



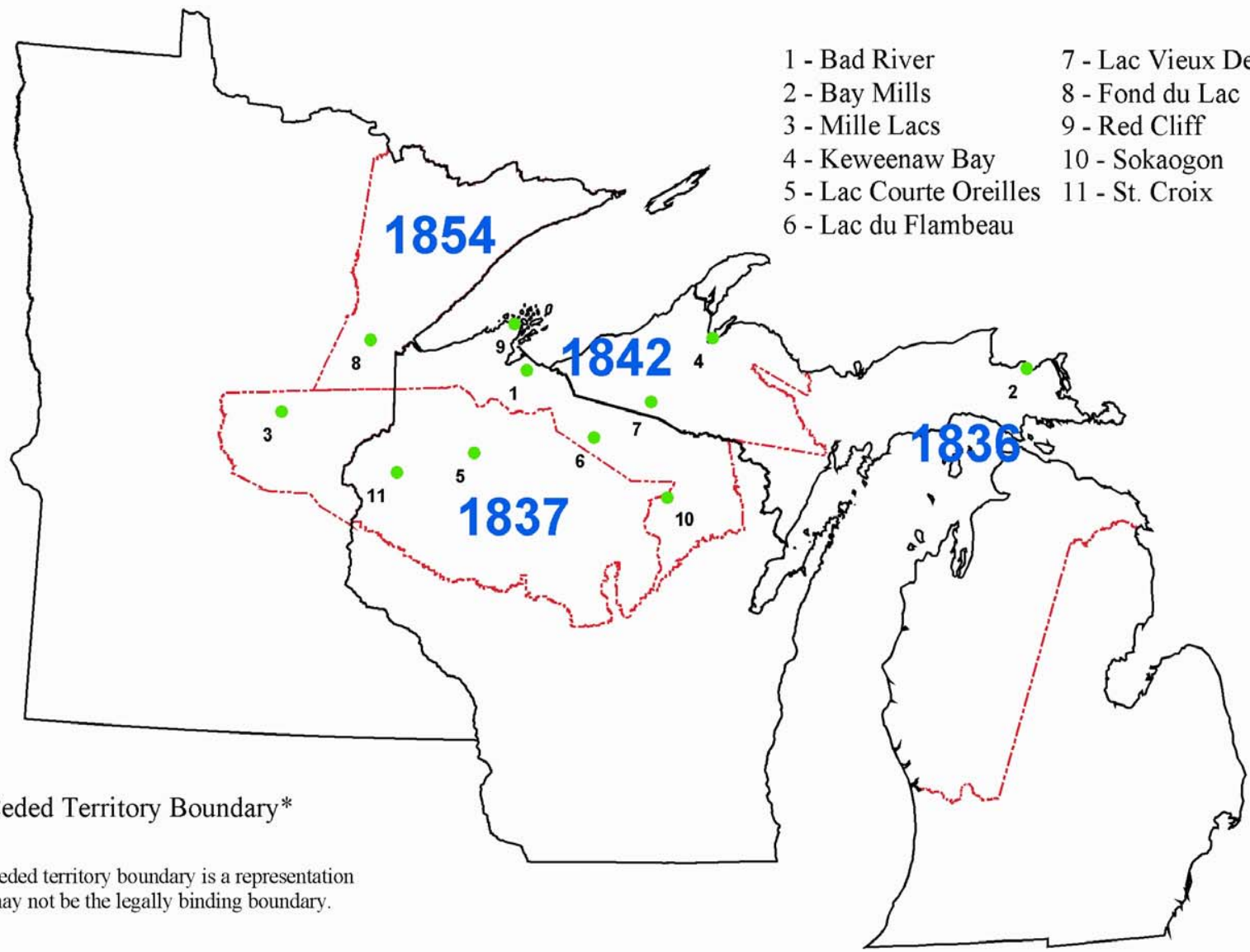
# Relationship of People to Place

- Case Study of Anishinaabe (aka Ojibwe or Chippewa) Life Ways and Reserved Sovereign Prerogatives
- Reservation-Based Rights
- “Ceded Territory” Rights – “Treaty” Rights to Hunt, Fish and Gather

