

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: JUL 08 2021

ORDINANCE NO.: 540 (2021)

*An ordinance prohibiting unsafe and unsanitary conduct towards
elk, bear, white-tail deer, waterfowl, and fish.*

WHEREAS, the Eastern Band of Cherokee Indians is a federally recognized Indian Tribe with sovereign powers for the regulation of the natural resources of its land; and

WHEREAS, Chapter 113 of the Cherokee Code creates the Division of Agriculture and Natural Resources and tasks it, through its departments and programs, with managing the Cherokee trout fishing, wildlife, air, water, energy, agriculture, and forestry resources; and

WHEREAS, Cherokee Code Section 113-5 and Cherokee Code Chapter 113 Appendix A set out infractions and civil penalties regarding, among other things, various human interactions with wildlife; and

WHEREAS, it has come to the attention of the Division that multiple instances occur of people improperly cleaning fish in Tribal waters, and approaching, harassing, and/or feeding elk, white-tail deer, waterfowl, and bear; and

WHEREAS, these interactions with wildlife present a threat and danger to the health, safety, and welfare of the Tribe and persons on Tribal land; and

WHEREAS, in many of these instances the officers of Natural Resource Enforcement do not have appropriate infractions and civil penalties at their disposal to police the unsafe or unsanitary interactions with wildlife; and

WHEREAS, the Cherokee Code should be amended to add additional infractions and civil penalties to enable Natural Resources Enforcement to lessen these threats to public safety and induce the public's compliance in properly interacting with wildlife.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in Council assembled at which a quorum is present, that in order to protect the health, safety, and welfare of the Tribe and persons on Tribal land as described above, that Cherokee Code Chapter 113 is hereby amended as follows:

[Cherokee Code Sec. 113-1 through 113-4 are unchanged.]

Sec. 113-5. Prohibitions.

(a) Hunting.

- (1) It shall be unlawful to hunt or discharge a firearm within 100 yards of any commercial property, elderly housing, hospital, school, housing project, campground, motel, church or any other property used by the public for public gathering, unless such activity is performed while participating in a lawfully organized exercise.
- (2) It shall be unlawful to spotlight wild animals or birds.
- (3) Migratory game birds may be hunted or taken only during the times and in the manner permitted by federal regulations.
- (4) It shall be unlawful to shoot into a squirrels nest.
- (5) It shall be unlawful to cut den trees.
- (6) It shall be unlawful to hunt, trap, kill or take any bird of prey, elk or deer.
- (7) Reserved.
- (8) It shall be unlawful to trap any big game or any other game except a species specified in this Chapter within Cherokee Indian trust lands.
- (9) Game birds may be taken one-half hour before sunrise through one-half hour after sunset with shotgun, bow and arrow, dogs or by falconry.
- (10) Bear, wild boar, raccoon, opossum, and coyote may be taken day or night.
- (11) It shall be unlawful to hunt or trap on the possessory holding of another Tribal member without permission from the possessory holder.
- (12) Reserved.
- (13) Reserved.
- (14) It shall be unlawful to kill a female (hen) turkey at any time.
- (15) It shall be unlawful to bait wild turkey and deer.
- (16) It shall be unlawful to kill wild turkey with a rifle or pistol.

(b) *Fishing criminal offenses.*

- (1) Seining of fish shall be unlawful.
- (2) Buying or selling of game fish shall be unlawful.
- (3) Giggling or spearing fish shall be unlawful.
- (4) Dynamiting or poisoning of fish shall be unlawful.
- (5) Destruction of fish in Tribal holding facilities shall be unlawful.
- (6) Fishing in closed waters/ponds posted "No Fishing" or "No Trespassing" shall be unlawful.
- (7) The destruction and/or damaging of Tribal holding facilities shall be unlawful.
- (8) Electro fishing shall be unlawful unless performed by the Tribe or through approved research.

(c) *Infractions.*

- (1) It shall be unlawful to exceed the fishing creel limit of ten fish per day, per permit holder (includes catch of children fishing under a supervising adult's permit).
- (2) It shall be unlawful to fish without a permit.
- (3) Snagging of fish is unlawful.
- (4) Grabbing of fish is unlawful.
- (5) Chumming of fish is unlawful.
- (6) Fishing with more than one line is unlawful.

