

**COMMISSIONER'S ORDER NO. 199-95**  
**Natural Resources**

A Commissioner's Order to regulate Mille Lacs Band members' winter fishing of designated species only within the Minnesota 1837 Treaty Area.

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

WHEREAS, the Federal District Court for the District of Minnesota in Mille Lacs Band v. State of Minnesota, No. 3-94-1226, has found that the Band retains rights to hunt, fish and gather under the 1837 Treaty, but has not resolved all issues regarding state regulatory authority or resource allocation; and

WHEREAS, the Band desires to permit its members to exercise their 1837 treaty rights to some extent pending final resolution of such litigation; and

WHEREAS, the purpose of this order is to permit a limited exercise of 1837 treaty rights pending final resolution of such litigation by opening a winter fishing season for designated species only within the Minnesota portion of the 1837 ceded territory; and

WHEREAS, the Mille Lacs Band deems it necessary and appropriate to provide for an orderly system of tribal control and regulation of such winter fishing, and;

WHEREAS, the Mille Lacs Band further deems it necessary and appropriate to provide for the conservation and management of fish populations found in the ceded territory through the regulation of members' winter fishing; and

WHEREAS, the Commissioner of Natural Resources has the authority to regulate the harvest of natural resources within the jurisdiction of the Mille Lacs Band of Ojibwe Indians under Band Statute 1162-MLC-50, Sec. 3, and Band Statute 1092-MLC-25, et seq.; and

WHEREAS, the taking of fish by Band Members under the 1837 treaty is a harvest of natural resources under the jurisdiction of the Mille Lacs Band of Ojibwe Indians; and

WHEREAS, given the limited purpose of this order, nothing herein or the application thereof shall be construed by any government, agency, person or circumstance as a waiver by the Mille Lacs Band of its rights under the 1837 treaty or its authority

to fully exercise those rights upon a final adjudication by the court; and

NOW THEREFORE, by the authority vested in me by the Mille Lacs Band of Ojibwe Indians pursuant to Band Statute 1162-MLC-50, Section 3, I, Don Wedll, Commissioner of Natural Resources for the Mille Lacs Band of Ojibwe Indians hereby establish the following Winter fishing regulations for the Minnesota portion of the 1837 treaty ceded territory.

### **Minnesota FY '95' Winter Fishing Season Chapter 1 - Regulations**

**1.01 Definitions.** For the purpose of this Commissioner's Order, the following terms shall be construed as follows:

- (1) "Hook and Line" means a rod and reel or similar device including a tip up and hand held lines.
- (2) "Ice Fishing" means fishing through an artificial hole in the ice.
- (3) "Spear" means a pole tipped with a minimum of three barbed tines which are a minimum of 4-1/2" long and each tine having a barb extending perpendicular which is greater than 1/8 inch; and when used as a verb, 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, and may include the use of artificial light. When used as a verb, spear shall also mean snagging for the purpose of this order.
- (4) "Snagging" means attempting to take or reduce a fish to possession by hooking a fish in a place other than the mouth by the use of a hook and line or any other device which is not a net or spear.
- (5) "Unattended" means beyond visual contact for a period of more than 1 hour.

**1.02 Open and Closed Season.** A closed season is hereby established for fishing except for the open seasons specified in this Commissioner's Order.

**1.03 Fish Available for Harvest.** The quantity of fish available for harvest pursuant to this Commissioner's Order for each twelve month period from April 1 through March 31 shall be limited by the management measure

(including closed seasons, method restrictions, bag limits and size limits) set forth herein and by any quotas established by the Commissioner after consultation with the State Department of Natural Resources.

**1.04 Fishing Permits/Tags.**

(1) No member shall hook and line fish pursuant to this Commissioner's Order without possessing a valid fishing permit and Band photo identification.

(2) No member shall fish with the use of a spear, while ice fishing, pursuant to this order without possessing a spearing permit bearing the member's Band identification number and valid for the dates which the member is spearing, and Band photo identification.

