HUNTING CO-MANAGEMENT AGREEMENT BETWEEN THE WASHINGTON DEPARTMENT OF FISH AND WILDLIFE AND THE JAMESTOWN S'KLALLAM, PORT GAMBLE S'KLALLAM, AND LOWER ELWHA KLALLAM TRIBES

1. PREAMBLE AND PURPOSE

The following is a hunting co-management Agreement between the Washington Department of Fish and Wildlife (WDFW), the Jamestown S'Klallam Tribe, the Port Gamble S'Klallam Tribe, and the Lower Elwha Klallam Tribe (Tribes); hereinafter jointly referred to as "the parties."

The overlapping nature of State and Tribal jurisdictions and responsibilities creates a co-management relationship, in the sense that: 1) WDFW and the Tribes have certain authorities that potentially pertain to the same wildlife resource; and 2) there is a need for the State and the Tribes to cooperate in the discharge of their respective authorities to ensure that healthy populations of wildlife continue to be available to State and Treaty hunters.

The parties disagree on the geographic scope of the areas subject to the Tribes' off-reservation hunting rights under the Treaty of Point No Point and the Tribes disagree on the process that WDFW is requiring as a prerequisite to exercising their Treaty rights. Nevertheless, in an effort to move forward, the Tribes commit to present information to WDFW in support of their historic use of the northwestern portion of the geographic area covered by this Agreement by December 2, 2013.

The parties recognize the need to manage wildlife populations and their habitats in a manner that provides sustainable populations and meaningful hunting opportunities for future generations. The purposes of this one-year temporary Agreement are to: (a) manage the resource without unwanted conflict despite a current disagreement regarding the scope of WDFW's enforcement jurisdiction over Tribal hunting, (b) provide a cooperative and coordinated science-based approach to resource management and management of the harvest opportunity in consideration of the needs of the signatories; (c) promote joint efforts to increase access to private commercial timberlands; (d) promote communication between the parties on policy, enforcement, and technical issues; and (e) provide a process to resolve and/or avoid unwanted conflicts. By signing this Agreement, the parties agree to cooperate in mutually implementing this Agreement.

2. LEGAL RIGHTS

No party to this Agreement waives any claim or legal argument with respect to the nature or scope of treaty hunting rights, state or tribal jurisdiction, or management authority nor does the signing of this agreement represent a covenant not to litigate on any issue pertaining to Treaty hunting rights or related to this agreement. This

Agreement is not intended to nor shall it define the nature or scope of the treaty right to hunt, ceded area boundaries, traditional hunting areas, or the meaning or scope of open and unclaimed lands as described in the 1855 Treaty of Point No Point. Nothing in this Agreement shall prevent or limit the right of any party to file or participate in litigation concerning the right to hunt under the terms of the Treaty, or to take such position or make such arguments as they shall in their discretion choose in litigation.

Neither this Agreement nor any other agreement, self-imposed limitation on hunting, regulation, or other management arrangement or accommodation made pursuant to this Agreement shall be an admission of any fact or limitation on state or tribal jurisdiction or management authority in any judicial, quasi-judicial, administrative, or other proceeding. By signing this Agreement, no party waives its sovereign immunity.

3. TERM

This Agreement will become effective upon the date each party signs. The Agreement will expire on August, 31, 2014, and may be renewed with agreement of the parties. Any signatory may withdraw from this Agreement by giving the other signatories 30 days written notice of the party's intent to withdraw. Should WDFW withdraw with respect to one or two, but not all of the Tribes, the Agreement shall remain in effect with respect to the remaining Tribe(s). Written notice shall be provided by United States Mail to the designated contact person (see Section 10) for each party. The 30-day period will begin on the notification date stated in the letter or the postmark date, whichever is later.

This Agreement covers all wildlife species for which harvest is permitted under Jamestown S'Klallam, Port Gamble S'Klallam, and Lower Elwha Klallam hunting regulations.

