

COQUILLE INDIAN TRIBAL CODE

Chapter 260

Clam Gathering Ordinance

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CLAM GATHERING ORDINANCE

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260.010 -- General

1. Purpose -- The purpose of this ordinance is to provide for regulation of the exercise of clam gathering by members of the Coquille Indian Tribe. Authority for this ordinance is Article I, Section 1, Article I, Section 2 and Article VI, Section 1 of the Tribal Constitution, adopted by eligible voters of the Tribe on August 27, 1991, and approved by the Secretary of the Interior on September 9, 1991.

2. Background and Intent –

a. Since time immemorial, Coquille Tribal Members have gathered shellfish at various marine and freshwater locations within the geographic areas currently referred to as Coos and Curry Counties within the State of Oregon.

b. Article I, Section 1 of the Tribal Constitution provides that, “[t]he jurisdiction of the Coquille Indian Tribe shall extend, to the fullest extent possible under federal laws, over all lands, waters, property, airspace, minerals and other natural resources, and any interest therein, either now or in the future, owned by the Tribe or held in trust by the United States for the Tribe.”

c. Article I, Section 2 of the Tribal Constitution provides that, “Coquille tribal members may exercise tribal hunting, fishing and gathering rights to the fullest extent possible under federal and tribal laws.”

d. Nothing in this Ordinance is intended to diminish or alter the rights of the Tribe or its members, under any authority whatsoever, including but not limited to treaty, common law, aboriginal rights, or international law, to hunt, fish, trap and gather species of any and all types, or to collect materials of any type. The Tribe asserts such rights independent of any provision in this Ordinance, and any provision of this Ordinance that conflicts or interferes with such rights shall be invalid and unenforceable to the extent of any such conflict or interference.

e. The Tribe for many purposes considers members of Tribal members’ families to be part of its community and eligible to benefit from subsistence activities.

3. Jurisdiction – Reserved.

260.050 Definitions

1. "Committee" shall mean the Natural Resources Committee established pursuant to Coquille Indian Tribal Code (CITC) Chapter 144;

2. “Dead Shells” shall mean the shells of deceased species listed in 260.300 below, and also of the shells of deceased crab of all species;

3. “Tribal Member” for the purposes of this Ordinance, shall mean an enrolled Tribal Member as defined by the Coquille Tribe Constitution and pursuant to Coquille Indian Tribal Code (CITC) Chapter 192;

4. "Gathering" shall mean the exercise of traditional, ceremonial or subsistence collection of clams. In this Ordinance, the term “Gathering” is not intended to include all traditional, ceremonial and subsistence materials or species gathered or used by the Tribe and its ancestors;

5. “Clam” or “Clams” shall mean those species described in 260.300 below.

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6. "Tribal Newsletter" shall mean K'wen'inish-ha, the Coquille Indian Tribal government newsletter.
7. "Tribe" shall mean the Coquille Indian Tribe.

260.090 Policy

1. The policy of the Tribe shall be to regulate the exercise of Tribal Members' Gathering rights in order to meet the following objectives:
 - a. Preserve and restore the Tribe's cultural and subsistence practices, with particular emphasis on the intergenerational transfer of knowledge regarding traditional Gathering methods and customs;
 - b. Provide adequate food reserves for Tribal Members and their immediate families, tribal gatherings and celebrations and meetings, and for elderly and needy Tribal Members;
 - c. Ensure the opportunity for Tribal Members to provide for themselves by engaging in Gathering; and
 - d. Provide for responsible Tribal stewardship of the clam resource.

2. In the exercise of Gathering under this Ordinance, conservation of the species shall be the overriding policy of the Tribe. The Tribe will cooperate and coordinate with relevant federal, state and private agencies in monitoring the health and sustainability of the species subject to tribal Gathering. In the event conservation concerns are documented for specific species and/or Gathering locations, the Executive Director (or designee) may, subject to Tribal appropriations and the provisions of this Ordinance, regulate tribal Gathering for conservation purposes, including, as appropriate, the institution of daily Gathering limits and other appropriate restrictions or limitations on harvest. Subject to Tribal appropriations, the Executive Director (or designee) may institute monitoring and reporting requirements for tribal gathering as necessary and appropriate to carry out its conservation oversight responsibilities.

