

WALLEYE OVERAGE PLAN FOR MILLE LACS LAKE 2003-2007

Part I: Introduction

- A. This Plan has been developed by the State of Minnesota ("State") and the eight Chippewa Bands with adjudicated treaty hunting, fishing and gathering rights in the Minnesota 1837 Ceded Territory ("Bands").
- B. In treaty rights litigation in Federal court, the State and the Bands entered into a series of protocols. Protocol No. 1 established the Minnesota 1837 Ceded Territory Fisheries Committee ("Fisheries Committee"), and Protocol No. 5 provided for the management of natural resources in the Minnesota portion of the 1837 Ceded Territory.
- C. Protocol No. 5 provides in part:
- The Bands and the State agree to manage their fisheries to remain within their respective shares of the harvestable surplus. During an initial three-year trial period, there will be no prescribed penalties for quota overruns. The parties will seek agreement through the Fisheries Committee on a mechanism to address quota overruns thereafter.
- D. In order to implement the provisions of Protocol No. 5, this Plan imposes annual limitations on overages in the State's walleye fishery in Mille Lacs Lake during the period 2003 - 2007, and contains a mechanism for addressing any overages that do occur (including the overage that occurred in 2002). Nothing in this Plan is intended to modify the State's and Band's commitment to manage their fisheries to remain within their respective shares of the harvestable surplus, as set forth in Protocol No. 5.
- E. The annual limitations on overages in the State's fishery are set forth in Part II below, and the mechanism for addressing any overages that do occur is set forth in Part III below. The annual limitations and the mechanism for addressing overages impose independent obligations on the State, and the State must comply with both

sets of obligations under this Plan.

- F. This Plan is predicated on the rights of the Bands to take their full walleye declaration in Mille Lacs Lake as identified in the Bands' five-year harvest management plan for the period 2003-2007. This Plan does not authorize any action or inaction by the State that interferes with such rights.
- G. As used in this Plan, the term "Harvestable Surplus" means the harvestable surplus as set forth in Protocol No. 5, as determined at the January meeting of the Fisheries Committee for the year in question.
1. The Fisheries Committee will use the best available data in making harvestable surplus determinations, including reliable data derived from the on-going walleye mark-recapture study on Mille Lacs Lake (the "Tagging Study").
  2. The Fisheries Committee, with the assistance of an independent fisheries consultant jointly selected by the Bands and the State, will: (a) investigate the issue of retrospective bias in the models utilized to evaluate the condition of the walleye population in Mille Lacs Lake; (b) investigate the effect of data derived from the Tagging Study as well as other available data on estimates of the walleye population in Mille Lacs Lake; and (c) adopt measures to minimize retrospective bias and incorporate reliable information from the Tagging Study in estimates of the walleye population in Mille Lacs Lake at or before the January 2004 Fisheries Committee meeting.
  3. If the State develops a proposal for the use of data derived subsequent to the determination of the Harvestable Surplus at the January Fisheries Committee meeting to determine the extent of any overages or underages for the previous fishing year, the Fisheries Committee, with the assistance of the consultant selected under paragraph I.G.2 above, will evaluate the need for and feasibility of the proposal, including its effects on the operations of the Fisheries Committee and any other pertinent considerations.
- H. Nothing in this Plan is intended to waive either the State's or the Bands' right to make use of the dispute resolution process set forth in the Protocols. This Plan may be modified by written agreement of the State and the Bands.

Part II: Annual Limitations

A. The State will ensure through pre-season and, if necessary, in-season management actions for its fishery, that total mortalities (including hooking mortalities) in its fishery in any year do not exceed the amounts specified below. The best available data regarding the status of the stock will be used to classify the population condition at the January Fisheries Committee meeting. However, unless the Fisheries Committee agrees otherwise, the following criteria derived from the State's annual experimental gill net survey will be used to classify the population condition:

1. **Condition 1:** When the index of spawning stock biomass (pounds of mature female walleye per experimental gill net) is at or above 7.9 pounds, **and** when the index of mature female walleye year-classes in the fishery is at or above 8, **and** when the index of walleye population size is at or above 20.8 pounds per experimental gill net, **then** total mortalities from the State's fishery shall not exceed the following percentages of the State's share of the Harvestable Surplus, as adjusted in accordance with Part III below:

2003-2005      130%

2006-2007      122%

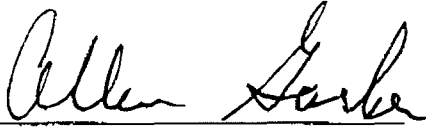
2. **Condition 2:** When the index of spawning stock biomass is between 7.2 pounds and 7.9 pounds of mature female walleye per experimental gill net, **or** when the index of mature female walleye year-classes in the fishery is 7, **or** when the index of walleye population size is between 18.9 and 20.8 pounds per experimental gill net, **and** Condition 3 does not exist, **then** total mortalities from the State's fishery in that year shall not exceed 110% of the State's share of the Harvestable Surplus, as adjusted in accordance with Part III below.
3. **Condition 3:** When the index of spawning stock biomass is less than 7.2 pounds of mature female walleye per experimental gill net, **or** when the index of mature female walleye year-classes in the fishery is less than 7, **or** when the index of walleye population size is less than 18.9 pounds per experimental gill net, **then** total mortalities from the State's fishery in that year shall not exceed the State's share of the Harvestable Surplus, as adjusted in accordance with Part III below.

