

COMMISSIONER'S ORDER NO. 85 - 88
Natural Resources

A Commissioner's Order to ratify the Open Water Fishing Agreement and to establish the 1988 Off-Reservation Summer and Fall Fishing Regulations for members of the Mille Lacs Band of Chippewa Indians.

WHEREAS, the Mille Lacs Band of Chippewa Indians is a signatory and successor to the Treaty of 1837, 7 Stat. 536, and the Treaty of 1842, 7 Stat. 591, and;

WHEREAS, the Mille Lacs Band of Chippewa Indians resides in the ceded territories of the Treaty of 1837, 7 Stat. 536, and;

WHEREAS, the Mille Lacs Band deem it appropriate to provide an orderly system of tribal control and regulation of off-reservation fishing, and;

WHEREAS, the Mille Lacs Band further deems it appropriate to provide conservation and management for fish populations found in the ceded territory through the regulation of member fishing occurring therein, and;

WHEREAS, the Commissioner of Natural Resources has the authority to regulate natural resources within the jurisdiction of the Mille Lacs Band of Chippewa Indians through Band Statute 1032-MLC-1, Sec. 29, Band Statute 1017-MLC-7, and Band Statute 1092-MLC-25, et seq., and;

WHEREAS, the taking of fish is a natural resources under the jurisdiction of the Mille Lacs Band of Chippewa Indians and;

WHEREAS, nothing herein or the application thereof shall be construed by any government, agency, person or circumstance as a waiver by the Non-Removable Mille Lacs Band of Chippewa Indians of the solemn, special trust obligation of the United States of America, and;

WHEREAS, pursuant to the provisions of Band Statute 1032-MLC-1, Section 25 and 29, the Commissioner of Natural Resources is empowered to execute the regulatory agreements for fishing by members of the Mille Lacs Band.

NOW THEREFORE, by the authority vested in me by the Mille Lacs Band of Chippewa Indians pursuant to Band Statute 1032-MLC-1, Section 29, I, Don Wedll, Commissioner of Natural Resources for the Mille Lacs Band of Chippewa Indians hereby ratify the 1988 Off-Reservation Open Water Fishing Agreement by and between the Tribal and State Parties in Lac Courte Oreilles, et al., v. State of Wisconsin, et al., and;

It is further and finally ordered that the following Open Water Fishing Regulations are established for the 1988 Fishing Season for members of the Mille Lacs Band of Chippewa Indians.

OFF-RESERVATION 1988 OPEN WATER FISHING REGULATION
East of the St. Croix River

PART I - INTRODUCTION

101. Title. This Commissioner's Order may be known as the Mille Lacs Band of Chippewa Indians Off-Reservation 1988 Open Water Fishing Regulations.
102. Authority. This Commissioner's Order is authorized pursuant to Band Statute 1032-MLC-1, Sec. 29, Band Statute 1017-MLC-7, and Band Statute 1092-MLC-25, et seq., of the Mille Lacs Band of Chippewa Indians.
103. Purpose. It is the purpose of this order to:
 - a) provide an orderly system for tribal control and regulation of open water fishing on the off-reservation ceded by the Chippewa Indians in the Treaty of 1837, 7 Stat. 536 and the Treaty of 1842, 7 Stat. 591.
 - b) Provide a means to promote the conservation and management of fish resources in the ceded territory through the regulation of member open water fishing occurring there.
104. Effective Date. This order shall be effective on the date of issuance and shall expire at 11:59 p.m. on December 31, 1988.
105. Interpretation. The provisions of this order shall be interpreted and applied as minimum requirements applicable to open water fishing and shall be liberally construed in favor of the Mille Lacs Band pursuant to Band Statute 1024-MLC-3, Section 19.01. The provisions shall not be deemed a limitation or repeal of any other Band power or authority.
106. Severability and Non-Liability. If any section, provision, or portion of this order is adjudged unconstitutional or invalid by the Court of Central Jurisdiction, the remainder of this order shall not be affected thereby. The Mille Lacs Band further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this order.
107. Repeal of Inconsistent Tribal Ordinances. All previous Commissioner's Orders inconsistent with this order are hereby repealed. To the extent that this order imposes greater restrictions than those contained in any other Commissioner's Orders, the provisions of this order shall govern.
108. Relationship to Agreement. This order is intended to implement the Agreement By and Between the Tribal and State Parties in Lac Courte Oreilles Band v. State of Wisconsin governing the 1988 Chippewa Off-Reservation Treaty Open Water Fishing Season [hereinafter Agreement], the provisions of which are hereby incorporated by reference as if fully set forth herein. In the event of any inconsistency between the Agreement and this Order, the Agreement shall govern unless the relevant order provision is more strict.

