

Memorandum 2016-35

Fish and Game Law (Comments of Yurok Tribe)

The Commission¹ is presently studying the Fish and Game Code in an effort to propose a recodification of that code.

In the course of this study, the Commission has received two comment letters from the Yurok Tribe, indicating that certain sections of the Fish and Game Code must be repealed or revised to avoid impinging on the Tribe's fishing rights. Those letters are attached as an exhibit to this memorandum.

After providing general background on tribal fishing and hunting rights, this memorandum discusses the specific reforms recommended by the Yurok Tribe in an Exhibit to its February 19, 2016 comment letter.²

This memorandum is primarily informational and does not include any staff recommendations. For the most part, the Yurok Tribe comments focus on issues concerning the tribe. However, the provisions of the code discussed in the comments, in some cases, apply to other tribes as well as the Yurok or to tribes generally.

Given that this memorandum is the Commission's first foray into issues of tribal fishing and hunting, the staff concluded that this memorandum could serve to introduce the broader issue and solicit further public comment, before the staff seeks to resolve the code's treatment of tribal fishing and hunting issues. As such, this memorandum does not call for any Commission decisions.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Exhibit pp. 75-79. The Yurok Tribe's February 19, 2016 letter includes several Exhibits. Exhibit C (Yurok Tribe Recommended Revisions) contains the recommended reforms discussed in this memorandum.

The Tribe also provided an additional background document, the 1993 Opinion of the Solicitor of the U.S. Department of the Interior (cited in footnote 10 of the Tribe's February 19, 2016 letter). That document is on file with the Commission.

The staff intends to prepare a second memorandum for consideration at the Commission's September meeting. That memorandum will present further staff analysis and any additional public comment that the Commission receives. At that point, the Commission will be asked to decide how the issues discussed in this memorandum should be addressed. The staff expects that these decisions will be incorporated in an upcoming tentative recommendation.

Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code.

BACKGROUND

Tribal Reserved Rights, Generally

For context, it is helpful to understand generally the legal principles governing tribal reserved fishing, hunting, gathering, and trapping rights (hereafter, collectively, "tribal reserved rights").

According to *Cohen's Handbook of Federal Indian Law*, tribal reserved rights derive from Aboriginal title.³ The tribal reserved rights remain with the tribe that originally possessed Aboriginal title unless title "has been granted to the United States by treaty, abandoned, or extinguished by statute."⁴ The power to extinguish Aboriginal title or use rights rests exclusively with the federal government.⁵

As a general matter, tribe members may have reserved fishing, hunting, trapping, and gathering rights either on or off of reservation lands.⁶ Depending on the status of the land, the state's ability to regulate the fishing or hunting conduct of tribe members differs.

For the purposes of this memorandum and the Yurok Tribe's comments, on-reservation fishing rights appear to be of primary relevance.⁷

For on-reservation reserved rights, *Cohen's Handbook* describes a state's ability to exercise concurrent regulatory authority as "severely restricted" and only permitted in "exceptional circumstances."⁸ The following passage, from a

3. See generally *Cohen's Handbook of Federal Indian Law* § 18.01 (Nell Jessup Newton Editor-in-Chief, Lexis Nexis 2012) (hereafter, "Cohen's Handbook").

4. *Id.*

5. *Id.*

6. See generally *id.* §§ 18.03 (on-reservation), 18.04 (off-reservation).

7. It is not clear whether off-reservation rights are in issue in California. See Cohen's Handbook, *supra* note 3, § 18.04[1] (off-reservation rights are particularly an issue for tribes "in the Pacific Northwest and western Great Lakes").

8. *Id.* § 18.03[2][b].

Supreme Court opinion assessing “whether a state may restrict an Indian Tribe’s regulation of hunting and fishing on its reservation,” provides some indication of “exceptional circumstances” that might support a state’s assertion of regulatory jurisdiction:

The exercise of state authority which imposes additional burdens on a tribal enterprise must ordinarily be justified by functions or services performed by the State in connection with the on-reservation activity. ... A State’s regulatory interest will be particularly substantial if the State can point to off-reservation effects that necessitate state intervention.⁹

In addition, California case law involving tribal fishing rights alludes to circumstances in which state regulation might be appropriate. A California Court of Appeals noted, in dictum, that “the state is not precluded from exercising its general police power under factual circumstances reasonably requiring the exercise of such power.”¹⁰ A California Supreme Court case states a two-part test for assessing whether the state’s interest in conservation is sufficient to permit state regulation:

[S]tate regulation on the basis of conservation is permitted only when (1) it is reasonable and necessary, and (2) it does not discriminate against the Indians.¹¹

It is worth noting that the courts in the above cases did not find the “exceptional circumstances” that would justify state regulation in those cases.¹²

Yurok Tribe

The attached Yurok Tribe letter of February 19, 2016, provides a thorough discussion of the history of the Yurok Tribe, its reservation, and the case law

9. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 336 (1983) (citations omitted).

10. See *Arnett v. Five Gill Nets*, 48 Cal. App. 3d 454, 463 (1975), quoting *Donahue v. Justice Court*, 15 Cal. App. 3d 557 (1971).

11. *People v. McCovey*, 36 Cal. 3d 517, 532 (1984).

12. See *New Mexico*, 462 U.S. at 325 (“We hold that this application of New Mexico’s hunting and fishing laws is pre-empted by the operation of federal law.”); *Arnett*, 48 Cal. App. 3d at 464 (“While it is recognized that the line at which State intervention might be necessary has not been drawn, several factors militate against the success of an argument of necessity here.”); *People v. McCovey*, 36 Cal. 3d at 533 (“The state’s exercise of concurrent jurisdiction over off-reservation sales of reservation-caught fish by Indians of the Hoopa Valley Reservation clearly interferes and is incompatible with the federal and tribal interests reflected in the comprehensive federal regulatory scheme. Moreover, the state has not shown that its interest in conservation is sufficient to justify assertion of concurrent authority.”).

pertaining to its reserved fishing rights.¹³ The following is a very brief summary of that discussion.

The letter indicates that the Yurok Tribe's reservation is located along the Klamath River. "It extends for a mile on each side of the Klamath River from the Pacific Ocean approximately 45 miles to just upstream of the confluence of the Klamath and Trinity Rivers."¹⁴

Yurok people are fishing people. They have relied on the Klamath River for its fisheries, cultural rites and traditions since time immemorial. For generations, Yurok has "depended on the Klamath [C]hinook salmon for their nourishment and economic livelihood." The salmon fishery was and is central for Yurok survival. The Supreme Court recognized the importance of salmon to the Yurok people when it concluded that access to the fisheries was "not much less necessary to the existence of the Indians than the air they breathed." U.S. Supreme Court Justice Blackmun observed that the original Klamath River Reservation, "abounded in salmon and other fish" and "was ideally selected for the Yuroks."¹⁵

The February 19, 2016 letter from the Yurok Tribe identifies a number of cases pertaining to the tribe's fishing rights. Cases involving the tribe's fishing rights have been litigated in both state and federal courts.¹⁶

As a general matter, the case law between California and members of the Yurok Tribe indicates that the disputes regarding the applicability of the code largely pertain to the use of gill nets in tribal fishing¹⁷ and off-reservation sale of fish caught on tribal lands.¹⁸

The cases between California and the Yurok Tribe members have often involved a factual dispute about the legal effect of historical actions taken by the federal government (i.e., whether the reservation was terminated¹⁹ or whether the federal government properly reserved tribal fishing rights²⁰). The case law

13. Exhibit pp. 2-8.

14. *Id.* at 3.

15. *Id.* (citations omitted).

16. See, e.g., *United States v. Eberhardt*, 789 F.2d 1354 (9th Cir. 1986); *People v. McCovey*, 36 Cal. 3d 517.

17. See *Arnett*, 48 Cal. App. 3d 454.

18. See *People v. McCovey*, 36 Cal. 3d 517; *Mattz v. Superior Court*, 46 Cal. 3d 355 (1988).

19. See *Mattz v. Arnett*, 412 U.S. 481, 506 (1973) ("We conclude that the Klamath River Reservation was not terminated by the Act of June 17, 1892, and that the land within the boundaries of the reservation is still Indian country, within the meaning of 18 U.S.C. § 1151.").

20. See *Mattz v. Superior Court*, 46 Cal. 3d at 374 ("[W]e reject the People's contention that the United States lacked either the power or the intent to protect the Yurok Indians' historic fishing rights in the Klamath River when it extended the Hoopa Valley Indian Reservation in 1891.").

appears to have resolved these issues in favor of the Yurok Tribe having a reservation and reserved fishing rights.²¹

Historically, the federal government has also been involved in regulating tribal fishing on the Klamath River.²² Much of the case law discussed in the Tribe's letter appears to have arisen at a time when federal regulations governed the Yurok's tribal fishing.²³

Fisheries Management

Anadromous fish, particularly salmon,²⁴ are the key fish resource in the Klamath River. Anadromous fish are born in fresh water, spend most of their life at sea, and return to fresh water to spawn.²⁵

Given the different locations in which anadromous fish can be found over their lifecycle, fishery management involves coordination between different jurisdictions. Formerly, this coordination was achieved, in part, through the Klamath Fishery Management Council (a federal advisory body made up of "commercial and recreational fishermen, Native American tribes, and state and federal agencies").²⁶ The Klamath Council was responsible for "manag[ing] harvests and ensur[ing] continued viable populations of anadromous fish in the Klamath Basin."²⁷ The federal law authorization for the Klamath Council expired in 2006 and the program was apparently discontinued.²⁸ As indicated below, some of the code sections at issue in the Yurok Tribe's letter reference the Klamath Council.²⁹

21. See *supra* notes 19, 20; see also *Parravano v. Masten*, 70 F.3d 539, 546 (9th Cir. 1995) ("[T]his court and the Interior Department have recognized a trust obligation to protect the Yurok and Hoopa Valley Tribes' rights to harvest Klamath chinook.")

22. See Exhibit p. 7; see also generally *People v. McCovey*, 36 Cal. 3d at 529-31 (assessing the comprehensiveness of the federal regulatory scheme applicable to Indian fishing on the Hoopa Valley Reservation).

23. See Exhibit p. 8 ("At the time of McCovey's and Mattz's prosecutions, the Yurok Reservation was still part of the Hoopa Valley Reservation. The Yurok Tribe was not a separate government entity, and fishing by all 'Hoopa Valley Reservation' Indians was governed by federal regulation. The express purpose of these regulations was 'to protect the fishery resources and to establish procedures for the exercise of the fishing rights of Indians of the Reservation until a Reservation-wide management mechanism is established with the capability to manage and regulate the Indian fisheries on the Reservation.' ... These federal regulations were later repealed in 1996....").

24. See generally <http://www.pcouncil.org/wp-content/uploads/2010/01/Salmon-Oct-2015.pdf>.

25. See <http://www.nefsc.noaa.gov/faq/fishfaq1a.html>.

26. See <https://www.fws.gov/yreka/kfmc.htm>.

27. See *id.*

28. See *id.*

29. See, e.g., Section 16520; see also discussion of "Definitions" *infra*.

Currently, the Pacific Fishery Management Council (hereafter, “Council”), which was established by the federal Magnuson Fishery Conservation and Management Act of 1976, manages the salmon fishery in the federal waters off the coast of California.³⁰ The Council and its advisory bodies include representatives from the industry and government in relevant states, as well as tribal representatives.³¹ The Council has prepared a Fishery Management Plan for salmon³² and conducts an annual process for developing recommendations for the management of the ocean fisheries.³³ The Council’s recommendations are approved by the Secretary of Commerce and implemented by the National Marine Fisheries Service.³⁴

The Yurok letter notes that the Council identifies the tribal fishery’s in-river allocation on an annual basis.³⁵ Based on the staff’s initial review, it appears that the Council takes into account tribal fishing rights in its management of the ocean fishery and conducts modeling of the full fish resource.³⁶

YUROK TRIBE COMMENTS

The Yurok Tribe recommends the following four revisions to the code:

- (1) Repeal of Section 7155.
- (2) Amendment of Section 12300.
- (3) Repeal of Division 13.5 (commencing with Section 16500).
- (4) Clarification of the inapplicability of specific, individual provisions of the code to Yurok Tribe members.

30. See <http://www.pcouncil.org/>; <http://www.pcouncil.org/resources/state-and-federal-regulations/>; see also <http://oceanservice.noaa.gov/facts/eez.html> (indicating that the inner boundary of federal waters, under the Magnuson-Stevens Fishery Conservation and Management Act, “is coterminous with the coastal states’ boundary at 3 nautical miles ...”).

31. See <http://www.pcouncil.org/council-operations/council-and-committees/council-and-committee-rosters/council-roster/>; <http://www.pcouncil.org/council-operations/council-and-committees/salmon-advisory-subpanel/>.

32. See <http://www.pcouncil.org/salmon/fishery-management-plan/adoptedapproved-amendments/>.

33. See <http://www.pcouncil.org/salmon/background/>.

34. See <http://www.pcouncil.org/wp-content/uploads/MSA-May-2014.pdf>;
<http://www.wpcouncil.org/wp-content/uploads/2013/04/USRFMCweb.pdf>.

35. See Exhibit p. 78.

36. See Pacific Fishery Management Council, Preseason Report III: Council Adopted Management Measures and Environmental Assessment Part 3 for 2016 Ocean Salmon Fishery Regulations, Regulatory Identifier Number: 0648-BF56 (April 2016), *available at* http://www.pcouncil.org/wp-content/uploads/2016/04/2016-Preseason-Report_III_FINAL.pdf.

The Tribe's letter notes that the fourth item (clarification of individual provisions) would best be addressed through the amendment of Section 12300 (which broadly states that the code provisions are inapplicable to tribe members under certain circumstances). As discussed further below, the staff agrees and does not recommend addressing the applicability of code provisions individually.

Each of the Tribe's recommendations is discussed in detail below.

Recommendation #1: Repeal of Section 7155

The Yurok Tribe's letter states that Section 7155 "reflects the state's unauthorized assertion of jurisdiction over the Tribe's fishing rights as well as the historic discrimination against tribal fishing on the Lower Klamath, and must be deleted in its entirety."³⁷

Section 7155 of the code, which has not been amended since 1957,³⁸ reads as follows:

7155. Notwithstanding any other provision of this code, California Indians who are bona fide registered members of the Yurok Indian Tribe may take fish, for subsistence purposes only, from the Klamath River between the mouth of that river and the junction of Tectah Creek with it, exclusive of tributaries, without regard to seasons, under the following conditions:

(a) Upon application therefor, the department shall issue to any Yurok Indian who is listed on the register of the Yurok Tribal Organization, as furnished to the department, a renewable, nontransferable permit to take fish pursuant to this section for a period of one calendar year. Any Indian of the Yurok tribe while taking fish pursuant to this section shall have upon his person such valid permit, and shall display it upon the request of any duly authorized officer.

(b) Hand dip nets, and hook and line only may be used for taking fish pursuant to this section.

(c) Pursuant to this section not more than three trout or salmon or combination thereof, or more than one sturgeon, may be taken in any one day. There is no bag limit on any other fish.

(d) No Yurok Indian while fishing pursuant to this section may be accompanied by any person who does not possess a valid permit as prescribed by this section. It is unlawful for any person who does not hold such permit to accompany any Yurok Indian who is taking fish pursuant to this section.

37. Exhibit p. 75.

38. See *Arnett*, 48 Cal. App. 3d at 458 ("In 1933, the State enacted Fish and Game Code section 429.8 (now § 7155) providing that Yurok Indians could obtain a permit to fish on the Klamath for subsistence without regard to seasons and under certain conditions not permitting gill netting.").

(e) The sale of any fish taken under the provisions of this section shall constitute cause for permanent revocation by the commission of the permit held by the person making the sale.

The staff notes that the area to which Section 7155 applies appears to be a segment of the Yurok Tribe's reservation, as described in their letter.³⁹

Although the permit provision of this code section had long been part of California law,⁴⁰ a 1975 California Court of Appeal, in *Arnett v. Five Gill Nets*, noted that "[a]ccording to the testimony at trial, there has never been an application for a section 7155 permit. The Indians continue gill netting and suffering occasional arrests and confiscation of nets."⁴¹

In *Arnett*, the court considered a California game warden's seizure of gill nets from a Yurok tribe member on reservation lands.⁴² In that case, the court concluded that the state did not have jurisdiction to regulate the fishing activity involved in the case.⁴³

Since the Indians on the Klamath River Reservation had fishing rights derived from Congress, State qualifications of those traditional rights was precluded by force of the Supremacy Clause. Thus, the attempt of the State to regulate fishing by passage of section 7155 of the Fish and Game Code was invalid even before the passage of Public Law 280. It is now also improper because of the renewed guarantee of Indian fishing rights by Public Law 280.⁴⁴

Similarly, later cases addressing the inapplicability of the code's sale prohibitions to fish taken on the reservation suggest that Section 7155(e), which seeks to prohibit off-reservation sale, is impermissible. In *People v. McCovey*, the California Supreme Court concluded that the state was preempted from regulating the off-reservation sale of fish caught on the reservation.⁴⁵ Specifically, in that case, the Court concluded that the state could not prosecute a Yurok tribe member for violation of a code provision that prohibits the sale of fish caught by gill net because of the comprehensive federal regulation of tribal fishing.⁴⁶ Similarly, in *Mattz v. Superior Court*, the California Supreme Court again concluded that the state could not prosecute Yurok tribe members for offenses

39. Exhibit p. 3.

40. See *supra* note 38.

41. *Arnett*, 48 Cal. App. 3d at 458.

42. *Id.* at 455-57.

43. *Id.* at 459.

44. See *id.* at 461-62 (citation and footnote omitted).

45. See 36 Cal. 3d at 524.

46. *Id.* at 524-35.

arising from on-reservation fishing.⁴⁷ In *Mattz*, the tribe members were charged with violating code provisions prohibiting the sale of fish taken in the Klamath River District and the sale of fish taken in California waters by means of a gill net.⁴⁸

Taken together, these cases suggest that Section 7155 is largely obsolete. However, the staff is uncertain whether there might be some aspect of Section 7155 that has continuing validity. **The staff welcomes comment on this issue.**

Recommendation #2: Amendment of Section 12300

The Yurok Tribe proposes amendment of Section 12300 to “accurately reflect the inapplicability of state regulation of a tribal member’s fishing rights related activity.”⁴⁹

Section 12300 currently reads as follows:

(a) Notwithstanding any other provision of law, the provisions of this code are not applicable to California Indians whose names are inscribed upon the tribal rolls, while on the reservation of that tribe and under those circumstances in this state where the code was not applicable to them immediately before the effective date of Public Law 280, Chapter 505, First Session, 1953, 83d Congress of the United States.

(b) No Indian described in subdivision (a) shall be prosecuted for the violation of any provision of this code occurring in the places and under the circumstances described in subdivision (a). Nothing in this section, however, prohibits or restricts the prosecution of an Indian for the violation of a provision of this code prohibiting the sale of a bird, mammal, fish, amphibian, or reptile.⁵⁰

While it is not entirely clear, Section 12300 may have been intended simply to codify an external limitation on the application of the code (i.e., describing situations in which tribal reserved rights or federal law would preclude application of the code).

47. 46 Cal. 3d 355 (1988).

48. *Id.* at 358.

49. Exhibit p. 75.

50. In 2015, technical amendments were made to this section, per an earlier Commission recommendation in this study. See 2015 Cal. Stat. ch. 154 (AB 1527 (Committee on Water, Parks, and Wildlife)); *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)*, 44 Cal. L. Revision Comm’n Reports 113 (Feb. 2015).

Previously, this section has been largely unchanged since 1961, when minor clarifying amendments were made. The substance of this section was added in 1955. See 1961 Cal. Stat. ch. 963, § 1; see also 1957 Cal. Stat. ch. 456, § 12300; 1955 Cal. Stat. ch. 389, § 1.

The state of the law on tribal fishing and hunting has evolved since 1953, when Public Law 280 was enacted.⁵¹ Absent a more definitive understanding of the intended effect of this section, it seems appropriate to update Section 12300 to reflect the current understanding of the scope of the code’s inapplicability.

The Yurok Tribe indicates that Section 12300 does not align with the case law describing the applicability of the code to tribal fishing and hunting.⁵² To clarify Section 12300, the Yurok Tribe suggests an amendment, focusing on whether the tribe member’s conduct is an exercise of the “tribe’s federally reserved fishing, hunting or gathering rights.”⁵³ The staff sees merit in that general approach, but, as discussed below, suggests some possible refinements of the specific language offered by the Yurok Tribe.

In addition, the staff has identified other language of Section 12300 that could perhaps benefit from clarifying amendments. Each of the issues is discussed in detail below.

Elements of Section 12300

By its terms, Section 12300(a) deems the code inapplicable to California Indians in a specified set of circumstances. In particular, Section 12300(a) applies to a person when the following conditions are present:

- (1) The person is a California Indian.
- (2) The person’s name is inscribed on the tribal roll.
- (3) The person is on the reservation of that tribe.
- (4) Under the circumstances, the code would not have been applicable to the person immediately prior to the effective date of federal Public Law 280 (i.e., before 1953⁵⁴).

