December of 1901 J.E. Youngblood, Sub-Indian Agent at the Skokomish Reservation, wrote to the State Board of Land Commissioners asking whether anyone had filed or had attempted to file plats for tide or oyster lands in front of the Reservation.

In February of 1902 the State Attorney General advised the Chief Clerk of the State Land Commissioners' office that in his opinion Sections 4 and 10 of the Enabling Act prevented the State from selling tidelands embraced within Indian reservations which were established prior to Statehood, that is, November 11, 1889. However, it was his opinion that tidelands lying in front of such reservations (but not included within them) were subject to sale by the State.

On May 10, 1902 the Superintendent of Indian Affairs for Washington, Frank Terry, formally protested the application of A.J. Faulknor of Olympia to purchase tidelands fronting Section 35, Township 22 North, Range 4 West, Willamette Meridian, situated in Mason County, Washington.

The Superintendent wrote to the Commissioner of Public Lands in part as follows:

"I desire to protest against the sale of said oyster lands on the grounds that they lie in front of and abut the Skokomish Indian Reservation and are a part of said of reservation, and therefore belong to the Skokomish tribe of Indians." (Terry 1902)

Enclosed with the official protest was a newspaper clipping of recent date advising the public of the application to purchase the tidelands in question. It appears that the Indian Service became aware of the application through the newspaper notice.

This particular application to purchase and the immediate official protest to the State attempting to halt the sale is of particular interest for two reasons. First, it documents unequivocally the understanding of the Indian Superintendent in Washington that the tidelands were included within the Skokomish Reservation.

Second, these tidelands were among those whose ownership was contested in Skokomish v. France. No evidence was presented to the court during that litigation to show

that either the United States or the Indians had ever asserted ownership to the tidelands prior to the initiation of the France litigation in 1948. The court's erroneous understanding of this matter, based on an incomplete record, apparently had some weight in the court's decision that the tribal claim to ownership was without merit.

In December of 1902 the State Department of Public Lands acknowledged Superintendent Terry's protest on the grounds that the lands applied for "were owned by the Skokomish tribe of Indians." A January date was set for a hearing of the protest.

In January 1903 the Attorney General for Washington wrote to the Commissioner of Indian Affairs asking whether the boundaries of the Skokomish Reservation extend to low water mark either by any treaty or Executive order.

In March 1903 the Commissioner of Indian Affairs responded indicating that the only Executive order relating to the Skokomish Reservation was that of February 25, 1874. (That Executive order is silent as to the exact delineation of the water boundaries.) The Commissioner's letter closed with the following words.

"Pending the determination of this question of tide lands fronting on Indian reservations bordering on Puget Sound, by the proper courts, the office can only say that good faith with the Indians affected requires that these tide lands should be held

for their use, free and unrestricted,
and that the same should not be dis-
posed of to any private parties to
the exclusion of the Indians."

(Tonner 1903)

In April 1903 the State Attorney General again wrote to the State Commissioner of Public Lands reiterating his opinion that the State had the power to sell tidelands fronting an Indian reservation, but not included within it. He referred again to the Executive order of February 25, 1874 and included a copy of the March 1903 letter from the Commissioner of Indian Affairs.

The Attorney General stated that it was the responsibility of the Commissioner of Public Lands to determine whether or not the lands applied for were included within the reservation boundaries.

Two weeks later the Department of Public Lands of the State of Washington advised the Indian Superintendent that State had decided to sell the tidelands fronting the Skokomish Reservation. The full text of that communication is as follows.

"In the matter of your protest filed May 10 1902, against the A.J. Falknor application for oyster lands No. 3356, in front the Skokomish Indian reservation, have to say that the board after considerable investigation has concluded that the lands applied for lie in front of the reservation but not within it. The attorney general advises that such lands may be sold by the state and

Mr. Falknor's application will therefore be allowed." (Callvert 1903)

All of the above correspondence is attached to this report as Appendix 6.

The documentation provided in this section shows that the Skokomish Reservation was established at Hood Canal and the Skokomish River in order to insure the Indians would have reserved to them their traditional fisheries at that locale. This intent of the United States in establishing the reservation was reported by Governor Stevens who negotiated the Treaty of Point No Point with the Skokomish and other Indians. The intent of the government to include the tidelands within the reservation was the continued understanding of subsequent officers of the Indian Department.

IV. INDIAN INTENT AND UNDERSTANDING REGARDING INCLUSION OF THE TIDELANDS WITHIN THE SKOKOMISH RESERVATION

In 1927 a number of tribes in western Washington were engaged in litigation with the government respecting claims that they had not been compensated for improvements which they had had to abandon when they removed to the reservations or which had been taken from them on ceded lands. Several of the Skokomish witnesses who testified during the course of this litigation were elderly people who had been present at the treaty ground in 1855 when the Treaty of Point No Point was negotiated.

The Skokomish witnesses reported their understanding that the tidelands with their shellfish resources had been reserved to them under the terms of the treaty.

