

**MESCALERO APACHE TRIBE
MESCALERO, NEW MEXICO**

ORDINANCE 19-03

WHEREAS, the Mescalero Apache Tribe, an Indian Tribe organized under the Indian Reorganization Act of June 18, 1934 (25 U.S.C. § 476) and under its Revised Constitution has full power and authority to act for the Tribe; and

WHEREAS, the Mescalero Apache Tribal Council has the power to protect and preserve the property, wildlife and natural resources of the Tribe pursuant to Article XI, Section 1(c) of the Revised Constitution; and

WHEREAS, each year Tribal members harvest elk or deer antlers and sell the same to buyers who may re-sell the same; and

WHEREAS, the Mescalero Apache Tribal Council believes that elk and deer are a valuable resource and the sale of hunting permits is a major source of revenue for the Mescalero Apache Tribe; and

WHEREAS, the Mescalero Apache Tribal Council is concerned that the sale of antlers could result in poaching and other practices that are not in the best interests of the Mescalero Apache Tribe; and

WHEREAS, the Mescalero Apache Tribal Council believes that it is necessary to amend the regulations governing the harvesting and sale of elk and deer antlers within the exterior boundaries of the Mescalero Apache Tribe; and

NOW, THEREFORE, BE IT ORDAINED that the Mescalero Apache Tribal Council does hereby adopt the below revisions to Chapter 15.

BE IT FURTHER ORDAINED that all contrary provisions are hereby repealed.

CHAPTER 15

HUNTING AND FISHING

SECTION 1. GENERAL PROVISIONS.

[Sections 15-1-1 and 15-1-3 (MM) remain unmodified.]

- NN. "Antler" means the bone protrusion grown as an extension of the skull of an adult deer or elk which falls off naturally as the deer or elk ages.
- OO. "Harvest" means the collection of antlers for the purpose of selling or personally possessing the same.
- PP. "Non-Tribal Member Buyer" means a buyer who purchases antlers harvested on the Reservation in order to re-sell the same or keep the same for personal use. This includes buyers who collect antlers to make furniture, art pieces, or other items from antlers for

sale to others or directly re-sell antlers to others.

QQ. "Tribal Member Buyer" means a buyer that is wholly owned and operated by a Tribal member who purchases antlers harvested on the Reservation in order to re-sell the same or keep the same for personal use. This includes buyers who collect antlers to make furniture, art pieces, or other items from antlers for sale to others or directly re-sell antlers to others.

[Sections 15-2-1 through 15-8-1 remain unmodified.]

15-8-2. CIVIL TRESPASS; DESTRUCTION OF BOUNDARY MARKERS OR SIGNS.

A. Whoever, without lawful authority or permission, intentionally goes upon any land that is held in trust by the United States for the benefit of the Mescalero Apache Tribe for the purpose of hunting, trapping or fishing thereon, or for the harvesting and/or removal of elk antlers, game peltries, other animal parts or fish therefrom, shall pay damages to the Tribe as established by the Tribal Court.

[Sections 15-8-2(B) through 15-8-3 remain unmodified.]

SECTION 9. CIVIL PROCEEDINGS.

15-9-1. CONSENT TO JURISDICTION. Any person who, after the effective date of this Code, obtains a permit or license to take or purchase any wildlife or parts thereof from the Reservation shall be deemed to have consented to all the provisions of this Code and the civil jurisdiction of the Mescalero Apache Tribal Court.

[Sections 15-9-2 through 15-9-7 remain unmodified.]

15-9-8. CIVIL REMEDIES.

A. **CIVIL LIABILITY SCHEDULE.** If it is established after a hearing before the Mescalero Apache Tribal Court that a person has taken a listed animal or parts thereof, including antlers, in violation of this Code, the violator shall pay as restitution to the Mescalero Apache Tribe the dollar amount assigned to the particular animal as set in the Civil Liability Schedule approved by the Tribal Council. No verdict or sum against a violator shall be less than the amount set out in the Civil Liability Schedule. This amount is separate from any damages that may be found by the Tribal Court.

B. **CIVIL LIABILITY.** The Director of the Mescalero Conservation Department, or any other Conservation Officer charged with enforcement of the laws relating to Game and Fish, if so directed by the Director, may bring a civil action in the name of the Mescalero Apache Tribe against any person unlawfully wounding, or killing, or in possession of any game, fish, or bird, or parts thereof, including antlers, and recover judgment for the following minimum sums as damage for the taking, killing, or injuring:

For each:

- Elk\$ 10,000
- Deer\$ 500.00
- Antelope\$ 500.00

Bear	\$ 500.00
Cougar	\$ 500.00
Birds	\$ 20.00
Fish	\$ 1.00
Endangered species	\$ 1,000.00
Turkey	\$ 150.00

[Sections 15-8-8 (C) through 15-10-1 shall remain unmodified.]

15-10-2. PENALTIES. Except as otherwise provided in this Chapter or in Chapter 10, any person violating this Code over whom the Mescalero Apache Tribal Court has criminal jurisdiction may be subject to a criminal fine of up to \$5,000.00, or imprisonment for one year, or both a fine and imprisonment. Any person violating this Code shall forfeit all game or fish, equipment, and license.

[Sections 15-10-3 through 15-11-6 remain unmodified.]

SECTION 12. ANTLERS.

15-12-1. TRIBAL MEMBERS ONLY. Only Tribal Members shall be allowed to harvest, collect, possess (with the exception of licensed non-Tribal Member buyers) or sell antlers from deer or elk within the exterior boundaries of the Mescalero Apache Indian Reservation. Non-Tribal Members found to be in violation of this Section shall be subject to the civil penalties.

