



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 05-97A

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 tribal members, and of 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; and

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 State of Washington (State) has initiated a lawsuit against Jeffrey Albulet, Julian Ng, and Clear Bay Fisheries Inc. (Clear Bay), in Thurston County Superior Court, Cause No. 05-2-00254-6 (Litigation), which lawsuit raises claims regarding theft of geoduck from state-owned lands; and

WHEREAS, in this Litigation the Squaxin Island Tribe, the Puyallup Tribe of Indians, and the Nisqually Indian Tribe (the Tribes) filed motions to intervene in the Litigation in which they argue that their treaty rights entitle them to share in any recovery against Clear Bay; and

WHEREAS, the State and the Tribes (the Parties) have reached an agreement (Settlement Agreement re Tribal Motion to Intervene) whereby the Tribes would not pursue their motions for intervention if the State abides by terms of a separate agreement between the State and Tribes, which separate agreement obligates the State to consult with the Tribes regarding the progress of the State's lawsuit against Clear Bay; and

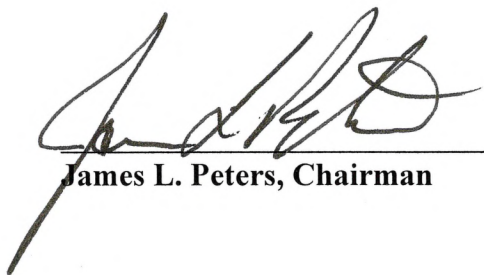
WHEREAS, the Squaxin Island Tribal Council has determined that it is in the best interests of the Squaxin Island Tribe to enter into the Settlement Agreement re Tribal Motion to Intervene;

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby approves the Settlement Agreement re Tribal Motion to Intervene Agreement;

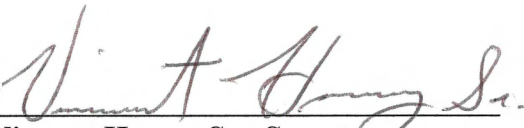
NOW THEREFORE BE IT FINALLY RESOLVED that James L. Peters, Tribal Chairman, and Mark E. Allen, Staff Attorney, are hereby authorized to execute the Agreement on behalf of the Squaxin Island Tribe and are further authorized to do any and all acts necessary to implement and/or perform the Agreement.

CERTIFICATION

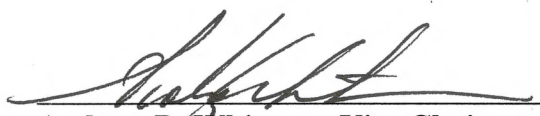
The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 20th day of October, 2005, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.



James L. Peters, Chairman

Attested by: 

Vincent Henry, Sr., Secretary



Andrew D. Whitener, Vice Chairman

SETTLEMENT AGREEMENT RE TRIBAL MOTION TO INTERVENE

**STATE v. CLEAR BAY FISHERIES, INC., et al.
Thurston County Superior Court Cause No. 05-2-00254-6**

This Settlement Agreement is made between Plaintiff State of Washington, the Squaxin Island Tribe, Puyallup Tribe of Indians, and Nisqually Indian Tribe, which Tribes have filed motions to intervene in the State's Lawsuit against Mr. Jeffrey Albulet, Mr. Julian Ng, and Clear Bay Fisheries Inc. (collectively referred to as "Clear Bay").

In consideration of the promises contained herein, the Parties agree to the following:

I. Definitions.

1. "Agreement" refers to this Settlement Agreement.
2. "Clear Bay" collectively refers to all defendants named in the Lawsuit.
3. "Lawsuit" refers to the case filed by the State of Washington against Clear Bay in Thurston County Superior Court, Cause No. 05-2-00254-6.
4. "Parties" refers to the parties to this Agreement, specifically, the State and the Tribes.
5. "State" refers to the State of Washington, Plaintiff in the Lawsuit. For purposes of this Agreement, the state agencies fulfilling any obligations on behalf of the State are the Department of Natural Resources (DNR) and the Department of Fish and Wildlife (WDFW).
6. "Tribes" refer to the Squaxin Island Tribe, Puyallup Tribe of Indians, and Nisqually Indian Tribe, the three of which comprise the Tribes in the South Puget Sound geoduck management region.
7. A "material breach" is one that substantially defeats the purpose of this Agreement, or relates to an essential element of this Agreement, and deprives the injured party of a benefit that he or she reasonably expected.

