



## Legislation Text

File #: CNCA-29, Version: 2

### TITLE 29 GAME AND FISH (INCLUDES 2016 POCKET PART)

#### 1. Hunting and Fishing Compact Act

#### Oklahoma Statutes

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

### CHAPTER 1 HUNTING AND FISHING

#### Section

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#### § 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”.

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

#### History

Fish O8.

Westlaw Topic Nos. 176, 187.

C.J.S. Fish §§ 24 to 26.

#### Library References

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 citi-

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zens 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 O8.

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

Game O 3.5.

O

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation

Westlaw Topic Nos. 176, 187, 209.

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.

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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.

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

## History

Game O 3.5.

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## Library References

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation

Westlaw Topic Nos. 176, 187, 209.

## § 105. Requirements of the state

C.J.S. Indians §§ 138 to 139.

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.

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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.

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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

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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.

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

## History

Game O 3.5.

O

## Library References

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation

Westlaw Topic Nos. 176, 187, 209.

## § 106. License requirements

C.J.S. Indians §§ 138 to 139.

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.

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## 29 CNCA § 107

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.

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

## History

Fish O10(1).

Indians 226.

Westlaw Topic Nos. 176, 187, 209.

## Library References

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.

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

## History

## 29 CNCA § 108

### § 108. Rules

#### GAME & FISH

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.

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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;

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- 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

Game O 3.5.

O

C.J.S. Fish §§ 24 to 26.

C.J.S. Game; Conservation and Preservation

Westlaw Topic Nos. 176, 187, 209.

## § 109. Management plans

C.J.S. Indians §§ 138 to 139.

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.

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## 29 CNCA § 112

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

### History

Fish O8.

Westlaw Topic Nos. 176, 187.

C.J.S. Fish §§ 24 to 26.

### Library References

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 O3.

Westlaw Topic Nos. 176, 187.

## § 111. Violations

C.J.S. Fish §§ 6 to 13.

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

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.

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

### History

Fish O10(1).

Westlaw Topic Nos. 176, 187.

### Library References

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.

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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 O11, 16.

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 433, 434. Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## CHAPTER 2

### HUNTING AND FISHING COMPACT ACT

201. Hunting and Fishing Compact between the state of Oklahoma and the Cherokee Nation

## § 201. Hunting and Fishing Compact between the state of Oklahoma and the Cherokee Nation

## ARTICLE I

### PURPOSE AND INTENT OF PARTIES

WHEREAS, the Cherokee Nation (hereinafter referred to as “Nation”), is a federally recognized Indian tribe<sup>1</sup> with inherent sovereign powers of self- government;

WHEREAS, Article 6 of the Constitution of the United States of America declares that the “Constitution, the Laws of the Unites States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land”;

WHEREAS, the United States of America has entered into a series of Treaties with the Cherokee Nation including the Treaty of Washington in 1866;

WHEREAS, the State of Oklahoma (hereinafter referred to as “State”) is an independent sovereign state within the United States of America possessed of full powers of state government;

WHEREAS, both the State of Oklahoma and the Cherokee Nation recognize that pursuant to applicable law each is a sovereign with dominion over their respective governments. Entry into this contract is not intended nor shall it be construed to cause the sovereignty of either to be diminished or expanded;

WHEREAS, the United States Supreme Court decision in Menominee Tribe of Indians v. United States established that the hunting and fishing rights of federally-recognized Indian tribes differ and must be analyzed against the unique backdrop of every tribe’s treaty history and its subsequent government- to- government relationship with the United States;

WHEREAS, both the State and the Nation recognize the need to develop and maintain good Tribal/State governmental relations and effectively manage their respective and shared resources;

WHEREAS, both the Nation and the State recognize the importance of the conservation, management, protection, and enhancement of wildlife resources and habitat for the scientific, educational, recreational, aesthetic, and economic benefits to present and future generations;

WHEREAS, Article 6, Section 8 of the Oklahoma Constitution vests the power and authority to conduct the business of the State with other sovereign

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states and with the United States to the Governor of the State of Oklahoma; and,

WHEREAS, for the purposes of the Oklahoma Constitution and this Com- pact, the Cherokee Nation does hereby constitute a sovereign state;

<sup>1</sup> “Federally recognized” tribe means any Indian tribe which has met the requirements established by the terms of the Indian Reorganization Act, 48 Stat. 984, as amended; the Oklahoma Indian Welfare Act, 49 Stat. 1967, as amended; or is one of those tribes listed in the Federal Register pursuant to 25 CFR Part 83 as recognized by and receiving services from the Bureau of Indian Affairs, as provided for in *Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 58 Federal Register 54364 (October 21, 1993).

