



# Quinault Indian Nation

POST OFFICE BOX 188 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (360) 876-6211

STATEMENT OF  
FAWN R. SHARP, J.D., PRESIDENT  
QUINAULT BUSINESS COMMITTEE, QUINAULT INDIAN NATION  
BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES NATURAL RESOURCES COMMITTEE  
ON  
H.R. 3084, THE CHINOOK NATION RESTORATION ACT  
JULY 15, 2009

Greetings Mr. Chairman and Members of the Committee, Greetings, I am Fawn R. Sharp, President of the Quinault Business Committee, the elected governing body for the Quinault Indian Nation. On behalf of the Nation, we thank you for the opportunity to testify before this Committee concerning H.R. 3084, the "*Chinook Nation Restoration Act*."

The Quinault Indian Nation cannot oppose another tribe seeking Federal recognition. As a Chinook blood descendant, and member of the Quinault Indian Nation, my testimony is driven by the need to ensure that this legislation in no way surrenders the Quinault Indian Nation's treaty or governance rights. The historic claims of the Chinook descendants against the interests of the Quinault Nation demonstrate that any Congressional legislation should be cautious. The Quinault Nation expects not to be adversely impacted as Congress considers the request to federally recognize the Chinook descendants and expects Congress to explicitly state that there will be no further claims against Quinault territorial, treaty or governmental interests by the Chinook descendants.

The Quinault Indian Nation cannot support legislation that would diminish or infringe upon the Quinault treaty rights reserved under the Treaty of Olympia. The Chinook descendants have repeatedly attempted to exercise and claim treaty reserved rights and rights of governance on the Quinault Indian Reservation which lawfully belong under the Quinault Nation's jurisdiction and regulation.

### **Federal Legislation and Court Rulings Concerning Chinook Descendants**

The historical record is not consistent with H.R. 3084, Section 1(b)(5) – Findings – "Congress named four of the five tribes of the Chinook Nation, the Lower Chinook, Wahkiakum, Cathlamet, and Clatsop, in the Western Oregon Termination Act of 1954, and this Act is the only basis for termination of the Federal relationship with the Tribe." Congressional considerations of claims associated with the Lower Band of Chinook include a 1901 Senate referral to the Court of Claims. The United States in its brief before the Court of Claims asserted that "[t]he tribal relations of the Chinook Nation have long ceased to exist." The Court of Claims 1906 Report, Finding of Fact concerning the Chinook found that the "the claimant, as a band, has long ceased to exist."

In 1911, Congress passed the Quinault Allotment Act, authorizing allotments for other tribal groups affiliated with the Quinault and Quileute Tribes' Treaty of 1855. That Act provided Chinook, among other "fish eating" Indians without a reservation, allotments on the Quinault Indian Reservation. The Secretary found that reference to the Chinook and "other tribes" as eligible for allotments was insufficient to substantiate that the Chinook then comprised an existing tribe acknowledged by Congress

as still a distinct tribe in existence. In fact when considered in tandem against the backdrop of the circa 1905-1906 Court of Claims considerations of Chinook claims simply determined that the Chinook had ceased to exist as a tribe by the end of the 19<sup>th</sup> century.

In 1912, Congress heard from the Chinook descendants through their attorney. The topic was United States payments for cessions described an 1851 treaty negotiated with the then existing Chinook people. Congress never ratified the treaty, and when considered payments to Chinook people, Congress considered payments only being made to descendants of a tribe that no longer existed, as the Chinook bands, or continuing Nation.

In 1925 Congress then authorized claims legislation that specifically authorized Claims by the Chinook, and other named tribal groups to hear legal and equitable for determination and adjudication. In 1934, the Court of Claims then found subsequent claims filed by the Chinook descendants to be without merit.

In 1931, the Supreme Court upheld the Federal District Court's 1928 ruling that, Chinook and other tribal groups named in the 1911 Quinault Allotment Act as eligible for allotments, otherwise held no "...tribal organization [but instead] are "remnants of bands and tribes."

These court rulings and interpretations of legislation substantiated the collective decision of the Secretary in denying the recognition of the Chinook descendants as an external identification of separate tribal entity existing in Congressional legislation of 1911, 1912 or 1925. Similarly, the Secretary also found that the Chinook also failed to satisfy the criteria substantiating a distinct community under the Code of Federal Regulations.

The Quinault Nation's second concerns are that despite the legislative acts of Congress and adverse court rulings, the Chinook people have consistently maintained that they should be federally recognized, exercise Quinault treaty hunting and fishing rights and possess the rights to govern the Quinault Indian Reservation equally with the Quinault Nation. Federal courts and administrative reviews have consistently held that Chinook descendants are neither entitled to independent recognition, nor the exercise of treaty reserved rights to resources such as hunting and fishing. Now, we are concerned that Sections 4, 7, 8 and 9 of H.R. 3084 conflicts with those established findings.

### **Historic Quinault Positions**

The Quinault Nation's comments are best considered against the long held positions concerning Chinook descendants. First, like previous legal, administrative and legislative determinations of the United States, the Quinault Nation has consistently maintained that Chinook descendants do not satisfy federal standards for recognition of the Chinooks as an independent tribe. The federal agency review of this matter through the Bureau of Indian Affairs (BIA) concluded that the Chinook descendant have not existed as a separate social and political community before 1990. Over a hundred years of legal disputes have consistently found that the Chinook descendants have lacked a separate identity. Instead, in 1906, the Court of Claims found that the Chinook had long ago ceased to exist as a tribe. In 1928, the United States District Court, in the Halbert case found that there was no Chinook tribal organization. Even as the federal government provided for allotments on the Quinault Indian Reservation, those were based on Chinook descent, and not as a member of an existing Chinook tribal body. The BIA's experts recommended against Chinook recognition based on the extensive records.

