

An Act

Legislative Act 36-06

A LEGISLATIVE ACT AMENDING TITLE 29 "GAME AND FISH" OF THE CHEROKEE NATION CODE ANNOTATED; ESTABLISHING PROVISIONS FOR HUNTING AND FISHING

BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION

This act shall be known as the "Cherokee Nation Hunting and Fishing Code" and shall be codified at Title 29 Section 101 et seq. of the Cherokee Nation Code Annotated.

SECTION 2. PURPOSE

Provides a short title, establishes Legislative Intent and Purpose, provides an effective date, establishes minimum requirements for hunting and fishing and adopts certain state requirements by reference, provides for modification of state rules, provides for licenses and exemptions for Cherokee Citizens, identifies persons required to obtain license, establishes rulemaking authority, specifies permission to enter lands is required, license required and general requirements, specifies penalties for violations, establishes enforcement mechanisms and provides for appeals of final decisions and orders.

SECTION 3. LEGISLATIVE HISTORY

None.

SECTION 4. SUBSTANTIVE PROVISIONS OF LAW

Title 29 CNCA is hereby amended to add the following:

101. Short Title

This act shall be known and may be cited as the Cherokee Nation Hunting and Fishing Code and is hereinafter referred to as "the Hunting and Fishing Code" or "this Code".

102. Legislative Intent and Purpose

- A. The purpose of this Act is to establish a regulatory scheme for hunting and fishing on tribal trust lands and restricted lands, in Indian country and in all other areas, lands and waters subject to the Nation's jurisdiction pursuant to treaty, federal laws, inherent sovereign authority, compact, cross-deputization agreement or other authority.
- B. It is the intent of the Council to confirm and assert the Nation's sovereign rights to establish a regulatory scheme under which Cherokee citizens may exercise, within area subject to the Nation's jurisdiction, those communal rights to hunt and fish which were included as part and parcel of the rights conveyed by treaty and patent, and which rights have not ever been conveyed, relinquished, or extinguished by any subsequent treaty or agreement.

103. Adoption by reference – Laws of Adjacent States and Nations

- A. Whenever necessary or appropriate to the conservation of the Nation's natural resources or the protection of the rights of the Nation's citizens or inherent sovereign authorities, the Nation may adopt by reference and enforce the fish and wildlife laws and requirements of adjacent states and nations.

- B. Requirements for fish and wildlife under the jurisdiction of the Cherokee Nation that are established pursuant to applicable federal laws such as the Migratory Bird Treaty Act and Endangered Species Act, are hereby adopted by reference as minimum requirements.
- C. The provisions of the Oklahoma State Wildlife Conservation Code, federal migratory bird seasons, and official requirements for hunting and fishing established by rules of the Oklahoma Wildlife Conservation Commission, shall apply to lands, waters, fish and wildlife, and persons subject to the jurisdiction of the Cherokee Nation, except as specified herein.

104. Modification of laws adopted by reference

- A. The provisions of laws and rules adopted by reference shall be read in all instances to give full effect to the establishment and implementation of a comprehensive Cherokee Nation wildlife program.
- B. For purposes of the Hunting and Fishing Code, the following modifications shall apply to any provisions of law or regulation that may be adopted by reference:
 - 1. Where the term "Oklahoma" or "state" is used, it shall mean the Cherokee Nation.
 - 2. Where the term "Oklahoma Wildlife Conservation Commission" or "Commission" is used, that authority shall vest in the Principal Chief.
 - 3. Where the term "Department" is used, it shall mean such division of the Cherokee Nation that the Principal Chief may designate.
 - 4. Where the term "Director" is used, it shall mean the person to whom the Principal Chief has appointed such authority in writing.
 - 5. Where the term "Attorney General" or "General Counsel" is used, it shall mean the Attorney General of the Cherokee Nation.
 - 6. Where there is reference to any "Court", it shall mean the Courts of the Cherokee Nation with corresponding jurisdiction.
 - 7. Where the term "warden" or "game warden" is used, it shall mean those persons designated by the Principal Chief as having authority to issue field citations or take other actions regarding violations, subject to such guidelines as may be established by rules of the Cherokee Nation approved by the Council and Principal Chief.
 - 8. Where the term "code" is used, it shall refer to the Cherokee Nation Hunting and Fishing Code.
 - 9. Where reference is made to county jail or state prison, it shall refer to such facilities as are used for imprisonment by the Cherokee Nation.
- C. The following additional definitions shall apply:
 - 1. Where reference is made to "Cherokee Citizen", it means any enrolled member of the Cherokee Nation.
 - 2. The term "tribal lands" shall include lands held in trust by the United States for the Cherokee Nation, individual restricted lands and other areas constituting Indian Country.

