

## TITLE 11. COMMERCE

### Chapter 11.6

#### SUQUAMISH SEAFOODS ENTERPRISE CHARTER

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**11.6.1. Title.** The title of this chapter will be the “Suquamish Seafoods Enterprise Charter.” (Res. 96-115 (part), passed Nov. 18, 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, and non-treaty and aquaculture seafood 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. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.3. Purpose.** This chapter establishes an independent enterprise of the Suquamish Tribe, with the power and duty to engage in commercial seafood activities. This includes: the commercial harvesting of shellfish; engaging in commercial aquaculture; the commercial processing, marketing, wholesale and retail sale of all seafood goods and services. 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. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**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) “Suquamish Seafoods Enterprise” means the branch of the Suquamish Tribe created by this charter, including all subsidiaries and subdivisions governed by the board of directors.

(d) “Tribal” or “Tribe” refers to the Suquamish Indian Tribe of the Port Madison Reservation.

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

(f) “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. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.5. Creation of Suquamish Seafoods Enterprise.** There will be a branch of the Suquamish Tribe known as Suquamish Seafoods, which will 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. 18, 1996)

**11.6.6. Place of Business.** The headquarters and principal place of business of Suquamish Seafoods will be on the Port Madison Indian Reservation. (Res. 96-115 (part), passed Nov. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**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 will 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, upon granting consent pursuant to its derived sovereign immunity be sued;

(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. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

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

(b) The term of the initial five (5) member board will 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 will be appointed for one (1) year terms, two (2) members will be appointed for two (2) year terms, and one (1) member will 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) will be appointed in the same year; board positions three (3) and four (4) will be appointed in the following year; and board positions five (5), six (6), and seven (7) will 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 will 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 will 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 will appoint two diver representative board members who will 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 will appoint one (1) 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 will 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 that person remains on the Tribal Council.

(d) Board members will 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. 18, 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 will be final and not appealable. (Res. 96-115 (part), passed Nov. 18, 1996)

**11.6.10. Officers.** At its annual meeting, the board of directors will elect from among its members a president, vice president, and secretary–treasurer who will each serve a one-year term. Officers may serve consecutive one-year terms. (Res. 96-115 (part), passed Nov. 18, 1996)

**11.6.11. Board Meetings.** Regular meetings of the board will 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 or other electronic means 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. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.12. Board Procedures.** A quorum of the board will be four (4) members. Within ninety (90) days after the first board of directors is appointed, the board may establish bylaws governing its procedures. (Res. 96-115 (part), passed Nov. 18, 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 will have the following powers and responsibilities.

(a) To employ a manager.

(b) To establish policies governing the employment, supervision, compensation, disciplining, and discharge of personnel of Suquamish Seafoods, provided that the personnel policies will 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 pursuant to any policies or procedures adopted by the Board.

(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 will identify the maximum hours of work each officer will 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 will 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 will adopt procurement policies which are consistent with any requirements of United States government agencies or other grantors that fund or contract with tribal enterprises and which include a "Buy Indian" policy to maximize Suquamish jurisdiction.

(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 will 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 any court of competent jurisdiction only the enterprise and the enterprise's assets. The board of directors lacks authority to waive sovereign immunity beyond the limited sovereign immunity derived from this charter.

(n) To communicate and negotiate with representatives of other governmental agencies and private businesses regarding commercial seafood matters, including the power to consent to waivers of SSE's derived sovereign immunity.

(o) With the approval of Tribal Council, to establish subsidiaries of Suquamish Seafoods Enterprise to be operated as separate legal entities. Any such subsidiary will be governed by the board of directors of Suquamish Seafoods and will have the rights granted and/or limited by its charter to carry on its business either within or without the lands of the Tribe and in whatever form it deems appropriate for the purpose of segregating the accounts, assets, and liabilities of discrete business enterprises regardless of common directorship; provided that no form of business organization may be used which does not preserve and protect the immunities and assets of Suquamish Seafoods or the Tribe. (Res. 96-115 (part), passed Nov. 18, 1996; amended by Res. 2009-182, passed Nov. 16, 2009; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.14. Powers Reserved to Tribal Council.** The Suquamish Tribal Council can reserve any powers relating to the management and operation of Suquamish Seafoods pursuant to a duly enacted Tribal Council resolution. (Res. 96-115 (part), passed Nov. 18, 1996; amended and renumbered by Res. 2011-070 (part), passed May 23, 2011; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.15. Manager.** The board of directors will employ a manager for Suquamish Seafoods. The manager will 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. 18, 1996)

**11.6.16. Annual Plan.** On or before October 1 (or an alternative date approved by Tribal Council resolution) of each year at a regular meeting, the board of directors will adopt for submission to the Tribal Council an annual plan of operation for Suquamish Seafoods. The plan will be consistent with the powers delegated to the board under this charter. The plan will 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. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.17. Reports.** In addition to the annual plan, the Tribal Council may require more frequent reports but will 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 will also prepare a summary annual report. (Res. 96-115 (part), passed Nov. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.18. Fiscal Year.** The fiscal year of Suquamish Seafoods will be the calendar year. (Res. 96-115 (part), passed Nov. 18, 1996)

**11.6.19. Bonding.** The board members, manager, and all employees of Suquamish Seafoods who handle money will be bonded. In lieu of bonding, the Board may maintain such other insurance as it deems appropriate. (Res. 96-115 (part), passed Nov. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.20. Audits.** The board of directors will 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 will be submitted to the Tribal Council within one hundred fifty (150) days after the end of the enterprise's fiscal year. The Tribal Council will 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. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.21. [reserved]** (Res. 96-115 (part), passed Nov. 18, 1996; repealed by Res. 2024-134, passed Jun. 3, 2024)

**11.6.22. Distribution of Net Proceeds.** Any proceeds may be distributed pursuant to the annual plan, or other Tribal Council directive approved by Tribal Council resolution. (Res. 96-115 (part), passed Nov. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**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 will 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 will 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, will 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) will 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 will 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, will be made only:

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

(2) Committee;

(3) By legal counsel appointed in the manner prescribed under §11.6.23(f)(1) or §11.6.23(f)(2);

(4) 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 will 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. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.24. Sovereign Immunity.** As a government enterprise of the Suquamish Tribe, Suquamish Seafoods will 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 will be construed as a general waiver of the sovereign immunity of the Suquamish Tribe or Suquamish Seafoods.

(a) 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 enterprise 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.

(b) 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 waive the enterprise’s derived sovereign immunity. (Res. 96-115 (part), passed Nov. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)

**11.6.25. Insurance.** The board will 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 will 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. 18, 1996)

**11.6.26. Transition Period.** (a) The Tribal Council will 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 will meet no later than ten (10) days after its appointment. Until the first board meets, the Tribal Council will 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 will be employees of Suquamish Seafoods.

(c) [reserved]

(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 will be and are hereby transferred to Suquamish Seafoods. (Res. 96-115 (part), passed Nov. 18, 1996; amended by Res. 2024-134, passed Jun. 3, 2024)