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NOOKSACK INDIAN TRIBE

TITLE 35

HUNTING CODE

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NOOKSACK HUNTING CODE

TITLE 35

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## TITLE 35

### NOOKSACK HUNTING CODE

#### 35.01     JURISDICTION

##### 30.01.010 Jurisdiction :

1. Subject matter. The Nooksack Tribal Court has jurisdiction to hear cases filed with the Court under this code.
2. Persons. The provisions of this code apply to all persons hunting on lands held by or for the benefit of the Nooksack Indian Tribe and to all persons purporting to exercise hunting rights reserved by the Nooksack Indian Tribe under the Treaty of Point Elliott.
3. Territory. The provisions of this code apply to all hunting on lands described in Article I of the Constitution and Bylaws of the Nooksack Indian Tribe of Washington, open and unclaimed lands as reserved by the Nooksack Indian Tribe under the Treaty of Point Elliott, and any other lands on which the Nooksack Indian Tribe has permission or the right to hunt.

#### 35.02     DEFINITIONS

##### 35.02.010 Definitions :

The words below shall have the meanings set forth in this chapter when those words appear in this code or in Nooksack tribal hunting regulations unless another meaning is clearly intended.

1. "Adult" - A person who is eighteen (18) years of age or older.
2. "Bag Limit" means the maximum number of animals which may be taken, caught, killed, or possessed by any person, specified by ordinance or regulation, for any particular period of time, and may include limits on size, sex, or species.
3. "Big Game" means elk or wapiti, deer, mountain goat, cougar or mountain lion, black bear, and mountain sheep or bighorn.

4. "Closed Area" means any place or area which has not been opened to hunting by regulation and any place or area described or designated by this code or regulation where it is unlawful to hunt.
5. "Closed Season" means all times during the entire year except those times an "open season" is designated by regulation.
6. "Game Agent" means any person authorized by the Nooksack Indian Tribe to enforce this code and Nooksack game regulations.
7. "Game Animals" means wild animals other than "big game" animals and game birds that shall not be hunted except as authorized by regulation.
8. "Game Birds" means all wild birds that shall not be hunted except as authorized by regulation.
9. "Hunt" and its derivatives, "hunting," "hunted," etc., and "trap" and its derivatives, "trapping," etc., mean any effort to kill, injure, capture, or intentionally disturb a wild animal or wild bird.
10. "Open Season" means those times, manners of taking and areas established by regulation for lawful hunting. "Open season" includes the first and last days of the established time, unless otherwise specified.
11. "Public Roads" means roads maintained by any county or by the State of Washington.
12. "Regulation" means any rule or regulation promulgated by the Nooksack Hunting Committee or the Nooksack Tribal Council.
13. "Revocation of Hunting Privileges" means the loss of all rights and privileges to hunt under this code and the loss of eligibility to apply for a Nooksack Tribal Game Permit and tags, for the duration specified by this code.
14. "Nooksack Tribal Member" or "Member" means an enrolled member of the Nooksack Indian Tribe.
15. "Tribal Council" means the Nooksack Tribal Council.

16. "Tag" means a card, label or other identification device issued for attachment to the carcass of any wildlife.
17. "Tribe" means the Nooksack Indian Tribe.
18. "Wasting" or "waste" means allowing edible meat to spoil or leaving edible meat behind in the field or elsewhere. Edible meat does not include diseased meat or meat damaged in the course of the hunt.
19. "Wildlife" means all species of the animal kingdom whose members exist within the territory described in section 35.01.010 except fish and domesticated animals.

35.03      GENERAL PROVISIONS

35.03.010 Nooksack Hunting Committee :

The Nooksack Tribal Council shall appoint a Hunting Committee of no less than five persons including at least one member of the Tribal Council. The Hunting Committee shall elect officers from its members. A quorum shall consist of three (3) committee members. The Hunting Committee has the power and duty to make recommendations to the Tribal Council regarding regulations and other wildlife management issues, to issue ceremonial and special hardship subsistence permits, to make emergency closures, and such other powers and duties as specified under this code or as delegated by the Tribal Council.

35.03.020 Annual Regulations :

The Hunting Committee shall recommend annual and seasonal game regulations to the Tribal Council prior to each hunting season. Regulations may govern time, location, and manner of taking animals and bag limit, sex, specie, and other measures for the protection and sound management of game resources.

