

T'akdeintaan Territoriality in Offshore Waters:
Sea Otters, Tsimshians and US Response

Presentation by
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**Events of 1880 – extracts from Langdon/Grant clan
presentation, Oct. 31, 2015 pertaining to unextinguished
aboriginal rights outside of 3-miles.**

Sharing Our Knowledge – Tlingit Clan Conference

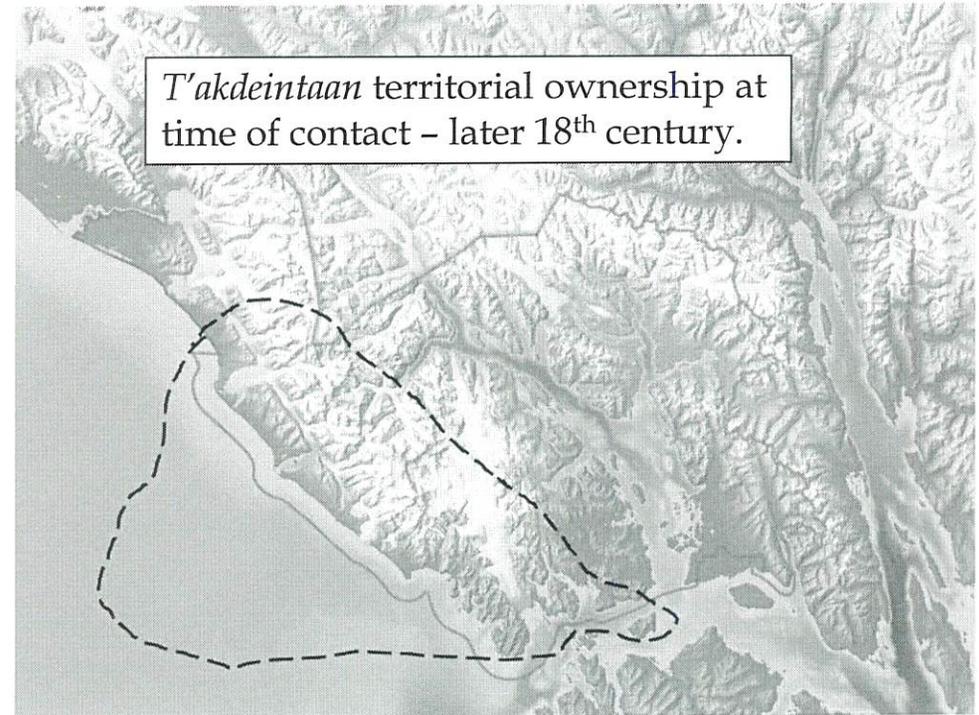
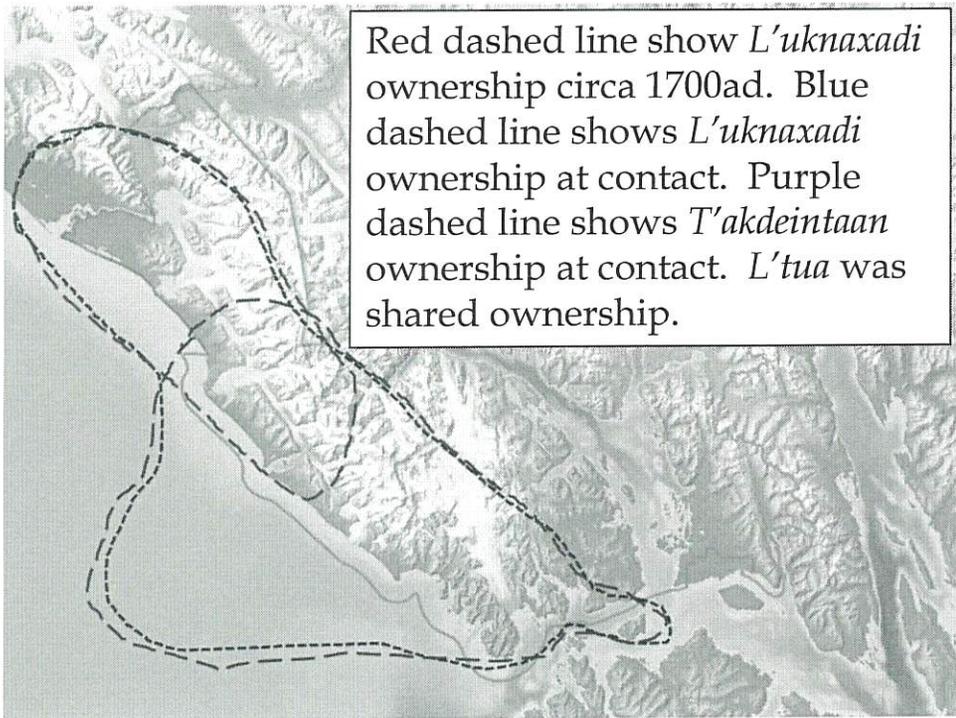
Juneau, Alaska