(3) In addition to requirements of 1.04 (2):

- (a) no member shall fish for northern pike with the use of a spear while ice fishing under this order after February 20, 1995, without possessing a permit valid for the lake at which the member is spearing;
- (b) no such permit shall be valid for more than seven days;
- (c) no member shall receive more than one such permit at a time;
- (d) such permit shall require the member to report the number of northern pike harvested to the Mille Lacs Department of Natural Resources at the end of the seven-day (or shorter) permit period;
- (e) no member shall receive a new permit under this subsection who has not complied with such reporting requirements.

**1.05 Seasons, Methods, Bag Limits, and Size Limits.**

(1) No member shall take, catch, kill or fish for any species of fish in excess of the bag limit, by means other than those enumerated, during other than the open season, below the minimum size limit, above the maximum size limit or in locations other than those established by this section.

(2) For the purposes of bag limits, "day" shall mean a continuous 24 hour period starting at 12:00 clock midnight.

(3) The following table hereby establishes the open season, permissible methods, daily bag limits and size limits for the enumerated species of fish in the identified locations.

(4) This Order establishes open seasons for "Ice Fishing" only. Ice fishing is defined above as fishing through an artificial hole in the ice. Ice fishing may be conducted under this Order by hook and line or by spear, subject to the regulations contained herein. However, no fishing other than ice fishing is authorized by this Order.

**Open Season - Kind of Fish**

(a) *Walleye.*

	<u>Locality Permitted</u>	<u>Dates are inclusive</u>	<u>Bag Limit</u>	<u>Maximum or/and Minimum Size Limits</u>
(i)	All waters	Jan 15-Feb 20,95	6 per person/day	None

*Methods:* Ice fishing by hook & line.

(b) *Northern Pike.*

	<u>Locality Permitted</u>	<u>Dates are inclusive</u>	<u>Bag Limit</u>	<u>Maximum or/and Minimum Size Limits</u>
(i)	All waters	Jan 15-Feb 20,95	3 per person/day*	None

*Methods:* Ice fishing by hook & line.

\* Platte lake and Sullivan lake no taking of Northern Pike between 24-30 inches in length.

	<u>Locality Permitted</u>	<u>Dates are inclusive</u>	<u>Bag Limit</u>	<u>Maximum or/and Minimum Size Limits</u>
(ii)	All waters	Jan 15-Ice out FY 95	3 per person/day*	One per day over 30 inches

*Methods:* Ice fishing by spearing,

\* Platte lake and Sullivan lake no spearing of Northern Pike between 24-30 inches in length.

\* Cross lake in Pine County and Rush lake in Chisago County closed to spearing northern pike.

(c) *White Bass, Rock Bass, Bluegill, Crappie, Pumpkinseed, Yellow Perch, Bullheads, Yellow Bass, Catfish.*

	<u>Locality Permitted</u>	<u>Dates are inclusive</u>	<u>Bag Limit</u>	<u>Maximum or/and Minimum Size Limits</u>
(i)	All waters	Year Around	20 per person/day*	None

*Methods:* Ice fishing by hook & line.

\* Limit per species as defined in this section.

(d) *Cisco and Whitefish.*

	<u>Locality Permitted</u>	<u>Dates are inclusive</u>	<u>Bag Limit</u>	<u>Maximum or/and Minimum Size Limits</u>
(i)	All waters	Year Around	None	:None

*Methods:* Ice fishing by hook & line.

(e) *Rough Fish.*

	<u>Locality Permitted</u>	<u>Dates are inclusive</u>	<u>Bag Limit</u>	<u>Maximum or/and Minimum Size Limits</u>
(i)	All waters	Year Around	None	None

*Methods:* Ice fishing by hook & line fishing or by spearing.

**1.06 Ice Fishing Regulated.**

(1) No member shall ice fish by the use of hook and line through a hole larger than 12 inches in diameter.

(2) No member shall ice fish by the use of a spear through a hole larger than 24 inches by 36 inches.

(3) No member shall ice fish with unattended lines.

(4) No member shall ice fish within an ice fishing house or other enclosure, unless the enclosure is equipped with a latch which will permit the door to be readily opened from the outside at all times while the house is occupied.

