

TESTIMONY OF WHITNEY B. GRAVELLE
PRESIDENT OF THE BAY MILLS INDIAN COMMUNITY
and
MEMBER OF THE CHIPPEWA OTTAWA RESOURCE AUTHORITY BOARD OF
DIRECTORS
before the COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
UNITED STATES HOUSE OF REPRESENTATIVES
on May 7, 2024

Aanii (Hello)! I am providing this testimony regarding FY 2025 funding in my capacity as President of the Bay Mills Indian Community, an Ojibwe Tribal Nation located on the south shore of Lake Superior in Michigan's Upper Peninsula. My Tribal Nation is a member of the Chippewa Ottawa Resource Authority (CORA) and I serve on the Board of that inter-tribal entity, and present this testimony on CORA's behalf.

CORA is a consortium of five federally recognized Tribal Nations in Michigan that are parties to the 1836 Treaty of Washington with the United States; they are: Bay Mills Indian Community; Grand Traverse Band of Ottawa and Chippewa Indians; Little River Band of Ottawa Indians; Little Traverse Bay Bands of Odawa Indians; and the Sault Ste. Marie Tribe of Chippewa Indians. The Tribes are plaintiffs in *United States v. Michigan*, a case filed 50 years ago by the United States to ensure that the 1836 Treaty Tribes are able to exercise rights reserved in that Treaty to hunt, fish, and gather.

I cannot emphasize enough the importance of federal funding to support the exercise of reserved treaty rights and management of natural resources protected by these treaties. Within the Department of the Interior annual budget exists funding for the Rights Protection Implementation (RPI) program. That program provides to those Tribal Nations with judicially-recognized reserved usufructuary rights, funds which are necessary to protect and preserve the ability of the Tribal Nations to facilitate sustainable use and enjoyment of these protected natural resources. RPI funds are targeted to enable Tribal Nations to identify and implement appropriate management and protection activities, to utilize expert management and biological services, and to employ sufficient law enforcement personnel enforce tribal, state, and federal laws regulating the natural resource use and protection.

In FY 2024, RPI funding in the amount of \$6,994,659.00 was provided to CORA's Tribal Nations. This level of funding is essential to the ability of each Tribal Nation to carry out the obligations under current Decrees, and additional funding in the amount of **\$1,803,021** is needed to fund the additional Tribal responsibilities and obligations under a successor Great Lakes Fishing Decree, bringing the total FY 2025 funding needed to **\$8,237,031**.

Background: Treaty Rights Recognition in State and Federal Courts

In 1836, the Ojibwe (Chippewa) and Odawa (Ottawa) Tribal Nations ("CORA Tribal Nations") in Michigan negotiated a treaty with the United States that ceded lands to the federal government which were used to create the State of Michigan in 1837. The ceded lands comprise more than forty per cent (40%) of what is now the State of Michigan. However, the CORA Tribal Nations reserved the "usual privileges of occupancy," which has also been interpreted to be the right to hunt, fish, trap, and gather throughout the ceded territory, including the waters of Lakes Michigan, Huron, and Superior.

Thereafter, tribal citizens continued to exercise their treaty-guaranteed rights. Their ability to do so was adversely impacted by the State of Michigan, which in the 1950's and 1960's asserted its authority to exclusively regulate hunting and fishing by tribal citizens and to limit what activities were protected by

the Treaty. At that time, only the Bay Mills Indian Community was a federally recognized Tribal Nation, so its tribal citizens, including my grandfather, Albert “Big Abe” LeBlanc, resisted State efforts to control treaty-protected activities and continued to hunt and fish with traditional gear and without a State License. The resistance culminated in 1971, with the citation of Albert “Big Abe” LeBlanc for fishing in Lake Superior with gill nets, then a State criminal offense. In defense, the Bay Mills Indian Community supported its fisher’s positions that the rights reserved in the 1836 Treaty continued to exist and supersede Michigan fishing regulation under the Supremacy Clause of the U.S. Constitution. The case wound through various State court levels, culminating in 1976 with the issuance of a decision by the Michigan Supreme Court, holding in *People v. LeBlanc* that the right to fish in the Great Lakes waters ceded in the Treaty of 1836 continued to exist, and that the State could apply its law to Treaty-protected fishing if it could demonstrate that the specific regulation is necessary to conserve the resource.

The ongoing battle shifted to federal court, as the United States had filed suit in 1973 against the State of Michigan, on the grounds that Michigan lacked the right to regulate treaty-protected Great Lakes fishing activities. The Bay Mills Indian Community and Sault Ste. Marie Tribe of Chippewa Indians joined the case as intervenors prior to trial. In 1979, the trial court declared that the right to fish in the Great Lakes waters ceded in 1836 continues to exist; the decision is known as the “Fox Decision.” The Grand Traverse Band of Ottawa and Chippewa Indians intervened in the case within the year.

