

COMMISSIONER'S ORDER NO. 78-88  
Natural Resources

A Commissioner's Order to ratify the Intertribal - State of Wisconsin Spring Fishing Agreement and to establish the Off-Reservation 1988 Spring 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 spring 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 spring 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 1986-87 Off-Reservation Spring 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 Spring Fishing Regulations are established for the 1988 Spring Fishing Season, east of the St. Croix River for members of the Mille Lacs Band of Chippewa Indians.

OFF-RESERVATION 1988 SPRING 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 1988 Spring 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 spring spearing 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 spring spearing 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 7, 1988.
105. Interpretation. The provisions of this order shall be interpreted and applied as minimum requirements applicable to spring spearing 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 Spring 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) "Ratifying tribe" means any tribe which has ratified the 1988 Spring Fishing Agreement by and between the tribal and state parties in Lac Courte Oreilles v. State of Wisconsin, approved an ordinance in conformity therewith, and supplied a copy of such ordinance to the Wisconsin Department of Natural Resources.
- f) "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.
- g) "Spear" means a pole tipped with a minimum of three barbed lines which are a minimum of 4 1/2" long.
- h) "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.
- i) "Spring spearing season" means the period of time from the effective date of this order through May 7, 1988.

Part III - REGULATIONS

301. Bag and size limits.

- a) No member shall exceed the following nightly bag and size limits:

1. <u>Muskellunge</u>	1/night, subject to sec. 302(b).	None
2. <u>Bass</u>	10/night	None
3. <u>Lake Trout</u>	4/night	None
4. <u>Lake Sturgeon</u>	1/season	None

- b) Walleye.

- 1. Size limit: No member shall take any walleye greater than 20 inches in length, except that one walleye no greater than 24 inches and one walleye of any size shall be allowed per nightly bag limit.
- 2. Bag Limit: No member shall exceed the bag limit as established by the tribal council or its designatee, or as established by any other ratifying tribe for any particular lake for any particular night.

- c) Special bag limits in streams and rivers:

a. Sturgeon	1 per night per stream (allboats)
b. Muskellunge	1 per boat per night
c. Walleye	5 per night per

- 302. a. Walleye permits. No member shall fish on any lake, river or stream for which a permit is required by the tribal council, its designee, or any other ratifying tribe without obtaining and having in his possession while fishing a valid permit for the lake, river and the night.
- b. Muskellunge closure. The Tribal Council or its designee may close any lake, river or stream to fishing muskellunge, the bag limit provided in sec. 301 (a) notwithstanding.

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303. 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.
304. Fishing season. No member shall fish except during the season as established by the tribal council or its designee.
305. Fishing hours. No member shall engage in fishing activity on any lake, rivers or streams except from dusk until 5:00 a.m. of the following morning.
306. Fishing locations.
- a) No member shall on any night fish using a spear or dip net except on lake, rivers and streams selected for that night by the tribal council or its designee.
  - b) No member shall on any night fish using a seine without a valid permit for the use of a seine specifying the lake, river or stream to be seined and the night of seining.
  - c) No more than 4 boats and 12 spearers shall be allowed to fish on any designated stream or stream segment. No stream or stream segment shall be designated for more than two nights.
307. Lake partially on a reservation. The provisions of this ordinance shall apply to any lake, river or stream partially on a reservation.
308. Prohibited locations. No member shall fish in any:
- a) River or stream, including lake inlets, outlets and connecting channels except a river or stream designated pursuant to section 306; or
  - b) In any of the following refuges:
    - 1) Trilby Lake (Camp 7), sections 11, 12, 13, and 14, township \_\_\_\_ north, range 6 east.
    - 2) 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.
    - 3) 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.
    - 4) 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.
309. Landings. No member shall enter or leave any lake, river or stream for the purpose of, or having done, any spearing, dip netting, or seining, except by those landings specified by the tribal council or its designee.
310. 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.
311. Sturgeon Tagging. Any sturgeon taken by a member shall be tagged and registered with the tribe before 4:30 p.m. on the following day.

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312.. Tribal Identification.

- 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 shall refuse to display his or her identification documents, including any walleye permits, upon request of any tribal, state, or local law enforcement officer.

313. Waste of natural resources. No member shall unreasonable waste, injure or destroy, or impair natural resources while fishing.

314. 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.

