

“legitimate State interest” for objecting to the proposed activity as defined in this Section XXI. The Tribes shall defer commencement of a proposed assessment activity during the 60-day period in which the State might object to such activities and, if the State does object, pending resolution of the objection by arbitration (but need not defer implementation pending an appeal of the arbitration award, unless otherwise ordered by the Court). An arbitration award under this Section may be vacated, modified or corrected on appeal only on the grounds set forth in the Federal Arbitration Act, 9 U.S.C. §§ 10-11, as now in force or hereafter amended. In carrying out assessment activities, the State and the Tribes shall utilize qualified biologists or other appropriately trained personnel. Tribal and State assessment activities shall be conducted in a manner consistent with accepted scientific principles using non-lethal methods whenever appropriate.

XXII. RESTORATION, RECLAMATION, AND ENHANCEMENT PROJECTS

The Parties recognize that the Tribes may desire to engage in activities designed to restore, reclaim, or enhance fish, wildlife or other natural resources within the inland portion of the 1836 Ceded Territory through stocking, rearing, habitat improvement, or other methods. The Parties shall meet annually in order to minimize or avoid duplication of, or interference with, restoration, reclamation, and enhancement activities. With the exception of habitat projects on federal lands, which shall be subject to federal approval under applicable law, or on lands that are owned by the Tribes or their members, the Tribes shall not undertake new restoration, reclamation, or enhancement projects without State approval, *provided* that the State shall not withhold its approval without fully consulting with the Tribes and articulating a legitimate State interest for doing so within 60 days of being notified of the proposed project. In carrying out restoration, reclamation, and enhancement projects, the Tribes shall utilize qualified biologists or

other appropriately trained personnel. Restoration, reclamation, or enhancement projects that involve stocking or rearing of fish that migrate to the Great Lakes and back into streams, such as the Little River Band's Manistee River sturgeon enhancement project, shall be subject to the provisions of the 2000 Great Lakes Consent Decree and any successor thereto, rather than this Decree, *provided* that the State and the Tribes shall provide each other with a reasonable opportunity to review and comment on any proposal to initiate, alter or discontinue a restoration, reclamation or enhancement project that may affect harvest opportunities under this Decree.

XXIII. CONSULTATION AND EXCHANGE OF INFORMATION

23.1 The State and the Tribes shall establish one or more committees to facilitate consultation and the exchange of information among the Parties. In addition to those matters set forth above, the State and the Tribes shall at least annually exchange: proposals for assessment activities; the results of assessment activities; a summary of State and Tribal licenses and permits issued and harvest and effort data pertaining to the inland portion of the 1836 Ceded Territory; and a summary of any other data and a copy of any reports regarding the condition of the resources in the inland portion of the 1836 Ceded Territory.

23.2 The Parties shall develop a protocol for these purposes, which shall provide for at least one annual meeting among the Parties or their representatives. The initial protocol to be adopted by the Parties is set forth in Appendix L, which is attached hereto and made a part hereof. The Parties may amend the protocol from time-to-time in accordance with its terms. The protocol, as initially adopted or hereafter amended, shall be enforceable as a component of this Decree.

23.3 The State and the Tribes shall work in good faith to coordinate resource assessment, restoration, enhancement, and harvest monitoring activities.

23.4 The State and the Tribes shall notify each other at least annually of proposed regulatory changes (including changes in management units or methodologies for determining the allowable harvest of any species) before they take effect (except where, due to an emergency or other matter beyond the control of the Parties it is not possible to provide advance notice) and seek to resolve any concerns arising from such changes before implementing them. Upon request, the State and the Tribes shall share information regarding the rationale for such changes and their anticipated effects (*e.g.*, changes in species abundance, distribution, or age or sex ratios). Upon request, the State and the Tribes shall provide similar information for any existing regulation, management unit or allowable-harvest methodology. The information provided shall be sufficiently detailed to enable the other Parties to fully understand the regulation, management unit or allowable-harvest methodology at issue and any underlying data associated with it, and to enable them to make constructive suggestions for improvements to such regulation, management unit or harvestable surplus methodology.

