

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #03/12

**1837 AND 1842 CEDED TERRITORY
NATIONAL FOREST GATHERING CODE**

Adopted by Resolution #1263/12 of the Fond du Lac Reservation
Business Committee on August 22, 2012.

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FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #03/12

1837 AND 1842 CEDED TERRITORY NATIONAL FOREST GATHERING CODE

CHAPTER 1
INTRODUCTION AND AUTHORITY

Section 1.01 **Title.**

This Ordinance shall be known as the 1837 and 1842 Ceded Territory National Forest Gathering Code.

Section 1.02 **Authority.**

This Ordinance is enacted by the Fond du Lac Reservation Business Committee pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa, as reserved under the Treaty of LaPointe, 10 Stat. 1109, and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; and under the common law of the United States.

Section 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 Wisconsin 1837 and 1842 Ceded Territory Conservation Code, FDL Ord. #01/12, and the Michigan 1842 Ceded Territory Conservation Code, FDL Ord. #02/12, 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 Band and which is incorporated by reference herein as if set forth in its entirety.

Section 1.04 Effective Date.

This Ordinance shall be effective on the date adopted by the Reservation Business Committee.

Section 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;
- (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.

Section 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.

Section 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 Wisconsin 1837 and 1842 Ceded Territory Conservation Code, FDL Ord. #01/12, or the Michigan 1842 Ceded Territory Conservation Code, FDL Ord. #02/12. It is intended to supplement those codes 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 Wisconsin 1837 and 1842 Ceded Territory Conservation Code, FDL Ord. #01/12, or the Michigan 1842 Ceded Territory Conservation Code, FDL Ord. #02/12.

- (b) Unless otherwise specifically indicated in this Ordinance, it is the intent of this Ordinance that the provisions of the Wisconsin 1837 and 1842 Ceded Territory Conservation Code, FDL Ord. #01/12, and the Michigan 1842 Ceded Territory Conservation Code, FDL Ord. #02/12, that generally govern the conduct of Band members exercising treaty rights applicable in the ceded territory shall apply to Band 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 Wisconsin 1837 and 1842 Ceded Territory Conservation Code, FDL Ord. #01/12, and the Michigan 1842 Ceded Territory Conservation Code, FDL Ord. #02/12, are hereby declared, and shall be construed, to govern Band members engaged in the exercise of treaty-reserved gathering rights applicable to National Forests.

Section 1.08 Religious or Ceremonial Use of Natural Resources.

- (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 Band and with the consent of the Reservation Business Committee, or its designee.
- (2) In reviewing and taking action on any request for religious or ceremonial harvest, the Reservation Business Committee, 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 any permit issued pursuant to this section or to otherwise comply with the requirements imposed by the Band regarding religious or ceremonial harvest of wild plants in National Forests in the ceded territory.

Section 1.10 Reservation of Rights.

The Reservation Business Committee reserves the right to amend or repeal all or any part of this Ordinance at any time. There shall be no vested private right of any kind created by this Ordinance. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the powers of the Fond du Lac Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

CHAPTER 2
DEFINITIONS

Section 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 Wisconsin 1837 and 1842 Ceded Territory Conservation Code, FDL Ord. #01/12, and the Michigan 1842 Ceded Territory Conservation Code, FDL Ord. #02/12.

- (2) The following terms, wherever used in this Ordinance, shall be construed as follows:
 - (a) **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.

 - (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) **"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 1837, 7 Stat. 536, or the Treaty of 1842, 7 Stat. 591.

 - (e) **"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.

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

 - (g) **"Forest Service"** means the United States Department of Agriculture, Forest Service.

 - (h) **"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.

- (i) **"Gather"** or **"gathering"** means to take or acquire or attempt to take or acquire possession of any wild plant, or part thereof.
- (j) **"Gathering Products"** means all products of miscellaneous forest products other than non-timber forest products such as: branchlets, roots, berries, fruits, nuts, and seeds.
- (k) **"Lodgepoles"** means any tree that is less than 5 inches DBH (diameter at breast height).
- (l) **"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.
- (m) **"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 or the Ottawa National Forest.
- (n) **"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.
- (o) **"Non-Timber Forest Products"** means any of the following miscellaneous forest products: bark, boughs, firewood, lodgepoles, and sap as further defined in this section.
- (p) **"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.
- (q) **"Sap"** means the watery fluid that circulates through a tree or plant, carrying food and other substances to the various tissues.
- (r) **"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.
- (s) **"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.

- (t) **"Species of Special Concern"** means any wild plant which is contained on the tribal species of special concern list.
- (u) **"Timber"** means any tree that is not a lodgepole as defined in Section 2.01(2)(k) of this ordinance, or is not firewood as defined in Section 2.01(2)(f) of this ordinance.
- (v) **"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.
- (w) **"Tribal conservation department"** means the Fond du Lac Resource Management Division or, as circumstances indicate, of another signatory tribe.
- (x) **"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.

CHAPTER 3
GENERAL REGULATIONS

Section 3.01 Regulatory Authority.

- (1) The Band asserts legal authority to regulate the exercise of the Band'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.