- (7) Setting of trotlines in unlawful.
- (8) Fishing in closed streams, ponds or waters is unlawful.
- (9) Fishing before or after legal fishing hours is unlawful.
- (10) It shall be unlawful to fail to keep individual catch separate.
- (11) Failure to retain all trout caught in Tribal managed ponds shall be unlawful. Catch and release is permitted in all other Tribal Enterprise Waters except in managed ponds.
- (12) It shall be unlawful to retain illegally caught trout.
- (13) Camping in unauthorized areas for the purpose of fishing or hunting is not permitted.
- (14) It shall be unlawful to cut wood or timber, except for campsite use, on Tribal reserve lands at any time except in those areas designated for cutting by the BIA Forestry department.
- (15) It shall be unlawful to hunt any game on Sunday. For purpose of this Chapter, Sunday shall be defined as extending from sunrise on Sunday morning until sunrise on the following Monday morning.
- (16) It shall be unlawful to hunt or fish within the Territorial Jurisdiction of the Eastern Band of Cherokee Indians without the proper license and/or permit.
- (17) It shall be unlawful to fail to produce a valid license and/or permit to any Natural Resources Enforcement Officer when requested.
- (18) It shall be unlawful to bribe, attempt to bribe, cajole or threaten a Natural Resource Enforcement Officer.
- (19) It is unlawful to clean or dispose of fish or fish parts in a stream, river, pond, or other body of water. Fish and fish parts may only be disposed of in sealable bags or containers which are placed in trash cans or other proper receptacles.

[Cherokee Code Sec. 113-6 through 113-26 are unchanged.]

Appendix A. Schedule of civil penalties.

Violations of the provisions enumerated here shall subject the offender to a civil penalty upon the issuance of a citation for such violation as provided in this Section. The civil penalty, if not paid to the Cherokee Tribal Court prior to court date designated on the citation issued, may be recovered by the Tribe in a civil action in the nature of Tribal debt. Unless otherwise provided by a specific provision of this Code, such civil penalties shall be in the amount of \$100.00 for each violation, and each day any single violation continues shall be a separate violation. The following civil penalties are hereby established:

Infractions §113-5(c)		
Number	Offense	Fine for Violation
1.	Exceeding creel limit (violation)	\$100.00
2.	Fishing without a permit	100.00
3.	Snagging of fish	100.00
4.	Grabbing of fish	100.00
5.	Chumming of fish	100.00
6.	Fishing with more than one line	100.00
7.	Setting of trotline	200.00
8.	Fishing in closed streams, ponds or waters	100.00

9.	Fishing before or after legal fishing hours	100.00
10.	Failure to keep individual's catch separate	50.00
11.	Failure to retain all trout caught, when fishing Tribally managed ponds	100.00
12.	Illegally caught trout	50.00
13.	And additional fine for each fish caught in violation of statutes	50.00
14.	Camping in unauthorized area	100.00
15.	Failure to report a bait site, per bait site	100.00
16.	Illegal cutting of wood or timber	75.00
17.	Hunting on Sunday	75.00
18.	Hunting or fishing without the proper license	100.00
19.	Failure to produce valid license and/or permit	25.00
20.	Failure to wear hunter orange while hunting	25.00
21.	Use or possession of illegal bait	100.00
22.	Use of improper equipment	100.00
23.	Running dogs out of season	100.00
24.	Failure to report to NREO	100.00
25.	Bribing or attempted bribery of a Natural Resource Enforcement Officer	100.00
26.	Removing and/or destroying tracking devices or identification collar from dogs	100.00
<u>27.</u>	<u>Feeding, approaching, or harassing elk or white-tailed deer</u>	<u>100.00</u>
<u>28.</u>	<u>Feeding, approaching, or harassing bear (not including legal hunting or baiting)</u>	<u>100.00</u>
<u>29.</u>	<u>Feeding or harassing waterfowl</u>	<u>100.00</u>

Note: In addition to all fines, court costs shall be assessed and added in amounts determined by the courts.

All other offenses are criminal violations and offenders within the criminal jurisdiction will be charged in Tribal Court; those outside the Tribe's jurisdiction will be referred to United States for prosecution.

BE IT FINALLY ORDAINED, that all ordinances and resolutions inconsistent with this ordinance are hereby rescinded, and that this ordinance shall become effective upon ratification by the Principal Chief.

Submitted by the Division of Agriculture and Natural Resources

Department of Natural Resources and Natural Resources Enforcement