

**MEMORANDUM OF UNDERSTANDING**

**REGARDING**

**TRIBAL - USDA-FOREST SERVICE RELATIONS**

**ON**

**NATIONAL FOREST LANDS**

**WITHIN THE TERRITORIES CEDED**

**IN**

**TREATIES OF 1836, 1837, AND 1842**

**PREAMBLE**

The Memorandum of Understanding (MOU) deals with the relationships of sovereign and federally recognized tribes of Lake Superior Chippewa Indians and of the USDA Forest Service, an agency of the government of the United States. The MOU is based on the principle of government-to-government interactions between the United States Government and federally recognized Indian tribes. The purpose of the agreement is to establish standards by which the Forest Service and the Tribes will act consistently across national forest lands within areas ceded in the treaties of 1836, 1837, and 1842.

The policies of the Forest Service toward federally recognized tribes are intended to strengthen relationships and further tribal sovereignty through fulfilling mandated responsibilities and through support and assistance of various kinds to tribal governments. The relationships between the Tribes and Forest Service are comprised of several parts, including honoring treaty-based usufructuary rights as well as policies of the Forest Service toward Indian nations. While court decisions, laws, regulations, policies and Executive Orders from the President of the United States have all shaped the Forest Service's policy toward Indian tribes, nothing in this agreement is in any way intended to abrogate or affect in any fashion judicial decisions which have interpreted such treaty rights.

This MOU recognizes existing treaty rights of Tribes to hunt and fish and to gather wild plants on national forest lands in accord with applicable regulatory authorities of the States or other federal agencies having jurisdiction over such activities. Reference in the MOU to such

activities as hunting and fishing are designed to recognize that the Forest Service manages and provides access to ecosystems which support these activities.

**I. CEDED TERRITORIES AND NATIONAL FORESTS INVOLVED (Figure 1).**

- A. Ceded Territories.** This MOU specifically pertains to the territories ceded [hereafter ceded territories] by various Chippewa Tribes in the following Treaties: Treaty of 1836, 7 Stat. 491; Treaty of 1837, 7 Stat. 536; and Treaty of 1842, 7 Stat. 591.
- B. National Forests.** This MOU specifically pertains to the portions of the following National Forests [hereafter National Forests] located in the ceded territories: Chequamegon-Nicolet in Wisconsin; and Ottawa, Hiawatha and Huron-Manistee in Michigan.

**II. PARTIES.** The following entities may ratify this MOU in accordance with their respective applicable laws and procedures, and, upon proper ratification, shall be deemed a party to this MOU:

- A. Tribes.** In their respective sovereign capacities, the following federally-recognized Tribes [hereafter Tribes] that are members of the Great Lakes Indian Fish and Wildlife Commission [hereafter GLIFWC]: Bad River Band of the Lake Superior Tribe of Chippewa Indians; Fond du Lac Band of Lake Superior Chippewa Indians; Lac du Flambeau Band of Lake Superior Chippewa Indians; Lac Courte Oreilles Band of Lake Superior Chippewa Indians; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community of the Mole Lake Band; Red Cliff Band of Lake Superior Chippewa Indians; Mille Lacs Band of Chippewa Indians; Bay Mills Indian Community; Keweenaw Bay Indian Community; and Lac Vieux Desert Band of Lake Superior Chippewa Indians.
- B. USDA-FS.** On behalf of the United States Department Agriculture, Forest Service [hereafter Forest Service] as an agency of the United States Government: the Forest Service's Eastern Region; the Eastern Region's Law Enforcement and Investigations; and the Forest Service's Northern Research Station.

**III. GOVERNING PRINCIPLES AND FUNDAMENTAL ASSUMPTIONS.** The parties agree that the MOU is based upon the following governing principles and fundamental assumptions and that the MOU shall be interpreted in accordance with them:

- A. Existence of Ceded Territory Rights.** The parties acknowledge and recognize the Tribes' treaty-guaranteed hunting, fishing and gathering rights [hereafter ceded territory rights] that may be exercised on lands administered by the Forest

Service located within the ceded territories.

**B. Tribal Sovereignty and Self-Regulatory Capacity.** The parties acknowledge and recognize:

1. The Tribes' inherent sovereignty and retained regulatory authority regarding their ceded territory rights; and
2. The Tribes' ability to administer and implement a system of effective tribal self-regulation regarding tribal member exercise of those rights.

**C. Federal Trust Responsibility and Treaty Obligations.** The parties acknowledge and recognize that the Forest Service shares in the United States Government's trust responsibility and treaty obligations to work with the Tribes on a government-to-government basis to protect the Tribes' ceded territory rights on lands administered by the Forest Service.

**D. Forest Service's Native American Policies.** The parties acknowledge and recognize the Forest Service's American Indian and Alaska Native Relations policies as presently set forth in Forest Service Manual 1563, Forest Service Handbook 1509.13, and other directives implementing provisions of the Food, Conservation, and Energy Act of 2008, Public Law 110-246 [hereinafter the "2008 Farm Bill"], to:

1. Maintain a governmental relationship with federally-recognized tribal governments consistent with Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, the President's Memorandum of November 5, 2009, Tribal Consultation and the President's Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments;
2. Implement programs and activities in a way that honors Indian treaty rights and fulfills legally-mandated trust responsibilities to the extent they apply to National Forest System lands;
3. Administer programs and activities to address and be sensitive to traditional Native religious beliefs and practices; and
4. Provide research, transfer of technology, and technical assistance to tribal governments.

**E. Forest Service's Forest Management Responsibilities.** The parties

acknowledge and recognize that the Forest Service is the agency of the United States Government authorized and responsible for implementing law and policies related to National Forest management.

- F. Forest Service's Law Enforcement Responsibilities.** The parties acknowledge and recognize that the Forest Service's Law Enforcement and Investigations Branch is responsible for enforcement of alleged violations of federal laws and regulations occurring on lands administered by the Forest Service.
- G. General Tribal/USDA-FS Government-to-Government Relationship Unaffected.** This MOU applies to the parties' government-to-government relationship, other Tribal -Forest Service interactions, the Tribes' ceded territory rights applicable on lands administered by the Forest Service, and the parties' relationships and dealings involving those rights. It is not intended, and should not be construed, to abrogate or otherwise affect any party's authority or responsibility in other areas. Similarly, it is not intended, and should not be construed, to otherwise define or restrict the parties' obligations, relationships or dealings in other areas of their respective authorities, responsibilities, or sovereign prerogatives.
- H. Effect of MOU on Non-Ratifying Tribes.** The parties' specific intent is that this MOU shall not bind or in any way affect the rights or claims of any GLIFWC member Tribe that chooses not to become a party or of any other Tribe that is a signatory to any of the treaties identified in Section I.B., above.
- I. Reservation of Rights, Claims and Defenses.**
1. The termination of or withdrawal from this MOU shall be without resulting liability to any other party or prejudice to any claim a party may have against any other party.
  2. Except as expressly provided herein, the fact that any Tribe or the Forest Service is or may have been a party to this MOU shall not be construed as a waiver of any rights, claims or defenses that, absent this MOU, any of those entities may have under any treaty between the United States and a Tribe, or under other applicable law of the United States.
  3. The parties acknowledge that this MOU contains provisions that may be the result of compromise and policy choices. As such, these provisions may not reflect the full extent of the Tribes' ceded territory rights or of the Forest Service's responsibilities to manage the National Forests. Therefore, in the absence of or outside the scope of this MOU, the

provisions contained herein are not intended to alter or abridge:

- a. The Tribes' underlying ceded territory rights or those rights of any other treaty signatory Tribe that is not a party to this MOU; or
  - b. The Forest Service's authorities to manage the National Forests in accordance with applicable law.
4. This agreement is not intended to alter usufructuary rights recognized in *Lac Courte Oreilles Band v. Voigt*, 700 F.2d 341 (7<sup>th</sup> Cir. 1983) or *Minnesota v. Mille Lacs Band*, 119 S.Ct. 1187 (1999). The MOU does not alter the authority of any government regarding the regulation of treaty rights under those decisions.

**IV. PURPOSES.** To accomplish the primary purposes of recognizing and implementing the Tribes' ceded territory rights and furthering Forest Service Native American policies, the parties intend to:

- A. Government-to-Government Relationship.** Establish a framework for a cooperative, government-to-government relationship between the Tribes and the United States Government that:
1. Ensures the meaningful exercise of the Tribes' ceded territory rights on the lands administered by the Forest Service within the ceded territories;
  2. Facilitates consistent and timely communication between parties at the appropriate levels of government; and
  3. Fosters effective participation by the Tribes in National Forest management, in the development, revisions and implementation of Land and Resource Management Plans [hereafter Forest Plans] and in subsequent Forest Plan implementation decisions.
- B. Exercise of Ceded Territory Rights.** Establish agreed-upon parameters under which the Tribes' ceded territory gathering rights may be exercised within the provisions of and the protections afforded by this MOU on lands administered by the Forest Service within the ceded territories.
- C. Conservation of Natural Resources.** Protect, manage and enhance ecosystems and communities that support the natural resources subject to the Tribes' ceded territory rights on lands administered by the Forest Service.

