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INTERIM TREATY FISHERIES MANAGEMENT PLAN
FOR THE 1837 MINNESOTA CEDED TERRITORY
FOR THE YEARS 1997-2001

Part I: Introduction.

The purpose of this plan is to set forth the management intent of the Mille Lacs, Bad River, Lac Courte Oreilles, Lac du Flambeau, Mole Lake - Sokaogon), Red Cliff and St. Croix Bands (the Bands) for the exercise of treaty fishing rights in the Minnesota portion of the 1837 ceded territory during the period 1997-2001. The Bands have prepared a Model Minnesota 1837 Treaty Conservation Code ("Model Code") that includes (in chapter 9) provisions regulating their members' fishing activities in the Minnesota ceded territory. This management plan complements the Model Code.

The treaty rights of the Bands to hunt, fish and gather in the 1837 ceded territory were confirmed in August 1994 and March 1996 by the federal district court in Mille Lacs Band v. State of Minnesota, No. 3-94-1226. As explained in the Plaintiffs' and Plaintiff-Intervenor's Joint Preliminary Pre-Trial Statement for Phase II at 12-15 (Nov. 23, 1994), the Bands contend that they are legally entitled to harvest up to 50 percent of the harvestable surplus of fish in each waterbody in the Minnesota ceded territory. However, this management plan does not purport to provide for the full harvest of the Bands' 50 percent share of most species in most waters during the initial five-year period following judicial reaffirmation of the Bands' treaty rights. Instead, this management plan is intended to provide for the gradual development of treaty fisheries in Minnesota during this initial five-year period. By incorporating a variety of conservative management measures, including restrictive quotas on spring spearing and net fisheries, the plan allows for the orderly development of treaty fisheries, provides the State with ample opportunity to adjust non-treaty fisheries, allows for the development of Band management capabilities, and allows new information about the status of the resources to be accumulated. This management approach is not intended to limit, waive or modify the Bands' treaty entitlement to 50 percent of the harvestable surplus, including their entitlement to 50 percent of the harvestable surplus in Mille Lacs Lake, and any such construction of this plan is improper and unauthorized.

It is the Bands' intent to prepare a second multi-year plan to replace this plan upon its expiration. The Bands anticipate that, on the basis of knowledge acquired through the implementation of this plan, the second plan will enable the Bands to more fully exercise their treaty fishing rights. At the beginning of year 5 under this plan, the Bands will provide a draft of the second plan to the State, and will seek to reach agreement with the State on the management measures incorporated therein before implementing it. The Bands propose that disputes regarding the second plan be resolved in accordance with the

dispute resolution procedure to be adopted by the court in Mille Lacs Band v. State.

Part II. Mille Lacs Lake.

The following management measures will be adopted for Mille Lacs Lake.

A. Hook and Line, Spearing, Setline, Set or Bank Poles, and Harpooning and Archery Equipment.

1. - The Model Code authorizes fishing in Mille-Lacs Lake by hook and line, spearing, setline, set or bank poles, and harpooning and archery equipment. Except for harpooning and archery equipment, these methods can be used to harvest largemouth and smallmouth bass, walleye, northern pike, muskellunge, rock bass, bluegill, crappie, pumpkinseed, yellow perch, cisco (tullibee), and rough fish. Harpooning and archery equipment may be used to take rough fish only.

2. Except for open-water spearing of walleye, northern pike and muskellunge, the Bands intend to manage these fisheries in accordance with the bag limits and other applicable regulatory provisions in the Model Code. The Bands anticipate relatively limited effort and catch in these fisheries. Based on currently available information, they anticipate issuing approximately 150 to 300 permits per year for these activities. To evaluate effort and catch in these fisheries, the Bands will survey the permit holders at the end of the year 1 open-water and ice-fishing seasons. If the number of permits in any subsequent year exceeds the number in year 1 by more than 100%, the Bands will repeat the survey.

3. The Bands will not authorize open-water spearing of northern pike or muskellunge during the term of this plan. Open-water spearing of walleye is subject to the additional management provisions described in Section II.B below.

B. Open-Water Spearing for Walleye and Netting.

1. The Model Code also authorizes netting in Mille Lacs Lake. In addition to the applicable regulatory provisions in the Code, the Bands intend to manage open water spearing for walleye and netting in accordance with the provisions set forth in this section.

