

Title 18 – Natural Resources

Chapter 3 – Fishing

Sec.

Subchapter I – Permits and Identification

- 18-03.010 Eligibility of Tribal Members to Exercise Tribal Treaty Fishing Rights
- 18-03.020 Identification Cards
- 18-03.030 Lost or Destroyed Point Elliott Treaty Fishing Cards
- 18-03.040 Misuse of Identification Cards
- 18-03.050 Fishing Permits
- 18-03.060 Fees
- 18-03.070 Associate Members
- 18-03.080 Assistants
- 18-03.090 Research and Observation Permits
- 18-03.100 Revocation or Suspension of Permits

Subchapter II – Vessel Ownership and Registration

- 18-03.110 Vessel Ownership in Tribal Fishery
- 18-03.120 Boat Registration and Identification

Subchapter III – Beach and Tidelands Access

- 18-03.130 Reasonable Access Across Private Lands
- 18-03.131 Summers River Access Property
- 18-03.140 Access Designated By Senate
- 18-03.150 Cooperative Access Agreements
- 18-03.160 Kiket Island and Flagstaff Island Tidelands

Subchapter IV – Fishing Instructors

- 18-03.170 Authorization
- 18-03.180 Application to Employ Fishing Instructor
- 18-03.190 Contents of Application
- 18-03.200 Fish and Game Management Commission Review
- 18-03.210 Issuance of Permit
- 18-03.220 Fixed Fee to Instructor Required
- 18-03.230 Restrictions on Instructor Fishing
- 18-03.240 Permit Conditions
- 18-03.250 Copy of Permit to Washington State
- 18-03.260 Civil Penalties

Subchapter V – Harvest and Gear Restrictions (General)

- 18-03.270 Protection of Spawning Areas
- 18-03.280 Purchase of Fish Illegally Harvested Prohibited
- 18-03.290 Purchase of Illegal Fish (Criminal)
- 18-03.300 Sale of Subsistence or Ceremonial Fish
- 18-03.310 Wasteful Practices Prohibited
- 18-03.320 Unattended Gear

18-03.330	Fishing After Closing Time
18-03.340	Fishing Prior to Area Opening
18-03.350	Fishing Out of Area
18-03.360	Fishing Out of Area (Criminal)
18-03.370	Use of Tribal Gear in Non-Tribal Fishery
18-03.380	Use of Non-Tribal Gear in Tribal Fishery
18-03.390	Multiple Benefits Prohibited
18-03.400	Receipt of a Percentage of the Catch
18-03.410	Loaning Gear to Suspended Fisher
18-03.420	Trawling Prohibited in Certain Areas
18-03.421	Non-Member Fishing
	<i>Subchapter VI – Harvest and Gear Restrictions (Fishery Specific)</i>
18-03.429	Conflict Between Fishery Specific Harvest and Gear Restrictions and Fishing Regulations
18-03.430	Salmon or Steelhead Openers
18-03.440	Salmon or Steelhead Harvest Restrictions
18-03.450	Salmon or Steelhead Gear Restrictions
18-03.460	Salmon or Steelhead Gear Identification
18-03.470	Halibut Openers
18-03.480	Halibut Harvest Restrictions
18-03.490	Halibut Gear Restrictions [Reserved]
18-03.500	Bottom Fish Openers
18-03.510	Bottom Fish Harvest Restrictions
18-03.520	Bottom Fish Gear Restrictions
18-03.530	Forage Fish Openers [Reserved]
18-03.540	Forage Fish Harvest Restrictions [Reserved]
18-03.550	Forage Fish Gear Restrictions
18-03.560	Crab Openers
18-03.570	Crab Harvest Restrictions
18-03.580	Crab Gear Restrictions
18-03.590	One Operator Per Vessel Per Commercial Crab Opener
18-03.600	Clams as Bait
18-03.610	Shrimp Openers
18-03.620	Shrimp Harvest Restrictions
18-03.630	Shrimp Harvest Restrictions (Criminal)
18-03.640	Shrimp Gear Restrictions
18-03.650	One Operator Per Vessel Per Shrimp Opener
18-03.660	Clam Openers
18-03.670	Clam Harvest and Gear Restrictions
18-03.680	Clam Fisheries
18-03.690	Commercial Dive Fisheries
18-03.700	Geoduck Fishery
18-03.710	Sea Urchin Fishery
18-03.720	Sea Cucumber Fishery
18-03.730	Oyster Fishery [Reserved]

Subchapter VII – Fish Buyers

- 18-03.740 Fish Buyers
- 18-03.750 Fish Buyer's Bond
- 18-03.760 Posted List of Fish Buyers
- 18-03.770 Fish Receiving Tickets and Bag Tags
- 18-03.780 Revocation and Reinstatement Procedures
- 18-03.790 Annual Withholding; Biological Sampling
- 18-03.800 Use of Voided Point Elliott Treaty Fishing Card

Subchapter VIII— Fish Sellers

- 18-03.820 Vessel Operators
- 18-03.830 Withholding
- 18-03.840 Fish Catch Reporting; Take Home; Over the Bank Sales
- 18-03.850 Failure to Use Point Elliott Treaty Fishing Card Number
- 18-03.860 Participation in Harvest
- 18-03.870 Sales to Unlicensed Fish Buyers
- 18-03.880 False or Misleading Fish Receiving Tickets

Subchapter IX – Public Safety and Welfare

- 18-03.890 Safe and Courteous
- 18-03.900 Unlawful Interference with Access
- 18-03.910 Interference with Another Fisher's Set Net
- 18-03.920 Corking Another Fisher's Net
- 18-03.930 Anchoring of Drift Nets
- 18-03.940 Use of Intoxicants
- 18-03.950 Boating Safety

Legislative History

Enacted:

- Ordinance 426 Amending STC Title 18, Chapter 3 (2/15/22).
- Ordinance 425 Amending STC Title 18, Chapter 3 (11/17/21).
- Ordinance 418 Amending STC Title 18, Chapter 3 (5/4/21).
- Ordinance 411 Amending STC Title 18, Chapter 3 (10/20/20).
- Ordinance 404 Amending STC Title 18, Chapter 3 (6/25/20).
- Ordinance 396 Amending STC Title 18, Chapter 3 (11/13/19).
- Ordinance 380 Amending STC Title 18, Chapter 3, and Ordinance Nos. 232 and 336 (5/10/18).
- Ordinance 358 Amending STC Title 18, Chapter 3, Sections 18-03.790 and 18-03.830 (2/8/16), BIA (2/18/16).
- Ordinance 336 Amending STC Title 18, Chapter 3, and Ordinance 232 (6/3/14), BIA (6/10/14)
- Ordinance 335 Amending Chapter 3 and Ordinance No. 254 (6/3/14), BIA (6/11/14).
- Ordinance 320 Amending STC Title 18, Chapter 3, and Ordinance Nos. 254 and 290 (12/4/12), BIA (12/12/12).

Ordinance 290 Amending Title 18, Chapter 3: Natural Resources Code and Repealing Title 17, Chapter 6: Fish Tax and Ordinance No. 182 (6/7/11), BIA (6/17/11).

Ordinance 268 Amending STC Title 18, Chapter 3, Fishing, and Ordinance No. 232 (1/19/10), BIA (3/5/10).

Ordinance 266 Amending STC Title 18, Chapter 3 and Ordinance No. 254 (6/18/09), BIA (6/30/09).

Ordinance 254 Amending Title 18, Chapter 3 and Repealing and Superseding that Portion of Ordinance No. 232 that Relates to Title 18, Chapter 3 (3/6/07), BIA (3/16/07).

Ordinance 232 Amending Title 18, Chapter 3 and Repealing and Superseding that Portion of Ordinance No. 207 that Relates to Title 18, Chapter 3 (6/7/05), BIA (6/17/05).

Repealed or Superseded:

Ordinance 207 Codifying Title 18 (1/27/04), BIA (2/9/04) (that portion of Ordinance 207 that pertains to Title 18, Chapter 3).

Ordinance 160 Ensuring Consistency Between Provisions in the Enrollment Ord. and the Fishing Ord. (9/10/02), BIA (10/2/02) (amending Part P of Section 11-1.040, Part C.5 of 11-1.070, Parts A, H and I of Section 11-3.010, and Section 11-3.030 of the Tribe's Fishing Ordinance, Title 11).

Ordinance 158 Increasing Membership of the Fish and Game Management (8/6/02), BIA (8/26/02) (amending Section 11-1.050 of the Tribe's Fishing Ordinance, Title 11).

Ordinance 157 Delegating Additional Authority to the Fisheries Manager and Fish and Game Management Committee (7/2/02), BIA (8/15/02) (amending Sections 11-1.050, 11-1.060, 11-1.070(C), and 11-8.040 of the Fisheries Code, Title 11).

Ordinance 156 Allowing for Electronic Home Monitoring in Sentencing (7/2/02), BIA (7/26/02) (amending Section 11-1.040 of Ordinance 117).

Ordinance 155 Imposing Moratorium on Issuance of Assistant Permits to Non-Members (6/4/02), BIA (6/16/02) (amending Subsection E of Section 11-2.020).

Ordinance 153 Imposing a Moratorium on the Issuance of Assistant Permits to Non-Member Spouses (5/7/02), BIA (5/9/02) (amending Section 11-2.020 of the Tribe's Fishing Ordinance, Title 11).

Ordinance 146 Increasing the Membership of the Fish and Game Management Committee (3/6/01), BIA (3/26/01) (amending Section 11-1.050 of the Tribe's Fishing Ordinance, Title 11).

Ordinance 117 Regulating Boat Registration and Identification (4/1/96), BIA (5/10/96).

Ordinance 97 Tideland and Beach Access (8/4/92).

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

Ordinance 88 Amending Ord. 77, Re: Crabbing (2/6/92).

Ordinance 82 Regulating Fishing in Closed Waters and Clamming on Closed Beaches (1/7/92), Enacting Res. 92-1-6, BIA (2/3/92).

Ordinance 81 Prohibiting Non-members from Beach Seining (8/6/91), Enacting Res. 91-8-86, BIA (11/1/91).

Ordinance 77 Fishing Ordinance (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).

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

Resolution 90-3-19 Amending Tribal Clamming Regulations (3/29/90).

Ordinance 64 Establishing Conditions on Fishing Permits for Qualified Assistants (8/1/89), Enacting Res. 89-8-76, BIA (3/22/90) (amending Ord. 45).

Ordinance 62 (renumbered as Ord. 64).

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

Resolution 86-5-27 Amending §§ 19 and 20 of Ord. 45 and Increasing the Fish Tax Ord. 86-55 (5/1/86), BIA (5/22/86).

Ordinance - No number - Amending § 19 of Ord. 45, Enacting Res. 85-5-35 (5/15/85).

Resolution 83-7-77 Regulating the Use of Fishing Gear and Boat Registration (7/29/83) (amending Ord. 45).

Resolution 83-7-78 Regulating the Use of Pt. Elliot Tribal Identification Cards (7/29/83).

Resolution 83-5-55 Amending Sections 19, 20, and 21 of Ord. 45 (5/31/83).

Resolution 82-5-926 Amending Sections 19, 20, and 21 of Ord. 45 (5/4/82).

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

Resolution 80-9-750 (9/2/80) Amending Ord. 45.

Resolution 80-8-742 Requiring Weekly Reporting of Number of Fish of Each Species Caught During Preceding Week, (8/12/80).

Ordinance – No number - Amending Form of Ord. 45 (11/8/78).

Resolution 78-10-555 Concerning Tribal Fishing Vessels (10/3/78).

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

Resolution 78-05-515 Designating the Enrollment Committee to Determine Eligibility of Applicants for Associate Fishing Membership Status (5/10/78).

Resolution 335 Establishing Violations and Penalties Concerning Use and Control of Natural Resources (3/4/75).

Ordinance 31 Fishing Ordinance (6/10/74), BIA (7/34/74).

Ordinance 30 Fishing Ordinance (6/5/73), BIA (8/13/73) (identical to Ord. 29).

Ordinance 29 Fishing Ordinance (4/5/73) (repealing Ord. 9 as amended).

Ordinance 28A Fishing Ordinance (8/3/65) (repealing Ord. 9).

Ordinance 27 Imposing 1% Catch Tax (7/6/65).

Ordinance – No number - Proscribing the Purchase, Sale, or Shipping of Steelhead or Game Fish (9/1/63) (amending Ord. 9).

Ordinance 9 Fish Ordinance (7/19/40), BIA (7/25/40).

Resolution 12 Closing Fish Trap on Weekends (no date), BIA (7/6/37).

Ordinance 5 Applying State Fishing Regulations to Indians Fishing in Swinomish Slough (no date), BIA (7/6/37).

Resolution 2 Establishing the Power and Duties of the Director of Fisheries: Powers and Duties (5/8/36).

Rescinded:

Ordinance 37 Fishing Instructor Permit (3/9/77), BIA (not approved).

Noted:

The general provisions from Ords. 160, 158, 157, 156, 155, 153, and 146 are as follows:

Ord. 160 (9/10/02).

Section 1. Title

This Ordinance shall be referred to as the Ordinance Amending the Fishing Ordinance to Ensure Consistency with the Enrollment Ordinance Regarding Tribal Identification Cards.

Section 2. Authority

This Ordinance is adopted pursuant to authority provided by the following provisions of the Swinomish Constitution and Bylaws, as amended on October 22, 1985:

Article VI, Section 1(k) of the **Swinomish Constitution**; and
Article VI, Section 1(q) of the **Swinomish Constitution**; and
Article VI, Section 1(s) of the **Swinomish Constitution**; and
Article V, Section 5 of the **Swinomish Bylaws**.

Section 3. Purpose

The purpose of this Ordinance is to amend Part P of Section 11-1-040, Part C.5 of 11-1.070, Parts A, H and I of Section 11-3.010, and Section 11-3.030 of the Tribe's Fishing Ordinance, Title 11, by substituting the phrase "Point Elliot Treaty Fishing Card" for "Tribal Identification Card" and by incorporating similar language regarding the misuse of Tribal Identification Cards for misuse of Point Elliot Treaty Fishing Cards.

Ord. 158 (8/6/02).

Section 1. Title

This Ordinance shall be referred to as the Ordinance Amending the Fishing Ordinance to Increase the Membership of the Fish and Game Management Committee.

Section 2. Authority

This Ordinance is adopted pursuant to authority provided by the following provisions of the Swinomish Constitution and Bylaws, as amended on October 22, 1985:

Article VI, Section 1(k) of the **Swinomish Constitution**; and
Article VI, Section 1(q) of the **Swinomish Constitution**; and
Article VI, Section 1(s) of the **Swinomish Constitution**; and
Article V, Section 5 of the **Swinomish Bylaws**.

Section 3. Purpose

The purpose of this Ordinance is to amend Section 11-1.050 of the Tribe’s Fishing Ordinance, Title 11, by increasing the membership of the Fish and Game Management Committee from eight (8) members to eleven (11) members and by setting the quorum of the Committee at six (6) members.

Ord. 157 (7/2/02).

Section 1. Title

This Ordinance shall be referred to as Ordinance Amending Fisheries Code Ordinance Re Delegated Authority and Advisory Committees.

Section 2. Authority

This Ordinance is adopted pursuant to authority provided by the following provisions of the Swinomish Constitution and Bylaws, as amended on October 22, 1985:

Article VI, Section 1(k) of the **Swinomish Constitution**; and
Article VI, Section 1(q) of the **Swinomish Constitution**; and
Article VI, Section 1(s) of the **Swinomish Constitution**; and
Article V, Section 5 of the **Swinomish Bylaws**.

Section 3. Purpose

The purpose of this Ordinance is to amend Sections 11-1.050, 11-1.060, 11-1.070(C), and 11-8.040 of the Fisheries Code, Title 11 of the Swinomish Tribal Code, by granting additional authorities to the Fisheries Manager and Fish and Game Management Committee under Fisheries code and by providing for the appointment of advisory committees.

Ord. 156 (7/2/02).

Section 1. Title

This Ordinance shall be known and referred to as the Swinomish Electronic Home Monitoring Amendment and may be cited as such.

Section 2. Constitutional Authority

This Ordinance is adopted pursuant to authority provided by the following provisions of the Swinomish Constitution and Bylaws, as amended on October 22, 1985:

Article VI, Sections 1(k), 1(l), 1(o) and 1(r) of the Swinomish Constitution.

