

TRIBAL CODE

CHAPTER 21

CONSERVATION CODE - NONMEMBERS

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HISTORY NOTE

Current Ordinance.

This chapter was repealed and replaced in its entirety and adopted by Resolution 20(07) on January 22, 2007.

Related Actions:

Adopted permit system for hunting, fishing and trapping by nonmembers, on tribal lands per 18 U.S.C. sec. 1164 and 1165 September 9, 1975, Resolution No. 102(75).

Trust land closed to nonmember hunting, fishing, trapping and ricing in September 19, 1977, Resolution No. 141(77).

Permit system for hunting, fishing and trapping per 18 U.S.C. sec. 1164 and 1165 established September 11, 1978, Resolution No. 182(78).

Fishing allowed for nonmembers camping at WaSwaGon Campground, November 27, 1978, Resolution No. 213(78).

Hunting and trapping authorized for nonmembers camping at WaSwaGon Campground February 12, 1979, Resolution No. 17(79), amending Resolution No. 213(78).

Fishing by nonmembers permitted with tribal license only, March 2, 1981, Resolution No. 49(81).

Permit system for hunting and trapping on tribal land per 18 U.S.C. sec. 1164 and 1165 established August 10, 1981, Resolution No. 176(81).

Permit system reaffirmed September 13, 1982, Resolution No. 305(82).

Early Actions (Predating Current Ordinance):

Drafting of nonmember code authorized March 26, 1973, Resolution No. 28(73).

Ordinance regulating fishing adopted April 9, 1973, Resolution No. 32(73).

Ordinance requiring license for navigable craft adopted April 9, 1973, Resolution No. 34(73).

Resolution Nos.32(73) and 34(73) rescinded following Secretarial disapproval, September 9, 1974, Resolution No. 89(74).

Adopted by the Tribal Council by resolution May 21, 1975, Resolution No. 49(75).

Approved by the Secretary of the Interior July 28, 1975.

Effective upon establishment of Tribal Court July 27, 1981, Resolution No. 167(81).

Resolution No. 319A (88), September 5, 1988 added Sec.21.406.

Resolution No. 328(99), July 16, 1999, amends Sec.21.707.

Cases:

Lac du Flambeau Band v. One 200 - 250 Foot Small Gillnet, LDF Tribal Court Appeal No. 86-01, opinion filed August 8, 1988. This code applies to nonmembers only and is not the code under which members are regulated.

TRIBAL CODE

CHAPTER 21

CONSERVATION CODE - NONMEMBERS

CHAPTER I: IMPLEMENTATION OF CONSERVATION PRACTICES

21.101 Definitions.

As used in this ordinance, the following terms shall have the meanings given to them in this section.

(1) "Conservation Code Committee" shall mean a committee appointed by the Tribal Council which shall have authority and responsibility to set up regulations of all matters within the Lac du Flambeau Reservation pertaining to hunting, fishing, trapping, the gathering of wild rice and other fruits of the earth, and for enforcement of such regulations. These regulations shall not be authorized or enforced until given final approval by the Tribal Council.

(2) "Lac du Flambeau Reservation" shall mean all lands and waters designated by virtue of the Treaty dated September 30, 1854 (10 Stat. 1109) between the Chippewa Indians of Lake Superior and the Mississippi and the United States, and proclaimed to be an Indian Reservation for the use and benefit of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(3) "Tribal Council" shall be the duly constituted Tribal Council for the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(4) "Special permit" shall mean a permit issued by the Conservation Code Committee exempting the recipient from one or more of the regulations contained herein upon finding by the Committee that granting of the exemption will not endanger the resource.

(5) "Authorized Enforcement Personnel" shall mean Conservation Law Game Wardens appointed by the Tribal Council.

(6) "Enrolled Member" shall mean those persons who are currently enrolled as provided in Article II - MEMBERSHIP of the Constitution and Bylaws of the Lac du Flambeau Band of Lake Superior Chippewa Indians, and Tribal Code Chapter 10.

(7) "Nonmembers" shall mean all those persons who are not members of the Lac du Flambeau Band as defined in Subsection (f) above.

(8) "Identification Card" shall mean a card duly issued by the Tribal Council for a nominal fee, to all enrolled members pursuant to subsection 6 above.

