

TITLE 3
 NATURAL RESOURCES AND ENVIRONMENT

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**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 canadensis
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, Dedragapus 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 transmonthanus

Lake whitefish - Coregonus clupeaformis

Bear Lake whitefish - Prosopium abyssicola

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 harvests 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)**

CHAPTER 3-2
SALMON AND STEELHEAD GUIDING AND OUTFITTING
(Chapter adopted by NPTEC action effective 5/28-29/02)

§3-2-1 Findings

The purpose of this Chapter is to provide for the regulation of salmon and steelhead guiding and outfitting on lands and waters of the Nez Perce Tribe by any person who is a member of the Nez Perce Tribe or an enrolled member of any federally recognized Tribe.

§3-2-2 Definitions

- (a) “Client” means a person utilizing the services of a guide or outfitter.
- (b) “Commission” means the Fish and Wildlife Commission of the Nez Perce Tribe defined in § 3-1-10 of this Title.
- (c) “Conservation Enforcement” means the Department of Fisheries Restoration Management Fisheries Conservation Enforcement.
- (d) “First Aid Card” means valid card issued by the American Red Cross to denote the individual whose name and signature appear thereon has successfully completed an applicable Red Cross course and is qualified to render appropriate, minimal first aid as prescribed by the American Red Cross, or other valid evidence showing successful completion of an equivalent course conducted by an organization acceptable to the Commission.
- (e) “Guide” means the taking of persons upon or over the land or waters of the Nez Perce Reservation for the purpose of fishing for salmon or steelhead in return for a fee in money, goods, or any other kind of compensation or consideration.
- (f) “License” means a license to hunt, or fish issued by the Tribe or other agency with jurisdiction to issue licenses recognized by the Nez Perce Tribe.
- (g) “NPTEC” means the Nez Perce Tribal Executive Committee.
- (h) “Open Area” means the place or location whereby regulation it shall be made lawful to operate as a guide or outfitter.
- (i) "Outfitter" includes any person who in return for a fee in money, goods, or any other kind of compensation or consideration provides equipment for salmon or steelhead fishing trips.
- (j) “Permit” means a valid permit issued by Conservation Enforcement authorizing the holder to act as an outfitter or guide within the Reservation.
- (k) “Reservation” means the Nez Perce Reservation.
- (l) “Treaty-reserved rights” means hunting, fishing, gathering, grazing, and any other rights reserved by the Nez Perce Tribe in the Treaty of June 9, 1855, with the Nez Perce Tribe, 12 Stat. 957 (1859) and any other treaty or agreement between the Nez Perce Tribe and the United States.

- (m) “Tribe” means the Nez Perce Tribe.

§3-2-3 Applicability

This Chapter applies to any person who is a member of the Nez Perce Tribe or an enrolled member of any federally recognized Tribe who acts as a guide or outfitter for salmon and steelhead fishing within the exterior boundaries of the Nez Perce Reservation.

§3-2-4 Exceptions

(a) This Chapter does not apply to the exercise of any treaty-reserved rights by a member of the Nez Perce Tribe, or any services provided by a member for a member of the Nez Perce Tribe exercising any treaty-reserved rights.

(b) This Chapter does not apply to a member of the Nez Perce Tribe or an enrolled member of any federally recognized Tribe, who acts as a guide or outfitter with a valid license or permit issued by the State of Idaho.

§3-2-5 Prohibition

(a) No person without a permit shall act as a guide or outfitter within the Reservation.

(b) Any person acting without a permit as a guide or outfitter within the Reservation shall be guilty of the civil infraction of unlawfully acting as a guide or outfitter.

(c) A permit must be in possession of the permittee while engaged in outfitting or guiding and must be produced upon the request of an authorized person. Upon request of Conservation Enforcement or other conservation enforcement, an outfitter or guide shall show proof of a permit. Refusal or failure to show proof of a permit shall be prima facie evidence that a person is acting without a permit.

(d) Any person acting as a guide while under the influence of alcohol or any controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances defined in Chapter 13, 21 U.S.C. § 812, shall be guilty of a civil infraction of unlawfully acting as a guide.

(e) Except as otherwise authorized by NPTC § 3-1-27, no person shall exercise treaty fishing, hunting, or trapping rights while acting as a guide.

