

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

P. O. Box 9 • Odanah, WI 54861 • 715/682-6619 • FAX 715/682-9294



• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
Lac Vieux Desert Band

WISCONSIN

Bad River Band
Lac Courte Oreilles Band
Lac du Flambeau Band

MINNESOTA

Fond du Lac Band
Mille Lacs Band

Mr. Chairman and Members of the Committee, my name is James E. Zorn and I am the Executive Administrator for the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). On behalf of GLIFWC's eleven member tribes, thank you for the opportunity to appear before you today, September 17, 2009, to testify on H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2009.

I. GLIFWC'S MEMBERSHIP AND PURPOSE

GLIFWC is a natural resources management agency exercising delegated authority from its 11 member federally-recognized Ojibwe¹ tribes in Wisconsin, Michigan and Minnesota regarding their ceded territory (off-reservation) treaty rights.²

Each of its member tribes has entered into one or more treaties with the United States, under which the tribes reserved off-reservation hunting, fishing and gathering rights in the lands ceded to the United States.³ These treaties represent a reservation of rights by each signatory Tribe individually and by all signatory Tribes collectively, as well as a guarantee of those rights by the United States.

Courts, including the United States Supreme Court in its 1999 *Minnesota v. Mille Lacs* ruling, consistently have recognized and upheld the treaty rights of GLIFWC's member tribes.⁴

¹The tribes also are referred to as Chippewa, or, in their own language, *Anishinaabe*.

²GLIFWC member tribes are: in Wisconsin – the Bad River Band of the Lake Superior Tribe of Chippewa Indians, Lac du Flambeau Band of Lake Superior Chippewa Indians, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, St. Croix Chippewa Indians of Wisconsin, Sokaogon Chippewa Community of the Mole Lake Band, and Red Cliff Band of Lake Superior Chippewa Indians; in Minnesota – Fond du Lac Chippewa Tribe, and Mille Lacs Band of Chippewa Indians; and in Michigan – Bay Mills Indian Community, Keweenaw Bay Indian Community, and Lac Vieux Desert Band of Lake Superior Chippewa Indians. See Attachment 1 for a map showing where these tribes and the treaty cession areas are located.

³ See Treaty of 1836, 7 Stat. 491; Treaty of 1837, 7 Stat. 536; Treaty of 1842, 7 Stat. 591; and Treaty of 1854, 10 Stat. 1109.

⁴See *People v. Jondreau*, 384 Mich 539, 185 N.W. 2d 375 (1971); *State of Wisconsin v. Gurnoe*, 53 Wis. 2d 390 (1972); *Lac Courte Oreilles v. Voigt* (LCO I), 700 F. 2d 341 (7th Cir. 1983), cert. denied 464 U.S. 805 (1983); *U.S. v. Bresette*, 761 F.Supp. 658 (D. Minn. 1991); *Minnesota v. Mille Lacs Band*, 199 S.Ct. 1187 (1999).

The rights apply to public lands and waters located within the ceded territories, and include the right to harvest virtually all natural resources found there. The ceded territories include portions of Lake Superior, as well as parts of the Lake Superior and Michigan watersheds. With these treaties and treaty rights in mind, GLIFWC was established in 1984 pursuant to a Constitution developed and ratified by its member tribes. It is an intertribal organization within the meaning of the Indian Self-Determination and Educational Assistance Act (PL 93-638). Since its inception, GLIFWC has entered into a contract with the Bureau of Indian Affairs pursuant to the Act, with funding provided on a regular basis by Congress.

GLIFWC's ultimate responsibility is twofold: 1) to ensure that its tribes and their tribal members are able to meet their subsistence, economic, cultural, medicinal and religious needs through the exercise of their ceded territory natural resource harvest and management treaty rights; and 2) to ensure a healthy, sustainable natural resource base in the ceded territories through cooperative management partnerships with other governments and agencies.

II. THE CIRCLE OF THE SEASONS – OJIBWE CULTURE AND LIFEWAYS

GLIFWC's member tribes share a common origin, history, language, culture and treaties. They share a traditional and continuing reliance upon fish, wildlife and plants to meet religious, ceremonial, medicinal, subsistence and economic needs.

It is precisely to maintain this lifeway that the tribes reserved the rights to hunt, fish and gather in the ceded territories. In proper perspective, this reservation of sovereign rights is part of the Ojibwe's on-going struggle to preserve a culture – a way of life and a set of deeply held values – that is best understood in terms of the tribes' relationship to *Aki* (earth) and the circle of the seasons.