V. **RECOGNITION OF THE PARTIES' MUTUAL INTERESTS.** Underlying the purposes of and specific agreements contained in this MOU, the parties recognize a number of mutual interests that they wish to address:

- A. **Tribal Self-Determination and Self-Governance.** One of the Tribes' primary goals is to achieve self-determination and self-governance through the exercise of their retained sovereign governmental authority regarding their ceded territory rights. A key Forest Service policy is to administer its programs and activities in a manner that recognizes the governments of the Tribes and the authority that they carry out on behalf of the Tribes. Therefore, the parties seek to establish a government-to-government relationship that promotes collaboration and communication in the management of the National Forests, that provides for effective tribal self-regulation of the exercise of ceded territory rights on lands administered by the Forest Service, and, as noted below, that promotes efficient and effective law enforcement.
- B. **Collaborative Approach in the Management of Natural Resources.** The Tribes' ceded territory rights include the right to gather wild plants and to harvest wild animals on lands administered by the Forest Service, and the Tribes want to ensure that management of these lands protects their ability to meaningfully exercise these rights. The Forest Service is tasked with the administration of the National Forests and is the federal agency responsible for the care and management of the land and natural resources that are part of the National Forests. Therefore, the Tribes and the Forest Service seek to establish a relationship and associated processes that facilitate consistent and timely communication between them and that integrate the Tribes' needs and wishes for the desired state of the National Forests into Forest Plans and subsequent Forest Plan implementation decisions.
- C. **Sustainability of Ecosystems.** Since time immemorial, the Tribes have traditionally harvested certain plants and other resources found on lands now managed as the National Forests to meet subsistence, religious, cultural, medicinal and commercial needs. The Tribes' culture and lifeway depends on this harvest activity, and they wish to protect and enhance the natural resources upon which they rely. The Tribes measure the protection of these resources in terms of ensuring their sustainability for use by the seventh generation hence. The Forest Service is the federal agency responsible for managing the National Forests for the benefit of present and future generations. In addition, the Forest Service's policy is to carry out its programs and activities in a manner that is sensitive to the Tribes' traditional practices and beliefs. Therefore, the Tribes and Forest Service seek to collaboratively promote ecosystem management that protects and restores native communities and species, furthers the diversity of species, and ensures the

sustained yield and availability of natural resources that are subject to the Tribes' ceded territory rights.

- D. Efficient and Effective Law Enforcement.** As part of their self-regulatory system, the Tribes recognize the need to provide for the enforcement and adjudication of alleged violations of tribal laws governing the exercise of the ceded territory rights. To further compliance with tribal laws and to mete out meaningful and effective penalties, they recognize that the administration of justice in this context is best accomplished within their own communities and in their own forums. The Forest Service also recognizes that justice is best served in the communities most involved and affected. Therefore, the parties seek to establish a mutually beneficial efficient and effective system for enforcing applicable laws.
- E. Consistent Ceded Territory Gathering Regulations.** The meaningful exercise of the Tribes' ceded territory rights requires a consistent, conservation-based harvest regulatory system throughout the National Forests. To avoid administrative inefficiency and the associated confusion, the Forest Service recognizes the need for a consistent gathering policy and regulatory scheme in each of the National Forests. Therefore, the parties seek to establish a ceded territory-wide policy and regulatory framework that provides for the exercise of the ceded territory rights in a consistent manner that meets conservation goals, protects the public health and safety, and promotes efficient and effective law enforcement.
- F. Implementation of the Federal Trust Responsibility.** The Tribes continually seek to have United States Government and its agencies properly discharge the federal trust responsibility to assist in the development of the Tribes' governmental capabilities and to take actions for the Tribes' benefit. The Forest Service's policy is to administer its programs and activities in a manner sensitive to the Tribes' needs, beliefs, and practices, and to provide research, transfer of technology and technical assistance to the Tribes. Therefore, the parties seek to establish a framework for collaboration, communication and information exchange that will nurture understanding and maximize mutual benefits, and that will enhance the development of the Tribes' capabilities necessary to ensure effective tribal participation in the processes and procedures established in this MOU.

**VI. SPECIFIC AGREEMENTS TO IMPLEMENT THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP.** This section sets forth the specific agreements to implement the parties' government-to-government relationship in these areas: (A) MOU administration and implementation; (B) National Forest planning and decision-

making; (C) natural resource harvest management; (D) natural resource research and monitoring; (E) law enforcement; and (F) amendment of the MOU and its Appendices.

**A. MOU Administration and Implementation.**

1. The parties shall strive to reach consensus in all decisions, actions and processes contemplated by the MOU.
2. Unless otherwise specifically provided in this MOU, the parties shall attempt to resolve any dispute arising under the MOU at the lowest possible level on a government-to-government basis between properly authorized representatives of the parties who have the authority to resolve the dispute in question.
3. To facilitate on-going communication and the resolution of outstanding issues, the parties:
  - a. Shall meet at least annually to facilitate on-going communication, to review progress made and discuss issues arising under this MOU, to ensure that the parties are faithfully and effectively implementing this MOU and adhering to its terms, and to discuss trends, issues or other matters that may effect the MOU. The Forest Service will accept comments from interested citizens about the implementation of the MOU at any time and, prior to the annual meeting, the Forest Service will solicit public comments. The parties will consider any comments at the annual meeting and jointly approved minutes will be made available for public review.
  - b. Hereby establish a Technical Working Group (hereafter TWG) whose purpose shall be to review any scientific, technical or natural resource management issue referred to it in this MOU or by subsequent agreement of the parties. The TWG is empowered to make recommendations to the parties regarding the matters referred to it, such as the development and coordination of research projects, possible harvest monitoring and regulatory responses to particular circumstances, and data/information exchange regimens. The TWG also is empowered to suggest to the parties issues that may require the parties' attention and consideration.

The TWG will be comprised of qualified natural resource scientists, managers and researchers designated by the Forest Service and the Tribes, and should include designates from the North Central Research Station and GLIFWC. Law enforcement



personnel should participate in the TWG as necessary to address enforcement-related issues.

The Forest Service and the Tribes will each appoint a TWG co-chair to coordinate communication and planning for the group's work. The TWG may appoint one or more working subgroups to address specified issues.

- c. May, in addition to matters referred to the TWG, agree to refer specific questions or issues to designated representatives or *ad hoc* working groups for discussion, development of information, formulation of recommendations, or specific action.
  - d. Agree to provide such data and information as another party might request pertaining to matters addressed by the MOU, such as natural resource population and harvest data, law enforcement statistics and tribal court statistics.
4. The parties shall cooperate in identifying and seeking adequate funding for the enhancement of their infrastructures necessary to improve the implementation of this agreement. However, the parties acknowledge that this MOU does not modify or restrict the budgetary authority of any party.
  5. The parties shall undertake cultural sensitivity training for their personnel who will be responsible for implementing this MOU. The parties also shall engage in joint and coordinated public education efforts to inform the public about this MOU and its underlying purposes.

**B. National Forest Planning and Decision-making.** The parties recognize that Forest Service decisions vary in their effects on the abundance of, distribution of or access to the natural resources on the lands that it administers. For example, the Forest Service, at various levels, makes a number of decisions that relate to such matters as the development, revision and implementation of Forest Plans for each of the National Forests covered by this MOU. They include decisions that commit to particular land management actions, such as project level decisions (including closures of temporary and permanent roads), and decisions that establish the policies or guidelines that govern these actions. Other decisions relate to such matters as the internal administration of the Forest Service as an agency regarding personnel, property and budgets, and do not commit to particular land management actions or establish policies governing those actions.

The Tribes and Forest Service agree that they shall consult on a government-to-

government basis on all Forest Service decisions that affect the abundance, distribution or access to the natural resources on lands administered by the Forest Service. In addition, they agree that the goal of such consultation shall be that any such Forest Service decision should expressly recognize and accommodate the Tribes' ceded territory rights, protect and enhance treaty-reserved natural resources, and accommodate exercise of ceded territory rights by tribal members under tribal regulations.

To achieve this end, the Tribes and Forest Service specifically agree that:

1. As to decisions that result in particular land management actions, in policies or guidelines governing those actions, or in research projects to be conducted by the North Central Research Station:
  - a. The Forest Service shall consult with and facilitate effective participation by the Tribes at all stages and levels of the decision-making process. This collaboration is recognized as a dynamic process that must include consultation on a consistent and timely basis at the appropriate levels of government and that must be flexible to deal with ever-changing circumstances and adaptive natural resource management responses.
  - b. The Forest Service shall consider the effects of its decisions on treaty resources and the ability of the Tribes to exercise treaty gathering rights. In decision and analysis documents, including those required by the National Forest Management Act and the National Environmental Policy Act, decision-makers will show how tribal information and involvement was taken into account in analyzing the effects of potential management actions and in making the decision.
  - c. The Tribes and the Forest Service will strive to reach consensus. Where consensus cannot be reached:
    - 1) They will attempt to resolve any dispute or disagreement first by good faith discussions between the affected Tribe(s) and the Forest Service deciding official. The Tribe(s) may raise any matter not resolved at this level to a higher Forest Service official, including the appropriate Forest Supervisor and the Regional Forester. The Forest Service agrees to delay a final decision on the unresolved matter until this process has had the opportunity to take place within a reasonable amount of time.

- 2) The Forest Service may make and implement the decision.
  - 3) In addition to the procedures provided by the MOU, a Tribe may challenge or appeal any Forest Service decision or action in accordance with applicable law.
2. As to decisions relating to the administration of Forest Service budgets, personnel or property, the parties shall cooperate in identifying and seeking adequate resources for the Tribes' and Forest Service's capabilities necessary to implement this MOU. In particular, the Forest Service shall seek input from the Tribes in a timely manner regarding the development of its budget proposal for upcoming fiscal years.
  3. During the course of their dealings, the Tribes and Forest Service shall ensure that they have identified their representatives with whom the other parties should interact regarding particular decisions or particular types of decisions.
  4. Nothing in this MOU shall preclude the Tribes and Forest Service from discussing matters or advancing particular requests that are not part of a particular pending Forest Plan implementation decision.

