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TITLE 30

NOOKSACK FISHING ORDINANCE

ADOPTED 7/19/90  
AMENDED 8/9/90

TITLE 30

NOOKSACK FISHING ORDINANCE

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TITLE 30

NOOKSACK FISHING ORDINANCE

30.01. TITLE, POLICIES, JURISDICTION AND DEFINITIONS

30.01.010 Title : This ordinance shall be known as the Nooksack Treaty Fishing Ordinance.

30.01.020 Policies : The following shall be the governing policies of this ordinance:

- 1) To implement and exercise the fishing rights of the Nooksack Tribe as secured by the Treaty of Point Elliott, 12 Stat. 927 (1859);
- 2) To regulate the Nooksack treaty fishing in such a manner that the opportunity for Nooksack Tribal members to participate in the treaty harvest is maximized while providing for necessary conservation and protection of the fisheries resource.

30.01.030 Jurisdiction :

- 1) Sources. The provisions of this ordinance and all regulations promulgated hereunder shall apply to the full extent of the sovereign jurisdiction of the Nooksack Tribe, which shall include the following sources:
  - a) the fishing rights reserved to the Nooksack Tribe by the Treaty of Point Elliott; and
  - b) the powers granted to the Nooksack Tribal Council by the federally approved Constitution of the Nooksack Indian Tribe.
- 2) Persons. The following persons shall be subject to regulation under this ordinance:
  - a) all members of the Nooksack Tribe and all other persons who purport to exercise fishing rights belonging to the Nooksack Tribe, or who assist or purport to assist a Nooksack tribal

member in fishing;

- b) any person who is or shall become subject to the jurisdiction of the Nooksack Tribe through the operation of any law, court decision, or lawful agreement conferring such jurisdiction upon the Tribe for the purpose of implementing or protecting Nooksack treaty fishing rights; and
  - c) any person, partnership, corporation, or association which shall apply for and accept any permit, license, or franchise issued by the Nooksack Tribe under authority of this ordinance, to the extent necessary to enforce the terms and conditions of said permit, license, or franchise.
- 3) Material Objects. Any boats, fishing gear, and other property which are used in a Nooksack treaty fishery, and all fish caught pursuant to such a fishery, are subject to regulation under this ordinance, including seizure and forfeiture for violation of this ordinance.
  - 4) Territory. This ordinance shall apply to fishing activities occurring at any locations and places as required to protect the treaty fishing rights of the Nooksack Tribe set out in this ordinance.

30.01.040 General Definitions : As used in this ordinance, the following words and terms shall have the meaning set out in this section.

- 1) "Assistant, assist in fishing" and their derivatives mean a person who aids a Nooksack tribal fisherperson to participate in fishing, while in the presence of the tribal fisherperson.
- 2) "Beach Seine" means fishing gear consisting of a lead line, cork line, auxiliary lines and a mesh net webbing fashioned in such a manner that it can be used to encircle fish in waters adjacent to any beach, with the catch landed directly onto the beach.
- 3) "Biological Personnel" means the biologists and technicians who are employed by the Tribe and whose duties include giving advice on the management and/or enhancement of the Tribal fishery.
- 4) "Buyer" means a person, partnership, corporation, or association who purchases fish from the fisherperson who caught the fish or who, for commercial purposes, smokes or otherwise processes and sells fish she or he has caught.

- 5) "Ceremonial Fishery" means a fishery conducted by one or more Tribal members for the purpose of obtaining fish to be used solely for Tribal or personal ceremonial and/or religious purposes.
- 6) "Closed Season" means for any species of fish, all of the time during the entire calendar year, except the "open season" for that species as specified by Tribal regulations.
- 7) "Commercial Fishing" means the taking of fish or other fishery resources with the intent to sell them or profit economically from them.
- 8) "Depth of Net" means the total distance between cork and lead lines measured in meshes perpendicular to either cork or lead line.
- 9) "Drift Net" means a gill net of single web construction not anchored, tied, staked, placed, or weighted, but drifts freely.
- 10) "Emergency Regulation" means a regulation promulgated to accomplish a limited purpose for a limited period of time.
- 11) "Enrolled Member" means any person who is an enrolled member of the Nooksack Indian Tribe.
- 12) "Fathom" is equivalent to six feet.
- 13) "Fish" includes any fish, seafood, or other aquatic product.
- 14) "Fishing" means to attempt to catch, trap, net or otherwise take any fish from its natural habitat by any means whatsoever; and/or having caught, or to possess, any fish on a fish site by any means previously described in this definition.
- 15) "To participate in fishing" and its derivatives mean any effort to operate a vessel or fishing gear, or provide immediate supervision in the operation of a vessel or fishing gear, or otherwise assist in the fishing operation, or to claim possession of a share of the catch. All persons on board a vessel -- whether floating or beached -- which is engaged in fishing; or all persons at the end of a net that is controlled from a beach shore or land; or in an immediate area of the net to assist in the control of such net or device, are deemed to be participating in fishing.
- 16) "Fishing Gear" means all types and sizes of hooks, nets, spears, gaffs,

lines, traps, appliances and other apparatus used to take fish.

- 17) "Gill Net" is a net of single-web construction designed to entrap fish in the mesh rather than confine fish to one side of a piece of netting.
- 18) "Hand Dip Net" is a section of netting distended by a rigid frame, operated by a process commonly recognized as dipping. Such nets may be of any size.
- 19) "Hook and Line" means the non-commercial use of line and lure attached to a pole held in the hand while fishing, or the use of a hand operated line without a rod or reel.
- 20) "Loss of Fishing Days" means the suspension of the fishing privilege during an open fishing season, in the same type of waters (either marine or river) as the fishery in which the violation was committed. For example, if the violation was committed during the sockeye fishery, a loss of fishing days shall be imposed during the next opening for sockeye fishing or economically comparable fishery in marine waters, even if it takes place the next season or year. During the period of suspension, the person shall not be eligible to participate in any fishing.
- 21) "Management Period" is a time interval during which the majority of individuals of a fish species is accessible to capture. A management period is specific to a species, and a single species may have more than one management period during the course of a year --depending upon the life style of that species.
- 22) "Mouth" of a river, stream, tributary, slough, or waterway shall be construed to mean the place where one body of water enters a larger body of water. The mouth shall be measured by a line projected between the mouth's outermost uplands that are not covered by water during a high tide or normal water flow.
- 23) "Non-member" means any person who is not an enrolled member of the Nooksack Indian Tribe.
- 24) "Open Season" means, for any species of fish, the time period or periods designated by tribal regulations during which it is lawful to fish for that species pursuant to this ordinance.
- 25) "Pole Nets" means a gill net attached along the length of a pole which is approximately 10-12 feet in length, controlled by a fisherperson from the beach, usually by means of another pole

serving as a handle.

- 26) "Purse seine" means all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse lines, purse rings, and mesh net webbing fashioned in such a manner that it can be used to encircle fish, and prevent their escape by drawing in the bottom of the net by means of the purse line so that it forms a closed bag.
- 27) "Reef net" means an arrangement of floats, lines, and anchors which guide salmon into a section of mesh netting suspended between two anchored boats.
- 28) "Registered owner" means any Nooksack tribal member who has registered a vessel with the Fish Commission whether he or she owns the vessel outright or is purchasing a vessel under a sales contract approved under this ordinance.
- 29) "Reservation" means all lands under the jurisdiction of the Nooksack Indian Tribe.
- 30) "Set line" means a fishing line along which baited hooks are spaced at intervals and to which an anchor is attached on either end.
- 31) "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.
- 32) "Stake net" is a gillnet which is held in a stationary position by the use of poles.
- 33) "State" is the government of Washington State.
- 34) "Stretched Measure" is the distance between the inside of one knot to the outside of the opposite (vertical) knot on one mesh.
- 35) "Subsistence Fishery" is a fishery conducted by one or more Tribal members for the purpose of obtaining fish to be used solely for personal consumption.
- 36) "Test Fishery" is a fishery conducted on a limited basis for the purpose of obtaining biological or technical information necessary to further the purpose of this ordinance.
- 37) "Treaty" means the Treaty of Point Elliott, 12 Stat, 927 (1859), as construed and interpreted by federal court decisions and orders; pertaining to or derived from the Treaty of Point Elliott.

- 38) "Tribal Council" is the Tribal Council of the Nooksack Indian Tribe.
- 39) "Tribal Court" is the Nooksack Tribal Court or any court authorized by the Nooksack Tribal Council to perform the functions of a Nooksack Tribal Court.
- 40) "Tribal Enforcement Officer" means each person charged with the responsibility of enforcing this ordinance and regulations adopted pursuant thereto.
- 41) "Tribal Fisherperson" (or "Authorized Tribal Fisherperson") means a person who is authorized to fish pursuant to this ordinance.
- 42) "Tribal Fishery" is fishing done in any Tribal fishing area pursuant to this ordinance.
- 43) "Tribal Property" includes the Nooksack Reservation; together with all other property owned by or held in trust by the Federal Government for the Nooksack Indian Tribe and any property leased by the Tribe.
- 44) "Tribe" means the Nooksack Indian Tribe.
- 45) "Troll line" when related to its use for commercial purposes shall be defined as means a fishing line used to drag a lure or lures behind a moving vessel.
- 46) "Usual and accustomed grounds and stations" means the customary fishing areas of the Nooksack Tribe, its members, and its predecessor tribes or and bands.

