

LEGISLATIVE REFERENCE LIBRARY
KF8228.C6 A5 1997

- What does the 1837 Treaty decision



3 0307 00049 6284

KF8228
.C6
A5
1997

see also:
• maps of the treaty boundary
Ref G
1426
FIM 62
1997

• maps of the estate boundary
G 1426
FIM 6
1997

970394

This document is made available electronically by the Minnesota Legislative Reference Library as part of an ongoing digital archiving project. <http://www.leg.state.mn.us/lrl/lrl.asp>
(Funding for document digitization was provided, in part, by a grant from the Minnesota Historical & Cultural Heritage Program.)

RECEIVED

SEP 17 1997

LEGISLATIVE REFERENCE LIBRARY
STATE OFFICE BUILDING
ST. PAUL, MN 55155

What does the 1837 Treaty decision mean to me?

Questions and answers about enforcement, education and management

On August 26, 1997, the U.S. Eighth Circuit Court of Appeals affirmed lower federal court decisions that upheld hunting, fishing and gathering rights for eight Chippewa Indian Bands in the 1837 Treaty territory of Minnesota.

Does the Appeals Court ruling change the role of the Department of Natural Resources?

No. The DNR remains the manager of Minnesota's natural resources. As always, the DNR's top priority is to maintain the long-term health of plant, fish, and wildlife populations for you and future generations.

The DNR will be working with the bands' biologists and law enforcement officials to effectively integrate resource harvest.

Does the Appeals Court ruling reduce the rights of private property owners in the ceded territory?

No. The State trespass law continues to apply to all lands. Further, the court has ruled that tribal rights to hunt, fish and gather don't exist on private property. As such, private landowners are free to open or close their lands as they so choose, but anyone harvesting on private land is subject to state law.

What effect does the court's ruling have on outdoor enthusiasts such as campers, hikers, mountain cyclists, etc.?

Very little. Lands that were closed to hunting in the past will continue to be closed in the future. This includes lands that are state parks, game refuges, public accesses, Scientific and Natural Areas, and other closed or restricted areas.

However, band hunting and fishing seasons begin earlier and close later than State seasons. As such, people may encounter hunters and anglers during times of the year when they haven't in the past.

How can I learn more about the 1837 Treaty and related issues?

Four ways.

One, visit the DNR's website at www.dnr.state.mn.us

Two, attend a DNR 1837 Treaty Open House. Open houses are held periodically in the Twin Cities and the ceded territory. DNR experts provide information about fish and wildlife populations, management plans, and other related information. The open house format allows you to talk directly to DNR staff, experts from the Minnesota Attorney General's Office, and others involved in enforcement, education, and resource issues.

Three, talk or write to the bands.

Four, contact any public library in the ceded territory. The DNR has supplied regional libraries with ceded territory boundary maps and will soon forward additional information to the libraries.

Libraries and the counties they serve are:

- * Anoka County Library, 707 Highway 10 NE, Blaine (Anoka County) 612-780-1463
- * East Central Regional Library, 244 S. Birch, Cambridge, MN (Aitkin, Chisago, Isanti, Kanabec, Mille Lacs and Pine counties) 612-789-7390
- * Great River Regional Library, 405 St. Germain, St. Cloud (Benton, Morrison and Sherburne counties) 320-251-7282
- * Hennepin County Library, 12601 Ridgedale Dr., Minnetonka (Hennepin County) 612-541-8580
- * Kitchigame Regional Library, 403 Barclay Ave, Pine River (Crow Wing County) 218-587-2171
- * Ramsey County Library, 4570 N. Victoria St., Shoreview (Ramsey County) 612-486-3639
- * Washington County Library, 2150 Radio Drive, Woodbury (Washington County) 612-731-8487
- * Legislative Reference Library, State Office Building, 1000 Constitution Ave., St. Paul.

HUNTING

What impact will the Appeals Court ruling have on Minnesota hunting seasons in the 1837 ceded territory?

Hunting seasons for non-band members will open and close as they have in the past.

Most bag limits are not expected to change, either. However, the State will adjust non-band harvest quotas for species such as deer, bear and wild turkeys in certain management areas to maintain healthy wildlife populations. The amount of adjustment will be based on the amount of game band members intend to take.

