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NOOKSACK TRIBE SHELLFISH ORDINANCE

July 26, 2000

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Subtitle 1. General Provisions

1-101. Title

This ordinance shall be known as the Nooksack Tribe Shellfish Ordinance.

1-102. Declaration of Policy

(a) The Nooksack Tribe finds and declares the facts and policies set forth in this section;

(b) The purpose of this ordinance is to regulate the harvest of shellfish by all members of the Nooksack Tribe within the usual and accustomed areas of the Nooksack Tribe, including both on and off reservation areas;

(c) The "Centennial Accord between the federally recognized treaty tribes of Washington, and the State of Washington" (1989), confirmed the government to government relationship between the tribes and the state;

(d) It is the continuing policy of the Nooksack Tribe to cooperate on a government to government basis with the federal government, the state government, other tribal governments as well as with the political subdivisions of the state, and other concerned public and private organizations and individuals, in a manner

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calculated to protect, preserve, and enhance shellfish and their environment;

(e) Shellfish located within the boundaries of the Nooksack Tribe's usual and accustomed areas are of considerable value to the tribe and their taking by tribal members and others entitled to harvest pursuant to this ordinance is subject to tribal regulation;

(f) Tribal members and other persons currently harvest shellfish for commercial, subsistence, recreational and ceremonial purposes; the implementation of a comprehensive regulatory system is necessary to prevent depletion of shellfish resources;

(g) The protection, preservation, and enhancement of the Nooksack Tribe's diverse environment is necessary for the maintenance of the health, safety, and welfare and the continued economic viability of the Nooksack Tribe;

(h) All agencies of the Nooksack Tribe will conduct their affairs with an awareness that they share the responsibility to care for the air, land and water, and that they have an obligation to protect the environment for the use and enjoyment of this and future generations;

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- (i) Environmental quality requires the most thoughtful consideration of ecological, economic, developmental, recreational, historic, religious, aesthetic, and other important tribal values;
- (j) Potential adverse environmental effects on the shellfish resource can be anticipated, minimized, and often eliminated if regulated properly;
- (k) The Tribal Council has an obligation to tribal members to review and evaluate the conduct of the Fisheries Manager and Shellfish Committee in carrying out the policies set forth in this ordinance; and
- (l) The policies, rules, regulations, and public laws of the Tribe shall be interpreted and administered in accordance with the policies set forth in this ordinance.

1-103. Definitions

- (a) ***"Biological Personnel"*** - "Biological personnel" means the biologists and technicians who are employed by the tribe or acting under the direction of the tribe or an intertribal organization of which the tribe is a member, and whose duties include giving advice on the management and/or enhancement of the tribal shellfish resources.

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- (b) **"Catch"** - "Catch" includes to take, kill, trap, gather, harvest, or in any manner reduce any shellfish to personal possession.
- (c) **"Cephalopods"** - "Cephalopods" are one of the major groups (classes) into which mollusks are divided. They include species such as squid and octopus.
- (d) **"Closed"** - "Closed" means the time during which any particular species of shellfish may not be caught legally pursuant to tribal law and includes any period of time not included within the tribal open season.
- (e) **"Commercial quantity"** - "Commercial quantity" means any quantity exceeding defined subsistence limits.
- (f) **"Commercial shellfishing"** - "Commercial shellfishing" means to exercise tribal shellfish rights for the purpose of selling or bartering shellfish, or to be in possession of a commercial quantity of shellfish.
- (g) **"Crab"** - "Crab" means crustaceans included within the order Decapoda, including Dungeness, Pacific and Red Rock crab.
- (h) **"Crustaceans"** - "Crustaceans" are a major group (a phylum or a class) of arthropod invertebrates. The crustaceans include barnacles, crabs, shrimps, lobsters

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and other groups.

(i) **"Diving Apparatus"** - "Diving apparatus" means any diving equipment that is supplied with air from the surface through a hose, or diving equipment generally referred to as self-contained underwater breathing apparatus (SCUBA), the use of which allows a person to harvest shellfish beneath the water.

(j) **"Dredge"** - "Dredge" includes any dredge, scoop, scrape, or similar device used under the surface of the water in catching oysters or clams by dragging.

(k) **"Enrolled Members"** - means any person who is a duly enrolled member of the Nooksack Tribe pursuant to the tribal constitution and laws.

(l) **"Exercise of Shellfish Rights"** - **"Exercise of Shellfish Rights"** includes, but is not limited to, harvesting any shellfish for subsistence, ceremonial, or commercial use, transporting any shellfish, processing, offering for sale or barter any shellfish, and traveling to and from such activities - purportedly pursuant to tribal treaty shellfish-harvesting rights.

(m) **"Hydraulic clam dredge"** - "Hydraulic clam dredge" means any device used for dredging clams which consists

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of a manifold through which water is forced under pressure for the purposed of digging clams and working them into the mouth of the dredge where the clams then are brought up to boat level by means of an escalator.

"Hydraulic clam dredge" includes the vessel on which the dredge is carried.

(n) **"Immediate family"** - "Immediate family" includes a spouse, child, parent, grandchild, grandparent, or sibling.

(o) **"Marketable Size Clam"** - "Marketable Size clam" means any clam 1.5 inches or more across.

(p) **"Marketable Size Crab"**- "Marketable Size Crab" means any crab 6.25 inches at the widest part of the shell excluding the points.

(q) **"Marketable Size Oyster"** - "Marketable Size Oyster" means Pacific oysters measuring 2-1/2 inches or greater in length.

(r) **"Mollusks"** - "Mollusks" are a major group (phylum) of invertebrates characterized by a calcareous shell. Mollusks include chitons, snails, slugs, clams, scallops, oysters, mussels, tusk shells, squids, and octopi.