Oct. 31, 2015

Overview of Presentation

- We will present information concerning events in 1880 when Huna Tlingit protested to the US Navy Tsimshian sea otter hunting on Huna grounds on the outer coast above Cape Spencer.
- Environmental characteristics of the land and ocean
- Evidence of Tlingit occupation and use of the area
- *T'akdeintaan* ancestry and establishment of territory as at.oow on land and sea
- *T'akdeintaan* use of offshore waters, especially Fairweather Grounds
- Historical background on Huna sea otter trading and relations with Tsimshians (special recognition to Richard Dalton [deceased])
- Events of 1880 – US Navy visit and their statements about the issues
- Significance of the events and Navy statements

History of *Luk'naxadi* and *T'akdeintaan* Territorial Ownership in *Huna kaawu*



Historical background on Huna sea otter trading

- At contact, long-distance trade was important to Tlingit to acquire goods they did not have. Products and materials moved north and south and east and west.
- Archeological evidence from throughout southeast Alaska shows that Tlingit were harvesting and using sea otters for thousands of years.
- Sea otters were important for garments, blankets and other uses among Tlingit.
- In 1788, British trader James Colnett acquired sea otters in trade from Tlingits in canoes offshore south of Icy Point.
- Demand for sea otters by Europeans and Americans increased substantially and harvests reduced their numbers by 1815 when trade for them declined for sometime.
- About 1830 to 1865, Hudson Bay Company vessels Beaver and Labouchere came to *Huna Káawu* to trade for skins. One of the sites of the trade was Swanson Harbor, named after the Hudson Bay captain who anchored there to trade.
- Huna also traded their sea otter skins to Russian and American traders during this time.
- Following US assumption of jurisdiction, Hudson Bay Company vessels could no longer trade in Alaska waters.

Oral Tradition concerning Huna relations with Tsimshians (special recognition to Richard Dalton [deceased], *T'akdeintaan*, Raven's Nest House)



- Tsimshians from Port Simpson were associates of the Hudson Bay Company and traded widely in southeast Alaska.
- After the US takeover, a new opening for trade emerged due to the slow reaction of American firms and the Tsimshians used the opportunity to establish trade relations with Dundas Bay *T'akdeintaan*.
- Richard Dalton provided an oral history of the establishment of that relationship, based on traditional principles of respectful gift giving and generous hosting. This was followed by trade of arms for sea otter skins.
- He stated that the Tsimshians (leader *Yashut*) came to Dundas Bay and was provided with nagoon berries (August) and traded arms, ammunition and other Hudson Bay Company goods for sea otter skins.
- He also reported a special visit of 8 Tsimshian canoes to Hoonah to meet with Dundas Bay leader *Teen ki ta* (his grandfather) and the transfer of special cultural valuables from the Tsimshians for which they were given sea otter skins.
- These events likely occurred in the late 1860s or early 1870s.

Events of 1880 (I)

- Relations with Tsimshians had changed from earlier times. Rather than trade, Tsimshians began hunting sea otters on their own under unclear circumstances.
- February 1880 - Huna chiefs travel to Sitka and while there complain to US Naval Commander Lester Beardslee about Tsimshians hunting on their grounds.
- Late June, 3 canoes of Tsimshians arrive at Pt. Adolphus and pass by Northwest Trading Company vessel westward.
- July 11 - Huna chiefs direct Willoughby to write a letter to Beardslee in which they informed him of the situation and asked what Beardslee would do to get Tsimshians off their hunting grounds.