Each of these circumstances is discussed in turn below, followed by a separate discussion of each of the two sentences contained in subdivision (b).

California Indian

Currently, Section 12300 only applies to a “California Indian.”

The staff did not find a definition of “California Indian” in the code and the staff is unsure of the precise meaning of this term. Presumably, “California Indian” would include a member of a federally-recognized tribe. Does it also

51. P.L. 83-280 (1953) (codified as 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321–1326).

52. See Exhibit pp. 75-76.

53. *Id.* at 76.

54. See *supra* note 51.

include a member of a non-federally-recognized tribe?⁵⁵ Where a tribe is located in more than one state,⁵⁶ how do you determine whether a tribe member is a “California Indian”?

The staff’s general impression is that any federal limitations on the application of California law to Indians would likely turn on whether the Indian was a member of a federally-recognized tribe, not on the location of the tribe or the residence of the individual. As such, the staff suggests that it may be appropriate to amend the language of Section 12300 to refer to a “member of a federally-recognized tribe,” as opposed to a “California Indian.” **The staff welcomes input on these issues.**

Name Inscribed on Tribal Roll

Currently, Section 12300 only applies to a California Indian whose name is inscribed on a tribal roll.

The staff is unsure whether a member of a tribe would necessarily be inscribed on a tribal roll. If so, referring to a “member” may render this language redundant.

The staff welcomes input on this issue.

Located on the Reservation

Currently, Section 12300 only applies on the reservation of the tribe at issue.

As noted above, in some cases, tribes may have off-reservation rights.⁵⁷ The staff is unsure whether any tribes have such rights in California.

55. See http://tribalgovtaffairs.ca.gov/State_Government/ (“The State will work with Native American tribes (federally and *non-federally recognized*) on a government-to-government basis to address issues concerning Native American tribal self-government and tribal trust resources.”) (emphasis added); see also Executive Order B-10-11 (Sept. 19, 2011) (defining “California Indian Tribe” to “include all Federally Recognized Tribes and other California Native Americans.”); Government Accountability Office, Report No. GAO-12-348, Federal Funding for Non-Federally Recognized Tribes 8 (April 2012), available at <http://www.gao.gov/assets/600/590102.pdf> (“[T]he California Native American Heritage Commission maintains a list of organized tribal governments in that state—including both federally recognized Indian tribes and nonfederally recognized tribes. Despite acknowledging these organized tribal governments and requiring cities and counties to consult with them under certain circumstances, California does not have a process for officially recognizing non-federally recognized tribes, according to a state official we spoke with.”).

56. For example, the National Conference of State Legislatures’ list of federally-recognized tribes identifies several multi-state tribes, including the Colorado River Indian Tribes (Arizona and California), Fort Mojave Indian Tribe (Arizona, California, and Nevada), Quechan Tribe (Arizona and California), the Washoe Tribe (California and Nevada)

See <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx#ca> (listing federally-recognized tribes in California).

57. See discussion of “Tribal Reserved Rights, Generally” *supra*.

Moreover, as discussed previously, courts have, in some cases, concluded that the state could not impose prohibitions on an off-reservation sale of fish caught on the reservation.⁵⁸

For those reasons, it is not clear that the limitation of Section 12300 to reservation land is appropriate. **The staff welcomes input on this issue.**

Under Circumstances in which the Code Was Not Applicable Prior to Public Law 280

Currently, Section 12300 only applies “under those circumstances in this state where the code was not applicable to [the California Indian] immediately before the effective date of Public Law 280.”

Public Law 280 is a federal law that grants certain states, including California, concurrent jurisdiction over criminal and civil matters arising in Indian Country.⁵⁹ Public Law 280, however, appears to have little or no effect on the ability of the state to regulate tribal fishing. The provision of Public Law 280 granting California criminal jurisdiction over Indian country expressly provides:

Nothing in this section ... shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.⁶⁰

In addition, Public Law 280 has been construed *not* to grant states general regulatory authority over tribes.⁶¹

Consequently, conditioning the effect of Section 12300 on the effective date of Public Law 280 seems unhelpful and potentially misleading. Based on the more recent case law on tribal fishing, the key issue for the applicability of the code to tribal members appears to be whether federal law on tribal fishing and hunting would preclude the application of the code to tribe members. The staff feels that

58. See discussion of “Recommendation #1: Repeal of Section 7155” *supra*.

59. See generally Cohen’s Handbook, *supra* note 3, § 6.04[3] Memorandum 2013-55, pp. 6-10 (discussing Public Law 280); see also P.L. 83-280, *supra* note 51.

60. 18 U.S.C. § 1162(b).

61. As a general matter, the state is precluded from applying regulatory laws, but can apply prohibitory laws. The distinction between regulatory and prohibitory laws is not entirely clear. See Cohen’s Handbook, *supra* note 3, § 6.04[3][b][iii] (“If the subset of outlawed conduct is small relative to the entire class of activity, the law is regulatory in nature and outside the scope of state jurisdiction under Public Law 280. Moreover, the Supreme Court’s approach in *Cabazon* suggests that the general category of conduct should be defined as comprehensively as possible. Only when the specific conduct outlawed under state law presents substantially different or heightened public policy concerns associated with risks of grave harm to persons or property should the courts find a state law prohibitory and thus within the scope of state jurisdiction conferred by Public Law 280.”) (citation omitted).

it would be helpful to amend this section to provide more accurate and current guidance as to the applicability of the code.

The Yurok Tribe suggests conditioning the applicability of the code on whether a tribe member is “exercising that tribe’s federally reserved fishing, hunting, or gathering rights.”⁶²

That general approach appears to make sense, but the staff is concerned that the proposed language might be read to foreclose the application of the code in situations where state regulation would otherwise be appropriate and permitted, under federal law.⁶³ Therefore, adding a qualification, limiting the applicability of the code to any exercise of tribal fishing rights “where federal law would preclude state regulation of the conduct at issue,” might be appropriate. **The staff welcomes comment on whether this would properly describe the limits of the applicability of the code to tribal exercises of their reserved rights.**

In addition, the staff notes that the application of California law may also be preempted by the federal government’s regulation of tribal fishing or hunting.⁶⁴ **The staff welcomes comment on whether Section 12300 should also refer to the inapplicability of the code “where preempted by federal law” more generally.**

Exemption from Prosecution

The first sentence of Section 12300(b) provides that a person cannot be prosecuted for a violation of the code where the code is inapplicable under Section 12300(a). **The staff welcomes comment on whether that provision is necessary, especially if the scope of Section 12300(a) is clarified as discussed in this memorandum.**

Prohibition on Sale

The second sentence of Section 12300(b) provides that “[n]othing in this section, however, prohibits or restricts the prosecution of an Indian for the violation of a provision of this code prohibiting the sale of a bird, mammal, fish, amphibian, or reptile.”

The Yurok Tribe recommends deleting this provision.⁶⁵ The Tribe contends that this provision is inconsistent with case law precluding the state from

62. See Exhibit p. 76.

63. See generally discussion of “Tribal Reserved Rights, Generally” *supra*.

64. See *People v. McCovey*, 36 Cal. 3d at 536-37 (“[T]his court holds that federal law preempts the state from regulating the off-reservation sale or possession for sale of fish caught by Hoopa Valley Reservation Indians on the reservation.”).

65. Exhibit p. 76.

prosecuting tribe members for violations of the code's prohibitions on sale.⁶⁶ As indicated previously, the California Supreme Court twice concluded that a Yurok Tribe member could not be prosecuted for violations of the code's sale prohibitions arising from the off-reservation sale of salmon, which was caught on-reservation.⁶⁷

As with the prior provision, the staff's initial assessment is that this provision would seem to be redundant and unnecessary if the scope of the inapplicability of the code were more clearly stated in Section 12300. **The staff welcomes comment on this issue.**

Recommendation #3: Repeal of Division 13.5 (commencing with Section 16500)

The Yurok Tribe's letter states that Division 13.5 (commencing with Section 16500) describes a "process in which the state purports to authorize tribal commercial fishing within the Klamath and Trinity Rivers." The Yurok Tribe indicates that actions undertaken by the tribe and the federal government have rendered this division "obsolete."

Division 13.5 is reproduced in its entirety in the Yurok Tribe's recommended revisions.⁶⁸ The staff notes that another division in the code, Division 13 (commencing with Section 16000), appears to be similar to Division 13.5. However, it involves the Covelo Indian Community and the Round Valley Indian Reservation.⁶⁹ **The remaining discussion focuses on Division 13.5, but the staff welcomes comment on any similar issues with respect to Division 13.**

The staff will contact the tribal communities that appear to be affected by these divisions to invite their input.

Authority to Enter Voluntary Agreement, Generally

As a whole, Division 13.5 appears primarily to be an authorization for the Department of Fish and Game to enter into a voluntary mutual agreement with the Klamath River Indian Tribes,⁷⁰ under specified conditions and with certain

66. *Id.* at 75-76.

67. See *People v. McCovey*, 36 Cal. 3d at 524-35; *Mattz*, 46 Cal. 3d at 374; see also discussion of "Recommendation #1: Repeal of Section 7155" *supra*.

68. See Exhibit pp. 76-78. Minor technical changes made in 2015 to Sections 16500 and 16520 are not reflected in the Exhibit. See 2015 Cal. Stat. ch. 154, §§ 117, 118. These technical changes do not affect the analysis presented in this memorandum.

69. It is unclear whether Division 13 may, similarly, need to be evaluated and analyzed.

70. This includes "those tribes existing within the boundaries of the Yurok Reservation and the Hoopa Valley Reservation...recognized as Indian tribes by the Secretary of the Interior." Section 16511.

procedural requirements and ancillary authority to implement such an agreement.

As a general matter, it seems useful for the Department to have authority to enter into voluntary agreements with tribes on issues, like the regulation of natural resources, that “transcend political boundaries.”⁷¹ However, it may be that this division needs to be updated to reflect the legal developments that have occurred since the division was enacted.

The staff does not have sufficient information to conclude that Division 13.5, as a whole, is legally obsolete. The division does not appear to directly regulate tribal fishing. However, the division specifies certain required terms for an agreement that includes provisions on commercial sales and gill net use by the Tribe.⁷² These provisions appear to limit the authority of the Department to enter into an agreement with the Tribe.

It seems possible that these required terms of the agreement render the division functionally obsolete. The Yurok Tribe may conclude that the specified, required conditions are unacceptable, in which case, presumably, the Yurok Tribe would simply refuse to enter into an agreement with Department. Further, the Yurok Tribe appears to suggest that some of the legal uncertainty, alluded to in the legislative findings,⁷³ has been resolved. Thus, it may be that some of the “expensive and protracted litigation,”⁷⁴ which the division was enacted to avoid, has since been undertaken and resolved.

The staff welcomes comment on whether any aspects of this division have ongoing utility and, if so, which ones remain helpful and why.

Assuming that this division has some ongoing utility and could be amended rather than repealed, the staff has a few concerns about specific provisions in the division. They are discussed below.

Legislative Findings

The division includes a section of legislative findings (Section 16500). These findings were added in 1986 and amendments were made in 1990, however, it is unclear whether these findings reflect the State’s current view of the situation on the Klamath River. **The staff requests comment on that issue.**

71. See Section 16500(c).

72. See Section 16532.

73. See, e.g., Section 16500(d) (“unresolved legal issues”).

74. See *id.*

Definitions

Sections 16511-16520 contain definitions applicable to the division. Certain definitions in the division may need to be updated. **The staff welcomes comment on the defined terms and definitions generally.**

In particular, it appears that the “Klamath Fishery Management Council” is not operating any longer.⁷⁵ **The staff welcomes comment on whether there is a substitute agency, perhaps the Pacific Fishery Management Council, that continues the relevant functions of the Klamath Fishery Management Council.**

Parties to Agreement

Section 16530 specifies that the Director (of the Department of Fish and Wildlife) may enter into an agreement with the Hoopa Valley Business Council or with the “Yurok Tribe, or the Bureau of Indian Affairs acting as trustee for the Yurok Indians,” with regard to the take of fish from their respective reservations. The Yurok Tribe indicates that these provisions were “enacted prior to the establishing of the Yurok Tribal Government.”⁷⁶ Thus, it seems appropriate to update this provision to refer to the Yurok Tribal Government. **The staff welcomes comment on whether the references to the Bureau of Indian Affairs acting as a trustee for the tribes should be deleted from this division.**⁷⁷

Timing of Negotiations

Section 16531 requires negotiations to take place following the completion of the salmon allocation agreement recommended by the Klamath Fishery Management Council. This section needs to be updated to reflect that the Klamath Fishery Management Council does not appear to be operating. **The staff welcomes comment on whether this provision for annual negotiations is still relevant.**

Terms of Agreement

Section 16532 specifies the required conditions for the agreement or compact, if it includes provisions on commercial sale and gill net use (or other traditional methods of taking fish). The Yurok Tribe comments suggest that the required

75. See <https://www.fws.gov/yreka/kfmc.htm> (The U.S. Fish and Wildlife Service webpage on the Klamath Fishery Management Council states that “[t]he Klamath Act expired on October 1, 2006, and was not reauthorized by Congress. The funding for this program was eliminated and the charter was discontinued.”).

76. Exhibit p. 78.

77. See also Section 16532(c).

terms set out in Section 16532 are problematic and would preclude an agreement under this division.

The staff welcomes comments on whether this provision is obsolete and, if so, whether this provision should be amended so as to continue providing authority for voluntary agreements.

Ancillary Provisions

Sections 16533-16541 address administrative requirements and implementation issues regarding the agreement. These provisions do not appear to be problematic, but may need minor technical changes.

Recommendation #4: Clarification of the Inapplicability of Specific, Individual Provisions of the Code to Yurok Tribe Members

The Yurok Tribe's letter identifies ten individual code provisions that it asserts are "in conflict with the Yurok Tribe Fishing Rights Ordinance as applied to authorized Yurok Tribal members."⁷⁸ The Yurok Tribe recommends clarifying that these provisions are inapplicable to Yurok tribe members whose fishing is authorized pursuant to the Tribe's ordinance. The Yurok Tribe also suggests that this clarification "is best presented through modification of section 12300 indicating the code in its entirety is not applicable to Yurok Tribal members."⁷⁹

In general, assessing the inapplicability of individual code sections, on the basis of conflict with tribal reserved rights, is simply impractical, given the number of tribes and different tribal land situations in the state.⁸⁰ For this reason, the staff did not undertake an assessment of the individual provisions identified by the Yurok Tribe and takes no position on their applicability.

The staff agrees that Section 12300 is the best place to provide any needed clarification as to the inapplicability of the code to conduct that is within the tribe's reserved fishing rights. **As discussed above, the staff welcomes input how to amend Section 12300 to adequately address these issues.**

78. Exhibit pp. 78-79.

79. See *id.* at 78.

80. See <http://www.courts.ca.gov/3066.htm> ("There are currently 109 federally recognized Indian tribes in California and 78 entities petitioning for recognition. Tribes in California currently have nearly 100 separate reservations or Rancherias. There are also a number of individual Indian trust allotments. These lands constitute "Indian Country", and a different jurisdictional [sic] applies in Indian Country.").

CONCLUSION

The staff welcomes comments on the issues discussed in this memorandum. The staff plans to provide those comments, along with additional analysis for discussion, at the Commission's September meeting. **The staff encourages commenters to submit written comments by August 15th to provide time for staff analysis.**

Respectfully submitted,

Kristin Burford
Staff Counsel



YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548



September 10, 2015

California Law Revision Commission
c/o UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616

Re: Yurok Tribe Public Comment on Fish and Game Code Revisions

Aiy-ye-kwee':

The Yurok Tribe respectfully submits the following comments regarding the proposed revisions of the California Fish and Game Code, specifically former Section 7155 regarding Native American Fishing. These codes were promulgated from 1952 – 1982, a time when discrimination against Indians and traditional Indian fishing practices was rampant. Additionally, during this period, the Yurok Tribe had no formally organized government to protest the promulgation of these regulations. Since this time, the Yurok Tribe's fishing right has been recognized by the United States Department of Interior Solicitor's Office as well as several federal court cases, which has rendered these codes obsolete. Further, there have been significant federal court decisions that place regulation of Indian fishing rights largely beyond the control of state government. Section 7155 is obsolete and must be removed in its entirety from the Fish and Game Code.

The Tribe would also like to take this opportunity to direct your attention to several other Code provisions, which are not identified for possible revision at this time, but are also discriminatory against the Tribe and contrary to the Tribe's reserved fishing right. They are as follows: existing sections 1000, 7370, 8370, 8434, 8664, 8681(a), 8685, 8685.5, 8685.6, 8685.7, 16530-16533.

In addition to discontinuing Section 7155 we ask that you consider revisions to the above-mentioned sections, which are discriminatory against the Yurok Tribe and are no longer applicable given the legal status of our federally reserved fishing rights. If you would like assistance from our staff to develop modifications to these sections, please contact our Staff Attorney, Rebecca McMahan at (707) 482 1350 ext. 1426. We thank you for reaching out to us for our comments, and we are confident you will address the Yurok Tribe's concerns in this matter.

Sincerely,

Thomas P. O'Rourke Sr.
Chairman

Sent Via Email

February 19, 2016

California Law Revision Commission
attn. Steve Cohen Staff Counsel
c/o UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616
scohen@clrc.ca.gov

Re: Yurok Tribe Comments on Proposed California Fish and Game Code Revisions

Dear Mr. Cohen:

The Yurok Tribe respectfully submits the following comments regarding the proposed revisions of the California Fish and Game Code related to the Yurok Tribe and its fishing right. These codes were promulgated from 1952 – 1982, a time when discrimination against Indians and traditional Indian fishing practices was rampant. Additionally, during this period, the Yurok Tribe had no formally organized government to protest the promulgation of these regulations. Since this time, the Yurok Tribe’s fishing right has been recognized by the United States Department of Interior Solicitor’s Office as well as federal and state court cases, which have rendered these code provisions obsolete. Also since the enactment of the original Fish and Game Code language, the Yurok Tribe has organized a tribal government and developed a comprehensive regulatory scheme for Tribal member fishing within the Yurok Reservation. Further, there have been significant federal court decisions that place regulation of Indian fishing rights largely beyond the control of state government.

State regulation of the Lower Klamath Indian fishery is preempted by federal law. California state courts have recognized the state does not have the jurisdiction to regulate tribal fishing in the Lower Klamath, but this legal reality has yet to be rectified in California statutes. The following is a summary of the history of the Tribe and its federally reserved fishing rights, as well as an overview of the federal and state case law that has recognized the Tribe’s exclusive authority to exercise and regulate such rights within the Lower Klamath River. The Fish and Game Code should be modified to reflect the Tribe’s exclusive authority to govern fishing of its members.

I. Background: Yurok People, the Reservation, and the Tribe’ Reserved Fishing Rights

A. Yurok Ancestral Territory and Reservation Boundaries

The Yurok people have always inhabited the lands along the Pacific Ocean and the Klamath River. The Ancestral Lands of the Yurok Tribe extend along the Pacific Ocean Coast “from Damnation Creek, its northern boundary, to the southern boundary of the Little River drainage basin,” and along the Klamath River “from its mouth upstream and to and including the Bluff Creek

drainage basin.”¹ The Yurok Reservation consists of only a fraction of Yurok’s ancestral homeland. It extends for a mile on each side of the Klamath River from the Pacific Ocean approximately 45 miles to just upstream of the confluence of the Klamath and Trinity Rivers. The Klamath River Reservation, which included the lower portion of the Yurok Reservation, was created by Executive Order on November 16, 1855, pursuant to authority granted by Congress in the Act of March 3, 1853, 10 Stat. 238. By Executive Order on October 16, 1891, the President established an extension from the Klamath River Reservation 25 miles upriver to the Hoopa Valley Reservation incorporating both into one combined Indian Reservation. The Hoopa-Yurok Settlement Act (25 U.S.C. § 1300i *et seq.*) (“HYSA”), which formally separated the Yurok Reservation from the Hoopa Valley Reservation, established the Yurok Reservation as that land included in the Klamath River Reservation and land previously set aside by Executive Order on October 16, 1891, extending from the Klamath River Reservation upstream to the present-day Hoopa Valley Reservation and including the confluence of the Klamath and Trinity Rivers.² A map of the Yurok Reservation and Yurok ancestral territory is attached as Exhibit A for your reference.

B. *Importance of the Fishery*

Yurok people are fishing people. They have relied on the Klamath River for its fisheries, cultural rites and traditions since time immemorial.³ For generations, Yurok has “depended on the Klamath [C]hinoook salmon for their nourishment and economic livelihood.”⁴ The salmon fishery was and is central for Yurok survival. The Supreme Court recognized the importance of salmon to the Yurok people when it concluded that access to the fisheries was “not much less necessary to the existence of the Indians than the air they breathed.”⁵ U.S. Supreme Court Justice Blackmun observed that the original Klamath River Reservation, “abounded in salmon and other fish” and “was ideally selected for the Yuroks.”⁶

Prior to non-Indian settlement, the salmon fishery was also a valuable commercial and economic commodity for the Yurok people. Concepts of property rights were associated with the fishery, in the sense that fishing spots were considered to be owned by individuals or families.⁷ The productivity of fishing holes was a marker of individual or family wealth.⁸ Ownership of fishing holes could be sold, bartered or inherited.⁹ Additionally, salmon was an item of trade among tribes, and after non-Indian settlement, to local settlers.¹⁰

The Yurok Tribe and its governing body as it exists today were established in 1994 following the enactment of the HYSA. In enacting the HYSA, Congress recognized the Act’s purpose to establish and confirm the property interests of the Yurok Tribe in the Reservation, including its

¹ Yurok Constitution, Art I Sec. 1.

