

## New Great Lakes Fishing Pact Gets OK Despite Objections

By Joyce Hanson

Law360 (August 25, 2023, 8:27 PM EDT) -- A Michigan federal judge has ordered a new fishing pact for the Great Lakes based on a proposed decree offered by the United States, Michigan and four Native American tribes, ruling that it reflects the best interests of all parties, despite objections to the deal.

U.S. District Judge Paul L. Maloney wrote in a 139-page opinion Thursday that the proposed successor to the 2000 Great Lakes Fishing Consent Decree "respects and promotes" tribal fishing rights and opportunities while preserving Great Lakes commercial fishing zones and recognizing the shared nature of the resource.

Judge Maloney overruled all objections to the proposed decree by the Sault Ste. Marie Tribe of Chippewa Indians, a party to the 2000 decree, and the amicus Coalition to Protect Michigan Resources. The six parties favoring the new pact are the U.S., the state of Michigan, the Bay Mills Indian Community, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, and the Little Traverse Bay Bands of Odawa Indians.

"Upon the court's review of the record, including but not limited to, all objections, responses, proposed findings of fact and conclusions of law, and supporting documents and exhibits, the court finds that the approval and entry of the proposed decree is in the best interest of the Great Lakes fishery, the parties and the amici," Judge Maloney wrote.

A lawyer for the Coalition to Protect Michigan Resources, Stephen O. Schultz of Fahey Schultz Burzych Rhodes PLC, told Friday that the coalition is disappointed with the judge's decision.

"We're concerned that the court missed our objections," Schultz said. "We think there are some significant difficulties with the sustainability of the fishery resource in the Great Lakes, and the court failed to grasp the seriousness of that issue."

Representatives for the other parties did not immediately respond to requests for comment Friday.

On June 1, **Judge Maloney said in an order** that he did not need expert testimony to decide how he will consider the more than 140 objections filed by the Sault Ste. Marie Tribe of Chippewa Indians and the Coalition to Protect Michigan Resources to a consent decree worked out between the federal and Michigan state governments with four state tribes.

The judge heard oral arguments on the Sault Tribe and coalition's objections to the proposed extension of the 2000 Great Lakes Fishing Consent Decree in late May. At the end of the hearing, he told the governments, the tribes and the coalition they could expand the record with expert testimony on issues of harvest limits, mortality rates, proposed gillnet use expansion and gillnet bycatch within the proposed decree.

In the June 1 order, Judge Maloney said holding a pretrial conference, allowing discovery and issuing a case management order would unnecessarily burden the parties, especially since neither of the objecting parties requested an evidentiary hearing. He gave all the parties 28 days to file proposed findings of fact and conclusions of law about any of the issues the Sault Tribe and the coalition raised.

The existing consent decree, in effect since 2000, oversees tribal fishing zones in parts of Lake Michigan, Lake Huron and Lake Superior for five tribes and sets fish harvest limits for certain species. The court extended the decree following its 2020 expiration date as Michigan, the federal government and tribes hashed out a new deal.

The Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, and Little Traverse Bay Bands of Odawa Indians submitted to the court a new fishing pact, referred to in litigation as the proposed decree, late last year.

The Sault Tribe in February **objected to the new fishing restrictions**, saying it has serious problems with parts of the agreement negotiated to replace a 2000 decree, such as fishing area closures, gear regulations and inequitable restrictions on tribal fishers compared to licensed Michigan fishers.

The tribe had asked the court to set a schedule for a trial that would work out a decree consistent with the groups' treaty rights. According to a February motion, the tribe said it wanted to revise the 2000 consent decree because the agreement damaged the tribal fishing industry while its people are poorer and have fewer jobs than non-Native citizens.

The coalition objected to the agreement in January because of environmental concerns, saying the decree did not adequately preserve and conserve the two lower lakes. The group, participating as amicus curiae in the litigation, called the decree "a political document based not on sound science but on the commercial or political interests of various parties."

It took particular issue with the proposed expansion of gillnet fishing — a traditional method of tribal fishing — in the decree, saying the fishing method would jeopardize the health of the Great Lakes fishery resource.

Federal and Michigan officials and the four signing tribes **blasted the coalition's objections** as unfounded and seeking to influence the negotiation process to tailor it to its members' interests. They urged Judge Maloney to approve the pact as is.

The consent decrees laying out tribal rights to fishing in special zones on lakes Michigan, Huron and Superior date back to the 1970s, when the U.S. government sued the state of Michigan on behalf of the Bay Mills Indian Community. A judge's 1979 ruling confirmed the tribes' fishing rights under an 1836 treaty and opened the way to multiple consent decrees, including the version in 2000.

The five tribes began renegotiating that 20-year agreement in 2019, but had to get multiple extensions as talks dragged on after it expired. In November, **Judge Maloney approved an indefinite extension** while the sides ironed out the final details of the agreement.

The Coalition to Protect Michigan Resources is represented by Stephen O. Schultz and Christopher S. Patterson of Fahey Schultz Burzych Rhodes PLC.

The Sault Ste. Marie Tribe of Chippewa Indians is represented by Mason D. Morisset and Thane D. Somerville of Morisset Schlosser Jozwiak & Somerville.

The Bay Mills Indian Community is represented in-house by Kathryn L. Tierney and Rebecca Liebing.

The Grand Traverse Band is represented by Rebecca Millican and William Rastetter of Olson Bzdok & Howard PC.

The Little River Band is represented by David A. Giampetroni of Kanji & Katzen PLLC and in-house by Elise McGowan-Cuellar.

The Little Traverse Bay Bands are represented in-house by James A. Bransky.

Michigan is represented by Kelly M. Drake and Christopher D. Dobyns of the Michigan Department of Attorney General.

The U.S. is represented by Marisa J. Hazell, Laura Boyer and Ryan D. Cobb of the U.S. Department of Justice.

The case is USA v. Michigan et al., case number 2:73-cv-00026, in the U.S. District Court for the Western District of Michigan.

--Additional reporting by Danielle Ferguson, Peter McGuire, Carolyn Muyskens and Ali Sullivan. Editing by Vaqas Asghar.