

109TH CONGRESS
2^D SESSION

H. R. 6119

To provide for the equitable settlement of claims of Indian tribes in the region of Puget Sound, Washington regarding treaty rights to take shellfish from lands in that region, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2006

Mr. DICKS introduced the following bill; which was referred to the Committee on Resources

A BILL

To provide for the equitable settlement of claims of Indian tribes in the region of Puget Sound, Washington regarding treaty rights to take shellfish from lands in that region, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Puget Sound Regional
5 Shellfish Settlement Act of 2006”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

1 (1) the Tribes have established treaty rights to
2 take shellfish from public and private tidelands in
3 Washington State, including from some lands owned,
4 leased, or otherwise subject to harvest by commercial
5 shellfish Growers;

6 (2) the district court that adjudicated the
7 Tribes' treaty rights to take shellfish found that the
8 Growers are innocent purchasers who had no notice
9 of the Tribes' fishing right when they acquired their
10 properties;

11 (3) numerous unresolved issues remain out-
12 standing regarding implementation of the Tribes'
13 treaty right to take shellfish from lands owned,
14 leased, or otherwise subject to harvest by the Grow-
15 ers;

16 (4) the Tribes, the Growers, the State of Wash-
17 ington, and the United States Department of the In-
18 terior have resolved by a Settlement Agreement
19 many of the disputes between and among them re-
20 garding implementation of the Tribes' treaty right to
21 take shellfish from covered tidelands owned or leased
22 by the Growers;

23 (5) the Settlement Agreement does not provide
24 for resolution of any claims to take shellfish from
25 lands owned or leased by the Growers that poten-

1 tially may be brought in the future by “Other
2 Tribes”;

3 (6) in the absence of congressional actions, the
4 prospect of “Other Tribes” claims to take shellfish
5 from lands owned or leased by the Growers could be
6 pursued through the courts, a process which in all
7 likelihood could consume many years and thereby
8 promote uncertainty in the State of Washington and
9 the Growers and to the ultimate detriment of both
10 the Tribes and Other Tribes and their members;

11 (7) in order to avoid this uncertainty, it is the
12 intent of Congress that Other Tribes have the option
13 of resolving their claims, if any, to a treaty right to
14 take shellfish from covered tidelands owned or leased
15 by the Growers; and

16 (8) this Act represents a good faith effort on
17 the part of Congress to extend to Other Tribes the
18 same fair and just option of resolving their claims
19 to take shellfish from covered tidelands owned or
20 leased by the Growers that the Tribes have agreed
21 to in the Settlement Agreement.

22 (b) PURPOSE.—The purposes of this Act are—

23 (1) to approve, ratify, and confirm the Settle-
24 ment Agreement entered into by and among the
25 Tribes, commercial shellfish growers, the State of

1 Washington and the United States on _____,
2 2006;

3 (2) to provide Other Tribes with a fair and just
4 resolution of any claims to take shellfish from “cov-
5 ered tidelands”, as that term is defined in the Set-
6 tlement Agreement, that potentially could be
7 brought in the future by Other Tribes; and

8 (3) to authorize the Secretary to implement the
9 terms and conditions of the Settlement Agreement
10 and this Act.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) **FUND.**—The term “Fund” means the
14 Puget Sound Shellfish Settlement Trust Fund Ac-
15 count established by this Act.

16 (2) **GROWERS.**—The term “Growers” means
17 Taylor United, Inc.; Olympia Oyster Company; G.R.
18 Clam & Oyster Farm; Cedric E. Lindsay;
19 Minterbrook Oyster Company; Charles and Willa
20 Murray; Skookum Bay Oyster Company; J & G
21 Gunstone Clams, Inc.; and all persons who qualify
22 as “growers” in accordance with and pursuant to
23 the Settlement Agreement.

24 (3) **OTHER TRIBES.**—The term “Other Tribes”
25 means any federally recognized Indian nation or

1 tribe other than the Tribes defined by this section
2 that, within 20 years after the deposit of funds in
3 the Special Holding Account, establishes a legally
4 enforceable treaty right to take shellfish from cov-
5 ered tidelands described in the Settlement Agree-
6 ment, owned, leased or otherwise subject to harvest
7 by those persons or entities that qualify as Growers.

8 (4) SECRETARY.—The term “Secretary” means
9 the Secretary of the Interior.

