



LUMMI INDIAN BUSINESS COUNCIL

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**TESTIMONY OF THE LUMMI INDIAN NATION
BEFORE
THE HOUSE COMMITTEE ON NATURAL RESOURCES
ON
H.R. 725: INDIAN ARTS AND CRAFTS AMENDMENTS OF 2009
BY
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The Lummi Nation requests that when the House pass the H.R. 725, Indian Arts and Crafts Amendments of 2009 that the following language be included:

(1) Federally Recognized Indian Tribes located along the US/Canada or US/Mexico Borders: are recognized as affiliated with and related to other indigenous bands and tribes north of or south of these borders. And, that cross-border traditional cultural sharing of Arts and Crafts knowledge and practices, as directly associated with their indigenous extended-family systems, is a manifest native reality and necessary for comprehensive cultural preservation. Any indigenous Native from Canada or Mexico, originating from immediate border communities, that can prove they have blood relatives enrolled within said U.S. Border Tribes may be recognized and certified as a native artist affiliated with said tribe for purposes of cross-cultural sharing and preservation. Said federally recognized U.S. tribe may certify said recognized native artists and hold them accountable to the same laws as enrolled tribal artisans.

(2) Indian Arts & Craft Tax Exemption: “Any Native American Arts & Craft produced by enrolled members, or their children (whether enrolled or not), of a Federal Recognized Indian Tribe, operating and producing art within the exterior boundaries of an established Indian Reservation, whether established by treaty, executive order, or federal statute, that produces revenue or income to qualified tribal members and their dependents shall be exempted from all federal and state income taxation. Such products, once produced, can be shipped to any exterior location outside the established reserve and still remain a tax exempt activity. Such exemption shall extend to and apply to the production, transportation, marketing, and management activities of said arts & crafts production when such activities are implemented by a 100% Indian business entity owned and operated by an enrolled tribal member (or their children), an Indian Artist Association of enrolled tribal members, or otherwise tribally authorized corporation.”

(3) Traditional Arts and Crafts as Native Science: Native Americans, as tribal collectives and individual artisans, have developed their own native science that incorporates the uses of the traditional arts and crafts to express sound principles of natural resources management and environmental protection by preservation of the sacred, traditional, collective knowledge associated with traditional symbols and correlated teaching of stories, myths, legends, and ceremonial knowledge through the use of said ancient artistic symbology and artistic expressions. And, Congress, hereby, requires that all federal departments and agencies give recognition to and respect toward these traditional artistic forms of manifesting tribal teachings about care and respect for the inherent, original integrity of creation (floral, faunal, mineral, elemental, time) and declares that said traditional teachings belong in the same category as valued principles tied to modern day management & sciences associated with protection of natural resource bases and the environment. And, that the use of said traditional arts and crafts is essential to tribal preservation of traditional culture and is directly related to modern day tribal natural resources management and regime development. And, any associated market value tied to said traditional arts and crafts does not lessen or impact the value since said production in perpetuate traditional native science systems and advocates care and respect for the environment.

In order to provide immediately relief from the threats of the IRS to the incomes of traditional Indian Artists that produce art products where the “stories of conservation” associated with the treaty-reserved fisheries, it would benefit their artists if the bill included language that declared:

(4) “The Congress, hereby, recognizes for purposes of clarification that traditional Indian arts and crafts, when associated with traditional stories of conservation, are qualified forms of modern day fisheries management and protection activity tied to and associated directly with tribal fisheries and natural resources management, and are protected by the same laws that may before, now, or hereafter be applied to the treaty reserved fishing rights. “

The Lummi Nation is a treaty Indian tribe (12 Stat. 927), as negotiated 1855 and ratified in 1859. The Lummi Nation, thus, has a government-to-government relationship with the United States. Like most Indian reservations, the Lummi People suffer from socio-economic marginalization, with conditions existing on the reservation, statistically, that are reflective of most struggling third world economies. The Pacific N.W. was once recognized, post-treaty times, for the huge economic potential associated with its fishing industries and timber production. But aspects of the regional economy has collapsed, causing severe impoverishment to the families that depended on these resource dependent industries for several generations; this holds just as true for tribal people that were participants in those economies. Consequently, while the majority of the treaty fishermen have been driven out of the economy, due to extremely limited harvests and correlated huge operation & debt loads, those remaining are working to increase the ex-vessel value of their harvests.

The Lummi Nation has been able to work with the Northwest Areas Foundation and secure a grant that shall operate to help overcome poverty amongst the tribal families during the term of several years. One aspect of that planning is an attempt to provide the traditional artists access to local to global markets, and to couple the product of the artists with the production of the fishermen; thereby increasing the ex-vessel value of the finished seafoods as well as the products of the artisans. This is a natural fit in that the “stories, myths, symbols, and ceremonial knowledge” traditionally associated with the “arts and crafts” are cultural vehicles for teaching tribal society, and others, the necessity of managing human activity and conduct in such a manner as to decrease immediate and short-term, as well as long-term, impacts to the fish populations, the correlated marine/riverine environs, and salmon/fish spawning habitat.

