

Lower Brule Sioux Tribe

Department of Wildlife, Fish and Recreation

Wildlife, Fish and Recreation Enforcement Code

(Last updated March 2023)

SECTION 1: GENERAL PROVISIONS

1.01 Title. This ordinance shall be known as the Lower Brule Sioux Tribe Wildlife, Fish and Recreation Enforcement Code.

1.02 Authority. This ordinance is enacted pursuant to Article VI, Section 1(j) of the Constitution of the Lower Brule Sioux Tribe and Ordinance No. LB-82-C adopted by the Lower Brule Sioux Tribal Council on June 2, 1982.

1.03 Policy and Legislative Intent.

(1) The Tribal Council of the Lower Brule Sioux Tribe, recognizing the spiritual, cultural, and economic value of the wildlife, fish and recreation resources of the Lower Brule Sioux Reservation; and recognizing that these are irreplaceable Tribal resources; and recognizing that unregulated use of the wildlife, fish, and recreation resources of the Tribe would threaten the political integrity, the economic security, and the health and welfare of the Lower Brule Sioux Tribe, hereby enacts this Wildlife, Fish and Recreation Enforcement Code to ensure proper management of these vital resources.

(2) Further, recognizing that enrolled members of the Lower Brule Sioux Tribe alone have the absolute, inherent, retained sovereign right to use and enjoy the Lower Brule Sioux Reservation, and to govern its use by its members and all others, the Tribal Council, in regulating the wildlife and recreation resources of the Reservation, intends that tribal members shall be afforded the greatest possible freedom to use and enjoy these resources consistent with the preservation and improvement of these resources for future generations.

(3) Of secondary importance is the policy of permitting the limited use of the wildlife, fish, and recreation resources of the Reservation by nonmembers for the promotion of intercultural education and good will and for the economic benefit of the Tribe as a whole.

(4) Recognizing the Lower Brule Sioux tradition of restitution as a remedy for injustices, the Tribal Council hereby declares that this code is civil in nature and that restitution and other civil penalties shall be the primary remedy for its violation. Criminal sanctions may also be imposed in cases where this code so provides.

1.04 Purpose. It is the purpose of this code to:

(1) Provide an orderly system for tribal control and regulation of hunting, fishing, trapping, woodcutting, gathering, and recreational activities on the lands established as the Lower Brule Sioux Reservation and trust lands outside the same exterior boundaries of the Lower Brule Sioux Reservation.

(2) Provide a means of conservation, enhancement, protection, and management of the Lower Brule Sioux Reservation's wildlife, fish, and plant populations, and recreation activities through the regulation of member and nonmember harvest and recreation activities.

(3) Provide a means of enforcing rules and regulations of this code contained hereafter.

1.05 Jurisdiction. This code shall govern the activities of hunting, fishing, trapping, gathering and recreation within the exterior boundaries of and trust lands outside the same exterior boundaries of the Lower Brule Sioux Reservation.

1.06 Effective Date. This code shall be effective on the date adopted by the Lower Brule Sioux Tribal Council.

1.07 Severability and Non-Liability. If a court of competent jurisdiction adjudges any section, provision, or portion of this code unconstitutional or invalid, the remainder of this code shall not be affected thereby. The Tribe further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this code.

1.08 Repeal of Inconsistent Tribal Ordinances. All ordinances and resolutions inconsistent with this code are hereby repealed. To the extent that this document imposes greater restrictions than those contained in any other tribal ordinance, the provision of this document shall govern.

1.09 For the Purposes of this code, all hunting, fishing, trapping, gathering of plants and seeds, woodcutting and parts thereof, are closed within the exterior boundaries of and trust lands outside the same boundaries of the Lower Brule Sioux Reservation unless authorized by the Lower Brule Sioux Tribal Council.

1.10 Unless and except as permitted by regulation made hereinafter provided by in this code, it shall be unlawful at any time, by any means or manner, to pursue, hunt, take, capture, kill, harass, waste; or to attempt to take, capture, or kill, possess, offer for sale, harass, waste, sell, offer for barter, barter, offer to purchase, deliver for shipment, ship, export, import; or to cause to be shipped, exported, imported, delivered for transportation; or to cause to be transported, carried, or cause to be carried; or to receive shipment, transportation, carriage; or to export any fish, wildlife, plant, any part or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such fish, wildlife, plant, or any part included in the terms of this code.

1.11 Title to Fish, Wildlife and Plants

(1) The legal title to, and the custody and protection of all fish, wildlife and plants within the exterior boundaries of and trust lands outside the same boundaries of the Lower Brule Sioux Reservation is vested in the Tribe for the purposes of regulating use, disposition and conservation thereof.

(2) The legal title to any such fish, wildlife, or plant, or carcass and/or part thereof, taken or reduced to possession in violation of this code remains with the Tribe; and the title to any such fish, wildlife, or plant, or carcass and/or part thereof, lawfully acquired, is subject to the condition that upon the violation of this code relating to the possession, use, giving, sale, barter, or transportation of such fish, wildlife, or plant, or carcass and/or part thereof, by the holder of such title, the same shall revert, as a result of the violation, to the Tribe. In either case, any such fish, wildlife, or plant, or carcass and/or part thereof, may be seized forthwith, wherever found, by the Lower Brule Department of Wildlife, Fish and Recreation or any law enforcement official authorized to enforce the provisions of this code.

SECTION 2: DEFINITIONS

For the purposes of this code the following definitions shall apply:

1. **Affiliate** – Includes non-Indians and nonmember Indians who work for the Lower Brule Sioux Tribe, Bureau of Indian Affairs – Lower Brule Agency, Indian Health Service – Lower Brule, and spouses of enrolled members of the Lower Brule Sioux Tribe. Affiliate does not include individuals working under contract for the before-mentioned agencies.
2. **Aircraft** - As used in this code, the term aircraft means any contrivance used for flight, or to be airborne, including but not limited to: airplanes, helicopters, and drones.
3. **Allotted Land** - Individually owned Indian lands held in trust by the federal government.
4. **All Terrain Vehicles** - Any off road motorized vehicle (also known as ORV's or ATV's) when used for recreational travel on trails, non-highway roads, and cross-country travel over natural terrain; including but not limited to four-wheelers, three-wheelers, dune buggies, motorcycles, and snowmobiles.
5. **Antlerless Deer** - All deer not displaying at least one visible antler.
6. **Antlered Deer** - All deer displaying at least one visible antler.

7. **Arrow** - A shaft of at least 24 inches long containing 3 trimmed or 5 untrimmed feathers, tipped with a point or device used to strike, penetrate, or pierce.

8. **Artificial light** - Any light produced by other than natural sources, including but not limited to, jacklights, spotlights, flashlights, or vehicular headlights.

9. **Bag Limit** - The maximum limit, in number amount, of a particular species of fish or wildlife, which may lawfully be taken in one day during an open season.

10. **Bait** - Any substance that is placed by any person and which may serve as an attraction to any wildlife, and may include but is not limited to grain or animal remains; however, that artificial decoys used to hunt migratory game birds, turkeys, pronghorn antelope, and deer shall not be deemed bait.

11. **Big Game** - Includes, but is not be limited to, mule deer, white-tailed deer, elk, pronghorn, wild turkeys, and bison.

12. **Bow** - Any hunting instrument designed for the purpose of propelling arrows which is drawn and held by and through efforts of the person releasing, but does not include Crossbow.

13. **Carcass** - The dead body of fish or wildlife or parts thereof.

14. **Closed Season** - The time and/or days during which fish or wildlife may not be taken legally.

15. **Crossbow** - Any device using a bow which, once drawn is held solely by means other than the effort of the person firing it.

16. **Depredation** - Any act by a wild animal that causes the destruction of or damage to property.

17. **Dog** - Refers to a dog specifically bred to hunt, scent, point, flush, or retrieve game birds or furbearers not to include big game.

18. **Dog Training** - Training dogs on live wild birds.

19. **Department** - The Lower Brule Sioux Tribe Department of Wildlife, Fish and Recreation.

20. **Endangered or Threatened Species** - Any species of fish, wildlife or wild plant within the Reservation or State as listed but not limited to 50 CFR Sections 17.11 and 17.12 or species classified pursuant to the Endangered Species Act of 1973 (then effective), or which the Tribe's governing body from time to time may declare as endangered or threatened.

21. **Falconry** - Taking quarry by means of a trained raptor.
22. **Fee Land** - Those lands within the exterior boundary of a Reservation not held in trust or subject to restrictions on alienation and which is in private ownership.
23. **Field Trial** - A competition where dogs and their owners/handlers compete against each other on a dog's ability to hunt, scent, flush, point, or retrieve live, wild birds.
24. **Firearm** - A rifle, shotgun, handgun, or other type of gun.
25. **Fish** - Any fish (Order Pisces) within the waters of the Reservation.
26. **Fishing** - Any effort made to kill, injure, disturb, capture, catch, or taking of fish of any variety by hook and line.
27. **Flashlight** - A small hand-held portable electric lamp powered by dry batteries.
28. **Furbearers** - Includes, but is not limited to, mink, muskrat, beaver, otter, weasel (long-tailed and short-tailed), porcupine, fox (red, grey, and swift), coyote, bobcat, badger, raccoon, and skunk.
29. **Gathering** - To take or acquire or attempt to take or acquire possession of any wildlife or wild plants or parts thereof.
30. **Game Fish** - Includes all species belonging to the salmon/trout, sturgeon, pike, catfish including bullheads, sunfish including black bass and crappies, perch including walleyes and sauger, and bass families.
31. **Harass, harassing, or harassment** - In reference to wildlife or fish, means to shoot at, disturb, worry, molest, rally, concentrate, hurry, chase, drive, herd, or torment. In reference to humans, means to intentionally interfere with the legal and lawful attempt to hunt, fish, trap, gather, or recreate or to intentionally interfere with a Tribal Conservation Officer or other Department personnel performing within the course of his or her duties; a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.
32. **Highway** - All public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of public as a matter of right for the purposes of vehicular travel. It includes those driveways in the state and Reservation, which have been opened to the use of the public, but does not include private roads or driveways.
33. **Hunt or Hunting** - Includes shooting, shooting at, pursuing, taking, flushing, driving, attracting, catching, killing, stalking, or lying in wait for any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded; *provided, however*, that hunt or hunting does not include the recovery of any wild animal, which has already been lawfully reduced to possession. In addition, such term does not include stalking, attracting, searching for, or lying in wait for any wildlife by an unarmed person solely for the purpose of watching wildlife or taking pictures or making sound recordings thereof.

34. **Hunting Hours** - The time of day when wildlife may be lawfully taken.

35. **Indian** - Any person of American Indian/Native American descent who is a member of a federally recognized Indian Tribe according to the laws of that tribe, and any other person recognized by federal or tribal law as an Indian for any purpose, and denotes both the singular and the plural.

36. **License** - A written document granting authority to engage in specific activities covered in this code.

37. **Member** - Any enrolled member of the Lower Brule Sioux Tribe.

38. **Migratory Birds** - Includes, but is not limited to, the following:

(a) All species of Ducks, Geese, and Swans (Order Anseriformes).

(b) All shorebirds, wading birds, and seabirds (Order Gaviiformes, Podicipediformes, Pelicaniformes, Ciconiiformes, Gruiformes).

(c) Mourning Doves (Order Columbiformes).

(d) All species of songbirds (Order Passeriformes)

(e) All raptors or birds of prey (Order Falconiformes or the Order Strigiformes)

39. **Motorboat** - Any boat equipped with propulsion machinery, whether or not the machinery is the principle source of propulsion.

40. **Non-Indian** - Any person not legally recognized as a Native American by blood percentage and/or not a member of a federally recognized tribe, band, pueblo, or group.

41. **Nonmember** - Any person who is not an enrolled member of the Lower Brule Sioux Tribe.

42. **Nonmember Indian** - Any federally recognized American Indian/Native American who resides on or visits a Reservation for which he or she is not enrolled.

43. **Open Season** - The time and/or days during which taking certain species of fish and/or wildlife is legal.

44. Possession Limit - The amount of fish and/or wildlife that may be legally possessed at any one time.

45. Possession - Having killed, harvested, taken, or otherwise obtained or acquired any wild animal, fish, or plant subject to the provisions of this ordinance.

46. Permit/Tag - Any identification device issued for the attachment to the carcass of any fish or wildlife.

47. Plant - Any undomesticated species, and fruit or part thereof, of the plant kingdom occurring in the natural ecosystem.

48. Protected Species - Includes, but is not limited to, endangered and threatened species, elk, pronghorn, bison, moose, mule deer, white-tailed deer, wolf, mountain lion, bobcat, waterfowl, upland game birds, upland game, jackrabbits, crow, squirrels, prairie dog, song birds, birds of prey or raptors, beaver, grey and swift fox, mink, muskrat, marmot, otter, and any other species or sexes for which a closed season is specified or for which no season is established or for a species for which a yearlong season has been established in addition to an approved management plan.

49. Raptor - A live migratory bird of the Order Falconiformes or the Order Strigiformes. For simplification, all eagles, hawks, falcons, and owls are part of this definition.

50. Reservation - All lands within and outside the exterior boundaries of the Lower Brule Sioux Reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including right-of-ways running through the Reservation; and including all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

51. Recreation - Includes, but is not limited to, picnicking, camping, boating, hunting, fishing, hiking, horseback riding, swimming, river access, ATV, snowmobile, dirt bike riding, cross-country skiing, wildlife viewing and photography, and other related activities.

52. Roadway, Trail and Right-of-Way - Roadway shall include but not be limited to any maintained public highway or road dedicated for public ingress and egress. Trails shall include pathways created by vehicles that cross or run along side cultivated or pasture land that are primarily used for agricultural purposes. Right-of-way shall include the road and ditch area from fenceline to fenceline, or 50 feet either side of the centerline of the road if a fenceline is not present.

53. Rough Fish - All fish species not a member of a game fish family, a baitfish family, or protected are rough, or nongame species. These include such species as burbot, freshwater drum, carp, buffalo fish, suckers and goldeneye (skipjack).

54. **Size Limit** - The specific size of a species of fish and/or wildlife that may be possessed legally.

55. **State** - The State of South Dakota, unless the context and usage clearly indicate otherwise.

56. **Take or Taking** - Pursuing, shooting, shooting at, hunting, fishing, netting, (including placing or setting any net or other capturing device) capturing, killing, snaring or trapping any fish, wildlife or plant, or attempting any of the foregoing.

57. **Timber** - Includes, but is not limited to, any woody vegetation that is 10 feet or greater in height and consists of 6 inches of diameter or greater in D.B.H. (Diameter at Breast Height).

58. **Trapping** - Includes the taking of, or attempting to take, any wild animal, animal, or fish by means of setting or operating any device, mechanism, or contraption that is designed, built, or made to close upon, hold fast, or otherwise capture a wild animal, animal, or fish.

59. **Tribal Member** - An enrolled member of the Lower Brule Sioux Tribe.

60. **Tribe** - The Lower Brule Sioux Tribe.

61. **Trespass** - Means:

(1) To enter upon the real property of another that is posted to prohibit trespassing, is fenced or contains obvious outward signs of habitability without permission of the owner or the owner's agent.

(2) To enter tribal lands that are specifically posted as closed to the public;

(3) To enter tribal lands with the intent of performing recreational activities prohibited by this code;

(4) To enter tribal lands with the intent of or performing recreational activities that require a recreation permit;

(5) To refuse to depart from or re-enter the Lower Brule Sioux Reservation in violation of an order of exclusion issued by the Tribal Court as provided by this code; or

(6) To take any other action identified as trespassing under this code.

(7) When nonmembers enter tribal or allotted lands for purposes other than hunting, trapping, fishing, woodcutting, gathering plants and seeds or other activities for which a permit is required.

62. **Trust Land** - In this code, generally refers to land to which the United States of America holds legal title for the benefit of Indians and Indian tribes.

63. **Unprotected Species** - Includes, but is not limited to, coyote, red fox, skunk, badger, raccoon, wild dogs, and other species for which a continuous open season exists.

64. **Upland Game Birds** - Includes, but is not limited to, sharp-tailed grouse, prairie chicken, pheasants, partridge, and quail.

65. **Upland Game** - Includes, but is not limited to, cottontail rabbits and mourning doves.

66. **Waterfowl** - Includes, but is not limited to, all varieties of geese, brant, swans, ducks, rails, coots, and Wilson snipe.

67. **Wildlife** - Any forms or parts of birds, mammals, fish, amphibians, and reptiles including their nest or eggs.

SECTION 3: AUTHORITY OF THE DEPARTMENT OF WILDLIFE, FISH AND RECREATION

3.01 General Powers and Duties of the Department of Wildlife, Fish and Recreation

(1) A Department of the Lower Brule Sioux Tribe shall be in existence and be known as the Lower Brule Sioux Tribe Department of Wildlife, Fish and Recreation, and shall have the power and be charged with the duty to protect, conserve, enhance, manage all fish, wildlife and plant species within the exterior boundaries of and trust lands outside the same boundaries of the Lower Brule Sioux Reservation.

(2) This Department also has the responsibility to enforce the provisions of this code and to carry out the policies and directions of the Lower Brule Sioux Tribal Council in all matters relating to fish, wildlife, plant, timber, and recreation activities. In order to administer the laws of the Tribe relating to conservation and management of wildlife and recreation resources the Department of Wildlife, Fish, and Recreation shall have the following powers and duties:

A. Make such rules and regulations and establish such services, as it deems necessary to carry out the provisions and purposes of this code, subject to the approval of the Tribal Council.

B. Recommend to the Tribal Council broad policies and long-range programs for the management and preservation of wildlife, fish, and other Tribal recreational resources.

C. Issue recreation permits, hunting, fishing, and trapping licenses, woodcutting, gathering, and other permits and licenses for use of the Tribal lands and resources.

D. Establish hunting and fishing regulations, and prescribe the manner and methods, which may be used in taking wildlife and fish, subject to the approval of the Tribal Council.

E. Establish and publish member and nonmember regulations, subject to the approval of the Tribal Council.

F. Be responsible for the enforcement of laws, including setting fines and civil penalties, for the protection of wildlife, fish, and other Tribal recreational resources.

G. Establish rewards or bounties for information leading to the identification and prosecution of violators of this code.

H. Prescribe qualifications, training, grades and salary schedules for Department employees.

I. Provide for the assembly and distribution of information to the public relating to wildlife, fish, and other Tribal recreational resources.

