

TITLE 11. COMMERCE

Chapter 11.6

SUQUAMISH SEAFOODS ENTERPRISE CHARTER

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11.6.1. Title. The title of this chapter shall be the “Suquamish Seafoods Enterprise Charter.” (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.2. Findings. (a) As stated in the preamble of the Constitution and Bylaws of the Suquamish Tribe, the people of the Suquamish Tribe established a tribal government, among other reasons, in order to develop their community resources and promote their economic and social welfare.

(b) The tribal government, organized in 1965, has been and remains almost entirely dependent for its operations on funding provided by agencies of the United States government. Nearly all the health, social, educational, and other services

available to members of the Suquamish Tribe are funded by the federal and state governments rather than the tribal government. This dependence on outside funding imposes substantial limits on self-government and frustrates efforts to improve the economic and social welfare of the members of the Tribe.

(c) The economic and social conditions of the Suquamish people remain significantly worse than those of the general population of Washington State. An unacceptable proportion of the members of the Tribe are unemployed, underemployed, or living in poverty.

(d) Tribal treaty resources could be developed for the benefit of all members of the Suquamish Tribe through the labor, skills, ingenuity, and determination of the Suquamish people. The Tribe's traditional usual and accustomed fishing and shellfish harvesting areas, if properly managed and harvested, could provide the Suquamish people with commercially salable fish and shellfish products as well as subsistence and ceremonial foods. The development of a commercial seafood enterprise would enhance the Tribe's ability to protect its tribal treaty fishing and shellfish harvesting rights and to exercise and develop its power of self-government.

(e) The Suquamish Tribe seeks to develop its tribal treaty fish and shellfish resources in a way which sustains existing tribal fish and shellfish resources, generates new tribal resources, and provides opportunities for tribal members to improve their standard of living. The Tribal Council finds that these goals can best be met by the establishment of a branch or agency of the tribal government which has the power and responsibility to generate income and create jobs by engaging in commercial fish and shellfish activities.

(f) The Suquamish Tribal Council has authority to enact this chapter pursuant to the Constitution and Bylaws of the Suquamish Tribe, Article III, §1(a), (b), (c), (f), and (i). (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.3. Purpose. This chapter establishes an agency of the Suquamish tribal government, separate from other branches of the tribal government but accountable to the Tribe's governing body, with the power and duty to engage in commercial seafood activities, such as the commercial harvesting of shellfish and the commercial processing, marketing, and sale of all seafood goods and services to the public. The Tribe adopts this chapter in order to achieve the following goals:

(a) To generate revenue for the tribal government, thereby simultaneously increasing the tribal government's independence from outside funding sources and providing needed services to members of the tribal community;

(b) To make possible the most efficient use and development of Suquamish tribal treaty fish and shellfish resources in a way which protects such treaty rights, ensures their preservation, and promotes their use to generate additional community resources; and

(c) To increase employment, training, and other economic opportunities for members of the Suquamish tribal community. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.4. Definitions. When used in this chapter, the following words have the following meanings:

(a) “Board” or “board of directors” refers to the board of directors of Suquamish Seafoods.

(b) “Commercial activity” means activity involving the commercial harvesting of shellfish and the processing, marketing, purchasing, and selling of seafood goods and services in the regular course of a business whose purpose is primarily to produce profit.

(c) “Tribal” or “Tribe” refers to the Suquamish Tribe.

(d) “Tribal Council” or “Suquamish Tribal Council” refers to the governing body of the Suquamish Tribe.

(e) “Tribal treaty rights,” “tribal treaty fishing rights,” and “tribal treaty shellfish harvesting rights” mean those general and specific rights reserved by the Suquamish Tribe when it entered into the Point Elliott Treaty in 1855, ratified by Congress in 1859. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.5. Creation of Suquamish Seafoods Enterprise. There shall be a branch of the Suquamish Tribe known as Suquamish Seafoods, which shall have responsibility for all tribal operations of commercial shellfish harvesting and commercial processing, marketing, purchasing, and selling of seafood goods and services, excepting any specific activities which the tribal government may commit to the general tribal membership as an individual exercise of the Tribe’s treaty rights regulated by tribal licensing and tribal taxes or committed to other tribal entities by tribal ordinance. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.6. Place of Business. The headquarters and principal place of business of Suquamish Seafoods shall be on the Port Madison Indian Reservation, and its business address shall be Post Office Box 1413, Suquamish, Washington 98392. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.7. Powers of Suquamish Seafoods Enterprise. Subject to the limitations and conditions set out in the following sections of this chapter, Suquamish Seafoods shall have the power in its own name:

