

SUBCHAPTER J—FISH AND WILDLIFE

PART 241—INDIAN FISHING IN ALASKA

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AUTHORITY: 25 U.S.C. 2, 9; 43 U.S.C. 1457; sec. 15, 26 Stat. 1101, 48 U.S.C. 358; Presidential Proclamation, Apr. 28, 1916, 39 Stat. 1777; sec. 2, 49 Stat. 1250, 48 U.S.C. 358a; sec. 4, 72 Stat. 339, as amended 73 Stat. 141.

SOURCE: 28 FR 7183, July 12, 1963, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 241.1 Purpose.

The purpose of the regulations in this part is to regulate all fishing within the Annette Islands Reserve and to regulate Indian and other native commercial fishing in the Karluk Indian Reservation, but they shall not be construed to limit any rights of Indians or other natives of Alaska not specifically covered hereby.

§ 241.2 Annette Islands Reserve; definition; exclusive fishery; licenses.

(a) *Definition.* The Annette Islands Reserve is defined as the Annette Islands in Alaska, as set apart as a reservation by section 15 of the Act of March 3, 1891 (26 Stat. 1101, 48 U.S.C. sec. 358), and including the area identified in the Presidential Proclamation of April 28, 1916 (39 Stat. 1777), as the waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island, Walker Island, Lewis Island, Spire Island, Hemlock Island, and adjacent rocks and islets, located within the broken line upon the diagram attached to and made a part of said Proclamation; and also the bays of said islands, rocks, and islets.

(b) *Exclusive fishery.* The Annette Islands Reserve is declared to be exclusively reserved for fishing by the members of the Metlakatla Indian Community and such other Alaskan Natives as have joined or may join them in residence on the aforementioned islands, and any other person fishing therein without authority or permission of the Metlakatla Indian Community shall be subject to prosecution under the provisions of section 2 of the Act of July 2, 1960 (74 Stat. 469, 18 U.S.C. sec. 1165).

(c) *Licenses.* Members of the Metlakatla Indian Community, and such other Alaskan Natives as have joined them or may join them in residence on the aforementioned islands, shall not be required to obtain a license or permit from the State of Alaska to engage in fishing in the waters of the Annette Islands Reserve.

§ 241.3 Commercial fishing, Annette Islands Reserve.

(a) *Definition.* Commercial fishing is the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of such fish, shellfish, or other fishery resources or parts thereof for profit, or by sale, barter, trade, or in commercial channels.

(b) *Trap fishing sites; number and location.* During 1963, and until the Secretary of the Interior or his duly authorized representative determines otherwise, the Metlakatla Indian Community is permitted to operate not more than one trap per site for salmon fishing at any four of the following sites in the Annette Islands Reserve, Alaska:

(1) Annette Island at 55 degrees 15 minutes 09 seconds north latitude, 131 degrees 36 minutes 00 seconds west longitude.

(2) Annette Island at 55 degrees 12 minutes 52 seconds north latitude, 131 degrees 36 minutes 10 seconds west longitude.

(3) Annette Island at 55 degrees 02 minutes 47 seconds north latitude, 131 degrees 38 minutes 53 seconds west longitude.

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(4) Annette Island at 55 degrees 05 minutes 41 seconds north latitude, 131 degrees 36 minutes 39 seconds west longitude.

(5) Annette Island at 55 degrees 01 minute 54 seconds north latitude, 131 degrees 38 minutes 36 seconds west longitude.

(6) Annette Island at 55 degrees 00 minutes 45 seconds north latitude, 131 degrees 38 minutes 30 seconds west longitude.

(7) Annette Island at 54 degrees 59 minutes 13 seconds north latitude, 131 degrees 36 minutes 48 seconds west longitude.

(8) Ham Island at 55 degrees 10 minutes 13 seconds north latitude, 131 degrees 19 minutes 31 seconds west longitude.

(c) *Trap fishing season.* Fishing for salmon with traps operated by the Metlakatla Indian Community is permitted only at such times as commercial salmon fishing with purse seines is permitted by order or regulation of the Alaska Board of Fish and Game for Commercial Fishing in any part of the following area: from the point at which meridian 132°17'30", thence due east along said parallel to longitude 130°49'15", then due south along said meridian to the point at which it intersects with the United States-Canadian boundary, thence due west along said boundary to the point of beginning, provided, however, that the Secretary or his duly authorized representative may upon request by the Metlakatla Indian Community, authorize fishing for salmon with traps, at such other times as he shall prescribe, which authorization shall be based upon the following criteria:

(1) Number of fish required for spawning escapement and any other requirements reasonable and necessary for conservation;

(2) Fair and equitable sharing of the salmon resource with other user groups fishing in State waters under State law and within the State fisheries management system; and

(3) The federal purpose in the establishment and maintenance of the Metlakatla Indian Reservation.

(d) *Size, construction and closure of fish traps*—(1) *Size.* When any part of a trap is in a greater depth of water than 100

feet, the trap as measured from shore at mean high tide to the outer face of the pot shall not extend beyond 900 feet.

(2) *Construction.* Poles shall be permanently secured to the webbing at each side of the mouth of the pot tunnel and shall extend from the tunnel floor to a height at least four feet above the water. A draw line shall be reeved through the lower end of both poles and the upper end of one.

