Michigan's 1836 TREATY FISHERY GUIDE

ABOUT THE GUIDE –

Prior to publication in May 1999, the *Michigan's 1836 Treaty Fishery Guide* was intensively reviewed by the State of Michigan's Department of Natural Resources, the State Attorney General's Office, the United States Department of the Interior, the Bureau of Indian Affairs, the United States Fish and Wildlife Service, the Grand Traverse Band of Ottawa and Chippewa Indians, Sault Ste. Marie Tribe of Chippewa Indians, Bay Mills Indian Community, Little River Band of Ottawa Indians, Chippewa Ottawa Treaty Fishery Management Authority, and the Inter Tribal Fisheries Assessment Program.

The review was intended to help the Public Information & Education Committee develop both an accurate and balanced view of the 1836 Treaty Fishery, and four progressive drafts were developed before the final version was settled.

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For a printed version of the *Guide*, or for a COTFMA brochure or media packet, please contact Jennifer Dale, newspaper@bmic.net, 906-248-3241, ext. 1170.

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Welcome to the 1836 Treaty Fishery Guide. The Public Information & Education Committee, with representatives from the State of Michigan, the U.S. Dept. of the Interior, and Chippewa Ottawa Treaty Fishery Management Authority-member tribes, developed this brochure describing the 1836 Treaty Fishery and the role of tribal fisheries management in the Great Lakes.

This brochure describes the history and evolution of the 1836 treaty fishery, tribal Great Lakes fishery management, commercial and subsistence fishing rules and regulations, commercial harvest information, the role of conservation enforcement and tribal courts, and additional information sources.

The Public Information & Education Committee invites you to browse through this information. Should you have any additional questions, please feel free to contact Chippewa Ottawa Treaty Fishery Management Authority (COTFMA) at 906-632-0043.

THE TREATY RESOURCE TODAY — HOW IT WORKS —

The treaty fishery today answers to regulations developed by tribal, state and federal authorities.

When the Upper Great Lakes Ottawa and Chippewa signed the Treaty of 1836, they retained the right to fish in treaty area water, according to a 1976 Michigan Supreme Court decision and a 1979 U.S. District Court decision.

Although the courts had established the 1836 tribes' right to self-regulation, allocations between user groups had not been addressed. In an attempt to resolve ongoing disputes between tribal and state-licensed fishers, the 1985 Consent Decree was ordered into effect by the U.S. District Court.

This order, in effect until May 2000, is designed to allocate and protect fishery resources, and reduce social pressure.

A six-member Executive Council resolves treaty fishery issues. It is composed of COTFMA member-tribes' chairmen, and a state and a federal representative.

ZONES FOR 1836 TREATY WATERS

— by Consent Order of 1985; amended 1990

Zone Designations for State and Tribal Commericial Fishing in 1836 treaty waters:

1 State Zone. State-licensed commercial fishing only.

2 State Zone. Primary lake trout rehabilitation.

A Tribal Zone. Deferred from lake trout rehabilitation.

B Tribal Zone. Primary lake trout rehabilitation, restrictions on lake trout catch.

GTB Grand Traverse Band Exclusive. Primary lake trout rehabilitation.

R Lake Trout Refuge. Commercial impoundment (trap net) gear only, no possession of lake trout.

Using geographical zones (*see illustration on page 5*), the Consent Order spells out commercial, sport and rehabilitation zones and any special conditions for a fishing zone. For example, some areas are lake trout refuges, where neither gill netting nor sport fishing for lake trout are permitted.

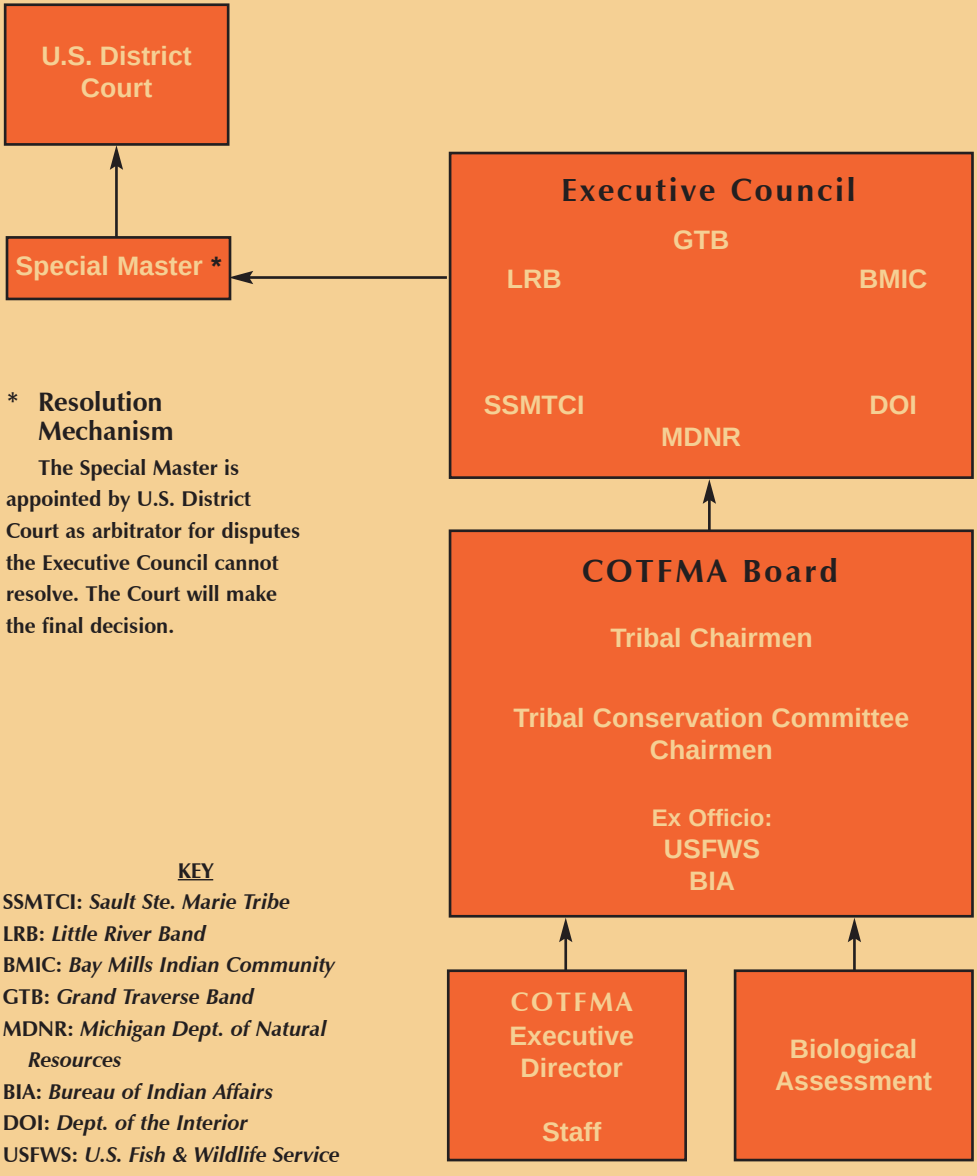
A Technical Fishery Review Committee (TFRC) is made up of biologists from Consent Order parties (*see organizational chart on page 7*). This group compiles annual reports on treaty waters fish stock status and determines harvest levels for certain species. The TFRC is a standing committee to the Executive Council and reports to the council at its quarterly meeting.

Each tribe fishes under COTFMA regulations and its own additional regulations. These regulations are designed to be consistent with the Consent Order. Tribal fishers are subject to U.S. Coast Guard maritime safety laws, and federal seafood safety laws.

