

1837 Treaty litigation

A review of the Minnesota 1837 Treaty case

Symbolic Petition of Chippewa Chiefs



Symbolic petition of Chippewa Chiefs, presented at Washington, D.C. on January 28th 1849. The delegation was headed by Oshcabawis of Monomonecau, Wisconsin. (See page 2 for explanation)

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1837 Treaty case in Minnesota

This special supplement to the *Masinaigan* is designed to consolidate information regarding the 1837 Treaty case in Minnesota which has been ongoing since the Mille Lacs band filed suit in 1990. Hopefully, the result will be a helpful resource to readers interested in completely understanding this case and treaty issues nationally.

The supplement provides a history of the case overall, but focuses on the District Court's January 1997 decision, currently under appeal, which delineates the regulations for the implementation of treaty hunting, fishing, and gathering activities on 1837 treaty ceded lands.

It is important to understand that at the time of this issue, the U.S. Court of Appeals, Eighth District, has not yet issued a judgment on the appeal, and any implementation of 1837 off-reservation treaty rights is suspended until the appeal is complete, with the exception of a very limited ceremonial harvest by the Mille Lacs band which was allowed by the Appellate Court.

Ojibwe bands party to the 1837 treaty include: the Mille Lacs and Fond du Lac bands in Minnesota, and the Bad River, Red Cliff, Lac Courte Oreilles, St. Croix, Lac du Flambeau, and Mole Lake bands in Wisconsin.

Prior to the Eighth District Court of Appeals' acceptance of the appeal and ruling for the suspension of implementation, the bands were preparing to exercise their off-reservation treaty rights in the 1837 Treaty ceded territory this spring.

This involved preparation for conservation enforcement and regulation of the spring seasons, including spearfishing and

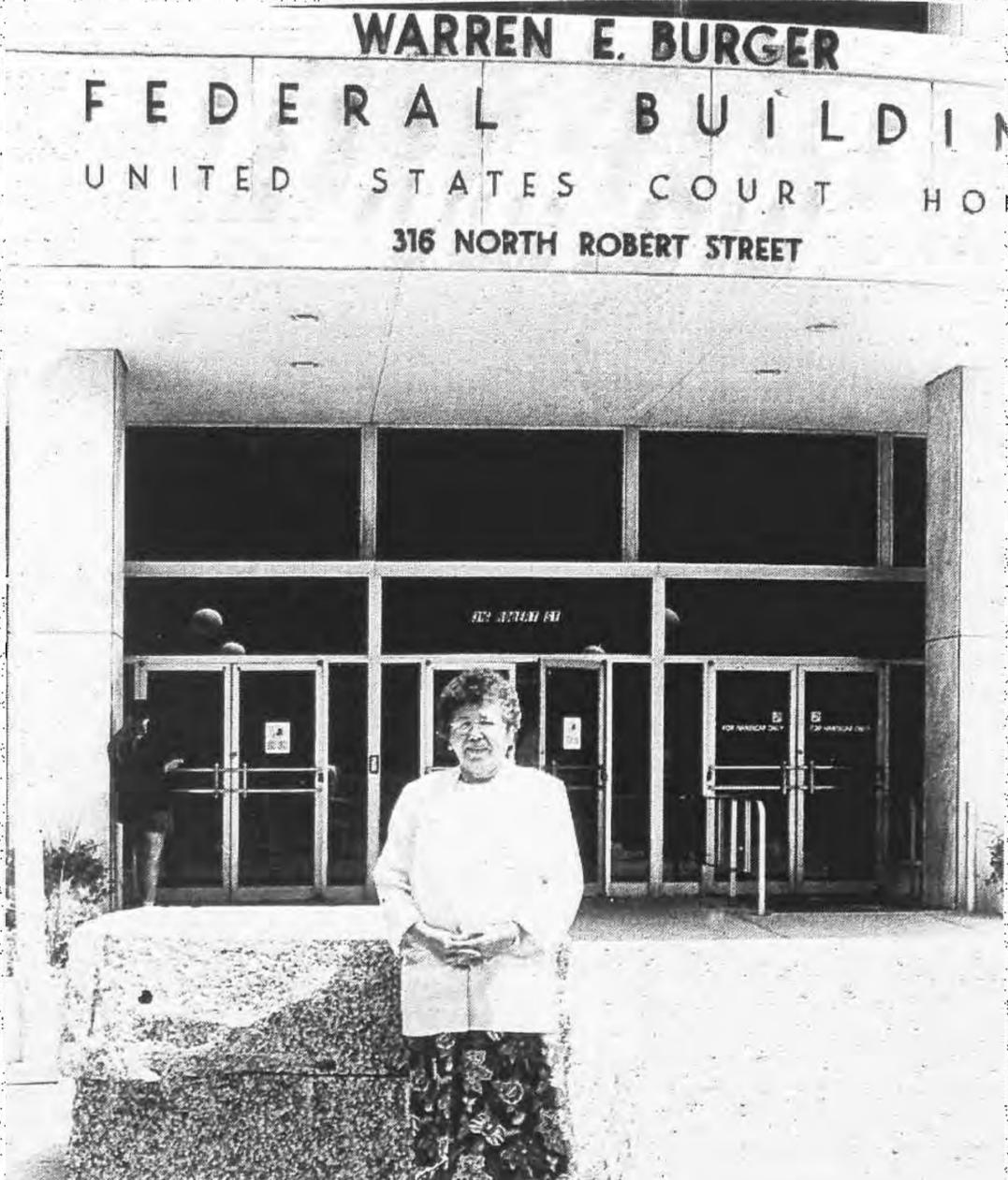
gillnetting. While the exercise of the rights has been delayed by the Appellate Court, the bands are prepared for effective implementation, including conservation enforcement and biological monitoring of the seasons, at such a time that the Court may allow.

Tribal biologists and conservation officers, in conjunction with those from the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), will work with local and state officials to assure treaty seasons which are both meaningful and safe to tribal members and which protect the resources for present and future use of all people.

The final section of this supplement will look at the exercise of treaty rights in Wisconsin where the Ojibwe bands have been implementing treaty seasons for the past thirteen years. Despite the early fears, foreboding, and protests, tribal off-reservation seasons have not harmed Wisconsin's resources, nor its tourism industry.

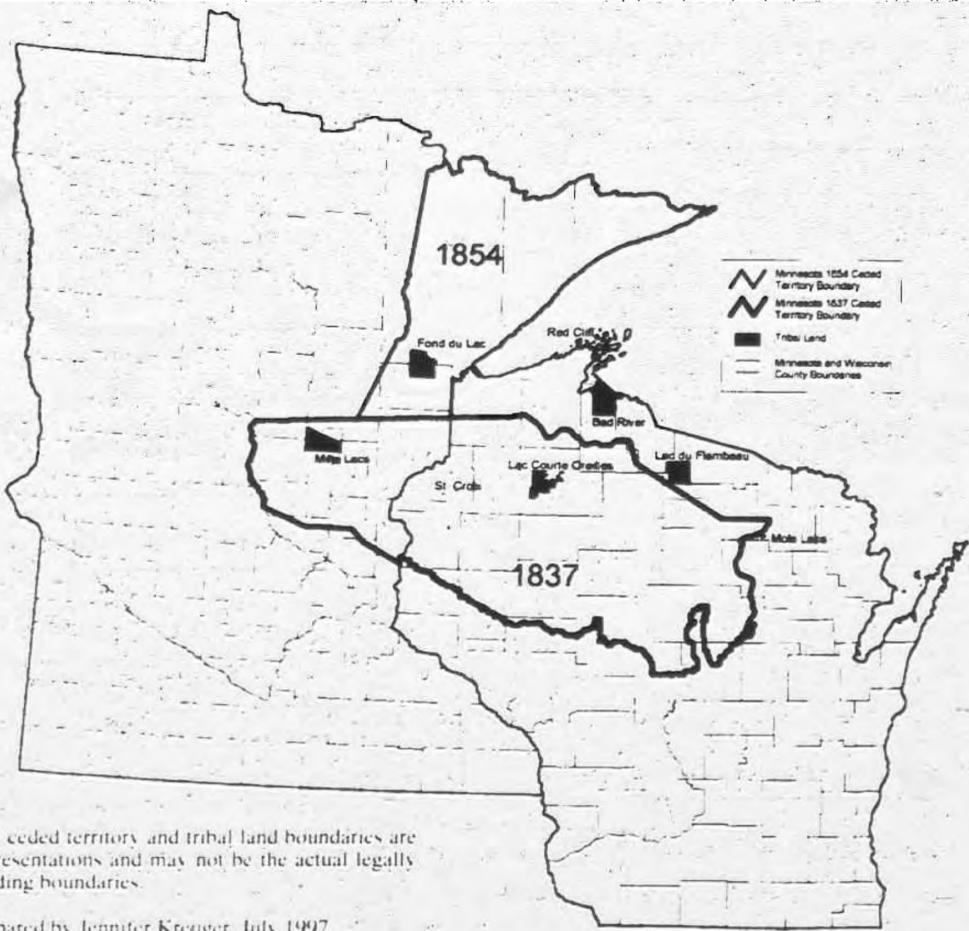
Today, tribes continue to spear fish each spring in a regulated manner, but the landings lack the protest which brought so much negative focus to Wisconsin in 1985-1990.

If anything can be learned from the "Wisconsin experience," it is that the tribal off-reservation harvest is modest, intensely regulated, and does not deplete the resource. It has brought increased attention to more accurately understand the status of the fishery, joint assessments, joint stocking projects—a general sharing of the effort required to effectively manage natural resources so they can continue to be healthy and available to all.



The U.S. Court of Appeals, Eighth Circuit, heard arguments of appeal in June 1996 from a lower court ruling which had affirmed the 1837 treaty rights in Minnesota. Above, Marge Anderson, Mille Lacs chief executive, stands in front of the Warren E. Burger Federal Building in St. Paul, Minnesota. (Photo by Sue Erickson)

1854 and 1837 Ceded territory boundaries (Minnesota and Wisconsin)



Prepared by Jennifer Kreuger, July 1997

Symbolic Petition of Chippewa Chiefs

Cover photo: During the late 1840s, rumors circulated around Wisconsin that the Chippewa Indians who inhabited land near Lake Superior were destined to be removed from their homes and sent to inland Minnesota.

In 1849 a Chippewa delegation traveled to Washington to petition Congress and President James K. Polk to guarantee the tribe a permanent home in Wisconsin. These delegates carried this symbolic petition with them on their journey. The animal figures represent the various "totems," as determined by family lineage, whose representatives made the historic appeal.

Other images represent some features of the tribe's beloved north woods. Lines connect the hearts and eyes of the various totems to a chain of wild rice lakes, signifying the unity of the delegation's purpose. This pictograph, originally rendered by the Chippewa on the inner bark from a white birch tree, was redrawn by Seth Eastman and appears in Henry Rowe Schoolcraft's *Historical and Statistical Information Respecting the History, Condition, and Prospects of the Indian Tribes of the United States, Vol. I* (1851). This book is part of the State Historical Society's rare book collection. The following legend details the pictograph's numbered images and what they represent:

1. **Osh-ca-ba-wis**—Chief and leader of the delegation, representing the Crane totem
2. **Wai-mit-tig-oazh**—He of the Wooden Vessel, a warrior Marten totem
3. **O-ge-ma-gee-zhig**—Sky Chief, a warrior of the Marten totem
4. **Muk-o-mis-ud-ains**—A warrior of the Marten totem
5. **O-mush-kose**—Little Elk, of the Bear totem
6. **Penai-see**—Little Bird, of the Man Fish totem
7. **Na-wa-je-wun**—Strong Stream, of the Catfish totem
8. Rice lakes of northern Wisconsin
9. Path from Lake Superior to the rice lakes
10. Lake Superior shoreline
11. Lake Superior

(Cover photo and text reprinted with permission of the State Historical Society of Wisconsin.)

History of the 1837 Treaty rights case

The Mille Lacs Band filed suit against the State of Minnesota on August 13, 1990 in federal court. It claimed that the State's natural resource laws and regulations violated the Band's hunting, fishing and gathering rights guaranteed by the 1837 Treaty.

The Band sought a judgment declaring that the 1837 ceded territory rights continued to exist, defining the nature and scope of the rights, and defining the permissible scope, if any, of state regulation of treaty rights harvest. It also sought a court order prohibiting enforcement of state fish and game laws against Band members except as specified by the court.

The Fond du Lac Band filed a similar suit in federal court on September 30, 1992 regarding both the 1837 Treaty and the 1854 Treaty.

Trial phases

The Mille Lacs case was divided into two phases. Phase I was to determine whether the rights continue to exist, the general nature of the rights, and where the rights may be exercised. If the rights were found to continue, Phase II would address issues of resource allocation between treaty and non-treaty harvests and the validity of particular measures affecting the exercise of the rights.

Out-of-court settlement fails

An attempted effort to resolve the Mille Lacs case through an out-of-court settlement failed in 1994. A proposed agreement was hammered out by Band and State representatives in many months of negotiating. It contained many compromises between the parties.

For example, Mille Lacs would have limited its spearing and netting in Mille Lacs Lake to approximately 4.5% of the lake's acreage in exchange for a fishery under the Bands' control in that area. The Bands' walleye take in that area would have been limited to 24,000 pounds per year. There were many other concessions between the parties, including cash and land consideration for the Band.

The proposed agreement was approved by the Mille Lacs Band, but was rejected by the State Legislature. The agreement would have ended the court case. With its rejection, the litigation proceeded, with judgements ultimately being rendered in the Bands' favor in both phases of the case.