(3) *Method of closing.* The tunnel walls shall be overlapped as far as possible across the pot gap and the draw line shall be pulled tight and both secured so as to completely close the tunnel. In addition, 25 feet of the webbing of the heart on each side next to the pot shall be lifted or lowered in such manner as to permit the free passage of fish.

(e) *Other forms of commercial fishing.* All commercial fishing, other than with traps, shall be in accordance with the season and gear restrictions established by rule or regulation by the Alaska Board of Fish and Game for Commercial Fishing in any part of the previously defined area; provided, however, that the Secretary or his duly authorized representative may, upon request by the Metlakatla Indian Community authorize such other commercial fishing at such times as he shall prescribe, which authorization shall be based upon the following criteria:

(1) Number of fish required for spawning escapement and any other requirements reasonable and necessary for conservation;

(2) Fair and equitable sharing of the fishery resource with other user groups fishing in State waters under State law and within the State fisheries management system; and

(3) The Federal purpose in the establishment and maintenance of the Metlakatla Indian Reservation.

[28 FR 7183, July 12, 1963; 28 FR 12273, Nov. 20, 1963, as amended at 40 FR 24184, June 5, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 241.4 Subsistence and sport fishing, Annette Islands Reserve.

(a) *Definitions.* (1) Subsistence fishing is the taking or attempting to take any species of fish or shellfish for purposes other than sale or barter, except

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as provided for in paragraph (a)(2) of this section.

(2) Sport fishing is the taking or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line or by such means as defined by regulation or statute of the State of Alaska.

(b) *Restrictions.* Subsistence fishing within the Annette Islands Reserve shall be in accordance with the season, gear and bag restrictions established by rule or regulation of the Alaska Board of Fish and Game for Commercial Fishing in Fishing District No. 1. Sport fishing within the Annette Islands Reserve shall be in accordance with the season, gear and bag restrictions established by rule or regulation for Southeastern Alaska by the Alaska Board of Fish and Game. Both subsistence and sport fishing shall also be in accordance with such ordinances as may be adopted by the Council of the Metlakatla Indian Community and approved by the Secretary of the Interior.

§ 241.5 Commercial fishing, Karluk Indian Reservation.

(a) *Definition.* The Karluk Indian Reservation includes all waters extending 3,000 feet from the shore at mean low tide on Kodiak Island beginning at the end of a point of land on the shore of Shelikof Strait about 1¼ miles east of Rocky Point and in approximate latitude 57 degrees 39 minutes 40 seconds N., longitude 154 degrees 12 minutes 20 seconds W.; thence south approximately 8 miles to latitude 57 degrees 32 minutes 30 seconds N.; thence west approximately 12½ miles to the confluence of the north shore of Sturgeon River with the east shore of Shelikof Strait; thence northeasterly following the easterly shore of Shelikof Strait to the place of beginning, containing approximately 35,200 acres.

(b) *Who may fish; licenses.* The waters of the Karluk Indian Reservation shall be open to commercial fishing by bona fide native inhabitants of the native village of Karluk and vicinity, and to other persons insofar as the fishing activities of the latter do not restrict or interfere with fishing by such natives. Such natives shall not be required to obtain a license to engage in commer-

cial fishing in the waters of the Karluk Indian Reservation.

(c) *Salmon fishing; restrictions.* Commercial fishing for salmon by native inhabitants of the native village of Karluk and vicinity in the waters of the Karluk Indian Reservation shall be in accordance with the seasonal and gear restrictions of the rules and regulations of the Alaska Board of Fish and Game for Commercial Fishing in the fishing district embracing the Karluk Indian Reservation except that:

(1) Beach seines up to 250 fathoms in length may be used northeast of Cape Karluk; and

(2) Prior to July 1, fishing shall be permitted to within 100 yards of the Karluk River where it breaks through the Karluk Spit into Shelikof Strait.

§ 241.6 Enforcement; violation of regulations; corrective action; penalties; closure of restrictions, Annette Islands Reserve.

(a) *Enforcement.* The regulations in this part shall be enforced by any duly authorized representative of the Secretary of the Interior. Any fish trap, vessel, gear, processing establishment or other operation or equipment subject to the regulations of this part shall be available for inspection at all times by such representative.

(b) *Violation of regulations.* Whenever any duly authorized enforcement representative of the Secretary of the Interior has reasonable cause to believe any violation of the regulations of this part relating to fish traps has occurred, he shall direct immediate closure of the trap involved and shall affix an appropriate seal thereto to prevent further fishing. The matter shall be reported without delay to the Area Director, Bureau of Indian Affairs, who shall thereupon report and recommend to the Secretary of the Interior appropriate corrective action.

(c) *Corrective action.* Any violation of the regulations of this part relating to fish traps shall be ground for the temporary or permanent closure, as the Secretary of the Interior may determine, of any or all traps authorized by § 241.3(a), or the withdrawal and rescission of the right to fish for salmon with traps at any or all sites authorized thereby.

(d) *Penalties.* Any person who violates any of the regulations of this part shall be subject to prosecution under section 2 of the Act of July 12, 1960 (74 Stat. 469, 18 U.S.C. sec. 1165), which provides as follows:

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than \$200 or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

(e) *Closure or restriction, Annette Islands Reserve.* The Commissioner of Indian Affairs, after consultation with officials of the Metlakatla Indian Community, is authorized and directed, upon a determination of the necessity to promote sound conservation practices, to restrict or close to commercial, subsistence or sport fishing any portion of the Annette Islands Reserve by notice given appropriate local publicity.