J. Assist in search and rescue operations.

K. Conduct investigations, inquiries or hearings as necessary to enforce this code.

L. Establish game management units, refuges, or closed areas for the preservation and management of wildlife, with the approval of the Tribal Council. Such units, refuges, or closed areas shall be clearly marked with signs.

M. Provide training to the public in hunting safety and the safe handling of firearms.

N. Purchase, sell, barter, or receive wildlife or fish for the purpose of stocking tribal lands and waters.

O. Use wildlife for research or other educational purposes.

P. Prescribe seasons, bag limits, possession limits and other regulations pertaining to the taking of wildlife, with the approval of the Tribal Council.

Q. Bring suit in the name of the Tribe against any person, entity, or organization, including public entities, to restrain or enjoin them from violating this code or destroying or polluting Tribal resources.

R. Exercise such additional powers and duties as are necessary to fully carry out the provisions of this code.

(3) Lower Brule Department of Wildlife, Fish and Recreation personnel may conduct investigations of fish, wildlife, and plants in order to develop scientific information relating to populations, distribution, habitat needs, and other biological data in order to advise the Tribe on conservation measures designed to ensure the continued ability of fish, wildlife, and plants to perpetuate themselves. Any Department personnel, in the course of their duties, may enter upon Tribal trust, allotted and fee land within the exterior boundaries of and trust lands outside the same boundaries of the Lower Brule Sioux Reservation and remain thereon while performing such duties hereunder, and such actions by Department personnel shall not constitute trespass. Interference by an individual or individuals with Department personnel, while in the course of their duties, shall be construed as harassment and subject to citation for unpermissible conduct and/or arrest for disorderly conduct.

(4) Lower Brule Department of Wildlife, Fish and Recreation may for scientific purposes engage in or authorize the harvest of protected species by the use of methods, at times or at locations not authorized by this code on such terms and conditions as it deems appropriate, as long as those methods are reasonable and acceptable to the scientific community.

(5) Department personnel and authorized individuals (authorized in writing by Department Director) may harvest, donate or otherwise provide game animals for use during ceremonies, wacipis (pow-wows), and other celebrations.

(6) Nothing in this section shall authorize any person to exceed the biologically safe harvest level of any species.

3.02 Director, Lower Brule Sioux Tribe Department of Wildlife, Fish and Recreation.

(1) The Tribal Council shall hire a Director for the Lower Brule Sioux Tribe Department of Wildlife, Fish and Recreation, who shall have all the rights of employment enjoyed by the Tribal employees. The Director shall be responsible to the Tribal Council for the successful operation of the Department.

(2) The Director shall have knowledge of and experience in fish, wildlife, plant, and recreational resources, protection, conservation, restoration, and management. The Director shall devote his or her entire working time to the service of the Lower Brule Sioux Tribe Department of Wildlife, Fish and Recreation in the discharge of his or her official duties.

(3) The Director shall have executive authority and control of the Department and its employees to the end that the policies of the Tribal Council shall be carried out in accordance with the ordinances, resolutions, and proclamations of said Tribal Council. The Director shall have full control of and be responsible for all property of the Tribe acquired and held for the purposes contemplated by this code. He or she shall, with the consent of the Tribal Council, hire such full-time or temporary officers, wardens, biologists, technicians, laborers, or other essential assistants and employees from the membership of the Tribe at his or her discretion. In the event that no qualified tribal members fill such full-time, temporary, or seasonal positions, the Director shall have the authority to hire qualified nonmembers or non-Indians to those positions. In cases of emergencies, the Director may exercise the powers of the Tribal Council until such time as the Council meets or the emergency ends.

(4) The Director is authorized and directed to:

- A. Report and be responsible to the Tribal Council.
- B. Design and implement a plan for the issuance of licenses, permits, tags, and for the collection of fees.
- C. Maintain records of all licenses and permits issued for the purpose of hunting, fishing, trapping, gathering, wood cutting, and recreation.
- D. Cooperate with and assist the Tribal Council, Community and Community Leaders, Federal, State, County Agencies, and individuals.
- E. Supervise all Department personnel and delegate authority as necessary.

3.03 Collection of Permit Fees, Forfeitures, and Fines

All monies collected from the sale of license, permits, tags, and recreation leases shall be deposited into a Tribal account. Money collected from fines, penalties, forfeitures and/or civil recoveries through the Tribal Court system shall either be deposited into this account or remain with the Tribal Court. Upon federal prosecution, the Director shall make formal request to the U.S. Attorney for Civil Restitution from persons violating any provision of this code. Money collected from the Federal Courts or respective Clerk of Courts shall be deposited into this account.

3.04 Expenditure of Funds

The Director shall have the authority to expend appropriated funds and monies deposited in the special account for the following:

- A. Conservation, protection, and enhancement of the Reservation's fish, wildlife, plant, and recreation resources.

B. Enforcement of provisions of this code, or any rule or regulation adopted in pursuant to this code.

C. Information and Education programs.

3.05 Cooperative and Reciprocal Agreements

The Director is authorized, subject to the approval of the Tribal Council, to enter into reciprocal and cooperative agreements with the State of South Dakota, other States, or any Federal, County, Local governmental agency for the purpose of promoting and implementing fish, wildlife, vegetative and recreational management programs, and activities.

SECTION 4: PERMITS

4.01 Permits and Identification

(1) The Lower Brule Department of Wildlife, Fish and Recreation is authorized to issue to persons permits and licenses required by this code. Except as otherwise required by this code, the form of such permits or licenses shall be left to the discretion of the Lower Brule Department of Wildlife, Fish and Recreation provided such form shall: describe the licensee, including applicant's weight, height, color of eyes, color of hair, address (including street and/or box number), phone number, date of birth, and social security number. This form shall also have printed on it: "Non-Transferable," date of issuance, date of expiration, and type of issuance.

(2) No refunds shall be made on any hunting and fishing, woodcutting, gathering, or recreational permits.

(3) Permits and licenses are not transferable or assignable.

(4) Unless stated otherwise, all permits expire at the end of the calendar year.

(5) No hunting or fishing licenses or permits issued by any state shall be required on the Reservation.

(6) The Department may issue a duplicate recreation permit, provided that the person requesting such duplicate permit furnishes such information as may be reasonably required. The Department may collect a fee for each duplicate recreation permit issued.

(7) The Department reserves the right to refuse permit to any nonmember for any reason.

4.02 Permit Agreement Form

Any persons to whom a hunting, fishing, trapping, woodcutting, gathering, dog training, guiding, or recreation permit is issued by the Department shall be required to sign a Permit Agreement before any such permit shall be valid. The Agreement shall be in substantially the immediately following form. The form shall be signed by the applicant in the presence of the designated license-issuing agent who sold and issued the permit.

"Permit Agreement Form

"I hereby agree that the following terms and conditions govern my use of the permit, my presence on the Lower Brule Sioux Reservation, and my use of Tribal resources and services:

"A. I agree to obey all Tribal laws and regulations.

"B. I consent to the jurisdiction of the Lower Brule Sioux Tribal Court as the forum for the resolution of any civil disputes, which arise, from my presence on the Reservation and/or use of Tribal resources and/or services.

"C. I understand that permission for me to enter the Lower Brule Sioux Reservation is conditioned on my obedience of Tribal laws and regulations and that violation of such laws and regulations makes me a trespasser and may subject me to arrest, tribal and federal court action, expulsion from the Reservation, and seizure of property as security for payment of potential financial obligations to the Tribe.

"D. I understand that permits are required for all hunting, fishing, trapping, woodcutting, gathering, and recreational activities on the Reservation.

"E. I understand that the willful use of Tribal resources or services contrary to the terms of Tribal law or regulation constitutes theft of Tribal assets and is a violation of Tribal and federal law.

"F. I agree to be bound by the penalties and liquidated damages provisions of Tribal law in the event that I am found liable to the Lower Brule Sioux Tribe for violations of Tribal law.

"I have read and understand the above terms and agree to be bound by them.

"

"Signature of Permittee Date

"

"Printed or typed name of Permittee"

SECTION 5: ENFORCEMENT

5.01 Duties of Tribal Conservation Officers

(1) Any provision of this code may be enforced by Tribal Conservation Officers of the Lower Brule Department of Wildlife, Fish and Recreation, Lower Brule Sioux Tribal Police Officers, Bureau of Indian Affairs Police Officers, or U.S. Fish and Wildlife Service Law Enforcement Division personnel.

(2) Conservation Officers have a duty to assist Lower Brule Sioux Tribal Police and Bureau of Indian Affairs Police in enforcing all tribal laws, ordinances, rules, regulations, and all provisions of the Lower Brule Sioux Tribe Law and Order Code.

(3) Conservation Officers shall ensure that any person who hunts, fishes, traps, gathers plants or parts thereof, or cuts wood have in possession the appropriate licenses, permits and/or tags and are complying with all rules, regulations and laws.

(4) Conservation Officers shall assist the Director in his supervision and management of all natural resources on the Lower Brule Sioux Reservation and shall perform all other duties described or delegated by the Director.

(5) Conservation Officers shall keep a detailed daily log of activities and make bi-weekly reports of these activities describing by total number, miles, contacts, violations, dispositions, surveys and what activities were performed or completed during the preceding weeks.

(6) Conservation Officer may not settle or compromise an alleged Natural Resource violation for which a citation was issued.

(7) Conservation Officers shall adhere to Conservation Enforcement Standards issued by the Director. (See Appendix A).

(8) Conservation Officers shall not guide or provide fee guiding services for the purpose of harvesting or attempting to harvest any fish or wildlife on any lands of the Lower Brule Sioux Reservation. Violation of this prohibition shall result in disciplinary action by the Director.

5.02 Enforcement by State Conservation Officers

State Conservation Officers may be authorized by the Tribal Council to enforce the provisions of this code and to institute proceedings in the Tribal, State, Federal Court by use of citation forms of that Department, or refer the matter to the appropriate Tribal Conservation Officer or Tribal Prosecutor or U.S. Attorney for further investigation or action.

5.03 Search and Seizure When Authorized

Any person authorized to enforce the provisions of this code may conduct a search of a person, object or place, and seize objects when the search is made:

- (1) With consent;
- (2) Pursuant to valid search warrant;
- (3) Within the authority and scope of a lawful inspection;
- (4) As otherwise authorized by law or provisions of this code; or
- (5) Incident to arrest.

5.04 Investigation and Citations

- (1) Any person authorized to enforce the provisions of this code may:

A. Subject to the immediately-preceding subsection 5.03, conduct routine inspections of vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, containers, packages, tents, and other receptacles contained therein, utilized by any person in a harvest activity authorized by this code and records of commercial transactions.

B. Execute warrants issued for the arrest of violators of this code.

C. Execute search warrants issued by the Tribal Court in matters arising under this code.

D. Serve subpoenas or other legal documents issued in matters arising under this code.

E. Stop and board any boat, or stop any vehicle if the Officer has probable cause that there is a violation of any provision of this code.

F. With or without a warrant, open, enter and examine vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, packages, and other receptacles contained therein, in which the Officer has probable cause to believe that contraband fish, wildlife, plants, carcasses, or parts thereof, may be contained.

G. Issue a citation on a form approved by the Tribe, Tribal Court, U.S. Attorney, and Department Director to any person upon finding probable cause that such person(s) has violated any provision of this code.

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

I. Any enforcement officer or Department personnel, in the course of his or her duties, may enter upon Tribal trust, allotted and fee land within the exterior boundaries of and trust lands outside the same boundaries of the Lower Brule Sioux Reservation and remain thereon while performing such duties hereunder, and such actions by the Officer(s) and/or Department personnel shall not constitute trespass. Interference by an individual or individuals toward a Conservation Officer, while in the course of their duties, shall be construed as harassment and subject to citation for unpermissible conduct and/or arrest for disorderly conduct.

(2) The inspections authorized by subsection 5.04(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.

(3) An arrest may be executed by any Officer through a tribally or federally approved arrest warrant or reasonable belief of imminent danger to life or property.

(4) 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. After the final disposition of the case, a hearing shall be held by the court to determine the disposition of all property taken as evidence. Upon satisfactory proof of ownership, property taken as evidence shall be returned to the owner, except for contraband, which shall be disposed pursuant to Sections 6.26 and 6.28.

5.05 Parties to a Violation

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

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

A. Directly commits the violation;

B. Aids or abets in the commission of; or

C. Is a party to a conspiracy with another to commit the violation, or advises, hires, or counsels, or otherwise procures another to commit the violation.

5.06 Harvesting After Revocation or Suspension

No person whose Reservation hunting, fishing, trapping, gathering, wood cutting or recreational privileges have been revoked or suspended, shall hunt, fish, or trap on the Lower Brule Sioux Reservation during such revocation or suspension.

SECTION 6: PENALTIES

6.01 Jurisdiction

Except as otherwise provided by this code, the Lower Brule Sioux Tribe, through its Tribal Council, Tribal Court, and such other tribal entities as are designated by Tribal law, shall have absolute, original, and exclusive jurisdiction to regulate and adjudicate all matters pertaining to wildlife, fish, and other resources, and all matters pertaining to recreational activities within the boundaries of the Lower Brule Sioux Reservation. This Section shall not prohibit federal or state prosecution, whether civil or criminal.

6.02 Notice

Signs shall be posted conspicuously at all maintained roads and highways entering the Reservation, putting the public on notice of Tribal jurisdiction over Tribal lands. The notice shall be in a form similar to the following, to the effect that:

- (1) Permits are required for all hunting, fishing and outdoor recreational activities;
- (2) Persons who violate any Tribal law are subject to Tribal and Federal prosecution;
- (3) Visitors must inquire locally at the Department of Wildlife, Fish and Recreation for permits and information.

6.03 Civil Complaints

Except as otherwise provided in this code, all matters arising under this code shall be adjudicated in the Lower Brule Sioux Tribal Court following the filing of a Civil Complaint naming the Lower Brule Sioux Tribe as plaintiff, by the Authorized Officer alleging the violation, or by legal counsel for the Tribe.

6.04 Procedure

Except as otherwise provided in this code, or as the interests of justice may require, the Lower Brule Sioux Formal Rules of Civil Procedure shall govern all questions of procedure arising as a result of the enforcement of this code.

6.05 Federal Prosecution

(1) Nothing in this code shall be deemed to preclude federal prosecution under 18 U.S.C. § 1165 of nonmembers who trespass on the Reservation to hunt, trap, fish, or to remove wildlife. Federal prosecution may be pursued in addition to or in lieu of other enforcement procedures provided by this code.

(2) The taking or using of Tribal property or services contrary to the terms of this code constitutes theft of Tribal assets. Accordingly, nothing in this code shall be deemed to preclude federal prosecution under 18 U.S.C. § 1163 for theft of Tribal property. Federal prosecution may be pursued in addition to or in lieu of other enforcement procedures provided by this code.

(3) Nothing in this code shall be deemed to preclude federal prosecution pursuant to 16 U.S.C. § 3371 et seq. (Lacey Act). Federal prosecution may be pursued in addition to or in lieu of other enforcement procedures provided by this code.

6.06 Criminal Sanctions

(1) It shall be a criminal offense for any person over whom the Tribe may assert criminal jurisdiction to:

A. Take, possess, transport, buy, sell, conceal, or offer for sale any big game species or any part thereof in violation of this code, or Department rule or regulation; or

B. Detach or remove from the carcass of a big game animal a portion thereof for the purpose of concealing evidence of illegality; or

C. Use an explosive compound, or a corrosive, narcotic, poison or other deleterious substance for the purpose of taking, stunning, or killing wildlife or fish.

(2) Violation of this Section shall be punished by a fine of not less than \$50.00 nor more than \$1,000.00, or by imprisonment in the Tribal jail for not less than one (1) day nor more than sixty (60) days, or performance of up to 80 hours of community service, or by any combination of such fine, imprisonment and community service.

(3) Any person over whom the Tribe may assert criminal jurisdiction who is a public officer, and who willfully fails to enforce this code, or a lawful rule, regulation or order of the Department is guilty of a criminal offense and is subject to the punishment provided in this Section.

(4) The criminal penalties in this Section shall be in addition to the Liquidated Damages assessment pursuant to Section 6.22.

6.07 Criminal Intent

(1) Any person over whom the Tribe may assert criminal jurisdiction who attempts to commit any offense prohibited in Section 6.06 shall be guilty of a criminal offense.

(2) For the purpose of this Section, "attempt" means to:

A. Intentionally engage in conduct which would constitute the offense if the attendant circumstances were as the person believes them to be; or

B. Intentionally do or omit to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of the offense.

(3) Violation of this Section shall be punished by a fine of not less than \$50.00 nor more than \$1,000.00, or by imprisonment in the Tribal jail for not less than one (1) day nor more than sixty (60) days, or performance of up to 80 hours of community service, or by any combination of such fine, imprisonment and community service.

6.08 Criminal Solicitation

(1) Any person over whom the Tribe may assert criminal jurisdiction who solicits another person to commit any offense prohibited in Section 6.06 shall be guilty of a criminal offense.

(2) For the purpose of this Section, "solicit" means to:

A. Encourage, command or request another person to engage in specific conduct, which would constitute the offense; or

B. An attempt to commit such offense or would establish his or her complicity in its commission or attempted commission.

(3) Violation of this Section shall be punished by a fine of not less than \$50.00 nor more than \$1,000.00, or by imprisonment in the Tribal jail for not less than one (1) day nor more than sixty (60) days, or performance of up to 80 hours of community service, or by any combination of such fine, imprisonment and community service.

6.09 Criminal Conspiracy

(1) Any person over whom the Tribe may assert criminal jurisdiction who conspires with another person to commit any offense prohibited in Section 6.06 shall be guilty of a criminal offense.

(2) For the purpose of this Section, "conspire" means to:

A. Agree with another person or persons that they or one or more of them will engage in conduct which constitutes the crime; or

B. Agree to aid another person or persons in the planning or commission of such crime or of an attempt to commit such crime.

(3) Violation of this Section shall be punished by a fine of not less than \$50.00 nor more than \$1,000.00, or by imprisonment in the Tribal jail for not less than one (1) day nor more than sixty (60) days, or performance of up to 80 hours of community service, or by any combination of such fine, imprisonment and community service.

