

WAGANAKISING ODAWA



TRIBAL CODE of LAW

TITLE IV. NATURAL RESOURCES

2024.2

WAGANAKISING ODAWA TRIBAL CODE of LAW

TABLE OF CONTENTS

TITLE IV. NATURAL RESOURCES.....	1
Chapter 1. Fishing Rules and Regulations	1
4.101 PURPOSE.....	1
4.102 DEFINITIONS	1
4.103 REPEAL AND REPLACEMENT OF PRIOR LEGISLATION	2
4.104 SAVINGS CLAUSE.....	2
4.105 EFFECTIVE DATE.....	2
CHIPPEWA OTTAWA RESOURCE AUTHORITY	3
PART ONE: GENERAL MATTERS.....	3
PART TWO: ZONES.....	7
PART THREE: GEAR.....	20
PART FOUR: SPECIES.....	24
PART FIVE: NON-COMMERCIAL FISHING	35
PART SIX: LICENSES AND INFORMATION	37
PART SEVEN: REGULATION AND ENFORCEMENT	43
PART EIGHT: ACCESS.....	47
Chapter 2. LTBB Off-Reservation (Ceded Territory, Hunting, Fishing, and Gathering [Repealed]).....	49
Chapter 3. Natural Resources Regulations for the Little Traverse Bay Bands of Odawa Indians' Reservation [Repealed]	50
Chapter 4. Wetland Protection and Management.....	51
4.401 FINDINGS	51
4.402 PURPOSE.....	51
4.403 DEFINITIONS	52
4.404 WETLAND PROTECTION OFFICER.....	54
4.405 NATURAL RESOURCE COMMISSION	55
4.406 LANDS TO WHICH THIS STATUTE APPLIES	55
4.407 WETLAND VERIFICATION AND DELINEATION.....	55
4.408 REGULATIONS; ADMINISTRATIVE PROCEDURES; DEPARTMENTAL PROCEDURES	56
4.409 ENFORCEMENT AND PENALTIES.....	57

4.410	SEVERABILITY	57
4.411	EFFECTIVE DATE.....	58
Chapter 5. Natural Resources Commission.....		59
4.501	GENERAL PROVISIONS.....	59
4.502	DEFINITIONS	59
4.503	PURPOSE.....	60
4.504	NATURAL RESOURCES COMMISSION	60
4.505	MEETINGS OF THE NATURAL RESOURCES COMMISSION.....	62
4.506	POWERS AND AUTHORITIES OF THE LTBB.....	64
4.507	POWERS OF THE COMMISSIONER	66
4.508	SAVINGS CLAUSE.....	66
4.509	EFFECTIVE DATE.....	67
Chapter 6. Protection of Great Lakes		68
4.601	TITLE AND PURPOSE	68
4.602	DEFINITIONS	68
4.603	DRILLING, SALE, AND DIVERSION PROHIBITION.....	69
4.604	VIOLATIONS OF FEDERAL LAW BASED ON TREATIES	69
4.605	SAVINGS CLAUSE.....	70
4.606	EFFECTIVE DATE.....	70
Chapter 7. Solid Waste Disposal.....		71
4.701	INTRODUCTION / PURPOSE.....	71
4.702	DEFINITIONS	71
4.703	APPLICABILITY.....	74
4.704	SOLID WASTE DISPOSAL.....	74
4.705	SOLID WASTE REDUCTION, REUSE AND RECYCLING.....	75
4.706	OPEN BURNING.....	75
4.707	SOLID WASTE COLLECTION AND TRANSPORT	76
4.708	ENFORCEMENT	77
4.709	PERMITS	78
4.710	LIMITATIONS.....	78
4.711	SAVINGS CLAUSE.....	78
4.712	EFFECTIVE DATE.....	78
Chapter 8. Conservation and Cultural Preservation Easement Act.....		80
4.801	PURPOSE	80
4.802	DEFINITIONS	80

4.803	ENFORCEABILITY AND CONSERVATION EASEMENT: RECORDATION	81
4.804	ENFORCEABILITY OF CULTURAL / HISTORIC PRESERVATION EASEMENT: RECORDATION	82
4.805	ENFORCEABILITY OF TRADITIONAL USE EASEMENT.....	82
4.806	ENFORCEABILITY OF OTHER RESTRICTIONS, EASEMENTS, COVENANTS OR CONDITIONS.....	83
4.807	RECORDATION OF EASEMENTS; ENFORCEMENT; ASSIGNMENT AND ACQUISITION.....	83
4.808	SAVINGS CLAUSE.....	84
4.809	EFFECTIVE DATE.....	84
Chapter 9. Fishing Vessel Safety		85
4.901	INTRODUCTION / PURPOSE.....	85
4.902	DEFINITIONS	85
4.903	EQUIPMENT	86
4.904	ALCOHOL AND CONTROLLED SUBSTANCES.....	93
4.905	DOCKSIDE INSPECTIONS	94
4.906	REQUIRED DECALS.....	94
4.907	ADDITIONAL PROVISIONS.....	96
4.908	ENFORCEMENT	96
4.909	PENALTIES.....	97
4.910	EXEMPTIONS.....	99
4.911	LIMITATIONS.....	101
4.912	SAVINGS CLAUSE.....	101
4.913	EFFECTIVE DATE.....	101
Chapter 10. Act Prohibiting the Patenting of Organisms.....		102
4.1001	PREAMBLE AND GENERAL DEFINITIONS.....	102
4.1002	DEFINITIONS	103
4.1003	PROHIBITION AGAINST PATENTING OF ORGANISMS.....	103
4.1004	PENALTY	104
4.1005	ENFORCEMENT	104
4.1006	SAVINGS CLAUSE.....	104
4.1007	EFFECTIVE DATE.....	104
Chapter 11. Natural Resource Protection		106
4.1101	SHORT TITLE	106

4.1102	PURPOSE	106
4.1103	DEFINITIONS	106
4.1104	JURISDICTION	107
4.1105	NATURAL RESOURCE COMMISSION	108
4.1106	NATURAL RESOURCE DEPARTMENT	108
4.1107	TRIBAL CONSERVATION ENFORCEMENT DIVISION	110
4.1108	PERSONS AUTHORIZED TO FISH, HUNT, TRAP AND GATHER	117
4.1109	SCIENTIFIC RESEARCH AND STUDY, NUISANCE ANIMALS	117
4.1110	ENFORCEMENT	118
4.1111	ENHANCEMENT AND EDUCATIONAL ACTIVITIES	122
4.1112	SAVING CLAUSE	123
4.1113	EFFECTIVE DATE	123
Chapter 12. Nibiish Naagdownen “The Care of Water”: Clean Water Act		125
4.1201	TITLE	125
4.1203	DEFINITIONS	127
4.1204	JURISDICTION	134
4.1205	AUTHORITIES AND DUTIES OF THE ENVIRONMENTAL SERVICES PROGRAM	135
4.1206	NO WAIVER OF SOVEREIGN IMMUNITY	137
PART 2. LTBB WATER QUALITY STANDARDS		137
Subpart A. Water Quality Standards		137
4.1207	WATER QUALITY STANDARDS	137
4.1208	REVIEW OF WATER QUALITY STANDARDS	139
4.1209	IMPLEMENTATION OF WATER QUALITY STANDARDS	140
Subpart B. Water Quality Planning and Management		140
4.1210	COORDINATED WATER QUALITY PLANNING AND MANAGEMENT	140
4.1211	IDENTIFICATION OF WATERS	140
4.1212	TOTAL MAXIMUM DAILY LOADS AND WASTELOAD ALLOCATIONS/LOAD ALLOCATIONS	142
4.1213	WATER QUALITY MONITORING, MANAGEMENT PLANS AND REPORTS	143
4.1214	CONTINUING PLANNING PROCESS	144
Subpart C. Certificate of Compliance		145
4.1215	CERTIFICATION OF COMPLIANCE WITH FEDERAL WATER	

	POLLUTION CONTROL REQUIREMENTS	145
PART 3. SURFACE WATER DISCHARGE AND PRETREATMENT REQUIREMENTS	146
4.1216	IMPLEMENTATION	146
4.1217	REGULATIONS REQUIRED	146
Subpart A. Surface Water Discharges		147
4.1218	PERMIT REQUIRED TO DISCHARGE INTO SURFACE WATER.....	147
4.1219	EFFLUENT LIMITATIONS ENFORCED IN ISSUANCE OF PERMITS.....	149
4.1220	COMPLIANCE SCHEDULES.....	151
4.1221	EXTENSION OF TIME TO MEET WATER QUALITY AND EFFLUENT	
	STANDARDS	151
4.1222	RECORDING, REPORTING, AND INSPECTION CONDITIONS	152
4.1223	DISPOSAL OF POLLUTANTS INTO WELLS	152
Subpart B. Pretreatment Requirements		153
4.1224	PRETREATMENT STANDARDS	153
4.1225	CONDITIONS IN PERMITS ISSUED FOR PUBLIC OWNED	
	TREATMENT WORKS	153
4.1225	OTHER AUTHORITY OF PROGRAM REGARDING PUBLIC OWNED	
	TREATMENT WORKS	154
PART 4. PROTECTION AND MANAGEMENT OF WETLANDS		155
4.1227	WETLANDS PROTECTION PROGRAM.....	155
4.1228	APPLICABILITY.....	156
4.1229	WETLANDS VERIFICATION.....	157
4.1230	PERMIT REQUIREMENT.....	158
4.1231	WETLAND MITIGATION	158
PART 5. SEWAGE SLUDGE.....		159
4.1232	REGULATION OF THE USE AND DISPOSAL OF SEWAGE SLUDGE	159
4.1233	BLANK SECTION	160
4.1234	PERMITS	160
4.1235	RECORDKEEPING, REPORTING, AND INSPECTIONS.....	161
PART 6. PERMIT PROCEDURES		161
4.1236	IMPLEMENTATION	161
4.1237	CONDITIONS OF PERMITS.....	162

4.1238	TERMS OF PERMITS.....	163
4.1239	NOTICE OF ACTIONS.....	163
4.1240	ISSUANCE, REVOCATION, OR DENIAL OF PERMITS	164
4.1241	CONFLICT OF INTEREST.....	166
4.1242	FUNDING OF PERMIT PROGRAM	166
PART 7. NON-POINT SOURCE MANAGEMENT PROGRAM.....		167
4.1243	NON-POINT SOURCE ASSESSMENT REPORT.....	167
4.1244	NON-POINT SOURCE MANAGEMENT PROGRAM.....	168
PART 8. CLEAN LAKES PROGRAM.....		169
4.1245	BIENNIAL REPORT	169
4.1246	CONTRACTS AND INTERAGENCY AGREEMENTS	171
PART 9. WATERSHED PROTECTION PROGRAM.....		171
4.1247	DEVELOPMENT OF PROGRAM.....	171
PART 10. ENFORCEMENT		171
4.1248	RECORDS, INSPECTIONS, MONITORING AND ENTRY.....	172
4.1249	GENERAL ENFORCEMENT AUTHORITY	174
4.1250	JUDICIAL ENFORCEMENT.....	178
4.1251	ADMINISTRATIVE ASSESSMENT OF PENALTIES.....	181
PART 11. RULEMAKING AND JUDICIAL REVIEW.....		183
4.1252	RULEMAKING	183
4.1253	REVIEW IN TRIBAL COURT.....	184
4.1254	SEVERABILITY	186
4.1255	EFFECTIVE DATE.....	186

TITLE IV. NATURAL RESOURCES
Chapter 1. Fishing Rules and Regulations
for the Treaty Ceded Waters of Lake Superior, Huron, and Michigan

4.101 PURPOSE

On August 17, 1997, the Little Traverse Bay Bands of Odawa Indians’ (“LTBB”) Tribal Council enacted Waganakising Odawak Statute 1997016 titled “Little Traverse Bay Bands of Odawa Indians Commercial and Subsistence Fishing Rules and Regulations for The Treaty Ceded Waters of Lakes Superior, Huron and Michigan” which replaced Waganakising Odawak Statutes 1995-004 and 1994-001. Subsequent to the enactment of Waganakising Odawak Statute 1997016, LTBB became a party in the Federal Court Case of *United States, et al. v. Michigan*, United States District Court for the Western District of Michigan, Case no: 2:73 CV 26. As party to that case, LTBB participated in negotiations which culminated in the entry by the Court of a Consent Decree on August 7, 2000 which is binding on LTBB. The Consent Decree states that “[t]he Tribes shall adopt the CORA Charter, Tribal Plan, and Tribal Code for management and regulation of their fisheries. . .”

(Source: WOS 2003-09, December 7, 2003, Section I)

4.102 DEFINITIONS

A. “**Consent Decree**” means the Consent Decree entered by the United States District Court for the Western District of Michigan by Judge Richard Enslen on August 7, 2000 in the case of *United States et al. v. Michigan*, Case No 2:73 CV 26.

B. “**Tribal Code**” means the *Chippewa Ottawa Resource Authority Commercial, Subsistence, and Recreational Fishing Regulations for the 1836 Treaty Ceded Waters of Lakes Superior, Huron, and Michigan*, including any future changes adopted in accordance with the Tribal Plan and the Consent Decree which the Consent Decree mandates the party Tribes adopt.

C. “**Tribal Plan**” means the *Management Plan for the 1836 Treaty Great Lakes Waters* adopted by the Tribes and attached to the Consent Decree as Appendix B, including any future changes adopted in accordance with the Tribal Plan and the Consent Decree.

(Source: WOS 2003-09, December 7, 2003, Section II)

4.103 REPEAL AND REPLACEMENT OF PRIOR LEGISLATION

A. Waganakising Odawak Statute 1997016 is repealed and replaced by the Tribal Code defined in Section II of this Statute.

(Source: WOS 2003-09, December 7, 2003, Section III)

4.104 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of the Tribal Code as defined in and adopted under this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

(Source: WOS 2003-09, December 7, 2003, Section IV)

4.105 EFFECTIVE DATE

This Statute takes effect immediately upon enactment.[December 7, 2003]

(Source: WOS 2003-09, December 7, 2003, Section V)

NOTE: The *Chippewa Ottawa Resource Authority Commercial, Subsistence, and Recreational Fishing Regulations for the 1836 Treaty Ceded Waters of Lakes Superior, Huron, and Michigan* adopted by the Little Traverse Bay Bands under this Title IV, Chapter 1 (WOS 2003-09) is printed below. The document is subject to periodic revision by the Chippewa Ottawa Resource Authority. Tribal member commercial and subsistence fishers and Court personnel can obtain updates through the LTBB Natural Resources Department.

**CHIPPEWA OTTAWA RESOURCE AUTHORITY
COMMERCIAL, SUBSISTENCE, AND RECREATIONAL FISHING REGULATIONS
FOR THE 1836 TREATY CEDED WATERS OF LAKES
SUPERIOR, HURON, AND MICHIGAN**

PART ONE: GENERAL MATTERS

SECTION I. PURPOSE.

These Regulations are adopted to govern the commercial, subsistence, and recreational fishing activities of members of the Bay Mills Indian Community, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, the Little Traverse Bay Bands of Odawa Indians, and the Sault Ste. Marie Tribe of Chippewa Indians in exercising the Great Lakes fishing rights reserved by the Tribes in the Treaty of March 28, 1836. These Regulations are intended to ensure conservation of the fishery resource for future generations of the Tribes and to ensure safe fishing practices.

SECTION II. SCOPE AND APPLICATION.

These Regulations apply to the commercial, subsistence, and recreational fishing activities of all enrolled members of the Tribes in the 1836 Treaty waters and are in compliance with and implement the Consent Decree and the Management Plan.

SECTION III. DEFINITIONS.

The following terms have the meanings indicated:

(a) "**1836 Treaty waters**" means all waters of Lake Huron, Lake Michigan, Lake Superior, and connecting waters, which are within the area ceded in Article First of the Treaty of March 28, 1836, 7 Stat. 491.

(b) "**Break wall**" means a man-made barrier that breaks the force of waves, as before a

harbor.

- (c) "**BSD**" means Biological Services Division, which is the biological staff of CORA.
- (d) "**Commercial fishing**" means a fishing activity engaged in for the purpose of sale of fish or parts of fish.
- (e) "**Consent Decree**" means the Consent Decree entered in United States v. Michigan, W.D. Mich. Case No. 2:73 CV 26 on August 8, 2000, including any future modifications made by the Court.
- (f) "**CORA**" means the Chippewa Ottawa Resource Authority, an organization formed by the Tribes which has been delegated certain management and regulatory authority, including the authority to promulgate these Regulations.
- (g) "**Director**" means the Director of the BSD.
- (h) "**Enforcement Officer**" means:
 - (1) any conservation officer or game warden of a Tribe; or
 - (2) any conservation officer of the Michigan Department of Natural Resources; or
 - (3) any enforcement agent of the Bureau of Indian Affairs or the United States Fish and Wildlife Service authorized to enforce the provisions of Title 25, Code of Federal Regulations, Part 249; or
 - (4) any person authorized by a Tribe's ordinance to enforce these Regulations, including enforcement officers of the Great Lakes Indian Fish and Wildlife Commission if authorized by ordinance of a Tribe; or
 - (5) any other person authorized by CORA to enforce these Regulations.
- (i) "**Fishing**" or "**fishing activity**" means fishing for, catching, or taking any species of fish, or attempting to fish for, catch, or take any species of fish from 1836 Treaty waters,

including all related activities which occur in or on the water or ice, until such time as the vessel or vehicle is moored, tied up, or grounded.

(j) **"Gill net"** means a wall of webbing held vertically in the water by weights and floats, and designed to capture fish by means of entanglement.

(k) **"GLRC"** means the Great Lakes Resources Committee, the committee of CORA charged with promulgating these Regulations and making other management decisions concerning Tribal fishing in the 1836 Treaty waters.

(l) **"Grid"** means a geographical unit based on ten (10) minutes of latitude by ten (10) minutes of longitude and commonly used by Tribal, State, provincial, and federal governments for reporting fishery statistics. For the purpose of these Regulations, the area of a grid shall include only those portions of a grid that are within the boundaries of the State of Michigan and the 1836 Treaty waters.

(m) **"Impoundment net"** means a net designed to capture fish by deflection and to retain them in a live condition until removed (e.g., trap, pound, fyke, or hoop nets, etc.).

(n) **"Large mesh gill net"** means a gill net having a diagonal stretch mesh measurement of four and one-half (4.5) inches or greater.

(o) **"Management Plan"** means the *Management Plan for the 1836 Treaty Great Lakes Waters* adopted by the Tribes and attached to the Consent Decree as Appendix B, including any future changes adopted in accordance with the Management Plan and the Consent Decree.

(p) **"Maps"** means the attached maps of 1836 Treaty waters which depict various types of zones, management units, refuges, and other areas defined in these Regulations.

(q) **"Mile"** means statute mile.

(r) **"Pier"** means a permanent man-made structure built for use by the public extending from land out over the water.

(s) “**Recreational fishing**” means fishing activity conducted in accordance with Section XVII of these Regulations.

(t) “**Regulations**” or “**these Regulations**” means the provisions of this document, including any subsequent modifications or amendments and, for jurisdiction and enforcement purposes, any Tribal regulations adopted in accordance with Section XXIV and any order of the Director issued under Section XXV.

(u) “**Round weight**” means the total weight in pounds of fish prior to any form of processing, dressing, or eviscerating, and includes the weight of the head, entrails, and skin.

(v) “**Seine**” means a net used to enclose fish when its ends are pulled together and are drawn to shore or to a vessel.

(w) “**Small mesh gill net**” means a gill net having a diagonal stretch mesh measurement of two and one-half (2.5) through three (3.0) inches.

(x) “**Subsistence fishing**” means a Treaty fishing activity solely to provide fish for personal or family consumption and not for sale or exchange, but does not include recreational fishing.

(y) “**Trap net**” means an impoundment net consisting of a lead, heart, tunnel, and pot or crib, the webbing of which is held on the lake bottom by leads and upright in the water by floats and held in place by anchors.