PART II - DEFINITIONS

201. Definitions.

- a) "Member" means a member of the Mille Lacs Band of Chippewa Indians.
- b) "Tribal conservation department" means the conservation departments of the Bad River, Lac Courte Oreilles, Lac du Flambeau, Mole Lake, Red Cliff, St. Croix Tribes, Mille Lacs, or Keweenaw Bay.
- c) "Tribal Court" means the Court of Central Jurisdiction.
- d) "Tribe" means the Mille Lacs Band of Chippewa Indians.
- e) "Ratifying tribe" means any tribe which has ratified the 1988 Open Water Fishing Agreement by and between the tribal and state parties in Lac Courte Oreilles v. State of Wisconsin, approved an ordinance in conformity therewith.
- f) "Hook and line" fishing is defined as reducing or attempting to reduce fish to possession the use of a rod and reel or similar device. It includes motor trolling but does not include snagging.
- g) "Attended Lines" means within sight of the lines.
- h) "Seine" means a large coarse-meshed net of mesh no larger than 2" stretch measure, with floats at the top and weights at the bottom, such that it hangs vertically in the water, and which is drawn through the water to capture fish by encircling them rather than entangling them.
- i) "Spear" means a pole tipped with a minimum of three barbed tines which are a minimum of 4 1/2" long.
- j) "Spearing" means reducing or attempting to reduce to possession fish by means of a hand held spear or other similar device which is directed by the spearer for the purpose of impaling the target fish. Spearing includes the use of an artificial light.
- k) "Spring spearing season" means the period of time from the effective date of this order through December 31, 1989.
- l) "Trap Net" means a fyke net, drop net, or pound net as those terms as defined in Wis. Stat. §29.33(1).

Part III - REGULATIONS

301. Bag and size limits.

- a) No member shall exceed the following nightly bag and size limits for hook and line fishing:

<u>Species</u>	<u>Bag Limit</u>	<u>Minimum Size</u>	<u>Last date of Season</u>
1. Lake Sturgeon	1/person/season (all methods)	45"	11/30
2. All trout from inland waters except lake trout	15 per day	none	9/30
3. Lake Trout	4 per day	17"	11/30
4. Muskellunge	2 per day	32"	11/30
5. Bass (smallmouth and largemouth)	15 per day in the aggregate	none	11/30
6. Trout in Lake Superior tributaries	10 in aggregate of which no more than 4 may be rainbow trout	none	Pursuant to State regulations

- b) For all other species no other bag or size limits are applicable to hook and line fishing, but no member shall fish by the use of hook and line beyond the season ending on December 31, 1988 or until a given body of water is covered with ice, whichever shall first occur.

302. Bag and Size limits - Spearing and Snagging.

- a) No member shall exceed the bag, size and season limit for spearing and snagging established pursuant to this section.

- b) All hook and line size limits and seasons are applicable to spearing and snagging, with the following exceptions:

<u>Species</u>	<u>Bag Limit</u>
1. Walleye	As established by permit issued pursuant to Section 303
2. Muskellunge	1/night
3. Bass (smallmouth and largemouth)	5 maximum of each after 9/30

- c) Spearing on inland trout streams shall end on September 30, 1988.

303. Walleye Permits.

- a) No member shall spear on any lake for which a permit is required by the Tribe's Governing Body, its designee, or any other ratifying tribe without obtaining and having in his or her possession while spearing a valid permit for the lake and the night.
- b) Walleye permits may be issued only for lakes of 100 or more acres for which a total allowable catch (TAC) has been established pursuant to the Agreement and shall establish a bag limit.

304. Muskellunge Closure. The Tribe's Governing Body or its designee may close any lake to fishing muskellunge, the bag limits in secs. 301(a) and 302(b)(2) notwithstanding.

305. Possession limit. No member may possess any fish in excess of the applicable bag limit while off the reservation, unless such fish has been tagged by a state, Commission or tribal warden indicating that it was taken on the reservation.

306. Spearing Hours. No member shall engage in spearing on any lake, except from dusk until 5:00 a.m. the following morning.

