

## **Title 18 – Natural Resources**

### **Chapter 10 – Appeals**

**Sec.**

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#### **Legislative History**

**Enacted:**

Ord. 235 (6/7/05), BIA (6/17/05).

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**18-10.010 Appeals to Senate.**

- (A) Any party aggrieved by a decision of the Fish and Game Management Commission may appeal that decision to the Senate within thirty (30) calendar days from the date of notice of the decision.
- (B) The Senate shall make a decision on appeal based on the administrative record of the proceedings before the Fish and Game Management Commission. The Senate shall not receive or consider any additional evidence not contained in the administrative record of the proceedings before the Fish and Game Management Commission, and shall not consider any issue that was not raised by the appealing party in the administrative proceedings before the Fish and Game Management Commission.
- (C) The Senate shall affirm the decision of the Fish and Game Management Commission unless the appealing party demonstrates to the Senate both (a) and (b) below:
  - (1) The decision of the Fish and Game Management Commission is either:
    - (a) Contrary to Swinomish or Federal law; or
    - (b) Arbitrary or capricious; or
    - (c) Not supported by substantial evidence in the record of proceedings held before the Fish and Game Management Commission; or
    - (d) Not in the best interests of the Tribe; and

- (2) The appealing party has been or will be substantially prejudiced by the challenged action. [3/10 amended]
- (D) If the Senate determines that the aggrieved party has met the burden set forth in Subsection (3)(a) and (b), then the Senate, in its discretion, may issue a decision on the merits or may send the matter back to the Fish and Game Management Commission for further proceedings in accordance with the Senate's ruling.

[History] Ord. 235 (6/7/05).

**18-10.020 Appeals from the Senate**

- (A) Any party aggrieved by a decision of the Senate pursuant to this Title may appeal such decision to Tribal Court within thirty (30) calendar days from the date of notice of the decision. Any appeal to the Tribal Court shall identify the name of the party petitioning for review, the interest of the petitioning party in the decision appealed from, and shall name as respondent either:
  - (1) the Fisheries Manager or the Game Manager, in his or her official capacity, as appropriate, if the underlying appeal is from a decision of the Fish and Game Management Commission; or
  - (2) the Tribal Chair, if the decision is from a decision of the Senate itself.
- (B) The review by the Tribal Court shall be limited to the evidentiary record made in the original administrative proceedings, whether before the Fish and Game Management Commission or the Senate. The Fisheries Manager or Game Manager, as appropriate, may charge an appealing party the reasonable costs of preparing copies of the administrative record or of transcribing a recording of a hearing for the Tribal Court and for the appealing party.
- (C) The Tribal Court shall not receive or consider any additional evidence not contained in the administrative record of the proceedings. The Tribal Court shall not consider any issue that was not raised by the appealing party in the proceedings before the Senate.
- (D) Tribal Court review shall be conducted by the Court, without a jury. The review shall be in accordance with those provisions of the Swinomish Rules of Civil Procedure that are determined to be applicable by the Tribal Court.
- (E) Any appeal from a decision of the Tribal Court shall be filed and adjudicated in accordance with the Swinomish Rules of Appellate Procedure.
- (F) The review by the Swinomish Tribal Court of Appeals shall be limited to the evidentiary record made in the original administrative proceedings, whether before the Fish and Game Management Commission or the Senate. The Court of Appeals

shall not consider any issue that was not raised by the appealing party in the proceedings before the Senate.

- (G) The Tribal Court and the Court of Appeals shall affirm the decision of the Senate upon review unless the appealing party demonstrates to the Court both (1) and (2):
  - (1) The decision of the Senate either:
    - (a) Is contrary to Swinomish or Federal law;
    - (b) Is arbitrary or capricious; or
    - (c) Is not supported by substantial evidence in the record of proceedings held before the Senate; and
  - (2) The appealing party has been or will be substantially prejudiced by the challenged action.
- (H) If the Court determines that the aggrieved party has met the burden set forth in Subsection (G)(1) and (2), then the Court shall reverse the decision appealed from and shall remand the matter to the Senate for further proceedings in accordance with the Court's ruling. The Senate, in its discretion, may send the matter to the Fish and Game Management Commission for further proceedings in accordance with the Court's ruling.
- (I) The decision of the Court of Appeals shall be final, and is not subject to further review.

[History] Ord. 235 (6/7/05).

**18-10.030 Time and Finality**

- (A) The date of notice of any decision shall be the date on which the decision is mailed by the body making the decision to the last known address of the applicant. The date of notice shall be stated in the decision.
- (B) All time periods set forth in Sections 18.10.010 and .020 shall be calculated in accordance with Rule 3-02.080(A), "Computation and Extension of Time", of the Swinomish Rules of Civil Procedure.
- (C) If a decision of the Fish and Game Management Commission, Senate, or Tribal Court is not appealed within the time period set forth in this Chapter, then that decision is final and conclusive, and is not subject to further review.

[History] Ord. 235 (6/7/05).

**18-10.040 Tribal Administrative Remedies and Tribal Court.** All cases or controversies arising under the terms and provisions of this Chapter shall be heard only in the Swinomish Tribal Court, and only as provided in this Subchapter. An applicant or other aggrieved party must exhaust any and all administrative remedies provided in this Chapter before seeking review in Tribal Court.

[History] Ord. 235 (6/7/05).

**18-10.050 Sovereign Immunity.** The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, or by any appeal commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the Fish and Game Management Commission, the Fisheries and Game Managers, the Enforcement Officer, all tribal officials, employees, staff, and agents, as to all actions taken in, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord. 235 (6/7/05).