# Fundamental Principles

- Tribes as Sovereigns/Governments
- Nature/Purpose of the Tribal Rights
- Relationships between Tribes and Other Governments
- Unique Federal Treaty Obligations and Trust Responsibilities
- Government-to-Government Relationship

- 1 - Bad River
- 2 - Bay Mills
- 3 - Mille Lacs
- 4 - Keweenaw Bay
- 5 - Lac Courte Oreilles
- 6 - Lac du Flambeau
- 7 - Lac Vieux Desert
- 8 - Fond du Lac
- 9 - Red Cliff
- 10 - Sokaogon
- 11 - St. Croix



--- Ceded Territory Boundary\*

\* The ceded territory boundary is a representation and may not be the legally binding boundary.

# Preserving the Circle of the Seasons

- *Aki* and the Circle of the Seasons
- A Way of Life – Subsistence, Economic, Cultural, Spiritual, and Medicinal Needs
- Interrelationship With and Dependence Upon *Aki* and the Other Orders of Creation

# Ojibwe Culture

- **Interdependence** between a people and the natural environment
- Notion of **Geographic Place** that embodies:
  - Human Origin
  - Historical Identity
  - Conception of Cultural Reality in the Modern World

# Interdependence with the Natural Landscape

- Virtually all plants and animals are used to meet a variety of everyday needs:
  - Subsistence
  - Economic
  - Cultural
  - Medicinal
  - Spiritual/Religious
- Water Ceremonies

# Maintaining Balance with the Natural Order

- Veneration of the spiritual essence of both human and non-human creatures
- Manner and rituals of harvest and use are key components to Ojibwe cultural preservation
- Secular knowledge related to harvest techniques and habits of animals
- Matching human needs to *Aki's* capability to produce and sustain

