

**HUNTING CO-MANAGEMENT AGREEMENT BETWEEN
THE WASHINGTON DEPARTMENT OF FISH AND WILDLIFE AND
THE SQUAXIN ISLAND TRIBE**

1. PREAMBLE AND PURPOSE

The following is a hunting co-management Agreement (hereafter, Agreement) between the Washington Department of Fish and Wildlife (WDFW) and the Squaxin Island Tribe (Tribe); hereinafter referred to as the parties.

The Parties come to this Agreement pursuant to, among other authorities, the Centennial Accord, the New Millennium Agreement, the Inter-Local Agreement Act, Chapter 39.10 RCW, and the Washington Fish & Wildlife Commission Policy Nos. POL-C3607 and C-6002.

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

The parties disagree on the geographic scope of the areas subject to the Tribe's off-reservation hunting rights under the Treaty of Medicine Creek (Treaty) and the process that WDFW is requiring as a prerequisite to WDFW's enforcement discretion determinations, and the interpretation of the phrases "open and unclaimed lands".

The parties recognize the need to manage wildlife populations and their habitats in a manner that provides a sustainable population and meaningful hunting opportunities for future generations. The purposes of this Agreement are to: (a) manage the resource without unwanted conflict despite a current disagreement regarding the interpretation of the Treaty and scope of WDFW's enforcement jurisdiction; (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 industrial timberlands; (d) assist the parties in cooperative management of hunting by coordinating tribal and state hunting and sharing regulations and harvest data; (e) promote communication between the parties on policy, enforcement, and technical issues; and (f) provide a process to resolve and/or avoid conflicts.

By signing this Agreement, all parties agree to cooperate in implementing this Agreement.

2. TERM

This Agreement will become effective as to any party upon the signature of that party to this Agreement. The Agreement will be in effect through July 31, 2017, but will renew

automatically for additional two-year terms unless terminated as provided for in this paragraph. Either Party may terminate this Agreement by giving 30 days written notice of the party's intent to terminate. Written notice shall be provided by United States Mail to the designated contact person (see Section 11) for each party. The 30-day period will begin on the notification date stated in the letter or the postmark date, whichever is later.

3. SPECIES COVERED BY THIS AGREEMENT

This Agreement covers wildlife species listed in Appendix A.

4. GEOGRAPHIC AREA COVERED BY THIS AGREEMENT

The parties disagree on the geographic areas subject to the Tribe's hunting rights under the Treaty of Medicine Creek. Nevertheless, the parties agree that the geographic area covered by this Agreement is depicted in Appendix B.

5. COMMITMENT TO PLAN AND COORDINATE

The parties agree to meet annually each Spring before April 30. Each party will designate one individual to represent its party to coordinate the terms of this Agreement (see Section 11). 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:

a discussion to evaluate, update, and renew the Agreement; a joint review of the status of game populations within the geographic area covered by this Agreement; a report by each party regarding the previous season's and the present season's harvest, based on available data; a report by each Party on its harvest accounting practices and effectiveness; a joint review of management practices and recommendations for future improvements; 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; a summary of research activities and results initiated or obtained since the prior annual meeting; 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.

Either party may request a meeting to resolve issues of any kind arising during the term of this Agreement.

6. MANAGEMENT PRINCIPLES AND GUIDELINES

6.1 Regulation development and sharing. The parties shall exchange copies of their annual hunting regulations for the upcoming hunting season by June 15. 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.

6.2 Harvest reporting. Each party will provide their harvest data for the previous hunting season to the other party. 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 two weeks prior to the annual meeting. 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): 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. Because game species cross reservation boundaries, the annual summary should include both on- and off-reservation harvest. The report will also include harvest activity from special season hunts such as wildlife damage hunts, ceremonial hunts, and other mortality sources as available.

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 by which each party uses to encourage and/or require harvest reporting by their members or constituents will be communicated at the annual meeting.

