



THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

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HONORING NATIONS: 2000 HONOREE

Treaty Rights/National Forest Memorandum of Understanding Tribes of the Great Lakes Indian Fish and Wildlife Commission

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The Great Lakes Indian Fish and Wildlife Commission, a tribally chartered intertribal organization, negotiated a memorandum of understanding (MOU) with the U.S. Forest Service that recognizes and implements treaty guaranteed hunting, fishing and gathering rights under tribal regulations and establishes a consultation process for management decisions that affect treaty rights in four National Forests located within areas ceded by the Chippewa in the Treaties of 1836, 1837 and 1842.

Hunting, fishing and gathering have long been central to the Lake Superior Chippewa (also known as Ojibwe or Anishinaabe) Indians' collective identity, and indeed, both individuals and communities rely upon these activities for meeting subsistence, cultural, religious, medicinal and economic needs. In fact, when Ojibwe leaders were pressured to sell vast quantities of land to the U.S. government in the 19th century, they negotiated to retain the right to utilize ceded lands for these critical activities, and they enshrined the agreements in their treaties. Over time, however, state governments increasingly denied the existence of such treaty rights, and by the late 20th century, tribal citizens often found themselves in court for violations of state conservation laws. In the 1970s and 1980s, the Ojibwe asserted a series of legal challenges against the states that sparked intense public furor over the prospect of tribal self-regulation and natural resource management, with many non-Native groups organizing major protests that, in some cases, turned violent. But the legal battles paid off for the tribes, and in the 1983 case, *Lac Courte Oreilles v. Voigt*, the Federal Court of Appeals affirmed the existence of Ojibwe treaty rights to hunt, fish and gather on ceded lands. The Voigt ruling had broad implications for sovereignty and treaty rights in the upper Midwest, but more pointedly, it afforded the Ojibwe bands an opportunity to develop their own regulations for managing off-reservation resources.

In 1984, in response, 11 tribal nations in the Lake Superior region formed the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) to assist in the implementation of their off-reservation treaty rights and in the protection of their off-reservation natural resources. With a central and several satellite offices, GLIFWC is a tribally chartered intertribal organization that provides management expertise, conservation enforcement, legal and policy analysis, and educational services on behalf of its members. GLIFWC's staff includes tribal representatives, managers, biologists and lawyers, who use sophisticated data collection and mapping techniques to negotiate effectively with non-Indian governments on such matters as timber management, sustainable plant harvest levels, wildlife population data and camping regulations. GLIFWC is also an active participant in regional and international bodies concerned with the health and status of Lake Superior specifically and the Great Lakes

generally.

Since its creation, GLIFWC has been an effective champion of tribal sovereignty – and its contributions to good governance are exemplified by its collaborative work with the U.S. Department of Agriculture’s Forest Service. The relationship began in the early 1990s arising out of a mutual concern that questions surrounding the exercise of treaty rights (specifically gathering rights) in ceded lands within National Forests had been left ambiguous by previous court decisions. Forgoing a legal battle, the two governmental bodies elected to negotiate a framework by which those rights would be acknowledged, interpreted and implemented. After six years of consultation, the Memorandum of Understanding (MOU) Regarding Tribal – USDA-Forest Service Relations on National Forest Lands Within the Territories Ceded in Treaties of 1836, 1837 and 1842 was ratified in June 1999 by GLIFWC member tribes and by the Forest Service’s Eastern Region, Law Enforcement and Investigation Branch, and North Central Research Station.

In essence, the MOU is an agreement between the GLIFWC Tribes and the Forest Service that recognizes and implements treaty-guaranteed hunting, fishing and gathering rights in ceded territories within four National Forests under tribal (not federal) regulations and establishes a consensus-based consultation process for National Forest management decisions that affect treaty rights. The MOU articulates the U.S. Forest Service’s recognition of tribal treaty rights, tribal sovereignty and tribal capacity to self-regulate, and acknowledges the Service’s role in fulfilling the federal government’s trust responsibilities and treaty obligations. Specifically, the MOU establishes: (1) a framework for a collaborative government-to-government relationship based on consistent and timely communication and tribal participation in National Forest management through a joint Technical Working Group; (2) a mutually agreeable set of regulations enacted by the tribes for regulating the exercise of treaty gathering rights; and (3) a shared goal of protecting, managing and enhancing ecosystems that support the natural resources subject to the tribes’ treaty rights. The MOU makes clear the fact that the tribes themselves have the primary right and responsibility to enforce their regulations within the forests’ treaty areas.

