

MEMORANDUM OF UNDERSTANDING

BETWEEN

National Park Service

and

**Hoh Indian Tribe
Jamestown S’Klallam Tribe
Lower Elwha Klallam Tribe
Makah Indian Tribe
Quileute Indian Tribe
Quinault Indian Nation
Port Gamble S’Klallam Tribe
Skokomish Indian Tribe**

To establish a framework for cooperative
government-to-government relationships

July 10, 2008

PREAMBLE

This Memorandum of Understanding (MOU) between governments and governmental agencies with shared interests over the lands and waters, activities or resources within the boundaries of the Olympic National Park (ONP) is intended to facilitate government-to-government relations, effective coordination, open and timely communication, and meaningful consideration of the interests and priorities between the Parties on issues of concern. The Parties to this MOU are the Hoh Tribe, Makah Indian Tribe, Quileute Tribe, Quinault Indian Nation, Lower Elwha Klallam Tribe, Jamestown S'Klallam Tribe, Port Gamble S'Klallam Tribe, and Skokomish Tribe, (collectively, the "Tribes"), and the National Park Service (NPS).

The Olympic Peninsula (Peninsula) in the State of Washington provides habitat for a wide variety of marine and terrestrial birds, fish, mammals, and plants. As stewards of the lands and waters, the Parties wish to work together. Through treaties with the United States, the Tribes reserved hunting, fishing, and gathering rights to utilize the plants, animals, fish, and other resources of the Peninsula. Tribes view the continued availability and use of water, plants, fish, and animal resources within the ONP and on the Peninsula as being critical to the protection of their treaty rights and the continuity of their distinct societies. These resources form an economic and cultural base for many tribal communities, helping to meet community needs for food, medicine, subsistence, trade and commerce, and ceremony.

The Tribes are federally recognized tribal governments with rights secured by treaties with the United States. Under Article VI of the U.S. Constitution these treaties are the supreme law of the land. The Tribes exercise their inherent sovereignty to regulate activities of their members throughout the territories ceded to the United States, as well as in other areas where they have treaty rights to natural resources.

In 1938, the ONP was designated by Congress as a unit of the National Park system. The ONP is administered under the provisions of its enabling legislation and the National Park Service Organic Act of 1916. The 1916 NPS Organic Act, as amended, established the role and responsibilities of the NPS, as well as its "fundamental purpose... to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 USC §1). However, the NPS mandate to protect resources within the ONP on an ecosystem-wide basis must be administered so that "nothing... shall affect...the rights reserved by treaty to the Indians of any tribes." (Olympic National Park enabling act of June 29, 1938, 52 Stat.1241, 16 USC §255).

Administration of the ONP by the NPS can affect natural and cultural resources that affect tribal rights or interests. ONP is part of the NPS, within the Department of Interior, and as such, has a solemn trust responsibility pursuant to the treaty obligations of the United States. As part of that trust responsibility to the Tribes, the United States must operate in accordance with fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. The government-to-government relationship between the NPS and the Tribes is founded in, and supported by, law and policy, as set forth in the Section 2.0 of this MOU "Authorities."

The NPS generally regulates activities of persons within the boundaries of ONP while the Tribes regulate activities of their members throughout the territories ceded through treaties with the United States, including the lands within ONP. The Parties wish to cooperate and harmonize the application of their respective authorities to advance their common interests in protecting and conserving the resources and environment of the ONP and to ensure that the Tribes' treaty rights to natural and cultural resources are respected.

1.0 PURPOSE

The Tribes, and the NPS, each sharing an interest in regulation of activities and management of the resources within and around the boundaries of ONP, enter into this MOU to clarify responsibilities and expectations.

The Parties intend that the MOU will contribute to the management of the resources of concern to ONP and/or the tribes through integrated management activities and collaborative relationships.

The purposes of the MOU are to: (a) support effective, efficient, timely, and respectful consultation, communication and discourse between and among the Parties; (b) improve coordination and collaboration of policies and programs affecting the resources within the boundaries of the ONP; (c) facilitate the sharing of information and expertise; and (d) promote collaboration in the protection, use, and conservation of natural and cultural resources for the benefit of the present and future generations.

