Summary of the Criteria and Evidence:

Reconsidered Final Determination Denying Federal Acknowledgment of the Petitioner

Schaghticoke Tribal Nation

Prepared in response to a petition to the Assistant Secretary - Indian Affairs for Federal acknowledgment as an Indian Tribe and in response to the Interior Board of Indian Appeals decision of May 12, 2005, *In Re Federal Acknowledgment of the Schaghticoke Tribal Nation.*

Approved OCT 11 2005

James E Cason

Associate Deputy Secretary

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INTRODUCTION

The formal name of Petitioner #79 is the Schaghticoke Tribal Nation (STN). Petitioner 79's mailing address is c/o Mr. Richard L. Velky, 33 Elizabeth Street, 4th Floor, Derby, Connecticut 06418.

Administrative History

The reader is referred to the December 5, 2002, "Summary under the Criteria and Evidence for Proposed Finding [PF] against Acknowledgment of the Schaghticoke Tribal Nation [STN]," Petitioner #79. Notice of this STN PF appeared in the Federal Register on December 11, 2002 (69 FR 76184). Following the comment periods and response and the submission of new evidence, the Department concluded, relying in part on the state relationship and a new calculation of marriage rates as carryover evidence for criterion 83.7(c), that STN met the seven mandatory criteria for acknowledgment. Also see the January 29, 2004, "Summary under the Criteria and Evidence for Final Determination [FD] to Acknowledge the Schaghticoke Tribal Nation" for a detailed administrative history, a summary of the litigation, and the court approved negotiated agreement governing the procedures for the STN petition evaluation.[1] Notice of the STN FD to acknowledge the STN appeared in the Federal Register on February 5, 2004 (69 FR 5570).

On May 3, 2004, the State of Connecticut (State), jointly with the Kent School Corporation, CL & P, the towns of Kent, Danbury, Bethel, New Fairfield, Newton, Ridgefield, Stamford, Greenwich, Sherman, Westport, Wilton, Weston, and the Housatonic Valley Council of Elected Officials (Towns), the Cogswell-family Group (CG), and the group known as the Schaghticoke Indian Tribe (SIT) filed requests for reconsideration of the STN FD with the Interior Board of Indian Appeals (IBIA). On May 21, 2004, the IBIA ruled that the CG did not allege grounds for reconsideration within the jurisdiction of the IBIA, and held the issues they raised in abeyance pending referral to the Assistant Secretary-Indian Affairs (AS-IA) upon resolution of the requests for reconsideration. On May 21, 2004, the IBIA also ruled that it was not necessary to determine if the co-requestors with the State held "interested party" status.

[1] On July 28, 2003, the Branch of Acknowledgment and Research (BAR), the office in the Bureau of Indian Affairs within the Department of the Interior principally responsible for administering the Federal Acknowledgment regulations ("Procedures for Establishing that an Indian Group Exists as an Indian Tribe," Part 83 of Title 25 of the Code of Federal Regulations), became the Office of Federal Acknowledgment (OFA) under the Assistant Secretary-Indian Affairs (AS-IA). The duties and responsibilities of OFA remain the same as those of BAR, as do the requirements set forth in the regulations. The AS-IA makes the determination regarding the petitioner's status as set forth in the regulations as one of the duties delegated by the Secretary of the Interior to the AS-IA (209 Department Manual 8). In this report, OFA should read to mean BAR when discussing activities conducted prior to July 28, 2003. By Secretarial Order 3259, dated February 8, 2005, as amended on August 11, 2005, the Secretary relegated the duties, functions, and responsibilities of the AS-IA to the Associate Deputy Secretary (ADS). Therefore, the ADS issues this reconsidered Final Determination.

On December 2, 2004, following the deadline for STN's response brief to the IBIA, the Office of Federal Acknowledgment (OFA) through the Office of the Solicitor submitted a "supplemental transmittal" to the IBIA. The supplemental transmittal noted that:

> The results of this review indicate that the Summary under the Criteria for the Final Determination in STN is not consistent with prior precedent in calculating the rates of marriages under 83.7(b)(2)(ii) and provides no explanation for the inconsistency (Supplemental Transmittal, 12/2/2004).

The supplemental transmittal also noted the following:

> Finally, there is a material mathematical error in the calculation for 1841-1850, which when corrected lowers the calculation to less than 50%, whether or not the proper interpretation of the regulations is to calculate 'marriages' or 'members.' The analysis under 83.7(b)(2)(ii) in the Summary and the carryover under 83.7(c)(3), therefore, should not be affirmed on these grounds absent explanation or new evidence. (Supplemental Transmittal, 12/2/2004)

On May 12, 2005, the IBIA vacated the STN FD based on the reasoning in its decision in Historical Eastern Pequot Tribe concerning state recognition, and referred other issues including the endogamy marriage rate calculations, to the AS-IA as possible grounds for reconsideration (41 IBIA 30).

Overview of the IBIA Decision

As stated above, the IBIA vacated and remanded the STN FD on May 12, 2005, the same day it vacated and remanded the Historical Eastern Pequot (HEP) FD. The IBIA linked the two cases because of their reliance on state recognition as additional evidence for criterion 83.7(b) and 83.7(c). The IBIA noted that the use of marriage rates for the time period 1801 to 1870, analyzed for criterion 83.7(b), community, was also used as carryover evidence to satisfy criterion 83.7(c) political authority, or influence, for the same years (41 IBIA 32). The IBIA further wrote:

> As a result, relying on a combination of new endogamy rate calculations for the group, and the reevaluated significance of the State's relationship with the Schaghticoke, the FD concluded that STN had been able to satisfy criterion (c) for 1801 to 1870, and 1892 to 1936. The FD also found, on the basis of additional evidence, that STN satisfied criterion (c) for the other time periods for which the PF had found the evidence insufficient (41 IBIA 32-33).

In its request for reconsideration of the STN FD, the State challenged the use of state recognition and the state relationship as providing evidence for community criterion 83.7(b) and for political authority and influence regarding criterion 83.7(c). The State

argued that the STN FD "impermissibly" expanded the use of the state relationship as evidence of political authority or influence in the absence of evidence of political activity within the group beyond that in the HEP FDs, which was also challenged (41 IBIA 34). As regards the use of the state relationship, IBIA concluded:

> Today, in Historical Eastern Pequot Tribe, the Board concludes that the State of Connecticut's 'implicit' recognition of the Eastern Pequot as a distinct political body - even if a correct characterization of the relationship - is not reliable or probative evidence for demonstrating the actual existence of community or political influence or authority within that group. The FD for STN used state recognition in the same way that we found to be impermissible in Historical Eastern Pequot Tribe. In addition, we agree with the State that the STN FD gives even greater probative value and evidentiary weight to such 'implicit' state recognition, and therefore it constituted a substantial portion of the evidence relied upon. Therefore, in light of our decision in Historical Eastern Pequot Tribe, the Board vacates the FD and remands it for reconsideration in accordance with that decision. (41 IBIA 34)

The IBIA referred back to the AS-IA other allegations made by the State, including its claim concerning the members of the STN acknowledged in the STN FD and whether the STN was an amalgamation of two historic tribes, the Weantinock and Potatuck (41 IBIA 37). The State also contended that Congress had not delegated authority to the BIA to acknowledge groups as Indian tribes (41 IBIA 37).

The IBIA also referred back to the AS-IA issues raised by the Schaghticoke Indian Tribe (Petitioner # 239)(SIT), including an allegation it was denied due process because the AS-IA:

> failed to properly or adequately consider SIT - rather than STN - as the legitimate present-day continuation of the historical Schaghticoke tribe, and the Principal Deputy Assistant Secretary erred by not simultaneously considering and deciding SIT's own petition for acknowledgment. (41 IBIA 40)

The IBIA returned three SIT specific issues in the referral to the AS-IA as the basis for the possible reconsideration of the STN FD: 1) that there was insufficient evidence to document the descent of Richard Velky and his family line from Schaghticoke Indians; 2) that the STN tribal government does not have a bilateral political relationship with the Schaghticoke membership; and 3) the recognition in the STN FD of "unenrolled members" as a part of the STN membership "without notice, consent, or equal protection of those unenrolled members" (41 IBIA 42).

In response to the State's arguments concerning the marriage rate calculations, an issue raised as well by OFA in its "supplemental transmission," the IBIA concluded:

> Because we are already vacating and remanding the FD to the Assistant Secretary for reconsideration based on Historical Eastern Pequot Tribe, and because OFA has acknowledged problems with the FD's endogamy rate calculations-at a minimum, inadequate explanation-we conclude that this matter is best left to the Assistant Secretary on reconsideration. (41 I BIA 36)

Amended Scheduling Order

The Department's evaluation of STN was conducted under a court approved negotiated agreement between the Department, STN, and parties to the several concurrent lawsuits discussed in detail in the STN PF and STN FD. This scheduling order, entered May 8, 2001, established timelines for submission of materials to the Department, submission of comments, issuance of a PF and a FD that supercede 25 CFR Part 83. Following the IBIA decision vacating and remanding the STN FD, STN filed a "Motion to Amend Scheduling Order and for Expedited Hearing and Status Conference," in the court on June 15, 2005, requesting a court order to compel BIA to receive additional documentation and provide additional TA on the issues remanded by the IBIA, and the issues derived from the Supplemental Transmittal regarding marriage rates. STN also requested to submit more documentation. The State and other interested parties submitted briefs opposing this motion.

On June 30, 2005, the Department filed its opposition to the STN motion to amend the scheduling order, but offered an alternative schedule and procedures including a technical (TA) assistance letter responsive to the issues raised in the supplemental transmission and concerns raised by STN on the issue of marriage rates. On or about July 8, 2005, Judge Peter C. Dorsey verbally transmitted his decision, which endorsed the alternative proposal. Judge Dorsey issued the written order on July 23, 2005, that called for the following: 1) submission of TA letter to STN and other parties on or before July 14, 2005; 2) submission of new documents or historical evidence regarding 19th century marriage rates and any documents requested in the TA letter on or before July 25, 2005; 3) submission of briefs not to exceed 25 pages, but no evidence, on or before August 12, 2005; and 4) extension to October 12 on time frame for the reconsidered Final Determination (Dorsey, 7/23/05 order, USDC CT).

OFA transmitted the TA letter concerning the issue of marriage rates to STN and the interested parties on July 14, 2005. Under the provisions of the amended scheduling order, STN and the interested parties were allowed to submit new evidence and analyses concerning marriage rates by July 25, 2005, and to submit legal briefs by August 12, 2005. Therefore, STN and interested parties were allowed in this case to submit new argument and documentation that are neither expressly permitted, nor precluded by 25 CFR Part 83.

Scope of the Reconsidered Final Determination

Where the STN FD is inconsistent with this reconsidered Final Determination (RFD), the RFD supercedes the STN FD. Analysis and conclusions in the STN FD that are not rejected, revised, or inconsistent with the RFD are affirmed.

The IBIA decision did not affect the STN FD conclusion that the petitioner had been identified as an Indian entity from 1900 to the present; therefore, this RFD affirms that the STN petitioner meets criterion 83.7(a).

The IBIA decision affects the criteria for community (83.7(b)) and political authority or influence (83.7(c)) for those time periods for which the STN FD found there was insufficient direct evidence and relied on the state relationship for additional weight to demonstrate that the criteria were met. This RFD affirms that a Schaghticoke community continued to exist from first sustained contact through 1920. This RFD affirms that the Schaghticoke petitioner demonstrated that a community existed between 1967 and 1996.

This RFD affirms that the petitioner met the requirements of criterion 83.7(c) for political authority or influence from colonial times to 1801. The analysis of the evidence and conclusions in the STN FD that the petitioner meets the criterion for political authority for 1876 to 1884 are affirmed. The analysis of the evidence and conclusions in the STN FD that the petitioner meets the criterion for political authority for 1967 to 1996 are affirmed.

This RFD reweighs the evidence for criterion 83.7(c) for the period 1801 to 1820 and 1840-1870 based on a new endogamy analysis, and for the periods 1820-1840, 1870-1875, and 1892 to 1967 in light of the IBIA ruling regarding the use of state recognition as evidence of political authority and influence. The RFD reweighs the evidence for 1884 to 1892 in light of the new evidence submitted to IBIA. Moreover, this RFD reconsiders the evidence for criterion 83.7(b) community for the periods1920 to1940 and 1940-1967 that also relied on the state relationship as evidence in the STN FD. This RFD reevaluates criteria 83.7(b) and 83.7(c) for the period 1997 to present, in light of the membership issue of 42 unenrolled individuals referred by the IBIA.

The IBIA decision did not affect the STN FD conclusion that the petitioner meets criterion 83.7(d), in that it has a governing document that describes the membership criteria and how the group governs itself.

This reevaluation of the State's and petitioner's arguments concerning marriage rates in the 19th century does not impact criterion 83.7(e). Therefore, this RFD affirms the STN FD that 100 percent of the membership at the time of the FD (273 on the group's certified membership list) descends from the historical tribe. The FD found that there were other Schaghticoke descendants (the STN petitioner identified 42 of them) who were also a part of the community as a whole and a part of the political body that was active between 1967 and 1996, but who were not on the certified membership list at the time of the FD. The FD concluded that the evidence showed these "unenrolled tribal community

members" also descended from the historical tribe. See the discussion under "other described grounds" for additional details and new analysis concerning the status of these individuals. Any finding concerning the status of these individuals as members of the community in relationship to criteria 83.7(b) and 83.7(c) does not affect the finding that the petitioner meets criterion 83.7(e).

This FD found that none of the STN members were known to be dually enrolled with any federally acknowledged tribe, and that the STN had not been terminated by Federal legislation; therefore, this RFD affirms that the STN meets criteria 83.7(f) and 83.7(g).

RECONSIDERED EVALUATION OF THE EVIDENCE FOR CRITERION 83.7(b) "COMMUNITY"

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprise a distinct community and has existed as a community from historical times until the present.

Analysis of the Regulations and Precedent in Interpreting 83.7(b)(2)(ii) Concerning Marriage Rates

Introduction

On December 2, 2004, the Department provided additional TA under 25 CFR § 83.11(e)(8) to the IBIA in the form of a "supplemental transmittal." This filing identified the "acknowledgment decisions in the Acknowledgment Decisions Compilation (ADC) that relied on or discussed 83.7(b)(2)(ii) and the carryover provision 83.7(c)(3)" (Supplemental Transmittal 12/2/2005, 1-2 [footnotes omitted]).

The supplemental transmittal also pointed out that the Summary under the Criteria for the STN FD was "not consistent with prior precedent in calculating rates of marriages under 83.7(b)(2)(ii)" and provided no explanation for the inconsistency and no evidence that the inconsistency was intentional (Supplemental Transmittal 12/2/2004, 2-3).

Subsequent to the IBIA decision concerning STN, the Department agreed to provide a TA letter to the STN and the interested parties concerning the Department's interpretation of section 83.7(b)(2)(ii) and the methodology for analyzing data concerning marriage within and outside of the petitioning group (Fleming to Velky 7/14/2005). The Department also accepted additional documentary evidence and supplemental briefs concerning the Schaghticoke marriage rates. STN, the State and the SIT group submitted additional documentary evidence and supplemental briefs.

This section describes the precedents from acknowledgment decisions preceding the Schaghticoke FD for counting marriages in interpreting 83.7(b)(2)(ii). The review concerns whether the precedent and the proper interpretation of the regulations is to count

marriages (i.e., unions) as opposed to counting individuals. Finally, this section reviews the comments presented in the supplemental briefs and earlier filings by the petitioner and interested parties concerning precedent and methodology.

Language of the Regulations

The pertinent language from the acknowledgment regulations is as follows:

> 83.7(b)(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:
>
> (i) 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;
>
> (ii) At least 50 percent of the marriages in the group are between members of the group;
>
> (iii) 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;
>
> (iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; [Emphases added] or
>
> (v) The group has met the criterion in § 83.7(c) using evidence described in § 83.7(c)(2).
>
> 83.7(c)(3) A group that has met the requirements in paragraph 83.7(b)(2) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

Interpretation of the Regulations

The 1994 revisions to the 1978 regulations in part added specific examples of the kinds of evidence that could be used to demonstrate criteria 83.7(b) and (c).[2] The discussion of public comments in the Federal Register publication of the regulations noted the changes were "to make clearer the meaning of the criteria and make more explicit the kinds of evidence which may be used to meet the criteria" (59 FR 9280). The addition of lists of specific evidence was to provide "a clearer explanation of the meaning of the criterion and associated definitions, and of the burden required to demonstrate" the criteria (59 FR 9286).

The Federal Register publication of the 1994 revised acknowledgment regulations also discussed the relationship between criterion 83.7(b), community, and criterion 83.7(c),

[2] This paralleled the listing in the 1978 regulations of specific forms of evidence for criteria 83.7(a) and (e).

political influence. Commenters suggested that the two were identical, and therefore redundant. The Department's discussion, however, stated:

> While the two criteria are interlinked, they are not identical. Previous acknowledgment decisions have delineated the relationship between these two criteria. Rather than eliminate one of the criteria, a description of how one can be used in some circumstances as evidence to demonstrate the other is included in the new descriptions of specific evidence which may be used to demonstrate these criteria (59 FR 9288). [Emphasis added.]

The regulations in 83.7(b)(2) list five specific kinds of evidence, each of which provides strong evidence of community, i.e., one in which members have a dense network of social links. High rates of marriage within the group are one way of showing that high levels of community cohesion exist. In providing a list of specific forms of evidence in 83.7(b)(2), the regulations limit it to these five forms of evidence in those circumstances where a single kind of evidence for community is deemed to be sufficient in itself to show that the criterion is met. The regulations also provide that evidence of community which is sufficient in itself as listed in 83.7(b)(2), is also sufficient in itself to demonstrate that political influence or authority has been demonstrated (that is, without any evidence for political influence except the existence of a strong community) (83.7(c)(3).

The measurement of marriage rates under section 83.7(b)(2)(ii), and also in 83.7(b)(1)(i), concerns the social links established by marriages as a means of demonstrating community. This approach is reflected in the discussion of marriage rates throughout the acknowledgment decisions; including decisions predating the 1994 regulations (see also discussion of precedents below). The definition of community in 83.1 includes, in part, that "significant social relationships exist within its membership." Counting unions of two people, i.e., marriages rather than individuals, is an appropriate method of measuring the social links established by marriages. The ratio of links within a group versus those outside the group provides a valid measure of the level of social cohesion within the community.

Precedent from Prior Federal Acknowledgment Decisions

In Federal acknowledgment decisions issued before the STN decision, the regulatory language of 83.7(b)(2)(ii) has been interpreted to require counting the number of marriages (i.e., unions of two individuals), rather than counting the number of individual members of the group who are married, when calculating the percentage of marriages within the group versus the percentage of marriages outside. That is, rates are calculated by counting the character of the unions, rather than counting the character of marriage ties of each individual member of the group. In contrast, the STN FD calculated individuals, the only decision to do so when considering evidence under 83.7(b)(2)(ii). See Appendix I for the list of prior Federal acknowledgment decisions that calculated marriage rates as part of an evaluation under 83.7(b)(2)(ii).

Meaning of the Term "Endogamy"

The briefs and comments by the STN and interested parties, and some of the acknowledgment decisions, utilize the term "endogamy." The term "endogamy" is an anthropological term which describes the practice of marrying within a group as opposed to marrying outside of the group (which is termed "exogamy").[3] The group may be a tribe, settlement, kinship unit such as a clan, ethnic group or social class. The term "endogamy" does not appear in the regulations themselves, which refer only to rates of "marriages in the group are between members in the group" (83.7(b)(2)(ii)). The supplemental transmittal said, "The term 'endogamy' is a general term used in acknowledgment findings to refer to marriage within a group, which can be measured in different ways" (Supplemental Transmittal, 3, note 3). This means empirical rates of endogamy may be calculated in differing ways, using different assumptions and different specific measures, depending on the purpose of the analysis. No one measure is inherently more valid than another. In particular, either unions or marriage choices made by individuals may be counted (see discussion below). Acknowledgment precedent, however, has relied on unions (see Appendix I).

Interpretations in Acknowledgment Guidelines

The Department's supplemental transmittal noted that one of the Department's prior decisions, the Little Shell proposed finding, and specifically disavowed language in draft acknowledgment guidelines that indicated the correct measure was individuals rather than marriages.

The acknowledgment regulations provide for guidelines for the preparation of documented petitions (83.5(b)). The guidelines provide technical assistance and explanations but do not alter the regulations or acknowledgment decisions. Guidelines issued in September 1997, the only guidelines issued after the publication of the revised acknowledgment regulations in February 1994, state briefly some of the evidence that may be used for community, including "More than half of your group's members marrying each other" (Official Guidelines 9/1997, 46). The 1997 guidelines do not discuss how marriage frequency is to be measured or further discuss marriage rates beyond the language quoted here.

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[3] "Marriage" is defined as a union of two people, as was explained in the STN FD:

> For the purposes of analyzing endogamy, OFA has followed its previous practice of categorizing all known relationships that endured long enough to produce children as "marriages," whether or not there was evidence of a formalized union. Documented unions (formal or informal) that did not produce children are also included in the analysis (STN FD 23, note 6).

The Department has also developed more detailed guidelines directed at petition researchers. A draft version, never finalized, was released to some petitioners in 1995.[4] These draft researcher guidelines stated, "The measurement of 50 percent applies to the percentage of members of the group that are in such marriages, not to the percentage of marriages of group members which are between members of the group."

The Little Shell PF reviewed an extensive analysis of marriage rates presented by the Little Shell petitioner. One of that petitioner's reports presented a marriage rate analysis under 83.7(b)(2)(ii) which counted individuals (Franklin 1996) and cited the draft researcher guidelines. The Little Shell PF responded to this as follows:

> Franklin in 1996 revised the petitioner's marriage rates to calculate the percentage of married *members* at a given time who were married to another Métis, rather than the percent of *marriages*. Franklin followed draft acknowledgment guidelines which stated that in-marriages count "twice" because they affect two members of the group. [footnote omitted] This approach has not been adopted, however, in any previous acknowledgment determinations. The acknowledgment regulations plainly refer to the percent of *marriages*, not the percent of *members* of the group affected. Thus, the percent of *members* participating in in-group marriages is not relevant evidence for the 50 percent requirement of the regulations (Little Shell PF, TR 178-9). [Emphases in the original.]

The accompanying footnote indicated this referred to Section 83.7(b)(2)(ii) of the regulations (25 CFR Part 83).

STN's supplemental brief claimed that the Duwamish FD quoted the 1997 guidelines language, which STN asserts refers to counting individuals (STN Supplemental Brief, 9). The language purportedly quoted from the guidelines was "the petitioner's members frequently marry one another," a general phrase which appears in the 1997 guidelines without further discussion (Duwamish FD, 31). As noted, the 1997 guidelines do not include a discussion of how marriage frequency is to be measured.

STN Comments Concerning Precedent

The STN supplemental brief raises several methodological questions concerning the marriage analysis in the Little Shell PF as reasons why the Little Shell decision, which explicitly corrected the draft researcher guidelines, lacked precedential value (STN Supplemental Brief 8/12/05, 6-7). These questions concerned the several approaches used to analyze marriage patterns in the Little Shell PF that did not rely on a complete

[4] The STN supplemental brief incorrectly characterizes these two guidelines as, respectively, "draft" and "final." The 1997 guidelines are a general introduction which revised only the introductory portion of the 1995 draft researcher guidelines. The 1995 draft, as noted, were not otherwise finalized.

reconstruction of the ancestral populations.[5] These methodological issues do not impact the question of precedent in interpreting 83.7(b)(2)(ii) as marriages rather than individuals.

STN also argues that the interpretation of 83.7(b) (2)(ii) that was used was immaterial because either approach would have yielded extremely high rates of marriage within the group (STN Supplemental Brief 8/12/2005, 7). This argument has no bearing on what method was appropriate.

STN also argues that the Little Shell finding was only a PF and was, therefore, not precedent (STN Supplemental Brief 8/12/2005, 7). A proposed finding is certainly subject to revision in the final determination. Where there is no final determination yet for Little Shell, the decision provides evidence for precedent. Further, even though a PF, the Little Shell PF provides a clear example and explanation of the interpretation of the regulations which are consistent with other acknowledgment decisions.

The STN supplemental brief notes that the Department's supplemental transmittal to the IBIA did not reference the Duwamish decisions and asserts that the Duwamish FD shows that "OFA/BAR failed to rely on the approach in Little Shell to focus on marriages" (STN Supplemental Brief, 9). It states that the Duwamish FD issued in September 2001, soon after the Little Shell PF, assessed individuals rather than marriages to determine whether the 50 percent level was met.

The Duwamish FD contains a brief reference stating that "in petition cases with high rates of in-group marriage, meaning that the petitioner's members frequently marry one another, the BIA has assumed that the petitioner meets the requirement for community, criterion 83.7(b), without requesting other evidence" (Duwamish FD, 31). This section implies an evaluation under 83.7(b)(2)(ii), but does not cite that or any other section of the regulations.[6] The Duwamish FD section referenced brief discussions in the Duwamish PF which listed marriage rates. The Duwamish PF's calculation of rates counted the number of marriages rather than the number of individuals (Duwamish PF Anthropological Report, 24, 69, 79). Therefore, the approach in the Duwamish PF and FD is consistent with precedent in evaluating unions under 83.7(b)(2)(ii).

Review of the STN Method of Measuring Marriage Rates

The STN supplemental brief (STN Supplemental Brief 8/12/05, 2-4) argues that the proper interpretation of the regulations, and the correct methodology as shown by the relevant social science literature, is to count individuals. The STN submitted nine articles from anthropological, historical, and sociological literature concerning the measurement and analysis of marriage rates. The STN notes that in each instance, marriages are counted in terms of individuals rather than unions. STN asserts that these articles

[5] A complete reconstruction was not possible because of the great size of the population ancestral to the Little Shell group. Hence, alternative approaches were used to gauge historical patterns of marriage (Little Shell PF, 14).