30.01.050 Sovereign Immunity : The sovereign immunity of the Nooksack Indian Tribe is in no manner waived by this ordinance. The employees of the Nooksack Fisheries Department, Tribal Law Enforcement, all tribal court personnel, members of the Nooksack Fish Commission, and members of the Nooksack Tribal Council are cloaked with the sovereign immunity of the Nooksack Indian Tribe.

30.01.060 Interpretation : This ordinance shall be liberally construed to effectuate its purpose. Whenever there is uncertainty or a question as to the

interpretation of certain provisions this ordinance, tribal law or custom shall be controlling, and where appropriate, may be based on the written or oral testimony of a tribal elder, tribal historian, Fish Commission member, or other tribal representative.

30.01.070 Saving Clause : If any provision of this ordinance, or its application to any person or circumstance, is held invalid or unconstitutional, the remainder of the ordinance, or the application of the provisions to other persons or circumstances, shall not be affected.

## 30.02 ELIGIBILITY TO FISH: PERMITS, RECORDS, IDENTIFICATION

30.02.010 Permits Required : No person shall participate in fishing at the Tribe's usual and accustomed fishing grounds and stations without a current tribal fishing permit in his or her possession. Such a permit must be valid for the type of fishing being done. All fishing permits are non-transferable. All fishing permits and identification issued by the Nooksack Tribe shall remain the property of the Tribe.

30.02.020 Types of Permits for Tribal Members : Treaty fishing rights under this ordinance shall be exercised only by enrolled members of the Nooksack Tribe, except as otherwise provided in this chapter. Members of the Nooksack Indian Tribe adopted after July 19, 1990, under Article II, Section 1 G of the Constitution and Bylaws of the Nooksack Indian Tribe of Washington, shall be eligible to exercise the fishing rights of the Nooksack Tribe under this ordinance only if they have been adopted pursuant to an ordinance which expressly confers the privilege of exercising the Tribe's fishing right on such members.

The types of fishing permits and permit fees shall be set by administrative regulations. Funds from sale of permits shall be deposited in the Nooksack Fish Commission Fund.

30.02.030 Age Limit for Commercial Permits : No person under the age of sixteen (16) years of age shall be eligible to receive a commercial fishing license.

30.02.040 Permits for Non-Member Spouses: Persons who are not members of the Nooksack Tribe, but who are married to tribal members, may assist in fishing at the Tribe's usual and accustomed grounds and stations, only under the following limited circumstances:

- 1) The couple has been legally married for at least two years;
- 2) The tribal member spouse is in the immediate presence of the non-member and both are engaged together in the fishing activity;
- 3) Both the tribal member and the non-member spouse are in possession of valid tribal fishing permits;
- 4) The non-member spouse shall not exercise the fishing rights of any other Indian tribe or band during any year in which he or she fishes under a Nooksack spouse permit; and
- 5) The non-member spouse shall not sell any fish caught in a Nooksack tribal fishery.

Spouse permits shall be subject to immediate confiscation and are automatically invalid in case of divorce. If a Nooksack member's fishing privilege is revoked or suspended, his or her non-member spouse's fishing privilege shall be automatically revoked or suspended for the same duration.

30.02.050 Possession of Permits Required :

- 1) Persons engaged in a Nooksack treaty fishery shall have in their physical possession all permits required by this chapter while participating in fishing, traveling to or from fishing activity, and selling fish.
- 2) Any person fishing under claim of tribal right shall produce for examination any tribal fishing permit required by this chapter upon the demand of a Tribal Enforcement Officer.

30.02.060 Fishing Assistants : No person shall be authorized to assist a Nooksack Indian fisherperson except as set forth in this section or as authorized under section 30.02.040 (spouse permits).

- 1) An enrolled member of the Nooksack Indian Tribe who owns a

vessel registered under this ordinance may hire or be accompanied by an assistant to be aboard the vessel, provided:

- a) The assistant has in his or her possession a valid fishing permit issued by the Tribe in which he or she is enrolled, which authorizes the assistant to participate in fishing during the time, in the manner, and in the area in which the vessel is being fished;
  - b) The vessel is fishing in waters, at a time, and in a manner which is open for fishing by the Nooksack Tribe and the Tribe in which the assistant is enrolled (an "in-common" treaty fishery); and
  - c) All fish caught shall be sold under the permit of the Nooksack Tribal member.
- 2) No other type of assistance or assistants are authorized.

30.02.070 Treaty Commercial Fish Tickets :

- 1) The Director of Fisheries Management shall have the power to authorize the type of fish tickets which shall be used in the management of the Nooksack Tribe's fishery.
- 2) Each fisherperson must insure that treaty commercial fish tickets are filled out accurately, legibly, and completely regarding catch area, fishing gear type, and all other required information. Fisherpersons shall also comply with the fish ticket requirements of chapter 3.03 Sale of Fish.

30.03 SALE OF FISH

30.03.010 Sale of Fish :

- 1) No person purporting to exercise the treaty fishing rights of the Nooksack Tribe shall sell fish, seafood, or other aquatic products to any person or entity who does not have a valid Fish Buyer's License issued by the Nooksack Director of Fisheries Management.
- 2) All persons purporting to exercise the treaty fishing rights of the

Nooksack Tribe are responsible for having a Washington Department of Fisheries treaty commercial fish ticket fully and accurately filled out and for signing the ticket, upon delivery and sale of any fish or other seafood.

- 3) All persons purporting to exercise the treaty fishing rights of the Nooksack Tribe are responsible for insuring that the tribal fish tax is withheld by the buyer and is remitted to the Director of Fisheries Management for deposit in the Nooksack Fish Commission Tax Fund;
- 4) When a Nooksack tribal member participates in fishing as an assistant on a vessel registered by another tribe, the Nooksack tribal member is not authorized to sell any fish harvested under his or her permit if the fishery is subject to intertribal allocation quotas. The vessel's owner shall sell the fish and they shall count against the quota of the vessel owner's tribe.

30.03.020 Fish Buyers License :

- 1) License Required. No person or entity shall buy fish or other seafood from a Nooksack tribal fisherperson unless he or she shall have a valid Fish Buyer's License issued by the Nooksack Tribe. The Director of Fisheries Management shall have authority to approve or deny license applications based on criteria established by the Nooksack Fish Commission or Nooksack Tribal Council.
- 2) Application. An applicant buyer may apply for a Fish Buyer's License at the Nooksack Fisheries Department. The application shall be on a form approved by the Nooksack Fish Commission and shall be accompanied by a fee of \$150.00 for the home station plus \$50.00 for each additional buying station. If the application is not approved, the license fee shall be returned to the applicant.
- 3) Buyer's Agreement. No license shall be issued unless the buyer has signed a Nooksack Tribal Commercial Fish/Shellfish Buyer's Agreement on a form authorized by the Nooksack Tribal Council.
- 4) Bond. Prior to issuance of an approved Fish Buyer License, the buyer must post a cash bond or surety bond, in the amount of \$10,000, with the Nooksack Fisheries Department to insure payment of the Tribe's fish tax. The duration of any surety bond shall extend until December 31 of the year the bond was issued. Cash bonds shall be deposited in a

separate non-interest bearing account, under the authority of the Nooksack Fish Commission, and shall be refundable at the end of the fishing season, less amounts deducted to pay fines or to reimburse the Tribe for unremitted fish taxes. Any interest accrued on cash bonds shall be the property of the Nooksack Indian Tribe and shall be placed in the Nooksack Fish Commission Tax Fund.

- 5) Tax Collection. A buyer shall withhold the tribal fish tax from every sale of fish or other seafood from a Nooksack tribal fisherperson. The tax shall be remitted to the Director of Fisheries Management no later than the 4th day of every month for all taxes withheld in the preceding month.
- 6) Interest on Unremitted Tax. A buyer shall pay interest at the rate of one and one half percent (1.5%) per month on taxes not remitted as required above.
- 7) Biologist Sampling. A buyer shall allow the tribal Fisheries biology staff to enter upon the buyer's premises at reasonable times and upon reasonable notice to sample, segregate, and gather data for fisheries management purposes.
- 8) Fish Ticket Information. The buyer shall fill in all fish tickets accurately, legibly, and fully, including the amount of the fish tax withheld and the name of the vessel and/or tribal boat registration I.D. number. An imprint of both the fisherperson's embossed tribal fishing permit and the buyer's Washington state buyer's license card must appear on the fish ticket. The buyer shall comply with all state and tribal requirements for reporting the sale and purchase of fish and handling of fish tickets.
- 9) Non-Compliance. If any fish buyer fails to comply with any applicable provisions of this ordinance or Nooksack tribal fisheries regulations, the following actions shall be taken:
  - a) The Director of Fisheries Management shall advise the buyer of the alleged non-compliance and request that a satisfactory arrangement be made to ensure compliance.
  - b) If such an arrangement cannot be arranged or is not followed, the Director of Fisheries Management shall prepare a formal Proposed License Revocation and Notice of Hearing. These documents shall be served on the buyer in person or by any method reasonably calculated to give notice, at least five business days before the scheduled hearing date. Copies of both

documents shall also be provided to the Nooksack Fish Commission.