2.0. AUTHORITIES

The Parties enter into this MOU under the authorities of their respective sovereign powers, including, but not limited to, the United States Constitution, including Article VI; the National Park Organic Act, 16 USC §1 et seq.; the Olympic National Park Enabling Act, 16 USC §§ 251-256; the Treaties of Point No Point, 12 Stat.933; Neah Bay, 12 Stat. 939; and Olympia, 12 Stat. 971; and under the authority of their respective Tribal constitutions; the Federal trust and consultation responsibilities as articulated in such documents as The National Historic Preservation Act (NHPA), 16 USC §§470 et seq. as amended; the Archaeological Resources Preservation Act (ARPA), 16 USC §§470aa et seq. as amended; the Native American Graves Protection and Repatriation Act (NAGPRA) 25 USC §§3000 et seq., as amended; the American Indian Religious Freedom Act (AIRFA) 42 USC §§1996 et seq., as amended; Executive Order (EO) 13007 ("Indian Sacred Sites, May 24, 1996), the EO on Consultation and Coordination with Indian Governments 13175 (November 6, 2000); EO 12898 "Federal Actions to Address Environmental Justice in Low Income and Minority Populations (Feb 11, 1994); Departmental Responsibilities for Indian Trust Resources (512 DM 2); the EO on Federalism 13132 (August 4, 1999); Secretarial Order 3206 on American Indian Tribal Rights; Federal Trust Responsibilities; the Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments (April 29, 1994); the National Environmental Policy Act (NEPA) 42 USC §§4371 et seq., as amended; the Clean Water Act, 33.U.S.C §§1251 et seq., as amended; the Endangered Species Act (ESA), 16 USC §§1531 et. seq., as amended; and, the Coastal Zone Management Act (16 USC §§ 1451 et. seq.

3.0 GOALS AND OBJECTIVES

3.1 Establish and implement a framework for cooperative government-to-government relationships between the Parties to build a relationship of mutual understanding and collaboration by facilitating consistent and timely communication at appropriate levels of government.

3.2 Clarify obligations for consultation and consideration of proposed actions that potentially affect treaty rights or interests within the ONP with the objective of providing opportunities for substantive Tribal input to NPS on the management of resources to facilitate the exercise of the Tribes' reserved rights and ensure the protection and conservation of natural and cultural resources of significance to the Tribes.

3.3. Promote open dialogue between the Parties on restoring and sustaining resources and ecosystem health, facilitating the identification of common goals, improving cooperation and collaboration to protect and manage natural and cultural resources, promoting educational opportunities and scientific research, and developing integrated funding proposals.

3.4 Promote collaboration on projects and activities to protect and restore natural and cultural resources on the ONP lands since all Parties share the goal of conservation of common resources. Pursue and integrate projects with mutual benefits, and share technical expertise and information to enhance the effectiveness of conservation activities, and of all Parties. At the discretion of the tribes, utilize traditional knowledge in NPS research, and build upon the tribes' capacity to contribute to the NPS management of the ONP and resources of tribal concern.

3.5 Facilitate the creation of inter-agency teams of NPS, ONP, and tribal policy, legal, and technical representatives to address issues of mutual concern.

3.6 The Parties will strive to reach consensus on issues of mutual concern and interest and will prioritize action items for the continued growth of the relationships between the Parties. An initial list of action items identified at the time of entry into this MOU follows:

- (a) support effective, efficient, timely, and respectful consultation, communication and discourse between and among the Parties;
- (b) improve coordination of policies and programs affecting the resources within the boundaries of the ONP;
- (c) facilitate the sharing of information and expertise; and
- (d) promote collaboration in the protection, use, and conservation of natural and cultural resources for the benefit of the present and future generations.

4.0 DEFINITIONS

4.1 *Affect tribal rights or interests* means any action or policy that may potentially impact tribal self-government, trust resources, treaty or other tribal reserved rights.

