

**COMMISSIONER'S ORDER NO. 241-97**  
**Natural Resources**

A Commissioner's Order establishing Off-Reservation National Forest Gathering Regulations.

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 deems it appropriate to provide an orderly system of tribal control and regulation of off-reservation gathering of forest products within national forests, and;

WHEREAS, the Mille Lacs Band further deems it appropriate to provide conservation and management for forest products found in the ceded territory through the regulation of member gathering occurring there, 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 Mille Lacs Band Statutes Annotated Title 11 Section 2002, and Title 2, et seq., and;

WHEREAS, the gathering 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;

NOW THEREFORE, by the authority vested in me by the Mille Lacs Band of Chippewa Indians pursuant to Mille Lacs Band Statutes Annotated Title 11 Section 2002, I, Don Wedll, Commissioner of Natural Resources for the Mille Lacs Band of Chippewa Indians hereby establish the following gathering regulations of forest products within National forest within the 1837 ceded territory:

## **CHAPTER 1 - INTRODUCTION**

### **1.01 Title.**

This Commissioner's Order 241-97 shall be known as the: 1996-97 Off-Reservation National Forest Gathering Order.

### **1.02 Authority.**

This Order is enacted pursuant to Mille Lacs Band Statutes Annotated Chapter 11 Section 2002.

### **1.03 Purpose.**

It is the purpose of this Order to:

- (1) Provide an orderly system for tribal control and regulation of treaty-reserved gathering activities in National Forests located in the ceded territory.
- (2) Supplement the Tribal Off-Reservation Conservation Code for the purposes of regulating the treaty-reserved off-reservation gathering in National Forests in the ceded territory.

### **1.04 Effective Date.**

This Order shall be effective on the date adopted by the tribe's governing body and shall expire at 11:59 p.m. on August 31, 1997.

### **1.05 Interpretation.**

The provisions of this order shall be interpreted and applied as minimum requirements applicable to gathering of the regulated items in National Forests and shall be liberally construed in favor of the tribe. The provisions shall not be deemed a limitation or repeal of any other tribal power or authority.

### **1.06 Severability and Non-Liability.**

If any section, provision or portion of this order is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Order shall not be affected thereby. The Tribe 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.

### **1.07 Relationship to Tribal Off-Reservation Conservation Code and other Orders.**

- (1) All other ordinances and resolutions governing treaty-reserved off-reservation wild plant gathering in National Forests are hereby repealed.

(2)(a) This Order is not intended to repeal or replace any provision of the Tribe's Off-Reservation Conservation Code. It is intended to supplement that Code only for the purposes of authorizing or governing tribal member gathering of wild plants in National Forests. It is not intended to apply to any other treaty-reserved off-reservation activity that is authorized or governed by the Tribe's Off-Reservation Conservation Code.

(b) Unless otherwise specifically indicated in this Order, it is the intent of this Order that the provisions of the Tribe's Off-Reservation Conservation Code that generally govern the conduct of tribal members exercising treaty rights in the ceded territory shall apply to tribal members gathering wild plants in National Forests pursuant to this Order. Such provisions of the Tribe's Off-Reservation Conservation Code are hereby declared, and shall be construed, to govern tribal members gathering wild plants in National Forests within the ceded territory, as defined in this Order.

### **1.08 Religious or Ceremonial Use of Natural Resources.**

Nothing in this Order shall prohibit the harvest or use of natural resource otherwise subject to the provisions of this Order which is harvested, taken or otherwise obtained within the ceded territory for religious or ceremonial purposes in accordance with the traditions and customs of the Tribe.

## **CHAPTER 2 - DEFINITIONS**

### **2.01 Definitions.**

(1) Except for specific terms defined in subsection (2), terms in this Order shall have the same definition as provided in the Tribe's Off-Reservation Conservation Code.

(2) The following terms, wherever used in this Order, shall be construed as follows:

(a) "**Ceded Territory**" means those off-reservation lands ceded by the Tribe or another signatory tribe to the United States of America in the Treaty of 1836, 7 Stat. 491, the Treaty of 1837, 7 Stat. 536, the Treaty of 1842, 7 Stat. 591, or the Treaty of 1854, 10 Stat. 1109.

(b) "**Forest Service**" means the United States Department of Agriculture, Forest Service.

(c) "**Gather**" or "**gathering**" means to take or acquire or attempt to take or acquire possession of any wild plant, or part thereof.