² 25 U.S.C. § 1300i-1(c).

³ *Kandra v. United States*, 145 F. Supp. 2d 1192, 1201 (D. Or. 2001).

⁴ *Parravano v. Babbitt*, 70 F. 3d 539, 542 (9th Cir. 1995), *cert denied*, 518 U.S. 1016 (1996).

⁵ *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)), *aff’d*, *Mattz v. Arnett*, 412 U.S. 481 (1973).

⁶ *Mattz*, 412 U.S. 481, 487 (1973).

⁷ Kathleen Sloan, Yurok and the Klamath River: Yurok Historical Context and Data for Assessing Current Conditions and the Effects of the Proposed Klamath Restoration Project on Yurok Tribal Trust Assets and Yurok Resources of Cultural and Religious Significance (Sloan Study), 47 (Feb. 2011) (on file with Yurok Tribe).

⁸ *Id.*

⁹ *Id.* at 48.

¹⁰ U.S. Department of the Interior Memorandum Opinion of the Solicitor, John D. Leshy (“Solicitor’s Opinion”) 9, M-36979 (October 4, 1993).

interest in the fishery.¹¹ The Tribe also established a Fisheries Department shortly after the Tribal government was formally organized. The Fisheries Department is primarily responsible for protecting the fishery through monitoring, habitat restoration, and regulation of the Tribal member exercise of subsistence and commercial fishing rights. The Tribe focuses considerable time, money and resources into its Fisheries Department for studying, monitoring, restoring, and protecting the Lower Klamath Indian fishery.

C. *Yurok Tribe Federally Reserved Fishing Rights*

The rights of tribes to govern their people, their lands, and their resources are not rights granted to tribes by the federal government, rather they are inherent rights Indian sovereign nations had prior to conquest – rights that they retained when their aboriginal lands were ceded to the United States through treaty or other agreement.¹² Thus, a grant or reservation of land to a tribe through treaty also includes inherent hunting, fishing, and gathering rights on those lands.¹³ The same implied hunting, fishing and gathering rights apply to reservations set aside by statute or executive order.¹⁴

In *Parravano v. Babbitt*, the Ninth Circuit confirmed that the Executive Orders that established the present-day Yurok Reservation vested the Yurok Tribe with “federally reserved fishing rights.”¹⁵ There is a substantial body of case law in addition to *Parravano* recognizing these reserved rights of the Tribe.¹⁶ Moreover, the U.S. Department of the Interior has issued a Solicitor’s Opinion highlighting its long standing recognition of the Tribe’s federally reserved fishing rights, and concluding such reserved rights include a right to “harvest a sufficient share of the resources to sustain a moderate standard of living.”¹⁷ The central reasoning to this opinion was that the Indian rights to the fishery “that once were thoroughly and exclusively exploited by the Indians” must be protected from encroachment by non-Indian exploitation to the extent necessary to provide the Indians with a livelihood.¹⁸

It is now well established that the Yurok Tribe has federally reserved fishing rights, established when the reservation was set aside for the Tribe with the specific and primary purpose of securing for the Tribe the access and right to fish without interference from others.¹⁹

II. On-Reservation Fishing Rights and State Regulation, Generally

Indian tribes enjoy exclusive jurisdiction over the exercise of their hunting, fishing, and gathering rights. It is not necessary that the rights be referred to as “exclusive” in the governing

¹¹ S. Rept. No. 100-564, at 2 (1988).

¹² *United States v. Wheeler*, 435 U.S. 313, 322-24 (1978).

¹³ *See, Menominee Tribe v. United States*, 391 U.S. 404, 406 (1968).

¹⁴ *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 343–344 (1983); *See also Parravano, supra* note 4 at 547 (“We have long held that when it comes to protecting tribal rights against non-federal interests, it makes no difference whether those rights derive from treaty, statute or executive order, unless Congress has provided otherwise.”).

¹⁵ *Parravano, supra* note 4 at 541.

¹⁶ *See, e.g., United States v. Eberhardt*, 789 F.2d 1354 (9th Cir. 1986); *United States v. Wilson*, 611 F. Supp. 813 (N.D. Cal. 1985), *rev’d on other grounds sub. nom., Eberhardt*, 789 F.2d 1354; *Pacific Coast Federation of Fishermen’s Assoc. v. Sec’y of Commerce*, 494 F. Supp. 626 (N.D. Cal. 1980); *Mattz v. Arnett*, 412 U.S. 481, 487 (1973); *Kandra v. United States*, 145 F. Supp. 2d 1192, 1198 (D. Or. 2001).

¹⁷ Solicitor’s Opinion *supra* note 10 at 21.

¹⁸ *Id.* at 20 (quoting *Washington v. Washington State Commercial Fishing Vessel Ass’n*, 443 U.S. 658, 686 (1979)).

¹⁹ Solicitor’s Opinion *supra* note 10 at 14-15.

document, or even that they be expressly mentioned.²⁰ Exclusive hunting, fishing, and gathering rights are implied from the establishment of a reservation for the exclusive use by a tribe.²¹ By virtue of the Tribe's inherent powers of self-governance, the Tribe retains the power to regulate its members in the exercise of its reserved fishing rights.²²

States are generally preempted from asserting regulatory authority over tribal hunting, fishing and gathering rights because it interferes with federal and tribal interests in self-governance of tribal members and territories.²³ Courts have afforded states exception to this principle of Indian sovereignty only in rare circumstances when serious conservation interests justify the interference.²⁴ The Supreme Court has held that sufficient circumstances are present for state regulation only when the on-reservation lands at issue no longer belonged to the tribe, the underlying treaty accorded the tribe a right "in common with" non-Indians, and the state had an interest "in conserving a scarce, common resource."²⁵ Absent such circumstances, states may not regulate tribal members in the exercise of on-reservation hunting, fishing, and gathering rights.²⁶ The case law cited in the section below demonstrates that the conservation concerns that could authorize state authority over Yurok Tribal fishing are not present in the Lower Klamath within the Yurok Reservation.²⁷

Public Law 280 does not provide California any additional authority to regulate Indian fishing rights. In enacting Public Law 280, Congress transferred to certain states, including California, criminal jurisdiction over reservations within those states.²⁸ It did not grant states regulatory power, and it specifically exempted reserved hunting, fishing, and gathering rights from state authority.²⁹

III. Non-Indian Encroachment in the Klamath Indian Fishery

When the original Klamath River Reservation was established by Executive Order in 1855, the federal government took efforts to protect the Yurok fishery from non-Indian encroachment. Following the 1855 Executive Order, a historic flood in 1861 decimated the original Klamath River Reservation. Reservation residents were forced to temporarily relocate, resulting in the misconception that the Reservation had been abandoned.³⁰ Taking advantage of the local perception that the Reservation was no longer occupied, in 1876 Crescent City residents Martin Jones and

²⁰ *Menominee*, *supra* note 13 at 406.

²¹ *Mescalero*, *supra* note 14 at 343–344.

²² *Id.* at 330.

²³ *Id.* at 333–36.

²⁴ *Id.* at 331–32.

²⁵ *Puyallup Tribe v. Dep't of Game*, 433 U.S. 165, 174–177 (1977). In determining whether state regulation of tribal rights is necessary for conservation, courts have looked to the presence of comprehensive tribal regulations as evidence that such state regulation is not necessary. *See U.S. v. Washington*, 384 F.Supp. 312 (D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975).

²⁶ *Mescalero*, 462 U.S. at 332 n.15 (distinguishing *Puyallup Tribe v. Dep't of Game*, 433 U.S. 165, 174–177 (1977)).

²⁷ *See Arnett v. Five Gill Nets*, *supra* note 15 at 465, distinguishing the few cases wherein the Supreme Court has allowed state regulation of tribal fishing rights from the circumstances in the Lower Klamath.

²⁸ 18 U.S.C. § 1162.

²⁹ *See Id.* § 1162(b). "[N]othing in this section ... shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof."

³⁰ Ronnie M. Pierce, *Klamath Salmon: Understanding Allocation (Pierce Study)*, 7 (February 1998) available at <http://www.fws.gov/yreka/KFMC-Docs/KlamSalUndAlloc.pdf>.

George Richardson established the first non-Indian commercial fishery on the Klamath.³¹ In response the U.S. Army sent a force to the Klamath Reservation to “suppress all fishing by whites” and expel all non-Indians from the Reservation.³² Jones and Richardson were evicted as trespassers from the Klamath Reservation in 1879.³³

The misconception that the Reservation was abandoned was later memorialized in the 1888 case *US v. Forty Eight Pounds of Rising Star Tea*, in which the state court determined that, although the land was still held by the federal government, it was not “Indian Country” within the meaning of the law.³⁴ The determination in *Forty Eight Pounds* subsequently led to the overturn of the federal prohibition on non-Indian fishing in the Klamath and ostensibly opened the River to unrestrained non-Indian commercial fishing.³⁵ In 1892 an act of Congress opening the Reservation to allotment and non-Indian settlement bolstered the misconception that the Klamath Reservation no longer existed.³⁶ Amid the decades of confusion regarding the status of the Klamath River Reservation, the State of California assumed it had jurisdiction over the area, including jurisdiction to regulate all fishing within the Lower Klamath. In 1934, California succumbed to pressure by commercial fishing operations to ban the use of Indian gill nets for subsistence fishing on the Lower Klamath.³⁷ The state’s jurisdictional encroachment on the Klamath River Indian fishery continued for decades until halted by the U.S. Supreme Court.

IV. The State’s Self-Identified Lack of Regulatory Authority over the Klamath Indian Fishery

A. Preemption of State Authority over Tribal Subsistence Fishing

The State’s assertion of jurisdiction over the Indian fishery was finally challenged in 1969 when Frank Mattz, a Yurok fisherman, had his gillnets confiscated by State Fish and Game wardens within the Reservation for violation of sections 8664, 8686, and 8630 of the California Fish and Game Code.³⁸ In court Mattz sought to correct the longstanding misconception established by *Forty Eight Pounds of Rising Star Tea* and perpetuated by the Act of 1892 of state jurisdiction over the Klamath River Indian fishery. Mattz argued that, as an enrolled member of the Yurok Tribe fishing in “Indian country” he was not subject to prosecution under state law.³⁹ The U.S. Supreme Court agreed, holding the Act of June 17, 1892, opening the reservation to allotment, did not terminate the Klamath River Reservation, and that the land within the reservation boundaries remained “Indian country” under 18 U.S.C. § 1151.⁴⁰ The Supreme Court remanded the case to the state courts for determination of the “applicability of California law notwithstanding reservation status.”⁴¹

On remand California’s First District Court of Appeals, in *Arnett v. Five Gill Nets*, determined that Indians on the Klamath River Reservation had fishing rights derived from Congress through the initial creation of the reservation, and the state therefore could not regulate fishing by Indians on

³¹ Edwin Bearss, History Resources Study, Hoopa-Yurok Fisheries Suit (Bearss Study), 159 (Sept. 21, 1989) available at http://www.nps.gov/parkhistory/online_books/hoopa/hrs.pdf.

³² *Id.* at 146.

³³ *Id.* at 147-48.

³⁴ 38 F. 403, 406-407 (N.D. Cal. 1888)

³⁵ Pierce Study, *supra* note 30 at 7.

³⁶ *Id.* at 493-95.

³⁷ Pierce Study, *supra* note 30 at 11.

³⁸ *Supra* note 6 at 484.

³⁹ *Id.*

⁴⁰ *Id.* at 487.

⁴¹ *Id.* at 485.

the Reservation.⁴² Despite the now substantial body of case law recognizing the Tribe's reserved fishing rights, the state continued to put forward the argument that fishing rights were not validly reserved for the Tribe. It argued that because the original Reservation was established by executive order, the federal government could not validly reserve fishing rights for the Tribe, and therefore tribal member fishing activity was not exempted from state authority granted by Public Law 280.⁴³ The court soundly rejected this argument, stating "since Indians on the Klamath River Reservation had fishing rights derived from Congress [pursuant to the 1855 Executive Order], State qualifications of those traditional rights was precluded by force of the Supremacy Clause," and such fishing rights were within the meaning of the Public Law 280 exemption.⁴⁴ Notably the California Court of Appeals also determined that "the attempt of the State to regulate fishing by passage of section 7155 of the Fish and Game Code was invalid even before the passage of Public Law 280."⁴⁵

B. Preemption of State Authority over Tribal Commercial Fishing

Following the *Mattz* decision the Bureau of Indian Affairs ("BIA") took a more active role in regulating the Klamath River Indian fishery by promulgating federal regulations reopening the Lower Klamath to subsistence and commercial fishing.⁴⁶ However, the Yurok's reprieve from suppression of fishing rights was short-lived. In 1979, largely due to public pressure, the BIA closed the tribal commercial fishery for "conservation purposes."⁴⁷ The moratorium on Indian commercial fishing was vehemently opposed by the Yurok Tribe. This closure prompted the volatile "fish wars" between federal and state officials and tribal fishermen in subsequent years until the moratorium was lifted in 1987.⁴⁸

During the moratorium in September of 1980, Walter McCovey, Jr., a Yurok fisherman, was charged with a felony violation of the Fish and Game Code. Mr. McCovey had been intercepted in San Jose while attempting to sell salmon he had gill net harvested on the Reservation.⁴⁹ The California Supreme Court found that the State lacked jurisdiction to prosecute Yurok tribal members under state law for exercising their reserved fishing rights. The court concluded that state regulation of off-reservation sale or possession for sale of fish caught by Yurok Indians on the Yurok Reservation was incompatible with federal and tribal interests and therefore preempted.⁵⁰ The court's determination that the preemption of state authority included commercial activity off-Reservation was later upheld in *Mattz v. Superior Court*.⁵¹

⁴² 48 Cal. App. 3d 454 (Cal. App. 1975) cert denied, 425 U.S. 907 (1976).

⁴³ *Id.* at 459-60.

⁴⁴ *Id.* at 461.

⁴⁵ *Id.* at 462. The Federal District Court in *Pacific Coast Federation of Fishermen's Assoc. v. Secretary of Commerce*, also noted that, "[i]n the wake of the *Mattz* decision, the California courts have concluded that California has no power to regulate fishing by Indians on the Klamath River and that California statutory prohibitions on gill net fishing are inapplicable." *Supra* note 16 at 633.

⁴⁶ 42 Fed. Reg. 40,904-05 (August 5, 1977).

⁴⁷ 44 Fed. Reg. 17,144 (Mar. 20, 1979).

⁴⁸ 52 Fed. Reg. 27,329 (July 21, 1987).

⁴⁹ *People v. McCovey*, 36 Cal. 3d 517 (Cal. Sup. Ct. 1984) cert denied, 489 U.S. 1078 (1989).

⁵⁰ *Id.* at 533.

⁵¹ 46 Cal. 3d 355 (Cal. Sup. Ct. 1988) (holding the comprehensive federal regulation of Indian fishing rights on the Hoopa Valley Reservation preempted state criminal prosecutions both of Indian fishing activities on the reservation and of the off-reservation sale by reservation Indians of fish that had been caught on the reservation.)

C. Development of Tribal Fishing Regulations for Klamath Indian Fishery

At the time of McCovey's and Mattz's prosecutions, the Yurok Reservation was still part of the Hoopa Valley Reservation. The Yurok Tribe was not a separate government entity, and fishing by all "Hoopa Valley Reservation" Indians was governed by federal regulation. The express purpose of these regulations was "to protect the fishery resources and to establish procedures for the exercise of the fishing rights of Indians of the Reservation until a Reservation-wide management mechanism is established with the capability to manage and regulate the Indian fisheries on the Reservation."⁵²


These federal regulations were later repealed in 1996, after the Yurok Reservation and Hoopa Valley Reservation were separated, the Yurok Tribe established a government, and the Yurok Tribe had developed its own regulatory scheme for fishing within the Yurok Reservation.⁵³ The repeal of the federal regulations and subsequent adoption of comprehensive Tribal regulations bolsters the exclusion of state authority over the Tribe's exclusive fishing rights within the Lower Klamath. Transfer of regulatory authority over the Tribe's fishery to the Tribe itself furthers the federal government interest in promoting tribal self-governance. Any state authority over the tribal fishery would interfere with federal interests in a manner inconsistent with principles of preemption.⁵⁴ The Yurok Tribe Fishing Rights Ordinance, which currently regulates the Tribe's exercise of its federally reserved fishing right, is attached as Exhibit B.

V. Conclusion

Since the Fish and Game Code was last comprehensively revised, the federally reserved fishing rights of the Yurok Tribe have been recognized by the federal and state courts and the Department of the Interior. Furthermore, state and federal courts have repeatedly determined that the state's authority over the Lower Klamath Indian fishery is preempted. The numerous federal and state cases confirming the Tribe's exclusive authority to exercise and regulate the Klamath River Indian fishery warrants the revision of contrary Fish and Game Code provisions.

Attached to this summary as Exhibit C is a list of all California Fish and Game Code sections that, for the reasons outlined above, are obsolete or discriminatory as applied to Yurok Tribal fishing and therefore require revision. The Tribe appreciates your careful consideration of these comments and recommended revisions. Any questions regarding this information can be referred to me at nvoegeli@yuroktribe.nsn.us or to Rebecca McMahon, Deputy General Counsel, at (707) 482-1350 ext. 1426 or rmcmahon@yuroktribe.nsn.us.

Sincerely,


Nathan Voegeli
General Counsel

Enclosures

⁵² 25 C.F.R. § 250.1(a).

⁵³ 61 Fed. Reg. 59,331 (Nov. 22, 1996).

⁵⁴ See *McCovey*, *supra* note 50 at 531. ("With the state asserting its authority in the area, there would be no incentive for the Hoopa Valley Reservation Indians ever to establish a reservation-wide system capable of managing and regulating the resources of the reservation. If the tribe did establish a system, its authority to regulate would have but a "hollow ring" and the exercise of that authority would be 'only at the sufferance of the State' . . . Thus, state jurisdiction would thwart Congress' overriding commitment to the encouragement of tribal self-government and economic development.")

EXHIBIT A: MAP OF YUOK RESERVATION
AND ANCESTRAL TERRITORY

Yurok Reservation & Ancestral Territory



JACK McNAMARA
FIELD AIRPORT (CEC)

● Crescent City

Klamath

DEL NORTE
HUMBOLDT

Six Rivers
National Forest

SISKIYOU



● Wautec

Redwood State
&
National Park

● Orleans

● Orick

Weitchpec

TRINITY

● Trinidad

● Hoopa

ARCATA/EUREKA
AIRPORT (ACV)

● McKinleyville

● Arcata

● Eureka

EX 10



The Yurok Tribe uses the most current and complete data available. The lines and areas represented on the map are only approximate and their actual location on the ground may vary.
Yurok Tribe, GIS Program
August 2014

EXHIBIT B: YUOK TRIBE FISHING RIGHTS ORDINANCE

Yurok Tribal Code, Natural Resources

YUROK TRIBAL FISHING RIGHTS ORDINANCE

Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following amendment and restatement of the Yurok Tribal Fishing Rights Ordinance to protect the Tribe’s federally reserved fishing rights and Tribal fishery resources:

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GENERAL PROVISIONS

SECTION 1001. Short Title

This amendment and restatement shall be referred to as the “Yurok Tribal Fishing Rights Ordinance” or “Fishing Rights Ordinance.”

