

GREAT LAKES REGIONAL COLLABORATION

Tribal Nations Issues and Perspectives

Version 1.0

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The purpose of this document is to provide the GLRC Executive Committee and Strategy Teams with information on the nature of Tribal sovereignty, rights, and interests as they relate to Great Lakes environmental protection and natural resource conservation issues.

The Framework document signed by the members of the GLRC noted that each Strategy Team should explicitly consider Tribal rights, interests, structure, and programs involved in its issue area and should identify priorities and strategies that relate to the health, welfare, and culture of Tribal communities.

The Tribal Nations that signed the Framework have agreed to organize an *ad hoc* Tribal Caucus for the purposes of facilitating intertribal cooperation and coordinated participation in the GLRC processes. The Caucus prepared this document to help other GLRC participants better understand tribal governments and tribal communities so that the Great Lakes Protection and Restoration Strategy properly addresses and protects tribal needs.

It is important to note that this report is not exhaustive in its scope or coverage, “legally” definitive, or representative of the “official” views any one Tribal Nation or tribal government.

As this document is relatively general in nature, the Tribal Caucus welcomes inquiries from the Executive Committee and Strategy Teams regarding further details, supporting documentation, clarification, or additional resources and information.

The Tribal Caucus anticipates an on-going dialogue on tribal issues and perspectives at all levels of the GLRC process. It hopes questions will be routinely addressed within the Strategy Teams themselves by individuals associated with Tribal Nations who are members of each Team, as well as by those who regularly are involved at the Executive Committee level. However, the Caucus will gladly convene to respond to specific inquiries and provide additional feedback as the need may arise.

I. Tribal Nations of the Great Lakes Basin

A. Basic Information

There are 35 federally-recognized Indian Tribal Nations whose reservations are located in the Great Lakes Basin and/or who may retain treaty guaranteed rights to hunt, fish or gather within the Great Lakes Basin in areas ceded to the United States in various treaties. *See* Attachment A: Great Lakes Tribes Listed by State, Map of Indian Lands in Great Lakes Basin (EPA Documents), and Map of 1836, 1837, 1842 and 1854 Treaty Ceded Territories (GLIFWC document).

Each Tribal Nation is legally, politically, socially and culturally unique:

- Tribal governments are established in accordance with each Tribal Nation's own laws and traditions, as well as within the framework of how Tribal Nations have been brought into the U.S. Constitution.
- The powers of tribal governments generally are set forth in tribal Constitutions or similar organic documents, but also might be determined in accordance with a Tribal Nation's customs and traditions.
- As a general matter, absent the consent of others, no one Tribal Nation may speak for another Tribal Nation. Moreover, there is no entity that represents or speaks for all Tribal Nations in the Great Lakes Basin.

Although unique and distinct in their own right, Great Lakes Tribal Nations share much in terms of the historic, cultural and social underpinnings of their respective communities, particularly regarding their interdependence with and reliance upon natural resources to meet subsistence, economic, cultural, spiritual, and medicinal needs. *See* Attachment B: Tribal Society and Culture – Ecological Sustainability/Cultural Sustainability

Some Tribal Nations in the Great Lakes Basin have formed intertribal agencies to assist them regarding treaty-reserved hunting, fishing and gathering rights. Such agencies carry out their responsibilities in accordance with specific delegations of authority from their member Tribal Nations:

- The Chippewa Ottawa Resource Authority (CORA) assists five Tribal Nations that signed the Treaty of 1836 in protecting and implementing such rights in parts of Michigan. *See* Treaty of Washington (1836), 7 Stat. 491.
- The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) assists eleven Tribal Nations that signed various Treaties, including those of 1836, 1837, 1842 and 1854, in protecting and implementing such rights in parts of Michigan, Minnesota and Wisconsin. *See* Treaty of Washington (1836), 7 Stat. 491; Treaty of St. Peters (1837), 7 Stat. 536; Treaty of La Pointe (1842), 7 Stat. 591; and Treaty of La Pointe (1854), 10 Stat. 1109.
- The 1854 Authority assists two Tribal Nations that signed the Treaty of La Pointe (1854) in the northeastern part of Minnesota.

The Six Tribal Nations within the Haudenosaunee Confederacy are particularly unique in terms of their retained sovereignty vis-à-vis the federal and state governments. To the extent that the status of these Nations may vary from some of the concepts stated in this paper, the GLRC Tribal Caucus defers to the Nations of the Haudenosaunee Confederacy to provide information relevant to their particular issues and perspectives in a separate document as they may deem appropriate.

A.1 Tribal Governance

The powers of tribal government generally are vested in what is commonly referred to as a tribal council:

- In most instances, tribal members elect council members.
- For some Tribal Nations, ultimate legislative power has been reserved to the general tribal membership and is exercised through what is commonly referred to as a general council.
- The tribal council (or sometimes called a tribal executive committee) serves as the Tribal Nation's primary administrative mechanism in carrying out the general council's actions and other powers set forth in the relevant organic documents.