Section 3. Jurisdiction

The provision of the Title shall apply to all persons and property subject to the governing authority of the Swinomish Indian Tribal Community as established by the Swinomish Tribal Constitution, By-Laws, and Ordinances.

Section 4. Purpose

The purpose of this Ordinance is to amend all tribal criminal sentencing provisions to allow for electronic home monitoring as an alternative to jail.

Section 8. Repeal of Conflicting Ordinances

All former ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein are hereby repealed.

Section 9. Severability

The Swinomish Indian Senate hereby declares that should any section, paragraph, sentence or word of this Ordinance as adopted and amended herein be declared for any reason to be invalid, it is the intent of Swinomish Indian Senate that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

Section 10. Effective Date

This Ordinance shall become effective immediately upon approval by the Secretary of the Interior or the Secretary's designated representative.

Ord. 155 (6/16/02).

Section 1. Authority

This Ordinance is adopted pursuant to authority provided by the following provisions of the Swinomish Constitution and Bylaws, as amended on October 22, 1985:

Article VI, Section 1(k) of the **Swinomish Constitution**; and
Article VI, Section 1(q) of the **Swinomish Constitution**; and
Article VI, Section 1(s) of the **Swinomish Constitution**; and
Article V, Section 5 of the **Swinomish Bylaws**.

Section 2. Purpose

The purpose of this Ordinance is to regulate the exercise of the Tribe's treaty rights in a manner that is consistent with the underlying policy of the General Council pursuant to the power of the Senate to act independently.

Section 4. Effective Date

This Ordinance shall become effective immediately.

Ord. 153 (5/7/02).

Section 1. Authority

This Ordinance is adopted pursuant to authority provided by the following provisions of the Swinomish Constitution and Bylaws, as amended:

Article IV, Section 1(c) of the **Swinomish Constitution**; and
Article IV, Section 1(k) of the **Swinomish Constitution**; and
Article IV, Section 1(q) of the **Swinomish Constitution**; and
Article V, Section 2 of the **Swinomish Bylaws**; and
Article V, Section 5 of the **Swinomish Bylaws**.

Section 2. Purpose

The purpose of this Ordinance is to implement the expressed wishes of the General Council.

Section 4. Effective Date

This Ordinance shall become effective immediately.

Ord. 146 (3/6/01).

Section 1. Title

This Ordinance shall be referred to as Ordinance Amending Fishing Ordinance to Increase Membership of the Fish and Game Management Committee.

Section 2. Authority

This Ordinance is adopted pursuant to authority provided by the following provisions of the Swinomish Constitution and Bylaws, as amended on October 22, 1985:

Article VI, Section 1(k) of the **Swinomish Constitution**; and
Article VI, Section 1(q) of the **Swinomish Constitution**; and
Article VI, Section 1(s) of the **Swinomish Constitution**; and
Article V, Section 5 of the **Swinomish Bylaws**.

Section 3. Purpose

The purpose of this Ordinance is to amend Section 11-1.050 of the Tribe's Fishing Ordinance, Title 11, by increasing the membership of the Fish and Game Management Committee from seven (7) members to eight (8) members.

Subchapter I – Permits and Identification

18-03.010 Eligibility of Tribal Members to Exercise Tribal Treaty Fishing Rights.

Members of the Swinomish Tribal Community, defined by the Tribe's Constitution and Bylaws and tribal law, are eligible to exercise the Tribe's Treaty fishing rights, but only in accordance with this Title and any rules or regulations promulgated hereunder.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.020 Identification Cards.

(A) Point Elliott Treaty Fishing Card.

- (1) **Required.** No person shall exercise or otherwise participate in tribal treaty fishing rights unless he or she is in possession of a valid and current Point Elliott Treaty Fishing Card.
- (2) **Contents.** The Point Elliott Treaty Fishing Card shall contain the following information:
 - (a) Name of the cardholder;
 - (b) Tribal affiliation of the cardholder;
 - (c) Address of the cardholder;
 - (d) Date of Birth of the cardholder;
 - (e) Height, weight, hair color and eye color of the cardholder;
 - (f) Whether the cardholder is an owner or operator;
 - (g) Serial number issued to the cardholder; and
 - (h) Signature of the Chairman of the Tribe.

The card shall be embossed with the fisher's five-digit Point Elliott Treaty Fishing Card number.

(3) Annual Validation Sticker.

- (a) Each fisher shall obtain an annual validation sticker for his or her Point Elliott Treaty Fishing Card from the Fisheries Manager, or his or her designee, and affix it to the front of the card.
- (b) The annual validation sticker shall be valid for one (1) fisheries management year, from March 1 through February 28 or February 29, depending on the calendar year.

(B) Tribal Identification Card.

- (1) Every person exercising or otherwise participating in tribal treaty fishing rights must have in his or her possession a valid Tribal Identification Card issued pursuant to Chapter 6-01 – Adoption and Membership.
- (2) The use of the Tribal Identification Card shall be subject to the terms and provisions of this Title and any rules or regulations issued hereunder, and Section 6-01.090 of Chapter 1, Title 6, rather than the terms and provisions of 25 CFR §§ 249.1 – 7, as provided for by 25 CFR § 249.6(b).

(C) Civil Penalties.

(1) Where Card Has Been Issued.

- (a) Fishing without a valid Tribal Identification Card in his or her possession when the person has been issued a Tribal Identification Card is a Class D infraction.
- (b) Fishing without a valid and current Point Elliott Treaty Fishing Card in his or her possession when the person has been issued such a Card is a Class D infraction.

(2) Where Card Has Not Been Issued.

- (a) Fishing without a valid Tribal Identification Card in his or her possession when the person has not been issued a Tribal Identification Card is a Class B infraction, but suspension of fishing privileges shall not be imposed pursuant to Section 18-08.040(B) of this Title.
- (b) Fishing without a valid Point Elliott card in his or her possession when the person has not been issued such a Card is a Class B infraction, but suspension of fishing privileges shall not be imposed.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.030 Lost or Destroyed Point Elliott Treaty Fishing Cards.

- (A) **Reporting.** Any person issued a Point Elliott Treaty Fishing Card who determines his or her Point Elliott Treaty Fishing card has been lost or destroyed shall immediately report the loss or destruction of his or her Point Elliott Treaty Fishing Card to the Fisheries Manager. The Fisheries Manager, or his or her designee, shall void the lost or destroyed card.
- (B) **New Card.** Following the report of his or her lost or destroyed Point Elliott Treaty Fishing Card, any person may request the Fisheries Manager to issue a new card with a new serial identification number. The cost of the new card shall be twenty dollars (\$20.00). The Fisheries Manager may deduct the cost of the card from the fisher's annual withholding amount assessed pursuant to Section 18-03.840(B).
- (C) **Return of Voided Cards.** Any person who finds his or her Point Elliott Treaty Fishing card after a new card has been issued shall immediately notify and turn in the voided card to the Fisheries Manager, or his or her designee.
- (D) **Notice of Voided Cards.** The Fisheries Manager shall notify all licensed fish buyers of all voided Point Elliot Treaty Fishing cards. The Fisheries Manager, or his or her designee, shall provide a list of voided cards to buyers within forty-eight (48) hours of the list being created or amended.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 160 (9/10/02); Ord. 77 (6/4/91).

18-03.040 Misuse of Identification Cards.

- (A) **Point Elliott Treaty Fishing Card.**
 - (1) No person shall transfer to another person or allow another person to possess or use his or her Point Elliott Treaty Fishing Card.
 - (2) No person shall possess or use another person's Point Elliott Treaty Fishing Card.
 - (3) No person shall alter a Point Elliott Treaty Fishing Card.
 - (4) **Civil Penalties.** Any person who violates Section 18-03.040(A)(1), (2) or (3) shall be subject to a Class C infraction, Provided, that any person not subject to suspension of fishing privileges shall be subject to a civil penalty of not more than \$500.00 for the first occurrence and not more than \$2,500.00 for the second and subsequent occurrences in lieu of the civil penalties for Class C infractions.

(B) **Tribal Identification Card.**

- (1) No person shall use a Tribal Identification Card in violation of Section 6-01.090 of the Swinomish Tribal Code.
- (2) **Penalties.**
 - (a) Any violation of Section 18-03.040(B)(1) committed during the exercise of treaty fishing rights shall be punishable by the terms and provisions of Section 6-01.090(E) and 6-01.090(F) of the Swinomish Tribal Code.
 - (b) In addition to the penalties established by Section 6-01.090(E), any tribal fisher who violates the terms and provisions of Section 18-03.040(B)(1) shall be subject to the loss of fishing privileges for a Class C infraction, as established by Section 18-08.030(C).

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 160 (9/10/02); Ord. 77 (6/4/91).

18-03.050 Fishing Permits.

(A) **Commercial.**

- (1) **Permit Required.** Any person seeking to exercise tribal treaty fishing rights on a commercial basis must obtain a commercial fishing permit from the Fisheries Manager, or his or her designee.
- (2) **Valid Period.** Commercial permits, with the exception of clamming permits, shall be valid for the season for which they are issued. A clamming permit shall be issued for a specified period of time.
- (3) **Stickers.**
 - (a) The Fisheries Manager shall issue all commercial fishing permits, except for commercial clamming permits, in the form of a sticker, which the tribal fisher shall affix to the back of his or her Point Elliot card.
 - (b) Each sticker shall bear the abbreviation for the fishery for which it was issued as follows:

Bottomfish:	BO
Crab:	CR
Geoducks:	GE
Halibut:	HA
Herring:	HE
Oysters:	OY
Salmon:	SA

Scallops:	SC
Sea Cucumbers:	CU
Sea Urchins:	UR
Shrimp:	SH
Smelt:	SM
Steelhead:	ST

- (4) **Clamming.** The Fisheries Manager shall issue commercial clamming permits in paper form.
- (5) **Unpaid Tribal Debts.** No commercial fishing permit shall be issued to any person who owes an aggregate amount of over five thousand dollars (\$5,000.00) in unpaid taxes, fees, assessments, forfeitures, or other debt of any kind to the Tribe or any subordinate organization of the Tribe. This provision shall not apply during any period in which:
- (a) The debt, or a portion of the debt sufficient to bring the remaining amount under \$5,000.00, is being contested in litigation, administrative appeal, or other formal dispute resolution mechanism; or
 - (b) The applicant has requested negotiations with the Senate or its designee for a settlement plan for payment of the debt and such negotiations are occurring and have not been terminated by the Tribe; or
 - (c) The applicant is performing the obligations contained in any settlement plan approved by the Senate.

(B) **Ceremonial and Subsistence.**

- (1) **Permit Required.** Any person seeking to exercise tribal treaty fishing rights on a ceremonial or subsistence basis must obtain a ceremonial and subsistence permit from the Fisheries Manager, or his or her designee.
- (2) **Permit.** The Fisheries Manager shall issue all ceremonial and subsistence permits in paper form and shall include the following information:
- (a) the name of the harvester(s),
 - (b) the purpose of the harvest,
 - (c) the number of pots or nets to be used,
 - (d) the quantity of fish to be harvested,

- (e) the area of harvest,
- (f) the dates the permit is valid,
- (g) name and registration number of boat to be used, if any; and
- (h) enrollment number of fisher.

Provided that ceremonial and subsistence clam permits shall be governed by Section 18-03.680.

- (3) **Reasonable Restrictions.** Ceremonial and subsistence permits shall be issued for a specified period of time and may contain harvest, gear, area, and other reasonable restrictions.
 - (4) **Conservation Closures.** The Fisheries Manager shall not issue a ceremonial or subsistence permit for any fishing area that is closed for conservation or management reasons.
- (C) **General Conditions for All Permits.**
- (1) All permits (commercial, ceremonial and subsistence) shall be issued upon the condition that the permit holder consents to reasonable searches and seizures whenever an Enforcement Officer has probable cause to believe the permit holder has violated any provision of this Title, any rule or regulation issued hereunder, or Title 4 – Criminal Code.
 - (2) The permit holder shall comply with all terms, limitations and conditions of each permit issued.
 - (3) The permit holder shall have in his or her possession at all times the appropriate valid and current permit while exercising tribal treaty fishing rights.
- (D) **Civil Penalties.**
- (1) Fishing without a permit when the fisher has been issued the permit but does not have it in his or her possession is a Class D infraction.
 - (2) Fishing without a permit when the fisher has not been issued a permit is a Class B infraction, but suspension of fishing privileges shall not be imposed notwithstanding Section 18-08.060(B) of this Title.

[History] Ord. 266 (6/18/09); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 160 (9/10/02); Ord. 96 (6/2/92); Ord. 88 (2/6/92); Ord. 77 (6/4/91).

18-03.060 Fees.

- (A) The Senate may, from time-to-time, set fees for the issuance of the Point Elliot Treaty Fishing Card and commercial permits. No fees shall be set for permits for fishing for ceremonial or subsistence purposes. All tribal fishing permits shall remain the property of the Tribe subject to surrender by the permit holder in appropriate circumstances.
- (B) Until posted otherwise, fees for fishing permits shall be five dollars (\$5.00) per season, per fishery.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.070 Associate Members.

- (A) Associate members, as defined in Chapter 6-01 – Adoption and Membership, who are over the age of ten (10), shall be entitled to exercise the same fishing rights and responsibilities under this Title as other members of the Tribe, Provided, that associate members
 - (1) may not assist tribal fishers in the exercise of tribal treaty fishing rights in waters within the exterior boundaries of the Reservation, the Skagit River, Skagit Bay or the area from West Beach to Smith Island;
 - (2) must possess at all times while exercising tribal treaty fishing rights an Associate Membership fishing permit and an Associate membership identification card; and
 - (3) must abide by all other restrictions set forth in STC 6-01.100 and Ordinance 33 incorporated therein.
- (B) **Civil Penalties.** A violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05).

18-03.080 Assistants.

- (A) **Categories.**
 - (1) **Non-Swinomish Tribal Members.** Non-member Indians who are over the age of fourteen (14) may assist tribal members in the exercise of treaty fishing rights under the following conditions:
 - (a) The non-member Indian is an enrolled member of an Indian tribe that has been adjudicated to be a successor in interest to a signatory to the Treaty of Point Elliot. *United States v. Washington*, 384 F. Supp. 312

(W.D. Wash. 1974); 459 F. Supp. 1020 (W.D. Wash. 1978); 626 F. Supp. 1405 (W.D. Wash 1985);

- (b) The non-member Indian must have in his or her possession at all times while assisting the tribal member in the exercise of tribal treaty fishing rights:
 - (i) An identification card issued by the BIA or the tribe in which he or she is enrolled as a member; and
 - (ii) A Point Elliot Treaty Fishing card.
- (c) The non-member Indian may only assist in the exercise of treaty fishing rights in the usual and accustomed areas that his or her Tribe shares in common with the Swinomish Indian Tribal Community as provided for by the Treaty of Point Elliot and adjudicated under *United States v. Washington, supra*, Provided, that non-member Indians may not assist tribal fishers in the exercise of tribal fishing rights in Skagit Bay, Skagit River and the area from West Beach to Smith Island or within the exterior boundaries of the Swinomish Reservation; and
- (d) If the non-member Indian is between the ages of ten (10) and fourteen (14), he or she must:
 - (i) have a declaration signed by his or her parent or legal guardian and the Fisheries Manager, or his or her designee, permitting him or her to be on the vessel;
 - (ii) possess an identification card issued by the BIA or the tribe in which he or she is enrolled as a member; and
 - (iii) wear a U.S. Coast Guard approved life vest at all times while on board the fishing vessel.
- (e) **Civil Penalties.** A violation of Section 18-03.080(A)(1)(a) or (b) or (c) or (d) is a Class B infraction.

