

UNITED HOUMA NATION



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The United Houma Nation (the "Tribe" or "Nation") hereby submits its comments on the Preliminary Discussion Draft concerning the Federal Acknowledgment Regulations.

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Having been in the administrative recognition process since the Carter Administration, the United Houma Nation sincerely appreciates the Obama Administration's sustained commitment to revise a process that has long been considered broken. During his confirmation hearing before the Senate Committee on Indian Affairs, former Assistant Secretary for Indian Affairs (AS-IA), Larry Echo Hawk, stated, "The tribal recognition system is not working. The process of reviewing and acting upon applications for federal recognition is taking too much time. Applicants deserve a clear and timely procedure that will yield fair results."¹ Under his leadership, progress was made and the table was set for the Obama Administration to make substantive changes to the process. As part of his confirmation hearing, current AS-IA Kevin Washburn stated, "Recognition and acknowledgment issues have festered for years, and I daresay decades now...I certainly hope to be part of the solution."² The United Houma Nation believes that the Discussion Draft is part of the solution to fixing a broken federal acknowledgment process and is grateful for the comprehensive revisions set forth in the Discussion Draft.

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By way of background, our Nation's petition for federal recognition (Petitioner #56) has been pending for 28 years. As a non-federally recognized tribe, we often have the fewest resources and political support, yet we are expected to commit countless time, money and energy – time, money and energy that are often in high demand– toward trying to comply with these

¹ U.S. Senate, Committee on Indian Affairs. Nomination of Larry J. Echo Hawk to be Assistant Secretary for Indian Affairs, U.S. Department of the Interior, Hearing, May 7, 2009 (S. HRG. 111-97). Washington: Government Printing Office, 2009

² U.S. Senate, Committee on Indian Affairs. Nomination of Kevin Washburn to be Assistant Secretary for Indian Affairs, U.S. Department of the Interior, Hearing, September 14, 2012 (S. HRG. 112-711). Washington: Government Printing Office, 2012.

regulations. This isn't an ordinary commitment; this is a commitment of decades. Despite the bleak outcome, we take it on. We choose to fight this uphill battle because we believe that one day, the Federal Government will see us for what we are -- a sovereign Indian nation.

We filed our letter of intent in 1979, a year after the acknowledgment regulations were adopted. After several years of preparation, we submitted our petition in 1985. It took six years before the petition went on active consideration in 1991 and we received our proposed negative finding in 1994. In the proposed negative finding, the Office of Federal Acknowledgment (OFA) found that, despite southern historians' evidence to the contrary, our tribe did not fulfill criteria (b),(c), and (e). We provided our 548 page rebuttal to the proposed findings in 1996 and our petition has been pending since that time. The devastation of Hurricanes Katrina and Rita as well the BP oil spill forced us to place our petition on emergency status where it is currently. Despite having limited resources and facing these kinds of disasters year after year, the tribe has continually waged this uphill battle for federal recognition. Because of our nearly 30-year experience in this process, we have some specific comments as to the proposed amendments.

I. Section 83.1

One of the most notable and helpful changes that will reduce the unrealistic burden on tribes is the establishment of 1934 as a starting point for criteria (b) and (c). This date marked the end of the destructive policies of the General Allotment Act of 1887 (24 Stat. 388) and the beginning of an era of tribal self-government with the enactment of the Indian Reorganization Act of 1934 (48 Stat. 984). Over 150 tribes and confederations organized under the Indian Reorganization Act but unfortunately not all tribes had this opportunity.

In addition, the 1934 starting point is a very important change because it significantly reduces the unrealistic and nearly impossible evidentiary burden for tribes-- especially considering the history of Southern tribes like the Houma who, instead of entering into any treaties or being forcibly removed, hid further and further down into the bayous in an effort to reduce contact with non-Indians.

However, the regulations should be clear that the 1934 starting point applies to the meaning of "historic" in the definitions. In section 83.1 definitions subsection, the meaning of "historic" being a distinct community identified by 1934 and that the terms "continuous" and "continuously," as pertaining to the community's history and descent, should clearly state that it is required to be traced from 1934.

II. Section 83.2

There are no proposed changes to section 83.2 and the Tribe has no comments on this section.