The powers and roles of tribal officials, such as Chairs or Chiefs, are determined by each Tribal Nation's laws and customs. Some tribal council Chairs are directly elected by tribal voters; others are chosen from among the sitting council members by the tribal council itself; still others may be chosen in accordance with custom and tradition based upon clan or other considerations.

Tribal governments provide a range of governmental services to promote the health, welfare and security of their communities. These programs include education, health care, housing, public safety/law enforcement, judicial systems, social services, natural resources management, and environmental protection.

The needs of tribal communities greatly exceed both the financial and human resources available to the institutions of tribal government. Tribal communities face decades of catching up vis-à-vis other communities in terms of funding and infrastructure to provide basic governmental programs, particularly regarding the threats posed by environmental degradation to their natural resources-dependent cultures.

A.2 Demographic Data

The total enrolled membership of the 35 Tribal Nations within the Great Lakes Basin is about 175,000, while the total service population (i.e. enrolled members and others who live on or near tribal reservations and who are entitled to receive tribal services and/or benefits) is about 110,000.

Many tribal reservations in the Great Lakes Basin are a mixed pattern (often called "checkerboard") of land ownership involving lands owned by the United States and held in trust for the Tribal Nation or individual tribal members, by the Tribal Nation itself in "fee" title, and by non-tribal entities and individuals in "fee" title. In some instances, there also may be public land administered by a federal or state agency.

Many non-tribal members reside within tribal reservations. In addition, portions of many municipalities are located within tribal reservations. This leads to many issues regarding the extent of tribal jurisdiction over non-Indians and activities by non-tribal entities, as well as regarding more practical aspects of delivering services to provide for the overall health, welfare and safety of those residing within reservation boundaries.

Tribal communities tend to be poorer and have higher unemployment levels than most other communities:

- Recent census data show that the poverty rate in reservation areas is approximately 50%, almost four times the United States average, and that the poverty rate for Indian children in reservation areas is 60%.
- Other federal data show that, as of 1999, over 40% of all adults living on or near reservations were unemployed and that over 30% of those employed were still living in poverty.

Tribal populations tend to face increased risk of public health threats from environmental contamination and to be subject to impacts from environmental degradation to a greater extent than other population segments:

- Tribal communities tend to consume larger quantities of fish, game and other natural foods than other communities, and thus face higher health risks posed by bioaccumulative toxics.
- In 2001, approximately 34% of drinking water suppliers in Indian country violated monitoring and reporting requirements and approximately 5% violated maximum contaminant level/treatment technologies. The vast majority of the public water systems with significant noncompliance have been out of compliance for nine months or more.
- Many Tribal Nations have no waste management program at all and use dumps or burn barrels as the primary method of waste disposal.

According to a 1999 Indian Health Service report, tribal communities face significant disparities vis-à-vis other communities regarding disease and mortality rates:

- Tribal communities have higher incidences than other communities of certain diseases, such as diabetes, cardiovascular diseases and hypertension, obesity, gall-bladder disease, and dental disease.
- Age-adjusted death rates for the following causes were considerably higher than those for other population segments in 1995: alcoholism—627 percent greater; tuberculosis—533 percent greater; diabetes mellitus—249 percent greater; accidents—204 percent greater; suicide—72 percent greater, pneumonia and influenza—71 percent greater; and homicide—63 percent greater.

Studies have shown a clear relationship between the use of traditional foods food and the health and well-being of tribal members, including:

- The improvement of diet and nutrient intake.
- The prevention of chronic diseases.
- The opportunities for physical fitness and outdoor activities associated with harvesting traditional foods.
- The opportunity to experience, learn, and promote cultural activities.

- The opportunity to develop personal qualities valued in tribal culture such as sharing, self-respect, pride, self-confidence, patience, humility and spirituality.

B. Tribal Reserved Rights and Sovereignty – Tribal Nations as Full Governmental Partners in Great Lakes Protection and Restoration

In general, Tribal Nations retain those rights and powers that they have not voluntarily relinquished or that Congress has not abridged. The U.S. Supreme Court has referred to Tribal Nations as “domestic dependent sovereigns” that retain the right to make and be governed by their own laws. *See* Attachment C: Tribal Nations within the United States Constitutional System – General Principles.

As a general rule, the right to tribal self-government remains intact unless tribal powers have been modified by treaty or by Congressional action.

In the on-reservation context, inherent tribal environmental and natural resource management authority extends to:

- Tribal members and tribal lands.
- Non-tribal members or non-tribal lands where there is consent to tribal authority or where non-member conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribal Nation.
- Tribal members and non-tribal members where Congress has specifically provided, such as in the Clean Water Act and the Clean Air Act where Tribal Nations may seek primacy for many federal environmental programs. A number of Tribal Nations in the Great Lakes basin have obtained or are in the process of seeking such federal approval.

