



**A Perspective from Tribes of the Great Lakes
Region:
State and Federal Agreements for Treaty
Gathering**

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**Tulalip Nations
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Great Lakes Tribal Gathering



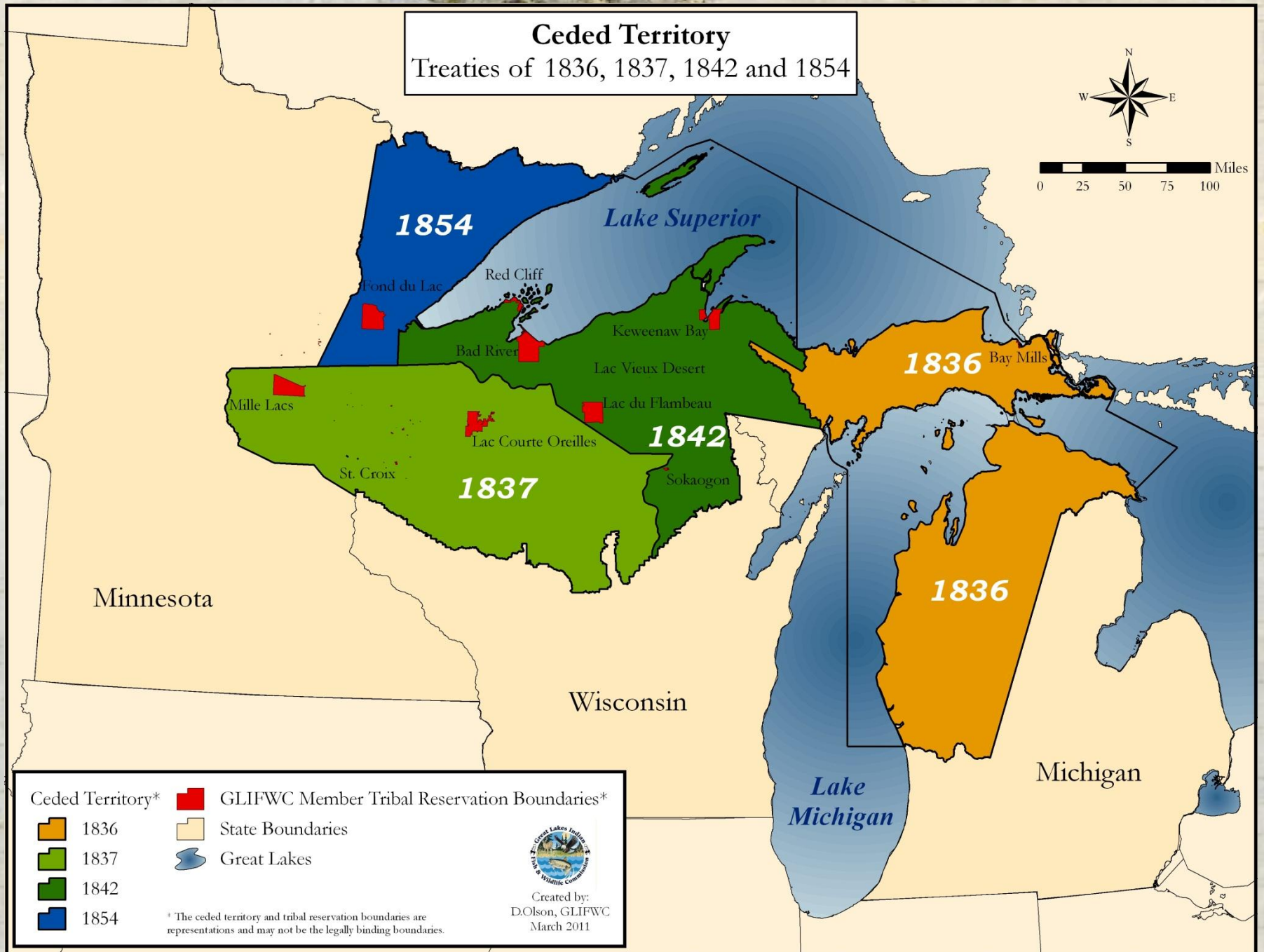
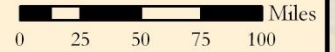
This presentation will focus on the nature and extent of the treaty-reserved gathering rights of GLIFWC member Tribes as well as on the mechanisms and processes that are in place among the Tribes and with other governments that affirm and recognize these rights.