10 (5) SETTLEMENT AGREEMENT.—The term
11 “Settlement Agreement” means the Settlement
12 Agreement entered into by and between the Tribes,
13 commercial shellfish Growers, the State of Wash-
14 ington and the United States, signed on
15 _____, 2006, to resolve certain dis-
16 putes between and among them regarding implemen-
17 tation of the Tribes’ treaty right to take shellfish
18 from certain covered tidelands owned, leased or oth-
19 erwise subject to harvest by the Growers.

20 (6) TRIBES.—The term “Tribes” means the fol-
21 lowing federally recognized Tribes that executed the
22 Settlement Agreement: Tulalip, Stillaguamish, Sauk
23 Suiattle, Puyallup, Squaxin Island, Makah,
24 Muckleshoot, Upper Skagit, Nooksack, Nisqually,
25 Skokomish, Port Gamble S’Klallam, Lower Elwha

1 Klallam, Jamestown S’Klallam, and Suquamish
2 Tribes, the Lummi Nation, and the Swinomish In-
3 dian Tribal Community.

4 (7) SPECIAL HOLDING ACCOUNT.—The term
5 “Special Holding Account” means the Puget Sound
6 Shellfish Settlement Special Holding Account estab-
7 lished by this Act.

8 **SEC. 4. APPROVAL OF SETTLEMENT AGREEMENT.**

9 (a) IN GENERAL.—The Settlement Agreement is
10 hereby approved, ratified, and confirmed, and section 6
11 of the Settlement Agreement, Release of Claims, is specifi-
12 cally adopted and incorporated into this Act as if fully set
13 forth herein.

14 (b) AUTHORIZATION FOR IMPLEMENTATION.—The
15 Secretary is hereby authorized to implement the terms and
16 conditions of the Settlement Agreement in accordance
17 with the Settlement Agreement and this Act.

18 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

19 There is authorized to be appropriated the sum of
20 \$23,500,000 to carry out this Act as follows:

21 (1) \$2,000,000 for fiscal year 2007.

22 (2) \$5,000,000 for each of fiscal years 2008
23 through 2010.

24 (3) \$6,500,000 for fiscal year 2011.

1 **SEC. 6. FUND, SPECIAL HOLDING ACCOUNT, AND CONDI-**
2 **TIONS.**

3 (a) PUGET SOUND REGIONAL SHELLFISH SETTLE-
4 MENT TRUST FUND.—

5 (1) There is hereby established in the Treasury
6 of the United States an account to be designated as
7 the “Puget Sound Regional Shellfish Settlement
8 Trust Fund”. The Secretary shall deposit funds in
9 the amount of \$22,000,000 at such time as appro-
10 priated pursuant to section 5 into the Fund.

11 (2) The Fund shall be maintained and invested
12 by the Secretary of the Interior pursuant to the Act
13 of June 24, 1938 as amended (25 U.S.C. 162a)
14 until such time that all monies are transferred from
15 the Fund.

16 (3) The Secretary shall transfer monies held in
17 the Fund to each Tribe of the Tribes in the amounts
18 and manner specified by and in accordance with the
19 payment agreement established pursuant to the Set-
20 tlement Agreement and this Act.

21 (b) PUGET SOUND REGIONAL SHELLFISH SETTLE-
22 MENT SPECIAL HOLDING ACCOUNT.—

23 (1) There is hereby established in the Treasury
24 of the United States a fund to be designated as the
25 “Puget Sound Regional Shellfish Settlement Special
26 Holding Account”. The Secretary shall deposit funds

1 in the amount of \$1,500,000 into the Special Hold-
2 ing Account in fiscal year 2011 at such time as ap-
3 propriated pursuant to section 5.

4 (2) The Special Holding Account shall be main-
5 tained and invested by the Secretary of the Interior
6 pursuant to the Act of June 24, 1938 as amended
7 (25 U.S.C. 162a) until such time that all monies are
8 transferred from the Special Holding Account.

9 (3) If a court of competent jurisdiction renders
10 a final decision declaring that any of the Other
11 Tribes has an established treaty right to take or
12 harvest shellfish in covered tidelands, as that term
13 is defined in the Settlement Agreement, and such
14 tribe opts to accept a share of the Special Holding
15 Account, rather than litigate this claim against the
16 Growers, the Secretary shall transfer the appropriate
17 share of the monies held in the Special Holding Ac-
18 count to each such tribe of the Other Tribes in the
19 amounts appropriate to compensate the Other
20 Tribes in the same manner and for the same pur-
21 poses as the Tribes who are signatory to the Settle-
22 ment Agreement. Such a transfer to a tribe shall
23 constitute full and complete satisfaction of that
24 tribe's claims to shellfish on the covered tidelands.