(z) “**Tribes**” (or individually, “**Tribe**”) means the five (5) Tribes who are members of CORA: the Bay Mills Indian Community (“Bay Mills”), Grand Traverse Band of Ottawa and Chippewa Indians (“Grand Traverse”), Little River Band of Ottawa Indians (“Little River”), Little Traverse Bay Bands of Odawa Indians (“Little Traverse”), and Sault Ste. Marie Tribe of Chippewa Indians (“Sault Tribe”).

(aa) “**Unattended nets**” means nets which have been tagged by an enforcement officer as such for at least four (4) days, except when fishing through the ice, which the fisher refuses to tend upon reasonable notice from an enforcement officer, or nets which contain entirely decayed

fish.

PART TWO: ZONES

SECTION IV. COMMERCIAL FISHING ZONES.

Subject to the provisions of these Regulations, including its closures and restrictions, the following waters are open to Tribal commercial fishing by members of one or more of the Tribes:

- (a) The tribal zones described in Section V.
- (b) The intertribal zones described in Section VI.
- (c) The trap net zones described in Section VII.

SECTION V. TRIBAL ZONES.

(a) **General Provisions.** Tribal zones are established as provided in this Section. Except as may otherwise be provided in the Consent Decree or the Management Plan, and subject to these Regulations, each Tribe, within all or any portion of its tribal zone, may prohibit commercial fishing or subsistence fishing by fishers from other Tribes, or allow commercial or subsistence fishing by members of other Tribes by issuance of permits to such fishers. Permits may impose restrictions on commercial fishing in the Tribe's tribal zone by fishers from other Tribes that are in addition to or more restrictive than those contained in these Regulations. The following fishing activities are prohibited in tribal zones:

- (1) Fishing in the tribal zone of a Tribe when such activity has been prohibited by that Tribe.
- (2) Fishing in the tribal zone of a Tribe without a permit from that Tribe when such permit is required.
- (3) Fishing in the tribal zone of a Tribe in violation of any permit condition or

regulation imposed by that Tribe.

(b) Little Traverse Tribal Zone.

(1) Description: Lake Michigan grids 517 through 519, the southeast quarter (SE $\frac{1}{4}$) of grid 314, and the south half (S $\frac{1}{2}$) of grid 415.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Commercial fishing in grid 518 shall be:

(A) Open to trap net fishing year round;

(B) Closed to large mesh gill net fishing except as follows:

a. From October 1 through April 30 west of a line running from Townline Road on the south to the Stuttsmanville Road tower on the north; and

b. From May 1 through September 30 west of a line from Nine Mile Point on the south to Seven Mile Point on the north.

(ii) Large mesh gill net operations in the south half (S $\frac{1}{2}$) and northeast quarter (NE $\frac{1}{4}$) of grid 517 and that portion of grid 518 in which large mesh gill net commercial fishing is permitted shall not exceed 12,000 feet of large mesh gill net in the water at any time.

(iii) Fishing for yellow perch in the portion of grid 518 described in Section XIV(a)(4) is permitted subject to the provisions of Section XIV.

(c) Grand Traverse Tribal Zone.

(1) Description: Lake Michigan grids 615, 616, 712 through 716, 812 through 816,

911 through 916, 1011, and the south half (S½) of grid 614.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Trap net operations. This zone is open to trap net operations year round except for grids 915 and 916.

(ii) Large mesh gill net operations:

(A) Grids 615, 616, 715, 716, the south half (S½) of grid 614, and the northern portion of grids 815 and 816 extending one (1) mile south from their northern boundary shall be open year round to large mesh gill net fishing.

(B) Grids 712 and 713 shall be open to large mesh gill net fishing from the day after Labor Day through June 15.

(C) Grid 714 shall be open to large mesh gill net fishing from the day after Labor Day through April 30.

(D) In grids 712, 713, and 714, large mesh gill nets shall be set at depths of thirty (30) feet or deeper from January 1 through April 30 and from the day after Labor Day through September 30, except when fishing for salmon pursuant to Section XII(b).

(E) In addition to the provisions of sub. (D), above, in grids 712 and 713, large mesh gill nets shall be set at depths of fifty (50) feet or less from May 1 through June 15.

(iii) Small mesh gill net operations:

(A) This zone shall be open to small mesh gill net fishing for chubs year round, except that grids 915, 916, and the portion of grids 815 and

816 south of a line one (1) mile south of their northern boundary are closed to all small mesh gill net fishing.

(B) Grids 615, 712, 713, 714, 715 [except for that portion described in Section XIII(a)(1)(i)], 716, and the south half (S½) of grids 614 and 616 shall be open year round to small mesh gill net fishing for yellow perch and walleye.

(d) Little River Tribal Zone.

(1) Description: Lake Michigan grids 1107 through 1111, 1207 through 1211, 1306 through 1310, and 1406 through 1410.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Trap Net Operations. This zone and that portion of the Lake Michigan Southern Development Zone [see Section VI(c)] which is within whitefish management unit WFM-07 shall be open to up to two (2) Tribal trap net operations, not exceeding twelve (12) nets each. Trap net fishing by any Tribal fisher not authorized to fish by Little River in such waters is prohibited.

(ii) Small Mesh Gill Net Operations. This zone and that portion of the Lake Michigan Southern Development Zone [see Section VI(c)] which is within whitefish management unit WFM-07 shall be open to fishing up to two (2) Tribal small mesh gill net operations, not exceeding 24,000 feet of net each. Small mesh gill net fishing by any Tribal fisher not authorized to fish by Little River in such waters is prohibited.

(iii) Commercial fishing with large mesh gill nets is prohibited in this zone.

(e) Bay Mills Small Boat Zone.

(1) Description: Those portions of Lake Huron grids 505 and 506 which lie south of a

line from Hammond Bay Harbor buoy to the northeast corner of grid 506.

(2) Regulations. Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Commercial fishing shall be restricted to October 1 through December 31, and subject to a spawning closure as described in Section IX(g).

(ii) Effort shall be limited to no more than ten (10) small boats (twenty six [26] feet or less) fishing a maximum of 6,000 feet of large mesh gill net per boat. This limitation includes any boat used for assessment purposes. Fishing by any Tribal fisher not authorized to fish by Bay Mills is prohibited.

(iii) Except as may be authorized for assessment fishing, nets must be set in water seventy-five (75) feet deep or less.

(iv) All live lake trout shall be released.

(v) Commercial fishing by Sault Tribe fishers is prohibited in this zone.

(f) Sault Tribe Tribal Zone.

(1) Description: Those portions of Lake Huron within one (1) mile from shore and delineated by the following landmarks:

(i) St. Martin's Bay zone - from Rabbit Back Point north and east to Brulee Point.

(ii) Cordwood Point zone - from Cordwood Point south to a point one half (0.5) mile north of the Hammond Bay harbor light.

(2) Regulations. Subject to the provisions of these Regulations, the following regulations apply in this zone:

- (i) The waters described in sub. (1), above, shall be the Sault Tribe Tribal Zone only during the salmon seasons set forth in Section XII(c)(2). At all other times, these waters shall be part of the Northern Lake Huron Inter-Tribal Fishing Zone. See Section VI(d).
- (ii) Other restrictions applicable to this zone are set forth in Section XII(c).
- (iii) Commercial fishing for salmon by Bay Mills fishers is prohibited in the portion of this zone described in sub. (1)(ii), above.

SECTION VI. INTERTRIBAL ZONES.

(a) Northern Lake Michigan Inter-Tribal Fishing Zone.

(1) Description: Lake Michigan grids 115 through 118, 211 through 220, 310 through 320, 409 through 419, 509 through 516, 613, and the north half (N¹/₂) of 614, except for the southeast quarter (SE¹/₄) of grid 314 and the south half (S¹/₂) of grid 415.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

- (i) This zone shall be open to fishers from all Tribes.
- (ii) Fishers from Bay Mills, Little River, and Sault Tribe shall be limited to four hundred (400) pounds round weight of lake trout per vessel per day caught within the following grids: Lake Michigan grids 315, 316, 317, 318, 319, 320, 417, 418, 419, and the north half (N¹/₂) of grids 313, 314, and 415.
- (iii) Each Tribal trap net operation shall be limited to twelve (12) trap nets in the water at any one time within the following grids: 313, 314, 315, 316, 317, 318, 319, 320, 413, 414, 415, 416, 417, 418, and 419.

(b) Lake Michigan Northern Development Zone.

(1) Description: Lake Michigan grids 610 through 612, 709 through 711, 808 through 811, 908 through 910, and 1008 through 1010.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Grids 711, 811, 910, and 1010 shall be open to Grand Traverse trap net operations targeting whitefish; provided, that the aggregate net effort shall not exceed twelve (12) nets in the water at any one time.

(ii) Except as provided in sub. (i), above, tribal commercial fishing in this zone shall be limited to a permit fishery targeting bloater chubs.

(iii) Tribal commercial fishing for all other species is prohibited.

(c) Lake Michigan Southern Development Zone.

(1) Description: All 1836 Treaty waters of Lake Michigan south of the northern boundary of the 1500 tier of grids.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Trap Net Operations. The portion of this zone that is within whitefish management unit WFM-08 shall be open to one (1) Tribal trap net operation, not to exceed twelve (12) nets. Trap net fishing by any Tribal fisher not authorized to fish by Little River in such waters is prohibited.

(ii) Small Mesh Gill Net Operations: The portion of this zone that is within whitefish management unit WFM-08 shall be open to one (1) Tribal operation not exceeding 24,000 feet of net. Small mesh gill net fishing by any Tribal fisher not authorized to fish by Little River in such waters is prohibited.

(iii) Commercial fishing with large mesh gill nets is prohibited in this zone.

(iv) This zone shall be managed and regulated in the same manner as the Little River Tribal Zone in accordance with Section V(a).

(d) Northern Lake Huron Inter-Tribal Fishing Zone.

(1) Description: Lake Huron grids 202, 207 through 209, 301 through 309, 401 through 410, 504, and those portions of grids 505 and 506 which lie north of a line from Hammond Bay Harbor buoy to the northeast corner of grid 506, except for those portions of grids 303 and 304 closed to all commercial fishing as described in Section VIII(e).

(2) Regulations: Subject to the provisions of these Regulations, the following regulations shall apply in this zone:

(i) Except as provided in sub. (iii), below, this zone shall be open to fishers from all Tribes.

(ii) The area described in Section VIII(f) shall be closed to commercial fishing beginning the Friday before Memorial Day through Labor Day.

(iii) The following restrictions apply to large mesh gill net operations in that portion of Lake Huron grids 505 and 506 that lies north of the line described in sub. (1), above:

(A) Effort shall be restricted to a maximum of 8,500 feet of net per vessel; and

(B) Fishing shall be limited to depths of seventy-five (75) feet or deeper from the Friday before Memorial Day through Labor Day.

(e) Lake Superior Inter-Tribal Fishing Zone.

(1) Description: All Lake Superior water east of the western edge of grids 934, 1034,

1134, 1234, 1334, 1434, 1534, and 1634.

(2) This zone shall be open to fishers from all Tribes subject to the provisions of these Regulations.

SECTION VII. TRAP NET ZONES.

(a) Bay de Noc Trap Net Zone.

(1) Description: Lake Michigan grids 306, 308, 309, 406 through 408, and 506 through 508.

(2) Regulations: Subject to the provisions of these Regulations, the following regulations apply in this zone:

(i) All Tribal commercial and subsistence fishing is prohibited west of a line extending from the mouth of the Escanaba River in Delta County due east to the center of the shipping channel, thence due south to the Michigan-Wisconsin border.

(ii) Except as provided in sub. (v), below, Tribal commercial fishing by any method other than trap nets is prohibited.

(iii) Each trap net operation may set no more than fifteen (15) trap nets at any one time.

(iv) Little Traverse may locate one (1) trap net operation within this zone, and the remainder of the trap net operations shall be Sault Tribe fishers. Commercial fishing with trap nets by fishers from any other Tribe, or by fishers from Little Traverse or Sault Tribe who have not been authorized to fish in this zone by their Tribe, is prohibited.

(v) Notwithstanding the above, fishing for yellow perch in the portion of grid 508 described in Section XIV(a)(2) is open to all Tribes in accordance with

Section XIV.

(b) Southern Lake Huron Trap Net Zone.

(1) Description: Lake Huron grids 507 through 512, 606 through 611, 709, and those portions of grids 612, 613, 710, 711, and 810 which are north of a line from the mouth of the Thunder Bay River in a straight line northeast through the northeast corner of grid 711 to the international border.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Except as provided in sub. (v), below, Tribal commercial fishing by any method other than trap nets shall be prohibited.

(ii) Trap net fishing in this zone shall be open only to Bay Mills and Sault Tribe trap net fishers by permit. Trap net fishing by fishers from Grand Traverse, Little River, and Little Traverse is prohibited. The permits shall be allocated equally between Bay Mills and Sault Tribe. If a Tribe has insufficient fishers interested in the permits allocated to it, the excess permits shall be made available for issuance by the other Tribe.

(iii) A total of four (4) trap net operations shall be authorized for this zone. Trap net fishing by fishers from Bay Mills and Sault Tribe who have not been authorized by their Tribe to fish in this zone is prohibited.

(iv) Each trap net operation may set no more than twelve (12) trap nets at any one time within the zone.

(v) Fishing for chubs with small mesh gill nets or small mesh trap nets shall be authorized only by permit issued by CORA. Such permits shall be available to fishers from any Tribe.

(vi) Bay Mills and Sault Tribe may authorize the Tribal fishers permitted to

fish with trap nets in this zone to obtain permits from the State to fish with trap nets in those waters within the State of Michigan south of the southern boundary of this zone and north of a line from the tip of North Point on Thunder Bay in a straight line northeast parallel to the southern boundary of this zone to the international border. The aggregate net effort allowed by all such permits shall not exceed sixteen (16) nets.

(c) Western Lake Superior Trap Net Zone.

(1) Description: All 1836 Treaty waters west of the western edge of grids 934, 1034, 1134, 1234, 1334, 1434, 1534, and 1634.

(2) Tribal commercial fishing by any method other than trap nets is prohibited.

SECTION VIII. CLOSED OR LIMITED FISHING ZONES.

Except as otherwise provided in this section, Tribal commercial fishing is prohibited in the following areas:

(a) The St. Mary's River, east of a line extending from Point Aux Pins, Ontario, to Brush Point, Michigan, downstream to the Detour - Drummond Island ferry docks, including all of Potagannissing Bay from Hay Point (Drummond Island) west to Cherry Island and north to the international boundary.

(b) Lake Michigan grid 519 in Little Traverse Bay.

(c) Lake Michigan grids 915 and 916 in Grand Traverse Bay.

(d) Those portions of Lake Michigan grid 306 that lie within 1836 Treaty waters and north of a line from the mouth of the Ford River to Peninsula Point.

(e) Those portions of Lake Huron grids 303 and 304 described as follows: The Les Cheneaux channels, or entrances thereto, or waters adjacent thereto within a line drawn as

follows: beginning at the southernmost point of land on the westerly side of McKay Bay; then southerly in a straight line to the northernmost point of Boot Island; then along the eastern shore of Boot Island to its southernmost point; then along the south shoreline of Boot Island to its westernmost point; then westerly in a straight line to the southernmost point of Government Island; then along the shoreline of Government Island to the point at which the distance between said island and LaSalle Island is the least, then westerly in a straight line to LaSalle Island; then along the eastern and southern shoreline of LaSalle Island to the point at which the distance between said island and Little LaSalle Island is the least; then westerly in a straight line to Little LaSalle Island; then westerly along the southern shoreline of Little LaSalle Island to its westernmost point; then westerly in a straight line to the eastern shore of Marquette Island; then along the southwestern shore of Marquette Island to Coats Point; then northwesterly to the southernmost part of Brulee Point, except that trap net fishing targeting whitefish shall be permitted in that portion of Lake Huron grid 303 within the area encompassed by a line from Coats Point on Marquette Island along the western shore of said island to Cube Point; then due west to the shore of Brulee Point; then southeasterly along said shore to the southern tip of Brulee Point; then southeasterly to Coats Point on Marquette Island.

(f) For the period from the Friday before Memorial Day through Labor Day only, those portions of Lake Huron grids 304 and 305 north of a line beginning at the southerly point of land on the easterly side of Dudley Bay (Cadogan Point); then running southwest in a straight line to the southeasterly end of Beaver Tail Point; then running westerly in a straight line to the southeasterly end of Whitefish Point in Mackinac County.

(g) Any area within one hundred (100) yards of any break wall or pier; provided, that this prohibition shall not apply to salmon fishing authorized by these Regulations.

(h) Any area within three-tenths (0.3) mile radius of the mouth of the following streams; provided, that this prohibition shall not apply to salmon fishing authorized by these Regulations:

(1) Lake Superior.

(i) Marquette County: Chocolay River and Sand River;

(ii) Alger County: Laughing Whitefish River, Autrain River, Anna River,

Mosquito River, Seven Mile Creek, and Hurricane River;

(iii) Luce County: Blind Sucker River, Big Two Hearted River, and Little Two Hearted River; and

(iv) Chippewa County: Tahquamenon River and Pendills Creek.

(2) Lake Huron.

(i) Mackinac County: Nunns Creek, Pine River, and Carp River;

(ii) Cheboygan County: Cheboygan River;

(iii) Presque Isle County: Ocqueoc River, Swan River, and Grand Lake Outlet;

(iv) Alpena County: Thunder Bay River.

(3) Lake Michigan.

(i) Delta County: Escanaba River, Days River, Tacoosh River, Rapid River, Whitefish River, Ogontz River, Sturgeon River, Big Fishdam River, and Little Fishdam River;

(ii) Schoolcraft County: Thompson Creek, Manistique River, and Milakokia River;

(iii) Mackinac County: Crow River, Millecoquins River, Black River, Paquin Creek, Cut River, and Brevort River;

(iv) Emmet County: Carp Lake River and Bear River;

(v) Charlevoix County: Pine River;

- (vi) Antrim County: Elk River;
- (vii) Grand Traverse County: Boardman River;
- (viii) Leelanau County: Leland River;
- (ix) Benzie County: Platte River and Betsie River;
- (x) Manistee County: Arcadia Lake Outlet, Portage Lake Outlet, and Manistee River;
- (xi) Mason County: Pere Marquette River;
- (xii) Oceana County: Pentwater Lake Outlet, Silver Creek, and Stoney Creek;
- (xiii) Muskegon County: White River and Muskegon River; and
- (xiv) Ottawa County: Grand River.

(i) The following provisions for harbor closures shall apply:

(1) The area within one-half (0.5) mile of the break walls at the Hammond Bay Harbor of Refuge; provided, that in that portion of this closure that lies within the Bay Mills Small Boat Zone described in Section V(e)(1), the closure shall be reduced to three-tenths (0.3) mile during any period in which fishing in that zone is restricted to depths of seventy-five (75) feet or less.

(2) The area within two (2) miles of the break walls at Rogers City.

PART THREE: GEAR

SECTION IX. GEAR RESTRICTIONS.

(a) The following are the only types of gear which shall be permitted for commercial fishing

activity:

- (1) Large mesh gill nets;
- (2) Small mesh gill nets;
- (3) Impoundment nets;
- (4) Seines; and
- (5) Hooks.

(b) Trap nets shall have a four and one-half (4.5) inch (stretch) minimum pot mesh size, except:

- (1) Trap nets of four and one-quarter (4.25) inches pot mesh size or greater may be used if they were used within 1836 Treaty waters prior to May 31, 2000.
- (2) Small mesh trap nets having a two and one-half (2.5) to three (3.0) inch (stretch) pot mesh size may be used for fishing for yellow perch, chubs, or other appropriate species as authorized by GLRC.

