

An Act

Legislative Act 004-22

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 cited as the "Cherokee Nation Hunting and Fishing Code Modernization Act of 2022" and referred to as "the Hunting and Fishing Code", 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

Section 2. Legislative Intent and Purpose

A. The purpose of this act is to establish a regulatory scheme for hunting and fishing on 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 wildlife conservation laws and requirements of adjacent states, nations, and tribes.

B. Requirements for fish and wildlife under the jurisdiction of Cherokee Nation that are established pursuant to applicable federal laws such as the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq. and Endangered Species Act, 16 U.S.C. § 1531 et seq. and other applicable federal laws, are hereby adopted by reference as minimum requirements.

C. The provisions of the Oklahoma State Wildlife Conservation Code (29 O.S. § 1-101 et seq.), federal migratory bird seasons, and official requirements for hunting and fishing established by rules of the Oklahoma Wildlife Conservation Commission, shall apply to lands, waters, fish and wildlife, and Persons subject to the jurisdiction of Cherokee Nation, except as specified herein or otherwise inconsistent with Cherokee Nation law.

§ 104. Modification of laws adopted by reference

A. The provisions of laws and rules adopted by reference shall be read in all instances to give full effect to the establishment and implementation of a comprehensive Cherokee Nation wildlife program.

B. For purposes of this chapter, the following modifications shall apply to any provisions of law or regulation that may be adopted by reference:

1. Where the term "**Attorney General**" or "**General Counsel**" is used, it shall mean the Attorney General of Cherokee Nation.
2. Where the term "**code**" is used, it shall refer to this Cherokee Nation Hunting and Fishing Code and any rules or regulations adopted or promulgated in accordance herewith.
3. Where reference is made to a "**county jail**" or "**state prison**", it shall refer to such facilities as are used for imprisonment by Cherokee Nation.
4. Where there is reference to any "**Court**", it shall mean the Courts of the Cherokee Nation with corresponding jurisdiction.
5. Where the term "**Department**" is used, it shall mean such division of Cherokee Nation that the Principal Chief may designate.
6. Where the term "**Director**" is used, it shall mean the official to whom the Principal Chief has appointed such authority in writing.
7. Where the term "**Oklahoma**" or "**state**" is used, it shall mean Cherokee Nation.
8. Where the term "**Oklahoma Wildlife Conservation Commission**" or "**Commission**" is used, that authority shall vest in the Principal Chief of Cherokee Nation and any such designation or delegation.
9. Where the term "**Person**" is used, it shall mean an individual who is a member of any

federally recognized Indian tribe, including Alaska Native entities, or such other person who would be considered an “Indian” for the purposes of federal criminal prosecution under 18 U.S.C. §§ 1152-1153.

10. Where the term "**warden**" or "**game warden**" or "**law enforcement division**" is used, it shall mean the Cherokee Nation Marshal Service and those officials cross deputized or otherwise designated by the Principal Chief as having authority to issue field citations or take other actions regarding violations in accordance with the laws of the Cherokee Nation.

C. The following additional definitions shall apply:

1. Where reference is made to "**Cherokee citizen**", it means any enrolled citizen of Cherokee Nation.

2. The term "**Reservation Lands**" shall include lands within the jurisdictional boundaries of the Cherokee Nation and 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. Adoption of State Regulations

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

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

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

29 O.S. § 3–204. Procedures.

The Department shall operate under the provisions of the Cherokee Nation 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 Treasurer and be deposited into the Cherokee Nation general fund or such other accounts as may be authorized to promote wildlife conservation and management.

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

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

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

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

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

Specific areas of Tribal 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.

§ 106. License requirements

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

C. Any Person who is not 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 Citizens may be allowed to obtain a permit or license from the Cherokee Nation to hunt, fish, trap, or otherwise harvest wildlife on Reservation Lands, or Tribal Lands, in accordance with a reciprocal or other intertribal agreement approved by the Principal Chief.

D. The Department may promulgate rules or regulations that limit the number of licenses, permits, establish appropriate conditions or restrictions or such other limitations for hunting, fishing, or otherwise harvesting wildlife or engaging in traditional outdoor activities consistent with good conservation practices and the goal of preserving the Nation's wildlife resources for future generations.

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.

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

§ 107. Wildlife harvest registration and checkpoints.

A. The Department shall establish checkpoints or provide other methods 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 check point or reporting system shall include information such as date of harvest, type of wildlife harvested, and other data relevant to 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 shall apply to all 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, 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 support wildlife resource conservation, public safety, habitat preservation, and cultural practices; and
3. The requirements of the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq., are followed.

§ 109. Management plans

A. The Department, in cooperation with other departments of the Nation, shall prepare management plans for fish and wildlife resources of the Nation and their habitats. Such management plans may incorporate the conservation requirements adopted by the State of Oklahoma, adjacent states, nations, and tribes.

B. The Management Plans may be adopted or incorporated in the Strategic Land Plan, Integrated Resource Management Plan and other guidance used to make decisions about tribal land development and future land purchases and may identify sensitive areas and limits on uses of fish and wildlife resources and their habitats by rule or regulation.

C. The Department may enter into agreements with private landowners, state agencies, and tribes, as appropriate for conservation of species, habitats, and the preservation of Cherokee culture.

§ 110. Permission to enter lands and general requirements

A. No Person shall enter restricted lands or privately owned fee lands of another, or Tribal Lands closed to the public by applicable rule or regulation promulgated under this Code to hunt, fish, trap, harvest wildlife or otherwise engage in related activities without first obtaining appropriate permission from the owner of the lands privately held, or in the case of Tribal lands, a permit, license, or other valid authorization from the Department. Any person violating this provision shall be guilty of trespass and subject to criminal and civil penalties in accordance with this Code and Cherokee Nation law.

B. Any Person who may hunt, fish, or otherwise take, fish, birds, plants or wildlife on lands and waters subject to the Nation's jurisdiction shall comply with the requirements set forth in this code and rules promulgated hereunder, applicable federal laws, and the other laws of the Cherokee Nation.

§ 111. Enforcement and field citations

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

§ 112. Violations and Penalties

A. Any Person violating any provision of this code or any rule or regulation incorporated herein or otherwise promulgated hereby, shall be guilty of a crime and/or 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 the rules or regulations

incorporated herein or promulgated hereunder shall be cumulative and in addition to any penalties set forth under Cherokee Nation law.

C. In addition to any other remedy provided by law, the Department may modify, revoke, refuse to renew or refuse to issue a license or permit to Persons in violation of this code.

§ 113. Authority of District Court

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

§ 114. Cooperative and Governmental Agreements

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

Section 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.