



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 11- 18

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Squaxin Island Tribal Council finds that regulation of commercial Treaty fish transactions is essential to the health and welfare of the Squaxin Island Tribe and its members;

WHEREAS, the Squaxin Island Tribal Council additionally finds that regulation of commercial Treaty fish transactions implements Judge Boldt's rulings in *United States v. Washington*, and in particular his 1974 decision that prohibits the State's from interfering with anyone purchasing, attempting to purchase, transporting, receiving for shipment, processing or reselling treaty fish; and that expressly anticipates and/or recognizes "non-State licensed Indian fish buyers."

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby adopts the following amendments to Title 7, the Natural Resources Management Act:

1. A new chapter title "7.18 Commercial Fish Buyers" is added to the Chapter index.

2. The definition of "Buyer" is repealed in the Definitions section in SITC § 7.04.050 (General Provisions).

3. The following subsections 7.12.060.C and D (Treaty Finfish) are repealed, and the subsequent subsections renumbered:

C. Authority for Tribal Buyers. The Tribal Council is authorized to provide Tribal fish buyers as a Tribal enterprise, and to impose a tax on such enterprises.

D. Tribal Buyer Fish Tickets: All authorized Tribal buyers are required to fill out Treaty Indian fish receiving tickets and return them to the Squaxin Island Natural Resources Department within four working days after the date of purchase of finfish.

4. The following sections 7.12.120.N and O are repealed, and the subsequent subsections renumbered:

N. Buyer Failure to Properly Fill Out Fish Tickets. It is unlawful for Tribal buyers to improperly fill out fish tickets. Violation of this provision is a Class D penalty.

O. Failure to Return Fish Tickets. It is unlawful for a Tribal buyer to fail to return fish tickets to the Squaxin Island Natural Resources Department within four working days of the purchase. Violation of this provision is a Class D penalty.

5. The following sections 7.16.080.C and D (Treaty Inter-Tidal Shellfish) are repealed, and the subsequent subsections renumbered:

C. Authority for Tribal Buyers. The Tribal Council is authorized to provide Tribal fish buyers as a Tribal enterprise, and to impose a tax on such enterprises.

D. Tribal Buyer Fish Tickets: All authorized Tribal buyers are required to fill out Treaty Indian fish receiving tickets and return them to the Squaxin Island Natural Resources Department within four working days after the date of purchase of finfish.

6. The following sections 7.16.110.N and O are repealed, and the subsequent subsections renumbered:

N. Buyer Failure to Properly Fill Out Fish Tickets. It is unlawful for Tribal buyers to improperly fill out fish tickets. Violation of this provision is a Class D penalty.

O. Failure to Return Fish Tickets. It is unlawful for a Tribal buyer to fail to return fish tickets to the Squaxin Island Natural Resources Department within four working days of the purchase. Violation of this provision is a Class D penalty.

7. A new Chapter 7.18 entitled, "Commercial Fish Buyers," is added to Title 7.

8. The following sections 7.20.070.C and D (Treaty Sub-Tidal Aquatic Resources) are repealed, and the subsequent subsections renumbered:

C. Authority for Tribal Buyers. The Tribal Council is authorized to provide Tribal fish buyers as a Tribal enterprise, and to impose a tax on such enterprises.

D. Tribal Buyer Fish Tickets: All authorized Tribal buyers are required to fill out Treaty Indian fish receiving tickets and return them to the Squaxin Island Natural Resources Department within four working days after the date of purchase of finfish.

9. The following sections 7.20.120.N and O are repealed, and the subsequent subsections renumbered:

N. Buyer Failure to Properly Fill Out Fish Tickets. It is unlawful for Tribal buyers to improperly fill out fish tickets. Violation of this provision is a Class D penalty.

O. Failure to Return Fish Tickets. It is unlawful for a Tribal buyer to fail to return fish tickets to the Squaxin Island Natural Resources Department within four working days of the purchase. Violation of this provision is a Class D penalty.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 24 day of March, 2011, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.


