

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

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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,

Plaintiffs-Intervenors,

vs.

STATE OF MICHIGAN, et al.,

Defendants.

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**COALITION TO PROTECT MICHIGAN RESOURCES’  
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* RESPONSE BRIEF**

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The Coalition to Protect Michigan Resources (“CPMR”), on behalf of itself and its members, in support of the motion for extension filed by six parties to the 2000 Consent Decree in this case and in opposition to the motion for extension of the 2000 Consent Decree (“Consent Decree”), states the following:

1. CPMR is a nonprofit membership organization that represents numerous Michigan-based sport fishing, boating, and conservancy groups. The Court previously granted CPMR status as an *amicus curiae* in this case.

2. As a representative of some or all of the organizations who are now members of the organization, CPMR has been involved in this case since 1979. CPMR itself has held to have *amicus curiae* status in this case since 2007.
3. The issues CPMR wishes to address are presented by the motion filed by the six parties seeking an extension of the Consent Decree until December 31, 2020 and the motion filed by the Sault Ste. Marie Tribe of Chippewa Indians' ("Sault Tribe") seeking a ninety-day extension of the Consent Decree, but with conditions on any subsequent extension, should one be necessary.
4. As explained further in its accompanying brief, CPMR or its predecessors have been directly involved and engaged in the negotiations that lead to the 1985 Consent Decree and the 2000 Consent Decree. It has a perspective on the matters before the Court that may assist the Court in deciding the issues presented in the competing motions by addressing the history of the 2000 Consent Decree, the current conditions of the fishery and various aspects of the issues related to co-management of the 1836 Treaty waters and the circumstances that have resulted in delay in a negotiated agreement.
5. Section 7.3(c) of the Local Civil Rules for the Western District of Michigan provides that a party opposing a non-dispositive motion shall file a response within fourteen days. A party must be granted leave of the court in order to file a response. While the CPMR supports the six party motion for an extension, it opposes the motion of the Sault Tribe.

WHEREFORE, pursuant to Section 7.3(c), CPMR asks the Court to grant it leave to file the proposed *amicus curiae* response brief, attached as Attachment 1.

Respectfully submitted,

Date: July 8, 2020

By: /s/ Stephen O. Schultz  
Stephen O. Schultz (P29084)  
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Okemos, Michigan 48864

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***AMICUS CURIAE* COALITION TO PROTECT MICHIGAN RESOURCES'  
RESPONSE AND BRIEF IN OPPOSITION TO THE SAULT STE. MARIE TRIBE OF  
CHIPPEWA INDIANS' MOTION TO EXTEND CONSENT DECREE FOR 90 DAYS**

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The Coalition to Protect Michigan Resources (“CPMR”) is a nonprofit membership organization that represents numerous Michigan-based sport fishing, boating, and conservancy groups. As a successor to some of the organizations it represents, CPMR’s involvement in this case dates back to 1979. CPMR is currently an amicus and has been since 2007. (ECF No. 1783). This Court recently confirmed CPMR’s amicus status. (ECF No. 1875).

The CPMR files this brief to aid the Court in consideration of the two competing motions to extend the current Consent Decree applicable to the 1836 Treaty waters of the Great Lakes. For the reasons set forth below, the CPMR suggests that this Court grant the Motion filed by the six Parties supporting it and reject the motion for extension filed by the Sault Ste. Marie Tribe of Chippewa Indians (“Sault Tribe”).

## BACKGROUND

This case began over 47 years ago when the United States of America commenced litigation in this Court against the State of Michigan asserting that the Bay Mills Indian Community had a treaty right to fish in certain waters of the Great Lakes, with such right alleged by virtue of the Treaty with the Ottawa and Chippewa Nation of 1836 (the “1836 Treaty”). The Bay Mills Indian Community (“Bay Mills”) and Sault Tribe intervened immediately thereafter.<sup>1</sup>

On May 7, 1979, Judge Noel Fox issued a decision analyzing the 1836 Treaty as a contractual agreement, holding that it retained and reserved to Bay Mills and the Sault Tribe both commercial and subsistence fishing rights on the Great Lakes. *United States v. Michigan*, 471 F. Supp 192, 260 (W.D. Mich. 1979). Ultimately, the treaty right was confirmed by the Sixth Circuit Court of Appeals, but with a holding that differed in significant ways from that of Judge Fox. *United States v. Michigan*, 653 F.2d 277 (6<sup>th</sup> Cir. 1981).

In 1981, Judge Richard Enslin replaced Judge Fox as the presiding Judge in this case. From 1981 to 1984, numerous motions were filed and proceedings heard regarding annual closures of certain areas of the Great Lakes to address overharvest of the fisheries’ resources. Between 1983 and 1984, the Parties’ motion practice before the Court was extensive, as a “racehorse” fishery among treaty and non-treaty users of the resource existed. With no specific allocations between competing users, this Court was continually involved.

In 1983, Bay Mills and the Sault Tribe filed a motion to allocate the fishery resource between treaty and non-treaty users (Exhibit A). The Sault Tribe and Bay Mills sought

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<sup>1</sup> Given the date of this case, all orders are not available on PACER. Certain of this case’s pleadings and orders have been placed in a federal court archive in the State of Missouri.



*quantification* of the Tribes’ treaty right. *Id.* at 6. In support of their requested relief, the Tribes relied upon *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n.*, 443 U.S. 658 (1979) to invoke this Court’s equitable jurisdiction for allocation of the resource. (Exhibit A at 7-8). The Tribes asked this Court “to allocate the resource in a manner similar to that which was upheld” in *Fishing Vessel Ass’n.* (Exhibit A at 9). The Tribes proposed a “management plan” to effectuate this equitable division, which was premised on a roughly 50-50 division of the resource as was the basis in the Washington litigation.

During consideration of the motion, the Court asked if negotiations might be fruitful and whether a Special Master might aid the parties and inform the Court as negotiations progressed. Using this process, the parties successfully concluded negotiation of a proposed Consent Decree in March, 1985.

After a bifurcated trial to address a later objection by Bay Mills to the negotiated Consent Decree, the Court issued an opinion and order deeming the 1985 Consent Decree an equitable allocation of the resource that vindicated the Tribes’ treaty right.<sup>2</sup> Judge Enslin opined that “[o]ne of the immediate problems presented, then, in 1979 and in the years which followed was and is how to share this treasured resource without diminishing or depleting it, and within the legal rights of the competing users.” *United States v. Michigan*, 12 I.L.R. 3079, 3079 (W.D. Mich. 1985). Judge Enslin concluded that the 1985 Consent Decree was an appropriate allocation of the resource that vindicated the Tribes’ treaty right, noting that to hold otherwise would allow “the ‘racehorse’ fishery [to] continue[ ] without abatement.” *Id.* at 3087.

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<sup>2</sup> The Decree and Court’s Order included exclusive zones separating treaty and non-treaty users in limited areas of the 1836 Treaty Waters.

As expiration of the 1985 Consent Decree approached, the Parties worked towards a new decree. With the assistance again of a Special Master, the Parties negotiated, and this Court entered, the 2000 Consent Decree that is the subject of the current motions. As with the 1985 Decree, the current Decree sets forth terms and conditions applicable to tribal and state-licensed fishers. An important premise of both decrees is the recognition that the State and Tribes are co-managers of the resource with treaty users and non-treaty users alike having a right to a portion of the resource. More specifically, the Parties mutually assented to similar 50-50 allocation in the current Decree. The Parties have operated under these circumstances for almost 35 years. Until the Sault Tribe announced its change of position in its motion in favor of removing exclusive zones and implicitly disavowing the equitable allocations long held by the Parties, the Parties appeared to be focused on negotiating the remaining core issues and implementing a successor decree without the years of litigation that may now be on the horizon.

### THE CURRENT MOTIONS FOR EXTENSION

Two motions are pending before this Court, both seeking to extend the current Decree for a limited period of time, but with significantly different implications for the Parties. Six of the Parties in this case and the Sault Tribe ask this Court for an extension of the 2000 Consent Decree (“Decree”) that has applied to fishing in the Great Lakes by tribal and state licensed fishers for close to 20 years. (ECF No. 1458). The current Decree will expire on August 8, 2020 and no successor decree has been negotiated.<sup>3</sup> Six of the parties to this case seek an extension of the current Decree until December 31, 2020, thereby maintaining the status quo during continued negotiations between the Parties. (ECF No. 1880) Though the CPMR believes that more time than this will be necessary to complete negotiations, it agrees that such an extension is both necessary and appropriate.