21.102 Duties of the Committee.

The Conservation Code Committee shall perform all duties and responsibilities and shall exercise authority delegated to it by the Tribal Council by this ordinance, including but not limited to:

(1) Oversee issuance of permits or licenses to nonmembers for fishing, hunting, ricing, trapping and other special permits authorized by these regulations. Permits and licenses shall be issued by the Tribal Fish and Game Department.

(2) Amendment of these regulations and adoption of additional regulations.

(3) Regulations applying to nonmembers.

(4) Setting of seasons where none are specifically provided, closing or shortening seasons when necessary for the preservation of the resource or extending or opening seasons when it is determined that it will not harm the resource.

(5) Setting limits on the manner or amount of taking any fish, game, fur bearing animals or wild rice when necessary for the conservation of the resource, and altering limits specifically provided by these regulations.

(6) Closing selected lakes, rivers, streams, and portions of the Lac du Flambeau Reservation from hunting, fishing, trapping or ricing, for such period of time as the Committee may deem necessary to conserve the resource.

(7) Regulating the use, sale, netting and possession of minnows, including the prohibition of certain species and licensing the sale of minnows within the Lac du Flambeau Reservation.

(8) Regulating motor trolling while fishing within the exterior boundaries of the Lac du Flambeau Reservation.

(9) Reviewing on an annual basis or more frequently the numbers of each type or permit and nonmember licenses outstanding to determine whether or not it

is in the best interest of conservation to issue such permits and nonmember licenses and making recommendations regarding the same to the Tribal Council.

(10) Revocation of permits and nonmember licenses under the provisions within this ordinance.

(11) Keeping and maintaining an up-to-date and accurate list of all persons to whom each type of permit or license has been issued.

(12) Establishing annual fees for the issuance of nonmember guide service licenses for the purpose of hunting, fishing, trapping, gathering wild rice or other fruits of the earth.

CHAPTER II: SMALL GAME HUNTING BY NONMEMBERS

21.201 Definition.

Small Game shall mean rabbit, hare, squirrel, ruffed grouse (partridge), sharptail grouse, spruce grouse, pheasant, woodcock and birds regulated by Federal Law as migratory water fowl under 50 C.F.R. Part 10.

21.202 License Required.

Every nonmember who hunts small game within the exterior boundaries of the Lac du Flambeau reservation as defined in Article I, Section 1(b) of this Code, shall have in his or her possession a Nonmember Small Game Hunting License duly issued or approved by the Fish and Game Department.

21.203 Species Limited.

No bird, fish, or animal shall be shot, wounded, or captured, trapped, or molested by any holder of a nonmember small game license other than small game as defined above.

21.204 DNR Regulations apply.

Where not inconsistent with this ordinance, regulations of the Wisconsin Department of Natural Resources governing open seasons, bag limits, and methods of hunting shall apply to nonmembers hunting under a nonmember small game license.

21.205 Closed Seasons.

In order to conserve the natural resources of the Lac du Flambeau Reservation, the Conservation Code Committee may declare closed seasons for small game hunting by nonmembers for such period of time as the Committee may deem necessary to conserve the resource.

21.206 License Fees.

The Conservation Code Committee shall recommend to the Tribal Council the amount of fees to be charged for annual nonmember small game licenses. Fees so charged shall be deposited in the Fish and Game Department and used for such purposes as the Tribal Council deems appropriate.

CHAPTER III: BIG GAME HUNTING BY NONMEMBERS

21.301 Definition.

Big game shall mean whitetail deer and black bear only.

21.302 License Required.

Every nonmember who hunts big game within the exterior boundaries of the Lac du Flambeau Reservation as defined in Sec. 21.101(2) of this Code, shall have in his or her possession a big game hunting license duly issued or approved by the Fish and Game Department.

21.303 Species Limited.

No bird, fish, or animal may be shot, wounded, captured, trapped, or molested by any holder or a big game license other than big game as defined above.

21.304 DNR Regulations Apply.

Where not inconsistent with this ordinance, regulations of the Wisconsin Department of Natural Resources governing open seasons, bag limits, and methods of hunting shall apply to nonmembers hunting under a nonmember big game license.