6.10 Penalties and Sanctions

A. Civil Penalties

(1) Any person who engages in conduct prohibited by any provision of this code and in the exercise of due care should know that the fish, wildlife, or plants taken, possessed, transported, sold in violation of, or in a manner unlawful under any provision of this code or Federal Acts and/or laws, may be assessed a civil penalty, by the appropriate court authority, of not more than \$10,000.00 for each violation.

(2) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. Each violation shall be deemed a separate civil offense.

(3) Civil jurisdiction over all matters under this code shall be with the Tribal or Federal Court which shall adjudicate in accordance with Tribal or Federal Code all questions, complaints, and alleged violations involving the provisions of this code.

B. For any civil violation, a revocation or suspension of Reservation hunting, fishing, trapping, gathering, wood-cutting, or recreational privileges for a period not to exceed one year may be imposed.

C. For any violation, a civil remedial forfeiture of any property, including boats; motors; vehicles; hunting, fishing, or trapping property; or other property used in the commission of the violation of this code may occur, as the court deems appropriate.

D. Civil Damages

In addition to any other penalty allowed by this code, the Tribal or Federal 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 – actual, non-punitive damages against any person(s) unlawfully killing, wounding, catching, taking, trapping, or having unlawfully in possession any of the named fish, wildlife, or plant species, or any part thereof.

6.11 Apprehension of Suspected Violators

(1) Any authorized officer who has reasonable grounds to believe that a person has violated this code, 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 member or nonmember, and if a nonmember, whether the person is Indian or non-Indian. In making such determination, the officer may demand identification and ask such questions as the officer reasonable believes are necessary to make the determination.

(2) Any person who an authorized officer reasonably believes to have violated this code may:

A. Be issued a Civil Complaint, pursuant to Section 6.12, and, if appropriate, be required to post a bond, pursuant to Section 6.14, and be released; or

B. Revoke the suspected violator's Tribal hunting and fishing license, recreation permit or any other permit on site until the matter is settled before the Tribal Court.

(3) If the suspected violator refuses to identify himself or herself the officer shall enter a fictitious name, such as John Doe or Jane Doe, on the Complaint. After learning the defendant's true name, the Tribe shall amend the Complaint to reflect the defendant's true name.

6.12 Civil Complaints

(1) The issuance of a Civil Complaint initiates a civil action against a suspected violator of this code.

(2) The Civil Complaint shall be prepared in triplicate and be signed by the person cited. One copy will be given to the person cited; one copy will be filed with the Tribal prosecutor; and one copy will be filed at the Department.

(3) That portion of the Civil Complaint requiring the signature of the person cited (i) shall be preceded by an explanation that, in the discretion of the officer serving the Civil Complaint, the signature of the person cited not only is an acknowledgment of receipt of the Civil Complaint, but also is a power-of-attorney to the court, authorizing the court to enter an admission of the alleged civil offense and to accept the person's Field Bond and Liquidated Damages, if any, as payment in full of the civil penalty; and (ii) shall be further preceded by a check-off area in which the officer serving the Civil Complaint states that the officer either does or does not authorize the person to appear by power-of-attorney. If the officer does not authorize appearance by power-of-attorney, the person cited must appear for the scheduled Initial Appearance.

(4) The Civil Complaint shall inform the person cited of the violation charged, the location, date, and time of the alleged violation, and the location, date, and time of the Initial Appearance, which shall be scheduled not more than 21 days from the date of the issuance of the Civil Complaint. The Civil Complaint shall also inform the person cited that failure to appear at the Initial Appearance will result in the entry of a default judgment against him or her and forfeiture of bond money or property.

6.13 Initial Appearance

(1) A person served with a Civil Complaint shall appear at the time and place stated in the Civil Complaint, or prior to that time if so authorized by the court, and upon the directions contained in the Civil Complaint admit or deny the allegations contained within the Civil Complaint. In any civil action, the defendant may file a written response to the complaint, in lieu of a personal appearance, provided that the defendant so notifies the court not less than 24 hours before the scheduled Initial Appearance and that the written response is received by the court prior to the scheduled Initial Appearance.

(2) For the Civil Complaint, if the defendant admits to liability for the acts complained of, the court may immediately impose a penalty or set a separate hearing to establish a penalty. If the defendant denies liability, the proceedings used to adjudicate liability shall be in accordance with the laws and procedures governing civil proceedings in the Lower Brule Sioux Tribal Court.

6.14 Field Bond

(1) Upon issuing a Civil Complaint, an Authorized Officer may demand that a suspected violator post a Field Bond in an amount equal to the maximum amount of the Civil Penalty plus the Liquidated Damages Amount for the violations alleged in the Complaint.

(2) Bond property may be cash or other property, which the officer reasonably believes is valued at an amount at least equal to the required bond amount.

(3) Field Bond is justified and shall be collected by the officer using any reasonably necessary non-deadly force, when, in the officer's judgment:

- A. The violator is not a resident of the Reservation; or
- B. The violator does not own sufficient valuable property which is permanently affixed to or stored on the Reservation; or
- C. The violator refuses to sign the complaint; or
- D. The violator cannot be, or refuses to be, positively identified; or
- E. Any other reason which leads the officer to believe that the violator's presence at the court hearing for the violation cannot be assured, or the violator's willingness or ability to pay the penalty or Liquidated Damages assessment is reasonably questioned.

(4) Any person who believes that a Field Bond has been required unlawfully or unreasonably may request, in writing, a bond hearing before the Tribal Court. Bond hearings shall take place within 14 days of the filing of such request, excluding Saturdays, Sundays, or other Court holidays.

(5) Non-cash bond property may be redeemed at any time during normal business hours at the Department office, or at another duly authorized location, by the posting of a cash bond, or payment of damages, or both. Post-judgment redemption must occur, if at all, within 30 days of the entry of judgment, unless an appeal is filed.

(6) If the suspected violator is found liable for the alleged violation, and there is no appeal, the bond shall be applied in satisfaction of the judgment. Failure to appear at the hearing shall result in entry of a default judgment and forfeiture of bond. Non-cash bond property shall be sold and the proceeds shall be applied to the judgment. Any excess proceeds shall be returned to the violator.

(7) If the suspected violator is found to be not liable for the alleged violation, the bond property shall be returned to the suspected violator.

6.15 Bond Notice Procedures

(1) If feasible, the officer shall issue a Bond Notice to a suspected violator before the officer takes possession of any bond property. An officer may seize bond property first and then issue a Bond Notice if the officer reasonably believes that the delay caused by the Bond Notice Procedure could:

- A. Jeopardize the safety of the officer; or
- B. Lead to a breach of the peace; or
- C. Jeopardize the opportunity to receive a Field Bond; or
- D. Allow the suspected violator the opportunity to flee the jurisdiction of the Tribe.

(2) The Bond Notice shall be prepared in triplicate and be signed by the suspected violator. One copy will be given to the person cited; one copy will be filed with the Tribal prosecutor; and one copy will be filed at the Department.

(3) The Bond Notice shall contain the following information:

- A. The date;
- B. The suspected violator's name and address;

- C. The Civil Complaint number;
- D. The alleged violation;
- E. The maximum dollar amount of the penalty;
- F. The Liquidated Damages amount;
- G. The required bond amount;
- H. The signature and identification number of the issuing officer;
- I. If a cash bond is posted, the amount received;
- J. If a property bond is posted, a description of the property, including serial and model numbers, where available, and the officer's estimate of the value of the property;
- K. Information concerning the redemption or return of the Field Bond; and
- L. Other information as is reasonably requested by the Department.

6.16 Bond Property Storage

All bond property shall be inventoried, labeled with the defendant's name and citation number, and placed in secured storage at the Department within 24 hours of being posted.

6.17 Classification of Civil Penalties

(1) The maximum civil penalties for violations of this code shall be:

- A. Class One: Fifty dollars (\$50.00)
- B. Class Two: Two hundred dollars (\$200.00)
- C. Class Three: Five hundred dollars (\$500.00)
- D. Class Four: Seven hundred fifty dollars (\$750.00)
- E. The civil penalty for an offense involving the unlawful disposal or possession of any hazardous material or petroleum product shall not exceed \$1,000.00, exclusive of clean-up costs, and 250 hours community service.

(2) A civil penalty of up to three times the amount of the penalty for that class of offense may be imposed if:

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

B. The violator issues a check in payment of a penalty imposed under this code knowing there are insufficient funds on deposit with the bank to ensure payment of the check on its presentation.

(3) In addition to the civil penalties above, the court may also require that the violator complete a hunter's safety course conducted by the Department or the State of South Dakota, and that no further permits shall be issued to the person until the course is completed.

6.18 Revocation and Denial of Right to Obtain Permit; Notice

(1) If any person is believed to be in violation of this code by an Authorized Officer, and the alleged violation is a Class Three or Class Four Civil Offense, the Officer shall revoke on site that person's permit to take wildlife or fish until the matter is settled before the Tribal Court.

(2) If any person is found in violation of this code by the Tribal Court, the Department may revoke that person's permit for up to two years from the date of violation. This remedy is available in addition to the other remedies provided by this code and is subject to the following conditions:

A. Not more than three weeks after the Tribal Court's ruling, the Department shall order the person, at a hearing in Tribal Court at a scheduled time and date, to show cause why the Court should not revoke that person's permit and privilege and the duration of the revocation. Notice shall be sent to the violator's last known address by registered or certified mail; and

B. The person whose permit and privilege has been revoked may appeal the Department's final decision to the Tribal Court within thirty days of the Department's decision.

(3) It shall be unlawful for any person to knowingly issue a permit of any kind to a person whose privilege to obtain that permit has been revoked. Any permit issued to a person whose privilege to have that permit has been revoked shall be void.

(4) Violation of this Section shall be a Class Two Civil Offense.

6.19 Trespassing; Expulsion of Nonmembers

(1) Any nonmember who violates this code shall be deemed a trespasser. Such violation includes, but is not limited to, failure to purchase and possess a valid Recreation Permit. It shall be unlawful for any nonmember to trespass on the Lower Brule Sioux Reservation.

(2) Any Authorized Officer may expel nonmembers who violate this code, in addition to or in lieu of any other enforcement procedure provided for by this code.

(3) Any nonmember who violates this code shall also be subject to formal exclusion pursuant to the treaties, constitution, and other laws of the Lower Brule Sioux Tribe.

6.20 Contempt

All defendants to actions brought under this code, whether member or nonmember, shall be subject to the civil contempt power of the Lower Brule Sioux Tribal Court, and may be sanctioned by any means provided for in the Lower Brule Sioux Tribal Code for civil contempt, including, but not limited to, imprisonment or other fines or penalties to compel compliance with a lawful court order.

6.21 Liquidated Damages Provisions

(1) The Department shall prepare and at least once per year shall review and, as necessary, revise a schedule of Liquidated Damages calculated to closely approximate the cost of providing equitable restitution to the Tribe for the damage which would be caused by each violation of each regulation of this code. In calculating these Liquidated Damages the Department 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.

(2) The Department shall publish the schedule of Liquidated Damages and cause it to be made available to the public at the Department.

6.22 Liquidated Damages Presumption

(1) Since in most instances the exact amount of damages caused to the Tribe by a particular violation of this code will be difficult or impossible to determine, it shall be presumed by the court adjudicating a complaint for violation of this code that the amount fixed by the schedule of Liquidated 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 Liquidated 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.

(2) All persons shall be deemed to have consented to the Liquidated Damages provisions of this code by their entry onto the Reservation, and where applicable, by their signature on a Tribal permit or permits.

6.23 Punitive Damages

(1) Nothing in this code shall be deemed to preclude the Tribe, through its counsel, from praying for and being awarded punitive damages in any civil action filed for a violation of this code wherein it is alleged that the violator has committed the acts constituting the violation without regard to the interests of the Tribe or wantonly, willfully, or maliciously.

(2) The Court, in assessing punitive damages, shall determine their amount in the same manner in which it would determine punitive damages in any other civil action. Punitive damages shall not exceed ten times the amount of the civil penalty.

6.24 Costs

(1) In addition to civil penalties and liquidated and punitive damages, the Court may award payment of costs associated with damage to Tribal resources not otherwise provided for in this code, including, but not limited to, rehabilitation, reforestation, loss of future revenue, and loss of productivity.

(2) The Court may also charge the violator with payment of all reasonable costs associated with the enforcement of these regulations, beginning with detection and including all processes through prosecution and collection of the settlement, such as field or animal examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney's fees.

6.25 Seizure of Prohibited Devices

(1) Any unauthorized device defined in Sections 7 and 8 may be seized by the officer if:

A. Seizure of the suspected violator's property is directly necessary to prevent irreparable injury to Tribal property or resources; and

B. Prompt action is needed because it is likely that the person may flee with or conceal the offending property, or that the person may continue the prohibited use.

(2) Any officer seizing property under this Section shall issue to the person from whom it is seized a receipt for the property describing it in detail. The officer shall then deliver the property to the Director for safe-keeping pending the outcome of all hearings on the seizure and the underlying violations, which shall be adjudicated pursuant to this code.

(3) In addition to filing any other complaints for the illegal use or possession of the seized property, the counsel for the Tribe may apply to the Court for an injunction prohibiting the continued use or possession of the property on the Reservation.

6.26 Disposal of Prohibited Devices

(1) After adjudicating the underlying complaints of illegal possession or use, the Court shall dictate the disposal of the seized property.

(2) Return of property: If the seized property belongs to a nonmember, the Court shall return the property to its owner, unless it determines that continued retention of the seized property is necessary to secure payment as provided by the Field Bond procedures of this code. The Court shall also advise the owner of the terms of any injunctions which have been issued against the continued use or possession of the property on the Reservation, and shall further advise the violator that violation of the injunction is contempt of court and may subject the violator to further civil liability.

(3) Forfeiture: If the seized property belongs to a member, or to a nonmember who fails to appear, the judge may order, in addition to any other sanction imposed for the violation, that the property be forfeited to the Tribe. In case of such forfeiture, the Director shall dispose of the property in the manner most consistent with the goals of the Department, choosing between destruction of the property, sale for the benefit of the Department at public auction, or retention of the property for Department use.

(4) If the owner of seized property cannot be determined, the complaining officer shall file with the Court Clerk a Notice of Intent to Confiscate and a Complaint, designating the defendant by a fictitious name following the procedures of Section 6.11(3) and include a description of the property, the date of seizure, and the location of seizure. The Court Clerk shall cause them to be posted in the Court and published in the Chamberlain Register and Pierre Capitol Journal for two weeks. A hearing on the matter shall be set for the first available date after the publication period has ended, and the date of the hearing shall be included in the posted and published notices. If the owner of the property fails to appear at the scheduled hearing the Court shall dispose of the property pursuant to the immediately-preceding subsection on Forfeiture.

6.27 Disposition of Fees, Forfeitures, Penalties

(1) All fees resulting from the sale of permits by the Department and its agents, and all fines, costs, monies, penalties, or damages collected for violation of this code shall be deposited in the Tribal General Fund and shall be available for expenditure in connection with the conservation and protection of the fish and wildlife of the Lower Brule Sioux Tribe; provided, however that bonds, unless forfeited, shall be deposited in a special Tribal account as provided by Section 3.03.

(2) Each Tribal judge or clerk of the Court shall, within 20 days after a judgment has been rendered under the provisions of this code, remit to the Tribal Treasurer all fines, forfeitures, damages, or penalties collected.

6.28 Disposition of Seized Wildlife and Property

(1) Wildlife seized under this code may be disposed of in such manner as the Department may prescribe.

(2) The Department shall prepare a report of all wildlife and devices seized by Authorized 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. All money derived from the sale of any seized property shall be deposited in the manner required by this code and other applicable Tribal law and procedure.

SECTION 7. GENERAL RULES AND REGULATIONS

7.01 Permits and Identification

(1) Except as otherwise provided by this code, no person shall take or attempt to take any wildlife, fish, timber, plant, or seed, or engage in any recreational activity regulated by this code on the lands established as the Lower Brule Sioux Reservation and trust lands outside the same exterior boundaries of the Lower Brule Sioux Reservation unless such person has in his or her personal possession a valid Tribal hunting and fishing, woodcutting, gathering, or recreation permit authorizing that activity.

(2) No person to whom any license has been issued under this code shall, when requested by the Lower Brule Department of Wildlife, Fish and Recreation, fail or refuse to provide harvest reports and data, and such other relevant information, as may be requested.

(3) No person required to obtain a hunting and fishing, woodcutting, gathering, or recreation permit pursuant to subsection 4.01 shall fail or refuse to exhibit such permit(s) when asked to do so by a Conservation Officer.

7.02 Wanton Waste of Fish, Wildlife and Plants

(1) No person who takes any fish, wildlife or plants shall abandon intentionally, or needlessly allow to go to waste, any portion thereof. The failure of any person to properly dress and care for any fish or wildlife species taken or killed by that person, and, if the carcass is reasonably accessible, the failure to take or transport the carcass to the residence of that person, or place for proper storage, and there properly care for the carcass within 48 hours after taking or killing, is prima facie evidence of a violation.

(2) No person shall abandon edible portions of fish or wildlife at a meat processing plant. The leaving of edible portions of fish or wildlife at a processing plant for more than 90 days shall be considered prima facie evidence of a violation. The owner(s) or operator(s) in charge of any meat processing plant shall report the violation to the Lower Brule Sioux Department of Wildlife, Fish and Recreation Director, or to any Local Law Enforcement Agency for referral to the Department Director.

7.03 Larceny of Fish, Wildlife or Plants

No person shall, without permission of the owner, molest, disturb or appropriate any fish, wildlife, plant or the carcass and/or parts thereof, which has been lawfully reduced to possession of another.

7.04 Use of Poison and Explosives

(1) No person shall take, capture, or kill, or attempt to take, capture, or kill any fish, wildlife, or plant with the aid of dynamite or any explosive, poisonous, or stupefying substance, or device. Exception: prairie dogs may be poisoned with zinc phosphide oats, in accordance with label prohibitions and restrictions; a poisoning permit is required (see section 9.16).

(2) No person shall place in any waters explosives which might cause the destruction of any fish, wildlife, or plant, except when authorized by the Department Director, or have in his or her possession or under his or her control upon any waters any explosive, poisonous, or stupefying substance, or device for the purpose of taking, catching, or killing any fish, wildlife, or plant.

