

ICGR White Paper Series on the Regulation of Tribal Sports Wagering

*State-Specific Analysis of Applicable Regulation Under Tribal-State
Compacts in Washington*

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Part I: Project Overview

Our goal in the *ICGR White Paper Series on the Regulation of Tribal Sports Wagering* is to help identify and understand emerging and best practices in the law, regulation, and public policy of tribal gaming.

This White Paper on Washington state and the tribes located there adds to our prior analysis in addressing the question of how tribally owned and operated sports books are being regulated for key markets in states that have legalized sports wagering. Previously, we provided an overview and synthesis of federal regulation (or lack thereof) and took a closer look at regulation of tribal sports wagering in New York state to explain and analyze a state-specific example of applicable regulation under Class III tribal-state compacts. Here, we apply the same methodology to take a closer look at regulation of tribal sports wagering in Washington state to further the ICGR's data relevant to tribal sports books and to consider what data, categories, or metrics would be useful in identifying emerging practices in tribal sports betting regulation or relevant to other ICGR initiatives.

In this White Paper on Washington, we continue to build out methodology to identify and make accessible information for tribal operators, vendors, and others seeking to enter the tribal sports wagering market, or for regulators and policymakers looking to identify emerging practices that could be used in their jurisdictions. By expanding the scope of research to multiple jurisdictions and situating them against the backdrop of IGRA and federal legal and regulatory gaming authority, we can begin to identify which research questions and accompanying findings are most useful in understanding how the legalization, regulation, and implementation of tribal sports betting is occurring in rapidly expanding markets.

1. Findings

Our key findings from this case study of tribal sports wagering regulation in Washington state include:

- The provisions of a tribal-state compact (1) allocating regulatory authority between the tribe and state generally and (2) setting or incorporating minimum standards or other applicable rules and regulations for sports betting specifically are the most significant current informational source.
- Beyond the tribal-state compact, the ready availability of applicable state or tribal regulations varies by jurisdiction. Tribal regulations are generally more difficult to obtain than state regulations.

- The scope, specificity, and clarity of Washington state’s regulations are notable and may be a useful model for other jurisdictions in terms of detailing substantive and procedural elements of tribal and state regulation of sports betting as well as establishing transparency and public accessibility of its regulations.
- In Washington, the approach to concurrent and cooperative regulation between state and tribal regulation also is notable as a potential benchmark or model for other jurisdictions.
- Washington’s state gaming commission maintains an informative and reasonably navigable website that includes the tribal-state compact amendments relevant to sports wagering as well as state regulations pertaining to sports wagering. This too is a useful model for other jurisdictions.

2. Methodology

Our methodology for this case study parallels and builds upon that which we developed in our prior analysis of a different jurisdiction. We took the following steps for this case study of tribal sports book regulation in Washington:

- Reviewed NIGC materials for any relevant guidance
- Reviewed information regarding Washington’s legalization of sports betting
- Reviewed Washington State Gaming Commission website
- Located and reviewed each tribal-state compact entered into in Washington for provisions related to regulatory authority and sports betting
- Located and reviewed the tribal gaming ordinance of each tribe in Washington for provisions related to regulatory authority and sports betting
- Sought to locate and identify or determine as possible what entity (e.g., tribal gaming commission) has authority to promulgate regulations specific to sports betting in Washington
- Sought to locate and review tribal sports betting regulations for each tribe in Washington
- Conducted web searches for other accessible sources of relevant information (e.g., tribal government websites, journalistic accounts, industry press releases, etc.)

Part II: Regulation of Tribal Sports Wagering in Washington State

1. Executive Summary

Washington state legalized sports betting in 2020, through a state law permitting amendment of the tribal-state compacts to include sports betting. The legislation directed that such an amendment must address “Licensing; fees associated with the gambling commission’s regulation of sports wagers; how sports wagering will be conducted, operated, and regulated; issues related to criminal enforcement, including money laundering, sport integrity, and information sharing between the commission and the tribe related to such enforcement; and responsible and problem gambling.” HB 2638, Ch. 127, Laws of 2020, sec. 2. The legislation also expanded the powers of the Washington State Gambling Commission to include regulatory authority over sports wagering, including ensuring sport integrity and tracking and monitoring gambling-related transactions. *Id.* sec. 7. The legislation also expressly authorized online and mobile wagering within the premises of a tribe’s casino: “The transmission of gambling information over the internet for any sports wagering conducted and operated under this [act] is authorized, provided that the wager may be placed and accepted at a tribe’s gaming facility only while the customer placing the wager is physically present on the premises of that tribe’s gaming facility.” *Id.* sec. 9.