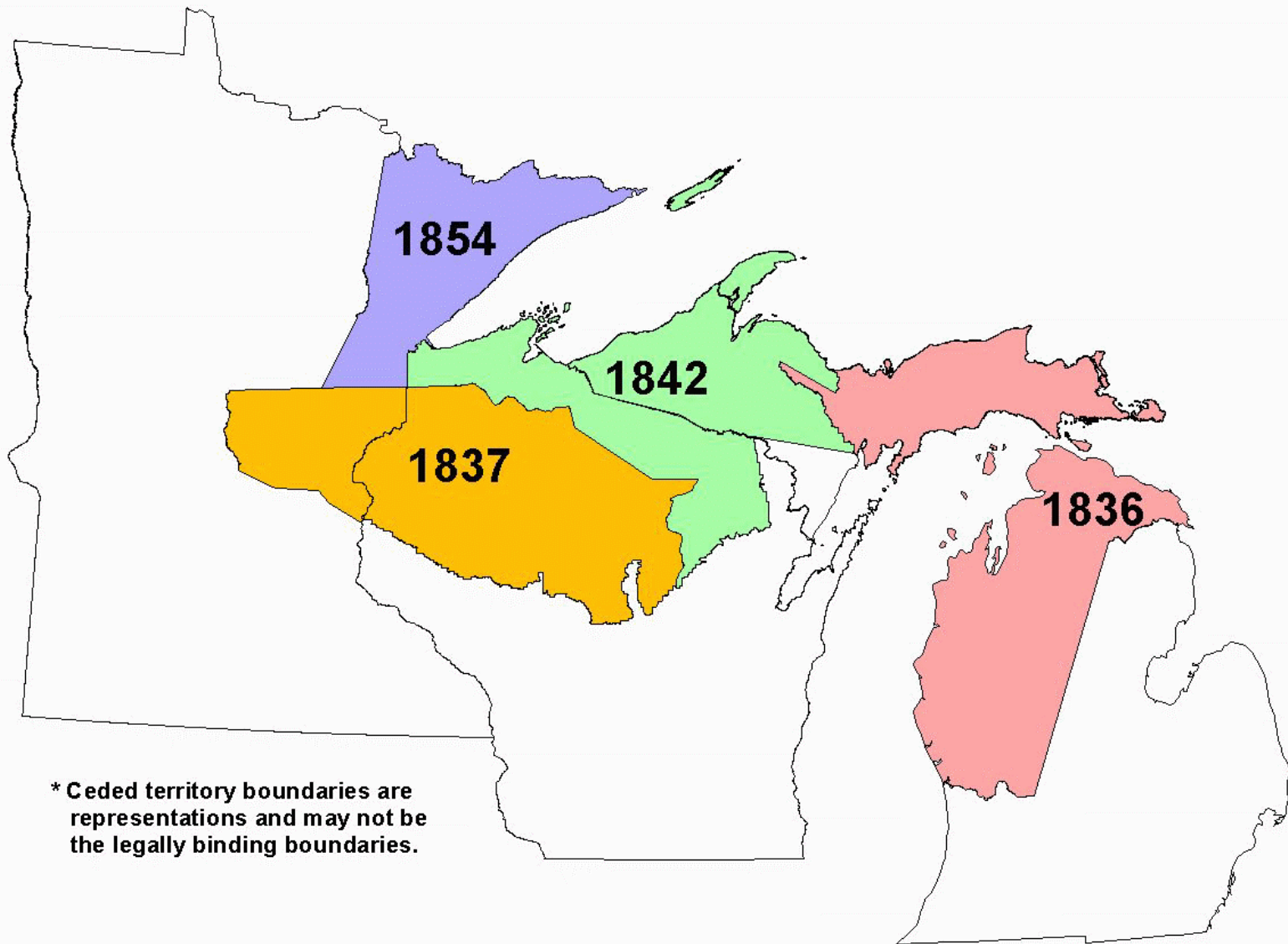


# Ecological Damage/Cultural Damage

- Disruption of natural and social environments = disruption of Ojibwe culture
  - Ojibwe stake/interests can be qualitatively different than those of other citizens
  - Historic Ojibwe adaptability and resiliency
- vs.
- How much ecological disruption is too much for Ojibwe culture to endure

# Fulfilling Treaty Promises

- Land Cession Treaties – 1836, 1837, 1842 and 1854
- Primary Purpose – Permanent right for signatory Tribes to continue to make a moderate living from the ceded territory lands and waters by engaging in hunting, fishing, and gathering
- Treaties -- Supreme Law of the Land