How will the state and band shares of the harvest be determined?

Each spring or summer the bands will declare their intended harvest for each species.

After the State receives the bands' declarations, the DNR will adjust non-band harvest quotas. This adjustment is designed to insure that the total harvest does not exceed the harvestable surplus for each species.

Harvestable surplus refers to the number of animals that can be taken by hunters each year without adversely affecting a species' long-term health and sustainability.

To what extent is band hunting regulated?

Band hunting is regulated extensively by the Bands' game and fish laws, called a conservation code. The code regulates how, when and where Band hunting and fishing may occur, addresses bag limits, and protects threatened and endangered species.

Is the conservation code more liberal than State law?

Yes and no. Some band hunting seasons are longer than State seasons. Likewise, some bag limits are higher.

On the other hand, the bands may be more restrictive than state law if they so choose. For example, the bands' provisions addressing party hunting and hunting while intoxicated are more restrictive than state law. Overall, many band regulations are identical or similar to state law.

For example, band provisions addressing hunter education requirements, limits on big game shooting hours to one-half hour before sunrise to one-half hour after sunset, and caliber and bow draw weights are similar to state regulations. The bands have adopted the same broadhead requirements for archery big game hunting as allowed by the State.

Is shining allowed for deer?

Yes. The DNR opposes shining but the court has allowed it only under the following conditions (designed to make it as safe as possible).

- * Shining cannot be done during the State firearms deer season.
- * The site must be selected and inspected in advance.
- * Appropriate federal, state and local officials as well as nearby landowners must be notified of the site in advance.
- * Shining must occur from an elevated stand at least 10 feet above the ground.
- * The stand must be within 17 yards of the bait site.
- * The only legal shining device is a battery-operated flashlight containing 5 "D" cell batteries.

- * The bait area must be no more than 16 square feet and no more than four feet on any side.
- * Deer can only be taken at the bait location.
- * Scopes are not allowed.
- * People who shine must complete an advanced hunter safety course and receive marksmanship training and a marksmanship rating.

Is the Bands' conservation code acceptable to the DNR?

Yes and no. The Bands' conservation code addresses all of the DNR's current conservation, public health and safety concerns. Still, the code contains hunting and fishing practices that DNR Commissioner Rod Sando strongly objects to. Such practices include shining for deer, spearing and gill-netting. Despite the DNR's opposition to these practices, the court has ruled that Band members may use these and other harvest methods so long as they do not pose a conservation, public health or public safety concern.

How much game will the bands harvest?

The bands have agreed to be bound by a five-year wildlife management plan that imposes certain harvest restrictions, including:

- Antlerless deer:** No more than 900 the first year to 1,300 by the fifth year of treaty harvest. *(Non-band hunters typically harvest about 12,600 antlerless deer per year in this area).*
- Bear:** No more 35 per year in quota areas 45 and 51. *(Non-band hunters typically harvest about 130 bear in these quota areas).*
- Moose:** No more than five moose per year outside of registration Block 184, which is closed to moose harvest.
- Wild turkey:** Harvest will be restricted to quota areas open by the State.
- Migratory birds:** Seasons, daily bag limits, and possession limits and other restrictions are determined annually in consultation with the U.S. Fish and Wildlife Service and are published in the Federal Register. Federal restrictions on methods of take and shooting hours apply. State waterfowl refuges and sanctuaries are recognized.
- Small game:** Quotas are set for bobcat, otter and fisher. Daily bag limits will be established annually. Most hunting seasons open the day after Labor Day. Trapping season is Oct. 1-March 31. Fox, raccoon and unprotected species are open 24 hours per day, except same as deer hunting hours during the deer season.

FISHING

How will the DNR protect fish populations in the 1837 ceded territory?

Three ways. Management, monitoring and enforcement. All treaty harvest will be conducted under specific regulations and closely monitored by State and Band conservation officers. State and Band conservation officers will enforce laws that have been written to ensure healthy game and fish populations exist for generations to come.

How will netting and spearing be regulated?