The traditional arts and crafts are venues of great traditional, cultural pride to native communities and artisans. It is for that reason that there has been a constant, national, effort to protect these forms of cultural expression from exploitations by non-Indian persons and business entities that are not affiliated with the tribal communities that own the collective knowledge, expressions and sacred knowledge tied to its artistic, symbolic manifestations. Before the non-Indian schools systems became the standard teaching institutions, the Native People passed individual, familial, extended-family and community collective knowledge from one generation to the next. In many cases this knowledge was shared and protected amongst intertribal affiliations. The use of artistic symbolism is directly tied to tribal methods of teaching protection, respect, and preservation of the surrounding environs (inclusive of the floral, faunal, environmental, elemental, mineral, etc. aspects). These traditional cultural teaching systems were defined by Dr. Gregory Cajete, University of New Mexico, as a form of “Native Science.” And, our “native science” coupled with our traditional symbolism depicted in the traditional arts does deserve to be protected under national powers given to the congress under Article I, Section 8, Clause 3 of the Constitution (i.e., the “Indian Commerce Clause”).

We have witnessed a local tribal casino offer carving projects to the Lummi Nation’s House of Tears Carvers, for totem poles that would be depicted outside their casino. It was a great opportunity, since the House of Tears Carvers most often employs and trains single tribal mothers and their children and other tribal youth in the process of any commissioned work, as well as presentations to local charity in the form of donated totem poles. The experience of learning the art, the stories, and earning a commission for their work has been a great experience for all involved, and builds self-esteem and cultural awareness & pride within those involved. However, the contract was lost to a local, non-Indian turned artist that now specialized in making “Indian Totem Poles.” At another local casino, the casino management had plastic replicas made of one pole and placed those throughout the facilities. Neither situation includes a notice to the public about the “art” and who made it, or their tribal affiliation (since there is none).

In addition, over time we have witnessed stores located at Sea-Tac International Airport that specialized in marking foreign made copies of Pacific N.W. Indian Masks; obviously masse produced. We find the same allegedly “Indian” art for sale in various

gift shops located within the “Tourists areas” of the San Juan Islands (original territory of the Lummi Nation).

Another example, the local Indian College has received “grants” and “charity donations” to have totem poles carved for display on the Lummi Reservation, for the benefit of the tribal students attending the college and the Lummi People. Now, of course, this could be taken as an issue to be resolved immediately by the Lummi. But, the issue has a deeper problem in that the “Indian” artist that received the “contract” was from British Columbia. Under U.S. law the aboriginal artist is considered “white” and not a Native American Indian, even though he is registered with a Canadian Band in British Columbia and has numerous relatives on the Lummi Reservation. Under indigenous law he is acceptable as a tribal community member but this is not true under U.S. law. The U.N. Declaration on the Rights of Indigenous Peoples addresses this subject. He would qualify as a native thereunder with cross-border inherent rights to cultural exchanges. By rights, under U.S. law, we could prosecute him and sue our own college for negligence in letting out the contract when qualified tribal members (“legal Indians” under U.S. law) were readily available; but, this is a dilemma in that traditionally, under our intertribal ceremonial systems, we must accept this man’s native blood in accordance to traditions. Thus, for Native Artisans, if an aboriginal artist in Canada can show that he has blood relatives within a U.S. federally recognized “border-tribe” then that tribe should be authorized to certify his native art products as authentic Indian art under tribal law, and include him amongst their lists of traditional certified tribal artists.

Most importantly, in the 1980’s, we witnessed the attempted federal taxation of our treaty reserved fishing rights income. In response, the U.S. Congress enacted the 1988 IRS Code amendment, Section 7873- the Indian Fishing Rights Exemption of Public Law 100-647. Previously, in multiparty, complex litigation, Federal District Judge George Boldt ruled (1974), and the U.S. Supreme Court confirmed (1979), that the tribes had reserved their rights to the commercial, subsistence, and ceremonial shares of all the salmon stocks, as well as other food fish. Thus, the intent of Section 7873 was to assure that all income derived from the exercise of those commercial, subsistence, and ceremonial rights (whether reserved by treaty, executive order, or federal statute) was recognized as tax exempt (under both federal and state law). This covered the rights to

harvest, transport, and market the harvested production of raw to finished marketable products. As interpreted by the tribes and the IRS, this exemption included the management and protection activities associated with modern tribal fisheries management and governance over the treaty fishing rights. As the attached testimony supplement addresses, when we use our traditional arts to teach each generation and the general public to maintain respect for the salmon species, the riverine/marine environments, and the spawning habitat that this is the traditional equivalent to fish culture management and good public relations to teach society to be more protective and caring for the fish stocks and the related rivers and environs.