260.110 Licenses

1. Required Annually for Exercise of Tribal Gathering Rights. Any Tribal Member who wishes to participate in Gathering must apply annually for a Tribal Clam Gathering License ("License"). The Tribal Member must have a current License in his or her possession when exercising the right. The License must be shown to any Tribal or State peace officer or any authorized Oregon Department of Fish and Wildlife Representative (collectively referred to below as "Authorized Inspectors") upon reasonable demand if the licensee is engaged or appears to be engaged in the exercise of Tribal Gathering. A license shall be valid only for the calendar year in which it is issued.
2. Issuance. Any Tribal Member may apply for a Tribal Clam Gathering License, by submitting to the Tribe a completed application form stating that he or she agrees to comply fully with all provisions of Tribal law, and is not currently suspended as provided in this Ordinance.

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3. Contents. The License shall include the following items, ALL OF WHICH MUST BE IN A TRIBAL MEMBER'S POSSESSION AT ALL TIMES WHILE GATHERING:

- a. Tribally-issued identification, showing the Tribal Member's name, photograph and identification number;
- b. A current, original Tribal Clam Gathering License (issued by the Coquille Tribe); and
- c. A copy of a current Special Gathering Permit for clams (letter issued by the State of Oregon), as well as any other information required by the Natural Resources Department.

260.120 Regulations and Policies

The Executive Director may adopt regulations and policies necessary to fulfill its duties under this Ordinance and to see that the terms of this Ordinance are properly implemented. A notice describing any rules or regulations approved by the Executive Director under this Section shall be made available for Tribal Member comment by (1) direct mailing to Tribal households; (2) publication in the Tribal Newsletter; or (3) posting on the Tribe's Internet portal. Any such rules or regulations shall not become effective until 30 days after the date of such publication, and must be presented in advance to the Tribal Council

260.150 State Rights of Tribal Members Unaffected

Nothing in this ordinance shall be interpreted to affect or limit in any way the exercise by Tribal Members of hunting, fishing and gathering rights or privileges afforded to all U.S. citizens and legal residents of any of the United States.

260.190 Gathering of Dead Shells

No license shall be required for the gathering of Dead Shells; provided that other jurisdictions, such as the State of Oregon, may regulate the gathering of dead shells.

260.200 Clam Gathering General Requirements

These provisions apply to the harvest of Clams by Tribal Members.

1. All Clam gatherers must have a complete Tribal Clam Gathering License in their possession (see 260.110), which may be obtained from the Coquille Tribal Natural Resources Department.
2. Clam gatherers under the age of 12 must be accompanied by and under the supervision of an adult. Children are encouraged to actively participate in Gathering activities. Adults are encouraged to teach the youth proper Clam Gathering techniques.
3. Consistent with the customs of the Coquille Indian Tribe, harvest of Clams is limited to that which can reasonably be expected to be used by the gatherer and their family, with no waste. Gatherers are encouraged to harvest sufficient amounts to provide for the needs of Tribal elders.

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For special ceremonies Gathering is limited to the amount expected to be used during the ceremony, with no waste.

4. Gatherers shall abide by any Clam harvest closures put in place due to the issuance of a Public Health Advisory by the Oregon Department of Agriculture. Up-to-date information regarding shellfish health advisories may be obtained at the following websites:

http://www.dfw.state.or.us/MRP/shellfish/whats_open.asp

<https://www.oregon.gov/ODA/programs/FoodSafety/Shellfish/Pages/ShellfishClosures.aspx>

5. Annually, Gatherers shall report gathering data as requested by the Natural Resources Department. Failure to report as required by this Ordinance may result in sanctions imposed by the Natural Resources Director. No Tribal Member shall receive a Tribal Clam Gathering License unless he/she has first submitted the information required to be reported for the previous year's Gathering.

6. The Permittee, upon request by an Authorized Inspector, shall produce all three components of a Tribal Clam Gathering License for inspection. A License may be suspended or revoked if a violation of the Gathering privilege has occurred.

7. The Natural Resources Department shall keep accurate, current records concerning Clam gathering under this Ordinance. The Department shall monitor the tribal Gathering harvest by appropriate means, and will share that harvest information with state wildlife officials.

260.300 Clam Harvest

Unless indicated otherwise below, all Clam gathering may be completed by hand or hand-powered tools and will include Razor Clams and Bay Clams (Butter, Littleneck, Cockle, Gaper) as well as purple varnish clams and softshell clams, provided that:

1. It shall be unlawful to remove clams from the shell before leaving the clamming area; and
2. Unbroken butter, cockle, or littleneck clams may be returned only to the immediate digging area. All other clams must be retained regardless of size or condition.

260.310 No Commercial Use

None of the Clams gathered under this Ordinance shall be used for commercial purposes; *provided*, that Dead Shells may be used for commercial purposes when consistent with law.