(3) No person shall use, set, lay, or prepare in any waters of the Reservation any lime, poison, fish berries, or any other substance deleterious to fish life; or use baits containing poison of any description in any area of the Reservation or other places where such baits might destroy or cause the destruction of fish, wildlife or plants; and the possession of any such poison, baits, or substances deleterious to fish, wildlife, or plants regulated by this code is prima facie evidence of a violation of this section.

(4) No person shall take, capture, or kill, or attempt to take, capture, or kill any game bird by setting or operating any trap or device designed, built, or used to capture birds.

(5) Nothing in this code shall prohibit the Lower Brule Department of Wildlife, Fish and Recreation or its designated agents from using explosives or possessing explosives for the purpose of removing beaver dams, clearing a channel, or breaking a log or ice jam or for the creation of wetlands.

7.05 Throwing Refuse in Waters and on Land; Abandoning Automobiles, Boats, or other Vehicles

No person shall deposit, place or throw into any Reservation waters or lands, or leave upon the ice or in such waters any cans, bottles, debris, refuse, or other solid waste material; and no person shall abandon any automobile, boat, or other vehicles in such waters. Any automobile, boat, or other vehicles not removed from such waters within thirty (30) days shall constitute abandonment.

7.06 Scientific Investigations

The Lower Brule Department of Wildlife, Fish and Recreation with Tribal Council authorization may permit personnel from educational institutions, state and federal agencies, and non-government organizations to conduct investigations of fish, wildlife and plants in order to develop scientific information relating to populations, distribution, habitat needs, and other biological data in order to advise the Tribe and others on conservation measures designed to ensure the continued ability of fish, wildlife, and plants to perpetuate themselves.

7.07 Seasons

No person shall engage in harvest activities regulated by this code, except during the respective seasons established pursuant to this code.

7.08 Unlawful Possession of Fish, Wildlife, or Plants

No person shall have in his or her possession or under his or her control at any time any fish, wildlife, plant or carcass and/or part thereof, knowing that the same has been taken unlawfully or during a closed season for such species.

7.09 Bag Limits; Possession Limits

No person shall have in his or her possession or under his or her control any fish, wildlife, or plant in excess of the bag or possession limits, or above or below the size limits for any fish, wildlife, or plants as established by this code.

7.10 Sharing of Permits and Tags

Except as otherwise provided in this code, no person shall lend, share, give, transfer, sell, barter, or trade to any person any identification document, permit, or tag issued by the Tribe pursuant to this code.

7.11 Harvesting with Another's Permit

No person shall hunt, fish, trap, guide, train dogs, recreate, gather plants or seeds, or cut wood while in possession of any permit or tag issued to another except when authorized under permit issued by the Department Director.

7.12 Shining Animals

(1) It shall be unlawful for any person to use or possess night vision equipment or shine a spotlight, headlight, or any other artificial light on a road or in a field, pasture, woodland, forest, or prairie for the purpose of locating, hunting, pursuing, taking or attempting to take or kill any fish or wildlife.

(2) This subsection shall not apply to:

A. Any Tribal member, spouse, or affiliate on foot who uses a hand-held flashlight, night vision, or thermal equipment while on foot to track or hunt raccoon, skunks, coyotes, or any other unprotected species.

B. Any person authorized to enforce the provisions of this code while on official business conducting an active investigation.

C. Any person authorized to conduct fish or wildlife censuses or surveys.

D. Any deeded or allotted landowner on their own deeded or allotted land possessing a .22 caliber rifle or shotgun only to pursue furbearers, rabbits, or unprotected wildlife.

7.13 Duties on Accidental Shooting

Any person who, while hunting any fish or wildlife discharges a firearm or arrow, and thereby injures or kills another person, shall forthwith give his or her name and address to such person if injured and render assistance to him or her as may be necessary and obtain immediate medical or hospital care, and shall immediately report such injury or death to the proper law enforcement authorities.

7.14 Failure to Report Hunting Accidents

Any person who has caused or been injured in an accident in which another person has been injured by gunfire or by an arrow while hunting, fishing, or trapping, or has inflicted an injury upon himself or herself with a firearm or arrow while hunting, fishing, or trapping, shall render, or cause to be rendered, a report to the Department Director. Failure to report such an accident shall constitute a violation of this section.

7.15 Hunter Education Requirement

Any person under the age of 18 must have completed a certified Reservation, State, or Canadian Hunter Safety Course and show proof of successful completion to the authorized license vendor to purchase a hunting or trapping license.

7.16 Age Restrictions

- (1) No person under 12 years of age may hunt or trap while possessing a firearm or bow and arrow.
- (2) No person between the ages of 12 and 15 years may hunt or trap while possessing a firearm or bow and arrow unless he or she is accompanied by a licensed or permitted parent, guardian, or other adult designated by a parent or guardian.
- (3) There are no age restrictions for the purpose of fishing. However, any person under 10 years of age must be accompanied by an adult, guardian, or other adult designated by a parent or guardian.

7.17 Parental Obligation

No parent, guardian, or other person shall authorize or knowingly permit or encourage a child to violate any provisions of this code.

7.18 Hunting, Fishing, Trapping, and Boating While Intoxicated

No person shall hunt, fish, trap, or operate a boat while under the influence of alcohol, intoxicant, or controlled substance to a degree that the person is incapable of safely using such weapon or equipment, or while a person has a blood alcohol concentration of 0.08% or more by weight of alcohol in the person's blood or 0.08% grams or more of alcohol in 200 liters of that person's breath.

7.19 Resisting a Conservation Officer

No person shall assault or otherwise resist or obstruct any law enforcement officer authorized to enforce the provisions of this code in the performance of duty.

7.20 False Impersonation of an Enforcement Officer

No person shall falsely represent himself or herself to be a law enforcement officer authorized to enforce the provisions of this code, or shall assume to act as such an officer, without having been first duly appointed.

7.21 General Restrictions on Hunting and Trapping

(1) Hunting in Restricted Areas; No Person Shall:

A. Hunt within 1700 feet of any hospital, school and/or grounds, or any public establishment and/or grounds.

B. Hunt or discharge a firearm within 660 feet of any occupied dwelling, church, schoolhouse, or livestock without the express permission of the owner or occupant of the building.

C. Hunt or pursue any wildlife, or enter for the purpose of hunting or pursuing any wildlife, on any allotted or fee land without the express permission of the owner or occupant. Trap or pursue furbearers on legally posted land without permission from the owner or occupant.

D. No person shall drive a vehicle of any type in a designated walk-in area except to retrieve legally harvested big game animals, or to place or retrieve decoys. From December 31st to April 1st, and May 15th to August 15th, vehicle use is permitted on established trails for the purposes of checking or setting traps, fishing, plant gathering, timber cutting, or other non-hunting recreation. No person driving in a designated walk in may have in their possession a shotgun, bow and arrow, crossbow, or centerfire rifle.

(2) Transportation of Firearms, Crossbow, and Bow & Arrow

A. No person shall, at any time, transport a firearm with a round in the chamber, or revolvers with cartridges in the cylinder, or a shotgun with more than two (2) shells in the magazine.

(3) Safe Use of Firearms and Bows

A. No person shall hunt, load, or discharge a firearm, bow, or crossbow from or across a roadway.

B. No person shall load or discharge a firearm or bow of any type in or from a motor vehicle.

C. No person shall lean or place any loaded firearm or bow of any type against any vehicle.

D. No person shall allow a firearm or bow to protrude from a vehicle.

(4) Restrictions on Use of Bait

A. No person shall place or hunt over bait unless such material is present from normal agricultural practices.

B. No trapper or person shall set any trap within 30 feet of any exposed bait visible to airborne raptors. Exposed bait means meat or viscera of any animal, bird, or fish with or without skin, hide, or feathers.

C. No person shall place, use, or hunt over bait containing, or contained within, metal, plastic, glass, wood, or non-biodegradable materials.

(5) Unpermissible Conduct

A. Leave any gate, bars, or other devices used to enclose land or livestock open upon entering or exiting the premises for the purposes of hunting, fishing, recreating, woodcutting, or gathering plants or seeds unless he or she is in lawful possession of the premises.

B. In any manner deface, destroy, or remove any signs posted in a legal manner.

C. Intentionally interfere with other persons lawfully engaged in taking or attempting to take game or fish, engage in any activity specifically intended to harass or prevent the lawful taking of game or fish, or scare or disturb game with specific intent to prevent its lawful taking.

D. No person shall drive a vehicle of any type in an area that has been designated as a Walk-in Hunting Area.

E. Nonmembers may not hunt, shoot, chase, or otherwise take or attempt to take wildlife while on horseback in a designated Walk-in Hunting Area. Non-members may not have in their company a horse while in a designated Walk-in Hunting Area.

F. No person shall possess or discharge any lead-based shotgun ammunition while hunting.

(6) Exceptions

A. These subsections shall not apply to any person authorized to enforce this code, who in the line of duty places, possesses, transports, loads, or discharges a firearm in, on, or from a motor vehicle or motorboat, or discharges a firearm from or across a maintained roadway or right-of-way, or leaves an established roadway in a motorized vehicle while conducting an active investigation, surveys, or wildlife and fisheries counts.

7.22 Hunting or Harassing Wildlife With Aircraft or Motor Vehicle

(1) No person shall hunt or harass any wild animal with the aid of any type of aircraft. Exception is the authorized use of aircraft to perform population censuses or to remove depredating wildlife with the consent of the Department Director.

(2) No person shall harass, pursue, or chase wildlife from a motor vehicle or all-terrain vehicle.

7.23 Pivot Guns and Similar Devices

No person shall place, operate or attend, spread, or set any net, pitfall, spring gun, pivot gun, swivel gun, or other similar contrivance for the purpose of catching, or which might catch, take, or ensnare wild animals.

7.24 Tampering With Equipment of Another

No person shall molest, disturb, tamper with, or in anyway interfere with any hunting, fishing, trapping, gathering, wood cutting, recreational or other equipment used, set, or placed by another except with the owner's permission.

7.25 Endangered and Threatened Species Protected

Except as otherwise permitted by law, no person shall take, transport, possess, or sell any endangered and threatened species.

7.26 Wildlife Refuge Established

No person shall enter any designated Tribal, Federal, or State Refuge for the purpose of taking, pursuing, harassing, killing or disturbing any wildlife, fish, or plant. This subsection shall not apply to any person authorized to perform directed management and enforcement duties as permissible by the agency of operation.

7.27 Unprotected Species

Except as otherwise expressly provided, nothing in this code shall be construed to prohibit or regulate the harvest of any unprotected species as defined in Section 2 of this code.

7.28 Protected Species

No person shall hunt, fish, trap, gather, take, pursue, harass, disturb, sell, purchase, or barter any protected species as defined in Section 2 of this code, except those species whose harvest is specifically regulated pursuant to the provisions of this code.

7.29 Permissible Conduct

(1) Conduct which is not expressly prohibited, restricted, or otherwise regulated by this code shall be deemed permissible.

(2) Except as otherwise provided herein, nothing in this code shall be construed to prohibit a person from hunting, fishing, trapping, recreating, gathering or wood cutting with an enrolled member of the Lower Brule Sioux Tribe, provided that the nonmember or non-Indian possesses a license or permit and is otherwise not prohibited from engaging in the activity involved and complies with the laws of this code or proper jurisdiction.

7.30 Emergency Closures

(1) Notwithstanding any other provisions of this code, the Department Director is hereby authorized and empowered to order closure of the harvest activity of any species, generally or with respect to a particular location or body of water, whenever in his or her professional opinion and judgment, the harvest or activity is likely to result in a harvest exceeding the harvest goals and quotas or danger to the public.

(2) Every reasonable effort shall be made to consult with and obtain the approval of the Tribe prior to ordering an emergency closure, but such closure may be ordered without consultation or approval if circumstances require.

(3) An emergency closure shall become effective immediately upon issuance or at such time or date as the closure order may direct. Such closure shall be communicated to the Tribe by the best and swiftest practical method.

(4) No person shall violate the terms, conditions, or restrictions of an emergency closure order issued pursuant to this section.

7.31 Hunting Hours

No person shall pursue, shoot, kill, or attempt to take any wildlife between 1/2 hour after sunset of one day and 1/2 hour before sunrise of the next day except as authorized by the Department of Wildlife, Fish and Recreation. No person shall pursue, shoot, kill, or attempt to take a wildlife species except during open hunting hours that are established by the Department of Wildlife, Fish and Recreation for that species.

7.32 Introduction of Fish, Wildlife, and Plants

No person shall transplant onto or transport into any lands of the Lower Brule Sioux Tribe any fish or eggs into any body of water, or any wildlife, animal, or plant species without authorization from the Tribe or Lower Brule Department of Wildlife, Fish and Recreation Director.

7.33 Unarmed Retrieval

Hunters may retrieve lawfully taken wildlife from allotted or fee land if they are unarmed and retrieve from foot.

7.34 Trespass

It is unlawful for nonmembers to enter tribal or allotted lands for purposes other than hunting, trapping, fishing, woodcutting, gathering plants and seeds, or other activities for which a permit is required.

SECTION 8: BIG GAME

8.01 General Big Game Provision

(1) It shall be unlawful for any person to hunt, take, harvest, or pursue any big game animal by any method other than prescribed in this code and/or section.

(2) Nothing in this code shall be construed to prohibit the taking of such big game for scientific purposes or for distribution to elderly and disabled Tribal Members for subsistence purposes with the authorization of the Lower Brule Department of Wildlife, Fish and Recreation.

8.02 Open and Closed Season

(1) A closed season is hereby established for the hunting of big game except for open seasons specified in Section 8.10 or proclamations established pursuant to this code.

(2) Except as otherwise expressly provided by this code, no person shall hunt big game on the Reservation during a closed season.

8.03 Number of Big Game Permits Available

(1) The number of big game harvest permits available for harvest in each big game unit pursuant to this code for each twelve (12) month period commencing January 1 and ending December 31 shall be limited to the number established by the Lower Brule Department of Wildlife, Fish and Recreation.

(2) No person shall hunt on Reservation Lands or big game units of the Reservation in which no harvest permits are made available.

8.04 Big Game Permits/Tags

(1) No person shall hunt big game on any lands of the Lower Brule Sioux Reservation pursuant to this chapter without possessing a valid big game license or permit approved by the Tribe.

(2) No person shall hunt big game without possessing a valid carcass tag.

(3) The Lower Brule Department of Wildlife, Fish and Recreation shall not issue more than one tag at one time to a person except as authorized in sections 8.07 and 8.09, where exceptions for Special Permits are allowed.

(4) No Big Game permits shall be considered valid for any Big Game Unit or Reservation Lands:

A. Which is shown to be closed.

B. For which the permit is marked as invalid.

C. On which any big game permit has been altered.

(5) No person shall move or field dress any big game animal before affixing to it a valid carcass tag.

(6) No person shall move or field dress any big game animal without making a cut or punch through the date of kill.

(7) No person shall hunt and harvest big game in a unit or on Reservation lands that is different than the unit or lands stated on the valid permit.

(8) No person shall harvest and/or tag big game of any species or sex without the appropriate license and carcass tag.

(9) No person shall hunt or harvest big game without their valid license(s) and tag(s) in possession and unless the license(s) and tag(s) are/is properly signed in ink by the hunter.

(10) No person designated to harvest big game for a senior citizen or disabled person shall fail to deliver the validly tagged carcass to such senior citizen or disabled person.

(11) No person shall transport antlered big game off the reservation or to their residence without submitting the carcass for inspection to Lower Brule Department of Wildlife personnel, or making arrangements to do so.

8.05 Accompaniment of Big Game

(1) It shall be unlawful for any big game permittee to transport any big game without being present with the carcass until such time as the carcass is processed.

(2) It shall be unlawful for anyone to knowingly accept for and transport another's big game without the valid license holder present or written permission from the person providing the game or parts thereof.

This subsection shall not apply to any authorized enforcement persons who in the course of their duties transport any such seized big game, or senior/disabled citizens under Section 8.07.

8.06 Accompaniment by Non-Licensee

It shall be unlawful for any big game permittee to be accompanied in the field by a non-licensee carrying a firearm or bow and arrow. A non-licensee is a person not having a valid Tribal big game license.

8.07 Senior Citizen and Disabled Permits

No person other than the designated hunter or senior or disabled citizen may hunt, harvest, transport, or possess any big game with a tribally issued senior or disabled citizen big game permit. Senior or disabled citizen big game permits will be considered provided:

- (1) The applicant meets the age and/or disability requirements established by the Department Director.
- (2) Complete and submit the appropriate Big Game Application.
- (3) If disabled, provide appropriate documents proving such person is disabled.
- (4) Designate one person who will possess the license, hunt and harvest, transport and deliver the carcass to the senior citizen or disabled person.

8.08 Special Provisions for Disabled Persons

It shall be unlawful for anyone to hunt with a disabled person who is in the act of hunting under a waiver of certain restrictions of this code. Waiver of restrictions listed below will be permitted after proof of disability is confirmed:

- (1) Shoot from a roadway
- (2) Shoot from a vehicle that is not moving
- (3) Park off an established trail not further than 100 feet.

8.09 Special Big Game Permits

No person shall possess, hunt, or harvest any big game for special purposes without possessing a valid permit approved by the Tribe and Department Director. To obtain a Special Big Game Permit, one must make application to the Department Director containing the following information:

(1) Purpose of permit request

(2) Period of requested harvest

(3) Designated hunter's name, address, Social Security or Tribal Enrollment Number, Hunter Safety Number (if applicable), phone number, height, weight, color of eyes, color of hair, date of birth.

(4) Name of person requesting permit, address, phone number, Social Security or Tribal Enrollment Number.

(5) Description of vehicle to be used for transporting big game.

8.10 Big Game Season

(1) No person shall hunt big game from the close of the specific season to the opening of the next specific season of the following year.

(2) Each year a regular firearm and bow season shall be established by the Tribal Council, or its designee, with the following limitations:

A. The regular seasons for hunting big game animals with the use of firearms or bow shall not open prior to the third Saturday of August or close later than the last day in December of each year, with the exceptions of elk and bison seasons which may extend to January 31.

8.11 Permissible Methods

(1) No person shall hunt big game animals except by use of any firearm, crossbow, or bow and arrow, the use of which is not prohibited by this code.

(2) No person shall hunt big game with the use of a dog or in the accompaniment of a dog while hunting big game.

(3) Individuals possessing a valid hunting permit for a firearm (i.e., rifle) season may use methods that are more primitive than a firearm, including muzzleloader, crossbow, and bow and arrow, during the firearm season.