Two tribes in the 1836 treaty ceded area were recognized almost ten years after the Consent Order went into effect — Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Little River Band joined COTFMA in 1998. Both tribes have joined in negotiations with the State of Michigan toward an agreement to replace the Consent Order when it expires in May 2000.

Tribal fisheries program staff conduct biological studies to better conserve and protect the Great Lakes fishery resource.

TREATY FISHERY REGULATION ORGANIZATION



* **Resolution Mechanism**

The Special Master is appointed by U.S. District Court as arbitrator for disputes the Executive Council cannot resolve. The Court will make the final decision.

KEY

SSMTCI: *Sault Ste. Marie Tribe*
LRB: *Little River Band*
BMIC: *Bay Mills Indian Community*
GTB: *Grand Traverse Band*
MDNR: *Michigan Dept. of Natural Resources*
BIA: *Bureau of Indian Affairs*
DOI: *Dept. of the Interior*
USFWS: *U.S. Fish & Wildlife Service*
TFRC: *Technical Fishery Review Committee*
GLFC: *Great Lakes Fishery Commission*

GREAT LAKES FISHERY HISTORY

Before European Settlement

Fishing and the use of gill nets for food and trade was important to the Great Lakes tribes before and after European settlement. Prior to European contact in the 1600s, Great Lakes Indians had developed a life patterned around lakeside fishing villages with small gardens of corn, squash and beans, supplementing their fish and vegetables with hunting. Fish was an important primary food source and some used the leftovers for fertilizing crops while whitefish bladders could be used to tan animal hides. The Great Lakes Indians' primary catch was whitefish and lake trout.

According to archeologists, Native Americans have been fishing the Great Lakes for centuries. In the beginning of the Christian Era, cooperating families began gathering in seasonal fishing villages. By the Late Woodland Era, which began around 800 A.D., an adaptation to fishing village life had evolved that archeologists call the "Inland Shores Fishery." Natives used gill nets to harvest whitefish and lake trout in many of the traditional areas still fished today.

Europeans Trade with Great Lakes Indians, Sign Treaty

As Europeans settled, Indians were fishing not only for subsistence (for food) but commercially, selling fish to the Europeans. As more Europeans settled, their need for fish that tribal fishers could provide increased. By the 1830s, Indians were working for American fur companies who developed their own fisheries, using gill nets and other gear.

In a push for land and statehood for the Michigan territories, the United States signed a treaty with regional Ottawa and Chippewa Indians in March 1836. The tribes retained the right to fish and hunt in the ceded territory and bordering waters. Michigan gained statehood in 1837.

Hands worn by years of fishing on the Great Lakes hold a tribal fisher's livelihood.

Great Lakes Fishery Grows, then Declines

The Great Lakes commercial fishery grew dramatically around the turn of the century. Immigrant fishers using steam powered tugs and net lifters began harvesting millions of fish from the Great Lakes.

The Michigan Supreme Court declared in 1930 that Indians had no special fishing and hunting rights. Many Indian fishers purchased state licenses to continue fishing.

During the 1950s, the sea lamprey entered the Great Lakes from the Atlantic Ocean and contributed to the decline of the Great Lakes Fishery.

The Struggle for Treaty Rights

In the mid-1960s, the State of Michigan began limiting entry into the commerical fishery. Its purpose was to protect a growing recreational fishery Albert “Big Abe” LeBlanc of the Bay Mills Indian Community challenged the state’s right to restrict tribal commercial fishing by setting nets in Lake Superior’s Whitefish Bay in 1971.

Due to his challenge, in 1976 the Michigan Supreme Court reversed its 1930 ruling. It determined the 1836 and 1855 treaties did retain some Indian fishing rights free from state regulation.

U.S. District Court Judge Noel Fox's 1979 decision concluded that Bay Mills Indian Community and Sault Ste. Marie Tribe of Chippewa Indians have treaty rights that include the right to fish in 1836 Treaty-ceded territory of Lakes Huron, Michigan and Superior that may not be regulated or restricted by the state. Grand Traverse Band of Ottawa and Chippewa Indians was later included as a party to the Court's decision.

In 1981, the U.S. Court of Appeals upheld the Fox Decision and the U.S. Supreme Court denied review.

The Consent Order of 1985

Because of the Fox decision and subsequent court rulings clarifying Indian treaty rights, the tribes established COTFMA to regulate the tribal fishery. In 1998, the COTFMA tribes were joined by the Manistee-based Little River Band of Ottawa Indians, which was federally recognized in 1994.

Youth practicums are held for those Native youth interested in a natural resources career.

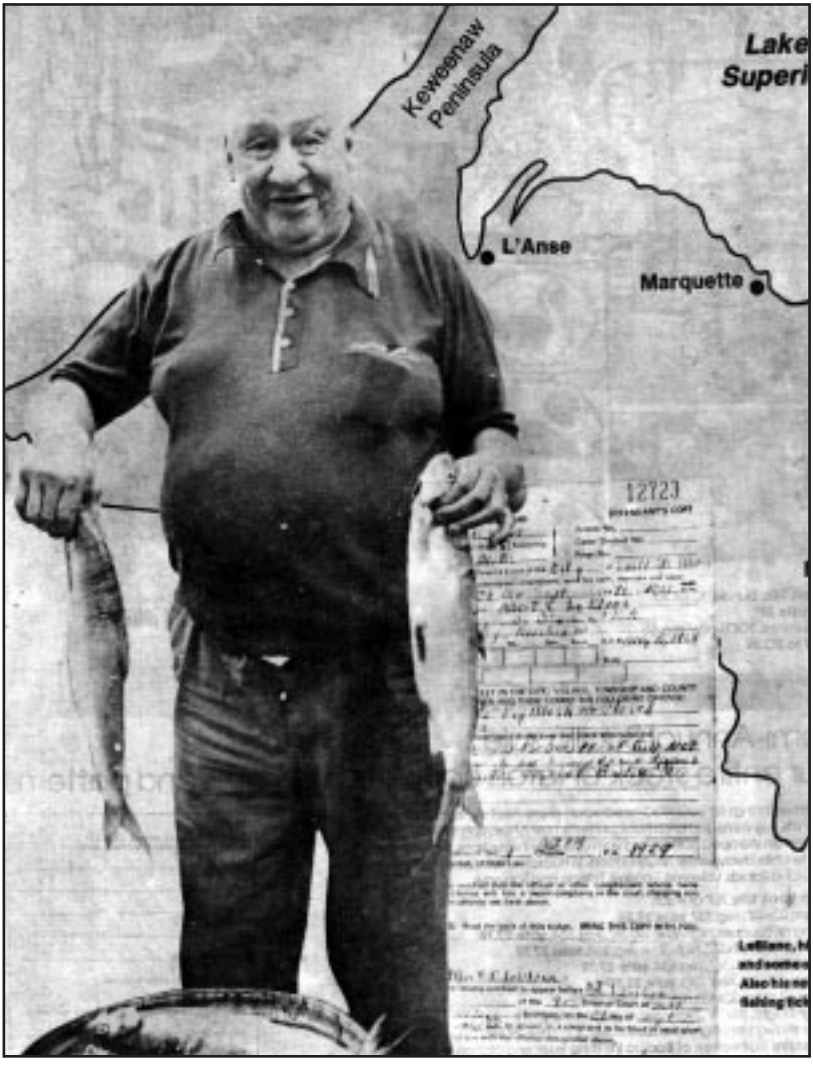
Although the tribes retained the right to fish in the Great Lakes, conflicts among tribal fishers, state licensed commercial fishers, and sport fishing groups continued. In 1985, the tribes, the state, the U.S. Department of the Interior and various sport fishing organizations entered negotiations. The U.S. District Court ordered a 15-year agreement called the "Consent Order" into effect in 1985.