Tribal “on-reservation” rights and authority may extend outside of reservation boundaries. For example, many reservations are located on the shores of a Great Lake precisely to secure access to the Lake for fishing and other purposes. In this context, the rights reserved by the Tribal Nation, and in most instances guaranteed by treaty, are considered “reservation-based” even though they extend to areas outside of a reservation, and the Tribal Nation involved will claim jurisdiction over these areas.

In addition to reservation-based rights and interests, many Great Lakes Tribal Nations retain treaty-guaranteed off-reservation hunting, fishing and gathering rights that extend to large parts of the Great Lakes basin:

- These are commonly referred to as ceded territory treaty rights because they pertain to areas that Tribal Nations ceded (or sold) to the United States in various treaties.
- These rights may include the authority and responsibility to ensure the natural resources subject to the rights, as well as the habitats and ecosystems supporting those resources, are conserved and protected.

- Such off-reservation treaty rights have been judicially affirmed in portions of Lakes Superior, Michigan and Huron and in “inland” parts of Wisconsin and Minnesota adjacent the Lakes. A case is pending involving claimed “inland” treaty rights in portions Michigan’s Upper and Lower Peninsula.

Great Lakes Tribal Nations operate a wide variety of natural resource and environmental management programs:

- The number and extent of a particular Nation’s program depends upon funding availability and the particular needs/priorities of the community involved.
- Some Tribal Nations are able to supplement federal and other funding for these programs with discretionary revenue generated from tribal economic enterprises.
- Important federal funding sources for tribal programs include Bureau of Indian Affairs funds provided pursuant to the Indian Self-Determination and Educational Assistance Act, United States Fish and Wildlife Service funds provided under a variety of project-specific authorizations, and Environmental Protection Agency funds provided under the Clean Water Act, the Clean Air Act, the Tribal General Assistance Program, and other authorizations.

Depending on the availability of funding and the extent of particular governmental infrastructure, Great Lakes Tribal Nations undertake:

- Tribal natural resource programs that generally relate to land/habitat management and harvest regulation. Many Tribal Nations have developed Integrated Resource Management Plans or similar documents that serve as comprehensive planning documents to guide tribal decisions relating to land use and management.
- Tribal environmental management programs relating to water quality monitoring and regulation, air quality monitoring and regulations, solid waste disposal, underground storage tanks, habitat restoration, and particular circumstances involving contaminated sites or pollution discharges.

B.1 Government-to-Government Relationships

The government-to-government relationship implicit in federal treaty making and in the federal trust responsibility toward Tribal Nations and individual tribal members has been expanded over time to include the full gamut of federal policy implementation by all federal agencies.

This relationship requires federal agencies to interact directly with Tribal Nations on a governmental basis, not merely as a segment of the general public:

- This obligation is separate and distinct from obligations to states and other governments as well as from requirements affording the opportunity for general public input on federal decisions.
- Federal agencies are to consult with tribal governments and their designated governmental representatives, to the greatest extent practical and as not otherwise

prohibited by law, before taking actions that affect tribal lands, resources, people, or treaty rights.

Many states, such as Michigan and Wisconsin, have adopted government-to-government consultation policies similar to that required of the federal government.

B.2 State Authority and Obligations Regarding Tribal Nations

State authority to regulate Tribal Nations and tribal members is limited because of the constitutional allocation of power between the federal and state governments, particularly in the context of the Constitution's Indian Commerce Clause and the Supremacy Clause.

Generally, a state may not infringe upon the right of Tribal Nations to make and be governed by their own laws concerning internal tribal affairs. However, Congress may specifically grant state authority over tribal affairs. Congress also may preempt state authority over tribal affairs through the operation of a federal regulatory scheme.

For reservation-based matters, unless Congress has otherwise provided, states generally do not have the authority to regulate tribal governments, tribal members, tribal lands, or matters where there is a tradition of tribal self-government. For example, states generally may not regulate tribal members exercising reservation-based hunting or fishing rights.

Because of the "checkerboard" nature of land ownership within tribal reservations and the presence of non-Indians living, working and otherwise undertaking activities within reservations, the extent of state authority over reservation-based matters is a continual subject of discourse, debate and sometimes litigation:

- Tribal Nations take the view that tribal governments are or should be the primary authority over reservation-based matters.
- States tend to be particularly concerned with exercising state authority over non-tribal members and non-tribal lands within reservations.
- The result is a truly dynamic relationship between Tribal Nations and states that engenders a wide range of cooperation and coordination, as well as stalemates and disagreements.
- In the area of environmental regulation, issues frequently arise over the extent of state jurisdiction over activities that take place within reservation boundaries. Often these issues involve whether a particular federal law (such as the Clean Water Act) provides for tribal or federal authority to the exclusion of state authority.