105. Requirements of the state

The provisions of the Oklahoma Wildlife Conservation Code, 29 Oklahoma Statutes Sections 1-101 et seq., are adopted by reference, with the following exceptions and modifications:

2-147. ~~Waters of this state.~~ Waters of the Nation.

Whenever the term "waters of the Nation" is used, it shall refer to waters of

the Cherokee Nation as defined in the Cherokee Nation Environmental Quality Code.

3-204. Procedures.

The Department shall operate under the provisions of the Cherokee Nation Administrative Procedures Act.

3-301. Dispositions of monies from fines and forfeitures.

Monies shall be collected by the Comptroller and be deposited in a separate account which shall be used for conservation of the Nation's fish and wildlife resources.

4-103. ~~Commercial Fishing License~~. Commercial fishing.

Commercial fishing is not allowed in waters of the Nation.

4-103A. ~~Commercial turtle harvester license~~. Commercial harvest.

Commercial harvest of wildlife is not allowed, except nuisance wildlife may be removed by a person for hire who has a duly issued authorization from the Nation.

4-103B. ~~Commercial turtle buyers license~~. Commercial sale and purchase.

The commercial sale and purchase of wildlife resources of the Nation is not allowed.

4-103C. Activities not prohibited.

Provisions of this Code prohibiting commercial fishing, commercial harvest and commercial sale/purchase shall not apply to prohibit Cherokee citizens from fishing, or harvesting fish and wildlife, or from gathering materials for crafting culturally related items, if they are doing so for the purpose of providing food, clothing or traditional items for Cherokee citizens in their immediate family. Provided, however, this shall not authorize the purchase or sale of fish or wildlife to noncitizens or persons outside their immediate family.

4-107.1. ~~Circuses~~. Non-native species.

All activities related to fish, birds, plant and wildlife, native and non-native, shall be subject to regulation by the Nation and the designated Department. Non-native species of fish and wildlife shall not be released on tribal lands or in waters of the Nation unless a permit is first obtained from the Department. Prior to issuance of such a permit, an environmental review shall be prepared and submitted to the Cherokee Nation Environmental Protection Commission for its review and recommendation.

4-115. ~~Minnow dealer's interstate license~~. Minnow or fish harvest.

Commercial harvest of minnows or fish is not allowed in waters of the Nation.

4-129. ~~Mussels Harvesting licenses and permits fees~~. Mussels.

Commercial harvest and export of mussels, other mollusks or crayfish is not allowed.

4-135. Permits to control nuisance or dangerous wildlife.

Only authorized representatives of the Department may take or control nuisance or dangerous wildlife on tribal trust lands or in waters of the Nation. Any person wishing to take or control nuisance or dangerous wildlife on individual restricted lands must first obtain a permit from the Department unless otherwise authorized by Department rules.

5-101. ~~Hunting Propagated Wildlife or Domesticated Animals; Sale or Gift; Transportation; Invoices; Records. Propagated or Confined Wildlife.~~

Hunting propagated or confined wildlife or domesticated animals is not allowed on trust lands, except in the case of a special hunt authorized by the Principal Chief and approved by the Council. Prior to such an authorization, an environmental review shall be prepared and submitted to the Cherokee Nation Environmental Protection Commission for its review and recommendation. The Department shall promulgate rules that apply to hunting propagated or confined wildlife or domesticated animals on individual restricted lands.

5-102. ~~Tagging Wildlife or Domesticated Animals Hunted for Sport to be Removed from Commercial Hunting Areas. Commercial Hunting.~~

Commercial taking of wildlife is not allowed on any tribal lands, provided this does not preclude special hunts authorized by and conducted by the Nation.

