

# GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

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## • MEMBER TRIBES •

### MICHIGAN

Bay Mills Community  
Keweenaw Bay Community  
Lac Vieux Desert Band

### WISCONSIN

Bad River Band  
Lac Courte Oreilles Band  
Lac du Flambeau Band

Red Cliff Band  
St. Croix Chippewa  
Sokaogon Chippewa

### MINNESOTA

Fond du Lac Band  
Mille Lacs Band

## GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION ORDER

Order No. 2019-01

### **Wisconsin 1837 and 1842 Ceded Territory Tribal Gathering Regulations**

This Commission Order addresses the regulation of tribal gathering activities on State Lands in the Wisconsin portion of the 1837 and 1842 ceded territory pursuant to agreements of the parties to the *LCO* case as authorized by *Section C.3.f.v* of the *Stipulation for Black Bear, Migratory Birds and Wild Plants* (Docket Number 1607, subpart 1) as amended by *Section XII* of the *Stipulation for Technical, Management and Other Updates: Second Amendment of the Stipulations Incorporated in the Final Judgment*.

#### **Sec. 1: Authority and Applicability; Purpose and Limitations.**

**Subd. 1.1:** This Order is issued in accordance with the authority granted in *Section C.3.f.v* of the *Stipulation for Black Bear, Migratory Birds and Wild Plants* (Docket Number 1607, subpart 1) as amended by *Section XII* of the *Stipulation for Technical, Management and Other Updates: Second Amendment of the Stipulations Incorporated in the Final Judgment* (hereinafter “Gathering Stipulation”), which provides for the parties to agree to continue the joint study and assessment process related to the Tribes’ implementation and enforcement of Chapter 12 of the Off-Reservation Conservation Codes (attached) on state lands open to tribal gathering.

**Subd. 1.2:** This Order is intended to establish culturally appropriate regulations and to preempt the enforcement of state regulations for tribal gathering activities on State Lands which are located in the Wisconsin portion of the 1837 and 1842 ceded territory as described in the *Gathering Stipulation*.

**Subd. 1.3:** Upon issuance of this Order, the Off Reservation Conservation Codes, including Chapter 12, shall constitute each Tribes’ gathering regulations applicable to state lands, unless a Tribe chooses to adopt more restrictive measures pursuant to §3.33(1)(f) of the Off-Reservation Conservation Codes.

**Sec. 2: Tribal Gathering on State Lands Regulations.** Starting on the date of this Order, and for one year, unless and until changed by a subsequent order, or the parties make permanent the tribal gathering on state lands regulations, the following shall apply to each signatory tribe:

**Subd. 2.1:** The Off Reservation Conservation Codes, including Chapter 12, shall regulate tribal gathering on state lands for an additional one-year period. During this time, the parties shall continue to collaborate on the joint study and assessment as contemplated by the parties in the Gathering Stipulation and within the joint tribal gathering assessment report of the Wild Plant Management and Policy Committee.

**Subd. 2.2:** The tribe shall continue to implement a system for offering, and recording the issuance of off-reservation gathering permits, and shall maintain harvesting data for certain activities.

**Subd. 2.3:** The tribe shall provide information on the state lands open for gathering in the document entitled *Tribal Gathering on State Lands Within the Portion of the Ceded Territory Located in the State of Wisconsin - Public Lands Open to Tribal Gathering* document (attached), which may be amended to incorporate additional state properties upon the joint recommendation of the Wild Plant Management and Policy Committee.

**Subd. 2.4:** The tribe shall authorize the Tribal Conservation Department and the Great Lakes Indian Fish and Wildlife Commission to take all necessary and appropriate steps within their respective authorities to implement this Order and to ensure that tribal members are able to enjoy its benefits.

**Sec. 3: Reservation of Each Tribe's Authority.** Nothing in this order is intended to, or shall be construed to, limit the authority of each Tribe to establish tribal gathering regulations or other measures that are more restrictive than provided in this Order.

Dated this 5th day of April, 2019.



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Michael J. Isham, Jr., Executive Administrator  
Great Lakes Indian Fish and Wildlife Commission

## **CHAPTER 12 - MISCELLANEOUS FOREST PRODUCT HARVESTING REGULATIONS**

### **12.01 Purpose.**

The purpose of this chapter is to regulate the harvest of miscellaneous forest products, or any parts thereof, which are not regulated pursuant to [Chapter 5](#) [Wild Rice Harvesting Regulations].