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(s) **"Pollution"** -

(1) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties, of any waters where the tribe retains treaty shellfishing rights;

(2) "Pollution" includes changes in temperature, taste, color, turbidity, or odor of the affected waters or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into waters which may render them harmful, detrimental, or injurious to public health, safety, or welfare; or domestic, commercial, industrial, agricultural, recreational, or other beneficial uses; or livestock, wild animals, birds, fish, or other aquatic life.

(t) **"Polluted Area"** - "Polluted area" means an area of waters and tidelands subject to the Tribe's treaty rights, which is determined by appropriate investigation to be so polluted that shellfish in the area are a hazard to public health, the area thus being restricted for the harvest or storing of shellfish.

(u) **"Processor"** - "Processor" means a person who

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depurates, shucks, packs, or repacks shellfish.

(v) "**Repacker**" - "Repacker" means a person other than the original certified shucker-packer who repacks shucked shellfish into other containers. A repacker may also repack and ship shellstock. A repacker shall not shuck shellfish.

(w) "**Reshipper**" - "Reshipper" means a person who purchases shucked shellfish or shellstock from other certified shippers and sells the produce without repacking or relabeling to other certified shippers, wholesalers, or retailers.

(x) "**Shellfish**" - "Shellfish" includes all marine invertebrates, including but not limited to mollusks, echinoderms and crustaceans.

(y) "**Shellstock**" - "Shellstock" means shellfish in the shell.

(z) "**Shellstock Shipper**" - "Shellstock Shipper" means a person who grows, harvests, buys, or repacks and sells shellstock. They are not authorized to shuck shellfish nor to repack shucked shellfish. A shellstock shipper may also ship shucked shellfish.

(aa) "**Shucked Shellfish**" - "Shucked Shellfish" means

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shellfish, whole or in part, from which one or both shells have been removed.

(bb) **"Shucker-Packer"** - "Shucker-Packer" means a person who shucks and packs shellfish. A shucker-packer may act as a shellstock shipper or reshipper or may repack shellfish originating from other certified dealers.

(cc) **"Staked Beds"** - "Staked Beds" means tidelands barren of naturally growing shellfish due to natural conditions or causes, and used for cultivation or storage of shellfish, the boundaries of which are marked by stakes that extend above the surface of the water at high tide.

(dd) **"Subsistence shellfishing"** - "Subsistence shellfishing" means to exercise tribal shellfishing rights for the purpose of consumption by the member or the member's immediate family.

(ee) **"Tidelands"** - "Tidelands" include that area measured from the line of extreme hightide marked by the upper vegetation line to the line of extreme lower low tide.

(ff) **"Usual and Accustomed Areas"** - "Usual and accustomed areas" means usual and accustomed grounds and stations

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of the Nooksack Tribe as adjudicated by the United States District Court.

(gg) "**Violation**" - "Violation" means failure to comply with:

- (1) Any provision of this ordinance; or
- (2) Any rule or regulation concerning shellfish and fisheries adopted by the Nooksack Tribe pursuant to this ordinance.

(hh) "**Wastage**" - "Wastage" includes the failure to take all shellfish that are harmed or destroyed during the harvest of shellfish but not retained.

(ii) "**Waters where the Tribe retains treaty shellfishing rights**" - "Waters where the Tribe retains treaty shellfishing rights" includes all waters, subtidal and intertidal, including associated substrate, within the boundaries of the usual and accustomed areas of the Nooksack Tribe.

1-104. Jurisdiction

(a) The provisions of this Shellfish Ordinance shall apply to the full extent permissible under tribal and federal laws. They shall be applicable to all enrolled members of the Nooksack Tribe and to any other person or entity acting under authority of the Nooksack Tribe

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or engaged in activity within the Tribe's territorial and civil regulatory jurisdiction.

(b) This Shellfish Ordinance shall apply to the full extent of the sovereign jurisdiction of the Nooksack Tribe and shall apply in conformity with all agreements or other cooperative arrangements entered into by the Nooksack Tribe which are designed to provide tribal access to available shellfish and to provide effective fisheries management.

(c) Any person or entity acting under tribal authority, or entering upon lands subject to tribal jurisdiction, shall be deemed thereby to have consented to the following, to the full extent permissible under tribal and federal law:

(1) To be bound by the terms of this Ordinance;

(2) To the exercise of jurisdiction by the Nooksack Tribe's Tribal Court over said person or entity in legal actions arising pursuant to this ordinance; and

(3) To arrest, service of summons and process, and constitutional search and seizure, in conjunction with legal actions arising pursuant to this ordinance, the Tribe's constitution and other

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tribal laws.

1-105. Species Covered

All marine invertebrates are subject to regulation pursuant to this ordinance, including but not limited to mollusks, crustaceans and echinoderms such as:

- (a) Abalone;
- (b) Barnacles;
- (c) Butterclams;
- (d) Cockles;
- (e) Crabs;
- (f) Crawfish;
- (g) Geoducks;
- (h) Horseclams;
- (i) Manila clams;
- (j) Mussels;
- (k) Native little necks (steamers);
- (l) Octopus;
- (m) Oysters;
- (n) Scallops;
- (o) Sea Cucumber;
- (p) Sea Urchin;
- (q) Shrimp; and

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(r) Squid.

Specific regulation of additional species may be enacted as provided in this Ordinance.

1-106. Effect of State, Local or Intertribal Laws Regulating Shellfish Generally

(a) *Sovereignty and Disclaimer* - Nothing in this Ordinance shall be construed as a waiver, relinquishment, abrogation or abridgment of any rights reserved or retained by the Nooksack Tribe as secured by, but not limited to the 1855 Point Ellicot Treaty. Nothing in this ordinance shall act to waive the sovereign immunity of the Nooksack Tribe. The tribe and tribal court shall have jurisdiction to the fullest extent necessary to enforce this ordinance.