4.2 *Cultural Resource* means an aspect of a cultural system that is valued by or significantly representative of a culture or that contains significant information about a culture. "A cultural resource may be a tangible entity or a cultural practice. Tangible cultural resources may include archeological sites, cultural landscapes, historic structures, or traditional cultural properties eligible for or listed on the National Register of Historic Places, as well as museum objects and ethnographic resources for NPS management purposes" (National Historic Preservation Act; NPS Management Policies 2006). Cultural practices include but are not limited to tribal use of natural resources in ceremonies and for subsistence. Tribes value the living fish, wildlife, and plants as inherently a part of the Tribes' cultures. These would fall within the NPS definition for Ethnographic Resource.

(a) Archeological Resource means "any material remains or physical evidence of past human life or activities which are of archeological interest, including the record of the effects of human activities on the environment. An archeological resource is capable of revealing scientific or humanistic information through archeological research" (NPS Management Policies 2006).

(b) Ethnographic Resources mean "objects and places, including sites, structures, landscapes, and natural resources, with traditional cultural meaning and value to associated peoples. Research and consultation with associated people identify and explain the places and things they find culturally meaningful. This would include the living fish, wildlife, and plants inherently a part of the Tribes' cultures. Species that live entirely within the ONP and those that migrate or reseed across its boundaries, as well as their habitat, are all of tribal cultural concern. Ethnographic resources eligible for the National Register of Historic Places are called traditional cultural properties" (NPS Management Policies 2006).

4.3 *Natural resources* include physical resources such as water, air, soils, topographic features, geologic features, paleontological resources, and natural soundscapes and clear skies, both during the day and at night; physical processes such as weather, erosion, cave formation, and wildland fire; biological resources such as plants, animals, and communities; biological processes such as photosynthesis, succession, and evolution; ecosystems; highly valued associated characteristics such as scenic views.

4.4 *Government-to-Government Consultation* means an accountable process that ensures substantive, meaningful, and timely input by Tribal officials on NPS policies or actions that may affect the Tribes' rights or interests prior to a decision; and substantative, meaningful, and timely consideration by ONP

of Tribal input prior to decision making, and to be informed on how their input was considered and addressed in the decision.

- 4.5 *Policies or actions that may affect Tribal interests or reserved treaty rights* means regulations, legislative comments or proposed legislation, policy, plans, projects or actions having effects on one or more Indian Tribes, on the relationship between the NPS and Indian Tribes, or on tribal rights or interests. Such actions can include but are not limited to, NPS construction of roads, rip rap, stream bank or other watershed restoration, or any other change in the landscape that may affect the fish, wildlife or plants within the affected Tribes' treaty ceded areas.
- 4.6 *Tribal officials* means elected officials or representatives who are appointed by, and are authorized to act on behalf of, tribal governments.

5.0 OBLIGATIONS OF THE PARTIES

5.1 MUTUAL OBLIGATIONS.

5.1.1 Each Party shall officially designate its principal contact for matters pertaining to this MOU and ensure that the other Parties are provided with current contact information. The responsibilities of the principal contacts will include, but not be limited to:

- Coordinating activities, ensuring that commitments are fulfilled, and sharing information as provided in this MOU or implementation agreements;
- Facilitating government-to-government communication;
- Facilitating emergency consultation;
- Receiving and routing correspondence to appropriate entities within their respective agencies;
- Initiating requests for consultation or dispute resolution;
- Facilitating mutual training;
- Arranging for access to appropriate policy, technical, and legal resources and information when seeking to collaboratively resolve issues to the mutual satisfaction of relevant Parties;
- Providing names, telephone numbers, and mailing and email addresses for legal, policy, and technical persons that may be contacted in regard to work on common issues. Workgroups will meet on a regular basis to resolve issues identified as important under other provisions of this document.

5.1.2 The Parties agree to identify and pursue opportunities for collaboration on projects lending themselves to partnership, such as salmon habitat restoration. In particular, the Parties will strive to support the implementation of mutually beneficial projects and look for ways to fund integrated projects that improve the management of cultural and natural resources within ONP, on the reservations, or on lands where common resources are being affected.

