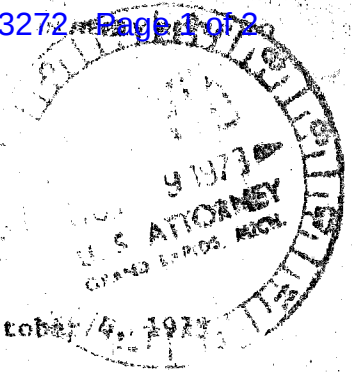




UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR
Office of the Field Solicitor
686 Federal Building, Fort Snelling
Twin Cities, Minnesota 55111

October 4, 1974



Honorable Joseph P. Milanowski
United States Attorney
Western District of Michigan
313 Federal Building
Grand Rapids, Michigan 49502

Re: Hunting and Fishing Rights of Individual Indians

Dear Mr. Milanowski:

Please forgive the delay in responding to your recent inquiry regarding the rights of individual Indians to hunt and fish, and specifically concerning questions raised by Mr. George Anthony, a member of the Northern Michigan Ottawa Association. We are forwarding a copy of your letter to the Bureau, as some of the questions relate to factual matters on which we have no information, specifically the inquiry regarding Bois Blanc Island. We will try to respond to the other questions individually.

1. What are the individual rights of Indians who are not members of any tribe or community of Indians?
Individuals who are not affiliated with any Federally recognized tribe or community may nevertheless be eligible for certain benefits and assistance administered by the Bureau of Indian Affairs, such as education assistance, employment assistance, training of a vocational or technical nature, and a variety of other services. They would not, however, be entitled to participate in or share in tribal activities or tribal property or benefit from programs operated by or for the benefit of a particular tribe or band. In some cases, too, an Indian may be able to establish his ancestry in a particular roll and thus share in the distribution of awards made by the Indian Claims Commission. The Northern Michigan Ottawa Association is a group organized for the purpose of participating in such an award, and is not a Federally organized Indian community, band or tribe. Meetings have been held with this group for the purpose of gaining assistance in preparation of a roll for distribution of the award.
2. What are his individual rights as an Indian in reference to fishing and hunting in the State of Michigan?
He has no individual rights per se, as treaty hunting and fishing rights are tribal in nature and not individual. A tribe may permit or deny the exercise of such rights, as well as regulate its exercise. See for discussions of the nature of such treaty rights, Whitefoot v. United States, 293 F.2d 658 (Ct.Cl. 1961).

Exhibit A

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certiorari denied 169 U.S. 518 (1907), Mason v. Ames, 3 F.2d 155 (9th Cir. 1925), Prairie Band of Potawatomi Indians v. United States, 165 F.Supp. 139, certiorari denied 359 U.S. 908 (1959). We are also enclosing for your reference copies of Solicitor's Opinions dealing with the issue in Klamath Terminal Legislation, M-36284, 62 I.D. 186 (1955), and Off-Reservation Fishing Rights in Washington and Oregon, M-36628, 69 I.D. 65 (1962), Treaty Status of the Muckleshoot Indian Tribe of the Muckleshoot Reservation, M-36862 (1973), and Jurisdiction of the Leech Lake Band of Chippewa Indians to Regulate Hunting, Fishing and Ricing by its Members Within the Boundaries of the Leech Lake Reservation, and to Enforce Those Regulations Against its Members, M-36864 (1972). All are uniform in the position that treaty rights to hunt and fish are tribal in nature, and the exercise of such rights may be had by the membership, subject to such conditions and restrictions which may be imposed by the tribe. An individual would have no rights on his own, unless he could establish connection with a particular tribe or band, and further establish that it is the treaty right of that tribe or band which he exercises and which he is authorized to exercise.

3. What would be his benefits in the event we were to win the case involving the Bay Mills Indians?
Unless he could become a member of the Bay Mills Community, he would have no direct benefit. If he were to become a member of some other Indian group, a satisfactory conclusion of the present litigation would serve as valuable precedent to that group in claiming and establishing such rights as they may have, which he in turn could then exercise. This would be particularly true were the group which he joined one of the signatories to the treaties involved in the litigation. Again, absent membership, he would have no right to exercise tribal treaty rights to hunt and fish.
4. He states he represents some Ottawas who were signatories to the treaties involved in our case, and he wonders what would be their rights in the event of the successful culmination of our case. The litigation, of course, does not directly affect the Ottawas. If, however, it is successfully concluded, it should be much easier for the Ottawa tribe to establish that it, too, is a beneficiary of the same treaties construed in the present litigation. The membership of the Ottawa tribe could then freely exercise those rights, subject only to regulation by the tribe itself.

We are forwarding a copy of your letter along with this one to the Bureau of Indian Affairs for their comments both on your questions and our answers, and also for such information as they might have on the history and status of Bois Blanc Island, including which treaties affected it.

Sincerely,

E. J. Minter
E. J. Minter
Field Solicitor

Enclosures