As of September 1, 2021, the state has negotiated amended compacts with 16 tribes to permit sports wagering. The state Gambling Commission’s new sports wagering licensing rules took effect on August 30, 2021. Vendors must be licensed by both the state and the tribe before they can provide services to a tribal sportsbook.

Methodology or emerging practices note: Washington state may be a useful model for other jurisdictions, in terms of tribal and state regulation of sports betting as well as transparency and public accessibility to its regulations. Its approach to concurrent and cooperative regulation between state and tribal regulation is notable.

2. Tribal Casinos in Washington

There are 29 federally recognized tribes with lands within Washington state. All 29 tribes have Class III compacts pursuant to IGRA; of these, 22 tribes operate a total of 29 casinos under the compacts. As of September 1, 2021, the state had negotiated amended compacts with 16 tribes to permit sports wagering and 9 of these had been approved by the U.S. Interior Secretary and published in the Federal Register, with effective dates of September 1, 2021.

The compact amendments are uniform: each authorizes the tribe to engage in sports wagering at the tribe’s Class III gaming facility; updates the various provisions of the compact to reflect the authorization of sports wagering; and incorporates Appendix S, Sports Wagering as part of the compact. Because of the uniformity of the amendments, we expect that the Interior Secretary will approve all of the amended compacts in due course.

Tribe (with amended compact authorizing sports wagering as of Sept. 1, 2021)	Casino
Confederated Tribes of the Colville Reservation	Coulee Dam Casino, Mill Bay Casino, 12 Tribes Resort Casino
Cowlitz Indian Tribe	Ilani Casino
Jamestown S’Klallam Tribe	Seven Cedars Casino
Kalispel Tribe of Indians	Northern Quest Casino
Lummi Nation	Silver Reef Casino
Muckleshoot Indian Tribe	Muckleshoot Indian Casino
Puyallup Tribe of Indians	Emerald Queen Casino
Shoalwater Bay Indian Tribe	Shoalwater Bay Casino
Skokomish Indian Tribe	Lucky Dog Casino
Snoqualmie Indian Tribe	Snoqualmie Casino
Spokane Tribe	Spokane Tribe Casino, Chewelah Casino
Squaxin Island Tribe	Little Creek Casino Resort
Stillaguamish Tribe of Indians	Angel of the Winds Casino
Suquamish Tribe	Clearwater Casino Resort
Swinomish Indian Tribal Community	Northern Lights Casino
Tulalip Tribes of Washington	Tulalip Resort Casino, Quil Ceda Creek Casino

3. Washington State Tribal-State Compacts: Provisions Relevant to Sports Betting Regulation

Tribal-state compacts for each of tribes operating Class III gaming in Washington state are available at <https://www.bia.gov/as-ia/oig/gaming-compacts> and <https://www.wsgc.wa.gov/tribal-gaming/gaming-compacts> (though neither the federal Office of Indian Gaming’s nor the Washington State Gambling Commission’s websites yet had been updated with the 2021 amended compacts as of September 1, 2021). The compact amendments related to sports wagering are available on the state Gambling Commission’s website at <https://www.wsgc.wa.gov/news/sports-wagering>. The amendments authorizing sports wagering are substantively the same for each tribe, including Appendix S, Sports Wagering.

Permitted Games. Each amended compact adds “Sports Wagering” as a permitted game, subject to Appendix S, defined as “the business of accepting wagers on any of the following sporting events, athletic events, or competitions by any system or method of wagering: (a) a Professional Sport or Athletic Event; (b) a Collegiate Sport or Athletic Event; (c) an Olympic or international sports competition or event; (d) an Electronic Sports or Esports Competition or Event; (e) a combination of sporting events, athletic events, or competitions listed in (a) through (d) of this subsection; or (f) a portion of any sporting event, athletic event, or competition listed in (a) through (d).” (This definition explicitly excludes wagering on horse races under state law.) The tribe’s sports book must be located within the tribe’s gaming facility; kiosks are permitted on the broader premises.

State Regulation. Washington state takes an “moderate” regulatory role under the compacts, with at least annual monitoring of tribal gaming operations by state regulators. (This classification of the state’s regulatory activity by degree is pursuant to the GAO’s 2015 report on Class III tribal gaming regulation; see methodology or emerging practices note below.) The compacts require *concurrent state and tribal regulatory jurisdiction*, including the tribes’ obligation to adopt criminal laws related to gaming that are consistent with and at least as restrictive as the state’s laws, and the tribes’ consent to concurrent application of the state’s gaming laws to Class III gaming on tribal lands (in effect a limited waiver of tribal sovereignty as executed through the compact).

