

The applicant requests a permit amendment to take the Indiana bat (*Myotis sodalis*) and gray bat (*M. grisescens*) throughout their range. The scientific research is aimed at enhancement of survival of the species in the wild.

**Permit Number: TE118449**

*Applicant:* U.S. Geological Survey, Columbia Environmental Research Center, Columbia, Missouri.

The applicant requests a permit to take the Pallid sturgeon (*Scaphirhynchus albus*), Topeka shiner (*Notropis topeka*) and Neosho madtom (*Noturus placidus*) throughout their range. The scientific research is aimed at enhancement of survival of the species in the wild.

**Authority:** This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Dated: January 27, 2006.

**Lynn M. Lewis,**

*Deputy Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

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**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Poarch Band of Creek Indians— Alcoholic Beverage Control Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Poarch Band of Creek Indians' Reservation. The land is located on trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the Poarch Band of Creek Indians' Reservation and will increase the ability of the tribal government to control the tribe's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

**DATES:** *Effective Date:* This Ordinance is effective on February 24, 2006.

**FOR FURTHER INFORMATION CONTACT:** Harold Spears, Eastern Regional Office, Division of Tribal Government, 711 Stewarts Ferry Pike, Nashville,

Tennessee 37214, Telephone (615) 467-2953; or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW., Mail Stop 320-SIB, Washington, DC 20240, Telephone (202) 513-7629.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Poarch Band of Creek Indians' Tribal Council adopted its Liquor Control Ordinance by Ordinance No. TCO 05:001 on January 16, 2005. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Poarch Band of Creek Indians' Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance, of the Poarch Band of Creek Indians, was duly adopted by the Tribal Council on January 16, 2005.

Dated: February 21, 2006.

**Debbie L. Clark,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

The Poarch Band of Creek Indians' Liquor Ordinance reads as follows:

#### Poarch Creek Indians Tribal Council Ordinance

##### TCO 05:001

Exercising inherent and aboriginal Tribal sovereign powers in accordance with the Tribal Constitution as ratified on June 1, 1985, the Poarch Band of Creek Indians hereby enacts the following ordinance:

#### Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance

The Poarch Band of Creek Indians, being a federally recognized Indian Tribe and organized pursuant to the Final Determination of Federal Acknowledgment, 25 U.S.C. 476; and the Act of June 18, 1934 (48 Stat. 984); and the authority of the Poarch Band of Creek Indians Tribal Council under Article IV, Section 4(k), (m), (n) of the Constitution of the Poarch Band of Creek, hereby establishes and enacts this ordinance to authorize, license and regulate alcoholic beverages on the Indian country within the jurisdiction of the Poarch Band of Creek Indians.

#### Section 1. Title

This Ordinance shall be known as the Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance.

#### Section 2. Authority and Purpose

This Ordinance is adopted pursuant to the sovereign authority of the Poarch Band of Creek Indians and Article IV, Section 4(k), (m), (n) of the Constitution of the Poarch Band of Creek Indians and the Act of August 15, 1953, Public Law 83-277, 18 U.S.C. 1161. The purpose of this Ordinance is to regulate the sale of alcoholic beverages on the Indian country within the jurisdiction of the Poarch Band of Creek Indians.

#### Section 3. Definitions

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "*Alcoholic Beverages*" shall mean any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, and shall include liquor, beer, and wine, both fortified and table wine.

(b) "*Beer, or Malt or Brewed Beverages*" shall mean any beer, lager beer, ale, porter, malt or brewed beverage, or similar fermented malt liquor containing one-half of one percent or more of alcohol by volume and not in excess of five percent alcohol by weight and six percent by volume, by whatever name the same may be called.

(c) "*Liquor*" shall mean any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, fermented, vinous or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, except beer and table wine.

(d) "*Minor*" shall mean any person under age twenty one (21) years of age.

(e) "*Tribe*" shall mean the Poarch Band of Creek Indians.

(f) "*Tribal Council*" shall mean the duly elected governing body of the Poarch Band of Creek Indians.

(g) "*Possession or possessing*" shall mean over one's person, vehicle or other property and includes constructive possession through control without regard to ownership.

(h) "Purchase" shall mean the exchange, barter, traffic, receipt, with or without consideration in any form.

(i) "Sale" shall mean the exchange, barter, traffic, donation, with or without consideration, in addition to the selling, supplying or distribution by any means, by any person to any person.

(j) "Transport" shall mean the introduction of alcoholic beverage onto the Indian country under the jurisdiction of the Poarch Band of Creek Indians by any means of conveyance for the purpose of sale, or distribution, to any licensed or permitted dealer.

(k) "Wine" shall mean all beverages made from the fermentation of fruits, berries, or grapes, with or without added spirits, and produced in accordance with the laws and regulations of the United States, containing not more than 24 percent alcohol by volume, and shall include all sparkling wines, carbonated wines, special natural wines, rectified wines, vermouths, vinous beverages, vinous liquors, and like products, including restored or unrestored pure condensed juice.

