

TITLE 17

FISHING CODE

Chapter 17.01 General Provisions

17.01.01	Title.....	1
17.01.02	Declaration of Policy.....	1
17.01.03	Definitions.....	1
17.01.04	Jurisdiction.....	6
17.01.05	Specific Closure.....	7
17.01.06	Treaty Fishing Outside U and A Grounds Prohibited.....	7
17.01.07	Limited Entry.....	8
17.01.08	Liberal Construction.....	8
17.01.09	Informational Cross References.....	8
17.01.10	Civil Infraction Procedures for Fishing Code Violations.....	8
17.01.11	Notice of Violation.....	8
17.01.12	Hearing Scheduling by the Community Court—REPEALED.....	9
17.01.13	Hearing to Explain the Circumstances Surrounding the Violation-- REPEALED.....	9
17.01.14	Hearing to Contest the Facts—REPEALED.....	9
17.01.15	Severability.....	9

Chapter 17.02 Who May Fish

17.02.01	Enrolled Members.....	10
17.02.02	Minors.....	10
17.02.03	Fishing Vessel Assistance.....	12
17.02.04	Non-member Spouses - Shellfish Assistance.....	14
17.02.05	Non-members Finfishing Non-Commercially On-Reservation.....	15
17.02.06	Biological Personnel.....	15

Chapter 17.03 Required Identification And Permits

17.03.01	General Requirements.....	16
17.03.02	Tribal Fishing Identification Card.....	16
17.03.03	Subsistence and Recreational Fishing.....	17
17.03.04	Commercial Fishing and Shellfish Harvesting.....	18
17.03.05	Ceremonial Fishing.....	19

17.03.06 Fisheries Personnel 20

Chapter 17.04 Boat Ownership and Registration

17.04.01 Fishing Vessel Ownership 21
17.04.02 Fishing Vessel Registration..... 23
17.04.03 Use of Tribally Registered Boat by Unauthorized Person 24
17.04.04 Use of Purse Seiner 24
17.04.05 Boat Owner Safety Requirements..... 24

Chapter 17.05 Specific Gear Provisions

17.05.01 Marine Drift Nets 25
17.05.02 Purse Seine Nets..... 26
17.05.03 Set Nets 26
17.05.04 Beach Seines 27
17.05.05 River Gillnets 27
17.05.06 Hook and Line - Subsistence and Recreational Fishing 28
17.05.07 Shellfish - Hand-Held Gear Only 29
17.05.08 Shellfish Pots..... 29
17.05.09 Finfish Traps 29
17.05.10 Other Gear Prohibited - Exceptions 30
17.05.11 Rented or Leased Gear Ownership Prohibited..... 30
17.05.12 Marine Mammal Damage 30

Chapter 17.06 Special Provisions for On-Reservation Fisheries

17.06.01 On-Reservation Net Finfishing - Exclusive to Tribal Members 31
17.06.02 Special On-Reservation Net Finfishing Regulations..... 31
17.06.03 Port Gamble Bay Mouth Closure..... 32

Chapter 17.07 Catch Reporting And The Sale Of Fish

17.07.01 Sale of Fish and Shellfish 32
17.07.02 Completion of Fish Tickets 34
17.07.03 Tax on Fish Sold Commercially 35
17.07.04 Buyer Licensing 37
17.07.05 On-Reservation Fish Buyers 38

17.07.06	Marine Mammal Reporting Cards	38
----------	-------------------------------------	----

Chapter 17.08 Fisheries Administration

17.08.01	Fisheries Manager Responsibilities	39
17.08.02	Fisheries Committee - Membership and Responsibility	39
17.08.03	Adoption of Annual and Seasonal Regulations	41
17.08.04	Notice of Regulations	42
17.08.05	Emergency Regulations.....	43
17.08.06	Delegation to Treaty Council - In-Common Fishery Management	43
17.08.07	Fishing Areas/Catch Reporting Districts	44
17.08.08	Test Fishing	44

Chapter 17.09 Enforcement

17.09.01	Fisheries Enforcement Officers	47
17.09.02	Cross Deputization	49
17.09.03	Complaint or Citation to Tribal Court	49
17.09.04	Failure to Appear	50
17.09.05	Arrest	50
17.09.06	Notification of Rights Upon Arrest	51
17.09.07	Citation in Lieu of Arrest (Repealed)	51
17.09.08	Searches Without Warrant - Probable Cause.....	51
17.09.09	Searches Without Warrant - Protective, Pursuant to Arrest.....	52
17.09.10	Search Warrants	52
17.09.11	Seizure Upon Arrest or Citation	52
17.09.12	Seizure - Inventory	53
17.09.13	Seizure - Sale of Seized Fish and Shellfish.....	53
17.09.14	Seizure - Shellfish Taken from Closed Beach.....	53
17.09.15	Seizure - Storage of Seized Property	54
17.09.16	Seizure - Return of Seized Property, Proceeds from Sale of Fish....	54
17.09.17	Forfeiture of Seized Property - Upon Court Order	54
17.09.18	Forfeiture of Seized Property - Owner Unknown.....	55
17.09.19	Forfeiture - Disposition of Property	56
17.09.20	Return of Property Not Forfeited	56

Chapter 17.10 Sentencing

17.10.01	Payment of Fine in Lieu of Court Appearance - Conditions.....	56
----------	---	----

17.10.02	Payment of Fine- Same as Guilty Plea	56
17.10.03	Bail.....	57
17.10.04	Sentencing Guidelines—REPEALED.....	57
17.10.05	Penalties - First Violation, Community Service—REPEALED.....	57
17.10.06	Penalties - Second and Subsequent Violations—REPEALED.....	57
17.10.07	Classification of Offenses for Sentencing and Fines	58

Chapter 17.11 Offenses

FISHING IDENTIFICATION AND PERMIT VIOLATIONS

17.11.01	Fishing Without Obtaining Identification and Permit	60
17.11.02	Fishing Without Identification and Permits in Possession	60
17.11.03	Failure to Produce Identification and Permits to Law Enforcement Officers.....	60
17.11.04	Unauthorized Transfer of Permit or Identification Prohibited	61

FISHING VESSEL REGISTRATION VIOLATIONS

17.11.05	Vessel Registration Requirements - Failure to Comply	61
17.11.06	Use of Another’s Boat Numbers, Annual Vessel Permit.....	61

FISHING VESSEL AND GEAR OWNERSHIP VIOLATIONS

17.11.07	Purse Seiners Prohibited- REPEALED.....	61
17.11.08	Rental or Lease of Fishing Gear Prohibited.....	62
17.11.09	Fishing on Vessel Obtained by a Lease, a Lease Purchase Agreement, or a Percentage-of-Catch Agreement.....	62
17.11.10	Commercial Use of Vessel by Unauthorized Person	62
17.11.11	Exercising Fishing Rights on Vessel not Owned by Tribe or Tribal Member.....	62
17.11.12	Giving False Information to Obtain Purchase Contract.....	63
17.11.13	Violating Boat Safety Requirements.....	63

FISHING ASSISTANT VIOLATIONS

17.11.14	Allowing Non-Members to Assist in Treaty Fishing.....	63
17.11.15	Allowing Non-Members to be Aboard Vessel While Fishing.....	64
17.11.16	Members Employed as Assistants – Prohibitions	64
17.11.17	Assistance from Members – Limitations	64

MINORS - VIOLATIONS

17.11.18	Minors to be Accompanied by Adult - Exceptions	65
17.11.19	Minors - Time of Day Restrictions.....	65
17.11.20	Allowing a Minor to Fish Contrary to Fishing Code.....	66
17.11.21	Minors- Diving Prohibited.....	66
17.11.22	Allowing a Minor to Dive Prohibited	66
17.11.23	Exemption	67

FISH TICKET AND CATCH REPORTING VIOLATIONS

17.11.24	Failure to Record Sale of Fish on Fish Ticket	67
17.11.25	Providing False Information on Fish Ticket.....	67
17.11.26	Failure to Fill Out Fish Ticket Accurately and Completely	68
17.11.27	Failure to Present Embossed I.D. Card	68
17.11.28	Failure to Fill Out and Return Subsistence/Ceremonial Cards	68

SALE OF FISH VIOLATIONS

17.11.29	Sale of Another's Fish - Prohibited	69
17.11.30	Members Selling Fish While on Non-Member Fishing Vessels Prohibited.....	69
17.11.31	Member Fishing or Selling Fish Under State License Prohibited ...	69
17.11.32	Recording Fish Caught Outside the U. and A. on a Fish Ticket	70
17.11.33	Sale of Fish Without Proper Permits, Cards, Identification and Registration	70
17.11.34	Sale of Fish Taken Unlawfully	70
17.11.35	Sale of Fish Caught for Subsistence or Recreational Purposes.....	71
17.11.36	Sale to Prohibited Buyers.....	71

GENERAL FISHING VIOLATIONS

17.11.37	Fishing Outside the U. and A.....	71
17.11.38	Fishing in Closed Area	71
17.11.39	Unauthorized Test Fishery - Compliance With Requirements	71
17.11.40	Unauthorized Gear/Prohibited Methods.....	72
17.11.41	Vandalism/Unauthorized Use/Theft.....	72
17.11.42	Taking of Finfish From Hatcheries and Reservation Streams Prohibited.....	72
17.11.43	Littering Prohibited	73
17.11.44	Use of Intoxicants Prohibited	73
17.11.45	Wasting.....	73

17.11.46 Failure to Remove Gear at End of Season 73

MARINE DRIFT NET VIOLATIONS

17.11.47 Violation of Net Length Limits 74
17.11.48 Buoy and Net Identification Requirements..... 74
17.11.49 Unattended Nets 74
17.11.50 Improper Lighting 75

SET NET VIOLATIONS

17.11.51 Net Identification Requirements..... 75
17.11.52 Set Nets to be Tended Daily 75
17.11.53 Failure to Remove Nets Upon Closure 76
17.11.54 Attaching Nets to Tribal Structures Prohibited..... 76

ON-RESERVATION NET FINFISHING VIOLATIONS

17.11.55 Non-Resident Tribal Members Prohibited From On-Reservation Net Fishing-
REPEALED 76
17.11.56 Violation of Special On-Reservation Net Finfishing Regulations... 76
17.11.57 Violation of Mesh and Length Requirements 76

RIVER GILLNET VIOLATIONS

17.11.58 Nets Not to Block River..... 77
17.11.59 Nets to be Attended..... 77
17.11.60 Nets to be Spaced 150 Feet Apart 77

SHELLFISH VIOLATIONS

17.11.61 Buoy and Net Identification Requirements-REPEALED 77
17.11.62 Possession of Excess Shellfish on a Beach Closed to Commercial
Harvest..... 77
17.11.63 Shellfish Harvesting Gear Prohibitions 78
17.11.64 Shellfishing in Closed Area 78
17.11.65 Shellfish From Polluted Beach - Prohibitions 78

FISHERIES ENFORCEMENT-RELATED VIOLATIONS

17.11.66	Fishing While Privilege is Revoked or Suspended	79
17.11.67	Assault	79
17.11.68	Resisting Arrest	79
17.11.69	Eluding	80
17.11.70	Escape	80
17.11.71	Obstruction	80
17.11.72	Interference with Fisheries Management Personnel.....	80
17.11.73	Giving False Information to an Officer	80
17.11.74	Failure to Assist an Officer	81
17.11.75	Failure to Appear/Respond	81
17.11.76	Violations of Regulations and Permits.....	81

CIVIL INFRACTIONS

17.11.77	Non-Member Fishing Without Authorization.....	82
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MARINE MAMMAL VIOLATIONS

17.11.78	Protection of the Fishery from Marine Mammal Damage.	82
17.11.79	Marine Mammal Reporting Cards Required.	83

TITLE 17

FISHING CODE

Chapter 17.01 General Provisions

17.01.01 Title

This Code shall be known as the Port Gamble S’Klallam Fishing Code.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 15-A-167, passed 12/9/15 adopted numerous revisions to Title 17 the Fishing Code.]

17.01.02 Declaration of Policy

Fishing has always been central to the cultural and economic existence of the Port Gamble S’Klallam Tribe and its members. By this Code and the regulations adopted under it, the Port Gamble S’Klallam Tribe intends to exercise control over fishing, shellfishing and related activities to the fullest extent of tribal jurisdiction in order to properly regulate, manage and protect all of the fisheries resources available to the Tribe and to insure their continued availability to the Tribe and its members. Nothing in this Code shall be construed as a relinquishment, abrogation or abridgment of any treaty right of the Port Gamble S’Klallam Tribe.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.01.03 Definitions

- a) Accompanied is in the immediate physical presence of another person.
- b) Beach Identification Number or “BIN” is the six-digit number or other number agreed to by the State of Washington and the Tribe to identify a beach managed for shellfish harvest by the Port Gamble S’Klallam Tribe.

- c) Beach Seine is a type of net used to capture finfish in near-shore areas by encircling them using a process commonly known as seining.
- d) Biological Personnel are trained biologists and technicians who are employed by the Tribe and/or the Point No Point Treaty Council and whose duties include advising on the management and/or enhancement of the tribal fishery or the Treaty Council fishery.
- e) Buyer is a person who purchases fish or shellfish from the fishers who caught the fish or shellfish or who, for commercial purposes, smokes or otherwise processes and sells fish or shellfish that the fishers have caught themselves.
- f) Ceremonial Fishing is the taking of fish, shellfish, or other fishery resources for use in traditional tribal ceremonies and/or for religious purposes, and is exclusive of fishing or shellfishing for subsistence and commercial purposes.
- g) Commercial Fishing is the taking of fish, shellfish or other fishery resource with the intent to sell it or profit economically from it. The term “profit economically” does not include barter among Port Gamble S’Klallam tribal members.
- h) Crab Pot is an enclosed trap with at least two escape rings or ports located in the upper half of the trap.
- i) Depth of Net is the total number of meshes measured perpendicular between cork and lead line.
- j) Dive, dives, diving is the use of SCUBA, surface-supplied air or mixed-gas diving methods.
- k) Drift Net (pole net) gear is a gillnet which is not staked, anchored or weighted but drifts free.
- l) Enrolled Person or Enrolled Member is any person who is an enrolled member of the Port Gamble S’Klallam Tribe.
- m) Exercise Treaty Fishing Rights and Exercise Tribal Fishing Rights include, but are not limited to, harvesting, transporting, processing,

offering for sale or barter, any fish or shellfish; and traveling to and from such activities--purportedly pursuant to treaty fish and shellfish rights.

- n) Finfish is a fish with a backbone that has gills throughout its life and has limbs, if any, in the shape of fins.
- o) Finfishing is attempting to catch, trap, net or otherwise take any finfish from its natural habitat; and/or having caught, or to possess, any finfish on a fish site previously described in this definition.
- p) Fisheries Manager is the person(s) charged with oversight on operations and policy issues for the finfish and shellfish programs. The actual title may change (i.e. Director) however the responsibilities under this Code remain the same.
- q) Fisheries Enforcement Officer(s) is the person or persons charged with the responsibility of enforcing this Code and the regulations promulgated under it.
- r) Fishing is the act of harvesting shellfish or finfish during but not limited to a commercial, subsistence, or ceremonial fishery.
- s) Fishing Boat /Vessel is any motorized vessel used to deploy, retrieve or transfer fishing or shellfishing gear or fisheries products
- t) Fishing Gear is all types and sizes of hooks, nets, spears, gaffs, lines, traps, rakes, shovels and appliances and other apparatus used to take fish or shellfish.
- u) Fish Ticket is the form provided by the State of Washington to licensed fish buyers for recording the sale of all commercial fisheries products. This form is also known as "Treaty Indian Fish Receiving Ticket".
- v) Gaff (hand operated gear) is a large iron hook attached to a pole or handle and used to hook or land a fish u)
- w) Gillnet is a net of single-web construction bound at the top by a float line and at the bottom by a weight line.

