

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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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,

THE HONORABLE  
RICHARD A. ENSLEN

Case No. 2:73 CV 26

Plaintiff-Intervenors,

vs.

STATE OF MICHIGAN, et al.,

Defendants.

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**STIPULATION FOR ENTRY OF CONSENT DECREE**

WHEREAS, Plaintiff-Intervenors hold treaty fishing rights under the Treaty of March 28, 1836, 7 Stat. 491 (the “1836 Treaty”), in the waters of Lake Huron, Lake Michigan, and Lake Superior, including the connecting waters, that are within the area ceded in Article First of that treaty (the “1836 Treaty waters”); and

WHEREAS, the nature and extent of these treaty fishing rights have been adjudicated in this case, in a decision reported at 471 F. Supp. 192 (W.D. Mich. 1979), aff’d, 653 F.2d 277 (6<sup>th</sup> Cir.), cert. denied, 454 U.S. 1124 (1981), as well as in other decisions in this and other cases; and

WHEREAS, the Court has continuing jurisdiction in this case over the implementation and enforcement of these treaty fishing rights, including jurisdiction to allocate the available harvest of fish in the 1836 Treaty waters; and

WHEREAS, the parties, with the involvement of *amici curiae*, have engaged in extensive mediated negotiations to resolve their differences concerning allocation, management, and regulation of fishing in the 1836 Treaty waters upon expiration of the Order of the Court entered in this case on May 31, 1985; and

WHEREAS, the negotiations have resulted in a proposed [Consent Decree](#) and related documents detailing how fishing in 1836 Treaty waters will be allocated, managed, and regulated by the parties for the next twenty years; and

WHEREAS, the parties recognize that the fishery in the 1836 Treaty waters is a shared resource and that, while the parties may have competing interests in the resource, they also share substantial material interest in the long-term health of the 1836 Treaty waters and its fishery; and

WHEREAS, the parties agree that an equitable allocation of the fishery in the 1836 Treaty waters is desirable and that, for purposes of the proposed [Consent Decree](#), the tribal commercial fishery will generally concentrate on harvesting whitefish and will also harvest other species, the state-licensed sport fishery will concentrate on harvesting recreational species, and lake trout harvest will be shared approximately equally; and

WHEREAS, the parties agree that constructive communications, free exchange of information, consultation, and joint collaborative biological and law enforcement efforts are essential to sustain and enhance the resource; and

WHEREAS, the parties agree that regulation and management of the fishery will promote the maintenance of diversity and the availability of the fishery resources in sufficient quantities for present and future generations; and

WHEREAS, the parties agree that harvest limits and guidelines should be based on the best scientific evidence and methods available, including monitoring and assessment activities, and should be periodically adjusted as new information and methods become available; and

WHEREAS, the parties are committed to lake trout rehabilitation and expect that measures described in the proposed [Consent Decree](#) when fully implemented will provide a meaningful opportunity to reestablish indigenous stocks of lake trout that will reproduce naturally; and

WHEREAS, the lake trout management regime set forth in section [VII.](#) of the proposed [Consent Decree](#) is based on the following major assumptions: (1) the Great Lakes Fishery Commission and the parties signatory to the Joint Strategic Plan for Management for Great Lakes Fisheries will continue to pursue lake trout rehabilitation; (2) lake trout rehabilitation is and will remain a viable goal in 1836 Treaty waters; (3) the United States will continue to rear lake trout at current or enhanced levels for purposes of lake trout rehabilitation; (4) available lake trout will be stocked consistently with lakewide rehabilitation plans and the proposed [Consent Decree](#); (5) sea lamprey control efforts will significantly reduce sea lamprey-induced lake trout mortality from 1998 levels; (6) the gill net conversion program described in section [X.](#) of the proposed [Consent Decree](#) will significantly reduce lake trout mortality; (7) changes in sport fishing regulations will significantly reduce lake trout mortality; (8) if all parties abide by the lake trout management regime in the proposed [Consent Decree](#), the lake trout rearing and stocking referenced in clauses (3) and (4), and the reductions in lake trout mortality referenced in

clauses (5), (6) and (7), will ultimately result in successful natural reproduction of lake trout; and (9) the lake trout management regime described in section VII. of the proposed Consent Decree will not require significant reductions in existing effort by tribal commercial fisheries (except for reduction in gill net effort as part of the conversion program described in section X. of the proposed Consent Decree), and will allow for the expansion of commercial fisheries by Little Traverse and the development of commercial fisheries by Little River; and