C. **Natural Resource Harvest Management.** The Tribes and Forest Service acknowledge their mutual interests in undertaking a collaborative approach in managing the harvest of natural resources on lands administered by the Forest Service to ensure the sustainability of ecosystems and the sustained yield of natural resources, in ensuring that the Tribes' ceded territory rights are meaningfully exercised, and in providing for a consistent conservation-based system under which the Tribes will exercise their ceded territory rights on those lands. Specifically, the Tribes and Forest Service agree:

1. Within the bounds of their respective authorities, to regulate and monitor the harvest of natural resources on lands administered by the Forest Service in a manner that provides for a sustained harvest of those resources and affords the Tribes the opportunity to harvest an equal allocation of the harvestable surpluses of those resources.
2. That the Tribes will regulate tribal member gathering on lands administered by the Forest Service by adopting regulations and implementing permit systems that are no less restrictive than those set forth in the Model Off-Reservation National Forest Gathering Code

[hereafter Model Code], which is attached as Exhibit A and specifically incorporated into this MOU.

3. That any changes making the Model Code, or any Tribe's enactment based upon the Model Code, less restrictive will fall within the scope of the MOU if the Forest Service's consent is obtained in accordance with the provisions of subsection F, below.
4. To monitor harvest levels in the most effective and precise manner needed to ensure resource protection and to exchange harvest monitoring data on a regular basis.
5. To designate areas for tribal sugar bushes that will meet needs identified by the Tribes and to jointly develop specific sugar bush management plans. The parties further agree to consider complementary and conflicting resource values, location of historical sugarbushes, proximity to reservations, and other relevant factors in choosing sugarbush locations.
6. To locate species of interest to the Tribes and to provide gathering opportunities for those resources, particularly regarding gathering opportunities associated with National Forest timber sales.
7. That once the Forest Service decides that it intends to solicit bids for timber sale contracts for down or damaged trees, trees in the designated timber salvage stands having a diameter of four inches or greater, whether they are alive, dead, down or standing, will be regulated in the same manner as standing live trees for treaty harvest purposes. For the purposes of the MOU and attached Model Code, the term "Forest Service timber salvage stand" means any stand of trees where the Forest Service has notified the Tribes of its decision to solicit bids for a salvage timber sale contract, and the term "salvage timber" means any tree in that stand, whether alive, dead, down or standing, having a diameter of four inches or greater.
8. That the Tribes will not issue a permit for the harvest of timber or of salvage timber, as set forth below, without the Forest Service's consent.
  - a. In seeking the Forest Service's consent, the requesting Tribe shall inform the other Tribes that are parties to the MOU of the request and shall indicate in writing to the Forest Service the types and amounts of trees sought, the use to which the trees will be put, and the anticipated time frame for the harvest. The Forest Service shall promptly consider the request, consult with the requesting Tribe as

to the specifics of the proposal, and provide in writing its decision and the underlying rationale. The Forest Service shall make every attempt to accommodate the request and, before withholding consent, shall discuss with the Tribe possible alternatives. In any event, Forest Service consent shall not be unreasonably withheld. The Tribes will conduct inter-tribal coordination on requests for timber.

- b. To further the purpose of this Section, the Tribes will implement a harvest management system pertaining to requests for timber, as set forth in the Tribal Timber Harvest Framework Agreement [Management Framework Agreement], which is attached as Appendix C and specifically incorporated into this Agreement. Any changes to the Management Framework Agreement or to any Tribe's enactment based upon it, which would result in less restrictive provisions relating to treaty rights exercise within the National Forest, will fall within the scope of the MOU only if the Forest Service's consent is obtained in accordance with the provisions of subsection F.6, below.
  - c. The tribes may issue a permit for the harvest of timber or of salvage timber for the following purposes:
    - 1) For domestic purposes, as this term is defined in the attached Model Code (authorized pursuant to 16 U.S.C. 477, and the treaties between the United States and GLIFWC's member Ojibwe Tribes, specifically Treaty of 1836, 7 Stat 491, Treaty of 1837, 7 Stat. 536, and Treaty of 1842, 7 Stat. 591).
    - 2) For non-commercial traditional and cultural purposes, as this term is defined in the attached Model Code (authorized pursuant to 25 U.S.C. 3055, and the treaties between the United States and GLIFWC's member Ojibwe Tribes, specifically Treaty of 1836, 7 Stat 491, Treaty of 1837, 7 Stat. 536, and Treaty of 1842, 7 Stat. 591).
9. That any requests for timber or miscellaneous forest products, as these terms are defined in the attached Model Code, from national forests made by Tribes not party to this MOU within the ceded territories will require immediate consultation with the signatory Tribes prior to the granting of such request.

10. That the Tribes and their members use National Forest campgrounds in the exercise of their ceded territory rights and that Forest Service fees and length of stay restrictions at campground should not interfere with the exercise of the rights. The parties acknowledge that, prior to completion and ratification of the MOU, time constraints have prevented them from developing the necessary Exemption Agreement and accompanying Implementation Plan regarding campground fee and length of stay exemptions for tribal members. Upon ratification of the MOU, the parties commit to immediately developing the Agreement and Implementation Plan. Once properly approved, the Exemption Agreement and Implementation Plan shall become part of the MOU and be specifically incorporated by reference herein as if set forth in their entirety.
11. That the parties have not resolved their disagreement regarding the Tribes' request for unrestricted motorized use of Crooked Lake in the Sylvania Wilderness located in the Ottawa National Forest. While the parties agree to disagree on this matter at this time, they will continue to strive for a resolution using the procedures and processes contained in the MOU. The parties acknowledge that on all other matters regarding wildernesses, their agreement is properly reflected in the provisions of the attached Model Code, including specifically those of §3.06(1)(a) that establish Tribal National Forest Wildernesses.
12. That, in accordance with the provisions of subsection F, below, the Forest Service will notify the Tribes of and obtain the Tribes' input on proposed changes in federal laws or regulations that are intended to regulate or otherwise restrict the harvest of natural resources on lands administered by the Forest Service within the ceded territories.
13. That the Tribes have implemented harvest management regulatory systems that govern the exercise of off-reservation treaty-reserved tribal deer hunting, bear hunting, migratory bird hunting, small game hunting and trapping, and wild rice gathering. To the extent that these activities occur within National Forests, the provisions of the Tribe's Off-Reservation Conservation Code are hereby declared, and shall be construed, to govern tribal members engaged in the exercise of these treaty-reserved rights within National Forests.

**D. Monitoring and Evaluation.** To ensure the sustainability of ecosystems, the Tribes and Forest Service acknowledge the importance of inventorying and monitoring the status of species and their habitats within the National Forests, evaluating the impacts of harvest on the resources subject to the Tribes' ceded

territory rights, and evaluating the effects of other land management activities on those resources. With the input and recommendations of the TWG, the Tribes and Forest Service agree to:

1. Review their respective existing research projects and administrative studies as needed for the purpose of encouraging research coordination.
2. Establish and implement a program of research, monitoring and evaluation regarding the resources subject to the Tribes' ceded territory rights that specifically would:
  - a. Inventory species status and habitat requirements.
  - b. Monitor the population dynamics and habitats of species as Forest Plans are implemented.
  - c. Determine the effects of land management activities, such as timber harvest, on species' populations.
  - d. Determine the effects of wild plant harvest on the status of the species being harvested.
  - e. Evaluate such other matters that relate to the resources subject to the Tribes' ceded territory rights.

**E. Law Enforcement.** The parties acknowledge the Tribes' capabilities to implement a self-regulatory system governing the exercise of ceded territory rights applicable on lands administered by the Forest Service. The parties specifically agree that:

1. Any regulation adopted by Tribe consistent with the MOU will govern the exercise of the Tribes' ceded territory gathering rights within the National Forests and is within the scope of the MOU. Any Tribe's regulation that is not consistent with the MOU's provisions is outside the MOU's scope.
2. The enforcement of the Tribes' regulations and of any federal statute or regulation governing the conduct within the scope of a Tribe's regulations that are consistent with the terms of the MOU shall be governed by a properly ratified agreement that is no less restrictive than the Tribal Self-Regulation Agreement [hereafter Self-Regulation Agreement], attached as Appendix B and specifically incorporated into the MOU. For the purposes of this subsection, "properly ratified" means a party's approval of

and the agreement to be bound by the Self-Regulation Agreement in accordance with that party's required governmental procedures.

3. That any changes in the Self-Regulation Agreement shall be made in accordance with the provisions of subsection F, below.
4. Primary enforcement and administration of justice responsibilities for the Tribes' regulations lies with the Tribes and their properly authorized agencies.
5. The Tribes and Forest Service will coordinate their respective law enforcement activities and establish cooperative law enforcement ventures, such as joint patrols, effective communication systems, information and potential violation referral processes, and joint training activities. These coordinated law enforcement activities shall include at least annual meetings between designated enforcement personnel.

**F. Process for MOU Amendments, Regulatory Changes and Self-Regulation Agreement Changes.** The parties recognize the dynamic nature of their government-to-government relationship. They also recognize that changes in federal and tribal regulation and management of the harvesting of the National Forests' natural resources in the ceded territories are inevitable. To facilitate open communication and minimize disputes arising from the dynamics of their relationship and from the need to change harvest regulations, the parties agree:

1. Consensus/Resolution of Disputes. As for the matters addressed by this subsection F, the affected parties shall strive to reach consensus on the matter at hand. Where consensus cannot be reached:
  - a. The affected parties will attempt to resolve any dispute or disagreement first by good faith discussions at the appropriate governmental level. A party may raise any matter not resolved at this level to a higher official of another party. If it has the authority to do so, a party will delay a final decision on the unresolved matter until this process has had the opportunity to take place within a reasonable amount of time.
  - b. A party claiming the requisite authority may make and implement a decision on the unresolved matter.
  - c. In addition to the procedures provided by the MOU, a party may challenge or appeal another party's decision or action in



accordance with applicable law.