Although the MOU is in the early stages of implementation, it has already been the basis of new and successful off-reservation forestry management. Critically, the MOU provides opportunities for tribal self-regulation – a hallmark of effective self-governance. The tribes have demonstrated responsible self-regulation and as a result, there has been growing public support and for and trust in tribally controlled natural resource management. The GLIFWC-member tribes collect their own data, regulate and enforce their citizens’ use of forest resources, and develop forest management plans. These activities make it evident that the tribes are not simply administering federal programs, but self-regulating and managing their own initiatives. GLIFWC encourages self-regulation and management initiatives at the Commission (intertribal) and individual tribal level, which reflects the member tribes’ belief that self-determination and sovereignty are appropriately exercised at both levels. The sugar bush management plan developed in 1999 for citizens of the Bay Mills Indian Community is one example. While the MOU’s Technical Working Group developed the plan, it stipulates that the Bay Mills tribal government is responsible for issuing permits and writing regulations under which its citizens can gather maple sap in the National Forests.

The MOU also codifies a true government-to-government relationship wherein the tribes and the Forest Service come together as governmental equals. Under the MOU’s consultative process, GLIFWC’s member tribes have input into all decisions affecting the abundance, distribution of and access to National Forest resources. For example, when a severe windstorm damaged thousands of acres of the Chequamegon-Nicolet Forest in July 1999,

GLIFWC and the National Forest Service reached consensus on where timber salvage operations should be undertaken and how tribal citizens would be able to access damaged trees. Moreover, tribal representatives are now playing a central role in revising the Chequamegon-Nicolet Forest plan. While the tribal governments and the U.S. government do not always agree, the MOU has been instrumental in providing a forum in which they can interact as peers in order to resolve disagreements and coordinate activities for the good of the forests.

A critical benefit of the collaborative relationship is that it adds content and specificity to the federal trust responsibility and to the federal government's treaty obligations. Early on, GLIFWC and the Forest Service recognized that it is easy to "talk the talk" of trust responsibility and treaty rights, but much more difficult to craft an agreement by which they would, on a daily basis, "walk the walk" in a practical, effective way. Yet they are doing just that. The MOU requires the Forest Service to consider the effects of its decisions on treaty resources and the tribes' ability to exercise their gathering rights. In all decision and analysis documents, the Forest Service must show how tribal information and involvement was taken into account. Representatives of the Forest Service note that the MOU has prompted the Service to undertake its most comprehensive review to date concerning its trust responsibilities. No other MOU signed by the Forest Service is as extensive regarding tribal rights and regulatory powers on federal lands.

Significantly, since the MOU's ratification, the Ojibwe have rejuvenated long-standing cultural traditions. By resolving uncertainty about tribal citizens' rights to gather plants and medicines and by eliminating citizens' fears of being prosecuted for exercising their treaty rights, a growing number of Ojibwe are utilizing forest resources for traditions that were on the verge of being lost. For example, elders are teaching Ojibwe youth about proper harvesting methods, and GLIFWC is currently working with the elders to catalog plants and their uses. Free to fully resume their cultural lifeways, the Ojibwe are spiritually reconnecting with the forests and passing on traditions taught by their ancestors to future generations.

The Treaty Rights/National Forest Management MOU is a shining example of how an intertribal agency can effectively work on behalf of its member tribes to obtain recognition of tribal treaty rights, add content and specificity to the federal trust responsibility and, crucially, develop new institutions for tribes to self-govern in a policy area – natural resource management – of great importance to the Anishinaabe and many other Indian nations.

Lessons:

- Tribally chartered intertribal organizations can serve as effective institutional vehicles for advancing the goals of tribes that share common histories or objectives. They can reduce the overlap of tribes' efforts and serve as a key contact point for other governmental bodies.
- In many cases, government-to-government communication can preclude protracted treaty rights litigation. Successful intergovernmental agreements are grounded in shared principles and possess clearly defined processes for joint decision-making and conflict resolution.
- Rigorous and consistent self-regulation fosters quality management and, over the long term, helps build public support for tribal exercises of sovereignty.