

TITLE 16
ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 2-76 Amendment No. 2

DATE APPROVED: May 28, 1986

SUBJECT: FISHING ORDINANCE OF THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1 (e) of this Constitution and Bylaws authorizes the Hoopa Valley Business Council "to enforce the protection of tribal property, wildlife and natural resources of the Hoopa Valley Tribe in accordance with a conservation ordinance", and

WHEREAS: Pursuant to Article IX, Section 1 (e) of the Constitution of the Hoopa Tribe, the Hoopa Valley Business Council did enact Tribal Ordinance No. 2-76, dated September 16, 1976, entitled "Hoopa Netting Ordinance" for the expressed purpose of conservation of the Hoopa Tribal fishery resource and did amend said ordinance, September 23, 1985, and

WHEREAS: The Hoopa Valley Business Council through it's organizational development has implemented conservation programs through it's Tribal Fisheries Department and law enforcement capabilities through the Tribal Law Enforcement Services Division and therefore has demonstrated it's capability to manage it's fisheries resources, and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Tribe will exercise it's control over fishing and related activities to the fullest extent of Tribal jurisdiction in order to properly regulate, manage and protect all of the Tribal fisheries resources pursuant to the provisions of the following ordinance:

FISHING ORDINANCE OF THE HOOPA VALLEY TRIBE

ORDINANCE NO. 2-76 AMENDMENT NO. 2

Section 1. - Title

This Ordinance shall be known as the "Hoopa Tribal Fishing Ordinance."

Section 2. - Findings and Purpose

(a) Under the authority set out by the Fishing Ordinance of the Hoopa Valley Tribe No. 2-76 section 11 (a) the Hoopa Valley Business Council

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hereby adopts the following management regulations for the 1986 fishing season.

Fishing shall be open for all species of anadromous fish for the period from July 1, 1986 until December 1, 1986 for twenty-four (24) hours a day seven (7) days each week except that the fishery will be closed between the hours of 9:00 a.m. and 5:00 p.m., on Monday of each week to retrieve lost and abandoned fishing gear.

All other parts of Ordinance 2-76 shall be in full force and effect.

Violations of this regulation and of Ordinance 2-76 shall be subject to adjudication in the Hoopa Tribal Court and penalties as set out in the Hoopa Tribal Law and Order Code.

Fishing before July 1, 1986 and after December 1, 1986 shall be open to all species with any gear except as prohibited under Ordinance 2-76.

This inseason regulation is designed to maximize fishing opportunity to members of the Hoopa Valley Tribe in accordance with the estimated harvest of 5,600 adult fall chinook salmon for the 1986 fishing season.

This regulation may be modified, as authorized under Section 11 (b) based on best scientific available data for conservation concerns.

(b) Fishing has always been central to the cultural and religious existence of the Hoopa Valley Tribe and it's members. By this Ordinance and the regulations adopted under it, the Hoopa Valley Tribe will exercise control over fishing and related activities to the fullest extent of Tribal jurisdiction in order to properly regulate, manage and protect all of the fisheries resources available to the Tribe and to insure their continued availability to the Tribe and it's members. Nothing in this ordinance shall be construed as a relinquishment, abrogation or abridgment of any rights of the Hoopa Valley Tribe.

(c) Tribal regulation is an internal affair of the Hoopa Valley Tribe, and is a natural attribute of the Tribe's internal sovereignty.

(d) In order to provide for increased Tribal control over the fisheries resource on the Reservation, the Hoopa Valley Business Council adopts this Fishing Ordinance pursuant to the powers vested in it by Article IX, Section 1 (e) and 1 (k) of the Constitution and Bylaws of the Hoopa Valley Tribe of the Hoopa Valley Indian REservation, California.

(e) Any and all provisions of the Code of Federal Regulations, Title 25, as presently constituted or hereafter constituted which deal with the subject covered herein or are otherwise inconsistent with or are in conflict with the provisions of this Fishing Ordinance are declared to be no longer applicable.

Section 3. - Relation to Other Tribal Laws

The Hoopa Tribal Netting Ordinance, Ordinance Number 2-76, as approved on September 16, 1976, as reaffirmed by Ordinance Number 2-79 of July 20, 1979 are hereby codified and incorporated herein. Further, any and all sections and provisions which are inconsistent with, or contrary to the spirit and/or prupose of this Amended Fishing Ordinance are hereby repealed.