5-103. ~~Liberation or Propagated and Other Birds.~~

A permit is required for release of any commercially propagated wildlife or domestic animal on tribal lands and waters of the Nation, provided that authorized representatives of the Department shall not be required to obtain a permit.

5-301. ~~Limitation on Predator Control Devices – Procedures for Use.~~

The Department shall promulgate rules to establish procedures and requirements that shall apply in all cases to prohibit inhumane measures or methods which may endanger humans, domestic animals or other wildlife. Until such rules are promulgated, only authorized representatives of the Department shall use predator control devices on tribal lands. At no time shall persons other than authorized representatives of the Department be allowed to use predator control devices on trust lands.

5-501. ~~Permission to Trap on Inhabited Lands. Trapping.~~

- A. No person, other than authorized representatives of the Department or persons doing so in conjunction with Department-authorized scientific research, may trap any fish, wildlife or birds on trust lands or waters of the Nation.
- B. No person may trap on restricted lands or other lands within the Nation's jurisdiction without first obtaining a permit from the Department. Trapping will only be allowed if the applicant can demonstrate a legitimate need and that humane conditions will be maintained at all times.
- C. Commercial trapping is prohibited at all times on all tribal lands and in waters of the Nation.

6-502. ~~Closing the Waters of this State. Closure of lands and waters.~~

The Department may designate specific lands or waters that shall be closed to hunting, fishing or related activities.

7-204. ~~Ownership of Wildlife.~~

Fish and wildlife are the property of the Nation, provided however, the Nation shall not be required to control said fish and wildlife and in no event shall the Nation be held responsible for damages caused by fish and wildlife.

7-304. ~~Wildlife refuges or wildlife management areas – entry with dog or gun prohibited.~~

Specific areas may be designated as a wildlife refuge or special management area. Special conditions or restrictions on activities may apply to such areas.

7-401. Deleterious, noxious or toxic substances.

It is illegal to place any pollutant into waters of the Nation, or to place any wastes in a place where it is likely to enter the waters of the Nation, without first obtaining a permit as required by the Cherokee Nation Environmental Code.

7-402. Activities in other states injurious.

The Principal Chief with the advice of the Attorney General may take any legal action appropriate and necessary to address activities in other states or nations which may be injurious to plants, fish, birds or any wildlife species in this Nation.

7-502. Prohibition on buying, bartering, trading, offering or exposing for sale protected fish or wildlife.

The provisions of this section shall also apply to any specially designated protected plants

7-503. Importation, sale, possession of aigrettes, plumes, feathers, quills, wings.

Only to the extent allowed by federal law and consistent with good conservation practices and this Code, the Department may by rule provide for the lawful possession of parts of fish, wildlife or birds, in connection with traditional uses by individual Cherokee Nation citizens.

106. License requirements

- A. The Department designated by the Principal Chief shall have the authority to issue licenses and tags for hunting, fishing and other activities as set forth in this Code.
- B. A valid Cherokee Nation Tribal Citizenship Card shall be considered a valid license for hunting or fishing by individuals for noncommercial traditional uses. This privilege may be revoked for persons who violate the provisions of this Code.
- C. Persons who do not possess a Cherokee Nation Tribal Citizenship Card may be allowed to obtain a permit to hunt on tribal lands as follows:
 - 1. Members of other Indian Tribes who present their CDIB card, pay any applicable fees and comply with other applicable rules may be granted a permit to hunt or fish on tribal lands. The Nation may limit the number of permits as it deems appropriate.
 - 2. The spouse and children of any Cherokee citizen may hunt on restricted lands owned by that Cherokee citizen.
 - 3. The Department may promulgate rules that limit the numbers of permits, establish appropriate conditions and restrictions, to allow other persons who are not Cherokee citizens to hunt and fish on restricted lands.
 - 4. The Department may promulgate rules that establish permit application requirements, fees, limit the number of permits and set other conditions for persons who wish to fish on navigable waterways of the Nation.
- D. Persons who are not Cherokee citizens and are not otherwise allowed to hunt or fish under the provisions of paragraph 106(C) shall not be allowed to hunt or fish on tribal lands or waters of the Nation, except in the event of a special hunt or event authorized and conducted by the Nation.
- E. All permits, special hunts and rules shall be consistent with good conservation practices and the goal of preserving the Nation's resources for future generations.
- F. No exemptions may be granted from federal requirements.

