

COMMISSIONER'S ORDER NO. 76-88
Natural Resources

A Commissioner's Order to ratify the 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 1986-87 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.

AGREEMENT

**By and Between the Plaintiff Tribes
in Lac Courte Oreilles Band v. State of Wisconsin
Governing the 1987-88 Chippewa Indian Off-Reservation
Treaty Ice Fishing Season**

THIS AGREEMENT is made and entered into this _____ of 1988, by and between the following parties: the Plaintiffs, the Bad River Band of Lake Superior Tribe of Chippewa Indians ("Bad River"); the Lac Courte Oreilles Band of Lake Superior Chippewa Indians ("Lac Courte Oreilles"); the Lac du Flambeau Band of Lake Superior Chippewa Indians ("Lac du Flambeau"); the Red Cliff Band of Lake Superior Chippewa Indians ("Red Cliff"); the St. Croix Chippewa Indians of Wisconsin ("St. Croix"); the Sokaogon Chippewa Community of the Mole Lake Band ("Mole Lake") (hereinafter collectively referred to as the "Tribes").

INTRODUCTION

The purpose of this agreement is to state the terms and conditions which the parties have agreed will be in effect for the purpose of regulating ice fishing during the 1987-88 Chippewa Indian Off-Reservation Treaty Ice Fishing Season ("1987-88 Treaty Season"). This agreement is effective only for the period of time listed in the terms of this agreement. It may not be used for any purpose in this or any other proceeding after the expiration of this agreement, except that provisions of this agreement shall remain in effect to the extent needed for the prosecution and defense of violations occurring during the term of this agreement. This agreement shall apply to member ice fishing activities on inland public navigable waters in the ceded territories located outside of the exterior boundaries of Chippewa Indian reservations in Wisconsin.

Article I

The parties agree that ice fishing activities by members of the tribes during the 1987-88 Treaty Season will be subject to the following conditions and regulations.

1. Seasons. The term of the 1987-88 Treaty Ice fishing Season shall be as follows:
 - a) Spearing: Ice-in through April 1, 1988.
 - b) All other permitted methods: Ice-in to ice-out.
2. Ice Fishing Defined. Ice fishing, as that term is used in this agreement, shall mean fishing by a method permitted by this agreement and shall only occur through an artificial hole in the ice.
3. Bag Limits. The following fish bag limits shall be in effect through the term of this agreement and shall be enforceable against tribal members throughout the terms of this agreement.
 - a) Lake trout: 4 per day per person.
 - b) Muskellunge: 2 per day per person.No other bag limits are in effect for any species taken pursuant to this agreement.

4. Minimum Size Limits. The following minimum fish size limits shall be in effect throughout the term of this agreement and shall be enforceable against tribal members throughout the term of this agreement:
 - a) Lake trout: 17 inches.
 - b) Muskellunge:
30 inches for the Chippewa Flowage, Big Lac Courte Oreilles, Grindstone Lake and Squirrel Lake.
25 inches for all other bodies of water.No other size limits are in effect for any species of fish taken pursuant to this agreement.
5. Closed season. There shall be a closed season on sturgeon. All other species of fish may be taken pursuant to the conditions set forth in this agreement.
6. Hole size. The following restrictions on ice fishing hole sizes shall be in effect for the term of this 1987-88 Treaty Ice Fishing Agreement:
 - 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.
7. Permissible Methods. The following methods are the permissible methods of ice fishing pursuant to this agreement: spearing, hook and line, tip up and hand line fishing. Tribal members shall not share gear with nontribal individuals.
8. Unattended Lines. The following restrictions on the use of unattended lines shall be in effect for the term of this 1987-88 Treaty Ice Fishing Agreement.
 - a) Unattended lines may be used only with a single iron hook with a maximum 1/2 inch point to shank gape, on each line.
 - b) 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 shall be tagged with a metal identification tag upon which is marked the fisher's name and tribal affiliation.
 - d) Prior to any treaty ice fisher fishing any lake with unattended lines, a tribe or the Great Lakes Indian Fish and Wildlife Commission shall notify the appropriate Department of Natural Resources area office of the specific lakes upon which the treaty ice fisher intends to use unattended lines. Lakes may be added or deleted to the list of lakes to be fished with unattended lines.
 - e) Each unattended line shall be marked with an object of a height at least one foot above the snow line.
 - f) Each unattended line shall be lifted at least once every 24 hours. Enforcement personnel shall take severe weather conditions into account when enforcing this requirement.
9. Assessment. The Great Lakes Indian Fish and Wildlife Commission shall estimate the 1987-88 treaty ice fishing muskellunge harvest by lake surveyed.
10. Number of lines. Tribal fishers shall have in use no more than a total of 30 attended or unattended lines at any one time. No tribal fisher may place or attend lines in more than three lakes at a time.
11. Poison and explosives. Use of poisons and explosives to take fish through the ice is prohibited.

