



Skokomish Indian Tribe

Natural Resources Department

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Skokomish Tribe's 2018/2019 Sub-Tidal Geoduck Annual Regulation

ANN-S#18-02

1. Introduction

The Skokomish Tribe's sub-tidal geoduck fishery has been designed to provide harvest opportunity for individual Tribal members as well as provide an overall benefit to the Tribe. The Skokomish Tribe's 2018/2019 annual geoduck regulation's purpose is to help maintain a sustainable geoduck fishery for future generations, enhance commercial and subsistence fisheries for sub-tidal geoduck clams, and most of all provide the safest work environment possible for members and employees of the Skokomish Tribe from February 1, 2018 through January 31, 2019. In addition to all other provisions herein, this Regulation must be read, agreed-to, signed and returned to the Department of Natural Resources by anyone wishing to participate in the fishery prior to February 1, 2018 in order to receive a quota.

2. Harvest Times and Areas

Harvest areas for the Skokomish Tribe include Washington Department of Fish and Wildlife Marine Shellfish Management and Catch Reporting Areas 25C south of a line from Olele Point to Foulweather Bluff, 27A, 27B and 27C. For the 2018/2019 geoduck season, the Skokomish Tribe intends to harvest geoduck at the Port Gamble Tract, #20000; the Port Gamble Inside tract, #20100; the Hazel Point (Toandos) tract, #21000; The Thorndyke tract, #21450; the Vinland tract, #20750, and the Coon Bay tract (19000).

3. Harvester and Diver Participation in the Geoduck Fishery

Only Skokomish Tribal members eighteen years of age or older will be authorized to participate and harvest geoduck in this fishery; non-member spouses who are eligible to fish under the Skokomish On-Reservation and Treaty Fishing Ordinance may assist in the fishery by acting as tenders on their member spouse's vessel. Non-member spouses must be in the presence of the member spouse during the fishery. Harvesters must dive their own geoduck and may not have another person either dive or harvest for them except as outlined in Section 17: Designated Divers.

It is the sole responsibility of a diver to know if they have a quota and the amount of that quota. Any person who harvests geoduck without a quota will automatically be ineligible to receive a quota for the following five seasons and must pay the Tribe double what was received for the geoduck within 12 months from the date of overharvest. Failure to pay within 12 months will eliminate the diver permanently from the geoduck fishery.

In the event that an individual does not harvest more than 50% of his or her phase-one quota for two years in a row, he or she will be ineligible for a quota the following year. Harvest between 49.1% and 49.4% will be rounded down to 49%; harvest of 49.5% to 49.9% will be rounded up to 50%. If the failure to harvest more than 50% of the quota was due to injury, the loss of an immediate family member¹, or enrollment in a drug treatment program, which caused an inability to harvest, then the individual may go to the Fish Committee to file an appeal. If approved, that individual then may go to the Tribal Council for final approval to receive a quota. This must all occur prior to the March 15 deadline (see section 4 for deadline details).

4. Certification of Harvesters and Divers

All harvesters will be subject to inspection and must comply with all applicable commercial diving safety standards and regulations promulgated by the Federal Occupational Safety and Health Administration (29 CFR § 1910.401 *et seq.* (Subpart T)).

All harvesters and divers must be certified by the Tribe by March 15, 2018 in order to participate in the current year's fishery. Whenever a diver brings in paperwork, it must be given directly to a DNR staff member. All paperwork to become certified must be to the deputy director of DNR by 5:00 PM on March 15. Should the 15th of March fall on either a Saturday or a Sunday, the deadline will be the next business day. If a certification expires during the fishery, the diver must become recertified in order to continue diving. A list of certified divers will be posted and updated regularly. Any diver who feels they should be on the list but cannot find their name will need to speak to the Deputy Director about what actions need to occur in order to secure a quota. It is the responsibility of the diver to make sure all of the necessary paperwork has been turned in by the deadline. This includes ensuring all third parties (Mason General Hospital, Kitsap Occupational Specialists, family doctor, etc.) submit paperwork on a diver's behalf by the deadline. Making sure a third party submits the proper paperwork before the deadline is the sole responsibility of the diver. After March 15, a final list of certified divers who are eligible to dive will be compiled and given to Public Safety, the geoduck monitors and posted at the Department of Natural Resources building. Certification will include successful completion with appropriate verification of the following:

