

Protocol # 4

INFORMATION EXCHANGE PROCEDURES

This protocol outlines the respective obligations and responsibilities of the State and the Bands for the timely and complete exchange of information related to: (1) natural resource management and harvest within the Minnesota portion of the 1837 Ceded Territory (hereafter, the Ceded Territory); and (2) changes in State or Band regulation and management of natural resource harvesting.

I. INFORMATION RELATED TO NATURAL RESOURCE MANAGEMENT AND HARVEST.

The State and Bands agree to the following timetable for the exchange of information needed for ongoing analysis and management of the resources. Information to be furnished by the Bands to the State shall be provided in writing as follows: (a) wildlife information, to the State DNR Wildlife Program Manager in St. Paul; (b) fisheries information, to the State DNR Fisheries Treaty Biologist; and (c) plant information, to the State DNR Ecological Services Section Chief in St. Paul. All information to be furnished by the State to the Bands shall be provided in writing to the Mille Lacs Band's Commissioner of Natural Resources and to the Biological Services Director of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC).

A. Wildlife Information.

1. Deer.

Deer harvest data. The State and the Bands agree to collect consistent information on sex (male or female) and age (adult or fawn) of deer harvested. Information on the quantity, distribution, and composition of deer harvest in the Ceded Territory will be exchanged by March 1 each year.

Deer populations, harvestable surplus, quotas and management plans. The State and the Bands will exchange any deer population information collected on an annual basis. The harvestable surplus calculations for antlerless deer will be completed in accordance with Protocol No. 5 by June 10 each year. The Bands will provide to the State a written declaration of the treaty quota for antlerless deer in each permit area (or portion thereof) within the Ceded Territory by August 10 each year. The State will provide to the Bands a written statement of its management plans for the non-treaty harvest in such areas by September 10 each year.

2. Bear.

Bear harvest data. The State and the Bands agree to collect and exchange biological information on sex and age of bear harvested in the Ceded Territory. Information on the quantity, distribution and composition of bear harvest, including bears killed while causing damage to property, will be exchanged by December 1 each year.

Bear populations, harvestable surplus, quotas and management plans. The State and the Bands will exchange any bear population information collected on an annual basis. The harvestable surplus calculations for bear in will be completed in accordance with Protocol No. 5 by March 1 each year. The Bands will provide to the State a written declaration of the treaty quotas for bears in the portions of Bear Management Units 45 and 51 that are within the Ceded Territory by May 10. The State will provide to the Bands a written statement of its management plans for the non-treaty harvest in such areas by June 1.

3. Wild Turkey.

Wild turkey harvest data. The State and the Bands agree to collect and exchange information on wild turkeys harvested. Information on the quantity and distribution of wild turkey harvest will be exchanged by July 1 each year.

Wild turkey populations, harvestable surplus, quotas and management plans. The State and the Bands will exchange any wild turkey population information collected. The harvestable surplus calculations for wild turkey will be completed in accordance with Protocol No. 5 by August 1 each year. The Bands will provide to the State a written declaration of treaty quotas for wild turkey for each permit area (or portion thereof) within the Ceded Territory by October 1. The State will provide to the Bands a written statement of its management plans for the non-treaty harvest in such areas by November 1.

4. Furbearers.

Furbearer harvest data. The State and the Bands agree to collect and exchange information on furbearer harvests. Information on the quantity and distribution of registered furbearer harvest, including furbearers killed while causing damage to property; will be exchanged by April 1 each year. If possible, the Bands will obtain information on a voluntary basis from Band members identifying the township and range of the county where the animal was killed.

Furbearer populations, harvestable surplus, quotas and management plans. The State and the Bands will exchange any furbearer population information collected. The harvestable

surplus calculations for registered furbearers (bobcat, fisher, marten, lynx and otter) will be completed in accordance with Protocol No. 5 by May 1 each year. The Bands will provide to the State a written declaration of treaty quotas for registered furbearers for which they have an open season (presently, bobcat, fisher and otter) by June 15. The State will provide to the Bands a written statement of its management plans for the non-treaty harvest of these animals by July 15.

