

# SKOKOMISH ON-RESERVATION AND TREATY FISHING ORDINANCE

Adopted by Resolution No. 97-015 (February 26, 1997)  
Amended by Resolution No. 97-080A (November 19, 1997)  
Amended by Resolution No. 98-049 (June 17, 1998)  
Amended by Resolution No. 98-069 (August 26, 1998)  
Amended by Resolution No. 09-025 (February 4, 2009)

## TABLE OF CONTENTS

### GENERAL PROVISIONS

7.02.001	Title
7.02.002	Authority and Declaration of Policy
7.02.003	Definitions
7.02.004	Jurisdiction
7.02.005	Liberal Construction
7.02.006	Informal Cross References
7.02.007	Severability

### FISHERIES ADMINISTRATION

7.02.020	General Closure
7.02.021	Treaty Fishing Outside Usual and Accustomed Grounds Prohibited
7.02.022	[Reserved]
7.02.023	Fisheries Manager
7.02.024	Fish Committee Membership and Responsibility
7.02.025	Adoption of Annual Regulations; Emergency Regulations
7.02.026	Delegation to Treaty Council of In-Common Fishery Management
7.02.027	Fishing Areas/Catch Reporting Districts
7.02.028	Special Provisions for On-Reservation Fisheries
7.02.029	Test Fishery

### ELIGIBLE FISHERMEN

7.02.040	Enrolled Members
7.02.041	Non-member Indian Spouses
7.02.042	Minors
7.02.043	Non-Members Fishing Non-Commercially On-Reservation
7.02.044	Biological Personnel
7.02.045	Fishing Vessel Assistance

### REQUIRED IDENTIFICATION AND PERMITS

7.02.050	General Requirements
7.02.051	Tribal Fishing Identification Card
7.02.052	Subsistence and Recreational Fishing
7.02.053	Commercial Fishing and Shellfish Harvesting
7.02.054	Ceremonial Fishing
7.02.055	Damaged or Lost Fishing Permits and Tribal Identification Cards
7.02.056	Fisheries Personnel

### FISHING VESSEL OWNERSHIP AND REGISTRATION

7.02.070	Fishing Vessel Ownership
7.02.071	Fishing Vessel Registration
7.02.072	Use of Tribally Registered Boat by Unauthorized Person

**7.02.073 Use of Purse Seiner Prohibited**

**SPECIFIC GEAR PROVISIONS**

- 7.02.080 Marine Drift Nets**
- 7.02.081 Marine Set Nets**
- 7.02.082 Beach Seines**
- 7.02.083 River Gillnets**
- 7.02.084 Hook and Line - Subsistence and Recreational Fishing**
- 7.02.085 Shellfish - Hand-Held Gear Only**
- 7.02.086 Shellfish Pots**
- 7.02.087 Prohibited Gear and Removal of Gear**
- 7.02.088 Fishery Activities Requiring Artificial Breathing Apparatus**

**CATCH REPORTING AND THE SALE OF FISH**

- 7.02.100 Sale of Fish and Shellfish**
- 7.02.101 Completion of Fish Tickets**
- 7.02.102 Tax on Fish Sold Commercially**
- 7.02.103 Buyer Licensing and Regulating On Reservation Fish Buyer**

**ENFORCEMENT**

- 7.02.110 Fisheries Enforcement Officers**
- 7.02.111 Complaint or Citation to Tribal Court**
- 7.02.112 Arrest**
- 7.02.113 Search and Seizure**

**OFFENSES**

- 7.02.120 General Fishing Violations**
- 7.02.121 Fisheries Enforcement - Related Violations**
- 7.02.122 Identification, Permit and Vessel Registration Violations**
- 7.02.123 Fishing Vessel and Gear Ownership Violations**
- 7.02.124 Fishing Assistant Violations**
- 7.02.125 Minors - Violations**
- 7.02.126 Fish Ticket, Catch Reporting and Sale of Fish Violations**
- 7.02.127 Net Violations**
- 7.02.128 Shellfish Violations**
- 7.02.129 Diving Violations**

**SENTENCING GUIDELINES**

- 7.02.140 Classification of Offenses for Sentencing and Bail**
- 7.02.141 Sentencing Guidelines**
- 7.02.142 Penalties - First Violation, Community Service**
- 7.02.143 Penalties - Second and Subsequent Violations**
- 7.02.144 Bail**

**ADMINISTRATIVE APPEALS PROCEDURE**

- 7.02.150 Appeal from Decision of Fisheries Manager and Fish Committee**
- 7.02.151 Appeal from Final Determination of Fish Committee to Tribal Council**

## General Provisions

### **7.02.001 Title**

This Ordinance shall be known as the Skokomish On-Reservation and Treaty Fishing Ordinance.

### **7.02.002 Authority and Declaration of Policy**

Fishing is central to the cultural and economic existence of the Skokomish Indian Tribe and its members. This On-Reservation and Treaty Fishing Ordinance is enacted pursuant to the inherent sovereign authority of the Skokomish Indian Tribe and applicable federal law. By this Ordinance and the regulations adopted under it, the Skokomish Indian Tribe intends to exercise control over fishing, shellfishing and related activities to the fullest extent of tribal jurisdiction in order to properly regulate, manage and protect all of the fisheries resources available to the Tribe and to insure their continued availability to the Tribe and its members. Nothing in this Ordinance shall be construed as a relinquishment, abrogation or abridgment of any treaty right of the Skokomish Indian Tribe.

### **7.02.003 Definitions**

(a) Where a term is not defined in this Ordinance, it shall be given its ordinary meaning. Words and phrases used in the past, present or future tense shall include the past, present and future tenses; words and phrases used in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders; and words and phrases used in singular or plural shall include the singular and plural, unless the context indicates otherwise.

(b) Terms used in this Ordinance, and regulations adopted under it, shall have the following meaning given to them in this section, except where otherwise specifically defined and unless the context clearly indicates otherwise:

(1) "Accompany" or "Accompanied" means in the immediate physical presence of another person.

(2) "Assist" or "participate" in a tribal fishery or any treaty fishing activity is defined to include:

(A) Any handling of the fishing or shellfishing gear, nets, ropes and lines being used by the member;

(B) Carrying of the fish, shellfish or marine resources caught by the member; or

(C) Engaged in any activity intended to:

(i) Cause or result in fish, shellfish or marine resources being caught by the member; or

(ii) Affect the sale of fish or shell fish, including transporting to the place of initial sale.

(3) "Beach Identification Number" or "BIN" means the six-digit number or other number agreed to by the State of Washington and the Tribe to identify a beach managed for

shellfish harvest by the Skokomish Indian Tribe.

(4) "Beach Seine" means a type of net used to capture fish in near-shore areas by encircling them using a process commonly known as seining.

(5) "Biological Personnel" or "Biologist" means trained biologists and technicians who are employed by the Tribe and/or the Point No Point Treaty Council and/or the Northwest Indian Fisheries Commission and whose duties include advising on the management and/or enhancement of tribal fisheries.

(6) "Buyer" means a person who purchases fish, shellfish or marine resources from the fishermen who caught the fish, shellfish or marine resources or who, for commercial purposes, smokes or otherwise processes and sells fish, shellfish or marine resources he has caught himself.

(7) "Ceremonial Fishing" means the taking of fish, shellfish, or other fishery resources for use in tribal ceremonies, and is exclusive of fishing for subsistence and commercial fishing.

(8) "Crab Pot" is an enclosed trap with at least two escape rings or ports located in the upper half of the trap.

(9) "Commercial Fishing" means fishing, shellfishing, or the taking of any other fishery resource with the intent to sell or profit economically. Commercial fishing does not include:

(A) Barter among Skokomish tribal members;

(B) Subsistence or ceremonial fishing;

(C) "Road sales" for purposes of the fish tax requirements, when conducted in compliance with this Ordinance and regulations adopted under it.

(10) "Depth of Net" means the total distance between cork and lead line measured in meshes perpendicular to either cork or lead line.

(11) "Drift Net" or "pole net" gear means a gillnet which is not staked, anchored or weighted but drifts free.

(12) "Enrolled Member," "Member" or "Enrolled Person" means any person who is an enrolled member of the Skokomish Indian Tribe.

(13) "Exercise Treaty Fishing Rights" and "Exercise Tribal Fishing Rights" include, but are not limited to:

(A) Harvesting, transporting, processing, offering for sale or barter, any fish, shellfish or marine resources purportedly pursuant to treaty fish and shellfish rights; and/or

(B) Traveling to and from such activities, purportedly pursuant to treaty fish and shellfish rights.

- (14) "Fish" means any edible fishery resource including, but not limited to, salmon, steelhead, other anadromous fish, bottomfish, shellfish, etc., and any part thereof.
- (15) "Fish Committee" means the Skokomish Tribal Fish Committee established pursuant to this Ordinance.
- (16) "Fisheries Enforcement Officer" means a person delegated the responsibility of enforcing this Ordinance and the regulations promulgated under it.
- (17) "Fishing" means:
- (A) Attempting to catch, trap, net or otherwise take any fish from its natural habitat by any means whatsoever; and/or
  - (B) Possessing any fish on a fish site after having caught the fish by any means previously described in this definition.
- (18) "Fishing Vessel" or "Vessel" means any boat used to deploy, retrieve or transfer fishing or shellfishing gear or marine products.
- (19) "Fishing Gear" or "Gear" means all types and sizes of hooks, nets, spears, gaffs, lines, traps, rakes, shovels and appliances and other apparatus used to catch, trap, net or otherwise take fish, shellfish or marine resources.
- (20) "Fish Ticket" means the form provided by the State of Washington to licensed fish buyers for recording the sale of all commercial fisheries products.
- (21) "Gaff and Snag Line" means hand-operated gear used to impale fish by pursuing and striking the individual fish with the gear.
- (22) "Gillnet" means a net of web construction bound at the top by a float line and at the bottom by a weight line.
- (23) "Hand Dip Net" means a section of netting distended by a rigid frame, operated by a process commonly recognized as dipping.
- (24) "Head of Household" means any member of the Tribe who is exclusively or substantially responsible for providing his or her own care and maintenance or the care and maintenance of his or her family.
- (25) "Hook-and-Line" or "hand-line" means a single line, attached to which are no more than two single-point hooks or one treble-point hook.
- (26) "Management Period" means the time interval during which the majority of a fish or shellfish species are accessible to capture. A management period is specific to a species and location.
- (27) "Marine Resource" means all marine vegetation and marine life, other than fin fish and shellfish, which inhabit the intertidal and sub-tidal zones of the marine environment and may be utilized by humans for personal, spiritual or commercial purposes.

- (28) "Minor" means a person under the age of eighteen (18) years.
- (29) "Non-Member" means any person who is not an enrolled member of the Skokomish Indian Tribe.
- (30) The term "Person" may be construed to include the United States, any state or territory, any Indian tribe, or any public or private corporation or entity, as well as an individual, but shall not include the Skokomish Indian Tribe as a sovereign entity.
- (31) "Point No Point Treaty Council" or "Treaty Council" means the confederacy of Indian Tribes in the Point No Point Treaty area established for the purpose of unifying management of the tribal fisheries resource in the Point No Point Treaty area.
- (32) "Polluted Beach" or "Polluted Area" means any area closed to shellfish harvest by the Skokomish Indian Tribe because pollution has caused shellfish in the area to become a hazard to human health.
- (33) "Purse Seiner" means a fishing vessel which carries machinery for the power retrieval of seine nets.
- (34) "Reservation" means the Skokomish Indian Reservation established pursuant to the Treaty of Point No Point of January 26, 1855, 12 Stat. 933, and the Executive Order of February 25, 1874.
- (35) "Ring Net" means a type of dip net which may be lowered from a vessel by a rope.
- (36) "Skokomish Indian Tribe" or "Tribe" means the present-day sovereign tribal entity which is the political successor in interest to certain tribes, bands or groups of Indians who were parties to the Treaty of Point No Point.
- (37) "Set Net" means a gillnet which is anchored, tied, stationed, laid in part on shore or whose lead line is so heavily weighted that it cannot drift.
- (38) "Shellfish" means all marine invertebrates or any parts thereof, including, but not limited to, littleneck, manila, horse, butter and geoduck clams; cockles; scallops; squid; octopus; mussels; sea cucumbers; sea urchins; oysters; shrimp; and crab.
- (39) "Shellfishing" means:
- (A) Attempting to catch, trap, net or otherwise take any shellfish from its natural habitat by any means whatsoever; and/or
  - (B) Possessing any shellfish on a shellfish site after having caught the shellfish by any means previously described in this definition.
- (40) "Shrimp Pot" means an enclosed trap made of netting stretched over a rigid frame that incorporates entry tunnels.
- (41) "Stretched Measure" means the distance between the inside of one knot to the outside of the opposite knot on one mesh of netting material. This measurement shall be taken

when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three (3) while under tension.

(42) "Subsistence Fishing" means the taking of fish, shellfish, or other fishery resources for personal consumption by tribal members and their families. Subsistence fish is exclusive of fishing for commercial or ceremonial uses.

(43) "Test Fishery" means a fishery allowed on a limited basis for the purpose of acquiring technical or management information including stock strength, timing, species or stock composition, gear selectivity, exploitation rate, and enhancement possibilities.

(44) "Tribal Council" means the duly constituted governing body of the Skokomish Indian Tribe delegated authority by the Skokomish General Council to conduct and regulate the business of and act on behalf of the Skokomish Indian Tribe.

(45) "Tribal Court" means the Skokomish Tribal Court or any court established by the Tribe or Point No Point Treaty Council to adjudicate violations of this Ordinance and regulations promulgated under it.

(46) "Tribal Fisherman" means any person, whether or not a member of the Tribe, who is exercising any tribal fishing or shellfishing rights or who is assisting in the exercise of such rights pursuant to tribal authorization.

(47) "Troll Gear" means a series of fishing lines attached to a fishing vessel which are retrievable either manually or hydraulically.

(48) "*U.S. v. Washington*" means the decision of the U.S. District Court *United States v. State of Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), aff'd 520 F.2d 676 (9th Cir. 1975) cert. denied 423 U.S. 108 and all applicable post-trial orders and proceedings.

(49) "Usual and Accustomed Fishing Grounds" or "U&A" means all waters of Hood Canal south of a line connecting Olele Point and Foulweather Bluff, and all freshwater streams draining into Hood Canal and all water bodies in the Hood Canal Watershed drainage.

