

TITLE 3 • NATURAL RESOURCES & ENVIRONMENT

FISH AND WILDLIFE CODE

TABLE OF CONTENTS

PART I. PURPOSE 1

 Section 3.10.001 Purpose and Declaration of Policy [3-1-2] 1

PART II. TREATY RESERVED RIGHTS 1

 Section 3.10.002 Treaty Rights Stated..... 1

 Section 3.10.003 Exercising Treaty Rights 2

 Section 3.10.004 Reserved..... 2

PART III. JURISDICTION AND CONSERVATION ENFORCEMENT 3

 Section 3.10.005 Jurisdiction [including 3-1-5] 3

 Section 3.10.006 Tribal Conservation Enforcement..... 3

 Section 3.10.007 CRITPD Authorization [3-1-3] 3

 Section 3.10.008 Columbia River Inter-Tribal Fisheries Enforcement Code [3-1-6] 3

 Section 3.10.009 Reserved..... 3

 Section 3.10.010 Reserved..... 3

 Section 3.10.011 Reserved..... 3

PART IV. DEFINITIONS..... 4

 Section 3.10.012 Definitions [3-1-1]..... 4

PART V. FISH AND WILDLIFE COMMISSION 10

 Section 3.10.013 Fish and Wildlife Commission [3-1-10] 10

 Section 3.10.014 Duties and Powers of the Fish and Wildlife Commission [3-1-11] 11

 Section 3.10.015 Seasons Opened Until Closed [3-1-12]..... 12

 Section 3.10.016 NPTEC Review [3-1-13]..... 12

 Section 3.10.017 Permits, Licenses, and Wildlife Tags [3-1-51]..... 12

 Section 3.10.018 Reserved..... 13

PART VI. FISH AND WILDLIFE DEPARTMENTS..... 13

 Section 3.10.019 Program Heads [3-1-9]..... 13

 Section 3.10.020 Protected Species List..... 13

 Section 3.10.021 Periodic Review of the Protected Species List..... 13

 Section 3.10.022 Disease Management..... 13

 Section 3.10.023 Reserved..... 14

PART VII. GENERAL PROVISIONS..... 14

 Section 3.10.024 Road Closures [3-1-7] 14

 Section 3.10.025 Tribal Member Identification [3-1-8] 14

 Section 3.10.026 Reserved..... 14

 Section 3.10.027 Reserved..... 14

PART VIII. FISHING..... 14

 Section 3.10.028 Fishing Gear [3-1-38, 3-1-41, and 3-1-46]..... 14

 Section 3.10.029 Reserved..... 14

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

| | | |
|-------------------|--|-----------|
| Section 3.10.030 | Ceremonial Fishing – Permits [3-1-45]..... | 15 |
| Section 3.10.031 | Ceremonial Fishing – Notice to States [3-1-47] | 15 |
| Section 3.10.032 | Subsistence Fishing – Season [3-1-37]..... | 15 |
| Section 3.10.033 | Subsistence Fishing – Reporting of Catch [3-1-39]..... | 15 |
| Section 3.10.034 | Commercial Fishing – General [3-1-40]..... | 15 |
| Section 3.10.035 | Commercial Fishing – Reporting of Catch [3-1-42] | 16 |
| Section 3.10.036 | Commercial Fishing – Fish Length [3-1-43] | 16 |
| Section 3.10.037 | Reserved..... | 16 |
| PART IX. | FISHING VIOLATIONS..... | 16 |
| Section 3.10.038 | Boat Safety Violation | 16 |
| Section 3.10.039 | Ceremonial Fishing Violations [3-1-48]..... | 17 |
| Section 3.10.040 | Intoxicating Beverage/Controlled Substance Possession and/or Consumption in Usual and Accustomed Fishing Areas [3-1-62] | 17 |
| PART X. | HUNTING AND TRAPPING | 18 |
| Section 3.10.041 | No Waste..... | 18 |
| Section 3.10.042 | Reserved..... | 18 |
| Section 3.10.043 | Unlawful Hunting [3-1-21, 3-1-22, 3-1-23, and 3-1-24] | 18 |
| Section 3.10.044 | Reserved..... | 19 |
| Section 3.10.045 | Hunting Off-Reservation on Open and Unclaimed Lands in Buffalo Country adjoining Yellowstone National Park [3-1-80] | 19 |
| Section 3.10.046 | Applicable Regulations –Hunting in Buffalo Country near Yellowstone [3-1-81] | 19 |
| Section 3.10.047 | Reserved..... | 20 |
| Section 3.10.048 | Reserved..... | 20 |
| Section 3.10.049 | Trapping Methods..... | 20 |
| Section 3.10.050 | Reserved..... | 21 |
| PART XI. | GATHERING..... | 21 |
| Section 3.10.051 | Regulations..... | 21 |
| Section 3.10.052 | Reserved..... | 21 |
| Section 3.10.053 | Reserved..... | 21 |
| Section 3.10.054 | Reserved..... | 21 |
| PART XII. | RETENTION OF EAGLE REMAINS..... | 21 |
| Section 3.10.055 | Purpose – Retention of Eagle Remains..... | 21 |
| Section 3.10.056 | Definition | 21 |
| Section 3.10.057 | Applicable Regulations – Retention of Eagle Remains | 21 |
| Section 3.10.058 | Violation of this Part – Unlawful Possession of Eagle Remains..... | 22 |
| Section 3.10.059 | Reserved..... | 22 |
| Section 3.10.060 | Reserved..... | 22 |
| PART XIII. | OTHER FORMS OF TAKE AND POSSESSION | 22 |
| Section 3.10.061 | Taking of Wildlife Damaging Property..... | 22 |
| Section 3.10.062 | Capture of Wildlife | 23 |
| Section 3.10.063 | Toxic Substance and Wildlife | 23 |
| Section 3.10.064 | Use of Wildlife for Scientific or Management Purposes [3-1-4] | 23 |
| Section 3.10.065 | Killing of Wounded Wildlife | 24 |
| Section 3.10.066 | Importation of Wildlife..... | 24 |

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

| | | |
|------------------|---|-----------|
| Section 3.10.067 | Importation of Invasive Plant and Animal Species | 24 |
| PART XIV. | FISH AND WILDLIFE VIOLATIONS | 25 |
| Section 3.10.068 | Failure to Provide Proof of Identification [3-1-17] | 25 |
| Section 3.10.069 | Protected Species Violation [3-1-52] | 25 |
| Section 3.10.070 | Wasting Fish or Wildlife [3-1-19] | 25 |
| Section 3.10.071 | Unauthorized Exercise of Treaty Rights [3-1-18, 3-1-27, 3-1-28] | 25 |
| Section 3.10.072 | Hunting, Fishing, or Trapping Without Privileges [3-1-26]..... | 26 |
| Section 3.10.073 | Interference with Hunting, Fishing, or Trapping Related Property [3-1-36]..... | 26 |
| Section 3.10.074 | Use of Unlawful Substances in Taking Fish and Wildlife [3-1-25] | 26 |
| Section 3.10.075 | Trafficking Fish and Wildlife [5-1-32] | 26 |
| Section 3.10.076 | Wildlife Harrassment | 27 |
| Section 3.10.077 | Hazing | 27 |
| Section 3.10.078 | Reserved..... | 27 |
| Section 3.10.079 | Reserved..... | 27 |
| PART XV. | PUBLIC SAFETY VIOLATIONS..... | 27 |
| Section 3.10.080 | Disorderly Conduct [3-1-60] | 27 |
| Section 3.10.081 | Public Intoxication [3-1-59] | 28 |
| Section 3.10.082 | Underage Possession of Alcohol [3-1-58] | 28 |
| Section 3.10.083 | Dispensing of Alcohol to a Person under 21 Years of Age | 28 |
| Section 3.10.084 | Drug Promotion [3-1-54] | 28 |
| Section 3.10.085 | Possession and/or Consumption of a Controlled Substance [3-1-55]..... | 28 |
| Section 3.10.086 | Possession of Drug Paraphernalia [3-1-57] | 29 |
| Section 3.10.087 | Abuse of Psychotoxic Chemical Solvents [3-1-56] | 29 |
| Section 3.10.088 | Resisting and Obstructing Officers [3-1-61] | 30 |
| Section 3.10.089 | Eluding an Officer [3-1-34] | 30 |
| Section 3.10.090 | Threat or Intimidation to a Tribal Police Officer, Conservation Enforcement, or CRITPD Officer [3-1-35] | 30 |
| Section 3.10.091 | Destruction of Property [3-1-20]..... | 30 |
| Section 3.10.092 | Emergency Restrictions | 31 |
| Section 3.10.093 | Defacing | 31 |
| Section 3.10.094 | Pollution and Littering [3-1-63 expanded] | 31 |
| PART XVI. | REMEDIES FOR VIOLATIONS..... | 31 |
| Section 3.10.095 | Suspension/Revocation of Privileges [3-1-16]..... | 31 |
| Section 3.10.096 | Civil Infractions under the Fish and Wildlife Code [3-1-14]..... | 31 |
| Section 3.10.097 | Criminal Offenses under the Fish and Wildlife Code [3-1-15]..... | 32 |
| Section 3.10.098 | Aiding In A Fish and Wildlife Violation | 32 |

TITLE 3 • NATURAL RESOURCES & ENVIRONMENT

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| CHAPTER 3.10 FISH AND WILDLIFE CODE |
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PART I. PURPOSE

Section 3.10.001 Purpose and Declaration of Policy [3-1-2]

The Nez Perce Tribe will use this Chapter and rely on Tribal governance to regulate, manage, and enhance fish, wildlife, and their habitats to ensure that the Nez Perce people benefit from the lands, waters, and resources for current and future use. The Nez Perce Treaty-reserved rights to fish, hunt, gather, pasture, and travel are essential to maintain and support the culture, identity, and livelihoods of the Nez Perce people. The Nez Perce people rely upon the natural resources and environment of the Nez Perce Territory to satisfy their health, well-being, culture, and economic activities.