8.12 Firearms Restrictions

No person shall hunt big game animals:

(1) With a .22 caliber rimfire rifle, 5mm rimfire rifle, or a .17 caliber centerfire rifle to include any equivalent caliber or smaller.

(2) With a .410 gauge shotgun.

(3) With any handgun except a handgun which is leaded with .357, .41, .44 magnum caliber handgun chambered or commercially manufactured cartridges which produce a minimum muzzle energy of 1000 foot pounds and which has a minimum barrel length of six (6) inches measured from the muzzle of the firing pin with the action closed.

(4) With any shell, cartridge or ammunition known as a tracer shell, or with incendiary shells or cartridges.

(5) With a shot shell containing shot of any size less than a slug.

(6) With a gun having the capacity to hold more than eight (8) shells in the clip or magazine.

(7) With a gun capable of being fired as an automatic.

(8) A rifle with a barrel less than a 16-inch barrel.

(9) A shotgun with a barrel less than 18 inches.

(10) Any altered projectiles.

(11) With any lead-based shotgun ammunition.

8.13 Bow/Crossbow Restrictions

No person shall hunt big game:

(1) With a bow having a pull strength less than 40 pounds or using an arrow that does not have a broadhead.

(2) With a crossbow unless the crossbow:

A. Is fired from the shoulder.

B. Has a minimum draw weight of 100 pounds.

C. Has a stock of not less than 30 continuing inches in length.

D. Is used with arrows or bolts of not less than 14 inches with a broadhead.

E. Has a working safety

(3) With a crossbow while hunting with an archery permit.

8.14 Group Deer Hunting

As used in this section:

(1) "Group Big Game Hunting Party" means two (2) or more persons but no more than 10 persons lawfully hunting big game in a group under this ordinance.

(2) Any person of a group big game hunting party must kill their own big game.

8.15 Hunting Hours

Except where otherwise expressly authorized, no person shall pursue, shoot, kill or attempt to take any big game animal between 1/2 hour after sunset of one day and 1/2 hour before sunrise of the next day.

8.16 Transportation

No person shall transport any untagged big game animal in or on any motor vehicle. All big game animals must be properly tagged before transporting.

8.17 Hunting on Certain Lands Prohibited

No person hunting under a Tribal Big Game Permit shall hunt on any designated Tribal, Federal, or State Wildlife Refuge unless permitted by law with appropriate license or required permit.

8.18 Sale of Big Game and Big Game Parts

(1) No person shall sell, purchase, barter, or trade any big game animal or meat from any big game animal.

(2) No person shall sell, barter, or trade any blood antler or antler in velvet from any big game animal.

(3) Nothing in this ordinance shall prohibit the sale of hides, bones, heads, or dried antlers from a legally harvested big game animal or the trading of such parts for use in traditional or religious ceremonies. Dried antlers that have been naturally shed or dropped by big game animals may be sold, purchased, or traded.

(4) Nothing shall prohibit the sale of big game managed by the Department of Wildlife, Fish and Recreation for management and financial purposes to further develop their respective programs.

8.19 Removal and Retention of Tags

No person who kills big game pursuant to this ordinance shall remove a carcass or registration tag from that big game animal until such time as the carcass is butchered or processed for consumption.

8.20 Evidence of Sex

No person shall transport any big game without leaving evidence of sex attached to carcass. This regulation only pertains to doe or buck, cow or bull only permits and tags. (i.e. leaving head attached, leaving udders attached, leaving penis sheath attached)

8.21 Special Mule Deer Provisions

No person shall harvest any mule deer that does not have at least three points on one antler. A point will be defined as being at least one inch in length as measured from its origin on the antler.

8.22 Grassrope Unit Restrictions

Big game hunting in the Grassrope unit is restricted to those individuals with “muzzleloader” or “archery” tags during the designated muzzleloader and archery seasons.

SECTION 9: PRAIRIE DOG, UPLAND GAME, AND UPLAND GAME BIRDS

9.01 General Provisions

(1) No person shall take, pursue, injure, or harass any prairie dog, upland game, or upland game bird while on or in its nest, den, or burrow, or remove any eggs or young except as may occur in normal agricultural, horticultural, or wildlife research practices, and as may be authorized by the Tribe or the Lower Brule Department of Wildlife, Fish and Recreation.

(2) Nothing in this code shall be construed to prohibit the taking of such upland game or upland game bird for scientific purposes with the authorization of the Lower Brule Department of Wildlife, Fish and Recreation.

9.02 Open and Closed Seasons

(1) A closed season is hereby established for the hunting of upland game and upland game birds except for open seasons specified in section 9.06 or by Tribal Proclamation. Prairie dogs may be hunted year-round.

(2) Except as otherwise expressly provided for by this ordinance, no person shall hunt upland game or upland game birds on the Reservation during a closed season.

(3) A closed season is hereby established for the hunting of hen (female) pheasants.

9.03 Prairie Dog, Upland Game, and Upland Game Bird Hunting Permits and Tags

(1) No person shall hunt prairie dogs, upland game, upland game birds, or mourning doves on any lands of the Lower Brule Reservation pursuant to this section without possessing a valid Upland

Game and/or Bird license or permit approved by the Tribe and Lower Brule Department of Wildlife, Fish and Recreation. However, cottontail rabbits may be hunted with only a General License (an Upland Game License is not required). A prairie dog license is needed to shoot prairie dogs.

(2) The Lower Brule Department of Wildlife, Fish and Recreation shall not issue more than one license to one person at one time except as authorized by the Department Director.

(3) No prairie dog, upland game, or upland game bird license shall be considered valid unless the license or permit is properly signed in ink by the hunter and/or for which any permit is marked invalid.

9.04 Accompany of Non-Licensee

It shall be unlawful for any prairie dog, upland game, or upland game bird hunter/permittee to be accompanied in the field by a non-licensee carrying a firearm or bow. A non-licensee is a person not having a valid tribal prairie dog, upland game, or upland game bird license.

9.05 Special Permits

No person shall possess, hunt, or take any prairie dog, upland game, or upland game bird for special purposes out of season without possessing a valid special permit approved by the Tribe or Lower Brule Department of Wildlife, Fish and Recreation Director.

9.06 Upland Game and Upland Game Bird Season

(1) No person shall hunt upland game or upland game birds from the close of a specific season to the opening of a specific season of the following year.

(2) Each year a regular firearm and bow season for upland game and upland game birds shall be established by the Tribal Council or its designee with the following limitations:

A. The regular season for hunting upland game or upland game birds shall not open before the first day in September or extend later than the last day in February of the following year.

9.07 Permissible Methods

(1) No person shall hunt upland game except by use of shotgun, firearms or bow and arrow.

(2) No person shall hunt upland game birds except by the use of shotgun, bow and arrow, or falconry.

9.08 Firearm Restrictions

(1) No person shall hunt upland game or game birds with:

- A. A shotgun larger than 10 gauge.
- B. A shotgun with a barrel length less than 18 inches
- C. Shot shells of Double BB or larger.
- D. A rifle or handgun of any type.
- E. Any lead-based shotgun ammunition

(2) No person shall hunt upland game with:

- A. A rifle or handgun larger than .22 caliber (to allow the use of both rim and center fire cartridges).
- B. A handgun with a barrel length less than 6 inches.
- C. A rifle with a barrel length less than 16 inches.

9.09 Bow and Arrow Restrictions

No person shall hunt upland game or upland game birds:

- (1) With a bow having a pull or draw strength less than 40 pounds.
- (2) Arrows must be at least 24 inches in length, have at least two (2) untrimmed feathers, and tip must be of a broadhead type.
- (3) With poison or exploding points of any type.
- (4) Crossbows are prohibited.

9.10 Falconry

Hunting upland game birds using birds of prey or raptors is permitted by persons possessing a federal falconry permit and Tribal Upland Game Bird Permit. All bag limits, seasons, and legal hunting hours shall apply.

9.11 Hunting Hours

Except where otherwise expressly authorized, no person shall pursue, shoot, kill, or attempt to take any prairie dog, upland game, or upland game bird between sunset of one day and sunrise of the next day.

9.12 Transportation

(1) No person shall transport any upland game or upland game bird in or on any motor vehicle without possessing the appropriate permit or required license.

(2) No person shall transport any upland game bird in or on any motor vehicle without leaving at least a fully feathered head, one fully feathered wing, or a leg and foot attached to each harvested upland game bird.

(3) It shall be unlawful for any upland game and/or bird permittee to transport any upland game or upland game bird without being present with the carcass until such time as the carcass is processed.

(4) Nor shall any person knowingly accept for transport another's upland game or upland game bird without the valid license holder present or written permission from the person providing the game.

(5) This section shall not apply to any authorized enforcement persons who in the course of their duties transport any seized upland game or upland game bird.

9.13 Hunting Certain Lands Prohibited

No person shall hunt any designated Tribal, Federal, or State Wildlife Refuge unless permitted by law and possessing the appropriate license or required permit.

9.14 Sale of Upland Game or Upland Game Birds

No person shall sell, attempt to sell, or purchase any upland game or upland game birds.

9.15 Limits

No person shall take more than one daily limit on any one day, nor possess more than one daily limit while in the field or while returning from the field to one's vehicle or hunting camp.

9.16 Prairie Dog Poisoning

No person shall poison prairie dogs without a prairie dog poisoning permit. Zinc phosphide oats is the only allowable poison and must be used in accordance to label prohibitions and restrictions.

SECTION 10: FURBEARERS

10.01 General Provisions

(1) No person shall take, attempt to take, pursue, harass, or injure any furbearer in its den, or remove any young except as may occur during normal agricultural, horticultural, or wildlife research practices and as may be authorized by the Department Director.

(2) Nothing in this code shall be construed to prohibit the taking of such furbearers for scientific purposes or depredation control as may be authorized by the Department Director.

10.02 Open and Closed Seasons

(1) A closed season is hereby established for the hunting and trapping of furbearers except for open seasons specified in Section 10.04 or by proclamation.

(2) Except as otherwise expressly provided by this code, no person shall hunt, take or trap furbearers on the Reservation during a closed season.

10.03 Permits and Tags

(1) No person shall take, hunt, or trap furbearers on any lands of the Lower Brule Sioux Reservation pursuant to this section without possessing a valid furbearers license or required permit approved by the Tribe.

(2) The Lower Brule Department of Wildlife, Fish and Recreation shall not issue more than one license to one person at one time except as authorized by the Department Director.

(3) No furbearer license shall be considered valid unless the license or permit is properly signed in ink by the hunter or trapper and/or for which any license or permit is marked invalid.

10.04 Furbearer Season

(1) No person shall take, hunt, or trap any furbearer from the close of a specific season to the opening of a specific season.

(2) Each year a regular firearm and trapping season for furbearers shall be established by the Tribal Council or its designee with the following limitations:

A. The regular season for trapping furbearers shall not open before the first Saturday in October of one year and may continue through the last Sunday in April of the next year to constitute a trapping year.

B. A regular season, to include a year-round season, for hunting furbearers shall only be established for the following species: coyote, red fox, skunk, badger, raccoon, prairie dog, feral dogs, and feral cats.

10.05 Furbearer Hunting and Trapping Hours

(1) Except where otherwise expressly authorized, no person shall pursue, shoot, kill, trap, or attempt to take any furbearers between 1/2 hour after sunset of one day and 1/2 hour before sunrise of the next day.

(2) It shall be permitted for tribal members, their spouses, and affiliates to hunt or trap at night and use a flashlight while on foot to track or hunt raccoon, fox, skunk, coyote, or any other unprotected species.

(3) Except for tribal members, their spouses, and affiliates during a designated season, no person shall take or attempt to take any furbearing animal with the use of night vision or thermal equipment, or have in their possession night vision or thermal equipment.

10.06 Methods of Taking

No person shall:

(1) Trap with any leghold trap larger than a Number Four (4) and/or any trap containing a tooth style jaw.

(2) Trap within 30 feet of any exposed bait visible to airborne raptors.

(3) Trap with aide of poison or poison bait.

(4) Trap with traps or snares without having attached to the traps or snares a metal tag displaying the trappers full name, address and phone number.

(5) Use Crossbows.

(6) Use a bow with a pull strength less than 40 pounds.

(7) Use arrows less than 24 inches in length.

(8) Use explosive points.

(9) Use arrows with a point other than a broadhead having no less than two (2) sharpened edges.

(10) Use artificial lights except as specified in section 10.05 (B).

(11) Use a rifle with a barrel length less than 16 inches and use of a shotgun with a barrel length less than 18 inches.

(12) Use any traps to take any wildlife not specified as furbearer or by proclamation.

(13) Destroy any den, lodge, or hut.

(14) Use poisons or explosives of any type or in any manner not authorized by the Lower Brule Department of Wildlife, Fish and Recreation Director.

10.07 Use of Traps

(1) Any person trapping must attend their traps at least every 48 hours and remove any trapped furbearer.

(2) Any threatened or endangered species or protected species caught in a trap must be immediately released or delivered to the Lower Brule Department of Wildlife, Fish and Recreation Director.

10.08 Trapping Areas Prohibited

(1) No person shall trap on fee or allotted land without receiving verbal or written permission from the owner or tenant.

(2) No person shall trap on any Tribal, Federal, or State Refuge without possessing the required permit, license, and/or tags.

10.09 Possession of Live Furbearers

(1) No person shall remove any live furbearers from their den, lodge, hut, or nest or trap and maintain them in captivity for the purpose of raising them for profit or offering them for sale.

(2) Any person who maintains live furbearers on any lands of the Lower Brule Sioux Reservation must serve notice within 30 days after receipt of the live furbearer(s) to the Lower Brule Department of Wildlife, Fish and Recreation and obtain a permit for those furbearers.

10.10 Bobcat Provisions

(1) Any person taking a bobcat must present it to a tribal conservation officer for registration and tagging of the pelt within five days of capture, and must notify the Lower Brule Sioux Tribe Department of Wildlife, Fish and Recreation of the harvest within 48 hours of capture. No person may buy, sell, or barter any bobcat pelts that are not legally tagged.

(2) The total bobcat harvest shall not exceed the quota set by the department before the beginning of each season. Licensed trappers and hunters will be notified of the closure of the season once the quota is reached via email or phone. If the quota is not reached the season will close at sunset on the last calendar date of the approved bobcat season.

(3) No person shall operate traps or snares intended to take bobcat after the close of the season

10.11 Use of Dogs

Dogs may be used in the pursuit of raccoon, coyote, and fox while hunting with a valid furbearers license. Dogs may not be used in the pursuit of bobcat.

10.12 Harvest of Depredating Animals

Any landowner or tenant may destroy any unprotected furbearer that has been identified as depredating any livestock, poultry, trees, or crops. He or she shall not commercialize in, sell, trade, or ship any pelt, or parts thereof, without possessing a valid Tribal furbearers license or permit.

10.13 Buying or Shipping of Furs or Pelts

No person shall engage in the business of buying or shipping of furs or pelts on any Reservation lands unless he or she possesses a valid Tribal furbearers license or permit.

10.14 Records to be Kept by Licensed Dealer

Any person licensed to engage in the business of buying or shipping furs or pelts shall keep a true and accurate record of each purchase and/or shipment of furs or pelts.

The record shall include:

- (1) The date of purchase;
- (2) The date of shipment;
- (3) The name and address of seller;
- (4) The kind and number of furs involved;
- (5) The amount of money paid for the furs; and
- (6) Any additional information requested.

10.15 Transportation of Furbearers

No person shall transport any furbearer in or on any motor vehicle without possessing a valid furbearer license or required permit and/or required tags.

10.16 Aerial Hunting

No person except an authorized agent shall attempt to take, hunt, or pursue any furbearer using aircraft without authorization from the Lower Brule Department of Wildlife, Fish and Recreation Director and in accordance with federal law.

The following information shall be provided:

- (1) The name and address of each person whom will be hunting;
- (2) A description of the furbearers authorized to be taken, the number of furbearers to be taken, and the harvest area;
- (3) The reason for requesting the permit; and,
- (4) Description of aircraft and pilot's name.

10.17 Motor Vehicle Use

No person shall take, hunt, kill, chase, harass, pursue, or attempt the above from any type of motor vehicle unless specifically authorized by permit or license issued by the Lower Brule Department of Wildlife, Fish and Recreation Director.

SECTION 11: MIGRATORY BIRDS

11.01 General Provisions

(1) No person shall take or injure any migratory bird or harass any migratory bird upon its nest or remove any eggs or young except as may occur in normal agricultural, horticultural, or wildlife research practices and as may be authorized by the Lower Brule Department of Wildlife, Fish and Recreation Director and federal regulations.

(2) Nothing in this code shall be construed to prohibit the taking of such migratory birds for scientific purposes with the authorization of the Lower Brule Department of Wildlife, Fish and Recreation Director and in accordance with federal regulations.

11.02 Open and Closed Seasons

(1) A closed season is hereby established for the hunting of migratory birds except for open seasons specified by proclamation.

(2) Except as otherwise expressly provided by this code, no person shall hunt migratory birds on any Reservation lands during a closed season.

11.03 Firearms Restrictions

No person shall hunt migratory birds with:

- (1) A shotgun larger than 10 gauge.
- (2) A shotgun capable of holding more than two (2) shells in the magazine.
- (3) A shotgun using a plug of two (2) or more pieces.
- (4) A rifle of any type.
- (5) A shotgun with a barrel length less than 18 inches.
- (6) A handgun of any type.
- (7) With shot other than non-toxic shot, except for hunting mourning doves.

11.04 Bait Restrictions

(1) It is unlawful to hunt over bait other than grain crops left in the field due to normal agricultural practices.

11.05 Live Decoys and Electronic Calls

(1) It shall be unlawful to use live decoy birds for the purpose of hunting migratory birds. If live domestic geese or ducks are or have been present, they must be removed ten (10) days prior to hunting.

(2) It is unlawful to use electronic calls or electronic devices of any type to lure migratory birds for any purpose. Note: This provision does not apply to Spring Conservation Orders.

11.06 Permits and Tags

(1) No person shall pursue or take any migratory birds on any lands of the Lower Brule Sioux Reservation without possessing a valid Tribal license, permit, required tags, and Tribal and Federal migratory bird stamps. Tribal members are not required to possess a Federal migratory bird stamp while hunting on the Reservation.

