

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defendants.

NO. C70-9213

Subproceeding No. 89-3 (Shellfish)

JOINT MOTION FOR ORDER AND
CONSENT DECREE APPROVING
SETTLEMENT AGREEMENT

Note On Motion Calendar: June 20, 2007

The Parties identified below seek this Court's entry of an Order that approves the Parties' Settlement Agreement attached hereto as Exhibit A. The Parties to the Settlement Agreement are as follows:

Plaintiff Indian Tribes: Tulalip, Stillaguamish, Sauk Suiattle, Puyallup, Squaxin Island, Makah, Muckleshoot, Upper Skagit, Nooksack, Nisqually, Lummi, Skokomish, Port Gamble S'Klallam, Lower Elwha Klallam, Jamestown S'Klallam, Suquamish and Swinomish ("Tribes");

Plaintiff United States of America;

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KANJI & KATZEN, PLLC
100 S. King Street, Suite 560
Seattle, WA 98104
(206) 344-8100

Defendant State of Washington; and

Intervenor-Defendant Puget Sound Shellfish Growers: Taylor United, Inc.;
Olympia Oyster Company; G.R. Clam & Oyster Farm; Cedric E. Lindsay; Minterbrook
Oyster Company; Charles and Willa Murray; Skookum Bay Oyster Company; and J&G
Gunstone Clams, Inc. ("Growers").

The undersigned representatives of the Parties affirm and agree that the Settlement Agreement is fair and reasonable and, by the signatures of their representatives below, the Parties consent to and are fully bound by all its terms. The undersigned further affirm and agree that the contingencies identified in ¶ 9.A.1, ¶ 9.A.2, and ¶ 9.A.4 of the Settlement Agreement have been fully and completely satisfied, as evidenced by the attached Exhibits B through D.

Each undersigned representative of the Parties to this Consent Decree certifies that he or she is fully authorized by that Party to enter into and execute the terms and conditions of this Joint Motion for Approval of Settlement Agreement, and to legally bind such Party to the Order and the Settlement Agreement. By their representatives' signatures below, the Parties consent to the entry of the Order Approving the Settlement Agreement.

Respectfully submitted this 20th day of June, 2007.

PLAINTIFF INDIAN TRIBES,

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THE STATE OF WASHINGTON, Defendant

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EXHIBIT A

SETTLEMENT AGREEMENT

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

vs.

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Case No.: C70-9213

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SETTLEMENT AGREEMENT

The Tribes listed in section 1 ("Tribes"), the Puget Sound Shellfish Growers ("Growers"), the United States Department of the Interior, and the State of Washington, by and through the undersigned representatives, hereby enter into this Settlement Agreement.

WHEREAS the Tribes have asserted treaty right claims to take shellfish from lands owned, leased, or otherwise subject to harvest by the Growers, which claims have resulted in the following decisions:

1. United States v. Washington, 873 F. Supp. 1422 (W.D. Wash. 1994).
2. United States v. Washington, 898 F. Supp. 1453 (W.D. Wash. 1995) (as modified by the Stipulation and Order Amending Shellfish Implementation Plan, dated April 8, 2002) (hereinafter the "Revised Shellfish Implementation Plan").
3. United States v. Washington, 909 F. Supp. 787 (W.D. Wash. 1995).

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4. United States v. Washington, 157 F.3d 630 (9th Cir. 1998);

WHEREAS the parties to this Settlement Agreement acknowledge that the district court found that the Growers are "innocent purchasers who had no notice of the Tribes' fishing right when they acquired their property." 898 F. Supp. at 1457;

WHEREAS the parties agree that numerous unresolved issues remain outstanding regarding implementation of the Tribes' treaty right to take shellfish from lands owned, leased or otherwise subject to harvest by the Growers; and

WHEREAS the Tribes, Growers, the United States Department of the Interior, and the State of Washington are interested in resolving any and all disputes between and among them regarding implementation of the Tribes' treaty right to take shellfish from lands owned or leased by the Growers, they agree as follows.

SETTLEMENT AGREEMENT

1. TRIBES.

The Tribes bound by this Settlement Agreement are the Tulalip, Stillaguamish, Sauk Suiattle, Puyallup, Squaxin Island, Makah, Muckleshoot, Upper Skagit, Nooksack, Nisqually, Lummi, Skokomish, Port Gamble S'Klallam, Lower Elwha Klallam, Jamestown S'Klallam, Suquamish, and the Swinomish Tribes (hereinafter "Tribes"). The Tribes are parties to the following treaties: Treaty of Medicine Creek, December 26, 1854 (10 Stat. 1132); Treaty of Point Elliot, January 26, 1855 (12 Stat. 927); Treaty of Point No Point, January 26, 1855 (12 Stat. 933); Treaty with the Makah, January 31, 1855 (12 Stat. 939) (hereafter "the treaties").

2. INTERVENOR DEFENDANTS.

A. The intervenor defendants bound by this Settlement Agreement shall include the following: Taylor United, Inc.; Olympia Oyster Company; G.R. Clam &

Oyster Farm; Cedric E. Lindsay; Minterbrook Oyster Company; Charles and Willa Murray; Skookum Bay Oyster Company; and J & G Gunstone Clams, Inc. These growers need only file with the Court and serve on Plaintiff Tribes by March 1, 2008 a sufficiently identified list of their tidelands, for example, by county and county tax parcel, owned, leased from a private party or otherwise subject to a right to harvest by these growers as of August 28, 1995.

B. In addition, all persons who are members of the Puget Sound Shellfish Growers Legal Defense Fund, Inc., and who on or before August 28, 1995, owned, leased from a private party, or otherwise had a right to commercial harvests of shellfish from tidelands in Washington State, and either:

(i) on or before August 28, 1995, had an active aquatic farm registration for commercial shellfishing from those tidelands and a Washington Department of Health certification for those tidelands, *provided*, that they intervene and file with the Court and serve on Plaintiff Tribes by March 1, 2008, copies of the documents that establish their compliance with this subsection and a sufficiently identified list of those tidelands, for example, by county and county tax parcel; or

(ii) on or before the date the person seeks to intervene had an active aquatic farm registration for commercial shellfishing and a Washington Department of Health certification for those tidelands, *provided*, that such persons intervene and file with the Court and serve on the Plaintiff Tribes by March 1, 2008, copies of documents that establish their compliance with this subsection and a sufficiently identified list of those tidelands, for example, by county and county tax parcel, and, further, file documentary evidence establishing that those tidelands were used for sustained

commercial production of shellfish during some portion of the time between January 1, 1985, and August 28, 1995;

shall be covered by the terms of this Settlement Agreement.

C. In addition, a person who between August 28, 1995 and March 1, 2008 acquires the right to harvest from a person whose tidelands are covered under section 2(A) and section 5 or from a person whose tidelands would have been eligible to become covered tidelands under section 2(B)(i) or (ii) and section 5, so long as the eligibility for including the tidelands under section 2(B)(i) or (ii) is documented as provided in those subsections, and on or before the date the person seeks to intervene had an active aquatic farm registration for commercial shellfishing and a Washington Department of Health certification for those tidelands, *provided*, that such persons intervene and file with the Court and serve on the Plaintiff Tribes by March 1, 2008, copies of documents that establish their compliance with this subsection, shall be covered by the terms of this Settlement Agreement.

D. Any person holding a commercial shellfish lease for state tidelands identified in section 4(A) shall be covered by the terms of this Settlement Agreement.

E. A person who at any time acquires the right to harvest from tidelands covered pursuant to section 5, from a person who actually intervened pursuant to section 2(A), 2(B), 2(C), 2(D), or this subsection, may become bound by the terms of this Settlement Agreement by filing with the Court a request to intervene in this proceeding for that limited purpose, supported by a copy of their aquatic farm registration for commercial shellfishing filed with the Washington Department of Fisheries and Wildlife, their Washington Department of Health certification for those tidelands, and their deed,

lease or contract showing the locations of the tidelands on which they have acquired the right to harvest.

F. All persons who fulfill the conditions of section 2(B), 2(C), 2(D) or 2(E) may intervene as defendants for the limited purpose only of participation in this Settlement Agreement. Any person who fails to actually intervene, except to the extent that a person is covered pursuant to section 2(D), shall have no rights under this Settlement Agreement.

G. Participation in this Settlement Agreement is a result of settlement and compromise and establishes only those persons who are covered by this Settlement Agreement. Such participation does not represent an admission or agreement by any party that a participant could or could not qualify as a commercial shellfish grower within the terms of the Revised Shellfish Implementation Plan. Therefore no person may refer to or rely upon this Settlement Agreement, nor any person's participation in the Settlement Agreement, and the Court shall not consider any such evidence, in any dispute as to the requirements necessary for any person to qualify as a commercial shellfish grower for purposes of the Revised Shellfish Implementation Plan.

H. A person who files a list of tidelands called for in section 2(A), 2(B), 2(C) or 2(E) and discovers that the list was incomplete through inadvertence or oversight may amend the list to include those tidelands.

3. STATE OF WASHINGTON AND UNITED STATES.

Except as set forth in section 12, the State of Washington acknowledges and appreciates the efforts of the Tribes and Growers to resolve the existing disputes and supports this Settlement Agreement. Except as set forth in section 12, the United States

supports the efforts of the Tribes and Growers to resolve any and all existing disputes between and among them through this Settlement Agreement.

4. STATE-OWNED TIDELANDS COVERED BY RELEASE.

A. Subject to subsections 4(B), (C), (D), and (E) and Section 9, below, the tidelands covered by the following State of Washington Department of Natural Resources (hereinafter "DNR") agreements shall be considered "covered tidelands" for the purposes of Section 6 of this Settlement Agreement when leased for any shellfish cultivation purpose:

LEASE #	COMPANY	USE	START	END	WATERBODY	SEC	TWN	RANGE
20009733	LITTLE SKOOKUM SHELLFISH	CLAM	28-Jun-93	30-Jun-03	PS SKOOKUM	10	19 03	W
		OYSTERS						
20009719	TAYLOR UNITED	CLAM	28-Jun-93	30-Jun-03	PS SKOOKUM	10	19 03	W
		OYSTERS						
20009703	LITTLE SKOOKUM SHELLFISH	CLAM	28-Jun-93	30-Jun-03	PS SKOOKUM	10	19 03	W
20A09206	JEFFREY DELIA	OYSTERS	30-Sep-99	29-Sep-09	HC DABOB	21	27 01	W
20A09307	E YAMASHITA	OYSTERS	2-Dec-99	1-Dec-09	HC DABOB	28	26 01	W
20012043	ROGER C LINDEMAN	CLAM	5-Mar-94	4-Mar-04	PS SEQUIM	36	30 03	W
20A12047	JODI CLAM COMPANY	CLAM	17-Sep-96	1-Nov-08	PS SEQUIM	36	30 03	W
20A12695	WALLY PEDERSON	OYSTERS	1-May-99	30-Apr-09	HC DABOB	27	27 01	W
20A12355	TAYLOR RESOURCES	OYSTERS CLAM	19-Jun-96	18-Jun-06	HC DOSEWALLIPS			02 W
20-A09868	C W GUNSTONE	CLAM	3-Mar-90	3-Mar-00	ST DISCOVERY	36	30 03	W
20-A11121	E YAMASHITA	OYSTERS	1-Aug-89	31-Jul-99	HC DABOB	16	27 01	W
20-A10234	***CRESENT BEACH OYSTER AND CLAM	OYSTERS	11-Apr-84	11-Apr-92	PS SHIP	13	37 02	W
20010050	J J BRENNER OYSTER CO	CLAM	22-Dec-90	22-Dec-00	PS SKOOKUM	9	19 03	W
22002530	E T & M E HAEFLIGER	CLAM	1-Sep-80	1-Sep-95	PS OAKLAND	16	20 03	W
20A12800	GUNSTONE CLAMS	CLAM	31-Oct-88	1-Nov-98	PS SEQUIM	23	30 03	W
20009956	GARY & JANICE MAZZONCINI	CLAM	7-Jul-90	1-Jul-00	HC HAMMA HAMMA			03 W
		OYSTERS						
20011283	JERRY YAMASHITA	OYSTERS	5-May-91	1-May-01	HC DABOB	15 & 16	27 01	W

20013012	JAMESTOWN KLALLAM TRIBE	OYSTERS	1-Aug-90	1-Aug-00	PS DUNGENESS	23	31 04 W
20012571	JAMESTOWN KLALLAM TRIBE	OYSTERS	1-Jun-87	1-Jun-97	PS SEQUIM	12	29 03 W
20012924	JAMESTOWN KLALLAM TRIBE	OYSTERS	1-Jan-90	1-Jan-00	PS SEQUIM	1 & 12	29 03 W
20012228	CHARLES & MARIE BRODERS	CLAM	1-Aug-85	1-Aug-96	ST DISCOVERY	7 & 18	29 01 W
20011665	TAYLOR UNITED	OYSTERS	1-Jul-81	1-Jul-93	HOOD CANAL	31	22 03 W

**** Crescent Beach Oyster and Clam app rejected, new app pending

B. For a lease of covered tidelands identified in subsection 4(A) that has expired before the date the Court signs a Consent Decree which implements the terms of this Settlement Agreement, DNR shall have up to eighteen months from the date of the Court's signature to execute a renewal of the lease with the prior lessee, or, where the prior lessee is deceased, the prior lessee's interest is now held by a member of the immediate family, or where the prior lessee was a business and the name of the business changed without a change in ownership, with that lessee's successor in interest. DNR agrees to expedite its efforts to obtain a lease renewal and to notify the tribes as soon as a lease renewal has been signed or a determination has been made that no renewal will take place. As soon as DNR determines that no renewal can or will take place with the prior lessee (or its immediate successor in interest as provided above), and notifies the tribe of that fact; or eighteen months after the Court signs a Consent Decree which implements the terms of this Settlement Agreement without a new lease being signed, whichever is sooner, the tribes shall have up to ninety days to elect to either exercise their treaty shellfishing rights using the principles of section 4 of the Revised Shellfish Implementation Plan, or negotiate a lease for those covered tidelands.

