

HISTORICAL VIEW OF THE LES CHENEAUX TRIBAL FISHING ISSUE

1985 - 1987

The Les Cheneaux Community Action Committee has been lobbying to have a protective perimeter line put in place around the sensitive ecological and pristine Les Cheneaux Islands since early 1985 when discussion of a line was dropped in the final negotiations of the 1985 Consent Decree. The following quotes are presented to show the outcome of this grave omission.

1. Tom Washington - Executive Director, MUCC:

Has stated he was disappointed the Les Cheneaux Islands were not protected. (Detroit Free Press, 3/31/85)

"We (MUCC) went to these meetings with several objectives, but two of our most important ones were to protect the fishery in the Bays de Noc and Les Cheneaux Islands. The last 24 hours of negotiations leading up to the signing were closed door sessions in which I was not permitted entrance nor were many other people who were involved in the negotiations. When the doors were open we were given just a few minutes to look over the final draft whereupon I immediately pointed out the Les Cheneaux Islands were not sufficiently protected. To put it bluntly we were told to shut up and not raise that issue any further or the Indians would walk out. Francis McGovern, appointed by the federal court and overseeing the entire process, made the statement that the Indians would walk out in 10 minutes if we weren't back with our approval." (Letter to Mike Krino of the Les Cheneaux Sportsman's Club, 10/20/86)

2. Jack Bails - Deputy Director, MDNR:

"Your protests over lack of protection in the Les Cheneaux Islands were loud and clear. I also remember a weak, vague commitment from Francis McGovern to reinstate the Les Cheneaux protection later. Both you and I recognized that it probably would not happen." (Letter to Tom Washington, 10/27/86)

3. John Scott - Chief of Fisheries Division, MDNR:

"Proposals for change in agreement/tribal regulations relative to commercial harvest of perch in the Les Cheneaux Islands State to finalize proposal." (Status of Action/Followup- 1st meeting of the Executive Council, 6/20/85)

4. Ronald Skoog - Director, MDNR:

Said commercial fishing could "wipe out the perch fishing" in the Les Cheneaux Islands, "an area where we would like an agreement - maybe a line outside the channels and islands where commercial fishermen wouldn't fish. "We'd probably have to give something up in return."

Skoog said, (State-Licensed) "Commercial Fishermen are not to be trusted, they're liars... Whenever there's an opportunity to catch more fish - legal or not legal - they're going to do it." (Sault Evening News, 6/27/85)

5. Vic Matson, Indian Fisherman's Association:

"We warned people of Cedarville we would come down there with 40 (fishing) boats... Those waters are open, they are treaty fishing waters and we were exercising our rights under the court order."

"Matson said truckloads of locals shouted racial taunts and threats of violence at the fishermen. One man, he said, carried a shotgun as a veiled threat as the fishermen raised their nets." (Sault Evening News, 7/10/85)

6. Joe Lumsden - Chairman, Sault Tribe of Chippewa Indians:

"Mr. Lumsden presented a proposal for an exchange between the Bay de Noc area and the Les Cheneaux area. This proposal had also been presented at a previous meeting." (Mackinaw City, 8/7/85)

"Comments were made by Dr. Skoog, who expressed the states feeling that they are against any changes in the order at this time. Dr. Reed recommended putting together a task force to work on changes on Bay de Noc and the Les Cheneaux Islands area, that could be implemented as an amendment to the Agreement to possibly ameliorate some of these problems." (Minutes of the Executive Council, Sault Ste. Marie, 11/12/85)

7. David Borgeson - Assistant Chief of Fisheries Division, MDNR:

"Let me say at the outset that the director and the fisheries division are understanding and sympathetic to your concerns. It is difficult however for us who work several hours away to be as concerned as you are. But perhaps by being a bit further removed we can view matters that concern both of us in an importantly different light. This light, I fear, will be painful at first but I hope you will read what follows with the understanding that it comes from someone who's life's work is dedicated to serving you and citizens like you throughout our great state."
"...Before the settlement (1984) perch and walleye were being targeted by commercial fishermen in your area of northern Lake Huron. The settlement put both species off limits to commercial fishing."

"...When recommendation for management of these stocks of fish are being developed (including any proposals for commercial harvest) we will be in a position to urge adoption of regulations that will best protect your interests." (Letter to Mark Engle of the Les Cheneaux Chamber of Commerce, H.R. Williams of the Les Cheneaux Islands Association, and Gary Reid of the Les Cheneaux Sportsman's Club, 11/21/85)

8. Gary Reid - President, Les Cheneaux Sportsman's Club:

"However, without exception, perch populations remain in the vital economic interest of the area and must be demonstrably protected from commercial activity. The netting line..., offers a minimum of safeguards towards that objective and at the very least should be observed..."
"Without such measures, subsequent actions by the Natural Resources Commission in favor of adopting minimum size limits for perch will likely be viewed locally as being undertaken for the prime benefit of future Native American fishing interests." (Letter to Ronald Skoog, 12/31/85)

9. Joe Lumsden - Chairman, Sault Tribe of Chippewa Indians:

"Mr. Lumsden reported that they had an organizational meeting of the Task Force (Ad Hoc Committee) on December 11, 1985 in Sault Ste. Marie, with representatives from the Les Cheneaux area, Michigan Fish Producers, Tribal Law Enforcement, Management Authority, and Natural Resources." Of their 5 recommendations presented, the states response on whether they wanted to negotiate on them for all but item #4 on the Les Cheneaux Buyout was "the state wants to stand firm on what the Agreement says." On item #4, "provide compensation to the tribe for a buy-out of fishing rights in the Les Cheneaux area, the state feels that this would be within the negotiated line. Feels this kind of compensation is a state responsibility, and are willing to discuss it." (Minutes of the Executive Council, Traverse City, 1/9/86)

10. Pat Gagliardi - State Representative, 107th District:

"How do you think we are going to compensate the Indians to get them out of the Les Cheneaux waters when we can't even compensate the (30) State-Licensed Commercial Fishermen who were put out of business because of the Treaty Agreement? The Indians can see that you aren't paying the white fishermen. I'd be interested in knowing why you think they will accept a compensatory offer to leave the Les Cheneaux area." (Letter to John Scott, 2/19/86)

