



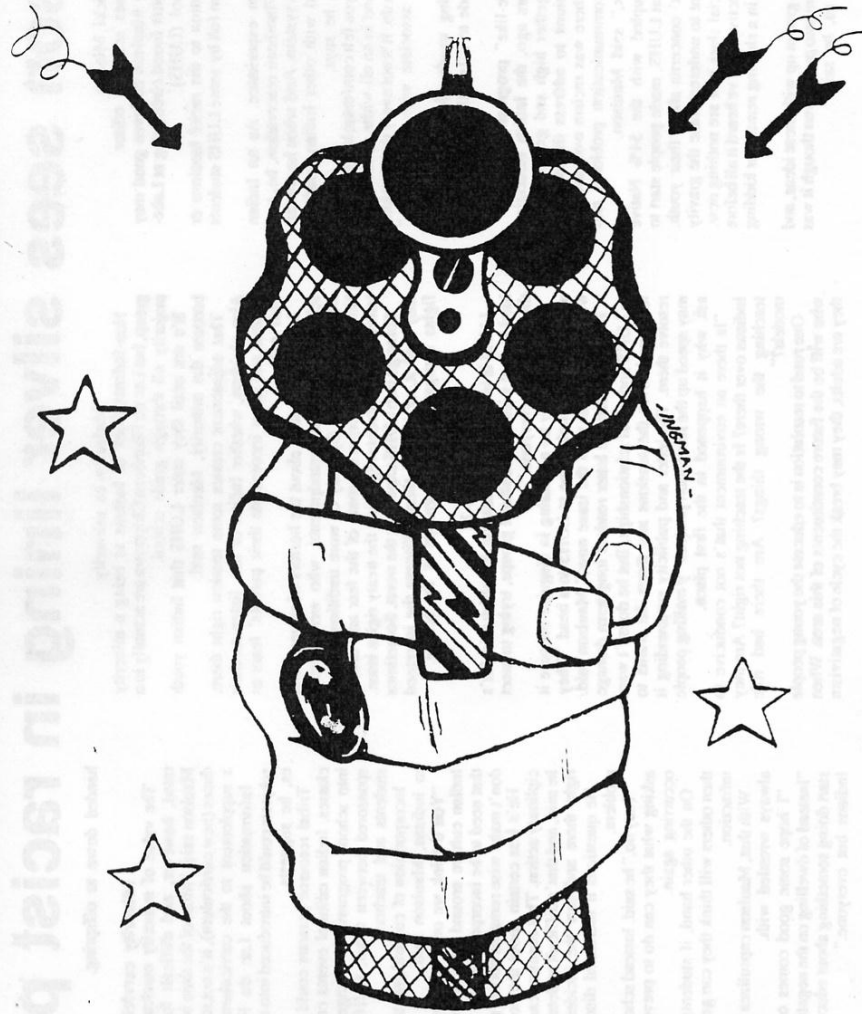
Tribal Gathering Across Jurisdictions in the Great Lakes Region

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Tulalip Nations
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SPEAR...