WHEREAS, the parties agree that the long-term goal of whitefish management is to maintain healthy, self-sustaining whitefish stocks throughout the 1836 Treaty waters, and, considering the past success of whitefish management, can be more flexible than lake trout management; and

WHEREAS, the assumptions and management provisions for lake trout, whitefish, and other species outlined in the proposed Consent Decree are based on current knowledge about the fishery gathered according to lake trout and whitefish management units, and the parties agree that substantial changes within any management unit may be a basis for reconsideration as set forth in section XXI. of the proposed Consent Decree; and

WHEREAS, the parties agree that the terms of this Stipulation, the proposed Consent Decree, including the appendices, embody the entire agreement among the parties over the allocation and management of the fishery in the 1836 Treaty waters, and there are no other terms, promises, warranties, or representations between or among the parties as identified, whether expressed, implied, written, or oral, pertaining to the subject matter of the proposed Consent Decree, and the proposed Consent Decree replaces and supercedes all prior agreements among the parties pertaining to its subject matter; *provided*, the following documents, leases, and agreements contemplated by the proposed Consent Decree that are necessary to its

implementation, are under negotiation at the time this Stipulation is executed, and any terms, promises, warranties, or representations between or among the parties to those documents relating to those documents are not merged with or superseded by the proposed [Consent Decree](#) and are not affected by the execution of this Stipulation; and *provided further*, that the terms of such additional documents, leases, and agreements shall be consistent with and may not modify the substantive provisions of the proposed Consent Decree:

1. An Escrow Agreement, referenced in section [X.C.3.g.\(1\)](#) of the proposed [Consent Decree](#);
2. A Trap Net Equipment Purchase Agreement, referenced in section [X.C.3.g.\(2\)](#) of the proposed [Consent Decree](#), and any protocol for inspection, inventory, and distribution of vessels and equipment among the Sault Tribe, Grand Traverse, and Little Traverse;
3. Any and all agreements between the Sault Tribe or Grand Traverse, as the case may be, and Tribal fishers participating in the gill net conversion program, to which the State is a party or a third party beneficiary, referenced in section [X.C.3.g.\(3\)](#) of the proposed [Consent Decree](#);
4. Special circumstances proposals for the inclusion of Sault Tribe fishers King Fisheries, Barbeaux Fisheries, Ben Peterson, and Joel Peterson in the gill net conversion program which are being prepared by the Sault Tribe for submission to and approval by the State pursuant to section [X.C.2.b.](#) of the proposed [Consent Decree](#);

5. A lease or similar agreement for the term of the proposed [Consent Decree](#) between Little Traverse and the Sault Tribe or others for access to and use of a dock by the trap net operation of Little Traverse in the Bay de Noc Trap Net Zone;
6. An agreement among Little Traverse, Little River, and the State concerning the specifications and process for transfer of assessment boats and equipment to Little Traverse and Little River, as referenced in section [XX.B.2.](#) of the proposed [Consent Decree](#);
7. An agreement among Little Traverse, Little River, and the State concerning the specifications and process for transfer of small mesh gill net operations, including vessels and gear, to Little Traverse and Little River, as referenced in section [XX.B.4.](#) of the proposed [Consent Decree](#);
8. Any and all releases issued by the selling State-licensed fishers to the State, Grand Traverse, the Sault Tribe, and Little Traverse releasing them from any liability relating to relinquishment of State trap net licenses.

NOW, THEREFORE the undersigned parties, by and through their respective counsel of record, hereby stipulate and agree to entry as an order of this Court the attached [Consent Decree](#).

