TITLE 14. FISHING AND HUNTING

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Chapter 14.1

FISHING

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GENERAL PROVISIONS

14.1.01. Title. This chapter and any accompanying regulations shall be known as the Suquamish Fishing Ordinance. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.02. Policies. It is the policy of the Suquamish Tribe to preserve, protect, and perpetuate the fish resources within its jurisdiction. To the extent that such resources are to be taken, such harvest shall be primarily for the purpose of providing food and income for Suquamish Indian families and only secondarily for sport or recreation. Nothing herein shall be a relinquishment, abrogation, or abridgement of any Suquamish treaty right. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.03. Jurisdiction. The Suquamish Tribal Court shall have jurisdiction over all actions arising under this chapter pursuant to Suquamish Tribal Code Chapter 3.2. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.04. Definitions. Unless another meaning is specified or required by context, the following terms when used in this chapter and accompanying regulations shall have the following meanings.

(a) “Abandoned gear” shall mean any fishing gear which has been discarded or left unattended for greater than 72 hours on any property or in any waters in which no arrangement for the storage of fishing gear exists.

(b) “Assisting” shall mean any act that helps another to fish, as defined in subsection (17) of this section.

(c) “Bag limit” shall mean the maximum number of fish which may be taken or possessed by any person, specified and fixed by this chapter or any regulation of the tribal council for any particular period of time, or so specified and fixed as to size, sex, or species.

(d) “Banks” shall mean, with reference to any body of water, the land lying at elevations between the bed of such water and the upper vegetation line of marine waters or mean high water of other waters.

(e) “Beach seine (drag seine)” shall mean fishing gear consisting of a lead line, cork line, auxiliary lines, and a mesh net webbing fashioned in such a manner that it can be used to encircle fish in waters adjacent to any beach, with the catch landed directly on the beach.

(f) “Biological personnel” shall mean professionally trained biological and/or fisheries technicians who are employed by, or are working with, the tribe and whose duties include advising on the management and/or enhancement of the tribal fishery.

(g) “Bivalve molluscan shellfish” shall mean the following species: native little neck, manila, butter, horseneck, and geoduck clams; cockles; and pacific and olympia oysters.

(h) “Buyer” shall mean a person who receives treaty harvested fish for resale on behalf of a dealer.

(i) “Ceremonial fishing” shall mean the taking of fish for use in traditional tribal ceremonies and/or for religious purposes. Only enrolled members of the Suquamish Indian Tribe shall exercise ceremonial fishing rights.

(j) “Closed areas” shall mean any lake, river, stream, or body of water; the beds, banks, and tidelands of any body of water; or any part thereof on or off the reservation described or designated by this chapter or regulation wherein it shall be unlawful to fish.

(k) “Closed season” shall mean all of the time during the entire calendar year excepting the “open season” as specified by this chapter or regulation.

(l) “Commercial fishing” shall mean the harvesting of fish with the intent to sell them. Only fish caught in accordance with commercial fishing regulations may be sold.

(m) “Dealer” shall mean a person who receives treaty harvested fish for resale.

(n) “Depth of net” shall mean the total distance between cork and lead lines measured perpendicular to either cork or lead line.

(o) “Drift Net (pole net)” gear is a gill net which is not staked, anchored, or weighted so that it may drift free.

(p) “Fin fish” shall include but not be limited to the genera Salmo and Oncorhynchus of the family Salmonidae and the genera Clupea of the family Clupeidae, including specifically the following:

(1) Pacific herring;

(2) Chinook, also called spring, king, tyee, or black mouth;

(3) Coho, also called silver salmon;

(4) Pink, also called humpback;

(5) Chum, also called dog or fall salmon;

(6) Sockeye, also called red or blue back;

(7) Steelhead;

(8) Cutthroat trout;

(9) Dolly Varden; and

(10) Atlantic salmon.

(q) “Fish” used as an adjective or verb and its derivatives, “fishing,” “fished,” etc. means any effort made to harvest, capture, or gather fish.

(r) “Fish” when used as a noun herein shall mean both fin fish and shellfish, or any fish products therefrom.

(s) “Fish ticket” or “Treaty Indian fish receiving ticket” shall mean an eight-and-one-half by eleven-inch multi-copy accounting form required to be filled out by tribal fishers and all state or tribally licensed dealers or buyers upon the treaty harvest (commercial, ceremonial, or subsistence) of fish. Fish tickets are available at the Suquamish fisheries office.

(t) “Fisheries director” shall mean the person selected by the tribal council to administer the tribal fisheries program.

(u) “Fishing gear” shall mean all types and sizes of apparatus used to take fish defined in this chapter or by regulation, including but not limited to hooks, nets, spears, gaffs, lines, traps, shovels, rakes, forks, hoes, and diving apparatus. The functional definition of any type of gear may be modified by tribal regulation notwithstanding any definition contained herein.

(v) “Fisheries patrol officer(s)” shall mean the person or persons charged with the responsibility of enforcing this chapter, regulations, and tribal resolutions promulgated hereunder.

(w) “Gaff or snag line” shall mean hand-operated gear which is used to impale fish by pursuing and striking the individual fish with the gear.

(x) “Gill net” gear shall mean net of a single-web construction bound at the top by a cork line and at the bottom by a lead line.

(y) “Hand dip net (dip bag net)” shall mean a section of netting distended by a rigid frame, operated by a process commonly recognized as dipping. Such nets may be of a size as determined by tribal regulation.

(z) “Hook and line” shall mean a single line attached to which are no more than two single-barbed hooks or a single triple-barbed hook.

(aa) “Lampara (round haul)” shall mean fishing gear having no purse line or rings, but employing a lead line, cork line, special tag, or auxiliary lines attached to the lead line and webbing in such a manner that the fish are encircled in open water.

(bb) “Live bait” shall mean any biological organism, vertebrate or invertebrate, alive or dead, that may be used for the purpose of taking fish.

(cc) “Lure” shall mean any inanimate object which may not resemble live bait that may be used for the purpose of taking fish.

(dd) “Management area” shall mean an area designated as a management and catch reporting area by the tribal fisheries department. Specific areas may be subdivided by tribal fisheries personnel where more detailed information on a particular fish species or fishery is desired.

(ee) “Management period” shall mean a time interval during which the majority of individuals of a fish species is accessible to capture. A management period may be specific to a species, and a single species may have more than one management period during the course of a year depending upon the cycle of that species.

(ff) “Member” shall mean any person who is enrolled in the Suquamish Indian Tribe.

(gg) “Minor” shall mean any person under the age of sixteen.

(hh) “Net length measure” shall mean the length of any net measured along the cork or top line.

(ii) “Non-member” shall mean any person who is not enrolled in the Suquamish Indian Tribe.

(jj) “Off reservation” shall mean all areas, water, and streams located outside the boundaries of the Port Madison Indian Reservation.

(kk) “On reservation” shall mean all areas within the exterior boundaries of the Port Madison Indian Reservation, including all waters, beds, and tidelands thereof, as reserved in the Treaty of Point Elliott and subsequent executive orders.

(ll) “Open season” means the time specified by regulation when it is lawful to fish.

(mm) “Persons” shall mean any individual, firm, partnership, association, or corporation.

(nn) “Purse seine” shall be defined as including all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse line, and purse rings, and of mesh net webbing fashioned in such a manner that it is used to encircle fish and, in addition, prevent their escape under the bottom of the 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.

(oo) “Regulation” shall mean any rule, regulation, resolution, or ordinance promulgated pursuant to this chapter.

(pp) “Reservation” shall mean the Port Madison Indian Reservation.