The Order, which expires in 2000, allocates fishery resources between user groups. Its purpose is to reduce social conflict while conserving and enhancing valuable fish stocks. It also established a mechanism to resolve disputes by the formation of an Executive Council. COTFMA-member tribes' chairmen and a state and federal representative sit on the council. When the mechanism fails, the U.S. District Court steps in to resolve the conflict. A court-appointed Special Master may serve as arbitrator.

Today's tribal fishery

Today, commercial and subsistence fishing are as important to tribal members as they ever were. Although gear, vessels and technology have changed, tribal members' desire to maintain their culture while conserving the resource has not.

PIONEERS — Art Duhamel, right, and Abe LeBlanc, below, are both deceased. They were two men who struggled on behalf of their tribes for the treaty right to fish. The two men are well-remembered pioneers who worked to reestablish the Great Lakes tribal fishery that all but disappeared in the mid-1900s.



UNDERSTANDING THE TREATIES

A treaty is a mechanism used by the United States government to give its word to another government, and that word is not eroded by the passage of time.

Accurate treaty interpretation is a sophisticated and complex legal issue. The body of treaty law is vast, and continues to grow. Federal court involvement is often required to interpret treaties. The courts provide a thorough and well-researched legal interpretation, which serves as a foundation for common understanding of reserved treaty rights. This foundation promotes public understanding and acceptance of reserved rights.

How Treaties between the U.S. and Indian tribes came about

Before the arrival of non-Indian people to North America, the landmass of the continent was completely controlled by native tribal entities. Tribes had all the rights of ownership, including the right to use the land and water resources as they desired.

Following European arrival, new settlements were established. These settlements needed land and its resources. Sometimes lands were obtained through warfare, but more often by negotiation or purchase. Treaties were the legal documents used to settle wars or to record the details of negotiation or purchase. Treaties were developed between tribal government and the government of the United States. Land conveyed by tribes in treaties is called "ceded land."

Prior to 1808, tribal groups in Michigan inhabited most of the 57,000 square miles that comprise the state. By 1864, tribal lands amounted to only 32 square miles of Michigan, the rest ceded in treaties with the United States government.

Prior to European occupation, tribes had complete sovereign power over their territory. In many cases, tribes retained some rights of ownership when treaties were negotiated. While tribes might exchange a territory for peaceful relationships, money or other considerations, they might decide to retain certain areas for tribal use, or to retain the right to continue some tribal activities on the ceded land. Fishing or hunting on ceded territory was a right of ownership retained by the tribes, not given up in treaty provisions.

The Nature of Treaty Rights

Treaty rights pertaining to hunting and fishing are very similar to contemporary property rights. Retaining certain rights when land is sold is a common practice in today's land

sales. A property owner might decide to sell land, but retain some property right such as an easement or sub-surface mineral rights.

The Canons of Construction: Interpreting Treaty Language

Interpretation of treaty language can be difficult even for skilled attorneys and judges.

The United States Supreme Court eventually developed "The Canons of Construction," a set of rules to be used by all courts in the United States when dealing with treaty interpretation issues. The two main points are that

- treaties are to be interpreted as the Indian participants understood them at the time negotiated; and
- ambiguities (unclear language) in interpreting treaty language are to be resolved in favor of the Indians.

Courts use historians, linguists, and other experts in attempting to understand what treaty language means.

The federal government negotiated hundreds of treaties with tribes all around the country between 1787 and 1871. Courts use historians, linguists, and other experts in attempting to understand what treaty language written during that time period means.

For example, letters written by Henry Schoolcraft, who helped negotiate the 1836 treaty, were examined in *United States v. State of Michigan*. Expert testimony by historians and linguists helped the court understand Schoolcraft's explanation of Article Thirteenth to the Indians and how Indians may have understood it.

Judge Fox determined that the canons of treaty construction should be "adhered to rigorously." He wrote, "This court adopts the meaning of the 1836 treaty consistent with the canons of construction. Under the 1836 treaty of cession, the Indians granted a large tract of land and water area to the United States. At the same time they reserved the right to fish in the ceded waters of the Great Lakes.

"Because of the documented evidence demonstrating that the Indians were absolutely dependent upon fishing for subsistence and their livelihood, and reading the treaty as the Indians would have understood it, they would not have relinquished their right to fish in the ceded waters of the Great Lakes. Since the treaty does not contain language granting away the prior right to fish, that right remains with the Indians and was confirmed by the 1836 treaty." (United States v. State of Michigan V.

Conclusions of the Law B. Canons of Treaty Construction [26].)

Interpreting the Treaties

After a series of court cases, both the Michigan State Supreme Court and the federal courts affirmed that the 1836 treaty reserved the right to fish under tribal authority in treaty ceded Great Lakes waters.

Treaty language from the 1830s and 1840s regarding these rights can seem difficult to interpret in today's terms. A section of the 1836 Treaty of Washington, has the following language.

Treaty rights pertaining to hunting and fishing are very similar to contemporary property rights. Retaining certain rights of ownership when land is sold is a common practice in today's land sales.

Article thirteenth. The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement.

U.S. District Judge Noel Fox discussed "Article Thirteenth" in the court case *United States v. State of Michigan*.

"The language contained in Article Thirteenth of the Treaty of 1836, by its own terms could not have limited the Indians' right to fish in the waters of the Great Lakes because these large bodies of water could not possibly be settled by homes, barns and tilled fields. While the Indians might have been willing to give up their right to hunt on various parcels of land as that land became occupied with settlers, the vital right to fish in the Great Lakes was something that the Indians understood would not be taken from them and, indeed, there was no need to do so ... " (United States v. State of Michigan V. Conclusions of the Law B. Canons of Treaty Construction [27].)

In *People v. LeBlanc,* the Michigan Supreme Court came to the same conclusion as Judge Fox: " ... the ceded water areas of the Great Lakes have obviously not been required for settlement, and therefore the fishing rights reserved by the Chippewas in these areas have not been terminated." (People v. LeBlanc, supra, 248 N.W.2d at 207.)

COMMERCIAL & SUBSISTENCE FISHING IN TREATY WATERS

The Consent Order divided treaty waters into geographic zones — state, tribal, lake trout refuges and rehabilitation zones (*see zone map on page 5*).

Gill netting and sport fishing for lake trout are not permitted in the refuges, where natural reproduction of lake trout is promoted. The commercial harvest of lake trout is restricted in primary rehabilitation zones.

Subsistence Fishing

Subsistence fishers may fish only for family and personal use. Their fish may not be sold or exchanged. They may use trap or gill nets, hooks, spears, and other gear specified by their tribe.

Commercial Fishing

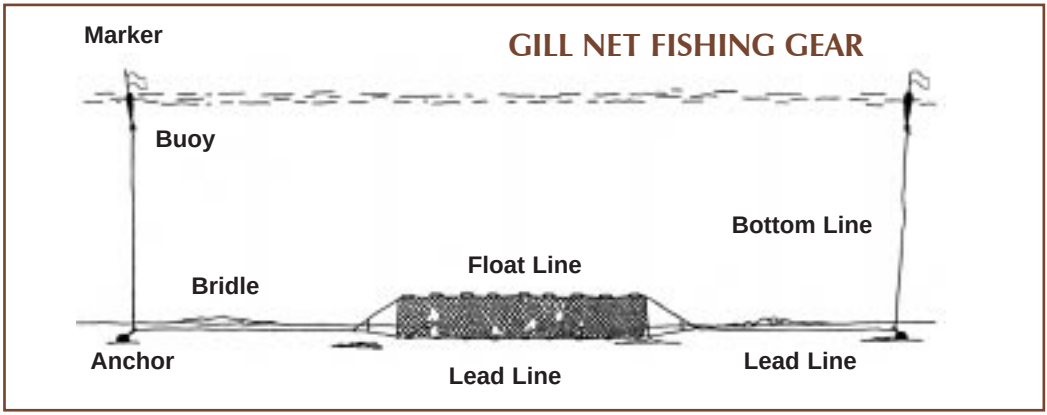
Tribal gill net and trap net commercial fishers may sell the fish they harvest from the Great Lakes. Each must submit a monthly catch report detailing where they fished each day, the amount of gear they used, and number of pounds of each species harvested. These reports are submitted to the tribes, and the statistics are made available to both the MDNR and USFWS.

