

TESTIMONY OF BRYAN NEWLAND
PRESIDENT OF THE BAY MILLS INDIAN COMMUNITY
and
MEMBER OF THE CHIPPEWA OTTAWA RESOURCE AUTHORITY
BOARD OF DIRECTORS
before the
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT AND RELATED AGENCIES
UNITED STATES HOUSE OF REPRESENTATIVES
on
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Introduction

Aanii (Hello)! My name is Bryan Newland, and I am the President of the Bay Mills Indian Community, which is an Ojibwe tribe located on Lake Superior in Michigan's Upper Peninsula. I am appearing before the Subcommittee in my capacity as a Member of the Board for the Chippewa Ottawa Resource Authority (CORA).

CORA is a consortium of five federally recognized tribes in Michigan that are parties to the 1836 Treaty of Washington with the United States; they are: Bay Mills Indian Community; Grand Traverse Band of Ottawa and Chippewa Indians; Little River Band of Ottawa Indians; Little Traverse Bay Bands of Odawa Indians; and the Sault Ste. Marie Tribe of Chippewa Indians.

Purpose

I appreciate the opportunity to present testimony to the Subcommittee regarding the importance of federal funding to support the exercise of reserved treaty rights and the management of natural resources protected by treaties between the United States and Indian tribes. I strongly urge your continued support for funding the Rights Protection Implementation (RPI) program at the Department of the Interior. RPI funds are necessary to ensure that tribes are able to exercise their judicially-recognized reserved treaty rights in a meaningful way, as they are used to monitor and protect natural resources, to enforce tribal, state and federal laws, and to provide expert management and biological services to carry out these responsibilities.

In FY 2020, Congress appropriated \$6,333,428 in RPI funding for the CORA Tribes. This level of funding continues to be greatly needed to carry out the Tribes obligations under current Consent Decrees, and additional funding in the amount of \$1,000,000 is needed to fund additional Tribal responsibilities and obligations under a successor Great Lakes Consent Decree currently under negotiation.

Background

In 1836, the Ojibwe (Chippewa) and Odawa (Ottawa) tribes (the "CORA Tribes") in Michigan negotiated a treaty with the United States to cede lands that were used to create the State of

Michigan in 1837. Those ceded lands comprise more than forty per cent (40%) of what is now the State of Michigan. In exchange for this immense land cession, the CORA Tribes reserved the right to hunt, fish, trap and gather throughout the ceded territory, including the waters of Lakes Michigan, Huron and Superior.

Following the Treaty ratification, tribal members continued to exercise their treaty-guaranteed rights. By the 1950's and 1960's, the State of Michigan asserted its authority to exclusively regulate hunting and fishing by tribal members, and to limit what activities were protected by the Treaty. At Bay Mills, many tribal members, including Albert "Big Abe" LeBlanc, resisted State efforts to control treaty-protected activities and continued to assert the right to hunt and fish without a State License and to use traditional harvest gear while doing so.

In 1971, Big Abe LeBlanc was cited for fishing with gill nets, a criminal offense at that time. The Bay Mills Indian Community defended him, arguing that the rights reserved in the 1836 Treaty continued to exist, and that they superseded state hunting and fishing regulation, under the Supremacy Clause of the United States Constitution. The resulting case, *People v. LeBlanc*, ended in 1976, with a resounding affirmation by the Michigan Supreme Court that the rights reserved in the 1836 Treaty continued to exist, and that the State could regulate their exercise only when necessary to conserve the resource.

One other result of the State's prosecution of Big Abe LeBlanc was the filing in 1973 of a lawsuit by the United States against the State of Michigan on behalf of the 1836 Treaty Tribes, claiming that the State was illegally subjecting treaty fishing activities in the Great Lakes ceded waters to State regulation; the case is known as *United States v. Michigan*. In 1979, the trial court issued an opinion which concludes that the right to fish in the Great Lakes ceded waters continues to exist. That decision is known as the "Fox decision."

Thereafter, all parties in the case—the United States; the State of Michigan, the Bay Mills Indian Community; the Grand Traverse Band of Ottawa and Chippewa Indians; and the Sault Ste. Marie Tribe of Chippewa Indians; and the State of Michigan—began court-supervised negotiations in 1984 regarding allocation, management and regulation of the Great Lakes fishery in the Treaty ceded waters. The following year, a tentative agreement was reached for joint fishery management among the parties, and for allocation of harvest opportunities between tribal and State-licensed fishers. A Consent Decree was entered and signed by the Court in May, 1985.

That Decree remained in effect for 15 years, at which time the United States, the CORA Tribes and the State of Michigan negotiated a successor agreement which covered management, regulation, enhancement and allocation of the Great Lakes fishery in Treaty waters. The successor agreement and Consent Decree was entered on August 8, 2000, and expires in 2020. The parties are currently in negotiations to create another successor management and allocation agreement. The exact terms have yet to be finalized, but what is already quite clear is that the CORA Tribes must create more intensive harvest monitoring and oversight, in order to ensure that stressors on the fishery are identified and management strategies are developed and implemented in a timely and appropriate manner. Fish stocks, environmental indicators (such as water quality and temperature) and invasive species must also be closely monitored to identify

and remediate problems in the Great Lakes fisheries. The CORA Tribes require adequate funding to carry out these activities.

