

Title 18 – Natural Resources

Chapter 1 – General Provisions

Sec.

18-01.010	Purpose and Scope
18-01.020	Findings
18-01.030	Jurisdiction
18-01.040	Authority
18-01.050	Applicability
18-01.060	Construction
18-01.070	Definitions
18-01.080	Repealer
18-01.090	Severability

Legislative History

Enacted:

Ord. 228 (4/5/05), BIA (4/20/05).
Ord. 249 (10/12/06), BIA (10/16/06).

Repealed or Superseded:

Codifying Title 18, Ord. 207 (1/27/04), BIA (2/9/04).
Ensuring Consistency Between Provisions in the Enrollment Ord. and the Fishing Ord., Ord. 160 (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).
Allowing for Electronic Home Monitoring in Sentencing, Ord. 156 (7/2/02), BIA (7/26/02) (amending sections 11-1.040 of Ord. 117).
Fishing Ord., Ord. 96 (6/2/92), BIA (8/20/92).
Amending Ord. 77 Re: Crabbing, Ord. 88 (2/6/92).
Fishing Ord., Ord. 77 (6/4/91), Enacting Res. 91-6-54, BIA (8/1/91) (superseding and replacing all previous fishing related Ordinances of the Swinomish Tribal Community).
Hunting Ord., Ord. 59 (1/10/89), Enacting Res. 89-1-5, BIA (1/24/89) (modifying Ord. 57 with respect to the scope of tribal jurisdiction. Repealing and superseding all previous hunting ordinances).
Establishing a List of Violations and Penalties Concerning Natural Resources, Res. 335 (4/4/75).

18-01.010 Purpose and Scope.

(A) The purposes of this Title are as follows:

- (1) To preserve, protect, and enhance the fishing, hunting and gathering resources and traditions of the Swinomish Indian Tribal Community for current and

future generations;

- (2) To establish the institutional framework to govern and regulate fishing, hunting, and gathering activities under the jurisdiction of the Swinomish Indian Tribal Community in accordance with cultural tradition and the best available scientific information;
 - (3) To protect the environment required to achieve maximum sustainable harvest from fisheries, game and plant resources in conformity with the accepted standards of international law and specifically as reserved and secured to the Swinomish Indian Tribal Community by the Treaty of Point Elliott, January 22, 1855, and upheld in *United States v. Washington*, 459 F.Supp. 1020, 1039, 1049 (W.D. Wash. 1975); and
 - (4) To protect against and regulate conduct that threatens or affects the political integrity, economic security, and health and welfare of the Swinomish Indian Tribal Community as a unique people and a sovereign government.
- (B) Actions taken under this Title to restrict the activities of members of the Swinomish Indian Tribal Community shall not constitute a waiver of the rights and obligations of the Community, or recognition of the authority of any state or federal executive agency to unilaterally regulate the fishing, hunting, or gathering activities of members of the Swinomish Indian Tribal Community.

[History] Ord. 249 (10/12/06); Ord. 228 (4/5/05); Ord. 207 (1/27/04).

18-03.020 Findings.

The Senate makes the following findings:

- (A) The Swinomish Tribe's adjudicated usual and accustomed fishing grounds and stations include all marine waters surrounding the Swinomish Indian Reservation. *United States v. Washington*, 459 F.Supp. 1020, 1049 (1978).
- (B) The Tribe's Federally approved Constitution and Bylaws provide that the Tribe's jurisdiction shall extend to the territory within the exterior boundaries of the Reservation as established by the Treaty of Point Elliot. Swinomish Indian Tribe Constitution Article I, Section 2.
- (C) The exterior boundaries of the Swinomish Indian Reservation include all tidelands and extend to the point of extreme low water. *Corrigan v. Brown*, 169 F. 477, 480 (W.D. Wash. 1907); *State v. Edwards*, 188 Wash. 467, 62 P.2d 1094 (1936).
- (D) The Tribe's treaty fishing right includes shellfishing and the right to erect temporary houses to cure fish and shellfish. Treaty of Point Elliott, Article 5.