CITES Tags. The State will provide to the Bands enough CITES tags to ensure the registration of legally harvested otter and bobcat for the upcoming hunting and trapping season. The Bands will use the CITES tags in lieu of, or in addition to, any other Band registration tags for these species. The Bands will report and account for the CITES tags they have used during the previous hunting and trapping seasons. The Bands will return to the State or, as authorized by the State, properly destroy any unused tags.

5. Waterfowl.

Waterfowl harvest data. The State and Bands will collect information on waterfowl harvests. Information on duck and goose harvests will be exchanged by July 31.

Waterfowl population data. The State and the Bands will collect information on waterfowl breeding populations and recovery data and exchange any such data that is not available at Mississippi Flyway Council meetings by July 31.

Incidental capture of waterfowl in muskrat sets and in gill nets. The Bands will monitor the capture of waterfowl in March muskrat trapping and report to the State the estimated numbers of any incidental waterfowl mortality. The Bands will also monitor the capture of diving birds in gill nets at any time of year, and report to the State the estimated numbers of any incidental mortality. The need to continue the monitoring and reports provided for in this paragraph will be reviewed by the 1837 Ceded Territory Wildlife and Plant Resources Committee after three years.

6. Moose.

Moose harvest data. The State and the Bands will collect data on moose harvested in the Ceded Territory and will exchange moose harvest information by January 1.

Moose population data. The State and the Bands will jointly gather information about moose populations in the Ceded Territory, including the population in Nemadji State Forest.

7. Game Birds.

Game bird harvest data. The State and the Bands will monitor total harvests of pheasants, ruffed grouse and sharp-tailed grouse in the Ceded Territory, and exchange such information by September 1.

Game bird population data. The State and the Bands will exchange information on game bird populations.

8. Registration Information.

Any and all registration information maintained by the Bands (individually or through GLIFWC) shall be made available for inspection by a State enforcement officer upon request, including for any registered animal the hunter's name, address, and tag number, the zone(s) in which the hunter was licensed to harvest the animal, and the date and location of the kill. Such information shall be used only for enforcement purposes, and the name, address and tag number of the hunter shall be confidential except as needed for enforcement purposes.

B. Emergency Taking of Endangered or Threatened Species.

The Bands will report to the State any emergency taking of endangered or threatened species, as defined in the 1837 Treaty Conservation Codes for the Minnesota Ceded Territory, § 3.25, within 48 hours of the taking. The State and the Bands will exchange any other information on any direct or incidental taking of endangered or threatened species on an annual basis.

C. Ginseng Sales and Exportation.

The Bands allow for the purchase and sale of wild ginseng by Band members. By March 1 of each year, the Bands shall provide a written report on wild ginseng transactions to the State DNR Wildlife Section Chief in St. Paul, including: (1) the date of each transaction; and (2) the quantity by weight of wild ginseng sold. The State and the Bands will exchange any other information regarding wild ginseng by March 1 each year.

Information on ginseng transactions maintained by the Bands (individually or through GLIFWC) pursuant to Sections 3.26 and 12.05 of the 1837 Treaty Conservation Codes shall be made available for inspection by a State enforcement officer upon request. Such information shall be used only for enforcement purposes, and the names of parties to such transactions shall be confidential except as needed for enforcement purposes.

D. Fisheries Information.

The Bands shall monitor their members' harvest of fish (including commercial harvests of non-game species) in accordance with their Interim Treaty Fisheries Management Plan and

Conservation Codes. The State will supply durable license tags for dark houses for the Bands' use under § 9.13(5) of the Codes.

The Bands' proposed Conservation Code currently requires a monitor at each gillnet lift and each boat landing where open-water spearing is conducted. The Bands agree to implement this monitoring regime on a three-year trial basis and, in addition, to permit State biologists to participate in monitoring these activities on a random basis. The Bands may propose appropriate revisions to this monitoring regime after the three-year trial period. Such proposals will be made through the Minnesota 1837 Ceded Territory Fisheries Committee and will be subject to the dispute resolution process in Protocol No. 1.

The Bands will report the following data to the State:

for walleye and northern pike harvested in open-water spear fisheries: (1) effort (in boat-hours by waterbody by date); and (2) total harvest (in numbers and aggregate pounds by species by waterbody by date);

for walleye and other species harvested in gillnet fisheries: (1) effort (in feet of net and numbers of hours fished, per mesh size, by waterbody by date) and (2) total harvest (in numbers and aggregate pounds by species by mesh size by waterbody by date); and

for walleye and other species harvested in other net fisheries: (1) effort (e.g. trap nights, seine hauls, etc.) by waterbody by date; and ((2) total harvest (in numbers and aggregate pounds by species by gear by waterbody by date).