To achieve this policy, the Nez Perce Tribal Executive Committee finds that:

- A. All fish and wildlife now or in the future within the Nez Perce Reservation, not held by private ownership legally acquired are hereby declared subject to the jurisdiction of the Nez Perce Tribe; and
- B. The environment and habitats that support fish and wildlife will be protected, restored, and preserved to sustain native ecosystems in perpetuity and to provide opportunities for Tribal members and their families to harvest and gather these foods; and
- C. Fish and wildlife populations, among other natural resources, will be managed and regulated to support and maintain sufficient abundance, productivity, and geographic distribution across Nez Perce Territory and “Usual and Accustomed” fishing and hunting places; and
- D. By this chapter and the regulations adopted therefrom, the Nez Perce Tribe intends to exercise jurisdiction over fishing, hunting, and gathering, and pasturing activities to the fullest extent of Tribal jurisdiction in order to properly regulate, manage, and protect all of the fish and wildlife resources available to the Tribe and its members. Nothing in this chapter shall be construed as a relinquishment, abrogation, or abridgment of any treaty right of the Nez Perce Tribe.

PART II. TREATY RESERVED RIGHTS

Section 3.10.002 Treaty Rights Stated

- A. Pursuant to the Treaty of 1855, Tribal Members may hunt, trap, and gather without restriction imposed by state law within Reservation boundaries and on Open and Unclaimed Lands outside of the Reservation.

- B. Pursuant to the Treaty of 1855, Tribal members may fish without restriction imposed by state law within Reservation boundaries and at all Usual and Accustomed Stations outside of the Reservation.

Section 3.10.003 Exercising Treaty Rights

- A. Tribal members. Only Nez Perce Tribal members may engage in the exercise of Nez Perce Treaty reserved rights.
- B. Non-members. Non-members of the Nez Perce Tribe, whether Indian or non-Indian, may not engage in the exercise of Nez Perce Treaty reserved rights.
1. Non-members may not engage in fishing, or hunting, or gathering at the same time and place as Nez Perce Tribal members exercising their Treaty reserved rights *unless* the area is open to non-members of the Tribe and the non-member is duly authorized to do so under tribal, state, or federal authority.
 2. Columbia River – Zone 6. For the mainstem Columbia River Treaty fishery (between Bonneville and McNary dams, a 150-mile stretch known as “Zone 6 fishing area”), the non-member providing assistance is a member of one of the other three Columbia River Treaty Tribes (Yakama, Warm Springs or Umatilla) who is authorized by Treaty to be fishing at the same time and place.
 - a. Assistance in Zone 6 fishing area includes operating or manning a boat.
 3. Other Treaty activities. For all other Treaty activities, a non-member may provide assistance to a Tribal member if said non-member is the Tribal member’s spouse, child, grandchild, sibling or parent.
 4. “Assist” or “assistance” *means* to help or aid. Assistance does *not* involve acts that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or control, or to attempt to engage in any such conduct. For example:
 - a. Assistance generally means to accompany and assist a Tribal member who is lawfully exercising Nez Perce Treaty reserved rights, but only with retrieving and transporting wildlife after a kill.
- C. This section shall not be construed as granting any privileges to persons not authorized to exercise Nez Perce Treaty rights other than the right of the persons specified to accompany members in the practice of such treaty rights.

Section 3.10.004 Reserved

PART III. JURISDICTION AND CONSERVATION ENFORCEMENT

Section 3.10.005 Jurisdiction [including 3-1-5]

- A. To the extent permitted by federal law, this Code applies to all persons fishing, gathering, hunting, trapping, or otherwise taking fish or wildlife within the boundaries of the Nez Perce Reservation.
- B. This Code applies to Tribal Members fishing at all Usual and Accustomed Stations and hunting, trapping, or gathering on all Open and Unclaimed Lands outside the boundaries of the Reservation.
- C. This Code preempts any state jurisdiction, and it is no defense that an alleged activity may be lawful under state law. [3-1-5]
- D. This Code shall not apply to Tribal employees acting within the scope of their employment except as it explicitly directs actions intended to implement this Code or regulations pursuant to this Code.

Section 3.10.006 Tribal Conservation Enforcement

Tribal Conservation Enforcement officers shall be assigned, as needed and available, to enforce the Nez Perce Tribe's fish and wildlife regulations, and the protection of Tribal members exercising treaty fishing, hunting, and gathering rights. All Tribal Conservation Enforcement and Police officers shall be eligible to enforce this Code and are required to be familiar with the provisions of this Code.

Section 3.10.007 CRITPD Authorization [3-1-3]

Any officer of the Columbia River Inter-Tribal Fisheries Enforcement (CRITFE) shall be authorized to enforce the provisions of this Code that pertain to off-Reservation Treaty Fishing Activity in the Columbia River area to the same extent as that of the Nez Perce Conservation Enforcement.

Section 3.10.008 Columbia River Inter-Tribal Fisheries Enforcement Code [3-1-6]

This Code, and any rules or regulations adopted under it, shall take precedence over the Columbia River Inter-Tribal Fisheries Enforcement (CRITFE) Code. Any violation of the CRITFE Code shall be a violation of this Code unless inconsistent with this Code.

Section 3.10.009 Reserved

Section 3.10.010 Reserved

Section 3.10.011 Reserved

PART IV. DEFINITIONS

Section 3.10.012 Definitions [3-1-1]

Placeholder text.

- A. As used in this Code, the words and phrases below are defined as follows.
1. **Animal** means any member of the taxonomic kingdom Animalia.
 2. **Artificial light** means any light produced by other than natural sources, including but not limited to spotlights, flashlights, or vehicular headlights.
 3. **Bag limit** means the daily limit in the amount of each species of wildlife or fish which may be taken by any one person.
 4. **Bait** means any salt, grain, fruit, hay, or other food- or mineral-based attractant that could serve as a lure or attraction to wildlife.
 5. **Barter** means the act of trading goods or services for other goods or services rather than money.
 6. **Big Game** means:
 - a. Bighorn Sheep (*Ovis canadensis*)
 - b. Bison (*Bison bison*)
 - c. Black Bear (*Ursus americana*)
 - d. Cougar (*Felis concolor*)
 - e. Gray Wolf (*Canis lupus*)
 - f. Moose (*Alces alces*)
 - g. Rocky Mountain Elk (*Cervus canadensis nelsoni*)
 - h. Mule Deer (*Odocoileus hemionus*).
 - i. White-tailed Deer (*Odocoileus virginianus*)
 - j. Any other such species as the Commission may by regulation designate.
 7. **Buffalo Country** refers to those Open and Unclaimed Lands adjoining Yellowstone National Park.
 8. **Centerfire rifle** means a shoulder weapon with a rifled bore that only shoots cartridges that have a primer located in the center of the cartridge case head.
 9. **Ceremonial** means hunting, fishing, or gathering when such action has been authorized in advance by the Commission for the purpose of taking a specified quantity of a resource for use in traditional Tribal ceremonies or religious occasions which are sponsored by the Nez

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

Perce Tribe, or some recognized traditional or religious group within the Tribe, and which is subject to participation by a significant portion of the membership.