1. NAUI or PADI recognized SCUBA certification
2. OSHA approved Surface Supplied Air diving certification
3. Current first aid and CPR certification
4. Current valid Skokomish Tribe fishing identification
5. All harvesters must pass a dive physical every two years and are responsible for scheduling of the physical. Divers may take a physical every year if they so choose.
6. All harvesters must pass a drug screening test every year. Scheduling of drug tests (other than random drug tests) will be the responsibility of the diver
7. All divers must read the Annual Geoduck Regulation and sign a copy (either in front of a DNR staff person or a notary public) stating that they have both read the regulation and understand the content, including the deadlines for submission. The signature also indicates that the diver will adhere to all of the rules of the

¹ Immediate family members include only mother, father, wife, husband, brother, sister and children of the harvester.

geoduck fishery and if a rule is broken, they will accept and pay all required penalties and fines. Failure to sign the form will prevent a diver from getting a quota. The signed copy must be returned to the Deputy Director of DNR by the first day of February each year.

8. By the March 15 deadline, anyone wanting a geoduck quota will be required to put on dive gear, show a public safety officer that they can dive to a depth of 50 feet, walk to the end of the 250-foot umbilical, stay underwater for ten minutes after doing so, and return to the boat. Failure to prove this ability will prevent a diver from receiving a quota. Potential divers will be given one excused absence in addition to two attempts to perform the above tasks.

New divers will be given a one-half quota. After one season, the divers will be given a full quota.

5. Tender Participation in the Geoduck Fishery

All boats must have two tenders on the boat if someone is diving. All harvesters will be subject to inspection and must comply with all applicable commercial diving safety standards and regulations promulgated by the Federal Occupational Safety and Health Administration (29CFR1910.401-1910.440 subpart T). Tender participation in this fishery will be limited to assisting with the operation of the vessel and harvesting equipment on the vessel only. Tenders may not enter the water to harvest geoduck; a tender may only enter the water in an emergency situation to assist another diver who is in danger. All tenders must be certified by the Tribe prior to participation in the fishery. Certification must be completed by March 15 each year in order to participate in the current year's fishery and will include successful completion with appropriate verification of the following:

1. Current first aid and CPR certification
2. Current valid Skokomish Tribe fishing identification and fishing permit
3. All tenders must pass an annual drug screening test

6. Drug Testing²

All pre-season drug testing, as necessary to become certified to dive for geoduck, must be conducted at Mason General Hospital between February 1 and March 10. Proof of a negative drug test must be received by the Department of Natural Resources by 5:00 pm on March 15. Divers are responsible for the scheduling of all pre-season drug testing. In-season drug testing will be performed by consent of the Deputy Director of DNR on any diver at any time, with or without cause, and will be scheduled and paid for by the Skokomish Tribe. Drug test results will be sent to the Deputy Director of Natural Resources and will only be used to determine the eligibility of individuals to either receive a quota or dive for their pounds.

The Deputy Director of the Department of Natural Resources will contact any individual who fails the drug test. An individual will be considered to have failed the drug test if

² For purposes of this regulation, a "drug" is a controlled substance as defined by Skokomish Tribal Code 9.09, Drug-Related Offenses.

any of the following drugs are found in their system, regardless of whether or not they have a prescription (the drug test must screen for, at the minimum, all of the following drugs; a test without results for any of the listed drugs will be deemed insufficient and not acceptable):

1. Amphetamines
2. Benzoyllecgonine (Cocaine)
3. Opiates (Codeine/Morphine/Heroin)
4. Phencyclidine
5. Barbiturates
6. Methadone
7. Propoxyphene
8. Alternate Opiates
9. Synthetic Opiates (Oxycontin, Oxycodone)

Individuals who fail an in-season random drug test must provide a letter from a doctor stating that the individual has passed a drug test at a more recent date than the random drug test. Costs for the follow up drug test will be borne by the individual.