- x) Hand-Dip Net is defined as a section of netting distended by a rigid frame, operated by a process commonly recognized as dipping.
- y) Hook-and-Line (hand-line) refers to a single line, attached to which are single-point hooks or treble-point hooks.
- z) Management Period is the time interval during which the majority of the individuals of a fish or shellfish species are accessible to capture. A management period is specific to a species and location.
- aa) Minor is a person under the age of eighteen (18) years.
- bb) Non-Enrolled Person or Non-Member is any person who is not an enrolled member of the Port Gamble S'Klallam Tribe.
- cc) Point No Point Treaty Council (Treaty Council) is the confederacy of Indian Tribes in the Point No Point Treaty area established for the purpose of unifying management of the Indian fisheries resource in the Point No Point area.
- dd) Polluted Beach or Area is any area closed to shellfish harvest by the Port Gamble S'Klallam Tribe because pollution has caused shellfish in the area to become a hazard to human health.
- ee) Port Gamble S'Klallam Tribe (Tribe) is the present-day sovereign tribal entity which is the political successor in interest to certain tribes, bands or groups of Indians who were parties to the Treaty of Point No Point.
- ff) Purse Seiner is a fishing vessel that carries machinery for the power retrieval of seine nets, and seine nets include all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse line and purse rings and mesh net webbing fashioned in such a manner that it is used to encircle finfish, and in addition prevents their escape under the bottom or lead line of the net by drawing in the bottom of the net by means of the purse line so that it forms a closed bag.
- gg) Ring Net is a type of dip net which may be lowered from a vessel by a rope.

- hh) Seller means a person who, for commercial purposes, sells, or smokes or otherwise processes and sells fish those fishers have caught themselves.
- ii) Set Net is a gillnet which is anchored, tied, stationed, laid in part on shore or whose lead line is so heavily weighted that it cannot drift.
- jj) Shellfishing is attempting to catch, trap, net or otherwise take any shellfish from its natural habitat by any means whatsoever; and/or having caught, or to possess, any shellfish on a shellfish site by any means previously described in this definition.
- kk) Shellfish are all marine invertebrates including, but not limited to, littleneck, manila, horse, butter, and geoduck clams; cockles; scallops; squid, octopi, mussels, sea cucumbers, sea urchins, oysters; shrimp; and crab.
- ll) Shrimp Pot is an enclosed trap made of netting stretched over a rigid frame that incorporates entry tunnels.
- mm) Snag Line (hand operated gear) is a line with one or more unbaited hooks attached there to used to the purpose of snagging any species of food fish..
- nn) Stretched Measure is the distance between the inside of one knot to the outside of the opposite knot on one mesh of netting material. This measurement shall be taken when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three (3) while under tension.
- oo) Subsistence Fishing is the taking of fish, shellfish, or other fishery resources for personal consumption by tribal members and their families. Subsistence fishing is exclusive of fishing or shellfishing for commercial or ceremonial purposes.
- pp) Test Fishery is a fishery allowed on a limited basis for the purpose of acquiring technical or management information including stock

strength, timing, species or stock composition, gear selectivity, exploitation rate, and enhancement possibilities.

- qq) Treaty Council Biologist is a member of the biological staff of the Point No Point Treaty Council.
- rr) Tribal Council is the Port Gamble S'Klallam Community Council, and is the duly constituted governing body of the Port Gamble S'Klallam Tribe delegated by the Port Gamble Community Council to conduct and regulate the business of and act on behalf of the Port Gamble S'Klallam Tribe.
- ss) Tribal Court is the Community Court of the Port Gamble S'Klallam Tribe or any court established by the Tribe to hear violations of this Code and regulations promulgated under it.
- tt) Tribal Fisherman is any person, whether or not a member of the Tribe, who is exercising any tribal fishing or shellfishing rights or who is assisting in the exercise of such rights pursuant to tribal authorization.
- uu) Troll Gear is a series of fishing lines with hooks attached, drawn through the water behind a moving fishing vessel which are retrievable either manually or hydraulically.
- vv) United States v. State of Washington (U.S. v. Washington) is the decision of the U.S. District Court reported in 384 F. Supp. 312 (W.D. Wash 1974), aff'd 520 F.2d 676 (9th Cir. 1975) cert. denied 423 U.S. 108 and all applicable post-trial orders and proceedings.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution 97 A 024. Passed 3/21/97. Amended to add and update definitions, Resolution 06 A 067, adopted 9/19/06. Resolution No. 15-A-167, passed 12/9/15 changed or added the definition for the following: Beach Seine, Finfish, Finfishing, Fishing, and Purse Seiner.]

1701.04 Jurisdiction

- a) Territory. The provisions of this Code and all rules and regulations adopted under it shall apply to the full extent of the sovereign

jurisdiction of the Port Gamble S'Klallam Tribe and shall apply in conformity with all agreements and other cooperative arrangements entered into by the Port Gamble S'Klallam Tribe which are designed to provide tribal access to available fisheries and to provide effective fisheries management in the Point No Point Treaty area.

- b) Persons. The provisions of this Code and all rules and regulations adopted under it shall apply to all persons who are eligible to fish under this Code, all persons who claim to be exercising fishing rights secured to the Port Gamble S'Klallam Tribe by the Treaty of Point No Point or other applicable treaties or agreements, and to all persons fishing within the exterior boundaries of the Port Gamble S'Klallam Reservation.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170105 Specific Closure

The waters and beaches of the Port Gamble S'Klallam Reservation and all waters and beaches off-Reservation fished by the Port Gamble S'Klallam Tribe are closed to the taking of fish and shellfish unless specifically opened by this Code or by annual or emergency regulations.

[Cross reference: section 17.11.38 Fishing in Closed Area and section 17.11.64 Shellfishing in Closed Area. See 17.05.06 Hook and Line - Subsistence and Recreational Fishing, open year round]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170106 Treaty Fishing Outside Usual and Accustomed Grounds Prohibited

No tribal member shall attempt to exercise the treaty fishing rights of the Port Gamble S'Klallam Tribe in any area which is outside the usual and accustomed fishing grounds of the Port Gamble S'Klallam Tribe.

[Cross reference: section 17.11.37 Fishing Outside the U. & A.]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170107 Limited Entry

The Tribal Council retains the power to establish a system of limited entry for commercial fishing and shellfishing.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170108 Liberal Construction

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

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170109 Informational Cross References

Cross reference notations found within the body of the Code are designed to assist people using the Code and are informational only. Cross referencing a provision to an offense section or the failure to do so does not carry any legal meaning.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.01.10 Civil Infraction Procedures for Fishing Code Violations

Fishing code violations are either criminal violations or civil infractions. The civil infraction procedures contained herein shall be used to adjudicate all fishing infractions designated as civil infractions.

[HIST: Resolution No. 18 A 148, passed 12/17/18 clarified that there are both civil infractions and criminal violations in Title 17. Prior to 12/2017 there were only 2 criminal violations—Shellfishing from Polluted Beach and Assault.]

17.01.11 Notice of Violation

A Fisheries Enforcement Officer shall either arrest or issue an infraction citation when the violation occurs in the officer's presence. For civil infractions, the citation shall include a court date and time to appear at the Community Court. If the alleged civil infraction does not occur in the

presence of an officer and is a result of documentation or an investigation that indicates the probability of a violation, the citation shall be issued in accordance with Code section 3.02.04, Service of Notice.

17.01.12 Hearing Scheduling by the Community Court—REPEALED

[HIST: Resolution No. 18 A 148, passed 12/17/18 repealed this section. As of 12/2017 Title 17 has both civil and criminal offenses and this section specified rights in court hearings that would only apply for civil infractions. This section was repealed so that all offenders shall have the same hearing process for all violations, both civil and criminal.]

17.01.13 Hearing to Explain the Circumstances Surrounding the Violation—REPEALED

[HIST: Resolution No. 18 A 148, passed 12/17/18 repealed this section. As of 12/2017 the penalties for violations of Title 17 increased based on the tribe's intent to hold offenders accountable for their actions when they violate the code. Offenders may explain to the Court the circumstances surrounding the violation and request a lesser penalty, but the Court is not required to consider this explanation when determining what penalty to impose.]

17.01.14 Hearing to Contest the Facts—REPEALED

[History: Resolution 13-A-098, passed July 9, 2013, added Sections 17.01.10 – 17.01.14 to clarify all, except two, violations of the fishing ordinance will be treated as civil offenses. Resolution No. 18 A 148, passed 12/17/18 repealed this section. As of 12/2017 Title 17 has both civil and criminal offenses and this section was removed so that offenders no longer have a right to a special hearing only to contest the facts.]

17.01.15 Severability

If any provision of this Code, or its application to any person or legal entity or circumstance, is held invalid, the remainder of the Code, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

Chapter 17.02 Who May Fish

17.02.01 Enrolled Members

An enrolled member of the Port Gamble S'Klallam Tribe is eligible to exercise treaty fishing rights, but only in accordance with this Code and applicable regulations.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.02.02 Minors

- a) Minors. A tribal member who is aged ten (10) through seventeen (17) years may exercise treaty fishing and shellfishing rights for commercial purposes, in accordance with the requirements of this section, provided he or she has a valid identification card and meets one of the following three circumstances:
 - i) The minor is accompanied by an adult member of the Tribe; or
 - ii) The minor is a head of household. "Head of household" is defined for purposes of this Code as any member of the Tribe who is solely or substantially responsible for providing his or her own care and maintenance or the care and maintenance of his or her family. The determination of whether a person is the head of household to exercise treaty fishing rights shall be made by the Fisheries Committee prior to that person fishing; or
 - iii) The minor has been exempted from the restrictions placed on minors upon a showing of extreme hardship. The determination of whether there is a showing of extreme hardship sufficient to allow a minor to be exempt from sections of this Code pertaining to minors shall be made by the Fisheries Committee prior to that person fishing.

Tribal members under ten (10) years of age do not need an identification card when they are accompanied by an adult Tribal member with a valid identification card.

[Cross reference: section 17.11.18 Minors to be Accompanied by Adult - Exceptions]

- b) Minor tribal members who are aged ten (10) through seventeen (17) may exercise treaty fishing and shellfishing rights for subsistence and ceremonial purposes, in accordance with the requirements of this section, provided that they have in their possession a valid identification card. Tribal members under ten (10) years of age do not need an identification card when they are accompanied by an adult Tribal member with a valid identification card.

- c) Time Restrictions. School-aged minors authorized to fish or shellfish under this Code shall be subject to all applicable regulations, provided however that on regularly scheduled school days, minors shall fish no earlier than thirty (30) minutes after the school day ends and no later than 10 p.m. on a day immediately preceding a school day. These time restrictions apply whether a child attends a regular school or follows a regular school schedule or not. North Kitsap Public School hours and schedule will be used as the default. If a minor has graduated from high school, the time restrictions in this section shall not apply.

[Cross reference: section 17.11.19 Minor - Time of Day Restrictions]

[HIST: Resolution No. 02 A 063, passed 5/14/02 amended this section to make clear that home schooled minors, children in non-traditional school settings or not attending school must still adhere to the time restrictions. Amended to change name to Fisheries Committee, Resolution 06 A 067, adopted 9/19/06.]

- d) Parental Responsibility for Minor and Required Consent. It is the duty of the parent or guardian of any minor who is to exercise treaty fishing rights pursuant to this section to insure compliance with this Code. No minor shall be issued a tribal Fishing Permit without the signed consent of his or her parent or guardian. The consent shall clearly indicate the duty of the parent or guardian to insure compliance with this section. Both the parent or guardian who permits a minor to violate this section and the minor violating this section shall be subject to the penalties provided by this Code.

[Cross reference: section 17.11.20 Allowing a Minor to Fish Contrary to Fishing Code and section 17.11.22 Allowing a Minor to Dive]

- e) Permit and the Sale of a Minor's Fish/Shellfish. A minor is not required to obtain an annual fishing permit unless he or she is the head of household. An adult accompanying the minor or the minor's parent may sell the minor's fish or shellfish on the minor's behalf, provided the adult/parent must comply with the eligibility and sale of fish requirements under this Code and regulations.
- f) Prohibited Methods. Minors are prohibited from diving in exercising their treaty fishing rights unless exempted under section 17.11.23.

[Cross reference: section 17.11.21 Minors - Diving Prohibited]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 97 A 024, passed 3/21/97 added section 17.02.02 (f). Resolution No. 97 A 053, passed 7/21/97 amended section 17.02.02 (f). Resolution No. 15-A-167, passed 12/9/15 amended Section 17.02.02 Minors to require 10-17 year olds to have valid identification for commercial, subsistence, and ceremonial purposes. Additionally, under 10 years old do not need an ID but do need to be accompanied by parent with ID. Also changed time restriction when children can be out of school and added in North Kitsap School District as default school times to use.]

17.02.03 Fishing Vessel Assistance

- a) Assistance from Non-Members - Prohibitions. A member of the Port Gamble S'Klallam Tribe shall not allow any non-member not otherwise authorized by this Code to assist in any treaty fishing activity. For the purposes of this section, "assist in any treaty fishing activity" is defined to include: any handling of the fishing or shellfishing gear, nets, ropes and lines being used by the member; carrying of the fish or shellfish caught by the member; or engaged in any activity intended to cause or result in fish or shellfish being caught by the member.

[Cross reference: section 17.11.14 Allowing Non-Members to Assist in Treaty Fishing]

- b) Non-Members Aboard Fishing Vessel - Prohibitions. A member of the Port Gamble S'Klallam Tribe shall not allow any non-enrolled person not otherwise authorized pursuant to this Code to be present aboard any fishing vessel being used in the exercise of treaty fishing rights of the Port Gamble S'Klallam Tribe.

[Cross reference: section 17.11.15 Allowing Non-Members to be Aboard Vessel While Fishing]

- c) Assistance from Members of Point No Point Treaty Tribes Authorized - Limitations. An enrolled member of the Port Gamble S'Klallam Tribe operating a vessel registered pursuant to this Code may hire an enrolled member of the Jamestown S'Klallam Tribe, the Lower Elwha Klallam Tribe, or the Skokomish Tribe as an assistant aboard his or her fishing vessel provided:
- i) The vessel is being fished in an area which is within the usual and accustomed fishing areas of both the Port Gamble S'Klallam Tribe and the assistant's tribe; and
 - ii) The assistant has in his or her possession valid identification showing membership in and current eligibility to exercise the treaty fishing rights of the Jamestown S'Klallam Tribe, the Lower Elwha S'Klallam Tribe, or the Skokomish Tribe; and
 - iii) Any of the fish or shellfish which are caught from the vessel and are sold by the Port Gamble S'Klallam member operating the vessel, and he or she uses the embossed Tribal Fishing Identification Card provided to him or her for this purpose.

[Cross reference: section 17.11.14 Allowing Non-Members to Assist in Treaty Fishing and section 17.11.15 Allowing Non-Members to be Aboard Vessel While Fishing]

- d) S'Klallam Members Employed As Assistants - Requirements. It shall be lawful for a member of the Port Gamble S'Klallam Tribe to be employed as an assistant on a fishing vessel legally owned, operated and/or licensed by a member of another Tribe which possesses treaty fishing rights pursuant to U.S. v. Washington provided:
- i) That said vessel is being legally fished within the usual and accustomed fishing area of the owner/operator's tribe;
 - ii) That the owner/operator is aboard the vessel while it is being fished.

[Cross reference: section 17.11.16 Members Employed as Assistants - Prohibitions]

- e) Assistance Aboard Non-Member's Fishing Vessels -Restrictions. Any member of the Port Gamble S'Klallam Tribe employed as an assistant aboard a non-member's fishing vessel shall not use any cards or permits issued by the Tribe or Treaty Council to sell any fish or shellfish caught by said vessel, or to allow the sale of any fish or shellfish caught by said vessel to be recorded as caught by a member of the Port Gamble S'Klallam Tribe.
- f) Assistance from Members – Limitations. A member of the Port Gamble S'Klallam Tribe shall not allow any enrolled member not otherwise authorized by this code to assist and/or be aboard a vessel which is exercising treaty fishing rights unless he or she has in his or her possession valid identification showing membership in and current eligibility to exercise treaty fishing rights of the Port Gamble S'Klallam Tribe.