1994 ruling on Phase I affirms treaty right

After a lengthy trial, the United District Court for Minnesota ruled in 1994 that:

- 1) the Mille Lacs Bands' 1837 ceded territory rights continue to exist;
- 2) the general nature of the rights was that the Band understood that it had given up the right to harvest timber, but that the Band did not understand the Treaty to impose any other limitations on the time, place or manner of treaty harvests;
- 3) the rights include the taking of resources for commercial purposes;
- 4) the rights were not limited to the use of any particular techniques, methods, devices, or gear; and
- 5) the State could regulate the rights only to the extent reasonable for conservation, public safety or public health reasons. The Court ordered that Phase II should proceed.

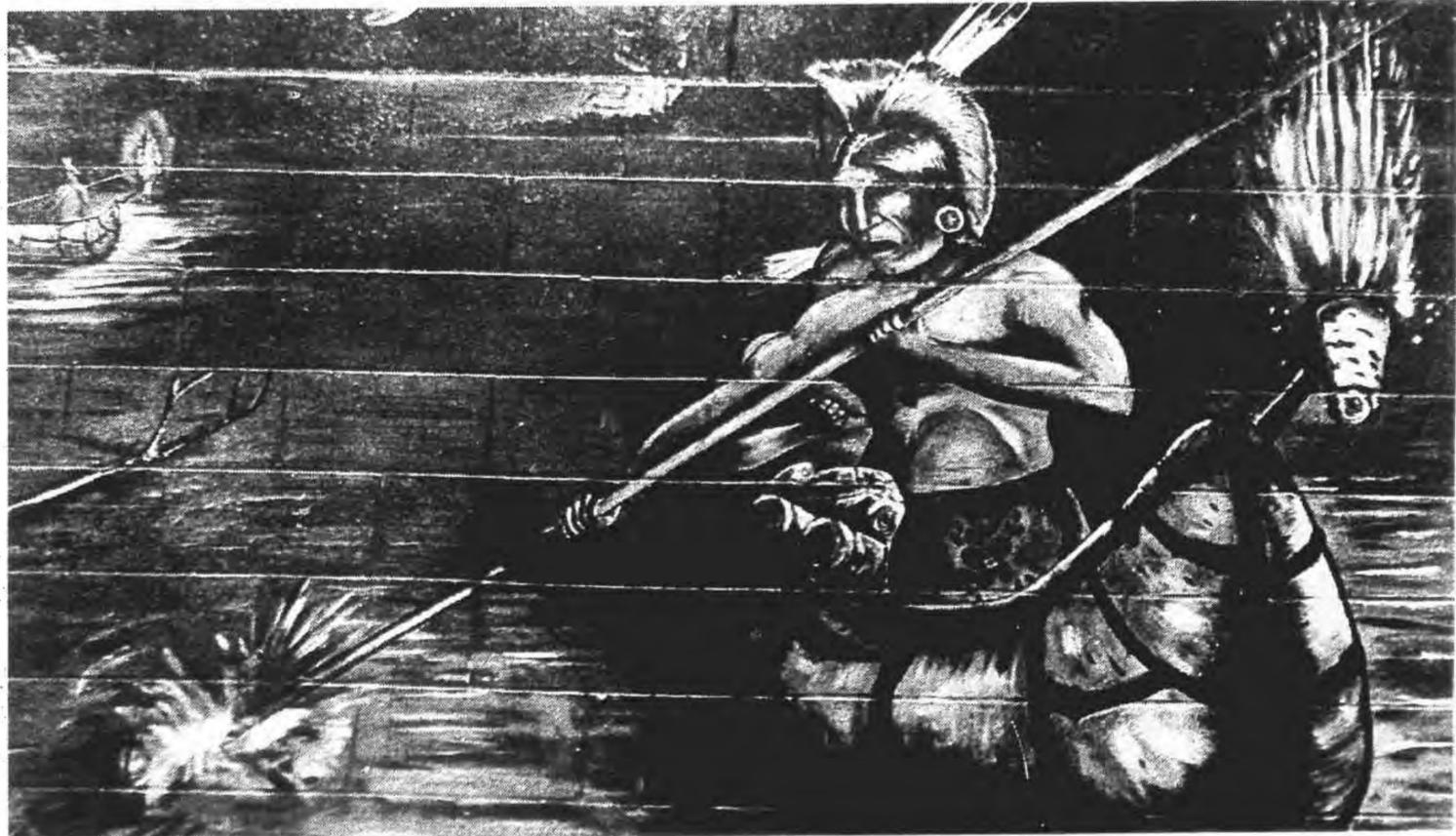
"We must fight for our rights, but we must do so in a decent, honest and legal manner as our ancestors taught us.

We must follow the principles of the Medewewin. We must be honest, we must respect others and we must be hard working.

I believe in their heart of hearts, the United States and the State of Minnesota know they have done a grave injustice to us. They have taken our land and tried to break our spirit using awful methods.

They know they were wrong. They also have to know that the pendulum of justice would one day begin to swing the way of the Mille Lacs Band."

**—Excerpted from State of the Band Address,
Arthur Gahbow, Chief Executive,
Mille Lacs Band of Ojibwa, January 1989**



A similar ruling was handed down in the Fond du Lac case in 1996. There, the Court ruled that Fond du Lac's 1837 Treaty rights are the same as those determined in the 1994 Mille Lacs case decision. It also ruled that Fond du Lac's 1854 rights continue to exist; however, it reserved a ruling on the nature and extent of those rights, and scheduled that issue for further proceedings.

Phase II: Nature and scope of right

The 1837 Treaty aspects of the Mille Lacs and Fond du Lac cases continued on separate tracks until the summer of 1996. At the State's request, the Court joined the 1837 Treaty issues of the two bands for Phase II purposes, and for these issues, the cases proceeded on a consolidated basis.

Additional parties were added to the Mille Lacs case as it proceeded through the District Court. In 1993, at the direction of the Eighth Circuit Court of Appeals, nine ceded territory counties, and six individual ceded territory landowners were joined as defendants in the case. The counties and landowners participated in both phases of the case.

In 1995, the six Wisconsin Chippewa Bands were joined as plaintiffs in the case for Phase II purposes only. In a separate decision in 1996, the Court ruled that the Wisconsin Bands' 1837 rights were already recognized in the 1983 Voigt case for the Wisconsin portion of the ceded territory, that they extend to the Minnesota portion of the ceded territory, and that they are the same rights as the Court affirmed in 1994 for the Mille Lacs Band.

In January 1997 the District Court ruled on Phase II of the 1837 Treaty case, providing for the exercise of treaty harvest in accordance with court-accepted stipulations that define the regulation of the off-reservation harvest and the amount of resources that can be taken.

Because issues regarding scope and regulation were resolved through stipulations which defined them, those issues were not included in the final decision. Therefore, lacking a court decision those issues cannot be appealed.

The appeal

A petition to appeal the 1997 District Court ruling was accepted by the U.S. Court of Appeals, Eighth Circuit. On April 9, 1997 the Eighth Circuit also suspended the exercise of any treaty harvest in the 1837 Treaty area until the appeal is decided. However, on April 16th an Order from the Eighth Circuit Court of Appeals allowed for a ceremonial harvest of 2,000 lbs. of fish by the Mille Lacs Band only.

On June 12, 1997 a three judge panel from the Eighth Circuit Court of Appeals heard the arguments on appeal issues which relate largely to the continued existence of the treaty right. A decision in the fall of 1997 is anticipated.

Supplement credits:

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Issues of allocation and regulation resolved in '97 District Court decision

(Editor's note: The judgment explained below is currently being appealed by the State of Minnesota, landowners, and counties. The U.S. Court of Appeals, Eighth Circuit, listened to oral argument in June 1997, and a decision should be forthcoming in the fall of 1997.)

The January 29, 1997 final judgment, issued by Judge Michael Davis of the US District Court of Minnesota, ended the trial portion of two 1837 treaty rights cases pursued by eight Chippewa Bands.

The **Mille Lacs Band v. State of Minnesota** case involves the Mille Lacs, Bad River, Lac Courte Oreilles, Lac du Flambeau, Red Cliff, St. Croix, and Sokaogon Chippewa Community (Mole Lake) Bands.

The **Fond du Lac Band v. Carlson** case involves that Tribe's 1837 and 1854 ceded territory claims. This ruling applies only to the 1837 portion of the **Fond du Lac** case. No trial date has been scheduled as yet for the remaining 1854 issues.

Two phases of the case have now concluded. Phase I ended in 1994 with a federal court ruling affirming the existence of the 1837 treaty rights. Phase II took up regulatory and allocation issues of the 1837 treaty right.

The final judgment in Phase II of the case resolved all issues of regulation and allocation. Basically, it approved a tribal self-regulatory system governing hunting, fishing and gathering rights in the Minnesota portion of the 1837 ceded territory without interference from the State unless for health, conservation and/or public safety reasons.

Judge Davis' ruling specifically addressed the regulations that will apply to the exercise of the rights, where the rights may be exercised, and the allocation between treaty and non-treaty harvests.

In conjunction with the court's previous rulings in Phase I of the cases affirming the continuing existence of the rights, the January 1997 judgment resolved all issues before the District Court.

The State and other defendants in the lawsuits have appealed both Phase I and Phase II rulings to the US Court of Appeals for the Eight Circuit.

In addition, the State has asked Judge Davis to suspend the Phase II judgment for an initial four-month period while it prepares for implementation of the rights. The county and landowner defendants asked Judge Davis to suspend his ruling while the case is on appeal. Judge Davis denied these requests. However, the U.S. Court of Appeals, Eighth Circuit, agreed to hear the appeal and placed a stay on the implementation.

Provisions of the Phase II final judgment

The Phase II judgment addressed and resolved a number of issues outlined below. *Masinaigan* provides first a synopsis of the ruling and then a discussion of the impact or implication of the ruling as provided by James Zorn, attorney and policy analyst for GLIFWC. Unless overturned by the U.S. Circuit Court of Appeals, where the case is currently being considered, these provisions will stand.



Marc Slonim, Mille Lacs litigation attorney

of gill nets in eight lakes under 1000 acres in size. Provided the Bands properly enact these regulations into tribal law and effectively enforce them, state laws will not apply.

Impact: The court's endorsement of the Bands' self-regulatory system—including their fishery and wildlife management plans—means that tribal members will be exercising the rights under tribal laws and be subject to the jurisdiction of tribal courts.

Although the Bands have agreed that Minnesota DNR wardens may enforce tribal laws, state wardens must work cooperatively with GLIFWC and tribal wardens in doing so.

Treaty rights cases consistently hold that tribal regulations should govern the exercise of treaty rights where those regulations meet legitimate conservation, public safety and public health concerns. "In this case, it is important to note that the State agreed that the vast majority of the proposed tribal regulations were adequate," Zorn says, "and where the State did not agree, the court also found them to be adequate."

Dispute resolution/continuing court jurisdiction:

Ruling: The Bands and the State agreed to, and the court approved, a system for sharing technical information and seeking consensus on resource issues, and a dispute resolution process.

This process calls for the establishment of two committees, one for fishery issues and the other for wildlife and wild plant issues. These committees will be the primary bodies where information will be exchanged, possible regulatory changes will be discussed, and issues will be resolved. An initial meeting of the fisheries committee was held on February 11, 1997, and Band and State biologists engaged in a positive exchange of information.

The Bands and State have agreed to mediate any disputes that arise in the future. If mediation fails, either party may ask the court to resolve the matter. The court agreed to maintain continuing jurisdiction over these matters.

Impact: Zorn views the court's approval of the joint fisheries and wildlife/wild plant committees and of the dispute resolution process as a means to ensure ongoing communication and coordination between the Bands and the State.

"The parties have every incentive to cooperate in conserving the ceded territory resources," Zorn says. "The possibility of ultimate court scrutiny should keep the parties open and honest in their dealings with each other."

