

# GREAT LAKES INDIAN FISH & 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

### MINNESOTA

Fond du Lac Band  
Mille Lacs Band

## GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION ORDER

REVISED

Order No. 2017-02

### **Birch Pole Harvesting Regulations**

This Commission Order amends the Tribes' gathering regulations for U.S. Forest Service properties included within the Memorandum of Understanding Regarding Tribal-USDA-Forest Service Relations on National Forest Lands within the Ceded Territories in the Treaties of 1836, 1837 and 1842, the Apostle Islands National Lakeshore and properties included in the administrative document "Tribal Gathering on State Lands Within the Portion of the Ceded Territory Located in the State of Wisconsin – Public Lands Open to Tribal Gathering," pursuant to authority granted by the Voigt Inter-Tribal Task Force, its member Tribes, and the Bay Mills Indian Community.

#### **Sec. 1: Authority and Applicability; Terms Used and Definitions.**

**Subd. 1:** This Order is issued in accordance with the self-governing authority of the Tribes to regulate their members' off-reservation harvesting activities. Consistent with this authority, the Tribes may issue more restrictive regulations than those regulations currently applicable to the above-listed properties. Upon the issuance of this Order, unless a Tribe chooses to revert to the original regulations for tribal birch pole harvesting, the regulations established herein shall be the Tribe's regulations as provide in each Tribe's Codes.

**Subd. 2:** This Order is issued to establish culturally appropriate regulations to provide tribal members with treaty harvest opportunities in the implementation of the Memorandum of Understanding Regarding Tribal-USDA-Forest Service Relations on National Forest Lands within the Ceded Territories in the Treaties of 1836, 1837 and 1842, the General Agreement Comprising Tribal-National Park Service Relations Regarding the Apostle Islands National Lakeshore and the Gathering of Miscellaneous Forest Products on State Properties: 2-Year Implementation Evaluation Final Report, September 2013, consistent with *Lac Courte Oreilles v. Wisconsin*, 668 F.Supp. 1233, 1241-42 (W.D. Wisc. 1987) and related decisions.

**Subd. 3:** Terms used in the Codes shall be given the meaning set forth in the Codes when used in this Order.

**Sec. 2: Birch Pole Harvesting Regulations.** Starting immediately and continuing until changed by a subsequent commission order, action by a Tribe's governing body amending birch pole provisions to the original version, or joint action on the part of parties to an agreement listed above, the following regulations for Tribal birch pole harvesting shall apply:

**Subd. 1: Reduction in the Number of Birch Pole Available Under General Gathering Permits.** Tribal members shall be limited to gathering no more than five birch poles, per year, pursuant to a general gathering permit.

**Sec. 3: Reservation of Each Tribe's Authority.** Nothing in this order is intended to, or shall be construed to, limit the authority of each Tribe to establish birch pole harvesting regulations or other measures that are more restrictive than provided in this Order.

Dated this 14th day of November, 2017.

  
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James E. Zorn, Executive Administrator  
Great Lakes Indian Fish and Wildlife Commission

## Model Code Amendments – Birch Pole Harvesting Amendments

- 1) Off Reservation National Forest Code revision regarding birch pole harvesting [§ 2.01 (Definitions) and § 3.02 (Permits and Identification – General.)] are (deletions shown by ~~strikeout~~ and additions by **redline**):

### **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) **“Birch Lodgepole”** means a lodgepole of a paper birch tree (*wiigwasimutig/Betula papyrifera*) or yellow birch tree (*wiinzik/Betula alleghaniensis*).

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

(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, the Hiawatha National Forest, the Huron-Manistee 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)(i) of this ordinance, or is not firewood as defined in Section 2.01(2)(d) 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) **“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.

### 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 (up to five (5) may be Birch Lodgepoles, see (e) below)

e) Birch Lodgepoles; Five (5) Birch 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.

[Subsections (2)-(6) unchanged.]

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2) Apostle Islands National Lakeshore Conservation Code revision regarding birch pole harvesting [§ 2.01 (Definitions) and § 5.05 (Wild Plant Gathering.)] are (deletions shown by ~~strikeout~~ and additions by **redline**):

**2.01 Definitions.**

[Subsection (1) unchanged.]

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

(a) "**Apostle Islands National Lakeshore**" means the entire mainland and island portions contained within the Apostle Islands National Lakeshore (Lakeshore), except: (i) These conditions do not apply to any part of the Lakeshore's mainland portion that is located within the boundaries of the Bad River or Red Cliff Indian Reservations; (ii) These conditions do not apply to any part of Chequamegon Point (known to the National Park

Service as Long Island); (iii) These conditions do not apply to any part of Madeline Island (which is not part of the Lakeshore).

(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) **“Birch Lodgepole”** means a lodgepole of a paper birch tree (wiigwasimig/*Betula papyrifera*) or yellow birch tree (wiinzik/*Betula alleghaniensis*).

(d) **“Bough”** means any branch of a tree less than 2” (two inches) in diameter and greater than 1/4” (one-quarter inch) in diameter.

(e) **“Branchlet”** means any branch of a tree less than or equal to 1/4” (one-quarter inch) in diameter.

