

Hunting and Fishing Ordinance update

by Marsha Shewczyk

As part of the overall updating of tribal ordinances the hunting and fishing ordinance recently received revision. There have been some major changes particularly in the hunting and trapping ordinance have remained the same as before, incorporating "most of the provisions of the previous ordinances," according to tribal attorney Dennis Karnopp.

The title for these ordinances are no longer Ordinance 50, the Hunting and Trapping Ordinance and Ordinance 38, the Fishing Ordinance. They will be referred to as Chapter 350, Hunting and Trapping Code and Chapter 340, Fishing Code.

Both chapters were revised by Karnopp with input from the involved departments. The chapters were submitted to Tribal Council for approval and were adopted on June 14, 1982 by resolutions No. 6234 and 6235.

Both hunting and fishing chapters begin with general statements describing the right of members of the Confederated Tribes of the Warm Springs reservation to hunt and fish on land that through treaty has been set apart for their use. The treaty of June 25, 1855 reserved "the exclusive right to hunt on the reservation and guaranteed to our people the right to hunt on unclaimed land in common with the citizen of the United States."

The wildlife resources belonging to the Tribe "constitute an invaluable and irreplaceable asset... They form an important cultural, historical and economic asset of the Tribe and its members. The Tribal Council, in order to protect and preserve the tribal property for the benefit of tribal members in the present and future generations... finds it necessary to regulate and control all hunting (fishing) on the Warm Springs reservation and the exercise of treaty reserved hunting (fishing) rights by tribal members off the reservation."

Chapter 350 Hunting and Trapping Code

Ceremonial Hunts

The major changes in Chapter 350, Hunting and Trapping code deals with ceremonial hunting and the Tribal council's right to set seasons. Section 350.210 states, "Ceremonial hunting permits for funeral purposes will be issued by the Natural Resources Department or, if application is made at a time other than during regular hours, by the tribal police. Application for a ceremonial hunting permit must be made by one or more adults of the family conducting the funeral on a form to be provided by the Natural Resources Department."

The permit will be valid for 72 hours. And "within five days after the funeral an adult member of the family conducting the ceremonial hunt shall file with the Natural Resources Department on a form provided by the department the sex and size of any deer and/or elk taken and

the area from which they were taken."

Season establishment for big game.

Because of a decline in the deer population and the possibility that a similar decline might occur in the population of elk and bear Tribal Council can establish hunting seasons as well as determine whether or not doe will be hunted. The population of deer on the reservation is one-eighth to one-tenth of what is on bordering areas according to tribal biologist Terry Luther.

Chapter 350 reads, "Tribal Council shall review the status of each of these species (bear, deer, elk) on the reservation and shall establish whatever season and bag limit as the Tribal Council shall deem appropriate."

Tagging deer, elk, bear

Besides attaching a tag to the animal killed "any tribal member killing an animal for which report form is required by the department shall complete such report and return it to the department within five days of killing such animal. Failure to complete the report shall be grounds for denying any further tags to such individual until the report is properly completed and filed."

Upland Birds

Like big game animals upland birds including chuker, partridge, grouse, hungarian partridge, pheasant, quail and turkeys "may only be hunted and killed during seasons and within bag limits as may be established by the Tribal Council each year."

Special hunts

"The Tribal Council may, by special resolution, authorize special hunting permits for ceremonial or other purposes, close areas to hunting or designate certain areas of the reservation for special use and shall immediately notify the department and the Warm Springs tribal police of such actions."

Penalties

Penalties for violation of provisions of chapter 350 by tribal members and other Indians subject to the criminal jurisdiction of the Warm Springs tribal court have increased. A first conviction carries with it a \$150 fine or imprisonment for not more than 20 days or both. A second conviction carries a fine of not



more than \$250 or imprisonment for not more than 60 days or both. A third conviction shall be punishable with a fine of not more than \$500 and not more than six months in jail or both.

"The Fish and Wildlife Committee shall have authority to issue a citation to any member who has violated the provisions to appear before the Committee and show cause why such member should not have his identification card suspended in which event such member shall have no right to claim treaty rights and shall be subject to the application of state law. In the event that the member shall fail to appear before the Committee at the time and place set for such show cause hearing, or shall fail to satisfy the Committee why such action should not be taken, such member's identification card may be suspended for such period as the Committee deems appropriate, not exceeding a period of six (6) months."

Persons not subject to criminal jurisdiction.

"Persons other than tribal members or other Indians subject to the criminal jurisdiction of the Warm Springs Tribal court, shall be punishable pursuant to the provisions of 18 USC 1165, which provides as follows:

"Whoever, without lawful authority or permission,

willfully and knowingly goes upon any land that belongs to any Indian or Indian Tribe, band or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game peltries, or fish therefrom, shall be fined not more than \$250 or imprisoned for not more than 90 days or both and all game, fish and peltries in his possession shall be forfeited."

"Persons other than tribal members or other Indians subject to the criminal jurisdiction of the Warm Springs Tribal court who violate the provision of this chapter may be subjected to a civil penalty in tribal court for a civil infraction. Such civil penalty shall not exceed the sum of \$500 for each such infraction. Equipment used in connection with such infraction including but not limited to firearms and motor vehicles, may be seized and held as security for such person's appearance before the tribal court and may be subject to sale or other disposition by the Tribe in the event that such person fails to pay the amount of any civil penalty imposed by

the court. The Tribal Council hereby specifically finds that such civil penalties are reasonably necessary and are related to the expenses of governmental administration necessary in managing, protecting, and developing the wildlife resources on the reservation. It is the legislative intent of the Tribal Council that such violations by non-members be considered civil in nature rather than criminal."

Other sections in Chapter 350 state provisions regarding migratory birds, weapons for big game hunting, predatory animals, marking of traps, non-game birds, shooting hours, hunting from propelled vehicles, transportation off-reservation, sale or trade of game animals and wild birds, waste of game, use of dogs, hunting within the McQuinn strip, and hunting off-reservation.

Chapter 340 Fishing Code

Provisions of Chapter 340, the Fishing Code include sections concerning fishing on the reservation, on-reservation fishing by both members and non-members, fishing off-reservation and penalties for violation of provisions.

Treaty fishing rights cannot be exercised unless a tribal member carries with him an identification card showing him to be an enrolled member of the Confederated Tribes of the Warm Springs reservation.

Fishing is permitted only during open seasons in areas established by Tribal Council with gear restrictions also established by Tribal Council "or established in accordance with the laws and regulations of the state of Oregon and Washington applicable to treaty Indians as may be modified by the action of the Tribal Council or its designee."

Net size and equipment restrictions are explained in Chapter 340 along with location where fish may be taken. The number of fish taken is not set but "the Tribal Council reserves the right without notice to close all fishing at any site in the event that the Tribal Council determines it is necessary for the proper conservation of the fish runs."

Information as to the number of and types of fish taken must be available upon request by those fishing for subsistence purposes.

Penalties for violation of Chapter 340 provisions are the same as for violation of provisions stated in Chapter 350. Fines range from \$250 for the first conviction and up to \$500 and/or up to six months imprisonment for a third conviction.

A civil penalty may be imposed upon those not subject to criminal prosecution in the Warm Springs tribal court.

Tribal members must not only comply with provisions of the Columbia River Inter-Tribal Code.

Copies of both Chapters 350 and 340 are available for viewing at the Warm Springs police department and the Natural Resources department.