The DNR must be notified in advance of open water spearing and netting. All nets are subject to specific visibility, length, depth, setting and lifting regulations. The only nets that band members are authorized to use will catch walleye primarily in the 15- to 18-inch range. Spearing is similarly regulated. Spearing is focused mostly on male walleye because they enter the spawning grounds earlier and stay longer than females which tend to release their eggs and return to deeper water in a relatively short time.

What impact will netting and spearing have on long-term walleye populations?

There should be no negative impact. That's because the combined catch of band and non-band anglers will not be allowed to exceed the "safe harvest level," which is the level at which enough walleye reach maturity to maintain the long-term health and productivity of a fish population.

When does the bands' fishing season begin?

The bands' open-water season begins at ice-out and ends at ice-in. Bands can exercise allowed harvest practices during this time. However, a monitoring crew must be present before spearing can begin. Also, a monitor must be present whenever a gillnet is lifted.

Walleye can be harvested in Lake Mille Lacs year round. The gillnet harvest of walleye in other lakes is from June 1 to March 1. The gillnet season is June 1-March 1 for northern pike, large mouth bass, smallmouth bass. Muskellunge may not be taken using gillnets.

Open-water spearing of northern pike and muskellunge is not allowed on Lake Mille Lacs. Muskellunge may not be taken by any nets. Muskellunge taken in nets must be released if capable of surviving. Muskellunge taken by nets that are not capable of surviving must be surrendered to a band officer.

Are nets and spears regulated?

Yes. Spears must have a minimum of three barbed tines, each at least 4.5 inches long. Subsistence gillnets must be no longer than 100 feet in length and four feet deep. The allowable mesh size is 1.25 inches from March 2-May 21 and 1.75 inches from June 1-March 1. Permits are valid for one day only.

Will gillnets nets be visible?

The bands' conservation code contains a number of provisions that should reduce the risk of tangles and collisions with nets. Each net shall be marked with two flags, one at each end. Each flag pole shall be at least two feet or more above the water and have a diameter of two-and-one-half inches or less. Each flag shall be white and ten inches square or larger. Each float shall be visible from shore. Gillnets must be set with the top line at least three feet beneath the surface of the water. Each gillnet must be lifted at least two times in each continuous 24 hour period (this is to prevent fish spoilage and to ensure that band members stay within their quota).

Can gillnets be placed in any lake?

No. The bands may only harvest in lakes where they have declared a harvest quota. Gillnet permits are available only for lakes in excess of 1,000 acres and Ogechie, Onamia and Shakopee lakes, approximately five miles of the Rum River connecting these lakes; Grindstone Lake; Lake Eleven; Pine Lake; Razor Lake; South Stanchfield Lake; Whitefish Lake (the one adjacent to Lake Mille Lacs); and the 20 miles of the St. Croix River downstream from the point where the river commences as the border between Minnesota and Wisconsin.

Lakes larger than 1,000 acres are Knife, Pokegama, East and West Rush, Mille Lacs, Green, Sunrise, Little Rock, Platte, Sullivan, and Lower South Long.

It is unlikely that all of these lakes would be netted in a given year. Bands must declare what lakes they intend to net each spring.

When will people know where band harvest will occur?

The process works like this: The bands shall convene a meeting no later than Feb. 15 each year to discuss spearing and netting plans. By March 15, the bands must declare to the State which bodies of water they intend to net and spear in the ceded territory. The bands cannot harvest an amount of fish that would be detrimental to a lake. Likewise, they can *only* net or spear in those lakes that were declared prior to March 16.

How will the State monitor the bands' harvest?

A permit is required for all open-water spearing and netting. Band members must comply with the terms of the permit, which includes registering all fish. Tribal identification and fishing permits must be carried while fishing and presented upon request to any law enforcement officer or biologist, whether tribal or state.

Though band harvest practices are more liberal than State law, band fish registration regulations are much more strict than state law. Band members must report each and every game fish they take by net and spear under treaty harvest.

How many walleye can the bands harvest from Lake Mille Lacs?

Under the bands' five-year management plan, the annual harvest of walleye would range from a maximum of 40,000 pounds the first year to 100,000 pounds in the fifth

year.