The motion filed by the Sault Tribe asks this Court to extend the current Decree for a period of ninety days. In Sault Tribe’s motion, any extension is conditioned upon the Court also holding that any additional extension be without enforcement of critical provisions in the current Decree. CPMR does not object to an extension of the current Decree as such is warranted. As CPMR raised to this Court previously (see ECF No. 1864), the Parties may be best served by a *good faith* negotiated settlement, and more time is needed.

Sault Tribe’s request is disingenuous, however. While Sault Tribe’s request asserts that that the “changed circumstances” warranting “a ninety day” extension is the result of delays due to COVID-19, the real need for an extension is simply due to the failure of negotiations to date.

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<sup>3</sup> Though the parties have held several negotiating sessions since September, 2019, not a single issue related to a successor decree has been agreed upon.

In particular, the need for an extension is due, in part, to the failure of the Sault Tribe to disclose its position on allocation of the fishery.

Any attempt to reach a negotiated settlement for continued co-management of the 1836 Treaty waters requires resolution of certain core issues.<sup>4</sup> While Sault Tribe's motion focuses on COVID-19, it also slips in a request for the removal of exclusive zones from the current Decree as a condition for extension. That request is actually a direct attack on the fundamental principle of the past Decrees and orders of this Court, which held that the fishery resources of the Great Lakes are an allocated resource shared between the Parties. The Sault Tribe's goal in requesting deletion of any exclusive zonal allocation of the fishery is part and parcel of a strategy to eliminate the concept of a shared resource between tribally licensed and State licensed fishers. It seeks an end to the allocation of the fishery. Such would impose a significant adverse impact on both the other Tribes and on non-treaty users. *See United States v. Michigan*, 12 I.L.R. 3079, 3088 (W.D. Mich. 1985).

Since at least the 1980s, the Sault Tribe—along with all other Parties—has accepted the position that the treaty right reserved in the 1836 Treaty is not one that entitles any party to up to 100% of the fishery resource in the Treaty waters. Instead, the Sault Tribe's position, until recently, has been consistent with that of all of the other Parties that the resource is equitably allocated on a roughly 50-50 basis. This position forms the basis of the 1985 and the 2000 Consent Decrees, wherein the fishery resource was generally allocated 50-50 among the Parties. *See United States v. Michigan*, 12 I.L.R. at 3088. This common position among the Parties was never challenged by

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<sup>4</sup> These issues have been consistent since 1983. The Table of Contents of the 2000 Decree provides an overview of the substantive areas.

the Sault Tribe when the State of Michigan first raised negotiation of a successor decree as early as 2017 (Exhibit B). The Parties thus prepared for extensive negotiations of a successor decree.

Not until Sault Tribe objected to an extension of the current Decree and filed its current motion in June 2020 did it unveil its position that exclusive zones must be removed from the current Decree, thereby rejecting an equitable allocation of the resource as well. The Sault Tribe was the “avaricious pike lurking in the lily pads,”<sup>5</sup> never disclosing its change of position even though allocation of the resource was raised early and often by the Parties.<sup>6</sup>

While it appears that the Parties may now be forced to litigate core issues as to this shared resource, the fishery will be left without a basis for co-management and conservation if the current Decree is not extended. In addition, if the status quo is not maintained and the Court finds that the fishery resource is indeed a shared one, several of the parties, including one or more Tribes and the State, will suffer irreparable harm by the take of the resource by the Sault Tribe while the question of the allocation of the resource is litigated. The fish, once caught, are gone forever.

Accordingly, this Court should grant an extension of the Current Decree to continue the status quo while the parties continue to pursue a negotiated agreement but deny Sault Tribe’s condition-limited 90-day request. The extension of the current Decree should continue until: (1) a successor decree is reached; or (2) this Court reaches a final decision regarding the issues of exclusive zones and allocation of the resource, or (3) further order of the Court.

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<sup>5</sup> Attributed to Theodore W. Swift.

<sup>6</sup> One can only speculate that it did so in order to reap the rewards of an unregulated fishery as of August 9, 2020, intending thereby to fish in areas of the fishery where other Tribes held exclusive sway or where sport fishers pursued the State’s allocation of the shared resource.

### APPLICABLE LAW

A consent decree is “essentially a settlement agreement subject to continued judicial policing.” *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983); *see also Vanguard of Cleveland v. City of Cleveland*, 23 F.3d 1013, 1017 (6th Cir.1994). Federal Rule of Civil Procedure 60(b)(5) provides for modification of a consent decree. Under Rule 60(b)(5), a modification may be granted “on motion and upon such terms as are just.” Terms that are just for modification include where “‘changed circumstances’ subvert its intended purpose.” *Williams*, 720 F.2d at 920 (citations omitted). *See also Rufo v. Inmates of the Suffolk Cty. Jail*, 502 U.S. 367 (1992). In reviewing the modification of a consent decree, the Court is “not bound under all circumstances by the terms contained within the four corners of the parties’ agreement.” *Waste Mgmt. of Ohio v. City of Dayton*, 132 F.3d 1142, 1146 (6th Cir. 1997) (quoting *Lorain NAACP v. Lorain Bd. of Educ.*, 979 F.2d 1141, 1148 (6<sup>th</sup> Cir. 1992).

## ARGUMENT

**I. Sault Tribe’s exclusive zone and allocation positions are the actual “changed circumstances” that frustrate the parties’ attempt to reach a negotiated settlement and warrant an extension of the current decree.**

All Parties to this case seek an extension of the current Decree if a successor decree has not been reached before August 8, 2020. Six of the parties appear prepared to continue good faith discussions on the core areas that must be resolved to continue the 35 years of co-management of a shared fishery resource. That motion should be granted by the Court.

In the Sault Tribe’s brief in support of its request for a 90-day extension of the current Decree, they argue that only the delay in negotiations due to the recent COVID-19 pandemic justifies an extension. After that is accounted for, they argue that the current Decree should **not** be continued. Although the pandemic may have caused delays and complications in negotiating an agreement, it is not the principal reason a new agreement has not been reached. Instead, the overwhelming majority of the delay in negotiating a new agreement has been the result of the failure of the parties to disclose their positions until the eve of the current Decree’s expiration. As is apparent from its motion and actions to date, the Sault Tribe now seeks to end any allocation of the fishery resource, reserving to itself the right to fish wherever and whenever it so chooses. Implicit in its objection to any continuation of any exclusive zones or exclusions after a 90-day extension is its demand for an end to the concept of a shared resource between the Tribes and the State. Further, it also rejects the “home waters” concept contained in the current Decree, thus tearing apart the relationships between the public and specific Tribes that have worked to share the resource for the past twenty years.

This change in position appears to have significantly impacted the last three years of the parties’ relationship and the need for timely negotiations. The State of Michigan first raised a

framework for negotiation of a successor decree in 2017. (Exhibit B). No objection was raised by the United States or the Tribes, though negotiations were not agreed to by the Tribes until August 2019. Knowing now the Sault Tribe's position, the delay in starting negotiations is understood. 90 days is not sufficiently tailored to the now understood circumstances. Either more time to negotiate is necessary or an even longer extension of the status quo may be required, as litigation may now be necessary to settle the issue of allocation, as was done by Judge Enslen. If the Sault Tribe is committed to claiming whatever part of the Great Lakes fishery resource it thinks it needs, the current Decree must be continued until this Court decides that claim or a successor decree is reached.

The Sault Tribe argues that the current Decree can end without incident (ECF No. 1883 at 9, citing to *United States v. Michigan*, 653 F.2d 277, 279 (6th Cir. 1981)). Such position ignores the past 35 years of co-management and equitable allocation of the fishery resource. It also fails to consider the last three years lost not addressing a new claim for a separate sovereign regulation of the fishery. With Sault Tribe's position that it will not be bound by an allocation of a shared resource as originally requested in the 1983 Motion, as set forth in 35 years of holdings by this Court, an understanding between the parties will come to an end in the middle of a fishing season. The absence of joint regulation and understanding regarding the resource could lead to the same kind of disputes over closures, allocations, and conflict among treaty users, among the Tribes, and with non-treaty users that this Court dealt with routinely through the 1980s. Finally, a new racehorse fishery is not out of the question and is exactly what Judge Enslen attempted to mitigate through entry of the 1985 Consent Decree. *United States v. Michigan*, 12 I.L.R. at 3086-87.

