

Title 18 – Natural Resources

Chapter 8 – Penalties

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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Repealed or Superseded: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).
Fishing Ord., Ord. 96 (6/2/92), BIA (8/20/92).
An Amendment to Ord. No. 77, re: Crabbing, Ord. 88 (2/6/92), BIA (2/18/92).
Fishing Ord., Ord. 77 (6/4/91), Enacting Res. 91-6-54, BIA (8/19/91) (superseding and replacing all previous fishing related ordinances, including but not limited to Ordinance 28, 30, 31, 37, and 45).
Amending Tribal Clamming Regulations, Res. 90-4-22 (4/17/90).
Amending Tribal Clamming Regulations, Res. 90-3-19 (2/29/90).
Hunting Ord., Ord. 59 (1/10/89), Enacting Res. 89-1-5, BIA (1/24/89) (modifying Ord. 57 regarding the scope of tribal jurisdiction; repealing and superseding all previous hunting ordinances).
Hunting Ord., Ord. 57, Enacting Res. 88-8-55 (8/31/88) (approved subject to the condition that it be modified regarding the scope of tribal jurisdiction; repealing and superseding all prior hunting ordinances).
Big Game Hunting Ord., Ord. 56 (9/1/87), Enacting Res. 87-9-95, BIA (10/26/87).
Big Game Hunting Regulations, Res. 86-12-115 (12/15/86).
Amending Sections 19 and 20 of Fishing Ordinance No. 45, Res. 86-5-27 (5/1/86).
Regulating the Use of Point Elliot Tribal Identification Cards, Res. 83-7-78 (7/29/83).
Adopting Clamming Regulations, Res. 83-6-60 (6/8/83).
Fishing Ord., Ord. 45 (7/25/78), BIA (11/20/78) (superseding and replacing all previous fishing-related ordinances except for ordinance 37, the Fishing Instructor Ordinance).

Regulating and Controlling the Treaty Fishing Right Both On and Off the Reservation, Ord. 31 (6/19/74), BIA (7/31/74) (repealing Ord. 30 and Ord 28).

Regulating and Controlling the Commercial Fishing for Salmon, Ord. 30 (6/5/73), BIA (8/13/73) (approved subject to conditions regarding the scope of tribal jurisdiction over non-members; repealing Ord. 9, as amended).

Regulating and Controlling the Commercial Fishing for Salmon, Ord. 29 (4/5/73) (repealing Ord. 9, as amended), BIA (11/6/78) (repealing Ord. 9, as amended).

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

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

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

18-08.010 Applicability.

Unless otherwise provided, any person violating any of the civil provisions of this Title or any rule or regulation issued hereunder shall be subject to the civil penalties as specified in this Chapter.

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

18-08.020 Unclassified Infractions of this Title.

Any person who commits any act prohibited by this Title or any rules or regulations issued hereunder, or fails to take any action or perform any act required by this Title or any rule or regulation issued hereunder, but which is not specifically described herein as a Class A, Class B, Class C, or Class D infraction shall be liable for a Class C infraction, in addition to any other sanctions imposed by this Title or any rules or regulations issued hereunder.

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

18-08.030 Classes of Infractions.

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

(1) **First Class A Infraction.**

(a) **Fine.** The fine for a Class A(1) infraction shall be no less than five hundred dollars (\$500.00) and no more than seven hundred fifty dollars (\$750.00), plus court costs.

(b) **Suspension of Fishing Privileges.** Fishing privileges for a Class A(1) infraction shall be suspended for no less than six (6), but no more than eighteen (18), of the next calendar months.

- (c) **Suspension of Hunting Privileges.** Hunting privileges for a Class A(1) infraction shall be suspended for no less than six (6), but no more than twenty-four (24), of the next calendar months.

(2) **Second Class A Infraction.**

- (a) **Fine.** The fine for a Class A(2) infraction shall be no less than seven hundred fifty dollars (\$750.00) and no more than one thousand dollars (\$1,000.00), plus court costs.
- (b) **Suspension of Fishing Privileges.** Fishing privileges for a Class A(2) infraction shall be suspended for no less than twelve (12), but no more than twenty-four (24), of the next calendar months.
- (c) **Suspension of Hunting Privileges.** Hunting privileges for a Class A(2) infraction shall be suspended for no less than twelve (12), but no more than thirty-three (33), of the next calendar months.