Section 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 Band, 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 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.

Section 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 Wisconsin 1837 and

1842 Ceded Territory Conservation Code, FDL Ord. #01/12, and the Michigan 1842 Ceded Territory Conservation Code, FDL Ord. #02/12, shall not apply.

Section 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 Commercial 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.
 - (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 Band's ceded territory conservation code.

Section 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 Band 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 Band 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.

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 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 Band 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 Band 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.

Section 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.

Section 3.08 Harvest of Certain "Marked" Trees.

- (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.

Section 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, and doodem may assist the member provided the member is present when the assistance is rendered.

CHAPTER 4
ENFORCEMENT

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

- (1) Any provision of this ordinance may be enforced by Band conservation wardens or by conservation wardens of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby deputized by the Band as Band conservation wardens for the purposes of enforcing this ordinance.
- (2) Such Band and Commission wardens may issue a citation on a form approved by the Band or the 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.

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

Band 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;
- (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.

Section 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 Band. No seized wild plant shall be returned by the Tribal Court or Band officials to a convicted violator, his or her immediate family or other member of the gathering party.

Section 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.

Section 4.05 Civil Damages.

- (1) In addition to any other penalty allowed by this ordinance, the Tribal Court may award to the Band or, in addition to an action to impose penalties, the Band 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:
- (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 Band, award all or part of any civil damages obtained pursuant to this section to the Forest Service or to such person or entity.

Section 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.

Section 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 Band, 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.

Section 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.

Section 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.

Section 4.10 Schedule of Money Penalties; No Contest.

The Tribal Court, in consultation with the Reservation Business Committee, 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.

Section 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.

Section 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

Section 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.

Section 5.02 Princess Pine.

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

Section 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.

Section 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.

Section 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 5.07.

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

Section 5.06 Ginseng.

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

Section 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.

Section 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.

Section 5.09 Harvest of Timber and Salvage Timber.

- (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 Construction and Non-Commercial Traditional and Cultural Purposes.
- (a) No member or Band entity shall cut down any timber live tree 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, "**Band 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 majority owned by the Band.
- (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 harvest permit, the tribal conservation department must consult with and obtain the concurrence of the Forest Service.

CHAPTER 6
EFFECTIVE DATE, AMENDMENTS, SEVERABILITY

Section 6.01 Effective Date.

The provisions of this Ordinance shall become effective on the date of adoption by the Reservation Business Committee.

Section 6.02 Amendment or Rescission.

The Reservation Business Committee may amend this Ordinance by resolution as it deems necessary to protect the public health, safety, and welfare of the Fond du Lac Reservation.

Section 6.03 Severability.


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 will not be affected thereby.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #03/12 was duly presented and adopted by Resolution #1263/12 by a vote of 3 for, 0 against, 0 silent, with a quorum of 1 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on August 22, 2012, on the Fond du Lac Reservation.



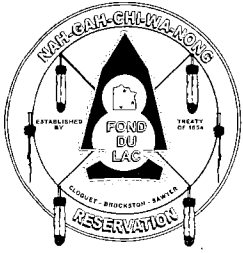
Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer

Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

1720 Big Lake Rd.
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146



Resolution #1263/12

ENACTING FOND DU LAC ORDINANCE #03/12, 1837 AND 1842 CEDED TERRITORY NATIONAL FOREST GATHERING CODE

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

Chairwoman
Karen R. Diver

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. I Representative
Wally Dupuis

Dist. II Representative
Sandra M. Shabiash

Dist. III Representative
Mary S. Northrup

Executive Director,
Tribal Programs
Chuck Walt

WHEREAS, the Fond du Lac Band of Lake Superior Chippewa are a sovereign people, who occupy the Fond du Lac Reservation and retain their aboriginal rights of self-government and self-determination pursuant to the Treaty of LaPointe of September 30, 1854, 10 Stat. 1109; the Indian Reorganization Act of 1934, 25 U.S.C. § 461 et seq.; the common law of the United States; and as recognized by the United Nations Declaration on the Rights of Indigenous Peoples of September 13, 2007; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the duly-constituted governing body of the Fond du Lac Band, to exercise the responsibilities of self-government and management over the Band's affairs; and

WHEREAS, the Fond du Lac Band of Lake Superior Chippewa is a signatory or successor to the Treaty of 1837, 7 Stat. 536; and the Treaty of 1842, 7 Stat. 591; and

WHEREAS, the Reservation Business Committee deems it appropriate and in the best interests of the Band to provide an orderly system of tribal control and regulation of off-reservation gathering activities in National Forests located in those ceded territories; and

WHEREAS, the Reservation Business Committee deems it appropriate and in the best interests of the Band to supplement the Band's ceded territory conservation codes to provide conservation and management for National Forest gathering of wild plants and miscellaneous forest products in the ceded territories through the regulation of member gathering that occurs there;

NOW THEREFORE BE IT RESOLVED, that the Reservation Business Committee hereby enacts Fond du Lac Ordinance #03/12, entitled "1837 and 1842 Ceded Territory National Forest Gathering Code", which shall be effective immediately.

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on August 22, 2012 on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer