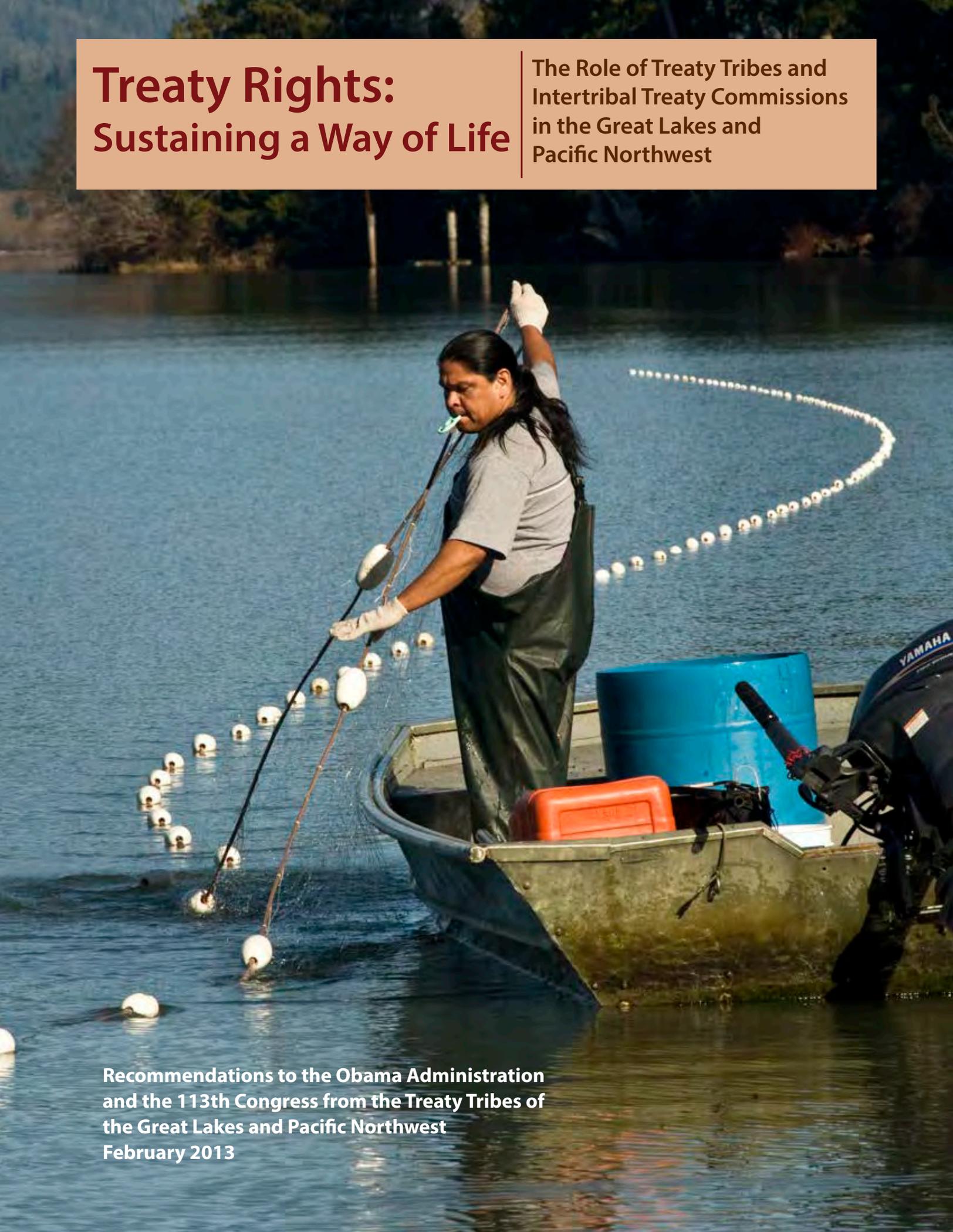


Treaty Rights: Sustaining a Way of Life

The Role of Treaty Tribes and
Intertribal Treaty Commissions
in the Great Lakes and
Pacific Northwest