2. For purposes of this interim five-year plan, the Bands' principal objectives for these fisheries in Mille Lacs Lake are to provide for the following:

open-water spearing of walleye;

netting of walleye;

netting of yellow perch;

Netting of burbot; and
netting of tullibee.

3. To meet these objectives, the Bands intend to manage open-water spear and net fisheries for walleye, and net fisheries for yellow perch, burbot and tullibee, on the basis of annual quotas for each Band for each species, in addition to other applicable provisions of the Model Code. When a Band's quota for one of these species is taken, fishing by that Band for that species by these methods will be closed, unless another Band releases a portion of its own quota to that Band. Moreover, all gillnetting (for any species) by a Band will be closed when that Band's quota for any of these species or the cap on its harvest of northern pike is taken, unless another Band releases a portion of its quota or cap to that Band. As set forth above, the Bands will not authorize open-water spearing for northern pike or muskellunge. Except when fishing for tullibee, the Bands will require that all gillnets have a minimum mesh size of 1.25 inches (bar measure), in addition to the provisions for maximum mesh sizes in the Model Code. The Bands will require the use of a minimum mesh of 1.75 inches (bar measure) when fishing for tullibee with gillnets.

4. The annual quotas for each Band for walleye, yellow perch, burbot and tullibee will be determined in accordance with the Inter-tribal Protocol set forth in Part V below, subject to the following limitations on the total annual quotas for these species for all Bands,

a. The total annual quotas for all Bands for walleye will not exceed the lesser of: (i) 50 percent of the Agreed Target Harvest Level¹ for walleye, less the amount reasonably anticipated to be harvested in the fisheries described in Part II.A above; or (ii) the following amounts in pounds (round weight):

	<u>Walleye</u>
Year 1	40,000
Year 2	55,000
Year 3	70,000
Year 4	85,000
Year 5	100,000

¹ The "Agreed Target Harvest Level" for a species is the total (treaty and non-treaty) target harvest level determined by the Bands' and State's technical representatives on the basis of the methodology agreed to by the Bands and the State, provided the State actively manages non-treaty fisheries to stay within that level minus the treaty harvests provided for pursuant to this plan.

b. The total annual quotas for all Bands for yellow perch, burbot and tullibee will not exceed 50 percent of the Agreed Target Harvest Level for these species, less the amount reasonably anticipated to be harvested in the fisheries described in Part II.A above.

5. The annual cap for each Band's northern pike harvest in net fisheries will be determined in accordance with the Inter-tribal Protocol set forth in Part V below, provided that the total annual cap on northern pike harvests by all Bands in these fisheries shall not exceed 50 percent of the Agreed Target Harvest Level for northern pike, less the amount reasonably anticipated to be harvested in other treaty fisheries provided for in Part II.A. above.

6. The Bands will not authorize open-water spearing or netting for muskellunge under this plan. The Bands will require that all muskies in nets (including gillnets) that are capable of surviving when the net is lifted be released, and require that all muskies not capable of surviving be surrendered in accordance with Model Code Section 9.16. If the numbers of muskellunge in nets exceed five (5) percent of the estimated muskellunge population, the Bands will initiate time and/or area closures to reduce further capture of muskellunge in nets.

7. The Bands will limit soak times and/or fishing effort to avoid exceeding the annual quotas or caps which are established under this plan. For gillnet fisheries, as a Band's cumulative catch of a species approaches its quota or cap, the Biological Services Director of the Great Lakes Indian Fish and Wildlife Commission ("Biological Services Director") will estimate the harvest per hundred feet of gillnet on the basis of the harvest in the three most recent fishing days, and limit the number of permits issued for the next day such that the anticipated harvest will not exceed the amount remaining under the quota or cap.

8. The Bands will monitor all open-water spear and net harvests in accordance with the provisions of the Model Code. All fish taken by open-water spearing and netting will be identified to species, counted and weighed in the aggregate. For spearing, length and sex will be taken from the first 100 walleye and from all walleye in the last boat per designated landing. For gillnetting, length and sex will be collected from walleye landed by a randomly selected gillnetter per mesh size fished on each day of gillnet fishing. The Bands will seek to obtain such data from 50 walleye per mesh size fished per day, and if necessary, will select a second gillnetter if less than 50 walleye are typically landed. Additional fish may be measured upon request by law enforcement personnel.

Part III: Other Lakes.

A. Management of Treaty Fishing by Hook and Line, Ice Spearing, Setline, Set or Bank Poles and Harpooning and Archery Equipment.

