

Legal history

In 1854, the Chippewa of Lake Superior entered into a treaty with the United States whereby the Chippewa ceded to the United States ownership of their lands in northeastern Minnesota. These lands are the so-called "1854 ceded territory." Article 11 of the 1854 Treaty provides:

"...And such of them as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President." The Chippewa of Lake Superior who reside in the ceded territory are the Fond du Lac, Grand Portage and Bois Forte Bands.

1985 - The Grand Portage Band sues the State of Minnesota in federal court claiming the 1854 Treaty gives it the right to hunt and fish in the ceded territory free of State regulation. Up until this time, the State had applied its hunting and fishing laws in the ceded territory to Indians and non-Indians alike. The Fond du Lac and Bois Forte Bands subsequently join the lawsuit in order to consider a settlement.

1988 - The State and the three Bands enter into an agreement whereby the State makes an annual payment to the Bands (\$1.6 million each to Grand Portage and Bois Forte; \$1.85 million to Fond du Lac), and the Bands establish their own regulations that apply to harvest by Band members. The Bands' regulations restrict commercial harvest, big game seasons, spearing, netting and other activities of concern to the State. This agreement, approved by the federal court, does not commit to a legal conclusion as to whether the 1854 Treaty harvest rights remain valid.

1989 - The Fond du Lac Band withdraws from the agreement after one year, but the other two Bands remain in the agreement, which continues successfully to date. Even though no longer in the agreement and no longer receiving an annual payment from the State, the Fond du Lac Band establishes harvest regulations for its own members. The Band and the State consult and cooperate successfully to date.

1990 - The Mille Lacs Band sues the State claiming harvest rights in the 1837 Treaty ceded territory, which lies immediately to the south of the 1854 ceded territory. This case raises legal issues very similar to those in the 1854 Treaty case. The court divides the Mille Lacs case into two phases: Phase I will address whether the 1837 Treaty ceded territory harvest rights are valid; if the answer is yes, Phase II will address the scope of those rights, that is, what the Band may actually allow its members to do.

1992 - The Fond du Lac Band sues the State under both the 1837 Treaty and the 1854 Treaty, both of which it signed. It claims harvest rights in both ceded territories. Like the Mille Lacs case, this one is also divided into Phase I and Phase II.

1994 - After a trial, the federal court rules in Phase I of the Mille Lacs case that the 1837 Treaty ceded territory harvest rights are valid. Phase II of the case begins.

1996 - The court rules in Phase I of the Fond du Lac case that the 1854 Treaty ceded territory harvest rights are valid. The court also rules that the Fond du Lac Band's claims under the 1837 Treaty are valid. (The validity of the 1854 Treaty effectively applies to the Grand Portage and Bois Forte Bands as well, because they also signed the 1854 Treaty.)

1996 - The Fond du Lac Band's 1837 Treaty claim is joined with the Mille Lacs case during Phase II of the Mille Lacs case. This is so that Phase II of the 1837 Treaty

claims in both cases can be resolved for both Bands together. Phase II of the Fond du Lac Band's 1854 Treaty claims is put on hold until the Mille Lacs case is completed. Both cases are now assigned to Federal District Court Judge Michael Davis.

1997 - Phase II of the Mille Lacs case is completed. Phase II addresses in detail seasons, bag limits, methods, commercialization and other harvest issues. Most of these issues are resolved by agreement between the Bands and the State; a few of them are resolved by the court. These 1837 Treaty Phase II conclusions apply to all harvest in the 1837 ceded territory by the Mille Lacs Band, the Fond du Lac Band, and several Wisconsin Chippewa Bands that also had signed the 1837 Treaty and had joined the Mille Lacs lawsuit.

1997 - The 8th Circuit federal appeals court affirms the decision of the district court in the Mille Lacs case, finding that the 1837 Treaty ceded territory harvest right is valid.

1999 - The United States Supreme Court affirms the lower court rulings in the Mille Lacs case. This is a final affirmation of the validity of ceded territory harvest rights under the 1837 Treaty.

2000 - Now that the Mille Lacs case is complete, we are moving forward with Phase II of the Fond du Lac case. The purpose of this Phase II is to address the scope of harvest rights in the 1854 Treaty ceded territory. Because of the long history of successful cooperation between the Fond du Lac Band and the State on harvest in the ceded territory, the goal in Phase II is to address only those issues that seem problematic. A process will be established to allow the Band and the State to communicate about natural resource concerns, resolve disputes, and deal with ongoing natural resource management issues.

Natural resource management concerns in the 1854 Treaty ceded territory

The State of Minnesota has shared natural resource harvest in the 1854 Treaty ceded territory with the Grand Portage, Bois Forte and Fond du Lac Bands successfully for over 12 years. Legal disputes over these harvest rights began as early as 1985, but only recently have court decisions made it clear that the Bands' treaty harvest rights are valid. The Department of Natural Resources and the Fond du Lac Band are now beginning to discuss resolution of remaining issues in the case brought by the Fond du Lac Band. The other two Bands may also need to become involved in these discussions because they share the same harvest rights. There are a few concerns that need to be addressed explicitly in the discussions, which are listed below:

1. Treaty Share Allocation.

The three Bands share treaty harvest rights in the 1854 Treaty ceded territory. These rights entitle the Bands collectively to harvest up to one half of the harvestable surplus of each resource, such as deer, walleyes or grouse. The three Bands may distribute the treaty share among themselves as they see fit, but under no circumstances may the total Band harvest exceed the total treaty share. This is a particularly important issue for high demand species, such as moose and certain furbearers.

2. Hunting, Fishing and Trapping.

- a. Harvest by management unit (avoid localized depletion and inequitable opportunity).
- b. Moose (limited numbers).
- c. Commercial harvest (notice; monitoring).
- d. Private property (access; applicable law).
- e. Spearing and netting (notice; monitoring).
- f. Deer season frameworks (protect young; protect during yarding).
- g. Disease control (stocking; exotic species).
- h. Special hunts in parks, SNAs and refuges (applicable law).
- i. Road-killed big game (accounting and distribution).

3. Other Harvest Concerns.

- a. Endangered, threatened and rare species.
- b. Forest products (birch bark and boughs).
- c. Wild rice (seeding).
- d. Exotic species.

4. Law Enforcement.

- a. Consistency of terms and definitions.
- b. Cross-deputization of Band and State conservation officers.

5. Process.

- a. Information exchange and regular meetings.
- b. Coordination and sharing of effort (data collection; law enforcement; other).
- c. Mutual notice of new plans and concerns.
- d. Dispute resolution.