

APPENDIX B

Management Plan for the 1836 Treaty Great Lakes Waters

December 11, 2022

Revised Draft

(“Tribal Plan”)

MANAGEMENT PLAN
FOR THE
1836 TREATY GREAT LAKES WATERS

Bay Mills Indian Community
Grand Traverse Band of Ottawa and Chippewa Indians
Little River Band of Ottawa Indians
Little Traverse Bay Bands of Odawa Indians
Sault Ste. Marie Tribe of Chippewa Indians

December 9, 2022

I. INTRODUCTION

This Plan is adopted by the five (5) plaintiff Tribes in United States v. Michigan, W.D. Mich. Case No. 2:73 CV 26: the Bay Mills Indian Community (“Bay Mills”), Grand Traverse Band of Ottawa and Chippewa Indians (“Grand Traverse”), Little River Band of Ottawa Indians (“Little River Band”), Little Traverse Bay Bands of Odawa Indians (“Little Traverse”), and Sault Ste. Marie Tribe of Chippewa Indians (“Sault Tribe”). Throughout this document, the term “Tribes” refers to these five (5) Tribes.

The purpose of this Plan is to describe how the Tribes will manage treaty fishing among themselves within “1836 Treaty waters,” that is, those portions of the Great Lakes and connecting waters ceded in the Treaty of Washington, March 28, 1836, 7 Stat. 491 (the “1836 Treaty”). This Plan implements and is coterminous with the twenty-four (24) year consent decree entered in United States v. Michigan by agreement of the parties to the case (the “Decree”).

The Tribes all are members of the Chippewa Ottawa Resource Authority (“CORA”). One of CORA’s two committees, the Great Lakes Resources Committee (“GLRC”), is the intertribal management body for the treaty fishery in 1836 Treaty waters. GLRC has broad authority to protect, preserve, and manage the fishery resources, promulgate regulations, coordinate law enforcement activities, participate in intergovernmental fisheries or environmental bodies, gather biological information, coordinate with other governments and other agencies to promote and take measures necessary to protect fish habitat and the environment, and develop methods for limiting harvest. It will exercise its authority consistent with the provisions of the Decree and this Plan.

Taken together, this Plan and the CORA Charter set forth the basis upon which the Tribes will manage and regulate their fisheries cooperatively during the term of the Decree. These documents contain the commitments and agreements essential to intertribal cooperation and to the implementation of the Decree. In addition, the Tribes, acting through GLRC, shall prepare and adopt regulations governing the exercise of treaty fishing rights in the 1836 Treaty waters by Citizens of the Tribes (the “Tribal Code”), as provided in Section VI.B.2. of the CORA Charter.

Terms used in this Plan shall have the meaning defined in the Decree. Whenever the Decree provides for some action to be taken by CORA, that action shall be taken by GLRC if the matter for action falls within GLRC’s duties and responsibilities under the CORA Charter.

II. MANAGEMENT OBJECTIVES

- A. The overall long-term goal of the Tribes is to ensure that seven (7) generations from now Great Lakes fishing will continue to sustain the livelihood and subsistence of Tribal Citizens and provide healthy and safe food for Tribal people and others. In addition, the Plan includes elements designed to protect the fisheries resources and habitat upon which the Tribes’ rights depend.
- B. These goals are advanced by the following specific objectives which have guided the development of this Plan and the Decree:

1. Maintain existing fishing opportunities and secure additional harvest opportunities.
2. Adopt an effort-based management system.
3. Support lake trout rehabilitation in Lakes Michigan and Huron.
4. Support whitefish rehabilitation in Lakes Michigan and Huron.
5. Maintain and encourage multi-species fishery opportunities.
6. Maintain and build upon cooperative intergovernmental structures and activities.
7. Pursue and support environmental activities that protect and enhance Great Lakes fish stocks and habitat as well as Tribal fisheries.

III. EFFORT – BASED HARVEST MANAGEMENT

- A. Introduction. Experience in regulating the treaty fishery has shown that fish stocks can be effectively managed, and the fishery resource properly protected from overharvest, by a flexible effort-based management system, as opposed to a strict quota-based system. Commercial fishing effort can be regulated through a variety of techniques, including regulations limiting entry, gear type, boat size, season, amount of gear, depth, and the like. This section of the Plan describes how effort-based management will be applied to regulate Tribal fishing in 1836 Treaty waters in those areas for those species where such management is consistent with the Decree.
- B. Harvest Regulation Guidelines (HRGs).
 1. The Biological Services Division (“BSD”) of CORA shall establish, evaluate, and adjust benchmark harvest levels for certain naturally reproducing fish stocks that are consistent with the sustained ability to harvest the stocks. These benchmark levels are referred to in this Plan as “Harvest Regulation Guidelines”, or “HRGs”, and will be employed as a gauge of long-term trends in the fishery as described in this section.
 2. HRGs shall be established, evaluated, and adjusted for whitefish in each whitefish management unit in which commercial harvest of whitefish is not shared with State commercial fishers under the Decree. HRGs may also be established, evaluated and adjusted for lake trout in Lake Superior Lake Trout Management Unit MI-8 and for other species, stocks, or locations when the BSD determines they are necessary or appropriate.

