

Chapter 11. Natural Resource Protection

4.1101 SHORT TITLE

This Statute shall be known and cited as the Little Traverse Bay Bands of Odawa Indians' "Natural Resource Protection Statute."

(WOS 2008-12, October 5, 2008, Section I)

4.1102 PURPOSE

The purpose of this Statute is to protect the environment, natural resources and the Treaty reserved rights of the Tribe while promoting, honoring and respecting the traditional, spiritual, subsistence and commercial use of the Tribe's natural resources. This Statute establishes the responsibilities, powers, and duties of the Natural Resource Department and its Tribal Conservation Enforcement Division; creates certain natural resource related funds and prescribes penalties.

(WOS 2008-12, October 5, 2008, Section II)

4.1103 DEFINITIONS

- A.** “**Ceded Territory**” means all lands and waters ceded in the 1836 Treaty of Washington, 7 Stat. 491, as described in Article First, that are not LTBB Reservation lands or within the reservation of another federally recognized Tribe.
- B.** “**Commission**” or “**NRC**” means the Natural Resource Commission.
- C.** “**Department**” means the Natural Resource Department.
- D.** “**Director**” means the director of the Natural Resource Department.
- E.** “**Executive**” means the Tribal Chairperson and Vice-Chairperson of the Executive Branch created under Article VIII of the Constitution, including their designees.
- F.** “**Firearm**” means a weapon from which dangerous projectiles may be propelled by use

of explosives, gas, or air as a means of propulsion.

G. “LTBB Reservation” means all lands and waters as described in the LTBB Constitution Article III (H).

H. “Non-member Indian” means a person who is an enrolled member of another federally recognized Indian Tribe other than the Little Traverse Bay Bands of Odawa Indians.

I. “Officer” means a Tribal Conservation Enforcement Officer as described in Section VII of this Statute.

J. “Reservation Trust Properties” means land held in trust for LTBB by the United States.

K. “Tribe” or “LTBB” means the Waganakising Odawa, also known as the Little Traverse Bay Bands of Odawa Indians.

L. “Tribal Court” means the LTBB Court created under Article IX of the LTBB Constitution.

M. “Tribal Citizen” means an enrolled member of LTBB.

N. “Watercraft” means any boat or other floating device of rigid or inflatable construction which is designed to carry people or things on the water.

O. “Wildlife” means all creatures, not human, wild by nature, endowed with sensation, and power of voluntary motion, which includes but not limited to quadrupeds, mammals, birds, fish, amphibians, reptiles, crustaceans, insects, and mollusks.

(WOS 2008-12, October 5, 2008, Section III)

4.1104 JURISDICTION

In accordance with Article IV (B) of the LTBB Constitution the jurisdiction of the Tribe "shall extend to all territory set forth in Section (A) of this Article [the LTBB Reservation and trust lands] and to any and all persons or activities therein based upon the inherent sovereign

authority of the Little Traverse Bay Bands of Odawa Indians and Federal law." Without conceding any of the LTBB Constitutional jurisdictions, regulation of wildlife, fish and other natural resources activities under this Statute will extend to the following persons and areas:

- A. LTBB Citizens and non-member Indians anywhere within the LTBB Reservation, including both civil and criminal jurisdiction;
- B. All persons within Reservation Trust Properties, except in the case on non-Indians only the exercise of civil jurisdiction; and
- C. LTBB Citizens exercising their Treaty rights throughout the 1836 Ceded Territory, including both civil and criminal jurisdiction.

This Statute does not preclude any concurrent federal jurisdiction under applicable federal law.

(WOS 2008-12, October 5, 2008, Section IV)

4.1105 NATURAL RESOURCE COMMISSION

This Statute is not intended to add or diminish the duties and responsibilities of the Natural Resource Commission under WAGANAKISING STATUTE 2005-01, as may be amended.