(i) If tribes elect to exercise treaty shellfishing rights on the subject property DNR may attempt to lease the subject covered tidelands for up to three years

from the date the tribes make the election. Any new lease must be issued at a fair market rental rate that is comparable to other commercial shellfish leases for the type of property and shellfish cultivation operation being considered. If DNR enters into a new lease within the three-year period, tribal shellfish harvesting pursuant to this subsection will cease as of the date that lease is executed. If no new lease has been signed within the three year period the subject property will cease to be considered covered tidelands and will be fully subject to the Revised Shellfish Implementation Plan. Tribal exercise of shellfishing rights during the three year period for State leasing efforts shall be undertaken in a manner that does not interfere with or impair DNR's ability to issue a new lease. As part of exercising their Treaty shellfish harvesting right pursuant to this subsection, the Tribes will conduct a shellfish population survey and provide a copy to DNR.

(ii) (a) If tribes elect to negotiate a lease for the covered tidelands, DNR and the tribes will negotiate a lease on terms that are comparable to other commercial shellfish leases for the type of property and shellfish cultivation operation being considered. If no property boundary survey is required, DNR and the tribes will have six months from the date the tribes make their election pursuant to subsection 4(B) to execute a lease. If a property boundary survey is required, DNR and the tribes will have nine months from the date the tribes make their election pursuant to subsection 4(B) to execute a lease. During such lease negotiations, the tribes may exercise their treaty shellfishing rights on the subject property as provided in subsection 4(B)(i), provided however, the tribes pay DNR a mutually agreed-upon rate for any shellfish taken during such negotiation period.

(ii) (b) If the tribes reject the lease terms offered by DNR or the lease is not executed within the time periods identified in the preceding subsection, DNR may attempt (during the remainder of the three year period that began with the tribes' election pursuant to subsection 4(B)) to lease the subject tidelands to another person so long as the terms offered to such person are no more favorable to that person than the terms last offered to the tribes. During such leasing efforts the tribes may exercise their treaty shellfishing rights on the subject property as provided in subsection 4(B)(i). For the purpose of determining whether DNR has offered a lease to a third party on terms no better than were offered to the tribes, the tribes recognize that rental rates for DNR shellfish leases are based in part on variables like the amount of shellfish on the leased parcel, the mortality rate of the shellfish and the market price of the shellfish. The tribes further recognize that a change in these kinds of variables, like a change in the amount of shellfish on that parcel due to tribal harvesting, a change in mortality rate, or a change in the market price for the shellfish, will likely change the rent offered to the lessee of that parcel. The tribes agree that any such rent changes will not be considered "terms . . . more favorable to that [third] person than the terms last offered to the tribes."

C. When a lease of covered tidelands identified in subsection 4(A) is terminated before the lease expiration date DNR shall give immediate notice to the tribes. The tribes will have ninety days from the date of that notice to elect to either exercise their treaty shellfishing rights using the principles of the Revised Shellfish Implementation Plan, take over the lease for the duration of the remaining period of the lease, including all rights, if any, to renew that lease upon its expiration, or attempt to negotiate a new lease with DNR. If the tribes elect to exercise their treaty shellfishing

rights the provisions of subsection 4(B)(i) shall apply. If the tribes elect to attempt to negotiate a new lease with DNR the provisions of subsection 4(B)(ii) shall apply. However, if the funding anticipated by section 7 on the schedule expressed in section 9 is not realized, then the provisions of this subsection do not apply.

D. When a lease of covered tidelands identified in subsection 4(A) expires after the date the Court signs the implementing Consent Decree without being renewed, including those leases previously renewed pursuant to subsection 4(B), DNR shall have up to six months from the date of the expiration of the lease, or nine months in the event a property boundary survey is needed, to execute a renewal of the lease with the prior lessee. DNR agrees to expedite its efforts to obtain a lease renewal and to notify the tribes as soon as a lease renewal has been signed or a determination has been made that no renewal will take place. As soon as it has been determined that no renewal will take place, or six months (or nine months where a property boundary survey was needed) after the expiration of the lease without a renewal being signed, whichever is sooner, the tribes will have ninety days to elect to either exercise their treaty shellfishing rights using the principles of the Revised Shellfish Implementation Plan, or negotiate a lease for the covered tidelands. If the tribes elect to exercise their treaty shellfishing rights the provisions of subsection 4(B)(i) shall apply. If the tribes elect to attempt to negotiate a new lease with DNR the provisions of subsection 4(B)(ii) shall apply.

E. (i) Subject to the exceptions set forth in subsection 4(E)(ii) below, when the lessee of a lease of covered tidelands identified in subsection 4(A) attempts to transfer ownership of the lease DNR will give immediate notice to the tribes. The tribes will have ninety days from the date of that notice to elect to either exercise their treaty

shellfishing rights using the principles of the Revised Shellfish Implementation Plan, take over the lease for the duration of the remaining period of the lease, including all rights to renew that lease, if any, upon its expiration, or attempt to negotiate a new lease with DNR. If the tribes elect to exercise their treaty shellfishing rights the provisions of subsection 4(B)(i) shall apply. If the tribes elect to attempt to negotiate a new lease with DNR the provisions of subsection 4(B)(ii) shall apply.

(ii) However, the provisions of subsection 4(E)(i) do not apply where the transfer of the lease is to a member of the lessee's immediate family, where the transfer is only the result of a change in the form of organization holding the lease without any change in control to any new persons, or where the transfer is part of a bulk sale of all the lessee's shellfish cultivation landholdings.

F. Renewals of leases and leases of covered tidelands identified in subsection 4(A) shall be for no longer than a period of ten years.

G. These provisions of section 4 shall not be applied to eliminate or modify any pre-existing statutory or contractual rights, including the right to freely assign a lease. DNR shall include provisions in future leases that facilitate the tribes' rights to lease pursuant to this section 4 by requiring the lessee to agree that the lease will subject to the terms of this section 4.

H. DNR shall include a provision in its leases and lease renewals that are entered into after December 1, 2003 for the covered tidelands in subsection 4(A) that provides: if the funding anticipated by Section 7 on the schedule expressed in Section 9 is not realized then the leases and or lease renewals shall, for the remainder of the lease term, be subject to a request for Tribal harvest under section 6 of the Revised Shellfish

Implementation Plan, notwithstanding any failure by the Tribe to give notice under section 8.2.2 of the Revised Shellfish Implementation Plan, and notwithstanding the requirements of section 6.1.4 of the Revised Shellfish Implementation Plan.

5. TIDELANDS COVERED BY RELEASE.

A. Tidelands and Transfers of Control of Tidelands.

(i) In addition to those State owned tidelands identified in section 4 of this Settlement Agreement, and in addition to the tidelands owned, leased from a private party, or otherwise subject to a right to harvest as of August 28, 1995, by the persons identified in subsection 2(A) above, the following tidelands shall be covered tidelands for the purposes of Section 6 of this Settlement Agreement:

a. those non-State owned tidelands owned, leased from a private party, or otherwise subject to a right of harvest as of August 28, 1995, by the persons who intervene in this proceeding pursuant to section 2(B), and

b. those non-State owned tidelands owned, leased from a private party, or otherwise subject to a right of harvest after August 28, 1995, where those tidelands were, before the date that a Consent Decree implementing this Settlement Agreement is entered by the Court, established not to include a natural shellfish bed pursuant to section 6.3 of the Revised Shellfish Implementation Plan.

(ii) If the right to harvest tidelands identified in subsection 5(A)(i) above are or were transferred to a person identified under subsection 2(A), 2(B), 2(C), 2(D) or 2(E) above at any time after August 28, 1995, those tidelands shall remain covered by section 6 of this Settlement Agreement.

B. Tidelands covered pursuant to subsections 5(A), above, shall cease to be covered if those tidelands are sold, deeded, or otherwise permanently transferred so that the tidelands are no longer used for the commercial cultivation of shellfish (commercial cultivation, for purposes of this subsection, includes allowing the land to lie idle when done with the intent of using those tidelands for commercial purposes in the future).

C. Whenever covered tidelands are sold, deeded, or otherwise permanently transferred, the transferring party shall promptly provide notice of that fact, including the location of the tidelands affected and the name and address of any new owner of the affected tidelands. Notice shall be sufficient if it is sent to the Northwest Indian Fisheries Commission, 6730 Martin Way E., Olympia, WA 98516. Failure to provide such notice, however, will not affect the validity of the sale, deed or transfer, nor affect the status of the tidelands as covered for purposes of this Settlement Agreement.

6. RELEASE OF CLAIMS.

A. Tribes' Treaty Claims. Upon fulfillment of all contingencies stated in Section 9 A. below, and for the purpose only of this Settlement Agreement, the Tribes agree, on their own behalf and on behalf of their predecessors, successors, and members, that any and all shellfish on "covered tidelands" within the terms of sections 4 and 5, above, are deemed as of the date of this Settlement Agreement to be "staked or cultivated by citizens" for the purpose of implementing the Treaties referenced in section 1, above. The Tribes hereby represent that they are intimately acquainted with the Puget Sound area and with all tribes, or their successors, who are or were party to the treaties listed in section 1 and that, to the best of their knowledge, there are presently no tribes or persons, other than the signatories to this Settlement Agreement, who have a right to take shellfish under the treaties listed in section 1.

B. Tribes' Claims Against the United States and State of Washington. Upon fulfillment of all contingencies stated in Section 9 A. below, the Tribes, on their own behalf and on behalf of their predecessors, successors, and members, hereby waive and release forever the United States and the State of Washington from all past and present claims, known and unknown, arising from or related to actions or inactions by the United States or the State of Washington arising from or related to the Tribes' treaty rights of taking shellfish from covered tidelands set forth in section 4 and 5 above. Such claims regarding those covered tidelands include, but are not limited to, 1) claims for alleged injury to the treaty shellfishing rights resulting from human activities authorized or permitted by the United States or the State of Washington on the covered tidelands; 2) breach of trust claims against the United States for failure or delay in the protection, acquisition, enhancement or development of the shellfish resource on the covered tidelands; and 3) breach of trust claims arising from or related to the United States' actions in this sub-proceeding 89-3, including but not limited to claims related to the litigation of this sub-proceeding and negotiation, execution and approval of this Settlement Agreement, including its terms.

C. Growers' Claims Against the United States. Upon fulfillment of all contingencies stated in Section 9 A., below, the Growers listed in section 2, and any persons or entities that become an Intervenor Defendant under section 2 above, on their own behalf and on behalf of their predecessors, successors, and members, waive and release forever the United States from any claims arising from or related to the existence of treaty rights to harvest shellfish from any tidelands they own, lease or in which they otherwise have a legal interest. Such claims include, but are not limited to, 1) all claims arising from or related to the actions, inaction, or alleged delay in taking action, by the United States related to the enforcement or protection of the Tribes' treaty shellfishing rights; and 2) all claims for taking of private or other property rights or interests in

connection with the United States' enforcement or protection of the Tribes' treaty shellfishing rights.