(b) *State law not applicable* - No act prohibited by this ordinance or by regulations enacted pursuant to this ordinance, or by any other applicable tribal ordinance or regulation, may be permitted even though such act would be lawful under the laws of the State of Washington. Nothing in this ordinance shall act or be construed to act to grant the State of Washington any jurisdiction over the tribe or tribal members. Neither the prohibitions contained in this ordinance nor any

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regulation enacted pursuant to this ordinance are necessarily based upon a conservation concern as to any species of fish.

(c) *Intertribal agreements* - The Nooksack Tribe shall honor all Intertribal agreements that are approved by the Tribal Council in a cooperative effort to enhance and protect the collective shellfish resource. All preexisting agreements shall remain in full force and effect unless found by the Fisheries Manager to be specifically inconsistent with this ordinance or unless modified by the Nooksack Tribe.

Subtitle 2. Organization and Authority of Nooksack Tribe

Pertaining to Shellfish-In General

2-101. Fisheries Manager

(a) *Regulations - In general* - In addition to the specific items of regulation mandated by this ordinance, the Fisheries Manager may promulgate rules and regulations relating to any aspect of the shellfish fishery. The Fisheries Manager may adopt regulations opening all or part of the usual and accustomed area of the Nooksack Tribe for subsistence, ceremonial, or commercial harvest, when doing so would be consistent with protection of the resource and allocation requirements.

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The Fisheries Manager may enact regulations designed to limit the location, number, size, sex, or pounds of shellfish to be taken, time of taking, the means and manner of access to harvest areas, and the methods and types of gear that may be employed to take shellfish, when the enactment of such regulations are deemed necessary by the Fisheries Manager to conserve the shellfish resource, to allocate the shellfish resource between tribal members or between the tribe and other tribes or non-Indians, protect shellfish from contamination and deterioration as a result of excessive weather conditions or for such other purposes as the tribal council may direct.

(b) *Limitation on permits* - Whenever the Fisheries Manager determines that opening a particular area would result in overharvest or overcrowding, or if the Fisheries Manager determines it is necessary to protect the quiet enjoyment of a property owner, the Fishery Manager shall limit the number of tribal members who may harvest shellfish in an area at the same time. Selection of harvesters may be accomplished by any random method of the fishery manager's choice, except that persons chosen in previous random selections shall

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be excluded until all members desiring to harvest have been selected.

(c) *Emergency closure; public health and safety* - The Fisheries Manager shall close any area whenever the harvest of shellfish from that area is determined to be potentially hazardous to health.

(d) *Determination of natural shellfish bed* - The Fisheries Manager, in conjunction with the shellfish committee, may survey any tideland area to determine the position and extent of any natural shellfish bed and make recommendations to the Tribal Council for surveyed areas to be declared natural shellfish beds. The Fishery Manager may enact appropriate environmental regulations for the protection and enhancement of the species present in natural shellfish beds.

(e) *Intergovernmental agreements* - The Fisheries Manager is authorized to negotiate intergovernmental agreements relating to the sanitation, harvesting, cooperative enforcement, or treaty protection of shellfish with any other treaty tribe, local government, the State of Washington and its agencies, or the federal government and its agencies. No such agreement shall be binding unless approved by the Tribal Council.

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(f) In the event that a regulation is presented to the Tribal Council for review, the Tribal Council shall determine whether or not the regulation shall continue in effect, be rescinded, or be modified; provided that, regulations enacted by the Fisheries Manager shall remain in full force and effect until modified by the Fisheries Manager or Tribal Council.

2-102. Fish Commission Established; Composition; and Terms

(a) The shellfish resource of the Nooksack Tribe shall be monitored by an advisory body known as The Fish Commission and shall be composed of five members and their alternates appointed by the Tribal Council. The Commission shall advise the Fisheries Manager in the regulation, management and enhancement of shellfish.

(b) A member or alternate may serve more than one term.

(c) The Tribal Council shall appoint a person to fill any vacancy on the Fish Commission for the remainder of that position's term.

(d) The Fish Commission shall elect the following officers: Chairperson, who shall preside over Commission meetings; Vice-Chairperson, who shall preside over Commission meetings in the absence of the

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Chairperson; and Secretary, who shall keep the minutes and correspondence of the Commission.

(e) The officers shall be elected from and by the membership of the Committee by a majority vote of all Committee members within the first month of annual appointments of new terms; except that emergency elections may be held to fill vacancies by any officer at other times.

(f) The Fish Commission, in conjunction with the Tribal Council, shall devise a schedule for regular meetings throughout each year. Emergency meetings may be called by the Commission Chairperson, by the Fisheries Manager, or by the Tribal Council.

(g) All proposed regulations and advisory recommendations made by the Fish Commission must first be approved by a majority vote of a quorum of the Commission. Three members constitute a quorum. The Chairperson shall not vote unless the vote is tied.

2-103. Fish Commission; Duties

(a) *The Fish Commission shall have the following powers and functions -*

(1) To gather information pertinent to the

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regulation, conservation, and enhancement of the Tribal shellfish resource and to make such information available to the Fishery Manager and Tribal Council;

(2) To draft proposed regulations for consideration by the Fishery Manager and Tribal Council, pertaining to the shellfish resource;

(3) To act as an advisory body to the Tribal Council on all matters pertaining to the regulation, conservation and enhancement of the tribal shellfish resource, and to otherwise promote the wise management of the shellfish resource;

(4) To prepare a written summary outlining the salient points of each Commission meeting -- including all minority viewpoints -- and to submit each written summary to the Fishery Manager and Tribal Council within five (5) days of each such meeting;

(5) To exercise such other powers and to perform such other functions as may be delegated to the Commission by the Tribal Council or the Fishery Manager, consistent with the purposes of this

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ordinance.

