

## TITLE 4 NATURAL RESOURCES AND ENVIRONMENT

### CHAPTER 4-24 CULTURAL PLANTS

#### GENERAL PROVISIONS

**4-24-1**            **Title**

This Chapter shall be known as the Colville Tribal Cultural Plants Chapter of this Code.

**4-24-2**            **Policy**

It is the policy of the Confederated Tribes of the Colville Reservation (Confederated Tribes, Colville Tribes, Tribes) to restore, preserve, protect and perpetuate the resources on the Colville Indian Reservation, the North Half, and off the Colville Reservation.

**4-24-3**            **Legislative Intent**

(a) Pursuant to the power vested in it by Article V of the Constitution of the Confederated Tribes of the Colville Reservation, the Colville Business Council of the Tribes recognizes the spiritual, cultural, and economic value of the resources of the Colville Reservation, the North Half, and within the aboriginal and traditional territories of the Colville Confederated Tribes are an irreplaceable tribal asset. The unregulated use of the resources of the Tribes would threaten the political integrity, economic security, and health and welfare of the Tribes. It is the duty of the Tribes to regulate, manage, and properly harvest resources and hereby enacts this Cultural Plants Chapter to ensure proper management of and support for these vital resources.

(b) The Colville Tribal people have the absolute, inherent, retained right to use and enjoy the Colville Reservation and the resources located thereon. In regulating the harvest of Cultural Plants and other plant life, the Colville Business Council intends that tribal members shall be afforded the greatest possible freedom to use and enjoy these resources consistent with the conservation and improvement of these resources for future generations. All Cultural Plants found on the Reservation, is the property of the Colville Tribes and shall be regulated by the Tribes, and may be taken only at such times, in such places, and in such a manner as provided by tribal law and outlined in this Chapter.

(c) The Tribes has a special duty to manage its resources located off the Reservation, and on the North Half of the Colville Reservation in order to ensure that tribal members have a fair and equitable opportunity to gather resources there available, ensure the proper conservation the resources located off the Reservation, provide for public safety in the gathering of such resources, and to work for the mitigation and enhancement of the resources available so to guarantee that they will be available into the future.

(d) Gathering is a spiritual and cultural practice of the Tribes. It is a way of life and part of the Colville Tribes' community traditions, which are to be preserved and protected for future generations. Gathering is a part of the Tribes' history, and exercise of religious freedom, and an important practice.

**4-24-4**            **Scope and Coverage of Chapter**

This Chapter and all regulations adopted under this Chapter shall apply to all persons who gather or engage in any activity related to gathering on the Colville Indian Reservation, to members gathering on the North Half, and to members who gather off-Reservation pursuant to rights held by the Confederated Tribes of the Colville Reservation to the full extent of the Colville Tribes' authority and jurisdiction.

**4-24-5**            **Jurisdiction and Management**

(a) Except as otherwise provided by this Chapter, the Colville Tribes, through the Colville Business Council, Tribal Court, and such other tribal entities as are designated by tribal law, shall have absolute, original, and exclusive jurisdiction to regulate and adjudicate all matters pertaining to gathering Cultural Plants or parts thereof found on the Reservation, such other lands as have been or may be added to the Reservation, allotments, and all other lands owned by the Tribes (whether in fee or trust) wherever, located.

(b) To the greatest extent permissible by law, the provisions of this Chapter shall apply to any person on

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lands in the North Half and on other lands were the Colville Confederated Tribes may be authorized to enforce its interests or rights and to any member asserting rights held by the Tribes without regard to location. By agreement approved by the Colville Business Council such authority may be delegated, or carried out through cross deputization agreements as deemed necessary.

(c) The Colville Tribal Court or such other tribunal as designated by the Colville Business Council shall have exclusive jurisdiction over all violations of this Chapter and any regulation adopted pursuant thereto except as this Chapter reserves that authority to the Colville Business Council or allows for potential federal prosecution.

**4-24-6 Definitions**

In this Chapter, unless the context requires another meaning, the following terms shall mean:

(a) “Aboriginal hunting and fishing rights” means those rights to hunt and fish in the territory occupied by the Colville Tribes traditionally.