11. Joseph Raphael - Chairman, Grand Traverse Band of Ottawa/Chippewa Indians:

"Stated that the Grand Traverse Band would support the Sault Tribe and Bay Mills in whatever agreement can be reached on the Les Cheneaux Islands." (Minutes of the Executive Council, Sault Ste. Marie, 3/19/86)

12. John Scott - Chief of Fisheries Division, MDNR:

"As a follow-up to our meeting in Marquette, Frank Opolka and I met with Wade Teeple and Joe Lumsden on July 21, 1986. Mr. Lumsden raised the possibility of an impoundment gear fishery in Hammond Bay after 1990 and I replied that we could discuss it if they wished to pursue that possibility." (Letter to Gary Reid, 7/23/86)

13. Pat Egan - Owner, Sault Evening News:

"...Sportsmen want the threat of commercial fishing out of the Les Cheneaux. So do resort and land owners. Strangely, so do the tribes. It was tribal fishing people who first formally asked the DNR to trade Bays." (Editorial, Sault Evening News, 12/16/86)

14. Frank Opolka - Deputy Director of Fisheries Division, MDNR:

"On June 2, 1987 John Scott and I met with Bay Mills and Sault Tribal Leaders, Indian Fishery Biologists, Tribal Attorneys, and other Tribal Members regarding the situation in the Les Cheneaux Islands. ...A combination of alternatives were offered to the Tribes, such as an annuity program, compensation and additional salmon, walleye and lake trout plants." (Letter to Dr. Guyer, 6/9/87)

15. John Scott - Director of Fisheries Division, MDNR:

"Wade Teeple mentioned that some sort of compensation might be acceptable to displaced fishermen (in Hammond Bay). I urged the Tribes to quickly develop a mechanism whereby they could accept the \$3 million in State and Federal Trust Funds." (Letter to Jack Bails from John Scott summarizing the meeting on June 2, 1987)

16. Wade Teeple - Acting Chairman, Chippewa/Ottawa Treaty Fishery Management Authority:

"Specifically our proposal is as follows:

Plantings ...150,000 Lake Trout yearlings and 100,000 Walleye fingerlings.

Fishing Activity ...The tribes would maintain a reduced gill net fishery in the Lake Huron Transition Zone (part of WFH-04, including Hammond Bay) after the date of January 1, 1990...

The Tribes would operate two trap net operations in the tribal portions of WFH-04.

Funding The proposal is conditional upon funding of the tribal trap net operations and other fisheries development activities at \$1.7 million. We believe this proposal could form the basis of a mutually agreeable compromise on this difficult issue." (Letter to Gordon Guyer responding to the States proposal made on June 2, 1987)

17. Mark Clymer - Spokesman, Les Cheneaux Community Action Committee:

"...Remedial action needed:

1. Multiple Use Management Plan

-Controlled growth and development of the area

-Substantiate (the) need and present ideas to bolster (the) local economy

-Provide relevant data to consummate amenable amendments to the 1885 Negotiated Settlement

-Provide never before studied data of various levels of the local food chain and their interdependence

-(Provide a) realistic assessment of (the) value and marketability of local natural resources... ("Outline for Public Meeting," Presentation to Dr. Guyer and the Natural Resources Commission, Cedarville, 7/23/87)

18. Dr. Gordon Guyer - Director, MDNR:

"The only way we can solve this is with some kind of partnership between you folks (residents of the Les Cheneaux area), Native Americans, and us. I won't let up on this." (Quoted from the July 23, 1987 Public Meeting in Cedarville, Sault Evening News, 7/24/87)

19. David Borgeson - Assistant Chief, MDNR:

"Annual dollar value of items offered by the tribes... = \$80,000.00 per year

Annual dollar value of items desired by the tribes... = \$540,000.00 per year

The above analysis makes it quite clear that the proposed exchange is not fair to the state." (Letter to John Scott, 7/30/87; concerning a possible state response to the Tribes proposal of July 22, 1987)

20. John Scott - Chief of Fisheries Division, MDNR:

"At the August 4, 1987 meeting of the Executive Council in Sault Ste. Marie, Frank Opolka and I requested clarification and elaboration of your proposed substituted fishing opportunities as contained in your July 22, 1987 letter to Dr. Guyer."

Item #6 of that request asked the Tribe to specify where they wanted the perimeter line around the Les Cheneaux Islands to be. (Letter to Wade Teeple, 8/27/87)

21. Carl Levin - U.S. Senator, Michigan:

"I support our governments' efforts in continuing to abide by the Agreements, which are not only legal in nature, but ethical and moral as well." (Letter to Don Patrick, Clark Township Supervisor, 9/28/87)

22. Glen Sheppard - Natural Resources Writer, North Woods Call:

"Just about everyone agrees that former DNR Director (Ronald Skoog) and others who negotiated the Indian Netting Agreement in 1985 sold out the Snows. To obtain concessions elsewhere the DNR agreed to leave the Snows open as a free fire zone for tribal netters. You can't blame folks in the snows for allowing themselves to become pawns. Skoog and company put it to 'em." (North Woods Call, 9/9/87)

"DNR Director Gordon Guyer says Snows area sportsmen and businessmen have every cause to feel frustrated. He adds that "I don't know what to do." The tribes, Guyer explains are holding their netting rights in the Snows as "a hammer over our heads,... they our holding us hostage." (North Woods Call, 10/21/87)

23. Mark Clymer - Spokesman, Les Cheneaux Community Action Committee:

"1. Establishment of a perimeter line around the Les Cheneaux Islands,...

A. Banning any commercial fishery ... within the perimeter line.

B. ... for the continuing concurrent tribal and sport fisheries of the Les Cheneaux area.

C. The right to an open and free navigation lane around the Les Cheneaux Islands, inside the perimeter line, for recreational boating... ("Community Program Guide", 8/31/87)

24. Mitch Irwin - Michigan State Senator, 37th District:

"... Their suggestions appear to be very well thought-out, and worthy of close examination by the Executive Council... additionally, we should commend the Committee for working within the Executive Council structure to attempt to resolve the issue of Native American commercial fishing in the Les Cheneaux waters." (Letter to Dr. Guyer, 9/28/87; concerning the Les Cheneaux Community Action Committees' "Community Program Guide")

25. Dr. Gordon Guyer - Director, MDNR:

"... Finally, let me complement you and your community on your careful and thoughtful response to this extremely difficult issue. I know the pressures this conflict has brought to your area and can see the elements that could lead to confrontations and unlawful acts in the absence of constructive community leadership. Please assure your Committee members that I will continue to seek a resolution to this issue and pledge the Department's resources to work with you to that end." (Letter to Mark Clymer, Spokesman for the LCCAC, 10/5/87)