(2) **Children of Tribal Members.**

Unless prohibited by federal law:

- (a) **Ten to Fourteen Years Old.** Children of tribal members who are between the ages of ten (10) and fourteen (14) years may accompany and assist a tribal member who is exercising tribal fishing rights, Provided, that:

- (i) The tribal member has a declaration signed by the child's parent or legal guardian and the Fisheries Manager, or his or her designee, permitting the child to be on the vessel;
 - (ii) The child wears a U.S. Coast Guard approved life vest at all times while on board the fishing vessel; and
 - (iii) The child has his or her Tribal Identification Card in his or her possession at all times while assisting the tribal member in the exercise of tribal treaty fishing rights.
- (b) **Under Ten Years.** Children of tribal members who are under ten (10) years may accompany and assist a parent or legal guardian who is exercising tribal fishing rights, Provided, that:
- (i) The tribal member has signed a declaration stating that he or she agrees that the child may accompany and assist him or her and the declaration is approved by the Fisheries Manager, or his or her designee;
 - (ii) The child wears a U.S. Coast Guard approved life vest at all times while on board the fishing vessel; and
 - (iii) The child has his or her Tribal Identification Card in his or her possession at all times while assisting the tribal member in the exercise of tribal treaty fishing rights.
 - (iv) The child may accompany and assist his parent or legal guardian in Skagit Bay, Skagit River, the area from West Beach to Smith Island, or within the exterior boundaries of the Swinomish Reservation only if the parent or legal guardian is an enrolled member of the Tribe. The parent or legal guardian may not be an associate member.
- (c) **Civil Penalties.**
- (i) Violation of Subsections 18-03.080(A)(2)(a)(i) or (iii) is a Class D infraction.
 - (ii) Violation of Subsection 18-03.080(A)(2)(a)(ii) is a Class C infraction.
 - (iii) Violation of Subsections 18-03.080(A)(2)(b)(i) or (iii) is a Class D infraction.

- (iv) Violation of Subsection 18-03.080(A)(2)(b)(ii) is a Class C infraction.

(B) General Requirements.

- (1) Regardless of the fishing method, each assistant must be accompanied at all times by the tribal fisher whom he or she is assisting;
- (2) An assistant may only assist a tribal member in the exercise of treaty fishing rights; he or she shall not engage in or assist any person engaged in any commercial fishing activity pursuant to or under a Washington State fishing license;
- (3) An assistant shall comply with the requirements of this Title and all rules and regulations issued hereunder; and
- (4) An assistant shall voluntarily accept the jurisdiction of the Swinomish Tribal Court.
- (5) **Civil Penalties.** Any violation of Section 18-03.080(B) is a Class B infraction.

- (C) Tribal Fisher Liability.** In addition to the liability of an assistant for violations of this Title and any rules or regulations promulgated hereunder, all tribal fishers shall remain liable for any violations committed by their assistants that they knew of or should have known of and are subject to the same penalties for the underlying violation(s).

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord 155 (6/4/02); Ord. 153 (5/7/02); Ord. 96 (6/2/92); Ord. 81 (8/6/91); Ord. 77 (6/4/91).

18-03.090 Research and Observation Permits.

- (A)** Unless prohibited by federal law:

- (1) **Application.** A tribal fisher may apply to the Fisheries Manager for a research or observation permit on behalf of an individual who is otherwise ineligible to exercise or assist in the exercise of tribal fishing rights.
- (2) **Issuance.** If approved by the Commission, the Fisheries Manager, or his or her designee, shall issue a research or observation permit allowing an individual ineligible to exercise or assist in the exercise of tribal fishing rights to board a tribal fisher's vessel during the exercise of tribal fishing rights for the following purposes:
 - (a) Scientific research; or
 - (b) Test fishery; or

- (c) Educational opportunity; or
- (d) Journalism; or
- (e) Time-sensitive Tribal business.

(B) **Permit Terms and Conditions.** The permit shall:

- (1) identify the fishing area(s) within which the visitor is authorized to be;
- (2) be valid for a maximum of twenty-four (24) hours;
- (3) be in the possession of the fisher at all times while the visitor is aboard a Swinomish registered vessel; and
- (4) explicitly prohibit the visitor from exercising or assisting in the exercise of tribal fishing rights.

(C) **Visitor Liability.** Any visitor who violates Section 18-03.090(A) or (B) shall be referred to the State for prosecution.

(D) **Tribal Fisher Liability.** A tribal fisher shall be liable for any violation committed by a visitor on his or her boat of which the tribal fisher knew or should have known.

(E) **Fisheries Biologists.** Notwithstanding the provisions of Sections 18-03.090(A) and (B), biologists employed by or associated with federal, state or tribal government, the Northwest Indian Fisheries Commission or the Skagit River System Cooperative may board a Swinomish vessel and accompany a tribal member for scientific research and educational purposes under the following conditions:

- (1) The person shall obtain a permit from the Fisheries Manager, or his or her designee, prior to boarding the vessel;
- (2) The permit shall be valid for one year from January 1st to December 31st;
- (3) There shall be no charge for the permit;
- (4) The permit shall identify the activity to be engaged; and
- (5) The person shall carry the permit on his or her person while on board the Swinomish vessel.

(F) **Civil Penalties.** Violation of this Section is a Class B infraction.

[History] Ord. 380 (5/10/18); Ord. 336 (6/3/14); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92).

18-03.100 Revocation or Suspension of Privileges.

- (A) **Fisheries Manager.** The Fisheries Manager shall revoke or suspend the fishing privileges and any permits, licenses or Point Elliott Treaty Fishing card issued under the terms of this Title or any rules or regulations issued hereunder pursuant to a Resolution of the Senate or a valid court order.
- (B) **Senate.** Notwithstanding any other provision of this Title, the Senate may revoke or suspend any permit or fishing privileges upon the recommendation of the Fish and Game Management Commission for good cause.
 - (1) **“Good cause,”** for the purposes of this Section, shall include, but not be limited to:
 - (a) More than three fishing-related convictions within three (3) years.
 - (b) Conviction of a Class A crime under the Swinomish Criminal Code, or a felony under the United States Criminal Code or the criminal code of any State of the United States.
 - (c) Conviction of Failure to appear in Court on a Fish and Game Citation or Complaint in violation of STC 4-09.120;
 - (d) Failure to comply with a court order, including a sentencing order regarding:
 - (i) A violation of this Title or any rule or regulation issued hereunder;
 - (ii) A fishing-related violation of Title 4 – Criminal Code;
 - (iii) A Class A violation of Title 4 – Criminal Code; or
 - (iv) A felony under the laws of the United States or any state of the United States.
 - (e) Conviction for an assault on an Enforcement Officer, police officer, or other tribal official;
 - (f) Conviction of a violation of this Chapter or Title 4 – Criminal Code that involves the reckless disregard for the safety of others while fishing;
 - (g) Failure to pay a debt owed to the Tribe under the conditions set forth in Section 18-03.050(A)(5).

- (h) Conviction for wasteful practices under Section 18-03.310; and
 - (i) Any action that the Fisheries Manager, the Enforcement Officer, or the Fish and Game Management Commission determines jeopardizes or might jeopardize the Tribe's ability or opportunity to responsibly manage and harvest fisheries resources.
- (2) **Notice.** Prior to any such revocation or suspension, the Fisheries Manager shall provide written notice to the fisher and ensure that fisher has an opportunity to be heard before the Senate.
- (3) **Hearing.** The Senate shall conduct the hearing in the following manner:
- (a) The Fisheries Manager shall provide the Senate with copies of the permit and of any documents in support of the Fish and Game Management Commission's recommendation that the fisher's permit or privileges be suspended or revoked;
 - (b) The fisher shall be provided a full and fair opportunity to respond, either orally or in writing;
 - (c) The Senate may question the Fisheries Manager, the fisher, and any witnesses produced by either the Fisheries Manager or the fisher, all of whom shall be placed under oath;
 - (d) The Fisheries Manager shall be provided an opportunity to respond to any evidence produced by the fisher;
 - (e) After hearing from both the Fisheries Manager and the fisher and any witnesses each may have produced, the Senate shall consider all of the evidence presented and shall suspend or revoke the fisher's permit or fishing privileges or shall deny the same upon such record, applying the provisions of the Swinomish Code and of Federal law and considering the best interests of the Tribe. The Senate may impose whatever conditions it deems necessary to ensure that the Tribe's treaty fishing rights are protected.
- (4) **Public Record.** The Senate shall make a written or audio record of the hearing.
- (5) **Written Decision.** The Senate shall issue its decision in the form of a written resolution. Copies shall be provided to the Fish and Game Management Commission and the party requesting the hearing, and shall be available for public inspection and copying at reproduction cost.

- (1) **Appeals.** The decision of the Senate may be appealed to Tribal Court. All appeals shall follow the procedures set forth for appeals in Chapter 18-10.

[History] Ord. 266 (6/18/09); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord 77 (6/4/91).

Subchapter II – Vessel Ownership and Registration

18-03.110 Vessel Ownership in Tribal Fishery.

- (A) No boat or vessel shall be used, borrowed or leased by any Swinomish Tribal member for the purpose of exercising tribal treaty fishing rights unless it is owned by a Swinomish Tribal member and registered with the Swinomish Indian Tribal Community pursuant to Section 18-03.120.
- (B) An Associate member, as defined in Chapter 6-03 – Associate Membership, shall not lease his or her boat(s) to any Swinomish Tribal member for fishing within the exterior boundaries of the Reservation, the Skagit River, in Skagit Bay or the area from West Beach to Smith Island.
- (C) **Civil Penalties.** Violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 117 (4/1/96); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.120 Boat Registration and Identification.

- (A) **Registration.** No boat or vessel shall be used to take fish for commercial, ceremonial, or subsistence purposes in the exercise of tribal treaty fishing rights unless it is registered with the Swinomish Indian Tribal Community.
- (B) **Application.** Vessel owners shall submit an application for boat registration to the Fisheries Office. The application form shall contain the following:
 - (1) Name of vessel owner;
 - (2) Address of vessel owner, including zip code;
 - (3) State where vessel is, or will be, principally used;
 - (4) The number previously issued by an issuing authority for the vessel, if any;
 - (5) Whether the application is for a new number, renewal of a number, or transfer of ownership;
 - (6) Statement that the principal use for the vessel shall be treaty fishing;

- (7) Make of vessel;
 - (8) Year of manufacture or model year;
 - (9) Manufacturer's hull identification number, if any;
 - (10) Overall length of the vessel;
 - (11) Type of vessel (*e.g.* open boat/skiff, gillnetter, dive boat);
 - (12) Composition of hull (wood, steel, aluminum, fiberglass, plastic, or other);
 - (13) Means of propulsion (inboard, outboard, inboard-outdrive, sail, or other);
 - (14) Fuel type (gasoline, diesel, or other); and
 - (15) Signature of owner.
- (C) **Prohibition on Registration.** No boat registration shall be issued to any applicant who owes the Tribe a debt in the amount, under the circumstances, and subject to the conditions and exceptions set forth in § 18-03.050(A)(5). Any boat registration already issued to such an applicant shall be rescinded and cancelled.
- (D) **Issuance of Registration Number.** The Fisheries Manager, or his or her designee, shall issue a registration number for the applicant's boat or vessel upon the applicant providing:
- (1) A completed application pursuant to Section 18-03.120(B);
 - (2) A current photograph of the vessel;
 - (3) Confirmation that the vessel is not registered by any other treaty tribe;
 - (4) For vessels documented by the United States Coast Guard, current documentation papers indicating that documentation is valid for the majority of the year for which the registration is to be issued;
 - (5) Proof of U.S. Coast Guard registration or Washington State documentation for boats or vessels sixteen (16) feet or longer, if required by federal or state law; and
 - (6) Proof of legal ownership of the vessel by an enrolled member of the Swinomish Indian Tribal Community. Evidence of legal ownership includes, but is not limited to, documentation papers from the Coast Guard, a bill of sale, or mortgage documentation.

- (a) The applicant must provide proof of ownership (title and/or bill of sale), or a bona fide sales contract that clearly demonstrates that the transaction is a sale and not a lease. The terms and conditions of the contract shall control rather than specific words, such as “sale” or “purchase.” Any contract about which there is a question as to whether it is a contract for lease rather than for sale shall be referred to the Office of Tribal Attorney for a legal opinion.
 - (b) Any contract for the purchase of a boat or vessel financed by a bank or other lending institution, or purchased through a marine broker, shall be presumed to be a sale unless the circumstances suggest otherwise; Provided, that the contract is signed by both parties and notarized.
- (E) **Tribal Fishing Vessel Registration Number.** The Fisheries Manager, or his or her designee, shall issue a registration number as follows:
- (1) The number shall consist of the prefix “WN” followed by not more than three (3) numerals, followed by the suffix “SWN.” In the alternative, the vessel registration number shall consist of the prefix “WN,” followed by not more than four (4) numerals, followed by a suffix of two capital letters, Provided, that the capital letters are neither “I,” nor “O,” nor “Q.” Each numeral in the vessel registration number shall be in plain vertical block letters not less than three (3) inches high. There shall be spaces or hyphens between the groups of letters and numerals, Provided, that the space is wider than the letter “I.”
 - (2) Vessel owners shall display their vessel registration number on the vessel at all times. The letters and numerals shall be painted or permanently attached to each side of the forward half of the vessel so that they are clearly visible to another vessel approaching from either side.
 - (3) **Civil Penalties.**
 - (a) Fishing without a valid and properly displayed Tribal Fishing Vessel Registration Number where the vessel owner has been issued a valid Tribal Fishing Vessel Registration Number but where the number is not properly displayed is a Class D infraction.
 - (b) Fishing without a valid and properly displayed annual vessel registration sticker (decal) where the owner or operator has not been issued a valid decal is a Class C infraction.
- (F) **Annual Registration Sticker (Decal).**

- (1) All persons owning or operating a vessel in the exercise of tribal treaty fishing rights shall obtain two (2) registration stickers (decals) from the Fisheries Manager, or his or her designee, annually.
- (2) Such registration stickers (decals) shall be approximately three (3) inches square. Beginning in 2001, the color of the registration sticker (decal) shall change yearly according to the following rotational cycle: blue, international orange, green, and red, Provided that when the rotational cycle ends, the cycle shall begin again with the color blue.
- (3) Such persons shall display valid and current annual vessel registration stickers (decals) within six (6) inches of the tribal fishing vessel registration number on each side of the forward half of the vessel so that they are clearly visible to a vessel approaching from either side.
- (4) **Civil Penalties.**
 - (a) Fishing without a valid and properly displayed annual vessel registration sticker (decal) where the owner or operator has been issued a valid decal but the decal is not properly displayed is a Class D infraction.
 - (b) Fishing without a valid and properly displayed annual vessel registration sticker (decal) where the owner or operator has not been issued a valid decal is a Class C infraction.

(G) **Certificate of Registration Number.**

- (1) All persons owning or operating a vessel in the exercise of tribal treaty fishing rights shall keep a valid and current "Certificate of Registration Number" on board the vessel at all times in such a manner that it can be handed to a law enforcement officer as required by law.
- (2) The certificate shall be issued annually no later than June 30th of each year by the Fisheries Manager, or his or her designee.
- (3) The certificate shall be updated and renewed where the following events occur:
 - (a) Change in address;
 - (b) Theft or recovery of the vessel;
 - (c) Loss or destruction of a valid certificate of registration number;
 - (d) Transfer of all or part of the certificate holder's interest in the vessel; or
 - (e) Destruction or abandonment of the vessel.

(4) **Civil Penalties.**

- (a) Fishing without a valid certificate of registration number where the owner or operator has been issued a valid certificate of registration number but the certificate is not on board the vessel is a Class D infraction.
- (b) Fishing without a valid certificate of registration number where the owner or operator has not been issued a valid certificate of registration number is a Class C infraction.

[History] Ord. 266 (6/18/09); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 117 (4/1/96); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

Subchapter III – Beach and Tidelands Access

18-03.130 Reasonable Access Across Private Lands.

- (A) Tribal fishers shall have the right to cross private lands located within and without the exterior boundaries of the Swinomish Indian Reservation at reasonable times, at reasonable locations and in a reasonable manner for the purpose of exercising treaty-reserved fishing rights; Provided, that the Tribe obtains either
 - (1) landowner consent from the private landowner pursuant to Section 18-03.150 whose land(s) the fisher must cross to exercise their treaty-reserved fishing rights; or
 - (2) permission from the court for its fishers to cross private lands pursuant to *United States v. Washington*, 909 F.Supp. 787, 791-792 (W.D. Wash. 1995)and the Tribe has posted notice of such written consent or Court order at the Fisheries Office and on the Swinomish Hotline.
- (B) Individuals crossing private lands for the purpose of exercising tribal treaty fishing rights shall observe and respect landowner rights to the quiet enjoyment of their property. Individuals shall not litter, pollute, destroy or damage any tribally owned lands or any private lands within the exterior boundaries of the Reservation either accessed or used.
- (C) **Penalties.** Violation of this section is a Class B infraction.