D. Grower's Claims Against the State. Upon fulfillment of all contingencies stated in Section 9 A., below, the growers listed in section 2, and any persons or entities that become an Intervenor Defendant under section 2 above, forever waive and release the State of Washington from any claims arising from or related to the existence of treaty rights to harvest shellfish from any tidelands they own, lease, or in which they otherwise have a legal interest. For the purposes of this provision, the term "tidelands" includes all aquatic lands in which Intervenor Defendants have some interest and which were conveyed by the State of Washington or are currently owned by the State of Washington subject to some interest held by Intervenor Defendants. This waiver and release of claims against the State of Washington shall be binding upon and inure to the benefit of the parties' successors and assigns. Once effective, this waiver and release continues in force and with the same effect if covered tidelands cease to be covered tidelands at some future date.

E. State's Claims Against the United States. Upon the fulfillment of all contingencies stated in Section 9 A. below, the State of Washington waives and releases forever the United States from any claims arising from or relating to the existence of treaty rights to harvest shellfish from any covered tidelands set forth in Section 4 and 5 that the State owns or any covered tidelands in which the State acquires some real property interest. Such claims include, but are not limited to, all claims related to the actions, inactions, or alleged delay in taking action, by the United States related to the

enforcement or protection of the Tribes' Treaty shellfishing rights on the covered tidelands.

F. United States' Claims Against the State. Upon the fulfillment of all contingencies stated in Section 9 A., below, and release of the tribal claims, the United States waives and releases forever the State of Washington from any claims arising from or related to the existence of treaty rights to harvest shellfish from any covered tidelands described in Sections 4 and 5 *supra* that the State owns or any covered tidelands in which the State acquires some real property interest. Such claims include, but are not limited to, all claims arising from or related to the actions, inaction, or alleged delay in taking action, by the State of Washington related to the recognition of the Tribes' treaty shellfishing rights on the covered tidelands as well as any existing claims for alleged injury to the treaty shellfishing rights resulting from human activities authorized or permitted by the State of Washington on the covered tidelands.

7. CONSIDERATION.

In consideration for the releases set forth above in section 6, the Tribes shall receive \$33,000,000 from state or federal sources, as set forth in Section 9, below. The monies to be received by the Tribes shall be used by the Tribes for the development of their shellfisheries, including, but not limited to, the acquisition of appropriate properties. The Tribes and Growers shall make their best concerted efforts to jointly request that \$33,000,000 be appropriated from federal or state sources.

8. PURCHASE OF GROWER PROPERTY.

In recognition of the treaty rights recognized by the courts in this action, the Growers further agree that within one year from the date that all contingencies in Section 9.A of this settlement agreement have been fulfilled, the Growers shall make available to the Tribes for purchase, at fair market value, at least 80 acres of tidelands, at least 40 acres of which shall be in Samish Bay, that are producing or are suitable for producing

commercial harvests of shellfish. Fair market value for the land to be made available for sale shall be determined by an appraiser agreed upon by the selling grower and the tribe or tribes purchasing the land. If no agreement on an appraiser can be reached, each side shall appoint an appraiser. The two appraisers shall select a third appraiser. The appraiser mutually agreed by the parties, or the third appraiser, shall establish the fair market value of the land, which appraised value shall be final and binding so that the selling grower shall be bound to sell at the appraised price. The tribes may choose not to purchase the offered property at that price; in that event the Growers shall not be obligated to make any additional or different offer for the number of acres contained in the rejected offer.

The tribes may choose to purchase less than the entire acreage offered to them where the cost of the whole offering would exceed the amount the tribes have set aside for purchase of tideland properties, provided that they may not choose only the most select of scattered parcels from the overall property offered in such a way as to substantially reduce the value of the remaining parcels. If the tribes choose to purchase less than the entire amount offered, the selling grower and the purchasing tribes shall agree on the portion to be made available to the tribes. Any disagreement as to the price shall be resolved by the same appraisal procedure as set forth above. Any dispute as to the portion to be made available to the tribes shall be subject to the dispute resolution procedure set forth in section 11.

9. CONTINGENT AGREEMENT.

A. This Settlement Agreement is expressly conditioned and contingent on the following:

1. By June 29, 2007, enactment of legislation by the United States Congress that is signed by the President that:
 - (a) approves this Settlement Agreement,

- (b) outlines a process for the consideration of the inclusion of other treaty tribe(s) in this Settlement Agreement without abrogation, extinguishment, or other equivalent action by Congress, the Secretary of Interior, or any other entity,
 - (c) authorizes the appropriation of money for the benefit of the Tribes that are parties to this Settlement Agreement, in the amounts and by the dates stated below in subsection 9.C, and
 - (d) authorizes the Tribes that are parties to this Settlement Agreement, either individually or collectively, to bring suit against the United States in the United States Court of Federal Claims for money damages, including interest, in the event that any payment by the United States required by subsection 9.C is not made in the full amount, or not within six months following the date required by subsection 9.C, or not in a manner consistent with the unanimous written agreement of the Tribes as served on all parties pursuant to subsection 9.A(4).
2. By June 29, 2007, appropriation of \$11,000,000 from the State of Washington for the benefit of the Tribes that are parties to this Settlement Agreement. The parties acknowledge that the State of Washington has appropriated funds for this settlement agreement under Section 308(8) of ESSB 6386 (Laws of 2006, Chapter 372), but that the actual release and application of the appropriated monies is subject to contingencies regarding the execution and full effectiveness of this settlement and the accompanying consent decree. The contingencies set forth in ESSB 6386, Section 308(8), must be fulfilled by June 29, 2007 or the appropriation lapses and the terms of this settlement agreement will not be fulfilled and this agreement may be certified as null and void in accordance with Section 9.B.

3. By June 29, 2007, the United States District Court which is presiding over *United States v. Washington*, Civ. No. C70-9213, Sub-proceeding No. 89-3 (shellfish), approves this Settlement Agreement and enters a corresponding consent decree.
 4. By May 15, 2007, the Tribes that are parties to this Settlement Agreement unanimously agree in writing on the payee or payees, and the allocation of payments to be made, for receipt of the funds appropriated pursuant to subsections 9.A(1) and (2), and serve such writing on the other parties to this agreement.
- B. If any one of the conditions stated in subsection 9.A are not fulfilled, without regard to the reason, and without regard to the fault of any party, this Consent Decree and Settlement Agreement shall be vacated and null and void and no party shall have any rights hereunder, and any individual tribal party or any other party may request, and the Court shall so certify, that this settlement agreement has become null and void. From the date of that certification the provisions of the Revised Shellfish Implementation Plan will have full force and effect, provided, however, that the Tribes' starting one year opportunity to give notice to Growers pursuant to sections 6.1 and 6.1.4 of the Revised Shellfish Implementation Plan shall begin with the date of certification or the date Exhibit A of the Revised Shellfish Implementation Plan is completed with respect to at least manila clams, native littleneck clams, geoduck clams and pacific oysters, whichever is later. Future opportunities for tribal notice shall then occur pursuant to the terms of section 6.1.4 of the Revised Shellfish Implementation Plan.

- C. Payments to the Tribes that are parties to this Settlement Agreement of the funds appropriated by the United States and State of Washington, in accordance with the written agreement served on the parties pursuant to subsection 9.A(4), shall be made as follows:
1. From the United States:
 - \$2,000,000 by 09/03/2007, plus
 - \$5,000,000 by 09/03/2008, plus
 - \$5,000,000 by 09/03/2009, plus
 - \$5,000,000 by 09/03/2010; plus
 - \$5,000,000 by 09/03/2011; and
 2. From the State of Washington, \$11,000,000 will be disbursed by September 3, 2007, upon timely fulfillment of all contingencies specified in Section 308(8) of ESSB 6386. The terms and conditions of this settlement agreement shall not be vacated or certified as null and void for any deficiency in the United States failure to make the payments specified in this Section subsequent to June 29, 2006. The provisions of Sections 9.A, 9.B, and 9.C are provided to address that circumstance.
 3. If all contingencies set forth in ESSB 6386, Section 308(8), are fulfilled by June 29, 2007, but the payment required from the State of Washington by subsection 9.C is not made in the full amount, or not by the date required by subsection 9.C, or not in a manner consistent with the unanimous written agreement of the Tribes as served on all parties pursuant to subsection 9.A(4), the State of Washington waives its immunity and consents to suit by the Tribes that are parties to this Settlement Agreement, either individually or collectively, for money damages equal to the amount of any required payments that are not made in a timely manner, together with interest on those

liquidated damages running from September 3, 2007 to the date that any required payments are finally made.

4. To facilitate timely payment, the Tribes agree that, as a part of the notice provided pursuant to subsection 9.A(4), they will notify the State if there is a means for individual payees to receive required payments by wire transfer and that such payees will assist in the facilitation of wire transfer payments where possible. Where wire transfer is not possible, the Tribes agree that the notice provided pursuant to subsection 9.A(4) will designate a payee and mailing address for required payments that may be mailed.
- D. So long as all the contingencies stated in subsection 9.A are fulfilled, the Tribes will not seek any access to tidelands where both (1) the tidelands would qualify as "covered tidelands" under the terms of this Settlement Agreement, and (2) the tidelands are subject to harvest by a person who may qualify to be an Intervenor Defendant under the terms of this Settlement Agreement. In every other respect, however, the Tribes may continue to exercise their rights pursuant to the Revised Shellfish Implementation Plan, including litigation of any disputes arising under the Revised Shellfish Implementation Plan.
- E. In the event that another tribe or tribes may establish treaty shellfish rights to the covered tidelands, the Parties agree to follow the process outlined in the legislation pursuant to subsection 9.A(1) to consider the inclusion of such tribe or tribes in this Settlement Agreement.
10. **PROPERTY HELD IN TRUST BY THE UNITED STATES.**

The Growers agree that they will not oppose or object to the United States holding in trust any and all properties acquired by the Tribes pursuant to this Consent Decree and Settlement Agreement.

11. RESOLUTION OF DISPUTES.

All disputes arising in the interpretation, implementation and enforcement of this Settlement Agreement and the Revised Shellfish Implementation Plan, including but not limited to disputes as to the definition and existence of natural shellfish beds, the qualifications of any person to become an intervenor-defendant pursuant to section 2, whether a particular tideland is covered within the meaning of section 5, and the suitability of any property offered for sale pursuant to section 8, shall be resolved as set forth in the Revised Shellfish Implementation Plan entered April 8, 2002 (or as thereafter amended). This Court retains continuing jurisdiction for this purpose.

12. RESERVATION OF RIGHTS.

Notwithstanding any other provision of this settlement, the State of Washington and the United States expressly reserve their rights and their discretion to consider, comment, and/or act upon any legislation, including appropriations, seeking to implement this agreement. Such consideration, comment, and/or action or lack thereof, shall not be deemed a breach of this agreement. Implementation of this Settlement Agreement by the United States or its agencies is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. Sec. 1341-1519, and the availability of appropriated funds. Nothing in this Settlement Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money by the State of Washington. As noted more fully in Section 9.A.2, Washington State has enacted a contingent appropriation of money in partial fulfillment of the funding requirements of this agreement. The determination of whether the contingencies to the Washington State budget appropriation have been met remains within the sole discretion of the State of Washington. Nothing in this Settlement Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury, subject to the terms of any legislation passed consistent with section 9(A)(1)(d). The Parties acknowledge that the United States shall not be required under this Settlement Agreement to expend any appropriated

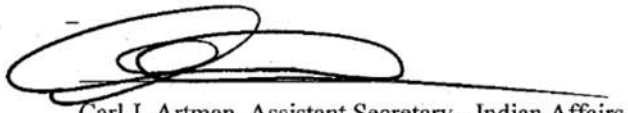
funds unless and until an authorized official of the U.S. Department of the Interior affirmatively acts to commit to such expenditures in writing, subject to the terms of any legislation passed consistent with section 9(A)(1)(d).

13. GROWER ENHANCEMENT OF STATE-OWNED TIDELANDS.

To enhance recreational shellfish harvest opportunities for the citizens of Washington State, as a condition of this settlement agreement, the Growers agree to provide recreational shellfish enhancements to the State and its citizens as set forth in this section. Subject to the fulfillment of the provisions of section 7, the Growers shall each year for a period of ten years contribute to the State of Washington \$50,000 worth of shellfish (Manila clam, Pacific oyster, Olympia oyster, or geoduck) enhancement to State-owned tidelands. The \$50,000 dollar value to be contributed to the State and its citizens by the Growers each year for that ten year period shall be satisfied through any combination of the fair market value of shellfish seed and any grower-furnished labor, materials and equipment expended to assist the enhancement of State-owned tidelands. The State may choose how the Growers contribute the \$50,000 shellfish enhancement through any combination of seed, the species of seed (Manila clam, Pacific oyster, Olympia oyster, or geoduck), and grower-furnished labor, materials and equipment expended in enhancing state-owned tidelands for recreational harvest. A voluntary committee of State, Grower and Tribal representatives may be called by the State to meet annually to assist the State in determining what proportion of seed species and Grower-furnished enhancement efforts would be most useful to the State in increasing the shellfish resource available for recreational harvest on state-owned tidelands. Nothing in this section is intended to modify the Tribes' rights to harvest up to 50% of the harvestable shellfish from state-owned tidelands as provided in the Court's Implementation Order and as further clarified by decisions of this Court. In particular, without setting any precedent for situations that may arise in other contexts, the Tribes'

rights to up to 50% of the harvestable shellfish from state-owned tidelands are preserved with respect to state-owned tidelands enhanced pursuant to this section.