"We shall indeed offer comments on these recommendations (The Community Program Guide) on October 20, 1987... while progress has not been rapid, I believe there is some likelihood of a partial compromise and an alternative fishery for the Indians." (Letter to Senator Mitch Irwin, 10/9/87)

26. John Schrouder - District Biologist, MDNR:

"... the potential impact of a tribal commercial fishery on the inner Les Cheneaux perch population... could be detrimental to the present sport fishery." ("Les Cheneaux Fisheries Opportunity Analysis", 2nd Draft, 10/13/87)

27. Mark Clymer - Spokesman, Les Cheneaux Community Action Committee:

"...a perimeter line delineating a boundary protecting the present small boat fishery, tribal subsistence fishing and various recreational boating interests from the encroachment of tribal commercial fish harvesting and larger scale sport fishing interests is needed to maintain any kind of ecological management of the area. ("Presentation to the Executive Council", delivered to the Executive Council in Sault Ste. Marie with the "Community Program Guide", 10/20/87)

28. Ross Swimmer - Secretary of Indian Affairs, Department of Interior:

"Any proposed shift in...the 1985 Consent Agreement, including plans involving the Les Cheneaux Islands...should be evaluated by the Joint Biological Committee and the Executive Council... We suggest you address concerns of the Les Cheneaux Community Action Committee with the Director, Michigan Department of Natural Resources." (letter to Mark Clymer, Spokesman for the LCCAC, 10/30/87; single reply to letters addressed to: Don Hodel - Secretary of the Interior, Ross Swimmer - Assistant Secretary of Indian Affairs, and Kenneth Smith - former Assistant Secretary of Indian Affairs signed by Shirley M. Crosby - Acting Deputy to the Assistant Secretary of Indian Affairs-Trust and Economic Development; responding to a request for comments on the "Community Program Guide".)

29. Bob Davis - U.S. Representative, 11th District, Michigan:

"I have discussed this matter with Dr. Lisle Reed of the Department of Interior, who has informed me that the federal government has paid every penny required under the Settlement. Most recently, \$1.5 Million was released for the Treaty Waters Fisheries Management Fund in June of this year. All other commitments were paid in previous fiscal years." (Letter to Mark Clymer, Spokesman, LCCAC, 11/3/87)

30. Dan Green - Attorney, Acting for the Sault Tribe of Chippewa Indians:

According to Green, the tribes "have left the possibility open", but the DNR is giving mixed signals. He and tribal biologist Bill Eger said the DNR told the tribes it cannot compromise or change the Consent Agreement. While comments to individual interest groups "have created a contrary impression."

"In our view," Green said, "we're talking about trading fishing opportunities in one place for opportunities in another... Basically, the tribes are willing to consider closing the area (Les Cheneaux Islands) in exchange for increased fishing opportunities someplace else... We're fairly open and flexible on that." (Sault Evening News, 11/13/87)

31. Dr. Gordon Guyer - Director, MDNR:

A Consent Decree allowing tribal commercial fishing in the Les Cheneaux Islands may be amended by spring, Department of Natural Resources Director Gordon Guyer said to Les Cheneaux citizens at a meeting in Cedarville Wednesday, November 11. "I want to solve this before I leave," Guyer told citizens gathered at Ang-gios' Restaurant. "I am very sympathetic; you've been considerate in this and I'm not going to let you down." The tribes, he said, have been patient about moving into the Les Cheneaux area while negotiations continue and have "kept their word pretty well" concerning other areas of the Consent Decree. "So we are on the way to helping this thing along." (St. Ignace News, 11/19/87)

While this last sentence by Dr. Guyer seems to be so, representatives of the Les Cheneaux Community Action Committee and the citizens of the Les Cheneaux Islands have, among other activities, formally presented their case to the following authorities:

1. The Natural Resources Commission, MDNR on October 8th, 1987 in Lansing. (See "Les Cheneaux Islands Association/MDNR")
2. The Executive Council administering the "1985 Consent Decree" in Sault Ste. Marie on October 20th, 1987. (See "Community Program Guide" with cover letter and "Presentation to Executive Council - October 20, 1987")
3. Dr. Gordon Guyer and Rep. Pat Gagliardi at the Town Meeting in Cedarville on November 11th, 1987. (See "Les Cheneaux Community Action Committee/MDNR")

The outcome of all this should be readily apparent upon reading this and the above cited documents - there isn't one yet!

Prepared by: Mark G. Clymer, Spokesman
Les Cheneaux Community Action Committee, 12/31/87

HISTORICAL VIEW OF THE LES CHENEAUX TRIBAL FISHING ISSUE

1988

32. William Eger - Fish Biologist, Sault Tribe:

"The state," Eger said, "has not raised any formal challenge or objection to commercial fishing there. Our studies show no indications of perch stocks being in danger, though we have done very little perch fishing in the Les Cheneaux area." (St. Ignace News, 7/21/1988)

33. Larry Barbeaux, Tribal commercial fisherman:

"A Native American commercial fisherman, fishing in McKay Bay about 5 miles (east) of Cedarville, filed a complaint July 15... claiming he was harassed by fishermen, his nets were damaged when they ran over them in their boats, one of his buoys was destroyed by a shotgun blast, and some 950 feet of his gill net was stolen from the water." (St. Ignace News, 7/21/1988)

34. Phil Pittman, Les Cheneaux Community Action Committee:

"Through no discernible fault of our own and without representation at any meeting that shaped the Consent Agreement, our community is about to be in dire economic trouble and MDNR must accept a good measure of the responsibility for that trouble. Worse than the nets and the threats that we, and the Tribes, now endure, when the tribal licensees come out of Hammond Bay early in 1990 they have virtually no other place to go but the Lake Huron grids of which our waters make a part. These waters, I think we all agree, are simply not that desirable for commercial fishing purposes, no matter what species may be sought in them. It is quite certain that they can in no way sustain the sort of fishing pressure with which they are threatened: it is as certain that the local economy cannot. ("LCCAC/MDNR Commission", Marquette, 8/4/88)