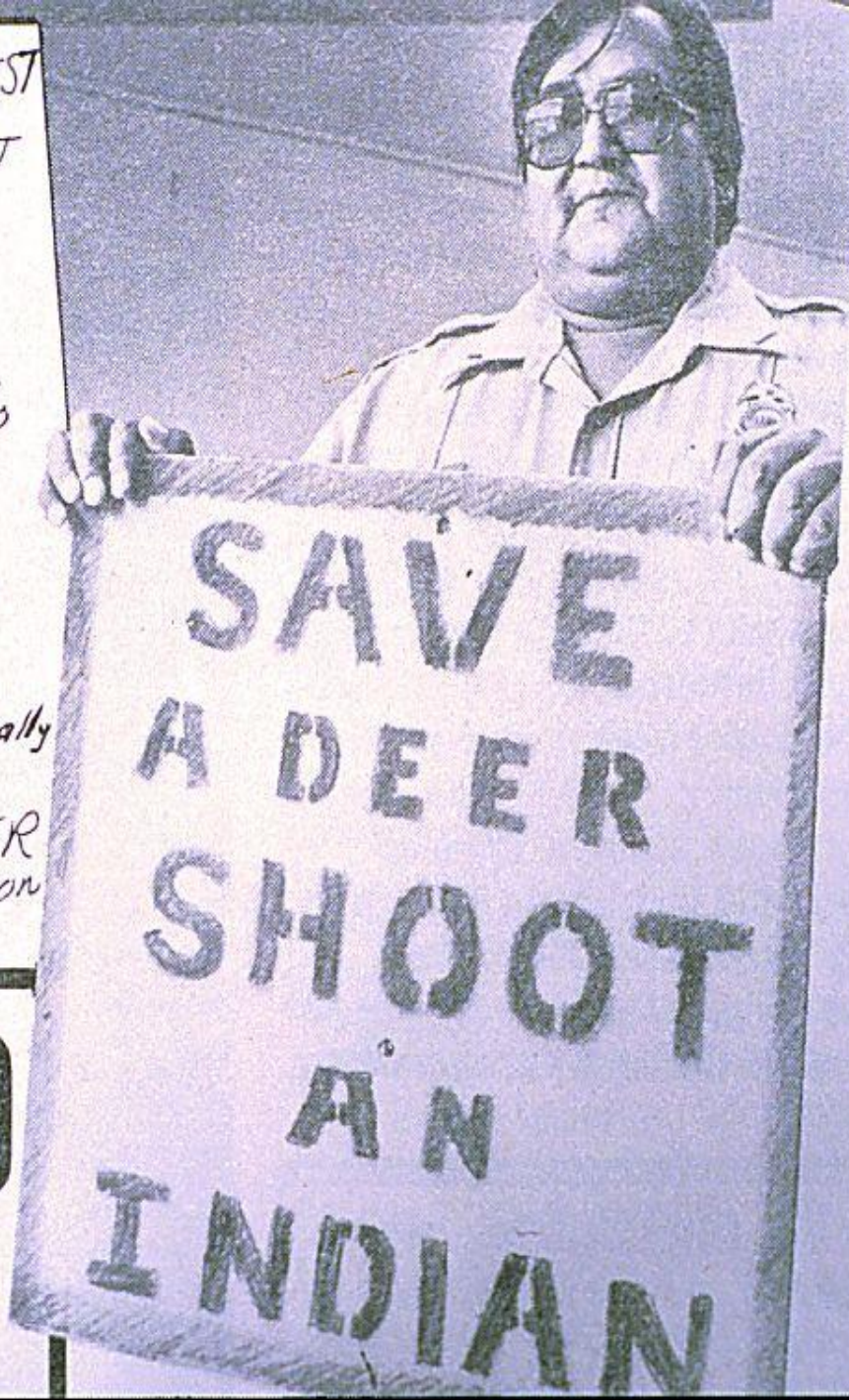


...THIS !!!

ARTICLE
THIS RALLY IS TO PROTEST
AGAINST THE TREATY THAT
GIVES LOADED GUNS IN
EARLY OPENING, AND
SHOOTING OUT OF CARS,
MUCH MORE.

There are many bear hunters and bird
hunters out in the woods dressed in
camouflage. With this ~~new~~ treaty, it is
likely that they could be accidentally
killed by being mistaken for a deer.
DON'T HAVE TO BE A HUNTER
TO BE THERE. WE NEED EVERYONE

WE CAN DO IT.
WE CAN DO IT.
WE CAN DO IT.