Events of 1880 (II)

- July 21 - Northwest Trading Company men observed Tsimshian canoes on the way out of the area going home.
- August 4 - Northwest Trading Company gave note to Beardslee in Sitka reporting the Hunas "openly stated that their intention was to take and kill the entire Fort Simpson expedition on their return from the sea otter grounds."
- Beardslee met with Treasury Special Agent Morris and they decided to go the Icy Strait and meet with "chiefs" to avert conflict.
- They chartered the Northwest Trading Company vessel "Favorite", armed it with howitzers and put 10 Navy crewmen aboard.
- They travelled north to Icy Strait where they meet with three "chiefs" on the "Favorite" on *Taas' Daa* (Lemusieur Island).
- Both talked with "chiefs" and were impressed by oldest spokesman who apparently convinced the others not to kill the Tsimshians.
- Beardslee wrote that Tlingit leaders informed him that Tsimshians were on their hunting grounds "thirty miles northwest of Cape Spencer."

S.S. Favorite –
Northwest
Trading Company
ship in Icy Strait,
summer of 1880.

Was chartered by
US government,
armed and
manned with
Navy crewmen for
trip to Icy Strait in
August, 1880.



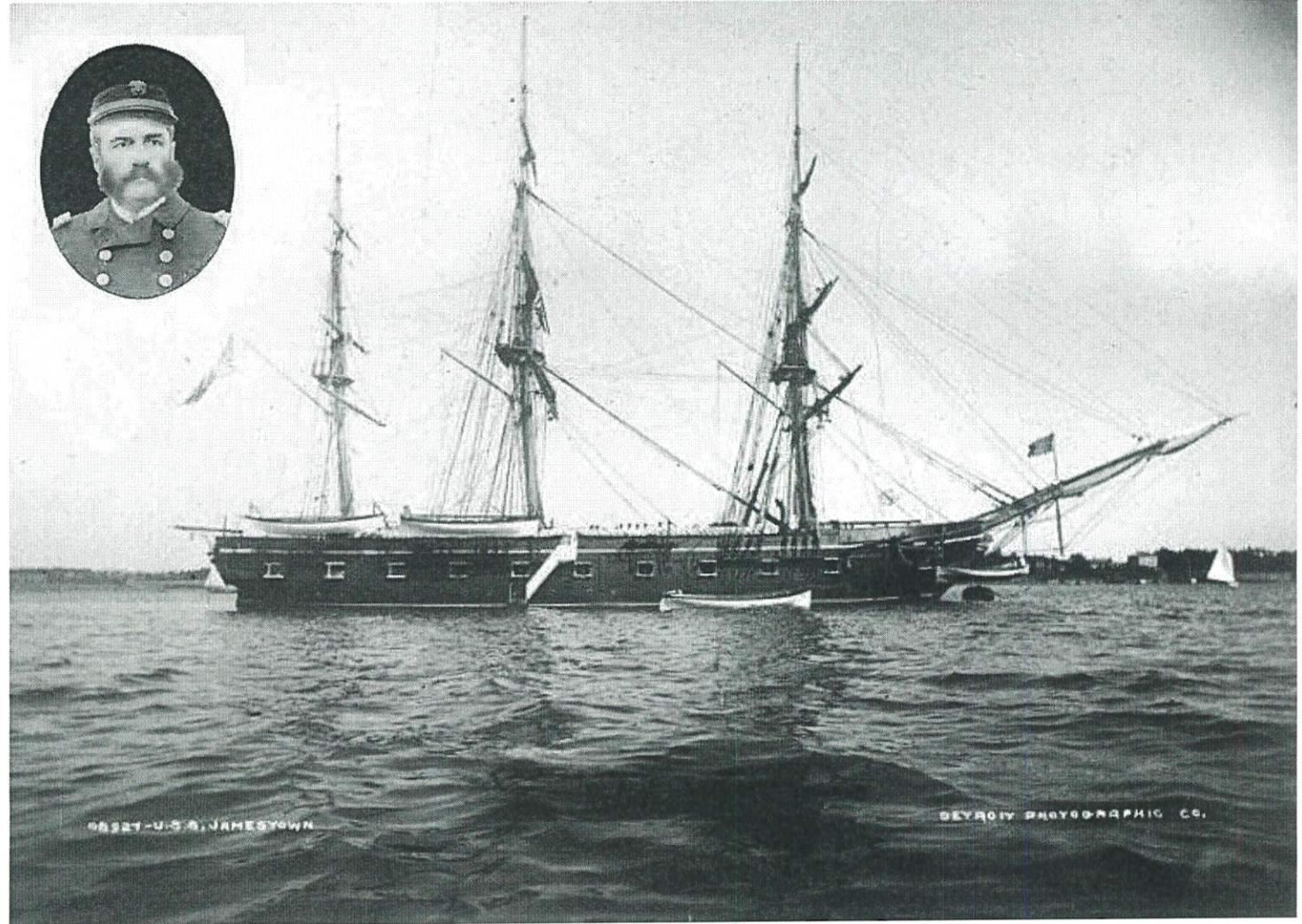
Events of 1880 (III)