[History] Ord. 404 (6/25/20); Ord 268 (1/19/10); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 97 (8/4/92).

18-03.131 Summers River Access Property.

- (A) **Definition.** As used in this Section, “Summers River Access Property” means that property commonly referred to as Summers Court and numbered Skagit County Parcel No. P15546.
- (B) **Access.** Summers River Access Property can be accessed only from Best Road, using Summers Court. All drivers must maintain a speed limit of 10 m.p.h. or less on Summers Court and any roads on the Summers River Access Property. Use of Skydda Lane to access the Summers River Access Property without express permission is prohibited and is a violation of this Section.
- (C) **Access Restricted.** Access to Summers River Access Property is restricted. Access is permissible only for the limited purposes authorized in this Section. Any person accessing Summers Court Access Property for any other purpose is in violation of this Section.
- (D) **Use by Caretaker and Government Staff/Contractors.** Summers River Access Property may be used by a resident caretaker to perform all caretaking activities and may be used by tribal government staff and their contractors to perform the duties and responsibilities of their employment or contract by maintaining, repairing, inspecting, performing research activities and monitoring the property.
- (E) **Use by Fishers During Authorized Fisheries.**
 - (1) Except for fishers who have a Tribal fishing permit and are engaging in fishing, the Summers River Access Property and Summers Court may be used *only* during the hours of 5:00 a.m. through 10:00 p.m.
 - (2) During Tribally authorized fishery, Summers Court Access Property is open and available to fishers who have a Tribal fishing permit for the exercise of Treaty fishing rights. Fishers who have a Tribal fishing permit may use Summers Court Access Property for the following activities:
 - (a) Launching and landing boats for the exercise of Treaty fishing rights;
 - (b) Landing fish; and
 - (c) Performing other activities related to and necessary for participation in Tribally authorized fishery, provided that the activities are not prohibited under subsection (F) of this Section.
- (F) **Prohibited Activities.** The following activities are prohibited at Summers Court Access Property:

- (1) Littering, destroying or damaging any Tribally owned land or property, or any private lands or property;
 - (2) Lighting a campfire;
 - (3) Leaving nets unattended at Summers Court Access Property;
 - (4) Entering the house, deck of the house, or outbuildings without invitation;
 - (5) Making or causing to be made noise that is unnecessary for permitted activities under this Section and of an intensity, duration, or character that it disturbs the quiet enjoyment of the Summers Court Access Property or adjacent properties;
 - (6) Using lighting that is unnecessary for permitted activities under this Section;
 - (7) Engaging in any other activity prohibited under this Chapter; and
 - (8) Engaging in any activity prohibited under Washington State or Swinomish criminal laws.
- (G) **Penalties.** Any person in violation of this Section commits a Class B infraction. Any nets left unattended may be confiscated by law enforcement.

[History] Ord. 404 (6/25/20).

18-03.140 Access Designated By Senate. The Senate may designate particular locations within and without the Swinomish Indian Reservation as "Access Areas" that meet the requirements of Section 18-03.130 and 18-03.131 and provide appropriate limitations for each location's use.

[History] Ord. 404 (6/25/20); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 97 (8/4/92).

18-03.150 Cooperative Access Agreements.

- (A) In the interests of harmony and a cooperative working relationship between the Tribe and private landowners, the Fisheries Manager or designated representative may negotiate agreements with private landowners that specify reasonable access areas both on and off the Reservation for the exercise of tribal treaty fishing rights and specify appropriate limitations for their use.
- (B) Cooperative Access Agreements may include conditions or limitations on use regarding time, place, manner, notice, conduct and any other mutually agreeable provision.

- (C) A Cooperative Access Agreement must be approved by the Fish and Game Management Commission and executed by the Fisheries Manager before any Tribal fisher may access the private lands covered by the Agreement.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 97 (8/4/92).

18-03.160 Kiket Island and Flagstaff Island Tidelands.

- (A) **Definition.** As used in this section, “Kiket Island and Flagstaff Island Tidelands” means all tidelands adjacent to Government Lots 2, 3, 5, 6, 7, 8, and 9 in Section 21 and Government Lot 2 in Section 20, Township 34 North, Range 2 East, including but not limited to tidelands underlying the lagoon located on Government Lot 2 in Section 21, Township 34 N., Range 2 E., WM, tidelands filled or stabilized in order to provide or protect road access to Kiket Island, and tidelands comprising the tombolos of land that separate Kiket Island from Fidalgo Island and Flagstaff Island from Kiket Island.
- (B) **Closed to Fishing.** Kiket Island and Flagstaff Island Tidelands shall be closed to all fishing unless opened by regulation issued pursuant to resolution enacted by the Senate.
- (C) **Penalties.** Any person fishing in violation of this Section commits a Class A infraction.

[History] Ord. 268 (1/19/2010); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 97 (8/4/92).

Subchapter IV – Fishing Instructors

18-03.170 Authorization. It shall be unlawful for a Tribal fisher to contract with and have on board his or her fishing vessel any person who is not an enrolled member of the Swinomish Indian Tribal Community for the purpose of giving the fisher instruction in the operation of fishing gear and equipment, except as provided in this Subchapter.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.180 Application to Employ Fishing Instructor. A Swinomish Tribal member wishing to employ a non-member fishing instructor shall apply for a permit from the Fisheries Manager, or his or her designee, authorizing the employment of an instructor.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.190 Contents of Application. The application for a permit shall include the following information:

- (1) the names of the instructor and the applicant;

- (2) the experience of the instructor;
- (3) the specific needs the instructor is to meet;
- (4) the length of time the instructor is to be employed;
- (5) the days that the instructor is to be employed;
- (6) the payment method to be used by the fisher in compensating the instructor; and
- (7) the signature of the applicant.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.200 Fish and Game Management Commission Review.

- (A) The Fish and Game Management Commission shall examine all applications for instructor permits, and shall determine whether or not said application is complete and is consistent with Sections 18-03.190, .220 and .230.
- (B) With the best interests of the Tribe and the applicant in mind, the Fish and Game Management Commission shall not recommend that the Fisheries Manager issue a permit unless the Commission finds that the experience level of the fishing instructor is sufficient to protect the safety of the applicant and ensure that no substantial damage occurs to the applicant's fishing equipment.
- (C) The Fish and Game Management Commission may establish any specific limitation, restriction or other requirement in the permit that it deems necessary to protect not only the tribal member, but also the Tribe.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.210 Issuance of Permit. If the Fish and Game Management Commission determines that the application is complete and consistent with this subchapter, it shall direct the Fisheries Manager to issue a permit to the applicant allowing the instructor identified in the application to engage in instructional activities and containing the conditions and restrictions set forth in Sections 18-03.220 - .240.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.220 Fixed Fee to Instructor Required. All permits shall require that instructors be paid a fixed fee per day of instruction. No instructor shall be paid with a percentage of the catch.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.230 Restrictions on Instructor Fishing. During the contract period that the fishing instructor is employed by the tribal fisher, the instructor shall engage in no other commercial fishing operations.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.240 Permit Conditions.

- (A) The permit shall be for a specific period that shall not exceed one (1) calendar year.
- (B) The permit shall be renewable on an annual basis until such time as the Fish and Game Management Commission is satisfied that adequate training has been accomplished.
- (C) The permit shall authorize the instructor to assist the tribal fisher only in learning how to operate the fishing gear and boat, and shall specifically prohibit the instructor from participating in any fishing operation, including but not limited to: the setting of nets, retrieving of nets, loading of fish, unloading of fish, or other like activities.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.250 Copy of Permit to Washington State. Upon issuance of a permit, the Fisheries Manager, or his or her designee, shall send a copy of the permit to the Washington State Department of Fish and Wildlife.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/01).

18-03.260 Civil Penalties. Any violation of Sections 18-03.170 through 18-03.250 shall subject the violator to:

- (A) A civil penalty of two hundred fifty to five hundred dollars (\$250.00 – \$500.00); and
- (B) Revocation of any permit issued pursuant to the authority of this Subchapter.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

Subchapter V – Harvest and Gear Restrictions (General)

18-03.270 Protection of Spawning Areas.

- (A) To prevent unnecessary damage to fish stock and habitats, the Fisheries Manager, at the direction of the Fish and Game Management Commission, shall identify and designate, by appropriate regulations and maps, those spawning areas that, because of their fragile nature and importance, shall be closed to all fishing or other damaging activities, unless specifically authorized.

(B) **Civil Penalties.** Any violation of this Section is a Class A infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.280 Purchase of Fish Illegally Harvested Prohibited.

(A) No person shall take, sell, purchase, or possess fish taken in violation of this Chapter or any rule or regulation issued hereunder. However, retention of bycatch for ceremonial or subsistence purposes or for sale shall be lawful in all instances except when expressly prohibited or restricted in the International Pacific Halibut Treaty, applicable federal law, or other provision of this Chapter or regulation issued thereunder.

(B) No buyer licensed under this Chapter shall purchase fish in violation of Section 18-03.800.

(C) **Civil Penalties.** The taking, sale, purchase or possession of fish taken in violation of this Chapter is a Class A infraction.

[History] Ord. 396 (11/13/19); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.290 Purchase of Illegal Fish (Criminal).

(A) No person shall intentionally or willfully purchase fish caught in violation of the terms and conditions of this Chapter or any rules or regulations issued hereunder.

(B) **Penalties.** Purchase of Illegal Fish (Criminal) is a Class A offense, punishable under Section 4-12.020(A) of the Criminal Code. In addition to the penalties for a Class A offense of the Criminal Code, the offender shall be subject to the suspension of fishing privileges for a Class A infraction of the Fishing Code pursuant to Section 18-08.040(A).

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.300 Sale of Subsistence or Ceremonial Fish.

(A) **No Sales.** No fisher shall sell fish taken in a ceremonial or subsistence fishery except fish taken as bycatch, provided that the fish taken as bycatch are possessed or sold not in violation of Swinomish law or applicable federal law.

(B) **Civil Penalties.** Violation of this Section is a Class A infraction.

[History] Ord. 396 (11/13/19); Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.310 Wasteful Practices Prohibited.

- (A) Any act or omission by a fisher, whether willful or negligent, that causes or permits the edible portions of a fish to decay or spoil and that could have reasonably been avoided is prohibited.
- (B) When an Enforcement Officer or other officer of the Tribe, including members of the Fish and Game Management Commission, or a member of the Senate, learns of wasteful practices by a particular fisher, he or she may bring the matter before the Senate for appropriate action including the revocation or suspension of permits and imposition of such other penalties as are appropriate. Any action to suspend or revoke permits under this Section shall be pursuant to Section 18-03.100.
- (C) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.320 Unattended Gear.

- (A) No person shall leave
 - (1) any boats, nets, pots, gear or other personal property unattended on Swinomish tribal tidelands or the beach fronting on the Swinomish Channel for more than one (1) week after the final day of the final opener of the season for which the gear is used; or
 - (2) any fishing gear or other personal property on the commercial float dock facility (including any floats, piers, or ramps) any later than the morning after the closing day of the season for which the gear is used; or
 - (3) fishing gear in the water after a closure.
- (B) **Civil Penalties.** Any violation of this Section is a Class C infraction. In addition, moorage fees may be assessed on a pro rata basis pursuant to Section 18-09.030(C)(2) against the violator if the location of the violation is the Commercial Float Dock Facility.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92).

18-03.330 Fishing After Closing Time.

- (A) No person shall intentionally fish or attempt to fish for a particular species once the area has been closed to fishing for that species.
- (B) Any person whom an Enforcement Officer has probable cause to believe is violating this Section

- (1) in a crab or shrimp fishery shall be required to pull all pots from the water and release any crab or shrimp in the pot(s);
 - (2) in a net fishery shall permit the Enforcement Officer to confiscate any fish caught in the net.
- (C) **Evidence.** If an Enforcement Officer determines in a crab or shrimp fishery that a person is violating this Section, he or she shall take one pot as evidence of the violation and store them in the evidence room.
- (D) **Civil Penalties.**
- (1) Except as provided below, any violation of this Section is a Class C infraction.
 - (2) **Exceptions.**
 - (a) **Class A.**
 - (i) **Crab or Shrimp Fisheries.** Any violation of this Section where the fisher has crab or shrimp aboard the vessel is a Class A infraction. Additionally, any person convicted of violating this Section by the Court shall forfeit all crab and/or shrimp caught in violation of this Section.
 - (ii) **Net Fisheries.** Any violation of this Section where the fisher has fish in his or her net is a Class A infraction. Additionally, any person convicted of violating this Section by the Court shall forfeit all fish caught in violation of this Section. Any fish confiscated shall be given to the Tribe to be used for ceremonial and subsistence purposes as the Tribe sees fit.
 - (b) **Class B.** Any violation of this Section where the fisher does not have crab or shrimp aboard the vessel, but in his or her pots, is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 82 (1/7/92); Ord. 77 (6/4/91).

18-03.340 Fishing Prior to Area Opening.

- (A) No person shall fish or attempt to fish for a given species of fish unless the season for that species or type of fish has been opened by a duly authorized Tribal fisheries regulation.
- (B) Any person whom an Enforcement Officer has probable cause to believe is violating this Section

- (1) in a crab or shrimp fishery shall be required to pull all pots from the water and release any crab or shrimp in the pot(s);
 - (2) in a net fishery shall permit the Enforcement Officer to confiscate any fish caught in the net.
- (C) **Evidence.** If an Enforcement Officer determines in a crab or shrimp fishery that a person is violating this Section, he or she shall take one pot as evidence of the violation and store them in the evidence room.
- (D) **Civil Penalties.**
- (1) Except as provided below, any violation of this Section is a Class B infraction.
 - (2) **Exceptions.** Any violation of this Section is a Class A infraction where:
 - (a) **Crab or Shrimp Fisheries.** The fisher has crab or shrimp aboard the vessel. Additionally, any person convicted of violating this Section by the Court shall forfeit all crab and/or shrimp caught in violation of this Section.
 - (b) **Net Fisheries.** The fisher has fish in the net. Additionally, any person convicted of violating this Section by the Court shall forfeit all fish caught in violation of this Section. Any fish confiscated shall be given to the Tribe to be used for ceremonial and subsistence purposes as the Tribe sees fit.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.350 Fishing Out of Area.

- (A) No person shall fish or attempt to fish for a given species of fish unless the area in which he or she is fishing has been opened for harvest of that particular species or type of fish by a duly authorized regulation.
- (B) Any person whom an Enforcement Officer has probable cause to believe is violating this Section
 - (1) in a crab or shrimp fishery shall be required to pull all pots from the water and release any crab or shrimp in the pot(s);
 - (2) in a net fishery shall permit the Enforcement Officer to confiscate any fish caught in the net.

(C) **Evidence.** If an Enforcement Officer determines in a crab or shrimp fishery that a person is violating this Section, he or she shall take one pot as evidence of the violation and store them in the evidence room.

(D) **Civil Penalties.**

(1) Except as provided below, any violation of this Section is a Class C infraction.

(2) **Exceptions.** Any violation of this Section is a Class A infraction where:

(a) **Crab or Shrimp Fisheries.** The fisher has crab or shrimp aboard the vessel. Additionally, any person convicted of violating this Section by the Court shall forfeit all crab and/or shrimp caught in violation of this Section.

(b) **Net Fisheries.** The fisher has fish in the net. Additionally, any person convicted of violating this Section by the Court shall forfeit all fish caught in violation of this Section. Any fish confiscated shall be given to the Tribe to be used for ceremonial and subsistence purposes as the Tribe sees fit.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.360 Fishing Out of Area (Criminal).

(A) No person shall intentionally or willfully fish or attempt to fish for a given species of fish unless the season for that species of fish has been opened by a duly authorized Tribal fisheries regulation.

(B) **Penalties.** Fishing out of Area (Criminal) is a Class B offense, punishable under Section 4-12.020(B) of the Criminal Code. In addition to the penalties for a Class B offense of the Criminal Code, the offender shall

(1) be subject to the suspension of fishing privileges for a Class B infraction of the Fishing Code pursuant to Section 18-08.040(B); and

(2) be subject to forfeiture of catch as follows:

(a) **Crab or Shrimp Fisheries.** Where the fisher has crab or shrimp aboard the vessel, the fisher shall forfeit all crab and/or shrimp caught in violation of this Section.