2-104. Annual, Seasonal, and Emergency Regulations

Regulations are to be in the best interests of the shellfish resource, as determined by the Fisheries Manager, Fish Commission and the Tribal Council, in accordance with the provisions of this ordinance.

(a) Annual regulations shall be enacted that establish the species to be regulated for that year, the seasons for harvest of those species, areas, the gear and harvest methods to be used, and such other general matters as the Fishery Manager deems appropriate.

Annual regulations shall be adopted only after a notice of proposed regulations has been publicized and only after a hearing has been held to consider comments on the proposed regulations by tribal members.

(b) Where necessary or appropriate for conservation, allocation, or any other appropriate purpose, annual shellfish regulations may be modified by the Fishery Manager on an emergency basis.

Subtitle 3. Fishing Areas; Protection and Notice to Private

Property Owner

3-101. Harvesting Areas

(a) *Harvesting areas* - "harvesting areas" include on and

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off reservation areas. All on-reservation areas and all off-reservation areas within the Nooksack Tribe's usual and accustomed areas may be opened for harvest by the Fishery Manager, provided that no area may be opened for harvest that has been closed pursuant to Subtitle 7 of this ordinance;

(b) Treaty harvesting outside usual and accustomed areas prohibited -

It shall be unlawful for any tribal member to attempt to exercise the treaty fishing rights of the Nooksack Tribe in any area that is outside the usual and accustomed fishing areas of the Nooksack Tribe.

3-102. Protection and Notice to Private Property Owner

(a) Conduct on Private Property - Individuals shall observe and respect landowners' rights to the quiet enjoyment of their property. Individuals shall not litter, pollute, destroy nor molest any shellfishing areas on private property or any private property in the vicinity of these areas or access routes to them;

(b) Courtesy Notice to Property Owner - In the interests of harmony and a cooperative working relationship between the tribe and landowners, the Fishery Manager shall give notice, by posting in public places, by publication, or by other means deemed appropriate, in

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the relevant communities, when harvesting may take place upon privately owned tidelands. Notice shall be given at least 48 hours and no more than 7 days before harvesting is to take place. The notice shall include the areas affected, the days and hours during which harvesting may take place, the number of harvesters permitted in particular locations (where relevant), any other relevant information, and the name and phone numbers of the tribe's enforcement officers and Fishery Manager. In addition, any property owner may request direct notice of an opening potentially affecting their property by providing the tribe with a stamped, self-addressed envelope for that purpose, with a property description sufficient to alert the tribe as to the location of the property.

Subtitle 4. Licensing, Regulation and Supervision of Fishing

4-101. Who May Harvest

(a) Enrolled *members* - An enrolled member who is licensed by the tribe pursuant to §4-103 of this ordinance may harvest shellfish, consistent with this ordinance and the regulations promulgated hereunder.

(b) *Family of Enrolled Members* -

(1) Adults - A licensed tribal member may be

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assisted in the harvest of shellfish by his or her non-member spouse. The tribal member shall be present at all times that the non-member is assisting in the harvest of shellfish; provided that, upon a showing of extreme hardship, the Fisheries Manager may authorize by special permit the non-member immediate family member to harvest shellfish for subsistence purposes without the tribal member being present;

(2) Minors - An individual under the age of 18 must be accompanied by an enrolled member adult member of the tribe, unless he or she is the head of a household or there is a showing of extreme hardship and authorization by the Fisheries Manager;

4-102. Identification Cards

(a) Tribal Card - A tribal member or eligible spouse shall obtain an identification card issued by the Nooksack Tribe.

4-103. Permits

(a) No person shall harvest shellfish pursuant to this

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ordinance unless he or she has obtained the appropriate tribal permit or license. The Fisheries Manager shall issue permits to tribal members wishing to harvest shellfish within the Nooksack Tribe's usual and accustomed fishing areas.

(b) The Fisheries Manager may issue permits of the following types:

- (1) **Commercial Fishing Permit** - A commercial permit must be obtained for all commercial shellfishing activity.
- (2) **Subsistence Permit** - A subsistence permit must be obtained where the shellfish harvested will be used by the tribal member, or a member of the tribal member's immediate family, for other than commercial shellfishing activity. A tribal member may apply to the Fisheries Manager for a special permit to harvest in excess of the limits established herein where the additional harvest is to be provided for the subsistence needs of a tribal member who is unable to harvest for him or herself;
- (3) **Ceremonial Permit** - A tribal member may apply to the Fisheries Manager for a ceremonial

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harvesting permit. A ceremonial harvesting permit shall allow the permittee to harvest in excess of the limits established in a subsistence permit. Ceremonial permits may be issued for special family, community, tribal, or religious gatherings.

(c) There shall be no fee for issuance of any subsistence or ceremonial permit. The Tribal Council shall set a fee for commercial permits.

(d) Permits may be limited to a single species or group of species of shellfish.

(e) No permit or license required by this ordinance shall be issued unless the applicant has paid all taxes due for the prior year under this ordinance.

(f) Each permit shall be for a specified period of time, and may restrict the holder to harvest shellfish from only certain areas and to use only certain routes or manner of access.

(g) The permit holder shall always personally possess a copy of the permit while exercising tribal shellfish rights.

(h) The Fishery Manager shall file a copy of all new permits issued with the tribal enforcement office on a

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daily basis.

