

## **Title 18 – Natural Resources**

### **Chapter 8 – Penalties**

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#### **Legislative History**

**Enacted:**

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**Repealed or Superseded:**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. 228 (4/5/05), BIA (4/20/05).

Ord. 249 (10/12/06), BIA (10/16/06).

Codifying Title 18, Ord. 207 (1/27/04), BIA (2/9/04).

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

An Amendment to Ord. No. 77, re: Crabbing, Ord. 88 (2/6/92), BIA (2/18/92).

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).

Amending Tribal Clamming Regulations, Res. 90-4-22 (4/17/90).

Amending Tribal Clamming Regulations, Res. 90-3-19 (2/29/90).

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).

Hunting Ord., Ord. 57, Enacting Res. 88-8-55 (8/31/88) (approved subject to the condition that it be modified regarding the scope of tribal jurisdiction; repealing and superseding all prior hunting ordinances).

Big Game Hunting Ord., Ord. 56 (9/1/87), Enacting Res. 87-9-95, BIA (10/26/87).

Big Game Hunting Regulations, Res. 86-12-115 (12/15/86).

Amending Sections 19 and 20 of Fishing Ordinance No. 45, Res. 86-5-27 (5/1/86).

Regulating the Use of Point Elliot Tribal Identification Cards, Res. 83-7-78 (7/29/83).

Adopting Clamming Regulations, Res. 83-6-60 (6/8/83).

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 Treaty Fishing Right Both On and Off the Reservation, 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) (repealing Ord. 9, as amended), BIA (11/6/78) (repealing Ord. 9, as amended).

Regulating and Controlling the Commercial Fishing of Salmon, Ord. 28A (8/3/65).

Regulating the Taking of Salmon, Ord. 9 (7/19/40), BIA (7/25/40).

Adopting Certain State Fishing Regulations, Ord. 5 (no date), BIA (7/6/37).

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### **18-08.010 Applicability.**

Unless otherwise provided, any person committing an infraction, including a violation involving the activities of non-Indians treated as a civil infraction under the provisions of Section 18-01.030(E), shall be subject to the civil penalties as specified in this Chapter.

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

### **18-08.020 Unclassified Infractions.**

Any person who commits any act prohibited by this Title or a regulation which is not an offense and which is not specifically described as a Class A, Class B, Class C, or Class D infraction shall be liable for a Class C infraction, in addition to any other sanctions imposed by this Title or a regulation.

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

### **18-08.030 Classes of Infractions.**

(A) **Class A.** A Class A infraction shall be punishable by the following civil penalties:

(1) A fine for no less than one thousand two hundred dollars (\$1200.00) and no more than two thousand dollars (\$2000.00), plus court costs.

(2) Suspension of hunting, fishing, or gathering privileges, as the case may be, for no less than three (3), but no more than twelve (12), of the next calendar months.

(B) **Class B.** A Class B infraction shall be punishable by a fine of not less than six hundred dollars (\$600.00) and not more than one thousand dollars (\$1000.00), plus court costs.

- (C) **Class C.** A Class C infraction shall be punishable a fine of not less than one hundred fifty dollars (\$150.00) and not more than two hundred fifty dollars (\$250.00), plus court costs.
- (D) **Class D.** A Class D infraction shall be punishable by a fine of not less than ten dollars (\$10) and not more than twenty dollars (\$20).

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

**18-08.040 Habitual Offenders.**

- (A) A habitual offender is any person whose record shows an accumulation of twelve (12) or more points based upon convictions for violations in a five (5) year period. No conviction entered prior to the effective date of this Section shall be included in or count toward the accumulation of points. Convictions accrue points as follows:

|                                   |          |
|-----------------------------------|----------|
| Offenses and Class A infractions: | 6 points |
| Class B infractions               | 4 points |
| Class C infractions               | 2 points |
| Class D infractions               | 1 point  |

- (B) The Enforcement Director shall develop a system for obtaining information from the Court and tracking convictions and point accumulation on a periodic basis. The Enforcement Director shall notify the prosecutor whenever a person has accumulated points sufficient to be a habitual offender, as further provided in Chapter 7.
- (C) If a defendant is determined to be a habitual offender, the Court shall impose a penalty of suspension of all hunting, fishing and gathering privileges and a prohibition against obtaining any license or permit available under this Title for a period of not less than one (1) year and not more than three (3) years. In addition, the Court may impose an additional fine of up to three times the maximum fine for the most severe underlying violation.
- (D) If a habitual offender commits a violation during the period of suspension under Sub. (C), above, the Court shall impose an additional, consecutive suspension and prohibition of licensing of twice the length of the original suspension and in addition may impose a fine of up to five thousand dollars (\$5,000). If the habitual offender commits a second violation during a suspension, the Court shall revoke all hunting, fishing and gathering privileges and permanently prohibit the habitual offender from obtaining any license or permit under this Title.
- (E) For purposes of this section, prior convictions of multiple violations arising from the same incident or occurrence shall be treated as a single prior conviction of the highest class of violation among the multiple violations.