(qq) “Resource committees” shall mean a number of members appointed by tribal council as representative of the membership at large. Resource committees are advisory bodies formed to provide the fisheries director with input regarding particular resource issues. Examples include but are not limited to the fish & wildlife committee advising on finfish and hunting issues and the shellfish committee advising on invertebrate issues.

(rr) “Shellfish” shall mean aquatic invertebrate animals, including but not limited to mollusks and crustaceans, and including specifically the following:

(1) Native littlenecks or steamers;

(2) Butter clams;

(3) Cockles;

(4) Horse clams;

(5) Manila clams;

(6) Oysters;

(7) Geoducks;

(8) Mussels;

(9) Barnacles;

(10) Limpets;

(11) Crabs;

(12) Sea cucumbers;

(13) Sea urchins (Strongylocentrotus);

(14) Shrimp;

(15) Octopus;

(16) Moon snail;

(17) Scallops;

(18) Chiton; and

(19) Abalone.

(ss) “Spouse” shall mean a non-enrolled wife or husband of a tribal member.

(tt) “Stretched mesh measure” shall mean the distance between the inside of one knot to the outside (vertical) knot of one mesh when wet, by using a tension of ten pounds on any three consecutive meshes, then measuring the middle mesh of the three while under tension.

(uu) “Subsistence fishing” shall mean the taking of fish by enrolled Suquamish members who may be assisted by their non-member spouses for consumption by tribal members and their immediate families.

(vv) “Suquamish Indian people” shall mean enrolled members of the Suquamish Indian Tribe.

(ww) “Test fishery” shall mean a fishery allowed on a limited basis for the purpose of acquiring technical or management information including run strength, time, composition, gear selectivity, exploitation rate, and enhancement possibilities.

(xx) “Tidelands” means that area from the vegetation line bordering Puget Sound to the line of extreme lower low tide.

(yy) “Treaty fishing rights” shall mean those rights reserved by the Treaty of Point Elliott between the Suquamish Indian Tribe and the United States Government.

(zz) **“**Treaty harvested fish” means fish or shellfish harvested in the exercise of Washington treaty fishing rights.

(aaa) “Tribal council” shall mean the elected governing body of the Suquamish Indian Tribe as prescribed in Article III of the Suquamish Constitution.

(bbb) “Tribal fishers” shall mean any person, whether or not a member of the tribe, who is exercising any tribal fishing right or who is assisting in the exercise of treaty fishing rights pursuant to tribal authorization.

(ccc) “Tribe” shall mean the Suquamish Indian Tribe of the Port Madison Indian Reservation.

(ddd) “Troll line” shall be defined as a fishing line used to drag lures or fresh bait behind a moving vessel.

(eee) “Usual and accustomed” shall mean all those fishing places where members of the tribe fished prior to entering into the Treaty of Point Elliott.

(fff) “Wastage” or “waste” means the failure to care for fish that are taken so as to preserve their desirability for human consumption, excepting bait and/or seed harvests authorized by the fisheries director. (Res. 2003-104 (part), passed Aug. 11, 2003; renumbered for consistency Jun. 12, 2007)

14.1.05. Fisheries Director. The executive director shall be responsible for hiring a fisheries director who shall be responsible for:

(a) Managing the Suquamish tribal fisheries program;

(b) Adopting fishing regulations subject to review by the tribal council;

(c) Issuance and revocation of tribal fishing identifications and permits;

(d) Fisheries enhancement efforts of the Suquamish Indian Tribe; and

(e) Carrying out any other duties delegated under this chapter or by the executive director/tribal council. (Res. 2003-104 (part), passed Aug. 11, 2003; renumbered for consistency Jun. 12, 2007)

14.1.06. In-season Regulations. (a) The fisheries director shall have the authority to adopt in-season regulations relating to all aspects of the fishery. The fisheries director shall promulgate any in-season regulations utilizing Western Union Easylink service, e-mail, fax, or other electronic messaging service and notifying fishers via the Suquamish Fisheries hotline telephone number.

(b) All in-season regulations shall be consistent with this chapter and any applicable federal law or agreement to which the tribe is a party.

(c) The fisheries director shall close any shellfish harvest area or part thereof to the harvest of shellfish whenever a potential concern for public health has been identified.

(d) In-season regulations shall be effective upon their adoption or as provided in the in-season regulation and shall be enforceable upon notification to a tribal fisher or twenty-four hours after the hotline update, whichever is earlier.

(e) The fish and wildlife committee or shellfish committee may by majority vote petition the tribal council to review any in-season or other regulation adopted by the fisheries director regarding their respective fishery.

(f) The tribal council shall at an open council meeting determine whether the challenged regulation shall remain in effect, be rescinded, or be modified; provided that regulations enacted by the fisheries director shall remain in full force and effect until modified by the director or by the tribal council.

(g) It shall be unlawful for any person to fish in any waters which are closed to fishing by tribal law or regulation or to fish outside of the usual and accustomed fishing places of the Suquamish Tribe while exercising treaty fishing rights pursuant to this chapter. Violation of this section is a Class C offense. A third or greater Class C offense committed within one year of the first Class C offense shall be a Class B offense. (See §14.1.10.) (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.07. Annual Regulations. (a) The fisheries director has the authority to adopt annual regulations, provided that the tribal council may review, modify, or repeal any regulation adopted by the fisheries director.

(b) Regulations regarding any particular fish species shall be distributed to the state, tribes, and other affected agencies at least twenty days prior to the proposed opening and provided further that all regulations adopted by the tribal council or by the

fisheries director shall in any event be filed and served as required by any applicable court order or agreement to which the tribe is party.

(c) Violation of this section is a Class C offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.08. Resource Committees; Fish & Wildlife, and Shellfish Committees. (a) Responsibilities. Regarding their respective issues, the general responsibilities of the Suquamish fish & wildlife and shellfish committees shall include:

(1) Representing the various groups of fishers and/or hunters in an advisory capacity;

(2) Attending meetings and advising the fisheries director concerning:

(A) Fishery/hunting management strategies (enhancement, enforcement, etc.);

(B) Fisheries/hunting regulations (in-season, emergency, and annual); and

(C) Fisheries/hunting codes; and

(3) Being involved in the presentation and organization of meetings which inform the general body of fishers/hunters regarding management and policy issues.

(b) Eligibility. Any registered, voting Suquamish tribal member, provided he or she is not in violation of §14.1.47, is eligible for appointment to the fish & wildlife or shellfish committees.

(c) Composition. The Suquamish fish & wildlife committee shall be composed of nine members appointed by the tribal council for two-year terms which may be staggered. A quorum of five is recommended when issues are brought to a vote. Tribal council shall attempt, but is not bound, to appoint persons from the following categories:

(1) Six commercial salmon fishers of which:

(A) Three are marine gillnet operators;

(B) One is a purse seine operator; and

(C) Two is a skiff operators; and

(2) Three are hunters.

(d) Shellfish Committee. The Suquamish shellfish committee shall be composed of five members appointed by the tribal council for two-year terms which may be staggered. The tribal council shall attempt, but is not bound, to appoint four commercially active shellfish harvesters, one elder or subsistence representative, and, if possible, persons from the following categories:

(1) One member who owns land or is from a family that owns land adjacent to tidelands;

(2) One member who has harvested or is currently harvesting shellfish commercially;

(3) One member from a pot fishery;

(4) One member from a dive fishery; and

(5) The remainder who have shown a concern for shellfish harvesting.

