

## **SQUAXIN ISLAND TRIBE 2022-2023 ANNUAL GEODUCK REGULATIONS**

These annual regulations are promulgated to ensure an orderly and safe fishery, to ensure an effective enforcement presence, to meet the requirements of federal law, and to manage the harvest of natural resources. These regulations are not adopted for conservation purposes. To the extent that *United States v. Williams*, 898 F.2d 727 (9<sup>th</sup> Cir. 1990) or *State v. McCormack*, 117 Wn. 2d 141, 812 P.2d 483 (1991), hold that these tribal regulations were promulgated for conservation purposes, the Squaxin Island Tribe specifically rebuts that presumption.

1. Authorization. This annual regulation is adopted consistent with the authority in SITC § 7.20, the Natural Resources Code. This annual regulation anticipates certain requirements beyond the 2022 - 2023 fishery. The treaty geoduck harvest season shall begin Saturday, April 2, 2022.
2. Except as provided in §§ 6 (assistant), 9 (spouse), 10 (law enforcement and tribal staff), 11 (tender) or 12 (operator), it is unlawful for a person who is not an enrolled member of the Squaxin Island Tribe to participate in the treaty geoduck fishery, or to be on board a vessel, or associated equipment, operating in a treaty geoduck fishery.
3. Individual Diver Quota System. The geoduck dive fishery is based on a limited entry model, with an allocation of the Total Allowable Catch ("TAC") amongst Existing IDQ Holders, Phase-Out IDQ Holders, and New 2022 IDQ Holders.
  - a. Prior to the beginning of the harvest season, IDQs will be allocated under § 5. Once the IDQ is determined for each group, the participating diver must meet the general requirements of § 4 and the specific requirements for each diver-type set out in Exhibit A, as applicable.
  - b. If any participating diver fails to vest his or her IDQ, his or her IDQ shall be forfeited.
  - c. An IDQ may not be transferred, sold or exchanged.
  - d. An individual who has an IDQ and fails to harvest all or a portion of that IDQ in the allotted time will forfeit the balance of his or her IDQ.
  - e. If the TAC or number of participants in each group changes as a result of litigation, settlement or other factors, the quota will be recalculated per a scheduled re-allocation (Exhibit A) or, if significant, per an unscheduled allocation approved by the Department.
4. Prerequisites for Participation in the Geoduck Dive Fishery. To participate in the geoduck, dive fishery, a diver (whether the IDQ Holder, Spouse or other Assistant), at his or her own expense, must provide evidence to the Department that the participant:
  - a. Has successfully completed a Basic Scuba course approved by the Department (no refresher required);
  - b. Has successfully completed an Advanced Scuba course approved by the

Department (no refresher required);

- c. Has successfully completed a Surface Supplied Air (SSA) course approved by the Department. If a diver has not been in the water and has not actively harvested geoduck since April 1, 2019, a refresher is required.
- d. Holds a current and valid First Aid and CPR card;
- e. Has successfully passed a comprehensive medical and physical examination by a licensed physician certifying that the diver has the medical and physical ability to participate in the 22-23 dive fishery. The standard for such certification shall be the current Puyallup dive standards.<sup>1</sup> A New Diver shall be evaluated by the Squaxin Island Tribe's Clinic. The new diver shall recertify with the Squaxin Island Health Clinic each year thereafter. An Existing Diver shall recertify with the Squaxin Island Tribe's Clinic each year on or before the anniversary of his or her initial certification. An Existing Diver may opt to use his or her current physician in lieu of using the Squaxin Island Tribe's Clinic.
- f. Holds a current and valid Annual Tribal Sub-Tidal License issued by the Department (acquired by March 31, 2022 4:00 PM PST);
- g. Has no outstanding taxes, fines, rents or other costs due the Squaxin Island Tribe;
- h. Has successfully passed any drug tests administered by the Tribe pursuant to § 13 (drug and alcohol free policy).

A New Diver must complete the prerequisites in the following order: first § 4(e) then the remainder of § 4(a) – (h).