10. **Closed season** means the period of time during which the taking and sale of specific fish or wildlife is prohibited.
11. **Commercial** means hunting, fishing, or gathering for purposes of selling or trading a resource for money, property, or other consideration, except to the extent that such action may constitute subsistence as defined by the provisions of this Code. Commercial fishing shall not include the sale or exchange of fish with other members of the Yakama, Warm Springs, Umatilla, and Nez Perce Tribes for the personal use of such other members.
12. **Commission** means the Nez Perce Tribe Fish and Wildlife Commission as established by this chapter.
13. **CRITPD** means the Columbia River Inter-Tribal Police Department, which is the law enforcement arm of the Columbia River Inter-Tribal Fish Commission (CRITFC). The CRITFC is a tribal organization wholly owned and governed by four sovereign treaty tribes: the Nez Perce Tribe, the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of the Warm Springs Reservation.
14. **Decoy** means any simulation or replication of wildlife, in whole or in part.
15. **Designated shooter** means a person who is listed on the same bison permit as a person who is permitted to hunt only using a hunting bow because that person is prohibited under Tribal, state, or federal law from possessing, or having under their custody or control, a Firearm; and
 - a. A Designated Shooter accompanies the person authorized to hunt using only a Hunting Bow.
 - b. A Designated Shooter must carry a .30 caliber or higher centerfire rifle and may also carry a .35 caliber or higher pistol.
 - c. A Designated Shooter is only authorized to kill a bison when the person authorized to hunt only using a hunting bow has shot, but failed to kill, a bison.
16. **Felon** means a person who has been convicted of a felony in any court of law of competent jurisdiction.
17. **Felony** means a conviction in any court of law of competent jurisdiction of a crime punishable by imprisonment in excess of one (1) year.

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

18. **Firearm** means a weapon such as a pistol, shotgun, or rifle capable of firing a bullet or other projectile.
19. **Fish** means any of numerous cold-blooded aquatic vertebrates of the taxonomic superclass Pisces, characteristically having fins, gills, and a streamlined body, and includes but is not limited to:
 - a. Summer Steelhead - *Oncorhynchus mikis*
 - b. Rainbow Trout - *Oncorhynchus mikis*
 - c. Brook Trout - *Salvelinus fontinalis*
 - d. Bull Trout - *Salvelinus confluentus*
 - e. Dolly Varden - *Salvelinus malma*
 - f. Largemouth Bass - *Micropterus salmoides*
 - g. Crappie - *Pomoxis nigromaculatus*
 - h. Brown Bullhead - *Ictalurus nebulosus*
 - i. Yellow Bullhead - *Ictalurus natalis*
 - j. Chinook Salmon - *Oncorhynchus tshawytscha*
 - k. White Sturgeon - *Acipenser transmontanus*
 - l. American Shad - *Alosa sapidissima*
 - m. Walleye - *Stizostedion vitreum*
 - n. Dace (Speckled) - *Rhinichthys osculus*
 - o. Redside Shiner - *Richardonius balteatus*
 - p. Northern Pikeminnow - *Ptychocheilus oregonensis*
 - q. Sucker (large scale) - *Catostomus macrocheilus*
 - r. Chiselmouth - *Acrocheilus alutaceus*
 - s. Carp - *Cyprinus carpio*
 - t. Cottid - *Cottus*
 - u. Lamprey (Pacific) - *Entosphenus tridentatus*
20. **Fisheries Department** means the Tribe's Department of Fisheries Resource Management or analogous entity.
21. **Fishing** means any effort to take fish in waters on the Nez Perce Reservation or in off-Reservation waters in which the Nez Perce Tribe has reserved treaty fishing rights at Usual and Accustomed Places and Treaty Fishing Access (aka "In-Lieu") Sites.
22. **Fungi** means any member of the taxonomic kingdom Fungi.

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

23. **Gill net** *means* a net of single web construction attached at the top by a float line and at the bottom by a weight line designed to entrap fish in the mesh.
24. **Gathering** *means* any effort to collect plants, fungi, shed or discarded animal parts (such as feathers or antlers), or other biological materials, other than wildlife or fish, on the lands or in the waters of the Nez Perce Indian Reservation or on the off-Reservation lands or waters in which the Tribe has treaty gathering rights or in usual and accustomed places.
25. **Hunting** *means* shooting at, harassing, chasing, driving, flushing, attracting, brushing, pursuing, trapping, stalking or lying in wait for any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded. Such term does not include stalking, attracting, searching for or lying in wait for any wildlife by an unarmed person solely for the purpose of watching wildlife or taking pictures or making sound recordings thereof. This definition shall apply to any such activities within the boundaries of the Nez Perce Reservation or on off-Reservation lands in which the Nez Perce Tribe has treaty hunting rights on Open and Unclaimed Land.
26. **Hunting bow** *means* a crossbow, longbow, recurve bow, or compound bow.
27. **Indian** *means* any adult person enrolled, or any minor person enrolled or eligible for enrollment, in a federally recognized Indian tribe.
28. **In-Lieu Fishing Site** *means* those certain federal lands along the Columbia River designated by the federal government via Public Law 79-14 for Indian treaty fishing activities in lieu of usual and accustomed fishing places inundated by construction of Bonneville Dam.
29. **Invasive Fish, Wildlife, and Plants** *means* a species that is not native to a given ecosystem and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.
30. **Non-Indian** *means* any person not defined as an Indian.
31. **Non-member** *means* any person not enrolled with the Nez Perce Tribe.
32. **Non-member Indian** *means* any person defined as an Indian, above, but not enrolled with the Nez Perce Tribe.
33. **Open and Unclaimed Lands** *means* those lands which:
 - a. Have not been occupied by settlers; and
 - b. Have no outward or visible indication of private ownership, or

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

- c. Are lands to which the United States holds title, including, but not limited to, National Forest System land and such other lands where hunting, fishing, and gathering may be undertaken without danger to lives or property; or
 - d. Those lands expressly determined by the federal courts to be open and unclaimed lands within the meaning of that phrase as used in the Treaty.
34. **Open season** *means* the period of time during which the taking of certain fish, wildlife, or gathered resource is permitted by this chapter or rules and regulations promulgated pursuant to this chapter.
35. **Pistol** *means* a handgun designed to enable a user to aim and fire it with one hand.
36. **Plant** *means* any member of the taxonomic kingdom Plantae.
37. **Possession limit** *means* the daily bag limit or aggregate daily bag limit, whichever applies to wildlife that any one person may have in custody between the place where taken and their personal residence.
38. **Protected Species** *means* any species of wildlife, fish, plant, or fungi classified as such by the Tribe.
39. **Public highways** *mean* all roadways open to the public for vehicular travel.
40. **Recreational** *means* hunting, fishing, or gathering resources for the personal use of non-Indians, including the sale or exchange with other non-Indians for their personal use.
41. **Reservation** *means* those lands and waters reserved by the Nez Perce Tribe in the Treaty for their use and benefit.
42. **Resources** *means* any species of fish, wildlife, plants, or fungi or any part thereof.
43. **Rifle** *means* a shoulder weapon with a rifled bore.
44. **Shed Antlers** *means* the naturally shed antlers of any Big Game species as defined herein, not including the antlers collected in the course of lawfully taking big game pursuant to this Code.
45. **Shotgun** *means* a smooth bore shoulder weapon for firing shots or slugs.
46. **Small Game** *means* all wildlife not classified as Big Game.
47. **Subcommittee** *means* the Natural Resources Subcommittee, or any successor Subcommittee hereafter designated by the Nez Perce Tribal Executive Committee.

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

48. **Subsistence** means hunting, fishing, or gathering by Tribal members pursuant to treaty rights for their personal use, including the sale or exchange with other members of the Yakama, Warm Springs, Umatilla, and Nez Perce Tribes for the personal use of such other members. Subsistence fishing shall not include the sale or trade of harvested fish with non-Indians or non-members of the Yakama, Warm Springs, Umatilla and Nez Perce Tribes or fishing for commercial or ceremonial purposes.
49. **Take** means any effort to kill, capture, catch, harm, shoot, wound, collect, hunt, pursue or trap fish, wildlife, plants, or fungi.
50. **Trapping** means any effort to take wildlife with a trap, net, snare, or other device used for the purpose of capture.
51. **Treaty** means the Treaty of June 11, 1855, between the Nez Perce Tribe and the United States as set forth in 12 Stat. 957, and any subsequent treaties and agreements between the Tribe and the United States.
52. **Treaty hunting or fishing rights** means any hunting or fishing right or privilege which is derived from the Treaty of June 11, 1855, 12 Stat. 957, or any subsequent treaties or agreements.
53. **Treaty Fishing Access Site (TFAS)** means certain federal lands along the Columbia River designated or acquired by the federal government via Public Law PL 100-581 to provide access for Indian treaty fishing activities.
54. **Tribal member** means a person who is duly enrolled in the Nez Perce Tribe.
55. **Usual and Accustomed (“U & A”) Fishing Places or Fishing Areas** means lands adjacent to streams, rivers, or shorelines to which the Nez Perce Tribe usually traveled or was accustomed to travel for the purpose of taking fish.
56. **Waste** means the abandonment of, or deterioration of those portions of fish or wildlife normally used for human consumption.
57. **Wildlife** means any member of the taxonomic kingdom Animalia, except those animals classified as fish or bred or held in captivity for domestic or agricultural purposes.
58. **Wildlife Department** means the Tribe’s Wildlife Division within the Natural Resources Department or analogous entity.
59. **Wildlife harassment** means to engage in any act which demonstrates a disregard for the well-being of wildlife or which creates the likelihood of injury to, or disrupts normal behavior patterns of wildlife, such as

feeding, watering, resting, and breeding. Such acts include, but are not limited to, chasing, pursuing, herding, or attempting to take wildlife.