- c) The hearing shall be held before the Nooksack Fish Commission for the purpose of determining whether the buyer is in compliance with the requirements of this ordinance which apply to fish buyers and, if not, whether his or her Nooksack Fish Buyers License should be revoked. The buyer shall be given a full and fair opportunity to respond. Based on the facts presented, the Nooksack Fish Commission has the power to determine that: (i) the buyer is in compliance and the matter should be dismissed, or (ii) the buyer is not in compliance but additional time will be allowed for the buyer to comply with this ordinance, or (iii) the buyer is not in compliance and his or her Nooksack Fish Buyers License should be revoked. If revoked, the buyer shall return the license to the Fish Commission at the hearing.
  - d) Decisions of the Nooksack Fish Commission may be appealed in writing to the Tribal Council. No appeal shall be valid if it is not filed with the Tribal Council within 10 calendar days of the Fish Commission's decision and unless it states specific reasons for the appeal.
  - e) If the Nooksack Fish Commission revokes a Fish Buyers License, the name of the buyer shall be removed from the list of licensed buyers and the revocation shall be announced on the Nooksack fisheries "hot line".
- 10) Fisherpersons Shall Not Sell to Unlicensed Buyers. It shall be unlawful for a person purporting to exercise Nooksack tribal fishing rights to sell fish to a fish buyer who does not have a valid Nooksack Fish Buyers License.
- 11) On-Reservation Buyers. No person, firm, corporation, government, or other entity, except the Nooksack Indian Tribe and entities created by the Nooksack Indian Tribe, may act as a fish buyer within the boundaries of the Nooksack Indian Reservation. Violation of this section shall be grounds for exclusion from the Reservation.

30.03.030 Fish Tax :

- 1) Authority to Impose Tax. The Tribal Council has the authority to

impose a fish tax on the privilege of fishing, under Article VI, Section 2(c) (2) of the Constitution of the Nooksack Indian Tribe. There is hereby imposed a tax in the amount of two percent (2%) of the gross proceeds, including bonuses, received by a fisherperson for the sale of any and all fish, seafood, and other aquatic products taken under this ordinance. There shall be no increase in the 2% rate for five years from the date this section is enacted unless amended by the Tribal Council

- 2) Use of Tax Revenue. The proceeds of this tax shall be placed in a separate account called the Fish Commission Tax Fund, to be administered by the Nooksack Fish Commission. Funds from the account shall only be expended for the following purposes: to maximize the opportunity for Nooksack Tribal members to participate in the treaty fishery, to provide for necessary conservation and enhancement, and to protect the Tribe's natural resources, including but not limited to payment of legal fees.
- 3) Annual Budget. The Nooksack Fish Commission shall annually submit a proposed budget for the Fish Commission Tax Fund to the Tribal Council for review and approval. Modifications to the budget may be submitted to the Tribal Council when necessary. All requests for disbursements from the Fish Commission Tax Fund must be submitted in writing for review and prior approval by a quorum of the Fish Commission members at an official meeting of the Commission. Expenditures must be consistent with the approved annual budget. The Commission shall authorize two of its members and one alternate to be check signers. The check signers shall be bonded under the Tribe's blanket bond or a separate bond.
- 4) Reports, Accounting, Audit. The Commission shall contract with a qualified bookkeeper with funds from the Fish Commission Tax Fund for the purpose of keeping an accurate accounting of all of the Commission's financial transactions. The Tribal Council shall be given an opportunity to participate in the selection of the bookkeeper. The bookkeeper shall be bonded, at his or her own expense. The Nooksack Fish Commission shall submit an annual financial report to the Fish Committee and the Nooksack Tribal Council. The Fish Commission shall arrange for an annual audit by a Certified Public Accountant by March 1 of each year unless a later date is approved by the Tribal Council. Copies of the audit report shall be provided to the Tribal Council and to the Nooksack Fish Committee.

30.04      BOAT REGISTRATION

30.04.010 Boat Ownership and Registration : No tribal member in the exercise of treaty fishing rights held by the Nooksack Tribe shall operate any vessel in marine waters that is not owned by, or in the process of being purchased by a tribal member pursuant to this ordinance. All boats operated in marine waters and all boats nineteen (19) feet or longer operated in non-marine waters, fished by Nooksack tribal members, shall be registered with the Fish Commission as provided under this chapter.

30.04.020 Boat Identification : All vessels fished by a Nooksack tribal fisherperson shall be identified in conformity with this ordinance and all tribal regulations for identification of boats.

- 1) Vessels under nineteen (19) feet, operated in non-marine waters, shall prominently display the tribal fishing identification number of its owner in a manner which is clearly visible from any nautical or land approach.
- 2) Vessels nineteen (19) feet and greater and all vessels operated in marine waters shall prominently display the Nooksack tribal boat registration number by permanently affixing the decal directly to the cabin, if there is a cabin. In all cases the number shall be clearly visible from any nautical, air, or land approach.

30.04.030 Gear Identification : All nets and other fishing gear, including river dinghies, which are used by Nooksack fishers in any Nooksack treaty fishery shall be conspicuously marked in such a way that the fisherperson may be identified without the necessity of removing the fishing gear from the water, and in compliance with all tribal regulations for fishing gear identification. All unmarked fishing gear and any fish found therein may be confiscated as provided in this ordinance.

30.04.040 Boat Registration - Scheduling :

- 1) Any boat nineteen (19) feet long or more and all vessels operated in marine waters, fished by a Nooksack tribal fisherperson must be registered annually with the Fish Commission. The Fish Commission has the authority to set fixed dates to consider

applications for boat registration and shall notify the Fish Committee of such deadlines. No registration shall be considered except at a meeting scheduled by the Fish Commission for the purpose of boat registration.

- 2) Persons who purchase boats after the deadline for annual boat registration shall give the Fish Commission at least two weeks notice before a meeting shall take place to consider whether to register the vessel.
- 3) No boat registration shall be considered unless a quorum of the Fish Commission is present.

30.04.050 Boat Registration Process :

- 1) No vessel shall be issued a tribal boat identification number and/or annual validation sticker unless :
  - a) The annual boat registration fee has been paid in full;
  - b) The owner has no outstanding fishing fines, fish taxes, and his or her fishing privileges have not been revoked or suspended;
  - c) The owner has submitted proof of ownership of the vessel with no encumbrances to the Fish Commission (such as U.S. Coast Guard Certificate of Documentation with current validation or title to the vessel); or a copy of any contract for purchase of the vessel financed by a bank along with a record of all payments made toward purchase of the vessel during the previous year; or the owner has received approval from the Fish Commission of a conditional sales contract under the terms of this chapter and submits a record of all payments made toward purchase of the vessel during the previous year. Vessels under 19 feet are exempt from this subsection;
  - d) A marine survey is submitted with each first-time registration application for a particular vessel and, for boats being purchased on a conditional sales contract, every five years thereafter. Vessels under 19 feet are exempt from this subsection; and
  - e) The vessel will at all times be under the lawful control of the tribal member and used exclusively as a Nooksack registered vessel in all fisheries. This section shall not prevent a Nooksack

tribal member from fishing his or her Nooksack registered vessel outside the Tribe's usual and accustomed fishing grounds, unless prohibited by tribal regulations. (See section 30.10.020 (6).) Vessels under 19 feet are exempt from this subsection.

30.04.060 Additional Registration Procedures - Regulations : Additional procedures to assist in a fair and efficient boat registration process may be provided for through Administrative Regulations under section 30.06.060.

30.04.070 Conditional Sales Contracts : Individual Nooksack fisherpersons may engage in a contract which will allow the tribal member to purchase a fishing vessel and/or fishing gear provided the conditions set forth in this section have been met and the contract is approved by the Fish Commission. The Fish Commission has the authority to approve or disapprove a conditional sales contract, based on this policy : to protect tribal members from improper or unrealistic agreements which may result in legal or financial problems or an undesirable exploitation of the Nooksack treaty fishing right. The Fish Commission shall disapprove any contract if it appears to exploit the tribal member or if it appears that the tribal member will not be able to own the boat free of encumbrance within a reasonable time. No conditional sales contract shall be approved by the Fish Commission unless:

- 1) The buyer and seller appear in person before the Fish Commission at the time and place designated by the Commission for review of the contract;
- 2) The purchase value of the vessel and fishing gear is reasonable relative to comparable equipment and interest costs. A marine survey shall be submitted with the contract for review by the Fish Commission for each first-time registration application for a particular vessel and every five years thereafter;
- 3) The vessel will at all times be under the lawful control of the tribal member and used exclusively as a Nooksack registered vessel in all fisheries. This section shall not prevent a Nooksack tribal member from fishing his or her Nooksack registered vessel outside the Tribe's usual and accustomed fishing grounds, unless prohibited by tribal regulations. (See section 30.10.020 (6)); and
- 4) The total value of the catch shall accrue to the tribal member. The contract may provide for fixed payments or payments may be

determined by a percentage of the value of the catch. No contract shall be approved unless the terms clearly provide:

- a) A fixed purchase price and the manner in which payments will be applied to principle and to interest.
- b) The annual interest rate, which shall not exceed the legal rate of interest for consumer loans in Washington state.
- c) The manner in which prepayments will be credited toward the purchase and providing that there shall be no penalty for prepayment.
- d) The amount and type of insurance coverage, who will pay for insurance, and how the proceeds of any insurance will be apportioned between buyer and seller.
- e) Payments shall be made by the buyer and shall be disbursed to the seller through a commercial bank or other approved financial institution. An accounting of the payments and disbursements shall be submitted to the Fish Commission by the buyer on an annual basis.
- f) A statement that the parties understand that use of the vessel by any person other than the buyer is unlawful and may result in civil and criminal penalties against both buyer and seller and confiscation of the vessel.
- g) For any arrangements whereby portions of the catch proceeds may be held in a separate account to provide for repairs to the vessel and fishing gear. The remainder of which, at the end of the contract shall revert to the tribal member.
- h) Procedures to be followed in case of default.