Section 4. - Definitions

As used in this ordinance, the following definitions shall apply unless the context clearly indicates otherwise:

- (a) "Biological Personnel" means well qualified experts in fishery science and management who are on the Tribal staff and whose duties include advising on the management and/or enhancement of the Tribal fishery.
- (b) "Ceremonial Fishing" is the taking of any fisheries resource for use in the traditional Tribal ceremonies and/or religious activities and is protected under the American Indian Religious Freedom Act and is exclusive of fishing for subsistence and commercial purposes.
- (c) "Commercial Fishing" is the taking of any fisheries resource with the expressed intent to sell and profit economically.
- (d) "Conservation" means to the extent necessary to insure optimum spawning escapement for the perpetuation of fish runs.
- (e) "Depth of Net" means the total distance between the cork line and the lead line in meshes measured perpendicular to either the cork or lead lines.
- (f) "Drift Net" is a net that is not anchored or staked on either end but drifts free in the water.
- (g) "Tribal Member or Enrolled Member" means any person who is an officially enrolled member of the Hoopa Valley Tribe.
- (h) "Tribal Enforcement Officer" means the person or persons charged with the responsibility of enforcing this ordinance and the regulations promulgated herein.
- (i) "Fishing Gear" means all types and sizes of hooks, nets, gaffs, lines, traps, appliances, and other apparatus used to take fish.
- (j) "Gill Net" is a net of a single web construction bound at the top by a float line and at the bottom by a weighted line.

- (k) "Dip Net" is a section of netting distended by a rigid frame operated by a process commonly recognized as dipping. Such nets may be any size.
- (l) "Hook and line" means a single line, attached to which are no more than two (2) single-barbed hooks or a single treble barbed hook.
- (m) "Non-Enrolled Person or Non-Member" means any person who is not an enrolled member of the Hoopa Valley Tribe.
- (n) "Stretched Measure" means the distance between the inside of one knot to the opposite (vertical) knot, one mesh. Measurement shall be taken when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three (3) while under tension.
- (o) "Subsistence Fishing" is the taking of any fisheries resource for personal consumption by Tribal Members and their families.
- (p) "Tribal Court" means a court established by the Hoopa Valley Business Council to hear violations of this ordinance and any regulations promulgated under it.
- (q) "Snag-Gear or Snagging" means the use of a fishing pole, multiple hook and weight to hook fish as they swim by. The use of a multiple hook in conjunction with bait or lure shall not be considered snagging provided the multiple hook is 1.0 inches or less between any two points.
- (r) "Identification Card" means a card issued by the Hoopa Valley Tribe to its members identifying the holder as an enrolled member of the Hoopa Valley Tribe.
- (s) "Identification Number" means a number assigned by the Hoopa Valley Tribe to its members to be placed on his or her fishing gear.
- (t) "Set Net" means a gillnet which is staked or anchored to one (1) end so that it does not drift down the river.

Section 5. - Jurisdiction

(a) Territory: The provisions of this ordinance and all rules and regulations adopted under it shall apply to the full extent of the sovereign jurisdiction of the Hoopa Valley Tribe and shall apply in conformity with all agreements entered into by the Hoopa Valley Tribe which are designed to provide Tribal access to available fisheries and to provide effective fisheries management on the Hoopa Valley Reservation as defined by the Tribal Constitution.

(b) Persons: The provisions of this ordinance and all rules and

regulations adopted under it shall apply to all persons who are regulated and/or are eligible to fish under this ordinance.

Section 6. - Eligible Fishermen

(a) Enrolled Tribal Members: Members of the Hoopa Valley Tribe are eligible to exercise Tribal Fishing rights on the "Square" portion of the Hoopa Valley Indian Reservation provided such fishing activities are in accordance with this fishing ordinance.

(b) Minors: Enrolled members of the Hoopa Valley Tribe ages fifteen (15) years or less may exercise Tribal fishing rights under this ordinance. Such minors shall comply with the provisions of this ordinance and any regulations adopted under it. Violations of this ordinance and any regulations adopted under it shall be the responsibility of the minor and the parent or guardian of said minor. Both parent or guardian who permit a minor to violate this ordinance shall be subject to the penalties provided by this ordinance.

(c) Non-Member Fishermen: Any person fishing under regulations other than under this ordinance shall be subject to the authority of the appropriate jurisdiction.