David Lopeman, Chairman

Attested by:


Peter Kruger, Secretary


Arnold Cooper, Vice Chairman

**Chapter 7.18
COMMERCIAL FISH BUYERS**

Sections:

7.18.010	Purpose and Legislative Findings
7.18.020	Definitions
7.18.030	Jurisdiction
7.18.040	Prior Ordinances and Resolutions
7.18.050	Sovereign Immunity
7.18.060	Effective Date
7.18.070	General Buyer Duties.
7.18.080	Buyer Duties Regarding Treaty Indian Fish Receiving Tickets.
7.18.090	License Fees
7.18.100	Bonds
7.18.110	License Applications
7.18.120	Issued Licenses
7.18.130	License renewal
7.18.140	License suspension or revocation
7.18.150	Shellfish Buyer Stations
7.18.160	Fish Buyer Vessels
7.18.170	Taxes
7.18.180	Violations
7.18.190	Appeals

7.18.010 Purpose and Legislative Findings

A. The Tribal Council makes the following findings, and directs that this Chapter be interpreted and understood in a manner that is consistent with these findings:

1. Tribal ancestors and other Indians at Treaty time engaged in substantial trade with Indians and non-Indians, particularly as to fish, over a large geographic area that extended beyond what were later determined to be Squaxin usual and accustomed grounds and stations.

Drafter's comment: See definition of "Tribal fishing areas" in § 7.04.050 of the Natural Resources Management Act, which is defined as "all areas within the Squaxin Island Tribe's jurisdiction, including all usual and accustomed grounds and stations of the Tribe, where tribal fishery resources such as finfish, shellfish, and aquatic resources may be found."

2. The Tribe and other treaty tribes have expansive regulatory authority over commercial activities involving treaty fish, including, but not limited to harvesting, transporting, processing, receiving for shipment, offering for sale or barter, purchasing or attempting to purchase, or reselling fish (as defined in this

Chapter), vessel registration, and traveling to and from such activities, all irrespective of the location of the harvest or transaction.

3. The Tribe encourages commercial activities involving treaty fish so as to benefit and perpetuate the economy and culture of the Tribal community.

4. Tribal harvesters and buyers should properly document and timely report commercial transactions on fish tickets so that the Tribe can effectively co-manage its fisheries, and regulate commercial activities.

5. Tribal fisheries and inter-governmental relationships and regulation will benefit by the Tribe's entering into cooperative relationships with tribal and other governments to coordinate and enforce regulation of commercial activities involving treaty fish, and to resolve jurisdictional issues. The Tribe will strive to assist other tribes' efforts to implement and enforce similar tribal laws to the extent that there is no inconsistency with the Act.

6. The Tribe, by this Chapter, does not intend to regulate or alter: 1) agreements between licensed buyers and sellers, such as to price; 2) non-commercial activities involving treaty fish; 3) activities involving non-treaty fish; or 4) health-related requirements, including shellfish sanitation.

7. Absent a mutually agreed conservation purpose, State regulation of activities described in this Chapter interferes with the treaty fishing right.

B. The purposes of this Chapter are, consistent with the Tribal Council's findings and policy directives, to broadly interpret, implement and regulate the treaty fishing right as to commercial activities; and the Tribe's sovereign rights as related to commercial activities involving non-treaty fish that occur on the Reservation.

C. This Chapter is not adopted for conservation purposes; rather, it is adopted to further management and enforcement objectives. To the extent that the conservation presumption expressed in *State v. Williams*, 898 F.2d 727 (9th Cir. 1990), is applied to this Chapter, the Tribe affirmatively rejects such a presumption.

7.18.020 Definitions.

The following terms when used in this Chapter shall have the following meanings. These terms are in addition to and/or supersede those found in Section 7.04.050 of the Squaxin Island Natural Resources Management Act, Ch. 7.04:

“**Act**” means the Squaxin Island Natural Resources Management Act, Ch. 7.04.

“Applicant” means a person or entity that applies for a license under this Chapter.