(WOS 2008-12, October 5, 2008, Section V)

4.1106 NATURAL RESOURCE DEPARTMENT

The Natural Resource Department for the Tribe is hereby created as an Executive Department and each annual budget submitted by the Executive shall include funding for the Department's operation. The Department falls under the purview of Executive oversight and has the following duties and powers:

- A. Promote and protect the Treaty Rights reserved to LTBB Tribal Citizens and ensure that Tribal Citizens rights are not obstructed or interfered with while lawfully exercising such rights.
- B. Protect and conserve the natural resources of the Tribe through management, biological

monitoring, research, and enhancement activities;

C. Issue NRC authorized permits, licenses and collect costs for such, including registration of vessels and vehicles used principally for exercise of Treaty Rights;

D. Represent the Tribe and its natural resource related interests on international, federal, tribal, state and inter-agency natural resource related boards, commissions, or organizations with the direction or concurrence of the Executive;

E. Recommend to the NRC and Executive Branch, policies and long range programs for the management and preservation of fish, wildlife and other natural resources;

F. Under the direction of the Executive, negotiate intergovernmental agreements, including but not limited to, cross-deputization agreements, with tribal, federal, state or local governments and their political subdivisions, and agreements with private entities, subject to Tribal Council approval;

G. Management of the Tribe's parks, campgrounds, wild areas, preserves, research areas, forests, docks, boat launches/access sites, or other similar natural or outdoor recreation areas;

H. Establishment of natural resource related procedures and regulations as may be necessary in accordance with duties, powers and responsibilities of this Statute, subject to Tribal Council approval where necessary under the LTBB Constitution;

I. Enforcement of Tribal natural resource related regulations, statutes and laws;

J. Hire and employ appropriately trained and/or certified staff as may be necessary in accordance with the duties, powers and responsibilities of this Statute;

K. Provide training to LTBB Citizens in hunting safety and the safe handling of firearms, bows or other legal devices and safe use and maintenance of boats and other vehicles used to harvest treaty resources;

(WOS 2008-12, October 5, 2008, Section VI)

A. The Conservation Enforcement Division is hereby created within the Natural Resources Department to aid in the enforcement of Tribal laws and regulations concerning the protection of natural resources, such as hunting, fishing and gathering.

B. Tribal Conservation Enforcement Officers. The Department shall employ Tribal Conservation Enforcement Officer(s) to carry out the duties and functions of the Division. Officers are law enforcement officers of LTBB, exercising the primary and secondary duties as set forth and limited in subsection C of this Section, possessing all of the privileges, powers and immunities of any such officer.

- 1.** Requirements. A person selected to become an Officer shall meet and maintain the following minimum requirements:
 - a.** Have legal residency in the United States;
 - b.** Have attained a minimum of 21 years of age;
 - c.** Have earned a high school diploma or have attained a passing score on the general education development test indicating a high school graduation level. Attainment of an associate or baccalaureate degree shall be evidence of having met this standard;
 - d.** Have no prior felony convictions, including expungements and set asides;
 - e.** Have never been convicted of a misdemeanor of domestic violence (Tribal, state or federal);
 - f.** Possess good moral character as determined by a favorable comprehensive background investigation covering school and employment records, home environment, personal traits and integrity. Consideration shall be given to a history of, and circumstances pertaining to, all law violations, including traffic and conservation law convictions, as indicating lack of good moral character;
 - g.** Possess a valid motor vehicle operator's license. Driving privileges shall not be in a state of suspension, revocation, or denial at the time of entry into a law

enforcement academy or activation as an Officer;

- h.** Read and write at a level necessary to perform the job of an Officer;
- i.** Test negative for the illicit use of a controlled substance(s);
- j.** Successfully completed the basic law enforcement training recognized by the Tribe including such academy or programs of the United States Indian Police Academy, State of Michigan, a post agency in another state, or a federally operated law enforcement academy;
- k.** Pass pre-enrollment physical fitness test;
- l.** Comply with all the following:
 - i.** free from any other impediment of the senses;
 - ii.** physically sound;
- m.** Be free from the following, which may impair the performance of the essential job functions of an Officer or which may endanger the lives of others or the Officer:
 - i.** physical defects;
 - ii.** chronic diseases;
 - iii.** mental and emotional instabilities.