4. GEOGRAPHIC AREA COVERED BY THIS AGREEMENT

The parties disagree on the geographic scope of the areas subject to the Tribes' off-reservation hunting rights under the Treaty of Point No Point. Nevertheless, the parties agree that the management area covered by this Agreement shall be the shaded area identified in the map as game management units (GMUs) attached as Appendix A, and modified GMU boundary descriptions attached as Appendix B.

5. COMMITMENT TO PLAN AND COORDINATE

The parties agree to meet annually. Each party will designate one individual to represent its party to coordinate the terms of this Agreement (see Section 10). Appropriate policy, technical, enforcement, and legal representatives from each party may attend the annual meeting.

Agenda items at the annual meeting will, at minimum, include: an evaluation, update, and possible renewal of the Agreement; a review of the status of game populations within the geographic area covered by this Agreement; a report by each party regarding both the previous and current season's harvest (using available data); future regulation development and permit levels; and a discussion on enforcement issues.

Other agenda topics may include: reviewing the terms of this Agreement; identifying future wildlife population monitoring and research needs; identifying wildlife habitat needs and opportunities to conduct habitat protection or restoration projects jointly by the parties and/or with landowners and other entities; and discussing joint public relations and outreach.

Any party may request a meeting to resolve issues of any kind arising during the term of this Agreement, provided that reasonable notice is given.

6. MANAGEMENT PRINCIPLES AND GUIDELINES

6.1 Regulation development and sharing

Each party shall provide copies of their annual hunting regulations for the upcoming hunting season to the other party at or before the time this agreement is signed, and by June 15 of each calendar year thereafter. To meet wildlife management goals and promote hunting opportunities, the parties agree to work together to develop compatible seasons and management options (including authorized weapons, areas, road management, and timing components) to meet their needs and objectives.

Any agreed requirements for specific species and/or areas would be incorporated as Appendix B of this Agreement.

6.2 Harvest reporting

Each party will provide its harvest data for the previous hunting season to the other parties prior to May 31 of the current year, or two weeks prior to the annual meeting, whichever is earlier. WDFW and the Tribe will establish a technical work group to improve the precision of harvest data and provide recommendations to be incorporated in future agreements. Data will include, at minimum, the following information for big game species (*i.e.*, deer, elk, black bear, mountain lion, mountain goat) by each Game Management Unit (GMU) or special permit area (e.g. Elk Area 6071): the total number of tags issued; and the total number of animals harvested separated by sex class and, as available, age/maturity/antler point. Small game (upland birds, waterfowl, bobcat, etc.) harvest will be summarized annually, as available. The report shall also include harvest occurring under special circumstances such as ceremonial hunts, on-reservation hunting, landowner permits, agricultural damage control permits, youth hunts, master hunter permits, destruction of nuisance big game wildlife by enforcement personnel and other mortality sources as available. For the purposes of capturing a 12-month timeframe, the report will cover all harvest

from April 1 through March 31 and will be submitted to each party two weeks prior to the annual meeting so the data from the parties can be summarized and presented to the parties at the time of the meeting.

Each party agrees to implement a harvest reporting system for their members or constituents that encourages and/or requires harvest reporting for every tag issued. Hunter reports should be submitted regardless of whether a hunter was successful. The system each party uses to encourage and/or require harvest reporting by its members or constituents will be communicated at the annual meeting.

6.3 Hunting on Private Commercial Timberlands

The parties disagree on the definition of "open and unclaimed land" as it pertains to Treaty hunting. Consistent with the reservation of legal rights in Section 2 of this Agreement, this section does not waive or otherwise compromise any party's legal position or argument regarding the scope of the phrase, "open and unclaimed lands." For the purposes of this Agreement only, private commercial timberlands within the geographic area covered by this Agreement will be considered by WDFW to be available for treaty hunting where consistent with the following conditions:

- Tribal hunters are members of the Jamestown S'Klallam, Port Gamble S'Klallam, and Lower Elwha Klallam Tribes; and each Tribe is sharing with WDFW its harvest data, hunting regulations, and other information as set forth in this Agreement;
- Signatory Tribes have hunting regulations in place that apply to tribal member hunters accessing private commercial timberlands;
- The owner of the private commercial timberlands allows some open access to both State and Tribal hunters for the current year's hunting season; and
- Tribal hunters utilize the property consistent with any landowner terms and conditions, provided those conditions are non-discriminatory and applicable to all hunters.

