

TITLE 29

GAME AND FISH

Oklahoma Statutes

Oklahoma Wildlife Conservation Code, see 29 O.S. § 1–101 et seq.

CHAPTER 1

HUNTING AND FISHING

§ 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".

History

Source. LA 36–06, eff. January 7, 2007.

Library References

Fish <KEY>8.

Game <KEY>3.5.

Westlaw Topic Nos. 176, 187.

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 5 to 6, 9 to 24, 27 to 37, 39 to 40, 44 to 49, 51, 54, 58.

§ 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 areas 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.

History

Source. LA 36–06, eff. January 7, 2007.

Library References

Fish <KEY>8.

Game <KEY>3.5.

Westlaw Topic Nos. 176, 187.

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 5 to 6, 9 to 24, 27 to 37, 39 to 40, 44 to 49, 51, 54, 58.

§ 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 fish and wildlife laws and requirements of adjacent states and nations.

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., 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.

History

Source. LA 36–06, eff. January 7, 2007.

Library References

Fish <KEY>8.

Game <KEY>3.5.

Indians <KEY>353.

Westlaw Topic Nos. 176, 187, 209.

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 5 to 6, 9 to 24, 27 to 37, 39 to 40, 44 to 49, 51, 54, 58.

C.J.S. Indians §§ 138 to 139.

§ 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 the Cherokee Nation Hunting and Fishing Code.
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 person 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.
9. 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 Cherokee Nation approved by the Council and Principal Chief.

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 "**tribal lands**" shall include lands held in trust by the United States for Cherokee Nation, individual restricted lands and other areas constituting Indian country.

History

Source. LA 36-06, eff. January 7, 2007.

Library References

Fish <KEY>8.

Game <KEY>3.5.

Indians <KEY>353.

Westlaw Topic Nos. 176, 187, 209.

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 5 to 6, 9 to 24, 27 to 37, 39 to 40, 44 to 49, 51, 54, 58.

C.J.S. Indians §§ 138 to 139.

§ 105. Requirements of the state

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

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 Administrative Procedure Act, 1 CNCA § 101 et seq.

29 O.S. § 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.

29 O.S. § 4-103. Commercial fishing.

Commercial fishing is not allowed in waters of the Nation.

29 O.S. § 4-103A. 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.

29 O.S. § 4-103B. Commercial sale and purchase.

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

29 O.S. § 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.

29 O.S. § 4-107.1. 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.

29 O.S. § 4-115. Minnow or fish harvest.

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

29 O.S. § 4-129. Mussels.

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

29 O.S. § 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.

29 O.S. § 5–101. 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.

29 O.S. § 5–102. 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.

29 O.S. § 5–103. Liberation of 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.

29 O.S. § 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.

29 O.S. § 5–501. 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.

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

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

29 O.S. § 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.

29 O.S. § 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.

29 O.S. § 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 Quality Code.

29 O.S. § 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.

29 O.S. § 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.

29 O.S. § 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.

History

Source. LA 36–06, eff. January 7, 2007.

Library References

Fish <KEY>8.

Game <KEY>3.5.

Indians <KEY>353.

Westlaw Topic Nos. 176, 187, 209.

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 5 to 6, 9 to 24, 27 to 37, 39 to 40, 44 to 49, 51, 54, 58.

C.J.S. Indians §§ 138 to 139.

§ 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 subsection (C) of this section 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.

History

Source. LA 36–06, eff. January 7, 2007.

Library References

Fish <KEY>10(1).

Game <KEY>5.

Indians <KEY>226.

Westlaw Topic Nos. 176, 187, 209.

C.J.S. Fish § 28.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 4 to 5, 49, 52 to 53.

C.J.S. Indians §§ 140 to 149.

§ 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.

History

Source. LA 36–06, eff. January 7, 2007.

§ 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 Procedure Act, 1 CNCA § 101 et seq., 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 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. mountain lion (aka puma, cougar, etc.) and

iv. any other plant, animal or aquatic species designated as a culturally-protected species as determined by regulations established by the Natural Resources Department 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 Department 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. 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. Preemption. This act specifically preempts state law applicable to Indian country.

7. Use of fines. Any criminal or civil fines collected pursuant to this act shall be earmarked for conservation efforts.

8. 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;

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 Department 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. 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.

History

Source. LA 36-06, eff. January 7, 2007.

Amended. LA 10-01, eff. April 22, 2010.

United States Code

Indian country defined, see 18 U.S.C. § 1151.

Protection and preservation of traditional religions of Native Americans, see 42 U.S.C. § 1996.

Library References

Fish <KEY>8.

Game <KEY>3.5.

Indians <KEY>353.

Westlaw Topic Nos. 176, 187, 209.

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 5 to 6, 9 to 24, 27 to 37, 39 to 40, 44 to 49, 51, 54, 58.

C.J.S. Indians §§ 138 to 139.

§ 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.

History

Source. LA 36-06, eff. January 7, 2007.

Library References

Fish <KEY>8.

Game <KEY>3.5.

Westlaw Topic Nos. 176, 187.

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 5 to 6, 9 to 24, 27 to 37, 39 to 40, 44 to 49, 51, 54, 58.

§ 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.

History

Source. LA 36–06, eff. January 7, 2007.

Library References

Fish <KEY>3.

Game <KEY>2.5.

Westlaw Topic Nos. 176, 187.

C.J.S. Fish §§ 6 to 13.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 6 to 7, 36.

§ 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.

History

Source. LA 36–06, eff. January 7, 2007.

Library References

Fish <KEY>10(1).

Game <KEY>5.

Westlaw Topic Nos. 176, 187.

C.J.S. Fish § 28.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 4 to 5, 49, 52 to 53.

§ 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.

History

Source. LA 36–06, eff. January 7, 2007.

Library References

Fish <KEY>11, 16.

Game <KEY>6, 10.

Westlaw Topic Nos. 176, 187.

C.J.S. Fish §§ 29, 45 to 46.

C.J.S. Game; Conservation and Preservation of Wildlife §§ 7, 23 to 24, 27, 29, 31, 46, 50, 60 to 66.

§ 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.

History

Source. LA 36-06, eff. January 7, 2007.

Library References

Indians <KEY>433, 434.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