We were, once, informed that the exemption included the artistic expressions of the reserved fishing rights (since art and stories are the means by which we publicly depict our ceremonial rights associated with the fisheries), and this informal response of the IRS was in compliance with our understanding of the reserved rights exemptions. But, others within the IRS Indian Government Taxation Division have, recently, concluded it is a taxable income and not directly related to the actual fishing activity. This is tragic in that many of the salmon/fish stocks are being listed on the extinction or endangered species lists. We believe our traditional arts, that depict our stories of conservation, are intended to be protected from taxation as much as the actual hands-on harvest, transportation, and marketing of the multitude of seafoods products. In fact, the art is one means to enhance the ex-vessel value for the fishermen's products at the market level (as in packaging and advocating quality, traditional native products). And, alongside rivers and streams our artists have raised story poles to teach the public to respect and protect these salmon populations and their riverine/marine habitats. These poles tell the "conservation stories" that the native people used to teach society in general to protect the natural environment for all future generations.

We recognize that there has been a bill introduced as H.R. 725: Indian Arts and Crafts Amendments of 2009. We believe that as a matter of clarification, for the established Section 7873, we need language that any and all rights to the commercial value of harvested natural seafood resources is inclusive of the tribal traditional artists rights to express the ceremonial and cultural values artistically associated with the natural resources and that such expressions have a *direct value-added* attached to the traditional

harvests, protection, and marketing of the product itself, as well as great significance toward preservation of the traditional & culture management of the resources. In time, more specifically, the language we would like to see come from the House companion bill would be something to the effect as follows (due to the Power of Purse right of the House):

Indian Arts & Craft Tax Exemption:

“Any Native American Arts & Craft produced by enrolled members of a Federal Recognized Indian Tribe, within the exterior boundaries of an established Indian Reservation, whether established by treaty, executive order, or federal statute, that produces revenue or income to qualified tribal members and their dependents shall be exempted from all federal and state taxation. Such exemption shall extend and apply to the production, transportation, marketing, and management activities of said arts & crafts production when such activities are implemented by a 100% Indian business entity owned and operated by an enrolled tribal member, an Indian Artist Association, or otherwise tribally authorized corporation.”

We believe that it was never the intent of the U.S. Congress to reach into Indian Country and apply federal taxation to traditional Indian Arts & Crafts. This activity is primarily the result of IRS Agents that have little understanding of the government-to-government relationship between the Indian Tribes and the United States. The Congress has control, with the signature of the President, over the development of “Indian Commerce” in relationships with local, regional, and national economy. It has never been the position of the Congress to authorize this extension of the taxing laws implemented by the IRS to this area of Indian Commerce activity. It is a direct insult and attack upon our tribal governments attempts to stabilize tribal culture, and tribal arts & crafts. As the great psychologist Carl Jung would recognize, the use of native symbolism, as expressed in their the stories, the myths, and arts have great significance to the socio-psychological stability of the tribal collective and culture. We have the inherent and exclusive rights to allow our traditional arts and crafts to be expressed and to protect those rights as a matter of our entitlement to self-determination and self-governance.

In the meanwhile, the Senate Committee on Indian Affairs has jurisdiction over Indian Affairs, and since it was the Senate that ratified our treaty (per Art. II, Sec. 2, Cl.2), the Senate has the power to “advise” it’s peers and the President on the treaty ratified. Thus, any language that could be included in the Arts and Crafts Bill that would “define” the treaty right in such a way that it declares that the use of traditional arts and crafts for the teaching of tribal membership and the general public the value of traditional knowledge

and ceremonial respect for reserved rights associated with treaty reserved (fish) resources shall be classified the same and considered the same as if it was an inherent part of the modern day management and science associated with said natural resources protection, management, harvests, and transportation, including the use of the arts to enhance the economic and market value of said raw or semi-finished or marketable finished products, or as used to enhance public awareness of the need to practice conservation.

We recognize that we cannot raise the issue of funds, finance, or taxes in the Senate first since the House controls this power (Art. I, Sec. 7, U.S. Constitution) and the House Parliamentarian would declare the language unconstitutional if raised in the Senate bill first. But, the conflict is really about the IRS not recognizing that “native ceremonial and traditional knowledge” deserves the same respect as any modern science of fisheries management that originates from the colleges and universities that teach fishery sciences and marine/riverine/environment management theories. Our tribal use of the traditional arts and ceremonial knowledge was how we managed and controlled human impacts upon the fish populations and related environs. It is how we taught the people not to overharvest or not to contaminate or impact salmon habitat and spawning grounds, or correlated environs.

Please consider language that would clarify, retroactively, that traditional Indian arts and crafts have valuable places in teaching respect for human relationships with the floral, faunal, mineral, and elemental aspects of the environment. For fishing tribes it directly has a significant value to the development of modern fishery management. The laws of the United States that protect these reserved rights to protect, manage, harvest, or conserve those resources include use & incorporation of said traditional arts and ceremonial knowledge into the principles and practices of modern tribal fisheries management.

It was our honor to submit this written testimony. Thank you very much!