Second, Chinook descendants have repeatedly claimed to share Quinault treaty reserved rights, and challenge the Nation as the governing authority over those rights as well as governance over the Quinault Reservation. In 1981, the Ninth Circuit Court of Appeals affirmed a lower court ruling that granted a summary judgment motion against the Wahkiakum Band of Chinook Indians claiming the privilege of exercising treaty rights reserved to the Quinault Nation under the 1855 Treaty of Olympia between the Quinault and United States.

In that case the Chinook sought to enjoin officials from the States of Washington and Oregon from regulating the taking of fish from the Columbia River. The Court upheld the lower Court's holding that the Chinook appellant "holds neither a treaty nor an aboriginal right to fish the waters of the Columbia River at the Wahkiakum's usual and accustomed grounds and stations." Only the Quinault Indian Nation has authority to govern the lands of the Quinault Reservation and its members and to regulate the exercise of treaty rights reserved under the Treaty of Olympia.

As a matter of Quinault Tribal law, any individual who can demonstrate a combined quarter blood quantum, as a descendant of 7 tribal groups, including Chinook, are eligible for enrollment in the Quinault Nation. As Quinault members, those individuals otherwise exercise the same rights as any other member, subject only to the laws of the Quinault Nation. Individuals claiming Chinook descendency have made claims in the United States Courts and before Congress while attacking the Quinault Nation's status as a federally recognized governing entity of the Quinault Indian Reservation.

In 1988, Chinook and Cowlitz testified before Congress against the return of North Boundary lands to the Quinault Nation. The two groups claimed that the federal government has improperly recognized the Quinault Nation as the tribal government over the Reservation and that eight tribes, including the Chinook have equal rights to share in the governance of the Reservation.

In 1989, Chinook and other tribal groups filed suit in the United States District Court requesting that the Secretary of Interior be required to organize a new tribal organization to govern the Quinault Indian Reservation. The groups claimed to have equal rights with the Quinault Nation to govern the Quinault Indian Reservation. The Quinault Nation has been forced to expend considerable resources to defend itself against such repeated assaults on its sovereignty. These are only a couple of examples of the ongoing issues that demonstrate the backdrop of historic disputes the Chinooks have with the Quinault Indian Nation.

With this background, the Nation provides its concerns specific to the proposed legislation, section -by - section:

#### **Section 4 - Federal Services and Benefits**

Many of the Chinook descendants are already eligible for federal services and benefits as enrolled members of the Quinault Indian Nation through federal funding, compacted funds and other resources.

#### **Section 4 - Subsection (c) – Civil Jurisdiction**

Statement on civil jurisdiction concerning jurisdiction pursuant to the Indian Child Welfare Act of 1978, appears to set up conflicts as to the well established criteria for enrollment, or eligibility for enrollment, rather than the reservation or service area based criteria in the Act. If further consideration is to be

given to H.R. 3084, we request that a provision be added expressly prohibiting dual enrollment so that individuals who elect to be enrolled as members of the Chinook Tribe must relinquish any and all claims to rights or interests of another federally recognized tribe.

#### **Section 7 – Land- Into-Trust**

The Nation cannot support the authorization to take lands into trust for the Chinook Nation as provided in H.R. 3084. First, there is no restriction on the use of the land to be taken into trust. Second, potential conflicts with the interests of the Quinault Indian nation could arise despite the restrictions set forth in Subsection (c)(1), because land owned by a Chinook descendant would otherwise be eligible to be placed into trust for the Quinault Nation. Third, the rights and interest of the Quinault Indian Nation are not recognized under Subsection (c)(2). This Subsection should include a requirement to consult with the Quinault Indian Nation and provide a procedure for resolving conflicting claims.

#### **Section 8- Fishing, Hunting, and Trapping Rights Not Restored**

The Nation must also oppose any legislation that would create an opportunity for any additional tribes to Hunt, fish, or gather for ceremonial purposes in the area where the Tribal has historically hunted or fished in Pacific and Wahkiakum Counties of Washington State. Some of these areas may overlap with those in which the Quinault Indian Nation regulates hunting, fishing, trapping, and gathering of its members. H.R. 3084 should include a specific provision that only members of the Chinook Tribe may exercise the describe ceremonial hunting and fishing rights; otherwise potential conflicts could arise where an individual , as a member of the Quinault Indian Nation, would not be permitted to do so under Quinault regulations. The Nation preserves its treaty rights and maintains that H.R. 3084 should include a specific limitation on any Chinook rights subject to Quinault treaty rights. This bill should explicitly state that the Quinault Nation’s treaty rights are in no way affected or diminished by this Act.

#### **Section 9 – Authorization of Appropriations**

The Nation requests more information and analysis be provided concerning the appropriations provided in the proposed legislation. We are concerned that such appropriations not diminish the availability of funding directly through the Quinault Indian Nation whether compacted or otherwise, which provides services to the members of the Nation, the Quinault Reservation, or resources in which the Quinault Nation has a vested interest. Any appropriation of funding under this Act needs to be new funding given the increasing federal funding shortfall for Indian programs. In addition, with the number of Tribes seeking federal recognition, if Congress supports these measures, then increase the appropriations line items to support the additional financial strain that will accompany the enactment of federal recognition legislation. These are the initial comments of the Nation. Provisions of H.R. 3084 pose many practical, legal and service questions that likely conflict with the Quinault Nation’s interests. The Quinault Nation requests the opportunity to submit additional comments and materials for the Committee’s consideration.

Thank you for inviting the Quinault Nation to testify before the Committee on this important legislation.