Section 7. - Tribal Biological Personnel

(a) Tribal Biological Personnel: Biological personnel of the Hoopa Valley Tribe may take and possess fish of any species for approved scientific, management and/or enhancement purposes by any means or gear suitable for the purposes of the biological program. Tribal biological personnel taking fish under the authority of this ordinance shall keep a cumulative record of all fish taken and shall provide such for inspection upon request by the Hoopa Valley Business Council. Fish taken by Tribal biological personnel for biological purposes shall not be used for their personal gain, but shall remain the property of the Hoopa Valley Tribe to be distributed as they may decide.

Section 8. - Identification

(a) No person who is eligible to fish under this ordinance shall exercise any Tribal fishing rights or other activities unless he or she is in possession of a valid current identification card as provided by this ordinance or unless that person can, without doubt, prove he or she is an enrolled member of the Hoopa Valley Tribe. All identification cards shall be issued by the Hoopa Valley Business Council, or their authorized representative and shall remain the property of the Hoopa Valley Tribe.

(b) Any person fishing within the boundaries of the Hoopa Valley "Square" shall produce an identification card as required by this ordinance upon demand of any authorized Tribal Law Enforcement Officer.

Failure to produce the required forms of identification or proof of enrollment shall be probable cause to believe that such person is not authorized to exercise fishing rights or privileges within the internal boundaries of the "Square".

(c) The Tribal issued identification cards shall state the name of the enrolled member, the current address, signature of the enrolled member, enrollment number of the individual and shall include a recent photograph of the person.

Section 9. - Fishing Equipment and Other Gear

(a) It shall be unlawful to exercise Tribal fishing rights with any gear which has not been properly marked in accordance with the procedures of this ordinance..

(b) Any gillnets used in accordance with this ordinance or any regulations adopted under it shall be marked with a number issued by the Hoopa Valley Business Council. Gillnets shall be marked at the end closest to the center of the river. Nets not so marked shall be removed from the river or confiscated by any Tribal Law Enforcement Officer. Repeated incidents of this section shall require confiscation and citation from any Tribal Law Enforcement Officer and such net shall be impounded pending decision from the Tribal Court.

(c) Gillnets used on the "Square" shall not exceed 100 feet in length and/or which blocks a distance of more than 1/3 of the river width.

(d) Fish dams and weirs shall be allowed for the benefit of the Hoopa Valley Tribe. Such weirs or dams will be allowed based on a permit process. Applications for fish dams and weirs shall be presented to the Hoopa Valley Business Council for consideration at any regular meeting. The Hoopa Valley Business Council shall consult with Tribal Biological personnel prior to the issuance of a permit.

(e) Eel baskets and traps shall be permitted under this ordinance without restriction. However the commercial sale of eels shall be prohibited and subject to applicable penalties.

Section 10. - Prohibited and Restricted Fishing Gear

The following shall be prohibited or restricted while exercising Tribal fishing rights within the interior boundaries of the Hoopa Valley Indian Reservation as defined herein. Penalties for violations of this section shall be applied by the Tribal Court based on the severity and/or circumstances of the violation:

(a) Commercial sale of any fishery resource shall be prohibited.

(b) Sale of any fishery resource to any elderly or incapacitated per-

son who cannot fish for themselves shall be prohibited. This section shall not be construed as restricting or prohibiting the voluntary transfer to any elderly or incapacitated person.

- (c) The taking of adult salmon from any tributary shall be prohibited.
- (d) Theft or destruction of another persons equipment shall be prohibited.
- (e) Any person who knowingly misappropriates the use of another persons identification card or number shall be in violation of this ordinance.
- (f) Taking fish by means of snagging shall be prohibited.
- (g) Gillnets set within fifty (50) feet from any spawning tributary shall be prohibited.
- * (h) Placing any net in any spawning tributary of the Trinity River shall be prohibited.
- (i) Placing any net within five-hundred (500) feet from the mouth of the Trinity River shall be prohibited.
- (j) Placing wire, boards or any other items in the river which result in the blockage of the river shall be prohibited.
- (k) The use of heavy equipment in the river and/or tributaries without the prior approval of the Hoopa Valley Business Council shall be prohibited.
- (l) Placing any net which extends more than 2/3 of the distance across the river shall be prohibited.
- (m) No person shall use more than two (2) nets at one time with a combined length of one-hundred (100) feet.
- (n) The use of explosives, stunning agents or caustic or lethal chemicals of any form is prohibited in all fisheries.