- (E) The Tribe's treaty fishing right also includes the right to cross private lands to access treaty secured usual and accustomed fishing grounds and stations and to occupy private land for the purposes specified in the treaty. *United States v. Winans*, 198 U.S. 371, 25 S.Ct. 662, 49 L.Ed. 1089 (1905).
- (F) For purposes of harvesting shellfish located on private tidelands, the Tribe may access those tidelands by water, across public lands, by public right-of-way, or by private upland access after obtaining consent from the landowner or the court. *United States v. Washington*, 909 F.Supp. 787, 791-792 (W.D. Wash. 1995).
- (G) The Tribe's fishing right is exclusive within the exterior boundaries of the Swinomish Indian Reservation. *United States v. Washington*, 384 F. Supp. 312, 332 (W.D. Wash. 1974); *United States v. Winans*, 198 U.S. at 381-382.
- (H) Kiket Island is located entirely within the exterior boundaries of the Swinomish Indian Reservation and was allotted to "Chubahud" or "Clark" as part of the first allotment schedule on April 1, 1885.
- (I) The tidelands surrounding Kiket Island have been one of the principal shellfishing areas on the Reservation since prior to the Treaty and continue as such today. Marine waters adjacent to Kiket Island continue to be one of the primary fishing grounds of the Tribe and also provide a commonly used mooring area for tribal fishing vessels in the bay on the northeast side of Kiket Island at the isthmus that separates the island from the mainland.
- (J) There is only one vehicular access to the Kiket tidelands and beach area and no other pedestrian access for over a mile to the north and south.
- (K) Continued protection and enhancement of the fisheries resources within the Tribe's usual and accustomed fishing grounds and stations is of vital importance to the Tribe.
- (L) Fishing, hunting and gathering, including shellfish harvest, are a central focus of the Tribe's culture and are of critical importance to the Tribe's economy and the economic well-being of its members, many of whom are dependent upon fishing, hunting, and gathering for their livelihood, and for ceremonial and subsistence purposes.
- (M) Protection of fish and wildlife, their habitat and the lands upon which they depend are essential to the Tribe's goals of preserving and increasing fish and wildlife populations.

[History] Ord. 249 (10/12/06); Ord. 228 (4/5/05).

18-01.030 Jurisdiction.

- (A) Tribal jurisdiction shall extend to all members who are exercising the treaty fishing, hunting and gathering rights of the Swinomish Indian Tribal Community on all lands and waters within the exterior boundaries of the Swinomish Indian Reservation, the usual and accustomed fishing grounds and stations outside the exterior boundaries of the Swinomish Indian Reservation, and all open and unclaimed lands within the State of Washington.
- (B) Tribal members are exercising treaty fishing, hunting, and/or gathering rights while en route to the usual and accustomed fishing grounds and stations of the Tribe or open and unclaimed lands within the State of Washington.
- (C) Tribal jurisdiction shall extend to all non-members who voluntarily submit to tribal jurisdiction.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04).

18-01.040 Authority.

This Title is promulgated under the authority of the following provisions of the Constitution of the Swinomish Indian Tribal Community:

Art. VI, Sec. 1(a), (g), (h), (k)(a), (k)(b), (l), (m), (q), (s).

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04).

18-01.050 Applicability.

The provisions in this Chapter shall apply to all Chapters in this Title, unless explicitly stated otherwise.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04).

18-01.060 Construction.

This Title is exempt from the rules of strict construction and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91); Ord. (1/10/89).

18-01.070 Definitions.

- (A) For the purposes of this Title, the following words and phrases shall have the following meanings, unless explicitly stated otherwise.
- (1) **“Adult”** means a person who is eighteen (18) years of age or older.
 - (2) **“Anchoring a Gillnet”** means tying or otherwise securing a gillnet to a fixed point so that it can no longer drift with the current. A fixed point may be either man-made or natural. Man-made anchors include, but are not limited to, a boat anchor, stake, vessel, buoy, piling, dock, seawall, or other structure. Natural anchors include, but are not limited to, snags, reefs, boulders, or trees.
 - (3) **“Assistant”** means any person who aids a tribal fisher in the exercise of any tribal fishing right by performing or assisting in the performance of fishing operations, including placing and tending nets or pots, operating a boat or net in the process of drift netting, and any other activity directly relating to the capture and sale of fish.
 - (4) **“Bag Limit”** means the maximum number of animals that may be taken, caught, killed, or possessed by any person for any particular period of time, and may include limits on size, sex, or species, as established by this Title or any rules or regulations issued hereunder.
 - (5) **“Beach Seine,” “Haul Seine,” or “Drag Seine”** means fishing gear consisting of a headline, corkline, auxiliary lines, and mesh fashioned so that it can be used to encircle fish swimming near the beach and then hauled either to the beach or to the boat.
 - (6) **“Big Game”** means elk or wapiti, deer, mountain goat, cougar or mountain lion, and black bear.
 - (7) **“Catch Quota”** means the number of fish that may be taken for any particular species or season, as established by rules and regulations issued pursuant to the provisions of this Title.
 - (8) **“Children”** means biological, adopted, or step children.
 - (9) **“Clam”** means any species of bi-valve mollusk, including but not limited to clams, geoducks, mussels and oysters.
 - (10) **“Closed Area”** means an area within the jurisdiction of the Tribe that is closed to the harvest of fish or game or the gathering of plant species by the provisions of this Title or any rule or regulation issued hereunder.