(e) Removal. The tribal council may remove any committee member upon good cause. Good cause includes but is not limited to:

(1) Conviction of a Class A or B offense;

(2) Nonpayment of back taxes; and

(3) Missing three consecutive meetings. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.09. Intergovernmental Agreements. The fisheries director is authorized to negotiate intergovernmental agreements relating to treaty fishery management, allocation, cooperative enforcement, or treaty protection with any other treaty tribe, any tribal group, any state or local government, or the federal government. No such agreement shall be binding unless approved by the Suquamish Tribal Council. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.10. General Closure. (a) Fishing within the Port Madison Indian Reservation and all areas off reservation fished by the Suquamish Indian Tribe is closed to tribal fishing unless specifically opened by properly adopted annual or in-season regulations (see §14.1.06(g)) promulgated under this chapter.

(b) Violation of this section is a Class C offense. A third or greater Class C offense committed within one year of the first Class C offense shall be a Class B offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.11. State Law Not Applicable. No act prohibited by this chapter or by regulations promulgated thereto or by any other applicable tribal ordinance or regulation may be

permitted even though such act would be lawful under the laws of the State of Washington. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.1. Monitoring by Federal and State Agencies. Authorized federal and state officials are permitted to board vessels owned by tribal members or the tribe and to monitor tribal fishing activities outside the Port Madison Indian Reservation but only to the extent:

(a) Authorized by Congress; or

(b) Specifically authorized by the Suquamish Tribal Council pursuant to this section. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.13. Shellfish Sanitation. (a) The tribe will regulate the harvest of shellfish for health purposes as specified in the *Consent Decree re: Shellfish Sanitation Issues, U.S. v. Washington Subpro. 89-3* (U.S.D.C.W.D. Wash., May, 1994). Due to the human health concerns associated with bivalve molluscan shellfish (e.g., little neck, manila, butter, geoduck, horse clams, and oysters) which are frequently transported and often consumed uncooked, the commerce of such species by tribal members or tribal entities will be regulated by the current National Shellfish Sanitation Program (NSSP) or an equivalent sanitation program implemented by the tribe. The NSSP manual, available at the Fisheries Department, regulates the handling, transport, and storage of bivalves between harvest and sale. Violation of NSSP regulations or equivalent tribal sanitation regulations is a Class C offense.

(b) Dealers who purchase bivalve shellfish harvested or purchased for resale by Suquamish Tribal members need to first acquire a shellstock shipper certification as described in §14.1.29(e).

(c) Violation of this section is a Class C offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

ELIGIBLE FISHERS

14.1.14. Identification Required. (a) All persons eligible to fish or observe under this chapter must obtain a valid treaty fishing rights identification card or permit prior to fishing. A valid treaty fishing rights identification card or permit must be in the physical possession of the person at all times when:

(1) Fishing or observing;

(2) Traveling to or from fishing activity; or

(3) Engaged in the sale of fish or fish products.

(b) The following persons must have a valid treaty fishing rights identification card in their physical possession when fishing:

(1) Tribal fisher, see §14.1.15;

(2) Authorized minor member, see §14.1.17;

(3) Non-member spouse of member, see §14.1.16; and

(4) Biological personnel, see §14.1.18.

(c) The card shall contain the following information:

(1) Name, photograph, and physical description of the cardholder;

(2) Enrollment number, if applicable;

(3) Tribal affiliation, if applicable;

(4) Current validation sticker (required for commercial harvest; not subsistence or ceremonial);

(5) Designation pursuant to parts (b)(1)-(4) of this section above; and

(6) Embossed tribal treaty fishing rights number.

(d) Observers/technical advisors must have valid permits in their physical possession when fishing, see §14.1.19.

(e) It shall be unlawful for any member to permit any non-member to fish in violation of this chapter. The tribal member is solely responsible for verifying whether the person assisting is authorized pursuant to §14.1.14. Violation of this subsection is a Class B offense.

(f) All identification cards or permits issued pursuant to this chapter shall remain the property of the Suquamish Indian Tribe and shall be returned to the tribal fisheries office upon request of the fisheries director or pursuant to forfeiture by tribal court order.

(g) No identification card issued pursuant to this chapter shall be valid for commercial fishing unless it bears a current annual validation sticker for that fishery. Annual stickers for fishing shall be valid from the date issued through the next December 31st. It shall be unlawful to use an identification card without a current year validation stamp. Violation of this subsection is a Class D offense.

(h) The tribal fisheries director may require each person exercising fishing rights under this chapter to also secure any other identification that may be required through

any intertribal or other intergovernmental agreement that the Suquamish Tribe may become or is a party to.

(i) The tribal council may establish fees for the issuance of any identification or permit described in this ordinance.

(k) It shall be unlawful for any person to exercise treaty fishing rights without having first obtained proper tribal identification. It shall be unlawful to fish without physical possession of a proper identification card. Violation of this subsection is a Class C offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.15. Eligible Fishers: Enrolled Members. All persons enrolled as Suquamish tribal members are eligible to exercise treaty fishing rights with the exception that those members adopted after September 29, 1983 must have one-eighth or more Suquamish blood consistent with Article II, Section 2. of the Suquamish Constitution. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.16. Eligible Fishers: Spouses. (a) The non-member legal spouse of a Suquamish tribal member may assist the member spouse in fishing, provided that:

(1) The enrolled member is present during fishing; and

(2) The non-member spouse does not exercise treaty fishing rights of another tribe, if any.

(A) If the non-member spouse has treaty fishing rights in another tribe, the non-member spouse must waive exercise of these rights by May 2nd of each year in writing and addressed to the Suquamish tribal council or fisheries director.

(B) The non-member spouse must agree in writing to be bound by all provisions of this chapter and submit to the jurisdiction of the tribal court.

(b) Upon a showing of necessity, the fisheries director may authorize by special permit a non-member spouse to harvest shellfish for subsistence purposes or to participate in a test or evaluation fishery without the tribal member spouse being present. The tribal-member spouse must sign the fish ticket reporting the catch pursuant to §14.1.22. The non-member spouse must agree in writing to be bound by all provisions of this chapter and submit to the jurisdiction of the tribal court. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.17. Eligible Fishers: Minors. (a) No person under the age of sixteen who is otherwise eligible to fish under this chapter shall exercise treaty fishing rights unless:

(1) He/she is accompanied by an adult relative who is an enrolled member of the tribe; or

(2) He/she is the head of a household; “head of household” is defined, for the purposes of this section, as any member of the tribe who is solely or substantially responsible for providing his/her own care and maintenance or that of his/her family; or

(3) There is a showing of extreme hardship.

(b) The determination of whether a person is a head of household or whether there is a showing of extreme hardship sufficient to allow a minor to exercise treaty fishing rights is made by the fisheries director according to procedures established in regulations promulgated under this chapter.

(c) Minors otherwise eligible to fish pursuant to (a) and (b) of this section and who have not graduated from high school shall not be permitted to fish on school days, but shall be permitted to fish:

(1) Between the hours of 5:00 p.m. and 10:00 p.m. on any day immediately preceding a school day, and

(2) At all hours permitted by regulation during authorized school vacations and on days not immediately preceding a school day.

(d) No minor shall be issued a tribal identification card without the signed consent of his/her parent or guardian.

(e) It is the duty of the parent or guardian of any minor who is to exercise treaty fishing rights pursuant to this section to ensure compliance with this section.

(f) A parent or guardian who knowingly permits his/her minor child or ward to violate any provisions of this chapter or regulations adopted pursuant to this chapter shall be subject to the same penalties as the minor child.

(g) Violation of this section is a Class D offense.

(h) A minor who violates the provisions of this section is guilty of a Class D offense and, in addition to the penalties prescribed by this chapter, may have his/her right to exercise treaty fishing rights suspended by order of the tribal court. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.18. Biological Personnel. (a) Biological personnel of the Suquamish Indian Tribe may take or possess fish of all species for scientific, management, and/or enhancement purposes, provided that:

(1) He/she is issued an identification card by the fisheries director;

(2) He/she keeps a cumulative record of all fish so taken, which shall be produced for inspection upon request by the fisheries director or tribal council; and

(3) Fish taken under the authority of this subsection are not to be sold or used by biological personnel for personal gain but are to be disposed of only as directed by the fisheries director or tribal council.