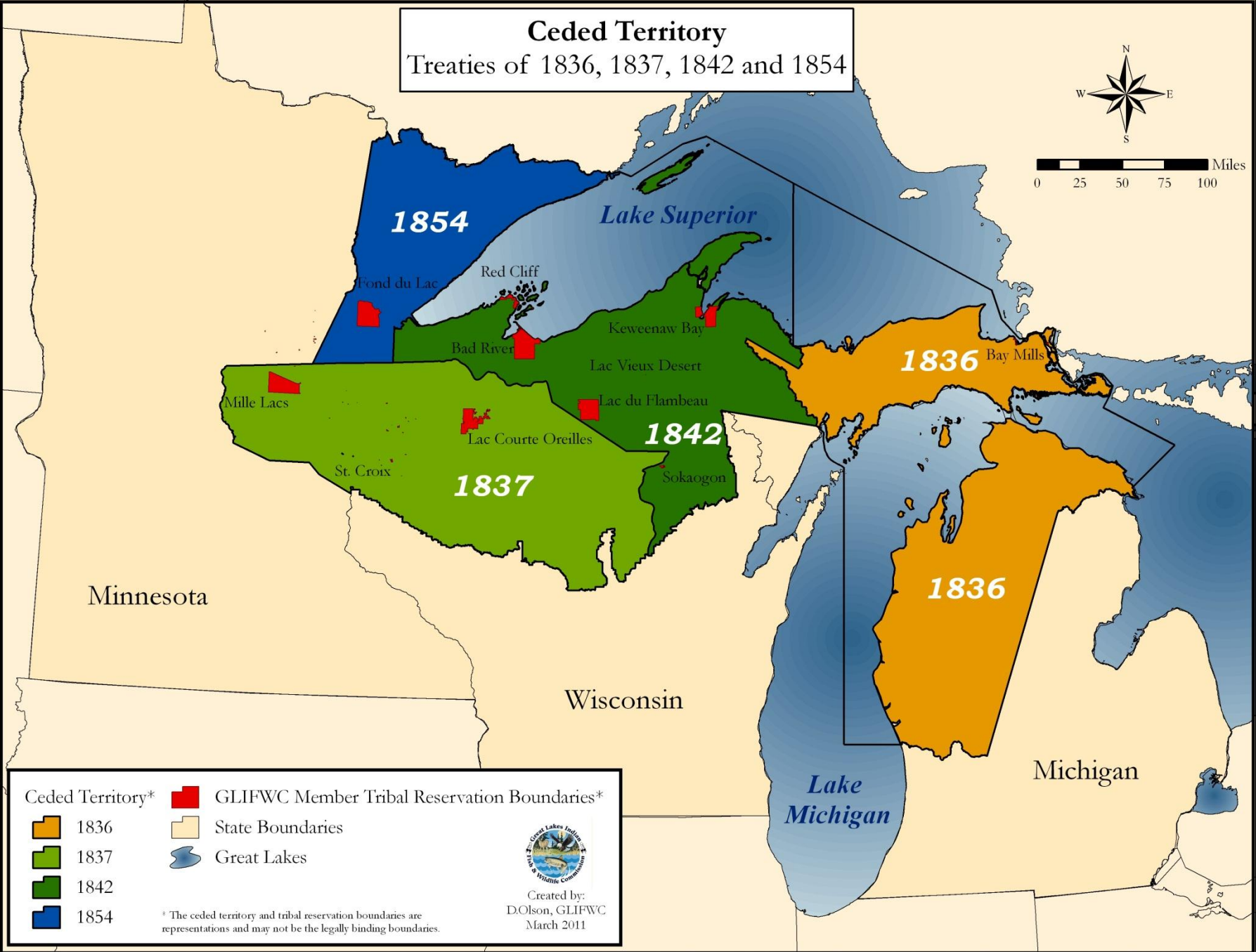


Fulfilling Treaty Promises

- Land Cession Treaties – 1836, 1837, 1842 and 1854.
- Primary Purpose – Permanent right for signatory Tribes to continue to make a moderate living from the ceded territory lands and waters by engaging in hunting, fishing, and gathering.
- Supreme Law of the Land

Ceded Territory

Treaties of 1836, 1837, 1842 and 1854



| | |
|-------------------------|--|
| Ceded Territory* | GLIFWC Member Tribal Reservation Boundaries* |
| 1836 | State Boundaries |
| 1837 | Great Lakes |
| 1842 | |
| 1854 | |

Created by:
D. Olson, GLIFWC
March 2011

* The ceded territory and tribal reservation boundaries are representations and may not be the legally binding boundaries.

Location of the National Forests included in the Memorandum of Understanding with Ojibwe Tribes