Vessels under 19 feet are exempt from this section.

30.05

DIRECTOR OF FISHERIES MANAGEMENT, FISH COMMITTEE AND FISH COMMISSION

30.05.010 Director of Fisheries Management : The Nooksack Tribe shall employ a tribal Director of Fisheries Management, subject to the personnel policies and procedures of the Tribe. The Director of Fisheries Management shall be under

the general supervision of the Business Manager and shall be responsible for:

- 1) Managing the Nooksack tribal fishery;
- 2) Supervising the employees of the tribal fisheries department;
- 3) Coordinating the management of the tribal fishery with tribal, international, federal, state, and other agencies;
- 4) Recommending and, where authorized, promulgating, fishing and other regulations as provided in this ordinance;
- 5) Planning and implementing fisheries enhancement efforts of the Nooksack Tribe. Priorities for enhancement projects shall be set by the Nooksack Fish Commission;
- 6) Carrying out any duties delegated to the Director of Fisheries Management under this ordinance or by the Fish Commission;
- 7) Attending meeting of the Fish Commission; and
- 8) Such other powers and duties as set forth in this ordinance.

30.05.020 Fish Committee : All tribal member who are licensed to fish under this ordinance shall be members of the tribal Fish Committee. The Fish Committee shall hold regular monthly meetings and such other meetings as shall be scheduled by the Committee itself for its Chairperson. The Fish Committee shall also be given an opportunity to review annual Fishing Regulations proposed under NTCL 30.06.020 and shall elect the Tribal Fish Commission in the manner provided below in NTCL 30.05.030.

30.05.030 Fish Commission : There is hereby established a Nooksack Fish Commission, to be elected from the membership of the Nooksack Fish Committee.

- 1) Composition. There shall be 5 members of the Fish Commission, chosen from among the members of the Fish Committee.
- 2) Election. Each January the Director of Fisheries Management shall mail written notice to all tribal fisherpersons that a meeting shall be held to elect members to the tribal Fish Commission. The Fish

Committee shall elect by secret ballot a Chairperson who shall serve a three year term; a Vice-Chairperson who shall serve a two year term; a Secretary-Treasurer who shall serve a three year term; two at-large members, one of whom shall serve a one year term and the other shall serve a two year term; and two alternate members, one of whom shall serve a one year term and the other shall serve a two year term. An alternate shall only vote if there is not otherwise a quorum present. The Chairperson shall only vote to break a tie. The Vice-Chairperson shall act in the absence of the Chairperson. A report on the activities and goals of the Fish Commission shall be given to new members at the first regular meeting following the election.

- 3) Regular Meetings. The Chairperson of the Fish Commission and the Director of Fisheries Management shall each be authorized to call meetings of either the Fish Commission or Fish Committee. No regular meeting of the Fish Committee shall be legal unless written notice thereof shall be mailed to members at least three working days in advance of the proposed meeting date. A quorum of the Fish Commission shall be 3 members.
- 4) Emergency Meetings. The Director of Fisheries Management or any member of the Fish Commission may call an emergency meeting of the Fish Commission. If the meeting is convened to review an Emergency Regulation proposed under this ordinance, the Fish Commission has the authority to rescind or modify the proposed Emergency Regulation. A meeting shall be properly convened if a good faith effort to provide actual notice to all Commission members shall have been made and if a quorum of Commission members shall attend such meeting. Any action taken shall be reviewed at the next following regular meeting of the Fish Commission and may be modified or rescinded at that time.
- 5) Vacancies. If any member of the Fish Commission shall fail to attend 3 consecutive legal meetings of the Commission, and shall have no adequate excuse thereof, the Chairperson of the Commission shall declare the position vacant and shall appoint one of the alternate Commission members to complete the remaining term of that office. If the Chairperson's position is vacant, the Vice-Chairperson shall fill the remaining term of the Chairperson. By written notice, the Chairperson shall call a meeting of the Fish Committee to elect a new member to fill the vacancy left by the alternate (or to elect a new Vice-Chairperson in the event that the Vice-Chairperson fills in a vacancy in the Chairpersonship.) The procedures set out in this subsection also shall apply to filling vacancies caused by resignation or death of a Commission member.

- 6) Duties and Powers. The Fish Commission is responsible for setting policy for the Nooksack fisheries resource. The following shall be the duties and powers of the Fish Commission:
- a) To review and take action on proposed Conditional Sales Contracts as provided under this ordinance;
  - b) To promulgate and approve fishing regulations as provided under this ordinance;
  - c) To carry out duties with respect to the sale of fish, fish buyers' licenses, and the fish tax as set forth under NTCL 30.03;
  - d) To meet periodically with tribal fisheries department staff to review department programs, policies, performance, and allocation of staff personnel and budget, and to recommend needed improvements to the Director of Fisheries Management, Business Manager, or Tribal Council, as as be appropriate. A quorum of three Fish Commission members must be present to bring action items to the Tribal Council, such as proposed amendments to this ordinance;
  - e) To review both proposed and current grants and contracts affecting the fishery resource including contracts for test fisheries;
  - f) To meet with the Fish Committee at its regular meetings to review recent and current Fish Commission actions;
  - g) To delegate authority and duties to the Director of Fisheries Management;
  - h) To perform such duties and exercise such powers as from time to time may be conferred by the Tribal Council; and
  - i) To perform such other duties and exercise other powers as set forth in this ordinance.
- 7) Referral. The Fish Commission may refer any matter before it to the entire Fish Committee for review. Such review shall be advisory only and shall not eliminate the need for formal Fish Commission approval of any matter requiring such approval under the terms of this ordinance.

30.05.040 Delegation of Authority : The Director of Fisheries Management may delegate his or her administrative responsibilities under this ordinance, including powers and duties conferred by NTCL 30.04 above, to employees or contractors of the tribal fisheries Department who are under his or her direct supervision. No regulations may be proposed in the name of the Director of Fisheries Management under NTCL 30.06 without his or her specific concurrence.

30.05.050 Biological Personnel : Biological personnel authorized by the Director of Fisheries Management may take and possess fish of all species for scientific, management and/or enhancement purposes provided, he or she shall have in his or her possession an identification card identifying him or her as biological personnel. Biological personnel authorized under this section are authorized to board vessels and take other measures necessary to inspect, take samples, measure, count, and collect other data for use in the management of the fisheries resource.

Each person taking fish under the authority of this section shall keep a cumulative record of all fish taken by him or her and shall produce it for inspection upon request by the Tribal Chairperson or a Tribal Enforcement Officer. Fish taken under authority of this section shall not be sold or used by biological personnel for personal gain, but shall be disposed of as directed by the Director of Fisheries Management.

## 30.06      TRIBAL REGULATIONS

30.06.010 Tribal Fishing Regulations - Generally : The Director of Fisheries Management is hereby authorized to propose regulations for the purpose of managing and conserving the Nooksack treaty fishery resource and to implement the powers and duties conferred by this ordinance. There shall be five types of regulations allowed by this ordinance, and each shall be adopted in the manner provided below.

30.06.020 Annual Pre-Season Fishing Regulations : Each year the Director of Fisheries Management shall propose annual fishing regulations stating the

general terms and conditions governing the Nooksack treaty fishery for the coming seasonal year. The seasonal year shall begin on June 1 of each year and shall end on May 31 of the following year. The Director of Fisheries Management is responsible for preparing and presenting the annual pre-season regulations in a timely manner so the Tribe is in compliance with the requirements of intergovernmental agreements and applicable court decisions regarding notice of pre-season regulations. This seasonal year applies to permit validation unless the date for permit expiration and validation are changed by administrative regulations. Nothing in this section shall prevent the promulgation of in-season and emergency regulations to modify or add to matters set forth in the in-season regulations, for the proper management of the resource. The annual pre-season fishing regulations shall set out the management periods for the coming year by species and by area.

Adoption. Annual pre-season fishing regulations shall be proposed by the Director of Fisheries Management and reviewed by the Fish Committee. After review, the proposed regulations shall be presented for review, modification, and adoption by the Fish Commission.

Amendment. Annual pre-season fishing regulations may be amended at any time by the same procedures as set out herein for adoption.

30.06.030 In-Season Regulations : The Director of Fisheries Management shall have the power to promulgate in-season regulations when deemed necessary to insure proper management of the fisheries resource. This includes:

- 1) The times and places when and where the taking and possession of any and all of the various classes of fish is lawful or is prohibited or otherwise limited;
- 2) The types, sizes, and other characteristics of fishing gear; and the time, places and manner in which it will be lawful to use or possess any fishing gear;
- 3) Restrictions on boats such as but not limited to the number, type, and size of boats which may be used, and the time and place in which they may be used;
- 4) Any restrictions on the species, size, sex, number, weight, ratio of one type of fish to another, and any other characteristics of the catch; and
- 5) Allocation of the opportunity to fish between user groups.