(b) Any attempt by biological personnel to circumvent this subsection or to abuse the privilege granted herein shall be grounds for immediate dismissal from employment with the tribe. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.19. Observers/Technical Advisors. (a) An observer/technical advisor may observe/advise a Suquamish member if properly authorized by permit pursuant to §14.1.14, provided that the Suquamish member shall be responsible for ensuring that the observer/technical advisor has complied with this chapter.

(b) The following information shall be provided to the fisheries director by the treaty fisher who will be advised:

(1) The name of the observer/technical advisor;

(2) Vessel identification, if any; and

(3) Type and location of fishery.

(c) All fishers must provide to the fisheries director a copy of any agreement between the observer/technical advisor and the fisher. The observer/technical advisor shall not be paid on a percentage of the harvest basis.

(d) Observer/technical advisors may instruct and observe only and are prohibited from assisting in any other manner, pursuant to §14.1.14, in any harvest. Any violation of this section shall result in the revocation of the observer/technical advisor's permit. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.20. Test Fishing. (a) The fisheries director may authorize a test fishery for the purposes of collecting management information regarding a particular species or stock regulated under this chapter. The fisheries director shall determine the specifics of any test fishery using in-season regulations. Such regulations would include, but not be limited to: target species, gear type, quantity, opening schedule, and area restrictions. Permanent records of all data collected by test fishers will be maintained by the fisheries director. There shall be no test fishery other than as directed by the fisheries director.

(b) Eligibility to participate in a test fishery will be limited to those fishers who meet the following requirements:

(1) Only enrolled members, spouses, and biological personnel as defined in §§14.1.15, 14.1.16, and 14.1.18 respectively who have obtained the identification required as defined in §14.1.14.

(2) Fishers must be familiar with, and have access to, the appropriate gear as specified by the fisheries director.

(3) Fishers must be familiar with the fishing area specified in the test fishery.

(4) Fishers must agree to record and provide all information regarding the test fishery in a timely manner as requested by the fisheries director.

(c) Should more than the necessary number of eligible fishers sign up for a particular test fishery, the participants shall be chosen by a drawing conducted by the fisheries director or designate.

(d) Fish taken in test fisheries shall not be sold for personal profit. Participating fishers shall be compensated for their effort at a rate set by the tribal council. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.21. Payment of All Taxes and Fees Required. (a) No person shall be issued an annual validation sticker for his/her identification card or other license or be authorized to exercise treaty fishing rights pursuant to this chapter until fish taxes, interest, penalties, or outstanding fines imposed by the Suquamish Tribal Court for fishing violations then due and owing are paid as described in Title 12 of the Suquamish Tribal Code.

(b) Violation of this section is a Class B offense. A third or greater Class B offense committed within one year of the first Class B offense shall be a Class A offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.22. Reporting of Catch — Fish Tickets. (a) Any authorized fisher fishing for any purpose (e.g., commercial, subsistence, ceremonial) shall report his or her catch within twenty-four hours for commercial or within three days for subsistence/ceremonial, consistent with this section and any applicable regulations. A treaty Indian fish receiving ticket ("fish ticket") shall be used to record the appropriate information as described below.

(b) Fishers shall be responsible for providing the following information on a fish ticket:

(1) Date of harvest;

(2) Date of sale;

(3) Economic value, where appropriate;

(4) Gear type used;

(5) Number and/or total weight of each species or products thereof;

(6) All salmon roe sales must include the number of harvested fish on the ticket;

(7) The Management/Catch Reporting area within which the fish was caught; and in the case of intertidal shellfish, the appropriate six-digit beach identification number (BIDN); and in the case of geoducks, the geoduck tract number;

(8) If sold, buyer to whom the catch was sold;

(9) Fisher's name and treaty fishing rights identification number; and

(10) Any additional information specified in in-season regulations.

(c) Additional copies of any or all fish tickets shall be supplied to the fisheries director or biological personnel upon request by the fisheries director.

(d) Violation of this section is a Class C offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

FISHING BOATS AND GEAR

14.1.23. Regulation of Fishing Fleet — Policy Considerations. (a) The tribal council recognizes that appropriate management and conservation of fishery resources may require the limiting of the tribal fleet, the type and numbers of gear authorized, the location where certain gear can be authorized, and may require other policy decisions as well.

(b) The fisheries director shall be responsible for the development and presentation of regulations limiting the size of the tribal fishing fleet. All fleet restrictions proposed under this section shall be presented to the fish committee for comment. Proposed regulations, along with any recommendation or comments from the appropriate resource committee, shall then be presented to the tribal council. No fleet restriction authorized under this section shall be implemented until approved by the tribal council.

(c) In considering the need for any limitation on the growth of the tribal fleet or direction of that growth, the tribal council shall consider the number of harvestable fish

available, where those fish are best harvested, potential gear conflicts, intertribal relationships, and the need to maximize the income for the tribal fishers.

(d) Affected fishers may appeal the tribal council's decision to the Suquamish Tribal Court, provided that the burden of proof shall be on the fisher. Review shall be limited to whether the decision was arbitrary, capricious, or having no basis in fact. The standard of proof shall be clear and convincing evidence. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.24. Boating Safety — Legal Firearms. (a) All boats or other craft used in exercising tribal fishing rights shall conform to the current United States Coast Guard regulations applicable to similar craft in similar waters.

(b) It shall be unlawful for any member or spouse to discharge any firearm from any fishing vessel or watercraft except as provided for in this section.

(c) Pursuant to §14.3.27, individuals while in the act of protecting catch, gear, or personal safety are authorized to utilize a shotgun with double 00 buckshot as ammunition.

(d) Violation of this section is a Class C offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.25. Manner of Fishing — Legal Gear. (a) The fisheries director shall determine, consistent with this chapter and after reviewing recommendations, if any, from the appropriate Suquamish tribal resource committee, what gear is authorized in a particular season at a particular place and for a particular species. Fishers may only use gear properly authorized by the fisheries director.

(b) Violation of this section is a Class B offense. A third or greater Class B offense committed within one year of the first Class B offense shall be a Class A offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.26. Registration/Identification of Fishing Boats/Gear. (a) All vessels used in the exercise of treaty fishing pursuant to this chapter shall be:

(1)(A) Owned and registered in the name of a member; or

(B) In the possession of a member under a bona fide purchase agreement which has been approved by and filed with the tribe as provided in §14.1.28; or

(C) In the possession of a member under a lease or lease/option to purchase from another member of the tribe; and

(2) In compliance with those adopted regulations governing comprehensive identification of boats, including but not limited to boat type, length, name, and gear.

(b) Unless otherwise provided in this chapter or regulations adopted hereunder, each fisher shall only operate a single piece of gear at a time. No gear shall be operated unless specifically authorized as provided in §14.1.26 of this section.

(c) All gear shall be identified as follows:

(1) All vessels shall have a permanent boat identification sticker and annual validation sticker displayed in a manner consistent with U.S. Coast Guard regulations as specified on the sticker.

(2) All nets of whatever type, all shellfish/fish pots and traps, and all buoys shall be clearly identified and marked with the owner's name and tribal treaty fishing rights identification number. The identification shall be at both ends of a net that is not attached to a vessel or on the outboard end of a net attached to a vessel. Unless otherwise specified in in-season regulations, all identification shall be easily visible without having to remove the gear from the water. It shall be unlawful to operate any gear without having all identification required by this section properly attached.