## **7.02.004 Jurisdiction**

### (a) Territory.

The provisions of this Ordinance and all rules and regulations adopted under it shall apply to the fullest extent of the sovereign jurisdiction of the Skokomish Indian Tribe authorized by the Constitution of the Skokomish Indian Tribe, the Treaty of Point No Point and applicable federal law. The provisions of this Ordinance shall apply to and be in conformity with all agreements and other cooperative arrangements entered into by the Skokomish Indian Tribe designed to provide tribal access to available fisheries and to provide effective fisheries management in the Point No Point Treaty area.

### (b) Persons.

The provisions of this Ordinance and all rules and regulations adopted under it shall apply to all

persons who are eligible to fish under this Ordinance, all persons who claim to be exercising fishing rights secured to the Skokomish Indian Tribe by the Treaty of Point No Point or other applicable treaties or agreements, and to all persons fishing within the exterior boundaries of the Skokomish Reservation.

**7.02.005 Liberal Construction**

This Ordinance shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

**7.02.006 Informal Cross References**

Cross reference notations found within the body of the Ordinance are designed to assist people using the Ordinance and are informational only. Cross referencing a provision to an offense section or the failure to do so does not carry any legal effect.

**7.02.007 Severability**

If any provision of this Ordinance, or its application to any person, legal entity or circumstance, is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

**Fisheries Administration**

**7.02.020 General Closure**

The waters and beaches of the Skokomish Reservation and all waters and beaches off-Reservation fished by the Skokomish Indian Tribe are closed to the taking of fish, shellfish and other marine resources unless specifically opened by this Ordinance or by regulations adopted under it.

[Cross reference: Section 7.02.120(b) - Fishing in a Closed Area is a Class A offense]

**7.02.021 Treaty Fishing Outside Usual and Accustomed Grounds Prohibited**

No tribal member shall attempt to exercise the treaty fishing rights of the Skokomish Indian Tribe in any area which is outside the usual and accustomed fishing grounds of the Skokomish Indian Tribe except where formally invited.

[Cross reference: Section 7.02.120(a) - Fishing Outside the Usual and Accustomed Fishing Grounds is a Class A offense]

**7.02.022 [Reserved]**

**7.02.023 Fisheries Manager**

(a) The Skokomish Fisheries Manager shall be an employee of the Skokomish Department of Natural Resources.

(b) The Fisheries Manager shall have the following duties and responsibilities:

- (1) Managing the Skokomish Tribal Fishery and coordinating the management of the Tribal Fishery with the Point No Point Treaty Council staff;
  - (2) Promulgating fishing regulations for review by the Skokomish Fish Committee and approval by the Tribal Council; and
  - (3) Directing the fisheries enhancement effort of the Skokomish Indian Tribe.
- (c) The Skokomish Fisheries Manager shall carry out any other duties delegated to him by this Ordinance or by the Tribal Council.

#### **7.02.024 Fish Committee Membership and Responsibility**

(a) Role of Fish Committee.

The Fish Committee shall act in a regulatory and advisory capacity to the Fisheries Manager, the Tribal Council, and the Treaty Council, and shall carry out any other fisheries related duties assigned to it by the Tribal Council or this Ordinance. Issues which may be addressed by the Fish Committee include:

- (1) Recommending the times when and places where the taking of fish, shellfish and other marine resources is lawful, with preference to ceremonial and subsistence fishing;
- (2) Recommending and defining the types, sizes and other characteristics of fishing gear not already defined in this Ordinance;
- (3) Recommending the time, place and manner in which it will be lawful to use any fishing gear;
- (4) Recommending additional requirements and conditions of the issuance and use of tribal fishing permits; and
- (5) Regulating all other aspects of the Tribal fishery which the Tribal Council refers to the Fish Committee.

#### **7.02.025 Adoption of Annual Regulations; Emergency Regulations**

(a) Proposed Annual Regulations.

The Fisheries Manager shall prepare or direct the preparation of proposed annual regulations for each species of fish, shellfish and other marine resources to be managed by the Tribe for its fishermen. These proposed regulations shall cover all aspects of tribal fishing consistent with this Ordinance and the requirements of *U.S. v. Washington*. In preparing the proposed regulations, the Fisheries Manager shall:

- (1) Consider all recommendations made to him by the Tribal Council, the Fish Committee, tribal and Treaty Council biologists and other interested parties;
- (2) Submit the proposed annual regulations to the Fish Committee for review and recommendation to the Tribal Council; and

(3) Submit the proposed annual regulations to the Tribal Council with a written resolution approving and authorizing the adoption of the annual regulations to be effective on dates specified therein.

(b) Emergency Regulations.

The Fisheries Manager shall have the power to make emergency changes in the annual regulations to insure proper management and conservation of the fisheries resource. The power to make emergency changes in annual regulations includes the power to close a tribal fishery when in his judgment the closure is necessary to meet conservation or allocation needs.

(1) Good Faith Requirement.

Emergency action pursuant to this section shall not occur until the Fisheries Manager has made a good faith effort to consult with the Fish Committee and a tribal biologist or a Treaty Council biologist about the action.

(2) Effective Date.

Emergency regulations issued by the Fisheries Manager shall be effective and enforceable when they are issued or according to their terms and shall remain effective until specifically modified or rescinded by the Fisheries Manager or the Tribal Council. No penalty shall be imposed for violations of an emergency regulation unless twenty-four (24) hours have passed since it was issued and posted, or unless there has been personal written or oral notice of the regulation given to the fisherman by Fisheries Enforcement or Fisheries Management staff, whichever occurs first.

(3) Tribal Council Authority.

The Tribal Council shall at all times retain the right to modify or rescind any or all emergency regulations issued by the Fisheries Manager.

(c) Notice of Regulations:

(1) Notice for *U.S. v. Washington* Species.

Regulations shall be provided to the parties in *U.S. v. Washington* according to the time schedule and for those species specified in the applicable orders entered in *U.S. v. Washington*.

(2) Notice for Other Species.

Regulations regarding species not adjudicated under *U.S. v. Washington* shall be provided to the Tribal Council and appropriate outside agencies.

(3) Notice to Tribal Council.

Copies of all fishing regulations shall be provided to the Tribal Council within a reasonable time.

(4) Posting of Notice of Adopted Regulations.

Copies of all adopted regulations, including emergency regulations, shall be prominently posted within the Reservation and shall be available to Tribal members upon request.

**7.02.026 Delegation to Treaty Council of In-Common Fishery Management**

(a) Power to Delegate Management of In-Common Fishery to Treaty Council.

The Skokomish Tribal Council has the power to delegate to the Treaty Council, by resolution and through the Point No Point Treaty Council Intertribal Fisheries Management Compact, the authority to manage fishing areas the Tribe has in-common with other members of the Treaty Council and the authority to negotiate in-common regulations with tribes which are not members of the Treaty Council.

(b) Tribal Council Review of Regulations Proposed by Treaty Council.

Regulations proposed by the Treaty Council on behalf of the Tribe shall be subject to the same procedural and review provisions as the regulations proposed and promulgated by the Fisheries Manager, including the right of the Tribal Council to reject or modify any regulations proposed by the Treaty Council.

**7.02.027 Fishing Areas/Catch Reporting Districts**

Annual and emergency fishing regulations may refer to marine areas by area ordinance numbers. The waters represented by these numbers shall be described in the most current State of Washington regulations establishing Puget Sound Commercial Salmon Management and Catch Reporting Areas, as appropriate. Freshwater fishing areas shall be referred to in the regulations by the number ordinance and the name of the stream, river or lake. Beach or other area descriptions for shellfish harvest may be made by reference to those designated by the Washington Department of Fisheries and Wildlife or other beach or area descriptions and maps prepared by the Fisheries Manager.

**7.02.028 Special Provisions for On - Reservation Fisheries**

(a) Special On-Reservation Net Fishing Regulations:

(1) The Fisheries Manager shall prepare or direct the preparation of the regulations regarding net fishing on the Reservation. In preparing the proposed net fishing regulations, the Fisheries Manager shall:

(A) Consider all recommendations made to him by the Tribal Council, the Fish Committee, tribal and Treaty Council biologists, and other interested parties;

(B) Submit the proposed regulations to the Fish Committee for review and recommendation to the Tribal Council; and

(C) Submit the proposed regulations to the Tribal Council with a written resolution approving and authorizing the adoption of the regulations to the Tribal Council with a written resolution approving and authorizing the adoption of the regulations to be effective on dates specified therein.

(2) Establishment of Fishing Locations.

The Fish Committee shall prepare and recommend for approval by the Tribal Council a list of fishing locations at appropriate places along the Skokomish River and other rivers and streams within the usual and accustomed fishing grounds and a list of enrolled tribal members assigned to such fishing locations:

(A) The locations shall be at intervals established in compliance with Section 7.02.083 of this Ordinance.

(B) Only one enrolled member shall be assigned to each fishing location. An enrolled member assigned to a fishing location may enter into an agreement with another enrolled member to fish the location as a partnership; PROVIDED that such agreement is in writing and filed with the fisheries manager. Under no circumstances may an enrolled member assigned to a fishing location sell, convey, or pledge such assigned fishing location.

(C) An enrolled member assigned to a fishing location shall not use more than one set net at a time at that location. No person shall use more than one set net and one drift net or two set nets in the river at the same time.

(3) Abandonment of Fishing Location.

A fishing site shall be considered abandoned if it is not fished for a period of one year.

(A) Any tribal member wishing to be assigned an abandoned fishing location shall apply in writing to the Fish Committee.

(B) The Fish Committee shall designate and recommend for approval by the Tribal Council a successor to the abandoned fishing location.

(c) An abandoned fishing location shall not be fished until properly reassigned to a tribal member pursuant to this section

(4) Relinquishment of Fishing Location.

(A) Voluntary Relinquishment:

-  
A fishing location may be relinquished upon written notification to the Fish Committee by an enrolled member assigned to the fishing location of their intent to relinquish.

(i) The written notification may designate a successor to the fishing location, PROVIDED such designee is a member of the family and is an enrolled tribal member who has not already been assigned a separate fishing location or is willing to relinquish the separate fishing location.

(ii) If no person is designated within the written notification, any tribal member wishing to be assigned a relinquished fishing location shall apply in writing to the Fish Committee. The Fish Committee shall designate and recommend for approval by the Tribal Council a successor to the

relinquished fishing location. Preference for reassigning a relinquished fishing location shall be given to a member of the family, if the family member is an enrolled tribal member who has not already been assigned a separate fishing location or is willing to relinquish the separate fishing location.

(B) Relinquishment upon Death.

A fishing location shall be relinquished upon the death of an enrolled member assigned to the fishing location.

(i) An enrolled member assigned to a fishing location may designate in writing an heir to the fishing location, PROVIDED such heir is a member of the family and is an enrolled tribal member who has not already been assigned a separate fishing location or is willing to relinquish the separate fishing location.

(ii) If no person is designated as an heir, any tribal member wishing to be assigned a relinquished fishing location shall apply in writing to the Fish Committee. The Fish Committee shall designate and recommend for approval by the Tribal Council a successor to the relinquished fishing location. Preference for reassigning a relinquished fishing location shall be given to a member of the family, if the family member is an enrolled tribal member who has not already been assigned a separate fishing location or is willing to relinquish the separate fishing location.

(C) A relinquished fishing location shall not be fished until properly reassigned to a tribal member pursuant to this section.

[Cross reference: Section 7.02.127(d)(2) - Violation of Special On-Reservation Net Fishing Regulations is a Class C offense]

(b) Area Closure.

No gillnet may be operated in that part of Area 12C south of a straight line drawn between the Tacoma City Light Powerhouse to Nalley's Slough, except by tribal fisheries staff for the benefit of the Tribe.

[Cross reference: Section 7.02.120(b) - Fishing in a Closed Area is a Class A offense]

(c) Hatchery Facilities.

No person shall take, attempt to take or harass any salmon species from any tribal, state, federal or tribally recognized private hatchery facility.

[Cross reference: Section 7.02.120(f) - Taking Fish from Hatcheries and Closed Areas is a Class A offense]

**7.02.029 Test Fishery**

(a) Decision to Conduct Test Fishery.

The Fisheries Manager shall have the power to authorize a test fishery when in his or her professional opinion such a fishery is justified. The Fisheries Manager shall determine the type and amount of gear to be used and the time period and fishing area for the test fishery. There shall be no test fishery other than as directed by the Fisheries Manager and/or the Treaty Council. Other affected management entities shall be given reasonable notice of proposed test fisheries.

(b) Who May Conduct Test Fishery; Use of Proceeds.

Only the Tribe or the Treaty Council may conduct a test fishery. Fish, shellfish or marine resources taken in test fisheries are the property of the Tribe or Treaty Council, whichever conducts the test fishery. All proceeds from the sale of fish, shellfish or marine resources caught in test fisheries shall be remitted to the Tribe or Treaty Council, as appropriate.

(c) Selection of Participants in Test Fishery.

In order to participate in a test fishery, a fisherman shall meet the following requirements:

(1) The fisherman shall be an enrolled member of the Skokomish Indian Tribe or other member of the tribe of the Point No Point Treaty Council who is eligible to participate in said Tribe's fishery. Any staff member employed by the Tribe may be present at the test fishery to collect data.

(2) The fisherman shall be experienced in the use of the selected test gear type in the selected test fishing area. In the case of test fisheries which require vessel-deployed drift nets, only those fishermen who have successfully operated their vessel and gear in the most recent regular fishery prior to the test fishery shall be eligible to participate in the test fishery.

(3) The fisherman shall agree to record and provide to the Fisheries Manager all the information regarding the test fishery requested by the Fisheries Manager.

(4) In the event that more than the number of eligible fishermen necessary for a specific test fishery are interested in participating in the test fishery, the participants shall be chosen by a fair drawing conducted by the Fisheries Manager. Participation in the test fishery shall be according to the order established in the drawing for that test fishery. If the test fishery continues long enough for all of the interested fishermen to participate in it once, then the participation of fishermen shall continue by rotating through the order established by the drawing. A fisherman who becomes interested and eligible to participate in an on-going test fishery after the drawing has been held shall be assigned a place at the end of the rotation list established by the drawing. "At the end of the rotation list" shall mean after the last person on the participation schedule as it stands on the day the new fisherman begins participation in the test fishery.

(5) When a selected test fisherman withdraws or is disqualified from participating in the test fishery, the next fisherman on the list shall be designated as his or her replacement. Test fishermen shall not exchange their position on the list before the test fishery begins without the approval of the Fisheries Manager. No exchange of positions shall be made after the test fishery begins.

