

Title 18 – Natural Resources

Chapter 6 – Enforcement

Sec.

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Legislative History

Enacted:

Ord. 233 (6/7/05), BIA (6/17/05).
Ord. 250 (10/12/06), BIA (10/16/06).

Repealed or Superseded:

Codifying Title 18, Ord. 207 (1/27/04), BIA (2/9/04) (that portion of Ordinance 207 that pertains to Title 18, Chapter 6).
Fishing Ord., Ord. 96 (6/2/92), BIA (8/20/92).
Fishing Ord., Ord. 77 (6/4/91), Enacting Res. 91-6-54, BIA (8/19/91) (superseding and replacing all previous fishing-related ordinances, including but not limited to Ordinance 28, 30, 31, 37, and 45).
Hunting Ord., Ord. 59 (1/10/89), Enacting Res. 89-1-5, BIA (1/24/89) (modifying Ord. 57 regarding the scope of tribal jurisdiction; repealing and superseding all previous hunting ordinances).
Adopting a Procedure for Disposing Abandoned Fishing Gear, Res. 82-5-925 (5/4/82).
Fishing Ord., Ord. 45 (7/25/78), BIA (11/20/78) (superseding and replacing all previous fishing-related ordinances except for ordinance 37, the Fishing Instructor Ordinance).
Regulating and Controlling the Commercial Fishing for Salmon, Ord. 31 (6/19/74), BIA (7/31/74) (repealing Ord. 30 and Ord 28).
Regulating and Controlling the Commercial Fishing for Salmon, Ord. 30 (6/5/73), BIA (8/13/73) (approved subject to conditions regarding the scope of tribal jurisdiction over non-members; repealing Ord. 9 as amended).
Regulating and Controlling the Commercial Fishing for Salmon, Ord. 29 (4/5/73), BIA (11/6/78) (repealing Ord. 9 as amended).

18-06.010 Enforcement Officers.

The Senate may appoint one or more Enforcement Officers. Such officers shall enforce this Title and all rules and regulations issued hereunder. Such officers may issue citations or make arrests in accordance with this Title, other provisions of the Swinomish Tribal Code, or any rules or regulations issued thereunder. Such officers may use boats, patrol vehicles and such other vehicles as are necessary to perform their duties. Enforcement Officers shall regularly patrol the Tribe's off-reservation usual and accustomed fishing places, open and unclaimed lands and on-reservation fishing, hunting, and gathering areas.

[History] Ord. 250 (10/12/06); Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord 96 (6/2/92); Ord. 77 (6/4/91); Ord. 59 (1/10/89).

18-06.020 Cross-Deputization.

Notwithstanding any provision of this Chapter, the Senate may enter into an agreement with another tribal, state, federal, or county government providing for the cross-deputization of Enforcement Officers.

[History] Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91); Ord. 59 (1/10/89).

18-06.030 Cooperation with State and Federal Agencies.

Enforcement Officers shall cooperate with authorized federal and state enforcement officers in monitoring tribal fishing, hunting, and gathering activities, but only to the extent that the monitoring by state or federal enforcement officers is permitted by law.

[History] Ord. 250 (10/12/06); Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-06.040 Citations and Arrests.

- (A) **Authority.** An Enforcement Officer shall have the authority to arrest any person for a violation of any provision of Title 4 – Criminal Code, or to issue a citation for a violation of any provision of this Title or any rule or regulation adopted hereunder.
- (B) **Citations.** In his or her discretion, an Enforcement Officer may issue a citation to a person who has violated this Title or any rule or regulation promulgated hereunder. For purposes of this Title only, unless restricted or prohibited by applicable federal law, the issuance of a citation for a fisheries or hunting related violation is not considered an arrest.
- (C) **Arrests.** The Enforcement Officer shall make all arrests pursuant to the requirements of Section 3-03.110 – Cause for Arrests.

[History] Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91); Ord. 59 (1/10/89).

18-06.050 Searches.