For an initial two-year trial period, this data will be reported to the State on a bi-weekly basis from March 1 to May 31, and on a monthly basis during other times of the year.

The Bands will make reasonable efforts to obtain: (1) length and sex of walleye harvested in open-water spear and net fisheries (pursuant to the sampling regime in Sections II.B.8, III.B.7 and IV.B.3 of the Bands' Interim Treaty Fisheries Management Plan); (2) length and sex of all northern pike harvested in open-water spear fisheries; (3) length of all fish of all species other than walleye harvested in net fisheries (unless, given the level of harvest, a subsample is appropriate); (4) scales or spines to permit aging of ten (10) walleye per inch group from each open-water spear and net fishery in waters with naturally reproducing walleye populations (in the case of a prolonged net fishery, the sampling will be repeated at reasonable intervals); and (5) a cleithrum from each muskellunge harvested from the Mississippi River and the length of each such fish. All such data and any other fisheries data collected by the Bands will be reported to the State semi-annually during the two-year trial

period.

The Minnesota 1837 Ceded Territory Fisheries Committee will review the above provisions for the collection and exchange of harvest and other data and propose appropriate revisions. The Committee will seek to ensure that data collection efforts are designed to maximize the collection of useful information while minimizing inconvenience to tribal fishers and the cost of data collection efforts.

The State will actively work with the Bands through the Fisheries Committee over the first five years of tribal harvest to coordinate data acquisition on harvest by different mesh size and filament type of gillnets, including using controlled experimental designs during the different fishing seasons. This will help provide information on Band fishing preferences, patterns and selectivity. The Fisheries Committee will review the data annually, and at the end of five years it will make recommendations about how the net mesh size will be handled in future years.

In addition to sharing information as provided above, any and all information maintained by the Bands (individually or through GLIFWC) on individual fishing permits, including the name and address of the permit holder, the permit number, and restrictions or limitations contained in the permit, shall be made available for inspection by a State enforcement officer upon request. Such information shall be used only for enforcement purposes, and the name, address and permit number shall be confidential except as needed for enforcement purposes.

The State will report any harvest data it obtains for non-treaty fisheries to the Bands. It will report effort (in angler hours per waterbody) and harvests (in numbers and pounds by species) obtained from creel surveys on a bi-weekly basis from March 1 to May 31, and on a monthly basis during other times of the year, for an initial two-year trial period. All other fisheries data collected by the State, will be reported to the Bands semi-annually during the two-year trial period. The Minnesota 1837 Ceded Territory Fisheries Committee will review these provisions for the exchange of information and propose appropriate revisions.

The information to be reported by the Bands to the State and by the State to the Bands will be reported in a paper and an electronic format to be agreed upon by the parties. Either the Bands or the State may obtain raw data from the other upon request, provided there is a bona fide need for such data, and provided further that fishers' names and other identifying information may be withheld except where needed for enforcement purposes.

The State and the Bands shall exchange all harvest and population information gathered during each fishing season at least 30 days prior to the 1837 Ceded Territory Fisheries Committee

meeting unless a shorter time frame is mutually agreed upon. The State and the Bands will undertake harvestable surplus calculations in accordance with Protocol No. 5. The State and the Band agree to provide any additional information requested by the other party through special requests if and when the information reasonably can be gathered.

E. Enforcement Information.

The Bands shall provide in writing to the State's Arrests and Confiscation Supervisor, in the Division of Enforcement in St. Paul, or another designee named by the State, any information on enforcement violations related to hunting while under the influence of alcohol or a controlled substance, or reports under Code Section 3.16 regarding hunting accidents. This includes all information regarding citations, arrests, and prosecutions under the Bands' Conservation Codes. The information shall include the name and Band identification number of any member cited or arrested, the type of citation or charge, the circumstances giving rise to the citation or charge, and the ultimate disposition thereof. The information shall be provided to the State within 30 days of the disposition of the matter.

