

**TITLE 3
NATURAL RESOURCES AND ENVIRONMENT
CHAPTER 3-1
FISH AND WILDLIFE**

INTRODUCTORY PROVISIONS

§3-1-1 Definitions

- (a) “Artificial light” means any light produced by other than natural sources, including but not limited to, spotlights, flashlights or vehicular headlights.
- (b) “Barter” means the act of trading goods or services for other goods or services rather than money.
- (c) “Bag limit” means the daily limit in the amount of each species of game or fish which may be taken by any one person.
- (d) “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. (added by NPTEC 2/14/17)
- (e) “Ceremonial fishing” means fishing by tribal members pursuant to treaty rights when such fishing is pursuant to a permit issued in advance by the Fish and Wildlife Commission for the purpose of taking fish for use in recognized traditional tribal ceremonies or religious occasions. Ceremonial Fishing is exclusive of fishing for subsistence or commercial purposes.
- (f) “Closed season” means the period of time during which the taking and sale of specific fish or wildlife is prohibited.
- (g) “Commercial fishing” means fishing by tribal members with specified fishing gear and pursuant to treaty rights for the purpose of selling, trading, or bartering such fish to any person in return for money, property, or other consideration. 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.
- (h) “CRITFE” means the Columbia River Intertribal Fisheries Enforcement.
- (i) “Designated shooter” means a person who is listed on the same buffalo permit as a person who is permitted to hunt using a hunting bow, as defined by § 3-1-1(r), and who is prohibited by the Nez Perce Tribal Code, state, or federal law from possessing, or having under her or his custody or control, firearm, as defined by the Nez Perce Tribal Code, state, or federal law. A designated shooter accompanies the person authorized to hunt using only a hunting bow. A designated shooter must carry a .30 caliber or higher centerfire rifle and may also carry a .35 caliber or higher pistol. A designated shooter is only authorized to kill a buffalo when the person authorized to hunt using a hunting bow has shot, but failed to kill, a buffalo. (added by NPTEC 2/14/17)
- (j) "Endangered species" means any species so designated by this chapter and which the Fish and Wildlife Commission has determined is in danger of extinction throughout all or a significant portion of its range.

- (k) “Felon” means a person who has been convicted of a felony in any court of law of competent jurisdiction. (added by NPTEC 2/14/17)
- (l) “Felony” means a conviction in any court of law of competent jurisdiction of a crime punishable by imprisonment in excess of 1 (one) year or death. (added by NPTEC 2/14/17)
- (m) “Firearm” means a weapon such as a pistol, shotgun or rifle capable of firing a bullet or other projectile.
- (n) “Fish and wildlife commission” or “Commission” shall mean the Nez Perce Tribe Fish and Wildlife Commission as established by this chapter.
- (o) “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 treaty fishing rights, at usual and accustomed places.
- (p) “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.
- (q) “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.
- (r) “Hunting bow” means a crossbow, longbow, recurve bow, or compound bow. (added by NPTEC 2/14/17)
- (s) “Member” means a person who is duly enrolled in the Nez Perce Tribe.
- (t) “Non-member” means any person other than a Nez Perce tribal Member.
- (u) “Nocturnal species” means those wildlife species which are most active during the night hours.
- (v) “Open season” means the period of time during which the taking of certain fish and wildlife is permitted by this chapter or rules and regulations promulgated pursuant to this chapter.
- (w) “Pistol” means a handgun designed to enable a user to aim and fire it with one hand. (added by NPTEC 2/14/17)
- (x) “Possession limit” means the amount of each species of game or fish which a person may possess.
- (y) “Public highways” means all roadways open to the public for vehicular travel.

(z) “Rifle” means a shoulder weapon with a rifled bore.

(aa) “Shotgun” means a smooth bore shoulder weapon for firing shots or slugs.

(bb) “Subcommittee” means the Nez Perce Tribal Fish and Wildlife Subcommittee or any successor Subcommittee hereafter designated by the Nez Perce Tribal Executive Committee to perform the functions of the Fish and Wildlife Subcommittee.

(cc) “Subsistence fishing” means fishing 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.

