

ORDINANCE #02/97
AMENDED
FOND DU LAC 1837 CEDED TERRITORY CONSERVATION CODE

Adopted by the Fond du Lac Reservation Business Committee pursuant to Resolution #1080/97 on March 27, 1997.

Amended by Resolution #1025/98 on February 3, 1998.

Amended by Resolution #1415/98 on December 29, 1998.

Amended by Resolution #1075/02 on February 14, 2002.

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TABLE OF CONTENTS

CHAPTER 1	INTRODUCTION	1
CHAPTER 2	GENERAL DEFINITIONS	4
CHAPTER 3	GENERAL PROVISIONS	8
CHAPTER 4	ENFORCEMENT	42
CHAPTER 5	WILD RICE HARVESTING REGULATIONS	48
CHAPTER 6	DEER HARVESTING REGULATIONS	53
CHAPTER 7	BEAR HARVESTING REGULATIONS	71
CHAPTER 8	SMALL GAME HARVESTING REGULATIONS	84
CHAPTER 9	FISH HARVESTING REGULATIONS	99
CHAPTER 10	MIGRATORY BIRD HARVESTING REGULATIONS	127
CHAPTER 11	AMPHIBIANS, TURTLES, MUSSELS AND CRAYFISH	142
CHAPTER 12	WILD PLANT HARVESTING REGULATIONS	152

CHAPTER 1 - INTRODUCTION

- 1.01 **Title.** This Ordinance shall be known as the Fond du Lac 1837 Ceded Territory Conservation Code.
- 1.02 **Authority.** The Fond du Lac Band of Lake Superior Chippewa, by and through the inherent powers and authorities of the lawfully elected governing body known as the Fond du Lac Reservation Business Committee, through the written laws of the Band and through the rights retained under the Treaty of July 29, 1837, 7 Stat. 536, between the Fond du Lac Band of Lake Superior Chippewa and the United States of America, does hereby authorize the following 1837 Treaty Conservation Code, enacted pursuant to Resolution #1080/97, dated March 27, 1997, which shall govern hunting, fishing and gathering in all parts of the territory ceded under the 1837 Treaty.
- 1.03 **Purpose.** It is the purpose of this Ordinance to provide an orderly system for Band control and regulation of the Band's hunting, fishing and gathering rights on the lands and waters located in the State of Minnesota which were ceded in the Treaty of 1837, 7 Stat. 536, ("Minnesota 1837 Ceded Territory"), which:
- (1) promotes public health and safety and the conservation and management of fish, wildlife and plant populations in the Minnesota 1837 Ceded Territory; and
 - (2) is consistent with the 1837 Treaty, applicable federal law, and the opinions, orders and decrees entered by the Court in Fond du Lac Band v. Carlson, No. 5-92-159 (D. Minn.).
- 1.04 **Territorial Applicability.** This Ordinance shall govern all treaty hunting, fishing and gathering activities of Band members within the Minnesota 1837 Ceded Territory, except that no member shall hunt, fish or gather within the boundaries depicted on Figure 1 hereto, except as permitted by the Mille Lacs Band.
- 1.05 **Effective Date.** Except as otherwise provided in specific sections, the provisions of this Ordinance shall be effective on March 27, 1997.

1.06 Interpretation. The provisions of this Ordinance:

- (1) shall be interpreted and applied as minimum requirements applicable to the exercise of treaty rights subject to this Ordinance;
- (2) shall be construed liberally in favor of the Band;
- (3) shall be construed consistently with the 1837 Treaty, applicable federal law, and the opinions, orders and decrees entered by the Court in Fond du Lac Band v. Carlson, No. 5-92-159 (D. Minn.); and
- (4) shall not be deemed a limitation or repeal of any other tribal power or authority.

1.07 Severability and Immunity. If any section, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby. The Band does not waive and to the contrary asserts to the fullest extent allowed by law immunity on its part and that of its officers, employees, and/or agents from any claims, actions or damages that may arise under or result from this Ordinance.

1.08 Repeal of Inconsistent Ordinances, Resolutions and Orders. All Band ordinances, resolutions and orders inconsistent with this Ordinance are hereby repealed. To the extent that this Ordinance imposes greater restrictions than those contained in any other ordinance, resolution or order, the provisions of this Ordinance shall govern.

1.09 Religious or Ceremonial Use of Natural Resources.

- (1) Except as provided in paragraphs (2) and (3) below and section 3.25, nothing in this Ordinance shall prohibit the harvest or use of any resource for religious or ceremonial purposes in accordance with the traditions and customs of the Band.
- (2) No member shall harvest any resource for religious or ceremonial purposes without written authorization from the Band's Department of Resource Management and a permit issued by the Commissioner pursuant to this section, and no member shall fail to comply

with the terms and conditions of any such permit.