[28 FR 7183, July 12, 1963, as amended at 30 FR 5742, Apr. 23, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 242—COMMERCIAL FISHING ON RED LAKE INDIAN RESERVATION

Sec.

- 242.1 Definitions.
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- 242.3 Authority to operate.
- 242.4 Fishing.
- 242.5 Disposition of unmarketable fish.
- 242.6 Spawning season.
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- 242.9 Quotas.
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- 242.12 Authority to lease.

AUTHORITY: 25 U.S.C. 2; 5 U.S.C. 301.

SOURCE: 25 FR 7784, Aug. 16, 1960, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 242.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Council" means the General Council of the Red Lake Band of the Chippewa Indians as recognized by the Secretary of the Interior.

(c) "Association" means the Red Lake Fisheries Association, incorporated under the laws of the State of Minnesota, and whose articles of incorporation and bylaws and any amendments thereto have been approved by the Council and the Secretary of the Interior.

(d) "Member of Association" means as defined in the Association by-laws.

(e) "Commercial fishing" means the catching of any fish for sale directly or indirectly to others than Indians on the reservations or licensed traders on the reservation for resale to Indians.

§ 242.2 Authority to engage in commercial fishing.

No person shall engage in commercial fishing in the waters of the Red Lakes on the Red Lake Indian Reservation in the State of Minnesota except the Red Lake Fisheries Association, a corporation organized and incorporated under the laws of Minnesota, and its members, and then only in accordance with the regulations in this part. The authority hereby granted to the Association and its members to engage in commercial fishing may, at any time, be canceled and withdrawn and these regulations may be modified and amended.

§ 242.3 Authority to operate.

The association may conduct commercial fishing operations on the reservation under authority of its articles of incorporation and by-laws only in accordance with the regulations in this part.

§ 242.4 Fishing.

(a) Enrolled members of the Red Lake Band of Chippewa Indians may take fish at any time except as prohibited by § 242.6 from waters of the Red Lakes on the Red Lake Indian Reservation for their own use and for sale to:

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(1) Other Indians on the reservation and

(2) Licensed traders on the reservation for resale to Indians.

(b) Fish may be taken for commercial purposes only by the Association through members of the Association in residence on the reservation during the fishing season which shall be May 15 to November 15 inclusive. All fish taken for such purposes shall be marketed through the Association.

(c) In connection with commercial fishing, Association members fishermen may be assisted only by Indians who are members of the Red Lake Band.

§ 242.5 Disposition of unmarketable fish.

All unmarketable live fish taken under authority of these regulations must be returned to the water, and all unmarketable dead fish taken must be buried by the person taking the same.

§ 242.6 Spawning season.

Walleye and northern pike (or pickerel) shall not be taken during their spawning season except for propagation purposes.

§ 242.7 Suspension.

All commercial fishing operations may be suspended by order of the Secretary at any time.

§ 242.8 Penalty.

Any Indian violating the provisions of §§ 242.4 and 242.6 shall forfeit his right to take fish for any purpose for a period of three months.

§ 242.9 Quotas.

The Secretary may set such commercial quotas as he may find desirable, based on available biological and other information, on the amount of fish which may be taken under authority of the regulations in this part in any one season. Until otherwise determined by the Secretary, not more than 650,000 pounds of walleyes may be taken in any one fishing season.

§ 242.10 Fishing equipment limitations.

(a) Any variety of fish may be taken by enrolled members of the Band from any waters on the reservation by hook

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and line, and from Upper and Lower Red Lakes by gill net or entrapment gear for noncommercial use only.

(b) For commercial fishing each member of the Association shall be limited to eight gill nets of 300 feet in length and six feet in depth, of which not to exceed six of such nets may be of nylon and other synthetic material.

(c) Gill nets for taking pike shall have a mesh of not less than 3½ inches extension measure.

(d) Gill nets for taking whitefish shall have a mesh of not less than 5½ inches extension measure.

(e) Entrapment gear may only be used by members of the Association for taking fish of any variety for commercial purposes or propagation, in accordance with such specifications and directions as the manager of the Association may provide.

(f) All nets used in Red Lake Reservation waters must be marked with appropriate tags to be furnished by the Association.

§ 242.11 Royalty.

The Association shall pay five percent of the gross receipts from the sale of fish by the Association to the designated collection officer of the Bureau of Indian Affairs, which shall be deposited to the credit of the Band in the Treasury of the United States.

§ 242.12 Authority to lease.

The Band, with the approval of the Secretary, may execute a lease or permit on its fisheries plant and hatchery at Redby, Minnesota, to the Association.

PART 243—REINDEER IN ALASKA

DECLARATIONS OF OWNERSHIP

Sec.

243.1 Agent.

243.2 Filing of form.

243.3 Receipt of form.

AUTHORITY: Sec. 12, 50 Stat. 902; 48 U.S.C. 250k. Interpret or apply sec. 3, 50 Stat. 900; 48 U.S.C. 250b.

