

**UNITED STATES OF AMERICA
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

File No. 2:73 CV 26

and

Hon. Paul L. Maloney

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,

vs.

STATE OF MICHIGAN, et al.,

Defendants.

**ORDER AMENDING SECTIONS
VII.A.5, VII.A.7.c. and IV.A.1.e.(2)(b)v. OF CONSENT DECREE**

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

The parties have executed a stipulation to amend Sections VII.A.5, VII.A.7.c. and IV.A.1.e.(2)(b)v. of the Consent Decree. The Court approves the agreement of the parties set forth in the stipulation and enters this Order:

A. IT IS 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 2002 through 2005 in units MH-1 (excluding the Bay Mills Small Boat Zone) and MI-6, and for 2007 and thereafter in unit MM-4, for the period as described below:

- (1) 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. For 2007, and thereafter, until sea lamprey-induced lake trout mortality levels are significantly below the 1998 baseline levels for three consecutive years, the annual Tribal lake trout harvest limit for unit MM-4 shall be 94,300 pounds or the model generated harvest limit, whichever is greater.
- (2) Recreational harvest limits for each year in unit MM-4 shall be derived based on the previous three-years' average recreational effort adjusted for any changes in fishing regulations. For 2007 through 2009, the annual recreational harvest limit shall be 63,000 pounds, based on the annual Tribal lake trout harvest limit established in (1) and the allocation rule in Section VII.A.7.e., or the model generated harvest limit, whichever is greater. For 2010 and thereafter the annual recreational harvest limit shall be 77,200 pounds, based on the annual Tribal lake trout harvest limit established in (1) and the allocation rule in Section VII.A.4., or the model generated harvest limit, whichever is greater.
- (3) Beginning in 2008, the State will transfer to the Tribes that portion of the State's annual lake trout harvest limit in unit MM-4 that was not harvested by the State in the previous year as provided below:
 - (a) By March 1 of each year, the Modeling Subcommittee shall determine the amount of underharvest of lake trout in unit MM-4, if any, by the State in the previous year and add the determined amount to the current year's annual Tribal lake trout harvest limit for unit MM-4 as provided for solely in (1) (i.e., 94,300 pounds or the model generated harvest limit, whichever is greater).
 - (b) When determining the underharvest of lake trout in MM-4, if any, by the State in the previous year, the Modeling Subcommittee shall exclude from their determination of underharvest any portion of the State's harvest limit that is derived from application of a penalty against the Tribes pursuant to Section VII.B

- (4) The amount of annual lake trout harvest limit transferred from the State to the Tribes for unit MM-4 as determined in (3) will be available as soon as the parties accept the annual lake trout harvest limit for unit MM-4 as recommended by the Technical Fisheries Committee for that year. Each transfer under this provision shall be valid only for the year in which the transfer occurs and is not permanent.
- (5) To prevent targeting and potential overharvest of lake trout, the Tribes shall adopt regulations for the 2009 fishing season and thereafter to ensure that appropriate levels of effort are being maintained in unit MM-4. Penalty provisions as described in Section VII.B. shall apply if overharvest occurs in any year.
- (6) After three consecutive years of sea lamprey-induced lake trout mortality levels which are significantly below the 1998 baseline levels, the parties shall review the status of lake trout in MM-4 to determine if a model-generated harvest limit, as contemplated in Section VII.A.5. of the Consent Decree, is the appropriate basis for establishing lake trout harvest limits, or if another methodology for calculating lake trout harvest limits in MM-4 is warranted.

B. IT IS FURTHER ORDERED that Section VII.A.5. is hereby amended to read:

The harvest and effort limits shall be calculated by a Modeling Subcommittee of the TFC each year based upon data collected from the fisheries and appropriate statistical and mathematical modeling techniques. Methods used to calculate these limits, including combinations of management units, shall be periodically reviewed and revised by the Modeling Subcommittee. All changes in methods shall be subject to review and approval by the TFC. All parties shall submit their end-of-year data to the Modeling Subcommittee by March 1 for each gear type showing total catch and effort by management unit, catch by age, and such other data as the TFC may request. The TFC shall submit preliminary harvest and effort limits to the parties on or before March 31, and provide final harvest and effort limits by April 30. For 2007, and thereafter, until sea lamprey-induced lake trout mortality levels are significantly below the 1998 baseline levels for three consecutive years, the annual Tribal lake trout harvest limit for MM-5 shall be the limit calculated pursuant to this section or 39,200 pounds, whichever is greater. When sea lamprey-induced lake trout mortality levels are significantly below the 1998 baseline levels for three consecutive years, the parties shall review the status of lake trout in MM-5 to determine if a model-generated harvest limit, as contemplated in Section VII.A.5. of the Consent Decree, is the appropriate basis for establishing lake trout harvest limits, or if another methodology for calculating lake trout harvest limits in MM-5 is warranted.

C. IT IS FURTHER ORDERED that Section IV.A.1.e.(2)(b)v. is hereby amended to read:

In addition to the provisions of sub. iv., above, in grids 712 and 713, large mesh gill nets shall be set at depths of one hundred (100) feet or less from May 1 through June 30, until sea lamprey-induced lake trout mortality levels are significantly below the 1998 baseline levels for three consecutive years. Thereafter, if the average catch per unit of effort is more