Tribal Nations holding off-reservation rights have a unique relationship with the states in which the rights may be exercised:

- Tribal Nations are particularly concerned about how state actions – such as harvest levels authorized for state licensees, the issuance of water pollution discharge permits, or the establishment of state air emission standards – could impact the quantity or quality of the natural resources that tribal members harvest pursuant to those rights.

- A state may not infringe upon a those rights either directly through the regulation of the time, manner or place of treaty-protected harvest activities, or indirectly through the exercise of state management authority that is retained in the ceded territories.
- Whether viewed as co-management or cooperative management responsibilities, Tribal Nations and states are compelled to communicate and engage with each other in the exercise of their respective responsibilities in the off-reservation ceded territories.

II. Implications for the GLRC – Issues of Special Concern to Tribal Nations

The Tribal Caucus recognizes that each Strategy Team will need to consider tribal interests and perspectives in the context of the particular issues within a Team’s charge. However, the Caucus offers a few thoughts to assist the Teams and the Executive Committee as they consider implications relating to Tribal Nations, their rights, and their communities:

- Budgetary/Financial Considerations – Tribal environment and natural resource management programs are particularly vulnerable to any budget reductions or reallocation of federal funds to non-tribal programs. The loss of what might be considered a small amount of funding to others could be a large percentage of a particular tribal program and simply amount to *de facto* elimination of that program. This would undermine treaty and other obligations that guarantee Tribal Nation self-determination and self-governance, as well as the obligations that many Tribal Nations must fulfill under particular court decisions or statutory schemes. It also would deprive the broader public from the benefits derived from the tribal programs that extend beyond tribal communities.
- Federal Obligations – Tribal participation in the GLRC process neither relieves the federal government from its particular treaty obligations toward those Tribal Nations nor the state governments from their obligation not to infringe on those rights. The fact that Tribal Nations may be willing to collaborate with other governments and stakeholders in the GLRC in an effort to align natural resource/environmental protection goals and policy priorities does not diminish treaty obligations or the federal trust responsibility.
- Mutual Benefits – There are significant overall public benefits in ensuring that tribal programs and natural resource/environmental management infrastructure are supported and enhanced. Great Lakes protection and restoration present “same side of the fence” issues for tribal, federal, state and local governments, as well as for NGO’s. If Tribal Nations fulfill their responsibilities toward their people, all within the Great Lakes Basin will benefit from the exercise of environmental stewardship based upon a long-term perspective. And, cooperation between Tribal Nations and others builds relationships and alleviates problems/disputes associated with the federal/state/tribal jurisdictional maze.

- Human Health/PBT Reduction – Direct exposure to contaminated resources is much greater for tribal communities than for others. Risk assessments based on standard assumptions about consumption rates of non-Indian population segments may not adequately assess risks to tribal communities. Similarly, emission/pollution standards that are based upon risk assessments relevant to non-Indian populations could expose tribal communities to greater health risks.
- Research and Monitoring – Research and monitoring must take into account the consumption patterns and risk exposures of tribal members who engage in subsistence life ways, who use natural resources for medicine and in ceremonies, and whose livelihood is based upon natural resources. Also, tribal indigenous or traditional ecological knowledge offers a wealth of information that can enhance research and monitoring efforts.
- Invasive Species – Invasive species particularly threaten tribal life ways because of significant adverse impacts on tribal fisheries and fishing activities. For example, sea lamprey mortality on Lake Trout populations often nears harvest mortality in Lake Superior, and in fact exceeded it as recently as 1999. And, in the treaty ceded waters of northern Lake Michigan, sea lamprey damage has become so great that there is virtually no harvestable surplus available either for tribal commercial or for sport recreational fisheries. In addition, zebra mussel infestations in the areas where a number of northern Michigan Tribal Nations fish are so pervasive that tribal nets are rendered unusable by the mussels themselves that attach to nets or by the algae blooms that result from the mussels' presence.
- Tribal Lands – While tribal lands face pollution/degradation problems, many are among the most pristine and non-degraded lands in the Great Lakes Basin. The Tribal Nations seek to protect them as such, knowing that it is better to preserve than to allow degradation that in turn requires restoration.
- Tribal Historic and Cultural Properties – Many particular locations around the Great Lakes are of cultural and historic significance to one or more of the Tribal Nations. For example, a site may be important because it contains human remains, funerary objects or items relating to tribal use and occupancy, because it is used during certain ceremonies, or because it contains particular natural resources, such as a wild rice bed. These locations must not be desecrated by habitat destruction, pollution, or land disturbing activities. In addition, remediation or restoration activities must be undertaken with the utmost of care so as to detect any such properties within the site and to properly repatriate any remains or objects to the proper Tribal Nation.
- Nature and Extent of “Negative” Impacts on Tribal Communities – What might be viewed as a small, minor or short-term environmental consequence by another community could easily be viewed as a major, significant or long-term consequence by a tribal community. For example:

