

COMMISSIONER'S ORDER NO. 310-00

Natural Resources

A Commissioner's Order for the Mille Lacs Band of Ojibwe Department of Natural Resources to enter into a Memorandum of Understanding with United States Department of Agriculture Forest Service on the use of National Forest Lands within the territories ceded in the Treaties of 1836, 1837, and 1842.

WHEREAS, the Mille Lacs Band of Ojibwe is a signatory or successor to the Treaty of 1836, 7 Stat. 491, the Treaty of 1837, 7 Stat. 536, and/or the Treaty of 1842, 7 Stat. 591; and

WHEREAS, the Commissioner of Natural Resources has the power to regulate natural resources within the jurisdiction of the Mille Lacs Band of Ojibwe pursuant to 11 MLBSA §2002 and § 2003; and

WHEREAS, the management and protection of a natural resource is under the jurisdiction of the Mille Lacs Band of Ojibwe Department of Natural Resources; and

WHEREAS, the Department of Natural Resources deems it appropriate to provide an orderly system of Band control and regulation of off-reservation gathering activities in National Forests located in the ceded territories; and

WHEREAS, the Department of Natural Resources specifically affirms and recognizes the Governing Principles and Fundamental Assumptions, the Purposes, and the Parties' Mutual Interests stated in the *Memorandum of Understanding Regarding Tribal-USDA-Forest Lands within the Territories Ceded by the Treaties of 1836, 1837 and 1842*; and

WHEREAS, the Department of Natural Resources further deems it appropriate to supplement the Mille Lacs Off-Reservation Conservation Code to provide conservation and management for National Forest gathering of wild plants in the ceded territories through the regulation of member gathering that occurs there; and

WHEREAS, the management and protection of a natural resource is under the jurisdiction of the Mille Lacs Band of Chippewa Indians Department of Natural Resources; and

WHEREAS, any government thereof shall construe nothing herein or the application, agency, person or circumstance as a waiver by the Mille Lacs Band of Ojibwe of the solemn, special trust obligation of the United States of America; and

WHEREAS, pursuant to the provisions of 4 MLBSA §7(b) and 11 MLBSA §2002(g) the Commissioner of Natural Resources is empowered to execute the said

Memorandum of Agreement for the Mille Lacs Band of Ojibwe Department of Natural Resources.

NOW THEREFORE, by the authority vested in me by the Mille Lacs Band of Ojibwe under tribal law, I, Don Wedll, Commissioner of Natural Resources for the Mille Lacs Band Ojibwe hereby concur with the following Memorandum of Agreement on the use of National Forest Lands.

MEMORANDUM OF UNDERSTANDING

REGARDING

TRIBAL - USDA-FOREST SERVICE RELATIONS

ON

NATIONAL FOREST LANDS

WITHIN THE TERRITORIES CEDED

IN

TREATIES OF 1836, 1837, AND 1842

PREAMBLE

The Memorandum of Understanding (MOU) deals with the relationships of sovereign and federally recognized tribes of Lake Superior Chippewa Indians and of the USDA Forest Service, an agency of the government of the United States. The MOU is based on the principle of government-to-government interactions between the United States Government and federally recognized Indian tribes. The purpose of the agreement is to establish standards by which the Forest Service and the Tribes will act consistently across National Forest lands within areas ceded in the treaties of 1836, 1837, and 1842.

The policies of the Forest Service toward federally recognized tribes are intended to strengthen relationships and further tribal sovereignty through fulfilling mandated responsibilities and through support and assistance of various kinds to tribal governments. The

honoring treaty-based usufructuary rights as well as policies of the Forest Service toward Indian nations. While court decisions, laws, regulations, policies and Executive Orders from the President of the United States have all shaped the Forest Service's policy toward Indian tribes, nothing in this agreement is in any way intended to abrogate or affect in any fashion judicial decisions which have interpreted such treaty rights.

This MOU recognizes existing treaty rights of Tribes to hunt and fish and to gather wild plants on National Forest lands in accord with applicable regulatory authorities of the States or other federal agencies having jurisdiction over such activities. Reference in the MOU to such activities as hunting and fishing are designed to recognize that the Forest Service manages and provides access to ecosystems which support these activities.