“Buyer” means a person who purchases, for commercial purposes, treaty fish from the harvester. **“Squaxin buyer”** means a buyer who is an enrolled Squaxin member or his or her majority-owned business, or a buyer that is a business majority-owned by the Tribe. **“Non-Squaxin buyer”** means a buyer who is an enrolled member of another Treaty tribe or his or her majority owned business, a buyer that is a business majority-owned by another Treaty tribe, or a buyer that is a non-Indian individual or business.

“Buyer’s card” means the plastic embossed card that the Department annually issues to each person engaged in buying activities for him or herself or for a business. A buyer’s card is proof of a license.

“Chapter” means this Chapter 7.18.

“Commercial” means related to or connected with buying, bartering, selling or profiting economically. Commercial does not include: (a) barter among Tribal members; or (b) subsistence or ceremonial harvesting.

“Department” means the Squaxin Island Natural Resources Department.

“Director” means the Director of the Squaxin Island Natural Resources Department.

“Harvester” means the tribally-authorized person, assistant or designated harvester who actually catches, or otherwise takes treaty fish from its natural habitat. **“Non-Squaxin harvester”** means a harvester exercising a non-Squaxin Island Tribe’s treaty fishing or shellfish harvesting rights. **“Squaxin harvester”** or **“Tribal harvester”** is defined in SITC § 7.04.050 (i.e., a harvester exercising the Squaxin Island Tribe’s Treaty rights).

Drafter’s comment: SITC § 7.04.050 defines “Tribal harvester” (or “authorized tribal harvester”) as a tribal member who is authorized to fish or harvest finfish, shellfish or aquatic resources pursuant to this Act.

“License” or **“Licensed”** means a buyer’s license issued by the Department under this Chapter.

“Reservation” means the Squaxin Island Reservation.

“Treaty fish” means finfish, shellfish and other aquatic or marine resources that are harvested pursuant to a treaty fishing right, and products made from these resources. **“Treaty fish”** are either **“Squaxin treaty fish,”**

meaning that they were harvested by a Squaxin Island Tribal harvester under the Treaty of Medicine Creek, or “**non-Squaxin treaty fish**,” meaning that they were harvested by a Non-Squaxin harvester.

“**Treaty tribe(s)**” means a tribe that has treaty fishing rights within the case area of *United States v. Washington* or *United States v. Oregon*.

“**Tribe**” or “**Tribal**,” when capitalized, means the Squaxin Island Tribe.

7.18.030 Jurisdiction.

A. In addition and complementary to the jurisdiction outlined in Section 7.04.030 of this Title, the Tribe has jurisdiction over the following, regardless of where the activities occur or the regulated persons are located:

1. Commercial activities involving Squaxin treaty fish;
2. Squaxin buyers’ commercial activities involving non-Squaxin treaty fish.
3. Commercial activities involving non-treaty fish that occur within the exterior boundaries of the Squaxin Island Tribe’s Reservation.

Drafter’s comment: Section 7.04.030 provides:

A. Persons Applied. The provisions of this Act shall be applicable to all members of the Squaxin Island Tribe, and to any other person whenever such person is either acting under authority of the Squaxin Island Tribe of Indians or acting upon property or treaty resources within the jurisdiction of the Squaxin Island Tribe, including its usual and accustomed fishing grounds and stations, ceded and/or traditional areas. To the greatest extent possible, property within the jurisdiction of the Squaxin Island Tribe shall be construed to include all lands within the Tribe’s traditional areas and all other lands owned by the Tribe in fee or held in trust on behalf of the Tribe or its members.

B. Subjects Applied. This Act shall apply to the full extent of the sovereign jurisdiction of the Squaxin Island Indian Tribe; and shall apply to all agreements or other cooperative arrangements entered into by the Squaxin Island Tribe which are designed to provide access to available natural resources and to provide effective natural resource management. The Tribal Council may enter into agreements or other cooperative arrangements that supersede this Act.