6.3 Hunting on Private Industrial Timberlands. The parties disagree on the definition of "open and unclaimed land" as it pertains to Treaty hunting. The parties also disagree with respect to the ability of landowners and/or WDFW to limit or regulate tribal hunters claiming a treaty right to hunt on private lands. Therefore consistent with the reservation of rights set out in Section 9, nothing in this section 6.3, or in private landowner access agreements entered into pursuant to this section, shall be construed to define, limit, or expand the rights of tribes to hunt under the Medicine Creek Treaty on such lands.

Thus, for purposes of this section 6.3 only, private industrial timberlands under access agreement with tribes and located within the geographic area covered by this Agreement will be considered to be available for treaty hunting by WDFW where consistent with the following conditions:

- Signatory tribes have hunting regulations in place that apply to Tribal member hunters accessing private industrial timberlands;
- The owner of private industrial timberlands is providing some access to both State and Tribal hunters for the current hunting season;
- The Tribe has informed WDFW of Tribal access that has been secured by landowner agreement and has provided a copy of the access agreement to the WDFW Regional Office; and
- Tribal hunters have utilized the property consistent with any landowner terms and conditions.

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

For purposes of this section 6.3 only, the parties agree to the following:

- WDFW and the Tribe agree to discuss season and regulatory approaches for wildlife management and harvest on private industrial timberlands, including ceremonial needs;
- WDFW and the Tribe will cooperate in developing management provisions (such as wildlife surveys, timber damage management, stewardship activities, security, and monitoring) associated with hunter access to private industrial timberlands, when possible;
- Upon request by the Tribe, WDFW will assist the Tribe in securing hunter access to private industrial timberlands; and,
- Owners of private industrial timberlands may, without concern of WDFW enforcement action, grant access to members of the Tribe.

For the purposes of this Agreement only, private industrial timberlands are defined as large blocks (640 acres or greater) of privately-owned forest that are capable of growing a merchantable stand of timber and/or being managed for commercial timber harvest. Private industrial timberlands may also include smaller blocks of privately-owned forest land that the Tribe and WDFW agree in writing shall be subject to this Agreement. The parties agree to continue discussion regarding the appropriate methods for recognizing smaller blocks of privately-owned forest land appropriate for hunting. Private industrial timberlands do not include commercial agricultural farms and Christmas tree farms. Consistent with the reservation of legal rights in Section 9 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 Tribe 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, addressed to the Captain, Sergeant, and Regional Wildlife Program identified in the list of e-mail addresses set forth in Appendix D 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 Damage Hunts. Both the WDFW and the Tribe agrees that non-lethal damage control techniques should be exhausted prior to the use of lethal removal and that lethal removal should be utilized as a last resort, particularly in regard to wildlife populations that the Parties are re-building. The parties commit to cooperatively pursue non-lethal control techniques to minimize damage to wildlife populations.

The parties disagree on the scope and nature of the management authority set forth in WAC 232-36-051. Nevertheless, for purposes of this Agreement, the Tribe may choose to participate in WDFW-managed damage hunts. The Tribe will advise WDFW how to contact the Tribe about damage hunt opportunities. Where WDFW has discretion as to which persons will obtain damage control permits, WDFW will provide equitable harvest opportunities to the Tribe WDFW will track the number of damage permits issued and report the number of animals harvested. The area of the damage hunt shall be identified in the WDFW damage permit.

The Tribe will adopt regulations establishing licensing, tagging, permit and reporting requirements regarding participation in wildlife interaction hunts. Tribal members may possess wildlife taken pursuant to any such permit.

If a landowner approaches the Tribe about assistance with damage hunts, the Tribe commits to notify WDFW Regional Wildlife Program Manager which, for purposes of this Agreement, will coordinate the response to the landowner. Notwithstanding the method of allocation referenced above, the Tribe, if it desires, will have an equitable opportunity to participate in the damage hunt.

6.6 Utilization of Road-Kill and Other 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 the Tribe has located road-killed big game prior to being notified by WDFW, the Tribe will notify WDFW Enforcement prior to salvaging, or within a reasonable time after salvaging, the animal if prior notice will result in spoilage, waste, or health and safety issues.

