

# GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

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## • MEMBER TRIBES •

### MICHIGAN

Bay Mills Community  
Keweenaw Bay Community  
Lac Vieux Desert Band

### WISCONSIN

Bad River Band  
Lac Courte Oreilles Band  
Lac du Flambeau Band  
Red Cliff Band  
St. Croix Chippewa  
Sokaogon Chippewa

### MINNESOTA

Fond du Lac Band  
Mille Lacs Band

## TESTIMONY

of

**JAMES E. ZORN**

**EXECUTIVE ADMINISTRATOR,  
GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION**

on

**SPECIAL SESSION  
ASSEMBLY BILL / SENATE BILL 24**

**submitted to the**

**WISCONSIN STATE ASSEMBLY AND SENATE  
NATURAL RESOURCES COMMITTEES**

**October 28, 2011**

**WRITTEN TESTIMONY**  
**OF**  
**JAMES E. ZORN, EXECUTIVE ADMINISTRATOR**  
**GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION**

Mr. Chairman and Members of the Committees, my name is James E. Zorn, Executive Administrator of the Great Lakes Indian Fish and Wildlife Commission (Commission or GLIFWC). Thank you for the opportunity to submit written testimony on Special Session AB/SB 24.

At the outset, it must be noted that due to the short timeframes involved, I have not had the opportunity to discuss these comments with GLIFWC's governing Board of Commissioners or Voigt Intertribal Task Force. However, I would be remiss if I did not offer the following thoughts on this bill and the initial analysis that has been provided by my staff. The Commission's governing bodies may have additional comments on this legislation, and I would urge the legislature to talk with the tribes directly on a government-to-government basis as well as under the auspices of the *Lac Courte Oreilles v. Wisconsin* case, commonly known as the *Voigt* case.

It is important that wild rice waters are included in the list of areas of "significant scientific value" that do not qualify for exemptions from permit requirements related to the placement of structures and deposits in navigable waters. However, concerns remain that many of the other provisions of the bill significantly undermine the protection of fish, wildlife and plant resources and habitats within the treaty ceded territories.

Although sufficient time has not been provided to perform an in-depth legal analysis of the ramifications of this bill, it is clear that the State does not have unfettered discretion to exercise its management prerogatives to the detriment of the tribes' treaty rights and in ways that would be contrary to the requirements of the *Lac Courte Oreilles v. Wisconsin* case. The State may not legislate away the tribes' treaty rights; similarly, legislating to the detriment of treaty resources through destruction of their habitat may not be used to accomplish the same end.

Other than the wild rice provision referred to above, the bill does not account for the tribes' treaty rights. The bill appears to eliminate, in many cases, the ability to analyze whether a specific action would be contrary to the mandates of the *Voigt* case. What the legislature might view as an insignificant impact to a shoreline that could be regulated under a general permit, for example, might be a major issue for the tribal member that harvests in that area.

The bill does not appear to take into account the additive and cumulative impacts from the myriad actions authorized, a major shortcoming that could result in widespread impacts to fish and wildlife habitats. More specific background information and comments on various provisions of AB/SB 24 follow.

**I. GLIFWC – BACKGROUND AND ROLE WITH RESPECT TO ACTIVITIES IN THE CEDED TERRITORIES AFFECTED BY AB/SB 24**

GLIFWC was founded in 1984 as a natural resources management agency exercising delegated authority from its 11 federally-recognized Ojibwe<sup>1</sup> member tribes in Wisconsin, Michigan and Minnesota. Those tribes have reserved hunting, fishing and gathering rights in territories ceded to the United States in treaties with the United States.

GLIFWC's Voigt Intertribal Task Force comprises nine of those tribes.<sup>2</sup> GLIFWC and the Task Force were established by the tribes to protect and regulate the use of off-reservation natural resources. They serve the tribes by conserving and managing off-reservation fish, wildlife, and other resources, helping in the development and enhancement of institutions for tribal self-regulation of natural resources, and protecting the habitats and ecosystems that support those resources.

**II. AB/SB 24 CANNOT UNDERMINE THE CONSULTATION REQUIRED UNDER VOIGT CASE STIPULATIONS**

Whatever timeframes are contained in the bill, the DNR must consult with the Voigt Intertribal Task Force, as required by the *Voigt* case, before issuing any permit that would impact wild rice or other wild plants in the ceded territory.

**III. AB/SB 24 HAS THE POTENTIAL TO SIGNIFICANTLY IMPACT LAKES AND STREAMS IN THE CEDED TERRITORY**

The bill impacts a variety of individually and generally permitted discharges into waters of the ceded territory, and staff is concerned that it will undermine the protection of fish and wildlife habitat, and groundwater and surface water resources. Examples include:

- AB/SB 24 permits activities that will increase the deposition of material in ceded territory waterbodies, with potential to harm fish spawning, nursery and other habitat.

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<sup>1</sup> The tribes also are referred to as Chippewa, or, in their own language, Anishinaabe.

<sup>2</sup>GLIFWC's Voigt Task Force member tribes are: the Bad River Band of the Lake Superior Tribe of 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, Keweenaw Bay Indian Community and Lac Vieux Desert Band of Lake Superior Chippewa Indians.

- AB/SB 24 requires the development of general permits that allow the removal of native plants and animals that “impede navigation or access,” with potential impacts to wild rice, waterfowl, aquatic plants and the ecosystems they support.
- AB/SB 24 requires an expedited process for approval of projects that would impact lakes and streams, including dams and culverts, with potential impacts to fish movement and the ecosystems of the flooded areas.
- AB/SB 24 requires the establishment of specific timeframes for approval of high-capacity wells, prospecting permits, and oil and gas developments, and makes permit approval automatic if the DNR fails to act. Artificial deadlines may not allow the State the flexibility it needs to address particularly complex proposals, or to consult as required by the *Voigt* case, with the result that poor decisions are made to the detriment of ceded territory natural resources and habitats.

#### **IV. AB/SB 24 HAS THE POTENTIAL TO SIGNIFICANTLY IMPACT WILD RICE**

It is important that wild rice waters are included in the list of areas of “significant scientific value” that do not qualify for exemptions from permit requirements related to the placement of structures and deposits in navigable waters.

Unfortunately, this provision is undermined by the separate requirement that the DNR establish a general permit that would allow “[a]ny person to annually remove not more than 500 cubic yards of plant or animal nuisance deposits from a stream, inland lake, or outlying waters if the plant or animal nuisance deposits impede navigation or access to the stream, inland lake, or outlying waters.”

- This provision has the potential to directly affect the abundance and habitat of wild rice in the ceded territory, and therefore, under *Voigt* case stipulations, the DNR must consult with the Task Force.
- Because there is little or no opportunity for such consultation under a general permit scheme, any activity that would impact wild rice and that previously required an individual permit, must continue to require an individual permit.

#### **V. AB/SB 24 HAS THE POTENTIAL TO SIGNIFICANTLY IMPACT AIR QUALITY**

AB/SB 24 would specify that the DNR is not required to use air dispersion modeling in determining whether a new stationary source of air pollution would comply with applicable emission limitations. This provision potentially removes an important tool that the DNR should be using to estimate emissions, thereby making predictions less certain and increasing the potential for mistakes.

## VI. CONCLUSION

AB/SB 24 is troubling for the reasons outlined above. There is no reason to change current law in these ways. In light of the State's *Voigt* case obligations, and with so much uncertainty about whether this is a valid bill as enacted, it should either not be passed, or the ceded territory should be exempted.