For the Ojibwe,

Culture is not merely a way of doing things that all human beings living in a society do to survive, such as eat, build homes, and arrange their relationships with each other. Culture also must be understood as a system of beliefs and practices that organize these activities. For example the collection of wild rice, the spearing of sturgeon, and the hunting of deer are fundamentally different activities for these Indian people in contrast to non-Indians. When Indians undertake these activities, the harvesting, processing, distribution, and consumption of natural foods, they are not only perpetuating their ancient cultures but the resources themselves. As Algonquian people take from the environment for their own use, they conceptualize their role as hunters, gatherers, and fishermen as part of the supernatural as well as the natural world. The manner of

hunting, the ritual offering left to assuage the souls of collected plants, and the use of [wild] rice, venison, and sturgeon as integral components of ceremonial feasts are activities which themselves assure the perpetuation of these creatures as well as themselves.⁵

Thus, the Ojibwe are closely tied to the natural environment by a system of beliefs and practices that organize everyday life. This environmental human relationship involves a notion of geographic place that embodies the Ojibwe's human origin and historical identity, as well as the way the Ojibwe conceive their cultural reality in the modern world.⁶

III. EXERCISING TRIBAL SOVEREIGNTY TO PRESERVE THE CIRCLE OF THE SEASONS

In accordance with these types of traditions and teachings, the Ojibwe seek to preserve a balance between the human being and the natural resources that humans rely upon, as well as between the natural world order and the supernatural world order. They understand the need to match human needs with *Aki's* capability to produce and sustain, and the need to nourish the body as well as the spirit.

Thus, for the tribal governments involved, the exercise of retained sovereign authority to manage natural resources and to regulate tribal members in the exercise of treaty rights is a necessary element of Ojibwe cultural preservation. Simply stated, ecological sustainability equates to Ojibwe sustainability.

GLIFWC and its member tribes are committed to natural resource management programs that sustain *Aki's* bounty for present and future generations. They recognize that perpetuation, enhancement and restoration of the natural resources upon which they rely are essential to sustaining tribal sovereignty, culture and society.

The court decisions affirming the Ojibwe's treaty rights serve as a reminder that tribes and tribal governments have a legal status not only in their own right but also under the United States Constitution. In exercising their treaty rights to harvest and manage natural resources, the tribes carry out sovereign powers of self-government and undertake a wide array of activities that perpetuate their culture. This means that other governments, particularly states, cannot maintain

⁵CHARLES CLELAND, ET AL., THE POTENTIAL CULTURAL IMPACT OF THE DEVELOPMENT OF THE CRANDON MINE ON THE INDIAN COMMUNITIES OF NORTHEASTERN WISCONSIN 110 (1995).

⁶In addition to the court decisions themselves, other sources documenting the essential role that natural resources play in Ojibwe culture include: FISH IN THE LAKES, WILD RICE, AND GAME IN ABUNDANCE (James M. McClurken et al. eds., (2000); and RONALD N. SATZ, WISCONSIN ACADEMY OF SCIENCES, ARTS, AND LETTERS, CHIPPEWA TREATY RIGHTS: THE RESERVED RIGHTS OF WISCONSIN'S CHIPPEWA INDIANS IN HISTORICAL PERSPECTIVE (1991).

exclusive control of natural resource use and management in the ceded territories.

IV. GLIFWC'S OFF-RESERVATION NATURAL RESOURCE MANAGEMENT PROGRAM

Just as the tribes' relationship to *Aki* is all encompassing during the course of the seasons' circle, with the harvest of each resource at its proper time (e.g. maple sap and fish in spring, plants in summer, wild rice in fall) so too is GLIFWC's natural resource management program. It is part of its member tribes' comprehensive intertribal self-regulatory system of management plans and conservation codes that govern a broad range of treaty rights activities, including fishing, deer hunting, bear hunting, small game and furbearer hunting/trapping, wild rice gathering, and wild plant and forest products gathering.

GLIFWC's program is designed to secure the exercise of treaty rights to meet subsistence, economic, ceremonial, medicinal, and religious needs, as well as to protect and enhance the natural resources and habitats involved. The information, data and analysis resulting from GLIFWC's management and research activities can be used in adaptive management, and are available to and used by conservation agencies of other jurisdictions as they carry out their own natural resource management programs.