(a) To acquire, lease, manage, encumber, and dispose of real and personal property;

(b) To hire and discharge employees and to contract for personal or professional services;

(c) To sue and be sued in the Suquamish Tribal Court and with the written consent of the tribal government to sue and be sued in a court of any other competent jurisdiction;

(d) To borrow and lend money and other personal property;

(e) To enter into contracts;

(f) To establish new commercial seafood ventures governed by the board of directors of Suquamish Seafoods; and

(g) To engage in activities and take actions necessary for carrying out these powers and any other powers conferred on it by the Suquamish Tribal Council. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.8. Board of Directors. (a) The operations of Suquamish Seafoods shall be directed by a board which shall be composed of seven (7) regular members appointed by the Suquamish Tribal Council.

(b) The term of the initial five (5) member board shall be deemed to have begun on January 1, 1997. In order to stagger the terms of board members, two (2) members of the initial board shall be appointed for one (1) year terms, two (2) members shall be appointed for two (2) year terms, and one (1) member shall be appointed for a three (3) year term. Subsequent board appointments shall be for three (3) year terms beginning on the first day of January. Board positions one (1) and two (2) shall be appointed in the same year; board positions three (3) and four (4) shall be appointed in the following year; and board positions five (5), six (6), and seven (7) shall be appointed in the year following after with appointments rotating in the same manner each year thereafter. Any member of the board may be appointed for one or more consecutive terms. If the board is expanded by Tribal Council action, the Council shall designate the length of the term to be served by any additional members in a manner which ensures that the terms of all board members are staggered.

(c) Five (5) board members shall be appointed to positions one (1), three (3), five (5), six (6), or seven (7) from the general membership of the Suquamish Tribe who are eligible to vote in tribal elections. The Tribal Council shall appoint two diver representative board members who shall serve in positions two (2) and four (4). A diver representative board member must have an active geoduck harvester contract in good standing with the Suquamish Seafoods Enterprise at the time of appointment and must maintain the contract in good standing to remain on the board.

The Tribal Council may appoint a Tribal Council member to serve in position seven (7) as a board member liaison to the Council if such appointment is deemed to be

in the best interest of the Tribe. The Tribal Council board member's term shall be one (1) year. The Tribal Council member may be reappointed to consecutive one (1) year terms and serve in such position so long as he or she remains on the Tribal Council.

(d) Board members shall not have any direct financial interest in the geoduck harvest operation, except diver representative board members who as a condition of serving on the board must have active geoduck harvester contracts with the Suquamish Seafoods Enterprise. (Res. 96-115 (part), passed Nov. 5, 1996; amended by Res. 97-033, passed Apr. 4, 1997; amended by Res. 2011-070 (part), passed May 23, 2011)

11.6.9. Removal of Directors. A member of the board of directors may be removed for good cause by a majority of all Tribal Council members after written notice and an opportunity to be heard by the Tribal Council. Good cause includes but is not limited to repeated unexcused failure to attend board meetings, neglect of duty, abusing the powers or privileges of the office, conflict of interest, or engaging in any criminal act(s). The decision of the Tribal Council on such removal shall be final and not appealable. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.10. Officers. At its annual meeting, the board of directors shall elect from among its members a president, vice president, and secretary–treasurer who shall each serve a one-year term. Officers may serve consecutive one-year terms. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.11. Board Meetings. Regular meetings of the board shall be held at least once a quarter and may be held more frequently if provided for by a majority vote of the board members. Board members may attend regular meetings by telephonic conference when personal attendance is not feasible. Special meetings may be called by the president or any two (2) members. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.12. Board Procedures. A quorum of the board shall be four (4) members. Within ninety (90) days after the first board of directors is appointed, the board shall establish bylaws governing its procedures. (Res. 96-115 (part), passed Nov. 5, 1996; amended by Res. 2011-070 (part), passed May 23, 2011; amended by Res. 2014-137, passed Sep. 8, 2014)

11.6.13. Powers and Duties of the Board of Directors. The directors of Suquamish Seafoods shall have the following powers and responsibilities.

(a) To employ a manager under a written contract.

(b) To establish policies governing the employment, supervision, compensation, disciplining, and discharge of personnel of Suquamish Seafoods, provided that the personnel policies shall provide for Indian preference in hiring and promotion.

(c) To establish bylaws governing its own procedures.

(d) To pay each board member a stipend to attend board meetings with the per meeting amount and conditions for and limitations upon receiving such payment to be determined and set on an annual basis by the Tribal Council as part of its review and approval of the Seafoods Enterprise's annual plan and budget.