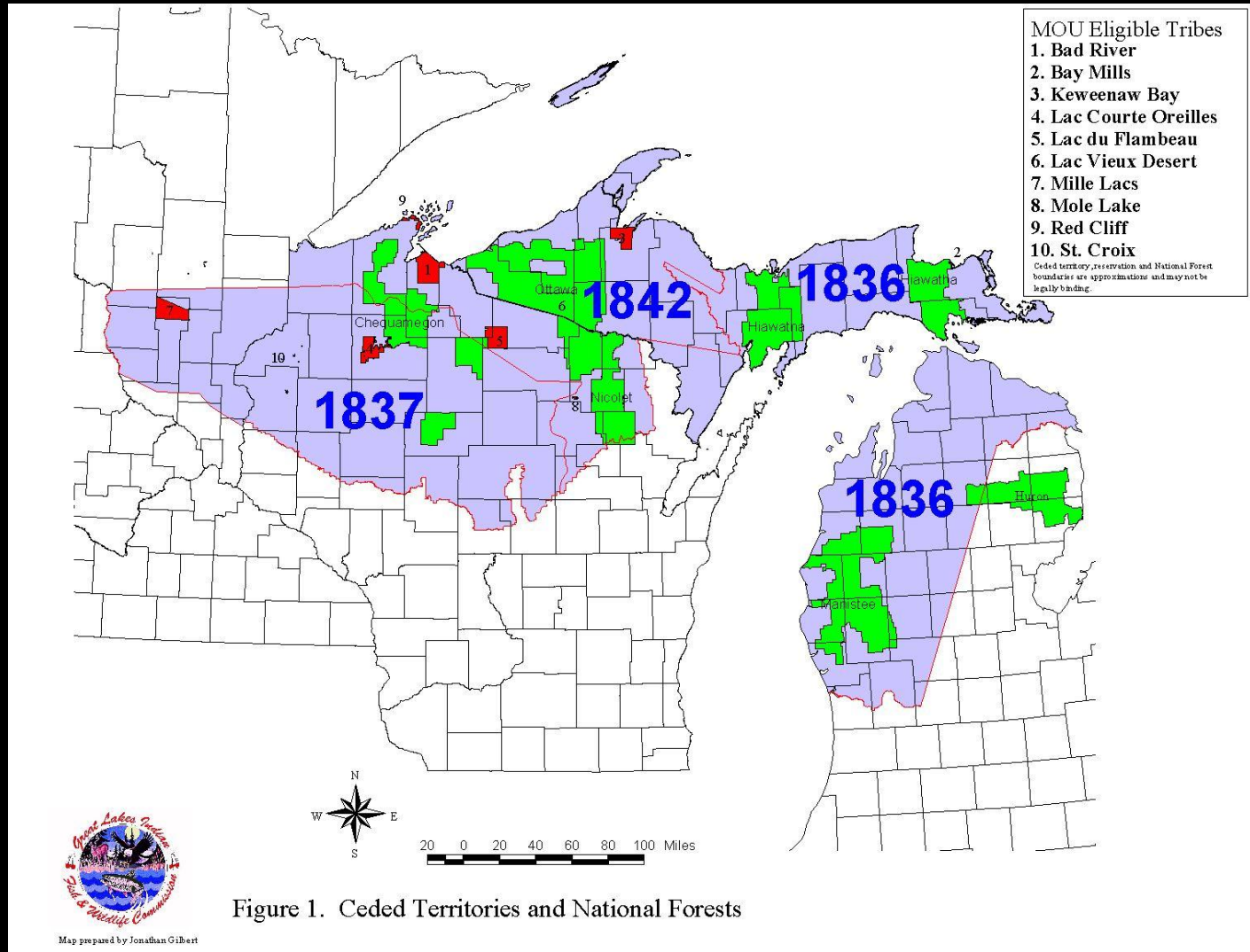


Figure 1. Ceded Territories and National Forests

Treaty Reserved Rights

- Treaty with the Chippewa. 1837.
 - Article 5: “The privilege of hunting, fishing and gathering the wild rice upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States.”
- Treaty with the Chippewa. 1842.
 - Article II: “The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States.”
the United States.”



Aki and the Circle of the Seasons

- Maintaining lifeways that follow a seasonal patterns of harvest
- Patterns include moving from place to place to find and harvest particular natural resources at the appropriate times



What is Gathered?

- Non-Timber Forest Products (these are items that are associated with trees)
 - Birch Bark
 - Balsam Boughs
 - Firewood
 - Lodge poles
 - Maple Sap
- Other plant species gathered (not associated with trees)
 - Ginseng
 - Lycopodium (Princess Pine)



What is Gathered?

- Wild Rice
 - Tribal Regulatory and Management Primacy
 - Rice Chiefs
- And about 400 other species
 - Utilitarian
 - Medicinal
 - Ceremonial



GLIFWC's Mission

- Ensure that its member Tribes are able to exercise their rights for the purposes of meeting subsistence, economic, cultural, medicinal, and spiritual needs.
- Ensure a healthy, sustainable natural resource base that supports those rights.

Implementing Treaty-Reserved Gathering Rights

- Harvest Regulation & Management
 - Effective Tribal and Intertribal Self-Regulation
- Co-Management
 - Among Tribes
 - With Other Authorities

Effective Tribal Self-Regulation

- Preempt State/Federal Regulation
 - System of Effective Tribal Self-Regulation that meets legitimate conservation, public health, and public safety requirements
- Tribal Laws, Biology, Enforcement, and Courts

Gathering on Ceded Territory Public Lands – Multiple Jurisdictions Involved

- USDA Forest Service – Four National Forests in Wisconsin and Michigan
 - Chequamegon/Nicolet National Forest (WI)
 - Ottawa National Forest (MI)
 - Hiawatha National Forest (MI)
 - Huron/Manistee National Forest (MI)
- US Park Service – Apostle Islands National Lakeshore