Where any one of the above conditions is not met, this Section 6.3 does not apply.

For purposes of Section 6.3 of this Agreement only, the parties agree to the following principles:

- State hunters shall comply with the applicable State hunting rules and regulations;
- WDFW and the Tribes agree to coordinate season and regulation approaches for wildlife management on private commercial timberlands, including ceremonial needs;
- WDFW and the Tribe will cooperate in securing access and in developing access management provisions (such as wildlife surveys, timber damage management, stewardship activities, security, and monitoring) associated with

obtaining hunter access to private commercial timberlands, when possible; and

- Owners of private commercial timberlands may, without concern of WDFW enforcement action, grant hunting access to members of the Tribes party to this Agreement.

For the purposes of this Agreement only, private commercial timberland generally will be described using the WDFW definition of large blocks (640 acres or greater) of land primarily devoted to the growing, managing, and harvesting of merchantable tree species for long-term commercial timber production. In addition, private commercial timberland may include smaller blocks of land devoted to the commercial production of timber that the affected Tribe(s) and WDFW agree in writing shall be subject to this Agreement.

"Open access" means that the owner allows access to the general public for hunting, or that the land is not fenced or posted, or does not otherwise display outward evidence of prohibition or restriction of entry. Consistent with the reservation of legal rights in Section 2 of this Agreement, this section does not waive or otherwise compromise any party's legal position or argument regarding the scope of the phrase, "open and unclaimed lands."

6.4 Ceremonial Hunting

WDFW recognizes the cultural and historical importance of wildlife to the Tribes and respects the circumstances that result in Tribal authorization of off-reservation ceremonial hunts, which may occur outside an established hunting season. The Tribe will notify WDFW, preferably via electronic mail, and secondarily via telephone or facsimile—sent to the Captain, Sergeants, and Regional Director identified in the list of e-mail addresses set forth in Appendix C—before an off-reservation ceremonial hunt commences, except for time-sensitive immediate ceremonial needs, in which case notice will be provided on the next business day. Ceremonial harvest information will be included as part of the annual harvest data report.

6.5 Wildlife Population Monitoring and Research

Wildlife population monitoring and research is crucial to proper management of harvested wildlife populations. In particular, studies should strive to identify sustainable harvest levels by Population Management Unit (PMU) for agreed upon priority species, and provide unbiased estimates of population abundance, age and sex composition, wildlife distribution and habitat use, and estimates of survival. The parties agree to work with one another at the annual meeting to identify management-driven research needs, such as needs outlined in WDFW wildlife management plans. Where feasible, the parties agree to work together on joint projects to leverage research funding and resources. The parties agree to openly share research data and analytical results with each other. At each annual meeting, each party will provide a summary of research activities and results initiated or obtained since the prior annual meeting.

6.6 Habitat Management, Habitat Restoration, and Wildlife Refuges

The parties agree that joint projects with landowners to protect, restore, and enhance important habitat, are beneficial. Accordingly, the signatories agree that they will seek to identify opportunities to work together and with other appropriate entities to protect, restore, and enhance wildlife habitat.

The parties recognize that consistent with other wildlife population goals, wildlife management practices such as providing wildlife refuges, limiting disturbance on winter range, or providing public wildlife viewing opportunities may preclude hunting activities in specific areas. The parties will work cooperatively to identify those needs and ensure harvest regulations are consistent to meet mutual goals.

6.7 Damage Hunts

WDFW and the Tribes will coordinate efforts to alleviate property and crop damage caused by wildlife species covered by this Agreement. Both the WDFW and the Tribes agree that non-lethal damage control techniques should be exhausted prior to the use of lethal removal and that lethal removal be utilized as a last resort, at minimal levels, particularly in wildlife populations that the parties are re-building. The parties commit to cooperatively pursue non-lethal control techniques to minimize damage.