II. The Lawsuit. In February 2005, the State filed a Lawsuit against Clear Bay alleging that the company funded a geoduck poaching operation run by Doug Tobin from the late 1990s until the time of Mr. Tobin's arrest in March 2002. Besides financing Mr. Tobin's operation, Clear Bay purchased much of the poached geoduck directly from Mr. Tobin, and Clear Bay also brokered sales of poached geoduck from Mr. Tobin to third party companies. The State's Complaint raises multiple causes of action and seeks damages from Clear Bay relating to the poached geoduck. The Complaint also seeks to extinguish any financial interest Clear Bay may hold in the fishing vessel *Typhoon*, which vessel was used in the poaching activities and subsequently forfeited to the State during the scope of Mr. Tobin's criminal case.

III. Basis for Settlement. The Tribes filed two motions to intervene in the Clear Bay Lawsuit, asserting the right to a share of any proceeds or assets the State may recover from Clear Bay. The State does not agree that the Tribes are entitled to a share of recovery obtained from Clear Bay in the Lawsuit. The Parties acknowledge a difference in legal opinions over this issue. The Parties believe the Clear Bay Lawsuit does not present the most appropriate forum to resolve this difference in opinion between the Parties. The Parties believe that litigating this dispute could severely disrupt and distract from the prosecution of the Lawsuit against Clear Bay. The Parties recognize that they share many of the same interests regarding the protection and enhancement of the commercial geoduck resource, and the Parties are interested in seeing Clear Bay be held accountable for its involvement with the Tobin poaching operation. Instead of litigating the dispute between the State and Tribes in the context of an intervention motion, the Parties have reached an understanding embodied in this Agreement whereby the Tribes agree not to intervene in the Lawsuit if the State abides by the conditions set forth in this Agreement.

IV. Communications Made for the Purpose of Settlement. The Parties agree that any statements or representations made by them in negotiating this Settlement Agreement are made for the purposes of settlement within the meaning of federal and state Evidence Rules 408, and cannot be used by or against any Party in litigation as evidence of liability, waiver or concession.

V. Conditions of Settlement.

1. No Intervention unless Material Breach. The Tribes agree not to pursue their motions to intervene in the Lawsuit. If the State commits a material breach of the terms of this Agreement, the Tribes may initiate dispute resolution. If the Dispute Resolution Board concurs that there has been a material breach, the Tribes may pursue other available legal remedies or they may re-note and pursue their motion to intervene on the condition that the Tribes collectively agree to seek intervention. If the Tribes re-note an intervention motion after a material breach, the State agrees that it will not object to the timeliness of the Tribes' intervention motion, and the State waives any applicable statute of limitation regarding the intervention motion. The State reserves the right to object to the intervention motion on substantive legal grounds.

2. Status Meetings and Settlement Consultation. The State agrees to communicate via telephone call, written letter, or in person, with the Tribal Attorneys on a quarterly basis to update them on the status of the Lawsuit. Upon request by any of the Tribal Attorneys the State shall, within fourteen (14) days, schedule and hold any additional status meetings with the Tribes. If the State enters into settlement negotiations with Clear Bay, the State agrees to consult with the Tribes regarding settlement offers before finalizing any settlement. The State agrees to give serious consideration, in good faith, to all comments provided by the Tribes. The Tribes do not, however, hold any veto power over any final settlement decision made by the State.

3. Cooperation on Geoduck Management.

A. Washington State Department of Fish and Wildlife Law Enforcement agrees to provide information in its possession identifying locations where Doug Tobin is suspected to have poached geoduck, and information revealing the quantity he may have poached.