National Forests Included

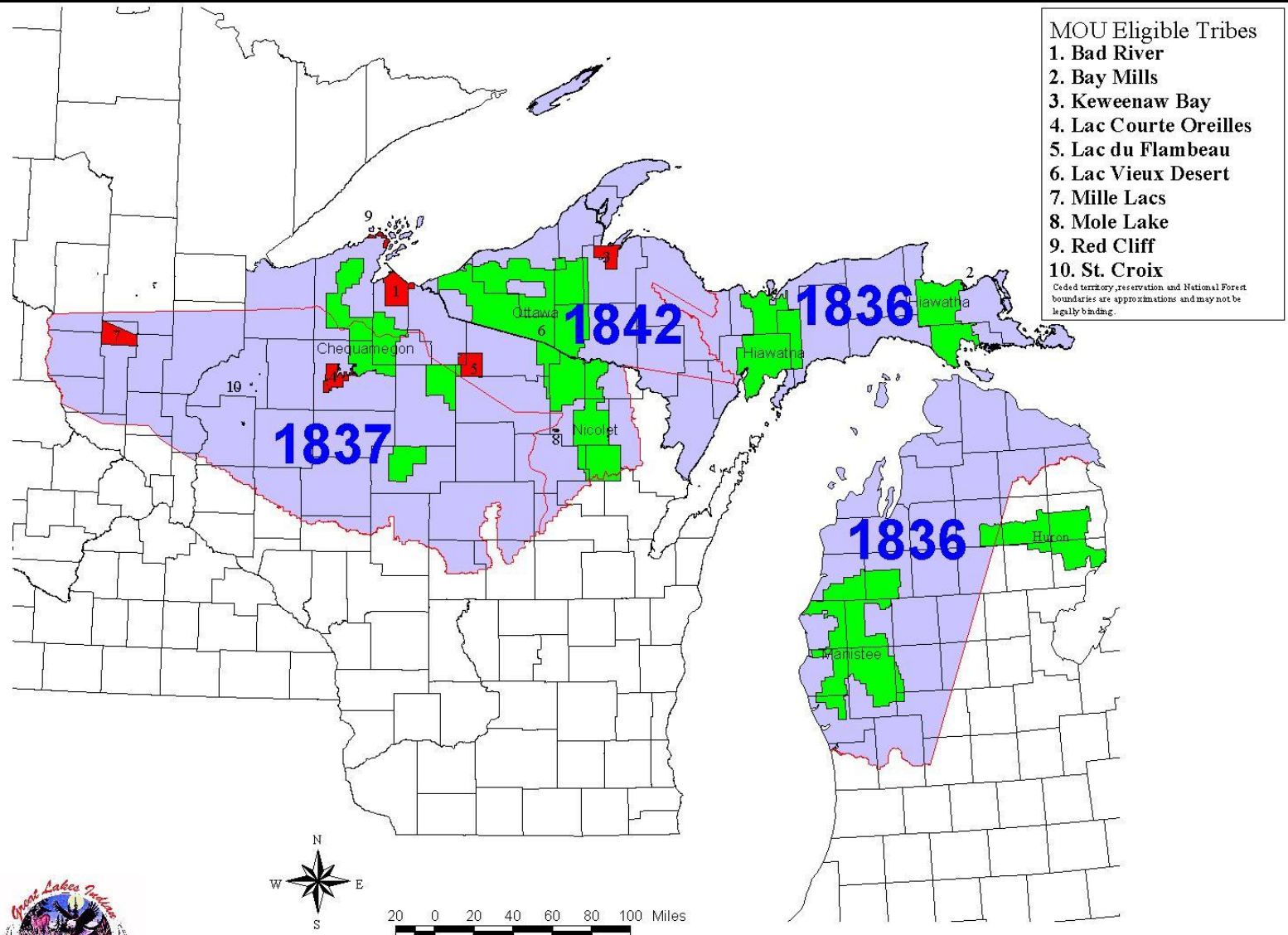


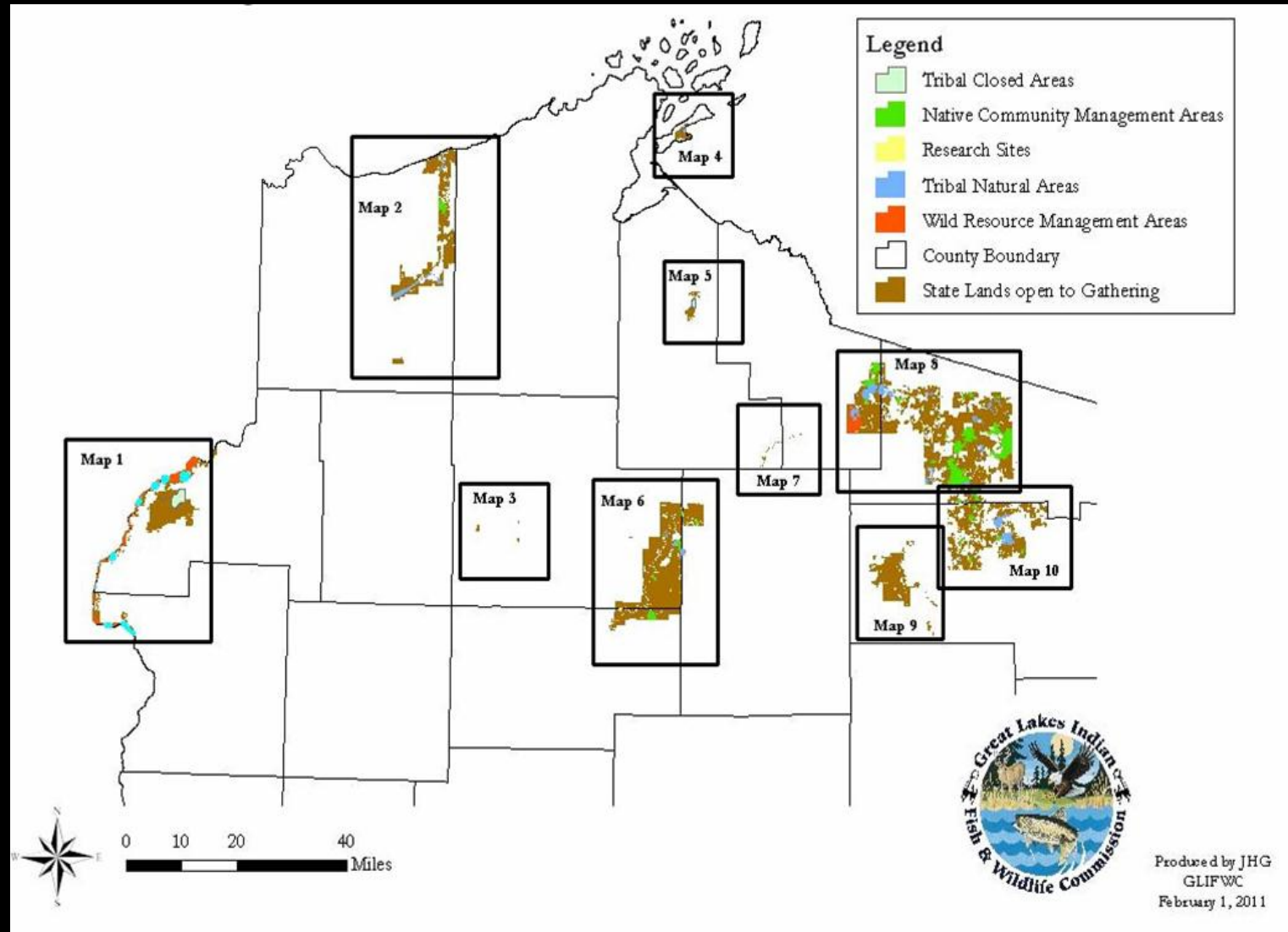
Figure 1. Ceded Territories and National Forests