2. MOU Amendment. Any party may propose an amendment to the MOU in writing to the other parties. Within 60 days of receipt, the parties shall convene a meeting to consider the proposal. An amendment may be adopted by and binding upon less than all of the parties provided that the adopting parties include at least one tribal party and the Forest Service.
3. Federal Laws and Regulations. The Forest Service agrees to seek the input of the Tribes on proposed changes to the Forest Service's regulation of natural resource harvesting within the ceded territories by providing written notice, including an explanation of the underlying rationale, to the Tribes at least 60 days in advance of the desired effective date of the proposed change. The Tribes shall have 45 days, or such other time period as may be agreed upon, to provide comments.

In addition, the Tribes may submit a written request to the Forest Service for changes in the Forest Service's regulation of natural resource harvesting, including an explanation of the request's rationale. The Forest Service agrees to respond to the request within 45 days, or such other time period as may be agreed upon.

Unless other time frames are specifically imposed by applicable law, the Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on the Forest Service proposal and on a Tribe's request.

4. Model Code or Tribal Enactments Based Upon the Model Code. The Tribes agree to notify the Forest Service in writing of any proposed change that would make the Model Code, or any Tribe's enactment based upon the Model Code, less restrictive than provided for in the MOU. In addition, the Forest Service may request the Tribes to change the Model Code, or any Tribe's enactment based upon the Model Code, to be more restrictive than provided for in the MOU.

Except in cases of emergency, such notices and requests will be provided at least 60 days in advance of the desired effective date of the change and will include an explanation of the proposal's rationale. Within 45 days of receipt, or such other time period as may be agreed upon, the receiving party or parties shall respond expressing any objections and indicating any changes that are agreeable. The failure to object in writing to a proposed change within the 45-day period, or any extension thereof, will be deemed as agreement to the proposal.

The Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on any objection to a proposed or requested change.

A properly amended Model Code shall replace the then-current Appendix A to the MOU and is specifically incorporated by reference herein as if set forth in its entirety.

5. Tribal Self-Regulation Agreement. Any party may submit a written request to the other parties for a change in the Self-Regulation Agreement. Except in cases of emergency, such request will be provided at least 60 days in advance of the desired effective date of the change and will include an explanation of the proposal's rationale. Within 45 days of receipt, or such other time period as may be agreed upon, the receiving party or parties shall respond expressing any objections and indicating any changes that are agreeable. The failure to object in writing to a proposed change within the 45-day period, or any extension thereof, will be deemed as agreement to the proposal.

The Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on any objection to a proposed change.

A properly amended Self-Regulation Agreement shall replace the then-current Appendix B to the MOU and is specifically incorporated by reference herein as if set forth in its entirety.

6. Tribal Timber Harvest Framework Agreement. Any party may submit a written request to the other parties for a change in the Timber Harvest Framework Agreement. Except in cases of emergency, such request will be provided at least 60 days in advance of the desired effective date of the change and will include an explanation of the proposal's rationale. Within 45 days of receipt, or such other time period as may be agreed upon, the receiving party or parties shall respond expressing any objections and indicating any changes that are agreeable. The failure to object in writing to a proposed change within the 45-day period, or any extension thereof, will be deemed as agreement to the proposal.

The Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on any objection to a proposed change.

A properly amended Timber Harvest Framework Agreement shall replace the then-current Appendix C to the MOU and is specifically incorporated by reference herein as if set forth in its entirety.

**G. Special Closures.** It is agreed that the Tribes or the Voigt Intertribal Task Force may submit a written request to the Forest Service requesting the temporary closure from public access areas of the National Forest to protect the privacy of tribal activities for traditional and cultural purposes.

1. The parties agree that in the implementation of the request the parties will cooperatively determine the smallest practicable area for the minimum period necessary to accommodate the requested activity.
2. It is further agreed that Tribal officials on behalf of the Tribe making the request or Voigt Intertribal Task Force Representatives shall be prepared to help the Forest Service understand the request, if necessary, by explaining how the intended activity is identifiable by the Tribe as traditional or cultural because of the long-established significance or ceremonial nature of the activity to the Tribe.

**VII. CONGRESSIONAL INVOLVEMENT.** Pursuant to 42 U.S.C. Section 22, no Member of or Delegate to the Congress of the United States shall be admitted to any share or part of this instrument, or any benefits that may arise therefrom.

**VIII. MOU EFFECTIVE DATE/TERMINATION.** The MOU shall take effect on the date when at least one Tribe, the Forest Service's Eastern Region, the Region's Law Enforcement and Investigations Branch, and the North Central Research Station have properly ratified it in accordance with their respective governmental procedures. The MOU shall be binding as to and between those entities upon notice to the other parties of their ratification as provided in Section IX, below. Any party may withdraw from this agreement at any time following the notice of withdrawal procedures of Section IX.B., below. This MOU shall no longer be in effect if the Forest Service withdraws or if all ratifying tribes have withdrawn.

**IX. REQUIRED NOTICES/PARTIES' DESIGNATED REPRESENTATIVES.**

**A. Notice of Ratification.** Within 30 days of ratification of the MOU, an entity shall notify all other entities listed in Section II, above, of the date of ratification. Each party's Notice of Ratification is specifically incorporated into the MOU as if set forth in its entirety.

**B. Notice of Withdrawal.** A party shall provide written notice to the other parties

of its intent to withdraw from the MOU at least 60 days in advance of the proposed withdrawal date. Within 45 days of such notice, or such other time period as may be agreed upon, the parties shall convene a meeting to discuss the intent to withdraw and to attempt to reach consensus on ways to prevent the withdrawal. Should a party ultimately withdraw from the MOU, it shall provide a written Notice of Withdrawal to the other parties, and such Notice is specifically incorporated into the MOU as if set forth in its entirety.

**C. Designated Representatives.** In providing notice of its ratification, a party may designate its representative for receiving the notices from the another party that are required by the MOU. Where a party has not formally designated a representative either with its Notice of Ratification or with respect to particular matters addressed by the MOU, another party may provide a required notice ex officio to the office of the official that provided the party's Notice of Ratification.

**X. INITIAL MEETING OF THE PARTIES.** Within 90 days of the MOU's effective date, the parties shall convene an initial meeting for the purposes of: (A) identifying those matters that require immediate attention in implementing the MOU's provisions, such as the agreement and implementation plan regarding campground fees and length of stay restrictions; (B) identifying and addressing any other matter regarding the MOU that requires the parties' attention; (C) setting forth a timetable for addressing those matters; and (D) identifying their representatives that will serve as their "keepers of the process" in ensuring that the MOU is faithfully implemented. These representatives may be persons other than a party's designated representative for receiving required notices from another party provided for in Article IX, above.

**As Approved and Recommended for Tribal Adoption at 3/1/12 Voigt Task Force Meeting**

**APPENDIX A**

**MODEL**

**OFF-RESERVATION NATIONAL FOREST GATHERING CODE**

**OF THE**

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## CHAPTER 1 - INTRODUCTION

### 1.01 Title.

This ordinance shall be known as the \_\_\_\_\_ Off-Reservation National Forest Gathering Code.

### 1.02 Authority.

This ordinance is enacted pursuant to Article \_\_\_\_\_, Section \_\_\_\_\_ of the Constitution and By-Laws of the \_\_\_\_\_ Tribe.

### 1.03 Purpose.

It is the purpose of this ordinance to:

(1) Provide an orderly and effective system for tribal control and regulation of treaty-reserved gathering activities applicable to National Forests located in the ceded territory.

(2) Supplement the Tribal Off-Reservation Conservation Code for the purposes of regulating the exercise of treaty-reserved off-reservation gathering rights applicable to National Forests located in the ceded territory.

(3) Implement the provisions of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaties of 1836, 1837, and 1842*, as may be amended from time to time, which has been ratified by the Tribe and which is incorporated by reference herein as if set forth in its entirety.

### 1.04 Effective Date.

This ordinance shall be effective on the date adopted by the Tribe's governing body.

### 1.05 Interpretation.

The provisions of this ordinance:

(1) Shall be interpreted and applied as minimum requirements governing the exercise of treaty-reserved gathering rights applicable to National Forests located in the ceded territory;

(2) Shall be liberally construed in favor of the tribe;

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(3) Shall be construed consistent with the purposes and provisions of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaties of 1836, 1837, and 1842*, as may be amended from time to time, which has been ratified by the Tribe and which is incorporated by reference herein as if set forth in its entirety; and

(4) Shall not be deemed a limitation or repeal of any other tribal power or authority.

#### **1.06 Severability and Non-Liability.**

If any section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby. The Tribe further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this ordinance.

#### **1.07 Relationship to Tribal Off-Reservation Conservation Code and other Tribal Ordinances.**

(1) All other ordinances and resolutions that solely govern treaty-reserved ceded territory gathering rights applicable to National Forests located in the ceded territory are hereby repealed.

(2) (a) This ordinance is not intended to repeal or replace any provision of the Tribe's Off-Reservation Conservation Code. It is intended to supplement that Code for the purposes of authorizing or governing the exercise of treaty-reserved wild plant gathering rights applicable to National Forests. It is not intended to apply to the exercise of any other treaty-reserved ceded territory right that is authorized or governed by the Tribe's Off-Reservation Conservation Code.

(b) Unless otherwise specifically indicated in this ordinance, it is the intent of this ordinance that the provisions of the Tribe's Off-Reservation Conservation Code that generally govern the conduct of tribal members exercising treaty rights applicable in the ceded territory shall apply to tribal members exercising treaty-reserved off-reservation gathering rights applicable to National Forests pursuant to this ordinance, including but not limited to regulations pertaining to the gathering of wild rice. Such provisions of the Tribe's Off-Reservation Conservation Code are hereby declared, and shall be construed, to govern tribal members engaged in the exercise of treaty-reserved gathering rights applicable to National Forests.