(dd) “Take” shall mean any effort to kill, capture, catch, harm, shoot, wound, collect, hunt, pursue or trap fish or wildlife in the waters or on the lands of the Nez Perce Reservation, or in off-Reservation lands in which the Nez Perce Tribe has treaty hunting or fishing rights in usual and accustomed places or on open and unclaimed land.

(ee) “Threatened species” means any species designated as such by this chapter or which as determined by the Fish and Wildlife Commission is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(ff) “Trap” or “Trapping” shall mean any effort to take wildlife with a trap, net, snare or other device used for the purpose of capture in the waters or on the lands of the Nez Perce Reservation, or in off-Reservation water or on off-Reservation lands in which the Nez Perce tribe has treaty hunting or fishing rights.

(gg) “Treaty” shall mean 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.

(hh) “Treaty hunting or fishing rights” shall mean 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.

(ii) “Waste” means the abandonment of or deterioration of those portions of fish or game normally used for human consumption. (amended by NPTEC 2/14/17)

§3-1-2 Purpose and Declaration of Policy

The Nez Perce Tribal Executive Committee finds that:

(a) all wildlife now or in the future within the Nez Perce Reservation, not held by private ownership legally acquired, and which for the purpose of this chapter shall include any game animals, upland game, game birds, game fish, migratory birds, furbearers, threatened, endangered and protected species are hereby declared subject to the jurisdiction of the Nez Perce Tribe; and

(b) such wildlife shall be preserved, protected and perpetuated in accordance with this

chapter and for use of members of the Nez Perce Tribe and their immediate families; and

(c) such wildlife resources may also be utilized for the sport and recreation of persons who are not members of the Nez Perce Tribe pursuant to rules, regulations and conditions established in accordance with this chapter; and

(d) by this chapter and the regulations adopted under it, the Nez Perce Tribe intends to exercise control over fishing and hunting activities to the fullest extent of tribal jurisdiction in order to properly regulate, manage and protect all of the fish and game 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.

§3-1-3 CRITFE Authorization

Any officer of the CRITFE shall be authorized to enforce the provisions of this chapter that pertain to off reservation treaty fishing activity in the Columbia River area to the same extent as that of the tribal police.

§3-1-4 Use of Wildlife for Scientific Purposes

(a) In accordance with this section and the terms and conditions established pursuant to the administrative procedures provided by this code by either the program head of Fisheries or Wildlife, whichever is applicable, a person may take, possess, inspect, sample, measure, count or collect data on fish and wildlife for scientific, management and/or enhancement purposes. This section shall apply to any person intending to conduct data collection or sampling within the boundaries of the Nez Perce Reservation and any Nez Perce tribal personnel intending to conduct data collection or sampling on any usual and accustomed fishing location or open and unclaimed lands.

(b) Any sampling or data collection activity conducted in violation of the policies and procedures established by the program heads of Fisheries and Wildlife shall constitute a violation of this chapter. In addition to any other remedy for a violation of this section, the Court may temporarily or permanently revoke the permit of the person in violation.

(c) The program heads of either Fishers or Wildlife, whichever is applicable, may suspend the permit of any person if he reasonably believes that at any time such person is in violation of this section or his actions threaten the fish and wildlife resources of the tribe and that immediate action is necessary to protect such resources. The suspension of a permit under this section shall be for no longer than ten (10) business days unless the applicable program head issues an order to revoke the permit following a hearing on the record in accordance with the administrative procedures provided in this code.

(d) Upon request, the program heads of either Fisheries or Wildlife, whichever is applicable, shall certify in writing that an animal has been taken in accordance with a valid permit issued under this section.

§3-1-5 State Jurisdiction Preempted

It shall not be a defense to any civil infraction or criminal offense under this chapter that the alleged activity may be lawful under state law.

§3-1-6 Consistency with CRITFE Code

Any rules or regulations adopted under this chapter shall be consistent with the Columbia River Intertribal Fisheries Enforcement (CRITFE) Code as duly adopted by the Nez Perce Tribe. Any violation of the CRITFE code shall be a violation of this chapter.

§3-1-7 Road Closures

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

- (a) on federal lands;
- (b) within the boundaries of the Nez Perce Reservation; and
- (c) otherwise established by NPTEC.

§3-1-8 Tribal Member Identification

(a) Any person who is a member of the Nez Perce Tribe and who hunts, fishes or traps within the tribe's territorial jurisdiction shall have in his possession a Nez Perce Tribe Identification card issued by the tribe.