If as a result of the pre-season drug test an individual is found to have a drug in his or her system, they will be given a quota and be allowed to dive if they provide both of the following to the Deputy Director of Natural Resources:

1. A valid, current prescription for that drug.
2. A note from a medical doctor must be provided to the Deputy Director by March 15 indicating the exact following: "I am a medical doctor, I have reviewed the patient's medical history, I am aware that they are using drugs, and I certify that 'name of diver' will not be a danger to him or herself or anyone else involved in the Skokomish Tribe's 2017-2018 geoduck fishery as a result of using 'name(s) of specific drugs.'"

Individuals who are legally using drugs may be subject to frequent in-season drug tests. The level of drugs in a diver's system at the time of the original, pre-season drug test will be used as a baseline indicator. If an in-season drug test results in a level of the drug greater than 10% above the baseline, the individual will not be allowed to dive until a subsequent drug test, scheduled and paid for by the diver, is received by the Deputy Director indicating that the drug level is at or below the baseline level.

7. Harvest Vessel Restrictions

Only those vessels owned by Skokomish Tribal members and registered with the Tribe, in accordance with sections 7.02.071 (a) and (b) of the Skokomish On-Reservation and Treaty Fishing Ordinance, are eligible to participate in this fishery. All vessels shall comply with applicable commercial diving safety standards and regulations promulgated by the Federal Occupational Safety and Health Administration (29CFR1910.401-1910.440 subpart T). All vessels registering for this fishery will be subject to safety inspections and an inspection conducted by the Washington State Department of Health. Vessels which fail to meet any of the safety standards will be provided the opportunity to remedy the situation within a reasonable amount of time. In-season safety inspection will be conducted at random; all vessels must successfully pass these safety inspections before proceeding in the fishery.

8. Diver Safety

Harvesters and divers shall comply with all of the applicable commercial diving safety standards and regulations promulgated by the Federal Occupational Safety and Health Administration (29CFR1910.401-1910.440 subpart T). All participants in the fishery shall be subject to inspections and random drug testing during the harvest season to ensure compliance with all safety standards, regulations and provisions. Any participant in the fishery found in violation of any safety standard shall be subject to citation and removal from the fishery until remedial action is taken.

9. Sanitary Control of Shellfish

All emergency openings or closings will be posted at the Skokomish Natural Resources office. All sub-tidal geoduck harvests are subject to emergency closure due to paralytic shellfish poison (PSP) or amnesic shellfish poison (ASP). It is the responsibility of the harvesters to check for updated changes, openings and closures of the fishery.

A label must be affixed to each container of commercially harvested geoduck prior to leaving the harvest site. Ready-to-use printed labels are available at the Skokomish Natural Resources office. The labels will be issued in person to registered Tribal members only. Each label will meet the standards set forth in the National Shellfish Sanitation Program's model ordinance, and shall include:

1. Name of Tribe
2. Tribe certification number: WA-0577-HA*
3. Harvester name and ID number
4. Harvest date
5. Growing area
6. Tract name
7. Shellfish type
8. Quantity harvested (in pounds)
9. Shellfish tag sequence number

Divers and vessel owners planning to transport geoduck with a vehicle to an upland point of sale must have the vehicle inspected for compliance with the appropriate shellfish sanitation standards or have their own Shellstock Shipper (SS) license from the State.