I. CEDED TERRITORIES AND NATIONAL FORESTS INVOLVED (Figure 1).

- A. **Ceded Territories.** This MOU specifically pertains to the territories ceded [hereafter ceded territories] by various Chippewa Tribes in the following Treaties: Treaty of 1836, 7 Stat. 491; Treaty of 1837, 7 Stat. 536; and Treaty of 1842, 7 Stat. 591.
- B. **National Forests.** This MOU specifically pertains to the portions of the following National Forests [hereafter National Forests] located in the ceded territories: Chequamegon-Nicolet in Wisconsin; and Ottawa, Hiawatha and Huron-Manistee in Michigan.

II. PARTIES. The following entities may ratify this MOU in accordance with their respective applicable laws and procedures, and, upon proper ratification, shall be deemed a party to this MOU:

- A. **Tribes.** In their respective sovereign capacities, the following federally-recognized Tribes [hereafter Tribes] that are members of the Great Lakes Indian Fish and Wildlife Commission [hereafter GLIFWC]: Bad River Band of the Lake Superior Tribe of Chippewa Indians; Lac du Flambeau Band of Lake Superior Chippewa Indians; Lac Courte Oreilles Band of Lake Superior Chippewa Indians; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community of the Mole Lake Band; Red Cliff Band of Lake Superior Chippewa Indians; Mille Lacs Band of Ojibwe; Bay Mills Indian Community; Keweenaw Bay Indian Community; and Lac Vieux Desert Band of Lake Superior Chippewa Indians.
- B. **USDA-FS.** On behalf of the United States Department Agriculture, Forest Service [hereafter Forest Service] as an agency of the United States Government: the Forest Service's Eastern Region; the Eastern Region's Law Enforcement and

Investigations; and the Forest Service's North Central Research Station.

III. **GOVERNING PRINCIPLES AND FUNDAMENTAL ASSUMPTIONS.** The parties agree that the MOU is based upon the following governing principles and fundamental assumptions and that the MOU shall be interpreted in accordance with them:

- A. **Existence of Ceded Territory Rights.** The parties acknowledge and recognize the Tribes' treaty-guaranteed hunting, fishing and gathering rights [hereafter ceded territory rights] that may be exercised on lands administered by the Forest Service located within the ceded territories.
- B. **Tribal Sovereignty and Self-Regulatory Capacity.** The parties acknowledge and recognize:
1. The Tribes' inherent sovereignty and retained regulatory authority regarding their ceded territory rights; and
 2. The Tribes' ability to administer and implement a system of effective tribal self-regulation regarding tribal member exercise of those rights.
- C. **Federal Trust Responsibility and Treaty Obligations.** The parties acknowledge and recognize that the Forest Service shares in the United States Government's trust responsibility and treaty obligations to work with the Tribes on a government-to-government basis to protect the Tribes' ceded territory rights on lands administered by the Forest Service.
- D. **Forest Service's Native American Policies.** The parties acknowledge and recognize the Forest Service's Native American policies as presently set forth in Forest Service Manual 1563 [Tribal Governments] and Forest Service Publication FS-446 [Native American Policy — Friends and Partners] to:
1. Maintain a governmental relationship with federally-recognized tribal governments consistent with the President's Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments;
 2. Implement programs and activities in a way that honors Indian treaty rights and fulfills legally-mandated trust responsibilities to the extent they apply to National Forest System lands;
 3. Administer programs and activities to address and be sensitive to traditional Native religious beliefs and practices; and

4. Provide research, transfer of technology, and technical assistance to tribal governments.
- E. **Forest Service's Forest Management Responsibilities.** The parties acknowledge and recognize that the Forest Service is the agency of the United States Government authorized and responsible for implementing law and policies related to National Forest management.
- F. **Forest Service's Law Enforcement Responsibilities.** The parties acknowledge and recognize that the Forest Service's Law Enforcement and Investigations Branch is responsible for enforcement of alleged violations of federal laws and regulations occurring on lands administered by the Forest Service.
- G. **General Tribal/USDA-ES Government-to-Government Relationship Unaffected.** This MOU applies to the parties' government-to-government relationship, other Tribal -Forest Service interactions, the Tribes' ceded territory rights applicable on lands administered by the Forest Service, and the parties' relationships and dealings involving those rights. It is not intended, and should not be construed, to abrogate or otherwise affect any party's authority or responsibility in other areas. Similarly, it is not intended, and should not be construed, to otherwise define or restrict the parties' obligations, relationships or dealings in other areas of their respective authorities, responsibilities, or sovereign prerogatives.
- H. **Effect of MOU on Non-Ratifying Tribes.** The parties' specific intent is that this MOU shall not bind or in any way affect the rights or claims of any GLIFWC member Tribe that chooses not to become a party or of any other Tribe that is a signatory to any of the treaties identified in Section I.A., above.
- I. **Reservation of Rights, Claims and Defenses.**
1. The termination of or withdrawal from this MOU shall be without resulting liability to any other party or prejudice to any claim a party may have against any other party.
 2. Except as expressly provided herein, the fact that any Tribe or the Forest Service is or may have been a party to this MOU shall not be construed as a waiver of any rights, claims or defenses that, absent this MOU, any of those entities may have under any treaty between the United States and a Tribe, or under other applicable law of the United States.