DATED this _____ day of _____, 2007



Carl J. Artman, Assistant Secretary - Indian Affairs
United States Department of the Interior

David Bernhardt, Solicitor
United States Department of the Interior

Christine
O. Gregoire, Governor State of
Washington

Jeff P. Koenings Ph.D, Director
Washington Department of Fish and Wildlife

Jt Mtn Order Approving

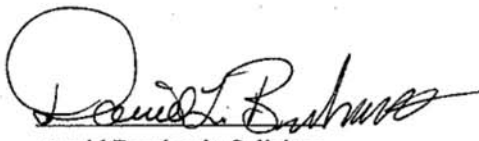
Settmt Agmt -- Page 32

Doug
Sutherland

rights to up to 50% of the harvestable shellfish from state-owned tidelands are preserved with respect to state-owned tidelands enhanced pursuant to this section.

DATED this _____ day of _____, 2007

Carl J. Artman, Assistant Secretary - Indian Affairs
United States Department of the Interior


David Bernhardt, Solicitor
United States Department of the Interior

Christine O. Gregoire, Governor
State of Washington

Jeff P. Koenings Ph.D, Director
Washington Department of Fish and Wildlife

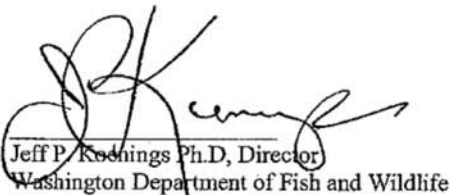
Doug Sutherland
Commissioner of Public Lands

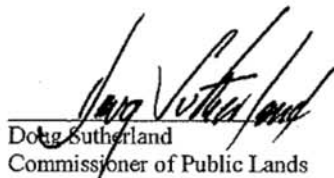
rights to up to 50% of the harvestable shellfish from state-owned tidelands are preserved
with respect to state-owned tidelands enhanced pursuant to this section.

DATED this 12th day of June, 2007

United States Department of Interior


Christine O. Gregoire, Governor
State of Washington


Jeff P. Koehnings Ph.D, Director
Washington Department of Fish and Wildlife


Doug Sutherland
Commissioner of Public Lands

- 24 -

DATED this 16th day of May, 2007

Willie J. Taylor, President
Intervenor-Defendant
Taylor-United, Inc.

Intervenor-Defendant
Olympia Oyster Co.

Intervenor-Defendant
G.R. Clam & Oyster Farm

Intervenor-Defendant
Cedric E. Lindsay

Intervenor-Defendant
Minterbrook Oyster Company

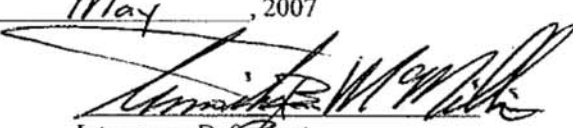
Intervenor-Defendant
Charles and Willa Murray

Intervenor-Defendant
Skookum Bay Oyster Company

Intervenor-Defendant
J&G Gunstone Clams, Inc.

DATED this 18 day of May, 2007

Intervenor-Defendant
Taylor-United, Inc.


Intervenor-Defendant
Olympia Oyster Co.

Intervenor-Defendant
G.R. Clam & Oyster Farm

Intervenor-Defendant
Cedric E. Lindsay

Intervenor-Defendant
Minterbrook Oyster Company

Intervenor-Defendant
Charles and Willa Murray

Intervenor-Defendant
Skookum Bay Oyster Company

Intervenor-Defendant
J&G Gunstone Clams, Inc.

DATED this 16th day of MAY, 2007

Intervenor-Defendant
Taylor-United, Inc.

Glen W. Rau

Intervenor-Defendant
G.R. Clam & Oyster Farm

Intervenor-Defendant
Minterbrook Oyster Company

Intervenor-Defendant
Skookum Bay Oyster Company

Intervenor-Defendant
Olympia Oyster Co.

Intervenor-Defendant
Cedric E. Lindsay

Intervenor-Defendant
Charles and Willa Murray

Intervenor-Defendant
J&G Gunstone Clams, Inc.

DATED this 16th day of May, 2007

Intervenor-Defendant
Taylor-United, Inc.

Intervenor-Defendant
G.R. Clam & Oyster Farm

Intervenor-Defendant
Minterbrook Oyster Company

Intervenor-Defendant
Skookum Bay Oyster Company

Intervenor-Defendant
Olympia Oyster Co.

Cedric E. Lindsay
Intervenor-Defendant
Cedric E. Lindsay

Intervenor-Defendant
Charles and Willa Murray

Intervenor-Defendant
J&G Gunstone Clams, Inc.

DATED this 23 day of May, 2007

Intervenor-Defendant
Taylor-United, Inc.

Intervenor-Defendant
Olympia Oyster Co.

Intervenor-Defendant
G.R. Clam & Oyster Farm

Intervenor-Defendant
Cedric E. Lindsay

Brendy Wiksten
Intervenor-Defendant
Minterbrook Oyster Company

Intervenor-Defendant
Charles and Willa Murray

Intervenor-Defendant
Skookum Bay Oyster Company

Intervenor-Defendant
J&G Gunstone Clams, Inc.

DATED this _____ day of _____, 2007

Intervenor-Defendant
Taylor-United, Inc.

Intervenor-Defendant
Olympia Oyster Co.

Intervenor-Defendant
G.R. Clam & Oyster Farm

Intervenor-Defendant
Cedric E. Lindsay

Intervenor-Defendant
Minterbrook Oyster Company

Willa Anick-Murray
Intervenor-Defendant
~~Charles and Willa Murray~~ *W.S.*

Intervenor-Defendant
Skookum Bay Oyster Company

Intervenor-Defendant
J&G Gunstone Clams, Inc.

DATED this 18 day of May, 2007

Intervenor-Defendant
Taylor-United, Inc.

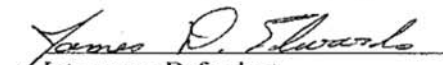
Intervenor-Defendant
Olympia Oyster Co.

Intervenor-Defendant
G.R. Clam & Oyster Farm

Intervenor-Defendant
Cedric E. Lindsay

Intervenor-Defendant
Minterbrook Oyster Company

Intervenor-Defendant
Charles and Willa Murray


Intervenor-Defendant
Skookum Bay Oyster Company

Intervenor-Defendant
J&G Gunstone Clams, Inc.

DATED this 21st day of May, 2007

Intervenor-Defendant
Taylor-United, Inc.

Intervenor-Defendant
Olympia Oyster Co.

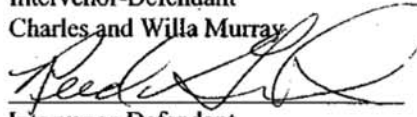
Intervenor-Defendant
G.R. Clam & Oyster Farm

Intervenor-Defendant
Cedric E. Lindsay

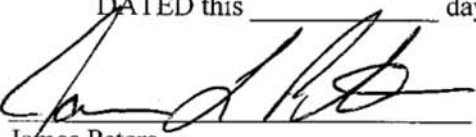
Intervenor-Defendant
Minterbrook Oyster Company

Intervenor-Defendant
Charles and Willa Murray

Intervenor-Defendant
Skookum Bay Oyster Company


Intervenor-Defendant
J&G Gunstone Clams, Inc.

DATED this _____ day of _____, 2007.


James Peters
Squaxin Island Tribe

Cynthia Iyall
Nisqually Indian Tribe

Herman Dillion, Sr.
Puyallup Indian Tribe

Ron Charles
Port Gamble S'Klallam Tribe

Denese LaClair
Skokomish Tribe

W. Ron Allen
Jamestown S'Klallam Tribe

Frances Charles
Lower Elwha Klallam Tribe

Ben Johnson, Jr.
Makah Tribe

M. Brian Cladoosby
Swinomish Indian Tribal Community

Leonard Forsman
Suquamish Tribe

Charlotte Williams
Muckleshoot Indian Tribe

Evelyn Jefferson
Lummi Nation

Shawn E. Yanity
Stillaguamish Tribe

Narcisco Cunanan
Nooksack Tribe

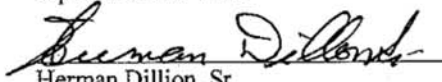
Melvin R. Sheldon, Jr.
Tulalip Tribes

Janice W. Mabee
Sauk-Suiattle Indian Tribe

Marilyn Scott
Upper Skagit Indian Tribe

DATED this _____ day of _____, 2007.

James Peters
Squaxin Island Tribe


Herman Dillion, Sr.
Puyallup Indian Tribe

Denese LaClair
Skokomish Tribe

Frances Charles
Lower Elwha Klallam Tribe

M. Brian Cladoosby
Swinomish Indian Tribal Community

Charlotte Williams
Muckleshoot Indian Tribe

Shawn E. Yanity
Stillaguamish Tribe

Melvin R. Sheldon, Jr.
Tulalip Tribes

Marilyn Scott
Upper Skagit Indian Tribe

Cynthia Iyall
Nisqually Indian Tribe

Ron Charles
Port Gamble S'Klallam Tribe

W. Ron Allen
Jamestown S'Klallam Tribe

Ben Johnson, Jr.
Makah Tribe

Leonard Forsman
Suquamish Tribe

Evelyn Jefferson
Lummi Nation

Narcisco Cunanan
Nooksack Tribe

Janice W. Mabee
Sauk-Suiattle Indian Tribe

DATED this 1st day of June, 2007.

James Peters
Squaxin Island Tribe

Cynthia Iyall
Nisqually Indian Tribe

Herman Dillion, Sr.
Puyallup Indian Tribe

Ron Charles
Port Gamble S'Klallam Tribe

Denese LaClair
Denese LaClair
Skokomish Tribe

W. Ron Allen
Jamestown S'Klallam Tribe

Frances Charles
Lower Elwha Klallam Tribe

Ben Johnson, Jr.
Makah Tribe

M. Brian Cladoosby
Swinomish Indian Tribal Community

Leonard Forsman
Suquamish Tribe

Charlotte Williams
Muckleshoot Indian Tribe

Evelyn Jefferson
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Shawn E. Yanity
Stillaguamish Tribe

Narcisco Cunanan
Nooksack Tribe

Melvin R. Sheldon, Jr.
Tulalip Tribes

Janice W. Mabee
Sauk-Suiattle Indian Tribe

Marilyn Scott
Upper Skagit Indian Tribe

DATED this _____ day of _____, 2007.

James Peters
Squaxin Island Tribe

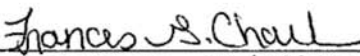
Cynthia Iyall
Nisqually Indian Tribe

Herman Dillion, Sr.
Puyallup Indian Tribe

Ron Charles
Port Gamble S'Klallam Tribe

Denese LaClair
Skokomish Tribe

W. Ron Allen
Jamestown S'Klallam Tribe


Frances Charles 06/01/07
Lower Elwha Klallam Tribe

Ben Johnson, Jr.
Makah Tribe

M. Brian Cladoosby
Swinomish Indian Tribal Community

Leonard Forsman
Suquamish Tribe

Charlotte Williams
Muckleshoot Indian Tribe

Evelyn Jefferson
Lummi Nation

Shawn E. Yanity
Stillaguamish Tribe

Narcisco Cunanan
Nooksack Tribe

Melvin R. Sheldon, Jr.
Tulalip Tribes

Janice W. Mabee
Sauk-Suiattle Indian Tribe

Marilyn Scott
Upper Skagit Indian Tribe

DATED this _____ day of _____, 2007.