The 90-day extension requested by the Sault Tribe is not suitably tailored to the circumstances that warrant the modification. See *Vanguards of Cleveland*, 23 F.3d 1013, 1020 (6th



Cir. 1994). The Treaty waters have not experienced gear conflict for most of the past 35 years. Tribal and non-tribal users have worked and fished together with a developed understanding that has served both well. Tribal “home waters” have contributed to that understanding. To grant the Sault Tribe’s motion, with its end to the status quo as of November 8, is to undo 35 years of progress.

Sault Tribe’s now disclosed approach has caused the parties to lose three years attempting to negotiate a successor decree, when a departure from the accepted 50-50 allocation of the resource and co-management could have been litigated. The issue of allocation was contested by the Parties in 1983, resulting in almost two years of litigation. At this point, 90 days is not sufficient under the circumstances to deal with the issues of exclusive zones and allocations or the Sault Tribe’s claims. While CPMR agrees that an extension is needed, such extension must continue until this Court makes a determination on the issues of allocation and exclusive zones or a successor decree is reached.<sup>7</sup>

## **II. The Sault Tribe position hints at the absence of clean hands.**

The Sault Tribe’s apparent approach, which we believe has actually created the change in circumstances, may not have been undertaken in good faith. The Court should consider whether a party so benefit from such actions. A court of equity should not provide relief to a party who has acted with inequity regarding the matter for which it seeks relief. *Id.* In *Precision Instrument Manufacturing Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945), the Supreme Court noted

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<sup>7</sup> Rule 65 of the Federal Rules of Civil Procedure provides the Court the authority to issue a preliminary injunction or temporary restraining order as it deems necessary, including “to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). The four factors that this Court reviews for purposes of issuing an injunction all weigh in favor of continuing the current Decree.

that when the public interest is involved in a suit in equity, the clean hands doctrine “assumes even wider and more significant proportions,” since it would avoid an injury to the public. *Id.* at 815. Notably, the public interest here may also be implicated by the interests of some of the other Parties, who may not share the Sault Tribe’s position.

### **III. Sault Tribe misrepresents Judge Fox’s opinion.**

Sault Tribe’s Motion and Brief focus upon Judge Fox’s 1979 decision. According to Sault Tribe, the Tribes may exercise an aboriginal right to fish “without regulation by the State of Michigan.” (ECF No. 1883 at 216). Sault Tribe fails to make clear that Judge Fox’s decision was appealed to the Sixth Circuit, where it was reversed in part. The Sixth Circuit held that the State can regulate treaty fishing where it is “a necessary conservation measure,” “the least restrictive alternative method available for preserving fisheries in the Great Lakes from irreparable harm,” and does “not discriminatorily harm Indian fishing or favor other classes of fishermen.” *United States v. Michigan*, 653 F.2d 277, 279 (6th Cir. 1981). Since over-fishing and irreparable harm may well be likely in the absence of a consent decree, further extensive litigation before this Court may well be likely.

The Sault Tribe attempts to quickly expand Judge Fox’s opinion by arguing that it was “determined that each tribe has a collective and indivisible right to fishing the 1836 ceded waters, as there were never any separate fishing areas for individual tribes within those waters.” ()). Judge Fox’s opinion on this issue is pure dicta, however, and was not affirmed by the appellate court. “[O]nly holdings are binding, not dicta.” *Wright v. Spaulding*, 939 F.3d 695, 700 (6th Cir. 2019). Even under the law of the case doctrine, “courts have ruled the law of the case doctrine does not apply to dicta.” *Matter of Grand Valley Sport & Marine, Inc. v. Hoerner*, 143 B.R. 840, 854 (Bankr. W.D. Mich. 1992) (citation omitted). “[T]he doctrine applies only if the . . . court ‘either

expressly or by necessary implication decides an issue.’ If the statement is not necessary to the outcome, it is dicta and nonbinding.” *Haddad v. Alexander, Selmanski, Danner & Fioritto, PLLC*, 758 F.3d 777, 781 (6th Cir. 2014) (citation omitted).

Judge Fox was presented with the following issues in 1979 : (1) “[w]hether the Indians reserved or retained fishing rights in the Great Lakes waters . . . under the Treaty of 1836;” (2) whether “those rights [were] abrogated in whole or in part by the Treaty of 1855;” and (3) “[a]ssuming those reserved fishing rights were not abrogated, [whether] . . . the State possess[es] any jurisdiction to regulate the exercise of those rights by treaty tribe members.” *United States v. Michigan*, 471 F. Supp. at 219. Although the question of whether the Tribes retained a right to fish in the Treaty waters was at issue in the case, the scope of that right (other than whether it could be regulated by the State) was not at issue. The Parties never presented the issue of whether the Treaty right was collective and indivisible among the Tribes. Although Judge Fox opined as to the scope of the treaty fishing right, this analysis was not relevant to his conclusion that the Tribes retained fishing rights and that those rights were not subject to regulation by the State (the latter being modified by the Sixth Circuit on appeal). Because these determinations by Judge Fox were not necessary to the resolution of the issues presented, they are dicta and are not binding on this Court. Thus, the Sault Tribe misrepresents Judge Fox’s decision and its bearing on exclusive zones and allocations, and these issues are not properly before the Court on the Sault Tribe’s motion.

**CONCLUSION AND RELIEF REQUESTED**

CPMR requests that this Court deny Sault Tribe's motion and instead extend the current Decree, as requested by the six Parties, until the issues of allocation and exclusive zones are litigated, until the parties otherwise reach a successor decree, or until further order of the Court.

Respectfully submitted,

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Attorneys for *Amicus Curiae* CPMR

Dated: July 8, 2020

By: /s/ Christopher S. Patterson  
Stephen O. Schultz (P29084)  
Christopher S. Patterson (P74350)  
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### CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief is drafted in compliance with the standards set forth in W.D. Mich. LCivR 7.3(b)(i) as required by W.D. Mich. LCivR 7.3(b)(ii). This Brief's Word Count is 4,040 Words out of 4,300. I prepared this Brief on Microsoft Word and relied upon its word count function for the purposes of this certificate of compliance.

Respectfully submitted,

FAHEY SCHULTZ BURZYCH RHODES PLC  
Attorneys for *Amicus Curiae* CPMR

Dated: July 8, 2020

By: /s/ Christopher S. Patterson  
Stephen O. Schultz (P29084)  
Christopher S. Patterson (P74350)  
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(517) 381-0100

### CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2020 I electronically filed the forgoing paper with the Clerk of the Court using ECF system which will send notification of such filing on the attorneys of record.

/s/ Stacy A. Parrish  
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**UNITED STATES OF AMERICA  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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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,

Plaintiffs-Intervenors,

vs.

STATE OF MICHIGAN, et al.,

Defendants.

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**INDEX OF EXHIBITS**

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Exhibit A – Bay Mills and Sault Tribe’s Motion to Allocate the Fishery *United States v. Michigan*, No. 2:73-cv-00026-PLM (W.D. Mich. July 3, 2007)

Exhibit B – State of Michigan’s Proposed Discussions on Negotiation for Successor Decree in 2017, 2018, and 2019

# EXHIBIT

# C

CONFIDENTIAL - ATTORNEY EYES ONLY

Bruce R. Greene  
Elizabeth Meyer  
Susan E. André

Of Counsel  
David H. Getches

November 8, 1983

Clerk of U.S. District Court  
U. S. Post Office Building  
410 W. Michigan Avenue  
Kalamazoo, MI 49007

Re: U.S. v. Michigan  
Civil Action No. M26-73

Dear Sir or Madam:

Enclosed please find an original and two copies of the following documents for filing in this matter:

1. Memorandum of Points and Authorities in Support of Motion to Allocate
2. Motion to Allocate Resource

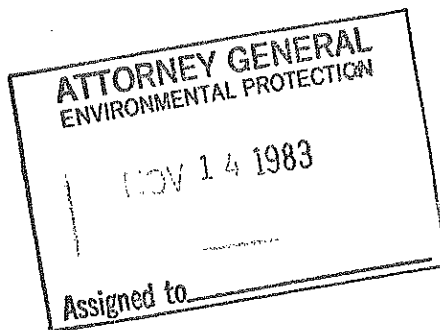
Thank you.