- (b) **Net Fisheries.** Where the fisher has fish in the net, the fisher shall forfeit all fish caught in violation of this Section. Any fish confiscated shall be given to the Tribe to be used for ceremonial and subsistence purposes as the Tribe sees fit.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.370 Use of Tribal Gear in Non-Tribal Fishery.

- (A) Gear registered for use in a Swinomish tribal fishery shall not be used in a non-Swinomish tribal fishery.
- (B) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.380 Use of Non-Tribal Gear in Tribal Fishery.

- (A) Gear registered for use in a Non-Tribal Fishery shall not be used in a Swinomish tribal fishery.
- (B) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05).

18-03.390 Multiple Benefits Prohibited.

- (A) No person may participate in the exercise of Swinomish Treaty fishing rights while also:
 - (1) exercising, or receiving benefits from, the fishing rights of another tribe secured by any treaty or executive order;
 - (2) participating in a Canadian First Nations fishery; or
 - (3) participating in a Washington State commercial fishery within Swinomish's usual and accustomed fishing grounds and stations.
- (B) **Civil Penalties.** Any violation of this Section is a Class A infraction.

[History] Ord. 411 (10/20/20); Ord. 254 (3/6/07); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.400 Receipt of a Percentage of the Catch.

- (A) No person or entity other than a Swinomish Tribal fisher or, enterprise, or an assistant as defined in Section 18-03.080, shall directly benefit from the exercise of Swinomish Tribal fishing rights in proportion to the success of a particular catch by taking a percentage of the catch or something other than a predetermined amount.
- (B) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.410 Loaning Gear to Suspended Fisher.

- (A) No Swinomish Tribal fisher shall knowingly give, loan, or rent his or her boat or gear to another fisher whose fishing privileges have been suspended during the period of suspension.
- (B) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.420 Trawling Prohibited in Certain Areas.

- (A) No fisher shall use trawl gear in any tribal fishery in Skagit Bay, Saratoga Passage, Holmes Harbor, or the marine waters off of West Beach, Whidbey Island.
- (B) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 254 (3/6/07); Ord. 232 (6/7/05).

18-03.421 Non-Member Fishing

- (A) A non-member of the Tribe shall not fish on lands (including tidelands) within the Swinomish Reservation, provided, however, that a non-member may fish on fee land within the Reservation which he or she owns if he or she complies with all applicable Tribal, Federal, and State of Washington law.
 - (1) This provision shall not apply to non-member Tribal employees or Tribal contractors acting within the scope and course of their employment or contracts and in compliance with all other applicable Tribal and Federal law.
- (B) **Civil Penalties.** Any violation of this Section is a Class A infraction.

[History] Ord. 425 (11/17/21).

Subchapter VI – Harvest and Gear Restrictions (Fishery Specific)

18-03.429 Conflict Between Fishery Specific Harvest and Gear Restrictions and Fishing Regulations.

In the event of a conflict between any fishery specific harvest and gear restriction set forth in this Chapter and a provision of a duly issued Swinomish fishing regulation, the Swinomish fishing regulation provision shall control.

[History] Ord. 425 (11/17/21).

18-03.430 Salmon or Steelhead Openers.

- (A) **Commercial.** All commercial salmon and steelhead fisheries are closed unless specifically opened by regulation.
- (B) **Ceremonial and Subsistence.** Fishing for salmon and steelhead for ceremonial and subsistence purposes is presumed open, subject to the terms of the permit.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.440 Salmon or Steelhead Harvest Restrictions.

(A) **Set Gill Net Sites.**

- (1) **Order of Priority.** Priorities to set gill net fishing sites shall be on a first come, first served basis. If such sites are abandoned by the first users, new users may be substituted by arrangement between fishers or on a first come, first served basis.
- (2) **Checked Daily.** All set gill nets shall be lifted and checked at least once per day.
- (3) **Penalties.** Any violation of this Subsection is a Class C infraction.

(B) **Drift Gill Net Areas.**

- (1) **Order of Priority.** Priorities in the use of drift gill nets shall be determined as follows: fishers using drift gill nets shall have access to a stream on a first come, first served basis. To make maximum use of the resources, fishers wishing to drift a specific area may take turns and follow one another in doing so; Provided, that when there is a conflict between fishers, the party who was first in the water during that particular drift shall have priority.

- (2) **Civil Penalties.** Any violation of this Subsection is a Class C infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.450 Salmon or Steelhead Gear Restrictions.

- (A) **On-Reservation.** For on-reservation salmon or steelhead fishing, the following types of gear may be used unless otherwise prohibited by regulation: drift gill net, beach seine, set gill net, troll, and hook and line. All other types of fishing gear are prohibited for individuals. No tribal fisher shall operate an individual fish trap. All fish trap operations belong to the Swinomish Indian Tribal Community and shall be regulated by the Senate.
- (B) **Off-Reservation.** For off-reservation fishing, the following types of gear may be used unless otherwise prohibited by regulation: drift gill net, beach seine, purse seine, reef net, round haul, set gill net, and hook and line.
- (C) **Net Restrictions.**
- (1) Fishers shall be limited to the use of two (2) nets at any one time. Use of either one (1) drift gill net and one (1) set gill net, or two (2) set gill nets, shall be permitted.
 - (2) Fishers shall not place set gill nets so that they cover more than one-third (1/3) of the wetted area of the stream channel. No river set gill net shall exceed thirty-five (35) fathoms in length.
 - (3) No gill net shall exceed three hundred thirty (330) fathoms in length.
 - (4) No purse seine shall exceed three hundred (300) fathoms in length.
 - (5) No beach seine shall exceed three hundred (300) fathoms in length.
- (D) **Hook and Line (Angling).**
- (1) For the purposes of this Section, “hook and line” and “angling” shall be identical in meaning.
 - (2) Hook and line fishing shall be restricted to the use of no more than four (4) lines per person with one (1) hook per line.
 - (3) The size and type of hook may be restricted by regulation or the “Swinomish Hotline.”
 - (4) Any Chinook listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. §§ 1531 – 1544, caught by hook and line shall be released.

(E) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.460 Salmon or Steelhead Gear Identification.

(A) Swinomish Tribal fishers shall conspicuously mark their nets and gear with the Tribal fisher's enrollment number preceded by "SWIN" or "29" so that the nets and gear can be identified without removing them from the water.

(B) Swinomish Tribal fishers shall mark their set nets at both ends with the letters "SWIN" or the numerals "29" followed by the tribal fisher's enrollment number.

(C) **Civil Penalties.** Violation of this Section is a Class C infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.470 Halibut Openers.

(A) **Commercial.** All commercial halibut fisheries are closed unless specifically opened by regulation.

(B) **Ceremonial and Subsistence.** Fishing for halibut for ceremonial and subsistence purposes is presumed open, subject to the terms of the permit.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.480 Halibut Harvest Restrictions. The following harvest restrictions shall apply in all halibut fisheries, whether commercial, ceremonial or subsistence:

(A) **Minimum Size.** It shall be illegal to sell or offer for sale or barter, halibut that with the head removed is less than twenty-four (24) inches from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail.

(B) **Bycatch.** All lingcod taken prior to April 15 each year in the commercial halibut fishery must be released. All other bycatch legal under current general bottom fish restrictions may be sold.

(C) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 396 (11/13/19); Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.490 Halibut Gear Restrictions.

[Reserved]

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.500 Bottom Fish Openers.

- (A) **Commercial.** All commercial bottom fish fisheries are closed unless specifically opened by regulation.
- (B) **Ceremonial and Subsistence.** Fishing for bottom fish for ceremonial and subsistence purposes is presumed open, subject to the terms of the permit.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.510 Bottom Fish Harvest Restrictions.

- (A) The following restrictions shall apply in all bottom fish fisheries, whether commercial, ceremonial or subsistence and no fisher may take:
 - (1) **Starry Flounder.** Starry flounder less than fourteen inches (14'') must be released unharmed;
 - (2) **Lingcod.**
 - (a) Lingcod measuring less than twenty-four inches (24'') or more than forty (40) inches; or
 - (b) Lingcod with any gear from July 16 through April 30.
 - (3) **English Sole.** English sole less than twelve inches (12'') long;
 - (4) **Rockfish.** Brown, Copper, or Quillback rockfish;
 - (5) **Dogfish.** Dogfish with any gear in any area for a three (3) month period after females have been observed with live pups; or
 - (6) **Shellfish.** Shellfish, of any species, with bottom fish gear.
- (B) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.520 Bottom Fish Gear Restrictions.

(A) Unless otherwise provided by regulation, it is unlawful to take bottom fish, except with the gear described below:

(1) **Set Line Gear.**

- (a) **Hook Size.** Hook size must not be smaller than size 7/0 Kirby style hooks or size 8 tuna circle hooks.
- (b) **Identification.** Set lines must be marked at the surface by a buoy clearly marked in a permanent fashion with the owner's enrollment number preceded by either "SWIN" or "29."

(2) **Troll Lines.**

- (a) Troll lines shall be limited to no more than two (2) per vessel.
- (b) Spreads or leaders shall be limited to no more than four (4) spreads or leaders per troll line.
- (c) The top spread or leader shall not be more than twenty-four (24) feet from the weight on the end of the line.
- (d) In the context of this Subsection, a "spread" or "leader" refers to the short line with a hook on one end that is attached to the troll line at the other end.

(B) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.530 Forage Fish Openers.

[Reserved]

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.540 Forage Fish Harvest Restrictions.

[Reserved]

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.550 Forage Fish Gear Restrictions. Forage fish gear restrictions shall be established by regulations issued by the Fisheries Manager at the direction of the Fish and Game Management Commission.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.560 Crab Openers.

- (A) **Commercial.** Commercial crabbing is closed unless specifically opened by regulation.
- (B) **Ceremonial and Subsistence.** Fishing for crab for ceremonial and subsistence purposes is presumed open, subject to the terms of the permit.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.570 Crab Harvest Restrictions.

- (A) **Restriction by Regulation.** All persons participating in a Tribal crab fishery shall follow the harvest and gear restrictions established by regulations issued by the Fisheries Manager at the direction of the Fish and Game Management Commission.
- (B) **Restrictions.** Harvest restrictions for all Tribal crab fisheries may include limits on:
 - (1) Species;
 - (2) Area;
 - (3) Total numbers of pots or rings;
 - (4) Size of pots or rings;
 - (5) Total number of permits per boat or vessel;
 - (6) Soak time; and
 - (7) Number of fishing vessels or boats per fisher.
- (C) **Prohibitions.** The taking or possessing of the following is prohibited in all Tribal crab fisheries unless specifically authorized by regulation:
 - (1) Female crabs;
 - (2) Softshell crabs;
 - (3) Male Crabs:

- (a) **Dungeness.** Male Dungeness crabs less than 6 ¼ inch carapace length measured using a caliper at the widest part of the shell immediately in front of, but not including the outside of, the tips;
 - (b) **Red Rock.** Male Red Rock crabs less than 5 inch carapace length measured using a caliper at the widest part of the shell immediately in front of, but not including the outside of, the tips; and
 - (4) Crabs without backs or that have been processed in a manner that will not allow the determination of the size or sex of the individual.
- (D) **Specific Ceremonial and Subsistence Requirements.** In addition to the fishing harvest restrictions, limits and prohibitions set forth in Sections 18-03.570(A-C) and .580, fishers harvesting for ceremonial and subsistence purposes shall comply with the following requirements:
- (1) **Reporting Requirements.**
 - (a) Upon the expiration of the ceremonial or subsistence permit, the permittee shall report to the Fisheries Manager, or his or her designee, the area fished and the quantity of crab taken.
 - (b) Any fisher who fails to report the required information shall be prohibited from receiving another ceremonial or subsistence permit for the next calendar year.
 - (2) **Buoy and Tag Requirements.**
 - (a) Tribal fishers engaged in crabbing for subsistence purposes shall obtain the appropriate buoys and tags from the Fisheries Office and affix them to the pot(s) or ring(s) used in the fishery.
 - (b) The tribal subsistence buoy shall be yellow with a red vertical stripe. The vertical stripe shall have a median width of three inches (3’’).
 - (c) Upon the expiration of the permit, the tribal fisher shall return the buoys and tags to the Fisheries Office.
 - (d) A tribal fisher who fails to return the buoys and tags shall be prohibited from receiving another ceremonial or subsistence permit for the next calendar year.
 - (3) **Ceremonial Limit.** The ceremonial limit shall be established by the terms of the permit.
 - (4) **Subsistence Limits.** Subsistence crabbing shall be limited as follows:

- (a) Two (2) pots per fisher;
- (b) Two (2) fishers per boat;
- (c) Seventy-two (72) hours of “soak” time per week; and
- (d) Six (6) crab per day.

(E) **Penalties.**

- (1) **Civil.** Regardless of intent, a violation of Section 18-03.570, or any rule or regulation issued hereunder, is a Class B infraction.
- (2) **Criminal.** Any fisher who intentionally or willfully violates Section 18-03.570 – Crab Harvest Restrictions shall be guilty of a Class B offense, punishable under Section 4-12.020(B) of the Criminal Code. In addition to the penalties for a Class B offense of the Criminal Code, the offender shall be subject to the suspension of fishing privileges for a Class B infraction of the Fishing Code pursuant to Section 18-08.040(B).

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.580 Crab Gear Restrictions.

(A) **Specifications.** This Section shall apply to all crab fisheries, whether commercial, ceremonial or subsistence.

- (1) **Standard Commercial.** Crab pots shall be standard commercial crab pots:
 - (a) **Escape Rings.** Each pot shall have two (2) escape rings of not less than 4.25 inches inside diameter in the fixed upper half of the pot.
 - (b) **Rot Cord.** Each pot shall have pot lid hooks or tie down straps secured with rot cord made from a single strand or loop of untreated natural fiber twine no larger than thread size #120, or an opening in the pot mesh no less than 3” x 5” that is laced or sewn closed with untreated natural fiber twine no larger than thread size #120. The rot cord must be incorporated into the pot so that, if the pot gets lost, the rot cord will rot away and the crab may freely escape from the pot.
- (2) **Ring Nets.** Ring nets shall be constructed so that they lie flat on the seabed and do not restrict the free movement of crab until lifted.

- (3) **Buoys.** Each pot or string of pots or ring net shall be attached to a surface buoy of durable material capable of floating at the surface with a five-pound (5 lb.) weight attached.

(B) **Identification.**

- (1) **Pots or Rings.** All crab pots or rings or strings of crab pots or rings shall be marked with buoys. All buoys shall be conspicuously marked in accordance with the regulation opening the fishery. If required by regulation, all crab pots shall be tagged.
- (2) **Groundlines.** All groundlines, if required by regulation, shall be marked on both ends with buoys that conform to Subsection 18-03.580(B)(1).

(C) **Civil Penalties.** Any violation of this Section is a Class C infraction.

[History] Ord. 380 (5/10/18); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 157 (7/2/02); Ord. 96 (6/2/92); Ord. 88 (2/6/92).

18-03.590 One Operator Per Vessel Per Commercial Crab Opener.

- (A) **Limitation.** No fisher shall operate more than one vessel during a crab opener.
- (B) **Designated Operator.** A vessel owner shall designate the vessel operator for each of the vessels he or she owns but will not operate before the commercial crab opener and so inform the Fisheries Manager, or his or her designee.
- (C) **Exception.** If an operator's vessel breaks down during a commercial crab opener and he or she is unable to pick his or her pots, he or she may use another vessel to pick or retrieve his or her pots; Provided, that the vessel operator notifies the Fisheries Manager, or his or her designee, of the registration number of the vessel that will pick or retrieve the pots.
- (D) **Civil Penalties.** Any violation of this Section is a Class A infraction, but, in lieu of the suspension periods set forth in Section 18-08.030(A), fishing privileges shall be suspended for the next three (3) calendar years.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.600 Clams as Bait.

[Reserved]

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.610 Shrimp Openers.

- (A) **Commercial.** Commercial shrimping is closed unless specifically opened by regulation.
- (B) **Ceremonial and Subsistence.** Fishing for shrimp for ceremonial and subsistence purposes is presumed open, subject to the terms of the permit.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.620 Shrimp Harvest Restrictions.

