

Bureau of Indian Affairs, Interior

§ 249.4

Secretary of the Interior deem necessary for effective fishery management.

§ 249.3 Identification cards.

(a) The Commissioner of Indian Affairs shall arrange for the issuance of an appropriate identification card to any Indian entitled thereto as prima facie evidence that the authorized holder thereof is entitled to exercise the fishing rights secured by the treaty designated thereon. The Commissioner may cause a federal card to be issued for this purpose or may authorize the issuance of cards by proper tribal authorities: *Provided*, That any such tribal cards shall be countersigned by an authorized officer of the Bureau of Indian Affairs certifying that the person named on the card is a member of the tribe issuing such card and that said tribe is recognized by the Bureau of Indian Affairs as having fishing rights under the treaty specified on such card. Copies of the form of any identification card authorized pursuant to this section and a list of the authorized Bureau of Indian Affairs issuing or countersigning officials shall be furnished to the fisheries management and enforcement agencies of any State in which such fishing rights may be exercised.

(b) No such card shall be issued to any Indian who is not on the official membership roll of the tribe which has been approved by the Secretary of the Interior. *Provided*, That until further notice, a temporary card may be issued to any member of a tribe not having an approved current membership roll who submits evidence of his/her entitlement thereto satisfactory to the issuing officer and, in the case of a tribally issued card, to the countersigning officer. Any Indian claiming to have been wrongfully denied a card may appeal the decision in accordance with part 2 of this chapter.

(c) No person shall be issued an identification card on the basis of membership in more than one tribe at any one time.

(d) Each card shall state the name, address, tribal affiliation and enrollment number (if any) of the holder, identify the treaty under which the holder is entitled to fishing rights, con-

tain such additional personal identification data as is required on fishing licenses issued under the law of the State or States within which it is used, and be signed by the issuing officer and by the holder.

(e) No charge or fee of any kind shall be imposed by the Commissioner of Indian Affairs for the issuance of an identification card hereunder: *Provided*, That this shall not prevent any Indian tribe from imposing any fee or tax which it may otherwise be authorized to impose upon the exercise of any tribal fishing right.

(f) All cards issued by the Commissioner of Indian Affairs pursuant to this part 249 shall be and remain the property of the United States and may be retaken by any Federal, State, or tribal enforcement officer from any unauthorized holder. Any card so retaken shall be immediately forwarded to the officer who issued it.

(g) The failure of any person who claims to be entitled to the benefits of a treaty fishing right to have such a card in his immediate personal possession while fishing or engaging in other activity in the claimed exercise of such right to display it upon request to any Federal, State, or tribal enforcement officer shall be prima facie evidence that the person is not entitled to exercise an Indian fishing right under a treaty of the United States.

(h) No person shall allow any use of his identification card by any other person.

(5 U.S.C. 301; R.S. 463 and 465)

[32 FR 10434, July 15, 1967, as amended at 46 FR 4873, Jan. 19, 1981. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 48 FR 1052, Jan. 10, 1983]

§ 249.4 Identification of fishing equipment.

All fishing gear or other equipment used in the exercise of any off-reservation treaty fishing right shall be marked in such manner as shall be prescribed in regulations issued pursuant to § 249.2 hereof to disclose the identity of its owner or user. In the absence of proof to the contrary, any fishing gear which is not so marked or labeled shall be presumed not to be used in the exercise of an off-reservation treaty fishing

§ 249.5

right and shall be subject to control or seizure under State law.

§ 249.5 Use of unauthorized helpers or agents.

No Indian shall, while exercising off-reservations treaty-secured fishing rights, permit any person 12 years of age or older other than the authorized holder of a currently valid identification card issued pursuant to this part 249 to fish for him, assist him in fishing, or use any gear of fishing location identified as his gear or location pursuant to this part 249.

§ 249.6 Enforcement and penalties.

(a) Any Indian tribe with a tribal court may confer jurisdiction upon such court to punish violations by its members of this part 249 or of the area regulations issued pursuant thereto. Jurisdiction is hereby conferred upon each Court of Indian Offenses established pursuant to part 11 of this chapter to punish such violations by members of tribes whose reservations are under the jurisdiction of such court. Courts of Indian Fishing Offenses may be created pursuant to part 11 of this chapter to punish such violations by members of any tribe or group of tribes for which there is otherwise no Court of Indian Offenses or tribal court with jurisdiction to enforce this part 249. The provisions of part 11 of this chapter shall apply to any such court with respect to the exercise of its jurisdiction to enforce this part 249. All jurisdiction conferred by this section shall apply without regard to any territorial limitations otherwise applicable to the jurisdiction of such court.

(b) Acceptance or use of an identification card issued pursuant to this part 249 or use of any fishing gear marked or identified pursuant thereto shall constitute an acknowledgment that the fishing done under such card or with such gear is in the claimed exercise of a tribal fishing right and is subject to the jurisdiction of the tribal court, Court of Indian Offenses, or Court of Indian Fishing Offenses. Ex-

25 CFR Ch. I (4-1-06 Edition)

cept as may be otherwise provided by tribal regulations approved by or on behalf of the Secretary of the Interior, any person claiming to be exercising such tribal right and fishing in violation of the regulations contained in or issued under this part 249 may be punished by a fine of not to exceed \$500, imprisonment of not to exceed 6 months, or both, and shall have his tribal fishing privileges suspended for not less than 5 days for any violation of this part 249 or of any area regulation issued pursuant thereto. The court shall impound the fishing rights identification card of any person for the period which the fishing privileges are suspended.

§ 249.7 Savings provisions.

Nothing in this part 249 shall be deemed to:

(a) Prohibit or restrict any persons from engaging in any fishing activity in any manner which is permitted under state law;

(b) Deprive any Indian tribe, band, or group of any right which may be secured it by any treaty or other law of the United States;

(c) Permit any Indian to exercise any tribal fishing right in any manner prohibited by any ordinance or regulation of his tribe;

(d) Enlarge the right, privilege, or immunity of any person to engage in any fishing activity beyond that granted or reserved by treaty with the United States;

(e) Exempt any person or any fishing gear, equipment, boat, vehicle, fish or fish products, or other property from the requirements of any law or regulation pertaining to safety, obstruction of navigable waters, national defense, security of public property, pollution, health and sanitation, or registration of boats or vehicles;

(f) Abrogate or modify the effect of any agreement affecting fishing practices entered into between any Indian tribe and the United States or any State or agency of either.