(6) In the event that a test fishery continues for an extended period of time, with the

result that some fishermen have repeatedly participated in it, fishermen who are ineligible to participate because their gear or experience is inadequate may indicate to the Fisheries Manager their desire to be an assistant in the test fishery. The Fisheries Manager may require the test fisherman to select a new assistant each time the test fisherman participates again in that test fishery.

(7) The test fisherman must agree to participate in the test fishery for the amount of compensation provided for within this section.

(8) In the event that no member fisherman possesses the type of gear necessary to conduct a test fishery, a non-member may be hired to fish in a test fishery. It is the Fishery Manager's responsibility to determine if any member fisherman possesses the necessary gear.

(d) Sale of Test Fishery Fish.

Fish, shellfish or marine resources taken in test fisheries shall be sold only on a Test Fishery Card, and not on the individual test fisherman's Tribal Fishing Identification Card.

[Cross reference: Section 7.02.126(i) - Sale of Fish Without Proper Permits, Cards, Identification and Registrations is a Class B offense]

(e) Compliance with Test Fishery Requirements.

Test fishermen shall strictly obey the gear, time, area and reporting requirements of the test fishing program. Failure to comply with the reporting requirements or the gear, time and area restrictions of the test fishing program shall constitute withdrawal from the program, and is a violation of this Ordinance.

[Cross reference: Section 7.02.120(c) - Unauthorized Test Fishery is a Class B offense]

(f) Compensation of Test Fishermen.

The Fisheries Manager shall determine compensation for test fishermen at the time of authorization of the test fishery and in compliance with existing tribal contractual procedures. Any compensation is conditioned on compliance with all applicable reporting requirements.

(g) Test Fishery Catch exempt from Tax.

The Tribal Fish Tax shall not be applied to the sale of fish or shellfish caught in test fisheries.

### **Eligible Fishermen**

#### **7.02.040 Enrolled Members**

Enrolled members of the Skokomish Indian Tribe are eligible to exercise treaty fishing rights, but only in accordance with this Ordinance and applicable regulations.

#### **7.02.041 Non-member Indian Spouses**

(a) Non-member Indian Spouses Are Eligible to Exercise Skokomish Tribal Fishing Rights.

Non-member Indian spouses of enrolled Skokomish Tribal members are eligible to exercise Skokomish tribal fishing rights, PROVIDED that:

(1) The member spouse must accompany the non-member Indian spouse while exercising tribal fishing rights outside the boundaries of the Skokomish Reservation;

(2) The non-member spouse must sign an annual written agreement containing the following;

(A) A voluntary and knowing relinquishment of the commercial treaty fishing rights from his or her Tribe;

(B) An unconditional promise to adhere to all Skokomish Tribal Ordinances and regulations; and

(C) Consent to the jurisdiction of the Skokomish Tribal Court if cited for a violation of this Ordinance, any regulations promulgated pursuant to this Ordinance, or any other law of the Skokomish Indian Tribe.

(b) Definition of Indian.

For purposes of this section, non-member Indian spouses must be enrolled members of a federally recognized Indian tribe; EXCEPT non-member Indian spouses who are not enrolled members of a federally recognized Indian tribe, but who have exercised Skokomish tribal fishing rights prior to the enactment of this code, may continue to exercise those rights.

(c) Definition of Spouse.

For purposes of this section, a "spouse" includes any person who is considered to be married under the laws of the Skokomish Indian Tribe or the State of Washington.

(d) Divorce or Separation.

A non-member Indian spouse loses the right to exercise Skokomish tribal fishing rights at the time of divorce or separation from the member spouse. The determination of whether the enrolled member and the non member Indian spouse are separated resulting in the loss of Skokomish treaty fishing rights shall be made by the Fish Committee.

[Cross reference: Section 7.02.120(1) - Non-Member Fishing Without Authorization is a Civil infraction; Section 7.02.024(a) - Allowing Non-Members to Participate or Assist in Tribal Fishing is a Class A offense]

**7.02.042 Minors**

(a) Minors Commercial Fishing.

Tribal members who are between the ages of 12 years old and 18 years old are eligible to exercise treaty fishing and shellfishing rights for commercial purposes, in accordance with the requirements of this section, PROVIDED he or she meets one of the following three

circumstances:

- (1) The minor is accompanied by an adult member of the Tribe;
- (2) The minor is a head of household. The determination of whether a person is the head of household to exercise treaty fishing rights shall be made by the Fish Committee prior to that person fishing; or
- (3) The minor has been exempted from the restrictions places on minors upon a showing of extreme hardship. The determination of whether there is a showing of extreme hardship sufficient to allow a minor to be exempt from the sections of this Ordinance pertaining to minors shall be made by the Fish Committee prior to that person fishing.

[Cross reference: Section 7.02.125(a) - Minors Not Accompanied by Adult is a Class D offense]

(b) Minors Subsistence Fishing.

Tribal members who are under the age of 18 years old may exercise treaty fishing and shellfishing rights for subsistence purposes in accordance with the requirements of Section 7.02.052, PROVIDED:

- (1) In the exercise of fishing rights for subsistence purposes, a minor may only fish with hook and line as defined within this Ordinance; and
- (2) In the exercise of shellfishing rights for subsistence purposes, a minor must be accompanied by an adult member and may only assist such adult member.

(c) Time Restrictions.

All minors authorized to fish, shellfish or harvest marine resources under this Ordinance shall be subject to the provisions of this Ordinance, all applicable regulations and the following time restrictions:

- (1) No minor shall fish earlier than 5:00 p.m. on a regularly scheduled school day;
- (2) No minor shall fish later than 10:00 p.m. on any day immediately preceding a regularly scheduled school day;
- (3) For purposes of this section, "regularly scheduled school day" means Monday through Friday, except scheduled school vacations or holidays; and
- (4) The time restrictions in this section shall not apply if prior to fishing:
  - (A) The minor's parent or legal guardian has requested a written waiver, approved by the Fish Committee, allowing the minor to fish, shellfish, or harvest marine resources during the restricted time;
  - (B) The Fish Committee has determined that the minor is a head of household pursuant to Section 7.02.042(a)(2);
  - (C) The minor has been exempted from the restrictions placed on minors upon a

showing the extreme hardship pursuant to § 7.02.042(a)(3); or

(D) The minor has graduated from high school and has requested a written waiver, approved by the Fish Committee, allowing the minor to fish, shellfish, or harvest marine resources during the restricted time.

[Cross reference: Section 7.02.125(b) - violation of Time of Day Restrictions is a Class D offense]

(d) Parental Responsibility for Minor and Required Consent.

It is the duty of the parent or legal guardian of any minor who is to exercise treaty fishing rights pursuant to this section to insure compliance with this Ordinance. No minor shall be issued a tribal Identification Card unless:

- (1) The minor obtains the written and signed consent of his or her parent or legal guardian;
- (2) The consent clearly indicates the duty of the parent or legal guardian to insure compliance with this section;
- (3) Both a parent or legal guardian who permits a minor to violate this section and the minor violating this section shall be subject to the penalties provided by this Ordinance; and
- (4) This subsection shall not apply when the Fish Committee has determined that the minor is the head of a household.

[Cross reference: Section 7.02.125(c) - Allowing a Minor to Fish Contrary to Fishing Ordinance is a Class D offense]

**7.02.043 Non-Members Fishing Non-Commercially On-Reservation**

(a) Special Permit Required.

A non-member (including a non-member spouse) may have the privilege of fishing non-commercially by hook and line on the Reservation if he or she has obtained a special fishing permit from the Skokomish Indian Tribe through the Skokomish Fisheries Office. Non-members fishing on-Reservation shall comply with this Ordinance, all applicable regulations and restrictions contained within the special fishing permit.

(b) Written Agreement Required.

The non-member must sign a written agreement containing the following:

- (1) An unconditional promise to adhere to all Skokomish Tribal ordinances and regulations; and
- (2) Consent to the jurisdiction of the Skokomish Tribal Court if cited for a violation of this Ordinance, any regulations promulgated pursuant to this Ordinance, or any other laws of the Skokomish Indian Tribe.

[Cross reference: Section 7.02.120(1) - Non-member Fishing Without Authorization is a Civil infraction]

#### **7.02.044 Biological Personnel**

(a) Approved Scientific, Management and/or Enhancement Purposes.

Biological personnel of the Skokomish Indian Tribe, The Point No Point Treaty Council and the Northwest Indian Fish Commission may take and possess fish and shellfish of all species and other marine resource for approved scientific management and/or enhancement purposes by any means or gear suitable for the purpose of the biological program.

(b) Cumulative Record Required.

Biological personnel taking fish, shellfish or marine resources under the authority of this Ordinance shall keep a cumulative record of all fish taken and shall produce it for inspection upon request by the Fisheries Manager or fisheries enforcement officer. Fish, shellfish and other marine resources taken by biological personnel shall not be sold or used for personal gain of the biological personnel, but shall remain the property of the Tribe or the Treaty Council.

(c) Grounds for Immediate Dismissal.

Any attempt by biological personnel to circumvent this section or abuse the privileges granted herein shall be grounds for immediate dismissal from employment with the Tribe and/or the Treaty Council.

#### **7.02.045 Fishing Vessel Assistance**

(a) Assistance from Non-Members Prohibited.

A member of the Skokomish Indian Tribe shall not allow any non-member not otherwise authorized by this Ordinance to assist in any treaty fishing activity.

[Cross reference: Section 7.02.124(a) - Allowing Non-Members to Participate or Assist in Tribal Fishing is a Class A offense]

(b) Non-Members Aboard Fishing Vessel Prohibited.

A member of the Skokomish Indian Tribe shall not allow any non-enrolled person not otherwise authorized pursuant to this Ordinance to be present aboard any fishing vessel being used in the exercise of treaty fishing rights of the Skokomish Indian Tribe.

[Cross reference: Section 7.02.124(b) - Allowing Non-Members to be Aboard Vessel While Fishing is a Class B offense]

(c) Assistance from Members of Point No Point Treaty Tribes Authorized - Limitations.

An enrolled member of the Skokomish Indian Tribe operating a vessel registered pursuant to this Ordinance may hire an enrolled member of the Lower Elwha S'Klallam Tribe, the Jamestown S'Klallam Tribe, or the Port Gamble S'Klallam Tribe as an assistant aboard his or her fishing

vessel provided:

(1) The vessel is being fished in an area which is within the usual and accustomed fishing areas of both the Skokomish Indian Tribe and the assistant's tribe. PROVIDED such joint arrangements are not lawful within the Skokomish Indian Tribe's exclusive harvest-use areas, as defined in the Point No Point Treaty Council Constitution and Off-Reservation Fisheries Management Compact; and

(2) The assistant has in his or her possession valid identification showing membership in and current eligibility to exercise the treaty fishing rights of the Lower Elwha S'Klallam Tribe, the Jamestown S'Klallam Tribe, or the Port Gamble S'Klallam Tribe; and

(3) Any of the fish, shellfish or marine resources which are caught from the vessel are sold by the Skokomish member operating the vessel, and he or she uses the embossed Tribal Fishing Identification Card provided to him or her for this purpose.

(d) Skokomish Members Employed As Assistants - Requirements.

It shall be lawful for a member of the Skokomish Indian Tribe to be employed as an assistant on a fishing vessel legally owned, operated and/or licensed by a member of another Point No Point Treaty Area Tribe which possesses treaty fishing rights pursuant to *U.S. v. Washington* provided:

(1) The said vessel is being legally fished within the usual and accustomed fishing area of both the Skokomish Indian Tribe and the owner/operator's tribe; and

(2) That the owner/operator is aboard the vessel while it is being fished.

[Cross reference: Section 7.02.124(c) - Violation of Prohibitions for Members Employed as Assistants is a Class B offense]

(e) Assistance Aboard Non-Members' Fishing Vessels - Restrictions.

Any member of the Skokomish Indian Tribe employed as an assistant aboard a non-member's fishing vessel shall not use any cards or permits issued by the Tribe or Treaty Council to sell any fish, shellfish or marine resources caught by said vessel, or to allow the sale of any fish, shellfish or marine resources caught by said vessel to be recorded as caught by a member of the Skokomish Indian Tribe.

[Cross reference: Section 7.02.126(g) - Members Selling Fish While on Non-Member Fishing Vessels is a Class A offense]

### **Required Identification and Permits**

#### **7.02.050 General Requirements**

(a) Identification and Permits Required.

Any person eligible to fish under Sections 7.02.040 through 7.02.045 of this Ordinance who exercises any treaty fishing (including shellfishing) right or engages in the sale of fish, shellfish or marine resources shall possess current valid identification and permits as provided in this section

and applicable regulations. All identification cards and permit documents shall be issued by the Tribe or Treaty Council and shall remain the property of the Skokomish Indian Tribe and shall be returned to the Tribe upon order of the Tribal Court or as otherwise provided in this Ordinance.

[Cross reference: Section 7.02.122(a) - Fishing Without Obtaining Identification and Permit is a Class B offense; Section 7.02.122(b) - Fishing without Identification and Permits in Possession is a Class D offense]

(b) Transfer of Permit or Identification Prohibited.

No person shall transfer any permit or identification issued to him or her under this Ordinance to another person for the purposes of allowing the transferee to engage in a treaty fishery.

[Cross reference: Section 7.02.122(d) - Unauthorized Transfer of Permit or Identification is a Class B offense]

(c) Examination of Identification and Permits by Law Enforcement.

Any person purporting to exercise tribal fishing or shellfishing rights shall produce for examination the applicable identification cards and fishing permits required by this Ordinance upon demand of any tribal, state, or federal law enforcement officer. Failure to produce the required forms of identification shall be probable cause to believe that such person is not authorized to exercise tribal fishing or shellfishing rights.

[Cross reference: Section 7.02.122(c) - Failure to Produce Identification and Permits to Law Enforcement Officers is a Class D offense]

## **7.02.051 Tribal Fishing Identification Card**

Any person who exercises Skokomish Tribal fishing or shellfishing rights must have in their possession a valid Tribal Fishing Identification Card which shall be an embossed identification card issued by the Skokomish Tribal Fisheries Department for the purpose of identifying the holder as a member of the Skokomish Indian Tribe and eligible to fish or shellfish. The card shall show the Bureau of Indian Affairs (B.I.A.) number of the card holder, his or her photograph and tribal affiliation, and any other information which the Tribal Council may require.

