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SUSTAINING OGAA: HOW OJIBWE TRIBAL LAW AND CUSTOM SUCCESSFULLY PROTECTS WALLEYE IN WISCONSIN

Ben Meyer

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I. INTRODUCTION

On a cold late-April night in 1989, more than 800 non-Native protesters descended on a boat landing on North Twin Lake in Phelps, Wisconsin.¹ They were there to confront the 13 Lac du Flambeau Ojibwe spearfishermen putting boats on the water to harvest *ogaa*, or walleye, from the lake.² The protesters began by hurling insults, then racial slurs, then rocks at the spearers.³ One tribal spearer, Raymond Cadotte, could “hear them whizzing by [their] heads.”⁴ That was just before Cadotte was hit in both the back and the face by rocks.⁵ Earlier that day, Wisconsin Governor Tommy Thompson acknowledged police had received reports of bombs being prepared for use against spearers at North Twin and other lakes in northern Wisconsin.⁶ Police at North Twin donned helmets, face shields, and other riot gear.⁷ The seven arrests they made that night were among at least 87 arrests of violent anti-spearfishing protesters in northern Wisconsin that week alone.⁸

The spring of 1989 was the fifth consecutive spring in which Ojibwe fishermen openly exercised their treaty-guaranteed rights to spearfish walleye on northern Wisconsin lakes outside of reservation boundaries. The protesters were enraged by the Ojibwe’s right to spear, a practice long outlawed by Wisconsin statute but newly affirmed by a federal court interpreting 19th-century treaties the Ojibwe had made with the United States. Non-Native opponents worried Native spearfishing, a technique much more efficient than hook-and-line angling, would lead to widespread walleye overharvest. They feared that, in turn, would devastate northern Wisconsin’s fishing-heavy tourist economy.⁹

Every spring in the late 1980s, non-Native protesters threw rocks, shot ball bearings from wrist rockets, and swamped the boats of tribal spearers.¹⁰ Bumper stickers, hats, and signs adorned with slogans like “Spear an Indian, Save a Walleye” became common in the region.¹¹ Protesters hung dummies dressed to represent Ojibwe people with ropes around their necks.¹² By 1988,

¹ Kurt Krueger, *At Least 87 Arrested in Record Protests*, VILAS COUNTY NEWS-REVIEW (Wis.) May 3, 1989, at 1.

² *Id.*

³ LARRY NESPER, *THE WALLEYE WAR: THE STRUGGLE FOR OJIBWE SPEARFISHING AND TREATY RIGHTS* 122 (2002).

⁴ Maryann Mrowca, *Officials Crack Down on Protest Violence*, THE JOURNAL TIMES (Wis.), May 1, 1989, at 4A.

⁵ Krueger, *supra* note 1, at 1.

⁶ RICK WHALEY & WALT BRESSETTE, *WALLEYE WARRIORS: THE CHIPPEWA TREATY RIGHTS STORY* 111 (2009).

⁷ Krueger, *supra* note 1, at 1.

⁸ *Id.*

⁹ LEON VALLIERE JR., *MEMORIES OF LAC DU FLAMBEAU ELDERS* 53 (Elizabeth M. Tornes eds., 2004).

¹⁰ GREAT LAKES INDIAN FISH AND WILDLIFE COMM’N, *MOVING BEYOND ARGUMENT: RACISM & TREATY RIGHTS* 18 (1989).

¹¹ *Id.*

¹² VALLIERE ET AL., *supra* note 9, at 51.

law enforcement was sending canine units and National Guard helicopters to boat landings to try to control the non-Native violence.¹³

However, the alarmist projections of anti-tribal protesters at northern Wisconsin boat landings in the 1980s were dead wrong. The federal court's affirmation of Ojibwe off-reservation walleye harvest rights did not lead to a decimation of the fish's population. Instead, after the affirmation of tribal authority to self-regulate the walleye resource, the tribes now administer a highly organized system of walleye management and enforcement. This system of tribal law is coupled with a powerful Native cultural relationship with walleye that dates to time immemorial. As a result, Ojibwe tribes have successfully protected the species they call *ogaa* in Wisconsin's lakes.

Following this Introduction, Part II of this paper traces the importance of walleye in Ojibwe culture. The reverence of walleye is rooted in the long-standing spiritual and symbiotic relationship Ojibwe people feel with all beings of the Earth. Walleye have also historically provided an important means of sustenance. Respectful harvest of walleye—and other plants and animals of the region—has always been important to the Ojibwe people.

The ability to harvest, in fact, was so crucial that the tribes affirmatively protected those rights on the very lands they ceded to the United States via treaty in the 19th century. Part III includes an overview of those cornerstone treaties. Then, Part IV describes the formidable post-treaty threats to walleye that the Ojibwe tribes in Wisconsin faced over the ensuing century, including aquatic habitat encroachments, the rise of non-Native sportfishing, and, most importantly, state laws blocking Ojibwe fishermen from exercising treaty-guaranteed rights like spearing.

But the Ojibwe never stopped fighting to protect their treaty rights. Part V summarizes the landmark set of 1980s federal rulings that affirmed those rights. The return of the spearers, however, precipitated a fierce, violent, and often downright racist response by non-Native anglers in northern Wisconsin. Part VI relays a brief description of that ugly historical period.

Part VII demonstrates how Ojibwe tribes proved the alarmists wrong by instituting a robust legal system governing walleye management, harvest, and enforcement. The legal system springs from long-honored tribal customs. In more recent years, it has taken the form of a successful regime of written tribal law: intertribal organizations, walleye harvest protocol, an exacting code, and enforcement by wardens and tribal courts. Part VII also offers statistics detailing the state of the walleye population and harvest in the region, of which tribal spearing remains but a fraction.

This paper draws on a variety of sources, including 1) oral histories shared by Ojibwe tribal members; 2) historical observations of Ojibwe customs by non-Natives; 3) treaties between tribes and the United States; 4) state and federal court decisions; 5) book-form academic research and analysis; 6) news reports contemporaneous to major events; 7) statistics and reports generated by tribes, intertribal organizations, and governments; 8) tribal codes;

¹³ NESPER, *supra* note 3, at 95.

9) interviews with Ojibwe fishermen, policymakers, and lawyers; and 10) first-hand personal observations.

Ojibwe tribes in Wisconsin maintain a successful system of tribal law in the harvest and management of walleye, a species of considerable cultural importance. By doing so, they advance a right they had so feverishly protected in 19th-century treaties with the United States—the right to fish outside of reservation boundaries. Notwithstanding the deepest fears of the raucous protesters at 1980s northern Wisconsin boat landings, tribal overfishing and depletion of the walleye resource remain but a myth. *Ogaa* are safe. The Ojibwe people ensure it.

II. TRADITIONAL IMPORTANCE OF WALLEYE IN OJIBWE CULTURE

Ojibwe people ensure the sustainability of walleye in Wisconsin in large part because the species is vital to them. Not only do walleye provide a dependable source of nourishment, they occupy an essential place in the history and culture of Ojibwe people. Ojibwe origin and migration stories help introduce the importance of walleye in Ojibwe culture. Additionally, traditional methods of walleye harvest—chiefly, spearing—are significantly tied to tribal culture.

A. *Ojibwe peoples' origins and arrival in the Great Lakes region*

Ojibwe tribes' relationship with walleye is deeply interwoven with their cultural and spiritual beliefs, which themselves are deeply interwoven with the story of who the Ojibwe people are and where they came from. Fish species, place, and spiritual beliefs are innately connected and deserve explanation to have a fuller understanding of the Ojibwe-walleye story.

Ojibwe people call themselves Anishinaabe, which translates to “original people.”¹⁴ “Chippewa” (English in origin) and “Ojibwe” (likely French) are terms sometimes used interchangeably to describe these people.¹⁵ The origin of the terms remains somewhat ambiguous, but modern scholars believe the word Chippewa may derive from a term meaning “people with the puckered moccasins.”¹⁶

Ojibwe spiritual tradition is based on the idea of the Midewiwin. The Midewiwin has been described by some as a society of shamans, increasing and distributing spiritual power.¹⁷ The people of the Midewiwin, according to tradition, followed a sacred *megis* shell, which appeared, disappeared, and reappeared again and again across North America.¹⁸ This led to a gradual east-to-west migration by the Anishinaabe, starting on the Atlantic Coast.¹⁹ Lore passed down by Ojibwe elders holds that, upon leaving the coast, Anishinaabe people congregated in a great town, but the “ravages of sickness and death” forced them westward.²⁰ The Midewiwin lodge, the center of spiritual life, was

¹⁴ WHALEY & BRESSETTE, *supra* note 6, at 7.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ NESPER, *supra* note 3, at 32.

¹⁸ *Id.* at 33.