SOURCE: 22 FR 10543, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

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DECLARATIONS OF OWNERSHIP

§ 243.1 Agent.

The General Reindeer Supervisor at Nome, Alaska, is hereby designated as the duly authorized agent of the Secretary of the Interior, with whom all declarations of reindeer ownership required by the act of September 1, 1937 (50 Stat. 900; 48 U.S.C. 250-250p), must be filed within the time limits specified in the act.

§ 243.2 Filing of form.

Pursuant to the provisions of section 3 of the act, declarations of ownership of reindeer in Alaska should be made by claimants upon the prescribed form. This form should be executed in quadruplicate. All four copies should be submitted in person or by mail to the General Reindeer Supervisor, Nome, Alaska, who has been designated as the duly authorized agent of the Secretary of the Interior pursuant to section 3 of the aforementioned act. Envelopes containing declarations of ownership of reindeer which are mailed to said agent must bear postmarks not later than midnight of September 1, 1938, in order to meet the requirements of the law. All declarations submitted in person by the owner, or his representative, must be filed with said agent at his office at Nome, Alaska, on or before 5 o'clock p.m., September 1, 1938.

NOTE: Copies of the form mentioned may be obtained from the General Reindeer Supervisor, Nome, Alaska.

§ 243.3 Receipt of form.

Upon receipt of each person's declaration of ownership of reindeer in Alaska, the General Reindeer Supervisor shall sign the receipt thereof in the proper place in the form, and shall submit two copies of the declaration to the Commissioner of Indian Affairs, retain one copy in his record, and return one copy to the claimant. All declarations of ownership of reindeer in Alaska which are included in the records of the office of the General Reindeer Supervisor shall be kept open to public inspection in Alaska in accordance with section 3 of said act.

PART 247—USE OF COLUMBIA RIVER TREATY FISHING ACCESS SITES

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- 247.1 What definitions apply to this part?
- 247.2 What lands are subject to these regulations?
- 247.3 Who is eligible to use the sites?
- 247.4 How can eligible users be identified?
- 247.5 What laws and regulations apply to the people who use these sites?
- 247.6 What will happen if I damage Government-owned property?
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- 247.8 What am I responsible for if I use the facilities?
- 247.9 What other rules apply while I am using the facilities?
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- 247.14 Can I hook up a campsite to on-site or off-site utilities?
- 247.15 May I reserve a campsite or drying shed?
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- 247.17 What are the restrictions on fires?
- 247.18 What are the sanitation prohibitions?
- 247.19 Can a site be used for commercial enterprises other than fishing enterprises by the tribes?
- 247.20 What are the road and trail prohibitions?
- 247.21 Can I appeal an administrative action?

AUTHORITY: 25 U.S.C. 2 and 9; Pub. L. 100-581, Title IV.

SOURCE: 62 FR 50868, Sept. 29, 1997, unless otherwise noted.

§ 247.1 What definitions apply to this part?

Abandoned property means property left at a site while the owner of the property is not actively engaged in fishing or drying or processing fish. Abandoned property may include:

- (1) Vehicles;
- (2) Mobile trailers;
- (3) Campers;
- (4) Tents;
- (5) Tepees;
- (6) Boats, or;
- (7) Other personal property.

Archaeological Resource means material remains of prehistoric or historic

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human life or activities that are of archaeological interest and are at least 50 years of age, and the physical site, location, or context in which they are found.

Area Director means the position responsible for administration of the Portland Area of the Bureau of Indian Affairs.

Campfire means fire, not within any building, motor home or trailer, which is used for cooking, personal warmth, lighting, ceremonial or aesthetic purposes.

Damage means to injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill or in any way harm or disturb.

Secretary means the Secretary of the Interior or his designee.

Sites means Treaty Fishing Access Sites.

Treaty Fishing Access Sites means all Federal lands acquired by the Secretary of the Army and Transferred to the Secretary of the Interior pursuant to Public Law 100-581, Title IV, November 1, 1988, to be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities.

Vehicle means any device in, upon, or by which any person or property is or may be transported, and including any motor, frame, chassis, or body of any motor vehicle, or camper shell, except devices used exclusively upon stationary rails or tracks.

§ 247.2 What lands are subject to these regulations?

(a) Any treaty fishing access sites and ancillary fishing facilities.

(b) These sites and facilities are managed for the exclusive use of members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakima Indian Reservation.

(c) The Area Director may suspend or withdraw the privileges of use of any or all of the facilities at the sites for any violation of the regulations in this part or of any rules issued under the regulations in this part.

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§ 247.3 Who is eligible to use the sites?

(a) You may use the sites for access to usual and accustomed fishing areas and ancillary fishing facilities if you are a member of the Confederated Tribes and Bands of the Yakima Indian Nation (Yakima), the Confederated Tribes of the Warm Springs Reservation of Oregon (Warm Springs), the Confederated Tribes of the Umatilla Indian Reservation (Umatilla), and the Nez Perce Tribe (Nez Perce).

(b) The general public or people fishing who do not belong to the tribes listed above cannot use these sites.

(c) Families of such Indians may camp on the sites.

(d) You may not deny access to these sites to any eligible user.

§ 247.4 How can eligible users be identified?

(a) In order to use these sites you must possess an identification card issued by your tribe identifying you as a member of that tribe.