- Huna told Beardslee that Tsimshians had told them that they would return in September to hunt again with 50 canoes armed by the Hudson Bay Company factor and supported by the Fort Simpson missionary.
- Tsimshians said “Boston men” had no authority over them because they were “King George men” and paid US Navy no mind.
- Beardslee recognized the Huna territorial claim to their hunting grounds which had been violated while advising against violence.
- Morris also told them not to fight but also told them that if he found them with goods obtained from the Hudson Bay Company, he would confiscate them as contraband.

Events of 1880 (IV)

- In his report to Navy Secretary Thompson, Beardslee stated that the Tsimshians were on the Tlingits hunting grounds without authorization and they should not be there.
- In his report to Thompson, Morris noted that Tsimshians were using guns which was a violation of the law of 1877 in addition to their status as foreigners.
- Both were convinced that the situation was extremely serious and wrote they expected a war in which 800 Hunas would face off against 2000 Tsimshians. Morris held a similar view.
- Beardslee was further concerned that this could lead to hostilities between the United States and Great Britain.
- Both men reported they would write letters to the Hudson Bay Company factor at Fort Simpson, to the missionary William Duncan, and to J.W. Powell, British Columbia Commissioner of Indian Affairs about the situation and request their help.
- In September, prior to leaving Sitka on reassignment, Beardslee wrote a letter summarizing his activities on the matter which included the following statement – see next page.
- Tsimshians did not return to *Huna Káawu* in the fall but soon shifted their efforts further north and began an engagement with Yakutat Tlingits – another story.

USS
Jamestown -
US Navy
vessel
stationed at
Sitka in 1880s.
Commander
Lester
Beardslee was
chief officer in
1880 at the
time of the sea
otter events.



**Commander Beardslee's
Advice to Secretary of the
Navy Thompson, Sept. 1880:**

*In the event of the expected war this fall, I shall simply act as an adviser to the Indians, urge them not to go to war but to wait patiently, until the letters I have written upon the subject shall have been received in Washington. **I shall not tell them, not to fight, for I am utterly unable to see that my orders are carried out, and so do not care to expose weakness.***

*Very respectfully,
L A Beardslee
Commander*

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*Very Respectfully
L A Beardslee
Commander*