SECTION 1002. Findings

- (a) The Yurok Tribal Council finds and declares as follows: The Yurok people “have always lived on this sacred and wondrous land along the Pacific Coast and inland on the Klamath River.” Yurok Const. Preamble. We “prudently harvest and manage the great salmon runs and . . . never waste and use every bit of the salmon, . . . sturgeon, eel, . . . and other ocean and river animals.” *Id.* The Yurok Tribal Court upholds our Constitution and explains that “the Yurok are a fishing people and the tribe’s Constitution and fishing laws are expressly designed to conserve and restore the severely depleted Klamath River anadromous fishery for current members and future generations.” *Nelson v. Yurok Tribe*, 5 NICS App. 119 (May 7, 1999).
- (b) In support of Yurok culture and sovereignty, the Yurok Constitution mandates that the Tribe “restore, enhance, and manage the tribal fishery, tribal water rights, tribal forests and all other natural resources.”
- (c) Federal courts also recognize that Yurok people have relied on the Klamath River for its fisheries, cultural rites and traditions since time immemorial. *See generally Kandra v. United States*, 145 F. Supp. 2d 1192, 1201 (D. Or. 2001). For generations, the Yurok Tribe has “depended on the Klamath [C]hinook salmon for their nourishment and economic livelihood.” *Parravano v. Masten*, 70 F.3d 539, 542 (9th Cir. 1995), *cert. denied*, 518 U.S. 1016 (1996). The Klamath River fishery was “not much less necessary to the existence of the [Yurok] Indians than the atmosphere they breathed.” *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)), *aff’d* 412 U.S. 481 (1973). The original Klamath River Reservation—the precursor to the Yurok Reservation—“abounded in salmon and other fish” and “was ideally selected for the Yuroks.” *Mattz v. Arnett*, 412 U.S. 481, 487 (1973).
- (d) The Executive Orders that created the present-day Yurok Reservation vested the Yurok Tribe with “federally reserved fishing rights.” *Parravano*, 70 F.3d at 541. Yurok’s federally reserved fishing right is well established by federal courts, see *United States v. Eberhardt*, 789 F.2d 1354 (9th Cir. 1986); *United States v. Wilson*, 611 F. Supp. 813 (N.D. Cal. 1985); *Pacific Coast Fed. of Fishermen’s Assoc. v. Sec’y of Commerce*, 494 F. Supp. 626 (N.D. Cal. 1980), California courts, see *Arnett v. Five Gill Nets*, 48 Cal. App. 3d 454 (Cal. App. 1975), and the U.S. Department of the Interior, Memorandum Opinion of the Solicitor, John D. Leshy, M-36979 (October 4, 1993) (“Solicitor’s Opinion”).
- (e) Federally reserved fishing rights in Yurok Tribal trust fish species of the Klamath River are integral to the Yurok way of life for subsistence, commercial, and cultural purposes. Yurok trust species include, but are not limited to, coho and Chinook salmon, steelhead trout, eel, sturgeon, and eulachon.
- (f) Congress has recognized, and the federal judicial and executive branches have

confirmed—such as in the 1988 Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i *et seq.*, *Parravano*, 70 F.3d at 539, and in the Solicitor’s Opinion—that the United States has a federal trust responsibility to protect the Yurok Tribe’s federally reserved fishery trust resources.

- (g) Federal law requires that ocean fishery management plans for Klamath and Trinity River anadromous fish substantively conform to Indian reserved fishing rights, including that of the Yurok Tribe. 16 U.S.C. § 1853(a)(2).
- (h) Harvestable quantities of Tribal trust species and seasonal races must be managed by integrating scientific and traditional methods to sustain Yurok subsistence and commercial fisheries.

SECTION 1003. Purpose

The Tribe amends and restates the Amended Fishing Rights Ordinance in order to:

- (a) Protect the Tribe’s fishery resources and Tribal fishing rights by establishing procedures for the conservation of fish stocks and exercise of the Tribe’s federally reserved fishing rights;
- (b) Allow fishing opportunity to Yurok Tribal members while at the same time ensuring adequate spawning escapement and the attainment of conservation objectives;
- (c) Restore, enhance, and manage the Tribal fishery by establishing harvest regulations for Tribal trust species and encouraging the sustainable use of Tribal trust species for the health and well-being of the Tribe and Yurok Tribal members; and
- (d) Protect fundamental Tribal cultural, ceremonial, religious, subsistence, and other traditional harvesting practices.

SECTION 1004. Reservation of Rights

- (a) The Tribe’s federally reserved fishing rights are designated for and are to be exercised exclusively by Yurok Tribal members.
- (b) Nothing in this ordinance reduces or diminishes the trust responsibility of the United States, including the Secretary of the Interior, to the Yurok Tribe.
- (c) The Yurok Tribe retains its authority to exercise its jurisdiction to the fullest extent possible.

SECTION 1005. Scope

- (a) This ordinance shall govern all Tribal members and non-Tribal members—including nonmember Indians—participating in the Tribal fishery or the Klamath River Indian fishery within the Yurok Reservation, using Tribal fishery resources or Klamath River Indian fishery resources harvested within the Yurok Reservation, or fishing within the Yurok Reservation.
- (b) The provisions of this ordinance and all adjustments apply to the waters within the jurisdiction of the Yurok Tribe as specified in the Yurok Tribal Constitution.

SECTION 1006. Sovereign Immunity Preserved

Except as judicial review is authorized in this ordinance, and in accordance with the Yurok Tribe's Supreme Ordinance, nothing in this ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

SECTION 1007. Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this ordinance are severable.

SECTION 1008. Effective Date

This amended and restated ordinance shall take effect immediately after its adoption by Council.

SECTION 1009. Amendment and Restatement

The Amended Fishing Rights Ordinance is hereby amended and restated and Council adopts the amended and restated ordinance in its entirety as the Yurok Tribal Fishing Rights Ordinance.

SECTION 1010. Repeal of Conflicting Ordinance Provisions

All prior ordinance provisions previously enacted by the Tribal Council and inconsistent with the provisions of this ordinance are hereby repealed. If the provisions of this ordinance conflict with the provisions of any other previously enacted ordinance, the provisions of this ordinance shall control.

SECTION 1011. Definitions

- (a) *Adjustment* means a pre-season or in-season adjustment to Tribal fishery resource management.
- (b) *Amended Fishing Rights Ordinance* means the Yurok Tribal Fishing Rights Ordinance originally adopted on June 4, 1996, amended on June 7, 1996, amended on July 11, 1996, amended on October 7, 1998, amended on July 7, 1999, and amended on July 18, 2007, and in effect immediately preceding the effective date of this amendment and restatement.
- (c) *Anadromous Fish* means all species, stocks and races of salmon, steelhead, cutthroat trout, eulachon, sturgeon, eel, or other species of anadromous fish as that term is commonly defined.
- (d) *Angling or Pole Fishing* means the taking or attempted taking of fish by hook and line, usually attached to a rod, with the line closely attended in such a manner that the fish voluntarily takes the hook in its mouth.
- (e) *Assist* means providing aid to an eligible fisher in placing, checking, or removing fishing gear from the water, removing any fish caught with the gear, or being in the boat while fishing.
- (f) *Barter* the exchange of goods or productive services for other goods or productive

services without the use of money or monetary equivalents such as gift cards.

- (g) *Ceremony* means a gathering consisting principally of Yurok Indians for any solemn, religious or cultural observance on a traditional basis, including funerals.
- (h) *Channel* means the deeper part of the Klamath River, which generally includes the main waterflow course within the Klamath River.
- (i) *Chute* means the narrow portion of the Klamath River estuary where the river passes through the sand spit to meet the ocean.
- (j) *Clip* means the complete removal of the dorsal fin of a salmon or steelhead to within one-half inch of the fish's back.
- (k) *Clipped Fish* means a fish that has had its dorsal fin clipped.
- (l) *Closed* or *Closure* refers to waters or areas closed to one or more methods of Tribal fishing for a specified period unless otherwise authorized.
- (m) *Commercial Fish* means any Chinook salmon, or part of such fish, taken within the commercial zone, during the commercial season, by a commercial fisher having a commercial buoy on the net, and handled according to the Quality Control Requirements and other commercial regulations laid out in this document.
- (n) *Commercial Fisher* means an eligible fisher certified for commercial fishing.
- (o) *Commercial Fishing* means fishing with the intent to use any fish taken, or part of such fish, for commercial use.
- (p) *Commercial Fishing Rights* means the privilege of eligible fishers to fish during a commercial season regulated pursuant to this ordinance.
- (q) *Commercial Use* means an income-generating use, such as sale, trade, or exchange for money, gift cards, or other type of income, but does not include barter or subsistence use.
- (r) *Commercial Use Permit* means an Find Own Market or Value Added permit.
- (s) *Commercial Zone* is the part of the Estuary above the downstream boundary and below the Highway 101 bridge, excluding all sloughs.
- (t) *Council* or *Tribal Council* means the Yurok Tribal Council.
- (u) *Cultural Committee* means the Yurok Tribe Cultural Committee with representatives designated by Council.
- (v) *Dip Net* or *Trigger Net* means a section of netting distended by a rigid frame operated by hand.
- (w) *Drift Net* means a gillnet which is not staked, anchored or weighted but drifts free, including a throw net.
- (x) *Eel* means Pacific lamprey, an anadromous fish.
- (y) *Eel Hook* means a hook attached to a pole used for catching eels and may be made of traditional or nontraditional materials.
- (z) *Eel Basket* or *Eel Trap* means a piece of fishing gear, which can be made from traditional or nontraditional materials such as wire mesh, consisting of a trap made

specifically for catching eel.

- (aa) *Eligible Fisher* means any Yurok Tribal member who is determined to be eligible in accordance with Chapter 1.
- (bb) *Enforcement Officer* means a Yurok Tribe Department of Public Safety officer or warden, or a person designated by the Yurok Tribal Council to enforce this ordinance.
- (cc) *Fish* or *Fishing* means the fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any fish.
- (dd) *Fisher* means any person, including Yurok Tribal members and non-Tribal members, who participates in or uses resources from the Tribal fishery.
- (ee) *Fisher Identification Card* or *Identification Card* means a Tribal identification card issued by the Yurok Tribe to a Tribal member, and includes the name, address, birthdate, color of hair, color of eyes, height, weight, identification number, and photograph of the Tribal member.
- (ff) *Fishing Gear* or *Gear* means any net, seine, hook and line, boat, trailer, vehicle, gun or other apparatus used for taking, attempting to take, or transporting fish.
- (gg) *Fish Monitor* means Yurok Tribal staff hired to monitor the Tribal fishery harvest.
- (hh) *FOM* means Find Own Market.
- (ii) *FRO* means this Yurok Tribal Fishing Rights Ordinance.
- (jj) *Gillnet* means a flat net suspended vertically in the water with meshes that allow the head of the fish to pass through and become entangled and includes set nets, drift nets, and throw nets.
- (kk) *Guide* means a Yurok Tribal member certified by the Yurok Tribe and authorized to act as a guide for the Tribal Guide Fishery.
- (ll) *HMP* means Harvest Management Plan.
- (mm) *Indian* means an enrolled member of a federally recognized Indian tribe.
- (nn) *Identification Number* means the identification number assigned by the Yurok Tribe to a Yurok Tribal member.
- (oo) *Ineligible Fisher* means a person who is not an eligible fisher, including nonmember Indians and non-Tribal members.
- (pp) *Natural Resources Committee* means the Yurok Tribe Natural Resources Committee with representatives designated by Council.
- (qq) *Nonmember Indian* means a person who is a member of a federally recognized tribe and is not a Yurok Tribal member.
- (rr) *Non-Tribal Member* means nonmember Indians and non-Indians.
- (ss) *Marine Mammal* means all species of seals, sea lions, otters, whales and such other species as defined by the Marine Mammal Protection Act, 16 U.S.C. § 1361 et seq.
- (tt) *Participate in a Fishery* means to take part or engage in a fishery, including fishing or assisting another with fishing in that fishery.

- (uu) *Reservation or Yurok Reservation* means all lands within the exterior boundaries of the Yurok Reservation.
- (vv) *River* means the wetted area from bank to bank of the Klamath River.
- (ww) *Secretary* means the Secretary of the Interior or his or her designated representative.
- (xx) *Set net* means a gillnet that is staked, anchored, or weighted on at least one end so that it does not drift free.
- (yy) *Snag Gear* means any hooking implement to catch or hold fish, with or without handles, making possible the taking of fish in such a manner that the fish does not take the hook voluntarily in its mouth.
- (zz) *Subsistence Fish* means any fish, or part of such fish, taken for subsistence use and as further defined in this ordinance.
- (aaa) *Subsistence Fishing* means fishing with the intent to use any fish taken for subsistence use.
- (bbb) *Subsistence Use* means use for either:
 - (1) direct personal, family, or community consumption for food or barter; or
 - (2) trade or sale to a Yurok Tribal member for direct personal, family, or community consumption as food; or
 - (3) the Elders' Fishery.
- (ccc) *Take* means the pursuing, capturing, harvesting or the attempted pursuit, capture or harvest of fish.
- (ddd) *Throw net* means a gillnet without an anchor that is no more than 30 feet in length and is placed in the water by throwing from shore.
- (eee) *Trade* means the act or business of buying or selling for money or a monetary equivalent such as gift cards.
- (fff) *Traditional Use* means a long-established, consistent pattern of use, incorporating Yurok beliefs and customs which have been transmitted from generation to generation, including trade, barter, and uses for cultural, ceremonial, religious, subsistence, and other traditional practices.
- (ggg) *Transporting Fish* means taking or carrying fish from one place to another by means of a vehicle, including a boat, and includes moving fish more than 25 feet from the wetted channel of the Klamath River, having fish on a road, or moving fish on land more than 200 feet from the fishing site.
- (hhh) *Tribal Allocation* means that number and type of fish allocated from the Tribal fishery to the Yurok Tribe pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.
- (iii) *Tribal Court* means the Yurok Tribal Court, which was established by the Yurok Tribe Judicial Branch Ordinance.
- (jjj) *Tribal Fishery* means the Klamath River Indian fishery within the exterior boundaries of the Yurok Reservation, including the subsistence and commercial fisheries regulated by this ordinance.

- (kkk) *Tribal Fishery Resource* means any anadromous fish or freshwater fish species found within the Yurok Reservation, but excluding marine species.
- (lll) *Tribal Member* or *Yurok Tribal Member* means a duly enrolled member of the Yurok Tribe listed on the Yurok Tribal Membership Roll.

CHAPTER 1:
FISHER
REQUIREMENTS

CHAPTER 1. FISHER REQUIREMENTS

SECTION 1101. Eligible Fishers

A Yurok Tribal member who has a valid Yurok Tribal identification card is an eligible fisher and may exercise Tribal fishing rights under the authority of this ordinance.

SECTION 1102. Non-Tribal Member Fishing Generally Prohibited

A non-Tribal member may not participate in the Klamath River fishery within the Yurok Reservation, including the subsistence, commercial, or Tribal Guide fisheries, except in compliance with any of the following:

- (a) A nonmember Indian may fish for eel on the Yurok Reservation if the nonmember Indian obtains a fishing license from the Yurok Tribe in accordance with Section 1607 and abides by the restrictions on that license and applicable California state fishing regulations. Any eel taken pursuant to this subsection is not part of the Klamath River Indian or Tribal fishery and instead is part of the California non-Indian fishery.
- (b) A non-Indian may fish within the Yurok Reservation if the non-Indian obtains a California state fishing license, abides by all California state fishing regulations applicable to non-Indians, and does not assert that such fishing is pursuant to any federal reserved or aboriginal fishing right. Any fish taken pursuant to this subsection is not part of the Klamath River Indian or Tribal fishery and instead is part of the California non-Indian fishery.
- (c) A non-Tribal member may fish within the Yurok Reservation if the non-Tribal member obtains a fishing license from the Yurok Tribe in accordance with Section 1607 and meets all other requirements for participation in the Tribal Guide Fishery.
- (d) Nonmember Indians may take only up to five (5) eels per day and shall only use an eel hook to fish for eels.
- (e) If approved in advance by the Tribal Council, nonmember Indians may take in excess of the five (5) eel limit for purposes of trading with Yurok or other nonmember Indians.
- (f) According to traditional Yurok fishing custom, only males may fish for eels. Therefore, only males will be issued Yurok fishing licenses to take eels.

A person commits a level two offense if the person violates this section. A nonmember Indian who fishes for eel in violation of this section additionally shall be suspended for one year from eel fishing on the Yurok Reservation.

SECTION 1103. Fishing By Minors

- (a) Fishers Under 12 Years. A fisher younger than 12 years old cannot fish:
 - (1) With his or her own net, including gillnets and dip nets, in the Estuary unless

accompanied by an eligible fisher over 18 years old.

- (2) Commercially with his or her own number, but can participate in commercial fishery under supervision of commercial fisher per section 1408.
- (b) Adult Responsibility. A fisher less than 12 years old cannot be charged with a violation of this ordinance. If a fisher less than 12 years old engages in conduct which, but for the age of the fisher, would constitute a violation of this ordinance, an adult may be charged with the violation if:
- (1) The adult is the parent or responsible guardian of the child; or
 - (2) The adult was the owner of any fishing equipment being used by the child at the time of the conduct constituting the violation.
- (c) Violation. A violation of this section results in a level one offense.

SECTION 1104. Assistance by Ineligible Fisher Prohibited

Only eligible fishers may participate in the Tribal fishery on the Yurok Reservation. Ineligible fishers may assist with cleaning fish on shore or dock, but they otherwise may not assist in the Tribal fishery on the water in any way. Assisting in the Tribal fishery includes setting or tending nets, removing fish from a net, providing aid to an eligible fisher in placing fishing gear, checking fishing gear, or removing gear from the water, or being in a boat with an individual that has a net deployed.

An eligible fisher who allows an ineligible fisher to assist in the Tribal fishery, and an ineligible fisher who assists in the Tribal fishery, in violation of this section commits a level three offense.

SECTION 1105. Claiming Fish of Another Prohibited

No fisher may claim a fish that was taken by an ineligible fisher and sell that fish during commercial season.

A person commits a level two offense if the person violates this section.

SECTION 1106. Identification Card Required

An eligible fisher shall obtain a Yurok Tribal identification card and have such card on his or her person while fishing or transporting fish taken on the Yurok Reservation and within the jurisdiction of the Yurok Tribe. An eligible fisher shall produce his or her Yurok Tribal identification card upon request by an enforcement officer. A non-Tribal member fisher shall produce his or her official state or other non-Yurok tribal identification upon request by an enforcement officer.

A person commits a level two offense if the fisher violates this section. If a fisher offers proof to the Tribal Court of his or her valid identification, the offense level shall be reduced to a level one offense.

SECTION 1107. Use of Another's Identification Prohibited

No fisher may use the identification card or identification number of another eligible fisher, except a fisher permitted in accordance with section 1108.

A person commits a level two offense if the person violates this section.

SECTION 1108. Fishing with the Identification Number of Elderly or Handicapped

Subsistence fishing by an eligible fisher with the identification number and gear of an elderly or handicapped Yurok Tribal member is permissible with a permit listing any elderly or handicapped Tribal member for whom the eligible fisher is authorized to fish. An eligible fisher can apply for a permit by submitting an application to the Weitchpec Tribal Office Manager or the Klamath Tribal Office Council Support staff, who are authorized to issue such permits as directed by the Council.

A person commits a level two offense if the person violates this section.

SECTION 1109. Emergency Assistance

Nothing in this ordinance or an adjustment shall prohibit an eligible fisher from requesting or giving assistance to anyone where the person needing assistance is faced with an emergency situation that could lead to injury, loss of life, or loss of substantial gear.

CHAPTER 2:
FISHERIES
MANAGEMENT

CHAPTER 2. FISHERIES MANAGEMENT

SECTION 1201. Fisheries Management

The Yurok Tribal Council shall manage and regulate the Tribal fishery pursuant to this ordinance and any adjustment.

The Tribal fishery harvest shall be managed by the Tribe to balance the protection, conservation, and restoration of Tribal fishery resources and the meaningful exercise of Tribal federally reserved fishing rights.

SECTION 1202. Harvest Management and Quota

The Council by adjustment may specify quotas, subquotas, reserve quotas, and fishing hours for the Tribal fishery. Harvest of adult fall Chinook salmon is based upon the harvestable surplus for the Klamath River, which is determined pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and establishes specific harvest allocations for the Klamath River Indian and non-Indian fisheries. The Tribe is entitled sufficient ceremonial, subsistence, and commercial fish to meet the fishing purposes for which the Reservation was created. The Klamath River harvest allocation is intended to provide adequate natural spawning escapement in the Klamath River and the propagation of the species.

SECTION 1203. Fishery Management Areas

This ordinance establishes the following management areas and permitted fishery uses, which may be altered by an adjustment:

- (a) Estuary. The mainstem Klamath River from the river mouth to the Highway 101 Bridge may be used for subsistence, commercial, and Tribal Guide fisheries.
- (b) Middle Klamath. The mainstem Klamath River from the Highway 101 bridge upstream to Surpur Creek may be used for subsistence, smoked salmon Value Added, and Tribal Guide fisheries.
- (c) Upper Klamath. Mainstem Klamath River from Surpur Creek to the upstream boundary of the Yurok Reservation may be used for subsistence, smoked salmon Value Added, and Tribal Guide fisheries.

SECTION 1204. Tribal Fishery: Subsistence, Commercial, and Tribal Guide Fisheries

The Tribal fishery is divided into the subsistence fishery, commercial fishery, and the Tribal Guide fishery.

The subsistence fishery includes the Elders' Fishery, which authorizes sales to the Tribe or an entity designated by the Tribe to purchase fish for distribution to Tribal member elders and disabled Tribal members.

The commercial fishery is subdivided for purposes of managing commercial sales and permits into the following fisheries:

- (a) Requa Sales Fishery. The Requa Sales Fishery authorizes direct sales to Tribally designated buyers at Requa.
- (b) Find Own Market Fishery. The Find Own Market or FOM Fishery authorizes sales of fresh Chinook salmon to non-Tribal member buyers that are found by the eligible fisher.
- (c) Value Added Fishery. The Value Added Fishery authorizes sales of frozen and vacuum-sealed or glazed fall Chinook salmon and of smoked, processed, and vacuum-sealed fall Chinook salmon.