(e) To reimburse at direct cost expenses incurred by board members to attend nonboard meetings for and on behalf of the enterprise.

(f) To authorize any one or more board officers to perform work on its behalf on matters related to any one or more projects identified by the board and memorialized in writing at an hourly rate to be set in the annual Suquamish Seafoods budget approved by the Tribal Council. The board shall identify the maximum hours of work each officer shall perform on a project and may increase the maximum by written approval. All authorizations under this section are to be made by decision of the majority of the board excluding the officer(s) to be assigned such work and are to be memorialized in the board meeting minutes. Any work performed by an officer under this subsection without prior written authorization of the board shall be deemed to be hours worked voluntarily by the officer and without expectation of compensation by the officer.

(g) To recommend to the Suquamish Tribal Council an annual plan of operation and an annual budget for Suquamish Seafoods, as provided in §11.6.16 of this chapter.

(h) To advise the Tribal Council on issues of tribal commercial seafood economic development.

(i) To execute contracts consistent with the annual plan approved by the Tribal Council.

(j) To acquire, lease, manage, and dispose of personal property for use in the operation of Suquamish Seafoods or the board's activities pursuant to this charter, provided that the board shall adopt procurement policies which are consistent with the requirements of United States government agencies that fund or contract with tribal enterprises and which include a "Buy Indian" policy.

(k) To borrow money and to secure such loans and the payment of any obligation by assigning or mortgaging property of Suquamish Seafoods, including real property, provided that the board shall not assign or mortgage any property of the Suquamish Tribe which has been leased or assigned to Suquamish Seafoods unless it first obtains the approval of the Tribal Council.

(l) Consistent with the annual plan of operation, to change the nature, volume, and scope of the commercial activities conducted by Suquamish Seafoods as necessary to maximize revenues, minimize losses, expand employment opportunities for members of the tribal community, provide services to the public, and achieve the purposes of this chapter.

(m) To file suit and to consent to suit in the Suquamish Tribal Court and with the written approval of the Suquamish Tribal Council to file suit and consent to suit in a competent court of any other jurisdiction.

(n) To communicate and negotiate with representatives of other governmental agencies and private businesses regarding commercial seafood matters. (Res. 96-115 (part), passed Nov. 5, 1996; amended by Res. 2009-182, passed Nov. 16, 2009)

11.6.14. Powers Reserved to Tribal Council. The following powers relating to the management and operation of Suquamish Seafoods shall be reserved to the Suquamish Tribal Council.

(a) To set general economic development policies and strategies for the Suquamish Tribe.

(b) To negotiate, litigate, and determine all public issues and policies regarding the Suquamish Tribe's fishing and shellfish harvest rights or any other tribal treaty right, including the determination of what fisheries Suquamish Seafoods may engage in.

(c) To request that the United States take land intended for use by Suquamish Seafoods into trust for the Suquamish Tribe.

(d) To consent to the lease, pledge, encumbrance, or disposition of any property owned by or held in trust for the Suquamish Tribe.

(e) To appropriate property or funds of the Suquamish Tribe for use by or in Suquamish Seafoods.

(f) To appoint and remove members of the board of directors.

(g) To determine the pool of tribal members who may participate as geoduck harvesters for the Suquamish Seafoods Enterprise.

(h) To determine the terms and conditions of compensation provided to contract geoduck harvesters.

(i) To determine the terms, conditions, and amount of any medical insurance or program, short term disability program, or long term disability insurance or program for contract geoduck harvesters and contract tenders.

(j) To determine the terms and conditions of any tribal government-sponsored loan program, specifically equipment loans and paralytic shellfish poisoning (PSP) caused harvest disruption loans, which may be offered to contract geoduck harvesters and contract tenders.

(k) To approve an annual plan of operation for Suquamish Seafoods prepared and recommended by the board of directors.

(l) To change the charter establishing the powers and structure of Suquamish Seafoods and to dissolve the enterprise and provide for the distribution of the enterprise's assets.

(m) To waive the sovereign immunity rights of Suquamish Seafoods to suit in a court of any competent jurisdiction and to consent to any court's jurisdiction over property or assets held by Suquamish Seafoods for its own benefit or for the benefit of the Suquamish Tribe. (Res. 96-115 (part), passed Nov. 5, 1996; amended and renumbered by Res. 2011-070 (part), passed May 23, 2011)

11.6.15. Manager. The board of directors shall employ a manager for Suquamish Seafoods. The manager shall have the following responsibilities:

(a) To conduct and oversee the daily operation of the enterprise's commercial activities.