2. Physical Fitness.

Officers must maintain an acceptable level of fitness and readiness during the term of their employment. Officer fitness shall be periodically evaluated during employment or upon request of the Chief Conservation Officer and/or Director, by successfully completing an approved physical efficiency battery.

3. Oath of Office.

Officers shall be sworn in by a Tribal judge to support, uphold, and defend the Constitution of the Tribe and to enforce the laws and regulations of the Tribe in accordance with this Statute.

4. Firearms.

Officers are authorized to carry firearms in the performance of their duties and are required to qualify semi-annually at a score of 80% (240) or better under the direction of a certified firearms instructor in accordance with Federal Law Enforcement Training Center firearm standards.

5. Authorities.

Officers shall have the following authority in their enforcement of criminal and civil violations within the jurisdiction of the Tribe:

- a.** Execute any process for enforcement of this Statute and/or any other natural resource, regulations or laws of the Tribe;
- b.** Issue citations for violations of this Statute and/or any other natural resource regulations or laws of the Tribe.
- c.** Execute warrants issued for the arrest of violators of this Statute and/or any other natural resource regulations or laws of the Tribe;
- d.** Arrest, without warrant, any person committing a criminal violation in his/her presence;
- e.** Make arrests and issue citations for any violation within LTBB jurisdiction when in the course of carrying out their primary duties they encounter people with outstanding warrants, or who commit violations in their presence.
- f.** Serve subpoenas or other legal documents issued in matters arising under this Statute and/or any other natural resource regulations or laws of the Tribe;
- g.** Search and Seizures. Execute searches with or without a warrant for matters

arising under this Statute and/or any other natural resource regulations or laws in accordance with the provisions below.

h. Any Officer may conduct a search of an object, place or person whose conduct is regulated by this Statute and/or any other natural resource regulations or laws of the Tribe, and may seize items when the search is made:

- i.** with consent;
- ii.** pursuant to a valid search warrant;
- iii.** incident to the issuance of a lawfully issued citation;
- iv.** with the authority and within the scope of a right of lawful inspection; or
- v.** as otherwise authorized by law or by provisions of this Statute.

i. Any Officer may conduct routine inspections, in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities, of vessels, boats, wagons, trailers, automobiles, snowmobiles, off-road vehicles, containers, packages, and other receptacles contained therein, utilized by a person in harvest activity authorized by this Statute.

j. If the Officer has probable cause to believe that contraband, fish, vegetation, wildlife or parts thereof taken in violation of this and/or other natural resource statutes, laws or regulations, or the instrumentalities of such illegal taking, are contained therein, the Officer may, without a search warrant, search any person, aircraft, watercraft, motorized vehicle, box, wildlife, fish, bag, locker, tool box, ice chest, camper, camper shell, trailer, backpack, bedroll, sleeping bag, or other container or package.

k. If the Officer has probable cause to believe wildlife or parts have been taken, possessed, or transported in violation of this and/or other natural resource statutes, and that any object has been used as the instrumentality of such illegal taking, the Officer may inspect all such wildlife, parts or objects, and may seize them as evidence.

l. For all property seized as evidence, the Officer shall make an inventory and provide a copy to the person from whom the property was taken. All property seized

shall be stored, returned and/or disposed of pursuant to policy.

m. Detainment and Apprehension of Suspected Violators. Any Officer who has reasonable grounds to believe that a person has violated this Statute and/or any other natural resource regulations or laws of the Tribe, either in or out of the Officer's presence, shall identify himself or herself to such person and promptly determine whether the person is a tribal member or non-member Indian, or non-Indian. In making such determination, the Officer may demand identification and take actions as the Officer reasonably believes are necessary to make the determination.

n. If an Officer reasonably suspects there is a violation, the Officer may stop and board any boat and stop any vehicle.

o. If an Officer has probable cause to believe that any provision this Statute and/or any other natural resource regulations or laws of the Tribe have been violated, the Officer may enter into or upon any private or public property for any purpose in Section VII.B.5.h (Search and Seizure) or for the purpose of patrolling, investigating, or examining. The term "private property" as used in this section does not include dwellings or dwelling houses or that which is within the curtilage of any dwelling house.

p. Use of Force

i. Officers are authorized to use force only to a level which is necessary, reasonable and appropriate to achieve the desired legal objective or to protect himself/herself or others from an immediate threat of death or serious physical injury.

ii. Reporting Use of Force. A written report shall be required for each of the following situations:

- a) when a firearm is drawn and/or is discharged outside of the firing range.
- b) when a non-lethal weapon is used.
- c) when use of force results in death or injury.

iii. Supervisor Summons. A supervisor or investigator shall be summoned to the scene in the following situations involving the use of force.