[6] For the sake of completeness, it is included in the table of precedents in this RFD.

demonstrate that counting individuals is the appropriate methodology. As STN notes, the regulations do not prescribe a method for measuring marriages (STN Supplemental Brief 8/12/05, 1).

The STN brief asserts that based on a "review of the relevant social science literature" there is a "well-established and unanimous consensus for a statistically valid method of analyzing marriage patterns" (STN Supplemental Brief 8/12/05, 2). The brief does not describe this review, and cites only the nine articles to demonstrate there is such a methodological consensus.

A review of these articles demonstrates that in each case the focus of the study is the marriage choices made by individuals. That is, the articles concern what factors, such as ethnicity, size of population, social class, and other factors affect the rates at which individuals marry within their group, or as prescribed socially, with certain other groups (see Ayoub 1959, Marcson 1950). For these purposes, counting individuals is an appropriate methodology.

The STN brief focuses on a statistical methodology described in one of the articles (Schoen 1986). This methodology appears to count marriages rather than individuals, but actually counts individual choices. The analysis includes the marriage choices of non-members as an initial analysis step, but then conducts an additional analysis which washes out the choices of the non-members. The resulting analysis, like the analyses in the other articles cited in the brief, is to count the individual marriage choices of members of the group in question, a different purpose than under the regulations.

Review of Petitioner's Interpretation of the Regulations

STN argues that counting individuals rather than marriages is the appropriate methodology because STN interprets this section of the regulations to be intended to measure the group's ability to enforce social norms. The social norm in this case is the prohibition of marriage outside the group (STN Supplemental Brief, 3, 9-10; Austin STN Response 12/4/04, 1-2). Such evidence would be more correctly applicable to 83.7(c)(2)(iii) or 83.7(b)(2)(iii), than 83.7(b)(2)(ii). Section 83.7(c)(2)(iii) refers to evidence that "group leaders and/or other social mechanisms exist or existed which" exert "strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior." Section 83.7(b)(2)(iii) refers to the "maintenance of distinct cultural patterns." Marriage patterns do not demonstrate whether social norms existed or were being enforced or whether distinct cultural patterns existed. The evidence for marriage rates in most of the findings to date has been drawn from genealogical data, such as censuses and birth records, which do not record the social and cultural context or reason for a marriage.

The Little Shell PF explicitly describes the rationale for examining patterns of marriages in acknowledgment findings under this section. The Little Shell PF stated, "Marriage creates close, kinship-based social ties, which form the basis for a community" (Little Shell PF, TR 17). The finding elsewhere stated, "Intermarriage among Métis generated

numerous kinship links within each of the two geographical regions of settlement" (Little Shell PF TR, 15). Similar statements appear throughout the Little Shell PF (see Little Shell PF, TR 19, 166-183).[7]

The Little Shell PF and the other findings (see Appendix I) do not cite high rates of marriage within the group as the result of enforcement of social norms, the rationale that the STN has ascribed as the reason for this form of evidence. For example, in the Little Shell case, there was not substantial evidence that enforcement of norms within the Métis population was the reason for the marriage pattern, as much as discrimination and exclusion by the surrounding populations who differed in religion, language and ethnic background. The PF noted that "in-marriage" (that is Métis-Métis) declined proportionally to the decrease in social discrimination (Little Shell PF TR, 181, 186).

The evaluations of marriage for the purposes of evidence under 83.7(b)(2)(ii) and other evaluations of marriage patterns for evaluating community may differ. The number of individuals in a group affected by in-group marriages, however, is relevant in evaluating ordinary evidence for the existence of community, under the regulations. Such evidence is applicable under 83.7(b) as evidence to be added to other evidence concerning community, because it provides evidence of social links between individuals. However, counting the percent of individuals is only applicable as ordinary evidence which must be combined with other evidence to demonstrate there is sufficient evidence for community. It would not meet the requirements of 83.7(b)(1)(i) which refers specifically to "marriages" within the group and culturally patterned marriage outside the group but does not require a 50 percent level to be useful evidence. It is legitimate evidence of community.

In some instances, evaluations which count individuals appear in acknowledgment findings to explicate larger social patterns, rather than as measures of community cohesion. Thus, the Duwamish PF describes general patterns of out-marriage among the ancestors of the Duwamish petitioner over many decades. These were part of the evidence demonstrating the descendants of early marriages between Duwamish and non-Indian pioneers had become separate from the extant Duwamish and other Indian communities in the region (Duwamish PF, AR, 68-79). Those findings do not conflict with the interpretation of 83.7(b)(2)(ii) as requiring the counting of marriages, not individuals.

The STN supplemental brief also addressed the other forms of evidence for community specifically listed in the regulations. The brief argues that the other forms of evidence specified under 83.7(b)(2) refer to individuals, hence the intent and the correct meaning under 83.7(b)(2)(ii) is to count individuals (STN Supplemental Brief 8/12/05, 10). The

[7] Community must be established on grounds independent of marriage links in order to evaluate the extent of marriage within versus outside the group (see LS PF TR, 175). The Little Shell PF did not conclude that 83.7(b)(2)(ii) was met, even though the marriages established substantial networks of social ties, because it was not established that there was a definable group within which such marriages were occurring. The calculations presented were based on the classification of the individuals, and hence the marriages, as Métis or not, but the PF concludes that it was not established that these Métis were part of a single group or groups and on those grounds did not meet the requirements of 83.7(b)(2)(ii).

difference in language indicates that a different choice was made. The forms of evidence identified in the other sections under 83.7(b)(2) are different in character from marriages, and hence are measured differently. The use of the term "marriages" rather than "individuals involved in marriages" within a group reflects the intent of the regulations to measure social links between individuals. The other forms of evidence require different approaches in order to most appropriately provide a measure of community cohesion. Marriages is a bilateral link which can be measured directly, while the other forms of evidence listed are not as easily susceptible to such a direct measure of the social ties and social interaction within the group they measure. For the foregoing reasons, the prior interpretation of the regulations as counting unions for purposes of 83.7(b)(2)(ii) is warranted, and does not merit any change.

Reconsideration of Nineteenth Century Marriage Rates

As stated previously, the IBIA directed:

> Because we are already vacating and remanding the FD to the Assistant Secretary for reconsideration based on Historical Eastern Pequot Tribe, and because OFA has acknowledged problems in the FD's endogamy rate calculations -- at a minimum inadequate explanation -- we conclude that this matter is best left to the Assistant Secretary on reconsideration. We do not decide whether the State's challenges to the endogamy rate calculations would otherwise fall within the Board's jurisdiction under 25 CFR § 83.11(d). On reconsideration, the Assistant Secretary will have to address this issue, taking into account the submissions of the parties in this proceeding, and may consider STN's request for technical assistance, as appropriate (41 IBIA 36).

As discussed in the previous section, the arguments presented by STN do not justify a change in the interpretation of 83.7(b)(2)(ii) as requiring a count of unions, not individuals. Therefore, the analysis under 83.7(b)(2)(ii) in the STN FD is rejected and the following analysis applies.

Background

The STN FD found:

> Throughout the 19th century, the overseers' reports, the existence of a distinct geographical settlement to which off-reservation residents frequently returned, and the close kinship ties between reservation residents and non-resident members provide sufficient evidence to show that a Schaghticoke community existed until about 1900. The analysis of the evidence undertaken for the FD strengthened these conclusions. The FD affirms that the Schaghticoke meet 83.7(b) through 1900 (69 FR 5571).

The STN PF did not include an analysis of marriage rates, but found that STN met the criterion for community by other means (STN PF, 15-16). STN submitted a report and analysis of marriage rates that OFA reviewed for the STN FD. The new evidence in the STN FD that strengthened the finding for community was the marriage analysis based on the STN's report on 19th century marriages. STN submitted a report that identified 90 marriages it claimed were either "endogamous," "culturally-patterned exogamous," or "exogamous," and asserted "that the average rate of endogamy for the 1800s exceeds fifty percent" (Austin 8/8/2003a; see SN-V054-D004 in FAIR).

The FD evaluated the STN claims and explained why it excluded some of the names identified by STN and included some other names and relationships (STN FD, 23). The primary sources for identifying Schaghticoke individuals in the 1800's were the overseers' accounts and ledgers. Although the sources listed individuals who received goods or services as members of the Schaghticoke tribe, the accounts were not a census and did not identify households or nuclear family relationships.[8] Faced with the limitations of the overseers' reports and the fact that there was no comprehensive census of the Schaghticoke living on or off the reservation in the 1800's, the STN FD verified some of the marriages in the STN report and identified others in the historical Schaghticoke, including those unions involving members who do not have descendants in the petitioner's current membership. The STN FD coded the individuals in a marriage: (1) Schaghticoke, (2) other Indian, (3) non-Indian, or (0) Unknown, and then identified the marriages as 1/1, 1/2, 1/3, or 1/0 in Tables 3 and 4.[9]

This RFD uses the list of marriages used for the STN FD to define the Schaghticoke between 1801 and 1900 without change. However, the evidence submitted by the STN and the interested parties for this RFD corrects some of the identifications, corrects the beginning or ending dates for some of those marriages, and provides heretofore missing names of some individuals. One marriage has been added to the analysis. This RFD recalculated the group marriage rates consistent with precedent in order to determine whether they provide additional evidence for community under 83.7(b)(1), or are at the 50 percent or higher level to meet 83.7(b)(2)(ii) and provide carry-over evidence to demonstrate political authority or influence pursuant to 83.7(c)(3).

State of Connecticut Issues Concerning STN Marriage Rates

The State and interested parties' request for reconsideration disagreed with the methodology used in the STN FD to determine which individuals should be included in the STN FD's analysis of the STN's endogamy report (State Request 5/3/2005, 109-

[8] The overseer may have recorded buying a coffin for "Mima's child," but he did not list the child's age, father, or siblings in the family.

[9] This RFD uses "S" for Schaghticoke, "I" for other Indian, and "U" for Unknown or non-Indian as a way of coding individuals in a marriage, and provides additional reasoning for including or excluding individuals about whom either the State or the petitioner had drawn differing conclusions.

114).[10] The State contends that the three "principles used to determine whether to include individuals in the tribal community" were too permissive in that "[m]ere mention of an individual on an overseer's report is not proof, or even reliable evidence that the person was a Schaghticoke tribal member" (State Request 5/3/2004, 109). (See STN FD, 24, for methodology applied in the STN FD.) These same arguments were repeated in the State and interested parties' August 11, 2005, "Supplemental Brief on Nineteenth Century Marriage Rates."

The State contended that many of the names in the STN FD's tables identifying Schaghticoke marriages were neither Schaghticoke Indians, nor other Indians, and should not be included in the analysis as Indians. The basis for these arguments was that either the individuals themselves were not on the Ezra Stiles's 1789 enumeration of the "Scatticook Tribe," or they or their children or grandchildren were not on the Schaghticoke overseers' accounts as receiving services (State Request 5/3/2005, 115).[11]

Specifically, the State objected to the STN FD's identification of 12 couples as having Schaghticoke-to-Schaghticoke marriages, claiming the STN FD assumed these individuals to be "members of the group and living in tribal relations, even though they are mentioned only briefly or in a non-definitive way in an overseer's report or similar record" (State Request 5/3/2005, 110). OFA has added beginning and ending dates of the marriages from Table 3 of the STN FD to show the time periods when the marriage information was challenged.[12]

Table 1: *Couples Identified by the State as Questionable Duration of Union from STN FD*

Abraham Rice and Martha Chappel	1800 - 1856
Dennis Mauwee and Polly	bef. 1802 - 1812
Joseph Chuse Mauwee and Sarah	bef. 1789 - 1803
Elihu Chuse Mauwee and Sarah	bef. 1789 - 1809
Peter Sherman and Sibbil	bef. 1789 - 1802
Rufus Bunker and Roxa	bef. 1796 - 1842
Benjamin Chickens and Sarah	abt. 1794/1800 - 1826

[10] The State, Town of Kent, Kent School, and other interested parties (see the administrative history for detailed list) submitted a request for reconsideration on May 3, 2004, and a supplemental brief on August 12, 2005. Arguments in the supplemental brief repeat those in the May 3, 2004, submission with few exceptions.

[11] The State submitted "Revised Charts" showing the couples that it contends were the only ones who could be included in the marriage analysis. The State's analysis did not change the beginning or ending dates for any of the marriages listed in the FD's analysis, but re-categorized some marriages as "other Indian to unknown" or "Schaghticoke-to-Unknown" and eliminated others entirely because the State considered them to be "non-Schaghticoke to non-Schaghticoke." The State combined the lists of names from the FD's tables 3 and 4 into one chart covering the years from 1789 to after 1900 (State Request 5/3/2005, 129-132).

[12] As noted in the STN FD: "For purposes of analyzing endogamy, OFA has followed its previous practice of categorizing all known relationships that endured long enough to produce children as 'marriages,' whether or not there was evidence of a formalized union. Documented unions (formal or informal) that did not produce children are also included in the analysis" (STN FD, 16, note 6).

"Schaghticoke/Schaghticoke" [*sic*: parents of Rachel Mauwee] unknown	abt 1809/1812 –
Job [Suckanuck?] and Eunice Job	bef. 1817 - 1820
Alexander Kilson and Parmelia Mauwee	1820 - 1844
Adonijah Cogswell and "Unknown"	bef. 1837 - 1837
Elihu Mauwee and Alma Mauwee	bef. 1849 – abt. 1859

The State also objected to the STN FD's inclusion of the children of these marriages, whether or not those children married within the group or married non-Indians or non-Schaghticoke Indians (State Request 5/3/2004, 110-112). In particular, the State named Joseph Kilson (1829-1871) as an example of a Schaghticoke who married twice (to women who, according to the State, were "not verified members of the group"), moved away, moved back to the Kent area and died shortly thereafter, but whose children were included in the endogamy rates. The State objected to including this family because the "BIA advised the petitioner that the same descendants of this family had to be removed from the membership rolls because they did not maintain tribal relations" (State Request 5/3/2004, 112).

The State also objected that the STN FD marriage analysis included information on the marriages of the children of Schaghticoke individuals who had entered into an exogamous marriage but "continued to participate in Schaghticoke activities (was named in overseers' records, signed petitions, etc.)" (State Request 5/3/2004, 112). The State asserted that such a practice included the children of exogamous marriages who themselves entered into an exogamous marriage, "even if the children in the subsequent exogamous marriage were not in tribal relations" (State Request 5/3/2004, 112).

The State did agree with the principle applied in the STN FD that if a Schaghticoke individual married outside of the group and ceased to participate in Schaghticoke activities, "then the individual is presumed to have abandoned tribal relations and the marriages of his/her children are not included in calculating the [group endogamy rates]" (State Request 5/3/2004, 113 citing STN FD, 24). However, the State asserted that the STN FD did not apply the principle correctly, because "[t]here are numerous instances where individuals who are critical to the Final Determination's calculation of endogamy appear minimally on the records" (State Request 5/3/2004, 113).

In particular, the State objected to including these individuals as it had a "trickle down effect" that allowed the next generation to be identified as Schaghticoke and included in the marriage calculations as "1/1 on the endogamy table" (State Request 5/3/2004, 114-115). For example, the State's request discussed at length the Aaron Chappel family,[13] some of whose children, or grandchildren, were marriage partners of other Schaghticoke descendants in the STN FD calculations (State Request 5/3/2004, 115-118, 121-124).[14]

[13] The FD used the "Chappel" spelling; the name was spelled "Chappel" on the one version of the 1831 deed, and "Chapel" on another. Chapel, Chapple, or Chappel were used in various census years. This RFD will use the "Chappel" spelling, unless in a quotation.

The State based its argument that Aaron Chappel was not Schaghticoke or Indian based on evidence that he purchased land in 1805 without petitioning the general assembly, that his heirs sold the land in 1831 without doing the same, and that he was listed as a free person of color on the 1830 Federal census of Pawling, Dutchess County, New York.[15] The State's supplemental brief goes two steps further, claiming that Aaron Chappel's wife Hagar/Haner's real name was "Queen Hill," and that she was the daughter of London Hill, who was probably an "emancipated slave" living in a neighborhood of "free colored persons" (a census category) in Pawling, Dutchess County, New York (State Supplemental Brief 8/12/2005, 14).

The State and the Towns claim that this evidence, together with the fact that Aaron Chappell and Hagar Chappell (by either their first names or the surname Chappel/Chapel) were not named in the Stiles report of Schaghticoke Indians in 1789, or on the subsequent overseers' accounts, indicates that they were not Indians and not Schaghticoke. By this reasoning, the State and Towns further conclude that since neither parent was Schaghticoke, their children were not Schaghticoke, and that the analysis should not have classified any of the Chappel family's marriages as showing Schaghticoke endogamy. In particular, they object to the inclusion of the Kellys, Chappel descendants, who subsequently married Schaghticoke descendants. The State also argued that the absence

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[14] The State claimed that neither Aaron Chappel nor his wife, Hagar/Haner (maiden name unknown), were Schaghticoke Indians (State Request 5/3/2004, 113-118, 121-125) and that neither they nor their children should have been included in the marriage analysis. The State quoted the STN FD which identified this marriage as "presumed exogamous," and noted that "there is insufficient evidence to determine which partner was Schaghticoke, nor is there evidence to exclude the possibility that both partners were Schaghticoke" (STN FD, 26). The State also quoted the STN FD's conclusion that there was no evidence that Hagar/Hanar was the mother of Aaron's children, only that she was identified as his wife at the time of his death (STN FD Table 3, 151 and n 104). The State's assertion that by including Aaron or Hagar/Haner Chappel as Schaghticoke means that the FD ". . . set in motion a chain of cascading results under that caused [*sic*] children of that marriage to be included as endogamous" (State Request 5/3/2004, 116).

[15] The State's Exhibit 42 (Ex. 42) is a copy of two April 27, 1805, deeds in which Aaron Chappel of Pawling, Dutchess County, New York, buys and sells [mortgages] a piece of property in Kent, Litchfield County, Connecticut. State's Ex. 43 is pages 37-39 on the history and settlement of East Mountain [a.k.a. Preston Mountain] from the 1982 *A History of Dover Township* by the Town of Dover Historical Society. Martin Preston was identified as the first settler and "Aaron Chappel, the namesake for Chappel Pond, was a free black man who settled on the mountain during the Revolution." This history also described the old stage coach route that "left the Housatonic valley at the Schaghticoke Indian reservation in Kent, Connecticut and went on up what is now the Appalachian Trail as far as where the trail forks" (Dover, 37, 38). State's Ex. 44 is information on the "London Hill Family of Dover" in a book called *The Settlers of the Beekman Patent Dutchess County, New York,* Vol VI by Frank J. Doherty. The State's Ex. 45 is one page from the Town of Kent registry of earmarks used by livestock owners to identify their property showing Aaron Chappell registered his mark on March 11, 1771, which the State and Towns assert indicated that he was not an Indian. The State's Ex. 46 includes pages from the Town of Kent tax lists 1771-1786, showing that Aaron Chappell was on the list of "poles and rateable estates" in 1777 and 177_ [last number cut off in the photocopy]. State's Ex. 47 is a page from the 1830 census of Dutchess County, New York, showing Aaron Chappell as the head of a household of free people of color. State's Ex. 48 is one page from the 1840 census of Litchfield County, Connecticut, showing Hagar Chappell, a free woman of color, between 55 and 100 years of age.

of other individuals, such Dennis Mauwee's wife Polly, from the Stiles list or overseers' accounts is evidence that they were not Schaghticoke (State Request 5/3/2005, 115-133).

The State also objected to including as Schaghticoke individuals "whose names appear minimally on overseer reports . . . Some of these individuals were simply mentioned on the overseer reports as having been buried, or given services in some other minor fashion, but they do not have descendants in today's STN . . ." (State Request 5/3/2005, 127).

Analysis and Response

Names Listed in the 1789 Stiles Enumeration

The STN PF briefly described the information in Ezra Stiles's 1789 enumeration of the "Scatticook Tribe" as having 12 men, 22 boys, 22 women, and 11 girls, and listed by name and age the 12 adult males, which "provides the best bridge currently available between the pre-1771 Moravian records and the post-1801 overseers' reports" (STN PF, 74). The Stiles enumeration listed almost everyone by name, age, and gender, except for six young boys and the children of Martha described below. The STN FD mentioned examples of Schaghticoke Indians who were not included in Stiles enumeration and observed that "Stiles himself noted there were 'four families on spot' and other documentation shows that people named by Stiles did not reside on the reservation" (STN FD, 20). Not all of the individuals on Stiles's list were identified by name: there were "4 boys of Pet. Mawwee King under 10," one 8-year-old boy, one 3-year-old boy, and the unidentified children of 28-year-old Martha who simply "has Children" (Stiles 1789).

Neither Stiles nor the rest of the historical record indicate that his enumeration identified all of the Schaghticoke who were living in 1789. Thus, when other reliable evidence identifies an individual as a Schaghticoke, this RFD will consider them, as well as individuals on the Stiles list, as Schaghticoke.

Names Listed in the Overseers' Accounts

The STN PF's discussion of the Schaghticoke from 1801 to 1860 stated that as of 1801 "overseers' reports which name individuals (although frequently using only the given name) are available, although submitted to the BIA only in the form of typed abstracts or extracts." [Footnote 108 states there was no indication of when, why, or by whom the typescript was prepared] (STN PF 78). For this RFD, the STN submitted photocopies of the three original account books for 1801 to 1807, 1807 to 1833, and 1833 to 1852 (STN 7/29/2005).

These original records reveal that several months had been omitted from the previously submitted transcripts. Thus, there were many more entries in the overseers' records that named Schaghticoke Indians than were recorded in the transcripts in the administrative record for the STN PF and STN FD. For example, the transcript for the year 1802 identified two entries in January, two entries in February, five in March, [none in April],

one in May, [none in June, July, August, September or October], two in November, and one in December (See SN-V011-D0039). However, the photocopy of the original shows that there were also seven entries in March, three in April, seven in May, three in June, four in July, one in August, three in September, one in October, and seven in December that named Schaghticoke Indians such as Sarah Mauwee, Johanna, Old Anna, Old John, Vina, John, and Jemima (STN 7/29/2005, Abel Beach Account Book, Vol. 1, 1801-1807). The typescript for the year 1807 did not include any of the entries for January through April, June, July, September, or November; yet, the original contained at least 18 entries naming Benjamin Chickens, Ned, Eunice, Dan'l, Old Sarah, Peter Mauwee, John, as well as, "Job's girl," "boy," and "child" (STN 7/29/2005, Abel Beach Account Book, Vol. 1, 1801-1807). OFA also did not find examples in the overseers' accounts from 1801 to 1852 that known non-Schaghticoke spouses were provided with goods after the death of the Schaghticoke individual.

Mim, Jacob Mauwee, and Fear were among the individuals whom the State claims were listed only "minimally" and "not part of the reservation community through time" (State Request 5/3/2005, 28). However, the analysis based on the original overseers' reports shows that these individuals received goods or services from the fund over long periods of time. For example, the transcript of the overseer accounts mentioned "Mim" only once and that was for a "coffin for Mims child" in October 1805. However, the handwriting in the original is very small and imprecise for that one entry. STN transcribed it as "Mica's child," but there is no other Mica/Micah/Michael in the Schaghticoke record and the name is clearly different from "Miah," which is seen elsewhere in the overseers' accounts. This RFD finds that the name in the overseers' account is more likely to be "Mima," a woman whose name appears at least 10 times between 1803 and 1806, and again in 1811 when she and her child were both mentioned. The fund paid for a flannel shirt for "Mima's" child in 1811, implying that this was a young child or minor, not an adult child. This "Mima" may be the same woman who was called "Old Mima" (with no mention of a child) in 1809, 1810, 1811, 1812, and June 1813.

The "Old Jemima" who was first identified in 1801 as "Jemima Suckernuck," (and perhaps as "Jemima" between 1802 and 1804) and as "Old Jemima" when she died in November 1813 appears to be the "Mymy Suknuk, widow" who was 50 years old in 1789 and, thus, too old to be the mother of a young child in 1811 (Stiles Report and STN FTM) (STN 7/29/2005, Abel Beach Account Book, Vol. 1, 1801-1807; Vol. 2, 1807-1833). The names "Mima" and "Old Mima" do not appear in the record after the death of "Old Jemima" in 1813. However, references to "Mima" and "Old Mima" appeared in the same year and the overseer may have been distinguishing between the two women of the same or similar name.

The information in the tables for the marriage analysis is corrected in this RFD to identify the "Mim" in the STN FD as "Mima." OFA has used the references to "Mima" in the original accounts to reevaluate the beginning and ending dates of a "marriage" between Mima and unknown spouse. This RFD corrects the name of Mima and extends the marriage date to after 1811.

The woman named Fear had shirts made for her in November 1829, her garden ploughed in 1830, her child buried in 1830, a flannel gown and shoes issued in 1831, and her own burial paid for in August 1834 (STN 7/29/2005, Abel Beach Account Book, Vol. 1, 1801-1807).[16] Jacob Mauwee had a child whose coffin and grave were paid for in 1812, and his family received provisions when they were sick in 1814, implying that his wife and other children were living in 1814. Jacob Mauwee also received cash from the fund in 1816 and 1822. He may be the same Jacob Mawwee who received leather boots in 1840, ploughed Mijah's garden in 1844, returned to Schaghticoke in 1848 when the fund "paid expenses [for] Jacob Mawwee from Milford" and where he apparently died in December 1848 (STN 7/29/2005, Abel Beach Account Book, Vol. 2, 1807-1833; Vol. 3, 1833-1852). Therefore, these Schaghticoke individuals were not merely "mentioned in passing" as the State claimed.