- Many tribal members use natural resources for medicines and in religious ceremonies. Their faith in the healing and spiritual power of those resources depends upon the purity of the resources used. It is not only the physical health of the individual that may be at risk if the resource is contaminated, but also the person's faith in their medicines and religion.
- For Tribal Nations and their communities, the right to hunt, fish and gather means little if there are insufficient resources, or if the resources are degraded or contaminated to the extent that tribal members are not able to use them, to meet subsistence, cultural, medicinal and spiritual needs.

ATTACHMENT A

Great Lakes Tribes Listed by State

Michigan

Bay Mills Indian Community of Michigan
Grand Traverse Band of Ottawa and Chippewa Indians of Michigan
Hannahville Indian Community of Michigan
Huron Potawatomi Nation (Nottawaseppi)
Lac Vieux Desert Band of Lake Superior Chippewa Indians
Keweenaw Bay Indian Community
Little River Band of Ottawa Indians
Little Traverse Bay Bands of Odawa Indians
Match-e-be-Nash-She-Wish Band
Pokagon Band of Potawatomi Indians
Saginaw Chippewa Indian Tribe of Michigan
Sault Ste. Marie Tribe of Chippewa

Minnesota

Bois Forte Band of Chippewa
Fond du Lac Band of Lake Superior Chippewa Indians
Grand Portage Band of Chippewa Indians
Leech Lake Band of Chippewa
Mille Lacs Band of Ojibwe
Minnesota Chippewa Tribe
White Earth Band of Chippewa