(c) All nets shall be clearly marked at each end with a buoy on the surface, showing the license number of the owner. Commencing in 2002, nets shall be marked as follows:

- (1) All gill nets set in depths greater than fifteen (15) feet shall have a staff buoy at each end with at least four (4) feet exposed above the surface of the water with a red or orange flag no less than twelve (12) inches by twelve (12) inches bearing the license number of the fisher and affixed to the top of the staff. Ice poles, painted red or orange on the top and bearing the license number of the fisher, may be used between November 1 and May 31 in Lake Superior waters, and between November 1 and April 30 in all other 1836 Treaty waters.
- (2) Any gill net or portion of a gill net set in water less than fifteen (15) feet deep

shall have: a red or orange float not less than one (1) gallon in size, or a red or orange PVC float that is at least six (6) inches by fourteen (14) inches in size, on each end that is in water less than fifteen (15) feet deep. The floats at the ends of the net shall bear the license number of the fisher. In addition, each such net shall also have either:

(i) An additional float of the size described above spaced every three hundred (300) feet or less along the length of the net that is in water less than fifteen (15) feet; or

(ii) Standard commercially available fluorescent orange floats at least one and one-half (1.5) inches by four (4) inches in size along the corkline not less than every twelve (12) feet in water less than fifteen (15) feet.

(3) All trap nets must be marked with a staff buoy on the pot with at least four (4) feet exposed above the surface of the water with a red or orange flag no less than twelve (12) inches by twelve (12) inches bearing the license number of the fisher and affixed to the top of the staff. Ice poles, painted red or orange on the top and bearing the license number of the fisher, may be used between November 1 and May 31 in Lake Superior waters, and between November 1 and April 30 in all other 1836 Treaty waters. From May 1 to November 7, the king anchor and inside end of the lead shall also be marked with a red or orange float not less than one (1) gallon in size.

(d) No Tribal commercial fisher shall use large mesh gill nets with mesh greater than five and one-half (5.5) inches stretch measurement at any time in any 1836 Treaty waters except as follows:

(1) When fishing for salmon under these Regulations; or

(2) When fishing in Lake Superior Lake Trout Management Unit MI-8 using large mesh gill nets that were used in that area prior to May 31, 2000.

(e) The use of any gear, mesh size, or method of capturing fish for commercial purposes not authorized by subs. (a) through (d), above, is prohibited.

(f) Tribal commercial fishing gear shall not be set in a manner which completely blocks or entirely prevents the free passage of fish into and out of streams that flow into 1836 Treaty waters.

(g) All commercial fishing with impoundment nets and large mesh gill nets shall be prohibited during the period from 12:00 noon November 6 through 12:00 noon November 29 to protect spawning lake trout and whitefish. Trap nets may remain in the water during this period, but trap net tunnels must be tied closed. During this period, fishing for or retention of whitefish or lake trout caught in any gear is prohibited.

(h) Commercial fishing with small mesh gill nets in six (6) fathoms of water or less shall be prohibited from 12:00 noon October 15 through 12:00 noon November 15.

(i) The use of small mesh gill nets in Lakes Huron and Michigan in waters between fifteen (15) fathoms and forty (40) fathoms is prohibited at all times.

(j) The trap net operations received by Little Traverse as described in section X.A.2.b. of the Consent Decree may also be used for fishing large mesh gill nets for salmon only and for fishing small mesh gill nets for all permitted species. Large mesh gill net fishing by these operations for any species other than salmon is prohibited.

(k) Possession of a firearm while engaged in fishing activity under these Regulations is prohibited.

(l) Unattended nets may be seized by an enforcement officer and forfeited; provided, that if the nets have been reported to the appropriate Tribe as vandalized or lost prior to seizure, the fisher shall be provided a reasonable opportunity to retrieve the nets.

(m) Floating buoy line on the surface of the water shall not exceed 5' (five feet) in length.

SECTION X. STATE-FUNDED TRAP NET CONVERSION OPERATIONS.

(a) Upon acceptance of a state-funded conversion trap net operation under section X.C. of the Consent Decree, use or possession on the water of large mesh gill nets by a converted

Tribal fisher is prohibited, except as provided in sub. (c), below.

(b) Use or possession on the water of small mesh gill nets is prohibited on state-funded conversion trap net vessels, except for the taking of chubs and menominee.

(c) A Tribal fisher who converts to trap nets under section X.C. of the Consent Decree shall not thereafter resume the use of large mesh gill nets except as follows:

(1) Subject to Tribal approval, after two (2) years of use of the trap net operation, the fisher may exchange license and gear with another Tribal licensee who represents at least sixty percent (60%) of the average large mesh gill net effort of the converted fisher during the years 1997 through 1999.

(2) Subject to Tribal approval, a converted fisher may acquire a large mesh gill net operation and license if the fisher has sold his trap net operation and retired from the fishery for a period of two (2) years.

(d) A Tribal fisher who participates in the gill net conversion program under section X.C. of the Consent Decree may sell his or her trap net operation and transfer the fisher's captain's license as provided under current Tribal regulations. Anyone acquiring such a conversion trap net operation shall be subject to the same restrictions as the original conversion program participant.

(e) Any Sault Tribe fisher who converts to trap nets under the program described in Section X.C. of the Consent Decree and who moves his or her fishing operation to one of the trap net zones described in Section VII(a) or Section VII(b) is prohibited from fishing in the following area for a period of two years after his or her conversion: Lake Michigan grids 313, 314, 315, 316, 317, 318, 319, 320, 413, 414, 415, 416, 417, 418, and 419. Thereafter, the fisher may fish in this area only if GLRC authorizes the fisher to do so.

PART FOUR: SPECIES

SECTION XI. LAKE TROUT.

- (a) Lake Trout Refuges.
- (1) The following areas shall be lake trout refuges:
- (i) In Lake Huron, grids 307 through 309, the north half (N $\frac{1}{2}$) of grid 407, and grids 408 through 410.
- (ii) In Lake Michigan, two (2) locations:
- (A) Grids 413, 414, 513, 514, 515, 516, and 613; the south half (S $\frac{1}{2}$) of grids 313, 314, and 415; the north half (N $\frac{1}{2}$) of grid 614; and the northwest quarter (NW $\frac{1}{4}$) of grid 517.
- (B) Grids 1606, 1607, 1706, 1707, 1806, 1807, 1906, and 1907.
- (2) Commercial and subsistence fishing with gill nets is prohibited in any refuge.
- (3) Commercial fishing with trap nets is permitted in any refuge, but retention of lake trout is prohibited.
- (4) Retention of lake trout caught by commercial, subsistence, or recreational fishers in any lake trout refuge is prohibited.
- (b) Retention of Lake Trout by Tribal Fishers.
- (1) In trap net zones identified in Section VII retention of lake trout caught in trap nets is prohibited. All lake trout caught by such fishers shall be returned to the water whether dead or alive.
- (2) All Tribal trap net fishers who have converted their operations to trap net operations at the expense of the State of Michigan, either as part of the gill net conversion program described in section X.C. of the Consent Decree or through any supplemental conversion program instituted while the Consent Decree is in effect, are prohibited from retaining lake trout. All lake trout caught by such fishers shall be returned to the water

whether dead or alive.

(3) A lake trout bag limit not to exceed one hundred (100) pounds round weight per vessel per day shall apply to all other Tribal trap net fishers. No lake trout under seventeen (17) inches long shall be retained.

(4) All live lake trout less than seventeen (17) inches long caught by Tribal gill net fishers shall be released. No more than fifteen (15) pounds round weight per vessel per day of undersized lake trout shall be retained by Tribal gill net fishers. Undersized lake trout shall not be offered for sale.

SECTION XII. SALMON.

Subject to the other provisions of these Regulations, salmon fishing is authorized as provided in this section.

(a) Little Traverse Salmon Fishery. A limited entry permit salmon fishery in Lake Michigan for Little Traverse fishers is authorized subject to the following restrictions:

(1) Salmon fishing by Little Traverse fishers shall be permitted within one (1) mile from shore from Seven Mile Point in grid 518 north to McGulpin Point in grid 320, from 12:00 a.m. August 1 through 6:00 p.m. October 15.

(2) Nets may be fished at the surface in this fishery from 12:00 a.m. September 10 through 6:00 p.m. October 15. At all other times during the salmon season in this salmon fishery, nets shall be set at least eight (8) feet below the surface.

(b) Grand Traverse Salmon Fishery. A salmon fishery in Lake Michigan for Grand Traverse fishers is authorized subject to the limitations of this subsection:

(1) Salmon fishing shall be permitted from 12:00 a.m. September 15 through 6:00 p.m. October 30 in grid 615, the south half (S½) of grid 614, and in that portion of grid 714 which is north of an east-west line commencing three-tenths (0.3) mile north of mouth of the Leland River.

(2) Salmon fishing shall be permitted from 12:00 a.m. the day after Labor Day through 6:00 p.m. October 30 in those portions of grids 715 and 815 within the boundaries of a line from the tip of Omena Point to buoy N"2" off Omena Point, then to buoy C"1" off Stony (Suttons) Point, and then due west to the intersection with the Leelanau Peninsula.

(c) Lake Huron Salmon Fishery. A salmon fishery in Lake Huron shall be authorized subject to Section V(f) and the limitations of this subsection:

(1) Fishing for salmon by the Tribal commercial fishers is limited to the Sault Tribe Tribal Zone described in Section V(f)(1).

(2) Salmon fishing shall be permitted from 12:00 a.m. August 1 through 6:00 p.m. October 15 in the St. Martin's Bay zone, and from 12:00 a.m. September 10 through 6:00 p.m. October 15 in the Cordwood Point zone.

(3) Nets may be fished at the surface at any time during the specified salmon seasons in the areas described in subs. (1) and (2), above.

(d) Except as provided in subs. (1), (2), and (3), above, commercial fishing for salmon is prohibited, except the for incidental harvest allowed in sub. (e), below.

(e) Retention of more than two hundred (200) pounds round weight per vessel per day of salmon caught as incidental catch in gill nets in waters and seasons not open to salmon fishing is prohibited.

(f) Retention of salmon caught in trap nets is prohibited. All salmon caught in trap nets must be returned to the water whether dead or alive.

(g) Net Marking. Salmon nets shall be marked in accordance with the following:

(1) Each gang of salmon nets shall be marked at each end with a staff buoy which extends a minimum of five (5) feet above the surface and which:

- (i) is at least fifty percent (50%) reflective orange in color;
- (ii) has affixed to the top one orange flag twelve (12) inches by twelve (12) inches in size; and
- (iii) has affixed the license number of the fisher.

(2) Each gang of nets shall have attached along the top edge of the net orange PVC floats which are at least six (6) inches by fourteen (14) inches in size and which are evenly spaced along the length of the gang at intervals of not more than three hundred (300) feet of net.

(h) Salmon nets shall be set in a manner that permits reasonable ingress and egress by shoreline residents.

SECTION XIII. WALLEYE.

(a) Walleye Fishing Areas. Tribal commercial fishing for walleye is permitted in the following locations, subject to the restrictions in this section and the other provisions of these Regulations:

(1) Lake Michigan grids 116, 117, 118, 218, 219, 615, 712, 713, 714, 715, 716, and the south half (S^{1/2}) of grids 614 and 616, subject to the following restrictions:

(i) The area in grid 715 north and west of a line from the tip of Northport Point in a direct line to R "2" Bell buoy off Northport Point, then due west to the shore, is closed to walleye fishing except from March 16 through April 23. Fishing for walleye during this period shall be limited to depths of twenty (20) feet or less using impoundment nets. All yellow perch shall be returned to the water dead or alive.

(ii) Small mesh gill nets shall be limited to two and three-quarters (2.75) to three (3.0) inch stretch measure in the north half (N^{1/2}) of grid 715 outside of the area described in sub. (I), above.

(iii) Small mesh gill nets shall not be set in waters greater than ninety (90) feet deep in grids 712, 713, and 714.

(iv) Small mesh gill nets shall not be set in waters less than twenty (20) feet deep or greater than ninety (90) feet deep in grids 615 and 716, the south half (S½) of grids 614 and 616, and the portion of grid 715 outside the area described in sub. (I), above.

(v) Nets set for walleye in grids 712, 713, 714, 715, 716, 615, and the south half (S½) of grids 614 and 616 shall be no more than six (6) feet in height and shall be set with the lead line on the bottom of the lake.

(vi) Grids 615, 712, 713, 714, 715, 716, and the south half (S½) of grids 614 and 616 are within the Grand Traverse Tribal Zone and subject to additional restrictions applicable to that zone.

(2) Lake Huron grids 202, 301 through 306, and 401 through 403, except for those portions of grids 303 through 305 described in Section VIII(e) and seasonally as provided in Section VIII(f).

(3) Lake Superior grid 1646.

(b) Except as provided in sub. (a), above, and subs. (c) and (d), below, Tribal commercial fishing for walleye is prohibited.

(c) Possession of more than fifteen (15) pounds round weight of walleye per vessel per day caught in all 1836 Treaty waters not identified in sub. (a), above, is prohibited.

(d) Possession of more than fifteen (15) pounds round weight of walleye per vessel per day caught in the 1836 Treaty waters identified in sub. (a), above, during a closed season specified in this section is prohibited.

(e) In order to protect walleye spawning stocks, the following shall apply to Tribal

commercial fishers in those waters in which walleye commercial fishing is permitted:

- (1) Except as provided in sub. (A)(1)(i), above, in Lakes Michigan and Superior, fishing for walleye is prohibited during the period from 12:00 noon March 15 through 12:00 noon May 1.
 - (2) In Lake Huron, fishing for walleye is prohibited during the period from 12:00 noon March 15 through 12:00 noon May 15.
- (f) Walleye less than fifteen (15) inches long caught in impoundment nets shall be returned to the water dead or alive. Possession of more than fifteen (15) pounds round weight of walleye less than fifteen (15) inches long captured in gill nets is prohibited. No undersized walleye shall be offered for sale.
- (g) Retention of walleye caught in the trap net zones identified in Section VII is prohibited. All walleye caught in the trap net zones shall be returned to the water dead or alive.

SECTION XIV. YELLOW PERCH.

(a) Yellow Perch Fishing Areas. Subject to the other provisions of these Regulations and the restrictions contained in this section, the following waters are open to Tribal commercial fishing targeting yellow perch:

- (1) Lake Michigan grids 116, 117, 118, 218, 219, 615, 712, 713, 714, 715, 716, and the south half (S^{1/2}) of grids 614 and 616, subject to the following restrictions:
 - (i) The area in grid 715 north and west of a line from the tip of Northport Point in a direct line to R"2" Bell buoy off Northport Point, then due west to the shore, is closed to commercial fishing for yellow perch.
 - (ii) Small mesh gill nets shall be limited to two and three-quarters (2.75) to three (3.0) inch stretch measure in the north half (N^{1/2}) of grid 715 outside of the area described in sub.(I), above.

(iii) Small mesh gill nets shall not be set in waters greater than ninety (90) feet deep in grids 712, 713, and 714.

(iv) Small mesh gill nets shall not be set in waters less than twenty (20) feet deep or greater than ninety (90) feet deep in grids 615 and 716, the south half (S½) of grids 614 and 616, and the portion of grid 715 outside the area described in sub. (I), above.

(v) Nets set for yellow perch in grids 712, 713, 714, 715, 716, 615, and the south half (S½) grids 614 and 616 shall be no more than six (6) feet in height and shall be set with the lead line on the bottom of the lake.

(vi) Grids 615, 712, 713, 714, 715, 716, and the south half (S½) of grids 614 and 616 are within the Grand Traverse Tribal Zone and subject to additional restrictions applicable to that zone.

(2) The northeast quarter (NE¼) of Lake Michigan grid 508, and a narrow strip of water along the eastern part of the northwest quarter (NW¼) of grid 508 near St. Martins Island and described as follows: commencing at the eastern shore of St. Martins Island at forty-five degrees thirty minutes (45° 30') north latitude; then southward along the shore of St. Martins Island to its southernmost tip; then due south to the intersection of the Michigan-Wisconsin border; then southeastward to the intersection with the eighty-six degrees forty minutes (86° 40') west longitude; then northward along said longitude to the intersection with forty-five degrees thirty minutes (45° 30') north latitude; then westward along said latitude to the point of beginning.

(3) Lake Michigan grids 315 to 319 and that portion of grid 320 west of McGulpin Point except:

(i) St. James Harbor west of eighty-five degrees thirty minutes (85° 30') west longitude; and

(ii) In grid 318, that part east of a line from the westernmost tip of Waugoshance Point to the southeast corner of the grid.

(4) The portions of Lake Michigan grids 418 and 518 described as follows: the area bounded by a line from the church spire at Middle Village southward to a line running from Townline Road on the south to the Stuttsmanville Road tower to the north; then south along that line a distance of three (3) miles; then along a line paralleling the shore and three (3) miles from the shore to a point due west of the church spire at Middle Village; then east to the shore. The portion of this area that is within grid 518 is within the Little Traverse Tribal Zone and is subject to additional restrictions applicable to that zone. The portion of this area in grid 418 shall be open to fishers from other Tribes as determined by Little Traverse in its discretion.

(5) Lake Huron grids 202, 301 through 306, and 401 through 403, except for those portions of grids 303 through 305 closed to tribal commercial fishing under Section VIII(e) and seasonally as provided in Section VIII(f).

(6) Lake Superior grid 1646.

(b) Seasonal Closures. The following seasonal closures shall apply to Tribal commercial fishing for yellow perch:

(1) In order to protect yellow perch spawning stocks, fishing for yellow perch is prohibited during the period from 12:00 noon April 1 through 12:00 noon May 15 in those waters in which fishing for yellow perch is permitted.

(2) In Lake Michigan, the north half (N^{1/2}) of the southwest quarter (SW^{1/4}) of grid 316 shall be closed to yellow perch fishing from and including the Friday before Memorial Day through Labor Day;

(3) In grid 318 in Lake Michigan, the area east of a line from the westernmost tip of Waugoshance Island to the southeast corner of grid 318 shall be closed to yellow perch fishing from and including December 1 through March 31.

(c) Yellow perch fishing in the waters described in sub. (a)(3), above, shall be subject to the following restrictions:

- (1) Until 2006, Little Traverse fishers only are allowed to fish for yellow perch in this area in connection with a yellow perch assessment fishery conducted under the direction of the TFC. All other fishing for yellow perch in this area is prohibited.
- (2) Yellow perch fishing shall be pursued in water depths between twenty (20) and ninety (90) feet.
- (3) Nets set for yellow perch shall be no more than six (6) feet in height and shall be set with the lead line on the bottom of the lake.
- (d) Except as provided in sub. (a), above, and subs. (e) and (f), below, commercial fishing for yellow perch is prohibited.
- (e) Possession of more than fifteen (15) pounds round weight of yellow perch per vessel per day caught in all 1836 Treaty waters not identified in sub. (a), above, is prohibited.
- (f) Possession of more than fifteen (15) pounds round weight of yellow perch per vessel per day caught in the 1836 Treaty waters identified in sub. (a), above, during a closed season specified in this section is prohibited.
- (g) Yellow perch less than eight (8) inches long caught in impoundment nets shall be returned to the water dead or alive. Possession of more than fifteen (15) pounds round weight of yellow perch less than eight (8) inches long captured in gill nets is prohibited. No undersized yellow perch shall be offered for sale.
- (h) Except as provided in sub. (a)(2), above, retention of yellow perch caught in the trap net zones identified in Section V is prohibited. All yellow perch caught in the trap net zones shall be returned to the water dead or alive.

SECTION XV. OTHER SPECIES.

- (a) The commercial harvest of lake trout, salmon, walleye, yellow perch, whitefish, bloater chubs, menominee, lake herring, and any other species is authorized unless specifically

prohibited in Section XVI.

(b) Whitefish. Whitefish less than seventeen (17) inches long shall be returned to the water immediately if alive. Possession of more than fifty (50) pounds round weight of undersized whitefish is prohibited. No undersized whitefish shall be offered for sale.

(c) Lake Herring. In order to protect lake herring spawning stocks, the following shall apply to Tribal commercial fishers during the period from 12:00 noon November 15 through 12:00 noon December 15:

(1) Fishing for lake herring is prohibited.

(2) Possession of more than four hundred (400) pounds round weight of lake herring is prohibited.

SECTION XVI. PROHIBITED SPECIES.