F. Ceremonial or Religious Harvests.

The Bands shall provide the following information to the State regarding permits issued pursuant to Section 1.09 of the Bands' Conservation Code: (1) the location by harvest management unit where the harvest is authorized; (2) the species and number of plant or animals authorized to be harvested; (3) the person or persons authorized to conduct the harvest; and (4) the length of time for which the permissible activity is authorized. At the conclusion of the harvesting, or no later than the end of the season, the Band shall notify the local area office of the Minnesota Department of Natural Resources of the following: (1) the number and species of the resource harvested; (2) the location or locations of the harvest; and (3) the date of the harvest.

II. CHANGES IN STATE OR BAND REGULATIONS AND MANAGEMENT OF NATURAL RESOURCE HARVESTING.

The State and the Bands recognize that changes in State and Band regulation¹ and management² of the harvesting of natural

¹ The term regulation is used broadly to include statutes, ordinances, administrative regulations and orders, etc.

² The term management is used broadly to include all matters addressed in the protocols and management plans developed by the parties, such as the definition of harvest management units, methodologies for determining harvestable surpluses, methodologies

resources in the Ceded Territory are inevitable. To facilitate open communication and minimize disputes arising from such changes, the State and the Bands agree to notify each other in writing of proposed changes to their own regulation or management of natural resource harvesting in the Ceded Territory, including an explanation of the rationale for the proposed change. In addition, the Bands and the State agree to submit any request for changes in the other's regulation or management of such harvesting in writing, including an explanation of the rationale for the request.³ Any Band proposal to change its regulation of the harvesting of natural resources in the Ceded Territory in a manner that is less restrictive, or a State proposal that the Bands change such regulation to be more restrictive, than what is included within the final court order shall include an explanation of the changed circumstances or the data, information or analyses (including, for example, information about the manner in or extent to which Band members seek to exercise their hunting, fishing and gathering rights) not currently available, which prompts the proposed change. The State and the Bands agree that the harvest levels in the Bands' Interim Fisheries and Wildlife Management Plans shall not be changed for the five-year period of those plans.

Except as otherwise provided in Part I above or in cases of emergency, such notices and requests shall be provided at least 60 days in advance of the desired effective date of the change. However, notices of land acquisitions by the State shall be provided within 60 days of completion of the acquisition. Within 30 days of receipt of any such notice or request, the receiving party or parties shall respond in writing, expressing any objections they may have to it and indicating any changes they may make to their own regulation or management of natural resource harvesting in light of it. The receiving party may make a written request for additional time, if needed, to complete this written response. The notices, requests and responses shall be furnished to the persons designated in Part I above.

for monitoring harvests and resources, scientific investigations, and interactions between State and Band management agencies.

³ This procedure shall include, but not be limited to, notice by the Band of any proposal to authorize falconry, and notice by the State of acquisitions, creations, or changes in the boundaries of or regulations pertaining to state parks, trails, water access sites, state forests and their use areas, wildlife management areas, scientific and natural areas, fish or aquatic management areas, experimental and special fish management waters, trout streams, designated muskellunge lakes, closed areas for fish preserves, spawning beds or research areas, game refuges, waterfowl feeding or resting areas, or controlled hunting zones in the Ceded Territory, and any State requests for conforming changes in Band law.

Notice by the State of acquisitions, creations, or changes in the boundaries of state parks, trails, water access sites, state forests and their use areas, wildlife management areas, and scientific and natural areas will be given to the Bands for consideration and comment, but will not subject the State to further dispute resolution pursuant to protocols 1 and 2. However, requests by the State that the Bands extend their special use rules to such new or expanded areas will be subject to the committee and dispute resolution processes set forth in those protocols.

If the State or the Bands do not object in writing to a proposed change within the thirty-day period prescribed above (or any agreed extension thereof), they will be deemed to have agreed to the proposal. If a written objection is made, the State and the Bands will attempt to resolve the matter in the appropriate 1837 Ceded Territory Resources Committee in accordance with the procedures set forth in Protocol Nos. 1 and 2. In the event a dispute is presented to the Court, it will be decided in accordance with applicable law. Thus, the Bands will not be required to change their regulation or management of natural resource harvesting in the Ceded Territory unless such a change is required under the conservation, public safety or public health standards established by the Court, and the State will not be required to change its regulation or management of natural resource harvesting in the Ceded Territory unless it is in violation of the Bands' treaty rights or other applicable law.

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