

**TESTIMONY OF  
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THE UNITED SOUTH AND EASTERN TRIBES (USET)  
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE  
ON**

**“THE LUMBEE RECOGNITION ACT”  
March 18, 2009**

**USET SUPPORTS H.R. 839, LEGISLATION THAT WOULD ALLOW ALL  
INDIAN GROUPS UNDER THE 1956 LUMBEE ACT TO COMPLETE THE  
FEDERAL ADMINISTRATIVE PROCESS FOR ACKNOWLEDGMENT**

On behalf of the United South and Eastern Tribes, an inter-Tribal organization comprised of 25 federally recognized Tribes located in 12 states from Maine to Texas, we submit this testimony in support of H.R. 839, legislation that would allow all Indian groups that fall under the 1956 Lumbee Act to complete the administrative process at the Office of Federal Acknowledgment (OFA) within the Department of the Interior.

USET opposes the H.R. 31, legislation that would congressionally acknowledge the Lumbees as an Indian tribe without going through the administrative process.

USET strongly supports the administrative process for Indian groups to seek Federal recognition through the Office of Federal Acknowledgment . Due to the complexity of determining whether an entity is deserving of Federal recognition, although Congress has the legislative authority to recognize a tribe, it has appropriately shifted that responsibility to the agency level, where the question can be examined in detail by experts and according to standards that were originally crafted after extensive review and consultation with Tribes by the American Indian Policy Review Commission.

To the extent that the OFA process needs to become more efficient, Congress should ensure the OFA is appropriated the dollars it needs to do its job more efficiently. It is perpetually understaffed and underfunded. Also, Secretary Ken Salazar has committed to reviewing the OFA process to ensure it works as well as possible, so the agency with the expertise on these issues is reviewing the agency for inefficiencies.

**Providing Acknowledgement through the Legislative Process Will Lead to Unfair Results.**

Federal legislative acknowledgment of a group gives unfair preferential treatment to that group over all other groups who are in the OFA process and waiting for a determination. In fact, H.R. 31 would congressionally acknowledge the Lumbees as a tribe but would require all other similarly situated groups to go through the OFA process. Moreover, providing federal acknowledgement to a group through legislation invariably leads to inconsistent and subjective results. Without the use of uniform procedures and criteria, the process of determining federal recognition as a tribe will inevitably be based on emotion and politics. The relationship that all federally acknowledged tribes have with the United States and the public perception of those tribes is diminished if a group is afforded federal acknowledgement without serious technical review. Thus, Congress should take the politics out of federal acknowledgement and allow the expert agency to do its job.

**The OFA, not Congress, Should Determine Whether a Group Should be Federally Acknowledged.**

Established in 1978, the OFA has a procedure and framework as well as the expertise for making federal acknowledgement determinations. The OFA process should be used in determining whether the Lumbee or any other group should be federally acknowledged as an Indian tribe. The OFA procedures were the result of a two-year study of the Congressionally-established American Indian Policy Review Commission and the requests of tribes across the country calling for standardized criteria in determining the future relationships of tribes with the United States. The OFA, not Congress, is staffed with experts, such as historians, anthropologists, and genealogists, whose jobs are to determine the merits of a group's claims that it is an Indian tribe that has existed since historical times as a distinct political entity.

**Other Tribes Oppose Congressional Acknowledgment.**

USET supports legislation that would allow the Lumbees to complete the administrative process but oppose congressional acknowledgement. In their efforts to achieve federal acknowledgment, the Lumbees have self-identified themselves over time as "the Cherokee Indians of North Carolina," and as "Siouan," "Croatan," and now "Cheraw" Indians. Finally, groups within the Lumbee have opposed this legislation, claiming that the history the Lumbee use to support its federal recognition efforts does not belong to the Lumbee.

USET does not take a position on whether any particular Indian group deserves Federal recognition. However, USET has testified many times in

support of Indian groups going through the OFA process, while consistently opposing those same groups going through the legislative process. Keller George, former USET President, testified in '03, "USET does not believe that the Lumbee should get preferential treatment and circumvent the administrative process within the Department of the Interior"; "USET supports, however, legislation that would clear the way for the Lumbee to get a shot at recognition through the administration process."

The OFA process serves to protect the cultural identity of established Tribes, as well as the government-to-government relationship that such Tribes have with the United States. Further, the process assures that the Federal government, through the use of experts in genealogy, history, and anthropology, can reach a determination in a manner that is fully supportable by a well-developed and evaluated record. This is an evaluation that agencies are well-positioned to undertake, but for which the Congress is not equipped.

It is because Federal recognition is so important that it must be handled with unusual care. Federal recognition is a formal act, creating a perpetual government-to-government relationship between a Tribe and the United States, in which the United States acknowledges the sovereign status of a Tribe. Federal recognition also creates a trustee relationship and fiduciary responsibilities on the part of the United States. Federal recognition enables Tribes to gain access to vital resources needed to break the yoke of unemployment, low education levels, substandard housing, and poverty, which have historically plagued our people. Federal recognition also shields Tribes from undue federal and state encroachments. Furthermore, Federally recognized Tribes have inherent sovereign powers recognized by the United States to exercise criminal jurisdiction and civil jurisdiction within their territory.

H.R. 839, would clear the way for the Lumbee to complete the OFA process and have the merits of the Lumbee petition for acknowledgement considered. A 1989 Interior solicitor's opinion stopped the review process of the Lumbee petition.

If Congress believes that the OFA process is in need of repair, then legislation should be developed to review and strengthen the OFA procedures. In those circumstances where an Indian entity cannot go through the legislative process, such as with the Lumbees, Congress should

enact legislation that would allow them to go through the OFA process, not legislation that would circumvent that process.

The USET Board of Directors urges the House Resources Committee and the Congress as a whole to reject HR.31.