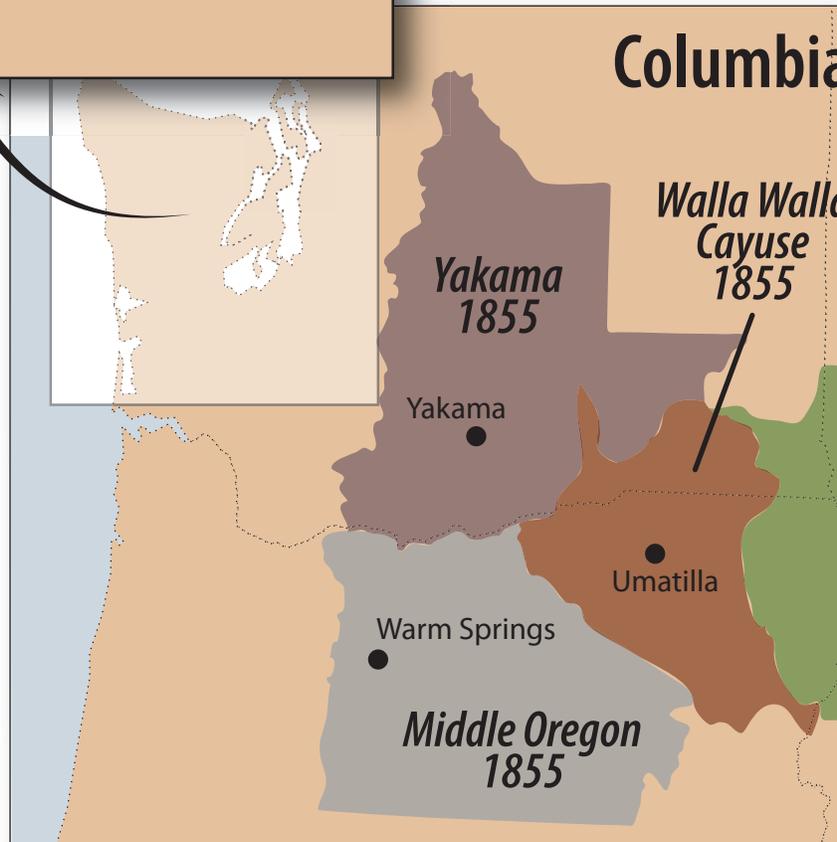
A woman wearing a grey t-shirt and black waders is standing in a small aluminum boat on a body of water. She is pulling a net that has several white buoys attached to it. The net is being lifted out of the water, and some water is splashing. In the background, there is a long line of white buoys floating on the water. The boat has a blue Yamaha outboard motor and a blue barrel on board. The water is calm and reflects the sky.

Recommendations to the Obama Administration
and the 113th Congress from the Treaty Tribes of
the Great Lakes and Pacific Northwest
February 2013

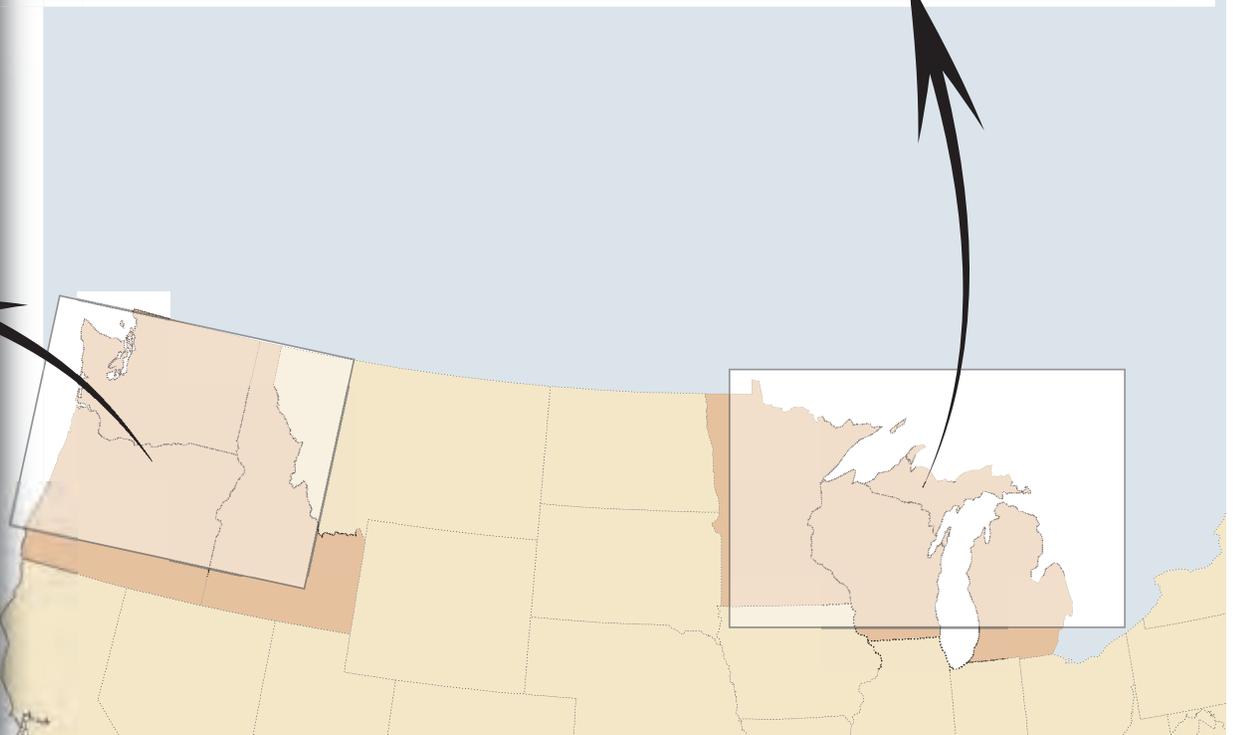
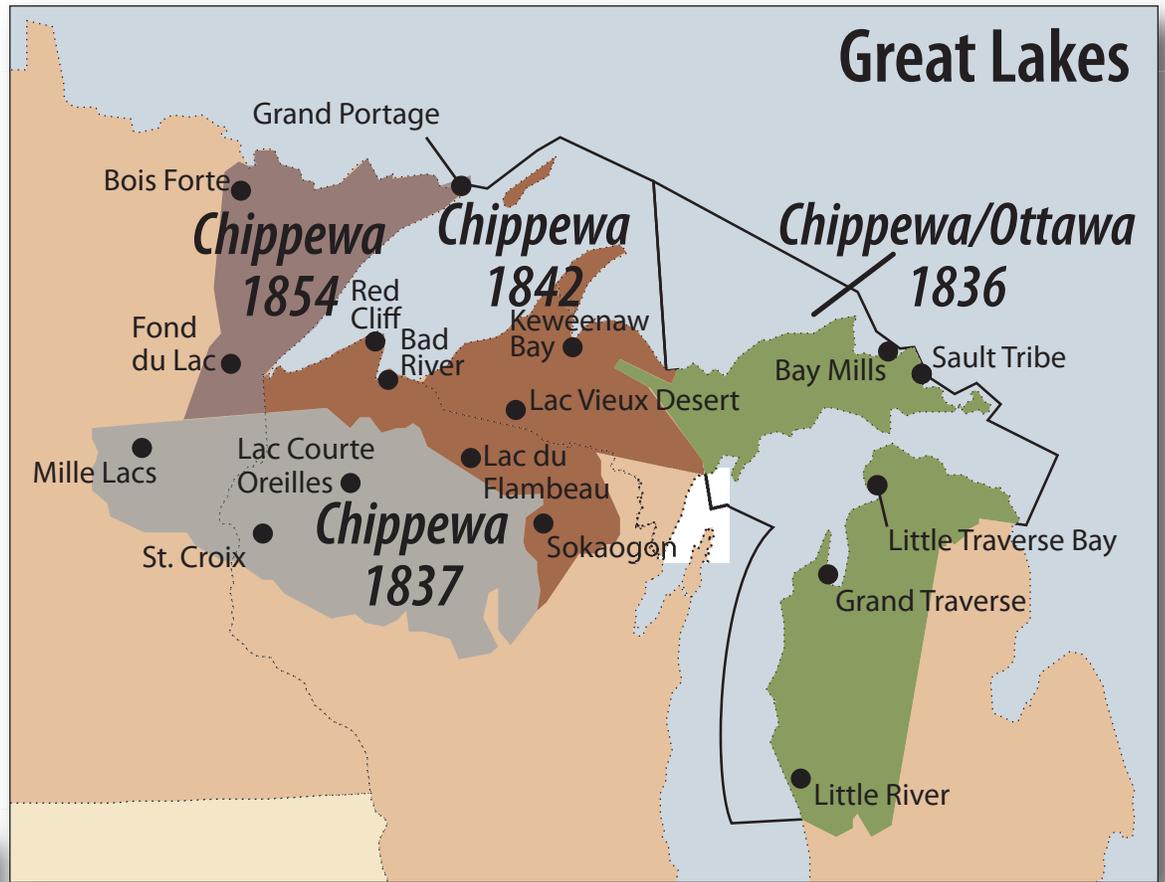
The 41 Treaty Tribes of the Pacific Northwest



Maps for illustration purposes only



ific Northwest and Great Lakes





The right of taking fish at usual and accustomed grounds and stations is further secured to said ***Indians*** in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the ***privilege of hunting and gathering*** roots and berries on open and unclaimed lands. ~***Treaty of Point Elliott, 1855***

By virtue of treaty-reserved rights and our legal status as co-managers, the 41 treaty Indian tribes in the Great Lakes and Pacific Northwest are key partners in the management of natural resources in both regions. It is imperative that opportunities are provided for tribal members to harvest healthy fish, wildlife and plant resources not only for food and income, but also for religious, spiritual and medicinal needs. Tribes are deeply concerned that treaty rights are at risk because of continued resource degradation.