James Peters
Squaxin Island Tribe

Cynthia Iyall
Nisqually Indian Tribe

Herman Dillion, Sr.
Puyallup Indian Tribe

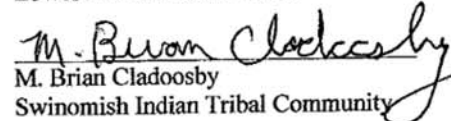
Ron Charles
Port Gamble S'Klallam Tribe

Denese LaClair
Skokomish Tribe

W. Ron Allen
Jamestown S'Klallam Tribe

Frances Charles
Lower Elwha Klallam Tribe

Ben Johnson, Jr.
Makah Tribe


M. Brian Cladoosby
Swinomish Indian Tribal Community

Leonard Forsman
Suquamish Tribe

Charlotte Williams
Muckleshoot Indian Tribe

Evelyn Jefferson
Lummi Nation

Shawn E. Yanity
Stillaguamish Tribe

Narcisco Cunanan
Nooksack Tribe

Melvin R. Sheldon, Jr.
Tulalip Tribes

Janice W. Mabee
Sauk-Suiattle Indian Tribe

Marilyn Scott
Upper Skagit Indian Tribe

DATED this _____ day of _____, 2007.

James Peters
Squaxin Island Tribe

Cynthia Iyall
Nisqually Indian Tribe

Herman Dillion, Sr.
Puyallup Indian Tribe

Ron Charles
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Denese LaClair
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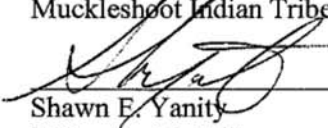
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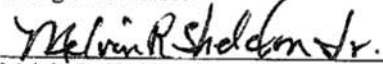
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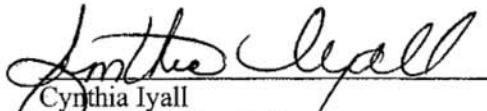
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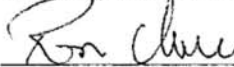
Janice W. Mabec
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Tulalip Tribes

Janice W. Mabee
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Upper Skagit Indian Tribe

DATED this 5th day of June, 2007.

James Peters
Squaxin Island Tribe

Cynthia Iyall
Nisqually Indian Tribe

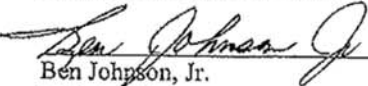
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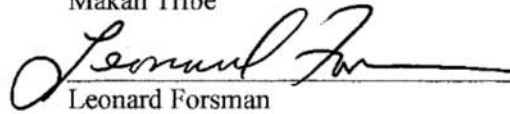
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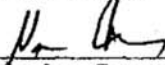
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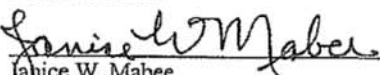
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Marilyn Scott
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EXHIBIT B

FEDERAL LEGISLATION

IN FULFILLMENT OF ¶9.A.1

UNITED STATES PUBLIC LAWS
109th Congress - Second Session
Convening January 7, 2005

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Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 109-479 (HR 5946)
January 12, 2007

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION
ACT OF
2006

An Act To amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States
of America in Congress assembled,

TITLE VII--MISCELLANEOUS

Sec. 701. Study of the acidification of the oceans and effect on fisheries.

Sec. 702. Puget Sound regional shellfish settlement.

SEC. 702. PUGET SOUND REGIONAL SHELLFISH SETTLEMENT.

(a) FINDINGS AND PURPOSES.--

(1) FINDINGS.--Congress finds that--

(A) the Tribes have established treaty rights to take shellfish from public and private tidelands in Washington State, including from some lands owned, leased, or otherwise subject to harvest by commercial shellfish growers;

(B) the district court that adjudicated the Tribes' treaty rights to take shellfish found that the growers are innocent purchasers who had no notice of the Tribes' fishing right when they acquired their properties;

(C) numerous unresolved issues remain outstanding regarding implementation of the Tribes' treaty right to take shellfish from lands owned, leased, or otherwise subject to harvest by the growers;

(D) the Tribes, the growers, the State of Washington, and the United States Department of the Interior have resolved by a settlement agreement many of the disputes between and among them regarding implementation of the Tribes' treaty right to take shellfish from covered tidelands owned or leased by the growers;

(E) the settlement agreement does not provide for resolution of any claims to take shellfish from lands owned or leased by the growers that potentially may be brought in the future by other Tribes;

(F) in the absence of congressional actions, the prospect of other Tribes claims to take shellfish from lands owned or leased by the growers could be pursued through the courts, a process which in all likelihood could consume many years and thereby promote uncertainty in the State of Washington and the growers and to the ultimate detriment of both the Tribes and other Tribes and their members;

(G) in order to avoid this uncertainty, it is the intent of Congress that other Tribes have the option of resolving their claims, if any, to a treaty right to take shellfish *3650 from covered tidelands owned or leased by the growers; and

(H) this Act represents a good faith effort on the part of Congress to extend to other Tribes the same fair and just option of resolving their claims to take shellfish from covered tidelands owned or leased by the growers that the Tribes have agreed to in the settlement agreement.

(2) PURPOSES.--The purposes of this section are--

(A) to approve, ratify, and confirm the settlement agreement entered into by and among the Tribes, commercial shellfish growers, the State of Washington, and the United States;

(B) to provide other Tribes with a fair and just resolution of any claims to take shellfish from covered tidelands, as that term is defined in the settlement agreement, that potentially could be brought in the future by other Tribes; and

(C) to authorize the Secretary to implement the terms and conditions of the settlement agreement and this section.

(b) APPROVAL OF SETTLEMENT AGREEMENT.--

(1) IN GENERAL.--The settlement agreement is hereby approved, ratified, and confirmed, and section 6 of the settlement agreement, Release of Claims, is specifically adopted and incorporated into this section as if fully set forth herein.

(2) AUTHORIZATION FOR IMPLEMENTATION.--The Secretary is hereby authorized to implement the terms and conditions of the settlement agreement in accordance with the settlement agreement and this section.

(c) FUND, SPECIAL HOLDING ACCOUNT, AND CONDITIONS.--

(1) PUGET SOUND REGIONAL SHELLFISH SETTLEMENT TRUST FUND.--

(A) There is hereby established in the Treasury of the United States an account to be designated as the "Puget Sound Regional Shellfish Settlement Trust Fund". The Secretary shall deposit funds in the amount of \$22,000,000 at such time as appropriated pursuant to this section into the Fund.

(B) The Fund shall be maintained and invested by the Secretary of the Interior pursuant to the Act of June 24, 1938 (25 U.S.C. 162a) until such time as all monies are transferred from the Fund.

(C) The Secretary shall transfer monies held in the Fund to each Tribe of the Tribes in the amounts and manner specified by and in accordance with the payment agreement established pursuant to the settlement agreement and this section.

(2) PUGET SOUND REGIONAL SHELLFISH SETTLEMENT SPECIAL HOLDING ACCOUNT.--

(A) There is hereby established in the Treasury of the United States a fund to be designated as the "Puget

Sound Regional Shellfish Settlement Special Holding Account". The Secretary shall deposit funds in the amount of \$1,500,000 into the Special Holding Account in fiscal year 2011 at such time as such funds are appropriated pursuant to this section.

***3651**

(B) The Special Holding Account shall be maintained and invested by the Secretary of the Interior pursuant to the Act of June 24, 1938, (25 U.S.C. 162a) until such time as all monies are transferred from the Special Holding Account.

(C) If a court of competent jurisdiction renders a final decision declaring that any of the other Tribes has an established treaty right to take or harvest shellfish in covered tidelands, as that term is defined in the settlement agreement, and such tribe opts to accept a share of the Special Holding Account, rather than litigate this claim against the growers, the Secretary shall transfer the appropriate share of the monies held in the Special Holding Account to each such tribe of the other Tribes in the amounts appropriate to compensate the other Tribes in the same manner and for the same purposes as the Tribes who are signatory to the settlement agreement. Such a transfer to a tribe shall constitute full and complete satisfaction of that tribe's claims to shellfish on the covered tidelands.

(D) The Secretary may retain such amounts of the Special Holding Account as necessary to provide for additional tribes that may judicially establish their rights to take shellfish in the covered tidelands within the term of that Account, provided that the Secretary pays the remaining balance to the other Tribes prior to the expiration of the term of the Special Holding Account.

(E) The Tribes shall have no interest, possessory or otherwise, in the Special Holding Account.

(F) Twenty years after the deposit of funds into the Special Holding Account, the Secretary shall close the Account and transfer the balance of any funds held in the Special Holding Account at that time to the Treasury. However, the Secretary may continue to maintain the Special Holding Account in order to resolve the claim of an other Tribe that has notified the Secretary in writing within the 20-year term of that Tribe's interest in resolving its claim in the manner provided for in this section.

(G) It is the intent of Congress that the other Tribes, if any, shall have the option of agreeing to similar rights and responsibilities as the Tribes that are signatories to the settlement agreement, if they opt not to litigate against the growers.

(3) ANNUAL REPORT.--Each tribe of the Tribes, or any of the other Tribes accepting a settlement of its claims to shellfish on covered lands pursuant to paragraph (2)(C), shall submit to the Secretary an annual report that describes all expenditures made with monies withdrawn from the Fund or Special Holding Account during the year covered by the report.

(4) JUDICIAL AND ADMINISTRATIVE ACTION.--The Secretary may take judicial or administrative action to ensure that any monies withdrawn from the Fund or Special Holding Account are used in accordance with the purposes described in the settlement agreement and this section.

(5) CLARIFICATION OF TRUST RESPONSIBILITY.--Beginning on the date that monies are transferred to a tribe of the Tribes or a tribe of the other Tribes pursuant to this section, *3652 any trust responsibility or liability of the United States with respect to the expenditure or investment of the monies withdrawn shall cease.

(d) STATE OF WASHINGTON PAYMENT.--The Secretary shall not be accountable for nor incur any liability for the collection, deposit, management or nonpayment of the State of Washington payment of \$11,000,000 to the Tribes pursuant to the settlement agreement.

(e) RELEASE OF OTHER TRIBES CLAIMS.--

(1) RIGHT TO BRING ACTIONS.--As of the date of enactment of this section, all right of any other

Tribes to bring an action to enforce or exercise its treaty rights to take shellfish from public and private tidelands in Washington State, including from some lands owned, leased, or otherwise subject to harvest by any and all growers shall be determined in accordance with the decisions of the Courts of the United States in *United States v. Washington*, Civ. No. 9213 (Western District of Washington).

(2) CERTAIN RIGHTS GOVERNED BY THIS SECTION.--If a tribe falling within the other Tribes category opts to resolve its claims to take shellfish from covered tidelands owned or leased by the growers pursuant to subsection (c)(2)(C) of this section, that tribe's rights shall be governed by this section, as well as by the decisions of the Courts in *United States v. Washington*, Civ. No. 9213.

(3) NO BREACH OF TRUST.--Notwithstanding whether the United States has a duty to initiate such an action, the failure or declination by the United States to initiate any action to enforce any other Tribe's or other Tribes' treaty rights to take shellfish from public and private tidelands in Washington State, including from covered tidelands owned, leased, or otherwise subject to harvest by any and all growers shall not constitute a breach of trust by the United States or be compensable to other Tribes.

(f) CAUSE OF ACTION.--If any payment by the United States is not paid in the amount or manner specified by this section, or is not paid within 6 months after the date specified by the settlement agreement, such failure shall give rise to a cause of action by the Tribes either individually or collectively against the United States for money damages for the amount authorized but not paid to the Tribes, and the Tribes, either individually or collectively, are authorized to bring an action against the United States in the United States Court of Federal Claims for such funds plus interest.

(g) DEFINITIONS.--In this section:

(1) FUND.--The term "Fund" means the Puget Sound Shellfish Settlement Trust Fund Account established by this section.

(2) GROWERS.--The term "growers" means Taylor United, Inc.; Olympia Oyster Company; G.R. Clam & Oyster Farm; Cedric E. Lindsay; Minterbrook Oyster Company; Charles and Willa Murray; Skookum Bay Oyster Company; J & G Gunstone Clams, Inc.; and all persons who qualify as "growers" in accordance with and pursuant to the settlement agreement.

(3) OTHER TRIBES.--The term "other Tribes" means any federally recognized Indian nation or tribe other than the Tribes described in paragraph (6) that, within 20 years after the deposit of funds in the Special Holding Account, establishes a legally enforceable treaty right to take shellfish from covered *3653 tidelands described in the settlement agreement, owned, leased or otherwise subject to harvest by those persons or entities that qualify as growers.

(4) SECRETARY.--The term "Secretary" means the Secretary of the Interior.

(5) SETTLEMENT AGREEMENT.--The term "settlement agreement" means the settlement agreement entered into by and between the Tribes, commercial shellfish growers, the State of Washington and the United States, to resolve certain disputes between and among them regarding implementation of the Tribes' treaty right to take shellfish from certain covered tidelands owned, leased or otherwise subject to harvest by the growers.