All owners of vessels participating in the fishery must complete an approved Plan of Operation with the Washington State Department of Health for the harvest, handling and transport of geoduck product or provide the appropriate information to amend the Tribe's Plan of Operation. Such information shall include a designated buyer of the product to be harvested, name and registration of the harvest vessel and a description of the harvest operation. Changes to the plan, such as selling to a new buyer not previously listed on the plan, must be approved prior to implementation of the change. Any harvester or vessel owner who does not have their own Shellfish Operations License certified with the current harvest location will operate under the Tribe's shellfish operation license, number WA-0577-HA. This license allows for the harvest and initial transportation of product to

* This certification number is valid only for the harvest of clams and oysters by Skokomish Tribal members participating in commercial fisheries governed by emergency regulation.

the point of sale. Sale of geoduck to a dealer not licensed with the Tribe and Washington State Department of Health is prohibited.

10. Take Home Harvest

All geoduck harvested for subsistence purposes must be recorded on the Treaty Indian Fish Receiving Tickets and reported to the harvest monitor for recording on the harvest monitor form. Selling subsistence geoduck is prohibited. All subsistence geoduck must be weighed by the monitor and recorded on the take home portion of the Treaty Indian Fish Receiving Ticket. Subsistence geoduck is removed from each individual's personal quota.

11. Lawful Gear

Only a high-pressure water jet with an inside diameter of 5/8 of an inch may be used for the harvest of geoduck.

12. Commercial Sale of Geoduck

Within two hours of the end of the harvest day, all harvested geoduck clams shall be brought to and weighed at the weigh-out site designated on the emergency regulation governing the conduct of the fishery. Should weather or some other factor prohibit weigh-out at the designated site, an alternative site will be designated by the monitor. All weigh-out shall be monitored by the Tribe's harvest monitor. It is the responsibility of the diver to ensure the weights are accurate on both the monitor form and fish ticket.

All geoduck sold must be reported on the Treaty Indian Fish Receiving Tickets and sold only to buyers licensed by the Tribe. A list of licensed buyers is available from the Skokomish Department of Natural Resources. No geoduck shall be discarded after being harvested for any reason; all harvested geoduck must be for commercial or take-home purposes. All buyers must be certified by the Washington State Department of Health and the Washington State Department of Fish and Wildlife and licensed by the Skokomish Tribe. In addition to any other applicable penalties, any individual who sells geoduck to a non-certified or unlicensed buyer shall lose his or her eligibility to participate in the fishery immediately and shall be prohibited from harvesting geoduck for the following season.

Geoduck will be taxed at \$.85 per pound based on the information from the Treaty Indian Fish Receiving Ticket.

13. Structure of the Fishery Opening

The harvest shall be limited only to geoduck. Openings will be announced by emergency regulation. Fishing schedules shall be set by the Skokomish Department of Natural Resources, based on recommendations by the Fish Committee. All harvest areas will be clearly marked or otherwise known by the harvest monitor present at the harvest. A representative from each harvest vessel must notify the monitor and shellfish biologist by phone by 7:00 pm the night before a given harvest of their intent to participate in the next day's harvest. The following information must be given:

1. Vessel name

2. Primary vessel owner
3. Number of harvesters
4. Potential buyers
5. Tract to be harvested

The harvest monitor must be contacted prior to fishing on the day of the harvest; if no harvesters report to the harvest monitor within two hours of the opening time on the day of a fishery, the harvest shall be closed for that day. No harvester or vessel may leave the harvest area without notifying the harvest monitor. Any captain who arranges to harvest but fails to show up on the tract without notifying the monitor by 10:00 AM will be fined \$100.00 per incident.

