

*Swinomish Tribal Community*

A FEDERAL CORPORATION CHARTERED UNDER THE ACT OF JUNE 19, 1934

MOORAGE &amp; MARINA FACILITIES ❖ SWINOMISH FISHERIES

LACONNER, WASHINGTON 98257

April 9, 1976

Colonel Raymond J. Eineigl, District Engineer  
U. S. Army Engineer District, Seattle  
4735 East Marginal Way, South  
Seattle, Washington 98134

Dear Colonel Eineigl:

We have completed our review of your draft environmental statement for "Swinomish Channel Maintenance Dredging", prepared in June, 1975. There is no single interest group which has more at stake or more interest in the past and future of the Swinomish Slough than the Swinomish Indian Tribal Community. The Tribal Community has clear title to all tidelands and some uplands on the entire west shore of the slough and to at least major portions of tidelands of what is now the east shore of the slough. Furthermore, the Tribal Community's basic economic resource is the fishery generated by the Skagit River and the surrounding inter-tidal areas.

First of all, it seems very clear that the Swinomish Indian Tribal Community can provide your agency with a spoils dumping area. This area is the proposed Swinomish Industrial site. The site should be able to accommodate Swinomish Channel maintenance needs for many years.

We realize that the exclusive use of this site for all channel dredge spoils will require a hopper dredge operation which will have higher direct costs to you. However, it is our firm conviction that the present method of disposal is at best running out of legitimate spoils sites, and at worst, causing serious environmental damage with significantly higher overall costs to everyone.

In our judgment, your environmental statement for future maintenance contains important oversights, as well as erroneous statements and dangerous conclusions. We suggest you consider the following points:

APR 14 1976

P004259

Colonel Raymond J. Eincigl, District Engineer  
Page Two  
April 9, 1976

Page 6, 1.2.3.

It should also be pointed out that the filling along the north side of the channel from the McGlinn-Goat Island jetty has further prevented freshwater from flowing north toward the tribal fish traps and oyster beds and has caused sand to drift into our fish trap areas.

Page 36, 2.2.6.

Your report grossly understates the case: "Since the diking of the southern entrance to Swinomish Channel, the number of salmon migrating through the channel to Padilla Bay has declined." Since the diking of the southern entrance to Swinomish Channel, the migration of salmon through the Swinomish Channel has been virtually destroyed. A once productive fishing grounds to the Indian and non-Indian people no longer yields any fish.

Page 38, 2.2.7.

"The catch of a trap and drag seine salmon fishery operated by the Swinomish Indians located just north of the southern entrance to the channel in Skagit Bay has been recorded for the past 36 years and is subject to a lack of information on effort and efficiency."

If catch records have been kept for the past 36 years, how can "information on effort and efficiency" be lacking? Fish traps operate and have operated during all fishing seasons at high tide. The local Indian population has been small and constant. If anything, drag seining effort probably increased after the channel fishery was destroyed by the jetty in 1937.

"Overall, however, it (Swinomish trap and drag seining catch) has exhibited more or less the same fluctuations in level of production as other local Indian fisheries (Tulalip, Samish, and Lummi) and there is no apparent relationship between catch and channel maintenance operations."

It is surprising to see a statement such as this which boldly contradicts graphed trends which you, as well as we, have on file (See Exhibits 1a, 1b, 1c). There is an expressed decline in both Chinook and Chum catches immediately following the 1937 jetty construction. Furthermore, these declines are local in nature deviating from other Indian fishery trends to the immediate north and south near the mouths of neighboring rivers.

P004260

Colonel Raymond J. Eineigl, District Engineer  
Page Three  
April 9, 1976

The Coho catch also shows a marked decline when the average Skagit Bay catch per trap is viewed before and after Initiative 77 which closed down non-Indian traps. The overwhelming question which has not yet been raised, much less answered, is why the two or three traps taken over by the Indians did not experience a much larger per-trap catch after Initiative 77. Almost 19 non-Indian traps lying to the north and northwest of these Indian traps necessarily intercepted a major portion of the fish before they arrived in the vicinity of the Indian traps (Exhibit 2). In 1935, these 19 non-Indian traps were closed and, therefore, many more fish coming through Deception Pass should have been caught by the Indian traps. However, Exhibit 3 clearly shows a dramatic decline in the per-trap catch, after the closure of the non-Indian traps.