- (A) **Search Warrants.** Except as provided in Sections 18-06.060(B) through (D), all searches shall be conducted in accordance with Chapter 3-03 – Rules of Criminal Procedure.
- (B) **Warrantless Search of Personal Property.** Enforcement Officers may conduct limited searches of personal property and effects without a warrant only where the violation has occurred in the officer’s presence or the officer has probable cause to believe that there has been a violation of this Title or Title 4 – Criminal Code. Pursuant to this Section, the officer may search fishing or hunting gear, nets, boats, storage gear, automobiles, campers, and other vehicles, and tents and other places of habitation within the immediate area of the person engaged in the fishing, hunting or gathering activity.
- (C) **Warrantless Search of the Person.**
 - (1) **Same-Sex Searches.** Notwithstanding the search and seizure provisions of Chapter 3-03 – Rules of Criminal Procedure, Enforcement Officers may conduct limited searches of the person without a warrant if the person to be searched is the same sex as the officer.
 - (2) **Opposite-Sex Searches.** Where an Enforcement Officer not of the same sex as the person to be searched believes that he or she is in imminent peril of serious bodily harm, he or she may conduct a limited search of the person, but only to the extent necessary to either disarm the person to be searched or to assure the officer that there is no peril.
 - (3) **Probable Cause.** No search of the person may be conducted pursuant to this Section unless the officer has probable cause to believe that there has been a violation of this Title or Title 4 – the Criminal Code, or the violation has occurred in the officer’s presence.
- (D) **Search of Dwelling.** An Enforcement Officer may not search a dwelling without a warrant or consent of the owner, resident or lessee.

[History] Ord. 250 (10/12/06); Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord 96 (6/2/92); Ord. 77 (6/4/91); Ord. 59 (1/10/89).

18-06.060 Seizure of Fish, Wildlife, and Gear.

- (A) **Fish and Game.** Upon arrest, the issuance of a citation, or the discovery of fishing

gear illegally in place or fish, plants or game illegally taken, an Enforcement Officer may seize all fish, parts of fish, game, and parts of game that the officer has probable cause to believe were taken, killed, transported, or possessed by the alleged violator contrary to the provisions of this Title or Title 4 – the Criminal Code.

- (B) **Gear and Weapons.** The Enforcement Officer may also seize any gear, weapons or other paraphernalia that the officer has probable cause to believe were used in the commission of a violation of this Title or Title 4 – the Criminal Code.
- (C) No weapons, gear or other paraphernalia shall be seized pursuant to this Section unless:
 - (1) The weapons, gear or other paraphernalia are needed as evidence of a violation of this Title or Title 4 – the Criminal Code;
 - (2) There is probable cause to believe the weapons, gear or other paraphernalia will continue to be used in violation of this Title or Title 4, the Criminal Code;
 - (3) The alleged violator refuses to sign a citation;
 - (4) The alleged violator is taken into custody; or
 - (5) The Enforcement Officer has probable cause to believe the weapons, gear or paraphernalia are contraband.
- (D) **Unattended Gear.** The Enforcement Officer may also seize and impound any unattended, unmarked, or improperly identified gear that he or she has probable cause to believe has been used or is being used in violation of this Title or Title 4 – Criminal Code.
- (E) **Inventory.** The Enforcement Officer shall prepare an inventory of all items seized that shall be signed by the officer and, if known, the alleged violator. A copy of the inventory shall be given to the alleged violator, if known. If the alleged violator is not known, a reasonable attempt shall be made to locate him or her and to provide him or her a copy of the inventory.

[History] Ord. 250 (10/12/06); Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord 96 (6/2/92); Ord 77 (6/4/91); Ord. 59 (1/10/89).

18-06.070 Contraband and Evidence.

- (A) Property that constitutes and has been seized as evidence of a violation of this Title or Title 4 – Criminal Code shall not be released prior to final judgment unless by court order and may be held pursuant to Section 18-06.080 until the offender has paid all fines and court costs imposed upon conviction of a violation under this Title or Title 4 – Criminal Code. For any evidence not retrieved by the lawful owner, the

Enforcement Officer shall dispose of all such property in a safe, prudent, and cost-effective manner pursuant to the terms and requirements of this Chapter.

- (B) Property that constitutes contraband shall be destroyed or disposed of by the Enforcement Officer after entry of judgment; Provided, that contraband fish, plants or game shall be disposed of pursuant to Sections 18-06.090 and .100.

[History] Ord. 250 (10/12/06); Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord. 77 (6/4/91).