(b) “Ceremonial gathering” means the taking of plants or parts of plants for use in tribal ceremonies and/or for religious purposes. Only enrolled members of the Colville Tribes may exercise ceremonial gathering rights.

(c) “Closed area” means those portions of the Reservation and areas off Reservation that are not open for gathering.

(d) “Colville Business Council” means the elected governing body of the Confederated Tribes of the Colville Reservation as prescribed in Article II of the Constitution.

(e) “Colville Indian People” means enrolled members of the Confederated Tribes of the Colville Reservation.

(f) “Commercial gathering” means any collection of vegetation where the primary purpose is the sale of the item collected, regardless of whether the activity is intended to produce a profit.

(g) “Department” means the Parks and Recreation Department.

(h) “Immediate Family” means related persons and immediate kin of both a tribal member and a non-tribal member spouse, whether related by blood or marriage, including parents, children (including foster children and children of previous marriages), brother, sister, aunts, uncles, grandparents, grandchildren, nieces, nephews, cousins, as well as members of the household of a tribal member living under the same roof.

(i) “Indian” means any person of Indian descent who is a member of a federally recognized Indian Tribe according to the laws of that tribe, and any other person recognized by federal or tribal law as an Indian for any purpose, and denotes both the singular and the plural.

(j) “Member” or “tribal member” means any person who is enrolled in the Confederated Tribes of the Colville Reservation.

(k) “Minor” means any person under the age of sixteen (16) years for purposes of this Chapter.

(l) “Natural resource enforcement officer(s)” means the person or persons charged with responsibility of enforcing this Chapter, regulations, and tribal resolutions promulgated pursuant to this Chapter. This includes:

(1) Police officers;

(2) Parks & Recreation Program enforcement personnel;

(3) Natural Resources Enforcement officers; and

(4) Any other qualified individual authorized by the Business Council to act as a natural

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resources enforcement officer

(m) "North Half" means all lands of the Colville Reservation as set apart in the Executive Order of July 2, 1872, that were ceded to the United States pursuant to the Agreement of May 9, 1891, in which the Tribes holds reserved rights to hunt, fish, and gather, and which consists generally of the lands between the current northern boundary of the Reservation and the Canadian border and between the Okanogan and Columbia rivers.

(n) "Off-reservation" means all lands, territories, waters and streams located outside the Colville Reservation as defined in section 1-1-361 of this Code, including but not limited to the North Half, over which the Tribes exercises jurisdiction and authority.

(o) "On reservation" means within the exterior boundaries of the Colville Reservation as defined in section 1-1-361 of this Code.

(p) "Open and Unclaimed Lands" means all public lands located outside the Colville Indian Reservation that are available to Tribal members for hunting, fishing, and gathering by executive order, statute, agreement, or other applicable law, where such activities are not inconsistent with the purpose of the public lands.

(r) "Person" means any individual, firm, partnership, association, or corporation.

(s) "Rake" means any tool used for collecting multiple berries that damages the bushes being harvested.

(t) "Reservation" means the Colville Reservation as defined in section 1-1-361 of this Code.

(u) "Spouse" means a wife or husband of an enrolled tribal member.

(v) "Trespass" means to:

(1) Enter upon the real property of another that is posted to prohibit trespassing, is fenced or contains obvious outward signs of habitability without permission of the owner or the owner's agent;

(2) Enter tribal lands that are not specifically posted as open to the public;

(3) Refuse to depart from or re-enter the Colville Reservation in violation of an order of exclusion issued by the Tribal Court as provided by this Code; or

(4) Take any other action identified as trespassing under this Chapter.

(w) "Tribal land" means land owned in fee by the Confederated Tribes of the Colville Reservation or a tribal member and/or land held in trust by the United States for the Tribes or individual Tribal members

## **TRIBAL IDENTIFICATION**

### **4-24-100      General Provisions**

Persons eligible to exercise gathering rights under this Chapter shall, prior to the exercise of such rights, first obtain the required documents listed in this chapter. Individuals must have the appropriate documents in their possession while participating in any activities under this Chapter or while traveling to and from gathering places.

### **4-24-101      Tribal Identification**

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A member who gathers shall utilize his tribal membership card as identification.