Section 11. - Annual, Seasonal and Emergency Regulations

- (a) The Hoopa Valley Business Council shall make any annual, seasonal and/or emergency regulations for the protection of the rights of the members of the Hoopa Valley Tribe and for the protection of the fishery resource of the Tribe.
- (b) Emergency regulations shall be considered and adopted at a duly called and convened meeting of the Hoopa Valley Business Council and shall be based on the condition of the fish runs and the fishery re-

source. Emergency regulations shall take effect as the Hoopa Valley Business Council deems necessary. Such emergency regulations shall be posted in conspicuous areas of the reservation and shall be broadcast over the Tribal Radio Station.

Section 12. - Appeals *Repealed this section*

(a) Appeals under this ordinance and regulations adopted under this ordinance shall be in accordance with the Appellate Review Procedure pursuant to Resolution 83-147 of the Hoopa Valley Business Council.

Section 13. - Amendments

Section 12.

(a) Amendments of this ordinance shall be by majority vote of the Hoopa Valley Business Council in accordance with the Hoopa Valley Tribe's Constitution and Bylaws.

Section 14. - Tribal Court *Repealed this section*

(a) Until the Hoopa Valley Tribe implements a comprehensive court system, violations under this ordinance shall be held before a Court of Elders.

(b) The Court of Elders shall consist of three (3) elder members of the Hoopa Valley Tribe and will be appointed by the Hoopa Valley Business Council. The elders appointed to sit on the Court shall have knowledge in the areas of traditional law and practices of the Hoopa Tribe.

(c) Penalties for violations under the Hoopa Valley Tribe's Fishing Ordinance shall be imposed by the Court based on traditional Tribal law and the levels of the penalties will be based on the severity of the violations.

(d) Penalties may include warnings, impoundment of fishing gear and/or suspension from participation in fishing activities for a time specified by the Court.

(e) In no event, will the Court of Elders impose excessive penalties and/or punishments which extend beyond the authority pursuant to Article VIII, Section 1 of the Constitution and Bylaws of the Hoopa Valley Tribe.

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

I, the undersigned, as Chairman or Vice-Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 7 were present, constituting a quorum, at a Special Meeting thereof; duly and specially called, noticed, convened and

Changed to Section 12.

*See 2-76 Amendment 2
Dec. 3, 1987
New sections 13 & 14.*

held this 28th day of May 1986; and that this resolution was adopted by a vote of 6 for with 0 against; and that said resolution has not been rescinded or amended in any way.

DATED THIS 28TH DAY OF MAY 1986.

Wilfred K. Colegrove
WILFRED K. COLEGROVE, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:

Deirdre R. Young
DEIRDRE R. YOUNG, EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO.: 2-76, Amendment No. 2

DATE APPROVED: December 3, 1987

SUBJECT: Amendment No. 2 of Ordinance No. 2-76, Fishing Ordinance of the Hoopa Valley Tribe, Codified at Title VI, Chapter 1, of the Law and Order Code of the Hoopa Valley Tribe

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1(e) of this Constitution and Bylaws authorizes the Hoopa Valley Business Council, "To enforce the protection of tribal property, wild life, and natural resources of the Hoopa Valley Tribe in accordance with a conservation ordinance . . . "; and

WHEREAS: Pursuant to the above cited provision of its Constitution and Bylaws, the Hoopa Valley Business Council did on September 23, 1985, enact Ordinance No. 2-76, Amendment No. 2, a comprehensive Fishing Ordinance asserting exclusive jurisdiction of the Hoopa Valley Tribe to regulate the exercise by its members of tribal fishing rights on the Hoopa Square; and

WHEREAS: Since the enactment of its Fishing Ordinance the Hoopa Valley Tribe has established a Tribal Court system, and certain provisions of the Fishing Ordinance have become obsolete or have been repealed; and

WHEREAS: There is a need to confirm established enforcement administrative procedures and to provide guidance to the Tribal Court regarding penalties for persons convicted of violating the Fishing Ordinance.

NOW THEREFORE BE IT RESOLVED THAT: The Hoopa Valley Business Council hereby adopts the following Amendment No. 2 to Ordinance No. 2-76, Fishing Ordinance of the Hoopa Valley Tribe, to confirm the repeal of certain obsolete provisions, to confirm established enforcement administrative procedures, and to provide guidance to the Tribal Court regarding penalties.