§3-2-6 Qualifications for Permits

(a) An applicant for an outfitter and/or guide permit must:

- (1) Be at least eighteen (18) years of age;
- (2) For a guide, have a First Aid Card and be aware of general emergency procedures;
- (3) Have extensive, first-hand knowledge of the area and activities involved in the proposed guiding or outfitting operation;

- (4) Thorough knowledge of the habits of the fish sought, fishing techniques that are successful in the area, be able to properly care for fish, be familiar with the necessary equipment, and have knowledge of licensing requirements, bag limits, seasons, and other applicable laws and regulations; and
- (5) For outfitters or guides operating any boat, an applicant must demonstrate that he has adequate training and experience in reading water and correctly operating and handling the type of boat to be used.
- (6) For outfitters or guides operating any boat, information regarding any vessels to be utilized shall be provided to Conservation Enforcement.

(b) Any person holding a current and valid outfitter's permit may act as a guide without a guide's permit if he possesses the qualifications of a guide as provided in this Chapter.

(c) Only members of the Nez Perce Tribe may be permitted to act as an outfitter under this Chapter. However, a member of a federally recognized Tribe, other than the Nez Perce Tribe, may obtain a permit to act as a guide for an outfitter permitted under this Chapter.

§3-2-7 Applications for Permits

(a) Any person wishing to serve as a guide or outfitter on the Reservation shall obtain a permit by submitting an application to Conservation Enforcement on forms to be provided by Conservation Enforcement.

(b) Conservation Enforcement may require an applicant for a permit to pay a reasonable filing fee to cover costs associated with the processing of an application. In addition, Conservation Enforcement may assess a reasonable yearly fee to cover monitoring and enforcement costs. These fees shall not exceed \$20.00 per year.

(c) Applicants for permits shall submit to interviews as requested by Conservation Enforcement and shall submit other proof of competence and knowledge to guide on the Reservation as requested by Conservation Enforcement.

(d) Conservation Enforcement shall review and grant or deny an application within thirty (30) days of the submission of a completed application.

§3-2-8 Denial of Permit / Appeal

(a) Conservation Enforcement may deny an application for a guiding or outfitting permit if:

- (1) The applicant does not meet the qualification described in § 3-2-6 of this Chapter;
- (2) The applicant failed to submit a complete application; or
- (3) Issuance of additional guiding or outfitting permits could be harmful to natural resources, the environment, or the public interest of the Tribe.

(b) Conservation Enforcement shall provide in writing the reasons for the denial of an application within thirty (30) days of the submission of an application.

(c) An applicant whose application was deemed to be incomplete shall have an opportunity to complete the application and provide other necessary information and resubmit the application without an additional application fee.

(d) An applicant may appeal a decision of Conservation Enforcement to Nez Perce Tribal Court in a manner consistent with the judicial review provisions of Chapter 2-5 of the Nez Perce Tribal Code. The decision of the Tribal Court shall be final, and no appeal shall be granted by the Nez Perce Tribal Court of Appeals.

§3-2-9 Insurance

An outfitter shall maintain and file with Conservation Enforcement a current certificate or proof of liability insurance in the amount as follows:

(a) Insurance coverage against loss resulting from liability for bodily injury, death, or damage to property suffered by any person caused by the outfitter's activities in the minimum amount of one hundred thousand dollars (\$100,000) per accident, with an aggregate of three hundred thousand dollars (\$300,000), because of bodily injury, death, or property damage occurring in an accident.

(b) Insurance coverage on vehicles carrying passengers (including boats) against loss resulting from liability for bodily injury, death, or damage to property suffered by any person caused by the outfitter's activities in the minimum amount of three hundred thousand dollars (\$300,000).

§3-2-10 Boating Equipment Requirement

Every boat utilized for guided or outfitted salmon or steelhead fishing shall comply with NPTC § 3-1-30 and must have:

(a) A U.S. Coast Guard approved life jacket in good condition for each passenger, boat operator, and guide;

(b) A fire extinguisher in working condition; and

(c) A complete first aid kit.

§3-2-11 Reporting

(a) No later than January 30th of each year, guides shall provide Conservation Enforcement with a report of all guide activities which took place on the Reservation for the previous calendar year. Such report shall contain the following information:

(1) The total number of persons guided;

(2) The number and species of fish taken by each person guided;

(3) The total number of days a guide has guided on the Reservation;

- (4) The area where a guide has guided;
- (5) A copy of current First Aid Card; and
- (6) Such other information as is reasonably requested by Conservation Enforcement.