(l) "Fortified Wine" or "Vinous Liquor" shall mean any wine containing more than 14.9 percent alcohol by volume but not more than 24 percent. Fortified wine is vinous liquor.

(m) "Table Wine" shall mean any wine containing not more than 14.9 percent alcohol by volume. Table wine is not liquor, spirituous or vinous.

(n) "Brandy" shall mean all beverages which are an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to the beverage, as bottled at not less than 80 degree proof.

#### Section 4. General

The introduction, possession, transportation, and sale of alcoholic beverages shall be lawful within the Indian country under the jurisdiction of the Tribe, provided that such introduction, possession, transportation, and sale are in conformity with the provisions of this Ordinance and the laws of the State of Alabama pursuant to 18 U.S.C. 1161.

#### Section 5. Tribal License or Permit Required

No person shall engage in the sale of any alcoholic beverage within the Indian country under the jurisdiction of the Tribe, unless duly licensed or permitted to do so by the State of Alabama and the Tribe in accordance with the terms of this Ordinance.

#### Section 6. Tribal Alcoholic Beverage License; Requirements

(a) The Tribal Council is authorized to issue alcoholic beverage licenses to entities or enterprises that are wholly owned and operated by the Tribe, and a separate license is required for each location where alcoholic beverages are to be sold or served.

(b) No licensed establishment shall be located closer than 500 feet from any church or school.

(c) Application for an alcoholic beverage license shall be made to the Tribal Council by the manager, director or chief operating officer of the Tribal entity or Tribal enterprise which seeks to sell and serve alcoholic beverages. The application shall include, among other matters, the following information:

(1) The name and address of the Tribal enterprise or entity making the application;

(2) the description of the premises in which the alcoholic beverages are to be sold;

(3) agreement by the applicant to accept and abide by all conditions of the tribal license;

(4) satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where alcoholic beverages are to be sold for at least 30 days prior to consideration by the Council and has been published at least twice in such local newspaper serving the community that may be affected by the license as the Tribal Chairman or Secretary may authorize. The notice shall state the date, time and place when the application shall be considered by the Council pursuant to Section 7 of this Ordinance;

(5) evidence that the applicant is or will be duly licensed by the State of Alabama.

#### Section 7. Hearing on Application for Tribal Alcoholic Beverage License

All applications for a tribal alcoholic beverage license shall be considered by the Council in open session at which the applicant, and any person(s) supporting or opposing the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Council, by secret ballot, shall determine whether to grant or deny the application, based on whether the Council, in its discretion, determines that granting the license is in the best interests of the Tribe.

#### Section 8. Temporary Permits

The Council may grant a temporary permit for the sale of alcoholic

beverages for a period not to exceed three (3) days to any tribally-owned and operated enterprise, department, or office, applying for the same in connection with a tribal or community activity, provided that the application shall be made as provided by Sections 6 and 7 of this Ordinance, and that the conditions prescribed in Sections 9(b) through 9(h) of this Ordinance shall be observed by the permittee. Each permit issued shall specify the types of alcoholic beverages to be sold, the specific place, dates, and times when the permit is valid.

#### Section 9. Conditions of the Tribal License or Tribal Permit

Any Tribal license or permit issued under this Ordinance shall be subject to such reasonable conditions as the Council shall fix, including, but not limited to the following:

(a) A license shall be for a term of one year. A permit shall be for a period of not to exceed three days.

(b) The licensee or permittee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

(c) The licensed premises shall be subject to patrol by the Tribal Police Department, and such other law enforcement officials as may be authorized under Tribal or federal law.

(d) The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

(e) No alcoholic beverage shall be sold within 200 feet of a polling place on tribal election days, or when a referendum is held of the people of the Tribe, and including special days of observance as designated by the Council.

(f) All acts and transactions under authority of the Tribal alcoholic beverage license or permit shall be in conformity with this Ordinance and the terms of the Tribal license or permit.

(g) All sales of alcoholic beverages shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage is prohibited.

(h) No person under the age of 21 shall be sold, served, delivered, given or allowed to consume alcoholic beverages in the licensed establishment. Where there may be a question of a person's right to purchase an alcoholic beverage by reason of his or her age, such person shall be required to present any one of the following cards of identification which shows his or her correct age and bears his or her signature and photograph: (1) A driver's license of any state or identification card issued by any state department of motor vehicles; (2)

United States active duty military ID; (3) a passport; or (4) a Poarch Creek tribal identification card or other recognized tribal identification card.

#### Section 10. Prohibited Activities

It shall be a violation of this Ordinance for any person:

(a) to sell or offer for sale or distribute or transport in any manner, any alcoholic beverage or to operate or shall have alcoholic beverages in his possession with intent to sell or distribute without a license or permit;

(b) to buy any alcoholic beverage from any person other than a person or entity holding a license or permit as required by this Ordinance;

(c) to sell or provide any alcoholic beverage to any person under the age of 21 years;

(d) to permit any person under the age of 21 years to consume any alcoholic beverage on his or her premises or any premises under his or her control;

(e) to transfer in any manner an identification of age to a minor for the purpose of permitting such minor to obtain any alcoholic beverage;

(f) to attempt to purchase an alcoholic beverage through the use of a false or altered identification;

(g) to consume, acquire or have in his or her possession any alcoholic beverage while under 21 years of age.

