

TITLE 7

HOH FISHING AND HUNTING CODE

Chapters:

- 7.1 Fishing Ordinance
- 7.2 Hunting Ordinance

Chapter 7.1

FISHING ORDINANCE

Sections:

GENERAL PROVISIONS

- 7.1.01. Title.
- 7.1.02. Policies.
- 7.1.03. Jurisdiction.
- 7.1.04. Definitions.

FISHERIES MANAGEMENT

- 7.1.05. Fisheries Manager.
- 7.1.06. In-Season Regulations.
- 7.1.07. Annual Regulations (Note: this section is missing)
Emergency and Special Regulations (Note: Should this be added?)
- 7.1.08. Resource Committees; Fish & Wildlife Committee and Shellfish Committee.
- 7.1.09. Intergovernmental Agreements.
- 7.1.10. General Closure.
- 7.1.11. State Law Not Applicable.
- 7.1.12. Monitoring by Federal and State Agencies.
- 7.1.13. Shellfish Sanitation.

ELIGIBLE FISHERS

- 7.1.14. Identification Required.
- 7.1.15. Eligible Fishers: Enrolled Members.
- 7.1.16. Eligible Fishers: Spouses.

**HOH FISHING AND HUNTING CODE
TITLE 7**

- 7.1.17. Eligible Fishers: Minors.
- 7.1.18. Fisheries Biology Personnel.
- 7.1.19. Observers/Technical Advisors.
- 7.1.20. Test Fishing.
- 7.1.21. Payment of All Taxes and Fees Required. RESERVED.
- 7.1.22. Reporting of Catch – Fish Tickets.

FISHING BOATS AND GEAR

- 7.1.23. Regulation of Fishing Fleet - Policy Considerations
- 7.1.24. Boating Safety - Legal Firearms.
- 7.1.25. Manner of Fishing - Legal Gear.
- 7.1.26. Tribal Owners and Operators of Fishing Boats.
- 7.1.27. Registration/Identification of Fishing Boats/Gear.
- 7.1.28. Boat Purchase Contract.

SELLING AND BUYING OF FISH

- 7.1.29. Sale of Fish.
- 7.1.30. Dealer/Buyer Licensing.
- 7.1.31. Authorization of Buyers.

ENFORCEMENT

- 7.1.32. Fish and Wildlife Officers.
- 7.1.33. Nature of Violations.
- 7.1.34. Criminal Citation.
- 7.1.35. Civil Citation.
- 7.1.36. Mandatory Court Appearance.
- 7.1.37. Resolution Without Court Appearance.
- 7.1.38. Mitigation Hearing – Civil Offenses Only.
- 7.1.39. Hearing to Contest the Charge.
- 7.1.40. Failure to Appear for Hearing or Pay Fine.
- 7.1.41. No Right to Appointed Counsel for Civil Offense.
- 7.1.42. No Right to Jury Trial for Civil Offense.
- 7.1.43. Seizure.
- 7.1.44. Return of Property.
- 7.1.45. Forfeiture Procedure.
- 7.1.46. Disposition of Property Forfeited.
- 7.1.47. Loss of Treaty Fishing Right.
- 7.1.48. Conviction as Bar.

**HOH FISHING AND HUNTING CODE
TITLE 7**

VIOLATION – PENALTIES

- 7.1.49. Classification of Offenses.
- 7.1.50. Prohibited Acts – Manner of Fishing.
- 7.1.51. Prohibited Acts – Eligible Fishers.
- 7.1.52. Prohibited Acts – Fish.
- 7.1.53. Miscellaneous Provisions.

CONSTRUCTION OF ORDINANCE

- 7.1.54. Effective Date.
- 7.1.55. Construction.
- 7.1.56. Severability.

**HUNTING
(Reserved)**

7.2. Reserved

HOH FISHING AND HUNTING CODE
TITLE 7

GENERAL PROVISIONS

7.1.01. Title. This Chapter shall be known as the Hoh Fishing Ordinance. It supersedes all previous ordinances regarding fishing (as defined below) for the Hoh Tribe.

7.1.02. Policies. It is the policy of the Hoh 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 providing food and income for Hoh Indian families and only secondarily for sport or recreation purposes. Nothing herein shall be construed as a relinquishment, abrogation, or abridgement of any Hoh treaty right.

7.1.03. Jurisdiction. The Hoh Tribal Court shall have jurisdiction over all actions arising under this Chapter pursuant to the Hoh Tribal Code and regulations promulgated pursuant to this Chapter.

- (1) This ordinance, and the rules and regulations adopted pursuant to this ordinance, and the jurisdiction of the Tribal Court shall apply to all authorized fisherman or fish product dealers, all members, at all usual and accustomed fish grounds, and stations of the Tribe, including both on and off reservation fishing, and including commercial, subsistence and ceremonial, sport fishing, and commerce. It shall apply to all persons wherever found within the boundaries of the reservation.
- (2) Entry onto the reservation is deemed consent to the jurisdiction of the tribal court and to the application of this ordinance, and pursuant regulations.
- (3) Nothing herein shall constitute a waiver of the Hoh Tribal Treaty rights nor recognition of state power to close or otherwise regulate usual and accustomed fishing places or activities.

7.1.04. Definitions. Unless another meaning is specified or required by context, the following terms when used in this Chapter shall have the meaning indicated below. When words are specially capitalized, that means they take the defined meaning of this section and not another more general meaning. Words used in the plural will not have a different definition unless the specific provision so indicates in that paragraph.

- (1) "Abandoned gear" shall mean any fishing gear which has been discarded or left unattended for greater than 8 (eight) hours on any property or in any waters in which no arrangement for the storage of fishing gear exists.
- (2) "Anadromous fish" shall mean any fish which spawns or is artificially produced in freshwater, reaches mature size while rearing in saltwater and returns to freshwater to reproduce, and which spends any portion of its life cycle in the waters within the Western District of Washington.

HOH FISHING AND HUNTING CODE
TITLE 7

- (3) "Assisting" shall mean any act that helps another to fish, as defined in subsection (20) of this section.
- (4) "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 regulations promulgated pursuant to this Chapter for any period, or so specified and fixed as to size, sex or species.
- (5) "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.
- (6) "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.
- (7) "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.
- (8) "Buyer" shall mean a person who purchases fish for resale or other commercial purpose, including barter for monetary gain on a professional basis.
- (9) "Boldt" shall mean the U.S. District Court decision of 1974 in *United States, et al v. State of Washington, et al*, 384 F. Supp. 312 (W. Dist. Wash. 1974)
- (10) "Ceremonial and Subsistence Fishing" shall mean the taking of fish only for personal use or for use in traditional tribal ceremonies and/or for religious purposes. Only enrolled members of the Hoh Indian Tribe shall exercise ceremonial fishing rights. No ceremonial or subsistence fish shall be sold. Subsistence fishing can be used to support Hoh families that include non-members.
- (11) "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 regulations promulgated pursuant to this Chapter wherein it shall be unlawful to fish.
- (12) "Closed season" shall mean all the time during the entire calendar year excepting the "open season" as specified by this Chapter or regulations promulgated pursuant to this Chapter.