[Cross reference: Section 7.02.122(a) - Fishing Without Obtaining Identification and Permit is a Class B offense; Section 7.02.122(b) - Fishing without Identification and Permits in Possession is a Class D offense]

## **7.02.052 Subsistence and Recreational Fishing**

(a) Tribal Fishing Identification Card Required.

Members fishing or shellfishing for subsistence or recreational purposes must have on their person a Tribal Fishing Identification Card as provided in Section 7.02.051 and a subsistence catch reporting card. A Commercial Fishing Permit is not required.

[Cross reference: Section 7.02.122(a) - Fishing Without Obtaining Identification and Permit is a Class B offense; Section 7.02.122(b) - Fishing without Identification and Permits in Possession is a Class D offense]

(b) Subsistence/Catch Reporting Cards.

Each time a fisherman catches fish and shellfish for non-commercial purposes he or she shall complete a Subsistence/Catch Reporting Card. The Subsistence Catch Reporting Card shall be issued free of charge by the Skokomish Tribal Fisheries Department. The fisherman shall record his or her catch at the time of catch and must return the card to the Tribal Fisheries Department within the time period specified by the Fisheries Manager for each species. A new card will not be issued until previously issued cards have been returned.

[Cross reference: Section 7.02.126(e) - Failure to Fill Out and Return Subsistence/Catch Cards is a Class D offense]

(c) Subsistence Catch Limits.

If necessary, subsistence catch limits may be set by regulation promulgated by the Fisheries Manager and approved by the Fish Committee.

**7.02.053 Commercial Fishing and Shellfish Harvesting**

(a) Commercial Fishing and Shellfish Harvesting.

- Any person eligible to fish pursuant to this Ordinance, who fishes or harvests shellfish for commercial purposes or fishes with nets of any kind for any purpose, must have a Tribal Fishing Identification Card as provided in Section 7.02.051 and a Commercial Fishing Permit as provided in subsection (b) below and other permits required by this section.

[Cross reference: Section 7.02.122(b) - Fishing without Identification and Permits in Possession is a Class D offense]

(b) Commercial Fishing Permit.

- Any person eligible to fish pursuant to this Ordinance, who fishes, shellfishes or harvests marine resources commercially or who fishes with a net of any kind for any purpose, shall obtain an annual tribal Commercial Fishing Permit from the Skokomish Tribal Fisheries Department, which may be in the form of a sticker which shall be attached to the fisherman's Tribal Fishing Identification Card. All such permits shall be non-transferable and shall expire on April 30 of each year.

[Cross reference: Section 7.02.122(a) - Fishing Without Obtaining Identification and Permit is a Class B offense; Section 7.02.122(d) - Unauthorized Transfer of Permit for Identification is a Class B offense]

(c) Fish Tax and Fines to be Paid Prior to Issuance of Permits.

- A Commercial Fishing Permit shall not be issued to an otherwise eligible fisherman for a given year unless and until:

- (1) The fisherman has paid all tribal fish and shellfish taxes due; and
- (2) The fisherman has paid all tribal fines in full or fishing violations levied during the

previous seasons; and

(3) Provided there is no Tribal Court to order prohibiting the issuance of the permit.

(d) Permit Fees.

A mandatory license fee shall be paid prior to the issuance of a Commercial Fishing Permit. The Fisheries Manager and Fish Committee shall propose the amount of the license fee within the annual regulations and the amount shall be subject to the final approval of the Tribal Council.

#### **7.02.054 Ceremonial Fishing**

(a) Ceremonial Fishing.

Only enrolled members of the Skokomish Indian Tribe shall exercise ceremonial fishing rights. Members fishing or shellfishing for ceremonial purposes shall have a Tribal Fishing Identification Card as provided in Section 7.02.051 and a Ceremonial Permit as provided in subsection (b) below. Each ceremonial fisherman shall report his or her ceremonial catch to the Fisheries Manager within the time period specified on the ceremonial permit.

[Cross reference: Section 7.02.122(b) - Fishing without Identification and Permits in Possession is a Class D offense]

(b) Ceremonial Fishing Permits.

Members of the Skokomish Indian Tribe may gather fish and shellfish for ceremonial purposes if they first obtain a Ceremonial Fishing Permit issued by the Skokomish Tribal Fisheries Department for that purpose. Ceremonial fishing shall be done in accordance with the conditions stated on the permit and in the appropriate ceremonial fishing regulation.

[Cross reference: Section 7.02.122(a) - Fishing Without Obtaining Identification and Permit is a Class B offense]

#### **7.02.055 Damaged or Lost Fishing Permits and Tribal Identification Cards**

(a) Damaged Permits or Cards.

If a Fishing Permit or Tribal Identification Card is damaged, the fisherman must present the damaged card for a free replacement.

(b) Lost Permits of Cards.

If a Fishing Permit or Tribal Identification Card is lost, the first replacement is free of charge. If a fisherman loses a second permit or card during the fishing year, the replacement shall be \$5.00. A third replacement shall be \$10.00. The fourth replacement shall be \$15.00, and each subsequent loss shall increase by \$5.00.

#### **7.02.056 Fisheries Personnel**

(a) Biological Personnel Identification Card.

The Biological Personnel Identification Card shall be issued by the Skokomish Tribal Fisheries Department to those biological personnel employed by the Tribe or Treaty Council who are authorized to take and possess fish, shellfish and other marine resources as may be required in the performance of his or her duties.

(b) Test Fishery Card.

The Test Fishery Card shall be an embossed card which shall be used for recording the sale of fish, shellfish or marine resources taken in test fisheries conducted pursuant to this Ordinance. Control of the use and possession of the Test Fishery Card shall be the responsibility of the Fisheries Manager.

(c) Tribal Fishery Card.

The Tribal Fishery shall be an embossed card which shall be used for recording the sale of fish, shellfish and other marine resources taken in fisheries specifically conducted on behalf of and for the benefit of the Tribe or Treaty Council. No such fishery shall occur except as specifically authorized by appropriate regulations issued pursuant to this Ordinance. Control of the use and possession of the Tribal Fishery Card shall be the responsibility of the Fisheries Manager.

(d) Hatchery Sale Card.

The Hatchery Sale Card shall be an embossed card which shall be used to record the sale of surplus or spawned fish taken at tribal enhancement facilities. Control of the use and possession of the Hatchery Sale Card shall be the responsibility of the Fisheries Manager.

(e) Patrol Confiscation Card.

The Patrol Confiscation Card shall be an embossed card which shall be used to record the sale of fish confiscated under authority of this Ordinance. Control of the use and possession of the Patrol Confiscation Card shall be the responsibility of the Fisheries Enforcement Officers.

### **Fishing Vessel Ownership and Registration**

#### **7.02.070 Fishing Vessel Ownership**

(a) Fishing Vessel Ownership.

Tribal fishermen shall exercise treaty fishing rights only on a vessel which is:

- (1) Wholly owned by the fisherman, a member of the Skokomish Indian Tribe, or the Treaty Council; or
- (2) In the fisherman's custody pursuant to an approved, legally binding purchase contract as provided for in section (c) below;
- (3) This section shall not apply to tribal members employed as assistants in accordance with Section 7.02.045 or to tribal members participating in a test fishery according to Section 7.02.029.

[Cross reference: Section 7.02.123(e) - Exercising Treaty Fishing Rights on Vessel not Owned by the Tribe or Tribal Member is a Class B offense]

(b) Documentation of Ownership.

Adequate documentation of ownership shall consist of the following:

- (1) Coast Guard documentation/registration or tribal registration in the name of the Tribe or a tribal member; and
- (2) A bill of sale conveying clear title to the boat to the Tribe or a tribal member; the bill of sale shall show the name and address of the purchaser and the seller; the purchase price; the make, model, hull identification number, type, name (if applicable) and length of the boat; a description of any included gear and equipment; and the date of sale; or
- (3) A purchase contract as approved under subsection (c) below.

(c) Procedure for Approval of Purchase Contracts.

Each vessel purchase contract must be approved by the Tribe before the vessel in question can be used in exercising treaty fishing rights. The procedure for obtaining approval of the vessel purchase contract shall be as follows:

- (1) Application for approval of the contract shall be made to the Fisheries Manager. The application shall be made by providing a copy of the purchase contract and any pertinent documents to the Fisheries Manager.
- (2) The Fisheries Manager shall examine the contract and the submitted documents in order to determine:
  - (A) Whether the contract is legally binding on both buyer and seller;
  - (B) Whether it has a reasonable likelihood of success, thus insuring that the vessel will not be returned to the seller; and
  - (C) Whether it otherwise meets the requirements of this Ordinance.
- (3) The Fisheries Manager shall consult with the tribal attorney and the Fish Committee in making this determination.
- (4) If the Fisheries Manager determines that the contract is enforceable and meets the requirements of this Ordinance, he shall approve the contract and authorize the vessel to be registered.
- (5) Within two (2) weeks after receiving the application, the Fisheries Manager shall notify the fisherman whether or not the purchase contract has been approved.
- (6) Any fisherman whose contract has been disapproved by the Fisheries Manager may appeal the decision pursuant to section 11 of this Ordinance.

[Cross reference: Section 7.02.123(f) - Giving False Information to Obtain Purchase Contract is a

Class C offense; Section 7.02.123(e) - Exercising Treaty Fishing Rights on Vessel not Owned by the Tribe or Tribal Member is a Class B offense]

(d) Contracts Where Payment is Percentage of Catch Prohibited.

No purchase contract shall be approved if payment on the contract is in the form of a percentage of the catch.

[Cross reference: Section 7.02.123(c) - Fishing on a Vessel Obtained by a Lease, a Lease Purchase Agreement or Percentage-of-Catch Agreement is a Class A offense]

(e) Lease and Lease Purchase Agreements Prohibited.

Lease and lease-purchase agreements are prohibited.

[Cross reference: Section 7.02.123(c) - Fishing on a Vessel Obtained by a Lease, a Lease Purchase Agreement or Percentage-of-Catch Agreement is a Class A offense]

**7.02.071 Fishing Vessel Registration**

(a) Fishing Vessel Registration - Generally.

Except as may be provided elsewhere in this Ordinance, no member shall exercise treaty fishing rights using any boat which has not been registered and marked in accordance to the procedures established by this Ordinance or other procedures approved by the Tribal Council or Treaty Council. All registration shall expire on April 30 of each year.

(b) Registration with the Skokomish Indian Tribe.

Any boat engaging in a tribal fishery must be registered with the Skokomish Indian Tribe through the Skokomish Tribal Fisheries Department and must display a WN# showing proof of registration as agreed between the Tribe and the State of Washington.

[Cross reference: Section 7.02.122(e) - Failure to Comply with Vessel Registration Requirements is a Class C offense]

(c) Transfer of Vessel Permit Prohibited.

Affixing or transferring the Annual Registration Sticker to another boat other than the one for which the sticker was issued is prohibited.

[Cross reference: Section 7.02.122(f)]

**7.02.072 Use of Tribally Registered Boat by Unauthorized Person**

The owner of a tribally registered boat shall not allow that boat to be commercially fished by a person not authorized to do so under this Ordinance.

[Cross reference: Section 7.02.123(d) - Commercial Use of Vessel by Unauthorized Person is a Class A offense]

### **7.02.073 Use of Purse Seiner Prohibited**

No person shall exercise treaty fishing rights of the Skokomish Indian Tribe as an owner or operator of a purse seine boat. This section does not prohibit employment as a fishing vessel assistant on a purse seiner under Section 7.02.045 of this Ordinance.

Cross reference: Section 7.02.123(a) - Violation of Purse Seinners Prohibition is a Class A offense]

### **Specific Gear Provisions**

#### **7.02.080 Marine Drift Nets**

(a) Lighting.

All boats and drift gillnets shall be properly lighted after dusk. Proper boat lighting is defined pursuant to applicable Coast Guard regulations. In addition to proper boat lighting, a light is also required at the end of the drift net furthest from the boat.

[Cross reference: Section 7.02.127(a)(4) - Failure to properly light Drift Nets is a Class C offense]

(b) Nets to be Attended.

All marine drift nets must be attended by the fisherman at all times.

[Cross reference: Section 7.02.087(a)(3) - Unattended Nets is a Class C offense]

(c) Length Limits.

In all marine areas a person shall not fish more than 330 fathoms of a drift gillnet.

[Cross reference: Section 7.02.127(a)(1) - Violation of Net Length Limits is a Class B offense]

(d) Net Identification - Buoys.

All submerged nets shall have buoys attached. All buoys shall comply with the following requirements:

(1) Buoys shall be conspicuously marked with the Tribal Identification Card number of the fisherman operating the gear;

(2) Buoys shall be marked in such a way that the fisherman and tribal affiliation can be identified without removing the gear from the water;

(3) Buoys shall be constructed of durable material excluding plastic or metal bottles and other containers; and

(4) The buoy line shall be weighted to keep the buoy line from floating.

[Cross reference: Section 7.02.127(a)(2) - Violation of Buoy and Net Identification Requirements

is a Class C offense]

## **7.02.081 Marine Set Nets**

### (a) Marine Set Net Identification Requirements.

All marine set nets shall comply with the following requirements:

- (1) Marine set nets shall be conspicuously marked at the outermost and innermost end with the Tribal Fishing Identification Card number of the fisherman operating the net; and
- (2) Marine set nets shall be marked in such a way that the fisherman and tribal affiliation can be identified without removing the net from the water.
- (3) All unmarked nets which are unattended, and any fish found in them may be seized by the fisheries enforcement officers.

[Cross reference: Section 7.02.127 (b)(1) - Violation of Net Identification Requirements is a Class C offense]

### (b) Lighting.

Lights are required on all set nets left in marine waters after dusk. All lights must be maintained in working condition.

[Cross reference: Section 7.02.127(b)(3) - Failure to Properly Light Set Nets is a Class C offense]

### (a) Nets to be Tended Daily.

All gillnets shall be tended at least once in every twenty-four (24) hour period, and all fish captured in the net shall be removed.

- (1) The person whose identification is attached to the net is the person responsible for tending the net.
- (2) Failure to move an enforcement marker within twenty-four (24) hours, according to the instructions on the marker, will raise a presumption that the net has not been tended.

[Cross reference: Section 7.02.127(b)(2) - Violation of Tending Marine Set Nets Daily is a Class C offense]

### (d) Removal of Nets Upon Closure.

Upon closure of a fishing area all nets and parts of nets, must be completely removed from the closed area regardless of the condition of the net.