(3) **Third Class A Infraction.**

- (a) **Fine.** The fine for a Class A(3) infraction shall be no less than one thousand dollars (\$1,000.00) and no more than two thousand dollars (\$2,000.00), plus court costs.
- (b) **Suspension of Fishing Privileges.** Fishing privileges for a Class A(3) infraction shall be suspended for no less than eighteen (18), but no more than forty (40), of the next calendar months.
- (c) **Suspension of Hunting Privileges.** Hunting privileges for a Class A(3) infraction shall be suspended for no less than eighteen (18), but no more than forty-eight (48), of the next calendar months.

(4) **Fourth and Subsequent Class A Infractions.**

- (a) **Fine.** The fine for the fourth and subsequent Class A infractions shall be no less than two thousand dollars (\$2,000.00) and no more than five thousand dollars (\$5,000.00), plus court costs.
- (b) **Suspension of Fishing Privileges.** Fishing privileges for the fourth and subsequent Class A infractions shall be suspended for no less than twenty-four (24), but no more than fifty-five (55), of the next calendar months.
- (c) **Suspension of Hunting Privileges.** Hunting privileges for the fourth and subsequent Class A infractions shall be suspended for no less than two (2), but no more than five (5), of the next calendar years.

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

(1) **First Class B Infraction.**

- (a) **Fine.** The fine for a class B(1) infraction shall be not less than two hundred fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00), plus court costs.
- (b) **Suspension of Fishing Privileges.** Fishing privileges for Class B(1) infractions shall be suspended for no less than seven (7), but no more than fourteen (14), of the next fishing days.
- (c) **Suspension of Hunting Privileges.** Hunting privileges for Class B(1) infractions shall be suspended for no less than fourteen (14), but no more than twenty-one (21), of the next hunting days.

(2) **Second Class B Infraction.**

- (a) **Fine.** The fine for a Class B(2) infraction shall be not less than three hundred fifty dollars (\$350.00) and not more than five hundred dollars (\$500.00), plus court costs.
- (b) **Suspension of Fishing Privileges.** Fishing privileges for Class B(2) infractions shall be suspended for no less than fourteen (14), but not more than twenty-one (21), of the next fishing days.
- (c) **Suspension of Hunting Privileges.** Hunting privileges for Class B(2) infractions shall be suspended for no less than twenty-one (21), but not more than thirty (30), of the next hunting days.

(3) **Third and Subsequent Class B Infractions.**

- (a) **Fine.** The fine for a Class B(3) and subsequent infractions shall be a mandatory five hundred dollars (\$500.00), plus court costs.
- (b) **Suspension of Fishing Privileges.** Fishing privileges for Class B(3) and subsequent infractions shall be suspended for the next three hundred sixty five (365) calendar days.
- (c) **Suspension of Hunting Privileges.** Hunting privileges for Class B(3) and subsequent infractions shall be suspended for no less than six (6), but no more than eighteen (18), of the next calendar months.

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

(1) **First Class C Infraction.**

- (a) **Fine.** The fine for a Class C(1) infraction shall be not less than twenty five dollars (\$25.00) and not more than fifty dollars (\$50.00), plus court costs; and
- (b) **Suspension of Privileges.** Suspension of fishing or hunting privileges shall not be imposed for a Class C(1) infraction.

(2) **Second Class C Infraction.**

- (a) **Fine.** The fine for a Class C(2) infraction shall be not less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100.00), plus court costs.
- (b) **Suspension of Privileges.** The Court may, at its own discretion, suspend no more than five (5) of the next fishing or hunting days, as appropriate.

(3) **Third Class C Infraction.**

- (a) **Fine.** The fine for a Class C(3) infraction shall be not less than one hundred dollars (\$100.00) and not more than two hundred fifty (\$250.00), plus court costs.
- (b) **Suspension of Privileges.** Fishing or hunting privileges for Class C(3) infractions shall be suspended for no less than five (5), but no more than ten (10), of the next fishing or hunting days, as appropriate.

(4) **Fourth and Subsequent Class C Infractions.** Fourth and subsequent Class C infractions shall be punishable as a Class B(1) infraction.