(b) You must exhibit the identification upon request of authorized Federal, State, local or tribal officials.

§ 247.5 What laws and regulations apply to the people who use these sites?

You may use access sites only if you obey the following rules:

(a) You may not use any of the sites for any activity that is contrary to the provisions of your tribe or contrary to Federal law or regulation, or in the absence of Federal law or regulation governing health, sanitation, and safety requirements, State or U.S. Public Health Service standards.

(b) The Area Director may suspend or withdraw the privileges of use of any or all of the facilities at the sites for any violation of the regulations in this part or for any violation of any rules issued under the regulations in this part. You cannot dig in, destroy, or remove any portion of a prehistoric or historic archaeological site or artifact.

(c) Nothing contained in the regulations in this part is intended or shall be construed as limiting or affecting any treaty rights of any tribe nor as subjecting any Indian properly exercising tribal treaty rights to State

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fishing laws or regulations that are not compatible with those rights.

§ 247.6 What will happen if I damage Government-owned property?

If you commit any act of vandalism, depredation, destruction, theft, or misuse of the land, buildings, fences, signs, or other structures that are the property of the United States you will be subject to prosecution under applicable Federal or State law.

§ 247.7 Can I build a structure?

(a) You may not build any structures at the sites except as allowed under paragraph (d) of this section .

(b) You may use the camping facilities that have been constructed at the sites.

(c) In addition to these structures, you may camp in tents, tepees, campers, and mobile trailers. You must remove any tents, tepees, campers, temporary drying sheds, and mobile trailers from the sites at any time you are not actively engaged in fishing, drying fish, or processing fish by other means, and during the time a site is closed for maintenance.

(d) Where the Area Director has designated areas for the construction of temporary drying sheds, you may construct a temporary drying shed where space is available. You must remove any temporary drying shed you build.

(e) If you erect or maintain a structure in violation of this section, the Area Director may order it removed at any time.

(f) The Area Director:

(1) Is not required to notify you before removing the structure; and

(2) Will charge you the cost of disposing of the structure.

§ 247.8 What am I responsible for if I use the facilities?

You are responsible for:

(a) Campsites, drying sheds and other facilities during the time you occupy or use them; and

(b) Any personal property that you erect, place, or maintain on the site during the time you occupy the site, including:

- (1) Tents;
- (2) Tepees;
- (3) Campers;

- (4) Mobile trailers;
- (5) Temporary drying sheds;
- (6) Fishing platforms;
- (7) Boats; and
- (8) Other fishing equipment.

§ 247.9 What other rules apply while I am using the facilities?

(a) You cannot construct, take possession of, occupy or otherwise use any access site or structure for residential purposes at an access site.

(b) Neither the United States nor any officer or employee thereof warrants, makes any representation, or is responsible for the safety or condition of any personal property.

§ 247.10 What will happen if I abandon property?

If you abandon property at a site, it may be removed without your consent and disposed of at your expense, if the Area Director approves.

§ 247.11 What other restrictions apply to use of the sites?

The Area Director may prescribe and post at the sites regulations covering:

- (a) Camping;
- (b) Picnicking;
- (c) Use of alcoholic beverages;
- (d) Setting or use of fires;
- (e) Use of the sites for cleaning fish;
- (f) Deposit of garbage, paper, cans, bottles, or rubbish of any kind; or
- (g) Use of the sites for any commercial activity (including commercial purchase of fish).

§ 247.12 Will I have to pay to use a site?

No. Neither you nor any member of your family will be charged for using a site in accordance with this part.

§ 247.13 Are the facilities available year around?

(a) The Area Director may close facilities at the sites for necessary maintenance during the winter or at other times if necessary. Before closing the facilities, the Area Director will consult with delegated tribal representatives, if possible.

(b) You will still be able to access your treaty fishing rights on the Columbia River through these sites while they are closed.

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(c) If any sites are closed or restricted, any affected tribe can contact the Area Director and ask that the sites be opened. The Area Director will work together with the tribes to consider these requests.

§ 247.14 Can I hook up a campsite to on-site or off-site utilities?

(a) You must share access to all on-site facilities.

(b) Because there are a limited number of faucets available, only short-term hose use is allowed to ensure that others have access to water.

(c) You may not tap into electrical lines or outlets, or have electrical power brought in from an outside source for campsite use.

§ 247.15 May I reserve a campsite or drying shed?

No. You may not reserve a campsite, drying shed, or other facility.

(a) You must use campsites, drying sheds, and other facilities on a first-come, first-served basis.

(b) You may not occupy one or more campsites solely for the purpose of reserving a site for another tribal member.

§ 247.16 What fire is permitted?

(a) You may have a fire in designated fire places, and other areas designated for fires.

(b) You may have a fire inside a drying shed in a manner that does not jeopardize the structure.

§ 247.17 What are the restrictions on fires?

(a) You cannot burn timber, trees, slash, brush or grass unless you have a permit issued by the Area Director or his designee.

(b) You cannot build a fire in an unsafe location or leave a fire without completely extinguishing it.

(c) You must control all fire and not allow it to escape.

§ 247.18 What are the sanitation prohibitions?

(a) You cannot deposit in any toilet, toilet vault, or plumbing fixture anything that could damage or interfere with the operation or maintenance of the fixture.