(5) No member shall fish within 200 yards of posted management sites or research sites including trap nets.

(6) No member shall place, maintain or use a house or other enclosure for ice fishing on any body of water unless the owner's name and address is clearly displayed on the outside of the house.

(7) No member shall fail to remove an ice fishing house or other enclosure from any body of water on or before March 1 except that portable shelters may be used while ice fishing after that date provided the portable shelter is removed daily from the ice.

(8) No member shall share any ice fishing gear, including any spear, with any person who is not a band member except as provided in herein, nothing in this Commissioner's Order shall be construed to prohibit a member from fishing, with any other person who is not a member of the Band, provided that such other person possesses a license or is otherwise not prohibited from engaging in the activity involved and complies with the laws of the State of Minnesota governing such activity.

(a) No member shall allow any person who is not a member of the Band to assist, and no such person shall assist, in the activities authorized by this order except in accordance with the provisions of this subsection.

(i) Those persons who may assist a member shall be limited to the member's family.

(ii) For the purposes of this subsection, "family" means all persons related by blood or adoption, or any person living within the household on a permanent basis.

(b) A member may be assisted by a non-member in accordance with this subsection only if the member is physically present during the activity which constitutes assistance.

(c) Non-member "assistance" pursuant to this subsection shall be limited to the following activities:

(i) Setting of attended lines during ice fishing.

(ii) Setting, placing, and operating a fish house.

**1.07 Possession Limit.**

(1) No member shall have in his or her possession any number of fresh fish of any species greater than double the daily bag limit of that species.

(a) For the purposes of this section, "fresh" means unspoiled and never frozen once removed from a body of water.

(2) No member shall possess more than one daily bag limit of any species of fish while on any body of water.

**1.08 Reporting and Monitoring.**

(1) No member shall fail to complete catch reports in the manner required by the Mille Lacs Department of Natural Resources or comply with any catch monitoring requirements imposed by the department with respect to any fishing method authorized by this chapter.

(2) The Department of Natural Resources shall issue no further permits under this Commissioner's Order to any member who has failed to complete and return any creel census questionnaire or other catch report required by subs. (1).

**1.09 Live Bait Restrictions.**

(1) No member shall use as live bait while fishing pursuant to this order: carp, goldfish, redhorse, fresh water drum, burbot, bowfin, garfish, buffalo fish, lamprey, alewife, gizzard shad, smelt, goldeye, mooneye, carpsucker, quillback, and crayfish.

(2) No member shall release any minnow or other bait fish or any game fish on any waters or shores except those waters from which such fish were taken.

**1.10 Sale of Game Fish.**

(1) The sale of game fish is prohibited.

**1.11 Closures.**

The Commissioner of Natural Resources, or his or her designee, shall close any body of water to fishing for any species upon a determination that a closure is necessary for conservation of the species. To assist in such determinations, the Commissioner shall report harvests under this order to and consult with the Minnesota Department of Natural Resources on a periodic basis.

CHAPTER 2 - ENFORCEMENT

**2.01 Hearings in Band Court**

Jurisdiction over all matters arising under this order shall be with the Court of Central Jurisdiction which shall adjudicate in accordance with the Mille Lacs Band Law all questions, complaints and alleged violations involving provisions of this order.

**2.02 Enforcement by Band and Commission Wardens**

Any provisions of this order may be enforced by Wardens of the Mille Lacs Department of Natural Resources or by Wardens of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby deputized by the band as Natural Resources Enforcement Officers for the purpose of enforcing this order.

**2.03 Enforcement by Minnesota Department of Natural Resource Conservation Officers**

Conservation Officers of the Minnesota Department of Natural Resources are hereby empowered to enforce the provisions of this order except on trust lands and to refer alleged violations to appropriate Band or Commission Wardens or the Solicitor General for further investigation or action.

**2.04 Search and Seizure: When authorized**

Any person authorized to enforce the provisions of this order may conduct a search of any object, place, or person whose conduct is regulated by the provisions of this order, and seize things when the search is made:

- (1) With Consent;
- (2) Pursuant to valid search warrant issued by the Band Court;
- (3) With authority and within the scope of a right of lawful inspections as provided in Section 2.05 (1) (a);
- (4) Incident to the issuance of a lawfully issued citation under this order; or
- (5) As otherwise authorized by law or by the provisions of this order.