¹⁹ *Id.*

²⁰ FRANCES DENSMORE, CHIPPEWA CUSTOMS 8 (1929) (quoting William Warren, a Native

deconstructed and reconstructed several times during the westward journey, including at present-day Montreal, on the shores of Lake Huron, and at Bowe-ting (present day Sault Ste. Marie, in Michigan's Upper Peninsula).²¹ For the last time, the Midewiwin lodge was erected at La Pointe, on today's Madeline Island in Lake Superior, just off the Wisconsin mainland.²² There, an elder recounted, "long before the pale face appeared among them, [their spirituality] was practiced in its purest and most original form."²³

The Anishinaabe were historically made up of "Three Fires," which were tribes within the larger whole including the Ojibwe, Odawa (or Ottawa), and Potawatomi.²⁴ Within this confederation, the Ojibwe assumed the role of "Elder Brother," the Odawa, "Next Elder Brother," and the Potawatomi, "Younger Brother."²⁵

Europeans first encountered Ojibwe peoples in the 17th century near Sault Ste. Marie, Michigan.²⁶ Around that time, Ojibwe bands were in the process of moving into today's Wisconsin.²⁷ By 1745, an Ojibwe leader named Kiishkiman established Waasawaaganing Village, today's Lac du Flambeau, in the heart of modern Wisconsin walleye territory.²⁸ Over time, Ojibwe tribes came to control about 20 million acres of land in today's northern Wisconsin.²⁹

Lac du Flambeau became one of six federally-recognized Ojibwe bands that remain in Wisconsin to this day, all in the northern third of the state. The others include the Bad River, Lac Courte Oreilles, St. Croix, Sokaogon (Mole Lake), and Red Cliff bands. The terms "band" and "tribe" are sometimes used interchangeably, as in the phrases "Lac du Flambeau tribe" and "Lac du Flambeau band." All six are part of a group referred to as the Lake Superior Chippewa, which signed several consequential 19th-century treaties with the United States.³⁰ Ojibwe bands in today's Minnesota and the Upper Peninsula of Michigan are also part of the Lake Superior Chippewa.³¹

B. *Cultural and spiritual reverence for beings of the Earth*

Drawing on teachings handed down over the centuries, Ojibwe people hold a profound respect and reverence for the beings with whom they share the Earth. Humans, according to the creation narrative relayed by Sokaogon elder Wayne LaBine, were the very last thing made by the Creator, after all other living

Ojibwe historian, who was relaying a story passed down by elders).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ MATTHEW L.M. FLETCHER, *THE EAGLE RETURNS: THE LEGAL HISTORY OF THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS* 3–4 (2012).

²⁵ *Id.* at 4.

²⁶ VICTOR BARNOUW, *WISCONSIN CHIPPEWA MYTHS & TALES AND THEIR RELATION TO CHIPPEWA LIFE* 6–7 (1977).

²⁷ *Id.* at 7–8.

²⁸ VALLIERE ET AL., *supra* note 9, at 10.

²⁹ WHALEY & BRESETTE, *supra* note 6, at 6.

³⁰ *Id.* at 7.

³¹ *Id.*

things.³² At the time of that creation, a covenant was formed between all living things to coexist and take care of each other. Every being had a duty of respect and assistance to the other beings of the earth.³³ Lac Courte Oreilles elder Eugene Begay described animals as teachers of humans after their creation.³⁴ All living beings are dependent on each other, but humans, coming to the world last, are the most dependent of all.³⁵ The Creator made it such that all beings procreate enough not only to survive, but to provide for other beings.³⁶

In this worldview, Ojibwe ancestors understood that lakes, trees, fish, wild rice beds, deer, and other living beings, if respected properly, would provide the needed sustenance for humans.³⁷ In Ojibwe tradition, “[d]eath is seen only as a temporary interruption. Animals do not mind being killed and eaten, provided that they are not treated with disrespect.”³⁸ Gaiashkibos, a onetime Lac Courte Oreilles Tribal Chair, referred to the Ojibwe as the “keepers” of the Earth, people who were placed here to preserve, not destroy and abuse the resources around them.³⁹

C. *Natural patterns of walleye*

Walleye have a highly predictable spawning pattern. As soon as the winter ice melts between mid-April and early May, walleye move to shallow, rocky waters near inland lake shorelines.⁴⁰ Peak spawning, during which females lay eggs and males provide milt (sperm), occurs when the water temperature is between 42 and 50 degrees Fahrenheit.⁴¹ Male walleye reach maturity in two or three years, when they are about a foot long; females mature in four or five years at a length of about 16 inches.⁴² An average walleye lives no more than seven years and can be two feet long.⁴³

D. *Place of walleye in Ojibwe culture*

Walleye have held a central place in Ojibwe culture for centuries. That importance continues to the present day. Walleye are, of course, an important food source, and tens of thousands are harvested by Ojibwe tribal members in Wisconsin alone every year. But walleye are viewed as much more than a simple resource for sustenance.

³² Telephone Interview with Wayne LaBine, Member, Voigt Inter-Tribal Task Force of the Great Lakes Indian Fish and Wildlife Comm’n (Sept. 28, 2023).

³³ *Id.*

³⁴ WHALEY & BRESSETTE, *supra* note 6, at 8.

³⁵ *Id.*

³⁶ See telephone interview with Wayne LaBine, *supra* note 32.

³⁷ WHALEY & BRESSETTE, *supra* note 6, at xv.

³⁸ BARNOUW, *supra* note 26, at 252.

³⁹ RONALD N. SATZ, CHIPPEWA TREATY RIGHTS: THE RESERVED RIGHTS OF WISCONSIN’S CHIPPEWA INDIANS IN HISTORICAL PERSPECTIVE, 79 Trans. Wis. Acad. Sci. Arts Lett. 125 (1991).

⁴⁰ See *Walleye*, Wisconsin Department of Natural Resources (last visited Nov. 12, 2023), <https://dnr.wisconsin.gov/topic/Fishing/species/walleye.html>.

⁴¹ *Walleye*, Wisconsin Department of Natural Resources (last visited Nov. 12, 2023), <https://dnr.wisconsin.gov/topic/Fishing/species/walleye.html>.

⁴² Maureen Mecozzi, *Walleye*, Wisconsin Department of Natural Resources (July 2008), https://dnr.wisconsin.gov/sites/default/files/topic/Fishing/Species_walleye.pdf.

⁴³ *Id.*

Larry Nesper, a professor and anthropologist focusing on Native Americans of the Great Lakes, suggested walleye are closely connected to Ojibwe culture because the fish are considered “persons” in a traditional Ojibwe view of life.⁴⁴ Wayne LaBine, the Sokaogon elder, said when Ojibwe harvest walleye from a lake—by spearing or by other means—the fisherman is not “hunting” the walleye.⁴⁵ Instead, the walleye is knowingly giving itself up to provide nourishment to man.⁴⁶ The animals themselves decide which among them are going to give themselves up.⁴⁷ Therefore, Ojibwe spearmen must take the walleye they see; otherwise, it is a sign of disrespect to the fish.⁴⁸ In return, fishermen present an offering of sacred tobacco (*semaa*) and take fish only in moderation.⁴⁹

The presence of walleye in traditional Ojibwe tales also points to the species’ importance in the culture. For example, Delia Oshogay, a Lac Courte Oreilles elder, retold a story to an anthropologist in 1942.⁵⁰ In the story, Mink found a live fish on a lakeshore. Mink told the fish a muskie was calling the fish names. “He says you’re wall-eyed,” Mink said. “Well, he’s got teeth like a saw blade and a long plated face. He’s not pretty either,” the fish replied, referring to the muskie. The story later ends as a classic trickster tale.⁵¹

Bodies of water across the western Great Lakes region are dotted with references to walleye, further demonstrating the role the fish has traditionally played. The Kakagon Slough on the Bad River Reservation in Wisconsin derives from the Ojibwe word for walleye (*ogaa*).⁵² The name of Duroy Lake near Phillips, Wisconsin comes from the French word for walleye.⁵³ Torch Lake, Michigan is named for a traditional walleye harvest method—spearing by the light of a torch.⁵⁴

Sustenance throughout the year, however, may be the chief role of walleye in Ojibwe culture. Natives and non-Natives alike have long gravitated to the taste of cooked walleye. But unlike in many non-Native communities, Ojibwe harvest of walleye is not merely for personal consumption. According to LaBine, it is the *duty* of Ojibwe fishermen to share their walleye catch widely in the community—with elders, with fellow families, and with those in need.⁵⁵ Despite the bulk of the walleye harvest occurring in spring, the fish are preserved for year-round use. Traditionally, Ojibwe people were adept at smoking, salting, and drying fish to provide nourishment throughout the year.⁵⁶ Modern technology allows for refrigeration to preserve fish.

⁴⁴ NESPER, *supra* note 3, at 102.

⁴⁵ See telephone interview with Wayne LaBine, *supra* note 32.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ WHALEY & BRESSETTE, *supra* note 6, at 11.

⁵⁰ BARNOUW, *supra* note 26, at 152.

⁵¹ *Id.*

⁵² NESPER, *supra* note 3, at 60.

⁵³ *Id.*

⁵⁴ FLETCHER, *supra* note 24, at 11.

⁵⁵ See telephone interview with Wayne LaBine, *supra* note 32.

⁵⁶ *Id.*

A 2019 interagency report on the walleye fishery in Wisconsin summarized the tie between the fish and the culture this way: “[o]gaa features prominently in many traditional stories and personal memor[ies] illustrating how Ojibwe people have depended on fishing as a means of survival.”⁵⁷

E. *Methods of harvest*

Ojibwe fishermen use a variety of methods to harvest fish, but the most recognizable is spearing. In late April and early May, the ice cover recedes from inland lakes as the weather warms. Walleye predictably retreat to shallow waters to spawn.⁵⁸ Spearfishing is done at night, when the glow of a torch or artificial light illuminates the reflective eyes of walleye, making them easier to see and spear. Historically, spearing parties navigated the lakes in birchbark canoes.⁵⁹ A torch, about four feet in length,⁶⁰ was fastened to the bow of the canoe.⁶¹ It allowed the fishermen to use a spear, generally 12 to 16 feet in length and equipped with multipronged points made of bone, to see the fish, thrust the spear into the water, and pull the fish back onto the canoe.⁶²



FIGURE 1: “Fishing by Torch Light” by Paul Kane. In 1845, Kane traveled through the Great Lakes region, sketching people he encountered and later developed paintings based on his sketches. This painting depicts Menominee people spearfishing on the Fox River in Wisconsin. The technique is substantially similar to that used by traditional Ojibwe spearmen.⁶³

⁵⁷ JOINT ASSESSMENT STEERING COMM., U.S. DEP’T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, MINN., FISHERY STATUS UPDATE IN THE WISCONSIN TREATY CEDED WATERS 4 (7th ed. 2019).