[Cross reference: Section 7.02.127(b)(4) - Failure to Remove Nets Upon Closure is a Class C offense]

## **7.02.082 Beach Seines**

(a) Mesh and Length Requirements.

Beach seine nets shall have four inch minimum mesh at the wings, three-and-a-half inch maximum mesh at the bunt and a maximum length of one hundred sixty five fathoms (990 feet). The use of power equipment for retrieval is not permitted.

**7.02.083 River Gillnets**

(a) Set and Drift Nets Authorized.

Set and drift nets are authorized for use on the Skokomish river and other rivers and streams within the usual and accustomed fishing grounds pursuant to the limitations established within this Ordinance and the annual or emergency regulations

(b) River Gillnet Identification Requirements.

All river gillnets shall comply with the following identification requirements:

- (1) River set nets shall be conspicuously marked at the outermost and innermost end with the Tribal Fishing Identification Card number of the fisherman operating the net and shall be marked in such a way that the fisherman and the tribal affiliation can be identified without removing the net from the river.
- (2) River drift nets shall be conspicuously marked at one end with the Tribal Fishing Identification Card number of the fisherman operating the net.
- (3) All unmarked nets and any fish found in them may be seized by the fisheries enforcement officers.

[Cross reference: Section 7.02.127(c)(4) - Violation of Net Identification Requirements is a Class C offense]

(c) River Gillnet Length Requirements.

All river gillnets shall comply with the length requirements designated within the annual or emergency regulations, but under no circumstances shall exceed 55 fathoms in length, EXCEPT that set nets below the Tacoma City Light power lines may not exceed 100 fathoms in length.

(d) Other River Set Net Requirements

(1) River Set Nets to be Tended Daily.

All river set nets shall be tended at least once in every twenty-four hour period, and all fish captured in the net shall be removed.

(A) The person whose identification is attached to the set net is the person responsible for tending the net.

(B) Failure to move an enforcement marker within twenty-four (24) hours, according to the instructions on the marker, will raise a presumption that the net has not been tended.

[Cross reference: Section 7.02.127(c)(2) - Violation of Tending Nets is a Class C offense]

(2) River Set Nets to be Spaced 250 Feet Apart.

River set nets shall be set and no part allowed to be closer than 250 feet from any other set net, unless specifically authorized by the Fish Committee.

[Cross reference: Section 7.02.127(c)(3) - Violation of Nets to be Spaced 250 Feet Apart is a Class D offense]

(d) River Set Nets Not to Block River.

River set nets shall not be allowed to extend across, or block by any means, more than one third of the portion of the river which is navigable by salmon. The set net must be adjusted when the water level drops.

[Cross reference Section 7.02.127(c)(1) - Nets Not to Block River is a Class B Offense]

**7.02.084 Hook and Line - Subsistence and Recreational Fishing**

(a) Marine Area Limitations.

Non-commercial hook-and-line fishing by tribal members at usual and accustomed marine fishing grounds and stations and at on-Reservation marine areas for subsistence and/or recreational purposes is permitted year round unless closed by annual or emergency regulations adopted pursuant to this Ordinance.

(b) Freshwater Limitations.

Non-commercial hook-and-line freshwater fishing by tribal members on the reservation is open year round unless otherwise specifically closed by regulations adopted pursuant to this Ordinance. Non-commercial hook-and-line fishing by tribal members off reservation at usual and accustomed freshwater grounds and stations for subsistence and/or recreational purposes is permitted whenever the fishing area is opened by the Washington Department of Fisheries and Wildlife for all-citizen sports fishermen, unless otherwise specifically opened or closed by regulations adopted pursuant to this Ordinance.

(c) Subsistence Fishing with Non-Members.

It shall be lawful for members to fish aboard boats with hook and line for non-commercial purposes with non-members likewise fishing, provided that the non-member is appropriately licensed by the State of Washington and is fishing according to current State laws and regulations governing sport fishing, and provided further that the member shall be limited to the same species and catch bag limits, size restrictions, and gear restrictions as apply to the non-members.

**7.02.085 Shellfish - Hand-Held Gear Only**

All shellfish, except crab and shrimp, must be harvested by hand-held gear unless otherwise authorized by regulation.

[Cross reference: Section 7.02.128(b) - Violating Shellfish Harvesting Gear Prohibitions is a Class C offense]

**7.02.086 Shellfish Pots**

(a) Crab Pots - Commercial.

The inside diameter of the escape rings or ports of a commercial crab pot shall not be less than 4 1/4 inches inside diameter.

(b) Crab Pots - Personal Use.

A personal-use crab pot shall have an escape ring or port if the pot entrance does not allow free exit. The inside diameter of the escape rings or ports of a personal-use crab pot shall not be less than 4-1/4 (4-1/8 south of Hood Canal Floating bridge) inches inside diameter and shall be located in the upper half of the pot.

(c) Shrimp Pots - Commercial.

The following provisions apply to commercial shrimp pots within Hood Canal only:

- (1) Walls of the pot constructed of square mesh only that measures less than 7/8-inch on the side of each mesh square;
- (2) No minimum mesh size for entry tunnels but tunnels located on sides of pot only; and
- (3) Total of tunnel widths not to exceed one-half the perimeter of the pot bottom.

(d) Shellfish Pot Identification Requirements.

All unattended pots shall have buoys attached. All buoys shall comply with the following requirements:

- (1) Buoys shall be conspicuously marked with the Tribal Identification Card number of the fisherman operating the gear;
- (2) Buoys shall be marked in such a way that the fisherman and tribal affiliation can be identified without removing the gear from the water;
- (3) Buoys shall be constructed of durable material excluding plastic or metal bottles and other containers; and
- (4) The buoy line shall be weighted to keep the buoy line from floating.

[Cross reference: Section 7.02.128(a) - Violation of Buoy and Net Identification Requirements is a Class C offense]

**7.02.087 Prohibited Gear and Removal of Gear**

(a) Other Gear Prohibited.

All gear types other than those authorized in this Ordinance are prohibited unless, and until, they are authorized by regulation.

[Cross reference: Section 7.02.120(d) - Use of Unauthorized Gear/Prohibited Methods is a Class B offense]

(b) Rented or Leased Gear Ownership Prohibited.

No person shall exercise any treaty fishing rights of the Skokomish Indian Tribe while using or in possession of any rented or leased fishing gear.

[Cross reference: Section 7.02.123(b) - Use of Rental or Lease of Fishing Gear is a Class A offense]

(c) Removal of Gear Upon Closure of Season.

Upon closure of a harvesting season for a fish, shellfish or marine resource species, all gear, including nets (regardless of condition), buoys, anchors and crosslines, must be completely removed from the area. No gear may be placed in an area until the opening of the next harvesting season.

[Cross reference: Section 7.02.120(g) - Failure to Remove Gear at End of Season is a Class B offense; Section 7.02.120(h) - Placing Gear in Marine Area Before Season Opening is a Class A offense]

## **7.02.088 Fishery Activities Requiring Artificial Breathing Apparatus**

(a) Training/Safety Class Requirement.

Any person who wishes to exercise tribal fishing rights by engaging in a fishery activity requiring artificial breathing apparatus must pass a Tribally approved training and safety class in compliance with federal and state law. This requirement applies to both divers and tenders.

(b) Safety Standards.

Any person engaging in a fishery activity which requires artificial breathing apparatus is required to follow OSHA safety standards. In addition, any such person shall wear a properly functioning "bailment bottle" with ten to fifteen minutes of air for use in an emergency situation.

(c) Monitoring.

No fishery activity requiring artificial breathing apparatus may take place without a monitor delegated by the Tribe within harvest area. The monitor has the authority to shut down the harvesting activity if he or she determines that a safety risk exists. No marine products may be discarded from any vessel without the monitor's approval.

(d) Licensing.

All persons engaging in fishery activity requiring artificial breathing apparatus must obtain all licenses and permits required by the Tribe.

[Cross reference: Section 7.02.129 - All Diving Violations are Class A offenses; Section 7.02.122 (a) - Fishing Without Obtaining Identification and Permit is a Class B offense]

### **Catch Reporting and the Sale of Fish**

#### **7.02.100 Sale of Fish and Shellfish**

(a) Sales to be Reported on Fish Tickets.

All fish, shellfish and other marine resources caught in commercial fisheries must be recorded on fish tickets.

[Cross reference: Section 7.02.126(n) - Failure to Record Sale of Fish on Fish Ticket is a Class B Offense]

(b) Fish to be Sold by Fisherman Who Caught Them.

A fisherman may only sell or offer for sale fish, shellfish or marine resources caught by said fisherman, EXCEPT under the following circumstances:

(1) The fisherman is authorized by the Tribe to sell or offer for sale fish, shellfish or marine resources owned by the Tribe; or

(2) The fisherman is acting as an agent on behalf of other eligible fishermen, PROVIDED

(A) The fisherman notifies the Fisheries Manager and Fisheries Enforcement Office within a reasonable time of the sale or proposed sale, the location of the sale and the identity of the buyer;

(B) The sale is properly recorded on fisherman's fish ticket; and

(C) Within 30 days from the sale, the fisherman submits in writing to the Fisheries Manager the names of the fishermen and the amount of the sale attributed to each of the fishermen.

[Cross reference: Offense - Section 7.02.126(f) - Sale of Another's Fish is a Class B offense]

(c) Sale to Prohibited Buyers Unlawful.

Fishermen may sell fish, shellfish or marine resources only to approved licensed buyers pursuant to Section 7.02.103.

[Cross reference: Section 7.02.126(l) - Sale to Prohibited Buyers is a Class C offense]

(d) Sale of Fish Taken with Illegal Gear or Without Valid I.D./Permits Unlawful.

Except as may be provided elsewhere in this Ordinance, no person shall sell, or offer for sale, any fish, shellfish or marine resources unless taken with lawful commercial gear in an area specifically opened to commercial fishing with that gear, and the fisherman has in his or her possession at the time of sale valid identification and permits as required by this Ordinance.

[Cross reference: Section 7.02.126(i) - Sale of Fish Without Proper Permits, Cards, Identification and Registration is a Class C offense; Section 7.02.126(j) - Sale of Fish Taken Unlawfully is a Class B offense]

(e) Sale of Fish Caught with Unregistered Vessel Unlawful.

No person shall sell fish, shellfish or marine resources caught with any vessel which has not been registered pursuant to this Ordinance.

[Cross reference: Section 7.02.126(i) - Sale of Fish Without Proper Permits, Cards, Identification and Registration is a Class C offense]

(f) Sale of Tribal Fish.

Any person selling fish, shellfish or marine resources which are the property of Tribe or Treaty Council shall record the sale of the fish, shellfish or marine resources using the appropriate card as provided in Section 7.02.056(c).

[Cross reference: Section 7.02.126(i) - Sale of Fish Without Proper Permits, Cards, Identification and Registration is a Class C offense; Section 7.02.044(c) - Grounds for Dismissal from Employment with Tribe]

(g) Sale of Subsistence Catch Prohibited.

No person shall sell fish, shellfish and other marine resources caught for subsistence and/or recreational purposes.

[Cross reference: Section 7.02.126(k) - Sale of Fish Caught for Subsistence or Recreational Purposes is a Class B offense]

(h) "Road Sales" Authorized.

A limited number of fish, shellfish and other marine resources caught in a commercial fishery may be sold by the fisherman directly to individuals for the purpose of personal consumption and not for resale. The Fish Committee shall recommend and the Tribal council shall adopt regulations which specify the manner of reporting these sales, the date by which they must be reported, the limit (number of fish or amount of shellfish per buyer/per fixed time period) and related regulatory matters. Road sales of certain species may be prohibited by regulation.

[Cross reference: Section 7.02.121(k) - Violation of Regulations and Permits is a Class C offense]

## **7.02.101 Completion of Fish Tickets**

(a) Identification Card to be Presented to Buyer/Embossed Buyer's Card to be Used.

Each fisherman shall present his Tribal Fishing Identification Card or other appropriate card as provided in this Ordinance to the buyer each time he sells fish, shellfish or marine resources. The fisherman selling the fish and/or shellfish shall require the buyer to use a valid embossed Washington State fish buyer's card to record the required information for each sale.

[Cross reference: Section 7.02.126(d) - Failure to Present Embossed I.D. Card is a Class C offense]

(b) Fish Tickets to be Filled out Accurately, Completely.

It is the responsibility of each fisherman at the time of each sale of fish, shellfish or marine resources to be sure that the fish ticket is filled out completely and accurately. Each fish ticket shall be signed by the fisherman who caught the fish, shellfish or marine resources being sold on that ticket, as an acknowledgement that the information on the ticket is correct; EXCEPT that a fisherman, acting as an agent for other eligible fishermen pursuant to Section 7.02.100(b) may sign on behalf of such other eligible fishermen.

[Cross reference: Section 7.02.126(c) - Failure to fill Out Fish Ticket Accurately and Completely is a Class C offense]

(c) Fish Ticket is Prima Facie Evidence of Events.

Fish tickets shall constitute prima facie evidence that the events as recorded on the tickets actually occurred. Fish tickets which indicate a violation of this Ordinance or regulations promulgated under it shall in and of themselves constitute probable cause to believe that a violation has occurred, and shall be admissible evidence that a violation has occurred. The embossed appearance of the identification number of a fisherman or his or her signature on any fish ticket, including unofficial receipts or proofs of sale, shall be admissible as prima facie evidence that the fisherman caught and sold the fish reported on the ticket on or about the date of the ticket.

(d) Providing False Information.

A person shall not record or provide false information to be recorded on fish tickets.

[Cross reference: Section 7.02.126(h) - Recording Fish Caught Outside U & A on a Fish Ticket is a Class A offense]

## **7.02.102 Tax on Fish Sold Commercially**

(a) Fish Tax.

There shall be a tax, called the Tribal Fish and Shellfish Tax, imposed on each sale of fish and shellfish by anyone exercising commercial fishing rights under the authority of this Ordinance. The tax shall be measured by the gross sale price of each sale of fish or shellfish multiplied by the rates for fish and shellfish as follows:

(1) Salmon: Five (5) percent

(2) Shellfish: Five (5) percent

(3) Geoduck exception: The tax on geoduck shall be proposed annually by the Fish Committee and approved by the Tribal Council.

(b) Exemption for Road Sales.

Road sales permitted under this Ordinance shall be exempt from the tribal fish, shellfish and other marine resources tax requirements of this Ordinance.