35. Phil Pittman and Mark Clymer, LCCAC:

"The salmon fishery, designed in part to take up the slack--and perhaps the most exciting and promising new sportfishery in the Great Lakes--is little help because of the proliferation of tribal commercial nets close in to our islands. They just are not compatible with downrigging gear, so the salmon fishers are going to Manistique, which now sports the best catch per hour ratio in the North and which, though it also rests on Indian waters, is protected by an outside line excluding tribal nets. So seems to be the case in Munising, though the Consent Decree itself seems ambiguous on the point." (Letter to Governor James Blanchard, 8/11/88)

36. Phil Pittman, Les Cheneaux Community Action Committee:

"We were able to meet privately with the entire hierarchy of MDNR and with certain of the Commissioners--notably Dr. Guyer, who has retained his position on the Commission having retired from the Director's office. The department has arranged a meeting with the Tribes, which occurred today, and they all assure us that they are prepared to enter into serious negotiations in order to resolve the Les Cheneaux fishing issue. Both sides have indicated an interest in having us present and both have promised to call us tomorrow morning to inform us of their progress. It looks very much like a meeting no one can walk away from quickly." ("LCIA Annual Meeting (8/11/88)", referring to the August 4th NRC meeting in Marquette)

37. Bob Davis - U.S. Representative, 11th District, Michigan:

"The citizen proposals have been thoughtful, reasonable attempts to work within the constraints of the Consent Agreement and I believe their efforts should be considered seriously. Clearly, if an arrangement that is satisfactory to both Indian and non-Indian groups can be accomplished, the State of Michigan should welcome it." (Letter to David Hales, 8/19/1988)

38. David Hales - Director, MDNR:

"On August 11, 1988... (we) reopen(ed) negotiations to address this issue. The meeting was very positive, and resulted in an agenda to explore a means to assist tribal fishers, who will be impacted by the closure of Hammond Bay in 1990." (Letter in reply to Bob Davis' letter of 8/19 by "Acting Director", Jack Bails, 9/16/1988)

39. David Hales - Director, MDNR:

"... we see some movement toward the use of trap nets. If the movement toward trap nets continues, we believe it will increase the returns to the tribal licensees and, at the same time, relieve the pressure to fish in other areas. We are suggesting that at every opportunity the tribes support this continued movement into impounding gear. (Letter in reply to the LCCAC letter to Gov. Blanchard of 8/11 by "Acting Director" Jack Bails, 9/26/1988)

40. Phil Pittman, Les Cheneaux Community Action Committee:

"No one has seriously questioned the wisdom or workability of an outside perimeter line such as the one we ask for: we do need it. We presented here one year ago specific suggestions addressing our concerns in the form of a "Community Program Guide". In the course of this past year we have edited and revised this "Guide" with input from both MDNR and the Sault Tribe and today will leave with you our "Executive Council Resolution Guide" which again details our concerns and suggestions. We ask the State and the tribes to set a serious target date before which they will find a way to a reasonable resolution to this specific issue. We ask that in the event it is necessary to make our issue a part of a larger package it nonetheless be carefully and concretely defined as an issue on the table. We ask if it might not be time

to form a bi- or tri-partisan committee to study our issue and make recommendations--and we ask that we be included as the third partisan faction." ("Executive Council Meeting", 10/18/1988)

41. Phil Pittman, Les Cheneaux Community Action Committee:

"... told the council that Les Cheneaux residents and businesses feel like a pawn caught between warring state and federal authorities. 'There are fewer fishermen catching fewer fish,' Pittman said. 'The presence of excessive netting gear especially along the southwest side of Marquette Island and at Point Brulee, scares many fishermen; others... have left early and angry, some refusing to honor their livery and room contracts.'" ("Executive Council Meeting" as reported by the St. Ignace News, 11/3/1988)

42. John Robertson - Fisheries Division Chief, MDNR:

"Governor Blanchard has asked that I write and thank you for your letter of August 11, 1988...(we) are actively seeking a solution to providing the tribes fishing opportunities they desire, as well as providing the Les Cheneaux area recreational anglers the fisheries they presently enjoy. It is our goal to have an agreement in place prior to the 1990 phase out of the gill net fishery in Lower Hammond Bay." (Letter to LCCAC, 11/7/1988)

43. Phil Pittman, Les Cheneaux Community Action Committee:

"3. We think at this time it is proper to ask once again what sense of obligation the Director feels to promises made by his predecessor? If any, we would also like to ask what progress he can report?

4. We have asked repeatedly for an outside perimeter line,... Is the Director willing to negotiate such a line or its equivalent?

7. What assistance has the State given the Tribes in converting from gill nets and/or finding alternative fishing opportunities? (LCCAC presentation to Director Hales and Representative Gagliardi - "David Hales, MDNR", 12/19/1988)

44. Tim Hossack - Chairman, Mackinac County Commissioners:

"You tell us to be patient while we watch our community sold down the tube" (he) said to Hales, "Anytime we do get answers we're told the same thing - be patient, but we don't get any assurance of changes in the problem." (Public Meeting with Director Hales and Representative Gagliardi, Cedarville Community Center, 12/19/1988)

45. David Hales - Director, MDNR:

"Your information goes into the negotiating process," Hales said. "Meetings like this help me know the impact this issue has on you." Hales refused to provide specific or general answers to any of the questions. Hales said it would be inappropriate to say, "trust us," but, he added, "watch us like a hawk. As soon as we can move to the next stage in the negotiations," he said, "we'll bring it back here." (St. Ignace News, 12/22/1988)

Once again, 1988 proved to be a contest of hurry up and wait. We all hope Director Hales will be able to "bring it back here" soon!