21.305 Closed Seasons.

In order to conserve the natural resources of the Lac du Flambeau Reservation, the Conservation Code Committee may declare closed seasons for big game hunting by nonmembers for such period of time as the Committee may deem necessary to conserve the resource.

21.306 License Fees.

The Conservation Code Committee shall recommend to the Tribal Council the amount of fees to be charged for annual nonmember big game hunting Licenses. Fees so charged shall be deposited in the Fish and Game Department and used for such purposes as the Tribal Council deems appropriate.

CHAPTER IV: GAME FISHING BY NONMEMBERS

21.401 Definition.

"Game Fish" shall mean Brook Trout, Brown Trout, Rainbow Trout, Lake Trout, Splake, Sauger, Walleye Pike, Muskellunge, Northern Pike, Largemouth Bass, Smallmouth Bass, and Sturgeon.

21.402 License Required.

Every nonmember who fishes within the exterior boundaries of the Lac du Flambeau Reservation as defined in Sec. 21.101(2) of this Code, shall have in his or her possession a nonmember fishing license duly issued or approved by the Fish and Game Department.

21.403 DNR Regulations Apply.

Where not inconsistent with this ordinance, regulations of the Wisconsin Department of Natural Resources governing open seasons, bag limits, and methods of fishing shall apply to nonmembers fishing under a nonmember fishing license.

21.404 Closed Seasons.

In order to conserve the natural resources of the Lac du Flambeau Reservation, the Conservation Code Committee may declare closed seasons for fishing by nonmembers for such period of time as the Committee may deem necessary to conserve the resource.

21.405 License Fees.

The Conservation Code Committee shall recommend to the Tribal Council the amount of fees to be charged for annual nonmember fishing licenses. Fees so charged shall be deposited in the Fish and Game Department and used for such purposes as the Tribal Council deems appropriate.

CHAPTER V: TRAPPING BY NONMEMBERS OF FUR BEARING ANIMALS

21.501 Definition.

"Fur bearing animals" shall mean beaver, mink muskrat, otter, skunk, fox, raccoon, weasel, opossum, pine marten, fisher, badger, squirrel, wild cat, and lynx.

21.502 License Required.

Every nonmember who traps fur bearing animals within the exterior boundaries of the Lac du Flambeau Reservation as defined in Sec. 21.101 (2) of this Code, shall have in his or her possession a nonmember trapping license duly issued or approved by the Fish and Game Department.

21.503 Species Limited.

No bird, fish, or animal shall be shot, wounded, captured, trapped, or molested by any holder of a nonmember trapping license other than fur bearing animals as defined above.

21.504 DNR Regulations Apply.

Where not inconsistent with this ordinance, regulations of the Wisconsin Department of Natural Resources governing open seasons, bag limits, and methods of trapping shall apply to Nonmembers trapping under a Nonmember Trapping License.

21.505 Closed Seasons.

In order to conserve the natural resources of the Lac du Flambeau Reservation, the Conservation Code Committee may declare closed seasons for trapping by nonmembers for such period of time as the Committee may deem necessary to protect the resource.

21.506 License Fees.

The Conservation Code Committee shall recommend to the Tribal Council the amount of fees to be charged for annual nonmember trapping licenses. Fees so charged shall be deposited in the Fish and Game Department and used for such purposes as the Tribal Council deems appropriate, earmarked for conservation oriented projects.

CHAPTER VI: RICING BY NONMEMBERS

21.601 Definitions.

"Wild rice" shall mean that rice crop which grows naturally or as a result or reseeded in the natural lakes and waters, including lakes resulting from power dams and flood control structures, within the exterior boundaries of the Lac du Flambeau Reservation.

21.602 License Required.

Every nonmember who harvests wild rice within the Lac du Flambeau Reservation as defined in Sec 21.101, shall have in his or her possession a nonmember ricing license duly issued by the Fish and Game Department.

21.603 Methods of Harvest.

(1) No water craft may be used for the harvest of wild rice other than a ricing boat, or canoe propelled by hand, which ricing boat or canoe may have a top width of not more than 38 inches and a length of not more than 18 feet, nor any machine or device be used for the harvest of wild rice other than a smooth, rounded stick not more than 38 inches in length and held and operated by hand.