Tribes need to be at the table when decisions are being made that affect our treaty-reserved rights. To do this, tribes need stable, consistent funding to continue to provide a comprehensive and effective co-management structure that ensures the continued exercise of rights guaranteed in treaties.

This report describes some of the common natural resources management challenges, accomplishments and funding needs of the Great Lakes and Pacific Northwest treaty tribes. It includes recommendations for actions needed to uphold the federal government's treaty obligations and trust responsibility to ensure that treaty rights continue to be understood, recognized and fully implemented.



Great nations, like great men,
should ***keep their word***.

Supreme Court Justice Hugo Black



Tribal Recommendations

We urge the Obama Administration and 113th Congress to uphold the federal government's treaty obligations and trust responsibility by:

Exercising federal authority to protect tribal natural resources and the ecosystems on which they depend.



Aligning federal agencies and programs to better coordinate protection of **treaty rights and tribal natural resources.**



Funding essential tribal treaty rights management programs in fulfillment of treaty obligations through the Bureau of Indian Affairs' Rights Protection Implementation line-item at **no less than \$49.5 million to meet overall tribal program needs.**



Protecting and restoring water quality and quantity in recognition that water supports fish, wildlife and plants on which **Indian people depend for food, traditions and commerce.** This includes recognizing tribal water rights and adopting standards that ensure sufficient instream flows for people, fish and wildlife.



Finalizing and implementing federal agency tribal consultation policies directed by President Obama's Memorandum of November 5, 2009, and **providing regular and meaningful consultation** to address a variety of issues that threaten the very foundation of our treaty rights.



Place-Based Peoples

Indian people of the Great Lakes and Pacific Northwest regions always have depended on natural resources for cultural, spiritual and economic survival. So central to our way of life are these resources that when our sovereign nations ceded millions of acres of lands in treaties with the United States, we forever reserved the right to hunt, fish and gather in traditional places.



These treaties are the supreme law of the land under the U.S. Constitution. After many years of struggling for recognition of our treaty rights, those rights have been reaffirmed by a number of federal courts, including the U.S. Supreme Court. Today, we are natural resources co-managers with state and federal governments. We are leaders with ever-growing responsibilities to protect, restore and enhance the natural resources of our regions. Our goal is sustainability for our way of life and for all natural resources. We are guided by the belief that we must act in the best interests of those who will follow for generations to come.

While the tribes and our commissions represent varied interests, we share much in terms of our views and cultural perspectives on environmental and natural resources issues, and we share many of the same challenges facing the health and sustainability of resources. We face a common concern that our treaty rights are being rendered meaningless by the declining health of natural resources.

Indian people have ***always lived*** throughout the watersheds of western Washington. We know these places better than anyone else because they are our ***home***.

Billy Frank Jr.
Nisqually Tribe
NWIFC Chairman



Tribal Sovereignty & Management

Tribes have a sovereign right, explicitly reserved by treaties, to govern our members and manage our territories. The United States officially recognized this right of tribal sovereignty in the U.S. Constitution and when it signed treaties with Indian tribes. Federal courts have upheld this sovereignty consistently.

Tribes also have sovereignty over the exercise of treaty harvest rights. Court decisions and orders implemented by the treaty tribes include: *U.S. v. Washington*, *U.S. v. Michigan*, *Lac Courte Oreilles v. Wisconsin*, *U.S. v. Oregon*, *Minnesota v. Mille Lacs* and *Grand Portage v. Minnesota*. We manage treaty resources pursuant to this inherent sovereignty as interpreted by these federal court decisions and as ordered under recurring management plans. Tribal governments actively co-manage ceded territory natural resources with federal and state governments. We also play an integral role in negotiating and implementing international treaties and other agreements that affect tribes' natural resources rights, including the U.S./Canada Pacific Salmon Treaty, U.S./Canada Boundary Waters Treaty, the Great Lakes Water Quality Agreement and the Convention on Great Lakes Fisheries.

To help coordinate natural resources management, the 41 treaty tribes of the Great Lakes and Pacific Northwest regions established five intertribal commissions. With the support of our commissions, the tribes implement court orders, consent decrees and cooperative intergovernmental agreements that recognize our treaty-reserved rights. We operate comprehensive treaty rights protection and implementation programs that enable the exercise of treaty-reserved hunting, fishing and gathering rights; conserve and enhance natural resources; and protect public health and safety.



Tribal Sovereignty & Management (continued)



Using biologists, technicians, conservation enforcement officers, policy analysts and public information specialists, the tribes:

- Fulfill conservation, habitat protection and law enforcement functions required by federal court decisions affirming treaty rights;
- Effectively regulate and monitor tribal treaty harvest of natural resources;
- Serve as active partners with state, federal and local governments, educational institutions, conservation groups and other non-profit organizations; and
- Conduct state-of-the-art scientific research to broaden the base of knowledge for all natural resources managers and decision makers.