14. Harvest Monitor

All fishery openings will be monitored by the Skokomish Tribe. A harvest monitor will be present at the harvest site throughout the duration of each harvest period. A monitor will also be present at the weigh-out site to account for all harvested geoduck. Harvest without the presence of a monitor is prohibited and will result in the loss of the diver's quota for the season. The harvest monitor will collect information about the amount harvested, area of harvest, harvest effort, and information related to tracking the sale of the product. The monitor may inspect vessels and divers to ensure compliance with safety standards and harvest regulations are being met. The harvest monitor may also prohibit vessels and harvesters from participating in the fishery should they be in violation of safety standards or harvest regulations. Furthermore, the monitor may close the fishery, adjust the harvest schedule or adjust management provisions to ensure compliance with safety standards, harvest regulations and allocation, should an allocation exist. Harvest information provided by the Department of Natural Resources and the monitors is only estimated. It is the responsibility of each diver to know how many pounds they have taken. The Deputy Director may, at his or her discretion, allow a current diver to monitor the harvest provided that the monitor does not harvest while monitoring.

15. In-Season Reallocation of Geoduck

The Tribe's geoduck allotment will be distributed to eligible divers in two rounds of allocation: one at the beginning of the geoduck season and one in January of the following year.

Between March 15 and March 31, unless otherwise prohibited, all eligible divers will be given an equal quota of geoduck pounds. Individuals for whom the 2018/2019 season is the first year they will be diving for geoduck will receive one-half the quota of veteran divers. Those divers will start receiving a full quote the second year they dive. In order to be eligible to receive a second allocation, divers must have harvested at least 50% of their first quota (and cannot be ineligible for diving for any reason) by December 31. All remaining pounds of geoduck will be reallocated after January 2 of the following year to all eligible divers. The remaining geoduck will be distributed equally to all eligible divers regardless of the amount of the original quota harvested by any one individual diver, minus any overharvest penalties. Any diver wanting a reallocation must sign up for a reallocation by January 10. Unless otherwise scheduled by the Tribe, all divers must harvest their second quota by the last day of February. On March 1, all remaining pounds

will revert to the Tribe and be harvested by the Tribe, at its discretion. If the reallocation amount is fewer than 50 pounds per diver, the Tribe will immediately as of January 11 divide the remaining pounds among the boat captains who have an operational dive vessel and are not otherwise restricted from using their boat. One boat will be selected if the remaining pounds are between 1 and 1,599. If more than 1,599 pounds remain, the pounds will be split by two boats. The captain(s) receiving the pounds must harvest those pounds utilizing their own boat but may have anyone of their choosing dive the actual pounds. A boat captain who receives pounds in a reallocation will not be eligible to receive reallocated boat pounds until all the geoduck boat captains have received such a quota.

If no allocation is set among the Tribes, the Skokomish Tribe will determine the structure of the geoduck fishery prior to the beginning of the season.

16. Overharvest Penalties

In addition to any other applicable penalties, an individual who exceeds his or her individual geoduck quota may be subject to the following, depending upon the amount of the overharvest. No exceptions will be made to these rules:

(1) Overharvest of less than 26 pounds.

(a) The harvester may forfeit those geoducks to the monitor immediately so that the monitor may sell them on the Tribe's card. The harvester will not be cited in this instance.

(b) If the harvester is eligible for the reallocation, the overage will be taken from the harvester's reallocated pounds. The harvester will not be cited in this instance. If there is no reallocation at the end of the season, the overage will be taken from the diver's quota the following year.

(c) If the overage is not forfeited or taken from the harvester's reallocation or following year's quota, the harvester will be issued a written warning in lieu of a citation, provided that full restitution is made within 14 days of receipt of notification. Restitution shall be an amount equal to what the harvester received from the sale of the geoduck. If restitution is not made within 14 days, the diver will be ineligible to participate in the following year's geoduck fishery and may receive a criminal citation.

(2) Overharvest of between 26 and 50 pounds. The harvester shall be required to pay back the full amount received for the overharvested geoduck plus a \$500.00 penalty within 14 days of notification of the overharvest in order to have a quota the following year. In addition, the amount of overharvested geoduck will be taken from the diver's reallocation or the following year's quota or a combination thereof. Failure to pay will result in the diver's permanent ineligibility to participate in the geoduck fishery and possible criminal citation. Late payments will be accepted and upon full payment the diver will be reinstated into the fishery and start receiving a quota concurrent with the next annual allocation.