Sincerely,

Bruce R. Greene

BRG:ss

bcc: Bill Horn  
Dan Green  
Bill Rastetter  
Wade Teeple  
Robin Friedman  
Edward Shawaker  
Joseph Kutkuhn  
Conrad Mallett  
Nancy Kida  
Richard Hatch





UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA, )  
 )  
 Plaintiffs, )  
 )  
 and )  
 )  
 BAY MILLS INDIAN COMMUNITY, )  
 SAULT STE. MARIE TRIBE OF )  
 CHIPPEWA INDIANS, GRAND )  
 TRAVERSE BAND OF OTTAWA- )  
 CHIPPEWA INDIANS, )  
 )  
 Intervenor-Plaintiffs, )  
 )  
 v. )  
 )  
 STATE OF MICHIGAN, et al., )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

MOTION TO ALLOCATE  
RESOURCE

Civil Action No. M26-73

The BAY MILLS INDIAN COMMUNITY, the SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS and the GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS (hereinafter "the Tribes"), plaintiff-intervenors, hereby move the Court to allocate the fishery resource found within the waters ceded by the Treaty of March 28, 1836 (7 Stat. 491) between treaty and non-treaty users.

The Tribes make this motion pursuant to paragraph 25 of the Court's Declaratory Judgment and Decree, United States v. Michigan, 471 F.Supp. 192,281 (W.D. Mich. 1979), pursuant to the Court's inherent powers to implement and modify its prior decree, and pursuant to 28 U.S.C. § 2202.

The reasons for this motion are set forth in the accompanying memorandum of points and authorities. In accordance with said memorandum, the Tribes respectfully request that this matter be set for hearing after the close of discovery and consistent with the Court's schedule and, thereafter, that the motion be granted.

Dated: November 8, 1983

Respectfully submitted,

Bruce R. Greene  
Native American Rights Fund  
1506 Broadway  
Boulder, CO 80302  
(303) 447-8760

Attorney for Bay Mills Indian  
Community

Daniel T. Green  
206 Greenough Street  
Sault Ste. Marie, MI 49783

Attorney for Sault Ste. Marie  
Tribe of Chippewa Indians

William Rastetter  
6724 County Road 645  
Cedar, MI 49621

Attorney for Grand Traverse  
Band of Ottawa-Chippewa  
Indians

By

  
Bruce R. Greene

CERTIFICATE OF MAILING

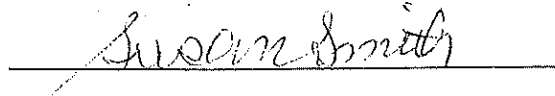
I hereby certify that a true and correct copy of the foregoing MOTION TO ALLOCATE RESOURCE was mailed, postage prepaid, this 8th day of November, 1983 to:

Dan LaVille  
Assistant U.S. Attorney  
399 Federal Bldg.  
110 Michigan Avenue, N.W.  
Grand Rapids, MI 49503

Marianna Shulstad  
Field Solicitor  
U. S. Dept. of Interior  
Office of the Solicitor  
686 Federal Bldg., Ft. Snelling  
Twin Cities, MN 55111

Stewart Freeman  
Asst. Attorney General  
762 Law Building  
525 W. Ottawa Street  
Lansing, MI 48913

Nino Green  
225 Ludington Street  
Escanaba, MI 49829

  
A handwritten signature in cursive script, reading "Susan Smith", is written over a horizontal line.

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA, )  
 )  
 Plaintiffs, )  
 )  
 and )  
 )  
 BAY MILLS INDIAN COMMUNITY, )  
 SAULT STE. MARIE TRIBE OF )  
 CHIPPEWA INDIANS, GRAND )  
 TRAVERSE BAND OF OTTAWA- )  
 CHIPPEWA INDIANS, )  
 )  
 Intervenor-Plaintiffs, )  
 )  
 v. )  
 )  
 STATE OF MICHIGAN, et al., )  
 )  
 Defendants. )  
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 \_\_\_\_\_ )

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO ALLOCATE

Civil Action No. M26-73

INTRODUCTION

In 1973, the United States initiated this litigation when it filed suit in its own behalf and in behalf of the Bay Mills Indian Community against the State of Michigan and named officials within the Department of Natural Resources. In November, 1974, the Court granted party status to the Bay Mills Indian Community, as plaintiff-intervenor. In October, 1975, the Court granted Bay Mills' motion for leave to file its amended complaint. Shortly thereafter, the Sault Ste. Marie Tribe of Chippewa Indians was permitted to intervene, pursuant to a stipulation signed by all the parties.\*

\*/ Still later, after the Court's initial decision in 1979, the Grand Traverse Band of Ottawa and Chippewa Indians intervened as plaintiffs.

Bay Mills' amended complaint, which is substantially similar to the amended complaints of the United States and the Sault Tribe, and the complaint of the Grand Traverse Band, asked the Court to declare that its predecessor tribe in interest had reserved certain rights to fish for subsistence and commercial purposes in the Great Lakes waters ceded by the Treaty of 1836 (7 Stat. 491). Bay Mills also sought a declaration that the State lacked authority to regulate treaty tribe members in the exercise of their federally protected rights.

In addition, Bay Mills asked the Court to take those steps necessary to require the State to reduce the harvest by state-licensed non-treaty fishers in order to ensure that treaty fishers were able to harvest their fair share of the resource. Thus, while it was important to the Tribes that their rights under the treaty be declared, it is equally important that the state-licensed harvest of the resource be reduced. Without this vital second step, the Court's declaration of rights under the treaty would have no meaning.

The so-called second step, reduction of harvest by state licensees, was asked for in Bay Mills' third claim for relief, and is the foundational underpinning for this motion to allocate the resource. Allocation of the resource involves the process of quantifying the hitherto declared rights of the Tribes and concomitant rights and responsibilities of the State.

In July, 1976, the Court granted a motion by the United States and the Tribes for separate trial. The Court ordered

that the issues for trial be limited to:

a) Whether the Indians reserved or retained fishing rights in the Great Lakes waters purportedly ceded by them under the Treaty of 1836 (7 Stat. 491);

b) If the Indians reserved rights to fish in those waters, were those rights abrogated in whole or in part by the Treaty of 1855 (11 Stat. 621); and

c) Assuming those reserved fishing rights were not abrogated, does the State possess any jurisdiction to regulate the exercise of those rights by treaty tribe members?

United States v. Michigan, 471 F.Supp. 192, 218 (W.D. Mich. 1979).

The effect of the Court's order was to sever the allocation issue from issues relating to treaty interpretation as well as the threshold legal question of whether the State had any jurisdiction to regulate treaty tribe fishers in the exercise of the right. What remains is the issue of allocation. The purpose of this motion is to raise that issue for the Court's consideration and disposition.

THE COURT HAS AUTHORITY TO  
ALLOCATE THE RESOURCE

The pinnacle decision in the field of allocation, and the only Supreme Court opinion on the subject, is Washington v. Fishing Vessel Ass'n., 443 U.S. 658 (1979). That case concerned certain treaties entered into between the United States and several tribes in the State of Washington. The Stevens' treaties, as they became known because they were negotiated by Isaac Stevens, the first Governor and first Superintendent of Indian Affairs of the Washington Territory, were negotiated in order to

extinguish the Indian occupants' aboriginal title to land sought by non-Indian settlers as they moved westward. In exchange for the large cession of land, the Indians retained small parcels for their homelands, known as reservations, and reserved the right to go off their homelands to fish at their usual and accustomed fishing places in common with the citizens of the territory.

At the time the treaties were negotiated, the resource was abundant -- indeed it was generally thought to be inexhaustible. With the passage of time, the resource became scarce and that scarcity severely impacted the fishing practices of tribal members and, since fishing was inextricably intertwined with tribal culture and traditions, the very foundation of their way of life.

In Washington, like in Michigan, the United States initiated litigation against the State seeking a declaration interpreting the treaties and an injunction requiring the State to protect the Indians' share of the harvestable resource. In Fishing Vessel Ass'n., supra, the Supreme Court affirmed the district court's decision, which equally divided the available harvest between treaty and non-treaty user groups, subject to certain adjustments.

The Supreme Court concluded that this was an equitable measure of the treaty right. Further, the Court analogized the fishing case to other situations where Indians enjoyed treaty rights to a scarce natural resource - such as water - where judges have been required to fashion ". . . some apportionment

that assured that the Indians' reasonable livelihood needs would be met." Fishing Vessel Ass'n., supra, 685.