### **12.02 Definitions.**

For the purposes of this chapter, the following terms shall be construed to apply as follows:

(1) **“Bark”** means the tough outer covering of the woody stems and roots of trees, shrubs, and other woody plants. It includes all tissues outside the vascular cambium.

(2) **“Birch Lodgepole”** means a lodgepole of a paper birch tree (wiigwasi-mitig/*Betula papyrifera*) or yellow birch tree (wiinzik/*Betula alleghaniensis*).

(3) **“Bough”** means any branch of a tree less than 2 inches in diameter.

(4) **“Designated Tribal Sugarbush”** means a specific site identified and established by the tribal conservation department, in consultation with the land manager according to Section [12.04\(5\)](#), of this ordinance, for which a site management plan has been developed and for which a sugarbush site permit has been issued.

(5) **“Designated Use Area”** means a specific site designated and maintained by the land manager for any activity or use as part of the operation and management of public land, and includes, but is not limited to offices, buildings, campgrounds, mowed areas, picnic areas, public beaches, parking lots, trails, access and maintenance roads.

(6) **“Firewood”** means any dead tree or part thereof, either standing or downed, which is harvested for and is to be used as fuel.

(7) **“Gathering”** means to take or acquire or attempt to take or acquire possession of any miscellaneous forest product, or parts thereof.

(8) **“Gathering Products”** means all products of miscellaneous forest products other than non-timber forest products such as: branchlets, roots, berries, fruits, nuts, and seeds.

(9) **“Ginseng”** means the roots, seeds or other parts of wild American ginseng (*Panax quinquefolium* or *Panax quinquefolius*).

(10) **“Land Manager”** means any owner or other entity responsible for the management of any public land.

(11) **“Lodgepoles”** means any tree that is less than 5 inches DBH (diameter at breast height).

(12) **“Miscellaneous Forest Products”** means any undomesticated species, or part thereof, of the plant and fungi kingdoms occurring in both forested and non-forested natural ecosystems including: non-timber forest products, wild plants, gathering products, and includes endangered or threatened plant species, as defined in Section [2.01](#)(4) [Definitions], of this ordinance, but for the purposes of this ordinance excludes wild rice.

(13) **“Non-Timber Forest Products”** means any of the following miscellaneous forest products: bark, boughs, firewood, lodgepoles, and sap as further defined in this section.

(14) **“Public lands”** means those lands, including the beds of any streams and flowages, located within the ceded territory owned by the State of Wisconsin or any of its political subdivisions or Departments.

(15) **“Sap”** means the watery fluid that circulates through a tree or plant, carrying food and other substances to the various tissues.

(16) **“Shrub”** means a woody perennial plant usually branched several times at or near the base giving it a bushy appearance, and is usually less than five meters tall.

(17) **“Species of Special Concern”** means any wild plant which is contained on the tribal species of special concern list.

(18) **“Timber”** means any tree that is not a lodgepole, as defined in Section 12.02(10), of this ordinance.

(19) **“Tree”** means a woody, perennial plant with a single trunk that is typically unbranched at or near the base, and is usually greater than five meters tall.

(20) **“Wild plant”** means miscellaneous forest products that are not trees, such as herbaceous plants and shrubs.

### **12.03 Miscellaneous Forest Product Harvesting Permits.**

(1) Generally. Except as provided in subs. (2) [Non-Timber Forest Products and Ginseng Gathering Permits], no permit shall be required for the gathering of any wild plant, or gathering product on public land.

(2) Non-Timber Forest Product and Ginseng Gathering Permits.

(a) No member shall harvest or gather non-timber forest products and ginseng pursuant to this ordinance without possessing a valid gathering permit issued by the tribal conservation department as follows:

(i) Small Scale Harvest Activity. For small scale activity, a tribal member may harvest non-timber forest products while possessing a valid gathering permit up to the following limits:

- |                      |  |
|----------------------|--|
| 1) Bark;             | Twenty (20) Trees  |
| 2) Boughs;           | Five (5) Tons  |
| 3) Firewood;         | Ten (10) Cords   |
| 4) Lodgepoles;       | Seventy-Five (75) Lodgepoles (up to five (5) may be Birch Lodgepoles, see (e) below) |
| 5) Birch Lodgepoles; | Five (5) Birch Lodgepoles  |

(ii) Large Scale Harvest Activity. For large scale activity, a tribal member may harvest non-timber forest products while possessing a valid large scale harvest activity gathering permit above the limits established for small scale harvest activity as follows:

1) No member shall gather non-timber forest products on a large scale without a valid large scale harvest activity gathering permit valid for a designated area established by the tribal conservation department in consultation with and approval of the land manager, which approval may not be unreasonably withheld.