35.03.030 Emergency Regulations :

1. The Hunting Committee may make emergency changes in annual or seasonal hunting regulations whenever necessary for proper management of game resources. The Hunting Committee shall notify the Tribal Council of any emergency regulations.
2. Emergency regulations shall take effect upon adoption or as specified in the regulations. They shall remain in effect until withdrawn by the Hunting Committee or Tribal Council, or until they lapse by their own terms.
3. Emergency regulations must be posted at several locations and must indicate the date and hour they were adopted. No penalty shall be imposed for violation of an emergency regulation unless 24 hours have passed since the regulation was issued or unless the violator was served personally with a notice of the regulation before the violation occurred.

35.03.040 General Closure :

All areas described in section 35.01.010 are closed to hunting under this code unless specifically opened by regulation.

35.03.050 Eligible Hunters :

The following persons are eligible to exercise hunting rights under the authority of this code:

1. Enrolled members of the Nooksack Indian Tribe who are sixteen (16) years of age or older; and
2. Enrolled members of the Nooksack Indian Tribe who are under sixteen (16) years of age if they are accompanied by an adult, provided, that persons who are fourteen (14) and fifteen (15) years of age may hunt unaccompanied if they have completed a firearms safety course approved by the Nooksack Hunting Committee.

35.03.060 Hunting for Ceremonial Use/Extreme Personal Hardship :

Members of the Nooksack Indian Tribe may apply for permits to allow wildlife to be bagged for funerals, religious ceremonies, tribal functions, or in cases of extreme personal hardship.

The permit shall specify the type, sex, and number of animals, the valid dates, and may include conditions regarding area and manner of taking. Permits under this section may be issued for use during an otherwise closed season.

35.03.070 Hunting for Another :

Members of the Nooksack Tribe who are unable to hunt for themselves may request that a designated hunter permit be issued to a person eligible to hunt under this code. The permit may be for subsistence or ceremonial use. The person making the request may reimburse the designated hunter for actual expenses such as gas, shells, and meals but no payment shall be made for the meat. All provisions of this code and regulations apply to hunting under this section. The Hunting Committee shall maintain a roster of eligible hunters who are available to hunt for other tribal members. Names may be added to the roster to accommodate specific requests for a particular hunter, provided the hunter is eligible under this code.

35.04 OFFENSES

35.04.010 Hunting - Obtaining Permits and Tags :

Any person who fails to obtain all identification, permits, and tags required by this code or regulation is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$50.00.

35.04.020 Hunting - Permit and Tags in Possession :

Any person who has obtained a valid permit and tags required by this code or regulation but who does not have the permit and tags in his or her possession while hunting or transporting wildlife is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.

35.04.030 Hunting During Closed Season :

Any person who hunts during a closed season is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$200.00.
2. The maximum fine which may be imposed is \$500.00.

35.04.040 Possession of Wildlife Taken During Closed Season :

Any person who possesses any wildlife killed during a closed season or who has otherwise taken or killed wildlife contrary to the provisions of this ordinance or regulations is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$200.00.
2. The maximum fine which may be imposed is \$500.00.

35.04.050 Hunting in Closed Areas :

Any person who hunts within a closed area is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$200.00.
2. The maximum fine which may be imposed is \$500.00.

35.04.060 Bag Limits :

Any person who exceeds the bag limit is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$200.00.
2. The maximum fine which may be imposed is \$500.00.

35.04.070 Reporting Bagged Game :

Any person who fails to report the species, sex and location of big game he or she has killed or to comply with any harvest report requirements set by regulation is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.
2. The maximum fine which may be imposed is \$50.00.

35.04.080 Wasting Big Game :

Any person who kills big game and causes it to go to waste, is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$200.00.
2. The maximum fine which may be imposed is \$500.00.
3. The Court may revoke the defendant's hunting privileges for up to one year in addition to the fine imposed.

35.04.090 Wasting Game Birds or Game Animals :

Any person who kills game birds or game animals and causes them to go to waste, is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.
2. The maximum fine which may be imposed is \$100.00.