(d) "**National Forest**" means those lands located within the ceded territory owned by the United States of America and part of the Chequamegon National Forest, the Hiawatha National Forest, the Huron-Manistee National Forest, the Nicolet National Forest, the Ottawa National Forest or the Superior National Forest.

(e) "**Signatory Tribe**" means an Indian Tribe which is a signatory to the Treaty of 1836, 7 Stat. 491, the Treaty of 1837, 7 Stat. 536, the Treaty of 1842, 7 Stat. 591, or the Treaty of 1854, 10 Stat. 1109, or such tribe's successor in interest.

(f) "**Wild Plant**" means any undomesticated species, or part thereof, of the plant kingdom occurring in the natural ecosystem, but excludes wild rice.**CHAPTER 3 - GENERAL REGULATIONS**

### **3.01 Regulatory Authority.**

(1) The Tribe asserts legal authority to regulate the harvesting, use and disposition of all wild plants by its members within the ceded territory.

(2) Any person authorized to enforce this Order may seize forthwith wherever found:

(a) any wild plant taken or reduced to possession in violation of this Order; or

(b) any wild plant lawfully taken or reduced to possession under this Order, upon violation of any provision of this Order relating to the possession, use, giving, sale, barter or transportation of such wild plant.

### **3.02 Permits and Identification.**

(1) No member shall gather any wild plant off-reservation in a National Forest without possessing a valid off-reservation harvesting permit approved by the Tribe, which may be the member's tribal identification card required by Subsection (2), or such other permit as this Order may require validated for the particular type of activity to be engaged in for the particular season in question.

(2) No member shall gather any wild plant off-reservation in a National Forest except while carrying a valid picture identification card issued by the tribe, or other form of identification approved by the tribe for such gathering activities.

(3) No member shall refuse to display his or her identification documents upon request of any tribal, federal, state, or local law enforcement officer.

(4) No member shall fail to comply with the terms, conditions and location restrictions of a permit issued pursuant to this Order.

(5) The tribal conservation department is authorized to issue to members permits required by this Order and to impose such terms, conditions and location restrictions in those permits as it deems necessary or appropriate. Except as otherwise required by this Order, the form of such permits shall be left to the discretion of the tribal conservation department, provided such form shall require the name, address and member's tribal identification number.

(6) The tribal conservation department may issue such harvesting permits to members of a signatory Tribe, provided such other Tribe has enacted an Order governing gathering in National Forests that is at least as restrictive as this Order.

### **3.03 Harvest Monitoring.**

No member to whom any permit has been issued under this Order shall fail or refuse to provide harvest information when requested by the tribal conservation department, any person authorized to enforce this Order, or the Great Lakes Indian Fish and Wildlife Commission.

### **3.04 Emergency Closures.**

(1) Notwithstanding any other provision of this Order, the Director of the Biological Services Division of the Great Lakes Indian Fish and Wildlife Commission or the Tribal Conservation Department may order the closure of the harvest activity of any wild plant in a National Forest generally or with respect to a particular location, whenever the continuation of the harvest is likely to cause biological harm to the species involved.

(2) Every reasonable effort shall be made to consult with and obtain approval of the Tribe prior to ordering an emergency closure, but such closure may be ordered without consultation or approval if circumstance require.

(3) An emergency closure shall become effective immediately upon issuance or at such time or date as the closure order may direct. Such closure shall be communicated to the Tribe by the best and swiftest practicable method.

(4) No member shall violate the terms, conditions or restriction of an emergency closure order issued pursuant to this section.

### **3.05 Records of Commercial Transactions.**

(1) No member shall sell any ginseng harvested pursuant to this Order to any person unless the member maintains a written record of all transactions on forms prescribed by the tribal conservation department indicating the amount of ginseng involved, the parties to the transaction, the date of the transaction and the National Forest in which harvest occurred.

(2) Records maintained pursuant to this section shall be forwarded annually to the tribal conservation department, or its designee.

(3) No member shall fail to comply with the reporting requirements of this section.

(4) With respect to ginseng gathered in a National Forest, this section supersedes any requirement for maintaining records of commercial transactions contained in the Tribe's Off-Reservation Conservation Code.

### **3.06 General Restrictions.**

(1) No member shall gather wild plants in National Forest Research Natural Areas or administrative sites.