HOH FISHING AND HUNTING CODE
TITLE 7

- (13) "Commercial fishing" shall mean the harvesting of fish with the intent to sell them. Only fish caught in accordance with commercial fishing regulations promulgated pursuant to this Chapter may be sold.
- (14) "Conservation" shall mean those measures which are reasonable and necessary to the perpetuation of a particular run or species of Fish (defined term herein). "Reasonable" means that a specifically identified conservation measure is appropriate to its purpose; and "necessary" means that such purpose, in addition to being reasonable, must be essential to conservation.'
- (15) "Court" shall mean the United States District Court of the Western District of Washington or any higher federal court that may rule on Indian treaty fishing rights, unless others specified.
- (16) "Depth of net" shall mean the total distance between cork and lead lines measured perpendicular to either cork or lead line.
- (17) "Designated Fishing Location" shall mean any site designated by the Hoh Tribe within their Usual and Accustomed Fishing Grounds and Stations and includes those areas on the South side of the Hoh River historically designated and defined by family relationships and traditional river fishing ground maps. Other Designated Fishing Locations may be identified and a list of additional Designated Fishing Locations shall be developed. All fishing sites outside of the Hoh Reservation are considered first-come first-serve locations, open to any Tribal fisher.
- (18) "Drift Net (pole net)" gear shall mean a gill net which is not staked, anchored or weighted so that it may drift free.
- (19) "Fin Fish" shall include but not be limited to the genera Salmon and Oncorhynchus of the family Salmonidae and the genera Clupea of the family Clupeidae, specifically including the following:
- (A) Pacific herring;
 - (B) Chinook, also called spring, king, tye, or black mouth;
 - (C) Coho (also called silver salmon);
 - (D) Pink (also called humpback);
 - (E) Chum (also called dog or fall salmon);
 - (F) Sockeye (also called red or blue back);
 - (G) Steelhead;
 - (H) Cutthroat trout;
 - (I) Smelt;
 - (J) Atlantic salmon;
 - (K) Sardines;

HOH FISHING AND HUNTING CODE
TITLE 7

- (L) Whiting; and
- (M) Others that may be added.

- (20) "Fish" used as an adjective or verb and its derivatives, "fishing, fished," etc. shall mean any effort made to kill, disturb, harvest, capture, catch or gather fish at any usual and accustomed fishing grounds or stations of the Hoh Tribe on or off the Hoh Reservation.
- (21) "Fish," when used as a noun herein, shall mean any marine or freshwater seafood animal harvested for food, whether anadromous or not, whether finned or shellfish, including edible invertebrates and marine mammals; and including either the whole part of the animal or any fish products there from.
- (22) "Fish Ticket" or "Treaty Indian fish receiving ticket" shall mean a multi-copy accounting form required to be filled out upon the treaty commercial harvest of fish. Fish Tickets are available at the Hoh Fisheries Department and are required to be completed by all state or tribally licensed wholesale dealer/buyers.
- (23) "Fisheries Manager" shall mean the Tribal employee who is responsible for administering the Hoh Tribal Fisheries program. The Fisheries Manager shall be a qualified expert in fishery science and management.
- (24) "Fishing gear" shall mean all types and sizes of apparatus used to take fish as defined in this Chapter or by regulations promulgated pursuant to this Chapter, including but not limited to hooks, nets, spears, gaffs, lines, traps, and shovels. The functional definition of any type of gear may be modified by tribal regulation notwithstanding any definition contained herein.
- (25) "Fish and Wildlife Enforcement Officer(s)" shall mean the person or persons charged with the responsibility of enforcing this Chapter, and enforcing any regulations promulgated pursuant to this Chapter, and may include federal, state and other tribal fish and wildlife enforcement officers.
- (26) "Fisher" shall mean enrolled members of the Hoh Indian Tribe.
- (27) "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.
- (28) "Gear" shall mean all instruments and/or equipment used in Fishing, or for boating safety when one is engaged in such activities, including, but not limited to boat plaques, identification cards, life vests, radios, radar, motors, lines, nets, traps, pots, lures, hooks, or any other equipment or tools used in such activities, but not Vessels."

HOH FISHING AND HUNTING CODE
TITLE 7

- (29) "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.
- (30) "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 regulations promulgated pursuant to this Chapter.
- (31) "Hoh Indian People" shall mean enrolled members of the Hoh Indian Tribe.
- (32) "Hook and line" shall mean a single hook, line and sinker.
- (33) "Management area" shall mean an area designated as a management and catch reporting area by the Hoh 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.
- (34) "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.
- (35) "Marine Mammal" shall mean any animal covered by the Marine Mammal Protection Act of 1972, as amended in 1974 (16 U.S.C. 1361 *et seq.*) or federal regulations promulgated thereunder, including but not limited to whales, porpoises, seals, sea lions, and marine otters that the Hoh Tribe may have traditionally fished for in the Pacific Ocean.
- (36) "Member" shall mean any person who is enrolled in the Hoh Indian Tribe.
- (37) "Minor" shall mean any person under the age of 18 (eighteen).
- (38) "Native Fish Stock" shall mean any anadromous or non-anadromous fish born within the usual and accustomed fishing places of the Hoh Tribe that are not hatchery produced.
- (39) "Net length measure" shall mean the length of any net measured along the cork or top line.
- (40) "Non-anadromous fish" shall mean any bony or cartilaginous finned fish other than Anadromous Fish, as defined hereinabove, and includes any separate parts of such fish.
- (41) "Non-member" shall mean any person who is not enrolled in the Hoh Indian Tribe.

HOH FISHING AND HUNTING CODE
TITLE 7

- (42) "Off reservation" shall mean all lands, waters, beds, streams and tidelands located outside the boundaries of the Hoh Indian Reservation.
- (43) "On reservation" shall mean all areas within the exterior boundaries of the Hoh Indian Reservation, including all lands, waters, beds, and tidelands thereof, as reserved in the Treaty of Olympia of 1855 and subsequent Executive Orders.
- (44) "Open season" shall mean the time specified by regulation when it is lawful to fish.
- (45) "Other Invertebrate" shall mean any invertebrate other than Shellfish
- (46) "'Person" shall mean any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, business trust, municipal corporation, corporation, association, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, for profit, for nonprofit purposes, or otherwise."
- (47) "Purse seining" shall mean the use of gear for Fishing that consists of a lead line, cork line, auxiliary lines, line and purse rings and mesh net webbing, fashioned to encircle fish and prevent their escape under the bottom or lead line of the net by drawing in the bottom of the net with the purse line so that it forms a closed bag – a "bund" located at the end of the net forms the bag holding the catch after the net is pursed; this is the last portion of the net to be pulled aboard the catching Vessel.
- (48) "Regulation" shall mean any rule, regulation, resolution or ordinance promulgated pursuant to this Chapter or promulgated pursuant to any other laws or codes of the Hoh Tribe.
- (49) "Reservation" shall mean all lands, waters, river beds and tidelands lying within the exterior boundaries of the Hoh Indian Reservation, Washington.
- (50) "Resource Committees" shall mean a number of members occasionally appointed by the Tribal Business Committee formed to provide the Fisheries Director and Tribal Business Committee with input regarding particular resource issues. Examples include but are not limited to the Fish and Wildlife Committee advising on finfish and hunting issues, and the Shellfish Committee advising on invertebrate issues.
- (51) "Round-hauling" shall mean any fishing method utilizing gear to encircle the fish.
- (52) "Run" shall mean a fishery management unit of Anadromous Fish returning to the same river at the same time. Hatchery and wild Runs returning to the same river that are managed separately and can be harvested on a separate basis in the Hoh

HOH FISHING AND HUNTING CODE
TITLE 7

River System or other lakes and streams within the Hoh Usual and Accustomed Fishing Area shall be considered separate runs, unless otherwise agreed by the Tribe or ordered by the federal court.

- (53) "Set Net" shall mean any gill net that is attached to a stationary object or objects and which remains in a fixed location when fishing.
- (54) "Shellfish" shall mean aquatic invertebrate animals or any separate parts of such animals that are harvested or caught for consumption in the Usual and Accustomed Fishing Grounds and Stations of the Hoh Tribe, including but not limited to mollusks and crustaceans, and specifically including the following:
- (A) Native littlenecks or steamers;
 - (B) Butter clams;
 - (C) Cockles;
 - (D) Horse clams;
 - (E) Manila clams;
 - (F) Rock Oysters;
 - (G) Mussels;
 - (H) Barnacles;
 - (I) Limpets;
 - (J) Crab;
 - (K) Razor clams;
 - (L) Sea cucumbers;
 - (M) Sea Urchins (*Strongylocentrotus*);
 - (N) Shrimp;
 - (O) Octopus;
 - (P) Moon snail;
 - (Q) Scallops; and
 - (R) Chitin.
- (55) "Spouse" shall mean a non-enrolled wife or husband, recognized under tribal law or custom or under State Law.
- (56) "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 of any three consecutive meshes, then measuring the middle mesh of the three while under tension.
- (57) "Sport Fishing" shall mean the taking of fish for recreational benefits and by which the fish are not sold.