## ARTICLE II

### HUNTING AND FISHING ON STATE AND TRIBAL LANDS

NOW, THEREFORE, the Cherokee Nation, by and through its Principal Chief, Bill John Baker, and the State of Oklahoma, by and through its Gover- nor, Mary Fallin, do hereby enter into this Compact, the terms of such Compact to commence on January 1, 2016, for the mutual benefit of the Nation and the State, to-wit:

(1) The Nation agrees to:

a. Adopt by reference as minimum requirements federal laws applica- ble to management of wildlife resources under federal authority, such as the Migratory Bird Treaty Act and the

Endangered Species Act;

b. Adopt and maintain as a minimum standard the provisions of the Oklahoma Wildlife Conservation Code ("Code"), federal migratory bird seasons and official requirements for hunting and fishing established by rules of the Oklahoma Wildlife Conservation Commission ("ODWC") to the lands, waters, fish, wildlife and persons subject to the jurisdiction of the Nation;

c. In the event that any modifications to the provisions of the Oklahoma Wildlife Conservation Code, federal migratory bird seasons and other official requirements for hunting and fishing conflicts with the traditions and customs of the Nation, the Nation shall provide notice to the State and the parties shall resolve the issue as provided for in Article III;

d. Assume responsibility for the administrative and supply cost of issuing a tribal/state dual jurisdiction license ("compact license") on behalf of both governments through the State's existing Internet Point of Sale system or other by means as agreed upon by the State for issuing and selling hunting and fishing licenses. Administrative costs shall be assessed at the end of each calendar year by the ODWC and the Nation shall have a right to challenge the amount of accounting of such assessment;

e. Pay the State the minimum amount for each compact license required for certification under the Wildlife and Sport Fish Restoration Program ("WSFR") of net revenue for every license issued to a citizen of the Nation under this Compact. Said amount is currently anticipated at \$2.00;

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## 29 CNCA § 201

f. Annually purchase and issue a minimum of 150,000 compact licenses for its Oklahoma resident citizens between the ages of 16 and 65 years old. The Nation may purchase additional compact licenses for its citizens above the age of 65 at the same cost as any other compact license, as set forth in subparagraph (b) above, but such sales will not be counted against the agreed annual purchase of 150,000 compact licenses for individuals between the ages of 16 and 65;

g. The Nation shall not be required to purchase compact licenses for the Nation's Citizens who are also legal residents of Oklahoma and under the age of sixteen (16), as they are currently exempt pursuant to

29 O.S. § 4-112(B)(1). These exempt citizens shall be entitled to receive one turkey and one deer license, as described in Article II, Part 2(b) below, provided they follow the same procedures for obtaining said license, as described below, and are otherwise eligible to receive said license. The Nation will pay the amount of a Compact License, as described in Article II, Part 1(e), for each exempt citizen who obtains a deer or turkey license pursuant to this Compact. Said payments shall be made to the ODWC quarterly; and

h. Provide identifiable individual personal information for each license, as required for the WSFR certification, to the State in a manner prescribed by the ODWC for each compact license issued.

(2) The State agrees to:

a. Authorize the issuance of a compact license to citizens of the Nation without charging the citizen any fee for said license if the following conditions are met:

i. The Cherokee Nation citizen applying for the compact license is a resident of the State of Oklahoma as that term is defined in Title 29 of Oklahoma Statutes;

ii. The Nation assumes responsibility for insuring that ODWC receives the minimum amount for each compact license required for certification under the Wildlife and Sport Fish Restoration Program ("WSFR") of net revenue for every license issued to a citizen of the Nation under this Compact. Said amount is currently anticipated at \$2.00

b. Provide every citizen of the Nation who obtains a compact license the opportunity to apply for and obtain or be assigned by the Nation one deer license (an archery deer license, primitive firearms deer license, gun deer license or holiday antlerless deer gun license at the option of the citizen) and one turkey license (spring or fall license) per year without fee, provided that:

i. No citizen may exceed the combined season limit for any animal;

ii. No citizen otherwise violates the laws of the State or the Nation; and

iii. This selection must be made online through a portal system, which will be created and maintained by the Nation and shared

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with ODWC, at least fourteen (14) days prior to the start of the opening of the hunting season for that respective license.

(3) Both the State and Nation agree:

- a. Each compact license will encompass the rights and regulatory requirements of an annual Oklahoma hunting license, annual Oklahoma fishing license, and the issuance of a single deer license and a single turkey license per calendar year. Provided, however, that the deer and turkey licenses shall be issued for a specific season, as requested by the licensee or assigned by the Nation and approved by ODWC. Said information will be provided to the ODWC with the other identifiable information described in Article II, Section 1(h) above;
- b. Compact licenses are only available to Oklahoma residents who are also citizens of the Nation and otherwise eligible for an Oklahoma hunting or fishing license under the Code or other applicable state law; and
- c. Compact license holders may, at their election, purchase additional licenses, products, and tags, such as additional deer or turkey licenses, of the ODWC not included in the rights of their compact license at the same cost and through the same process as other citizens of Oklahoma that are hunting and fishing license holders.