5.1.3 The Parties agree to share survey, research, and other types of data regarding natural, cultural, and archaeological resource management, and to protect, to the maximum extent permitted by law, information that the Tribes or the NPS deem to be confidential or sensitive. Nothing in this agreement mandates the sharing of data.

5.1.4 The Parties will collaboratively develop general protocols to ensure consistent, early, timely, and frequent communication between the Parties, including:

- (a) Identification of activities, events, processes, or conditions that require notification of the Parties according to agreed protocols (e.g., initiated by responsible Party via email, phone call, FAX, letter, etc.);
- (b) Identification of activities, events, processes, or conditions that would initiate review/consultation by the Parties (specify staff responsible for consultation). The Parties will

determine what activities, events, processes, or conditions are of concern for review/consultation and request participation in decision-making processes or consultation;

- (c) Sharing metrics, considerations, and criteria employed when evaluating alternative actions or monitoring impacts of proposed ongoing, or implemented actions;
- (d) Sharing and protecting sensitive, confidential information insofar as the Freedom of Information Act and the National Parks Omnibus Management Act (16 USC 5937) and policies and regulations thereunder provide;
- (e) Document sharing to achieve clarification of the respective roles and governmental responsibilities of the Parties regarding environmental, habitat, cultural, archaeological resource review processes and surveys, and natural resource management (fish, wildlife, plants and water), and enforcement; and to promote collaborative opportunities to conserve natural and cultural resources within the ONP, including:
 - i. Identification of responsibilities for distribution and retention of documents;
 - ii. Descriptions of avenues for each to access the other's data and information, including but not limited to, resource management information, GIS, and pertinent databases.
- (f) Mutual training programs for ONP and tribal personnel, to ensure that ONP employees are familiar with the rights of the Tribes, as defined by the Constitution, treaties, statutes, Executive Orders, and judicial rulings; and that tribal personnel are familiar with NPS statutes, regulations, policies, guidance, and ONP internal operations;
- (g) Cross-deputization for enforcement, investigation, and prosecution of violations of ONP or tribal laws or regulations;
- (h) Securing full faith and credit for tribal or federal court judgments.

5.1.5 The Parties will meet at least once each calendar year to discuss and deliberate on the effectiveness of the MOU, policies or projects of mutual interest, management initiatives, and direction regarding resources within and around the ONP. At the annual meeting the Parties will develop a work plan including issues to be addressed, formation of workgroups, and a calendar for future meetings, to address an initial list of issues developed in the attached Appendix, made a part hereof for all purposes. The meeting will be convened at a time and place to be determined by the hosting Party. The Tribes shall host the meeting in even years and NPS in odd years. Any Party may request additional meetings at any time.

5.1.6 Each Party is accountable for its implementation of this MOU and will strive to ensure that all communication among the Parties is conducted using the protocols developed pursuant to this MOU.

5.2 OBLIGATIONS OF NPS

5.2.1 The NPS shall accommodate and facilitate the exercise of reserved treaty rights and ensure protection of such rights and the natural and cultural resources upon which they depend. The NPS will work collaboratively with tribes on matters of mutual interest and activities and policies that may affect or relate to reserved treaty rights or tribal interests in resources within ONP and on the peninsula.

5.2.2 The NPS will provide timely notice to affected Tribes of any proposed NPS permit, or action that requires notice per 5.1.4 that potentially affects reserved treaty rights or tribal interests in resources within the ONP and on the Peninsula. The NPS will ensure that Tribes have an opportunity for consultation and consideration in addition to any public notice and comment provided for under federal law including, (i)

NEPA processes, including pre-scoping notification of tribes and monitoring; (ii) NHPA Section 106 Consultation; (iii) Revision of ONP Management Plans; (iv) Rule making, permitting or actions, including, but not limited to, stream restoration, road and culvert maintenance, fire management, wildlife management, fisheries management, hazard tree reduction, cultural resource protection and research; (v) NPS policies or guidelines that may affect or relate to reserved treaty rights or tribal interests in resources within ONP and on the Peninsula.

