



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 14-18

of the

### SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; **and**

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of the tribal members, and with protecting and managing the lands and treaty resources and rights of the Tribe; **and**

**WHEREAS**, The Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self government;

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education, and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; **and**

**WHEREAS**, the Bureau of Indian Affairs has advised the Tribe of the availability of Fiscal Year 2014 funds to implement the Timber Fish & Wildlife (TFW) Program, for which the Tribe is submitting a project proposal; **and**

**WHEREAS**, the Squaxin Island Tribe acknowledges that this proposal addresses only funds available for TFW in FY14 and further acknowledges that no guarantee is made that funds will be available for TFW beyond the current year;

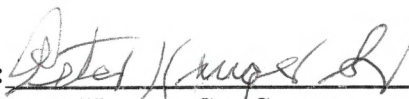
**NOW THEREFORE BE IT RESOLVED**, the Squaxin Island Tribal Council authorizes the submission of a funding request to the Bureau of Indian Affairs for implementation of a Tribal TFW project; **and**

**BE IT FURTHER RESOLVED**, the Tribe requests the available dollars be provided through the Tribe's Self-Governance Annual Funding Agreement.

**CERTIFICATION**

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at a regular meeting of the Squaxin Island Tribal Council, held on 27 of March, 2014, at which time a quorum was present and was passed by a vote of 6 for, 0 against, and 0 abstained.

  
\_\_\_\_\_  
David Lopeman, Chairman

Attested by:   
\_\_\_\_\_  
Peter Kruger, Sr., Secretary

  
\_\_\_\_\_  
Arnold Cooper, Vice Chairman

**SQUAXIN ISLAND TRIBE**  
**2014-2015 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 2014 -2015 fishery.
2. Except as provided in section 5 of this regulation (assistant) and section 10 (law enforcement and tribal staff), it is unlawful for a person who is not an enrolled member 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 amongst Existing Individual Dive Quota Holders (Existing IDQ Holder) (existing divers) as Individual Dive Quotas (IDQ), and a limited opportunity for additional members (new divers or New IDQ Holder) to obtain an IDQ and enter the fishery. Prior to the beginning of the harvest season, IDQs will be determined. The IDQs will be determined by dividing the estimated Total Allowable Catch (minus a reserve determined by the Department for PSP, dig samples, and other management purposes) by the number of Existing IDQ Holders (Tiers 1-4), with a limit of 5,000 lbs. Phase out divers will be limited to the pounds available based on the schedule in section 3(c). Thereafter, the remaining TAC will be divided by the number of New IDQ Holders (Tier 5). [TAC/EIDQ ≤ 5000 lbs + remaining TAC/NIDQ].
  - a. Existing IDQ Holders are those who participated in the Base Year fishery (2009-2010). The current number of Existing IDQ Holders is 57, with 1 EIDQ in Phase 1 (4,500 lbs.), 3 EIDQ in Phase 2 (4,000 lbs.) and 2 EIDQ in Phase 3 (3,500 lbs) and 1 EIDQ in Phase 4 (3,000 lbs.). New IDQ Holders are 19 individuals that fully vested in the 2010-2014 year fishery.
  - b. The IDQs will be first allocated amongst the Existing IDQ holders. [TAC/EIDQ] subject to the limits for Phase Out divers. For the 2014 – 2015 dive year there are 53 individuals that hold an IDQ from the previous year, 1 individual in Phase 1, 3 individual in Phase 2, 2 individual in Phase 3 and 1 individual in Phase 4. The TAC will be divided amongst the 57 that are current on all taxes, fines, rents and other costs due the Tribe as of March 31, 2014.
  - c. The maximum allowable IDQ for an EIDQ Holder shall be 5,000 lbs. [TAC/EIDQ = 5000 lbs.] The maximum allowable IDQ for a Phase 1 diver shall be 4,500 lbs. The maximum allowable IDQ for a Phase 2 individual shall be 4,000 lbs. The maximum allowable IDQ for a Phase 3 IDQ individual shall be 3,500 lbs. The maximum allowable IDQ for a Phase 4 individual shall be 3,000 lbs. The maximum allowable IDQ for a Phase 5 individual shall be 2,500 lbs. The maximum allowable IDQ for a Phase 6 individual shall be 0 lbs.