#### **1.08 Religious or Ceremonial Use of Natural Resources.**

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(1) Nothing in this ordinance shall prohibit the harvest or use of natural resources in a manner otherwise prohibited by this ordinance which is harvested, taken or otherwise obtained in a National Forest within the ceded territory for religious or ceremonial purposes in accordance with the traditions and customs of the Tribe and with the consent of the Tribe's governing body, or its designee.

(2) In reviewing and taking action on any request for religious or ceremonial harvest, the Tribes' governing body, or its designee, shall take into account the biological impact of the harvest, shall ensure that the harvest takes place in a manner that does not cause biological harm, and shall consult with the local National Forest District office if the requested gathering is to take place in a National Forest Research Natural Area (see Section 3.06(1)).

(3) No member shall fail to comply with the terms and conditions of the any permit issued pursuant to this section or to otherwise comply with the requirements imposed by the Tribe's regarding religious or ceremonial harvest of wild plants in National Forests in the ceded territory.

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## CHAPTER 2 - DEFINITIONS

### 2.01 Definitions.

(1) Except for specific terms defined in subsection (2), terms in this ordinance shall have the same definition as provided in the Tribe's Off-Reservation Conservation Code.

(2) The following terms, wherever used in this ordinance, shall be construed as follows:

(a) **“Ceded Territory”** means those off-reservation lands ceded by the Tribe or another signatory tribe to the United States of America in the Treaty of 1836, 7 Stat. 491, the Treaty of 1837, 7 Stat. 536, or the Treaty of 1842, 7 Stat. 591.

(b) **“Bark”** means the tough outer covering of the woody stems and roots of trees, shrubs, and other woody plants. It includes all tissues outside the vascular cambium.

(c) **“Bough”** means any branch of a tree less than 2 inches in diameter.

(d) **“Domestic Purpose”** means the use of timber or salvage timber, harvested for the construction of any structure, building or appenditia to be used for community or residential domestic purposes.

(e) **“Firewood”** means any dead tree or part thereof, either standing or downed, which is harvested for and is to be used as fuel.

(f) **“Forest Service”** means the United States Department of Agriculture, Forest Service.

(g) **“Forest Service Salvage Timber Stand”** means any stand of trees where the Forest Service has notified the Tribe of the decision to solicit bids for a Forest Service salvage timber sale contract.

(h) **“Gather”** or **“gathering”** means to take or acquire or attempt to take or acquire possession of any wild plant, or part thereof.

(i) **“Gathering Products”** means all products of miscellaneous forest products other than non-timber forest products such as: branchlets, roots, berries, fruits, nuts, and seeds.

(j) **“Lodgepoles”** means any tree that is less than 5 inches DBH (diameter at breast height).

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(k) **“Miscellaneous Forest Products”** means any wild plant including: non-timber forest products, wild plants that are not trees such as herbaceous plants and shrubs, gathering products, endangered or threatened plant species, and species of special concern, but for the purposes of this ordinance excludes timber.

(l) **“National Forest”** means those lands located within the ceded territory owned by the United States of America and part of the Chequamegon-Nicolet National Forest, the Hiawatha National Forest, the Huron-Manistee National Forest, or the Ottawa National Forest.

(m) **“Non-Commercial Traditional and Cultural Purpose”** means the use of timber harvested with respect to a definable use, area, or practice, identified by an Indian tribe as traditional or cultural because of the long established significance or ceremonial nature of the use, area, or practice to the Indian tribe; and is not for commercial purposes.

(n) **“Non-Timber Forest Products”** means any of the following miscellaneous forest products: bark, boughs, firewood, lodgepoles, and sap as further defined in this section.

(o) **“Salvage Timber”** means any tree in a Forest Service salvage timber stand, whether alive, dead, down or standing, having a diameter of four inches or greater.

(p) **“Sap”** means the watery fluid that circulates through a tree or plant, carrying food and other substances to the various tissues.

(q) **“Shrub”** means a woody perennial plant usually branched several times at or near the base giving it a bushy appearance, and is usually less than five meters tall.

(r) **“Signatory Tribe”** means an Indian Tribe which is a signatory to the Treaty of 1836, 7 Stat. 491, the Treaty of 1837, 7 Stat. 536, or the Treaty of 1842, 7 Stat. 591, or such tribe's successor in interest.

(s) **“Species of Special Concern”** means any wild plant which is contained on the tribal species of special concern list.

(t) **“Timber”** means any tree that is not a lodgepole as defined in Section 2.01(2)(i) of this ordinance, or is not firewood as defined in Section 2.01(2)(d) of this ordinance.

(u) **“Tree”** means a woody, perennial plant with a single trunk that is typically unbranched at or near the base, and is usually greater than five meters tall.

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(v) **“Wild Plant”** means any undomesticated species, or part thereof, of the plant and fungi kingdoms occurring in both forested and non-forested natural ecosystem, but for the purposes of this ordinance excludes wild rice.

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Model Off-Reservation National Forest Gathering Code

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**CHAPTER 3 - GENERAL REGULATIONS**

**3.01 Regulatory Authority.**

- (1) The Tribe asserts legal authority to regulate the exercise of the Tribe’s treaty-reserved ceded territory gathering rights applicable to wild plants found in National Forests.
- (2) Any person authorized to enforce this ordinance may seize forthwith wherever found:
  - (a) any wild plant taken or reduced to possession in violation of this ordinance;
  - or
  - (b) any wild plant lawfully taken or reduced to possession under this ordinance, upon violation of any provision of this ordinance relating to the possession, use, giving, sale, barter or transportation of such wild plant.

**3.02 Permits and Identification -- General.**

- (1) No member shall gather any wild plant off-reservation in a National Forest without possessing a valid off-reservation harvesting permit approved by the Tribe, which may be the member's tribal identification card required by Subsection (2), or such other permit as this ordinance may require validated for the particular type of activity to be engaged in for the particular season in question, as follows:
  - (a) Generally. Except as provided in subs. (b) [Non-Timber Forest Products and Ginseng Gathering Permits], no member shall gather any miscellaneous forest products without possessing a valid general gathering permit issued by the tribal conservation department while harvesting off-reservation in a National Forest.
  - (b) Non-Timber Forest Product and Ginseng Gathering Permits.
    - (i) No member shall harvest or gather non-timber forest products or ginseng pursuant to this ordinance without possessing a valid gathering permit issued by the tribal conservation department as follows:

1) Small Scale Harvest Activity. For small scale activity, a tribal member may harvest the following non-timber forest products while possessing a valid gathering permit up to the following limits:

- a) Bark;    Twenty (20) Trees
- b) Boughs;    Two (2) Tons

c) Firewood; Ten (10) Cords

d) Lodgepoles; Seventy-Five (75) Lodgepoles

2) Large Scale Harvest Activity. For large scale activity, a tribal member may harvest non-timber forest products while possessing a valid large scale harvest activity gathering permit above the limits established for small scale harvest activity as follows:

a) No member shall gather non-timber forest products on a large scale without a valid large scale harvest activity gathering permit valid for a designated area established by the tribal conservation department in consultation with the Forest Service.

b) "Designated Area" means a specific site identified and established by the tribal conservation department, in consultation with the Forest Service, for which a species harvestable surplus has been determined and for which the appropriate number of large scale harvest activity permits are available for the designated area.

c) The tribal conservation department may issue a large scale harvest activity permit to one or more members based upon the determined species harvestable surplus and may impose such terms and conditions as it deems necessary or appropriate.

d) No member shall fail to comply with the terms and conditions of a large scale harvest activity permit.

(ii) No gathering permit is required of helpers of a permittee who participate only in the collection of the resource once it has been reduced to possession of a permittee.

(iii) The tribal conservation department may impose such other terms and conditions as it deems necessary or appropriate, including biological monitoring requirements in addition to those contained in Section 3.04 of this ordinance.

(2) No member shall gather any wild plant off-reservation in a National Forest except while carrying a valid picture identification card issued by the tribe, or other form of identification approved by the tribe for such gathering activities.

(3) No member shall refuse to display his or her identification documents upon request

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of any tribal, Great Lakes Indian Fish and Wildlife Commission, federal, state, or local law enforcement officer.

(4) No member shall fail to comply with the terms, conditions and location restrictions of a permit issued pursuant to this ordinance.

(5) The tribal conservation department is authorized to issue to members permits required by this ordinance and to impose such terms, conditions and location restrictions in those permits as it deems necessary or appropriate. Except as otherwise required by this ordinance, the form of such permits shall be left to the discretion of the tribal conservation department, provided such form shall require the name, address and member's tribal identification number.

(6) The tribal conservation department may issue such harvesting permits to members of a signatory Tribe, provided such other Tribe has enacted an ordinance governing gathering in National Forests that is at least as restrictive as this ordinance.

### **3.03 Sale of Miscellaneous Forest Products Authorized.**

(1) Nothing contained in this ordinance shall be construed to prohibit members from selling any miscellaneous forest products, or any part thereof, lawfully harvested pursuant to this chapter.

(2) With respect to the sale of any miscellaneous forest products, or part thereof, lawfully harvested pursuant to this ordinance in a National Forest, any requirement for maintaining records of commercial transactions contained in the Tribe's Off-Reservation Conservation Code shall not apply.

### **3.04 Harvest Monitoring.**

(1) Generally. No member to whom any permit has been issued under this ordinance shall fail or refuse to provide harvest information when requested by the tribal conservation department, any person authorized to enforce this ordinance, or the Great Lakes Indian Fish and Wildlife Commission.

#### **(2) Records of Ginseng Transactions.**

(a) Unless otherwise required under the provisions of GLIFWC's and the Tribes' approved CITES export program, no member shall sell any ginseng harvested pursuant to this ordinance to any person unless the member maintains a written record of all transactions on forms prescribed by the tribal conservation department indicating the amount of ginseng involved, the parties to the transaction, the date of the transaction and the National Forest in which harvest occurred.