- (11) **“Closed Season”** means all times during the year except those times when an “open season” is designated by regulation. A season is presumed closed, unless specifically opened by regulation.
- (12) **“Conviction”** means a finding or admission that the person committed a violation of any of the terms or provisions of Chapters 18-03 or 18-04, which are civil, or a finding or admission that the person committed a violation of any of the terms or provisions of Chapters 18-05 or 18-06 or Title 4 – Criminal Code, which are criminal.
- (13) **“Court”** means the Swinomish Tribal Court established pursuant to Title 3 of the Swinomish Tribal Code.
- (14) **“Crab”** means the Dungeness, Pacific, Red Rock or Tanner crab.
- (15) **“Deface”** means to destroy, tear down, shoot, erase, disfigure, or otherwise damage a sign or printed matter.
- (16) **“Edible Meat”** means meat from an animal that has been killed in a lawful hunt, as prescribed by Chapter 18-04 and any rules or regulations issued thereunder. It does not include diseased meat or meat damaged in the course of the hunt.
- (17) **“Elder”** means any member of the Swinomish Tribal Community who is fifty-five (55) years of age or older.
- (18) **“Enforcement Officer”** means the person or persons authorized by the Senate to enforce this Title and any rules or regulations issued hereunder.
- (19) **“Fish”** (noun) means anadromous and non-anadromous fish, shellfish, and all other fishery resources. **“Fish”** (verb) means the attempt to, or the act of, capturing, taking or otherwise harvesting any fish by any method.
- (20) **“Fish and Game Management Commission”** or **“Commission”** means the Fish and Game Management Commission of the Swinomish Indian Tribal Community.
- (21) **“Fisheries Office”** means the Fisheries office of the Swinomish Indian Tribal Community.
- (22) **“Fishing, Hunting or Gathering for Ceremonial Purposes”** means the capture, taking, or harvesting of fish or game and the gathering of plant species for traditional tribal ceremonies, including religious and funeral purposes, and excluding fishing for subsistence and commercial purposes.

- (23) **“Fishing for Commercial Purposes”** means all fishing other than fishing for ceremonial or subsistence purposes, such as the capturing, taking, or harvesting of fish for resale, exchange for something of value, debt reduction, profit sharing, or other economic gain.
- (24) **“Fishing or Hunting for Subsistence Purposes”** means fishing or hunting for personal consumption by persons and their immediate families and is exclusive of fishing or hunting for commercial and ceremonial purposes.
- (25) **“Fishing Gear”** or **"gear"** means all types and sizes of hooks, nets, spears, gaffs, lines, traps, pots, appliances and other apparatus used to take fish.
- (26) **“Fishing or Hunting Related Criminal Offense”** means any violation of Title 4 – Criminal Code committed in the exercise of tribal fishing or hunting rights, provided the offense was committed within the exterior boundaries of the reservation or off the reservation at the Tribe’s usual and accustomed fishing grounds and stations, or on open and unclaimed lands within the State of Washington, or while in transit to such areas.
- (27) **“Fishing or Hunting Privileges”** means the privileges that are extended by the Tribe to its members that derive from the rights reserved by the Tribe under the Treaty of Point Elliott. Those privileges are extended in the form of a Point Elliott Treaty Fishing Card, fishing permits, and hunting permits.
- (28) **“Forfeiture”** means the legal process whereby items authorized for confiscation during the commission of a violation of the provisions of this Title or a fishing or hunting related criminal offense shall be transferred to the ownership of the Tribe.
- (29) **“Game”** means all species that shall not be hunted except as authorized by this Title and any rules or regulations issued hereunder. It includes “game animals,” “big game,” and “game birds.”
- (30) **“Game Animals”** means wild animals that shall not be hunted except as authorized by this Title and any rules or regulations issued hereunder. It excludes “big game” animals and “game birds.”
- (31) **“Game Birds”** means any wild bird that shall not be hunted except as authorized by this Title and any rules or regulations issued hereunder. Game birds are suitable for food, including the larger species (such as wild turkey and goose), medium-sized birds (including pheasant and wild duck) and smaller game birds (such as the coot, dove, grouse, hazel hen, lark, mud hen, partridge, pigeon, plover, quail, rail, snipe, thrush and woodcock).