AMENDMENT NO. 2 OF ORDINANCE NO. 2-76,
FISHING ORDINANCE OF THE HOOPA VALLEY TRIBE, CODIFIED AT
TITLE VI, CHAPTER I, OF THE LAW AND ORDER CODE OF
THE HOOPA VALLEY TRIBE

Section (1) The Hoopa Valley Business Council hereby confirms that pursuant to Title I, Chapter 1, Section .06 of the Law and Order Code of the Hoopa Valley Tribe, Sections 12 and 14 of Ordinance No. 2-76, Amendment No. 1, have been repealed.

Section (2) Ordinance No. 2-76, as amended, is codified at Title VI, Chapter 1, of the Law and Order Code of the Hoopa Valley Tribe. Repealed Sections 12 and 14 of Amendment No. 2 shall be deleted from Title VI, Chapter 1, and Section 13, Amendments, of Amendment No. 1 shall be recodified as the new Section 12 of Title VI, Chapter 1.

Section (3) The following sections are hereby enacted, to be codified as Sections 13 and 14 of Title VI, Chapter 1:

Section 13 - Enforcement

- (a) Tribal Court: Members of the Hoopa Valley Tribe shall be subject to prosecution in the Hoopa Valley Tribal Court for violation of any provision of this Chapter or for violation of any annual, seasonal, and/or emergency regulation promulgated under Section (11) of this Chapter. The Tribal Court may issue any order it deems necessary to enforce a conviction. Any person convicted under this Chapter may appeal the conviction in accordance with Chapter 7, Title I of this Law and Order Code.
- (b) Citations: The Hoopa Valley Tribal Police are the tribal enforcement officers charged with enforcement of the provisions of this Chapter and any regulations promulgated thereunder. Tribal Police officers may issue citations to any member of the Hoopa Valley Tribe who the officer believes has committed a violation of any provision of this Chapter or of a regulation promulgated thereunder. Such citation shall state when and where the person is charged, and shall be forwarded

in a timely manner to the Clerk of the Hoopa Valley Tribal Court.

Section 14 - Penalties

- (a) Persons convicted of violating a time closure or any other regulation promulgated under Section (11) of this Chapter may be subject to penalties set forth in the Tribal Resolution enacting the Section (11) regulation they have violated.
- (b) Persons convicted of violating Sections 9(e), 10(a), and 10(b) of this Chapter, which prohibit commercial sales of fish and/or eels, shall be subject to the following maximum penalty:
- Not more than \$200.00 fine; or
 - Forfeiture of fish or fishing gear; or
 - Sixty (60) days suspension of fishing rights; or
 - Any combination of the above deemed necessary or appropriate by the Tribal Court.

Nothing in this subsection shall be construed to restrict the Court's discretion to impose less than the maximum penalty.

- (c) Persons convicted of violating any other provision of this Chapter shall be subject to the following maximum penalty:
- Fine of \$50.00; or
 - Forfeiture of fish or fishing gear; or
 - Thirty (30) days suspension of fishing rights; or
 - Any combination of the above deemed necessary or appropriate by the Tribal Court.

If a person is convicted more than twice during any three-year period of violating the same provision of this Chapter, and if said provision is penalized under this subsection, such person may, upon the third conviction, be subject to a maximum fine of \$100.00, forfeiture of fish or gear, or sixty (60) days suspension of fishing rights, or any combination thereof deemed necessary or appropriate by the Tribal Court. Nothing in this subsection shall be construed

to restrict the Court's discretion to impose less than the maximum penalty.

- (d) Any person who refuses or fails to obey a lawful order of the Tribal Court shall be fined not more than \$50.00 and/or suffer suspension of fishing rights for not more than thirty (30) days.
- (e) Community Service. The Tribal Court may order community service work to be performed by any person convicted of violating any provision of this Chapter or any regulation promulgated thereunder. Such work may be ordered as an alternative to all or any part of the penalties which, in the absence of this subsection, otherwise would be imposed. As a guideline to the Tribal Court, one hour of such work should be valued at \$5.00.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Business Council, do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 6 were present constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 3rd day of December 1987; and that this ordinance was duly adopted by a vote of 5 for and 0 against; and that said resolution has not been rescinded or amended in any way.

DATED this 3rd day of December 1987.

Wilfrid K. Colegrove
Wilfrid K. Colegrove, Chairman
Hoopa Valley Business Council

ATTEST:

for Deirdre R. Young
Deirdre R. Young, Executive Secretary
Hoopa Valley Business Council