

Title 18 – Natural Resources
Chapter 11 – Swinomish Treaty Hunters’ and Gatherers’ Association

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Legislative History

Enacted:

Codifying Title 18, Chapter 11, Ord. 252 (10/12/06), BIA (10/16/06).

Subchapter I – General Provisions

18-11.010 Title.

This Chapter shall be known as the “Charter of the Swinomish Treaty Hunters and Gatherers’ Association.

[History] Ord. 252 (10/12/06).

11-04.020 Authority.

This Chapter is enacted pursuant to authority provided by Article VI, Section (1)(k)(b), (m) and (q) of the Swinomish Constitution, as most recently amended on October 22, 1985.

[History] Ord. 252 (10/12/06).

18-11.030 Definitions.

(A) When used in this Chapter, the following words and phrases shall have the following respective meanings, unless explicitly stated otherwise

(1) **“Constitution”** means the Constitution and By-Laws of the Tribe ratified by the Tribe on November 16, 1935, approved by the Secretary of the Interior on January 27, 1936, and thereafter amended on October 22, 1985.

(2) **“Fish and Game Management Commission”** or **"Commission"** means the Fish and Game Management Commission of the Swinomish Indian Tribal Community.

(3) **“Game Manager”** means the person employed by the Tribe and responsible for managing hunting and gathering activities of tribal members pursuant to STC §§ 18-04.150 -18.04.170.

(4) **“Member”** or **“Tribal Member”** means an person enrolled in the Swinomish Indian Tribal Community.

(5) **“Open and Unclaimed Lands”** includes public lands and large private industrial timberlands.

(6) **“Reservation”** means the Swinomish Indian Reservation and all lands, waters, and any interests within its exterior boundaries, notwithstanding the issuance of any patent or right-of-way.

(7) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.

(8) **“STHGA”** means the Swinomish Treaty Hunters and Gatherers’ Association.

(9) **“Treaty”** means the Treaty of Point Elliott, 12 Stat.928 (January 12, 1855), to which the predecessor bands of the Swinomish Indian Tribal Community were signatories.

(10) **“Tribe”** or **“Tribal Community”** means the Swinomish Indian Tribal Community, a federally recognized Indian Tribe pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, which is a successor-in-interest to the signators of the Treaty of Point Elliott, 12 Stat. 927. It is composed of members tracing their ancestry to the

aboriginal Swinomish, aboriginal Samish, Kikiallus and Lower Skagit bands of Indians. It includes all enrolled members of the Tribe.

(11) **“Tribal Hunter” or “Tribal Gatherer”** means any enrolled member of the Swinomish Indian Tribal Community who is exercising any tribal hunting or gathering right pursuant to a valid Tribal Hunting or Gathering Permit.

(12) **“Tribal Hunting or Gathering Permit”** means a permit issued pursuant to this Title and any rules or regulations issued hereunder for the purpose of permitting the holder to engage in any type of hunting or gathering activity and represents nothing more than the permission of the Tribe to participate in the Tribe's hunting or gathering right in accordance with Tribal law and regulations.

(B) All other words and phrases shall have their ordinary and customary meanings.

[History] Ord. 252 (10/12/06).

18-11.040 Tribal Charter

The Senate, acting pursuant to the powers enumerated in the Constitution of the Tribe, hereby charters the Swinomish Treaty Hunters and Gatherers’ Association as a cooperative association of members of the Tribe, and as an instrumentality created, entirely owned and controlled by the Swinomish Indian Tribal Community.

[History] Ord. 252 (10/12/06).

Subchapter II – Identity and Purpose

18-11.050 Name.

The official name of this tribal cooperative association shall be the “Swinomish Treaty Hunters’ and Gatherers’ Association” or “STHGA.”

[History] Ord. 252 (10/12/06).

18-11.060 Location and Place of Business

The principal place of business and office of the STHGA shall be on the Swinomish Indian Reservation near LaConner, Washington.

[History] Ord. 252 (10/12/06).

18-11.070 Authority.

The STHGA is established in accordance with and under the authority of Article VI, Sections (1)(k)(b) and (m) of the Constitution.

[History] Ord. 252 (10/12/06).

18-11.080 Purposes.

The purposes of the STHGA are as follows:

- (A) To provide for the exercise by its members of the hunting and gathering rights within its traditional aboriginal territories as well as on all open and unclaimed lands as reserved by the Tribe in the Treaty;
- (B) To protect, enhance, and manage the hunting and gathering resources of the Tribe;
and
- (C) To preserve and protect tribal culture and resources.

[History] Ord. 252 (10/12/06).

Subchapter III –Duration, Attributes and Powers

18-11.090 Duration.

The STHGA shall continue until it is dissolved in accordance with the provisions of this Chapter.

[History] Ord. 252 (10/12/06).

18-11.100 Attributes

- (A) The STHGA is a tribal cooperative association of tribal members whose activities are regulated by the Tribe and whose members shall have the right to exercise, pursuant to a valid Tribal Hunting or Gathering Permit, the hunting and gathering rights reserved by the Tribe under the Treaty at those off-Reservation locations identified and opened by regulation.
- (B) It is the purpose and intent of the Senate, in enacting this Chapter, that the activities of the STHGA be conducted on behalf of the Tribe for the benefit and interests of the Tribe and its members.
- (C) Notwithstanding any authority exercised by the STHGA and its members under this Chapter, the Tribe reserves to itself the right to bring suit against any person or entity in its own right, on behalf of the Tribe or the STHGA, whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe and the STHGA.