- B. The gill net catch rates utilized in Part II.A above are derived from the State's original, standard 32 gill net sets during the period 1983 to 2001.
- C. If the Fisheries Committee agrees on an improved estimate of spawning stock biomass, it may substitute the improved estimate for the index of spawning stock biomass set forth in paragraphs II.A.1, 2 and 3 above.

Part III: Mechanism for Addressing Overages

- A. The State will ensure, through pre-season and, if necessary, in-season management actions for its fishery, that total mortalities (including hooking mortalities) in its fishery and total mortalities in the Bands' fishery (not counting any net overage in the Band's fishery) over the period 2003 through 2007, together with amount by which total mortalities in State and Band fisheries in fishing year 2002 exceeded the total Harvestable Surplus as determined in January 2002, do not exceed the sum of: (i) the total Harvestable Surplus for the period 2003 through 2007 and (ii) the allowable overage (if any) in State mortalities in 2007 as determined under Part II above.
- B. In order to help achieve the result required in Part III.A, the State's share of the Harvestable Surplus will be adjusted as follows:
  - 1. The State's share of the Harvestable Surplus in each of the fishing years 2003 through 2007 shall be reduced by 20% of the difference between total mortalities in State and Band fisheries in fishing year 2002 and the total Harvestable Surplus for 2002.
  - 2. If total mortalities in State and Band fisheries in any fishing year during the period 2003 through 2006 exceed the total Harvestable Surplus for that year (less any adjustments in the State's share under Part III of this Plan), the excess will be divided by the number of fishing years remaining through 2007 and the State's share of the Harvestable Surplus in each of the remaining fishing years will be reduced by that amount.
  - 3. If total mortalities in State and Band fisheries in any fishing year during the period 2003 through 2006 are less than the total Harvestable Surplus for that year (less any adjustments in the State's share under Part III of this Plan), the underage will be divided by the number of fishing years

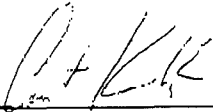
remaining through 2007 and any reductions calculated under paragraphs III.B.1 and 2 above will be offset by that amount.



Allen Garber  
Commissioner  
MN Department of Natural Resources

11/22/02

Date



Curt Kalk  
Commissioner of Natural Resources  
Mille Lacs Band of Ojibwe

11-22-02

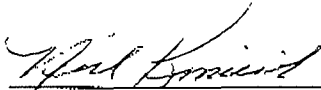
Date



Ferdinand Martineau  
Director of Resource Management  
Fond du Lac Band of Lake Superior Chippewa

11-26-02

Date



Neil E. Kmiecik  
Biological Services Director  
Great Lakes Indian Fish & Wildlife Commission

12-18-02

Date

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

Mille Lacs Band of Chippewa Indians, et al.,

Court File No. 3-94-1226

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

St. Croix Chippewa Indians, et al., Lac Du  
Flambeau Band, et al., Bad River Band of Lake  
Superior, et al., Lac Courte Oreilles Indians, et  
al., Sokaogon Chippewa Community, et al., Red  
Cliff Band of Lake Superior, et al.,

**STIPULATION**

Plaintiff-Intervenors,

vs.

State of Minnesota, Minnesota Department of  
Natural Resources, et al.,

Defendants,

County of Aitkin, Benton, et al.,  
John W. Thompson, et al.,

Defendant-Intervenors,

Save Lake Mille Lacs Association,

Amicus Curiae.

Fond du Lac Band of Chippewa Indians, et al.

Court File No. 5-92-159

Plaintiffs,

vs.

Arne Carlson, et al.,

Defendants.

WHEREAS, in June and July 1996, in the course of litigation in *Mille Lacs Band of Chippewa Indians, et al. v. State of Minnesota, et al.*, No. 3-94-1226, Plaintiffs Mille Lacs Band of Chippewa Indians, et al. and Plaintiff-Intervenors the United States, the St. Croix Chippewa Indians of Wisconsin, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Sokaogon Chippewa Community, and the Red Cliff Band of Lake Superior Chippewa Indians entered into a stipulation with Defendants State of Minnesota, et al. ("*Mille Lacs Stipulation*"), attaching a Band Conservation Code, Band Commissioner's Orders, Band Management Plans, and five Band-State Protocols; and

WHEREAS, in August 1996, in the course of litigation in *Fond du Lac Band of Chippewa Indians, et al. v. Carlson, et al.*, No. 5-92-159, Plaintiffs Fond du Lac Band of Chippewa Indians, et al. and Defendants Arne Carlson, et al. entered into a similar stipulation ("*Fond du Lac Stipulation*") attaching the same set of documents, including the Band-State Protocols, that had been attached to the *Mille Lacs Stipulation*, except that the documents attached to the *Fond du Lac Stipulation*: (1) referred to the Fond du Lac Band instead of the Plaintiff and Plaintiff-Intervenor Bands in the *Mille Lacs* case; and (2) stated they would be implemented in coordination with the documents attached to the *Mille Lacs Stipulation*; and