(a) The following fish species shall not be targeted for harvest or offered for sale or exchange when taken as bycatch during commercial fishing activities: muskellunge (except in Lake Michigan), splake, brown trout, brook trout, rainbow (steelhead) trout, Atlantic salmon, largemouth and smallmouth bass, and northern pike. Retention of such species when taken as bycatch during commercial trap net fishing is prohibited. Retention of more than twenty-five (25) pounds round weight per vessel per day of such species as bycatch during commercial gill net fishing is prohibited.

(b) The following fish species shall not be targeted for harvest or offered for sale or exchange when taken as a bycatch during commercial fishing, and any catch shall immediately be returned to the water if alive or, if not alive, shall be turned in to the BSD, Tribal biological staff, or the nearest Michigan Department of Natural Resources field office and shall not be retained in possession: lake sturgeon, muskellunge (Lake Michigan only), and any fish species listed as threatened or endangered under the Federal Endangered Species Act.

PART FIVE: NON-COMMERCIAL FISHING

SECTION XVII. RECREATIONAL FISHING.

Tribal members may engage in recreational fishing in the 1836 Treaty waters subject to the bag limits, seasons, size limits, closed areas, and gear and method restrictions applicable to recreational fishers licensed by the State of Michigan. Tribal members engaged in recreational fishing must have a Tribal membership identification card in their possession, but no further license is required.

SECTION XVIII. TRIBAL CHARTER BOAT OPERATIONS.

- (a) Any Tribe which authorizes or conducts a charter boat operation shall adopt safety inspection standards for its charter operations substantially similar to those that exist under current State law for vessels carrying passengers for hire.
- (b) Customers of Tribal charter operations who are not members of one of the Tribes shall be subject to applicable State law including, but not limited to, licensing requirements, rod limits, size and bag limits, daily possession limits, and seasons.
- (c) Any Tribal charter boat operation shall report its charter boat harvest, including the number and weight of species caught by recreational fishers, and areas fished, to the State in accordance with provisions applicable to state-licensed charter boat operations.

SECTION XIX. SUBSISTENCE FISHING.

- (a) The following are permitted gear for tribal subsistence fishing activity: impoundment gear, hooks, spears, bow and arrow, artificial lights, seines, dip nets, and a single large mesh or small mesh gill net as regulated in this section.
- (b) Each gang of gill nets or impoundment nets used in subsistence fishing activity shall be marked at each end with an orange float equivalent to at least a one (1) gallon jug in size bearing the Tribal ID number of the subsistence fisher.

(c) Tribal fishers who engage in subsistence fishing shall obtain a subsistence fishing license issued by their Tribe, and shall abide by all provisions of these Regulations and applicable Tribal regulations governing subsistence fishing. In addition, no Tribal member shall engage in subsistence fishing with gill nets or impoundment nets without a Tribal permit which shall be limited both in duration and in the area where the fishing may occur. The Tribal member shall abide by the limitations contained in the permit.

(d) Subsistence fishers shall be limited to one hundred (100) pounds round weight aggregate catch of all species in possession.

(e) Subsistence fishers shall not sell or otherwise exchange for value any of the catch.

(f) Subsistence gill netting is limited to one (1) net of three hundred (300) feet or less per vessel per day, except that in the St. Mary's River, as described in Section VIII(a), a single gill net shall not exceed one hundred (100) feet in length. The tying together of single gill nets to form a gang of nets is prohibited.

(g) Subsistence fishing is authorized in all 1836 Treaty waters, except:

(1) Subsistence fishing with gill nets is prohibited in all lake trout refuges, and retention of lake trout taken with any gear in lake trout refuges is prohibited.

(2) Subsistence fishing gear shall not be set in a manner which completely blocks or entirely prevents the free passage of fish into and out of streams that flow into 1836 Treaty waters.

(3) There shall be no subsistence fishing with nets:

(i) Within one hundred (100) yards of any break wall or pier; or

(ii) Within a three-tenths (0.3) mile radius of the mouth of the streams listed in Section VIII(h).

- (iii) In any tribal zone where fishing with all types of nets has been closed.
- (h) Subsistence fishing with large mesh gill nets and impoundment nets is prohibited during the period from 12:00 noon November 6 through 12:00 noon November 29.
- (i) In Little Bay de Noc, Lake Michigan, subsistence fishers shall not use gill nets or possess walleye beginning 12:00 a.m. March 1 through 6:00 p.m. May 15 in the waters of grid 306 north of an east-west line drawn through Saunders Point.
- (j) In Big Bay de Noc, Lake Michigan, subsistence fishers shall not use gill nets or possess walleye beginning 12:00 a.m. March 1 through 6:00 p.m. May 15 in the waters of grids 308 and 309 north of a line from St. Vitals Point to the northernmost tip of Garden Bluff.
- (k) Lake sturgeon, muskellunge (in Lake Michigan), and any species of fish listed as threatened or endangered under the Federal Endangered Species Act shall not be targeted for harvest, and any catch of such fish shall be returned to the water alive or, if not alive, shall be turned into the BSD or Tribal biological staff and shall not be retained in possession.
- (l) All subsistence fishers who engage in any fishing activity under this section shall file catch reports with their Tribe as provided in Section XXII(b).
- (m) No subsistence fisher shall set a gill net within fifty (50) feet of another gill net.
- (n) In the City of Sault Ste. Marie's Kids Fishing Pond at Rotary Park Island, all fishing activity shall be in accordance with those regulations imposed by the City of Sault Ste. Marie and the State of Michigan.

PART SIX: LICENSES AND INFORMATION

SECTION XX. LICENSE AND REGISTRATION DEFINITIONS AND RESTRICTIONS.

- (a) A commercial fishing captain license entitles the holder to operate a fishing boat and to

participate fully in all commercial fishing activities, including the capture and sale of all species pursuant to these Regulations. It further entitles the holder to employ helpers in such activities. Fees for such licenses may be set by individual Tribes. The license shall be valid during the calendar year for which it is issued.

(b) A commercial fishing helper license entitles the holder to assist the holder of a commercial fishing captain license in commercial fishing activities. Fees for such licenses may be set by individual Tribes. The license shall be valid during the calendar year for which it is issued.

(c) A subsistence fishing license entitles the holder to engage in fishing activities for subsistence purposes. Fees for such licenses may be set by individual Tribes. The license shall be valid during the calendar year for which it is issued.

(d) A commercial fishing vessel registration is necessary in order for any vessel to be utilized for commercial fishing. Anyone with a valid commercial fishing captain license may operate a properly registered commercial fishing vessel. Fees for such licenses may be set by individual Tribes.

(e) A member of a Tribe who engages in recreational fishing shall not be required to have in his or her possession a fishing license but must have tribal identification in his or her possession at all times.

(f) No holder of a commercial fishing captain license, commercial fishing helper license, or commercial fishing vessel registration shall fish as an employee of or for shares with a person not licensed to exercise treaty fishing rights. This prohibition shall be liberally interpreted to prohibit a licensee from exercising treaty fishing rights for the benefit of non-Indians.

(g) Except as provided in Section VII(b)(2)(vi), no Tribe shall issue a commercial fishing captain license or a commercial fishing vessel registration to a person who also holds a license or permit of any kind issued by the State of Michigan for commercial fishing.

SECTION XXI. LICENSE REGULATIONS.

(a) No member of a Tribe sixteen (16) years of age or older may engage in fishing activity within 1836 Treaty waters without having in his or her possession at all times a commercial fishing captain license countersigned under 25 C.F.R. Part 249, a commercial fishing helper license countersigned under 25 C.F.R. Part 249, or a subsistence license issued in accordance with these regulations, or, if engaged in recreational fishing, a tribal identification.

(b) No member of a Tribe may allow a person who does not possess a valid fishing license as required by subsection (a) of this section to aid or assist him or her while engaged in any fishing activity authorized by this Code; provided, however, that a validly licensed member of a Tribe may employ the consulting technical expertise of a non-member by obtaining a permit therefore from GLRC, which permit may not extend for more than one calendar year and may not be renewed for more than one additional year. Such permit shall list the name and address of the consultant, the type of fishing operation to which consultation will be provided, and the name and size of the vessel on which consultation will be provided. No such permit may be issued under any of the following circumstances:

(1) The consultant has an ownership interest in the vessel which the member seeks to utilize; or

(2) The consultant has an ownership interest in the fishing gear which the member seeks to utilize; or

(3) The consultant's payment for services from the member is based on a percentage of the member's proceeds from fishing activity.

(c) The license, permit or identification required by subsections (a) and (b) of this section shall be shown to any Enforcement Officer who makes a request therefore.

(d) Each boat which is used by a member of the Tribes for fishing activity shall have affixed to it in a clearly visible manner the number of the commercial fishing vessel registration issued by a Tribe. Each snowmobile or off road vehicle which is used by a member of a Tribe for fishing activity shall have affixed to it in a clearly visible manner a valid Tribal or State of Michigan snowmobile or off road vehicle registration.

(e) Each boat which is used by a member of a Tribe for commercial fishing activity must

have on board at all times at least one person with a valid commercial fishing captain license.

No member of a Tribe may allow any person who does not possess a valid fishing license as required by subsection (a) of this section, or who does not possess a permit as required by subsection (b) of this section, to be on board a commercial fishing vessel while it is operating on 1836 Treaty waters; provided, however, that such person's presence may be authorized by the member's Tribe through the issuance of a written permit. Issuance of such authorization shall not be considered a permit to engage or assist in fishing activity. Such permit shall identify by name and address the authorized individual, specify the commercial fishing vessel upon which the individual may be a passenger and the purpose for his presence, and identify the dates for which such authorization is valid.

SECTION XXII. HARVEST REPORTING AND SAMPLING.

(a) Each person to whom a commercial fishing captain license has been issued shall file with his or her Tribe an accurate report of his or her harvest for each calendar month not later than the tenth (10th) day of the following month. The licensee who is in charge of the fishing vessel may file a single report listing the names and license numbers of all licensed fishers who worked on the vessel at any time during the previous month, as well as the information required in sub. (2), below.

(1) Harvest reports shall be filed with the designated office of the Tribe that has issued the license. A Tribe may designate the BSD as the recipient of its catch reports.

(2) The report shall be submitted on forms developed for that purpose by the BSD, and each report shall include, for each day of fishing activity:

(i) the kind of gear used, including mesh size and total length of net lifted or number of impoundment nets lifted;

(ii) the depth and location of fishing activity by grid number; the total pounds of each species landed;

(iv) whether the fish were sold round or dressed;

- (v) the fisher’s license number;
 - (vi) the date of the activity; and
 - (vii) any other information required.
- (3) The holder of a commercial fishing captain license who does not fish during a month shall file a report of “no fishing.”
- (4) Catch reports filed by individual Tribal fishers are confidential and protected from disclosure. CORA shall not divulge the name of any reporting fisher or release a catch report except as required by an order from the appropriate Tribal court.
- (b) Each person to whom a subsistence fishing license has been issued shall file with his or her Tribe an accurate report of his or her harvest for each calendar month not later than the tenth (10th) day of the following month.
- (1) Subsistence harvest reports shall be filed with the designated office of the Tribe that has issued the license. A Tribe may designate the BSD as the recipient of its catch reports.
- (2) The subsistence harvest report shall be submitted on forms developed for that purpose by the BSD, and each report shall include, for each day of fishing activity:
- (i) the type and amount of gear used;
 - (ii) the location of fishing activity by grid number;
 - (iii) the total pounds round weight of each species landed;
 - (v) the fisher’s license number and, if nets were used, the fisher’s permit number;

(vi) the date of the activity; and

(vii) any other information required.

(3) The holder of a subsistence fishing license who does not fish during a month shall file a report of “no fishing.”

(4) Catch reports filed by individual Tribal fishers are confidential and protected from disclosure. CORA shall not divulge the name of any reporting fisher or release a catch report except as required by an order from the appropriate Tribal court.

(c) Each tribally licensed commercial fisher shall issue a bill of sale to any retail outlet purchasing fish from such fisher. The bill of sale shall be on a form developed by the BSD for that purpose which shall contain the name of the Tribal fisher; the number and pounds, by species, of fish sold; the date of sale; and the signature of the fisher.

(d) Tribally licensed commercial fishers selling fish to any state- or Tribally-licensed fish wholesaler shall furnish the wholesaler with the name of the seller, the seller’s address and license number, the date of the sale, and the signature of the fisher on the state or Tribal wholesale fish record of purchase.

(e) Any Tribally-licensed fish wholesaler shall furnish written reports of all purchases of fish on a form developed by the BSD for that purpose, indicating the name of the seller; the date; the seller’s license number; the number and pounds of each species sold; and the price paid for each species. Tribally-licensed wholesale fish dealers shall require identification from each seller of fish. A Tribally-licensed wholesale fish dealer shall purchase fish only from a State or Tribally licensed commercial fisher, or other legal source of fish. A copy of the report shall be mailed by the Tribally-licensed fish wholesaler to CORA by the tenth (10th) day of the month following the month in which the transaction occurred.

(f) Any catch shall be subject to reasonable biological sampling by Tribal biologists or the BSD to obtain information required for conservation and management purposes. If such sampling impairs or destroys the market value of the sampled fish, a reasonable value for the loss shall be paid to the fisher.

SECTION XXIII. ASSESSMENT FISHING.

Notwithstanding the other provisions of these Regulations, assessment fishing may be conducted by Tribal commercial fishers under permit from CORA or the State of Michigan. Such assessment fishing by commercial fishers, except that conducted by the United States, shall be limited by the following, except as may be otherwise approved by the state, the federal government, and the Tribes:

- (a) Tribal commercial fishers shall not be permitted to conduct assessment fisheries in areas otherwise closed to Tribal commercial fishing under Section VIII.
- (b) If an assessment conducted by commercial fishers will harvest a species in an area where commercial fishing for that species is prohibited by these Regulations, or will use gill nets in an area where the commercial use of such gear is otherwise prohibited by these Regulations, the assessment shall be limited to a single operation using no more than 6,000 feet of large mesh gill net, small mesh gill net, or graded mesh gill net, as appropriate.

PART SEVEN: REGULATION AND ENFORCEMENT

SECTION XXIV. TRIBAL REGULATIONS.

- (a) Each of the Tribes may promulgate regulations necessary to implement those portions of the Management Plan or Consent Decree which apply to that particular Tribe only, or which affect it in ways that are not reflected in the Tribal Code.
- (b) Each of the Tribes may promulgate additional and different regulations governing its members which are more restrictive than the provisions of the Tribal Code, provided that the regulations comply with the Management Plan and Consent Decree and do not involve matters that require uniformity among the Tribes.
- (c) The violation of any Tribal regulation adopted as provided in this section is prohibited.

SECTION XXV. ORDERS OF THE DIRECTOR.

(a) The Director shall issue emergency orders closing, curtailing, or otherwise restricting fishing activity by Tribal fishers when substantial harm to the resource is imminent and the need for immediate action is evident. Such an emergency order, unless rescinded by the Director, shall remain in effect until forty-five (45) days from the date of issuance or until GLRC has acted upon the matter, whichever shall first occur.

(b) The Director shall have the authority to close fishing by members of any Tribe, or to implement other regulations authorized by or consistent with the Consent Decree, Management Plan, and these Regulations necessary to prevent that Tribe or its fishers from violating the provisions of the Consent Decree, Management Plan, these Regulations, or decisions of GLRC or the Director made in accordance with the Management Plan.

(c) The violation of any order of the Director issued in accordance with this section is prohibited.

SECTION XXVI. JURISDICTION AND ENFORCEMENT.

(a) Jurisdiction to enforce these Regulations upon members of each Tribe is vested exclusively in the tribal court of that Tribe.

(b) Except for the provisions of Section XXVII, these Regulations are civil in nature. Violations may be punished by suspension or revocation of the fishing license or permit of the violator, assessment of a monetary penalty, forfeitures as set forth in subs. (c), (d), and (e), below, without the necessity of a separate forfeiture action, and any other penalty provided for by the civil or criminal code of the Tribe for violations within its jurisdiction.

(c) Violations of the regulations listed below shall be major violations and shall be punished by license or permit suspension for not less than thirty (30) days, a fine of not less than \$250.00, forfeiture of the catch, and such additional penalties as the tribal court may order:

(1) Commercial fishing for species listed in Section XVI;

(2) Commercial fishing for a fish species during the closed season for that species in

the area of the fishing activity;

(3) Commercial fishing in an area closed to that activity as specified in Section VIII;

(4) Fishing with gear prohibited in lake trout refuges, or with gear prohibited during closed seasons, or with gear which is prohibited by subsequent amendment of these Regulations or by an emergency order of the Director; and

(5) Engaging in commercial fishing activity without first having obtained a valid commercial fishing captain license or commercial fishing helper license, as required by these Regulations.

(d) All fish, eggs, or parts of fish taken, possessed, sold, purchased, offered for sale or purchase, or transported, delivered, received, carried, shipped, exported, or imported contrary to these Regulations shall be subject to seizure and shall be forfeited to the appropriate tribal court.

(e) All traps, nets and other equipment, vessels, snowmobiles, vehicles, and other means of transportation used to aid in the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivery, receiving, carrying, shipping, exporting, or importing any fish, eggs, or parts of fish in violation of these Regulations shall be subject to seizure and may be forfeited by the appropriate tribal court.

(f) The Tribes shall accept and prosecute all alleged violations of these Regulations referred to them by enforcement officers.

(g) Any enforcement officer may:

(1) Detain for inspection and inspect any package, crate, box, or other container, including its contents and all accompanying documents or tags, at reasonable times.

(2) Arrest without warrant any person committing in his or her presence or view a violation of Section XXVII.

(3) Execute any process for enforcement of the provisions of these Regulations.

(4) Search any place reasonably related to fishing activity, with or without a warrant, as authorized by state law.

(5) Seize, with or without warrant, any article which may be subject to forfeiture under subs. (c), (d), and (e), above, or which may be required as evidence of a violation of these Regulations, if the violation occurs in his or her presence; provided, however, that any such articles seized shall be delivered within forty-eight (48) hours of the time of seizure into the custody of the tribal court of the Tribe which has licensed or permitted the fisher who has violated these Regulations.

SECTION XXVII. CRIMINAL PROVISIONS.

(a) It shall be a criminal offense for any person to commit any of the following acts:

(1) Assault, resist, oppose, impede, intimidate, bribe, attempt to bribe, or interfere with an enforcement officer engaged in enforcing these Regulations.

(2) Violate any license or permit suspension or revocation ordered by a tribal court under Section XXVI.

(3) Commit any contempt in the presence of the tribal court.

(4) Violate any court order.

(5) Damage or steal nets or equipment belonging to another fisher, or steal from another fisher's nets.

(6) Possess a firearm while engaging in any fishing activity under these Regulations.

(b) Criminal offenses shall be punishable by a fine not to exceed \$5,000.00 or imprisonment not to exceed one year, or both. In addition, the forfeiture provisions of Section XXVI(d) and Section XXVI(f) shall apply to those convicted of criminal offenses.

PART EIGHT: ACCESS

SECTION XXVIII. USE OF ACCESS SITES.

(a) Fishers issued licenses or permits under these Regulations, including subsistence fishers, are authorized to use access sites which are subject to permits issued by agencies of the State of Michigan and the United States to the Chippewa-Ottawa Treaty Fishery Management Authority (COTFMA), predecessor to CORA, and sites acquired by COTFMA from private parties, as well as such sites as CORA may receive permits for or acquire. Sites may be used for putting boats into and pulling boats out of the water, for docking facilities, and for parking of vehicles.

(b) The following regulations apply to the use of such access sites, in addition to any restrictions or requirements that may be set forth in the applicable permit:

- (1) All vehicles shall be parked in the designated parking areas only.
- (2) Equipment, with the exception of boat trailers, shall not be left on site overnight.
- (3) Sites shall be maintained in a neat and orderly fashion with all garbage and refuse disposed of properly.
- (4) Littering is prohibited.
- (5) Cleaning of fish or fish disposal is prohibited.
- (6) Maintenance of equipment on site is prohibited.
- (7) Damage to trees, signs, and improvements is prohibited.
- (8) Overnight camping and overnight housing are prohibited.

(c) Violations of this section are subject to the jurisdiction and enforcement provisions of Section XXVI and, in addition, may result in revocation or denial of permission to use access sites and an order of restitution for any damage caused.

