Statement of John Daniels, Jr. on Behalf of the Muckleshoot Indian Tribe, Puyallup Tribe of Indians, and the Tulalip Tribes
Before the
House Committee on Natural Resources

Hearing on H.R. 2678 A Bill to Extend Federal Recognition to the Duwamish Tribe

July 15, 2009

Good morning, Mr. Chairman and members of the Committee. My name is John Daniels, Jr. I am the Vice Chairman of the Muckleshoot Indian Tribe. I am pleased to have the opportunity to appear today on behalf of the Muckleshoot Indian Tribe, the Puyallup Tribe of Indians, and the Tulalip Tribes, three federally recognized Indian tribes, to offer testimony on H.R. 2678 A Bill to Extend Federal Recognition to the Duwamish Tribe.

The Muckleshoot Indian Tribe occupies the Muckleshoot Indian Reservation located in the upper portions of the historic Duwamish River Watershed south of Seattle. The Muckleshoot Reservation is one of the reservations on which the United States encouraged Duwamish Indians to locate in the years following negotiation of the 1855 Treaty of Point Elliott. Many members of the Muckleshoot Tribe are descendants of Duwamish who settled on the Muckleshoot Reservation and received allotments of Muckleshoot land.

The Puyallup Tribe occupies the Puyallup Indian Reservation in Pierce County, Washington, and the Tulalip Tribes occupy the Tulalip Reservation in Snohomish County, Washington. In the years following the Treaty, Duwamish also located on these reservations and their descendants are today members of the Puyallup and Tulalip Tribes.

The Muckleshoot, Puyallup, and Tulalip Tribes oppose H.R. 2678. The Duwamish group has already had its claim to tribal status fully considered by both the Courts and the Executive Branch which have found the claim to be without merit. Both the Courts and the Executive Branch found the Duwamish group does not possess the essential characteristics that distinguish a tribal political entity from other minority groups, maintenance from historic times to the present of a functioning community, and the exercise of political authority in that community. In this factually complex area, where the group seeking recognition has had its claim considered by the two other branches of the federal government, we believe Congress should tread carefully.

The group calling itself the Duwamish Tribe has been unsuccessfully seeking federal recognition for forty plus years from the Courts, the Executive, and now Congress. In 1979, in *United States v. Washington*, the seminal Northwest Indian fishing rights case, District Judge George Boldt after hearing evidence submitted by the Duwamish group found that the group was not a Tribe, and was not a successor to the historic Duwamish Tribe that signed the Treaty of Point Elliott. He concluded that the "Duwamish … do not and have not lived as continuous separate, distinct and cohesive Indian cultural or political community … [and] have not

maintained an organized tribal structure in a political sense." *United States v. Washington,* 476 F.Supp. 1101, 1105 (W.D.Wash. 1979). The Court of Appeals for the Ninth Circuit after carefully reexamining the record affirmed Judge Boldt's determination, and the Supreme Court denied review. *United States v. Washington*, 641 F.2d 1368 (9th Cir. 1981), *cert denied*, 454 U.S. 1143 (1982).

In 1996 during the Clinton Administration the Assistant Secretary – Indian Affairs issued a proposed finding against acknowledgment of the Duwamish group as an Indian tribe. 61 F.R. 33762 (June 28, 1996). In 2001, following lengthy review of additional submissions by the Duwamish group, the Assistant Secretary – Indian Affairs for the Department of the Interior affirmed the proposed finding against acknowledgment and issued a final determination that the Duwamish group is not an Indian tribe within the meaning of federal law. 66 F.R. 49966 (Oct. 1, 2001). The Assistant Secretary's detailed decision rejecting the Duwamish group's claim to tribal status was supported by 300 pages of exhaustive technical reports.

In May 2008, the Duwamish filed a lawsuit in the United States District Court for the Western District of Washington challenging the Department of the Interior's determination. The lawsuit, *Hansen v. Salazar*, No. C08-0717C, is now pending before United States District Court in Seattle. The District Court recently granted a request by the Muckleshoot Tribe to participate in that case as an amicus curiae or friend of the court.

In recent years, the Duwamish group has also pursued legislative recognition. H.R. 2678 is the most recent in a series of bills that would, if enacted, legislatively grant the Duwamish the tribal status that the Courts and Executive Branch have concluded is not warranted.

The Duwamish claim that they have suffered a grave injustice rings hollow when one considers that both the Courts and the Executive Branch have independently reached the same conclusion after providing the Duwamish a full opportunity to present evidence in support of their claims. The claim that the Duwamish group was administratively recognized on the last day of the Clinton Administration was the subject of an Inspector General's Report which concluded that after leaving office the Acting Assistant Secretary involved in the matter signed and backdated an unfinished draft decision contrary to the Bureau of Indian Affairs staff's strong recommendation against acknowledgment. USDOI Office of the Inspector General, Allegations Involving Irregularities in the Tribal Recognition Process and Concerns Related to Indian Gaming, Report No. 01-I-00329, February 2002. The Duwamish claim regarding this draft decision is also before the District Court in the Duwamish Tribe's pending lawsuit, where the Muckleshoot, Puyallup, and Tulalip Tribes are confident it will be rejected.

As noted, both the Courts and Executive Branch concluded that the Duwamish group has not retained minimal elements of historic community structure and political authority that distinguish an Indian tribe from other minorities. Instead, the Duwamish group was found to be an association of Duwamish descendants formed for the principal purpose of pursuing monetary

claims against the United States, who had little association with one another outside of the pursuit of these claims. The Department of the Interior found that many important Duwamish families moved to Muckleshoot and other reservations where they and their descendants became part of reservation based tribal communities, and that the Duwamish group seeking recognition is a fraction of Duwamish descendants whose ancestors remained off reservation where they had little contact with one another and assimilated into the larger society.

Recognition of a tribe is more than acknowledgment of ethnic identity. It is recognition that a group possesses and retains sovereign political authority predating the United States. Recognition is an acknowledgment by the federal government that a group possesses the governmental authority to regulate the conduct of its members and control activities of both Indians and non-Indians within its territory. It is the retention of some semblance of community structure and political authority from the time of first contact with non-Indians to the present that justifies recognition of groups of Indian descent as tribal political entities that retain sovereign governmental authority over their members and territory.

Recognition of groups that have failed to maintain a real community, one that exercises some measure of political control over its membership, devalues and undermines the status of all Indian tribes, as sovereign political entities with significant governmental authority. The internal conflicts that are apparent among some newly recognized groups reflect the problems that arise when the federal government recognizes marginal groups that have not maintained a self-governing community through time, and therefore do not have a strong sense of their own identity.

The Duwamish group's claims have been reviewed twice now with the same outcome, and we respectfully submit that Congress should tread carefully in rejecting the conclusions of both the Courts and the Executive Branch. The issues that are presented are factually complex and the Duwamish group is currently challenging the Department of the Interior's decision in the United States District Court in Seattle. The complexity of these issues is exemplified by the fact that the Duwamish group's own attorneys asked for and were recently granted a 6 month continuance of their own case to familiarize themselves with the 35,000 plus page administrative record developed in connection with the Department of the Interior's decision. In contrast, the Committee is being asked to act on H.R. 2678 without the detailed review of the record which the Courts and Executive Branch have undertaken. In this context we ask that the Committee defer to the Courts and the Executive Branch.