[Cross reference: section 17.11.30 Members Selling Fish While on Non-Member Fishing Vessels Prohibited]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to omit Lower Elwha and Skokomish from the list of authorized assistants and adding subsection (f), Resolution 06 A 067, adopted 9/19/06. Resolution No. 15-A-167, passed 12/9/15 amended subsections (c) and (c)(ii) to include the Lower Elwha Klallam Tribe and the Skokomish Tribe.]

17.02.04 Non-member Spouses - Shellfish Assistance

On the Port Gamble S'Klallam Reservation, non-member spouses of licensed Tribal members may assist the member spouse in harvesting the member's subsistence limit of shellfish. The member spouse must be present during the harvest and transport of the shellfish. The non-member spouse need not have a license for assisting a member spouse on the Reservation.

[Cross reference: section 17.11.14 Allowing Non-Members to Assist in Treaty Fishing]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.02.05 Non-members Finfishing Non-Commercially On-Reservation.

A non-member (including a non-member spouse) may have the privilege of finfishing non-commercially by hook and line on the Reservation if he or she has obtained a special fishing permit from the Port Gamble S'Klallam Tribe through the Port Gamble S'Klallam Fisheries Office. Non-members finfishing on-Reservation shall comply with all applicable regulations.

[Cross reference: section 17.11.77 Non-Member Fishing Without Authorization]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 15-A-167, passed 12/9/15 amended this Section from Non-members Fishing Non-Commercially On-Reservation to Non-members Finfishing Non-Commercially On-Reservation.]

17.02.06 Biological Personnel

- a) Biological personnel of the Port Gamble S'Klallam Tribe and of the Point No Point Treaty Council may take and possess fish and shellfish of all species for approved scientific, management and/or enhancement purposes by any means or gear suitable for the purpose of the biological program.
- b) Biological personnel taking fish or shellfish under the authority of this Code shall keep a cumulative record of all fish taken and shall produce it for inspection upon request by the Fisheries Manager or fisheries enforcement officer. Fish and shellfish taken by biological personnel shall not be sold or used for their personal gain, but shall remain the property of the Tribe or the Treaty Council.
- c) Any attempt by biological personnel to circumvent this section or to abuse the privileges granted herein shall be grounds for immediate dismissal from employment with the Tribe and/or the Treaty Council.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

Chapter 17.03 Required Identification And Permits

17.03.01 General Requirements

- a) Identification and Permits Required. Any person eligible to fish under sections 17.02.01 and 17.02.02 of this Code who exercises any treaty fishing (including shellfishing) right or engages in the sale of fish or shellfish shall possess valid, current identification and permits as provided in this section and applicable regulations. All identification cards and permit documents shall be issued by the Tribe or Treaty Council and shall remain the property of the Port Gamble S'Klallam Tribe and shall be returned to the Tribe upon order of the Tribal Court or as otherwise provided in this Code.

[Cross reference: section 17.11.01 Fishing Without Obtaining Identification and Permit and section 17.11.02 Fishing Without Identification and Permits in Possession]

- b) Examination of Identification and Permits by Law Enforcement. Any person purporting to exercise tribal fishing or shellfishing rights shall produce for examination the applicable identification cards and fishing permits required by this Code upon demand of any tribal, state, or federal law enforcement officer. Failure to produce the required forms of identification shall be probable cause to believe that such person is not authorized to exercise tribal fishing or shellfishing rights.

[Cross reference: section 17.11.03 Failure to Produce Identification and Permits to Law Enforcement Officers]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.03.02 Tribal Fishing Identification Card

Any person who exercises Port Gamble S'Klallam tribal fishing or shellfishing rights must have in their possession a valid Tribal Fishing Identification Card which shall be an embossed identification card issued for the purpose of identifying the holder as a member of the Port Gamble S'Klallam Tribe and eligible to fish or shellfish. The card shall show the Bureau of Indian Affairs (B.I.A.) number of the card holder, his or her

photograph and tribal affiliation, and any other information which the Tribal Council may require.

[Cross reference: section 17.11.01 Fishing Without Obtaining Identification and Permit and section 17.11.02 Fishing Without Identification and Permits in Possession]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.03.03 Subsistence and Recreational Fishing

- a) Subsistence and Recreational Fishing. Members fishing or shellfishing for subsistence or recreational purposes with gear other than nets need only have a Tribal Fishing Identification Card as provided in 17.03.02. A Commercial Fishing Permit is not required. Each subsistence or recreational fisherman shall record his or her catch on the Subsistence/Catch Reporting Card as provided in section 17.03.03 (b).
- b) Subsistence/Catch Reporting Cards. Each time a fisherman catches fish and shellfish for non-commercial purposes, he or she shall complete a Subsistence/Catch Reporting Card before leaving the beach or immediately upon arrival at shore. The Subsistence Catch Reporting Card shall be issued free of charge by the Tribal Fisheries Department and must be returned to the Tribal Fisheries Department by December 31 following the date of issue, or sooner, if required by emergency regulation.

[Cross reference: section 17.11.28 Failure to Fill Out and Return Subsistence/Ceremonial Cards.]

[Resolution No. 18 A 148, passed 12/17/18, added language into this section that cards must be filled out before leaving the beach or immediately upon returning to shore.]

- c) Subsistence Fishing with Non-Members. It shall be lawful for members to fish and shellfish aboard boats for non-commercial purposes with non-members likewise fishing or shellfishing, provided that the non-member is appropriately licensed by the State of Washington and is fishing or shellfishing according to current State laws and regulations governing sport fishing. The member shall

be limited to the same species and catch bag limits, size restrictions, and gear restrictions as apply to the non-member(s).

[Moved from 17.05.06 (c) Hook and Line - Subsistence and Recreational Finfishing.]

- d) Subsistence Fishing with Non-Members Who Are Members of Other Tribes. It shall be lawful within the Tribe's U&A for tribal members to fish or shellfish aboard boats for non-commercial purposes with members of other tribes who have valid subsistence cards from their tribe and who are fishing or shellfishing within their U&A and who do not need a Washington State fishing license. The tribal member shall be limited to the catch limitations that are the most restrictive of the tribes represented on the boat.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 18 A 148, passed 12/17/18, moved sub-section (c) Subsistence Fishing with Non Member to this section and out of Hook and Line Subsistence Fishing, and created sub-section (d) regarding subsistence fishing with non-members who are members of other tribes with U&A fishing areas that overlap the tribe's U&A fishing areas.]

17.03.04 Commercial Fishing and Shellfish Harvesting

- a) Commercial Fishing and Shellfish Harvesting. Any person who harvests shellfish or finfish for commercial purposes or fishes with nets of any kind for any purpose must have an embossed Tribal Fishing Identification Card as provided in section 17.03.02, and a Fishing Permit as provided in section 17.03.04 (b) and any other permits required by this section.

[Cross reference: section 17.11.02 Fishing Without Identification and Permits in Possession]

- b) Commercial Fishing Permit. Any person who harvests shellfish or finfish commercially or who fishes with a net of any kind for any purpose shall obtain an annual tribal Commercial Fishing Permit, which may be in the form of a sticker which shall be attached to the fisherman's Tribal Fishing Identification Card. All such permits shall be non-transferable and shall expire on June 30 of each year.

[Cross reference: section 17.11.01 Fishing Without Obtaining Identification and Permit and section 17.11.04 Unauthorized Transfer of Permit for Identification Prohibited; HIST: Resolution No. 10- A-096, passed 6/22/2010, changed the commercial fishing permit expiration date from April to June of each year.]

- c) Fish Tax and Fines to be Paid Prior to Issuance of Permits. No Commercial Fishing Permit shall be issued for a given year unless and until the fisherman has paid all tribal fish taxes due and all tribal fines for fishing violations levied during the previous seasons and provided that there is no tribal court order prohibiting the issuance of the permit.
- d) Permit Fees. The Tribal Council has the power to set fees for Commercial Fishing Permits by appropriate amendment to this Code. If a Fishing Permit is damaged, the fisherman must present the damaged card for a free replacement. If the permit or card is lost, the first replacement is free of charge. If a fisherman loses a second permit or card during the fishing year, the replacement shall be \$5.00. A third replacement shall be \$10.00, the fourth shall be \$15.00, and each subsequent loss shall continue to increase by \$5.00 each time.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended for minor editing, Resolution 06 A 067, adopted 9/19/06]

17.03.05 Ceremonial Fishing

- a) Ceremonial Fishing. Only enrolled members of the Port Gamble S'Klallam Tribe shall exercise ceremonial fishing rights. Members fishing or shellfishing for ceremonial purposes shall have an embossed Tribal Fishing Identification Card as provided in section 17.03.02 and a Ceremonial Permit as provided in section 17.03.05 (b). Each ceremonial fisherman shall report his or her ceremonial catch to the Fisheries Manager within the time period specified on the ceremonial permit.

[Cross reference: section 17.11.02 Fishing Without Identification and Permits in Possession and section 17.11.28 Failure to Fill Out and Return Subsistence/Ceremonial Cards]

- b) Ceremonial Fishing Permits. Members of the Port Gamble S'Klallam Tribe may gather fish and shellfish for ceremonial purposes if they first obtain a Ceremonial Fishing Permit issued by the Fisheries Manager or his or her designee for that purpose. Ceremonial fishing shall be done in accordance with the conditions stated on the permit and in the appropriate ceremonial fishing regulation.

[Cross reference: section 17.11.01 Fishing Without Obtaining Identification and Permit and section 17.11.76 Violations of Regulations and Permits]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.03.06 Fisheries Personnel

- a) Biological Personnel Identification Card. The Biological Personnel Identification Card shall be issued to those biological personnel employed by the Tribe or Treaty Council who are authorized to take and possess fish and shellfish as may be required in the performance of his or her duties.
- b) Test Fishery Card. The Test Fishery Card shall be an embossed card, which shall be used for recording the sale of fish or shellfish taken in test fisheries conducted pursuant to this Code. Control of the use and possession of the Test Fishery Card shall be the responsibility of the Fisheries Manager.
- c) Tribal Fishery Card. The Tribal Fishery Card shall be an embossed card, which shall be used for recording the sale of fish and shellfish taken in fisheries specifically conducted on behalf of and for the benefit of the Tribe or Treaty Council. No such fishery shall occur except as specifically authorized by appropriate regulations issued pursuant to this Code. Control of the use and possession of the Tribal Fishery Card shall be the responsibility of the Fisheries Manager.
- d) Hatchery Sale Card. The Hatchery Sale Card shall be an embossed card, which shall be used to record the sale of surplus or spawned finfish taken at tribal enhancement facilities. Control of the use and possession of the Hatchery Sale Card shall be the responsibility of the Fisheries Manager.

- e) Patrol Confiscation Card. The Patrol Confiscation Card shall be an embossed card, which shall be used to record the sale of fish confiscated under authority of this Code. Control of the use and possession of the Patrol Confiscation Card shall be the responsibility of the Fisheries Enforcement Officers.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

Chapter 17.04 Boat Ownership and Registration

17.04.01 Fishing Vessel Ownership

- a) A tribal fisherman who is exercising treaty fishing rights with intent to sell using his or her embossed Tribal Fishing Identification Card shall do so only on a vessel which is either wholly owned by the fisherman, or by a member of the Port Gamble S'Klallam Tribe, or by the Treaty Council, or is in the fisherman's custody pursuant to an approved, legally binding purchase contract, as provided for in section 17.04.01(c), except as provided under section 17.08.08 Test Fishing and section 17.02.03 (d) Port Gamble S'Klallam Members Employed as Assistants - Requirements.

The above does not apply to Port Gamble S'Klallam Members in transit to a clam dig or oyster pick on a vessel wholly owned by a Skokomish, Jamestown S'Klallam, or Lower Elwha Klallam tribal member with a valid fishing identification card.

[Cross reference: section 17.11.11 Exercising Treaty Fishing Rights on Vessel not Owned by the Tribe or Tribal Member]

- b) Documentation of Ownership. Adequate documentation of ownership shall consist of one or more of the following:
- i) Coast Guard documentation/registration or tribal registration in the name of the Tribe or a tribal member.
 - ii) A bill of sale conveying clear title to the boat to the Tribe or a tribal member. The bill of sale shall show the name and address of the purchaser and the seller; the purchase price; the make,

model, type, name (if applicable) and length of the boat; a description of any included gear and equipment; and the date of sale.

iii) A purchase contract as approved under section 17.04.01(c) of this Code.

c) Procedure for Approval of Purchase Contracts. Each vessel purchase contract must be approved by the Tribe before the vessel in question can be used in exercising treaty fishing rights. The procedure for obtaining approval of the vessel purchase contract shall be as follows:

i) Application for approval of the contract shall be made to the Fisheries Manager. The application shall be made by providing a copy of the purchase contract and any pertinent documents to the Fisheries Manager.

(ii) The Fisheries Manager shall examine the contract and the submitted documents in order to determine whether the contract is legally binding on both buyer and seller; whether it has a reasonable likelihood of success, thus insuring that the vessel will not be returned to the seller; and whether it otherwise meets the requirements of this Code. The Fisheries Manager shall consult with the tribal attorney and the Fisheries Committee, as appropriate for the species involved, in making this determination.

iii) If the Fisheries Manager determines that the contract is enforceable and meets the requirements of this Code, he or she shall approve the contract and authorize the vessel to be registered.

iv) Within two (2) weeks after receiving the application the Fisheries Manager shall notify the fisherman whether or not the purchase contract has been approved.

- v) Any fisherman whose contract has been disapproved may appeal the decision to the Tribal Council, whose decision shall be final.

[Cross reference: section 17.11.12 Giving False Information to Obtain Purchase Contract and section 17.11.11 Exercising Treaty Fishing Rights on Vessel not Owned by the Tribe or Tribal Member]

[HIST: Resolution No. 95 A 058, passed 5/5/95]

- d) Contracts Where Payment is Percentage of Catch Prohibited. No purchase contract shall be approved if payment on the contract is in the form of a percentage of the catch.

[Cross reference: section 17.11.09 Fishing on a Vessel Obtained by a Lease, a Lease Purchase Agreement or Percentage-of-Catch Agreement]

- e) Boat Rentals, Lease and Lease Purchase Agreements Prohibited. Leases and lease-purchase agreements are prohibited.

[Cross reference: section 17.11.09 Fishing on a Vessel Obtained by a Lease, a Lease Purchase Agreement or Percentage-of-Catch Agreement]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to allow leases and lease-purchase agreements for purse seiners, Resolution 06 A 067, adopted 9/19/06. Resolution No. 15-A-167, passed 12/9/15 amended Subsection 17.04.01(a) to clarify boat ownership requirements and deleted Subsection (e) purse seine language.]

170402 Fishing Vessel Registration

- a) Fishing Vessel Registration - Generally. Except as may be provided elsewhere in this Code, no member shall exercise treaty fishing rights using any motorized vessel which has not been registered and marked in accordance to the procedures established by this Code or other procedures approved by the Tribal Council or Treaty Council. All registration shall expire on June 30 of each year.
- b) Fishing Vessel Registration - Limits. Registration of vessels over 22 feet in length is limited to one vessel per owner per fishery.

- c) Boat Numbers. All boats must be registered at the Port Gamble S'Klallam Natural Resources Department. A number will be issued to each boat and must be displayed on each side of the bow of the boat. Numbers must be easy to read and at least 3 inches high. Annual vessel permits will be issued and shall be affixed to the boat on the right side of the number.
- d) Boat Numbers Not Transferable. Use of boat numbers or annual vessel permits on a boat other than the one for which they were issued is prohibited.

[Cross reference: section 17.11.05 Vessel Registration Requirements - Failure to Comply and section 17.11.06 Use of Another's Boat Numbers, Annual Vessel Permit]

[HIST: Resolution No. 02 A 063, passed 5/14/02 amended subsections (c) and (d) and repealed (e). Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.04.03 Use of Tribally Registered Boat by Unauthorized Person

The owner of a tribally registered boat shall not allow that boat to be commercially fished by a person not authorized to do so under this Code.