- B. All other words and phrases shall be interpreted as commonly used. If a word or phrase has a meaning distinct to Tribal culture, that meaning shall be used in appropriate circumstances.

PART V. FISH AND WILDLIFE COMMISSION

Section 3.10.013 Fish and Wildlife Commission [3-1-10]

- A. A Nez Perce Tribe Fish and Wildlife Commission is hereby established to administer the fish and wildlife resources of the Tribe. The Commission shall consist of five (5) Tribal members to be appointed by NPTEC. The heads of the Fisheries and Wildlife Departments may not serve as chairperson or vice chairperson of the Commission and may only vote to break a tie. The five appointed members of the Nez Perce Fish and Wildlife Commission shall be nominated through election by the Nez Perce Tribe, General Council. The nominated members' names will be forwarded to NPTEC for consideration at the first NPTEC meeting following the General Council election.
- B. The selection and appointment of Commission members shall be made upon the consideration of the welfare and the best interest of the Tribe and its fishery and wildlife resources. No person shall be appointed to the Commission unless they are well informed about and interested in the subject of treaty rights and wildlife or fisheries conservation and restoration.
 - 1. Commission members shall serve three (3) year terms which shall be staggered so that only two positions are subject to renewal in any one year.
 - 2. At the outset of the Commission, and in order to maintain the staggered terms of commission members, one (1) member shall serve for a term of one (1) year, two (2) members shall serve for a term of two (2) years, and two (2) members shall serve for a term of three (3) years. The members shall elect among themselves a chairperson and a vice chairperson.
- C. NPTEC shall remove any Commission member for cause. If a Commission member resigns or a position on the Commission otherwise becomes vacant before the term of that position expires, a temporary commission member shall be appointed by NPTEC to fill the unexpired term.
- D. Commission decisions shall be by simple majority vote of the members present. Any members who disagree with the majority vote may make their dissent along with the reason for dissenting known to NPTEC. Three (3) Commission members shall make a quorum.

- E. The chairperson of the Commission shall be authorized to call meetings of the Commission. Meetings shall be called at the request of either NPTEC, or any Commission member deems it necessary to implement the provisions of this chapter. The chairperson of the Commission shall be responsible for notifying Commission members of upcoming Commission meetings. No Commission meeting shall be held unless a good faith effort is made to contact each member.
- F. By-laws to govern the operation of the Commission in performing its duties shall be promulgated and ratified by NPTEC.

Section 3.10.014 Duties and Powers of the Fish and Wildlife Commission [3-1-11]

- A. Subject to the provisions of this chapter, this code, and the authority of NPTEC to reject or modify any action of the Commission at any time, and upon consideration of the recommendations of the program heads of the Fisheries and Wildlife departments, if any, the following duties and powers shall be exercised by the Fish and Wildlife Commission:
 - 1. To promulgate annual and seasonal hunting and fishing regulations and prescribe the manner and methods which may be used in taking fish and wildlife;
 - 2. To establish seasons for the taking of fish or wildlife, the amount of each wildlife species that may be taken in terms of sex, maturity and other physical distinction, and the areas or territorial limits for taking fish or wildlife;
 - 3. Consistent with applicable federal law, to establish regulations for the issuance and use of fishing and hunting permits, licenses, tags or other related privileges within the Tribe's territorial jurisdiction;
 - 4. Consistent with applicable federal law, to establish seasons, bag, limits, possession limits and other regulations pertaining to the taking of migratory birds;
 - 5. To promulgate regulations consistent with Tribal agreements and policies established by the NPTEC;
 - 6. To meet periodically with Tribal Fisheries and Wildlife Department staff to review policies and recommend needed improvements to the program heads of the Fisheries and Wildlife Departments and/or NPTEC;
 - 7. To meet with the Natural Resources Subcommittee when requested by the subcommittee;

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

8. To recommend to NPTEC broad policies and long-range programs to restore, perpetuate, enhance, and manage the Tribe's fish and wildlife resources;
 9. To provide for the distribution of copies of all codes, policies, and regulations applicable to and/or issued by the Commission to the affected public(s);
 10. To perform such duties and exercise such powers as from time to time may be conferred by the NPTEC;
 11. To perform such other duties and exercise such powers as set forth in this chapter; and
 12. To provide for the restoration, perpetuation, enhancement, use, and management of the Tribe's fish and wildlife resources.
- B. The NPTEC, after consultation with or upon the recommendation of the Commission, shall have the sole authority to authorize an open season in Buffalo Country. Open seasons in Buffalo Country shall be limited to authorizing subsistence and/or ceremonial hunting on Open and Unclaimed Lands adjoining Yellowstone National Park.

Section 3.10.015 Seasons Opened Until Closed [3-1-12]

- A. Unless and until the Fish and Wildlife Commission acts as provided by this chapter to close a fishing or hunting season for a particular species, then such season shall be open.
- B. No person shall hunt or fish during a specific closed season established by the Fish and Wildlife Commission for a specific species of fish or wildlife as designated under this chapter.

Section 3.10.016 NPTEC Review [3-1-13]

Absent NPTEC modification or rejection, the Commission's action or decision shall be binding. During the NPTEC meeting immediately following each Fish and Wildlife Commission meeting, the Commission shall submit a full report to NPTEC including a summary of:

- A. Any regulatory actions taken and the rationale for the action, the administrative process used and written public comments and public hearing records;
- B. Other actions, decisions and recommendations.

Section 3.10.017 Permits, Licenses, and Wildlife Tags [3-1-51]

The Fish and Wildlife Commission shall be authorized to issue hunting and recreational fishing permits, licenses or wildlife tags in accordance with this Code and applicable federal law regulating the taking of or managing wildlife.

Section 3.10.018 Reserved

PART VI. FISH AND WILDLIFE DEPARTMENTS

Section 3.10.019 Program Heads [3-1-9]

- A. The Nez Perce Tribe shall employ program heads for both the Nez Perce Tribe Fisheries and Wildlife Departments subject to the personnel policies and procedures of the Tribe. Subject to the provisions of this chapter, the program heads shall take such action as necessary to protect, manage, enhance, and recommend to NPTEC and the Commission regarding regulations of fish and wildlife.
- B. The program heads may promulgate rules to implement their duties and authorities under this chapter and pursuant to the administrative procedures provided by this Code.

Section 3.10.020 Protected Species List

The program heads for the Fisheries and Wildlife Departments shall jointly develop a list of Protected Species based on the best available scientific, cultural, and commercial data regarding the demographic health, current and future threats, and state or federal regulatory status of all fish, wildlife, and plant populations and/or species within the jurisdiction of the Tribe. Development of this list shall be undertaken in consultation with the Tribe's Cultural Resources Division.

Section 3.10.021 Periodic Review of the Protected Species List

- A. The program heads for the Fisheries and Wildlife Departments shall jointly conduct a review of the Tribe's Protected Species list biennially, commencing within two years from the date of its initial development. This review shall be based on the best available scientific, cultural, and commercial data regarding the demographic health, current and future threats, and state or federal regulatory status of all fish, wildlife, and plant populations and/or species within the jurisdiction of the Tribe.
- B. This review shall be undertaken in consultation with the Tribe's Cultural Resources Division.
- C. The program heads for the Fisheries and Wildlife Departments shall, as necessary based on the results of the biennial review, present recommendations for appropriate additions to or deletions from the list to the NPTEC for adoption.

Section 3.10.022 Disease Management

- A. The Commission and program heads of the Fisheries and Wildlife Offices may recommend disease surveillance zones, emergency closures, or

emergency regulations in response to outbreaks of infectious fish or wildlife diseases.

- B. Emergency closures or regulations established by the program heads of the Fisheries and Wildlife Offices pursuant to this section shall remain in effect for no longer than ninety (90) days unless extended through action by the Commission and/or NPTEC.