3. The parties acknowledge that this MOU contains provisions that may be the result of compromise and policy choices. As such, these provisions may not reflect the full extent of the Tribes' ceded territory rights or of the Forest Service's responsibilities to manage the National Forests. Therefore, in the absence of or outside the scope of this MOU, the provisions contained herein are not intended to alter or abridge:
 - a. The Tribes' underlying ceded territory rights or those rights of any other treaty signatory Tribe that is not a party to this MOU; or
 - b. The Forest Service's authorities to manage the National Forests in accordance with applicable law.
4. This agreement is not intended to alter usufructuary rights recognized in *Lac Courte Oreilles Band v. Voigt*, 700 F.2d 341 (7th Cir. 1983) or *Minnesota v. Mille Lacs Band*, 119 S.Ct. 1187 (1999). The MOU does not alter the authority of any government regarding the regulation of treaty rights under those decisions.

IV. PURPOSES. To accomplish the primary purposes of recognizing and implementing the Tribes' ceded territory rights and furthering Forest Service Native American policies, the parties intend to recognize:

- A. Government-to-Government Relationship.** Establish a framework for a cooperative, government-to-government relationship between the Tribes and the United States Government that:
 1. Ensures the meaningful exercise of the Tribes' ceded territory rights on the lands administered by the Forest Service within the ceded territories;
 2. Facilitates consistent and timely communication between parties at the appropriate levels of government; and
 3. Fosters effective participation by the Tribes in National Forest management, in the development, revision and implementation of Land and Resource Management Plans [hereafter Forest Plans] and in subsequent Forest Plan implementation decisions.
- B. Exercise of Ceded Territory Rights.** Establish agreed-upon parameters under which the Tribes' ceded territory gathering rights may be exercised within the provisions of and the protections afforded by this MOU on lands administered by the Forest Service within the ceded territories.

C. **Conservation of Natural Resources.** Protect, manage and enhance ecosystems and communities that support the natural resources subject to the Tribes' ceded territory rights on lands administered by the Forest Service.

V. **RECOGNITION OF THE PARTIES' MUTUAL INTERESTS.** Underlying the purposes of and specific agreements contained in this MOU, the parties recognize a number of mutual interests that they wish to address:

A. **Tribal Self-Determination and Self-Governance.** One of the Tribes' primary goals is to achieve self-determination and self-governance through the exercise of their retained sovereign governmental authority regarding their ceded territory rights. A key Forest Service policy is to administer its programs and activities in a manner that recognizes the governments of the Tribes and the authority that they carry out on behalf of the Tribes. Therefore, the parties seek to establish a government-to-government relationship that promotes collaboration and communication in the management of the National Forests, that provides for effective tribal self-regulation of the exercise of ceded territory rights on lands administered by the Forest Service, and, as noted below, that promotes efficient and effective law enforcement.

B. **Collaborative Approach in the Management of Natural Resources.** The Tribes' ceded territory rights include the right to gather wild plants and to harvest wild animals on lands administered by the Forest Service, and the Tribes want to ensure that management of these lands protects their ability to meaningfully exercise these rights. The Forest Service is tasked with the administration of the National Forests and is the federal agency responsible for the care and management of the land and natural resources that are part of the National Forests. Therefore, the Tribes and the Forest Service seek to establish a relationship and associated processes that facilitate consistent and timely communication between them and that integrate the Tribes' needs and wishes for the desired state of the National Forests into Forest Plans and subsequent Forest Plan implementation decisions.

C. **Sustainability of Ecosystems.** Since time immemorial, the Tribes have traditionally harvested certain plants and other resources found on lands now managed as the National Forests to meet subsistence, religious, cultural, medicinal and commercial needs. The Tribes' culture and lifeway depends on this harvest activity, and they wish to protect and enhance the natural resources upon which they rely. The Tribes measure the protection of these resources in terms of ensuring their sustainability for use by the seventh generation hence. The Forest Service is the federal agency responsible for managing the National Forests for the benefit of present and future generations. In addition, the Forest

Service's policy is to carry out its programs and activities in a manner that is sensitive to the Tribes' traditional practices and beliefs. Therefore, the Tribes and Forest Service seek to collaboratively promote ecosystem management that protects and restores native communities and species, furthers the diversity of species, and ensures the sustained yield and availability of natural resources that are subject to the Tribes' ceded territory rights.