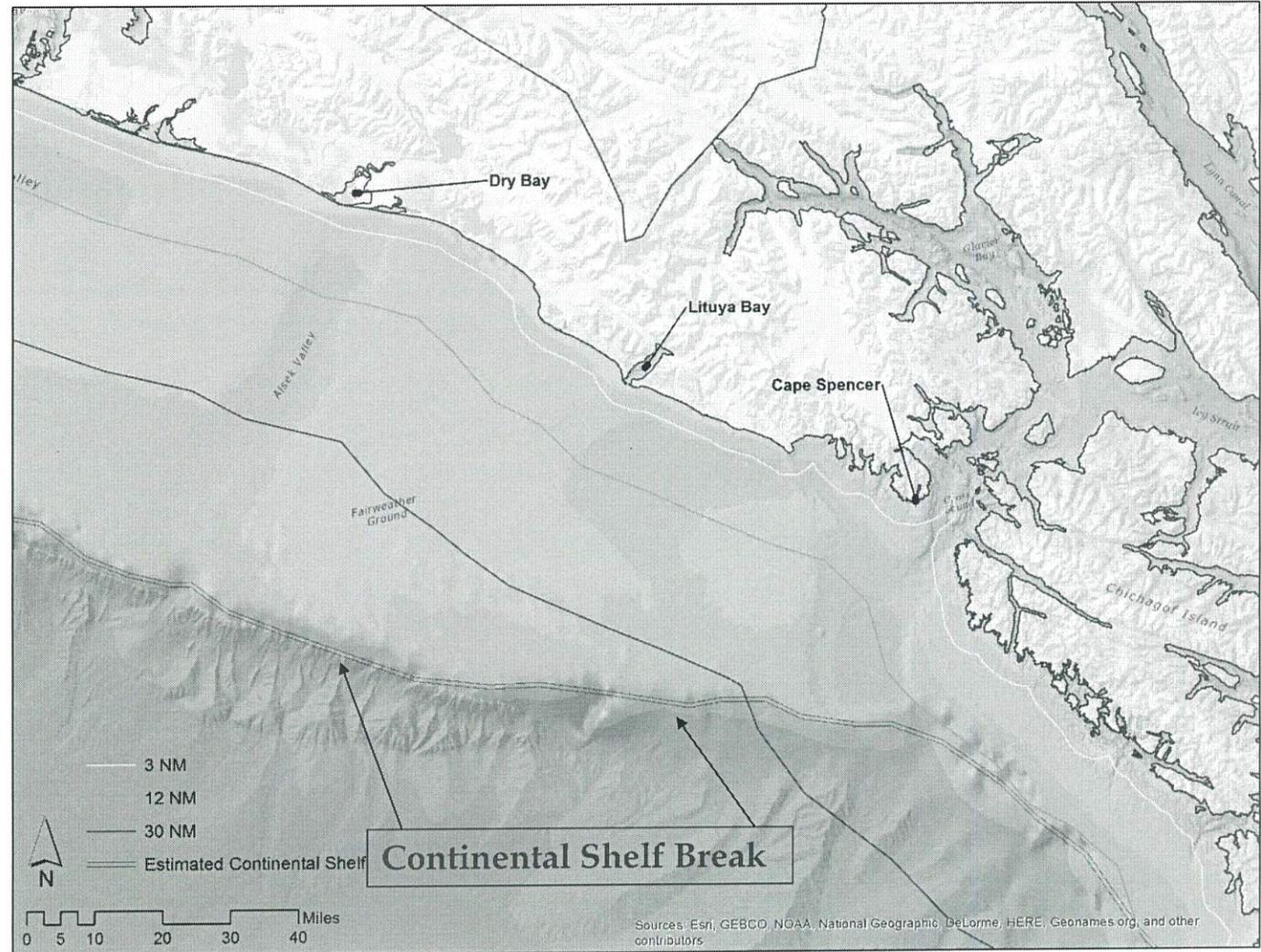
US marine jurisdiction:

1880 - 3 miles

1982 - 12 miles

1983 - EEZ, 200 miles

ANCSA extinguished subsistence rights "in Alaska" - in 1971 Alaska meant land plus ocean out to 3 miles offshore.



US Jurisdiction in the EEZ (Extended Economic Zone)

Within its EEZ, a coastal State has:

- (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, whether living or nonliving, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in international law with regard to the establishment and use of artificial islands, installations, and structures, marine scientific research, and the protection and preservation of the marine environment, and
- (c) other rights and duties provided for under international law.

Source: NOAA Office of General Counsel, accessed 10/27/2015

Implications of the Events of 1880 in relation to *T'akdeintaan* Offshore Territories

- Gambell - St. Lawrence Island Yup'ik asserted aboriginal rights in EEZ were violated when their hunting outside three-miles was ignored in oil lease sale. Decision in 1989 stipulated that aboriginal rights were not precluded by "paramountcy" doctrine and could coexist. No final decision appeared due to withdrawal of lease sale.
- Eyak I Trawler Diane - Chugach villages claimed concurrent fishing rights for halibut and sablefish in the EEZ on the grounds of unextinguished aboriginal title. In 1998, district court denied rights based on "paramountcy" doctrine asserting it precluded claims of aboriginal rights.
- Eyak II - On remand of Eyak I (2004) from 9th circuit, district court was told that it must determine if aboriginal rights for the Chugach in the EEZ existed. District found that aboriginal rights did not exist as Chugach had not met requirements.
- Eyak appeal - On appeal to the 9th circuit, Chugach lost by a very narrow 6-5 vote (2012). Majority said that Chugach had not proved exclusive use and occupancy nor had demonstrated the capacity to exercise control over the claimed territory and exclude others using violence if necessary. Dissent found that the Chugach had met the requirements for aboriginal rights.

Legal criteria for proving aboriginal title

- Claimants must prove that their holdings were “actual, exclusive, and continuous use and occupancy ‘for a long time’ of the claimed area.”
- Use and occupancy are measured “in accordance with the way of life, habits, customs and usages of the Indians who are its users and occupiers.”
- Must demonstrate with “preponderance of evidence” that “they were in a position to occupy or exercise exclusive control over the claimed area.”
- Must exercise “full dominion and control” over the areas such that it “possesses the right to expel intruders” and the power to do so.
- Chugach it was determined by the District and Circuit courts could not meet the exclusive control standards.
- TO BE CONTINUED?