The STN PF also noted that the number of individuals mentioned in the overseers' accounts varied "widely" from year to year and mentioned that in 1840 the only names listed were "Old Eunice" and "Alma's child" (STN PF, 79, note 112).[17] The STN PF's discussion of the use of the Federal censuses for identifying residents on the reservation in the 1800's found that not all of the Schaghticoke Indians were listed in the overseers' accounts. "However, comparison of the overseer's reports to the Federal census is

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[16] It appears that Fear was the widow of Walter, who died in 1826. This conclusion is based on the fact that Fear's name first appears in the overseer's accounts as having two shirts made for her in 1829 and her garden plowed in 1830. These events lead to the pattern for paying to plow gardens for women who did not have able-bodied men in their households, and whose gardens were plowed at the expense of the Schaghticoke funds. Fear first has a garden plowed in 1830, about four years after Walter died and the same year she lost a child. The record does not have any evidence of Fear's age either when the child died, or when Fear, herself, died in 1834. Walter died in 1826, and appears to be the best candidate to be Fear's spouse, because he also had at least one child by 1824, and likely left a widow and child(ren) when he died in 1826. Supporting this hypothesis is the fact that a boy named Albert, who appears to be the son of Walter (see analysis in FAIR notes), was cared for by other Schaghticokes from 1835-1839 when he was still a minor. Although Walter died in 1826, the care for Albert did not begin until 1835, after Fear died, suggesting that he was in the care of his mother (Fear) until her death in August 1835. Therefore, as long as Albert had one parent living, he probably did not need additional care from the tribe. One death record documents an Albert Rylus who was 30 years old when he died in 1854 (b. ca. 1824) but another says he was 25 when he died (b. ca. 1829), which is too late for him to be the son of Walter, but still right to be a child of Fear (or some other Schaghticoke couple who died before 1835). If Albert was the son of Walter and Fear, then both of his parents were dead by August 1834 and it is plausible that he would be cared for by the other tribal members until he was of an age to be out working, probably about 14 or 15 years old.

An individual named Nehemiah, died in 1825, and does not seem to be a reasonable candidate for Fear's spouse because another woman named Lavinia was paid to care for him in his last illness. If he had a wife, it is unlikely that someone else would be paid to care for him, unless his wife (Fear?) was also somehow disabled. However, Nehemiah had at least one child born about 1820, and since he died in 1825, it leaves a strong possibility that he also left a widow and possibly other children.

[17] This observation was based on the transcripts available for the STN PF and STN FD. The photocopy of the original submitted by STN in July 29, 2005, shows that Jacob Mawwee got leather for boots in March 1840 and J. Mawwee [perhaps John who was also alive in 1840 or Jacob] got a "pair of large shoes" in August 1840.

complicated by the fact that the overseer did not prepare full lists of tribal members" (STN PF, 80).

That the transcriptions of the overseer's accounts were incomplete, and that the overseers did not list all of the Schaghticoke Indians, but only those for whom goods or services were provided as needed, undermine the State's arguments that Mim, Jacob Mauwee, and Fear were "not part of the reservation community through time" (State Request 5/3/2005, 127-128). This RFD finds that the above three individuals who were identified in the Schaghticoke overseers' accounts, and the others listed on page 128 of the State's request for reconsideration, were documented as Schaghticoke in the STN FD's analysis, and are included in the marriage analysis for the RFD. Any corrections to the beginning or ending dates of the marriages appear in the table for the RFD.

During the 18th and 19th centuries, Schaghticoke Indians' surnames often varied, or individual Indians were not consistently referred to by the same surname. For example, Eliza Warrups (born abt. 1762- died bef. 1812, daughter of Johannes and Zipora (Mauwee) Warups was also known as Eliza Warrups Chickens and Eliza Mauwee. Rufus Bunker was also called Rufus Mauwee, and Truman Mauwee was also known as Truman Bradley. In many instances, the overseers' accounts merely listed the Indians by their first names or nicknames, sometimes making it difficult to determine which Sarah/Sally, Joseph/Joe, Martha/Patty or Patsy, or Jeremiah/Jerre/Jerry received goods or services.

The Stiles list, the overseers' accounts, and other reliable historical documents in the record for the STN PF and STN FD identified as Schaghticoke each of the spouses in the State's list of 12 couples, listed above, whom it claimed were "mentioned only briefly or in a non-definitive way" (State Request 5/3/2005, 110). For example, Abraham Rice, also identified as Ned Rice, was a 12-year-old boy on the 1789 Stiles list, was periodically identified in the overseers' accounts from 1807 until 1852 as receiving goods, and his children's "school rate" was paid almost every year between 1809 and 1830 (STN 7/29/2005, Abel Beach Account Book Vol. 1, 1801-1807; Vol. 2, 1807-1833; Vol. 3, 1833-1852). Abraham's wife, Martha or Patty (Chappel) Rice, also received goods in her own right, both during Abraham's lifetime and after his death (See notes in FAIR and STN 7/29/2005, Abel Beach Account Book Vol. 1, 1801-1807; Vol. 2, 1807-1833; Vol. 3, 1833-1852). Dennis Mauwee was also a 12-year-old boy in the Stiles list, was provided shoes from the overseer in 1808 and was buried at the expense of the Schaghticoke fund in 1812 (See notes in FAIR and (STN 7/29/2005, Abel Beach Account Book Vol. 1, 1801-1807; Vol. 2, 1807-1833). His wife was Polly (maiden name unknown at this time, but perhaps Polly Pann), who appears to be the Polly in the overseers' accounts who was brought back to Schaghticoke in 1824, who cared for "Old Sue" in 1825, who was herself cared for when sick in 1828, and who was buried at the Schaghticoke fund's expense in June 1828. Dennis's and Polly's two children were identified as Schaghticoke Indians throughout their lifetimes. The State claims that no one named Polly was on the Stiles's list; therefore, Polly, who "should have been listed on Stiles' 1789 Report" was not Schaghticoke and should be identified as "unknown" in the marriage analysis. This argument has merit because the above citations from other

sources provide evidence showing her to be Schaghticoke. The Stiles list was not the only reliable source for identifying Schaghticoke during this period.

The State noted that the STN PF stated that Henry Harris (a.k.a. Henry Pan Harris, Tin Pan), the husband of Abigail Mauwee, was Indian, but that his "exact tribal background has not been determined" (STN FD, 186, quoting STN PF, 97), and that the STN FD listed Henry as Schaghticoke in Table 3 for the marriage analysis, making the 1849 marriage to Abigail a "Schaghticoke-to-Schaghticoke" marriage, rather than "Schaghticoke-to-Other Indian" (State Request 5/3/2004, 126). The STN PF also stated that the records concerning Henry Harris's origins were not consistent and included lengthy footnotes quoting various sources (STN PF 97-98, notes 131, 132, 133, 134).[18] The STN PF also quoted Frank Speck, who stated in 1903 that James Henry Harris's father (Henry Harris) was a "Pan-Pequot, Pequot on his father's side & Pan on his mother's side" (STN PF, 98). This was three years after the 1900 Federal census when all of the Indian residents on the Schaghticoke reservation were identified as "Pequot;" therefore, this identification made some years after the death of Henry Harris did not have the same weight as the contemporary records.

The STN FD did not specifically state the reasons for concluding that Henry Harris was at least part Schaghticoke and including him as a Schaghticoke spouse in the marriage rates. However, the contemporary records that supported the conclusion that he was of Schaghticoke descent included the following: the 1864 marriage record for "Abigail Harris, 34, Indian," and "Henry Stephen Tuncas, 49, Indian," which listed his birthplace as Kent, Connecticut; the 1876 and 1884 Schaghticoke petitions that were signed by Henry Harris as one of the members of the Schaghticoke tribe (Schaghticoke Indians to District Court 1876; Kilson, et al. to Litchfield County Court, 6/2/1884),[19] and the overseer paid for supplies for Henry Harris from the Schaghticoke fund in his last illness and for his casket and burial (Overseer Report 1884-1914, 68). This RFD finds that the State has not presented any evidence or arguments not already considered in the STN FD. The RFD marriage analysis, therefore, includes Henry Harris, and his brother John Harris, as Schaghticoke spouses.

Aaron Chappel/Chapel Family

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[18] The STN genealogical data base identified Henry Harris and John Harris as the sons of Sue Taukis, who was apparently presumed to be a Schaghticoke Indian, but did not provide evidence or analysis other than the following.

> KA: Set 9 Doc #4264: Interview with Samuel A. Woodward's wife, Aunt Bet by David Thompson. [Prindle genealogy attached].
> Woodwards related to Thompson: Lugevia Lyman Prindle Hine (April 10, 1835-May 2, 1912]: "Told story to [her daughter] Alice Anna Hine Hall [1870s-1930s] of Eunice Mauwehe & Sue Taukis coming to sell baskets at the Prindle farm on Prindle Hill in Orange [now West Haven]."

[19] The words "full blood" were written alongside the names of Abigail, Henry, and James Harris on the 1884 petition, but it is ambiguous as to whether it meant "full-blood Indian" or "full-blood Schaghticoke" and it has not been determined who added that description.

The STN FD did not find that Aaron Chappel was Schaghticoke, but did conclude that his widow, Haner/Hagar, or some other unnamed woman who was otherwise the mother of his children, was Schaghticoke and, thus, considered their children descended from the Schaghticoke. The State and Towns referred to an 1831 deed recorded in Kent, Litchfield County, Connecticut, which sold the land belonging "to the late" Aaron Chappel as evidence that the Chappel family was not Indian. The State also claimed that the deed did not show how Marianne Kelly (mother of Eliza Kelly who married Alexander Kilson) was related to Aaron Chappel, or otherwise show that she was a Schaghticoke descendant. The State also claimed that the Isaac Rogers named in this deed was not the same man whose funeral had been paid for with Schaghticoke funds in 1823.[20]

There are two 1831 deeds in the record that show Aaron Chappel owned a farm that spanned the Connecticut/New York state boundary (SN-V060-D0035, SN-V060-D075). One deed for the property on the Connecticut side of the border was recorded in Kent, Litchfield County, Connecticut, and the other deed for the property on the New York side of the border was recorded in Dutchess County, New York. Both tracts of land were purchased by Rufus Fuller of Kent. In each of these deeds, the "party of the first part" (the heirs of Aaron Chappel Sr.) was identified as:

> Hagar [Haner], widow of Aaron Chappel late of Dover, and Aaron Chappel, Jr. of Green, Chenango County, New York, Isaac Rogers and Deborah his wife of Sheffield, Berkshire County, Massachusetts, Abraham Rice and Martha his wife of Kent, Litchfield County, Connecticut, and Mariann Kelly of the place last named aforesaid named parties of the first part (Chappel to Fuller 5/24/1831; FAIR SN-V060-D0075).

The deeds specifically identified the widow, Haner, and by implication that they were equally "parties of the first part," identified the children of Aaron Chappel Sr. (Aaron Jr., Sarah Rice, Deborah Rogers, and Mariann Kelley), and two sons-in-law, Abraham Rice and Isaac Rogers. The last half of the Dutchess County deed showed that on May 24, 1831, the following individuals appeared in person in court and signed their consent to the sale: Hagar {x her mark} Chappel [seal], Deborah {x her mark} Rogers [seal], Abraham {x his mark} Rice [seal], Mariann {x her mark} Kelly [seal], Martha Rice [seal], and Aron Chappel [seal] "signed sealed and delivered in presents of Jarret Winegar, John Jewett of Dutchess County, New York" (see FAIR Chappel to Fuller 10/13/1831, SN-V060-D0035 for the New York transaction, and see Chappel to Fuller 5/24/1831, SN-V060-D0075 for similar language in the Connecticut transaction).

The Dutchess County deed included a statement by the recorder of deeds that Martha Rice of Kent, Litchfield County, was "examined separately" from her husband (Chappel

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[20] The STN PF noted that the May 20, 1773 petition (Daniel Mawhew et al. to CT Gen. Assem. 5/20/1773) included the name Jacob Rodgers, which "appears to be an alternative name for Jacob Mauwee (see notes under the individual in the FAIR data base" (STN PF, 71 n 99). The surname use is a clue, but there is no evidence at this time that Isaac Rogers was a descendant of Jacob Mauwee.

to Fuller 10/13/1831, SN-V060-D0035). Neither the petitioner nor the State submitted any evidence to show that Deborah Rogers (of Sheffield, Massachusetts, which is about 30 miles from Kent) or Mariann Kelly (of Kent, Connecticut) was "examined separately" from her husband to determine whether either one "executed the within instrument freely without any fear threat or compulsion of her husband" as was done with Martha and Abraham Rice (Chappel to Fuller 10/13/1831, SN-V060-D0035). The Kent deed showed that all of the parties of the first part personally appeared in court and signed the deed. Since neither Isaac Rogers nor Thomas Kelley appeared in court or signed the deed, and there is no record that the court separately interviewed Deborah or Mariann as wives who also had to give their own consent, this record implies that Deborah's and Mariann's husbands may have been dead by 1831.

The State submitted a copy of pages from the 1810, 1820, and 1830 Federal censuses that showed Isaac Rogers, free person of color living in Berkshire County, Massachusetts (State Ex. 50). These references appear to be the Isaac Rogers family identified in the 1831 deed. However, the 1810 census did not list the inhabitants of the household by age group, only as "3" in the column for number of "free colored persons." The 1820 census appeared to show that Isaac Rodgers [*sic*] household included two males under 14 years old, one adult male between 26 and 45 years old, one female under 14 years old, and one adult female 26-45 years old, all of whom were identified as "free colored persons."[21] In 1830, there were only two individuals listed in the Isaac Rodgers household: a male and a female free colored persons (Isaac and Deborah), each between the ages of 55 and 100 (State Ex. 50). There were no younger children or adults in the Isaac Rogers/Rodgers house in 1830. OFA did not find either Isaac or Deborah Rogers/Rodgers in the 1840 Federal census.

The Schaghticoke overseers' accounts show that in 1821 the Schaghticoke fund paid for a shirt for "I. Rodgers," and in August 1823 the fund paid A. Hubbell for "Isaac Rodgers sickness, phisick, and funeral" [*sic*].[22] There was nothing in the overseers' accounts to indicate the age of the deceased, but it appeared reasonable to assume that the Isaac Rodgers in the overseers' accounts was the son of Isaac and Deborah (Chappel) Rodgers, who had at least one young male in their household in 1820, but none in 1830.[23] Thus,

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[21] The State made no specific analysis of the households, concluding only "Based on Census return research, it is clear that there were children living in the household, who probably were their children" (State Request 5/3/2005, 123). The State, STN, and OFA did not find the names of any other children or other descendants of this couple.

[22] There was no one named Hubbell whose first name began with the letter "A" in Sheffield, Berkshire County, Massachusetts, although there was an "Ishamour" Hubbell. However, there was an Abijah Hubbell in the 1820 census of Kent, implying that the Isaac Rodgers named in the accounts was also in the vicinity of Kent when he died in 1823. There was another "Isaac" [perhaps Isaac Skenk] in the overseers' accounts who received articles of clothing and a blanket in 1808, 1811, and 1812. The Schaghticoke fund paid for his grave clothes and coffin in December 1816 (Abel Beach Account Book, Vol. 2, 1807-1833, 157).

[23] The Towns agree that there were two different men, but have a different conclusion: "It should be noted that the Isaac Rogers [sic], for whom the overseer paid for funeral expenses, was not the same as the Isaac Rogers who was the husband of Deborah (Chappel) Rogers. Deborah's husband was still alive in

OFA concurred w th the State that the Isaac Rodgers in the 1831 deed was not the Isaac Rodgers listed in the 1823 overseers' report. OFA concluded that the 1823 listing was likely the son of Isaac and Deborah Rodgers who were in the deed. OFA disagreed with the State that the l sting of the Isaac Rodgers family as "free persons of color" on the Federal censuses i ndicated that neither was Schaghticoke. Also, because the Isaac Rodgers who was buried with Schaghticoke funds appeared to be their son, it implied that either Deborah (Chappel) Rodgers or Isaac Rodgers [Sr.] was Schaghticoke. OFA found Deborah (Chappel) Rodgers to be Schaghticoke and thus included her in the marriage analysis. Neither the petitioner, nor OFA identified any other children of Isaac and Deborah (Chappel) Rodgers.

The State claimed that Marianne Chappel (1783-1862), one of the other daughters of Aaron Chappel named in the 1831 deed, was not a Schaghticoke Indian, and that her husband, Thomas Kelly who was paid in 1814 for keeping and caring for a Schaghticoke Indian named Peter Hine, was not Schaghticoke, and that they do not otherwise appear in the overseers' accounts, ". . . yet the Final Determination assigns his wife, Marianne, Schaghticoke status and assumes they lived in tribal relations" (State Request 5/3/2005, 110). The State asserted that Thomas Kelly and Marianne Chappel should not be included in the marriage analysis.

This RFD reevaluates the evidence in the record and the State's new arguments concerning the Schaghticoke descent of Marianne (Chappel) Kelly and finds that based on evidence acceptable to the Secretary, Mariann (Chappel) Kelly was a Schaghticoke Indian. The State did not take into account the other evidence that demonstrated Marianne Chappel was a Schaghticoke Indian. Although Marianne (Chappel) Kelly did not receive goods from the Schaghticoke fund, the analysis above shows that the children of Aaron Chappel Sr. were Schaghticoke descendants.[24] If Thomas and Marianne Kelly were self-sufficient, they probably did not need assistance from the Schaghticoke fund. There is no evidence in the record at this time that Thomas Kelly was Schaghticoke or other Indian. That the name "Marianne Chappel" or "Marianne Kelly" (or in any variations in spelling) does not appear in the overseers' accounts is not evidence she was not Schaghticoke or not living in tribal relations, and does not trump the other evidence indicating that she was Schaghticoke. Marianne Kelly and her three daughters, Flora Kelly (1815-1884) Almeda Kelly (1820-1898), Eliza Ann (Kelly) Kilson (1816-1899), were buried in the Schaghticoke Indian reservation cemetery. Almeda Kelly was brought back from Bridgeport, Connecticut, to be buried in the Schaghticoke Indian reservation cemetery (see notes in FAIR). Marianne's daughter, Eliza Ann (Kelly) Kilson, signed the 1876 and 1884 Schaghticoke petitions and was listed in the overseers' accounts.

1831, while the other Isaac Rogers had been buried in 1823" (State's Supplemental Brief, 8/12/2005, 16, n 15).

[24] Marianne (Chappel) Kelly's sister, Martha (Chappel) Rice was named in the overseers' accounts in her own right, not merely as the widow of Abraham Rice. Some of the Rice children who died young and Isaac Rodgers, probable son of her sister Deborah (Chappel) Rogers, were buried at the expense of the Schaghticoke fund. The overseers' accounts provided for the education of "Indian children" (names not specified), as well as the specifically identified children of Abraham Rice and Benjamin Chickens.

The State sent one page from the 1850 Federal census of Kent, Litchfield County, Connecticut, showing a 68-year-old white woman named "Miriam Kelly," who was living in the Nelson Potter household and claimed that this was evidence "Marianne Kelly" was not Indian (State 7/22/2005, Ex. M). Although the first name of Marianne (Chappel) Kelly was spelled Maryann, Marion, Mariann, Marianna, or Miriam in various records that can be clearly associated with this woman (the 1831 deeds, her tombstone, her daughter's death certificates, and the North Kent Store ledger) the State has not demonstrated that the "Miriam Kelly" on the 1850 census is the same woman. The 1850 census did not call for the enumeration of Indians, and other Schaghticoke Indians who were alive in 1850, and presumably on the reservation, were not included in the 1850 census of Kent, Litchfield County, Connecticut. Therefore, Marianne (Chappel) Kelly continues to be identified as Schaghticoke in the marriage analysis.

The State also argued that none of the "children or grandchildren of Aaron and Hagar/Queen appear on any overseer records, other than Eliza Kelly Kilson" (State Supplemental Brief, 16). This is incorrect. Martha (Chappell) Rice (born abt 1779-died abt 1867) received goods and services in her own right, and the Rice children's schooling was paid for by the Schaghticoke funds from 1807 to 1830. Her husband, Abraham Rice, was also a Schaghticoke Indian; however, Martha received some goods and services in her own name, even during the lifetime of Abraham Rice. Moses, Julia, Harvey, Lucinda, and other unnamed Rice children were buried at the expense of the Schaghticoke fund. Isaac Rodgers, most likely the child of Deborah (Chappel) Rogers, was cared for and buried at the expense of the Schaghticoke fund. There is no evidence that the overseer provided these services to non-Indians. This RFD affirms the finding in the STN FD that the mother of Aaron Chappel's children, whether Hagar/Haner or some other woman whose name is not known at this time, was a Schaghticoke Indian, and that the marriage of Hagar/Haner (or the mother of his children) to Aaron Chappel should be identified as "Schaghticoke-to-Unknown." This RFD also affirms that the children of this couple were correctly identified as Schaghticoke descendants and that the STN FD properly included them as a part of the Schaghticoke population to be analyzed for determining marriage rates in the 19th century.

For this RFD, OFA reviewed the State's evidence and arguments as well as the evidence in the record for the STN FD to evaluate whether the marriages identified in the Schaghticoke Endogamy/Exogamy Patterns 1801-1850 and 1851 to 1900 (Tables 3 and 4 in STN FD, 150-164), were Schaghticoke-to-Schaghticoke or not.[25] As a result, one marriage was added to the list (Jonah Coshire and Lydia Toto), partial data for two

[25] The evidence in the record for the STN FD included STN's report on Schaghticoke marriage patterns for the STN FD (*Evidence of Community and Political Authority: Schaghticoke Marriage Patterns in the Nineteenth Century*, in particular see Appendix A: List of Marriages of Schaghticoke Tribal Members Extant from 1776 to 1899 in FAIR: SN-V054-D004 and cited as "Austin 8/8/2003a"). This report was the initial basis for identifying the individuals included in the STN FD's analysis of Schaghticoke marriage rates. As explained in the STN FD, OFA's analysis "added some relationships that must have existed for named Schaghticoke individuals, since the children of the individual were mentioned in the Schaghticoke overseers' account books . . . eliminates some individuals included by STN . . . and adds others, based on the known birth of a child" (STN FD, 23-24).

different marriages in the STN FD was found to actually refer to one marriage (listings for Walter and Fear, and the two listings for the parents of Rachel and Abigail Mauwee), and some of the beginning or ending dates of the marriages were corrected.

The STN Petitioner's New Evidence and Analysis

As permitted by the amended scheduling order, STN submitted new evidence on July 25, 2005, which OFA received on July 29, 2005, and STN filed its "Brief on Endogamy" on August 12, 2005. The brief included a table entitled "STN Marriage Patterns," which arranged marriage data by decade (1800-1809, 1810-1819, etc., through 1860-1869), and contained (in regular type) names and marriages that had been identified in the STN FD's tables 3 and 4 on marriage patterns. STN inserted (in bold type) names and the beginning and ending dates of other marriages that STN asserted should be added (STN Brief 8/12/2005, 15-21).[26]

The STN also provided a short explanation of why it believed some couples should be included in the analysis: four "omitted from prior lists without explanation," one added for "consistent treatment," and one correction of two entries for the parents of Rachel and Abigail Mauwee to represent one marriage instead of two. The petitioner also listed four couples for whom it had "clarifications" (STN Brief 8/12/2005, 13-14). This RFD considered and evaluated the evidence currently available for these individuals and analyzed STN's claims concerning these individuals.

The STN indicated that Johannes Penni and Lea Kehore as born in the 1730's, and baptized at Pachgatgoch (Schaghticoke) in 1750. There is no evidence in the record of

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[26] To establish context for the 19th century, STN's 8/12/2005 "Brief on Endogamy" included some names that appeared in the STN's report for the STN FD which included an analysis of marriages from the 18th century. The STN asserted:

> [i]n looking at the Stiles census, a number of tribal members, both male and female, remained single rather than marrying outside of the Tribe . . . endogamy continued to be practiced at a rate of fifty percent or more throughout the 1800s. This evidence is strengthened somewhat by at least one instance of culturally-patterned exogamy (Austin 8/8/2003a).

The STN did not provide evidence to support its claim that single individuals on the 1789 Stiles list of Schaghticoke Indians "preferred" to remain single rather than marry non-Indians. Indeed, there is little evidence that they did remain single. Stiles identified the Indians as being "aetat" (of age) [adult males with ages ranging from 16 to 70], "boys" [ages ranging 3 to 18], "squaws" [ages ranging from 20 to 70, and identified as either "wife of," "widow of," "old maid," "m." [married], or "has children"], and "girls" [ages ranging from 3 to 19]. There is no explanation why Stiles counted one 16 year old as "single" in the "of age" category, but listed two other boys who were 16 and 18 years old as "boys." Some individuals named in the Stiles report, whether young or widowed, may have remained single. Because surname use among the Indians was not consistent in this time period and because of the lack of first names for some children, we do not know who may have remained single for any reason, moved out, married out of the group, or died young. The STN did not provide any new evidence that extended the ending dates of some of these marriages past 1789.

their death dates, but they were last known to be living in 1756 and 1763, respectively (see notes in FAIR). Neither of these individuals was in the 1789 Stiles' list. There is no evidence that they were living in 1800 or later; therefore, they were not included in the STN FD's analysis or in this RFD's analysis of Schaghticoke marriages in the 19th century. However, Joseph/Jo Pene was born about 1749 and his wife Eliza was born about 1764, according to the 1789 Stiles enumeration. Because of the age discrepancies, there must have been two different couples. There was a "Joseph Pene" listed in the overseers' accounts between 1811 and his death in 1820; however, there is no evidence that Eliza lived past 1789 (see notes in FAIR), meaning that even if they are the same couple, the marriage cannot be shown to have extended into the 19th century. The petitioner did not submit any new evidence that extended the known lifetime of Eliza, wife of Joseph Pene; therefore, there is no support for the proposition that the marriage lasted into the 19th century.

The STN also listed the marriage of Hannah Cocksure and Peter Hinds/Hines as one that was omitted from previous marriage analyses; however, the record for the STN FD shows that the couple married in 1770 (STN also submitted a copy of the marriage record in the 7/29/2005 filing) and that Hannah was deceased before 1789; she was not on the Stiles report. Although the overseers' accounts show that Peter Hines died in 1814, there is no evidence that he was married at the time, either to Hannah Cocksure, or anyone else. There is no evidence that the Hines/Cocksure marriage lasted into the 19th century; therefore, this RFD does not include the Hines/Cocksure marriage in the marriage analysis.