In 2007, a separate agreement was reached by the United States, the CORA Tribes, and the State of Michigan, to acknowledge the continued existences of the Tribes' reserved treaty rights to hunt, fish and gather on the "inland" portion of the 1836 Treaty cession. The agreement was also entered by the U.S. District Court for the Western District of Michigan, with no expiration date. The Decree provides for Tribal regulation of member hunting, fish, trapping and gathering activities and specifies the content of some of them. It also establishes joint management protocols applicable to the CORA Tribes and the State, and allocates harvest opportunity for certain species.

It is important to note that this framework is mandated by order of the U.S. District Court for the Western District of Michigan in the *United States v. Michigan* litigation, and equally important to note that the Federal Government negotiated the terms of the cooperative resource management framework with, and on behalf of, the CORA Tribes.

FY 2021 Budget Request: Rights Protection Implementation

The CORA Tribes receive funding through the "Treaty Fisheries" line item in the Rights Protection Implementation program. Those funds are used to support the following activities; those earmarked as additional activities for which RPI funds are sought to implement the 2020 Great Lakes Consent Decree are identified by use of italics:

- Establishment of conservation-based fishing regulations;
- Biological support services to monitor the fishery;
- Resource protection and enhancement programs;
- Conservation law enforcement activities and Tribal Court staffing for conservation cases;
- Intertribal coordination of activities and policies with federal and state agencies;
- *Additional oversight of harvest activities by biological staff and enforcement personnel;*
- *Monitoring of environmental factors which adversely affect the treaty fishery;*
- *Establishment of remediation projects to address identified environmental factors' impact on fish stocks; and*
- *Invasive species monitoring and controls.*

The CORA Tribes also receive RPI funding to implement the 2007 Consent Decree, relating to the exercise of "inland" treaty rights. Those funds support the following activities:

- Establishment of conservation-based hunting, fishing and gathering regulations;
- Biological support services to monitor wildlife, plant life, and habitat;
- Resource protection and enhancement programs;
- Invasive species monitoring and controls;
- Conservation law enforcement activities and Tribal Court staffing for inland conservation cases; and
- Intertribal coordination of activities and policies with federal and state agencies.

CORA does not, and cannot, support any budget request for *Rights Protection Implementation* in FY 2021 which is less than the sum appropriated for FY 2020. As is outlined here, the need for additional funds to implement the CORA Tribes' obligations under the soon to be completed 2020 Great Lakes Consent Decree is obvious and critical. Less funding, should it occur, will require conservation, monitoring and enforcement activities to be scaled back. Such a reduction would not only require staff layoffs, it would also increase the risk of conflict between Tribes and other communities over resources, and present significant reduction in the protection of the fishery, wildlife and habitat throughout the ceded territory. Such a reduction also makes it more likely that the parties will bring disputes over program changes to the federal court for resolution.

For all of the above reasons, CORA urges Congress to maintain *Rights Protection Implementation* as a budget priority in the FY 2021 Budget, and to increase the CORA Tribes' share to **\$7,333,428**. We believe that this funding is minimally adequate to allow the Tribes to successfully work with federal and state agencies to implement the terms of the 2007 and 2020 Consent Decrees.

CORA is also requesting that Congress appropriate an additional \$500,000 to the Bureau of Indian Affairs for "Litigation Support" for tribal treaty rights litigation. While "Litigation Support" funds are not used to directly implement tribal treaty rights, they are used by tribes—like the CORA Tribes—to negotiate consent decrees that ensure cooperative resource management and avoid litigation between the United States and state governments over tribal treaty rights. The Tribes have received some Litigation Support funding to negotiate a successor Great Lakes Consent Decree, but lack sufficient financial resources to prepare for both negotiation and possible litigation to create a new allocation/ management regime. Since "Litigation Support" funding is available to any Tribe for any potential litigation, the Bureau of Indian Affairs and the Department of the Interior have more requests for funding than there are funds available. For this reason, the CORA Tribes are concerned that lack of funds within the Bureau will impair and impede the Tribes' efforts to negotiate a new consent decree. It is even more a concern that the lack of a new consent decree by August, 2020, will result in litigation to establish an allocation/ management framework, which the Tribes lack the capacity to fund.

CORA estimates a need for \$500,000 in FY 2021 to finalize negotiations for a new consent decree, or to prepare to litigate the scope of our treaty rights beyond 2020.

Conclusion

There is no doubt that the *Rights Protection Implementation* Program is necessary to ensure that the United States continues to meet its obligations under treaties with tribes across the country. TRPI funds are also necessary to ensure that tribes can meet our obligations under Federal Court orders applicable to our reserved treaty rights. For the reasons stated above, the CORA Tribes respectfully request your support for FY 2021 RPI funding for them in the amount of \$7,333,428, and to increase the Bureau of Indian Affairs "Litigation Support" line item by \$500,000. Miigwetch (thank you) for the opportunity to present our views. I am happy to answer any questions that you might have.