Missouri River: Any enrolled member of the Lower Brule Sioux Tribe hunting migratory birds on the Missouri River is required to possess the requisite Tribal licenses or permits. Any nonmembers of the Lower Brule Sioux Tribe hunting migratory birds upon the Missouri River or its shoreline within the boundaries of the Lower Brule Sioux Reservation are required to possess the requisite Tribal or State waterfowl hunting licenses or permits and must be hunting during an open season and under the regulations established by the agency that issued the license.

(2) The Lower Brule Department of Wildlife, Fish and Recreation shall not issue more than one license to one person at one time except as authorized by the Department Director.

(3) No waterfowl or migratory bird license shall be considered valid unless the license or permit is properly signed in ink by the hunter or for which any license or permit is marked invalid.

11.07 Hunting Seasons, Bag Limits, and Shooting Hours

(1) The establishment of migratory bird hunting seasons and bag limits shall be set in compliance with the Migratory Bird Treaty Act. In addition to any regulations provided for in this subsection, all rules and regulations provided for in 50 CFR 20, Migratory Bird Hunting, will be enforced.

(2) The Lower Brule Department of Wildlife, Fish and Recreation and Tribal Council are responsible for establishing migratory bird seasons in compliance with the Migratory Bird Treaty Act. If recommended Tribal seasons, limits, or taking activities vary from their respective State seasons, limits, or taking activities, or vary from the Central Flyway recommendations for the hunting of migratory birds, the Tribal Council or designated representative is responsible by law to submit a proposal to the U.S. Fish & Wildlife Service, Migratory Bird Management Office, Washington, D.C. to request the variance or Special Migratory Bird Hunting Season. This proposal should include, but not limited to, the following:

- A. The requested hunting season dates and other details regarding regulations to be observed.
- B. Harvest anticipated under the requested regulations.
- C. Methods that will be employed to measure or monitor harvest.
- D. Steps that will be taken to limit level of harvest.
- E. Tribal capabilities to establish and enforce migratory bird hunting regulations.

Upon completion of a Special Migratory Bird Hunting Season, the Tribe or its designated representative is required by law to submit a final report to the Migratory Bird Management Office, Washington, D.C., describing the number of migratory birds harvested per species, and any problems incurred through the special season. If the Tribe does not set a migratory bird hunting season different from the State or Central Flyway Council, then no proposal is required.

(3) Except where otherwise expressly authorized, no person shall pursue, shoot, kill, or attempt to take any migratory bird between sunset of one day and one-half hour before sunrise of the next day.

11.08 Raptors, Bald & Golden Eagles, Other Protected Species

(1) It shall be unlawful for any person to take, attempt to take, kill, hunt, sell, purchase, possess, pursue, shoot at, disturb, or destroy any raptor, golden or bald eagle, owl, falcon or other species of protected migratory birds or its nest or eggs thereof on any lands of the Lower Brule Sioux Reservation.

(2) Any enrolled member of the Lower Brule Sioux Tribe requesting or desiring any eagle, raptors, or protected migratory bird, or parts thereof, for ceremonial or religious purposes must make or properly complete an application for submission to the U.S. Fish & Wildlife Service, Law Enforcement Division.

11.09 Transportation

No person shall transport any migratory bird without:

(1) Leaving a fully feathered wing or head on each carcass.

When transporting migratory birds of another without that person present, written permission from the person providing the migratory bird for transport must be obtained and possessed by the person transporting migratory birds; migratory birds must also be properly tagged if required. Written permission must include the signature, name, address, phone number, and hunting permit numbers of the person who shot the birds, as well as the number and species of waterfowl shot and where they are being transported.

(2) This subsection shall not apply to any authorized enforcement persons in the course of their duties transporting any seized migratory bird(s).

11.10 Live Birds

It shall be unlawful to possess a live migratory bird or birds at any time. All migratory birds must be immediately killed once possession is gained. Persons who raise captive birds may maintain these birds by permit issued through a hatchery, game farm, or State, and/or Federal Agency.

SECTION 12: FISH

12.01 General Provision

(1) No person shall take, attempt to take, or injure any fish in any waters, upon its nest, or remove any eggs as may occur in normal recreational or fisheries research practices, or as may be authorized by the Lower Brule Department of Wildlife, Fish and Recreation Director.

(2) Nothing in this code shall be construed to prohibit the taking of such fish for scientific purposes with the authorization of the Lower Brule Department of Wildlife, Fish and Recreation Director.

12.02 Open and Closed Seasons

(1) A closed season is hereby established for fishing except for the open season, species, and creel or bag limits specified by proclamation.

(2) Except as otherwise expressly provided by this code, no person shall fish on any reservation waters during a closed season.

12.03 Fishing Permits and Tags

(1) No person shall fish, take, or attempt to take, any fish pursuant to this code without possessing a valid tribal fishing permit, license, or required tags issued by the Lower Brule Department of Wildlife, Fish and Recreation.

Reservation Lands: Any person fishing any lands of the Lower Brule Sioux Reservation must possess the requisite Tribal fishing license or permit.

Missouri River: Any enrolled member of the Lower Brule Sioux Tribe fishing within the boundaries of the Lower Brule Sioux Reservation on the Missouri River is required to possess the requisite Tribal fishing license or permit (the state license may be substituted if desired by the fisherman but license holder must follow State limits, rules, and regulations). Any other person fishing upon the Missouri River is required to possess the requisite State fishing license.

(2) The Lower Brule Department of Wildlife, Fish and Recreation shall not issue more than one license to one person at one time except as authorized by the Lower Brule Department of Wildlife, Fish and Recreation Director.

(3) No fishing license or permit shall be considered valid unless the license is properly signed in ink by the fisher and/or for which any permit or license is marked invalid.

12.04 Seasons, Creel Limits, and Size Limits

(1) No person shall take, attempt to take, catch, or fish for any species of fish in excess of the established daily or possession creel or bag limit.

Daily Limit: The number of fish that may be taken from midnight to midnight, except no person may possess more than one day's limit of fish with head, skin, and fins attached while on the water, ice, or actively engaged in fishing.

Possession Limit: The number of fish a person may have under his or her control such as in a portable cooler or registered in his or her name in a commercial cold storage locker.

(2) No person shall take, attempt to take, kill, or possess any fish under or over the specified size limit.

12.05 Trespass

(1) No person may fish on fee or allotted waters without permission from the owner or tenant.

(2) No person may fish on Tribal, State, or Federal Refuge waters or protected waters without possessing the required license, permit, tags, or unlawfully fish in those designated waters.

(3) Nonmembers may not cross Tribal land to fish on the Missouri River without possessing a valid Recreation Permit.

12.06 Hook and Line Limitations

(1) A maximum of four lines and three hooks per line is allowed for fishing open waters.

(2) A maximum of four lines is allowed for fishing through the ice.

(3) Only one end of each line may be equipped with hooks. An artificial lure constitutes one hook, regardless of the number of gang hooks attached.

12.07 Bait

(1) No person may possess carp, buffalo fish, carpsuckers, goldfish, or game fish except bullhead, lake herring, sunfish of the Genus *Lepomis*, and cleanings, as bait for hook and line fishing.

(2) Licensed anglers may take bait for non-commercial purposes and as provide below:

Bait Defined: Bait includes baitfish, frogs, salamanders, crayfish, freshwater shrimp, snakes, lizards, clams, and snails.

Limit: 12 dozen of any species.

Seines, Nets, and Traps: Any licensed angler taking bait may use a seine up to 30 feet long, 6 feet deep, and with a mesh $\frac{3}{8}$ inch square or less; a dip net up to 30 inches in diameter and with a mesh $\frac{3}{8}$ inch square or less; a lift net up to 4 feet square and with mesh $\frac{3}{8}$ inch square or less; a cast net up to 24 feet in diameter and with mesh $\frac{3}{8}$ inch square or less; or a trap no longer than 12 inches in diameter, 36 inches long, and with rigid entrances no wider than one inch.

Trap Marking Required: Bait traps must be clearly marked with the owner's name and address.

Lost Traps: Traps lost or stolen must be reported within 10 days of knowledge of the loss to the Lower Brule Department of Wildlife, Fish and Recreation Director.

Trap Setting: Traps must be set so that not more than one half of the width of a stream is blocked.

Trap Checking: To prevent loss of baitfish or other gill-breathing animals, traps must be checked and emptied at least once every 48 hours.

Game Fish Released: Game fish and endangered or threatened species must be released or returned to the water from which they were taken.

Non-Game Fish Destroyed: All other fish, excluding baitfish, taken in bait traps or seines must be destroyed and buried or disposed of in a manner conforming with Tribal health, pollution, and refuse laws.

12.08 Bait Wholesalers and Retailers License

(1) A Tribal bait dealers license shall be issued by the Lower Brule Department of Wildlife, Fish and Recreation Director and will prescribe rules and regulations for the handling and care of bait.

(2) All Dealers are required to possess the requisite license or permit to sell, trap, seine, or net bait. Each permit or license will:

- A. Include the name, address, and location of dealer.
- B. Specify the type and amount to be possessed.
- C. Specify if purchased, trapped, seined, or netted, and where the bait was purchased, trapped, seined, or netted.
- D. A permit shall be valid for no more than 12 continuous months from date issued.

(3) It shall be unlawful to possess more than 12 dozen minnows or bait species without maintaining a Tribal bait dealers license.

12.09 Commercial Sale of Fish

No person shall sell, barter, trade or offer to sell, barter, or trade any fish taken from Reservation waters, except:

(1) Without possessing a Commercial license issued by the Lower Brule Department of Wildlife, Fish and Recreation Director.

(2) Channel catfish, flathead catfish, and non-game fish.

(3) Persons operating a private fish hatchery.

12.10 Hoop Nets, Traps, and Setlines

No person shall set any hoop net, traps, or setlines except enrolled members of the Lower Brule Sioux Tribe.

Restrictions:

License: No enrolled member of the Lower Brule Sioux Tribe shall set, check, pull, or operate any hoop net, trap, or setline without possessing a valid Tribal license or permit issued by the Lower Brule Department of Wildlife, Fish and Recreation Director.

Tags: Each hoop net, trap, or setline must be marked with a metal tag with the enrolled members name, address, and telephone number.

Size and Construction of Hoop Nets and Traps: Hoop nets must not be more than 18 feet long nor more than 4 feet wide. No leads or wings are permitted. Only hoop nets constructed of fabric mesh with twine size number 15 or larger and slat catfish traps constructed of wood or synthetic slats with at least two 1 1/4 inch openings in each end are allowed. Wire fish traps are prohibited.

Species: Hoop nets, traps, and setlines may be used to take channel catfish, flathead catfish, and nongame fish in Reservation waters. It is prohibited to take blue catfish, game fish, or endangered or threatened fish. Any blue catfish, game fish, or endangered or threatened fish must be released in the waters from where they were caught.

Baitfish: Only prepared or cut bait, worms, frogs, crayfish, and toads may be used on setlines. Whole baitfish (minnows) are prohibited.

Checking: Hoop nets and setlines must be checked at least every 48 hours.

Limit: Unlimited numbers of nongame fish may be taken from Reservation waters.

Sale of Fish: Legal fish taken by hoop net, trap, or setlines from Reservation waters may be sold, bartered, or traded pursuant to subsection 12.09.

Unauthorized Use: No enrolled member may use or tend hoop nets, traps, or setlines of another enrolled member.

Setline Restrictions: No enrolled member may use a setline that operates by a reel or other mechanical device, or more than 20 hooks attached to one setline.

12.11 Gill Netting

It is unlawful to take any fish or attempt to take any fish with the use or aid of a gill net.

12.12 Spearing

No person may take fish with a spear, legal spear gun, crossbow, or bow and arrow except enrolled members of the Lower Brule Sioux Tribe.

(1) Fish may be taken with spear, legal spear gun (a muscle-loaded device propelling a spear attached to a lanyard no more than 20 feet long), crossbow, and bow and arrow. Arrows may have only one point, which must be barbed and attached to the bow by a line. Daily and possession limits are the same as and in combination with hook and line limits.

(2) Nongame fish may be taken between sunset and sunrise January 1 - December 31.

(3) All species of fish, except paddlefish, pallid sturgeon, lake sturgeon, and endangered or threatened fish, may be speared from sunrise to sunset during the seasons established by Tribal proclamation.

(4) Catfish may be taken without limit for non-commercial purposes from sunrise to sunset January 1 - December 31.

(5) Underwater spearfishing is not permitted within 100 yards of designated swimming or waterskiing areas, boat docks, power intake tubes, or spillways. No underwater diving is permitted where placement of the diver-down flag would restrict boat access into or out of a public access area.

(6) Divers must display a diver's flag on the water on a float or buoy during any diving or underwater spearfishing. The flag must be at least 80 square inches and must be all red with a white diagonal beginning at the top of the flag where attached to the staff. The diver's flag indicates a diver is submerged in the immediate area and boats are to avoid the area.

(7) Persons spearfishing may not possess game fish in areas not open to the spearing of game fish.

12.13 Landing Aids

Landing nets, gaffs, and similar devices may be used as an aid in landing fish.

12.14 Artificial Lights

Artificial lights may be used as an aid in taking fish by legal methods.

12.15 Unattended Lines

Each line used must be under the direct supervision and within the unaided observation of the user.

12.16 Ice Houses

Each fish house, shanty, or other shelter must display on the outside the name and address of the owner in letters at least two inches high. The door must permit entry except when unoccupied and locked from the outside. Shelters must be removed from the ice by March 5.

12.17 Transportation

(1) No person shall transport dressed fish from the waters of the Reservation to his or her residence unless those fish can be readily counted. Mobile recreational vehicles, trailers, or tents do not qualify as residences.

(2) Any dressed fish transported, if frozen, must be packaged individually. Two fillets will be counted as one fish.

(3) A person may carry or transport only his or her own lawfully possessed fish.

12.18 Interference

No person may intentionally interfere with other persons lawfully engaged in taking or attempting to take fish, or engage in an activity specifically intended to harass or prevent the lawful taking of fish.

12.19 Restrictions

No person shall:

- (1) Deposit refuse in Reservation waters.
- (2) Leave or deposit fish on the shorelines of Reservation waters.
- (3) Empty receptacles containing exotic bait into Reservation waters. This provision does not apply to fathead minnows or golden shiners.
- (4) Transport or introduce fish or fish eggs into Reservation waters.
- (5) Release fish, reptiles, amphibians, or crustaceans not native to the Reservation into Reservation waters without written authorization from the Lower Brule Department of Wildlife, Fish and Recreation Director.
- (6) Possess, have under control, or maintain trammel nets, gill nets, or seines except legal minnow seines.
- (7) Possess a spear on or near lakes or streams except during legal hours in open season.
- (8) Sell, buy, or barter game fish.
- (9) Lend his or her license to another person or aid someone in securing a license fraudulently.
- (10) Use explosives, electrical devices, or poisonous or stupefying drugs to take fish.
- (11) Shoot fish, frogs, or turtles with a firearm.

SECTION 13: BOATING

13.01 General Provisions

(1) No person shall operate any boat, watercraft, water-vessel, or floating-device without complying with all rules and regulations pertaining to safety and operation established by the U.S. Coast Guard.

13.02 Boating Safety Equipment

No person shall operate any boat, watercraft, water-vessel, or floating device without maintaining the following equipment on or within any boat, craft, vessel, or device:

(1) All motorboats less than 16 feet in length and non-motorized boats must have at least one Coast Guard approved type I, II, or III floatation device for each person on board. All boats 16 feet and over in length must have, in addition, at least one Coast Guard approved throwable type IV device on-board.

(2) All persons using water skis, surfboard, or similar device must wear a Coast Guard approved type I, II, or III floatation device.

(3) Any Enforcement Officer who observes a vessel being used in an unsafe condition or manner and in the Officer's judgment such use creates a hazardous condition may direct the operator to take whatever immediate and reasonable steps that would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring and to remain there until the situation creating the hazard is corrected or ended. For the purpose of this section an unsafe condition is defined as any one of the following:

- A. Operating without boating safety equipment.
- B. Operating in an overloaded condition.
- C. Fuel leakage or presence of fuel in bilges.
- D. Riding on the bow, gunwale, transom, or on the back of seats without taking precautions to prevent persons falling overboard.
- E. Operating in weather or water conditions that endanger the boat and/or occupants.
- F. Operating a boat without a battery cover in place.
- G. Operating a boat without the necessary lights for low light conditions.

13.03 Prohibited Operation

No person shall:

- (1) Operate a boat at excessive speeds, or in a dangerous or reckless manner.
- (2) Operate a boat in an overloaded condition.
- (3) Operate a boat within designated swimming areas or in areas where swimmers are present.
- (4) Operate a boat within 100 yards of a skin-diving zone marked by the appropriate diving flags indicating the presence of skin divers below the surface.
- (5) Operating near dams or other hazardous waters.

(6) Towing water skiers near other vessels, obstructions, hazardous waters, or in a reckless or dangerous manner.

(7) Operate a boat in such a manner to cause a dangerous or damaging wake.

(8) Operate a boat in such a manner as to molest, disturb, or annoy persons lawfully engaged in fishing.

(9) Continue to use or refuse to terminate use of a boat in a hazardous manner after being ordered to cease by an Enforcement Officer.

(10) No person shall operate any motorboat, craft, vessel, or floatation device while under the influence of alcohol or drugs.

13.04 Collisions, Accidents, Casualties, and Liability

(1) It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he or she can do without serious danger to his or her own life or property, to render aid to persons affected by the collision, accident, or other casualty. He or she shall give their name, address, and vessel identification in writing to any person injured and to the owner of any property damaged in excess of \$100.00, or a person disappears from such vessel under circumstances that indicate death or injury, the operator thereof shall file with the Department Director a full description of the collision, accident, or other casualty, including such information as said Agency may, by regulation, require.

(2) The owner of a vessel shall be liable for injury or damage occasioned by the negligent operation of such vessel, whether such negligence consists of a violation of State statutes, or neglecting to observe such ordinary care and such operation as the rules of the common law require. The owner shall not be liable unless such vessel is being used with his or her expressed or implied consent. It shall be presumed that such vessel is being operated with the knowledge and consent of the owner, if at the time of the injury or damage it is under control of his or her immediate family. Nothing herein relieves any other person from any liability he or she would otherwise have, and nothing contained herein authorizes or permits any recovery in excess of injury or damage actually incurred.