Gill Net Gear

The gill net, set on the lake bottom, is a simple design resembling a tennis net. It is held open by lead weights along the bottom of the net, small floats along the top, and anchors at each end (*see illustration below*).

Fish are captured in gill nets when they swim into the mesh and are entangled, or caught by the gills when attempting to back out of the net.

Tribal gill net fishers use various mesh sizes, depths and locations to



capture their target species.

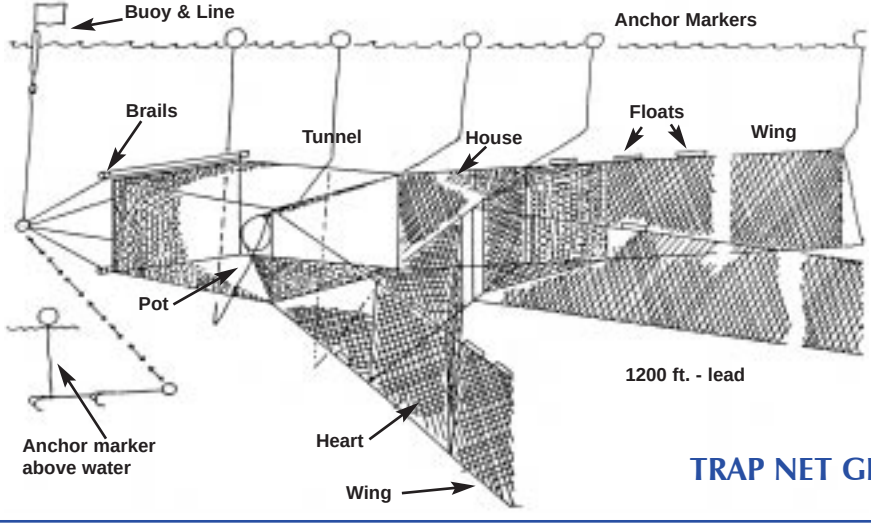
Gill nets are the traditional gear used for centuries by Native Americans in the Great Lakes. They can be readily lifted from most commercial vessels and do not require a large capital investment to purchase and operate.

A gill net reel, used for drying and spreading the nets.

A tribal fisher sews a gill net.

Trap Net Gear

Trap nets are a form of impoundment gear. Trap nets used for whitefish range in height from 20 feet to 40 feet off the lake bottom. The lead, which directs fish into the net, may extend 500 to 1,500 feet along the lake bottom (*see illustration below*). Trap nets are generally tended using specially equipped vessels, generally 35 to 50 feet in length.



TRAP NET GEAR

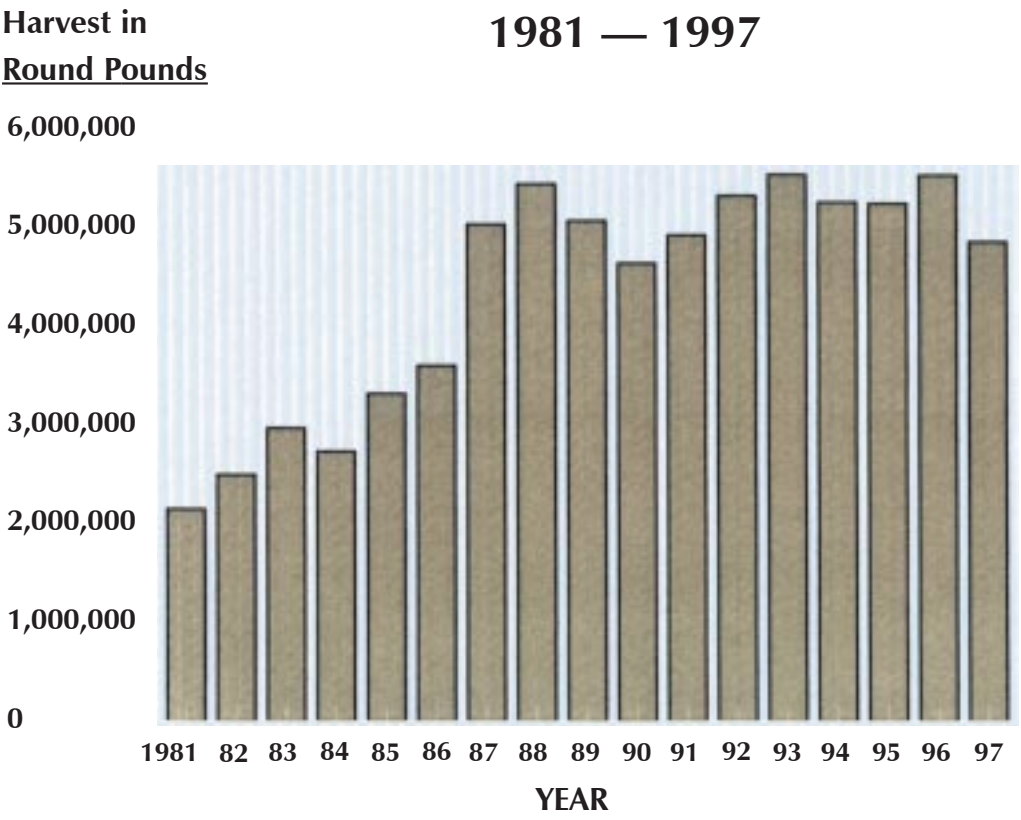
TREATY FISHERY REGULATION

The purpose of the COTFMA commercial and subsistence fishing regulations is to "assure conservation of the fishery resources in the treaty-ceded waters of the Great Lakes in the State of Michigan for the continued use and enjoyment by Indian tribes and all other persons entitled to use the resources." (From *COTFMA Rules and Regulations*.)

COTFMA's commercial and subsistence fishing regulations were adopted in 1982. Regulatory changes are approved and adopted by the COTFMA Board when necessary.