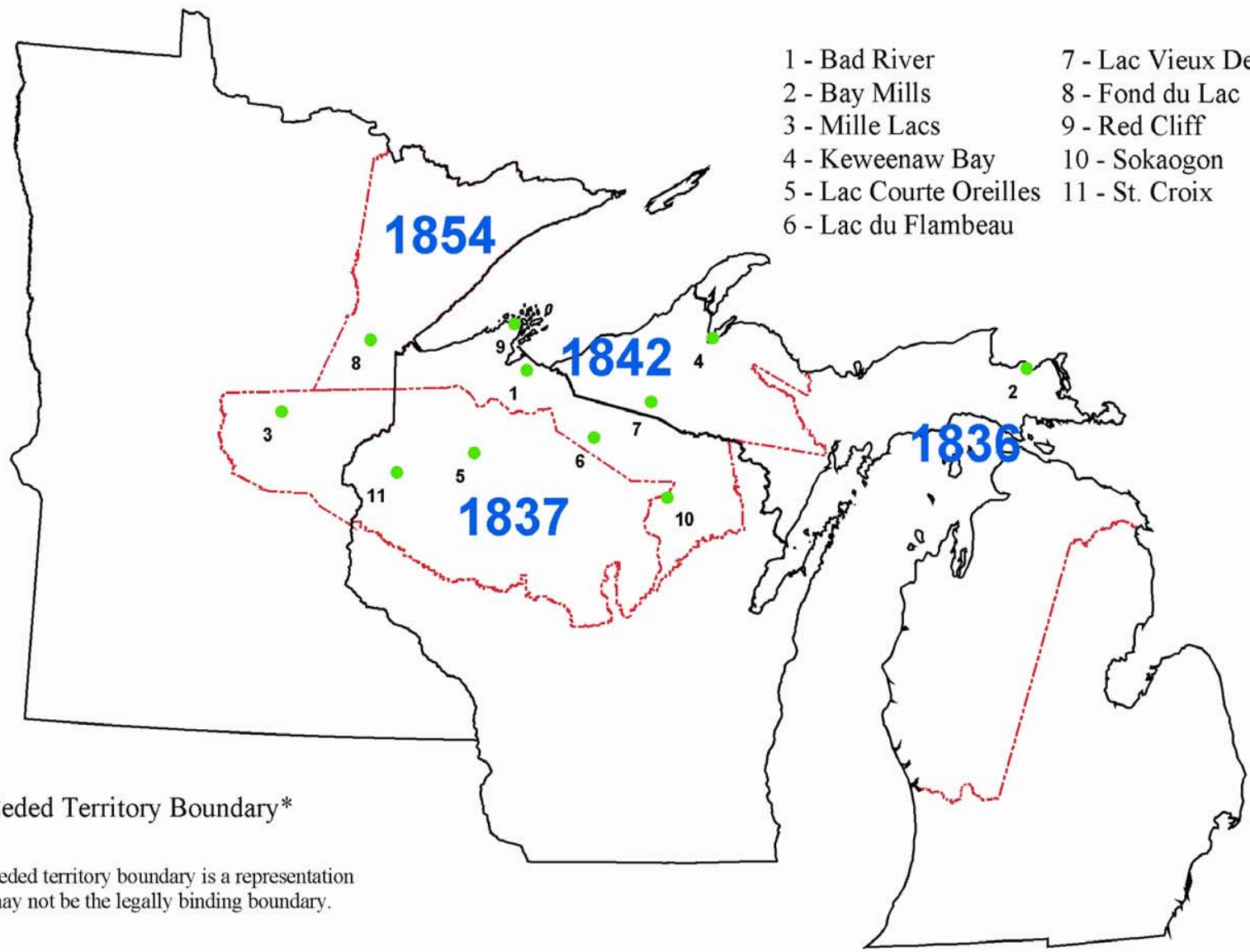


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# Fulfilling Treaty Promises

- Treaty of 1854 – Chippewa Reservations
- End of Federal Government's Efforts to Remove Lake Superior Chippewa
- Primary Purpose – Provide a permanent “home” and secure land base to continue “traditional” pursuits

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# Treaty Reserved Rights

## Treaty with the Chippewa 1837

Article 5: 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.

# “Pleasure of the President”

- Canons of Treaty Construction
- Neither Congress nor President have Terminated the Rights
- “Statehood” did not Terminate the Rights
- “Ain’t Misbehavin’” Interpretation

# Nature and Extent of the Rights

- Right to Continue the “Traditional” Hunting, Fishing and Gathering Way of Life in all Parts of the Ceded Territory
- Right to Use Virtually all of the Natural Resources Found in the Ceded Territory
- Entitled to a Maximum of 50% Allocation of Harvestable Resources



# Regulatory and Management Aspects of the Rights

## Tribal Sovereignty Over the Rights

- “Tribal” Rights – retained by the Tribe as Sovereign
- Tribal Self-Regulation – Regulatory authority over tribal members exercising the rights
- Co-management with other Sovereigns

# Implications for Ceded Territory Natural Resource Management

- State Management Authority Significantly Narrowed – Subject to judicial review
- State Regulatory Authority Limited – May restrict the exercise of rights only to extent reasonable and necessary for conservation, public health, or public safety purposes

# Implications for Ceded Territory Natural Resource Management

- Federal Obligations/Responsibilities
  - Fulfill Provisions and Purposes of the Treaty
  - Federal Trust Responsibility
- Federal Management and Regulatory Authority
  - Congressional Intent – Provisions and Legislative History of Federal Law in Question
  - Similar to Extent of State Authority (Conservation, Health, Safety)