III. Section 83.3

The draft regulations are unclear on the order in which petitioning groups will be reincorporated under the new regulations. While section 83.3(g) states that a petition under active consideration can choose whether to proceed under the new regulations or the old regulations, the regulations do not state the *order* in which the petitions will be considered under the new regulations if a tribe decides to proceed under the new regulations. A tribe who suspends their petition pending the rulemaking and then submits a new petition, in accordance with the new regulations, should not lose their place in line and be placed at the end of the line where they have been for 30 years based on something out of their control. We are concerned that there will simply be a race to file creating the unjust scenario where a petitioning group who submitted a letter of intent only 5 years ago could rush to file before others and be placed ahead of tribes whose petitions have been pending for nearly 30 years. The Nation suggests that, as long as a

tribe's petition is submitted by a certain date after the implementation of the new regulations, that tribe's petition should be given the same place in line where they are currently pending.

Specifically, a petitioner should be given a priority number based on the date that group submitted its completed petition under the old regulations. This will prevent the injustice that would occur should petitioners simply race to file. We recommend the priority of consideration be tied to the date which the petition was submitted rather than the date the letter of intent was submitted (for those groups who actually did submit petitions) for consistency based on the fact that the preliminary discussion draft aims to eliminate the requirement of a letter of intent.

As previously mentioned, the United Houma Nation received a proposed finding in 1994. If the Nation chooses to resubmit a petition under the new regulations, we would like to ensure that we will receive a new proposed finding before a final determination. This makes sense because it would be illogical to receive a proposed finding under one set of regulations and a final determination under a new set of different regulations.

IV. Section 83.4

The Tribe is supportive of the elimination of the requirement for a letter of intent as it is an unnecessary burden on tribes.

V. Section 83.5

Subsection (f) of section 83.5 should clarify that it is applicable to those tribes who have chosen to suspend their petitions pending the rulemaking process. Thus, even those tribes who have chosen to suspend their petitions pending the rulemaking process have the option of choosing "whether to complete their petitioning process" under the revised regulations or the previous regulations.

VI. Section 83.6

Regarding subsection (a), petitions for acknowledgement should not need to exceed 50 pages, excluding supportive documentation. Petitions should be able to be submitted in electronic format.

Subsection (b) should provide procedures for protection of confidential and private information (i.e. date of birth and residential address).

VII. Section 83.7

a. Criterion (a)

The elimination of criterion (a) is another critical change as it properly relieves the unnecessary burden on tribes to provide evidence from outside observers of the petitioning community's continuing existence. While the United Houma Nation supports the elimination of this criterion, we would like to ensure that the documentation we provided to successfully meet this criterion in our proposed finding will transfer to other mandatory criteria.

b. Criterion (b)

Regarding criterion (b), historic or modern third party nomenclature racially misidentifying or mislabeling a tribe should not be weighed against a tribe, but may be considered as evidence supporting the petitioner's claim of being a "distinct" community.

Greater weight should be given to the supportive testimony of federally recognized tribes which have viewed the petitioner as a historic tribe. However, the lack of supportive testimony or the

submission of negative testimony from any entity should not be weighed against the petitioner in the application process, as it could be politically motivated and not reflective of the history of a petitioner or worthiness of a petition. A relationship between tribal communities, whether formal or informal, should also be viewed as evidence of continuing tribal community.

We support the additional language added under this criterion, in particular, the sentence that states, "Distinct community must be understood in the context of the history, geography, culture and social organization of the group." Predominately located along the gulf coast of Louisiana, the Tribe faces a very unique set of environmental circumstances. Throughout our history, we have faced several devastating hurricanes and the continual eroding of the coast where our tribal communities are located. These factors have led some tribal members to relocate outside of the tribal communities. In addition, being located in what was the segregated South, tribal members were forced to attend an Indian-only school, were required to sit in Indian-only sections at churches and not allowed to patron some stores and businesses. Once again, we support the additional language added to this criterion and we would like to ensure that these types of factors will be considered.

One issue that is not addressed in the preliminary discussion draft is the required proof of relationships among tribal members to satisfy criteria (b). In the past, this criteria has been interpreted to require proof of relationships among tribal members. In the case of a large tribe, such as the United Houma Nation, this would involve literally millions of relationships. Obviously, this is an unusually harsh burden on the Nation and other tribes. These types and number of statistical analysis could take many years and countless resources to complete. Because of this, the Nation suggests that the Department accept a statistically significant sampling of these relationships where proof of relationship is required. This would minimize the tremendous burden on the petitioning group, while at the same time proving that the required relationships are significant.

c. Criterion (c)

Regarding criterion (c), a high rate of endogamy within the petitioning group, or with other American Indian Tribes, should be viewed as a form of political control by the community upon individual members, meeting 83.7(b)(2). Such a rate need not exceed 50% to be considered "substantial" and should be measured in a fashion favorable to the petitioner.