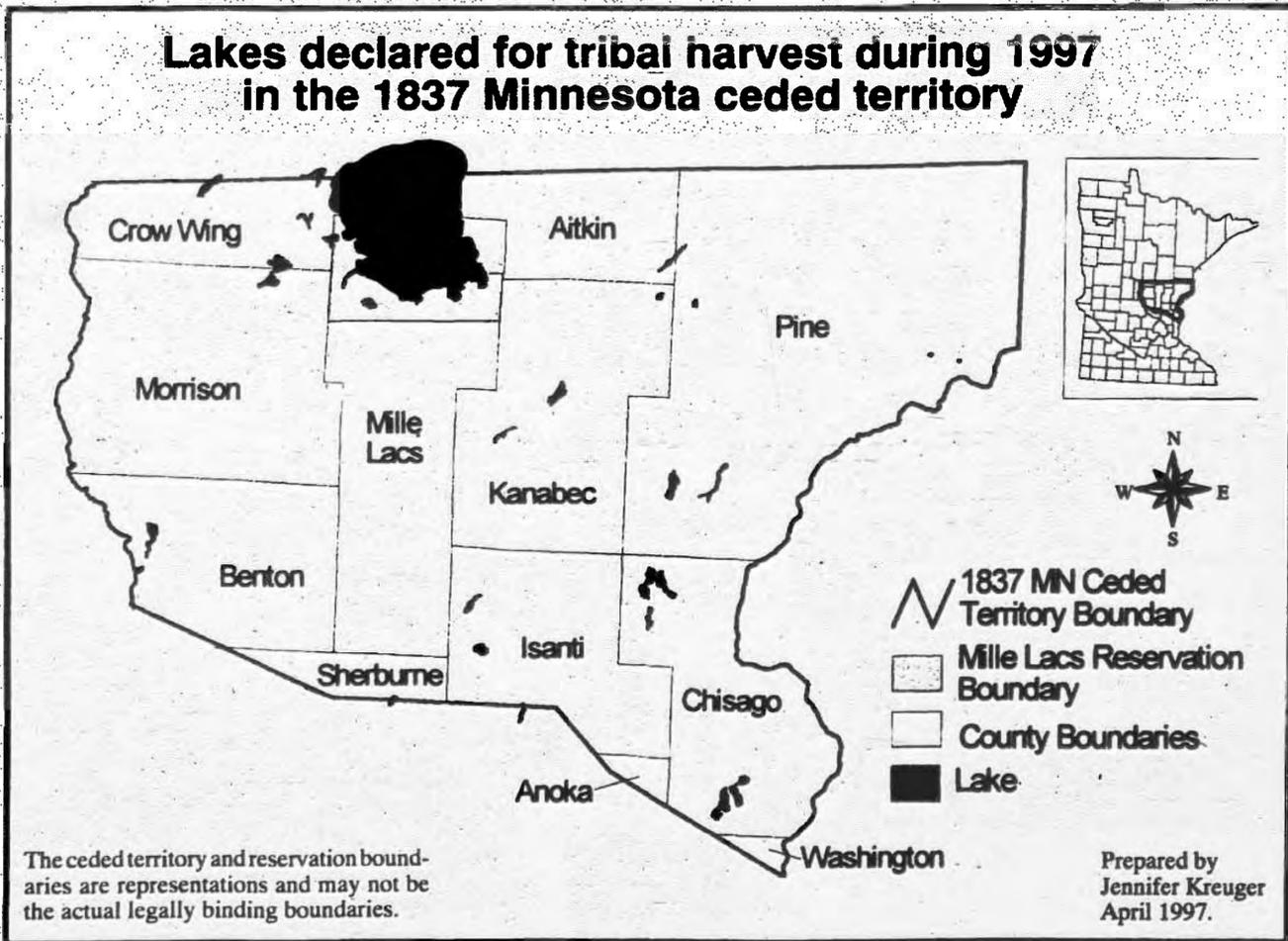
Extent of the State's management authority:

Ruling: The State claimed that it had the exclusive and unreviewable authority to set harvestable surplus determinations and to make what it called "management" decisions.

The court noted, however, that except for the harvestable surplus issue, the parties had agreed on mechanisms to address all other issues raised to date.

Accordingly, the Court stated that "[t]here is no concrete issue before the court with regard to the State's management authority," and declined to provide an "advisory ruling" on possible disagreements.

As to the harvestable surplus issue, the court disagreed with the State. It ruled that, absent agreement with the Bands, the State only has the authority to establish harvestable surplus determinations that meet the legal standard requiring them to be reasonable and necessary for (See January '97 judgment, page 13)



Three judge panel hears arguments in 1837 Treaty rights appeal

A decision from the U.S. Circuit Court of Appeals, Eighth District, is currently being awaited with hopes for a ruling early this fall. Appeals of the January 1997 District Court decision were filed by the State of Minnesota, the counties, and the landowners shortly after the District Court rendered its January decision.

The appeals contend that the 1837 Treaty rights of the bands have been extinguished. Primary issues being considered in the appeal are: 1.) Article V of the 1837 Treaty & the 1850 Presidential Removal Order; 2.) the 1855 Treaty; 3.) settlement of claims by the Indian Claims Commission; and 4.) moderate standard of living/allocation.

Although Mille Lacs first filed the suit claiming the 1837 Treaty rights, the Fond du Lac Band's 1837 Treaty case was consolidated with the Mille Lacs case; and six Chippewa bands in Wisconsin were granted intervention as was the U.S. Government, who intervened on behalf of the Mille Lacs Band. Each of these entities, including the eight Chippewa bands and the U.S. Government, are party to the appeal as well.

The Eighth Circuit Court of Appeals limited the arguments to forty minutes each and narrowed the issues to be discussed, so legal representation on both sides were required to be brief and focused during the June 12th hearing in St. Paul. A brief synopsis of major points follows:

Article V, 1837 Treaty & 1850 Removal Order

A primary issue in the appeal is interpreting the language of Article V and the effect of the President Zachary Taylor's 1850 Removal Order.

Article V guarantees the hunting, fishing, and gathering rights of the Chippewa "during the pleasure of the President of the United States." The appellants contend that President Zachary Taylor exercised his "pleasure" when he issued the 1850 Removal Order. The issuance of that Order, they say, served to revoke the treaty rights guaranteed under Article V.

The tribes, however, say that wording of the Article V was understood by the Chippewa to be benevolent and protective towards the Chippewa and that their rights

"The privilege of hunting, fishing, and gathering the wild rice upon the lands, rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States."

—Treaty of 1837

(See pages 15 & 16 for copies of the treaties)

could not be revoked unless they misbehaved. A primary intent of government at the time of the treaty was to keep peace between Indians and settlers. The Tribes assert that they did not break the peace and that the 1850 Removal Order was illegal.

Tribal attorneys also noted that the 1850 Removal Order caused widespread protest among the tribes because it was not authorized by either the 1837 or 1842 treaties. Attorney Marc Slonim noted that in 1851 the Commissioner of Indian Affairs concluded removal was not required because there was no misbehavior. This was confirmed by Territorial Governor Ramsey at the time.

In addition the Removal Order was suspended in 1851 following the "horrible event" at Sandy Lake, according to Slonim.

To encourage Indians to remove to Minnesota territory at the time, annuity payments were dispersed from Sandy Lake, Minnesota, requiring many Chippewa to make long, arduous journeys in order to receive annuities. Hundreds became ill during the journeys, or contracted diseases at Sandy Lake, and died.

Slonim also noted that the U.S. Government actually provided the Chippewa with implements to hunt, fish and gather at the time, which would indicate an encouragement to exercise the rights more than an intent to revoke.

The 1855 Treaty

Representing the counties in the case, Attorney James Johnson told the court that the 1855 Treaty was made with the understanding that all claims by the Indians were now settled. The 1855 Treaty, he says, includes a quit claim that extinguishes the 1837 Treaty rights.

However, Slonim said that there is nothing in the 1855 Treaty that would extinguish the rights. The language of the cession, he said, is clear. The 1855 Treaty was intended to acquire "all remaining lands" of the Chippewa, but did not intend to take away the treaty rights of the bands.

The Indian Claims Commission (ICC)

Attorney Peter Tester, representing the State of Minnesota, claimed that the ICC was an "exclusive forum for an exclusive remedy for all claims," and that this was the intent of Congress. Claims were to be filed within a given time period, settled, and that would be the end of all Indian claims.

Attorney Steve Froehle, representing the two landowner groups, said that the 1974 payment of \$9 million for all uses of the land includes payment for the treaty rights. Consequently, the ICC has paid for the treaty rights already.

However, Doug Endreson, attorney for Fond du Lac, said there is no legal support for the assertion that the ICC terminated all Indian rights. Endreson said the ICC sought to recover only the value of lands and made payments in relation to the land cession provisions of Articles II, III, and IV of the 1837 Treaty. No claims were based on Article V, which reserves the treaty rights.

Attorney for the U.S. Government Elizabeth Peterson said that the idea that the ICC settled claims such as treaty rights is "preposterous."

Moderate standard of living

The "moderate standard of living" argument is related to the issue of allocation. Tester told the Court that the State supports the landowners' contention that it is necessary for the court to address the issue of moderate standard of living because it is the "threshold to allocation," or relates to the need of the bands to access the resources.

However, Endreson noted that the lower court found that an allocation was not necessary at this time. He reminded the Court of the stipulation worked out between the bands and the state of Minnesota that introduces "a very conservative phase-in harvest." There has been no harvest and the stipulation, which is part of the Court Order, is modest enough not to require allocation.

A decision from the three judge panel is expected by early fall; however, the issues are complicated. Any party that loses is likely to request the Supreme Court to consider an appeal.



Sewing buckskin and preparing food in the old ways as part of a "Four Seasons" exhibit at the Mille Lacs Ojibwe Museum. (Photo by Sue Erickson)

Implementation of the 1837 Treaty rights

Management plans structure treaty harvest

Based on the January 1997 District Court judgment which is currently being appealed, the exercise of the 1837 treaty rights is governed by a number of documents and systems.

These include: 1) the Bands' natural resource management plans; 2) the Minnesota 1837 Ceded Territory Conservation Codes; and 3) tribal/state cooperative management agreements. Each of these is reviewed below.

It should be noted that this plan was set to be implemented for the 1997 spring fishing season, but the treaty harvest was suspended until the appeal before the Eighth District U.S. Court of Appeals has been decided.

Management plans

The Bands have adopted two management plans—one applying to fishery issues and the other applying to wildlife and wild plant issues. Both are initial five-year plans, covering 1997 through 2001. They will be followed by second multi-year plans.

These plans provide the structure for treaty harvest while safeguarding the resources. They establish the basis for particular regulations contained in band ceded territory conservation codes, particularly as to allowable harvest methods and the amount of species available for treaty harvest.

In some instances, such as for walleye and antlerless deer, the plans set low initial treaty harvest ceilings that gradually increase in following years.

"Our intent is to establish the treaty harvest in a careful and manageable fashion," explains Mille Lacs Natural Resource Commissioner Don Wedll. "We have been conservative at the outset to make sure that we have time to get the information needed to make well-informed management decisions as the treaty harvest develops."

Wedll adds that this "phase-in" approach also will allow the State and non-Indians time to adjust to treaty harvest activities.

While the plans provide for a limited, gradual implementation of the rights, they specifically do not limit or waive the full extent of the treaty rights. "The Bands are willing to be careful and practical in re-establishing treaty harvests," Wedll said. "But in doing so, they will not give up their rights."

Fishery management plan

The fishery management plan establishes the framework for fishing in all waters in the ceded territory for all species and methods.

Particular provisions apply to Mille Lacs lake, to all other lakes, and to rivers. The plan also contains an intertribal agreement that sets forth how the Bands will work together to declare their harvests for the upcoming fishing year.



Spearfishing was one part of an ANA Youth Program which introduced youth to the skills and arts necessary to exercise off-reservation hunting, fishing, and gathering rights. (Photo by Amoose)

Methods

The plan allows for a number of fishing methods that may be used throughout the ceded territory. These include hook and line, open-water and ice spearing, setlines, set or bank poles, and various nets including gillnets, fyke nets and seines.

Some of these methods are limited to certain species and/or locations. In addition, some harvest methods are governed by daily bag limits, while other methods are governed by season ceilings, or quotas.

Mille Lacs lake

As for open-water spearing and netting in Mille Lacs lake, the Bands' principle objectives are: open-water walleye spearing, walleye netting, yellow perch netting, burbot netting, and tullibee netting.

These species will be managed by an annual quota which will be divided between each of the Bands selecting these methods.

The tribal annual Mille Lacs lake walleye quota could not exceed 40,000 pounds in 1997, but may increase gradually to 100,000 pounds in 2001. Tribal quotas for that lake for the other species will not exceed 50% of an acceptable target harvest level agreed upon by the Bands and the State.

There will be no open-water spearing or netting for muskellunge in Mille Lacs lake. Muskellunge incidentally caught in a net must be turned over to the Bands.

Also, there will be no open-water spearing for northern pike, and the plan does not contemplate netting targeted for northern pike.

However, incidental netting harvest of northern pike will be limited to 50% of an agreed-upon target harvest level. If this cap is reached, netting must cease for all species.

Other lakes

As for lakes other than Mille Lacs lake, the fishery plan authorizes open-water spearing, dip netting, fyke netting and seining in ceded territory lakes.

In addition, gillnetting is authorized in all lakes over 1,000 acres as well as in Shakopee, Ogechie, Whitefish, Grindstone, Eleven, Pine, Razor and South Stanchfield Lakes.

Very limited open-water spear and net fisheries could take place at what the plan refers to as "threshold" levels.

Spearing or netting beyond these levels may take place only if a standard gillnet survey has been conducted within the previous 24 months and a quota has been established.

Gillnetting for muskellunge and sturgeon is prohibited in these lakes.

Rivers

As for rivers, open-water spearing and fyke-netting are authorized. No gillnetting in rivers will be authorized under the first five year plan. Lake Sturgeon harvest is closed in rivers except for the St. Croix below Taylor Falls.

During the spawning season, open-water spearing will be open on alternate days only. Muskellunge harvest in the Mississippi river may not exceed 10 per year.

Monitoring

All open-water spearing and netting will be strictly monitored. Spearing permits may not be issued unless a monitor will be present at all designated boat landings.

Gillnetting may only take place if a monitor is available either at a designated boat landing or at the location of the net lift.

All fish taken by open-water spearing or by netting must be identified as to species and counted. Length, sex and aggregate weights data will be collected from appropriate harvest samples at designated boat landings or net lift locations.

(See Management plans, page 7)

Management plans structure treaty harvest

(Continued from page 6)

Notification/harvest closures

No later than March 15 of each year, the Bands will notify the State of their declared open-water spearing and netting harvests for the upcoming fishing year. This declaration will set forth the quotas and caps for each band's open-water spear and net fishery.

The fishery plan also requires that the Bands notify the Minnesota DNR no later than noon of the bodies of water that the Bands have designated for open-water spearing that night and "promptly" of the location of any gillnetting activities.