[Cross reference: section 17.11.10 Commercial Use of Vessel by Unauthorized Person]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.04.04 Use of Purse Seiner

A member of the Port Gamble S'Klallam Tribe may exercise treaty fishing rights with a purse seiner which is owned and operated by the Port Gamble S'Klallam Tribe and/or by enrolled members of the Port Gamble S'Klallam Tribe.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to allow the use of purse seiners, Resolution 06 A 067, adopted 9/19/06.]

17.04.05 Boat Owner Safety Requirements

The owner of a tribally registered vessel shall ensure that:

- a) There are life jackets for all occupants on the vessel;
- b) If the vessel is nineteen (19) feet long or less, all occupants under twelve (12) years of age wear a US Coast Guard approved life jacket at all times while on the vessel;
- c) If the vessel is eighteen (18) feet long or more, it has a functioning VHF radio on board;
- d) The vessel has functioning navigation equipment on board; and
- e) There is at least one functioning light on the vessel.

[HIST: Resolution No. Cross reference 17.11.13 Violating Boat Safety Requirements]

[HIST: Resolution No. 15-A-167, passed 12/9/15 created Section 17.04.05 Boat Owner Safety Requirements to require boat owners to ensure certain safety requirements are met on board.]

Chapter 17.05 Specific Gear Provisions

17.0501 Marine Drift Nets

- a) Lighting. All boats and drift gillnets shall be properly lighted according to current U.S. Coast Guard regulations, when exercising treaty fishing rights.

[Cross reference: section 17.11.50 Improper Lighting]

- b) Nets to be Attended. All marine drift nets must be attended to by the fisherman at all times.

[Cross reference: section 17.11.49 Unattended Nets]

- c) Length Limits. Marine drift gillnets in marine areas 4B, 5, and 6C, shall not be subject to an overall length limit. In all other marine areas a person shall not fish more than 330 fathoms of a drift gillnet.

[Cross reference: section 17.11.47 Violation of Net Length Limits]

- d) Net Identification - Buoys. All submerged nets shall have buoys attached. Buoys shall be conspicuously marked with the Tribal

Identification Card number of the fisherman operating the gear and shall be marked in such a way that the fisherman and tribal affiliation can be identified without removing the gear from the water. All buoys shall be constructed of durable material excluding plastic or metal bottles and other containers. The buoy line shall be weighted to keep the buoy line from floating.

[Cross reference: section 17.11.48 Buoy and Net Identification Requirements]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.05.02 Purse Seine Nets

- a) Purse Seine Net Identification Requirements. All purse seine nets shall be conspicuously marked with Tribal Fishing Identification Card number of the fisherman operating the net and shall be marked in such a way that the fisherman and tribal affiliation can indentify them without removing the net from the water.
- b) Length Limits. Purse seing nets shall not exceed 1,800 feet.

[HIST: Resolution No. 15-A-167, passed 12/9/15 created Section 17.05.02 Purse Seine Nets to establish rules on ID requirements and net length limits.]

17.05.03 Set Nets

- a) Set Net Identification Requirements. All set nets shall be conspicuously marked at the outermost (seaward)end with the Tribal Fishing Identification Card number of the fisherman operating the net and shall be marked in such a way that the fisherman and tribal affiliation can be identified without removing the net from the water.

All unmarked nets which are unattended, and any finfish found in them may be seized by the fisheries enforcement officers.

[Cross reference: section 17.11.51 Net Identification Requirements]

- b) Nets to be Tended Daily. All gillnets shall be tended at least once every fourteen (14) hours, and all finfish captured in the net shall be removed. The person whose identification is attached to the net is the

person responsible for tending the net. Failure to move an enforcement marker within fourteen (14) hours, according to the instructions on the marker, will raise a presumption that the net has not been tended.

[Cross reference: section 17.11.52 Set Nets to be Tended Daily. Resolution No. 18 A 148, passed 12/17/18, changed the period from 24 hours to 14 hours to match the regulations already in place that tribe was following.]

- c) Removal of Nets Upon Closure. Upon closure of a fishing area all nets and parts of nets, including buoys, anchors and crosslines, must be completely removed from the closed area regardless of the condition of the net.

[Cross reference: section 17.11.53 Failure to Remove Nets Upon Closure]

- d) Consent Required to Attach Net to Private Property. Nets shall not be attached to private piers, docks, or bulkheads without written consent of the owner unless the structure obstructs a traditional fishing site.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.05.04 Beach Seines

Beach seine nets minimum mesh size and length will be based on the regulation as determined by the fishery. The length shall not exceed 300 feet. The use of power equipment for retrieval is not permitted.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to make mesh size a matter for regulation, Resolution 06 A 067, adopted 9/19/06. Resolution No. 18 A 148, passed 12/17/18, added the word "length".]

17.05.05 River Gillnets

- a) Nets to be Attended. All river set nets must be attended to by the fisherman at all times.

[Cross reference: section 17.11.59 Nets to be Attended]

- b) Nets to be Spaced 150 Feet Apart. River gillnets shall be set and no part allowed to be closer than 150 feet from any other gillnet.

[Cross reference: section 17.11.60 Nets to be Spaced 150 Feet Apart]

- c) Nets Not to Block River. Set nets shall not be allowed to extend across, or block by any means, more than one-half of the portion of the river which is navigable by salmon. The net must be adjusted when the water level drops.

[Cross reference: section 17.11.58 Nets Not to Block River]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.05.06 Hook and Line - Subsistence and Recreational Finfishing

- a) Marine Area Limitations. Non-commercial hook-and-line finfishing by tribal members at usual and accustomed marine fishing grounds and stations and at on-Reservation marine areas for subsistence and/or recreational purposes is permitted year round unless closed by properly adopted annual or emergency regulations.
- b) Freshwater Limitations. Non-commercial hook-and-line freshwater finfishing by tribal members on the reservation is open year round unless otherwise specifically closed by regulations adopted pursuant to this Code. Non-commercial hook-and-line finfishing by tribal members off reservation at usual and accustomed freshwater grounds and stations for subsistence and/or recreational purposes is permitted whenever the body of water is opened by the Washington Department of Fisheries and Wildlife for all-citizen sports fishermen, unless otherwise specifically opened or closed by regulations adopted pursuant to this Code.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 18 A 148, passed 12/17/18, deleted subsection (c) Subsistence Fishing with Non-Members and moved it to Section 17.03.03 Subsistence and Recreational Fishing.]

170507 Shellfish - Hand-Held Gear Only

All shellfish must be harvested by hand-held gear unless otherwise authorized by regulation.

[Cross reference: section 17.11.63 Shellfish Harvesting Gear Prohibitions]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170508 Shellfish Pots

- a) Crab Pots . Crab pot diameter, mesh size, and escape rings or ports location shall be determined by regulation.
- b) Shrimp Pots . Shrimp pot diameter, mesh size, and escape tunnel location shall be determined by regulation.
- c) Setting and Pulling of Shellfish Pots . The tribal member to whom the boat and gear is registered must be present on the vessel when pots are set, checked, and pulled.
- d) Shellfish Pot Identification Requirements . All unattended pots shall have buoys attached. All buoys shall be conspicuously marked with the Tribal Identification Card number of the fisherman operating the gear and shall be marked in such a way that the fisherman and tribal affiliation can be identified without removing the gear from the water. All buoys shall be constructed of durable material excluding plastic or metal bottles and other containers. The buoy line shall be weighted to keep the buoy line from floating.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to make dimensions the subject of regulation, Resolution 06 A 067, adopted 9/19/06. Resolution No. 15-A-167, passed 12/9/15 created Sub-section (c) Setting and Pulling of Shellfish Pots.]

170509 Finfish Traps

The Tribal Council may authorize the use of finfish traps by the Tribal Fisheries Program or the Treaty Council for any purpose.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.05.10 Other Gear Prohibited - Exceptions

All gear types other than those authorized in this Code are prohibited unless, and until, they are authorized by regulation.

[Cross reference: section 17.11.40 Unauthorized Gear/Prohibited Methods]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.05.11 Rented or Leased Gear Ownership Prohibited

No person shall exercise treaty fishing rights of the Port Gamble S'Klallam Tribe while using or in possession of any rented or leased fishing gear to or from another person.

[Cross reference: section 17.11.08 Rental or Lease of Fishing Gear Prohibited]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.05.12 Marine Mammal Damage

Marine mammals are protected under tribal law from intentional harassment, injury and killing. However, under certain circumstances Tribal members are allowed to harass, injure or kill a marine mammal. Those circumstances are:

- a) Tribal members are allowed to use non-lethal means to deter a Harbor Seal or California Sea Lion from damaging fishing gear, catch, private property or endangering personal safety.
- b) Tribal members are allowed to use lethal means to deter a Harbor Seal or California Sea Lion from damaging fishing gear, catch, private property, or endangering personal safety, provided that all reasonable non-lethal means to deter the Harbor Seal or California Sea Lion have been attempted.

- c) Tribal members are allowed to injure or kill a marine mammal if it is necessary to save their lives or the life of another.

[Cross reference: section 17.11.78 Protection of the Fishery from Marine Mammal Damage. Hunting of marine mammals is authorized only as expressly provided under the Port Gamble S'Klallam Hunting Code and Hunting Regulations.]

[HIST: Resolution No. 95 A 092, passed 9/20/95]

Chapter 17.06 Special Provisions for On-Reservation Fisheries

17.06.01 On-Reservation Fisheries - Exclusive to Tribal Members

Only tribal members of the Port Gamble S'Klallam Tribe shall be permitted to harvest finfish and shellfish along the marine shoreline of the Port Gamble S'Klallam Reservation.

[Cross reference: section 17.11.51 Non- Tribal Members Prohibited From On-Reservation Fisheries—REPEALED and section 17.11.77 Non-Member Fishing Without Authorization]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to permit harvest by all tribal members, Resolution 06 A 067, adopted 9/19/06.]

17.06.02 Special On-Reservation Net Finfishing Regulations

The Tribal Council may adopt regulations regarding net finfishing on the Reservation. These regulations may include but shall not be limited to:

- a) Establishing a system of assigning set sites to fishermen;
- b) Controlling the spacing between nets;
- c) Setting any other conditions or limitations as necessary to fairly allocate this limited resource among tribal members.

[Cross reference: section 17.11.56 Violation of Special On-Reservation Net Finfishing Regulations]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.06.03 Port Gamble Bay Mouth Closure

No gillnet may be operated in that part of Area 9A north of a straight east-west line drawn between the tribal fisheries markers, except by tribal fisheries staff for the benefit of the Tribe.

[Cross reference: section 17.11.42 Taking of Finfish From Hatcheries and Reservation Streams Prohibited]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

Chapter 17.07 Catch Reporting And The Sale Of Fish

17.07.01 Sale of Fish and Shellfish

- a) Commercial Catch to be Reported. All fish and shellfish caught in commercial fisheries must be recorded on fish tickets or reported to the Fisheries Office.

[Cross reference: section 17.11. 24 Failure to Record Sale of Fish on Fish Ticket]

- b) Fish to be Sold by Fisherman Who Caught Them. Except as may be provided elsewhere in this Code, a fisherman may only sell or offer for sale fish or shellfish caught by himself or herself.

[Cross reference: Offense - section 17.11.29 Sale of Another's Fish - Prohibited. Exception - section 17.02.02 Minors.]

- c) Sale to Prohibited Buyers Unlawful. No person shall sell fish or shellfish to any buyer to whom the sale of fish and shellfish by tribal members has been prohibited, as provided in this Code.

[Cross reference: section 17.11.36 Sale to Prohibited Buyers]

- d) Sale of Fish Taken with Illegal Gear or Without Valid I.D./Permits Unlawful. Except as may be provided elsewhere in this Code, no person shall sell, or offer for sale, any fish or shellfish unless taken with lawful commercial gear in an area specifically opened to commercial fishing with that gear, and the fisherman has in his or her possession at the time of sale valid identification and permits as required by this Code.

[Cross reference: section 17.11.33 Sale of Fish Without Proper Permits, Cards, Identification and Registration]

- e) Sale of Fish Caught with Unregistered Vessel Unlawful. No person shall sell fish or shellfish caught with any vessel which has not been registered pursuant to this Code.

[Cross reference: section 17.11.33 Sale of Fish Without Proper Permits, Cards, Identification and Registration]

- f) Sale of Tribal Fish. Any person selling fish or shellfish which are the property of the Tribe or Treaty Council shall record the sale of the fish or shellfish using the appropriate card as provided in section 17.03.06

[Cross reference: section 17.11.33 Sale of Fish Without Proper Permits, Cards, Identification and Registration]

- g) Sale of Subsistence Catch Prohibited. No person shall sell fish and shellfish caught for subsistence and/or recreational purposes.

[Cross reference: section 17.11.35 Sale of Fish Caught for Subsistence or Recreational Purposes]

- h) “Beach Sales” Authorized. A limited number of fish and shellfish, excluding bivalves, such as clams, oysters and geoduck, caught in a commercial fishery may be sold by the fisherman directly to individuals for the purpose of personal consumption and not for resale. The Fisheries Manager shall promulgate regulations which specify the manner of reporting these sales, the date by which they must be reported and the limit (number of fish or amount of shellfish per buyer/per fixed time period) and related regulatory matters. These sales are not exempt from the tribal fish and shellfish tax and fish ticket requirements of this Code

[Cross reference: section 17.11.24 Failure to Record Sale of Fish on Fish Ticket]

- i) Sale of Fish, Fishing Under State License Prohibited. No member shall participate in fishing or shellfishing or sell fish or shellfish under a Washington State fishing license within the Tribe’s usual and accustomed fishing grounds. A Port Gamble S’Klallam tribal member

may work as a crew member on a vessel fished under a Washington State commercial fishing license but is prohibited from selling the fish.

[HIST: Resolution No. 02 A 063, passed 5/14/02, amended this section by adding subsection (i). Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to clarify that beach sales of bivalves is prohibited and that beach sales are subject to tribal tax and must be reported, Resolution 06 A 067, adopted 9/19/06]

[Cross reference: section 17.11.31 Members Fishing or Selling Fish Under State License Prohibited]

170702 Completion of Fish Tickets

- a) Embossed I.D. Card to be Presented to Buyer/Embossed Buyer's Card to be Used. Each fisherman shall present his or her embossed Tribal Fishing Identification Card or other appropriate embossed card as provided in this Code to the buyer each time he or she sells fish or shellfish. The fisherman selling the fish and/or shellfish shall require the buyer to use a valid, embossed Washington State fish buyer's card to record the required information for each sale.

[Cross reference: section 17.11.27 Failure to Present Embossed I.D. Card]

- b) Fish Tickets to be Filled out Accurately, Completely. It is the responsibility of each fisherman at the time of each sale of fish or shellfish to be sure that the fish ticket is filled out completely and accurately. Each fish ticket shall be signed by the fisherman who caught the fish or shellfish being sold on that ticket, as an affirmation that the information on the ticket is correct.

[Cross reference: section 17.11.26 Failure to Fill Out Fish Ticket Accurately and Completely]

- c) Fish Ticket is Prima Facie Evidence of Events. Fish tickets shall constitute prima facie evidence that the events as recorded on the tickets actually occurred. Fish tickets which indicate a violation of this Code or regulations promulgated under it shall in and of themselves constitute probable cause to believe that a violation has occurred, and shall be admissible evidence that a violation has

occurred. The embossed appearance of the identification number of a fisherman or his or her signature on any fish ticket, including unofficial receipts or proofs of sale, shall be admissible as prima facie evidence that the fisherman caught and sold the fish reported on the ticket on or about the date of the ticket.

- d) Providing False Information. No person shall provide false information that will be recorded onto fish tickets.