(c) Use of Tax Revenue.

The funds raised by the Tribal Fish and Shellfish Tax shall be deposited in the Tribal Fish Tax account and shall be expended at the discretion of the Tribal Council.

(d) Power to Increase/Decrease Fish Tax and Levy Additional Taxes.

The Tribal Council retains the power to increase/decrease the fish tax and levy additional taxes or fees on fish, shellfish, or other marine resources.

(e) Fisherman Liable for Payment of Tax.

The tribal fisherman shall be liable for payment of any fish or shellfish tax owed to the Tribe. The Fisheries Manager, or his staff, shall regularly compute the amount of tax owed by each tribal fisherman and shall notify each fisherman in writing of the amount of tax due from him. If a fisherman fails to make full payment of the amount due within thirty (30) days from the date of the written notice, he shall be prohibited from exercising commercial treaty fishing rights and registering any vessel for commercial fishing until the amount owing is paid in full.

## **7.02.103 Buyer Licensing and Regulating On Reservation Fish Buyers**

(a) Authority to Restrict Sales to Licensed Buyers.

The Skokomish Indian Tribe retains the authority to restrict the sale of tribally caught fish, shellfish and other marine resources to approved licensed buyers. The Fisheries Manager is hereby authorized to execute Fish Buyer License Agreements on behalf of the Skokomish Indian Tribe.

(b) Fish Buyer License Agreement.

The Fish Buyer License Agreement shall contain the conditions by which a fish buyer shall be authorized to buy fish, shellfish and other marine resources from Skokomish fishermen on the Reservation. These conditions may include, but are not limited to, license fees, bonding and other conditions established by the Fisheries Manager upon recommendation of the Skokomish Fish Committee. The Fisheries Manager will consult with the Fish Committee and the tribal attorney regarding the requirements for fish buyer licensing.

(c) Tribal Member Fish Buyers.

The Fisheries Manager may direct the issuance of Tribal Fish Buyer identification cards to enrolled members of the Skokomish Indian Tribe who have properly applied for and met the requirements for a Tribal Fish Buyer identification card, provided that such individuals must possess a valid Skokomish Commercial Fishing Permit. Enrolled tribal members shall be exempt from dealer and buyer license fee requirements.

[Cross reference: Section 7.02.126(m) - Purchase or Sale in Violation of Tribal Regulations is a Class B offense or a civil infraction]

(d) Power to Regulate.

The Tribal Council retains the power to regulate the numbers and activities of commercial fish buyers within the boundaries of the Skokomish Reservation.

(e) Recording of Sales Required.

All fish and shellfish buyers on the Skokomish Indian Reservation must record sales of fish, shellfish and other marine resources on approved fish tickets or shellfish tickets. In recording the sale the buyer must use an embossed Washington State fish buyer's card and an embossed fisher's card.

(f) Proof of Legal Possession.

Fish and Shellfish buyers on the Skokomish Indian Reservation may be required to provide proof to Fisheries Enforcement that the product they have in their possession has been legally obtained.

[Cross reference: Section 7.02.126(n) - Failure to Record Fish Sales is a Class B offense or a civil infraction]

## **Enforcement**

### **7.02.110 Fisheries Enforcement Officers**

(a) Appointment.

The Skokomish Tribal Council hereby:

- (1) May enter into an agreement with another Tribe and/or with the Point No Point Treaty Council whereby the fisheries enforcement officers of said other tribe and/or the Treaty Council may act as fisheries enforcement officers for the Skokomish Indian Tribe; and/or
- (2) Authorizes the Fisheries Manager to hire fisheries enforcement officers; and/or
- (3) Authorizes the Fisheries Manager to deputize the Tribe's law enforcement officers to act as fisheries enforcement officers; and/or
- (4) Authorizes the Fisheries Manager to deputize additional persons to assist in the fisheries enforcement officers in the performance of their duties.

(b) Authority and Duty.

The fisheries enforcement officers shall have the authority to:

- (1) Enforce the provisions of this Ordinance and all regulations promulgated under it;
- (2) Enforce all warrants issued by the Tribal Court in fisheries-related cases; and
- (3) Regularly patrol the Skokomish Indian Tribe's usual and accustomed fishing grounds and stations, the Reservation fishing area, and any other areas where the Skokomish Indian

Tribe exercises fishing and shellfishing rights.

(c) Cross Deputization.

The Tribal Council may enter into an agreement with another tribe, the Treaty Council, or state, federal or county governments providing for the cross-deputization of fisheries enforcement and/or law enforcement officers.

**7.02.111 Complaint or Citation to Tribal Court**

(a) Jurisdiction.

The Skokomish Tribal Court shall have original jurisdiction over all actions arising under this Ordinance.

(b) Rules of Court.

EXCEPT as otherwise provided in this Ordinance, the Rules of the Skokomish Tribal Court shall apply to any action brought in Tribal Court arising under this Ordinance.

(c) Service of Process.

All persons charged with a violation of this Ordinance or regulations promulgated under it shall be served a summons and complaint or shall be issued a citation in lieu of a summons and complaint, to appear and answer said charges before the Tribal Court.

(d) Failure to Appear.

In the event of the failure of any person to appear in Tribal Court as required by any charging document accusing the person of committing any offense under this Ordinance, the Skokomish Tribal Court shall, in addition to any other sanctions, order the following sanctions:

(1) Contempt of Court, except in the case of a valid bail forfeiture; and

(2) Immediate Suspension of All Fishing Licenses and Permits issued to the person under this Ordinance for thirty (30) days without additional hearing. The Tribal Court shall not reinstate fishing (shellfishing and/or anadromous) privileges under any circumstances during this mandatory thirty (30) day suspension. The Fisheries Manager shall not reinstate nor issue any new license or permit under this Ordinance to the person until the person appears as required by the Court.

**7.02.112 Arrest**

(a) Authority.

Pursuant to the provisions of this section, fisheries enforcement officers shall have the authority to arrest any person who violates this Ordinance, or regulations promulgated under it, when:

(1) The offense occurs in the presence of the arresting officer(s); or

(2) The officer has a warrant signed by the Tribal Court commanding the arrest of such

person or knows as a certainty that such a warrant has been issued, except that an officer may arrest a person without a warrant when exigent circumstances exist. For purposes of this section, "exigent" circumstances include:

- (A) A real danger to the police or public;
- (B) A real danger of evidence being lost; or
- (C) Where a suspect of a crime might flee.

(b) Other Detentions.

(1) Investigatory Detentions.

- Fisheries enforcement officers may make an investigative stop based on reasonable suspicion that a person has committed an offense.

(2) Vehicle/Vessel Detentions.

- Fisheries enforcement officers may stop any vehicle or vessel based on reasonable suspicion that the conduct of the occupants is in violation of this Ordinance.

(c) Notification of Rights Upon Arrest.

- Immediately upon arrest, an alleged violator shall be advised of the following:

- (1) The charges against him;
- (2) That he has a right to remain silent;
- (3) That anything he says may be used against him in court; and
- (4) That he has a right to be represented by an attorney or spokesperson at his own expense.

(d) Copy of Warrant Provided.

If an arrest is made pursuant to a warrant, the accused shall be given a copy of the warrant at the time of the arrest or as soon thereafter as possible.

(e) Citation in Lieu of Arrest.

A citation may be issued by a fisheries enforcement officer, in his discretion, in lieu of keeping that alleged violator in custody or requiring bail or a bond.

### **7.02.113 Search And Seizure**

(a) Authority.

To enforce the provisions of this Ordinance and the regulations adopted under it, fisheries enforcement officers shall have the authority to search and seize any person or property in compliance with the following provisions.

(b) Search Warrant Requirement.

Except as otherwise provided below, a fisheries enforcement officer must obtain a valid search warrant before searching and seizing any fish, shellfish or marine resources, gear, container, vehicle, boat, tent, camper or searching any place or premises which may contain evidence of violations of this Ordinance or regulations adopted or permits issued under it. The Tribal Court shall issue a search warrant and direct a search and seizure be made in any place wherein it is alleged that any fish, shellfish or marine resources taken contrary to this Ordinance or regulations adopted under it is concealed or kept. Such warrants shall be:

- (1) Based upon a showing of probable cause by the officer through an affidavit setting forth sufficient underlying circumstances; and
- (2) Issued in compliance with the rules of the Skokomish Tribal Court and the Skokomish Law and Order Ordinance.

(c) EXCEPTIONS to Search Warrant Requirement:

(1) Vehicle/Vessel Search.

(A) Exigent Circumstances.

Due to exigent circumstances, as defined in Section 7.02.112(a)(2), and based on probable cause that a vehicle/vessel contains evidence of violations of this Ordinance, a fisheries enforcement officer may conduct a warrantless search of the vehicle or vessel.

(B) Inventory Searches.

A fisheries enforcement officer may search impounded vehicles or vessels without a warrant or probable cause so long as they follow regular impoundment procedures.

(2) Protective Search.

A fisheries enforcement officer may conduct a protective search, without a warrant, of persons acting in a suspicious or hostile manner. The sole purpose of the search shall be to disarm the person for the safety of the officer and others.

(3) Search Incident to a Lawful Arrest.

A fisheries enforcement officer may conduct a warrantless search of any person who is lawfully arrested for an alleged violation of this Ordinance or regulations adopted under it.

(4) Plain View Doctrine.

A fishery enforcement officer may make a warrantless seizure under the plain view exception when the officer:

- (A) Has a prior justification for intrusion on the premises;

- (B) Inadvertently discovers evidence of a violation of this Ordinance;
- (C) Has immediate knowledge that the object in plain view is seizable evidence;  
and
- (D) Can demonstrate some exigency which requires immediate, warrantless seizure.

(5) Consent.

A fishery enforcement officer may conduct a valid warrantless search upon a voluntary and intelligent consent to do so.

(6) Hot Pursuit.

A fishery enforcement officer in hot pursuit of a person suspected of violating this Ordinance may make a warrantless search and seizure and pursue the suspect into private dwellings.

(d) Seizure Upon Arrest or Citation.

Upon arrest or upon issuance of a citation, the fisheries enforcement officer has the authority to:

- (1) Seize all fish, shellfish and other marine resources or parts thereof which the officer has reasonable grounds to believe have been illegal taken or killed by the alleged violator or which have been illegally bought or sold; and
- (2) Seize any gear or other property which the officer has reasonable grounds to believe has been used in the commission of a violation.

(e) Seizure - Inventory.

A fisheries enforcement officer who has seized fish, shellfish or gear pursuant to this section shall:

- (1) Prepare a written inventory of all items seized which shall be signed by the enforcement officer; and
- (2) Provide one (1) copy of the inventory to the alleged violator, if known, file one (1) copy with the Tribal Court, and file one (1) copy with the tribal fisheries office.

(f) Seizure - Sale of Seized Fish and Shellfish.

The arresting officer shall, as soon as possible, sell all fish, shellfish and other marine resources seized from the alleged violator in either of the following manners:

- (1) The fish, shellfish and other marine resources shall be sold at the nearest market at the then prevailing price at the market selected, provided:
  - (A) All proceeds from the sale shall be immediately deposited in a special account for the tribal fisheries office;

(B) The accused shall receive a copy of the fish ticket; and

(C) The proceeds from the sale of seized fish shall be held until disposed of pursuant to order of the Tribal Court.

(2) If a fisheries enforcement officer reasonably believes that the sale of fish and/or shellfish is not feasible, he may return the fish and/or shellfish to the harvest area, beach area, or otherwise dispose of said fish and/or shellfish.

(g) Seizure - Shellfish Taken from Closed Beach.

Shellfish, which a fisheries enforcement officer has reason to believe has been taken from a closed beach or which may be unfit for human consumption, may be returned to the beach or otherwise disposed of at the officer's discretion.

(h) Seizure - Storage of Seized Property.

All items, other than fish, shellfish and other marine resources, seized pursuant to this section shall as soon as practicable be brought to the Tribal Fisheries Enforcement Office or other place designated by the Fisheries Manager for the storage of seized property. Seized property shall be stored in such a manner as to minimize further damage to it and shall be held until disposed of pursuant to order of the Tribal Court.

(i) Seizure - Return of Seized Property, Proceeds from Sale of Fish.

Any person whose property, other than fish, shellfish or other marine resources which has been seized under the authority of this Ordinance may apply immediately to the Tribal Court for release of the property. The Tribal Court may order immediate return of the property, provided that the proceeds from the sale of seized fish shall be returned only upon acquittal or dismissal. If fish and/or shellfish from two or more alleged violators are commingled, each violator shall be presumed to own an equal percentage.

(j) Forfeiture of Seized Property - Upon Conviction.

When a person has been convicted of violating a provision of this Ordinance or any regulation promulgated under it, the Tribal Court may order forfeiture of any item seized in connection with the violation. The convicted person shall be given an opportunity to present evidence and argument to the Tribal Court regarding why it would be inequitable to forfeit those items seized.

(k) Forfeiture of Seized Property - Owner Unknown.

In all cases where it appears the owner of gear or other items seized by Fisheries Enforcement Officers is unknown, the Tribal Court shall have the power to order the forfeiture of any article(s) seized. The procedure for forfeiture in such cases shall be as follows:

(1) The Tribal Court, upon application of the Tribe, shall order service of summons and notice of hearing. Service shall be accomplished by posting the summons and notice as follows:

(A) If the article(s) were seized within the Skokomish Indian Tribe's exclusive

harvest-use areas, as defined in the Point No Point Treaty Council Constitution and Off-Reservation Fisheries Management Compact, a copy of the summons and notice shall be posted at the Skokomish Fisheries Office at the Skokomish Tribal Center.

(B) If the articles were seized outside of the Skokomish exclusive harvest-use areas, a copy of the summons and notice shall be posted at all tribal fisheries offices and tribal centers in the Point No Point Treaty area and at the Treaty Council office.

(2) The summons shall describe the article(s) seized and shall set a date for a hearing on whether or not the item seized should be forfeited. The hearing shall be held at least thirty (30) days from the date the article(s) was seized. Notice shall be posted for at least twenty (20) days prior to the hearing. (The 20 days may run during the 30-day period.)

(3) An affidavit of the tribal representative that served the summons and notice of hearing shall be filed with the Tribal Court. The affidavit shall state the place and date the summons and notice were posted.

(4) The owner of the article seized shall have the opportunity at the date and time set in the summons to appear before the Tribal Court and contest the forfeiture. If no one appears at the hearing to claim any article, the Tribal Court may enter an order forfeiting the article(s).