# Federal Treaty Obligations and Trust Responsibility

- Treaties – Responsibility to ensure that treaty rights are given full effect
  - Specific reserved/guaranteed rights
  - Fulfilling the purposes of the treaty
- Trust Responsibility – Substantive and Procedural

# Federal Trust Responsibility

## Source of Trust Responsibility

- Constitution, Treaties, Statutes, Executive Orders, Court Decisions
  - Specifically denominated duties or responsibilities (e.g. trust asset management accounts)
  - More general responsibilities stemming from the nature of the relationship between the US and Tribes

# Nature of Trust Obligations

## Unique Legal and Political Relationship

- Trusteeship for the benefit of Tribes and Indian people – “Most exacting fiduciary standards”
- Tribes’ right to maintain themselves as distinct cultural and self-governing entities
- Duty of good faith and fair dealings that applies to all federal agencies
- Enforceable in court – Enforce particular commitments and ensure good faith/fair dealings

# Nature of Trust Obligations

## Acting for the Benefit of Tribes/Indians

- Limitation on Actions
- Proaction
- Most Beneficial vs. Least Harmful
  - “What is acceptable/allowable harm”
  - vs.
  - “What must/should be done to protect”

# Process/Procedure of Trust

## Good Faith and Fair Dealings

- Government-to-Government relationship and consultation process
- Opportunity to understand to the fullest extent:
  - Nature of tribal rights/interests involved
  - Impacts of proposed action/alternatives on those rights/interests
  - Tribal view of what should be done



# Dual Mandate Dilemma

- Implementing the agency's specific enabling laws and mandates from Congress

while

- Honoring treaty obligations and trust responsibility

# Dual Mandate Balancing Act

- Must attempt to reconcile both obligations
- Judged by “most exacting fiduciary standards”
- Can’t take the “easy way out” by simply subordinating tribal interests to “public” interests

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# Process/Procedure of Trust

- Avoid premature determinations and “substitution of judgment”
- Tribal “veto” authority vs. Federal Agency as the ultimate decision maker within bounds of its authority
  - Not “Tribes always win”
  - But Tribes could institute a legal challenge to Agency decision

# Tribal Ceded Territory Management and Regulatory Frameworks

## Must Meet Two Needs:

- Regulatory Perspective – Regulations that conserve natural resources and protect public health/safety
- Management Perspective – Coordination and cooperation (co-management) between the governments involved

# Effective Tribal Self-Regulation

- Tribes may Preempt State/Federal Regulation – System of Effective Tribal Self-Regulation that meets legitimate conservation, health, and safety requirements
- Tribal Laws, Biology, Enforcement, and Courts

# Tribal Ceded Territory Management in Action

- Natural Resource Management Plans
- Protocols (between Tribes and with States) for determining harvestable surpluses and treaty harvest limits/quotas
- Model Regulations that Tribes must adopt to be in compliance with court orders
- Harvest Monitoring and Reporting Requirements
- Research and Data Gathering/Analysis
- Co-Management Mechanisms/Processes
- Environmental/Habitat Protection and Ecosystem Health Protection

# Importance of Lake Superior

- Reservation-Based Rights and Ceded Territory Rights Extend into Lake Superior
- Practices and Life Ways Depend on Clean Resources -- Fishing, Ceremonies and Medicinal Practices



# GLIFWC Resolutions Related to Lake Superior

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- Support the “Zero Discharge” Principle for Lake Superior
- Oppose New or Increased Mercury Discharges into the Air or Water of the Ceded Territory
- Support an Outstanding National Resource Water Designation for Lake Superior -- Tribes already view it as such
- Oppose Great Lakes Water Diversion/Withdrawals