(b) 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 him to exercise all hunting, fishing 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.

PROGRAM HEADS OF FISHERIES AND OF WILDLIFE DEPARTMENTS, FISH AND WILDLIFE COMMISSION ON RESERVATION HUNTING/ RECREATIONAL FISHING

§3-1-9 Program Heads of Fisheries and Wildlife Departments

(a) The Nez Perce Tribe shall employ program heads for both the Nez Perce Tribe Fisheries and Wildlife Programs subject to the personnel policies and procedures of the tribe. Subject to the provisions of this chapter, the program heads shall take such action necessary to protect, manage and enhance 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.

§3-1-10 Fish and Wildlife Commission (Amended 08/14/18, NP 18-486)

(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 elected by the Nez Perce Tribe, General Council. The elected 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 he is well informed about and interested in the subject of treaty rights and wildlife or fisheries conservation and restoration. 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. 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. Until such time as members of the Fish and Wildlife Commission can be appointed, the Commission's duties and authority as provided by this chapter shall be retained by NPTEC.

(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. (amended by NPTEC 08/14/18)

§3-1-11 Duties and Powers of the Commission

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:

(a) to promulgate annual and seasonal hunting and fishing regulations and prescribe the manner and methods which may be used in taking fish and wildlife;

(b) 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;

(c) 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;

(d) consistent with applicable federal law, to establish seasons, bag, limits, possession limits and other regulations pertaining to the taking of migratory birds;

(e) to meet periodically with tribal fisheries and wildlife department staff to review department programs, policies, performance, allocation of staff personnel and budget and to recommend needed improvements to the program head of the Fisheries and Wildlife departments and/or NPTEC;

(f) to meet with the Fish and Wildlife Subcommittee when requested by the Subcommittee;

(g) to recommend to NPTEC broad policies and long-range programs for the management, preservation, and harvest of fish and wildlife;

(h) to provide for the assembly and distribution of information to the public relating to wildlife and the activities of Fisheries and Wildlife Department personnel;

(i) to perform such duties and exercise such powers as from time to time may be conferred by NPTEC;

(j) to perform such other duties and exercise other powers as set forth in this chapter; and

(k) to provide for the conservation, enhancement and management of the tribe's fish and wildlife resources.

§3-1-12 Seasons Opened Until Closed

(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, trap or engage in recreational fishing on the Nez Perce Reservation during any closed season established by the Fish and Wildlife Commission for any game animals, upland game, game birds, game fish, migratory birds or furbearers as designated under this chapter. The length of such closed seasons and the fish or wildlife permitted to be taken during those seasons shall be subject to modification by the Commission at any time circumstances warrant such modification.

§3-1-13 Report to NPTEC/NPTEC Review

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.

REMEDIES FOR VIOLATIONS

§3-1-14 Civil Infractions

(a) Any person subject to the civil jurisdiction of the Nez Perce Tribe who is charged with an infraction violation under this chapter shall be subject to the procedures and remedies provided by this code.

(b) Any violation of this chapter and a violation of any regulation or policy adopted pursuant to this chapter is a civil infraction unless specifically identified as a criminal offense.

§3-1-15 Criminal Offenses

Any person subject to the criminal jurisdiction of the Nez Perce Tribe who is charged with a criminal offense under this chapter shall be prosecuted under the Nez Perce Tribe Rules of Criminal Procedures and, if found guilty, penalized as a criminal offender.

§3-1-16 Suspension/Revocation of Privileges

In addition to any other remedy or penalty provided for a violation of this chapter, the Tribal Court may suspend, confiscate or permanently revoke hunting, trapping or fishing licenses, permits, game 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.

INFRACTIONS

§3-1-17 Failure to Show Proof of Identification

(a) Any tribal person purporting to hunt, fish, sell, or transport fish or game 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 his Nez Perce Tribe identification card, commits the infraction of failure to show proof of identification.

(b) 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.

§3-1-18 Unauthorized Use of Rights or Privileges

A person commits the infraction of unauthorized use of rights or privileges if for the purpose of allowing a person other than the person to whom the right or privilege is issued to use such right or privilege, he:

(a) loans a tribal identification card or fishing or hunting license, permit or game tag to another; or

(b) uses or alters any tribal identification card or fishing or hunting license, permit or game tag belonging or issued to another person.