(l) Forfeiture - Disposition of Property.

In the event the Tribal Court orders forfeiture of any articles seized by Fisheries Enforcement Officers and/or proceeds from the sale thereof, said articles and/or proceeds shall be turned over to the Skokomish Tribal Council for the use and benefit of the Tribe.

(m) Return of Property Not Forfeited.

Any item seized by Fisheries Enforcement Officers or proceeds from the sale thereof which are not forfeited by order of the Tribal Court shall be returned to the person from whom seized, after the completion of the case and after the fines, if any, have been paid.

## Offenses

### **7.02.120 General Fishing Violations**

(a) Fishing Outside the Usual and Accustomed Fishing Grounds.

Any person who purports to exercise the treaty fishing rights of the Skokomish Indian Tribe in any area which is outside the usual and accustomed fishing grounds of the Skokomish Indian Tribe, who has not been formally invited to do so by another Tribe, is guilty of a **Class A offense**.

(b) Fishing in Closed Area.

Any person who engages in fishing at any place, at any time, or for any species not specifically opened by this Ordinance or by annual or emergency regulations, is guilty of a **Class A offense**.

[Cross reference: "Fishing" defined Section 7.02.003(b)(17)]

(c) Unauthorized Test Fishery - Compliance with Requirements.

Any person is guilty of a **Class B offense** who:

(1) Conducts or participates in a test fishery that has not been authorized by the Fisheries Manager or the Treaty Council; or

(2) Who fails to obey all gear, time, area, and reporting requirements of the test fishery.

(d) Unauthorized Gear/Prohibited Methods.

Any person who uses gear, or any method of disabling or capturing fish, shellfish or marine resources not permitted in this Ordinance or regulations adopted under it, except as may be required by biological personnel for the purpose of biological research and management, is guilty of a **Class B offense**.

(e) Vandalism of Fishing Gear.

Any person who willfully and without authorization damages or destroys a fishing net, vessel, or other fishing or shellfishing gear, not his or her own, is guilty of a **Class B offense**.

(f) Taking of Fish From Hatcheries and Closed Areas Prohibited.

Any person not under the supervision of Tribal Fisheries personnel who takes, or attempts to take, or who harasses any salmon species from any tribal, state, federal or Tribally recognized private hatchery facility or from that part of Area 12C south of a straight line drawn between the Tacoma City Light Powerhouse to Nalley's Slough, is guilty of a **Class A offense**.

(g) Failure to Remove Gear at End of Season.

Any person who fails to remove buoys, anchors and crosslines from a marine area at the end of a harvesting season is guilty of a **Class C offense**.

(h) Placing Gear in Marine Area Prior to Season Opening.

Any person who places buoys, anchors and crosslines in a marine area prior to the opening of a fishing season is guilty of a **Class C offense**. This provision shall not apply to dive fisheries (geoduck, sea urchin, sea cucumber, etc.).

(i) Littering Prohibited.

Any person who discards or disposes of any litter or other waste material while engaged in the exercise of treaty fishing rights or on the way to or from, is guilty of a **Class B offense**.

(j) Use of Intoxicants Prohibited.

Any person who exercises or assists in exercising treaty fishing rights while in possession of or under the influence of alcohol or illegal drugs is guilty of a **Class A offense**.

(k) Wasting.

Any person who fails to properly care for captured fish, shellfish or other marine resources in such a manner that substantial deterioration in commercial or food value of the fish, shellfish or marine resource results, is guilty of a **Class C offense**.

(n) Non-Member Fishing Without Authorization.

Any non-member (including a non-member spouse) who fishes or who assists in any treaty fishing activity, when not expressly authorized to do so by this Ordinance, has committed a **civil infraction**. Upon finding that the person committed the infraction, the Court shall impose a civil fine not less than \$250.00 and not to exceed \$5,000.00. The fine is intended to compensate the community for unauthorized use of its resources.

### 7.02.121 Fisheries Enforcement - Related Violations

(a) Fishing While Privilege is Revoked or Suspended.

Any person who participates in a commercial fishing or shellfishing activity or sells fish, shellfish or marine resources while his or her fishing privilege is suspended or revoked or during a time when the Court has ordered a loss of fishing days is guilty of a **Class A offense**. Subsistence fishing or shellfishing shall not be subject to suspension or revocation.

(b) Assault

Any person who uses or threatens to use force or violence against a Fisheries Enforcement Officer or any other person is guilty of a Class A offense.

(c) Resisting Arrest.

Any person willfully resists arrest by use of force or violence or who flees from a Fisheries Enforcement Officer is guilty of a **Class B offense**.

(d) Eluding.

Any person who fails to or refuses to stop a vessel or vehicle after being given a visible or audible signal by a Fisheries Enforcement Officer is guilty of a **Class B offense**.

(e) Escape.

Any person who escapes, attempts escape, or assists another to escape from lawful custody for any fishing-related or shellfishing-related offense is guilty of a **Class B offense**.

(f) Obstruction.

Any person who willfully interferes with or obstructs any Fisheries Enforcement Officer engaged in the lawful performance of his or her duties is guilty of a **Class C Offense**.

(g) Interference with Fisheries Management Personnel.

Any person who willfully interferes with or prevents fisheries management personnel of the Tribe, the Treaty Council, or state or federal agencies, from carrying out their professional management duties is guilty of a **Class C offense**.

(h) Giving False Information to an Officer.

Any person who knowingly gives false information to a Fisheries Enforcement Officer is guilty of a **Class B offense**.

(i) Failure to Assist an Officer.

Any person who fails to respond to a request for assistance by any Fisheries Enforcement Officer is guilty of a **Class D offense**.

(j) Failure to Appear/Respond.

Any person who fails to appear and respond to Tribal Court as required by a civil or criminal citation, summons, subpoena or notice of hearing issued under this Ordinance is guilty of a **Class D offense** or a **civil violation subject to a fine not to exceed \$100**.

(k) Violations of Regulations and Permits.

Any person is guilty of a **Class C offense** who fails to comply with:

- (1) Any provision of this Ordinance;
- (2) Any Skokomish fishing or shellfishing regulation; or
- (3) The terms or conditions stated on any fishing or shellfishing permit;

When such failure has not been specifically designated as an offense under this Ordinance or which does not carry with it a specific penalty.

(l) Habitual Offender.

Any person who is convicted of three (3) violations of this Ordinance within a two (2) year period is guilty of a **Class B offense**. Class D violations shall not be considered in determining whether a person is a habitual offender.

## **7.02.122 Identification, Permit and Vessel Registration Violations**

(a) Fishing Without Obtaining Identification and Permit.

Any person who exercises or purports to exercise any treaty fishing or shellfishing right without first obtaining valid and current tribal identification and permits, as required in this Ordinance and applicable regulations, is guilty of a **Class B offense**.

(b) Fishing Without Identification and Permits in Possession.

Any person who exercises or purports to exercise any treaty fishing or shellfishing right or engages in the sale of fish, shellfish or marine resources without having in his or her possession valid and current tribal identification and permits as required in this Ordinance and applicable regulations, is guilty of a **Class D offense**.

(c) Failure to Produce Identification and Permits to Law Enforcement Officers.

Any person who fails to produce for examination his or her identification and permits required by this Ordinance or regulations, upon demand by any tribal, state or federal law enforcement officer, is guilty of a **Class D offense**.

(d) Unauthorized Transfer of Permit or Identification Prohibited.

Any person who transfers any permit or identification issued to him or her under this Ordinance to another person for the purpose of allowing the transferee to engage in a treaty fishery is guilty of a **Class B offense**.

(e) Vessel Registration Requirements - Failure to Comply.

Any person who fails to comply with any vessel registration requirement under Section 7.02.071 of this Ordinance or applicable regulations is guilty of a **Class C offense**.

(f) Transfer of Vessel Permit Prohibited.

Any person who transfers the vessel or affixes the annual registration sticker to any vessel other than the one for which the sticker was issued is guilty of a **Class B offense**.

### **7.02.123 Fishing Vessel and Gear Ownership Violations**

(a) Purse Seiners Prohibited.

Any person who exercised treaty fishing rights of the Skokomish Indian Tribe as an owner or operator of a purse seine vessel is guilty of a **Class A offense**.

(b) Rental or Lease of Fishing Gear Prohibited.

Except as otherwise provided in this Ordinance, any person is guilty of a **Class A offense** who:

- (1) Uses or possesses any rented or leased fishing gear from a non-tribal member while exercising treaty fishing rights; or
- (2) Rents or leases his or her gear to a non-tribal member.

(c) Fishing on Vessel Obtained by a Lease, a Lease Purchase Agreement or Percentage-of-Catch Agreement.

Any person who fishes from a vessel that is subject to a lease, a lease purchase agreement or a percentage-of-catch agreement is guilty of a **Class A offense**.

(d) Commercial Use of Vessel by Unauthorized Person.

Any person who allows a tribally registered vessel to be commercially fished by a person not authorized to do so under this Ordinance is guilty of a **Class A offense**.

(e) Exercising Treaty Fishing Rights on Vessel not Owned by the Tribe or Tribal Member.

Any person who engages in any treaty fishing activity from a vessel that is not either wholly owned by the fisherman, a member of the Skokomish Indian Tribe, or the Treaty Council, or is in the fisherman's custody pursuant to a legally binding purchase contract, as approved under Section 7.02.070(c) is guilty of a **Class B offense**. This prohibition shall not apply to:

- (1) A test fishery conducted under this Ordinance; or
- (2) A Skokomish member who is an assistant on a non-member's fishing vessel as authorized under this Ordinance.

(f) Giving False Information to Obtain Purchase Contract.

Any person who provides false information in order to obtain approval of a purchase contract of a fishing vessel is guilty of a **Class C offense**.

#### **7.02.124 Fishing Assistant Violations**

(a) Allowing Non-Members to Participate or Assist in Tribal Fishing.

Any member of the Skokomish Indian Tribe who allows any non-member, not expressly authorized by this Ordinance, to exercise or assist in the exercise of any tribal fishing activity is guilty of **Class A offense**.

(b) Allowing Non-Members to be Aboard Vessel While Fishing.

Any member of the Skokomish Indian Tribe who allows any non-member, not otherwise authorized pursuant to this Ordinance, to be present aboard any fishing vessel being used in the exercise of treaty fishing (including shellfishing) rights of the Skokomish Indian Tribe is guilty of a **Class B offense**.

(c) Members Employed as Assistants - Prohibitions.

Any member of the Skokomish Indian Tribe who is employed as an assistant on a fishing vessel owned, operated and/or licensed by a member of another PNPTC Tribe who possesses treaty fishing rights pursuant to *U.S. v. Washington* is guilty of a **Class B offense** if:

- (1) The owner/operator is not aboard the vessel while it is being fished; or
- (2) The vessel is being fished outside the usual and accustomed fishing area of both the Skokomish Indian Tribe and the owner/operator's tribe.

#### **7.02.125 Minors - Violations**

(a) Minors to be Accompanied by Adult - Exceptions.

Any minor who exercises treaty fishing rights for commercial purposes unaccompanied by an adult member of the Tribe is guilty of a **Class D offense**. This prohibition does not apply to:

- (1) A minor determined to be a head of household by the Fish Committee determined prior to the minor fishing; or

(2) A minor who has been exempted from this section by the Fish Committee prior to the minor fishing due to extreme hardship.

(b) Minors - Time of Day Restrictions.

Any minor who exercises treaty fishing rights in violation of Section 7.02.042(c) is guilty of a **Class D offense**. This prohibition does not apply to:

(1) A minor whose parents have signed a consent form allowing the minor to fish, shellfish, or harvest marine resources during the restricted time;

(2) A minor determined to be head of household by the Fish Committee determined prior to the minor fishing; or

(3) A minor who has been exempted from Section 7.02.042(a)(3) by the Fish Committee prior to the minor fishing due to extreme hardship; or

(4) A minor who has graduated from high school.

(c) Allowing a Minor to Fish Contrary to Fishing Ordinance.

Any parent or guardian of a minor who allows that minor to fish in violation of this Ordinance is guilty of a **Class D offense**.

## **7.02.126 Fish Ticket, Catch Reporting and Sale of Fish Violations**

(a) Failure to Record Sale of Fish on Fish Ticket.

Any person who sells or offers for sale fish, shellfish or marine resources not recorded on his or her fish ticket is guilty of a **Class B offense**.

(b) Providing False Information on Fish Ticket.

Any person who knowingly allows false information to be recorded on a fish ticket is guilty of a **Class B offense**.

(c) Failure to Fill Out Fish Ticket Accurately and Completely.

The fisherman's signature on a fish ticket constitutes an affirmation that the information on the fish ticket is correct. Any person is guilty of a **Class C offense** who:

(1) Fails to fill out his or her fish ticket completely and accurately and sign his or her fish ticket; or

(2) Allows another to fill out his or her fish ticket with incomplete or inaccurate information.

(d) Failure to Present Embossed ID Card.

Any person is guilty of a **Class C offense** who:

(1) Fails to present to the buyer at the time of sale of fish, shellfish or marine resources his or her embossed Tribal Fishing Identification Card or other embossed card required by this Ordinance or regulations; or

(2) Allows his or her fish ticket to be filled out without the imprint from the buyer's valid, embossed Washington State fish buyer's card or fish buyer's card required by the Tribe.

(e) Failure to Fill Out and Return Subsistence/Catch Cards.

Any person who engages in subsistence or recreational fishing or shellfishing activity and fails to fill out and return a Subsistence/Catch Reporting Card or harvest log to the Tribal Fisheries Department as required by Section 7.02.052(b) is guilty of a **Class D offense**.

(f) Sale of Another's Fish - Prohibited.

Any person who sells or offers for sale fish, shellfish or marine resources caught by another, unless expressly authorized by the Ordinance or fishing/shellfishing regulations, is guilty of a **Class B offense**. This provision shall not apply to a fisherman acting as an agent on behalf of other eligible fishermen pursuant to Section 7.02.100(b)(2).

(g) Members Selling Fish While on Non-Member Fishing Vessels Prohibited.

Any member of the Skokomish Indian Tribe who is employed as an assistant aboard a non-member's fishing vessel who uses any cards or permits issued by the Tribe or Treaty Council to sell any fish, shellfish or marine resources caught by that vessel, or allows the sale of any fish, shellfish or marine resources caught by that vessel to be recorded as caught by a member of the Skokomish Indian Tribe, is guilty of a **Class A offense**.