SECTION 1205. Downstream Boundary for Fishing

Special regulations will apply to fishing in the lower end of the Estuary. The downstream boundary shall be located as specified in an adjustment for each fishing season. Buoys or other markers will be located along the downstream boundary for net fishing. While these markers may move from time to time, the location of the downstream boundary shall be as stated in the adjustment, regardless of the position of any markers. Due to unforeseen circumstances, however, these markers may not be in place at all times. Any determination of the downstream boundary shall be at the reasonable discretion of enforcement officers. An officer may, but is not required to, notify a fisher that he or she is fishing below the downstream boundary before issuing a citation.

If an anchor rope of a set net is more than ten feet below the downstream boundary, the net will be considered to be set below the line.

Fishing below the downstream boundary shall be regulated as follows, or as stated in an adjustment:

- (a) Drift Net.
 - (1) During the commercial season, drift net fishing below the downstream boundary is prohibited.
 - (2) Except during the commercial season, drift net fishing below the downstream boundary is permitted with a maximum of a 30-foot throw net.
 - (3) Motorized vehicles, boats, jet skis, or other floating objects cannot be used to assist with setting throw nets.
- (b) Dip Net.
 - (1) During the commercial season, dip net fishing below the downstream boundary is prohibited.
 - (2) Except during the commercial season ends, dip net fishing below the downstream boundary is generally permitted.
- (c) Set Net. Set net fishing below the downstream boundary is prohibited. All set nets must have their entire cork line above the downstream boundary.
- (d) Angling. Angling below the downstream boundary is prohibited for commercial fishing, but is permitted for subsistence fishing. There shall be no catch-and-release fishing below the downstream boundary.

- (e) Net Fishing in Chute Prohibited. In accordance with subsections (a)(1) and (b)(1) of this section, no person shall use a drift net or dip net in the chute during the commercial season. Set nets are prohibited in the chute.

A person commits a level three offense if the person violates this subsection (a) – (c). A person commits a level two offense if the person violates this subsection (d). A person commits a level four offense if the person violates this subsection (e). A violation of each subsection shall constitute a separate offense.

SECTION 1206. Fishing In a Tributary

No gillnet or dip net may be used in any tributary creek of either the Klamath or Trinity River or within 100 feet of the mouth of any of the following creeks:

Ah Pah Creek	Johnson Creek	Surpur Creek
Blue Creek	McGarvey Creek	Tarup Creek
Bear Creek	Metah Creek	Tectah Creek
Cappell Creek	Pecwan Creek	Terwer Creek
Omagar Creek	Pine Creek	Tulley Creek
Hoppaw Creek	Roach Creek	Waukell Creek
Hunter Creek	Salt Creek	

A person commits a level two offense if the person violates this section.

SECTION 1207. Closure of Sloughs in Estuary during Commercial Season

In addition to the downstream boundary, no fishing for salmon will be permitted during the commercial season in the sloughs immediately connected to the Estuary, including the slough near Williams Rock, Panther Creek and associated slough, and the South slough.

A person commits a level two offense if the person violates this section.

SECTION 1208. Fishery Closures

- (a) Fishery Closures. The Council by adjustment may specify closures of the subsistence, commercial, and Tribal Guide fisheries, including by date, time, or management area.
- (b) Monday Closures. The Tribal fishery is closed every Monday from 9:00 a.m. to 5:00 p.m. (Monday closure), except on Memorial Day, Labor Day, or the Fourth of July when that holiday falls on a Monday, or as otherwise specified by an adjustment.
- (c) Stock Protection Closures. Stock protection closures may be necessary to spread harvest impacts between Klamath River Basin and Trinity River Basin stocks, or to protect coho salmon stocks, which have been listed as threatened under the federal

Endangered Species Act. The Tribe may implement stock protection closures, including varying coho salmon protection closures, as necessary by an adjustment.

- (d) Coho Protection Closures. A coho protection closure shall take effect on September 25 of each year, unless an earlier date is specified by an adjustment, and continue until November 30 of that year. The Tribal fishery during the coho protection closure shall be closed Monday at 9:00 a.m. through Wednesday 9:00 a.m. of each week (Monday through Wednesday morning closure), or as specified by an adjustment.

A person commits a level two offense if the person violates this section.

SECTION 1209. Blue Creek Closure

Fishing is prohibited from 500 feet upstream to one-half mile downstream from the upstream bedrock cliff at the mouth of Blue Creek from June 15 through November 30 to protect the thermal refugia and to protect fish returning to Blue Creek and staging at its mouth. The boundary limits and timing of closure may be altered or specified by an adjustment.

A person commits a level three offense if the person violates this section.

SECTION 1210. Permitted Gear

- (a) Authorized Gear. Eligible fishers may use the following gear:
 - (1) Set net;
 - (2) Gillnet;
 - (3) Hand dip net or trigger net;
 - (4) Drift net;
 - (5) Eel basket;
 - (6) Eel hook; and
 - (7) Hook, line, and rod.
- (b) Unauthorized Gear. Fishers may not fish within the Yurok Reservation with the following gear:
 - (1) Any gear not specifically authorized for that fisher in subsection (a);
 - (2) Traps, except eel traps;
 - (3) Wire;
 - (4) Fencing material;
 - (5) Snag gear;
 - (6) Stunning agents;
 - (7) Explosives; and
 - (8) Caustic or lethal chemicals in any form.

A person commits a level three offense if the person fishes on the Yurok Reservation with unauthorized gear, except the use of gear identified in subsections (b)(7) and (b)(8) shall be a level four offense. Any gear used or possessed in violation of this subsection shall be subject to seizure and forfeiture.

SECTION 1211. Attendance of Nets in the Estuary

Nets in the Estuary must be constantly attended at all times from August 1 through November 30. A net is considered unattended if the eligible fisher is more than 500 feet or out of direct line of sight from his or her net that is in the water. A person may leave for up to 30 minutes in a four-hour period for a bathroom break.

A person commits a level two offense if the person violates this section.

SECTION 1212. Assistance with Attendance of Nets

Eligible fishers may assist other eligible fishers to attend a net if the eligible fisher who owns the net is within 500 feet of the fishing location. An eligible fisher may ask another eligible fisher to attend his or her net while that person takes a bathroom break for up to 30 minutes. The intent of this regulation is to expedite proper handling of fish during times of abundant harvest.

SECTION 1213. Marking of Nets

- (a) Unmarked Net. Each eligible fisher shall indelibly and conspicuously mark his or her Tribal identification number on a float or cork attached to either end of any gillnet being used so that the number is obvious without removing the gear from the water. This requirement does not apply to throw nets used in the chute.
- (b) Mismarked Net. Only one identification number may be on a net. Any net marked with more than one identification number shall be subject to seizure and forfeiture together with any fish contained therein.

A person commits a level two offense if the person violates this section.

SECTION 1214. Use of Identification Numbers on Nets

- (a) Use of Identification Number by Another Prohibited. No eligible fisher shall authorize the use of his or her identification number on a net fished by another person. This responsibility shall not act to relieve another person of liability for any conduct charged.
- (b) Fishing with Identification Number of Another Prohibited. No eligible Indian fisher may attend or fish a net that is not marked with his or her own identification number.
- (c) Exceptions. Notwithstanding subsections (a) and (b), an eligible fisher may fish with the identification number of another, or authorize another eligible fisher to use his or her identification number, if:
 - (1) The eligible fisher whose identification number is on the net is within 500 feet of the net and has given his or her permission;

- (2) The eligible fisher maintains an elders' fishing permit and uses the identification number of that elder; or
- (3) Such use is authorized by an adjustment.

A person commits a level two offense if the person violates subsection (a) or (b) and does not meet an exception under subsection (c). A violation of each subsection shall constitute a separate offense.

SECTION 1215. Dip Net Fishing

Dip net fishing by eligible fishers is permitted, except during closures or as otherwise provided in section 1205, this ordinance, or an adjustment.

A person commits a level two offense if the person violates this section.

SECTION 1216. Angling

Angling for subsistence is permitted throughout the Reservation at all times, except during the coho closure or as otherwise provided in this ordinance or an adjustment. Salmon and steelhead caught by angling must have the dorsal fin clipped, unless it is a fall Chinook salmon caught within the Estuary during an open commercial fishery.

SECTION 1217. Drift Net Fishing

Drift net fishing is permitted, except:

- (a) Yield to Set Nets. A drift net fisher must yield to set nets;
- (b) 50-foot Separation. A drift net fisher must maintain a 50-foot separation from other drift and set nets; and
- (c) As otherwise provided in section 1205, this ordinance, or an adjustment.

A person commits a level two offense if the person violates this section. A violation of each subsection shall constitute a separate offense.

SECTION 1218. Gillnet Fishing

Gillnet fishing by eligible fishers is permitted, except:

- (a) Monday Closure. No gillnet may be in the water Monday between the hours of 9 a.m. and 5 p.m. as specified in section 1208;
- (b) Maximum Length. An eligible fisher may not use more than 100 feet of gillnet, which may be divided into two or more separate gillnets;
- (c) Anchoring. No gillnet may be anchored to any boat dock without permission;
- (d) Blocking Dock and Ramp Traffic. No gillnet may be placed in such a manner as to impede boat traffic from docking at or departing from any boat dock or ramp; and
- (e) As otherwise provided in section 1205, this ordinance, or an adjustment.

A person commits a level two offense if the person violates this section. A violation of each subsection shall constitute a separate offense.

SECTION 1219. Set Net Fishing

Set net fishing by eligible fishers is permitted, except:

- (a) 50-foot Separation. A set net fisher must maintain a 50-foot separation from other drift and set nets. If two set-nets are less than 50 feet apart, then the net that was moved last shall be considered to be the net at fault.
- (b) Placement Along Downstream Boundary. All set nets must have their entire cork line above the downstream boundary. If a fisher is determined by an enforcement officer to be below the downstream boundary, that fisher shall be required to remove his or her net and move back in the order to the next available spot.
- (c) Set Net Fishing Hole Locations. Set net fishing hole locations shall be determined by the individual eligible fishers in accordance with tradition and custom. Claims by eligible fishers to fishing holes that cannot be resolved amicably by the disputing parties shall be resolved pursuant to section 1904.
- (d) Blocking River Channel. No set net or combination of set nets, staggered or joined, may be placed in such a way that the set net or nets extend more than one-half of the distance across any channel within a 100-foot stretch of the river in the Upper or Middle Klamath.
- (e) As otherwise provided in section 1205, this ordinance, or an adjustment.

A person commits a level two offense if the person violates this section. A violation of each subsection shall constitute a separate offense.

SECTION 1220. Eel Fishing

Eel fishing with an eel hook or eel trap by eligible fishers is generally permitted, except as otherwise provided in this ordinance or an adjustment.

A person commits a level two offense if the person violates this section. In addition to the penalties prescribed for a level two offense, a non-Tribal member fisher who violates this section shall be penalized as specified in section 1102.

SECTION 1221. Sturgeon Fishing

Sturgeon fishing by eligible fishers is generally permitted, except:

- (a) Barter and Sale Prohibited. Sturgeon are subsistence fish, but no fisher shall barter, trade, or sell sturgeon for commercial or subsistence use. Sturgeon is only for direct subsistence by a Tribal member and his or her family and may not be bartered with anyone, including with Tribal members.
- (b) Release of Large Sturgeon. A fisher shall release all sturgeon 6 feet or longer, measured in a straight line from the nose to the tip of the tail.
- (c) Holding of Sturgeon. A fisher shall not hold sturgeon alive, except while the fisher is tending his or her net or processing fish on site. Any sturgeon found alive shall be released if it appears healthy enough to survive, otherwise the sturgeon will be confiscated and distributed to elders.

- (d) Harvest Number. A fisher shall not harvest more than one sturgeon per day.
- (e) Land Transportation. A fisher shall not transport by land more than one sturgeon at a time, unless the fisher has a valid transportation permit issued by the Yurok Tribal Fisheries Program or the Yurok Tribe Department of Public Safety on the day the sturgeon was harvested and names that person as eligible to transport.
- (f) As otherwise provided in this ordinance or an adjustment.

A person commits a level three offense if the person violates this section. A violation of each subsection shall constitute a separate offense.

SECTION 1222. Scientific Studies

- (a) Interference Prohibited. Adjustments may be adopted as necessary to ensure that no fishing occurs which may interfere with any scientific study authorized by the Tribe.
- (b) Test Fisheries. Test fisheries, including trapping, netting, and electrofishing, may be conducted by employees of fisheries management agencies working on the Reservation for resource management purposes. Both Tribal and Non-Tribal agencies and personnel must obtain a permit to conduct such studies from the Tribal Council. Tribal members may observe test fishery operations by making arrangements with the agency conducting the activity.
- (c) Notice. Notice of a scientific study or test fishery shall be posted at the Klamath and Weitchpec Tribal administrative offices, the Requa boat ramp, and other places as determined by the Tribal Council.
- (d) Collection of Coded Wire Tags and Cooperation with Fish Monitors. Fishers are required to cooperate with Fish Monitors. The snouts of Chinook with an adipose fin clip must be given to Yurok Tribal Fisheries Program staff upon request. The information obtained from the coded wire tags recovered from such fish is critical to the successful management of Klamath River fall Chinook. Sampling must be allowed even if the fish have been packed in ice or are intended for commercial use.

A person commits a level three offense if the person interferes with a properly noticed scientific study or test fishery, or fails to provide a snout of a Chinook salmon upon request.

SECTION 1223. Fish Waste Prohibited

Fishers must exercise care to ensure that no fish are wasted.

A person commits a level two offense if the person violates this section.

SECTION 1224. Fish Theft

The theft of fish from nets, boats, smokehouses or other locations and the theft of fishing gear or boats is strictly prohibited. Complaints of fish theft must be initiated by the individual who owns the property taken.

A person commits a level four offense if the person violates this section. Restitution shall be required in the amount of three times fair market value.

SECTION 1225. Sale of Chinook Roe

Eligible fishers may sell roe from Chinook salmon from August 1 to November 30, or as specified by an adjustment. The sale of roe from any fish other than Chinook salmon is prohibited.

A person commits a level two offense if the person violates this section.

SECTION 1226. Cleaning Fish at Requa

Cleaning of fish at the Requa Resort, docks, and boat ramp areas is prohibited except at designated fish cleaning stations. Fish parts may not be placed in dumpsters at these areas. .

A person commits a level two offense if the person violates this section.

SECTION 1227. Protecting Gear From Marine Mammals

Eligible fishers may protect their fishing gear and their person from damage or threat by marine mammals. Fishers shall only use seal bombs, pellet or BB air guns, slingshots, and shotguns to protect their gear. The eligible fisher protecting his or her gear shall ensure that any marine mammal carcass is used by Tribal members in a manner consistent with traditional customs and practice.

A person commits a level three offense if the person violates this section. In addition to the penalties prescribed for a level two offense, any person who violates this section shall forfeit any weapon used to commit the violation.

CHAPTER 3:
SUBSISTENCE
FISHERY

CHAPTER 3. SUBSISTENCE FISHERY

SECTION 1301. Subsistence Fishery

The subsistence fishery is separate from the commercial fishery and the Tribal Guide Fishery, but includes the Elder Fishery. The subsistence fishery authorizes Yurok Tribal members to take fish (1) for direct personal, family, or community consumption for food, barter, or trade; (2) for sale to a Yurok Tribal member for direct personal, family, or community consumption as food; or (3) for the Elders' Fishery.

SECTION 1302. Subsistence Fishing Generally Permitted

Pursuant to the Yurok Constitution, subsistence fishing by eligible fishers is generally permitted, except as managed pursuant to this ordinance or an adjustment.

SECTION 1303. Subsistence Fish

Subsistence fish are all fish that are not commercial and include, but are not limited to:

- (a) Any dorsal fin clipped salmon or steelhead;
- (b) Any fish caught outside of the commercial season;
- (c) Any fish that is not a Chinook salmon;
- (d) Any Chinook salmon caught during commercial season that
 - (1) Meets the requirements for the Elders' Fishery; or
 - (2) Has not been handled in accordance with the Commercial Fish Quality Control Requirements of section 1416; or
 - (3) Has been harvested in a net not marked with a commercial buoy, or
 - (4) Is located outside of the Estuary or is transported by land without a commercial use permit; or
 - (5) Was caught below the downstream boundary; or
 - (6) Was harvested by, purchased by, or is in the possession of, a fisher not certified for commercial fishing.

SECTION 1304. Use of Subsistence Fish

Barter, trade, or sale of fish to Yurok Tribal members for direct consumption as food shall be generally permitted. Bartering of fish must be conducted in accordance with section 1309. Barter, trade, or sale of sturgeon is prohibited. Spring Chinook salmon may not be sold. The Tribal Council may impose any limitations on subsistence that are necessary to protect fishery resources or to ensure that all fish caught are used for subsistence purposes.

SECTION 1305. Dorsal Fin Clip of Subsistence Salmon and Steelhead

All subsistence salmon and all steelhead must have the dorsal fin completely removed to within one-half inch of the fish's back, except Chinook salmon that meet Elders Fishery requirements in section 1312 are not to be clipped. The dorsal fin must be removed prior to cleaning, gutting, or

transporting and within 15 minutes of first handling the fish. Any salmon taken in the Middle or Upper Klamath, including salmon to be smoked for commercial use, must be clipped. Failure to clip the dorsal fin on a Chinook defined as subsistence will create the rebuttable presumption that the fish is a commercial fish

A person commits a level three offense if the person possesses an unclipped salmon or steelhead:

- (a) Outside of the Estuary without a commercial use permit; or
- (b) Within the Estuary without a commercial fishing license or without meeting Elders' Fishery requirements; or
- (c) On land without a commercial use permit.

SECTION 1306. Sale of Subsistence Fish Prohibited

Selling a subsistence fish to a non-tribal member, with or without an intact dorsal fin, leaving the dorsal fin intact on a salmon defined as subsistence, or leaving the dorsal fin intact on a steelhead is prohibited.

A person commits a level four offense if the person violate this section.

SECTION 1307. Ceremonial Fishing

Ceremonial fishing may be conducted at any time, except ceremonial fishing during a closure may only be conducted pursuant to a special permit issued by the Tribal Council. The Yurok Tribal Council may impose any conditions on the permittee that are necessary to protect fishery resources or to ensure that all fish caught are used for ceremonial purposes.

A person commits a level two offense if the person violates this section.

SECTION 1308. Sea Lion Hunt

A Sea Lion Hunt consistent with Yurok Tribe traditional practices is allowable with an approved harvest management plan for this species.

SECTION 1309. Bartering Fish

Only subsistence fish may be bartered, and all subsistence salmon and steelhead must have the dorsal fin clipped. Eligible fishers may barter fish with anyone, except:

- (a) No eligible fisher may barter more than 10 fish to any one individual within a 30-day period;
- (b) No eligible fisher may barter more than 30 fish within a 30-day period;
- (c) Bartered fish cannot be sold or bartered by the recipient; and
- (d) Barter is for goods or services only. Prepaid credit cards, gift cards, gas cards, and other instruments that can be used to purchase goods and services are not valid for barter.

A person commits a level two offense if the person violates this subsection (a) – (c). A person commits a level three offense if the person violates this subsection (d).

SECTION 1310. Fish for Cookout by Permit

Use of fish for community functions and cookouts may be authorized pursuant to a special permit issued by the Tribal Council. The Tribal Council may impose any conditions on the permittee that are necessary to protect the fishery resources or to assure that all fish caught are used for the stated purpose. Proceeds from the cookout may be used as specified by the permit and for direct costs incurred for the cookout, but not for labor involved with the cookout or the purchase of fish for the cookout.

A person commits a level two offense if the person violates this section.

SECTION 1311. Elders' Fishery

Eligible fishers are generally permitted and encouraged to give fish to elders. The Tribe may establish an Elders' Fishery to provide a mechanism to furnish additional fish to elders. The Elders' Fishery permits authorized eligible fishers to sell fresh Chinook salmon to the Tribe for distribution to elders and disabled Tribal members in accordance with the following provisions:

- (a) Commercial Certification Required. A fisher must have had the required training and signed the commercial fisher's contract.
- (b) Commercial Buoy Required. A fisher must use a commercial buoy.
- (c) Estuary Fish. The fish must be harvested from the Estuary.
- (d) Adult fish. Donated fish must be adult Chinook.
- (e) Unclipped Fish. The fisher must not clip the dorsal fin of elders' fish.
- (f) Commercial Quality Control Standards. The fish must be handled in accordance with the Commercial Fish Quality Control Requirements.
- (g) Transport of Fish. The fisher making the sale must transport the fish to the buying station at Requa by boat and cannot transport the fish by land.
- (h) Any additional requirement established by an adjustment.

CHAPTER 4:
COMMERCIAL
FISHERY

CHAPTER 4. COMMERCIAL FISHERY

SECTION 1401. Commercial Fishery

The commercial fishery is separate from the subsistence fishery and the Tribal Guide Fishery. The commercial fishery includes Requa Sales, Find Own Market, and Value Added Fisheries. The commercial fishery authorizes Yurok Tribal members to use fish harvested from the Tribal allocation for a commercial use, including sales to non-Tribal members.