**Chapter 2. LTBB Off-Reservation (Ceded Territory, Hunting, Fishing, and Gathering
[Repealed]**

The LTBB Off-Reservation Hunting, Fishing and Gathering Statute, being Waganakising Odawak Statute 2002-07, is repealed.

(Source, WOS 2005-01, February 20, 2005, Section III(A); Section II of WOS 2005-01, codified at WOTC 4.504, delegated the promulgation of regulations to the Natural Resources Commission. By Section IV of WOS 2005-01 this change took “effect upon the Natural Resources Commission’s adoption of regulations that govern the use, management and protection of natural resources within the Ceded Territory and Reservation.”)

Chapter 3. Natural Resources Regulations for the Little Traverse Bay Bands of Odawa Indians' Reservation [*Repealed*]

The Natural Resources Regulations for the Little Traverse Bay Bands of Odawa Indians' Reservation Statute, being Waganakising Odawak Statute 2001-05, is repealed.

(Source, WOS 2005-01, February 20, 2005, Section III(B); Section II of WOS 2005-01, codified at WOTC 4.504, delegated the promulgation of regulations to the Natural Resources Commission. By Section IV of WOS 2005-01 this change took “effect upon the Natural Resources Commission’s adoption of regulations that govern the use, management and protection of natural resources within the Ceded Territory and Reservation.”)

Chapter 4. Wetland Protection and Management

4.401 FINDINGS

A. Importance to Ecosystem. Wetlands Areas are an integral and essential part of the ecosystem. Their functions include:

1. Sediment control;
2. They provide a natural filtration system needed to maintain surface and ground water quality;
3. They store water after high rainfalls thereby preventing erosion and failure of storm and sewage runoff and discharge systems;
4. Groundwater recharge;
5. They provide a habitat for many plants and animals, including aquatic life and endangered or threatened species;
6. Wetland habitats are needed for outdoor recreation, as well as fishing and hunting.

B. Cultural Values. The critical environmental functions of Wetland Areas make them very important to Little Traverse Bay Bands of Odawa Indians (LTBB) culture in that they provide medicinal, food and utilitarian plants, and a forum for outdoor education and ceremony.

(Source: WOS 2006-016, September 18, 2006, Section I)

4.402 PURPOSE

By protecting wetlands we protect our heritage for the next seven generations. The purposes of this Statute are:

- A. Protection, preservation, proper maintenance, and use in accordance with the character, adaptability, and stability of the reservations' Wetlands in order to prevent pollution, or contamination; outlaw their disturbance and disturbance to the natural habitat therein; and prevent damage from erosion, siltation, and flooding.
- B. Encourage education and proper cultural uses of our Wetlands, and reduce their over harvesting.
- C. The coordination with, and support for the enforcement of any applicable federal statutes, ordinances and regulations involving wetlands protection and enhancement.
- D. The establishment of standards and procedures for review of the regulation and uses of wetlands.
- E. The establishment of enforcement procedures and penalties for the violation of the Statute.
- F. To prevent the loss of Native Wetlands and any other Wetlands within the jurisdiction of LTBB.

(Source: WOS 2006-016, September 18, 2006, Section II)

4.403 DEFINITIONS

- A. **“Applicant”**. Any person or entity applying to conduct activity on or in any way alter wetlands, including but not limited to individuals, sole proprietorships, partnerships, corporations, associations, governments, and governmental agencies.
- B. **“Coastal Wetland”**. Wetlands that are within one mile or less of the Lake Michigan shoreline.
- C. **“Conservation Enforcement Officer”**. Any Tribal Conservation or Law Enforcement officer authorized by Tribal law to enforce Tribal conservation regulations, or federal enforcement agents, including Special Agents of the U.S. Fish and Wildlife Service.

- D. “Contiguous Wetland”.** Wetland bordering a lake or stream or that is directly connected to, or within 500 feet of, the surface waters of the Great Lakes.
- E. “High Quality Wetlands”.** Those wetlands determined to be of high quality by the LTBB Wetland Protection Officer using the rapid assessment for functional values analysis.
- F. “Hydric Soils”.** A soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop an anaerobic condition in the upper part or as recognized in the United States Department of Agriculture Soil Surveys for the reservation land as a Hydric Soil.
- G. “Inland Wetland”.** Any wetland over one mile from the Lake Michigan shoreline.
- H. “Non-contiguous Wetland”.** A wetland over 500 feet from the surface waters of the Reservation land and not directly connected to waters therein.
- I. “Native Wetlands”.** Wetlands that are within or connected to the 1855 LTBB Treaty Delineated Reservation that include marshes, bogs, fens, sedge meadows, seeps, or wet prairies.
- J. “Sediment Control”.** When wetland vegetation greatly reduces the velocity of water flow, allowing suspended material to settle.
- K. “Wetland”.** Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, not contiguous to the Great Lakes, an inland lake or pond, or a river or stream. Wetlands must have hydric soils, wetland vegetation and presence of wetland hydrology.
- L. “Wetland Delineation”.** Determining the boundaries of a wetland utilizing aerial photography, satellite telemetry data, digital imagery, other graphic representation of the area, and/or field reconnaissance.
- M. “Wetland Vegetation”.** Plants that exhibit adaptations to allow, under normal

conditions, germination and propagation, and to allow growth with at least their root systems in the water or saturated soils.

(Source: WOS 2006-016, September 18, 2006, Section III)

4.404 WETLAND PROTECTION OFFICER

The duties of the Wetland Protection Officer will be performed by the Wetland Technician or other qualified staff within the Environmental Services Department as determined by the Environmental Services Director.

A. Wetland Protection Officer Duties and Responsibilities:

- 1.** Enforce regulations promulgated pursuant to this Statute;
- 2.** Wetlands permitting and activities review;
- 3.** Wetlands Delineation;
- 4.** Conduct an annual review of this Statute and Regulations to recommend changes, identify conflicts between this Statute and Regulations and other governments' local ordinances and zoning laws/ordinances, and address accordingly;
- 5.** Assist in development and review of LTBB's operating procedures for implementation of this Statute and Regulations;
- 6.** Serve as a liaison between Tribal, Federal, County, State and local units of government on Wetland protection issues;
- 7.** Apply for U.S. Army Corps of Engineers permits; Standard or Regional, if needed under Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

(Source: WOS 2006-016, September 18, 2006, Section IV)

4.405 NATURAL RESOURCE COMMISSION

Pursuant to Const. art. VII, § D (16) a Wetland Review Board (“WRB”) is hereby created.

- A.** Composition: The Natural Resource Commission shall serve as the WRB.
- B.** Wetland Review Board Mandates:
 - 1.** Hear permit application appeals under § -- of this Statute.
 - 2.** Develop procedures for permit application appeal hearings.
 - 3.** Provide recommendations to the Environmental Services Department.

(Source: WOS 2006-016, September 18, 2006, Section V)

4.406 LANDS TO WHICH THIS STATUTE APPLIES

This Statute shall apply to:

- A.** Non-contiguous and contiguous wetlands at least 1/3 acre in size;
- B.** All high quality wetlands, regardless of size, located on lands held in fee by, or trust for, LTBB, or otherwise under the jurisdiction of LTBB.

(Source: WOS 2006-016, September 18, 2006, Section VI)

4.407 WETLAND VERIFICATION AND DELINEATION

- A.** The Environmental Services Department and GIS Department, along with any other departments or staff assigned by the Tribal Administrator, shall prepare and keep current an inventory of all wetlands to which this Statute applies, including the preparation of composite Wetlands maps, using available resources including but not limited to United States Department of Agricultural Soil surveys, Wetland Criteria as established by the Army Corps of Engineers,

field inspection, topographical maps, and aerial photography. The inventory and maps shall note areas of particular cultural significance. This inventory shall be in compliance with the proposed LTBB Cultural Areas Policy and Procedures.

(Source: WOS 2006-016, September 18, 2006, Section VII)

4.408 REGULATIONS; ADMINISTRATIVE PROCEDURES; DEPARTMENTAL PROCEDURES

A. Regulations

- 1. Uses Allowed Without a Permit.** The Environmental Services Department shall develop regulations for uses allowed in a wetland without a permit.
- 2. Uses Allowed With a Permit.** The Environmental Services Department shall develop regulations for activities allowed in a wetland with a permit.
- 3. Prohibited Uses.** The Environmental Services Department shall develop regulations for uses that are prohibited in a wetland. They will include but are not limited to the following:
 - a.** Deposit or permit the placing of fill material in a Wetland;
 - b.** Dredge, remove, or permit the removal of soil or minerals from a wetland;
 - c.** Construct, operate, or maintain any use or development in a wetland;
 - d.** Drain surface water from a wetland;
 - e.** Engage in wanton destruction or waste of fish, game, reptiles, amphibians or plants.

B. Administrative Procedures

1. Permit Applications. The Environmental Services Department shall develop administrative procedures for permit applications for permits required by regulations promulgated pursuant to this Statute.

2. Appeals. The Environmental Services Department shall develop administrative procedures for appeals from the grant or denial of permit applications for permits required by regulations promulgated pursuant to this Statute.

(Source: WOS 2006-016, September 18, 2006, Section VIII)

4.409 ENFORCEMENT AND PENALTIES

A. Enforcement.

1. The Tribal Court shall have jurisdiction to hear and adjudicate alleged violations of this Statute.

2. LTBB Conservation Enforcement Officers shall have the authority to issue civil citations for violations of any of the provisions of this Statute, or for any regulations promulgated pursuant to this Statute.

B. Penalties. If the Court finds that any person or entity destroyed or harmed wetlands in violation of this Statute, or any regulations promulgated pursuant to this Statute, it shall enter such orders as it deems necessary to restore such wetlands; including the issuance of injunctions requiring the restoration of such wetlands, or the assessment of monetary fees in amounts adequate to cover restoration costs, or any other appropriate civil penalty.

(Source: WOS 2006-016, September 18, 2006, Section IX)

4.410 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the

validity of the remaining portions thereof.

(Source: WOS 2006-016, September 18, 2006, Section X)

4.411 EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2006-016, September 18, 2006, Section XI)

Chapter 5. Natural Resources Commission

4.501 GENERAL PROVISIONS

A. The Little Traverse Bay Bands of Odawa Indians has determined that it is in the best interests of its members to regulate the wise utilization of Natural Resources within its jurisdiction in order to promote, honor and respect our traditional, spiritual and physical relationship with the land and waters, and the resources on, above, below and within the land and waters.

B. This statute is adopted under the provisions of the Constitution and By-Laws of the Little Traverse Bay Bands of Odawa Indians, the governance of which was recognized and extended by Section 8(a)(2) of Public Law 103-324. This Statute repeals and replaces the Natural Resources Commission Statute enacted on March 26, 1995, being Waganakising Odawak Statute 1995005. It is intended that this statute continue in full force and effect not only until such time as the Little Traverse Bay Bands of Odawa Indians adopt a new constitution under the Indian Reorganization Act, as authorized by Section 8(a)(1) of public Law 103-324, but thereafter as well, unless and until it is modified, amended or revoked by the duly authorized and elected governing body as created by the new constitution.

(Source: WOS 2001-04, March 18, 2001, Section I)

4.502 DEFINITIONS

Definitions. In implementation of this statute, the following terms shall have the meanings set forth:

A. “**Commission**” shall mean the LTBB Natural Resources Commission consisting of a five (5) member body, as created pursuant to Article II of this statute, with the powers and authority vested therein.

B. “**Commissioner**” shall mean the individual designated to chair the Commission who shall have powers and authority vested in that office pursuant to this statute.

C. “**Associate Commissioner**” shall mean one of the four (4) members of the Commission appointed to serve thereon according to Article II of this statute, with powers and authority vested in such members pursuant to this statute.

D. “**Tribal Council**” shall mean the elected governing body of the Little Traverse Bay Bands of Odawa Indians.

E. “**LTBB**” shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2001-04, March 18, 2001, Section I)

4.503 PURPOSE

The purpose of this Statute is to clarify the duties and authority of the Natural Resources Commission including drafting of regulations for Executive and Tribal Council’s approval that will ensure the wise use and management of inland natural resources.

(Source: WOS 2013-004, April 18, 2013, Section I)

4.504 NATURAL RESOURCES COMMISSION

A. There is hereby created the Natural Resources Commission, which shall consist of five (5) persons appointed according to Section B of this Article, which Commission is created for purposes described in Article I of this statute. The Commission is charged with the oversight and regulation of utilization of natural resources within LTBB’s jurisdiction and shall exercise the powers and authorities described in Article IV [WOTC 4.504] hereof and such other powers and authorities described as may be delegated by the Tribal Council by resolution, amendment of this statute or by a separate statute.

B. The Natural Resources Commission shall consist of the following persons to be appointed according to Section C of this Article:

- 1.** A Commissioner who shall serve as the Chair of the Commission and shall exercise the duties and responsibilities as set forth in this statute. The Commissioner shall

be a duly enrolled member of the Little Traverse Bay Bands of Odawa Indians, shall be at least 18 years of age upon appointment to his or her first term of office.

2. Four (4) Associate Commissioners, who shall have the duties and responsibilities as set forth in this statute. An Associate Commissioner shall be a duly enrolled member of the Little Traverse Bay Bands of Odawa Indians, shall be at least 18 years of age upon appointment to his or her first term of office.

C. The Commissioner and the Associate Commissioners shall be appointed as follows:

1. Initial appointments. The Tribal Council shall appoint a Commissioner and two Associate Commissioners who shall serve for two (2) years, and two (2) Associate Commissioners who shall serve for four (4) year terms.

2. Future appointments. At the expiration of the terms of any Commissioners, the Tribal Council shall fill such vacancies by appointment.

3. At least forty-five (45) days prior to the expiration of the term of any Commissioner, the Commission's Administrative Assistant shall notify the Tribal Council to publicize the vacancy and shall seek applicants for appointment and nominations of individuals to be appointed.

D. The term of office of the Commissioner shall be four (4) years, and an individual may serve a total of two (2) terms in such capacity, whether or not consecutive. There shall be no limit on the terms that Associate Commissioners may serve and a past Commissioner may serve as an Associate Commissioner. The Commissioner and Associate Commissioners will continue to serve until their successors are appointed and sworn in.

E. As soon as practicable after appointment, the Tribal Court shall administer the oath of office to the Commissioner and to Associate Commissioners. The oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this statute, the mandates of the CORA Fishing Regulations for the 1836 Treaty Ceded Waters of Lakes Superior, Huron and Michigan, the Natural Resources Regulations for the Little Traverse

Bay Bands of Odawa Indians' Reservation and the Uniform Conservation Code of the Odawa/Ottawa and Chippewa of Northern Michigan and future statutes adopted by the Tribal Council.

F. Removal from the office of Commissioner or Associate Commissioner.

1. Grounds for removal of an individual from office of Commissioner or Associate Commissioner shall include:

- a.** Conviction of felony in Tribal, State or Federal court during a term of office;
- b.** Fraud, conspiracy to commit fraud or material misrepresentation or malfeasance in the performance of duties and responsibilities under this statute.
- c.** Failure to attend three (3) consecutive meetings of the Commission without valid excuse.

2. Procedure for removal of an individual from the office of Commissioner or Associate Commissioner shall be in accordance with the Removal of Commissioners and Nepotism Statute (Waganakising Odawak Statute 1997005), or such successor statute as the Tribal Council may enact.

3. In the event a vacancy occurs in the office of Commissioner or Associate Commissioner, by virtue of death, resignation or removal, the Tribal Council shall appoint a member meeting the eligibility requirements of this Statute to fill the remaining term.

(Source: WOS 2001-04, March 18, 2001, Section II)

4.505 MEETINGS OF THE NATURAL RESOURCES COMMISSION

A. Regular Meetings. Regular meetings of the Natural Resources Commission shall be held at least once a month for the purpose of conducting the business of the Natural Resources

Commission. Regular meetings will be subject to the following requirements:

1. Notice of such meetings, including the date, time and location, shall be provided to each member of the Natural Resources Commission at least ten days prior to the date of the meeting.
2. Commissioner and each Associate Commissioner shall have a vote on all issues except when they have a conflict of interest.
3. Complete minutes of such meetings shall be taken and retained, subject to the exception contained in Section D of this Article, and shall become a part of the official records of the Natural Resources Commission.
4. Notice of upcoming meeting dates shall be posted in all Tribal Buildings and announced in the Odawa Trails Newsletter.

B. Public Informational Meetings. One time per year, the Commission shall hold its regular monthly meeting at a location suitable for any interested Tribal members to attend and receive information on the work and activities of the Commission. The following requirements apply to this annual meeting.

1. The agendas of such meetings shall be primarily informational in nature.
2. Substantial time shall be set aside at such meeting to permit the membership of the Little Traverse Bay Bands of Odawa Indians the opportunity to provide input on any aspect or issue which is relevant to the purpose and authority of the Natural Resources Commission.
3. Notice of such meetings shall be published in local periodicals wherever concentrations of members reside no later than ten days prior to such meeting, such notice to set forth the place, date, time and duration of such meeting and the agenda for such meeting.
4. Complete minutes of such meetings shall be taken and retained, and shall become

a part of the legislative history of the Natural Resources Commission.

C. Special meetings. Special meetings of the Natural Resources Commission shall be held as needed upon the directive of the Natural Resources Commissioner or any two (2) Associate Commissioners upon receipt of five (5) days notice in writing. Special meetings shall be held in accordance with the requirements of the Stipend policy or such other statute or policy of the Tribal Council governing special meetings of commissions.

D. Regular and special meetings shall be conducted pursuant to the following additional rules:

1. It shall be the standard that all meetings of the Natural Resources Commission shall be open to all members of the Little Traverse Bay Bands of Odawa Indians; however, the Commissioner or a majority of the present Associate Commissioners may direct all or a portion of a regular or special meeting to be conducted in closed session when necessary to deal with personnel issues or to discuss any legal matters.

2. Minutes of all regular and special meetings of the Natural Resources Commission shall be transcribed, shall be kept on permanent file in the offices of the Natural Resources Commission, and shall be available for inspection by any member of the Little Traverse Bay Bands of Odawa Indians in accordance with the procedures developed by the Tribal Council.

3. The Commissioner and Associate Commissioners shall not participate in making any decision that involves a personal or financial interest of the member of his or her immediate family unless such interest is held in common with the Tribe and its members.

4. Quorum. A quorum shall consist of three members of the Commission. The Commissioner counts toward a quorum.

(Source: WOS 2001-04, March 18, 2001, Section III)

4.506 POWERS AND AUTHORITIES OF THE LTBB

A. The primary purpose of the Natural Resources Commission is to protect treaty hunting and fishing rights through monitoring resources and drafting regulations that are consistent with the treaty rights and wise use of the resources. The Commission shall draft regulations for all hunting, fishing, trapping and gathering, including subsistence and commercial, for the area within the boundary established by the Treaty of 1855, the 1836 Treaty Ceded Territory, and 1836 Treaty Ceded Waters. The Natural Resources Commission also has the responsibility of drafting regulations necessitated by future statutes enacted by LTBB pertaining to Natural Resources.

(Source: WOS 2013-004, April 18, 2013, Section IV)

B. The Natural Resources Commission shall have the following additional powers:

- 1.** To issue orders and directives not inconsistent with either statute; to take any and all steps necessary, not inconsistent with other statutes, to carry out the purposes set forth in subsection (A) of this Section.
- 2.** When expressly authorized by Tribal Council action, to enter into contracts of all types with agencies of Federal, State, local or other Tribal governments, with private parties, including individuals, partnerships, corporations or other enterprises.
- 3.** To issue, suspend or revoke licenses contemplated by this statute and the aforementioned mandates in subsection (A) of this Section addressing the commercial fishery and the harvest of the inland natural resources.
- 4.** To issue, suspend or revoke special permits contemplated by this Statute and the aforementioned mandates in subsection (A) of this Section addressing the commercial and subsistence fishery and the harvest of inland natural resources.
- 5.** Take or enact emergency measures in order to preserve the rights or resources of the Tribe or its members. This may include but not be limited to shortening or closing seasons, reducing bag limits and/or other similar methods. The NRC may take this action at any regularly scheduled meeting or by a phone poll called for that purpose. However, such emergency enactment shall require a unanimous vote of all sitting Natural Resource

Commissioners and shall not conflict with any governing court order.