[Cross reference: section 17.11.25 Providing False Information on Fish Ticket]

- e) Fish Caught Outside the U. and A. A member of the Port Gamble S'Klallam Tribe shall not allow fish or shellfish to be recorded on a fish ticket as caught by a member of the Tribe when those fish or shellfish have been caught outside of the usual and accustomed fishing grounds of the Port Gamble S'Klallam Tribe.

[Cross reference: section 17.11.32 Recording Fish Caught Outside U. & A. on a Fish Ticket]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to slightly edit subsection (d), Resolution 06 A 067, adopted 9/19/06]

170703 Tax on Fish Sold Commercially

- a) Fish Tax. There shall be a tax, called the Tribal Fish and Shellfish Tax, imposed on each sale of fish and shellfish by anyone exercising commercial fishing rights under the authority of this Code. The tax shall be measured by the gross sale price of each sale of fish or shellfish multiplied by the rates for fish and shellfish as follows:
 - i) Salmon: Five (5) percent
 - ii) Shellfish: Five (5) percent

The tribal tax season runs from April 1 of the previous year through March 31 of the current year.

[Cross reference: section 17.07.01 (h) "Beach Sales"; HIST: Resolution No. 10- A-096, passed 6/22/2010, clarified the Tribal Tax season dates.]

- b) Use of Tax Revenue. The funds raised by the Tribal Fish and Shellfish Tax shall be used in the Tribal Fisheries Program and to cover legal expenses to protect fishing rights, shellfish rights, and hunting rights of the Tribe. In using funds from the Tribal Fish and Shellfish Tax account for legal expenses such funds shall be used for the overall protection of the Tribe's treaty rights and not on an individual's legal case.
- c) Withholding of Tax by Fish Buyers. The Port Gamble S'Klallam Tribal Council, through the Fisheries Manager, shall authorize a fish buyer to withhold the Tribal Fish and Shellfish Tax at the time of each sale of fish. A list of buyers so authorized shall be available to the fishermen and kept available in the Tribal Fisheries Office and Tribal Office. Any fish buyers withholding the Tribal Fish and Shellfish Tax shall remit the amount withheld to the Port Gamble S'Klallam Tribe on a regular basis as prearranged with the Fisheries Manager. Each payment shall be verified against the fish tickets for the sale involved. The fish buyer shall receive a receipt for the amount of tax remitted.
- d) Fisherman Liable for Payment of Tax. If a fish buyer does not withhold the Tribal Fish and Shellfish Tax at the time of sale or if a tribal fisherman sells to a buyer to whom the sale of fish and shellfish has been prohibited pursuant to sections 17.07.03(e) and 17.07.04, the tribal fisherman remains liable for payment of the tax to the tribe. The Fisheries Manager, or his delegate, shall regularly compute the amount of tax owed by each tribal fisherman and shall notify each fisherman in writing of the amount of tax due from him or her. Annual commercial fisher permits will only be issued to fishers who have paid the full amount of tax due. Failure to make full payment of the amount due is grounds for suspension or revocation by the Tribal Court of any or all of the tribal identification cards, permits, and licenses issued to the fisherman.

[Cross reference: section 17.11.36 Sale to Prohibited Buyers]

- e) Two Year Limit on Taxes Owed by Fishermen from Fish Tickets Obtained Belatedly. If a fish ticket is received by the Tribe which is

dated more than 2 years prior the start of the current tax season (April 1) then the tax owed by the fisherman will be forgiven. Taxes owed by a buyer on fish tickets obtained belatedly will not be forgiven.

- f) Authority of Fisheries Manager to Prohibit Sales to Buyers Who Refuse to Collect Tax. The Fisheries Manager may prohibit the sale of fish or shellfish by tribal members to those fish buyers who refuse to collect tribal fish and shellfish taxes or who have failed to remit collected taxes to the Tribe in an accurate or timely manner. If the Fisheries Manager takes such action, he or she shall notify all tribal fishermen and provide them with a list of the buyers to whom the sale of fish and shellfish is prohibited.
- g) Authority of Fisheries Manager to Prohibit Sales by Tribal Members Who Refuse to Collect Another Tribe's Tax. The Fisheries Manager may prohibit the sale of fish and shellfish by tribal members to those buyers that refuse to collect fish taxes from any tribe or fail to remit collected fish and shellfish taxes in a timely manner to any tribe, so long as the other tribe makes such a request to the Fisheries Manager and also is willing and able to prohibit the sale of fish by its members to buyers upon the request of the Port Gamble S'Klallam Fisheries Manager.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to clarify that annual permits will only be issued if a fisher had paid his or her tax in full, Resolution 06 A 067, adopted 9/19/06. Resolution No. 10- A-096, passed 6/22/2010, added section (e) recognizing the tribe may obtain belated information in the reconciliation process.]

170704 Buyer Licensing

- a) Authority to Restrict Sales to Licensed Buyers. The Port Gamble S'Klallam Tribe retains the authority to restrict the sale of tribally caught fish and shellfish to approved and/or licensed buyers. The Fisheries Manager shall be authorized to execute a Fish Buyers Agreement on behalf of the Port Gamble S'Klallam Tribe.
- b) Fish Buyer Agreement - The Fish Buyer Agreement shall contain the conditions by which a fish buyer shall be authorized to buy fish and

shellfish from Port Gamble S'Klallam fishers. These conditions may include, but are not limited to, license fees, bonding and other conditions established by the Fisheries Manager upon recommendation of the Port Gamble S'Klallam Business Committee. The Fisheries Manager will consult with the Fisheries Committee, as appropriate for the species involved, and attorneys regarding the requirements for fish buyer licensing.

[HIST: Resolution No. 95 A 058, passed 5/5/95]

- c) Tribal Member Fish Buyers. The Fisheries Manager may direct the issuance of Tribal Fish Buyer identification cards to enrolled members of the Port Gamble S'Klallam Tribe who have properly applied for and met the requirements for a Tribal Fish Buyer identification card, provided that such individuals must possess a valid Port Gamble S'Klallam Commercial Fishing Permit. Enrolled tribal members shall be exempt from dealer and buyer license fee requirements.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.07.05 On-Reservation Fish Buyers

- a) The Tribal Council retains the power to regulate the numbers and activities of commercial fish buyers within the boundaries of the Port Gamble S'Klallam Reservation.
- b) All fish and shellfish buyers on the Port Gamble S'Klallam Reservation must record sales of fish and shellfish on approved fish tickets or shellfish tickets. In recording the sale the buyer must use an embossed Washington State fish buyer's card and an embossed fisher's card.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.07.06 Marine Mammal Reporting Cards

It is the responsibility of each fisherman to fully complete a marine mammal reporting card and return it to the Fisheries Office by the date printed on the card, reporting each marine mammal killed under section

17.11.78 (b) and (c) of this Code and reporting each marine mammal unintentionally killed or seriously injured while engaged in fishing (i.e. entanglement in gear).

[Cross reference: section 17.11.79 Marine Mammal Reporting Cards Required. Marine Mammals harvested under the Port Gamble S'Klallam Hunting Code and Hunting Regulations must be reported as provided under the Hunting Regulations.]

[HIST: Resolution No. 95 A 092, passed 9/20/95]

Chapter 17.08 Fisheries Administration

17.08.01 Fisheries Manager Responsibilities

The Tribal Council shall appoint a Fisheries Manager who shall be responsible for:

- a) Managing the Port Gamble S'Klallam Tribal Fisheries;
- b) Coordinating the management of the Tribal Fisheries with the Point No Point Treaty Council biological staff;
- c) Promulgating fishing regulations;
- d) Directing the fisheries enhancement effort of the Port Gamble S'Klallam Tribe and;
- e) Carrying out any other duties delegated to the Fisheries Manager by this Code or by the Tribal Council.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.08.02 Fisheries Committee - Membership and Responsibility

- a) Role of Fisheries Committee. The Fisheries Committee shall act in an advisory capacity to the Fisheries Manager, the Tribal Council, and the Treaty Council, and shall carry out any other fisheries related duties assigned to it by the Tribal Council or this Code. Issues which may be addressed by the Fisheries Committee include:

- i) Recommending times and places when and where the taking of fish is lawful, with preference to ceremonial and subsistence fishing.
 - ii) Recommending and defining the types, sizes and other characteristics of fishing gear not already defined in this Code.
 - iii) Recommending the time, place and manner in which it will be lawful to use any fishing gear.
 - iv) Recommending additional requirements and conditions for the issuance and use of tribal fishing permits.
 - v) Regulating all other aspect of the Tribal fishery which the Tribal Council refers to the Fisheries Committee.
- b) Reports to Council. The Fisheries Committee shall make a regular report to the Tribal Council of its recommendations, actions and decisions.
 - c) Approval of Fisheries Committee Action by Tribal Council. Except as otherwise provided in this Code or by the Tribal Council, no recommendation, action or decision of the Fisheries Committee shall become effective until it has been reviewed and approved by the Tribal Council.
 - d) Appointment and Membership. The Tribal Council shall appoint a Fisheries Committee which shall consist of at least six (6) tribal members.
 - e) Quorum, Voting For the purpose of conducting business, a quorum of the Fisheries Committee shall be four (4) members. Fisheries Committee members shall not vote on matters that directly concern a close relative. Fisheries Committee decisions shall be by simple majority vote of the members present. Fisheries Committee members who disagree with the decisions of the Fisheries Committee may express their dissent and their reasons for it to the Tribal Council.
 - f) Meetings - Notice. The Fisheries Manager shall be responsible for notifying Fisheries Committee members of Fisheries Committee

meetings. No Fisheries Committee meeting shall be held unless the Fisheries Manager has made a good faith effort to notify each Fisheries Committee member of the meeting. The Fisheries Manager shall call a meeting at the request of a Tribal Council or Fisheries Committee member, at any time required to implement this Code or as deemed necessary by the Fisheries Manager.

g) Vacancy, Resignation, Removal from Committee

- i) The Tribal Council may declare a position on the Fisheries Committee to be vacant if a Fisheries Committee member is unwilling or unable to fulfill his or her duties.
- ii) No person who has been convicted of a violation of this Code or a regulation promulgated under it which the Tribal Court has determined to be a conservation threat to the fishery resource, shall be allowed to serve on the Fisheries Committee for a period of two (2) years after his or her conviction. A person so convicted during his or her term of office on the Fisheries Committee may be removed from said office upon conviction. Such removal shall be at the discretion of the Tribal Council.
- iii) If a Fisheries Committee member resigns or a position otherwise becomes vacant before the term of that position expires, the Council shall appoint someone to serve the unexpired term.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Shellfish Committee amendments adopted by Resolution No. 95 A 058, passed 5/5/95. Amended to omit a separate Shellfish Committee and to change the name Fish Committee to Fisheries Committee throughout the code, Resolution 06 A 067, adopted 9/19/06.]

170803 Adoption of Annual and Seasonal Regulations

- a) Proposed Annual and Seasonal Regulations. The Fisheries Manager shall prepare or direct the preparation of proposed annual and seasonal regulations for each species of fish and shellfish to be managed by the Tribe for its fishermen. These proposed regulations shall cover all aspects of tribal fishing consistent with this Code and the requirements of U.S. v. Washington. In preparing the proposed

regulations, the Fisheries Manager shall consider all recommendations made to him or her by the Tribal Council, the Fisheries Committee, as appropriate for the species involved, tribal and Treaty Council biologists, and other interested parties.

- b) Tribal Council Approval. The Tribal Council at all times shall retain the right to reject or modify any or all regulations proposed by the Fisheries Manager, and to adopt regulations other than those proposed by the Fisheries Manager. Each regulation proposed by the Fisheries Manager and not rejected or modified by the Tribal Council shall be considered as approved and shall become effective and enforceable according to the terms specified in the regulation or until the regulation is rejected or modified by the Tribal Council.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended by Resolution No. 95 A 058, passed 5/5/95]

170804 Notice of Regulations

- a) Notice for U.S. v. Washington Species. Regulations shall be provided to the parties in U.S. v. Washington according to the time schedule and for those species specified in the applicable orders entered in U.S. v. Washington.
- b) Notice for Other Species. Regulations regarding species not adjudicated under U.S. v. Washington shall be provided to the Tribal Council and appropriate outside agencies.
- c) Notice to Tribal Council. Copies of all fishing regulations shall be provided to the Tribal Council at such time and in such manner as the Tribal Council shall designate.
- d) Posting of Notice of Adopted Regulations. All adopted regulations, including emergency regulations, shall be prominently posted within the Reservation and shall be available to Tribal members upon request.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170805 Emergency Regulations

- a) Emergency Regulations. The Fisheries Manager shall have the power to make emergency changes in the annual regulations to insure proper management and conservation of the fisheries resource. The power to make emergency changes in annual regulations includes the power to close a tribal fishery when in his or her judgment the closure is necessary to meet conservation or allocation needs. Annual regulations shall not be changed on an emergency basis until the Fisheries Manager has made a good faith effort to consult with the Fisheries Committee, as appropriate for the species involved, a tribal biologist, or a Treaty Council biologist about the change.
- b) Effective Date. Emergency regulations shall be effective and enforceable when they are issued or according to their terms and shall remain effective until specifically modified or rescinded by the Fisheries Manager or the Tribal Council. No penalty shall be imposed for violations of an emergency regulation unless twenty-four (24) hours have passed since it was issued, or unless there has been personal written or oral notice of the regulation given to the fisherman by Fisheries Enforcement or Fisheries Management staff, whichever occurs first.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended by Resolution No. 95 A 058, passed 5/5/95]

170806 Delegation to Treaty Council of In-Common Fishery Management

- a) Power to Delegate Management of In-Common Fishery to Treaty Council. The Port Gamble S'Klallam Tribal Council has the power to delegate to the Treaty Council, by resolution and through the Point No Point Treaty Council Intertribal Fisheries Management Compact, the authority to manage fishing areas the Tribe has in-common with other members of the Treaty Council and the authority to negotiate in-common regulations with tribes which are not members of the Treaty Council.

- b) Tribal Council Review of Regulations Proposed by Treaty Council. Regulations proposed by the Treaty Council on behalf of the Tribe as provided in section 17.08.03 Adoption of Annual and Seasonal Regulations shall be subject to the same procedural and review provisions as the regulations proposed and promulgated by the Fisheries Manager, including the right of the Tribal Council to reject or modify any regulations proposed by the Treaty Council.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.08.07 Fishing Areas/Catch Reporting Districts

Annual and emergency fishing regulations may refer to marine areas by area code numbers. The waters represented by these numbers shall be described in the most current State of Washington regulations establishing Puget Sound Commercial Salmon Management and Catch Reporting Areas, as appropriate. Freshwater fishing areas shall be referred to in the regulations by the number code and the name of the stream, river or lake. Beach or other area descriptions for shellfish harvest may be made by reference to those designated by the Washington Department of Fisheries and Wildlife or other beach or area descriptions and maps prepared by the Fisheries Manager.

[[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.08.08 Test Fishing

- a) Decision to Conduct Test Fishery. The Fisheries Manager shall have the power to authorize a test fishery following a determination that such a fishery is necessary. The Fisheries Manager shall determine the type and amount of gear to be used and the time period and fishing area for the test fishery. There shall be no test fishery other than as directed by the Fisheries Manager and/or the Treaty Council. Other affected management entities shall be given reasonable notice of proposed test fisheries.

[Cross reference: section 17.11.39 Unauthorized Test Fishery - Compliance with Requirements]

- b) Who May Conduct Test Fishery; Use of Proceeds. Only the Tribe or the Treaty Council may conduct a test fishery. Fish or shellfish taken in test fisheries are the property of the Tribe or Treaty Council, whichever conducts the test fishery. All proceeds from the sale of fish or shellfish caught in test fisheries shall be remitted to the Tribe or Treaty Council, as appropriate.