(b) No later than January 30th of each year, outfitters shall provide Conservation Enforcement with a report of all outfitting activities which took place on the Reservation for the previous calendar year. Such report shall contain the following information:

- (1) The type of services provided;
- (2) A copy of a current certificate or proof of liability insurance; and
- (3) The total number of persons provided outfitting services.

(c) Failure to provide the reports described in subsection (a) and (b) of this section may result in the temporary or permanent suspension of the outfitting or guiding permit by Conservation Enforcement.

§3-2-12 Regulations

The Commission may promulgate other necessary rules and regulations which shall apply to guides and outfitters in a manner consistent with rule making requirements of NPTC Chapter 2-5. Upon adoption, the Commission shall provide a copy of any such regulations to all guides and outfitters.

§3-2-13 Open Areas

(a) The Commission shall recommend to NPTEC areas within the Reservation that shall be deemed open for outfitting and guiding activities.

(b) NPTEC shall review the recommendation of the Commission and shall designate areas open for outfitting and guiding activities.

(c) This designation shall include:

- (1) A geographic description of the area deemed to be open;
- (2) The type of guiding and outfitting activities allowed within the open area;
- (3) The maximum number of guides and outfitters permitted to operate within the open area; and
- (4) Any other restriction deemed necessary.

(d) A guide or outfitter may only operate in an open area in a manner consistent with the NPTEC designation. The Commission shall notify all guides and outfitters of areas deemed open for outfitting and guiding activities and any applicable regulations or restrictions.

(e) Regardless of any designation as an open area, if land is privately owned, a guide shall obtain permission from the landowner before guiding a client upon or across such lands.

§3-2-14 Licenses / Other Regulations

(a) Guides and outfitters shall verify that clients have all required licenses for the activity for which the services are being provided. Guides who are not enrolled members of the Nez Perce Tribe must have a salmon or steelhead license issued by the Tribe or the State.

(b) Guides shall ensure that clients comply with bag limits, seasons, area closures, and other applicable regulations.

§3-2-15 Cultural Resources

(a) Guides shall not guide clients to any archaeological resource site or other sensitive cultural resource sites.

(b) Guides and outfitters shall not disclose information about archaeological resource sites to any client.

§3-2-16 Violations

(a) Any person found violating any provision of this Chapter shall be guilty of a civil infraction.

(b) The penalty for a violation of this Chapter shall be a fine of not less than \$100 and no more than \$500 and may include the temporary or permanent suspension of a guide or outfitting permit and/or the temporary or permanent prohibition from acquiring a permit in the future.

(c) Any permitted guide or outfitter who commits any violation of NPTC Chapter 3-1 shall receive a temporary or permanent suspension of a guide or outfitting permit and/or the temporary or permanent prohibition from acquiring a permit in the future.

CHAPTER 3-3
WATER RESOURCES
NEZ PERCE TRIBAL WATER RIGHTS ADMINISTRATION

*Adopted by NPTEC Resolution NP 20-117 (December 24, 2019);
Approved by United States Department of the Interior by letter of December 16, 2020).*

INTRODUCTORY PROVISIONS

§3-3-1 Short Title

This chapter may be referenced as the Nez Perce Tribal Water Rights Administration Code.

§3-3-2 Purposes

The purposes of the Nez Perce Tribal Water Rights Administration Code are as follows:

- (a) To provide an orderly system for the protection, allocation, regulation, dispute-resolution, and use of Tribal water rights consistent with the needs of ecosystems, natural resources, and cultural resources.
- (b) To carry out the SRBA Agreement and the Snake River Water Rights Act of 2004.
- (c) To ensure that the rights of Allottees to the use of water in quantities necessary to carry out the purposes of a trust allotment are secured as provided under the General Allotment Act, 25 U.S.C. Section 381.

§3-3-3 Definitions

- (a) “Allottee” means an individual who holds a trust allotment created pursuant to the General Allotment Act, 25 U.S.C. Section 381, for agricultural purposes, inside or outside the boundaries of the Nez Perce Reservation.
- (b) “Beneficial Use” means any use of water for instream flow, domestic, commercial, municipal, industrial, irrigation, hydropower generation, recreation, stock watering, fish propagation, as well as any other uses that are determined to have a beneficial purpose pursuant to this chapter.
- (c) “Commission” means the Nez Perce Tribal Water Rights Administration Commission.
- (d) “Diversion” means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other action, or the impoundment of water in a reservoir or other storage facility for re-diversion.