(Source: WOS 2005-01, February 20, 2005, Section II which by Section IV of WOS 2005-01 took effect immediately upon enactment)

4.507 POWERS OF THE COMMISSIONER

The Natural Resources Commissioner shall have the following powers and authority:

- A. To chair meetings of the Natural Resources Commission.
- B. To act in all respects on behalf of the Natural Resources Commission, subject, however, to ratification by the Natural Resources Commission on any action taken.
- C. To represent the Natural Resources Commission, whenever it is appropriate for the Natural Resources Commission to be represented.
- D. To serve on other boards or commissions as a representative of the Natural Resources Commission.
- E. To delegate to any Associate Commissioner any of the duties and responsibilities of the Commissioner.
- F. To exercise any other authority delegated to the Commissioner by statute or by action of the Tribal Council.

(Source: WOS 2001-04, March 18, 2001, Section V)

4.508 SAVINGS CLAUSE

In event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the

balance of the statute to remain in full and binding force and effect.

(Source: WOS 2001-04, March 18, 2001, Section VI)

4.509 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the Statute, then upon Tribal Council override of the veto.

(Source: WOS 2013-004, April 18, 2013, Section III)

Chapter 6. Protection of Great Lakes

4.601 TITLE AND PURPOSE

A. Title. This Statute may be cited as the Little Traverse Bay Bands of Odawa Indians Great Lakes Protection Statute.

B. Purpose. The Bands that make up the Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) historically resided in the Great Lakes Region in harmony with the natural environment since well before the arrival of Europeans. The Great Lakes, especially Lakes Michigan, Huron and Superior, have provided the Tribe with food, water, and transportation for hundreds of years. The central mission of the Tribal government stated in the Tribe’s Constitution is “to provide for the perpetuation of our way of life and the welfare and prosperity of our people, to preserve the right of self government, and to protect our property and resources.” Preserving the environmental quality of the Great Lakes and their resources for the present and future generations is absolutely essential to the Tribe. This Statute is enacted to help protect and preserve the Great Lakes ecosystem.

(Source: WOS 1999010, June 27, 1999, Section I)

4.602 DEFINITIONS

The following definitions apply to this Statute:

A. “Great Lakes”. Great Lakes means any of the following bodies of water: Lake Ontario (including the Saint Lawrence River from Lake Ontario to the forty-fifth parallel of latitude), Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, Lake Superior, and all connecting waters.

B. “Sale”. Sale means any selling or attempted selling of water from any of the Great Lakes.

C. “Divert/Diversion”. Divert or Diversion means any increased activity removing water from any of the Great Lakes to a point outside of the Great Lakes Basin. The term does not

include movement of waters through locks designed to protect the Great Lakes from pollution that are already in use as of the date of enactment of this Statute.

(Source: WOS 1999010, June 27, 1999, Section II)

4.603 DRILLING, SALE, AND DIVERSION PROHIBITION

A. No person under the jurisdiction of LTBB may commence or carry out any drilling activity (including any slant or directional drilling) to extract oil, gas or other petroleum products from lands beneath waters under any of the Great Lakes.

B. No person under the jurisdiction of LTBB may commence or carry out any activities to sell or divert any waters from the Great Lakes.

C. The Tribal Prosecutor, as directed by the Tribal Council, shall bring any action necessary to enforce the prohibition contained in this section.

(Source: WOS 1999010, June 27, 1999, Section III)

4.604 VIOLATIONS OF FEDERAL LAW BASED ON TREATIES

A. Under Article VI of the United States Constitution, “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” LTBB was a party to numerous treaties with the United States including the 1836 Treaty of Washington, 7 Stat. 491, in which the Tribe reserved the right to utilize Great Lakes resources for subsistence and commercial purposes. Federal Courts have upheld the continued vitality of this Treaty right. Degradation and destruction of the Great Lakes ecosystem constitutes an unauthorized limitation or negation of this Treaty right. Any such degradation or destruction therefore violates the “supreme law of the land.”

B. Any drilling, sale or diversion which has the potential for impacting the waters of Lakes Michigan, Superior or Huron ceded by the 1836 Treaty of Washington would violate Federal law and Tribal law, and LTBB will take any appropriate and necessary action to prevent such activity

including seeking Federal prosecution therefore.

(Source: WOS 1999010, June 27, 1999, Section IV)

4.605 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this ordinance is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this ordinance, the entirety of the balance of the ordinance to remain in full and binding force and effect.

(Source: WOS 1999010, June 27, 1999, Section V)

4.606 EFFECTIVE DATE

This Statute shall take effect immediately upon enactment [June 27, 1999].

(Source: WOS 1999010, June 27, 1999, Section VI)

Chapter 7. Solid Waste Disposal

4.701 INTRODUCTION / PURPOSE

The Little Traverse Bay Bands of Odawa Indians recognizes that unsanitary, inefficient, and inappropriate methods of disposal of solid waste have an adverse impact upon the environment and the natural resources of the Little Traverse Bay Bands of Odawa Indians and its citizens, and the promulgation of standards of solid waste disposal and recycling are in the best interests of the Little Traverse Bay Bands of Odawa Indians people. Accordingly, the purposes of this Statute are to promote the health, safety and welfare of the Little Traverse Bay Bands of Odawa Indians' members and all others within LTBB's jurisdiction through the establishment of standards necessary to the sanitary and environmentally sound disposal of solid waste.

4.702 DEFINITIONS

- A. **“Brush”** means cut or broken branches.
- B. **“Campfire”** means small fire of not more than 3.5 ft. in diameter which has been contained in a pit, or metal or masonry burner. Used for cooking, warmth, or recreation.
- C. **“Collection Site”** means any place designated by the Tribal Council or Natural Resource Department as the site where solid waste may be presented for disposal including transfer stations.
- D. **“Collector”** means any natural or legal person, that person's employees and agents, who gather solid waste from another person.
- E. **“Commercial Grade Waste Wood”** means any wood of commercial nature that has been treated, stained, painted, tarred, shingled, or glued.
- F. **“Garbage”** means all putrescible (decayable) wastes, including animal and vegetable matter, animal offal and carcasses and recognizable industrial by-products, but excluding sewage and animal wastes.

- G.** “**Garbage Pits**” means holes, pits and or depressions in the normal topography created for the sole purpose of depositing and/or placing garbage and refuse as a means of disposal.
- H.** “**Hazardous Solid Waste**” means any solid waste defined as hazardous by the Environmental Protection Agency under the provisions of the Resource and Conservation Act of 1976, as amended, and includes but is not limited to, explosives, pathological wastes, pesticides, chemicals, and other toxic materials, which are harmful to public health.
- I.** “**Non-recyclable Waste**” means all solid waste not listed in Subsection (O) of this section, excluding hazardous waste.
- J.** “**Open Burning**” means any fire wherein the products of combustion are emitted directly into the atmosphere and are not directed thereto through a stack or chimney, incinerator, or other devices.
- K.** “**Open Dump**” means the consolidation of solid waste from one or more sources at a disposal site with unsanitary conditions, little or no cover, usually burning, and little or no management.
- L.** “**Person**” means any individual, firm, governmental unit, organization, partnership, corporation, or company.
- M.** “**Putrescible**” means solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gasses, such as kitchen wastes, food scraps, offals and carcasses.
- N.** “**Radioactive Solid Waste**” means any radioactive material.
- O.** “**Recyclable Waste**” means glass containers, metal cans, jar lids, newspaper, magazines, phone books, hard-cover books, cardboard, brown paper bags, office/writing paper, envelopes, file folders, plastics (HDPE and PET), aluminum cans, foil, batteries and motor oil.
- P.** “**Refuse**” means all non-putrescible wastes.

- Q.** “**Solid Waste**” means all garbage, refuse, rubbish, trash, and other discarded, solid materials, including solid wastes materials resulting from industrial, commercial, and agricultural operations, from community activities and individual people, but does not include solid or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluent, dissolved materials in irrigation return or other common pollutants.
- R.** “**Solid Waste Collector**” means LTBB approved tribal or non-tribal entity responsible for collecting, transporting, and properly disposing of solid waste.
- S.** “**Solid Waste Disposal**” means the collection, storage, treatment, utilization, processing or final disposal of solid waste.
- T.** “**Solid Waste Disposal Facility**” means any land, personnel equipment, or resource approved for and used in the disposal of solid waste.
- U.** “**Solid Waste Reduction**” means reduction of waste at the source of generation, prior to recycling.
- V.** “**Spoiled Food**” means any food which has been removed from sale by the United States Department of Agriculture.
- W.** “**Transfer Station**” means any facility approved by the LTBB Tribal Council for the purpose of collecting, transporting and disposing of solid wastes.
- X.** “**Tribal Health**” means the Health Director and/or his authorized representative or Department representatives.
- Y.** “**Tribe or LTBB**” means the Little Traverse Bay Bands of Odawa Indians.
- Z.** “**Vector**” means an insect or other animal, which transmits infectious diseases from one person or animal to another.
- AA.** “**Waste Wood**” means any wood of commercial nature that has not been treated, stained,

painted, tarred, shingled, or glued.

BB. “**Yard Waste**” means any waste associated with common yard maintenance, such as grass clippings, pulled weeds, leaves, twigs and branches.

(Source: WOS 2003-001, January 5, 2003, Section II)

4.703 APPLICABILITY

This Statute applies to all real property and persons under the jurisdiction of the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2003-001, January 5, 2003, Section III)

4.704 SOLID WASTE DISPOSAL

The following provisions shall apply to all solid waste disposal within LTBB Tribal jurisdiction.

- A.** No person shall leave, deposit, and/or dump solid waste anywhere within LTBB’s jurisdiction except at a collection site or tribally approved transfer station.
- B.** No person shall store any solid waste on any properties or land within LTBB Tribal jurisdiction except for in containers, which have been approved and accepted by the solid waste collector.
- C.** No person shall burn and/or incinerate any solid waste on any properties within LTBB jurisdiction with the exception of those waste allowed for by permit (brush, yard waste and/or waste wood). This shall include but not be limited to burn barrels, burn baskets, in ground pits, garbage piles and the like.
- D.** No person shall deposit solid waste from any stopped or moving vehicle on to state, county, or tribal highways, roads, or right-of-ways, within LTBB Tribal jurisdiction.
- E.** No person shall dispose of any commercial hazardous and/or nuclear waste within LTBB

jurisdiction.

F. No person shall deposit solid waste at a collection site or transfer station except in a manner approved by the solid waste collector.

G. The owner and/or occupant of any premise, business establishment, or industry within LTBB jurisdiction shall be responsible for the proper disposal of any solid waste produced by or accumulated at said premise, business establishment, or industry.

(Source: WOS 2003-001, January 5, 2003, Section IV)

4.705 SOLID WASTE REDUCTION, REUSE AND RECYCLING

Solid waste reduction, reuse and recycling are the preferred methods of handling solid waste. LTBB is and will continue to be committed to solid waste reduction, reuse and recycling.

A. All Tribally owned or funded facilities and/or enterprises shall implement a solid waste recycling and reduction policy developed by the Tribal Council or its designee.

B. The Tribe will make available at all Tribal housing sites and/or developments recycling collection bins.

C. All Tribally owned and/or funded facilities and/or enterprises and the collector contracted to empty the recycling collection bins shall not dispose of the said collected recyclables in any fashion other than which would allow the said recyclables to be recycled.

(Source: WOS 2003-001, January 5, 2003, Section V)

4.706 OPEN BURNING

Burning is not a recommended method of waste disposal. However, open-air burn permits may be issued for the burning of brush, other yard wastes and waste wood if conditions are conducive to safety and environmental protection.

- A.** The applicant must request a permit and receive approval in writing from the LTBB Natural Resources Department prior to any burning.
- B.** The Permittee will be required to inform the nearest local fire authority as to the time and location of the intended burn.
- C.** The permittee will be held responsible for any damages that may result from the fire itself or any other fires caused by the initial fire.
- D.** All permitted fires shall be attended at all times.
- E.** The permit will be valid for thirty (30) days after the date issued. The permittee must request in writing another permit after the expiration date.
- F.** All burning must cease and the permit becomes void if a burn ban is issued (contact local fire authority). The permittee shall be required to obtain a new permit in writing to continue burning once the restriction or ban has been lifted.
- G.** The permittee will be required to comply with any burning restrictions and/or bans that may be currently in place or enacted.
- H.** Burn permits are not required for campfires.
- I.** No permit shall be required when an inch or more of snow is present provided that no other restrictions apply.

(Source: WOS 2003-001, January 5, 2003, Section VI)

4.707 SOLID WASTE COLLECTION AND TRANSPORT

- A.** Any solid waste transported within LTBB jurisdiction shall be collected and transported in a manner that prevents the waste from leaking, blowing off, or falling from the transport vehicle. If there is any solid waste lost from or if there is any spillage from the collection container or transportation vehicle, the material shall be immediately picked up by the solid

waste collector and returned to the vehicle or container and the area properly cleaned.

B. Commercial vehicles or containers used for collection and transportation of garbage and other putrescible wastes, or solid waste containing such materials, shall be covered, leak proof, durable, and of easily cleanable construction. These shall be cleaned to prevent nuisances, pollution, or insect breeding and shall be maintained in good repair.

(Source: WOS 2003-001, January 5, 2003, Section VII)

4.708 ENFORCEMENT

A. LTBB's Law and Conservation Enforcement officers shall be empowered to enforce all provisions of this Solid Waste Statute. When necessary to enforce this Statute, Tribal law enforcement or natural resources conservation officers may file reports with the Tribal Prosecutor.

B. Any duly authorized agent, in the performance of his or her duty, may enter into any premises on or in which he or she has reasonable cause to believe a violation of this Statute is occurring after obtaining a valid search warrant from the Tribal Court, subject to the common law exceptions for exigent circumstances.

C. Violation of any provision of this Statute is a civil penalty which may not exceed \$500. Each day of any continuing violation may be charged as a separate violation, and a separate penalty may be imposed.

D. In addition to a civil penalty, any personal property which has been used in connection with a violation of this Statute, including vehicles and other equipment may be seized and forfeited in satisfaction of any judgment rendered pursuant to this Statute.

E. Any person found in violation this Statute shall be responsible for any damage, clean up and/or remediation that may be necessary as a result of the said violation.

F. Repeated violations by occupants or Tribal Members that are renting or leasing from the Tribe may be punished by the termination of the rental agreement and/or lease.

G. Nothing herein shall prevent the Little Traverse Bay Bands of Odawa Indians from bringing suit against any violator of this Statute for monetary damages, for harm to any LTBB resources, or for injunctive relief.

(Source: WOS 2003-001, January 5, 2003, Section VIII)

4.709 PERMITS

The Little Traverse Bay Bands of Odawa Indians Natural Resource Department shall be responsible for the issuance of permits under this Statute.

(Source: WOS 2003-001, January 5, 2003, Section IX)

4.710 LIMITATIONS

Nothing within this Statute shall be constructed to limit the authority of the Tribal Council from adopting more stringent solid waste disposal requirements than those set forth in this Statute.

(Source: WOS 2003-001, January 5, 2003, Section X)

4.711 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this Statute found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

(Source: WOS 2003-001, January 5, 2003, Section XI)

4.712 EFFECTIVE DATE

This Statute shall take effect upon enactment by Tribal Council [January 5, 2003].

Chapter 8. Conservation and Cultural Preservation Easement Act

4.801 PURPOSE

The way of life of the Little Traverse Bay Bands of Odawa Indians (LTBB) relies upon environmental protection for cultural perpetuation. This is rooted in the traditional reliance on Great Lakes and inland fishing and hunting, and the many plant species that have cultural, medicinal, and spiritual values for the Tribe. For centuries, LTBB Tribal members have subsisted by making good use of the natural resources available to them, including the flora and fauna in their environment, for food, medicines, clothing, shelter, and heat. This way of life continues to be threatened by the increasing popularity of LTBB's 1836 and 1855 Treaty Reservation and surrounding area both as a resort locale and as a permanent home. Development is still on the rise to accommodate the large numbers of people visiting and relocating in the area. The escalating development and rise in population density will continue to have a negative impact on the area's natural resources that hold such central importance to the Tribe.

The Little Traverse Bay Bands of Odawa Indians strives to protect vital areas such as sites of cultural significance, scenic view-sheds, open space, wetland areas, waterfront property, plant and animal habitat, and endangered/threatened species, etc. By protecting these vital areas in perpetuity, LTBB ensures that these areas and thus the LTBB way of life will be protected for the next seven generations.

(Source: WOS 2004-01, July 25, 2004, Section I)

4.802 DEFINITIONS

As used in this Statute:

A. "Conservation Easement" means an interest in land which provides limitation on the use of land or a body of water, or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water,

predominantly in its natural, scenic, or open condition, or in an agricultural, farming ,open space, or forest use, or similar use or condition.

B. “Cultural/Historic preservation easement” means an interest in land which provides a limitation on the use of a structure or site that is listed as a national historic landmark pursuant to the historic sites act of 1935, Public Law 74-292; is listed on the national register of historic places pursuant to the national historic preservation act of 1966, Public Law 89-665; is recognized as a site of cultural and/or historical significance according to the Little Traverse Bay Bands of Odawa Indians Archives and Records Department, or prohibits certain acts on or with respect to the structure or site, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the structure or site or in an order of taking, which interest is appropriate to the preservation or restoration of the structure or site.

C. “Traditional Use Easement” means a provision in a restriction, easement, covenant, deed, will or other instrument executed by or on behalf of the owner of the land that allows LTBB members to hunt, fish, gather plants, hold ceremonies and/or erect temporary or permanent structures as specified in such provision. A conservation easement as defined in Section II(A) and a cultural/historic preservation easement as defined in Section II(B) may also contain traditional use easements.

(Source: WOS 2004-01, July 25, 2004, Section II)

4.803 ENFORCEABILITY AND CONSERVATION EASEMENT: RECORDATION

A conservation easement granted to a governmental entity, including but not limited to the LTBB Tribal Government, or to a charitable or educational association, corporation, trust, or other legal entity, including but not limited to those formed under the laws of LTBB, before or after the effective date of this Statute, shall be enforceable against the owner of the land or body or water subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to particular land or a body of water, or the fact that the benefit may be assigned to another governmental entity or legal entity. Any such easement created after the effective date of this Statute that is for lands within the exclusive jurisdiction of LTBB or granted to LTBB or an entity formed under the laws of LTBB shall be filed with the LTBB Archives and Records

Department as well as the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value or other grantee without actual notice.

(Source: WOS 2004-01, July 25, 2004, Section III)

4.804 ENFORCEABILITY OF CULTURAL / HISTORIC PRESERVATION EASEMENT: RECORDATION

A cultural/historic preservation easement granted to a governmental entity including but not limited to the LTBB Tribal Government, or to a charitable or educational association, corporation, trust, or other legal entity, including but not limited to those formed under the laws of LTBB, before or after the effective date of this Statute, whose purposes include the preservation or restoration of structures or sites described in section II(B) shall be enforceable against the owner of the structure or site subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to the particular structure or site, or the fact that the benefit may be assigned to another governmental entity or legal entity whose purposes include the preservation or restoration of structures or sites described in section II(B). Any such easement created after the effective date of this Statute that is for lands within the exclusive jurisdiction of LTBB or granted to LTBB or an entity formed under the laws of LTBB shall be filed with the LTBB Archives and Records Department as well as the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value or other grantee without actual notice.

(Source: WOS 2004-01, July 25, 2004, Section IV)

4.805 ENFORCEABILITY OF TRADITIONAL USE EASEMENT

A traditional use easement granted to a governmental entity, including but not limited to the LTBB Tribal Government, or to a charitable or educational association, corporation, trust, or other legal entity, including but not limited to those formed under the laws of LTBB, before or after the effective date of this Statute, shall be enforceable against the owner of the land or body or water subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to particular land or a body of water, or the fact that the benefit may be assigned to another governmental entity or legal entity. Any such easement created after the effective date

of this Statute that is for lands within the exclusive jurisdiction of LTBB or granted to LTBB or an entity formed under the laws of LTBB shall be filed with the LTBB Archives and Records Department as well as the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value or other grantee without actual notice.