# Lake Superior Protection Activities Take Many Forms

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- Resource management activities:
  - invasive species work,
  - fish population monitoring,
  - fish contaminant testing, and
  - fish consumption research project.
- Participation in intergovernmental forums:
  - Binational Program to Restore and Protect Lake Superior
  - Great Lakes Fishery Commission
  - International Joint Commission (IJC)
  - State of the Great Lakes Ecosystem Conference (SOLEC)
  - Great Lakes Regional Collaboration

# GLIFWC Invasive Species Work

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- Sea Lamprey



- Purple Loosestrife



- Ruffe



- Zebra mussels



# Fish Population Monitoring

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- Lake trout/Siscowet



- Whitefish

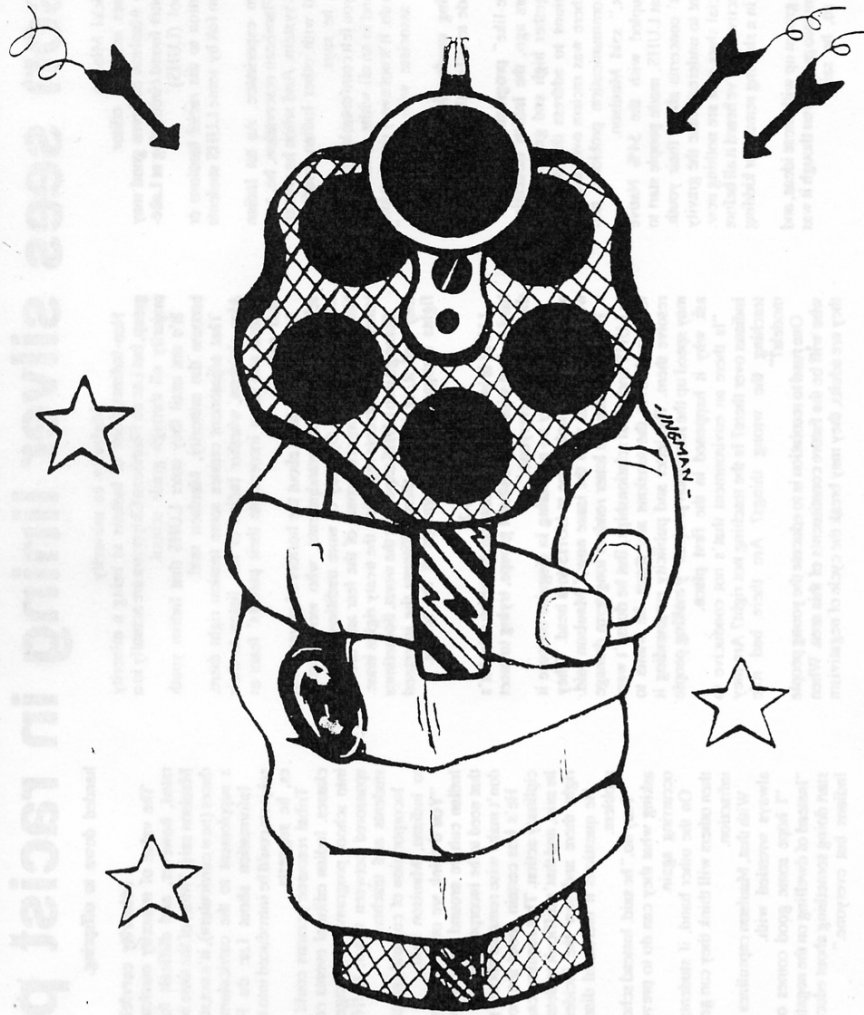


- Sturgeon





# SPEAR...

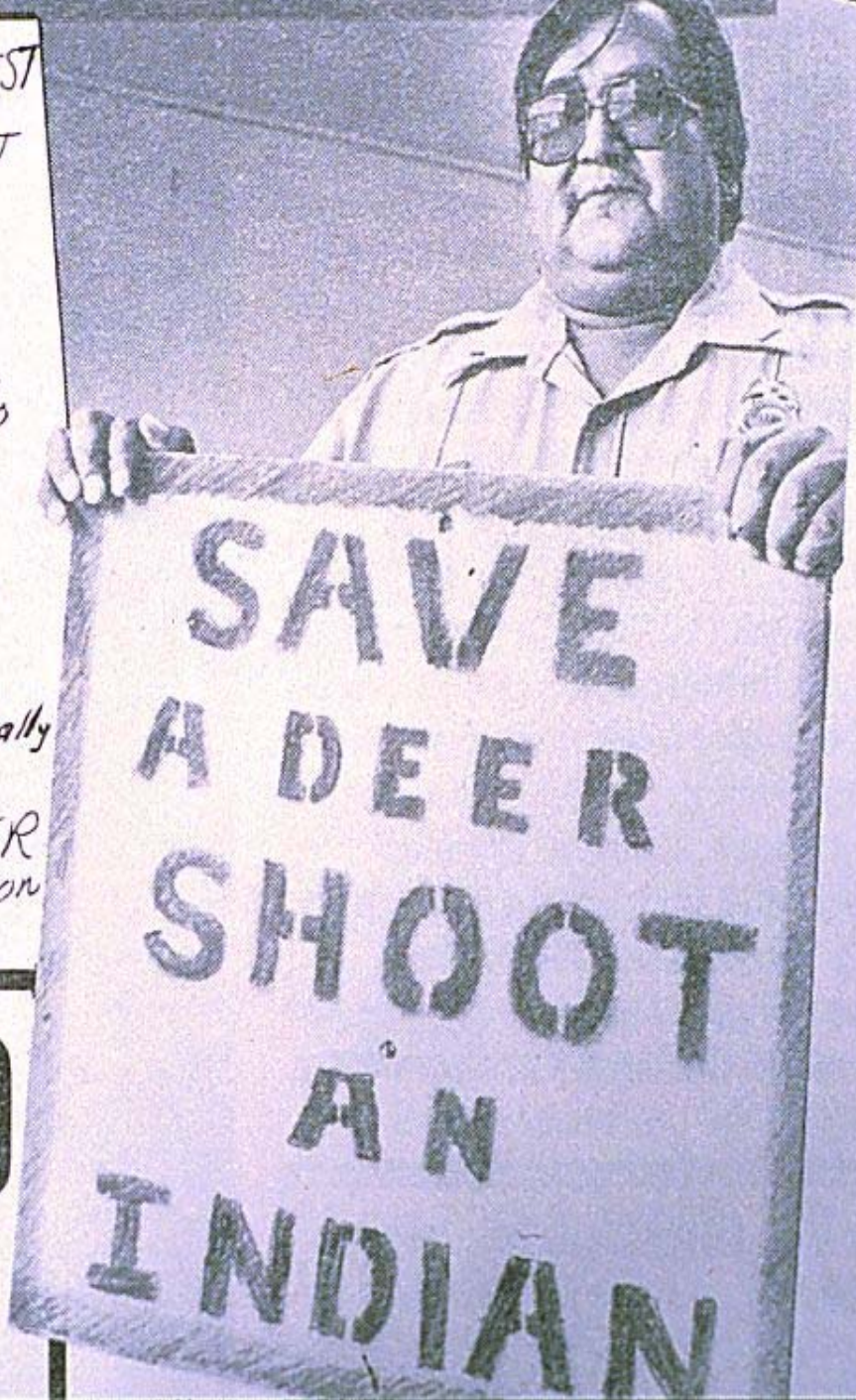


# ...THIS !!!

ARTICLE  
THIS RALLY IS TO PROTEST  
AGAINST THE TREATY THAT  
GIVES LOADED GUNS IN  
EARLY OPENING, AND  
SHOOTING OUT OF CARS,  
MUCH MORE.

have many bear hunters and bird  
hunters out in the woods dressed in  
camouflage. With this ~~new~~ treaty, it is  
possible that they could be accidentally  
killed by being mistaken for a deer.  
DON'T HAVE TO BE A HUNTER  
TO BE THERE. WE NEED EVERYONE

WE CAN DO IT.  
WE CAN DO IT.  
WE CAN DO IT.







# GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

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