Committee: Rules Committee

Date: 09-11-2024 Committee Date: 09-26-2024

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An Act

Legislative Act 37-24

AN ACT AMENDING TITLE 29 OF THE CHEROKEE NATION CODE ANNOTATED

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 Modernization Act of 2024" and codified in Title 29, Chapter 1 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to amend the hunting and fishing code to incorporate enhanced conservation standards, technical amendments, and facilitate cooperative wildlife management agreements.

Section 3. Legislative History

LA-36-06

LA-10-10

LA-04-22

Section 4. Substantive Provisions

Title 29 shall be amended as follows:

§ 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 and/or by Persons 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 the Cherokee Nation Reservation areas subject to the Nation's jurisdiction, those communal rights to hunt and fish which were included as part and parcel of the rights that inhere to the sovereignty of the Cherokee Nation, which we affirmed conveyed by treaty and patent, and which rights have not ever been conveyed, relinquished, or extinguished by any subsequent treaty or agreement.
- B.C. It is further the intent of the Council of the Cherokee Nation to provide opportunity to enhance intergovernmental cooperation and coordination respecting wildlife conservation management and associated activities.

§ 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 authority, the Nation may adopt by reference and enforce the wildlife conservation laws and requirements of adjacent states, nations, and tribes.
- B. Requirements for fish and wildlife under the jurisdiction of Cherokee Nation that are established pursuant to applicable federal laws such as the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq. and Endangered Species Act, 16 U.S.C. § 1531 et seq., and other applicable federal laws, are hereby adopted by reference as minimum requirements.
- C. The provisions of the Oklahoma State Wildlife Conservation Code (29 O.S. § 1-101 et seq.), 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 Cherokee Nation, except as specified herein or where otherwise inconsistent with Cherokee Nation law.

§ 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 this chapter, the following modifications shall apply to any provisions of law or regulation that may be adopted by reference:
 - 1. Where the term "Attorney General" or "General Counsel" is used, it shall mean the Attorney General of Cherokee Nation.
 - 2. Where the term "code" is used, it shall refer to this Cherokee Nation Hunting and Fishing Code and any rules or regulations adopted or promulgated in accordance herewith.
 - 3. Where reference is made to a "county jail" or "state prison", it shall refer to such facilities as are used for imprisonment by Cherokee Nation.

- 4. Where there is reference to any "Court", it shall mean the Courts of the Cherokee Nation with corresponding jurisdiction.
- 5. Where the term "**Department**" is used, it shall mean such division of Cherokee Nation that the Principal Chief may designate.
- 6. Where the term "**Director**" is used, it shall mean the official to whom the Principal Chief has appointed such authority in writing.
- 7. Where the term "Oklahoma" or "state" is used, it shall mean Cherokee Nation.
- 8. Where the term "Oklahoma Wildlife Conservation Commission" or "Commission" is used, that authority shall vest in the Principal Chief of Cherokee Nation and any such designation or delegation.
- 9. Where the term "Person" is used, it shall mean an individual who is a member of any federally recognized Indian tribe, including Alaska Native entities, or such other person who would be considered an "Indian" for the purposes of federal criminal prosecution under 18 U.S.C. §§ 1152-1153.
- 10. Where the term "warden" or "game warden" or "law enforcement division" is used, it shall mean the Cherokee Nation Marshal Service and those officials cross deputized or otherwise designated by the Principal Chief as having authority to issue field citations or take other actions regarding violations, in accordance with the laws of the Cherokee Nation.
- C. The following additional definitions shall apply:
 - 1. Where reference is made to "Cherokee citizen", it means any enrolled citizen of Cherokee Nation.
 - 2. The term "Public Lands" shall include lands within the jurisdictional boundaries of the Cherokee Nation that are owned, held, or administered by the State of Oklahoma or an agency thereof or the United States or any agency thereof and which are open to the public for purposes of hunting, fishing, trapping, or other wildlife harvesting activity.
 - 2.3. The term "Reservation lands" shall include lands within the jurisdictional boundaries of the Cherokee Nation, which lands constitute and constituting Indian Country that term is defined by 18 U.S.C. § 1153, without regard to rights of way or fee title, and such other areas subject to the Nation's jurisdiction.
 - 3.4. The term "Restricted Lands" shall include lands the title to which is held, for any individual Cherokee Citizen, in trust by the United States or is subject to restriction against alienation imposed by the United States.
 - 4.5. The term "**Tribal Lands**" shall include lands held in trust by the United States of America for the benefit of Cherokee Nation and fee lands owned by the Cherokee Nation, including any subdivision thereof.