⁵⁸ VALLIERE ET AL., *supra* note 9, at 42.

⁵⁹ SUE ERICKSON, GREAT LAKES INDIAN FISH & WILDLIFE COMM’N., MAZINA’IGAN SUPPLEMENT, SPEARFISHING WITH TOMMY SKY (2009), http://glifwc.org/publications/pdf/Spearfishing_Supplement.pdf.

⁶⁰ DENSMORE, *supra* note 20, at 125.

⁶¹ Erickson, *supra* note 59.

⁶² *Id.*

⁶³ Paul Kane, *Fishing by Torch Light* (illustration), in ROYAL ONTARIO MUSEUM (1849–1856), <https://artsandculture.google.com/asset/fishing-by-torch-light-paul-kane/>

Frances Densmore, a non-Native anthropologist, documented Ojibwe culture in a detailed report for the Smithsonian Institution in 1929. She observed that through this practice, “the occupant of the canoe could see the fish and spear them while he himself remained invisible.”⁶⁴ Fishermen carried extra strips of bark with them, Densmore wrote, to replenish the torch and keep it burning as long as needed.⁶⁵ In the Ojibwe language, a torch is known as a *waaswaagan*, forming the root of the place name Waaswaaganing (Place of Fishing by Torch Light).⁶⁶ The more commonly-known modern name of that place and the Ojibwe band residing there (the Lac du Flambeau Tribe) is itself a French term with a similar meaning: Lake of the Torch.⁶⁷

The premise of modern spearfishing remains the same, although the technologies have changed. Boats are now powered by motors. Fishermen use battery-powered headlamps to illuminate fish.⁶⁸ Their spears are often made of aluminum.⁶⁹ But they still spearfish at night, still go in spring right after the ice leaves the lakes, and still haul their catch into the boat, to shore, and to their communities.

III. TREATIES WITH THE UNITED STATES PROTECTING HARVEST RIGHTS

Given the central role of fishing in the culture and sustenance needs of the Ojibwe in the Great Lakes region, it is little wonder these peoples insisted upon reserving fishing rights (along with hunting and gathering rights) in 19th-century treaty-making with the United States. Treaties made in 1837 and 1842, in which Ojibwe bands ceded their lands in present-day Wisconsin to the United States, contained specific provisions for continued Ojibwe fishing, hunting, and gathering on those lands. A description of four treaties—the ones made in 1837 and 1842, plus additional treaties with the United States in 1825 and 1854—is essential in understanding the contours of Ojibwe fishing, management, and legal enforcement in contemporary Wisconsin.

A. *Treaty of Prairie du Chien (1825)*

By 1825, the United States had established physical supremacy in much of North America.⁷⁰ That year, representatives from the United States and several Midwestern tribes met at Prairie du Chien in today’s southwestern Wisconsin. The primary American purpose was to establish geographic borders between territories of the various tribes.⁷¹ The Lake Superior Chippewa laid claim to today’s northern Wisconsin, northeastern Minnesota, and the western

OwFKt5oYdDerUQ?hl=en [<https://perma.cc/J5TJ-DN3E>].

⁶⁴ DENSMORE, *supra* note 20, at 126.

⁶⁵ *Id.*

⁶⁶ VALLIERE ET AL., *supra* note 9, at 42.

⁶⁷ *Id.*

⁶⁸ Ben Meyer, *Spearfishing Walleye, Fighting Misconceptions: A Night with Tribal Members on a Northwoods Lake*, WXPB (May 24, 2022, 4:54 AM).

⁶⁹ *Id.*

⁷⁰ WHALEY & BRESSETTE, *supra* note 6, at 13.

⁷¹ *Id.*

Upper Peninsula of Michigan.⁷² The borders of the Ojibwe territory were described not by political boundaries or lines of latitude and longitude, but in the delightfully descriptive parlance of the day. For example, the boundary was described, in part, as:

[commencing] at the Chippewa River, half a day's march below the falls; and from thence it shall run to Red Cedar River, immediately below the falls; from thence to the St. Croix River, which it strikes at a place called the standing cedar, about a day's paddle in a canoe, above the Lake at the mouth of that river; thence passing between two lakes called by the Chippewas "Green Lakes," and by the Sioux "the lakes they bury the Eagles in," and from thence to the standing cedar that "the Sioux Split".⁷³

Importantly, in agreeing upon specific boundaries, the United States *acknowledged* tribal ownership of the lands described.⁷⁴ Ojibwe author and historian Walter Bresette described this line-drawing treaty as a "necessary first step in disenfranchising Native people of their homelands."⁷⁵ In other words, the treaty geographically defined tribal homelands—and provided the United States a guide on *from whom* to buy or take land.

B. *Treaty of St. Peter's (1837)*

Twelve years later, in a treaty-making session convened at St. Peter's (today's Mendota, Minnesota), Ojibwe tribes ceded a large swath of the territory they had claimed in the Treaty of 1825. The United States took much of northcentral and northwestern Wisconsin as well as parts of east-central Minnesota.⁷⁶ In return, the United States promised to the Ojibwe people a total of \$870,000 in payments, annuities, and provisions over a period of 20 years.⁷⁷

Ojibwe negotiators insisted upon reserving their rights to fish, hunt, and gather on the ceded lands. Ojibwe spokesman Aish-ke-bo-gi-ko-she told American Commissioner Henry Dodge that the tribes could not live deprived of these means of sustenance.⁷⁸ Dodge replied, in part, "I will make known to your Great Father, your request to be permitted to make sugar [maple syrup], on the lands; and you will be allowed, during his pleasure, to hunt and fish on them."⁷⁹ Critically, Article 5 of the ensuing treaty reads: "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."⁸⁰

⁷² *Id.*

⁷³ Treaty with the Sioux and Chippewa, Sacs and Fox, Menominee, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa, and Potawatomie, Tribes art. 5, Aug. 19, 1825, 7 Stat. 272.

⁷⁴ WHALEY & BRESSETTE, *supra* note 6, at 13.

⁷⁵ *Id.*

⁷⁶ Treaty with the Chippewa art. 1, July 29, 1837, 7 Stat. 536.

⁷⁷ *Id.* at art. 2–4.

⁷⁸ *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt (LCO I)*, 700 F.2d 341, 344 (7th Cir. 1983).

⁷⁹ *Id.*

⁸⁰ See Treaty with the Chippewa, *supra* note 79, at art. 5.

C. *Treaty of La Pointe (1842)*

The United States took possession of the rest of Ojibwe territory in today's Wisconsin via another treaty in 1842. At La Pointe, on today's Madeline Island, Wisconsin in Lake Superior, Ojibwe leaders ceded their remaining Wisconsin lands and most of the western Upper Peninsula of Michigan.⁸¹ In return, they were promised \$875,000 in payments, annuities, and provisions over a period of 25 years.⁸² Like in the Treaty of 1837, Ojibwe tribes safeguarded their rights to fish, hunt, and gather on the ceded lands. Article II provides: "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 . . ."⁸³

Upon signing, Ojibwe tribes had ceded all Wisconsin lands to which they had laid claim in the Treaty of 1825. Totalling more than 22,000 square miles, the Ceded Territory encompasses roughly the northern third of lands within today's state boundaries.

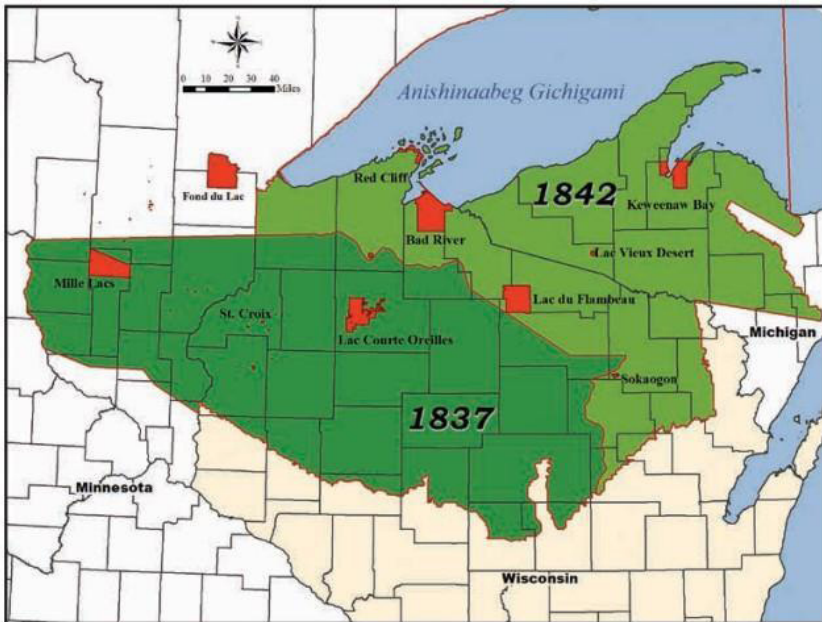


FIGURE 2: A map showing lands ceded by Ojibwe tribes in the Treaties of 1837 and 1842 and present-day Ojibwe reservations in and near ceded lands. In Wisconsin, the Ceded Territory covers roughly the northern third of the state.⁸⁴

⁸¹ Treaty with the Chippewa art. I, Oct. 4, 1842, 7 Stat. 591.

⁸² *Id.* at art. IV.

⁸³ *Id.* at art. II.