SECTION 14: GUIDING OR GUIDES FOR HIRE

14.01 General Provision

(1) No person shall guide or provide fee guiding services for the purpose of harvesting or attempting to harvest any fish or wildlife on any lands of the Lower Brule Sioux Reservation pursuant to this chapter without possessing a valid guide license or permit approved by the Tribe or Lower Brule Department of Wildlife, Fish and Recreation Director.

(2) No guide shall provide services that will allow clients to knowingly or unknowingly take, attempt to take, kill, pursue, or harass any fish or wildlife species during a closed season or in violation of any provisions of this code.

(3) Fee and allotted landowners may guide upon their own land without a Tribal guide license or permit.

14.02 License Requirements

(1) No person shall act as a guide for the purpose of hunting or fishing on any lands of the Lower Brule Sioux Reservation without possessing a valid guide permit or license issued by the Lower Brule Department of Wildlife, Fish and Recreation Director.

(2) Licenses or permits will be issued annually in a form prescribed by the Lower Brule Department of Wildlife, Fish and Recreation Director.

14.03 Seasons and Limits

Except as otherwise provided, guides will operate or provide services within the seasons and limits established by proclamation.

14.04 Responsibilities and Liability

(1) Any person offering guiding services on any lands of the Lower Brule Sioux Reservation are responsible for:

- A. Ensuring that each client has a valid license or permit for the taking of fish or wildlife.
- B. Ensuring that each client does not exceed bag limits or season dates as established by proclamation.
- C. Ensuring that each client understands the rules and regulations prescribed by proclamation and complies with those rules and regulations while under the direction of a guide and while afield.
- D. Reporting any accidents or damage caused by their clients while hunting, fishing, or recreating on the Reservation.
- E. Ensuring that all clients have permission from fee or allotted landowner or tenant to hunt upon those lands.
- F. Providing harvest information and/or harvested animal parts to Department of Wildlife, Fish and Recreation personnel.

G. Following all additional provisions of the hunting guide permit.

(2) Any guide may be liable for:

A. Any physical damages he or she or their clients may knowingly commit to any person or property in violation of this code.

B. Knowingly allow any violation of rules or regulations pursuant to this code.

C. Knowingly allow a client to hunt, fish, or recreate without possessing the requisite license, permit, or applicable hunter safety certification.

D. Knowingly being party to a violation or assisting in commission of a violation.

E. Damages caused by the guide or clients who goes afield under the influence of alcohol or drugs.

SECTION 15: TIMBER AND PLANT HARVEST

15.01 General Provisions

(1) No person shall remove any timber, wood, plant, or seed from any lands of the Lower Brule Sioux Reservation without authorization from the Lower Brule Department of Wildlife, Fish and Recreation Director.

(2) This shall not prohibit the removal of any timber, wood, plant, or seed by fee or allotted landowners.

(3) Any person removing timber, wood, plant, or seed from fee or allotted land must have permission from that fee or allotted landowner or tenant.

15.02 Permits

Any person taking, cutting, or harvesting any timber, wood, plant, or seed must possess a valid Tribal permit. The following information is needed for permit application:

(1) His or her name and address.

(2) Location of removal area.

(3) Type of timber, wood, plant, or seed to be removed.

(4) Amount of timber, wood, plant, or seed to be removed.

(5) Purpose and need for timber, wood, plant, or seed.

(6) Dates removal will begin and end.

15.03 Responsibilities and Liability

Any person removing any timber, wood, plant, or seed for their use or sale may be held responsible for knowingly causing physical damage to an area that exceeds normal harvesting or cutting practices such as:

(1) Cutting any timber, wood, plant, or seed species not authorized by permit.

(2) Cutting any timber, wood, or plant that have nests or dens of birds or mammals.

(3) Causing environmental damages, such as erosion to soil, from vehicle use.

(4) Failure to remove any cut timber, wood, or plant.

(5) Cutting any timber, wood, or plant not marked or identified for harvest when applicable.

(6) Causing a fire from careless use of equipment or careless behavior.

(7) Deposit any litter while afield.

SECTION 16: DOG TRAINING; FIELD TRIALS

16.01 General Provisions

(1) No person shall train dogs for commercial purposes or organize, host, coordinate, or compete in any field trials on any lands of the Lower Brule Sioux Reservation without authorization from the Lower Brule Department of Wildlife, Fish and Recreation Director.

(2) Nonmembers may not train dogs on tribal land. Nevertheless, dog training is permissible on tribal member allotted and deeded lands, with allottee or landowner permission.

(3) This code shall not prohibit the training of dogs by allotted landowners on their allotted lands.

(4) Any person training dogs for commercial purposes or organizing, hosting, coordinating, or competing in a field trial on fee or allotted land must have permission from that fee or allotted landowner or tenant.

(5) Dog training and field trials are prohibited when the current year population index of the species of wildlife that dogs are being trained on or field trial is being held on (e.g. prairie chicken, sharp-tailed grouse, pheasant) is below the previous 10-year average.

16.02 Permits

Any person training dogs for commercial purposes or organizing, hosting, coordinating, or competing in field trials must possess a valid Tribal permit. The following information is needed for permit application:

- (1) His or her name and address.
- (2) Location of training area or field trial.
- (3) Number and breed of dogs to be trained or number and breed of dogs competing at field trial.
- (4) Dates dog training or field trial will begin and end.

16.03 Responsibilities and Liability

Any person training dogs for any purpose or the organizer, host, coordinator, or individuals competing in field trials may be held responsible for knowingly causing damage to the Tribe's wildlife and natural resources. This includes:

- (1) The killing or harassment of any species of wildlife by a dog.
- (2) Causing environmental damages, such as erosion to soil, from vehicle use.
- (3) Causing a fire from careless use of equipment or careless behavior.
- (4) Deposit any litter while afield.

SECTION 17: RECREATION

17.01 General Provisions

(1) Nonmembers of the Lower Brule Sioux Tribe shall not engage in the following activities on tribal or allotted lands without a valid recreation permit: picnicking, camping, boat launching, hiking, horseback riding, ATV, snowmobile, or dirt bike riding, cross-country skiing, wildlife viewing and photography, and other related activities.

(2) Nonmembers of the Lower Brule Sioux Tribe are required to purchase recreation permits when traveling across tribal or allotted lands to access the Missouri River for any recreational activity, including shore-fishing.

(3) Permits are not required at Corps of Engineers Recreation Areas (Right and Left Tailrace and Good Soldier Creek).

(4) Enrolled members of any federally recognized Tribe are exempt from purchasing recreation permits to recreate at any established Tribal Recreation Area.

(5) Removal of antlers from tribal or allotted lands by nonmembers of the Lower Brule Sioux Tribe is prohibited.

17.02 Permits

Any person engaging in recreational activities listed in Section 17.01 must possess a valid Tribal permit. The following information is needed for permit application:

- (1) His or her name and address.
- (2) Specific recreational activity permitted.
- (3) Beginning and ending dates recreation permit is valid.

17.03 Responsibilities and Liability

Any person recreating on tribal or allotted lands may be held responsible for knowingly causing damage to the Tribe's wildlife and natural resources. This includes:

- (1) The killing or harassment of any species of wildlife.
- (2) Causing environmental damages, such as erosion to soil, from vehicle use.
- (3) Causing a fire from careless use of equipment or careless behavior.
- (4) Deposit any litter while afield.

SECTION 18: SPECIAL PERMITS

18.01 General Provisions

It shall be unlawful for any person to harvest any fish, wildlife, plant, or seed for any special purpose without obtaining a permit or license from the Lower Brule Department of Wildlife, Fish and Recreation Director.

18.02 Permits

(1) Special permits may be available upon request for taking or harvesting fish, wildlife, timber, plants, or seeds on lands of the Lower Brule Sioux Reservation.

(2) The following information is needed for permit application:

A. Name and address or person(s) making the request.

B. Reason for request.

C. Name of person(s) who will be harvesting the fish, wildlife, timber, plant, or seed or name of person(s) responsible for the activity for which the special permit has been requested.

D. Dates of harvest to occur.

E. Area for harvest to occur in.

F. Species and amount to be harvested.

(3) The Lower Brule Department of Wildlife, Fish and Recreation Director shall:

A. Present the permit request to the Tribal Board, Commission, or Council for approval.

B. Determine sex, amount, and methods of harvest.

C. Provide assistance if requested.

D. Request and collect any unused special permits.

SECTION 19: PADDLEFISH

19.01 General Provision

(1) It shall be unlawful for any person to hunt, take, harvest, or pursue paddlefish by any method other than prescribed in this code and/or section.

19.02 Paddlefish Season

(1) No person shall snag for paddlefish from the close of the specific season to the opening of the next specific season of the following year.

19.03 Permissible methods

(1) No person shall

A. Cast for, hook, snag or otherwise attempt to snag paddlefish without being issued, and having in their possession, a valid license and tag, by the Lower Brule Department of Wildlife Fish and Recreation

B. Use more than one hook, or a hook with a gap bigger than ½ inch between the point

and the shaft

- C. Use a gaff hook or other penetrating device as an aid while landing paddlefish
- D. Snag, or attempt to snag paddlefish from the Big Bend Powerhouse downstream to the chain link fence on both the left and right tailrace areas
- E. Snag or attempt to snag paddlefish or rough fish before 6 am or after 9 pm

SECTION 20: PROCLAMATION HAS FORCE OF LAW

20.01 General Provision

Any proclamation, resolution, or ordinance issued by the Lower Brule Sioux Tribal Council shall have full force of law. Any person violating a provision of such order or proclamation shall be subject to penalties and/or imprisonment within Section 6, Penalties. In addition to any fine and/or imprisonment, the violator shall be subject to forfeiture of his or her license, permit, loss of privileges for one year, and confiscation of paraphernalia used in connection of the violation.

20.02 Proclamations to be Posted

Each proclamation, resolution, or ordinance issued by the Tribe pursuant to this code shall be published and posted at least once in the following locations: Lower Brule Sioux Tribal Administration Building, Department of Wildlife, Fish and Recreation Headquarters, Lower Brule Post Office, Lower Brule High School.

20.03 Emergency Openings and Closures of Seasons

Any season established by proclamation may be closed, modified, altered, or a closed season may be opened after investigation and recommendation by the Lower Brule Department of Wildlife, Fish and Recreation Director finds:

(1) That a species of fish or wildlife for which an open season exists, are in danger of depletion or extinction, or when necessary for the proper protection during critical periods, the Director may close a season for proper protection of said species.

(2) That any species of fish or wildlife have become sufficient in numbers or have over populated an area and are causing depredation problems, the Director may open or extend a season to control said depredating species.

(3) That due to environmental or climatic conditions, a hunting season may create a hazard to life or property (i.e., fire), the Director may close or postpone a season and reopen a season at a later date upon reasonable notice through local media.

APPENDIX A. CONSERVATION ENFORCEMENT-PERFORMANCE STANDARDS

The Tribe(s) (Contractor) shall perform the contracted conservation enforcement program in accordance with the qualifications, trainings, code of conduct, inspection and evaluation, and other standards applicable to Bureau Law Enforcement personnel as follows:

A. In addition to Tribal personnel employment standards, the Contractor shall adhere to the Office of Personnel Management, Bureau of Indian Affairs, accepted standards for skill level GS-1812 minimum job entry level qualifications.

Prior to hiring conservation enforcement officers, formal background investigations must be completed. Areas to be considered should include, but not be limited to, criminal record, traffic record, military, education, and prior work experience. Background investigations shall remain in the employee's official personnel file.

B. In addition to requirements of the Contractor's Policies and Procedures, the Contractor, prior to taking disciplinary actions involving suspension, demotion, or termination against any Conservation Enforcement employee, shall take the following steps:

(1) Notify employee of the contemplated action and give a full specification of the reasons such action is contemplated.

(2) Provide the employee with a written statement of any specific violation of rules, regulations, or statutes the Contractor alleges the employee has committed and the names of all persons upon whose testimony these allegations are based.

(3) Set a meeting date with the appropriate administrative personnel, Tribal Council, or Division Director, the employee and employee's legal counsel, if he or she has such counsel, not less than 15 days after the employee has been given the written statement of allegations.

(4) Provide the employee and, if applicable, the employee's counsel at the meeting with an opportunity to confront and question each person providing information adverse to the employee.

(5) Provide the employee and, if applicable, the employee's counsel at the meeting with an opportunity to delineate issues, to present factual contentions and supporting information in an orderly manner and to generally protect the employee's interest.

(6) Reconsider the decision to take the adverse action based solely on the information given at the meeting and provide the employee at the time the decision is announced with a written statement of the reasons for the decision and the information relied upon in reaching the decision.

C. The Contractor shall assure that each officer is qualified in the field of conservation enforcement and has a working knowledge of arrest procedures, rules of evidence, crime scene search, preservation of evidence, writing reports, testifying in court, and related enforcement functions.

D. Firearms Qualifications will be biannual and should be held in conjunction with handgun firearms certifications. All ammunition for qualification with handgun, rifle and shotgun will be provided by the Contractor.

Each Conservation Enforcement Officer must attain a score of 70 percent or better on an approved firearms qualification course twice during a calendar year, with at least a four month period separating each session to be considered qualified to carry a firearm. Whenever an officer fails to qualify or the qualification time lapses, the officer shall return all weapons issued. The following courses are approved firearms qualification courses:

(1) The National Rifle Association National Police Course.

(2) The National Rifle Association 25 Yard Course.

(3) The National Rifle Association Practical Pistol Course.

(4) The Federal Bureau of Investigation Practical Pistol Course.

(5) Indian Police Academy/FLETC Timed PPC Course

(6) Fifty Yard Practical Pistol Course

(a) Conservation Enforcement Officers shall be issued the standard police .38 caliber and ammunition. The use of other calibers or types of handguns, such as automatics, para-bellums are prohibited. The barrel length may be not more than six inches nor less than four inches for uniform personnel, and not less than two inches for plainclothes personnel, and only standard load ammunition may be used. The Assistant Secretary of Indian Affairs may grant a written waiver to permit Conservation Enforcement Officers to carry handguns not authorized by this paragraph in accordance with current CFR Regulations.

(b) If weapons other than sidearms are issued, Officer must also qualify them. These qualifications will be on a police approved course, with training conducted by any State or BIA certified instructor.

(c) A firearm may be discharged only when in the considered judgment of the Officer there is imminent danger of loss of life or serious bodily injury to the Officer or to another person. The weapon may be fired only for the purpose of rendering the person at whom it is fired as incapable of continuing the activity prompting the Officer to shoot. The firing of warning shots is prohibited. This policy does not apply to the use of firearms to participate in official marksmanship training, or to kill a dangerous or seriously injured animal.

(d) Except in firearms training, each time a firearm is used, a report shall be filed with the Officer's Supervisor and the Supervisor will notify the respective Agency Superintendent and Criminal Investigator. Whenever use of a weapon results in serious injury or death of any person(s), the Officer firing the weapon shall be placed on administrative leave, to be assigned to strictly administrative duties pending a thorough investigation of all circumstances surrounding the incident.

E. Each Conservation Enforcement Officer shall receive a minimum of forty hours of local in-service training annually to meet needs determined by the Contractor and to keep abreast with developments in the field of Conservation Enforcement. If economically feasible, each Conservation Officer shall attend all Conservation Management Trainings or Workshops to keep abreast with developments in the field of Conservation Management.

F. The Contractor shall require each Conservation Enforcement Officer it employs to sign and adhere to a code of conduct prescribed by the Contractor. The signed copy shall be filed in the employee's official personnel file. The code shall establish specific rules concerning conflict of interest, employee conduct both on and off duty, impartiality and thoroughness in performance of duty, and acceptance of gifts and favors.

G. The Contractor shall permit the inspection and evaluation of the contracted conservation programs by the Bureau of Indian Affairs Inspection and Evaluation Unit in accordance with 68 BIAM, Supplement 1, Release 5, or 56 BIAM Release 1, Fish, Wildlife and Recreation.

H. The Contractor shall assure that each Conservation Enforcement Officer shall be specifically identified as such.

I. Uniforms shall be worn at all times while on routine duty which shall positively identify the wearer as a Conservation Enforcement Officer. Badge, name plate, and shoulder patch shall be visible at all times. Each Officer shall be issued an identification card bearing a photograph of the Officer.

J. The Contractor shall assure that all Conservation Enforcement vehicles are equipped with a two-way radio, emergency lights, one of which must be red, sirens, safety screens (sedans and crew-cab), fire extinguisher, flashlight, emergency flares, rope, blankets, first aid kit, shovel, tow chain, tire chains, attached or portable winch, handyman jack, and jumper cables. The Contractor shall require that all vehicles used be in good condition and that a DI 120 operators log book or similar operator/maintenance record book be kept current. The Contractor shall assure that all Conservation Enforcement vehicles are thoroughly cleaned on a weekly basis and all litter removed on a daily basis and all ashtrays emptied daily. The Contractor shall require that all Conservation Enforcement vehicles are marked on each front door with a Department emblem resembling the Officer's shoulder patch.

K. The Contractor will provide all uniformed Conservation Enforcement Officers with the following and assure they are in good condition:

- (1) .38 caliber revolver and ammunition.
- (2) Belt, holster, handcuff case, and cartridge holder.
- (3) Handcuff with keys.
- (4) Minimum of two complete uniforms, including hat.
- (5) Hat badge, breast badge, and coat/jacket badge.

L. The Contractor shall certify that each Conservation Enforcement Officer will or is able to do the following activities:

- (1) Identify furbearers, big game, small game, waterfowl, all wildlife and threatened, protected and/or endangered species, and their habitats.

- (2) Identify species of fish and their habitats.
- (3) Recognize and dismantle illegal sport gear and commercial fishing tackle (nets, trap sets, snares, deadfalls, etc.)
- (4) Recognize and seize illegal firearms and ammunition.
- (5) Conduct random patrol on land and water by use of car, truck, boat, aircraft, snowmobile, snowshoes, skis, and foot.
- (6) Recognize signs of illegal hunting, fishing, and trapping activity.
- (7) Respond to complaints and take action or refer to appropriate agency if needed.
- (8) Interview complainant and witnesses.
- (9) Cite, in a professional manner, violations of season, time, protected species, and illegal methods, bag limits, sex.
- (10) Seize, mark, and hold illegal game and equipment in a safe place for court evidence. Provide confiscated property receipts.
- (11) Determine appropriate methods for apprehending illegal operators.
- (12) Determine ownership of dogs that are running deer or any wildlife; inform the owner of circumstances and to keep dogs tied, or destroy dogs that are running deer or any wildlife as per Contractor's policy.
- (13) Prepare detailed incident reports for courtroom use and prepare Informational Complaint forms to maintain record of violation/complaint history for Department.
- (14) Stop vehicles and boats where occupants have been observed in violation of the law or when violations is suspected.
- (15) Check licenses, permits, and tags to determine if valid, not borrowed, or fraudulently obtained, or that conditions of license/permit are otherwise in compliance.
- (16) When so directed by appropriate court or operational policy, sell confiscated fish or wildlife, and have check made payable to Lower Brule Department of Wildlife, Fish and Recreation. The check or money shall be deposited into the Tribal Fish, Wildlife and Recreation Special Account. Under no circumstances will Conservation Enforcement Officers accept actual money.

