



Ms. Tara Sweeney
Assistant Secretary – Indian Affairs
Department of the Interior
1849 C Street NW, MS-4141
Washington DC 20240
Attn: Mr. Tyler Fish, Counselor
Via email: consultation@bia.gov

Re: Comments in response to DTL dated July 2, 2018

Dear Assistant Secretary Sweeney:

In response to the Department of Interior's (Department) request for comment on its implementation of the Indian Reorganization Act of 1934 (IRA) in Alaska, I present comments on behalf of Chugachmiut, an Alaska Native tribal consortium. Chugachmiut was incorporated to serve the seven Native tribes in the Chugach Region. These tribes are the Native Village of Port Graham, the Nanwalek IRA, the Tatitlek IRA, the Chenega IRA, the Native Village of Eyak in Cordova, the Valdez Native Tribe in Valdez and the Qutekcak Native Tribe in Seward. A seven-member Board of Directors governs Chugachmiut; each member is selected by their tribal government to represent the region and their community.

One of Chugachmiut's key duties is to strengthen tribal governance in each of the communities it serves. We acknowledge and support the Seward based, Qutekcak Native Tribe (QNT) in its twenty – five year effort to obtain federal recognition and offer comments that clearly establish QNT's eligibility for organization under the IRA. We urge that the Department to complete the process of QNT's 1996 IRA petition without further delay.¹

Chugachmiut provides the following input on the common bond standard that is consistent with both the delegation of authority Congress provided to the Department in the Alaska amendment to the IRA and the Department's prior implementation of that statute.

I. BRIEF SUMMARY OF COMMON BOND STANDARD

As discussed below, the statutory language of the Alaska amendment to the IRA and Department guidance and precedent together with feedback from officials within the Department provide the parameters of the eligibility standard for organization and federal recognition under the Alaska amendment to the IRA—often called the “common bond standard.” Before discussing the questions you posed in your Dear Tribal Leader letter, we have laid out for you the common

¹ QNT should not be required to re-submit their 1996 petition, but rather should be permitted to supplement the existing petition if they so choose.



bond standard as articulated by these authorities. The parameters of the common bond standard are as follows:

- **Common Bond.** The common bond standard is met through shared residence or shared occupation or shared association. This common bond is even more apparent when it arises from special circumstances under which the United States owes unique obligations to the Alaska Natives.
- **Boundaries.** Shared residence must take place within a well-defined neighborhood, community, or rural district. Social interactions between Alaska Natives may be used to determine the existence and outer geographic boundaries of a well-defined neighborhood, community, or rural district.
- **Timeframes.** A group of Alaska Natives is eligible to organize under the common bond standard when the group: met the common bond standard in 1936; meets the common bond standard at the time of organization; and maintains within it a continuing element of the group as it existed in 1936.

II. RESPONSES TO QUESTIONS POSED

Below we have answered the specific questions posed in the July 2, 2018 Dear Tribal Leader letter. However, we have regrouped the questions to better address parallel issues.

A. Congress has properly delegated the Department authority to organize groups of Alaska Natives meeting the common bond standard and to thereafter federally recognize them as tribes. The need for and the existence of this authority remains today.

Response to Question 1: Yes, the Alaska IRA's organization provision is still relevant today.

In 1936, Congress amended the IRA to ensure its application in Alaska. In addition to making specific provisions of the IRA applicable in Alaska, it made clear that groups of Alaska Natives had every right to officially organize:

[G]roups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans. . .²

Through this statute, Congress created the common bond organization standard, which is a unique standard Congress designed for and made applicable only to groups of Alaska Natives.

The Department has used the Alaska amendment to the IRA to organize and federally recognize many Alaska tribes throughout time. We know of at least two groups of Alaska Natives that have current applications pending in the Department waiting for it to expedite their organization

² Pub. L. No. 115-196, 49 Stat. 1250 (1936) (codified at 25 U.S.C. §5119).

and declare them federally-recognized tribes as befitting the Department's duty and responsibility to Indians and Tribes. Therefore, the need for the Alaska amendment to the IRA as an avenue for federal recognition of groups of Alaska Natives still exists today.