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

(1) **First Class D Infraction.**

- (a) A written citation; and
- (b) A warning that a subsequent infraction of the same provision will result in a citation and monetary fine.

(2) **Second Class D Infraction.**

- (a) A written citation; and

- (b) A monetary fine no less than ten dollars (\$10.00) and no greater than twenty five dollars (\$25.00).
- (3) **Third and Subsequent Class D Infractions.** Third and subsequent infractions shall be treated as a Class C(2) infraction.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 59 (1/10/89).

18-08.040 Additional Penalties For Fishing or Hunting-Related Criminal Offenses.

- (A) **Class A.** Unless otherwise prohibited by this Title, upon conviction of a Class A fishing or hunting related offense under Title 4 – Criminal Code, the Court shall impose the following civil penalties in addition to the criminal penalties established by the Criminal Code:
 - (1) **First Offense.** For the first Class A fishing or hunting related offense, fishing or hunting privileges shall be suspended for no less than twelve (12), but no more than thirty-six (36), of the next calendar months.
 - (2) **Second Offense.** For the second Class A fishing or hunting related offense, fishing or hunting privileges shall be suspended for no less than twenty-four (24), but no more than forty-eight (48), of the next calendar months.
 - (3) **Third Offense.** For the third Class A fishing or hunting related offense, fishing or hunting privileges shall be suspended for no less than twenty-eight (28), but no more than fifty-six (56), of the next calendar months.
 - (4) **Fourth or Subsequent Offense.** For the fourth or subsequent Class A fishing or hunting related offense, fishing or hunting privileges shall be suspended for no less than forty-eight (48), but no more than seventy-two (72) of the next calendar months.
- (B) **Class B.** Unless otherwise prohibited by this Title, upon conviction of a Class B fishing or hunting related offense under Title 4 – Criminal Code, the Court shall impose the following civil penalties in addition to the criminal penalties established by the Criminal Code:
 - (1) **First Offense.** For the first Class B fishing or hunting related offense, fishing or hunting privileges shall be suspended for no less than fourteen (14), but no more than twenty-eight (28), of the next fishing or hunting days.
 - (2) **Second Offense.** For the second Class B fishing or hunting related offense, fishing or hunting privileges shall be suspended for no less than twenty-eight (28), but no more than forty-two (42), of the next fishing or hunting days.

- (3) **Third Offense and Subsequent.** For the third and subsequent Class B fishing or hunting related offense, fishing or hunting privileges shall be suspended for the next two (2) calendar years.
- (C) **Class C.** Unless otherwise prohibited by this Title, upon conviction of a Class C fishing or hunting-related offense under Title 4 – Criminal Code, the Court shall impose the following civil penalties in addition to the criminal penalties established by the Criminal Code:
- (1) **Second Offense.** For a Class C(2) offense, fishing or hunting privileges shall be suspended for not more than ten (10) of the next fishing or hunting days.
- (2) **Third Offense.** For a Class C(3) offense, fishing or hunting privileges shall be suspended for no less than ten (10), but no more than twenty (20), of the next fishing or hunting days.
- (3) **Fourth and Subsequent Offense.** For a Class C(4) and subsequent offense, fishing or hunting privileges shall be suspended for no less than twenty (20), but no more than thirty (30), of the next fishing or hunting days.

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

18-08.050 Determination of Number of Infractions.

Unless specifically stated otherwise, the determination of whether a civil infraction is a first, second, third, or subsequent infraction shall be made by the court. A certified copy of the prior judgment shall be sufficient proof of the prior conviction.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 59 (1/10/89).

18-08.060 Each Infraction a Separate Infraction.

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

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 59 (1/10/89).

18-08.070 Conviction or Bail Forfeiture as a Prior Infraction.

- (A) A conviction in any court of the State of Washington, any federal court, or any court of another Tribe, shall be counted as an infraction for purposes of this Chapter where the conviction involves a violation of the fishing, hunting or gathering laws of the State of Washington, the United States, or another Tribe; Provided that no such conviction may be counted when the underlying fishing, hunting or gathering law is contrary to or inconsistent with Indian treaty rights or federal law; Provided further that no conviction may be counted when the arrest,

charge, or conviction involves a gross violation of a defendant's civil rights.