§ 105. Adoption of State Regulations

The provisions of the Oklahoma Wildlife Conservation Code, 29 O.S. § 1–101 et seq. and regulations established in accordance therewith, are adopted by reference, with the following exceptions, unless otherwise modified by applicable rules or regulations promulgated in accordance with this Code:

29 O.S. § 2–147. Waters of the Nation.

Whenever the term "waters of the Nation" is used, it shall refer to waters of Cherokee Nation as defined in the Cherokee Nation Environmental Quality Code, 27 CNCA § 100 et seq.

29 O.S. § 3–204. Procedures.

The Department shall operate under the provisions of the Cherokee Nation <u>Hunting and Fishing Code</u>, 29 C.N.C.A. § 101 et seq. <u>Administrative Procedure Act</u>, 1 CNCA § 101 et seq.

29 O.S. § 3–301. Dispositions of monies from fines and forfeitures.

Monies shall be collected by the Treasurer and be deposited into the Cherokee Nation general fund or such other accounts as may be authorized to promote wildlife conservation and wildlife management.

29 O.S. § 6–502. Closure of lands and waters.

The Department may designate Tribal Lands that shall be closed to hunting, fishing or related activities to support conservation and wildlife management in accordance with Cherokee Nation law and this Code.

29 O.S. § 7–204. Ownership of wildlife.

Fish and wildlife subject to the Nation's jurisdiction are the property of the Nation; provided however, in no event shall the Nation be held responsible for damages caused by fish and wildlife.

29 O.S. § 7–304. Wildlife refuges or wildlife management areas

Specific areas of Tribal Lands may be designated as a wildlife refuge or special management area in accordance with Tribal law and any rule regulation hereafter promulgated. Special conditions or restrictions on activities may apply to such areas.

§ 106. License requirements

A. It shall be unlawful as a violation of the Cherokee Nation's criminal laws for any Person subject to the jurisdiction of such laws to hunt, fish, trap, or otherwise harvest wildlife within Reservation Lands (inclusive of privately held fee lands of another, Public Lands,

and Tribal Lands therein) without a license, tag, permit, or other authorization issued or recognized by the Department and pertaining to the engagement in such activities.

- A.B. The Department designated by the Principal Chief shall have the authority to issue licenses, permits for hunting, fishing, trapping, and other activities as set forth in this Code.
- B.C. Subject to section 110 of this chapter, aA valid Cherokee Nation Tribal Citizenship Card shall be considered a valid license for to hunting, fishing, or trapping, or otherwise harvest wildlife by Cherokee Citizens on Reservation Lands (including any privately owned fee lands of another, Public Lands, and Tribal Lands located therein) for noncommercial traditional uses, unless another licensing method is required in accordance with any rule or regulation hereafter promulgated.
 - 1. Any Persons who is are not a citizens of the Cherokee Citizen Nation, but are members or citizens of a federally recognized Indian Tribe that is a party to a reciprocal agreement approved by the Principal Chief may are authorized to hunt, fish, trap, or otherwise harvest wildlife on Reservation Lands, including privately held fee lands or another, Public Lands, or Tribal Lands, as provided in such agreement excluding Tribal Lands, in accordance with state law requirements for wildlife conservation, including licensing requirements; provided however:
 - 2. Irrespective of such Persons who are members of federally recognized Indian Tribe who are not Cherokee Nation Citizens may be allowed to obtain a permit or license from the Cherokee Nation to hunt, fish, trap, or otherwise harvest wildlife on Reservation Lands, or Tribal Lands, in accordance with a reciprocal or other intertribal agreement: approved by the Principal Chief.
 - i. all Persons subject to the criminal laws of the Cherokee Nation must comply with this chapter and the rules or regulations adopted or promulgated for its implementation; and
 - i-ii. all citizens of the Cherokee Nation, when hunting, fishing, trapping, or otherwise harvesting wildlife within the jurisdiction of another federally recognized Indian Tribe that is party to such an agreement, must comply with the relevant wildlife laws of that Tribe.
- C.D. The Department may promulgate rules or regulations that limit the number of licenses, permits, establish appropriate conditions or restrictions or other such limitations for hunting, fishing, or otherwise harvesting wildlife or engaging in traditional outdoor activities consistent with good conservation practices and the goal of preserving the Nation's wildlife resources for future generations.
- D.E. Notwithstanding any provision of this Code, no exceptions shall be made, nor shall any provision be construed to deviate from the minimum requirements of federal law.