[Cross reference: section 17.11.39 Unauthorized Test Fishery - Compliance with Requirements]

- c) Selection of Participants in Test Fishery. In order to participate in a test fishery, a fisherman shall meet the following requirements:
- i) The fisherman shall be an enrolled member of the Port Gamble S'Klallam Tribe or other member tribe of the Point No Point Treaty Council who is eligible to participate in said Tribe's fishery; or a biologist employed by the Tribe or Treaty Council.
 - ii) The fisherman shall be experienced in the use of the selected test gear type in the selected test fishing area. In the case of test fisheries which require vessel-deployed drift nets, only those fishermen who have successfully operated their vessel and gear in the most recent regular fishery prior to the test fishery shall be eligible to participate in the test fishery.
 - iii) The fisherman shall agree to record and provide to the Fisheries Manager all the information regarding the test fishery requested by the Fisheries Manager.
 - iv) In the event that more than the number of eligible fishermen necessary for a specific test fishery are interested in participating in the test fishery, the participants shall be chosen by a fair drawing conducted by the Fisheries Manager or Point No Point Treaty Council senior biologist. Participation in the test fishery shall be according to the order established in the drawing for that test fishery. If the test fishery continues long enough for all of the interested fishermen to participate in it once, then the participation of fishermen shall continue by rotating through the order established by the drawing. A

fisherman who becomes interested and eligible to participate in an on-going test fishery after the drawing has been held shall be assigned a place at the end of the rotation list established by the drawing. "At the end of the rotation list" shall mean after the last person on the participation schedule as it stands on the day the new fisherman begins participation in the test fishery.

- v) When a selected test fisherman withdraws or is disqualified from participating in the test fishery, the next fisherman on the list shall be designated as his or her replacement. Test fishermen shall not exchange their position on the list before the test fishery begins without the approval of the Fisheries Manager. No exchange of positions shall be made after the test fishery begins.
 - vi) In the event that a test fishery continues for an extended period of time, with the result that some fishermen have repeatedly participated in it, fishermen who are ineligible to participate because their gear or experience is inadequate may indicate to the Fisheries Manager their desire to be an assistant in the test fishery. The Fisheries Manager may require the test fisherman to select a new assistant each time the test fisherman participates again in that test fishery.
 - vii) The test fisherman must agree to participate in the test fishery for the amount of compensation provided for in section 17.08.8. (f).
 - viii) In the event that no member fisher possesses the type of gear necessary to conduct a test fishery, a non-member may be hired to fish in a test fishery. It is the Fishery Manager's responsibility to determine if any member fisher possesses the necessary gear.
- d) Sale of Test Fishery Fish. Fish or shellfish taken in test fisheries shall be sold only on a Test Fishery Card, and not on the individual test fisherman's Tribal Fishing Identification Card.

[Cross reference: section 17.11.33 Sale of Fish Without Proper Permits, Cards, Identification and Registration]

- e) Compliance with Test Fishery Requirements. Test fishermen shall strictly obey the gear, time, area and reporting requirements of the test fishing program. Failure to comply with the reporting requirements or the gear, time and area restrictions of the test fishing program shall constitute withdrawal from the program, and is a violation of this Code.

[Cross reference: section 17.11.39 Unauthorized Test Fishery - Compliance with Requirements]

- f) Compensation of Test Fishermen. Test fishermen shall be compensated for their work as determined by the Fisheries Manager based upon a percentage of the gross sale price or personal consumption of the fish/shellfish caught in the test fishery. The Fisheries Manager shall determine the appropriate compensation.
- g) Test Fishery Catch Exempt from Tax. The Tribal Fish Tax shall not be applied to the sale of fish or shellfish caught in test fisheries.
- h) Compensation is Conditioned on Compliance with Reporting Requirements. No test fisherman shall be compensated for his or her work unless he or she has complied with all the reporting requirements of the test fishery.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to simplify compensation of test fishers and for minor editing, Resolution 06 A 067, adopted 9/19/06.]

Chapter 17.09 Enforcement

170901 Fisheries Enforcement Officers

- a) Appointment. The Port Gamble S'Klallam Tribal Council shall appoint one or more persons to serve as fisheries enforcement officers. The Tribal Council shall have the power to enter into an agreement with another Tribe and/or with the Point No Point Treaty Council whereby the fisheries enforcement officers of said other tribe and/or the Treaty Council may act as fisheries enforcement officers for the Port Gamble S'Klallam Tribe.

- b) Authority. The fisheries enforcement officers shall regularly patrol the Port Gamble S'Klallam Tribe's usual and accustomed fishing grounds and stations, the Reservation fishing area, and any other areas where the Port Gamble S'Klallam Tribe exercises fishing and shellfishing rights. The fisheries enforcement officers shall have the authority to enforce the laws governing any activity that is licensed or regulated by the Port Gamble S'Klallam Tribe and related to fishing, *and* all titles and chapters of the Port Gamble S'Klallam Tribe's Law & Order Code, all regulations promulgated under it, and all warrants issued by the Tribal Court. The Tribal Council may deputize additional persons to assist the fisheries enforcement officers in the performance of their duties.
- c) Qualifications. A Port Gamble S'Klallam Fisheries Enforcement officer must meet the following qualifications:
- i) Must be twenty-one (21) years of age or older, in sound physical condition, and of sufficient size and strength to perform the duties required; and
 - ii) Must be possessed of courage, self-reliance, intelligence, and high sense of loyalty and duty; and
 - iii) Must never have been convicted of a felony or any domestic violence offense, nor have been convicted of any misdemeanor for a period of three (3) years (dependent on review of incident) prior to appointment, and
 - iv) Must have successfully completed at least one of the following four requirements during the first six months of employment. Tribal Council may extend the time for the basic training requirement on a case-by-case basis. Successful completion of basic training is a requisite to the continuation of employment:
 - 1) The Basic Law Enforcement Academy provided by the Washington State Criminal Justice Training Commission; or
 - 2) Both the Federal Law Enforcement Training Academy and the Basic Law Enforcement Equivalency Academy provided by the Washington State Criminal Justice Training Commission; or
 - 3) The Washington State Criminal Justice Training Commission Reserve Academy; or

- 4) Another law enforcement training academy that the Washington State Criminal Justice Training Commission or the Federal Law Enforcement Training Commission accepts and verifies in writing to the Tribe as an equivalent academy while the officer waits for the opportunity to attend the Washington State Basic Equivalency Academy.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution 13-A-098, passed July 9, 2013, amended "authority" to clarify Natural Resource Enforcement officers have the authority to enforce the criminal code in the U and A areas when patrolling for fisheries violations and when the Tribe regulates such activity. Resolution 19-A-061, passed 6/24/19, amended this section to create sub-section (c) Qualifications. The Tribe created this sub-chapter in order to codify the specific qualifications that tribal natural resource enforcement officers must have in order to become active tribal law enforcement officers and to enforce the Tribe's laws. New Chapter 5.12 Enforcement in Title 5 is a part of Resolution 19-A-061 and codifies the specific qualifications that tribal police officers must have. The required qualifications for officers under both Title 17 and Title 5 is the same.]

170902 Cross Deputization

The Tribal Council may enter into an agreement with another tribe, the Treaty Council, or state, federal or county governments providing for the cross-deputization of fisheries enforcement and/or law enforcement officers.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170903 Complaint or Citation to Tribal Court

All persons charged with a violation of this Code or regulations promulgated under it shall be served a summons and complaint or shall be issued a citation in lieu of a summons and complaint, to appear and answer said charges before the Tribal Court.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170904 Failure to Appear

- a) Contempt of Court. Except in the case of paying the maximum fine in lieu of court attendance pursuant to Section 17.10.01,, failure to appear in Tribal Court shall constitute contempt of court.

- b) Failure to Appear - Suspension of Fishing License and Permit. Upon the failure of any person to appear in Tribal Court as required by any charging document accusing the person of committing any offense under this Code, the Fisheries Manager shall immediately suspend, without hearing, all licenses and permits issued to the person under this Code. This action shall be taken in addition to action taken by the Tribal Court. The Fisheries Manager shall not issue any new license or permit under this Code to the person until the person appears as required by the Court.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170905 Arrest

Fisheries enforcement officers shall have the authority to arrest any person who violates this Law and Order Code, or regulations promulgated under it, when:

- a) The offense occurs in the presence of the arresting officer(s); or
- b) The officer has a warrant signed by a Tribal Judge commanding the arrest of such person or knows as a certainty that such a warrant has been issued; or
- c) The officer has probable cause to believe the arrested person has committed the alleged offense.

An officer shall not arrest for purposes of questioning only or enter a residence to arrest in the absence of an arrest warrant.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

170906 Notification of Rights Upon Arrest

Immediately upon arrest an alleged violator shall be advised of the following:

- a) The charges against him or her;

- b) That he or she has a right to remain silent;
- c) That anything he or she says may be used against him or her in court;
- d) That he or she has a right to be represented by an attorney or spokesperson at his or her own expense.

Failure to so advise immediately shall not result in dismissal of the charge but shall prevent the admission into Court of any confessions or other incriminating statements of the alleged violator obtained prior to advising the alleged violator of his rights. If an arrest is made pursuant to a warrant, the accused shall be given a copy of the warrant at the time of the arrest or as soon thereafter as possible.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.09.07 Citation in Lieu of Arrest

A citation may be issued by a fisheries enforcement officer, in his or her discretion, in lieu of keeping the alleged violator in custody or requiring bail or a bond.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.09.08 Searches Without Warrant - Probable Cause

A fisheries enforcement officer may search, without warrant, any fish or shellfish, gear, container, vehicle, boat, tent, camper, or any place or premises which he or she has probable cause to believe contains evidence of violations of this Code or regulations adopted or permits issued under it.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.09.09 Searches Without Warrant - Protective, Pursuant to Arrest

A fisheries enforcement officer may conduct a protective search, without warrant, of persons acting in a suspicious or hostile manner. The sole

purpose of the search shall be to disarm the person for the safety of the officer and others. A fisheries enforcement officer may search any person who is arrested for an alleged violation of this Law and Order Code or regulations adopted under it.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

1709.10 Search Warrants

The Tribal Court may issue a search warrant and direct a search to be made in any place wherein it is alleged that any fish or shellfish taken contrary to this Code or regulations adopted under it is concealed or kept. Such warrants shall be issued pursuant to the Port Gamble S'Klallam Law and Order Code.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

1709.11 Seizure Upon Arrest or Citation

Upon arrest or upon issuance of a citation, the fisheries enforcement officer may seize all fish and shellfish or parts thereof which the officer has reasonable grounds to believe have been illegally taken or killed by the alleged violator or which have been illegally bought or sold. A fisheries enforcement officer may, in addition, seize any gear or other property (excluding the vehicle used to transport the fisherman to the fishing spot) which the officer has reasonable grounds to believe has been used in the commission of a violation.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

1709.12 Seizure - Inventory

A fisheries enforcement officer who has seized fish, shellfish or gear pursuant to this section shall prepare a written inventory of all items seized which shall be signed by the enforcement officer. In all cases, one (1) copy of the inventory shall be given to the alleged violator, if known, one (1) copy filed with the Tribal Court, and one (1) copy returned to the tribal fisheries enforcement office.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

1709.13 Seizure - Sale of Seized Fish and Shellfish

The arresting officer shall, as soon as possible, return the resources to its habitat if it is still alive and viable. Otherwise, fisheries enforcement shall sell, donate, or dispose of all fish and shellfish seized from the alleged violator. If fisheries enforcement sells the resource, the fish and shellfish shall be sold at the nearest market at the then prevailing price at the market selected. All proceeds from the sale shall be immediately deposited in a special account at the Tribal Office. The accused shall receive a copy of the fish ticket. The proceeds from the sale of seized fish shall be held until disposed of pursuant to order of the Tribal Court.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution 17-A-109, passed 11/13/17, revised this section to allow fisheries enforcement to return the resource to its environment if still viable or to donate it. The previous section required enforcement to sell the resource.]

1709.14 Seizure - Shellfish Taken from Closed Beach

Shellfish, which a fisheries enforcement officer has reason to believe has been taken from a closed beach or which may be unfit for human consumption, may be returned to the beach or otherwise disposed of at the officer's discretion.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

1709.15 Seizure - Storage of Seized Property

All items, other than fish and shellfish, seized pursuant to this section shall as soon as practicable be brought to the Tribal Office or other place designated by the Tribal Council for the storage of seized property. Seized property shall be stored in such a manner as to minimize further damage to it and shall be held until disposed of pursuant to order of the Tribal Court.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

1709.16 Seizure - Return of Seized Property, Proceeds from Sale of Fish

Any person who is not an alleged violator whose property has been seized under the authority of this Code may apply immediately to the Tribal Court for release of the property.

For alleged violators, the proceeds from the sale of seized fish shall be returned only upon acquittal or dismissal. If fish and / or shellfish from two or more alleged violators are commingled, each violator shall be presumed to own an equal percentage.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution 17-A-109, passed 11/13/17, revised this section to allow non-violators to apply immediately for return of property and to only return property to violators upos acquittal or dismissal of charges.]

1709.17 Forfeiture of Seized Property - Upon Court Ruling

When a person has been convicted of violating a provision of this Code or any regulation promulgated under it, the Tribal Court may order forfeiture of any item seized in connection with the violation. The convicted person shall be given an opportunity to present evidence and argument to the Tribal Court regarding why it would be inequitable to forfeit those items seized.

When the court finds a person not guilty of violating a provision of this Code or any regulation promulgated under it, the Tribal Court shall order an immediate release of any item seized in connection with this violation.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution 17-A-109, passed 11/13/17, revised this section to require the Court to immediately return property upon a not guilty finding.]

1709.18 Forfeiture of Seized Property - Owner Unknown

In all cases where it appears the owner of gear or other items seized by Fisheries Enforcement Officers is unknown, the Tribal Court shall have

the power to order the forfeiture of any article(s) seized. The procedure for forfeiture in such cases shall be as follows:

- a) The Tribal Court, upon application of the Tribe, shall order service of summons and notice of hearing. Service shall be accomplished by posting the summons and notice in the Tribe's Natural Resource office, in the Tribe's community memo, and at the Point No Point Treaty Council office.
- b) The summons shall describe the article(s) seized and shall set a date for a hearing on whether or not the item seized should be forfeited. The hearing shall be held at least forty-five (45) days from the date the article(s) was seized. A notice shall be posted for at least thirty (30) days prior to the hearing. (The 30 days may run during the 45-day period.)
- c) An affidavit of the tribal representative who served the summons and notice of hearing shall be filed with the Tribal Court. The affidavit shall state the place and date the summons and notice were posted and the date they were submitted for publication.
- d) The owner of the article seized shall have the opportunity at the date and time set in the summons to appear before the Tribal Court and contest the forfeiture. If no one appears at the hearing to claim any article, the Tribal Court may enter an order forfeiting the article(s).

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 17-A-109, passed 11/13/17, revised this section to remove the requirements that notice be posted at the location where the property was seized and that notice be posted in all tribal newsletters of the tribes in the Point No Point treaty area.]

1709.19 Forfeiture - Disposition of Property

In the event the Tribal Court orders forfeiture of any articles seized by Fisheries Enforcement Officers and/or proceeds from the sale thereof, said articles and/or proceeds shall be turned over to the Port Gamble S'Klallam Tribal Council for the use and benefit of the Tribe.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.0920 Return of Property Not Forfeited

Any item seized by Fisheries Enforcement Officers or proceeds from the sale thereof which are not forfeited by order of the Tribal Court shall be returned to the person from whom seized, after the completion of the case and after the fines, if any, have been paid.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

Chapter 17.10 Sentencing

17.1001 Payment of Fine in Lieu of Court Appearance - Conditions

The first time a person is cited for allegedly violating this Code or a regulation promulgated under it, the person may pay the fine associated with the offense instead of appearing in court to defend the charge if the violation is a class D offense. Appearance in court is mandatory for class A, class B, and class C offenses.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution 13-A-098, passed July 9, 2013, added Sections 17.01.10 – 17.01.14 to clarify all, except two, violations of the fishing ordinance will be treated as civil offenses, and changed sections 17.10.01 – 17.10.03 to remove references to bail and impose fines where appropriate. Resolution 17-A-109, passed 11/13/17, revised this section to match the revised penalty chart.]