HOH FISHING AND HUNTING CODE
TITLE 7

- (58) "Subsistence Fishing" shall mean fishing for personal consumption by a Member of the Hoh Tribe and his/her respective Family."
- (59) "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.
- (60) "Tidelands" shall mean that area from the vegetation line to the line of extreme lower low tide.
- (61) "Treaty fishing rights" shall mean those rights reserved by the Treaty of Olympia of 1855 between the Hoh Indian Tribe and the United States Government.
- (62) "Treaty of Olympia" shall mean the treaty between the United States of America and ancestors of the Quileute, Quinault, and Hoh Tribes, codified as 12 Stat. 97, II Kappler 719; initially signed as Treaty of Quinault River on July 1, 1855 and reauthorized in Olympia, January 25, 1856; ratified March 8, 1859, and proclaimed April 11, 1859, and which provides, among other things for the treaty right to fish for tribal descendants of the treaty signatories.
- (63) "Treaty Resources or Treaty Natural Resources" shall mean those natural resources used by the Hoh Tribe for subsistence, ceremony or commerce both at or before treaty times and in the present, both on and off the Reservation and in the lands and waters and other areas used by the Hoh Tribe prior to the Treaty of Olympia which may be obtained by fishing, gathering or hunting.
- (64) "Treaty Right Fisherman" shall mean one who is an enrolled member of a Tribe having a federally recognized treaty with the United States of America, either as described in the Boldt decision, subsequent sub-proceedings thereof, or any other applicable federal decision or regulation of the Hoh Indian Tribe's treaty rights for Fishing.
- (65) "Tribal Business Committee" shall mean the elected governing body of the Hoh Indian Tribe as prescribed in Article III of the Hoh Constitution.
- (66) "Tribal Fishers" shall mean any Hoh Tribal Member, or the spouse of a Hoh Tribal Member when accompanied by their Hoh Tribal Member Spouse, who is exercising any tribal fishing right or who is assisting in the exercise of treaty fishing rights pursuant to tribal authorization.
- (67) "Tribe" shall mean the Hoh Indian Tribe of the Hoh Indian Reservation.
- (68) "Tribal Court" shall mean the Court system established by the Hoh Tribe for the purpose of administering any ordinances, and other laws, codes and regulations of the Hoh Tribe.

HOH FISHING AND HUNTING CODE
TITLE 7

- (69) "Troll line" shall mean a fishing line used to drag lures or fresh bait behind a moving vessel.
- (70) "Usual and accustomed" or "U&A" shall mean the Usual and Accustomed Fishing ground, stations and areas beyond the external boundaries of the Hoh Reservation that were reserved by the ancestors of the Hoh Tribe under the Treaty of Olympia, as subsequently interpreted by the Courts in the Boldt decision and its sub-proceedings, other federal court proceedings, and federal regulations regarding the tribal fishery in the freshwater and Pacific Ocean off Washington State (often referred to as the Usual and Accustomed Area)."
- (71) "Vessel" shall mean any type of boat of any material and any size, used for Fishing, including not only the Vessel used for harvest and transport of the Fishermen, but also any appurtenant life rafts or small boats used with it.
- (72) "Wastage" or "waste" shall mean 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 Manager.

FISHERIES MANAGEMENT

7.1.05. Fisheries Manager.

The Natural Resources Director shall be responsible for hiring a Fisheries Manager who shall be responsible for:

- (1) Managing the Hoh tribal fisheries program which includes but is not limited to harvest sampling, abundance forecasting, spawning escapement estimation, harvest model updating and maintenance, genetic stalk identification, and representing the Hoh Tribe in local and national resources preservation associations, etc.;
- (2) Drafting and recommending fishing regulations for adoption by the Tribal Business Committee;
- (3) Issuance of tribal ceremonial and subsistence fishing permits;
- (4) Fisheries enhancement efforts of the Hoh Indian Tribe; and
- (5) Carrying out any other duties delegated under this Chapter or by the Natural Resources Director and/or the Tribal Business Committee.

HOH FISHING AND HUNTING CODE
TITLE 7

7.1.06. In-Season Regulations.

- (1) The Fisheries Manager shall have the authority to recommend to the Tribal Business Committee in-season regulations relating to all aspects of the fishery. The Fisheries Manager shall provide seven (7) days' notice of all proposed regulations and the date that the regulation will be considered by the Tribal Business Committee. The Tribal Business Committee shall utilize any appropriate method to provide actual or constructive notice to fishers when a new regulation is adopted.
- (2) All in-season regulations shall be consistent with this Chapter and any applicable federal laws or agreements to which the Tribe is a party.
- (3) The Natural Resources Director (and/or the Fisheries Manager) may close any shellfish harvest area or part thereof to the harvest of shellfish whenever a potential concern for public health has been identified. Minimally, the Natural Resources Director (and/or the Fisheries Manager) shall post a notice whenever such a concern is identified.
- (4) In-season regulations shall be effective upon their adoption by the Tribal Business Committee or as provided in the in-season regulations and shall be enforced upon actual or constructive notice to a Tribal Fisher.
- (5) Seventy -five percent (75%) of all Hoh Tribal Fishers authorized to harvest during the respective season may petition the Tribal Business Committee to review any in-season or other regulation promulgated pursuant to this Chapter. The Tribal Business Committee shall at an open Tribal Business Committee meeting determine whether the challenged regulation shall remain in effect, be rescinded, or be modified.
- (6) All regulations enacted by the Tribal Business Committee shall remain in full force and effect until modified.

7.1.07. Regulations.

- (1) Fishing and fish commerce will be regulated in accordance with the general provisions and annually promulgated regulations as to gear, locations, season, and other matters deemed advisable by the Fish and Game Resource Committee to conserve the Tribal fish and shellfish resources and provide for the orderly exploitation thereof and continuation of the traditional aspects of Indian fishery culture.
- (2) No person shall enact Annual Fishing Regulations except the Hoh Tribe Fish and Game Resources Committee under authority of this Ordinance and the

HOH FISHING AND HUNTING CODE
TITLE 7

Constitution and By-Laws of the Hoh Tribe Fish and Game Resources Committee.

- (3) The Tribal Business Committee and Fish and Game Resources Committee are prohibited from enacting laws affecting the fishing and commerce opportunity of any person, except in specific cases where the following provisions have been met:
 - (a) A complete and accurate report of the total fish harvested by affected Treaty parties by individual fishery name has been verbally presented at a hearing by technical fisheries experts and has been read into the record.
 - (b) A biological impact statement specifically related to the regulatory proposal has been presented at a hearing by one or more parties and read into the record.
 - (c) A Indian cultural impact statement describing accurately the effects of the regulatory proposal on traditional Tribal fishing and commerce practices has been read into the record at a hearing.
- (4) The Hoh Tribal Technical Fisheries Management Program Management shall submit recommended annual commercial fishing regulations to the Tribal Fish and Game Resource Committee, including technical justifications for the regulatory proposal. The technical justifications shall be in the form of a written report. The fish and Game Resources Committee shall, after consultation with the fisheries program manager and the appointed Tribal Fisheries attorney, convene a Tribal hearing for the purpose of obtaining recommendations, criticism, objection on the regulatory proposal(s). All hearing records shall be maintained by the secretary of the Fish and Game Resources Committee as provided in the Committee constitution and by-laws, Article VI section 2. The records shall be maintained on a on-going basis.
- (5) The annual fishing regulations shall be effective when enacted by the Fish and Game Resources Committee and shall remain in effect until rescinded by the Committee.
- (6) Nothing in this ordinance shall be construed in a manner that will diminish the right of the people to vote directly any laws by referendum.
- (7) Complete and accurate copies of proposed regulations and enacted regulations shall be made available for any person to reference and/or inspect at the Tribal office, fisheries, office, and Fish and Wildlife Officer.