6.7 Marine Mammal Management. Marine mammal management is outside the scope of this Agreement.

7. ENFORCEMENT

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 do not identify themselves as being Tribal members. If a hunter refuses to provide identification, the Tribal enforcement officer may contact State law enforcement. Final disposition of all violations will be shared between the affected parties.

7.1 Investigations. A Party shall cooperate and coordinate investigations concerning hunting violations involving persons hunting under the jurisdiction of the other party. Thus, if a Squaxin member is being investigated for possible violations of state or tribal law, WDFW will inform Squaxin enforcement. WDFW will afford Squaxin an opportunity to aid or participate in the investigation. If an investigation or evaluation arises to the point of reasonable suspicion that a game violation has occurred by a tribal member, WDFW will refer the matter to Squaxin so that Squaxin can determine whether to assume primary jurisdiction or not.

7.2 Mutual Aid. Parties shall come to each other's aid when requested, if reasonably possible.

7.3 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 Tribal enforcement to report the violation. WDFW shall subsequently forward the information (case reports, including probable cause statements, and evidence, if any) to Tribal enforcement for charging and prosecution. See Tribal enforcement contact list, Appendix E.

7.4 Public Safety Laws. The following protocols shall govern WDFW enforcement of the state public safety laws and regulations set forth below against members of the Tribe for public safety violations. These protocols, however, shall not affect the rights of WDFW or the Tribe to enforce any other public safety laws or regulations not specifically set forth below, nor shall it grant any additional rights. These protocols shall be the only action taken to enforce the following public safety laws and regulations:

7.4.1. Loaded Firearm in Vehicle. *RCW 77.15.460(1) and WAC 232-12-828(6)* prohibit possession of rifle or shotgun in a vehicle when a shell or cartridge is either in the chamber or the attached magazine. Squaxin Island Tribal Code (SITC) § 9.12.835 likewise prohibits transporting loaded firearms. If a WDFW Enforcement Officer encounters a member of the Tribe transporting loaded firearms, WDFW shall promptly refer the matter to the Tribe to process under tribal law.

7.4.2. Negligent Shooting Across Roadway. *RCW 77.15.460(2)* prohibits negligent shooting of a firearm from, across, or along the maintained portion of a public highway; SITC §§ 9.12.845 and 7.24.140(F) likewise prohibits shooting firearms across public roads. If a WDFW Enforcement Officer encounters a member of the Tribe shooting firearms from, across or along public roads, WDFW shall promptly refer the matter to the Tribe to process under tribal law.

7.4.3. Hunting While Intoxicated. *RCW 77.15.675* prohibits hunting under the influence of intoxicating liquor or drugs; SITC §7.04.050 and the SITC annual hunting regulation likewise prohibits hunting while intoxicated. 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.

7.4.4. Spotlighting and Artificial Light. *RCW 77.15.450* prohibits hunting big game with aid of a spotlight, artificial light, or night vision equipment, while possessing a firearm, bow and arrow, or crossbow. "Big game" includes elk, deer, moose, mountain goat, caribou, mountain sheep, pronghorn antelope, cougar, and bear. SITC § 7.24.140(B) likewise prohibits hunting with artificial light, unless specifically allowed as a ceremonial hunt. If a WDFW Enforcement Officer encounters a member of the Tribe hunting with artificial light, WDFW shall promptly refer the matter to the Tribe to process under tribal law.

7.4.5. Hunting Hours. *WAC 232-12-289* sets lawful hunting hours for most game species as ½ hour before sunrise to ½ hour after sunset, except for bobcat and raccoon when the area is not open to modern firearms hunting of deer and elk. The SITC annual hunting regulation likewise sets lawful hunting hours as ½ hour before sunrise to ½ hour after sunset. If a WDFW Enforcement Officer encounters a member of the Tribe hunting outside established hunting hours, WDFW shall refer the matter to the Tribe to process under tribal law.

7.4.6. Hunter Orange. *WAC 232-12-055* generally prohibits hunting during modern firearm season unless the hunter is wearing 400 square inches of hunter orange. Hunter orange is not required for hunting upland game birds with muzzleloader, bow or falconry. The Tribe does not require hunter orange. If a WDFW Enforcement Officer encounters a member of the Tribe hunting without hunter orange, WDFW will take no enforcement action with respect to *WAC 232-12-055*.