We support the additional language that clarifies "political influence." We emphasize the importance of taking into account the history, geography, culture and social organization of the petitioning tribe. The Tribe would also like to ensure that prevailing Federal and State policies and activities or a lack thereof from 1934 to present are also taken into consideration.

Like criteria (b), criteria (c) has been interpreted to require proof of bilateral political relations for political authority. Again, for a group as large as the Houma, this results in proof of millions of relationships to prove bilateral political relations. To minimize this burden, the Nation suggests that the Department accept a statistically significant sampling of these relationships where proof of relationship is required. This would minimize the tremendous burden on the petitioning group, while at the same time proving that the required relationships are significant.

d. Criterion (d)

The Tribe has no comments on this subsection.

e. Criterion (e)

Another notable improvement is the inclusion of historian and anthropologists' conclusions to criterion (e), descent from a historical tribe. This is a crucial change. As we all know and can attest today, petitioning tribes are not all the same. We have very different histories, which have greatly impacted the type of evidence we can use in support of our petitions. It only makes sense that the Tribe should be able to use its own historians and anthropologist, who know the history of our tribe and our area, to support the petition. If Tribes cannot use their own historians and anthropologist, how are we supposed to ever demonstrate these criteria? The Nation would recommend though, that the Department also get regional specific experts to review the criteria. A petitioner from California has a very different history than the southern tribes and it just doesn't make sense to have the same expert or historian reviewing both petitions. Along these lines, the Department should also address the issues of inconsistencies in the treatment of anthropologists and historians. There is no reason why the *same anthropologist* should be considered more or less credible in one petition compared to another petitions, yet this has happened. This type of inconsistency across petitions should be addressed by uniform standards created by the Department for those reviewing petitions.

However, this criteria also has room for improvement since it remains largely unchanged, other than the addition of the consideration of anthropological and historical considerations. While the other criteria change the starting point to 1934, this criteria still requires evidence to "historical" times. By requiring this, a tribe still has to demonstrate the nearly impossible task and enormous evidentiary burden on demonstrative evidence dating back to first European contact. This has the potential to obliterate any ease on the burden created by the 1934 start date.

Our tribe is a good example of the problems with these criteria. While many other federally recognized tribes, the state of Louisiana, and even other countries recognize the Nation, the BIA has still questioned our descent from the historic Houma Tribe. Even though there were federal experts on southern tribes, who identified our tribe as descending from the historical Houma tribe, the BIA has questioned the reliability of this evidence. Instead, the BIA looks for a genealogical connection to Indians identified as Houma at the time of white contact.

One way to address this issue would be a stated presumption: There should be the stated presumption that if a tribe existed in 1934, that tribe descended from an historical tribe at the time of contact with non-Indians, shifting the meaning of "historic" in the regulations to refer to distinct communities identified as such by 1934.

For criterion (e), a petitioner should be able to meet the requirement if a substantial percentage (with the measure of "substantial" not needing to exceed 50%) of their membership as submitted in the petition consists of individuals who descend from a historical Indian tribe. The term "historic" meaning a distinct community identified by 1934 and specifically identified as an American Indian community by 1954 or from such historical Indian tribes which combined and functioned as a single autonomous political entity or functioned as closely interrelated political entities. Identifying evidence may include citation by historians, anthropologists, ethnologists, citations in government reports and correspondences, studies by agencies such as the Smithsonian and the Bureau of Ethnology and others serving as "arms of the government," those receiving or determined eligible for government services while also being identified as a community, and actions of a colonial, state, or federal agency segregating the community from Blacks and Whites (i.e.: by designated reservations, identified geographic areas, or segregated schools). However, if a tribe could not establish identity as an Indian community by such evidence within 20 years of 1934, but could establish identity from an earlier point in time, it could choose to trace from the earlier date.

f. Criterion (f)

The Tribe has no comments on this section.

g. Criterion (g)

The Tribe has no comments on this section.

