TRIBAL REGULATION GOVERNING INCIDENTAL TAKE OF MARINE MAMMALS IN TREATY FISHERIES

Tribal Regulation No.:26-05F
Affected Species: California Sea Lion, Steller Sea Lion, Harbor Seal
Effective Dates: April 1, 2026 to March 31, 2027
Management Area: ALL of the Suquamish Tribe's U & A
Fishery: Commercial and Ceremonial and Subsistence Fisheries

1. Purpose.

This regulation enacted by the Suquamish Tribe ("Tribe") is intended to implement the Tribe's right of taking fish under the Treaty of Port Madison, which includes the right to defend fishing gear and catch from interference by marine mammals. Consistent with Congress's determination that nothing in the 1994 amendments to the Marine Mammal Protection Act ("MMPA") "alters or is intended to alter any treaty between the United States and one or more Indian tribes," Pub. L. No. 103-238, § 14, 108 Stat. 532, 558 (1994), this regulation describes those circumstances identified by the Tribe under which the incidental take of marine mammals by tribal members exercising treaty reserved fishing rights and certain identified tribal fisheries enforcement and management professionals is authorized.

This regulation also establishes a framework for government-to-government coordination between the Tribe and the National Oceanic and Atmospheric Administration ("NOAA") regarding the incidental take of marine mammals in treaty fishing operations. The Tribe and NOAA will share information intended to improve science-based management of marine mammals and facilitate Tribal enforcement of this regulation and NOAA enforcement of the MMPA and its implementing regulations.

2. Definitions.

(a) "Take" means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill a marine mammal.

(b) "Incidental take" means the taking of a marine mammal in the course of treaty fishing operations (i) because it is directly interfering with fishing operations, (ii) as a consequence of the steps used to secure the fish in connection with fishing operations or (iii) as a measure of self-defense to ensure the safety of the crew or vessel.

(c) "Marine mammal" means any marine mammal that is not depleted (as defined in the MMPA) or listed under the federal Endangered Species Act.

(d) "Serious injury" means any injury that will likely result in mortality.

(e) "Tribal fisheries enforcement and management professional" means a person authorized by the Tribe to enforce or manage the Tribe's treaty right to take fish.

(f) "Tribal treaty fisher" means a person authorized by the Tribe to exercise the Tribe's treaty fishing rights.

3. Prohibitions.

It is prohibited to take a marine mammal except as otherwise provided by this regulation.

4. Incidental Take Authorized.

A tribal treaty fisher and tribal fisheries enforcement and management professional may incidentally take a marine mammal, under the circumstances specified below, when exercising, enforcing or managing the Tribe's treaty right to fish.

5. Incidental Take of a Marine Mammal Interfering with Treaty-Reserved Fishing – Preventing Interference.

(a) Preventing Interference – Non-Lethal Acts.

A tribal treaty fisher or tribal fisheries enforcement and management professional may incidentally take a marine mammal by deterring it from damaging catch or deployed fishing gear, so long as such acts of deterrence are not intended to result in the death of or serious injury to the marine mammal. Potential non-lethal deterrence methods will include those set forth in the most recent NOAA Fisheries Guidance (updated November 2015) attached hereto, or such other measures as may be added to this provision after consultation with NOAA.

(b) Preventing Interference – Lethal Acts.

A tribal treaty fisher or tribal fisheries enforcement and management professional, after attempting non-lethal steps to deter a California sea lion, Steller sea lion, or harbor seal from damaging catch or deployed fishing gear, may incidentally take the California sea lion, Steller sea lion, or harbor seal by lethal means consistent with Section 5(c) below.

(c) Public Safety.

Tribal treaty fishers and tribal fisheries enforcement and management professionals shall ensure that any methods used to prevent a marine mammal from interfering with their fishing operations will not create an imminent risk to public safety.

6. Incidental Take of a Marine Mammal as a Consequence of Steps Used to Secure Fish.

A tribal treaty fisher may incidentally take a marine mammal as a consequence of the steps used to secure fish in connection with treaty fishing operations. Such incidental take includes but is not limited to entanglement of a marine mammal in fishing gear.

7. Self-Defense.

A tribal treaty fisher or a tribal fisheries enforcement and management professional may incidentally take by non-lethal or lethal means a marine mammal if such take is imminently necessary in self-defense or a life-threatening situation.

8. Information Sharing.

(a) For purposes of information sharing under this section only, "marine mammal" means any seal, sea lion, whale, dolphin, porpoise or sea otter.

(b) A tribal treaty fisher or tribal fisheries enforcement and management professional shall report any incidental take resulting in mortality or serious injury of a marine mammal to the Tribe's Fisheries Department within 48 hours of landing, or as soon as reasonably possible.

(c) The Tribe's Fisheries Department shall provide on an annual basis by January 15 a summary report to the Northwest Indian Fisheries Commission ("NWIFC"), regarding aggregate incidental takes resulting in mortality or serious injury of marine mammals by tribal treaty fishers or tribal fisheries enforcement and management professionals, including number of marine mammals taken, approximate date, species, location (*e.g.* catch area), fishery gear type and target species (*e.g.* salmon troll, salmon drift gillnet, groundfish trawl), and disposition (mortality or serious injury). The NWIFC shall aggregate the information received into a single report and provide it to NOAA Fisheries. Individual tribe, fisher, and vessel anonymity shall be maintained. In lieu of the process above, any tribe can report directly to NOAA Fisheries.

(d) To facilitate Tribal enforcement of this regulation and NOAA enforcement of the MMPA and its implementing regulations, the Tribe shall coordinate with NOAA Office of Law Enforcement and share information relevant to such enforcement, including Tribal fishing regulations establishing open seasons and areas, this marine mammal regulation and contact information for the Tribe's Fisheries Department and Fisheries Enforcement Office. Upon request, the Tribe shall share with NOAA Office of Law Enforcement relevant information it has obtained from any reports submitted pursuant to Section 8(b) above regarding the incidental take of a marine mammal by a tribal treaty fisher or tribal fisheries enforcement and management professional. The

Tribe shall also share information regarding and the disposition of any incident involving incidental take referred to the Tribe for investigation, including the outcome of any prosecution arising from the incident.

9. Disposition of Carcass.

The carcass of any marine mammal incidentally taken and killed under this regulation may be returned to the sea. If the carcass is retained, it must be made available to the Tribe's Fisheries Department for biological sampling, after which it shall be provided for ceremonial and subsistence use within the tribal community consistent with Tribal law and custom.

10. Penalties.

Failure to observe and comply with any provision of this regulation shall be punishable by civil and/or criminal penalties as follows or as specified in Section ____ of the Tribe's Fishing Ordinance.

11. Reservation of Rights.

By adopting this regulation as Tribal law, the Tribe is not waiving any right, claim, defense or other legal entitlement regarding the Tribe's treaty fishing right or other rights held by the Tribe, nor is it intending to define or interpret the scope of its treaty right to take marine mammals.