



UPPER SKAGIT INDIAN TRIBE

25944 Community Plaza Way
Sedro-Woolley, WA 98284
(360) 854-7000

July 23, 2013

TESTIMONY OF JENNIFER R. WASHINGTON
CHAIRMAN, UPPER SKAGIT INDIAN TRIBE
BEFORE THE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON INDIAN AND
ALASKA NATIVE AFFAIRS
RE: H.R. 1225 (LARSEN) "SAMISH INDIAN NATION HOMELANDS ACT OF 2013

Good morning. Mr. Chairman and members of the Committee. Thank you for inviting me to testify today before the House Natural Resources Committee Subcommittee on Indian and Alaska Native Affairs on the proposed legislation, the Samish Indian Nation Homelands Act of 2013. For the Record, my name is Jennifer Washington and I am the Chairman of the Upper Skagit Indian Tribe. I am here representing the Upper Skagit Indian Tribe. The Swinomish Indian Tribal Community previously wrote a letter of concern when this bill was introduced last year. Chairman Brian Cladoosby of the Swinomish Tribe has also indicated that his Tribe, which is also directly affected by this legislation, is also opposed to the legislation for many of the reasons that I will present.

I will start by telling you that even though this legislation was written without consulting neighboring tribes, the Upper Skagit has since met with the Samish Nation at a government to government meeting in order to see if the Upper Skagit concerns could be resolved. The Samish have refused to seek to change the legislation to meet the concerns of Upper Skagit.

This legislation raises the following direct substantial concerns:

1. The use of the term Homeland is both inaccurate and offensive to Upper Skagit and other tribes. Many of the parcels listed in the legislation are clearly in other tribes' homelands. In particular, parcel #2 on Kelleher Road is squarely and totally in the Homeland of the Upper Skagit. Upper Skagit has been adjudicated in a contested trial as the successor in interest of the Nuwaha and parcel #2 is in Nuwaha territory. Parcel #2 resides between the two Upper Skagit Reservation parcels at Bow Hill and at Helmick Road / Sedro Woolley in Washington. Homeland has a definite meaning in US v. Washington and the ramifications of a designation of homeland can be far reaching, well beyond the so-called limited intention of taking a piece of land into trust. While Samish has indicated that they are willing to change the name of the legislation, it is essential that this Committee insure that the name change and removal of that term occur.
2. Removing parcel #2 from the legislation does no harm to the Samish Nation. The land is not located in any area that would foster economic development and if that were the goal of Samish, then the Upper Skagit would still be absolutely opposed. Also, the Samish Nation got the land as a gift under a will so it is not out monies that could have been used for vital Samish services. Moreover, under the regulations of the Washington Department of Revenue, the land

can be exempted very easily from the payment of taxes. Thus, there is no economic reason or drain on the finances of Samish to keep parcel #2 in the legislation.

3. The language of sections 3c and 4 also raises substantial concerns about the ability of the Samish Nation later to use that language to assert a claim for Treaty rights. Samish has been denied Treaty rights on two separate occasions in *US v. Washington* and Upper Skagit is concerned that this language not be used as a “boot strap” to seeking those rights based upon legislative language. (This is not an idle concern since Samish has recently announced its current intention to obtain hunting and gathering rights under the Treaty of Point Elliott.) Upper Skagit proposed language changes to Samish and they have rejected some of those changes as well. I am submitting with this testimony a package indicating the communications between Upper Skagit and the response by Samish on those issues as well.

Finally, this legislation raises other long term concerns by Upper Skagit and other federally recognized Treaty tribes.

1. This legislation would circumvent the BIA’s responsibility under the *Carcieri* decision of the United States Supreme Court to engage in an investigation of whether the Samish Nation was under federal jurisdiction in 1934. This is an investigation which all other federally recognized tribes must undergo, but Samish would not should this legislation pass.
2. With this legislation, Samish can bypass other federally recognized tribes who have had their fee to trust applications considered by the BIA under the administrative regulations. Some tribes have been waiting years to complete that process and it is unfair to prefer Samish over those tribes.
3. If Samish uses this legislation to connect the dots between these five parcels and seek a Reservation through the administrative process of a Reservation Proclamation, that Reservation would create the anomaly of allowing a non-Treaty tribe to have a Reservation that included fishable (fish and shellfish / crab) marine waters. That would provide them with an on-Reservation marine fishery all the way out to the San Juan Islands in Washington State that was unregulated except for conservation issues. This would not only disrupt the *US v. Washington* court ordered marine fisheries of numerous Treaty tribes, but would overrule the decisions of the federal courts. (In 2008, Samish presented a map to Treaty tribes showing the Reservation area it wished to claim. If you look at that map and compare it to the properties Samish wishes to take into trust through this legislation, you can see that connecting those trust parcels would accomplish a significant portion of and even expand upon Samish’s Reservation strategy. Note the marine water nature of the Samish claim. 2008 map enclosed as part of the submission)
4. Samish has taken a number of steps, including writing the Point Elliott Treaty Tribes, claiming a hunting and gathering right under the Treaty of Point Elliott in spite of the rulings of the federal trial and appellate courts in *US v. Washington*. This is of great concern to the Treaty tribes and there is a substantial likelihood that Samish would use this legislation to further its attempts to obtain Treaty rights. This is absolutely unacceptable to Upper Skagit and other Treaty Tribes.
5. Additionally, this legislation is completely unnecessary. Samish claims that it needs the legislation because it cannot get land taken into trust through the administrative process. However, Samish already has land that was taken into trust and this is evidence that the administrative process, although slow, does work, even for the Samish Nation.
6. Finally, if the legislation were to pass and Samish were to obtain a Reservation Proclamation by connecting the properties in the Samish Indian Nation Homeland Act of 2013, as it proposed in 2008, then the current Samish attempt to take a parcel of land in Anacortes, WA into trust for gaming (which is not a part of this legislation) could be achieved without Washington state