#### Section 11. Enforcement

(a) *Criminal Penalties.* A violation of this Ordinance by any person subject to the criminal jurisdiction of the Tribe is a Class B Misdemeanor and may be prosecuted by the Tribe as provided by Title 9 of the Poarch Band of Creek Indians Code of Justice.

(b) *Civil Fines.* The Tribe may bring a civil action in the Tribal Court against any person or entity for violation of this Ordinance or the terms of a license or permit issued under this Ordinance, and a person found to have violated this Ordinance or the terms of a license or permit issued under the Ordinance may be subject to a civil fine of not to exceed \$500 per violation.

(c) *Injunctive relief.* The Tribe may bring a civil action in the Tribal Court against any person or entity to enjoin a violation of this Ordinance.

(d) *Contraband.* Alcoholic beverages confiscated from any person found in violation of this Ordinance are declared to be contraband. Where a person is found to have violated this Ordinance, all alcoholic beverages in such person's possession shall be contraband. Any tribal agent, employee, or officer who is authorized by the Tribal Council to enforce this Ordinance shall have the authority to, and shall, seize all

contraband. Any officer seizing contraband shall preserve the contraband in accordance with applicable Tribal and State law. Upon being found in violation of this Ordinance by the Tribal Council or the Tribal Court, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

(e) Suspension or revocation of license or permit. Any license or permit issued under this Ordinance may be suspended or revoked by the Tribal Council for violation of any of the provisions of this Ordinance, or of the tribal license or permit, upon hearing before the Tribal Council after 10 days notice to the licensee or permittee. The decision of the Council shall be final and no appeal therefrom shall be allowed. The Tribal Council shall grant all persons in any hearing regarding license or permit suspensions or revocations all the rights and due process granted by the Indian Civil Rights Act, 25 U.S.C. 1302, *et seq.* Notice of a Tribal Council hearing regarding an alleged violation of this Ordinance shall be given to the affected individual(s) or entity(ies) by certified mail at least 10 days in advance of the hearing. The notice will be delivered in person or by certified mail with the Tribal Council retaining proof of service. The notice will set out the rights of the alleged violator, including but not limited to the right to an attorney to represent the alleged violator, the right to speak and to present witnesses and to cross-examine any witnesses against them.

#### Section 12. License and Permit Not a Property Right

Notwithstanding any other provision of this Ordinance, a tribal alcoholic beverage license or permit is a mere permit for a fixed duration of time. A tribal alcoholic beverage license or permit shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal alcoholic beverage license or permit give rise to a presumption or legal entitlement to the granting of such license or permit for a subsequent time period.

#### Section 13. Assignment or Transfer

No tribal license or permit issued under this Ordinance shall be assigned or transferred without the written approval of the Council expressed by formal resolution and upon satisfaction of the conditions required for a license as set out in Sections 6 and 7.

#### Section 14. Severability

If a court of competent jurisdiction invalidates any part of this Ordinance, all valid parts that are severable from the invalid part shall remain in effect. If a part of this Ordinance is invalid in one or more of its applications, that part shall remain in effect in all valid applications that are severable from the invalid applications.

#### Section 15. Sovereign Immunity

Nothing contained in this Ordinance is intended to nor does in any way limit, alter, restrict, or waive the Tribe's sovereign immunity.

#### Section 16. Amendment

Section 8-7-3 of the Poarch Band of Creek Indians Code of Justice, regarding the "Possession of Liquor" is hereby amended so that it recites that:

##### Possession of alcoholic beverages

(a) A person commits an offense under this section if said person possesses, sells, trades, transports, manufactures, or distributes any alcoholic beverage *except as provided in the Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance.*

(b) Possession of alcoholic beverages *except as provided in the Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance* is a Class B Misdemeanor.

#### Section 17. Effective Date

This Ordinance shall be effective on the date that the Secretary of the Interior certifies this Ordinance and it is published in the **Federal Register**.

\* \* \* \* \*

#### Approval

I, the Chairman of the Poarch Band of Creek Indians, hereby affix my signature to this ordinance authorizing it to become official this 16th day of January 2005, in accordance with established Tribal Policy.

Eddie L. Tullis,  
Tribal Council Chairman.

#### Certification

I, \_\_\_\_\_ the undersigned, certify that the foregoing is a true extract from the minutes of the Tribal Council Meeting of the Poarch Band of Creek Indians, comprised of nine members, with nine in attendance and eight members voting, on the 16th day of January 2005, and that the above is in conformity with the provisions therein adopted by a vote of eight (8) in favor, none against, and no abstentions, and that the above is the signature of the Chairman.

Daniel K. McGhee,  
Tribal Council Secretary.

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