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(b) You must dispose of all garbage, including any paper, cans, bottle, sewage, waste water or material, either by removal from the site, or by depositing it into receptacles or at places provided for such purposes.

(c) You may not bring refuse, debris, or toxic or hazardous materials to the sites for disposal.

(d) All toxic or hazardous materials must be properly removed from the sites. You may not dispose of such materials in a sewer line, tank, drain, storm drain, or on the ground.

(e) You must not place in or near the river or other water any substance that pollutes or may pollute the water.

(f) If dumping stations are not available, you must transport sewage off site.

§ 247.19 Can a site be used for commercial enterprises other than fishing enterprises by the tribes?

(a) You may operate commercial activities during commercial fishing seasons, and subsistence activities, incidental to treaty fishing on the site.

(b) You may not construct or operate other types of commercial enterprises, such as firework stands.

§ 247.20 What are the road and trail prohibitions?

(a) You cannot damage or leave in a damaged condition any road, trail, or segment thereof.

(b) You cannot block, restrict, or otherwise interfere with the use of a road, trail, or gate.

§ 247.21 Can I appeal an administrative action?

You may appeal any decision made by the Area Director under this part to the Commissioner of Indian Affairs. You may appeal any decision of the Commissioner of Indian Affairs to the Secretary of the Interior in accordance with part 2 of this chapter.

PART 248—USE OF COLUMBIA RIVER INDIAN IN-LIEU FISHING SITES

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248.1 Fishing sites subject to regulation.

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9.

SOURCE: 32 FR 3945, Mar. 10, 1967, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 248.1 Fishing sites subject to regulation.

Use of any of the lands acquired by the Secretary of War and transferred to the Secretary of the Interior pursuant to the Act of March 2, 1945 (59 Stat. 22), as amended (hereinafter called "in lieu fishing sites" or "sites") to replace Indian fishing grounds submerged or destroyed as a result of the construction of the Bonneville Dam shall be subject to the following rules and regulations. The Area Director, Portland Area Office, Bureau of Indian Affairs (hereinafter called "Area Director"), may suspend or withdraw the privileges of access to or use of any or all the sites for any violation of the regulations in this part or of any rules issued pursuant to the regulations in this part.

§ 248.2 Persons eligible to use sites.

The in-lieu fishing sites are for the benefit of the Yakima, Umatilla, and Warm Springs Indian Tribes, and such other Columbia River Indians, if any, who had treaty fishing rights at locations inundated or destroyed by Bonneville Dam, to be used in accordance with treaty rights. The use of the sites is restricted to such Indians; however, this shall not preclude the use of camping areas on the sites by the families of such Indians.

§ 248.3 Identification of eligible users.

For the purpose of identification of the persons entitled to use the sites, each eligible Indian shall, when using said sites, have in his possession an identification card issued by his tribe identifying him as a member of that tribe. The Area Director shall issue identification cards to such other Columbia River Indians, if any, as may be eligible to use the sites. Any individual

using the sites shall exhibit the identification upon request of authorized Federal, State or local officials.

§ 248.4 Applicability of laws and regulations.

No Indian shall use any of the sites for any activity that is contrary to the provisions of any applicable law or regulation of his tribe or contrary to any applicable State or Federal law or regulation. The Area Director may in his discretion suspend or withdraw privileges for future access to or use of the sites for violation of such laws and regulations: *Provided*, That, nothing contained in the regulations in this part is intended or shall be construed as limiting or affecting any treaty rights of any tribe nor as subjecting any Indian properly exercising tribal treaty rights to State fishing laws or regulations which are not compatible with such rights.

§ 248.5 Damage to Government-owned property.

Anyone committing any act of depredation, destruction, theft, or misuse of the land, buildings, fences, signs, or other structures which are the property of the United States shall be subject to prosecution under applicable Federal or State law.

§ 248.6 Structures.

Dwellings, camping facilities, and other structures such as fish drying facilities and fishing platforms may be erected, placed, or maintained on the sites for use in the conduct of treaty fishing and related activities. Sites must be used in a manner that conforms to the health, sanitation, and safety requirements of the State or local law, or, in the absence of appropriate State or local laws, to the health, sanitation, and safety recommendations of the U.S. Public Health Service. The privileges or right of access to or use of the sites of any individual may be suspended or withdrawn, in the discretion of the Area Director, when such individual having violated such health, sanitation, and safety requirements repeats such violation after having been given notice to cease and desist therefrom.

[59 FR 16757, Apr. 7, 1994]

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§ 248.7 Liability for condition and use of structures.

Any private structures including drying sheds, tents, tepees, or fishing platforms erected, placed, or maintained on the sites are the sole responsibility of their owners, and all use of such structures shall be at the user's or owner's sole responsibility and risk. Neither the United States nor any officer or employee thereof warrants, makes any representation, or is responsible for the safety or condition of any such structure.

[34 FR 2248, Feb. 15, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 248.8 Abandoned property.

No vehicle, trailer, boat, or other personal property shall be abandoned on the sites. Property abandoned in violation of the regulations in this part may be removed without prior notice to the owner and may be disposed of at the owner's expense as determined by the Area Director.

§ 248.9 Camping and use restrictions.