Effect and Review. In-season regulations shall be put in effect and shall be reviewed in the same manner as emergency regulations under sections 30.06.040 (1) and (2) and those sections are hereby incorporated by reference.

30.06.040 Emergency Regulations : The Director of Fisheries Management shall have the power to make emergency changes in the annual pre-season and in-season regulations when deemed necessary to insure proper management of the fisheries resource. This includes but is not limited to the power to close a tribal fishery when it appears that escapement goals will be exceeded; to modify fishing gear limitations to either increase or decrease fish harvest levels; and to allocate the opportunity to fish between treaty and non-treaty fishers, between the commercial fishery and the subsistence and ceremonial fishery, and among tribal gear types. With respect to any run of fish, should it appear that the total number of fish available for Nooksack treaty harvest is insufficient to support a commercial fishery without severely depleting the amount of fish available to the tribal subsistence and ceremonial fishery, the Director of Fisheries Management shall propose emergency regulations which give preference to maintaining the subsistence and ceremonial fishery.

Emergency regulations supersede conflicting, previously promulgated, annual pre-season and in-season regulations.

- 1) Effect. Emergency Regulations shall be effective upon their issuance or according to their terms and shall remain effective until modified or rescinded by the Director of Fisheries Management or the Fish Commission. No penalty shall be imposed for violation of an emergency regulation unless twenty-four (24) hours have passed since the issuance of the emergency regulation, or until there has been personal service of the regulation upon the fisher, whichever occurs first. Personal service includes verbal, telephone, and radio contact and other forms of actual notice. All emergency regulations shall be posted at the Tribal Center, mailed to all tribal fisherpersons, and programmed into the Nooksack Fisheries telephone hotline. Provided, in cases where a fishery is open for less than 72 hours, fisherpersons may be required to keep radio contact with the Director of Fisheries Management or his or her designee. The fisherperson in such cases shall be responsible for receiving notice of any closure or other emergency regulations affecting the fishery via radio or by other form of personal service.
- 2) Review. If practicable prior to the issuance of an emergency regulation, the Director of Fisheries Management shall obtain the

concurrence of the Fish Commission to such action. If prior review is not possible, the Director of Fisheries Management shall issue the emergency regulation and simultaneously notify Fish Commission members of his or her action and convene a meeting of the Fish Commission to review said action. Subsequent to review thereof the Fish Commission may rescind the emergency regulation.

- 3) In the event the emergency regulation has been issued in order to comply with a state or federal directive effecting a conservation closure of or other limitation upon a Nooksack treaty fishery, the Fish Commission may examine the factual basis therefore, and if it appears to be insufficient to support the directive, shall instruct the Director of Fisheries Management to take appropriate action.

30.06.050 Ceremonial and Subsistence Regulations : The Fish Commission may establish guidelines for issuance of ceremonial and subsistence regulations, such as but not limited to the numbers and types of fish to be harvested and the types of authorized uses. No ceremonial or subsistence regulation shall be issued to any person or group for the purpose of selling or trading the fish. Requests for issuance of ceremonial and subsistence regulations shall be directed to the Director of Fisheries Management.

Adoption. Ceremonial and subsistence regulations for emergency use such as funerals shall issued in the same manner as emergency regulations under section 30.06.040. Ceremonial and subsistence regulations for all other purposes shall be issued in the same manner as administrative regulations under section 30.06.060.

30.06.060 Administration Regulations Authorized : The Director of Fisheries Management may propose administrative regulations for the purpose of providing the standards, forms, procedures, permits, permit fees, programs, and qualifications necessary to efficient management of the fisheries resource and to carry out the powers and duties conferred upon him or her by this ordinance provided that no matter described in NTCL 30.06.020 or 30.06.030, 30.06.040, and 30.06.050, shall be enacted under any administrative regulation.

Adoption. The Director of Fisheries Management shall convene a meeting of the Fish Commission to review any regulation proposed under this section. If the Fish Commission does not act on the proposed regulation at the meeting, it shall have 14 calendar days from the date of said meeting to approve or disapprove the proposed administrative regulation. If the Fish Commission

shall fail to act within the 14 day period, the regulation shall be deemed adopted. If the Fish Commission shall reject the proposed regulation, the Director of Fisheries Management may appeal this decision to the Tribal Council, which shall either uphold the Fish Commission or overturn its decision and adopt the regulation. Any member of the Fish Commission has the power to convene a meeting of the Fish Commission to review any regulation proposed under this section.

### 30.07      TEST FISHERY

30.07.010 Authorized : The Director of Fisheries Management shall be authorized to to implement a test fishery when in his or her opinion such a fishery is required to obtain data as to run size, composition, and for other fisheries management purposes. The Fisheries Managers shall determine the time, places, and effort to be used in the test fishery. The Director of Fisheries Management may make agreements with other governments and agencies for conducting test fisheries.

30.07.020 Participation : The following persons are authorized to participate, including monitoring and analysis of data, in a Nooksack test fishery:

- 1) Enrolled members of the Nooksack Tribe who are licensed to fish under this ordinance are authorized to actually harvest fish in a test fishery under this section.
- 2) If a Nooksack fisherperson is not available to conduct a test fishery, other enrolled members of Point Elliott Treaty tribes who are eligible to participate in their own tribe's treaty fishery may be authorized by the Director of Fisheries Management to conduct a test fishery.
- 3) Biological personnel of the Nooksack Fisheries department shall monitor and analyze data from the test fishery. If a Nooksack Fisheries biologist is not available, other professional biologists who have been approved for monitoring and analysis of data by the Director of Fisheries Management.

30.07.030 Selection : No person shall be selected to participate in a Nooksack test fishery who is not familiar with both the gear type and area for which the test fishery has been designated. Selection of Nooksack tribal members to participate

in a test fishery shall be made in a fair and equitable manner which shall afford to all qualified tribal members a reasonable opportunity to apply for selection.

30.07.040 Responsibilities : No person shall be permitted to participate in a test fishery who has not agreed in advance to provide to the Director of Fisheries Management all information requested in the time limits requested, regarding the test fishery. Failure to report on a daily basis constitutes withdrawal from the test fishery as of the time of the last preceding report of information which was actually filed.

30.07.050 Compensation : Tribal members who participate in a test fishery shall be compensated as agreed upon between the test fisherpersons and the Director of Fisheries Management. All fish caught in a test fishery shall be the property of the Nooksack Tribe, and any proceeds derived from a commercial sale of fish harvested during a test fishery shall be deposited to the Fish Commission Fund, unless deposit in the Fund is prohibited by the terms of a fisheries grant or contract under which the test fishery is being conducted.

### 30.08. ENFORCEMENT

30.08.010 Tribal Enforcement Officers Authorized : The Nooksack Tribe shall employ one or more persons to act as Tribal Enforcement Officers, subject to the personnel policies and procedures of the Tribe. It shall be the duty of the Tribal Enforcement Officers to regularly patrol the usual and accustomed fishing grounds of the Nooksack Tribe. Tribal Enforcement Officers shall be authorized to enforce:

- 1) This ordinance and all regulations issued hereunder;
- 2) Those provisions of the Nooksack Law and Order Code as shall pertain specifically to the regulation or protection of the Nooksack treaty rights and generally to the procedures to be followed in issuing citations and effecting lawful searches and arrests;
- 3) Federal laws which confer authority upon tribal Tribal Enforcement Officers to protect federally protected Indian treaty rights;
- 4) Any duties and powers conferred by any joint enforcement or cross-deputization agreement in effect between the Nooksack Tribe and any

other tribe or law enforcement agency;

- 5) Orders of the Nooksack Tribal Court; and
- 6) Tribal Enforcement Officers shall have such other authority as set forth under this ordinance and any regulations issued hereunder, and as given by their supervisor(s), by the Tribal Council, and by the Fish Commission.

30.08.020 Regulations - Construction : Any provision of this ordinance which reads "under this ordinance" "in violation of this ordinance" or "as required by this ordinance" shall be constructed to read, respectively: "under this ordinance or any regulations issued hereunder" "in violation of this ordinance or any regulations issued hereunder," and "as required by this ordinance or any regulations issued hereunder."