- D. Efficient and Effective Law Enforcement.** As part of their self-regulatory system, the Tribes recognize the need to provide for the enforcement and adjudication of alleged violations of tribal laws governing the exercise of the ceded territory rights. To further compliance with tribal laws and to mete out meaningful and effective penalties, they recognize that the administration of justice in this context is best accomplished within their own communities and in their own forums. The Forest Service also recognizes that justice is best served in the communities most involved and affected. Therefore, the parties seek to establish a mutually beneficial efficient and effective system for enforcing applicable laws.
- E. Consistent Ceded Territory Gathering Regulations.** The meaningful exercise of the Tribes' ceded territory rights requires a consistent, conservation-based harvest regulatory system throughout the National Forests. To avoid administrative inefficiency and the associated confusion, the Forest Service recognizes the need for a consistent gathering policy and regulatory scheme in each of the National Forests. Therefore, the parties seek to establish a ceded territory-wide policy and regulatory framework that provides for the exercise of the ceded territory rights in a consistent manner that meets conservation goals, protects the public health and safety, and promotes efficient and effective law enforcement.
- F. Implementation of the Federal Trust Responsibility.** The Tribes continually seek to have United States Government and its agencies properly discharge the federal trust responsibility to assist in the development of the Tribes' governmental capabilities and to take actions for the Tribes' benefit. The Forest Service's policy is to administer its programs and activities in a manner sensitive to the Tribes' needs, beliefs, and practices, and to provide research, transfer of technology and technical assistance to the Tribes. Therefore, the parties seek to establish a framework for collaboration, communication and information exchange that will nurture understanding and maximize mutual benefits, and that will enhance the development of the Tribes' capabilities necessary to ensure effective tribal participation in the processes and procedures established in this MOU.

VI. SPECIFIC AGREEMENTS TO IMPLEMENT THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP. This section sets forth the specific agreements to implement the parties' government-to-government relationship in these areas: (A) MOU administration and implementation; (B) National Forest planning and decision-making; (C) natural resource harvest management; (D) natural resource research and monitoring; (E) law enforcement; and (F) amendment of the MOU and its Appendices.

A. MOU Administration and Implementation.

1. The parties shall strive to reach consensus in all decisions, actions and processes contemplated by the MOU.
2. Unless otherwise specifically provided in this MOU, the parties shall attempt to resolve any dispute arising under the MOU at the lowest possible level on a government-to-government basis between properly authorized representatives of the parties who have the authority to resolve the dispute in question.
3. To facilitate on-going communication and the resolution of outstanding issues, the parties:
 - a. Shall meet at least annually to facilitate on-going communication, to review progress made and discuss issues arising under this MOU, to ensure that the parties are faithfully and effectively implementing this MOU and adhering to its terms, and to discuss trends, issues or other matters that may effect the MOU. The Forest Service will accept comments from interested citizens about the implementation of the MOU at any time and, prior to the annual meeting, the Forest Service will solicit public comments. The parties will consider any comments at the annual meeting and jointly approved minutes will be made available for public review.
 - b. Hereby establish a Technical Working Group (hereafter TWG) whose purpose shall be to review any scientific, technical or natural resource management issue referred to it in this MOU or by subsequent agreement of the parties. The TWG is empowered to make recommendations to the parties regarding the matters referred to it, such as the development and coordination of research projects, possible harvest monitoring and regulatory responses to particular circumstances, and data/information exchange regimens. The TWG also is empowered to suggest to the

parties issues that may require the parties' attention and consideration .

The TWG will be comprised of qualified natural resource scientists, managers and researchers designated by the Forest Service and the Tribes, and should include designates from the North Central Research Station and GLIFWC. Law enforcement personnel should participate in the TWG as necessary to address enforcement-related issues.

The Forest Service and the Tribes will each appoint a TWG co-chair to coordinate communication and planning for the group's work. The TWG may appoint one or more working subgroups to address specified issues.