2) "Designated Area" means a specific site identified and established by the tribal conservation department, in consultation with and approval of the land manager, which approval may not be unreasonably withheld, for which a species harvestable surplus has been determined and for which the appropriate number of large scale harvest activity permits are available for the designated area.

3) The tribal conservation department may issue a large scale harvest activity permit to one or more members based upon the determined species harvestable surplus and may impose such terms and conditions as it deems necessary or appropriate.

4) No member shall fail to comply with the terms and conditions

of a large scale harvest activity permit.

(b) No gathering permit is required of helpers of a permittee who participate only in the collection of the resource once it has been reduced to possession of a permittee.

(c) The tribal conservation department may impose such other terms and conditions as it deems necessary or appropriate, including biological monitoring requirements in addition to those contained in Section [12.07](#) [Harvest Monitoring] of this ordinance.

#### **12.04 Miscellaneous Forest Product Harvesting Restrictions.**

(1) Conifer Boughs. No member shall:

- (a) Cut down or kill a tree for the purpose of gathering conifer boughs;
- (b) Remove boughs from the upper half of a tree; or
- (c) Gather for subsequent sale northern white cedar or hemlock boughs.

(2) Princess Pine. No member shall gather any *Lycopodium* species except by cutting the vertical above ground stems.

(3) Sheet Moss. No member shall harvest sheet moss except by harvesting no more than fifty percent (50%) of a species in any particular harvest area, including leaving the edges of the patch.

(4) Lodgepoles. No member shall harvest lodgepoles except by harvesting no more than fifty percent (50%) of a species in any particular harvest area, unless the location is a designated area as defined in Section [12.03](#)(2)(a)(ii)(2) of this ordinance.

(5) Firewood.

- (a) No member shall cut any live tree for firewood.
- (b) No member shall cut any standing dead tree except those standing dead trees within 100 feet of any road or designated use area.
- (c) No member shall gather any dead tree or portion of a dead tree where any portion of the dead tree is located below the ordinary high water mark.
- (d) No member shall use a farm tractor, rubber tired skidder, or similar vehicle for gathering firewood without written permission from the Tribe after consulting with and approval of the land manager, which approval may not be unreasonably withheld.

(6) Ginseng. No member shall gather ginseng from November 1 through August 31.

(7) Maple Sap/Sugarbushes.

(a) No member shall gather maple sap without a sugarbush site permit valid for a designated tribal sugarbush or for such other location established by the tribal conservation department in consultation with and approval of the land manager, which approval may not be unreasonably withheld.

(b) "Designated tribal sugarbush" means a specific site identified and established by the tribal conservation department, in consultation with and approval of the land manager, which approval may not be unreasonably withheld, for which a site management plan has been developed and for which a sugarbush site permit has been issued.

(c) The tribal conservation department may issue a sugarbush site permit to one or more members and may impose such terms and conditions as it deems necessary or appropriate.

(d) No member shall fail to comply with the terms and conditions of a sugarbush site permit.

(8) Unsustainable Harvest Activity. Member compliance with tribal harvest guidelines (bmp) shall be considered sustainable harvest activity, otherwise no member shall harvest any miscellaneous forest product in such a manner so as to impair the future viability and continued success of the miscellaneous forest product on the landscape or ecosystem from which the member is harvesting, as conditioned by the type of miscellaneous forest product, and must take reasonable precautions to prevent unsustainable harvest activity.

#### **12.05 Timber Harvesting Prohibition.**

(1) Except as specified in this ordinance, no member shall under authority of this ordinance cut down any live tree for any purposes or gather any salvage tree for the purposes of selling or causing to be sold all or part of it, or any product derived from it, as bolts, posts, logs, biomass, pulpwood, lumber, or other commercial timber resource.

(2) Except as specified in this ordinance, no member shall sell or cause to be sold under authority of this ordinance all or part of any tree, or any product derived from it, as bolts, posts, logs, biomass, pulpwood, lumber, or other commercial timber resource.

#### **12.06 Harvest of Certain Miscellaneous Forest Products Prohibited.**

(1) Endangered or Threatened Plant Species. No member shall gather any endangered or threatened plant species, as defined in Section [2.01](#)(4), of this ordinance.

(2) Tribal Species of Special Concern. The following Great Lakes Indian Fish and Wildlife Commission document, as it may be amended from time to time, is hereby adopted and incorporated in this ordinance as if fully set forth herein, and no member shall fail to comply with the closures and other restrictions established by this document:

*Tribal Gathering on Public Lands within the Portion of the Ceded Territory Located in the State of Wisconsin – Tribal Species of Special Concern, Version 1: [October 2010].*

#### **12.07 Harvest Monitoring.**

No member to whom any permit has been issued under this ordinance shall fail or refuse to provide harvest information when requested by the tribal conservation department, any person authorized to enforce this ordinance, or the Great Lakes Indian Fish and Wildlife Commission.

#### **12.08 Emergency Closures.**

(1) Notwithstanding any other provision of this ordinance, the Director of the Biological Services Division of the Great Lakes Indian Fish and Wildlife Commission or the tribal conservation department may order the closure of the harvest activity of any miscellaneous forest product generally or with respect to a particular location, whenever the continuation of the harvest is likely to cause biological harm to the species involved.

(2) Every reasonable effort shall be made to consult with and obtain 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 member shall violate the terms, conditions or restriction of an emergency closure order issued pursuant to this section.

#### **12.09 Harvest Location Restrictions.**

(1) Public Safety. No member engaged in the gathering of miscellaneous forest products pursuant to this chapter shall impair or obstruct developed recreational trails or designated use areas and any miscellaneous forest product subject to the gathering which may impede or impair the use of those trails or areas shall be removed immediately.

(2) Designated Use Areas. No member may gather miscellaneous forest products within *Tribal Designated Uses Areas*, unless established by the tribal conservation department in consultation with and approval of the land manager, as follows;



(a) No member shall gather miscellaneous forest products under authority of this ordinance on or within any designated use area.

(b) No member shall gather bark, conifer boughs, or lodgepoles within 100 feet of any designated use area.

(c) No member shall gather wild plants within 25 feet of any designated use area.

(d) It is the member's responsibility to be certain about a designated use area. Any uncertainty should be resolved by contacting the Tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local office of the land manager.

(3) Tribal Research and Management Areas - Tribal Natural Areas. No member may gather miscellaneous forest products within *Tribal Research and Management Areas - Tribal Natural Areas*, unless established by the tribal conservation department in consultation with and approval of the land manager, as follows;

(a) No member shall gather miscellaneous forest products under authority of this ordinance on or within any tribal research and management areas - tribal natural areas.

(b) No member shall gather bark, conifer boughs, or lodgepoles within 100 feet of any tribal research and management areas - tribal natural areas.

(c) No member shall gather wild plants within 25 feet of any tribal research and management areas - tribal natural areas.

(d) It is the member's responsibility to be certain about a tribal research and management areas - tribal natural areas. Any uncertainty should be resolved by contacting the Tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local office of the land manager.

(4) Tribal Research and Management Areas - Tribal Wild Resource Management Area. No member may use a motorized vehicles, motorized equipment, or mechanical transport within a tribal wild resource management area unless established by the tribal conservation department in consultation with and approval of the land manager.

(5) Tribal Research and Management Areas - Tribal Long-Term Research Area. No member may gather miscellaneous forest products within a tribal long-term research area, unless established by the tribal conservation department in consultation with and approval of the land manager, as follows;

(a) No member shall gather miscellaneous forest products under authority of this ordinance on or within any tribal long-term research areas.

(b) No member shall gather bark, conifer boughs, or lodgepoles within 100 feet of any tribal long-term research areas.

(c) No member shall gather wild plants within 25 feet of any tribal long-term research areas.

(6) Tribal Research and Management Areas - Tribal Native Community Management Area. No member may gather firewood within a tribal native community management area, unless established by the tribal conservation department in consultation with and approval of the land manager, as follows;

(a) No member shall gather firewood under authority of this ordinance on or within any tribal native community management areas.

(b) No member shall gather firewood within 25 feet of any tribal native community management areas.

(7) Closed Gathering Areas. No member may gather miscellaneous forest products within *Tribal Closed Areas*, unless established by the tribal conservation department in consultation with and approval of the land manager, as follows;

(a) No member shall gather bark, conifer boughs, or lodgepoles within 100 feet from any Class A road, pond, lake, stream or river .