(2) No water craft utilized for the actual gathering of wild rice may be propelled by "motorized power".

21.604 Seasons.

The Conservation Code Committee shall determine each year and shall authorize the Fish and Game Department to post notices announcing the season for the harvest of wild rice that year by nonmembers and the length of time each day during which wild rice may be harvested.

21.605 Closed Seasons.

In order to conserve the natural resources of the Lac du Flambeau Reservation, the Conservation Code Committee may declare closed seasons for ricing for such periods of time and at such locations as the Committee may deem necessary to conserve the resource.

21.606 License Fees.

The Conservation Code Committee shall recommend to the Tribal Council the amount of fees to be charged for annual nonmember ricing licenses. Fees so charged shall be deposited to the Fish and Game Department and used for such purposes as the Tribal Council deems appropriate.

CHAPTER VII: CONDUCT BY NONMEMBERS WHICH IS PROHIBITED

21.701 Protected Species.

There shall be no taking, possession, molesting, or transportation whatsoever of bald eagle, osprey, elk, fisher, golden eagle, marten, moose, timber wolf, or any species determined to be rare or endangered by U.S. Conservation Code Service and listed in the current edition of "Rare and Endangered Fish and Wildlife of the United States."

21.702 Littering.

No weeds, sod, brush, cans, bottles, machinery, garbage, trash, waste, or rubbish shall be thrown, left, or deposited on any road, highway, logging trail or path within the Lac du Flambeau Reservation.

21.703 Littering In Water.

No metal cans, bottles, garbage, trash, waste, or rubbish shall be thrown into or left upon any lake or body of water, including streams and rivers, within the Lac du Flambeau Reservation.

21.704 Off-Road Vehicles.

No snowmobile, all terrain vehicle, dune buggy or other vehicle expressly designed for or capable of off-road operation shall be operated on Indian lands without the consent of the Tribal Council or Indian owner. Failure to post Indian lands does not imply consent for said use. Indian Lands means lands held in trust by the United States Government for the use or benefit of the Lac du Flambeau Band of Lake Superior Chippewa Indians, or individual Indians.

21.705 Waste Prohibited

No nonmember shall unreasonably waste, injure, destroy, or impair any wild plant, animal, or fish while engaging in the harvest of said species, and/or unreasonably waste any wild plant, animal, or fish that has been harvested.

21.706 License Required.

Any nonmember who kills, wounds, catches, takes, traps, or has in his possession any fish, wild rice, small game, big game, or fur bearing animal included and regulated in this ordinance without a proper nonmember license shall be prosecuted in the Tribal Conservation Court. Upon a finding of violation, the violator may be required to pay a penalty as set forth in Chapter VIII of this Code. Said forfeiture shall be payable to the treasury of the Tribal Council and shall be used for tribal purposes.

21.707 Camping.

Camping is prohibited on all Indian Lands, except in designated camping areas as set forth by the Tribal Council. The only authorized camping areas are the Tribal Campground, the Bear River Pow Wow Grounds, while the event is occurring, and Nii-Jii Pow Wow Grounds, while the event is occurring. Indian lands means lands held in trust by the United States Government for the use and/or benefit of the Lac du Flambeau Band of Lake Superior Chippewa, or individual Indians. Camping by tribal members and their non-member guests is not effected in any way as long as the tribal member is present at the campsite.

21.708 Crossing Tribal Land.

Utilization of tribal land for the purposes of obtaining ingress or egress from a body of water within the exterior boundaries of the Lac du Flambeau Reservation or being on tribal land for the purpose of engaging in any of the activities enumerated in this ordinance is prohibited for any person who does not possess a valid tribally issued or approved license.

21.709 Violations.

Any nonmember who violates any of the provisions of the chapter above shall be processed in the Lac du Flambeau Tribal Court provided for in Section 8 Chapter 80 of the Tribal Code. Upon a finding of violations, the violator may be required to pay a penalty as set forth in Chapter VIII of this Code. Said forfeiture shall be payable to the treasury of the Tribal Council and shall be used for tribal purposes.