The STN also included Jonas Cocksure and Lydia Toto as an example of a Schaghticoke-to-Schaghticoke marriage that was omitted from previous marriage analysis (STN Brief 8/12/2005, 13). There are no descendants of this couple in the petitioner's membership. The STN cited the Stiles list that identified Jonas Cocksure (age 16) and Lydia Toto (age 8) and stated that they later married and had at least two children and lived in Dutchess County, New York. As evidence, the STN cited the 1909 *History of Dutchess County, New York* which stated that:

> In the latter part of the eighteenth century, Jonah Coshire and his squaw, Lydia, two pure blooded Schaghticoke Indians, a one branch of the powerful Pequod tribe, settled on a ridge in the north part of town. This couple and their children, Steve and Hannah, became known as "the Jonahs," and their few acres of rough land were termed "Jonah's Manor." Steve lived here until his death, after which Hannah lived many years, having a home with one of the families in the neighborhood. (*History of Dutchess County, New York* 1909, 365)[27]

The county history did not include birth or death dates for Jonas or Lydia Coshire, and at the time of the STN FD, the record did not include evidence to determine when they married, when their known children were born, or how long the marriage lasted.

[27] The 1909 county history included a portrait of "Hannah Jonah."

There is evidence in the record for this RFD that supports the statements in the *History of Dutchess County*. Since the STN FD, OFA found "Jonas Coxsure" on the 1810 census of Beekman Township, Dutchess County, New York. There were nine "free people of color" in the household, but no age or gender categories listed (NARA M252 Roll 30, p. 80: 1810 Federal Census, Dutchess County, New York). It seems reasonable to assume that Jonas and Lydia and some of their children were in this household. OFA was not able to locate Jonas, Lydia, or Stephen Coxsure (by any spelling or by the surname "Jonah") on any of the later censuses.

The *Old Gravestones of Dutchess County, New York*, published by the Dutchess County Historical Society in 1924, included inscriptions from the West Branch Cemetery (Quaker) and quoted an article in the newspaper that identified other burials in the cemetery.

> *The Sunday Courier*, October 12, 1919, (page 9), in an article on the last of the Schaghticoke Indians quotes Mr. F. Jay Skidmore of Moore's Mills as authority for the statement that the following Schaghticoke Indians were buried in this churchyard:
>
> 1. Coshire, Jonah
> 2. Coshire, Lydia, w. of Jonah.
> 3. Coshire, Stephen, s. of Jonah and Lydia.
> 4. Coshire, Hannah, d. of Jonah and Lydia, died Oct. 18, 1877.
>
> (*Old Gravestones of Dutchess County, New York* 1924, 157-a; SN-V024-D0033)

The STN's genealogical database also included abstracts of the 1919 newspaper articles by F. Jay Skidmore and Wright Devine, which read like letters to the editor to correct information in some previously published article.[28] These two articles stated that Stephen

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[28]LMG: Researcher Donna Hearn gathered articles from the Sunday Courier in Poughkeepsie, NY Document # not yet assigned. The Sunday Courier, September 28, 1919, p. 10.

"The Last of the Schaghticokes"

"Editor of *the Courier*, Dear Sir: In your Sunday's 'Historical Dutchess County' your author tells us the last of the "Wappingers"--two Indians--lived at Freedom Plains, a man and his wife, and died there. Stephen Jonah was the Indian's name and the woman, Hannah, was his sister, (not wife).

They were the last of the Schaghticokes who roamed over this section years ago.

"Steve" was a typical Indian, loved his game better than work; quite a decent fellow when sober, but loved his whiskey and then was inclined to be ugly.

He died about 1850 but his sister was given a home by Andrew Skidmore, and family, who lived near and she was treated as one of the family. Hannah lived until about 1875 or 1880. I saw them both and their old hut in my youth many times.

I send this as I recollect seeing the old people and their hut in the bushes many times and to correct the statement of Hannah being his wife.

Respectfully, Wright Devine.
Pleasant Valley, NY, September 23, 1919

LMG: Researcher Donna Hearn gathered articles from *The Sunday Courier* in Poughkeepsie, NY; Document # not yet assigned, *The Sunday Courier*, October 12, 1919, p9.

Coshire (died about 1850) and Hannah (died in 1877) were brother and sister (not husband and wife as previously published), and the children of Jonah and Lydia, Schaghticoke Indians. Mr. F. Jay Skidmore claimed that Hannah lived with the Andrew Skidmore family and then with James Skidmore until her death in 1877. He also claimed that he had Hannah's will. OFA located a copy of the 1875 New York State census for Dutchess County and found "Hannah Coshire, Indian, born in Dutchess, age 75" living with James Skidmore family (NY State Census 1875, Vol. 1, Dutchess County, LaGrange, p.27). The age and birth place of Hannah supports the statements in the 1909 Dutchess County history that her parents were married before 1800 and living in Dutchess County before 1800. F. Jay Skidmore's relationship to James or Andrew Skidmore was not stated.

The Schaghticoke overseers' accounts includes at least 10 references to providing "Jonas" with leather for moccasins, a blanket, shoes, provisions, pork, rye, and medical attentions between 1801 and 1808. At least two of these references mention Jonas who died in 1807 (probably in Warren, Litchfield County, Connecticut), but there was one bill from "Philomus Beardsley for taking care of Jonas one week when sick" in March 1808, five months after the death of a man named Jonas.[29] However, at this time, it is not possible to say whether all of the references to "Jonas" in the overseers' accounts applied to one or more men.[30] This RFD finds that the 1875 New York state census and 1810 Federal census provides sufficient evidence to reasonably conclude that Jonas and Lydia

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"Hannah Coshire Last of Schaghticoke Indians, F. Jay Skidmore Declares"

"The discussion about the last of the Schaghticoke Indians which once occupied the territory throughout Dutchess County, which has been carried on in The Courier, has attracted wide attention and brought communications from various sources. F. Jay Skidmore, of Moore's Mills, however, claims to have authoritive information regarding the last of this tribe of Indians who roamed the hills hereabouts. Mr. Skidmore writes: "Being interested in your articles on Historical Dutchess, and especially the one relative to the 'Last of the Wappingers', I am enclosing a picture of the last member of the tribe of Schaghticokes referred to in last Sunday's issue by Mr. Wright Devine and with apologies to him wish to make one correction.

"The names of the two Indians whose home, long since in ruins, was a few miles from here, were Stephen and Hannah Coshire, not Jonah. Their fathers name was Jonah Coshire, thus they were often called Jonah.

"The Picture from our old family album is of Hannah, the last member of her race who made her home with Andrew A. Skidmore's family and later with his son James and whose death occurred forty-two years ago this month, October 13, 1877.

"She lies buried, with her parents, Lydia and Jonah Coshire in the little Quaker burying ground known years ago as "West Branch"--located on the Cromline Dean farm, recently purchased by Garfield Porter.

"I have as a valued keepsake and relic of the past, the original copy of Hannah Coshire's last will and testament of which she disposes of her few personal belongings to friends and neighbors living near at that time."

[29] The name "Philo Beardsley" was found in Kent in the 1820 Federal census (SN-V016-D0075, 4).

[30] In 1820, the overseer mentioned providing care for the "Amenia Indians," without identifying any of the New York Schaghticoke Indians by name (Overseers' Accounts 1820, 22). It is not clear whether this applied to the Jonah Coshire family or not.

(Toto) Coxsure/Coshire/Coxel were Schaghticoke Indians who married before 1800 and were living as late as 1810. The table of Schaghticoke marriages for this report incorporates the Jonas Coxsure and Lydia Toto marriage.

The STN petitioner stated that the marriage of Parmelia Mauwee's parents "should be treated as equivalent to that of the parents of Lavinia, Rachel and Abigail" (STN Brief 8/12/2005). The STN did not provide new evidence to identify the parents of Parmelia Mauwee; however, since she was born in 1798, the beginning date for such a marriage would have been before 1798 and an estimated end date of after 1798. Because there was no specific evidence to identify her parents and the ending date of their marriage, they were not included in the 19th century marriage analysis. The STN FD made no finding concerning the parentage of Parmelia (Mauwee) other than to say of the Mauwee women on the 1884 petition that: "Rachel, Vina (Lavinia), and Abigail, were either sisters, half-sisters, or cousins to each other and to Parmelia (Mauwee) Kilson" and that, given their birth years, they were probably the grandchildren or grandnieces of Eunice Mauwee, rather than her children as had been claimed at times (STN FD, 33). As explained in the July 14, 2005, TA letter, OFA does not assume the duration of a marriage. Therefore, without evidence, such as mention in the overseers' accounts, or the birth of a child, the marriages do not continue into the next decade. This RFD declines to include the parents of Parmelia Mauwee in the 19th century marriage analysis.

The STN brief stated that the entries for parents of Rachel Mauwee (b. between 1809 and 1821) and Abigail Mauwee (b. about 1828-1833) should be combined to show that it was one marriage beginning between 1809-1821 and extending through 1828-1833, since Rachel and Abigail were full sisters (STN Brief, 14). The STN did not submit new evidence to provide names for the sisters' parents; however, the STN FD accepted the long-standing tradition that Abigail and Rachel Mauwee were full sisters. This RFD corrects the tables of the marriage analysis in the STN FD to reflect that there was one marriage for the parents of Abigail and Rachel Mauwee documented from 1809 through 1833.

The STN Brief asserted that Phebe Hinds/Hines should be added to the marriage analysis as the wife of an "unknown Mauwee" because there was a Phebe Hinds/Hines on the Stiles list and "[t]he only other Phebe in any subsequent Schaghticoke record was in July 1813, Phebe Mawe in 'Kent Congregational Church Records'" (STN Supplemental Brief 8/12/2005, 14). The STN did not provide evidence that 17-year-old Phebe Hines lived past 1789, evidence of the age of "Phebe Mawe" who was a member of the Kent Congregational Church in 1813, or evidence that Phebe Mawe was married in 1813 or that an unnamed spouse was also living. The RFD finds that the coincidence of a common first name is not sufficient evidence to add this claimed marriage to its marriage analysis of 19th century marriages.

The STN brief claimed that Luman Tabor Mauwee married a woman named Sarah Mauwee on November 3, 1829, and that their marriage should be included as a Schaghticoke-to-Schaghticoke marriage, rather than as "Schaghticoke-to-Unknown" as it was in the STN FD. STN based its claim on a photocopy of pages from Luman T.

Mauwee's bible, which lists the birth dates of "Luman T. Mauwee" and "Sarah Mauwee" and the marriage date of "Luman T. and Sarah Mauwee," and a statement that "[g]enealogical research shows that in Bible marriage entries, the bride's maiden name and surname of groom are usually recorded. There was a very large extended Mauwee family and Mauwee to Mauwee marriages did occur" (STN Brief 8/12/2005, 14). A transcript of the Luman T. Mauwee bible was available for the STN FD, and STN also submitted a photocopy of the original for the RFD, which does not provide any evidence not already considered for the STN FD. The bible entries are ambiguous concerning the possible maiden name of Sarah, who married Luman T. Mauwee. Therefore, this RFD continues to identify this marriage as "Schaghticoke-to-Unknown."

The STN brief claimed that James Phillips, husband of Nancy Chickens, should be identified as an Indian. STN provided a copy of his 1881 death record which identified him as an 89-year-old (born ca. 1792) "Indian," who was born in Litchfield County, Connecticut. There was a Sarah Phillips in the Schaghticoke overseers' accounts who received a blanket and shoes in 1802, but there is no evidence at this time to establish a family relationship between her and James Phillips, who was the son of Jeruel and Prudence (Phillips) Phillips of New Milford, Connecticut. OFA has not been able to determine which of his parents was of Indian descent, or if both were, or a tribal affiliation.[31] However, this RFD finds that the available evidence confirms James Phillips was an Indian, and corrects the marriage table to show that the Chickens/Phillips marriage as "Schaghticoke to Indian."

The STN provided new evidence that Riley Cogswell, who married Mary Ann Phillips (daughter of James and Nancy (Chickens) Phillips above), was the son of Jeremiah Cogswell and Wealthy Gauson (STN Brief 8/12/2005 and records from the Litchfield County, Connecticut, estate of Jeremiah Cogswell). Jeremiah Coxsure/Cogswell was a 3-year-old boy on the Stiles report and periodically appeared in the overseers' accounts throughout the 1800's until the Schaghticoke fund paid for the funeral of "J. Cogswell" of Cornwall in November 1848 (see notes in FAIR).[32] These court records show that Riley Cogswell was given money from the sale of a cow that was part of Jeremiah's estate in 1852 to reimburse him for the care of Riley's mother, Wealthy (Gauson) Cogswell, who did not die until 1863 (see estate record submitted 7/29/2005). Therefore, Riley Cogswell is shown to be a child of a Schaghticoke. This RFD corrects the

[31] OFA found that Jeruel, and his brothers Shubel and Reuben (sons of Benjamin Phillips and Mary) served in the Revolutionary War, and either they or their widows applied for pensions. The applications included many family connections, and in at least one instance referred to the soldier as "a colored man." The families were consistently identified as "free colored persons" in the Federal censuses, which does not preclude them from having Indian ancestry. They primarily lived in New Milford, Connecticut. See notes in FAIR.

[32] See notes in FAIR for Jeremiah Cogswell who died in 1838: "KA: 1879-Sharpe, W.C., HISTORY OF SEYMOUR, CT, BIOGRAPHIE AND GENEALOGIES. Seymour, CT page 71....."Jeremiah Coggswell, an Indian, was shot on Great Hill Jan. 30th, 1838, by James Driver, in the house of the latter." No evidence in the record at this time identifies the age or parents of this man also named Jeremiah Cogswell.

information in the marriage analysis to show the 1849 Mary Ann Phillips/Riley Cogswell marriage as Schaghticoke-to-Schaghticoke.

The petitioner's tables of "STN Marriage Patterns" by decade in the STN's "Endogamy Brief" also included some other changes without specific reasoning or analysis (STN Brief (8/12/2005). The petitioner also submitted an updated Family Tree Maker™ (FTM) genealogical database dated July 2005, but did not include citations to any new data in the notes section in the FTM database that might explain those changes. Therefore, the STN's undocumented, suggested additions or changes could not be verified, and thus not accepted for this RFD.

See Appendix II for list of marriages identified for the RFD, based on the best evidence available in the record. Appendix II does not represent a complete genealogical study identifying all the family members in each generation, and whom they married, but are an analysis of the Schaghticoke marriages that were identified in the STN FD analysis, identified by STN, the State, or the OFA for the RFD. Those descendants who left and no longer interacted were not included in the analysis, and not all of the cohorts in each generation are known; therefore, there are deficiencies in this analysis. Neither STN nor OFA attempted to identify all of the siblings in each generation and tract them and their descendants through time to determine whom they married. Such a task was not necessary for the petitioner to demonstrate descent from the historical tribe. However, the lack of information on the siblings limits the number of individuals who could be included in this analysis of marriage rates. The analysis included the Schaghticoke individuals who were listed in the overseers' accounts, town vital records, probate and land records, Schaghticoke petitions, and other historical data. Also included are individuals, whose names we do not know, but whose existence is shown by the birth of a child who is clearly part of the reservation group. This included the parents of those of Eunice Mauwee's granddaughters whose names were known even though the names of their parents were not. (See STN FD's tables 3 and 4, "Schaghticoke Endogamy/Exogamy Patterns 1801-1850" and "Schaghticoke Endogamy/Exogamy Patterns 1851-1900," STN's "Brief on Endogamy" 8/12/2005, and the State's Request for Reconsideration and Supplemental Brief.)

Reconsidered Marriage Rates

The STN FD examined Schaghticoke marriage rates using a methodology that tracked the length of marriages over time and recorded the number of endogamous and exogamous marriages that existed in each decade between 1801 and 1900-both continuing and new marriages (STN FD, 26-28, 36-39). For some decades the STN FD used two methodologies, including the calculation of new marriages as well as the continuation of existing marriages (STN FD, 37). Prior Federal acknowledgment findings also examined marriage rates using different methodologies and data sets, for purposes of 83.7(b)(2).

Criterion 83.7(b)(2) provides for a high standard of evidence to satisfy the criterion than 83.7(b)(1). This criterion can be satisfied by a combination of evidence under 83.7(b)(1), but can be satisfied by a single type of evidence under 83.7(b)(2), if the evidence satisfies

the higher threshold, for example, of at least 50 percent endogamous marriages or at least 50 percent residency rates. The Jena Band of Choctaw PF, for example, calculated marriage rates using new marriages. Jena PF also calculated the continuity or duration of marriages, but did so to show social stability, not to calculate the actual marriage rates. The genealogical report also showed high rates of endogamous marriages (marriages/unions within the group) for a period of time, such as prior to World War II (JBC PF Genealogical Report, 9-15).

The Little Shell Montana PF also calculated marriage rates, and relied, in part, on the continuation of the marriage as indicating endogamous unions (LS PF, 16-17). The analysis of Little Shell marriage also showed high rates of endogamous marriages. These examples taken from precedent establish different methods to calculate marriage rates, for purposes of indicating social relations within a community, while still relying on unions not individuals.

The IBIA described the STN FD's analysis of marriage rates as a ground referred to the AS-IA. This RFD reexamines marriage rates for the period 1801-1900 using calculations of new marriages by decade. Within the limitations imposed by the deficiencies in the data set generated from less than perfect or incomplete sources, the calculation of marriage rates based on new marriages provides more reliable conclusions than calculations based on the duration of marriages. Calculations based on duration of a marriage are a less reliable methodology for these historic time periods because documents or evidence concerning end-date of a marriage are more incomplete in comparison to start dates. Given the deficiencies in the sources, the calculation of new marriages is consequently more methodologically sound than other methodologies for the calculation of marriage rates.

Appendix II summarizes the available data on Schaghticoke marriages abstracted from a variety of documents, some of which were not originally produced to record vital rates or other information about a group of people. Where available, marriage certificates and divorce records, that note both the dates of marriage and divorce, are used to establish the exact beginning and ending dates for a marriage. Other sources have been used to estimate the date of a marriage, particularly the overseer accounts that contain information that provided clues to a marriage date. The Federal censuses also provided clues to estimate marriage dates.

Despite these sources, however, it must also be acknowledged that there are deficiencies in the data set summarized in Appendix II. The record of new marriages only refers to those identified in the records analyzed. There may have been some marriages not contained in the data set, including marriages of siblings or children of couples identified. On the other hand, given the small size of the population of the group, particularly in the first half of the 19th century, the marriages in the sample can reasonably be assumed to constitute a representative sample because the number of marriages is close to the number of marriages that would be expected from a population the size of the Schaghticoke. Altogether, the sample totals 94 marriages, or an average of 9.4 marriages

per decade. This number of marriages suggests that the data set, while not complete, does encompass a majority of the marriages during the time period.

The data set, based on the 1789 Stiles population count, the overseers accounts, and other sources, shows at least 8 existing marriages in 1800, 7 of which are Schaghticoke to Schaghticoke (see Appendix II). This suggests a high rate of endogamous marriages in the late 18th century, a period for which there is additional evidence for community. The continuation of these marriages provides supporting evidence for the continuation of a Schaghticoke community in the early part of the 19th century. The analysis of 19th century marriages rates, on the other hand, demonstrates a breakdown of the pattern of marriages within the group, as more Schaghticoke chose partners from the larger marriage pool outside of the group.

For the analysis of marriage rates, the data have been divided into two categories: marriages for which exact dates are available and marriages with estimated dates. The endogamous marriage rate, or Schaghticoke/Schaghticoke marriages, is calculated as a percentage of total new marriages. The calculation is based on all marriages in the data set, those with exact marriage dates and those with estimated dates. The endogamous marriage rate does not reach 50 percent in any decade during the period 1801-1900. This RFD changes the finding of the STN FD, and finds that the endogamous marriage rates do not provide carryover for criterion 83.7(c).

Table 2: Schaghticoke Marriage Rates by Decade, 1801-1900

Decade	Sch/Sch	Total	Percentage
1801-1810	5	12	41.7
1811-1820	2	11	18.2
1821-1830	1	5	20.0
1831-1840	2	8	25.0
1841-1850	5	11	45.5
1851-1860	3	8	37.5
1861-1870	1	5	20.0
1871-1880	0	12	0
1881-1890	1	12	8.3
1891-1900	1	10	10.0
Total	21	94	22.3

Reevaluation of Residency Rates and Evidence of Community

Overview

In its request for reconsideration of the STN FD, the State alleges that the evidence used in the STN FD to document community as related to criterion 83.7(b) and political authority and influence as related to criterion 83.7(c) is insufficient and unreliable for the 19th and 20th centuries. The IBIA referred the State claims to the AS-IA as a described ground (41 IBIA 36).

The STN PF concluded that a combination of evidence demonstrated community for the 19th and early 20th centuries. The STN FD reevaluated the direct evidence, particularly marriage rates, and affirmed the findings of the STN PF that STN met criterion 83.7(b) without relying on the state relationship (STN FD, 22, 36, 40, 58-59; 69 FR 5571). The Request for Reconsideration did not raise new arguments or evidence not previously addressed in the STN FD. Therefore, the ADS declines to reconsider the STN FD under criterion 83.7(b) for the period 1800-1920.

The STN FD considered new evidence for community for the period 1920-1940, but also relied on the state relationship to meet criterion 83.7(b) (STN FD, 40, 59). No new evidence for this period was submitted before the IBIA. The RFD reviewed the specific state relationship for this period, and found that it did not provide additional evidence of community or political influence within the Schaghticoke. See further discussion under "Nature of the State relationship," under criterion 83.7(c). On reconsideration, and not relying on the state relationship, STN does not meet criterion 83.7(b) for the 1920-1940 period.

For the period 1940-1967, the STN PF had found that there was not sufficient evidence for community for 1940-1967 (STN PF, 18-19). However, the STN FD considered new evidence, and concluded:

> A thorough review of the existing data together with the new data submitted in response to the PF indicates that the larger body of the evidence, and the more reliable sources, demonstrates that community existed among the Schaghticoke between 1940 and 1967. A review of the oral histories, including new information added to the record, demonstrates that significant social relationships existed between as well as within the three main family lines during this time period (STN FD, 59-60).

The STN FD further noted that the State cited interviews that it claimed showed a lack of community for this period. However, the STN FD considered and rejected the State's assertions regarding the interviews. The STN FD relied on the state relationship to provide sufficient evidence to meet criterion 83.7(b), concluding that: "Continuous state recognition provides additional evidence here, where specific evidence of community exists"(STN FD, 60).

On reconsideration, after evaluating the state relationship, the RFD concludes that STN does not meet criterion 83.7(b) for this period. The State actions did not provide evidence of community or political influence within the Schaghticoke, and the remaining evidence was insufficient to demonstrate the necessary social interaction among the Schaghticoke. See further discussion under "Nature of the State relationship," under criterion 83.7(c). No new evidence was presented before the IBIA.

The IBIA decision does not affect the analysis of conclusions that STN meets criterion 83.7(b) for the period 1967-1996. The STN FD is affirmed for this period.

The interested parties questioned the inclusion of 42 Schaghticoke individuals in the group to be acknowledged even though not enrolled. This issue affected the analysis of criterion 83.7(b) for the period 1996-2004. The IBIA described the membership issue as grounds outside of its jurisdiction, and the ADS accepted the grounds for reconsideration. The ADS concluded that the continued refusal of these individuals to be members in the STN resulted in the petitioner not including the entire community (see below "IBIA Described Ground: Inclusion of Unenrolled in the Group Proposed to be Acknowledged").

Both the STN PF and STN FD discussed the fact that the petitioner's membership list did not include a substantial body of individuals who had been extensively participating in the community and its politics (STN PF, 20; STN FD, 52-53, 61). This was one reason that STN did not meet 83.7(b) from 1996-2004 in the STN PF (STN PF, 20). In contrast, the STN FD included these individuals as members of STN, allowing STN to meet criterion 83.7(b) for this time period. Based on the reevaluation of the membership issue, the RFD affirms the analysis of the STN PF and STN FD that STN does not meet criterion 83.7(b) without the 42. Therefore, STN does not meet criterion 83.7(b) after 1996 because, as defined by their membership list, they do not constitute the entire community.

Reevaluation of Residency Rates, 1850-1902

This RFD reexamined the analysis of reservation residency rates, which can be used for criterion 83.7(b) (community) as well as possible carryover evidence for criterion 83.7(c)(political authority or influence). The STN FD used overseer accounts, population estimates from overseer reports, and Federal censuses to analyze residency patterns for the Schaghticoke, including the period 1850 to 1900 (STN FD, 29-36). The question addressed is whether more than 50 percent of group members resided on the Schaghticoke Indian reservation, a geographical area exclusively or almost exclusively inhabited by members of the group, with the remaining group members maintaining contact with them to provide carryover evidence from criterion 83.7(b)(2)(i) to criterion 83.7(c).

The reason that these documents used in the residency analysis were prepared is a key methodological issue in identifying possible deficiencies in the documents. Scholars studying the evolution of historical populations have recognized potential deficiencies in population counts in documents prepared to bring people under closer scrutiny by governments. Good examples of such documents are censuses prepared for the collection of taxes, or for listing adult males for possible military or labor service. People often tried to avoid being enumerated in these counts, making them less accurate. An evaluation of the sources used in the residency analysis in the STN FD is germane to the reconsideration of this section of the STN FD, since the purpose for the reporting of population estimates in the reports prepared by the overseers has a direct bearing on the

reliability of the population estimates used in calculating the percentage of group members who reside on the reservation.

The overseers prepared three sets of records that can be used to identify group members, and perhaps establish a baseline population from which to calculate the number of Schaghticoke residing on and off of the reservation. These records are: 1) the accounts of expenditures of Schaghticoke funds; 2) the annual reports that sometimes included population estimates; and 3) the 1902 census. The first set of records, the overseer accounts, recorded expenditures for individuals and families, and can be used to supplement information from other sources, particularly the Federal censuses.