We do this work through our Biological Services Division, which conducts a variety of fish, wildlife and plant assessments, monitors tribal harvests, assists in tribal permit issuance and animal registration, and provides other management assistance. Particular areas of work include:

1. Harvest Management – Determine available harvestable surpluses and then monitor and prepare regular reports on tribal ceded territory harvest levels for a wide range of species, including fish (such as walleyes, muskellunge, lake trout, and whitefish), wildlife (such as white-tailed deer, black bear, and furbearers), and plants (such as wild rice and other wild plants).
2. Population Studies, Assessments, and Research – Conduct a variety of population studies, assessments, and related research.
3. Habitat Enhancement and Exotic Species Control – With the goal of providing healthy, fully-functioning ecosystems that will provide for the sustainability of the natural resources they support.
4. Contaminant Studies/Human Health Research – Research projects and fish consumption advisories to help prevent contamination of natural resources and to help tribal members maximize the health benefits from a traditional diet.

GLIFWC recognizes that its responsibility for regulating and managing Great Lakes resources is one that it shares with local, state, federal and foreign governments. Because treaty

rights extend to areas of shared jurisdiction and use, we along with these other governments are compelled, whether legally or practically, to acknowledge the rights and responsibilities that we each share. Thus, we undertake many cooperative research and management projects including:

1. Fish Population Assessment Activities – GLIFWC works with the Michigan, Minnesota and Wisconsin departments of natural resources to coordinate an agreed-upon assessment program for ceded territory waters, both for Lake Superior and inland. For Wisconsin, much of this work stems from the joint fishery assessment, begun in 1991, and undertaken by the USFWS, BIA, WDNR, tribes, and GLIFWC.⁷ In May 2009, this joint effort received a Department of Interior “Partners in Conservation” award, recognizing those who make exceptional contributions in achieving conservation goals through collaboration and partnering. For Minnesota, the state and the tribes are undertaking a joint walleye population study on Mille Lacs Lake as part of the co-management responsibilities set forth in the *Mille Lacs Band v. State of Minnesota* case.

2. Upper Peninsula Coastal Wetland Project – This project is designed to protect and enhance nearly 3,000 acres of wetlands and associated uplands in the Lake Superior and St. Mary’s River watersheds. Funds were provided to GLIFWC and its member tribes by the BIA through the tribal Circle of Flight initiative and to Ducks Unlimited by the North American Wetlands Conservation Fund grant. Partners include the tribes and GLIFWC, and the State of Michigan, USDA-Forest Service, Gogebic County (Michigan), Ducks Unlimited, and a number of other non-governmental conservation organizations.

3. Furbearer Research – GLIFWC’s biologists have undertaken a multi-year study of fishers, pine martens, and bobcats in the Chequamegon-Nicolet National Forest. Aspects of this study include home range and habitat usage, species interaction, and developing a habitat suitability index model. The USDA-Forest and WDNR are cooperators and financial contributors to this research.

4. Lake Sturgeon Project – GLIFWC, the Bad River Tribe, and the USFWS have joined to gather data on the distribution and movement of juvenile sturgeon in and around the Bad River and its tributaries. This river has one of only four known sturgeon populations that spawn in Lake Superior tributaries.

5. Lake Superior Research Institute, UW-Superior – GLIFWC and the University of Wisconsin-Superior have entered into an agreement establishing the Environmental Health Laboratory within the University’s Lake Superior Research Institute. This laboratory has undertaken a number of studies regarding the health effects for Indian people associated with consuming fish contaminated with toxics. It is a major partner in

⁷See BUREAU OF INDIAN AFFAIRS, U.S. DEP’T OF THE INTERIOR, CASTING LIGHT UPON THE WATERS: A JOINT FISHERY ASSESSMENT OF THE WISCONSIN CEDED TERRITORIES (1991).

GLIFWC's mercury-in-fish project and tests most of the fish samples as part of that study.

6. Purple Loosestrife Invasive Species Project – GLIFWC has undertaken a long-term project to control and reduce purple loosestrife (an invasive non-native plant that supplants native species including wild rice) in the Bad River watershed. Among its cooperators on this project are the USDA-Natural Resource Conservation Service, local county highway departments, local town and municipal governments, the Nature Conservancy, local 4-H Clubs, and private landowners. One part of the project is to educate private landowners about loosestrife control and to provide eradication services at a landowner's request.