(e) "Domestic Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of property, or related accessory uses.

(f) "Instream Flow Water Use" means water use authorized and permitted for the purposes of protecting a tribal interest in a natural stream, lake, or spring, such as recreation, fish or wildlife.

(g) "Nez Perce Tribal Code" or "NPTC" means the Code of the Nez Perce Tribe, as amended.

(h) "NPTEC" means the Nez Perce Tribal Executive Committee, the duly elected governing body of the Nez Perce Tribe pursuant to the Revised Constitution and Bylaws of the Nez Perce Tribe.

(i) "Permit" means a written, conditioned authorization granted pursuant to this chapter, in the form of either a Water Use Permit or a Temporary Water Use Permit, for a Person to use a portion of the Tribal water rights.

(j) "Person" means any individual or group or organization of any kind, whether organized for profit or not, and regardless of the manner of form in which it does business, whether as a sole proprietorship, receiver, partnership, joint venture, trust, estate, firm, unincorporated association, corporation, or government.

(k) "Place of Use" means the location where the water is used.

(l) "Point of Diversion" or "POD" means any location at which water is diverted from a water source.

(m) "Priority date" means the priority date assigned to a water right by tribal, federal or state law.

(n) "Purpose of Use" means the permitted category of use of water under a Permit.

(o) "Reservation" means all lands within the boundaries of the Nez Perce Reservation as established by the Nez Perce Treaty of 1863.

(p) "Snake River Basin Adjudication Agreement" or "SRBA Agreement" means the "Mediator's Term Sheet" dated April 20, 2004; together with, and as approved by, the Snake River Water Rights Act of 2004; NPTEC Resolution 05-210; and the Idaho SRBA Court's January 30, 2007 entry in Case No. 39576 of the "Consent Decree Approving Entry of Partial Final Decrees Determining the Rights of the United States as Trustee for the Benefit of the Nez Perce Tribe to the Use of Water in the Snake River Basin within Idaho and Partial Final Decrees Determining Minimum Stream Flow Water Rights Held by the Idaho Water Resources Board."

(q) "Snake River Water Rights Act" means the Snake River Water Rights Act of 2004, Public Law 108-447, Division J, Title X, 118 Stat. 3431.

(r) "Source" means the named or described water source within the Reservation.

(s) "Transfer" means any change in a point of diversion, place of use, period of use, or purpose of use for a water right.

(t) "Tribal water rights" means those water rights confirmed in the Snake River Water Rights Act of 2004 as rights held in trust for the Tribe by the United States, including those rights held for the benefit of individual Indians on Indian lands, and any other water rights acquired by the Tribe at any other time.

(u) "Tribe" means the Nez Perce Tribe.

(v) "Water Resources Division" or "Division" means the Tribe's Water Resources Division, the lead agency responsible for Tribal water rights administration on the Nez Perce Reservation.

§3-3-4 Scope

This chapter applies to the Nez Perce Tribe, all of its governmental subdivisions, all other entities owned by the Tribe, all Allottees, and any Person desiring to use, or using, Tribal water rights.

§3-3-5 Construction

The provisions of this chapter shall be interpreted to give effect to this chapter's purposes. This chapter shall be construed in a manner that is not inconsistent with provisions of the SRBA Agreement or the Snake River Water Rights Act of 2004.

§3-3-6 Allottee Water Rights and Duties

Allottees are entitled to the use of water in quantities necessary to carry out the purposes of the allotment. In administering and managing this chapter, the Nez Perce Tribe shall ensure that an Allottee's rights are secured as provided under the General Allotment Act, 25 U.S.C. Section 381.

TRIBAL WATER RIGHTS ADMINISTRATION

§3-3-7 Water Resources Division

The Tribe's Water Resources Division, a division of the Tribe's Natural Resources Department, is directed to administer Tribal water rights in the best interests of the Tribe, its members, and Allottees, and is authorized to:

(a) Allocate surface and groundwater for beneficial uses established in this chapter, consistent with the provisions and purposes of this chapter.