The overseer also prepared annual reports for the Litchfield County Court that in some instances estimated the size of the Schaghticoke population. Reports, listed in the FAIR database, exist from the 1850s to the early twentieth century. However, with the exception of the 1902 census which was prepared specifically to identify all Schaghticoke, the overseer reports attempted to only give an idea of the size of the population. Moreover, a number of the reports contain qualifiers that clearly show that the overseer did not have precise figures on the size of the Schaghticoke population. The 1883 report was typical. Overseer Henry Roberts noted: "As far as I can learn there are 42 members living, they having become so scattered it is almost impossible to learn their exact number" (Overseer Report 8/1883; FAIR BR-V005-D0237). Roberts identified the difficulty in obtaining an accurate count of Schaghticoke members, and the related problem of the dispersion of the population which made it difficult to keep track of the members. Other reports echoed Roberts's complaint regarding counting the number of members.

Other sources also show that the estimates of the Schaghticoke population given in the overseer reports were too low. The STN FD analyzed the 1880 Federal census to identify Schaghticokes living in Litchfield and Fairfield counties in western Connecticut (STN FD, 32-35). The number of Schaghticoke members identified on the census was larger than the estimate given on the overseer report. Moreover, the analysis in the STN FD found additional members listed on the overseer reports in the 1880s that were not on the census (STN FD, 35).

Another type of record, the Federal censuses provided more accurate counts than the overseer reports. However, as the discussion in the previous paragraph suggests, there was also a difficulty in identifying all Schaghticoke members enumerated on the census. The analysis in the STN FD found 62 Schaghticoke members in Litchfield and Fairfield counties enumerated in the 1880 Federal census (STN FD, 35). Nevertheless, nine additional adult group members are named in the overseer accounts in the 1880s, who apparently were not enumerated in the census, or were not identified as Indians (STN FD, 35). A part of the problem may be that group members lived in other counties in Connecticut. The 1897 overseer report noted: "Almost 30 members on reservation and about as many more scattered about the state as near as I can learn" (Overseer Report, 10/1/1897; FAIR SN-V059-D124).

The third type of record, the 1902 overseer report and census, provides the most accurate count of group members in the late 19th and early 20th centuries (also see Appendix III). The overseer Martin Lane prepared the census at the request of the Litchfield County Court of Common Pleas, for the express purpose of determining the number of members both on and off of the reservation. The 1902 census listed the place of residence of 106 Schaghticoke members, living in Connecticut and several neighboring states (Austin 11/29/2004). The enumeration did not ascertain the place of residence of five members, which suggests that these individuals either no longer maintained social relations with the rest of the group or did not visit frequently.

The appended table (also see Appendix III) summarizes the residency information from the census. Although the overseer reported that 16 group members lived on the reservation, the actual number was 18, or 17 percent of the total number. Another 27 or 25.5 percent of the individuals enumerated lived within about 12 miles of the reservation. These included residents of Kent, Cornwall Bridge, New Milford, and Sharon in Litchfield County, as well as three individuals living in Webotuck in Duchess Country, New York, about five miles from the reservation. These 27 individuals lived fairly close to the reservation, and may have maintained close contact and social relations with the 18 members living on the reservation. The fact that the overseer knew their place of residence suggests that they maintained some sort of contact and relations with the reservation members. Although not documented, the overseer may have known the members' residences by working with them.

Some Schaghticoke members lived further from the reservation, mostly in New Haven, Hartford, and Fairfield counties in communities that ranged from some 30 to 42 miles from the reservation, in large towns that included Hartford, New Haven, and Bridgeport, as well as smaller towns or suburbs such as Long Hill in Fairfield County, not too far from Bridgeport. These individuals group totaled 51, or 48 percent of the group enumerated.

A third group lived at greater distances from the reservation in Massachusetts and New York, and probably maintained less contact. Two lived in Springfield in Hampden County, Massachusetts, about 50 miles from the reservation, and another two in Boston more than 100 miles from Kent. Two individuals lived in New York State, one in Duchess County and Julia Cogswell in an unspecified location in the State or perhaps New York City.

Table 3: Schaghticoke Residency Patterns Based on the 1902 Overseer Census

State	County	Town	Distance from Reservation	Number of Residents
Connecticut	Litchfield	Reservation	0	18
		Kent	1 mile	1
		Cornwall Bridge	8 miles	1
		New Milford	8 miles	19
		Sharon	12 miles	3
	New Haven	New Haven	36 miles	13
		Ansonia	30 miles	1

		Branford	42 miles	3
	Hartford	Hartford	38 miles	4
	Fairfield	Long Hill	32 miles	2
		Stratford	36 miles	9
		Bridgeport	36 miles	19
Rhode Island	unknown	unknown	unknown	4
Massachusetts	Hampden	Springfield	50 miles	2
		Boston	130 miles	2
New York	Ulster	unknown	Unknown	1
	Unknown	unknown	unknown	1
	Duchess	Webotuck	5 miles	3
Total				106

A core group of 45 individuals (43 percent of the total) lived on or fairly close to the reservation. Actual reservation residents accounted for 17 percent of those enumerated on the census. STN argued that "[t]he rate of reservation residence for adult tribal members in the 1870's was fifty-four percent (27/50=.54)" (Austin 8/8/2003b, 11). Establishing residency rates based solely on one segment of a population, in this case adults, is not what is called for in the regulations. As the STN FD noted, residency rates need to be calculated based on the entire population. (STN FD, 36)

However, there is an additional methodological issue to be considered in relation to the discussion of residency rates. The population estimates for the period 1850 to 1902 are too imprecise to calculate residency rates with any reasonable level of confidence. The Litchfield County Court of Common Pleas recognized the problem of inadequate population estimates, and ordered the preparation of a more comprehensive count of the Schaghticoke members that increased the number of Schaghticoke beyond the overseer reports from previous years. In 1897, for example, the overseer estimated a population of some 60 Schaghticoke, 46 fewer than reported on the overseer report and census prepared five years later (Overseer Report, 10/1/1897; FAIR SN-V059-D124). The 1900 overseer report estimated the Schaghticoke population as 65, 40 fewer than reported two years later (Overseer Report 9/1/1899-8/31/1900; FAIR SN-V059-D122). As noted above, in 1902 only 17 percent of individuals listed on the 1902 overseer report and census lived on the reservation. The analysis of residency rates for the period 1850 to 1902 affirms the conclusion of the STN FD that residency rates do not provide carryover evidence for criterion 83.7(c), because the rates are too imprecise to establish a residency rate of 50 percent.

Reevaluation of Criterion 83.7(b) (Community) for 1900-1920

The STN FD did not rely on evidence of the state relationship for the evaluation of community for the period 1900-1920 (STN FD, 58-59). The 1902 census provides additional evidence for community for this time period. This RFD affirms the finding of the STN FD that STN meets criterion 83.7(b) for the period 1900-1920.

Reevaluation of Criterion 83.7(b) Community for 1920-1940

In its decision to vacate and remand the STN FD, the IBIA also described as a ground for reconsideration the state relationship as it was used in STN as evidence for criterion 83.7(b). Moreover, the State challenged the sufficiency of the direct evidence for community in the STN FD, including evidence for the period 1900 to 1940. The IBIA noted:

> The State also argues that the remaining direct evidence used in the FD to support its findings of community and political influence and authority for STN in the nineteenth and twentieth centuries is insufficient to sustain such a finding and is unreliable, and that the FD relied on such evidence in an arbitrary and highly selective fashion. (41 IBIA 36)

The IBIA further noted:

> The Board concludes that these allegations are best left for the Assistant Secretary to consider and address on remand, as appropriate. First, with few if any exceptions, the time periods relevant to the evidence discussed by the State are ones for which the FD relied upon state recognition or endogamy rates. Reconsideration of the FD based on those two issues may affect the analysis of either the sufficiency or probative value of other evidence for those time periods, particularly if additional or other evidence is taken into account. Second, to the extent the State alleges that the direct evidence is insufficient to sustain the FD's finding of community and political authority for STN, the Board does not have jurisdiction to review the sufficiency of otherwise reliable and probative evidence. Third, even if the Board were to attempt to analyze the reliability and probative value of the evidence discussed by the State, it would be speculative in this context to determine whether the evidence constituted a "substantial portion" of the evidence relied upon. (41 IBIA 36)

In its brief before the IBIA, the State outlined what it viewed as the insufficiency of the evidence in the STN FD for community. The State claimed as follows:

> Lacking direct evidence of the existence of a distinct Schaghticoke community during the early twentieth century, the Final Determination contrives to infer that one must have existed. Following the inferential analysis created in the Proposed Finding and similarly used for the nineteenth century, the Final Determination's conclusions for the 1900 to 1940 period are not based on evidence that is probative of community. Moreover, the purported additional evidence identified for the Final Determination is singularly insubstantial and nonprobative. (State Request 5/3/2004, 140)

The State also noted as follows:

> The Final Determination built on the weak footings of the Proposed Finding, concluding that additional evidence supported the inferred existence of a community for this period. None of this purported additional evidence is reliable or probative of community existence. First, the Final Determination makes the wholly specious assertion that the residency and marriage patterns of the *nineteenth* century somehow proves that a community existed in the early twentieth century. It makes no effort to explain how that could be so when the residency and marriage rates for this period were extremely low. At most marriage and residency rates had fallen below 10 percent. Moreover, given that the trend beginning several decades earlier was a dramatic decline in reservation residency and intermarriage, the fact that in the mid-nineteenth century rates were, at least in the Final Determination's view, substantial is not at all probative of the existence of community in the 1900 to 1940 period. This notion of community "drift" simply is not sufficient to satisfy criterion (b). (State Request 5/3/2004, 142) [Emphasis in the original]

Regarding community for the period 1900 to 1940, the STN PF concluded that STN met criterion 83.7(b), based on:

> [T]he reservation community, which encompassed the three main family lines, and the extant kinship ties with others living nearby. Many of these were former reservation residents whose residence nearby continued the 19th century Schaghticoke pattern in which the community was centered on but not limited to the reservation. (STN PF, 39)

The STN PF further noted as follows:

> Additional evidence for community is that the Schaghticoke up through the mid-1990's have not been a descendancy group but have only included individual descendants who are maintaining social relations. Continuous state recognition provides additional evidence here, where specific evidence of community exists. (STN PF, 18)

Regarding community for the period 1920 to 1940, the STN FD noted that "Supporting evidence for this period was the continuous relationship with the State as a tribe with a reservation" (STN FD, 39). The STN FD concluded further:

> The reservation continued to be occupied from 1920 to 1940, with the resident population declining in the 1920's and then increasing again beginning in 1934. A review of documentary evidence for this period

finds references to the Schaghticoke as an existing community. (STN FD, 40)

In its brief before the IBIA, STN did not directly address the issue raised by the State regarding evidence for community in the period 1920 to 1940. This RFD reexamines the evidence for community for the time period 1920 to 1940. Documents, including the 1920 Federal censuses, the reports in the 1920's and 1930's of the State Park and Forest Commission, and newspaper articles document continued residency on the reservation, and off-reservation group members. The reservation population did decline in the 1920's and then grew again in the 1930's. In 1902 and again in 1910, 18 Schaghticoke lived on the reservation. The number dropped to six in 1920 and three in 1926, but then rebounded and grew to 12 in 1934 and 14 in 1940 (Overseer Report and Census, 1902; U.S. Census Abstracts 1910 n.d.; U.S. Census 1920c; Report of the Park and Forest Commission 1926; Report of the Park and Forest Commission 1928; Report of the Park and Forest Commission 1930; U.S. Census 1930; Report of the Park and Forest Commission 1932; Report of the Park and Forest Commission 1934; Report of the Park and Forest Commission 1936; Report of the Park and Forest Commission 1938; Report of the Park and Forest Commission 1940).

The Park and Forest Commission reports from the late 1920's and 1930's provide a profile of the reservation residents, particularly in the early and mid 1930's when the number of residents grew. One key fact was that a younger generation of Schaghticoke lived on the reservation. In 1940, for example, Frank Cogswell and members of the Kilson family were on the reservation (Report of the Park and Forest Commission 1940). Frank Cogswell was on the reservation in 1902, as were several Kilsons. Again citing evidence for the year 1940, five children ranging in age from two to nine lived on the reservation (Report of the Park and Forest Commission 1940).

The STN PF analyzed reservation residency patterns for the period 1900 to 1940. In part of the 1930's the reservation residents were Kilsons, with the exception of Frank Cogswell (STN PF, 126-127). Residence on the reservation mostly by members of one lineage does not provide as much evidence for community of all three lineages.

A 1929 newspaper article cited in the STN FD discussed the history of the Schaghticoke, and described the status of the reservation residents (STN FD, 40; Newspaper Article *Indians Still State Wards* 2/1/1929). The article reported that nine Schaghticoke, including children, lived on the reservation. It further noted: "[i]ts inhabitants are state wards; its chief product is rattlesnakes," which was most likely a reference to the well known "Rattlesnake Club." The residents lived in a small cluster of houses described as being located in a small clearing near the river. The 1929 article shows continued residence on the reservation, but does not provide additional evidence of community.

The STN FD relied upon the existence of the continuous state relationship as evidence of community for the period 1920-1940. The specific relationship between the State and the Schaghticoke during this time period was reviewed in accordance with the IBIA decision.

The state relationship did not provide evidence of social interaction or cohesion among the Schaghticoke. See further discussion in "Nature of the State relationship" below.

This RFD changes the findings of the STN FD, and concludes that there is insufficient evidence for community for the period 1920-1940 pursuant to criterion 83.7(b).

Reevaluation of Criterion 83.7(b) Community for 1940-1967

The STN FD relied on the state relationship in order to conclude that there was sufficient evidence of community for the period 1940-1967 (STN FD, 59). No new evidence was submitted before the IBIA for this period. In accord with the IBIA, the specifics of the state relationship were reviewed for this time period and the relationship did not provide evidence of social interaction or cohesion among the Schaghticoke. Therefore, this RFD changes the finding of the STN FD, and concludes that there was insufficient evidence to meet criterion 83.7(b) for the period 1940 to 1967 pursuant to criterion 83.7(b).

Reevaluation of Criterion 83.7(b) Community for 1967-1996

The analysis and conclusion in the STN FD for community for the period 1967-1996 are not affected by the IBIA decision. Therefore, the STN FD is affirmed.

Reevaluation of Criterion 83.7(b) Community for 1997-2004

Conclusions regarding criterion 83.7(b) for the period 1997-2004 are in the section "Inclusion of Unenrolled Individuals in the Group Proposed to be Acknowledged" below.

Conclusions

STN does not meet criterion 83.7(b).

RECONSIDERED EVALUATION OF CRITERION 83.7(c)

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

In vacating and remanding the STN FD, the IBIA rejected the general use of state recognition as evidence for political influence or authority. The IBIA also described and referred grounds outside of its jurisdiction to the AS-IA. This RFD reevaluates those sections of the STN FD relating to criterion 83.7(c) affected by the IBIA ruling.

The STN FD fully and extensively examined and rejected comments made by the State, the Towns, and the Housatonic Valley Coalition that STN did not descend from a historical tribe or tribes, and did not descend from an amalgamation of tribes (STN FD, 65-82). In its brief requesting a reconsideration of the decision to acknowledge STN, the

State argued that the AS-IA erred in his evaluation of the evidence regarding the historical roots of STN as an amalgamation of two historical tribes, Potatuck and Wentinock (State Request 5/24/2004, 170-185). In its brief before the IBIA, the State asserted that: "without exception, the Acting Assistant Secretary failed to address these concerns in the Final Determination (State Request 5/4/2004, 175). However, the IBIA concluded the following:

> Although the State's arguments concerning this issue invoke the language of the Board's jurisdiction – e.g., unreliable evidence, new evidence, inadequate research – in substance the State challenges the FD's analysis of the evidence, failure to address conflicting evidence in the record, and the sufficiency of the evidence relied upon. The Board concludes that it lacks jurisdiction over the allegations, and refers them to the Assistant Secretary. (41 IBIA 37)

The STN FD extensively considered, weighed, and rejected the evidence and arguments presented by the State and Towns regarding the descent of STN from historical Indian tribes (STN PF, 37-61; STN FD, 65-82, 165-183). The AS-IA made extensive use of the evidence and findings of an ethnohistorical study that showed that STN did descend from the Potatuck and Wentinock (Wojciechowski 1992). Additionally, the STN FD contained an appendix that further discussed and documented the evidence for descent from the historical Wentinock and Potatuck tribes (STN FD, 165-183).

The evidence and arguments presented before the IBIA regarding the continuity of STN from an amalgamation of two historical tribes was not new, and had been fully and extensively evaluated, weighed, and rejected by the AS-IA in the STN FD. No new evidence or arguments were submitted before the IBIA. The analysis and conclusion of the STN FD on this issue do not merit reconsideration on this issue.

Nature of the State Relationship

In evaluating the State's request for reconsideration of the STN FD, the IBIA noted the following:

> The FD for STN used state recognition in the same way that we found to be impermissible in Historical Eastern Pequot Tribe. In addition, we agree with the State that the STN FD gives even greater probative value and evidentiary weight to such "implicit" state recognition, and therefore it constituted a substantial portion of the evidence relied upon...Therefore, in light of our decision in Historical Eastern Pequot Tribe, the Board vacates the FD and remands it for reconsideration in accordance with that decision. The reconsideration of the State relationship with STN has a direct bearing on the reweighing of the evidence with reference to criteria 83.7(c). (41 IBIA 34)

The IBIA also noted as follows:

> Reconsideration of the FD based on these two issues [state recognition being one] may affect the analysis of either the sufficiency or probative value of other evidence for [the time periods affected], particularly if additional or other evidence is taken into account. (41 IBIA 36)

The initial stage of analysis of the STN petition for the PF found that STN did not present sufficient evidence to satisfy criterion 83.7(c). The notice of the STN PF published in the Federal Register on December 11, 2002, advised as follows:

> For the period from 1801 to 1860, there is no evidence in the record pertaining to political authority or influence. There are no leaders named either by outside observers or in internal documents. The State or the overseer did not deal with leaders. The evidence available for the proposed finding does not show that the group submitted any petitions to the State authorities. While a single man served as overseer from 1801 to 1852, thus reducing the number of occasions for petitions, the evidence submitted did not include any data showing that the group expressed its views or was consulted with regard to the 1852 or 1861 overseer appointment. Although in a certain sense, Eunice Mauwee represented the group to outsiders through the interviews that she granted, there is no evidence that she did so in "matters of consequence," as required under the definition of political influence in the regulations. Although the overseers' records and descriptions by outside observers reflect the existence of a continuing geographical community which maintained continuing ties with non-resident relatives, many of whom received disbursements from the tribal fund when in need, the record provides no data beyond the fact of this continuous existence and descriptions of a few selected members. There is no direct information in regard to political process. (67 FR 76187)

The STN PF noted the following:

> The Schaghticoke have been a state-recognized tribe, with a state reservation, from colonial times until the present. The State administered a Schaghticoke tribal fund and made specific appropriations for the Schaghticoke until well into the 1950's. However, within the general parameters of Connecticut State-recognized legal status, the specifics of state dealings with state-recognized tribes differed from tribe to tribe... In this instance, there are substantial periods of time, from the early 1800's until 1876 and from 1885 until the late 1960's, when the State did not deal with or identify formal or informal leaders of the Schaghticoke, and did not consult with members concerning issues which concerned the entire group. In the 1930's, the State declared affirmatively that there were no leaders recognized by the group. (STN PF, 10)

The STN PF concluded that criterion 83.7(c) was not met in the period 1800-1875 and from 1885-present. The STN PF also concluded that criterion 83.7(b) was met for the period 1920-1940 by relying on state recognition as evidence, but was not met between 1940-1967 and 1996 to the present.

Based in part on comments received from the petitioner and interested parties on the STN PF, in the STN FD, state recognition was treated as direct evidence of community and political influence under criterion 83.7(c). The state relationship was relied upon to find that the petitioner met 83.7(b) in the period 1920-1967, and to meet 83.7(c) from 1820-1840, 1870-1875, and 1892-1967 (69 FR 5571).

The STN FD concluded:

> The Department's reevaluated position is that the historically continuous existence of a community recognized throughout its history as a political community by the State and occupying a distinct territory set aside by the State (the reservation), provides sufficient evidence for continuity of political influence within the community, even though direct evidence of political influence is absent for two historical time periods [1820-1840 and 1892-1936]. This conclusion applies only because it has been demonstrated that the Schaghticoke have existed continuously as a community (within the meaning of criterion 83.7(c))(sic) and because of the specific nature of their continuous relationship with the State. Further, political influence was demonstrated by direct evidence for very substantial historical periods before and after the two historical periods. Finally, there is no evidence to indicate that the tribe ceased to exist as a political entity during these two periods. (STN FD, 120)

This RFD reexamines the relationship between the State and the Schaghticoke from the colonial period to the present. The State did not implicitly or explicitly predicate its legislation and policies regarding the Schaghticoke and other Connecticut Indians on the basis of the recognition of a government-to-government relationship with the Indians, or on the basis of any recognition of the existence of bilateral political relations within the group. Legislation passed in 1973 and particularly in 1989 did establish a government-to-government relationship between the State and the Schaghticoke, but did not provide evidence concerning the exercise of political authority or influence with the petitioner. The state relationship had a foundation in the more than 200 year history of the maintenance of the Schaghticoke reservation near Kent by the Colony and later the State. However, in reviewing the specific state relationship with the Schaghticoke, consistent with the IBIA ruling, the evidence of the actual interactions between the different representatives of the State and the Schaghticoke does not provide evidence of political authority and influence in the group.

The 20th-century state relationship evolved over more than 200 years in often contradictory and *ad hoc* ways, in response to short-term issues of immediate concern, or based on previous legislative actions that may have been out of date or in need of

revision.[33] The reevaluation of the nature of the state relationship addresses several issues, including the citizenship status of the Schaghticoke, the overseer system as one aspect of interactions between the Schaghticoke and representatives of the State, and a discussion of the rationale given for the relationship between the State and the Schaghticoke.

Citizenship Status

State law defined the legal status of Indians within Connecticut society. Legislation passed in 1918 (Rev. Stat. Conn., Chap. 276, 1446), which was a revision of an earlier statute from 1902, linked the status of Indians not already granted state citizenship with that of non-citizen aliens. This legal definition remained in place until repealed by legislation passed in 1973 and again in 1975 that granted these groups full state citizenship rights (Conn. Gen. Stat., Title 47, Ch. 824, 1975). However, there was no state policy or law that effectively prevented them from exercising citizenship rights, including the right to vote in state and Federal elections.

State laws that defined the theoretical legal status of Connecticut Indians were not predicated on the existence of a government-to-government relationship with the Schaghticoke and other tribes, or the recognition of the group as a political entity. Moreover, the State did not pass the laws regarding the Schaghticoke and the other Indian groups because of its recognition of their being a separate political entity. The non-citizenship status of the Schaghticoke does not provide evidence regarding criteria 83.7(b) and 83.7(c).

Overseer System and Its Successors

The provision for the system of overseers to help the Indians as fiduciary agents continued in various guises during the period 1926 to 1973 with state officials filling the role of overseer previously held by individuals appointed by the Litchfield County Superior Court and later the Litchfield County Court of Common Pleas. It was one element that defined the state relationship with the Schaghticoke. The two courts retained responsibility for appointing and monitoring the overseers until 1926, after which two different state agencies assumed fiduciary responsibility for the group (Park and Forest Commission Annual Report 1928). The State modified its guardianship role for the Indians in Connecticut in 1926 by transferring responsibility for the Schaghticoke to the State Park and Forest Commission, and abolishing the overseer system overseen by the County Courts (Public Acts, 1925, Ch. 203, 3994; Supp. Conn. Gen. Stat., Title 51, Ch. 272, 1935). The Park and Forest Commission assumed fiduciary oversight for the Schaghticoke living on the reservation carrying out the role of "overseer," managed group assets as well as funds appropriated by the legislature, and a trust fund created in 1927 with a starting balance of $250.00. The legislature also appropriated additional "deficiency" funds (Report of the State Park and Forest Commission, 1926, 1928, 1930). The jurisdiction of the Park and Forest Commission applied only to the Schaghticoke

[33] For a more detailed discussion of the colonial and state legislation regarding Indians in Connecticut see EP FD, 55-72; PEP FD, 66-77.

living on the reservation, and not to members living off the reservation. In 1941, legislature transferred authority over the Schaghticoke to the Commissioner of Welfare, and in 1959 the Commissioner of Welfare received authority and duties similar to the overseers in the pre-1926 system (Supp. Conn. Gen. Stat., Title 51, Ch. 272; Rev. Stat. Conn., Title 47, Ch. 824, 171-173).

No other group of residents of the State of Connecticut was placed under the unique guardianship of state agencies such as the Park and Forest Commission and the Commissioner of Welfare, although the State did not treat all the state recognized Indian tribes in the same way. Moreover, those non-Indians placed under the jurisdiction of the Welfare Commission were there because they were disabled or economically destitute. However, the jurisdiction of the Park and Forest Commission applied only to Schaghticoke members residing on the reservation, and the Commission did not have the authority to provide services to Schaghticoke members living off the reservation.

The creation and maintenance of the overseer system through 1926, and the transfer of jurisdiction over state recognized Indian tribes to two other state departments after that does not provide evidence that demonstrates a bilateral political relationship within the group, or that the group interacted with the state as one polity to another. There is insufficient evidence in the record that shows the exercise of political authority or influence within the group deriving from the overseer system, or of interactions between Schaghticoke members and representatives of the State that demonstrate political organization and activity. The State's guardianship role does not provide evidence to demonstrate criterion 83.7(c).

Reservation Lands, Residency, and Management of Schaghticoke Resources

The record includes evidence concerning the maintenance of the Schaghticoke reservation, the management of and expenditure of Schaghticoke resources, membership, and residency on the reservation. Management by State officials was another instance where actions by the State would and did generate responses by the Schaghticoke. One question central to defining the historic relationship between the Schaghticoke and the State was the integrity and use of the reservation lands.