35.04.100 Selling Wildlife :

Any person who sells meat from wildlife is guilty of an offense, and upon conviction shall be sentenced to:

1. Sentence for the first conviction for selling:
  - a) A mandatory, minimum fine of \$200.00; and

- b) Mandatory revocation of the defendant's hunting privileges for one year.
  - c) The maximum fine which may be imposed is \$500.00.
2. Sentence for the second conviction:
- a) A mandatory, minimum fine of \$500.00; and
  - b) Mandatory revocation of the defendant's hunting privileges for three years.
  - c) The maximum fine which may be imposed is \$1, 000.00.
3. Sentence for the third conviction:
- a) A mandatory, minimum fine of \$1,000.00; and
  - b) Permanent revocation of the defendant's hunting privileges.
  - c) The maximum fine which may be imposed is \$5,000.00.

35.04.110 Trap Inspection :

Any person who fails to inspect any trap or trapline he has set and such failure results in spoilage of big game or game animals is guilty of an offense, and upon conviction shall be sentenced to:

1. Sentence for violation resulting in wastage of big game animal:
  - a) A mandatory, minimum fine of \$200.00.
  - b) The maximum fine which may be imposed is \$500.00.
  - c) The Court may revoke the defendant's hunting privileges for up to one year in addition to the fine imposed.
2. Sentence for violation resulting in wastage of small game animal or game bird:
  - a) A mandatory, minimum fine of \$35.00.
  - b) The maximum fine which may be imposed is \$100.00.

35.04.120 Interference with Traps :

Any person who takes big game or a game animal from another person's trap without permission, or who springs, damages, possesses, or removes another person's trap is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.
2. The maximum fine which may be imposed is \$100.00.

35.04.130 Transporting Loaded Firearms :

Any person, except authorized law enforcement officers, who carries, transports, conveys, or possesses a) a shotgun or rifle containing shells or cartridges in the magazine or chamber, or b) a muzzle-loading firearm loaded and capped or primed; in or on a motor vehicle is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$200.00.
2. The maximum fine which may be imposed is \$500.00.

35.04.140 Hunting from a Vehicle :

Any person who hunts from within or upon a motor vehicle or pursues wildlife off a road with a motor vehicle is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.

35.04.150 Shooting Firearms Across Public Roads :

Any person, except authorized law enforcement officers, who discharge a firearm from, across, or along the maintained portion of a public road is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.

35.04.160 Shooting Arrows Across Public Roads :

Any person who shoots an arrow from a vehicle or shoots an arrow from, across, or along the maintained portion of a public road is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.

35.04.170 Spotlighting/Night Hunting :

Any person who a) hunts using torches, a spotlight, head lights, or other artificial light; or b) hunts during a time of day which is not expressly open for hunting under Nooksack hunting regulations; unless authorized to do so in writing by the Hunting Committee for a funeral hunt, is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$100.00.

35.04.180 Use of Dogs :

Any person accompanied by a dog while deer or elk hunting, is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$200.00.
2. The maximum fine which may be imposed is \$500.00.

35.04.190 Hunting While Intoxicated :

Any person who hunts while under the influence of alcohol or illegal drugs is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory fine of \$100.00.

35.04.200 Hunting Eagles :

Any person who kills any eagle, is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$1000.00.

2. The maximum fine which may be imposed is \$5000.00.

35.04.210 Laying Out Poison :

Any person who lays or sets out a drug, explosive or poison that may endanger, injure, or kill wildlife is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$200.00.
2. The maximum fine which may be imposed is \$500.00.

35.04.220 Mutilation of Wildlife :

Any person who mutilates wildlife so that the species and sex cannot be determined visually in the field or while being transported is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$100.00.

35.04.230 Shooting Persons or Livestock :

Any person who shoots any other person or any domestic livestock while hunting is guilty of an offense, and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$500.00.
2. The maximum fine which may be imposed is \$5000.00.
3. The Court may order restitution in lieu of or in addition to the fine.

35.04.240 Hunting While Privilege is Revoked :

Any person who hunts while his or her hunting privilege is revoked is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$500.00.
2. The maximum fine which may be imposed is \$1,000.00.