- 5. Allocation. The available harvestable biomass shall be allocated at the beginning of the season for testing, training and commercial harvest and reallocated during the season as determined by rule adopted by the Department. The allocation rule is set out in Exhibit A and will be revised from time to time during the season.
- 6. Assistance for an IDQ Holder. An IDQ Holder may not receive assistance except in the following circumstances:
  - a. An enrolled member of the Squaxin Island Tribe may assist another member in harvesting all or a portion of a member's IDQ if the IDQ holder is on a Temporary Medical Waiver under § 20 or on phase out under § 22.
  - b. For an Assistant to dive, he or she must meet the requirements of all divers (see § 4).
  - c. A Spouse may assist his or her spouse IDQ Holder in harvest all or a part of his or

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<sup>1</sup> See Puyallup Shellfish Code Chapter 12.12. See <https://www.codepublishing.com/WA/PuyallupTribe/html/PuyallupTribe12/PuyallupTribe1212.html#12.12>.

her spouse's IDQ; however, a Spouse shall not assist in any training or testing required under § 5 or Exhibit A. The IDQ holder must be present at the harvest.

7. Definitions. The following terms shall have the meaning described:

- a. "Assist" shall mean to handle or operate any boat or other vessel used in the geoduck fishery, to handle or operate any dive or harvest gear used in the geoduck fishery, or to use a treaty fisherman or other Indian identification card in geoduck fishing or in the sale, trading or peddling of geoduck.
  - b. "Assistant" shall mean a tribal member that is not a Spouse that assists an IDQ Holder. To dive, an Assistant must meet the requirements of § 4 and 6. To tend, an Assistant must meet the requirements of § 11.
  - c. "Department" shall mean the Squaxin Island Natural Resources Department.
  - d. "Existing IDQ Holder" shall mean any diver who harvested a full IDQ in the prior year fishery.
  - e. "New IDQ Holder" shall mean an enrolled member who is at least 18 years of age that was not an Existing IDQ Holder and has been selected to hold an IDQ under § 3 and satisfies the prerequisites for participation in § 4 before April 1, 2022.
  - f. "Participation in the dive fishery" shall mean to assist in the fishery, including assisting as a diver.
  - g. "Spouse" shall mean the husband or wife of a tribal member. See *United States v. Washington*, 384 F. Supp. 312 at 412. ("A treaty right fisherman may also be assisted by his or her spouse (whether or not possessing individual treaty rights).
  - h. "Temporary Medical Waiver" shall mean a waiver granted by the Department to a fully vested IDQ Holder for one or more the requirements that must be met to participate in the geoduck fishery.
  - i. "Vest" shall mean to satisfy the prerequisites in § 4 and the applicable requirements of Exhibit A regarding test or training digs.
8. Training. Divers who wish to participate in the fishery shall take their training and certification from contractors selected by the Department.
9. Spouse Participation. For a Spouse to dive, he or she must meet the requirements of all divers (see § 4) and assistance (see § 6).
10. Non-Member Participation. A non-member may participate in the geoduck fishery if doing so is related to his or her job duties in law enforcement, fisheries science, legal or management.
11. Tenders. A tender shall be an enrolled Squaxin Island member, Spouse or Assistant. In

order to qualify as a tender, the tender must provide evidence to the Department that the tender:

- a. Has registered with the Department as a tender;
  - b. Has successfully passed a drug test administered by the Tribe pursuant to its Random Drug Policy;
  - c. Has successfully passed a basic First Aid course approved by the Department;
  - d. Is able and willing to physically perform top-side responsibilities.
12. Vessel Operators. A vessel operator shall be an enrolled Squaxin Island member, Spouse or Assistant. A Vessel Operator must maintain a Safe Operating Distance (see Dive Safety Manual). In order to qualify as a Vessel Operator, the vessel operator must provide evidence to the Department that the vessel operator:
- a. Has successfully passed a drug test administered by the Tribe pursuant to its Random Drug Policy;
  - b. Has successfully passed a basic First Aid course approved by the Department.
13. Drug and Alcohol Free Policy. The Tribe is committed to providing a safe dive environment that is free from the harmful effects of drug and alcohol abuse. It is also illegal to harvest while under the influence of drugs or alcohol. SITC § 7.04.160. This policy applies to all participants in the diver fishery and is a specific condition under §§ 4 (divers) and 11 (tenders). Compliance with all elements of this policy is a condition of continued participation in the fishery.

Each year a drug test will be administered prior to entering the fishery. A licensed drug laboratory must administer the drug test. A list of laboratories approved by the Department is available at the Human Resources Office.

If law enforcement personnel suspect alcohol or drug use during any dive operation, they may suspend the dive operation immediately. Law enforcement personnel may administer either a field breath test for alcohol and or a field drug test.