XXIV. LAW ENFORCEMENT

24.1 As a general principle, prosecutions of alleged violations of fish and game laws and regulations by Tribal members in the inland portion of the 1836 Ceded Territory shall be heard in a Tribal forum. This provision is predicated on: (a) the enactment of Tribal fish and game laws and regulations that are consistent with this Decree; and (b) the existence of a Tribal forum with subject matter jurisdiction to hear prosecutions of alleged violations of fish and game laws and regulations. As used in this Section XXIV, Tribal forum means either a Tribal Court or another mutually acceptable Tribal tribunal. In any Tribal forum in which such a prosecution is heard, upon request of a law enforcement agency whose officer will be a witness, the law

enforcement officer's testimony shall be presented by a tribal prosecutor or other trained legal advocate.

24.2 Except for the categories of violation specifically otherwise noted in this Decree, if the predicate requirements are met, the State shall be precluded from initiating prosecutions of the Tribes' members in State courts for violations of State law or regulations pertaining to Hunting, Trapping, , otherwise taking any species of wildlife, Fishing, or Gathering, when such acts are within the scope of this Decree or subject to Tribal regulations that are consistent herewith. This preclusion shall apply to the following statutes and their implementing regulations, as now in force or hereafter amended, and other similar statutes and regulations:

(a) endangered species protection [Part 365 of Art. III, Chap. I, Natural Resources and Environmental Protection Act (NREPA), Mich. Comp. Laws, § 324.36501 *et seq.*];

(b) wildlife conservation [Part 401, Art. III, Chap. II, NREPA, Mich. Comp. Laws, § 324.40101 *et seq.*];

(c) Hunting and Fishing licenses [Part 435, Art. III, Chap. II, NREPA, Mich. Comp. Laws, § 324.43501 *et seq.*];

(d) Fishing with Hook and Line Gear [Part 453, Art. III, Chap. II, NREPA, Mich. Comp. Laws, § 324.45301 *et seq.*];

(e) frogs [Part 455, Art. III, Chap. II, NREPA, Mich. Comp. Laws, § 324.45501 *et seq.*];

(f) mussels [Part 457, art. III, Chap. II, NREPA, Mich. Comp. Laws, § 324.45701 *et seq.*];

(g) fish shanties [Part 465, Art. III, Chap. II, NREPA, Mich. Comp. Laws, § 324.46501 *et seq.*]; and

(h) spearing fish in Houghton Lake [Part 485, Article III, Chap. II, NREPA, Mich. Comp. Laws, § 324.48501]

(i) sport Fishing [Part 487, Art. III, Chap. II, NREPA, Mich. Comp. Laws, § 324.48701 *et seq.*].

24.3 This Decree does not preclude the State from prosecuting in State court alleged violations by Tribal members of the provisions of the Michigan Penal Code, Mich. Comp. Laws, § 750.1 to 750.568, as now in force or hereafter amended. Violations of State or Tribal law pertaining to safety zone closures near occupied dwellings, trespass or recreational trespass, and hunter harassment, as defined in State or Tribal law or regulations consistent with this Decree, shall be concurrently enforceable by State and Tribal officers, with prosecution to occur in either State or Tribal courts, *provided* that nothing herein shall be construed as creating a right of a defendant to seek removal of a prosecution from State court to Tribal court or from Tribal court to State court, and *provided further* that Tribal members shall not be prosecuted in State court under circumstances in which non-Tribal members would not be prosecuted for the same offense. If the State issues a citation to a Tribal member for a violation of State law under this Paragraph 24.3 or Paragraph 24.5 of this Decree, it shall provide notice of the citation to the Tribal member's Tribe on the next business day or as soon thereafter as practicable. In the event that it is not practicable to provide notice of the citation to the Tribal member's Tribe on the next business day, the State shall explain in writing the reasons that the provision of such notice was impracticable. Notwithstanding the foregoing, the State's failure to provide notice of a citation

or a written explanation for such failure to the Tribal member's Tribe shall not constitute a defense to the citation.