Disquisitions were presented to the following authorities this year:

1. The Natural Resources Commission of the MDNR on August 4th in Marquette. (see "LCCAC/MDNR Commission")
2. The Executive Council administering the "1985 Consent Decree" in Sault Ste. Marie on October 18th. (see "Executive Council Meeting" and "Executive Council Resolution Guide")
3. Director David Hales and Representative Pat Gagliardi at the Public Meeting in Cedarville on December 19th. (see "David Hales, MDNR")

Following the 1st "behind closed doors" meeting between representatives of the Tribes and the State on August 11th, both sides indicated they would be scheduling another within a month. The next meeting occurred, over breakfast, before the Executive Council meeting on October 18th. No one present at this 2nd meeting would discuss any aspect of it with us that day, but they were noticeably disillusioned with the results. Frank Opolka informed us after the Town Meeting on December 19th there was a 3rd meeting scheduled for January 9th, after the Tribes postponed it twice in December. This meeting was again postponed by the Tribes, with no new date scheduled as yet.

prepared by: Mark Clymer, Spokesman
Les Cheneaux Community Action Committee, 1/13/89
(50 year anniversary of Barefoot Daves' demise)

HISTORICAL VIEW OF THE LES CHENEAUX TRIBAL FISHING ISSUE

1989 - 1991

46. Dr. Philip McM. Pittman - historian & author:

"The treaties have been wildly and politically misinterpreted. The intent of the treaties was to confer civilization upon the aboriginals, to absorb them into our culture, and give them the gift of citizenship." (St. Ignace News, 3/30/89)

47. Greg Wright - Manager, Nunn's Creek Fishery Enhancement Facility:

"The emphasis is to develop a self sustaining commercial fishery. ...(We) are working to establish about 40 rearing ponds in which the fry can grow safe from predation... Eventually, the walleye will be stocked at a rate of about 250,000 fry and fingerlings annually." (St. Ignace News, 5/11/89)

48. Robert W. Davis - Member of Congress:

"To establish a Presidential Commission to review the exercise of Indian treaty rights on off-reservation lands. ...examine and report to congress on possible Federal guidelines for the States and tribes to follow with respect to preventing the exploitation of fish and game resources on off-reservation lands; ...with respect to protecting the property rights of non-tribal citizens; ...to protect Indians exercising treaty rights..." (H.J. Res. 287, 6/1/89)

49. Glenn Sheppard - conservation journalist, Northwoods Call:

"While miles of ghost (abandoned) gill nets reportedly haunt and stalk the big lakes and their fish, Indians have told the state and sportsmen to take the 1985 agreement to control netting and post it over the middle hole in the outhouse. Indians did not breed this tragedy that is dismantling our society and natural resources. Congress, unequivocally, has the authority and responsibility to end this nightmare. Gov. Blanchard and legislators in Lansing are almost equally at fault for their failure to...make all U.S. citizens equal under our conservation laws." (North Woods Call, 6/14/89)

50. Clinton Parrish - Chairman, Bay Mills Tribe of Chippewa Indians:

In response to H.B. Res. 287: "Why not look at all the treaties, then we could reestablish our rights to the land and remove all of Davis' white constituents until this thing is settled. He should recognize the dangers of what he is doing." (St. Ignace News, 7/13/89)

51. Dr. Philip McM. Pittman - historian & author:

"Both judges, Williams and Fox, in their opinions recur to the Northwest Ordinance in developing their historical arguments. The final sentence of the fourth article...reads as follows: 'The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be *common highways, and forever free*, as well to the inhabitants of said territory as to the citizens of the United States, and those of any other states that might be admitted to the confederacy, without any tax, impost, or duty therefor.' In 1787, then, federal authority eased the waters of the Great Lakes for common use and clearly defined them as quite separate from the lands to be acquired from their inhabitants... It seems a curious perversity that twentieth century judges should have seen fit to carve up the waters which the treaties use only as containing boundary points and lines continuing the unknown and unmapped islands of land." (St. Ignace News, 7/13/89)

52. James Blanchard, Governor of Michigan:

"I'm delighted to be here, and I appreciate the warm welcome including the informational picketing because it will certainly cause me to make sure our DNR director meets with you. I am aware of some of your concerns, but obviously I do not know as much about the fishing situation as I think some of you do, so I hope you understand I appreciate being sufficiently notified and politely welcomed. I might tell you that I don't agree with what the Supreme Court does - not just on fishing, but on Women's Rights, of Flag Rights either, so I want you to know that." (TV 9 & 10 Newsreel, Governors visit to Hessel, 7/26/89)

53. Mark G. Clymer, Spokesman, LCCAC:

"I think the Indians have negotiated with the DNR in good faith... More often than not the tribe's and the local residents goals are more closely aligned with each other than with the DNR. Tribal cooperation on staying out of Les Cheneaux during negotiations has been good, but the DNR is taking the hard line - they say there's no problem here...And they have backed the Indians into a corner where they have to use us as a bargaining chip." (Sault Evening News, 8/17/89)

54. Guy Fleischer, Fisheries Biologist, U.S. Fish & Wildlife Service:

"The state must realize the tribes are co-managers of the fishery. People are forgetting the spirit and intent of the Consent Decree, which is to reduce social conflict." The Les Cheneaux area had an agreed line with state and tribal commercial fishermen before the Consent Decree went into effect. With the decree, state commercial fishermen were not allowed in the upper Great Lakes area and tribal commercial fishermen still did not fish within the islands area, although they had the right to do so. (St. Ignace News, 8/17/89)

55. John Causley, Jr., Unit Rep., Sault Ste. Marie Tribe of Chippewa Indians and resident of Hessel:

About 45 tribal commercial fishermen from Bay Mills, Grand Traverse, and Sault Ste. Marie bands launched their boats from the public ramp in Cedarville and fished the waters within the Les Cheneaux Islands as part of a peaceful demonstration Sunday, August 20. The idea behind the Sunday rally, was to raise awareness that tribal fishermen have the right to fish within the Les Cheneaux islands... The state must begin to realize there is a problem here. "We have to live here, too." (St. Ignace News, 8/24/89)

56. Gordon Charles, Outdoor Editor, Traverse City Record Eagle:

"When David Hales visited the Les Cheneaux area last December, he challenged the residents to 'watch me like a hawk.' They have been, but are far from happy with what they regard as shoddy treatment by the director of the Department of Natural Resources. Most consider themselves being used as pawns in the high stakes chess game between Indian commercial netters and sports fishermen. Blanchard and Hales very likely see the Cedarville area of Michigan as having very little in the way of voting strength." (Record Eagle, 12/10/89)

57. John Schrouder, Region II Fisheries Biologist, MDNR:

"Regional fish supervisor John Schrouder says the tribes insisted on secrecy and refused to negotiate if the sportsmen's groups were involved. Going public, or bringing in representatives from the groups would halt discussions..." (North Woods Call, 1/10/90)

58. John Robertson - Chief of Fisheries Division, MDNR:

"Robertson outlined six expectations the DNR has for the Lake Huron (Advisory) Committee: provide information to interest groups and anglers about fishing in Lake Huron; keep the DNR's Fisheries Division focused on major priorities; help Michigan take a leadership role in Lake Huron fisheries issues; identify Fisheries Division mistakes and needed improvements; generate creative ideas toward solving the problems Lake Huron faces; and look at Lake Huron as a single ecosystem, in spite of political boundaries." (St. Ignace News, 2/1/90)