(b) Consult and coordinate with the other appropriate departments or divisions of the Tribe to reserve and allocate surface water for non-consumptive, instream flow water uses that are conducive to fish habitat, wildlife habitat, cultural, and recreational purposes.

(c) Develop and adopt water conservation plans necessary to preserve the availability of water resources for the beneficial uses established by this chapter.

(d) Issue, condition, deny, revise, and revoke any Permits established under this chapter, monitor compliance with the requirement to obtain Permits, and monitor compliance with the terms of all Permits.

(e) Take any enforcement action necessary to address violations of this chapter, as further described in § 3-3-12.

(f) Coordinate and interact as necessary with the Idaho Department of Water Resources (IDWR) in the administration of this chapter and the Tribal water rights, including but not limited to: sharing and exchanging water use information; acquiring a database from IDWR of all state-administered water rights and permits within the Reservation; filing objections to any proposed new or modified IDWR water right or permit applications within the Reservation, on any basis consistent with the purposes of this chapter.

§3-3-8 Tribal Water Rights Administration Commission

(a) There is established the Tribal Water Rights Administration Commission, which shall be the administrative body charged with conducting hearings and issuing orders appropriate to the enforcement of this chapter.

(b) The Commission shall consist of three members of the NPTEC Natural Resources Subcommittee. The three members shall serve annually after being selected and appointed to the Commission by the new annual membership of the NPTEC Natural Resources Subcommittee.

WATER RIGHTS ADMINISTRATION PRINCIPLES

§3-3-9 Beneficial Uses

The beneficial uses to which Tribal water rights may be put include the following, which are not listed in order of preference:

- (a) Instream Flow
- (b) Domestic
- (c) Cultural
- (d) Religious/spiritual
- (e) Agricultural

- (f) Stock Watering
- (g) Hatchery Use
- (h) Commercial
- (i) Industrial
- (j) Water Storage
- (k) Groundwater Recharge
- (l) Recreational
- (m) Municipal
- (n) Power Generation
- (o) Leasing to the Idaho Water Supply Bank, solely by the Tribe
- (p) Other uses consistent with the purposes of this chapter.

§3-3-10 Water Management

(a) Existing Uses: Existing water uses of the Tribal water rights as of the date of enactment of this chapter, and initial use dates of those existing uses, will be inventoried by the Water Resources Division.

(b) Initial Use: The Water Resources Division shall assign a date of initial use for new-use Permits established pursuant to this chapter.

(c) The Water Resources Division will establish and maintain a geodatabase of: 1) all existing Tribal water rights; 2) all existing uses of the Tribal water rights that are issued a Permit under this chapter; 3) all new-use Permits issued under this chapter; and 4) all future acquired Tribal water rights.

(d) Drought: In drought conditions water shall be strictly allocated according to Permit initial use date, unless special agreements between the Nez Perce Tribe and other entities provide for a temporary change of water allocation priority. If a drought condition prevails such that not enough water exists to satisfy even senior users, all senior water uses will have partial water uses met, but at a lesser diversion rate than that specified in a Permit. The diversion rate shall be set according to the specific demands in relation to overall supply. The Water Resources Division may set temporary use priorities, restrictions, and, in extreme cases, moratoriums on the use of water under drought conditions. In doing so, the Water Resources Division will coordinate with IDWR, or take any other necessary actions, to ensure that such restrictions only occur after any restrictions that are required to occur first, based on priority date or other legal condition, of any state-administered water rights or permits within the Reservation.

WATER PERMIT SYSTEM

§3-3-11 Permits

- (a) General Principles.
 - (1) No Person shall divert water or undertake any activity affecting or involving the Tribal water rights without first obtaining a Permit from the Water Resources Division.
 - (2) Existing uses of the Tribal water rights that are inventoried and documented in a registry by the Division shall not require an application for Permit, but shall be issued a Permit, subject to any Permit conditions of use, including new conditions, imposed by the Water Resources Division at that time in furtherance of the purposes and provisions of this chapter.
 - (3) No right to any use of the Tribal water rights may be acquired by adverse possession, prescription, estoppel, or laches.
 - (4) No person may create a security interest or authorize the creation of a security interest in a Permit.
 - (5) No conditions of use in a Permit, and none of the processes for renewal or revocation of a Permit, may alter an Allottee's entitlement to the use of water in quantities necessary to carry out the agricultural purposes of the allotment as provided under the General Allotment Act, 25 U.S.C. Section 381.
 - (6) No Permit is required for emergency fire-fighting uses.
 - (7) No Permit is required for sweat house/lodge uses (in an amount not to exceed 15 gallons/day).
- (b) Categories of Permits: Permits under this chapter are limited to the following categories:
 - (1) Water Use Permits for the purpose of appropriating the Tribal water rights for beneficial uses.
 - (2) Temporary Water Use Permits for the purpose of appropriating Tribal water rights for a specified time of less than one (1) year, in a limited amount.
- (c) The Water Resources Division shall establish forms for applications and Permits. Forms shall be made available to applicants at no cost but shall charge a filing fee for submitted