4-104. Test Fishing Permit

(a) *In General* - The Tribal Fisheries Manager shall authorize test-fishing permits pursuant to the provisions of this subtitle:

(1) The Tribal Fisheries Manager shall have the power to authorize a test fishery when, based upon technical information, the measure is appropriate to set harvest levels, determine openings and closings, determine habitat impacts or otherwise manage, protect, and enhance the resource. The Fisheries Manager shall determine:

(i) the type and amount of gear to be used;
and

(ii) the time period and area involved.

There shall be no test fishery other than as directed by the Fisheries Manager.

(2) Participation in test fishery - qualifications:

(i) Participants must be enrolled members of the Nooksack Tribe or biological personnel;
(ii) Participants must be familiar with both the gear type and the area for which the test

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fishery has been designated;

(iii) Participants must possess gear appropriate for the planned fishery, as specified by the Fisheries Manager;

(iv) Participants must agree to record and provide to the Fisheries Manager all requested information regarding the test fishery.

(b) *Excess of eligible applicants* - In the event that there are more eligible applicants than necessary for the test fishery, the applicants shall be chosen by a random drawing conducted by the Tribal Fisheries Manager.

(c) *Responsibilities of participants in test fishery* -

(1) Participants shall report all information requested by the Fisheries Manager on a daily basis;

(2) Shellfish taken in test fisheries shall not be sold for personal profit. Shellfish harvested shall be sold using a tribal identification number.

(3) Participants shall strictly obey the gear, time, and area restrictions of the test fishing program;

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(d) *Failure to Comply* - Failure to comply with any of the provisions of subsection (c) shall automatically relieve the participants of the authorization and privileges of the test fishing permit.

(e) Participant compensation - Participants shall be compensated for their work at a rate set by the Shellfish Committee in conjunction with the Nooksack Tribal Council. In the absence of a rate established by the Shellfish Committee and Tribal Council, participants in a test fishery pursuant to this section shall be compensated for their efforts as follows: to the extent possible, shellfish taken during a test fishery shall be sold by the Nooksack Tribe on the commercial market. After withholding twenty percent (20%) of the proceeds of such sale for expenses, the Nooksack Tribe shall divide the remainder of the proceeds equally among all participants in the test fishery.

(f) *Maintain data* - The Fisheries Manager shall maintain permanent records of all data collected in the test fisheries.

4-105. Special Licenses

In addition to these permits, special licenses for

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harvesting shellfish with specific gear may be required
by the fishery manager.

**Subtitle 5. Harvest Practices, Gear Limitations - In General And
By Species**

5-101. Harvest Limitations

(a) *In general* - The Fisheries Manager shall determine for each beach or catch area a total maximum number or number of pounds of shellfish to be taken. Once this quota is taken the beach or catch area shall be closed to further harvesting. A limit to be taken by a member harvesting commercially may be set in the permit issued, but in no event may it exceed the quota set for the area(s) where the commercial harvest shall take place.

(b) *Subsistence* - A member harvesting for subsistence shall comply with the following daily harvest limits;

- (1) Native little necks, butterclams, cockles, manila clams, horseclams and oysters in any combination - not exceeding fifty pounds or five gallons daily;
- (2) Geoducks - Not to exceed fifty pounds or five gallons daily;
- (3) Mussels - Not to exceed fifty pounds or five

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gallons daily;

(4) Crab - Not to exceed 12 legal male crab daily;

(5) Shrimp - Not to exceed 10 pounds daily;

(c) *Size and sex limits* - All shellfish taken for subsistence or commercial purposes, unless otherwise stated, shall be at least the following size:

(1) Mollusks -

(i) Native little necks, manila clams - 1.5 inch in diameter;

(ii) Butterclams, horseclams, oyster, geoducks, mussels - no size limit;

(iii) Cockles - 1.5 inches in diameter.

(iv) Crab - 6.25 inches; legal males only.

(2) Other shellfish - The Fishery Manager shall determine size limits of species that have not already been determined by this ordinance.

5-102. Devices for harvesting mollusks

(a) *Devices generally* - Subject to further restrictions promulgated pursuant to this ordinance, a person may harvest mollusks only by hand, shovel, dry fork, wet fork, rakes, or diving apparatus, except for soft-shell clams, which may be harvested by hydraulic or

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mechanical dredges or rigs. An applicant for a commercial license shall indicate whether the applicant will use any mechanical or hydraulic dredge or rig, or any diving apparatus, including SCUBA, to harvest mollusks.

(b) *Fisheries Manager authorized to regulate size and weight of devices.* -

The Fisheries Manager may place limitations on the size, weight, and volume of devices used in harvesting mollusks.

5-103. Dredging Regulations and Prohibitions Generally

License required - A person may not harvest with a dredge boat without a license. The Fisheries Manager may specify the size, nature, and other licensing requirements of dredge boats, including the release of species harvested incidentally during dredging.

5-104. Harvesting Oysters

(a) *Fisheries Manager may regulate catch limits; notice* - The Fisheries Manager may establish by rule or regulation daily catch limits on the quantities of oysters which may be caught from natural beds and may amend the daily catch limits to conserve the tribal oyster resource. Notice of the establishment or amendment of these catch limits shall be given by standard notice procedures of

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the tribe not less than one week prior to the effective date, except where an emergency is declared by the Fishery Manager or Tribal Council.

(b) *Oysters in excess of catch limits tribal property* - All oysters landed or offered for sale on any day by any person licensed to catch oysters which are in excess of the daily catch limit shall become the property of the Nooksack Tribe and payment shall be made directly to the tribe by the buyer or receiver of the oysters at the same price per pound paid the catcher for the balance of his catch. All funds received under this subsection shall be deposited to the credit of the Fisheries Department and shall be used for repletion of the natural beds.