Tribal treaty rights programs also provide significant recreational, economic and other opportunities that extend beyond tribal communities. Our programs protect and conserve natural resources that are harvested by the public, and they protect and enhance habitats and ecosystems relied upon by others for economic benefit and development. Tribal programs also protect public health and safety. We promote cooperation and partnerships that are effective and efficient for multiple stakeholders and partners. These partnerships maximize limited financial resources, avoid duplication of effort and costs, and deliver outcomes that no one partner could accomplish alone.

For more than three decades, Presidential Administrations and Congress have supported these treaty rights programs through funding under the Rights Protection Implementation line-item in the Bureau of Indian Affairs budget. This funding has helped provide institutional experience and expertise, continuity and stability in interagency relationships, and social stability in the context of ceded territory treaty rights issues. The tribes are recognized as valued partners in natural resources management. We require adequate, long-term and stable Rights Protection Implementation funding to continue to meet court mandates and legal responsibilities, and to remain valued co-managers.



Federal Treaty Obligations & Trust Responsibility

Treaty-reserved rights to harvest natural resources are a property right protected under the Fifth Amendment to the U.S. Constitution. The federal government, as a treaty signatory, is required to uphold treaty rights, including the protection and restoration of natural resources on which those rights are based. This requirement is bolstered by the federal trust responsibility. Implementing the tribal recommendations in this report is essential to the conservation of natural resources so tribal communities can continue to exercise our treaty-reserved rights.

Coordinating agency actions is necessary for the federal government to uphold its trust obligation to the treaty tribes. Each federal department and agency must conduct its programs, functions and activities to:

- Promote, support and protect tribal sovereignty;
- Respect the government-to-government relationship and fully implement the requirement for meaningful consultation with tribes about activities and decisions that may affect us; and
- Respect and explicitly account for tribal interests in all decisions that may affect our sovereignty, treaty rights, cultures, economies, health and education.

We need to... **remember**
where we came from and who
we are because those **treaties**
are us. That's our life.

George Newago
Red Cliff Band of
Lake Superior Chippewa Indians





Actions & Outcomes

The Obama Administration and Congress have made significant progress on issues affecting Indian Country. At the beginning of the Obama Administration and the 111th Congress, the treaty tribes in the Pacific Northwest requested support of tribal sovereignty by reaffirming and strengthening the Administration's government-to-government relationship with Indian tribes. In 2009, President Obama signed a memorandum that directed every federal agency to develop detailed plans to fully implement Executive Order 13175, "Consultation and Coordination with Tribal Governments."

President Obama also kept his pledge to honor treaty rights and sovereignty through respectful relationships and empowerment of Indian people. When the President took office, he committed to regular and meaningful discussions with tribal leaders to strengthen this government-to-government relationship. The Obama Administration has since held a White House Tribal Nations Conference every year.

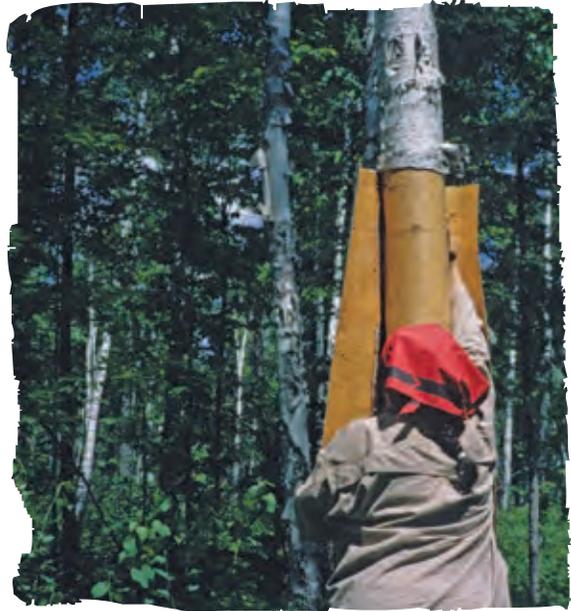
The President also made certain that Native Americans were represented in his Administration by appointing tribal members to key positions. With personnel in the Domestic Policy Council and the Office of Intergovernmental Affairs, Indian Country has key personnel advising the President on policies affecting tribal communities.

In Fiscal Years 2011 and 2012, Congress and the Obama Administration funded the Bureau of Indian Affairs' indirect contract support costs at nearly full funding. In addition, direct contract support costs saw a significant increase in FY12. However, without full funding, essential governmental functions are lost to tribes and tribal organizations as other resources are diverted to cover these expenses.