(3) All gillnets shall have a buoy ball (minimum of twelve-inch diameter) clearly marked with the fisher's name and tribal identification number attached to the waterward end of the net. All gillnets greater than three hundred feet in length shall have a functional jacklight extending a minimum of fifteen inches above the surface of the water located at the waterward end of the net.

(d) All unmarked gear and boats which are unattended and any fish found therein may be removed by a tribal patrol officer.

(e) Use of gear that is not properly marked pursuant to tribal law or regulation is a Class D offense. Failure to actively tend fishing gear at least once every twenty-four hours is a Class C offense. The abandonment of gear or the discarding of any object, debris, or waste related to the act of fishing upon any property or in any waters is a Class D offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.27. Boat Purchase Contract. (a) A member who intends to exercise treaty fishing rights with gear or a boat the legal title of which is not in the tribal member's name, or a member who is purchasing a boat or gear on installments paid to the seller, shall first present to the fisheries director for approval:

(1) A purchase agreement evidencing that the member is purchasing the boat or gear; and

(2) A boat/gear survey provided by a professional marine surveyor.

(b) The tribal fish and wildlife committee shall review all purchase agreements and shall provide a recommendation to the tribal council regarding the likelihood or success of the contract. The fish and wildlife committee shall consider the following factors in formulating its recommendation:

(1) Legal summary of contract as reviewed by tribal legal department;

(2) Specifics of the contract (i.e., financial institution or firm holding the lien; payment schedule or associated business plan; downpayment quantity; and term of contract);

(3) Fisher's experience operating this type of vessel/gear; and

(4) Circumstances which affect the availability of fish or fish value during the term of the contract.

(c) The recommendations of the fish and wildlife committee shall be reviewed by the tribal council which shall either approve or disapprove the contract. In addition to considering those factors set out in subsection (b) of this section, the tribal council shall also consider the recommendation of the fisheries director and shall specifically determine whether the approval of the purchase contract would result in an increase in the tribal fishing fleet or in tribal fishing power in violation of any policy set pursuant to §14.1.23 of this chapter.

(d) All boat contracts approved under this section shall be subject to annual review. The purpose of such annual review will be to determine whether the conditions of the contract are being met. The fisheries director is authorized to request from the member purchasing the boat an annual financial statement which specifies the amount of money paid on both the principal and interest and the amount of the principal remaining. Said statement must be signed, dated, and notarized by both the member and the mortgagor. In the event the contract conditions are not being met, the fisheries director shall request a statement from the member regarding the likelihood of both contract failure and future contract compliance. The fisheries director will then report to the tribal council on the condition of the contract. If the tribal council believes the risk of contract failure is significant, the tribal council may revoke the member's authorization to use the described vessel under this chapter.

(e) Disapproval of a boat contract may be reviewed by the Suquamish Tribal Court; provided that the burden of proof shall be on the member. Review shall be limited to whether the decision was arbitrary, capricious, or having no basis in fact. The standard of proof shall be clear and convincing evidence.

(f) The review and approval under this section is for the tribe's benefit only. Such review and approval shall not and does not guarantee or warrant to the member that the

contract is legal, binding, enforceable, or that it will be successful. (Res. 2003-104 (part), passed Aug. 11, 2003)

SELLING AND BUYING OF FISH

14.1.28. Sale of Fish. (a) It is the responsibility of each fisher at the time of each fish sale to be sure that the fish ticket is filled out completely and accurately in accordance with §14.1.22. Improperly filled out fish tickets are in violation of this chapter. Violation of this subsection is a Class C offense.

(b) It shall be unlawful to sell any fish caught as subsistence or ceremonial harvest. Violation of this section is a Class B offense. A third or greater Class B offense committed within one year of the first Class B offense shall be a Class A offense.

(c) A tribal fisher who engages in personal sales of fish to a person, organization, or entity other than fish buyers licensed by the tribe, the state, or other treaty tribes shall contact the tribal fisheries office to either fill out a fish ticket or report the sale within twenty-four hours. Illegal sale of fish in violation of this chapter is a Class C offense.

(d) Only tribal members who have obtained a treaty fishing rights identification card as provided in §14.1.14 shall sell fish pursuant to this chapter.

(e) It shall be unlawful for a tribal member with a treaty fishing rights identification card to allow another member or non-member to use that card or to sell fish with the member's card. Violation of this subsection shall be a Class C offense.

(f) It shall be unlawful for any person to, with intent to injure or defraud, falsely make, complete, or alter any document created pursuant to this chapter or to possess, utter, offer, dispose of, or put off as true any document created pursuant to this chapter. Such conduct shall constitute the crime of forgery, pursuant to STC §7.10.03. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.29. Dealer/Buyer Licensing. (a) Dealer License. Every Suquamish tribal member or tribal enterprise who receives for resale treaty harvested fish or shellfish shall be required to first obtain a Suquamish fish dealer's license.

(b) Buyer License. Every Suquamish tribal member who receives treaty harvested fish or shellfish on behalf of a fish dealer licensed by any state or tribe shall be required to first possess a Suquamish fish buyer's license. No person may be licensed to buy fish or shellfish on behalf of more than one dealer.

(c) Issuance, Validity, and Duration. Suquamish fish dealer and fish buyer licenses shall be issued by the fisheries director and shall be valid when signed by the fisheries director and the applicant. Each such license shall be valid from the date of issue through the following December 31st.

(d) Persons Eligible for Licensing. Only enrolled Suquamish tribal members eighteen (18) years and older who owe no back taxes to the Suquamish Tribe are eligible to obtain a Suquamish dealer or buyer license. Non-tribal member spouses may not be issued buyer or dealer licenses.

(e) License Application. (1) Procedure.

(A) An applicant for a buyer or dealer license may apply in person at the Suquamish Fisheries Department or by mail addressed to the fisheries director. Mail applicants shall be sent an unsigned copy of the appropriate license and instructed to return it signed by the applicant, together with a check or money order for the license fee. If approved by the fisheries director, the license shall be signed by the director and returned to the licensee. In-person applicants shall deliver the appropriate license fee to the fisheries department. If the application is not approved, the license fee shall be returned to the applicant.

(B) The fisheries director shall reject the license application if the applicant has been found by the tribal court to have violated §14.1.29 three or more times within the last twelve months or if the applicant has been convicted within the last twelve months of fraud under Suquamish Tribal Code Chapter 7.10. The fisheries director shall not review a license renewal application of an applicant who has a notice of proposed suspension or two or more citations or complaints pending in tribal court, until those issues have been resolved by the tribal court.

(2) Notice of denial of a license application shall be delivered in person or by first class mail. When delivered by mail, the notice shall be presumed received within three days of mailing to the applicant at the address listed on the application. The notice shall state the reasons for denial and shall inform the applicant that within ten calendar days of receipt of the notice of denial, the applicant may file a civil action for judicial review by the Suquamish Tribal Court. The court may award only declaratory and related injunctive relief. The court shall uphold the action of the fisheries director unless it was arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

(3) Shellfish Certification. Dealers wishing to purchase molluscan bivalve shellfish (such as clams, oysters, geoduck, and mussels) shall first obtain a shellstock/shipper certification from the Washington Department of Health**.** Applications for such certification may be obtained from the Washington Department of Health. Upon proof of such certification, the dealer license will be imprinted with an “S” by the tribal fisheries department. Licenses of the dealer's buyer or buyers will be imprinted with an "S" by the tribal fisheries department along with the dealer's name and license identification number. No buyer shall receive molluscan bivalve shellfish on behalf of a dealer who has not obtained

such certification. Dealers must abide by the 1999 National Shellfish Sanitation Program (NSSP) Model Ordinance, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.