C. Deemed to Consent. Any person acting under Tribal authority, or entering upon property within the jurisdiction of the Squaxin Island Tribe, shall be deemed thereby to have consented to the following:

1. *To be bound by the terms of this Act;*
 2. *To the exercise of civil jurisdiction by the Squaxin Island Tribal Court over said person in legal actions arising pursuant to this Act; and*
 3. *To detention, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Act.*
- B. The Tribal Court has limited jurisdiction over actions arising under this Chapter pursuant to Squaxin Tribal Court Code Chapter 4.04.

7.18.040 Prior Ordinances and Resolutions.

This Chapter supersedes and replaces any resolutions or ordinances, or portions thereof, that directly conflict with this Chapter.

Drafter's comment: No fish buyer-related resolutions appear in the Code's Comparative Table and Disposition List. Certain buyer-related provisions in the Natural Resources Code should be deleted or modified where they are either confusing or inconsistent with this Code.

7.18.050 Sovereign Immunity.

Nothing in this Chapter shall be construed as a waiver of the sovereign immunity of the Tribe, or of its enterprises, agents, employees or officials, except that there is a limited waiver only for the purpose of challenging a final decision by the Director in Tribal Court in accordance with the terms of Section 7.18.190.

7.18.060 Effective Date.

This Chapter shall become effective on April 1, 2011.

7.18.070 General Buyer Duties.

A. Squaxin buyers purchasing Treaty fish for commercial purposes shall be licensed under this Chapter.

B. A Non-Squaxin buyer of Squaxin Treaty fish must hold a valid license issued by the Tribe or by another jurisdiction that has entered into an agreement with the Tribe as to fish buyer regulation. In order not to discourage commercial activities:

1. The Department may waive or postpone seeking some or all monetary requirements that this Chapter imposes upon the Non-Squaxin buyer (e.g., license fee, fish buyer tax, bond), including for the reason that he or she is currently maintaining a State buyer's license. The Tribe may later seek such

monies from the Non-Squaxin buyer, particularly if the Tribe directly or indirectly challenges the validity of the State requirements and seeks reimbursement.

2. A Non-Squaxin buyer may engage in a one-time purchase of Squaxin Treaty fish from a Squaxin harvester without a License as long as such buyer at his or her first opportunity after the transaction promptly applies for a License from the Tribe. Otherwise, Squaxin fishers shall not sell Treaty Fish to a Non-Squaxin buyer that does not hold a valid Squaxin license (or an in lieu license as described herein .

C. Buyers shall require that Squaxin or Non-Squaxin harvesters present their Treaty Indian fishing identification cards before completing any commercial activity involving Treaty or non-Squaxin fish.

D. Licensed buyers shall carry their buyer's cards on their person whenever engaged in Treaty fish buying activities, and shall make them available for immediate inspection upon request by Squaxin or Non-Squaxin harvesters, or authorized governmental natural resources employees or enforcement officers.

7.18.080 Buyer Duties Regarding Treaty Indian Fish Receiving Tickets.

A. Licensed buyers shall:

1. Report all commercial sales of treaty fish on fish tickets;
2. Ensure that all information on the fish ticket is complete and accurate;
3. Imprint on the fish ticket both the Squaxin or Non-Squaxin harvester's embossed Treaty Indian Fishing Identification card, and his or her buyer's card;
4. Return fish tickets to the Department within four working days after the date of the purchase; and
5. Provide harvest management statistics from their fish tickets upon request by the Department.

7.18.090 License Fees.

A. The annual fee for a Buyer's license and for each embossed buyer's card shall be in an amount established by the Department.

B. No license fees shall apply to Squaxin buyers, or to Non-Squaxin buyers as described in Section 7.18.070.

C. The Department may waive or postpone license fees for Non-Squaxin buyers as described in Section 7.18.070.

7.18.100 Bonds

A. The purpose of a bond is to ensure that the Tribe is paid any taxes, fees, penalties and/or interest required by this Chapter.