Many issues remained unresolved, as the Fox Decision did not determine what gear could be employed in the Treaty fishery, what species could be harvested, when harvest could occur, and most importantly, what number of fish of each species could be taken by Tribal fishers. All the parties in the case—United States; State of Michigan; Bay Mills Indian Community; Sault Ste. Marie Tribe of Chippewa Indians; and Grand Traverse Band of Ottawa and Chippewa Indians—participated in court-ordered negotiations which resulted in a comprehensive order of the court regarding allocation of harvest opportunity, management, and regulation in May 1985.



Management, Regulation and Allocation In 1836 Ceded Great Lakes Waters

That order was for a term of 15 years, and was succeeded by an agreement among the parties covering allocation, management, regulation, enhancement and restoration of the Great Lakes fishery, negotiated by all the prior participants and joined by the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. This agreement was signed on August 7, 2000, for a term of 20 years, and was also entered as a court order. All the parties began negotiations for a third agreement in the fall of 2019. The parties' discussions continued through the COVID-19 pandemic and resulted in a proposed comprehensive agreement filed with the trial court on December 11, 2022. Objections to certain provisions were filed by one Tribe and by amicus curiae which were heard by the judge in May 2023. The court approved the proposed decree and rejected the objections made to it by order in August 2023. The objecting entities have filed appeals in the U.S. Court of Appeals for the Sixth Circuit, which are pending in that court. In the meantime, the treaty fishery is being conducted under the provisions of the August 2023 Great Lakes Fishing Decree.

Under these circumstances, the final text of the successor comprehensive Decree is not complete. What is clear is that the CORA Tribal Nations must create more frequent and comprehensive harvest reporting and oversight, so that stressors of the fishery are identified and management strategies developed and implemented to address them. Harvest is not the primary source of fish mortality in this century; instead, water quality, higher water temperatures and invasive species are causing the fishery to change in ways that must be closely monitored to identify and remediate impediments to a healthy fish stock for decades. These activities will require additional funding to address them.

Inland Treaty-Protected Activities: Comprehensive Agreement

The parties have also separately addressed the nature and scope of inland treaty-protected activities in the 1836 Treaty ceded lands. In 2007, the parties abandoned planned litigation on this subject in favor on negotiating a separate agreement addressing the treaty-protected rights to hunt, fish, and gather on all lands and inland waters ceded in the 1836 Treaty. This comprehensive agreement was entered as an order of the federal district court, which has no termination date. Among other matters, the Consent Decree recognizes exclusive Tribal regulation of tribal citizen hunting, fishing, trapping and gathering activities, and allocates harvest opportunities for elk, bear, and sturgeon. Joint management protocols for certain species are also created as well as cooperative law enforcement agreements.

In each comprehensive agreement to date, the management framework has been approved and ordered by the court in the *United States v. Michigan* litigation. Equally significant is the active role of the Federal Government in negotiating the terms of these cooperative resource management frameworks.

FY 2025 Budget Request: Rights Protection Implementation

Currently, CORA's Tribal Nations receive funding through the "Treaty Fisheries" line item in the Rights Protection Implementation (RPI) program for the Great Lakes Treaty fishery. ("Inland treaty rights" are separately funded within the RPI program and are addressed separately.) That line item supports the following activities, with additional activities for which funding is sought identified by use of italics:

- Establishment of conservation-based fishing regulations; Biological support services to monitor the fishery; Resource protection and enhancement programs;
- Conservation law enforcement activities and Tribal Court staffing for Great Lakes fishing conservation cases;
- *Additional oversight of harvest activities by biological staff and enforcement personnel;*

- *Implementation of electronic harvest reporting by Tribal fishers and wholesalers and maintenance of inter-tribal harvest reporting system;*
- *Creation of access sites and improvement of access for Tribal fishers to the waters of the Great Lakes;*
- *Monitoring of environmental factors which adversely affect the treaty fishery;*
- *Establishment of and/or cooperation with federal and state researchers in remediation projects to address identified environmental factors' impact on fish stocks; and*
- *Invasive species monitoring and controls.*

CORA's Tribal Nations also receive RPI funding relating to "inland treaty rights" implementation of the 2007 Consent Decree. The following activities are supported:

- Establishment of conservation-based hunting, fishing and gathering regulations;
- Biological support services to monitor wildlife, plant life and habitat;
- Resource protection and enhancement programs;
- Invasive species monitoring and controls;
- Conservation law enforcement activities and Tribal Court staffing for inland conservation cases; and
- Inter-tribal coordination of activities and policies with federal and state agencies.

CORA does not, and cannot, support any budget request for RPI funds in FY 2025 that is less than the sum appropriated for FY 2024. Less funding, especially in light of the soon to be completed Great Lakes Fishing Decree appeal, will require severe cuts to conservation, monitoring and enforcement activities, with attendant staff layoffs. That situation will not only increase conflict between Tribal Nations and other communities over resources, but will also significantly reduce the level of protection of the fishery, wildlife and habitat throughout the ceded territory. It is almost a certainty that the parties to these management and allocation agreements will bring disputes over program changes to the federal court for resolution.

CORA requests that Rights Protection Implementation continue to be a budget priority, and that CORA's Tribal Nations' share be increased for FY 2025 to **\$8,237,031.00**, which is added to the Great Lakes base funding, for the identified purposes listed above.