The Nation reserves the right to deny a permit application or to revoke a permit or license issued in accordance with this Code, and the regulations incorporated herein or otherwise promulgated, for any Person subject to the Nation's jurisdiction who violates Cherokee Nation law, federal law, or other applicable law.

§ 107. Wildlife harvest registration and checkpoints.

- A. The Department shall prescribe a bag or harvest limit for each species that may be taken or otherwise harvested within Reservation Lands (including privately held fee lands of another, Public Lands, and Tribal Lands therein), and it shall be unlawful as a violation of the Cherokee Nation's criminal laws for any person subject to the jurisdiction of such laws to exceed the specified bag or harvest limit for any species, irrespective of where the take or harvest occurred within the State of Oklahoma, i.e., no person may harvest separate bag or harvest limits within the Cherokee Nation and elsewhere in the State of Oklahoma.
- B. Each Cherokee Citizen, as a condition on the right to lawfully take or harvest wildlife under this chapter, shall report, at minimum, all harvests of deer, turkey, and other species as required by the Department, irrespective of where the harvest occurred.
- A.C. The Department shall establish checkpoints or provide other methods for reporting applicable wildlife harvests by Cherokee Citizens having a valid license or permit issued by the Cherokee Nationentitled to hunt, fish, trap, or otherwise harvest wildlife within Cherokee Nation Reservation Lands or elsewhere pursuant to an agreement between the Cherokee Nation and any other Tribal government or agency thereof, the State of Oklahoma, or any agency thereof, or the United States or any agency thereof.
- D. Such check-point or reporting system shall include, at a minimum, information such as date harvest, species, age class, sex, antler points (if applicable), method of harvest, county of harvest (including counties located outside Reservation Lands), and reservation of harvest (if taken from within the jurisdiction of another Tribal nation), type of wildlife harvested, and such other data relevant as the Department might require to support informed fish and wildlife conservation and management decisions.
- B.E. By February 28 of each year, the Department shall report to each other Tribe that is a party to the Five Tribe Wildlife Management Reciprocity Agreement the basic harvest data collected from its citizens pursuant to this section. The report shall include aggregate data for citizen check ins and indicate cumulative numbers for species, age class, sex, antler points (if applicable), method of harvest, county of harvest, and jurisdiction of harvest for all deer and turkeys taken during the prior season(s). The Department shall not disclose in such report any identifying or personal information regarding any Cherokee Nation citizen.

§ 108. Rules

A. The Department shall have the authority to promulgate any and all rules and regulations necessary to give full effect to this chapter and any agreements the Principal Chief may enter hereunder on the Cherokee Nation's behalf with another Tribal government or any

agency thereof, the United States or an agency thereof, the State of Oklahoma or any agency thereof, or a private organization or land owner.

- A.B. Except as specified herein, and until such time as the Department promulgates rules or regulations, the hunting and fishing rules of the Oklahoma Department of Wildlife Conservation shall apply to all Reservation Lands, including privately held fee lands of another, Public Lands, and Tribal lands located therein, and Persons subject to the jurisdiction of the Cherokee Nation.
- B.C. 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, provided that:
 - 1. The rules are not inconsistent with the provisions of this Code, Cherokee Nation law, and applicable federal law; and
 - 2. In the Department's reasonable view, the rules will support wildlife resource conservation, public safety, habitat preservation, and cultural practices; and.
 - 3. The requirements of the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq., are followed.
- C.D. The Department Secretary of Natural Resources shall work with the Environmental Protection Commission and other departments of the Nation to identify and protect plant and animal species of special concern to the 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, states, and other tribal nations, and any "culturally-protected species" identified by Cherokee Nation, pursuant to the following rules:

1. Definitions

- a. "Culturally-protected species" includes:
 - i. bald eagle,
 - ii. black bear,
- iii.ii. mountain lion (aka puma, cougar, etc.) and
- iv.iii. any other plant, animal or aquatic species designated as a culturally-protected species as determined by regulations established by the Natural Resources DepartmentSecretary of Natural Resources and approved by the Environmental Protection Commission.
- b. "Indian" means an individual who is a member of a federally-recognized Indian tribe or eligible for membership in a federally-recognized Indian tribe.