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(b) Records maintained pursuant to this section shall be forwarded annually to the tribal conservation department, or its designee.

(c) No member shall fail to comply with the reporting requirements of this section.

(d) With respect to ginseng gathered in a National Forest, this section supersedes any requirement for maintaining records of commercial transactions contained in the Tribe's Off-Reservation Conservation Code.

### **3.05 Emergency Closures.**

(1) Notwithstanding any other provision of this ordinance, the Director of the Biological Services Division of the Great Lakes Indian Fish and Wildlife Commission or the tribal conservation department may order the closure of the harvest activity of any wild plant in a National Forest generally or with respect to a particular location, whenever the continuation of the harvest is likely to cause biological harm to the species involved.

(2) Every reasonable effort shall be made to consult with and obtain approval of the Tribe prior to ordering an emergency closure, but such closure may be ordered without consultation or approval if circumstances require.

(3) An emergency closure shall become effective immediately upon issuance or at such time or date as the closure order may direct. Such closure shall be communicated to the Tribe by the best and swiftest practical method.

(4) No member shall violate the terms, conditions or restriction of an emergency closure order issued pursuant to this section.

### **3.06 Harvest and Other Location Restrictions.**

(1) Tribal Wilderness, Research Natural Areas, and Special Use Areas Established. The following Great Lakes Indian Fish and Wildlife Commission document, as it may be amended from time to time, is hereby adopted and incorporated in this ordinance as if fully set forth herein, and no member shall fail to comply with the closures and other restrictions established by this document:

*Tribal Wildernesses, Tribal Research Natural Areas, and Tribal Vehicle Permit Areas on National Forests, Version 1: [August 1998].*

(2) Forest Service Administrative Sites. No member shall gather wild plants under authority of this ordinance on a Forest Service administrative site. For the purposes of this

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ordinance, a “Forest Service administrative site” means a specific site where an office, storage or other building or structure is located and maintained by the Forest Service as part of its operation and management of a National Forest. It is the member's responsibility to be certain about a Forest Service administrative site. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local National Forest District office.

(3) National Forest Campgrounds.

(a) Gathering in Developed Campgrounds.

(i) Except as provided in subs (ii), no member shall gather wild plants under authority of this ordinance on any land located within a developed National Forest Campground. For the purpose of this ordinance, a “developed National Forest Campground” means a location that is clearly marked and identified as a campground by the Forest Service and on which improvements clearly have been made to develop and maintain the site as a campground. It is the member's responsibility to be certain about a developed National Forest campground. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local National Forest District office.

(ii) Except where firewood is provided at no cost by the campground or where firewood will be used while camping in the campground, no member shall gather firewood in a developed National Forest campground.

(b) Camping Fees and Length of Stay Restrictions. The Tribe and the Forest Service have entered into a Memorandum of Understanding that will exempt members from certain camping fees and length of stay restrictions that the Forest Service requires of the general public in the National Forests. Once the Tribe and the Forest Service have entered into a campground fee and length of stay Exemption Agreement and accompanying Implementation Plan, and the Tribe has ratified the Agreement and Plan, no member shall fail to comply with the requirements and restrictions contained in the Agreement and Plan. Information about the Exemption Agreement and Implementation Plan can be obtained by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or local National Forest District office.

(4) Non-National Forest Lands. No member shall gather wild plants under authority of this ordinance on any land located within the boundaries of a National Forest that is not owned by the United States of America and part of a National Forest. This provision does not apply to or otherwise restrict any wild plant gathering on non-National Forest lands that is authorized by another tribal ordinance.

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**3.07 Harvest of Trees Subject to a Timber Sale Contract or Located Within a Forest Service Timber Sale Contract Area.**

(1) No member shall gather any tree under authority of this ordinance without a permit issued pursuant to subs. (4) that is subject to the harvest rights of another in a valid Forest Service timber sale contract. Sometimes these trees are marked with orange, green or yellow paint. However, it is the member's responsibility to be certain about trees that are subject to a valid Forest Service timber sale contract. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local National Forest District office.

(2) Within an open Forest Service Timber Sale Contract Area as defined in subs. (3), no member shall undertake any of the following activities under authority of this ordinance without a permit issued pursuant to subs. (4):

(a) Cut down any live tree;

(b) Remove the bark of any live tree;

(c) Trim or remove the branches from the top half of any live tree; or

(d) Trim or remove the branches or other parts, except cones, of any tree that has been cut down by another person.

(3) For the purposes of this ordinance, an "Open Forest Service Timber Sale Contract Area" means a defined location of a National Forest which has been delineated by the Forest Service for the purposes of a timber sale offering and for which a valid Forest Service timber sale contract has been executed. Typically, a Forest Service Timber Sale Contract Area is marked with orange paint on trees around the perimeter of the Area. It is the member's responsibility to be certain about an open Timber Sale Contract Area. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local National Forest District office.

(4) (a) The tribal conservation department, after first consulting with the Forest Service, is authorized to issue permits under this section on such terms and conditions as it deems necessary and appropriate.

(b) No member shall fail to comply with the terms and conditions of a permit issued pursuant to this section.

**3.08 Harvest of Certain "Marked" Trees.**

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(1) No member shall cut down any tree that has been designated with any of the following markings, and no member shall remove, alter or deface any of the following markings:

(a) Orange Paint. Orange paint designates the boundaries of a payment unit within a Forest Service Timber Contract Sale Area;

(b) Red Paint. Red paint indicates boundaries between National Forest land and other ownerships, or may designate a witness tree at a legal corner;

(c) White Paint Stripes or Other White Bands. White stripes or bands indicate a tree being used to collect cones or seeds for nursery stock; or

(d) Metal or Wood Forest Service Signs. These signs designate property or National Forest boundaries, indicate legal corners or other survey data, indicate nursery stock, or provide other similar information.

### **3.09 Permissible Conduct/Assistance by Non-Members.**

(1) Conduct which is not expressly prohibited, restricted or otherwise regulated by this ordinance shall be deemed permissible.

(2) Except as provided in subs. (3) or as otherwise provided herein, nothing in this ordinance shall be construed to prohibit a member from gathering in a National Forest with any other person who is not a member of the Band, provided that such other person possesses a license or permit, or is otherwise not prohibited from engaging in the activity involved and complies with applicable laws.

(3) No member shall allow any person who is not a member to assist, and no such person shall assist, in the activities authorized by this ordinance except that persons of the member's immediate family, including but not limited to grandparents, parents, spouses, siblings, wenh'enh, doodem, and bami'aagin may assist the member provided the member is present when the assistance is rendered.

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## **CHAPTER 4 - ENFORCEMENT**

### **4.01 Enforcement by Deputized Conservation Wardens and Issuance of Citations.**

(1) Any provision of this ordinance may be enforced by tribal conservation wardens or by conservation wardens of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby deputized by the Tribe as tribal conservation wardens for the purposes of enforcing this ordinance.

(2) Such Tribal and Commission wardens may issue a citation on a form approved by the Tribe or tribal court to any person whose conduct is regulated by the provisions of this ordinance upon reasonable belief that such person has violated or breached a provision of this ordinance.

### **4.02 Search and Seizure; When Authorized.**

Tribal and Great Lakes Indian Fish and Wildlife Commission conservation wardens, and properly identified Forest Service law enforcement officers are empowered to:

(1) Conduct a search of an object, place or person whose conduct is regulated by the provisions of this ordinance, and may seize things when the search is made:

(a) with consent;

(b) pursuant to a valid search warrant;

(c) with the authority and within the scope of a right of lawful inspection as provided in this section;

(d) incident to the issuance of a lawfully issued citation under this ordinance; or

(e) as otherwise authorized by law or by the provisions of this ordinance;

(2) Conduct routine inspections, in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities, of vessels, boats, wagons, trailers, automobiles, snowmobiles, off-highway vehicles, containers, packages, and other receptacles contained therein, utilized by a person in a harvest activity authorized by this ordinance and of record of commercial transactions required under this ordinance with have not yet been forwarded to the tribal conservation department;

(3) Execute and serve warrants and other process issued by the tribal court in accordance with applicable law;

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(4) Stop any automobile or other vehicle as part of a lawful inspection authorized by this section or if the person reasonably suspects there is a violation or breach of this ordinance;

(5) With or without a warrant, open, enter and examine vessels, boats, wagons, trailers, automobile, vehicles, snowmobiles, off-highway vehicles, and packages and other receptacles contained therein, in which the person has probable cause to believe that contraband wild plants, may be contained or pursuant to a lawful inspection authorized by this section; and

(6) Seize and hold subject to the order of the tribal court any alleged contraband or property which such person reasonably believes may be needed as evidence in connection with the institution of proceedings in tribal court or any property otherwise authorized to be seized by the provisions of this ordinance.

#### **4.03 Seized Items.**

Any wild plant which is seized in connection with cases referred to Tribal Court for prosecution shall be turned over to the Tribe. No seized wild plant shall be returned by the tribal court or tribal officials to a convicted violator, his or her immediate family or other member of the gathering party.

#### **4.04 Penalties.**

Any person who, for himself or herself, or by his or her agent, servant or employee, or as an agent, servant or employee of another, violates this ordinance, shall be liable as follows:

(1) For any violation, a civil remedial forfeiture of not more than \$5000.00;

(2) For any violation, a revocation or suspension of off-reservation National Forest gathering privileges for a period of time within the discretion of the court;

(3) For any violation, the court may order a natural resources assessment not to exceed 75% of the amount of the civil remedial forfeiture; and

(4) For any violation, appropriate court costs within the discretion of the court.