**2.05 Investigations and Citations**

- (1) Any person authorized to enforce the provisions of this order may:
  - (a) Subject to subsection (2) conduct routine inspections of vessels, boats, wagons, trailers, automobiles, vehicles, snowmobilers, containers, packages, and other receptacles contained therein, utilized by a person in a harvesting activity authorized by this order.
  - (b) Execute and serve warrants and other process issued by the Band court in

accordance with applicable law;

(c) Stop and board any boat and stop any automobile or other vehicle pursuant to subs. (1) (a) ; or if the person reasonable suspects there is a violation or breach of this order;

(d) With or without a warrant, open, enter, and examine vessels, boats, wagons, trailer, automobiles, vehicles, snowmobilers, and packages and other receptacles contained therein, in which the person has probable cause to believe that contraband fish or carcasses or parts thereof, may be contained or pursuant to subs. (1) (a);

(e) Issue a citation on a form approved by the Band or Band court to any person whose conduct is regulated by the provisions of this order upon reasonable belief that such person has violated or breached a provision of this order; and

(f) Seize and hold subject to the order of the Band court any alleged contraband or property which such person reasonably believes may be needed as evidence in connection with the institution of proceedings in Band Court or any property otherwise authorized to be seized by the provisions of this order.

(2) The inspections authorized by subsection (1) (a) shall be conducted in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities.

#### **2.06 Penalties.**

Any person who, for himself or herself, or by his or her agent, servant or employee, or who as an agent, servant or employee of another, violates this order, shall be liable as follows:

(1) For all violations for which no other amount is specified, a civil remedial forfeiture of not more than \$5,000.00;

(2) For any violation, a revocation or suspension of hunting, fishing or gathering privileges for a period of time within the discretion of the court;

(3) For any violation, a civil remedial forfeiture of any property, including boats, motors, vehicles, hunting or fishing equipment, or other property, used in the commission of the violation of this order;

(4) For all violations, the court may order a natural resources assessment not to exceed 75% of the amount of the civil remedial forfeiture; and

(5) For all violations, appropriate court costs within the discretion of the court.

#### **2.07 Enhancement of Forfeiture and Penalties.**

Upon conviction of any member for a violation of this order when such



person has been convicted of a previous violation of a Band hunting, fishing or gathering regulation within a period of one year, the court may enhance any civil remedial forfeiture or other penalty as the court deems appropriate.

**2.08 Seized Fish**

No fish seized pursuant to this order shall be returned to a convicted violator, his or her family, or other member of the fishing party.

**2.09 Collection of Money Penalties**

Enforcement of the money penalties imposed pursuant to 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 law.

**2.10 Parties to a violation**

(1) 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.

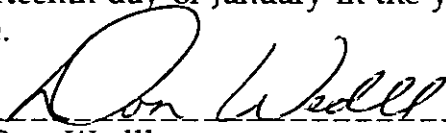
(2) A person is concerned in the commission of the violation if the person:

- (a) directly commits the violation;
- (b) aids or abets the commission of the violation; or
- (c) is a party to a conspiracy with another to commit, or advises, hires, counsels or otherwise procures another to commit, the violation.

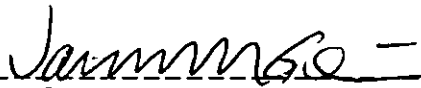
**2.11 Harvesting After Revocation or Suspension**

No person whose hunting, fishing or gathering privileges have been revoked or suspended pursuant to Section 2.06 (2), shall hunt, fish, trap or gather any wild plant or wild animal, the harvest of which is regulated by the Band during such revocation or suspension.

DATED at Vineland, Minnesota this thirteenth day of January in the year one thousand nine hundred and ninety-five.

  
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Don Wedll  
Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO  
FORM AND EXECUTION

  
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Jim Genia  
Solicitor General

OFFICIAL SEAL OF THE BAND