§3-1-19 Wasting Fish and Game

A person commits the infraction of wasting fish and game if he permits any fish or game needlessly to go to waste after killing or wounding the same.

§3-1-20 Destruction of Property

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, he damages the land, any crops or other property.

§3-1-21 Hunting from a Motor Vehicle

A person commits the infraction of hunting from a motor vehicle if he hunts, molests or takes 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.

§3-1-22 Hunting with Artificial Lights

A person commits the infraction of hunting with artificial lights if he hunts 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 (6) volts or more of electrical power in any place where game 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.

§3-1-23 Unlawful Hunting

A person commits the infraction of unlawful hunting if he utilizes explosive devices or poison on arrows, or violates any other regulations adopted by the Fish & Wildlife Commission. (amended by NPTEC 11/8/11)

§3-1-24 Unlawful Hunting with Dogs

A person commits the infraction of unlawful hunting with dogs if he:

- (a) uses dogs to harass wildlife in any manner; or
- (b) hunts or tracks any animal with dogs except as authorized by the Fish and Wildlife Commission.

§3-1-25 Use of Unlawful Substances

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

§3-1-26 Hunting or Fishing Without Privileges

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

§3-1-27 Unauthorized Fishing, Hunting and Trapping

- (a) A person commits the infraction of unauthorized fishing, hunting and trapping if:

- (1) being a tribal member, he:
 - (A) engages or attempts 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
 - (B) allows a person who is not authorized to exercise Nez Perce Treaty rights to fish or hunt for him, assist him in fishing or hunting or use any gear or fishing location identified as his gear or location; or
- (2) being a nonmember of the Nez Perce Tribe, he:
 - (A) engages or attempts 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
 - (B) fishes or hunts for a tribal member, assists a tribal member in fishing or hunting or uses any gear or fishing location identified as the gear or location of a Nez Perce tribal Member.
- (b) This section shall not apply when the non-member involved is:
 - (1) the member's spouse, child, grandchild, sibling or parent; (amended 12/14/99)
 - (2) 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.
 - (3) otherwise authorized by the tribe or the State of Idaho to be fishing or hunting at the same time and place.

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.

§3-1-28 Unauthorized Helpers

A person commits the infraction of unauthorized helpers if he:

- (a) being a non-member of the Nez Perce Tribe, operates or mans any boat used for Nez Perce treaty fishing purposes.
- (b) being a Nez Perce tribal member who operates or maintains a boat for treaty fishing purposes and employs or uses any person on such boat who is not a member of one of the tribes having adjudicated treaty fishing rights upon the main stem of the Columbia River.

§3-1-29 Liquor Infraction

A person commits a liquor infraction if he fishes or hunts while under the influence of intoxicating liquor or controlled substances.

§3-1-30 Boat Safety

A person commits a boat safety infraction if while operating a boat and while engaged in fishing activities pursuant to this chapter he does not have:

- (a) one (1) life preserver per person and one (1) fire extinguisher on board;
- (b) running lights which shall be mounted to the hull of the boat and turned on during hours of darkness while being operated;
- (c) portable boat lights placed in a conspicuous location, if running lights are not available.

§3-1-31 Scaffolds *(This section was deleted by NPTEC action 11/10/98)*

CRIMES

§3-1-32 Trafficking Fish and Game

- (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
 - (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.

§3-1-33 Weapons Offense

A person is guilty of a criminal weapons offense if he, while exercising treaty fishing rights at a usual and accustomed fishing site, has in his immediate possession any firearm.

§3-1-34 Eluding an Officer

A person is guilty of the criminal offense of eluding an officer if he knowingly flees or attempts to evade a tribal police 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.

§3-1-35 Threat or Intimidation to a Tribal Police Officer

Any person who shall use 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.

§3-1-36 Interference with Hunting or Fishing Related Property

A person is guilty of the criminal offense of interference with the hunting or fishing related property of another if he, without the permission of the owner, uses, operates, occupies, moves, disturbs or otherwise tampers with fishing nets, fishing platforms, fishing poles, firearms, vehicles, boats or other hunting or fishing related personal property belonging to another.