12. Closed Bodies of Waters. The following bodies of waters are closed for purposes of this agreement: 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 Wisconsin Administrative Code, shall be closed for purposes of this agreement 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. April 25 - May 14.
 - 1) Rusk County: Thornapple River.
- d) April 1 to Date Immediately Preceding State Season.
 - 1) Price County: Solberg Creek and Squaw Creek.
- e) 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, Knuteson Creek, Melviney Creek, Squaw Creek, Totgetic 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.
- f) March 1 to Date Immediately Preceding State Season:
 - 1) Eau Claire County: Eau Claire River.
- g) 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.
- h) September 1 - May 31.
 - 1) Bayfield County: Sioux River
- i) April 15 - May 15.
 - 1) Bayfield County: Eau Claire Chain of Lakes.
- j) April 1 - April 30.
 - 1) Clark County: South Fork Eau Claire River.
- k) Open only in State muskellunge season.
 - 1) Rusk County: Flambeau River.
- l) April 15 - June 1.
 - 1) Burnett County: Clam River.
 - 2) Sawyer County: Chief River, Whitefish Creek, and Chippewa River.
- m) 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.
- n) April 10 to Date Immediately Preceding State Season.
 - 1) Oneida County: Wisconsin River, Pelican River, and Little Rice Creek.
- o) April 10 - May 20.
 - 1) Oneida County - Tomahawk River.

- p) April 10 - May 15.
 - 1) Vilas County: Little St. Germaine Lake.
 - q) First Saturday in May to June 1.
 - 1) Iron County: Manitowish River.
 - 2) Vilas County: Manitowish River.
 - r) March 1 - May 15.
 - 1) Douglas County: St. Louis River
 - s) April 15 - June 15.
 - 1) Price County: Big Elk River.
13. 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.
14. 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. A tribal member holding any such document shall display it upon request by state or local law enforcement personnel and is not required to hold or obtain a state license to ice fish under this agreement. The tribes agree to verify membership during normal tribal business hours.
15. 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 ice fishing pursuant to this agreement. Where ice fishing activities conducted pursuant to this agreement would not interfere with a lake's fish management experiments, tribal members shall be allowed to ice fish pursuant to this ordinance. The following lakes have current ongoing research projects and are specially regulated:
- 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: Namakegon River and Winter Lake.
 - k) Vilas County: Big Lake, Little Arbor Vitae Lake, Escanabe Lake, Mystery Lake, Nebish Lake, Palette Lake, Spruce Lake, Trout Lake, Wabasso Lake, and Wildwood Lake.
16. 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.
17. Waste of natural resources. No member shall unreasonable waste, injure, destroy, or impair natural resources while engaged in ice fishing activities pursuant to this agreement.
18. 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.