- d. Once the IDQ is determined for EIDQ Holders, the EIDQ Holder must meet the requirements of §§ 4 and 22 by the Vesting Date established by the Department. If an EIDQ Holder fails to vest his or her IDQ, his or her IDQ shall be forfeited.
- e. If, after allocating the maximum allowable IDQ amongst EIDQ, there are remaining pounds available, the remaining TAC shall thereafter be allocated amongst New IDQ Holders. [Remaining TAC/ # of New IDQ = NIDQ lbs].
- f. The remaining pounds available shall include TAC from whatever source, including forfeited pounds, pounds that did not vest, pounds that are not claimed, reduction in number of EIDQ Holder, any remaining IDQ following suspension for failing to pay stumpage, or any difference in actual TAC from estimated TAC.
- g. Once the NIDQ is determined for the 19 NIDQ Holders, the NIDQ Holder must meet the requirements of §§ 4 and 22 by the Vesting Date established by the Department. If a NIDQ Holder fails to vest his or her IDQ, his or her IDQ shall be forfeited. If a NIDQ Holder fails to vest, his or her pounds shall be re-allocated in 2014-2015 equally amongst the remaining NIDQ Holders (however, the increase harvest opportunity from a re-allocation does not alter the quota as in (m) and (n) below).
- h. An IDQ may not be transferred, sold or exchanged.
- i. The IDQ Holder must log a dive each day the IDQ Holder claims the harvest of his or her IDQ. See § 6.
- j. An individual who has an IDQ and fails to harvest all or a portion of that IDQ will forfeit the balance of his or her IDQ.
- k. If the TAC or number of EIDQ or NIDQ changes as a result of litigation, settlement or other factors, the quota will be recalculated amongst the EIQD and NIQD per a scheduled re-allocation (¶ (n) and (o)) or, if significant, per an unscheduled allocation approved by the Department.
- l. All pounds not fully vested by October 15 shall be allocated equally among the fully vested new divers.
- m. Prior to the last 6 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 all divers [Remaining TAC/EIDQ + NIDQ less Phase Out divers] excluding Phase Out Divers.
- n. Prior to the last 2 weeks of the fishery, on a date and time determined by the Department, the remaining TAC shall be re-allocated equally amongst all divers [Remaining TAC/EIDQ + NIDQ less Phase Out divers] excluding Phase Out Divers.
- o. 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.

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) must provide evidence to the Department that the participant:
  - a. Has successfully completed a Basic Scuba course approved by the Department;
  - b. Has successfully completed an Advanced Scuba course approved by the Department;
  - c. Has successfully completed a Surface Supplied Air (SSA) course approved by the Department;
  - 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 dive fishery.
  - f. Holds a current and valid Annual Tribal Sub-tidal License issued by the Department;
  - g. Has no outstanding taxes, fines, rents or other costs due the Squaxin Island Tribe; and
  - h. Has successfully passed the annual drug test administered by the Tribe pursuant to its Random Drug Policy.
  - i. Has successfully passed any drug tests administered by the Tribe pursuant to its Random Drug Policy.
5. Assistance for an IDQ Holder. In addition to the requirements of § 4 an IDQ Holder may receive assistance in the following circumstances:
  - a. An enrolled member of the Tribe may assist another member in harvesting all or a portion of a member's IDQ, once a Logged Dive occurs. The IDQ holder must be present at the harvest.
  - 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 a member's IDQ and/or a Logged Dive. The IDQ holder must be present at the harvest.
  - d. The IDQ Holder must Log a Dive each day that he or she claims a harvest.
6. Logged Dive. See definition at § 7(e).
  - a. The IDQ Holder or another must notify Law Enforcement immediately prior to an IDQ Holder beginning his or her logged dive. If Law Enforcement is not notified, the IDQ Holder shall not claim a harvest for that day.
  - b. If anyone falsely identifies another as having completed a Logged Dive the individual providing the false information to Law Enforcement shall lose his or her ability to participate in the fishery and forfeit any remaining IDQ for the year that he or she may

have.

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 5. To tend, an Assistant must meet the requirements of § 11.
- c. "Base Year fishery" shall mean the 2009-2010 geoduck fishery.
- d. "Existing IDQ Holder" shall mean any diver who held an IDQ in the Base Year fishery.
- e. Logged Dive shall mean a dive or dives that total 30 minutes or more in which the diver reaches the bottom in the harvest area with intent to harvest.
- f. "New IDQ Holder" shall mean an enrolled member who is at least 18 years of age that did not hold an IDQ in the Base Year Fishery and has been selected to hold an IDQ under § 3(h).
- g. "Participation in the dive fishery" shall mean to assist in the fishery, including assisting as a diver.
- h. "Spouse" shall mean the husband or wife of a tribal member married for one year or more. See 384 F. Supp. at 412.
- i. "Temporary Medical Waiver" shall mean a waiver granted to a fully vested diver for a specified amount of no more than one year of time and does not cross harvest years for one or more specific requirements that must be met to participate in the geoduck fishery.
- j. "Vesting Date" shall mean the date by which an Existing or New IDQ Holder demonstrates that he or she has qualified to participate in the fishery.

8. Training. Divers who wish to participate in the fishery shall take their training and certification from the 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 § 5).

10. Non-Member Participation. A non-member may participate in the geoduck fishery if doing so related to his or her job duties in law enforcement, fisheries science, or management.