⁸⁴ See JOINT ASSESSMENT, *supra* note 57, at 46.

D. *Treaty of La Pointe (1854)*

During another treaty-making session at La Pointe in 1854, Ojibwe tribes ceded more territory, although none of it in today's Wisconsin. The United States took possession of Ojibwe lands in northeastern Minnesota.⁸⁵ As part of the exchange, however, the United States created relatively small reservations for several Ojibwe bands, including four in Wisconsin: Bad River, Red Cliff, Lac Courte Oreilles, and Lac du Flambeau.⁸⁶ The two other Wisconsin Ojibwe bands, the St. Croix and Sokaogon, were left out of treaty negotiations.⁸⁷ They remained landless until even smaller reservations were created for them by the federal government in 1934.⁸⁸

By the time these four treaties were concluded, the Lake Superior Ojibwe had ceded all the territory delineated as their own—and recognized as such by the United States—in the Treaty of 1825. Crucially, though, each treaty retained for the tribes “usufructuary rights” (the continued right to fish, hunt, and gather) across the so-called “Ceded Territory.” Even though most of the land was no longer theirs, those rights remained, including the right to fish for walleye.

IV. THREATS TO TRIBAL WALLEYE ACCESS

Not long after the spate of treaties transformed land possession in northern Wisconsin, Wisconsin's walleye populations began feeling pressure to survive due to increasing white settlement. Then, harsh non-Native restrictions on traditional Native fishing methods frustrated the Ojibwe harvest rights the tribes had just negotiated to retain by treaty.

A. *Non-Native impacts on fish populations*

Within decades of the treaty signings, walleye in the region's lakes were put under increasing strain by escalating white settlement, industry, and tourism. Speaking in the 1930s, Ojibwe elder Joe Stoddard, then in his 90s, declared “the arrival of the white man in this region marked the decline of wild life of the forests and waters.”⁸⁹ Stoddard described the wanton waste of fish by white fishermen, contrasting it with the practices of his people, who “believed it sacrilegious to waste any game or part of game that was fit for food.”⁹⁰

Furthermore, in the late 1800s and early 1900s, massive lumbering operations across northern Wisconsin hurt fish populations. The industry routinely dumped sawdust and waste into lakes and rivers.⁹¹ Lumbermen floated logs to mills along those same lakes and rivers, causing physical damage to aquatic habitats.⁹²

⁸⁵ Treaty with the Chippewa art. 2, Sep. 30, 1854, 10 Stat. 1109.

⁸⁶ *Id.*

⁸⁷ SATZ, *supra* note 39, at 69.

⁸⁸ *History: Sokaogon Chippewa Community*, SOKAOGON CHIPPEWA COMMUNITY, <https://sokaogonchippewa.com/about-us/history/> [<https://perma.cc/35DQ-946E>].

⁸⁹ M. CAROLISSA LEVI, CHIPPEWA INDIANS OF YESTERDAY AND TODAY 251 (1956).

⁹⁰ *Id.*

⁹¹ NESPER, *supra* note 3, at 61.

⁹² *Id.*

Despite strained fish populations, Wisconsin began to turn to sportfishing as a tourist draw. The first state-sponsored fish hatcheries opened in 1875 and the legislature started regulating the walleye season in 1881.⁹³ By 1937, state-sponsored fish hatcheries were producing 50 million walleye fry, or recently-hatched fish, and stocking them in lakes and rivers for sportfishermen to catch.⁹⁴ In the 1950s, six million people vacationed and enjoyed outdoor recreation annually in Wisconsin.⁹⁵ The state sold nearly one million fishing licenses in 1960s.⁹⁶

B. State restriction of Ojibwe fishing

As early as the 1870s, federal officials, despite promises made in the treaties, were actively seeking to prevent Ojibwe people from clinging to “lazy habits of Indian life” like off-reservation fishing in the Ceded Territory.⁹⁷ But the biggest threat to the Ojibwe fishing right was Wisconsin’s state government.

Wisconsin law banned spearing starting in the 1800s.⁹⁸ In fact, starting at that time, the state prohibited walleye harvest by any method other than angling (also commonly called hook-and-line fishing).⁹⁹ Around the turn of the 20th century, state officials began harassing Ojibwe people attempting to exercise their off-reservation treaty rights.¹⁰⁰ In 1907, an Ojibwe man was arrested for fishing with a gill net in Lake Superior in violation of a two-year-old state fishing regulation. Upon appeal of his state court conviction, the Wisconsin Supreme Court stood with the state, saying the fishing rights enumerated in the Treaties of 1837 and 1842 were extinguished when Wisconsin became a state in 1848.¹⁰¹ Exempting Indians from state fishing laws, the court wrote, “would deprive the state of its sovereign power to regulate the rights of hunting and fishing, and would deny to such state admission into the Union on an equal footing with the original states.”¹⁰²

That decision led to 75 years of the state claiming the right to ignore treaty guarantees and enforce its own laws regarding off-reservation hunting and fishing. Walleye spearing was illegal under state law, so the practice predictably slowed among the Ojibwe. Those that dared spear off-reservation could be prosecuted. The state even started “vigorously” applying state conservation laws against Native Americans *on* their own reservations in the 1950s.¹⁰³ Such harsh measures drew heated resistance. In 1959, the Bad River Tribal Council formally declared a “state of cold war” existed between the tribe and the

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ SATZ, *supra* note 39, at 89.

⁹⁶ *Id.*

⁹⁷ *Id.* at 73.

⁹⁸ Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (*LCO VI*), 707 F. Supp. 1034, 1036 (W.D. Wis. 1989).

⁹⁹ *Id.* at 1040.

¹⁰⁰ SATZ, *supra* note 39, at 83.

¹⁰¹ State v. Morrin, 117 N.W. 1006, 1007 (Wis. 1908).

¹⁰² *Id.*

¹⁰³ SATZ, *supra* note 39, at 89.

Wisconsin Department of Conservation (later renamed Wisconsin Department of Natural Resources).¹⁰⁴

However, Ojibwe tribal members continued to challenge state domination of conservation laws, which they viewed as a direct and illegal abrogation of their reserved treaty rights. In 1969, six Red Cliff tribal members were arrested by Wisconsin Department of Natural Resources (DNR) wardens after gill netting on Lake Superior. The same happened to two Bad River tribal members weeks later.¹⁰⁵ All were found guilty in Bayfield County Circuit Court, but a 1972 Wisconsin Supreme Court decision found Ojibwe retained fishing rights on the off-reservation waters of Lake Superior.¹⁰⁶ The decision, however, did not address the off-reservation fishing rights for Ojibwe people on the thousands of *inland* lakes in the Ceded Territory—the lakes in which walleye swam.

In early March 1974, Lac Courte Oreilles tribal members (and brothers) Fred and Mike Tribble sought to change that. The Tribbles notified the DNR of their intent to spear a fish on the off-reservation portion of Chief Lake near Hayward, Wisconsin.¹⁰⁷ They cut a hole in the ice and speared a fish.¹⁰⁸ As they expected, DNR wardens arrived and arrested them.¹⁰⁹ The brothers were found guilty in Sawyer County Circuit Court of violating the state conservation law against spearing.¹¹⁰ But the Tribble brothers had intentionally set into motion the legal fight that would lead federal courts, at long last, to affirm Ojibwe treaty rights to fish, hunt, and gather off-reservation in the Ceded Territory.

V. AFFIRMATION OF OFF-RESERVATION FISHING RIGHTS

In 1975, the Lac Courte Oreilles Tribe sued the State of Wisconsin in federal court on behalf of the Tribble brothers, claiming their treaty rights allowed for off-reservation fishing, including by spear.¹¹¹ Four years later, Judge James Doyle ruled against the tribe, finding the off-reservation fishing, hunting, and gathering rights included in the Treaties of 1837 and 1842 were relinquished when tribes accepted permanent reservations in the Treaty of 1854.¹¹² But the federal Seventh Circuit Court of Appeals reversed Doyle's decision in 1983, ruling that the Treaty of 1854 did not extinguish those rights—and that, in fact, they continued to exist.¹¹³ That decision came to be known as *LCO I*, the first in a suite of cases (styled “*LCO*” with a sequential roman numeral) defining treaty rights for Ojibwe tribes in Wisconsin. Later in 1983, the United States Supreme Court ensured the appeals court's decision would endure when

¹⁰⁴ *Id.*

¹⁰⁵ GREAT LAKES INDIAN FISH AND WILDLIFE COMM’N, OJIBWE TREATY RIGHTS 35 (2018).

¹⁰⁶ *State v. Gurnoe*, 192 N.W.2d 892, 901 (Wis. 1972).

¹⁰⁷ WHALEY & BRESETTE, *supra* note 6, at 19.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See OJIBWE TREATY RIGHTS, *supra* note 108, at 35.

¹¹¹ VALLIERE ET AL., *supra* note 9, at 29.

¹¹² See OJIBWE TREATY RIGHTS, *supra* note 108, at 36.