When a band's quota or a "threshold" level has been harvested, it must stop spearing for that species in the particular body of water. When a quota for any of these species has been taken, gillnetting by that band for all species must stop there as well.

Wildlife management plan

The Bands' initial five-year wildlife plan provides for the harvests of bear, deer, moose, wild turkeys, and furbearers. The Bands agree to manage many species on a quota basis, including bear, antlerless deer, wild turkey, fisher, bobcat, and otter.

The wildlife plan adopts the procedures for determining wildlife harvestable surpluses that the Bands and State have agreed to.

The plan provides that antlerless deer harvest will be managed consistent with the State's current management unit system. The process presently used by the State for establishing antlerless deer quotas for each unit will continue with full participation by the Bands.

Quotas

The plan limits the Bands' total annual antlerless deer quota to 900 deer (see Figure 1) and to no more than 50% of the total quota in any management unit. This represents about 7% of the State's average annual antlerless deer harvest in the ceded territory.

Bear harvest is limited to 35 each year, with a maximum of 10 in bear management unit 45 and 25 in unit 52. Wild turkey harvest is limited to 50% of the harvestable surplus of bearded turkeys in the State's turkey management zones.

Similarly, annual fisher, bobcat and otter treaty quotas may not exceed 50% of the harvestable surpluses for these species in the ceded territory. Tribal moose harvest will be closed in deer registration block 184 pending further study and harvest in the remainder of the ceded territory is limited to 5 moose per year.

Notification

As with fish harvest declarations, the plan also requires the Bands to notify the State of their treaty quota declarations for wildlife species at various times of the year. For example, the Bands must notify the State of their antlerless deer quotas no later than August 10 of each year.

Tribal conservation codes or Model Code

In the lawsuit, the Bands proposed a set of regulations that they would adopt to govern exercise of the treaty rights. This proposal—referred to as the Model Code—sets forth specific rules that would apply to the wide range of hunting, fishing and gathering activities that members may undertake.

These rules are based upon the requirements of the resource management plans and are summarized in more detail in another article (see 1837 Treaty regulations). The federal court has approved the Model Code.

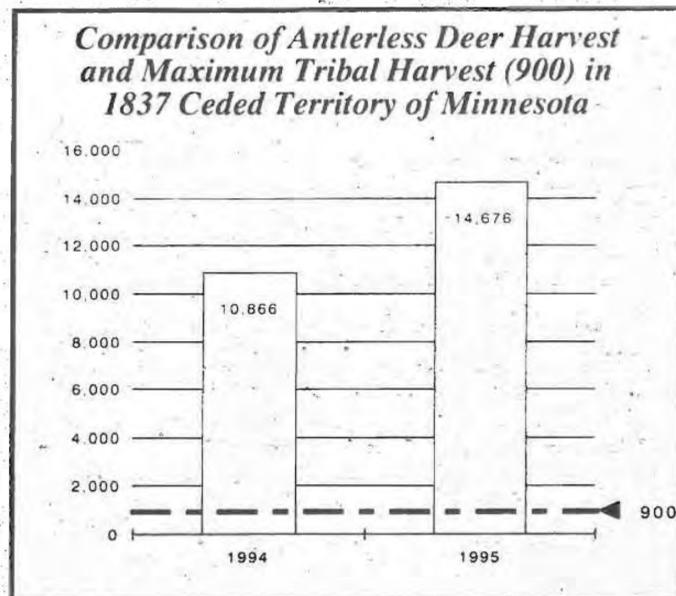


Figure 1.

Before treaty harvest may begin, the Bands must enact regulations into tribal law that are based upon the Model Code. These tribal regulations will control treaty harvest activities, not state regulations.

Members will need tribal permits, not state permits. Members will be governed by the regulations adopted by their own band, and any alleged violations of those regulations will be prosecuted in their band's court.

The Bands have agreed to authorize their tribal conservation wardens, GLIFWC's wardens and the Minnesota DNR's wardens to enforce the ceded territory conservation codes.

As discussed in another article (see enforcement, page 10) ceded territory law enforcement training is underway and enforcement plans are being developed by all agencies involved.

Cooperative management agreements

Five agreements between the Bands and the State govern cooperative management in the Minnesota 1837 ceded territory. These agreements establish two joint Band/State committees, one for fishery issues and the other for wildlife and wild plant issues.

These agreements require regular, on-going information exchange regarding the status of natural resources, scientific investigations, and harvest data.

Population assessments, surveys and the research will be coordinated, and results will be shared, jointly analyzed, and made available to the public.

The fisheries and wildlife/wild plant committees are the primary cooperative management bodies where information will be exchanged, harvestable surpluses will be determined, possible regulatory changes will be discussed, and issues will be resolved.

The Bands and State have agreed to mediate any unresolved disputes. If mediation fails, either party may ask the court to resolve the matter pursuant to the court's continuing jurisdiction.



This traditional Ojibwe village is part of an exhibit at the Mille Lacs Historical Museum, Mille Lacs Reservation. (Photo by Sue Erickson)

Reductions in Mille Lacs lake angling needed with or without treaty harvest

The Minnesota Department of Natural Resources did not change its reduction of the sport harvest when the anticipated treaty harvest was suspended by the appellate court.

This is because the reduction of the sport harvest of walleye was based on conservation concerns beyond and before treaty rights.

Comments by Jack Skrypek, Chief of the Minnesota DNR's Section of Fisheries, support this. In a **St. Paul Pioneer Press** article (2/28/97), Skrypek said that state walleye angling on Mille Lacs lake must be reduced by 110,000 pounds to stay within what he called a "safe harvest cap." This reduction is necessary even if treaty harvest does not take place.

Don Wedll, Mille Lacs Commissioner of Natural Resources, has been concerned that the Bands will be blamed for these angling reductions.

"I hope people understand that the State must reduce angling harvest no matter what happens with the treaty fishing," Wedll said. "Any misunderstanding or misrepresentation of this fact will cause unnecessary tension."

Mille Lacs Lake has been a center of focus for the Bands in developing management plans and codes to implement the 1837 ceded territory treaty rights. Its walleye fishery is valued as a significant re-

source not only by State fishermen but also Band harvesters.

Band resource managers have designed an implementation plan for the treaty harvest on Mille Lacs lake that will protect fisheries resources and provide a meaningful harvest opportunity to Band members," says Neil Kmiecik, Biological Services Director, GLIFWC.

At a Fisheries Technical Committee meeting on February 11, 1997, State biologists projected that without any regulation changes there would be an angler walleye harvest of 430,000 pounds during the 1997 angling season, Kmiecik says.

State and Band biologists also agreed that the "target harvest" of walleye for 1997 should be 320,000 pounds. This would require state fish managers to reduce angler harvest by 110,000 pounds regardless of treaty harvest.

According to Steve Haeseker, GLIFWC fishery biologist stationed at Mille Lacs, the status of the Mille Lacs lake walleye population requires these reductions. Recruitment has been average or below average since 1988, Haeseker said.

He also added that the spawning biomass of walleye has shown a progressive decline from the early 1980's and that angling exploitation has been exceeding target harvests in many of the recent years (see Figure 2).

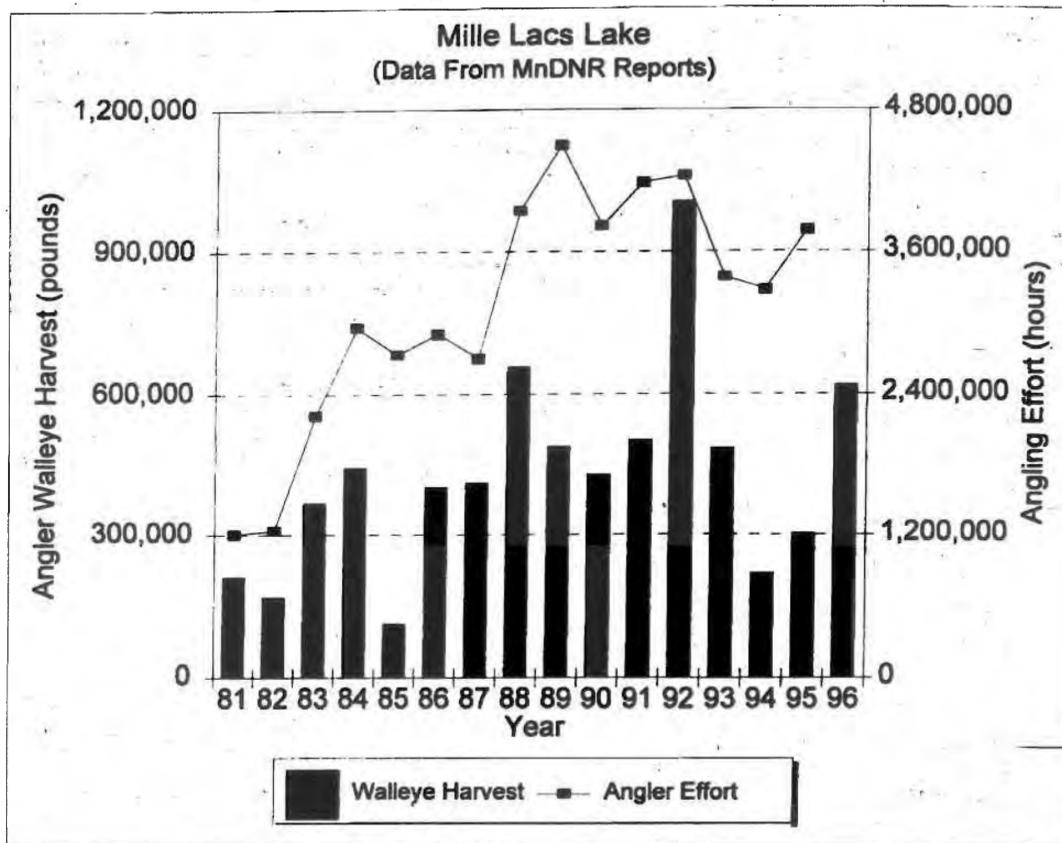


Figure 2.

"It is unfortunate that the necessity for more additional regulation of the lake's fishery coincides with implementation of treaty fishing," Kmiecik adds.

The Band management plan allows

for only 40,000 pounds of walleye to be taken by Band members in 1997 and provides for a gradual increase in Band harvest over the first five year period.

The Bands have opted for a careful, cautious approach because they care about the fishery in Mille Lacs lake. The initial years will provide an opportunity for Band members to exercise their treaty right in a meaningful way and at the same time provide resource managers the opportunity needed to gather more information on the fishery, Kmiecik says.

The low treaty harvest level of walleye in Mille Lacs lake leaves plenty of room for sport fishing opportunity, which has long been a valued recreational and economic base for the community.

Contrary to popular opinion, gill nets are not inherently evil. Neither is angling inherently good. Like any gear, gill nets can be regulated to produce harvest while protecting the resource. Conversely, without proper control angling can result in overharvest.

In Minnesota under tribal regulation in the 1837 Treaty, the Bands will have the opportunity to use gill nets, a traditional method of fishing, in Mille Lacs lake and a number of other designated lakes in the ceded territory.

However, spring gill netting is limited to only Mille Lacs lake. The other lakes can only be netted in the summer, fall and winter.

Bands in Wisconsin have demonstrated that a tribal spring spearfishery can be effectively regulated and monitored to remain within set quotas while protecting the fishery resources, Kmiecik says. This is essentially the same system that will be used to monitor harvest of spear and net fishery in Minnesota.

(See Strict monitoring, page 9)

Where does the 40,000 pounds of walleye from Mille Lacs lake go?

One meal of walleye per month per family

A common question about the 1837 treaty harvest of fish is: "What do they do with 40,000 pounds of fish?"

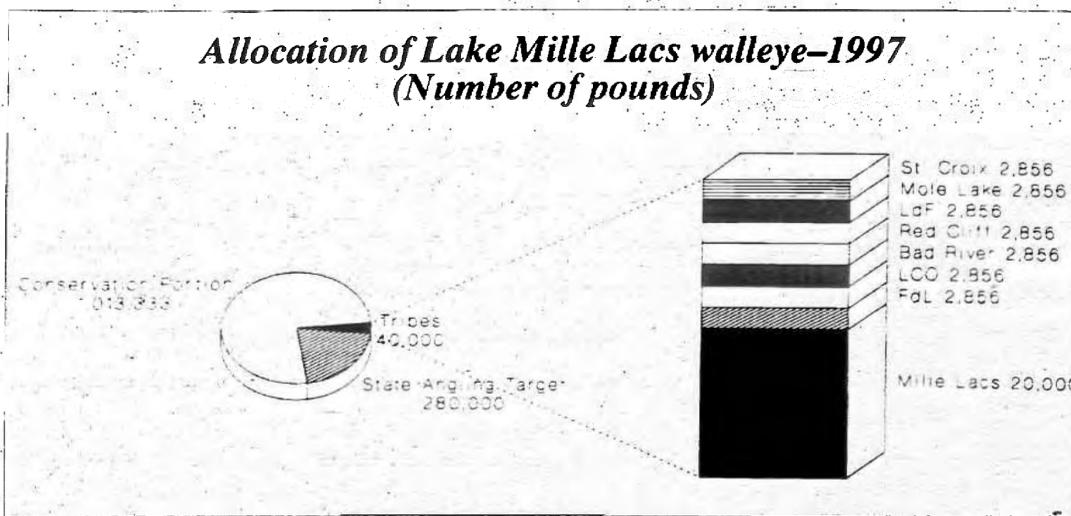
It could well be wondered what is done with the 320,000 pounds of walleye to be taken by the State anglers as well, but never-the-less, let's look at the allowable harvest for the eight Chippewa bands with treaty rights.