The COTFMA regulations contain the following general information: purpose of the regulations, definition of terms, scope and application of regulations, license definition and restrictions, and identification. Specific regulations are addressed by

TRIBAL COMMERCIAL WHITEFISH HARVEST

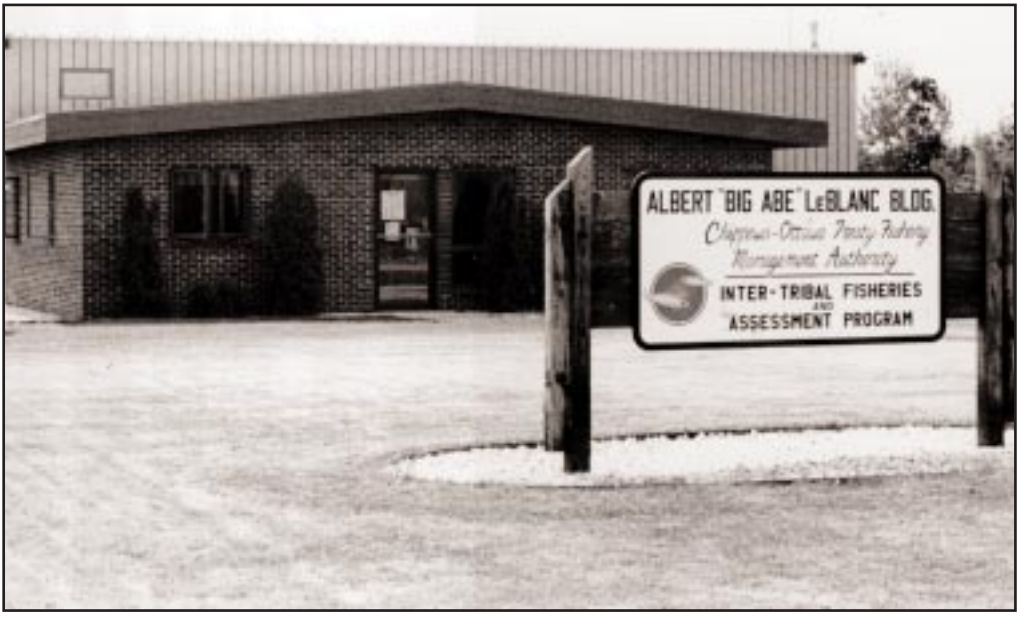


area (Lake Huron, Lake Michigan and Lake Superior), gear, species and area closures, season and zone.

Requirements for catch reporting, wholesale and retail reporting, and subsistence and assessment fishing activities are described in detail.

Jurisdiction and enforcement, criminal penalties, powers of the COTFMA Board, and access site regulations are also included.

A copy of the COTFMA regulations are available at the COTFMA office.



COTFMA administrative offices are located at 179 W. 3 Mile in Sault Ste. Marie. ITFAP is also housed in the building, named after Albert "Big Abe" LeBlanc.

This tribal fishing tug must be ready at any time for a U.S. Coast Guard on board inspection. Tribal commercial fishers must observe maritime safety regulations.

TREATY FISHERY ENFORCEMENT

Management of the Great Lakes Treaty Fishery would not be complete without adequate conservation enforcement. Tribal conservation enforcement personnel enforce regulations established by the 1985 Consent Order, COTFMA and each tribe to protect and conserve the treaty fishery and its fishers. Tribal conservation officers cooperate with the Michigan DNR, U.S. Coast Guard, Border Patrol and other duly recognized agencies to enforce commercial and subsistence fishing activities and safety regulations.

Tribal conservation wardens and state conservation officers have the authority to cite tribal commercial and subsistence fishers for civil and criminal infractions.

When a tribal fisher is cited for a violation, he or she is ordered into a tribal court for judgment. Fines of various amounts, revocation of fishing license and forfeiture of the catch and equipment are some of the penalties levied.

Tribal, federal and state conservation officers recognize the need to enforce regulations fairly and uniformly. Tribal wardens from the four COTFMA tribes discuss and resolve tribal regulatory issues at Management Authority Conservation Enforcement (MACE) meetings. MACE provides monthly reports to the COTFMA board. The Executive Council's Joint Enforcement Committee is composed of tribal, federal, and state conservation officers. It is responsible for resolving multi-jurisdictional enforcement fishery issues.

Each of the four tribes has conservation officers who enforce commercial, subsistence, and vessel safety

Net Tampering is Illegal and Dangerous

Tampering with any net is a violation of state and federal law. If you see a net you think is illegally set, or see someone attempting to tamper with a net, call your local law enforcement agency.

regulations in the treaty waters of the Great Lakes. Tribal conservation officers receive mandatory police, firearm, and first aid training.

Tribal conservation officers are required to attend annual training seminars and are advised of regulatory changes and updates. Each officer is trained to enforce federal and tribal regulations. In addition to mandatory training and instruction, tribal conservation wardens receive vessel safety, navigation and rescue training.

Above, tribal conservation officers learn ice rescue techniques. Below, tribal officers check a tribal fisher's license.

MANAGEMENT & ENHANCEMENT

Inter Tribal Fisheries and Assessment Program (ITFAP), and tribal biological services programs, ensure regulation of tribal fisheries and cooperative management with federal and state agencies.

ITFAP represents COTFMA on the Technical Fishery Review Committee (TFRC), which is responsible for overseeing the fishery resource in the 1836 Treaty waters. The TFRC is a standing committee to the Executive Council. The committee, made up of Michigan DNR, USFWS, COTFMA and tribal biologists, sets total allowable catches (TACs) in the treaty waters.

Nunns Creek Fish Hatchery is an ongoing effort to strengthen and improve the Great Lakes fishery resource. Nunns Creek raises walleye, salmon and other species to stock Great Lakes waters. Since it opened in 1989, the hatchery has served as the center for monitoring and management of salmon harvested by tribal commercial fishermen.

Each COTFMA tribe has a biological services program that cooperates with ITFAP, Michigan DNR, and fed-

Tribal biologists work to both conserve and enhance the fishery.

Tribes rear walleye for stocking in the Great Lakes, and conduct studies to evaluate these populations. They have worked with state and federal agencies to plant lake trout eggs hoping to imprint them on spawning reefs. Tribes participate in efforts to re-establish a wild population of lake trout in Lake Superior.

Above left, COTFMA's fishery enhancement director preps a pump at a walleye holding tank.

Below left, a walleye fingerling is measured prior to stocking.

eral and international agencies and governments to manage and maintain Great Lakes fish stocks.

All biological agencies on the Great Lakes work toward sea lamprey eradication. Recent examples of other cooperative efforts include:

- Planting lake trout eggs on historic spawning reefs;
- Spring and fall lake trout assessments;
- Habitat inventories and mapping projects;
- Lake Michigan yellow perch assessments; and
- Seasonal whitefish studies.

Tribal biologists are responsible for coordinating activities and research that evaluate Great Lakes fish stocks and maintain or improve fishery habitat. Annual projects conducted by these programs include commercial harvest monitoring, lake trout and walleye population assessment, whitefish recruitment, forage fish surveys, and water quality monitoring. ITFAP maintains a commercial harvest database, conducts fish contaminant sampling, and stocks fish in treaty waters.

Tribal biologists work throughout the Great Lakes but specialize in their area of the treaty fishery. Grand Traverse Band and Little River Band are located on Lake Michigan's east coast, and Bay Mills on Lake Superior. Sault Tribe reservations span the eastern Upper Peninsula from Munising to St. Ignace.

TRIBAL FISHERY BIOLOGISTS:

Cooperating with USFWS biologists.

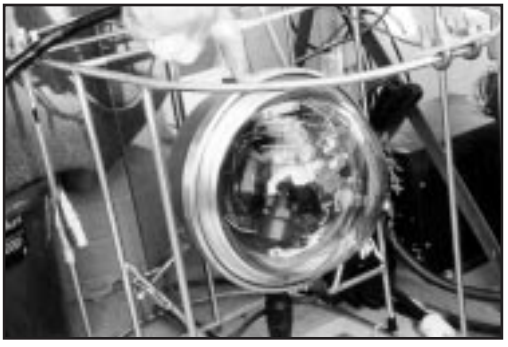
Hatching eggs.

Planting lake trout eggs.

Conducting walleye assessments.