- (A) **Restriction by Regulation.** All persons participating in a Tribal shrimp fishery shall follow the harvest and gear restrictions established by regulation issued by the Fisheries Manager at the direction of the Fish and Game Management Commission.
- (B) **Restrictions.** Harvest restrictions for all Tribal shrimp fisheries may include limits on the:
 - (1) Maximum pounds of shrimp each fisher may harvest;
 - (2) Area(s) where fishers may harvest shrimp;
 - (3) Total number of pots per boat or vessel;
 - (4) Minimum carapace length;
 - (5) Species of shrimp that may be harvested;
 - (6) Hours when pots may be pulled; and
 - (7) Soak time.
- (C) **Specific Commercial Fishery Requirements.**
 - (1) **Harvest Log to be Maintained.**
 - (a) Vessel operators engaged in commercial shrimp fishing shall obtain and accurately maintain the appropriate harvest log provided by the Fisheries Office.
 - (b) The log shall be kept aboard the vessel while the vessel operator is engaged in fishing activities or has shrimp aboard.
 - (c) The vessel operator shall submit a copy of the harvest log to the Fisheries Manager within ten (10) days of the end of each month in

which harvest activity has occurred, and within ten (10) days of the termination of commercial shrimp fishery.

- (d) The Fisheries Manager may request the vessel operator submit the log for inspection at any time.

(2) **Civil Penalties.**

- (a) **Class B.** Any violation of Subsection 18-03.620(C) is a Class B infraction.
- (b) **No New Permit.** In addition to the penalties established by Section 18-03.620(C)(2)(a), in a pot shrimp fishery, the Fisheries Manager shall
 - (i) not issue a new commercial shrimping permit to a vessel operator until he or she completes and submits to the Fisheries Manager copies of all logs required by the previous commercial shrimping permit upon closure of the regional fishery; and
 - (ii) revoke the commercial shrimping permit of the vessel operator if she or she fails to submit copies of all logs required by the permit to the Fisheries Manager pursuant to Section 18-3.620(C)(1)(c).

(D) **Specific Ceremonial and Subsistence Requirements.**

- (1) **Permit.** Upon reasonable request, the Fisheries Manager shall issue a permit for the harvest of shrimp for ceremonial or subsistence purposes.

(2) **Reporting.**

- (a) Upon the expiration of the ceremonial or subsistence permit, the permittee shall report to the Fisheries Manager the area fished and the quantity of shrimp taken.
- (b) A tribal fisher who fails to report the required information shall be prohibited from receiving a ceremonial or subsistence permit for the following calendar year.

(3) **Buoy and Tag Requirements.**

- (a) Tribal fishers engaged in shrimping for subsistence purposes shall obtain the appropriate buoys and tags from the Fisheries Manager, or his or her designee, and affix them to the pot(s) or ring(s) used in the fishery.
- (b) The tribal subsistence buoy shall be yellow with a red vertical stripe. The vertical stripe shall have a median width of three inches (3’’).

- (c) Upon the expiration of the permit, the tribal fisher shall return the buoys and tags to the Fisheries Office.
 - (d) Any tribal fisher who fails to return the buoys and tags shall be prohibited from receiving another ceremonial or subsistence permit for the next calendar year.
- (4) **Notification.** Upon the issuance of a ceremonial shrimping permit, the Fisheries Manager, as a courtesy to other Tribes, shall notify other Tribes that have treaty fishing rights in the same area of the ceremonial shrimp fishery.
 - (5) **Ceremonial Limit.** The ceremonial limit shall be established by the terms of the permit.
 - (6) **Subsistence Limit.** Subsistence shrimping shall be limited as follows:
 - (a) Two (2) pots per fisher;
 - (b) Two (2) fishers per boat; and
 - (c) Ten pounds (10 lbs) of shrimp (head on) per day including a maximum of eighty (80) spot shrimp;
 - (7) **Civil Penalties.** Any violation of Section 18-03.640(D), or any rule or regulation issued hereunder, is a Class C infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.630 Shrimp Harvest Restrictions (Criminal). A person who intentionally or willfully violates the terms and provisions of Section 18-03.620 – Shrimp Harvest Restrictions is guilty of a Class B offense, punishable under Section 4-12.020(B) of the Criminal Code. In addition to the penalties for a Class B offense of the Criminal Code, the offender shall be subject to the suspension of fishing privileges for a Class B infraction of the Fishing Code pursuant to Section 18-08.040(B).

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.640 Shrimp Gear Restrictions.

- (A) **Applicability.** This Section shall apply to all shrimp fisheries, whether commercial, ceremonial or subsistence.
- (B) **Pots.**

(1) **Standard Commercial.** Shrimp pots shall be standard commercial shrimp pots as follows;

(a) **Tunnels.** Each pot with doors shall have pot lid hooks or tie down straps secured with rot cord made from a single strand or loop of untreated natural fiber twine no larger thread than #100, or an opening in the pot mesh no less than 3" x 5" that is laced or sewn closed with untreated natural fiber twine no larger than thread size #100; Provided, that the opening is located within the top half of the pot and is unimpeded by the entry tunnels, bait boxes, or any other structures or materials.

(b) **No Tunnels.** Each pot without doors shall have an opening in the top mesh no less than 3" x 5" that is laced or sewn closed with rot cord made from a single strand or loop of untreated natural fiber twine no larger than thread size #100.

(C) **Buoys.** Each pot or string of pots shall be attached to a surface buoy of durable material capable of floating at the surface with a five-pound (5 lb.) weight attached. Each buoy shall be clearly marked in a permanent fashion with the enrollment number of the registered owner of the pots, preceded by either "SWIN" or "29."

(D) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 157 (7/2/02); Ord. 96 (6/2/92); Ord. 88 (2/6/92).

18-03.650 One Operator Per Vessel Per Commercial Shrimp Opener.

(A) **Limitation.** No person shall operate more than one (1) vessel during a commercial shrimp opener.

(B) **Designated Operator.** A vessel owner shall designate the vessel operator for each of the vessels he or she owns but will not operate before the commercial shrimp opener and so inform the Fisheries Manager, or his or her designee.

(C) **Exception.** If a vessel operator's vessel breaks down during a commercial opener and he or she is unable to pick his or her pots, he or she may use another vessel to pick his or her pots; Provided, that the vessel operator notifies the Fisheries Manager, or his or her designee, of the registration number of the vessel that will recover the pots.

(D) **Civil Penalties.** Any violation this Section is a Class A infraction. However, in lieu of the suspension periods set forth in Section 18-08.030(A), fishing privileges shall be suspended for the next three (3) calendar years.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.660 Clam Openers.

- (A) **Commercial.** A commercial beach is closed to all commercial digging in the absence of a duly authorized regulation opening the beach or specified area within the beach for commercial digging.
- (B) **Ceremonial.** Clamming for ceremonial purposes is presumed open, subject to the terms of the permit except as provided in STC 18-03.160(C).
- (C) **Subsistence.** All beaches are open to tribal subsistence digging in the absence of a duly authorized tribal regulation closing the beach or specified area(s) within the beach for tribal subsistence digging except as provided in STC 18-03.160(C).

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.670 Clam Harvest and Gear Restrictions.

- (A) **Restriction by Regulation.** All persons participating in a tribal clam fishery shall follow the harvest and gear restrictions established by tribal regulation and permit.
- (B) **Harvest Restrictions.** Harvest restrictions for all clam fisheries may include limits on:
 - (1) The maximum volume/pounds of clams each fisher may harvest;
 - (2) The species of clam each fisher may harvest;
 - (3) The minimum size of harvestable clams;
 - (4) The areas where fishers may harvest clams;
 - (5) The access routes fishers may use to access harvest areas; and
 - (6) The total numbers of buckets or bags a fisher may use.
- (C) **Gear Restrictions.** Fishers shall harvest all clams, with the exception of geoducks, by hand, using forks, rakes, or shovels.
- (D) **Civil Penalties.** A violation of Section 18-03.670, or any rule or regulation issued hereunder, is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.680 Clam Fisheries.

- (A) **Specific Commercial Fisheries Requirements.**

- (1) **Monitor.** Commercial clam harvesting shall be supervised by an official monitor designated by the Fisheries Manager.
- (2) **Pre-Harvest.** Prior to harvest, each person engaging in commercial clam harvesting shall:
 - (a) Provide the following information to the monitor:
 - (i) The name of the fisher;
 - (ii) The date of harvest;
 - (iii) The harvest location;
 - (iv) The number and species of clams expected to be harvested; and
 - (v) The name of the buyer; and
 - (b) Obtain official Swinomish Clam harvest bag and bag tags from the Fisheries Office.
- (3) **Post-Harvest.** Upon the completion of the harvest, the fisher shall:
 - (a) Thoroughly wash the clams with marine water from the beach where the clams were harvested;
 - (b) Discard all broken clams destined for sale;
 - (c) Place his or her pre-washed clam harvest in an official Swinomish Clam harvest bag;
 - (d) Seal the bag;
 - (e) Attach a bag tag containing the Tribal Shellstock Shipper's License number, the permit holder's Point Elliott Treaty Fishing Card Identification Number, date of harvest, the harvest location/Beach Identification Number (BIDN), species and quantity of clams, and the date of wet storage, if applicable; and
 - (f) Bring a copy of the buyer's receipt to the monitor for recording of information in the Clam Harvest Logs and on fish tickets.
- (4) The monitor shall not authorize the sale of clams that have not been harvested under the terms and conditions of this Chapter and any rules or regulations promulgated hereunder.

(5) **Harvest Log.**

- (a) Clam monitors monitoring commercial clam fisheries shall obtain the appropriate harvest log from the Fisheries Office and accurately maintain it.
- (b) The clam monitor shall submit copies of the harvest logs to the Fisheries Office within one (1) day following harvest of any clams for commercial purposes.

(6) **Sanitation Compliance.** No fisher shall handle, transport, sell or attempt to sell clams in violation of the guidelines set forth in the National Shellfish Sanitation Program Manual, a copy of which shall be on file in the Fisheries Office and made available for public inspection during regular business hours.

(B) **Specific Ceremonial and Subsistence Fishery Requirements.**

(1) **Permit.** Notwithstanding Section 18-03.050(B)(2), a permit to engage in a ceremonial and subsistence clam fishery shall contain the following information:

- (a) name of the harvester(s),
- (b) the purpose of the harvest,
- (c) the number of buckets or bags to be used or the quantity of clams to be harvested,
- (d) the species of clams to be harvested,
- (e) the quantity of clams to be harvested,
- (f) the area of harvest,
- (g) the dates the permit is valid,
- (h) name and registration number of boat to be used, if any
- (i) enrollment number of the fisher.

(2) **Reporting.**

- (a) At the expiration of the permit, the permittee shall report the area harvested and the quantity of clams taken to the Fisheries Manager, or his or her designee.

(b) A fisher who fails to report the required information shall be prohibited from receiving a ceremonial or subsistence permit for one month.

(C) **Subsistence Harvest Limitations.** Unless otherwise specified, the taking of clams for subsistence purposes beyond and within the exterior boundaries of the Swinomish Indian Reservation shall be limited to one (1) five-gallon bucket of unshucked clams per fisher per day (twenty-four hour period). Up to one half of the five-gallon bucket, *i.e.*, twenty pounds (20 lbs), may be unshucked native little neck clams or manila clams.

(D) **Civil Penalties.** Violation of Section 18-03.680 is a Class C infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 82 (1/7/92); Ord. 77 (6/4/91).

18-03.690 Commercial Dive Fisheries.

(A) **General.**

(1) The commercial dive fisheries shall include fisheries for:

- (a) Geoducks;
- (b) Red and green sea urchins;
- (c) Sea cucumbers; and
- (d) Scallops.

(2) The requirements set forth in Sections 18-03.690(B) and (C) and (D) shall apply to all commercial dive fisheries.

(B) **Safety Requirements.**

(1) All gear used in a commercial dive fishery shall adhere to the commercial diving standards established by the U.S. Occupational Safety and Health Administration (“OSHA”);

(2) All persons working as commercial harvest divers shall have open water certification by the National Association of Underwater Instructors (“NAUI”), Professional Association of Diving Instructors (“PADI”) or a comparable program;

(3) All persons working as commercial divers using a surface air supply breathing apparatus shall have appropriate certification from an appropriate nationally recognized agency; and

- (4) All divers and operators of vessels to be used in a dive fishery shall notify the Fisheries Manager, or his or her designee, of their intent to participate in the dive fishery.
- (5) Any person participating in a commercial dive fishery, including but not limited to skippers, divers, monitors and operators of vessels, who has knowledge of any accident or any incident causing bodily injury or property damage which occurred during commercial dive fishery operations shall provide written notice of such accident or incident to the Fisheries Manager, or his or her designee, as soon as is reasonably practical.

(C) Drug Testing.

- (1) **Purpose.** Each person participating in a commercial dive fishery has a responsibility to self, others participating in the fishery and the general public to perform commercial dive operations in a safe and conscientious manner and to refrain from the use of controlled substances while the dive fishery is open.
- (2) **Diver Drug Policy.** The Commission shall adopt a diver drug policy as a regulation of the Commission. The policy shall govern controlled substances and prescription drugs, protocols for drug testing of divers and others, consequences for a positive test results, requirements for cooperation by those required to be tested, and privacy protections for test information required by applicable federal and tribal laws and regulations.
- (3) **Enforcement and Penalties.** The diver drug policy shall contain penalties for violations of the policy, which may include without limitation loss of fishing privileges. The diver drug policy shall be enforced by the Fisheries Manager and staff in accordance with the terms of the policy. In addition, violation of the diver drug policy shall be punishable as a Class B infraction.
- (4) **Cooperation of Tribal Employees.** The Commission is authorized to provide for drug testing through the Swinomish Wellness Program, and for evaluation and counselling services to be performed by the Tribe's chemical dependency professionals, who shall cooperate in providing the services which the diver drug policy may require.
- (5) **Report to the Senate.** The Fisheries Manager shall report to the Senate annually regarding the administration and enforcement of the drug testing policy. Any changes in the policy shall be reported to the Senate as part of the Fisheries Manager report.

(D) Harvest and Gear Restrictions.

- (1) **Restriction by Regulation.** All persons participating in a commercial harvest dive fishery shall follow the harvest and gear restrictions established by this Chapter and regulations issued hereunder.

- (2) **Harvest Restrictions.** Harvest restrictions for all dive fisheries may include limits on:
 - (a) Maximum number of pounds of the target species per fisher;
 - (b) Maximum and/or minimum size of the target species;
 - (c) Harvest methods;
 - (d) Hours of harvest each day;
 - (e) Days of harvest each year; and
 - (f) Any other rule or regulation reasonably calculated to preserve, protect, or enhance the tribal commercial dive fisheries.

- (E) **Civil Penalties.** Any violation of Section 18-03.690(B) or (D), or any rules or regulations issued hereunder, is a Class B infraction.

[History] Ord. 335 (6/3/14); Ord. 254 (3/6/07); Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.700 Geoduck Fishery.

(A) **Commercial Fishery.**

- (1) **Presumed Closed.** Commercial harvesting of geoducks is closed unless specifically opened by regulation.

- (2) **Monitor Required.**
 - (a) All commercial harvesting of geoducks shall be supervised by an official monitor designated by the Fisheries Manager.
 - (b) The monitor shall obtain the appropriate harvest log from the Fisheries Office and accurately maintain it.
 - (c) The monitor shall record the following information in the log:
 - (1) the number of geoducks harvested, and

- (2) whether the geoducks were sold, taken home, taken as a sample (e.g. PSP sample), or otherwise,
 - (3) name of buyer, if sold, and
 - (4) the geoduck track by name and identification number.
- (d) The monitor shall submit copies of the harvest log to the Fisheries Manager, or his or her designee, within one (1) day following harvest.

(3) **Health Inspection Requirements.**

- (a) All vessels used in a geoduck fishery must pass an annual inspection by the Washington State Department of Health prior to participation in the fishery.
- (b) The boat owner, or his or her designee, shall provide proof of such inspection to the Fisheries Office.
- (c) The boat owner shall be liable for all inspection costs.

(B) **Ceremonial and Subsistence Fisheries.**

- (1) **Permit Required.** Ceremonial and subsistence harvesting of geoducks shall be by permit only.

(2) **Reporting.**

- (a) Upon the expiration of the ceremonial or subsistence permit, the permittee shall report to the Fisheries Manager, or his or her designee, the area fished and the quantity of geoduck taken.
- (b) A Tribal fisher who fails to report the required information shall be prohibited from receiving a ceremonial or subsistence permit for the following calendar year.

