

## **§ 248.5**

to State fishing laws or regulations which are not compatible with such rights.

### **§ 248.5 Damage to Government-owned property.**

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

### **§ 248.6 Structures.**

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 The privileges or right of access to or use of the sites of any individual may be suspended or withdrawn, in the discretion of the Area Director, when such individual having violated such health, sanitation, and safety requirements repeats such violation after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

[59 FR 16757, Apr. 7, 1994]

### **§ 248.7 Liability for condition and use of structures.**

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

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

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### **§ 248.8 Abandoned property.**

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

### **§ 248.9 Camping and use restrictions.**

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

### **§ 248.10 Appeals from administrative actions.**

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

## **PART 249—OFF-RESERVATION TREATY FISHING**

### **Subpart A—General Provisions**

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AUTHORITY: 25 U.S.C. 2 and 9; 5 U.S.C. 301, unless otherwise noted.

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

**Subpart A—General Provisions****§ 249.1 Purpose.**

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

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

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

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

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

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

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

(b) The conservation regulations of this part 249 are found to be necessary to assure that the nonexclusive rights secured to certain Indian tribes by treaties of the United States to fish at usual and accustomed places outside the boundaries of an Indian reservation shall be protected and preserved for the benefit of present and future members of such tribes in a manner consistent with the nonexclusive character of such rights. Any exercise of an Indian off-reservation treaty fishing right shall be in accordance with this part and any applicable area regulations issued hereunder.

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

**§ 249.2 Area regulations.**

(a) The Secretary of the Interior may upon request of an Indian tribe, request of a State Governor, or upon his own motion, and upon finding that Federal

regulation of Indian fishing in any waters in which Indians have a treaty-secured nonexclusive fishing right is necessary to assure the conservation and wise utilization of the fishery resources for the present and future use and enjoyment of the Indians and other persons entitled thereto, promulgate regulations to govern the exercise of such treaty-secured fishing right in such waters for the purpose of preventing, in conjunction with appropriate State conservation laws and regulations governing fishing by persons not fishing under treaty rights, the deterioration of the fishery resources.

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

(c) Before promulgating such regulations the Secretary of the Interior will seek the views of the affected Indian tribes, of the fish or game management agency or agencies of any affected State, and of other interested persons. Except in emergencies where the Secretary finds that the exigencies require the promulgation of regulations to be effective immediately, a notice of proposed rule making will be published in the FEDERAL REGISTER in accordance with 5 U.S.C. 553 to afford an opportunity to submit comments and information, at such times and in such manner as may be specified in the notice. In the event of the emergency promulgation of regulations, interested persons will be afforded, as soon as possible, an opportunity to request amendment or revocation thereof.

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

(e) Regulations issued pursuant to this § 249.2 may include such requirements for recording and reporting catch statistics as the appropriate state fish and game agencies or the

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Secretary of the Interior deem necessary for effective fishery management.

#### § 249.3 Identification cards.

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

(b) No such card shall be issued to any Indian who is not on the official membership roll of the tribe which has been approved by the Secretary of the Interior. *Provided*, That until further notice, a temporary card may be issued to any member of a tribe not having an approved current membership roll who submits evidence of his/her entitlement thereto satisfactory to the issuing officer and, in the case of a tribally issued card, to the countersigning officer. Any Indian claiming to have been wrongfully denied a card may appeal the decision in accordance with part 2 of this chapter.

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

(d) Each card shall state the name, address, tribal affiliation and enrollment number (if any) of the holder, identify the treaty under which the holder is entitled to fishing rights, contain such additional personal identi-

fication data as is required on fishing licenses issued under the law of the State or States within which it is used, and be signed by the issuing officer and by the holder.

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

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

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

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

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

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

#### § 249.4 Identification of fishing equipment.

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

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### § 249.5 Use of unauthorized helpers or agents.

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

### § 249.6 Enforcement and penalties.

(a) Any Indian tribe with a tribal court may confer jurisdiction upon such court to punish violations by its members of this part 249 or of the area regulations issued pursuant thereto. Jurisdiction is hereby conferred upon each Court of Indian Offenses established pursuant to part 11 of this chapter to punish such violations by members of tribes whose reservations are under the jurisdiction of such court. Courts of Indian Fishing Offenses may be created pursuant to part 11 of this chapter to punish such violations by members of any tribe or group of tribes for which there is otherwise no Court of Indian Offenses or tribal court with jurisdiction to enforce this part 249. The provisions of part 11 of this chapter shall apply to any such court with respect to the exercise of its jurisdiction to enforce this part 249. All jurisdiction conferred by this section shall apply without regard to any territorial limitations otherwise applicable to the jurisdiction of such court.

(b) Acceptance or use of an identification card issued pursuant to this part 249 or use of any fishing gear marked or identified pursuant thereto shall constitute an acknowledgment that the fishing done under such card or with such gear is in the claimed exercise of a tribal fishing right and is subject to the jurisdiction of the tribal court, Court of Indian Offenses, or Court of Indian Fishing Offenses. Except as may be otherwise provided by

tribal regulations approved by or on behalf of the Secretary of the Interior, any person claiming to be exercising such tribal right and fishing in violation of the regulations contained in or issued under this part 249 may be punished by a fine of not to exceed \$500, imprisonment of not to exceed 6 months, or both, and shall have his tribal fishing privileges suspended for not less than 5 days for any violation of this part 249 or of any area regulation issued pursuant thereto. The court shall impound the fishing rights identification card of any person for the period which the fishing privileges are suspended.

### § 249.7 Savings provisions.

Nothing in this part 249 shall be deemed to:

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

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

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

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

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

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