While these are examples of some of the successes, work still is needed on a number of issues to ensure that treaty-reserved resources remain available for tribes to exercise their treaty rights.

Tribes appreciate federal funding for salmon recovery, yet despite extensive restoration efforts, salmon habitat in western Washington continues to be damaged and destroyed faster than it can be restored. The trend shows no signs of improvement, threatening tribal treaty-reserved rights to harvest fish, shellfish and wildlife. Declining salmon returns have forced some tribes to suspend even their most basic ceremonial and subsistence fisheries that are cornerstones of tribal culture. In the Great Lakes region, mercury contamination still requires tribes to limit consumption of walleye, an important traditional and treaty-protected food. In addition, more than 180 invasive species still disrupt the ecology and fisheries of the Lakes, despite cooperative efforts to eradicate them.

More must be done. We need the help of the federal government to ensure that tribes have the capacity to participate fully as co-managers with other governments, as well as carry out specific projects. Issues like climate change, mining and invasive species will require significant attention and resources if they are to be addressed in environmentally effective and culturally sensitive ways.





Tribal Accomplishments & Challenges

Natural resources are the foundation of our treaty rights. All of the treaty tribes are working to prevent habitat destruction, restore and protect native species, and eradicate invasive species, with the aim of preserving natural resources for tribal members and broader communities.

Tribes actively seek funds from a number of sources to enhance the base natural resources management funding provided directly through the BIA's Rights Protection Implementation line-item. These sources include the Environmental Protection Agency's General Assistance Program, the Great Lakes and Puget Sound geographic programs; Department of Justice's Community Oriented Policing Services Tribal Resources Grant Program; and U.S. Fish and Wildlife Service's Tribal Wildlife Grants and invasive species management grants. Each of these complementary funding sources must contain a tribal component to ensure sufficient, focused funding to meet tribal needs. Also, new initiatives such as the National Ocean Policy need similar funding components.

Tribes make efficient use of federal dollars to protect natural resources using culturally appropriate methods and traditional ecological knowledge. The following are examples of these treaty tribal natural resources activities and functions.

Managing Shellfish & Marine Fish Sustains Culture

Tribal cultures in western Washington have always relied on many species of fish and shellfish to sustain their cultures and economies. Tribal co-management responsibilities for these resources have grown steadily since the 1974 *U.S. v. Washington* ruling that upheld tribal treaty-reserved harvest rights.

In 1994 Federal District Court Judge Edward Rafeedie, in a sub-proceeding of *U.S. v. Washington*, ruled that tribes had reserved harvest rights to half of all shellfish from their usual and accustomed places. "A treaty is not a grant of rights to the Indians, but a grant of rights from them," Rafeedie wrote in his decision.

With the court's decision came additional tribal management responsibilities. Tribes were required to increase staffing to include shellfish technical expertise, and address additional requirements such as developing harvest management and supplementation plans, enforcement, harvest data collection and fisheries monitoring. However, federal funding to support tribes in the management of these trust resources has been inadequate.

Tribal treaty-reserved rights also extend to marine fish such as rockfish, black cod, whiting and halibut. Tribes work closely with the state of Washington and the federal government to develop and implement conservation plans for all groundfish stocks in Puget Sound and along the Pacific Coast. Annual tribal quotas are developed in cooperation with entities such as the Pacific Fisheries Management Council and the International Pacific Halibut Commission.

As with shellfish, tribes need adequate, consistent funding to meet their groundfish management responsibilities. In particular, tribes need funding to work with the other co-managers to address a significant lack of research and data on groundfish populations.

Our **elders** used to tell us salmon is good medicine. It's part of our **schelangen** – our way of life. Now the salmon is in trouble, so our way of life is in trouble.

Merle Jefferson
Lummi Nation



Tribal Accomplishments & Challenges (continued)

Johnson Creek Hatchery Research

Tribes in the Columbia Basin are developing the best available science to guide salmon hatchery management.

A journal-published study of the Nez Perce Tribe's Johnson Creek Artificial Propagation Enhancement project found that hatchery-reared salmon that spawned with wild salmon had the same reproductive success as salmon left to spawn in the wild.

Using DNA from all returning adults collected over a 13-year period, the tribe tracked parents and their offspring to determine how successful hatchery fish were at mating in the wild when compared to wild fish. The results of this study confirm that hatcheries are a necessary part of efforts to rebuild natural salmon populations and protect treaty fishing rights.

The results refute a commonly held misconception that interbreeding of hatchery-reared fish with wild fish decreases productivity and fitness of the wild populations. The study also found that productivity of two hatchery fish spawning naturally was not significantly lower than two wild fish spawning.



