



Little River Band of Ottawa Indians

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RESOLUTION NO. #97-0804-05

Authorizing the Natural Resource Commission to License
Tribal Members to Engage in Subsistence Fishing Pursuant to
Tribal Regulations and Amending the Uniform Conservation Code
In Accordance with this Authorization

WHEREAS, the Little River Band of Ottawa Indians is a federally recognized tribe, as reaffirmed under P.L. 103-324, enacted on September 21, 1994; and

WHEREAS, the Little River Band of Ottawa Indians is descended from, and is the political successor to, certain Grand River Ottawa Bands which were signatories of the 1836 Treaty of Washington (7 Stat. 491), as reaffirmed under P.L. 103-324, enacted on September 21, 1994; and

WHEREAS, the Little River Band of Ottawa Indians reserved certain rights to hunt, fish, trap and gather natural resources from the lands and waters in those portions of Michigan which were ceded under the 1836 Treaty. These treaty based rights were confirmed by United States v. Michigan, 471 F.Supp 192 (W.D. Mich. 1979); affirmed, 653 F.2d 277 (6th Cir. 1981); certiorari denied, 454 U.S. 1124, 102 S.Ct. 971 (1981), and reaffirmed by P.L. 103-324 section 5, and are protected by the United States Constitution (Art. 1, §8, cl. 3 and Art. 6, cl. 2).

WHEREAS, the Tribal Council has, pursuant to Little River Band Ordinance Number 96-500-01, adopted May 5, 1996, created a Natural Resource Commission and authorized such Commission to recommend to the Tribal Council, Ordinances as may be required to regulate and manage natural resources which may utilized by Tribal members; and

WHEREAS, the Tribal Council has, pursuant to Little River Band Ordinance Number 96-500-02, adopted the Uniform Conservation Code of the Ottawa and Chippewa of Northern Michigan, subject to the limitations defined in Tribal Council Resolution Number #96-0922-01; and

WHEREAS, Ordinance Number #96-500-02 authorized the Natural Resource Commission develop regulations for the conduct of one or more ceremonial hunts and to issue subsistence hunting and fishing licenses and permits to Tribal Elders; and

WHEREAS, the Natural Resource Commission is authorized to promulgate rules for the purpose of implementing Ordinances which authorize and regulate hunting, fishing, trapping or gathering activities of Tribal members; and

WHEREAS, the Natural Resource Commission wishes to extend Tribally-regulated harvesting opportunities to all Tribal members by receiving Tribal Council authorization to license Tribal members to engage in subsistence fishing activities on the Treaty-ceded waters of the Great Lakes, other waters within the territory ceded in the 1836 Treaty, and within the exterior boundaries of the Tribe's Reservation; and

WHEREAS, the Tribal Council has determined that it is in the interests of the Tribe to honor and promote the Tribe's traditional and physical relationship to the natural environment, and its Tribal members traditional use of the resources within the territory ceded in the 1836 Treaty, which were reserved by its ancestors; and

WHEREAS, the Tribal Council finds that certain revisions to the Uniform Commission's implementation of this authorization.

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Council of the Little River Band of Ottawa Indians hereby authorizes the Natural Resource Commission to issue licenses which authorize Tribal members to engage in subsistence fishing activities in accordance with regulations promulgated by the Natural Resource Commission. The regulations promulgated by the Natural Resource Commission shall, at a minimum, define the specific waters which will be open to Tribally-licensed, subsistence fishers, the seasons and creel/harvest limits for species subject to subsistence harvest, and any gear restrictions which are reasonably necessary for conservation or public safety.

IT IS FURTHER RESOLVED, that at least ten (10) days prior to issuing any license or permit which authorizes a Tribal member to engage in subsistence fishing activities, the Natural Resource Commission shall provide a copy of its proposed regulations to the Tribal Council and the Tribal Attorney. Subsistence fishing regulations shall become effective seven (7) days after such regulations, or any amendments or additions thereto, have been duly adopted by the Natural

Resource Commission and a copy of such regulations is filed with the Tribal Chairperson and the Secretary of the Tribal Council.

IT IS FURTHER RESOLVED, that the Natural Resource Commissioner is authorized to request the assistance of the Michigan Department of Natural Resources, United States Fish and Wildlife Service, United States Forest Service and other 1836 Treaty Tribes to implement and enforce the Uniform Conservation Code and any regulations promulgated under such Code. The Natural Resource Commissioner is further authorized to negotiate, on behalf of the Tribe, any inter-governmental agreements that may be necessary or appropriate to implement and enforce the Uniform Conservation Code and regulations promulgated under such Code; however, any such agreements must be approved by the Tribal Council to be effective.