**4-24-102 Other Identification, Tribal Member Permits**

(a) Tribal employees authorized to gather and possess vegetation under the provisions of this Chapter shall obtain an identification card issued by the Parks and Recreation Department. Said identification card shall show:

- (1) The name, photograph and physical description of the employee;
- (2) The tribal employer;
- (3) Any other information the Colville Business Council deems appropriate.

(b) An identification card issued to an employee pursuant to this section shall be surrendered to the director upon request, or upon termination of tribal employment.

(c) Tribal members hunting or fishing on the Colville Reservation, or on the North Half during special

(d) All special identification cards and permits issued pursuant to this Chapter (excluding tribal membership cards) shall remain the property of the Colville Tribes and shall be returned to the department upon request of the Colville Business Council, as recommended by the director or the committee, or pursuant to Tribal Court order. The Director may propose additional requirements necessary to properly manage the resource.

**GENERAL PROVISIONS**

**4-1-200 Gathering.**

Tribal members and their immediate families may gather any and all subsistence, ceremonial, medicinal, ornamental, and construction plants for personal use and/or gifting without a permit.

**HUCKLEBERRIES**

**4-24-300 Commercial Purposes.**

No person shall cut off, cut down, pull up, collect, or otherwise harvest or remove from where it occurs any naturally occurring vegetation or parts thereof for commercial purposes from any tribal lands. This prohibition does not apply to plants or materials taken from the land owned by the person gathering or to plants or materials taken for the purpose of selling to other tribal members.

**4-24-301 Collections of Huckleberries by non-Tribal members.**

Non-Tribal members, except for spouses and the immediate families of Tribal members, are prohibited from collecting, harvesting, or otherwise removing from the patches, any huckleberries. If a spouse or immediate family member is collecting, harvesting, or otherwise removing huckleberries from the patches, the Tribal member must be present.

**4-24-302 Collection using a Rake.**

No person shall cut off, cut down, pull up, collect or otherwise harvest or remove from where it occurs any naturally occurring vegetation or parts thereof using a rake, or any other instrument that damages the plant in such a manner that it risks not re-growing during the subsequent seasons.

**MUSHROOMS**

**4-24-400 [RESERVED]**

**GENERAL ENFORCEMENT PROVISIONS**

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**4-24-500      Notice**

(a) Signs shall be posted conspicuously along the boundaries of the Reservation and at all roadway points of entry putting the public on notice that:

- (1) Permission to enter is conditional on consent to tribal jurisdiction;
- (2) Violators of tribal regulations are trespassing and are subject to tribal and federal sanctions;
- (3) Visitors must inquire locally for permits and information.

(b) The lack of the signs required by this section or the lack of knowledge of such signs shall not be a defense in any action brought in the name of the Tribes to enforce this Chapter.

**4-24-501      Civil Actions**

Except as otherwise provided in this Chapter, all violations of this Chapter or regulations promulgated under this Chapter shall be considered civil in nature, and shall be adjudicated as provided by the requirements of this Chapter and Chapter 3-7 Infractions; Field Bonds; Other Civil Violations and Forfeitures Chapter under this Code.

**4-24-502      Disposition of Fees, Penalties and Damages: Report**

All fees resulting from the sale of permits and all fines, costs, monies, penalties, or damages collected for violations of this Chapter or regulations promulgated thereunder shall be deposited in a special Fish and Wildlife Fund and shall be available for expenditure pursuant to a Colville Business Council approved budget in connection with the conservation, restoration, and protection of plant resources of the Colville Indian Reservation, the management of off-Reservation resources, and for Tribal Court Administration of this Chapter.

**4-24-503      Enforcement/Right of Entry in Course of Duty**

(a) All natural resources enforcement officers shall have the authority and the duty to enforce the provisions of this Chapter and regulations adopted thereunder.

(b) Any authorized assistants, employees, agents, appointees or representatives of the Colville Tribes may, in the course of their inspection, enforcement, and/or management duties as provided for in this Chapter, enter upon any lands, real estate, waters, or premises except the dwelling house or appurtenant buildings on the Reservation whether public or private and remain thereon while performing such duties. In no event, other than an emergency such as firefighting, shall motor vehicles be used to cross a field customarily cultivated, without prior consent of the owner. None of the entries herein provided for shall constitute trespass.