17.1002 Payment of Fine- Same as Guilty Plea

Payment of fine in lieu of a court appearance shall be considered as a guilty plea and shall have the same effect as a conviction.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution 13-A-098, passed July 9, 2013, added Sections 17.01.10 – 17.01.14 to clarify all, except two, violations of the fishing ordinance will be treated as civil offenses, and changed sections 17.10.01 – 17.10.03 to remove references to bail and impose fines where appropriate].

17.1003 Bail

The amount of bail required to secure release from custody for a first offense of a class A Fish Code offense is between \$2,500 and \$5,000. For a second or third offense, the bail amount is \$5,000.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances Resolution 13-A-098, passed July 9, 2013, added Sections 17.01.10 – 17.01.14 to clarify all, except two, violations of the fishing ordinance will be treated as civil offenses, and changed sections 17.10.01 – 17.10.03 to remove references to bail and impose fines where appropriate. Resolution 17-A-109, passed 11/13/17, revised this section to match the new penalty chart. All class A offenses are now criminal offenses, and B, C, and D offenses remain civil. Resolution 18-A-148 removed reference to Shellfishing Polluted Beach and Assault, which were previously the only 2 criminal offenses in the code.]

17.1004 Sentencing Guidelines—REPEALED

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 17-A-109, passed 11/13/17 replaced the old penalty chart that only imposed nominal fines with a new fishing penalty chart that increased the penalty for fishing violations by combining fines, suspension of harvest privileges, and civil forfeiture of property. Resolution No. 18-A-148, passed 12/17/18, repealed this section because it conflicted with revisions to the new penalty chart in section 17.10.07.]

17.1005 Penalties - First Violation, Community Service—REPEALED

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 17-A-109, passed 11/13/17, revised this section to allow first violations of class B, C, and D offenses to qualify under this section because they are civil offenses. Class A offenses are now criminal and do not qualify. Resolution No. 18-A-148, passed 12/17/18, repealed this section because it conflicted with revisions to the new penalty chart in section 17.10.07.]

17.1006 Penalties - Second and Subsequent Violations--REPEALED

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 17-A-109, passed 11/13/17, revised this section to match the new penalty chart by removing language on mandatory minimum fines and forfeiture. Resolution No. 18-A-148, passed 12/17/18, repealed this section because it conflicted with revisions to the new penalty chart in section 17.10.07.]

17.10.07 Classification of Offenses for Sentencing and Fines

Suspension of harvest privileges begin on the day of the Court ruling. Fishing privileges will be restored only after all fines are paid.

The following are the penalties for each class of offense:

Class A Penalties. Class A penalties shall be criminal penalties and shall be punishable by:

- a) For the first violation, a mandatory fine of \$2,500 to \$5,000, suspension of commercial and subsistence harvest privileges between 3 to 6 months, or if on an annual individual fishers quota (IFQ) system, a loss of up to one-half of the IFQ for the following year. No civil forfeiture for first offense.
- b) For the second violation, a mandatory fine of \$5,000, suspension of commercial and subsistence harvest privileges between 6 months and 1 year, or if on an annual IFQ System, a loss of up to two-thirds of the IFQ for the following year; and, at the court's discretion, up to six (6) months in jail and civil forfeiture of vehicles, firearms, boats or harvest gear used in the commission of the offense.
- c) For the third violation, a mandatory fine of \$5,000, suspension of commercial and subsistence harvest privileges for two years, or if on an annual IFQ system, a loss of the IFQ for the next two full allocation years following judgement; and, at the court's discretion, jail up to one (1) year and civil forfeiture of vehicles, firearms, boats or harvest gear used in the commission of the offense.

Class B Penalties. Class B penalties shall be civil penalties and shall be punishable by:

- a) For the first violation, a mandatory fine of \$500 to \$1,000, suspension of commercial harvest privileges between 3 and 6 months, or if on an annual IFQ system, a loss of up to one-third of the IFQ for the following year. No civil forfeiture for first offense.
- b) For the second violation, a mandatory fine of \$1,000 to \$3,000, suspension of commercial and subsistence harvest privileges between 6 months and 1 year, or if on an annual IFQ system, a loss of one-half of the IFQ for the following year, and, at the court's discretion, civil forfeiture of

vehicles, firearms, boats or harvest gear used in the commission of the offense.

- c) For the third or subsequent violation, a mandatory fine of \$5,000, suspension of commercial and subsistence harvest privileges for one year, or if on an annual IFQ system, a loss of the individual fisher quota for the following year, and, at the court's discretion, civil forfeiture of vehicles, firearms, boats or harvest gear used in the commission of the offense.

Class C Penalties. Class C penalties shall be civil penalties and shall be punishable by:

- a) For the first violation, a mandatory fine of \$150 to \$250 and suspension of commercial harvest privileges between 1 and 3 months, or if on an annual IFQ system, a loss of up to one-tenth of the individual fisher quota for the following year. No civil forfeiture for first offense.
- b) For the second violation, a mandatory fine of \$250, suspension of commercial harvest privileges between 3 to 6 months, or if on an annual IFQ system, a loss of up to one-fifth of the individual fisher quota for the following year, and possible civil forfeiture at court's discretion.
- c) For the third or subsequent violation, a mandatory fine of \$500, suspension of commercial harvest privileges between 9 months and 1 year, or if on an annual IFQ system, a loss of up to one-third of the individual fisher quota for the following year, and possible civil forfeiture at court's discretion.

Class D Penalties. Class D penalties shall be civil penalties and shall be punishable by:

- a) For the first violation, a fine of \$150.
- b) For the second violation, a fine of \$250.
- c) For the third or subsequent violation, a fine of \$500.

There shall be no civil forfeiture for Class D penalties.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 17-A-109, passed 11/13/17 replaced the old penalty chart that only imposed nominal fines with a new fishing penalty chart that increased the penalty for fishing violations by combining fines, suspension of harvest privileges, and civil forfeiture of property. Resolution No. 18-A-148, passed 12/17/18, modified this section to include the word "mandatory" in front of the word "fine" in all subsections for consistency, the clarification that both commercial and subsistence harvest privileges shall be suspended where stated, and the addition of possible jail time for a Class A second or third offense.]

Chapter 17.11 Offenses

FISHING IDENTIFICATION AND PERMIT VIOLATIONS

17.1101 Fishing Without Obtaining Identification and Permit

Any person who exercises or purports to exercise any treaty fishing or shellfishing right without first obtaining valid and current tribal identification and permits, as required in this Code and applicable regulations, is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1102 Fishing Without Identification and Permits in Possession

Any person who exercises or purports to exercise any treaty fishing or shellfishing right or engages in the sale of fish or shellfish without having in his or her possession valid and current tribal identification and permits as required in this Code and applicable regulations, is guilty of a class D offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1103 Failure to Produce Identification and Permits to Law Enforcement Officers

Any person who fails to produce for examination his or her identification and permits required by this Code or regulations, upon demand by any tribal, state or federal law enforcement officer, is guilty of a class D offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1104 Unauthorized Transfer of Permit or Identification Prohibited

Any person who transfers any permit or identification issued to him or her under this Code to another person for the purpose of allowing the transferee to engage in a treaty fishery is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

FISHING VESSEL REGISTRATION VIOLATIONS

17.1105 Vessel Registration Requirements - Failure to Comply

Any person who fails to comply with any vessel registration requirement under section 17.04.02 of this Code or applicable regulations is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1106 Use of Another's Boat Numbers, Annual Vessel Permit Prohibited

Any person who affixes the boat number or annual vessel permit to a vessel other than the one for which it was issued is guilty of a class B offense.

[HIST: Resolution No. 02 A 063, passed 5/14/02 amended this section. Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

FISHING VESSEL AND GEAR OWNERSHIP VIOLATIONS

17.1107 Purse Seiners Prohibited- Repealed

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Repealed, Resolution 06 A 067, adopted 9/19/06.]

17.11.08 Rental or Lease of Fishing Gear Prohibited

Any person who:

- 1) Uses or possesses any rented or leased fishing gear while exercising treaty fishing rights; or
- 2) Rents or leases his or her gear to another,

is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.11.09 Fishing on Vessel Obtained by a Lease, a Lease Purchase Agreement, or Percentage-of-Catch Agreement

Any person who fishes from a vessel that is subject to a lease, a lease purchase agreement or a percentage-of-catch agreement is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.11.10 Commercial Use of Vessel by Unauthorized Person

Any person who allows a tribally registered vessel to be commercially fished by a person not authorized to do so under this Code is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.11.11 Exercising Treaty Fishing Rights on Vessel not Owned by the Tribe or Tribal Member

Any person who engages in any treaty fishing activity from a vessel that is not either wholly owned by the fisherman, a member of the Port Gamble S'Klallam Tribe, or the Treaty Council, or is in the fisherman's custody pursuant to a legally binding purchase contract, as approved under Chapter 17.04 is guilty of a class B offense.

This prohibition shall not apply to:

- 1) A test fishery conducted under this Code; or
- 2) A Port Gamble S'Klallam member who is an assistant on a non-member's fishing vessel as authorized under this Code.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.11.12 Giving False Information to Obtain Purchase Contract

Any person who knowingly provides false information in order to obtain approval of a purchase contract of a fishing vessel is guilty of a class B offense.

[HIST: Resolution No. 02 A 063, passed 5/14/02, amended this section to add the mental state of knowledge as an element and changing the penalty classification from C to B. Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.11.13 Violating of Boat Safety Requirements

Any owner of a tribally registered vessel who does not ensure that all safety requirements are met under Section 17.04.05 of this Code is guilty of a Class C offense.

[HIST: Resolution No. 15-A-167, passed 12/9/15 created Section 17.11.13 Violating of Boat Safety Requirements to enforce the new Section 17.04.05 Boat Owner Safety Requirements.]

FISHING ASSISTANT VIOLATIONS

17.11.14 Allowing Non-Members to Assist in Treaty Fishing

Any member of the Port Gamble S'Klallam Tribe who allows any non-member, not expressly authorized by this Code, to assist in treaty fishing activity is guilty of a class B offense.

For the purposes of this section, "assist in any treaty fishing activity" is defined to include: any handling of the fishing or shellfishing gear, nets, ropes, and lines being used by the member; carrying of the fish or shellfish

caught by the member; or engaging in any activity intended to cause or result in fish or shellfish being caught by the member.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.11.15 Allowing Non-Members to be Aboard Vessel While Fishing

Any member of the Port Gamble S'Klallam Tribe who allows any non-member, not otherwise authorized pursuant to this Code, to be present aboard any fishing vessel being used in the exercise of treaty fishing (including shellfishing) rights of the Port Gamble S'Klallam Tribe is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.11.16 Members Employed as Assistants - Prohibitions

Any member of the Port Gamble S'Klallam Tribe who is employed as an assistant on a fishing vessel owned, operated and/or licensed by a member of another Tribe who possesses treaty fishing rights pursuant to U.S. v. Washington if:

- 1) The owner/operator is not aboard the vessel while it is being fished;
or
- 2) The vessel is being fished outside the usual and accustomed fishing area of the owner/operator's tribe, is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.11.17 Assistance from Members – Limitations

Any member of the Port Gamble S'Klallam Tribe who allows any enrolled member not otherwise authorized by this code to assist and/or be aboard a vessel which is exercising treaty fishing rights or if the assistant does not have in their possession valid identification showing membership in and current eligibility to exercise treaty fishing rights of the Port Gamble S'Klallam Tribe shall be guilty of a class B offense.

[HIST: Adopted by Resolution 06 A 067, on 9/19/06.]

MINORS - VIOLATIONS

17.11.18 Minors to be Accompanied by Adult - Exceptions

A minor between the age of ten (10) and seventeen (17) years of age who exercises treaty fishing rights for commercial purposes unaccompanied by an adult member of the Tribe is guilty of a class D offense.

If a minor under ten (10) years of age exercises treaty fishing rights for commercial or subsistence purposes unaccompanied by an adult member of the Tribe, the parent or guardian of that minor is guilty of a class D offense.

This prohibition does not apply to:

- 1) A minor determined to be a head of household by the Fisheries Committee determined prior to the minor fishing; or
- 2) A minor who has been exempted from this section by the Fisheries Committee prior to the minor fishing due to extreme hardship.

[Cross reference: "Minor" defined, 17.01.03; "Accompanied" defined, 17.01.03 "Head of Household" defined, 17.02.02 (a)]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 15-A-167, passed 12/9/15 changed this Section to give the violation to the parent of guardian if the minor is under 10 years old.]

17.11.19 Minors - Time of Day Restrictions

Any minor who exercises treaty fishing rights earlier than one (1) hour after the school day ends or later than 10 p.m. on a day immediately preceding a school day is guilty of a class D offense.

This prohibition does not apply to:

- 1) A minor determined to be a head of household by the Fisheries Committee determined prior to the minor fishing; or

- 2) A minor who has been exempted from this section by the Fisheries Committee prior to the minor fishing due to extreme hardship; or
- 3) A minor who has graduated from high school.

[Cross reference: "Minor" defined, 17.01.03; "Head of Household," defined 17.02.02 (a)]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1120 Allowing a Minor to Fish Contrary to Fishing Code Prohibited

Any parent or guardian of a minor who allows that minor to fish in violation of any section of this Code, except section 17.11.21, is guilty of a class D offense.

[Cross reference: "Minor" defined 17.01.03, "Dives" defined 17.01.03, "Exercise treaty fishing rights defined 17.01.03]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended by Resolution No. 97 A 024, passed 3/21/97. Amended by Resolution No. 97 A 053, passed 7/21/97]

17.11.21 Minors - Diving Prohibited

Any minor who dives in the exercise of his or her treaty fishing rights is guilty of a class B offense.

[Cross reference: "Minor" defined 17.01.03, "Dives" defined 17.01.03, "Exercise treaty fishing rights defined 17.01.03; section 17.11.23 Exemption.]

[HIST: Resolution No. 97 A 024. Passed 3/21/97. Resolution No 17-A-109, passed 11/13/17, changed this violation from class A to class B so that it is a civil and not a criminal offense.]

17.1122 Allowing a Minor to Dive Prohibited

Any parent or guardian of a minor who allows that minor to dive in the exercise of the minor's treaty fishing rights is guilty of a class A offense.

Any owner or any operator of a vessel who allows a minor to exercise the minor's treaty fishing rights by diving from the vessel is guilty of a class A offense.

[Cross reference: "Minor" defined 17.01.03, "Dives" defined 17.01.03, "Exercise treaty fishing rights defined 17.01.03; section 17.11.23 Exemption]

[HIST: Resolution No. 97 A 024. Passed 3/21/97. Amended by Resolution No. 97 A 053, passed 7/21/97]

17.1123 Exemption

Sections 17.11.21 and 17.11.22 shall not apply to minors who were awarded individual fisher quotas for the harvest of geoducks by the Tribe for the year 1997. All those who qualify for this exemption shall remain exempt for the remainder of their minority.

[HIST: Resolution No. 97 A 053. Passed 7/21/97]

FISH TICKET AND CATCH REPORTING VIOLATIONS

17.1124 Failure to Report Catch or Sale of Fish

Any person who fails to report all fish and shellfish caught in a commercial fishery in a manner set forth by regulation is guilty of a class A offense.

[Cross reference: section 17.07.01 (h) "Beach Sales".]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Amended to reference the regulations for manner of reporting catch by Resolution 06 A 067, adopted 9/19/06.]

17.1125 Providing False Information on Fish Ticket

Any person who knowingly allows false information to be recorded on a fish ticket is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1126 Failure to Fill Out Fish Ticket Accurately and Completely

Any person who:

- 1) Fails to fill out his or her fish ticket completely and accurately and sign his or her fish ticket; or
- 2) Allows another to fill out his or her fish ticket with incomplete or inaccurate information,

is guilty of a class C offense.