(Source: WOS 2004-01, July 25, 2004, Section V)

4.806 ENFORCEABILITY OF OTHER RESTRICTIONS, EASEMENTS, COVENANTS OR CONDITIONS

This Statute does not render a restriction, easement, covenant, or condition which does not have the benefit of this Statute unenforceable.

(Source: WOS 2004-01, July 25, 2004, Section VI)

4.807 RECORDATION OF EASEMENTS; ENFORCEMENT; ASSIGNMENT AND ACQUISITION

A. A conservation easement, historic preservation easement or traditional use easement is an interest in real estate, and a document creating one or more of those easements shall be considered a conveyance of real estate and shall be enforced either by an action at law or by an injunction or other equitable proceedings.

B. A conservation easement described in section II(A) and a traditional use easement described in section II(C) may be assigned to a governmental or other legal entity, which shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

C. A cultural/historic preservation easement described in section II(B) may be assigned to a governmental or other legal entity whose purposes include preservation or restoration of structures or sites described in section II(B), which shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

(Source: WOS 2004-01, July 25, 2004, Section VII)

4.808 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2004-01, July 25, 2004, Section VIII)

4.809 EFFECTIVE DATE

This Statute takes effect thirty days from the date of enactment.[from July 25, 2004]

(Source: WOS 2004-01, July 25, 2004, Section IX)

Chapter 9. Fishing Vessel Safety

4.901 INTRODUCTION / PURPOSE

In order to protect members engaged in commercial fishing pursuant to the rights reserved in the Treaty of 1836 and in accordance with the Memorandum of Understanding with the United States Coast Guard (USCG), the Little Traverse Bay Bands of Odawa Indians (LTBB) hereby enacts this Statute in an attempt to decrease the potential of death, personnel injury, and or property damage that may be associated with the high risk activity of commercial fishing. Any duly licensed LTBB commercial fisherman shall ensure that he and any vessel he may operate are in full compliance with the following safety provisions. Failure to comply with the following safety provisions could result in fines, suspension or revocation of fishing license.

(Source: WOS 2004-02, July 25, 2004, Section I)

4.902 DEFINITIONS

- A. **“Auxiliary Craft”**: a vessel that is carried onboard a commercial fishing vessel and is normally used to support fishing operations.
- B. **“Buoyant Apparatus”**: a buoyant apparatus approved by the Commandant.
- C. **“Coast Guard”**: a commissioned, warrant, or petty officer of the U.S. Coast Guard Boarding Officer having authority to board any vessel under the Act of August 4, 1949, 63 Stat. 502, as amended (14 U.S.C. 89).
- D. **“Cold Waters”**: water where the monthly mean low water temperature is normally 59° F (15° C) or less.
- E. **“Commandant”**: the Commandant of the U.S. Coast Guard or an authorized representative of the Commandant of the U.S. Coast Guard.
- F. **“Commercial Fishing”**: a fishing activity engaged in for the purpose of sale of fish or parts of fish.

G. “Enforcement Officer”: any Tribal, Federal or State officer authorized under this Statute, the 2000 Great Lakes Consent Decree or the LTBB/USCG MOU to enforce LTBB fishing rules and regulations.

H. “Fishing Vessel”: a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking or harvesting of fish.

I. “Inflatable Buoyant Apparatus”: an inflatable buoyant apparatus approved by the Commandant.

J. “Traditional Craft”: a vessel such as a dugout canoe, cedar strip or birch bark canoe, that is hand made and is not powered by anything other than hand paddles and the elements of nature.

K. “USCG”: means the United States Coast Guard.

L. “Warm Waters”: means water where the monthly mean low water temperature is normally above 59° F (15° C).

(Source: WOS 2004-02, July 25, 2004, Section II)

4.903 EQUIPMENT

A. Lights.

- 1.** Vessels 39.4 feet and less are required to have the following:
 - a.** Side lights: Sidelights that are visible from dead ahead to 22 ½ degrees abaft the beam (red port light and green starboard light).
 - b.** Masthead and/or stern light: An all around white light.

2. Vessels over 39.4 feet are required to have the following:
 - a. Side lights: Sidelights that are visible from dead ahead to 22 ½ degrees abaft the beam (red port light and green starboard light).
 - b. Masthead and/or stern light: A stern light and a masthead light that shows dead ahead to 22 ½ degrees abaft the beam on either side.

B. Distress Signals.

1. Visual:
 - a. Vessels that operate within three miles of the Coastline of the Great Lakes are required to have the following:
 - i. Night visual distress signals: One electric distress light or 3 approved flares; and
 - ii. Day visual distress signals: One distress flag, or 3 approved flares, or 3 approved smoke signals.
 - b. Vessels that operate more than three miles from the Coastline of the Great Lakes are required to have the following:
 - i. 3 Parachute flares, 6 handheld flares, and 3 smoke signals.
2. Sound:
 - a. Vessels 39.4 feet and less are required to have the following:
 - i. A means of making an efficient sound signal audible within one nautical mile of the vessel.
 - b. Vessels over 39.4 feet are required to have the following:

ii. Batteries for the EPIRB shall be replaced after the EPIRB deployed for any purpose other than testing and before the expiration date of the battery.

iii. All non-functioning or damaged EPIRB's must be replaced with an operational EPIRB.

d. Exceptions:

i. A skiff/work boat or auxiliary craft is not required to carry an EPIRB; if:

aa. Its "mother ship" is required to carry an EPIRB; and

bb. When not in use, the skiff/work boat or auxiliary craft is carried on board the mother ship.

C. Communication Equipment.

1. Each vessel must be equipped with an operational VHF FM handheld submersible ship to shore radio; or

2. An operational cell phone capable of communicating in the area fished.

D. Life Preservers and Personal Floatation Devices.

1. Types: Each vessel must be equipped with at least one immersion suit, exposure suit, or wearable personal flotation device (PFD) of the proper size for each individual on board and as specified below. Each life preserver or PFD must be stowed so that it is readily accessible to the individual for whom it is intended.

a. Lake Superior: Immersion Suit.

b. Lake Michigan and Lake Huron:

i. Vessels 40 feet or more in Length: Type I, Type V commercial hybrid, immersion suit, or exposure suit.

ii. Vessels 40 feet or less in length: Type I, Type II, Type III, Type V commercial hybrid, immersion or exposure suit.

2. Markings: Each immersion suit, exposure suit or PFD must be marked with the name of either the vessel, the owner of the device, or the individual to whom it is assigned. The lettering used in marking must be in block capital letters.

3. Operation Readiness and Maintenance: The captain or individual in charge of the vessel must ensure that each immersion suits, exposure suits, or wearable PFD must be in good working order, ready for immediate use, and readily accessible before the vessel leaves port and at all times when the vessel is in operation.

4. Approved equipment/materials: All immersion suits, exposure suits, or wearable personal flotation devices must be equipped with a Coast Guard approved PFD light and have at least 31 square inches per side of retro-reflective material attached to the front and back.

E. Throwable Flotation Device.

1. Types: Each vessel as specified below must be equipped with a throwable flotation device or ring buoy and a proper corresponding length of line.

a. Vessels less than 16 feet: No throwable flotation devices are required.

b. Vessels 16 feet or more but less than 26 feet: One (1) throwable buoyant cushion or ring buoy equipped with a line at least 60 feet in length.

c. Vessels 26 feet or more but less than 65 feet: One (1) orange Coast Guard approved ring buoy at least 24 inches in size equipped with a line at least 60 feet

in length.

d. Vessels 65 feet or more: Three (3) orange ring buoys at least 24 inches in size each equipped with a line at least 90 feet in length.

2. Markings: All throwable flotation devices and ring buoys must be marked with the name of the vessel. The lettering used in marking must be in block capital letters.

3. Operation Readiness and Maintenance: The captain or individual in charge of the vessel must ensure that each throwable flotation device and/or ring buoy be in good working order, ready for immediate use, and readily accessible before the vessel leaves port and at all times when the vessel is in operation.

4. Approved equipment/materials: All throwable flotation devices and ring buoys must be U.S. Coast Guard certified or approved.

F. Survival Craft.

1. Warm Waters:

a. All vessels (regardless of length), which operate within three miles of the Great Lakes Coastline and have 3 or fewer people on board are not required to have a survival craft.

b. All vessels (regardless of length), which operate beyond three miles of the Great Lakes Coastline and have 3 or fewer people on board are required to have a buoyant apparatus.

2. Cold Waters:

a. Vessels less than 36 feet in length are required to have a buoyant apparatus.

b. Vessels 36 feet in length or more are required to have an inflatable

buoyant apparatus.

3. Markings: Each inflatable life raft, inflatable buoyant apparatus or any auxiliary craft used in their place must be marked with the name of either the vessel or the owner of the device. The lettering used in marking must be in block capital letters.
4. Operation Readiness and Maintenance: The captain or individual in charge of the vessel must ensure that each item of lifesaving equipment must be in good working order, ready for immediate use, and readily accessible before the vessel leaves port and at all times when the vessel is in operation.

G. Fire Extinguisher.

1. Vessels under 16 feet in length:
 - a. Must either have a fixed Fire Extinguishing System in the machinery space; or
 - b. One (1) B-I hand portable U.S. Coast Guard approved fire extinguisher.
2. Vessels 16 feet or more but less than 26 feet in length:
 - a. Must either have a fixed Fire Extinguishing System in the machinery space; or
 - b. One (1) B-I hand portable U.S. Coast Guard approved fire extinguisher.
3. Vessels 26 or more but less than 40 feet in length:
 - a. Must have a fixed Fire Extinguishing System in the machinery space and one (1) B-I hand portable U.S. Coast Guard approved fire extinguisher; or
 - b. Two (2) B-I hand portable U.S. Coast Guard approved fire extinguishers.

4. Vessels 40 feet or more but not over 65 feet in length:
 - a. Must have a fixed Fire Extinguishing System in the machinery space and two (2) B-I hand portable U.S. Coast Guard approved fire extinguishers; or
 - b. Three (3) B-I hand portable U.S. Coast Guard approved fire extinguishers.

(Source: WOS 2004-02, July 25, 2004, Section III)

4.904 ALCOHOL AND CONTROLLED SUBSTANCES

A. Operation of Fishing Vessel Under the Influence: No member shall operate a fishing vessel on the waters of the Ceded Territory if either one of the following applies:

1. The member is under the influence of intoxicating liquor or a controlled substance or combination thereof; or
2. The member has an alcohol content of .90 percent or higher; or
3. The intoxicant's effect on the member's manner, disposition, speech, muscular movement, general appearance, or behavior is apparent by observation.

B. Zero Tolerance Members under 21 Operating a Fishing Vessel Under the Influence: A member who is less than 21 years of age shall not operate a fishing vessel on the waters of the Ceded Territory if the member has any presence of alcohol within the member's body resulting from the consumption of intoxicating liquor.

C. Preliminary Chemical Breath Analysis: A duly authorized enforcement officer who has reasonable cause to believe that a member was operating a fishing vessel on the waters of the Ceded Territory and that by consumption of intoxicating liquor the member's ability to operate a vessel may have been affected or who has reasonable cause to believe that a member under the age of 21 was operating a fishing vessel while having any bodily alcohol content, that officer may require the member to submit to a preliminary chemical breath analysis. The results of such analysis may be used as the basis to issue a citation or other discipline.

D. Refusal to Submit Preliminary Chemical Breath Analysis: A member who refuses to submit to a preliminary chemical breath analysis upon the request of an officer shall be subject to a civil remedial forfeiture action with a maximum fine of up to \$1,000.00.

(Source: WOS 2004-02, July 25, 2004, Section IV)

4.905 DOCKSIDE INSPECTIONS

A. Any vessel utilized for commercial fishing activities shall be inspected by duly authorized enforcement personnel at dockside every two (2) years. Proof of inspection shall be demonstrated by the affixing by enforcement personnel to the vessels outer hull a U.S. Coast Guard- approved Fishing Vessel Compliance decal.

(Source: WOS 2004-02, July 25, 2004, Section V)

4.906 REQUIRED DECALS

A. Injury Placard.

1. Each vessel must have posted in a highly visible location accessible to the crew a placard measuring at least 5 inches by 7 inches which reads:

**Notice
Report of Injuries**

United States law, 46 United States Code 100603, requires each seaman on a fishing vessel, fish processing vessel or fish tender vessel to notify the master (captain) or individual in charge of the vessel or other agent of the employer regarding any illness, disability, or injury suffered by the seaman when in service to the vessel not later than seven days after the date on which the illness, disability or injury arose.

B. Discharge of Oil Prohibited.

1. All vessels 26 feet and larger in length must have a placard of at least 5 by 8 inches, made of durable material affixed to a conspicuous place in each machinery space, or at the bilge and ballast pump control station which read the following:

Notice
Discharge of Oil Prohibited

The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the United States, or the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to or under the exclusive management authority of the United States, if such discharge causes a film or discoloration of the surface of the water or causes a sludge or emulsion beneath the surface of the water. Violators are subject to substantial civil penalties and/or criminal sanctions including fines and imprisonment.

C. Discharge of Plastics / Garbage Prohibited.

1. All vessels 26 feet and larger in length must have a placard of at least 4 by 9 inches, made of durable material, with lettering at least 1/8 inch high and displayed in prominent locations and in sufficient numbers so that they can be read by the crew and passengers. The placard shall read as follows:

- 2.

Notice
Discharge of Plastics/Garbage Prohibited (MARPOL):

The discharge of all garbage into the Great Lakes or their connecting or tributary waters is prohibited. A person who violates the above requirements is liable for civil penalty for each violation, and the criminal penalties of a class D felony.

(Source: WOS 2004-02, July 25, 2004, Section VI)

4.907 ADDITIONAL PROVISIONS

- A.** It shall be criminal offense for any person to commit any of the following acts:
- 1.** Carry any firearms on the vessel;
 - 2.** Assault, resist, oppose, impede, threaten, bribe or attempt to bribe or interfere with an officer engaged in enforcing any provisions of regulations found within this Statute;
 - 3.** Violate any court order relating to the use of a vessel or fishing activity; and
 - 4.** Violate sec.IV.A., IV.B. or IV.D [WOTC 4.904(A),(B) or (D)].

(Source: WOS 2004-02, July 25, 2004, Section VII)

4.908 ENFORCEMENT

A. Boardings.

- 1.** To facilitate the boarding of vessels by the appropriate enforcement officer (U.S. Coast Guard or Tribal Conservation Enforcement Officer or State Officers) in the exercise of their authority, any vessel if underway and upon being hailed by the U. S. Coast Guard, Tribal Conservation Enforcement, or State Conservation Enforcement must stop immediately and lay to, or must maneuver in such a way to permit the boarding officer to come aboard. Failure to permit the Coast Guard or Tribal Conservation Enforcement Officer to board a vessel or refusal to comply will subject the operator or owner of the vessel to the penalties provided by law.
- 2.** Coast Guard, Tribal, and State boarding vessels will be identified by their corresponding insignias and enforcement markings. The boarding officers from each agency will be dressed in the appropriate Coast Guard, Tribal or State uniforms. The boarding officer upon boarding the vessel will identify himself to the captain, owner or operator and explain his mission.

(Source: WOS 2004-02, July 25, 2004, Section VIII)

4.909 PENALTIES

A. Termination of Voyage. An Enforcement Officer may direct the captain, owner or operator of the vessel to immediately take reasonable steps necessary for the safety of individuals on board the vessel if the Enforcement Officer observes the vessel being operated in an unsafe manner and determines that an especially hazardous condition exists. The Enforcement Officer may terminate the voyage and instruct the captain, owner or operator of the vessel to return the vessel to a mooring, dock or shore until the hazardous condition is corrected. Hazardous conditions may include but are not limited to the following:

1. An insufficient type or number of lifesaving equipment onboard may include insufficient number of required PFD's, immersion suits, exposure suits or survival craft capacity;
2. Improperly maintained or non-operational PFD's, immersion suits, exposure suits or survival craft capacity;
3. An inoperable Emergency Position Indicating Radio Beacon (EPIRB);
4. Inoperable radio communication equipment (when required);
5. Inadequate fire fighting equipment on board;
6. Inoperable bilge system;
7. Intoxication of the captain (master) or individual in charge of the vessel;
8. A lack of adequate or operational navigation lights during periods of reduced visibility; and
9. Flooding or uncontrolled leakage in any space.

B. Vessel Use Restriction. No vessel may be used for commercial fishing, which has been found to violate any provision of this Statute until its owner or operator provides proper documentation to Tribal Court that the violation has been remedied. The Tribal Court may request that the vessel pass a dockside inspection to confirm the correction.

C. Penalties.

1. Violation of any applicable provisions found in sec. III.[WOTC 4.903] *Equipment-* up to \$150.00. This monetary fine may be in addition the *Termination of Voyage* or any *Vessel Use Restrictions* that may be applied as stated above;
2. Failure to Display Required Decals- up to \$75.00 per decal;
3. Failure to Report an Injury- up to \$150.00;
4. Discharge of oil- up to \$500.00;
5. Discharge of Plastics/Garbage- up to \$500.00;
6. Failure to permit the Coast Guard or Tribal Conservation Enforcement to board a vessel or refusal to comply with their directives - up to \$600.00;
7. Alcohol/Controlled Substance Related Violations:
 - a. Operation of Fishing Vessel Under the Influence - Offender may be sentenced to a jail term not to exceed 180 days or to a fine not to exceed \$2,000.00 or suspension of his/her commercial fishing license or to all or a combination thereof;
 - b. Members under 21 Operating a Fishing Vessel Under the Influence - Members under the age 21 who have not exceed the alcohol percentage in sec.IV.A.2 [WOTC 4.904(A)(2)]may be sentenced to a jail term not to exceed 30 days or a fine not to exceed \$1,000.00 or suspension of his/her commercial

fishing license or to all or a combination thereof;

c. Refusal to Submit Preliminary Chemical Breath Analysis- a maximum fine of up to \$1000.00; and

8. Any other violations of this Statute not specifically mention in above- up to \$400.

D. Arrest.

1. A Conservation Enforcement Officer or any other duly authorized enforcement officer may arrest a member without a warrant when the officer has reasonable cause to believe the member was the operator of a fishing vessel at the time it was involved in an accident and that member was in violation of sec. IV, A or B [WOTC 4.904(A) or (B)]; and

2. A Conservation Enforcement Officer or any other duly authorized enforcement officer may arrest a member without a warrant any person committing in his/her presence or view a violation of sec. VII [WOTC 4.907].

(Source: WOS 2004-02, July 25, 2004, Section IX)

4.910 EXEMPTIONS

A. Exemption Procedure. Tribal members may request exemptions from these and the parallel U.S. Coast Guard commercial fishing safety rules and regulations by submitting a written request to the U. S. Coast Guard District Office or the Little Traverse Bay Bands of Odawa Indians Natural Resources Commission with joint authority in the waters where the vessel will be operating. The request must specify the reasons for the request in detail. Requests will be evaluated using the following criteria:

1. Good cause exists for granting the exemption; and

2. The safety of the vessel and those on board will not be adversely affected.

B. Exemption Denial or Approval Letter. The exemption request will be denied or approved in writing. Any copy of any exemption approved the Little Traverse Bay Bands of Odawa Indians shall be forwarded to the USCG. If approved, the member will receive an exemption letter specifying the terms and conditions of the exemption. This letter will then be required to be on the vessel to which the exemption applies at all times.

C. Types of Exemptions.

1. Specific Exemption: an exemption for an individual commercial fishing vessel.
2. Class Exemption: an exemption for a class or fleet of commercial fishing industry vessels.

D. Right of Appeal. Any person directly affected by a decision or action taken under this part may appeal in accordance with federal rules and regulations, or to LTBB Tribal Court in the event LTBB and the USCG enter into an agreement granting LTBB authority over such exemptions.

