



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS RAZOR CLAM HARVEST RIGHT OF ENTRY

Right of Entry No. 23-XXXXXX

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and _____, an individual ("Licensee").

PRINT NAME IN UPPERCASE

THE Parties agree as follows:

SECTION 1 GRANT OF PERMISSION

Subject to following terms and conditions, State grants Licensee a revocable, nonexclusive license to enter upon the real property described in Exhibit A (the "Property"). In this agreement, the term "Right of Entry" means this agreement and the rights granted.

SECTION 2 USE

2.1 Authorized Activities. Licensee shall enter the Property only for the sole purpose of:

commercial razor clam harvest as described in Exhibit B (the "Activities")

and for no other purpose. Licensee shall not conduct any other commercial activities on the Property without the prior written permission of State.

2.2 Restrictions on Activities

- (a) The limitations in this Paragraph 2.2 apply to the Property and adjacent state-owned aquatic land.
- (b) Licensee shall not cause or permit:
 - (1) Damage to natural resources,
 - (2) Waste, or
 - (3) Deposit of material. This prohibition includes deposit of fill, rock, earth, ballast, refuse, garbage, waste matter, pollutants of any type, or other matter.

- (c) State may take any steps reasonably necessary to remedy any failure of Licensee to comply with the restrictions under this Paragraph 2.2. Upon demand by State, Licensee shall pay all remedial costs and natural resources damages.

2.3 Conformance with Laws. Licensee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its activities on the Property. The required permits include, but are not limited to, a valid commercial fishing license from the Washington State Department of Fish and Wildlife (WDFW), and registration with the Washington State Department of Health (DOH).

2.4 Interference with Other Uses. Licensee shall exercise this right of entry in a manner that minimizes or avoids interference with the rights of State, the public, Tribal members, and others to use or occupy the Property or surrounding lands and water. State may grant similar right of entry to harvest razor clams on the Property to other persons.

SECTION 3 TERM

3.1 Term Defined. This right of entry is valid only during the period of the commercial razor clam season as established annually by the State Department of Fish and Wildlife, (“WDFW”), and is effective on April 1, 2015 (“Effective Date”), and terminates on July 31, 2015 (“Termination Date”), unless terminated sooner under the terms of this Right of Entry. Licensee shall not conduct any activities on the Property except during the commercial razor clam season established by WDFW.

SECTION 4 COMPENSATION

Licensee shall pay State a fee in the amount of One Hundred Dollars (\$100.00), which is due and payable on or before the Effective Date.

SECTION 5 ENVIRONMENTAL LIABILITY

5.1 Definitions. “Hazardous Substance” means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup, including oil and petroleum products.

5.2 General Conditions.

- (a) Licensee shall exercise the utmost care with respect to Hazardous Substances, including the foreseeable acts or omissions of third parties affecting Hazardous Substances.

- (b) Licensee and Licensee's affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances on the Property or adjacent state-owned aquatic lands, except in accordance with all applicable laws.
- (c) Licensee shall immediately notify State if the Licensee become aware of any release or threatened release of Hazardous Substance on the Property.
- (d) If a Licensee's act or omission results in a release of Hazardous Substances, Licensee, at its sole expense, shall promptly take all actions necessary or advisable to clean up, contain, and remove the Hazardous Substances in accordance with applicable laws.

SECTION 6 ASSIGNMENT

Licensee shall not assign this Right of Entry.

SECTION 7 INDEMNITY

7.1 Indemnity and insurance.

- (a) Licensee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any Claims arising out of the Activities or related activities by Licensee, its contractors, agents, invitees, guests, employees or affiliates.
- (b) "Claim" as used in this Subsection 7.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property, including damage resulting from Hazardous Substances, and damages resulting from loss of use of the Property.
- (c) State shall not require Licensee to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.
- (d) Licensee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.
- (e) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.

SECTION 8 TERMINATION

State may terminate this Right of Entry at any time upon twenty-four (24) hours' notice to the Licensee.

SECTION 9 NOTICE

Following are the locations for delivery of notice and the Contact Person. Any Party may change the location of notice and/or the Contact Person upon reasonable notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division
Sandra Morken, Aquatic Nature Data Services
1111 Washington Street SE
PO Box 47027
(360) 902-1065
Sandra.morken@dnr.wa.gov

LICENSEE NAME IN UPPERCASE

Unified Business Identifier (UBI) REQUIRED

Telephone number

Fax number

E-mail address

SECTION 10 MISCELLANEOUS

10.1 Headings. The headings used in this Right of Entry are for convenience only and in no way define, limit, or extend the scope of this Right of Entry or the intent of any provision.

10.2 Invalidity. The invalidity, voidness, or illegality of any provision of this Right of Entry does not affect, impair, or invalidate any other provision of this Right of Entry.

10.3 Applicable Law and Venue. This Right of Entry is to be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising

out of or in connection with this Right of Entry is in the Superior Court for Thurston County, Washington.

10.4 Modification. No modification of this Right of Entry is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

10.5 Survival. Any obligations of Licensee not fully performed upon termination of this Right of Entry do not cease, but continue as obligations of the Licensee until fully performed.