307. Spearing Locations.

- a) No member shall spear on any night except on an authorized lake for that night by the tribal council or its designee, or by any other ratifying tribe.
- b) No member shall spear in any river or stream, including lake inlets, outlets and connecting channels, except as provided in Sec. 302(c).
- c) No member shall spear in lakes under 100 acres or not authorized by a tribe for spearing pursuant to this section.
- d) No member shall spear in any lake for which the designated tribal spearing quota has been reached (closed for walleye only).
- e) No member shall spear on any Lake Superior tributary.

308. Lake partially on a reservation. The provisions of this order shall apply to off-reservation portion of any lake, river or stream partially on a reservation.

309. Fishing season. No member shall fish off-reservation, except during the season as established by this order.

310. Prohibited locations. No member shall fish in any refuge, including the following:

- a) Trilby Lake (Camp 7), sections 11, 12, 13, and 14, township ___ north, range 6 east.
- b) Gile Flowage-Junk Shop Dike. 100 feet on either side of the Junk Shop Dike on Knight Road where it crosses the Flowage between section 36, township 46 north, range 2 east, and section 1, township 45 north, range 2 east.
- c) Gile Flowage-CTH C. 200 feet on either side of that part of CTH C located in the SW 1/4 of the NW 1/4 and in the NW 1/4 of the SW 1/4, section 1, township 45 north, range 2 east.
- d) Turtle Flambeau Flowage. Within 200 feet of the shoreline of the peninsula in section 5, township 41 north, range 3 east, commonly known as Seifert's Point.

311. Experimental Lakes. Special restrictions applicable to lakes upon which the Wisconsin Department of Natural Resources is conducting fish management experiments shall apply to tribal members. No member shall violate any such special restrictions.
312. Spearing Catch Reports Required.
- a) no member shall fail to complete spearing catch report as required by tribe issuing a spearing permit.
 - b) Spearing catch reports must be filed by noon of the business day following the spearing activity.
 - c) No spearing permit shall be issued to any person who has failed to file a spearing catch report.
 - d) No spearing permits shall be issued for any lake for which one or more catch reports have not been filed.
313. Spearing Permits Required.
- a) No member shall possess or fish with a spear on any body of water except pursuant to a spearing permit issued by the Tribe or another ratifying tribe valid for that lake and date.
 - b) No member shall fail to comply with the terms and conditions of any spearing permit issued to him or her by the tribe or by another ratifying tribe.
 - c) The tribe's governing body, or its designee, may impose such terms and conditions on spearing permits as deemed necessary or appropriate, including but not limited to designating landings for the purpose of spearing.
314. Endangered species. No tribal member may take any of the following species: Goldeye, Gravel Chub, Pallid Shiner, Striped Shiner, Slender Madtom, Starhead Topminnow, Crystal Darter, Bluntnose Darter, Speckled Chub, Blue Sucker, Black Buffalo, Longear Sunfish, Gilt Darter, and Ozark Minnow.
315. Sturgeon Tagging. Any sturgeon taken by a member shall be tagged and registered with the tribe before 6:00 p.m. on the following day.
316. Tribal Identification and Licensing.
- a) No member shall spear off-reservation except while carrying a valid picture identification card issued by the tribe, or other form of identification approved by the tribe for spearing activities.
 - b) No member may fish off-reservation without a valid Mille Lacs Band's fishing license.
 - c) No member shall refuse to display his or her identification documents, including any walleye permits, upon request of any tribal, state, or local law enforcement officer.
317. Waste of natural resources. No member shall unreasonable waste, injure or destroy, or impair natural resources while fishing.
318. Littering Prohibited. No member shall leave or discard cans, bottles, debris, refuse or any other solid waste or deposit debris on private or public property.
319. Creel surveys. Tribal members shall cooperate with and provide information to employees of the Tribe, the Great Lakes Indian Fish and Wildlife Commission, and the Wisconsin Department of Natural Resources who are conducting creel surveys.
320. Methods permitted. No member during the spearing season established by this order shall engage in any fishing method other than those authorized by this order. Prohibited harvest methods include but are not limited to spear guns, nets, firearms, electroshocking, and toxic substances.

321. Prohibitions.

- a) No member may spear within 50 yards of a Wisconsin Department of Natural Resources or tribal assessment net or its leads.
- b) No member may have a spear, dip net or seine in a refuge or on closed water.
- c) No member may share his or her fishing gear or bag limit or possession limit with an individual who is not a tribal member, except that immediate family or household member may assist in the operation of a boat during spearing or trolling.
- d) No member shall, while hook and line fishing, use more than six lines with a maximum of two hooks on lines per line. All lines must be attended at all times.
- e) No member shall use the following live fish for use as bait while fishing pursuant to this order: carp, goldfish, redhorse, fresh water drum, burbot, bowfin, garfish, buffalo fish, lamprey, alewife, gizzardshad, smelt, goldeye, mooneye, carpsucker, quillback, chub and crayfish.