Article II

1. Prosecution of Violation. Any act by a tribal member, arising from ice fishing activity during the 1987-88 Treaty Ice Fishing Season, shall be referred for prosecution to the tribal court of the person's tribe, provided that the tribe maintains a tribal court with jurisdiction over ice fishing by its members, has adopted and agreed to enforce and has in force at the time of the violation a code of regulation incorporating the regulation described in this agreement and has supplied a copy of the code to the Great Lakes Indian Fish and Wildlife Commission and the other parties. The tribe's regulations shall apply to the tribe's members when ice fishing off the reservation during the 1987-88 Treaty Ice Fishing Season and shall be no less restrictive than prescribed in this agreement. All tribal codes adopted pursuant to this agreement must contain a provision indicating that if the code does not contain as restrictive as a provision in this Agreement, the provision in this agreement is applicable to treaty ice fishing and is automatically incorporated into the tribal code.
2. Law Enforcement.
 - a) Any provision of the regulations adopted pursuant to this Agreement shall be enforceable by tribal conservation wardens or by conservation wardens of the Great Lakes Indian Fish and Wildlife Commission. The Tribes agree to empower the Commission wardens to enforce the provisions of the ordinance adopted pursuant to this Agreement. Unless specifically provided by tribal ordinance or resolution Commission wardens enforcement activities shall be confined to off-reservation areas except:
 1. When the warden is in hot pursuit of a tribal member who flees onto a reservation; or
 2. When the warden has probable cause to believe that a violation of an ordinance adopted pursuant to this Agreement has been committed and that the individual under investigation has committed the violation; or
 3. At the request of the tribal prosecutor.
 - b) The Tribes agree to empower Wisconsin conservation wardens and deputy conservation wardens to enforce off-reservation the provisions of the ordinances adopted pursuant to this Agreement and to allow the institution of proceedings in tribal court by use of citation forms of the Wisconsin Department of Natural Resources, as described in sec.23.054, Wis.Stats.
 - c) Tribal, Commission, and Wisconsin conservation wardens are empowered to seize evidence in connection with the institution of proceedings in tribal court.
 - d) Tribal Commission and Wisconsin law enforcement personnel shall use the utmost discretion in the retention of seized equipment of tribal members apprehended in a violation of this Agreement, thereby recognizing the hardship such retention may have on the exercise of the tribal members treaty rights. Every reasonable effort shall be made to return the equipment as soon as possible when confiscation is not sought and when retention is not needed for prosecution. The disposition of seized equipment shall be determined by the court in which the enforcement action is brought. Tribal wardens shall cooperate with the Commission and State wardens in enforcing the terms of the ordinance adopted pursuant to this Agreement.
 - e) Fish 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 a convicted violator, his immediate family or other members of the fishing party.
 - f) Tribal and Commission wardens are empowered to request and receive from tribal permit issuance and registration stations information regarding permit issuance and registration.
3. Members of other Tribes, Tribal Adjudication. The Tribes agree to authorize their tribal court to adjudicate alleged violations by any member of the Keweenaw Bay Indian Community or the Mille Lacs Band of Mississippi Chippewa Indians of the off-reservation fishing ordinance of either tribe provided:
 - a) The ordinance is in conformance with the 1987-88 Off-Reservation Treaty Ice Fishing Season Agreement by and between the Plaintiff Tribes in Lac Courte Oreilles, et al. v. State of Wisconsin, et al., and
 - b) The Tribe has authorized the adjudication.

4. Members of Other Tribes, Permits, Tags, and Registration. The Tribes agree to authorize their conservation departments to issue unattended line tags to members of any tribe which has adopted an ordinance in conformance with the 1987-88 Off-Reservation Treaty Ice Fishing Season Agreement by and between the Plaintiff Tribes in Lac Courte Oreilles Band, et al. v. State of Wisconsin, et al.
5. Parties to a Crime. All tribal codes adopted pursuant to the Agreement must contain a provision allowing the prosecution of a member who aids and abets the commission of a violation of that code, or who is a party to a conspiracy with another to commit, or advises, hires or counsels or otherwise procures another to commit a violation.
6. Non-Member Use Restrictions. All tribal codes adopted pursuant to this Agreement must contain a provision prohibiting a member from lending, selling, or giving to any non-member any tag, permit or identification issued by the Tribe pursuant to such codes.

Article III

1. After the date of expiration of this agreement, this agreement shall neither establish nor constitute any principle or precedent binding in this or any other proceeding upon the parties.
2. The execution and submission of this agreement shall not be deemed in any respect to constitute an admission by any party that any allegation made in this proceeding is true or valid or that any contention of law is correct or binding and shall not be deemed to foreclose any party from making any allegation or contention in this or any subsequent proceeding involving the same subject matter.
3. The discussion between the parties which have resulted in this agreement have been conducted on the explicit understanding that all offers of settlement, and writing and discussion relating thereto, are and shall be privileged and shall be without prejudice to the positions of the parties and are not to be used in any manner in connection with this proceeding or otherwise, except in court proceedings as authorized by applicable rules of evidence. The parties agree that all such offers, writing and discussions are inadmissible as evidence in this proceeding pursuant to Rule 408 of the Federal Rules of Evidence.

Article IV

1. The parties agree that any controversies, disputes, differences or misunderstandings arising out of this agreement (except for violations of regulations listed in Article I) shall be referred to designated representatives for consultation before any further action is taken by any party.
2. The parties agree to supply each other with preliminary information on their respective ice fishing harvests as soon as information is available and to contemporaneously exchange final reports by mutual agreement between their biological staffs as to date.

Article V

This agreement is effective as of the date of approval of the second party hereto for each of the first two tribes to approve this Agreement, and, as to each subsequently approving tribe, the date of that tribe's approval.

The Mille Lacs Band of Chippewa Indians hereby approves the 1987-88 Inter-Tribal Off-Reservation Treaty Ice Fishing Agreement.

Date: _____

By: _____

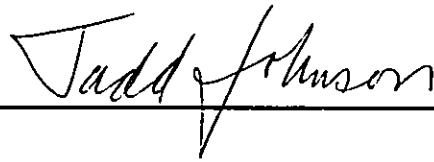
Position: _____

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



Don Wedell
Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO
FORM AND EXECUTION



Solicitor General

OFFICIAL SEAL OF THE BAND