CHAPTER VIII: ENFORCEMENT

21.801 Hearings in Tribal Court.

Jurisdiction over all matters arising under this code shall be with the tribal court which shall adjudicate in accordance with the Tribal Court Code all questions, complaints and alleged violations involving the provisions of this ordinance. Forfeiture proceedings shall be conducted in accordance with Chapter IV of the

Tribal Court Code, provided that citations issued thereunder may be served by ordinary mail.

21.802 Enforcement by Deputized Conservation Warden.

Any provision of this code may be enforced by wardens of the tribal conservation department.

21.803 Enforcement by Wisconsin Department of Natural Resources Wardens.

Wardens and Deputy Wardens of the Wisconsin Department of Natural Resources are hereby empowered to enforce the provisions of this code and to institute proceedings in the tribal court by use of citation forms of that Department as described in Wis. Stat. s.23.54 or to refer the matter to appropriate tribal wardens or the tribal prosecutor for further investigation or action.

21.804 Search and Seizure; When Authorized.

Any person authorized to enforce the provisions of this code may conduct a search of an object, place or person whose conduct is regulated by the provisions of this ordinance, and seize things when the search is made:

- (1) With consent;
 - (2) Pursuant to a valid search warrant;
 - (3) With the authority and within the scope of a right of lawful inspection.
 - (4) Incident to the issuance of a lawfully issued citation under this code;
- or
- (5) As otherwise authorized by law or by the provisions of this code.

21.805 Investigations and Citations.

- (1) Any person authorized to enforce the provisions of this code may:
 - (a) Subject to subsection (2), conduct routine inspections of vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, containers, packages, and other receptacles contained therein, utilized by a person in a harvest activity authorized by this code;

(b) Execute and serve warrants and other process issued by the tribal court in accordance with applicable law;

(c) Stop and board any boat and stop any automobile or other vehicle pursuant to subs. (1)(a) or if the person reasonably suspects there is a violation or breach of this code;

(d) With or without a warrant, open, enter, and examine vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, and packages and other receptacles contained therein, in which the person has probable cause to believe that contraband wild plants or wild animals, or carcasses or part thereof, may be contained or pursuant to subs. (1)(a);

(e) Issue a citation on a form approved by the Tribe or tribal court to any person whose conduct is regulated by the provisions of this ordinance upon reasonable belief that such member has violated or breached a provision of this code; and

(f) May seize and hold subject to the order of the tribal court any alleged contraband or property which such person reasonably believes may be needed as evidence in connection with the institution of proceedings in tribal court or any property otherwise authorized to be seized by the provisions of this code.

(2) The inspections authorized by subsection (1)(a) shall be conducted in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities.

21.806 Registration Information.

Tribal wardens are hereby empowered to request and receive from tribal tag and permit issuance stations and harvest registration stations information regarding tag and permit issuance and harvest registration.

21.807 Penalties.

Any person who, for himself or herself, or by his or her agent, servant or employee or who as an agent, servant or employee of another, violates this Code, shall be liable as follows:

(1) For all violations for which no other amount is specified, a civil remedial forfeiture of not more than \$5,000.00;

(2) For any violation, a revocation or suspension of hunting, fishing or gathering privileges for a period of time within the discretion of the court;

(3) For any violation, a civil remedial forfeiture of any property, including boats, motors, vehicles, hunting or fishing equipment, or other property, used in the commission of the violation of this code;

(4) For all violations, the court may order a natural resources assessment not to exceed 75% of the amount of the civil remedial forfeiture; and

(5) For all violations, court costs in the amount of \$20.

(6) The court may order community service work in lieu of any forfeiture imposed.

21.808 Enhancement of Forfeiture.

Upon conviction for a violation of this Code, when such person has been convicted of a previous violation of this Code within a period of one year, the forfeiture shall be enhanced as follows:

(1) For a violation carrying a \$20 minimum, not less than \$100 nor more than \$500.

(2) For a violation carrying a \$100 minimum, not less than \$250 nor more than \$500.

(3) For a violation carrying a \$250 minimum, \$500.

(4) For a third violation within a period of one year, \$500 and mandatory revocation for a minimum of one year.