Section 3.10.023 Reserved

PART VII. GENERAL PROVISIONS

Section 3.10.024 Road Closures [3-1-7]

Tribal members shall always observe and obey all road closure policies and rules:

- A. On federal lands; and
- B. Within the boundaries of the Nez Perce Reservation; and
- C. As otherwise established by the NPTEC.

Section 3.10.025 Tribal Member Identification [3-1-8]

- A. Any person who is a member of the Nez Perce Tribe and who hunts, fishes, gathers, or traps within the Tribe's territorial jurisdiction shall have in their possession a Nez Perce Tribe Identification card issued by the Tribe.
 - 1. A valid Tribal identification card shall identify the holder as a duly enrolled member of the Nez Perce Tribe and, subject to the provisions of this chapter, entitle them to exercise all hunting, fishing, gathering, and trapping rights and privileges reserved for the members of the Nez Perce Tribe by Treaty of June 11, 1855, 12 Stat. 957, and subsequent treaties and agreements.
- B. Upon reasonable request by a law enforcement or conservation officer (federal, tribal, state), a Tribal member shall show proof of Tribal identification card.

Section 3.10.026 Reserved

Section 3.10.027 Reserved

PART VIII. FISHING

Section 3.10.028 Fishing Gear [3-1-38, 3-1-41, and 3-1-46]

All unattended fishing gear must be permanently marked with the owner's name, enrollment number, and Tribal affiliation prominently displayed in a visible area.

Section 3.10.029 Reserved

Section 3.10.030 Ceremonial Fishing – Permits [3-1-45]

Any Tribal member who is fishing for ceremonial purposes or who transports fish taken for ceremonial purposes shall have in their possession a copy of a ceremonial fishing permit issued by the Fish and Wildlife Commission. Such permit shall include the following:

- A. The name, place and time of the ceremony for which food fish will be used;
- B. The name of individuals and helpers who will be fishing and transporting fish;
- C. The exact location(s) of fishing and the amount of gear to be used at each location;
- D. The exact ceremonial fishing beginning and ending dates;
- E. The type of gear to be used;
- F. The estimated number of pounds of fish needed for the ceremony;
- G. Whether fish are to be stored or not to be stored prior to a ceremony, and the location of storage, if applicable;
- H. The signature of the Chairman of the Fish and Wildlife Commission; and
- I. A requirement that a report on the exact amount of fish taken under the permit be made to the Fish and Wildlife Commission.

Section 3.10.031 Ceremonial Fishing – Notice to States [3-1-47]

- A. The program head of Fisheries shall notify the States of Oregon, Washington, or Idaho as appropriate in writing of the issuance of a ceremonial fishing permit at least one week prior to the start of such fishery.
- B. In the event of a bona fide emergency need for ceremonial fish, notice to State authorities by telephone will be allowed, so long as sufficient time is provided for the notification of all State agencies and agents.

Section 3.10.032 Subsistence Fishing – Season [3-1-37]

The season for subsistence fishing shall be established by the Fish and Wildlife Commission.

Section 3.10.033 Subsistence Fishing – Reporting of Catch [3-1-39]

Any Tribal Member engaging in subsistence fishing may be required by Fish and Wildlife Commission regulation to report their catch to a designated person or body. Failure to make such a report where required by rule or regulation shall constitute a violation of this chapter.

Section 3.10.034 Commercial Fishing – General [3-1-40]

Any Nez Perce Tribal Member shall be authorized to engage in commercial fishing in accordance with the terms and conditions provided in this chapter and by the Fish and Wildlife Commission.

Section 3.10.035 Commercial Fishing – Reporting of Catch [3-1-42]

Text.

- A. Any person engaging in commercial fishing under this chapter, or any person buying fish which were taken pursuant to any provision of this chapter or regulation adopted pursuant to this chapter shall be required to submit a complete record of their catch or purchase to the Fish and Wildlife Commission within twenty (20) business days after the close of each season. Failure to make such catch or purchase report shall constitute a violation of this chapter.
- B. In order to assist purchasers in record keeping and reporting, any member of the Nez Perce Tribe who sells, trades or barter fish taken pursuant to treaty rights shall, upon request, provide their Tribal enrollment number to purchasers of such fish.

Section 3.10.036 Commercial Fishing – Fish Length [3-1-43]

The Fish and Wildlife Commission is authorized to adopt regulations establishing the minimum or maximum size of fish that may be taken. Compliance with fish length requirements shall be determined as follows:

- A. For all fish except sturgeon size shall be measured measuring from the shortest distance between the extreme tip of the tail and extreme tip of the snout or jaw, whichever extends the farthest, while the fish is lying in a prone and normal position;
- B. For sturgeon size shall be measured from the shortest distance between the interior edge of the fork of the tail to the extreme tip of the snout, while fish is lying in a prone and normal position.

Section 3.10.037 Reserved

PART IX. FISHING VIOLATIONS

Section 3.10.038 Boat Safety Violation

A person commits a boat safety infraction if while operating a boat and while engaged in fishing activities pursuant to this Code, they do not have:

- A. One (1) life preserver per person and one (1) fire extinguisher on board; and
- B. Running lights which shall be mounted to the hull of the boat and turned on during hours of darkness while being operated; and

- C. Portable boat lights placed in a conspicuous location, if running lights are not available.

Section 3.10.039 Ceremonial Fishing Violations [3-1-48]

- A. While fishing for ceremonial purposes, no person shall:
 - 1. Fish for ceremonial purposes with commercial fishing gear except in those areas where such gear is authorized for commercial fishing;
 - 2. Engage in ceremonial fishing during any portion of a week within a commercial fishing season which is open to commercial fishing;
 - 3. Sell or barter, offer for sale or barter, or, being a commercially licensed fish buyer or wholesale fish dealer, have in their possession fish taken for ceremonial purposes;
 - 4. Fish for ceremonial purposes without having in their possession a copy of the written notification to the appropriate state agency(s) of the ceremonial fishing activity issued by the program head of Fisheries in accordance with this chapter;
 - 5. Fish for ceremonial purposes with commercial fishing gear which is not marked and identified in accordance with this chapter;
 - 6. Continue to fish once the catch limit set out in the ceremonial permit has been achieved;
 - 7. Fail to deliver to the person or entity designated in the ceremonial fishing permit as the receiver of fish taken for ceremonial purposes, all fish taken for such purposes; or
 - 8. Exceed the fishing duration (day and hour) limitations listed in the permit.
- B. In addition to any other remedies provided by this chapter, a violation of this section shall be grounds for banning the issuance of further permits for ceremonial fishing.

Section 3.10.040 Intoxicating Beverage/Controlled Substance Possession and/or Consumption in Usual and Accustomed Fishing Areas [3-1-62]

- A. It shall be unlawful for any Nez Perce Tribal member to possess, use, transport, distribute, buy sell, or be under the influence of any alcoholic beverage or controlled substance within a distance of 400 feet of the nearest waterway (river, creek, or lake) including but not limited to Rapid River, South Fork Salmon River, Clear Creek, and the Dworshak fish ladder sites from May 1st to August 31st each year.
- B. It shall be unlawful to own, possess, use, transport, distribute, buy sell, or be under the influence of any alcoholic beverage or controlled substance while on a Columbia River In-Lieu Fishing Site or Columbia River Treaty Fishing

Access Site. It shall be unlawful to own, possess, use, distribute, manufacture, buy, sell, or be under the influence of any controlled substance(s) on a Columbia River In-Lieu Fishing Site or Columbia River Treaty Fishing Access Site. A person may possess and use drugs as prescribed for them by a licensed practitioner, but they must be contained in the original pharmaceutical container and have the valid prescription label attached. Controlled substances are those substances regulated by Title 21 USC The Controlled Substances Act, the Comprehensive Crime Control Act of 1984, and the Anti-Drug Abuse Act of 1986. Columbia River In-Lieu Site means federal property established by the US Congress under Public Law 79-14. Columbia River Treaty Fishing Access Site means federal property established by the US Congress under Public Law 100-581.

C. Violation of this section is a criminal offense subject to possible arrest.

PART X. HUNTING AND TRAPPING

Section 3.10.041 No Waste

For purposes of this Part on Hunting and Trapping, “portions of wildlife [big game] normally used for human consumption” includes meat from the hind quarters down to the hock; meat from the front quarters down to the knee; the backstraps (outer portion of the spine); the tenderloins (underneath the spine); meat from the ribs with flank; and ribs, which must be cut off.) The only remaining parts of a downed wildlife that may be left in the field are the spine, pelvic bone, entrails (gut pile), the rear legs from the hock down, the front legs from the knee down, the head, and the hide. The remaining parts once butchered are to be disposed of properly.

A violation of this section is a civil infraction.