- G. The Nation reserves the right to deny a permit application or to revoke a permit to hunt or fish on tribal lands or waters of the Nation for any person who is otherwise in violation of tribal law or is a habitual offender.

107. Registration; checkpoints

- A. The Department shall establish checkpoints or provide other methods so that all persons who enter tribal lands or waters of the Nation to hunt or fish on tribal lands can fill out a registration form.
- B. Such form should include information such as date of entry, purpose, animals taken, and other data pertinent to making informed fish and wildlife management decisions.

108. Rules

- A. Until such time as the Department promulgates rules, the hunting and fishing rules of the Oklahoma Department of Wildlife Conservation existing on the effective date of this Code shall apply to all tribal lands
- B. The Department shall have the authority to promulgate, update, revise, modify or revoke any provisions or requirements contained in the rules of the Oklahoma Department of Wildlife Conservation, or any season, provided:
1. The rules are not inconsistent with the provisions of this Code,
 2. The rules will assist the Nation in conserving fish and wildlife, protecting important habitat and ensuring public safety, and
 3. The requirements of the Cherokee Nation Administrative Procedures Act are followed.
- C. In developing subsequent revisions of this Code and rules, the Department shall work with the Environmental Protection Commission and other departments of the Nation.
- D. The Department shall work with the Environmental Protection Commission and other departments of the Nation to identify and protect plant and animal species of special of special concern to this Nation and important habitats. For purposes of this Code, "species of special concern" should include, but is not limited to, any species listed as endangered, threatened or rare by the federal government, adjacent states and other tribal nations.

109. Management Plans

- A. The Department, in cooperation with Environmental Programs and other departments of the Nation, shall prepare management plans for fish and wildlife resources of the Nation and their habitats.
- B. The Management Plans may be adopted or incorporated in the Strategic Land Plan, Integrated Resource Management Plan and other guidance used to make decisions about tribal land development and future land purchases.
- C. The Management Plans shall be consistent with these plans, establish by rule appropriate conditions on allowable activities in sensitive areas and limits on uses of fish and wildlife resources and their habitats.
- D. The Department shall, consistent with these plans, establish by rule appropriate conditions on allowable activities in sensitive areas and limits on uses of fish and wildlife resources and their habitats.
- E. The Department may enter into agreements with private landowners and may acquire conservation easements as appropriate to the conservation of species, habitats and the preservation of Cherokee culture.

110. Permission to enter lands and general requirements

- A. No person shall enter restricted lands or fee lands owned by the Nation to hunt, fish, trap or engage in related activities without first obtaining appropriate permission from the owner of the lands.

- B. Any person who may hunt, fish or otherwise take fish, birds, plants or wildlife on lands and waters subject to the Nation's jurisdiction shall comply with the requirements set forth in this Code and rules promulgated hereunder, applicable federal laws, the Cherokee Nation Environmental Quality Code and requirements contained in any applicable permit.

111. Violations

- A. The requirements and penalties established in this Code and rules promulgated hereunder shall be cumulative and in addition to any penalties set forth in the Cherokee Nation Environmental Quality Code and other provisions of tribal law.
- B. In addition to any other remedy provided by law, the Department may modify, revoke, refuse to renew or refuse to issue a permit to persons in violation of this Code.

112. Enforcement and field citations

- A. The Principal Chief may designate persons authorized to issue field citations, make arrests and confiscate property for violations.
- B. Any person authorized by the Principal Chief to engage in enforcement actions shall have appropriate training related to wildlife management and enforcement.
- C. The Director of the designated Department shall have the authority to issue Notices of Violation for violations of the terms of any permit or license, and to initiate administrative proceedings to revoke, modify, suspend or cancel a license, permit or other authorization. The Principal Chief shall designate an impartial person or entity to make final decisions.
- D. The Principal Chief, Director or Attorney General may also direct that an enforcement referral be made to the District Court for cases involving violations of this Code, requirements in rules that are adopted by reference, and any rule promulgated pursuant to this Code.