(2) No member shall gather wild plants under authority of this Order on any land located within the boundaries of a National Forest that is not owned by the United States of America and part of a National Forest. This provision does not apply to or otherwise restrict any wild plant gathering on non-National Forest lands that is authorized by another tribal Order.

### **3.07 Commercial Wild Plant Gathering Permit.**

(1) No member shall gather to sell conifer boughs, princess pine or ginseng gathered without possessing a valid commercial wild plant gathering permit.

(2) A commercial wild plant gathering permit shall:

(a) identify the permittee or permittees, including the name, address and tribal affiliation of all members authorized by the permit;

(b) identify the amount and general location of the plants to be gathered;

(c) require that all members authorized by the permit must possess a duplicate of the permit while engaged in the gathering activity.

(3) A commercial wild plant gathering permit may:

(a) establish limits on the quantity of the plants which may be gathered;

(b) define the specific area or areas where the gathering may occur;

(c) define or limit the methods which may be employed to gather the plants;

(d) establish such other conditions or requirements deemed necessary or appropriate by the tribal conservation department.

### **3.08 Timber Sale Contracts.**

No member shall gather a tree, or any part thereof, that has been purchased in a timber sale contract without the permission of the timber purchaser.

## **CHAPTER 4 - ENFORCEMENT**

### **4.01 Enforcement by Deputized Conservation Wardens and Issuance of Citations.**

(1) Any provision of this Order may be enforced by tribal conservation wardens or by conservation wardens of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby deputized by the Tribe as tribal conservation wardens for the purposes of enforcing this Order.

(2) Such Tribal and Commission wardens may issue a citation on a form approved by the Tribe or tribal 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 provisions of this Order.

### **4.02 Search and Seizure; When Authorized.**

Tribal, Great Lakes Indian Fish and Wildlife Commission, and United States Forest Service conservation wardens are empowered to:

(1) Conduct a search of an object, place or person whose conduct is regulated by the provisions of this Order, and may seize things when the search is made:

(a) with consent;

(b) pursuant to a valid search warrant;

(c) with the authority and within the scope of a right of lawful inspection as provided in this section;

(d) incident to the issuance of a lawfully issued citation under this Order; or

(e) as otherwise authorized by law or by the provisions of this Order;

(2) Conduct routine inspections, in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities, of vessels, boats, wagons, trailers, automobiles, snowmobiles, containers, packages, and other receptacles contained therein, utilized by a person in a harvest activity authorized by this Order and of record of commercial transactions required under this Order with have not yet been forwarded to the tribal conservation department;

(3) Execute and serve warrants and other process issued by the tribal court in accordance with applicable law;

(4) Stop any automobile or other vehicle as part of a lawful inspection authorized by this section or if the person reasonably suspects there is a violation or breach of this Order;

(5) With or without a warrant, open, enter and examine vessels, boats, wagons, trailers, automobile, vehicles, snowmobiles, and packages and other receptacles contained therein, in

which the person has probable cause to believe that contraband wild plants, may be contained or pursuant to a lawful inspection authorized by this section; and

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

#### **4.03 Seized Items.**

Any wild plant which is seized in connection with cases referred to Tribal Court for prosecution shall be turned over to the Tribe. No seized wild plant shall be returned by the tribal court or tribal officials to a convicted violator, his or her immediate family or other member of the gathering party.

#### **4.04 Penalties.**

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

(1) For any violation, a civil remedial forfeiture of not more than \$5000.00;

(2) For any violation, a revocation or suspension of off-reservation National Forest gathering privileges for a period of time within the discretion of the court;

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

(4) For any violation, appropriate court costs within the discretion of the court.

#### **4.05 Civil Damages.**

(1) In addition to any other penalty allowed by this Order, the tribal court may award to the Tribe or, in addition to an action to impose penalties, the Tribe may bring a civil action for recovery of, damages against any person unlawfully gathering or having unlawfully in possession any wild plant taken from a National Forest. The sum assessed for damages for each wild plant shall not be less than the amount stated in this section:

(a) Any endangered or threatened species protected under this Order, \$875.00.

(b) Any wild plant for which a fair market value can be established, the fair market value.

(c) Any other wild plant, \$17.50.



(2) Where the Forest Service or another person or entity has sustained damages as a result of unlawful harvest, the court may, with the consent of the Tribe, award all or part of any civil damages obtained pursuant to this section to the Forest Service or to such person or entity.