18-06.080 Gear as Security. In addition to his or her authority to seize gear pursuant to Sections 18-06.060(B) through (D),

- (A) The Enforcement Officer shall seize and hold fishing or hunting gear and boats involved in any Class A infraction as security for payment of any fines and court costs that may be imposed upon conviction of a violation under this Title or Title 4 – Criminal Code.
- (B) The Enforcement Officer may seize and hold fishing or hunting gear and boats involved in a Class B infraction as security for payment of fines and court costs that may be imposed upon conviction of a violation under this Title or Title 4 – Criminal Code.
- (C) If the fisher or hunter does not pay the fine within sixty (60) days of the court order, the Fisheries Manager or the Hunting Manager shall dispose of the seized property pursuant to the provisions of Sections 18-06.090 and .100.

[History] Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-06.090 Confiscation Procedures

- (A) **Authority.** The Enforcement Officer is authorized to confiscate and impound, sell or destroy pursuant to the terms of this Chapter:
 - (1) all fishing or hunting gear used in violation of this Title or in violation of fishing or hunting related offenses in Title 4- Criminal Code;
 - (2) any abandoned and lost fishing gear; and
 - (3) all fish or game caught or plants gathered by a fisher or hunter engaged in any Class A infraction of this Title, fishing after closing time, before an opener or out of area in a salmon, crab or shrimp fishery under Chapter 18-03; or any criminal offense under this Title or any fishing or hunting related violation of Title 4 – Criminal Code.
- (B) **Prior Notice.** Where boats, fishing gear or other personal property have been left on tribal tidelands, the beach fronting on the Swinomish Channel, or the Tribe's

Commercial Float Dock in violation of Section 18-03.320, the Enforcement Officer shall provide notice of intent to remove such gear and personal property as follows:

- (1) The notice shall be given on
 - (a) the eighth (8th) day following the closure to all owners of all boats, fishing gear and personal property left on tribal tidelands or the beach fronting on the Swinomish Channel; and
 - (b) the morning after the closure of the season to all owners of fishing gear and personal property left on the Commercial Float Dock;
- (2) The notice shall advise the owner of the boat, fishing gear or other personal property that he or she has forty-eight (48) hours within which to clean up any debris adjacent to the owner's moorage site on the Commercial Float Dock, if any, and to remove the boat, fishing gear or other personal property or the items will be confiscated;
- (3) The notice shall be in writing and shall be secured in a conspicuous place on the boat, fishing gear or other personal property; and
- (4) The notice shall state as follows:

At _____ a.m./p.m. on _____, 20__, I found the following:

[describe items seized]

on the tribal tidelands, the beach fronting on the Swinomish Channel, or the Commercial Float Dock. You are hereby notified that you must remove such boat, fishing gear and/or personal property [and any debris from the Commercial Float Dock adjacent to your moorage site] from this area within forty-eight (48) hours (that is, by _____ a.m./p.m. of _____). If you do not do so, you will be in violation of Section 18-03.320, a Class C infraction and may also be subject to moorage fees up to \$6.00/foot/month for the remainder of the year pursuant to Section 18-09.030(C)(3).

- (5) The notice shall be signed by the Enforcement Officer;
- (6) The notice shall be on red paper for easy visibility; and
- (7) The Enforcement Officer shall keep a duplicate of the notice in his or her records and upon request, shall provide such record to the Fisheries Manager to assist the Fisheries Manager in implementing this Title.

- (C) **List.** The Enforcement Officer shall prepare a list of all confiscated property and post it at the Fisheries Office, the Tribal Administration Building, and the Fish Plant. The list shall contain the following information:
- (1) A description of the item confiscated, including model, brand, color and serial or identification number, if any. If the item seized is a fishing net, the type and length of net;
 - (2) The name of the owner, if known; and
 - (3) The location where the item was confiscated.
- (D) **Storage.** The Enforcement Officer shall store all confiscated property in a secure location and shall label each item with the owner's name if known. Items seized from the same location shall be stored together if possible.
- (E) **Abandoned Property.** Where the Enforcement Officer is unable to determine the owner of the property and no one claims the property within one (1) week of the posting of the list pursuant to Subsection C above, the Enforcement Officer shall dispose of the property either:
- (1) by auction, if the Enforcement Officer determines that the property has sufficient value; or
 - (2) by destruction, if the Officer determines that the property has minimal value.
- (F) **Reclaiming Property.** The lawful owner of confiscated property shall reclaim and take possession of the property within thirty (30) days of its confiscation; Provided the owner first makes payment to the Tribe for any costs, charges, or fines that have accrued or been assessed.
- (1) **Exceptions**
- (a) Notwithstanding Section 18-03.320, persons who have left their gear in the water on the fishing grounds after an opener due to extenuating circumstances and whose gear has been confiscated by the Enforcement Officer may reclaim their gear free of charge from the Enforcement Officer within forty-eight (48) hours of the closure.
 - (b) Any fish or game confiscated under this Section, or the proceeds from the sale of the same, shall not be returned to those who admitted or were found liable for a violation of any of the terms or provisions of Chapters 18-03 or 18-04 or who pled to or were found guilty of a hunting or fishing related offense under Title 4—Criminal Code.