All camping, picnicking, use of alcoholic beverages, setting or use of fires, use of the sites for cleaning of fish, the deposit of any garbage, paper, cans, bottles, or rubbish of any kind, or use of the sites for any commercial activity (including commercial purchase of fish) shall be subject to such prohibitions, restrictions, or other regulations as the Area Director may prescribe and cause to be posted on the site or sites to which said regulations are applicable; provided that no fee may be charged to any Indian or member of his family for any such use.

§ 248.10 Appeals from administrative actions.

Any decision made by the Area Director under this part 248 shall be subject to appeal to the Commissioner of Indian Affairs, and any decision on the Commissioner of Indian Affairs on such an appeal may be appealed to the Secretary of the Interior in accordance with part 2 of this chapter.

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PART 249—OFF-RESERVATION TREATY FISHING

Subpart A—General Provisions

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- 249.1 Purpose.
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- 249.5 Use of unauthorized helpers or agents.
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AUTHORITY: 25 U.S.C. 2 and 9; 5 U.S.C. 301, unless otherwise noted.

SOURCE: 32 FR 10434, July 15, 1967, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

Subpart A—General Provisions

§ 249.1 Purpose.

(a) The purposes of these regulations (part 249) are:

(1) To assist in protecting the off-reservation nonexclusive fishing rights which are secured to certain Indian tribes by their treaties with the United States;

(2) To promote the proper management, conservation and protection of fisheries resources which are subject to such treaties of the United States;

(3) To provide for determination of restrictions on the manner of exercising nonexclusive fishing privileges under rights secured to Indian tribes by such treaties of the United States necessary for conservation of the fisheries resources;

(4) To assist in the orderly administration of Indian Affairs;

(5) To encourage consultation and cooperation between the states and Indian tribes in the management and improvement of fisheries resources affected by such treaties;

(6) To assist the states in enforcing their laws and regulations for the management and conservation of fisheries resources in a manner compatible with the treaties of the United States which are applicable to such resources.

(b) The conservation regulations of this part 249 are found to be necessary to assure that the nonexclusive rights secured to certain Indian tribes by treaties of the United States to fish at

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usual and accustomed places outside the boundaries of an Indian reservation shall be protected and preserved for the benefit of present and future members of such tribes in a manner consistent with the nonexclusive character of such rights. Any exercise of an Indian off-reservation treaty fishing right shall be in accordance with this part and any applicable area regulations issued hereunder.

[32 FR 10434, July 15, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 249.2 Area regulations.

(a) The Secretary of the Interior may upon request of an Indian tribe, request of a State Governor, or upon his own motion, and upon finding that Federal regulation of Indian fishing in any waters in which Indians have a treaty-secured nonexclusive fishing right is necessary to assure the conservation and wise utilization of the fishery resources for the present and future use and enjoyment of the Indians and other persons entitled thereto, promulgate regulations to govern the exercise of such treaty-secured fishing right in such waters for the purpose of preventing, in conjunction with appropriate State conservation laws and regulations governing fishing by persons not fishing under treaty rights, the deterioration of the fishery resources.

(b) In formulating such regulations the Secretary of the Interior may incorporate such State laws or regulations, or such tribal regulations as have been approved by the Commissioner of Indian Affairs, as he finds to be consistent with the Indians' rights under the Treaty and the conservation of the fishery resources.

(c) Before promulgating such regulations the Secretary of the Interior will seek the views of the affected Indian tribes, of the fish or game management agency or agencies of any affected State, and of other interested persons. Except in emergencies where the Secretary finds that the exigencies require the promulgation of regulations to be effective immediately, a notice of proposed rule making will be published in the FEDERAL REGISTER in accordance with 5 U.S.C. 553 to afford an opportunity to submit comments and infor-

mation, at such times and in such manner as may be specified in the notice. In the event of the emergency promulgation of regulations, interested persons will be afforded, as soon as possible, an opportunity to request amendment or revocation thereof.

(d) Any regulations issued pursuant to this section shall contain provisions for invoking emergency closures or restrictions or the relaxation thereof at the field level when necessary or appropriate to meet conditions not foreseeable at the time the regulations were issued.

(e) Regulations issued pursuant to this § 249.2 may include such requirements for recording and reporting catch statistics as the appropriate state fish and game agencies or the Secretary of the Interior deem necessary for effective fishery management.

§ 249.3 Identification cards.

(a) The Commissioner of Indian Affairs shall arrange for the issuance of an appropriate identification card to any Indian entitled thereto as prima facie evidence that the authorized holder thereof is entitled to exercise the fishing rights secured by the treaty designated thereon. The Commissioner may cause a federal card to be issued for this purpose or may authorize the issuance of cards by proper tribal authorities: *Provided*, That any such tribal cards shall be countersigned by an authorized officer of the Bureau of Indian Affairs certifying that the person named on the card is a member of the tribe issuing such card and that said tribe is recognized by the Bureau of Indian Affairs as having fishing rights under the treaty specified on such card. Copies of the form of any identification card authorized pursuant to this section and a list of the authorized Bureau of Indian Affairs issuing or countersigning officials shall be furnished to the fisheries management and enforcement agencies of any State in which such fishing rights may be exercised.