15-12-2. CONSUMPTION & POSSESSION OF ALCOHOL. For public safety reasons, it shall be unlawful for any person to consume or possess alcohol or illegal drugs while harvesting or collecting deer or elk antlers and such person may be held liable or punished as allowed under Section 8 of this Chapter.

15-12-3. BUYERS. Only licensed buyers may purchase antlers or possess or transport antlers for the purpose of selling the same. A separate license shall be required for each location that a buyer intends to inspect and/or purchase antlers.

A. SEASONS.

1. Licensed Tribal Member Buyers are authorized to purchase antlers year-round.
2. Licensed Non-Tribal Member Buyers are authorized to purchase antlers from April 1st to June 30th of each year.

B. APPLICATION FOR A LICENSE. Any buyer wishing to obtain a license to purchase antlers on the Reservation shall submit a written application to the Tribal President or his or her designee. The Tribal President or his or her designee shall either issue a license or deny the application at his or her discretion.

C. LICENSE FEE.

1. **TRIBAL MEMBER BUYERS.** Tribal Member Buyers shall be required to pay a One Thousand Dollar (\$1,000.00) license fee.

2. **NON-TRIBAL MEMBER BUYERS.** Non-Tribal Member Buyers shall be required to pay a Five Thousand Dollar (\$5,000.00) license fee.
- D. **REQUIREMENTS.** Any license issued under this Section shall:
1. State the name and contact information of the buyer; the names and contract information of any employees of buyer; the make, model, year, color and license plate number of any vehicle used by buyer; and the location where the buyer is authorized to inspect and purchase antlers;
 2. Be kept in the possession of the buyer and available for inspection by Tribal officials at all times that the buyer is in possession, transporting or purchasing antlers;
 3. Expire after three (3) months from the date of issuance; and
 4. State that the Tribe may revoke the license at any time and for any reason.
- E. **REPORTING OF SALES.** Each licensed buyer must report the number and weight of antlers purchased during the month no later than the 1st day of the subsequent month to the Conservation Law Enforcement Office.
- F. **CERTIFICATION OF SCALE(S).** Prior to issuance of a permit, the Conservation Law Enforcement Office shall inspect and certify the Buyer's scale(s) to ensure that the same are in good, working condition and accurate. Each scale shall be photographed and clearly identified.
- G. **FAILURE TO COMPLY.** The failure to comply with this Section and the terms and conditions of the license shall render the permit invalid and the buyer may be barred from receiving any future licenses for a certain period or for an indefinite period of time. In addition, the buyer may be subject to criminal and civil penalties.
- H. **CRIMINAL OFFENSE.** Any Indian who shall purchase antlers without a license shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to a imprisonment or labor for a period not to exceed sixty (60) days and/or a fine of up to One Thousand Dollars (\$1,000.00)
- I. **CIVIL LIABILITY.** Any person who is found to have violated this Section may be held civilly liable as provided under Section 15-9-8 herein.
- J. **REPORTING OF SUSPICIOUS/ILLEGAL ACTIVITY.** Each buyer has an obligation to report suspicious/illegal activity to the Conservation Law Enforcement Office.

15-12-4. SAWED-OFF OR BROKEN ANTLERS. Only antlers that have been shed naturally from a deer or elk may be harvested, possessed, transported or sold by Tribal members or possessed, transported, or purchased by licensed buyers.

- A. **CRIMINAL OFFENSE.** Any Indian who shall harvest, possess, transport or sell sawed-off antlers or antlers forcibly broken off of a deer or elk skull shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to:
1. For a first offense under this Section, imprisonment or labor up to sixty (60) days and/or a fine of up to One Thousand Dollars (\$1,000.00);
 2. For a second offense under this Section, imprisonment up to One Hundred Eighty

(180) days and/or a fine of up to Two Thousand Dollars (\$2,000.00); and

3. For a third offense and every offense thereafter under this Section, imprisonment or labor up to three hundred and sixty (360) days and/or a fine of up to Five Thousand Dollars (\$5,000.00).

B. **CIVIL LIABILITY.** Any person who is found to have violated this Section may be held civilly liable as provided under Section 15-9-8 herein.

15-12-5. OFF-ROAD MOTORIZED VEHICLE USE. Antlers may be harvested, possessed, or transported via off-road motorized vehicle provided that the vehicle: remains on established roads (roads may be improved or unimproved); is not used in any way to harass or scare deer or elk in an attempt to collect the antlers; and the driver of and any passengers on the vehicle may not be under the influence of alcohol or drugs. All other Tribal laws governing the use of off-road motorized vehicles shall apply.

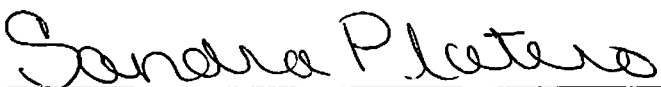
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CERTIFICATION

The foregoing enactment of the Mescalero Apache Tribal Council is duly adopted and approved on the 22nd day of March 2019, at a legally called session of the Mescalero Apache Tribal Council, by a vote of 6 in favor, opposed, abstaining and 2 absent at which a quorum was present and at which a majority of the members voted in favor thereof. This enactment is approved by the President of the Mescalero Apache Tribe under authority of Article XII, Section 1, of the Revised Constitution.



Arthur L. Blazer, President



Sandra Platero, Secretary