SUBSISTENCE FISHING

§3-1-37 Season

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

§3-1-38 Gear

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

§3-1-39 Reporting of Catch

Any tribal member engaging in subsistence fishing may be required by Fish and Wildlife Commission regulation to report his 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.

COMMERCIAL FISHING

§3-1-40 Commercial Fishing in General

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.

§3-1-41 Gear

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

§3-1-42 Reporting Catch

(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 his 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 his tribal enrollment number to purchasers of such fish.

§3-1-43 Fish Length (amended 3/22/11)

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.

§3-1-44 *Fishing Sites (12/13/16 NPTEC authorized deletion of this section)*

CEREMONIAL FISHING

§3-1-45 Ceremonial Permits

Any tribal member who is fishing for ceremonial purposes or who transports fish taken for ceremonial purposes shall have in his 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.

§3-1-46 Gear

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

§3-1-47 Notice to States

(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.

§3-1-48 Offenses

- (a) 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 his possession fish taken for ceremonial purposes;
 - (4) fish for ceremonial purposes without having in his 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;
 - (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.

ON RESERVATION HUNTING/RECREATIONAL FISHING

§3-1-49 Types of Animals Defined

For the purposes of addressing wildlife and fishery resources under this Sub-title the following classification system will be used:

- (a) GAME ANIMALS:

Mule deer - Odocoileus hemionus

White-tailed deer - Odocoileus virginianus

Elk - Cervus elaphus

Moose - Alces alces

Pronghorn antelope - Antilocapra americana

Rocky Mountain bighorn sheep - Ovis canadensis candensis

Californian bighorn sheep - Ovis canadensis californiana

Mountain goat - Oreamnos americanus

Black bear - Ursus americanus

Mountain lion - Felis concolor

(b) UPLAND GAME:

Cottontail rabbit - Sylvilagus nuttallii

Pygmy rabbit - Sylvilagus idahoensis

Snowshoe hare - Lepus americanus

(c) GAME BIRDS:

Game birds include both upland game birds and migratory game birds.

(1) Upland game birds:

- (A) Pheasants: Chinese or ring-necked pheasant, Mongolian pheasant, mutant pheasant, Japanese green pheasant, or any hybrids thereof - Phasianus
- (B) Partridge: gray (Hungarian) partridge, Perdix perdix; chukar partridge, Alectoris chukar; french red-legged partridge, Alectoris rufa.
- (C) Quail: bobwhite quail, Colinus virginianus; California quail, Callipepla californicas; mountain quail, Oreortyx pictus; and Gambel's quail, Callipepla gambelli.
- (D) Grouse: Blue grouse, Dendragapus obscurus; ruffed grouse, Bonasa umbellus; spruce grouse, Dendragapus canadensis; sage grouse, Centrocercus urophasianus; sharp-tailed grouse, Tympanuchus phasianellus; and wild turkey, Meleagris gallopavo intermedia, M.g. merriami and M.g silvestris.

(2) Migratory Game Birds:

- (A) Coot: American, Fulica americana.
- (B) Dove: mourning, Zenaida macroura.
- (C) Ducks: black duck, Anas rubries; bufflehead, Bucephala albeola; canvasback, Aythya valisineria; gadwall, Anas strepera; Barrow's goldeneye, Bucephala islandica; common goldeneye, Bucephala clangula; harlequin duck, Histrionicus histrionicus; mallard, Anas platyrhynchos; common merganser, Mergus merganser; hooded merganser, Lophodytes cucullatus; red-breasted merganser, Mergus serrator; oldsquaw, Clangula hyemalis; northern pintail, Anas acuta; redhead, Aythya americana; ring-necked duck, Aythya collaris; ruddy duck, Oxyura jamaicensis; greater scaup, Aythya marila; lesser scaup, Aythya affinis; surf scoter, Melanitta perspicillata; white-winged scoter, Melanitta deglandi; northern shoveler, Anas clypeata; blue-winged teal, Anas discors; cinnamon

teal, Anas cyanoptera; green-winged teal, Anas crecca; American wigeon, Anas americana; European wigeon, Anas penelope; and wood duck, Aix sponsa.