**4-24-504      Warrants, Subpoenas and Service of Process**

Any natural resources enforcement officer may, in addition to exercising any other powers granted by this Chapter:

- (a) Execute search warrants issued by the Tribal Court or any other court in matters arising under this Chapter;
- (b) Serve subpoenas or other legal documents issued in matters arising under this Chapter.

**4-24-505      Searches and Seizures**

(a) Any natural resources enforcement officer may, without a search warrant, search any aircraft, watercraft, vehicle, box, locker, backpack, bedroll, sleeping bag, or other container or package if the officer has probable cause to believe that cultural plants or parts thereof taken in violation of this Chapter or the instrumentalities of such illegal taking are contained therein.

(b) This section shall not be construed to permit the warrantless search of any non-mobile dwelling house (including mobile/modular homes) or any outbuilding within the enclosed land surrounding it.

(c) Any natural resources enforcement officer may inspect all plants or parts thereof taken, possessed, or

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transported on the Colville Reservation, and may seize as evidence all plants or parts which such officer has probable cause to believe has been taken, possessed, or transported in violation of this Chapter and any object which the officer has probable cause to believe has been used as the instrumentality of such illegal taking, possession, or transportation.

(d) Upon issuance of an infraction notice or citation, the natural resources officer shall retain all plants and/or parts thereof in the possession of the suspected violator.

(e) Plants or plant parts seized under this section may be disposed of in such a manner as is provided by the provisions for forfeiture under this Code. Provided that any such wildlife may be disposed of, sold, preserved or used for food purposes as necessary to prevent loss or spoilage.

(f) If the Tribal Court determines that the suspected violator has not violated this Chapter or regulations adopted hereunder, the seized items shall be returned if possible. If the plants or plant parts in question were disposed of prior to such determination the Department shall pay to the person from whom the plants and/or plants parts was seized an amount equal to the market value at the time of seizure.

(g) The Director shall prepare a report of all plant and/or plant parts and devices seized by the natural resources enforcement officer showing a description of the items, the person from whom they were seized, if known, and the disposition of the items. This report shall be presented to the committee annually and kept by the Department. All money derived from the sale of any seized property shall be deposited in the Department fund.

**4-24-506            Representation of the Tribes in Actions Arising Under this Chapter**

The Tribal Prosecutor, the natural resources enforcement officer, or, in the case of conflict of scheduling or interest, such other counsel for the Tribes as the Colville Business Council may designate, shall represent the Tribes in all actions arising under this Chapter to which the Tribes is a party, whether such actions are civil or criminal.

**4-24-507            Closure**

If a gathering season or gathering is closed to gathering of any plants or materials thereof, by the Colville Tribes, gathering or attempting to gather will be considered a trespass and a violation of this Chapter.

**4-24-508            Trespassing**

Violation of this Chapter by nonmembers shall be considered immediate revocation of permission to enter the Reservation and may render the violator a trespasser. It shall be unlawful for any nonmember to trespass on the Colville Reservation.

**4-24-509            Federal Prosecution**

(a) Nothing in this Chapter shall be deemed to preclude the federal prosecution under 18 U.S.C. 1165 of nonmembers who trespass on the Reservation. Any natural resources enforcement officer or the prosecutor may follow the procedure provided by applicable law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

(b) This Chapter has been enacted to protect the resources of the Colville Tribes, and the taking or using of tribal property or services contrary to the terms of this Chapter constitutes theft of tribal assets. Nothing in this Chapter shall be deemed to preclude federal prosecution of violators under 18 U.S.C. 1163 for theft of tribal assets or any other federal law designed to protect tribal wildlife or other natural resources. Any natural resources enforcement officer may follow the procedure provided by tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

**4-24-510            Expulsion**

Nothing in this Chapter shall be deemed to preclude the use of the remedy of expulsion of nonmembers for violation of this Chapter and any natural resources enforcement officer or other appropriate official may follow the procedure provided by tribal law to initiate an action for expulsion in addition to or in lieu of any other enforcement procedure provided for by this Chapter.