3. The Court may impose up to 30 days in jail in addition to the fine.

35.04.250 Big Game Hunting - Firearms Restrictions :

No person shall hunt big game with any of the following:

1. A fully automatic firearm; or
2. A rifle with a bore diameter less than .240 of an inch (6mm), or barrel length less than 16 inches; or
3. A rifle cartridge with a bullet weighing less than 85 grains, or that develops less than 900 foot pounds of energy at 100 yards (this section applies to hunting elk only); or
4. A rifle cartridge containing a bullet other than a mushrooming or expanding type, designed for big game hunting; or
5. A shotgun; except that a shotgun which is 20 gauge or larger, using shells loaded with slugs or buckshot size #1 or larger, may be used to hunt deer and bear; or
6. A handgun; except a handgun may be used to kill an animal at close range once the animal has been wounded by a weapon allowed under this code.
7. A bow that possesses less than 40 pounds of pull, measured at 28 inches or less draw length; or
8. Any arrows, except those having sharp broadhead blade or blades at least seven - eighths inches wide. The broadhead of the blade or blades by a smooth, unbroken surface starting at maximum blade width forming a smooth line toward the feather end of the shaft and such line shall not angle toward the point; or

Any person who violates this section is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.
2. The maximum fine which may be imposed is \$100.00.

35.04.260 Game Animals - Firearms Restrictions :

Any person who hunts game animals with a shotgun larger than a 10 gauge is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.
2. The maximum fine which may be imposed is \$100.00.

35.04.270 Game Birds - Firearms Restrictions :

No person shall hunt game birds with:

1. Lead shot;
2. A shotgun larger than 10 gauge; or
3. A rifle, with the exception of blue grouse, spruce grouse, and ruffed grouse.

Any person who violates this section is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$35.00.
2. The maximum fine which may be imposed is \$100.00.

35.04.280 Resisting :

Any person who resists or obstructs any duly authorized game agent in the discharge of his duties under this ordinance or regulations is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$100.00.

35.04.290 Aiding and Abetting :

Any person who knowingly aids and abets another person to engage in conduct which is unlawful under this ordinance or regulation is guilty of an offense and upon conviction shall be sentenced to:

1. The same penalty as if he or she committed the primary violation.

#### 35.04.300 Reckless Endangerment :

Any person who, through negligent or reckless conduct, places another person at risk of serious physical harm is guilty of an offense and upon conviction shall be sentenced to:

1. A mandatory, minimum fine of \$ 200.00.
2. The maximum fine which may be imposed is \$ 5000.00.
3. The Court may order restitution in lieu of or in addition to the fine.

### 35.05 ENFORCEMENT

#### 35.05.010 Enforcement Procedures - Generally :

The Nooksack Tribe's Court Rules and Rules of Criminal Procedure apply in the enforcement of this code and regulations. Where provisions of this code and the Rules mentioned above conflict, this code shall be controlling.

#### 35.05.020 Game Agents :

The Nooksack Tribal Council may appoint or employ one or more persons to act as game agents. A game agent shall have authority to:

- a) Enforce this code and all hunting regulations;
- b) Conduct arrests, searches, and seizures and to carry out other duties of an officer set forth in this code, regulations, Nooksack Tribal Court Rules, and Rules of Criminal Procedure and any other duties required by the agent's terms of employment; and
- c) Any powers and duties conferred by any joint enforcement or cross-deputization agreement in effect between the Nooksack Indian Tribe and any other tribe or law enforcement agency.

35.05.030 Powers and Duties of Game Agents :

A game agent shall have the following powers and duties:

- a) To cite violators into Tribal Court, to file complaints with the Prosecutor and in Court;
- b) To request search warrants consistent with the Nooksack Tribe's Rules of Criminal Procedure;
- c) To stop, question, search, and arrest suspected violators consistent with the Nooksack Tribe's Rules of Criminal Procedure;
- d) To search vehicles, tents, campers, gear, and any place or premises near a hunting site, which the game agent has probable cause to believe contains evidence of violations of this code or regulations;
- e) To seize wildlife, parts of wildlife, weapons, and any paraphernalia used in connection with hunting which the game agent has reasonable grounds to believe have been used or possessed in violation of this code or regulations;
- f) To confiscate any permit, identification, or tags used or possessed in violation of this code or regulations as provided in section 35.05.040; and
- g) To obey and carry out the lawful orders of the Court.

35.05.040 Confiscation of Tribal Permits :

Attendant to the issuance of a citation, a game agent shall confiscate tribal hunting permits and tags from violators of this code of regulations under the following circumstances:

- a) The permit is in the possession of a person to whom said permit was not issued;
- b) The holder of the permit is using a weapon of a type which cannot be used legally under this code or regulations at any time or place;

- c) The game agent has determined that seizure of the permit and tags is necessary to prevent further or continued violations of this code or regulations.
- d) The holder of the permit has failed to appear at a Tribal Court hearing to which said holder has been cited or summoned previously or has failed to satisfy a judgment of the Tribal Court against said holder arising from a prior violation of this code or regulations.