Congress has not repealed the organization provision of the Alaska amendment to the IRA. Congress explicitly repealed the provision of the Alaska amendment to the IRA dedicated to creating specific reservations in Alaska, but left the organization provision untouched and unchanged since it was enacted. Other more recent statutes dealing generally with federal recognition, such as the Federally Recognized Tribes List Act (List Act), do not repeal, mention or affect the organization provision of the Alaska amendment to the IRA. The Alaska Native Claims Settlement Act (ANCSA) does not repeal or affect the provision.

The Department has noted the continuing vitality of the organization provision of the Alaska amendment to the IRA, acknowledging that later legislation did not repeal the provision and that Alaska Natives may seek federal recognition pursuant to the Alaska amendment to the IRA regardless of amendments to 25 C.F.R. Part 83 (Part 83). Officials within the Department continue to affirm to congressional representatives that the Alaska amendment to the IRA and its common bond standard are still in effect. Furthermore, in recent years, Department officials have engaged in detailed discussions about the parameters of the common bond standard with QNT and quite possibly other petitioner's representatives.

Further, the Supreme Court in *Carcieri v. Salazar* confirmed the continuing importance of the Alaska amendment to the IRA intended for federal recognition of Alaska Natives.

B. We do not believe it is necessary to promulgate additional guidance, regulatory or otherwise, to more fully articulate the common bond standard.

Response to Question 2: The Department must define and interpret the statutory phrase "common bond" in accordance with the statute's plain language and with past Department guidance and precedent.

When it enacted the Alaska amendment to the IRA, Congress made clear what constitutes a "common bond." The statute explicitly referred to "a common bond of occupation, or association, or residence." The Department's 1937 guidance issued to interpret the statutory common bond standard as well as the precedent that has developed through each of the Department's common bond decisions has affirmed this straightforward standard. The Department has always taken the position that the common bond standard allows for the organization of Alaska Natives that are from different localities and do not descend from a single tribe that existed in historical times but instead may originate from several tribes but share the requisite common bond today.

This common bond is even more apparent when it arises from special circumstances that resulted in the United States owing a unique obligation to the Alaska Natives sharing the common bond, such as traditional migration patterns that led to dispersed Alaska Natives or United States actions that harmed Alaska Natives.

Congress designed the common bond standard to address historical differences between Alaska Natives' experiences and circumstances and those of Indian people in the contiguous United States and among each unique tribe in Alaska. It is not surprising that Congress very purposefully designed a standard for organizing Alaska Natives that accounts for their unique history. It is Congress's job to help the United States carry out the unique obligations it owes to Indians, including Alaska Natives, and Congress has undertaken this job in many ways in an effort to account for the various historical experiences of Native people throughout Indian country.

For example, Congress has a practice of organizing Indians to whom the United States owes unique obligations but lack affiliation with a currently existing tribal entity. Congress recognized that the United States in some instances owes unique obligations to individual Indians based on specific past events—such as actions undertaken by the United States, its predecessors, or its citizens that led to the destruction of a tribal entity. Recognizing this, Congress has found ways to facilitate organizing those Indians into tribal entities, an action that helps the United States carry out its unique obligations owed to those Indians. Congress's organization standards designed for Indians in California and organization standards designed for Indians in Oklahoma are examples of this.

Congress similarly sought to account for the unique historical circumstances of Alaska Natives when designing the common bond organization standard for Alaska Natives in the Alaska amendment to the IRA.

First, Alaska Natives, though traditionally affiliated with large ethnic groups, engaged in migration patterns that led them throughout the land that is now Alaska. During migrations, Alaska Natives settled for various periods of time in different Alaska Native communities along traditional routes. When behaving in their traditional ways predating contact with Europeans, Alaska Native tribal entities engaged in a different level of migration than tribes in the contiguous United States; thus they possess different characteristics and customs than those tribes and even other tribes in Alaska. Therefore, when examining their status as tribal entities to which the United States owes unique obligations, Congress recognized that Alaska Natives' traditional migration patterns must be taken into account.

Second, European contact with isolated Alaska Native communities harmed the makeup of those communities, in some circumstances resulting in a breakdown of their cohesive functioning. In some instances, contact and interaction with Europeans harmed or otherwise affected or shaped Alaska Native communities to such a degree that the United States took on a special obligation to the Alaska Natives who made up that community.

The existence of the Jesse Lee Home for Children in Seward is an example of one such circumstance. During the late 1910s, an influenza epidemic introduced to the remote and isolated Native communities of Alaska left many Native children orphaned. These Native children were brought to and raised within the Jesse Lee Home for Children in Unalaska. After the pandemic Spanish influenza of 1918-1919, the Unalaska facility was overflowing and in need of repair and the transportation of children and supplies had become unreliable and expensive.