The reservation was the focal point of the relationship with the Colony and later the State. Upon a reevaluation of the evidence, this RFD concludes that the maintenance of the reservation by the State was not predicated on a government-to-government relationship with the group or the existence within the group of bilateral political relations that provides evidence for political influence or authority. This aspect of the State relationship based on the maintenance of the reservation does not provide evidence for criterion 83.7(c), although the responses by the Schaghticoke to the State's actions are evidence to be evaluated under criterion 83.7(c).

Rationale for the State Relationship

A review of the record indicates that there was no material in which the State or a judicial body articulated a specific reason or rationale for the distinct status of the state recognized tribes during the long history of the relationship between the Colony and later the State and the Schaghticoke. That is, the State recognized an obligation to the Schaghticoke, maintained an undefined land status, and provided special and specific funding. The documents refer to "tribe" but do not, generally, characterize what a "tribe" was for the purposes of maintaining the reservation, management of Schaghticoke assets, and the provision of financial support and services. The exception to the lack of an articulation of a rationale by the State for the state relationship was two Attorney General (AG) opinions rendered in 1939 and 1955.[34] Other documents in the record contained a variety of informal opinions and comments as to the character of the Schaghticoke, and the status of the land or of the group's members. The AG opinions did not provide significant evidence about the character of the state recognized tribe, although the opinions also do not assert a political basis for the relationship between the State and the Schaghticoke.

An analysis of the two AG opinions does not show a clear definition of "tribal organization" as outlined in the opinions, nor does it demonstrate whether there was or was not political influence or authority within the group as defined in 83.1.

The 1939 opinion concerned whether "full-blooded Indians" in the state had a right to hunt, trap, or fish without a license. Such a right was claimed "by virtue of treaties." The 1939 opinion included the statement:

> Whatever the status of the Indian tribes may have been in the early days of this commonwealth by virtue of treaties or laws, it is apparent that we do not have at the present time any Indian tribal organizations. Their political and civil rights can be enforced only in the courts of this state, and they are as completely subject to the laws of this State as any of the other inhabitants thereof. (Pallotti 5/18/1939, 1)

The 1939 decision concluded:

> While Indians are expressly exempted from the Fish and Game Laws of some of the States of the Union, no such exemption exists in this State. Excepting such rights as the Indians may have on their reservations, we are of the opinion that Indians do not have the right to hunt, fish, or trap in this State without a license therefore. (Pallotti 5/18/1939, 2)

In other words, no Connecticut law granted Indians an exemption from the requirement to obtain a State license to hunt, fish, or trap off reservation. The opinion does not preclude the exercise of political authority and influence by Schaghticoke within the definition of the regulations.

[34] For the background to the 1939 AG opinion see EP FD, 70.

In the 1955 opinion the AG considered whether or not Connecticut Indians could claim reservation lands to be their property that could be hunted, fished, or trapped without a license (Report of the Attorney General 11/4/1955, 115). The State did not recognize land ownership rights of the Indians to the lands on the reservations granted by the colonial government of Connecticut, and instead argued that reservation lands actually belonged to the State.

In the 1955 decision, the AG cited case law from the United States Supreme Court, as well as two rulings from courts of other states. The opinion cited *State v. Newell,* 84 Me. 464, 24A943, a case decided in 1892 by the Maine Supreme Court concerning the status of state recognized tribes in Maine. This decision noted that:

> They are completely subject to the State as any other inhabitants can be. They cannot now invoke treaties made centuries ago with Indians whose political organization was in full and acknowledged vigor. (*State v. Newell,* 84, Me. 464, 24A 943)(sic)

The AG opinion used *State v. Newell* to bolster its conclusion that:

> [I]t is still an historical fact that the Indians who made such treaties have wholly lost their political organization and their political existence. There has been no continuity or succession of political life or power. (Report of the Attorney General 11/4/1955, 115)

The opinion concluded that since the Indians did not own the reservations, and since Connecticut Indians did not reserve a right to hunt or fish by treaty with the Colony or with the Federal Government, they were not exempt from obtaining a license.

The findings in the two opinions indicate that the AG did not consider the Schaghticoke to be exercising or possessing sovereign authority. The opinions, however, did not preclude the possibility of demonstrating political authority and the exercise of influence within the group within the meaning of the regulations through other evidence.

Marriage Rates and Carryover Evidence for Criterion 83.7(c)

The STN FD analyzed Schaghticoke marriage rates to determine if the endogamous marriage rates within the Schaghticoke reached a high enough level to provide evidence to carryover evidence for criterion 83.7(c) (STN FD, 82-84). The STN FD concluded that, based on the calculation of endogamous marriages, that STN met criterion 83.7(c) for the years 1801-1820 and 1841-1870 under 83.7(c)(3)(STN FD, 84). This RFD recalculated Schaghticoke marriage rates, and finds that marriage rates do not provide evidence to carryover for criterion 83.7(c) for the years 1801-1900. Little direct evidence of political influence or authority was provided for these periods. Therefore, based on the new analysis of the specific state relationship with STN and the new marriage analysis, STN does not meet criterion 83.7(c) for the years 1801-1875.

Evidence of Political Authority or Influence, 1876-1884

The STN FD cited two petitions from 1876 and 1884 regarding the appointment of overseers as evidence of political authority or influence (STN FD, 86-87). No new evidence or argument was presented regarding the two petitions. This RFD affirms the finding of the STN FD that STN meets criterion 83.7(c) for the period 1876-1884.

Reconsideration of the 1892 Petition as Evidence for Criterion 83.7(c)

In STN's submission to the IBIA, STN presented new evidence regarding the 1892 petition identified in the STN FD as an 1892 petition from Truman Bradley, a Schaghticoke Indians (STN FD, 87). This new evidence, the records of the Litchfield County Court of Common Pleas regarding the petition and the audit report prepared on the orders of the Court, provides further details regarding the petition (Austin 11/29/2004, 6-8). Truman Bradley submitted the 1892 petition to the Litchfield County Court requesting an audit of the overseer accounts. However, it is now clear from the wording of the Court record that Bradley submitted the petition on his own initiative, and not on behalf of the Schaghticoke as a group. The record identifies the document as "his [Bradley's] petition," and does not refer to the petition as being an action submitted on behalf of the group (Records of the Court of Common Pleas, Litchfield County, 4th Monday of September. Term 1892). The Court ordered a report to be prepared in response to Bradley's petition regarding the group's assets, and specifically looked into the issue that Bradley raised regarding debts against group assets. The Court assigned a team to conduct the audit, a step that was consistent with the Court's fiduciary responsibility to the group as defined by State law.

The STN FD noted regarding the petition that: "The submissions provided little context for this petition" (STN FD, 88). Nevertheless, the STN FD concluded, without providing a justification, that the petition provided evidence for criterion 83.7(c).

STN claimed that the petition is evidence for political activity on the part of the group, although the petition and the documents resulting from the audit provided no evidence for this being anything more than the action of an individual group member (Austin 11/29/2004, 6-8). The RFD finds that the new evidence presented regarding the 1892 petition does not provide evidence that it represented a group action, or that Truman Bradley acted on behalf of the group. This RFD reverses the STN FD, and finds that evidence for this time period is lacking. Therefore, STN does not meet criterion 83.7(c) for the period 1885 to 1892.

Evidence of Authority and Influence, 1885 to 2004

The STN PF summary evaluation for the early decades of the 20th century concluded the following:

> There was no significant evidence to support the petitioner's position that James H. Harris (died 1909) and George Cogswell (died 1923) were leaders. Although they were well known, none of the contemporary descriptions of their activities described roles as leaders of the Schaghticoke. The references to them by the title of "chief," often in newspaper accounts, do not provide substantial evidence that they exercised political influence or carried out activities which meet the definition of political influence in § 83.1 of the regulations. Interview references to them as leaders provided little substantial detail. (STN PF, 26)

The STN PF also concluded that "While George Cogswell was a well-known figure; there was little evidence to demonstrate that he was a leader of the Schaghticoke" (STN PF, 124). The STN PF noted that he was perhaps the most prominent Schaghticoke snake hunter and especially well-known for his role in the Rattlesnake Club. The finding noted the petitioner's claim that this role was evidence of his leadership, but did not accept that claim. The STN PF stated the following:

> The only potentially significant evidence of leadership was that Cogswell kept a kind of "guest book," in which was entered all of the visitors to the reservation. There was little specific evidence about this, including what time period he kept the guest book. (STN PF, 124)

The STN FD concluded that there was insufficient direct evidence of political activity from 1892-1936. The STN FD relied on the state relationship to conclude that STN met criterion 83.7(c) for the period 1892 to 1936 (STN FD, 122).

STN submitted what it claimed was "new evidence" before the IBIA in a report titled "Summary of New Evidence: The Schaghticoke Tribal Nation and Political Authority between 1876 and 1936." The report purports to substantiate political activity for the period 1892 to 1910. In 1898, the overseer sold a section of reservation land, an action evaluated and approved by the Litchfield County Court. STN inferred that Schaghticoke members were consulted on the question of the land sale, although STN presents no evidence that a consultation actually occurred (Austin 11/29/2004, 7-8). Moreover, the argument regarding reservation lands duplicated an argument already considered and rejected in the STN FD (STN FD, 92-94).

STN cited the preparation of the report and census in 1902 by overseer Martin Lane as further evidence for political activity, suggesting that "tribal members were active in helping the Overseer gather and organize the information for the census" (Austin 11/29/2004, 9). While it is likely that group members provided information to the overseer during the preparation of the census (Lane had been the overseer since 1884), there is nothing in the new documents submitted to the IBIA that shows that the preparation of the census in any way constitutes evidence of political authority or influence regarding criterion 83.7(c).

STN cited an undated newspaper article as evidence of political activity (Austin 11/29/2004, 9-10). The article referenced two Schaghticoke members attending the Court session at which the Court reappointed Martin Lane as overseer. STN concluded that the reference to two Schaghticoke members attending the Court session shows "that the tribal members were actively involved in protecting the Tribe's interests" (Austin 11/29/2004, 11). The evidence presented, however, does not show specifically why the two group members attended the Court session, or that they attended on behalf of the group. Moreover, the evidence does not show that it was the result of a group decision. Finally, the STN FD already described the trip discussed in the undated newspaper article. The STN FD noted that there was no clear identification of the occasion that precipitated the court appearance (STN FD, 102).

STN provided information regarding two incidents in 1905 that it claimed provided evidence for further group political activity. The first involved the relocation of some 60 corpses from the reservation cemetery, after it was flooded by waters from a recently completed dam. Overseer Martin Lane apparently organized the cemetery relocation project, and Value Kilson was reported in a contemporary newspaper article as having helped Lane (Austin 11/29/2004, 14-15). However, there is nothing in the description that shows political activity by the group in the project to relocate bodies from the old to the new cemetery, nor any decision-making process.

In the same year a group of Schaghticoke went with the new overseer Fred Lane to New Milford. In the overseer accounts Lane noted expenditure for "car fare to New Milford for self and Indians." Lane also identified the Indians accompanying him as "Value, George, and Mary" (Austin 11/29/2004, 16). STN suggested that the George mentioned in the accounts was George Cogswell, and that the group was a delegation sent to attend the Litchfield County Court on behalf of the group regarding the appointment of a new overseer (Austin 11/29/2004, 16). It is equally plausible that the George mentioned was George Kilson and not George Cogswell, and the group that included Value Kilson and Mary Kilson Jessen went to New Milford on family business, rather than as a delegation sent to represent Schaghticoke interests. Nothing in the evidence presented by STN identified the purpose for the trip made by the three Schaghticoke members to New Milford. Therefore, the trip is not evidence of a group decision-making process. Moreover, the STN FD already evaluated the evidence presented by STN regarding the 1905 trip (STN FD, 102). STN's new argument does not overcome the issues raised in the STN FD concerning this evidence.

George Cogswell and James H. Harris as Leaders

STN argued that George Cogswell and James H. Harris were informal leaders, and further elaborated on the role of Cogswell in the "Rattlesnake Club" and George Cogswell's association with the club, and the role of group members as "culture keepers" that reflected evidence of informal leadership. Regarding the "Rattlesnake Club," the STN FD concluded as follows:

> There is no evidence that other Schaghticoke were involved in the hunt itself or the related activities. A comparison of those described as involved in the club's activities with the resident population indicates that this was not a community activity. None of the children of George Cogswell lived on the reservation after 1903 and none were mentioned in connection with the club. The only members of James Harris' family that were mentioned were his non-Indian wife Sarah (Sally), his son Edson Charles, and his daughter "Alice."[35] There was no mention of involvement of the two adult children of James Harris (Grace and Elsie) and their families who were living on the reservation, even while James was alive. After 1913 none of the Harrises were on the reservation. There was also no indication that any of the adult Kilsons, such as Bertha Kilson and Mary Ett Kilson or their families who were resident on the Schaghticoke reservation from 1892 to 1920, were involved in the Rattlesnake Club activities. Value Kilson was 76 in 1900 and probably too old to participate, as were Rachel Mauwee (1812-1903), and Abigail Mauwee (1828/1833-1900). There was no evidence that Schaghticokes living off the reservation were involved with the Rattlesnake Club hunts. (STN FD, 98-99)

As regards the group members identified as being "culture keepers," the STN FD asserted:

> There is, thus, little or no evidence of these named Schaghticoke individuals as culture keepers who demonstrated a form of leadership. There is a limited degree of evidence of transmission of cultural ideas that was shared on a reasonably wide basis within the group. The available information is better evidence to show community, possibly as a shared body of knowledge, than it is evidence for leadership. The individuals involved here do not fit the definition of "cultural leader" (see Mohegan), where an individual functions to preserve and transmit culture for the entire group, and is recognized as fulfilling that function. Thus, there is not good evidence here for political leadership of James Harris, George Cogswell, and the others cited, based on their expertise as "culture keepers."(STN FD, 102)

Additionally, the STN FD discussed reports from the mid-1930's that noted that there were no Schaghticoke leaders:

> The PF noted two reports, in 1934 and 1936, which denied that the Schaghticoke at that time, or "in recent years," had leaders. The first

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[35]This reference may be to Jessie Harris, birth date 1891. According to one source, "Jessie Harris was often called a Princess. During the spring rattlesnake huts she dressed in Indian costume, was pictured and written up in the papers as a full blood Indian Princess" (CT Genealogy Charts post 1935 C:\FAIR\079_Doc_ Images\ BR\V004\D0094.TIF Bates page 38 of 57).

> report is close to the point in time, and second report is at the point in time, when there is specific evidence of Schaghticoke leaders (see evaluation, below, of 1936 to 1967). A 1934 report for the U.S. Indian Service on federally unrecognized Northeastern Indian groups said that the Schaghticoke had not had a chief or headman in recent years. A statement in 1936 in the minutes of the Connecticut State Park and Forest Commission, was that there were no leaders "recognized by the tribe." The 1934 report also denied leaders existed in other Northeastern groups, for which there is good evidence that such leaders existed, hence [it] is not a definitive source. The 1936 report did not specify that it referred to any time other than in 1936, or the years immediately before it. (STN FD, 121)

The arguments presented by STN do not address the reasons why the STN FD discounted the rattlesnake hunts, culture keepers, and other evidence presented for purposes of political influence. The analysis of the leadership of Cogswell and Harris and of political authority and influence during the period 1884 to 1936 provides insufficient evidence to satisfy criterion 83.7(c). This RFD reviewed actions taken by the State to determine if they presented evidence of political influence or authority within the STN, and found that they did not. Based on the new evidence concerning the 1892 petition and following an evaluation of the state relationship, this RFD reverses the STN FD, and finds that there is insufficient evidence for political activity for the period 1885 to 1936.

Reconsidered Evaluation of the Evidence for Political Authority for 1937-1967 and 1967-1996

The STN FD relied on the state relationship in order to conclude that there was sufficient evidence for STN to meet criterion 83.7(c) for the period 1937-1967 (STN FD, 124). STN and the interested parties provided no new evidence or arguments to the IBIA regarding this period. A review of the specific state relationship for this period did not provide evidence of political influence or authority within the Schaghticoke. Therefore, this RFD concludes that, without relying on the state relationship, there is insufficient evidence for political authority or influence for the period 1937-1967.

The STN FD concluded that STN met criterion 83.7(c) without reliance on state recognition for the period 1967-1996. No new evidence or arguments were presented regarding this time period. Therefore, this RFD affirms the conclusion of the STN FD for this time period.

Reconsidered Evaluation of the Evidence for Political Authority for 1996-2004

The interested parties questioned the STN FD's inclusion of 42 Schaghticoke on the STN rolls as acknowledged, which affects the analysis of criterion 83.7(c) for the period 1996-2004. The IBIA described the membership issue as grounds outside of its jurisdiction, and the ADS accepted the grounds for reconsideration (see below "IBIA Described Ground: Inclusion of Unenrolled in the Group Proposed to be Acknowledged"). Based on the reevaluation of the enrollment issue for community, the RFD affirms the analysis

in the STN PF and STN FD that STN could not meet criterion 83.7(c) without the 42 (STN PF, 20-21; STN FD, 51-55). This RFD concludes that at least 33 of the 42 did not consent to enrollment. In addition, as the STN FD noted, there were 14 other individuals who were not part of the community who were not on the STN membership list. Therefore, STN does not meet criterion 83.7(c) after 1997 because, as defined by their membership list, they do not constitute the entire political system.

Conclusion

The analysis of the contours of the state relationship shows that it does not provide evidence for political influence or authority within the Schaghticoke, and the State did not formulate its policies towards the Schaghticoke based on the recognition of the existence of bilateral political relations within the Schaghticoke. In the absence of state recognition STN does not meet criterion 83.7(c) for the years 1820-1840, 1870-1875, and 1892-1967. This RFD finds that without carryover from marriage rates pursuant to criterion 83.7(b), STN does not meet criterion 83.7(c) for the period 1801-1820 and 1840-1870. Reanalysis of the 1892 petition based on new evidence shows that STN does not meet criterion 83.7(c) for the years 1885-1892. STN does meet criterion 83.7 (c) for the period 1967-1996 without reliance on state recognition. Taken as a whole, STN does not meet criterion 83.7(c).

DESCRIPTION OF THE GROUNDS OUTSIDE OF THE IBIA'S JURISDICTION

Inclusion of Unenrolled Individuals in the Group Proposed to be Acknowledged

Description of the Issues

The IBIA described as a ground outside its jurisdiction "Whether the regulations require that the base membership roll of a petitioner must consist solely of individuals who are currently enrolled in the group" (41 IBIA 37).[36] This issue was raised by the State in its request for reconsideration. The IBIA described the State's contention that "the FD impermissibly departed from precedent and the regulations in considering as part of STN's base membership roll individuals who had not specifically assented to or been accepted as members" (41 IBIA 36).[37]

[36] The regulations refer to the "base membership roll" in the context of 83.12(b), which defines the membership of a tribe that has been recognized under the regulations. The regulations there state, "Upon acknowledgment as an Indian tribe, the list of members submitted as part of the petitioner's documented petition shall be the tribe s complete base roll for purposes of Federal funding and other administrative purposes."

[37] Section 83.12(b) states concerning an acknowledged group's membership list, "For Bureau purposes, any additions made to the roll, other than individuals who are descendants of those on the roll and who meet the tribe's membership criteria, shall be limited to those meeting the requirements of 83.7(e) and maintaining significant social and political ties with the tribe (i.e., maintaining the same relationship with the tribe as those on the list submitted with the group's documented petition)." This section allows the addition of

The IBIA also described, as a related ground, the SIT allegation that the STN FD "improperly recognized STN's membership as including 'unenrolled members,' a number of whom belong to SIT, without obtaining the consent of those 'unenrolled members' and without affording them due process before treating them as STN members" (41 IBIA 40-41). The IBIA characterized SIT's argument, in part, as contending that the unenrolled members were not "sufficiently linked to STN to be considered as 'members' for purposes of determining STN's base membership" (41 IBIA 39).

The IBIA also described as a related ground, the CG's contention that "the FD's recognition of 'unenrolled members' as part of STN's membership was taken without notice, consent, or equal protection of those unenrolled members."

The SIT also challenged the STN FD's conclusion that the unenrolled individuals were part of the STN community and political processes notwithstanding their refusal to be enrolled with STN. This conclusion was the basis for the STN FD's inclusion of them in the group to be acknowledged. The IBIA also referred the consent issue in the context of the ground concerning whether there was a "bilateral political relationship" of the unenrolled individuals with the STN (41 IBIA 42) (see below).

The STN Final Determination and Proposed Finding

The STN FD noted that:

> At the time of the PF, the Schaghticoke did not meet criteria 83.7(b) and 83.7(c) from 1996 to the present in part because a substantial portion of the actively involved membership, whose activities helped demonstrate these criteria were met from 1967 to 1996, were no longer listed as members. (STN FD, 51-52)

The STN FD noted that these individuals remained unenrolled, having declined STN's offer and efforts to enroll them. The STN FD concluded there were approximately 56 individuals identified as being "from the families in conflict with the current STN administration who were not on the STN membership list" (STN FD, 52).

For the STN FD, the STN provided a membership list, dated September 28, 2003, with 271 living members. This list did not include all of the residents of the Schaghticoke reservation. The STN also submitted a second list of 42 individuals who were not enrolled but who it considered "would likely qualify for membership" (Austin 9/29/2003, 11-14 [Table 4]).

The STN FD's discussion of community noted that the individuals on the second list were part of the community and were all enrolled in the STN at one time. They all

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individuals not on the group's list, under the conditions prescribed, but does not provide for circumstances where a substantial portion of an existing group is not enrolled.

descended from the three main families of Harris, Kilson, or Cogswell, or from the Bradley-Kilsons (non-Cogswells). The STN FD found that "They all have close relatives on the STN 2003 membership list and more importantly have been actively involved in the STN political and social community" (STN FD, 54).

The STN FD concluded that:

> [T]here is one Schaghticoke tribe, composed of the individuals and families identified on these two lists, and that approximately 14 other individuals, who are the children or siblings of unenrolled individuals may also be included in the membership (See the discussion under criterion 83.7(b)). (STN FD, 142)

All of the 42 were included in the 56 individuals identified by OFA as unenrolled members of the community. Although the STN FD concluded that: "The difference between 42 and 56 potential members who are considered a part of the Schaghticoke community is not significant and does not include or exclude families not previously seen to be a part of the whole community (STN FD, 55). However, when these 14 and the 42 (at least 33 are not on the STN membership list) are added together, the difference between the STN enrollment and the community becomes significant.

The STN FD reached these conclusions because it considered that the STN membership list did not reflect the actual membership of the community (STN FD, 57). It concluded that the current membership list reflected a temporary political condition. It noted that the unenrolled individuals "were part of the community considered to meet criteria 83.7(b) and 83.7(c) in the decades leading up to 1996 and continue to be part of that community, and its political processes, up until the present (STN FD, 57).

The STN FD concluded that:

> [T]he combination of the two specific lists submitted by the STN, identifies the tribe being acknowledged and shall comprise the tribe's base membership roll. As the base roll, it identifies the STN's present membership for Federal purposes. Individuals on these lists will be considered to be members of the tribe unless they knowingly relinquish their membership after this decision is final and effective. (STN FD, 57)

Discussion

The STN FD, by defining the group to be acknowledged as larger than the STN's current membership, predicated acknowledgment, and in particular meeting criteria 83.7(b) and 83.7(c) after 1996, on the inclusion of the 42 unenrolled individuals in the group to be acknowledged.

The Department took this action in part because of the close involvement of the 42 in the community, which involvement continued even after these individuals had declined to reenroll in STN when it conducted a reenrollment of its membership. At the time of the STN FD, the enrollment situation appeared to reflect a particular phase in a long-running conflict within the group.

The Issue of Consent and Actions Since the STN FD

The STN FD's treatment of the two lists as a single group was consistent with the Department's policy to discourage splits both in acknowledged tribes and in groups that might become acknowledged. However, 33 of the 42 through the SIT and the CG requests for reconsideration of the STN FD maintain that they do not consent to be part of the STN.[38]

Section 83.7(e)(2) requires that, "The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group." That requirement was met by the STN, since the 42 were not members. However, in addition, the intent of this section is that the membership list reviewed for acknowledgment includes the entire group and this condition was not met (see Narragansett, where the membership list initially did not reflect the entire group).

Under 83.1, "member of an Indian group" (i.e., a petitioner) is defined as "an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group." Similarly, "tribal roll" is defined in the regulations as persons who meet the tribe's membership requirements and who "have affirmatively demonstrated consent to be listed as members" (83.1). Thus, the regulations require the consent of the individuals listed.

The SIT request for reconsideration indicates that the 29 individuals on its membership list who were on the list of 42 unenrolled individuals did not, after the STN FD was issued, consent to be a member of STN. These 29 individuals include several reservation residents. The STN did not provide evidence to the contrary in its response to the request for reconsideration. The CG's request for reconsideration similarly indicates that the four individuals from their group who are on the list of 42 have declined to be enrolled in the STN. By continuing to decline enrollment, 33 of the individuals on the list of 42 affirmatively declined to give consent to being included on the STN membership list or be included within the STN group.

The court in Masayesva v. Zah (792 F. Supp. 1178 (D. Ariz. 1992)), held that the Navajo Tribe could not, by including members of the San Juan Southern Paiute on the Navajo membership roll, thereby make them in fact members without their consent. The court cited as a necessary condition to membership the existence of a bilateral political relationship, which required consent on the part of both the Paiutes and the Navajo Tribe (1187-1188). Thus, the 33, for purposes of the acknowledgment regulations, are no

[38] The balance of nine is from two separate families who are also in political opposition to STN. No information was received for this reconsideration to show that they consented to being enrolled in STN.

longer considered members of STN since they do not consent to be part of the STN, and therefore, there is no bilateral political relationship.