Achieving the goals of these projects benefits not only the eleven tribal communities that GLIFWC serves, but also the broader communities of northern Wisconsin, east central Minnesota and Michigan's Upper Peninsula. These partnerships: i) provide accurate information and data to counter social misconceptions about tribal treaty harvests and the status of ceded territory natural resources; ii) maximize each partner's financial resources; iii) avoid duplication of effort and costs; iv) engender cooperation rather than competition; and v) undertake projects and achieve public benefits that no one partner could accomplish alone.

V. CONSOLIDATED LAND, ENERGY, AND AQUATIC RESOURCES ACT, H.R. 3534

It is with this twenty-five years of history and experience in protecting and enhancing ceded territory resources, including portions of the Great Lakes and its watershed, that the Great Lakes Indian Fish and Wildlife Commission is before you today. As an initial matter, GLIFWC greatly appreciates the Committee's and Chairman Rahall's efforts to ensure that tribal governments and tribal treaty rights are acknowledged and protected as you consider the Consolidated Land, Energy, and Aquatic Resources Act, H.R. 3534 (CLEAR Act). GLIFWC was given an opportunity to comment on the draft legislation earlier in the spring. We are pleased that the CLEAR Act as introduced reflects some our comments. This is an important component of effective consultation and is an example of how tribes and the Federal Government can interact positively to achieve shared goals.

These comments are purely from the perspective of our member tribes' off reservation rights in the western Great Lakes region and, as such, GLIFWC would not purport to pass judgment on H.R. 3534's provisions with regard to the Outer Continental Shelf leasing process or the bill's proposed federal leasing or royalty reforms. Nevertheless, GLIFWC does support the inclusion of "affected Indian tribes" as defined in the bill, in any planning process that has the potential to lead to impacts on treaty and trust resources.

We are most heartened by the Act's specific inclusion of affected Indian tribes in Section 605—the Ocean Resources Conservation and Assistance Fund. We would ask that this language be amended to create a set-aside, perhaps of 5%, for affected Indian tribes. In our experience where there is no tribal set-aside for programs such as this, tribal natural resource programs are vulnerable to politics and the vagaries of the appropriations process. With a set-aside, tribes would be able to plan and execute in a way that complies with the bill's mandate for a five year plan.

We appreciate the Indian savings provision in Subtitle A of Title V. However, consultation with affected Indian tribes is still necessary and should be explicitly required under section 501(e) before the Secretary approves or issues leases for commercial solar or wind energy development on federal lands. Just as consultation with affected governors and other stakeholders is required, so too should tribal consultation be explicitly mandated. The western Great Lakes region is home to a number of national forests and parks—public lands that tribes rely on to provide the natural resources that maintain their lifeways. This region is also witnessing a significant interest in exploring the potential of wind in particular as a power source, and consultation with tribes will be vital in planning for any eventual development. We note that the state of Wisconsin has already committed to such consultation in its “Wind on the Water” analysis of potential wind development in Lakes Superior and Michigan.

While we appreciate the CLEAR Act's inclusion of tribes as eligible members of the Ocean, Coastal, and Great Lakes Council, we ask that a tribal representative on the Council be mandatory. Tribes rely on coastal resources not just for economic livelihood or recreational activities, but because they serve as the very essence and life blood of their communities and cultures. Thus, the interests and concerns of tribal governments with regard to how to use, protect, and preserve these resources is often complicated and not always consistent with that of States, the federal government, or other agencies and interests. Consequently, we cannot depend on these other agencies to adequately represent tribes in these forums and have found that the most effective way to ensure that tribal concerns are addressed is to ensure that tribes have a place at the table. Making a tribal representative mandatory would achieve this.

Finally, with regard Title IV and the Reauthorization of the Land and Water Conservation Fund, tribal governments have long advocated that Congress include a Tribal set-aside in this Program. In the past Tribes have advocated for a 2-5 percent set-aside for this program. We support these efforts to ensure that there is parity between tribal natural resource agencies and their State cohorts.

VI. CONCLUSION

Tribal natural resource management programs touch the very core of federal Indian law and policy – the preservation of historically and culturally significant activities of Indian people, the fulfillment of federal promises made to the tribes by treaty, the protection of significant

Indian subsistence and economic activity, the enhancement of self-government by the tribes, and the encouragement of government-to-government dealings between tribes, the federal government, and other governments. Congress carries an important obligation to promote and support these programs upon which tribes rely to maintain their sovereignty, culture and society.

Thank you for the opportunity to testify.

ATTACHMENT 1

GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

MEMBER TRIBES AND CEDED TERRITORIES