3. This section does not apply to the harvest levels established by the Tribes and the MDNR through the Technical Fisheries Committee (“TFC”) and Executive Council for whitefish and lake trout management units in which the fish are shared with State commercial fishers, pursuant to Section VII of the Decree.
 4. In establishing, evaluating, and adjusting HRGs, the BSD shall, to the extent practicable, make use of the following:
 - a. Available information regarding:
 - i. fishing effort and catch in treaty and non-treaty fisheries, including commercial, subsistence, and recreational fisheries;
 - ii. fish population characteristics (*e.g.*, growth recruitment indices, mortality rates, age composition, length/weight composition, mortality/sex ratios derived from catch and effort information, sampling, assessment work, or other sources);
 - iii. stocking activities and plans;
 - iv. sea lamprey impacts;
 - v. bioenergetics;
 - vi. fish health factors; and
 - vii. environmental factors.
 - b. A population model or models it finds best suited for establishing, evaluating, and adjusting HRGs, to be developed by the Modeling Subcommittee of the TFC established in Section XII of the Decree.
 5. In establishing, evaluating, and adjusting HRGs, including gathering and making use of information, the BSD shall consult with Tribal biologists (including consultants). The BSD and the Tribes shall employ the TFC as the primary body for consultation and collaboration with USFWS and MDNR on biological issues, and shall operate in accordance with the notice and collaboration provisions contained in the Decree.
- C. Report to Great Lakes Resources Committee (GLRC).
1. The BSD, in consultation with the TFC and Tribal biologists (including consultants), shall present a written report to GLRC by March 1 of each

year, and shall provide a copy of the report to USFWS and MDNR at the same time the report is provided to GLRC. The report shall make recommendations for reductions in fishing effort if the BSD determines, on the basis of all information considered by it, that such reductions are necessary or appropriate to sustain the yield of any stock. The report may also recommend the availability of increases in fishing effort, if circumstances warrant, or other changes in the Tribal Code that the BSD determines advisable. In making recommendations for changes in fishing effort, the report shall highlight trend information and population characteristics in the relevant fish populations and describe alternative regulatory measures, which may be temporary or continuing in nature, to achieve the desired change. The report shall indicate the assumptions of fishing effort for the coming season upon which its recommendations are based. When effort-based management is being applied to two (2) or more fish stocks within an area, BSD recommendations shall take due account of the need to manage for the protection of all stocks.

2. Where harvest reductions are necessary, comparison of the actual harvest to the HRG will provide an approximate measure of the desired harvest reduction. However, a harvest exceeding the HRG in and of itself will not necessarily require a reduction in effort, because such a reduction may not be deemed necessary when other population parameters are considered. Conversely, if population characteristics and health indicators show a negative trend, it may be necessary to reduce effort even if the harvest is below the HRG.

D. Adjustment of Effort Management.

1. If the BSD report indicates that a harvest reduction is required for a particular fish stock during the next fishing season, GLRC shall adopt appropriate effort restrictions that are reasonably calculated to reduce the harvest in question in accordance with the report and other sections of this Plan. Conversely, if the report indicates that the harvest may be expanded for a particular stock, GLRC may ease effort restrictions in a manner reasonably calculated to expand the harvest in accordance with the report and other sections of this Plan.
2. The method or methods selected will vary depending on the nature of the area in question, the status of the fish stocks in that area, the extent of the harvest reductions required, and the type of fishing operations in use. There are a number of regulatory options for reducing effort, and new options are likely to be developed in the future as well. Currently, the main options for reducing harvest by regulation of effort include the following:
 - a. *Seasonal closures (temporary or permanent).* A temporary closure for an entire season would reduce the harvest by a predictable

amount for that season. A permanent closure for a portion of a season, such as during the spawning period, would help reduce harvest and protect spawning stock to promote future year classes.