SECTION 1402. Commercial Fishing Prohibited Except as Authorized

Commercial fishing is prohibited, except as provided in this ordinance or an adjustment.

SECTION 1403. Commercial Fishing By Management Area

- (a) Estuary. Commercial fishing below the downstream boundary is prohibited. Commercial fishing in the Estuary is prohibited, except as specifically allowed for fall Chinook salmon for the Requa Sales, FOM and Value Added fisheries.
- (b) Middle Klamath. Commercial fishing is prohibited, except commercial fishing for the smoked salmon Value Added Fishery.
- (c) Upper Klamath. Commercial fishing is prohibited, except commercial fishing for the smoked salmon Value Added Fishery.

SECTION 1404. Commercial Fisheries

Three separate commercial fisheries for fall Chinook salmon exist, subject to adjustment:

- (a) Sale to Requa Buyers. Buyers may be contracted to purchase fish at the Requa Buying Station.
- (b) Find Own Market (FOM) Fishery. The FOM Fishery allows Tribal members who have acquired a permit from the Tribe to sell fresh fish from the Estuary to markets they find themselves. If the harvest monitors have time, they can inspect the fish and issue the fisher a receipt stating how many fish are eligible for sale, which the fisher can take to the checkpoint to get a permit instead of taking the actual fish to the checkpoint.
- (c) Value Added Fishery. The Value Added Fishery allows eligible fishers to add value to the fish, such as by smoking or freezing for later sale. Fish not harvested as specified for fresh fish must have the dorsal fin clipped. Fish to be smoked may be harvested in the Estuary or the Middle and Upper Klamath management areas. Fish to be frozen may be harvested only in the Estuary.

SECTION 1405. Species Eligible for Sale; Authorized Sales

Only Chinook salmon may be sold during the commercial fishery. Sale of any other fish species is prohibited. Fresh fish may not be sold after the close of the commercial season, except fresh fish with a Find Own Market Permit may be sold up to five days after the close of the commercial season. Frozen and smoked fish with a Value Added Permit may be sold at any time.

SECTION 1406. Commercial Fish

Fish for commercial use or sale are commercial fish. Commercial fish should not be clipped, except any salmon taken in the Middle and Upper Klamath for the smoked salmon Value Added Fishery must be clipped. The use or sale of commercial fish is limited to Chinook salmon harvested during the commercial season and used pursuant to the Requa Sales, Find Own Market, or Value Added Fishery, except as authorized by an adjustment.

SECTION 1407. Commercial Season and Closures

The commercial season is closed, except as specified in an adjustment.

A person commits a level three offense if the person commercial fishes during a closure.

SECTION 1408. Commercial Certification Required

No person may participate in the commercial fishery or sell any fish from the Tribal allocation without a current commercial certification. A current commercial certification shall only be issued to Yurok Tribal members who meet the following requirements:

- (a) Eligible Fisher. The person must meet the definition of an eligible fisher.
- (b) Signed Contract. The person must have signed a contract for the current commercial season agreeing to use any required handling procedures and to abide by this ordinance and any current adjustment.
- (c) Fishing Rights Not Suspended. The person's subsistence or commercial fishing rights have not been suspended; and
- (d) Over 12 Years Old. Over 12 years old, except a person under 12 years old may participate in the commercial fishery under the supervision of another commercial fisher.
- (e) Current Familiarity with the Fishery. The person must be knowledgeable about current fishing regulations and is responsible for adherence to all current fishing regulations in this ordinance and any adjustment.

A person commits a level three offense if the person participates in the commercial fishery without a current commercial certification, or allows another person without current commercial certification to participate in the commercial fishery.

SECTION 1409. Commercial Fishing With Suspended Rights Is Prohibited

No person may participate in the commercial fishery while that person's subsistence or commercial fishing rights are suspended. The commercial license of any person whose subsistence or commercial fishing rights are suspended shall be invalid for a period of time corresponding to the suspension.

A person commits a level three offense if the person violates this section.

SECTION 1410. Commercial Buoy Required

Persons fishing commercially must identify their nets with a commercial fishing buoy that is attached to the net. Fish caught in a net without a commercial buoy are for subsistence purposes only and must have the dorsal fin clipped.

- (a) Buoy Type. Commercial fishing buoys must be bright yellow.
- (b) Marked Buoy. Each commercial fisher shall indelibly and conspicuously mark the commercial fishing buoy with his or her Tribal identification number and commercial license number. The numbers shall be marked on the buoy in such a way that they are obvious without removing the gear from the water and can be read from a distance of at least 10 feet.

A person commits a level three offense if the person violates this section. A violation of each provision shall constitute a separate offense.

SECTION 1411. Use of Another's Commercial Buoy Prohibited

Fishers may only use their own commercial buoy.

A person commits a level three offense if the person violates this section.

SECTION 1412. Use of Commercial License Numbers on Nets

- (a) Use of License Number by Another Prohibited. No commercial fisher shall authorize the use of his or her commercial license number on a net fished by another person. This responsibility shall not act to relieve another person of liability for any conduct charged.
- (b) Fishing with Identification Number of Another Prohibited. No fisher may attend or fish a net that is not marked with his or her own commercial license number.

A person commits a level three offense if the person violates this section. A violation of each subsection shall constitute a separate offense.

SECTION 1413. Unoccupied Boats; Buoys

During the commercial season, no buoy or unoccupied boat may be left in the Estuary during a closure of the commercial fishery, except:

- (a) Marked Snags. A buoy may be left in the Estuary if its primary purpose is to mark a snag or placed by the Tribe to mark boundaries.
- (b) Docked Boats. An unoccupied boat may be left in the Estuary if it is docked, including boats docked a reasonable distance off-shore to allow for tidal fluctuation and not meant to save a fishing spot.

A person commits a level two offense if the person violates this section.

SECTION 1414. Anchoring to Save Positions Prohibited

No person, more than one-half hour prior to the time that commercial fishing is allowed, may anchor a boat or buoy or use other methods to attempt to save a spot for commercial fishing.

A person commits a level two offense if the person violates this section.

SECTION 1415. **Transporting Commercial Fish**

No commercial fish shall be transported outside the commercial zone without a Find Own Market or Value Added Permit, except by an authorized Requa buyer in accordance with its agreement with the Tribe. Any fish located outside of the commercial zone without a permit is considered a subsistence fish and must have the dorsal fin clipped. Fish can be cleaned within 25 horizontal feet of the wetted area of the Klamath River shoreline, but must be presented by boat at the boat dock at Requa. Fish cannot be moved more than 25 horizontal feet from the wetted area of the Klamath shoreline without a commercial permit.

A person commits a level four offense if the person transports an unclipped fish outside of the commercial zone without a commercial use permit in violation of this section

SECTION 1416. **Commercial Fish Quality Control Requirements**

Commercial fishers must meet the following Commercial Fish Quality Control Requirements:

- (a) Icing for Fish. At the time they begin fishing, commercial fishers must have with them adequate ice to chill and pack all fish to be harvested.
- (b) Containers. Fishers must have adequate containers (e.g. ice chests or totes) in which to pack fish. Containers must be of a material that can be readily cleaned/sterilized and must be maintained in a sanitized condition.
- (c) Handling Fish. Fish are never to be placed on the ground. Fish must be handled gently, held by the head. Never handle fish by the tail.
- (d) Bleeding Fish. Harvested fish are to be immediately bled (for example, by pulling a gill).
- (e) Packing Fish. All fish must be iced immediately. Ice must surround and cover the fish and is also to be placed in the belly, or, the fish must be packed in slush.
- (f) Cleaning Fish. Fish must be gutted immediately no later than 10 minutes after removal from the water.
 - (1) If fish cannot be immediately gutted, fish must be placed within 10 minutes in a slush tank or ice to chill them while waiting.
 - (2) No fish should be held more than one hour before gutting.
 - (3) Do not cut into the belly wall when gutting the fish. Remove the kidney (backbone blood) using a spoon, with special care for the pockets near the head and tail. If visible blood remains in the veins of the belly, press it out by stroking toward the backbone.
 - (4) Fish that are removed from the water dead are subsistence fish and must have the dorsal fin clipped.
- (g) Keeping Up with Harvest. Fish must be alive when removed from a net. Fish must be removed promptly from a net and cleaned and iced immediately. If the fisher and

crew cannot meet this standard, then part of the net is to be tied up so that it is not fishing and they have time to properly care for the fish.

- (h) Any additional requirement specified by an adjustment.

Any fish not handled in this manner must be clipped, cannot be used for commercial use, and shall be considered a subsistence fish.

A person commits the level two offense if the person possesses an unclipped salmon or steelhead and does not meet Commercial Fish Quality Control Requirements.

SECTION 1417. No Tribal Liability

All liability and expenses incurred by fishers by participating in the commercial fishery shall be the responsibility of the fisher. The Yurok Tribe, including its officers, staff, and agents, shall not be liable for any liability or expense incurred by any person participating in the commercial fishery.

CHAPTER 5:
COMMERCIAL
FISHERY SALES
AND PERMITTING

CHAPTER 5. COMMERCIAL FISHERY SALES AND PERMITTING

SECTION 1501. Commercial Sales Prohibited Except As Authorized

Commercial sales and commercial use of a Tribal fishery resource is prohibited, except in accordance with this ordinance or an adjustment.

A person commits a level three offense if the person possesses an unclipped salmon or steelhead, or a commercial fish, on land without a valid commercial use permit. A person commits a level four offense if the person sells or trades, or attempts to sell or trade, a fish to a non-Tribal buyer without fully complying with the requirements of the Elders', Requa Sales, Find Own Market, or Value Added Fishery.

Each fish used in violation of the Elders', Requa Sales, Find Own Market, or Value Added Fishery shall constitute a separate offense.

SECTION 1502. Commercial Fish Sales To Tribal Members

Commercial sale of fish by a fisher to Tribal members is prohibited, except if the seller is an eligible fisher with a commercial license and either of the following exceptions apply:

- (a) The Tribal member purchaser is an eligible fisher with a commercial license; or
- (b) The Tribal member purchaser uses the fish only for subsistence use.

SECTION 1503. Sales of Commercial Fish To Tribal Member Commercial Buyers

An eligible fisher with a commercial license may, without a commercial use permit, purchase commercial fish from another eligible fisher with a commercial license. In order to re-sell the fish to a non-Tribal member buyer, the Tribal-member purchaser must:

- (a) Keep a current log of the original purchase, including when the fish was purchased and who the fish was purchased from;
- (b) Allow inspection of the log by the Tribe;
- (c) Turn in the log at the time the person receives a commercial use permit;
- (d) Meet the commercial use and permit requirements in this ordinance and any adjustment for any subsequent re-sale.

SECTION 1504. Commercial Use Permit

A commercial use permit is required to accompany all unclipped salmon and commercial fish once the fish has been transported off the river. The Yurok Tribal Fisheries Program is authorized to issue commercial use permits, including FOM and Value Added Permits, to facilitate and manage sales of commercial fish to non-Tribal members. A commercial use permit shall contain the following information:

- (a) Type of permit;
- (b) Name of permittee;

- (c) Tribal identification number of permittee;
- (d) Commercial license number of permittee;
- (e) Number of fish to be sold; and
- (f) Location of harvest by management area.

SECTION 1505. Use Fee

The Council shall require a use fee for each fish that is sold from the Tribal commercial fishery to a non-Tribal member. The use fee amount may be specified in an adjustment.

SECTION 1506. Requa Sales Fishery

Fresh Chinook salmon may be sold only to Tribally authorized buyers at Requa. The buyers will issue receipts for fish purchased and will pay the use fee to the Tribe. Receipts from an authorized buyer do not need to be returned to fisheries by the seller. Fish may be sold at Requa in accordance with the following provisions:

- (a) Tribally Authorized Buyers. A fisher may only sell to a Tribally designated buyer for the Requa Sales Fishery. The Tribe will post notice of all current Tribally authorized buyers. Such buyers must have a current agreement with the Tribe for the purchase of commercial fish, which helps to ensure payment to Tribal members for commercial fish purchased pursuant to that agreement, and obligates the buyer to issue fish receipts and to pay the Tribe a use fee for each fish purchased.
- (b) Use Fee. A use fee may be charged for each fish sold to an authorized buyer as specified by an adjustment.
- (c) Transport of Fish. Any commercially certified fisher is eligible to sell to the Requa buyers by presenting their fish by boat at the Requa Buying Station loading dock. The boat may not be pulled out of the water before presenting fish.
- (d) Commercial Use Permit Not Required. A commercial use permit is not required for sales to Tribally authorized buyers.
- (e) Any additional requirement established by an adjustment.

SECTION 1507. Find Own Market (FOM) Fishery

Fresh fish harvested in the Estuary Commercial Zone may be sold in any market, on or off the Reservation, including to non-Tribal buyers, as a part of the Find Own Market (FOM) Fishery. The seller is responsible for finding his or her own market and for all expenses related to the marketing of the fish. FOM sellers must have a commercial permit issued by the Yurok Tribal Fisheries Department. Fresh fish sales of fish harvested above the Commercial Zone are not permitted.

Fish can be cleaned within 25 horizontal feet of the wetted area of the Klamath River shoreline, but must be presented while still in the boat at the boat dock at Requa. Fish cannot be moved more than 25 horizontal feet from the wetted area of the Klamath shoreline without an FOM permit.

SECTION 1508. FOM Permits

A FOM Permit will authorize the selling of fresh fish to non-Tribal members. Tribal fishers may always sell fish to Yurok Tribal members unless prohibited by an adjustment.

A Tribal member is not required to harvest fish to be eligible to obtain an FOM Permit; however, the Tribal member must have taken the commercial fisher training. These permits may be obtained at the Yurok Tribal Commercial Fishing Checkpoint (“Checkpoint”), which will be located at Requa, hours to be posted in an adjustment.

Fresh Chinook salmon may be sold to a non-Tribal member buyer, within or outside of the Reservation, with an FOM Permit in accordance with the following provisions:

- (a) Only Estuary Fish May be Sold. The sale of fresh fish harvested above the Commercial Zone is not permitted. Separate permits for sales of smoked fish or holding frozen fish for later sale are available as described for the Value Added Fishery.
- (b) FOM Permit. A fisher with a commercial license must obtain a FOM Permit authorizing the sale of commercial fish to non-Tribal members. The FOM Permit is valid for the sale of fresh fish only. In order to receive a FOM Permit, the following requirements must be met:
 - (1) Only fresh commercial Chinook salmon are eligible for sale.
 - (2) A FOM Permit may only be issued to an eligible fisher with a commercial license.
 - (3) The fisher seeking the FOM Permit must transport the commercial fish by boat to designated Yurok Tribal staff for inspection.
 - (4) Any fish that Yurok Tribal inspection staff determines does not meet Quality Control Requirements or other commercial use requirements shall be clipped immediately by the fisher and shall not be eligible for a FOM Permit. Failure to immediately clip a fish as directed by the Yurok Tribal inspection staff shall constitute a level two offense.
 - (5) Information to be contained on the FOM Permit includes the following:
 - (A) Expiration date;
 - (B) Number of fish to be sold;
 - (C) Location of harvest;
 - (D) Tribal identification number of the permit holder; and
 - (E) Permit holder’s name
- (c) Use Fee. A use fee may be charged at the time the FOM Permit is issued as specified by an adjustment.
- (d) Expiration of FOM Permit. A FOM Permit shall expire five calendar days from the date of issuance, unless an earlier date is specified on the permit. No Find Own Market fish may be sold after that date.
- (e) Fish Sales Receipts. A fish sales ticket in triplicate shall be issued with the FOM Permit in the number requested by the commercial fisher, but no more than one ticket per fish.

- (f) Return of Sales Tickets. All FOM fish sales must be tracked. Whenever an FOM transaction is made, the fisher must fill out the ticket and retain one copy, provide a copy to the buyer, and deliver or mail a copy to the Yurok Tribal Fisheries Department within three days of the expiration of the FOM Permit. The following conditions shall apply to the return of sales tickets:
- (1) A copy of all used sales tickets must be returned no later than three days after expiration of the FOM Permit.
 - (2) A copy of all used sales tickets must be returned to the checkpoint where they were obtained, or by mailing to the Yurok Tribal Fisheries Program, Attn: Commercial Fishery, PO Box 1027, Klamath, California 95548.
 - (3) The Tribe may refuse to issue an FOM Permit to any person who failed to return all prior fish sales tickets within three days of fish sale or permit expiration date.
 - (4) Any unused ticket must be returned in the original triplicate.
 - (5) Failure to return any used or unused ticket shall result in a \$15 fine per ticket for the first offense, \$50 per ticket for the second offense, and on the third offense the offender shall become ineligible for an FOM Permit for one year.
- (g) Returned Sales Ticket Information. Returned fish sales tickets shall contain the following information:
- (1) Number of fish sold;
 - (2) Date fish were sold;
 - (3) Price per pound or price per fish sold;
 - (4) Name of seller;
 - (5) Tribal identification number of seller; and
 - (6) Commercial license number of seller.
- (h) Any additional requirement established by an adjustment.

SECTION 1509. Value Added Fishery

Fall Chinook salmon that have been hard frozen and vacuum-sealed or glazed, or that have been smoked, processed, and packaged, may be sold pursuant to this section to a non-Tribal buyer, within or outside the Reservation, in accordance with the following provisions:

- (a) Value Added Permit. A fisher with a commercial license may obtain a Value Added Permit authorizing the holding and later sale of commercial fish to non-Tribal members. In order to receive a Value Added Permit, the following requirements must be met:
- (1) A Value Added Permit may only be issued to an eligible fisher with a commercial license.
 - (2) The fisher seeking the Value Added Permit for fish from the Estuary must transport the commercial fish by boat to Requa and present the fish to Yurok Tribal Fisheries Program staff for inspection at a checkpoint established for

such purposes. The fisher seeking the Value Added Permit for fish from the Upper or Middle Klamath for smoking must clip the fish and may then transport the fish by land to the appropriate checkpoint for inspection.

- (3) Any fish that Yurok Tribal Fisheries Program staff determines does not meet Value Added Fishery requirements shall be clipped immediately and shall not be eligible for a Value Added Permit.
- (b) Use Fee. A use fee may be charged at the time the FOM Permit is issued as specified by an adjustment. The amount of the total use fee shall be noted on the Value Added Permit. A receipt will be issued for the use fee.
- (c) Expiration of Value Added Permit. A Value Added Permit shall expire October 1 of the following year unless an earlier day is specified.
- (d) Smoked Fish. Value Added smoked fish must be smoked, processed, and vacuum-sealed by April 15 following the date of issuance. Smoked fish may be caught in the Estuary, Middle, or Upper Klamath management areas pursuant to section 1404.
- (e) Frozen Fish. Value Added frozen fish must be hard frozen and vacuum-sealed or glazed by April 15 following the date of issuance. Fish to be frozen pursuant to this subsection must be caught in the Estuary pursuant to section 1404. Frozen fish must be kept hard frozen until sold.

CHAPTER 6:
TRIBAL GUIDE
FISHERY

CHAPTER 6. TRIBAL GUIDE FISHERY

SECTION 1601. Tribal Guide Fishery

The Tribal Guide Fishery is separate from the subsistence fishery and the commercial fishery. The Tribal Guide Fishery authorizes certified Tribal members to guide non-Tribal members in the harvest of Chinook salmon by angling from the Tribal allocation within the Yurok Reservation or harvesting from the non-Tribal fishery for all fish species.

SECTION 1602. Authorized Tribal Guide Fishery Products and Services

The product and services authorized for sale under the Tribal Guide Fishery is the opportunity to fish with an authorized Tribal Guide Fishery guide and to harvest of fall Chinook salmon from the Tribal allocation.

SECTION 1603. Tribal Guide Fishery Regulations

The Yurok Tribal Council by regular action may establish and amend Tribal Guide Fishery Regulations governing the certification of guides, permitting of non-Tribal members, permit fees, and harvest management of the Tribal Guide Fishery for resource conservation and harvest management purposes.

- (a) Effective Date of Regulations. Tribal Guide Fishery Regulations adopted pursuant to this section shall be effective upon adoption by the Council and shall remain in effect until modified or rescinded by the Yurok Tribal Council, or until the regulations expire by their own terms. Penalties for violations of Tribal Guide Fishery Regulations are set by Yurok Tribal Council.
- (b) Notice. Notice of Tribal Guide Fishery Regulations shall be posted at the Klamath and Weitchpec Tribal administrative offices, the Requa boat ramp, and other places as determined by the Tribal Council.

SECTION 1604. Tribal Fishery Harvest Prohibited Except As Permitted

No non-Tribal member may harvest fish from the Tribal fishery within the Yurok Reservation except as permitted by the Tribe. The Tribe will issue, by way of a Tribal guide, a Yurok Fishing License authorizing non-Tribal members to harvest Chinook salmon by angling from the Yurok Tribal allocation in accordance with section 1607.