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**
- **Affirmation of Fundamental Anishinaabe Law**

Ceded Territory

Treaties of 1836, 1837, 1842 and 1854



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

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



Created by:
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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.”



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



Preserving the Circle of the Seasons

***Aki* and the Circle of the Seasons**

A Way of Life – Subsistence, Economic, Cultural, Spiritual, and Medicinal Needs

Interrelationship With and Dependence Upon *Aki* and the Other Orders of Creation

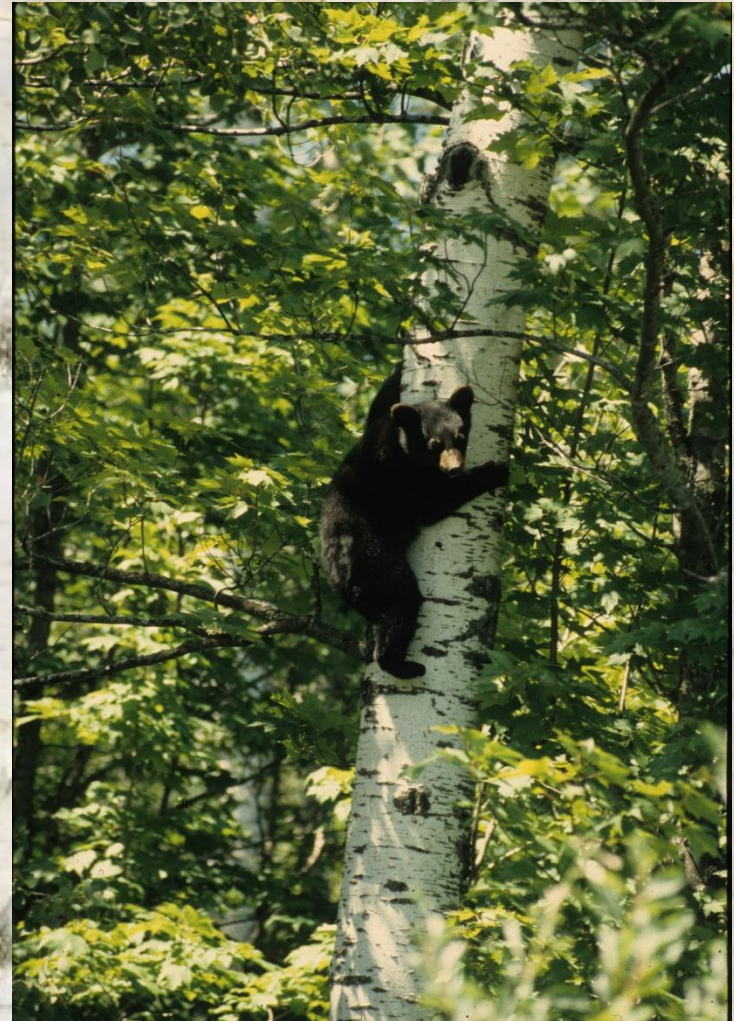
Re-Affirmation of Treaty Rights

- **Exercising the Rights – Use ‘em or lose ‘em!**
- **Judicially – Court Cases (Tribal Attorney Full Employment Bill)**
- **Legislatively – Statutes**
- **Administratively – Agency Regulations and Policies**
- **Inter-Governmental Agreements – [Semi]Voluntary Collaboration and Partnerships**

The Nature and Extent of the Treaty Reserved Gathering Rights

The court held that the Tribes reserved the right to exploit virtually all the natural resources in the ceded territory, as they did at treaty time.

– *LCO X*, 775 F. Supp. 321,
(W.D. Wis. 1991).



Resources Include: Manoomin (wild rice)

To the Ojibwe, Manoomin is considered a “spirit food” whose presence fulfilled the prophecies of the people.

- “*Stipulation on Wild Rice*” defines the Regulatory and Management principles associated with Manoomin



Resources Include: Gitigaan (wild plants)

To the Ojibwe, Gitigaaning references the plant ecosystem and refers to the forest as “the Indian gardening place.”