(f) **“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 1842, 7 Stat. 591.

(g) **“Designated tribal sugarbush”** means a specific site identified and established by the tribal conservation department, in consultation with the Lakeshore, for which a site management plan has been developed and for which a sugarbush site permit has been issued.

(h) **“Designated Use Area”** means a specific site designated and maintained by the Lakeshore for any activity or use as part of the operation and management of of the Lakeshore, and includes, but is not limited to light houses, buildings, campgrounds, mowed areas, picnic areas, public beaches, parking lots, trails, access and maintenance roads.

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

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

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

(l) **“Harvest Activities”** or **“Harvesting”** means hunting, fishing, trapping, or gathering.

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

(n) **“Lakeshore”** means the Apostle Islands National Lakeshore, National Park Service, United States Department of Interior.

(o) **“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.

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

(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 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)(i) of this ordinance, or is not firewood as defined in Section 2.01(2)(d) 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) **“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.

## **5.05 Wild Plant Gathering.**

Gathering within the Apostle Islands National Lakeshore of wild plants is subject to the following regulations:

(1) **Gathering Permit.** No member shall gather any wild plants within the Apostle Islands National Lakeshore without possessing a valid gathering permit approved by the Tribe, 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 the Lakeshore.

(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 (up to five (5) may be Birch Lodgepoles, see (e) below)

e) Birch Lodgepoles; Five (5) Birch Lodgepoles

2) Large Scale Harvest Activity Closed within the Lakeshore. No member shall gather non-timber forest products on a large scale, above the limits established for small scale harvest activity, within the Lakeshore.

[Subsections (2)-(11) unchanged.]

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3) Off Reservation Conservation Code (Voigt Model Code) revision regarding birch pole harvesting [§ 12.02 (Definitions) and § 12.03 (Miscellaneous Forest Product Harvesting Permits)] are (deletions shown by ~~strikeout~~ and additions by **redline**):

**12.02 Definitions.**

For the purposes of this chapter, the following terms shall be construed to apply as follows:

(1) **“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.

(2) **“Birch Lodgepole”** means a lodgepole of a paper birch tree (*wiigwasi-mitig/Betula papyrifera*) or yellow birch tree (*wiinzik/Betula alleghaniensis*).

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

(4) **“Designated Tribal Sugarbush”** means a specific site identified and established by the tribal conservation department, in consultation with the land manager according to Section 12.04(7), of this ordinance, for which a site management plan has been developed and for which a sugarbush site permit has been issued.

(5) **“Designated Use Area”** means a specific site designated and maintained by the land manager for any activity or use as part of the operation and management of public land, and includes, but is not limited to offices, buildings, campgrounds, mowed areas, picnic areas, public beaches, parking lots, trails, access and maintenance roads.

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

(7) **“Gathering”** means to take or acquire or attempt to take or acquire possession of any miscellaneous forest product, or parts thereof.

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

(9) **“Ginseng”** means the roots, seeds or other parts of wild American ginseng (Panax quinquefolium or Panax quinquefolius).

(10) **“Land Manager”** means any owner or other entity responsible for the management of any public land.

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

(12) **“Miscellaneous Forest Products”** means any undomesticated species, or part thereof, of the plant and fungi kingdoms occurring in both forested and non-forested natural ecosystems including: non-timber forest products, wild plants, gathering products, and includes endangered or threatened plant species, as defined in Section 2.01(4), of this ordinance, but for the purposes of this ordinance excludes wild rice.

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

(14) **“Public lands”** means those lands, including the beds of any streams and flowages, located within the ceded territory owned by the State of Wisconsin or any of its political subdivisions or Departments.

(15) **“Sap”** means the watery fluid that circulates through a tree or plant, carrying food

and other substances to the various tissues.

(16) **“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.

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

(18) **“Timber”** means any tree that is not a lodgepole, as defined in Section 12.02(10), of this ordinance.

(19) **“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.

(20) **“Wild plant”** means miscellaneous forest products that are not trees, such as herbaceous plants and shrubs.

### **12.03 Miscellaneous Forest Product Harvesting Permits.**

[Subsection (1) unchanged.]

#### (2) Non-Timber Forest Product and Ginseng Gathering Permits.

(a) No member shall harvest or gather non-timber forest products and ginseng pursuant to this ordinance without possessing a valid gathering permit issued by the tribal conservation department as follows:

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

- |                      |  |
|----------------------|--|
| 1) Bark;             | Twenty (20) Trees  |
| 2) Boughs;           | Five (5) Tons  |
| 3) Firewood;         | Ten (10) Cords   |
| 4) Lodgepoles;       | Seventy-Five (75) Lodgepoles (up to five (5) may be Birch Lodgepoles, see (e) below) |
| 5) Birch Lodgepoles; | Five (5) Birch Lodgepoles  |

(ii) 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:

1) 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 and approval of the land manager, which approval may not be unreasonably withheld.

2) "Designated Area" means a specific site identified and established by the tribal conservation department, in consultation with and approval of the land manager, which approval may not be unreasonably withheld, 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.

3) 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.

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

(b) 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.

(c) 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 12.07 of this ordinance.