59. Bigelow v MDNR:

"...because the American Indians had superior rights to fish certain waters. Plaintiffs (State licensed commercial fishermen) did not have an equal right to fish the coastal waters of Michigan. Plaintiffs had no property right in their commercial fishing licenses, because the Indian fishers had a superior right to fish. ...plaintiffs' alleged "rights" to employment were reclaimed by the tribal fishers, whose fishing rights were superior." (Michigan Bar Journal, 3/90)

60. Dr. Philip McM. Pittman - historian & author:

"We have been asked to respect their apartheid, their peculiar brand of socialism, and their unaccountability for our tax dollars after they have crossed into the reservations. Now we also have to accept the fact that they can and have purchased (a portion of) the legal aid federal library in the Sault. Since tax dollars have already been spent once to establish the facility as an aid to the public it feels like they have been spent a second time to repurchase it for the benefit of a preferred minority." (letter to Judge Enslin, 4/2/90)

61. Donald W. Reigle, Jr., U.S. Senator:

"This situation is, however, primarily a state and local issue, and should be handled at those levels. As a federal representative, my role is quite limited." (response to letter from Phil Pittman, 4/2/90)

62. John Engler, Senate Majority Leader:

"...this is a very complicated and sensitive issue, and I am not certain what I, as a state legislator, can do to help." (response to letter from Phil Pittman, 4/5/90)

63. Glenn Sheppard - conservation journalist, North Woods Call:

"It is abundantly clear that our congressmen have become adept at passing the buck. They, and only they (and the president), can get us out of this mess. The state cannot. The courts, it is obvious, will not. Congress can, but won't so long as we allow them to slough it off on the state and courts. A federal judge in Wisconsin spelled this out... he declared the law, not justice, dictated his finding. Congress can change the law, he added, and suggested it do so." (response to letter from Phil Pittman, 4/18/90)

64. Dr. Philip McM. Pittman - as spokesman for the LCCAC:

"It now appears the ordinary citizen, and I speak for uncounted and unconsulted numbers of us, that the judiciary, both federal and state, is enthusiastically embracing a process whereby through the slanted reinterpretation of historical matter it presumes to mete out justice in recompense for wrongs presumed to have been perpetrated long generations ago. That is both wrong and unfair because no one is protected from having to pay for it and because it violates the federal government's obligation to honor its contracts with its ordinary citizens. We the people conducted a revolution and wrote a constitution. You are trampling on it. But we, finally, are the jury of peers in the court of last resort and when we come in we are very likely to call for a plague upon all of your houses." (LCCAC Address to the Executive Council, 4/19/90)

65. John Robertson - Chief of Fisheries Division, MDNR:

In response to the 6 page LCCAC presentation at the 4/19/90 Executive Council meeting which included in part: "It is hard for the ordinary citizen to understand how he can be so perfectly excluded from what is finally a judicially approved process that affects our community so much. ... We can only conclude that we are being discriminated against and we don't like it." Robertson replied angrily, saying, 'You have been represented. You may argue about the quality of the representation, but I don't want to hear anymore you are not represented.'" (St. Ignace News, 4/26/90)

66. Howard Tanner, Former DNR Director:

"What are they (tribes) putting on the table?' He charged the tribes are not offering anything in trade for continued netting and that the sport fishery is suffering the sole losses. DNR fisheries chief John Robertson and director David Hales are now trying to find other fisheries to open..." (North Woods Call, 5/2/90)

67. Dan Greene, Attorney, Sault Band of Chippewa Indians:

"The loss of the relatively sheltered area of the bay, however, puts small boat fishermen at risk to the open waters, said Dan Greene, tribal attorney. During the court proceedings, tribal attorneys offered a compromise plan: a protective line around the outside edge of the Les Cheneaux Islands; the Sault Tribe would not fish in Hammond Bay; and the Bay Mills Band would reduce the number of its fishermen, reducing the total number of fishermen from 32 to 20. The state, however, rejected that plan as it has consistently refused to negotiate or trade a line around Les Cheneaux for any other opening for the tribes." (St. Ignace News, 5/3/90)

68. Kevin Smith, Assistant Attorney General:

"The Department of Natural Resources, with the blessing of the Michigan United Conservation Clubs, has agreed to let 20 Bay Mills small boat fishermen fish Hammond Bay from May 4 to May 25 this year. Enslin ordered the state to develop a more comprehensive plan by June 1. ...Enslin stressed to the state the importance of reducing the impact of the bay's closure, said Kevin Smith, assistant attorney general. (St. Ignace News, 5/10/90)

69. David F. Hales, Director, MDNR:

"Item 5--the Consent Decree is a working document. Many seem to lose sight of this very important point. Les Cheneaux people should bear in mind that they have made a strong impact on the conduct of the Consent Decree parties. Although we have not been able to draw the perimeter line as yet, the concept is not forgotten. The Islands have two representatives on the new Lake Huron Advisory Committee. This membership will help this committee to direct Lake Huron fisheries management efforts for years to come." (response to 2/24/90 letter from Phil Pittman, 5/14/90)

70. Con Shoberg, Resort Owner:

"(Steve) Scott said a Spring closure of some bays might help bring back perch populations. 'I don't think closures will do any good', said Con Shoberg, owner of Shoberg's Resort. 'I don't know of any place in the state where bay closures did anything to promote perch fishing. If we were to close fishing in April, I'd lose 15 percent of my business. I'd lose another 10 percent in the Fall because some of those fishermen would not return.' If Les Cheneaux doesn't do something now and the trend continues, Scott said, resort owners might lose more than a Spring perch fishery." (St. Ignace News, 5/31/90)