30.08.030 Powers and Duties : Any officer authorized to enforce this ordinance shall have the following powers and duties:

- 1) To cite violators for criminal offenses and civil fishing violations, into Tribal Court, to file complaints in Tribal Court based upon the officer's information and belief, and to request search warrants;
- 2) To inspect and search without warrant any fish, fishing gear, vehicle, conveyance, container, or property used in catching, processing, storing, or marketing fish which he or she has reason to believe contain evidence of violations of this ordinance or regulations;
- 3) To stop, detain, question, and search suspected violators;
- 4) To arrest tribal members under any of the following circumstances:
  - a) The officer has a warrant signed by the Tribal judge commanding the arrest of such person or knows as a certainty that such a warrant has been issued; or
  - b) A criminal offense has occurred in the presence of the arresting officer; or
  - c) The officer has reasonable cause to believe that the person to be arrested has committed a criminal offense under this ordinance

or other criminal law of the Tribe; or

- d) The officer cannot issue a citation to the alleged offender because said person has refused to identify himself or has refused to sign the citation;
- 5) To order a boat to stop, to board, inspect, and search without a warrant, boats which he or she has reason to believe contain evidence of violations of this ordinance or regulations;
- 6) To seize fish without warrant, which the officer has reason to believe were taken, killed, transported, or possessed in violation of this ordinance or regulations and may seize without warrant a boat, vehicle, fishing gear, or other article held with intent to violate or has been used or possessed in violation of this ordinance, and weapons, and other things lawfully subject to seizure under the Rules of Criminal procedures;
- 7) To confiscate any tribally-issued fishing card or permit used or possessed in violation of this ordinance as provided by NTCL 30.08.060;
- 8) To obey and carry out lawful court orders, including but not limited to search warrants and arrest warrants, issued under this ordinance;
- 9) To order any person who the officer believes has committed a Type III civil fishing violation, and his or her or her vessel, off the water; and
- 10) Such other powers as are necessary to carry out his or her or her authority under section 30.08.010.

30.08.040 Confiscation of Fish : Whenever a Tribal Enforcement Officer shall make an arrest or issue a civil or criminal citation under this ordinance, such officer may confiscate any fish reasonably believed to have been caught illegally by the alleged violator. Such fish shall be sold in a timely manner and the proceeds therefrom shall be held in a special account by the Director of Fisheries Management until such time as directed by the Tribal Court to dispose of or release said proceeds.

In the event that the Tribal Enforcement Officer shall seize fish caught with fishing gear that is unattended and no citation can be immediately issued, such fish shall be sold as provided above. If the owner of the fishing gear cannot be identified and cited within fourteen (14) days of the date of the seizure, the

proceeds of the seizure shall be disposed of according to NTCL 10.06.050, Return of Property When Owner Unknown.

30.08.050 Confiscation of Boats and Gear : A Tribal Enforcement Officer shall confiscate boats and fishing gear used unlawfully hereunder, in the following manner:

- 1) Unattended river gear which is fished illegally shall be seized and held at the Fisheries Office or other secure storage site until it is properly disposed of by the Tribal Court according to the provisions of NTCL 10.06. Unattended property for which no owner can be discovered shall be disposed of in accordance with NTCL 10.06.050.
- 2) Attended fishing gear shall be seized if such gear is of a type that cannot be used legally under this ordinance at any time or place.
- 3) Any fishing gear and/or boat may be seized when the gear of boat may be needed as evidence in court.
- 4) Any fishing gear and/or boat shall be seized if the owner or operator thereof has failed to appear in Tribal Court to respond to a citation issued previously under this ordinance or has failed to satisfy judgment for a previous conviction under this ordinance.

30.08.060 Confiscation of Tribal Permits : Attendant to the issuance of a citation, a Tribal Enforcement Officer shall confiscate tribal fishing permits or licenses from violators of this ordinance under the following circumstances:

- 1) The permit is in the possession of a person to whom said permit was not issued;
- 2) The Tribal Enforcement Officer shall determine that seizure of the permit is necessary to prevent further or continued violations of this ordinance; or
- 3) The Tribal Enforcement Officer is issuing a citation for a Type III civil fishing violation, for a second or subsequent Type II civil fishing violation committed by the same person, or is issuing a citation or arresting the person for any criminal offense under this ordinance.

30.08.070 Disposition of Confiscated Materials : Any fish, boat, gear, permit, license, or other object confiscated or seized under authority of this chapter shall be disposed of in accordance with the procedures of NTCL 10.06.050.

30.08.080 Tribal Court Jurisdiction : The Nooksack Tribal Court shall have jurisdiction over all criminal and civil cases under this ordinance and fishing regulations. The jurisdiction of the Nooksack Tribal Court over persons and territory shall be the fullest permissible under the Constitution of the Nooksack Indian Tribe and other laws applicable to the Nooksack Tribal Court.

30.08.090 Failure to Appear/Respond : If a person fails to respond or appear as required under this ordinance, the Court shall enter an order finding that the defendant committed the violation, assess the appropriate fine and shall notify the Director of Fisheries Management to prevent the issuance of new permits until all fines are paid. The Court may also issue a summons or an arrest warrant for the defendant's appearance. Failure to appear or respond is also a criminal offense and may be prosecuted under section 30.11.010 of this ordinance.

30.08.100 Default on Fine : If a defendant fails to pay a fine or any installment due, the Court, on its own motion or on the Tribe's motion, shall order the defendant to show cause why he or she shall not be held in contempt and may issue a summons or an arrest warrant for the defendant's appearance. This section may be imposed in addition to any other penalty or remedy provided under this ordinance or other laws of the Nooksack Indian Tribe. The following restitution shall be made to the Court and to the Tribe if the Court finds the defendant to be in contempt:

First time a person is in contempt of court - A mandatory \$100 penalty, a mandatory loss of one fishing day as defined in section 30.01.040, and the Court shall advise the defendant that if the Court's order is not complied with in full by the date set by the Court, including payment of the mandatory \$100 penalty, the defendant shall be subject to the penalties for a second contempt of court .

Second Contempt - A mandatory \$100 penalty, and a mandatory loss of three fishing days.

Third and Subsequent Contempts - A mandatory loss of one calendar year of all

fishing privileges.

A person shall have a "clean slate" for purposes of counting the number of times he or she has been in contempt of court in five years from the date the person satisfied the court ordered penalty.

30.08.110 Fish Tickets as Evidence : The embossed appearance of the identification number of a Nooksack tribal fishing permit holder or his or her signature, on any fish receiving ticket, including unofficial receipts or proofs of sale, shall be admissible in the Nooksack Tribal Court as prima facie evidence that the permit holder caught and sold the fish reported on the ticket on or about the date of the ticket.

30.08.120 Presumption as to Responsibility of Boat Owner : The registered owner of any vessel registered by the Nooksack Fish Commission shall be presumed to have criminal and civil responsibility for the operation of the vessel. "Registered owner" shall include Nooksack tribal members who are purchasing a vessel under a sales contract approved under this ordinance.

30.08.130 Statute of Limitations : Section 10.06.020 is hereby amended to provide a three year statute of limitations for criminal fishing offenses under this ordinance. There shall be a three year limit on civil fishing violations under this ordinance. The time shall be computed in the same manner for civil and criminal fishing cases.

## 30.09      CIVIL PROCEDURE

30.09.010 Purpose : The Nooksack Indian Tribe adopts civil procedures to enforce this ordinance to protect the fishery resource from violations by all persons over whom the Tribe has jurisdiction and to provide for the fair and efficient administration of justice. As unlawful fishing harms the whole tribal community, the penalties set forth in this ordinance are intended to be compensatory rather than punitive.

30.09.020 Complaints/Citations for Civil Fishing Violations : Civil fishing violation cases shall be started by a complaint and a notice of hearing which lists the defendant's choices for responding--both of which shall be filed with the Court by the Tribal Prosecutor, with copies served on the defendant. The Prosecutor's complaint shall be based on either the written report, citation, or notice of infraction of a Tribal Enforcement Officer, or on the affidavit(s) (signed before a notary or the Court Clerk) of any person, or on the written report of another law enforcement agency.

30.09.030 Notice of Hearing/Defendant's Choices for Responding : The Notice of Hearing filed with the Court by the Prosecutor shall be served on the defendant by certified mail return receipt requested, or by personal service on the defendant or on a member of the defendant's household who is at least eighteen years old. The Notice of Hearing shall set a time for an initial hearing to be held no sooner than seven (7) nor more than ninety (90) calendar days from the date the notice of hearing is mailed or personally served unless the parties agree otherwise. The notice shall explain to the defendant that he or she shall either:

- 1) Pay the fine on or before the date of the initial hearing, if payment in lieu of appearing before the court is allowed for the particular violation. The Prosecutor shall indicate in the notice whether the defendant is eligible to pay the fine in lieu of appearing before the Court and the amount of the fine;
- 2) Request a hearing to explain the circumstances (without contesting that he or she committed the violation). The defendant will have an opportunity at the hearing to request time payments, or request that a fine in the lower range be imposed; or
- 3) Request a hearing to contest that he or she committed the violation.

30.09.040 Payment of Fine in Lieu of Appearance : A defendant has the option of paying \$150.00 for the first violation of a Type I civil fishing violation or \$300.00, for the second Type I civil fishing violation in lieu of appearing before the Court. The Prosecutor shall indicate in the notice whether the defendant is eligible to pay a fine in lieu of appearing before the Court and the amount of the fine.

Appearance before the Court is mandatory for all other civil and criminal violations of this ordinance. Payment shall be made on or before the date of the first hearing. Upon payment, the Court shall enter a judgment that the

defendant committed the violation.

30.09.050 Rights at Hearing : The following rules apply to all civil fishing hearings:

- 1) The proceedings shall be heard by the Court without a jury; and
- 2) The defendant may be represented by a spokesperson at his or her own expense.