B. Each buyer shall be required to post a bond in an amount to be recommended by the Department and approved by Tribal Council, and such bond shall be conditioned upon prompt payment of obligations to the Tribe. Squaxin buyers shall not be required to pay or obtain a bond, and the Department may waive or postpone bonds for Non-Squaxin buyers.

C. The bond may be in the form of any of the following:

1. Cash or money order paid to the Department;
2. A surety bond naming the Department as the obligee and expiring no sooner than ninety (90) days after the license period;
3. An irrevocable standby letter of credit naming the Department as the beneficiary; or
4. A savings account assignment naming the Department as the assignee. The terms of the assignment must specify a perpetual time period until the buyer's bank receives written notification from the Department to terminate the assignment.

D. The Director may approve an alternative approach, including but not limited to collateral, or daily or weekly payments, as long as the alternative approach meets Squaxin economic and fisheries objectives.

E. The Director may take action upon the bond or alternative approach upon a final determination of required taxes, fees, penalties and/or interest owed to the Tribe.

F. The bond shall be returned or released when the buyer informs the Tribe in writing that it no longer wishes to have a buyer's license, and after the Director determines that all required taxes, fees, penalties and/or interest owed the Tribe has been paid.

7.18.110 License Applications.

A. Applicants shall submit their applications to the Department. Each business shall submit one application. All information on the applications shall be complete and accurate.

B. The license application shall require at least:

1. The name, address, phone number and e-mail address of the business, or individual if not a business;

2. The names, addresses, phone numbers and e-mail addresses of the business owner(s) and operator(s);

3. The name, address, phone number and e-mail address of each employee of the business who will engage in buying activities for the business;

4. The make, year and registration of each vessel and/or delivery vehicle involved in the applicant's treaty fish buying activities; and

5. Signatures of the individual or business owner(s) and each employee who seeks a buyer's card.

C. License applications shall require that applicants, including any employees, consent to the following:

1. To comply with and be subject to applicable Squaxin jurisdiction and laws, including:

(a) to Tribal authority to suspend, revoke or condition a buyer's license, or to assess and collect taxes, fees, penalties and/or interest, either for violating Squaxin or other tribes' treaty fish buyer laws, regulations or agreements, or for unlawfully refusing to submit to Tribal or non-Squaxin jurisdiction as related to compliance with the applicable laws;

(b) to Tribal and other governments' inspections of licensed buyers' paperwork, purchases, product, equipment and facilities, including vessels and vehicles; and

(c) to the registration of Tribal Court judgments against licensed buyers in another tribal court or state court for enforcement purposes.

2. To comply with applicable federal law, including *U.S. v. Washington* court orders with regard to fish tickets and shellfish sanitation;

3. To comply with non-Squaxin tribes' treaty fish buyer laws;

4. To use only current certified scales; and

5. For Non-Squaxin buyers, to remain bonded during and at least 90 days after the license term, and to allow the Tribe to pursue the bonds for any past due taxes, fees, penalties and/or interest, except as provided in Section 7.18.070.

7.18.120 Issued Licenses

A. A Buyer's License and buyer's card(s) shall be issued upon receipt of:

1. A completed license application;
2. A signed buyer's license agreement;
3. Payment of license fees, if applicable; and
4. Proof of a bond, if applicable.

B. Licenses are effective from October 1 to September 30 of each year and must be annually renewed. The deadline for submitting a license application is August 30 of each year.

C. Buyer's cards issued to Squaxin buyers shall state, "No State-Issued Buyer's License Is Required Regardless of Buying Location."

D. By October 15 of each year, the Department shall make available a list of all licensed buyers, which shall be posted at the Department and shared with Squaxin Enforcement officers, and other governments upon request.

E. If the application is approved, the Department shall issue a separate plastic embossed buyer's card to each registered employee-buyer.

7.18.130 License renewal

A. The Department shall renew buyer's licenses and buyer's cards if the applicant submits the information required in §§ 7.18.110 A and B.

B. No buyer shall be issued a license until any monies owing from the previous year are paid, or an agreement on clearing the balance owed has been reached between the buyer and the Department; except as otherwise provided in Section 7.18.090(c).