Our old people didn't have supermarkets or canneries, they relied on the salmon harvest for their **survival**. That reliance was part of their **spiritual being**. That is why the Indian people always give thanks to the air, water and animals – because they rely on these things to **survive**.

Wilfred Scott
Nez Perce Tribe

Tribes Develop Joint Harvest Limits

In 2000, the five Chippewa Ottawa Resource Authority (CORA) tribes negotiated a comprehensive agreement with the state of Michigan and the federal government to govern management and allocation of the upper Great Lakes fishery resource through 2020. The agreement was entered into federal court as a Consent Decree.

One key component was the formation of standing interagency committees tasked with addressing all pertinent fishery management issues, including the development of harvest limits for key species. Harvest limits are calculated using statistical catch-at-age

computer modeling, and require extensive data collection and input from field assessments, commercial effort and harvest sampling, and other biological parameters from each agency.

Biologists from CORA tribes, the state of Michigan, and the U.S. Fish and Wildlife Service participate in the annual harvest limit-setting process, along with outside experts from universities and other agencies as needed.



Conservation Enforcement Plays Key Role

Treaty tribes enforce their conservation codes in tribal courts to comply with the mandates of governing court decrees. Tribal conservation enforcement departments are fully trained and qualified similar to their state and federal counterparts. In addition to performing this core function, tribal conservation officers also assist other agencies in broader law enforcement services.

Great Lakes Indian Fish & Wildlife Commission (GLIFWC) and Columbia River Inter-Tribal Fish Commission (CRITFC) conservation enforcement divisions also play an integral role in regional law enforcement and emergency services networks through cross-jurisdictional agreements and Special Law Enforcement Commissions.

Over the past three years, GLIFWC has assisted federal, state and local agencies in drug interdiction actions on state and national forests. Authorities broke up and made numerous arrests in connection with three marijuana growing operations in Wisconsin.

CRITFC Enforcement, through recent agreements with the Department of Justice, provides both conservation enforcement and federal criminal enforcement authority at the remote Treaty Fishing Access sites on the Columbia River, closing a critical jurisdictional loophole.

My teachings about salmon and our **fishing rights** go back to when I was a young girl. We have a responsibility to **fight** for those treaty rights, for our tribal members and the next **seven generations** of tribal members.

N. Kathryn "Kat" Brigham

*Confederated Tribes of the Umatilla Indian Reservation
CRITFC Chairwoman*



Wild Rice: The Food that Grows on Water

Wild rice is a culturally significant food source for Great Lakes tribes.

The reaffirmation of off-reservation treaty rights has served to stimulate cooperative wild rice management. Since 1990, the Great Lakes Indian Fish & Wildlife Commission (GLIFWC) and its partners have established more than 1,200 acres of rice beds in Wisconsin alone, increasing the off-reservation abundance of this critical resource by about 25 percent at historic and non-historic sites. GLIFWC also has worked with the Wisconsin Department of Natural Resources to create an inventory of more than 300 waters supporting rice, and is working to develop the first cooperative wild rice management plan for the Wisconsin ceded territory. Cooperative management activities extend into the Minnesota and Michigan ceded territories.

The 1854 Treaty Authority also is working to preserve, protect and enhance wild rice. The organization conducts a wild rice monitoring program and survey of waters in the 1854 Ceded Territory, and cooperates with other agencies in the management of wild rice waters. The 1854 Treaty Authority developed and maintains the most updated list of wild rice waters in the region, which has been important for a number of initiatives. The condition of natural wild rice crops is provided to band members and the public each harvest season.



Tribal Accomplishments & Challenges (continued)

Habitat – if we can't get the fish back with habitat, we've got a problem. People are going to have to sacrifice to get restoration, and that requires internal **cooperation** right now. There aren't going to be any quick fixes.

Guy McMinds
Quinault Indian Nation

Salmon Habitat Damage & Loss

Ongoing destruction of habitat across western Washington is fueling a steady decline of salmon populations, and threatening tribal treaty-reserved fishing rights, according to the 2012 State of Our Watersheds report released by Northwest Indian Fisheries Commission (NWIFC) tribes.

The report confirms that wild salmon populations are not improving, despite deep harvest cuts, strategic use of hatcheries, and a huge financial investment in habitat restoration over the past four decades. The reason for the decline is that salmon habitat is being lost faster than it can be restored. This trend shows no sign of improvement.

The State of Our Watersheds report supports the Treaty Rights at Risk initiative launched in 2011 by NWIFC tribes, calling on the federal government to honor the treaties by taking charge of salmon recovery in western Washington.