- b. *Gear (net type) restrictions.* Effort reduction may be accomplished by restricting gear in certain areas.
 - c. *Limiting net effort.* Limiting the number of feet of gill net or the number of trap nets per fisher, vessel, or area can be an effective technique for reducing harvest. Because of enforcement difficulties, this technique is most appropriate for trap net fisheries or for small, easily monitored gill net fisheries.
 - d. *Depth restrictions.* Limiting the depth at which gill and trap nets may be set, on either a general or seasonal basis, can be effective in reducing harvest. This regulatory option may also entail enforcement difficulty and is most appropriate for trap net fisheries and small gill net fisheries.
 - e. *Limited entry.* Limiting the number of fishers in a zone or area can be an effective harvest reduction method. This method can work effectively throughout the 1836 Treaty waters as well, because Tribal fishers generally move freely among stocks, distributing total effort so that no single stock becomes overfished. Entry may also be limited by area, Tribe, or specific fishers within an area. These options may be desirable for reasons other than harvest reduction as well.
3. Given the complex biological concerns surrounding the treaty fishery, and nonbiological considerations that affect Tribal fisheries management, effort restrictions will likely be a combination of the above techniques (or some yet to be developed) customized to the particular situation at hand. These customized strategies will likely be modified through time even if the desired harvest remains the same. GLRC shall pursue an adaptive management approach and may revise its effort reduction methods for a particular location or stock even when there is neither need to reduce nor opportunity to expand the harvest in question.
- E. In-Season Adjustments. Experience with the treaty fishery over the past four (4) decades indicates that overall fishing effort does not change substantially from year to year, and mid-season adjustments are likely to be needed seldom, if at all; however, in order to protect against unforeseen circumstances, effort monitoring and a process for in-season adjustments is necessary.
1. The BSD shall monitor fishing activity during the fishing season. Each Tribe shall notify the BSD immediately when it issues a new captain or

vessel license or when it allows an effort or vessel size increase for an existing licensee. The BSD shall also monitor monthly catch reports to identify substantial changes in overall fishing effort and to determine whether any inactive licensee has returned to the fishery. Subject to confidentiality provisions of the Decree, the BSD shall share effort information with the USFWS and MDNR.

2. If a substantial unforeseen increase in fishing effort occurs during a fishing season or if other unforeseen circumstances not considered in the BSD report suggest or require that an in-season adjustment is necessary or desirable, the BSD, with notice and consultation in accordance with the Decree, shall recommend to GLRC, based on all available data, that an in-season effort adjustment be made. GLRC shall then adopt additional effort restrictions in response to the recommendations or, if an easing of restrictions is indicated, GLRC may ease restrictions.
3. The BSD Director is authorized to act in emergencies as provided in Section VII. of this Plan.

IV. TRIBAL ZONES

Tribal zones established in the Decree shall be managed and regulated by GLRC on an intertribal basis as described in this Plan, subject to the provisions of the Decree. Within its zone a Tribe shall determine whether and to what extent fishers from other Tribes may fish in the zone. Within its zone a Tribe may prohibit fishing, or may allow fishing by its fishers only, in all or any portion of its zone in its sole discretion. If fishing by other fishers is allowed in its zone, a Tribe shall issue permits to those fishers. Each permit may impose fishing restrictions that are in addition to or more restrictive than those contained in the Tribal Code.

V. INTERTRIBAL FISHING ZONES

All zones established in Sections IV.A.1.(a),(b)and (g), A.2.(a)and (d), and A.3. of the Decree are intertribal zones in which two (2) or more of the Tribes are authorized to fish. Subject to any intertribal division of fishing opportunity in a particular zone contained in the Decree, in the event that it is necessary to reduce fishing effort in an intertribal zone or any portion of it, the following provisions shall apply:

- A. Restrictions shall be designed to protect those fishers who most depend upon fishing in the waters involved. GLRC shall seek to avoid restrictions that will impair the economic viability of fishing in the area in question. Management options presented to GLRC for reducing effort shall describe the economic impact of each as well as biological and other management considerations.
- B. If it is necessary to impose new restrictions limiting entry, vessel size, seasons, or gear type or effort, the restrictions shall be designed first to protect those who have most depended upon fishing in the waters involved over the preceding five (5) year

period. GLRC shall apply this principle in implementing restrictions, which may include restrictions upon individual fishers in furtherance of the principle. GLRC may adopt regulations providing for the continuation of the preference period when a fishing operation passes between family members and in other appropriate circumstances, and for a tolling of the period during illness or other justifiable absence from the fishery.