B. The State and Tribes agree to continue working together to develop a policy or protocol on how to quantify suspected geoduck poaching activity. Regarding the poaching activity led by Doug Tobin, the full extent of which is not known to the Parties, the State and Tribes agree to account for that poaching by prioritizing future surveys of geoduck tracts in suspected poached areas. This joint survey effort will occur within the next three to five years and will replace an 18,000 pounds reduction of the south Puget Sound regional geoduck total allowable harvest as an alternative to account for impacts to the geoduck resource caused by poaching.

4. Use of Funds Recovered from Clear Bay

A. For funds recovered by the State from Clear Bay up to two million dollars, the State agrees to use one-half of the amount recovered on projects described below to benefit the South Puget Sound geoduck resource. For funds recovered by the State from Clear Bay between two and three million dollars, the State agrees to use all of those funds on the projects described below. All other funds recovered from Clear Bay will be kept by the State with no conditions on their use. This agreement controls regardless of whether funds recovered are described as damages, costs, attorney fees, or any other designation. All dollar amounts referenced in this document are in United States currency.

B. Projects funded by this Agreement include (1) surveys to estimate geoduck biomass in areas mutually agreed upon by the Parties; (2) efforts to certify and/or re-certify geoduck tracts that are not currently open for commercial harvest, as agreed upon by the Parties; and (3) any other activities agreed upon by the Parties that benefit the South Puget Sound commercial geoduck resource. If any dispute arises over the selection of projects, the Parties shall submit the dispute to the Dispute Resolution Board pursuant to Section XII of this Agreement. The DRB's decision on a dispute arising from this subsection shall be binding on the parties and shall not be further litigated in the courts.

C. The State's commitment regarding the use of certain funds recovered from Clear Bay relies upon the State's spending authority in the current state budget. The current biennium ends on June 30, 2007. The State is legally unable to dedicate any particular use of funds beyond June 30, 2007. In the event the Clear Bay lawsuit is not concluded and/or funds are not recovered by June 30, 2007, the State agrees to seek the necessary spending authority to comply with the terms of this Agreement in the 2007-2009 biennium budget. If the

State does not obtain the necessary spending authority to fulfill this Agreement regarding the use of funds recovered from Clear Bay after June 30, 2007, it shall be considered a material breach of this Agreement and the Tribes may initiate dispute resolution.

5. Disposition of Physical Assets

A. The State currently holds possession of Doug Tobin's vessel, the *Typhoon*, which vessel Doug Tobin forfeited during the course of his criminal case. Clear Bay currently holds two federally-registered maritime liens on the *Typhoon*, which liens the State seeks to extinguish as part of the Lawsuit. The Tribes assert a property interest in the *Typhoon*, which claim the State disputes. If recovery from Clear Bay is less than one million dollars, the Tribes will drop their claim in the *Typhoon*, but the State may be willing to sell the boat to the Tribes at fair market value. If recovery from Clear Bay is one million dollars or more, the State will acknowledge a one-half interest of the Tribes in the *Typhoon*, subject to division, credit, or some kind of resolution in the future which could include the State's selling its half interest to the Tribes at fair market value.

B. Doug Tobin forfeited to the State other personal property assets besides the *Typhoon* as part of the criminal case against Tobin. The Tribes agree that they will not pursue any interest they may have in this personal property as part of this Lawsuit. The Tribes reserve the right to pursue any interests they may have in those assets in any other action they deem appropriate.

VI. Term. This Agreement shall be in effect from the date it is signed by the last Party and shall expire after all funds recovered have been applied towards geoduck projects per section V.4.

VII. No Third-Party Benefits. This Agreement is intended by the Parties for their sole and exclusive benefit. The Parties expressly do not intend to benefit any other party, and expressly do not intend to create any third-party beneficiaries to this Agreement.