¹¹³ *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voight (LCO I)*, 700 F.2d 341, 365 (7th Cir. 1983).

it refused to review *LCO I*.¹¹⁴ In short order, the five other Wisconsin Ojibwe tribes (Lac du Flambeau, Bad River, Red Cliff, Sokaogon, and St. Croix) joined the lawsuits.¹¹⁵

The 1985 *LCO II* decision clarified that Ojibwe off-reservation harvest rights applied only to public lands.¹¹⁶ *LCO III*, decided in 1987, set forth the standard that there were few limitations on tribal rights to exploit natural resources in the Ceded Territory.¹¹⁷ The state could, the court ruled, impose restrictions on rights if those restrictions were “reasonable and necessary” to conserve a particular resource.¹¹⁸ However, the tribes were not confined to the methods of fishing and hunting used at the time of treaty signing; tribal members could take advantage of technological improvements.¹¹⁹

LCO IV, decided in 1987, affirmed tribes’ right to regulate their own use of natural resources in the Ceded Territory.¹²⁰ The state could not invade on tribal self-regulation of a particular resource or activity as long as the regulation was “effective,” the court ruled.¹²¹

The 1989 *LCO VI* decision focused specifically on walleye and muskellunge and produced another major victory for tribal self-determination and self-regulation. The six federally recognized Ojibwe tribes in Wisconsin had presented Judge Barbara Crabb with their plan for managing and regulating the walleye resource. Crabb ruled that detailed plan demonstrated that the tribes were fully capable of regulating their members’ off-reservation walleye harvest.¹²² The plan, Crabb found, needed only a few relatively minor tweaks. But if the tribes made those tweaks, the State of Wisconsin “[could] not regulate tribal members’ rights and activities in harvesting walleye and muskellunge within the ceded territory.”¹²³

The framework of tribal law constructed and submitted by tribes is the same framework remaining in effect today for managing walleye. What follows is a brief description of that framework as reviewed and approved by Crabb. Part VII, Section B of this paper, by contrast, describes the specifics, application, and success of this set of tribal laws in greater detail.

Crabb noted each of the six Ojibwe tribes in Wisconsin had joined a new organization called the Great Lakes Indian Fish and Wildlife Commission

¹¹⁴ *Besadny v. Lac Courte Oreilles Band of Lake Superior Chippewa Indians*, 464 U.S. 805 (1983).

¹¹⁵ SATZ, *supra* note 39, at 95.

¹¹⁶ *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO II)*, 760 F.2d 177, 182 (7th Cir. 1985).

¹¹⁷ *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO III)*, 653 F. Supp. 1420, 1430 (W.D. Wis. 1987).

¹¹⁸ *Id.* at 1435.

¹¹⁹ *Id.* at 1430.

¹²⁰ *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO IV)*, 668 F. Supp. 1233, 1241 (W.D. Wis. 1987).

¹²¹ *Id.*

¹²² *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO VI)*, 707 F. Supp. 1034, 1038 (W.D. Wis. 1989).

¹²³ *Id.*

(GLIFWC) in 1984.¹²⁴ Furthermore, each tribe was a signatory to the so-called Intertribal Agreement, which “describes the delegation of authority for the making of critical regulatory decisions.”¹²⁵ One of those delegations of authority was to the Voigt Inter-Tribal Task Force Committee of GLIFWC, which was to make decisions on how land and resources were used in the 1837 and 1842 cession areas.¹²⁶ Part of the Voigt Task Force’s role was to “set[] out in detail the procedure to be followed in determining annual walleye harvest and quota.”¹²⁷ Lastly, GLIFWC’s Model Conservation Code—to be adopted by the six tribes—laid out substantive regulations for fishing and a mechanism for enforcing quota limits.¹²⁸

Crabb’s opinion in *LCO VI* evinced her considerable regard for the system developed by the tribes. She required but a few tweaks to protect the walleye resource in northern Wisconsin. Perhaps the most notable requirement was that the tribes needed to incorporate a method to “ensure that tribal members do not subject any lake to intensive fishing more than two years in succession.”¹²⁹ If that change (and a few other minor changes) were made, Crabb ruled, the state had no right to invade on tribal self-regulation of walleye.

It bears noting that, in 1999, the United States Supreme Court upheld the off-reservation fishing, hunting, and gathering rights for Ojibwe tribal members in the Minnesota portion of land ceded in the Treaty of 1837.¹³⁰ Therefore, the rights of the six Ojibwe tribes in Wisconsin—plus the Fond du Lac and Mille Lacs Tribes in Minnesota—to conduct harvest activities off-reservation in the Minnesota Ceded Territory were affirmed to be substantially similar to the same rights in the Wisconsin Ceded Territory.

Around the same time, the Ojibwe tribes and the State of Michigan recognized that a federal court would be likely to see Michigan’s 1842 Ceded Territory in the same way as the ceded territories in Wisconsin and Minnesota.¹³¹ That is, Ojibwe rights to fish, hunt, and gather off-reservation in that territory would likely be affirmed. Thus, tribes exercise off-reservation rights in Michigan’s 1842 Ceded Territory (roughly the western half of the Upper Peninsula) in similar way to the exercise of rights in Wisconsin and Minnesota as part of a so-called “unlitigated treaty right.”¹³² However, in Wisconsin, the off-reservation fishing rights affirmed in the 1983 *LCO I* decision—and their open exercise by Ojibwe people—became a flashpoint for conflict, violence, and racism.

¹²⁴ *Id.* at 1050.

¹²⁵ *Id.* at 1051.

¹²⁶ *Id.* at 1050.

¹²⁷ *Id.* at 1051.

¹²⁸ *Id.*

¹²⁹ *Id.* at 1057.

¹³⁰ *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999).

¹³¹ Statement by Ann McCammon Soltis, Dir., Div. of Intergovernmental Aff., Great Lakes Indian Fish and Wildlife Comm’n, video call between Ann McCammon and Ben Meyer, ZOOM (Sept. 1, 2023).

¹³² *Id.*

VI. BACKLASH AND PROTEST

Beginning in spring 1985, Ojibwe tribal members started exercising their rights for the spearing of walleye in earnest.¹³³ The tribes' walleye regulatory framework (affirmed in 1989's *LCO VI* decision) had not yet been fully developed, so during the spring spearing seasons of 1985 through 1988, spring spearing operated under interim walleye management agreements struck between tribes and the DNR.¹³⁴

Tribal members' exercise of their rights prompted severe backlash from many non-Native people in northern Wisconsin. On the night of April 26, 1987, 12 walleye spearers sought to fish on Butternut Lake near Park Falls.¹³⁵ With just 11 members of law enforcement on hand,¹³⁶ about 450 angry protesters hurled dangerously large rocks and racial slurs at spearers at the lake's boat landing.¹³⁷ Two of those spearers, Ed Chosa and Tom Maulson, later said they feared they would die.¹³⁸ Butternut Lake's boat landing was not cleared until about 2 a.m., when law enforcement from four counties and their police dogs arrived.¹³⁹ Four people were arrested.¹⁴⁰

That incident—and the 1989 incident at North Twin Lake described in the Introduction—are but two of hundreds of protests at northern Wisconsin boat landings in the 1980s and early 1990s as Ojibwe people exercised their treaty rights to spear walleye. Tribal opponents were motivated by the knowledge that spearing was a far more efficient way to harvest fish than hook-and-line angling. The opponents feared that tribes would conduct a freewheeling, unregulated, and nearly limitless tribal harvest. They foresaw a decimation of the walleye population for sport anglers in the region's lakes and devastating injury to the northern Wisconsin tourism economy.¹⁴¹ This paper contains a brief description of that era of protest and resistance in an effort to demonstrate the local atmosphere at the time.¹⁴²

The culture of protest—and sometimes violence—rose in the 1980s with the establishment of organizations with names like Protect Americans' Rights and Resources, Stop Treaty Abuse—Wisconsin, and the Wisconsin Alliance for Rights and Resources.¹⁴³ Hatred, and often racism, pulsed through their protests at boat landings as attendees tried to intimidate Ojibwe spearers.¹⁴⁴ In the eyes of many, the scene of race relations echoed that of the Deep South.¹⁴⁵ Boat landing encounters earned northern Wisconsin the nickname the “Mississippi

¹³³ *LCO VI*, 707 F. Supp. at 1047.

¹³⁴ *Id.* at 1047–48.

¹³⁵ *Crowd Taunts Spearers*, WAUSAU DAILY HERALD (Wis.), Apr. 27, 1987, at 1A.

¹³⁶ NESPER, *supra* note 3, at 92.

¹³⁷ *See Crowd Taunts Spearers*, *supra* note 135.

¹³⁸ NESPER, *supra* note 3, at 92.

¹³⁹ *Id.* at 92–93.

¹⁴⁰ *See Crowd Taunts Spearers*, *supra* note 135.

¹⁴¹ VALLIERE ET AL., *supra* note 9, at 51.

¹⁴² *See generally* NESPER, *supra* note 3 and WHALEY & BRESSETTE, *supra* note 6 for two notable book-length treatments of the so-called “Walleye Wars” in northern Wisconsin.

¹⁴³ *See OJIBWE TREATY RIGHTS*, *supra* note 108, at 28.

¹⁴⁴ *Id.* at 28–29.

¹⁴⁵ VALLIERE ET AL., *supra* note 9, at 55.

of the North.”¹⁴⁶ By 1989, Judge Crabb, in her *LCO VI* decision, recognized that “[h]arassment has become a fact of life” for tribal spearmen.¹⁴⁷



FIGURE 3: *Demonstrations at boat landings often involved violence, harassment, and racism.*¹⁴⁸

But through the turmoil, Ojibwe people continued to practice their craft. They were supported by Native and non-Native organizations like the Waswagoning Treaty Association, the Midwest Treaty Network, and Honor Our Neighbors’ Origins and Rights.¹⁴⁹ Then, in 1991, Crabb issued a temporary injunction preventing one of the anti-tribal organizations from protesting at boat landings.¹⁵⁰ The injunction was made permanent in 1992.¹⁵¹ Since the spring of that year, spearing has been relatively peaceful, at least compared to the turbulent prior decade.¹⁵² Doubtless, however, the fears that Ojibwe spearmen would wantonly decimate the walleye population long lingered in the minds of many non-Natives.