- “*Stipulation on Black Bear, Migratory Birds, and Wild Plants*” defines the Regulatory and Management principles associated with Gitigaan.



Resources Include: Mitigoowishan (tree products)



The tribes' treaty reserved right includes the right to gather miscellaneous forest products, namely, such items as firewood, tree bark, maple sap, lode poles, boughs and marsh hay.
LCO X, 775 F.Supp. 321, (W.D. Wis. 1991).

Resources Include: Mitigoowishan (tree products)



Resources Do Not Include: **TIMBER**

The court found that at treaty time the Chippewa were not exploiting timber for their own use or for commercial purposes, although they were exploiting the various species of trees in the forest for a multitude of purposes other than for timber. The court concluded that commercial logging is not simply a modern means of harvesting but an entirely different activity from any the Chippewa engaged in at treaty time.

– *LCO IX, 758 F. Supp. 1262, 1268-1271 (W.D. Wis. 1991).*



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**

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.**

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**

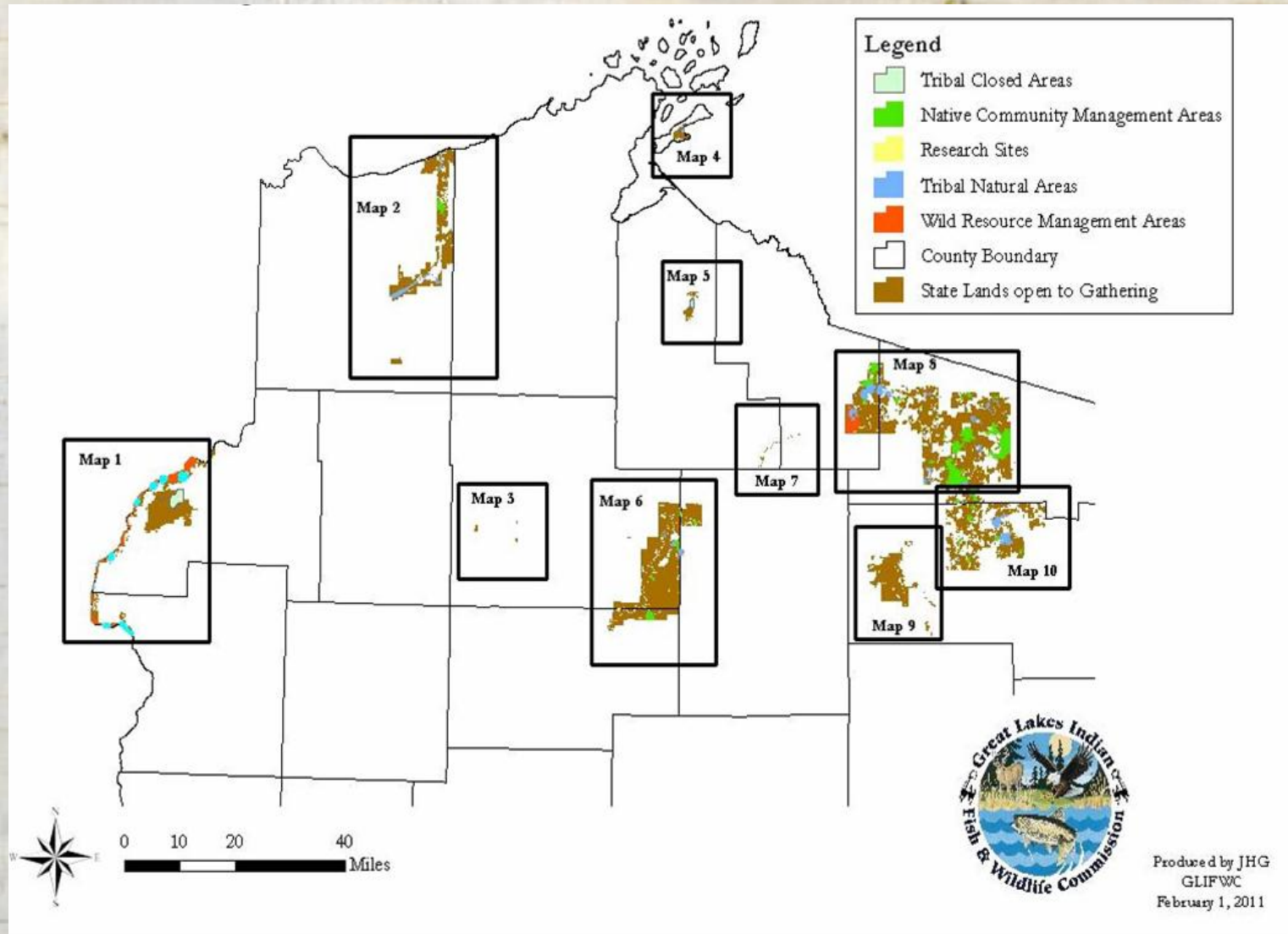
Gathering on Ceded Territory Public Lands – Multiple Jurisdictions Involved

