

Title 18 – Natural Resources

Chapter 6 – Enforcement

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Legislative History

Enacted:

Ordinance 356 Amending STC Title 10, Chapter 7 (12/1/15), BIA (12/17/15) (that portion of Ordinance 356 that pertains to Title 18, Chapter 6).

Ordinance 353 Amending STC Title 18 – Natural Resources Enforcement Provisions (9/1/15), BIA (9/10/15).

Effective date: 9/1/15 (except as to cases brought under this Title pending in Swinomish Tribal Court on the effective date; see Ord. No. 353).

Repealed or Superseded:

Ord. 233 (6/7/05), BIA (6/17/05).

Ord. 250 (10/12/06), BIA (10/16/06).

Codifying Title 18, Ord. 207 (1/27/04), BIA (2/9/04) (that portion of Ordinance 207 that pertains to Title 18, Chapter 6).

Fishing Ord., Ord. 96 (6/2/92), BIA (8/20/92).

Fishing Ord., Ord. 77 (6/4/91), Enacting Res. 91-6-54, BIA (8/19/91) (superseding and replacing all previous fishing-related ordinances, including but not limited to Ordinance 28, 30, 31, 37, and 45).

Hunting Ord., Ord. 59 (1/10/89), Enacting Res. 89-1-5, BIA (1/24/89) (modifying Ord. 57 regarding the scope of tribal jurisdiction; repealing and superseding all previous hunting ordinances).

Adopting a Procedure for Disposing Abandoned Fishing Gear, Res. 82-5-925 (5/4/82).

Fishing Ord., Ord. 45 (7/25/78), BIA (11/20/78) (superseding and replacing all previous fishing-related ordinances except for ordinance 37, the Fishing Instructor Ordinance).

Regulating and Controlling the Commercial Fishing for Salmon, Ord. 31 (6/19/74), BIA (7/31/74) (repealing Ord. 30 and Ord. 28).

Regulating and Controlling the Commercial Fishing for Salmon, Ord. 30 (6/5/73), BIA (8/13/73) (approved subject to conditions regarding the scope of tribal jurisdiction over non-members; repealing Ord. 9 as amended).

Regulating and Controlling the Commercial Fishing for Salmon, Ord. 29 (4/5/73),
BIA (11/6/78) (repealing Ord. 9 as amended).

18-06.010 Enforcement Officers.

- (A) **Appointment.** The Senate may appoint one or more enforcement officers.
- (B) **Duties; Enforcement.** Enforcement officers shall have the duty to:
- (1) regularly patrol the Tribe's off-reservation usual and accustomed fishing places, open and unclaimed lands, and on-reservation fishing, hunting, and gathering areas;
 - (2) enforce the provisions of this Title and all regulations;
 - (3) enforce the provisions of Title 4 and Title 5, Chapter 2 of the Swinomish Tribal Code if the alleged offense is an offense committed during the exercise of Tribal treaty rights or an offense committed against an enforcement officer;
 - (4) issue notices of violation, make arrests, and conduct searches, seizures, investigations, and confiscations in accordance with this Title, a regulation, or Swinomish Tribal Code Title 4 and Title 5, Chapter 2, where applicable.
 - (5) use boats, patrol vehicles and such other vehicles and equipment as are necessary to perform their duties;
 - (6) cooperate with authorized federal and state enforcement officers in monitoring tribal fishing, hunting, and gathering activities, but only to the extent that the monitoring by state or federal enforcement officers is permitted by law;
 - (7) cooperate with authorized enforcement officers from other tribes in monitoring fishing, hunting and gathering activities of the treaty tribes;
 - (8) access fish tickets, reports and other information concerning the individual fishing, hunting or gathering activity in the possession of the Fish Manager or Game Manager; and
 - (9) perform all other duties delegated or assigned in accordance with this Title by the Fisheries Manager, the Game Manager, the Senate, the Commission, or the Enforcement Director.

[History] Ord. 353 (9/1/15).

18-06.020 Cross-Deputization.