The Tribes may choose to participate in WDFW-managed damage hunts and will submit an approach regarding how WDFW will contact the Tribes about damage hunt opportunities and allocating that opportunity. WDFW commits to work with the Tribes to provide equitable harvest opportunities. WDFW will track the number of damage permits issued to state hunters and landowners, and report the number of animals harvested. The area and effective dates of the damage hunt shall be identified in the WDFW damage permit. WDFW will also notify the Tribes of any animals removed by WDFW staff, including enforcement personnel.

If landowners approach a Tribe about assistance with damage hunts, the Tribe commits to notify WDFW, which will coordinate the response.

6.8 Utilization of Non-hunting Mortalities

If requested by the Tribe, WDFW Enforcement may contact Tribal authorities about utilizing road-killed big game, seized poached wildlife, or wildlife culled in game damage hunts. In instances where a Tribe has located road-killed big game prior to being notified by WDFW, Tribes will notify WDFW Enforcement prior to salvaging, or within a reasonable time after salvaging the animal if prior notice will cause spoilage, waste, or health and safety issues.

6.9 Marine Mammal Management

Marine mammal management is outside the scope of this Agreement.

7. ENFORCEMENT

Subject to the parties' reservation of legal rights, as set forth in Section 2 of this Agreement, the parties intend to coordinate their enforcement efforts in the manner described in this section.

WDFW and Tribal enforcement officers will work cooperatively and share violation information. Both WDFW and Tribal enforcement officers may request identification from hunters. Nothing in this Agreement confers on Tribal enforcement officers any authority over hunters who are not Tribal members, and similarly, nothing in this Agreement confers on the WDFW enforcement any authority over Tribal members beyond existing law. If a non-Indian hunter refuses to provide identification, the Tribal enforcement officer may contact State law enforcement. If a Tribal hunter refuses to provide identification, the WDFW officer may contact Tribal enforcement.

7.1 Public Safety Laws

The parties disagree as to whether State general public safety laws and regulations apply to Tribal hunters hunting pursuant to this Agreement. The parties acknowledge that it is WDFW's position that within the scope of its authority, WDFW enforcement officers reserve the authority to enforce State general public safety laws and regulations for all hunters hunting under the terms of this Agreement.

Notwithstanding this position, with respect to the following six laws, the parties agree as follows:

In circumstances under which a Tribe has public safety laws similar to state laws addressing:

1. Possession of a loaded firearm in a motor vehicle;
2. Negligent shooting across a roadway;
3. Hunting while intoxicated;
4. Spotlighting;
5. Safe Hunting Hours; and
6. Wearing Hunter Orange,

WDFW shall confer with the appropriate Tribe with respect to violations occurring during the exercise of Treaty hunting by that Tribe's members.

If a WDFW Enforcement Officer encounters a member of the Tribe hunting while intoxicated, WDFW shall secure the suspect to address any immediate threat to public safety, and shall thereafter refer the matter to the Tribe to process under tribal law.

If detention of the suspect is reasonably necessary to protect public safety, WDFW shall promptly contact Tribal Enforcement and, if Tribal Enforcement is able to take custody of the suspect within a reasonable period of time, transfer the suspect to Tribal custody. Tribal enforcement shall also promptly contact WDFW or other nearby enforcement officers should a similar situation arise when encountering a non-Indian suspect, and a need for detention and transfer.

Should the Tribe elect to prosecute or otherwise address the public safety violation by the Tribal member, WDFW will not forward the case to the county prosecutor for prosecution in state court, but will forward information (case reports) regarding such violations to the appropriate Tribal enforcement entity for consideration of charging and prosecution for any cases involving a tribal member. If the Tribe's prosecuting authority, absent good cause or outside the bounds of reasonable prosecutorial discretion, fails to proceed with charging within six (6) months of submission of the referred charge(s) to the Tribe, WDFW may refer the matter to the appropriate non-tribal prosecuting authority provided that such referral is consistent with other applicable law.

The parties also acknowledge that in the event one or more Tribal hunters are cited by WDFW for violation(s) of State general public safety laws while hunting pursuant to Tribal hunting regulations, the Tribe reserves its right, on its own behalf as well as on behalf of any individual Tribal member hunter, to contest any such citation filed in any court and to take whatever action necessary to fully defend against such action.