(4) Beginning with the 2003-2004 licensing year, applicants for Suquamish dealer or buyer licenses who either have been denied a license in any of the three previous licensing years, or have been found by the tribal court to have violated §14.1.29 three or more times within the last twelve months, or been convicted within the last twelve months of fraud under Suquamish Tribal Code Chapter 7.10 will be required to deposit with the fisheries department a performance bond on forms and in amounts prescribed by departmental regulation.

(A) This performance bond shall be a corporate surety bond executed in favor of the fisheries department by a corporation approved by the tribe.

(B) The bond shall be conditioned upon the compliance with the requirements of §14.1.29 and the provisions of this ordinance relating to the payment of fines for violations of §14.1.29.

(C) In lieu of the surety bond required by this section, the dealer or buyer may file with the fisheries department a cash deposit , negotiable securities acceptable to the department, or an assignment of a savings account or a savings certificate in a Washington bank on an assignment form prescribed by the department and in amounts prescribed by departmental regulation.

(f) License Fees. In order to obtain or retain a Suquamish fish dealer or buyer license, the applicant or licensee must pay an annual license fee.

(g) Biological Staff Entry. All licensed dealers and buyers shall allow tribal fisheries department staff to enter upon any premises where fish or shellfish are received under such license or where records required by this chapter are kept and allow such staff to sample, segregate, and gather data for fisheries management purposes. Failure to comply with the provisions of this subsection shall be grounds for the issuance of an emergency suspension of the license of the dealer and/or the buyer.

(h) Daily Reporting. The licensed dealer or licensed buyer who receives for resale treaty harvested fish or shellfish shall prepare fish tickets in a manner that complies with §14.1.22. The licensed dealer or licensed buyer must sign the completed fish ticket. No licensee spouse or any other third party may sign a fish ticket on behalf of a dealer or buyer. The licensed dealer or licensed buyer shall distribute copies of the fish ticket in accordance with the instructions on the Treaty Indian Fish Ticket Book. Licensed dealers and buyers shall maintain for at least one year copies of

all fish tickets they prepare. All fish ticket information must be made available to tribal fisheries department staff and tribal fisheries enforcement officers upon demand.

(i) Personal Purchases. Dealers or buyers who receive for resale fish or shellfish taken in their own exercise of treaty fishing rights must report such receipts on the appropriate fish tickets at the market price on the fishing grounds at the time of the catch.

(j) Fish Purchases. Dealers or buyers shall not purchase for resale fish or shellfish harvested in violation of this ordinance or applicable regulations.

(k) Health Inspections. Dealers and buyers shall permit reasonable inspection of their facilities and operations by federal and Suquamish tribal health authorities and by the Washington State Department of Health upon the concurrence of the tribe. Failure to comply with the provisions of this subsection is grounds for the issuance of an emergency suspension of the license of the dealer and/or the buyer.

(l) License Suspension. When a person licensed under §14.1.29 has been issued a civil citation or complaint for violation of §14.1.29, or if the fisheries director otherwise has probable cause to believe that a licensee has violated §14.1.29, the fisheries director shall have the authority to suspend or propose to suspend a license as follows:

(1) Emergency Suspension. (A) The fisheries director will issue an emergency notice of license suspension if he or she finds compelling reasons of public health or fisheries management related to the:

(i) Purchase of molluscan bivalve shellfish from an area that is closed or prohibited or that otherwise constitutes a violation of the shell stock shippers license;

(ii) Purchase of fish or shellfish caught in closed waters;

(iii) Failure to allow health inspections of facilities where the fisheries director has reason to believe that conditions posing a health risk to the public exist;

(iv) Failure to submit completed fish receiving tickets within one working day of the landing date where such failure affects the ability of the fisheries department to properly manage a limited opening;

(v) Submission of falsified information or signatures on a fish receiving ticket; or

(vi) Other compelling reasons of public health or fisheries management.

(B) The emergency notice of license suspension shall contain the following information:

(i) The date of the alleged violation or violations;

(ii) The §14.1.29 provision(s) alleged to have been violated;

(iii) A statement of the compelling reasons for emergency suspension;

(iv) Effective date and duration of the suspension, which time period shall not exceed the expiration date of the license; and

(v) An explanation of right to judicial review and time period for filing request for review.

(C) The notice shall be delivered in person or by first class mail. When delivered by mail, the notice shall be presumed received within three days of mailing to the licensee's address as last given to the fisheries department.

(D) The emergency notice of license suspension shall be effective upon receipt.

(E) Within ten days of receipt of the notice, the recipient may file a civil action for judicial review by the Suquamish Tribal Court. The emergency notice of license suspension shall not be stayed during the pendency of this proceeding except upon order of the court.

(2) Notice of Proposed License Suspension. (A) When the basis for issuing an emergency notice of license suspension is not present, the fisheries director is authorized to issue a notice of proposed license suspension if the nature, number, or pattern of the violations involved seriously impacts the conservation and management of the resource, allocation of the resource or intergovernmental relations.

(B) The notice of proposed license suspension shall contain the following information:

(i) The date of the alleged violation or violations;

(ii) The §14.1.29 provision(s) alleged to have been violated;

(iii) Written findings upon which the proposed suspension or revocation is based;

(iv) A time period for the proposed suspension, which time period shall not exceed the expiration date of the license; and

(v) An explanation of right to judicial review and time period for filing request for review.

(C) The notice shall be delivered in person or by first class mail. When delivered by mail, the notice shall be presumed received within three days of mailing to the licensee's address as last given to the fisheries department.

(D) Within ten days of receipt of the notice, the recipient may file a civil action for judicial review by the Suquamish Tribal Court. The proposed suspension shall be automatically stayed during the pendency of such an action. If no request for judicial review is filed, the proposed suspension shall become final and effective ten days after receipt of notice

(3) In an action to review an emergency notice of license suspension or notice of proposed license suspension, the court may award only declaratory and related injunctive relief, including preliminary injunctive relief. The court shall uphold the action of the fisheries director unless it was arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

(4) The sovereign immunity of the tribe is hereby waived only for the purpose of actions by Suquamish tribal members brought in the Suquamish Tribal Court under and in accordance with the terms of this section.

(m) Additional Penalties. The penalties, remedies and enforcement mechanism set forth in this section shall be in addition to any other penalties or remedies available for a violation of this section under applicable laws of the tribe. (Res. 2003-104 (part), passed Aug. 11, 2003; renumbered for consistency Jun. 12, 2007)

14.1.30. Authorization of Dealers or Buyers Not Subject to §14.1.29. (a) All fish dealers or buyers licensed by another treaty tribe or by Washington State shall be authorized to purchase fish, both fin fish and shellfish, from tribal members fishing commercially pursuant to this chapter, unless a buyer is declared unauthorized pursuant to this section.

(b) The fisheries director, tribal council, or tribal court may declare a fish dealer or buyer ineligible to purchase fish from tribal fishers upon a showing that the dealer or buyer has had a dealer or buyer license suspended or revoked or an application for license denied by any treaty tribe, including the Suquamish Tribe or by Washington State; acted in a manner inconsistent with the provisions of this or other applicable tribal

law; defrauded a tribal fisher; or engaged in unfair or deceptive trade practices. The dealer or buyer shall be provided with reasonable notice of the allegations against him and an opportunity to respond in writing or in person before a decision is made to remove him or her from the list of authorized buyers.

(c) Tribal fishers shall be provided reasonable notice that a dealer or buyer has been declared unauthorized to purchase fish from tribal fishers. A tribal commercial fisher who knowingly sells fish to an unauthorized dealer or buyer shall be guilty of a violation of this chapter. Violation of this section is a Class C offense. A third or greater Class C offense committed within one year of the first Class C offense shall be a Class B offense.