The Tribes in Michigan ask the Court to allocate the resource in a manner similar to that which was upheld in the Washington litigation. However, the methodology employed there must be adapted slightly to accommodate the situation in Michigan. It must be remembered that the nature of the Great Lakes resource is different than the resource in Washington. In the latter, the resource consists primarily of anadromous species, which spend some portion of their life cycle in fresh water and some portion in salt water. The nature of that resource was described by the Supreme Court in Fishing Vessel Ass'n., supra.

The regular habits of these fish make their "runs" predictable; this predictability in turn makes it possible for both fishermen and regulators to forecast and control the number of fish that will be caught or "harvested." Indeed, as the terminology associated with it suggests, the management of anadromous fisheries is in many ways more akin to the cultivation of "crops" -- with its relatively high degree of predictability and productive stability, subject mainly to sudden changes in climatic patterns -- than is the management of most other commercial and sport fisheries.

Id. 663 (citation omitted).

The Great Lakes resource is not as predictable. It consists of many more species that are sought after by commercial operators. It has been drastically manipulated by non-Indians and, as a result, has experienced enormous changes over time.

The Tribes in Michigan begin with the same premise approved in the Washington litigation. Their treaty right entitles them to an equal division of the available fishery resource.



However, the Great Lakes' resource is evolving; and the markets for that resource are likewise evolving. In order to accommodate the dynamic nature of the resource and the ever changing needs of the user groups, the Tribes will propose a management plan to effectuate the equitable division of the available resource. That plan will provide for the orderly harvest of the available species by treaty and non-treaty user groups and will be presented to the Court for its review and approval at the trial of this cause.

For the reasons set forth herein, the Tribes respectfully request that the Court set this matter for hearing in early 1984, after the completion of discovery and thereafter, that the motion be granted.

Dated: November 8, 1983

Respectfully submitted,

Bruce R. Greene  
Native American Rights Fund  
1506 Broadway  
Boulder, CO 80302  
(303) 447-8760 and (303) 442-2021

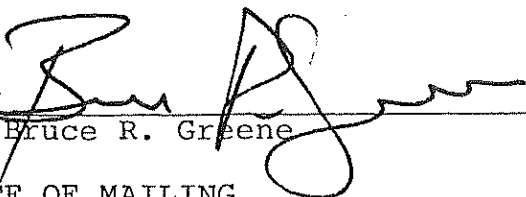
Attorney for Bay Mills Indian  
Community

Daniel T. Green  
206 Greenough Street  
Sault Ste. Marie, MI 49783  
(906) 635-6050

Attorney for Sault Ste. Marie Tribe  
of Chippewa Indians

William Rastetter  
6724 County Road 645  
Cedar, MI 49621  
(616) 228-6300

Attorney for Grand Traverse Band  
of Ottawa-Chippewa Indians

By   
Bruce R. Greene

CERTIFICATE OF MAILING

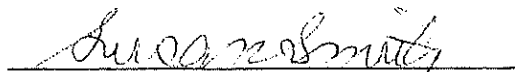
I hereby certify that a true and correct copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO ALLOCATE was mailed, postage prepaid, this 24th day of November, 1983 to:

Dan LaVille  
Assistant U.S. Attorney  
399 Federal Bldg.  
110 Michigan Avenue., N.W.  
Grand Rapids, MI 49503

Marianna Shulstad  
U.S. Dept. of Interior  
Office of the Solicitor  
686 Federal Bldg., Ft. Snelling  
Twin Citites, MN 55111

Stewart Freeman  
Asst. Attorney General  
762 Law Building  
525 W. Ottawa Street  
Lansing, MI 49813

Nino Green  
225 Ludington Street  
Escanaba, MI 49829



# EXHIBIT

# B

**7J: ;4;F 4**

**EXECUTIVE COUNCIL  
Grand Traverse Resort and Spa's – Michigan A Room, Acme, Michigan  
August 25, 2016, 10:00 a.m.**

- I. Call to Order (Council Chairman for 2016/2017 – President Levi Carrick, Sr.)
- II. Roll Call
- III. Invocation
- IV. Introductions
- V. \*Acceptance of Minutes
  - A. August 20, 2015
- VI. Great Lakes
  - A. Reports
    1. Joint Law Enforcement Committee – Chairman Terry Short
    2. Technical Fisheries Committee – Chairman Mark Holey
  - B. New Business
    1. \*Walleye Bag Limit (Expires end of 2016)
    2. \*Discussion on Proposed CORA Regulations Amendment in Section IX (k) & XXVII (a) (6) Regarding Firearms Possession – Tribes/State
    3. \*MM-1,2,3 Harvest Limit – Tribes
    4. Purse Seine Issue – Sault Tribe
    5. \*2020 Consent Decree Negotiations – State
- VII. Inland
  - A. Reports
    1. Inland Fisheries Committee – Committee Member
    2. Wildlife Technical Committee – Committee Member
  - B. New Business
    1. 2007 Consent Decree Appendix L, Paragraph 11.4 Process – Grand Traverse Band
    2. \*Law Enforcement Mechanism – State

Executive Council Agenda  
August 25, 2016  
Page 2

VIII. Public Comments

IX. \*Date and Location of Next Meeting (Grand Traverse Resort)

- August 24, 2017, 10:00 a.m. (date available at GTR)  
[Chairman for this meeting, Chairman Thurlow "Sam" McClellan, GTB]

X. \*Adjournment

**\*Action Items**

## **VI. GREAT LAKES**

### **B. New Business**

#### **5. \*2020 Consent Decree Negotiations**

On May 12, 2016, the State sent a letter to the Parties requesting that discussion begin during the 2016 Executive Council meeting about preparation for 2020 negotiations. We believe it would be beneficial to establish common ground regarding the framework for the negotiation process.

**Action Requested: The State of Michigan requests the Executive Council designate a representative from each Party and CORA to work collaboratively to:**

- **Initiate compilation of a list from the Parties of the concepts of the 2000 Consent Decree to retain**
- **Produce a list of the remaining concepts to be reviewed for 2020**
- **Seek consensus for a default plan should the new Decree not be finalized prior to the expiration of the 2000 CD**
- **Identify target date to initiate 2020 negotiations**
- **Discuss need for outside assistance (mediator)**
- **Discuss process, acceptable locations, allocation of expenses**
- **Discuss need for confidentiality agreement**
- **Designees send work group report with recommendations on each of these items to the Executive Council by June 1, 2017. Executive Council makes decision on negotiation schedule initiation at 2017 meeting.**





STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

May 24, 2016

Ms. Jane A. TenEyck  
Executive Director  
Chippewa Ottawa Resource Authority  
179 West Three Mile Road  
Sault Ste. Marie, Michigan 49783

Dear Ms. TenEyck:

As the expiration of the 2000 Consent Decree (Decree) approaches, all Parties will soon begin preparing to negotiate a new agreement. We believe it would be beneficial to begin a dialogue about the negotiations during the August 25, 2016 Executive Council meeting, with discussions about issues such as a timeline to begin negotiations, facilitation or mediation options, the duration of the new Decree, as well as a default plan if a new Decree cannot be finalized prior to the expiration of the 2000 Consent Decree.

Additionally, it may be beneficial for the Parties to identify areas of common ground at the outset, and more specifically concepts of the current Decree that could be maintained in the next Decree, with the hope that it may improve the overall efficiency of upcoming negotiations. Toward that end, the State of Michigan (State) endorses the concepts of:

- An overarching Chippewa Ottawa Resource Authority Code to govern treaty fishing activities of tribal members to ensure conservation of the fishery resource for future generations and to ensure safe fishing practices.
- The existing committee structure (Executive Council, Technical Fisheries Committee, Law Enforcement Committee and Modeling Subcommittee).
- A similar management structure for lake trout and lake whitefish, including the establishment of annual harvest limits/harvest regulation guidelines with allocation between the State and Tribes.
- The establishment of specific commercial fishing zones for State, Tribal, and joint fishing.
- A management structure for other species (lacking sufficient data for harvest limits) that utilizes regulations such as area closures, seasons, possession limits, and size limits.
- A protocol or method for notice and consultation as well as information sharing.
- A method for dispute resolution.
- A reconsideration clause.



Ms. Jane A. TenEyck  
Page 2  
May 24, 2016

We look forward to discussing the negotiation timeline with the Parties in August. We believe it will be in all Parties' best interest to have a clear understanding of timeframes, process and big picture issues well in advance of beginning our negotiations.

If you have any questions about what we are proposing, please contact Department of Natural Resources Tribal Coordinator, Mr. Dennis Knapp at 517-243-1510, or at [knappdj@michigan.gov](mailto:knappdj@michigan.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Nyberg". The signature is stylized and cursive.