#### **4.05 Civil Damages.**

(1) In addition to any other penalty allowed by this ordinance, the tribal court may award to the Tribe or, in addition to an action to impose penalties, the Tribe may bring a civil action for recovery of, damages against any person unlawfully gathering or having unlawfully in possession any wild plant taken from a National Forest. The sum assessed for damages for each wild plant shall not be less than the amount stated in this section:

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(a) Any endangered or threatened species protected under this ordinance, \$875.00.

(b) Any wild plant for which a fair market value can be established, the fair market value.

(c) Any other wild plant, \$17.50.

(2) Where the Forest Service or another person or entity has sustained damages as a result of unlawful harvest, the court may, with the consent of the Tribe, award all or part of any civil damages obtained pursuant to this section to the Forest Service or to such person or entity.

#### **4.06 Enhancement of Forfeiture and Penalties.**

Upon conviction of any member for a violation of this ordinance when such person has been convicted of a previous violation of this ordinance within a period of one year, the court may enhance any civil remedial forfeiture or other penalty as the court deems appropriate.

#### **4.07 Collection of Money Penalties.**

Enforcement of the money penalties imposed pursuant to this ordinance may be had through the collection of penalties from funds of the violator held by the Tribe, through the imposition of community service work requirements in lieu of money payment, through debt collection mechanisms of the courts of other jurisdictions, or through any other method authorized by law.

#### **4.08 Parties to a Violation.**

(1) Whoever is concerned in the commission of a violation of this ordinance shall be deemed a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

(a) directly commits the violation;

(b) aids or abets the commission of it; or

(c) is a party to a conspiracy with another to commit it, or advises, hires, or counsels or otherwise procures another to commit it.

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**4.09 Harvesting After Revocation or Suspension.**

No person whose off-reservation National Forest wild plant gathering privileges have been revoked or suspended pursuant to Section 4.04(2), shall gather any wild plant in a National Forest, the harvest of which is regulated by this ordinance, during such revocation or suspension.

**4.10 Schedule of Money Penalties; No Contest.**

The tribal court, in consultation with the Tribe's Governing Body, may adopt a schedule of forfeitures to be imposed by the court upon the receipt of an admission that a violation of this ordinance has occurred, or a plea of not contest, which may be done either in person or in writing. This schedule shall not bind the court as to forfeitures assessed by the court after adjudicating a violation where the defendant has entered a plea of not guilty.

**4.11 Hearings in Tribal Court.**

The Tribal Court shall adjudicate all matters arising under this ordinance pursuant to the provisions of the Tribal Court Code.

**4.12 Members of Other Tribes, Tribal Court Adjudications.**

The tribal court is authorized to adjudicate alleged violations by any member of a signatory tribe of any off-reservation National Forest gathering code of that Tribe provided:

- (1) The relevant provisions of such ordinance are in essential conformance with the parallel provisions of this ordinance; and
- (2) The other Tribe has authorized the adjudication.

## CHAPTER 5 -- SPECIFIC HARVEST REGULATIONS

### 5.01 Conifer Boughs.

No member shall:

- (1) Cut down a tree for the purpose of gathering conifer boughs;
- (2) Remove boughs from the upper half of a tree; or
- (3) Gather for subsequent sale northern white cedar or hemlock boughs.

### 5.02 Princess Pine.

No member shall gather any *Lycopodium* species except by cutting the vertical above ground stem.

### 5.03 Sheet Moss.

No member shall harvest sheet moss except by harvesting no more than fifty percent (50%) of a species in any particular harvest area, including leaving the edges of the patch.

### 5.04 Lodgepoles.

No member shall harvest lodgepoles except by harvesting no more than fifty percent (50%) of a species in any particular harvest area, unless the location is a designated area as defined:

(1) "Designated Area" means a specific site identified and established by the tribal conservation department, in consultation with the Forest Service, for which a species harvestable surplus has been determined and for which the appropriate number of large scale harvest activity permits are available for the designated area.

### 5.05 Firewood.

(1) No member shall cut any live tree or gather any salvage timber for firewood unless the tree is included within a National Forest "firewood sale," other area designated for firewood either generally or on a case-by-case basis, or as permitted pursuant to a valid sugarbush site permit issued pursuant to Section 5.05.

(2) No member shall cut any standing dead tree more than 100 feet from the cleared edge

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of any road where it is legal for highway vehicles to travel.

(3) No member shall cut any standing dead tree within 200 feet of any pond, lake, stream or river.

(4) No member shall use a farm tractor, rubber tired skidder, or similar vehicle for gathering firewood without written permission from the Tribe.

**5.06 Ginseng.**

No member shall gather ginseng from November 1 through August 31.

**5.07 Maple Sap/Sugarbushes.**

(1) No member shall gather maple sap without a sugarbush site permit valid for a designated tribal sugarbush or for such other location approved by the tribal conservation department in consultation with the Forest Service.

(2) "Designated tribal sugarbush" means a specific site identified and established by the tribal conservation department, in consultation with the Forest Service, for which a site management plan has been developed and for which a sugarbush site permit has been issued.

(3) The tribal conservation department may issue a sugarbush site permit to one or more members and may impose such terms and conditions as it deems necessary or appropriate.

(4) No member shall fail to comply with the terms and conditions of a sugarbush site permit.

**5.08 Unsustainable Harvest Activity.**

Member compliance with tribal harvest guidelines (bmp) shall be considered sustainable harvest activity, otherwise no member shall harvest any miscellaneous forest product in such a manner so as to impair the future viability and continued success of the miscellaneous forest product on the landscape or ecosystem from which the member is harvesting, as conditioned by the type of miscellaneous forest product, and must take reasonable precautions to prevent unsustainable harvest activity.

**5.09 Harvest of Timber and Salvage Timber.**

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(1) Harvest for Sale as “Lumber” or Similar Wood Products.

(a) No member shall under authority of this ordinance cut down any timber or gather any salvage timber for the purposes of selling all or part of it, or any product derived from its wood, as bolts, pulpwood or lumber.

(b) No member shall sell under authority of this ordinance all or part of any timber, or any product derived from its wood, as bolts, pulpwood or lumber.

(2) Harvest for Domestic and Non-Commercial Traditional and Cultural Purposes.

(a) No member or tribal entity shall cut down any timber or gather any salvage timber under authority of this ordinance for domestic purposes, such as constructing a structure or dwelling, or for non-commercial traditional and cultural purposes, as those terms are defined in subs. (b), without a valid harvest permit issued pursuant to subs. (c).

(b) (i) For the purposes of this section, the terms “structure or dwelling” mean a building or other larger structure to be used for residential, commercial, or storage purposes, and include, for example, a home, cabin, garage, storage shed, store, office building, and manufacturing facility. The terms do not include smaller structures, such as hunting blinds, fish houses or sugarbush shacks, that are used in the exercise of treaty-reserved hunting, fishing or gathering rights. It is the member’s responsibility to verify that the intended construction use is not prohibited by this ordinance. Any uncertainty should be resolved by contacting the tribal conservation department or the Great Lakes Indian Fish and Wildlife Commission.

(ii) For the purposes of this section, the terms “ non-commercial traditional and cultural purpose” shall be defined by the Tribe issuing the harvest permit. Tribal officials on behalf of the Tribe issuing the harvest permit shall be prepared to help the Forest Service understand the request, if necessary, by explaining how the intended use is identifiable by the Tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use to the Tribe. It is the member’s responsibility to verify that the intended use is not prohibited by this ordinance. Any uncertainty should be resolved by contacting the tribal conservation department or the Great Lakes Indian Fish and Wildlife Commission.

(iii) For the purposes of this section, “tribal entity” means an agency, business, partnership, corporation, committee, body or other entity, and the officers, employees and agents thereof, that is chartered, directed, controlled, or

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majority owned by the Tribe.

(c) (i) The tribal conservation department is authorized to issue harvest permits for domestic and non-commercial traditional and cultural purposes on such terms and conditions as set forth in the attached Tribal Timber Harvest Framework.

(ii) Prior to issuing a harvest permit for domestic or non-commercial traditional and cultural purposes, the tribal conservation department must consult with and obtain the concurrence of the Forest Service.

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**APPENDIX B**

**TRIBAL SELF-REGULATION AGREEMENT**

This Tribal Self-Regulation Agreement [hereafter Self-Regulation Agreement] is entered into as part of the parties' ratification of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaties of 1836, 1837, and 1842* [hereafter MOU]. Specifically, the Self-Regulation Agreement implements the MOU's provisions regarding the Administration of Justice outlined in MOU Section VI.E.