- (c) Any person who has been found not liable for the violation or not guilty of the offense by a court of law may reclaim his or her gear or personal property free of charge from the Enforcement Officer upon presentation of a certified copy of the judgment and order.
 - (d) Any person who can demonstrate economic hardship may be permitted to reclaim his or her property on the condition that he or she pays one half of the accrued charges and agrees to pay the remainder over time (but no longer than six (6) months).
 - (e) Where property has been retained as evidence of a violation of this Title or Title 4 – Criminal Code, the owner of such property shall have thirty (30) days from the entry of the judgment and order to reclaim any property to which he or she may be entitled pursuant to the terms of this Title.
- (2) **Extenuating Circumstances.**
- (a) **Emergency.** “Emergency” in the context of this Section refers to events not reasonably foreseeable to a reasonable person, including, but not limited to, the boat or equipment on the boat breaking down. In the event of an emergency, a fisher may leave his or her gear in the water for up to forty-eight (48) hours after an opener under the following conditions:
 - (i) The fisher must notify immediately the Fisheries Manager or his or her designee, that he or she is leaving his gear in the water and explain the reason for doing so; and
 - (ii) The fisher must provide the Fisheries Manager, or his or her designee, with the registration number of the vessel that will recover the gear.
 - (b) **Lost Gear.** If a fisher is unable to locate his or her gear after making a diligent effort to do so or if the fisher subsequently determines after returning to shore that he or she has inadvertently left a portion of his or her gear on the fishing grounds, the fisher shall notify immediately the Fisheries Manager, or his or her designee, that the fisher is leaving or has left the gear in the water. Such notice shall describe the gear that has been or will be left.
- (3) The Fisheries Manager, or his or her designee, shall keep a record of the aforementioned extenuating circumstances and shall notify the Enforcement Officer of such. The record shall include the name of the fisher, the date and time of the notification to the Fisheries Manager, and the extenuating circumstance.

(G) **Hearing.** If the owner asserts a claim to confiscated property in storage, the owner may request a hearing before the Fish and Game Management Commission within thirty (30) days of confiscation. The Fish and Game Management Commission shall conduct the hearing in the following manner:

- (1) The Fisheries or Game Manager, as appropriate, shall provide the Commission with copies of any documents in support of confiscation and impoundment and their associated costs;
- (2) The owner shall be provided a full and fair opportunity to respond, either orally or in writing;
- (3) The Commission may question the Fisheries or Game Manager, the owner, and any witnesses produced by either the Fisheries or Game Manager or the owner, all of whom shall be placed under oath;
- (4) The Fisheries or Game Manager shall be provided an opportunity to respond to any evidence produced by the owner;
- (5) After hearing from both the Fisheries or Game Manager and the owner and any witnesses each may have produced, the Commission shall consider all of the evidence presented and on the basis of the record, shall either deny or issue the owner's requested relief.

The Hearing shall be audio recorded and the tape shall be provided to the Senate, in the event of an appeal of an adverse decision by the owner. All appeals to the Senate and Tribal Court shall be prosecuted pursuant to the provisions set forth in Chapter 18-10.