- (3) In reviewing and taking action on any request for a permit to harvest a resource for religious or ceremonial purposes, the Commissioner shall take into account the biological impact of the harvest and shall ensure compliance with all provisions of the 1837 Treaty, applicable federal law, and the opinions, orders and decrees entered by the Court in Fond du Lac Band v. Carlson, No. 5-92-159 (D. Minn.).

1.10 **Additional Measures.** The Band's Department of Resource Management is authorized to issue orders that impose measures regulating hunting, fishing and gathering by Band members in the Minnesota 1837 Ceded Territory that are in addition to and more restrictive than the provisions of this Ordinance.

CHAPTER 2 - GENERAL DEFINITIONS

2.01 General Definitions. The following terms, wherever used in this Ordinance, shall be construed as follows:

- (1) **"Band," "Tribe," and "Tribal"** mean or refer to the Fond du Lac Band of Lake Superior Chippewa. When used in the plural, "Bands" or "Tribes" refers to the Fond du Lac Band as well as all plaintiff and plaintiff-intervenor Bands in Mille Lacs Band v. State of Minnesota, No. 3-94-1226 (D. Minn.).
- (2) **"Carcass"** means the dead body of any wild animal to which it refers, and, unless clearly indicated to the contrary by a specific provision of this Ordinance in particular circumstances, includes the hide or skin and head.
- (2A) **"Commercial Harvesting"** shall mean any harvesting of a natural resource in which the resource harvested, or any portion thereof, is sold, but shall not include harvesting of natural resources for subsistence uses.
- (3) **"Commission"** means the Great Lakes Indian Fish and Wildlife Commission.
- (3A) **"Commissioner"** means the Director of the Ceded Territory Conservation Department of the Fond du Lac Band unless the context expressly indicates otherwise.
- (4) **"Department of Resource Management"** means the Band's Ceded Territory Conservation Department, unless the context expressly indicates otherwise.
- (5) **"Endangered or Threatened Species"** means any wild animal or wild plant which is contained on either the federal (50 C.F.R. §§ 17.11 and 17.12) or Commissioner's endangered and threatened species lists, as may be amended from time to time, or which the Band's governing body from time to time may declare as endangered or threatened. The Commissioner's list shall, at a minimum, initially contain all species listed by the State of Minnesota as threatened or endangered as of January 1, 1995, but may be revised

hereafter in accordance with the provisions in the final decree in Fond du Lac Band v. Carlson, No. 5-92-159 (D. Minn.) and to recognize and give effect to determinations on threatened and endangered species made on behalf of the other Chippewa Bands by the Mille Lacs Commissioner of Natural Resources.

- (6) **"Fishing"** includes taking, capturing, killing or attempting to take, capture or kill fish of any variety in any manner. When the word "fish" is used as a verb, it shall have the same meaning as the word "fishing" as defined herein.
- (7) **"Game fish"** includes all varieties of fish except rough fish and minnows; **"rough fish"** means carp, buffalo, sucker, sheepshead, bowfin, burbot, cisco, gar, goldeye and bullhead; **"minnows"** includes (1) the minnow family, Cyprinidae, except carp and goldfish; (2) members of the mudminnow family; Umbridae; (3) members of the sucker family, Catostomidae, not over 12 inches in length; (4) bullheads, ciscoes, lake white fish, goldeyes, and mooneyes, not over seven inches long; and (5) leeches.
- (8) **"Gathering"** means to take or acquire or attempt to take or acquire possession of any wild plant or any part thereof.
- (9) **"Hunt" or "Hunting"** includes shooting, shooting at, taking, catching, or killing any wild animal or animals, or attempting to do any of the foregoing, except that "hunt" or "hunting" does not include the recovery of any wild animal which has already been lawfully reduced to possession.
- (10) **"Member"** means an enrolled member of the Fond du Lac Band.
- (11) **"Minnesota 1837 Ceded Territory"** means all lands and waters in Minnesota that were ceded by the Chippewa to the United States of America in the Treaty of 1837, 7 Stat. 536.
- (11A) **"Motor Vehicle"** means a self-propelled vehicle or a vehicle propelled or drawn by a self-propelled vehicle that is operated on a

highway, on a railroad track, on the ground, in the water, or in the air.