- (D) Brant: black brant, Branta bernicula.
 - (E) Geese: Canada, Branta canadensis; emperor, Philacte canagica; Ross', Chen rossii; snow, Chen caerulescens; and white-fronted, Anser albifrons.
 - (F) Snipe: Common, Capella gallinago.
- (d) GAME FISH: Game fish includes the following fish and amphibians:

White sturgeon - Acipenser transmontanus
Lake whitefish - Coregonus clupeaformis
Bear Lake whitefish - Prosopium abyssiicola
Pygmy whitefish - Prosopium coulteri
Bonneville cisco, peaknose - Prosopium gemmiferum
Bonneville whitefish - Prosopium spilonotus
Mountain whitefish - Prosopium williamsoni
Golden trout - Salmo aguabonita
Cutthroat trout - Salmo clarki
Rainbow trout - Salmo gairdneri
Steelhead - Salmo gairdneri
Atlantic salmon - Salmo salar
Brown trout - Salmo trutta
Arctic char - Salvelinus alpinus
Brook trout - Salvelinus fontinalis
Bull trout - Salvelinus confluentis
Mackinaw trout - Salvelinus namaycush
Arctic grayling - Thymallus arcticus
American smelt - Osmerus mordax
Black bullhead - Ictalurus melas
Brown bullhead - Ictalurus nebulosus
Channel catfish - Ictalurus punctatus
Flathead catfish - pylodictis olivaris
Ling - Lota lota
Warmouth - Chaenobryttus gulosus
Green sunfish - Lepomis cyanellus
Pumpkinseed - Lepomis gibbosus
Bluegill - Lepomis macrochirus
Smallmouth bass - Micropterus dolomieu
Largemouth bass - Micropterus salmoides
White crappie - Pomoxis annularis
Black crappie - Pomoxis nigromaculatus
Yellow perch - Perca flavescens
Walleye - Stizostedion vitreum
Northern pike - Esox Lucius

(e) MIGRATORY BIRDS

Common American crow - Corvus brachyrhynchos

(f) FURBEARING ANIMALS

Marten - Martes americana

Fisher - Martes pennanti

Otter - Lutra canadensis

Beaver - Castor canadensis

Muskrat - Ondatra zibethicus

Bobcat - Felis rufus

Lynx - Felis lynx

Red Fox - Vulpes vulpes includes all color phases found in Idaho

Raccoon - Procyon lotor

Badger - Taxidea taxus

Coyote

Jackrabbit

Skunk

Weasel

(g) THREATENED OR ENDANGERED WILDLIFE

Chinook salmon - <u>Oncorhynchus tshawytscha</u>	Endangered	
Coho salmon - <u>Oncorhynchus kisutch</u>	Threatened	
Sockeye salmon, kokanee - <u>Oncorhynchus</u>	Endangered	<u>tshawytscha</u>
Grizzly bear - <u>Ursus arctos</u>	Endangered	
Wolf - <u>Canis lupus</u>	Endangered	
Peregrine falcon - <u>falco perigrinus</u>	Endangered	
Whooping crane - <u>Grus americana</u>	Endangered	
Caribou - <u>Rangifer tarandus</u>	Endangered	
Bald eagle - <u>Haliaeetus leucocephalus</u>	Endangered	

(h) PROTECTED SPECIES

(1) Mammals:

Red squirrel - Tamiasciurus hudsonicus

Wolverine - Gulo gulo

Chipmunks - Eutamias

Golden mantled ground squirrel - Spermophilus lateralls

Pika - Ochotona princeps

Kit fox - Vulpes macrotis

Northern flying squirrel - Glaucomys sabrinus

(2) Birds: All species EXCEPT:

English sparrow

Feral pigeons

Game birds

Migratory birds

Threatened or Endangered Wildlife

- Starling
- (i) UNPROTECTED WILDLIFE

Unprotected wildlife includes all wildlife not classified in the preceding categories.

§3-1-50 Transportation Permit

(a) Any tribal member who harvest game on the Nez Perce Reservation and who intends to transport the animal beyond the reservation boundaries shall first obtain from the tribal police a permit that contains:

- (1) the name of the person transporting;
- (2) his tribal enrollment number;
- (3) the type, sex and approximate size of the animal transported;
- (4) the location and date the animal was taken; and
- (5) the ultimate destination of the animal.