(6) TRIBES.--The term "Tribes" means the following federally recognized Tribes that executed the settlement agreement: Tulalip, Stillaguamish, Sauk Suiattle, Puyallup, Squaxin Island, Makah, Muckleshoot, Upper Skagit, Nooksack, Nisqually, Skokomish, Port Gamble S'Klallam, Lower Elwha Klallam, Jamestown S'Klallam, and Suquamish Tribes, the Lummi Nation, and the Swinomish Indian Tribal Community.

(7) SPECIAL HOLDING ACCOUNT.--The term "Special Holding Account" means the Puget Sound Shellfish Settlement Special Holding Account established by this section.

(h) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated \$23,500,000 to carry out this section--

(A) \$2,000,000 for fiscal year 2007;

(B) \$5,000,000 for each of fiscal years 2008 through 2010; and

(C) \$6,500,000 for fiscal year 2011.

EXHIBIT C

STATE LEGISLATION

IN FULFILLMENT OF ¶9.A.2

1 remove lost and abandoned fishing nets and crab and shrimp pots that
 2 may be dangerous to humans and that unintentionally trap and kill
 3 endangered salmon and other aquatic species.

4 ~~((21))~~ (31) \$4,000 of the wildlife account--state appropriation
 5 is provided solely to implement House Bill No. 1210 (temporary fishing
 6 license). If the bill is not enacted by June 30, 2005, the amount
 7 provided in this subsection shall lapse.

8 (32) Within existing appropriations and utilizing all available
 9 federal moneys allocated for the crab buy-back program, the department
 10 shall develop and implement a crab buy-back program that allows
 11 commercial crab fishers the opportunity to sell their licenses back to
 12 the state and exit from the crabbing fishery. The department shall
 13 report to the office of financial management and the appropriate fiscal
 14 committees of the legislature its detailed implementation plan no later
 15 than December 1, 2006.

16 (33) \$660,000 of the general fund--federal appropriation is
 17 provided solely to initiate a review of the hydraulic project approval
 18 permit rules and to undergo a public process for adoption of new or
 19 revised rules that may be needed. Upon completion, the department shall
 20 complete a habitat conservation plan for the hydraulic project approval
 21 program, and shall seek legislative review prior to adoption of new or
 22 revised rules.

23 (34) \$125,000 of the state wildlife account--state appropriation is
 24 provided to implement Engrossed Senate Bill No. 5232 (turkey tags). If
 25 the bill is not enacted by June 30, 2006, the amount provided in this
 26 subsection shall lapse.

*Sec. 307 was partially vetoed. See message at end of chapter.

27 *Sec. 308. 2005 c 518 s 308 (uncodified) is amended to read as
 28 follows:

29 **FOR THE DEPARTMENT OF NATURAL RESOURCES**

30	General Fund--State Appropriation (FY 2006)	((\$49,220,000))
31		\$40,473,000
32	General Fund--State Appropriation (FY 2007)	((\$43,757,000))
33		\$53,999,000
34	General Fund--Federal Appropriation	((\$15,202,000))
35		\$15,215,000
36	General Fund--Private/Local Appropriation	((\$1,275,000))
37		\$1,276,000

1	Forest Development Account--State Appropriation	((\$54,441,000))
2		<u>\$54,697,000</u>
3	Off-Road Vehicle Account--State Appropriation	((\$3,986,000))
4		<u>\$4,001,000</u>
5	Surveys and Maps Account--State Appropriation	((\$2,436,000))
6		<u>\$2,447,000</u>
7	Aquatic Lands Enhancement Account--State	
8	Appropriation	((\$8,344,000))
9		<u>\$8,451,000</u>
10	Resources Management Cost Account--State	
11	Appropriation	((\$85,941,000))
12		<u>\$86,332,000</u>
13	Surface Mining Reclamation Account--State	
14	Appropriation	((\$1,841,000))
15		<u>\$2,828,000</u>
16	Disaster Response Account--State	
17	Appropriation	\$5,000,000
18	Water Quality Account--State Appropriation	((\$2,630,000))
19		<u>\$2,636,000</u>
20	Aquatic Land Dredged Material Disposal Site	
21	Account--State Appropriation	((\$652,000))
22		<u>\$1,321,000</u>
23	Natural Resources Conservation Areas Stewardship	
24	Account--State Appropriation	\$34,000
25	State Toxics Control Account--State Appropriation	\$2,155,000
26	Air Pollution Control Account--State Appropriation	((\$555,000))
27		<u>\$556,000</u>
28	Derelict Vessel Removal Account--State Appropriation	((\$1,137,000))
29		<u>\$1,138,000</u>
30	Agricultural College Trust Management	
31	Account--State Appropriation	((\$1,962,000))
32		<u>\$1,966,000</u>
33	<u>Pension Funding Stabilization Account--State</u>	
34	<u>Appropriation</u>	<u>\$136,000</u>
35	TOTAL APPROPRIATION	((\$280,568,000))
36		<u>\$284,661,000</u>
37	The appropriations in this section are subject to the following	
38	conditions and limitations:	

(1) As described in section 129(7) of this act, the department shall make recommendations and report on monitoring activities related to salmon recovery.

(2) \$18,000 of the general fund--state appropriation for fiscal year 2006, \$18,000 of the general fund--state appropriation for fiscal year 2007, and \$1,652,050 of the aquatic lands enhancement account appropriation are provided solely for the implementation of the Puget Sound conservation and recovery plan and agency action items DNR-01 and DNR-02.

(3) \$138,000 of the resource management cost account--state appropriation is provided solely to implement Engrossed Second Substitute House Bill No. 1896 (geoduck harvest). If the bill is not enacted by June 30, 2005, the amount in the subsection shall lapse.

(4) (~~(\$953,000)~~) \$972,000 of the general fund--state appropriation for fiscal year 2006 and (~~(\$950,000)~~) \$994,000 of the general fund--state appropriation for fiscal year 2007 are provided solely for deposit into the agricultural college trust management account and are provided solely to manage approximately 70,700 acres of Washington State University's agricultural college trust lands.

(5) (~~(\$10,635,000)~~) \$10,689,000 of the general fund--state appropriation for fiscal year 2006, \$13,635,000 of the general fund--state appropriation for fiscal year 2007, and \$5,000,000 of the disaster response account--state appropriation are provided solely for emergency fire suppression. Of these amounts, up to \$250,000 may be expended for staff and other necessary resources to design and implement a fire data-collection system that includes financial- and performance-management information for fires over 10 acres in size.

None of the general fund and disaster response account amounts provided in this subsection may be used to fund agency indirect and administrative expenses. Agency indirect and administrative costs shall be allocated among the agency's remaining accounts and appropriations.

(6) \$582,000 of the aquatic lands enhancement account appropriation is provided solely for spartina control.

(7) Fees approved by the board of natural resources in the 2005-07 biennium are authorized to exceed the fiscal growth factor under RCW 43.135.055.

(8) \$9,000,000 of the general fund--state appropriation for fiscal year ((2006)) 2007 and \$2,000,000 of the aquatic lands enhancement account--state appropriation are provided solely for the purposes of settling those claims identified in ~~((the consent decree and settlement agreement in))~~ *U.S., et al. v. State of Washington, et al.* Subproceeding No. 89-3 (Shellfish), United States District Court for the Western District of Washington at Seattle, Case No. C70-9213. The expenditure of this appropriation is contingent on ~~((the release of these claims in this subproceeding. In the event that the federal government does not appropriate \$22,000,000 for this purpose by June 30, 2006,))~~ a settlement agreement that includes the state of Washington as a party to the agreement which is fully executed by June 29, 2007, and a consent decree entered by June 29, 2007, by the United States District Court for the Western District of Washington settling and releasing the identified treaty claims to harvest shellfish previously negotiated in the settlement agreement. By June 29, 2007, the release of claims associated with the settlement agreement and consent decree must be fully effective and there must be no unfulfilled contingencies that could cause the settlement agreement or consent decree to be vacated at some future date if not fulfilled. In the event that these contingencies are not met, the amounts provided in this subsection shall lapse.

(9) \$2,155,000 of the state toxics account--state appropriation is provided solely for the department to meet its obligations with the U.S. environmental protection agency for the clean-up of Commencement Bay and other sites.

(10) The department shall not develop the Gull Harbor facility without first submitting a master plan to the appropriate committees of the legislature. The plan shall ensure continued public access to the waterfront. The plan shall also examine alternative locations to the Gull Harbor site that would colocate marine equipment for all state agencies needing water access in Thurston county. The report shall be submitted by December 1, 2006.

(11) \$250,000 of the general fund--state appropriation for fiscal year 2006, \$250,000 of the general fund--state appropriation for fiscal year 2007, and \$500,000 of the resource management cost account--state appropriation are provided solely for a report on the future of Washington forests. The purpose of the report is to examine economic,

EXHIBIT D

**TRIBES' PAYMENT ALLOCATION
AGREEMENTS**

IN FULFILLMENT OF ¶9.A.4

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

vs.

STATE OF WASHINGTON, et al.,

Defendants.

Civil No. C70-9213

Subproceeding No. 89-3
(Shellfish)

NOTICE OF COMPLIANCE WITH SHELLFISH
SETTLEMENT AGREEMENT SECTION 9.A(4)

Section 9.A(4) of the Shellfish Settlement Agreement provides that the Agreement is expressly conditioned and contingent on the following: "By May 15, 2007, the Tribes that are parties to this Settlement Agreement unanimously agree in writing on the payee or payees, and the allocation of payments to be made, for receipt of the funds appropriated pursuant to subsections 9.A(1) and (2), and serve such writing on the other parties to this agreement."

All Tribes party to the Settlement Agreement have agreed, in writing, on the allocation of payments and the payees for those payments, as required by Section 9.A(4). Those allocations, and the designation of the names and mailing addresses of the payees, are set forth in the attached documents:

Jt Mtn Order Approving
Settmt Agmt -- Page 72

C70-9213, Subproceeding 89-3 (Shellfish)

NOTICE OF COMPLIANCE WITH SHELLFISH
SETTLEMENT AGREEMENT SECTION 9.A(4) - PAGE 1

Kanji & Katzen, PLLC
100 S. King Street, Suite 560
Seattle, WA 98104
206-344-8100

1 South Puget Sound Tribes' Notice Of Agreement Re: Allocation Of Shellfish Settlement Funds And
2 Payee, with signatures in counterpart; Hood Canal and Strait of Juan de Fuca Regional Shellfish
3 Settlement Fund Memorandum of Agreement, with signatures in counterpart; North Sound Tribes
4 Settlement Agreement, with signatures in counterpart. These documents and this notice have been
5 served on all other parties by electronic mail, with hard copies placed in the mail, on this 15th day of
6 May, 2007. As required by section 9.C(4) of the Shellfish Settlement Agreement, the tribes notify the
7 State that there is presently no means for individual payees to receive the required payments by wire
8 transfer.

9 The Tribes have therefore fulfilled the contingency set forth in Section 9.A(4).

10
11 Respectfully submitted this 15th day of May, 2007.

12
13 KANJI & KATZEN, PLLC

MORISSET, SCHLOSSER, JOZWIAK AND
McGAW

14 s/ PHILLIP E. KATZEN, WSBA # 7835

s/ MASON D. MORISSET, WSBA # 273

15 Tribal Co-lead Counsel

Tribal Co-lead Counsel

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25 Jt Mtn Order Approving
Settmt Agmt -- Page 73

C70-9213, Subproceeding 89-3 (Shellfish)

NOTICE OF COMPLIANCE WITH SHELLFISH
SETTLEMENT AGREEMENT SECTION 9.A(4) - PAGE 2

Kanji & Katzen, PLLC
100 S. King Street, Suite 560
Seattle, WA 98104
206-344-8100

**SOUTH PUGET SOUND TRIBES' NOTICE OF AGREEMENT RE:
ALLOCATION OF SHELLFISH SETTLEMENT FUNDS AND PAYEE**

WHEREAS, section 9.A(4) of the Shellfish Settlement Agreement provides that the Agreement is expressly conditioned and contingent on the following, *inter alia*: "By May 15, 2007, the Tribes that are parties to this Settlement Agreement unanimously agree in writing on the payee or payees, and the allocation of payments to be made, for receipt of the funds appropriated pursuant to subsections 9.A(1) and (2), and serve such writing on the other parties to this agreement";

WHEREAS, the Squaxin Island Tribe, the Nisqually Indian Tribe, and the Puyallup Indian Tribe (collectively, the "South Puget Sound Tribes") has each approved the South Puget Sound Regional Shellfish Settlement Fund Trust Agreement ("Trust Agreement");

WHEREAS, the South Puget Sound Tribes desire to provide notice of their unanimous agreement as to the allocation of Shellfish Settlement Agreement funds and as to the payee for funds allocated to the South Puget Sound Tribes;

WHEREAS, each of the undersigned is authorized to enter this Notice of Agreement;

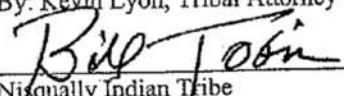
THEREFORE, in satisfaction of section 9.A(4), the South Puget Sound Tribes hereby provide the following Notice of Agreement, consistent with their Trust Agreement:

All payments under the Shellfish Settlement Agreement, whether from the United States or the State of Washington, shall be allocated as follows: the South Sound regional allocation shall be fifteen million dollars payable as 45.454545% of each payment, whether the payment is from the United States or the State of Washington; the North Sound regional allocation shall be eight million dollars payable as 24.242424% of each payment, whether the payment is from the United States or the State of Washington; and the Hood Canal/Strait of Juan de Fuca regional allocation shall be ten million dollars payable as 30.303030% of each payment, whether the payment is from the United States or the State of Washington.