24.4 Tribal members operating off-road vehicles, snowmobiles, boats or other vessels who are engaged in the exercise of a treaty-related Hunting, Trapping, Fishing or Gathering activity, shall not be subject to State vehicle or vessel registration requirements, provided that the Tribal member satisfies Tribal license requirements for the activity in question, is in compliance with applicable Tribal Hunting, Trapping or Fishing season limitations in Tribal law adopted pursuant to this Decree, and possesses evidence of being currently engaged in Hunting, Trapping, Fishing or Gathering, such as fish, game or common items related to Hunting, Trapping, Fishing or Gathering such as Fishing rods, tip-ups, firearms, traps, or nets.

24.5 On non-Tribally owned lands, operation of an off-road vehicle, snowmobile, or boat or vessel by a Tribal member in a manner that creates a threat to public safety or damage to the environment is enforceable by both State and Tribal officers under provisions of State or Tribal law or regulation, with concurrent jurisdiction in both State and Tribal court.

24.6 The provisions set forth in subparagraphs (a) through (c) of this Paragraph 24.6, by which State law enforcement officers shall have the authority to enforce Tribal regulations on non-Tribal lands, shall be effective only if, and only for so long as, the Parties are able to identify a mechanism by which Tribal law enforcement officers shall have the authority to: stop hunters and fishermen in the field in order to determine whether they are Tribal members; enforce Tribal regulations with respect to Tribal members; and, to the extent they are deputized under applicable law, enforce State regulations with respect to non-Tribal members. The State shall not be liable for the acts or omissions of Tribal law enforcement officers in the performance of their duties under this Decree and the Tribes shall not be liable for the acts or omissions of the

State's law enforcement officers in the performance of their duties under this Decree. Moreover, nothing in this Decree shall be construed to mean either that Tribal law enforcement officers are agents of the State or that State law enforcement officers are agents of the Tribes.

(a) Conservation officers of the MDNR are authorized to enforce a Tribe's regulations pertaining to Inland Article 13 Rights on non-Tribal lands and to institute proceedings in a Tribal forum through the issuance of a citation upon satisfaction of the following requirements:

- (i) certification as a law enforcement officer by MCOLES, or its successor agency; and
- (ii) successful completion of a cultural awareness program approved by the State and the Tribes.

MDNR shall provide the Tribes with updated lists of officers meeting these criteria.

(b) In order to assure professional, fair, and reasonable enforcement of the Tribes' regulations, any Tribe subject to this Decree may initiate a complaint of unprofessional conduct against a Michigan conservation officer, by means of filing the standard form available from the Law Enforcement Division of the MDNR. In order to assure transparency in the investigation of such charges, the chief law enforcement officer of the Tribe initiating a complaint shall be invited to:

- (i) participate in the investigation of such charges; and
- (ii) participate as a member of the review board that reviews the investigation, determines the validity of such charges and establishes any corrective or disciplinary actions that may be appropriate if officer misconduct is established.

(c) A MDNR conservation officer may:

(i) conduct routine inspections of boats, wagons, trailers, vehicles, snowmobiles, containers, packages, or other containers utilized by a person in a Harvesting Activity authorized by Tribal law;

(ii) stop and board any boat and stop any vehicle or snowmobile if the officer reasonably suspects there is a violation of Tribal law;

(iii) execute any process for enforcement of the provisions of Tribal law;

(iv) with or without a warrant, open, enter and examine boats, wagons, trailers, vehicles, snowmobiles and packages and other containers, in which the officer has probable cause to believe that contraband wild plants, wild animals, fish, or carcasses or parts thereof may be contained, or as part of a routine inspection authorized under subparagraph (c)(i) of this Paragraph 24.6; and

(v) if a violation occurs in the officer's presence, seize, with or without a warrant, any article which is subject to forfeiture under applicable Tribal law, or which may be required as evidence of a violation of applicable Tribal law, *provided* that any article so seized shall be delivered within 5 working days of the time of seizure into the custody of the Tribal member's Tribal forum, unless said article is immediately delivered into the custody of an officer of the Tribal member's Tribe. Officers shall exhaust all other practical means of gathering required evidence prior to seizing an article under this subparagraph.