In addition, unannounced on-site drug testing will be conducted during the current harvest year. Testing shall be administered to the greatest extent possible without a waiting period. An individual, who fails to take a test immediately after being selected, will be deemed to have refused the test. If an individual refuses to take the test(s) the individual will immediately fail the prerequisites for participation in the fishery, §4, and lose the balance of his or her IDQ for the remainder of the year. Any Participant in the Fishery who registers a result other than negative for only marijuana or alcohol shall immediately leave the water and may return the next day. Any Participant in the Fishery who registers a result other than negative for other than marijuana or alcohol may continue participating only by (a) immediately leaving the water and (b) completing and abiding by all terms and conditions set forth in the Continued Certification Plan. Refusal by the Participant to agree to all terms or failure by the diver to comply with all terms and conditions of this regulation will result in revocation of the rights and privileges that he or she may hold to participate

in the fishery.

A Continued Certification Plan shall include the following:

- a. An agreement by the participant to be assessed by a qualified drug\alcohol counselor approved by the Squaxin Island Tribe;
- b. An agreement by the participant to abide by the recommendations, if any, of the counselor;
- c. A prohibition on participating in the fishery for two weeks from date of assessment;
- d. An opportunity to renew participation but only after successfully passing a drug test;
- e. Be subject to unannounced, unscheduled follow up testing for up to 24 months following the participants return to the fishery; and
- f. The consequence that any subsequent positive test result will result in loss of rights and privileges to participate in the fishery, including permanent (life-time) loss of IDQ.

#### 14. Compliance.

- a. Location of Harvest. Each diver must only operate on a designated tract(s) with certified boats and dive on specific dive days. The dive days and designated areas will be set by Tribal in-season regulation.
- b. Hours of Operation. For the 2022/2023 season, harvest days may occur seven (7) days per week with harvest hours being from 7:00 a.m. through 6:00 p.m. Days and daily times will be designated by in season regulation.
- c. Harvest Notification. To ensure effective enforcement, vessel operators must notify law enforcement of his or her intent to operate every Friday for the upcoming week if the dive operation plan is to start after 11 a.m. on any open harvest day. If there is no submitted plan, and divers show up after 11 a.m. (and harvests), and law enforcement personnel are not present, the diver will be charged with Failure to Cease Harvest. If the vessel owner/operator must deviate from this schedule, the Department and Enforcement must be notified immediately.
- d. Daily Dive Log. Each dive vessel operator shall maintain a daily dive log and provide a copy to the Department no less than weekly. The daily dive log shall include the name of the diver, date, location, time down, time up, total dive time, maximum depth and crates harvested signed by the vessel operator.
- e. Geoduck Daily Weigh Out Record. Each monitor shall report daily weigh out on forms provided by the Department and provide a copy to the Department no less than weekly. The weigh out form shall include the name of the diver, date, location, tract, number of crates, pounds per crate, and total pounds signed by the diver,

monitor and vessel operator.

- f. Strict Compliance. The Department and Squaxin Island Police Department have been directed to strictly comply and enforce this regulation package. A violation of the regulations by an IDQ Holder, diver or captain of the day may result in the loss of IDQ or license.
15. Requirements of Sale. All geoduck sales must be completely and accurately recorded on Treaty Indian Fish Receiving Tickets. The Fish Receiving Tickets must reconcile with the Geoduck Daily Weigh Out Record and a copy provided to the Department no less than weekly. All geoduck must be weighed by law enforcement personnel on tract or at a site designated by the Department. Only individuals holding an unused IDQ may sell geoduck.
16. Stumpage Fee. A fee shall be levied on the sale of geoducks at the rate of .75 per pound. Stumpage will be assessed against the boat owner or tribal buyers for geoducks harvested during the fishery and must be paid within thirty days of the end of each month. Failure to pay stumpage owed when due will result in the suspension of the license and IDQ until such time as the boat owner or tribal buyer pays the stumpage in full. The stumpage fees will be allocated to Law Enforcement for compliance and the balance, in amounts determined through the budget process, will be dedicated to natural resource management.
17. Boat Certification. All boats participating in the dive fishery shall:
- a. Be inspected and certified for safe operation by law enforcement personnel before participating in the dive fishery;
  - b. Have a comprehensive safety inspection;
  - c. Be available to be regularly checked for safe operating equipment and procedures; and
  - d. Pass an annual health and sanitation inspection conducted in conjunction with Washington State Department of Health, Shellfish Program.
  - e. Adopt a COVID-19 Safety Plan to include:
    - (i) that there are no more than 5 people on the dive vessel; no more than 2 people on a support or transport skiff; and no more than 7 people on tract at any one time.
    - (ii) provision for thoroughly sanitizing dive equipment before each dive.
    - (iii) that each diver has his or her own or an assigned helmet, oral nasals and nose guards and that divers not share helmets, oral nasals or nose guards.
    - (iv) that only the captain of the day will interact in person with a buyer, and both the captain of the day and the buyer will mask and glove when interacting.