- (F) For purposes of this section, a conviction in another court shall be counted as a prior conviction for purposes of the point system in sub. (A), above, as follows:
- (1) A conviction in any court of the State of Washington, any federal court, or any court of another Tribe shall be considered as a prior conviction for purposes of this Section where the conviction involves a violation of the fishing, hunting or gathering laws of the State of Washington, the United States, or another Tribe; provided, that no such conviction may be counted if: (i) the underlying fishing, hunting or gathering law is contrary to or inconsistent with the Tribe's treaty rights or federal law, or (ii) the arrest, charge, or conviction involves a gross violation of a defendant's civil rights.
  - (2) Forfeiture of bail shall be counted as a conviction for the purposes of this Section.
  - (3) A certified copy of the prior judgment from any court of the State of Washington, any federal court, or any court of another Tribe shall be sufficient proof of the prior conviction.
  - (4) For any prior conviction under this Section, the Court shall determine which class of infraction or offense is most analogous to the prior conviction for purposes of determining how many points to assign to the conviction under sub. (A), above.

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

**18-08.050 Additional Penalties for Certain Offenses.**

Unless otherwise prohibited by this Title, upon conviction of an offense committed during the exercise of Tribal treaty rights or an offense committed against an enforcement officer, in addition to the criminal penalties under Swinomish Tribal Code Title 4 or Title 5, Chapter 2, the Court shall impose a suspension of hunting, fishing and gathering privileges for a period no less than three (3) months but no more than twelve (12) months.

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

**18-08.060 Each Violation a Separate Violation.**

Each violation is a separate violation that carries its own penalty as set forth in this Title, unless stated explicitly otherwise.

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

**18-08.070 Fines and Community Service.**

- (A) **Fines.** The Court does not have the authority to suspend or reduce any minimum fine for violations of this Title, unless specifically provided for in this Title or a regulation. However, the Court may order reasonable installment payments as provided in Chapter 7.
- (B) **Community Service.**
  - (1) The Court may allow the defendant to perform community service hours in lieu of up to twenty five percent (25%) of any fine. The balance of seventy five percent (75%) must be paid in cash. Each hour of community service shall reduce the fine by the state minimum wage, or as otherwise set by the Court.
  - (2) The Court may impose community service hours only if there is community service work available within the Tribe and there is someone available to monitor and supervise the work.
  - (3) Upon completion of any community service ordered by the Court or expiration of the time period in which the community service was to be performed, whichever occurs first, the person monitoring the work performed by the defendant shall submit a written report to the Court.

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

**18-08.080 Default on Fine; Suspension or Revocation.**

- (A) If a defendant fails to pay a fine or any installment of the fine when due, the Court, on its own motion or on the Tribe's motion, shall notify the defendant of the default in payment and that in thirty (30) days the Court will notify the Fisheries Manager or Game Manager, as the case may be, to suspend or revoke the defendant's hunting, fishing or gathering privileges unless and until the defendant has paid the full amount of the fine or has made other arrangements satisfactory to the Court. The defendant may request a hearing before the Court on the matter of payment.
- (B) If the defendant fails to pay the fine when due or make satisfactory arrangements with the Court, the Court shall notify the Fisheries Manager or the Game Manager, as appropriate. The Fisheries Manager or Game Manager shall immediately revoke or suspend the fishing, hunting or gathering privileges, as appropriate, until the fine has been paid or appropriate arrangements have been made with the Court. This suspension may be imposed in addition to any other penalty or remedy provided under this Title or other law of the Tribe, including the application of Tribal fisher withholding to unpaid Court fines under Section 18-03.830.

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

**18-08.090 Suspension or Revocation of Fishing Privileges.**

- (A) Suspension or revocation of fishing privileges shall prohibit any and all activity reasonably related to the exercise of treaty fishing rights, including acting as an assistant. In addition, suspension of fishing privileges shall prohibit the use or operation of the suspended fisher's boat or gear by another person during the period of the suspension.
- (B) The Fisheries Manager shall develop a method for tracking suspensions. The Fisheries Manager shall notify the affected Tribal member, the Court, and enforcement officers when the suspension begins and ends.

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

**18-08.100 Suspension or Revocation of Hunting Privileges.**

Suspension or revocation of hunting privileges shall prohibit any and all activity reasonably related to the exercise of treaty hunting rights, including acting as a designated hunter.

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

**18-08.110 Suspension or Revocation of Gathering Privileges.**

Suspension or revocation of gathering privileges shall prohibit any and all activity reasonably related to the exercise of treaty gathering rights.

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