

COMMISSIONER'S ORDER NO. 75 - 88
Natural Resources

A Commissioner's Order to ratify the Intertribal - State of Wisconsin Ice Fishing Agreement and to establish the Off-Reservation 1987-88 Ice Fishing Regulations, east of the St. Croix River 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 ice 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 ice 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 for the area East of the St. Croix River and within the 1837 treaty area.

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 1987-88 Off-Reservation Ice 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 Ice Fishing Regulations are established for the 1987-88 Ice Fishing Season, east of the St. Croix River for members of the Mille Lacs Band of Chippewa Indians.

OFF-RESERVATION 1987-88 ICE FISHING REGULATION
East of the St. Croix River

PART I - INTRODUCTION

101. Title. This Commissioner's Order may be cited as the Mille Lacs Band of Chippewa Indians (east of the St. Croix River) Off-Reservation 1987-88 Ice 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 ice fishing on the off-reservation lands and waters 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 population in the ceded territory through the regulation of member ice 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 May 15, 1988.
105. Interpretation. The provisions of this order shall be interpreted and applied as minimum requirements applicable to ice 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 1987-88 Off-Reservation Treaty Ice Fishing season, 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 any tribe which has approved an order in conformance with the Agreement.
- c) "Tribal Court" means the Court of Central Jurisdiction.
- d) "Tribe" means the Mille Lacs Band of Chippewa Indians.
- e) "Ice Fishing" means fishing by a method permitted by this Order and occurring through an artificial hole in the ice.

Part III - REGULATIONS

301. Seasons. Seasons are as follows:

- a) Spearing: Ice-in through April 1, 1988.
- b) All other permitted methods: Ice-in to ice-out.

302. Bag Limits. Bag limits are as follows:

- a) Lake trout: 4 per day per person.
- b) Muskellunge: 2 per day per person.
- c) All other species: No limit.

303. Size Limits. Minimum size limits are as follows:

- a) Lake trout: 17 inches.
- b) Muskellunge: 30 inches for the Chippewa Flowage, Big Lac Courte Oreilles, Grindstone Lake and Squirrel Lake.
- c) All other species: No size limits.

304. Sturgeon closed season. No sturgeon may be taken.

305. Hole size restrictions. Restrictions on ice fishing hole sizes are as follows:

- a) All permitted methods other than spearing: no larger than 12 inches in diameter.
- b) Spearing: No larger than 24 inches X 36 inches.
- c) All unattended holes created for the purpose of ice fishing shall be reasonably marked so as to be visible to vehicular traffic.

306. Permissible ice fishing methods. Permissible methods are as follows: spearing, hook and line, tip up and hand line. No member shall share gear with anyone not a member of Mille Lacs Band or Lake Superior Chippewa Tribe.

307. Unattended line fishing. Unattended line fishing shall be conducted only in conformance with the following conditions

- a) All unattended lines shall have attached a single iron hook with a maximum 1/2 inch point to shank gape.
- b) All unattended lines shall be of a biodegradable material and shall be securely anchored so as not to be dislodged by a hooked fish.
- c) All unattended lines must be tagged with a valid metal identification tag obtained from the tribe indicating the fisher's name and tribal affiliation.
- d) Any member fishing with unattended lines shall, prior to doing so, inform the Tribe of his or her name, address, phone number and lakes upon which the member intends to fish with unattended lines.
- e) Each unattended line shall be checked at least once every 24 hours unless severe weather conditions render it hazardous to human life or health to do so.