Dave Nyberg  
Deputy Legal Counsel

cc: Ms. Kelly Drake, Office of the Attorney General  
Dr. William E. Moritz, Director, DNR  
Mr. Dennis Knapp, Tribal Coordinator, DNR

**VI. \*MINUTES**

**A. August 24, 2017 – Reaffirm**

**B. May 24, 2018 – Reaffirm**

**Action Requested: The Executive Council reaffirms the August 24, 2017 minutes which were approved during the September 26, 2017 – June 21, 2018 poll and reaffirms the May 24, 2018 minutes which were approved during the June 15 – 25, 2018 poll.**

## **VII. GREAT LAKES**

### **A. Reports**

#### **1. Technical Fisheries Committee**

#### **2. Joint Law Enforcement Committee**

As of packets being mailed, the LEC had indicated they will be giving a Power Point Presentation at the August 23, 2018 meeting and as in past, it is assumed the TFC will do one as well.

<b>Action Requested: NO Action Required.</b>
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## VII. GREAT LAKES

### B. Old Business

#### 1. MH-1,2 Lake Trout Harvest Limits

On July 11, 2018, the State of Michigan sent a letter to the Parties with a proposal to resolve the penalty for the State's 2016 exceedance of the lake trout harvest limit in MH-1 and to establish official lake trout harvest limits for 2017 and 2018 in MH-1 and MH-2. The proposal is attached and summarized below as the action requested.

**Action Requested: Penalty for State's exceedance of the lake trout harvest limit in MH-1 be applied proportionally across MH-1 and MH-2. Lake trout harvest limits for MH-1 and MH-2 in 2017 be set at levels 15% higher than 2016 levels, and 2018 harvest limits be set at levels 15% higher than 2017 levels.**

## **VII. GREAT LAKES**

### **C. New Business**

#### **1. MH-1 Lake Trout Stocking**

Per Section IX.D.2 of the 2000 Consent Decree the State of Michigan stocks 100,000 yearling lake trout annually in management unit MH-1 of Lake Huron. Since 2002 the Marquette State Fish Hatchery has been rearing and stocking these lake trout. These fish have been marked with an adipose fin clip and coded wire tag. Because of a recent positive finding for the virus known to cause epizootic epitheliotropic disease (EEDv) and the risk associated with potentially transferring the virus, the U.S. Fish and Wildlife Service (USFWS) has determined that they will no longer bring the mass marking trailer to mark lake trout at the Marquette State Fish Hatchery. At the State of Michigan's request, the USFWS has agreed to rear and stock the lake trout in MH-1 for the duration of the 2000 Consent Decree. This is possible because of increased natural reproduction of lake trout and a commensurate decrease in lake trout rearing assignments at Federal hatcheries. However, the USFWS currently only has enough lake trout in their hatchery system to cover half (50,000) of the assignment for 2019. Thus, in 2019 the Marquette State Fish Hatchery will rear and stock the remaining 50,000 fish needed to meet the Consent Decree requirement. The lake trout from the Marquette State Fish Hatchery will be hand clipped (no coded wire tag) in the summer of 2018. In 2020 the USFWS will rear and stock the full 100,000 lake trout in MH-1. All fish stocked will be Seneca-strain, which have been stocked since 2004. A memorandum of understanding formalizing this arrangement is pending.

<b>Action Requested: NO Action Necessary.</b>
-----------------------------------------------

## **VII. GREAT LAKES**

### **C. New Business**

#### **2. State of Michigan Electronic Wholesale Reporting System**

On June 21, 2018 the State of Michigan sent a letter to the Parties notifying them of the implementation timeline for the various modules of a new electronic reporting platform. The electronic Wholesale Reporting System was the first module to be implemented in July of 2018. To build off the information provided in that letter, we will have staff present a brief overview of the new system.

<b>Action Requested: NO action necessary.</b>
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## VII. GREAT LAKES

### C. New Business

#### 3. \*Net Marking Requirements

Law enforcement representing state and tribal interest have responded to numerous complaints of unmarked/improperly marked nets, vessel entanglements, and vandalism of nets. Many of these complaints are a result of poor net markings and/or difficulty in determining the type of net and what direction the net is running. Entanglements can be dangerous and have resulted in injury and death. It has also left boaters having to cut their way out of nets, making the situation appear to be vandalism if not reported as an entanglement. Officers have also observed shallow set nets run over by boats where the operator was not able to either see the markings or did not know what direction the net was running causing damage to nets. The Law Enforcement Committee (LEC) recognizes that a lack of commercial fishing/net knowledge by the non-commercial fishing public in many instances is an issue as well.

At the September 29, 2016 LEC meeting the committee began discussions regarding net markings. The LEC looked at the possibility of unifying markings between state and tribal trap nets and developing a better color scheme with additional markings to identify gill nets and the direction they are set. Tribal officers brought the discussion to their respective tribal conservation committees and the LEC outlined recommendations at the 2017 Executive Council meeting. In January of 2018, the LEC brought the recommendations to the CORA Board meeting. Further information was requested of the proposed recommendation for change. During the summer of 2018, the LEC began testing net markings with orange, yellow, and green flagging combinations for gill nets and has agreed to recommend adding markings to tribal trap nets that are similar to those currently used on state trap nets. It should be noted that some fishers have already adopted additional markings and color schemes recognizing better visibility.

The LEC believes that this action will improve public recognition of nets, increase public safety, and decrease net damage and loss to fishers.

<b>Action Requested: NO action necessary.</b>
-----------------------------------------------

## **VII. GREAT LAKES**

### **C. New Business**

#### **4. \*2020 Consent Decree Negotiations**

At the August 2016 and 2017 Executive Council meeting the Parties discussed the possibility of interest-based negotiation training and other issues related to preparation for 2020 negotiations. A successful training session was held in May 2017, but representatives from all Parties were not present. The State of Michigan values our long-term working relationship as co-managers and wishes to continue discussing common ground regarding the framework for the negotiation process.

**Action Requested: The State of Michigan requests that the Executive Council designate a representative from each party to collaboratively:**

- **Identify a target date to initiate 2020 negotiations**
- **Discuss acceptable meeting locations, allocation of expenses, and need for a confidentiality agreement**
- **Seek consensus for a default plan should the new Decree not be finalized prior to the expiration of the 2000 Decree**

**If the Executive Council agrees to form a committee, we request that recommendations be completed by December 1, 2018 and the Executive Council decide on the recommendations by February 1, 2019. A decision is recommended to be captured with an agreement in principle or some other legal instrument.**



## **VIII. INLAND**

### **A. Reports**

- 1. Inland Fisheries Committee**
- 2. Wildlife Technical Committee**
- 3. Consultation Process Committee**

Verbal reports will be given at the August 23, 2018 meeting by the Committees.

<b>Action Requested: NO action required.</b>
----------------------------------------------

## **VIII. INLAND**

### **B. Old Business**

#### **1. Black Lake Sturgeon Harvest Stipulation**

This was placed on the agenda by the Little Traverse Bay Bands during the August 2017 meeting, however it was tabled. This is placed on the agenda for the 2018 meeting and if it is no longer necessary or Parties not ready to discuss, it can be removed from the agenda or tabled for the 2019 meeting.

**Action Requested: Action necessary as Executive Council deems necessary.**

## **VIII. INLAND**

### **C. New Business**

#### **1. Chronic Waste Disease (CWD) Update**

CWD was first discovered in the Lower Peninsula in 2015. Since then, actions have been taken to limit the spread and monitor the current distribution of the disease. To date, we have tested over 31,000 deer in Michigan. Of those tested, we have confirmed 60 deer positive for CWD.

In addition to direct consultation with tribal governments, including a special meeting held in Petoskey on April 26 and convening the Wildlife Technical Committee meeting on July 11, we have conducted extensive discussions with stakeholder groups and held public meetings on the topic to solicit input on actions that could be taken to manage this disease.

On August 9, 2018, the Natural Resources Commission will consider new CWD management recommendations and regulations for the 2018 fall deer season. We will have staff present a brief overview on the history of the issue, public and tribal engagement on forming the regulations, and the current deer regulations in Michigan developed to address CWD.