30.09.060 Hearing to Explain the Circumstances : If a defendant does not contest that he or she committed a violation, he or she may request a hearing to explain any circumstances which might arguably lessen the amount of the penalty. These rules apply to such hearings:

- 1) The defendant cannot contest the determination that he or she committed the violation;
- 2) The proceeding shall be informal with appearance by the Prosecutor optional, at the Prosecutor's discretion;
- 3) The Court cannot lessen or suspend a mandatory minimum penalty;
- 4) The Court shall determine whether the defendant's explanation justifies a fine in the lower end of the penalty range;
- 5) The Court shall enter an order stating that the defendant committed the violation and assessing the civil penalties provided; and
- 6) The parties' right to appeal is limited to appealing sentences imposed by the Court outside the range provided in this ordinance.

30.09.070 Hearing to Contest the Violation : The following rules apply to hearings where the defendant contests that he or she committed the violation:

- 1) The Court shall set a hearing date no sooner than seven (7) nor more than sixty (60) days from the date of the initial hearing unless the parties agree otherwise;
- 2) The Tribe and the defendant have the right to subpoena witnesses;

- 3) The defendant has the right to confront and cross-examine witnesses against him or her;
- 4) The parties may present evidence and examine witnesses;
- 5) The Tribe has the burden of proving the defendant committed the violation by a preponderance of the evidence;
- 6) After hearing the evidence and arguments, the Court shall determine whether the defendant committed a violation. Where it has not been established by a preponderance of the evidence that a violation has been committed, the Court shall enter an order dismissing the action. Where it has been established that a violation has been committed, the Court shall enter an order accordingly; and
- 7) Both parties have the right to appeal. Appeals shall be governed by the Nooksack Appellate Rules.

30.10      CIVIL FISHING VIOLATIONS

30.10.010 Type I Civil Fishing Violations.

The following are Type I Civil Fishing Violations:

- 1) Possession of Fishing Permit. It shall be a civil fishing violation to participate in fishing or to sell fish or to travel to or from fishing activity without having one's current, valid tribal fishing permit/identification within one's immediate possession or control.
- 2) Failure to Report Loss of Fishing Permit/Identification. It shall be a civil fishing violation to fail to report the loss of one's fishing permit/identification to the Director of Fisheries Management or to a Nooksack Tribal Enforcement Officer within forty-eight (48) hours.
- 3) Commercial Fishing by Persons Under the Age of Sixteen. It shall be a civil fishing violation for a member of the Nooksack Tribe who is under the age of sixteen (16) years to participate in commercial fishing unless he or she is accompanied by a person who possesses a valid tribal fishing permit.
- 4) Sale of Ceremonial and Subsistence Fish Prohibited. It shall be a civil fishing violation to sell any fish taken in a ceremonial or subsistence

fishery.

- 5) Failure to Properly Complete Fish Ticket. It shall be a civil fishing violation for a fisherperson to allow a fish buyer to fail to fully and completely fill out a treaty commercial fish ticket or for the fisherperson to fail to sign the Tribe's copy of the ticket, upon delivery and sale of fish.
- 6) Failure to Pay Fish Tax. It shall be a civil fishing violation for a fish buyer to fail to remit the tribal fish tax to the Director of Fisheries Management in the amount and within the time period required under this ordinance.
- 7) Purchase of Fish by Unlicensed Buyers. It shall be a civil fishing violation to purchase fish caught in the exercise of Nooksack tribal fishing rights without having a valid Fish Buyer's license issued by the Nooksack Indian Tribe.
- 8) Purchase of Illegally Caught Fish. It shall be a civil fishing violation to purchase fish when a buyer knows or should reasonably should have known that the fish were caught in violation of this ordinance.
- 9) Aiding a Violation. It shall be a civil fishing violation to knowingly aid or assist another to engage in conduct that violates this ordinance.
- 10) Violation of a Regulation/Other Acts Prohibited. It shall be a civil fishing violation to commit any other acts or omissions prohibited by this ordinance or any regulations issued hereunder which are not specifically designated as a civil fishing violation or criminal fishing offense.

30.10.020 Type II Civil Fishing Violations.

The following are Type II Civil Fishing Violations:

- 1) Failure to Obtain a Valid Permit. It shall be a civil fishing violation to participate in fishing or to sell fish or to travel to or from fishing activity, without having first been issued a current, valid, fishing permit/identification.
- 2) Unauthorized Fishing. It shall be a civil fishing violation to sell fish or to participate in fishing while purporting to exercise Nooksack tribal fishing rights when one is not eligible to obtain a Nooksack

tribal fishing permit/identification.

- 3) Allowing Unauthorized Fishing. It shall be a civil fishing violation for a member of the Nooksack Indian Tribe to allow any person:
  - a) Who is not eligible to obtain Nooksack tribal fishing permits/identification to sell fish or to participate in fishing under claim of Nooksack tribal fishing rights; or
  - b) To assist him or her in fishing, unless the requirements of section 30.02.060 are met.

Provided, however, that allowing unauthorized assistance from a non-member spouse shall not be cited under this section, but shall result in a one year automatic revocation of the tribal member's fishing privilege, as provided under section 30.04.050.

- 4) Sale of Fish to Unlicensed Buyers. It shall be a civil fishing violation to sell fish to any buyer who does not have a valid Fish Buyer's license issued by the Nooksack Indian Tribe.
- 5) Sale of Non-Treaty Fish Prohibited. It shall be a civil fishing violation to sell as Nooksack treaty harvest any fish which has not been caught in a Nooksack treaty fishery.
- 6) Fishing Under State License Prohibited. It shall be a civil fishing violation for a Nooksack tribal fisherperson to participate in fishing or to sell fish, under a Washington State commercial fishing license, when prohibited under tribal fishing regulations. This section shall not prevent a Nooksack tribal member from working as a crew member on a vessel fished under a Washington State commercial fishing license.
- 7) Transferring Tribal Boat I.D. Number. It shall be a civil fishing violation to transfer a tribal boat identification number to a vessel not validly registered with that identification number by the Tribe.
- 8) Falsifying Fish Ticket. It shall be a civil fishing violation to enter or to knowingly allow to be entered any false information on a treaty commercial fish ticket.
- 9) Wasting. It shall be a civil fishing violation to allow fish to spoil or otherwise become unfit for human consumption, when this result could have been avoided by reasonable and timely action.

- 10) Failure to Properly Mark Fishing Gear/Boats. It shall be a civil fishing violation to fail to adhere to tribal fishing gear or boat identification requirements as set forth in this ordinance, while participating in fishing.
- 11) Unauthorized Gear/Boats. It shall be a civil fishing violation to participate in fishing while using or possessing fishing gear or boats which have not been authorized by tribal regulation.
- 12) Unauthorized Nets. It shall be a civil fishing violation to
  - a) Fish with more than three set nets or one drift net in the Nooksack River;
  - b) Fish with a set net which exceeds ten (10) fathoms in length;
  - c) Fail to lift and check set nets every twelve (12) hours;
  - d) Allow a set net to cover more than 1/3 of the distance across the wetted area of any channel;
  - e) Allow the end of a set net to drift free, thereby risk creating fish trap;
  - f) Set a net within 100 feet of another's net in the Nooksack River. This section only applies to nets on the same side of the river;
  - g) Fish in non-marine waters with a drift net which exceeds fifty (50) fathoms in length;
  - h) Have more than one fishing identification number on one net. All persons having their identification number on the net have committed this violation;
  - i) Exceed marine net length requirements set by regulation;
  - j) Fail to conspicuously mark all nets with the owner's name, tribal fishing identification number in a manner which does not necessitate removal of the fishing gear from the water;
  - k) Fish with a net mesh size which is not authorized by regulation; and
  - l) Leave any marine net unattended while set for fishing, except in an emergency. "Unattended" means to be farther than 100 feet

from the net.

- 13) Interference With Nets/Gear/Boats. It shall be a civil fishing violation to check, handle, tamper with, destroy, harm, or remove the fish from, any net, boat, or fishing gear which is not one's own or not properly identified as one's own.
- 14) Malicious Harm. It shall be unlawful for any person to pollute, destroy, obstruct, or otherwise harm any fish or fish rearing habitat.
- 15) Trespass in Enhancement Facility. It shall be a civil fishing violation to:
  - a) Enter or remain in the confines of any enhancement facility, fish rearing pond, or similar facility designed for fisheries research or for the propagation or enhancement of fish; or
  - b) To harm, pollute, or take fish from any hatchery, rearing pond, or enhancement facility owned by or under the management of the Nooksack Tribe.
- 16) Failure to Call-In/Report. It shall be a civil fishing violation to fail to adhere to any call-in or reporting requirement set forth by fishing regulation promulgated under this ordinance.

### 30.10.030 Type III Civil Fishing Violations.

The following are Type III Civil Fishing Violations:

- 1) Fishing in Closed Waters. It shall be a civil fishing violation to participate in fishing in any area, at any time, or for any species unless specifically opened by tribal regulation.

All tributaries, spawning channels, and the area within 100 yards from the mouth of any tributary to the Nooksack River are closed to fishing at all times.
- 2) Fishing While Under the Influence. It shall be a civil fishing violation to participate in fishing or operate a fishing vessel while under the influence of alcohol or drugs.
- 3) Failure to Comply with Boat Ownership and Registration Requirements. It shall be a civil fishing violation to fail to comply

with any requirement for boat ownership and registration under this ordinance or regulations.