10.6 Exhibits. All referenced exhibits are incorporated in this Right of Entry unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

PRINT NAME IN UPPERCASE

Dated: _____, 20_____
signature

By: _____

Title: _____

Address: _____

Phone: _____

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20_____
Signature

By: _____

Title: _____

Address: 1111 Washington Street SE
M/S 47027
Olympia WA 98504

Phone: _____

Approved as to form this
19 day of October 2011
Terry Pruitt, Assistant Attorney General

Exhibit A 2015 Willapa Bay Razor Clam Harvest Area

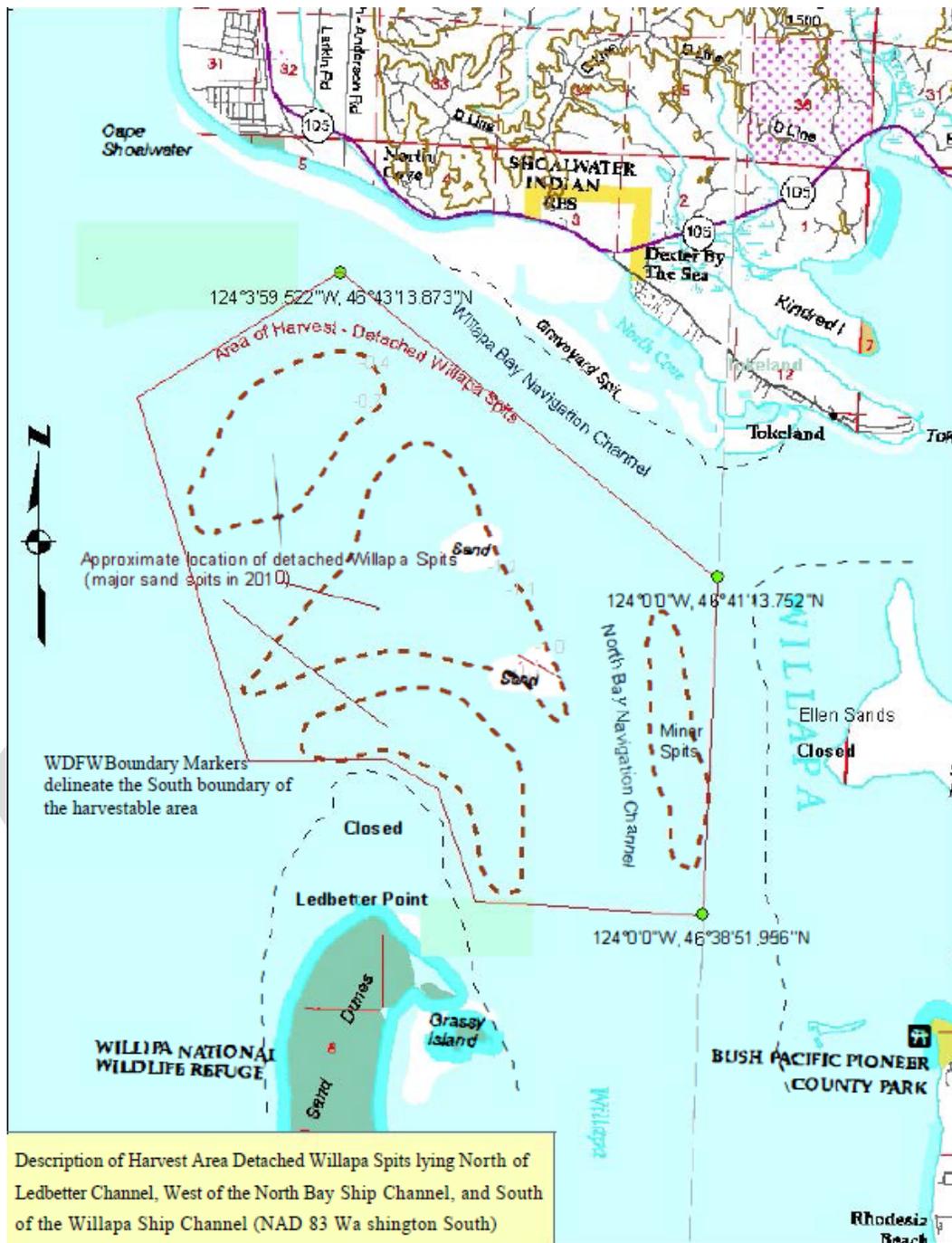


Exhibit B

Plan of Operations

1. Harvesting

- A. Licensee shall enter and leave the Property by boat only.
- B. Licensee shall use only hand tools to harvest. All other methods of harvest are prohibited.
- C. Licensee shall remove all tools, debris, products of harvest activities, and personal property from the Property each day after harvesting and as leaving the Property.
- D. Licensee shall conduct the Activities in a manner that does not interfere with critical habitat for the Western Snowy Plover. All elements of the Activities, including foot traffic, shall be on wet sand only and at least 200 feet water ward of the line of the highest tide that occurred in the previous 24 hours.

2. General

- A. Licensee must comply with all contaminated spill cleanup, bilge water disposal, and sewage disposal guidelines and laws for boats, including:
 1. Bilge Care:
<http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/fuel.html>
 - a. Keep all oily bilge water out of the water.
 - b. Place an oil absorbent pad or pillow in your vessel bilge to keep dry and oil-free.
 - c. Periodically check your boat's bilge for oil leaks and accumulation of water.
 - d. Shut off bilge pump while refueling.
 2. Do not discharge sewage in the water.
<http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/sewage.html>
 3. Spill Prevention and response - [RCW 90.56](#) . Report any spills or cleanups conducted on the beach to the Department of Natural Resources.
- B. Report stranded marine mammals to Cascadia Research Collective (360) 943-7325. Comply with all provisions of the [Mammal Protection Act](#), including:
 1. Do not harass, hunt, capture, collect, or kill any marine mammal, or attempt to perform these acts.
 2. Do not approach within 100 yards of any marine mammal.