5.2.3 The NPS will manage resources in a manner that accommodates tribal conservation and management plans for Indian resources and tribal activities to the maximum extent practicable within the limits of applicable law. The NPS Organic Act, the ONP Enabling Act, and other authorities provide the basis for NPS management of resources within ONP. These authorities must be administered in accordance with trust responsibilities of the United States towards the Tribes. The Tribes often prepare management plans to memorialize their governmental responsibilities for management of their respective treaty-protected resources, and regulations governing the exercise of tribal treaty rights by tribal members. Collaboration between the NPS and the Tribes will be necessary to minimize conflicts and coordinate management plans and actions.

5.2.4 The NPS will manage and administer programs and activities in a manner sensitive to traditional Tribal beliefs and practices and assist in protecting and securing access to medicines, plants, animals, and specific places of special cultural significance, consistent with Federal law and policy, including but not limited to NAGPRA, AIRFA and EO 13007 on Indian Sacred Sites, May 24, 1996, and any amendments to these.

5.2.5 The NPS will provide timely notice to Tribes of actions that may potentially disturb land, water, or other natural or cultural resources. For cultural resources of tribal concern such as burial sites, archaeological sites, or ethnographic sites any work will cease until the appropriate tribe(s) are notified and consulted. The ONP will work with the Tribe(s) to identify all resources of concern and of the need to protect confidentiality.

5.2.6 The NPS will work with other federal departments and agencies (e.g., NOAA and USFWS) to more effectively coordinate activities, programs, and policies to assist Tribes and accomplish goals of common interest, such as, shared stewardship approaches.

5.2.7 The NPS will encourage and assist state and local governments to coordinate with the Tribes and ONP on matters of mutual concern, particularly when federal funds and other assistance are provided through state programs or agencies.

5.2.8 The NPS will provide affected Tribes with copies of agreements with other entities pertaining to matters that may affect tribal rights or interests.

5.3. OBLIGATIONS OF THE TRIBE(S)

5.3.1 The Tribes will provide timely notice to NPS of opportunities to comment on any proposed Tribal actions and plans that require notice per 5.1.4 that potentially affect NPS management of resources, and will respond in a timely manner to NPS. Tribal activities within ONP boundaries that may affect resources, include, but are not limited to:

- i. Research or monitoring activities;
- ii. Fisheries activities such as collection of broodstock, release of progeny, placement of carcasses, or habitat modification;
- iii. Watershed and habitat restoration activities, including measures to control exotic plant or invasive species;
- iv. Regulations and results of data gathered pursuant to regulations of tribal treaty-right related activities; and

v. Plans for motorized use in wilderness or use of aviation equipment which affect ONP operations.

5.3.2 The Tribes will work collaboratively with NPS on matters of mutual interest and on activities and policies that may affect or relate to reserved treaty rights or tribal interests in resources within the ONP, to strengthen government-to-government relations, and to reconcile conflicts that may arise between NPS and Tribal resource management plans.

5.3.3 The Tribes will provide the NPS with information identifying Usual and Accustomed Fishing Grounds as set forth in the U.S. v Washington proceedings and sub proceedings.

5.3.4 The Tribes will provide advance notice and a timely opportunity for consultation to the NPS on actions that may potentially disturb land, water, or other natural, or cultural resources of tribal concern within ONP and, upon request by ONP, identify resources of concern and advise the NPS of the need to protect confidentiality.

5.3.5 The Tribes will provide the NPS with copies of agreements with other entities pertaining to matters that may affect the resources of the ONP and the Tribe(s).

6.0 DISPUTE RESOLUTION

The Parties commit to working in good faith to seek consensus agreements. In the event that bona fide disputes arise from this MOU, the disputing Parties will first strive to resolve matters informally through government-to-government discourse at the appropriate level. Any disputant may raise any matter not resolved to a higher official. In the event that the matter is not resolved, the Parties may agree to utilize neutral third party mediation.