- c. May, in addition to matters referred to the TWG, agree to refer specific questions or issues to designated representatives or *ad hoc* working groups for discussion, development of information, formulation of recommendations, or specific action.
 - d. Agree to provide such data and information as another party might request pertaining to matters addressed by the MOU, such as natural resource population and harvest data, law enforcement statistics and tribal court statistics.
4. The parties shall cooperate in identifying and seeking adequate funding for the enhancement of their infrastructures necessary to improve the implementation of this agreement. However, the parties acknowledge that this MOU does not modify or restrict the budgetary authority of any party.
 5. The parties shall undertake cultural sensitivity training for their personnel who will be responsible for implementing this MOU. The parties also shall engage in joint and coordinated public education efforts to inform the public about this MOU and its underlying purposes.

B. National Forest Planning and Decision-making. The parties recognize that Forest Service decisions vary in their effects on the abundance of, distribution of, or access to the natural resources on the lands that it administers. For example, the Forest Service, at various levels, makes a number of decisions that relate to such matters as the development, revision and implementation of Forest Plans for each of the National Forests covered by this MOU. They include decisions that commit to particular land management actions, such as project level decisions (including closures of temporary and permanent roads), and decisions that

establish the policies or guidelines that govern these actions. Other decisions relate to such matters as the internal administration of the Forest Service as an agency regarding personnel, property and budgets, and do not commit to particular land management actions or establish policies governing those actions.

The Tribes and Forest Service agree that they shall consult on a government-to-government basis on all Forest Service decisions that affect the abundance, distribution or access to the natural resources on lands administered by the Forest Service. In addition, they agree that the goal of such consultation shall be that any such Forest Service decision should expressly recognize and accommodate the Tribes' ceded territory rights, protect and enhance treaty-reserved natural resources, and accommodate exercise of ceded territory rights by tribal members under tribal regulations.

To achieve this end, the Tribes and Forest Service specifically agree that:

1. As to decisions that result in particular land management actions, in policies or guidelines governing those actions, or in research projects to be conducted by the North Central Research Station:
 - a. The Forest Service shall consult with and facilitate effective participation by the Tribes at all stages and levels of the decision-making process. This collaboration is recognized as a dynamic process that must include consultation on a consistent and timely basis at the appropriate levels of government and that must be flexible to deal with ever-changing circumstances and adaptive natural resource management responses.
 - b. The Forest Service shall consider the effects of its decisions on treaty resources and the ability of the Tribes to exercise treaty gathering rights. In decision and analysis documents, including those required by the National Forest Management Act and the National Environmental Policy Act, decision-makers will show how tribal information and involvement was taken into account in analyzing the effects of potential management actions and in making the decision.
 - c. The Tribes and the Forest Service will strive to reach consensus. Where consensus cannot be reached:

They will attempt to resolve any dispute or disagreement first by good faith discussions between the affected

Tribe(s) and the Forest Service deciding official. The Tribe(s) may raise any matter not resolved at this level to a higher Forest Service official, including the appropriate Forest Supervisor and the Regional Forester. The Forest Service agrees to delay a final decision on the unresolved matter until this process has had the opportunity to take place within a reasonable amount of time.

- 2) The Forest Service may make and implement the decision.
 - 3) In addition to the procedures provided by the MOU, a Tribe may challenge or appeal any Forest Service decision or action in accordance with applicable law.
2. As to decisions relating to the administration of Forest Service budgets, personnel or property, the parties shall cooperate in identifying and seeking adequate resources for the Tribes' and Forest Service's capabilities necessary to implement this MOU. In particular, the Forest Service shall seek input from the Tribes in a timely manner regarding the development of its budget proposal for upcoming fiscal years.
 3. During the course of their dealings, the Tribes and Forest Service shall ensure that they have identified their representatives with whom the other parties should interact regarding particular decisions or particular types of decisions.
 4. Nothing in this MOU shall preclude the Tribes and Forest Service from discussing matters or advancing particular requests that are not part of a particular pending Forest Plan implementation decision.

C. **Natural Resource Harvest Management.** The Tribes and Forest Service acknowledge their mutual interests in undertaking a collaborative approach in managing the harvest of natural resources on lands administered by the Forest Service to ensure the sustainability of ecosystems and the sustained yield of natural resources, in ensuring that the Tribes' ceded territory rights are meaningfully exercised, and in providing for a consistent conservation-based system under which the Tribes will exercise their ceded territory rights on those lands. Specifically, the Tribes and Forest Service agree:

1. Within the bounds of their respective authorities, to regulate and monitor the harvest of natural resources on lands administered by the Forest Service in a manner that provides for a sustained harvest of resources and affords the Tribes the opportunity to harvest an equal

allocation of the harvestable surpluses of those resources.