- (A) Notwithstanding any other provision of this Title, the Senate may enter into an agreement with another tribal, state, federal, or county government providing for the cross-deputization of enforcement officers.
- (B) Notwithstanding any other provision of this Title, enforcement officers may be deputized or cross-deputized as Tribal police officers, in general or with regard to some particular duties or provisions of Tribal law, and may exercise the powers and duties of a police officer in accordance with the terms and conditions of the deputization or cross-deputization.

[History] Ord. 353 (9/1/15).

18-06.030 Authority of Enforcement Officers.

- (A) **General Authority.** Enforcement officers shall have the authority to perform all acts authorized by this Title or that are incidental or necessary to the performance of authorized acts.
- (B) **Criminal Investigations.** An enforcement officer shall have the authority to investigate and arrest any person for an offense. The enforcement officer shall make all arrests in accordance with the requirements of Swinomish Tribal Code, Title 3, Section 3-03.110 – Cause for Arrests. In the officer’s discretion, in lieu of arrest, an enforcement officer may issue a criminal citation to a person who has committed an offense.
- (C) **Civil Investigations.** An enforcement officer shall have the authority to investigate and issue a notice of violation to any person who has committed an infraction.
- (D) **Authority for Arrests and Search and Seizure.** For actions taken within the scope of their authority under this Title, and except as may be limited by any other provision of this Title, enforcement officers shall have the full power and authority to arrest, detain, stop, question, investigate, and effect searches and seizures that are permitted under the Indian Civil Rights Act, 25 U.S.C. §§ 1301 – 1303, and Article VII, Section 4 of the Tribal Constitution, as interpreted and applied in accordance with decisions of the Court.

[History] Ord. 353 (9/1/15).

18-06.040 Routine Inspections.

- (A) **Inspection.** Based upon a reasonable and articulable suspicion that a person is engaged in treaty fishing, hunting or gathering activities, enforcement officers are authorized to temporarily stop the person and inspect (i) any permits, licenses, logs, tickets, gear, vehicles or boats used in the fishing, hunting or gathering activities; (ii) other documents required to be carried upon or maintained by the person under to this Title; and (iii) any fish, game or plants in possession of the person.
- (B) **Failure to Comply.** Failure to comply with an inspection under Subsection (A) is an offense committed against an enforcement officer.

[History] Ord. 353 (9/1/15).

18-06.050 Seizure of Property.

Personal property shall be subject to seizure in accordance with this Section.

- (A) **Seizure for Evidentiary Purposes.** An enforcement officer may seize any fish, wildlife, plants, gear or other personal property where the officer has probable cause to believe that a violation has occurred and the officer reasonably believes that it is necessary to seize the property and hold it as evidence of the commission of a violation.
- (B) **Fish and Game.** An enforcement officer may seize all fish, parts of fish, game and parts of game, and plants or parts of plants that the officer has probable cause to believe were taken, killed, captured, gathered, harvested, transported, or possessed by the a person illegally or in the course of a violation.
- (C) **Gear.** The enforcement officer may also seize any gear or other personal property if:
 - (1) The officer has probable cause to believe the property was used in the commission of a violation and there is probable cause to believe the weapons, gear or other paraphernalia will continue to be used in a violation; or
 - (2) The owner or possessor of the property is taken into custody; or
 - (3) The enforcement officer has probable cause to believe the property is unlawfully in the possession of the person.
- (D) In addition to the authority contained in Sub. (C), above, an enforcement officer may seize and hold any fishing gear or fishing vessel that the officer has probable cause to believe were involved in any offense of Class A or Class B infraction as security for payment of any fine or other costs that may be imposed by the Court.

- (E) **Abandoned Vessels and Fishing Gear.** Where vessels, fishing gear or other personal property have been abandoned on tribal tidelands, the beach fronting on the Swinomish Channel, or have been abandoned on the Tribe's commercial float dock in violation of Section 18-03.320, the enforcement officer shall follow the provisions provided for in Title 10, Chapter 7 of the Swinomish Tribal Code.