(3) Overharvest by more than 50 pounds is a criminal offense. Any harvester overharvesting more than 50 pounds of geoduck is guilty of a Class C Offense. Upon conviction, the harvester shall be required to pay twice the amount of money received for the geoduck without exception. In addition, without exception, the amount of overharvested geoduck shall be deducted from the harvester's reallocation or the following year's quota or a combination thereof. Failure to pay will result in the harvester's permanent ineligibility to participate in the geoduck fishery. Late payments will be accepted and upon full payment the diver will be reinstated into the fishery and start receiving a quota concurrent with the next annual allocation.

18. Designated Divers

In the event that a diver is unable to harvest his or her initial geoduck quota the diver may ask the Fish Committee, in person, to allow them to use a designated diver to harvest the remainder of their quota. The following stipulations must be met for the individual to be considered for a designated diver:

- (a) In the event the individual requests a designated diver for a medical reason the individual must present a note from a doctor verifying that the individual cannot, for medical reasons, harvest geoduck for at least one month. The note must explicitly state that the individual is medically unfit to dive. Additionally, the note must estimate the time until this Tribal Member can re-enter the fishery.
- (b) The individual requesting a designated diver has had fewer than 500 pounds of geoduck harvested by a designated diver during the current geoduck season. Individuals may only have up to 500 pounds of geoduck harvested by a designated diver during any given season.
- (c) Individuals requesting a designated diver cannot have previously received a designated diver during the current season.
- (d) If no allocation is set among the Tribes, stipulations for a designated diver will be set prior to the fishing season.

A designated diver will be assigned to a pregnant woman, regardless of how many pounds remain in her quota, provided that she also meets the stipulation identified in item (a) only and is not a first-year diver.

A diver wishing to retire from the fishery may designate someone to harvest either some or all of their quota. The diver wishing to retire must present a signed, dated letter to the Fish Committee indicating that they will retire from the fishery and never again seek to have a geoduck quota. The diver must also indicate who they will designate as a diver. The designated diver must be a current diver in the geoduck fishery.

Tribal members who receive a designated diver for medical reasons must provide a doctor's note that explicitly states the individual who received a designated diver is fit to dive prior to diving again.

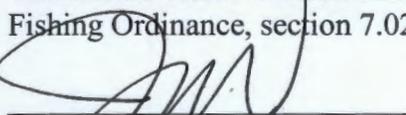
Individuals requesting a designated diver must present to Fish Committee a list of other divers willing to act as their designated diver in order of preference. Fish Committee will then determine which individual will act as designated diver either from the preferred list or from another list of potential divers as provided by the Natural Resources Department. In the event the individual requesting a designated diver cannot provide a list of potential designated divers, Fish Committee will assign one.

If the Tribal Member requesting a designated diver is not satisfied with the Fish Committee's response, then he or she may file a written request for a hearing with the Tribal Council. This request must be in writing and be submitted no later than ten (10) calendar days from receipt of the decision of the Fish Committee. The Tribal Member will be placed on the next available Tribal Council agenda. The decision of the Tribal Council is final and no further appeal is available.

Individuals who have a designated diver do not need to be present on the boat when the geoduck are harvested for them. However, they must be present to sign both the monitor form at the time of weigh-out and the Treaty Indian Fish Receiving Ticket at the time of sale.

19. Authority

These regulations are promulgated by the Skokomish Fish Committee and adopted by the Skokomish Tribal Council under authority of the Skokomish On-Reservation and Treaty Fishing Ordinance, section 7.02.025.



Jonathon Wolf
Shellfish Harvest Manager
Skokomish Indian Tribe

I have read the above Skokomish Tribe's 2018/2019 Annual Geoduck Regulation and I completely understand what is expected of me in order to receive a quota.

Name, Date and Signature