C. The Director has discretion to refuse to renew a license based upon the applicant's history of noncompliance with the requirements of this Chapter or other tribes' commercial treaty fish buyer laws.

7.18.140 License suspension, revocation or waiver

A. The Director for cause may suspend or revoke a buyer's license and/or assess a penalty against the buyer, and according to the procedures described in this Chapter. The Director has discretion to choose the remedy, depending upon the severity of the violation.

B. Any suspension, revocation or penalty must be preceded by the Director's providing an initial written warning to the buyer. The warning shall describe the violation and how to correct the problem. The Director shall grant the buyer at least fourteen (14) days from the date of mailing to correct the problem. If the buyer fails to take appropriate corrective action, or if a similar violation occurs again, the Director may suspend or revoke a buyer's license and/or assess a penalty against the buyer, after the Director provides the buyer with a final written decision.

C. The Director shall post at the Department the names of any buyers whose licenses are suspended or revoked, or against whom penalties are assessed, and shall share a copy with the Tribal Enforcement officers and other governmental enforcement officers upon request.

D. A fee may be waived or postponed only by Tribal Council action.

7.18.150 Shellfish Buyer Stations

A. Buyers' purchasing activities of Squaxin Treaty shellfish shall occur at a certified weigh-out station(s) on or adjacent to the harvested beach during a Tribal dig.

B. At the station(s), the Buyer shall weigh the shellfish provided to it, and attach a unique identifier to the weighed product. Buyers shall not possess shellfish that lacks the unique identifier.

C. The buyer and seller shall confirm the quality and quantity of the shellfish at the weigh-out station, and that the bag contains nothing but shellfish.

7.18.160 Fish Buyer Vessels

The Tribe has exclusive jurisdiction to register vessels that are actually used for Treaty fish buying by Squaxin buyers, regardless of:

1. Whether the vessels are used within or outside Tribal fishing areas;

2. Whether the vessels are also used for activities related to non-Squaxin treaty fish; and

3. Whether the vessels are also used for activities completely unrelated to Treaty or non-Squaxin treaty fish.

7.18.170 Fish Buyer Taxes

A. Licensed buyers shall pay any business activity tax, also known as the Fish Buyer's tax, which is imposed from time to time by Council resolution.

B. The Fish Buyer's tax shall be equal to the gross purchase price of the fish at time of landing multiplied by a specified tax percentage rate.

C. The buyer shall withhold the Fish Buyer's tax on the gross sale price of fish and shellfish purchased from Squaxin harvesters, and shall record the tax on the fish ticket.

D. The buyer shall transfer the tax withheld each month by the 10th day of the following month, to the Natural Resources Department. All taxes due shall be received by the Natural Resources Department within 20 days of the last day of the quarter within which the taxable transactions occurred, i.e., March, June, September, and December. Delinquent taxes shall bear interest at the rate of one and one half (1-1/2) percent compounded monthly for each month or portion thereof for which the buyer is delinquent.

E. The Department is authorized to seek collection of a delinquent tax from the bond required by 7.18.100.

F. The funds raised by the Fish Buyer's tax shall be used in the Tribal fisheries program for fisheries management, regulation, enhancement, or such other fishery or Treaty rights-related purposes as determined by the Tribal Council in its discretion.

7.18.180 Violations

Violations of this Chapter are civil in nature. Each violation of this Chapter is a Class D penalty under Chapter 7.08.

Drafter's comment: Class D penalties are as follows, per § 7.08.030:

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

- 1. For the first violation, a fine of one hundred fifty dollars (\$150.00).*
- 2. For the second violation, a fine of two hundred fifty dollars (\$250.00).*
- 3. For the third or subsequent violation, by a fine of five hundred dollars (\$500.00).*

7.18.190 Appeals

A buyer or harvester may appeal a final decision of the Director by filing a complaint with Tribal Court under the rules prescribed in Chapter 4.24 of this Code.