For the 1997 spring fishing season, which did not occur because of a court-ordered suspension during the appeal, the Mille Lacs band had declared a harvest quota of 20,000 pounds of walleye from lake Mille Lacs, or half of the 40,000 pounds of walleye allowed the eight Chippewa bands.

The seven other bands, including Bad River, Fond du Lac, Lac Courte Oreilles, Mole Lake, Red Cliff, and St. Croix declared a harvest quota of 19,992 pounds from lake Mille Lacs.

Had the 1997 season been available to band members the treaty harvest from Mille Lacs lake would have provided about six pounds of fish annually for each Mille Lacs tribal member living on or near the reservation (i.e. 20,000 lbs. x 50% = 10,000 lbs of fillets; 10,000 lbs of fillets/1,700 tribal members = 5.88 lbs/person annually).

Essentially, the Mille Lacs band's treaty harvest quota from Mille Lacs lake will provide about 1/2 a pound per month of



By Jim Thannum, GLIFWC Natural Resource Development Specialist

walleye for each Mille Lacs tribal member living on or near the reservation (i.e. 5.88 lbs/12 months = .49 lbs/month).

The Mille Lacs treaty harvest quota will provide about one meal of walleye per month for each Mille Lacs family living on or near the reservation.

This is based upon a family of 4 people eating 8 ounces of walleye fillets per person per meal. (20,000 lbs harvested x 50% = 10,000 lbs of fillets; 10,000 lbs of fillets/2 lbs per meal = 5,000 meals; 5,000 meals/425 families = 11.76 meals per family annually).

Strict monitoring and limitations on efficient methods safeguard the resources

(Continued from page 8)

Historically Chippewa bands have relied on the fishery for subsistence. Harvest of fish was not a sport activity, but a matter of subsistence. Therefore, tribes have traditionally used efficient methods for fishing purposes, including the net and the spear.

While these methods are controversial today, strict regulations and monitoring of the harvest allow them to be used without the threat of damaging the natural resource.

Net restrictions

Fishery managers have completed a number of studies on the selectivity of gill nets, meaning that nets can be constructed to target specific species, or specific sizes of a species. This is largely accomplished through mesh size (see Figures 3 and 4). As mesh size is diminished, the size of fish caught also diminishes (Figure 4).

Under the Bands' conservation code, spring gill netting will limit Band members to the use of a relatively small mesh, 1.25 inches, which basically targets walleye in the 12-18" size range.

Because of spawning patterns in spring these fish tend to be adult male walleye. In addition, length of net is limited to 100 feet. Naturally, the use of short nets will also serve to limit the number of fish caught.

Intense monitoring

Safe use of gill nets requires routine checking of set nets. The Bands' conservation code requires nets to be pulled twice a day, or more if water temperature concerns warrant it, Kmiecik says.

Netters are required to bring their catch to specified landings each day where biological staff will be present to monitor the number and weight of fish taken as well as record other data needed for fisheries management.

In addition, conservation wardens from GLIFWC and the Minnesota DNR will be monitoring netters for compliance with the codes.

For netting to occur a monitoring team needs to be present, so all netting will be completely monitored and all catch recorded.

When quotas are reached by a Band, further gill netting will be closed to that

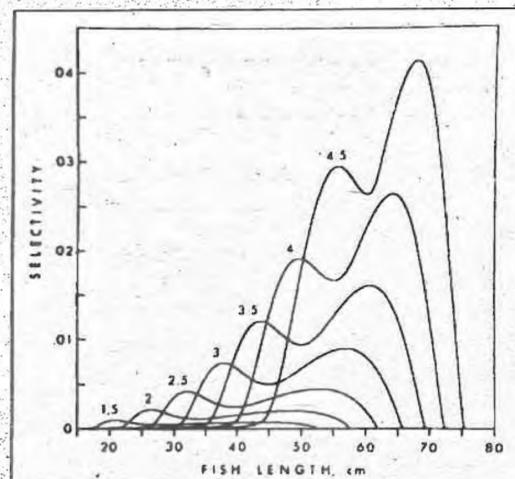


Figure 4. Selectivity of 1 1/2 - 4 1/2 inch gill nets to walleye, estimated directly by gill netting marked fish (Hamley and Reiger 1973).

Band unless another Band chooses to release some of its quota.

Additional provisions in the code protect populations, such as northern pike, which may be incidentally caught in the nets (see article on management plan, page 6).

Spring spearing

Like gill netting, spring spearing can be an efficient means of harvesting walleye.

Therefore, the spring spearing season is also very closely regulated and monitored.

As stated above, effective management of the spring spearfishery has been occurring in Wisconsin since 1985.

Nightly permits

Spearers must use designated boat landings to launch and land. Biological and enforcement staff will be assigned to each landing every night of spearing.

Spearers must possess a nightly permit and will be subject to a bag limit based on the remaining quota of walleye available in the selected lake.

Quotas are adjusted each day to reflect any amount of fish taken on previous nights.

Size restrictions

Spearers are also limited to walleye 20" or under, with two allowed over 20" and one of those may be over 24".

Daily count

When spear fishermen return to the landing, the fish are weighed, counted and a sample of walleye will be measured, sexed and weighed before fishermen remove them from the landing.

When a lake's quota is reached, it will be closed to further spearing and/or netting.

Consequently, Bands will have a precise knowledge of how many fish are taken by tribal spearers and netters and won't be reliant on estimated figures.

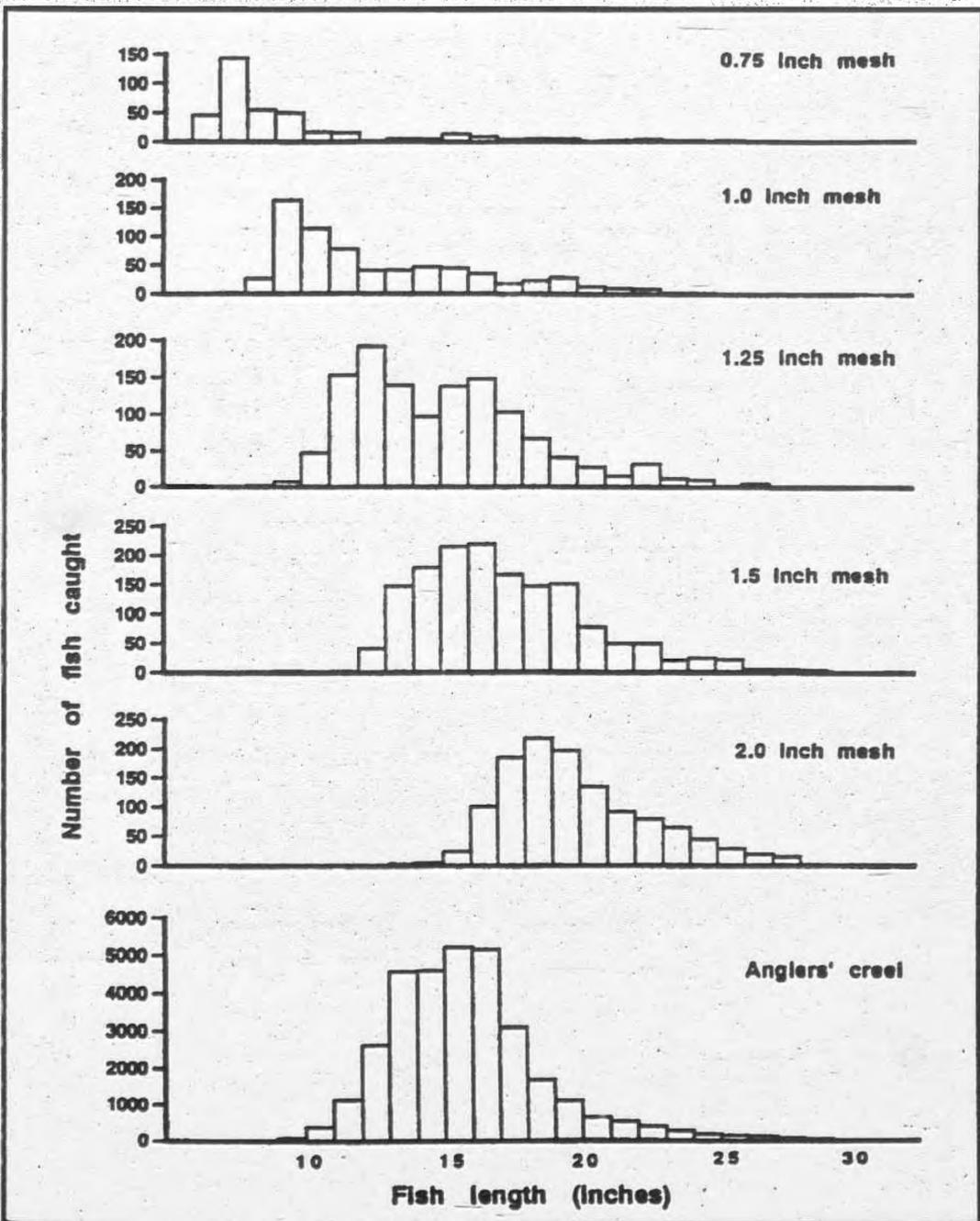


Figure 3. Numbers of walleye caught in five mesh sizes and numbers measured in the angler's creel in Lake Mille Lacs, 1986-1995.



Tribal spearfishers must possess a nightly permit and be subject to a bag limit. Above, GLIFWC wardens check permits at a spearfishing landing in Wisconsin. (Photo by Amoose)

Band conservation enforcement plan to monitor off-reservation treaty harvests

The Bands' intertribal conservation law enforcement system, as coordinated by GLIFWC, is ready to be implemented and will provide effective conservation law enforcement services for the 1837 off-reservation seasons, according to GLIFWC's Chief Warden Charles Bresette.

An enforcement plan is in place that draws on over ten years of ceded territory enforcement experience in Wisconsin, and involves communication and coordination with state and local law enforcement agencies.

According to Bresette, from the outset the Bands developed their ceded territory conservation code and management plans in coordination with enforcement plans designed to effectively ensure compliance.

"The underlying concept is community-based law enforcement," Bresette said. "Wardens are based in the communities they serve and are very familiar with Band member harvest activities."

GLIFWC's wardens are stationed at satellite offices at the Bands' reservations and establish their patrol activities to coincide with the timing and locations of Band member harvest activities.

Three GLIFWC wardens are stationed in the Minnesota portion of the ceded territory and at least nine GLIFWC wardens would have been available in Minnesota at any one time this spring had the spring fishing season been opened. Additional wardens from Wisconsin satellite stations will be assigned to Minnesota as necessary to cover spring fishing activities, according to Bresette.

GLIFWC wardens are fully-certified conservation officers. Each warden has completed basic police recruit or equivalent training and each year must attend forty hours of additional in-service training.

GLIFWC wardens have attended conservation enforcement techniques training, species identification training, crowd control training, hazardous material training, hunting and firearm safety training, accident investigation training, and boating safety and water rescue training, among others.

All the necessary tools will be available to GLIFWC wardens. In addition to their fully equipped patrol vehicles, wardens will have portable radios, cellular telephones, boats, night scopes, Global Position System (GPS) units, and water rescue equipment at their disposal.

GLIFWC's enforcement activities will be supplemented by Band and State conservation wardens who also are authorized to enforce Band ceded territory regulations. "There certainly will be no shortage of well-qualified wardens in the 1837 ceded territory," Bresette said.



Charles Bresette, GLIFWC Chief Warden.

Enforcement efforts in Minnesota will draw upon similar activities that have taken place in Wisconsin. Since 1984, GLIFWC and the Bands have been enforcing Wisconsin ceded territory codes that are basically the same as the Minn. code.

"We have substantial experience and expertise to enforce precisely the type of regulatory system that the court has required for Minnesota," Bresette said. "It will be no problem to transfer our Wisconsin experience to Minnesota."

To back up his statement, Bresette points out that, by their design, the Bands' Minnesota regulations and management plans lend themselves to effective enforcement. "The seasonal harvest patterns that the regulations accommodate are known to us," Bresette commented. "We know when tribal members hunt and when they fish."

Because of regulations governing spring spearing and netting activities, wardens will be present at all spearing and netting locations to help carry out complete on-site monitoring.

Band regulations provide that no Band member may use or possess any spear on any body of water unless the member possesses a valid spearing permit for the that body of water, and a Band may not issue a spearing permit unless a monitor will be present at the designated boat landing.

Similar provisions apply to netting, in particular gill netting. Special permits are required and permits may not be issued

unless a monitor is available either at the designated boat landing or at the location of the net lift. "This means that enforcement activities for spearing and netting will be very straightforward," Bresette said.

"These activities can only take place if the issuance of a permit is coordinated with enforcement personnel and if personnel are available to carry out the required on-site monitoring duties." In addition, the State will have advance notice of Band spearing and netting activities. The Bands must notify the Minnesota DNR no later than noon of the bodies of water which the Bands have designated for open-water spring spearing that night and must "promptly" notify the DNR of the location of any gill netting.

"It will not be difficult for any GLIFWC, Band or state warden to monitor Band spearing and netting activities," Bresette said. "The locations of these activities will be known in advance."

According to Don Wedll, Milles Lacs Natural Resource Commissioner, the Bands will coordinate their fishing activities with enforcement personnel to ensure that the number of spearing and netting locations does not exceed the number of wardens available to monitor those locations.