113. Appeals and authority of District Court

- A. Persons wishing to appeal any final decision denying or revoking a license may, if such right is specifically granted by law, appeal to the Cherokee Nation District Court.
- B. The District Court shall have authority to issue judgments and orders, assess costs, fines and attorney fees, require remediation, restitution and payment of damages, issue injunctive relief and issue orders relating to confiscation of property, in any civil or criminal enforcement proceeding involving violations of requirements imposed by this Code, permits issued under this Code or rules duly promulgated pursuant to this Code.

SECTION 5. PROVISIONS AS CUMULATIVE

The provisions of this act shall be cumulative to existing law.

SECTION 6. SEVERABILITY

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

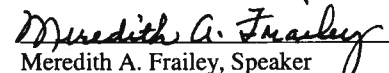
SECTION 7. EFFECTIVE DATE

The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.


SECTION 8. SELF-HELP CONTRIBUTIONS

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.


Enacted by the Council of the Cherokee Nation on the 11th day of December, 2006.


Meredith A. Frailey, Speaker
Council of the Cherokee Nation

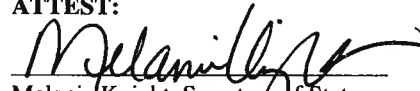
ATTEST:


Don Garvin, Secretary
Council of the Cherokee Nation

Approved this 18th day of December, 2006.


Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:


Melanie Knight, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Audra Smoke-Conner	<u>YEA</u>	Meredith A. Frailey	<u>YEA</u>
Bill John Baker	<u>YEA</u>	John F. Keener	<u>YEA</u>
Joe Crittenden	<u>YEA</u>	Cara Cowan Watts	<u>YEA</u>
Jackie Bob Martin	<u>YEA</u>	Buel Anglen	<u>YEA</u>
Phyllis Yargee	<u>YEA</u>	William G. Johnson	<u>YEA</u>
David W. Thornton, Sr.	<u>YEA</u>	Charles "Chuck" Hoskin	<u>YEA</u>
Don Garvin	<u>YEA</u>	Taylor Keen	<u>YEA</u>
Linda Hughes-O'Leary	<u>YEA</u>	Jack D. Baker	<u>YEA</u>
Melvina Shotpouch	<u>YEA</u>		

Cherokee Nation Act/Resolution Proposal Form

Act Resolution

ADMINISTRATIVE CLEARANCE

Program/Project Manager:

Signature/Initial _____ Date _____

Department Director:

Signature/Initial _____ Date _____

Executive Director:

Jeannine Hale

Jeannine Hale 11/2/06
Signature/Initial _____ Date _____

Controller: (if needed)

Signature/Initial _____ Date _____

Government Resources:

Steve Mays 11/1/06
Signature/Initial _____ Date _____

Administration Approval:

Melanie H. W. 11/2/06
Signature/Initial _____ Date _____

LEGISLATIVE CLEARANCE:

Legislative Aide:

Brittani 11/2/06
Signature/Initial _____ Date _____

Standing Committee & Date:

Resource 11/13/06

Chairperson:

Martin
Signature/Initial _____ Date _____

Returned to Presenter:

_____ Date _____

TITLE: Cherokee Nation Hunting and Fishing Code

DEPARTMENT CONTACT: Jeannine Hale, 918-453-5786

RESOLUTION PRESENTER: Jeannine Hale

SPONSOR: Jackie Bob Martin

NARRATIVE: (See Attached Outline for Information If Outline is Required)

This Act contains the Cherokee Nation Hunting and Fishing Code. The Code is modeled after corresponding Oklahoma law, with changes made to adapt it to the unique needs of the Tribe.

The passage of this Code will provide guidelines for hunting in Indian Country where none exist today. It will promote the conservation of the Nation's fish and wildlife resources and is an important exercise of sovereignty.

This Code will also provide a foundation that will enable the Nation to negotiate with state wildlife officials and the Governor's office concerning specific issues and concerns.