All South Sound regional allocation payments shall be made and delivered to Charles Schwab & Co, Inc., 1148 Broadway, Suite 110, Tacoma, Washington, 98402, Account No. 90766958.

Dated this 14th day of May, 2007.

Squaxin Island Tribe
By: Kevin Lyon, Tribal Attorney


Nisqually Indian Tribe
By: Bill Tobin, Tribal Attorney

Puyallup Indian Tribe
By: Samuel Stiltner, Tribal Attorney

**SOUTH PUGET SOUND TRIBES' NOTICE OF AGREEMENT RE:
ALLOCATION OF SHELLFISH SETTLEMENT FUNDS AND PAYEE**

WHEREAS, section 9.A(4) of the Shellfish Settlement Agreement provides that the Agreement is expressly conditioned and contingent on the following, *inter alia*: "By May 15, 2007, the Tribes that are parties to this Settlement Agreement unanimously agree in writing on the payee or payees, and the allocation of payments to be made, for receipt of the funds appropriated pursuant to subsections 9.A(1) and (2), and serve such writing on the other parties to this agreement";

WHEREAS, the Squaxin Island Tribe, the Nisqually Indian Tribe, and the Puyallup Indian Tribe (collectively, the "South Puget Sound Tribes") has each approved the South Puget Sound Regional Shellfish Settlement Fund Trust Agreement ("Trust Agreement");

WHEREAS, the South Puget Sound Tribes desire to provide notice of their unanimous agreement as to the allocation of Shellfish Settlement Agreement funds and as to the payee for funds allocated to the South Puget Sound Tribes;

WHEREAS, each of the undersigned is authorized to enter this Notice of Agreement;

THEREFORE, in satisfaction of section 9.A(4), the South Puget Sound Tribes hereby provide the following Notice of Agreement, consistent with their Trust Agreement:

All payments under the Shellfish Settlement Agreement, whether from the United States or the State of Washington, shall be allocated as follows: the South Sound regional allocation shall be fifteen million dollars payable as 45.454545% of each payment, whether the payment is from the United States or the State of Washington; the North Sound regional allocation shall be eight million dollars payable as 24.242424% of each payment, whether the payment is from the United States or the State of Washington; and the Hood Canal/Strait of Juan de Fuca regional allocation shall be ten million dollars payable as 30.303030% of each payment, whether the payment is from the United States or the State of Washington.

All South Sound regional allocation payments shall be made and delivered to Charles Schwab & Co, Inc., 1148 Broadway, Suite 110, Tacoma, Washington, 98402, Account No. 90766958.

Dated this 11 day of May, 2007.

Squaxin Island Tribe
By: Kevin Lyon, Tribal Attorney

Puyallup Indian Tribe
By: Samuel Stiltner, Tribal Attorney

Nisqually Indian Tribe
By: Bill Tobin, Tribal Attorney

**SOUTH PUGET SOUND TRIBES' NOTICE OF AGREEMENT RE:
ALLOCATION OF SHELLFISH SETTLEMENT FUNDS AND PAYEE**

WHEREAS, section 9.A(4) of the Shellfish Settlement Agreement provides that the Agreement is expressly conditioned and contingent on the following, *inter alia*: "By May 15, 2007, the Tribes that are parties to this Settlement Agreement unanimously agree in writing on the payee or payees, and the allocation of payments to be made, for receipt of the funds appropriated pursuant to subsections 9.A(1) and (2), and serve such writing on the other parties to this agreement";

WHEREAS, the Squaxin Island Tribe, the Nisqually Indian Tribe, and the Puyallup Indian Tribe (collectively, the "South Puget Sound Tribes") has each approved the South Puget Sound Regional Shellfish Settlement Fund Trust Agreement ("Trust Agreement");

WHEREAS, the South Puget Sound Tribes desire to provide notice of their unanimous agreement as to the allocation of Shellfish Settlement Agreement funds and as to the payee for funds allocated to the South Puget Sound Tribes;

WHEREAS, each of the undersigned is authorized to enter this Notice of Agreement;

THEREFORE, in satisfaction of section 9.A(4), the South Puget Sound Tribes hereby provide the following Notice of Agreement, consistent with their Trust Agreement:

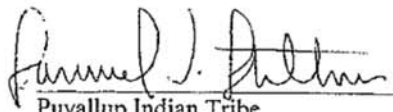
All payments under the Shellfish Settlement Agreement, whether from the United States or the State of Washington, shall be allocated as follows: the South Sound regional allocation shall be fifteen million dollars payable as 45.454545% of each payment, whether the payment is from the United States or the State of Washington; the North Sound regional allocation shall be eight million dollars payable as 24.242424% of each payment, whether the payment is from the United States or the State of Washington; and the Hood Canal/Strait of Juan de Fuca regional allocation shall be ten million dollars payable as 30.303030% of each payment, whether the payment is from the United States or the State of Washington.

All South Sound regional allocation payments shall be made and delivered to Charles Schwab & Co, Inc., 1148 Broadway, Suite 110, Tacoma, Washington, 98402, Account No. 90766958.

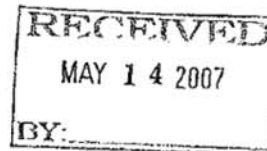
Dated this ____ day of May, 2007.

Squaxin Island Tribe
By: Kevin Lyon, Tribal Attorney

Nisqually Indian Tribe
By: Bill Tobin, Tribal Attorney

 5-11-07

Puyallup Indian Tribe
By: Samuel Stiltner, Tribal Attorney



**HOOD CANAL AND STRAIT OF JUAN DE FUCA
REGIONAL SHELLFISH SETTLEMENT FUND
MEMORANDUM OF AGREEMENT**

A. Parties

The Parties to this Memorandum of Agreement (MOA) are the Port Gamble S'Klallam, Skokomish, Makah, Lower Elwha Klallam and Jamestown S'Klallam Tribes.

B. Purpose

The Purpose of this MOA is to provide instructions for the Parties' funds received from the Puget Sound Regional Shellfish Agreement and Consent Decree (Settlement Fund) to be entered in United States v. Washington, Case No. C70-9213, Sub-proceeding 89-3. This MOA also outlines a timeframe and specific actions the Parties will engage-in to develop a Long Term Agreement regarding the use of these funds.

The payments from the United States and the State of Washington are as follows:

1. From the United States:

\$2,000,000 by September 3, 2007; plus
\$5,000,000 by September 3, 2008; plus
\$5,000,000 by September 3, 2009; plus
\$5,000,000 by September 3, 2010; plus
\$5,000,000 by September 3, 2011; and

2. From the State of Washington:

\$11,000,000 will be disbursed by September 3, 2007.

C. Regional Share from the Settlement Fund

The Parties' Hood Canal and Strait of Juan de Fuca (HC/SJF) regional allocation from the total payments is \$10 million, payable as 30.303030% of each payment, whether each payment is from the United States or the State of Washington. The Parties to this MOA recognize that the South Sound regional allocation from the total payments is \$15 million, payable as 45.454545% of each payment, whether each payment is from the United States or the State of Washington; and that the North Sound regional allocation from the total payment is \$8 million, payable as 24.242424% of each payment, whether each payment is from the United States or the State of Washington.

D. Temporary Trust Account

The Parties agree that the first payment amounts, \$3,333,333.33 from the State payment and \$606,060.61 from the US payment, for a total of \$3,939,393.94 will be made payable to, and deposited in, the Temporary Trust Account of Attorney Phil Katzen, of Kanji & Katzen, PLLC, 100 South King Street, Suite 560, Seattle, WA 98104. This will be disbursed, along with any interest earned, pursuant to the terms of section "E" below.

When a Joint Investment Vehicle has been selected pursuant to section "E" below, the United States and State of Washington will be notified of the new recipient of the funds to replace the Kanji & Katzen Temporary Trust Account. However, if a new Joint Investment Vehicle, pursuant to section "E" below, is not established by the time of the second and future payment(s) are made, payments will continue to be made to this Temporary Trust Account until notification of a new Joint Investment Vehicle or Long Term Agreement has been provided to the United States and the State of Washington.

E. Joint Investment Vehicle

The Parties agree to meet within thirty days from the execution of this agreement to establish an agreed upon joint investment vehicle. In order to accomplish this, and seek the best advice on establishing a safe and positive return, the Parties agree to consult with financial advisor(s). When a replacement investment vehicle has been selected and approved by the Parties, the entire balance in the temporary trust account (see "D" above) will be transferred in accordance with the Parties' instructions.

The Parties further agree that no individual Tribe shall have access to either the Temporary Trust Account or the Joint Investment Vehicle until a long-term agreement (see "F" below) regarding the management and / or distribution of the total HC/SJF portion of the Regional Settlement Fund has been developed.

F. Long Term Agreement

The Parties agree to jointly develop a Long Term Agreement for the management and distribution of the proceeds from the HC/SJF Regional Settlement Fund. Once executed, it shall replace this Memorandum of Agreement.

The Parties agree that they will meet no less than once per quarter in an effort to reach a permanent agreement concerning the best use of the funds, and that joint meeting locations shall rotate between the Tribes. The Parties agree to exercise good faith and prudent management practices in all their transactions and negotiations.

G. Agreement Facilitation

If the Parties have not succeeded in completing a Long Term Agreement by September 3, 2011, which is the date of the final payment by the United States, the Parties may submit to mediation, with a mediator to be chosen by the Parties. The costs of any mediation process shall be borne

05/11/2007 FRI 10:44 FAX 1 360 645 2323 Makah Fisheries Mngt.

002/00

May-11-07 08:51am From-POINT NO POINT TREATY COUNCIL

+3602972787

T-210 P.04/04 F-962

equally by the Parties to this Agreement. The funds, including future HC/SIF Regional Settlement Fund payments and earnings shall remain in the Joint Investment Vehicle until a Long Term Agreement has been finalized regarding their use.

Executed on the 11 of May, 2007, by the undersigned representatives of the Parties:

For the Port Gamble S'Klallam Tribe

Richie (name)
Chairman (title)

For the Skokomish Tribe

Denise Latta (name)
Chairwoman (title)

For the Makah Tribe

Sam Johnson Jr. (name)
Chairman (title)

For the Lower Elwha Klallam Tribe

____ (name)
____ (title)

For the Jamestown S'Klallam Tribe

W. Ron Allen (name)
Chairman (title)

05/11/2007 12:37 FAX 360 452 3428

LOWER ELWHA TRIBE

004

May-11-07 09:54am From-POINT NO POINT TREATY COUNCIL

+3602972797

T-211 P.04/04 F-983

equally by the Parties to this Agreement. The funds, including future HC/SIF Regional Settlement Fund payments and earnings shall remain in the Joint Investment Vehicle until a Long Term Agreement has been finalized regarding their use.