Section 3.10.042 Reserved

Section 3.10.043 Unlawful Hunting [3-1-21, 3-1-22, 3-1-23, and 3-1-24]

A person commits the infraction of unlawful hunting if they:

- A. Hunt, molest or take any animal from any automobile, truck, motorcycle, snowmobile, three or four wheeled vehicle, airplane or any other vehicle driven by use of a motor or engine [3-1-21]; or
- B. Hunt an animal with any spotlight, headlights or other man-made light source. The act of casting or throwing, after sunset, the beam or rays of any artificial lights capable of utilizing six volts or more of electrical power in any place where wildlife animals may reasonably be expected to be found while having in one's possession any uncased firearm shall be prima facie evidence of a violation of this section [3-1-22]; or
- C. Utilize explosive devices while hunting [3-1-23]; or
- D. Utilize poison on arrows while hunting [3-1-23]; or

- E. Hunt or tracks any animal with dogs except as authorized by the Commission [3-1-24]; or
- F. Use dogs to harass wildlife in any manner [3-1-24]; or
- G. Violate any other regulations adopted by the Commission.

Section 3.10.044 Reserved

Section 3.10.045 Hunting Off-Reservation on Open and Unclaimed Lands in Buffalo Country adjoining Yellowstone National Park [3-1-80]

Pursuant to the Nez Perce Treaty of 1855 (12 Stat. 957) and the Nez Perce Tribe's sovereign authority, the Nez Perce Tribal Executive Committee (NPTEC), after consultation with the Fish and Wildlife Commission, will authorize an annual ceremonial and subsistence season for hunting and harvesting of bison or elk on Open and Unclaimed Lands adjoining Yellowstone National Park.

Section 3.10.046 Applicable Regulations –Hunting in Buffalo Country near Yellowstone [3-1-81]

Only enrolled Tribal members of the Nez Perce Tribe may participate in the hunt and harvest of bison or elk on Open and Unclaimed Lands adjoining Yellowstone National Park.

- A. All provisions of the Nez Perce Tribal Code are applicable.
- B. The NPTEC, after consultation with the Fish and Wildlife Commission, will specify the opening and closing dates for the bison season for Nez Perce Tribal members on Open and Unclaimed Land adjoining Yellowstone National Park, and will specify the number of bison or elk that may be harvested by Nez Perce Tribal members.
- C. Tribal members may hunt and harvest from two (2) hours before sunrise to two (2) hours after sunset;
- D. Bison or elk must be hunted with a hunting bow, as defined in this Code or a .30 caliber or higher centerfire rifle, as defined in this Code.
 - 1. Tribal members hunting using a hunting bow must be accompanied by a permitted designated shooter, as defined in this Code if they are prohibited under the Nez Perce Tribal Code, state, or federal law from possessing, or having under their custody or control, a firearm, as defined by the Nez Perce Tribal Code, state, or federal law. Only the designated shooter may carry and fire a .30 caliber or higher centerfire rifle or a .35 caliber or higher pistol.
 - 2. All Tribal members using a .30 caliber or higher centerfire rifle must use 150 grain or heavier bullets and are prohibited from using the following cartridges: .30 Carbine and 7.62x39mm.

- E. Nez Perce Conservation Enforcement Officers shall be present to enforce this regulation and the Nez Perce Tribal Code dependent on funds and officer availability.

Section 3.10.047 Reserved

Section 3.10.048 Reserved

Section 3.10.049 Trapping Methods

A violation of this section is a civil infraction unless specifically stated otherwise in the subsections below.

- A. No person shall use wildlife or fish or their parts as bait, except that nonedible parts of wildlife or fish may be used. A violation of this subsection is a crime.
- B. No person shall use live wildlife or fish as bait.
- C. No person shall set a trap within:
 - 1. 100 feet of an open public road;
 - 2. 50 feet of a forest road on Tribal trust or fee lands;
 - 3. 500 feet of a home, residential area, or established campsite, except as explicitly authorized by the Commission in the case of wildlife damaging property;
 - 4. 30 feet of any exposed meat bait or nonedible wildlife or fish parts which are visible to flying raptors.
- D. Restrictions on trap types, e.g., unpadded or padded foot-hold traps, snares, conibear-type, etc., may be established by NPTEC.
- E. Animals captured in restraining (non-killing) traps must be removed within 24 hours of capture.
- F. Kill traps must be checked and animals removed within 48 hours.
- G. Trappers shall attach to the chain of their traps or devices a legible metal tag with either their name and address or Tribal enrollment number.
- H. Prohibition against placing traps on private land on-Reservation without permission from the landowner.
- I. Accidental or incidental capture of a Protected Species shall be reported to the Commission within 24 hours of discovery. The report must include the circumstances surrounding the incident, observed physical and ambulatory condition of the Protected animal, and the final disposition of the Protected animal.
- J. No person under 18 years of age shall set or check traps unless the person is accompanied by an adult 18 years of age or older. The adult shall be either

the minor's parent, legal guardian, or shall have the express permission of the minor's parent or legal guardian.

Section 3.10.050 Reserved

PART XI. GATHERING

Section 3.10.051 Regulations

The NPTEC or Fish and Wildlife Commission or designee may promulgate regulations consistent with this Code governing the gathering of the Tribe's resources.

- A. Bird Remains. Except as permitted by the Tribe for the Retention of Eagle Remains in Part XIV:
1. No person shall pick up, gather, retain, or possess the naturally-released feathers of eagles, other birds of prey, and migratory birds on the Reservation except for Tribal members, members of a federally recognized Tribe, and Tribal employees acting within the scope of their employment, except that actions intended to remove or cause the release of feathers from these birds shall be classified as wildlife harassment.

Section 3.10.052 Reserved

Section 3.10.053 Reserved

Section 3.10.054 Reserved

PART XII. RETENTION OF EAGLE REMAINS

Section 3.10.055 Purpose – Retention of Eagle Remains

In accordance with the sections below, the Nez Perce Tribe shall authorize Nez Perce Tribal members to receive, possess, and transport within the United States for religious purposes, bald and golden eagles found dead within the Nez Perce Reservation.

Section 3.10.056 Definition

For purposes of this Part, "bald and golden eagles" includes their parts, feathers, nests, and eggs.

Section 3.10.057 Applicable Regulations – Retention of Eagle Remains

- A. All provisions of the Nez Perce Tribal Code shall apply.
- B. A Nez Perce Tribal member seeking to receive, possess, or transport within the United States any bald or golden eagle found dead within the Nez Perce

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

Reservation shall obtain an eagle remains permit issued by Nez Perce Conservation Enforcement in accordance with policies and procedures approved by the NPTEC.

- C. Such permit shall authorize Nez Perce Conservation Enforcement to distribute to a Nez Perce Tribal member bald or golden eagles found dead within the Nez Perce Reservation, are in the custody and control of Nez Perce Conservation Enforcement, and which have been determined may be lawfully distributed.
- D. Notwithstanding any permit issued under subsection (C) above, nothing in this section authorizes a Nez Perce Tribal member to:
 - 1. Disturb, collect, or possess bald or golden eagles that the Nez Perce Tribal member finds dead on the Nez Perce Reservation without the prior, express authorization of Nez Perce Conservation Enforcement; or
 - 2. Take, hunt, possess, sell, purchase, barter, trade, offer to sell, purchase or barter, transport outside of the United States, export, or import any bald or golden eagle, dead or alive, including any part, nest, or eggs.
- E. This section shall not apply to bald and golden eagles lawfully obtained or authorized under applicable federal law.

Section 3.10.058 Violation of this Part – Unlawful Possession of Eagle Remains

A Tribal member may be charged with a criminal offense of possessing a bald or golden eagle found dead on the Reservation if the Tribal member receives, possesses, distributes, or transports, such deceased eagle(s), its parts, nests, or eggs without a valid permit issued by Nez Perce Conservation Enforcement.

Section 3.10.059 Reserved

Section 3.10.060 Reserved

PART XIII. OTHER FORMS OF TAKE AND POSSESSION

Section 3.10.061 Taking of Wildlife Damaging Property

- A. The taking of wildlife for the primary purpose of alleviating damage to real or personal property shall not be undertaken as an exercise of Tribal treaty rights. Such take shall only be authorized and undertaken by permit issued by the Commission.
- B. Whenever possible, before the Commission approves an application for the destruction, trapping or removal of any animal classified as fish or wildlife, the Commission may arrange for Tribal law enforcement or Wildlife

personnel to investigate and report to the Commission regarding the extent of the alleged damage.

- C. Approval to destroy, trap, or remove any animal classified as a Protected Species shall be granted only in extreme circumstances (for example, cases involving substantial risk of personal injury or death to members of the public) and shall be undertaken by law enforcement officers only, unless imminent danger exists.
- D. The Commission may require the permittee to provide the remains of the destroyed wildlife as deemed appropriate by the Commission.
- E. A violation of this section is a civil infraction.