HOH FISHING AND HUNTING CODE
TITLE 7

(8) Emergency and Special Regulations

- (a) The Tribal Business Committee is empowered by its constitution and by-laws to change the annually promulgated fishing regulations on a special or emergency basis in the interest of conservation or orderly exploitation of the fish and/or shellfish resources. Such changes shall be made public by posting notice of such change at the Tribal office, and the fisheries office and at the fishing location that is affected.
- (b) Notice of special or emergency closures and permitted periods of fishing shall be posted 12 hours prior to their effective time at the Tribal office, fisheries office, and fishing locations that are effected, in a conspicuous manner.

7.1.08. Resource Committees: Fish & Wildlife Committee and Shellfish Committee.

- (1) The Tribal Business Committee may, at its discretion, create Resource Committees, including a Fish & Wildlife Committee and a Shellfish Committee.
- (2) Responsibilities. In regards to their respective issues, the general responsibilities of the Fish & Wildlife Committee and Shellfish Committee may include:
 - (a) Representing the various groups of fishers and/or hunters in an advisory capacity; and
 - (b) Attending meetings and advising the Natural Resources Director concerning:
 - (1) Fishery/hunting management strategies (enhancement, enforcement, etc.);
 - (2) Fisheries/hunting regulations (in-season, emergency and annual); and
 - (3) Fisheries/hunting codes.
 - (c) Being involved in the presentation and organization of meetings which inform the general body of fishers/hunters regarding management and policy issues.
- (3) Eligibility. Any Hoh tribal member is eligible for appointment to the Fish & Wildlife or Shellfish Committees, provided they are not in violation of this Chapter or regulations promulgated pursuant to this Chapter.
- (4) Composition. The Fish & Wildlife Committee may be comprised of five members appointed by the Tribal Business Committee for two-year terms which may be

HOH FISHING AND HUNTING CODE
TITLE 7

staggered. A quorum of five (5) members is recommended when issues are brought to a vote. The Tribal Business Committee shall attempt, but is not bound, to appoint persons from the following categories:

(a) Three Hoh Tribal Member Tribal fishers and,

(b) Two (2) hunters.

(5) Removal. The Tribal Business Committee may remove any Committee Member upon good cause.

7.1.09. Intergovernmental Agreements. The Natural Resources Director or his designee is authorized to assist the Tribal Business Committee in negotiating 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 Tribal Business Committee.

7.1.10. General Closure. Fishing within the Hoh Indian Reservation and all areas off-reservation fished by the Hoh Indian Tribe is closed to tribal fishing unless specifically opened by properly adopted annual or in-season regulations promulgated pursuant to this Chapter.

7.1.11 State Law Not Applicable. No act prohibited by this Chapter or by regulations promulgated pursuant to this Chapter or by any other applicable tribal ordinance or regulation may be permitted by tribal fishers even though such act would be lawful under the laws of the State of Washington.

7.1.12. Monitoring by Federal and State Agencies. Authorized federal and state officials are permitted to board tribal vessels and monitor tribal fishing activities outside the Hoh Indian Reservation but only to the extent that the monitoring is:

(1) Authorized by Congress; or

(2) Expressly authorized by the Hoh Tribal Business Committee pursuant to this section or applicable law.

7.1.13 Shellfish Sanitation.

(1) 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 Sub-proceeding 89-3 (W.D. Wash., May 1994). Due to the human health concerns associated with bivalve molluscan shellfish which are frequently transported and

HOH FISHING AND HUNTING CODE
TITLE 7

often consumed uncooked, the commerce of such species 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.

- (2) Those bivalve shellfish being purchased or harvested for resale by Hoh Tribal Members need to first acquire a Shell Stock Shipper Certification as described in Section 7.1.30(5)(b).

ELIGIBLE FISHERS

7.1.14. Identification Required.

- (1) All Hoh Tribal Members eligible to fish or observe under this Chapter must obtain a valid Hoh Tribal identification card or permit where applicable prior to fishing. A valid identification card or permit must be in the physical possession of the person at all times when:
 - (a) Fishing or observing;
 - (b) Traveling to or from fishing activity; and
 - (c) Engaged in the sale of fish or fish products.
- (2) The following persons must have a valid identification card or permit in their physical possession when fishing:
 - (a) Non-member assistant spouse of member;
 - (b) Fisheries Biology Personnel. See Section 7.1.18 below.
- (3) The card shall contain the following information:
 - (a) Name, photograph and physical description of the cardholder;
 - (b) Enrollment number (if applicable); and
 - (c) Tribal affiliation (if applicable).
- (4) Observers/technical advisors must have a valid identification card or permit in their physical possession when fishing.

HOH FISHING AND HUNTING CODE
TITLE 7

- (5) A non-member spouse who wishes to assist his or her member spouse in the exercise of his/her treaty fishing rights shall be issued a special permit which shall contain the information deemed necessary by the Fisheries Manager. The non-member spouse must supply a tribal or State Certified Marriage license to the Fisheries Department. The Tribal Business Committee may from time to time establish, by regulation, a fee for the issuance of said permit. All spousal permits are non-transferable and valid until the event of a legal separation or divorce from the Tribal member spouse or the death of the Tribal member spouse.

- (6) All identification cards or permits issued pursuant to this Chapter shall remain the property of the Hoh Indian Tribe and shall be returned to the Tribal Fisheries Department upon request of the Fisheries Manager or pursuant to forfeiture by tribal court order. All permits shall be issued on an annual basis.

- (7) The Natural Resources 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 Hoh Tribe is or may become or a party to.

7.1.15. Eligible Fishers: Enrolled Members. Only those persons enrolled in the Hoh Indian Tribe are eligible to exercise treaty fishing rights under this Chapter, unless otherwise provided in this Chapter.

7.1.16. Eligible Fishers: Spouses.

- (1) The non-member legal, state certified spouse of a Hoh tribal member may assist the member spouse in fishing; provided, that:
 - (a) The enrolled member is present during fishing; and
 - (b) The non-member spouse does not exercise treaty fishing rights of another tribe, if any; and
 - (1) If the non-member spouse has treaty fishing rights in another tribe, the non-member spouse must waive exercise of these rights during the scheduled fishing season each year in writing and addressed to the Tribal Business Committee.
 - (2) The non-member spouse, by engaging in the Hoh Tribal fishery, agrees to be bound by all provisions of this Chapter and any regulations promulgated pursuant to this Chapter, and expressly consents to the jurisdiction of the Hoh Tribe for all matters arising out of such exercise.
 - (c) The non-member spouse agrees to submit to the jurisdiction of the Hoh Tribal Court.

HOH FISHING AND HUNTING CODE
TITLE 7

7.1.17. Eligible Fishers: Minors.

- (1) No person under the age of eighteen (18) who is otherwise eligible to fish under this Chapter shall exercise treaty fishing rights unless:
 - (c) He/she is accompanied by an adult relative who is an enrolled member of the Tribe; or
 - (d) He/she is solely or substantially responsible for providing his/her own care and maintenance or that of his/her family; or
 - (e) There is a showing of extreme hardship.
- (2) The determination of whether there is a showing of extreme hardship sufficient to allow a minor to exercise treaty fishing rights shall be made by the Fish & Wildlife Committee, the Shellfish Committee or by the Tribal Business Committee, at the discretion of the Tribal Business Committee according to procedures established in regulations promulgated pursuant to this Chapter.
- (3) 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:
 - (a) Between the hours of 5:00 p.m. and 10:00 p.m. on any day immediately preceding a school day;
 - (b) At all hours permitted by regulation on days not immediately preceding a school day; and
 - (c) At all hours permitted by regulation during authorized school vacations.
- (4) No minor shall be issued a tribal identification card without the signed consent of his/her parent or guardian.
- (5) 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.
- (6) A parent or guardian who knowingly permits his/her minor child or ward to violate any provisions of this Chapter or regulations promulgated pursuant to this Chapter shall be subject to the same penalties as the minor child.

HOH FISHING AND HUNTING CODE
TITLE 7

- (7) A minor who violates the provisions of this section, 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.