applications. Applications must be approved by the Water Resources Division and a Permit issued before the applicant may take any proposed water use action.

(d) Application forms will at a minimum require the following information: name and contact information; proposed water source; proposed point of diversion; proposed diversion rate, annual volume cap, or other quantity limitation; any proposed diversion works; proposed place of water use; proposed beneficial purpose of water use; and proposed calendar period of water use.

(e) All issued Permits shall include at least the following conditions:

- (1) Permittee's name and contact information.
- (2) Restrictions or limitations as to: water source; point of diversion; diversion rate; annual volume cap; place of water use; any authorized diversion works; beneficial purpose(s) of use; calendar period of use.
- (3) The Permittee's required compliance with the provisions of this chapter.
- (4) Notice that the Permit constitutes a right of entry for Water Resources Division personnel to the entire location of permitted water use, for purposes of inspection, monitoring, and Permit enforcement.
- (5) A maximum initial term of five (5) years, or such shorter term as stated in the Permit.
- (6) Notice that a Permit to pump or divert more than twenty-five gallons per minute shall require the installation and maintenance of a flow rate and total use metering system, at the permittee's expense.
- (7) Notice that no construction of diversion works or diversion of water or other alteration of any water source, is allowed under the Permit until the expiration of the later date of either: (1) 20 days after the expiration of the Notice of Permit Issuance described in Subsection (f) below, if no objection to the Permit has been filed; or (2) final resolution of any objection to the Permit pursuant to a hearing pursuant to §3-3-13 below, including any subsequent appellate process on such objection.

(f) Notice of Permit Issuance: Any Permit issued by the Water Resources Division, whether based on an existing use, or any new use, shall then be publicly noticed. The Division shall publish an abstract of the Permit in a newspaper of general circulation within the Reservation for three (3) weeks, and the Permit itself shall also be posted for three (3) weeks in the Tribal and BIA offices and other such areas as may be deemed appropriate by the Division.

(g) Permit Renewals: All Permits expire on the stated expiration date. A permittee may petition the Water Resources Division for renewal within thirty calendar days prior to the expiration date, and the Water Resources Division shall review the petition and provide a

renewal decision prior to the expiration of the Permit. Based on the permittee's compliance history and subject to review of the petition and any amendment of conditions, a Permit may be renewed. Nothing in the permit renewal process shall alter an Allottee's entitlement to use of water in quantities necessary to carry out the agricultural purposes of the allotment as provided under the General Allotment Act, 25 U.S.C. Section 381.

(h) Transfer of Permits: No Permit may be transferred, exchanged, sold, or otherwise conveyed except as follows:

- (1) Any Person with an ownership interest in an allotment on the Reservation may transfer a Permit to another person with an ownership interest in the same Allotment; or
- (2) Any Person with an ownership interest in an allotment on the Nez Perce Reservation may transfer a Permit to successors to that ownership interest.
- (3) A Permit held by an Allottee may be transferred to the initial purchaser in fee of an Allotment, provided the quantity of water transferred under the Permit does not exceed the amount of water being validly used by the Allottee at the time of transfer, and does not exceed an equitable share of Tribal water rights pursuant to 25 U.S.C. Section 381.

(i) Transfer of a Permit shall not change any of the terms and conditions of the Permit.

(j) Revocation of Permits: The Water Resources Division may revoke a Permit for any of the following reasons:

- (1) Failure to comply with the any term or condition of the Permit.
- (2) Failure to comply with any provision of this chapter.
- (3) Failure to comply with any order or decision of the Water Resources Division, the Commission, or the Tribal Courts.
- (4) Nonuse of water for a period of two years.
- (5) Expiration of the Permit without renewal.
- (6) Any misrepresentation in the Permit application, or in any other statement made as part of the Permit application or modification process.
- (7) Ecosystem conditions or protections of a Permit's water source.