**UNITED STATES OF AMERICA,**  
Plaintiff

\_\_\_\_\_  
John D. Leshy  
Solicitor  
U.S. Department of the Interior

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael Hayes Dettmer  
United States Attorney  
330 Ionia, N.W.  
P.O. Box 208  
Grand Rapids, MI 49503

Dated: \_\_\_\_\_

**BAY MILLS INDIAN COMMUNITY,**  
Plaintiff-Intervenor

\_\_\_\_\_  
Jeffrey Parker  
Chairman

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kathryn L. Tierney  
Bay Mills Indian Community  
12140 West Lakeshore Drive  
Brimley, MI 49715

Dated: \_\_\_\_\_

**GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS,**  
Plaintiff-Intervenor

\_\_\_\_\_  
Jaime Barrientoz  
Vice-Chairman

Dated: \_\_\_\_\_

\_\_\_\_\_  
William Rastetter  
6700 French Road  
Cedar, MI 49621

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ellen J. Kohler  
Kohler & Black  
P.O. Box 1031  
Traverse City, MI 49685

Dated: \_\_\_\_\_

**LITTLE RIVER BAND OF OTTAWA INDIANS,**  
Plaintiff-Internevor

\_\_\_\_\_  
Robert Guenthardt  
Tribal Ogema

Dated: \_\_\_\_\_

\_\_\_\_\_  
Marc D. Slonim  
Ziontz, Chestnut, Varnell, Berley & Slonim  
2101 Fourth Avenue, Suite 1230  
Seattle, WA 98121

Dated: \_\_\_\_\_

\_\_\_\_\_  
William J. Brooks  
Little River Band of Ottawa Indians  
1762 U.S. 31 South  
Manistee, MI 49660

Dated: \_\_\_\_\_

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

\_\_\_\_\_  
Gerald V. Chingwa  
Chairman

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mariana R. Shulstad  
Nancy A. Wiltgen  
Leonard, Street and Deinard  
Professional Association  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402

Dated: \_\_\_\_\_

**SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,**  
Plaintiff-Intervenor

\_\_\_\_\_  
Bernard Bouschor  
Chairman

Dated: \_\_\_\_\_

\_\_\_\_\_  
James M. Jannetta  
Sault Ste. Marie Tribe of Chippewa Indians  
523 Ashmun Street, 3<sup>rd</sup> Floor  
Sault Ste. Marie, MI 49783

Dated: \_\_\_\_\_

**STATE OF MICHIGAN, et al.,**  
Defendants

\_\_\_\_\_  
K. L. Cool  
Director  
Department of Natural Resources

Dated: \_\_\_\_\_

\_\_\_\_\_  
R. John Wernet, Jr.  
Assistant Attorney General In Charge  
Native American Affairs Division  
P.O. Box 30217  
One Michigan Avenue Bldg., Suite 210  
Lansing, MI 48909

Dated: \_\_\_\_\_

The undersigned *amici curiae*, by and through their respective counsel of record, hereby agree with and support entry of the proposed Consent Decree as stipulated between and among the parties.

**MICHIGAN FISHERIES RESOURCE CONSERVATION COALITION,**  
*Amicus Curiae*

\_\_\_\_\_  
Stephen O. Schultz  
Foster, Swift, Collins & Smith, P.C.  
313 S. Washington Square  
Lansing, MI 48933

Dated: \_\_\_\_\_

**MICHIGAN UNITED CONSERVATION CLUBS,**  
*Amicus Curiae*

\_\_\_\_\_  
Jim Goodheart  
Executive Director

Dated: \_\_\_\_\_

\_\_\_\_\_  
Peter Steketee  
600 Cascade West Parkway S.E., Suite 65  
Grand Rapids, MI 49546

Dated: \_\_\_\_\_

**BAY DE NOC GREAT LAKES SPORTFISHERMEN, INC.,**  
*Amicus Curiae*

\_\_\_\_\_  
Paul L. Strom  
Strom & Strom  
P.O. Box 714  
Escanaba, MI 49829

Dated: \_\_\_\_\_

**MICHIGAN FISH PRODUCERS ASSOCIATION,**  
*Amicus Curiae*

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Pete Hermes  
President

Dated: \_\_\_\_\_

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Kirt L. Harmon  
220 W. Munising Avenue  
P.O. Box 478  
Munising, MI 49862

Dated: \_\_\_\_\_