Multiple Jurisdictions Involved

- Wisconsin -- 9 Wisconsin State Properties
 - 4 State Forests
 - 2 State Parks
 - 3 Fish/wildlife management areas

Wisconsin Public Lands Included



Tribal Regulation & Management in Action

- Natural Resource Management Plans
- Regulations Governing Gathering Activities
 - What, When, How and Where
- Harvest Monitoring and Reporting requirements
- Research and Data Gathering/Analysis
- Co-Management Mechanisms/Processes
- Habitat/Ecosystem Health Protection

Implementing Treaty Gathering Rights on Federal and State Lands

Practical Issues and Considerations

What is the Basis for the Agreement or Arrangement?

- Treaties and Associated Court Cases
- Other Law
 - Constitution: Religious Freedom
 - Statutes: Organic Agency Acts or Particular Laws Establishing Parks, etc.
 - Cases: Federal Trust Responsibility
- Agency Policies

Forest Service MOU

Memorandum of Understanding

Regarding

Tribal - USDA-Forest Service Relations

on

National Forest Lands

Within the Territories Ceded

in

Treaties of 1836, 1837, and 1842

What Are the Rules and Who Determines Them?

- Tribal Goals, Values and Principles
 - TEK
 - “Western” Science
- Legal and Other Constraints
 - State or Federal Regulatory Authority
 - Political and Social Considerations
- Consistency of Regulations Throughout Ceded Territories
 - Challenge: Consistency Between Federal and State Agencies

Consistent Regulations Across Jurisdictions

- Forest Service – Challenge: Each forest ranger district had a different set of rules to be followed. Made for complex regulations. Tribal regulations were to be consistent across jurisdictions, so that the same conservation based rules were followed no matter where gathering occurred.
- State – Challenge: Consistent regulations between state and federal properties.
- Different Types of Properties – Challenge: Presumption of Use vs. Presumption of Preservation?

**National Forest Treaty Gathering and Camping
Regulation Summary
1836, 1837 and 1842 Ceded Territories of
Michigan, Minnesota and Wisconsin**



1836, 1837 and 1842 Ceded Territories: Bad River,
Bay Mills, Keweenaw Bay, Lac Courte Oreilles, Lac du
Flambeau, Lac Vieux Desert, Mille Lacs, Red Cliff,
Sokaogon (Mole Lake), and St. Croix

What May Be Gathered and Where?

- Plants, Trees, and Parts/Products Thereof
- Trees vs. Timber
- “Timber” Not included in Treaty Reserved Rights
- Trees – Lodge Poles; Ricing Sticks; Christmas Trees (omg!)

Where May Gathering Take Place?

- Generally, gathering is permitted throughout the property. There are a few exceptions:
 - Natural Areas – Unique ecosystems worthy of protection; Tribes adopted Tribal Natural Areas
 - Native Plant Community Management Areas – Some gathering may be inconsistent with management objectives; e.g., firewood gathering may be inconsistent with the objective of maintaining large amounts of woody debris.
 - Wilderness – Tribal gathering is permitted in designated wilderness. No mechanized harvest is permitted. Also, access issues.

How May Plants Be Used?

- Tribes generally do not regulate post-harvest disposition of resources
 - Subsistence, Economic, Cultural, Spiritual, Medicinal Uses
 - Exception: “Timber” to Market or for Construction Purposes
- The primary issue with ‘commercial harvest’ is an issue of quantity
 - ‘Small scale harvesting’ versus ‘large scale harvesting’ taking into account that gathering lots of resources needs more attention than gathering small quantities of resources
 - Large scale harvest permits are provided, but with increased interaction with land managers

How is Harvest Managed?