governmental or tribal input. That gaming parcel would lie within a newly existing Samish Reservation and IGRA's initial Reservation regulations and off-Reservation gaming issues would be circumvented.

Upper Skagit acknowledges that the Samish Nation is a federally recognized tribe and treats the Samish Nation with the same respect that it treats all federally recognized treaty tribes. However, Samish is asking the Congress to circumvent the processes all federally recognized tribes must utilize and, even worse, I believe, to use the Congress to make unsupportable Treaty claims against legitimately recognized Treaty tribes.

I urge this Committee to reject this unwarranted and improper incursion into the rights of the Treaty tribes of Western Washington. The trust responsibility of the United States to the Treaty tribes must be recognized by the rejection of this legislation.

Thank you for your attention to this matter.

Jennifer R. Washington
Chairman Upper Skagit Indian Tribe



UPPER SKAGIT INDIAN TRIBE

25944 Community Plaza Way
Sedro-Woolley, WA 98284
(360) 854-7000

May 8, 2013

Chairman Tom Wooten
Samish Indian Nation
2918 Commercial Avenue
Anacortes, WA 98221

Re: Upper Skagit / Samish Meeting on May 7, 2013

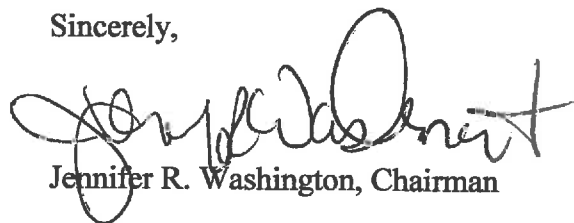
Dear Chairman Wooten:

Thank you for meeting with the Upper Skagit Indian Tribe to explain the proposed legislation in some detail and to listen to the concerns of the Upper Skagit Indian Tribe. This will confirm the following issues and discussions:

1. We discussed renaming the legislation and the map associated with the legislation to a more neutral and descriptive name. Upper Skagit proposed calling it the Samish Indian Nation Fee to Trust Act of 2013. Your attorney suggested the name to be the Samish Indian Nation Land Conveyance Act of 2013. You also stated that you didn't see a problem with finding a new name other than the one currently on the proposed legislation.
2. We discussed removing parcel #2 from the legislation. Upper Skagit also called your attention to the Department of Revenue of the State of Washington's Rule 1000 which would allow Samish to leave the parcel #2 in fee but not pay real estate taxes because it would be exempt.
3. We discussed removing section 3c from the legislation. Your attorney suggested that there needed to be language making it clear that this legislation was not one and done and that Samish would not be precluded from other fee to trust activities at a later date.
4. We discussed rewording section 4, to reflect language about Treaty Tribes.

I know that you need to meet with your Council to discuss these issues. Of course, I will have to take these issues to the Upper Skagit Tribal Council as well. Hopefully the Samish Tribal Council will be able to agree to the Upper Skagit concerns. Moreover, the sooner both Tribes can finish off the differences between us at this government to government level, the sooner Upper Skagit would be able to notify the Congressional delegation that it has no further issues.

Sincerely,



Jennifer R. Washington, Chairman



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PROPOSED CHANGES TO SAMISH INDIAN NATION LEGISLATION

Section 1. Short Title

Change to read: This Act may be cited as the “Samish Indian Nation Fee to Trust Act of 2013”

Sec. 2. DEFINITIONS

Change:

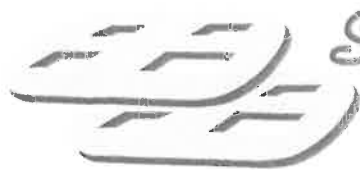
- a) 16 parcels to 13 parcels and remove the Skagit County 3 parcels on Kelleher. Change the acreage.
- b) Delete parcel 2 from the Map and change the name of the map to “the Samish Indian Nation Fee to Trust Map”.

SECTION 3. LAND INTO TRUST

Delete Sec. 3(c).

SECTION 4. HUNTING, FISHING, TRAPPING AND GATHERING

Change the wording to provide: “This Act shall not grant or diminish any hunting, fishing, trapping or gathering treaty right of any Treaty tribe.”