SECTION 1605. Guide Certification Required

In order to be a Tribal guide, a person must obtain certification by meeting the following minimum requirements:

- (a) Yurok Tribal member;
- (b) Payment of a \$100 certification fee, or such other amount as specified by an adjustment;
- (c) Fishing rights not currently suspended;
- (d) Knowledge of basic rescue operations;

- (e) Knowledge of basic first aid;
- (f) U.S. Coast Guard License for six or more clients;
- (g) Boat safety inspection certificate from Yurok Public Safety for operating with fewer than six clients, U.S. Coast Guard Boat Safety Inspection certificate for six or more clients; and
- (h) Listing of other experience that qualifies the applicant for guiding.

SECTION 1606. Catch and Release Prohibited

Catch and release of adult Chinook salmon is prohibited for the Tribal Guide fishery. All adult Chinook salmon that are caught must be kept. The individual daily bag limit for each licensed angler and Tribal member with a Tribal guide shall be set by adjustment. The daily boat limit shall be the daily bag limit for each angler multiplied by the number of Tribally licensed anglers in the boat plus the guide. It is possible for one angler in a Tribal guide boat to catch more than the number of adult Chinook salmon specified in an adjustment, as long as the daily boat limit is not exceeded. Each angler may keep only the individual daily bag limit from the Tribal allocation per day. The catch of Chinook salmon jacks shall be regulated by an adjustment.

A person commits a level two offense if the person violates this section.

SECTION 1607. Non-Tribal Member Fishing License Requirements

In order to fish from the Tribal Fishery allocation, a person must obtain a Yurok Fishing License. This license is valid only while fishing with a certified Tribal guide. Chinook salmon harvested under this license comes from the Tribal Guide Fishery allocation. A person agrees to the following conditions, at a minimum, in order to obtain a Yurok Fishing License:

- (a) License Fee. The non-Tribal member shall pay a license fee set by an adjustment for each adult fish. The license shall be valid for one day. The license may be obtained from the guide.
- (b) Bag Limit for License. The bag limit shall be set by an adjustment. No fish harvested under the Tribal Guide Fishery allocation may be sold.
- (c) No Past Violations of This Ordinance. A non-Tribal member found guilty of violating this ordinance within the previous three years shall be ineligible to harvest fish from the Tribal fishery within the Yurok Reservation.
- (d) Tribal Guide Fishery Regulations Compliance. The non-Tribal member shall comply with the FRO and any applicable HMP or adjustment.
- (e) State Fish and Game Regulations Compliance. The non-Tribal member shall comply with all California Fish and Game regulations regarding gear type and, for fish from the California allocation, daily bag limits and possession limits.
- (f) Harvest State Allocation Chinook First. If the non-Tribal member has a California fishing license for the harvest of Chinook salmon, those Chinook must be harvested before any Chinook salmon is harvested from the Tribal allocation.
- (g) Submission to Tribal Court Jurisdiction. The non-Tribal member shall consent to

Tribal Court jurisdiction for any violation of the FRO, applicable HMP or adjustment, or any other dispute arising under the Yurok Fishing License.

SECTION 1608. Harvest of Fall Chinook Salmon Only

A non-Tribal member with a Yurok Fishing Permit may harvest only fall Chinook salmon from the Tribal allocation as specified by adjustment. No other fish, including coho salmon, spring Chinook salmon, steelhead, sturgeon, or eel, may be harvested by a non-Tribal member from the Tribal Guide fishery.

A person commits a level three offense if the person harvests more than the number and type of fish permitted by this ordinance or Tribal Guide Fishery Regulations, or if the person is a Tribal Guide Fishery guide and allows such harvest.

SECTION 1609. Duration of Guiding Season

Tribal Guide Fishery guides may operate throughout the year, but harvest of Chinook salmon from the Tribal allocation shall only be permitted during the fall season. The fall season shall open the first Sunday after the last Saturday in July and close on November 30, unless otherwise specified by an adjustment.

SECTION 1610. Location of Tribal Guide Fishery

The Tribal Guide Fishery is generally permitted throughout the Reservation, except as otherwise provided by an adjustment.

SECTION 1611. Fish Harvest Tickets

All fish harvested from the Tribal Guide Fishery must be tracked. Whenever a fish is harvested by a non-Tribal member pursuant to a Yurok Fishing Permit, the Tribal guide must immediately fill out a fish harvest ticket, retain one copy, and provide a copy to the licensee. The Tribal guide must hand deliver or mail a copy to the Yurok Tribal Fisheries Program within three days of the harvest. A copy of all unused tickets must be delivered or mailed to the Yurok Tribal Fisheries Program no later November 30 of the year the tickets were issued.

- (a) Fish Harvest Ticket Information. Fish harvest tickets shall contain the following information:
 - (1) Number and type of fish harvested;
 - (2) Date fish were harvested;
 - (3) Name of permittee;
 - (4) Name of Tribal guide; and
 - (5) Tribal identification number of Tribal guide.
- (b) Return of Tickets. Fish harvest tickets may be returned to the office where they were obtained, or by mailing to the Yurok Tribal Fisheries Program, Attn: Tribal Guide Fishery, 15900 Highway 101 North, Klamath, California 95548.
- (c) Failure to Return Tickets. The Tribe may fine or refuse to certify as a guide any

person who failed to return all prior used fish harvest tickets within three days of fish harvest, or failed to return unused fish tickets by November 30. Failure to return any used or unused ticket shall result in a \$15 fine per ticket for the first offense, \$50 per ticket for the second offense, and on the third offense the guide shall become ineligible for guide certification for one year.

SECTION 1612. Fish Harvest Records

Guides may be required to maintain records of harvest in addition to complying with fish harvest ticket requirements.

SECTION 1613. No Tribal Liability

All liability and expenses incurred by Tribal guides shall be the responsibility of the guide. The Yurok Tribe, including its officers, staff, and agents, shall not be liable for any liability or expense incurred by any person participating in the Tribal Guide Fishery.

CHAPTER 7:
HARVEST
MANAGEMENT

CHAPTER 7. HARVEST MANAGEMENT

SECTION 1701. Harvest Management Plan; Adjustments

The Yurok Tribal Council by regular action may establish a harvest management plan (HMP) or adopt pre-season and in-season adjustments to harvest management for Tribal fishery resource conservation and harvest management purposes.

- (a) Effective Date of Adjustments. Harvest management plans and adjustments adopted pursuant to this section shall be effective 24 hours after notice is posted, unless an earlier time is specified in an adjustment, and shall remain in effect until modified or rescinded by the Yurok Tribal Council, or until the adjustments expire by their own terms. Penalties for violations of an adjustment may be specified by Tribal Council.
- (b) Notice. Notice of an adjustment shall be posted at the Klamath and Weitchpec Tribal administrative offices, the Requa boat ramp, and other locations as determined by the Tribal Council. The Tribe shall post such notices within 24 hours of adoption and it shall be presumed that this requirement was met unless evidence is presented indicating that notice was not posted.

SECTION 1702. Violation of Adjustment

Violation of an approved adjustment is prohibited. Tribal Council may specify a fine or penalty for violation of an adjustment at the time the adjustment is adopted.

SECTION 1703. Consultation with Tribal Members

The Yurok Tribal Council or its designee shall hold meetings to consult with Yurok Tribal members about the status of the resources and fisheries, to discuss pre-season and in-season adjustments to harvest management, and to discuss other relevant matters. At the appropriate times during these presentations, comments will be received from those in attendance. As appropriate, notes or tape recordings of these proceedings will be made.

SECTION 1704. Coordination with State and Federal Governments

The Tribe maintains authority to enter into co-management, cooperative, and other types of agreements with the United States, the State of California, and other states as may be necessary to further the Tribe's fishery interests.

SECTION 1705. Emergency Regulations

The Tribal Chairperson is authorized to enact an emergency closure of all or any part of the Tribal fishery, including if there is an immediate threat to, or conservation need for, the Tribal fishery resource. The emergency closure shall remain in place for the time specified by the Chairperson when such action is taken, or until dissolved by Council.

SECTION 1706. Cooperation in Harvest Monitoring

Each fisher shall display all fish he or she has caught upon the request of an authorized law enforcement official or authorized Tribal personnel for the purpose of monitoring the harvest or

assuring compliance with the provisions of this ordinance. The snouts of Chinook with an adipose fin clip must be given to Yurok Tribal Fisheries Program staff upon request pursuant to Section 1221(d). The information obtained from the coded wire tags recovered from such fish is critical to the successful management of Klamath River Fall Chinook.

CHAPTER 8:
ENFORCEMENT
AND SANCTIONS

CHAPTER 8. ENFORCEMENT AND SANCTIONS

SECTION 1801. Cooperation with Law Enforcement

Fishers are required to cooperate with enforcement officers. A person commits the level three offense of Non-cooperation with Law Enforcement if the person fails to cooperate as requested or directed by an enforcement officer.

SECTION 1802. Prosecution

Any person—including Tribal members and non-Tribal members—who violates this ordinance shall be subject to prosecution in Tribal Court.

SECTION 1803. Citations

Law enforcement officers may issue a citation to any person for an alleged violation of this ordinance. Such citation shall state the date, time, and location of the alleged violation and the name, if known, of the person charged.

SECTION 1804. Search of Personal Property

Law enforcement officers who have a reasonable belief that any personal property contains any fish taken or possessed in violation of this ordinance, or was used to take a fish in violation of this ordinance, or that may be hiding fish from law enforcement or fish monitors, may search the property to investigate whether a fish was taken or possessed in violation of this ordinance.

SECTION 1805. Search of Real Property

Law enforcement officers have the authority to enter real property to determine if a fish was taken or possessed in violation of the FRO or an adjustment, to the fullest extent allowed under the Yurok Constitution and the Indian Civil Rights Act which governs searches and seizures. This section includes authorization for law enforcement to enter real property without a warrant under various conditions, including but not limited to the following situations:

- (a) An officer is lawfully present where an item is in plain sight and the officer has probable cause to believe the item is contraband, stolen property, or the item is evidence of a violation of the FRO (plain view exception); or
- (b) The landowner does not maintain a reasonable expectation of privacy in the area, even if “No Trespassing” signs are posted. Such areas generally include pastures, open water, open fields, and woods (open fields exception); or
- (c) Exigent circumstances exist where an officer conducts a lawful search justified by the officer’s need to investigate the officer’s reasonable belief that a crime is being committed or that the FRO is being violated.

SECTION 1806. Search of Vehicles

Law enforcement officers who have probable cause to believe that any transportation vehicle, including a boat, contains fish taken illegally or possessed in violation of the FRO or an adjustment may search the vehicle to determine if fish was taken or possessed in violation of such authority.

SECTION 1807. Seizure and Forfeiture of Fish and Gear

Any net or other fishing gear, including vehicles and boats, used to violate an HMP or the FRO, or any fish taken or possessed in violation of an HMP or the FRO, may be seized by a law enforcement officer. A notice of seizure shall be left at the site where fish or gear were confiscated. Fish and gear so seized shall be held pending disposition by court order, except as specifically provided in an adjustment or sections 1808 and 1809. Pursuant to Tribal Court order, any such fish or gear may be forfeited to the Tribe for a violation of an adjustment or the FRO. .

SECTION 1808. Forfeiture Proceedings

- (a) Forfeiture; Identified Owner. When fish or fishing gear is seized and the owner is identified, the Tribal Prosecutor shall review the case and either:
 - (1) Serve notice of a complaint for forfeiture or violation of this ordinance, in accordance with Tribal Court Rules, to every person known to have an alleged interest in the property subject to forfeiture; or
 - (2) Authorize law enforcement officers to release, without a court order, any gear or fish seized when the prosecutor declines to prosecute a person for an alleged violation of this ordinance.
- (b) Forfeiture; Unidentified Owner. When fish or gear is seized and the owner is unknown to the enforcement officer, the enforcement officer shall post notice of the seizure in the immediate vicinity of where the fish or gear was seized. The posting of such notice shall constitute notice of forfeiture. Notice of forfeiture may also be perfected by publishing notice of the seizure in the Tribe's periodic newsletter. The Tribal Prosecutor shall review the case and file a complaint *in rem* for forfeiture or violation of this ordinance. The Tribal Prosecutor may authorize law enforcement officers to release, without a court order, any gear or fish seized.
- (c) Third Party Interests in Forfeited Property. Any person asserting a legal interest in fish or gear that is the subject of a complaint or civil action under subsections (a) or (b) may, within 30 days of the initial filing in the court action, petition the Tribal Court for a hearing to adjudicate the validity of that person's alleged interest in the property. The petitioner shall have the burden of proving by a preponderance of the evidence that the petitioner has a legal right, title, or interest in the fish or gear seized, is a bona fide purchaser for value of the right, title, or interest in the property, and is an innocent owner. Any person determined to be the owner of such fish or gear may be held liable for the violation for which the fish or gear was seized, unless the gear was reported as stolen prior to being seized.
- (d) Clear Title After Forfeiture. Following the Tribal Court's disposition of the underlying legal action, law enforcement shall have clear title to fish and gear that is forfeited.

SECTION 1809. Use of Seized Fish

All fish seized may be utilized for subsistence or ceremonial purposes, be commercially sold, be donated to an elders' program if edible, or be destroyed if inedible by the Yurok Tribe. Proceeds from sold fish shall be held pending disposition by the Tribal Court. Nothing in this section shall be construed to prevent undercover law enforcement officers from selling fish as part of their duties or to make legal the purchase of fish from such officers.

SECTION 1810. Complaint Procedures

Any person regulated under this ordinance who alleges professional misconduct against a law enforcement officer may file a complaint, in writing, with the Director of the Yurok Tribe Department of Public Safety. The Director of the Yurok Tribe Department of Public Safety shall, without unreasonable delay, cause an investigation to be conducted into any allegation of misconduct by a law enforcement officer in carrying out the duties of that office. Upon completion of the investigation, the Director shall make available to the complainant the findings of the investigation. The Director shall ensure that the appropriate actions occur pursuant to such findings.

Any person who is not satisfied with the determination of the Director may appeal the determination to the Executive Director.

SECTION 1811. Sanctions

The Tribal Court maintains discretion to impose any of the following sanctions for violation of this ordinance, in addition to those prescribed in section 1815:

- (a) Monetary civil fines or penalties as further specified in this chapter;
- (b) Administrative and enforcement fees and costs;
- (c) Restitution;
- (d) Civil forfeiture of fishing gear;
- (e) Suspension of Tribal privileges, including commercial and subsistence fishing rights under this ordinance; and
- (f) Exclusion or banishment.

SECTION 1812. Monetary Civil Fines or Penalties

The maximum monetary civil fine or penalty that may be imposed for a violation of this ordinance is the maximum permitted under the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302, as amended. Tribal Council by resolution and without amending this ordinance may:

- (a) Establish a Tribal Fishing Rights Fine and Bail Schedule, setting bail, fines, and administrative fees for any violation of this ordinance; and

- (b) Adjust the minimum monetary civil fine or penalty amounts specified in this ordinance.

SECTION 1813. Attempted Violation

Any person who intentionally engages in conduct which constitutes a substantial step toward commission of a violation of this ordinance shall commit the offense of attempt of the underlying violation, which shall be treated as at the same offense level as the underlying violation.

SECTION 1814. Offense Levels and Penalties

Offense levels and corresponding penalties are established for violations of this ordinance as follows:

- (a) Level One. Penalties for a level one offense are:
 - (1) *First Offense*. Seized fish are forfeited to the Tribe and a fine of \$25 to \$100 imposed or an equivalent amount of community service hours.
 - (2) *Second Offense*. Seized fish and gear, except a boat or vehicle, are forfeited to the Tribe and a fine of \$50 to \$200 imposed. Commercial and subsistence fishing rights may be suspended up to 7 days.
 - (3) *Third Offense and Subsequent Offenses*. Seized fish and gear, except a vehicle, are forfeited to the Tribe and a fine of \$100 to \$250 imposed. Commercial and subsistence fishing rights may be suspended up to 30 days.
- (b) Level Two. Penalties for a level two offense are:
 - (1) *First Offense*. Seized fish and gear, except a boat or vehicle, are forfeited to the Tribe and a fine of \$50 to \$200 imposed.
 - (2) *Second Offense*. Seized fish and gear, except a vehicle, are forfeited to the Tribe and a fine of \$100 to \$250 imposed. Commercial fishing rights shall be suspended at least 14 days and may be suspended up to 60 days. Subsistence fishing rights may be suspended up to 30 days.
 - (3) *Third Offense and Subsequent Offenses*. Seized fish and gear are forfeited to the Tribe and a fine of \$200 to \$500 imposed. Commercial fishing rights shall be suspended 30 days and may be suspended up to 120 days. Subsistence fishing rights may be suspended up to 90 days.
- (c) Level Three. Penalties for a level three offense are:
 - (1) *First Offense*. Seized fish and gear are forfeited to the Tribe and a fine of \$250 to \$1000 imposed. Commercial fishing rights shall be suspended at least 7 days and may be suspended up to 90 days. Subsistence fishing rights may be suspended up to 30 days.
 - (2) *Second Offense*. Seized fish and gear are forfeited to the Tribe and a fine imposed of \$500 to \$2000. Commercial fishing rights shall be suspended for 30 days and may be suspended up to one season. Subsistence fishing rights may be suspended up to 90 days.

- (3) *Third and Subsequent Offenses.* Seized fish and gear are forfeited to the Tribe and a fine imposed of \$1000 to \$3000. Commercial fishing rights shall be suspended for three months and may be suspended up to three seasons. Subsistence fishing rights may be suspended up to one year.
- (d) Level Four. Penalties for a level four offense are:
 - (1) *First Offense.* Fine imposed of \$250 to \$1000. Commercial fishing rights shall be suspended for one season. Subsistence fishing rights may be suspended up to one year.
 - (2) *Second and Subsequent Offenses.* Fine imposed of \$500 to \$2000. Commercial fishing rights shall be suspended for two seasons. Subsistence fishing rights may be suspended up to two years.

SECTION 1815. Suspension of Commercial Fishing Rights

- (a) Suspension Duration.
 - (1) *Season.* A one-season suspension of commercial fishing rights shall conclude at the end of the season following the date the court orders the suspension. If the courts orders the suspension during a commercial fishing season, then the suspension shall run through the end of that season.
 - (2) *Year.* A one-year suspension of subsistence fishing rights shall run 365 days from the date the court orders the suspension.
- (b) Carryover of Commercial Suspension. A suspension of commercial fishing rights shall carryover to the subsequent season if the suspension is not fully served within the season the suspension occurs. A commercial season that is less than 30 days in length shall be counted as 30 days for purposes of calculating carryover of a suspension.

CHAPTER 9:
TRIBAL COURT
REVIEW AND
JURISDICTION

CHAPTER 9. TRIBAL COURT REVIEW AND JURISDICTION

SECTION 1901. Primary Jurisdiction

The Tribal Court is the court of primary jurisdiction for all violations occurring under the FRO. Violations of the FRO by Yurok Tribal Members and non-Tribal members within the territorial jurisdiction of the Yurok Tribe are prosecutable in the Yurok Tribal Court or in other courts of competent jurisdiction. Pursuant to the Hoopa-Yurok Settlement Act, all rights and claims by nonmember Indians to participate in the Klamath River Indian fishery within the Yurok Reservation, or to federal reserved fishing rights within the Yurok Reservation, have been extinguished. No such right or claim shall be established, recognized, or upheld by the Yurok Tribal Court or other court of competent jurisdiction or any other dispute resolution mechanism.

SECTION 1902. Consent to Tribal Court Jurisdiction

Fishing by a Tribal member or non-Tribal member within the Yurok Reservation pursuant to this FRO shall be deemed to constitute consent to Tribal Court jurisdiction for alleged violations of this ordinance.

SECTION 1903. Traditional Dispute Resolution

Traditional dispute resolution pursuant to this ordinance, including under section 1904, shall be limited to those disputes that involve only Yurok Tribal members. Pursuant to the Hoopa-Yurok Settlement Act, all rights and claims by nonmember Indians to fish a fishing hole location within the Yurok Reservation as part of the Klamath River Indian fishery have been extinguished and no such right or claim shall be recognized by the Yurok Tribal Court or dispute resolution panel.

Traditional Yurok fishing law as identified by the Yurok Cultural Committee in 2003 includes the following:

- (a) Know your family relations. Know where you are related along the River. Know the River and its locations, particularly the village name your family is from.
- (b) Not every Yurok family has/had a fishing place right.
- (c) Every Yurok has a fishing place right through permission.
- (d) Permission is gained by asking and being granted the right, with terms and conditions.
- (e) Permission once given is not permission given forever.
- (f) One standard condition is to offer some fish caught at the place where permission was granted.
- (g) Some fishing places are “open” and anyone can fish there. They are open on a first-come, first-serve basis. If someone is fishing in an open place then the latecomer informs the first party that they want to fish. The latecomer should politely wait a day. If the first party has already caught enough fish, then they should make ready to leave. It is polite for the first party to provide some fish to those waiting.
- (h) No fighting on the River, particularly no fighting over fishing places. The River is a

place to show respect.

- (i) Do not waste fish; do not take more than what is needed. It is not what the River will do for you, it is what you will do for the River.

SECTION 1904. Resolution of Fishing Hole Disputes

Disputes over set net fishing hole locations between eligible fishers are to be resolved among the parties. Fishing hole disputes that cannot be amicably resolved between the eligible fishers shall be resolved according to the procedures of this section.