308. Number of lines. Tribal members shall have in use no more than a total of 30 attended or unattended lines at any one time. All lines must be placed in no more than 3 lakes at any given time.
309. Poison and explosives. Use of poisons and explosives to take fish through the ice is prohibited.
310. 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.
311. Prohibited live bait. The following live fish are prohibited for use as bait: carp, goldfish, red horse, freshwater drum, burbot, bowfin, garfish, buffalo fish, lamprey, alewife, smelt, goldeye, mooneye, carpsucker, quillback, and crayfish.
312. Ice fishing shanties. Ice fishing shanties shall be equipped with a latch which will permit the door to be readily opened from the outside at all times while the enclosure or shelter is occupied. All such shanties shall be removed from the ice on or before March 5 on all waters south of Highway 64 and March 15 on all waters north of Highway 64. Portable shelters may be used after the removal dates. All shanties used for ice fishing purposes shall have the name and residential address of the person owning the shanty displayed on the outside of the shanty.
313. Waste of natural resources. No member shall unreasonably waste, injure, destroy, or impair natural resources while ice fishing.
314. Tribal identification. Any tribal member who has been issued a photo identification card by his tribe shall carry such card when ice fishing off-reservation. If a member has not been issued such a card by the tribe, he shall carry other identification documents approved by the tribe. Identification shall be displayed upon request by tribal, Great Lakes Indian Fish and Wildlife Commission, state, or local law enforcement personnel.
315. Experimental lakes. Special restrictions applicable to lakes upon which the Wisconsin Department of Natural Resources is conducting fish management experiments shall apply to members throughout the ice fishing season. Where ice fishing activities will not interfere with a lake's fish management experiments, tribal members may ice fish pursuant to this ordinance. This provision applies to the following lakes:
- a) Bayfield County: Balsam Lake, Beaver Lake, Blaisdell Lake, Little Star Lake, Mimi Lake, Nymphia Lake, and Spring Lake.
 - b) Iron County: Long Lake, Pine Lake.
 - c) Langlade County: Kimball Lake, McGee Lake, Mueller Lake, Sawyer Lake and the Wolf River.
 - d) Lincoln County: Ament Lake and Tahoe Lake.
 - e) Marathon County: Plover River.
 - f) Marinette County: Peshtigo River.
 - g) Oneida County: Clear Lake and Little Bass Lake.
 - h) Polk County: Blake Lake, Bone Lake, and Loveless Lake.
 - i) Rusk County: South Fork, Main Creek.
 - j) Sawyer County: Nemakegon River and Winter Lake.
 - k) Vilas County: Big Lake, Little Arbor Vitae Lake, Escanaba Lake, Mystery Lake, Nebish Lake, Palette Lake, Spruce Lake, Trout Lake, Wabasso Lake, and Wildwood Lake.

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- p) April 25 - May 14.
 - 1) Rusk County: Thornapple River.
- q) First Saturday in May to June 1.
 - 1) Iron County: Manitowish River.
 - 2) Vilas County: Manitowish River.
- r) September 1 - May 31.
 - 1) Bayfield County: Sioux River
- s) Open only in State muskellunge season.
 - 1) Rusk County: Flambeau River.

317. Non-Member Use Restrictions. No member shall lend, sell, or give to any non-member any tag, permit, or identification issued by the tribe pursuant to this order.

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 of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby authorized 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. §23.054.
- 403. Seizure of Evidence. Tribal, Commission, and Wisconsin conservation wardens are empowered to seize evidence in connection with the institution of proceedings in tribal court.
- 404. Seized fish. Fish which are seized in connection with cases referred to tribal court for prosecution shall be turned over to the tribe. Such fish shall not be returned by the tribal court or tribal officials to the convicted violator, his immediate family or other members of the fish party.
- 405. Registration information. Tribal and Commission wardens are empowered to request and receive from tribal tag and registration stations information regarding line tag issuance.
- 406. 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 other provision of this ordinance, a forfeiture of not more than \$500.00
 - b) For any violation of any other provision of this ordinance, a revocation of off-reservation ice fishing privileges may be ordered for a period of time to be determined by the court.
- 407. 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.
- 408. Collection of Money Penalties. Enforcement of the penalties imposed by Sec. 406 and 407 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.