- Gathering Permits
 - What permits are required?
 - Who issues them: Tribe or State/Federal Agency?
 - Consultation with land manager to ensure that tribal gathering is consistent with management objectives

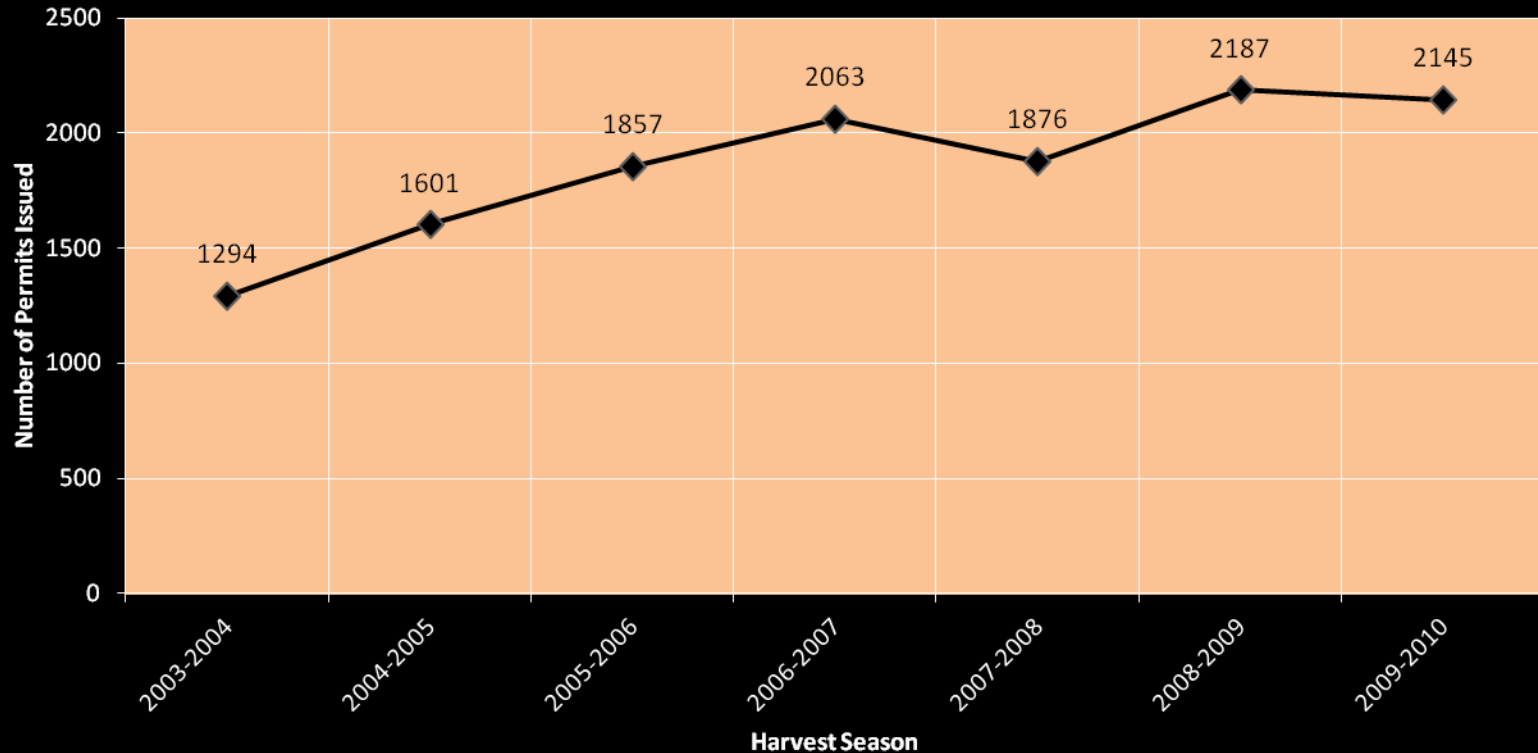
How is Harvest Managed?

- Implications of Land Owner's "Property" Rights
 - Plants Considered "Realty" Until Severed (Compare Animals)
 - Legal Deference to Land Owner's Management Plans?
 - National Forests vs. National Parks
 - Presumption of Use vs. Preservation?

How is Harvest Managed?

- Tribes Monitor Harvest and Report Harvest Data
- What is Monitored?
 - Number and Types of Permits Issued
 - Quantity Gathered
 - Location of Gathering Activities

Harvest Results



The number of permits issued to tribal members to gather non-timber forest products from National Forests. This shows a typical pattern of starting slowly and gradually building.

Who Enforces the Rules?