The tribe’s sports book and kiosks, prior to starting operations, must be inspected by both the state and tribal regulatory agencies for compliance with Appendix S as it is incorporated in each compact. Appendix S sets out “Standards of Conduct and Operation” for tribal sports wagering, which include—

- *Authorized Sports Wagering Menu* that lists every league, organization, and wager type offered, with approval by the tribal regulatory authority and notice to the state gaming commission (note the Authorized Sports Wagering Menu template available on the state gaming commission website at <https://www.wsgc.wa.gov/tribal-gaming/sports-wagering-menu>)
- *Prohibitions against wagers on collegiate events* sponsored by in-state colleges and minor-league sports
- *Independent lab testing* of the tribe’s sports wagering system (defined as all equipment, hardware, data networks, communication technology, and software used in the tribe’s sports wagering operation, including retail and mobile platforms and kiosks), with certification provided to tribal and state regulators benchmarked by specified minimum

standards (Gaming Laboratories International GLI-33: Standards for Event Wagering Systems)

- *Independent technical expert assessment* of the tribe's sports wagering system with regard to system integrity and security, with the expert licensed by the tribal regulatory authority and certified by the state gaming commission, and the expert's report provide to tribal and state regulators
- *Player Accounts* to engage in mobile wagering, including requirements regarding in-person registration, account funding, and account controls.

Appendix S also details certain internal control standards that the tribal regulatory authority must adopt and implement, following state gaming commission review of the tribe's proposed internal control standards. At a minimum, the tribe's *internal control standards* must address—

- *Employees by duty or function*, who will perform management, supervision of daily operations, acceptance of wagers, oversight of technology, handling of payouts, and compliance functions in relation to the tribe's sports wagering, as well as employee user access controls and segregation of employee duties
- *Handling and reporting of any system failure* that impedes the tribe's ability to pay the winning sports wagers, as well as other automated and manual risk management procedures
- Procedures for *identifying and reporting fraud and suspicious conduct*, including unusual wagering activity, wagering by prohibited participants, money laundering (including limits on anonymous wagering), and structured wagers
- Procedures for *submitting, approving, and accepting wagers, as well as issuing payouts* (including additional controls for wagers/payouts over \$10,000)
- Procedures related to *accounting controls and Player Accounts*

Along with the compact provisions, Appendix S details licensing and certification requirements related to the tribe's sports betting operations. Sports wagering vendors must be licensed by the tribal regulatory authority and certified by the state gaming commission. Vendors are categorized as *major* (providers of management or primary consulting services; manufacturers or distributors of the tribe's sports wagering system; providers of bookmaking or risk management services), *mid-level* (providers of security or integrity services, including geofencing and player account services), or *ancillary* (providers of mobile payment processing, KYC, or marketing services).

Appendix S specifies that the tribal regulatory authority is responsible for *regulating player accounts* and *patron funds* in compliance with federal requirements. For *sports integrity matters*, the state and tribe will collaborate to ensure compliance with applicable state law, including procuring an integrity monitoring provider who will have access to aggregate sports wagering information.

Finally, Appendix S includes provisions related to *problem and responsible gaming*, including annual training for all gaming employees and displays on sports betting kiosks.

Methodology or emerging practices note: The U.S. General Accounting Office (GAO) conducted a broad analysis in 2015 of Class III gaming regulation. It classified states as having either an “active, moderate, or limited” regulatory role. The categorization of Washington as an “moderate” regulatory regime reflects the concurrent regulatory jurisdiction of the tribe and the state; this approach is further reflected or extended in the state’s role in the regulation of tribal sports wagering. Washington state’s approach to concurrent and cooperative regulation between state and tribal regulation is notable.

Mobile Wagering. The compact amendments permit mobile wagering that occurs on the “premises” of the tribe’s gaming facility. “Gaming facility” is defined as the building or buildings in which Class III gaming occurs; “premises” are defined as including adjacent or adjoining amenities such as hotels, restaurants, conference or entertainment spaces, common areas, parking lots, garages, and other improved areas, so long as they are on Indian lands and do not include non-adjointing convenience stores or golf courses. Thus, mobile wagering is confined to the areas specified by this definition; it is not authorized in other, unspecified areas or more broadly on the tribe’s Indian lands.

