Waganakising Odawak
Little Traverse Bay Bands of Odawa Indians
Office of the Tribal Chairman
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NATURAL RESOURCES COMMISSION REGULATIONS FOR LICENSING AND PERMITS REG WOS 2005-01 070909-004

I. AUTHORITY AND PURPOSE

A. **Authority.** As stated in Waganakising Odawak Statute 2001-04 and Waganakising Odawak Statute 2005-01 as amended: "The primary purpose of the Natural Resources Commission is to protect treaty hunting and fishing rights through monitoring resources and promulgating regulations that are consistent with the treaty rights and wise use of the resources. The Commission shall promulgate rules and regulations for all hunting, fishing, trapping and gathering, including subsistence and commercial, for the area within the boundary established by the Treaty of 1855, the 1836 Treaty Ceded Territory, and 1836 Treaty Ceded Waters." To carry out its responsibilities, the powers granted the Commission under that Statute include: "To issue, suspend or revoke licenses [and permits] . . . addressing the commercial fishery and the harvest of the inland natural resources."

B. **Purpose.** The purpose of these regulations is to establish standards and procedures for the issuance, suspension, revocation and denial of licenses and permits issued by the Natural Resources Commission under LTBB natural resources laws and regulations for Great Lakes commercial and subsistence fishing, inland on-reservation hunting, fishing and gathering, and inland Ceded Territory hunting, fishing and gathering.

II. DEFINITIONS

A. **None**

III. PROCEDURES FOR ISSUANCE OF LICENSES

A. **Duties Delegated to Department.**

1. The Natural Resources Department shall develop application forms, accept applications, and collect fees as set by the Commission, and issue licenses and permits to persons eligible under applicable LTBB law and

Commission regulations and policies.

2. Except as noted in subsection 3 below, the Department will only deny permits if the person does not meet statutory or regulatory requirements, if they are subject to a suspension or revocation order of the Commission or Tribal Court, or if a suspension or revocation action is pending.

3. In the event that a limited number of permits are available for a particular species or activity, and the number of applicants exceeds the available permits, the Commission will develop policies to allocate such permits.

B. **Appeal to Commission.** Any person whose license is suspended, revoked or denied may request a hearing before the Commission in accordance with the procedures set out in Section V.

IV. SUSPENSION OR REVOCATION OF LICENSES

In the event that a licensee or permittee is convicted of violating any law or regulation within the Tribe's jurisdiction, including guilty and no-contest pleas, related to the licensed activity, the Commission may issue such suspension or revocation orders as it deems necessary and appropriate using the following guidelines.

A. **First time offenders.**

1. For first time civil convictions, a suspension will not exceed one (1) year.

2. For first time criminal convictions, a suspension shall not exceed five (5) years.

B. **Repeat offenders.**

1. For repeat offenders where both offenses are civil the suspension shall not exceed two (2) years.

2. For repeat offenders where one offense is civil and one criminal the suspension shall not exceed seven (7) years.

3. For repeat offenders where both offenses are criminal the suspension shall not exceed nine (9) years.

V. APPEALS

A. **Initial Action.** Since a suspension or revocation will generally follow Tribal Court convictions the Commission need not hold a hearing before taking

suspension or revocation actions. The person against whom such action has been taken shall have the right to appeal the revocation or suspension in a hearing before the Commission only if the person is an enrolled LTBB citizen.

B. **Notice.** Notices of suspensions and revocations shall be served upon the licensee by personal service or by United States mail. If the notice is served by mail, it shall be addressed to the licensee's last known address. It is the licensees' duty to keep the Commission informed of their current address.

C. **Right to Hearing before Commission.** The notices to people subject to denial, suspension or revocation shall include a statement of the following:

1. The right to a hearing before the Natural Resources Commission on the suspension or revocation.

2. Must file a written notice of appeal request to the Commission for a hearing within thirty (30) days following the effective date of the Commission's action. Failure to properly request a hearing in a timely manner waives the person's right to a hearing or any other appeal of the Commission's decision.

D. **Timing of Hearing**

After receipt of a written notice of appeal, the Commission shall schedule a hearing not later than thirty (30) calendar days after receipt of the request unless the Commission and person making the appeal mutually agree to an extension. Following the hearing the Commission shall make a decision to uphold, modify, or reverse the suspension or revocation.

E. **Conduct of Hearing**

1. The hearing must be held before a quorum of the Commission. The members of the Commission shall serve in the capacity of hearing officers; the Commission shall designate one member to serve as presiding officer.

2. The person challenging the suspension or revocation must appear personally at the hearing and may also bring an advocate (i.e. attorney, tribal member, friend, etc). Parties retaining an advocate who require fees shall retain the advocate at their own cost. Failure of a licensee to appear personally at the hearing, unless otherwise excused by the Commission, forfeits their right for further consideration.

3. The Commission reserves the right to directly question the licensee during the hearing.

4. The licensee shall have the right to present any evidence and witnesses the licensee believes supports reversal or modification of the Commission's action.

5. The Commission shall issue its decision upholding, modify or reversing the action in writing within thirty (30) days of the hearing. If the Commission finds that its initial action was based on misinformation, such as mistaken identity, it must reverse. Otherwise, the Commission will uphold, modify or reverse its initial action at its discretion based on the totality of the circumstances.

F. **Tribal Court Review**

1. Following a final decision of the Commission after a hearing under these Regulations, a licensee has a right to file an appeal with the Tribal Court. The burden of proof in the appeal process is on the applicant or licensee.

2. All appeals shall be in writing. A licensee shall have twenty (20) calendar days from the date of receiving the hearing decision of the Commission to file an appeal in writing with the Tribal Court.

3. The sole purpose of the Appeals Process will be to determine if there has been a clear error in the Commission's decision based on the documentation in the Commission's record including that provided by the licensee to the Commission before or during the hearing, or if the Commission made a procedural error that significantly prejudiced the licensee. The Tribal Court shall only overrule the decision of the Commission if the evidence cannot reasonably be construed to support the Commission's action. In the event the Tribal Court determines a prejudicial procedural error was made, it shall remand to the Commission to hold a new hearing in accordance with these Regulations.

CERTIFICATION

As Chairperson, I certify that I approve these Natural Resources Commission Regulations for Licensing and Permits.

Date: 7-9-09

Frank Ettawageshik, Tribal Chairperson

Received by the Tribal Council Office on: _____ by: _____

As the Legislative Leader and Tribal Council Secretary, we certify that these Natural Resources Commission Regulations for Licensing and Permits were approved by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on, July 12, 2009 at which a quorum was present, by a vote of 5 in favor, 3 opposed, 0 abstentions, and 1 absent.

Date: 7/12/09

Beatrice Law, Legislative Leader

Date: 7-12-09

Regina Gasco Bentley, Secretary