- Tribal Regulations into Tribal Courts
 - Presumption: Time, Manner & Place Regulations within Exclusive Tribal Jurisdiction
- Challenges
 - What is within scope of treaty gathering vs. other laws, e.g. timber theft?
 - Cross-Credentials between Tribal and other Agencies
 - “Stove Pipes” Within Other Governments
 - E.g., Forest Service Enforcement but US Attorney Prosecution

Enforcement coordination

- GLIFWC wardens empowered to enforce tribal ceded territory codes. Primary enforcement agency.
- State DNR wardens also empowered to enforce tribal ceded territory codes. Follow-up action through GLIFWC enforcement personnel.
- National Forest Law Enforcement Officers – not deputized to enforce tribal rules, but extensive coordination occurs vis-à-vis tribal rules.
- Preemptive enforcement and prosecution deferral agreements ensuring that Tribes can take the primary action against any tribal members violating rules.

How Do Tribes and Other Agencies Co-Manage?

- Context: Tribal gathering takes place on lands owned by others
- Issues:
 - Who has management authority?
 - How must that authority be exercised to recognize tribal rights and accommodate gathering?
 - How must that authority be exercised to manage the lands and natural resources consistent with tribal rights and uses?
 - How must that authority be exercised in coordination and consultation with Tribes?

How Do Tribes and Other Agencies Co-Manage?

Forest Service MOU Provisions

- Who has management authority?

“The parties acknowledge that this MOU contains provisions that may be the result of compromise and policy choices. As such, these provisions may not reflect the full extent of the Tribes’ ceded territory rights or of the Forest Service’s responsibilities to manage the National Forests. Therefore, in the absence of or outside the scope of this MOU, the provisions contained herein are not intended to alter or abridge:

- a. The Tribes’ underlying ceded territory rights or those rights of any other treaty signatory Tribe that is not a party to this MOU; or
- b. The Forest Service’s authorities to manage the National Forests in accordance with applicable law.”

How Do Tribes and Other Agencies Co-Manage?

Forest Service MOU Provisions

- How must FS authority be exercised to recognize and accommodate tribal gathering?

“[R]egulate and monitor the harvest of natural resources on lands administered by the Forest Service in a manner that provides for a sustained harvest of those resources and affords the Tribes the opportunity to harvest an equal allocation of the harvestable surpluses of those resources.”

“[T]he Tribes will regulate tribal member gathering on lands administered by the Forest Service by adopting regulations and implementing permit systems that are no less restrictive than those set forth in the Model Off-Reservation National Forest Gathering Code. . . .”

How Do Tribes and Other Agencies Co-Manage?

Forest Service MOU Provisions

- How must FS authority be exercised to manage the lands and natural resources consistent with tribal rights and uses?

“The Tribes and Forest Service agree that they shall consult on a government-to-government basis on all Forest Service decisions that affect the abundance, distribution or access to the natural resources on lands administered by the Forest Service. In addition, they agree that the goal of such consultation shall be that any such Forest Service decision should expressly recognize and accommodate the Tribes’ ceded territory rights, protect and enhance treaty-reserved natural resources, and accommodate exercise of ceded territory rights by tribal members under tribal regulations.”

How Do Tribes and Other Agencies Co-Manage?

Forest Service MOU Provisions

- How must FS authority be exercised to manage the lands and natural resources consistent with tribal rights and uses?
 - Joint Tribal/FS Technical Working Group Established to encourage research coordination
 - “Establish and implement a program of research, monitoring and evaluation regarding the resources subject to the Tribes’ ceded territory rights that specifically would:
 - Inventory species status and habitat requirements.
 - Monitor the population dynamics and habitats of species as Forest Plans are implemented.
 - Determine the effects of land management activities, such as timber harvest, on species’ populations.
 - Determine the effects of wild plant harvest on the status of the species being harvested.”

How Do Tribes and Other Agencies Co-Manage?

Forest Service MOU Provisions

- How must FS authority be exercised in coordination and consultation with Tribes?

“[T]he Tribes and the Forest Service seek to establish a relationship and associated processes that facilitate consistent and timely communication between them and that integrate the Tribes’ needs and wishes for the desired state of the National Forests into Forest Plans and subsequent Forest Plan implementation decisions.”

How Do Tribes and Other Agencies Co-Manage?

Forest Service MOU Provisions

- How must FS authority be exercised in coordination and consultation with Tribes?
 - “The Forest Service shall consult with and facilitate effective participation by the Tribes at all stages and levels of the decision-making process.”
 - “The Tribes and the Forest Service will strive to reach consensus.”
 - Dispute Resolution process in place
 - All Rights, Claims and Defenses Reserved – Tribes may challenge any FS decision in any available forum

Full Circle

- Recognition of Tribal Sovereignty and Gathering Rights
- Implementation of Systems and Processes that ensure exercise of Rights under Tribal Authority for subsistence, economic, cultural, spiritual and medicinal purposes
- Co-Management to ensure sustainable natural resource management and ecological protection
- Fulfilling Treaty Obligations and Trust Responsibilities
- Mutual Ecological and Community Benefits

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

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