

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

BAY MILLS INDIAN COMMUNITY, SAULT
STE. MARIE TRIBE OF CHIPPEWA INDIANS,
GRAND TRAVERSE BAND OF OTTAWA AND
CHIPPEWA INDIANS, LITTLE RIVER BAND OF
OTTAWA INDIANS, and LITTLE TRAVERSE
BAY BANDS OF ODAWA INDIANS,

File No. 2:73 CV 26

Hon. Richard Alan Enslen

Plaintiff-Intervenors,

v

STATE OF MICHIGAN, et al,

Defendants.

**ORDER AMENDING SECTIONS
VILA.7.b.2, VILA.7.c AND VILA.7.e OF CONSENT DECREE**

A Consent Decree was entered on August 7, 2000, upon the stipulation of the parties, with the involvement of *amici curiae*, by which the Court established regulation, management and allocation of fish resources in the Great Lakes subject to the treaty fishing rights reserved in the Treaty of March 28, 1836 (7 Stat. 491) for the time period of 2000 to 2020.

The parties, with *amici curiae*, have engaged recently in extensive negotiations to resolve a dispute about the lake trout management regime set forth in Section VII of the 2000 Consent Decree, and have resolved that dispute under the dispute resolution provisions of the Decree found at Section XIX. The parties have executed a stipulation for amendment for Sections

VII.A.7.b.2, VII.A.7.c AND VII.A.7.e of Consent Decree, in which the *amici* have concurred.

The Court approves the agreement of the parties set forth in the Amendment and enters this

Order:

IT IS HEREBY ORDERED that Section VII.A.7.b. is hereby amended to read:

The following phase-in to target levels based on reduction in harvest shall apply to Tribal harvest limits in MM-1, MM-2, and MM-3 (combined) for the period 2001 through 2006 in any year in which this phase-in method results in a higher commercial harvest limit than the method in sub a., above; provided, that the Tribal harvest limit in MM-1, MM-2, and MM-3 (combined) shall not be less than 450,000 pounds round weight in any year during this period;

(1) Unchanged

(2) For the years 2002 through 2006, the Tribes' lake trout harvest limit shall be their prior year's harvest limit, less the reduction in lake trout harvest projected from gill net conversions under Section X.C. occurring since the calculation of the previous harvest limit.

IT IS FURTHER ORDERED that Section VII.A.7.c. is hereby amended to read:

Phase-in to target levels based on reduction in effort or change in regulations shall apply in years 2001 through 2005 in units MH-1 (excluding the Bay Mills Small Boat Zone) and MI-6, and in years 2001 through 2006 in unit MM-4, as described below:

(1) Unchanged

(2) Unchanged

IT IS FURTHER ORDERED that Section VII.A.7.e is hereby amended to read:

Phase-in to target levels in unit MM-4 shall be based on a Tribal share of sixty percent (60%) and a State share of forty percent (40%) during the period 2007 through 2009.

IT IS FURTHER ORDERED that the phase-in period for lake trout harvest limits in management units MM-1, MM-2, MM-3, and MM-4 may be extended by the parties through the filing of a notice to the Court no later than October 30, 2006, of the duration of the extension upon which the parties are agreed.

/s/ Richard Alan Enslin

Hon. Richard Alan Enslin
U.S. District Court Judge

Dated: January 9, 2006

cases/1990/us v mich/inland filing/west dist/pleadings/order amending consent decree

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

BAY MILLS INDIAN COMMUNITY, SAULT
STE. MARIE TRIBE OF CHIPPEWA INDIANS,
GRAND TRAVERSE BAND OF OTTAWA
AND CHIPPEWA INDIANS, LITTLE RIVER
BAND OF OTTAWA INDIANS, and LITTLE
TRAVERSE BAY BANDS OF ODAWA
INDIANS,

Plaintiff-Intervenors,

v

STATE OF MICHIGAN, et al,

Defendants.

File No. 2:73 CV 26

Hon. Richard Alan Enslin

**STIPULATION FOR AMENDMENT OF SECTIONS
VILA.7.b.2, VILA.7.c AND VILA.7.e OF CONSENT DECREE**

WHEREAS, a Consent Decree was entered on August 7, 2000 ("2000 Consent Decree"), upon the stipulation of the parties, by which the Court established regulation, management and allocation of fish resources in the Great Lakes waters of Lakes Huron, Michigan and Superior subject to the treaty fishing rights reserved by Plaintiff-Intervenors in the Treaty of March 28, 1836 (7 Stat. 491) (the "1836 Treaty waters") for the time period of 2000 to 2020; and

WHEREAS, the parties' Stipulation for Entry of Consent Decree premised the lake trout management regime set forth in Section VII of the 2000 Consent Decree upon the existence of

certain conditions which together contribute over time to rehabilitation of lake trout in the 1836 Treaty-ceded waters, specifically the reduction of sea lamprey to a level at which sea lamprey-induced mortality of lake trout will be less than the baseline levels observed in 1998; and

WHEREAS, the parties acknowledge that the number of lake trout stocked in northern Lake Michigan under Section IX.C. of the 2000 Consent Decree remains below the amount believed necessary to allow reasonable fishing opportunities and achieve lake trout rehabilitation within the term of this Decree; and