260.320 Relationship to State Law

1. Nothing in this Ordinance extends the application of Oregon law or constitutes a submission by the Tribe to the jurisdiction of the State of Oregon.

2. Nothing in this Ordinance relieves any person of the obligation to comply with Oregon State law; provided that Tribal Members Gathering Clams in accordance with this Ordinance are determined to act in compliance with Oregon law.

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260.330 Violations

In addition to any other enforcement under this Ordinance, or applicable law, any failure to comply this Ordinance shall be a civil violation enforceable under the Tribal Civil Violations Ordinance (CITC Chapter 650).

260.340 Notice of Violations

The Natural Resources Department shall notify the Tribal Member that a violation has been reported regarding him or her or his or her minor child. The notice shall include a written statement of the facts constituting the violation and the possible penalties. The notice shall also include a date, time and address by which the Tribal Member can submit any statement or evidence, including witness statements, to the Natural Resources Committee, or its designated subcommittee, or such other body designated by Tribal Council (referenced below as “Natural Resources Review Panel”). The Notice shall be sent by United States First Class Mail to the Tribal member’s last known address. The Notice will give the Tribal member an opportunity to present statements or evidence in person and contest the information supporting a reported violation.

260.350 Consideration by Natural Resources Review Panel

The Natural Resources Review Panel shall consider the facts and nature of the alleged violation and shall consider all submitted evidence regarding it. The Natural Resources Review Panel shall make a finding regarding the violation in writing with supporting reasons. Decisions of the Natural Resources Review Panel shall be made by majority vote.

260.400 Penalties

1. If the Natural Resources Review Panel finds that the Tribal Member has committed a violation of this Ordinance, it shall impose the following penalties:

- a. For a first violation, a warning;
- b. For a second violation, forfeiture of the species wrongfully taken and suspension of License privileges from thirty (30) days up to six (6) months;
- c. For a third violation, forfeiture of the species wrongfully taken and suspension of License privileges from six (6) months up to one (1) year;
- d. For a fourth violation, forfeiture of the species wrongfully taken and mandatory suspension of License privileges for one (1) year.

e. After the expiration of the mandatory suspension period described in 260.400(1)(d), a Tribal Member may petition the Natural Resources Review Panel for issuance of a new License pursuant to this Section.

f. Upon receipt of a petition for issuance of a new Tribal Clam Gathering License pursuant to 260.400 (1)(e), the Natural Resources Review Panel shall review all available evidence to decide whether to grant the License. Information the Natural Resources Review Panel may consider in reaching a decision shall include, but is not limited to: the seriousness of the previous violations; any subsequent violations, whether tribal, state, or federal; compliance with other

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conditions and penalties imposed previously by the Natural Resources Review Panel; changed attitude of the Tribal Member towards his or her Gathering responsibilities.

g. If, after consideration of the petition for issuance of a new Tribal Clam Gathering License, the Natural Resources Review Panel decides to deny the petition, the mandatory suspension of License privileges may continue for an additional period of up to one (1) year, at the Natural Resources Review Panel's discretion. A new petition for issuance of a Tribal Clam Gathering License under this section may be submitted after the end of any additional revocation period.

2. If the Natural Resources Review Panel makes a finding that the Tribal Member has committed three (3) or more violations of this ordinance in the ten-year time period preceding the person's most recent violation, the Natural Resources Review Panel may recommend that the Tribal Council revoke the Tribal Member's tribal Gathering privileges under this Ordinance for a period of time or permanently in the absence of a showing of special circumstances why such permanent revocation should not occur.

3. Only the Tribal Council may permanently revoke a Tribal Member's tribal Gathering privileges under this Ordinance.

4. When the Natural Resources Review Panel renders a decision on a reported violation, the conflict-of-interest provisions of CITC 144.130 and CITC 160.100 shall apply. Accordingly, Natural Resources Review Panel members that have a conflict of interest must comply with those provisions of Tribal law.

5. Final decisions of the Natural Resources Review Panel or the Tribal Council shall be in writing, dated, and sent to the Tribal member at his/her last known address.

260.450 Rights not Diminished or Abrogated

Nothing in this Ordinance is intended to diminish or abrogate any rights of the Tribe or any Coquille Tribal Members under any authority whatsoever, including but not limited to International law, treaty, aboriginal right, statute, or common law. A provision of this Ordinance that is interpreted to diminish or abrogate any such right shall be invalid.

260.500 Appeal

Decisions of the Natural Resources Review Panel or the Tribal Council may be appealed to the Tribal Court under tribal law, provided that any such appeal must be filed and served on the Tribe within sixty days of the decision being appealed. The decision of the Tribal Court shall be final.

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