5-105. Oyster Culling

In general - A person who harvests oysters pursuant to this ordinance shall cull the oysters on the tide or bedlands from which they were taken, and return to those tidelands or bedlands all shells, stones, gravel, and slag. Any oyster shell measuring less than a distance, the length of which is to be determined by the Fisheries Manager by regulation, between its longest or widest points, whether or not attached to a

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marketable oyster, shall be included in the culling and replaced in the area from which taken. The Fisheries Manager by rule may permit the possession of marketable oysters to which nonmarketable oysters adhere so closely that it is impossible to remove them without destroying the smaller oyster.

5-106. License for Harvesting Hard-shell Clams by Rake Required

Any person desiring to harvest hard-shell clams by rake shall apply to the Fisheries Manager for a license. The license must be openly displayed during all harvest operations.

5-107. Use of Crab Pots

The Fishery Manager shall establish requirements for marking by buoy, float or sign, the presence of crab pots, limitations on the number of crab pots permitted overall and per licensee, and the size, shape and design of permissible crab pots.

Subtitle 6. Boats - In General

6-101. Registration and Identification of Fishing Boats and Gear

(a) *Boat registration and identification* - All boats and gear used in exercising tribal shellfishing rights shall be

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marked in accordance with the procedures established by the Nooksack Tribe for other fishing activities and shall be registered with the Nooksack Tribe in the name of the tribal member actually owning or having an interest in that boat or gear. No gear shall be authorized under this ordinance for use in exercising tribal shellfishing rights unless it is so registered and marked.

(b) *Gear identification; unmarked gear and seizure* - All harvesting gear shall be conspicuously marked in such a way that the harvester may be identified without the necessity of removing the gear from the water. All unmarked gear and boats which are unattended, and any fish or shellfish found therein, may be seized pursuant to the provisions of this ordinance.

6-102. Boating Safety

(a) *In general* - All boats or other craft used in exercising tribal shellfishing rights shall conform to the current United States Coast Guard regulations applicable to similar craft in similar waters which are hereby incorporated as tribal law.

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Subtitle 7. Shellfish Sanitation Program

7-101. Purpose

The purpose of this subtitle is to provide for the sanitary control of shellfish and to comply with the provisions of the National Shellfish Sanitation Program (NSSP). Protection of the public health requires assurances that commercial shellfish are harvested only from approved growing areas and that processing of shellfish is conducted in a safe and sanitary manner.

7-102. Authority of the Nooksack Tribe, Fisheries Manager and Shellfish Committee

The Fisheries Manager is empowered to make rules and take all steps necessary to develop and improve sanitation, harvesting, and marketing of shellfish within the usual and accustomed areas of the Nooksack Tribe.

7-103. Harvesting Mollusks and Clams in Certain Areas Prohibited

(a) *Closed areas* - A person shall not harvest mollusks in any area closed by the Fisheries Manager due to pollution;

(b) *Exception; Relay Program* - Notwithstanding the prohibition in subsection (a) of this section, mollusks

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may be transplanted from areas deemed polluted to unpolluted waters for purification and eventual sale. Such transfers must be done in accordance with a program that is designed to ensure the safety of all mollusks for human consumption and that has been approved by the Tribal Council. The relay program shall be carried out under the supervision and direction of the Fisheries Manager.

(c) *Notice of Closed/Open Areas* - The Fisheries Manager shall notify tribal members of the areas opened and closed for harvest of mollusks.

(d) *When restriction effective; warning; arrest* -

(1) Closure of an area due to pollution becomes effective immediately.

(2) To the extent feasible, law enforcement officers shall patrol areas closed due to pollution to warn tribal members and to immediately halt all prohibited harvests. No arrests may be made until 24 hours following notice of a closure, except where a person refuses to cease harvesting and return all harvested shellfish to the water upon notice by a law enforcement officer or biological personnel of the

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closure.

(3) Lifting of restrictions - Whenever the Fishery Manager determines that samples of water and shellfish of a restricted area indicate that the shellfish and water comply with standards for harvesting shellfish, the restrictions shall promptly be lifted;

(4) Each violation of this section 7-103 constitutes a separate offense punishable as provided by the provisions of this ordinance.

7-104. Cooperation with State and United States

In the interest of public health, the Nooksack Tribe will strive to maintain a cooperative working relationship with agencies of the State of Washington and the United States responsible for shellfish sanitation.

Subtitle 8. Sales

8-101. Sales

(a) *Sale of Shellfish* - A person may sell their shellfish harvest pursuant to the provisions of this ordinance:

(1) A person may not sell their shellfish harvest unless they have;

(i) obtained a commercial fishing permit

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pursuant to section 4-103; and

(ii) complied with all pertinent regulations relating to that specific species.

(2) a person shall also obtain a license before engaging in the business of shipping or selling shellfish.

(b) *Completion of Fish Tickets* - Each person commercially harvesting shellfish shall accurately and completely fill out a Treaty Indian Fish Receiving Ticket.

(c) *Payment of Tax* - A tax in an amount to be set by the Tribal Council will be assessed against the seller as a percentage of the value of all shellfish harvested and sold pursuant to this ordinance. Tax revenues will be deposited in the Nooksack Tribe's Fish Commission Account. By regulation, the Fishery Manager may provide for the licensing of shellfish buyers for treaty harvests as set forth in section 8-102, and require those buyers to collect all taxes owing and to promptly remit them to the Nooksack Tribe. [Monthly or at the end of the fishery, whichever is shorter.]

8-102. Designation of Shellfish Buying Stations; Unlawful Sales or Purchases; Exceptions; Forms

(a) *Designation of licensed buyers* - The Fisheries Manager may

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by rule or regulation require all commercial shellfishing sales to be made to buyers licensed by the Tribe. The Fishery Manager shall provide application forms to buyers, issue licenses, and collect a license fee in an amount to be established by the Tribal Council. No license may be issued to a buyer who has failed to remit taxes owed to the Tribe.