(k) No later than seven calendar days prior to the revocation of a Permit, the Water Resources Division shall notify the permittee of the impending revocation. Notification is deemed to have occurred if the notification is sent to the last known address of the permittee via

certified mail, regardless of whether the permittee picks up the notification. An Allottee whose Permit has been revoked may reapply to obtain a Permit to use water in quantities necessary to carry out the agricultural purposes of the allotment as provided under the General Allotment Act, 25 U.S.C. Section 381.

ENFORCEMENT, HEARINGS, AND APPEALS

§3-3-12 Enforcement

(a) The Water Resources Division is authorized to take appropriate action, including the following:

- (1) Inspect, monitor, and investigate water use, Permit compliance, and any other activities affecting the Tribal water rights in conformity with the purposes or provisions of this chapter;
- (2) Issue warnings, stop work orders, abatement orders, compliance orders, stop use orders, Permit revocations, and take any other action necessary to carry out the purposes or provisions of this chapter; and
- (3) Remove, render inoperative, shut down, close, seal, cap, or otherwise control methods of water diversion, withdrawal, or use, in order to carry out the purposes or provisions of this chapter.

(b) The Nez Perce Tribal Police and the Tribal Prosecutor shall provide assistance as requested by the Water Resources Division in the enforcement of this chapter.

§3-3-13 Hearings on Permit Decisions

(a) An applicant, or any objector, including the Tribe or any tribal department or agency, who is not satisfied with the issuance or non-issuance of a Permit by the Water Resources Division shall request a hearing within twenty (20) calendar days of the closing period of public notice of issuance of the Permit, and shall receive a hearing before the Commission within twenty (20) calendar days of filing the request. The applicant and any objector shall be provided an opportunity for a full factual presentation and for public comment and testimony on the proposed use or activity.

(b) Notice of such hearing will be published at the Commission's expense in a newspaper of general circulation within the Reservation at least one (1) week prior to the date of hearing. Notice shall also be posted in the Tribal and BIA offices and other such areas as may be deemed appropriate by the Commission.

(c) All members of the Commission shall be present and preside over the hearing. The applicant and any objector shall have the right to present oral and written testimony under oath. The Commission shall have the authority to administer oaths to witnesses, to take evidence under oath, and to compel attendance of witnesses or production of documents and other evidence.

(d) After the hearing, the Commission shall render a written decision based solely on the application and record within ten (10) calendar days:

- (1) Approving the Permit with or without conditions;
- (2) Denying the Permit;
- (3) Tabling action pending receipt of additional data or information.

(e) The decision shall be adopted by a majority vote of the Commission and shall be delivered to all parties by certified mail.

(f) All proceedings of the hearing shall be recorded, and, if an appeal is sought, the applicant or any other affected party at their sole cost and expense may request a transcript of the hearing.

(g) An appeal shall be filed by a petition, which has the decision of the Commission attached.

(h) All appeals shall go exclusively to the Nez Perce Tribal Court of Appeals as set forth in §3-3-15.

(i) Any Permit that is the subject of a hearing under this Section shall not take effect or authorize any action to be taken pursuant to it, until a final decision is rendered by the Commission, or by the Nez Perce Tribal Court of Appeals if there is an appeal under §3-3-15.

§3-3-14 Review of Enforcement Decisions and Actions

(a) Request for Hearing. Any affected person may file a written petition for a hearing before the Commission not later than fifteen (15) calendar days after issuance of an enforcement decision by the Water Resources Division.

(b) Hearing before Commission. Upon the proper and timely filing of a petition for a hearing, the Commission will conduct a recorded hearing to receive evidence from the petitioner. The Water Resources Division shall provide to the Commission, on its request, copies of all documents and other information which formed the basis for the decision or action. The Commission may modify or reverse such decision or action of the Water Resources Division only where such decision or action is not supported by hydrologic fact, Tribal policy or law, or is clearly arbitrary and capricious. The Commission will issue a written final decision. Appeals of final decisions of the Commission shall be made exclusively to the Nez Perce Tribal Court of Appeals as described in §3-3-15.