1. **Parties.** The entities that may be parties to the Self-Regulation Agreement are the same as those that may be parties to the MOU, as set forth in MOU Section II.
2. **Incorporation of MOU's Provisions.** The MOU, as may be amended from time to time, is specifically incorporated by reference into the Self-Regulation agreement as if set forth in its entirety. The Self-Regulation Agreement shall be construed consistent with the purposes and provisions of the MOU, and, except as otherwise specifically provided herein, terms in the Self-Regulation Agreement shall have the same definition as provided in the MOU.
3. **Scope and Purposes of the Self-Regulation Agreement.** The Self-Regulation Agreement pertains to the administration of justice regarding the Tribes' exercise of their treaty-reserved ceded territory rights. Its primary purposes are to:
  - a. Facilitate the exercise of the Tribes' self-regulatory authority over the exercise of those rights; and
  - b. Prevent dual prosecution in tribal and federal forums stemming from conduct regulated by a Tribe's Off-Reservation National Forest Gathering Code that complies with the MOU's provisions [hereafter Complying Tribal Code].
4. **Enforcement and Prosecution of Alleged Violations of Tribal Law.** The parties acknowledge that conduct governed by a Complying Tribal Code also might be governed by federal statutes or regulations which the Forest Service is authorized to enforce in federal forums. Where the underlying conduct or act would be a violation of a Complying Tribal Code and of a federal statute or regulation, the parties agree that the Tribe's court is the preferred forum for dealing the alleged violation. Specifically, the parties agree:
  - a. Except as provide in subs. b, any conduct or act which is an alleged violation of a Complying Tribal Code shall be administered and prosecuted in accordance with the provisions of the Complying Tribal Code, provided:

- i. The Complying Tribal Code is in force at the time of the alleged violation; and
    - ii. The Tribe maintains a tribal court with jurisdiction to enforce the Complying Tribal Code.
  - b. After consultation with the affected Tribe, the Forest Service may initiate a federal enforcement action where the underlying conduct is egregious in nature. Factors to determine egregiousness shall include: the type of conduct involved; the amount of natural resources illegally taken; the nature and extent of the natural resource damages caused by the illegal act; considerations for specific and general deterrence; and considerations for compensating those persons or entities harmed or damaged by the conduct or act.
5. **Agreement Effective Date/Termination.** The Self-Regulation Agreement shall take effect when at least one Tribe, the Forest Service's Eastern Region and the Region's Law Enforcement and Investigations have properly ratified it in accordance with their respective governmental procedures. The Self-Regulation Agreement shall be binding as to and between those entities that ratify it upon notice to the other parties of their ratification as provided in MOU Section IX.
- The Self-Regulation Agreement shall automatically terminate at such time when the requisite combination of parties to make it effective no longer exists, or when the MOU terminates.
6. **Dispute Resolution.** The parties agree that any controversies, disputes, differences or misunderstandings arising out of the Self-Regulation Agreement shall be addressed as disputes under the MOU and handled in accordance with the MOU's provisions.
7. **Amendment of Agreement.** The parties agree that amendments to the Self-Regulation Agreement shall be addressed in accordance with the provisions of MOU Section VI.F.
8. **Required Notices/Parties' Designated Representatives.** The parties agree that the provisions of MOU Section IX shall apply to Notices of Ratification of and Withdrawal from the Self-Regulation Agreement and to the parties' designation of representatives regarding the Self-Regulation Agreement.

APPENDIX C

TRIBAL TIMBER HARVEST FRAMEWORK AGREEMENT

This Tribal Timber Harvest Framework Agreement [hereafter Timber Harvest Framework] is entered into as part of the parties' ratification of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaties of 1836, 1837, and 1842* [hereafter MOU]. Specifically, the Timber Harvest Framework implements the MOU's provisions regarding Natural Resource Harvest Management outlined in MOU Section VI.C. It is through the implementation of the Timber Harvest Framework that the Forest Service exercises its authority pursuant to 16 U.S.C. 477; 25 U.S.C. 3055; and the treaties between the United States and GLIFWC's member Ojibwe Tribes, specifically the Treaty of 1836, 7 Stat. 491, the Treaty of 1837, 7 Stat. 536, and the Treaty of 1842, 7 Stat. 591.

1. **Parties.** The entities that may be parties to the Timber Harvest Framework are the same as those that may be parties to the MOU, as set forth in MOU Section II.
2. **Incorporation of MOU's Provisions.** The MOU, as may be amended from time to time, is specifically incorporated by reference into the Timber Harvest Framework as if set forth in its entirety. The Timber Harvest Framework shall be construed consistent with the purposes and provisions of the MOU, and, except as otherwise specifically provided herein, terms in the Timber Harvest Framework shall have the same definition as provided in the MOU:
  - a. For the purpose of this Timber Harvest Framework, timber shall be defined as any "tree" as defined in the attached Model Code, that is not a "lodgpole" or "firewood" as defined in the attached Model Code.
3. **Scope and Purposes of the Timber Harvest Framework.** The Timber Harvest Framework pertains to the Natural Resource Harvest Management principles regarding the Tribes' exercise of their treaty-reserved ceded territory rights. Its primary purposes are to:
  - a. Facilitate the exercise of the Tribes' self-regulatory authority over the exercise of those rights through the implementation of a timber harvest management system; and
  - b. To detail the process pertaining to the Tribes' implementation of the harvest of timber and salvage timber for domestic and non-commercial traditional and cultural purposes.
4. **Timber Harvest Conditions.** The Parties acknowledge the following conditions to the

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Timber Harvest Framework:

- a. Timber and salvage timber harvested pursuant to the Timber Harvest Framework may not be used for commercial purposes.
- b. The harvesting of timber and salvage timber pursuant to the Timber Harvest Framework must comply with relevant land management plans, the National Environmental Policy act, and all other applicable laws and regulations.
- c. The harvesting of timber and salvage timber pursuant to the Timber Harvest Framework shall be in compliance with 36 C.F.R. 223.8.
- d. The harvesting of timber and salvage timber pursuant to the Timber Harvest Framework may be conditioned or denied for reasons including:
  - i. Protecting public health and safety,
  - ii. Preventing interference with Forest Service and/or tribal activities,
  - iii. Complying with federal, tribal, and state laws and regulations,
  - iv. Ensuring the sustainability of a forest product or tribal sensitive species,
  - v. Otherwise protecting ceded territory land and resources.

**5. Timber Harvest Framework Principles.** The parties agree to the implementation of the following Timber Harvest Framework:

- a. A tribe initiating a request for the harvest of timber or salvage timber for domestic or non-commercial traditional and cultural purposes shall inform the Voigt Intertribal Task Force [hereafter VITF] of such intent for the purpose of conducting intertribal coordination.
- b. Once the VITF has conducted the proper intertribal coordination, the Commission shall send a letter to the tribe of such intent, thereby notifying it whether there is an intertribal conflict with the request.
- c. If the VITF determines that there is no intertribal conflict with a request, the Commission staff shall notify the Forest Service that the VITF has conducted intertribal coordination pertaining to the tribe's initial intent to harvest timber or salvage timber for domestic or non-commercial traditional and cultural purposes and that there is no intertribal conflict pertaining to the request. Thereby, the notification shall include a request to consult on the tribe's initial desire to make a request for the harvest of timber or salvage timber for domestic or non-commercial traditional and cultural purposes.

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- d. The Commission, in consultation with the tribe, shall set up a meeting with the Forest Service, the Tribe and the Commission to discuss the specifics of the potential formal request, which shall include the following:
- 1) Potential locations where the Tribe may desire to harvest;
  - 2) Approximate number of trees the Tribe desires to harvest;
  - 3) The species and size of timber the Tribe desires to harvest;
  - 4) The approximate year and season when the Tribe desires to harvest;
  - 5) The purpose for which the timber or salvage timber will be put:
    - i) For domestic purposes, as this term is defined in the attached Model Code.
    - ii) For non-commercial traditional and cultural purposes, as this term is defined in the attached Model Code.
- e. The Forest Service, the Tribe, and the Commission shall set up a site evaluation(s) to determine the feasibility of the proposed harvest location(s). Proposed harvest locations shall be agreed to by consensus of all parties.
- f. The Tribe shall submit a formal “Letter of Request of the Tribe for Timber Harvest Purposes” to the District Ranger. The letter of request shall include:
- 1) The location of harvest;
  - 2) The approximate number of trees to be harvested;
  - 3) The species and size of timber to be harvest;
  - 4) The approximate year and season the timber shall be harvested; and
  - 5) The purpose for which the timber or salvage timber will be put:
    - i) For domestic purposes, as this term is defined in the attached Model Code.
    - ii) For non-commercial traditional and cultural purposes, as this term is defined in the attached Model Code.

The Tribe shall provide a courtesy copy (cc) of this letter of request to the Forest Supervisor, the Tribal Liaison for the Chequamegon-Nicolet, Hiawatha and Ottawa National Forests, the VITF, and Commission staff.

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- g. The Forest Service in consultation with the Tribe and the Commission shall develop an area of operation map.
  - h. The Forest Service in consultation with the Tribe and the Commission shall develop the necessary decision and analysis documents, including those required by the National Forest Management Act and the National Environmental Policy Act. If either the Tribe or the Commission has the capacity, they may exercise the option to jointly develop the necessary decision and analysis documents for the requested site location.
  - i. The Commission, the Tribe and the Forest Service shall develop the specific provisions of the “Operating Plan”.
  - j. The Tribe shall issue a tribal permit to the “member” or “tribal entity” as defined in the attached Model Code.
  - k. The Tribe in consultation with the Commission and the Forest Service shall conduct the necessary monitoring and evaluation of the timber harvest operation.
  - l. The Tribe in consultation with the Commission shall provide the Forest Service with a final notification that the filed operations on the timber harvest operation are complete.
  - m. The Tribe in consultation with the Commission shall provide the Forest Service with a final briefing (success story) on the results of the timber harvest request.
5. **Agreement Effective Date/Termination.** The Timber Harvest Framework shall take effect when at least one Tribe, and the Forest Service’s Eastern Region have properly ratified it in accordance with their respective governmental procedures. The Timber Harvest Framework shall be binding as to and between those entities that ratify it upon notice to the other parties of their ratification as provided in MOU Section IX. The Timber Harvest Framework shall automatically terminate at such time when the requisite combination of parties to make it effective no longer exists, or when the MOU terminates.
6. **Dispute Resolution.** The parties agree that any controversies, disputes, differences or misunderstandings arising out of the Timber Harvest Framework shall be addressed as disputes under the MOU and handled in accordance with the MOU’s provisions.
7. **Amendment of Agreement.** The parties agree that amendments to the Timber Harvest Framework shall be addressed in accordance with the provisions of MOU Section VI.F.
8. **Required Notices/Parties’ Designated Representatives.** The parties agree that the provisions of MOU Section IX shall apply to Notices of Ratification of and Withdrawal from the Timber Harvest Framework and to the parties’ designation of representatives regarding the Timber Harvest Framework.

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