The fisherman's signature on a fish ticket constitutes an affirmation that the information on the fish ticket is correct.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1127 Failure to Present Embossed I.D. Card

Any person who:

- 1) Fails to present to the buyer at the time of sale of fish or shellfish his or her embossed Tribal Fishing Identification Card or other embossed card required by this Code or regulations; or
- 2) Allows his or her fish ticket to be filled out without the imprint from the buyer's valid, embossed Washington State fish buyer's card or fish buyer's card required by the Tribe,

is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1128 Failure to Fill Out and/or Return Subsistence/Ceremonial Cards

Any person who engages in non-commercial fishing or shellfishing activity and fails to fill out and return a Subsistence/Catch Reporting Card or harvest log before leaving the beach or immediately upon returning to shore, or who fails to return the Card to the Tribal Fisheries Department

by December 31, or earlier if required by emergency regulation, is guilty of a class D offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 18 A 148, passed 12/17/18, added language into this section that cards must be filled out before leaving the beach or immediately upon returning to shore.]

SALE OF FISH VIOLATIONS

17.1129 Sale of Another's Fish - Prohibited

Any person who sells or offers for sale fish or shellfish caught by another, unless expressly authorized by the Code or fishing/shellfishing regulations, is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1130 Members Selling Fish While on Non-Member Fishing Vessels Prohibited

Any member of the Port Gamble S'Klallam Tribe who is employed as an assistant aboard a non-member's fishing vessel who uses any cards or permits issued by the Tribe or Treaty Council to sell any fish or shellfish caught by that vessel, or allows the sale of any fish or shellfish caught by that vessel to be recorded as caught by a member of the Port Gamble S'Klallam Tribe, is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1131 Members Fishing or Selling Fish Under State License Prohibited

Any member of the Port Gamble S'Klallam Tribe who participates in fishing or shellfishing or sells fish or shellfish under a Washington State fishing license within the Tribes usual and accustomed fishing grounds, is guilty of a class B offense.

[HIST: Resolution No. 02 A 063, passed 5/14/02, added this section.]

17.1132 Recording Fish Caught Outside the U. and A. on a Fish Ticket

Any person who allows fish or shellfish to be recorded on a fish ticket as caught by a member of the Tribe, when the fish or shellfish has been caught outside of the usual and accustomed fishing grounds of the Port Gamble S'Klallam Tribe is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1133 Sale of Fish Without Proper Permits, Cards, Identification and Registration

Any person who shall sell or offer for sale any fish or shellfish:

- 1) Without the proper, valid identification and permits as required by this Code; or
- 2) Caught in a test fishery and not recorded on a test fishery card; or
- 3) Which are the property of the Tribe or Treaty Council, without properly recording the sale using the proper card under section 17.03.06 of this Code; or
- 4) Caught with any vessel which has not been registered in compliance with this Code,

is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1134 Sale of Fish Taken Unlawfully

Any person who shall sell or offer for sale any fish or shellfish taken with commercial gear in an area not specifically opened to commercial fishing with that gear is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1135 Sale of Fish Caught for Subsistence or Recreational Purposes

Any person who shall sell or offer for sale any fish or shellfish caught for subsistence or recreational purposes is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1136 Sale to Prohibited Buyers

Any person who sells fish or shellfish to any buyer who has been prohibited from buying fish from tribal members is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

GENERAL FISHING VIOLATIONS

17.1137 Fishing Outside the U. and A.

Any person who purports to exercise the treaty fishing rights of the Port Gamble S'Klallam Tribe in any area which is outside the usual and accustomed fishing grounds of the Port Gamble S'Klallam Tribe, is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1138 Fishing in Closed Area

Any person who engages in fishing at any place, at any time, or for any species not specifically opened by this Code or by annual or emergency regulations, is guilty of a class A offense.

[Cross reference: "Fishing" defined section 17.01.03]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1139 Unauthorized Test Fishery - Compliance With Requirements

Any person who:

- 1) Conducts or participates in a test fishery that has not been authorized by the Fisheries Manager or the Treaty Council; or
- 2) Who fails to obey all gear, time, area, and reporting requirements of the test fishery,

is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1140 Unauthorized Gear/Prohibited Methods

Any person who uses gear, or any method of disabling or capturing fish or shellfish not permitted in this Code or regulations adopted under it, except as may be required by biological personnel for the purpose of biological research and management, is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1141 Vandalism/Unauthorized Use/Theft

Any person who willfully and without authorization takes, uses, tampers with, damages or destroys a fishing net, vessel, other fishing or shellfishing gear, or fish or shellfish, not his or her own, is guilty of a class A offense.

[HIST: Resolution No. 02 A 063, passed 5/14/02, amended this section to expand the protection for gear, fish and shellfish. Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1142 Taking of Finfish From Hatcheries and Reservation Streams Prohibited

Any person not under the supervision of Tribal Fisheries personnel who takes, or attempts to take, or who harasses any salmon species from Little Boston Creek, Middle Creek, or any finfish from any tribal, state, federal or private hatchery facility, is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1143 Littering Prohibited

Any person who discards or disposes of any litter or other waste material while engaged in the exercise of treaty fishing rights or on the way to or from, is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1144 Use of Intoxicants Prohibited

Any person who exercises or assists in exercising treaty fishing rights while in possession of or under the influence of alcohol or illegal drugs is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1145 Wasting

Any person who fails to properly care for captured fish, shellfish, or other marine resources in such a manner that substantial deterioration in commercial or food value of the fish, shellfish, or marine resource results, is guilty of a class A offense.

[HIST: Resolution No. 15-A-167, passed 12/9/15 created Section 17.11.45 Wasting.]

17.1146 Failure to Remove Gear at End of Season

Any person who fails to remove buoys, anchors, crosslines, pots or other gear used for harvesting from a marine area at the end of, or at the end of an opening within, a harvesting season is guilty of a Class B offense.

[HIST: Resolution No. 15-A-167, passed 12/9/15 created Section 17.11.46 Failure to Remove Gear at End of Season.]

MARINE DRIFT NET VIOLATIONS

17.1147 Violation of Net Length Limits

Any person who fishes more than 330 fathoms of a marine drift gillnet in any area other than marine areas 4B, 5, and 6C is guilty of a class B offense.

“Fishes,” for purposes of this section only, does not include any portion of the net or parts of nets joined together which are not actually in the water.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1148 Buoy and Net Identification Requirements

Any person who fishes with a marine drift gillnet without a buoy attached which:

- 1) Is conspicuously marked with the Tribal Identification card number of the fisherman operating the gear;
- 2) Is marked in such a way that the fisherman and the tribal affiliation can be identified without removing the gear from the water;
- 3) Is constructed of durable material excluding plastic or metal bottles or other containers; and
- 4) Has a weighted buoy line to keep it from floating,

is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1149 Unattended Nets

Any person who leaves his or her marine drift gillnet unattended is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1150 Improper Lighting

Any person who exercises treaty fishing rights in marine waters on a vessel or using a drift gillnet which is not properly lighted according to U.S. Coast Guard regulations is guilty of a class D offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

SET NET VIOLATIONS

17.1151 Net Identification Requirements

Any person who fishes with a set net that is not:

- 1) Conspicuously marked at the outermost (seaward) ends with the Tribal Identification Card number of the fisherman operating the gear; and
- 2) Marked in such a way that the fisherman and the tribal affiliation can be identified without removing the gear from the water,

is guilty of a class C offense.

[Cross reference: section 17.05.03(a) Finfish found in unattended nets may be seized]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1152 Set Nets to be Tended Daily

Any person who fails to tend his or her set gillnet and remove all finfish captured in the net at least at once every fourteen (14) hours, is guilty of a class B offense.

[Cross reference: section 17.05.03(b) Presumption of failure to attend nets]

[HIST: Resolution No. 02 A 063, passed 5/14/02 amended this section by changing the penalty classification from C to B. Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 18 A 148, passed 12/17/18, changed the period from 24 hours to 14 hours to match the regulations already in place that tribe was following.]

17.1153 Failure to Remove Nets Upon Closure

Any person who, upon closure of a fishing area, fails to completely remove all nets and parts of nets, buoys, anchors and crosslines, regardless of the condition of the gear, is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1154 Attaching Nets to Tribal Structures Prohibited

Any person who attaches a gillnet to the Tribe's pier, salmon pens or other aqua culture project-related structure without authorization of the Fisheries Manager, is guilty of a class D offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

ON-RESERVATION NET FISHING VIOLATIONS

17.1155 Non-Resident Tribal Members Prohibited From On-Reservation Net Fishing – REPEALED

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Repealed, Resolution 06 A 067, adopted 9/19/06.]

17.1156 Violation of Special On-Reservation Net Fishing Regulations

Any person who violates any regulation for on-Reservation net fishing is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

BEACH SEINE VIOLATIONS

17.11.57 Violation of Mesh and Length Requirements

Any person who fishes with beach seine longer than 300 feet or uses mechanical gear retrieval is guilty of a class B offense.

[HIST: Adopted by Resolution 06 A 067, on 9/19/06.]

RIVER GILLNET VIOLATIONS

17.1158 Nets Not to Block River

Any person who allows a set net to extend across or block, by any means, more than half of the portion of the river which is navigable by salmon is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1159 Nets to be Attended

Any person who fishes with a river gillnet and leaves it unattended is guilty of a class B offense.

[HIST: Resolution No. 02 A 063, passed 5/14/02 amended this section by changing the penalty classification from C to B. Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1160 Nets to be Spaced 150 Feet Apart

Any person who sets or allows any part of any river gillnet to drift closer than 150 feet to any other gillnet is guilty of a class D offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

SHELLFISH VIOLATIONS

17.1161 Buoy and Net Identification Requirements - REPEALED

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Repealed by Resolution 06 A 067, on 9/19/06. These matters are now covered by regulation.]

17.11.62 Possession of Excess Shellfish on a Beach Closed to Commercial Harvest

Any person who possesses shellfish in excess of his or her subsistence limit of shellfish, while on a beach which is closed for commercial harvest, is guilty of:

- 1) A class C offense when the amount is more than 1 pound but less than 10 pounds above the limit;
- 2) A class B offense when the amount is at least 10 pounds but less than 50 pounds above the limit; and
- 3) A class A offense when the amount is fifty pounds or greater above the limit.

[HIST: Adopted by Resolution 06 A 067, on 9/19/06.]

17.1163 Shellfish Harvesting Gear Prohibitions

Any person who harvests shellfish using any gear other than hand-held gear, unless authorized by this Code regulation is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1164 Shellfishing in Closed Area

Any person who engages in shellfishing at any place, at any time, or for any species not specifically opened by this Code or by annual or emergency regulations is guilty of a class A offense.

[HIST: Resolution No. 02 A 063, passed 5/14/02 amended this section by changing the penalty classification from B to A. Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1165 Shellfish From Polluted Beach - Prohibitions

Any person who:

- 1) Takes shellfish from a polluted beach; or
- 2) Transfers, transports, offers for sale, or sells shellfish from a polluted beach; or
- 3) Attempts any conduct prohibited under this section,

is guilty of a class A offense.

This section shall not apply to the relay of shellfish from a polluted beach to a clean beach, when authorized by the Fisheries Manager.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

FISHERIES ENFORCEMENT-RELATED VIOLATIONS

17.1166 Fishing While Privilege is Revoked or Suspended

Any person who participates in commercial fishing or shellfishing activity or sells fish or shellfish while his or her fishing privilege is suspended or revoked or during a time when the Court has ordered a loss of fishing days is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances. Resolution No. 15-A-167, passed 12/9/15 added the word "commercial" for clarification.]

17.1167 Assault

Any person who uses or threatens to use force or violence against a Fisheries Enforcement Officer or any other person is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1168 Resisting Arrest

Any person who willfully resists arrest by use of force or violence or who flees from a Fisheries Enforcement Officer is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1169 Eluding

Any person who fails to or refuses to stop a vessel after being given a visible or audible signal by a Fisheries Enforcement Officer is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1170 Escape

Any person who escapes, attempts escape, or assists another to escape from lawful custody for any fishing-related or shellfishing-related offense is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1171 Obstruction

Any person who willfully interferes with or obstructs any Fisheries Enforcement Officer engaged in the lawful performance of his or her duties is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1172 Interference with Fisheries Management Personnel

Any person who willfully interferes with or prevents fisheries management personnel of the Tribe, the Treaty Council, or state or federal agencies, from carrying out their professional management duties is guilty of a class A offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1173 Giving False Information to an Officer

Any person who knowingly gives false information to a Fisheries Enforcement Officer is guilty of a class B offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1174 Failure to Assist an Officer

Any person who fails to respond to a request for assistance by any fisheries enforcement officer or who disobeys the lawful command of a fisheries enforcement officer is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1175 Failure to Appear/Respond

Any person who fails to appear and respond as required by a civil or criminal citation, summons, subpoena or notice of hearing issued under this Code is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

17.1176 Violations of Regulations and Permits

Any person who fails to comply with:

- 1) any provision of this Code,
- 2) any Port Gamble S'Klallam fishing or shellfishing regulation, or
- 3) the terms or conditions stated on any shellfishing or fishing permit,

when such failure has not been specifically designated as an offense under this Code or which does not carry with it a specific penalty, is guilty of a class C offense.

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

CIVIL INFRACTIONS

17.11.77 Non-Member Fishing Without Authorization

Any non-member (including a non-member spouse) who fishes or who assists in any treaty fishing activity, when not expressly authorized to do so by this Code, has committed a civil infraction.

Upon finding that the person committed the infraction, the Court shall impose a civil fine not less than \$250.00 and not to exceed \$5000.00 and may order forfeiture of any fish or shellfish harvested in violation of this section. The fine is intended to compensate the community for unauthorized use of its resources.

For the purposes of this section, "assist in any treaty fishing activity" is defined to include: any handling of the fishing or shellfishing gear, nets, ropes, and lines being used by the member; carrying of the fish or shellfish caught by the member; or engaging in any activity intended to cause or result in fish or shellfish being caught by the member.

[Cross reference: Title 15 - Civil Infractions Code. Section 17.06.01 prohibits the harvest of finfish and shellfish along the marine shoreline of the Port Gamble S'Klallam Reservation by non-members.]

[HIST: Resolution No. 94 A 109, passed 7/12/94 adopted a completely revised and codified Fishing Code and repealed all prior Fishing Ordinances.]

MARINE MAMMAL VIOLATIONS

17.11.78 Protection of the Fishery from Marine Mammal Damage.

Any person who shall intentionally harass, injure or kill any marine mammal except as follows, is guilty of class A offense:

- a) Tribal members are allowed to use non-lethal means to deter a Harbor Seal or California Sea Lion from damaging fishing gear, catch, private property or endangering personal safety.
- b) Tribal members are allowed to use lethal means to deter a Harbor Seal or California Sea Lion from damaging fishing gear, catch, private property, or endangering personal safety, provided that all reasonable non-lethal means to deter the Harbor Seal or California Sea Lion have been attempted.

- c) Tribal members are allowed to injure or kill a marine mammal if it is necessary to save their lives or the life of another.
- d) Tribal members are allowed to hunt certain marine mammals as provided under the Port Gamble S'Klallam Hunting Code and Hunting Regulations.

[HIST: Resolution No. 02 A 063, passed 5/14/02 amended this section by adding subsection (d). Resolution No. 95 A 080, passed at special meeting 7/27/95. Permanent adoption on 9/20/95 by Resolution No. 95 A 092.]

17.11.79 Marine Mammal Reporting Cards Required.

Any person who fails to fully complete a marine mammal reporting card and return it to the Fisheries Office by the date printed on the card, reporting each marine mammal killed under section 17.11.78 (b) and (c) of this Code and reporting each marine mammal unintentionally killed or seriously injured while engaged in fishing (i.e. entanglement in gear), is guilty of a class D offense.

[Cross reference: Marine Mammals harvested under the Port Gamble S'Klallam Hunting Code and Hunting Regulations must be reported as provided under the Hunting Regulations.]

[HIST: Resolution No. 95 A 080, passed at special meeting 7/27/95. Permanent adoption on 9/20/95 by Resolution No. 95 A 092.]