The tribe’s servers must be located within its gaming facility (and any cloud storage back up must be located within the state). Prior to offering mobile wagering, the tribe must submit, to both tribal and state regulators, a proposal that includes a description of the geofence technology the tribe has in place and a map of the tribe’s gaming facility premises. The geofencing must comport with the premises of the tribe’s gaming facility, as defined in the compact amendments.

Methodology or emerging practices note: Washington’s approach to on-premises mobile wagering is similar to that authorized under the tribal-state compacts in Mississippi and is sometimes referred to as the “Mississippi model” or the “Mississippi rule.”

Revenue Sharing. The compacts do not require direct payments to the state in the form of revenue sharing. Tribes instead reimburse the state for regulatory, certification, and gaming lab fees, as well as make relatively modest contributions to local non-profit and charitable organizations and state-wide responsible gaming and smoking cessation organizations. Appendix S provides that the tribe's net win from its sports betting operation will be included in the calculation of Class III gaming revenues to determine the tribe's contribution to local and state-wide organizations under the compact.

Methodology or emerging practices note: Washington's approach to revenue sharing avoids raising the potentially complicating question of the interaction of compact exclusivity and revenue-sharing provisions in other states, such as New York and Florida, especially related to the legalization of mobile sports wagering. It therefore is notable as a potential model for other jurisdictions.

4. Tribal Law & Regulation: Tribal Gaming Ordinance, Tribal Gaming Regulatory Authority

Approved tribal gaming ordinances for each of the tribes operating Class III gaming in Washington state are available from the National Indian Gaming Commission at <https://www.nigc.gov/general-counsel/gaming-ordinances>. Several tribes in Washington have revised their gaming ordinances within the last year or two. *Notably, none of the tribes' gaming ordinances speak directly to sports wagering*; instead, the ordinances reference the games authorized by the compact.

Each of the tribes has a tribal gaming regulatory authority as provided by the tribe's gaming ordinance and as required by the tribal-state compacts. The tribal-state compacts use the term "Tribal Gaming Agency" (TGA) to refer to the tribal gaming regulatory authority, often titled as a tribal gaming commission, "or such other agency of the Tribe as the Tribe may from time to time designate by written notice to the State as the Tribal agency primarily responsible for independent regulatory oversight of Class III Gaming as authorized by this Compact." The compacts generally detail the required scope of authority of the tribal gaming regulatory authority, which includes "primary responsibility for the on-site regulation, control and security of the Gaming Operation authorized by this Compact, and for the enforcement of this Compact." A tribal gaming agent is required to "be present in the Gaming Facilities during all hours of the Gaming Operation authorized under this Compact, and shall have immediate access to any and all areas of the Gaming Operation for the purpose of ensuring compliance with the provisions of this Compact and Tribal ordinances." The tribal gaming ordinances provide further detail as well as the specifics of the structure of the tribal gaming regulatory authority.

Tribe (with amended compact authorizing sports wagering as of Sept. 1, 2021)	Tribal Gaming Regulatory Authority (described with elements of structure or authority)
Confederated Tribes of the Colville Reservation	Colville Tribal Gaming Commission http://www.cct-ctg.com/
Cowlitz Indian Tribe	Cowlitz Tribal Gaming Commission https://cowlitz-tga.org/
Jamestown S’Klallam Tribe	Jamestown S’Klallam Tribal Gaming Commission and Tribal Gaming Agency (the Commission is a board of commissioners, appointed by the Tribal Council, with oversight over the Tribal Gaming Agency, the regulatory agency) https://jamestowntribe.org/programs-staff/tribal-gaming-agency/
Kalispel Tribe of Indians	Kalispel Tribal Gaming Board and Tribal Gaming Agency (the Board consists of the Tribal Council, and has delegated its regulatory authority to the Tribal Gaming Agency) https://kalispeltribe.com/our-government/tribal-gaming-agency/
Lummi Nation	Lummi Nation Gaming Commission https://www.lummi-nsn.gov/Website.php?PageID=538
Muckleshoot Indian Tribe	Muckleshoot Gaming Commission and Tribal Gaming Agency (the Commission consists of 5 members appointed by the Tribal Council; the Tribal Gaming Agency performs regulatory duties) http://mtga.us/
Puyallup Tribe of Indians	Puyallup Gaming Advisory Commission and Tribal Gaming Regulatory Office (the Commission advises the Tribal Council regarding both management and regulation of the tribe’s gaming; the Office, and in particular the Office Director appointed by the Tribal Council, is responsible for the administration of regulatory duties as set out in the Tribal Gaming Ordinance)
Shoalwater Bay Indian Tribe	Shoalwater Bay Indian Tribal Gaming Commission https://www.shoalwaterbay-nsn.gov/home/tribal-government/tribal-gaming-commission/
Skokomish Indian Tribe	Skokomish Tribal Gaming Commission and Tribal Gaming Agency Director (under the Tribal Gaming Ordinance, the Commission has authority to hire and delegate authority to the Director, who in turn has authority to hire staff)
Snoqualmie Indian Tribe	Snoqualmie Gaming Commission https://snoqualmietribe.us/snoqualmie-gaming-commission/