(v) that all crew, skiff operators, and divers will be screened prior to work for temperature and COVID 19 symptoms based on Center for Disease Control guidance. If anyone fails temperature or screening check, he or she will not be allowed on the skiff or dive vessel for that day.

The Covid-19 Safety Plan shall be implemented when and as the Emergency Management Department announces that the incidence of Covid has risen such that additional mandated safety precautions are necessary.

18. Law Enforcement/Monitor Procedures. The law enforcement personnel may enter and leave the harvest tract at will. To protect divers underwater, law enforcement may not approach within 50 yards of a harvest boat without prior contact and approach instructions from the boat tender. Licenses must be presented upon request to law enforcement. The existing provisions of the Squaxin Island Tribal Natural Resources Code are in effect.

19. Other Restrictions.

a. Harvest for other Tribes. No Squaxin Island diver or registered vessel will be allowed to participate in a geoduck harvest for another Tribe without express written permission from the Squaxin Island Tribal Council. If a diver participates in a harvest for another Tribe without express written permission, the diver's IDQ will be revoked for the remainder of the harvest year and the diver will not be eligible for a license for the following year. If a Squaxin Island registered vessel participates without express written permission, the vessel registration will be revoked for the remainder of the harvest year and for the following year.

b. Failure to disclose. It shall be a violation of this regulation to knowingly fail to disclose to law enforcement personnel any aquatic resources on board any vessel or vehicle in use by a Squaxin Island aquatic harvester. Violation of this provision shall be punishable as a Class B Penalty of §7.08.030 of the Squaxin Island Tribal Code.

20. Temporary Medical Waiver. [Reserved.]

21. Senior Exception. Seniors (those 55 years and older) are exempt from the annual license fee in § 4(f). Notwithstanding the fee exemption, Seniors shall comply with all other reporting, licensing and tax obligations.

22. Phase Out of IDQ Holders.

a. An IDQ Holder may elect to participate in the Basic Phase Out. In addition, if an IDQ Holder fails to harvest the initial allocation by June 30, as required under Exhibit A, or fails the physical required under § 4(e) with no Temporary Medical Waiver available under § 20, he or she will be placed in the Basic Phase Out program. The Phase Out allocations are set out in Exhibit A.

b. Once an IDQ Holder has begun to phase out of the fishery, he or she need not meet the requirements of § 4, except (f) (annual license) and (g) (taxes, etc.), in any subsequent year. An IDQ Holder in a phase-out mode need not be present as

otherwise required by § 6(c). A phase out cannot be rescinded. Once a tribal member in the geoduck fishery goes into phase-out, the individual cannot return to the fishery.

- c. Any dispute with respect to whether an individual did or did not pass the digging test shall be resolved by the independent third party, whose decision shall be final and not subject to appeal.

23. Penalties. It shall be a violation of this regulation to knowingly submit an incomplete, inaccurate or otherwise false or falsified certificate or harvest record to the department. Violation of this provision shall be punishable as a Class B penalty under §7.08.030 of the Squaxin Island Tribal Code. Violation of this provision by a diver shall include loss of the amount of his or her current year annual IDQ.

Adopted March 31, 2022 by Tribal Council.

Kristopher K Peters  
Kristopher K Peters (Mar 31, 2022 15:43 PDT)

Tribal Council

Andy Whitener  
Andy Whitener (Mar 31, 2022 18:02 PDT)

Natural Resource Director

#### 2022-2023 Regulation history:

- February 24, 2022 Aquatics Committee (AC) considers revisions to 22-23 package.
- March 3, 2022 Draft 22-23 regulation package considered
- March 10, 2022 AC considered 22-23 regulation package.
- March 17, 2022 AC further considered 22-23 regulation package.
- March 18, 2022 Council considers package, does not approve 3<sup>rd</sup> year of pandemic assistance, returned to AC.
- March 21, 2022 NR revises regulation package removing pandemic assistance.
- March 24, 2022 AC and Council consider package; returned to AC.
- March 29, 2022 AC considers further revisions to 22-23 regulation package.
- March 31, 2022 Tribal Council considers and approves 22-23 regulation package with addition of dive safety plan.