Despite the fact that habitat loss and degradation are the main causes of the salmon resource's decline, the federal government's primary response has been to restrict harvest. Treaty tribes are required to prove that fishing and hatchery plans will not harm ongoing wild salmon recovery efforts, and in fact will lead to increased salmon populations. Those who damage and destroy salmon habitat, however, aren't held to the same standard. Instead, the U.S. government continues to approve federal actions and federally funded state actions that do not contribute to salmon recovery. This sets the bar higher for tribes to continue our way of life, while setting it lower for those who would destroy the salmon's home.

For more information, visit treatyrightsatrisk.org. Read the full State of Our Watersheds report at nwifc.org/sow.



Invasive Species Threaten Resources

Invasive species are a grave threat to the ecology of the Great Lakes and tribes' ability to pursue their livelihoods and subsistence. The negative impacts of invasive species on native fish, wildlife and plant species are a significant management focus for treaty commissions in the Great Lakes region.

The 1854 Treaty Authority has been active in invasive species public outreach, monitoring and control. It has developed specific outreach materials and worked with various agencies at public events. In addition, the Authority works cooperatively to survey and control invasive species, such as zebra mussels, spiny water fleas and rusty crayfish. The 1854 Treaty Authority obtained a boat decontamination unit and provided staff to conduct inspections at public boat accesses in the ceded territory.

The Great Lakes Indian Fish & Wildlife Commission (GLIFWC) and Chippewa Ottawa Resource Authority are partners with the eight states in the Great Lakes, the province of Ontario, and the federal governments of the United States and Canada in a Great Lakes-wide joint strategic management plan that includes efforts to combat invasive non-native sea lamprey, which feed on native fish. The goal of the Great Lakes Fishery Commission's Sea Lamprey Control Program is to minimize the destructive impact of Atlantic sea lamprey on native Great Lakes fishes, especially those species most important to tribal fisheries.

The Great Lakes commissions and their member tribes also participate as full partners on many intergovernmental committees that address vectors for the introduction of aquatic and terrestrial invasive species into the Great Lakes, along with control and remediation activities. For example,

GLIFWC teams survey about 25-30 inland lakes each year, reporting new occurrences and providing rapid response alerts as they occur.

Invasive species represent an ongoing battle for the survival of treaty-reserved rights that requires tribal participation at all levels.



Every time we set a net, it feels like we are **taking back** a little bit of what our people lost.

William "Bill" Fowler
Grand Traverse Band

Intertribal Treaty Commissions



Columbia River Inter-Tribal Fish Commission

729 NE Oregon Street, Suite 200
Portland, Oregon 97232
(503) 238-0667
www.critfc.org

N. Kathryn Brigham, Chairwoman
Paul Lumley, Executive Director

CRITFC assists in protecting and implementing the treaty rights of four tribes in Oregon, Washington and Idaho. See Treaty with the Yakamas (1855), Treaty with the Walla-Wallas (1855), Treaty with the Nez Perces (1855) and Treaty with the Tribes of Middle Oregon (1855).



Northwest Indian Fisheries Commission

6730 Martin Way E.
Olympia, Washington 98516
(360) 438-1180
www.nwifc.org

Billy Frank Jr., Chairman
Mike Grayum, Executive Director

NWIFC assists in protecting and implementing the treaty rights of 20 tribes in western Washington. See Treaty of Medicine Creek (1854), Treaty of Point Elliott (1855), Treaty of Point No Point (1855), Treaty of Neah Bay (1855) and Treaty of Olympia (1855).



Chippewa Ottawa Resource Authority

179 W. Three Mile Road
Sault Ste. Marie, Michigan 49783
(906) 632-0043
www.1836cora.org

Kurt Perron, Chairman
Jane TenEyck, Executive Director

CORA assists in protecting and implementing the treaty rights of five tribal nations that signed the Treaty of 1836 in Michigan, including parts of Lakes Superior, Michigan and Huron. See Treaty of Washington (1836).



1854 Treaty Authority

4428 Haines Road
Duluth, Minnesota 55811-1524
(218) 722-8907
www.1854treatyauthority.org

Norman Deschampe, Chairman
Sonny Myers, Executive Director

The 1854 Treaty Authority assists in protecting and implementing the treaty rights of two tribal nations in northeastern Minnesota. See Treaty of LaPointe (1854).



Great Lakes Indian Fish & Wildlife Commission

72682 Maple Street
Odanah, Wisconsin 54861
(715) 682-6619
www.glifwc.org

Michael J. Isham Jr., Chairman
James Zorn, Executive Administrator

GLIFWC assists in protecting and implementing the treaty rights of 11 tribes in Michigan, Minnesota and Wisconsin, including portions of Lake Superior. See Treaty of Washington (1836), Treaty of St. Peters (1837), Treaty of LaPointe (1842) and Treaty of LaPointe (1854).