Three elderly Skokomish men provided information concerning the size and number of houses at various villages in the area ceded by the Skokomish under the 1855 treaty. That list was entered into evidence in Duwamish et al. v. United States (79 Ct. Cl. 530 (1934) cert. den. 295 U.S. 755) as Claimants Exhibit R-2. At the conclusion of the list, the following statement is appended.

"Indians at Point No Point
Treaty reserved all tide lands
bordering on Hood Canal, all rivers
and streams for their clams fish etc
Sanctioned by Governor Stephens."

A copy of the document is attached to this report as Appendix 7.

The men who provided the above information and opinion were Dick Lewis, Joe Dan, and Robert Lewis. None of these men could read or write. The list was written at their direction by Charles G. Miller, secretary of the tribe, who was 64 years old in 1927.

Dick Lewis, Joe Dan, and Charles Miller gave testimony regarding the tidelands, shellfish resources and fisheries during the course of their depositions taken at the Skokomish Reservation, March 23, 1927. Their statements add to that contained in the above noted document.

Dick Lewis was over 80 years old in 1927 and he stated that he had been present at the treaty negotiations in 1855. He thought he was about fourteen years of age at the time of the treaty and he claimed to have understood the discussions that the Skokomish had at the treaty ground.

He testified that game, shellfish and fish had formerly been plentiful but were now very scarce. (R 605) At the conclusion of his testimony he addressed these words to the Commissioner.

"This is what Governor Stevens stated to the old Indians at the treaty. I will state everything as nearly as I can remember as I heard it at that time.

Now, the Indians at that treaty wished to reserve the streams and fish and all shellfish, deer, elk, bear, ducks, and all game, and Governor Stevens said that "They will be all yours. All that I want is the timber and land, and all games of all description and fish will be yours, and also cedar with which to make your canoes with; also cedar bark" was made into buckets.

We wonder why we get arrested when everything is ours, was promised us. We can not go out and get a deer without being arrested. We can not get fish out of the streams without being arrested. We were raised on wild game and we still like to get them, but on account of present laws we are unable to do so. He says that at no time can we go out to a white man's place and kill a cow or pig or anything, because it is theirs; and we consider the wild game is ours." (R 608)

It is evident from the above that the witness understood that fish and shellfish from reservation tidelands and

tidal waters were reserved to the Indians.

Joe Dan, who thought he was about 80 years old at the time he testified, gave evidence regarding oysters in Annas Bay. He also testified that there were plenty of oysters, but that the State had taken the oyster lands from the Indians. (R 610)

Another tribal witness, Frank Allen, also made a statement to the Commissioner. He said in part,

"Well if you want it, I will tell it just as it is, as the chiefs said. Now, they left off--they wanted their clams, they wanted their salmon, they wanted their game of all kinds in the woods; they wanted that cedar timber to make their canoes and buckets and such things as they used to use; dead tree bark, dead tree, they want that for the firewood. Governor Stevens told them all right, it is yours, and the creeks where salmon runs."

(R 620)

Charles Miller made the following statement to the Commissioner.

"The reserves that they had reserved at the treaty were the fishing, hunting, clams, tidelands, the rivers, and all streams, the cedar, the roots and birds of the sea, and the wild woods were reserved by the Indians, and it was sanctioned by Governor Stevens. . ." (R 623)

The entire transcript of all Skokomish testimony taken at the hearing is attached to this report as Appendix 8. Clearly these witnesses asserted that their ancestors had reserved rights to waterfowl, shellfish and fish

and they certainly would have understood that they had the right to take these species in the tidelands and tidal waters of the reservation. One witness, Joe Dan, specifically stated that the State had taken the oyster lands away from the Indians. The tidelands fronting his allotment were in issue in Skokomish v. France.

Joe Dan was no longer alive to testify in the 1960 litigation and neither his testimony nor that of any of the other tribal witnesses in the Duwamish case was made part of the record in Skokomish v. France.

In 1944 the Skokomish Tribal Council approved a ten year planning program for the Skokomish Indian Reservation. The program noted that "Fish, clams and oysters play an important part in our food supply." (Skokomish Tribal Council 1944:4)

The section of the report dealing with tidelands is reproduced here in its entirety.

"b. Tide Lands

It is our understanding that the tide lands of Hoods Canal, which front on former trust lands, were sold by the State. We believe that these tide lands that front on former trust lands are Tribal property. Basic data and citations of similiar cases, with respective decisions of the Courts is being assembled for Court decision, if necessary.

These tide lands could provide additional revenues for the Tribe through the development of commercial

Olympia oyster beds. These tide lands, located near fresh water, are considered excellent for production of the Olympia oyster, which is considered as one of the choicest varieties." (Council 1944:6)

The foregoing documents the consistent and continuing assertion of the Skokomish Indians that they understood the tidelands of the reservation to be tribal property.

In Skokomish v. France the Court was under the mistaken impression that the tribe had come forward for the first time to assert ownership over the reservation tidelands. Information provided in the preceding two sections of this report show that this was not the case. Both the United States and the Skokomish Tribe are on record explicitly asserting their understanding that the tidelands are a part of the reservation.