- a) when a subject communicates that an injury has been inflicted,
- b) when a firearm is discharged as a means of force,
- c) when use of force results in death or injury.

iv. Administrative Review. All reported use of force incidents shall be reviewed by the appropriate supervisor to determine whether:

- a) any laws or departmental policies were violated. All incidents involving the use of force that causes death shall be subject to both an administrative and criminal investigation.
- b) the relevant policy was clearly understandable and effective to cover the situation.
- c) training is currently adequate.

v. Annual Report. An annual summary of incidents involving the use of force will be prepared and submitted to the Executive Branch and Tribal Council on an annual basis.

C. Primary and secondary duties of the Division include, but are not limited to:

1. Primary Duties:

- a.** enforcement of this Statute and any other natural resource related LTBB regulation or statute;
- b.** enforcement of natural resource related federal/state laws or laws of another tribe to the extent that Officers are authorized through Tribal Council approved deputization, special commissions, agreements, or memoranda of understanding/agreements (MOU/MOA);
- c.** promote and protect the Treaty rights of Tribal Citizens.

2. Secondary Duties:

- a. provide aid or assistance to other law enforcement agencies when requested by a law enforcement agency;
- b. perform and participate in search and rescue operations when its Officers encounter emergency situations in the course of carrying out their duties or when requested by a law enforcement or public safety agency;
- c. perform and participate in emergency management activities when requested by the Executive;
- d. to take necessary and appropriate actions to enforce violations of civil or criminal law whether or not directly related to natural resource protection when in the course of carrying out their primary duties its Officers encounter situations requiring law enforcement intervention to protect the public safety;
- e. participate in homeland security activities as requested by the Executive;
- f. request aid of other law enforcement agencies when prudent to do so to address situations encountered in the course of carrying out primary duties.

D. Policies and Procedures. The Tribal Conservation Enforcement Division shall have in place and adhere to written Conservation enforcement policies and procedures as approved by the NRC, subject to Tribal Council approval where necessary under the LTBB Constitution.

(WOS 2008-12, October 5, 2008, Section VII)

4.1108 PERSONS AUTHORIZED TO FISH, HUNT, TRAP AND GATHER

A. Tribal Citizens may exercise fishing, hunting, trapping and gathering rights within the Reservation and Ceded Territory subject to LTBB natural resource related regulations and laws.

B. Non-member Indians and non-Indians may exercise the privilege to fish, hunt, trap and gather on the LTBB Reservation pursuant to LTBB regulations, statutes and law in accordance with the following provisions:

1. Non-member Indians must have a properly issued and valid LTBB license and/or accompanying permit in order to take or attempt to take any wildlife, fish or plant species from lands within the LTBB Reservation.

2. Non-member Indians and non-Indians must have a properly issued and valid LTBB license and/or accompanying permit in order to take or attempt to take any wildlife, fish or plant species from Reservation Trust Properties. Failure to secure a proper permit or license may subject the violator to civil prosecution in tribal court and/or federal prosecution.

(WOS 2008-12, October 5, 2008, Section VIII)

4.1109 SCIENTIFIC RESEARCH AND STUDY, NUISANCE ANIMALS

A. The Director may authorize the Department's staff, its agents or contractors to conduct biological monitoring, research, and enhancement activities of wildlife or plants.