322. Tribal Council designation.

- a) The tribal council designee under sections 301 (b)(1) (walleye bag limit), 302 (walleye permits), 309 (season), 307 (a) (body of water selections), and 303(c) (spearing permits requirements) shall be David Matrious.
- b) The tribal council designee under section 304 (muskellunge closure) shall be Don Wedl.

Part IV - ENFORCEMENT

401. Enforcement by deputized conservation wardens. Any provision of this order may be enforced by Mille Lacs Band Enforcement Officer or tribal conservation wardens or by conservation wardens of any other ratifying tribe of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby deputized by the Department as tribal conservation wardens for purposes of enforcing this order.

402. Enforcement by Wisconsin Department of Natural Resources Wardens. Wisconsin conservation wardens and deputy conservation wardens are hereby empowered to enforce the provision of this order and to institute proceedings in the Court of Central Jurisdiction by use of the citation forms of the Wisconsin Department of Natural Resources, as described in Wis. Stat. §23.54.

403. Penalties. Any tribal member found by the Court of Central Jurisdiction to have violated a provision of this order shall be subject to the following penalties:

- a) For a violation of any section, a civil remedial forfeiture not to exceed \$500.00.
- b) In addition to any other penalties provided by this order, a revocation or suspension of off-reservation fishing privileges for a period of time to be determined by the court.

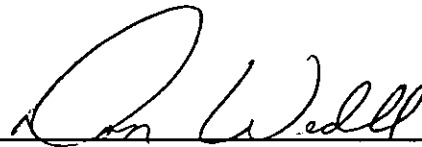
404. Schedule of Money Penalties: No Contest. The Band Court may adopt a schedule of forfeitures to be imposed by the Court upon the receipt of an admission that a violation of this order has occurred, which may be done either in person or in writing. This schedule is not binding as to the forfeitures assessed by the Court after adjudicating a violation.

405. Collection of Money Penalties. Enforcement of the penalties imposed by Sec. 403 and 404 of this order may be had through the collection of penalties from funds of the violator held by the Band, through the imposition of community service work requirements in lieu of money payment, through debt collection mechanisms of the courts of other jurisdictions, or through any other method authorized by tribal ordinance.

406. Hearing in Tribal Court. The Court of Central Jurisdiction shall adjudicate all matters arising under this order, pursuant to the provisions of the Band Statute 1024-MLC-3.

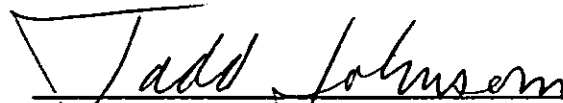
407. Members of other Tribes, Tribal Court Adjudications. The tribal court is authorized to adjudicate alleged violations by any member of the off-reservation summer and fall open water fishing order of the other tribe provided:
- a) The ordinance is in conformance with the Agreement, and
 - b) The other ratifying tribe has authorized the adjudication.
408. Members of other tribes, walleye permits. The tribal conservation department is authorized to issue walleye permits to members of any ratifying tribe.
409. Spearing bag limits, permit requirements of other tribes. Any person authorized by sections 401 and 402 to enforce this order is authorized and directed to enforce against members of the tribe, where applicable, the requirement established by the spearing permit of any other ratifying tribe.
410. Parties to a Violation.
- a) Whoever is concerned in the commission of a violation of this order shall be deemed a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.
 - b) A person is concerned in the commission of the violation if the person:
 1. directly commits the violation;
 2. aids or abets the commission of it, or
 3. is a party to a conspiracy with another to commit it, or advises, hires, or counsels or otherwise procures another to commit it.
411. Authorization for Closure.
- a) Notwithstanding any other provision of this order, the Great Lakes Indian Fish and Wildlife Commission is hereby delegated the authority to close any body of water to further fishing by the use of a spear for any species prior to the season's closing date for biological reasons to prevent potential overharvest.
 - b) No member shall fail to comply with any closure ordered pursuant to this section.

DATED at Vineland, Minnesota this first day of July in the year one thousand nine hundred and eighty-eight.



Don Wedll
Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO
FORM AND EXECUTION



Tadd Johnson
Solicitor General

OFFICIAL SEAL OF THE BAND