(b) To hire, train, supervise, and discharge employees of the enterprise, consistent with personnel policies adopted by the board and in accordance with the guidance and direction provided by the board.

(c) To manage harvesting operations, to determine what seafood goods and services the enterprise will sell, to determine how the seafood goods and services will be processed and marketed, and to determine the prices to be charged for such goods and services, consistent with the annual plan adopted by the board and in accordance with the guidance and direction provided by the board.

(d) To maintain a complete and accurate accounting of all funds and property acquired, held, used, and disposed of by the enterprise.

(e) To formulate for the board's consideration plans for the enterprise's annual operations and for changes in the nature and scope of those operations.

(f) To carry out the plans and policies adopted by the board and to perform all responsibilities delegated to the manager by the board. The manager may not serve as a voting member of the board of directors. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.16. Annual Plan. On or before October 1 of each year at a regular meeting, the board of directors shall adopt for submission to the Tribal Council an annual plan of operation for Suquamish Seafoods. The plan shall be consistent with the powers delegated to the board under this charter. The plan shall include at least the following information:

(a) An unaudited report of the year's operation to that date, including expenditures, income, profits, and performance relative to the goals set in the annual plan;

(b) A projection of the final report of the year;

(c) Any planned changes in the nature of the commercial activities to be conducted by the enterprise;

(d) Any planned expansion or reduction in the inventory, assets, facilities, or personnel of the enterprise;

(e) Any construction, major repairs, major equipment purchases, or other capital expenditures planned;

(f) Plans or proposals for any joint ventures, partnerships, contracts, or new ventures which will be employed to carry out the enterprise functions;

(g) Plans or proposals for any financial percentages to be provided to contract divers as part of their diving contracts;

(h) A proposed budget for the coming year for the continuation or expansion of the operations;

(i) Any new loans or grants which the enterprise expects to apply for or receive or propose that the Tribal Council apply for on behalf of the enterprise; and

(j) A projected profit and loss statement, balance sheet, and cash flow analysis for the coming year. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.17. Quarterly Reports. In addition to the annual plan, the board of directors shall submit to the Tribal Council within thirty (30) days after the end of each quarter a report of the operations and financial status of the enterprise for that quarter and for the fiscal year to that date. The Tribal Council may require more frequent reports but shall not require reports more frequently than once each month. Within one hundred and twenty (120) days after the end of the fiscal year, the board shall also prepare a summary annual report for public release. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.18. Fiscal Year. The fiscal year of Suquamish Seafoods shall be the calendar year. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.19. Bonding. The board members, manager, and all employees of Suquamish Seafoods who handle money shall be bonded. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.20. Audits. The board of directors shall cause an annual audit of Suquamish Seafoods' accounts to be conducted by a qualified person who is not an employee of the enterprise or of the Tribe, and such audit shall be submitted to the Tribal Council within ninety (90) days after the end of the enterprise's fiscal year. The Tribal Council shall have the right to cause its own audit of the enterprise accounts to be conducted at no expense to the enterprise. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.21. Public Disclosure. The following records of Suquamish Seafoods shall be public information available for inspection by any interested person during regular business hours at the enterprise's principal office:

- (a) A summary of the annual plan of operation;
- (b) Bylaws of the board of directors;
- (c) Personnel policies of Suquamish Seafoods; and
- (d) The summary annual report.

When necessary to prevent another commercial enterprise from acquiring a competitive advantage over Suquamish Seafoods, the board may delete portions of the annual plan and report before permitting their inspection pursuant to this section. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.22. Distribution of Net Proceeds. (a) All net proceeds of Suquamish Seafoods shall be distributed to the Suquamish Tribe. For purposes of this section, "net proceeds" means all earnings in excess of the cost of sales; operating expenses; other expenses; capital expenditures which are paid in full within any year; payments on loans or contracts for capital expenditures, including both principal and interest thereon, made within any year; and a reserve fund of fifty thousand dollars (\$50,000) to finance time-sensitive business opportunities, to replace or repair equipment material to the functioning of the enterprise, and to fund short-term commercial business emergency expenses.

(b) The reserve fund shall be created upon enactment of this charter by accruing five percent (5%) of the monthly gross receipts until the fund has reached the amount of fifty thousand dollars (\$50,000) and shall be maintained at such amount. When expenditures are made from the reserve fund, the fund shall be replenished at the same five percent (5%) rate of the monthly gross receipts until the full reserve amount is replenished. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.23. Limited Liability. (a) No lawful act of the Tribal Council, the board of directors, or any members of the Tribal Council or the board shall result in personal liability on the part of any such member for the debts, acts, or omissions of Suquamish Seafoods.