24.7 The records of a Tribal court related to State or Tribal citations or arrests of Tribal members for alleged violations related to Hunting and Fishing under this Decree, including records of court dispositions of such citations or arrests, shall be accessible to MDNR conservation officers during normal business hours.

24.8 Each Tribe shall prepare an annual summary of citations and arrests of Tribal members for alleged violations related to Hunting and Fishing under this Decree, showing the date of violation, the agency initiating the citation or arrest, the location by county of the alleged violation, the charge filed, and the status or disposition of each incident. The report shall be provided to the State no later than the last day in February of the following year. Upon request, the State shall provide a Tribe comparable data for Hunting and Fishing violations prosecuted by the State.

24.9 If Michigan law is amended or modified in the future to provide the opportunity for the deputization of Tribal conservation officers by the MDNR, the State and the Tribes shall work together to develop a process to provide for deputization of such officers.

XXV. WILDLIFE SPECIES FOR WHICH THE STATE DOES NOT CURRENTLY PERMIT HUNTING

Except as otherwise provided in Section XVIII (Migratory Birds), the Tribes shall not authorize their members to harvest wildlife species that cannot lawfully be harvested under State law as of October 2006 (as set forth in Appendix K, which is attached hereto and made a part hereof), *provided* that if any such species is biologically capable of withstanding harvest and the Tribes express interest in such harvest, the State and the Tribes shall make best efforts to reach consensus regarding Tribal harvest of such species, and *provided further* that in the event such consensus is not obtained, the Parties shall utilize the dispute resolution process under this Decree to determine whether Tribal harvests may be permitted. For species designated as game species under Michigan law as of October 2006 (as also set forth in Appendix K), the issue shall be whether the State has a reasonable basis for prohibiting such harvests taking into consideration the Tribes' interest in allowing such harvests, *provided* that no harvest of moose shall be permitted by the State or the Tribes unless the State and the Tribes agree that such

harvest is appropriate and agree on an allocation of such harvest. For all other species, the issue shall be whether the State has a basis for objecting to the Tribes' proposed harvest regulations under Paragraph 26.2 of this Decree. Notwithstanding the foregoing, if in the future the State permits the harvest of any species that cannot lawfully be harvested under State law as of October 2006, the Tribes may also permit the harvest of such species. The State agrees to consult with the Tribes on issues of mutual concern regarding such species, including allocation.

XXVI. CHANGES TO REGULATIONS

26.1 The Parties agree that management and regulation of fish, wildlife and other natural resources must be dynamic and respond to changing conditions. Accordingly, from time to time the State and the Tribes may change their harvesting regulations, provided that all such changes shall be consistent with the provisions of this Decree. The State and the Tribes agree to consult with each other about such changes in accordance with this Section XXVI and Section XXIII (Consultation and Exchange of Information).

26.2 The State may object to a proposed Tribal regulatory change, *provided* that the State shall not object to such a change unless, within 60 days of being notified of the proposed change, it consults with the Tribes and demonstrates that: (a) the change would cause demonstrable harm to the conservation of the resource at issue or a demonstrable threat to public health or safety; and (b) prohibiting the change is reasonable and necessary to prevent such conservation harm or public health or safety threat. If the State makes such an objection after fully consulting with the Tribes, the Parties shall jointly refer the matter to binding arbitration to be resolved within the next 60 days. The issue in the arbitration shall be whether the State has satisfied the foregoing standards. The Tribe or Tribes proposing the regulatory change shall defer implementation of the proposed change during the 60-day period in which the State might

object to the change and, if the State does object, pending resolution of the objection by arbitration (but need not defer implementation pending an appeal of the arbitration award, unless otherwise ordered by the Court). An arbitration award under this Paragraph 26.2 may be vacated, modified or corrected on appeal only on the grounds set forth in the Federal Arbitration Act, 9 U.S.C. §§ 10-11, as now in force or hereafter amended.