7.1.18. Fisheries Biology Personnel.

- (1) Fisheries Biology Personnel of the Hoh Indian Tribe may take or possess fish of all species for scientific, management and/or enhancement purposes, provided that:
- (a) He/she is issued an identification card by the Natural Resources Director;
 - (b) He/she keeps a cumulative record of all fish so taken, which shall be produced for inspection upon request by the Natural Resources Director or the Tribal Business Committee; and
 - (c) Fish taken under the authority of this subsection are not to be sold or used by Fisheries Biology Personnel for personal gain but are to be disposed of only as directed by the Natural Resources Director or the Tribal Business Committee.
- (2) Any attempt by Fisheries Biology Personnel to circumvent this subsection or to abuse the privilege granted herein shall be grounds for disciplinary action under the Hoh Tribe's personnel policy up to and including immediate dismissal from employment with the Tribe.

7.1.19. Observers/Technical Advisors.

- (1) The Tribal Business Committee may authorize, by regulation, the use by Tribal Fishers of observers/technical advisors to observe/advise a Hoh Member if properly authorized by permit issued by the Tribe. However, the following conditions apply:
- (a) The observer/technical advisor shall not assist the Member in any way; and
 - (b) A Hoh Member shall be present at all times and responsible for ensuring that the observer/technical advisor has complied with this Chapter and any regulations promulgated pursuant to this Chapter.
- (2) The following information shall be provided to the Fisheries Department by the treaty fisher who will be observed/technically advised:
- (a) The name of the observer/technical advisor;

HOH FISHING AND HUNTING CODE
TITLE 7

- (b) Vessel identification, if any; and
 - (c) Type and location of fishery.
- (3) All fishers must provide to the Fisheries Manager a copy of any agreement between an observer/technical advisor and the fisher. The observer/technical advisor shall not be paid on a percentage of the harvest basis.
- (4) Observers/technical advisors may instruct and observe only and are prohibited from assisting in any other manner in any harvest pursuant to this Chapter. Any violation of this section shall result in the revocation of the observer/technical advisor's permit.

7.1.20. Test Fishing.

- (1) The Fisheries Manager may recommend to the Tribal Business Committee, a test fishery for the purpose of collecting management information regarding a particular species or stock regulated under this Chapter. The Fisheries Manager 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 Manager. There shall be no test fishery other than as directed by the Fisheries Manager.
- (2) Eligibility to participate in a test fishery will be limited to those fishers who meet the following requirements:
- (a) Only enrolled members, spouses, and biological personnel as defined in this Chapter who have obtained the identification as required by this Chapter;
 - (b) Fishers must be familiar with and have access to the appropriate gear as specified by the Fisheries Manager;
 - (c) Fishers must be familiar with the fishing area specified in the test fishery; and
 - (d) Fishers must agree to record and provide all information regarding the test fishery in a timely manner as requested by the Fisheries Manager.
- (3) 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 Manager or his or her designee.

HOH FISHING AND HUNTING CODE
TITLE 7

- (4) 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 Business Committee.

7.1.21. Payment of All Taxes and Fees Required.

The Tribal Business Committee may promulgate rules and regulations related to the payment of all taxes and fees authorized by this Chapter.

7.1.22. Reporting of Catch - Fish Tickets.

- (1) Any authorized fisher fishing for any purpose shall report their fish catch pursuant to regulations promulgated pursuant to this Chapter.
- (2) Each Fisher shall be responsible for including the following information on a fish ticket:
- (a) Date of harvest;
 - (b) Date of sale;
 - (c) Economic value;
 - (d) Gear type used;
 - (e) Number and/or total weight of each species or products (e.g., roe) thereof;
 - (f) The appropriate 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);
 - (g) If sold, the buyer to whom the catch was sold;
 - (h) Tribal identification number; and
 - (i) Another other information required by applicable law or as requested by the Fisheries Manager, Natural Resources Director, Fish and Wildlife Committee or Tribal Business Committee.
- (3) All Tribal fishers shall provide copies of any or all fish tickets to the Fisheries Manager or biological personnel upon request by the Fisheries Department.

FISHING BOATS AND GEAR

HOH FISHING AND HUNTING CODE
TITLE 7

7.1.23. Regulation of Fishing Fleet - Policy Considerations.

- (1) The Tribal Business Committee recognizes that appropriate management and conservation of the fishery resource may require the limiting of the tribal fleet, the type and numbers of gear authorized, the location where certain gear can be authorized, as well as other policy considerations.
- (2) The Fisheries Manager 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 Tribal Membership for comment. Proposed regulations, along with any recommendation or comments from the general membership, shall then be presented to the Tribal Business Committee for approval. No fleet restriction authorized under this section shall be implemented until approved by the Tribal Business Committee.
- (3) In considering the need for any limitation on the growth of the tribal fleet or direction of that growth, the Tribal Business Committee 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.
- (4) Affected fishers may appeal the Tribal Business Committee's decision to the Hoh 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.

7.1.24. Boating Safety -- Legal Firearms.

- (1) All ocean going vessels used in exercising tribal fishing rights shall conform to the current United States Coast Guard regulations applicable to similar craft in similar waters.
- (2) 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.
- (3) Individuals without any felony, domestic violence, or assault convictions or pending charges and with proper permits issued pursuant to Section 7.3.27, or individuals while in the act of protecting catch, gear, or personal safety, are authorized to utilize a shotgun with double 00 buckshot as ammunition.

7.1.25. Manner of Fishing -- Legal Gear.

HOH FISHING AND HUNTING CODE
TITLE 7

The Fisheries Manager shall recommend to the Tribal Business Committee, consistent with this Chapter, what gear is authorized in a particular season at a particular place and for a particular species.

7.1.26. Tribal Owners and Operators of Fishing Boats.

- (1) A Member shall secure through the Hoh Tribal Fisheries Department a vessel identification card. The identification card shall be either an owner's card or an operator's card.
- (2) An owner's card shall be available only to those tribal members who either own a boat or possess a boat pursuant to an approved boat purchase contract as provided in Section 7.1.28. Persons applying for an owner's card shall submit to the Tribe a photograph of the boat and a copy of his or her title to the boat or a copy of a contract to purchase the boat approved as provided in Section 7.1.28. An owner's card shall contain the information specified in Section 7.1.14.
- (3) An operator's card shall be available to any tribal member who does not possess a boat but wishes to assist a member possessing an owner's card in any fishing activity. Operator's cards shall contain the information specified in Section 7.1.14.

7.1.27. Registration/Identification of Fishing Boats/Gear.

- (1) All vessels used in the exercise of treaty fishing pursuant to this Chapter shall be:
 - (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 Section 7.1.28; or
 - (c) In the possession of a Member under a lease or lease/option to purchase from another member of the Tribe; and
 - (d) In compliance with those adopted regulations governing comprehensive identification of boats, including but not limited to boat type, length, name and gear.
- (2) Unless otherwise provided in this Chapter or regulations adopted hereunder, each fisher shall only operate the gear specified by the applicable Hoh Tribal fishery regulation. No gear shall be operated unless specifically authorized as provided in this section.

HOH FISHING AND HUNTING CODE
TITLE 7

(3) All gear shall be identified as follows:

(a) All vessels shall have a permanent boat identification sticker and annual validation sticker displayed in a manner consistent with U.S. Coast Guard regulations (Boat Tax Consent Decree of 1994, U.S. v Washington Sub-proceeding 88-1, (W.D. Wash., 1994))

(b) All nets of whatever type, all shellfish/fish pots and traps, and all containers used for the storage or transport of seafood (e.g., buckets, clam/oyster sacks, fish totes), shall be clearly identified and marked with the owner's tribal 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. 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.

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

7.1.28. Boat Purchase Contract.

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

- (a) A purchase agreement evidencing that the member is purchasing the boat or gear; and
- (b) A boat/gear survey provided by a professional marine surveyor.