(4) Both the Nation and the State will:

- a. Coordinate to create a process for the Nation's citizens to obtain a compact license, as well as deer and turkey licenses;
- b. Collaborate on projects that will protect, restore, perpetuate, conserve and enhance the management of wildlife in the State and the Nation;
- c. Report any poaching or other violations of federal, state or tribal wildlife laws uncovered by law enforcement or game wardens between the agencies of the State or the Nation, charged with their respective responsibility for enforcing wildlife laws and hold continuing discussions to discuss what additional measures may be needed to hold offenders accountable across multiple jurisdictions;
- d. Design a compact license which can be issued under the authority of the Nation and the State to Cherokee Nation citizens as provided herein.

## ARTICLE III GENERAL PROVISIONS

(1) Any dispute arising in the interpretation or performance of this Compact, which is not resolved by good faith negotiation within thirty (30) days, or such longer period as mutually agreed in writing by both parties, shall be subject to any of the following remedies: (1) voluntary unilateral termination, (2) mediation, or (3) legal proceedings in federal court. Each party agrees to a limited waiver of sovereign immunity from suit, liability, judgment, and collection in mediation and federal court. Provided, however, that this limited waiver of

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sovereign immunity from suit is limited to disputes arising under this Compact. Voluntary unilateral termination may be done by either party at the end of each calendar year by providing sixty (60) days written notice.

(2) This Compact shall terminate on December 31, 2018. Nothing in this Compact shall prevent the parties by mutual agreement from establishing an earlier or later termination date or otherwise modifying this agreement.

(3) By entering into this Compact, the Nation does not concede that the laws of the State of Oklahoma, including its tax and licensing laws, apply to the Nation or its members regarding activities and conduct within the Nation's Jurisdiction.

(4) Neither party shall be deemed the drafter of this Compact in the event of any action to interpret its terms. Therefore, the rule of construction that in the case of an ambiguity, the ambiguity is construed against the author is not applicable. Furthermore, any rule of construction of ambiguities either in favor of or against a State or Tribal governmental entity is not applicable to this Compact.

(5) Notice shall be by United States mail, postage prepaid. Any notice required hereunder to the State shall be delivered to the Governor of the State of Oklahoma at 2300 N. Lincoln Blvd., Room 212, Oklahoma City, Oklahoma 73105-4890. Notification by the State shall be made by the Governor or designee in writing to the Principal Chief of the Cherokee Nation at P.O. Box 948, Tahlequah, Oklahoma, 74465. Notification by the State and Nation shall also be filed with the Office of the Oklahoma Secretary of State.

(6) The effective date of this Compact shall be January 1, 2016, when fully executed by all parties, and there is attached hereto the original, or a properly certified copy, of the properly prepared and approved resolution of the legislative body, or similar document of the Nation authorizing the Nation to enter into and execute this agreement. The approved resolution, or similar document, shall be accompanied by a letter from counsel for the Nation certifying that such resolution, or other tribal action, fully and regularly complies with tribal law and was obtained in accordance with all necessary legal and procedural requirements.

(7) Nothing in this Compact shall be deemed to authorize the State to regulate the Nation's government or to interfere in any way with the Nation's election of its governmental officers. This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction, except as to waivers provided herein.

(8) This Compact comprises the entirety of the agreement between the parties hereto. Any and all prior or contemporaneous representations, predictions, warranties or other inducements, however denominated, are merged within the terms of this Compact, and shall not survive its execution. There are no representations, promises, predictions, warranties, inducements or other agreements, however denominated, between the parties other than as set forth herein. This Compact may not be amended or modified except by written agreement, approved and executed by the parties hereto.

IT IS AGREED:

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Each of the undersigned represents that they are duly authorized, and has the authority, to execute this Compact on behalf of the designated party.

IN WITNESS WHEREOF, the parties have executed this Hunting and Fishing Compact effective January 1, 2016.

#### State of Oklahoma

Mary Fallin, Governor

Date Attest:

Secretary of State

#### Cherokee Nation

Bill John Baker, Principal Chief

Date

History

Source. LA 09-15, eff. May 29, 2015.



### **Oklahoma Statutes**

Oklahoma Wildlife Conservation Code, see 29 § 1-101 et seq.

### **United States Code**

Endangered Species Act, see 16 U.S.C. § 1531 et seq. Migratory Bird Treaty Act, see 1642 U.S.C. § 710 et seq.

### **Library References**

Indians 350. Westlaw Topic No. 209.

C.J.S. Indians §§ 114, 116 to 118.