**Action Requested: NO action required.**

**VI. \*MINUTES**

**A. August 24, 2017 – REAFFIRM**

**B. May 24, 2018 – REAFFIRM**

## **VII. GREAT LAKES**

### **A. Reports**

- 1. Technical Fisheries Committee**
- 2. Joint Law Enforcement Committee**

## **VII. GREAT LAKES**

### **B. Old Business**

#### **1. MH-1, 2 Lake Trout Harvest Limits**

## **VII. GREAT LAKES**

### **C. New Business**

- 1. MH-1 Lake Trout Stocking**
- 2. State of Michigan Electronic Wholesale Reporting System**
- 3. \*Net Marking Requirements**
- 4. \*2020 Consent Decree Negotiations**

## **VIII. INLAND**

### **A. Reports**

- 1. Inland Fisheries Committee**
- 2. Wildlife Technical Committee**
- 3. Consultation Process Committee**



**VIII. INLAND**

**B. Old Business**

**1. Black Lake Sturgeon Harvest  
Stipulation**

**(Tabled from Last Year)**

## **VIII. INLAND**

### **C. New Business**

#### **2. Chronic Waste Disease (CWD) Update**

**IX. PUBLIC COMMENTS**

**X. \*DATE/LOCATION OF NEXT MEETING**

**XI. \*ADJOURNMENT**



**EXECUTIVE COUNCIL**  
**Grand Traverse Resort and Spa's – Michigan AB Room, Acme, Michigan**  
**August 22, 2019, 10:00 a.m.**  
**AGENDA**

- I. Call to Order (Council Chairman for 2019/2020 – Chairperson Regina Gasco-Bentley)
- II. Roll Call
- III. Invocation
- IV. Introductions
- V. \*Additions/Approval of Agenda
- VI. \*Minutes
  - A. August 23, 2018
- VII. Great Lakes
  - A. Reports
    1. Technical Fisheries Committee – Chairman Scott Koproski
    2. Joint Law Enforcement Committee – Chairman Robert Robles, Jr.
  - B. Old Business
    1. \*MH-1,2 Lake Trout Harvest Limits - State
  - C. New Business
    1. \*Net Markings - State
    2. \*2020 Great Lakes Consent Decree – State
      - a. Challenges State of Michigan is Facing in Preparing for 2020
      - b. Timeframe for Negotiations
- VIII. Inland
  - A. Reports
    1. Inland Fisheries Committee – Committee Member
    2. Wildlife Technical Committee – Committee Member
    3. Consultation Process Committee – Committee Member

Executive Council Agenda  
August 22, 2019  
Page 2

B. New Business

1. Proposed Landscape Management Technical Committee – GTB NRD (T. Callison)
2. \*Recovering America's Wildlife Act – Overview for Support - State
3. \*2020 MDNR Conservation Order Schedule - State

IX. Public Comments

X. \*Date and Location of Next Meeting (Grand Traverse Resort)

- Schedule Meeting Prior to the Expiration of the 2000 Consent Decree?  
[Chairman for this meeting would be Chairperson Aaron Payment, SSM]

XI. \*Adjournment

**\*Action Items**

**EXECUTIVE COUNCIL**

**DRAFT**

**Grand Traverse Resort and Spa's Michigan AB Room, Acme, Michigan**

**August 23, 2018 – 10:00 a.m.**

**I. Call to Order**

Meeting called to order by Executive Council Chairman, Frank Beaver of the Little River Band of Ottawa Indians, at 10:15 a.m.

Executive Council Chairman Beaver noted that the Executive Council has agreed to help in moving the meeting along and to not get side tracked from agenda items; that any comments or questions from those not at the meeting table must go through their respective Executive Council Member and if a caucus is needed the party can request that at any time as needed; otherwise, all comments and questions will be heard during the Public Comment section of the agenda.

**II. Roll Call**

Present: Frank Beaver (alternate for Ogema Larry Romanelli) of the Little River Band of Ottawa Indians, President Bryan Newland of the Bay Mills Indian Community, Chairman Sam McClellan of the Grand Traverse Band of Ottawa and Chippewa Indians ( Brian Napont took over as alternate when Chairman McClellan had to leave at 11:00 a.m. – Tina Frankenberger took over as alternate when Brian Napont had to leave at 1:00 p.m.), Chairperson Regina Gasco-Bentley of the Little Traverse Bay Bands of Odawa Indians, Chairperson Aaron Payment of the Sault Ste. Marie Tribe of Chippewa Indians; Director Keith Creagh of the State of Michigan Department of Natural Resources and Acting Regional Director Charles Wooley of the United States Fish & Wildlife Service.

Absent: Ogema Larry Romanelli of the Little River Band of Ottawa Indians.

Also Present: See attached list of attendees.

**III. Invocation**

Invocation given by Tony Grondin of the Sault Ste. Marie Tribe of Chippewa Indians.

**IV. Introductions**

Introductions given around the room.

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**V. Additions to Agenda**

Director Keith Creagh asked that the agenda item under VII. Great Lakes, C. New Business, 3. \*Net Marking Requirements, is removed from the agenda as it will be discussed under the Law Enforcement report.

**Consensus of the Executive Council to remove agenda item VII. Great Lakes, C. New Business, 3. \*Net Marking Requirements.**

**VI. \*Minutes**

- A. August 24, 2017 – REAFFIRM
- B. May 24, 2018 – REAFFIRM

**Motioned by Chairperson Aaron Payment, supported by Chairman Sam McClellan to reaffirm the telephone polls to approve the Executive Council minutes of August 24, 2017 and May 24, 2018.**

**Motion carried with a vote of 7 in favor, 0 opposed, 0 abstaining and 0 absent.**

**VII. Great Lakes**

**A. Reports**

**1. Technical Fisheries Committee**

Presented to Executive Council by Technical Fisheries Committee (TFC) Chairman, Scott Koproski of the United States Fish and Wildlife Services on such issues as: 1) TFC Membership and Membership Changes; 2) Meetings; 3) Letters/Notices to Parties; 4) Stocking changes reviewed; 5) Adjustments to lake trout stocking by the Lake Committees; 6) Review of models to determine Harvest Limits; 7) Biological considerations for managing MH-1 and MH-2; 8) Sea lamprey control concerns in Lake Huron; 9) LTBB commercial assessment fishery in Bay de Noc; 10) Harvest reporting workgroup and 11) Status of lake whitefish and lake trout stocks and fisheries by management unit.

**2. Joint Law Enforcement Committee**

Presented to Executive Council by Members of the Consent Decree Law Enforcement Committee (LEC) on such issues as: 1) Committee; 2) Recommendations to the LEC; 3) LEC



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Concerns/Recommendations; 4) LEC concern such as Bay de Noc; 5) LEC efforts; 6) LEC concern – net issues/testing color schemes; 7) LEC recommendations – net tags and talks on how to differentiate between trap nets and gill nets; 8) LEC’s mission – Public Safety and Emergency Response, Resource Protection, Protection of Property and Treaty Rights and Education; 9) 2020 Consent Decree and LEC working on ideas to improve the LEC’s function and any recommendations brought to the respective parties.

**B. Old Business**

**1. MH-1,2, Lake Trout Harvest Limits**

Presented to Executive Council by Director Keith Creagh of the State of Michigan Department of Natural Resources on the State’s proposal to resolve the penalty for the State’s 2016 exceedance of the lake trout harvest limit in MH-1 and to establish official lake trout harvest limits for 2017 and 2018 in MH-1 and MH-2.

**Motioned by Director Creagh for action to accept the State’s proposal in today’s meeting packet, to resolve the penalty for the State’s exceedance of the lake trout harvest during the 2016 season, that the penalty for the State exceeding be applied proportionally across MH-1 and MH-2.**

**Supported by Executive Council Chairman Beaver for discussion purposes.**

**Roll call vote:**

**Director Keith Creagh, State of Michigan Department of Natural Resources – YES  
President Bryan Newland, Bay Mills Indian Community – NO  
Chairman Sam McClellan, Grand Traverse Band of Ottawa and Chippewa Indians – NO  
Frank Beaver (alternate for Ogema Larry Romanelli), Little River Band of Ottawa Indians – NO  
Chairperson Regina Gasco-Bentley, Little Traverse Bay Bands of Odawa Indians – NO  
Chairperson Aaron Payment, Sault Ste. Marie Tribe of Chippewa Indians – NO  
Acting Regional Director Charles Wooley, United States Fish & Wildlife Service – NO**

**Motion failed 1 in favor, 6 opposed, 0 absent and 0 abstaining.**

Caucus taken 12:09 – 12:26 p.m.