As part of the issues referred concerning consent and due process, the SIT argues that the STN FD failed to consider the SIT's petition and its claim that it is the legitimate present-day continuation and rightful descendant of the historical Schaghticoke tribe (see discussion of referred grounds below). The STN PF and the STN FD evaluated all of the arguments SIT presented as an interested party. This included the claim to be the rightful successor. To the extent the STN FD and the RFD draw conclusions about the historical Schaghticoke tribe that might be in common with the SIT petition, the acknowledgment process provides for comment, technical assistance, and reconsideration, and permits the SIT to participate in the process as it did. These procedures provide the SIT with all the due process required, since this RFD concludes that the 33 individuals, most of whom are members of the SIT, are not part of the STN petitioner, and the RFD concludes that the STN does not meet all seven mandatory criteria. There remain no other due process or equal protection issues that need to be addressed. (See also discussion of the IBIA described grounds concerning the failure to simultaneously address the SIT petition).

Conclusions

The ADS has determined that the STN FD should be reconsidered on the ground that the 33 of the individuals on the STN's list of "unenrolled members" do not consent to be members and have affirmatively declined to be enrolled. Therefore, this RFD concludes that they are not now part of the STN.

The ADS declines to reconsider the decision on the related issue raised by the SIT that the 42 individuals were not at the time of the STN FD sufficiently linked to the STN membership. The evidence for the STN FD and the STN FD's analysis demonstrated that such a connection existed at that time.

The STN FD concluded in effect that the Department had the authority to acknowledge a group which included a substantial number of individuals not on the STN's current membership list, although part of its community and, in large part, recently enrolled or closely related to those who were. The Department may under certain circumstances acknowledge a larger group than defined by the petitioner's membership list. However, by virtue of SIT's and CG's requests for reconsideration, 33 of those those on the list of 42 have affirmatively declined to consent to be included in the STN. In addition, as the STN FD noted, 14 other individuals who were part of the community were also not enrolled. Therefore, STN does not reflect the community and political processes that existed between 1996 and the time of the STN FD. Therefore, STN does not meet criterion 83.7(b) and 83.7(c) after 1996 because, as defined by its membership list, it does not constitute the entire community and political system and because the Secretary has no authority to acknowledge only part of a community. The criteria define the community to mean the whole community.

Alleged Failure to Consider SIT's Claim to be the Present-Day Continuation of the Historical Schaghticoke Tribe

IBIA Decision

The IBIA described the following ground for the AS-IA to consider: "Should the FD be reconsidered on the grounds that the STN FD failed to adequately consider SIT's claim that it -- and not STN -- is the legitimate present-day continuation and rightful descendant of the historical Schaghticoke tribe?" (41 IBIA 40).

Discussion

The STN PF and STN FD analyzed in depth the long term political conflicts within the STN. It found a common community and political history of the current STN membership and certain identified individuals previously but not presently members of the STN. Some of these, the political opposition to the current STN leadership, were members of SIT. The STN FD, now vacated, concluded that these portions of the SIT were also part of the Schaghticoke community, notwithstanding their refusal to reenroll in STN in recent years. Others, i.e., the CG, were part of this common history though not members of the SIT, also refused to reenroll.[40]

Therefore, the STN FD adequately considered the character and history of the SIT petitioner as far as it affected evaluation of the STN's petition. The ADS concludes concerning the related ground of failure to consider that SIT petition, that the appropriate time to consider the SIT's petition is when that petition is ready for active consideration.

Conclusion

The ADS declines to reconsider the STN FD on the ground that SIT is the legitimate present-day continuation of the historical Schaghticoke tribe. The SIT claim will be considered when its petition is complete and is reviewed under the acknowledgment regulations.

Failure to Simultaneously Consider the Schaghticoke Indian Tribe's Petition

IBIA Decision

The IBIA described the following ground for the AS-IA to consider: "Should the FD be reconsidered on the grounds that the STN FD failed to adequately consider SIT's petition, which could be prejudiced by a final determination on the STN petition" (41 IBIA 40).

Discussion

[40] The STN FD also concluded that the SIT membership went well beyond the Schaghticoke membership as it had existed in the 20th century, so that only a portion of its membership was relevant to the STN petitioner.

The SIT petition is not yet fully documented and was therefore not ready for a review during the active consideration of the STN petition. Because a completely documented petition has not been provided, the OFA did not provide the TA review under 25 CFR § 83.10(b), which, along with the petitioner's response, is preliminary to active consideration.[41] The partially documented SIT petition was not reviewed for the STN finding except for the membership list and charts submitted with the partially documented petition in 2002 for purpose of evaluating the membership list of the STN.

To the extent SIT's membership includes individuals previously involved substantially in the STN up until the past few years and that there continues to be an on-going conflict involving such, the STN decision substantially considered the history of those individuals' participation in the Schaghticoke community. However, the SIT membership also included other individuals, who have not formed part of the STN group. The STN findings did not substantially consider information about them.

The SIT had the opportunity to comment on the STN PF and did so. It had the opportunity to submit all documents and argument it thought necessary to protect its own interests and to assist in the Department's evaluation of its shared history with STN. Its submission was reviewed for the STN FD. The SIT also challenged the STN FD before the IBIA. All arguments and evidence submitted concerning the STN petition by the SIT were considered.

Since those SIT members known to have been involved in STN in the recent past are not currently members of STN, the regulatory prohibition against repetitioning by a group already considered (83.10(p)) would not apply to the SIT, based on the information about the group currently available.[42]

Conclusion

The ADS declines to reconsider the STN FD on the ground it failed to adequately consider the SIT's petition. The SIT petition will be considered when it is fully documented under the priority provisions of the regulations (83.10(d)). To the extent that consideration of the STN petition involves common history with the SIT petition, SIT's interests are protected by the SIT's participation as an interested party on the STN petition and by the opportunity to provide evidence and analysis in support of its own petition when fully documented.

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[41] The SIT was provided informal, preliminary technical assistance on March 20, 2003, which was summarized in a letter of April 30, 2003. On September 22, 2005, OFA received a response to the preliminary TA.

[42] Given the relationship between the SIT and the STN, materials from the record of the STN decision would normally be reviewed, to the extent relevant, during active consideration of the SIT petition.

Whether There Is a Bilateral Political Relationship between the STN Governing Body and the Membership

Described Ground

The IBIA described the following ground raised by the CG: "Should the FD be reconsidered on the ground that "the STN tribal government does not have a bilateral political relationship with the Schaghticoke membership?" (41 IBIA 42).

Discussion

The IBIA summarized the claim by the CG that the current governing body of the STN "does not have a bilateral relationship with the membership, as required by the regulations, because Schaghticoke families do not have influence over tribal decisions and some families reject and do not support STN" (41 IBIA 41). The CG has been in conflict with the current STN leadership for a substantial period. Their objections here note that conflict as doe the STN former members who joined the SIT and refused to reenroll in the STN.

The STN FD extensively reviewed the history and present-day status of these conflicts, and concluded that STN met 83.7(c) for the period 1967-1996 (STN FD, 115-120, 124-125). Political opposition and rejection of leadership in itself does not mean that a political system which meets the requirements of 83.1 and 83.7(c) and thus the bilateral political relationship does not exist. The CG has not presented new evidence or arguments not reviewed for the STN FD.

Conclusion

Therefore, the ADS declines to reconsider the STN FD on this ground.[43]

CG Questions Richard Velky's Descent from the Historical Schaghticoke Tribe

The IBIA described one of the CG's allegations that was outside of its jurisdiction, but "that appear to relate directly to the FD" as an item for the AS-IA to consider on remand. The CG claim:

> There was insufficient evidence submitted to demonstrate that the Velky family line represented by STN's current leadership is descended from a Schaghticoke Indian, rather than from a non-Indian. (41 IBIA 42)

[43] See also this RFD's review of "Inclusion of Unenrolled Individuals in the Group Proposed to be Acknowledged."

The CG alleged that Howard N. Harris was not the son of James Henry Harris, who was a Schaghticoke Indian, but that both of his parents were non-Indians (CG 4/9/2004, 13). This is not a new argument. The STN PF and STN FD discussed this claim and evaluated the evidence that identified Howard N. Harris as one of the children of James Henry Harris and his wife, Sarah Snyder (a.k.a. Sarah Collins and Sarah Williams) (STN PF 114-115, 122; STN FD 134-135). The CG submitted photocopies of records that are already in the documented petition, none of which provide evidence to support their claim. The CG have not submitted any new evidence to refute the STN PF and STN FD findings that Howard N. Harris was the son of James Henry Harris, and a descendant of the Schaghticoke Indian tribe.

Conclusion

The ADS declines to reconsider the STN FD on this allegation.

Consideration of the Elton Jenkins Letter

Elton Jenkins who claims descent from Jabez Cogswell, a historic Schaghticoke Indian, wrote to the IBIA regarding the STN FD. In its decision regarding STN, the IBIA noted in footnote 12 that

> On January 6, 2005, the Board received from OFA, through the Solicitor's office, correspondence from Elton J. Jenkins dated June 7, 2004. The correspondence was intended for the Board of Indian Appeals, but was misdirected to OFA and received by that office on June 23, 2004. (41 IBIA 42, note 12)

The IBIA further noted:

> Mr. Jenkins' letter appears to be seeking 'interested party' status for a group of Schaghticoke Indians that once applied for or possibly held membership in STN, but is not included in the membership as recognized by the FD. Given the grounds on which the Board is deciding this case, it does not appear that Mr. Jenkins or those whom he may represent have been prejudiced by the Board's inability to address his request in a timely manner. The Board refers Mr. Jenkins request to the Assistant Secretary for appropriate consideration on remand. (41 IBIA 42, note 12)

In his letter, Elton Jenkins identified himself as a Schaghticoke descended from Jabez Cogswell through his daughter Ellen Cogswell Seeley. Jenkins also noted that:

> Until recently, we held membership with the Schaghticoke Indian Tribe of Kent Connecticut and believed that the tribe would represent us in the appeal process. However, the tribe separated themselves from us when

they filed their appeal. Now without legal representation, we have no choice but to defend ourselves. (Jenkins June 7, 2004)

Jenkins wrote on behalf of "our Indian group...the descendants of Jabez Cogswell through his daughter Ellen Cogswell Seeley." They wrote that they "are pleased that the Schaghticoke Tribe received federal recognition," did not object to the STN FD, but were "displeased that the recognition did not include our group." They sought to have the "community requirement under section 83.7(b)...relaxed for us too." The letter also mentioned that he and his family had been members of SIT.

To the extent that this letter is a request for reconsideration of the STN FD, it was not filed within 90 days of the publication of notice of the STN FD in the Federal Register. Nevertheless, this RFD notes that the STN PF addressed the question of Jenkins's claims of Schaghticoke descent, and concluded that Jabez Cogswell and his descendants married non-Indians and did not maintain relations with the rest of the group, and did not have descendants involved in the 20th century Schaghticoke group (STN PF, 108, 122). Moreover, the descendants of Jabez Cogswell did not satisfy the STN membership requirement of descent from reservation residents listed on the 1910 Federal census (STN PF, 118). Thus, to the extent Jenkins's group seeks membership in STN; the STN PF already addressed this issue. No new evidence or argument is presented in the correspondence that merits revisiting the analysis in the STN PF.

To the extent that Jenkins's group seeks to be federally acknowledged as a tribe, they must file a documented petition under the regulations. Therefore, the June 7, 2004, letter does not raise grounds for reconsideration of the STN FD.

Authority for the Acknowledgment Regulations

IBIA Decision

The IBIA referred to the AS-IA as a ground outside of its jurisdiction, the contention of the State that "there is no proper delegation of authority from Congress for BIA to recognize a group as an Indian tribe" (41 IBIA 37).

Summary of the State's Argument

The State argues that "Congress has never actually delegated the authority to acknowledge Native American groups as a federally recognized Indian tribe" (State Request 2004, 193). In the alternative, the State argues that the delegation of authority of "Indian affairs" is without "intelligible principles" to guide the Department's exercise of such authority, rendering the acknowledgment process unconstitutional (State Request 2004, 193).[44]

[44] The State raised the same arguments in its request for reconsideration of the Historical Eastern Pequot (State's Request 2002, 69-71). The EP and PEP RFD, issued at the same time as this STN RFD

The Department of the Interior has Authority to Promulgate the Acknowledgment Regulations.

Congress has charged the Secretary of the Interior with the supervision of public business relating to Indian tribes (43 U.S.C. § 1457). Numerous statutes deal with Indian tribes without defining what an "Indian tribe" is, and many condition eligibility for certain benefits on being an Indian tribe that is "recognized by the Federal Government." The Department considered the question of what groups constitute Indian tribes extensively in connection with tribal organization under the Indian Reorganization Act (Felix Cohen, *Handbook of Federal Indian Law,* 270 (U.S.G.P.O. 1942)). Subsequently, the Department's practices were formalized through notice-and-comment rulemaking in 1978 (43 FR 39361). The regulations were revised in 1994 through that same notice-and-comment rulemaking process, under the Department's general authority, 25 U.S.C. §§ 2 and 9, 43 U.S.C. § 1457 (59 FR 9280).

The Department's authority to promulgate acknowledgment regulations was upheld in *James v. U.S. Department of Health and Human Services*, (824 F.2d 1132, 1137, 1138 (D.C. Cir. 1987)), which held "Congress has specifically authorized the Executive Branch to prescribe regulations concerning Indian affairs and relations 25 U.S.C. §§ 2, 9 . . . Regulations establishing procedures for federal recognition of Indian tribes certainly come within the area of Indian affairs and relations."[45] The regulations themselves were upheld in *Miami Nation of Indians of Indiana v. Babbitt,*[46] and in *United Houma Nation v. Babbitt.*[47]

When the regulations were adopted in 1978, 40 requests for recognition of tribal status were pending and the Department was aware of an additional 130 potential petitioning groups. With this administrative workload and the importance of the decisions, rule-

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concludes that the Department has the authority to acknowledge groups as Indian tribes under its acknowledgment regulations.

[45]See also *Miami Nation of Indians of Indiana, Inc. v. Babbitt, 887 F. Supp. 1158, 1165* (N.D. Ind. 1995) (finding that acknowledgment regulations were promulgated under Congress' delegation of authority to the President and to the Secretary to prescribe regulations concerning Indian affairs and relations), *aff'd,* 255 F.3d 342, 346 (7th Cir. 2001), *cert. denied,* 534 U.S. 1129 (2002); *United Tribe of Shawnee Indians v. United States,* 253 F.3d 543, 549 (10th Cir. 2001) (finding that the Bureau of Indian Affairs has been delegated the authority to determine whether recognized status should be accorded to previously unrecognized tribes); *Kahawaiolaa v. Norton*, 222 F. Supp. 2d 1213, 1215 (D. Haw. 2002) *aff'd,* 386 F.3d 1271 (9th Cir. 2004), *cert. denied,* 125 S. Ct. 2902 (June 13, 2005)(finding that, pursuant to the Department's authority to adopt regulations to administer Indian affairs, the Department adopted comprehensive regulations that govern its decisions concerning tribal status); and *Burt Lake Band of Ottawa and Chippewa Indians v. Norton*, 217 F. Supp. 2d 76, 77 (D.D.C. 2002) (stating that "pursuant to this delegation of authority to [the Department], BIA promulgated regulations establishing procedures for federal recognition of Indian groups as Indian tribes").

[46]887 F. Supp 1158, 1165 (N.D. Ind. 1995), *aff'd,* 255 F.3d 342, 346 (7th Cir. 2001), *cert. denied,* 534 U.S. 1129 (2002).

[47]1997 WL 403425 (D.D.C. 1997).

making was a manifestly reasonable method of addressing the issue. Congress knew of the Department's actions and deferred to the Department.

Since the regulations were adopted, Congress has held numerous hearings on recognition or restoration of specific Indian tribes and several oversight hearings on the acknowledgment process. Congress has not changed the criteria or process. If the regulations conflicted with Federal statutes and Congressional intent, Congress could have clarified this matter. Instead, Congress has knowingly deferred to the agency's interpretation. As stated in *United Houma Nation,* "[T]his court . . . cannot ignore the evidence indicating that Congress is aware of the agency's regulations . . . but has nevertheless failed to act." (1997 WL 403425, 8).

Finally, Congress has supported the decisions made under the administrative process by appropriating money to the "new tribes" budget line item following decisions by the Department to acknowledge Indian tribes under the regulations.

Conclusion

Numerous courts have upheld the regulations, issued under the general delegation of authority over "Indian affairs" to the Department. In addition, Congress is very much aware of the Department's Federal acknowledgment administrative process and has acquiesced in it and its standards. This RFD concludes that the Department of the Interior has authority to promulgate the Federal acknowledgment regulations. The ADS, therefore, concludes that this issue is not a ground for reconsideration of the STN FD.

Appendix I

SUMMARY TABLE:
PRECEDENTS IN THE OF USE OF MARRIAGE RATES FOR 83.7(b)(2)(ii)[48]

Examinations That Counted Marriages

Jena Band of Choctaw
PF (1994)
PF Summ. (3-5, 7, 9-15)
PF GTR Appendix I.
Conclusion: High enough to meet the requirements of 83.7(b)(2)(ii).
FD: Did not address the issue beyond citing the PF.

United Houma Nation
PF (12/1994)
PF Summary (10-14) Refers to 50% of marriages as evidence for 83.7(b)(2)(ii) (p.12)
PF GTR (22-24) Counts individuals with one vs. two Houma parents, i.e., marriages.
FR did not reference 83.7(b)(2(ii), but stated: "limited evidence that they tended to marry each other more frequently than they married outsiders"
Conclusion: High level, but insufficient data to reach a conclusion.
FD (None issued to date)

Eastern Pequot and Paucatuck Eastern Pequot
PFs (2000)
EP PF (90) and PEP (93) Counted marriages. Cited 83.7(b)(2)(ii)
Conclusion: Did not meet the requirements.
FD and RFD analysis did not alter the PF

Little Shell Chippewa
PF (2001)
PF Summary (14-19)
PF TR (175-179)
Conclusion: Rate high enough to meet the requirements, but did not meet because community within which marriages occurred was not adequately identified.

Duwamish
PF (2001)
PF AR (40, 70)
FD TR (31)
Conclusion: Did not meet the requirements.

[48] This table records all acknowledgment decisions prior to the STN FD which specifically referenced 83.7(b)(2)(ii) or where the text otherwise indicated that an evaluation under that section had been made.

Examination Counting Individuals

STN

PF (2002)

PF (88) referred to "rate of endogamous marriages" and to 83.7(b)(2) without further discussion. Methodology indeterminate.

FD (2004)[49]

FD TR (18-29, 36-39), Appendix I, tables 3 and 4.

Conclusion: Meets 83.7(b)(2)(ii).

Examination under 83.7(b)(2)(ii) Probably Counting Marriages

RMI[50]

PF 1993 (issued under the 1978 regulations)

PF (7) references "in group marriages"

PF ATR (21) references marriages fairly clearly.

FD (1996)

FD TR (65-67) Cites 83.7(b)(2). Uses term "endogamy," refers to "lists of marriages," and "endogamous marriages," not to individuals.

FD TR (79, 82-3) FD Summ. (24) Cites sufficient level (83.7(b)(2)(ii)) for marriages "taking place" between 1901 and 1918. Also referenced "group endogamy," "married each other at a high rate."[51]

Huron Potawatomi

PF (1995)

PF Summary 10-11, HTR 91, GTR 35-36, ATR 9-20, 51).

Note: The Supplemental Transmittal identified HP as probably counting marriages. Further review for this RFD concludes marriages rather than individuals were counted, but 83.7(b)(2)(ii) was not referenced. The PF and FD concluded that HP met 83.7(b)(2), but on the basis of residence evidence, under 83.7(b)(2)(i).[52]

FD 1995.

FD Incorporates PF, with no new analysis or evidence.

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[49] Vacated by 2005 IBIA decision.

[50] A review of the reports on RMI finding and the evaluations in it indicates that the method of counting was probably marriages rather than individuals but the text statements and analyses do not allow a definitive conclusion. It did not include statistics or statements which definitely indicated counting individuals for purposes of 83.7(b)(2)(ii). The texts referred to "marriages" in most cases. The primary evaluations and analyses in RMI case did not refer to "individuals." The methodology was not explicitly stated, but the summary marriage statistics indicated the approach used.

[51] Counting basis apparently marriage, but this is not entirely clear from the summary or TR text itself.

[52] The finding summarized marriage rates under 83.7(b)(1)(i), counting marriages within the group, together with a high rate of culturally patterned out marriages.

APPENDIX II

Schaghticoke Marriages 1801-1900

This analysis replaces tables 3 and 4 of the STN FD. Names, dates, and analyses that differ from that in the STN FD are in ***bold italics***. The STN petitioner submitted a "Brief on Endogamy" on August 12, 2005, which included some new dates and analysis for the years between 1800 and 1869.

The names of the individuals or couples are from the 1789 Stiles list, entries in the Schaghticoke overseers' account books, Federal censuses, and other contemporary records. Many dates in this table are approximate (after x or before y), based upon the birth of a child, marriage certificates, birth or death certificates, tombstone inscriptions, the appearance of the individual on a census, the mention of the purchase of a coffin in the overseer's ledger, etc. See FAIR for "Remarks" under each individual for more complete citations.

This is not meant to be a complete genealogical accounting of all Schaghticoke families, but is a listing of the identifiable marriages in the 19th century for the purposes of estimating endogamous marriage rates. It is based on the best evidence available at this time. There are a few other individuals mentioned in the overseers' accounts; however, the entries did not provide evidence to reasonably determine that the individual was married or had children; therefore, they were not included in this table.

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Joseph Chuse Mauwee/Sarah[53]	before 1789 on Stiles Report	1803	S/S	Extant in 1800: 1803 petition to the Gen. Assembly from the overseer of Joseph Mauwee's (deceased) estate; coffin for Sarah in 1812
Elihu Chuse Mauwee/Sarah	before 1789 on Stiles Report	1809	S/S	Extant in 1800: coffin for Elihu in 1809; "Old Sarah" died in 1810
Peter Mauwee/Eliza Warrups Chickens	before 1789 on Stiles Report	1812	S/S	Extant in 1800; Eliza's heirs named in 1812; coffin for Peter 1822

[53]She was documented by Stiles in 1789 as having been born in the "East Haven" tribe, was enumerated by Stiles in the 1789 Schaghticoke census, and was carried on the Schaghticoke overseer's records. This couple lived at Derby, New Haven County, Connecticut, prior to moving to Schaghticoke. Joseph was a son of Schaghticoke chief, Gideon Mauwee (abt. 1687-1760).

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Peter Sherman/Sibbil	before 1789 on Stiles Report	1802	S/S	Extant in 1800; coffin for "Sybell" in 1802; coffin for Peter in 1812
Rufus Bunker/Roxa [Mauwee?]	before 1796 [est. from birth of eldest child]	1842	S/S	Extant in 1800; overseer paid for her funeral in 1842; Rufus d. after 1860
Benjamin Chickens/Sarah	1794-1800 [est. from birth of first child]	1828	S/S	Extant in 1800: coffin for Benjamin in 1828; Sarah Chickens in overseers' accounts in 1829
Aaron Chappel/*mother of his children or Haner/Hagar*	***before 1775***[54] ***[est. from age of Aaron Chapel Jr.]***	1831	U/S	The mother of Aaron Chappel's children appears to be Schaghticoke; whether she was "Haner/Hagar" who was his widow in 1831, or another woman, possibly Martha Obadiah. See analysis above discussing the State's assertions that neither was Schaghticoke.
Jonah Cocksure [Jonas Coshire]/ Lydia Toto	***before 1800 [est. from birth of daughter, Hannah]***	***after 1810***	***S/S***	***Both were named and single in Stiles report; at least one daughter b. before 1800; "Jonas Coxsure" on 1810 census in a household of 9 "free colored people," but no ages/genders***
Abraham Rice/Martha Chappel [a.k.a. Patty]	about 1800 [Est. from birth of eldest child]	1856	S/S	both named in overseers' accounts; Abraham d. 1856; Martha d. abt. 1867

[54]See: *Gravestones of Old Dutchess County, New York,* Vol. 2, p. 46 which says Lucy, daughter of Aaron and Haner, died April 11, 1814, aged 20 years. The 1830 and 1840 Federal censuses of Chenango County, New York lists Aaron Chapel [Jr.] between age 36 and 55 in 1830 and between age 55 and 100 in 1840; therefore, he was probably born about 1775. This gives a beginning marriage date for Aaron Chapel [Sr.] and his Schaghticoke wife as before 1775.

The FD noted that there was a November 24, 1774 marriage for Aaron Chappel and Martha Obadiah in Amenia, Dutchess County, New York, but "It is not known whether this pertains to the same Aaron Chappel" (citing: ttp://www.familysearch.org/Eng/Search/IGI/family_group_record.asp? family id+11663767...4/11/2003) (See STN FD, 151, ftn 104). Could this Martha Obadiah be the 28-year old "Martha has children" referred to in the Stiles report?