The referral by WDFW to the Tribe shall include probable cause statements, case reports, physical evidence, and any other discoverable materials relevant to the referral. If the Tribe's prosecuting authority, absent good cause, fails to proceed with charging within six (6) months of submission of the referred charge(s) to the Tribe, and diligently prosecute, WDFW may refer the matter to the appropriate non-tribal prosecuting authority. Nothing in this Section shall limit the prosecutorial discretion of the Tribe under tribal law in any matter referred.

If a WDFW Enforcement Officer or other enforcement officer fails to refer a matter initially to the Tribe which is subject to the requirements of this Section of the Agreement, WDFW shall advocate for the transfer or removal of the matter from state court to the Tribe's Court.

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.

7.5. Private Industrial Timberlands. Except as provided in Sections 7.1 and 7.2, where a WDFW officer encounters tribal hunters and the officer has probable cause to believe the individuals are not hunting in compliance with state law and/or 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 both state 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, 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 9 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 industrial timberland.

7.6. Subpoenas. WDFW enforcement officers will respond to Tribal court subpoenas, and Tribal enforcement officers will respond to state court subpoenas.

7.7. Requests for Information. The Tribe may request additional information from the state concerning a particular WDFW officer's encounter with its members. If the Tribe

makes such a request, WDFW shall provide to the requesting party any information relevant to the incident, including a copy of the dispatch report, within a reasonable time.

7.8 Continuing Enforcement Dialogue. The Parties respective enforcement teams agree to meet and discuss developing appropriate responses to matters of interest to one or the other, including, by way of example, special commission or cross commission agreement, coordinated field investigations and other evaluations, confiscations, dispositions, and cooperation with local law enforcement.

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 another party's wildlife management program, the party proposing to take such action shall give reasonable written notice of the action to each affected party. Notice shall be considered reasonable if it provides adequate time under the existing circumstances for any affected 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 affected parties. Any 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 all affected parties.

9. LEGAL RIGHTS

No party to this Agreement waives or concedes any claim or legal argument with respect to the nature or scope, use or boundary of treaty hunting rights, state or tribal jurisdiction, or management authority. This Agreement is not intended to nor shall it define the nature or scope of the treaty right to hunt, nor the meaning or scope of open and unclaimed lands as described in the Treaty. 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 treaties, nor from taking such position or making 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.

The Agreement and its implementing regulations are not premised on the conservation purposes described in *United States v. Williams*, 898 F.2d 727 (9th Cir. 1990) or *State v. McCormack*, 117 Wn.2d 141, 812 P.2d 483 (1991).

10. MISCELLANEOUS

10.1. Amendments and Modifications. This Agreement may be modified or amended only through the written agreement of all parties.

10.2. 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.

10.3. Non-Tribal Members Hunting on Reservation. The Tribe will contact WDFW to discuss the legal parameters and license/tag requirements prior to opening land within a reservation to allow non-tribal member hunting.

10.4. No Benefit to Third Parties. This Agreement does not create any rights or benefits for persons not party to the Agreement.

11. CONTACT INFORMATION

The principle contacts for the parties to this Agreement are:

Michele Culver
Regional Director
WDFW
48 Devonshire Road
Montesano, WA 98563
(360) 249-1211 (office)

Joseph Peters
Hunting Policy Representative
Squaxin Island Natural Resources Dept.
70 SE Squaxin Lane
Shelton, WA 98584
(360) 432-3813 (office)
(360) 490-6825 (cell)

12. PARTY SIGNATURE AUTHORITY

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


James Unsworth September 25, 2015
Director, WDFW


David Lopeman September 11, 2015
Chairman, Squaxin Island Tribe

Appendix A: Wildlife species covered in this Agreement

Cottontail rabbits
Snowshoe hare
Fox
Black bear
Raccoon
Cougar
Bobcat
Elk
Deer
Coyotes
Mountain goat
Waterfowl
Turkey
Forest grouse
Quail
Pheasant
Band-tailed pigeon
Mourning doves
Snipe