(b) Each permit shall be signed by a tribal police officer and shall be valid for no more than seventy-two (72) hours from the time and date of issuance.

§3-1-51 Permits, Licenses and Game Tags

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

§3-1-52 Protected/Threatened and Endangered Species

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

§3-1-53 Taking of Wildlife Damaging Property, Real or Personal

Any person who resides within the boundaries of the Nez Perce Reservation commits an infraction if he destroys any animal that is damaging property without first obtaining permission from the Fish and Wildlife Commission. The Commission may grant the request upon a reasonable investigation of the facts alleged, the implementation of appropriate safeguards and consideration of the impacts to any protected, threatened or endangered species.

(" 3-1-54 - 3-1-60 adopted 7/24/01)

(" 3-1-54 -3-1-61 are criminal arrestable offenses authorized by NPTEC 7/8/03)

(' 3-1-62 is a criminal arrestable offense adopted by NPTEC 7/22/08)

§3-1-54 Drug Promotion

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.

§3-1-55 Possession and/or Consumption of a Controlled Substance

(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, 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:

- (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.

§3-1-56 Abuse of Psychotoxic Chemical Solvents

(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 his 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) This section shall not apply to the inhalation of prescribed anesthesia for medical or dental purposes.

(c) 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.

§3-1-57 Possession of Drug Paraphernalia

(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. (Amended by NPTEC 1/24/17)

(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.

§3-1-58 Possession of Alcohol by a Person Under Twenty-One

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), he shall 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 his age for the purpose of buying or otherwise obtaining an alcoholic beverage.

§3-1-59 Public Intoxication

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.

§3-1-60 Disorderly Conduct

A person commits the infraction of disorderly conduct if he causes 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.

§3-1-61 Resisting and Obstructing Officers (adopted by NPTEC 7/8/03)

- (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 his office; or
 - (2) knowingly give a false report to any peace officer.
- (b) "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.

§3-1-62 Intoxicating Beverage/Controlled Substance Possession and/or Consumption in Usual and Accustomed Fishing Areas (adopted by NPTEC 7/22/08) (amended 7/14/09)

(a) It shall be unlawful for any Nez Perce tribal member to possess and/or consume alcoholic or other intoxicating beverages or substances within a distance of four hundred feet of the nearest waterway (river, creek, or lake) at Rapid River; South Fork Salmon River; Clear Creek; and the Dworshak fish ladders all 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. (subsection adopted by NPTEC 4/28/15)

§3-1-63 Littering at Fishing Sites (adopted by NPTEC 8/10/11)

A person commits the infraction of littering if he deposits upon any public or private property any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, cans, barbed wire, boards, trash, garbage, lighted material or waste substances without authorization from the tribe or the owner of the property affected while fishing within usual and accustomed areas, Treaty Fishing Access sites, or in lieu sites.

BUFFALO/BISON HUNTING (adopted by NPTEC 4/11/06)

§3-1-80 Purpose

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 buffalo/bison on open and unclaimed lands adjoining Yellowstone National Park.

§3-1-81 Applicable Regulations

- (a) All provisions of the Nez Perce Tribal Code are applicable.
- (b) Only enrolled members of the Nez Perce Tribe may participate in the hunt and harvest of buffalo/bison.
- (c) NPTEC, after consultation with the Fish and Wildlife Commission, will specify the opening and closing dates for the bison/buffalo season for Nez Perce tribal members on open

and unclaimed land adjoining Yellowstone National Park, and will specify the number of bison/buffalo that may be harvested by Nez Perce tribal members.

(d) Tribal members may hunt and harvest from 2 hour before sunrise to 2 hour after sunset; (amended by NPTEC 1/26/16)

(e) Buffalo must be hunted with a hunting bow, as defined in § 3-1-1(r), or a .30 caliber or higher centerfire rifle, as defined in § 3-1-1(d). (amended by NPTEC 2/14/17)

(1) Tribal members hunting using a hunting bow must be accompanied by a permitted designated shooter, as defined in § 3-1-1(i), 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.

(f) Nez Perce Conservation Enforcement Officers shall be present to enforce this regulation and the Nez Perce Tribal Code dependent on funds and officer availability. (Amended by NPTEC 1/8/13)