"No Band spearing or netting will take place at any location where either GLIFWC or Band wardens are unavailable," Wedll said. "This will ensure that there will be a sufficient number of wardens available to monitor harvest activities."

As in Wisconsin, the Bands have committed to the complete on-site monitoring of all inland open water spearing and netting. Enforcement personnel must be present at the designated boat landings on each lake declared open to spearing or netting.

GLIFWC wardens will undertake a number of responsibilities, including: scheduling and supervising the harvest monitoring personnel; collating and reporting nightly harvest data; providing whatever assistance the Bands might request not only during the night when spearing or netting might take place, but also during the day when the Bands must make the decision as to what lakes or landings will be opened for upcoming harvest; and conducting investigations, issuing citations and testifying in Band courts.

A key component of the Bands' enforcement plan is training and coordination among the various enforcement agencies. GLIFWC and its wardens were kept informed of courtroom developments and have been preparing for a court decision allowing implementation of the Bands' regulations.

GLIFWC wardens were provided copies of the Bands' regulations as they were being developed during the course of this case and had the opportunity to discuss the code with their supervisors and with Band representatives.

On March 12, 1997, GLIFWC planned an interagency training session on the Bands' regulations and management plans. This was required training for GLIFWC wardens. Band and state DNR wardens attended, as did many officers from county Sheriff's Departments in the ceded territory. This training also focused on developing cooperation, coordination and communication between the various law enforcement agencies.

"One goal was to develop conservation-based law enforcement partnerships for enforcing the Bands' regulations," Bresette said. "An equally important goal was to develop partnerships for ensuring the safety of those exercising their treaty rights."



GLIFWC wardens attended a training session for all enforcement personnel, including state, county and tribal law enforcement officers. The training session was held prior to the court ordered stay. (Photo by Kim Campy, Enforcement Division.)

Mille Lacs exercises ceremonial rights on Mille Lacs lake

In accordance with the April 16th Order from the U.S. Court of Appeals, 8th Circuit, Mille Lacs band members have been exercising their right to harvest up to 2000 lbs. of fish from Mille Lacs lake for religious and ceremonial purposes.

This Order came down following the April 9th Order from the 8th Circuit to suspend the off-reservation treaty harvest by the Chippewa bands under the 1837 Treaty until an appeal could be heard.

The 2000 lbs. includes all species of fish; applies to the Mille Lacs band only; and is limited Mille Lacs lake adjacent to tribal lands.

As of July, the ceremonial/religious harvest by Mille Lacs members neared the 2000 lbs. limit, according to Steve Haeseker, GLIFWC biologist stationed at the Mille Lacs reservation. He does not believe any more ceremonial harvest will occur.

The harvest has been monitored in accordance with the Order, Haeseker states, with permits being issued by the Mille Lacs Commissioner of Natural Resources Don Wedll.

The Band is required to notify the Minnesota Department of Natural Resources in advance with information relating to the amount and location of the harvest.

Walleye has been the primary species taken and netting the primary method.

The fish is used during various religious ceremonies which traditionally include feasting, or during events such as funerals. If all the fish is not used for one event, it is saved for use as the need arises, according to Wedll.

GLIFWC maintains satellite offices of the Division of Enforcement and Division of Biological Services on the Mille Lacs reservation for the purpose of assisting the Band with the implementation of its off-reservation treaty rights.

Harvesting rights under the 1837 Treaty are held also by the Fond du Lac Band in Minnesota and six Chippewa bands in Wisconsin, including: Red Cliff, Bad River, St. Croix, Lac Courte Oreilles, Mole Lake, and Lac du Flambeau. Ceremonial rights were not extended to any of the other seven bands.

Although the Band's off-reservation rights had been reaffirmed and protocols established in U.S. District Court for implementation of the treaty rights, the appellate court saw fit to suspend any exercise until the appeal, filed by the landowners party to the 1837 Treaty case, could be heard.

The Court also recognized a similar, subsequent motion from the counties for a stay.

The Court did expedite the schedule for the appeal. Oral arguments were heard in St. Paul on June 13th and a decision from the three judge panel are expected this fall.

The facts about Indian treaty rights

A lot of rumors and just plain lies are circulating about Indian treaty rights. The truth is that American Indians are deeply committed to protecting our natural resources.

Myth American Indians gave up their treaty rights a long time ago.

Fact American Indians *never* gave up their treaty rights. American Indians agreed to ceded their homelands to the U.S. government only on the condition that they be allowed to hunt, fish and gather on that land. These treaty rights were recently upheld in federal court for the Mille Lacs band and seven other bands.

Myth The recent court decision gives American Indians unlimited hunting and fishing rights off the reservation.

Fact All Band members who exercise their treaty rights must obey the Minnesota Off-Reservation 1837 Conservation Code as approved by the federal court. To net or spear fish, for example, Band members will be required to get daily permits, and netting and spearing will be strictly monitored.

Myth The court ruling on treaty rights has forced the Minnesota Department of Natural Resources to limit the 1997 walleye harvest for Mille Lacs lake.

Fact Years of over-fishing on Mille Lacs lake, mostly by non-Indian anglers, is the reason why limits are now needed. The DNR's own experts report that walleye harvests in past years have been much higher than they should have been.

Myth Allowing Indians to net and spear fish will threaten the walleye population of Mille Lacs lake.

Fact The bands are allowed to harvest up to 40,000 pounds of walleyes from Mille Lacs Lake in 1997. By comparison, 618,000 pounds of walleyes were harvested by all anglers in 1996, and one million pounds were harvested in 1992.

Myth Indian bands have entered into commercial fishing contracts to net and spear fish on Mille Lacs lake.

Fact Such contracts have never been sought or suggested, and the Mille Lacs band has no plans for entering into such contracts.

Myth Mille Lacs band members are able to harvest half a million antlerless deer each season off the reservation.

Fact Band members will be allowed to harvest a total of 900 antlerless deer in the ceded territory during the entire hunting season, according to the Band's own wildlife management plan.

Myth Indians can hunt and fish off the reservation without supervision from state conservation officers.

Fact Minnesota DNR conservation officers will enforce the Minnesota Off-Reservation 1837 Conservation Code, working together with tribal officials and the Great Lakes Indian Fish & Wildlife Commission.

Myth Band members will be able to hunt anywhere.

Fact Band members will only be allowed to hunt on lands where public hunting is permitted.



Norman Clark, Mille Lacs Band member, carefully peels bark from a birch tree. Many traditional items are still crafted from birch bark. (Photo by George Felix)

Prepared by the Mille Lacs Band of Ojibwe Indians.

Band fishing regulations for the 1837 Treaty off-reservation seasons summarized

The Bands' open-water spearing and netting and their ice fishing regulations for the Minnesota 1837 ceded territory are summarized below. Exercise of the treaty right is suspended until the appeal currently pending in the Eighth Circuit Court of Appeals is decided. GLIFWC will be preparing similar regulatory summaries for hook and line fishing, hunting, trapping, and gathering. These will be available to Band members in time for these seasons. The regulations are printed below.

Open-water spearing and netting regulations

This is a summary of some of the more important tribal spearing and netting regulations for the 1997 open-water fishing season in the Minnesota portion of the 1837 ceded territory. It does not summarize all the regulations that may apply. If you have questions, contact your tribal office or GLIFWC at 715-682-6619.

Important: The specific regulations of your tribe might be different from those mentioned here and the status of lakes can change from night to night (i.e. whether a lake is open, what the bag limit is, etc). Make sure that you have current information before you harvest fish. You must comply with your tribe's ordinances.

Season: The open-water season includes the period from ice-out to ice-in. During this period, you may use the harvest methods allowed by your tribe on declared lakes.

Daily/nightly hours: There are no set times that spearing or netting must begin or end. However, a monitoring crew must be present before spearing can begin. Also, a monitor must be present whenever a gill net is lifted.

Waters open to harvest: You may spear/net on those lakes or rivers for which you have a valid permit. Check with your tribe to determine which lake or river segments are open each night or day for the method you wish to use.

Rivers: Spearing and fyke netting are allowed; gill netting is not. During the spawning season, rivers may be open to spearing on alternate days only. All waters except tributaries to the St. Croix River are closed to harvest of lake sturgeon.

Permits: A permit is required for all open-water spearing and netting. Permits are typically issued on a "first come, first served" basis. During the day permits can be picked up at the tribal conservation department or headquarters. At night, if permits are still available, they may be issued at the designated boat landing. You must comply with all the terms of any permit that you have been issued.

Landings: You must use the landing designated by your tribe. An alternate landing may be used if weather conditions or safety concerns warrant.

Spears: Spears must have a minimum of three barbed tines, each of which are at least 4.5 inches long.

Seining, dip netting, and fyke (trap) netting: You may not use nets on a lake at the same time that spearing is taking place (except Mille Lacs lake). Fyke nets can be used in rivers. You must have a netting or seining permit valid for the water you wish to net or seine. All nets must comply with marking and safety requirements. Details on marking and setting requirements can be obtained from the tribal conservation department or GLIFWC. A creel clerk must be present at the landing to monitor harvest.

Gill nets: Your tribe must have declared a netting quota for a lake to be available for netting. You may not use nets on a lake at the same time that spearing is taking place (except Mille Lacs). Rivers are closed to gill netting.

Walleye can be harvested using gill nets in Mille Lacs year around. Walleye in other lakes may be harvested using gill nets from June 1 through March 1. Northern Pike, Large Mouth Bass, and Small Mouth Bass gill netting season runs from June 1 through March 1. Muskellunge may not be taken using gill nets.

You must possess a valid permit to use a gill net. A monitor must be present when the net is lifted. Subsistence nets may be up to 100 feet in length and 4 feet deep. The allowable mesh size (bar) from March 2 through May 31 is 1.25 inches and from June 1 through March 1 is 1.75 inches. Commercial nets of 1.75 inch bar mesh may only be set in Mille Lacs Lake from June 1 through March 1 and these nets may be up to 300 feet in length and six feet in depth. All nets must comply with marking and safety requirements.

Mixing fishing gear: You may not combine methods of harvest. When harvesting, you may not possess any other type of fishing gear except the type you have a permit for.

Tribal I.D./permit: Tribal I.D.'s and fishing permits must be carried while fishing and presented upon request to any law enforcement officer or biologist, whether tribal or state.

Creel surveys: You must cooperate with the persons conducting creel surveys. All fish speared or netted will be identified to species and counted, plus length, a scale or spine, and weight will be taken from a sample on each lake each night.

Non-members: No non-members may participate in spearing or netting except that members of your immediate family may operate the boat while you are spearing or may assist in the setting or lifting of nets if you are present during the activity.

Northern pike and muskellunge in Mille Lacs: Open-water spearing of northern pike and muskellunge is not allowed on Mille Lacs Lake. Northern Pike may be taken using gill nets during June 1 through March 1 and year around by other nets. Muskellunge may not be taken by any nets. If capable of surviving, muskellunge taken in nets must be released; if not capable of surviving, muskies must be surrendered.

Bag and size limits for open-water spearing and netting

Species	Bag Limit	Size Limit
Northern Pike		
•Mille Lacs lake	no open-water spearing; gill nets established by permit	any size
•other lakes and rivers	gill nets established by permit; spearing 10 per person per day	any size
Smallmouth and Largemouth Bass	10 per person per day; gill nets established by permit	any size
Walleye	established by permits	spearing: All must be 20" or less, except 1 may be between 20-24" and one can be any size. gill nets: Any size. other nets: Identifiable males only prior to May 1. Maximum of 20" thereafter.
Sturgeon	1 per person per year. All methods. June 1 to March 1 season except 1 sturgeon per lake during spring spearing. tagging required	45" minimum size limit.
Muskellunge		
•Mille Lacs lake	no netting or open-water spearing allowed	
•other lakes and rivers	no gill netting allowed other netting established by permit spearing established by permit	40" minimum size limit any size
Tullibee	none	any size
White Bass, Rock Bass, Bluegill, Crappie, Yellow Perch, Pumpkinseed, Yellow Bass, Catfish	none	any size

(See page 13 for winter spearing and fishing regulations)



Steve Haeseker, GLIFWC biologist stationed at the Mille Lacs reservation. Haeseker has been involved in fishery assessments in Mille Lacs and other off-reservation lakes. (Photo by Butch Mieloszyk)

Winter spearing and fishing regulations

This is a summary of some of the more important tribal spearing and ice fishing regulations for the 1997 winter fishing season in the Minnesota portion of the 1837 ceded territory. This does not summarize all the regulations that may apply. All exercise of treaty harvest, except for ceremonial purposes by the Mille Lacs band, is suspended until the appeal is decided. If you have questions, contact your tribal office or GLIFWC at 715-682-6619.

Ice fishing: means fishing through an artificial hole in the ice.

Season: The winter fishing season includes the period from ice-in to ice-out.

Ice holes: While fishing using hook and line, the ice hole cannot be larger than 12 inches in diameter. While spearing, the hole cannot be larger than 24 by 36 inches. Uncovered holes must be marked.

Ice fishing house: Must be equipped with a latch so the door can be opened from the outside whenever the house is occupied. The owner's name and address or the owner's driver's license number must be displayed on the outside of the house on a durable license tag. House or other enclosure must be removed from any body of water on or before March 1 except that portable shelters may be used while ice fishing after March 1 provided the shelter is removed daily from the ice.

Methods allowed: Fishing pole, tip-up, or spear. Spears must have a minimum of three barbed tines, each of which are at least 4.5 inches long.