- **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**

Multiple Jurisdictions Involved

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

Wisconsin Public Lands Included



Implementing Treaty Gathering Rights on Federal and State Lands

Issues and Considerations

Implementing Treaty Gathering Rights on Federal and State Lands

- **What's the Basis for the Agreement or Arrangement?**

- Treaties, Cases, Statutes, Regulations, Policies

- **What Are the Rules and Who Determines Them?**

- Tribal Values and Goals; Legal & Policy Considerations; Consistency Throughout Ceded Territories

- **What May Be Gathered and Where?**

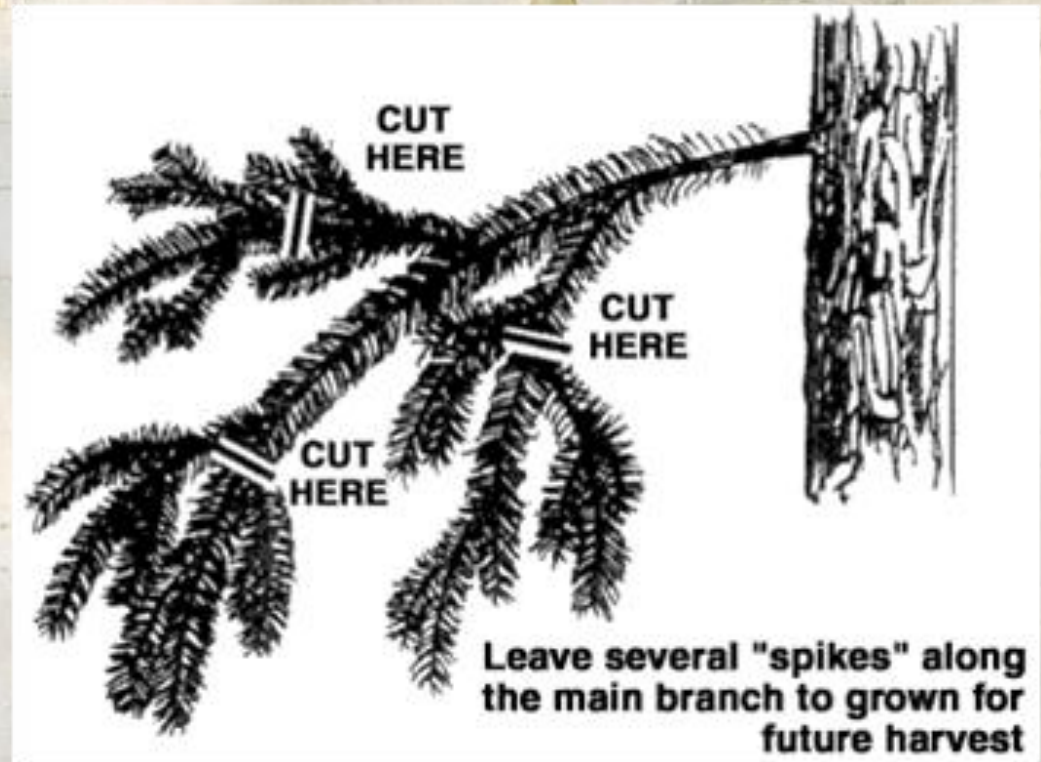
- Virtually All Plants, Trees (except Timber) and Parts Thereof

- Christmas Trees???