VII. SUCCESS IN TRIBAL PROTECTION OF THE WALLEYE RESOURCE

The fears of walleye population destruction at the hands of tribal spearmen have proven unfounded. Instead, tribal custom and tribal law has produced a story of success in the protection of walleye. To achieve that success, tribes rely on custom to ensure the sustainability of walleye populations—and walleye harvest—for generations into the future. Furthermore, something much newer than tribal custom plays a major role: the exacting regime of written

¹⁴⁶ John A. Turcheneske, Jr., *Wisconsin’s Attempt to Reach a Treaty Rights Settlement with its Chippewa Indians*, in 24 PAPERS OF THE ALGONQUIAN CONFERENCE, Dec. 1, 1993, at 381, 390.

¹⁴⁷ *LCO VI*, 707 F.Supp. at 1054.

¹⁴⁸ Photographs of Boat Landing Protesters, in PROTESTS, GREAT LAKES INDIAN FISH AND WILDLIFE COMM’N, <https://glifwc.org/TreatyRights/protest.html> [<https://perma.cc/6PDL-YJVU>].

¹⁴⁹ See OJIBWE TREATY RIGHTS, *supra* note 108, at 28.

¹⁵⁰ Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc., 759 F.Supp. 1339 (W.D. Wis. 1991).

¹⁵¹ Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc., 781 F.Supp. 1385 (W.D. Wis. 1992).

¹⁵² WHALEY & BRESETTE, *supra* note 6, at 267.

tribal law governing walleye in the Ceded Territory of Wisconsin. That combination of tribal custom and legal regime has produced successful results, as evidenced by statistics demonstrating the state of the walleye population and harvest in the region.

A. *Protection via tribal custom*

The first forms of law and order in Ojibwe societies appeared long before European arrival. According to noted Anishinaabe tribal law professor and historian Matthew L.M. Fletcher, they usually entailed resolving disputes involving fishing, hunting, and gathering rights, privileges, and territories.¹⁵³ Ojibwe societies developed systems to ensure tribal members only took the right amount of resources at the right times of year to preserve resources for the future.¹⁵⁴ In other words, the idea of an orderly system of resource harvest was deeply rooted in Ojibwe culture—long before formal paper documentation.

Such systems were needed, in part, because both walleye and the act of spearing were so important to the sustenance and heritage of Ojibwe people. In a 1990 speech, Tom Maulson, perhaps the most recognizable tribal spearing proponent, said that non-Natives need to understand the “cultural aspect” of spearfishing: that it is “important to American Indian heritage.”¹⁵⁵ Leon Valliere Jr., an Ojibwe tribal historian, wrote that “[m]ost Ojibwe view the exercise of harvesting rights as central to our heritage.”¹⁵⁶ Indeed, wrote Valliere, “Ojibwe people would suffer starvation and death if unable to secure these resources.”¹⁵⁷

The importance of walleye harvest to Ojibwe culture was demonstrated by a pair of referendum votes in 1989 in which the State of Wisconsin attempted to induce tribes to forego their off-reservation rights in exchange for multi-million dollar payouts. That year, the Sokaogon Tribal Council had agreed to forego its off-reservation rights for ten years in exchange for \$10.32 million in state money.¹⁵⁸ The money would be used to support tribal health, welfare, and economic development programs.¹⁵⁹ But when the deal was put to a binding referendum, Sokaogon tribal members rejected it by a 131 to 24 margin.¹⁶⁰

Later that year, the Lac du Flambeau Tribe was offered \$49.78 million to forego its off-reservation rights for ten years.¹⁶¹ That number included a \$29.2 million trust fund that could generate annual cash payments of \$1,250 for each tribal member.¹⁶² With 60 percent unemployment on the Lac du Flambeau reservation, the state and tribal leaders expected the agreement to be

¹⁵³ FLETCHER, *supra* note 24, at 148.

¹⁵⁴ *Id.* at 152.

¹⁵⁵ SATZ, *supra* note 39, at 121.

¹⁵⁶ VALLIERE ET AL., *supra* note 9, at 55.

¹⁵⁷ *Id.* at 41.

¹⁵⁸ Turcheneske, *supra* note 149, at 383.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 386.

¹⁶¹ *Id.* at 393.

¹⁶² *Id.*

approved by members.¹⁶³ They were shocked when it was defeated, 439 to 366.¹⁶⁴ Opponents of the deal “saw their victory as nothing less than the ability to retain their cultural identity as Chippewa Indians.”¹⁶⁵ Nothing less than tribal members’ birthright was at stake, John A. Turcheneske argued in a 1992 paper published in the academic journal *Papers of the Algonquian Conference*.¹⁶⁶ As one tribal member put it, “if we give up our ways, we die.”¹⁶⁷

The centrality of walleye spearing, and the customary code by which spearers abide, is further visible through contemporary practices relating to the harvest. As spearing boats take to the water, tribal members start with a prayer.¹⁶⁸ First, they identify themselves by their spirit name and clan; then, they thank the Creator for all creation; finally, they ask to be provided with fish.¹⁶⁹ They follow a simple teaching: if the Ojibwe people don’t take the gifts given to them by the animals, the animals will go away.¹⁷⁰ Unlike many non-Native sport anglers, the walleye harvest is not a mere recreational activity for Ojibwe people. It is not, primarily, an avenue for promoting tourism to northern Wisconsin. It is instead inextricably bound up in the culture, sustenance, and the very identity of what it means to be Ojibwe.



FIGURE 4: Sokaogon Chippewa tribal members Leelyn VanZile, standing, and Wayne LaBine practice modern spearfishing on Butternut Lake in Forest County, Wisconsin in May 2022.¹⁷¹

¹⁶³ *Id.* at 396.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 397.

¹⁶⁶ *Id.* at 399.

¹⁶⁷ *Id.*

¹⁶⁸ See Telephone Interview with Wayne LaBine, *supra* note 32.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ MEYER, *supra* note 68.

B. *Protection via written tribal law*

Tribal customary law may guide how Ojibwe people think about and interact with walleye. Over the last 40 years, Ojibwe tribes have also developed a reliable network of tribal laws, systems, and organizations to protect walleye. It is this network that formally governs the management of the walleye resource and addresses threats against it. It is also this network, because of its comprehensiveness, that has been “blessed” by federal courts, said attorney Ann McCammon Soltis.¹⁷² McCammon Soltis was the longtime Director of the Division of Intergovernmental Affairs for GLIFWC, the intertribal conservation organization; she was referring to Judge Barbara Crabb’s endorsement of the system in Crabb’s 1989 *LCO VI* opinion.¹⁷³ This Section describes the framework of that system in detail. It then presents data on how, and how well, its enforcement mechanisms work in practice.

1. Tribal law regulatory system

In 1984, just one year after the *LCO I* decision affirmed tribal treaty rights for off-reservation fishing, hunting, and gathering in the Ceded Territory, the six federally-recognized Ojibwe tribes of Wisconsin joined GLIFWC.¹⁷⁴ GLIFWC’s mission includes the conservation and management of natural resources in the Ceded Territory “to support treaty-reserved Anishinaabe life-ways and to meet spiritual, cultural, medicinal, subsistence, and economic needs.”¹⁷⁵ It also seeks to ensure “effective self-regulation” of Ceded Territory natural resources.¹⁷⁶ Besides the six Wisconsin-based tribes, two Ojibwe tribes in Minnesota (Fond du Lac and Mille Lacs) and three in Michigan (Lac Vieux Desert, the Keweenaw Bay Indian Community, and the Bay Mills Indian Community) are GLIFWC members, but their role is beyond the scope of this paper.

At the same time, the six Ojibwe tribes in Wisconsin signed the Chippewa Intertribal Agreement Governing Resource Management and Regulation of Off-Reservation Treaty Rights in the Ceded Territory (the “Intertribal Agreement”). This agreement describes itself as the “binding mechanism for intertribal comanagement [*sic*] and regulation, in recognition of the fact that each tribe cannot on its own effectively manage and regulate the exercise of treaty rights in the ceded territory.”¹⁷⁷ The Intertribal Agreement grants primary responsibility for co-management and regulation of natural resources in the Ceded Territory to the Voigt Inter-Tribal Task Force Committee of GLIFWC (“Voigt Task Force”).¹⁷⁸ The Voigt Task Force carries the name of the first named defendant in the *LCO I* case, Lester Voigt, the then-secretary of the

¹⁷² See interview with Ann McCammon Soltis, *supra* note 134.

¹⁷³ *Id.*

¹⁷⁴ See OJIBWE TREATY RIGHTS, *supra* note 113, at 22.

¹⁷⁵ GREAT LAKES INDIAN FISH AND WILDLIFE COMM’N, ANNUAL NARRATIVE REPORT FISCAL YEAR 2022 ADM-2 (2023).

¹⁷⁶ *Id.*

¹⁷⁷ GREAT LAKES INDIAN FISH AND WILDLIFE COMM’N, CHIPPEWA INTERTRIBAL AGREEMENT GOVERNING RESOURCE MANAGEMENT AND REGULATION OF OFF-RESERVATION TREATY RIGHTS IN THE CEDED TERRITORY, § 2.

¹⁷⁸ *Id.* at § 5(a).