The only other major environmental change at this time which could have so dramatically affected the fish catch was the jetty construction in 1937.

Another point of major concern is the destructive effect Corps' activity has had upon tribal oyster beds in both Skagit and Padilla Bays. The only question is the extent of this destruction.

Page 39, 2.2.7.

"Before the rehabilitation of the dikes in 1936, some commercial gill-netting and Indian set-net fishery were practiced in the channel, but abandoned thereafter. Dike construction probably did not diminish the number of fish, but, rather, altered the migratory pattern which resulted in a shift of fishing effort into the Skagit."

It may be difficult to show statistically that dike construction diminished the number of fish because of all the variables. However, it would be even more difficult to draw the conclusion that "dike construction probably did not diminish the number of fish." Certainly, important fish habitat and access was diminished. Logically, the fact that the number of fish was diminished would be a more reasonable conclusion than that the number was not diminished by the dike construction.

Page 41, 2.3.1.

The resident Indian population figure was higher than 210 in 1970 and is presently about 450 people. Non-Indians number about 800 people.

Colonel Raymond J. Eineigl, District Engineer

Page Four

April 9, 1976

Page 51, 2.4.1.

The Swinomish Indian Tribal Community is developing a shoreline management plan. Shorelines surrounding the Reservation are not subject to the State Shoreline Management Act.

Page 56 and 57, 2.5.2.

Archaeological investigations on the Reservation shall be authorized only by the Swinomish Indian Senate.

Page 77, 4.10.1.

"Such firms as the New England Fish Company, Swinomish Indian Fish House, and Dunlap Towing would likely be forced to leave the area or go out of business, if channel dredging were discontinued."

The Swinomish Indian Fish Company (House) would neither go out of business nor leave the area. As a matter of fact, if there were no jetty or dredging, the tribal fishing and oyster operation would now be very profitable. Since the damage has been done, however, restoration will take large sums of money and many years of effort.

The Swinomish Indian Tribal Community can no longer tolerate any further trespasses or damages to its tidelands or fishery resource. The McGlenn-Goat Island jetty is presently located on tribal tidelands without legal authorization. Any fill on either side of this jetty or any of the intertidal areas at the River delta or on tidelands north of the jetty or in the deep water of Skagit Bay will be firmly opposed by this government. There is certainly adequate evidence, even in your own environmental statement, to establish a reasonable doubt in federal court, that such actions do not seriously damage Reservation resources and environment.

On the other hand, we can help you solve your disposal problem by two of the methods you described. First of all, we can develop a plan with your help for the filling of our industrial-zoned area in Padilla Bay, most of which is partially filled now. Secondly, again with your help, we may be able to identify a market for upland stock-piled material. This material could be shipped by barge, rail, or truck from our industrial site.

It has always been this Tribal Community's policy to work cooperatively. To us, this means a two-way give-and-take relationship. We hope



P004262

Colonel Raymond J. Eincigl, District Engineer

Page Five

April 9, 1976

you will be willing to view your agency's relationship with us in this fashion.

Sincerely yours,

*Marvin Wilbur*

Marvin Wilbur  
Executive Director

MW/md

Enclosures: 5

cc: U.S. Fish & Wildlife, Northwest Fisheries, Mr. James Heckman  
Washington State Fisheries, Mr. Dennis Austin, Biologist  
Skagit County Planning Dept., Mr. Robert Schofield, Director  
The Honorable Lloyd Meads  
The Honorable Warren G. Magnuson  
The Honorable Henry M. Jackson  
Skagit Regional Planning Council, Chairman  
Skagit Port District  
Jeanne Whiteing, Native American Rights Fund  
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P004263