- (C) **Harvest Restrictions.** Fishers shall not discard any geoducks taken during harvest operations regardless of whether the fishery is commercial, ceremonial or subsistence.

- (D) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.710 Sea Urchin Fishery.

- (A) **Commercial Fishery.**

- (1) **Presumed Closed.** Commercial harvesting of sea urchins is closed unless specifically opened by regulation.
 - (2) **Harvest Logs to be Maintained.**
 - (a) Vessel operators engaged in commercial sea urchin fishing shall obtain the appropriate harvest log from the Fisheries Office and maintain it accurately and completely in accordance with any rules or regulations promulgated thereto.
 - (b) The log shall be kept aboard the vessel while the vessel operator is engaged in fishing activities or has sea urchins aboard.
 - (c) The vessel operator shall submit copies of the harvest logs to the Fisheries Manager, or his or her designee, within ten (10) days of the end of each month in which harvest activity has occurred, and within ten (10) days of the termination of commercial sea urchin fishery for that season.
 - (d) The Fisheries Manager may request the vessel operator submit the log for inspection at any time.
- (B) **Ceremonial and Subsistence Fisheries.**
- (1) **Permit Required.** Ceremonial and subsistence harvesting of sea urchins shall be by permit only.
 - (2) **Reporting.**
 - (a) Upon the expiration of the ceremonial or subsistence permit, the permittee shall report to the Fisheries Manager, or his or her designee, the area fished and the quantity of urchins taken.
 - (b) A tribal fisher who fails to report the required information shall be prohibited from receiving a ceremonial or subsistence permit for the following calendar year.
 - (3) **Subsistence Limit.** The subsistence harvest limit shall be twenty pounds (20 lbs.) wet weight of sea urchin per day.
- (C) **Gear.** Fishers shall harvest sea urchins with hand-held rakes, tongs or equipment that does not damage the shell of the sea urchin.
- (D) **Civil Penalties.**

- (1) Any violation of Section 18-03.710 is a Class B infraction.
- (2) In addition to the penalties established by Section 18-03.710(D)(1), the Fisheries Manager shall:
 - (a) not issue a new commercial sea urchin permit to the vessel operator until he or she completes and submits copies of all logs required by the previous commercial sea urchin permit to the Fisheries Manager;
 - (b) revoke the commercial sea urchin permit of the vessel operator if he or she fails to submit copies of all logs required by the permit to the Fisheries Manager pursuant to Section 18-03.720(A)(2)(c).

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.720 Sea Cucumber Fishery.

(A) Commercial Fishery.

- (1) **Presumed Closed.** Commercial harvesting of sea cucumbers is closed unless specifically opened by regulation.
- (2) **Harvest Log to be Maintained.**
 - (a) Vessel operators engaged in commercial sea cucumber fishing shall obtain the appropriate harvest log from the Fisheries Office and maintain it accurately and completely in accordance with any rules or regulations promulgated thereto.
 - (b) The log shall be kept aboard the vessel while the vessel operator is engaged in fishing activities or has sea cucumbers aboard.
 - (c) The vessel operator shall submit copies of the harvest logs to the Fisheries Manager, or his or her designee, within ten (10) days of the end of each month in which harvest activity has occurred, and within ten (10) days of the termination of commercial sea cucumber fishery.
 - (d) The Fisheries Manager may request the vessel operator submit the log for inspection at any time.

(B) Ceremonial and Subsistence Fisheries.

- (1) **Permit Required.** Ceremonial and subsistence harvesting of sea cucumbers shall be by permit only.
- (2) **Reporting.**

- (a) Upon the expiration of the ceremonial or subsistence permit, the permittee shall report to the Fisheries Manager, or his or her designee, the area fished and the quantity of cucumbers taken.
 - (b) A tribal fisher who fails to report the required information shall be prohibited from receiving a ceremonial or subsistence permit for the following calendar year.
- (C) **Gear Restrictions.** Harvest of sea cucumbers is restricted to individual harvest by hand.
- (D) **Civil Penalties.**
- (1) Any violation of Section 18-03.720 is a Class B infraction.
 - (2) In addition to the penalties established by Section 18-03.720(D)(1), the Fisheries Manager shall:
 - (a) not issue a new commercial sea cucumber permit to the vessel operator until he or she completes and submits copies of all logs required by the previous commercial cucumber permit to the Fisheries Manager;
 - (b) revoke the commercial sea cucumber permit of the vessel operator if he or she fails to submit copies of all logs required by the permit to the Fisheries Manager pursuant to Section 18-03.720(A)(2)(c).

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.730 Oyster Fishery.

[Reserved]

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

Subchapter VII – Fish Buyers

18-03.740 Fish Buyers.

- (A) **Buyer's License.** Any person who buys fish caught during the exercise of the Tribe's treaty fishing rights for any use other than the buyer's own personal or household consumption and not for resale, as provided in Section 18-03.840(C) – Over the Bank Sales shall first obtain a Buyer's License from the Tribe. The Fisheries Manager is authorized to issue the Buyer's License, which shall be valid when signed by the Fisheries Manager, or his or her designee, and the license applicant. The person holding the license is a Fish Buyer, and the license thus issued is a Buyer's License, for

purposes of this Chapter. The license shall be valid for one (1) year commencing on the first day of April and ending on the 31st day of March.

(B) License Application.

- (1) Any person may apply for a Buyer's License either in person or by mail addressed to:

Swinomish Indian Tribal Community
Fisheries Office
11426 Moorage Way
La Conner, WA 98257

- (2) The license application shall contain the following information:

- (a) Name of applicant;
- (b) Business address and telephone number of applicant;
- (c) Number of tenders, if any;
- (d) Applicant's business locations;
- (e) Make, year; and registration number of each tender;
- (f) If the applicant is a commercial seafood buyer duly licensed under the laws of the State of Washington, proof of such license or certification;
- (g) Whether the applicant is licensed to purchase fish from another Tribe;
- (h) Whether the applicant has been convicted of any felony under the laws of the State of Washington or the United States;
- (i) Whether the applicant has had a previous license revoked by the Tribe, the State of Washington, or another tribe; and
- (j) Signature of the applicant.

(C) Issuance of License. The Fisheries Manager, or his or her designee, shall issue a Buyer's License upon the applicant providing:

- (1) a completed application for a Buyer's License;
- (2) payment of the license fee; and
- (3) proof of a Fish Buyer's bond, if required pursuant to Section 18-03.750.

(D) **Fee.**

- (1) **Non-Swinomish Tribal members.** The annual fee for non-Swinomish tribal members shall be one hundred dollars (\$100.00) per license, plus an additional twenty-five dollars (\$25.00) per each tender or buyer's location over the first tender or buyer location.
- (2) **Swinomish Tribal Members.** The annual fee for Swinomish tribal members and for Swinomish Fish Co., Inc. shall be one hundred dollars (\$100.00) per license, regardless of the number of tenders or buyer's locations.

(E) **License Conditions.** All Buyers' Licenses issued by the Tribe shall include the following terms and conditions, to which the Fish Buyer shall agree in writing:

- (1) To abide by all laws, rules, and regulations of the Tribe, all applicable federal laws, and all applicable court orders in *U.S. v. Washington*, No. C70-9213, as affirmed;
- (2) To provide harvest management information from fish tickets as requested by the Fisheries Manager, or his or her designee;
- (3) To consent to the jurisdiction of the Tribal Court over any action arising from or concerning the Buyer's License and the enforcement of any judgment from the Tribal Court related to such action;
- (4) To pay to the Tribe reasonable attorney's fees, costs, and expenses of any litigation arising from a dispute concerning implementation of the terms and conditions of the Buyer's License in which the Tribe prevails;
- (5) To abide by any other reasonable terms and conditions that may be required by the Fisheries Manager, upon direction from the Commission or the Senate;
- (6) To surrender the Buyer's License upon revocation by the Fisheries Manager at the direction of the Tribal Court, the Commission, or the Senate;
- (7) To permit Enforcement Officers to enter any Fish Buyer's business location and inspect the premises and records of the Buyer; and
- (8) To cooperate with Enforcement Officers concerning any investigation for a violation.

The Fish Buyer's acceptance of and signature upon the Buyer's License shall be prima facie evidence of the buyer's acceptance of the license terms.

- (F) **Revocation.** Violation of this Chapter or any condition of the Buyer's License may lead to its revocation by the Fisheries Manager at the direction of the Commission or Senate under Section 18-03.780.

[History] Ord. 320 (2/4/12); Ord. 254 (3/6/07); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.750 Fish Buyer's Bond.

- (A) **Purpose.** The purpose of the Fish Buyer's bond or check is to ensure that the Fish Buyer pays all required withholdings and surcharges to the Tribe under Section 18-03.790(A).
- (B) **Amount.** Unless otherwise directed by the Fisheries Manager in consultation with the Commission:
- (1) Each Fish Buyer shall post a bond in the amount of five thousand dollars (\$5,000.00); or
 - (2) In lieu of a bond, the Fish Buyer may deliver a check in the amount of five thousand dollars (\$5,000.00) to the Fisheries Manager. The Fisheries Manager shall transmit the check to the Tribe for placement into a designated account. The Tribe shall retain any interest earned on the funds deposited in the designated account.
- (C) **Conditions.** The bond or check shall be subject to forfeiture upon a determination by
- (1) the Tribal Court of any violation of the terms of this Chapter; or
 - (2) the Fisheries Manager of any violation of the terms of the Buyer's License.
- (D) **Return of Bond.** Upon determination by the Fisheries Manager that the Buyer (1) has paid all withholdings and surcharges under Section 18-03.790(A); and (2) no longer seeks to hold a Buyer's License issued by the Tribe, the Fisheries Manager shall return the bond or the \$5,000 to the Fish Buyer.
- (E) **Exception.** Swinomish Tribal members shall not be required to post bond. In the event that a Tribal member fails to remit any withholding, the Fisheries Manager shall hold back that amount from that member's withholding remittance.

[History] Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.760 Posted List of Fish Buyers.

- (A) **Date.** On or before May 1 of each year, the Fisheries Manager, or his or her designee, shall post a list of Fish Buyers who possess a currently valid Buyer's License.
- (B) **Notice.** To ensure adequate notice to fishers, the list shall be posted at the Fisheries Office, the Fish Plant and the Tribal Administration Building.
- (C) **Revision.** If, after the list has been posted, any additions or deletions are made, the list shall be revised and reposted by the Fisheries Manager, or his or her designee, within 48 hours of any addition or deletion.

[History] Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.770 Fish Receiving Tickets and Bag Tags.

- (A) **Fish Receiving Tickets Required.** A Fish Buyer purchasing fish taken, caught, or harvested by a fisher in the exercise of the Tribe's treaty fishing rights shall record the sale on a fish receiving ticket.
- (B) **Fish Receiving Ticket Information.** All fish receiving tickets shall include at least the following information:
 - (1) the date of the sale,
 - (2) the name of the Fish Buyer and his or her state identification number,
 - (3) the name and identification of the fisher as stated on his or her Point Elliott Treaty Fishing Card,
 - (4) the number, weight, and species of fish caught,
 - (5) the fish catch area,
 - (6) the price, and
 - (7) the annual withholding collected and withheld by the Fish Buyer.

The Fish Buyer shall record on the fish receiving ticket the name and fisher's identification number on the current and valid Point Elliott Treaty Fishing Card of the fisher who harvested the fish; provided, that if the fisher is an operator and the owner of the vessel has so directed, the owner's identification number shall be recorded. The Fish Buyer shall also record the Tribe's identification number on the fish receiving ticket. Such information may be written in by hand.

- (C) **Tribal Fisher With Buyer's License.** A Tribal fisher who also holds a Buyer's License may document that fisher's harvest amounts not sold to another Fish Buyer by issuing a fish receiving ticket for that amount of the harvest as if such fish had been sold to the fisher in his or her capacity as a Fish Buyer.
- (D) **Fisheries Manager Buyer's License.** A Buyer's License shall be issued to the Fisheries Manager for use on behalf of the Tribe in accordance with this Subsection (D). The Fisheries Manager, or his or her designee, may issue fish receiving tickets under the Fish Manager's Buyer's License in order to document the following types of harvests by Tribal fishers:
- (1) Authorized test fisheries;
 - (2) Authorized ceremonial harvests;
 - (3) Over the bank sales by Tribal fishers, as provided in Section 18-03.840;
 - (4) Geoduck harvests sold by Tribal fishers to certain buyers who do not hold a Buyer's License; and
 - (5) Harvests in other special circumstances as authorized or directed by the Commission or Senate.

No application fee or bond is required for the Fisheries Manager's Buyer's License. The Fisheries Manager shall comply with the other requirements of this Chapter concerning fish Buyers and Buyer's Licenses.

- (E) **Adjustment to Fish Receiving Ticket.** At the direction of the Fisheries Manager, or his or her designee, the Fish Buyer shall adjust any fish receiving ticket to reflect corrected information.
- (F) **Bag Tags for Bivalve Fisheries.**
- (1) A Fish Buyer shall ensure that all bag tags affixed to a container or bag of bivalves are filled out accurately and completely by the monitor.
 - (2) The Fish Buyer and subsequent purchasers shall comply with all bag and container requirements contained in Chapter X, Section .05 of the 2009 NSSP Guide for Control of Molluscan Shellfish Model Ordinance.
 - (3) **Civil Penalties.** Any violation of this Subsection (F) shall be punishable by a civil fine of not less than five hundred dollars (\$500.00) and no more than one thousand dollars (\$1,000.00).
- (G) **Daily Reporting.**

- (1) To ensure effective self-regulation of treaty fishing, it is essential that all commercial fish sales are accurately reported.
- (2) Fish Buyers shall deliver copies of all fish receiving tickets that involve the purchase of fish from Tribal fishers to the Fisheries Manager on a daily basis, unless the Fisheries Manager previously has designated Tribal staff to pick up the fish receiving tickets from that Fish Buyer.
- (3) **Separate Violation.** Each day a Fish Buyer fails to provide the Fisheries Manager with a copy of the fish receiving ticket shall be a separate violation.
- (4) **Exception.** Any Fish Buyer on a tender boat may, in lieu of the reporting requirement in Subsection (2) above, call in the catch rate daily to the Fisheries Manager, or his or her designee; provided, that within one day of returning to shore, the Fish Buyer on the tender shall either mail or personally deliver copies of all fish receiving tickets to the Fisheries Manager.
- (5) **Civil Penalties.** Any violation of this Subsection (G) shall be punishable by:
 - (a) An administrative penalty of twenty-five dollars (\$25.00) for each incorrectly filled out fish receiving ticket;
 - (b) Except for Fish Buyers governed by Subsection (4), an administrative penalty of twenty-five dollars (\$25.00) for each fish receiving ticket for Fish Buyers not presented to the Fisheries Manager within one (1) working day of purchase and sale, and
 - (c) For Fish Buyers on tender boats, an administrative penalty of twenty-five dollars (\$25.00) for each fish receiving ticket that is not presented to the Fisheries Manager within one day of returning to shore.

[History] Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.780 Revocation and Reinstatement Procedures.

- (A) **Grounds for Revocation.** The Buyer's License of any person who is not in compliance with the terms of his or her license or the terms and requirements of this Chapter may be subject to revocation.
- (B) **Written Notice of Violation.** If the Fisheries Manager believes that any Fish Buyer is not in compliance with his or her license or the terms and requirements of this Chapter, the Fisheries Manager shall contact and advise the Fish Buyer of the grounds of the alleged non-compliance.
- (C) **Voluntary Settlement.** The Fisheries Manager shall attempt to resolve the issue of alleged non-compliance. An agreed settlement may be negotiated which may include

the payment of any monetary penalties assessed by the Fisheries Manager, the imposition of additional license terms to ensure future compliance with the terms of this Chapter, or both.

(D) **Proposed Determination of Non-Compliance.** If settlement with the Fish Buyer is not reached, or if the Fish Buyer does not follow the terms of the settlement, the Fisheries Manager shall:

- (1) Prepare a formal proposed determination of non-compliance and notice of hearing before the Commission;
- (2) Place the matter on the agenda of the next Commission meeting; and
- (3) Serve on the Fish Buyer the proposed determination and notice no less than eight (8) calendar days prior to the meeting of the Commission. Service may be in person, by certified mail, or by any method reasonably calculated to give notice to the Fish Buyer.