2. That the Tribes will regulate tribal member gathering on lands administered by the Forest Service by adopting regulations and implementing permit systems that are no less restrictive than those set forth in the Model Off-Reservation National Forest Gathering Code [hereafter Model Code], which is attached as Exhibit A and specifically incorporated into this MOU.
3. That any changes making the Model Code, or any Tribe's enactment based upon the Model Code, less restrictive will fall within the scope of the MOU if the Forest Service's consent is obtained in accordance with the provisions of subsection F, below.
4. To monitor harvest levels in the most effective and precise manner needed to ensure resource protection and to exchange harvest monitoring data on a regular basis.
5. To designate areas for tribal sugar bushes that will meet needs identified by the Tribes and to jointly develop specific sugar bush management plans. The parties further agree to consider complementary and conflicting resource values, location of historical sugarbushes, proximity to reservations, and other relevant factors in choosing sugarbush locations.
6. To locate species of interest to the Tribes and to provide gathering opportunities for those resources, particularly regarding gathering opportunities associated with National Forest timber sales.
7. That once the Forest Service decides that it intends to solicit bids for timber sale contracts for down or damaged trees, trees in the designated timber salvage stands having a diameter of four inches or greater, whether they are alive, dead, down or standing, will be regulated in the same manner as standing live trees for treaty harvest purposes. For the purposes of the MOU and attached Model Code, the term "Forest Service timber salvage stand" means any stand of trees where the Forest Service has notified the Tribes of its decision to solicit bids for a salvage timber sale contract, and the term "salvage timber" means any tree in that stand, whether alive, dead, down or standing, having a diameter of four inches or greater.
8. That the Tribes will not issue a permit for the harvest of live trees or of

salvage timber for the purposes of constructing a structure/dwelling, as these terms are defined in the attached Model Code, without the Forest Service's consent. In seeking the Forest Service's consent, the requesting Tribe shall inform the other Tribes that are parties to the MOU of the request and shall indicate in writing to the Forest Service the types and amounts of trees sought, the use to which the trees will be put, and the anticipated time frame for the harvest. The Forest Service shall promptly consider the request, consult with the requesting Tribe as to the specifics of the proposal, and provide in writing its decision and the underlying rationale. The Forest Service shall make every attempt to accommodate the request and, before withholding consent, shall discuss with the Tribe possible alternatives. In any event, Forest Service consent shall not be unreasonably withheld. The Forest Service, within its existing authorities, will provide opportunities for the Tribes to take up to 40,000 board feet of timber per year per National Forest and the Tribes will conduct inter-tribal coordination on requests for timber for these purposes.

9. That the Tribes and their members use National Forest campgrounds in the exercise of their ceded territory rights and that Forest Service fees and length of stay restrictions at campground should not interfere with the exercise of the rights. The parties acknowledge that, prior to completion and ratification of the MOU, time constraints have prevented them from developing the necessary Exemption Agreement and accompanying Implementation Plan regarding campground fee and length of stay exemptions for tribal members. Upon ratification of the MOU, the parties commit to immediately developing the Agreement and Implementation Plan. Once properly approved, the Exemption Agreement and Implementation Plan shall become part of the MOU and be specifically incorporated by reference herein as if set forth in their entirety.
10. That the parties have not resolved their disagreement regarding the Tribes' request for unrestricted motorized use of Crooked Lake in the Sylvania Wilderness located in the Ottawa National Forest. While the parties agree to disagree on this matter at this time, they will continue to strive for a resolution using the procedures and processes contained in the MOU. The parties acknowledge that on all other matters regarding wildernesses, their agreement is properly reflected in the provisions of the attached Model Code, including specifically those of §3.06(1)(a) that establish Tribal National Forest Wildernesses.
11. That, in accordance with the provisions of subsection F, below, the Forest Service will notify the Tribes of and obtain the Tribes' input on proposed changes in federal laws or regulations that are intended to regulate or

otherwise restrict the harvest of natural resources on lands administered by the Forest Service within the ceded territories.