- c. "Indian country" has the meaning given to such term by 18 U.S.C. § 1151.
- d. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" in the definition of "take" in the act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.
- 2. It shall be a crime for an Indian to take or possess a culturally-protected species from Indian country.
 - a. Exceptions.
 - i. those possessing live animals or any part of a dead animal are not subject to sanction if in possession by any legal tribal, federal or state method; specifically including:
 - (I) eagle feathers obtained through a repository,
 - (II) rehabilitation efforts of a live animal, or
 - (III) pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996.
 - ii. The Natural Resources DepartmentSecretary of Natural Resources and Environmental Protection Commission shall promulgate rules that would allow an exception to take or possess a culturally-protected species, if that taking or possessing positively impacts the people of Cherokee Nation.
 - b. Punishment. This crime shall be punishable by a term of imprisonment not exceeding one (1) year or a fine in a sum not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine or imprisonment.
- 3. It shall be unlawful for any non-Indian to take or possess a culturally-protected species from Indian country.
- 4. Remedy. A non-Indian who takes or possesses a culturally-protected species in violation of this act is subject to:
 - a. a civil fine in a sum not exceeding Five Thousand Dollars (\$5,000.00); and
 - b. permanent or temporary expulsion and exclusion from Indian country; and

c. reimbursement of Cherokee Nation for any rehabilitation cost to an injured species.

5.3. Cause of action.

- a. Criminal sanctions may only be initiated by the Office of the Attorney General in Cherokee Nation District Court, Criminal Division;
- b. Civil sanctions may be initiated by the Office of the Attorney General or the Environmental Protection Commission in Cherokee Nation District Court, Civil Division.
- 6.4. Preemption. This act specifically preempts state law applicable to Indian country.
- 7.5. Use of fines. Any criminal or civil fines collected pursuant to this act shall be earmarked for conservation efforts.
- 8.6. Guidelines for listing a species as a culturally-protected species:
 - a. Proposals to add/delist all species to/from the list of culturally-protected species shall be coordinated through and by the Natural Resources Department Secretary of Natural Resources;
 - b. The final determination of a listed species will be made by the Environmental Protection Commission;
 - c. To be considered for listing as a culturally-protected species, an individual must present information as required by the Natural Resources DepartmentSecretary of Natural Resources and Environmental Protection Commission, including, but not limited to, cultural significance, habitat information, and likely harm to the species;
 - d. Burden of proof. An individual seeking to add a species to the culturally protected species list must establish proof by a preponderance of the evidence that a species is in need of protection because of its cultural significance to Cherokee Nation;
 - e. Appeals. The Natural Resources Department and the Environmental Protection Commission will establish policies and procedures for an appeals process pursuant to the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq.
- 9.7.List. A list of culturally-protected species shall periodically, but no less than once per year, be published pursuant to rules established by the Environmental Protection Commission regarding time and place of publication.

§ 109. Management plans

- A. The Department, in cooperation with other departments of the Nation, shall prepare management plans for fish and wildlife resources of the Nation and their habitats. Such management plans may incorporate the conservation requirements adopted by the State of Oklahoma, adjacent states, nations, and tribes.
- 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 and may identify sensitive areas and limits on uses of fish and wildlife resources and their habitats by rule or regulation.
- C. The Department may enter into agreements with private landowners, state agencies, and tribes, as appropriate for conservation of species, habitats, and the preservation of Cherokee culture.

§ 110. Permission to enter lands and general requirements

- A. It shall be unlawful as a violation of the Cherokee Nation's criminal laws for any No person subject to the jurisdiction of such laws to shall enter restricted lands, or privately owned fee lands of another, public lands of the State of Oklahoma or the United States, or Tribal Lands closed to the public by applicable rule or regulation promulgated under this Code to hunt, fish, trap, harvest wildlife or otherwise engage in related activities without first obtaining appropriate permission from the owner of the lands privately held,—; or in the case of public lands of the State of Oklahoma or United States, compliance with rules applicable to land access promulgated by the owning government or land management agency responsible for such lands; or in the case of Tribal lands, a permit, license, or other valid authorization from the Department. Any person violating this provision shall be guilty of trespass and subject to criminal and civil penalties in accordance with this Code and Cherokee Nation law.
- 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, and the other laws of the Cherokee Nation.