21.809 Civil Damages.

In addition to any other penalty allowed by this code, the tribal court may award to the Tribe or, in addition to an action to impose penalties, the Tribe may bring a civil action for recovery of damages against any person unlawfully killing, wounding, catching, taking, trapping, or having unlawfully in possession any of the following named protected wild plant, wild animals, or any part thereof, and the sum assessed for damages for each wild plant or wild animal, shall not be less than the amount stated in this section:

- (1) Any endangered and threatened species protected under this code, \$875.00.
- (2) Any fisher, prairie chicken or sand hill crane, \$262.50.
- (3) Any deer, moose, elk or bear, \$75.00.
- (4) Any bobcat, cougar, fox, beaver or otter, \$87.50.
- (5) Any coyote, raccoon or mink, \$43.75.
- (6) Any sharptail grouse, ruffed grouse, spruce grouse, wild duck, coot, wild goose or brant, \$26.25.
- (7) Any pheasant, Hungarian partridge, bobwhite, quail, rail, Wilson's snipe, wood cock or shore bird, or protected song bird or harmless bird, \$17.50.
- (8) Any muskrat, rabbit or squirrel, \$8.75.
- (9) Any muskellunge or rock or lake sturgeon, \$43.75.
- (10) Any largemouth or smallmouth bass, \$26.25.
- (11) Any brook, rainbow, brown, or steelhead trout, \$26.25.
- (12) Any walleye, northern pike, or any other game fish not mentioned in pars. (9) to (11), \$8.75.
- (13) Any wild animal or wild plant not mentioned in pars. (2) to (8), \$17.50.

21.810 Seized Wild Animals and Wild Plants.

No wild animal or wild plant seized pursuant to this code shall be returned to a convicted violator, his or her immediate family, or other member of the hunting, fishing or gathering party.

21.811 Specific Minimum Forfeitures for Certain Violations.

- (1) For a violation of double or more the bag limit for walleye, a forfeiture no less than \$150 and no greater than \$500, plus a forfeiture no less than \$8.75 and no greater than \$500 for each walleye in excess of double the bag limit.

(2) For a violation of more than double the bag limit specified for muskellunge, a forfeiture no less than \$75 and no greater than \$1000 for each muskellunge over double the bag limit.

(3) For a violation of more than double the bag limit established for bass, a forfeiture no less than \$25 per bass in excess of double the daily bag limit.

(4) For a violation of more than double the bag limit for sturgeon, a forfeiture no less than \$400 per sturgeon in excess of double the bag limit.

(5) For spearing in closed waters, a forfeiture no less than \$150 and a forfeiture of no less than \$8.75 for each walleye, no less than \$75 for each muskellunge, and no less than \$400 for each sturgeon, provided that each per fish forfeiture does not exceed \$500.

(6) For a violation of walleye size limits, a forfeiture no less than \$50 and no greater than \$500, plus a forfeiture of \$8.75 per walleye for possessing more than two (2) walleye in violation of Section 26.905 (3)(b)(ii) or of possessing more than one walleye in excess of 24 inches in violation of said Section.

(7) For netting in closed waters, a forfeiture no less than \$250 and a forfeiture no less than \$8.75 for each walleye, no less than \$75 for each muskellunge, no less than \$25 for each bass, and no less than \$400 for each sturgeon.

(8) For each violation of walleye sex limits, a forfeiture no less than \$50 and no greater than \$500, plus a forfeiture of \$8.75 per walleye.

(9) For a violation of spearing or netting without a permit where required, a forfeiture no less than \$100 plus a forfeiture of \$8.75 for each walleye, \$75 for each muskellunge, \$25 for each bass, and \$400 for each sturgeon taken in violation of the permitting requirement.

(10) For a violation of taking an antler less deer without the required permit, a minimum forfeiture of \$2000.00.

(11) For a violation of taking an antler less deer from a management unit not authorized by the requisite permit, a minimum forfeiture of \$2000.00.

(12) For a violation of hunting or taking a bear without the required permit, a minimum forfeiture of \$2000.00.

21.812 Parties to a Violation.

(1) Whoever is involved in the commission of a violation of this code shall be deemed a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is involved in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids or abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it, or advises, hires, or counsels or otherwise procures another to commit it.