26.3 In the event that a reduction in fish or game populations requires more restrictive State regulations, the Tribes and the State shall consult regarding appropriate adjustments, if any, in Tribal regulations. The State may object to a Tribe's decision not to make such an adjustment in its regulations, *provided* that the State shall not make such an objection without consulting with the Tribes and demonstrating that: (a) a failure to make the adjustment would cause demonstrable harm to the conservation of the resource at issue; and (b) the adjustment is reasonable and necessary to prevent such conservation harm. If the State makes such an objection after fully consulting with the Tribes, the Parties shall jointly refer the matter to binding arbitration to be resolved within the next 60 days. The issue in the arbitration shall be whether the State has satisfied the foregoing standards. An arbitration award under this Paragraph 26.3 may be vacated, modified or corrected on appeal only on the grounds set forth in the Federal Arbitration Act, 9 U.S.C. §§ 10-11, as now in force or hereafter amended.

XXVII. DISPUTE RESOLUTION

27.1 Any dispute relating to the interpretation, application or enforcement of this Decree shall be resolved by the procedures set forth in this Section XXVII. However, the decision of a Party not to agree or not to give its consent with respect to a matter identified in this Decree as requiring the mutual agreement or consent of the State and one or more of the Tribes shall not be subject to dispute resolution under this Section.

27.2 Negotiation

(a) It is the intent of the Parties that any dispute be resolved informally and promptly through good faith negotiations among the Parties. Should any dispute or controversy arise, the steps outlined in this Paragraph 27.2 shall immediately be taken.

(b) If the dispute involves any matter which is subject to an information sharing or consultation provision under this Decree or which is addressed by the Information Sharing and Consultation Protocol entered into pursuant to Paragraph 23.2 of this Decree, the Party raising the dispute must first comply with the applicable information sharing and consultation requirements and attempt to achieve consensus. If consensus on the matter is not achieved, or if consensus on components of the dispute does not resolve the entire dispute, the Party may proceed with the next step in dispute resolution under this Section.

(c) Any Party may initiate negotiation proceedings by sending written notice to the other Parties setting forth the particulars of the dispute, the provision of this Decree involved, and a suggested resolution of the problem. The recipient Parties involved in the dispute must respond within 20 days of receipt with an explanation and response to the proposed resolution, which response shall be sent to all other Parties.

(d) If correspondence does not resolve the dispute, the Parties involved in the dispute and any other Parties who desire to attend shall meet on at least one (1) occasion within fifteen (15) days after the response by the recipient Parties and attempt to resolve the matter.

(e) If the dispute is not resolved by negotiations within fifteen (15) days after the Parties' first meeting, or within any extended period of time to which the Parties agree, the matter shall be referred to the Executive Council established under the Information Sharing and Consultation Protocol entered into pursuant to Paragraph 23.2 of this Decree. The Executive

Council shall meet either in person or by teleconference within thirty (30) days of the referral to address the matter.

27.3 Mediation

(a) In the event that the entire dispute is not resolved at the meeting of the Executive Council, the Party raising the dispute may proceed to mediation. Unless the Parties agree to a different mediation procedure, Voluntary Facilitative Mediation (“VFM”), pursuant to W.D. Mich. LCivR 16.3, as now in force or hereafter amended, shall govern the mediation process; provided, however, that notwithstanding those rules: (i) the Parties hereby consent to mediation in accordance with this Section; and (ii) the Parties may agree to select a mediator with background and experience in the subject matter which gave rise to the dispute, even if said agreed-upon mediator is not on the list of Court-certified mediators.