(b) No lawful act of the manager or any other employee of Suquamish Seafoods shall result in personal liability on the part of any such employee for the debts, acts, or omissions of Suquamish Seafoods.

(c) The personal liability of a member of the board of directors to the Tribe or to Suquamish Seafoods, for acts taken as a director, shall not exceed the amount of any applicable insurance maintained by Suquamish Seafoods or by the Tribe for the protection of such directors from such liability, provided that the director's liability does not arise from the director:

(1) Knowingly permitting Suquamish Seafoods to enter into a business transaction with him- or herself or a member of his or her immediate family or with any organization in which the director or such family member has a substantial interest or holds a management position without having previously disclosed such interest to the person or persons approving the transactions;

(2) Taking actions as a director for the purpose of conferring personal benefit upon the director or his or her immediate family;

(3) Taking actions as a director which are criminal; or

(4) Taking actions in any capacity which are in willful disregard of his or her obligations as a director.

(d) Subsection §11.6.23(c) shall not be construed to expand or limit the liability of a director to the Tribe or to Suquamish Seafoods for acts described in §11.6.23(c)(1–4).

(e) Suquamish Seafoods shall indemnify and hold each director harmless against the actual and reasonable expenses incurred by the director in connection with any claim or proceeding against him or her arising from his or her actions as a director, provided the director has been successful on the merits or otherwise in defending against such claim.

(f) Any indemnification under §11.6.23(e), unless ordered by the Court, shall be made only:

(1) Upon a unanimous vote of a quorum consisting of directors not parties to such claim or proceeding;

(2) By special legal counsel appointed by the Suquamish Tribal Council if a quorum cannot be obtained under §11.6.23(f)(1); or

(3) By the Suquamish Tribal Council if a decision cannot be made by any of the methods prescribed above.

(g) As used in this section, the following terms shall have the following meanings:

(1) "Immediate family" means the director's spouse, parent, sibling, child, grandchild, grandparent, aunt, uncle, or first cousin and any person having the same home as the director.

(2) "Management position" means a position having significant actual or potential influence over the management of such organization including but not limited to a position as a director, general partner, general manager, principal, or officer.

(3) "Substantial interest" means a financial interest of such significance that it would reasonably be expected to exert an influence on the judgment of the person having such interest, including ownership of in excess of the lesser of ten percent (10%) or one thousand dollars (\$1,000) of the assets or capital stock of such organization. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.24. Sovereign Immunity. As a branch of the Suquamish Tribe, Suquamish Seafoods shall be entitled to all of the protections and immunities afforded by the laws of the United States to Indian tribal governments, and nothing in this chapter shall be construed as a general waiver of the sovereign immunity of the Suquamish Tribe or Suquamish Seafoods. However, the board of directors, subject to the powers reserved in this chapter by the tribal government and the requirement of §11.6.13(m) herein, may enter agreements which waive the right of the agency to raise the defenses of sovereign immunity to suit with regard to specified assets of the enterprise and in specified courts with jurisdiction over such assets. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.25. Insurance. The board shall maintain a policy of liability insurance covering all operations of Suquamish Seafoods, with policy limits and types of coverage specified by the Tribal Council. Such policy shall name the Suquamish Tribe as an additional insured and require that the insurer waive any right it may otherwise have to raise the sovereign immunity of the enterprise as a defense to claims against the policy. (Res. 96-115 (part), passed Nov. 5, 1996)

11.6.26. Transition Period. (a) The Tribal Council shall appoint the first board of directors as soon as practicable but no later than forty (40) days after the enactment of this chapter. The board shall meet no later than ten (10) days after its appointment. Until the first board meets, the Tribal Council shall appoint three (3) of its members to act as an interim board and appoint one (1) of its members to act as an alternate to the interim board.

(b) As of the date of the enactment of this charter, the general manager and the bookkeeper of the tribal geoduck harvest program shall be employees of Suquamish Seafoods.

(c) Until the permanent board adopts personnel policies, the personnel policies of the tribal government shall govern the employment conditions of the persons employed by Suquamish Seafoods.

(d) All assets leased, loaned, or assigned by the Tribe to the tribal geoduck harvest program at the time this chapter is enacted and all liabilities incurred on behalf of the tribal geoduck harvest program or on behalf of Suquamish Seafoods before the date this chapter is enacted shall be and are hereby transferred to Suquamish Seafoods. (Res. 96-115 (part), passed Nov. 5, 1996)