Permits: A general fishing permit is all that is necessary for winter fishing or spearing and can be picked up your at the tribal conservation department or headquarters. You should also carry your Tribal I.D. when fishing during winter and present it upon request to enforcement personnel.

Sharing gear: Do not share any ice fishing gear, including any spear, with any member who is not a member of one of the Bands unless the person is part of your immediate family and the person is legally fishing under state law.

Bag and Size Limits

Species	Bag Limit	Size Limit
Northern Pike, Smallmouth Bass, Largemouth Bass, and Walleye	10 per person per day	Any size
Sturgeon	1 per person per year (all methods) June 1 to March 1 season. Register and tag by 5:00 pm of working day following harvest.	45" minimum size limit.
Muskellunge	2 per person per day.	40" minimum - Mille Lacs only Any size - all other waters.
White Bass, Rock Bass, Bluegill, Crappie, Pumpkinseed, Yellow Perch, Yellow Bass, Catfish, Cisco, Whitefish	None	Any size.
Lake Trout	5 per person per day	Any size.

January '97 judgement affirms 1837 Treaty rights

(Continued from page 4)
conservation purposes. It also ruled that such determinations are subject to review by the court to ensure that this standard is met.

Impact: The court's ruling that the State's harvestable surplus decisions are subject to the conservation-necessity legal standard is significant, Zorn says.

"The law requires the State to show that its attempted regulation of the treaty right is conservation based and not discriminatory against the Bands," Zorn says. "So-called 'management' decisions can easily affect harvest opportunity and should be subject to the same conservation-necessity standard."

Treaty harvest throughout all of Mille Lacs lake:

Ruling: The court agreed with the Bands that they should be able to fish throughout Mille Lacs lake, including the approximate one-fifth of the lake lying north of the 1837 ceded territory line. The court found that the Bands understood the treaty rights to extend to waters "in and abutting" the ceded territory.

It ruled that the Bands may exercise their rights throughout the lake and that harvestable surplus determinations must be based upon the fish populations found in the entire lake.

Impact: "This ruling not only makes sense from a treaty interpretation perspective, but from a biological perspective as well," Zorn notes. "The fish in the lake don't recognize an artificial boundary and the lake should be managed as a unit."



Don Wedll, Mille Lacs Natural Resources Commissioner.

Hunting on private lands:

Ruling: The court limited the Bands exercise of their rights to private lands enrolled in Minnesota's tree growth tax program. This program creates a right of public access in exchange for granting favorable tax treatment for those lands.

The court rejected the Bands' position that tribal members may hunt on unposted private land or on posted land with the owner's consent.

Impact: "This ruling means that the overwhelming majority of ceded territory lands is off limits to treaty hunting," Zorn says. "About 85% of the total ceded territory acreage is in private ownership, and only a very small part, if any, of this is in the tree growth tax program."

Allocation/moderate standard of living doctrine:

Ruling: The court rejected the State's and other defendants' requests for an allocation of the natural resources subject to treaty harvest. The court ruled that an allocation is unnecessary at this time.

It found that the State had not shown that treaty harvest would deprive State harvesters of their "fair share" of the resources.

"No such showing can be made at this time . . . because the Bands have had no opportunity to exercise their usufructuary rights under the 1837 Treaty," the court concluded.

However, the court noted that "the time may come when an allocation of a resource will have to be made," and ordered that "new proceedings" could be brought "if it should appear that either treaty or non-treaty harvesters will be deprived in the future of a meaningful opportunity to harvest any resource."

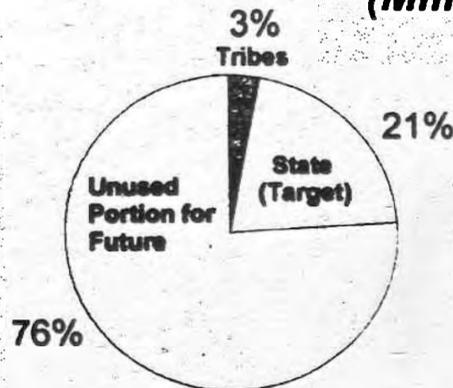
Impact: The Bands worked hard to develop a regulatory system that would phase in treaty harvests and allow Band members to determine the extent to which they exercise the treaty rights.

For the most sought after resources, such as Mille Lacs lake walleye, the Bands adopted initial harvest levels that are well below 50 percent of the harvestable surplus, and recognized a maximum harvest level of 50 percent in all other cases.

"I believe the State will come to recognize that the Bands' system offers many advantages by providing a period of years to adjust to treaty harvests," Zorn says.

"The additional artificial restraints and harvest restrictions sought by the State, counties and landowners were all found to be unnecessary. The impact of the Court's decision is that, at least initially, Band members themselves can choose whether and to what extent to exercise the treaty right, subject to the limitations voluntarily adopted by the Bands," Zorn said.

Shared walleye fisheries in the Minnesota 1837 ceded territory (Mille Lacs lake)



1997 Tribal Quota	=	40,000 pounds
Angler Harvest Target	=	280,000 pounds
Unused Portion for the Future	=	1,013,333 pounds

The Fisheries Technical Committee agreed on a walleye harvestable surplus of 320,000 pounds for 1997. (By Neil Kmiecik and Jennifer Kreuger)

The Wisconsin experience: Lessons learned about treaty rights

Six Chippewa bands have been exercising off-reservation treaty rights in Wisconsin ceded territory since the mid-1980s. The bottom line is that the exercise of treaty rights has not harmed the natural resources nor caused a decline in tourism.

However, in Wisconsin it took six tumultuous years (1984-1990) of social unrest, demonstrations of hatred and bigotry, and millions of dollars spent annually for enforcement before many Wisconsin citizens would even consider listening to the facts.

The controversy and the hatred which boiled in Wisconsin were started by anti-treaty organizations and individuals who were vociferously spreading tales of doom. The deer population would be decimated; no fish would be left in northern Wisconsin lakes; tribal members could fish and hunt anywhere, anytime without regulation; property values would drop, and local economies dependent on tourism would crash. None of this happened!

Meetings were organized throughout the ceded territories and speakers succeeded in frightening many people within the communities. Rallies were held and protesters marched through main streets. The messages on signs and comments often were blatantly racist. The media was always invited and was always there. So the accusations and statements were reported, although they were not founded in fact.

A sense of economic terror and impending disaster brought hundreds to the boatlandings each spring in angry protest, requiring lines of enforcement personnel imported from throughout the state to be on duty nightly.

It took nationwide coverage depicting Wisconsin citizens in an ugly, racist protest harassing Chippewa people as they tried to fish. It took neighbors and local businessmen to be alarmed by the negative publicity and weary of living in communities overrun with hostility and conflict.

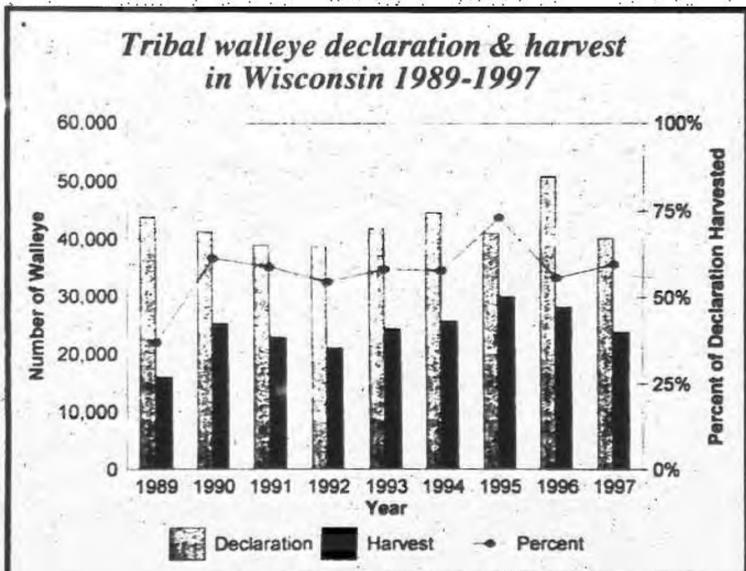
It took a lawsuit filed by the American Civil Liberties Union (ACLU) and a court injunction to stop certain people and organizations from menacing, racist activities which too frequently comprised the protest.

It took a few forward-looking businessmen and women in scattered communities to change the course from conflict to cooperation by finding common goals with the tribes and pursuing them together.

It took Governor Thompson beginning the Northern Initiative which set up joint tribal-local community committees, charged with establishing common objectives that would benefit the community as a whole and jointly meeting them.

It took Sen. Daniel Inouye, former Chairman of the Senate Committee on Indian Affairs, to personally visit Wisconsin and then seek an appropriation for a joint assessment of the fishery by state, tribal, and federal resource managers. Their 1991 report, *Casting Light Upon the Waters*, was finally able to state, based on the fishery assessments, that tribal spearfishing had not harmed the resources.

Thus the accusations of resource depletion heard nightly from the mouths of protesters lost credibility. With arguments of resource depletion removed from their repertoire, many protesters were left with only racist arguments against Chippewa treaty rights.



The off-reservation walleye harvest is measured by numbers of fish in Wisconsin, rather than pounds of fish as in Minnesota. The graph above shows actual number of walleye tribes have harvested in comparison to the number they declare available to treaty harvest prior to the season.

In a paper entitled *"The Economic Impact of the 1837 and 1842 Chippewa Treaties"* published July 20, 1989, by Dr. David Wrone, Prof. of History, UW-Stevens Point, noted that while the Chippewa harvest of deer and fish "trigger the most popular agitation... The numbers simply do not sustain the anti-treaty faction's assertions."

Wrone pointed to the 1987 figures for the ceded territories that showed 14,745 deer were taken in the state bow season by non-Indians and 86,121 deer were taken by the state gun hunters, while the



Fears about resource depletion and economic decline spurred a large-scale protest movement in Wisconsin as tribal members exercised their off-reservation treaty rights during the first six years. However, the lack of substance to support their arguments of economic disaster and resource depletion eventually unveiled racism as a motivating factor.

Chippewa harvest was 2,829 deer. This made the Chippewa harvest about 2% of the total—a figure which drops to 1% if the estimated figures for poaching (5,000 deer) and road-kills (50,000 deer) are included.

Similarly Wrone noted that in 1989 the Chippewa took about 2% of the total walleye catch. The WDNR estimated a sport angling harvest of 672,303 walleye in 1989 with the tribes taking exactly 16,053, or roughly 2%.

In the 1991 report, *Casting Light Upon the Waters*, the Joint Assessment Steering Committee, comprised of federal, tribal, and state representatives, announced their finding following a joint assessment of northern Wisconsin's fishery. They wrote: "NO!—Chippewa spearfishing has not harmed the resource; and YES!—the fish population in the ceded territory is healthy."

The Joint Assessment Steering Committee, which has continued to perform annual walleye assessments since 1990, also noted that walleye populations needed continued careful monitoring and management due to the combined impact of tribal and sport fishing and degradation of habitat.

In his study, Wrone noted, "Numerous non-treaty related factors affecting the reproduction of walleye are conveniently ignored by individuals agitated by the false issues of the treaty question."

Wrone cites mercury and PCB contamination in seventy-one lakes and rivers; "massive lake front development... manipulating frontage spawning waters, pollution from septic systems, and recreational usage" as factors having a decided negative impact on walleye reproduction.

In regard to claims that spearfishing would cause a decline in tourism, Wrone commented on the tourism boom in northern Wisconsin. 1988 tourism figures showed an increase from 1987 and 1989 figures topped 1988, according to the State Department of Tourism and Development statistics. "Yet, opponents to Chippewa treaty fishing vigorously persist in their claims and present several lines of what they refer to as evidence to support the charge that many specific resorts, lodges, and other tourist dependent businesses have been hurt or are even 'going under,'" Wrone states.

While some specific resorts may be troubled, Wrone points to a UW-Extension Recreation Center study that indicates age, income, and lifestyle of the tourist has changed. Today, people are requiring a different kind of vacation experience in a different setting than ten to thirty years ago. "The rustic cabins and narrow bathrooms no longer exerts a romantic allure," he notes, "but blaming Chippewa spearfishing for the decline of a business has no basis."

Tourism & economic growth not impaired by Chippewa spearfishing

(Editor's note: The following information is excerpted from a fact sheet entitled "Economic and Tourism Growth in the 1837 and 1842 Ceded Territories of Wisconsin" written by James Thannum in April 1997. A copy of the complete fact sheet is available from GLIFWC upon request.)

Rate of tourism growth

Since 1985, tourism has steadily increased in the Wisconsin portion of the 1837 and 1842 ceded territories. The rate of growth was greater in the region with the heaviest exercise of treaty rights than in the regions with less or no exercise, according to a report by David W. Marcouiller, entitled "Trends in the Tourism Industry: Impacts of Exercising Hunting, Fishing and Gathering Rights in the Ceded territories of Wisconsin and Minnesota," published December 12, 1995.

Marcouiller's study examined trends in the number of firms and employment for various tourism businesses. He then compared trends in the number of firms and employees for various tourism businesses for an area experiencing the heaviest spearfishing pressure (Vilas and Oneida counties), the ceded territories as a whole, and the State of Wisconsin using 1985 as the base year.

The study looked at 1.) eating/drinking establishments; 2.) overnight accommodations, including resorts; and 3.) tourism-related retail, including sporting goods and bait stores.

Marcouiller concluded that: "Tourism in Vilas and Oneida counties has consistently outperformed tourism in the other two regions during the entire 30 year time span.

Of particular interest are the trends experienced since 1985. Once again, data suggest that tourism in Vilas and Oneida counties since 1985 has grown faster than tourism in both the Wisconsin portion of the ceded territories and the state as a whole."