- C. The paramount measure of dependence upon the fishery shall be the percentage of a fisher's total catch derived from the waters involved during the preceding five (5) year period. If the paramount measure does not provide a clear basis for distinguishing among fishers, or some of them, GLRC shall take the following into account:
1. Dependence upon the fishery during the time prior to the five (5) year period.
 2. Proximity of the fisher's home port or residence to the area in question.
 3. Whether the fisher's Tribe has historically used the fishing grounds in question.
 4. Family tradition of fishing in the area in question.
 5. The seasonal pattern of the fisher's fishing activity.
 6. The practical prospect for relocation of fishing effort by the fisher into another area in which the available fishery may sustain additional effort that will not result in undue inconvenience or economic hardship.

VI. MANAGEMENT OF SPECIES.

- A. Lake Trout. Lake trout harvest shall be managed in accordance with Section VII. of the Decree in all areas except Lake Superior Lake Trout Management Unit MI-8. In MI-8 the Tribes shall manage the lake trout harvest as provided in Section III., above, subject to the provisions of the Decree.
- B. Whitefish. Whitefish management units in which the commercial harvest is shared between Tribal and State commercial fishers shall be managed in accordance with Section VII. of the Decree. In all other management units, the Tribes shall manage their whitefish harvest as provided in Section III., above, subject to the provisions of the Decree.
- C. Salmon. Tribal commercial salmon harvest shall be conducted as provided in Section VIII.B. of the Decree.
- D. Other Species. Subject to the provisions of the Decree, the Tribes shall manage

their commercial harvest of bloater chubs, walleye, yellow perch, cisco, menominee, smelt and any other species the commercial harvest of which is not prohibited by Section VIII.J. of the Decree, in accordance with Section III., above, and may develop HRGs for such species when circumstances warrant.

VII. EMERGENCY ORDERS

Experience regulating treaty commercial fishing in the Great Lakes suggests that emergency regulatory actions are seldom, if ever, necessary for such a fishery. Still, it is possible that some unforeseen event, such as an environmental catastrophe, could require an immediate regulatory response in order to prevent resource harm to a particular fish stock or within a particular area. For this reason, the BSD Director shall issue emergency orders closing, curtailing, or otherwise restricting fishing activity when substantial harm to the resource is imminent and the need for immediate action is evident. Emergency orders shall remain in effect until GLRC has been able to act upon the matter, as described more particularly in the Tribal Code.

VIII. MATERIAL PARTICIPATION IN THE FISHERY

GLRC shall adopt regulations governing material participation in the treaty fishery. Material participation in or economic benefit from a treaty fishing operation by a person (other than immediate family) or entity not entitled to exercise 1836 Treaty fishing rights is prohibited, except as provided in Section VI.A.5. of the Decree.

IX. INTERAGENCY COOPERATION

A. Consultation.

1. The Great Lakes fishery and the ecosystem upon which it depends is surrounded by a number of states and provinces and straddles the international boundary between the United States and Canada. The actions of numerous local units of government and uncounted private parties also impact the fishery resource. It is imperative that the Tribes, through CORA and GLRC, actively participate in all existing entities which provide information concerning the Great Lakes resource to all regulatory bodies and develop recommendations or action plans to address resource concerns. To this end, the Tribes have actively participated in the Lake Committees of the Great Lakes Fishery Commission, and will continue to do so. Likewise, the Tribes have been active in the work generated through the Great Lakes Fish and Wildlife Restoration Act, and with the Great Lakes Restoration Initiative (GLRI) and will continue that participation as well.
2. In order to develop the most comprehensive data concerning the status of the resource and to implement as many enhancement and protection projects as possible, it is also imperative that the Tribes consult with other regulatory agencies concerning their research and action projects. Due to the trust relationship between the Tribes and the United States, such consultation

will be focused on the activities of the USFWS and the laboratories of the National Biological Service, the National Oceanic and Atmosphere Administration (NOAA), the United States Geological Survey (USGS), and the Environmental Protection Agency (EPA). Consultation shall also be held with those state and provincial agencies whose research projects of fishery protection and enhancement activities impact on the treaty fishery. The Tribes, through CORA and GLRC, shall serve as a consultative body to each and every entity whose regulation of the fishery and the Great Lakes ecosystem has an impact on the treaty fishery.

3. Consultation can best be facilitated through the establishment of working groups which meet regularly in order to identify areas of concern and develop comprehensive approaches to address them. The primary body for consultation and collaboration is the TFC created in Section XII. of the Decree. Enforcement issues are the province of another collaborative body, the Law Enforcement Committee, created in Section XVI.B.2. of the Decree.