(b) No member shall gather bark, conifer boughs, or lodgepoles within and 50 feet from and Class B road.

(c) There shall be no distance limit pertaining to the gathering of bark, conifer boughs, or lodgepoles from any Class C road.

(d) No member shall gather wild plants within 25 feet of any road.

(8) Closed Gathering and Entry Restriction Areas. No member shall enter or gather miscellaneous forest products within the following *Tribal Closed Areas* unless established by the tribal conservation department in consultation with and approval of the land manager:

(a) Big Bay State Park Tribal Closed Areas: Closed Year Round

(b) Copper Falls State Park Tribal Closed Areas: Closed Year Round

(c) Crex Meadows Wildlife Area Tribal Closed Areas: Closed Seasonally - September 1 through December 31.

(d) Powell Marsh Wildlife Area Tribal Closed Areas: Closed Seasonally - September 1 through December 31.

(9) Tribal Designated Use, Tribal Research and Management and Tribal Closed Areas Established. The following Great Lakes Indian Fish and Wildlife Commission document, as it may be amended from time to time, is hereby adopted and incorporated in this ordinance as if fully set forth herein, and no member shall fail to comply with the closures and other restrictions established by this document:

*Tribal Gathering on State Lands within the Portion of the Ceded Territory Located in the State of Wisconsin – Tribal Designated Use, Tribal Research and Management Areas, and Tribal Closed Areas, Version 1: [November 2010].*

(10) Non-Public Lands. No member shall gather miscellaneous forest products under authority of this ordinance on any land within the ceded territory except public land identified as being open to tribal gathering in the following Great Lakes Indian Fish and Wildlife Commission document, as it may be amended from time to time, which is hereby adopted and incorporated in this ordinance as if fully set forth herein, and no member shall fail to comply with the closures and other restrictions established by this document:

*Tribal Gathering on State Lands within the Portion of the Ceded Territory Located in the State of Wisconsin – Public Lands Open to Tribal Gathering.*

#### **12.10 Harvest of Miscellaneous Forest Products Subject to a Timber Sale Contract or Located within a Timber Sale Contract Area.**

(1) No member shall gather any miscellaneous forest product under authority of this ordinance without a permit issued pursuant to subs. (3) that is subject to the harvest rights of another in a valid timber sale contract. Sometimes these trees are marked with paint. However, it is the member's responsibility to be certain about trees that are subject to a valid timber sale contract. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local office of the land manager.

(2) For the purposes of this ordinance, an open Timber Sale Contract Area means a defined location which has been delineated by the landowner for the purposes of a timber sale offering and for which a valid timber sale contract has been executed. Typically, a Timber Sale Contract Area is marked with paint on trees around the perimeter of the Area. It is the member's responsibility to be certain about an open Timber Sale Contract Area. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local office of the land manager.

(3) (a) The tribal conservation department, after consultation with and approval of the land manager, which approval may not be unreasonably withheld, is authorized to issue permits under this section on such terms and conditions as it deems necessary and appropriate.

(b) No member shall fail to comply with the terms and conditions of a permit

issued pursuant to this section.

**12.11 Harvest of Certain Marked Trees or Lodgepoles Prohibited.**

(1) Paint Markings. No member shall cut down any tree that has been designated with any paint markings including but not limited to: paint marking that designates the boundaries of a payment unit within a Timber Contract Sale Area, as defined in Section [12.10](#) [Harvest of Miscellaneous Forest Products Subject to a Timber Sale Contract or Located within a Timber Sale Contract Area] of this ordinance; paint marking that indicates boundaries between public land and other ownerships, or may designate a witness tree at a legal corner; or paint markings that may indicate a tree being used to collect cones or seeds for nursery stock.

**12.12 Sale of Miscellaneous Forest Products Authorized.**

(1) Nothing contained in this ordinance shall be construed to prohibit members from selling any miscellaneous forest product, or any part thereof, lawfully harvested pursuant to this chapter.

(2) The provisions of Section [3.26](#) [Records of Commercial Transactions Required] shall not apply to the sale of any miscellaneous forest product, or part thereof, lawfully harvested pursuant to this chapter.

**12.13 Assistance by Non-Tribal Member.**

(1) No person who is not a member or a member of another signatory tribe shall assist a member in the gathering of any miscellaneous forest product, or part thereof, pursuant to this chapter except as provided in Section [3.30](#) [Permissible Conduct/Assistance by Non-Members].