1 (4) The Secretary may retain such amounts of
2 the Special Holding Account as necessary to provide
3 for additional tribes that may judicially establish
4 their rights to take shellfish in the covered tidelands
5 within the term of that Account, provided that the
6 Secretary pays the remaining balance to the Other
7 Tribes prior to the expiration of the term of the Spe-
8 cial Holding Account.

9 (5) The Tribes shall have no interest,
10 possessory or otherwise, in the Special Holding Ac-
11 count.

12 (6) Twenty years after the deposit of funds into
13 the Special Holding Account, the Secretary shall
14 close the Account and transfer the balance of any
15 funds held in the Special Holding Account at that
16 time to the Treasury. However, the Secretary may
17 continue to maintain the Special Holding Account in
18 order to resolve the claim of an Other Tribe that has
19 notified the Secretary in writing within the 20-year
20 term of that Tribe's interest in resolving its claim in
21 the manner provided for in this Act.

22 (7) It is the intent of Congress that the Other
23 Tribes, if any, shall have the option of agreeing to
24 similar rights and responsibilities as the Tribes that

1 are signatories to the Settlement Agreement, if they
2 opt not to litigate against the Growers.

3 (c) ANNUAL REPORT.—Each tribe of the Tribes, or
4 any of the Other Tribes accepting a settlement of its
5 claims to shellfish on covered lands pursuant to (b)(3),
6 shall submit to the Secretary an annual report that de-
7 scribes all expenditures made with monies withdrawn from
8 the Fund or Special Holding Account during the year cov-
9 ered by the report.

10 (d) JUDICIAL AND ADMINISTRATIVE ACTION.—The
11 Secretary may take judicial or administrative action to en-
12 sure that any monies withdrawn from the Fund or Special
13 Holding Account are used in accordance with the purposes
14 described in the Settlement Agreement and this Act.

15 (e) CLARIFICATION OF TRUST RESPONSIBILITY.—
16 Beginning on the date that monies are transferred to a
17 tribe of the Tribes or a tribe of the Other Tribes pursuant
18 to this Act, any trust responsibility or liability of the
19 United States with respect to the expenditure or invest-
20 ment of the monies withdrawn shall cease.

21 **SEC. 7. STATE OF WASHINGTON PAYMENT.**

22 The Secretary shall not be accountable for nor incur
23 any liability for the collection, deposit, management or
24 nonpayment of the State of Washington payment of

1 \$11,000,000 to the Tribes pursuant to the Settlement
2 Agreement.

3 **SEC. 8. RELEASE OF OTHER TRIBES CLAIMS.**

4 (a) RIGHT TO BRING ACTIONS.—As of the date of
5 enactment of this Act, all right of any Other Tribes to
6 bring an action to enforce or exercise its treaty rights to
7 take shellfish from public and private tidelands in Wash-
8 ington State, including from some lands owned, leased, or
9 otherwise subject to harvest by any and all Growers shall
10 be determined in accordance with the decisions of the
11 Courts of the United States in *United States v. Wash-*
12 *ington*, Civ. No. 9213 (Western District of Washington).

13 (b) CERTAIN RIGHTS GOVERNED BY THIS ACT.—If
14 a tribe falling within the category Other Tribes opts to
15 resolve its claims to take shellfish from covered tidelands
16 owned or leased by the Growers pursuant to section
17 6(b)(3) of this Act, that tribe's rights shall be governed
18 by this Act, as well as by the decisions of the Courts in
19 *United States v. Washington*, Civ. No. 9213.

20 (c) NO BREACH OF TRUST.—Notwithstanding
21 whether the United States has a duty to initiate such an
22 action, the failure or declination by the United States to
23 initiate any action to enforce any Other Tribe(s) treaty
24 rights to take shellfish from public and private tidelands
25 in Washington State, including from covered tidelands

1 owned, leased, or otherwise subject to harvest by any and
2 all Growers shall not constitute a breach of trust by the
3 United States or be compensable to Other Tribes.

4 **SEC. 9. CAUSE OF ACTION.**

5 If any payment by the United States is not paid in
6 the amount or manner specified by this Act, or is not paid
7 within 6 months after the date specified by the Settlement
8 Agreement, such failure shall give rise to a cause of action
9 by the Tribes either individually or collectively against the
10 United States for money damages for the amount author-
11 ized but not paid to the Tribes, and the Tribes, either indi-
12 vidually or collectively, are authorized to bring an action
13 against the United States in the United States Court of
14 Federal Claims for such funds plus interest.

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