DNR. The Intertribal Agreement directs the Voigt Task Force, in consultation with GLIFWC biologists, to develop and approve management plans for natural resources in the Ceded Territory, with harvest goals not to be exceeded by tribes.¹⁷⁹ It also grants special power to the GLIFWC director of biological services, who may close any harvest season if it is likely to exceed harvest quotas or “would otherwise cause biological harm to the resource.”¹⁸⁰

The Voigt Task Force, then, is the primary body managing the annual resource harvest of tribal members in the Ceded Territory. It is comprised of representatives from each Ojibwe tribe. It relies on the Voigt Inter-Tribal Task Force Protocol on Noodagaawe Igaye Noodamashkinoozhewe (Walleye and Muskellunge Harvest) Levels (the “Protocol”), which describes the detailed procedure by which the walleye harvest is planned and managed.¹⁸¹

Under the Protocol, by January 15 of each year, GLIFWC’s biological services department lists the lakes in the Ceded Territory that, based on population estimates, can sustain a walleye harvest.¹⁸² A number of walleye, called the Safe Harvest, is calculated for each lake.¹⁸³ The Safe Harvest serves as the maximum number of walleye that can be speared from that lake that year. Even at its peak, the Safe Harvest can be no more than 14 percent of the total walleye estimated to be living in the lake. The Protocol also discourages “intensively” spearing the same lake in consecutive years. If a lake has more than 60 percent of its Safe Harvest taken in back-to-back years, no tribal harvest is allowed the following year, allowing an opportunity for the walleye population to recover.¹⁸⁴ Taken together, these restrictions on maximum quantity of fish speared comprise an extremely conservative model for walleye conservation.

By February 15, each of the six Wisconsin-based Ojibwe tribes can declare the lakes it intends to spear that spring plus the percentage of the Safe

¹⁷⁹ *Id.* at § 7.

¹⁸⁰ *Id.* at § 10.

¹⁸¹ GREAT LAKES INDIAN FISH AND WILDLIFE COMM’N, VOIGT INTER-TRIBAL TASK FORCE PROTOCOL ON NOODAGAWE IGAYE NOODAMASHKINOOZHEWE (WALLEYE AND MUSKELLUNGE HARVEST) LEVELS (1989).

¹⁸² *Id.* at § 1.00.

¹⁸³ The Safe Harvest number is calculated in the following way. First, a Total Allowable Catch number is set annually for each lake in the Ceded Territory based on biological information. In short, the Total Allowable Catch is the number of walleye that could be harvested (by both spearers and anglers) in a given year while keeping the walleye resource healthy in that lake. It is generally calculated as 35 percent of the estimated population of total walleye for that lake. While the Total Allowable Catch is a fraction of the estimated total population, the Safe Harvest is a fraction of the Total Allowable Catch. For a lake with a one-year-old population estimate, the Safe Harvest is 41 percent of the Total Allowable Catch. For a lake with a population estimate two years old or older, the Safe Harvest is 33 percent of the Total Allowable Catch. The Safe Harvest number serves as the limit for tribal spearing in that lake. Taken together, the Total Allowable Catch and Safe Harvest metrics provide multiple safeguards against overharvest of walleye. See joint assessment, *supra* note 57, at 11; Email from Mark Luehring, Inland Fisheries Biologist, Great Lakes Indian Fish and Wildlife Comm’n, to author (Sept. 7, 2023) (on file with author).

¹⁸⁴ GREAT LAKES INDIAN FISH AND WILDLIFE COMM’N, VOIGT PROTOCOL, *supra* note 187, § 1.03 and § 1.04.

Harvest it wishes to take.¹⁸⁵ Then, by March 15, the Voigt Task Force publishes its Final Report and Determination.¹⁸⁶ The report provides an accounting of the lakes that will be open for harvest and the walleye quotas on each lake. During spring spearing, tribes can choose which lakes they would like to spear each day; the Voigt Task Force notifies the DNR of the selected lakes by noon that day.¹⁸⁷

In June 1988, GLIFWC drafted a Model Off-Reservation Conservation Code (“Model Code”) with the intention that it would be incorporated into each tribe’s own tribal code.¹⁸⁸ All tribes have adopted the code, which periodically undergoes slight adjustments and amendments.¹⁸⁹

The current Model Code runs to 184 pages.¹⁹⁰ It sets forth a number of substantive fishing regulations and the mechanisms for enforcing them with exacting specificity. Under the Model Code, each tribe’s conservation department issues daily spearing permits to individual tribal members, ensuring that the total remaining walleye quota for a lake is not exceeded.¹⁹¹ Every spearer needs this daily permit and their tribal identification card to spear.¹⁹²

28	29	30	31	Month	1	2	3	4	5
27	Off-Reservation Treaty Fishing Permit ☐ Spearing ☐ Fyke Netting No. 0250								6
26	☐ Seining ☐ Gill Netting								7
25	Tribal ID Number _____ of _____ Reservation								8
24	Signature of Permittee: _____								9
23	Issued by: _____ of _____ Reservation								10
22	Water: _____ County: _____								11
	Bag Limit: Walleye _____ Muskellunge _____								
	Other Restrictions: _____								
21	20	19	18	17	16	15	14	13	12

FIGURE 5: The permit used for off-reservation spearing during the 2019 season.¹⁹³

¹⁸⁵ *Id.* at § 2.01.

¹⁸⁶ *Id.* at § 3.01.

¹⁸⁷ *Id.* at § 5.00.

¹⁸⁸ *LCO VI*, 707 F. Supp. at 1034, 1050 (W.D. Wis. 1989).

¹⁸⁹ See interview with Ann McCammon Soltis, *supra* note 134.

¹⁹⁰ MODEL OFF-RESERVATION CONSERVATION CODE (GREAT LAKES INDIAN FISH AND WILDLIFE COMM’N 2024).

¹⁹¹ *Id.* at § 9.06(2).

¹⁹² *Id.* at § 3.02.

¹⁹³ KIM HMIELEWSKI, GREAT LAKES INDIAN FISH & WILDLIFE COMM’N, ADMIN. REP. 23–01, OPEN WATER HARVEST IN 1837 & 1842 CEDED TERRITORIES IN WISCONSIN BY OJIBWE INDIANS DURING 2019, 3 (2023).

Spearers may not exceed their daily permit allowance of walleye (colloquially, a “bag limit”).¹⁹⁴ A bag limit of 30 is not uncommon.¹⁹⁵ Furthermore, there are strict walleye size restrictions. All fish must be smaller than 20 inches in length except two: one may be 20 to 24 inches, and a second may be any size.¹⁹⁶ The spear used must have tines of at least three inches in length with barbs of at least 1/8 inch.¹⁹⁷

Tribal wardens and creel clerks are stationed at every boat landing with spearing activity to count and measure all fish taken.¹⁹⁸ Spearers are compelled by the Model Code to comply with this documentation process.¹⁹⁹ The Model Code grants authority to any GLIFWC conservation warden, any tribal conservation warden,²⁰⁰ and any DNR conservation warden²⁰¹ to enforce its provisions. The Model Code provides robust rules for search and seizure of property by wardens.²⁰² For example, wardens are authorized to stop and board any boat if there is a reasonable suspicion of an ordinance breach.²⁰³ With probable cause of contraband plants or animals, they may enter and examine boats, vehicles, and containers within them.²⁰⁴

Under the Model Code, tribal courts adjudicate complaints and alleged violations.²⁰⁵ They are authorized to impose considerable penalties for violations. Civil remedial forfeitures can run up to \$5,000, off-reservation fishing and hunting privileges may be revoked, and individuals can be compelled to forfeit property used in the commission of a violation.²⁰⁶ In addition, a penalty of \$8.75 per illegally harvested walleye may be imposed.²⁰⁷ Repeat offenders may be treated especially harshly; those with multiple violations within one year may be punished “as the court deems appropriate.”²⁰⁸

All six Ojibwe tribes in Wisconsin have adopted the Model Code, though some tribes have chosen to make minor elements even more restrictive. For example, the Lac du Flambeau Tribal Court imposes \$20 in court costs for alleged violators, regardless of the outcome of their case.²⁰⁹ The Lac Courte Oreilles conservation code requires spears to be at least 4.5 inches in length,²¹⁰ as opposed to 3 inches under the Model Code.²¹¹

¹⁹⁴ See MODEL OFF-RESERVATION CONSERVATION CODE, *supra* note 193, § 9.05.

¹⁹⁵ MEYER, *supra* note 68.

¹⁹⁶ See MODEL OFF-RESERVATION CONSERVATION CODE, *supra* note 193, § 9.05(3)(b)(ii).

¹⁹⁷ *Id.* at § 9.01(9).

¹⁹⁸ See JOINT ASSESSMENT, *supra* note 61, at 15.

¹⁹⁹ See MODEL OFF-RESERVATION CONSERVATION CODE, *supra* note 193, § 9.11(1).

²⁰⁰ *Id.* at § 4.02.

²⁰¹ *Id.* at § 4.03.

²⁰² *Id.* at § 4.04.

²⁰³ *Id.* at § 4.05(1)(c).

²⁰⁴ *Id.* at § 4.05(1)(d).

²⁰⁵ *Id.* at § 4.01.

²⁰⁶ *Id.* at § 4.08.

²⁰⁷ *Id.* at § 4.10(12).

²⁰⁸ *Id.* at § 4.09.

²⁰⁹ LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS TRIBAL CODE § 26.408(5).

²¹⁰ LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS TRIBAL CODE OF LAW § CSV.2.9.010(i).

²¹¹ See MODEL OFF-RESERVATION CONSERVATION CODE, *supra* note 193, § 9.01(9).

In sum, the code framework, taken together with the Intertribal Agreement and the Protocol of the Voigt Task Force, creates a comprehensive tribal self-regulatory scheme. It is a system that rivals or surpasses the rigorosity of most states' conservation codes.