VIII. Section 83.8

The Tribe is concerned about the deletion of the “formal meeting” during the response period at the request of the petitioner under section 83.8. This meeting, held on the record and for the purpose of providing petitioners with the “reasoning, analyses and factual bases for the proposed finding” is crucial to petitioning tribes’ ability to adequately provide an informed response to the proposed finding. Although Section 83.8(n)(2) provides for a “hearing,” at the request of the petitioner, as the draft regulations stand now, this is only allowed *after* the end of the comment period on the proposed finding. Thus, this deletion completely denies petitioner with an avenue for meaningful consultation prior to the comment period.

IX. Section 83. 9

The Tribe has no comments on this section.

X. Section 83.10

In section 83.10(r) (and the related section 83.3 (f)) and, it should be made clear that the Assistant Secretary should have the authority to reconsider and reverse previous negative decisions and consider new information that may provide greater support for a positive decision. However, it should be made clear in section 83.4 and other similar sections that such reconsideration should not entail that a tribe must resubmit documentation previously submitting to the BIA.

The Tribe is supportive of the inclusion of the proposed “expedited favorable finding” provided for by section 83.10(g). Given the usual length of time required to process petitions, the Tribe appreciates that the regulations are making an attempt at curtailing this long wait time.

With regards to section 83.10(i)-(r), the Tribe is supportive of the potential inclusion of an objective entity (perhaps the Office of Hearings and Appeals (OHA)), so long as that entity possesses the requisite familiarity with Indian Law, history, culture, and the history of the acknowledgment of American Indian Tribes. In addition, this objective review should not preclude a tribe’s ability to rebut the proposed finding under subsection (k).

XI. Section 83.11

The Tribe has no comments on this section.

XII. Section 83.12

The Tribe has no comments on this section.

XIII. Section 83.13

The Tribe has no comments on this section.

XIV. Issues Not Addressed by Proposed Changes.

a. Preamble.

A Preamble needs to be added stressing that the goal of the changes is to make the regulations more consistent with the intent of Cohen's criteria and reflective of the way in which early petitions received favorable determinations. The Preamble should also include an analysis of why the year of the Indian Reorganization Act of 1934, which marked a new relationship between the Federal Government and American Indian tribes, is the starting point instead of a much older date relating historic "first contact." Requiring tribes to demonstrate sustained community from a starting point that is hundreds of years in the past, places an unnecessary burden on tribes. The preamble should also clearly state that the Department of Interior's aim is for the process to be predictable, policy-based instead of an overly rigorous scientific evaluation, and less unreasonably cumbersome for petitioners.

The new regulations should directly overrule past OFA precedents in negative findings because they will be inconsistent with the new regulations.

b. Splinter Groups

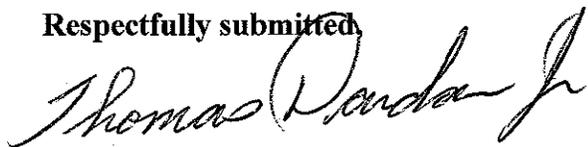
The draft regulations are not clear as to how they will treat splinter groups. After receiving our proposed finding in 1994, two factions split from the Nation and subsequently filed separate petitions. Under the current process, our petitions are tied together and are being considered collectively. If the new regulations are put in place, we recommend that our original petition filing date be given priority and that our petition be analyzed independently. Specifically, as regards the Nation's comments to Section 83.3 addressing the order in which the petitioners should be considered, the splinter groups' order should also be considered on the date on which that splinter group submitted its petition. It should not be tied to the date the other groups filed their petitions. This will ensure the splinter groups are treated as separate and distinct petitions.

The regulations should clarify that active consideration of petitions from tribal groups who, at any time during the review process, experience splintering among its membership into smaller, distinct tribal groups, will continue unabated, unless and until such splinter groups submit fully documented separate and distinct petitions of their own. The information contained in the petition should be separate and distinct from that of the petitioning group from which it splintered from. In that case, the petitions should be treated as separate and distinct petitions and each group should be accorded the right to proceed under the previous or the new regulations as they deem appropriate.

c. Gaps in Evidence

Gaps of less than 20 years should not be negatively interpreted when the strength of the evidence prior to and after such gaps demonstrate community continuity. Gaps of up to 25 years should be taken into consideration, with reasonable explanation, if the weight of the evidence can demonstrate community continuity.

Respectfully submitted,



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