The Jesse Lee Home for Children was relocated to Seward in 1925 and became an institution at the heart of QNT's community identity.

Additionally, the fact that the United States government provided services to the Alaska Natives in Seward evidences its understanding that a community of Alaska Natives to which it owed obligations existed there. After the Jesse Lee Home was opened in Seward in 1925, the Department's Indian Field Service established the Bayview School for Alaska Native Youth in 1926. Additionally, the Alaska Native Service provided health care services in Seward. The federal government directed an Alaska Native Service nurse (in 1934) and BIA teacher (in 1939) to conduct censuses of the Alaska Native population, recognizing the established presence of the Alaska Native community in residence in Seward. Thereafter, the Alaska Native Service funded and opened the Seward Tuberculous Sanatorium, and the BIA provided an employment coordinator for Alaska Natives as part of the services provided by the Alaska Skills Center.

Department officials have sought to interpret the common bond standard faithfully while also exercising policy discretion to ensure floodgates aren't thrown open to recognition of groups of Alaska Natives residing or sharing occupations or associations together in more recent times. In addition to requiring a group of Alaska Natives to meet the common bond standard upon organization, Department officials have said in recent meetings with QNT representatives that the group must also have met the common bond standard in 1936 when the Alaska amendment to the IRA was enacted. Department officials further stated that some element of the 1936 Alaska Native group must remain intact and continue into the group as it exists at the time of organization. Qutekcak Native Tribe met this standard in 1925 and continues to meet this standard today.

Response to Question 3: The Department has indicated that it will define the geographic boundaries of a "well-defined neighborhood, community, or rural district" by looking at social interactions between Alaska Natives. Chugachmiut supports the addition of social interactions to expand the definition of geographic boundaries.

Under the Department's 1937 guidance, three types of entities meet the common bond standard—with the first two based on shared residence. The first type is an Alaska Native village that is organizing as a unit and that already carries out certain municipal and public activities. The second type is a group of Alaska Natives living among non-Natives within a town or city where the town or city government carries out municipal and public activities. There are more than a few federally recognized, Alaskan tribes in existence today that fall into the second category.

In recent years, officials within the Department have explained that they will look to social interactions to define the outer geographic boundaries of a well-defined neighborhood, community, or rural district. That the geographic boundaries of an organizing Alaska Native group can be based on something more than municipal boundaries is demonstrated by past organizations of Alaska Natives facilitated by the Department. Those past organizations show that communities can be defined by tribal village boundaries or the boundaries of where the community's social interactions take place rather than by municipal boundaries.

C. It is not necessary to promulgate additional guidance, regulatory or otherwise, to more fully explain the process for organizing a group of Alaska Natives deemed to have met the common bond standard.

Response to Question 6 and 9: The Department has an Agency Guidance. There is no need to create a separate process for federal recognition of Alaska Native groups outside Part 83; a process has been in existence and in use since 1937.

The Department need not promulgate regulations or issue additional formal agency guidance detailing the process for organizing under the Alaska amendment to the IRA. The statutory language itself and the Department's existing guidance issued shortly after the statute's enactment provides the Department all that is necessary to organize a group of Alaska Natives meeting the common bond standard.

The parameters of the common bond standard applicable for determining whether a group of Alaska Natives is eligible to organize is discussed above. Significantly, however, the Department has also issued specific guidance dictating the proper procedural steps for organizing an eligible group.

The Department's 1937 guidance lays out in detail the proper procedural steps for organization of a group of Alaska Natives deemed eligible under the common bond standard. Recent statements from the Department clearly indicates that the 1937 guidance is valid.