Additionally, beginning six months from the effective date of this Agreement, and every six months thereafter while this Agreement is in effect, the Tribe shall provide WDFW a written report of: (1) all active public safety matters referred to the Tribe under this appendix; (2) the date of the referral; (3) a description of the tribal law violation(s) at issue; (4) name(s) of the defendant(s); (5) the status of the matter; and (6) for any matter disposed during the six-month period, a summary of the disposition (including whether prosecuted or dismissed, and any penalty imposed). Upon request by WDFW, the Tribe shall provide such information regarding specific enforcement encounters within a reasonable time.

7.2. Violations of Non-Public Safety Tribal Hunting Regulations. When a WDFW officer encounters tribal hunters and the officer has probable cause to believe that the hunters are in violation of tribal hunting regulations other than public safety regulations, the WDFW officer will promptly contact the appropriate tribal enforcement entity to report the violation. WDFW shall subsequently forward the information (case reports, including probable cause statements, and evidence, if any) to the appropriate tribal enforcement entity for charging and prosecution.

7.3. Private Commercial Timberlands. Where a WDFW officer encounters tribal hunters on private commercial timberlands as defined in Section 6.3 of this agreement

and the officer has probable cause to believe the individuals are not hunting in compliance with state law, and conditions listed in Section 6.3 of this Agreement, WDFW reserves the right to enforce state law, provided WDFW shall confer with Tribal enforcement and promptly forward to Tribal enforcement copies of the probable cause statements and case reports.

If the WDFW officers have probable cause to believe the tribal hunters are in violation of Section 6.3, state law, and applicable tribal law, and the relevant state and tribal laws are consistent, WDFW may refer the matter to tribal enforcement authorities for prosecution. However, WDFW reserves the right to enforce state law, if the Tribal prosecutor, absent good cause for delay, or dismissal, or reasonable exercise of prosecutorial discretion, does not proceed with charging within six months of the alleged offense date and diligently prosecute. Further, consistent with the reservation of legal rights in Section 2 of this Agreement, the Tribes reserve the right to challenge any prosecution of a tribal member for violation of State hunting laws while hunting on private commercial timberland.

7.4 Subpoenas. WDFW enforcement officers will respond to Tribal court subpoenas, and Tribal enforcement officers will respond to state court subpoenas. Final disposition of all violations will be shared between the affected parties.

8. DISPUTE RESOLUTION PROCESS

The parties shall continue to refine this cooperative approach to further increase efficiencies, improve resource management, reduce conflict between objectives, and avoid the need to resort to judicial or other third party dispute resolution mechanisms. It is expected that the cooperative approach will continue to resolve the majority of issues. However, the parties recognize that some issues may not be capable of informal resolution.

Where a party decides to take any wildlife management action that has not previously been shared with the other party and would reasonably be expected to affect the other party's wildlife management program, the party proposing to take such action shall give reasonable written notice of the action to the other affected party. Notice shall be considered reasonable if it provides adequate time under the existing circumstances for the other party to notify the proponent that the particular issue is disputed, and allow time for a request for dispute resolution as provided in this Agreement.

In the event of a dispute, the parties shall attempt an informal resolution of that dispute by referring the dispute to policy representatives designated by the parties. Either party may request a meeting of policy representatives on an issue in dispute upon timely, reasonable and written notice of the existence of the dispute to the other party.

9. MISCELLANEOUS

A. Amendments and modifications.

This Agreement may be modified or amended only through the written agreement of the parties.

B. Upon Whom Binding.

Except as otherwise stated herein, this Agreement shall extend to and be binding upon the assigns, successors, agents, and administrators of the parties and to all persons acting by or through the parties.