(b) In the event the Parties cannot agree upon a mediator within ten (10) days after the party invoking mediation has initiated the process by written notice to all Parties, the mediator shall be selected by the Court’s ADR Administrator.

27.4 Judicial Resolution

(a) If the Parties do not resolve the matter through mediation, or if the Parties agree to waive mediation, a Party or Parties may seek relief from the Court as provided by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Michigan.

(b) A Party desiring to initiate judicial resolution of the dispute shall file a notice pleading with the Court containing a concise description of the matters in dispute, a certification that the Party seeking relief has complied with the dispute resolution procedures of this Decree, and a description of the relief requested. The other Parties may file a responsive pleading within thirty (30) days.

(c) Unless the Parties agree that the dispute can be resolved by motion without the need for discovery or an evidentiary hearing, they shall request a scheduling conference under W. D. Mich. LCivR 16.1, as now in force or hereafter amended, to establish a timetable for disposition of the dispute.

(d) In the event of an emergency involving this Decree posing a threat of immediate irreparable harm to a resource or a Party, a Party may seek immediate or temporary relief under Fed. R. Civ. P. 65, as now in force or hereafter amended, and applicable local court rules without following the procedural steps set forth in this Section.

27.5 Arbitration.

(a) The provisions in Paragraphs 27.1 through 27.4 of this Decree shall not apply to disputes that are subject to binding arbitration under Section XXVI (Changes to Regulations) or Section XXI (Assessment Activities). However, a Party must comply with the applicable information sharing and consultation provisions of Section XXVI, Section XXI, and the Information Sharing and Consultation Protocol adopted under Paragraph 23.2 of this Decree, before invoking arbitration. If a Party invokes binding arbitration under Section XXVI or Section XXI, the arbitration shall be conducted pursuant to W.D. Mich. LCivR 16.6, as now in force or hereafter amended; provided, however, that notwithstanding those Rules: (i) the Parties hereby consent to binding arbitration whenever this Decree calls for arbitration, which arbitration shall be final, binding and non-appealable; (ii) the provisions of the Federal Arbitration Act, 9 U.S.C. §§ 10-11, as now in force or hereafter amended, shall apply to any arbitration award or decree; and (iii) the Parties may agree to select an arbitrator with background and experience in the subject matter which gave rise to the dispute, even if said agreed-upon arbitrator is not on the list of Court-certified arbitrators.

(b) In the event the Parties cannot agree upon an arbitrator within 20 days after the Party invoking arbitration has initiated the process by written notice to all Parties, the arbitrator shall be selected by the Court's ADR Administrator. The arbitration proceedings shall be concluded within the time period specified in this Decree.

XXVIII. MODIFICATIONS

Except as otherwise provided by federal law applicable to the modification of consent decrees, modifications to this Decree shall be made only by mutual agreement among the Parties and approval by this Court. In the event the Parties desire to modify this Decree, the Parties shall present to this Court for its consideration a stipulation and a proposed order for modification of the Decree.

XXIX. FEDERAL LANDS AND FEDERAL LAW

29.1 To the extent a particular activity on federal land under the jurisdiction and control of the U.S. Forest Service, the U.S. Fish and Wildlife Service, the National Park Service, or any successor agency is otherwise subject to State regulation, the exercise of Inland Article 13 Rights on such lands shall be governed by the terms of this Decree and applicable federal laws and regulations. To the extent a particular activity on those federal lands would not otherwise be subject to State regulation, the exercise of Inland Article 13 Rights on those lands shall be governed by memoranda of understanding between the Tribes and the Forest Service, Fish and Wildlife Service, or Park Service, or any successor agency, respectively, and by applicable federal laws and regulations. The exercise of Inland Article 13 Rights on lands under the jurisdiction and control of any other federal agency shall be governed by memoranda of understanding between the Tribes and the agency or its successor and applicable federal laws and regulations.