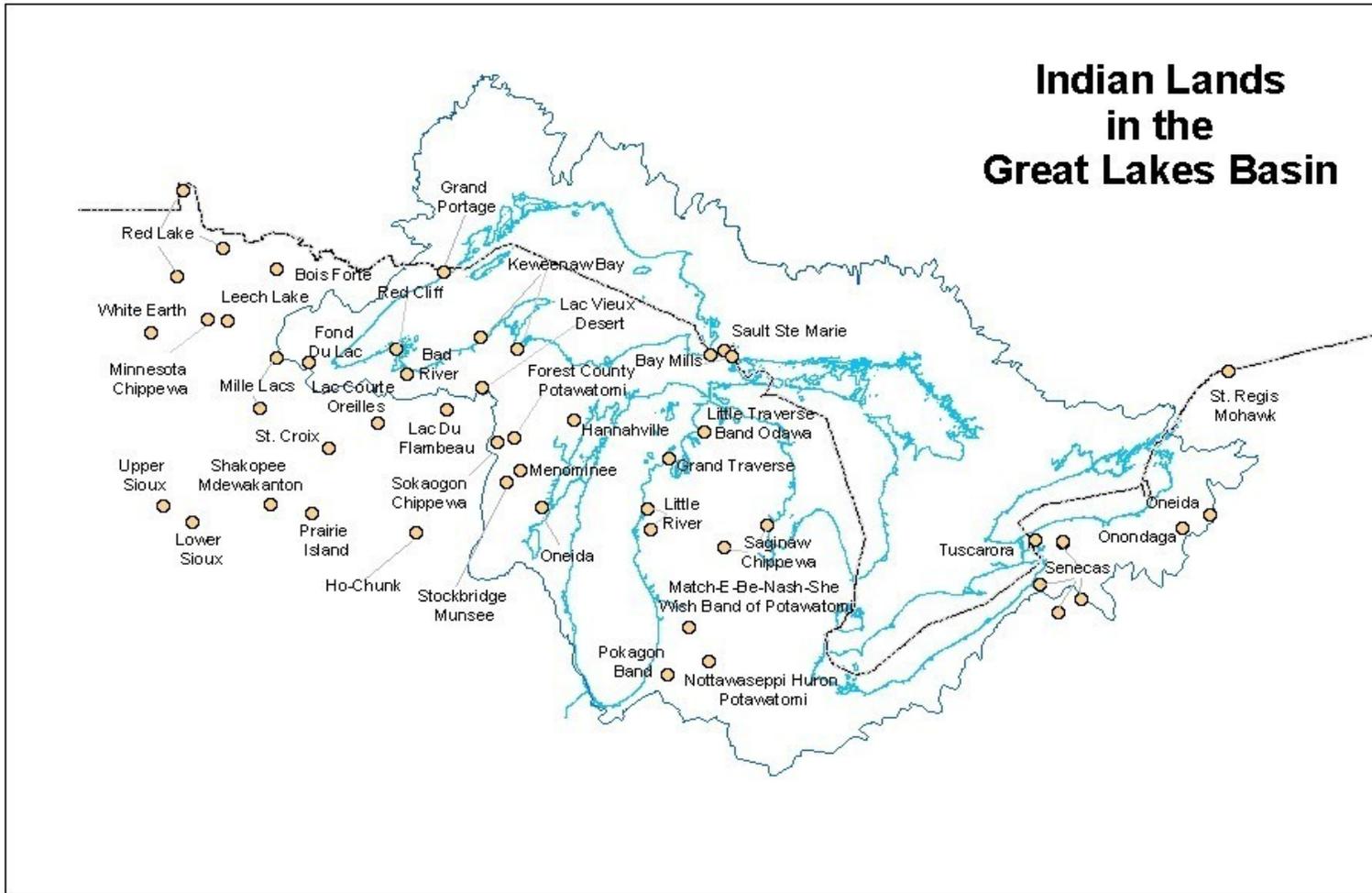
Wisconsin

Bad River Band of Lake Superior Tribe of Chippewa Indians
Forest County Potawatomi
Lac Courte Oreilles Band of Lake Superior Chippewa Indians
Lac du Flambeau Band of Lake Superior Chippewa Indians
Menominee Indian Tribe of Wisconsin
Oneida Nation of Wisconsin
Red Cliff Band of Lake Superior Chippewa Indians
Sokaogon Chippewa Community (Mole Lake Band)
St. Croix Chippewa Indians of Wisconsin
Stockbridge-Munsee Community of Wisconsin

New York

Oneida Indian Nation of New York
Onondaga Nation
Seneca Nation of Indians
St. Regis Mohawk Nation (Akwesasne Mohawk Nation)
Tuscarora Nation
Tonawanda Seneca Nation

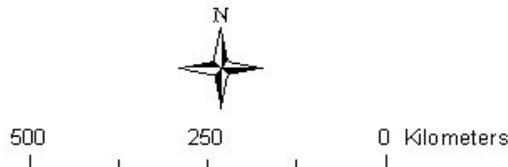
Indian Lands in the Great Lakes Basin



Great Lakes Basin Boundaries

International Border

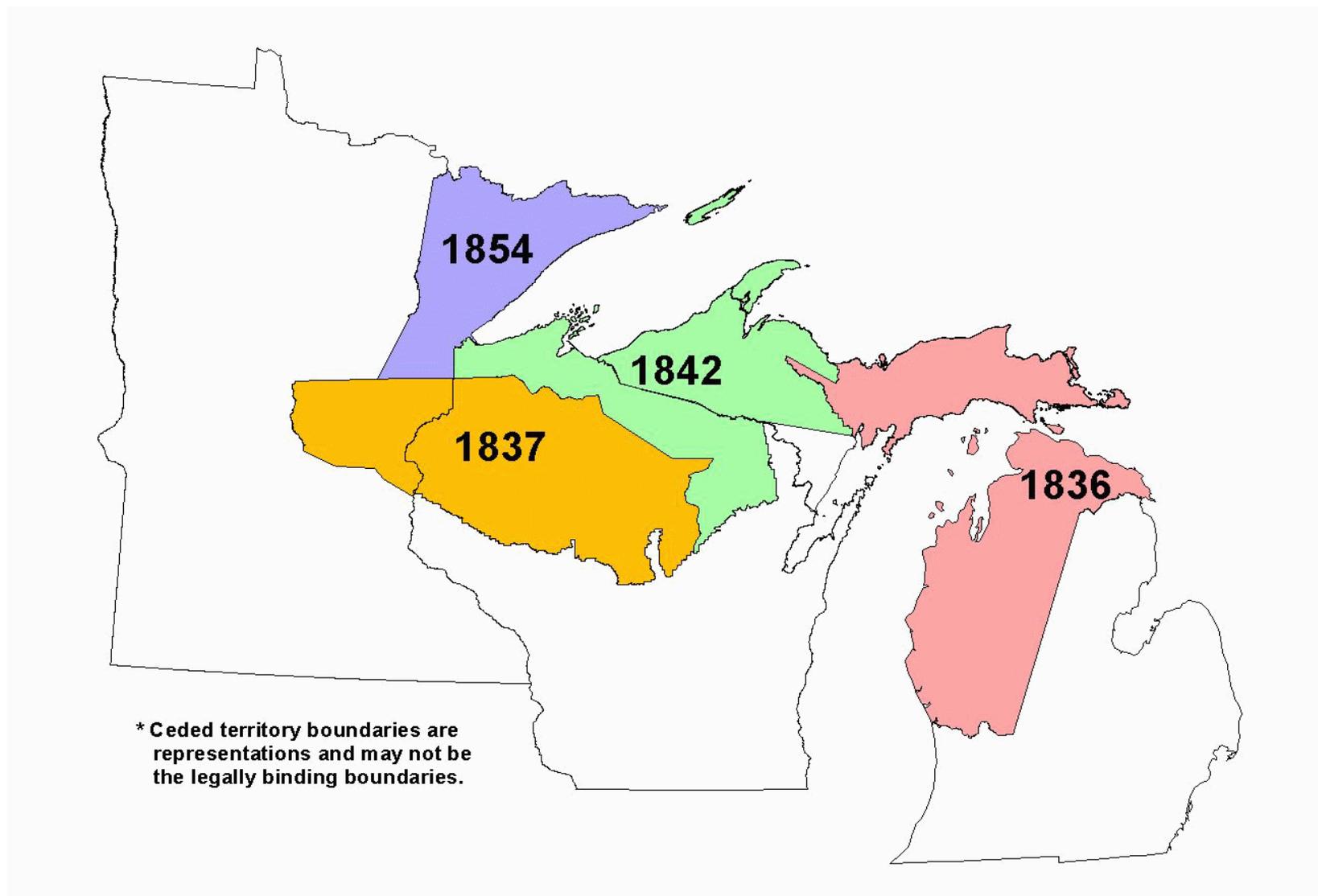
The reservation locations displayed on this map are to be used only as a guide, not a legal representation of actual reservation locations.