Section 3.10.062 Capture of Wildlife

- A. No person shall capture and keep any wildlife as a pet or for other purposes except as permitted by a scientific permit or special use permit. A violation of this section is a civil infraction.

Section 3.10.063 Toxic Substance and Wildlife

- A. No person, including licensed state or federal personnel or their designees, shall make caustic or toxic substances available to wildlife on the Reservation except:
 - 1. As permitted by the Commission; or
 - 2. As approved by the NPTEC for use in controlling invasive species; or
 - 3. As approved by the NPTEC for use on farmland for agricultural purposes.
- B. A violation of this section is a civil infraction.

Section 3.10.064 Use of Wildlife for Scientific or Management Purposes [3-1-4]

- A. A person may not take, possess, inspect, sample, measure, count, or collect fish or wildlife, fish or wildlife parts, or data on fish and wildlife for scientific, management, and/or enhancement purposes on the Reservation except pursuant to a scientific permit issued by the program head of the Fisheries or Wildlife Office, whichever is applicable.
- B. The program heads of the Fisheries or Wildlife Office, whichever is applicable, shall impose specific expiration dates on permits, may impose any reasonable conditions on any permits issued, may deny a permit application without cause, and may suspend the permit of any person if they reasonably believe that at any time such person is in violation of this section or their actions threaten the fish or wildlife resources of the Tribe.
- C. Any violation of this section or any permit conditions is a civil infraction.

Section 3.10.065 Killing of Wounded Wildlife

Anyone may kill wildlife that is found suffering from mortal wounds. However, no person shall use any such remains, out of season, for any purpose without a prior obtained permit from the Commission. Anyone who kills wildlife found suffering from mortal wounds shall take reasonable steps to prevent waste including immediately notifying Tribal Conservation enforcement as soon as practicable. A violation of this section is a civil infraction.

Section 3.10.066 Importation of Wildlife

- A. No person shall import, possess, release, purchase, sell, barter, distribute, propagate, or transport within the boundaries of the Reservation live animals:
1. In the family Cervidae (deer, elk, moose);
 2. In the subfamily Caprinae, except domestic sheep (*Ovis aries*) and domestic goats (*Capra hircus*) which must be registered with the Wildlife Office to ensure the protection of wild bighorn sheep;
 3. In the family Equidae, except domestic horses (*Equus ferus caballus*) and domestic donkeys (*Equus assinus*);
 4. In the family Suidae, except domestic pigs (*Sus scrofa*);
 5. In the subfamily Antilopinae (antelope);
 6. Representing species commonly classified as “wildlife;” or
 7. Representing a hybrid of the above listed animals.
- B. A violation of this section is a civil infraction.

Section 3.10.067 Importation of Invasive Plant and Animal Species

- A. No person shall import, possess, release, purchase, sell, barter, distribute, propagate, or transport within or across the Reservation any plant or animal species classified as invasive by the Tribe, including biological material capable of propagation.
- B. All persons must drain, clean and inspect all vehicles, vessels, trailers, or other conveyances and associated equipment for the presence of invasive plants and animals immediately prior to entering and departing from the Reservation.
- C. Tribal law enforcement or conservation officers within the Reservation, upon reasonable suspicion that a vehicle, vessel, trailer, or other conveyance or associated equipment is infested with an invasive plant or animal, may require a driver of a vehicle to stop and submit to an inspection of the exterior of any conveyance(s) in plain view as well as the interior of a live well or a bilge area of a watercraft.

- D. If the Tribal law enforcement or conservation officer has probable cause to believe that the vehicle, vessel, trailer, or other conveyance or associated equipment is contaminated with an invasive plant or animal, or when a vehicle, vessel, trailer, or other conveyance or associated equipment is found to be contaminated or otherwise carrying an invasive plant or animal, they shall detain the conveyance(s) and/or equipment and immediately order a decontamination conveyance(s) and/or equipment as specified by the program heads of the Fisheries and Wildlife Departments.
- E. Any violation of this section or regulations adopted pursuant to this Code is a civil infraction.

PART XIV. FISH AND WILDLIFE VIOLATIONS

Section 3.10.068 Failure to Provide Proof of Identification [3-1-17]

Any Tribal member purporting to hunt, fish, gather, sell, or transport fish, wildlife, or other resources under right of Treaty who fails, upon reasonable demand by any federal, state, or tribal police officer or by a purchaser, transporter or warehouseman of fish, to show their Nez Perce Tribe identification card, commits the infraction of failure to show proof of identification.

- A. Refusal or failure to show proof of identification shall be prima facie evidence that such person is not a member of the Nez Perce Tribe.

Section 3.10.069 Protected Species Violation [3-1-52]

Any person who takes a protected species, except as specifically authorized by the Fish and Wildlife Commission, shall be in violation of this Code.

Section 3.10.070 Wasting Fish or Wildlife [3-1-19]

A person commits the infraction of wasting fish and wildlife if they permit any fish or wildlife needlessly to go to waste after killing or wounding the same.

Section 3.10.071 Unauthorized Exercise of Treaty Rights [3-1-18, 3-1-27, 3-1-28]

A person commits the infraction of Unauthorized Exercise of Treaty Rights in violation of Part II, Section 3.05.03 if:

- A. Being a Tribal member, they:
1. Engage or attempt to engage in the exercise of Nez Perce Treaty fishing, hunting or trapping within the Nez Perce Reservation or upon any Usual and Accustomed Fishing Site in the company of any person who is not authorized to exercise such rights or permitted to assist the Tribal member; or

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

2. Allows a person who is not authorized to exercise Nez Perce Treaty rights to fish or hunt for them or use any gear or fishing location identified as their gear or location; or
 3. Loans or alters a Tribal identification card or fishing or hunting license, permit or wildlife tag to a non-member.
- B. Being a non-member of the Nez Perce Tribe, they:
1. Engage or attempt to engage in the exercise of Nez Perce treaty fishing, hunting or trapping within the Nez Perce Reservation or upon any Usual and Accustomed Fishing Site; or
 2. Fish or hunt for a Tribal member, assists a Tribal member in violation of Section 3.05.03(B) in fishing or hunting, uses any gear or fishing location identified as the gear or location of a Nez Perce Tribal member; or
 3. Uses or alters any Tribal identification card or fishing or hunting license, permit or wildlife tag belonging or issued to another person.

Section 3.10.072 Hunting, Fishing, or Trapping Without Privileges [3-1-26]

A person commits the infraction of Hunting, Fishing, or Trapping Without Privileges if they exercise or attempt to exercise any hunting, fishing, or trapping privileges during a time when their license, permit, tags, identification card or other related privileges have been suspended, revoked or otherwise limited, or if they have no license, permit, tag or other indication of authorization.

Section 3.10.073 Interference with Hunting, Fishing, or Trapping Related Property [3-1-36]

A person is guilty of the criminal offense of interference with the hunting, fishing, or trapping related property of another if they, without the permission of the owner, use, operate, occupy, move, disturb or otherwise tamper with fishing nets, fishing platforms, fishing poles, firearms, traps, vehicles, boats or other hunting or fishing related personal property belonging to another.

Section 3.10.074 Use of Unlawful Substances in Taking Fish and Wildlife [3-1-25]

A person commits the infraction of use of unlawful substances if they use any explosive compound, corrosive, toxic, narcotic, poison or other deleterious substance to take fish and wildlife except as authorized by the Commission.

Section 3.10.075 Trafficking Fish and Wildlife [5-1-32]

- A. A person is guilty of the criminal offense of trafficking fish and game if he:
1. sells or barter, or has in his possession with intent to sell or barter;
 2. exposes or offers for sale or barter; or

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

3. ships for commercial purposes or has in his possession with intent to ship for commercial purposes, any big or small game or fish or parts thereof.
- B. This section shall not apply to the sale or possession of fish lawfully taken during commercial treaty fishing season, the possession or sale of hides or antlers of game animals lawfully taken or the sale or exchange between members of any federally recognized Indian Tribes for the personal use of such members.

Section 3.10.076 Wildlife Harrassment

- A. No person shall engage in wildlife harassment on the Reservation.
- B. The following actions shall not constitute wildlife harassment:
 1. Lawful fishing, hunting, trapping, or gathering activities as set forth in this Code or regulations issued pursuant thereto;
 2. Approved fish or wildlife management actions carried out by, on behalf of, or otherwise with the approval of the Tribe by Tribal staff. Such actions may include, but are not limited to, hazing, aerial wildlife surveys, and translocation of fish and wildlife.
- C. Violation of this section is a civil infraction.

Section 3.10.077 Hazing

No person shall enter an area closed to hunting or trapping and take, drive, haze, or attempt to take, drive, or haze, wildlife from such areas. Violation of this section is a civil infraction.