- (32) **“Gather”** and its derivatives, *e.g.* **“gathering”** and **“gathered”** means any effort to take, dig up, remove, fell, or harvest by any method.
- (33) **“Gillnet”** means any net with a mesh size designed to “gill” the targeted species of fish. A fish is “gilled” when it swims into the mesh and its gills and gill plates become entangled in the mesh. A gill net may be either a set gill net or a drift gill net.
- (34) **“Hotline”** means the telephone line on which the Fisheries Office has recorded information regarding open and closed areas, emergency closures of a season or area, buyers who have been added or removed from the list of commercial fish buyers, or other information posted by the Fisheries Office.
- (35) **“Hunt”** and its derivatives, *e.g.* **“hunting”** and **“hunted,”** means any effort to kill, injure, capture, or intentionally disturb wildlife. Assisting in dressing, packing, and transporting game is not hunting.
- (36) **“Infraction”** means any civil violation, especially any violation of the terms and provisions of Chapters 18-03 or 18-04 or any rules or regulations issued thereunder.
- (37) **“Jail”** means electronic home monitoring, incarceration, imprisonment or any other form of detention.
- (38) **“Knowingly”** means with knowledge, consciously, intelligently, willfully, or intentionally. A person acts knowingly when he or she acts with awareness of the nature of the act.
- (39) **“Landed”** refers to a boat that has been secured at the dock, riverbank or shore, even if it is still in the water, or to gear or catch that has been removed directly from the water and placed on the dock, bank or shore.
- (40) **“Revocation of Fishing, Hunting or Gathering Privileges”** means the loss of all rights and privileges to fish, hunt or gather under this Title and any rules or regulations issued hereunder until such time, if any, that fishing, hunting or gathering privileges are restored.
- (41) **“Suspension of Fishing, Hunting or Gathering Privileges”** means the loss of all rights and privileges to fish, hunt or gather under this Title and any rules or regulations issued hereunder for a specified period of time.
- (42) **“Mesh Size”** means the size of an individual mesh in a fishing net measured by the distance between the inside of one knot to the outside of the opposite vertical knot of one (1) mesh when the mesh is stretched vertically while using a moderate tension applied to any three (3) consecutive meshes, and then measuring the middle of three (3) meshes.

- (43) **“Muzzle-Loader”** means a single or double-barrel wheel lock, matchlock, flintlock or percussion rifle with exposed ignition in which the black powder and ball or bullet must be loaded from the muzzle.
- (44) **“Offense”** means any criminal violation.
- (45) **“On-Reservation Fishing Areas”** means those fishing areas within the exterior boundaries of the Reservation recognized as such by the Senate.
- (46) **“Open and Unclaimed Lands”** includes public lands and large private industrial timberlands.
- (47) **“Open Season”** means those times a given area is open to hunting, gathering or fishing for a particular species by a particular gear type pursuant to the terms of this Title and any rule or regulation issued hereunder.
- (48) **“In Possession of an Identification Card, Permit, or Document”** means that the identification card, permit, or document is on the person or in the immediate control of the person, such that the person could present it to an enforcement officer upon request, as required by law.
- (49) **“Public Roads”** means roads maintained by the United States, any Tribe, county, city, or the State of Washington.
- (50) **“Purse Seine”** means all types of fishing gear consisting of a lead line, auxiliary lines, purse line, purse rings, and webbing fashioned in a manner that is used to encircle fish, and in addition prevents their escape under the bottom or lead line of the net by drawing in the bottom of the net by means of the purse line so that it forms a closed bag. The bunt is the portion of a purse seine located at the end of the net designed to form the bag that holds the net’s catch after the net is pursed and is the last portion of the net to be pulled aboard the catching vessel.
- (51) **“Regulation”** means any rule or regulation issued pursuant to the terms of this Title.
- (52) **“Rot Cord”** means biodegradable twine made from cotton or other natural fiber that will rot away if submerged in water for a few days or longer.
- (53) **“Senate”** means the duly constituted governing body of the Swinomish Indian Tribal Community.
- (54) **“Soak Time”** means the period of time beginning when the pot is dropped overboard and ending when it is lifted above the surface of the water.