The process for organization under the 1937 guidance is as follows: (1) the Alaska Native group calls a general meeting; (2) the group elects a constitutional committee, with a temporary leader, that drafts the governing documents for consideration of the group as a whole; (3) the group works with the local representative from the Bureau of Indian Affairs (BIA); (4) once the group as a whole has agreed on drafts, the local representative submits the documents to the local BIA office for review and consultation; (5) after review, the local BIA office submits the documents to the Washington DC office for review; (6) after the group and the Washington DC office reach an agreement about the suitability of the documents, the documents are submitted to the Secretary for approval; (7) upon approval by the Secretary, notice of a secretarial election to vote on the documents is provided to eligible voters from within the group; and (8) eligible voters from within the group then vote on whether to adopt the documents.³

In 1996, the BIA gave QNT technical assistance consisting of feedback aimed at aligning QNT's petition materials with the 1937 guidance. The BIA provided this feedback consistent with the other requests that were pending or had just been completed at that time—all of which the BIA processed under the procedures set forth in the 1937 guidance. In response to the BIA's recommendation, QNT resubmitted its materials to the BIA to incorporate the BIA's technical assistance feedback on its petition. QNT has been waiting for more than a decade; suspended between steps 5 and 6. We urge the Department to immediately submit QNT's 1996 petition to

³ Memorandum from Harold L. Ickes, Sec'y, Dep't of Interior, re Instructions for Organization in Alaska under the Reorganization Act of June 18, 1934 (48 Stat. 987), and the Alaska Act of May 1, 1936 (49 Stat. 1250), and the Amendments Thereto (Dec. 22, 1937).

the Secretary for approval and a Secretarial Election launched. QNT will promptly take steps to assure that the duly organized election takes place.

D. Part 83 is not appropriate for groups of Alaska Natives.

Response to Question 7: Part 83 is not an appropriate process for groups of Alaska Natives seeking federal recognition.

All tribes may seek federal recognition through Part 83, including Alaska tribes. However, for the reasons discussed below, Part 83 is not designed or appropriate for groups of Alaska Natives seeking recognition. Therefore, the Department has repeatedly and correctly acknowledged that Part 83 is not *required* for federal recognition of Alaska tribes.

Response to Question 8: There are challenges specific to groups of Alaska Natives that make the requirements of Part 83 particularly difficult.

As discussed in response to Question 2, the common bond standard was designed by Congress to address historical differences in Alaskan tribes. Alaska Native communities are unique both because they traditionally behave differently than tribes in the contiguous United States and because Alaska Natives were deeply affected by contact with Europeans. Therefore, because Congress knew the United States owed unique obligations to Alaska Natives, it undertook to create the common bond standard to facilitate their organization and federal recognition so that the United States could better carry out its obligations to them. Like other congressional organization standards, the common bond standard is independent of and distinct from the federal recognition standard employed in Part 83.

Aside from these historical differences, practically speaking, tribes in Alaska are less likely to have the proper evidentiary documentation necessary to succeed under Part 83. The Department has acknowledged repeatedly that Alaska tribes' isolation led to little to no documentary evidence of their historical existence and that therefore they should not be required to go through the Part 83 process.

E. Groups of Alaska Natives that meet the common bond standard are eligible to organize and receive federal recognition. A group of Alaska Natives gaining federal recognition through organization pursuant to the common bond standard has the ability to exercise sovereign governmental powers upon federal recognition that the Department may not limit.

Response to Question 4: Yes, groups of Alaska Natives sharing a common bond of occupation and thus receiving federal recognition must have the ability to exercise sovereign governmental powers.

Once federally recognized, including a group of Alaska Natives sharing a common bond of occupation and organizing under the common bond standard, the Department may not place limits on the exercise of a tribe's sovereignty.

Response to Question 5: The Department must not place limits on the sovereign governmental powers of a federally recognized tribe.

Congress made clear in a 1994 amendment to the IRA that the federal government must treat all federally recognized tribes the same, regardless of the way in which they received federal recognition—through organization, Part 83, or otherwise.⁴ This amendment was necessary because officials within the Department had improperly, placed limitations on the exercise of sovereignty for federally recognized tribes that had been organized under the IRA.

* * *

Chugachmiut appreciates the opportunity to comment on this significant topic. It is our position that the Department already has the necessary tools and guidance to recognize the Qutekcak Native Tribe. The Qutekcak Native Tribe has waited far too long to organize under the Alaska amendment to the IRA. Chugachmiut urges you to move their petition forward without further delay. Because its very existence is in line with the parameters of the common bond standard, federal recognition is the only decision for the Department to reach for Qutekcak Native Tribe.

However, if you must complete this consultation before you make a decision on the Qutekcak Native Tribe's petition, we urge you to complete the consultation swiftly.

Regards,



Angela J. Vanderpool, Executive Director

cc: Senator Murkowski
Senator Sullivan
Representative Young

⁴ 25 U.S.C. § 5123(f)–(g).