(2) The Fish & Wildlife Committee shall review all purchase agreements and shall provide a recommendation to the Tribal Business Committee regarding the likelihood of success of the contract. The Fish & Wildlife Committee shall consider the following factors in formulating their recommendation:

- (a) Legal summary of contract as reviewed by tribal legal department;
- (b) Specifics of the contract (i.e., financial institution or firm holding the lien, payment schedule or associated business plan, down payment quantity, term of contract);
- (c) Fisher's experience operating this type of vessel/gear; and

HOH FISHING AND HUNTING CODE
TITLE 7

- (d) Circumstances which affect the availability of fish or fish value during the term of the contract.
- (3) The recommendations of the Fish & Wildlife Committee shall be reviewed by the Tribal Business Committee, which shall either approve or disapprove the contract. In addition to considering those factors set out in subsection (b) of this section, the Tribal Business Committee shall also consider the recommendation of the Fisheries Manager 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 policy set pursuant to Section 7.1.23 of this Chapter.
- (4) 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 Manager 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 Manager shall request a statement from the member regarding the likelihood of both contract failure and future contract compliance. The Fisheries Manager will then report to the Tribal Business Committee on the condition of the contract. If the Tribal Business Committee believes the risk of contract failure is significant, the Tribal Business Committee may revoke the member's authorization to use the described vessel under this Chapter.
- (5) Disapproval of a boat contract may be appealed to the Hoh 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.
- (6) 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.

SELLING AND BUYING OF FISH

7.1.29. Sale of Fish.

- (1) It is the responsibility of each fisher at the time of each fish sale to accurately and completely fill out the fish ticket in accordance with this Chapter. Improperly filled out fish tickets are in violation of this Chapter.
- (2) It shall be unlawful to sell any fish caught as subsistence or ceremonial harvest.

HOH FISHING AND HUNTING CODE
TITLE 7

- (3) A tribal fisher who sells fish to a person, organization, or other entity other than fish buyers licensed by the tribe, the state, or other treaty tribes shall contact the tribal Fisheries Department to report the sale within twenty-four (24) hours.

7.1.30. Dealer/Buyer Licensing.

- (1) Hoh Fish Dealer License. Every Hoh tribal member who receives for resale fish harvested in the exercise of Washington treaty Indian fishing rights shall be required to first obtain a Hoh Fish Dealers license.
- (2) Hoh Fish Buyer License. Every Hoh tribal member who receives such fish on behalf of a fish dealer licensed by any state or tribe shall be required to first possess a Hoh Fish Buyer's license, which shall be obtained by the dealer on whose behalf the buyer receives fish. No person may be licensed to buy fish on behalf of more than one Dealer.
- (3) Issuance, Validity, and Duration. Hoh Fish Dealer and Hoh Fish Buyer licenses shall be issued by the Fisheries Manager and shall be valid when signed by both the Fisheries Manager and the applicant. Each such license shall be valid from the date of issuance through the end of the season.
- (4) Persons Eligible for Licensing. Only enrolled Hoh tribal members are eligible to obtain a Hoh Fish Dealer or Hoh Fish Buyer license. Spouses may not be issued buyer or dealer licenses nor may they sign fish tickets on behalf of a dealer or buyer.
- (5) License Application.
- (a) Procedure. An applicant for a Buyer or Dealer license may apply in person at the Hoh Fisheries Department or by mail addressed to the Fisheries Manager. Mail applicants shall be sent an unsigned copy of the appropriate license application 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 Manager, the license shall be signed by the Fisheries Manager and returned to the licensee. In-person applicants shall deliver the appropriate license fee to the tribal comptroller or receptionist at the Hoh Tribal Center, and shall present a receipt of payment to the Fisheries Department together with the license application. If the license is not approved, the license fee shall be returned to the applicant.
- (b) 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 State of Washington Department of Health, or an equivalent certification from the Hoh Tribe. Applications for such certification may be obtained from the tribal Fisheries Department.

HOH FISHING AND HUNTING CODE
TITLE 7

Upon proof of such certification the Dealer license will be imprinted with an "S" by the tribal Fisheries Department. No buyer shall receive molluscan bivalve shellfish on behalf of a dealer who has not obtained such certification.

- (6) License Fees. In order to obtain or retain a Hoh Fish Dealer or Fish Buyer license, the applicant or licensee must pay an annual license fee of one hundred dollars (\$ 100) for a Dealer license, and twenty dollars (\$ 20) for a Buyer license.
- (7) Fisheries Department Staff Entry. All licensed Dealers and Buyers shall allow Tribal Fisheries Department staff to enter upon any premises where fish 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 an Emergency Revocation of the license of the Buyer and Dealer.
- (8) Daily Reporting. Tribal members who receive for resale fish harvested in the exercise of Washington treaty Indian fishing rights shall prepare and distribute copies of fish tickets in a manner that complies with Section 7.1.23. (Check cite). All fish ticket information must be made available to tribal Fisheries Department staff and Tribal Fish and Wildlife Officers upon demand. The tribal copy of each completed Fish Receiving Ticket must be mailed or delivered in person to the tribal Fisheries Department within one (1) working day of the landing date shown on the fish ticket. Licensed dealers and buyers shall maintain copies of all fish tickets they prepare for at least one (1) year.
- (9) Personal Purchases. Dealers or Buyers who receive for resale fish 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.
- (10)

Health Inspections. Dealers and Buyers shall permit reasonable inspection of their facilities and operations by federal and Hoh tribal health authorities, and by the State of Washington Department of Health, upon the concurrence of the Tribe.

- (11) License Suspension or Revocation.
- (a) If the Fisheries Manager has reason to believe that any person has failed to comply with the requirements of Section 7.1.30, the Fisheries Manager may issue a written Notice of Violation. The Notice of Violation shall state the date of the alleged violation and the ordinance provision(s) alleged to have been violated. The Notice of Violation shall be delivered in person or by first class mail,

HOH FISHING AND HUNTING CODE
TITLE 7

and shall be presumed received within three (3) days of mailing to the alleged violator's address as last given to the Fisheries Department.

- (b) The Notice of Violation may be accompanied by a Notice of Proposed License Suspension or Revocation. The Notice of Proposed License Revocation or Suspension shall state that it will become final and effective ten (10) days after receipt of notice, unless appealed as provided for in this Chapter. The Fisheries Manager may, for compelling reasons of public health or fisheries management, issue an Emergency Notice of License Suspension or Revocation which shall be effective upon receipt.
- (c) Within ten (10) days of receipt of a Notice of Proposed License Suspension or Revocation, the recipient may file a civil action for judicial review with the Hoh Tribal Court. The Court in such action may award only declaratory and related injunctive relief, including preliminary injunctive relief. The suspension or revocation of a license shall be automatically stayed during the pendency of such action; provided that an Emergency Suspension or Revocation shall not be stayed except upon order of the Court pending a preliminary injunction hearing.
- (d) The Court shall uphold the action of the Fisheries Manager unless it was arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.
- (e) The sovereign immunity of the Tribe is hereby waived only for the purpose of actions by Hoh tribal members brought in the Hoh Tribal Court under and in accordance with the terms of this section.

(12) 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.

7.1.31. Authorization of Buyers.

- (1) All Fish Buyers licensed by the State of Washington shall be authorized to purchase both fin fish and shellfish from tribal members fishing commercially pursuant to this Chapter, unless a Buyer is declared unauthorized pursuant to this section.
- (2) The Fisheries Manager, the Tribal Business Committee, or the Tribal Court may declare a Fish Buyer unauthorized to purchase fish from tribal fishers upon a

HOH FISHING AND HUNTING CODE
TITLE 7

showing that the buyer has disregarded the provisions of this or other applicable tribal law, defrauded a tribal fisher, or engaged in unfair or deceptive trade practices. The 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 from the list of authorized Buyers.

- (3) Tribal fishers shall be provided reasonable notice that a Buyer has been declared unauthorized to purchase fish from tribal fishers. A tribal commercial fisher who knowingly sells fish to an unauthorized Buyer shall be guilty of a violation of this Chapter.
- (4) No person who purchases fin fish or shellfish from Hoh tribal fishers is authorized to collect any tax.