It is also interesting to note that for Minocqua, Oneida county room tax receipts grew significantly during the height of Wisconsin's spearfishing controversy.

In a Milwaukee Sentinel article, Dec. 8, 1990, Rick Romell notes that the "annual projections, along with the actual receipts for 1987 through 1989, show that hotel-motel spending in Minocqua grew by 24% to 30% a year through 1989. That's a better rate than two other prominent Wisconsin tourist communities—the Wisconsin Dells and the City of Lake Geneva—showed over the same period."

Fishing license sales

Fishing license sales in the four Wisconsin counties with the heaviest treaty fishing increased in relation to total fishing license sales in Wisconsin.

License sales for non-resident licenses increased at the fastest rate, according to a report by James Thannum, entitled *Analysis of Fishing License Sales Trends in Four Wisconsin Counties (Vilas, Oneida,*

Iron and Sawyer) Within the Chippewa Ceded Territory 1980-1993, published December 13, 1995.

Thannum examined the sales data on seven types of fishing licenses and looked at the percentage of the state's total sales for each of the four counties.

Data indicated that "the most heavily speared counties increased as a percentage of the state's total sales for each type of fishing license—both resident and non-resident. Non-resident 4 day fishing license sales grew at the fastest rate."

Property values

Property values in the nine Wisconsin counties which experienced the greatest Chippewa treaty fishing activity since 1985 have steadily increased.

The same trend has taken place in those townships experiencing the heaviest treaty fishing pressure, according to David W. Bromley, in a report entitled "Chippewa Fishing and Property Values in Northern Wisconsin," published November 1995.

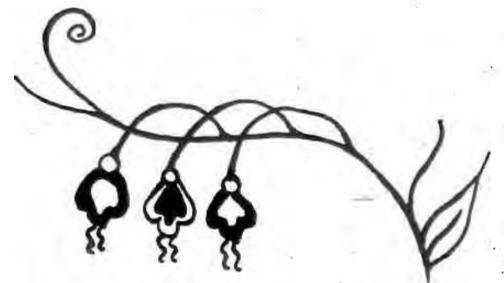
Bromley utilized data from annual reports issued by the Wisconsin Department of Revenue entitled "Town, Village, and City Taxes." The study compared property value trends in six counties in the ceded territory (Oneida, Price, Sawyer, Polk, Washburn, and Vilas); the State of Wisconsin as a whole; Vilas county as the county experiencing the greatest spearfishing activity and a large number of protests; and specific townships that experienced heavy and light spearfishing pressure.

Bromley concluded: "The years prior to 1987 were not particularly good for real estate values anywhere in Wisconsin. Indeed, in 1986 property values in Wisconsin (and in Vilas county) fell by 2 percent from the previous year. By 1987 Vilas county (and Wisconsin) were again seeing slight increases over the previous year.

By 1988, property values in Vilas County had increased over 2 1/2 percent from the previous year, while those in Wisconsin as a whole had increased somewhat less than 4 percent. By 1991, when protests over fishing petered out, property values in Vilas county were increasing more than they were in the state as a whole, and that trend continues to the present."

Bromley continues to conclude that "...property values in the nine counties most affected by treaty fishing have gone up, both on a total county basis, and on a per-capita basis, in almost every year since 1982 or 1983.

This is hardly auspicious for those who would claim that they stand to suffer from a loss in property value from Chippewa fishing. The Wisconsin evidence put the lie to that idea."



Treaty with the Chippewa—July 29, 1837

Articles of a treaty made and concluded at St. Peters (the confluence of the St. Peters and Mississippi rivers) in the Territory of Wisconsin, between the United States of America, by their commissioner, Henry Dodge, Governor of said Territory, and the Chippewa nation of Indians, by their chiefs and headmen.

ARTICLE 1. The said Chippewa nation cede to the United States all the tract of country included within the following boundaries:

Beginning at the junction of the Crow Wing and Mississippi rivers, between twenty and thirty miles above where the Mississippi is crossed by the forty-sixth parallel of north latitude, and running thence to the north point of Lake St. Croix, one of the sources of the St. Croix river; thence to and along the dividing ridge between the waters of Lake Superior and those of the Mississippi, to the sources of the Ocha-sua-sepe a tributary of the Chippewa river; thence to a point on the Chippewa river, twenty miles below the outlet of Lake De Flambeau; thence to the junction of the Wisconsin and Pelican rivers; thence on an east course twenty-five miles; thence southerly, on a course parallel with that of the Wisconsin river, to the line dividing the territories of the Chippewas and Menomines; thence to the Plover Portage; thence along the southern boundary of the Chippewa country, to the commencement of the boundary line dividing it from that of the Sioux, half a days march below the falls on the Chippewa river; thence with said boundary line to the mouth of Wah-tap river; at its junction with the Mississippi; and thence up the Mississippi to the place of beginning.

ARTICLE 2. In consideration of the cession aforesaid, the United States agrees to make to the Chippewa nation, annually, for the term of twenty years, from the date of the ratification of this treaty, the following payments.

1. Nine thousand five hundred dollars, to be paid in money.
2. Nineteen thousand dollars, to be delivered in goods.
3. Three thousand dollars for establishing three blacksmith shops, supporting the blacksmiths, and furnishing them with iron and steel.
4. One thousand dollars for farmers, and for supplying them and the Indians, with implements of labor, with grain or seed; and whatever else may be necessary to enable them to carry on their agricultural pursuits.



5. Two thousand dollars in provisions.
6. Five hundred dollars in tobacco.

The provisions and tobacco to be delivered at the same time with the goods, and the money to be paid; which time or times, as well as the place or places where they are to be delivered, shall be fixed upon under the direction of the President of the United States.

The blacksmiths shops to be placed at such points in the Chippewa country as shall be designated by the Superintendent of Indian Affairs, or under his direction.

If at the expiration of one or more years the Indians should prefer to receive goods, instead of the nine thousand dollars agreed to be paid to them in money, they shall be at liberty to do so. Or, should they conclude to appropriate a portion of that annuity to the establishment and support of a school or schools among them, this shall be granted them.

ARTICLE 3. The sum of one hundred thousand dollars shall be paid by the United States, to the half-breeds of the Chippewa nation, under the direction of the President. It is the wish of the Indians that their two sub-agents Daniel P. Bushnell, and Miles M. Vineyard, superintend the distribution of this money among their half-breed relations.

ARTICLE 4. The sum of seventy thousand dollars shall be applied to the payment, by the United States, of certain claims against the Indians of which amount twenty-eight thousand dollars shall, at their request, be paid to William A. Aitkin, twenty-five thousand to Lyman M. Warren, and the balance applied to the liquidation of other just demands against them—which they acknowledge to be the case with regard to that presented by Hercules L. Dousman, for the sum of five thousand dollars; and they request that it be paid.

ARTICLE 5. The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States.

ARTICLE 6. This treaty shall be obligatory from and after its ratification by the President and Senate of the United States.

Done at St. Peters in the Territory of Wisconsin the twenty-ninth day of July eighteen hundred and thirty-seven.

Henry Dodge, Commissioner



Treaty with the Chippewa

September 30, 1854

Articles of a treaty made and concluded at La Pointe, in the State of Wisconsin, between Henry C. Gilbert and David B. Herriman, commissioners on the part of the United States, and the Chippewa Indians of Lake Superior and the Mississippi, by their chiefs and head-men.

ARTICLE 1. The Chippewas of Lake Superior hereby cede to the United States all the lands heretofore owned by them in common with the Chippewas of the Mississippi, lying east of the following boundary line, to wit: Beginning at a point, where the east branch of Snake River crosses the southern boundary line of the Chippewa country, running thence up the said branch to its source, thence nearly north, in a straight line, to the mouth of East Savannah River, thence up the St. Louis River to the mouth of East Swan River, thence up the East Swan River to its source, thence in a straight line to the most westerly bend of Vermillion River, and thence down the Vermillion River to its mouth.

The Chippewas of the Mississippi hereby assent and agree to the foregoing cession and consent that the whole amount of the consideration money for the country ceded above; shall be paid to the Chippewas of Lake Superior, and in consideration thereof the Chippewas of Lake Superior hereby relinquish to the Chippewas of the Mississippi, all their interest in and claim to the lands heretofore owned by them in common, lying west of the above boundary-line.

ARTICLE 2. [Designation of boundary lines]

ARTICLE 3. The United States will define the boundaries of the reserved tracts, whenever it may be necessary, by actual survey, and the President may, from time to time, at his discretion, cause the whole to be surveyed, and may assign to each head of a family or single person over twenty-one years of age, eighty acres of land for his or their separate use: and he may, at his discretion, as fast as the occupants become capable of transacting their own affairs, issue patents therefor to such occupants, with such restrictions of the power of alienation as he may see fit to impose. And he may also, at his discretion, make rules and regulations, respecting the disposition of the lands in case of the death of the head of a family, or single person occupying the same, or in case of its abandonment by them. And he may also assign other lands in exchange for mineral lands, if any such are found in the tracts herein set apart. And he may also make such changes in the boundaries of such reserved tracts or otherwise, as shall be necessary to prevent interference with any vested rights. All necessary roads, highways, and railroads, the lines of which may run through any of the reserved tracts, shall have the right of way through the same, compensation being made therefor as in other cases.

ARTICLE 4. In consideration of and payment for the country hereby ceded, the United States agree to pay to the Chippewas of Lake Superior, annually, for the term of twenty years, the following sums, to wit: five thousand dollars in coin; eight thousand dollars in goods, household furniture and cooking utensils; three thousand dollars in agricultural implements and cattle, carpenter's and other tools and building materials, and three thousand dollars for moral and educational purposes, of which last sum, three hundred dollars per annum shall be paid to the Grand Portage band, to enable them to maintain a school at their village. The United States will also pay the further sum of ninety thousand dollars, as the chiefs in open council may direct, to enable them to meet their present just engagements. Also the further sum of six thousand dollars, in agricultural implements, household furniture, and cooking utensils, to be distributed at the next annuity payment, among the mixed bloods of said nation. The United States will also furnish two hundred guns, one hundred rifles, five hundred beaver traps, three hundred dollars' worth of ammunition, and one thousand dollars' worth of ready made clothing, to be distributed among the young men of the nation, at the next annuity payment.

ARTICLE 5. The United States will also furnish a blacksmith and assistant, with the usual amount of stock, during the continuance of the annuity payments, and as much longer as the President may think proper, at each of the points herein set apart for the residence of the Indians,

the same to be in lieu of all the employees to which the Chippewas of Lake Superior may be entitled under previous existing treaties.

ARTICLE 6. The annuities of the Indians shall not be taken to pay the debts of individuals, but satisfaction for depredations committed by them shall be made by them in such manner as the President may direct.

ARTICLE 7. No spirituous liquors shall be made, sold, or used on any of the lands herein set apart for the residence of the Indians, and the sale of the same shall be prohibited in the Territory hereby ceded, until otherwise ordered by the President.

ARTICLE 8. It is agreed, between the Chippewas of Lake Superior and the Chippewas of the Mississippi, that the former shall be entitled to two-thirds, and the latter to one-third, of all benefits to be derived from former treaties existing prior to the year 1847.

ARTICLE 9. The United States agrees that an examination shall be made, and all sums that may be found equitably due to the Indians, for arrearages of annuity or other thing, under the provisions of former treaties, shall be paid as the chiefs may direct.

ARTICLE 10. All missionaries, and teachers, and other persons of full age, residing in the territory hereby ceded, or upon any of the reservations hereby made by authority of law, shall be allowed to enter the land occupied by them at the minimum price whenever the surveys shall be completed to the amount of one quarter section each.

ARTICLE 11. All annuity payments to the Chippewas of Lake Superior, shall hereafter be made at L'Anse, La Pointe, Grand Portage, and on the St. Louis River; and the Indians shall not be required to remove from the homes hereby set apart for them. **And such of them as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President.**

ARTICLE 12. In consideration of the poverty of the Bois Forte Indians who are parties to this treaty, they having never received any annuity payments, and of the great extent of that part of the ceded country owned exclusively by them; the following additional stipulations are made for their benefit. The United States will pay the sum of ten thousand dollars, as their chiefs in open council may direct, to enable them to meet their present just engagements. Also the further sum of ten thousand dollars, in five equal annual payments, in blankets, cloth, nets, guns, ammunition, and such other articles of necessity as they may require.

They shall have the right to select their reservation at any time hereafter, under the direction of the President; and the same may be equal in extent, in proportion to their numbers, to those allowed the other bands, and be subject to the same provisions.

They shall be allowed a blacksmith, and the usual smithshop supplies and also two persons to instruct them in farming, whenever in the opinion of the President it shall be proper, and for such length of time as he shall direct.

It is understood that all Indians who are parties to this treaty, except the Chippewas of the Mississippi, shall hereafter be known as the Chippewas of Lake Superior. Provided, That the stipulation by which the Chippewas of Lake Superior relinquishing their right to land west of the boundary line shall not apply to the Bois Forte band who are parties to this treaty.

ARTICLE 13. This treaty shall be obligatory on the contracting parties, as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Henry C. Gilbert, and the said David B. Herriman, commissioners as aforesaid, and the undersigned chiefs and headmen of the Chippewas of Lake Superior and the Mississippi, have hereunto set their hands and seals, at the place aforesaid, this thirtieth day of September, one thousand eight hundred and fifty-four.

Henry C. Gilbert and David B. Herriman, Commissioners



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