B. Scientific Collectors Permit

1. In accordance with this section and any terms and conditions that may be established pursuant to the administrative procedures developed in accordance with this Statute, a scientific collectors permit issued by the Department is required and shall entitle a Tribal employee to take, possess, inspect, sample, measure, count or collect data on fish, wildlife, plant or invertebrate for scientific, management and/or enhancement purposes within the LTBB Reservation and/or throughout the 1836 Ceded Territory. This section shall further apply to any person intending to conduct data collection or sampling within any LTBB Reservation trust properties.

2. Failure to obtain a permit or any sampling or data collection activity conducted in violation of the procedures established by the Department shall constitute a violation. Violations may result in revocation of issued permits and/or penalties set out in LTBB statutes or regulations.

3. The Director may suspend the permit of any person if he or she reasonably believes that at any time such person is in violation of this section or his or her actions threaten the fish and wildlife resources of the Tribe and that immediate action is necessary to protect such resources.

C. Nuisance Animals- The Director may issue special use permits on such terms and conditions as he or she deems necessary or appropriate to take wild animals subject to regulated harvest that are damaging or about to damage property owned by the Tribe or a Tribal Citizen. The permit shall require the Citizen to report the outcome of the permitted action.

(WOS 2008-12, October 5, 2008, Section IX)

4.1110 ENFORCEMENT

A. Officers and other tribal, state and federal law enforcement agencies or personnel as authorized through Tribal Council approved deputization agreements, memoranda of understanding, court order, or compacts are authorized to enforce provisions of this and other LTBB natural resource statutes, laws or regulations.

B. Civil Infractions - Regulations promulgated in accordance with this Statute and WAGANAKISING ODAWAK STATUTE 2001-04 are civil in nature. Violations may be punished by suspension or revocation of the fishing, hunting, trapping license or any permit(s) of the violator, assessment of a fine of not less than \$50.00 or no more than \$1,000.00, assessment of community service hours, forfeitures as set forth below, restitution as set forth below or by any combination thereof and any other applicable penalty provided for by the laws of the Tribe.

C. Increased Penalties. Penalties may be increased up to three times the amount of the penalty of offense if:

1. The violator is found liable for the second or any subsequent violation of the same provision; or

2. The violator issues a check in payment of a penalty imposed under this Statute and/or any other natural resource regulations or laws of the Tribe knowing there are insufficient funds on deposit with the bank to ensure payment of the check on its presentation.

D. Contempt - To compel compliance with a lawful court order, all defendants to actions brought under this Statute, other natural resource regulations or laws of the Tribe, whether

Member, Nonmember or Non-Indian, shall be subject to the contempt power of the Little Traverse Bay Bands of Odawa Indians Tribal Court, and may be sanctioned by any means provided for by LTBB law or Court Rule including, but not limited to, imprisonment or other fines or penalties.

E. Restitution.

1. Any person convicted of any violation of this Statute and/or any other natural resource regulations or laws of the Tribe may, at the Court's discretion, be charged the cost of providing equitable restitution to the Tribe for the damage caused by each violation in addition to any other fines or penalties imposed by the Tribal Court.

2. The Commission shall prepare, annually and, as necessary, revise a schedule of damages calculated to closely approximate the cost of providing equitable restitution to the Tribe for the damage which would be caused by violations of this Statute and/or any other natural resource regulations or laws of the Tribe. The schedule of damages may be used as a guideline by the Tribal Court and may not be all inclusive. In calculating these damages the Commission may consider, in addition to any other factors reasonably deemed relevant:

- a.** The cost to the Tribe of producing and/or protecting the resource;
- b.** The cost of replacing or restoring the resource;
- c.** The costs of enforcement including the general overall costs and costs particularized to individual violations where appropriate;
- d.** The loss to the Tribe of license revenue;
- e.** Damages for trespass.

3. The Department shall publish the schedule of damages and cause it to be made available to the public at all permit outlets.

4. Since in most instances the exact amount of damages caused to the Tribe by a particular violation will be difficult or impossible to determine, it may be presumed by

the court adjudicating a complaint for violation that the amount fixed by the schedule of damages represents the damages owed to the Tribe as restitution if the defendant is found to be liable. This presumption may be rebutted by evidence which shows by clear and convincing evidence that the amount indicated by the schedule of damages is so excessive in a particular case as to be punitive or so inadequate in a particular case as to result in a gross deprivation of adequate restitution. In any case in which the presumption is successfully rebutted, the parties may introduce evidence to prove the actual damages as in any other civil case.