ENFORCEMENT

7.1.32. Fish & Wildlife Officers

- (1) The Hoh Tribal Business Committee is responsible for hiring one or more persons to serve as Fish and Wildlife Officers.
- (2) The Tribal Business Committee shall have the power to enter into an agreement with another tribe or other law enforcement agency whereby the Fish and Wildlife Officer of the other tribe may act as a Fish & Wildlife Officer for the Hoh Indian Tribe.
- (3) The Fish and Wildlife Officers shall:
 - (a) Have the authority to enforce the provisions of this Chapter and all emergency and standard regulations promulgated pursuant to this Chapter; and
 - (b) Regularly patrol the land and waters of the reservation and the usual and accustomed fishing areas where tribal fishers are engaged in fishing.
- (4) The Tribal Business Committee may, upon request from a Fish and Wildlife Officer, appoint and deputize additional persons to assist the Fish and Wildlife Officer in the performance of his/her duties.
- (5) Fish and Wildlife Officers shall have the authority to arrest any tribal member/Indian person or detain any non-member spousal person fishing in violation of this Chapter when:

HOH FISHING AND HUNTING CODE
TITLE 7

- (a) There exists a valid warrant of arrest for the defendant known to the Officer; or
 - (b) A criminal offense occurs in the presence of the Officer; or
 - (c) The Officer shall otherwise have probable cause to believe that the defendant has committed a criminal offense.
- (6) Hoh tribal law enforcement officers shall have the authority to enforce the provisions of this Chapter and all regulations promulgated pursuant to this Chapter.

7.1.33. Nature of Violations.

Violations under this ordinance shall be designated as either:

- (1) A criminal violation; or,
- (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 alleged violator appearing before the Court.

Any violation for which a penalty is not explicitly set out in this Chapter shall be deemed a civil offense not requiring an appearance before the Court.

7.1.34. Criminal Citation.

Fish and Wildlife Officers have the discretion to issue a citation on a form approved by the Tribal Business Committee in lieu of making an arrest for a criminal violation, provided that:

- (5) The defendant has satisfactorily been identified;
- (6) The defendant has signed the citation;
- (7) The defendant ceases the activity which violated this Chapter;
- (8) The defendant has no history of previous failure to respond to lawful process of the Hoh Tribe; or
- (9) There is no substantial likelihood the defendant will refuse to respond to the citation.

HOH FISHING AND HUNTING CODE
TITLE 7

7.1.35. Civil Citation.

A Fish and Wildlife Officer may issue a civil citation for a civil violation of this Chapter or any regulations promulgated pursuant to this Chapter 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 Tribal Business Committee and shall include the following:

- (1) The name of the defendant;
- (2) The date, time and location of the incident;
- (2) The section of this Chapter which has been violated;
- (3) Whether or not a court appearance is mandatory;
- (4) The monetary penalty for the offense (unless the defendant is required to appear in court);
- (5) 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;
- (6) 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; and
- (7) Notice to the defendant (when an appearance is not required) that the fine must be paid or a hearing requested within seven (7) days of receiving the citation.

Nothing in this section shall preclude the Tribe from instituting proceedings by filing a civil complaint.

7.1.36. Mandatory Court Appearance.

- (1) 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.
- (2) At the preliminary hearing, the defendant shall either:

HOH FISHING AND HUNTING CODE
TITLE 7

- (a) Admit liability and pay the fine; or
- (b) Admit liability but request a mitigation hearing; or
- (c) Deny liability and request a hearing to contest the charge.

7.1.37. Resolution Without Court Appearance.

- (1) When a civil violation has occurred and the defendant is not required to appear in Court for a preliminary hearing, he/she shall, within seven (7) days of receiving a notice of violation, either:
 - (a) Admit liability and pay the fine;
 - (b) Admit liability and request a mitigation hearing to explain the circumstances surrounding the violation; or
 - (c) Deny liability and request a hearing to contest the violation.
- (2) No further proceedings shall be initiated against any defendant who pays the fine pursuant to subsection (a)(1) above.

7.1.38. Mitigation Hearing - Civil Offenses Only.

- (1) At the mitigation hearing, the defendant shall have the burden of proving mitigating circumstances.
- (2) At the mitigation hearing, the defendant may present evidence of mitigating circumstances and ask the Court to reduce the monetary penalty.

7.1.39. Hearing to Contest the Violation.

- (1) At a hearing to contest a civil violation, the Tribe shall have the burden of proving by a preponderance of the evidence that the defendant committed the violation.
- (2) If the Tribe does not meet its burden, the case shall be dismissed with prejudice.
- (3) If the Tribe does meet its burden, the defendant may present evidence of mitigating circumstances.

7.1.40. Failure to Appear for Hearing or Pay Fine.

- (1) Any person who does not appear for a hearing, or who fails to pay a fine within seven (7) days of receiving a citation under this Chapter, shall be deemed to

HOH FISHING AND HUNTING CODE
TITLE 7

have admitted committing the charged offense. The Court shall enter a default judgment against the defendant if it finds that:

- (a) The notice of infraction was issued;
- (b) The defendant was informed of the date and time of the hearing, or of his/her duty to pay the fine or request a hearing; and
- (c) The defendant did not appear at the appointed time and place, or did not pay the fine or request a hearing within seven (7) days of receiving the citation.

(2) The Tribe may institute a civil proceeding to collect the fine and up to an additional one-hundred-and-fifty-dollar (\$ 150.00) penalty.

7.1.41. No Right to Appointed Counsel.

No person shall be entitled to appointed counsel when the charged offense is a civil infraction.

7.1.42. 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.

7.1.43. Seizure.

- (1) A Fish and Wildlife 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.
- (2) When seizing fish or equipment, the Fish and Wildlife Officer shall follow the procedures below:
 - (a) The Fish and Wildlife Officer shall prepare a written inventory of each item seized and, if possible, make a photographic record. The Fish and Wildlife Officer shall make a reasonable attempt to identify the owner of the equipment. The owner/defendant, if present, shall receive a copy of the inventory; otherwise, the Fish and Wildlife Officer shall make a reasonable attempt to mail a copy to the owner/defendant.
 - (b) The Fish and Wildlife Officer shall, as soon as practicable, turn all seized fish over to the Community Fish Bank for distribution to Tribal members.
 - (c) All other equipment seized pursuant to this Chapter shall, as soon as practicable, be placed in the custody of the Tribal Enforcement Officer.

HOH FISHING AND HUNTING CODE
TITLE 7

Recovery of seized equipment shall be governed by Section 7.1.43 of this Chapter.

7.1.44. Return of Property.

Any person who has had equipment seized pursuant to Section 7.1.43 may petition the Court to issue an order of release of the fish and gear seized. The 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 Court shall expedite, to the extent practicable, all hearings requested under this section.

7.1.45. Forfeiture Procedure.

- (1) Upon the finding of a violation of this Chapter;
 - (a) the Court shall order the forfeiture of all fish proceeds derived in violation of this Chapter; and
 - (b) after notice and an opportunity for hearing, the Court may enter an order of forfeiture of any and all equipment seized pursuant to Section 7.1.43.
- (2) All unclaimed equipment seized for violation of this chapter for which the owner cannot be identified shall be forfeited. The Court shall order posting of a 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 (15) days after first posting of a notice of confiscation of unclaimed equipment, for a hearing on whether the equipment should be forfeited. Upon or after the date previously established for the hearing in the notice, the Court may enter an order forfeiting the equipment.

7.1.46. Disposition of Property Forfeited.

- (1) All equipment or proceeds forfeited by order of the Court shall be turned over to the Tribal Business Committee or its designee for the use and benefit of the Tribe or to be disposed of as appropriate.
- (2) Any equipment or proceeds not forfeited by order of the Court shall be returned to the owner/defendant after the completion of the case and after the fines, if any, have been paid.