(H) **Costs of Confiscation and Disposal.** Pursuant to Section 18-06.090, the person whose gear has been confiscated and/or disposed of shall be liable for all reasonable costs, associated with confiscating and disposing of the gear. The costs may include the following: The owner claiming any confiscated property shall be subject to the following charges:

- (1) **Removal Costs.** The cost, if any, of removing the confiscated property, including the cost of fuel. The Enforcement Office shall keep a logbook of all mileage dedicated to confiscation;
- (2) **Storage Charge.** A daily charge for storage at a reasonable rate shall be set by the Fish and Game Management Commission. Unless otherwise posted, the rate shall be \$5.00/day;
- (3) **Fine.** A fine of twenty dollars (\$20.00) may be assessed by the Commission against an owner of confiscated property that has been kept in storage if the

owner knowingly leaves such property in storage without claiming it for thirty (30) days or more; and

- (4) **Auction Costs.** The actual costs of advertising and conducting an auction, if any, to sell the confiscated property.

[History] Ord. 250 (10/12/06); Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).

18-06.100 Tribal Auction and Sale.

- (A) **Sufficient Value.** If any property confiscated or forfeited under the terms of this Title is of sufficient value, the Enforcement Officer shall so inform the Fisheries Manager or the Game Manager, as appropriate, who shall sell the property at an auction; Provided, that all fish shall be sold promptly by Fisheries Manager to preserve its fair market value; and Provided further, that all game shall be turned over to the Tribe to use as it sees fit.
- (B) **Notice.** The Fisheries Manager or the Game Manager shall provide reasonable notice of the auction authorized by this Section at least ten (10) days prior to the auction date. The notice shall be posted at the Fisheries Building, the Tribal Administration Office and the Fish Plant, and shall be published in the Tribe's newspaper, if time permits. The notice shall state the date, time and place of the auction and a general description of the items to be auctioned.
- (C) **Conduct.**
- (1) **Public.** The Fisheries Manager or the Game Manager shall conduct the auction in a public, open, fair, and orderly fashion consistent with the practices and procedures of the trade.
- (2) **Delegation.** The Fisheries Manager or the Game Manager may delegate any or all of the responsibilities for conducting the auction to any qualified person.
- (3) **Bidders.** Only enrolled members of Tribe may enter bids at the auction. Any member whose fishing or hunting privileges have been suspended or revoked by resolution of the Senate or by valid court order shall not be permitted to bid at any auction held during the period of suspension or revocation.
- (4) **Time of Auction.** The auction shall be held no sooner than forty (40) days after confiscation, Provided that if the property has been seized in connection with a violation of this Title or Title 4—Criminal Code, the property (other than perishable fish which shall be sold immediately after confiscation) shall not be auctioned off until after the prosecution has concluded.
- (D) **Sale or Auction Proceeds.** Unless the property is subject to a forfeiture order,

- (1) The Fisheries Manager or the Game Manager, as appropriate, shall disburse the proceeds of the auction or the sale of perishable items in the following order of priority:
 - (a) Confiscation, storage, and retrieval costs;
 - (b) Costs of the auction;
 - (c) Court costs, if any, including reasonable attorney's fees;
 - (d) Fines or penalties imposed by the Court, if any; and
 - (e) Taxes or fees the fisher or hunter owes the Tribe, if any.
- (2) **Remaining Money.**
 - (a) **Known Owner.** Where the lawful owner of the property sold at auction or sale is known, the Fisheries Manager or the Game Manager shall distribute all monies remaining after distribution according to the list of priorities in Section 18-06.100(D)(1), if any, to the lawful owner of the property, Provided that proceeds from the sale of any fish (or game if applicable) subject to forfeiture pursuant to this Title shall not be so distributed and instead shall be deposited in the account established pursuant to subsection 3 of this Section.
 - (b) **Unknown Owner.** Where the lawful owner of the property sold at auction is unknown, the Fisheries Manager or the Game Manager shall deposit all monies remaining after distribution according to the list of priorities in Section 18-06.100(D)(1), if any, in the dock fund.
- (3) **Special Account.** All monies from the confiscation of property, the sale of perishable items or from the auction shall be deposited in a designated bank account by the Fisheries Manager or Game Manager, as applicable. The Tribe shall retain any interest on the funds deposited in the designated account. Notwithstanding Section 18-06.100(D), the entire proceeds from the sale or auction shall be returned to lawful owner, if known, where the individual from whom the property was confiscated or seized is found not liable of the violation or not guilty of the offense by a court of competent jurisdiction.
- (E) **Auction Purchases.** The purchaser of any item at an abandoned property sale shall take title to that item free and clear of any claim made by the former owner after the sale of the item is complete.

[History] Ord. 233 (6/7/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91).