



The Grand Traverse Band of Ottawa and Chippewa Indians

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On behalf of the Grand Traverse Band of Ottawa and Chippewa Indians, the following testimony regarding House Bill 5255 is presented to the Committee on Natural Resources by Desmond Berry, Manager of the Grand Traverse Band Natural Resources Department:

A. Commercial Net Pen Aquaculture Would Adversely Impact Great Lakes' Natural Resources

The Mission Statement of the Grand Traverse Band of Ottawa and Chippewa Indians- Natural Resources Department is: "To protect and enhance the natural resources and environment entrusted to us by the Creator for managed and respected utilization by Anishinabek for past, present, and future generations." We do not feel that commercial net pen aquaculture aligns with our guiding mission due to the number of potential risks to the fishery and the environment. As such, the Grand Traverse Band of Ottawa and Chippewa Indians support House Bill 5255 in opposing commercial net pen aquaculture within the Great Lakes.

Net pen aquaculture within Great Lakes waters is not appropriate for a variety of reasons. First and foremost, the Great Lakes and their associated bottomlands are a public trust. These waters are to be managed for the long-term use and enjoyment of ALL people. The Great Lakes Fishery Commission has valued the Great Lakes fishery at more than \$7 billion annually; while the Michigan Quality of Life Agencies have valued the Great Lakes natural resources and associated tourism industry at nearly \$37 billion annually. By privatizing these bottomlands for the benefit of a few, it puts the entire system at risk. Biologically, net pens allow industrial scale "farming" operations to be placed in the open water, without any real separation between the net pens and the surrounding waters. Fish feces, waste feed, disease and parasites all pass through the net into the environment. Because of their nature, net pens hold fish at very high concentrations, such that large amounts of fish waste are produced in a relatively small area. We do not allow feces from beef, pork or other farms to runoff into local rivers that flow into the Great Lakes. How is this different? In ocean systems, tidal changes help "flush" the excess nutrients away. But in the Great Lakes excess nutrient loading is a leading cause of harmful algal blooms. *Cladophora*, an algae found in the Great Lakes, is already a nuisance for many beachgoers; in addition, *Cladophora* has been linked to botulism outbreaks in many fish and bird species. The Clean Water Act has worked to reduce pollutants, including excess nutrients, from entering our waters. Allowing the free-flow of nutrients from commercial net pens into the Great Lakes flies directly in the face of the Clean Water Act.

In addition, given the harsh environment of the Great Lakes, escapement of fish from the net pens is highly likely. Proposed species include those which may inter-breed with wild

stocks, potentially reducing genetic fitness; also, farmed non-native species could become invasive after escaping from net pen facilities.

B. Law Authorizing Aquaculture Would Violate Treaty-Reserved Fishing Rights

The Grand Traverse Band of Ottawa and Chippewa Indians and four other Michigan Indian Tribes possess Great Lakes fishing rights reserved under the Treaty of Washington executed March 28, 1836 (7 Stat. 491).¹ The Grand Traverse Band's off-reservation fishing rights in the Great Lakes were confirmed by federal court litigation, see *United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), *aff'd*, 653 F. 2nd 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981).² Subsequently the federal courts confirmed that the Indian Tribes signatory to the 1836 Treaty retain property rights in the Great Lakes fishery resources:

Treaty reserved rights to access traditional fishing areas and catch fish are property rights protected by the United States Constitution. See *Mille Lacs Band of Chippewa Indians v. State of Minnesota*, 853 F.Supp. 1118, 1125 (D.Minn. 1994); *Muckleshoot Indian Tribe v. Hall*, 698 F.Supp. 1504, 1510 (W.D.Wash. 1988).

Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Department of Natural Resources, 971 F.Supp. 282, 288 (W.D. Mich. 1995), *aff'd*, 141 F.3d 635 (6th Cir. 1998), *cert. denied*, 525 U.S. 1040 (1998).

Any Michigan law or regulation authorizing aquaculture within the Great Lakes would be subject to challenge by the 1836 Treaty Tribes under the holding of Paragraph 18 of the federal court's May 7, 1979 Declaratory Judgment and Decree:

Because the right of the Plaintiff tribes to fish in ceded waters of the Great Lakes is protected by treaties of the Ottawa and Chippewa Indians with the United States, *that right is preserved and protected under the supreme law of the land*, does not depend on State law, is distinct from the rights and privileges held by non-Indians and may not be qualified by any action of the state or its agents nor regulated by the state or its agents

¹ The purpose of the 1836 Treaty was for the United States to acquire legal title to the lands and adjacent Great Lakes waters occupied by the Indian signatories, because the U.S. could not grant statehood to Michigan in 1837 without having legal title to the land. As "aboriginal occupants" of the area, the Ottawa and Chippewa (Odawa and Ojibway) bands were considered (by the Anglo-American legal system) to have aboriginal or "Indian title" to the lands ceded in the Treaty. Suffice it to say that the 1836 Treaty in effect was a contractual agreement; the Ottawas and Chippewas agreed to covey title to the land, but they reserved the right to continue using the land and waters for sustenance and commercial activities including Great Lakes fishing.

² The Grand Traverse Band of Ottawa and Chippewa Indians intervened as a party-plaintiff in this litigation pursuant to the federal court's order entered October 26, 1979 [Doc #394, W.D. Mich. Case No. 2:73-cv-26].

except as authorized by Congress. *** *To the extent that any laws or regulations of Michigan are inconsistent with the treaty rights of the Michigan Indians, such laws and regulations are void ab initio* and of no force and effect as to the plaintiff tribes and their members. (Emphasis added.)

A Michigan law or regulation authorizing commercial net pen aquaculture in the Michigan waters of the Great Lakes would be inconsistent with the 1836 Treaty-reserved Great Lakes fishing rights declared in the *United States v. Michigan* litigation. Fish harvested and sold from these facilities would compete for the seafood market share with those harvested by Tribally-licensed commercial fishers. However, it should not be necessary for the 1836 Treaty Tribes to challenge a law authorizing commercial net pen aquaculture. Instead, the Michigan legislature should enact House Bill 5255 prohibiting net pen aquaculture in the Michigan waters of the Great Lakes because it poses an unacceptable threat to the Great Lakes' natural resources that are of paramount concern to all of the citizens of Michigan.