- (a) Fishing Hole Guidelines. The Cultural Committee had identified the following guidelines, which shall govern over any fishing hole dispute:
 - (1) A person may get or own a fishing right in or at a particular place by inheriting, by being gifted it, or by buying it.
 - (2) Not fishing in your fishing hole does not equal losing your fishing right. An individual can move away and still retain rights in his or her fishing hole when he or she returns.
 - (3) Buying or selling of land that contains a fishing hole does not mean that you have also bought or sold the fishing hole. The fishing hole is separate from land ownership unless specifically included in the transaction.
 - (4) There are two main rules for the proper course of action when finding someone fishing in your fishing hole. The first rule is the same as in section 1903(h)—no fighting. The second rule is basically the same as in section 1903(g), except that the offending party should leave immediately and make payment upon leaving.
- (b) Cultural Committee Selection of Knowledgeable Representatives. The Cultural Committee shall identify and select a group of approximately nine to twelve knowledgeable individuals to represent the fishery management areas under this ordinance, with at least three knowledgeable individuals for each of the three management areas. A selected individual shall meet the following qualifications:
 - (1) Tribal member;
 - (2) Descendant of the fishing area he or she was selected to represent; and
 - (3) Recognized as a knowledgeable adult of the community for the particular fishing area he or she was selected to represent.
 - (4) A knowledgeable individual may, but is not required to be, a member of the Cultural Committee.
- (c) Initiation of Dispute Resolution. A dispute may be brought to the Cultural Committee by one or more of the disputing parties, or the dispute may be referred to the Cultural Committee by the Council or Tribal Court.
- (d) Selection of Dispute Resolution Panel. Once a dispute is brought before the Cultural Committee, the Cultural Committee shall select a three-member panel with

knowledge of the particular section of the river at issue in the dispute. At least one panel member selected by the Cultural Committee must be a descendant of the specific fishing area under dispute. Each of the disputing parties may request that one individual be removed from the panel, but both parties must agree to that individual's replacement.

- (e) Hearing Procedures. Once the panel is selected, a hearing shall be scheduled. The parties shall be given notice, including the date, time, and location of the hearing, at least 10 days prior to the hearing date, unless the parties agree to waive the notice requirements. Hearing procedures shall comply with due process, but not necessarily formal rules of evidence, and shall meet the following guidelines:
- (1) Each party shall select one person to represent the party. That person is the only person authorized to speak for the party at the hearing.
 - (2) Each party is responsible for presenting its case. The parties may present evidence, including maps and pictures of the location and witness testimony. If witness testimony is provided, the other party shall have an opportunity cross-examine each witness. The panel may ask questions of the parties and the witnesses.
 - (3) Each of the disputing parties shall present their case to the panel separately in the order determined by the panel.
 - (4) The panel shall, after hearing both parties, meet and go over the evidence presented.
 - (5) The panel may ask either or both of the parties for clarification before making its recommendation. If the panel seeks clarification after the hearing has concluded, then it shall do so in writing, providing a copy of the request to the other party, and ensure that other party receives any response provided by the party from which the panel sought clarification.
 - (6) On the basis of the evidence presented at the hearing and within one week of the conclusion of the hearing, the panel shall make a recommendation to the Council and provide an explanation as to that recommendation. If the panel is not able to reach a majority decision, it may request additional clarification or schedule a subsequent hearing that shall be conducted in accordance with the guidelines of this section.
- (f) Tribal Council Order. The Council shall receive and review the panel's recommendation at its next regularly scheduled meeting, or at a special meeting called by the Council for such purpose. Council shall conduct its review of the panel's recommendation in open session, unless one of the parties requests the Council conduct the review in closed session. The Council may issue an order:
- (1) Adopting the panel's recommendation;
 - (2) Modifying the panel's recommendation;
 - (3) Rejecting the panel's recommendation and substituting its own determination; or
 - (4) Rejecting the panel's recommendation and remanding to the panel with

instructions for further consideration.

- (g) Final Action. The Council order shall be considered a final action and may not be appealed to the Tribal Court.

SECTION 1905. Confidentiality of Tribal Court Records for Juveniles

All Yurok Tribal Court and enforcement records concerning violations or alleged violations which occurred when the violators or alleged violators were under the age of 18 shall be strictly confidential. Records for juveniles shall be sealed, except upon order of the Tribal Court upon its own motion or that of a party. Records may only be released to other agencies or persons by petition to and order of the Tribal Court. Nothing in this paragraph shall bar the use of statistical compilations of juvenile records.

SECTION 1906. Tribal Court Discretion

- (a) Reduced Penalties. The Tribal Court may convert penalties to community service at its discretion for first time offenders for offenses that do not facilitate or result in the illegal sale, trade, or barter of fish. Community service shall be ordered as an alternative to all or any part of the penalties which otherwise would be imposed.
- (b) Community Service. Imposing community service is left to the discretion of the Tribal Court. If a person does not obey the community service penalties then community service shall be converted into the penalty specified for the original offense and any additional offense under section 1907.
- (c) Prior Convictions. Prior convictions are calculated from the conviction date of a fishing offense within the preceding three-year period.

SECTION 1907. Failure to Appear; Trial in Absentia

Any person who fails to appear in Tribal Court for a violation of this ordinance after being appropriately noticed may be deemed to have elected to have a trial in absentia.

SECTION 1908. Failure to Obey Tribal Court Order

- (a) Any person who fails to comply with a lawful order of the Yurok Tribal Court shall be fined not more than \$500 on the first offense and may suffer suspension of fishing rights for an additional period not to exceed 365 days for each offense. If the order of the Yurok Tribal Court is not satisfied within 180 days, the net and any equipment from that case may be forfeited and disposed of by the Yurok Tribe.
- (b) Any eligible fisher who fails to comply with a lawful order of the Yurok Tribal Court suspending that person's fishing rights shall be guilty of a level three offense.

SECTION 1909. Tribal Council as Appellate Court for Certain Matters

Pursuant to the Yurok Constitution Article VII and the Judicial Branch Ordinance, the Tribal Council shall sit as Appellate Court for decisions of the Tribal trial court regarding all fishing disputes involving a nonmember Indian as a party or for which a non-Tribal member claims a fishing right in the Klamath River Indian or Tribal fishery. The Tribal trial court order disposing of

such dispute shall be considered a final action and may be appealed to the Tribal Council sitting as the Appellate Court, which shall be the highest judicial body of the Tribe for such disputes.

C*E*R*T*I*F*I*C*A*T*I*O*N

THE FOREGOING ORDINANCE, ENTITLED THE YUOK FISHING RIGHTS ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUOK TRIBAL COUNCIL ON JULY 23, 2015, AT WHICH A QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF 5 FOR, 2 OPPOSED AND 0 ABSENTIONS IN ACCORANDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUOK TRIBE.

DATED THIS ____ DAY OF _____ 2015

Thomas P. O'Rourke, Sr., Chairperson
Yurok Tribal Council

ATTEST:

Mindy Natt, Secretary
Yurok Tribal Council

EXHIBIT C: YUROK TRIBE RECOMMENDED
REVISIONS TO FISH AND GAME CODE

Yurok Tribe Recommended Revisions:

1. Section 7155 is Unlawful, Discriminatory and must be repealed.

Section 7155 reads as follows:

Notwithstanding any other provision of this code, California Indians who are bona fide registered members of the Yurok Indian Tribe may take fish, for subsistence purposes only, from the Klamath River between the mouth of that river and the junction of Tectah Creek with it, exclusive of tributaries, without regard to seasons, under the following conditions:

- (a) Upon application therefore, the department shall issue to any Yurok Indian who is listed on the register of the Yurok Tribal Organization, as furnished to the department, a renewable, nontransferable permit to take fish pursuant to this section for a period of one calendar year. Any Indian of the Yurok tribe while taking fish pursuant to this section shall have upon his person such valid permit, and shall display it upon the request of any duly authorized officer.
- (b) Hand dip nets, and hook and line only may be used for taking fish pursuant to this section.
- (c) Pursuant to this section not more than three trout or salmon or combination thereof, or more than one sturgeon, may be taken in any one day. There is no bag limit on any other fish.
- (d) No Yurok Indian while fishing pursuant to this section may be accompanied by any person who does not possess a valid permit as prescribed by this section. It is unlawful for any person who does not hold such permit to accompany any Yurok Indian who is taking fish pursuant to this section.
- (e) The sale of any fish taken under the provisions of this section shall constitute cause for permanent revocation by the commission of the permit held by the person making the sale.

Section 7155 is outdated. It is well established that the tribe retains fishing rights by virtue of its sovereignty, and that the state in no way has authority to grant Tribe's ability to engage in its right to fish in the Lower Klamath. This section reflects the state's unauthorized assertion of jurisdiction over the Tribe's fishing rights as well as the historic discrimination against tribal fishing on the Lower Klamath, and must be deleted in its entirety.

2. Section 12300 must be amended to accurately reflect the inapplicability of state regulation of a tribal member's fishing rights related activity.

Section 12300 reads as follows:

Irrespective of any other provision of law, the provisions of this code are not applicable to California Indians whose names are inscribed upon the tribal rolls, while on the reservation of such tribe and under those circumstances in this State where the code was not applicable to them immediately prior to the effective date of Public Law 280, Chapter 505, First Session, 1953, 83d Congress of the United States.

No such Indian shall be prosecuted for the violation of any provision of this code occurring in the places and under the circumstances hereinabove referred to. Nothing in this section, however, prohibits or restricts the prosecution of any Indian for the violation of any provision of this code prohibiting the sale of any bird, mammal, fish, or amphibia.

The State Fish and Game Code is inapplicable to the exercise of Indian fishing rights. Public Law 280 does not facilitate the State's ability to assert jurisdiction over Indian fishing within reservations, on the contrary it exempts tribal fishing, hunting and gathering rights from any state jurisdiction. Additionally, state court case law has confirmed the state is preempted from prosecuting Indians for the sale of fish caught on reservation pursuant to the valid exercise of a

tribal fishing right. The section should be amended as follows to delete reference to PL 280 and unlawful state authorization to prosecute Indians for sale of fish:

Irrespective of any other provision of law, the provisions of this code are not applicable to a California Indians whose names are is inscribed upon the a tribal rolls and who is exercising that tribe's federally reserved fishing, hunting or gathering rights. and under those circumstances in this State where the code was not applicable to them immediately prior to the effective date of Public Law 280, Chapter 505, First Session, 1953, 83d Congress of the United States.

No such Indian shall be prosecuted for the violation of any provision of this code occurring in the places and under the circumstances hereinabove referred to. ~~Nothing in this section, however, prohibits or restricts the prosecution of any Indian for the violation of any provision of this code prohibiting the sale of any bird, mammal, fish, or amphibia.~~

3. Sections 16500 - 16541 reflects an outdated state-authorized negotiation process for in-river fishery allocation and should be repealed.

Division 13.5 of the Fish and Game Code, State-Tribal Agreements Governing Indian Fishing on the Klamath River, reads as follows:

16500. The Legislature finds:

(a) Jurisdiction over the protection and development of natural resources, especially the fish resource, is of great importance to both the State of California and California Indian tribes.

(b) To California Indian tribes, control over their minerals, lands, water, wildlife, and other resources within Indian country is crucial to their economic self-sufficiency and the preservation of their heritage. On the other hand, the State of California is concerned about protecting and developing its resources; protecting, restoring, and developing its commercial and recreational salmon fisheries; ensuring public access to its waterways; and protecting the environment within its borders.

(c) More than any other issue confronting the State of California and California Indian tribes, the regulation of natural resources, especially fish, transcends political boundaries.

(d) In many cases, the State of California and California Indian tribes have differed in their respective views of the nature and extent of state versus tribal jurisdiction in areas where Indians have historically fished. Despite these frequent and often bitter disputes, both the state and the tribes seek, as their mutual goal, the protection and preservation of the fish resource. This division is an attempt to provide a legal mechanism, other than protracted and expensive litigation over unresolved legal issues, for achieving that mutual goal on the Klamath River.

(e) That the Department of Fish and Game has exercised jurisdiction over the Klamath River from the mouth of the river through the Yurok Reservation and the Hoopa Valley Reservation, but that the Bureau of Indian Affairs and the Indian tribes thereon have also asserted jurisdiction over that river. The river itself lies within a disputed area and proper management of the resource presents, therefore, unique and difficult problems in the exercise of fishing practices by all users groups.

(f) Although commercial fishing may not be a traditional practice of the tribes existing along the Klamath River within the boundaries of the land of the Yurok Reservation and the Hoopa Valley Reservation, nevertheless, the Department of Fish and Game has historically supported the concept of tribal fishing, including a tribal commercial fishing industry where the industry is consistent with the need to preserve the species, sound management, and where such usage would not adversely effect other user groups, including sportfishing and the ocean commercial fishery.

(g) That a commercial fishery existed on the Klamath River in the late 19th century and early 20th century, in which the Indian tribes existing along the river participated, but that the commercial fishing was abolished in 1933 with the passage of the predecessor to Section 8434, and, further, that salmon resources have declined historically due to past water developmental policies and timber harvesting

practices. With a reduced number of fish available, special laws are needed to protect those resources and allocate them fairly among the various user groups.

(h) This division is not only enacted to provide the legal mechanism described above, but is also intended to encourage cooperative agreements to allow protection of the resource among all of the user groups. In so doing, the Legislature recognizes the unique status of the Klamath River and the fishing therein.

16510. The definition in this chapter shall govern the construction of this division.

16511. "Klamath River Indian Tribes" means those tribes existing within the boundaries of the Yurok Reservation and the Hoopa Valley Reservation, located in Humboldt and Del Norte Counties in California, which tribes are recognized as Indian tribes by the Secretary of the Interior.

16512. "Take" means pursue, catch, capture, or kill, or attempt to pursue, catch, capture, or kill.

16513. "Traditional Indian fishing practice" means a mode, method, or way of taking fish that is recognized in the customs and traditions of the Klamath River Indian Tribes.

16514. "Yurok Reservation" means the land extending one mile in width on each side of the Klamath River from the mouth of the Klamath River to the confluence of the Trinity and Klamath Rivers. "Hoopa Valley Reservations" means those lands lying within the Hoopa Square.

16515. "Disputed area" means that part of the Klamath River or Trinity River where jurisdiction to regulate Indian fishing is asserted by both the State of California and by one or more of the Indian tribes in the Klamath River Indian Tribes or by the United States government acting as trustee therefor.

16516. "Subsistence purposes" means fish or game taken by qualified Indian tribal members of the Klamath River Indian Tribes for personal consumption by the tribal members or their immediate families.

16517. "Ceremonial or religious purposes" means fish taken by qualified Indian tribal members of the Klamath River Indian Tribes for recognized religious or ceremonial activities, which activities are consistent with the customs and traditions of the particular tribe in the Klamath River Indian Tribes.

16518. "Commercial fishing" means the taking of fish by qualified Indian tribal members of the Klamath River Indian Tribes, for sale or to be offered for sale within California.

16520. "Klamath Fishery Management Council" means that council created pursuant to Section 46055 of Title 16 of the United States Code which is composed of one representative each from the Pacific Fishery Management Council, National Marine Fisheries Service, Department of the Interior, Oregon Department of Fish and Wildlife, California Department of Fish and Game, the Hoopa Valley Business Council, non-Hoopa Indians, the California commercial salmon fishing industry, the Oregon commercial salmon fishing industry, the Klamath River in-river sportfishing community, and the California offshore recreational fishing industry.

16530. The director may enter into a mutual agreement or compact with the Hoopa Valley Business Council regarding the taking of fish from the Trinity River within the exterior boundaries of the Hoopa Valley Reservation or with the Yurok Tribe, or the Bureau of Indian Affairs acting as trustee for the Yurok Indians, regarding the taking of fish from the Klamath River within the exterior boundaries of the Yurok Reservation.

16531. Negotiations shall take place following the completion each year of the salmon allocation agreement recommended by the Klamath Fishery Management Council, and subsequently adopted by the Pacific Fishery Management Council and the United States Department of Commerce. Any agreement or compact under this division shall reflect those allocations.

16532. Notwithstanding Sections 8434, 8685.5, 8685.6, and 8685.7, the compact or agreement may include provisions for commercial sales of salmon allocated to qualified Indian members of the Klamath River Indian Tribes and that the salmon may be taken by traditional Indian methods, including, but not limited to, use of gill nets, if the agreement or compact includes provisions for all of the following:

- (a) Separating the salmon taken for commercial purposes from the salmon taken for subsistence use, which may include tagging or marking of the salmon to be sold.
- (b) Limiting the number of the salmon to be sold.
- (c) A portion of the sales to benefit the members or programs of the Klamath River Indian Tribes in accordance with the wishes of the tribes or the Bureau of Indian Affairs acting on behalf of the tribes as trustee.

16533. The department shall, on or before January 30 of each year, beginning January 30, 1987, prepare a report summarizing the status and content of these agreements or compacts and shall submit the report to the commission and the Legislature.

16540. Any agreement or compact entered into pursuant to this division shall be enforceable by the parties only to the extent and in the form or forms provided for under the terms of the agreement or compact.

16541. The department may adopt regulations consistent with the provisions of any agreement or compact entered into pursuant to Section 16530 or 16531. The application and enforcement of those regulations shall be in accordance with the express provisions of the agreement or compact.

This division, enacted in 1986, identifies a process in which the state purports to authorize tribal commercial fishing within the Klamath and Trinity Rivers. This division was enacted in the midst of the state determinations in *People v. McCovey* and *Mattz v. Superior Court* and prior to the 1993 Solicitor's opinion identifying the Indian allocation of the Klamath River basin anadromous fishery resources, at a time when the state was still attempting to assert jurisdiction over the Tribe's commercial fishery. These provisions were also enacted prior to the establishment of the Yurok Tribal Government and the development of the Yurok Tribe Fishing Rights Ordinance. These subsequent actions have rendered this process obsolete – in-river tribal allocation is identified on an annual basis by the Pacific Fishery Management Council, and the state has no authority to negotiate with the tribes the conditions of their management of such allocation. This division should be repealed to better reflect the current state of the law for the Klamath Indian fishery.

4. The numerous Code provisions in conflict with the Yurok Tribe Fishing Rights Ordinance should be clearly indicated as inapplicable to Yurok Tribal members fishing pursuant to the Tribe's Ordinance.

The following provisions are in conflict with the Yurok Tribe Fishing Rights Ordinance as applied to authorized Yurok Tribal members. The Code must be amended to clarify that these provisions are not applicable to Yurok Tribal members authorized to fish in the Lower Klamath pursuant to the Tribe's Ordinance. It is the Tribe's opinion that this clarification is best presented through modification of section 12300 indicating the Code in its entirety is not applicable to Yurok Tribal members. In the alternative the Commission could consider including an exception in each of the following provisions for authorized Yurok Tribal members fishing pursuant to the Yurok Tribe Fishing Rights Ordinance. The conflicting provisions below are listed below for your review.

Section 1000(a)

Every person engaged in the business of canning, curing, preserving, packing, or otherwise processing, or dealing at wholesale in, the eggs of sturgeon for human consumption shall obtain a sturgeon egg processing license from the department for that purpose. The license required by this division is in addition to any other license, permit, or other authorization required by this code or by any other provision of law.

Section 7370

Except as provided in Section 7230 or 8371, it is unlawful to buy or sell, or to offer to buy or sell, a whole sturgeon, or any part thereof, including eggs, or to possess sturgeon, or parts thereof, including eggs, in any place where fish are bought, possessed for sale, or sold, or where food is offered for sale, or in any truck or other conveyance operated by or for a place so selling or possessing fish.

Section 8370

(a) Any striped bass, salmon, or sturgeon, if alive, that is taken in any type of net in any district shall be immediately liberated from the net by the fishermen and immediately returned to the water without further harm.
(b) Any striped bass, salmon, or sturgeon that is taken in any type of nets in any district shall be removed from the net by the fisherman and immediately returned to the water, regardless of the condition of the fish.

Section 8434

It is unlawful to sell or purchase any fresh, canned, or cured fish taken in the Klamath River District or in the waters of the Smith River.

Section 8664

Except in Districts 6 and 7, any net found in, or within 500 feet of the Klamath, Smith, Eel, Mad, Van Dusen, or Mattole Rivers, or their tributaries, is prima facie evidence that the owner or person in possession of the net is or has been using it unlawfully. The provisions of this section do not apply to trawl or drag nets being transported.

Section 8681(a)

Gill nets or trammel nets shall not be used for commercial purposes except under a revocable, nontransferable permit issue by the department....

Section 8685.5

Notwithstanding any other provision of law, gill nets may not be used to take salmon, steelhead, or striped bass.”

Section 8685

In Districts 1, 2, and 3, gill nets may not be possessed on any boat.

Section 8685.6

It is unlawful to sell or possess for sale any salmon, steelhead, or striped bass which were taken in California waters by the use of a gill net.

Section 8685.7

It is unlawful for any person to knowingly purchase any salmon, steelhead, or striped bass which were taken in California waters by the use of a gill net. For the purpose of this section, "person" includes a broker who purchases salmon, steelhead, or striped bass which were unlawfully taken by gill net for the purpose of reselling those fish.