(h) Recording Fish Caught Outside the U. and A. on a Fish Ticket.

Unless authorized by this Ordinance, regulations adopted under it, or agreements entered pursuant to it, any person who allows fish, shellfish or marine resources to be recorded on a fish ticket as caught by a member of the Tribe, when the fish, shellfish or marine resources have been caught outside of the usual and accustomed fishing grounds of the Skokomish Indian Tribe is guilty of a **Class A offense**.

(i) Sale of Fish Without Proper Permits, Cards, Identification and Registration.

Any person is guilty of a **Class C offense** who shall sell or offer for sale any fish, shellfish or marine resources:

(1) Without the proper, valid identification and permits as required by this Ordinance; or

(2) Caught in a test fishery and not recorded on a test fishery card; or

(3) Which are the property of the Tribe or Treaty Council, without properly recording the sale using the proper card under Section 7.02.056(c) of this Ordinance; or

(4) Caught with any vessel which has not been registered in compliance with this Ordinance.

(j) Sale of Fish Taken Unlawfully.

Any person who shall sell or offer for sale any fish, shellfish or marine resources taken with commercial gear in an area not specifically opened to commercial fishing with that gear is guilty of a **Class B offense**.

(k) Sale of Fish Caught for Subsistence or Recreational Purposes.

Any person who shall sell or offer for sale any fish, shellfish or marine resources caught for subsistence or recreational purposes is guilty of a **Class B offense**.

(l) Sale to Prohibited Buyers.

Any person who sells fish, shellfish or marine resources to any buyer who has been prohibited from buying fish from tribal members is guilty of a **Class C offense**.

(m) Purchase in Violation of Tribal Regulation.

Any person who buys fish, shellfish or other marine resources contrary to Tribal regulations restricting the sale of tribally caught fish to approved licensed buyers or contrary to the conditions by which a fish buyer shall be authorized to buy from tribal fishermen is guilty of a **Class B offense** or a **civil violation subject to fine not to exceed \$1000**.

(n) Failure to Record Fish Sales.

Any person who buys fish, shellfish or other marine resources on the Skokomish Reservation and fails to record such sales as required by Section 7.02.103(e) of this Ordinance is guilty of a **Class B offense** or a **civil violation subject to a fine not to exceed \$1000**.

## 7.02.127 Net Violations

(a) Marine Drift Net Violations

(1) Violation of Net Length Limits.

Any person who fishes more than 330 fathoms of a marine drift gillnet in any area is guilty of a **Class B offense**. "Fishes," for purposes of this section only, does not include any portion of the net or parts of nets joined together which are not actually in the water.

(2) Buoy and Net Identification Requirements.

Any person is guilty of a **Class C offense** who fishes with a marine drift gillnet without a buoy attached which:

(A) Is conspicuously marked with the Tribal Identification card number of the fisherman operating the gear;

(B) Is marked in such a way that a fisherman and the tribal affiliation can be identified without removing the gear from the water;

(C) Is constructed of durable material excluding plastic or metal bottles or other containers;

(D) Has weighted buoy line to keep it from floating; and

(E) Meets all other requirements set by regulation.

(3) Unattended Nets.

Any person who leaves his or her marine drift gillnet unattended is guilty of a **Class C offense**.

(4) Failure to Properly Light Drift Nets.

Any person fishing after dusk who fails to keep lighting on his or her boat and at the end of the drift net furthest from the boat is guilty of a **Class C offense**.

(b) Marine Set Net Violations.

(1) Net Identification Requirements.

Any person is guilty of a **Class C offense** who fishes with a marine set net that is not:

(A) Conspicuously marked at the outermost (seaward) and innermost ends with the Tribal Identification Card number of the fisherman operating the gear; and

(B) Marked in such a way that the fisherman and the tribal affiliation can be identified without removing the gear from the water.

(2) Marine Set Nets to be Tended Daily.

Any person who fails to tend his marine set net and remove all fish captured in the net at least once in every twenty-four hour (24 hr.) period is guilty of a **Class C offense**.

(3) Failure to Properly Light Marine Set Nets.

Any person who fails to maintain working lights on any marine set nets left by the fisherman in marine waters after dusk has committed a **Class C offense**.

(4) Failure to Remove Nets Upon Closure.

Any person who, upon closure of a fishing area, fails to completely remove all nets and parts of nets, buoys, anchors and crosslines, regardless of the condition of the gear, is guilty of a **Class C offense**.

(c) River Gillnet Violations.

(1) Nets Not to Block River.

Any person who allows a set net to extend across or block, by any means, more than one third of the portion of the river which is navigable by salmon is guilty of a **Class B**

**offense.**

(2) Nets to be Attended.

Any person who fails to tend his or her river gillnet and remove all fish captured in the net at least once in every twenty-four hour (24 hr.) period is guilty of a **Class C offense**.

(3) Nets to be Spaced 250 Feet Apart.

Any person who sets or allows any part of any river gillnet to drift closer than 250 feet to any other gillnet is guilty of a **Class D offense**.

(4) Net Identification Requirements.

Any person is guilty of a **Class C offense** who fishes with a river gillnet that is not:

(A) Conspicuously marked at the outermost and innermost ends with the Tribal Identification Card number of the fisherman operating the net; and

(B) Marked in such a way that the fisherman and the tribal affiliation can be identified without removing the net from the water.

(d) General Net Violations.

(1) Attaching Nets to Tribal Structures Prohibited.

Any person who attaches a net to the Tribe's pier, salmon pens or other aquaculture project-related structure without authorization of the Fisheries Manager, is guilty of a **Class D offense**.

(2) Violation of Special On-Reservation Net Fishing Regulations.

Any person who violates any regulation for on-Reservation net fishing is guilty of a **Class C offense**.

**7.02.128 Shellfish Violations**

(a) Buoy and Net Identification Requirements.

Any person is guilty of a **Class C offense** who fishes with, or sets a shellfish pot for fishing and fails to attach a buoy to the port as follows:

(1) Conspicuously marks the buoy with the Tribal Identification Card number of the fisherman operating the gear;

(2) Marks the buoy in such a way that the fisherman and the tribal affiliation can be identified without removing the gear from the water;

(3) Constructs the buoy of durable material excluding plastic or metal bottles or other containers; and

(4) Has a weighted buoy line to keep it from floating.

(b) Shellfish Harvesting Gear Prohibitions.

Any person who harvests shellfish, not including crab and shrimp, using any gear other than hand held gear, unless authorized by this Ordinance or by regulation is guilty of a **class C offense**.

(c) Shellfishing in Closed Area.

Any person who engages in shellfishing at any place, at any time, or for any species not specifically opened by this Ordinance or by annual emergency regulations is guilty of a **Class A offense**.

(d) Shellfish From Polluted Beach - Prohibitions.

Any person is guilty of a **Class A offense** who:

- (1) Takes shellfish from a polluted beach;
- (2) Transfers, transports, offers for sale, or sells shellfish from a polluted beach; or
- (3) Attempts any conduct prohibited under this section.

(e) Exception.

This section shall not apply to the relay of shellfish from a polluted beach to a clean beach when authorized by the Fisheries Manager.

## **7.02.129 Diving Violations**

(a) Diving Without Training and Safety Class.

Any person who engages in a treaty fishing activity requiring artificial breathing apparatus without passing a tribally approved training and safety class is guilty of a **Class A offense**.

(b) Failure to Follow Safety Standards.

Any person who fails to follow OSHA safety standards while engaging in a fishery activity requiring artificial breathing apparatus is guilty of a **Class B offense**.

(c) Diving Without a Monitor.

Any person who engages in a fishery activity requiring artificial breathing apparatus without a tribally approved monitor in the harvest area, or who fails to follow the instructions of a monitor in the harvest area, is guilty of a **Class A offense**.

## **Sentencing Guidelines**

## **7.02.140 Classification of Offenses for Sentencing and Bail**

The following are the ranges of fines for each class of offense:

<u>Class D</u>	<u>Class C</u>	<u>Class B</u>	<u>Class A</u>
\$25-\$100	\$100-\$250	\$250-\$1,000	\$500-\$5,000

### **7.02.141 Sentencing Guidelines**

Any person who has been convicted by the Tribal Court of violating any provision of this Ordinance or any regulation adopted under it shall be sentenced to one or more of the penalties described in this section.

(a) Sentencing Factors.

When considering the propriety of the sentence to be imposed, the Tribal Court shall specifically consider the following:

- (1) Whether the offense involved a conservation threat to the fishery resource; and
- (2) Whether the convicted person has any prior fishery convictions; and
- (3) Whether the offense constitutes a threat to the Skokomish Indian Tribe's certification status.

(b) Impact on the Resource and Certification Status.

Violations which have a significant impact on the resource and the certification status of the Tribe are more serious than other offenses and shall be punished accordingly. The classification of offenses reflects the relative seriousness of a particular offense. If the Tribal Court is in doubt as to whether a particular violation significantly impacts the fishery resource or the certification status of the Tribe, the Tribal Court may request further information from the Fisheries Manager and/or biologist as to the seriousness of the threat.

### **7.02.142 Penalties - First Violation, Community Service**

(a) Minimum Penalty.

The minimum penalty for a first violation of this Ordinance or regulations adopted under it shall be a fine equal to the amount of the lowest dollar amount within the range set for the class of offense, except that a fine assessed under this chapter may be suspended upon such conditions as the Court may order.

(b) Substitution of Community Service.

Community service may be substituted for the amount of bail, up to a maximum of \$150, provided:

- (1) The violation is a Class C or Class D offense; and

(2) The order for community service hours shall be issued only upon recommendation of the Tribe, through its spokesperson, to the Court; and

(3) Each hour of community service shall only reduce the fine by the amount of the federal minimum wage (rounded to the nearest dollar amount) at the time of sentencing.

#### **7.02.143 Penalties - Second and Subsequent Violations**

(a) Repeat/Habitual Offenders - Combination of Penalties.

For the second and subsequent violations of this Ordinance or regulations adopted under it, a person shall receive more than the minimum penalty established for that class of offense. In such cases the Court shall impose one or a combination of the following penalties:

(1) A mandatory minimum fine in an amount greater than the lowest dollar amount within the range set for that class of offense;

(2) Forfeiture of all property, including fish, shellfish and other marine resources, seized pursuant to a lawful arrest or issuance of a citation;

(3) Suspension or revocation of some or all privileges and/or licenses or permits granted by the Tribe; and/or

(4) Imprisonment for a period of time not to exceed one (1) year.

(b) Violation not Counted After Five Years.

When computing "second and subsequent violations" of this Ordinance or when considering prior convictions for sentencing, a violation shall not be counted after five (5) years from the date of conviction.

#### **7.02.144 Bail**

(a) Amount of Bail.

The amount of bail required to secure release from custody shall be equal to the highest dollar amount within the range set for the class of offense for which the person was arrested. Bail for a Class A offense is \$5,000; Class B is \$1,000; Class C is \$250; and Class D is \$100.

(b) Forfeiture of Bail in Lieu of Court Appearance - Conditions.

The first time a person is cited for allegedly violating this Ordinance or a regulation promulgated under it, the person may forfeit bail instead of appearing in court to defend the charge if the violation is a Class C or Class D offense. The amount of money required to forfeit bail in lieu of a court appearance shall be equal to the highest dollar amount within the range set for the class of offense for which the person was cited. Appearance in court is mandatory for Class A and Class B offenses.

(c) Forfeiture of Bail - Same as Guilty Plea.

Forfeiture of bail shall be considered as a guilty plea and shall have the same effect as a

conviction.

### **Administrative Appeals Procedure**

#### **7.02.150 Appeal from Decision of Fisheries Manager and Fish Committee**

(a) Written Notice of Complaint.

Any person who is aggrieved by an administrative decision of the Fisheries Manager or the Fish Committee may file a "Notice of Complaint" as follows:

- (1) The Notice of Complaint shall be in writing, dated and signed by the aggrieved party;
- (2) The Notice of Complaint shall include a concise statement of the facts and relief requested; and
- (3) A copy of the Notice of Complaint shall be given to the Fisheries Manager and to the Fish Committee.

(b) Fish Committee Hearing and Final Determination.

Within five (5) working days of receipt of the Notice of Complaint, the Fisheries Manager shall set a date for hearing before the Fish Committee:

- (1) A hearing shall be held within 30 days of receipt of the Notice of Complaint;
- (2) At the hearing, the aggrieved party shall be given the opportunity to present any testimony, documents or other evidence to support the complaint;
- (3) At the end of the hearing, the Fish Committee shall adjourn the hearing and shall meet in closed session to render a final determination;
- (4) The Fish Committee may inform the aggrieved party of its final determination when it comes out of closed session, and shall inform the aggrieved party of its final determination in writing within five (5) working days of the hearing.

#### **7.02.151 Appeal from Final Determination of Fish Committee to Tribal Council**

(a) Written Notice of Appeal.

Any person who is aggrieved by a final determination of the Fish Committee pursuant to Section 7.02.150(b) above, may appeal the administrative decision to the Tribal Council by filing a "Notice of Appeal" as follows:

- (1) The Notice of Appeal shall be in writing, dated and signed by the aggrieved party;
- (2) The aggrieved party shall attach to the Notice of Appeal, copies of the original Notice of Complaint and supporting documentation presented at the Fish Committee hearing;
- (3) The aggrieved party shall file the Notice of Appeal with attachments with the

Secretary of the Tribal Council and shall be added to the agenda of a regular Tribal Council meeting within thirty (30) days of receipt of the Notice of Appeal; and

(4) Upon the filing of the Notice of Appeal, the Fisheries Manager shall provide any record of the hearing to the Tribal Council.

(b) Tribal Council Meeting and Final Decision.

(1) The Fisheries Manager, and/or a designated member of the Fish Committee, shall attend the Tribal Council meeting at which the appeal is to be heard;

(2) The appeal shall be heard in open session of the Tribal Council meeting, unless the Tribal Council determines otherwise;

(3) The aggrieved party shall be given the opportunity to explain the basis for his appeal from the administrative decision of the Fisheries Manager and/or the Fish Committee;

(4) The Tribal Council may adjourn into closed session to render a final decision on the matter;

(5) The Tribal Council may consider the entire record *de novo*;

(6) The Tribal Council may announce its final decision when it comes out of closed session, or shall inform the aggrieved party of its final decision in writing within five (5) working days of the meeting; and

(7) The decision of the Tribal Council regarding administrative action is final and cannot be appealed to any other forum.