- (12) **"Non-member"** means a person who is not a member of any one of the Bands.
- (13) **"Possession"** means having killed, harvested, or otherwise obtained or acquired any wild animal or wild plant subject to the provisions of this Ordinance.
- (14) **"Protected Species"** means any wild animal or wild plant, the hunting, fishing, trapping or gathering of which is prohibited by Section 3.29 of this Ordinance.
- (14A) **"Subsistence Uses"** shall mean the use of natural resources for direct personal or family consumption by Band members as food, medicine, shelter, fuel, clothing, tools or transportation; for the making or selling of handicraft articles; or for barter. For purposes of this section, the term:
- (a) **"Family"** means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis;
 - (b) **"Handicraft articles"** means articles produced, decorated or fashioned in the exercise of traditional Indian handicrafts such as carving, weaving, beading, drawing or painting, without the use of mass copying devices; and
 - (c) **"Barter"** means the sale or exchange of natural resources or parts thereof for subsistence uses between members of the Bands.
- (15) **"Trapping"** includes the taking of, or attempting to take, any wild animal by means of setting or operating any device, mechanism or contraption that is designed, built or made to close upon, hold fast, or otherwise capture a wild animal or animals. When the word "trap" is used as a verb, it shall have the same meaning as the word "trapping" as defined herein.

- (16) **"Unprotected Species"** means any wild animal or wild plant, the hunting, fishing, trapping or gathering of which is not expressly authorized, prohibited or regulated by this Ordinance.
- (17) **"Wild animal"** means any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion.
- (18) **"Wildlife"** means all varieties of wild animals.
- (19) **"Wild Plant"** means any undomesticated species, and fruit or part thereof, of the plant kingdom occurring in the natural ecosystem, and includes wild rice, maple sap, ginseng, birch bark and timber.
- (20) **"Working day"** means Monday, Tuesday, Wednesday, Thursday or Friday, unless such day is a Band holiday.

CHAPTER 3 - GENERAL

3.01 Regulatory Authority.

- (1) The Band asserts legal authority to regulate the harvesting, use and disposition of all wild plants and wild animals by its members within the Minnesota 1837 Ceded Territory under the 1837 Treaty.

- (2) An officer of one of the Bands or other law enforcement official authorized to enforce the provisions of this Ordinance may seize forthwith wherever found:
 - (a) Any wild plant or wild animal, or carcass or part thereof, taken or reduced to possession in violation of this Ordinance; or

 - (b) Any wild plant or wild animal, or carcass or part thereof, lawfully taken or reduced to possession under this Ordinance, upon violation of the Ordinance relating to the possession, use, giving, sale, barter or transportation of such wild plant or wild animal, or carcass or part thereof.

3.02 Permits and Identification.

- (1) No member shall engage in the exercise of 1837 treaty rights regulated by this Ordinance without a validly issued Band natural resources harvesting permit or such other permit as this Ordinance may require validated for the particular type of activity to be engaged in and for the particular season in question.

- (2) No member shall engage in the exercise of treaty rights regulated by this Ordinance except while carrying a valid color picture identification card issued by the Band.

- (3) Except as otherwise provided in this Ordinance, the Band's Department of Natural Resources is authorized to issue to members permits required by this Ordinance and establish the form of such permits, provided

that such form shall include the member's name, address and Band enrollment number.

- (4) **[Reserved]**
- (5) No member shall refuse to display his or her identification documents or any other document or permit required by this Ordinance to any Band, state, local or federal law enforcement officer upon request by such officer.
- (6) No member to whom any permit has been issued under this Ordinance shall fail or refuse to provide harvest reports and data, and such other relevant information, as may be lawfully requested by one of the Bands, state, local and federal law enforcement officers or the Band's Department of Resource Management.
- (7) Permits, carcass tags and registration tags issued or used pursuant to this Ordinance in connection with any species for which a harvest quota is established shall be numbered sequentially and shall be indexed by number making information regarding the identity of the person who has been issued a tag or permit promptly accessible.

3.03 **Waste of Natural Resources.** No member shall unreasonably waste, injure, destroy, or impair natural resources while engaging in the exercise of treaty rights regulated by this Ordinance.

3.04 **Larceny of Natural Resources.** No member shall, without permission of the owner, molest, disturb or appropriate any wild plant or wild animal, or the carcass or part thereof, which has been lawfully reduced to possession by or is otherwise owned by another.

3.05 **Use of Poison and Explosives; Pole Traps.**

- (1) No member shall take, capture, or kill or attempt to take, capture or kill any wild animal with the aid of dynamite or any other explosive or poisonous or stupefying substances or devices.
- (2) No member shall place in or allow to enter any waters explosives which might cause the destruction of any wild animal, except when authorized by the Commissioner, or have in his or her possession or under his or her control