

7/31/96

**Protocol # 1**

**MINNESOTA 1837 CEDED TERRITORY FISHERIES COMMITTEE**

**A. Committee Purposes and Tasks.**

1. This protocol, between the Fond du Lac Band of Lake Superior Chippewa, the State of Minnesota and its Department of Natural Resources, and the plaintiff and plaintiff-intervenor Bands in Mille Lacs Band v. Minnesota, No. 3-94-1226 (D.Minn.) provides for the Fond du Lac Band's equal participation with the Bands under the terms of Protocol No. 1 agreed upon by the State and the Bands in the Mille Lacs case, and which establishes an 1837 Ceded Territory Fisheries Committee. The purpose of the Fisheries Committee is to facilitate free and open communications between the State and the Bands regarding natural resource management within the boundaries of the 1837 Ceded Territory. The Bands and the State will encourage such communications to the greatest extent practicable, and nothing herein shall limit such communications inside or outside formal Committee meetings. The State and the Bands believe that such communication will benefit natural resources management in the 1837 Ceded Territory, and will help avoid (or at least minimize the number and complexity of) disputes that will require judicial resolution.

2. As set forth below, the Fisheries Committee will develop, analyze and review data relevant to fish management within the 1837 Ceded Territory; provide for coordination among State and Band fisheries surveys, sampling and research in the 1837 Ceded Territory; consider harvestable surplus levels; discuss proposed changes to State or Band fisheries laws or regulations; and address other fisheries management issues. The Committee will perform these tasks in accordance with the provisions of this Protocol and Protocol Nos. 4 (Information Exchange Procedures) and 5 (Natural Resource Management).

**B. Composition of the Committee; Working Groups.**

1. The Committee shall be composed of qualified fisheries scientists and managers designated by the State and the Bands. Representatives from the State could include: a fisheries treaty biologist, one regional fisheries manager, five area fisheries supervisors from within the 1837 Ceded Territory, and the Mille Lacs big lake specialist. Representatives from the Bands could include Band natural resource officials, staff and consultants, and Great Lakes Indian Fish and Wildlife Commission [GLIFWC] personnel. Other State, Band or Federal experts or representatives may be invited by the State or the Bands to attend as necessary to discuss and resolve a particular issue.

A Band and State representative for enforcement/public safety issues is encouraged to attend the meetings to address enforcement-related concerns.

2. The State and the Bands will each appoint a Committee co-chair to coordinate communication and planning for the Committee's work.

3. The Committee may appoint one or more working groups to address specified issues. The composition and functions of a working group shall be set forth in a written document approved by consensus of the Committee.

#### C. Meetings.

1. The Fisheries Committee should meet at least twice per year. The timing of Committee meetings will be variable depending on the species or issues needing discussion, and will be held by mutual consent of the parties. The meetings will be hosted alternately by the State and Bands, with the host responsible for any direct meeting costs and for chairing the meeting. Additional meetings can be called by the State or the Bands as issues needing discussion or resolution arise. A working group may meet as often as is appropriate in light of its designated functions.

2. Unless the parties agree otherwise, the State and the Bands shall exchange the following items at least 30 days prior to each Committee meeting. The information exchange required by this paragraph shall be in addition to and complimentary with the exchange of information required by other protocols (see especially Protocol No. 4, Information Exchange Procedures).

a. Each party shall produce a list of items it wishes to address at the meeting. The co-chairs shall prepare and circulate at least 14 days before the meeting a consolidated agenda incorporating all items listed by the parties, and a list of those representatives that the parties' anticipate will be attending the meeting on their behalf.

b. Each party shall produce all fisheries harvest and survey data for the 1837 Ceded Territory collected since the last meeting. This shall include raw data in standard machine readable form upon request, as well as any summaries or analyses generated from the data. The data should include all State and Band harvest data pertaining to the 1837 Ceded Territory, and all data from surveys, sampling or research conducted within the 1837 Ceded Territory.

c. Each party shall produce a preliminary written analysis of any proposal or position it intends to present at the meeting. Such analyses may be revised in light of data or analyses received from the other party or other new information. The revised analyses shall be presented at or before the meeting. Such analyses may be revised further in light of discussions at the meeting.

**D. Committee Functions.**

The Committee shall:

1. Discuss the fisheries harvest and survey data that have been collected since the last meeting, and the implications of such data for fisheries management and harvests.