[History] Ord. 356 (12/1/15); Ord. 353 (9/1/15).

18-06.060 Pre-Forfeiture Procedures.

- (A) **Inventory.** The enforcement officer who has seized property shall prepare and sign an inventory of all items seized describing the items in sufficient detail to allow identification and stating the location where the property was seized. If the owner or the person in possession of the property is present at the seizure or otherwise readily available, the officer shall request that person to sign the inventory as well. A copy of the inventory shall be provided to the owner of the property, if known.
- (B) **Unknown Owner.** If the identity of the owner of the property seized is not known, the enforcement officer shall make a reasonable attempt to identify the owner and provide the owner with a copy of the inventory. If the officer is unable to identify or locate the owner after reasonable efforts to do so, the officer shall post the inventory at the fish and game office and two other suitable public locations on the Reservation. If no one claims to be the owner of the property within ten (10) days of the posting, the officer shall proceed with the forfeiture of the property as provided in Section 18-06.070.
- (C) **Storage of Seized Property.** The enforcement officer shall store all seized property in a secure location and shall label the items with the owner's name if known. Items seized from the same location shall be stored together if possible.
- (D) **Perishable Property.** If the property seized consists of fish, game, or other perishable products, an enforcement officer may, in the officer's discretion:
- (1) freeze or otherwise preserve the property in salable condition, or
 - (2) sell the property in any commercially reasonable manner, seize the proceeds of the sale, and hold the proceeds for disposition in the manner that would have applied to the property itself, or
 - (3) destroy or discard the property if the property has insufficient value to warrant retention or sale.

[History] Ord. 356 (12/1/15); Ord. 353 (9/1/15).

18-06.070 Forfeiture Procedures.

- (A) **General Rule.** All confiscated property is forfeited unless redeemed or returned as provided in this Chapter.
- (B) **Property Seized as Evidence.** If the property has been seized as evidence, the enforcement officer shall prepare an inventory of items seized as evidence, which shall be provided to the owner of the property, if known. If the owner is unknown, the officer shall follow the procedures contained in Section 18-06.060(B) to identify the owner. Personal property shall be returned to the owner when it is no longer needed as evidence, or at the time of disposition of any related charge of a violation, whichever is earlier. Property introduced as evidence at any proceeding in Court shall be held as part of the record and shall not be released to the owner without further order of the Court. If the owner is unidentified, the evidence shall be held for sixty (60) days after it is available for return to the owner. If not claimed by the owner within that period, the property shall be disposed of as provided in this Section. If property seized as evidence is also be subject to seizure under another subsection of Section 18-06.050, such property shall be treated in accordance with the provisions applicable to that subsection, and not the provisions of this subsection.
- (C) **Reclaiming Property.** The owner of seized property may reclaim and take possession of the property within thirty (30) days of its seizure or at the conclusion of Court proceedings related to the seizure, whichever is later. The owner first shall make payment to the Tribe for any costs, charges, or fines that have accrued or been assessed, subject to the following provisions:
- (1) Any fish, game, or plants seized under this Section, or the proceeds from the sale of the same, shall not be returned to a person who admitted to or was found to have committed a violation.
 - (2) Any person whose property was seized under 18-06.050 (B), (C)(1) or (2), or (D) may obtain the return of the property seized, free of any costs or charges, if:
 - (a) charges for a violation are not initiated within sixty (60) days of seizure;
or
 - (b) changes of a violation have been dismissed; or
 - (c) the person has been found not liable for or not guilty of a violation by the Court.

