



Legislation Text

File #: 10-013, Version: 2

**A LEGISLATIVE ACT AMENDING TITLE 29 - GAME AND FISH OF THE CHEROKEE NATION CODE ANNOTATED; AMENDING LEGISLATIVE ACT 36-06, THE "CHEROKEE NATION HUNTING AND FISHING CODE"; ESTABLISHING PROVISIONS FOR CULTURALLY PROTECTED SPECIES
BE IT ENACTED BY THE CHEROKEE NATION:**

Section 1. Title and Codification

This act shall be known as the "Culturally Protected Species Act of 2010" and codified as Title 29 Section 108D of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this act is to protect species that have cultural significance to the Cherokee Nation and its people.

Section 3. Legislative Authority

Article VI Section 7 of the Cherokee Nation Constitution states "The Council shall have the power to establish laws which it shall deem necessary and proper for the good of the Nation, which shall not be contrary to the provisions of this Constitution. The style of all bills shall be: "Be It Enacted by the Cherokee Nation."

Section 4. Legislative History

Legislative Act 36-06, effective January 10, 2007.

Section 5. Substantive Provisions of Law

Title 29 CNCA 108D is hereby amended to add the following:

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"
 - i. 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"

- i. Has the meaning given to such term by Section 1151 of Title 18, United States Code
 - d. "Take"
 - i. harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct
 1. "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. Exception
 - 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:
 1. eagle feathers obtained through a repository;
 2. rehabilitation efforts of a live animal; or
 3. 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 the Cherokee Nation
 - b. Punishment
 - i. 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
3. It shall be unlawful for any non-Indian to take or possess a culturally protected species from Indian Country
 - a. Remedy
 - i. A non-Indian who takes or possess 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. Reimburse Cherokee Nation for any rehabilitation cost to an injured species
4. 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
5. Preemption
 - a. This Act specifically preempts state law applicable to Indian Country
6. Use of Fines
 - a. Any criminal or civil fines collected pursuant to this Act shall be earmarked for conservation efforts
7. 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 Protect Species, an individual must present information as required by the Natural Resources Department and Environmental Protection Commission, including, but not limited to, cultural significance, habit information, and likely harm to the species
 - d. Burden of Proof
 - i. 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 in is need of protection because of its cultural significance to the Cherokee Nation
 - e. Appeals
 - i. The Natural Resources Department and the Environmental Protection Commission will establish

policies and procedures for an appeals process pursuant to the Cherokee Nation Administrative Procedures Act

8. List

A list of Culturally Protect 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

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

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

Section 9. Self-Help Contributions

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

Enacted by the Council of the Cherokee Nation on the 15th day of March, 2010.