



## 2007 Inland Consent Decree FAQs

### 1. What is the 2007 Inland Consent Decree?

The 2007 Inland Consent Decree is a settlement negotiated between the State of Michigan, five sovereign Michigan tribes that are signatory to the 1836 Treaty of Washington, and the United States. While the U.S. District Court ruled in 1979 that tribes reserved their treaty right to fish in the Great Lakes, the scope of treaty rights with respect to the inland territory of ceded lands were not resolved at that time. 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. The 2007 Inland Consent Decree is a legal document that defines the extent of tribal rights and describes how the State and the tribes will cooperatively manage natural resources.

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

The 1836 treaty involved a territory purchase between the United States and Ottawa and Chippewa Indian Tribes of the northern Lower Peninsula and the eastern Upper Peninsula of Michigan. Treaties such as this often contained clauses in which tribes reserved 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." These usufructuary rights (rights that allow the use of a property owned by someone else) were retained even though the land and waters were ceded to the United States and in that regard are similar to mineral rights which can be retained by individuals even when surface land is sold. 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.

### 3. Why was a negotiated settlement necessary?

Although the court in 1979 addressed tribal treaty rights 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.

### 4. Which tribes are involved in the 2007 Inland Consent Decree and how much territory is involved?

The tribes that are included in the Consent Decree are the Sault Ste. Marie Tribe of Chippewa Indians, the Bay Mills Indian Community, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little Traverse Bay Bands 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.

**5. Who besides the State, the tribes, and the United States were included in the negotiations that led to the Consent Decree?**

Numerous conservation groups were involved as proposed intervenors, including the Michigan United Conservation Clubs, the Coalition to Protect Michigan's Resources representing several conservation organizations, the Walloon Lake Trust and Conservancy, the U.P. Whitetails Association, and the Bays de Noc Great Lakes Sports Fishermen.

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

The risks of litigation were significant since previous court rulings had already determined that the Article 13 treaty rights were still valid for 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 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 tribes in order to better control the outcome in a manner that protected the interests of the State and its resources and the interests of property owners and of non-tribal hunters and fishers, but that also addressed the needs of the tribes in preserving their traditional subsistence activities.

**7. How are Michigan's natural resources 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 continues to do so under the Inland Consent Decree. In the 1836 treaty-ceded territory, the DNR and the tribes coordinate research and assessment activities, restoration, reclamation, and enhancement projects, and regularly consult and exchange information with one another. These cooperative efforts and sharing of information have led to a high degree of transparency among the State and tribes. The Inland Consent Decree also defines harvest levels for various species, which ensures the availability of sufficient resources for tribal and non-tribal fishers and hunters in the future. Any changes to the decree require approval of all seven parties.

**8. Has the Inland Consent Decree affected the opportunities of State-licensed hunters and fishers?**

Under the 2007 Inland Consent Decree, the tribes have seasons and bag limits that differ somewhat from State regulations. However, tribal hunting and fishing is for personal subsistence use and not commercial use and therefore has 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.

**9. How are tribal hunting, fishing, and gathering activities 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,

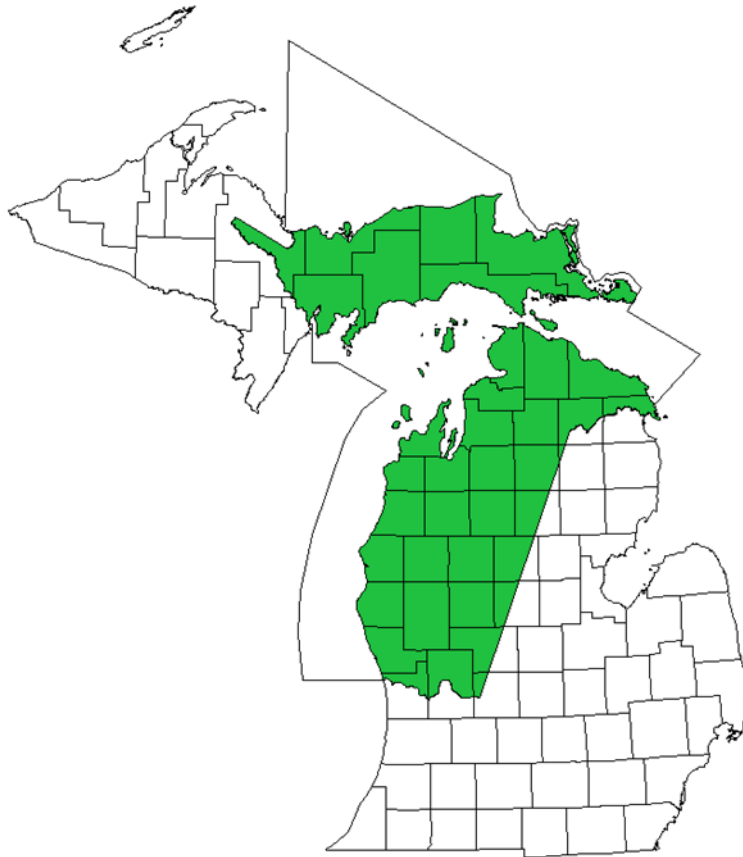
steelhead, and walleye when traditional tribal methods such as spearing are used in order to protect the resources being harvested by staying within available surpluses.

**10. 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, 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.

**11. How are the provisions of the Inland Consent Decree enforced?**

All parties to the 2007 Inland Consent Decree maintain law enforcement staff that enforce the provisions.



1836 Treaty-ceded inland territory.