71. Dr. Philip McM. Pittman - historian & author:

"Morse cites the deliberations of the commissioners at the Treaty of Ghent (1814). The American Commissioners wrote: 'The recognition of a boundary [by international agreement] gives up to the nation in whose behalf it was made, all the Indian tribes and countries within that boundary. It was on this principle that the undersigned have confidently relied on the Treaty of 1783, which fixed and recognizes the boundaries of the United States, without making any reservation respecting the Indian tribes.' (pp.283-84) The commissioners, thus, like John Quincy Adams ("It is not a true and legal possession...not to be transferred, but extinguished") and the Supreme Court ("Indian title...is not such as to be absolutely repugnant to seisin in fee on the part of the State" - Fletcher v. Peck) at a slightly later date, recur to the international law of nations superseding and making possible national and municipal law. That law assigns to the tribes the privileges and advantages of occupancy upon the land, not rights--which can derive only from the actual ownership of it." (quoted from A Report to the Secretary of War of the United States on Indian Affairs by the Rev. Jedidiah Morse, D.D., Davis and Force, Washington, DC, 1822; address to the Historical Society of Michigan Annual Convention, Cedarville, 6/22/90)

72. Glenn Sheppard, conservation journalist, North Woods Call:

"By the mid 1980's, then district fish chief John Schrouder was warning that the perch population faced disaster, due to overharvest by sports fishermen and loss of habitat. He called for an 8.5 inch minimum size limit and spring closure of several bays to protect spawning perch. Having ignored the earlier warning, most local leaders now support closing the major spawning bays in the spring. Local support for a temporary ban on killing perch would demonstrate that there is sincere concern. This would be a powerful argument for forcing the DNR to make concessions that will keep the nets out of the channels. With a recovered perch population, the DNR, and state politicians, would be forced to accept their responsibility to protect it." (North Woods Call, 8/22/90)

73. Les Cheneaux Community Action Committee, Public Meeting:

"The state of the fishery in Les Cheneaux was presented August 16 at the Community Center in Cedarville. The Les Cheneaux Community Action Committee presented a chronological account of its efforts to get the attention of the Department of Natural Resources (DNR), to seek changes in the 1985 Consent Decree with Michigan tribes, and to improve the fishery.

(At a 12/1/89 closed-door) meeting, which was attended by DNR director David Hales, fisheries chief John Robertson, regional DNR director Frank Opolka, State Representative Pat Gagliardi, State Senator Mitch Irwin, and members of the (Les Cheneaux Community) action committee, Hales told the Les Cheneaux representatives the DNR would negotiate a netting line with the tribes, if the tribes raised the issue. Hales then told the Les Cheneaux representatives, 'If you open your mouths, you will shoot yourselves in the foot.'

Negotiations with the tribes concerning the use of Hammond Bay, however, seemed to contradict DNR officials' promises. Tribal negotiators offered to avoid netting in Les Cheneaux in exchange for seasonal, limited fishing in Hammond Bay, and the DNR refused the offer. The DNR, further, refused to negotiate any protective line inside which netting would not be permitted in Les Cheneaux." (St. Ignace News, 8/23/90)

74. Bruce Patrick, Cedarville Resort Owner:

"A friend of mine made a trip to Pendills Creek. He found the whole place a mess - dead brook trout, dead and bloated-dying in some of the ponds, brood trout that were still alive all covered with fungus! A very deplorable condition...no one around - he and a friend spent some time walking around the hatchery - door and gates wide open, etc." (letter to Bob Davis, 9/5/90)

75. Dr. Philip McM. Pittman - historian & author:

"I have personally chosen, for reasons I presume you will understand, to fish strictly within the protective line we have been seeking around our islands, the same area in which I took 118 fish during the summer of 1987. Last year in the same area, I took one fish--a pink. This year, in about fourteen trips, I was able to take none. I cannot believe kidney disease in the hatcheries accounts for this dramatic decline. I can believe in nets, because I can count them, anywhere between nine and fourteen sets depending on the day I may choose to count. (letter to David Hales, 10/3/90)

76. John Christian, Acting Regional Director, Fish and Wildlife Service:

"What was observed at Pendills Creek was a combination of a temporary staff shortage and an attempt to keep fish alive... We have taken the following actions to ensure this does not happen again. 1. The front office will be staffed at all times... 2. An interpretive sign will be placed in the broodstock area to explain the situation with the diseased fish." (reply to letter from Bob Davis in reference to Letter from Bruce Patrick, 10/25/90)

77. David F. Hales, Director, MDNR:

"Last winter at our meeting in Sault Ste. Marie, we thought the Tribes would voluntarily agree to a proposal for a perimeter line around the Les Cheneaux Islands. As indicated in my August 14, 1990, letter to you, the Tribes continue to offer proposals but, to date, the trade-off values have been unacceptable. I don't see a resolution in the near future." (letter to Phil Pittman, 11/8/90)

78. Dick Powell, Writer and Les Cheneaux sportsman:

"John Schrouder correctly analyzed the problem a number of years ago...more perch were being taken than could be replaced by natural reproduction. But, John and the rest of the DNR have always backed away from a bay closure during spring spawning season. They came close, but when a small minority of voices at the Snows were raised in opposition, out of greed, the DNR refused to take the steps necessary to protect the resource. Most of those at the Snows who are close to the situation would, I believe, be willing to bite the bullet and go for the closure. The greedy minority, of course, would not, and never will." (North Woods Call, 11/28/90)

79. Dr. Philip McM. Pittman - historian & author:

"Last year, like the year before, the proliferation of tribal nets immediately outside our islands, both trap and gill net operations, was tremendous--so much so as to present a very real hazard to navigation and threat to user safety. A number of nets were set without markings at all, and apparently floating free (I became involved in one of these and properly reported it to both BIA and DNR), and on several occasions large pleasure cruisers had props fouled in nets. That can provide quite a thrill for the unsuspecting operator of a twin screw vessel. It is sad commentary that open waters have become unsafe and no one seems to have either the authority or the strength of will to enforce elemental boating safety. The Coast Guard, for instance, has done no better than to foul one of their own vessels in a net set in St. Ignace harbor.

Is it not reasonable for us to ask if some unit of our government, state or federal--the folks to whom we pay taxes--wouldn't be willing to be our advocate in seeking a solution to an increasingly volatile situation? Bob, Bruce Patrick kindly left his Pendills Creek federal hatchery file with me before he went south. Could the federal government intervene on behalf of its citizens (for a change) and offer the clearly troubled Pendill's Creek facility to the tribes in return for a protective line outside Les Cheneaux? Last we heard they still wanted lake trout and that would be a means of getting some to them in the form of an ongoing, self-perpetuating, income generating project." (letter to Bob Davis, 2/4/91)

80. Tom Gorenflo, tribal fisheries biologist:

"The salmon harvesting tank was part of an original proposal to catch salmon that fishermen missed from St. Martins Bay, Gorenflo said. Commercial fishermen, however, let very few salmon through in recent years, he said, even though they caught 20 percent fewer salmon in 1990 (421,000 pounds) than in 1989 (519,000 pounds)." (St. Ignace News, 3/7/91)

81. Les Cheneaux Community Action Committee, Public Hearing:

"A public hearing about the Nunn's Creek Fish Hatchery Facility improvements is tentatively scheduled for April 3 at the Clark Township Community Center.