§ 111. Enforcement and field citations

The Cherokee Nation Marshal Service, and such officials designated by the Marshal, or otherwise in accordance with any cross deputization agreement and this Code, are authorized to issue field citations, make arrests, and confiscate property for violations of this Code and other Cherokee Nation laws. Such matters shall be cited to the Cherokee Nation District Court.

§ 112. Violations and Penalties

- A. Any Person violating any provision of this code, or any rule or regulation incorporated herein or otherwise promulgated hereby, shall be guilty of a crime and/or civil infraction and subject to the following penalties.
 - 1. Criminal Penalties. Violation of this Code as established in this Section shall be a misdemeanor punishable by a term of imprisonment not to exceed one (1) year,

or a fine in a sum not to exceed Five Thousand Dollars (\$5,000), or by both <u>such</u> <u>fine and imprisonment</u>, and confiscation of vehicles, weapons, contraband, and/or equipment.

- B. The requirements and penalties established in this Code and the rules or regulations incorporated herein or promulgated hereunder shall be cumulative and in addition to any other penalties set forth under Cherokee Nation law.
- C. In addition to any other remedy provided by law, the Department may modify, revoke, refuse to renew or refuse to issue a license or permit to Persons in violation of this code.

§ 113. Authority of District Court

Any decision of the Department revoking or rejecting a license or permit may be appealed to the District Court of the Cherokee Nation within fifteen (15) days of receipt of the final decision of the Department.

§ 114. Cooperative and Governmental Agreements

The Principal Chief is authorized to negotiate and execute agreements with federal, state, local governments, and other public and private entities to facilitate the purpose, policies, and requirements of this Code, which may include applications for grant funding, conservation programs and other cooperative agreements.

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

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force immediately upon 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 <u>15th</u> day of <u>September</u>, 2024.

Mike Shambaugh, Speaker
Council of the Cherokee Nation

ATTEST:

Dora Smith Patzkowski, Secretary Council of the Cherokee Nation

Approved and signed by the Principal Chief this 28th day of October, 2024.

Chuck Hoskin, Jr., Principal Chief

Cherokee Nation

ATTEST:

Shella Bowlin, Secretary of State

Cherokee Nation

YEAS AND NAYS AS RECORDED:

Sasha Blackfox-Qualls	Yea	Melvina Shotpouch	Yea
Candessa Teehee	Yea	Kendra McGeady	Yea
Lisa Hall	Yea	Dora Smith Patzkowski	Yea
Mike Dobbins	Yea	Joe Deere	Yea
E.O. "Jr." Smith	Yea	Kevin Easley, Jr.	Yea
Daryl Legg	Yea	Danny Callison	Yea
Joshua Sam	Yea	Julia Coates	Yea
Codey Poindexter	Yea	Johnny Kidwell	Yea
Mike Shambaugh	Yea		

<u>ADMINISTRATIVE</u> **CLEARANCE** Dept/Program: Signature/Initial Date **Executive Director:** Date Signature/Initial Treasurer (Required: Grants/Contracts/Budgets): Signature/Initial Date **Government Relations:** Signature/Initial Date Administration Approval: 9/10/24 Date LEGISLATIVE CLEARANCE: egal & Legislative Çoordinator: Signature/Initial Standing Committee & Date: Chairperson:

Cherokee Nation Act/Resolution Proposal Form

Χ	Act	Resolution
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TITLE:

AN ACT AMENDING TITLE 29 OF THE CHEROKEE NATION CODE ANNOTATED

DEPARTMENT CONTACT:	Canaan Duncan
RESOLUTION PRESENTER:	Chad Harsha, Christina Justice
COUNCIL SPONSOR: Dann	y Callison

NARRATIVE:

The purpose of this Act is to amend the hunting and fishing code to incorporate enhanced conservation standards, technical amendments, and facilitate cooperative wildlife management agreements.