10. CONTACT INFORMATION

The principle contacts for the parties to this agreement are:

WDFW: Michele Culver, Regional Director
48 Devonshire Road
Montesano, WA 98563
(360) 249-1211
Michele.Culver@dfw.wa.gov

Jamestown: Scott Chitwood, Natural Resources Director
1033 Old Blyn Highway
Sequim, WA 98382
(360) 681-4616
schitwood@jamestowntribe.org

Port Gamble: Paul McCollum, Natural Resources Director
31912 N.E. Little Boston Road
Kingston, WA 98346
(360)-297-6237
paulm@pgst.nsn.us

Lower Elwha: Doug Morrill, Natural Resources Manager
51 Hatchery Road
Port Angeles, WA 98363
(360) 457-4012, extension 7485
dmorrill@elwha.nsn.us

PNPTC: Randy Harder, Executive Director
Tim Cullinan, Wildlife Program Manager
7999 NE Salish Lane
Kingston, WA 98346
(360) 297-3422
rharder@pnptc.org
tcullinan@pnptc.org

11. PARTY SIGNATURE AUTHORITY

The undersigned parties agree to adopt this Hunting Co-Management Agreement.

Philip Anderson, Director
Washington Department of Fish and Wildlife — Date: 10/16/13

W. Ron Allen, Chairman
Jamestown S'Klallam Tribe — Date: 10/17/13

Jeromy Sullivan, Chairman
Port Gamble S'Klallam Tribe — Date: 10/17/13

Frances Charles, Chairwoman
Lower Elwha Klallam Tribe — Date:

ATTACHMENTS:

Appendix A, Map of Open Hunting Areas per this Agreement

Appendix B, Descriptions of Open Hunting Areas per this Agreement

Appendix A
Hunting Co-management Agreement--Open GMUs

This map is for illustrative purposes only and should not be relied on for any other purpose than to ascertain the general area where the S'Klallam/Klallam Tribes currently authorize hunting activities under the Treaty of Point No Point. Authorized areas of hunting can be subject to change and in no way should be considered to limit the treaty rights of the Tribes. If there are questions regarding the hunting areas illustrated, or activities of the Tribes outside the areas illustrated, please refer to the contact list contained in this Agreement.

Appendix B
Description of Geographic Area Open Under S'Klallam/Klallam Hunting Regulations

Game Management Units (GMU) 603 (Pysht), 621 (Olympic), 624 (Coyle), and 651 (Satsop) will be opened in their entirety by all three Tribes party to this Agreement.

GMU 601 (Hoko) will be opened by the Lower Elwha Klallam Tribe.

GMUs 638 (Quinault Ridge), and 663 (Capitol Peak) will be closed by all three Tribes until further notice.

GMUs 602 (Dickey) and 607 (Sol Duc) will be opened in part by all three Tribes. The southern boundary of the open areas is described as follows:

Commencing at the intersection of the Olympic National Park boundary and U.S. Highway (US) 101 approximately 2 miles W of Lake Crescent; S and W along the Olympic National Park Boundary (the existing boundary of GMU 607) to the south fork of the Calawah River; W along the south fork of the Calawah River to the mainstem Calawah River; W along the Calawah River to US 101; N along US 101 to the intersection of US 101 and the D2000 mainline road in T29N R13W S28 WM; W and N on the D2000 to the RY9000 road; N and W along the RY9000 road to the RY5000 road; W along the RY5000 road to the RY5800 road; W along the RY5800 road to the north fork of Crooked Creek; SW along the north fork of Crooked Creek to the mainstem of Crooked Creek; W along Crooked Creek to the Olympic National Park boundary and the existing western boundary of GMU 602 (Dickey).

GMUs 633 (Mason Lake) and 627 (Kitsap), will be opened in part by all three Tribes. The eastern boundary of the open areas is described as follows:

Commencing at the intersection of U.S. 101 and SR 3 south of Shelton, N and NE on SR 3 to SR 305; E on SR 305 to SR 307 (Bond Rd. NE); NE on SR 307 to NE Gunderson Road; E along NE Gunderson Rd. to Miller Bay Road NE; N on Miller Bay Rd. NE to NE West Kingston Road; E and NE along NE Wesst Kingston Rd to SR 104; E along SR 104 to Puget Sound and the existing eastern boundary of GMU 627 (Kitsap).

GMUs 636 (Skokomish) and 648 (Wynoochee) will be opened in part by all three Tribes. Only the parts of these GMUs east of the West Fork of the Satsop River will be opened until further notice.