VIII. Governing Law and Venue. This Agreement and the obligations of the Parties hereto shall be governed by, and interpreted in accordance with, the laws of the State of Washington. The venue for any disputes arising from this Agreement shall be Thurston County Superior Court where the Lawsuit is pending. If any litigation is brought to enforce any term, condition, or section of this Agreement, the prevailing party shall be awarded its reasonable attorney's fees.

IX. Successors and Assigns. This Agreement shall be binding upon all successors and assigns of the Parties.

X. Entire Agreement. This Agreement contains the entire understanding among the Parties relating to settlement of the Motion to Intervene in the Lawsuit. It supersedes any prior negotiations or representations, whether oral or written, relating to the settlement of the Motion to Intervene in the Lawsuit. Each Party acknowledges that it enters into this Settlement Agreement in reliance solely on the terms herein without reliance on any other promises, representations, or warranties.

XI. Authority of Signing Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized to enter into this Agreement by the entity on whose behalf the person is signing.

XII. Dispute Resolution. When a bona fide dispute arises between the Parties and it cannot be resolved through discussion and negotiation, either Party may request a Dispute Resolution Board (DRB). A request for a DRB must be in writing, state the disputed issues, state the relative positions of the Parties, designate the requesting party's DRB representative, and be sent to all Parties. Parties must provide a response addressing the same within ten (10) days.

The two representatives selected by the requesting and responding Parties shall mutually select a third DRB member within fourteen (14) days.

Within fourteen (14) days after the third DRB member is selected, the DRB shall notify the Parties of the date and time of informal hearing if either of the Parties or DRB requests a hearing. If no Party requests a hearing, the DRB can proceed on the submitted materials, and may request additional written materials from the Parties. The DRB shall evaluate the facts, Agreement terms and applicable statutes and rules and make a determination by majority vote, with the final decision being released within sixty (60) days after selection of the third DRB member. The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding concerning the Agreement. Parties agree that the DRB shall precede any action in judicial or quasi-judicial tribunal.

XIII. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

XIV. Alterations and Amendments. This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

(Please sign name and date signed)

Jim Peters
Tribal Council Chairman
Squaxin Island Tribe

Mark E. Allen
Attorney for Squaxin Island Tribe

Herman Dillon, Sr.
Tribal Council Chairman
Puyallup Tribe of Indians

Samuel J. Stiltner
Attorney for Puyallup Tribe of Indians

Dorian S. Sanchez
Tribal Council Chairman
Nisqually Indian Tribe

Bill Tobin
Attorney for Nisqually Indian Tribe

Jeff P. Koenigs, Ph.D.
Director, Washington State
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Kathryn McLeod
James Allen

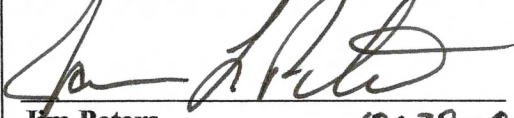
**Doug Sutherland, Commissioner of
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Attorneys for Washington State



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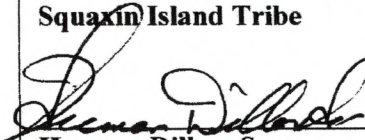
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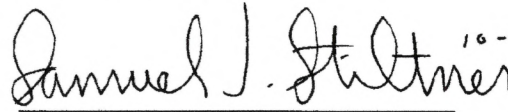
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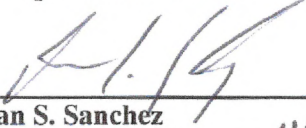
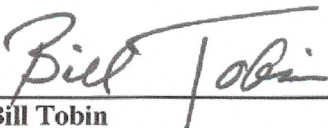
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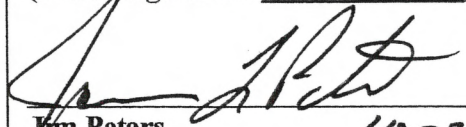
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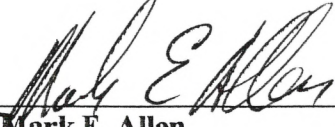
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