- D. Monitoring and Evaluation.** To ensure the sustainability of ecosystems, the Tribes and Forest Service acknowledge the importance of inventorying and monitoring the status of species and their habitats within the National Forests, evaluating the impacts of harvest on the resources subject to the Tribes' ceded territory rights, and evaluating the effects of other land management activities on those resources. With the input and recommendations of the TWG, the Tribes and Forest Service agree to:
1. Review their respective existing research projects and administrative studies as needed for the purpose of encouraging research coordination.
 2. Establish and implement a program of research, monitoring and evaluation regarding the resources subject to the Tribes' ceded territory rights that specifically would:
 - a. Inventory species status and habitat requirements.
 - b. Monitor the population dynamics and habitats of species as Forest Plans are implemented.
 - c. Determine the effects of land management activities, such as timber harvest, on species' populations.
 - d. Determine the effects of wild plant harvest on the status of the species being harvested.
 - e. Evaluate such other matters that relate to the resources subject to the Tribes' ceded territory rights.
- E. Law Enforcement.** The parties acknowledge the Tribes' capabilities to implement a self-regulatory system governing the exercise of ceded territory rights applicable on lands administered by the Forest Service. The parties specifically agree that:
1. Any regulation adopted by Tribe consistent with the MOU will govern the exercise of the Tribes' ceded territory gathering rights within the National Forests and is within the scope of the MOU. Any Tribe's regulation that is not consistent with the MOU's provisions is outside the MOU's scope.

2. The enforcement of the Tribes' regulations and of any federal statute or regulation governing the conduct within the scope of a Tribe's regulations that are consistent with the terms of the MOU shall be governed by a properly ratified agreement that is no less restrictive than the Tribal Self-Regulation Agreement [hereafter Self-Regulation Agreement], attached as Appendix B and specifically incorporated into the MOU. For the purposes of this subsection, "properly ratified" means a party's approval of and the agreement to be bound by the Self-Regulation Agreement in accordance with that party's required governmental procedures.
3. That any changes in the Self-Regulation Agreement shall be made in accordance with the provisions of subsection F, below.
4. Primary enforcement and administration of justice responsibilities for the Tribes' regulations lies with the Tribes and their properly authorized agencies.
5. The Tribes and Forest Service will coordinate their respective law enforcement activities and establish cooperative law enforcement ventures, such as joint patrols, effective communication systems, information and potential violation referral processes, and joint training activities. These coordinated law enforcement activities shall include at least annual meetings between designated enforcement personnel.

F. Process for MOU Amendments, Regulatory Changes and Self-Regulation Agreement Changes. The parties recognize the dynamic nature of their government-to-government relationship. They also recognize that changes in federal and tribal regulation and management of the harvesting of the National Forests' natural resources in the ceded territories are inevitable. To facilitate open communication and minimize disputes arising from the dynamics of their relationship and from the need to change harvest regulations, the parties agree:

1. Consensus/Resolution of Disputes. As for the matters addressed by this subsection F, the affected parties shall strive to reach consensus on the matter at hand. Where consensus cannot be reached:
 - a. The affected parties will attempt to resolve any dispute or disagreement first by good faith discussions at the appropriate governmental level. A party may raise any matter not resolved at this level to a higher official of another party. If it has the authority to do so, a party will delay a final decision on the

unresolved matter until this process has had the opportunity to take place within a reasonable amount of time.

- b. A party claiming the requisite authority may make and implement a decision on the unresolved matter.
 - c. In addition to the procedures provided by the MOU, a party may challenge or appeal another party's decision or action in accordance with applicable law.
2. MOU Amendment. Any party may propose an amendment to the MOU in writing to the other parties. Within 60 days of receipt, the parties shall convene a meeting to consider the proposal. An amendment may be adopted by and binding upon less than all of the parties provided that the adopting parties include at least one tribal party and the Forest Service.
 3. Federal Laws and Regulations. The Forest Service agrees to seek the input of the Tribes on proposed changes to the Forest Service's regulation of natural resource harvesting within the ceded territories by providing written notice, including an explanation of the underlying rationale, to the Tribes at least 60 days in advance of the desired effective date of the proposed change. The Tribes shall have 45 days, or such other time period as may be agreed upon, to provide comments.

In addition, the Tribes may submit a written request to the Forest Service for changes in the Forest Service's regulation of natural resource harvesting, including an explanation of the request's rationale. The Forest Service agrees to respond to the request within 45 days, or such other time period as may be agreed upon.

Unless other time frames are specifically imposed by applicable law, the Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on the Forest Service proposal and on a Tribe's request.

4. Model Code or Tribal Enactments Based Upon the Model Code. The Tribes agree to notify the Forest Service in writing of any proposed change that would make the Model Code, or any Tribe's enactment based upon the Model Code, less restrictive than provided for in the MOU. In addition, the Forest Service may request the Tribes to change the Model Code, or any Tribe's enactment based upon the Model Code, to be more restrictive than provided for in the MOU.