Two persons, Gary Reid of Cedarville and Mark Clymer of Hessel, had filed 'a whole list (of) questions about the improvements' with the Department of Natural Resources, said Les Thomas, of the Land and Water Division. The questions included concerns about flooding, the

impact on commercial and recreational fishing, lack of communication from the Tribes, wastewater discharge, and whether Nunn's Creek is still considered a navigable waterway." (St. Ignace News, 3/14/91)

"Seeking clarification of the relationship between state, federal and tribal governments regarding the management of the fishery, Phil Pittman criticized the development on a 'philosophical and political basis.' 'What was promised as a shared resource is no longer shared, nor is there apparent any provision either for sharing or co-management that might somehow benefit the citizen-sportsman,' he read from a prepared statement. 'It now seems the taxpaying, license-buying citizen in this part of the world fishes wholly at the sufferance of the tribes and may have no stake whatsoever in the resource that his tax and license dollar has provided.'" (St. Ignace News, 4/11/91)

82. Dr. Philip McM. Pittman - historian & author:

The fish were to be a shared resource and all we had to do was to accept sharing fairly and by law. That, emphatically, is not what has evolved and the community has every right to be outraged at what has evolved. The problem, we are told, is one of allocation--which sounds to the layman a lot like sharing. The trick, which has never been explained to us, is that the allocation has already been done. The tribe just last year came forth with their own apologist, Robert Doherty, whose book Disputed waters: Native Americans & the Great Lakes Fishery (Lexington: The University Press of Kentucky, 1990) develops the theme, apparently allowed--even encouraged--by the courts, that all fish in designated tribal waters, no matter what their origin or other status, are already allocated wholly to the tribes in all but entire contravention of state efforts toward conservation and shared participation in the resource. Doherty fished with the tribes out of Mackinaw City and his work was in part funded by a tribal grant. (letter to the editor, St. Ignace News, 4/3/91)

83. Robert W. Davis - Member of Congress:

"Once again, I am hitting a brick wall. The NRC does not have jurisdiction over this matter nor do they want it, and Congressman Vander Jagt does not wish to get involved at the present time. As for new initiatives, I'm not aware of any. I'm sorry your efforts have not paid off to date. (letter to Phil Pittman, 4/11/91)

84. Robert D. Rowe, Director, Office of the Vice President:

"Vice President Quayle asked me to reply to your letter concerning tribal treaty rights. In an effort to be of assistance, I have written to the Department of the Interior on your behalf. You should hear from them directly." (letter to Phil Pittman, 4/23/91)

85. John D. Schrouder, Region II Fisheries Biologist, MDNR:

In terms of tribal issues, I still believe the solution lies in achieving a "sharing" attitude through discussion with the Chippewa/Ottawa Treaty Fishery Management Authority (COTFMA) and their new Fisheries Assessment Unit Leader, Tom Gorenflo. Obviously, the fisheries plan we prepared for the Les Cheneaux's in about 1987 needs updating. In terms of resolution, I would suggest these two areas (negotiation and plan update) would be a logical place to start. I'm also sharing these thoughts with Messrs. Robertson and Scott by copies of this reply. (letter to Phil Pittman, 5/1/91)

86. Con Shoberg, Mackinac County Commissioner and Cedarville Resort Owner:

In response to the proposed changes in Upper Peninsula fish regulations: "I'm madder than hell. Why penalize the sportsman? They raise license fees and then restrict us, too. If they try to ram this down our throats they will have this guy fighting them all the way.' Shoberg characterized the proposals as an 'experimental idea' that the DNR has no proof will work. 'Why impose it on us? That will hurt us economically.' (Steve) Scott said he would like to hear angler's opinions about increasing the size limit for perch from seven to eight inches. He said he has received support from Drummond Island sportsmen for such an increase." (St. Ignace News, 5/2/91)

87. Mark G. Clymer, Spokesman, LCCAC:

"The Les Cheneaux Community Action Committee has not taken a position on the proposed regulations, said spokesperson Mark Clymer. He said the committee wants to examine more thoroughly their economic, biological and political repercussions." (St. Ignace News, 5/9/91)

88. John Robertson, - Chief of Fisheries Division, MDNR:

“...the Les Cheneaux area debate was unresolvable when the state, the federal government, and the tribes were negotiating the 1985 Consent Agreement. The difficulty was trying to trade Les Cheneaux for something else. If they drew a line around the islands, they would want something substantial in return. It was a question of what other group would be impacted (in the trade-off).” Robertson said that a line around Les Cheneaux is at the top of his list... “I think the Les Cheneaux question will be resolved long before the year 2000. There is not an economically-viable commercial fishery within the waters. I see the problem not as a biological issue, but a social issue. When I advocate a line around Les Cheneaux, it is a gesture recognizing the reality of the area, a good faith effort of compatibility.” (St. Ignace News, 8/1/91 - article about 7/23/91 meeting at Ang-gios)

89. Dr. Philip McM. Pittman - historian & author:

“John ... indicated that we should perhaps negotiate directly with the tribes, as that may be our best hope. In 1987 the state told us that we must not negotiate directly with the tribes, and we concurred; we have, after all, nothing to negotiate with--nothing to trade and no position from which to make demands. John stated, really, only that he will encourage the tribe to give us a protective netting line as a sign of good faith, not a negotiated trade.” (letter to Pat Gagliardi, 7/26/91)

90. Pat Gagliardi - State Representative, 107th District:

“I want to assure you that I have every intention of bringing John Robertson back to the Les Cheneaux area to discuss fishing issues with concerned citizens. Although a definite date has not been set, I hope to arrange the either late this winter or early spring. As he stated during his visit, Les Cheneaux is his highest priority, and I will take him at his word on this.” (letter to Phil Pittman, 10/3/91)

prepared by:

Mark Clymer, Spokesman

Les Cheneaux Community Action Committee, 10/13/91