316. Closed Waters. The following bodies of waters are closed throughout the ice fishing season: springs, spring ponds, trout streams, and fish refuges. A trout stream is any body of water so classified by the State of Wisconsin and listed as a Trout Stream in Wisconsin Trout Streams, D.N.R. Publ. #6-3600 (80). The following fish refuges, as specifically described in the Great Lakes Indian Fish and Wildlife Commission's publication, "Tribal Fish Refuges," shall be closed to ice fishing on the dates listed:
- a) Year around.
 - 1) Chippewa County: Chippewa River.
 - 2) Iron County: Flambeau River.
 - 3) Sawyer County: Chippewa River (west fork), Spider Creek.
 - 4) Vilas County: Manitowish River, Rice Creek, and Trilby Lake.
 - b) January 1 - May 1
 - 1) Dunn County: Red Cedar River.
 - c) March 1 to Date Immediately Preceding State Season:
 - 1) Eau Claire County: Eau Claire River.
 - d) March 1 - May 15.
 - 1) Douglas County: St. Louis River
 - e) April 1 to Date Immediately Preceding State Season.
 - 1) Price County: Solberg Creek and Squaw Creek.
 - f) April 1 - April 30.
 - 1) Clark County: South Fork Eau Claire River.
 - g) April 1 - May 14.
 - 1) Iron County: Gile Flowage, Turtle Flambeau Flowage, Turtle River, Mercer Creek, Fisher and Catherine Lakes.
 - 2) Sawyer County: Conners Creek, Island Creek, Knutson Creek, Melvinay Creek, Squaw Creek, Totgatic River and an unnamed stream (from S16, T37W, R9W upstream to a point 1,000 feet above Hwy 48).
 - 3) Washburn County: Balsam Lake Outlet, Bear Creek, Birch Creek, Little Mud Lake Outlet, and Slim Creek.
 - h) April 1 - May 31.
 - 1) Barron County: Sand Creek, Staples Creek, Beaver Dam Lake inlets, Cumberland ditch, Granite Lake inlet, Duck Lake inlet, Silver Lake inlet, Hemlock Creek, and Turtle Creek.
 - 2) Bayfield County: Pikes Creek.
 - 3) Polk County: Balsam Branch, Butternut Creek, Harder Creek, Horse Creek, and Sucker Creek.
 - 4) Rusk County: Swift Creek.
 - 5) Sawyer County: Brunet River, Couderay River, and Chippewa River.
 - i) April 10 to Date Immediately Preceding State Season.
 - 1) Oneida County: Wisconsin River, Pelican River, and Little Rice Creek.
 - j) April 10 - May 10.
 - 1) Oneida County: Squirrel River.
 - 2) Vilas County: Helen Creek, Spring Creek, Big Arbor Vitae Lake and Little Arbor Vitae Lake.
 - k) April 10 - May 15.
 - 1) Vilas County: Little St. Germaine Lake.
 - l) April 10 - May 20.
 - 1) Oneida County: Tomahawk River.
 - m) April 15 - May 15.
 - 1) Bayfield County: Eau Claire Chain of Lakes.
 - n) April 15 - June 1.
 - 1) Burnett County: Clam River.
 - 2) Sawyer County: Chief River, Whitefish Creek, and Chippewa River.
 - o) April 15 - June 15.
 - 1) Price County: Big Elk River.

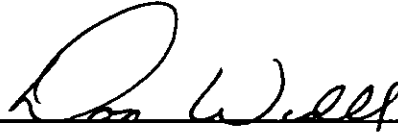
409. Hearing in Tribal Court. The Court of Central Jurisdiction shall adjudicate all matters arising under this order, pursuant to the provisions of the Band Statute 1024-MLC-3.
410. Members of other tribes, issuance of permits, Tags, Registration. The tribal court is authorized to adjudicate violations by any member of the Keweenaw Bay Indian Community or the Mille Lacs Band of Mississippi Indians of the off-reservation ice fishing ordinance of either tribe provided:
- a) The ordinance is in conformance with the 1987-88 Off-Reservation Ice Fishing Season Agreement between the Plaintiff Tribes in Lac Courte Oreilles Band, et al., v. State of Wisconsin, et al., and
 - b) The tribe has authorized the adjudication.
411. Issuance of Unattended Line Tags. The tribal conservation department is authorized to issue unattended line tags to members of the tribe and of any other tribe which has adopted an ordinance in conformance with the 1987-88 Off-Reservation Treaty Ice Fishing Season Agreement between the Plaintiff Tribes in Lac Courte Oreilles Band, et al., v. State of Wisconsin, et al.
412. Parties to a Violation.
- a) Whoever is concerned in the commission of a violation of this ordinance 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.

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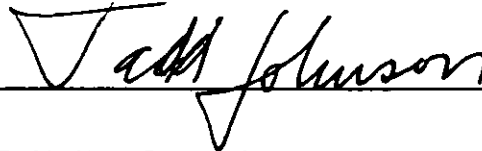
DATED at Vineland, Minnesota this seventh day of January in the year one thousand nine hundred and eighty-eight.



Don Wedl

Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO
FORM AND EXECUTION



Solicitor General

OFFICIAL SEAL OF THE BAND