- (55) **“Spouse”** means a partner by legal marriage, but does not include common law “spouse” or other partner by cohabitation without legal formalities.
- (56) **“Subsistence Hunting”** means non-commercial hunting for the purpose of providing meat for domestic use. A person may use his or her subsistence harvest for religious purposes.
- (57) **“Successful Hunt”** means a hunt wherein the hunter kills the game animal for which he or she has a permit.
- (58) **“Swinomish Indian Tribal Community”** or **“Tribe”** means the federally recognized Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934, 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, Samish, Kikiallus and Lower Skagit bands of Indians. It includes all enrolled members of the Tribe.
- (59) **“Swinomish Tribal Member”** or **“Tribal Member”** means an enrolled member of the Swinomish Indian Tribal Community.
- (60) **“Take,” “Taking,” “to Take,”** and other derivatives means to catch, capture, kill, trap, gather, harvest or in any manner reduce any fish, game or plant species to personal possession.
- (61) **“Trap”** and its derivatives, *e.g.* **“Trapping”** and **“Trapped,”** means any effort to capture or snare game with a spring-loaded mechanical device, trip wire, concealed pit, or any other instrument designed to capture or snare game.
- (62) **“Treaty Tribe”** means the tribes found to be successors in interest to any of the groups or bands that signed the treaties – commonly known as the Stevens Treaties – between the United States and the Indians of what is now known as the Pacific Northwest in 1854 and 1855.
- (63) **“Tribal Fisher,” “Tribal Hunter”** or **“Tribal Gatherer”** means any enrolled member of the Swinomish Indian Tribal Community who is exercising any tribal fishing, hunting or gathering right.
- (64) **“Tribal Fishing, 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 fishing, hunting or gathering activity and represents nothing more than the permission of the Tribe to participate in the Tribe's fishing, hunting gathering right.

- (65) **“Tribal Identification Card”** means any currently valid card issued by an authorized official of the Tribe for the purpose of identifying the holder as an enrolled member of the Swinomish Indian Tribal Community and, as such, as a person entitled to all of the Tribe’s rights and privileges, including those reserved by the Treaty of Point Elliot.
- (66) **“Unattended Nets”** means a net set in position to take fish without a fisher within the immediate area attending it, or, during open hours, a set net that an enforcement officer determines has not been attended for a reasonable period of time.
- (67) **“Usual and Accustomed Grounds and Stations”** means all those areas where the Swinomish Indian Tribal Community and its members and its predecessor tribes or bands and their members customarily fished before, at the time of, and subsequent to, the signing of the Treaty of Point Elliott.
- (68) **“Violation”** means any violation of:
- (a) Any provision of this Title;
 - (b) Any rule or regulation issued under this Title; or
 - (c) Any fishing, hunting related offense of Title IV – Criminal Code.
- (69) **“Wastage,” “Wasting,” or “Waste”** means the taking of any fish, game or plant species subject to regulation under this Title or any rules or regulations issued hereunder and allowing it to spoil or otherwise become unfit for its normal use, medicinal or spiritual use, or human consumption.
- (70) **“Wildlife”** means all species of the animal kingdom except fish and domesticated animals.

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

[History] Ord. 249 (10/12/06); Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 160 (9/10/02); Ord. 156 (7/2/02); Ord. 96 (6/2/92); Ord. 88 (2/6/92); Ord. 77 (6/4/91); Ord. 59 (1/10/89).

18-01.080 Repealer.

This Chapter hereby repeals and supersedes Chapter 18-01 of Ordinance 207, Ordinance Nos. 160, 158, 157, 156, 155, 153, 146, 117, 97, 96, 91, 88, 82, 81, 77, Amended 59, 59, 57, 49, and 6.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04).

18-01.090 Severability.

The provisions of this Title are severable. If a court of competent jurisdiction should hold any provision of this Title invalid, the validity of the remaining provisions shall be unaffected and the remaining provisions shall remain in full force and effect.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04).