WHEREAS, in the *Mille Lacs* and *Fond du Lac Stipulations*, the stipulating parties agreed that they "shall comply with the terms and provisions of the Protocols;" and

WHEREAS, the *Mille Lacs* and *Fond du Lac Stipulations* were incorporated within this Court's Order of January 29, 1997 (*Mille Lacs Band of Chippewa Indians v. State of Minnesota*, 952 F. Supp. 1362, 1397 (D. Minn. 1997)); and

WHEREAS, consistent with the agreement of the stipulating parties, this Court's Order directed that "[t]he stipulating parties shall comply with the terms and provisions of the Protocols;" and

WHEREAS, the Order provided that "[t]he Court will retain continuing jurisdiction over the cases to facilitate the implementation of the Court's orders and decrees herein, to resolve any disputes among the parties with respect thereto, or to address other matters as the Court may deem appropriate;" and

WHEREAS, Protocol #5 provides in part that "[t]he Bands and the State agree to manage their fisheries to remain within their respective shares of the harvestable surplus. During an initial three-year trial period, there will be no prescribed penalties for quota overruns. The parties will seek agreement through the Fisheries Committee on a mechanism to address quota overruns thereafter;" and

WHEREAS, the Plaintiff and Plaintiff-Intervenor Bands and the State Defendants in the *Mille Lacs* and *Fond du Lac* cases have agreed to a mechanism to address quota overruns and have memorialized the mechanism in the document titled, *Walleye Overage Plan for Mille Lacs Lake 2003-2007* ("Overage Plan"); and

WHEREAS, an original copy of the Overage Plan executed by the parties' representatives to the aforementioned Fisheries Committee is attached to this Stipulation as Attachment A; and

WHEREAS, by Order dated May 28, 2002 in response to a stipulation filed by the Plaintiff and Plaintiff-Intervenor Bands and the State Defendants to amend the Protocols, this Court directed that "[a]ll future amendments to the Protocols agreed to by all of the plaintiff and plaintiff-intervenor Bands and State defendants in the *Mille Lacs* and *Fond du Lac* cases shall become effective and be subject to the jurisdiction of this Court upon filing with this Court a written stipulation reflecting the agreement of all the parties to such amendments;" and



WHEREAS, this Stipulation is entered into by the Plaintiff and Plaintiff-Intervenor Bands and the State Defendants in the *Mille Lacs* case, and the Plaintiff Band and State Defendants in the *Fond du Lac* case are entering into an identical stipulation.

THEREFORE, the Plaintiff and Plaintiff-Intervenor Bands and the State Defendants in the *Mille Lacs* case hereby stipulate and agree as follows:

1. That the attached Overage Plan amends and shall become part of the Protocols as amended by this Court's Order of May 28, 2002.
2. That pursuant to this Court's Order of May 28, 2002, the attached Overage Plan shall become effective and be subject to the jurisdiction of this Court upon filing of this written Stipulation.
3. That the Plaintiff and Plaintiff-Intervenor Bands and the State Defendants in the *Mille Lacs* case will comply with the terms and provisions of the attached Overage Plan.

MILLE LACS BAND OF CHIPPEWA

Dated: December 6, 2002

Dated: December 6, 2002

ZIONTZ, CHESTNUT, VARNELL,  
BERLEY & SLONIM

Marc Slonim

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OFFICE OF THE SOLICITOR GENERAL  
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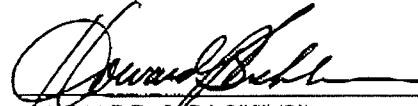
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**ST. CROIX CHIPPEWA INDIANS OF WISCONSIN**

Dated: 12-17-02

**OFFICE OF TRIBAL ATTORNEY**

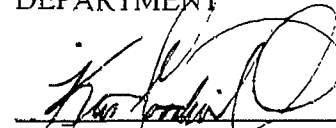


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**LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**

Dated: 12/23/02

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**RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**

Dated: 12-12-02

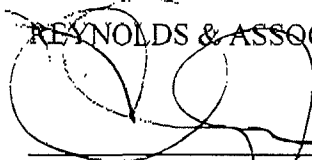


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**SOKAOGON CHIPPEWA COMMUNITY**

Dated: 12-12-02

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**BAD RIVER BAND OF THE LAKE  
SUPERIOR TRIBE OF CHIPPEWA INDIANS**

Dated: 12-23-02

**BAD RIVER BAND OF THE LAKE  
SUPERIOR TRIBE OF CHIPPEWA INDIANS**



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**LAC DU FLAMBEAU BAND OF LAKE  
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Dated: 12-12-02

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**STATE OF MINNESOTA, DEPARTMENT  
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Dated: 12-30-02

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