[History] Ord. 252 (10/12/06).

18-11.110 Compliance with Tribal Law.

As a cooperative association of members whose activities are regulated by the Tribe, the STHGA and its members shall be subject to and fully comply with all tribal laws, including all tribal resolutions, regulations, and ordinances, as now or hereafter enacted or amended, unless explicitly exempted.

[History] Ord. 252 (10/12/06).

18-11.120 Sovereign Immunity and Waiver

(A) Sovereign Immunity of the Tribe. The Tribe expressly reserves all its inherent sovereign rights, privileges and immunities as a federally recognized Indian tribe with respect to the creation, existence and activities of the STHGA, including the Tribe's sovereign immunity from suit in any court. Nothing in this Chapter or any action of the STHGA shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe, or to be a consent of the Tribe to the jurisdiction of the United States or of any state or any tribe with regard to the business or affairs of the STHGA or the Tribe, or to be a consent of the Tribe to any cause of action, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe, or a consent to suit in respect of any land within or without the exterior boundaries of the Reservation, or a consent to the alienation, attachment or encumbrance of any such land.

(B) Sovereign Immunity of STHGA. The STHGA is clothed by federal and tribal law with all of the privileges and immunities of the Tribe including sovereign immunity from suit in any state, federal or tribal court, except as may be specifically limited by the Tribe. Nothing in this Charter shall be deemed or construed to be a waiver of the sovereign immunity of the STHGA from suit, which may only be waived pursuant to Section 18-11.120(C), or to be a consent of the STHGA or the Senate to the jurisdiction of the United States or of any state or of any tribe, with regard to the business or affairs of the STHGA or to any cause of action, case or controversy arising from such business or affairs.

(C) Limited Waivers of Sovereign Immunity.

(1) The sovereign immunity of the STHGA may be waived only by express resolution of the Senate, after consultation with its attorneys. All waivers of sovereign immunity shall be preserved with resolutions of continuing force and effect.

(2) Waivers of sovereign immunity are disfavored and may be granted only when necessary to secure a substantial advantage or benefit to STHGA. Waivers of sovereign immunity shall be specific and shall be limited as to: (a) duration, grantee, transaction, property or funds; (b) the court having jurisdiction; and (c) the applicable law.

(3) No express waiver of sovereign immunity shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the STHGA other than property specifically pledged or assigned, or upon any property of the Tribe, or a consent to suit in respect of any land within or without the exterior boundaries of the Reservation or a consent to the alienation, attachment or encumbrance of any such land.

[History] Ord. 252 (10/12/06).

18-11.130 Limitations

The STHGA may not:

- (A) Expressly, impliedly, or otherwise through its status or activities, subject the Tribe to obligations or liabilities arising from contract, tort, regulation, licensing, taxation, or any other matter;
- (B) Pledge the credit of the Tribe;
- (C) Dispose of, mortgage, or otherwise encumber real or personal property of the Tribe;
- (D) Waive any right of the Tribe or release any obligation owed to the Tribe; or waive any other rights, privileges or immunities of the Tribe;
- (E) Name the Tribe or attempt to join the Tribe in any claim, action, suit, proceeding, dispute or other matter, whether as plaintiff, defendant or otherwise, without the express written consent of the Senate, and any such attempt is hereby declared to be *ultra vires* of the STHGA's powers and authority;
- (F) In litigation or any administrative or regulatory proceeding or in any mediation or arbitration or any other dispute resolution proceeding, either assert or concede to any claims regarding the legal status, powers, authority or immunities of the STHGA, the Tribe, the Reservation, or activities taking place or property found thereon without the express, written consent of the Senate; or
- (G) Execute any documents or make any final decisions that require the express prior consent of the Senate by resolution.

[History] Ord. 252 (10/12/06).

Subchapter IV-Structure of the STHGA

18-11.140 Composition and Term

- (A) **Composition.** The membership of the STHGA shall consist of only those members of the Tribe who possess a valid Tribal Hunting or Gathering Permit issued by the Game Manager of the Tribe pursuant to STC 18-04.060.
- (B) **Term.** The term of each member shall be for the duration of the permit issued pursuant to STC 18-04.060.

[History] Ord. 252 (10/12/06).

18-11.150 Officers

The sole officer of the STHGA shall be the Executive Director who shall be the Game Manager of the Tribe.

[History] Ord. 252 (10/12/06).

18-11.160 Decisions

Pursuant to STC 18-02.090 and 18-02.100, all decisions governing the exercise of the treaty right to hunt and gather, including which areas off-Reservation shall be open to hunting and gathering, shall be made by the Fish and Game Management Commission. The STHGA shall have no decision-making authority.

[History] Ord. 252 (10/12/06).

Subchapter V Severability and Effective Date

18-11.170 Severability

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this Chapter, or the application of the provision to other persons or circumstances shall remain in effect.

[History] Ord. 252 (10/12/06).

18.-11.180 Effective Date

This Chapter shall become effective thirty (30) days after approval by the Secretary of the Interior or the Secretary's designated representative.

[History] Ord. 252 (10/12/06).