1. The Model Code authorizes fishing in lakes other than Mille Lacs Lake by hook and line, spearing through the ice, setline, set or

bank poles, and harpooning and archery equipment. Except for harpooning and archery equipment, these methods can be used to harvest large and smallmouth bass, walleye, northern pike, lake sturgeon, muskellunge, salmonids, white, yellow and rock bass, bluegill, crappie, pumpkinseed, yellow perch, catfish, cisco (tullibee) and whitefish, and rough fish. Harpooning and archery equipment may be used to take rough fish only.

2. The Bands intend to manage these fisheries in accordance with the bag limits and other applicable regulatory provisions in the Model Code, provided that only the St. Croix River below Taylor's Falls will be open to harvests of lake sturgeon. The Bands anticipate relatively limited effort in these fisheries. Based on currently available information, they anticipate issuing approximately 150 to 300 permits per year for these activities. To evaluate effort and catch in fisheries on other lakes, the Bands will survey the permit holders at the end of the year 1 open water and ice fishing seasons. If the number of permits in any subsequent year exceeds the number in year 1 by more than 100%, the Bands will repeat the survey.

B. Management of Treaty Fishing by Open-Water Spearing and Netting.

1. The Model Code also authorizes open-water spearing, dip netting, fyke netting and seining in all waters and gillnetting in all lakes in excess of 1000 acres as well as Shakopee, Ogechie, Whitefish, Grindstone, Eleven, , Razor, and South Stanchfield Lakes. In addition to applicable regulatory provisions in the Code, the Bands intend to manage these fisheries in accordance with the provisions set forth this section.

2. The Bands' principal objective is to provide opportunities for open-water spearing and netting for walleye, open-water spearing of other species, and netting of tullibee in these lakes.

3. The Bands will not authorize open-water spear or net fisheries that exceed the threshold level set forth below unless a standard gillnet survey has been conducted on the lake within 24 months before the beginning of the fishing year and a quota been established. The threshold level is,

for lakes over 1,000 acres, either {a) 3 standard 100-foot gillnet sets per 100 surface acres per year; (b) 0.2 walleye per surface acre taken by open-water spear fishing per year; or (c) a percentage of each component, provided the sum of the percentages does not exceed 100percent;

for lakes under 1,000 acres, either (a) 2 standard 100-foot gillnet sets per 100 surface acres per year; {b) 0.2 walleye per surface acre taken by open-water spear fishing per year; or (c) a percent of each component, provided the sum of the percentages does not exceed 100percent;

the number of gillnet sets will be rounded up to the

nearest integer (for example, in a 1,210 acre lake, the threshold level would be 37 since $3 \times 12.1 = 36.3$)

When a Band's walleye quota in a particular lake is taken, fishing by that Band for walleye in that lake and all gillnetting by that Band for any species in that lake will be closed, unless another Band releases a portion of its own quota to that Band. The Bands will manage open-water spear and net fisheries for species other than walleye in accordance with the hook and line bag limits and other applicable regulatory provisions in the Model Code and the provisions set forth herein. Accordingly, fish in nets in excess of such bag limits must be released if capable of surviving or surrendered under Model Code Section 9.16 if they are not capable of surviving. The Bands will also require that, in lakes over 1,000 acres, all gillnets have a minimum mesh size of 1.5 inches (bar measure), in addition to the provision for maximum mesh size (1.75 inches) in the Model Code. In lakes under 1,000 acres, the Bands will require that gillnets have a mesh size of 1.75 inches (bar measure). The Bands will not authorize commercial harvests of tullibee in these lakes unless an Agreed Target Harvest Level or other effort limitation is established for tullibee harvests, and will require the use of a minimum mesh size of 1.75 inches (bar measure) when fishing for tullibee with gillnets.

4. The annual walleye quotas for each Band in each lake will be determined in accordance with the Inter-tribal Protocol set forth in Part V below, provided that the total quota for all Bands in a given lake will not exceed 50 percent of the Agreed Target Harvest Level² for that lake, less the amount reasonably anticipated to be harvested in the fisheries described in Part III.A above.

5. If necessary to provide further assurance that management errors or enforcement problems do not jeopardize stocks, the Bands will adopt additional protective measures on a lake-by-lake basis. These measures may include, but are not limited to, time and area closures of spear and net fisheries during the spring spawning season as well as shorter soak times than those authorized in the Code. The Bands will in any event limit soak times and/or fishing effort as described in II.B.7 above to avoid exceeding their quotas.