- Anywhere on the Property in Questions, Except "Special Areas"

Tribal Gathering Management Practices

Gathering Practices must be performed in compliance with the Management objective of the property.



Tribes recognize that gathering itself is an element of active management and tribal regulation based upon Tribal Law and Custom, and Tribal Harvest Guidelines.

Implementing Treaty Gathering Rights on Federal and State Lands

•How May Plants Be Used?

- No regulation of “end-uses” (except Timber)
- Large Quantity vs. Small Quantity; Not Sale or Non-Sale

•How is Harvest Managed?

- Tribal Permits; Consultation with Land Manager/Owner
- Harvest Monitoring and Reporting

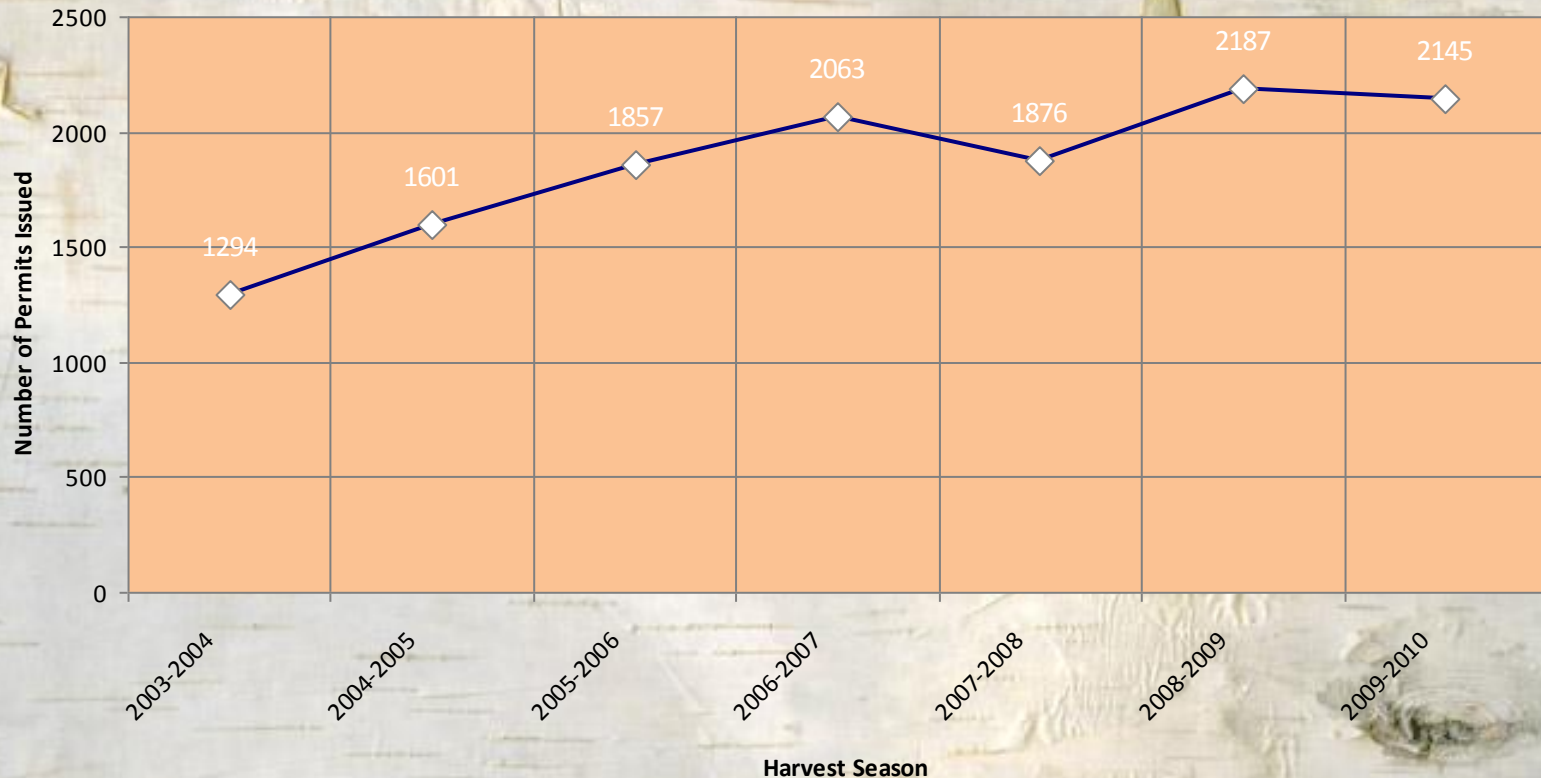
Use of Treaty Reserved Resources



The fruits of the tribes exercise of their treaty reserved rights may be traded and sold to non-Indians, employing modern methods of distribution and sale.

– *LCO X, 775 F.Supp. 321, (W.D. Wis. 1991).*

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.

Implementing Treaty Gathering Rights on Federal and State Lands

• Who Enforces the Rules?

• Tribal Enforcement into Tribal Courts

• 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

Implementing Treaty Gathering Rights on Federal and State Lands

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

- “[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

- **Tribes and FS Acknowledge Their Respective Authorities and Responsibilities – Coordination of Respective Sovereign Prerogatives**
- **FS Agrees to Regulate and Monitor Plant Harvest to Achieve Sustainability of Resources, to Afford Equal Harvest Opportunity to Tribes.**
- **FS and Tribes Agree to a Tribal Gathering Code**

How Do Tribes and Other Agencies Co- Manage?