IT IS FURTHER RESOLVED, that the Tribal Council amends the Ordinance No. 96-500-02, entitled the Uniform Conservation Code of the Ottawa and Chippewa of Northern Michigan, as adopted by Tribal Council Resolution No. #96-0922-01, and as amended by Tribal Council Resolution No. #97-0126-02, in the following manner:

The "Preamble" shall be amended to delete the following language:

The Grand Traverse Band of Ottawa and Chippewa Indians, the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians (Tribes) are all parties to the Treaty of Washington of March 28, 1836, 7 Stat. 491. In that Treaty the Tribes reserved the right to hunt, fish and gather on the ceded lands and waters. The individual Tribes adopt this uniform Code to exercise their inherent sovereign right to regulate the reserved treaty rights. This uniform Code enables the Tribes to coordinate their efforts to preserve and conserve the resources while promoting public safety. The purpose of these regulations is to preserve and conserve the natural resources on and in the lands and waters ceded by the Ottawa and Chippewa in the Treaty of 1836 for the perpetual use, benefit, and enjoyment of the members of the Tribes. These regulations do not apply to the commercial ~~or subsistence~~ use or regulation of those uses on the Treaty-ceded waters of the Great Lakes, or on Treaty-ceded waters connecting the Great Lakes. ~~These regulations do not apply on lands or waters within Indian Country unless a Tribe also adopts this as an on-reservation Code. Provided, the individual Tribes may adopt their own additional regulations to supplement this uniform Code.~~

Section 2 of the Uniform Code shall be amended to add and delete certain language to Sub-sections 2.01 and 2.02, to provide as follows:

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SECTION 2. TERRITORIAL JURISDICTION

2.01. This Code shall govern all treaty hunting, fishing, trapping and gathering activities of Tribal members on lands and waters within the Ceded Territory. In addition, this Code ~~may be~~ IS adopted by ~~a Tribe~~ THE LITTLE RIVER BAND OF OTTAWA INDIANS ~~as an on-reservation code~~ to govern activities within THE CEDED TERRITORY AND WITHIN Indian Country OWNED BY, OR HELD IN TRUST FOR, THE LITTLE RIVER BAND OF OTTAWA INDIANS OR MEMBERS OF THE LITTLE RIVER BAND OF OTTAWA INDIANS.

2.02. *Open Areas.* Tribal members may hunt, trap, fish and gather within the Ceded Territory and pursuant to the regulations contained in this Code, only on the following CATEGORIES OF lands and waters:

- 1) Lands and waters open to public hunting, trapping, fishing and gathering.
- 2) Tribal lands which are open to hunting, trapping, fishing and gathering by Tribal members;
and
- 3) Private lands including without limitation lands held by non-Tribal members, lands held directly by Tribal members, lands held by Tribal members subject to restrictions on alienation and lands held by the United States in trust for Tribal members, but only with permission from the owner (or restricted fee or beneficial owner), occupant or lessee.

THE GEOGRAPHIC LIMITS OF EACH CATEGORY OF LAND AND WATER, AS DEFINED IN THIS SUB-SECTION, OPEN TO LICENSED TRIBAL MEMBERS SHALL BE DETERMINED AND DELINEATED BY TRIBAL REGULATION.

Subsection 8.02 of Section 8, defining Method and Gear Restrictions application to Subsistence and Sport Fishing under the Uniform Code, shall be amended to add additional language as follows:

8.02. Methods and Gear Restrictions

- A. The use of poles, reels, tip-ups, and hand lines is lawful for use while fishing.
- B. Seines up to thirty feet (30') by three feet (3') and dip nets up to nine (9) square feet are legal for smelt on the Great Lakes, inland lakes and 100 yards upstream on all tributaries and connecting waters of the Great Lakes.
- C. Bait fish may be taken by traps, seines up to thirty feet (30') by three feet (3') and dip nets up to nine (9) square feet.
- D. Individual hook and line fishing is limited to four (4) lines per person with two (2) hooks per line. Ice fishing is limited to eight (8) tip ups and one (1) pole or hand line per licensee.

E. Fixed ice shanties must have the owner's name, address and Tribal license number permanently affixed on all sides with letters at least two inches (2") high. Shanties must be removed when the ice is unsafe.

F. Fishing with a spear, bow and arrow, or dip net, ~~is~~ MAY BE permitted on any streams, lakes and rivers subject to the season, size and creel limits and other restrictions imposed by Tribal regulations AND PURSUANT TO A SPECIAL USE PERMIT ISSUED UNDER SECTION 11 OF THIS ORDINANCE. Provided that spearing is only permitted for white fish, trout (including steelhead), northern pike, walleye, herring, menominee, suckers, carp, drum, bass, muskellunge, buffalo, salmon and sauger.

G. A SINGLE LARGE OR SMALL MESH GILL NET NOT TO EXCEED 300 FEET IN LENGTH MAY BE PERMITTED PURSUANT TO A SPECIAL USE PERMIT ISSUED UNDER SECTION 11 OF THIS ORDINANCE, EXCEPT IN THE ST. MARY'S RIVER SYSTEM, A SINGLE GILL NET SHALL NOT EXCEED 100 FEET IN LENGTH; A SUBSISTENCE FISHER IS PROHIBITED FROM TYING TOGETHER SINGLE GILL NETS TO FORM A GANG OF NETS. AS USED IN THIS SUB-SECTION, "LARGE MESH GILL NET" MEANS A GILL NET HAVING A DIAGONAL STRETCH MEASURE OF 4 ½ INCHES OR GREATER. "SMALL MESH GILL NET" MEANS A GILL NET HAVING A DIAGONAL STRETCH MEASURE OF 2 ½ INCHES THROUGH 3 INCHES.

Certificate of Adoption

This resolution was adopted by the Tribal Council of the Little River Band of Ottawa Indians at its Regular Session held on August 4, 1997 by a vote of 7 in favor, 0 opposed, 0 absent, and 0 abstentions, a quorum being present for such vote.

Date: 8/4/97

Robert Guenthardt
Robert Guenthardt, Chairperson

Attest:

Charles Fisher
Charles Fisher, Council Secretary