7.0 GENERAL PROVISIONS

7.1 AMENDMENT, REVIEW AND TERMINATION

7.1.1 TERM OF MOU. This MOU shall become effective on the date of signature and will remain in effect unless terminated in whole, or in part, by mutual agreement. Any Party may withdraw from the MOU by providing thirty days written notice to each of the other Parties. Withdrawal by any Party from this MOU does not alter or affect the application of this MOU to remaining Parties. No Party shall incur any new obligations for the terminated portion of the MOU after the effective date.

7.1.2 MODIFICATIONS to the MOU may be made at any time by mutual consent of the Parties. A written amendment, signed and dated by the relevant Parties, shall be executed prior to any changes becoming effective.

7.1.3 PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the NPS or the Tribes from participating in similar activities with other public or private agencies, organizations, individuals, or governments.

7.1.4 FREEDOM OF INFORMATION ACT. Any information furnished to the NPS under this MOU that becomes a part of the system of Federal records is subject to the Freedom of Information Act (FOIA). Notwithstanding the foregoing, information identified by a Tribe as being of a privileged or confidential nature shall be exempt from disclosure under FOIA to the extent allowed by law.

8.0 DISCLAIMERS

8.1 Nothing in this MOU is intended to conflict with any current directive from the Department of the Interior or any applicable federal, state, or tribal law or regulation. If any of the terms of this MOU are

determined by any of the Parties to be inconsistent with applicable law or directives then those terms of the MOU shall be invalid, but the remaining terms and provisions of the MOU not affected by the inconsistency will remain in full force and effect.

8.2. Nothing in this MOU will be construed to grant, expand, create or diminish any legally enforceable rights, benefits or responsibilities, substantive or procedural, not otherwise granted or created by existing law. Nothing in this MOU will be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty right, or other rights of any Indian tribe or preempt, modify, or limit the exercise of any such right.

8.3 Nothing in this MOU is intended to waive or diminish the right of any Party to challenge or appeal another Party's decision or action in accordance with applicable law.

8.4 Each Party reserves all rights, powers, and remedies now or hereafter existing at law or in equity, or by statute, treaty, or otherwise. A Party's joinder to this MOU shall not constitute a waiver of sovereign immunity. The MOU is intended solely to facilitate coordination among the Parties, and nothing herein creates any rights in third parties or gives rise to any right of judicial review.

8.5 This MOU commits the Parties to work cooperatively and respectfully toward resolution of issues of mutual interest and concern. Nothing in this MOU is intended to substitute for additional government-to-government consultation that may be required by the federal trust responsibility, or the executive orders and policy statements, set forth in "Authorities" above.

8.6. This MOU is not intended to obligate the funds of any Party.

Adopted this _____ day of _____, 2008, at

_____.

Signatures:

Hoh Tribe

Makah Indian Tribe

Quileute Tribe

Quinault Indian Nation

Lower Elwha Klallam Tribe

Jamestown S'Klallam Tribe

Skokomish Tribe

Port Gamble S'Klallam Tribe

National Park Service

APPENDIX OF INITIAL ISSUES FOR WORKGROUPS

1. Identification of areas of importance for the ability of Tribes to exercise spiritual and cultural activities and the measures to be taken to ensure their integrity and preservation.
2. Development of an inventory of cultural and natural resources utilized by the Tribes for cultural purposes.
3. Identification of areas where cultural and natural resources are to be preserved, measures to ensure their conservation (e.g., regulating or prohibiting commercial harvest or competition for use, limitation of total harvest, application of herbicides/pesticides), and opportunities to provide or enhance Tribal access and use.
4. Identification of areas of importance for the exercise of Tribally reserved rights; measures to protect, restore, and conserve wildlife and fish habitat and population productivity; and elimination of obstacles to the exercise of those rights.
5. Restoration of landscapes and ecological functions that have historically supported cultural resources.
6. Development of mechanisms to identify places of importance to sustain cultural, natural, and archeological resources.
7. For resources within ONP that are utilized or affected by Tribal activities, development of mechanisms to assist NPS with information to report on status and condition of these resources as required by NPS policies.
8. Provision of access by all Parties to appropriate policy, technical, and legal resources and of information when seeking to collaboratively resolve issues to their mutual satisfaction.
9. Development of specific guidelines for consultation on a government-to-government basis.