6. The Bands do not anticipate any significant incidental catch of muskellunge or sturgeon in gillnet fisheries. The Bands will prohibit

²As described in note 1 above, the Agreed Target Harvest Level will be jointly determined by the Bands and the State. The Bands' intent to manage for quotas that do not exceed 50 percent of the Agreed Target Harvest Level is conditioned upon the State's management of non-treaty fisheries so that walleye harvests do not exceed the Agreed Target Harvest Level minus the treaty harvests provided for pursuant to this plan. If the State intends to permit larger non-treaty harvests on the theory that a portion of those harvests comprise immature fish, then adjustments in the methodology for determining treaty harvest limits will be necessary.

gillnetting for muskies and sturgeon, require that all muskies and sturgeon captured in gillnets that are capable of surviving when the net is lifted be released, and require that all muskies and sturgeon not capable of surviving be surrendered under the Model Code Section 9.16. If incidental harvest of muskies or sturgeon becomes a problem, the Bands will limit soak times to facilitate their release while they are still capable of surviving. The Bands will also impose time and area restrictions to avoid incidental harvest of muskies and sturgeon if necessary. The Bands will close gillnet fishing on a lake when the harvest of northern pike over 23 inches in gillnets exceeds 1.15 pounds per acre for that lake.

7. The Bands will monitor all open-water spear and net fisheries in accordance with the provisions of the Model Code. All fish taken by open-water spearing and netting will be identified to species, counted and weighed in the aggregate. For walleye, length and sex will be taken from first 100 fish per night and from all fish taken by the last boating party of the night for each lake. Additional fish may be measured upon request by law enforcement personnel.

Part IV: Rivers

A. Management of Treaty Fishing by Hook and Line, Ice Spearing, Setline, Set or Bank Poles and Harpooning and Archery Equipment.

1. The Model Code authorizes fishing in rivers by hook and line, spearing through the ice, setline, set or bank poles, and harpooning and archery equipment. Except for harpooning and archery equipment, these methods can be used to harvest large and smallmouth bass, walleye, northern pike, muskellunge, lake sturgeon, salmonids, white, yellow and rock bass, bluegill, crappie, pumpkinseed, yellow perch, catfish, cisco (tullibee) and whitefish, and rough fish. Harpooning and archery equipment may be used to take rough fish only.

2. The Bands intend to manage these fisheries in accordance with the bag limits and other applicable regulatory provisions in the Model Code, provided that only the St. Croix River below Taylor Falls will be open to lake sturgeon harvests. The Bands anticipate relatively limited effort in these fisheries. Based on currently available information, they anticipate issuing approximately 150 to 300 permits per year for these activities. The Bands anticipate that most of the permittees will concentrate their fishing effort on Mille Lacs Lake. To evaluate effort and catch in fisheries on rivers, the Bands will survey the permit holders at the end of the year 1 open water and ice fishing seasons. If the number of permits in any subsequent year exceeds the number in year 1 by more than 100%, the Bands will repeat the survey.

B. Management of Treaty Fishing by Open-Water Spearing and Netting.

1. The Model Code also authorizes open water spearing, dip netting, fyke netting and seining in all rivers and gillnetting in the

approximately five miles of the Rum River connecting Ogechie, Onamia and Shakopee Lakes and in the first 20 miles of the St. Croix River downstream of the point where the river commences as the border between Minnesota and Wisconsin. For purposes of this five-year plan, the Bands intend to limit the use of these methods in rivers to open-water spearing and fyke netting and will close all waters except the St. Croix River below Taylor Falls to harvests of lake sturgeon.

2. These fisheries (open-water spearing and fyke netting in rivers) will be managed in accordance with the applicable regulatory provisions in the Code (including angling bag limits). In addition, during the Spawning season, the Bands will open river segments to open-water spearing on alternate days only.

3. The Bands will monitor all open-water spear and net fisheries in accordance with the provisions of the Model Code. In addition, all fish taken by spearing and netting will be identified to species and counted. For walleye, length and sex will be taken from first 100 fish per night and from all fish taken by the last boating party of the night for each river segment. Additional fish may be measured upon request by law enforcement personnel.

4. The Bands will limit the harvest of muskellunge in the Mississippi River to no more than ten (10) fish per year.

Part V: Inter-tribal Protocol.