Tribal biological staff and ITFAP participate in many interagency fishery and environmental committees, task forces, commissions and advisory teams on a state, national and international level. Tribal biological staff have been members of or have actively participated in:

- Great Lakes Fishery Commission
- Integrated Management of Sea Lamprey
- Lake Huron Committee
- Lake Huron Technical Committee
- Lake Michigan Committee
- Lake Michigan Technical Committee
- Lake Superior Committee
- Lake Superior Technical Committee
- Great Lakes Fish Health Committee
- Council of Great Lakes Fishery Agencies
- International Joint Commission – Lake Michigan Lakewide Management Plan
- St. Mary's Remedial Action Plan
- Binational Program for Lake Superior
- Binational Superior Work Group
- Great Lakes Council of Governors
- Fish Consumption Advisory Task Force
- Great Lakes Panel on Exotic Species
- Great Lakes Water Quality Guidance
- Great Lakes United
- Michigan Aquaculture Advisory Committee
- Technical Fisheries Review Committee



ITFAP and the National Geological Survey (USGS) biologists are cooperating to map whitefish spawning habitat in Lake Superior. Above is the underwater camera used in the process. Below is Gary Cholwek, USGS biologist who developed the method and has used it to map lamprey spawning grounds.

Tribal biologists have given presentations at many environmental and fishery management functions, from a local Sierra Club to the Native American Fish and Wildlife Society. They have contributed or served as editors to such publications as the *Lake Trout Rehabilitation Guide*; *State of the Lake Report*; and *Fish Community Objectives*.

MONITORING FISH CONTAMINANT LEVELS

Because of a need for consistent and current data for fish marketed from the 1836 treaty-ceded waters, ITFAP began monitoring fish for contaminants in 1991. ITFAP designed its fish contaminant monitoring program to supplement the monitoring programs of other agencies in the region. The program also provides consumers with reliable, up-to-date information on the quality of fish caught in the treaty waters.

Each year, ITFAP collects lake trout and whitefish from either Lake Michigan, Lake Huron or Lake Superior. Fish are analyzed for pesticides, PCBs, mercury and other contaminants.

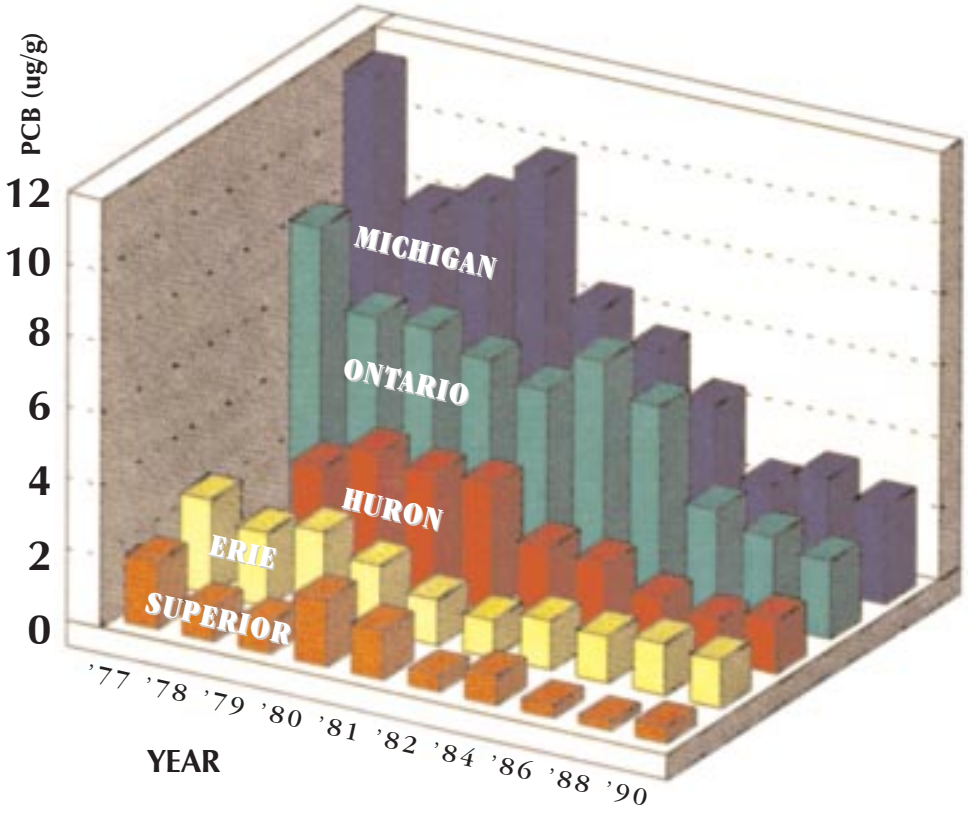
ITFAP distributes the results in a final report to COTFMA-member tribes, Great Lakes agencies and other interested parties. COTFMA's fishers can use this information to market their products.

Laws banning the most toxic of pesticides and other contaminants such as PCBs have been in effect since the 1970s. These laws have greatly helped lower contaminants in Great Lakes fish. Analysis of fish shows a dramatic decline in the average amount of PCBs found in fish since those compounds were banned (*see graph on page 25).*

Contaminants continue to find their way into the Great Lakes basin despite successful efforts over the past 20 years to lower levels. Contaminated sediments remain in many bays and harbors where industrial activities have been operating. Contaminants also come from rivers flowing through agricultural areas where pesticides and herbicides are used, mining operations and from the air itself. Most mercury contamination, for instance, comes from the smoke stacks of coal-powered electric plants.

Although most Great Lakes fish are deemed safe to eat under state and federal advisory guidelines, people are still very concerned about contaminants. As part of the effort to stop further contamination of fish, ITFAP participates in many different committees and other efforts to improve water quality in the Great Lakes.

PCB TRENDS OF LAKE TROUT* FROM THE GREAT LAKES



* WALLEYE FROM LAKE ERIE

Graphic from Devault et al. 1996. "Contaminant Trends in Lake Trout and Walleye from the Great Lakes." (Text reformatted to fit.)

GREAT LAKES EXOTIC SPECIES

Treaty fishery staff participate in national efforts both in the field and the political arena to deal with exotic species, which have proved to be a serious threat to the resource. Tribal fishers are encouraged to report exotic species when encountered.

Scientists have recorded 130 non-native (non-indigenous) species introductions to the Great Lakes in the past 100 years. They are often referred to as biological pollution, most often introduced in ballast water of ships doing foreign trade. Unlike the phosphate pollution of the 1960s, biological pollution cannot be diluted, washed away by the rains, or cleaned up.

One of the most destructive of Great Lakes aquatic exotic species is the sea lamprey. In the 1950s, the lamprey entered the Great Lakes from the Atlantic Ocean through the St. Lawrence Seaway and devastated many fish populations. This parasitic invader was responsible for the crash of ecologically and economically important fish species, costing taxpayers millions dollars each year.

SEA LAMPREY — These eel-like fish native to the Atlantic Ocean arrived through the St. Lawrence Seaway's Welland Canal in the 1950s. With their sucker-like mouths, they attach themselves to fish, especially lake trout, eventually killing them.

Most aquatic exotic species arrive in ships' ballast water — a largely preventable occurrence.

Tribal biologists assist lamprey control efforts by maintaining traps, monitoring wounding rates, and practicing other control measures like river treatments.

A recent invader, the zebra mussel, has become a concern throughout the Great Lakes. Native to Eastern Europe, its population explosion has clogged municipal and industrial water intakes so thoroughly as to shut down entire facilities. Zebra mussels foul boat motors and hulls, create razor sharp docks and rocks, pile up on

The zebra mussel clogs vital equipment, and fishers have reported attachment to nets and changes in fish behavior. Each one can produce 1 million eggs at a time, crowding out native clams.

EURASIAN RUFFE — First seen in 1986. Aggressive competitor with native species for food and habitat.