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**C. New Business**

**1. MH-1 Lake Trout Stocking**

Presented to Executive Council by Jim Dexter of the State of Michigan Department of Natural Resources, on lake trout stocking in MH-1.

**2. State of Michigan Electronic Wholesale Reporting System**

Presented to Executive Council by John Busken of the State of Michigan Department of Natural Resources, on facts and an overview on the Fishing Activity and Catch Tracking System.

**3. \*Net Marking Requirements**

Removed from agenda as was discussed during LEC report.

**4. \*2020 Consent Decree Negotiations**

Presented to Executive Council by Trevor VanDyke of the State of Michigan, on: 1) the State would offer a free one-day Interest-Based Training before the 2020 negotiations as not all parties participated in the first training and 2) the need for preliminary planning for negotiations to occur and the Executive Council designate someone from each party to go over issues such as who will pay for negotiation meetings; what if no plan in place before end of Decree what happens; how often to meet and to get a time table put in place.

**VIII. Inland**

**A. Reports**

**1. Inland Fisheries Committee**

Presented to Executive Council by the Inland Fisheries Committee (IFC) Chairman, Max Field of the Little Traverse Bay Bands of Odawa Indians on such issues as: 1) Committee Members; 2) Responsibilities (Walleye Table 1, Black Lake sturgeon abundance, Inland 1836 Consent Decree stocking, Assessment protocols for walleye and sturgeon, Chinook salmon harvest limits); 3) Protected streams – rainbow trout tribal harvest; 4) Bays de Noc restricted tribal walleye harvest; 5) Walleye lake systems restricted tribal harvest; 6) Black Lake sturgeon 2018 harvest; 7) Black Lake sturgeon abundance estimates; 8) Black Lake sturgeon harvest 2010-2018 Tribal and State; 9) Proposed Walleye Table 1 charges for 2019; 10) Collaborations such as: a) Walloon Lake fall walleye recruitment survey; b) Arctic grayling collaboration/research

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meeting; c) Walleye and sturgeon rearing and stocking; d) Lake O'Neal Dam fix; e) SSMT walleye correction facts review; f) Upper Black River system larval drift survey; g) Upper Black River juvenile sturgeon visual survey; h) Black Lake sturgeon; 11) 1836 Ceded Territory fall walleye recruitment; 12) 1836 Ceded Territory Inland walleye stocking and 13) 1836 Ceded Territory Inland sturgeon stocking.

Presented to Executive Council by Dan Mays, IFC Member of the Little River Band of Ottawa Indians, on such issues as: 1) Manistee sturgeon recovery; 2) Michigan arctic grayling initiative; 3) Updates; 4) Arctic grayling research – a) Upper Manistee River stream surveys and b) Evaluations of in stream egg incubator; 5) MSU research and 6) for further information on the next partnership meeting on Michigan arctic grayling can be found at [MiGrayling.org](http://MiGrayling.org).

Presented to Executive Council by Brett Fessell of the Grand Traverse Band of Ottawa and Chippewa Indians, on the Boardman-Ottaway River Restoration Project: Turning Back Time such as: 1) Great Lakes Restoration funding supporters; 2) Project context; 3) Project fundamentals and 4) Update since 2012 to present.

## **2. Wildlife Technical Committee**

Presented to Executive Council by the Wildlife Technical Committee Chairman, Eric Clark of the Sault Ste. Marie Tribe of Chippewa Indians, on such issues as: 1) Committee Members and 2) Meetings.

## **3. Consultation Process Committee**

### **a. \*Approval of Terms of Reference**

Presented to the Executive Council by the Consultation Process Committee Chairman, Desmond Berry of the Grand Traverse Band of Ottawa and Chippewa Indians, on such issues as: 1) Activity; 2) Committee history and 3) Work accomplished – Terms of Reference for which the Committee asked for the Executive Council to approve the Consultation Process Committee's Terms of Reference.

**Motioned by Chairperson Aaron Payment, supported by Director Creagh to approve the Consultation Process Committee's Terms of Reference as presented.**

**Motion carried with a vote of 7 in favor, 0 opposed, 0 abstaining and 0 absent.**

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**B. Old Business**

**1. Black Lake Sturgeon Harvest Stipulation**

On agenda as tabled during 2017 Executive Council meeting. Jim Bransky of the Little Traverse Bay Bands of Odawa Indians and Jim Dexter and Director Keith Creagh of the State of Michigan Department of Natural Resources informed the Executive Council they are working to finalize the stipulation to circulate for review.

**C. New Business**

**1. Chronic Waste Disease (CWD) Update**

Presented to Executive Council by Clayton Buchanan and Director Keith Creagh of the State of Michigan Department of Natural Resources, for an update on the Chronic Waste Disease and current regulations.

**IX. Public Comments**

Comments given to the Executive Council by Steve Schultz, Attorney for the Coalition to Protect Michigan Resources on 1) appreciating the Tribes concerns of funding for the process of working towards an agreement but hopes the parties will proceed to move forward with the process of negotiations; 2) the interest-based negotiations training he is in favor of and 3) the State of Michigan needs to consider the role of the Amici in the negotiations.

**X. \*Date and Location of Next Meeting**

Consensus of the Executive Council for the next meeting to take place August 22, 2019, 10:00 a.m. at the Grand Traverse Resort and Spa in Acme.

**XI. \*Adjournment**

Consensus to adjourn the meeting at 2:19 p.m.

Minutes taken by:

\_\_\_\_\_  
Beverly Carrick, Recording Secretary  
Assistant Executive Director for the  
Chippewa Ottawa Resource Authority

\_\_\_\_\_  
Date Approved

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**Bay Mills Indian Community:**

President Bryan Newland  
Tim Kinney, Conservation Committee Chairman  
Kathryn Tierney, Tribal Attorney  
Paul Ripple, Great Lakes Biologist  
Emily Martin, Inland Biologist  
Capt. Donald Carrick, Jr.

**Chippewa Ottawa Resource Authority:**

Jane A. TenEyck, Executive Director  
Beverly Carrick, Assistant Executive Director  
Tom Gorenflo, Biological Services Division Director

**Grand Traverse Band of Ottawa and Chippewa Indians:**

Chairman Thurlow "Sam" McClellan  
Brian Napont, Natural Resources Commission Chairman  
William Rastetter, Tribal Attorney  
Tina Frankenberger, Natural Resources Commission Vice-Chairman  
Erik Olsen, Great Lakes Biologist  
Nathan Barton, Great Lakes Biological Department  
James Garavaglia, Inland Biologist  
Tom Callison, Inland Biological Department  
Cindi John, Tribal Commercial Fisher  
Michelle Bostic, Legal Department  
Brett Fessell, River Biologist

**Little River Band of Ottawa Indians:**

Frank Beaver, Natural Resources Department Director  
Gary DiPiazza, Tribal Council and Natural Resources Liaison  
Caitlin Rollins, Attorney  
Archie Martell, Senior Great Lakes Biologist  
Barry Weldon, Great Lakes Biologist  
Bob Sanders, Inland Biologist  
Dan Mays, Natural Resources Department  
Sgt. Robert Robles

**State of Michigan Department of Natural Resources Continued:**

Patrick Mohney, Forest Resources Division  
Clay Buchanan, Wildlife Division  
Nathan Gambill, Michigan Department of Attorney General  
Gary Haglar, Law Division  
2<sup>nd</sup> Lt. Terry Short, Law Division  
Jon Busken, Law Division  
2<sup>nd</sup> Lt. Michael Feagan, Law Division

**United States Department of the Interior:**

Acting Regional Director Charles Wooley, U.S. Fish & Wildlife Service  
Scott Koproski, Project Leader of U.S. Fish & Wildlife Service  
Stuart Radde, Solicitor's Office  
Stephen Lenart, Alpena Conservation Office  
Ted Treska, Biologist for U.S. Fish & Wildlife Service

**Others:**

Theresa Krist, Hammond Bay Area Anglers Association  
Frank Krist, Coalition to Protect Michigan Resources/Hammond Bay Area Anglers Association  
Capt. Terry Walsh, MCBA and LHCFAC  
Capt. Barry Lienzcewski, MCBA Officer  
Capt. Richard Haslett, MCBA  
Wes Newberry, GTASFA  
Jim VanderMaas, GTASFA  
Mike Verhamme, Bay de Noc GLSF  
Bill Winowiecki, MCBA UP – Coalition  
Steve Schultz, Attorney for Coalition to Protect Michigan Resources  
Chris Patterson, Attorney for Coalition to Protect Michigan Resources