Sources:
US Bureau of Indian Affairs
US Bureau of Census

USEPA Region 5 OSEA CM August 2004

Examples of Treaty Ceded Territories in the Great Lakes Basin



ATTACHMENT B

Tribal Society and Culture – Ecological Sustainability/Cultural Sustainability

For the Tribal Nations of the Great Lakes Basin, ecological sustainability ensures tribal sustainability, and vice versa.

Although unique and distinct in their own right, the Tribal Nations share much in terms of the historic, cultural and social underpinnings of their respective communities, including:

- A continuing dependence on the complete inventory of species – The use of virtually all plants and animals for subsistence, ceremonial, medicinal, spiritual or economic purposes.
- Close ties to the natural environment through a system of beliefs and practices that organize everyday life – Great Lakes Tribal Nations continue to occupy and use their ancestral homelands with a notion of geographic place that embodies views of their origin, migrations and historical identity, the way tribal cultural reality is perceived in the modern world, and the social and political means to partitioning and distributing resources.
- Indigenous/Traditional ecological knowledge – A wealth of information passed between generations about plants and animals, about their habitats, habits, and natural processes, and about the impacts of human activities on them.
- The organization of families and communities around differing activities according to the changing seasons as resources become available for harvest – The “circle of the seasons” and the parallel harvest patterns that provide the fruits of the harvest as well as opportunities for cultural expression and transmission of cultural patterns from one generation to the next.
- Religious beliefs that guide the harvest and use of natural resources – A spiritual interdependence and connection between all living and non-living things regarding the origin and creation of the natural world as well as the relationships between all things found there.
- The relationship of humans to the rest of nature as one of reciprocity, and the proper attitude toward the natural world as one of humility and gratitude – The manner and rituals of harvest and use become key components to cultural preservation, as one must give thanks to the Creator both before and after harvest if the resources relied upon are to sustain themselves and make themselves continually available to meet human needs.

- The importance of language to transmit knowledge and teachings from one generation to the next – Native languages tend to wrap up many ideas into a word and involve a highly developed vocabulary for discussing particular activities, such as fishing methods, as well as more complex and abstract notions, such as the technology of maple sugar processing or the concepts of religion and other areas of cultural importance. Frequently, there are no English equivalents for native language words or expressions.
- The beneficial relationship between the use of traditional foods and the health and well-being community members – The holistic benefits of traditional food use include:
 - the improvement of diet and nutrient intake;
 - the prevention of chronic diseases (such as obesity, diabetes, cardiovascular diseases and hypertension, gall-bladder disease, and dental disease) associated with the consumption of non-traditional foods;
 - the opportunities for physical fitness and outdoor activities associated with harvesting traditional foods;
 - the opportunity to experience, learn, and promote cultural activities; and
 - the opportunity to develop personal qualities desired in tribal culture such as sharing, self-respect, pride, self-confidence, patience, humility and spirituality.

Against the background of these life ways, traditions and teachings, the Tribal Nations of the Great Lakes Basin view the exercise of their retained sovereign natural resources and environmental management responsibilities as a necessary element of their cultural preservation.

ATTACHMENT C

Tribal Nations within the United States Constitutional System – General Principles

1. United States Constitution’s Indian Commerce Clause

The United States Constitution vests the power to regulate commerce with Indian Tribal Nations in the federal government. Some courts have called this authority “plenary.” However, tribal powers persist unless Congress has otherwise provided or where a treaty otherwise provides.

The Constitution’s “Supremacy Clause” makes the treaties and laws of Congress controlling over state laws. Thus, as a general rule, courts have taken the view that tribal sovereignty is dependent upon and subordinate to only the federal government, not the states.