Forest Service MOU Provisions

- **Government-To-Government Consultation Required – “on all Forest Service decisions that affect the abundance, distribution or access to the natural resources on lands administered by the Forest Service”**
 - **FS Decision Documents Must Show How Tribal Rights Were Considered and Justify Basis for Decision**

How Do Tribes and Other Agencies Co- Manage?

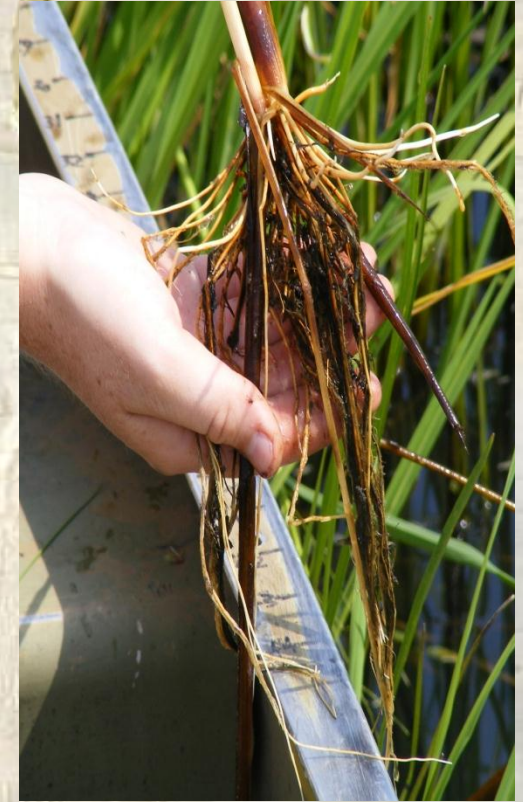
- **“The Forest Service shall consult with and facilitate effective participation by the Tribes at all stages and levels of the decision-making process.”**
- **“The Tribes and the Forest Service will strive to reach consensus.”**
- **Dispute Resolution process in place**
- **All Rights, Claims and Defenses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

How Do Tribes and Other Agencies Co- Manage?

Forest Service MOU Provisions

- **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.”**

Tribal Management Principles



In the management of medicinal gathering products the tribes manage and protect the general habitats that foster medicinal plants so as not to have to disclose the medicinal products.

Allocation of Gathering Resources

With respect to miscellaneous forest products, the total estimated harvest is to be apportioned equally between the tribes and all other persons, with such apportionment applying to each type of miscellaneous forest product and to each state or county forest unit or state property on which the gathering of miscellaneous forest products is permitted.

– *LCO X, 775 F. Supp. 321 (W.D. Wis. 1991).*



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**

Gidaa miigwechiwendam awegodogwen ge ayaaman
Be thankful for what you have.





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