(b) *Unlawful sales or purchases* - When sale to a tribally licensed shellfish buyer is required, no person shall sell shellfish to a person not possessing a tribal buyer's license, except for use as bait. A person who sells shellfish to someone other than a licensed buyer, for bait, assumes responsibility for paying the tax imposed by this subtitle.

(c) *Forms* - For every sale of shellfish the buyer and seller shall comply with all tribal requirements for the completion and distribution of fish tickets.

**Subtitle 9. Prohibited Activities And Restrictions on Taking
Shellfish from Polluted Waters**

9-101. Prohibitions

(a) *Open and closure of harvest areas; unlawful conduct* - All tidelands, bedlands and waters within the Nooksack Tribe's usual and accustomed area are closed to the

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harvest of shellfish of whatever type or variety unless opened by the Fisheries Manager or the Tribal Council. It is unlawful to harvest in a closed area.

(b) *Compliance with shellfish ordinance and regulations* - No person shall harvest shellfish of whatever type or variety within the usual and accustomed area of the Nooksack Tribe without first complying with the provisions of this ordinance and all regulations promulgated pursuant to this ordinance.

(c) *Permit and identification required* - It shall be unlawful for any tribal member to harvest shellfish within the usual and accustomed area of the Nooksack Tribe for any purpose without first having on his/her person the identification and permit required by this ordinance.

9-102. Use of Intoxicants Prohibited

No person shall exercise or assist in exercising tribal shellfishing rights while in the possession of or under the influence of alcohol, intoxicating drugs, or other intoxicants.

9-103. Littering Prohibited

No person engaged in or on the way to or from the exercise of tribal shellfishing rights shall discard or otherwise dispose of any litter or other waste material

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upon any public or private property or in any waters.

9-104. Vandalism Prohibited

It shall be unlawful for any member to destroy, tear down, shoot at, deface or erase any printed matter or signs placed or posted by or under instructions of the Nooksack Tribal Council to assist in the enforcement of tribal shellfishing regulations. It shall also be unlawful to damage any private property in a shellfishing area or access route.

9-105. Obstructing Enforcement, Management or Biological Personnel Prohibited

It shall be unlawful to willfully interfere with or obstruct a fisheries patrol officer or management or biological personnel engaged in the enforcement and/or regulation of this ordinance.

Subtitle 10. Penalties, Fines, and Forfeitures - Civil

10-101. Penalties - Civil

Non-compliance with any provision of this ordinance is a civil violation, subject to civil remedies.

10-102. Collection and Disposition of Fines

(a) Violations of any part of this ordinance shall be subject to the following civil fines, in addition to the other remedies listed below:

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- (1) For the first violation, a mandatory fine of **FIVE HUNDRED DOLLARS (\$500.00)**;
- (2) For the second violation, a mandatory fine of **FIVE HUNDRED DOLLARS (\$500.00)** and suspension from shellfish privileges for one (1) year;
- (3) For the third and subsequent violations, a mandatory fine of **FIVE HUNDRED DOLLARS (\$500.00)**, and suspension from shellfish privileges for two (2) years.

10-103. Seizure and Disposition of Shellfish Unlawfully Harvested Sold, Offered for Sale, Transported or Possessed

The Tribal Court may order a violator to forfeit any shellfish in the possession of the violator at the time of the incident and confiscated by enforcement officers.

10-104. Seizure, Forfeiture, and Disposition of Proceeds, Equipment or Property

The Tribal Court may also order a violator to forfeit the proceeds of the sale of any confiscated shellfish as well as any shellfishing gear in the possession of the violator at the time of the incident.

10-105. Restitution

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The Tribal Court may also order a violator to provide restitution and/or community service to the Nooksack Tribe for the value of any shellfish obtained in violation of this chapter and already sold by or for the benefit of the violator, if the value of such shellfish can be reasonably determined. The Tribal Court may also order a violator to provide restitution and/or community service in the event of vandalism or property damage.

10-106. Immediate Suspension of License for Failure to Appear in Court

Upon the failure of any person to appear in tribal court as required by any charging document accusing the person of committing any civil offense under this ordinance, in addition to any other appropriate action taken by the tribal court or the Fisheries Department, the Fisheries Department shall immediately suspend, without hearing, all licenses and permits issued to the person under this ordinance. The Fisheries Department may not issue any new license or permit under this ordinance to the person until the person appears in tribal court to answer the charging document.

Subtitle 11. Penalties, Fines and Forfeitures - Criminal

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11-101. Penalties - Criminal

Non-compliance with any provision of this ordinance or any rule or regulation ~~promulgated~~ pursuant to it is a criminal violation subject to the following criminal penalties.

11-102. Penalties

(a) *First Offense* - Except as otherwise specifically provided in this ordinance, a person who violates any provision of this ordinance is guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding \$500, with costs imposed in the discretion of the tribal court.

(b) *Second Offense* - Unless another penalty is specifically provided elsewhere in this ordinance, any person found guilty of a second or subsequent violation of any provision of this ordinance is subject to a fine not exceeding \$1,000, or imprisonment not exceeding one year, or both, with costs imposed in the discretion of the tribal court. For the purpose of this subsection, a second or subsequent violation is one which has occurred within two years of any prior violation of this ordinance.

(c) *Violation of rule or regulation* - In addition to any civil

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penalty provided in this title, violation of any rule or regulation adopted by the Nooksack Tribe to the provisions of this title is a ~~misdemeanor~~ and is punishable as provided in subsections (a) and (b).