7.1.47. Loss of Treaty Fishing Right.

HOH FISHING AND HUNTING CODE
TITLE 7

- (1) A Member who has been convicted of or has pleaded guilty to three offenses pursuant to Section 7.1.35 may have his/her privilege of exercising treaty fishing rights revoked for a period not to exceed twenty-four (24) months.
- (2) The Tribal Business Committee shall have the exclusive right to revoke a member's privilege to exercise treaty fishing rights pursuant to subsection (a) of this section. The Fisheries Manager may make recommendations on whether to take action under this section.
- (3) The Tribal Business Committee 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 (15) days prior to a Tribal Business Committee meeting called to decide the case. Hoh Law Enforcement officers may be used to serve the notice.
- (4) The notice required by subsection (c) of this section shall contain the following:
 - (a) A clear statement that the Tribal Business Committee 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 (24) months;
 - (b) A statement of the basis for the proposed action including a list of the convictions involved;
 - (c) The date that a hearing before the Tribal Business Committee will be held to consider the case;
 - (d) A statement that the Member has the right to appear before the Tribal Business Committee, to present evidence, to call witnesses, and to be represented by a spokesperson.
- (5) The Tribal Business Committee 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 Business Committee 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. If the Tribal Business Committee finds that the violations were serious, significantly affected the conservation of the resource, allocation, or intergovernmental relations, the Tribal Business Committee 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 Business Committee 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 implemented.

HOH FISHING AND HUNTING CODE
TITLE 7

7.1.48. Conviction as Bar.

- (1) At the recommendation of the Natural Resources Director, any person who has been convicted of a criminal offense under this Chapter may be prohibited for a period not to exceed one (1) year:
 - (a) From serving on the Fish and Wildlife Committee or Shellfish Committee; and/or
 - (b) From being employed by the Fisheries Department.
- (2) A person who has been convicted of a criminal offense related to this Chapter during his/her term of appointment or employment with the Fisheries Department may be removed from said office or employment at the recommendation of the Natural Resources Director for a period not to exceed one (1) year.

VIOLATION - PENALTIES

7.1.49. Classification of Offenses.

- (1) Class A Offense: A Class A offense is a criminal offense punishable by up to six (6) months in jail and up to a fine of five hundred dollars (\$500). The Court shall also order the forfeiture of any fish or proceeds obtained as a result of the violation. The Court may order forfeiture of any and all gear used in the commission of 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 twenty-four (24) months.
- (2) Class B Offense: A Class B offense is a criminal offense punishable by up to three (3) months in jail and up to a fine of four hundred dollars (\$400). The Court shall also order the forfeiture of any fish or proceeds obtained as a result of the violation. The Court may order forfeiture of any and all gear used in the commission of 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 three (3) months. A third offense of Class B or greater committed within one (1) year of the first Class B offense shall be a Class A offense.
- (3) 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). A penalty of up to three hundred dollars (\$300) shall be imposed for the commission of a Class C offense, plus forfeiture of any fish or proceeds obtained as a result of the violation. However, the Court may consider any mitigating circumstances and reduce the penalty accordingly.
- (4) 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). A

HOH FISHING AND HUNTING CODE
TITLE 7

penalty of up to two hundred dollars (\$200) shall be imposed for the commission of a Class D offense, plus forfeiture of any fish or proceeds obtained as a result of the violation. However, the Court may consider any mitigating circumstances and reduce the penalty accordingly.

- (5) 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. A penalty of up to one hundred dollars (\$100) shall be imposed for the commission of a Class E offense, plus forfeiture of any fish or proceeds obtained as a result of the violation. However, the Court may consider any mitigating circumstances and reduce the penalty accordingly.

7.1.50. Prohibited Acts – Manner of Fishing.

- (1) Failure to Fill Out Fish Ticket: Failure to fill out Fish Tickets as required by this Chapter is a Class C offense.
- (2) Fishing in Closed Waters: 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 Tribe while exercising treaty fishing rights pursuant to this Chapter. Violation of this subsection is a Class A offense.
- (3) Exceeding Bag Limit: It shall be unlawful for any person to kill, disturb, harvest, capture, catch take or gather any species of fish in excess of the number fixed as the bag limit. Violation of this subsection is a Class C offense.
- (4) 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.
- (5) Using Illegal Gear: It shall be unlawful to use gear not authorized by tribal law or regulation. Violation of this subsection is a Class B offense.
- (6) Failure to Tend Gear: It shall be unlawful to actively tend fishing gear less than once every twenty-four (24) hours. Violation of this subsection is a Class C offense.
- (7) Failure to Have Gear Properly Marked: It shall be unlawful to use gear that is not properly marked pursuant to tribal law or regulation. Violation of this subsection is a Class D offense.
- (8) Abandoned Gear/Illegal Dumping: It shall be unlawful for any person to abandon gear 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.

7.1.51. Eligible Fishers

HOH FISHING AND HUNTING CODE
TITLE 7

- (1) No Fishing Identification: It shall be unlawful for any person to exercise treaty fishing rights without having first obtained proper tribal identification. Violation of this subsection is a Class C offense.
- (2) Illegal Fishing by Minor: It shall be unlawful for a minor to fish in violation of this code. Violation of this subsection is a Class D offense.
- (3) Failure to Have Current Validation On Fishing Identification: It shall be unlawful to use an identification card without a current year validation stamp. Violation of this subsection is a Class D offense.

HOH FISHING AND HUNTING CODE
TITLE 7

- (4) Physical Possession of Identification When Fishing: It shall be unlawful to fish without physical possession of a proper identification card. Violation of this subsection is a Class C offense. Exercising Treaty Fishing Rights When Penalties or Taxes Are Owed: It shall be unlawful to exercise treaty fishing rights when penalties (i.e. fines) imposed have not been paid. Violation of this subsection is a Class B offense.

HOH FISHING AND HUNTING CODE
TITLE 7

7.1.52. Prohibited Acts – 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 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 regulations promulgated pursuant to this Chapter. Violation of this subsection is a Class C offense.
- (4) Sale of Fish Caught for Subsistence: It shall be unlawful to sell fish if they were caught with a subsistence license or in a subsistence only fishery. Violation of this subsection is a Class B offense.
- (5) Shellfish Sanitation: It shall be unlawful for any Member to fail to follow the National Shellfish Sanitation Program (NSSP) or equivalent sanitation program implemented by the Tribe, as it relates to the handling, transport and storage of bivalve molluscan shellfish. Violation of this subsection is a Class C offense.

7.1.53. Miscellaneous Provisions.

- (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. Violation of this subsection is a Class C offense.
- (2) Obstruction of Enforcement Officer: 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 law and regulations. Violation of this subsection is a Class A offense.
- (3) 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 Business Committee or Fish & Wildlife Committee advising tribal members of tribal fishing regulations. Violation of this subsection is a Class C offense.
- (4) Permitting Non-member to Assist: It shall be unlawful for any Member to permit any non-member to fish in violation of this Chapter. The Member is solely responsible for verifying whether the person assisting is authorized pursuant to this code. Violation of this subsection is a Class B offense.

HOH FISHING AND HUNTING CODE
TITLE 7

- (5) Adult Knowingly Permitting Minor to Violate Chapter: It shall be unlawful for an adult person to knowingly allow, encourage or direct a minor person to violate this Chapter. Violation of this subsection is a Class C offense.
- (6) Dealer/Buyer Violations: It shall be unlawful to violate the provisions of this Chapter. Violations of this subsection is a Class C offense.
- (7) Health Violations: It shall be unlawful to violate any health regulations implemented pursuant to this code. Violation of this subsection is a Class C offense.
- (8) 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 promulgated pursuant to this Chapter by the Tribal Business Committee or the Fisheries Manager, any emergency regulation, or any other requirement contained herein which is now in effect or may hereafter be promulgated. Violation of this subsection is a Class C offense.

CONSTRUCTION OF ORDINANCE

7.1.54. Construction.

This Chapter shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

7.1.55. Severability. If any provision of this Chapter is held invalid, the remainder of the Chapter shall not be affected.

7.1.56. Effective Date.

This ordinance as amended becomes effective upon approval by the Hoh Tribe Business Committee by Council Resolution.

**HOH FISHING AND HUNTING CODE
TITLE 7**