2. Enforcement

Enforcement of these tribal codes falls generally into two categories: on-the-ground monitoring and adjudication in tribal courts. GLIFWC employs 20 wardens²¹² to, as the organization describes it, "provide effective and efficient Ceded Territory conservation enforcement services through a community-oriented policing approach."²¹³ During the spring spearing season, GLIFWC also hires 80–90 part-time creel workers to document the harvest at boat landings.²¹⁴ Wardens travel extensively during the spring spearing season. In April and May 2022, they traveled approximately 123,000 miles in performing their enforcement duties.²¹⁵

Wardens are tasked with enforcing the stringent tribal codes and generally do so in an exacting manner. Citations for taking even one fish over the permitted limit or having a fish miss size requirements by even a fraction of an inch are generally referred to tribal court.²¹⁶ Wardens are required to appear and testify in tribal court proceedings as citing officers.²¹⁷

One might expect such a regime to produce a considerable quantity of violations. Instead, the regime appears to have encouraged widespread compliance. In 2022, GLIFWC wardens issued just 53 citations and warnings spanning the spearing and netting activities across Wisconsin, Minnesota, and Michigan²¹⁸ despite an overall harvest season that spanned 180 lakes and well over 500 fishermen.²¹⁹

For example, the Sokaogon Chippewa generally has roughly 60 spearers per spring.²²⁰ But in only two years between 2018 and 2023 were there *any* walleye violations referred by wardens to Tribal Court.²²¹ Through 2023, the last walleye-related violations were in spring 2021, when there were two that resulted in fines.²²² Lac du Flambeau, the tribe that consistently sends the most spearers to the lakes (usually around 200),²²³ had 18 fishing violations

²¹² GREAT LAKES INDIAN FISH AND WILDLIFE COMM'N, OJIBWE TREATY RIGHTS, *supra* note 108, at 24.

²¹³ GREAT LAKES INDIAN FISH AND WILDLIFE COMM'N, ANNUAL REPORT, *supra* note 178, at CE-1.

²¹⁴ *Id.* at CE-2.

²¹⁵ *Id.*

²¹⁶ See interview with Ann McCammon Soltis, *supra* note 134.

²¹⁷ GREAT LAKES INDIAN FISH AND WILDLIFE COMM'N, ANNUAL REPORT, *supra* note 178, at CE-3.

²¹⁸ *Id.*

²¹⁹ *Id.* at BSD-10.

²²⁰ Hmielewski, *supra* note 196, at 4.

²²¹ Telephone Interview with Amanda Swanson, Clerk of Courts, Sokaogon Chippewa Community (Aug. 29, 2023).

²²² *Id.*

²²³ Hmielewski, *supra* note 196, at 4.

processed in Tribal Court during the first half of 2023.²²⁴ Citations for one, two, or three fish over the size limit were common.²²⁵

The rare cases of major violations were punished severely. In 2022, Lac du Flambeau Tribal Court processed 39 fishing code violations, but 24 of them came from three individuals acting together in the same instance.²²⁶ Without a permit, they took 115 walleye from Squirrel Lake in Oneida County and then resisted a GLIFWC warden.²²⁷ A tribal judge found them guilty at trial. Each was fined more than \$1,000, with one owing \$1,237.²²⁸

C. *Walleye population and harvest statistics*

It would be a grand understatement to say the fears of non-Native protesters in northern Wisconsin regarding disappearing walleye populations due to spearing—and, therefore, disappearing availability for sport angler catch—were overblown. To the contrary, speared walleye consistently make up just a fraction of the yearly harvest from lakes in the Ceded Territory. By a wide margin, the majority of walleye are still caught by hook-and-line sport anglers. That is a result, in large part, of the customary and law-based regulations tribes have put upon themselves regarding walleye harvest.

Between 1989 and 2018, an average of 446 Ojibwe spearers fished on 149 Ceded Territory lakes each spring.²²⁹ In that time, they harvested an annual average of 28,081 walleye.²³⁰ The angler harvest dwarfed that number. Between 1990 and 2011, anglers caught an estimated average of 983,000 walleye each year, keeping 245,000 (returning the rest to the water using catch-and-release practices).²³¹ Even when the angler catch rate slowed between 2012 and 2018, their estimated annual catch was 720,000, out of which they kept slightly less than 200,000.²³² It should be noted the estimated angler catch and harvest levels are far less accurate than the tribal spearing numbers. Angler catch is estimated by extrapolating a relatively small number of creel surveys across the entire Ceded Territory.²³³

In 2014, spearers took a particularly low number of walleye compared to anglers. Of the roughly 335,000 walleye harvested in Ceded Territory lakes, just eight percent were speared by Ojibwe tribal members.²³⁴ Since then, the tribal spearing harvest has made up a slightly higher proportion of the total walleye harvest, but it remains a small fraction of the total. The following

²²⁴ Consolidated Reporting, Off-Reservation Violations/Natural Resource Dockets, Jan. 1, 2023 through July 31, 2023, Lac du Flambeau Tribal Ct. (2023).

²²⁵ *Id.*

²²⁶ Consolidated Reporting, Off-Reservation Violations/Natural Resource Dockets, Jan. 1, 2023 through Dec. 31, 2022, Lac du Flambeau Tribal Ct. (2022).

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ See JOINT ASSESSMENT, *supra* note 61, at 15.

²³⁰ *Id.*

²³¹ *Id.* at 17.

²³² *Id.*

²³³ *Id.*

²³⁴ Hmielewski, *supra* note 196, at 4; See JOINT ASSESSMENT, *supra* note 61, at 17.

recent data were provided by Tom Cicosz, the Treaty Data Coordinator for the DNR.²³⁵

Year	Estimated angler harvest in Ceded Territory	Tribally speared harvest in Ceded Territory	Spearing percentage of total harvest
2015	188,087	38,595	17.0%
2016	135,288	32,640	19.4%
2017	181,288	38,755	17.6%
2018	163,084	28,704	15.0%
2019	168,946	35,321	17.3%
2020	160,797	35,133	17.9%
2021	105,865	34,403	24.5%
2022	110,046	30,247	21.6%

Millions of walleye swim in northern Wisconsin lakes, of which a few hundred thousand, at most, are harvested each year. That said, there has been a recent “regional downward trend” in walleye populations in Ceded Territory lakes.²³⁶ The magnitude has proved hard to quantify. However, no data suggest tribal spearing harvest—let alone overharvest—is driving the trend. In fact, many of the difficulties in sustaining stable population numbers appear to be related to recruitment (successful reproduction) of walleye and survival of very young walleye (those far too small to be harvested).²³⁷ Scientists also point to ecosystem changes like increased waterfront development, watershed land use changes, sedimentation, invasive species, and climate change as likely factors in the trend.²³⁸

Nonetheless, more lakes have a walleye population in 2023 as compared to three decades prior. In the Ceded Territory, 919 lakes of at least 25 acres contain walleye.²³⁹ In 1989, that number was 861.²⁴⁰ By any measure, the idea that tribal spearing would come to dominate harvest or decimate populations of walleye in northern Wisconsin has proven to be a fiction.

VIII. CONCLUSION

On April 11, 2023, winter ice was about to start melting from northern Wisconsin lakes. That meant walleye were about to move to shallow waters to spawn. That also meant Ojibwe spearers were about to start their centuries-old harvest practice.

²³⁵ Email from Tom Cichosz, Treaty Data Coordinator, Univ. of Wis.-Stevens Point and Wis. Dep’t of Nat. Res., to author (Dec. 5, 2023) (on file with author).

²³⁶ See JOINT ASSESSMENT, *supra* note 61, at 5.

²³⁷ *Id.* at 6.

²³⁸ *Id.* at 5.

²³⁹ Press Release, Wis. Dep’t of Nat’l. Res., 2023 Ojibwe Spring Fishing Season Starting Soon: Wisconsinites Reminded of Protected Tribal Right to Fish (Apr. 11, 2023).

²⁴⁰ *LCO VI*, 707 F. Supp. at 1034, 1040 (W.D. Wis. 1989).

On that day, a press release appeared in the inboxes of journalists. “The Wisconsin DNR fully supports Ojibwe sovereignty and treaty rights,” said DNR Secretary Adam N. Payne in the release. “We encourage tribal members to get out and exercise their treaty rights. Likewise, we remind the public that it is illegal to interfere with this right and have zero tolerance for harassment.”²⁴¹ The DNR called Ojibwe spearing “an integral and respected part of Wisconsin’s history.”²⁴² A similar release had been distributed just prior to spearing season in each of the preceding few years.

Wisconsin’s show of support for Ojibwe walleye spearing was a far cry from the state’s attitude for well over a century. During that time, Wisconsin criminalized an array of Ojibwe off-reservation harvest rights, including the right to spear, that were to have been protected by treaty. The denial of those rights, from the late 1800s to the 1980s was due, in part, to deep-seated fears about walleye overharvest. Those fears boiled over in violent and racist demonstrations in northern Wisconsin in the 1980s and 1990s after Ojibwe treaty rights were finally affirmed.

Since that time, though, Ojibwe tribes have been successfully managing the walleye resource in northern Wisconsin, in stark contrast to the deepest fears of opponents. Their success stems from a respect for the beings of the Earth, including walleye, that dates to time immemorial. Tribal custom, in other words, was the way of Ojibwe people, and Ojibwe walleye management long before written tribal laws.

But the system of tribal laws that have been developed since the 1980s is exacting and robust. Tribes have achieved successful self-regulation through an intertribal agency, tribal codes, and a well-functioning enforcement system. That enforcement system has been used relatively sparingly, as Ojibwe tribal members are overwhelmingly compliant with their own rules.

As a result, an essential Ojibwe lifeway is sustained. Spearers take far fewer walleye than their non-Native angling neighbors. The walleye population in northern Wisconsin lakes remains. And *ogaa* are protected.

²⁴¹ See press release, *supra* note 241.

²⁴² *Id.*