1. As set forth in the Model Code, Section 1.04, no member of any Band may fish within the area depicted in Figure 1 thereto, which includes the southwestern portion of Mille Lacs Lake, the eastern half of Whitefish Lake, Ogechie, Shakopee and Onamia Lakes, and the portion of the Rum River connecting Mille Lacs, Ogechie, Shakopee and Onamia Lakes, without permission of the Mille Lacs Band. The Mille Lacs Band agrees to make its lands available to members of the Wisconsin Bands to launch their boats into Mille Lacs Lake.

2. No later than January 15 of each year the Biological Services Director shall notify each of the Bands of the total annual quotas and caps for all Bands for open-water spearing and netting for the upcoming year, as determined in accordance with this plan.

3. No later than February 15 of each year the Bands shall convene a meeting and designate their desired harvest in each open-water spear and net fishery for which a total quota or cap has been established. At their initial meeting and at such further meetings as they may deem advisable, the Bands shall consider such accommodations and adjustments as may harmonize their respective harvest designations and shall consider any policy questions.

4. The Bands' harvest designations for Mille Lacs shall be subject to the following special provisions:

a. Fifty (50) percent of the total quotas in open-water

spearing and net fisheries for all Bands shall be reserved for the Mille Lacs Band. If the other Bands designate less than 50 percent of the total quotas, the Mille Lacs Band may designate in excess of 50 percent.

b. No Band shall designate an open-water spearing harvest of northern pike or muskellunge. The total cap for northern pike harvests by all Bands shall be allocated among the Bands in proportion to their designated net harvests of walleye.

5. At the conclusion of their meeting(s), but in no case later than March 15, the Bands shall file and publish their Final Report and Declaration on Open-Water Spearing and Netting in the Minnesota Ceded Territory for the upcoming fishing year (Final Report). The Final Report shall set forth the quotas and caps for each Band's harvest in each open-water spear and net fishery which is subject to quota management for the upcoming year, which collectively shall not exceed the total quotas and caps for all Bands in such fisheries as determined under this plan.

6. The Biological Services Director is authorized to make pro rata reductions in Band designations if necessary to complete the Final Report in compliance with 4 and 5 above and other applicable provisions of this plan.

7. The Final Report shall conclusively establish those bodies of water in the Minnesota ceded territory open for those open-water spear and net fisheries which are subject to quota management during the upcoming fishing year and the amounts of fish to be harvested by each Band using those methods. If the Bands do not fully harvest the amount of fish specified for harvest in an open-water spear fishery in a particular water body, the amount not harvested may be added to the permissible harvest in net fisheries by those Bands that have designated a net harvest of the same species in the same water body in the same year. The amount not harvested in the open-water spear fishery will be allocated to such Bands in proportion to their designated net harvests of that species.

8. All Bands shall manage their fisheries to comply with the provisions of the Final Report. The Biological Services Director is authorized to close fishing by members of any Band or implement other management measures authorized by this plan or the Model Code to prevent that Band from exceeding the harvest levels in the Final Report or in any other manner violating the provisions of the Final Report.

9. The Biological Services Director shall promptly transmit a copy of the Final Report upon its completion to the Minnesota Department of Natural Resources ("MDNR").

10. During the spring open-water spearing season, the Biological Services Director shall notify the MDNR no later than noon of the bodies of water which the Bands have designated for open-water spearing that night and of the bag limits for each species in each body of water to be fished, and shall notify the MDNR no later than 10:00 a.m. of the Band

spearing harvest which occurred the previous night. During the remainder of the open-water spearing season, the Biological Services Director shall provide similar advance notice to the MDNR of the bodies of water designated for spearing and the bag limits for each such body of lakes, and shall report the harvest during the following business day. Each of the Bands will provide the Director with the information needed to provide the notices specified in this paragraph.

11. The Biological Services Director shall promptly notify the MDNR of the issuance and provisions (including location) of any gillnet permit. Each of the Bands will provide the Director with the information needed to provide the notices specified in this paragraph.

12. The allocation of treaty harvest opportunities among the Bands as set forth in this plan is the product of compromise and negotiation among the Bands, and shall be effective only for the duration of this plan. The Bands reserve rights and claims they may have vis-a-vis one another with respect to the allocation of treaty harvest opportunities in the future, and nothing herein shall limit, prejudice or otherwise affect the assertion of such rights or claims upon the expiration of this plan, or create a precedent for future inter-tribal allocations. Any use or construction of this plan to limit, prejudice or otherwise affect such rights or claims or as such a precedent unauthorized and improper.

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