Congress often acts to affirm tribal authority, rather than to restrict it. For example, Congress has specifically provided for a tribal role in the implementation of a number of key laws relevant to the GLRC, including:

- Clean Water Act, 33 U.S.C. sec. 1377.
- Clean Air Act, 42 U.S.C. sec. 7474(c).
- Safe Drinking Water Act [Public Health Service Act], 42 U.S.C. sec. 300j-11.
- Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. sec. 9626.

2. Federal Treaty Obligations

For the most part, the relationship between the federal government and Tribal Nations has its roots in treaties. The United States signed over 300 treaties with Tribal Nations covering many subjects, including peace, land cession (hence the term “ceded territory”), removal of Tribal Nations from traditional homelands to new areas, and the establishment of reservations.

In 1871, Congress ended treaty making with Tribal Nations, but expressly validated and protected all rights under then-existing treaties. Under the Constitution’s Supremacy Clause, these treaties remain part of the “law of the land” unless rescinded, abrogated, or amended by Congress. The courts have uniformly held that the United States remains obligated to uphold specific treaty provisions and to honor the overriding treaty purposes.

Today, federal relations with Tribal Nations are conducted pursuant to the terms of these treaties, as well as in accordance with Executive Orders, legislative enactments, and judicial decisions. Not all Tribal Nations signed treaties with the United States, and treaties are not the sole source of the federal government’s responsibilities to Tribal Nations.

Treaties and treaty rights are particularly important to the Tribal Nations of the Great Lakes Basin. Specifically:

- Reservations secured through various treaties are intended to provide a “homeland,” albeit a small vestige of once vast traditional territories, where traditional life ways and cultures based upon an interdependent relationship with the natural world can be carried out and preserved.
- For off-reservation ceded territories, the rights to hunt, fish and gather were reserved specifically for the purpose of securing the opportunity to continue to meet subsistence, economic, cultural, spiritual and medicinal needs through traditional life ways and harvest pursuits.

3. Federal Trust Responsibility

As a consequence of United States Supreme Court rulings that refer to Tribal Nations as “domestic dependent sovereigns,” the United States, and all of its agencies, owe a special and unique duty to Tribal Nations – what the Supreme Court calls a “trust responsibility.”

The trust responsibility arises from treaties, statutes, executive orders, and historical relations between the U.S. government and Tribal Nations. It may be viewed in terms of both general and specific components, although the line between the two is not always clear.

The general trust responsibility informs federal policy and includes the protection of the Tribal Nations’ right to maintain themselves as distinct cultural and self-governing entities:

- It establishes a standard of good faith and fair dealings that applies to all federal agencies.
- It requires pre-decisional consultation with potentially affected Tribal Nations.
- Such consultation must be designed to facilitate an understanding of the nature of tribal rights/interests involved, the impacts of a proposed action on those rights/interests, and a Tribal Nation’s own view of what should be done.

The specific component of the trust responsibility usually results only from some action of the government, such as a statute, treaty, or executive order.

Federal courts often discuss the specific trust responsibility in terms of a common-law trust that is subject to the “strictest fiduciary standards,” and that generally has three elements: a trustee, which in this case is the U.S. government; a beneficiary, which may be a Tribal Nation or an individual Indian; and a corpus, for example tribal lands or funds from the sale of tribal timber assets.

Tribal Nations take a broad view of what is included in the “corpus” of the federal trust responsibility, particularly regarding both on- and off-reservation rights and the natural resources and ecosystems subject to those rights. In particular, they seek to hold the federal government responsible for fulfilling the purposes of treaties and ensuring that the Tribal Nations’ treaty rights are protected.

4. Government-to-Government Relationship

The government-to-government relationship implicit in treaty making and in the federal trust responsibility has been expanded over time to include the full gamut of federal policy implementation by all federal agencies.

This relationship requires federal agencies to interact directly with Tribal Nations on a governmental basis, not merely as a segment of the general public. Federal agencies are to consult with tribal governments and their designated governmental representatives, to the greatest extent practical and as not otherwise prohibited by law, before taking actions that affect tribal lands, resources, people, or treaty rights.

This obligation is separate and distinct from obligations to states and other governments as well as from requirements affording the opportunity for general public input on federal decisions.

The government-to-government policy is long-standing, and recently has been continually affirmed from the terms of President Nixon through current-President Bush. President Clinton's Executive Order 13175 reaffirmed several responsibilities of federal agencies in this regard, and, on September 23, 2004, President Bush reiterated his Administration's adherence to the principles stated in his predecessor's Order, specifically to a government-to-government relationship and support for tribal sovereignty and self-determination.

Many states, such as Michigan and Wisconsin, have adopted government-to-government consultation policies similar to that required of the federal government.