(d) No person who purchases fin fish from Suquamish tribal fishers is authorized to collect the tax imposed by STC Chapter 12.1. (Res. 2003-104 (part), passed Aug. 11, 2003)

ENFORCEMENT

14.1.31. Fisheries Patrol Officers. (a) The tribe shall be responsible for hiring one or more persons to serve as fisheries patrol officers.

(b) The tribal council shall have the power to enter into an agreement with another tribe whereby the fisheries enforcement officer of the other tribe may act as fisheries patrol officer for the Suquamish Indian Tribe.

(c) The fisheries patrol officers shall:

(1) Have the authority to enforce the provisions of this chapter and all emergency and annual regulations promulgated hereunder;

(2) Regularly patrol waters wherein tribal fishers are engaged in fishing; and

(3) Regularly patrol the usual and accustomed fishing areas of the Suquamish Tribe.

(d) The tribal council may, upon request from a fisheries patrol officer, appoint and deputize additional persons to assist the fisheries patrol officer in the performance of his/her duties.

(e) Fisheries patrol officers shall also have all power and authority duly delegated to them by the Suquamish Chief of Police as well as the authority to arrest any tribal member/Indian person fishing in violation of this chapter.

(f) It shall be unlawful for any person to resist, obstruct, or interfere with any duly authorized tribal fisheries patrol or law enforcement officer in the performance of official

duties pursuant to this chapter or any other tribal regulations. Violation of this subsection is a Class A offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.32. Nature of Violations. (a) A violation under this ordinance shall be designated as:

(1) A criminal violation;

(2) A civil violation requiring the alleged violator to appear before the court for a preliminary hearing (mandatory appearance); or

(3) A civil violation which can be resolved without the violator appearing before the court.

(b) Any violation for which a penalty is not explicitly set forth in this chapter shall be deemed a Class C offense. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.33. Criminal Citation. In lieu of arrest under §14.1.31(e), fisheries patrol officers have the discretion to issue a citation on a form approved by the tribe, provided that:

(a) The defendant has satisfactorily been identified;

(b) The defendant has signed the citation;

(c) The defendant ceases the activity which violated this chapter;

(d) The defendant has no history of previous failure to respond to lawful process of the Suquamish Tribe; or

(e) There is no substantial likelihood the defendant will refuse to respond to the citation. (Res. 2003-104 (part), passed Aug. 11, 2003; renumbered for consistency Jun 12, 2007)

14.1.34. Civil Citation. (a) A fisheries patrol officer shall have the authority to issue a civil citation for a civil violation of this code or any regulations adopted thereunder when the offense is committed in the officer's presence or when the officer otherwise has probable cause to believe that an offense has been committed. The citation shall be on a form approved by the tribe and shall include the following:

(1) The name of the offender;

(2) The date, time, and location of the incident;

(3) The section of this chapter which has been violated;

(4) Whether or not a court appearance is mandatory;

(5) The monetary penalty for the offense (unless the defendant is required to appear in court);

(6) A space for the defendant to sign, promising to appear for the court date (if required). If the defendant refuses to sign the citation, the officer shall write “refused” in the space provided. A person who refuses to sign a citation is presumed to have notice of its contents, including the time and date given for hearing.

(7) Instructions to the defendant (when an appearance is not required) that he or she can either pay the penalty, request a hearing to explain the circumstances surrounding the violation, or request a hearing to contest the charge.

(8) Notice to the defendant (when an appearance is not required) that the fine must be paid or a hearing requested within seven days of receiving the citation.

(b) Nothing in this section shall preclude the tribe from instituting proceedings by filing a civil complaint. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.35. Mandatory Court Appearance. (a) When a defendant is required to appear for a preliminary hearing, he/she shall appear at the time and date stated on the notice of infraction or summons, unless a continuance is granted.

(b) At the preliminary hearing, the defendant shall:

(1) Admit liability and pay the fine;

(2) Admit liability but request a mitigation hearing; or

(3) Deny liability and request a hearing to contest the charge. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.36. Resolution without Court Appearance. (a) When a civil violation has occurred and the defendant is not required to appear in tribal court for a preliminary hearing, he/she shall within seven days of receiving a notice of infraction:

(1) Admit liability and pay the fine;

(2) Admit liability and request a mitigation hearing to explain the circumstances surrounding the offense; or

(3) Deny liability and request a hearing to contest the charge.

(b) No further proceedings shall be initiated against any person who pays the fine pursuant to subsection (a)(1). (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.37. Mitigation Hearing. (a) At the mitigation hearing, the defendant shall have the burden of proof.

(b) The defendant may present evidence of mitigating circumstances and ask the court to reduce the monetary penalty. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.38. Hearing to Contest the Charge. (a) At a hearing to contest a civil charge, the tribe shall have the burden of proving by a preponderance of the evidence that the defendant committed the offense.

(b) If the tribe does not meet its burden, the case shall be dismissed with prejudice.

(c) If the tribe does meet its burden, the defendant may present evidence of mitigating factors. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.39. Failure to Appear for Hearing or Deny Liability. (a) Any person who does not appear for a hearing under §14.1.35, or who fails to deny liability within seven days of receiving a citation under §14.1.36, shall be deemed to have admitted committing the charged offense. The court shall enter a default judgment against the offender if it finds that:

(1) The notice of infraction was issued;

(2) The offender was informed of the date and time of the hearing, or his/her duty to pay the fine or request a hearing; and

(3) The offender did not appear at the appointed time and place, or did not pay the fine or request a hearing within seven days of receiving a citation.

(b) The tribe may institute a civil proceeding to collect the fine and up to an additional one-hundred-and-fifty-dollar penalty. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.40. No Right to Appointed Council. No person shall be entitled to appointed counsel when the charged offense is a civil infraction. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.41. No Right to Jury Trial for Civil Offense. No person shall be entitled to a jury trial when the charged offense is a civil infraction. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.42. Seizure. (a) A fisheries patrol officer may seize any fish or fishing gear used in taking the fish if he or she has probable cause to believe a violation of this chapter has occurred.

(b) When seizing fish or equipment, the officer shall follow the procedures below:

(1) The officer shall prepare a written inventory of each item seized and, if possible, make a photographic record. The officer shall make a reasonable attempt to identify the owner of the equipment. The defendant, if present, shall receive a copy of the inventory; otherwise a reasonable attempt to mail a copy to the defendant shall be made by the officer.

(2) The officer shall, as soon as practicable, sell all marketable fish seized at prevailing market price. All proceeds from the sale shall be immediately turned over to the tribal fisheries director and thereafter deposited in a special account. The defendant shall receive a receipt for the sale of seized fish. Unmarketable fish shall be destroyed.

(3) All other equipment seized pursuant to this chapter shall, as soon as practicable, be placed in the custody of the tribal fisheries director. Recovery of seized equipment shall be governed by §14.1.43 of this chapter. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.43. Return of Property. Any person who has had equipment seized pursuant to §14.1.42 may petition the court to issue an order of release. The tribal court shall make a determination based on the reports and testimony presented to it that serve the interests of justice and the fishery resource. The tribal court shall expedite, to the extent practicable, all hearings requested under this section. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.44. Forfeiture Procedure. (a) Upon the finding of a violation of this chapter:

(1) The tribal court shall order the forfeiture of all fish proceeds derived in violation of this chapter; and

(2) After notice and an opportunity for hearing, the Suquamish Tribal Court may enter an order of forfeiture of any and all equipment seized pursuant to §14.1.42.