Section 3.10.078 Reserved

Section 3.10.079 Reserved

PART XV. PUBLIC SAFETY VIOLATIONS

Section 3.10.080 Disorderly Conduct [3-1-60]

A person commits the criminal offense of disorderly conduct if they cause public inconvenience, annoyance or alarm or creates a risk thereof by:

- A. Engaging in fighting or threatening, or in violent or tumultuous behavior;
- B. Making unreasonable noise or an offensively coarse utterance, gesture or display, or addresses abusive language to any person present;
- C. Creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or
- D. Threatening, quarreling, challenging to fight or fighting.

Violation of this section is subject to possible arrest.

Section 3.10.081 Public Intoxication [3-1-59]

It shall be unlawful for any person to create any disturbance in a public place while intoxicated or under the influence of an intoxicating drink or drug. Violation of this section is a criminal offense subject to possible arrest.

Section 3.10.082 Underage Possession of Alcohol [3-1-58]

- A. A person commits the offense of possession of alcohol by a person under the age of twenty-one (21) if while being under the age of twenty-one (21), they possess, purchase, consume, obtain, or sell, or is found under the influence, of any beer, wine, ale, whiskey or any substance whatsoever which produces alcoholic intoxication, or misrepresents their age for the purpose of buying or otherwise obtaining an alcoholic beverage.
- B. Violation of this section is a criminal offense subject to possible arrest for any person over 18 years of age, but under 21 years of age.

Section 3.10.083 Dispensing of Alcohol to a Person under 21 Years of Age

- A. It shall be unlawful for any person who is twenty-one (21) years of age or older knowingly to sell, give, or furnish, or cause to be sold, given, or furnished any alcoholic beverage, including any distilled spirits, beer or wine, to a person under the age of twenty-one (21).
- B. Violation of this section is a criminal offense subject to possible arrest.

Section 3.10.084 Drug Promotion [3-1-54]

It shall be unlawful for any person to knowingly maintain, frequent or remain at a place:

- A. Resorted to by drug users for the purpose of unlawfully using narcotic or dangerous drugs; or
- B. Which is used for the unlawful keeping or sale of narcotic or dangerous drugs.

Violation of this section is a criminal offense subject to possible arrest.

Section 3.10.085 Possession and/or Consumption of a Controlled Substance [3-1-55]

- A. It shall be unlawful for any person to possess, purchase, consume, obtain, ingest, inject, distribute, manufacture, or sell any controlled substance including, but not limited to, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812.
- B. This section shall not preclude:

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

1. The possession, purchase, consumption, obtaining, ingestion, distribution or sale of peyote for bona fide Native American religious ceremonies; or
 2. Any substances as prescribed by a duly licensed physician.
- C. Violation of this section is a criminal offense subject to possible arrest.

Section 3.10.086 Possession of Drug Paraphernalia [3-1-57]

- A. It shall be unlawful for any person to use, or possess with intent to use, drug paraphernalia to cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812.
- B. This section shall not preclude the possession or purchase of any item/object traditionally used in bona fide Native American religious ceremonies or used as prescribed by a licensed physician.
- C. Violation of this section is a criminal offense subject to possible arrest.

Section 3.10.087 Abuse of Psychotoxic Chemical Solvents [3-1-56]

- A. It shall be unlawful for a person:
1. For the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of their brain or nervous system, to intentionally:
 - a. Smell or inhale the fumes of any psychotoxic chemical solvent;
 - b. Possess, purchase or attempt to possess or purchase any psychotoxic chemical solvent; or
 2. Knowing or believing that the purchaser of another intends to use a psychotoxic chemical solvent in violation of this section, to sell or offer to sell any psychotoxic chemical solvent.
- B. Violation of this section is a criminal offense subject to possible arrest.
- C. This section shall not apply to the inhalation of prescribed anesthesia for medical or dental purposes.
- D. As used in this section, “psychotoxic chemical solvents” includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or

the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

Section 3.10.088 Resisting and Obstructing Officers [3-1-61]

- A. It shall be unlawful for any person to:
 - 1. Willfully resist, delay, obstruct or otherwise endeavor to prevent with or without actual force any public officer, in the discharge, or attempt to discharge, of any duty of their office; or
 - 2. Knowingly give a false report to any law enforcement officer.
- B. Violation of this section is a criminal offense subject to possible arrest.
- C. “Resists” as used in this section means the use of or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person or that justifies or requires substantial force to overcome.

Section 3.10.089 Eluding an Officer [3-1-34]

A person is guilty of the criminal offense of eluding an officer if they knowingly flee or attempt to evade a Tribal police, Conservation Enforcement, or CRITFE officer following a visible or audible signal to stop. A visible or audible signal under this section may include the use of hands, voice, emergency lights or sirens.

Violation of this section is a criminal offense subject to possible arrest.

Section 3.10.090 Threat or Intimidation to a Tribal Police Officer, Conservation Enforcement, or CRITPD Officer [3-1-35]

Any person who uses unjustified force or violence or threaten the use thereof on a Tribal police officer for the purpose of interfering or influencing the performance of an official duty shall be guilty of the criminal offense of threat or intimidation to a Tribal police officer.

Violation of this section is a criminal offense subject to possible arrest.

Section 3.10.091 Destruction of Property [3-1-20]

A person commits the infraction of destruction of property if while hunting, fishing or trapping within the boundaries of the Nez Perce Reservation, or exercising off-reservation treaty rights, they damage any land, crops or other property.

Violation of this section is a criminal offense subject to possible arrest.

Section 3.10.092 Emergency Restrictions

- A. No person shall fish, hunt, trap, or gather on or off the Reservation in a manner which violates or conflicts with an emergency closure or restriction established pursuant to this Code by the NPTEC and the Commission.
- B. Emergency closures or regulations established pursuant to this section shall remain in effect for no more than ninety (90) days unless extended through action by the Commission or NPTEC.
- C. Violation of this section is a civil infraction.

Section 3.10.093 Defacing

No person shall destroy, tear down, shoot at, deface, or erase any printed matter or signs placed or posted to assist in the enforcement of this Code or regulations adopted pursuant to this Code. Violation of this section is a civil infraction.

Section 3.10.094 Pollution and Littering [3-1-63 expanded]

- A. No person shall dump, throw, shoot or cause to be placed in any waters on or off the Reservation (includes while fishing within Usual and Accustomed Areas, Treaty Fishing Access sites, or In-Lieu Sites) any garbage, foreign matter (including but not limited to pollutants, toxics, and poisons), or human or animal waste while engaged in fishing, hunting, trapping, or gathering.
- B. No person shall dump, throw, shoot, abandon, or cause to be placed upon any public or private property or Tribal lands any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, cans, barbed wire, boards, trash, garbage, lighted material, or waste substances, without authorization of the owner of the property affected, while engaged in fishing, hunting, trapping, or gathering.
- C. Violation of this section is a civil infraction.

PART XVI. REMEDIES FOR VIOLATIONS

Section 3.10.095 Suspension/Revocation of Privileges [3-1-16]

In addition to any other remedy or penalty provided for a violation of this Code, the Tribal Court may suspend, confiscate, or permanently revoke hunting, trapping, or fishing licenses, permits, wildlife tags, identity cards or other related privileges which were granted pursuant to this chapter.

The authority to revoke or suspend privileges extends to the rights of Tribal members to hunt, trap, or fish, pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.

Section 3.10.096 Civil Infractions under the Fish and Wildlife Code [3-1-14]

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 23-XXX (DATE)

- A. Any person subject to civil jurisdiction of the Nez Perce Tribe who is charged with an infraction under this Code shall be subject to the procedures and remedies provided by this Code and other Tribal civil laws.
- B. Any violation of this Code or of a regulation adopted pursuant to this Code is a civil offense unless specifically limited to a criminal offense only.
- C. For a civil offense the Court may:
 - 1. Impose a fine per violation;
 - 2. Suspend, confiscate or permanently revoke as noted in the above section;
 - 3. Forfeiture; or
 - 4. Any combination of the above.

Section 3.10.097 Criminal Offenses under the Fish and Wildlife Code [3-1-15]

Any person subject to the criminal jurisdiction of the Nez Perce Tribe who is charged with a criminal offense under this Code shall be prosecuted under Tribal criminal law and procedure and, if found guilty, penalized as a criminal offender.

Section 3.10.098 Aiding In A Fish and Wildlife Violation

Any person who aids, abets, or counsels another in violation of this Code, shall be subject to the same penalties as the person who actually committed the violation. It shall not be a violation of this section for a person to aid or counsel another person to mitigate the adverse effects of that person's violation of this Code, so long as they took no part in the initial violation and immediately notified Tribal law enforcement of the violation.