(b) No such card shall be issued to any Indian who is not on the official membership roll of the tribe which has been approved by the Secretary of the Interior. *Provided*, That until further

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notice, a temporary card may be issued to any member of a tribe not having an approved current membership roll who submits evidence of his/her entitlement thereto satisfactory to the issuing officer and, in the case of a tribally issued card, to the countersigning officer. Any Indian claiming to have been wrongfully denied a card may appeal the decision in accordance with part 2 of this chapter.

(c) No person shall be issued an identification card on the basis of membership in more than one tribe at any one time.

(d) Each card shall state the name, address, tribal affiliation and enrollment number (if any) of the holder, identify the treaty under which the holder is entitled to fishing rights, contain such additional personal identification data as is required on fishing licenses issued under the law of the State or States within which it is used, and be signed by the issuing officer and by the holder.

(e) No charge or fee of any kind shall be imposed by the Commissioner of Indian Affairs for the issuance of an identification card hereunder: *Provided*, That this shall not prevent any Indian tribe from imposing any fee or tax which it may otherwise be authorized to impose upon the exercise of any tribal fishing right.

(f) All cards issued by the Commissioner of Indian Affairs pursuant to this part 249 shall be and remain the property of the United States and may be retaken by any Federal, State, or tribal enforcement officer from any unauthorized holder. Any card so retaken shall be immediately forwarded to the officer who issued it.

(g) The failure of any person who claims to be entitled to the benefits of a treaty fishing right to have such a card in his immediate personal possession while fishing or engaging in other activity in the claimed exercise of such right to display it upon request to any Federal, State, or tribal enforcement officer shall be prima facie evidence that the person is not entitled to exercise an Indian fishing right under a treaty of the United States.

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(h) No person shall allow any use of his identification card by any other person.

(5 U.S.C. 301; R.S. 463 and 465)

[32 FR 10434, July 15, 1967, as amended at 46 FR 4873, Jan. 19, 1981. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 48 FR 1052, Jan. 10, 1983]

§ 249.4 Identification of fishing equipment.

All fishing gear or other equipment used in the exercise of any off-reservation treaty fishing right shall be marked in such manner as shall be prescribed in regulations issued pursuant to § 249.2 hereof to disclose the identity of its owner or user. In the absence of proof to the contrary, any fishing gear which is not so marked or labeled shall be presumed not to be used in the exercise of an off-reservation treaty fishing right and shall be subject to control or seizure under State law.

§ 249.5 Use of unauthorized helpers or agents.

No Indian shall, while exercising off-reservations treaty-secured fishing rights, permit any person 12 years of age or older other than the authorized holder of a currently valid identification card issued pursuant to this part 249 to fish for him, assist him in fishing, or use any gear of fishing location identified as his gear or location pursuant to this part 249.

§ 249.6 Enforcement and penalties.

(a) Any Indian tribe with a tribal court may confer jurisdiction upon such court to punish violations by its members of this part 249 or of the area regulations issued pursuant thereto. Jurisdiction is hereby conferred upon each Court of Indian Offenses established pursuant to part 11 of this chapter to punish such violations by members of tribes whose reservations are under the jurisdiction of such court. Courts of Indian Fishing Offenses may be created pursuant to part 11 of this chapter to punish such violations by members of any tribe or group of tribes for which there is otherwise no Court of Indian Offenses or tribal court with jurisdiction to enforce this part 249. The provisions of part 11 of this chapter shall apply to any such court with

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respect to the exercise of its jurisdiction to enforce this part 249. All jurisdiction conferred by this section shall apply without regard to any territorial limitations otherwise applicable to the jurisdiction of such court.

(b) Acceptance or use of an identification card issued pursuant to this part 249 or use of any fishing gear marked or identified pursuant thereto shall constitute an acknowledgment that the fishing done under such card or with such gear is in the claimed exercise of a tribal fishing right and is subject to the jurisdiction of the tribal court, Court of Indian Offenses, or Court of Indian Fishing Offenses. Except as may be otherwise provided by tribal regulations approved by or on behalf of the Secretary of the Interior, any person claiming to be exercising such tribal right and fishing in violation of the regulations contained in or issued under this part 249 may be punished by a fine of not to exceed \$500, imprisonment of not to exceed 6 months, or both, and shall have his tribal fishing privileges suspended for not less than 5 days for any violation of this part 249 or of any area regulation issued pursuant thereto. The court shall impound the fishing rights identification card of any person for the period which the fishing privileges are suspended.

§ 249.7 Savings provisions.

Nothing in this part 249 shall be deemed to:

(a) Prohibit or restrict any persons from engaging in any fishing activity in any manner which is permitted under state law;

(b) Deprive any Indian tribe, band, or group of any right which may be secured it by any treaty or other law of the United States;

(c) Permit any Indian to exercise any tribal fishing right in any manner prohibited by any ordinance or regulation of his tribe;

(d) Enlarge the right, privilege, or immunity of any person to engage in any fishing activity beyond that granted or reserved by treaty with the United States;

(e) Exempt any person or any fishing gear, equipment, boat, vehicle, fish or fish products, or other property from the requirements of any law or regulation pertaining to safety, obstruction of navigable waters, national defense, security of public property, pollution, health and sanitation, or registration of boats or vehicles;

(f) Abrogate or modify the effect of any agreement affecting fishing practices entered into between any Indian tribe and the United States or any State or agency of either.