## **Exhibit A: Allocation**

Divers shall be designated by the Department as to the type (Existing and New) and stage of phase-out (phase 1, 2 etc.).

### **Existing IDQ Holders.**

An Existing IDQ Holder will be allocated an initial 500 lbs. The Existing IDQ Holder must harvest the 500 lbs. without spousal or other assistance before June 28, 2022. All harvest, including the initial 500 lbs., must be certified by the captain of the day and the monitor as being harvested by the Existing IDQ Holder without assistance.

### **Applicant New IDQ Holder.**

An Applicant to be a New IDQ Holder will be allocated a provisional IDQ of 750 lbs. The Applicant must coordinate with boat owners to harvest this provisional IDQ without spousal or other assistance between April 2, 2022, and June 28, 2022, as proof of capacity and as a prerequisite to receiving an additional allocation as a New 2022 Diver. Provided, the Applicant must log 6 tender days prior to any harvest. The log days must be certified by the captain of the day. All harvest, including the provisional IDQ, must be certified by the captain of the day and the monitor as being harvested by the Applicant without assistance.

An individual who has passed all requirements of § 4, and has successfully certified harvesting the provisional IDQ prior to June 28, 2022, will be designated a New IDQ Holder and receive an additional allocation of up to 500 lbs., for a total of up to 1,250 lbs.

To be eligible for an IDQ in 2022 an Applicant must sign up with the Department no later than April 1, 2022.

An Applicant must satisfy all prerequisites (§ 4(a) (b) (c) (d) and (e)) by April 1, 2020.

### **Allocation.**

For 2022-2023, the geoduck resource shall be allocated as follows:

Initially, 500 lbs. per Existing IDQ Holder and 750 lbs. per New Applicants. On or after June 28, 2022, allocating the available biomass (estimated to be 3,800 lbs. per Existing IDQ Holder and 1250 lbs. per New IDQ Holders).

- Existing IDQ holders: Equally 3,800 lbs. each (based on 64 divers)
- Phase out: 1,280 lbs. each (based on 1 Phase 2 harvester)
- New IDQ Holders in 2022-23 will share 12,500 pounds with an initial provisional IDQ of 750 pounds to test on. Once they pass the dive test, they will be allocated up to an additional 500 pounds with a maximum allocation of 1,250 pounds. The unallocated balance of these pounds will be redistributed to Existing IDQ holders equally.

**Phase out program:**

An IDQ Holder may elect to phase-out of the fishery. An IDQ Holder that elects to phase out of the fishery will be entitled to one year for each year that he or she participated in the fishery up to 5 years. If an IDQ Holder elects to phase out in-season, without harvesting all of his or her allocation at the time of the election, the IDQ Holder will be entitled to the balance of that year's allocation, less 500 lbs., and it shall be deemed the 1<sup>st</sup> year of the phase-out,

A phase out, elected in the 22-23 or subsequent years, shall be a maximum of 5 years and the allocation shall be reduced by 500 lbs. per year.

For those IDQ Holders in a phase out as of the 22-23 season, the allocation shall be reduced by 1280 lbs. per year.

**Reallocation:**

On July 1, 2022, New Divers will share in any remaining new diver pounds among the successful New Divers up to 1,250 pounds each for 2022-23.

All pounds not fully vested by July 1, 2022, shall be allocated equally among the fully vested Existing IDQ Holders.

Prior to the last 12 weeks of the fishery, on a date and time determined by the Department, the Committee shall meet to evaluate the remaining TAC to be harvested. For any reallocation the remaining TAC shall be re-allocated equally amongst Existing and New IDQ Holders excluding Phase-Out Divers.

Prior to the last 6 weeks of the fishery, on a date and time determined by a meeting with the Department and Committee, with a recommendation to Tribal Council, will evaluate whether to continue the fishery. The time, place and manner of harvest in the last 2 weeks shall be approved by Tribal Council, after receiving the recommendation of the Aquatic Committee. If the Committee fails to make a recommendation and/or the Council does not approve the time, place and manner of harvest for the last 2 weeks, no fishery will take place.









# 2022-2023 Annual Geoduck Regulation approved 033122

Final Audit Report

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