Samish Indian Nation

OF WASHINGTON

May 13, 2013

Jennifer Washington, Chairwoman
Upper Skagit Indian Tribe
25944 Community Plaza Way
Sedro-Woolley, WA 98284

Re: Samish Lands Bill, HR 1225
Samish/Upper Skagit Meeting on May 7, 2013

Dear Chairwoman Washington:

Thank you for meeting with the Samish Tribal Council on May 7, 2013 to discuss the Upper Skagit Tribe's concerns with the Samish Tribe's pending legislation, H.R. 1225. This legislation is virtually identical to legislation the Samish Tribe had introduced in the previous Congress. The Samish Tribe was glad to set up the meeting and to travel to your tribal property to discuss this matter with you. I hope you have been able to convey the substance of the meeting to your Tribal Council members who were unable to attend. This meeting was a good start and I feel positive that our two Councils will be able to talk in the future about other issues of mutual concern.

The Samish Tribal Council met following our meeting and has the following response to the presentation made by your general counsel, Harry Chesnin, and the five issues raised by him.

1. As we discussed, the Samish Tribe has no substantial investment in the title or short title of our legislation although we believe it is the start of restoring a homeland for our Tribe. The Samish Tribe did not understand why the present title of its legislation raised a substantive concerns, but the Tribal Council wanted to try to accommodate Upper Skagit's concerns. We discussed changing the name of the legislation if Congress deems appropriate to something like the "Samish Indian Nation Land Conveyance Act of 2102," and the Upper Skagit representatives present at the meeting indicated that such a change would probably satisfy the Upper Skagit Tribe's concerns.

2. The Upper Skagit Tribe wants the three parcels comprising what the Samish Tribe calls its Thomas Creek property and is also referred to as the Kelleher Road property removed from the legislation. The Samish Tribal Council cannot agree to this change. We do not want to get into a dispute with the Upper Skagit Tribe, but the Samish Tribe has a direct and substantial connection to this area, and believes it has the right to obtain property in this area. The Samish Tribe also understands that the Upper Skagit Tribe has a connection to this geographic area. Just as the Samish Tribe respects the right of the Upper Skagit Tribe to obtain property in this area and place it into trust, we ask that the Upper Skagit Tribe also respect the Samish Tribe's right to do so.

3. The third listed concern raises two separate concerns, which have been addressed above. The Samish Tribe will not delete the Thomas Creek property from the "Map" that is referenced in the legislation and which is attached to it. On the same basis as stated above in number one, the Samish Tribe can agree to change the title of the map itself and the reference to the map in Section 2(b) of H.R. 1225. The Samish Tribe has previously changed the title of its map, but that revision has apparently not been provided to you.

Jennifer Washington, Chairwoman

Page 2

May 13, 2013

4. The Upper Skagit Tribe requested that Section 3(c) of the legislation be removed from the bill. That section sets out the principle that the legislation does not affect any other rights or claims of the Samish Indian Nation. Mr. Chesnin expressed the Upper Skagit Tribe's position that the Samish Tribe's bill is a fee-to-trust bill and should not include additional subjects. The Samish Tribe expressed its concern that some might try to use the bill to argue that the parcels described in the bill were the only lands that the Samish Tribe was eligible to have placed into trust status. Upper Skagit stated that it would not be opposed to narrower language that addressed this situation. The Samish Tribe proposes replacement language for Section 3(c) something like the following: "Nothing in this Act shall limit the eligibility of the Samish Indian Nation to acquire additional land in trust under applicable federal law and regulations."

5. The Upper Skagit Tribe proposed changes to Section 4 of the Samish legislation, which was included at the request of other Washington tribes in the last Congress to satisfy concerns that the legislation could be read somehow to affect Samish treaty status. The language, taken from other successful tribal legislation on the same subject, was designed to say that the Samish legislation is entirely neutral on this subject.

The Samish Tribe cannot agree to the language change proposed by the Upper Skagit Tribe for this section because it could be read by implication to negatively impact the rights of the Samish Tribe. The purpose of the language is to remain neutral on this subject, not to affect any Indian tribe in any manner. If the language as it exists in the legislation is unacceptable to Upper Skagit, the Samish Tribe suggests that the entire Section be omitted in line with Upper Skagit's policy position with regard to Section 3(c) that this is a fee-to-trust bill and should not address other subjects. Of course, such a change would likely concern the tribe that asked for the language of this section to be included. The Samish Tribe requests that Upper Skagit consult with that tribe and reach consensus on whether to keep or remove the section. The Samish Tribe is willing to accept either option, but does not have the ability to resolve disputes between other tribes. Let us know how Upper Skagit would like to proceed on this issue.

Thank you again for meeting with the Samish Tribal Council. We hope that the Upper Skagit Tribe will be able to support the Samish Tribe's modest legislative land legislation. Feel free to contact me if you have any questions or if the Upper Skagit Tribe would like to discuss this matter further. The Samish Tribal Council would be glad to meet with you at your convenience.

Sincerely,



Thomas D. Wooten
Samish Tribal Chairman

c: Samish Tribal Council
Craig Dorsay, Tribal Attorney

Samish Indian Nation

**Presentation on
Proposed Federal Legislation**

**Little Creek Casino
Squaxin Island
January 10, 2008**

On Reservation Designation



Proposed Fee to Trust Area



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