(b) All unclaimed equipment seized for violation of this chapter for which the owner cannot be identified shall be forfeited. The tribal court shall order posting of notice of confiscation at all normal places used for posting of regulations. The notice shall describe the equipment seized and shall set a firm date, not less than fifteen days after last posting, for hearing on whether the equipment should be forfeited. Upon or after the date previously established for the hearing in the notice, the Suquamish Tribal

Court may enter an order forfeiting the equipment. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.45. Disposition of Property Forfeited. (a) All equipment or proceeds forfeited by order of the Suquamish Tribal Court shall be placed in the custody of the fisheries director for the use and benefit of the Suquamish Tribe.

(b) Any equipment or proceeds not forfeited by order of the Suquamish Tribal Court shall be returned to the defendant after the completion of the case and after the fines, if any, have been paid. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.46. Loss of Treaty Fishing Right. (a) Where a member has, on three or more occasions, been found to have violated a provision of this chapter and the violation constitutes a Class A, Class B, or Class C offense, the member may have his/her privilege of exercising treaty fishing rights suspended for a period not to exceed twenty-four months.

(b) The tribal council shall have the exclusive right to revoke a member's privilege to exercise treaty fishing rights pursuant to subsection (a) of this section. The tribal fisheries director may make recommendations on whether to take action under this section.

(c) The tribal council shall cause notice to be delivered by personal service to a member who is subject to losing the privilege of exercising treaty fishing rights. The notice shall be delivered at least fifteen days prior to a council meeting called to determine the case. Service of the notice may be made by a member of the Suquamish police department.

(d) The notice required by subsection (c) of this section shall contain the following:

(1) A clear statement that the tribal council will consider whether to revoke his/her privilege of exercising treaty fishing rights and that the privilege could be revoked for up to twenty-four months;

(2) A statement of the basis for the proposed action including a list of the convictions involved;

(3) The date that a hearing before the council will be held to consider the case; and

(4) A statement that the member has the right to appear before the council, to present evidence, to call witnesses, and to be represented by a spokesperson at his or her own expense.

(e) The tribal council shall set a date certain to consider whether to revoke a member's privilege of exercising treaty fishing rights. In making its determination, the tribal council shall consider the nature and seriousness of the convictions involved and the impact of the violations on the conservation of the resource, allocation, or intergovernmental relations.

(f) If the tribal council finds that the violations were serious, significantly affected the conservation of the resource, allocation, or intergovernmental relations, the tribal council may revoke the member's privilege of exercising treaty fishing rights as provided in subsection (a) of this section. In lieu of revoking a member's privilege, the tribal council may impose a plan on the member designed to ensure that there are no further violations. A member who fails to comply with a plan established under this section shall be subject to having his/her privilege revoked as if the plan had not been imposed. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.47. Conviction as Bar. (a) At the recommendation of the fisheries director, any person who has been convicted of a criminal offense under this chapter may be prohibited for a period not to exceed one year:

(1) From serving on the fish and wildlife, or shellfish committees; and/or

(2) From being employed by the tribal fisheries program.

(b) A person who has been convicted of a criminal offense during his/her term of appointment or employment with the tribal fisheries program may be removed from said office or employment at the recommendation of the fisheries director for a period not to exceed one year. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.48. Construction. This chapter shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.49. Severability. If any provision of this chapter is held invalid, the remainder of the chapter shall not be affected. (Res. 2003-104 (part), passed Aug. 11, 2003)

VIOLATION – PENALTIES

14.1.50. Classes of Offenses. (a) Class A Offense. A Class A offense is a gross misdemeanor punishable by up to 9 months in jail and up to a $5,000 fine. The court shall also order the forfeiture of any fish or proceeds obtained as a result of the offense. The court may order forfeiture of any and all gear used in the offense. The commission of a Class A offense may result in the suspension of the defendant's fishing privileges for a period not to exceed one year.

(b) Class B Offense. A Class B offense is a misdemeanor punishable by up to 6 months in jail and up to a $2,500 fine. The court shall also order the forfeiture of any

fish or proceeds obtained as a result of the offense. The court may order forfeiture of any and all gear used in the offense. The commission of a Class B offense may result in the suspension of the defendant's fishing privileges for a period not to exceed 3 months. A third or greater Class B offense committed within one year of the first Class B offense shall be a Class A offense.

(c) Class C Offense. A class C offense is a civil offense for which the defendant will be required to appear in court for a preliminary hearing (mandatory appearance). Up to a $1,500 penalty shall be imposed for the commission of a Class C offense, plus any fish or proceeds obtained as a result of the violation. However, the court may consider any mitigating circumstances and reduce the penalty accordingly. A third or greater Class C offense committed within one year of the first Class C offense shall be a Class B offense.

(d) Class D Offense. A class D offense is a civil offense for which the defendant will be required to appear in court for a preliminary hearing (mandatory appearance). Up to a $500 penalty shall be imposed for the commission of a Class D offense, plus any fish or proceeds obtained as a result of the violation. However, the court may consider any mitigating circumstances and reduce the penalty accordingly.

(e) Class E Offense. A class E offense is a civil offense for which the defendant will not be required to appear in court for a preliminary hearing. Up to a $100.00 penalty shall be imposed for the commission of a Class E offense, plus any fish or proceeds obtained as a result of the offense. However, the court may consider any mitigating circumstances and reduce the penalty accordingly. (Res. 2003-104 (part), passed Aug. 11, 2003)

14.1.51. Prohibited Acts. (a) Manner of Fishing. (1) Exceeding Bag Limit. It shall be unlawful for any person to kill, take, or catch any species of fish in excess of the number fixed as the bag limit in applicable regulations. Violation of §14.1.06 or §14.1.07 is a Class C offense.

(2) Interference with Another's Gear. It shall be unlawful for any person to move, remove, steal, handle, or net pick any other person's gear or property without permission of that person. Violation of this subsection is a Class B offense.

(3) Illegal Dumping. It shall be unlawful for any person to abandon gear (§14.1.04(1)) or discard any object, debris, or waste related to the act of fishing upon any property or in any waters. Violation of this subsection is a Class D offense.

(b) Fish. (1) Illegal Possession of Fish. It shall be unlawful for any person to possess or control fish taken in violation of this chapter or tribal regulations. Violation of this subsection is a Class D offense.

(2)Wasting Fish. It shall be unlawful for any person to waste (§14.1.4(58)) fish taken in any usual and accustomed fishing area of the tribe. Violation of this subsection is a Class B offense.

(3) Illegal Sale of Fish. It shall be unlawful to sell fish in violation of this chapter or tribal regulations. Violation of this subsection is a Class C offense.

(c) Miscellaneous. (1) Fishing under the Influence of Intoxicants. It shall be unlawful for any person to fish while in possession of or under the influence of alcohol or intoxicants. For the purposes of this section “under the influence” has the same meaning as STC §7.25.01(1)(a)-(d). Violation of this subsection is a Class C offense.

(2) Destruction of Posted Official Regulations. It shall be unlawful for any person to destroy, tear down, shoot at, deface, or erase any official printed matter or signs authorized by the tribal council or fish and wildlife committee advising tribal members of tribal fishing regulations. Violation of this subsection is a Class C offense.

(3) Health Violations. It shall be unlawful to violate any health regulations implemented pursuant to §14.1.13. Violation of this section is a Class C offense.

(4) Other Violations. In addition to the prohibited acts set out above, it shall be unlawful for any member to violate any other provision of this chapter, any regulation adopted by the tribal council or fisheries director, any emergency regulation, or any other requirement contained herein, which is now in effect or hereafter may be promulgated. Violation of this subsection is a Class C offense. (Res. 2003-104 (part), passed Aug. 11, 2003; renumbered for consistency Jun. 12, 2007)