To put these numbers in perspective, the average annual harvest by sport anglers is about 300,000 walleye weighing about 450,000 pounds. During the last 15 years, sport anglers have harvested an average of 21 percent of the catchable-size walleye in Lake Mille Lacs per year. The range of harvest during those years was 8 to 35 percent.

What will the band do with the fish they catch?

Eat them for subsistence, religious or ceremonial purposes. Though 40,000 pounds of walleye from Lake Mille Lacs may sound like a lot of fish, it amounts to about two walleyes per year for each member of the eight Chippewa bands that have rights in the 1837 ceded territory.

Fish can't be sold because no member may buy or sell game fish taken from the ceded territory unless the fish is part of a commercial harvest. Currently, the bands do not have a commercial fish operation in place nor have they indicated they intend to begin one at this time.

Similarly, game fish can't be harvested and intentionally disposed of either. That's a wanton waste violation.

ENFORCEMENT

Will DNR conservation officers enforce the bands' conservation code?

Yes. DNR conservation officers have been authorized to enforce the bands' code.

Will endangered and threatened species laws be enforced?

Yes. The band code protects all endangered and threatened species protected by State law, including birds, mammals, reptiles, fish, mollusks, butterflies, beetles, plants, lichens, fungi, mosses and other species. Federal laws protecting threatened and endangered species will continue to apply.

How will conservation officers know if a person is a band member?

Through permits and identification. No band member may engage in treaty harvest without a valid permit issued by the band for a particular season. Band members must carry a valid color picture identification card while exercising treaty rights.

Does the bands' code limit "methods of take?"

Yes. Many methods of take are illegal. Conservation officers can cite people who use poison, explosives, pole traps, pivot guns, or chase wild animals with a motor vehicle.

What happens to game that has been seized ?

No wild animal or wild plant that has been seized from a band member during a violation

may be returned to a convicted violator, his or her immediate family, or other member of the hunting, fishing or gathering party.

GENERAL INFORMATION

Do the bands and State have to share biological and management information?

Yes. The court stated that the State and bands must fairly regulate their respective harvest activities in a manner that is consistent with sound conservation practices. Sharing information is a critical component of sound resource management.

How will information be shared?

The court directed the State and bands to develop specific procedures and specific technical committees for the purpose of sharing information and resolving differences. Fisheries and wildlife committees, composed of band and State experts, will meet periodically to analyze data, coordinate surveys and research, develop recommendations on harvestable surplus levels, and address other issues of importance.

How are differences in the technical committees resolved?

If no consensus is reached within the committee, the issue will be referred to top managers in the Band and DNR. If no agreement is reached at this level, the parties shall jointly choose a mediator to reach consensus. If consensus still cannot be reached, the parties have the option of going to court.

Can the bands commercially harvest fish and game?

Yes, the court ruled that bands can commercially harvest fish and game. However, the bands have not indicated they intend to exercise that right in the immediate future.

There are a couple of likely reasons for this.

First, this year's maximum walleye harvest of 40,000 pounds from Lake Mille Lacs would gross only about \$60,000 (currently, walleye fetch about \$1.50 per pound from wholesale buyers). Therefore, a commercial operation is not practical as a large money-making venture designed to generate a large number of jobs.

Second, a commercial operation must comply with State and federal food handling regulations. Commercial food handling standards are more strict than those for subsistence harvest for band members.

Who are the plaintiffs in this case?

The bands and the United States government. The Mille Lacs Band sued the State of Minnesota and other Chippewa bands the United States joined that lawsuit.

Who are the defendants?

The State, which is represented by the Attorney General's Office, six landowners living in the ceded territory, and nine counties in the ceded territory.

What is the next step in the 1837 Treaty litigation?

The State of Minnesota intends to appeal the appeals court decision to the U.S. Supreme Court. The Supreme Court may or may not hear the 1837 Treaty case. That decision is solely up to the Supreme Court, which rejects about 90 percent of the cases it is asked to hear. If the Supreme Court declines to hear the 1837 Treaty case, the Eighth Circuit Court of Appeals ruling will stand.

This information prepared by the Minnesota Department of Natural Resources
August 27, 1997