Executed on the 11 of May, 2007, by the undersigned representatives of the Parties:

For the Port Gamble S'Klallam Tribe

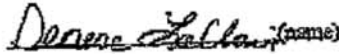
For the Skokomish Tribe



(name)

Chairman

(title)



(name)

Chairwoman

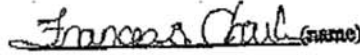
(title)

For the Makah Tribe

For the Lower Elwha Klallam Tribe

(name)

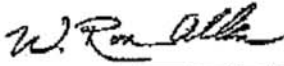
(title)



(name)

(title)

For the Jamestown S'Klallam Tribe



(name)

Chairman

(title)

NORTH SOUND TRIBES SETTLEMENT AGREEMENT

AGREEMENT entered into this 15th day of May, 2007, by and among the following federally recognized Indian Tribes holding Treaty fishing rights reserved in the Treaty of Point Elliott: the Lummi Nation ("Lummi"), the Upper Skagit Indian Tribe ("Upper Skagit"), Swinomish Indian Tribal Community ("Swinomish"), the Tulalip Tribes ("Tulalip"), the Suquamish Tribe ("Suquamish"), the Muckleshoot Indian Tribe ("Muckleshoot"), the Nooksack Tribe ("Nooksack"), the Sauk-Suiattle Indian Tribe (Sauk-Suiattle), and the Stillaguamish Tribe ("Stillaguamish"), which have been identified as the "North Sound Tribes" in a certain settlement agreement with Shellfish Grower parties in the litigation known as *United States v. Washington* ("Shellfish Settlement Agreement") and shall be referred to as the "North Sound Tribes" in this Agreement. This instant agreement shall be identified as the "North Sound Agreement" or "Agreement";

WHEREAS, many of the parties in *U.S. v. Washington*, Subproceeding 89-3 ("Shellfish Litigation"), including Swinomish, Suquamish, Muckleshoot, and Nooksack who are parties to this Agreement, have entered into or approved the Shellfish Settlement Agreement, a copy of which is attached hereto and made a part hereof as Exhibit A (the "Settlement Agreement"); and

WHEREAS, neither Upper Skagit nor Tulalip have approved the Shellfish Settlement Agreement nor executed any document or resolution which would require them to sign the Shellfish Settlement Agreement; and

WHEREAS, Lummi, has indicated that it is not bound by its earlier resolution to support the Shellfish Settlement Agreement, which resolution has expired by its terms.

Lummi has now indicated its willingness to approve the Shellfish Settlement Agreement;
and

WHEREAS, the parties hereto are desirous of settling certain issues among themselves as sovereigns and, after the execution of this North Sound Agreement, authorizing and signing the Shellfish Settlement Agreement. Those issues include: 1) the distribution of moneys designated for the North Sound Tribes; 2) the determination of which tribes will have the right to the purchase tideland properties in Samish Bay which must be offered for sale by certain non-Indian shellfish growers ("Growers") pursuant to the Shellfish Settlement Agreement; and 3) the nature of the rights a Tribe acquires, as against the other parties to this Agreement, upon purchasing such tidelands or any other tidelands in any location.

NOW THEREFORE, in consideration of the mutual promises contained herein, the payments provided for herein and other good and valuable consideration, the parties hereto hereby agree as follows:

1. a.) Solely for the purposes of this North Sound Agreement as part of the Shellfish Settlement Agreement the "Payee Tribes" shall be and be deemed to be Lummi, Upper Skagit, Swinomish, Tulalip, Suquamish, Muckleshoot, and Nooksack;
- b.) The Sauk-Suiattle and Stillaguamish Tribes are each holders of the right of taking fish under the Treaty of Point Elliott and as signatories of this agreement are not precluded from participation to the extent applicable upon establishing their respective usual and accustomed fishing areas.

2. The sum of \$8.0 million dollars provided to go to the North Sound Tribes shall be paid and distributed to the Payee Tribes equally, each tribe receiving \$1,142,857.14 in principal distributions. Payment shall be made in installments as specified herein. Disbursement of each installment payment shall be made within ten (10) business days of the date on which such funds are made available for distribution. Interest and other earnings on the settlement funds shall follow principal and shall be distributed with each installment in equal shares to the North Sound Tribes.

3. a.) The 40 acres of tidelands to be available for purchase from the Growers in Samish Bay as set forth in the Settlement Agreement shall be available for purchase exclusively by a consortium consisting of Lummi, Upper Skagit, and Swinomish, based upon the U and A rights of those Tribes in Samish Bay, each member of the consortium contributing its share of the acquisition cost, including, without limitation, all costs associated with title, inspections, closing, division and placing the tidelands (or any portion thereof) into trust, if the three Tribes so desire. If these tidelands are to be partitioned among these three Tribes, each Tribe shall be responsible for the costs related to its parcel(s) after partition. Nothing herein implies that any Point Elliot Treaty Tribe does not have usual and accustomed fishing grounds and stations in Samish Bay.
- b.) Nothing in this section shall prohibit a tribe from purchasing tidelands from a Grower in Samish Bay, which purchase is for tidelands

not included in the Grower's Samish Bay offer in Section 8 of the Shellfish Settlement Agreement.

c.) With respect to section 3(a) above, if the members of the consortium purchase more than 40 acres, then the additional acreage above 40 acres shall be deemed sections 3(b) and 7 acreage. As to such acreage in excess of 40 acres, the consortium shall designate the 40 acres which it wishes to purchase under section 3(a) and the remaining acreage shall be controlled by section 7.

4. Lummi, Upper Skagit and Swinomish shall take steps consistent with buying the said 40 acres, which steps will include either buying the property or properties, offering to purchase the properties, placing earnest money down for such purchase or purchases and / or, if necessary, seeking court assistance if Lummi, Upper Skagit, and Swinomish believe that either the property or properties offered or the price at which the property is offered is in violation of the Growers' good faith agreement in the Settlement Agreement.

5. Nothing prohibits or limits the funds which Lummi, Upper Skagit and Swinomish are able to use in order to purchase the said 40 acres.

6. As to consortium issues, including the manner and timing of the management of the 40 acres and any potential ceremonial, subsistence and / or commercial use and enhancement of the resources of the property or properties, Lummi, Upper Skagit and Swinomish shall reach joint agreement on such matters through further discussions, negotiations and unanimous consent. Such

consortium agreements shall be by separate agreement and not a part of this North Sound Agreement.

7. There are no restrictions prohibiting any of the parties hereto from purchasing tidelands in Samish Bay or any other area under section 3(b) and 3(c).

Upon making such purchase, the parties shall take the same rights and responsibilities as a private citizen under the Shellfish Implementation Plan.

8. Nothing in this Agreement shall affect, extinguish, create, increase or decrease any party's court adjudicated usual and accustomed fishing rights or claims.

9. If a tribe purchases private tidelands within the Point Elliott Treaty area, and on those tidelands there exists a shellfish population that is subject to U&A harvest rights of one or more Point Elliott tribes and the purchasing tribe, as the new owner of that property, enhances and increases production, then the extent of U&A harvest rights shall be based on the natural production levels revealed in a survey done originally at or near the time of purchase and not on the increase of production from the efforts of the owner tribe in the same manner as has been required under the Shellfish implementation procedures with other private property owners in the past and future.

10. The provisions of this Agreement apply only to, inhere in and are binding upon the signatory parties to this Agreement. This Agreement is not intended to create any third party beneficiaries with respect to the rights and obligations in this Agreement.

11. With respect to the consortium interests and activities concerning the 40 acres obtained pursuant to paragraph 3(a) set forth above, the parties hereto agree that only Upper Skagit, Swinomish and Lummi have standing to raise an issue with respect to the enforcement of such provisions.

12. This North Sound Agreement shall not be effective unless and until all parties to this Agreement approve and execute the Shellfish Settlement Agreement.

13. a.) The North Sound Tribes hereby agree that, pursuant to the Shellfish Settlement Agreement, they shall receive collectively 24.242424% of the \$33 million settlement funds, which when divided equally among the Payee Tribes as set forth above, equals 3.4632035% each.
- b.) The North Sound Tribes also agree that the remaining settlement funds shall be disbursed to the other tribes/tribal regions identified in the Shellfish Settlement Agreement as follows: 45.454545% to "South Sound" Tribes and 30.303030% to "Hood Canal/Strait of Juan de Fuca" Tribes, to be directed to such payee or payees and in such amounts as the South Sound Tribes and the Hood Canal/Strait of Juan de Fuca Tribes, respectively, may agree. This provision constitutes the agreement of the North Sound Tribes to these payee designations required by Section 9.A.4. of the Shellfish Settlement Agreement.

14. The North Sound Tribes hereby agree that each disbursement to each Payee Tribe under the Shellfish Settlement Agreement shall be made in the

percentage and as provided above with the payment for that tribe delivered to the Chairman of that tribe at the tribal address set forth below.

15. This agreement may be signed in counterparts. Upon signature, the originals shall be faxed to the Upper Skagit Indian Tribe at (360) 854-7052 and the originals mailed to the Upper Skagit Indian Tribe, attention Harry Chesnin. When all fax signatures are received by the Upper Skagit Indian Tribe, this Agreement shall be binding upon all the parties hereto and Upper Skagit shall notify all parties by email that the Agreement is binding and shall return a fully executed copy to the chairperson of each signatory tribe at the addresses set forth below.

Swinomish Indian Tribal Community

By: _____
M. Brian Cladoosby, Chairman
11404 Moorage Way,
POB 817
LaConner WA 98257.

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Swinomish Indian Tribal Community

By: M. Brian Cladoosby
M. Brian Cladoosby, Chairman
11404 Moorage Way,
POB 817
LaConner WA 98257.

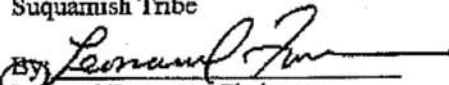
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Swinomish Indian Tribal Community

By: _____
M. Brian Cladoosby, Chairman
11404 Moorage Way,
POB 817
LaConner WA 98257.

Suquamish Tribe

By:  _____
Leonard Forsman, Chairman
P.O. Box 498
18490 Suquamish Way
Suquamish, Washington 98392.

Muckleshoot Indian Tribe

By: _____
Charlotte Williams, Chairperson
39015 -- 172nd Ave. S.E.
Auburn, WA 98092

P.O. Box 498
18490 Suquamish Way
Suquamish, Washington 98392.

Muckleshoot Indian Tribe

By: Charlotte Williams
Charlotte Williams, Chairperson
39015 - 172nd Ave. S.E.
Auburn, WA 98092

Lummi Nation

By: _____
Evelyn Jefferson, Chairwoman
2616 Kwina Rd.
Bellingham WA 98226

Stilligumish Indian Tribe

By: _____
Shawn E. Yarity, Chairman

P.O. Box 498
18490 Suquamish Way
Suquamish, Washington 98392.

Muckleshoot Indian Tribe

By: _____
Charlotte Williams, Chairperson
39015 - 172nd Ave. S.E.
Auburn, WA 98092

Lummi Nation

By: *Evelyn Jefferson*
Evelyn Jefferson, Chairwoman
2616 Keweenaw Rd.
Bellingham, WA 98226

Stillaguamish Indian Tribe

By: _____
Shawn E. Yarity, Chairman

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Muckleshoot Indian Tribe

By: _____
Charlotte Williams, Chairperson
39015 - 172nd Ave. S.E.
Auburn, WA 98092

Lummi Nation

By: _____
Evelyn Jefferson, Chairwoman
2616 Kwina Rd.
Bellingham WA 98226

Stillaguamish Indian Tribe

By: 
Shawn E. Yarity, Chairman

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NOOKSACK COUNCIL


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Stilliguamish Indian Tribe

By: _____
Shawn E. Yanity, Chairman

Nooksack Indian Tribe

By: 
Narcisco Cunanan, Chairman
Nooksack Indian Tribe
PO Box 157
5048 Mt Baker Hwy
Deming, WA 98226

Tulalip Tribes

By: _____
Mr. Melvin R. Sheldon Jr, Chairman
Tulalip Tribes - Board of Directors
6700 Totem Beach Road
Marysville WA 98271

Nooksack Indian Tribe

By: _____
Narciso Cunanan, Chairman

Tulalip Tribes

By: Melvin R. Sheldon Jr.
Mr. Melvin R. Sheldon Jr, Chairman
Tulalip Tribes - Board of Directors
6700 Totem Beach Road
Marysville WA 98271

Sauk-Suiattle Indian Tribe

By: _____
Janice W. Mabee, Chairman
5318 Chief Brown Lane
Darrington, WA 98241

Upper Skagit Indian Tribe

By: _____
Marilyn Scott, Chairman
25944 Community Plaza Way
Sedro Woolley, WA 98284

Sauk-Suiattle Indian Tribe

By: Janice W. Mabee
Janice W. Mabee, Chairman
5318 Chief Brown Lane
Darrington, WA 98241

Upper Skagit Indian Tribe

By: _____
Marilyn Scott, Chairman
25944 Community Plaza Way
Sedro Woolley, WA 98284

Sauk-Suiattle Indian Tribe

By: _____
Janice W. Mabee, Chairman
5318 Chief Brown Lane
Darrington, WA 98241

Upper Skagit Indian Tribe

By: Marilyn M. Scott
Marilyn Scott, Chairman
25944 Community Plaza Way
Sedro Woolley, WA 98284