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Dennis Mauwee/Polly	before 1802 [est. from birth of son, John]	1812	S/S	coffin for Dennis in 1812; coffin for Polly in 1828
Peter Sherman/ Eunice Mauwee[55]	about 1802 [est. as after the death of Peter's first wife, Sibbel]	1812	S/S	coffin for Peter Sherman in 1812; Eunice d. 1860
Ann/Unknown	before 1805 [est. from death of a child]	***1808***	S/U	Coffin for Ann's child October 1805; coffin for Ann 1808
Mima/Unknown	before 1805 [Est. from death of a child]	***after 1811***	S/U	Mima's child's coffin October 1805; shirt for another child in 1811
Jeremiah Cogswell/ Wealthy Gauson	about 1805 [Est. from birth of eldest child]	1848	S/U	Overseer pd. for Jeremiah's funeral in Cornwall in 1848; Wealthy d. in 1863
Schaghticoke man/ White woman	about 1805-1815 [Est. from various ages attributed to Lavinia Carter]	before 1821, probably earlier	S/U	Parents of Lavinia Carter, granddaughter of Eunice Mauwee, born abt. 1806, 1808, or 1815 [age varied on censuses and death record]
Job [Suckanuck?]/ Eunice Job	***before 1806 [Est. from having a child by 1806]***	1820	S/S	Schaghticoke accounts: 1806 frock for "Job's child," 1817 Job's family; coffin for Job in 1820; gown for Eunice Job in 1821
Joseph Mauwee/ Unknown	before 1809 [Est. from age of child]	1813	S/U	Coffin for Joseph Mauwee in 1813; Joseph's children mentioned, January 1814 and following
Schaghticoke/ Schaghticoke[56]	***1809-1821 [Est. from birth year of daughter Rachel Mauwee]***	***after 1828-1833***	***S/S***	***Parents of Rachel and Abigail Mauwee [full sisters] and granddaughters of Eunice Mauwee; Rachel prob. b. December 1812-1813 and Abigail b. between 1828 - 1833***

[55]Petitioner's analysis (Austin 8/8/2003a, 28) included the prior marriage of Eunice Mauwee to John Sutnux. However, there is no evidence that John Sutnux survived past 1800.

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Aaron Chappel [Jr.] /Unknown	***prob. before 1810 [Est. from children's ages 1830 & 1840]***	***after 1830***	S/U	***Moved to Chenango County, NY before 1820; 36-55 year old female [assumed wife] in house in 1830, but not there in 1840***
Deborah Chappel/Isaac Rodgers [Rogers]	***before 1810 [Est. from appearance on 1810 census]***	***between 1830 and 1831***	S/U	***Isaac [Sr.] on 1830 census, but apparently deceased before the May 1831 deed; Deborah d. after 1831; the Isaac Rodgers' funeral pd by overseer in 1823 appears to be their son***
Jacob Mauwee/ Unknown	before 1812 [Est. from death of a child in 1812]	after 1822	S/U	Jacob Mawwee, child's coffin February 1812; the funeral of a Jacob Mauwee was paid by the overseer in 1848; no evidence if it was the same man.
Pequot/ Pan [Schaghticoke]	***before 1813 [Est. from the age of son John, b. abt. 1813]***	***after 1817***	***I/S***	***Parents of John Harris (b. abt. 1813) & Henry Harris (b. abt. 1817) who was said to be full-blood Indian, but with ascription of various tribes other than Schaghticoke. John & Henry were in overseers' accounts and Henry signed 1876 & 1884 petitions***
Pann [Jo Pene?]/ Unknown	about 1813 [Est. from the birth of son Jeremiah, b. abt. 1813]	1820 or before	S/U	Parents of Jeremiah P. Pann (b. abt. 1813) & Ann Pann (b. before 1820); the father is possibly Joe/Jo Pene who was ill in 1812 and whose funeral was in 1820
Marianne Chappel/ Thomas Kelley	about 1814 [Est. from the birth of child, Flora, in abt. 1815]	***after 1822 & before 1831***	S/U	child b. abt 1815, Thomas Kelly cared for Peter Hines in 1814 & listed in North Kent Store ledger in 1822, but probably deceased before 1831 deed
Charlotte Mauwee/ Timothy Vandore	about 1818 [Est. from birth of a child in 1819]	1835	S/U	Charlotte age 3 on Stiles; 1st known child b. 1819; Charlotte's funeral pd. for in 1835

[56]Lavinia Carter and Rachel Mauwee were identified during their own lifetimes as granddaughters of Eunice Mauwee. One record was made between 1881-1884 by a man who visited the reservation in company of overseer Henry Roberts, and spoke with Lavinia. He stated that they were half-sisters, Lavinia's mother having been white, while Rachel was a "full-blood."

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Gideon Sherman/ probably Rhoda	***before 1818 [Est. from reference to "Gid's wife" in 1818***	***1819***	***S/S***	***Overseer pd for shoes and rum for "Gid's wife" in 1818, Rhoda died in 1819; milk & sugar for "Gid's child" 1819-1820; and coffin for Gideon in 1821***
Jeremiah Tomuck/ Unknown	before 1819 [Est. from reference to JT's "family" in 1819]	1837	S/U	Overseer pd for taking care of "Jere Tomuck's family" when sick in 1819 and "fetched" Jere's family in 1828, & pd for J. Tomuck grave in 1837
Luman Taber Mauwee/ Hannah	11/3/1819 [from divorce record]	***before 1824 (separated)***	S/U	Marriage date in divorce record, which shows they separated in 1824 and divorced in 1829. Hannah's maiden name not identified in the divorce record
Miah/ Unknown	***before 1820 [Est. from date of child's coffin in 1820]***	***1824***	***S/U***	***Coffin for Miah's child April 1820, medicine & care for another child 1821-1822; coffin for Miah in 1824; "Miah" does not appear to be the "Nehemiah" who was cared for "in his last sickness" by Lavinia who was paid in Dec. 1825.***
Alexander Kilson/Parmelia Mauwee	12/3/1820	1844	S/S	Exact marriage date in STN's FTM, but no source: 1st. child b. 1821; overseer pd for Alexander's burial in 1844
Schaghticoke/ Unknown[57]	1820-1825 [Est. from age of son, Truman Bradley]	unknown, estimated: aft 1825	S/U	Parents of Truman Mawwee-Bradley, his birth variously listed as 1821, 1823, or abt 1825
Nancy Chickens/ James Phillips	11/5/1823	1837	***S/I***	1823 Kent town record; Nancy died in 1836; James Phillips was identified as "Indian" on his death certificate

[57]A Connecticut State genealogical chart made in the 20th century stated, without documentation, that Truman Mauwee/Bradley was said by some to be a half-brother of Rachel Mauwee and Abigail Mauwee (but not that he was a half-brother of Lavinia Carter).

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Abraham Peters/ Unknown	before 1823 [Est. from date of child's funeral]	before 1831	S/U	Funeral for Abraham Peters' child paid for in 1823; funeral for Abraham paid for in Jan. 1831
Walter [Rylas]/ Fear	***before 1824 [Est. from date of coffin for child]***	***1826***	***S/S***	***Coffin for Walter's child in July 1824; grave clothes for Walter in 1826; Coffin for Fear's child in May 1830; coffin for Fear July 1834; care for Albert Rylas beginning in 1835***
Unknown/ Lavinia Carter	before 1824 [Est. from birth of child, Laura]	prob. 1824	U/S	Birth of Laura Carter ca. 1824.
Luman Taber Mauwee/Sarah ***[Mauwee ?]***	11/3/1829 Bible	1834	S/U	Marriage of Luman T. Mauwee and Sarah in Family Bible is ambiguous for her maiden name; grave for Taber in Nov. 1834
Nathan G. Cogswell/ Melissa Price	1836 [Est. from birth of child, Sarah]	1881	S/U	Child Sarah b. 1836; Nathan signed 1876 petition.[58] Nathan & Melissa both living in 1880
Adonijah Cogswell/ Unknown	before 1837 [Est. from coffin for child]	1837	S/S	Coffin for Adonijah in 1837 & presumption that his wife was Schaghticoke based upon "dress for Widow Cogshall"
Jabez Cogswell/ Marie Hamlin	about 1839 [Est. child born in 1840]	1850	S/U	Child b. 1840; Marie died in 1850; Jabez in 1864 overseers' report

[58] See pages from Melissa Cogswell's dependent mother's pension application on son Williams' Civil War service: Ex. G, affidavit of Nathan Hart, age 59 of Cornwall, knew Melissa and Nathan well: "Said Nathan Cogswel is a half breed Indian and is said __ [illegible ?thot?]__ to be chief of the Schaghticoke tribe of Indians, affiant does not know that he received any annuity as an Indian. . . " Melissa also submitted a statement in January 1879, said she was 65 years old [b. ca 1814] and that William H. Cogswell, Lt. in the 2nd Reg. of Connecticut Heavy Artillery, had devoted his wages to the family before he went into service. Affiant Nathan Cogswell said he was b. Jan. 5, 1809, "a member of the Schaghticoke tribe of Indians and is entitled to an annual "pittoner," not exceeding five dollars per annum in clothing, but the expense of going for it has been nearly equal to the value of it and affiant has not drawn anything for three years for that reason."

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Sarah Rice/ William Henry Fowler	about 1839 [Est. from age of child on 1860 census]	before 1871	S/U	Only one overseer's mention, 1865; did not sign petitions. See 1871 estate records of Sophia Rice
Sarah Bunker/ van Rensselaer	about 1839 [Est. from birth of child abt. 1840]	before 1880	S/U	Child b. abt. 1840; Sarah's 1883 dc says "widow" & she is in her daughter's home in Amenia, Dutchess Co., NY 1880 census
Loraine Vandore/ George Parrott	1/1/1840 [Sharon, CT, Town Record]	1881	S/U	STN's FTM cites the Sharon Town record for exact date; Two overseer's mentions, first in 1858-1859 and last in 1865; George Parrot d. in 1881; Lorraine d. 1906
Luman Bunker/Unknown	before 1840 [Est. from census]	1860 [or earlier]	S/U	Adult female, presumed wife in his household on 1840 census, but not located in 1850. Luman was alone in 1860 census, but "married" in his 1860 dc
Elihu Mauwee/ Alma Mauwee	before 1840 [Est. from coffin for child]	about 1859	S/S	Coffin for Alma's child in 1840; Elihu d. abt 1859, Alma d. 1876
Eli Bunker/ Fannie Maria Watson	2/9/1842 [Cornwall, CT, vital record]	before 1860	S/U	1842 marriage record in Barbour Collection of CT vital records; Eli appears alone on 1860 and later censuses; he died in 1888.
Melissa Vandore/ Homer Harris	1/20/1843 [Sharon, CT, Town Record]	1849	S/U	Abstract of 1843 town record in FTM; she d. 1849
Truman Bradley/Julia Kilson	*3/24/1844* [Kent, CT, town record]	1892	S/S	Abstract of 1844 town record in FTM; Julia d. 1892; Truman d. 1900
Delia J. Kilson/ Reuben Rogers	5/24/1846 [New Milford, CT Town Record]	after 1880	S/U	Abstract of 1846 town record in FTM; both living in 1880 census; her brother's 1907 obituary implies she is deceased, but no new evidence as to when

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Laura Carter/ John Skickett	***about 1847 [Est. child born in 1848]***	***aft 1861 – before 1868***	S/I	Child b. 1848; Skickett an Indian from New York; he was married a 2nd time by 1868
Alexander Value Kilson/ Eliza Ann Kelly	1/31/1848 [Kent , CT Town Record]	1899	S/S	Abstract of Kent Town Record 1848; she d. 1899, he d. 1907; both named in Schaghticoke accounts; both signed 1876 & 1884 petitions
Mary Ann Phillips/Riley Cogswell	***1/21/1849 [New Milford CT, town record]***	***abt. 1877***	***S/S***	***1849 marriage record; Riley was the son of Jeremiah and Wealthy (Gauson) Cogswell: see estate record of Jeremiah Cogswell; Riley died abt. 1877***
Emily Cogswell/ Abner L. Rogers	11/29/1849 [Cornwall, CT, vital record]	after 1860	S/U	Abstract of Cornwall marriage record 1849 in Barbour Collection of CT vital records; both living in 1860 census
Caroline Kilson/ Albert Rylas	about 1849 [Est. from birth of child in 1850]	1854	S/S	Child b. abt 1850; Caroline m. 2nd. Oliver Potter by 1858
Ann M. Cogswell/ William Jenkins	about 1849 [Est. from age of eldest child]	1894	S/U	See 1860 census, Litchfield, Litchfield Co., CT for William and Ann with family; William d. 1892; Ann. D. 1895
Abigail Mauwee/ Henry Harris	about 1849 [Est. from birth of child in about 1850]	1895	S/S	Son James Henry Harris born 1850; both Abigail and James signed the 1876 & 1884 petitions; both in overseers' accounts & fund paid for Henry's casket in 1895
Rachel Mauwee/ John Harris	about 1851 [Est. from child born abt. 1852]	after 1870	S/S	Son, Charles Henry Harris, born about 1852; Rachel and John in same household in 1870 census
Jabez Cogswell/ Marcia Ann Heddy	about 1851 [Est. from child born in 1852]	1901	S/U	Child b. 1852; Marcia d. 1901
Joseph D. Kilson/ Mary Jane Kelly	10/10/1852 [Kent, CT Town Record]	before 1857	S/S	Abstract of Kent Town Record; 1857 divorce assumed, Joseph D. married 2nd In 1857

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Mary Ann Kilson/ Lazarus Frank	8/2/1855 [Kent, CT Town record]	1882	S/U	Abstract of 1855 Kent town marriage record in FTM; he d. in 1881 & she d. in 1889
Joseph D. Kilson/ Nancy M. Kelly	2/21/1857 [Kent CT, town record]	1871	S/S	Abstract of 1857 Kent Town Record; Joseph D. died in 1871; Nancy signed the 1876 and 1884 petitions, she d. 1920
Sarah Van Rensselaer/ W. K. Mowers	about 1858 [Est. from birth of child in 1858]	after 1880	S/U	child b. 1858; Sarah and spouse on 1880 census in Amenia, New York
Caroline (Kilson) Rylas/ Oliver Potter	about 1858 [Est. from birth of child in 1858]	after 1860	S/U	Child b. 1859 and 1860; end date based on birth of last child
Rosetta Cogswell/ William Peters	3/23/1859 [Cornwall, CT town record]	1871	S/U	Abstract of Cornwall 1859 Town record in FTM; William Peters married 2nd before 1875
Mary Jane Fowler/ William Peacher	before 1867 [Est. from birth of child]	before 1879	S/U	See abstracts of the Dutchess County, NY, surrogate court records on the estate of Sophia Rice (1871-1880)]
George H. Cogswell/ Sarah Lavina Bradley	3/11/1867 [New Milford, CT town record]	after 1880	S/S	Abstract of 1867 New Milford CT town record in FTM; they were separated by 1880 & she petitioned for a divorce in 1884.
Newton Cogswell/ Pauline M. Hofmann	12/15/1867 [Cornwall, CT town record]	1876	S/U	Abstract of 1867 Cornwall CT town record in FTM; both died in 1876 – he served in the Civil War
Mary Jane Kelly/ Theodore Abel	10/1/1862 [in 1883 divorce record]	1879	S/U	Abstract of 1883 divorce record gives the marriage date and that they separated in 1879
Benjamin Rogers/ Unknown	about 1870 [est. from age of eldest child]	after 1885	S/U	(son of Delia Kilson Rogers) dates from ages of his children'
Helen A. Bradley/ Andrew Burr Phillips	10/23/1874 [New Milford, CT, town	1892	S/U	Abstract of 1874 New Milford town record; she d. 1892, he died in 1909

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
	record]			
Frances J. Bradley/ John Smith	11/24/1874 [Monroe, CT, marriage record]	1911	S/U	Abstract of 1874 Monroe, CT marriage record; he d. 1911, she died in 1919
Charles William Kilson/ Sarah Peters	***before 1875 [Est. from the birth of their child]***	***after 1875***	***S/U***	***child b. 1875; (the mother had 2 other children, but no evidence Charles W. Kilson was the father)***
James Henry Harris/Sarah Snyder	about 1875 [Est. from age of eldest child]	1909	S/U	STN FD concluded that Sarah Snyder, Sarah Collins, and Sarah Williams were alternate names for the same woman.
Sarah Ella Kilson/ William O. Schmidl	6/9/1876 [Colchester, CT record]	1895	S/U	Abstract of 1876 Colchester CT marriage record in FTM, she married 2nd in about 1895
George Wesley Bradley/ Lillian J. Penfield	12/31/1877 [Stratford, CT, marriage record]	1901	S/U	Abstract of 1877 Stratford, CT marriage record; he d. 1901, she d. 1904
Emelia Rogers/ Amos Taylor	about 1877 [Est. from child's age]	after 1885 (estimate)	S/U	[CT State chart cited in FTM]
Mary Ett Kilson/ Edward Watson	before 1879 [Est. from age of child]	after 1883	S/U	dates from ages of children, she married 2nd in 1896
Harriet B. Frank/ Unknown	before 1879 [Est. from birth of child in 1879]	unknown	S/U	Birth of child in 1879.
Charles Lyman Kilson/Alice Estella Dwy	1880 [Est. from birth of child in 1881]	after 1898	S/U	child b. 1881; wife died after 1902; he d. 1935
Harriet B. Frank/ William McGill	1880 [New Milford, CT, marriage record]	Unknown	S/U	Abstract of 1880 marriage record in FTM; no information on the rest of their lives

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
Augusta Rogers/ Collier Black	abt. 1877 [Est. from birth of a child]	after 1887	S/U	
Sarah Lavina Bradley/Charles Lane	after 1880	before 1909	S/U	Supposed elopement; based on modern interview data, unconfirmed; similar date to verified story concerning Charles Henry Harris and Helen Lossing Skickett.
Helen Lossing Skickett/Henry E. Wilmot	1881	1885	S/U	
Charles Henry Harris/Helen Lossing Skickett	about 1882	1882	S/S	Temporary elopement, which took place during her marriage to Wilmot.
Walter Rylas/ Charlotte Jackson	10/9/1882 New Milford, CT, marriage record	unknown	S/U	Walter Rylas died in 1913
Ida Elizabeth Kilson/Frank DuPrez	about 1883 [Est. from child born 1884]	before 1887	S/U	
John Henry Bradley/Georgianne V. DeCosta	8/8/1884 Stratford, CT, marriage record	unknown	S/U	He died in 1936
William Rogers/ Mary Black	after 1885 (estimate)	unknown	S/U	Information from CT State genealogy charts only
Charles William Kilson/Mary Elizabeth Beers	before 1887	unknown	S/U	date est. from birth of a child in 1887; Charles William Kilson died in 1934
Cornelia J. Bradley/ James Fuller	9/2/1886 Stratford, CT, marriage record	after 1902	S/U	
Ida E. Kilson/ David D. Thomas	1887	after 1913	S/U	child born in 1888
John William Kilson/ Ida Laura Staples	2/21/1889 Bridgeport, CT, town record	1892-1898	S/U	

Names	Beginning Date	Ending Date	Type S=Schaghticoke; I=other Indian; U=Unknown/non-Indian	Notes
William Truman Cogswell/Gertrude G. Johnson	7/5/1890 New Milford, CT town record	1942	S/U	
Minnie Kilson/ William H. Bixby	before 1892	unknown	S/U	child b. 1892; Minnie Kilson died after 1842
Truman Bradley/ Mary Jane Kelly	3/30/1893 New Milford, CT town record	1900	S/S	
Carrie B. Phillips/ George William Riley	9/18/1894 New Milford, CT town record	1935	S/U	
Sarah E. Kilson/ Frank White	abt. 1895	after 1903	S/U	child b. 1896
Alice L. Bradley/ Charles F. Hawley	abt. 1896	1902	S/U	child b. 1897
Mary Ett Kilson/ Peter Jessen	5/24/1896 Amenia, Dutchess County, NY	1915	S/U	
Florence J. Smith/ Hubert Johnson	6/25/1896 Trumbull, CT record	1949	S/U	
Elsie Harris/ Albert Bishop	abt. 1896	1898	S/U	child b. 1897
Bertha Watson Kilson/ Charles Stevenson	abt. 1897	before 1903	S/U	child b. 1898
Elsie Harris/ Erwin Dwy	abt. 1899	1900	S/U	child b. 1900

APPENDIX III

Schaghticoke Listed on the 1902 Census

State	County	Town	Distance from Reservation	Individuals
Connecticut	Litchfield	Reservation	0	Rachael Mauwee
				Mary Kilson
				Bertha Kilson
				Earl Kilson
				Charles Kilson
				Robert Kilson
				George Kilson
				Value Kilson
				Fred Kilson
				James Harris
				Frank Cogswell
				Grace Harris Stowes
				Alice
				Bill Stowes
				Edson Harris
				Frank Harris
				Gertrude Harris
				Howard Harris
		Kent	1 miles	Jessie Harris
		Cornwall Bridge	8 miles	Charles Cogswell
		New Milford	8 miles	Mary Cogswell
				Nancy Moody & 2 children
				John Bradley
				Walter Kilson Rilas
				Sidney Rilas
				Will Cogswell
				Sara
				Julia
				Hazel
				Bill
				Lewis Cogswell & 3 children
				Etta & 1 child
				Lois Harris
		Sharon	12 miles	Lucinda Parrott
				Ed Parrott
				Ed Parrott
	New Haven	New Haven	36 miles	Ann Cogswell Jenkins

				& 3 children
				Ida Kilson Thomas & 3 children
				Archie Cogswell
				Fred Cogswell & 1 child
				Mary Cogswell
		Ansonia	30 miles	Jabez Cogswell
		Branford	42 miles	Lyman Kilson
				Martha
				Olive
	Hartford	Hartford	38 miles	Ben Rogers
				Alice
				Ada
				Benjamin
	Fa rfield	Long Hill	32 miles	Sidney Kilson Potter
				Emily Kilson Potter Lynch
		Stratford	36 miles	Francis Bradley Smith
				Florence Bradley
				Lester Bradley
				Esther Bradley
				Frank Bradley
				Joe Bradley
				Sarah Bradley Hawley
				Everett Hawley
				Estella Harris
		Bridgeport	36 miles	Alonzo Bradley
				Henry Bradley
				George Bradley
				Carrie Bradley
				Delia Kilson Rogers
				Aurelia & 2 children
				Augusta Rogers Black
				Alice [Black]
				Fred Black
				Will Rogers & 4 children
				Joe Kilson
				Minnie Kilson Bixby
				Clifton Bixby
Rhode Island	unknown	unknown	unknown	Ella Kilson
				Fanny
				Will
				One unknown

Massachusetts	Hampden	Springfield	50 miles	Eliza Cogswell Hill & 1 child
		Boston	130 miles	Ellen Cogswell & 1 child
New York	Ulster	unknown	Unknown	Sarah Bradley Cogswell
	Unknown	unknown	unknown	Julia Cogswell
	Duchess	Webotuck	5 miles	Elsie Harris King
				Will King
				Leonard King

ERRATA

Schaghticoke Tribal Nation Reconsidered Final Determination

The following is a list of corrections to some typographical errors and editorial oversights found in the text of the Summary of the Criteria and Evidence of the Schaghticoke Tribal Nation Reconsidered Final Determination. None of the errors are significant and they do not affect the ultimate result of the finding.

Table of Contents, line 14 should refer to "Criterion 83.7(c)"

Page 2, first paragraph in Overview of the IBIA Decision, line 4: delete "the use of"

Page 3, first paragraph, line 3: replace "HEP FDs" with "HEP FD"

Page 3, fifth full paragraph, line 1: insert "other" after the word "three"

Page 5, last paragraph, line 3: replace "273" with "271"

Page 15, third full paragraph, add the words "population" and "significant" to the first sentence and make the last word plural, so the first sentence reads: "This RFD uses the list of marriages used for the STN FD to define the Schaghticoke population between 1801 and 1900 without significant changes."

Page 17, third line: "unknown" should be on line two for the end-date of the Schaghticoke/Schaghticoke marriage: abt1809/1812 - unknown

Page 22, last paragraph, last sentence, replace "has" with "lacks" to read: "This argument lacks merit because the above citations from other sources provide evidence showing her to be Schaghticoke."

Page 25, first full paragraph, second sentence: insert the word "to" after the word "be"

Page 25, footnote #23, insert the word "State" so the first sentence reads: "The State and Towns agree . . ."

Page 29, indented quote at the bottom of the page, delete the word "one" in the first sentence insert the word "once" before "powerful," so the sentence reads ". . . a branch of the once powerful Pequod tribe . . ."

Page 34, second full paragraph, line 7: replace the word "are" with "is"

Page 34, second paragraph, line 8: replace the word "tract" with "trace"

Page 34, last paragraph, line 1: replace the word "high" with "higher"

Page 35, third full paragraph, line 2: replace the word "vital" with "marriage"

Page 38, third paragraph, add two sentences from page 62 before the last sentence:

> By virtue of SIT's and CG's request for reconsideration, 33 of those on the list of 42 have affirmatively declined to consent to be included in the STN. In addition,

as the STN FD noted, 14 other individuals who were part of the community were also not enrolled.

Page 39, last paragraph, first sentence should read: "The Federal censuses also provided the names of other Schaghticoke Indians not listed in the overseer reports."

Page 46, the name of one the historical tribes is misspelled in several places on this page: the correct spelling is "Weantinock"

Page 51, first paragraph, line 13: replace "tribe" with "tribes"

Page 53, second paragraph, line 3: replace "Indians" with "Indian"

Page 56, the footnote numbered "35" within the quoted text should read "note 72" as in the text from the STN FD

Page 58, first partial paragraph, second full sentence should read: "In addition, as the STN FD noted, there were 14 other individuals who were part of the community who were not on the STN membership list."

Page 59, second full paragraph: insert the citation (41 IBIA 42)

Page 60, second full paragraph: add end-quote and merge second and third sentences to read:

> Although the STN FD concluded that: "The difference between 42 and 56 potential members who are considered a part of the Schaghticoke community is not significant and does not include or exclude families not previously seen to be a part of the community" (STN FD, 55), when these 14 and the 42 (at least 33 are not on the STN membership list) are added together, the difference between the STN enrollment and the community becomes significant.

Page 65, second full paragraph, last sentence: replace the word "doe" with "do"

Page 65, third full paragraph, add commas and insert "the requirement for" in second sentence to read:

> Political opposition and rejection of leadership in itself does not mean that a political system that meets the requirements of 83.1 and 83.7(c), and thus, the requirement for the bilateral political relationship, does not exist.

Page 66, first paragraph under Consideration of the Elton Jenkins Letter, add commas and replace "historic" with "historical" to the first sentence to read: "Elton Jenkins, who claims descent from Jabez Cogswell, a historical Schaghticoke Indian, wrote to the IBIA regarding the STN FD."

Page 67, first full paragraph, line 3: insert the word "and" after the word "recognition"