- (B) Forfeiture of bail shall be counted as a conviction for the purposes of this Title.
- (C) Subject to the limitations set forth in Subsection A of this Section, a certified copy of the prior judgment from any court of the State of Washington, any federal court, or any court of another Tribe shall be sufficient proof of the prior conviction.

[History] Ord. 249 (10/12/06); Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 59 (1/10/89).

18-08.080 Fines and Community Service.

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

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord. 77 (6/4/91); Ord. 59 (1/10/89).

18-08.090 Default on Fine.

If a defendant fails to pay a fine or any installment of the fine when due, the Court, on its own motion or on the Tribe's motion, shall order the defendant to show cause why he or she should not be held in contempt of court and may issue a summons or an arrest warrant for the defendant's appearance. If good cause is shown, the Court may allow the defendant additional time for payment of the original fine. If good cause is not shown, the Court shall issue a finding of contempt of court and suspend the defendant's fishing or hunting privileges, as appropriate, until the fine is satisfied in full. This Section may be imposed in addition to any other penalty or remedy provided under this Title or other law of the Swinomish Indian Tribe.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 59 (1/10/89).

18-08.100 Revocation or Suspension of Fishing Privileges.

Upon notice, the Fisheries Manager shall immediately revoke or suspend the fishing privileges of any tribal fisher for failure to pay court-ordered fines or penalties, pursuant to a valid court order.

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

18-08.110 Revocation or Suspension of Hunting Privileges.

Upon notice, the Hunting Manager shall immediately revoke or suspend the hunting privileges of any tribal hunter for failure to pay court-ordered fines or penalties, pursuant to a valid court order.

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

18-08.120 Suspension of Fishing Privileges.

- (A) **Any Activity.** Suspension of fishing privileges shall prohibit any and all activity reasonably related to the exercise of treaty fishing rights, including acting as an "assistant."
- (B) **Same Fishery.** Fishing privileges shall be suspended in the same fishery in which the fisher committed the violation (*i.e.*, if the violation occurred during a salmon fishery or was salmon related, fishing privileges would be suspended commencing with the next scheduled salmon opener, rather than a steelhead or crab opener).
- (C) **Commencement.** The period of suspension shall commence with the next scheduled opener immediately following a finding that the fisher committed the violation.
- (D) **Termination.**
 - (1) **Next Fishing Days.** The period of suspension for "next fishing days" shall terminate after the required fishing days have been suspended regardless of the number of calendar days within that period, with the result that a fisher may be suspended from multiple openers, depending on the number of days in the openers and the number of days in the period of suspension.
 - (2) **Next Calendar Months.** The period of suspension for "next calendar months" shall terminate after the required period of months, regardless of the number of openers in that period.

- (3) **Next Calendar Years.** The period of suspension for “next calendar years” shall terminate after the required period of years, regardless of the number of openers in that period.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord 77 (6/4/91).

18-08.130 Suspension of Hunting Privileges.

- (A) **Any Activity.** Suspension of hunting privileges shall prohibit any and all activity reasonably related to the exercise of treaty hunting rights, including acting as a designated hunter.
- (B) **Same Hunting Season.** Hunting privileges shall be suspended in the same hunting season in which the hunter committed the violation (*i.e.*, if the violation occurred during doe season or was doe season related, hunting privileges would be suspended commencing with the next scheduled doe season, rather than elk season or buck season).
- (C) **Commencement.** The period of suspension shall commence with the next scheduled hunting season immediately following a finding that the hunter committed the violation.
- (D) **Termination.**
 - (1) **Next Hunting Days.** The period of suspension for “next hunting days” shall terminate after the required hunting days have been suspended regardless of the number of calendar days within that period with the result that a hunter may be suspended from multiple seasons, depending on the number of days in the season and the number of days in the period of suspension.
 - (2) **Next Calendar Months.** The period of suspension for “next calendar months” shall terminate after the required period of months, regardless of the number of seasons in that period.
 - (3) **Next Calendar Years.** The period of suspension for “next calendar years” shall terminate after the required period of years, regardless of the number of seasons in that period.

[History] Ord. 228 (4/5/05); Ord. 207 (1/27/04); Ord. 96 (6/2/92); Ord 77 (6/4/91).