(17) Any fish or wildlife that is confiscated or seized shall be secured or stored as not to be wasted or spoiled. Any perishable fish or wildlife shall be stored in a freezer. If any species is too large to fit into a freezer, the animal will be processed at a commercial processing plant and then placed into the freezer with head, cape, and other parts. Fish and wildlife recovered where no citation has been issued or formal court appearance has occurred will be donated to charitable causes and a signed receipt shall be obtained from the charitable organization. No fish or wildlife seized or confiscated will be sold or donated until the case has been disposed.

(18) Examine fish or wildlife for method of take and when taken.

(19) Investigate animal damage or depredation, issue permits, and/or destroy animals.

(20) Report vehicle killed deer to appropriate authorities.

(21) Inspect for legality of fur and tag with appropriate tag(s).

(22) Assist Department with statutory responsibility in recovery of drowning victims, lost persons, severe weather emergencies, and civil disorders when requested.

(23) Maintain a working relationship with Tribal and Federal Prosecutors, Court Judge, Clerk of Court, and various support staff.

(24) Act as court officer and liaison for all cases within jurisdiction.

(25) Obtain and serve search warrants, seize property, and issue evidence receipts.

(26) Know and practice court room etiquette and procedure.

(27) Testify as witness at motions, preliminary hearings, and trials.

(28) All weapons shall be inspected monthly by the Division Director who will report results in the monthly consolidated report. The Contracting Officer or his designee shall be notified immediately of any deficiencies in weapons.

(29) All firearms shall be cleaned at least once every two weeks. Ammunition shall be replaced at least once a year.

(30) The proper storage of firearms at home shall include; rendering firearms inoperable by a safety device and/or storing ammunition and the weapons separately. Both ammunition and firearms shall be stored in places not readily accessible to children.

(31) Map reading techniques (e.g., road, topographic, quadrangle, plat books).

M. Each Conservation Officer shall be certified in advanced first aid and water rescue procedures. Emergency Medical Technician is the desired level of performance.

N. In order to assure that Conservation Enforcement Officers are physically qualified to perform their assigned duties in a manner which reduces the risk to themselves, others, and to the resources protected, yearly physical examinations will be obtained and results furnished to the Contracting Officer. Program funds may be used if necessary to complete the physical examinations.

O. In addition to tribal personnel employment standards, each applicant entering into employment as a full-time permanent Conservation Officer, shall pass a Health and Performance related physical fitness test.

The following are the physical fitness test battery standards:

(1) 1.5 mile run or stress test given by a physician or qualified person:

Technique - Both of these tests measure cardiovascular endurance or the effectiveness of the body to transport and use oxygen. The standard U.S. Forest Service step test is administered. It consists of stepping up and down on a bench 15 3/4 inches high for men, 13 inches for women, at a rate of 22 1/2 times a minute for 5 minutes. Fifteen seconds after completing the test the pulse is measured for 15 seconds. This pulse rate is used along with the weight, age and sex to determine the step test score. A minimum level of 35 is required.

Minimum Score - A minimum step test score of 35 or 1.5 mile run of 14 minutes is required.

Training - A gradually increased walking or walk-jog program is recommended to increase aerobic capacity. Other types of exercises that will help aerobic conditioning are bicycling, rowing, running, swimming or any exercise that increase the heart rate to about 75% of the maximum for a minimum of 30 minutes, three (3) times per week. This level of exercise should be reached gradually over a period of several months for those who are not physically fit or involved in conditioning program.

(2) Pushups:

Technique - Standard pushups from the toes are used. The body must be kept straight at all times. The chest must touch the floor at the low position and arms must be straight at the high position. The test is started in the down position. During this test the partner's hand will be placed on the floor under the chest of the person being tested. A pushup will be counted by the partner when the chest touches the hand.

Minimum Score - A minimum score of 25 pushups are required during the one minute time period allowed.

Training - Repetitive pushups on a regular basis will develop the muscular endurance necessary for this test. To start, one can use a wall and push away until muscular strength is developed to the point where pushups can be done on the floor. Doing pushups with the knees remaining on the ground is also a good technique for beginners. The bench press will aid in developing strength for the pushup test.

(3) Sit-ups:

Technique - Bent leg sit-ups are used. While seated on the floor the knees are brought towards the chest until the feet are flat on the floor. The toes are placed under something or someone else can hold the feet down to anchor the body while the sit-ups are completed. Hands must be clasped behind the head or neck during the entire sit-up. At the down position the shoulders must touch on the knee. During the test the partner will hold the feet down and count the sit-ups. Start in the down position.

Minimum Score - A minimum of 25 sit-ups is required during the one minute time period allowed.

Training - Repetitive sit-ups on a regular basis will develop muscular endurance necessary for this test. Increased abdominal strength can be attained by holding a small weight behind head while doing the sit-ups or using an inclined board.

(4) Swimming:

Technique - Any style or stroke. Kick turns are allowed. No standing on the bottom or holding the sides of the pool are permitted. Start by either diving from the pool edge or push off while in the pool. The distance of the swim is yards. Lakes or ponds can be substituted for pools.

Minimum Score - A minimum of five (5) minutes is required to complete the 200 yard swim.

Training - Practice with the various strokes and emphasize fundamentals. The use of the legs is very important in this test.

All phases of the physical fitness test battery must be completed at the minimum level or better. All phases will be conducted by a Physician or qualified person.

APPENDIX B. FIELD BOND SCHEDULE AND LIQUIDATED DAMAGES PROVISIONS

**Section Regulation Classification of
Civil Penalties**

05.06 Hunting, fishing, or trapping while under revocation or suspension **class four**

07.00 General Rules and Regulations

07.01 (1) Hunting, Fishing, Trapping, Gathering, Recreating without Class Three
valid license, permit, or tag.

07.01 (3) Failure to display identification or permit Class One

07.01 (4) Failure to provide harvest report or data Class One

07.02 (1) Wanton waste of fish, wildlife, or plants. Class Three

07.02 (2) Abandonment of fish or wildlife at processing plant. Class Two

07.03 Unlawful larceny of fish, wildlife, or plants. Class Three

07.04 (1) Unlawful take with the aide of explosive, poisonous or Class Three
stupefying substance or device.

07.04 (2) Unlawful placement of explosives in any waters. Class Three

07.04 (3) Unlawful use of poisonous baits. Class Three

07.04 (4) Taking any game bird with unlawful device. Class Three

07.05 Unlawful littering. Class One

07.07 Hunting, fishing, trapping during closed seasons. Class Three

07.08 Unlawful possession of fish, wildlife, or plants during closed Class Three
seasons.

07.09 Unlawful possession/over limit of fish or wildlife. Class Three

07.10 Unlawful sharing of permits and tags. Class Three

07.11 Unlawful harvesting with another's permit. Class Three

07.12 Unlawful shining or spotlighting. Class Two

07.13 Failure to report an accidental shooting. Class One

07.14 Failure to report hunting accident. Class One

07.15 Hunter education requirement. Class One

07.16 Age Restrictions. Class One

07.17 Unlawful parental obligation. Class One

07.18 Hunting, fishing, trapping, boating while intoxicated. Class Four

07.19 Resisting a conservation officer. Class Four

07.20 False impersonation of an enforcement officer. Class Three

07.21.1.A Hunting within 1700 feet of a hospital, school or public establishment class Three

07.21.1.B Hunt or Discharge a weapon within 660 feet of occupied dwelling or livestock Class Two

07.21.1.C Hunting trespass on fee or allotted land Class Three

07.21.1.D Driving off established road or trail Class Two

07.21.2 Transporting a firearm with a chambered round Class Two

07.21.3.A Hunting, loading, or discharging a firearm from or across a roadway Class Two

07.21.3.B Loading or discharging a firearm from a motor vehicle Class Three

07.21.3.C Allowing a firearm to lean against a vehicle Class Two

07.21.3.D Allowing a firearm or bow to protrude from a vehicle Class Three

07.21.4.A Hunting over Bait Class Two

07.21.4.B Trapping within thirty feet of exposed bait or viscera Class Two

07.21.4.C Placing Bait Class Two

07.21.5.A Leave any gate open while hunting fishing or recreating Class One

07.21.5.B Deface destroy or remove any signs posted in a legal manner Class Two

07.21.5.C Hunter Harrasment Class Two

07.21.5.D Driving in a walk in area Class Two

07.21.5.E Non-member Hunting while on Horseback Class Two

- 07.21.5.F Possession of Lead Shot Class Two
- 07.22 Unlawful hunting or harassing wildlife from aircraft, motor vehicle, or all-terrain vehicle. Class Four
- 07.23 Unlawful use of pivot guns and similar devices. Class Four
- 07.24 Tampering with another person's equipment. Class Two
- 07.25 Unlawful take of threatened, endangered, and protected species. Class Four
- 07.26 Unlawful hunting or trespassing in designated wildlife refuge. Class Three
- 07.28 Unlawful take of protected species. Class Four
- 07.29 Unpermissible conduct while hunting, fishing, trapping, recreating, gathering, or cutting wood.2
- 07.30 Unlawful hunting during an emergency closure. Class Three
- 07.31 Hunting hours violation. Class Two
- 07.32 Unlawful introduction of fish, wildlife, or plants. Class One
- 07.34 Trespass violation. Class Two

08.00 Big Game Provisions

- 08.01 Unlawful hunting of big game. Class Three
- 08.02 Unlawful big game hunting during a closed season. Class Four
- 08.04 Unlawful big game hunting without appropriate permits or tags. Class Four
- 08.04.11 Failure to check in antlered big game Class Three
- 08.05 Failure to accompany harvested big game while transporting. Class Two
- 08.06 Unlawful accompaniment by non-licensee. Class Three
- 08.07 Unlawful use of senior citizen or disabled permits. Class Two
- 08.08 Unlawful hunting with a disabled person. Class Four
- 08.09 Unlawful hunting without or use of special big game permits. Class Three
- 08.10 Hunting big game during a closed season. Class Four
- 08.11 Hunting big game with impermissible methods. Class Two
- 08.12 Firearm restriction violation. Class Two
- 08.13 Bow/crossbow restriction violation. Class Two
- 08.14 Unlawful group-deer hunting. Class Three
- 08.15 Hunting Hours violation. Class Three
- 08.16 Unlawful transportation of untagged big game. Class Three
- 08.17 Unlawful big game hunting in established refuge. Class Four
- 08.18 Unlawful sale of big game or big game parts. Class Three
- 08.19 Unlawful removal of big game tag. Class Three
- 08.20 Failure to leave evidence of sex attached to carcass. Class Three
- 08.21 Mule deer point restriction Violation Class Two
- 08.22 Big game hunting in grassrope unit with a rifle Class Three

09.00 Prairie Dog, Upland Game and Game Bird Provisions

- 09.01 Unlawful take of prairie dog, upland game or game birds. Class Three
- 09.02 Unlawful hunting of upland game or game birds during closed season. Class Three
- 09.03 Unlawful hunting of prairie dogs, upland game, or game birds Class Three without possessing valid permit or tags.
- 09.04 Unlawful accompaniment by non-licensee. Class Two
- 09.05 Unlawful hunting of prairie dogs, upland game, or game birds Class Three without special permit.
- 09.06 Hunting upland game or game birds during a closed season. Class Three
- 09.07 Unpermissible upland game or game bird hunting methods. Class Two

- 09.08 Firearm restriction violation. Class Two
- 09.09 Bow and arrow restriction violation. Class Two
- 09.10 Falconry permit violation, failure to possess. Class One
- 09.11 Hunting hours violation. Class Two
- 09.12 Unlawful transportation of upland game or game birds. Class Two
- 09.13 Unlawful hunting of prairie dogs, upland game, or game birds Class Three
in designated refuge.
- 09.14 Unlawful sale of upland game or game birds. Class One

- 09.15 Over limit violation. Class Two
09.16 Unlawful prairie dog poisoning. Class Three

10.00 Furbearer Provisions

- 10.01 Unlawful take of furbearers. Class Three
10.02 Unlawful take of furbearer during a closed season. Class Three
10.03 Unlawful hunting/trapping of furbearer without possessing a Class Three valid permit.
10.04 Hunting/trapping furbearers during a closed season. Class Two
10.05 Hunting/trapping hours violation. Class Three
10.06 Unlawful methods of take, hunting/trapping. Class Three
10.07 Unlawful use of traps. Class Two
10.08 Trapping in closed areas. Class Two
10.09 Unlawful possession of live furbearers. Class Three
10.10 Unlawful take of bobcat Class Four
10.10.1 Failure to report bobcat Harvest Class Three
10.10.3 Operating Bobcat sets after close of season Class Three
10.11 Unlawful use of dogs, failure to show proof of vaccination. Class Two
10.12 Violation of depredation permit provision. Class Three
10.13 Buying/shipping furs/pelts without possessing valid permit. Class One
10.14 Failure to maintain proper records. Class Three
10.15 Unlawful transportation of furbearers. Class Four
10.16 Unlawful hunting of furbearers with use of aircraft. Class Three
10.17 Unlawful hunting of furbearers from a motor vehicle. Class Three

11.00 Migratory Bird Provisions

- 11.01 Unlawful take of migratory birds. Class Three
11.02 Hunting migratory birds during a closed season. Class Two
11.03 Violation of firearms restrictions. Class Two

- 11.04 Unlawful hunting of migratory birds over bait. Class Two
- 11.05 Unlawful use of live decoys and electronic calls. Class Four
- 11.06 Unlawful hunting of migratory birds without possessing a valid permit. Class Two
- 11.07 Hunting hours violation. Class Four
- 11.08 Unlawful take of raptors, eagles, and protected species. Class Two
- 11.09 Unlawful transportation of migratory birds. Class Two
- 11.10 Unlawful possession of live migratory birds. Class One

12.00 Fishing Provisions

- 12.01 Unlawful take of fish. Class Two
- 12.02 Fishing during a closed season. Class Three
- 12.03 Fishing without possessing a valid permit. Class Two
- 12.04 Violation of daily and possession creel limit. Class Two
- 12.05 Unlawful trespass to fish on fee or allotted waters on in a designated refuge. Class One
- 12.06 Violation of hook and line provisions. Class Two
- 12.07 Unlawful possession of bait fish. Class Three
- 12.08 Violation of bait wholesalers/retailers license provisions. Class Four
- 12.09 Unlawful sale of fish. Class Three
- 12.10 Unlawful use of hoop nets, traps, and seines. Class Four
- 12.11 Unlawful use of gill nets. Class Two
- 12.12 Unlawful spearing. Class One
- 12.15 Violation of unattended line provision. Class One
- 12.16 Violation of icehouse provision. Class Two
- 12.17 Unlawful transportation of fish. Class Two
- 12.18 Interfering with other fishers or fishing activities. Class Three
- 12.19 Violation of fishing restrictions. Class Two

13.00 Boating Provisions

- 13.01 Operating any boat in violation of U.S. Coast Guard regulations. Class One
- 13.02 Boating safety equipment violation. Class One
- 13.03 Violation of prohibited operation provisions. Class Two
- 13.04 Failure to report boating collision, accident. Class Two

14.00 Guiding Provisions

- 14.01 (1) Unlawful guiding without possessing a valid permit. Class Three
- 14.01 (2) Unlawful guiding, causing client to violate regulations. Class Three
- 14.03 Unlawful guiding during a closed season. Class Three
- 14.04 Violating responsibility and liability provision. Class Three

15.00 Timber and Plant Harvest Provisions

- 15.01 (1) Unlawful removal or take of timber, wood, plant, or seed without possessing proper authorization. Class Two
- 15.01 (3) Unlawful trespass for the purpose of removing, taking timber, wood, plant, or seed. Class Three

15.03 Violation of responsibility and liability provisions. Class Three

16.00 Dog Training and field Trial Provisions

16.01 Unlawful dog training or conducting field trails without proper Class Three authorization.

16.03 Violation of responsibility and liability provisions. Class Three

17.00 Recreation

17.01 Unlawful recreation activity without proper permits. Class One

17.03 Violating responsibility and liability provision. Class Three

18.00 Special Permit Provisions

18.01 Unlawful harvest or take of wildlife, fish, plants, or seeds Class Three for special purposes without proper authorization.

19.00 Paddlefish

19.01 Unlawful take of paddlefish Class Two

19.02 Snagging for paddlefish during a closed season Class Three

19.03 Impermissible methods Class Two

LIQUIDATED DAMAGES PROVISIONS

SPECIES

RECOVERY VALUE

BIG GAME

Deer		\$ 1,000.00
Deer (Grassrope Unit)	2,000.00	
Pronghorn		1000.00
Elk		5,000.00
Buffalo		5,000.00
Moose	5,000.00	
Turkey		300.00

FURBEARERS

Coyote		200.00
Red Fox		100.00
Swift or Grey Fox	500.00	
Bobcat		1000.00
Mink		100.00
Beaver		100.00
Raccoon		100.00
Muskrat		50.00
Otter		500.00
Weasel		50.00
Badger		100.00
Porcupine		50.00
Mountain Lion	1500.00	
Wolf	1500.00	

MIGRATORY BIRDS

Ducks, Coots

50.00

Geese, Brants	100.00
Swans	100.00
Shorebirds	50.00
Mourning Doves	50.00
Songbirds	50.00
Gulls	50.00

UPLAND GAME BIRDS

Pheasant	100.00
Grouse	100.00
Partridge	150.00
Quail	150.00

UPLAND GAME

Tree Squirrels	50.00
Cottontail Rabbits	50.00

RAPTORS

Any Raptor	500.00
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FISH

All fish, regardless of species, shall have a value of \$25.00 plus \$2.00 per inch.