ROUND GOBY — First seen in 1990, now spreading through waterways. Another aggressive competitor with native species for food and habitat. Populates rapidly.

public beaches to decompose, decimate native clam populations, and contribute to algal blooms that cause drinking water taste and odor problems.

The scientific community is also concerned with lesser known exotics. Biologists don't yet know the long-term effects of the round goby and the eurasian ruffe, two new aggressive competitors for food and spawning areas that eat the young of native species, especially perch.

Purple loosestrife takes over habitat of native plants that native animals and aquatic life need.

Non-indigenous species compete with native species for space and nutrition. They often out-compete native species that have evolved natural limits within their ecosystem. Non-indigenous population explosions and crashes have caused immediate and tangible ecological and economic difficulties for the people of the Great Lakes basin. The incremental, long-term loss of biodiversity casts an increasingly foreboding shadow on the future.

Less than 1/2 inch long, the spiny-tailed *Bythotrephes* is a ferocious predator of the zooplankton that small fish and game fish fry need to survive.

Acknowledgments to Michigan SeaGrant for exotic information and graphics.

MARKETING

Marketing of Great Lakes fish is an important aspect of the treaty commercial fishery. Although the traditional and cultural aspects of the treaty fishery have not changed, technological advances, transportation, fish processing, and consumer demand have influenced marketability and economic returns to fishermen.

Lake whitefish, lake trout, Pacific salmon, bloater chub, round whitefish, and lake herring continue to be important commercial fish species targeted by tribal fishers. What was once a salted and dried fish market is now a fresh, smoked, and value-added fish product market. Today's "value-added" products include pin-boned and vacuum-packed fillets, fish spreads, caviar, fish sausages, and a variety of smoked fish recipes. With improvements in transportation and fish processing technology, fresh fish and "value-added" fish products are produced and transported to national and international markets across the globe.

Tribal fishers market their fish directly to the consumer through their own fish houses and restaurants

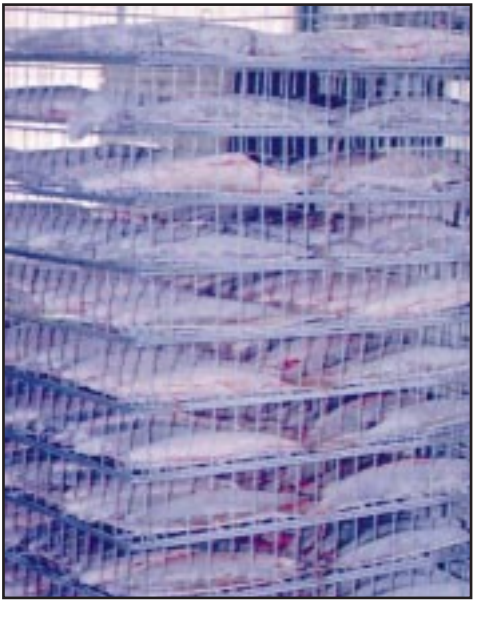
Tribal fishers produce everything from fresh fish fillets to golden roe, all subject to seafood safety regulations. At the Clearwater Fishermen's Cooperative warehouse, a rabbi's presence ensures the caviar produced is kosher.

or sell to local-, state- and tribally-licensed fish buyers. Tribal fishers have also initiated efforts to improve marketing, fish prices, and economic returns. They have formed tribal associations, opened their own businesses, and created alternative markets for fish products. An example of a new association founded by tribal fishers is the Clearwater Fishermen's Cooperative. Tribal and state commercial fishers formed the cooperative to ensure that profits go directly to the fishermen and to protect individual and small boat fishers from market pressures that force them to sell at unfavorable prices.

COTFMA has established a new resource developer position and a fishery development commission to improve fish prices and marketing opportunities. The resource developer has pursued funding for training and certification of tribal fish processors. Following certification, all fish processed by a tribal processor will be certified by the Food and Drug Administration (FDA). The fishery development commission also began an initiative to establish a tribal "seal of quality" for tribal fish and will create a standardized menu of tribal fish products targeting several local markets.

Although fishing has been traditionally and culturally important to tribal fishermen and their families, they also recognize the need to improve marketing of the fish they harvest and sell. Effective marketing strategies undertaken today will ensure continued existence of the treaty fishery in the future.

Wilcox's Fish House and Restaurant on Lake Superior's Whitefish Bay is a successful family business owned and operated by a tribal fisher. Below, these fillets are all in a days work at the Clearwater Fishermen's Cooperative Warehouse.



COMMON MISCONCEPTIONS ABOUT INDIAN FISHING

Treaties and sovereignty are two widely misunderstood concepts. How the fishery should be allocated among user groups, the role of the courts, and tribal, state and federal regulation are murky waters for most.

Here are a few of the most frequently asked questions and their answers:

"Doesn't the treaty expire in the year 2000?"

No. In fact, only the 'Consent Order,' set into effect in 1985 by the U.S. District Court, expires in the year 2000. Treaties don't expire.

"What is the difference between the Consent Order and the 1836 Treaty?"

The Consent Order is a 15-year, court-ordered user allocation plan among the tribes, the state (including the interests of sport fishing associations), and the federal government.

The 1836 Treaty is an agreement that was made between two sovereign nations. Tribes that signed the 1836 Treaty reserved certain rights under that treaty. Federal courts have reaffirmed that fishing in the Great Lakes ceded waters is one of those rights. That's why Indian fishing is called a treaty right, and is how the treaty fishery is defined.

"Who enforces Indian fishing regulations?"

Tribal conservation officers enforce regulations. State conservation officers may also enforce regulations. Each group has a number of officers who patrol waters to ensure regulations are followed. The U.S. Coast Guard, in cooperation with tribal authorities, can conduct on board inspections to ensure maritime safety regulations.

"Why should treaties be recognized in today's world?"

At first glance, it might seem like treaties with Indian tribes are old fashioned, even outdated documents. But, they are not. Native Americans are a living people, organized as tribes that have retained their sovereignty.

Like the U.S. Constitution or the Bill of Rights, the ideas behind these old-fashioned terms are not outdated. In fact, ideas like sovereignty are the foundations America was built on.

"Are Tribal fishers unregulated and allowed unlimited access to the resource?"

No. Tribal fishers must follow not only tribal and intertribal regulations, but also federal regulations. Many court orders, decisions and agreements have limited fishing. Tribal fishing is one of the most highly regulated fisheries on the Great Lakes.

Tribal fishers observe spawning season closures, limited or no entry in lake trout primary rehabilitation zones, and harvest limits. They must comply with species, gear and seasonal regulations. Besides tribal regulations, COTFMA, USFWS, Coast Guard and Food and Drug Administration (FDA) regulations must also be followed.

"Tribal fishers could just work for tribal organizations. Why is fishing so important to them?"

Tribal fishing carries with it a rich tradition of family heritage. It's more than a job — it's a way of life passed down through the generations. Much like the fishermen of New England, songs and stories and family traditions have grown up around tribal fishing.

Some tribal members have chosen a way of life closer to nature and traditional culture, maintaining a fishery in the tradition of their ancestors. This type of choice is a freedom all Americans hold dear.

Some Native Americans hold that exercising treaty rights is an important and honorable role in the tribal community.

Today's tribal fishers are very skilled, and live for their work. Most tribal fishers wouldn't have it any other way — they enjoy their lives on the Great Lakes, doing something they know how to do well and working for themselves.

"Why should state-licensed sport fishers have to pay to use the resource when tribal fishers use it for free?"

Sport fishing requires license fees that directly support management practices used by the state to protect and enhance the fishery. Tribal licensing fees exist to defray cost of enforcement and management.