**4.06 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 this Order within a period of one year, the court may enhance any civil remedial forfeiture or other penalty as the court deems appropriate.

**4.07 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 Tribe, 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.

**4.08 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 it; or

(c) is a party to a conspiracy with another to commit it, or advises, hires, or counsels or otherwise procures another to commit it.

**4.09 Harvesting After Revocation or Suspension.**

No person whose off-reservation National Forest wild plant gathering privileges have been revoked or suspended pursuant to Section 4.04(2), shall gather any wild plant in a National Forest, the harvest of which is regulated by this Order, during such revocation or suspension.

**4.10 Schedule of Money Penalties; No Contest.**

The tribal court, in consultation with the Tribe's Governing Body, 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, or a plea of not contest, which may be done either in person or in writing. This schedule shall not bind the court as to forfeitures assessed by the court after adjudicating a violation where the defendant has entered a plea of not guilty.

**4.11 Hearings in Tribal Court.**

The Tribal Court shall adjudicate all matters arising under this Order pursuant to the provisions of the Tribal Court Code.

**4.12 Members of Other Tribes, Tribal Court Adjudications.**

The tribal court is authorized to adjudicate alleged violations by any member of a signatory tribe of any off-reservation National Forest gathering code of that Tribe provided:

- (1) The relevant provisions of such Order are in essential conformance with the parallel provisions of this Order; and
- (2) The other Tribe has authorized the adjudication.

## CHAPTER 5 – SPECIFIC REGULATIONS

### 5.01 Conifer Boughs.

No member shall:

- (1) Cut down a tree for the purpose of gathering conifer boughs;
- (2) Remove boughs from the upper half of a tree;
- (3) Gather for subsequent sale northern white cedar or hemlock boughs; or
- (4) Gather conifer boughs in a National Forest campground.

### 5.02 Princess Pine.

- (1) No member shall gather for subsequent sale any *Lycopodium* species except *Lycopodium obscurum*, *Lycopodium dendroidium*, or *Lycopodium hickeyi*.
- (2) No member shall gather princess pine in a National Forest campground.

### 5.03 Firewood.

(1) No member shall cut any live tree for firewood unless the tree is included within a National Forest "firewood sale," or as permitted pursuant to a sugarbush site permit under Section 5.05.

(2) No member shall cut any standing dead tree more than 100 feet from the cleared edge of any road open to automobile traffic.

(3) No member shall cut any standing dead tree within 200 feet of any pond, lake, stream or river.

(4)(a) No member shall gather firewood within an active timber sale without the permission of the timber purchaser.

(b) An "active timber sale," generally is indicated by logging equipment, stacked wood, trees cut into 8 foot lengths, or paint on standing trees. It is the member's responsibility to be certain about an active timber sale area. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local National Forest District office.

(5) No member shall use a farm tractor, rubber tired skidder, or similar vehicle for gathering firewood without written permission from the Tribe.

(6) No member shall gather firewood in a National Forest campground except for personal use while camping in the campground.

**5.04 Ginseng.**

(1) No member shall gather ginseng and no commercial harvest permit for ginseng shall be issued from November 1 through August 31.

(2) No member shall gather ginseng in a National Forest campground.

**5.05 Maple Sap/Sugarbushes.**

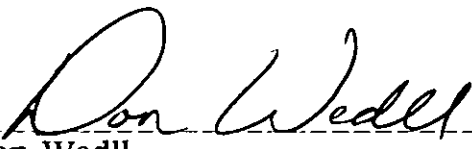
(1) No member shall gather maple sap without a sugarbush site permit valid for a designated tribal sugarbush or such other location approved by the tribal conservation department in consultation with the Forest Service.

(2) "Designated tribal sugarbush" means a specific site identified and established by the tribal conservation department, in consultation with the Forest Service, for which a management plan has been developed and for which a sugarbush site permit has been issued.

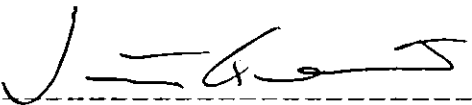
(3) The tribal conservation department may issue a sugarbush site permit to one or more members and may impose such terms and conditions as it deems necessary or appropriate.

(4) No member shall fail to comply with the terms and conditions of a sugarbush site permit.

DATED at Vineland, Minnesota this twenty eighth day of October in the year one thousand nine hundred and ninety six.

  
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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