- B. Information Gathering and Sharing. Effective management of the fishery is dependent on good information. The Tribes are committed to establishing the most efficient and timely means of obtaining information on the status of the fish stocks and the harvest of them. The Tribes are also committed to obtaining from any and all other sources in a timely manner whatever information they may have on these subjects. The Tribes shall cooperate with the information sharing and gathering provisions in Sections XIV. and XV. of the Decree, and shall freely share the information described in those sections with each other and with the BSD.

X. JURISDICTION AND ENFORCEMENT

- A. Codes. The Tribal Code, as it may be amended from time to time in accordance with the CORA Charter, the Decree, and this Plan, shall apply to all commercial, subsistence, and recreational fishing activities of Citizens of the Tribes in 1836 Treaty waters. Each Tribe shall adopt the Tribal Code as part of its regulation of its treaty fishers. Each Tribe shall promulgate regulations necessary to implement those portions of this Plan or the Decree which apply to that particular Tribe only, or which affect a Tribe in ways that are not reflected in the Tribal Code. In addition, each Tribe may promulgate additional and different regulations which are more restrictive than the provisions of the Tribal Code, provided that the regulations are in accordance with the Decree and this Plan and do not involve matters which require uniformity among the Tribes. No Tribe shall adopt, amend, or rescind a rule, regulation, or order where such action would conflict with the substantive requirements of the Decree, this Plan, or the Tribal Code.
- B. Enforcement. The Tribal Code and the additional fishing regulations of each Tribe shall be enforced by Tribal conservation officers, who shall be authorized to enforce the Tribal Code and each Tribe's regulations. MDNR conservation officers shall be

authorized to enforce the Tribal Code and individual Tribal regulations as provided in Section XVI.B.3. of the Decree. Other enforcing officers may also be authorized from time to time. Enforcing officers shall exercise the authority and have the powers provided in the Tribal Code.

- C. Courts. Violations shall be prosecuted in the courts of each Tribe, as more particularly described in the Tribal Code. Most offenses are civil in nature, but a number of offenses are misdemeanors. The Tribal courts shall have the authority to impose civil or criminal penalties, as the case may be, suspend or revoke licenses, issue injunctions, and order forfeiture of personal property used in the commission of an offense.
- D. Compliance With Plan. All Tribes shall manage their fisheries and regulate their Citizens in compliance with the Decree, this Plan, the Tribal Code, and decisions of GLRC and the BSD Director made in accordance with this Plan. The BSD Director is hereby authorized to close fishing by Citizens of any Tribe or to implement other management measures authorized by or consistent with the Decree, this Plan, or the Tribal Code, necessary in order to prevent that Tribe from violating the provisions of the Decree, this Plan, the Tribal Code, or decisions of GLRC or the BSD Director made in accordance with this Plan.

XI. DISPUTE RESOLUTION

Disputes among the parties concerning the Decree shall be resolved as provided in Section XVIII. of the Decree. Disputes among the Tribes concerning this Plan, the CORA Charter, or the Tribal Code shall be resolved in accordance with Section VI.C. of the CORA Charter.

XII. DURATION

This Plan shall be coterminous with the Decree. This Plan may be amended at any time during its term by resolution of GLRC, subject to the applicable restrictions and notice and dispute resolution provisions contained in the Decree or the CORA Charter, as the case may be.

XIII. DISCLAIMERS

- A. The allocation of treaty harvest opportunities among the Tribes, and the restrictions imposed upon treaty fishing which favor the fishers of one or more Tribes, are the product of compromise and negotiation among the Tribes, and shall be effective only for the duration of this Plan. The Tribes reserve all rights and claims they may have in relation to one another with respect to the allocation of treaty harvest opportunities in the future, and nothing in this Plan 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 intertribal allocation or regulation. Any use or construction of this Plan to limit, prejudice, or otherwise affect such rights or claims or to use such as precedent is unauthorized and improper.

- B. This Plan is not intended to identify, nor does it define, the maximum extent of the legal entitlement of the Tribes under the 1836 Treaty. The allocation of treaty harvest opportunities between the Tribes and non-treaty fishers, and the restrictions imposed by this Plan upon treaty fishing, shall be effective only for the duration of this Plan. The Tribes reserve all rights and claims they may have against the State with respect to regulatory issues and the allocation of treaty harvest opportunities in the future, and nothing in this Plan 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 allocation or regulation. Any use or construction of this Plan to limit, prejudice, or otherwise affect such rights or claims or to use such as precedent is unauthorized and improper.

- C. Upon expiration of the term of this Plan, or if earlier terminated for any reason, the provisions, restrictions, and conditions contained in it shall no longer govern the Tribes in any manner whatsoever.