(E) **Hearing.**

- (1) The Commission shall conduct the hearing in the following manner:
 - (a) The Fisheries Manager shall provide the Commission with copies of the Buyer's License and of any documents in support of the allegations of violations of the terms of the Buyer's License or the terms and requirements of this Chapter;
 - (b) The Fish Buyer shall be provided a full and fair opportunity to respond, either orally or in writing;
 - (c) The Commission may question the Fisheries Manager, the Fish Buyer, and any witnesses produced by either of them, all of whom shall be placed under oath;
 - (d) The Fisheries Manager shall have an opportunity to respond to any evidence produced by the Fish Buyer;
 - (e) After hearing from both the Fisheries Manager, the Fish Buyer, and any witnesses each may have produced, the Commission shall consider all of the evidence presented and either deny or issue a final determination of non-compliance based upon the record.
- (2) The hearing shall be audio recorded. If the Fish Buyer appeals the Commission's decision the tape shall be provided to the Senate.

- (3) The Fisheries Manager shall post a final determination of non-compliance at the Fish Plant, the Fisheries Office, and the Tribal Administration Building.
- (F) **Buyer's License Revocation.** Notwithstanding any right of appeal by the Fish Buyer, once the Commission has made a final determination of non-compliance, the Buyer's License of the Fish Buyer shall be revoked and the name of the Fish Buyer shall be removed from the posted list of Fish Buyers. The removal shall be announced on the Swinomish "Hotline" immediately after posting of the notice under Subsection (E)(3).
- (G) **Appeal to Senate.** The decision of the Commission may be appealed to the Senate. All appeals shall follow the procedures set forth for such appeals in Chapter 18-10 of this Title.
- (H) **Final Decision.** The determination of the Senate may be appealed to Tribal Court under the provisions in Chapter 18-10 of this Title.
- (I) **Reinstatement.** Before a Buyer's License may be reissued to a Fish Buyer found liable for a violation of his or her Buyer's License or the terms of this Chapter, or to another applicant using any facility owned by such Fish Buyer at the time of the violation:
- (1) the violator must appear before the Senate and demonstrate his or her commitment to abide by the terms and provisions of this Chapter and any rules or regulations issued under this Chapter in the future;
 - (2) the Senate must determine that all obligations from previous Buyer's Licenses have been satisfied; and
 - (3) the violator must pay a penalty of ten percent (10%) of any unpaid withholding and accrued interest.
- (J) **Reinstatement Disallowed.** Any Fish Buyer found liable for more than three (3) violations of this Chapter within a three (3)-year period, or who has not settled any outstanding judgments assessed for violations of this Chapter, shall be denied a future Buyer's License under this Chapter. Additionally, a Buyer's License shall not be issued to any person or entity using the facilities of a Fish Buyer for whom reinstatement is disallowed under this Chapter.

[History] Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.790 Annual Withholding; Biological Sampling.

- (A) In order to retain a valid Buyer's License, the Fish Buyer must:

- (1) **Collect Tax and Annual Withholding.** Collect a total of 8% of gross sales as an annual withholding from the gross proceeds of every Tribal fisher selling fish to the Fish Buyer.
 - (2) **Remit Tax and Withholding.** Remit the 8% annual withholding collected from Tribal fishers to the Fisheries Manager no later than the 4th day of every month. The monies remitted by the Fish Buyer shall include all monies collected up to and through the last day of the previous month. Remittance of annual withholding shall be the sole responsibility of the Fish Buyer and shall not depend upon billing or accounting statements that may be furnished to the Fish Buyer at the discretion of the Tribe.
 - (3) **Interest on Unremitted Withholding.** Pay interest at the rate of one and one-half percent (1 ½ %) per month on the amount annual withholding collected from Tribal fishers but not remitted.
- (B) **Biologist Sampling.** A Fish Buyer shall allow a Tribal fisheries biologist to enter the Fish Buyer's premises at reasonable times and upon reasonable notice to sample, segregate and gather data for fisheries management purposes. Failure to comply with the provisions of this subsection shall be grounds for immediate revocation of the buyer's license.
- (C) **Civil Penalties.**
- (1) Failure to collect or remit the 8% in annual withholding as provided by this Section shall be a violation of this Chapter subject to a civil fine of one hundred dollars (\$100.00) for each violation in addition to the payment of interest under Subsection (A)(3).
 - (2) Each day the Fish Buyer fails to remit the 8% of such annual withholding to the Fisheries Manager shall be a separate violation.
 - (3) A Fish Buyer who fails to remit the 8% of annual withholding shall be prohibited from buying more fish until such time as he or she pays the unremitted annual withholding.

[History] Ord. 358 (2/8/16); Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.800 Illegal Purchases.

- (A) No Fish Buyer shall purchase fish from any Tribal fisher who fails to present fish for sale at one of the Fish Buyer's locations identified on the Buyer's License within six (6) hours of a fishery closure.

- (B) Except as consistent with Section 18-03.840(C) (“Over the Bank Sales”), no person or entity shall purchase fish caught in the exercise of the Tribe’s treaty fishing rights without first obtaining a valid Buyer’s License from the Tribe.
- (C) No person or entity with a suspended or revoked Buyer’s License shall purchase fish caught in the exercise of the Tribe’s treaty fishing rights.
- (D) No person or entity shall purchase fish caught in the exercise of the Tribe’s treaty fishing rights using another person’s or entity’s Buyer’s License.
- (E) No person or entity with a valid Buyer’s License shall allow another person or entity to use said Buyer’s License to purchase fish caught in the exercise of the Tribe’s treaty fishing rights.
- (F) **Civil Penalty.** Any violation of this Section is a Class B infraction.

[History] Ord. 426 (2/15/22); Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.810 Use of Voided Point Elliott Treaty Fishing Card.

- (A) No Fish Buyer shall purchase fish using a voided Point Elliott Treaty Fishing Card on the list of voided cards sent to the Fish Buyer by the Fisheries Manager, or his or her designee, under Section 18-03.030(D).
- (B) **Civil Penalty.** Fish Buyers who accept a voided Point Elliott Treaty Fishing Card shall be subject to the following penalties:
 - (1) **First Occurrence.** For the first occurrence, a civil fine of no less than one hundred dollars (\$100.00) and no more than three hundred fifty dollars (\$350.00), temporary suspension of the Buyer's License for no more than ten (10) open fishing days, or both.
 - (2) **Second Occurrence.** For the second occurrence, a civil fine of no less than three hundred fifty dollars (\$350.00) and no more than five hundred dollars (\$500.00). The Commission may direct the Fisheries Manager to revoke the Buyer's License for up to one (1) calendar year.
 - (3) **Subsequent Occurrences.** For subsequent occurrences, a mandatory civil fine of no less than five hundred dollars (\$500.00). The Commission may direct the Fisheries Manager to permanently revoke the buyer's license.

[History] Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

Subchapter VIII – Fish Sellers

18-03.820 Vessel Operators. Vessel operators shall provide vessel owners with access to all fish receiving tickets used to sell or otherwise dispose of fish that the operator has harvested while operating the owner's vessel.

[History] Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.830 Withholding.

(A) Annual Withholding.

(1) **Amount.** Each Tribal fisher shall pay a withholding amount equal to eight percent (8%) of the proceeds of all sales of fish taken in the exercise of Swinomish treaty fishing rights. The eight percent (8%) withholding shall be applied by the Tribe, first, to pay any unremitted withholding collected by the Tribal member Fish Buyer, if any; second, to pay off any fines or other assessments arising from or related to the fisher's fisheries violations; third, any debts arising from or connected to the fishery owed by the fisher to the Tribe that is in arrears, if any; and fourth, to pay off any debts owed by the fisher to the Swinomish Housing Authority or the Swinomish Utility Authority, if any, regardless of how or when the debts arose. The remainder, if any, shall be refunded to the fisher twice a year on or before the 15th of December of the year of withholding and on or before the 5th day of May of the next year, provided, however, that a minimum of one percent (1%) of the annual withholding shall be refunded to the fisher twice a year on those dates regardless of the fisher's debt to the Tribe.

(2) **Separate Account.** The Fisheries Manager shall transmit all funds received to the Tribal Comptroller. The Tribal Comptroller shall deposit all annual withholdings into a separate interest-bearing bank account opened by the Tribe for the sole purpose of holding these monies. The Comptroller shall account separately for each Tribal fisher's withholding amount and shall determine and apply or pay out monies from each Tribal fisher's account as provided in Subsection (A)(1).

(B) **Contracts.** The Fisheries Manager shall execute written contracts with Tribal fishers on behalf of the Tribe that provide for the withholding of the eight percent (8%) annual withholding and shall withhold the fishing permit of any fisher who refuses to sign.

(C) Collection and Remittance.

(1) Each Tribal fisher shall pay the annual withholding of eight percent (8%) from fish sales at the time of sale to the Fish Buyer, who shall collect and remit the withholding to the Tribe in accordance with Section 18-03.790.

- (2) Each Tribal fisher is responsible and liable for any withholding from sales the fisher makes that are not made to a Fish Buyer, including without limitation over the bank sales authorized by Section 18-03.840. The Tribal fisher shall pay the withholding directly to the Tribe.
- (D) **Withholding Liability.** The authorized owner of a Point Elliott Treaty Fishing Card shall be liable for the annual withholding on all fish sold using that card unless and until that card is reported lost to and voided by the Fisheries Manager.
- (E) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 358 (2/8/16); Ord. 320 (2/4/12); Ord. 290 (6/7/11); Ord. 254 (3/6/07); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.840 Fish Catch Reporting; Take Home; Over the Bank Sales.

(A) **Fish Catch Reporting.**

- (1) **Required.** Every boat owner or operator fishing under this Chapter shall report the total amount of that boat's fish catch on a fish ticket on a daily basis to the Fisheries Office. The Fisheries Manager, or his or her designee, shall compile these fish catch reports and upon request make them available to other governmental fish conservation agencies.
- (2) **Information Reported.** Catch reporting shall include, but not be limited to, a report of species and location, specifically whether on- or off-reservation, date of harvest, and quantity of harvest that separately designates commercial catch and ceremonial and subsistence catches.

(B) **Take Home.**

- (1) Every Tribal fisher fishing under this Chapter shall report the total amount of his take home portion of the harvest on a weekly basis to the Fisheries Manager. The report shall include, but not be limited to, a report of species and location, specifically whether on- or off-reservation, and date of harvest.
- (2) The Fisheries Manager shall compile the take home catch reports and upon reasonable request shall make the compilation available to other governmental fish conservation agencies.

(C) **Over the Bank Sales.** Sales made by Tribal fishers directly to an individual for personal or household consumption and not for resale are "over the bank" sales. Over the bank sales are authorized in accordance with this Subsection.

- (1) The Tribal fisher shall write a receipt for the purchase at the point of sale that states the date of sale, species, quantity purchased, and amount paid by the purchaser. A copy of the receipt shall be provided to the purchaser.
- (2) The Tribal fisher shall present the original receipt to the Fisheries Manager, or his or her designee, no later than the next Tribal business day after the sale.
- (3) The Fisheries Manager, or his or her designee, shall record the sale by preparing a fish receiving ticket issued under the Fisheries Manager's Buyer's License.
- (4) The Tribal fisher shall be liable and responsible for remitting to the Tribe the annual withholding required by Section 18-03.830 on each over the bank sale. If the withholding is not remitted, the amount will be assessed to the Tribal fisher as provided in that Section.

(D) **Civil Penalties.** Any violation of this Section is a Class C infraction.

[History] Ord. 418 (5/4/21); Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord 96 (6/2/92); Ord. 77 (6/4/91).

18-03.850 Failure to Use Point Elliott Treaty Fishing Card Number.

Failure to use a valid Point Elliott Treaty Fishing Card number to fill out a fish receiving ticket is a Class B civil infraction.

[History] Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.860 Participation in Harvest.

(A) Each Tribal member who uses his or her Point Elliott Treaty Fishing Card to sell fish shall have been aboard the boat during the harvest and when the fish were landed; provided, however, that if the boat was operated by an operator rather than the boat's owner, and if the boat's owner requires that the operator record the sale under the owner's Point Elliott Treaty Fishing Card, the operator and the Fish Buyer may record the sale in the name and under the card number of the owner.

(B) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.870 Sales To Unlicensed Fish Buyers.

(A) Except as consistent with Section 18-03.840(C) ("Over the Bank Sales"), no person shall knowingly sell fish caught in the exercise of the Tribe's treaty fishing rights to a person or entity without a valid Buyer's License.

(B) No person shall knowingly sell fish caught in the exercise of the Tribe's treaty fishing rights to a person or entity with a suspended or revoked Buyer's License.

(C) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 426 (2/15/22); Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.880 False or Misleading Fish Receiving Tickets.

(A) No person shall knowingly fill out, or allow a Fish Buyer to fill out, a fish receiving ticket that contains false, inaccurate or misleading information. Every person who sells fish to a Fish Buyer shall be responsible to see that all fish receiving tickets are filled out accurately and completely.

(B) **Civil Penalties.** Any violation of this section is a Class C infraction.

[History] Ord. 320 (2/4/12); Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92).

Subchapter IX – Public Safety and Welfare

18-03.890 Safe and Courteous.

(A) **Conduct.** All fishers shall conduct themselves in a safe and courteous manner while fishing and shall observe the traditional custom and usage of the Tribe.

(B) **Civil Penalties.** Any violation of this Section is a Class D infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.900 Unlawful Interference with Access.

(A) No person shall obstruct or interfere with the ability of a Tribal fisher to lawfully access fishing grounds within the exterior boundaries of the Swinomish Indian Reservation.

(B) **Civil Penalties.** Any violation of this Section is a Class B infraction. .

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 97 (8/4/92).

18-03.910 Interference with Another Fisher's Set Net.

(A) No person shall willfully and knowingly interfere with another fisher's set net.

(B) **Civil Penalties.** Any violation of this Section is a Class C infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-03.920 Corking Another Fisher's Net.

- (A) No fisher shall lay out his or her drift net, set net, purse seine, or other net of any kind directly up current from, or in front of, another fisher's drift net, set net, purse seine, or other net of any kind.
- (B) **Civil Penalties.** Any violation of this Section is a Class D infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04).

18-03.930 Anchoring of Drift Nets.

- (A) No fisher shall anchor a drift net.
- (B) **Civil Penalties.** Any violation of this Section is a Class C infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.940 Use of Intoxicants.

- (A) No person shall exercise or assist in exercising tribal fishing rights while in possession of or under the influence of intoxicating liquor or drugs. A person is guilty of exercising or assisting in exercising tribal treaty fishing rights while under the influence of intoxicating liquor or drugs if the person fishes or assists in fishing and:
 - (1) The person has, within two (2) hours after fishing or assisting in fishing, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under Section 5-02.210 of the Swinomish Tribal Code;
 - (2) The person is under the influence of or affected by intoxicating liquor or any drug; or
 - (3) The person is under the combined influence of or affected by intoxicating liquor and any drug.
- (B) The fact that a person charged with a violation of this Section is or has been entitled to use a drug under the laws of a state shall not constitute a defense against a charge of violating this Section.
- (C) It is an affirmative defense to a violation of Subsection (A)(1) of this Section that the defendant consumed a sufficient quantity of alcohol after the time of fishing or assisting in fishing and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two (2) hours after fishing or assisting in fishing. The defendant must prove the defense by a preponderance of the evidence. The Court shall not admit evidence of this defense

unless the defendant notifies the prosecution prior to the pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(D) Analyses of blood or breath samples obtained more than two (2) hours after the alleged fishing or assisting in fishing activity may be used as evidence that within two (2) hours of the alleged fishing or assisting in fishing activity, a person had an alcohol concentration of 0.08 or more in violation of Subsection (A)(1) of this Section, and in any case in which the analysis shows an alcohol concentration above 0.08 it may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of Subsection (A)(2) or (3) of this Section.

(E) **Civil Penalties.** Any violation of this Section is a Class B infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-03.950 Boating Safety.

(A) All boats or other craft used in exercising tribal fishing rights shall conform to the current U.S. Coast Guard regulations applicable to similar craft in similar waters.

(B) **Civil Penalties.** Any violation of this Section is a Class C infraction.

[History] Ord. 232 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).