



## Legislation Text

File #: 22-009, Version: 1

### AN ACT AMENDING TITLE 29 OF THE CHEROKEE NATION CODE

#### **BE IT ENACTED BY THE CHEROKEE NATION:**

#### **Section 1. Title and Codification**

This Act shall be known and ~~may be~~ cited as the "Cherokee Nation Hunting and Fishing Code Modernization Act of 2022" and is ~~hereinafter~~ referred to as "the Hunting and Fishing Code" ~~or "this "~~, codified at Title 29, Game and Fish, Chapter 1, Hunting and Fishing, of the Cherokee Nation Code", which is hereby amended in accordance with the Act

#### **§ 102.**

#### **Section 2. 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~~lands 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 ~~of the Cherokee Nation~~ 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.

#### **Section 3. Legislative History**

Legislative Act 36-06, effective December 18, 2006; Title 29 of the Cherokee Nation Code

#### **Section 4. Substantive Provisions**

#### **§ 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 conservation laws and requirements of adjacent states ~~and~~, 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 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 ~~the~~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 person 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.

9.9. 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 personsofficials cross deputized or otherwise 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 in accordance with the laws of the 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 "**tribalReservation Lands**" shall include lands held in trust by within the United States forjurisdictional boundaries of the Cherokee Nation; individual restricted lands and other areas constituting Indian Country. as that term is defined by 18 U.S.C. § 1153, and such other areas subject to the Nation's jurisdiction.
3. 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. 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. RequirementsAdoption of the-stateState 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 and modifications, 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 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~~Treasurer and be deposited ~~in a separate account which shall into the Cherokee Nation general fund or such other accounts as may be used for authorized to promote wildlife conservation of the Nation's fish and wildlife resources.~~management.

~~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~~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, ~~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 of Tribal Land 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.

~~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.~~

## § 106. License requirements

A. The Department designated by the Principal Chief shall have the authority to issue licenses, tags, and tagspermits for hunting, fishing, trapping, 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, ~~or trapping wildlife~~ by ~~individuals~~ Cherokee Citizens on Reservation Lands and Tribal Lands for noncommercial traditional uses. ~~This privilege may be revoked for persons, unless another licensing method is required in accordance with any rule or regulation hereafter promulgated.~~

C. ~~Any Person~~ who ~~violate the provisions of this Code.~~

~~C. Persons who do is not possess a Cherokee Citizen, but a member of a federally recognized Indian Tribe are authorized to hunt, fish, trap, or otherwise harvest wildlife on Reservation Lands, excluding Tribal Lands, in accordance with state law requirements for wildlife conservation, including licensing requirements; provided however:~~

1. ~~Persons who are members of federally recognized Indian Tribe who are not Cherokee Nation Tribal Citizenship Card~~ Citizens may be allowed to obtain a permit ~~to hunt on tribal lands as follows:~~ 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.

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. ~~D. The Department may promulgate rules or regulations that limit the numbers~~ number of licenses, permits, establish appropriate conditions ~~and/or~~ 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 or such other limitations 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~~ 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.

~~F. No exemptions may be granted from federal requirements.~~

~~G. 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.~~



~~E. 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 or license issued in accordance with this Code, and the regulations incorporated herein or otherwise promulgated, for any Person who is otherwise in violation of tribal law or is a habitual offender.~~ subject to the Nation's jurisdiction who violates Cherokee Nation law, federal law, or other applicable law.

#### **§ 107. ~~Registration-Checkpoints~~ Wildlife harvest registration and 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.~~ for reporting applicable wildlife harvest by Cherokee Citizens having a valid license or permit issued by the Cherokee Nation to hunt, fish, trap, or otherwise harvest wildlife within Cherokee Nation Reservation Lands.

B. Such ~~form should~~ check point or reporting system shall include information such as date of ~~entry,~~ purpose, ~~animals taken~~ harvest, ~~type of wildlife harvested,~~ and other data ~~pertinent~~ relevant to ~~making support~~ informed fish and wildlife conservation and management decisions.

#### **§ 108. Rules**

~~A. 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 ~~existing on the effective date of this Code~~ shall apply to all ~~tribal lands~~ Reservation Lands and Person subject to the jurisdiction of the Cherokee Nation.

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 that:

1. The rules are not inconsistent with the provisions of this Code, Cherokee Nation law, and applicable federal law;
2. In the Department's reasonable view, the rules will ~~assist the Nation in conserving fish and support~~ wildlife, ~~protecting important habitat and ensuring 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. In developing subsequent revisions of this code and rules, the Department shall work with the Environmental Protection Commission and other departments of the Nation.~~

#### **§ 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. 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 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.C.~~ The Department may enter into agreements with private landowners, state agencies, and ~~may acquire conservation easement~~ tribes, as appropriate ~~to the~~ for 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 privately owned fee lands ~~owned by of another, or Tribal Lands closed to the Nation~~ public by applicable rule or regulation promulgated under this Code to hunt, fish, trap ~~or, 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 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 ~~Environmental Quality Code and requirements contained in any applicable permit.~~

#### **§ 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 law.

#### **§ 112. Violations and Penalties**

~~A.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 a 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, and confiscation of vehicles, weapons, contraband, and/or equipment.

2. Civil Penalties. Violation of this Code as established in this Section shall also be a civil infraction punishable by a fine in a sum not to exceed Five Thousand Dollars (\$5,000) and confiscation of vehicles, weapons, contraband, and/or equipment.

B. The requirements and penalties established in this Code and ~~rules~~the rules or regulations incorporated herein or promulgated hereunder shall be cumulative and in addition to any penalties set forth ~~in the~~under Cherokee Nation ~~Environmental Quality Code and other provisions of tribal~~ law.

B.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.

#### **§ 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.~~

**§ 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 6. Provisions as cumulative**

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

**Section 7. 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 8. Effective Date: Emergency Declared**

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 immediately upon its approval and signatures