35.05.050 Seizure of Wildlife/Property :

Whenever a game agent makes an arrest or issues a citation under this code or regulations, the agent may seize any wildlife or parts of wildlife the agent reasonably believed had been killed, captured, or possessed illegally by the alleged violator. A game agent may, in addition, seize any weapons or other paraphernalia (excluding the hunter's vehicle) which the agent has reasonable grounds to believe has been used in the commission of a violation of this code or regulations.

35.05.060 Disposition of Seized Wildlife, Property :

Disposition of seized wildlife or other property shall be governed by section 10.06.050 of the Nooksack Tribe's Rules of Criminal Procedure except as provided in this section. If perishable meat is seized under the authority of this code or regulations, the meat shall not be sold but shall be placed in the control of the Hunting Committee to be disposed of for tribal purposes. The first priority tribal purpose shall be use of the meat for the elders' lunch program. If the defendant is acquitted or charges are dismissed (and the person's hunting privilege is not revoked on another charge), the person shall be issued a permit and any required tag to bag a replacement animal.

35.05.070 Arrest

In addition to the power to cite persons in violation of this code or regulations game agents shall also have the authority to arrest and detain tribal members under any of the following circumstances:

- a) The agent 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) The agent has been physically assaulted by the alleged offender or has been threatened with physical violence; or
- c) The agent cannot issue a citation to the alleged offender because said person has refused to identify himself or has refused to sign the citation.

35.05.080 Payment of Fine in Lieu of Appearance :

As authorized by and to be construed consistent with section 10.06.160 of the Nooksack Tribe's Rules of Criminal Procedure, a defendant may enter a guilty plea by paying a fine to the court clerk on or before the date he or she is summoned to appear before the Court. Payment of fine in lieu of appearance is only available for a first offense of this code or regulations. Appearance is mandatory for any offense in which jail time or revocation of hunting privileges is possible or mandated. Where a minimum and maximum fine are specified for an offense, the defendant must pay the maximum fine if he or she wishes to pay the fine in lieu of appearance before the Court.

35.05.090 Failure to Appear/Comply :

Any person who without adequate excuse shall fail to appear in Tribal Court to answer a citation lawfully issued hereunder or shall fail to comply with any sentence of the Tribal Court issued with respect to a conviction for violation of this code or regulations shall have suspended all tribal hunting privileges granted under and authorized' by this code and regulations. Such suspension shall continue until said party is found by the Tribal Court to have brought himself into compliance with this code and all Court orders issued pursuant thereto.

35.06 SENTENCING

35.06.010 Assessment of Fines - Time Payments, Community Service :

The Court does not have the authority to suspend or reduce any mandatory fine under this code. The Court may order reasonable

installment payments. The Court may also order the defendant to perform community service hours in lieu of up to fifty percent (50%) of any fine; the balance must be paid in cash. Each hour of community service shall reduce the fine by \$4.00. Community service in lieu of a fine shall only be ordered after a showing by the defendant of indigency and if a responsible person is available to supervise and monitor the work performed.

35.06.020 Sentencing Guidelines - General Considerations :

For those offenses where the Court has some discretion in sentencing, the Court shall consider, among other things:

- a) Whether or not the defendant has any prior hunting convictions;
- b) Whether or not the offense involved a threat to the game resource, as determined by the Tribal Court;
- c) Whether any wildlife was possessed, killed, or injured as a result of the offense;
- d) Whether big game animals were illegally possessed, killed, or injured vs. small game animals, if any; and
- e) The number of animals illegally possessed, killed, or injured, if any.

35.07 SOVEREIGN IMMUNITY, SEVERABILITY

35.07.010 Sovereign Immunity :

The sovereign immunity of the Nooksack Indian Tribe shall in no manner be waived by this code or regulations. The employees, Tribal Council members, appointees, game agents, tribal court personnel and Hunting Committee members are cloaked with the sovereign immunity of the Nooksack Indian Tribe.

35.07.020 Severability :

If any provision of this code or its application of the provisions to other persons or legal entity or circumstances is held invalid, the remainder of

the code or the application of the provision to other persons or legal entities or circumstances shall not be affected.