Except in cases of emergency, such notices and requests will be provided at least 60 days in advance of the desired effective date of the change and will include an explanation of the proposal's rationale. Within 45 days of receipt, or such other time period as may be agreed upon, the receiving party or parties shall respond expressing any objections and indicating any changes that are agreeable. The failure to object in writing to a proposed change within the 45-day period, or any extension thereof, will be deemed as agreement to the proposal.

The Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on any objection to a proposed or requested change.

A properly amended Model Code shall replace the then-current Appendix A to the MOU and is specifically incorporated by reference herein as if set forth in its entirety.

5. Tribal Self-Regulation Agreement. Any party may submit a written request to the other parties for a change in the Self-Regulation Agreement. Except in cases of emergency, such request will be provided at least 60 days in advance of the desired effective date of the change and will include an explanation of the proposal's rationale. Within 45 days of receipt, or such other time period as may be agreed upon, the receiving party or parties shall respond expressing any objections and indicating any changes that are agreeable. The failure to object in writing to a proposed change within the 45-day period, or any extension thereof, will be deemed as agreement to the proposal.

The Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on any objection to a proposed change.

A properly amended Self-Regulation Agreement shall replace the then-current Appendix B to the MOU and is specifically incorporated by reference herein as if set forth in its entirety.

VII. CONGRESSIONAL INVOLVEMENT. Pursuant to 42 U.S.C. Section 22, no Member of or Delegate to the Congress of the United States shall be admitted to any share or part of this instrument, or any benefits that may arise therefrom.

VIII. MOU EFFECTIVE DATE/TERMINATION. The MOU shall take effect on the date when at least one Tribe, the Forest Service's Eastern Region, the Region's Law

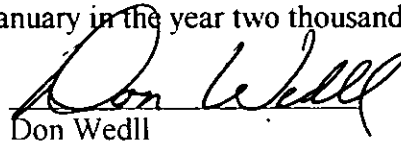
Enforcement and Investigations Branch, and the North Central Research Station have properly ratified it in accordance with their respective governmental procedures. The MOU shall be binding as to and between those entities upon notice to the other parties of their ratification as provided in Section IX, below. Any party may withdraw from this agreement at any time following the notice of withdrawal procedures of Section IX.B., below. This MOU shall no longer be in effect if the Forest Service withdraws or if all ratifying tribes have withdrawn.

IX. REQUIRED NOTICES/PARTIES' DESIGNATED REPRESENTATIVES.

- A. **Notice of Ratification.** Within 30 days of ratification of the MOU, an entity shall notify all other entities listed in Section II, above, of the date of ratification. Each party's Notice of Ratification is specifically incorporated into the MOU as if set forth in its entirety.
- B. **Notice of Withdrawal.** A party shall provide written notice to the other parties of its intent to withdraw from the MOU at least 60 days in advance of the proposed withdrawal date. Within 45 days of such notice, or such other time period as may be agreed upon, the parties shall convene a meeting to discuss the intent to withdraw and to attempt to reach consensus on ways to prevent the withdrawal. Should a party ultimately withdraw from the MOU, it shall provide a written Notice of Withdrawal to the other parties, and such Notice is specifically incorporated into the MOU as if set forth in its entirety.
- C. **Designated Representatives.** In providing notice of its ratification, a party may designate its representative for receiving the notices from the another party that are required by the MOU. Where a party has not formally designated a representative either with its Notice of Ratification or with respect to particular matters addressed by the MOU, another party may provide a required notice *ex officio* to the office of the official that provided the party's Notice of Ratification.

- X. **INITIAL MEETING OF THE PARTIES.** Within 90 days of the MOU's effective date, the parties shall convene an initial meeting for the purposes of: (A) identifying those matters that require immediate attention in implementing the MOU's provisions, such as the agreement and implementation plan regarding campground fees and length of stay restrictions; (B) identifying and addressing any other matter regarding the MOU that requires the parties' attention; (C) setting forth a timetable for addressing those matters; and (D) identifying their representatives that will serve as their "keepers of the process" in ensuring that the MOU is faithfully implemented. These representatives may be persons other than a party's designated representative for receiving required notices from another party provided for in Article IX, above.

DATED at Vineland, Minnesota this 14th day of January in the year two thousand:



Don Wedll
Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO
FORM AND EXECUTION



Adam Altman
Solicitor General

Expiration Date: None

OFFICIAL SEAL OF THE BAND