(c) Finality of Decisions. If no request for hearing before the Tribal Court of Appeals is filed within twenty (20) calendar days, the decisions or rulings of the Commission shall be binding and enforceable and not subject to further appeal.

(d) Proceedings on Exercise of Water Resources Division's Emergency Enforcement Powers. When in the exercise of the Water Resources Division's authority under §3-3-12, the Water Resources Division removes, renders inoperative, shuts down, closes, seals, caps or otherwise controls any method of water diversion or withdrawal, any obstruction to the flow of water, or any activities adversely affecting the quality or quantity of any Tribal water rights, the affected person shall have the following appeal deadlines:

- (1) A written petition must be filed with the Commission not later than seven (7) calendar days from the date of the Water Resources Division's action;
- (2) The Commission will conduct a hearing to receive evidence from the person challenging the Water Resources Division's action within three (3) working days of filing such petition after having, in good faith, attempted to notify any affected Permit holders; and
- (3) The Commission shall within forty-eight (48) hours issue a written decision stating the grounds therefor.

(e) All decisions and actions of the Water Resources Division shall remain in effect and be enforced unless modified or set aside by a final decision of the Commission.

§3-3-15 Tribal Court of Appeals – Review of Commission Decisions

(a) Tribal Court of Appeals Review. The Nez Perce Tribal Court of Appeals shall have exclusive jurisdiction to hear appeals from any final decisions or ruling of the Commission, if filed within the time period prescribed in subsection (b).

(b) Filing of Appeal. Appeals of Commission decisions or rulings shall be filed with the Nez Perce Tribal Court of Appeals no later than twenty (20) calendar days from issuance of such decision or ruling of the Commission. Notice of such appeal shall be sent to the Commission.

(c) Exhaustion. No person may seek review by the Nez Perce Tribal Court of Appeals of a decision of the Commission unless such person has first exhausted the administrative appeal rights provided in this chapter.

(d) Standard of Review. Appeals to the Nez Perce Tribal Court of Appeals shall be limited to review of the record of the Commission's administrative decisions or rulings and shall not be a trial de novo. The Tribal Court of Appeals may modify, reverse, or remand a decision or ruling of the Commission only where such decision or ruling is: without substantial basis in fact, in view of the whole record; or is contrary to tribal law or other applicable law; or is clearly arbitrary or capricious, or a clear abuse of discretion.

(e) Administrative Record. Upon receipt by the Commission of notice that an appeal has been filed with the Tribal Court of Appeals, the Commission shall certify and transmit to the clerk of Tribal Court of Appeals the administrative record within fourteen (14) calendar days,

including all documents, transcripts and other information which formed the basis for the decision or ruling being appealed.

(f) All decisions of the Commission shall remain in effect and be enforced unless modified or set aside by a final decision of Nez Perce Tribal Court of Appeals.

§3-3-16 Tribal Court Jurisdiction

The Nez Perce Tribal Court shall have jurisdiction to enforce decisions of the Water Resources Division or the Commission, including through orders granting injunctive relief, in the same manner that the Court enforces its own decisions.

GENERAL PROVISIONS

§3-3-17 Sovereign Immunity

This chapter waives the Tribe's sovereign immunity from suit solely and exclusively with respect to actions described in §3-3-15 above, exclusively in the forum described there. This waiver in no other respect waives the sovereign immunity of the Tribe or any of its departments, divisions, officials, employees, or any other entities or persons protected by the sovereign immunity of the Tribe.

§3-3-18 Notice to Allottees of Exhaustion Requirement

As required by the Snake River Water Rights Act, before asserting any claim against the United States under 25 U.S.C. Section 381, or 28 U.S.C. Section 1491(a), or petitioning the Secretary of Interior for relief of claims relating to 25 U.S.C. Section 381, an Allottee shall first exhaust the remedies available pursuant to §3-3-14 and §3-3-15 above.

§3-3-19 Severability

This chapter is severable. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, will remain unaffected.

§3-3-20 Computation of Time

Unless otherwise provided, the time for performing any action under this chapter shall be computed by eliminating the first day and including the last day. If the last day of any time period in this chapter falls on a Saturday, Sunday, or Tribal holiday, then the duration of the time period is extended to end on the next day that is not a Saturday, Sunday, or Tribal holiday. "Day" denotes a calendar day.