2. Discuss means to coordinate all fisheries surveys, sampling and research to be conducted within the 1837 Ceded Territory, and share information on all 1837 Ceded Territory fisheries survey, sampling and research projects. This should include:

a. Review of all new or outstanding fisheries survey, sampling or research proposals, including any outstanding Band proposal that requires State approval pursuant to Protocol No. 5; and

b. Making recommendations to the parties regarding revisions to or discontinuation of on-going surveys, sampling, or research, or the initiation of new surveys, sampling or research, within the 1837 Ceded Territory, including recommendations regarding which water bodies be surveyed, by what method, and by whom.

3. Develop recommendations for harvestable surplus levels by species and lake or river segment, in accordance with Protocol No. 5.

4. Discuss proposed changes in State or Bands fisheries laws and regulations.

5. Address other fisheries management issues, including technical and coordination issues, of interest to the parties.

**E. Committee Decision-making, Meeting Reports and Dispute Resolution.**

1. The representatives of the Bands and the State serving on the Committee shall strive for consensus on all issues, and no Committee decision or recommendation on a particular issue shall be made in the absence of a consensus on that issue. As used here, "consensus" means the agreement of all such representatives present at a meeting, provided that a consensus shall be obtained if some representatives disagree but

choose not to object formally to the agreement of all other representatives. All Committee decisions and recommendations shall be subject to the opinions, orders and decrees in Mille Lacs Band v. Minnesota, No. 3-94-1226 (D. Minn), and Fond du Lac Band v. Carlson, No. 5-92-159 (D. Minn.) and any protocols, agreements or stipulations among the parties.

2. An agreed Meeting Report shall be prepared by the Co-Chairs upon the conclusion of a Committee Meeting. The report shall include the consolidated meeting agenda, a list of participants, a brief summary of the presentations and discussions, a statement of all decisions and recommendations made by the Committee, and a list of all issues on which consensus was not reached, including a concise statement of the parties' respective positions with respect to such issues. All preliminary and revised analyses prepared in accordance with ¶ C.2.c. above shall be included as appendices to the report. A final, typed version of the Meeting Report shall be prepared and circulated by the Co-Chairs within 10 days after the meeting. All preliminary and revised analyses prepared in accordance with ¶ C.2.c. above shall be included as appendices to the final, typed version of the report.

3. Issues on which consensus was not reached by the Committee will be referred to the State Fisheries Chief and to the Bands' designated fisheries manager(s) upon the written request of the State or the Bands. These individuals shall strive to reach consensus on the issue.

4. If no consensus is reached, upon the written request of the State or the Bands, the parties shall jointly choose a mediator to convene and conduct a mediation session to seek consensus on the issue. The cost of the mediation shall be borne equally by the State and the Bands. The State Fish and Wildlife Director and the State DNR Commissioner, or their appointed representatives, shall attend the mediation session on behalf of the State. The Mille Lacs Commissioner of Natural Resources, the Fond du Lac Commissioner of Natural Resources, the GLIFWC Biological Services Director and other designated Band officials, or their appointed representatives, shall attend the mediation session on behalf of the Bands. The State and the Bands may also invite such other experts as may be needed to reach resolution of the matter.

5. If consensus still cannot be reached, the parties have the option of invoking the court's continuing jurisdiction to seek resolution of the matter, unless the Court has determined that one party has authority to resolve the matter unilaterally and that its decision cannot

be challenged in Court.<sup>1</sup>

6. Except for those situations described in ¶ 7 below, any dispute between the parties about fisheries biology or resource issues must be brought to the Fisheries Committee and submitted to a mediator for assistance, if necessary, prior to seeking a court resolution.

7. There may be a matter in dispute that, because of imminent threat to a resource or public safety or imminent loss of harvest opportunity, cannot be handled through the established committee and mediation process. In those situations, before seeking judicial relief a party shall give at least such notice to the opposing party of the issue in dispute as is required by the Federal Rules of Civil Procedure for applications for temporary restraining orders.

F. Public Information.

The parties shall cooperate in making Meeting Reports and all analyses and technical data developed by or for the Committee available to the public. As a professional courtesy, Committee members shall notify each other before issuing press releases or other statements to the media.

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<sup>1</sup> The State contends it has authority to resolve disputes over the harvestable surplus of a species unilaterally, and that its decision cannot be challenged by the Bands in court. The Bands dispute this. They propose that, in the event of a dispute over harvestable surplus levels, a neutral fisheries expert, jointly selected by the State and the Bands, be given authority to determine such levels on an interim basis, pending resolution of the matter by the parties or the court.