WHEREAS, the parties further acknowledge that sea lamprey abundance in northern Lake Michigan under Section IX.C of the 2000 Consent Decree has not been reduced to achieve sea lamprey-induced lake trout mortality levels at or below the baseline levels observed in 1998; and

WHEREAS, implementation of lake trout harvest limits in lake trout management units MM-1, MM-2 and MM-3 (combined) in 2006, as contemplated by Section VII.A.7.b.2. of the 2000 Consent Decree, and in MM-4 in 2006, as contemplated by Section VII.A.7.c. of the 2000 Consent Decree, will effectively prohibit harvest of lake trout by both tribal and State-licensed recreational anglers because the condition for implementation expressed in the Stipulation for Entry of Consent Decree regarding sea lamprey-induced lake trout mortality levels has not been met; and

WHEREAS, all parties continue to be fully committed to lake trout rehabilitation in all 1836 Treaty-ceded waters; and

WHEREAS, all parties are fully committed to reaching agreement on management of the lake trout fishery in MM-1, MM-2, MM-3, and MM-4, pending successful control of sea lamprey to reduce sea lamprey-induced lake trout mortality to levels at or below the 1998

baseline levels, and if feasible, increased stocking of lake trout to levels believed necessary to allow reasonable fishing opportunities and achieve lake trout rehabilitation within the term of this Decree; and

WHEREAS, Tribal regulation of the treaty fishery in MM-1, MM-2, MM-3, and MM-4 will maintain the current restriction on fishing effort; and

WHEREAS, Plaintiff-Intervenors will provide to the Plaintiff United States and Defendant Michigan Department of Natural Resources all collected data on tribal commercial harvest in MM-1, MM-2 and MM-3 (combined) and in MM-4 no later than August 1st for harvest occurring between January 1 and June 30, and no later than October 1st for harvest occurring between July 1 and August 31; and

WHEREAS, the parties acknowledge that the sea lamprey-induced lake trout mortality may exceed 1998 baseline levels in 2006 in MM-1, MM-2, and MM-3 (combined) and in MM-4.

NOW, THEREFORE the undersigned parties, by and through their respective counsel of record hereby stipulate and agree to entry of an order of this Court amending the 2000 Consent Decree as follows:

IT IS HEREBY ORDERED that Section VII.A.7.b. is hereby amended to read:

The following phase-in to target levels based on reduction in harvest shall apply to Tribal harvest limits in MM-1, MM-2, and MM-3 (combined) for the period 2001 through 2006 in any year in which this phase-in method results in a higher commercial harvest limit than the method in sub. a., above; provided, that the Tribal harvest limit in MM-1, MM-2, and MM-3 (combined) shall not be less than 450,000 pounds round weight in any year during this period;

For the years 2002 through 2006, the Tribes' lake trout harvest limit shall be their prior year's harvest limit, less the reduction in lake trout harvest projected from gill net conversions under Section X.C. occurring since the calculation of the previous harvest limit.

IT IS FURTHER ORDERED that Section VII.A.7.c. is hereby amended to read:

Phase-in to target levels based on reduction in effort or change in regulations shall apply in years 2001 through 2005 in units MH-1 (excluding the Bay Mills Small Boat Zone) and MI-6, and in years 2001 through 2006 in unit MM-4, as described below:

Commercial gill net effort limits for each year shall be determined in each of these units as the 1997 through 1999 average commercial gill net effort less the cumulative gill net effort removed by conversion under Section X.C. Commercial harvest limits for each year shall be derived annually based on that year's commercial gill net effort limit, provided that such limits shall not be used to manage the fishery unless average catch per effort in commercial gill nets increases by twenty percent (20%) above the 1997 through 1999 average.

Recreational harvest limits for each year shall be derived based on the previous three-years' average recreational effort adjusted for any changes in fishing regulations.

IT IS FURTHER ORDERED that Section VII.A.7.e is hereby amended to read:

Phase-in to target levels in unit MM-4 shall be based on a Tribal share of sixty percent (60%) and a State share of forty percent (40%) during the period 2007 through 2009.

IT IS FURTHER ORDERED that the phase-in period for lake trout harvest limits in management units MM-1, MM-2, MM-3, and MM-4 may be extended by the parties through the filing of a notice to the Court no later than October 30, 2006, of the duration of the extension upon which the parties are agreed.

UNITED STATES OF AMERICA
Plaintiff

/s/ Margaret M. Chiara
Margaret M. Chiara, Attorney

Dated: January 5, 2006

BAY MILLS INDIAN COMMUNITY
Plaintiff-Intervenor

/s/ Kathryn L. Tierney
Kathryn L. Tierney, Attorney

Dated: January 5, 2006

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS
Plaintiff-Intervenor

/s/ William Rastetter
William Rastetter, Attorney

Dated: January 5, 2006

LITTLE RIVER BAND OF OTTAWA INDIANS
Plaintiff-Intervenor

/s/ William J. Brooks
William J. Brooks, Attorney

Dated: January 5, 2006

**LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS,**
Plaintiff-Intervenor

/s/ James A. Bransky
James A. Bransky, Attorney

Dated: January 5, 2006

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
Plaintiff-Intervenor

/s/ Bruce Greene
Bruce Greene, Attorney

Dated: January 5, 2006

STATE OF MICHIGAN, et al.,

/s/ James E. Riley
James E. Riley, Attorney

Dated: January 5, 2006

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