30.10.040 Violation of Spouse Assistance Laws, Additional Penalties for Spouses:  
It shall be a civil fishing violation for any person purporting to fish under section 30.02.040 (spouse permit) to:

- 1) To participate in fishing unless the Nooksack tribal member spouse is in the immediate presence of the non-member and both are engaged together in the fishing activity;
- 2) To obtain a Nooksack spouse permit if the couple has not been legally married for at least two years;
- 3) To fail to be in possession of a valid spouse permit issued by the Nooksack Indian Tribe;
- 4) To exercise the fishing rights of any other Indian tribe or band during any year in which he or she fishes under a Nooksack spouse permit;  
or
- 5) To sell any fish caught in a Nooksack tribal fishery.

Any person found to have committed a violation of this section shall pay a mandatory civil penalty of \$500.00 and mandatory forfeiture of the value of any fish taken in violation of this section and mandatory, permanent (lifetime), revocation of his or her fishing permit. These civil penalties shall apply to first and any subsequent violations of this section.

Lifetime Revocation of Spouse Fishing Permit. Any person purporting to fish under section 30.02.040 (spouse permit) who violates *any* civil or criminal provision of this ordinance shall have his or her fishing permit revoked permanently (for life), *in addition* to the penalties set forth for the particular violation. This penalty is mandatory; the Court does not have the authority to reduce, waive, or suspend the lifetime revocation.

30.10.050 Legal Responsibility Imposed Upon Spouses: The Nooksack Indian Tribe hereby imposes upon all its married members a legal responsibility for their non-member spouses who participate in the Nooksack tribal fishery.

If the non-member spouse is found to have committed *any* civil violation or is convicted of *any* criminal offense, under this ordinance, the Nooksack tribal member shall automatically lose his or her Nooksack tribal fishing privilege for one calendar year from the date of the non-member spouse's conviction for a criminal offense or one year from the date the Court finds the non-member

spouse has committed a civil fishing violation (or the date the non-member spouse pays a fine in lieu of appearing in Court under section 30.09.040).

"Participate in the Nooksack tribal fishery " includes all fishing activities authorized and all acts prohibited by this ordinance.

### 30.11      CRIMINAL FISHING OFFENSES

30.11.010 Criminal Violations. The following acts are criminal violations under this ordinance:

- 1) Fishing While Privilege is Revoked or Suspended. It shall be unlawful for any person to participate in fishing or sell fish while one's fishing privilege has been suspended or revoked or during a time when the Court has ordered a loss of fishing days.
- 2) Failure to Appear/Respond. It shall be unlawful for any person to fail to appear and respond as required by a civil or criminal citation or notice of hearing issued under this ordinance.
- 3) Obstructing an Enforcement Officer. It shall be unlawful to willfully interfere with or obstruct any Tribal Enforcement Officer engaged in the lawful performance of his or her or her duties. Refusal to produce a tribal permit or license upon request by a Tribal Enforcement Officer shall be an offense under this section.
- 4) Resisting Arrest. It shall be unlawful to willfully resist a lawful arrest or assist another person in resisting a lawful arrest, either by force or violence.
- 5) Eluding. It shall be unlawful for any person to fail or refuse to stop a vessel after being given a visible or audible signal by a Tribal Enforcement Officer.
- 6) Disobeying the Command of a Tribal Enforcement Officer. It shall be unlawful to disobey the lawful command of a Tribal Enforcement Officer given in the performance of the Officer's duties.
- 7) Assault. It shall be unlawful to threaten bodily harm to another person, including but not limited to a Tribal Enforcement Officer, through the use of force or violence or verbal threats coupled with

some act or acts.

- 8) Battery. It shall be unlawful to willfully strike another person, including a Tribal Enforcement Officer, or otherwise inflict bodily injury on another person or to cause another person to harm himself or herself.
- 9) Unauthorized Transfers. It shall be unlawful for any tribal member or licensee to transfer any permit or license issued to him or her under this ordinance to another person for the purpose of allowing the transferee to engage in a treaty fishery.

30.11.020 Criminal Procedures : The Rules of Criminal Procedure in chapter 10.06 of the Nooksack Tribal Code of Laws applies to all criminal violations brought under this ordinance.

## 30.12 PENALTY SCHEDULE

30.12.010 Penalties : The attached penalty schedule applies to violations of this ordinance. Civil penalties are intended to compensate the Tribe for the harm to the resource and no jail time shall be imposed for civil fishing violations. To determine which penalty applies, locate the type violation on the attached penalty schedule and apply the rules listed below.

- 1) Universal Penalties. The Court shall impose court costs, restitution for injuries to persons or property caused by the defendant in violating this ordinance, and the defendant shall not be eligible for the next year's fishing permit validation unless all fines and court costs have been paid in full.
- 2) Criminal Violations. If this is the first time the defendant has committed a criminal offense under this ordinance, the penalty in the "first violation" column in the criminal offense row shall apply. If this is the second time the defendant has committed a criminal offense under this ordinance, the penalty in the "second violation" column in the criminal offense row shall apply and similarly for the third and subsequent violations. Criminal convictions are counted as prior violations during the five (5) years preceding the date a guilty plea was accepted by the Court or an order of conviction was entered for the current offense. Any defendant sentenced to serve time in jail

shall reimburse the Tribe for the cost of the jail time, in addition to all other penalties imposed. The penalties set forth in this subsection are mandatory.

- 3) First Civil Violation. If this is the first time the defendant has committed any civil fishing violation under this ordinance the penalty in the "first violation" column for that type of violation shall apply.
- 4) Second Civil Violation. If this is the second time the defendant has committed any type of civil fishing violation under this ordinance, the penalty in the "second violation" column for that type of violation shall apply.
- 5) Third and Subsequent Civil Violations. If this is the third or subsequent time the defendant has committed any type of civil fishing violation under this ordinance, the penalty in the "third and subsequent violation" column for that type of violation shall apply.
- 6) Computing Prior Civil Violations. Type I civil fishing violations shall not be considered in computing whether a violation is the "first violation", "second violation" and so forth, after one year from the date the fine was forfeited or the date the court entered an order finding the person committed the violation. Types II and III civil fishing violations shall not be considered after two years. Criminal offenses shall be used only in computing prior for other criminal offenses. Criminal offenses shall not be considered after five years.

30.12.020 Assessment of Fines - Time Payments, Community Service : The Court does not have the authority to suspend or reduce any minimum, mandatory fine, jail time, loss of fishing privileges, or other mandatory penalty under this ordinance or to impose community service hours in lieu of any penalty. The Court may impose a fine, jail time, or other penalty within the range between the minimum mandatory and maximum penalty. The Court may order reasonable installment payments.

# NOOKSACK FISHING ORDINANCE SCHEDULE OF PENALTIES

Type of Violation	1st Violation	2nd Violation	3rd and Subsequent Violations
TYPE I	Minimum Mandatory Fine Maximum Fine May pay in lieu of court	Minimum Mandatory Fine Maximum Fine May pay in lieu of court	Minimum Mandatory Fine Maximum Fine MANDATORY APPEARANCE REQUIRED
TYPE II Mandatory Appearance	\$ 100.00 \$ 500.00 \$ 150.00 Minimum Mandatory Fine Maximum Fine and Minimum Mandatory Loss of Fishing Days Maximum Loss of Fishing Days and Mandatory Forfeiture of the Value of Fish Taken in Violation of Ordinance	\$ 225.00 \$ 750.00 \$ 300.00 Minimum Mandatory Fine Maximum Fine and Minimum Mandatory Loss of Fishing Days, Maximum Loss of Fishing Days and Mandatory Forfeiture of the Value of Fish Taken in Violation of Ordinance	\$ 500.00 \$ 1000.00 MANDATORY APPEARANCE REQUIRED Minimum Mandatory Fine Maximum Fine and Mandatory Loss of Fishing Days and Mandatory Forfeiture of the Value of Fish Taken in Violation of Ordinance
TYPE III Mandatory Appearance	\$ 500.00 \$ 3000.00 Minimum Mandatory Loss of Fishing Days Maximum Loss of Fishing Days and Mandatory Forfeiture of the Value of Fish Taken in Violation of Ordinance	\$ 750.00 \$ 4500.00 Minimum Mandatory Fine Maximum Fine and Minimum Mandatory Loss of Fishing Days, Maximum Loss of Fishing Days and Mandatory Forfeiture of the Value of Fish Taken in Violation of Ordinance	\$ 1000.00 \$ 5000.00 Minimum Mandatory Fine Maximum Fine and Mandatory Loss of Fishing Days and Mandatory Forfeiture of the Value of Fish Taken in Violation of Ordinance
CRIMINAL OFFENSES	\$ 500.00 \$ 5000.00 Minimum Mandatory Fine Maximum Fine and Up to one year in jail and Mandatory Forfeiture of the Value of Fish Taken in Violation of Ordinance	\$ 750.00 \$ 5000.00 Minimum Mandatory Fine Maximum Fine and Minimum Mandatory Jail Time ..... 5 days Not to exceed.....one year in jail and Mandatory Forfeiture of the Value of Fish Taken in Violation of Ordinance	\$ 2500.00 \$ 5000.00 Minimum Mandatory Fine Maximum Fine and Minimum Mandatory Jail Time .....14 days Not to exceed.....one year in jail and Mandatory Forfeiture of the Value of Fish Taken in Violation of Ordinance and Revocation of all fishing privileges for one year

Violation of Spouse Assistance Laws and violations by a non-member spouse- see section 30.10.040.