(d) *Exemption of common carrier transporting shellfish* - A common carrier transporting shellfish who is not the buyer, seller, or harvester of the shellfish and who is not controlled by the buyer, seller, or harvester of the shellfish, is not subject to any penalty under this section for transporting shellfish which is either unlawfully caught or of unlawful size, provided, that the operator of the common carrier has in his or her possession a valid bill of lading, stating the origin, shipper, destination and receiver of the shellfish and the common carrier does not know or have reason to know that the shellfish were unlawfully caught.

11-103. Collection and Disposition of Fines

Fines collected by tribal court - If any fine is imposed by the tribal court for a violation of any provision of this ordinance, the fine shall be collected pursuant to tribal law. The proceeds from all fines collected shall be deposited with the tribal court, subject to the control of the tribal council.

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11-104. Search Warrants

(a) *In general* - If any tribal fisheries officer or any law enforcement officer has probable cause to believe that any person possess any shellfish, any device or intoxicating substance, in violation of this ordinance or any rule or regulation promulgated pursuant to it, the officer shall go before any tribal court judge and make an affidavit of that fact. If the court finds the affidavit legally sufficient, he or she shall issue a search warrant against the person complained of, directed to the officer making the affidavit, commanding the officer to proceed at once and search for the shellfish, intoxicating substance or device and, upon finding it, to seize, take possession, and keep it until further order by the court. The warrant shall be executed pursuant to the Criminal Procedure Rules of the Nooksack Tribe.

(b) *Time for service* - The warrant shall be returned within five (5) days from the issuing date or within a shorter period of time as set forth in the search warrant.

11-105. Searches Without Warrant

(a) *In general* - If a tribal fisheries officer or any tribal law enforcement officer has probable cause to

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believe that any shellfish, shellfish device, or intoxicating substance, is possessed in violation of this ordinance or any rule or regulation promulgated pursuant to it, and it is not possible or feasible to secure a search warrant in time to seize the fish, device, or substance, then the officer may examine without a warrant any boat, box, crate, package, or container that may contain shellfish, or such device or substance.

(b) *Warrantless search of automobiles* - If a fisheries officer, in uniform or accompanied by uniformed tribal police officer, has probable cause to believe that shellfish, device, or substance are possessed in violation of this ordinance or any rule or regulation promulgated pursuant to it, the officer may stop and search an automobile, any vehicle, or trailer for the purpose of examining any container that may contain shellfish. The officer may also determine whether the person has an appropriate license or permit.

(c) *Exceptions* - However, this section does not permit entering a residence without first procuring a search warrant pursuant to the Criminal Procedure Rules of the Nooksack Tribe.

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11-106. Seizure and Disposition of Shellfish Unlawfully Caught,
Sold, Offered for Sale, Transported, or Possessed

A fisheries officer or any tribal law enforcement officer, upon arresting any person for violating any provision of this ordinance or any rule or regulation promulgated pursuant to it, may seize all shellfish unlawfully caught, sold, offered for sale, transported, or possessed. The tribe may dispose of the seized shellfish at its discretion.

11-107. Seizure, Forfeiture, and Disposition of Devices,
Equipment, or Property

(a) *In general* - A fisheries officer or any law enforcement officer, upon arresting any person for violating any provision of this title or any rule or regulation promulgated pursuant to it, may seize every device, equipment, conveyance, or property unlawfully used. If the owner or person in charge of the seized device, equipment, conveyance, or property is convicted, the tribal court may declare the device, equipment, conveyance, or property forfeited in addition to any other penalty provided in this ordinance. Any forfeiture becomes the property of the Nooksack Tribe for disposition at its discretion. If

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the owner is not known, the tribal court may proceed ex parte to hear and determine any question of forfeiture.

If the owner or person charged with the violation is not convicted, the device, equipment, conveyance, or property seized shall be released and returned to the owner.

(b) *Exceptions* - A device, equipment, conveyance, or property may not be forfeited if the owner was not a consenting party or privy to a violation.

11-108. Suspension and Revocation of Licenses by Tribal Court

In addition to any other penalty or fine provided in this title, any person who is convicted of violating any provision of this ordinance or any rule or regulation promulgated pursuant to it may have his or her license suspended or revoked by the tribal court.

11-109. Expungement of Records

(a) *Conditions for Expungement* - If a person applies for the expungement of their record concerning any violation, the Nooksack Tribe shall expunge the record if, at the time of application the person has not been convicted of a violation for the preceding three (3) years, there are no pending charges and any license issued to the person under this title has never been suspended or

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revoked.

11-110. Immediate Suspension of License for Failure to Appear
in Court

Upon the failure of any person to appear in tribal court as required by any charging document accusing the person of committing any criminal offense under this ordinance, in addition to any other appropriate action taken by the tribal court or the Fisheries Department, the Fisheries Department shall immediately suspend, without hearing, all licenses and permits issued to the person under this ordinance. The Fisheries Department may not issue any new license or permit under this ordinance to the person until the person appears in court to answer the charging document.

Subtitle 12. Interpretation; Saving Clause and Other Tribal Ordinances - In General

12-101. Construction and Interpretation

(a) This ordinance shall be liberally construed to effectuate its purpose.

12-102. Severability

(a) If any provisions of this ordinance, or its application to any person or circumstance, is held

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invalid or unconstitutional, the remainder of the ordinance, or the application of the provisions to other persons or circumstances, shall not be affected.

12-103. Other Tribal Ordinances Apply

All provisions of applicable ordinances and codes of the Nooksack Tribe shall apply to the prosecution of violations under this ordinance, where consistent. This shall include applicable Rules of Criminal and Civil Procedure. The entire Law and Order code also applies to all on and off reservation fishing related conduct, and this shall be complied with by all harvesters.