11. Tenders. A tender may 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; and
  - d. Is able and willing to physically perform top-side responsibilities.
12. Vessel Operators. A vessel operator may be an enrolled Squaxin Island member, Spouse or Assistant. A Vessel Operator must maintain a Safe Operating Distance. 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; and
  - 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 condition (for divers) under section 4 and/or (for tenders) under section 11. Compliance with all elements of this policy is a condition of continued participation in the fishery.
- a. 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.
  - b. 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.
  - c. 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.
  - d. 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.
  - e. Any Participant in the Fishery who registers a result other than negative may continue participating only by 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 rights and privileges that he or she may hold to participate in the fishery.
  - f. A Continued Certification Plan shall include the following:
    - i. Agreement by the participant to be assessed by a qualified drug/alcohol counselor approved by the Squaxin Island Tribe.

- ii. Agreement by the participant to abide by the recommendations, if any, of the counselor.
- iii. Prohibited from participating in the fishery for two weeks from date of assessment.
- iv. Renew participation only after successfully passing a drug test.
- v. Unannounced, unscheduled follow up testing for up to 24 months following the participants return to the fishery.
- vi. 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 2014 / 2015 season, harvest days may occur seven (7) days per week with harvest hours being from 7:00 am through 6:00 PM. 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 am on any open harvest day. If there is no submitted plan, and divers show up after 11 am (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 must be notified immediately.

15. Requirements of Sale. All geoduck sales must be completely and accurately recorded on Treaty Indian Fish Receiving Tickets. 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 assessed for geoducks harvested during the fishery 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 harvester 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.
  - d. Pass an annual health and sanitation inspection conducted in conjunction with Washington State Department of Health, Shellfish Program.
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. See § 7(i). An IDQ holder may be assisted by another if the IDQ Holder has a temporary medical waiver. A Temporary Medical Waiver may be obtained by making a request to the Aquatics Committee and Natural Resources Department for approval. All requests must be accompanied by written documentation of the medical condition by a physician. Pregnancy is hereby defined as a condition eligible for a Temporary Medical Waiver. All waivers will contain the specific requirement(s) waived, the duration of the waiver(s), and any specific conditions found to be necessary on a case-by-case basis. Temporary Medical Waivers are limited for any diver to two times in his/her lifetime, with exception of pregnancy.
21. Senior Exception. Seniors (those 55 years and older) are exempt from the stumpage fee in § 16, the annual license fee in § 4(f). Notwithstanding the fee exemptions, seniors shall comply with all other reporting and licensing obligations.
22. Phase Out of IDQ Holders.
- a. All IDQ Holders must successfully pass a digging test prior to October 15, 2014 as established by the Department. The test shall include harvest of 10 geoducks in 25 minutes or less. The time shall be measured from when the hose is turned on. If the IDQ Holder fails to pass the digging test, for whatever reason, he or she will begin a five year phase out. As a test incentive, if the IDQ Holder successfully passes the digging test in 10 minutes, the following years digging test shall be marked as successfully passed. An IDQ Holder that is phasing out of the fishery shall have his or her IDQ reduced by no less than 500 lbs per season and reduced to zero by the end of year 5. (Year 1 = 4500, Year 2 = 4000, Year 3 = 3500, Year 4 = 3000, Year 5 = 2500, Year 6 =

0). (This program is intended as a multi-year program and testing of increasing difficulty is anticipated).

- b. The dig test shall occur on days that the fishery is open. Boat Owners / Captains must schedule the individual tests with Law Enforcement on days that Law Enforcement is available. Because of the high demand for tests, all IDQ Holders are urged to complete testing as early in the season as possible. Law Enforcement will be available for testing, on times and places as it determines, from April 1 through October 15. Law Enforcement shall schedule tests by vessel, and test all IDQ Holders available on any test day, prior to scheduling tests on another vessel. Law Enforcement shall observe the dig test while in the water.
- c. An EIDQ Holder may elect to phase out of the fishery and thereby defer some or all of his or her quota to the new divers, the NIDQ Holders. An EIDQ that is phasing out of the fishery shall have his or her IDQ reduced by no less than 500 lbs per season and reduced to zero by the end of year 5.
- d. Once an IDQ Holder has begun to phase out of the fishery, he or she need not meet the requirements of §§ 4 and 22, except 4 (f) (annual license) and (g) (taxes, etc.), in any subsequent year. A IDQ Holder in a phase-out mode need not be present as otherwise required by § 5. A phase out cannot be rescinded.
- e. Any dispute with respect to whether an individual did or did not pass the digging test shall be resolved by the Department, whose decision shall be final and not subject to appeal.

Adopted \_\_\_\_\_, 2014 by Tribal Council.

  
Tribal Council

  
Natural Resource Director

- First draft to Aquatics Committee – February 14, 2014.
- Committee approved draft to Tribal Council - March 14, 2014.
- First Draft to Tribal Council for Approval – March 25, 2014.