



## 2007 Inland Consent Decree

### 1. What is the issue in the case that the State of Michigan is currently involved in litigation with the 1836 Indian tribes?

Litigation between five Michigan tribes, the United States, and the State over the scope of treaty rights under the 1836 Treaty of Washington actually has been on-going since 1973. However, until late 2003 tribal claims litigated in federal court only involved tribal fishing in the Great Lakes. In 1979, the court ruled that the 1836 tribes still had a viable treaty right to fish in the Great Lakes, and specifically found that the Great Lakes waters could never be settled. As a result of this ruling, the State, the United States, and the tribes entered into Consent Decrees in 1985 and again in 2000 to implement the court's 1979 ruling. In September 2003, the State filed a claim in federal court to resolve the issue of the inland treaty rights to hunt, fish, and gather on land ceded to the United States in 1836.

### 2. What is the background of the 1836 Treaty of Washington?

The 1836 treaty, as with many of the treaties between the United States and various Indian tribes in the Northwest Territory, involved a land purchase between the United States and Ottawa and Chippewa Indian Tribes of the northern Lower Peninsula and the eastern Upper Peninsula of Michigan. These Indian treaties often contained clauses in which the tribes often reserved certain hunting, fishing, and gathering rights. In the 1836 treaty, Article 13 provided that the Indians reserved the "right to hunt and the usual privileges of occupancy until the land is required for settlement." The current litigation between the United States, the tribes and the State of Michigan involves a dispute as to the meaning of when the land was "required for settlement."

### 3. Why are we still talking about a treaty from 1836? Is it still valid today?

Yes, federal courts, including the United States Supreme Court, have consistently held that the passage of time cannot erode the rights retained when these treaties were signed. In these Indian treaty cases, federal courts have ruled that under the Supremacy clause of the United States Constitution, that State laws must give way to Indian treaties.

### 4. Why was litigation in the inland case necessary?

Although the court in *U.S. v. Michigan* has addressed the issue regarding the tribes' treaty right claim with respect to Great Lakes fishing, the issue of the validity of treaty rights with respect to inland hunting, fishing, and gathering remained unresolved and uncertain. The tribes believed that these inland rights were still valid and that they did not need to adhere to State hunting and fishing laws and regulations. Accordingly, the tribes adopted their own hunting and fishing regulations for their members. Under these circumstances, the State believed judicial resolution of these issues was necessary to remove the legal uncertainty of the issue and to provide long-term stability to a legal issue that was formerly uncertain and confusing.

**5. Which Indian tribes are involved in the 1836 Inland Treaty Rights Consent Decree and how much territory is involved?**

The tribes that are included in the Consent Decree are two Upper Peninsula Tribes, the Sault Ste. Marie Tribe of Chippewa Indians and the Bay Mills Indian Community, and three Lower Peninsula Tribes, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little Traverse Bay Band of Odawa Indians and the Little River Band of Ottawa Indians. The agreement covers 13,837,207 acres of lands and inland waters within the boundaries of the 1836 treaty area, which is located in the eastern half of the Upper Peninsula and the northwest one third of the Lower Peninsula.

**6. Who besides the State and the tribes were included in the negotiations that led to the Consent Decree?**

Numerous conservation groups were involved in the negotiations, including the Michigan United Conservation Clubs, the Coalition to Protect Michigan's Resources (formerly Michigan Fisheries Resource Conservation Coalition), comprised of a dozen hunting, fishing and property owners associations; the U.P. Whitetails Association and the Bays de Noc Great Lakes Sports Fishermen.

**7. Why did the State negotiate this 2007 Inland Consent Decree rather than go to trial?**

In this case the risks of litigation were significant for the reason that the court in its previous rulings had already decided that the Article 13 treaty right was still valid as to Great Lakes tribal fishing. The court's 1979 ruling, together with the applicable judicial rules for interpreting disputed Indian treaty language, presented the State with substantial obstacles. Also, the experience of other states in cases like the inland case provided a clear lesson as to what the risks of litigation would be. In Wisconsin and Minnesota, federal courts upheld similar Indian treaty right claims. Thus, the State determined that the more prudent and responsible course of action was to explore the possibilities of reaching a settlement with the five 1836 tribes in order to better control the outcome of this case in a manner that protects the interests of the State and its resources and the interests of property owners and of non-tribal hunters and fishers, but that also addresses the needs of the 1836 tribes in preserving their traditional subsistence activities. The State believes that these objectives can be accomplished by using available fish and game surpluses.

**8. How will Michigan's natural resources be managed under the 2007 Inland Consent Decree?**

The Michigan Department of Natural Resources manages Michigan's resources based on the principles of sound scientific management and will continue to do so under the Inland Consent Decree. In the 1836 treaty area, the DNR and the tribes will coordinate their efforts in research and assessment activities and will cooperate in conducting restoration, reclamation, and enhancement projects and consulting and exchanging information. It is anticipated that these cooperative efforts and sharing of information will lead to a high degree of transparency of both State and tribal harvest efforts and levels, which ensure the availability of sufficient resources for tribal and non-tribal fishers and hunters in the future.

**9. How will this Inland Consent Decree affect the opportunities of State-licensed hunters and fishers?**

Under the Inland Consent Decree, the tribes will have seasons and bag limits that differ somewhat from State regulations. However, tribal hunting and fishing will be for personal subsistence use and not commercial use and should therefore have limited effect on the resources in question, especially in view of the small number of tribal hunters and fishers relative to the large number of non-tribal hunters and fishers.

**10. How will tribal hunting, fishing, and gathering activities be regulated?**

Generally, tribal members' hunting, fishing, and gathering activities are subject to tribal regulations. However, the Inland Consent Decree contains specific hunting regulations for some species such as deer, elk, bear, and turkey and specific fishing regulations for salmon, steelhead, and walleye when traditional tribal methods such as spearing are used in order to protect the resources being harvested by staying within available surpluses.

**11. Where may tribal members engage in hunting, fishing, and gathering activities under the Inland Consent Decree?**

Tribal members may engage in hunting, fishing, and gathering activities on tribal lands and lands that are open to the public for those activities. The Inland Consent Decree does not open private land for such activities without permission of land- owners, unless the private land, such as Commercial Forest Act (CFA) land, is open to the public. Additionally, on CFA lands smaller than 1,000 contiguous acres, tribal members may only hunt during State seasons unless they have permission from the CFA landowner.

**12. How will the provisions of the Inland Consent Decree be enforced?**

Both the State and the tribes will enforce the provisions of the Consent Decree.