Also, tribal fishers' reserved right to fish in the treaty-ceded waters is a form of property right. If someone sells their property and retains the mineral rights, they can go back later and use those minerals at will, without having to pay for it. (These sorts of property rights are known as "usufructuary rights.")

"Don't tribal fishers just get a slap on the wrist when found in tribal court to be fishing illegally?"

Tribal fishers can face monetary fines, confiscation of their gear, and license suspension. Each tribal court has a Tribal Code in place that names progressively severe consequences for violators, much like state-licensed fishers and hunters face.

"Aren't gill nets bad because they kill all fish caught in the net? Why don't tribal fishers convert to trap nets?"

Tribal gill net fishers believe they can target the fish they want to catch by fishing in specific depths and locations, by using the proper mesh size, and by releasing the live non-target fish. By using these techniques, the catch of non-target species can be minimized.

Many tribal fishers have not converted to trap nets because of the high cost and the expertise required.

1836 TREATY INFORMATION & LITERATURE

Literature and Video

Chippewa Ottawa Treaty Fishery Management Authority: the Fishing Rights that Remained in the Ottawa-Chippewa Treaty of 1836

This 28-minute video illustrates how the treaty fishery works. *COTFMA, 1987. Call 906-632-0043.*

Treaty Rights: A Guide to Understanding Ojibwe Treaty Rights

This 52-page color booklet explains treaty history, tribal sovereignty, current litigation, management of treaty seasons and the role of Great Lakes Fish & Wildlife Commission. (*GLIFWC), 1998. Call 715-682-6619.*

Chippewa Treaties Understanding and Impact

A booklet aimed at 4–8 grade students promoting cultural awareness and background information on Chippewa treaties. *GLIFWIC, 1994. Call 715-682-6619.*

Conserving the Resource for Future Generations

This brochure overviews the 1836 Treaty and 1985 Consent Order. And, COTFMA and its member tribes' philosophy, conversation /enhancement / environmental services and law enforcement. *COTFMA, 1997. Call 906-632-0043.*

Lake Superior Indian Fishery

An excellent explanation of the Lake Superior tribal fishery and includes an insert of tribal fish outlets that includes local fishers. *GLIFWC. Call 715-682-6619.*

Tribal Hatcheries of the Great Lakes Region

Updated booklet that reviews the activities of tribal hatcheries including annual stocking figures. *GLIFWC. Call 715-682-6619.*

Native American Publications

Masinaigan

This quarterly newspaper published by GLIFWC contains a wealth of information about tribal fisheries; tribal hunting in Wisconsin; treaty rights and responsibilities; related legislative and litigation efforts; tribal conservation and ecology; and traditional values. *GLIFWC. Call 715-682-6619.*

Bay Mills News

Monthly Bay Mills Indian Community newspaper with local, regional and national news and cultural/historical features of interest to the community and surrounding area. Available by subscription. *Bay Mills Indian Community. Call 906-248-3241.*

Tribal Fishing

This monthly newsletter for COTFMA fishers provides current news on conservation, biology, enhancement. Regional, national and international issues. *Call Bay Mills News.*

Win Awenen Nisitotung

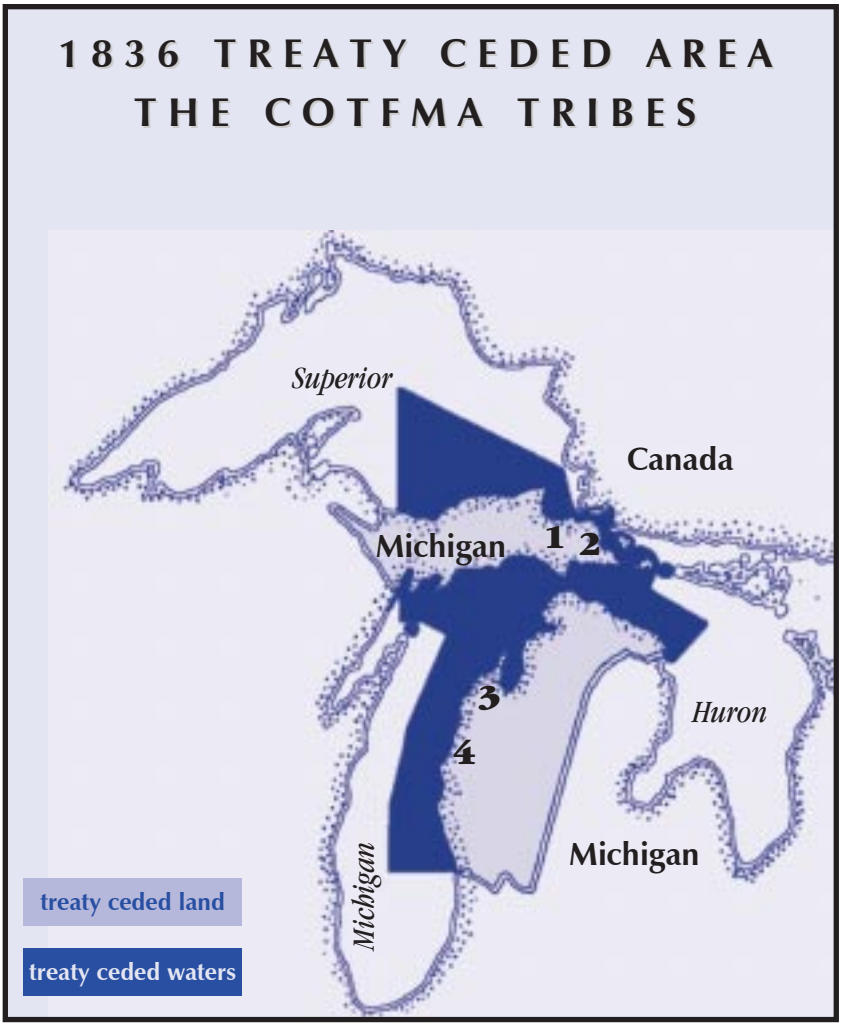
Tribal newspaper published every three weeks by the Sault Ste. Marie Tribe of Chippewa Indians. Local and regional tribal and cultural news. *Sault Tribe Communications Dept. Call 906-635-4768.*

Grand Traverse Band Newsletter

Published monthly by the Grand Traverse Band, this newsletter informs the membership and interested parties of tribal community news. *GTB Communications Dept. Call 616-271-7366. Fax: 616-271-7724.*

INTERNET RESOURCES

- **Bay Mills Indian Community**
  www.4baymills.com
- **Chippewa Ottawa Treaty Fishery Management Authority**
  http://home.northernway.net/~qitfap
- **Department of the Interior**
  www.doi.gov
- **Great Lakes Fish & Wildlife Commission**
  http://www.glifwc.org
- **Sault Ste. Marie Tribe of Chippewa Indians**
  www.sootribe.org
- **U.S. Fish & Wildlife Service**
  www.fws.gov/~r3pao
- **Native American Journalists Association**
  www.medill.nwu.edu/naja/



1 Bay Mills Indian Community,

➤ Reservation on Lake Superior shoreline near Brimley, Mich.

2 Sault Ste. Marie Tribe of Chippewa Indians

➤ Based in Sault Ste. Marie, Mich., with reservation land throughout the Eastern Upper Peninsula.

3 Grand Traverse Band of Ottawa and Chippewa Indians

➤ Reservation "Peshawbetown," near Suttons Bay, Mich., on Lake Michigan shoreline.

4 Little River Band of Ottawa Indians

➤ Based near Manistee, Mich.

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Public Information & Education Committee mission statement

To educate and inform the public about the Chippewa Ottawa Treaty Fishery Management Authority and its member tribes activities and to promote understanding of Indian treaty rights and responsibilities.

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