315. Methods permitted. No member during the spring spearing season may engage in any fishing method other than the use of a spear, dip net or seine as authorized by this order.

316. Prohibitions.

- a) No tribal member may spear, dip net or seine within 50 yards of a Wisconsin Department of Natural Resources or tribal assessment net or its leads.
- b) No tribal member may have a spear, dip net or seine in a refuge or on any water where spearing, dip netting or seining is not permitted, except a seine may be possessed while leaving a seining lake, river or stream when the tribal TAC for that lake, river or stream has been reached.
- c) No tribal member may share his or her fishing gear or bag limit or possession limit with an individual who is not a tribal member.
- d) No tribal member may sell any fish taken off-reservation if the fish was taken during the effective period of this order.

317. Band designation.

- a) The Band designee under sections 301 (b)(2) (walleye bag limit), 302 (a) (walleye permits), 304 (season), 306 (a) (lake selections), and 309 (landings), and shall be David Matrious.
- b) The Band designee under section 302 (b) (muskellunge closure) shall be David Matrious.

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 or 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. The Officer shall have the discretion to allow a "grace" of up to 1 inch in measurement on 20 inch and 24 inch walleyes.

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. S23.054.

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:
- For a violation of double or more the bag limit established pursuant to sec. 301 (b) (2) (walleye), a forfeiture no less than \$150.00 and no greater than \$5000.00 plus a forfeiture no less than \$8.75 and no greater than \$5000.00 for each walleye in excess of double the bag limit.
  - For any violation of more than double the bag limit specified by sec. 301 (a) (1) (muskellunge), a forfeiture no less than \$75.00 and no greater than \$5000.00 for each muskellunge overbag limit.
  - For a violation of more than double the bag limit in sec. 301 (a) (2) (bass), a forfeiture of no less than \$25.00 per bass in excess of double the nightly bag limit.
  - For a violation of more than double the bag limit in sec. 301 (a) (4) (sturgeon), a forfeiture of no less than \$400.00 per sturgeon in excess of double the nightly bag limit.
  - For a violation of section 308 (a), spearing in rivers, streams, channels, inlets and outlets, a forfeiture of no less than \$150.00 and no greater than \$5000.00 plus a forfeiture of no less than \$8.75 for each walleye, no less than \$75.00 for each muskellunge, and no less than \$400.00 for each sturgeon, each per fish forfeiture not to exceed \$5000.00.
  - For a violation of section 301 (b) (1) size limits (walleye), a forfeiture of no less than \$50.00 and no greater than \$5000.00 plus a forfeiture of \$8.75 per walleye for possessing more than 2 walleyes in violation and a forfeiture of no less than \$50.00 and no greater than \$5000.00 plus a forfeiture of \$8.75 per walleye for possession of more than one walleye in excess of 24".
  - For a violation of sec. 302 (a) (spearing without a permit where required), a forfeiture of no less than \$100.00 and no greater than \$5000.00 plus a forfeiture of \$8.75 per walleye taken in violation of said section.
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, issuance of permits, Tags, Registration. The tribal conservation department is authorized to adjudicate alleged violations by any member of the Keweenaw Bay Indian Community of the Mille Lacs Band of Chippewa Indians of the off-reservation spring spearing order of either tribe provided:
- The ordinance is in conformance with the 1988 Chippewa Indian Off-Reservation Spring Fishing Season Agreement by and between the tribal and state parties in Lac Courte Oreilles Band, et al., v. State of Wisconsin, et al., and
  - The Band 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. Bag limits, permit requirements of other tribes. The tribal conservation department is authorized and directed to enforce against members of the tribe the bag limits and permit requirements established by any other ratifying tribe.
410. 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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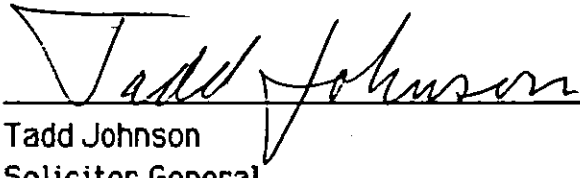
DATED at Vineland, Minnesota this twelveth day of April in the year one thousand nine hundred and eighty-eight.



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Don Wedll  
Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO  
FORM AND EXECUTION



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Tadd Johnson  
Solicitor General

OFFICIAL SEAL OF THE BAND