5. All persons shall be deemed to have consented to the restitution provisions of this Statute by their entry onto the Reservation, and where applicable, by their signature on Tribal licenses or permits.

F. Forfeiture.

1. Officers may detain, in accordance with Section *****(m)** any person(s) committing an offense and may seize or confiscate any fish, game, furbearers, wild animals, their parts or hides and/or any vehicles, vessels, firearms, bow, traps, nets, lines or any other associated paraphernalia used in committing the offense. All seized or confiscated material taken under this part shall be held as evidence according to applicable tribal law enforcement policies or agreements.

2. After adjudicating the underlying complaints for the illegal possession or use, the Court shall dictate the disposal of the seized resource or property.

a. Return of the property: If the accused is found not guilty or charges have been dismissed according court action, all seized non-perishable property shall be returned to the owner in the condition it was received. Persons who have had perishable items seized such as game or fish shall be compensated according to the developed damages schedule.

b. Forfeiture: Any person convicted of any violation of this Statute and/or any other natural resource regulations or laws of the Tribe may, at the Court's discretion, have any property or resources seized permanently confiscated in lieu of fines or in addition to fines or other penalties.

c. All confiscated property shall be disposed of according to regulations developed by the Commission which may include destruction of property, sale, retention, use by the Department or donation to a food bank.

d. The Department shall prepare a report of all game, fish and property seized by the Officers showing a description of the items, the persons from whom they were seized, if known, and the disposition of the items. This report shall be prepared annually and kept by the Department.

H. Collection of Money Penalties. Enforcement of the money penalties imposed pursuant to this Statute may be had through the collection of penalties from funds of the violator held by the Tribe if otherwise legally permissible, through the imposition of community service work requirements in lieu of money payment, through debt collection mechanisms of the courts of other jurisdictions, or through any other method authorized by law.

I. Schedule of Money Penalties. The NRC may adopt a schedule of fines and/or forfeitures that may be imposed by the Court upon the receipt of an admission of guilt or plea of no contest for violations committed. This schedule shall not apply as to penalties assessed by the court after adjudicating a violation where the defendant has entered a plea of not guilty.

J. State Jurisdiction Preempted. It shall not be a defense to any infraction under this Statute or any LTBB natural resource regulation or law that the alleged activity may be lawful under state law.

K. Federal Prosecution. Nothing in this Statute shall be deemed to preclude federal prosecution under applicable federal law. Federal prosecution may be pursued in addition to or in lieu of other enforcement procedures provided by this Statute.

(WOS 2008-12, October 5, 2008, Section X)

4.1111 ENHANCEMENT AND EDUCATIONAL ACTIVITIES

A. The annual Department budget shall include a line item to enhance tribal treaty harvest opportunities, to provide harvest based assistance and educational programs and to fund the NRC's annual "Public Information Meeting" as established in Section III.B of the Waganakising Odawak Statute 2001-04.

B. All fees resulting from the sale of licenses, registrations permits or tags by the Department and its agents, and all fines, costs, monies, penalties, damages or revenue from the sale of confiscated property collected for violation of this Statute and/or any other natural resource regulations or laws of the Tribe shall be deposited into the General Fund.

C. Each Tribal judge or clerk of the Court shall, within twenty (20) days after judgment has been rendered under the provisions of this Statute, remit to the Tribal Chief Financial Officer (CFO) all fines, forfeitures, damages or penalties collected to be deposited into the General Fund.

D. Any revenue derived from the sale of tribally owned natural resources shall be collected and deposited into the General Fund.

E. Any royalties derived from leases established to remove and provide for sale natural resources or minerals from LTBB owned properties shall be collected and deposited into the General Fund.

(WOS 2008-12, October 5, 2008, Section XI)

4.1112 SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

(WOS 2008-12, October 5, 2008, Section XIII)

4.1113 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(WOS 2008-12, October 5, 2008, Section XIV)