Spokane Tribe	Spokane Tribal Gaming Commission https://spokanetribe.com/government/gaming/
Squaxin Island Tribe	Squaxin Island Gaming Commission https://squaxinland.org/squaxin-island-gaming-commission-tga/
Stillaguamish Tribe of Indians	Stillaguamish Tribe Gaming Commission and Tribal Gaming Agency https://www.stillaguamish.com/departmentsandservices/gaming-commission/
Suquamish Tribe	Suquamish Tribal Gaming Commission https://suquamish.nsn.us/home/government/suquamish-tribal-gaming-commission/
Swinomish Indian Tribal Community	Swinomish Gaming Commission and Tribal Gaming Agency https://swinomish-nsn.gov/resources/tribal-gaming-agency.aspx
Tulalip Tribes of Washington	Tulalip Tribal Gaming Commission and Tribal Gaming Agency (under the Tribal Gaming Ordinance, the Commission has primary regulatory authority and the Agency, which includes a Director as well as Inspectors, performs onsite regulation) https://www.tulaliptribes-nsn.gov/Dept/TulalipTribalGamingAgency

Methodology or emerging practices note: Several tribes in Washington state utilize both a tribal gaming commission, often with oversight and/or rulemaking authority, and a tribal gaming agency, with more direct responsibility for performing regulatory functions. While we located a webpage for most tribal gaming regulatory authorities, the content of the webpages varied significantly, with some including links to the tribe’s internal control standards (for example, Cowlitz) and others with a short description of the role of the tribal gaming regulatory authority (for example, Lummi). It would be useful to identify a model for other jurisdictions, perhaps in particular a model that some tribes might find of practical value in stating or making transparent the responsibility and authority of TGAs as primary regulatory authorities and/or demonstrating the nature of their concurrent and cooperative regulatory relationship with the state.

5. State Law & Regulation: Provisions Relevant to Sports Betting Regulation, State Regulatory Authority for Tribal Gaming

The Washington State Gambling Commission (WSGC) is the single statewide agency charged with gambling licensing, regulation, and enforcement. Five commissioners are appointed by the governor to six-year terms; four members of the state legislature serve as ex officio members to liaise between the WSGC and the legislature, and have authority to vote on tribal-state compacts and amendments.

Notably, the WSGC is charged with negotiating tribal-state compacts and amendments. The WSGC has a formal statement regarding its government-to-government relationship with the tribes in the state, available at https://wsgc.wa.gov/sites/default/files/public/tribal/Tribal%20Relations%20Policy.pdf?_ga=2.231725656.677804424.1630616423-1177789015.1630438629, which states, “The WSGC will cooperatively work with the Compacted Tribes and their Tribal Gaming Agencies (TGA). The WSGC recognizes the TGAs are the primary regulators, and the WSGC works with each TGA to ensure Class III gaming activities are conducted in accordance with the Compacts.” The WSGC’s website includes the rules for each Class III game operated by a tribe; most of these are the rules as provided by the game developer/owner, but a few (such as blackjack) are rules promulgated by the WSGC.

As noted above, Appendix S of the amended compacts that authorize sports betting details the cooperative regulatory approach between the state gaming commission and the tribal gaming regulatory authorities.

For sports betting, the WSGC promulgated and approved licensing rules in 2021; these took effect on August 30, 2021 and are available at <https://www.wsgc.wa.gov/news/rule-changes>. A “Concise Explanatory Statement” of the rule changes related to sports wagering is available at <https://www.wsgc.wa.gov/sites/default/files/public/rules/changes-rules/sports-wagering/Concise%20Explanatory%20Statement%3B%20SW.pdf>. This document includes a list of new rules, amended rules, and repealed rules, with short descriptions of each, as well as a summary of public comments and the Commission’s responses.

Methodology or emerging practices note: Washington state’s approach to concurrent and cooperative regulation between state and tribal regulation is notable, and is reflected in the tribal-state compacts as well as the compact amendments authorizing sports wagering. The WSGC website contains reasonably easily accessible information with regard to the state gaming commission’s regulation of sports wagering.

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