- (3) Any person whose property has been seized to secure payment of fines and costs arising from a violation who can demonstrate economic hardship may be permitted to reclaim the property if the person pays one half of the accrued amount and agrees to pay the remainder over a period of time not to exceed six (6) months.
- (D) **Hearing.** If the owner asserts a claim to seized property in storage, and there is no pending proceeding in Court regarding a violation associated with the seizure of the property, the owner may request a hearing before the Commission on return of the property within thirty (30) days of the seizure. The Commission shall conduct the hearing in the following manner:
- (1) The Fisheries Manager or Game Manager, as appropriate, shall provide the Commission with copies of any documents in support of seizure and impoundment and their associated costs, and may produce and question witnesses at the hearing.
 - (2) The owner shall be provided a full and fair opportunity to respond, either orally or in writing, and may produce and question the Fisheries Manager or Game Manager and witnesses at the hearing.
 - (3) All witnesses shall be placed under oath. The hearing will be audio recorded.
 - (4) The Commission shall consider all of the evidence presented and, on the basis of the record, shall either deny or grant the owner's requested relief.
- (E) **Costs of Seizure and Disposal.** The owner of the property that has been seized shall be liable for all reasonable costs associated with seizing and disposing of the property in forfeiture. The owner shall be subject to the following charges:
- (1) The cost, if any, of removing the seized property, including the cost of fuel;
 - (2) A daily charge for storage at a reasonable rate shall be set by the Commission. Unless otherwise posted, the rate shall be \$5.00/day; and
 - (3) A fine of twenty dollars (\$20.00), which may be assessed by the Commission against an owner of seized property that has been kept in storage if the owner knowingly leaves such property in storage without claiming it for thirty (30) days or more; and
 - (4) The actual costs of advertising and conducting the bid process, if any, to sell the seized property.

- (F) **Security for Payment of Fine.** With regard to property that has been seized to secure the payment of any fine for a violation assessed by the Court, if the Court imposes a fine and the fine remains unpaid for sixty (60) days after the judgment or order was entered, the property shall be forfeited to the Tribe for disposition under this Section.

[History] Ord. 353 (9/1/15).

18-06.080 Disposition of Forfeited Property.

- (A) **Determination of Value.** The Fisheries Manager or Game Manager, as appropriate, shall determine whether a forfeited property is of sufficient value to justify the time and costs associated with selling the property by sealed bids. If the property is of sufficient value to be reasonably expected to fetch through sealed bids an amount that exceeds the costs of the process, the Fisheries Manager or the Game Manager, as appropriate, shall sell the property in that manner. If the value of the property is insufficient to justify the use of sealed bids, the Fisheries Manager or Game Manager may sell the property in any other commercially reasonable manner or otherwise dispose of the property.
- (B) **Sale by Sealed Bids.**
- (1) At least fourteen (14) days prior to the date for opening the bids, notice of the sale by bids shall be posted at the fish and game office, the Tribe's administration office and one other prominent public place on the Reservation, and shall be published in the Tribe's newspaper if time permits.
 - (2) The notice shall include a general description of the property to be bid upon, where the property may be viewed, where to tender the bids, the form of the bid, the deadline for submission of the bids, and the date, time and place for the opening of the bids. The Fisheries Manager or the Game Manager may set a minimum bid requirement or impose other reasonable conditions on the bidding process. All bids shall be submitted sealed.
 - (3) Only Tribal members may enter bids at the auction. The owner of the property and members of the owner's immediate family shall be ineligible to bid on the property. Any Tribal member whose fishing, hunting, or gathering privileges have been suspended or revoked in accordance with this Title shall not be permitted to submit a bid during the period of suspension or revocation.
 - (4) Bids shall be opened publicly at the place and time given in the notice. The highest qualified bid will be accepted. The awarding of bids shall be conducted in a public, open, fair, and orderly fashion.
 - (5) The purchaser of any item at the sale of a forfeited property shall take title to that item free and clear of any claim made by the former owner after the sale of the item is complete.

(C) **Sale Proceeds.**

- (1) Except as otherwise provided in this Chapter, all proceeds derived from the sale of forfeited property are the property of and shall be paid to the Tribe.
- (2) The proceeds shall be disbursed in the following order of priority:
 - (a) Seizure, storage, and retrieval costs;
 - (b) Costs of the sale;
 - (c) Court costs, fines and penalties imposed by the Court, if any;
 - (d) taxes, fees or any other debt the owner owes the Tribe; and
 - (e) the remainder, if any, to the dock fund.

[History] Ord. 353 (9/1/15).