E. Rescinding of an Exemption Letter. Exemptions granted may be rescinded by the U.S. Coast Guard if it is subsequently determined that the safety of the vessel and those onboard is adversely affected.

F. Traditional Craft. Traditional Craft shall be exempt from all provisions and requirements except personal flotation devices in this statute provided that the Traditional Craft is not used as a supplement for a powered vessel and the captain and every crewmember on board during any commercial fishing operations have provided the Natural Resources Commission with signed and witnessed statements indicating the following: “I understand the inherent risk to life and limb while engaging in fishing operations and I have chosen of my own free will to fish from a Traditional Craft with no requirements for modern safety devices with the knowledge that these requirements were enacted in an attempt to decrease the potential of death, personal injury and or property damage that may be associated with the high risk activity of commercial fishing.” This exemption requires no application and is effective upon receipt of the appropriate signed statements and cannot be revoked.

(Source: WOS 2004-02, July 25, 2004, Section X)

4.911 LIMITATIONS

Nothing within this Statute shall be constructed to limit the authority of the Tribal Council from adopting more stringent commercial fishing vessel safety regulations than those set forth in this Statute.

(Source: WOS 2004-02, July 25, 2004, Section XI)

4.912 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this Statute found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

(Source: WOS 2004-02, July 25, 2004, Section XII)

4.913 EFFECTIVE DATE

This Statute shall take effect thirty (30) days from the day of its enactment [July 25, 2004] by Tribal Council.

(Source: WOS 2004-02, July 25, 2004, Section XIII)

Chapter 10. Act Prohibiting the Patenting of Organisms

4.1001 PREAMBLE AND GENERAL DEFINITIONS

The purpose of this Act Prohibiting the Patenting of Organisms is the protection of the health, welfare and economic security of the Tribe through the control of the patenting of natural organisms within the Tribe's jurisdiction.

The Tribe recognizes that the biodiversity of its territory encompasses the full range of genes, species and ecosystems within its jurisdiction. This biodiversity constitutes an essential resource for the Tribe because it produces the varied plants, animals and organisms that together provide the Tribe with food, medicinal plants, energy, fibers, materials for shelter and warmth, materials for the creation of art and materials for ceremonial use.

The Tribe also recognizes that the biodiversity of its territory creates several finely-balanced ecosystems, and that these ecosystems purify the air and water, stabilize and moderate the climate, and decrease flooding, drought and other environmental disasters.

Furthermore, the Tribe recognizes that the biodiversity of its territory creates harmony between the Tribe and nature and fosters the ethical and peaceful co-existence of the Tribe with the living species surrounding it.

The Tribe finds that by providing food for sustenance, medication, energy and protection from the elements, the Tribe's biodiversity sustains the health of all Tribal members. In addition, the Tribe finds that by providing materials that sustain health and materials that are essential to the Tribe's traditional knowledge, artforms, and ceremonies, the Tribe's biodiversity sustains the welfare of all Tribal members. Finally, the Tribe finds that by providing food and other goods that can be exchanged for sale, and by stabilizing the climate and preventing natural disasters, the Tribe's biodiversity creates an environment conducive for economic activity and security. Thus, in light of the fundamental resource that the biodiversity of its territory constitutes, the Tribe finds that conservation of its biodiversity is essential to protect the health, welfare and economic security of all present and future generations of the Tribe.

The Tribe recognizes that scientists from firms and research facilities are mining indigenous

communities for unique organisms that may be used for the creation of new agricultural and pharmaceutical products. Such firms and research facilities frequently attempt to acquire samples of organisms and obtain an exclusive property right in the organisms by patenting them. The Tribe finds that although the intent of the patenting is frequently to prevent competition by other firms and research facilities, the effects can be much more far-reaching. The Tribe recognizes that the patenting of organisms threatens the loss of biodiversity by limiting access to genetic variants through the enforcement of proprietary rights and by encouraging the spread of a single variant of an organism in place of other natural variations. For these reasons, the patenting of organisms threatens the Tribe's health, welfare and economic security.

(WOS 2004-03, July 25, 2004, Section I)

4.1002 DEFINITIONS

The following definitions apply to this Statute:

- A. "Jurisdiction"** means the jurisdiction of the Tribe as defined in the Tribe's Constitution.
- B. "Organism"** means a whole, living, viable entity; a genetic structure, whether that structure comprises all or only a portion of an entity or a total genetic structure of an entity; and a reproductive cell or developmental stage of an organism.
- C. "Person"** means an individual person and any corporation, partnership, limited liability company, or any other form of legal entity.
- D. "Tribe"** means the Waganakising Odawak, also known as the Little Traverse Bay Bands of Odawa Indians.

(WOS 2004-03, July 25, 2004, Section II)

4.1003 PROHIBITION AGAINST PATENTING OF ORGANISMS

Within the jurisdiction of the Tribe, no person may patent or claim any exclusive property interest in the makeup of any organism.

(WOS 2004-03, July 25, 2004, Section III)

4.1004 PENALTY

Within the jurisdiction of the Tribe, any person who attempts to or successfully patents or claims any property interest in any organism will have their equipment and research materials confiscated by the Tribe and to the extent allowed under the Tribe's Constitution and applicable law, may be banished from the Tribe's territory and denied permission and access for any research activities related to such organism.

(WOS 2004-03, July 25, 2004, Section IV)

4.1005 ENFORCEMENT

The Tribal Prosecutor shall have the authority to enforce this statute by bringing an action against any person accused of violating this statute in Tribal Court and obtaining a Tribal Court order providing for relief in the form of the penalties described in Section IV [WOTC 4.1004] above.

(WOS 2004-03, July 25, 2004, Section V)

4.1006 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

(WOS 2004-03, July 25, 2004, Section VI)

4.1007 EFFECTIVE DATE

This Statute takes effect thirty (30) days from the date of its enactment [July 25, 2004].

(WOS 2004-03, July 25, 2004, Section VII)

Chapter 11. Natural Resource Protection

4.1101 SHORT TITLE

This Statute shall be known and cited as the Little Traverse Bay Bands of Odawa Indians' "Natural Resource Protection Statute."

(WOS 2008-12, October 5, 2008, Section I)

4.1102 PURPOSE

The purpose of this Statute is to protect the environment, natural resources and the Treaty reserved rights of the Tribe while promoting, honoring and respecting the traditional, spiritual, subsistence and commercial use of the Tribe's natural resources. This Statute establishes the responsibilities, powers, and duties of the Natural Resource Department and its Tribal Conservation Enforcement Division; creates certain natural resource related funds and prescribes penalties.

(WOS 2008-12, October 5, 2008, Section II)

4.1103 DEFINITIONS

- A. **“Ceded Territory”** means all lands and waters ceded in the 1836 Treaty of Washington, 7 Stat. 491, as described in Article First, that are not LTBB Reservation lands or within the reservation of another federally recognized Tribe.
- B. **“Commission”** or **“NRC”** means the Natural Resource Commission.
- C. **“Department”** means the Natural Resource Department.
- D. **“Director”** means the director of the Natural Resource Department.
- E. **“Executive”** means the Tribal Chairperson and Vice-Chairperson of the Executive Branch created under Article VIII of the Constitution, including their designees.

- F.** “**Firearm**” means a weapon from which dangerous projectiles may be propelled by use of explosives, gas, or air as a means of propulsion.
- G.** “**LTBB Reservation**” means all lands and waters as described in the LTBB Constitution Article III (H).
- H.** “**Non-member Indian**” means a person who is an enrolled member of another federally recognized Indian Tribe other than the Little Traverse Bay Bands of Odawa Indians.
- I.** “**Officer**” means a Tribal Conservation Enforcement Officer as described in Section VII of this Statute.
- J.** “**Reservation Trust Properties**” means land held in trust for LTBB by the United States.
- K.** “**Tribe**” or “**LTBB**” means the Waganakising Odawa, also known as the Little Traverse Bay Bands of Odawa Indians.
- L.** “**Tribal Court**” means the LTBB Court created under Article IX of the LTBB Constitution.
- M.** “**Tribal Citizen**” means an enrolled member of LTBB.
- N.** “**Watercraft**” means any boat or other floating device of rigid or inflatable construction which is designed to carry people or things on the water.
- O.** “**Wildlife**” means all creatures, not human, wild by nature, endowed with sensation, and power of voluntary motion, which includes but not limited to quadrupeds, mammals, birds, fish, amphibians, reptiles, crustaceans, insects, and mollusks.

(WOS 2008-12, October 5, 2008, Section III)

4.1104 JURISDICTION

In accordance with Article IV (B) of the LTBB Constitution the jurisdiction of the Tribe "shall extend to all territory set forth in Section (A) of this Article [the LTBB Reservation and trust lands] and to any and all persons or activities therein based upon the inherent sovereign authority of the Little Traverse Bay Bands of Odawa Indians and Federal law." Without conceding any of the LTBB Constitutional jurisdictions, regulation of wildlife, fish and other natural resources activities under this Statute will extend to the following persons and areas:

- A. LTBB Citizens and non-member Indians anywhere within the LTBB Reservation, including both civil and criminal jurisdiction;
- B. All persons within Reservation Trust Properties, except in the case on non-Indians only the exercise of civil jurisdiction; and
- C. LTBB Citizens exercising their Treaty rights throughout the 1836 Ceded Territory, including both civil and criminal jurisdiction.

This Statute does not preclude any concurrent federal jurisdiction under applicable federal law.

(WOS 2008-12, October 5, 2008, Section IV)

4.1105 NATURAL RESOURCE COMMISSION

This Statute is not intended to add or diminish the duties and responsibilities of the Natural Resource Commission under WAGANAKISING STATUTE 2005-01, as may be amended.

(WOS 2008-12, October 5, 2008, Section V)

4.1106 NATURAL RESOURCE DEPARTMENT

The Natural Resource Department for the Tribe is hereby created as an Executive Department and each annual budget submitted by the Executive shall include funding for the Department's operation. The Department falls under the purview of Executive oversight and has

the following duties and powers:

- A.** Promote and protect the Treaty Rights reserved to LTBB Tribal Citizens and ensure that Tribal Citizens rights are not obstructed or interfered with while lawfully exercising such rights.
- B.** Protect and conserve the natural resources of the Tribe through management, biological monitoring, research, and enhancement activities;
- C.** Issue NRC authorized permits, licenses and collect costs for such, including registration of vessels and vehicles used principally for exercise of Treaty Rights;
- D.** Represent the Tribe and its natural resource related interests on international, federal, tribal, state and inter-agency natural resource related boards, commissions, or organizations with the direction or concurrence of the Executive;
- E.** Recommend to the NRC and Executive Branch, policies and long range programs for the management and preservation of fish, wildlife and other natural resources;
- F.** Under the direction of the Executive, negotiate intergovernmental agreements, including but not limited to, cross-deputization agreements, with tribal, federal, state or local governments and their political subdivisions, and agreements with private entities, subject to Tribal Council approval;
- G.** Management of the Tribe's parks, campgrounds, wild areas, preserves, research areas, forests, docks, boat launches/access sites, or other similar natural or outdoor recreation areas;
- H.** Establishment of natural resource related procedures and regulations as may be necessary in accordance with duties, powers and responsibilities of this Statute, subject to Tribal Council approval where necessary under the LTBB Constitution;
- I.** Enforcement of Tribal natural resource related regulations, statutes and laws;
- J.** Hire and employ appropriately trained and/or certified staff as may be necessary in accordance with the duties, powers and responsibilities of this Statute;

K. Provide training to LTBB Citizens in hunting safety and the safe handling of firearms, bows or other legal devices and safe use and maintenance of boats and other vehicles used to harvest treaty resources;

(WOS 2008-12, October 5, 2008, Section VI)

4.1107 TRIBAL CONSERVATION ENFORCEMENT DIVISION

A. The Conservation Enforcement Division is hereby created within the Natural Resources Department to aid in the enforcement of Tribal laws and regulations concerning the protection of natural resources, such as hunting, fishing and gathering.

B. Tribal Conservation Enforcement Officers. The Department shall employ Tribal Conservation Enforcement Officer(s) to carry out the duties and functions of the Division. Officers are law enforcement officers of LTBB, exercising the primary and secondary duties as set forth and limited in subsection C of this Section, possessing all of the privileges, powers and immunities of any such officer.

- 1.** Requirements. A person selected to become an Officer shall meet and maintain the following minimum requirements:
 - a.** Have legal residency in the United States;
 - b.** Have attained a minimum of 21 years of age;
 - c.** Have earned a high school diploma or have attained a passing score on the general education development test indicating a high school graduation level. Attainment of an associate or baccalaureate degree shall be evidence of having met this standard;
 - d.** Have no prior felony convictions, including expungements and set asides;
 - e.** Have never been convicted of a misdemeanor of domestic violence

(Tribal, state or federal);

f. Possess good moral character as determined by a favorable comprehensive background investigation covering school and employment records, home environment, personal traits and integrity. Consideration shall be given to a history of, and circumstances pertaining to, all law violations, including traffic and conservation law convictions, as indicating lack of good moral character;

g. Possess a valid motor vehicle operator's license. Driving privileges shall not be in a state of suspension, revocation, or denial at the time of entry into a law enforcement academy or activation as an Officer;

h. Read and write at a level necessary to perform the job of an Officer;

i. Test negative for the illicit use of a controlled substance(s);

j. Successfully completed the basic law enforcement training recognized by the Tribe including such academy or programs of the United States Indian Police Academy, State of Michigan, a post agency in another state, or a federally operated law enforcement academy;

k. Pass pre-enrollment physical fitness test;

l. Comply with all the following:

i. free from any other impediment of the senses;

ii. physically sound;

m. Be free from the following, which may impair the performance of the essential job functions of an Officer or which may endanger the lives of others or the Officer:

i. physical defects;

ii. chronic diseases;

iii. mental and emotional instabilities.

2. Physical Fitness.

Officers must maintain an acceptable level of fitness and readiness during the term of their employment. Officer fitness shall be periodically evaluated during employment or upon request of the Chief Conservation Officer and/or Director, by successfully completing an approved physical efficiency battery.

3. Oath of Office.

Officers shall be sworn in by a Tribal judge to support, uphold, and defend the Constitution of the Tribe and to enforce the laws and regulations of the Tribe in accordance with this Statute.

4. Firearms.

Officers are authorized to carry firearms in the performance of their duties and are required to qualify semi-annually at a score of 80% (240) or better under the direction of a certified firearms instructor in accordance with Federal Law Enforcement Training Center firearm standards.

5. Authorities.

Officers shall have the following authority in their enforcement of criminal and civil violations within the jurisdiction of the Tribe:

- a.** Execute any process for enforcement of this Statute and/or any other natural resource, regulations or laws of the Tribe;
- b.** Issue citations for violations of this Statute and/or any other natural resource regulations or laws of the Tribe.

- c.** Execute warrants issued for the arrest of violators of this Statute and/or any other natural resource regulations or laws of the Tribe;
- d.** Arrest, without warrant, any person committing a criminal violation in his/her presence;
- e.** Make arrests and issue citations for any violation within LTBB jurisdiction when in the course of carrying out their primary duties they encounter people with outstanding warrants, or who commit violations in their presence.
- f.** Serve subpoenas or other legal documents issued in matters arising under this Statute and/or any other natural resource regulations or laws of the Tribe;
- g.** Search and Seizures. Execute searches with or without a warrant for matters arising under this Statute and/or any other natural resource regulations or laws in accordance with the provisions below.
- h.** Any Officer may conduct a search of an object, place or person whose conduct is regulated by this Statute and/or any other natural resource regulations or laws of the Tribe, and may seize items when the search is made:
 - i.** with consent;
 - ii.** pursuant to a valid search warrant;
 - iii.** incident to the issuance of a lawfully issued citation;
 - iv.** with the authority and within the scope of a right of lawful inspection; or
 - v.** as otherwise authorized by law or by provisions of this Statute.
- i.** Any Officer may 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-road vehicles, containers, packages, and other receptacles contained therein, utilized by a person in harvest activity authorized by this Statute.

- j.** If the Officer has probable cause to believe that contraband, fish, vegetation, wildlife or parts thereof taken in violation of this and/or other natural resource statutes, laws or regulations, or the instrumentalities of such illegal taking, are contained therein, the Officer may, without a search warrant, search any person, aircraft, watercraft, motorized vehicle, box, wildlife, fish, bag, locker, tool box, ice chest, camper, camper shell, trailer, backpack, bedroll, sleeping bag, or other container or package.
- k.** If the Officer has probable cause to believe wildlife or parts have been taken, possessed, or transported in violation of this and/or other natural resource statutes, and that any object has been used as the instrumentality of such illegal taking, the Officer may inspect all such wildlife, parts or objects, and may seize them as evidence.
- l.** For all property seized as evidence, the Officer shall make an inventory and provide a copy to the person from whom the property was taken. All property seized shall be stored, returned and/or disposed of pursuant to policy.
- m.** Detainment and Apprehension of Suspected Violators. Any Officer who has reasonable grounds to believe that a person has violated this Statute and/or any other natural resource regulations or laws of the Tribe, either in or out of the Officer's presence, shall identify himself or herself to such person and promptly determine whether the person is a tribal member or non-member Indian, or non-Indian. In making such determination, the Officer may demand identification and take actions as the Officer reasonably believes are necessary to make the determination.
- n.** If an Officer reasonably suspects there is a violation, the Officer may stop and board any boat and stop any vehicle.
- o.** If an Officer has probable cause to believe that any provision this Statute and/or any other natural resource regulations or laws of the Tribe have been violated, the Officer may enter into or upon any private or public property for any purpose in Section VII.B.5.h (Search and Seizure) or for the purpose of patrolling, investigating, or examining. The term "private property" as used in this section does not include

dwellings or dwelling houses or that which is within the curtilage of any dwelling house.

p. Use of Force

i. Officers are authorized to use force only to a level which is necessary, reasonable and appropriate to achieve the desired legal objective or to protect himself/herself or others from an immediate threat of death or serious physical injury.

ii. Reporting Use of Force. A written report shall be required for each of the following situations:

- a) when a firearm is drawn and/or is discharged outside of the firing range.
- b) when a non-lethal weapon is used.
- c) when use of force results in death or injury.

iii. Supervisor Summons. A supervisor or investigator shall be summoned to the scene in the following situations involving the use of force.

- a) when a subject communicates that an injury has been inflicted,
- b) when a firearm is discharged as a means of force,
- c) when use of force results in death or injury.

iv. Administrative Review. All reported use of force incidents shall be reviewed by the appropriate supervisor to determine whether:

- a) any laws or departmental policies were violated. All incidents involving the use of force that causes death shall be subject to both an administrative and criminal investigation.
- b) the relevant policy was clearly understandable and effective to cover the situation.
- c) training is currently adequate.

v. Annual Report. An annual summary of incidents involving the use of force will be prepared and submitted to the Executive Branch and Tribal Council on an annual basis.

C. Primary and secondary duties of the Division include, but are not limited to:

1. Primary Duties:

a. enforcement of this Statute and any other natural resource related LTBB regulation or statute;

b. enforcement of natural resource related federal/state laws or laws of another tribe to the extent that Officers are authorized through Tribal Council approved deputization, special commissions, agreements, or memoranda of understanding/agreements (MOU/MOA);

c. promote and protect the Treaty rights of Tribal Citizens.

2. Secondary Duties:

a. provide aid or assistance to other law enforcement agencies when requested by a law enforcement agency;

b. perform and participate in search and rescue operations when its Officers encounter emergency situations in the course of carrying out their duties or when requested by a law enforcement or public safety agency;

c. perform and participate in emergency management activities when requested by the Executive;

d. to take necessary and appropriate actions to enforce violations of civil or criminal law whether or not directly related to natural resource protection when in the course of carrying out their primary duties its Officers encounter situations requiring law enforcement intervention to protect the public safety;

- e. participate in homeland security activities as requested by the Executive;
- f. request aid of other law enforcement agencies when prudent to do so to address situations encountered in the course of carrying out primary duties.

D. Policies and Procedures. The Tribal Conservation Enforcement Division shall have in place and adhere to written Conservation enforcement policies and procedures as approved by the NRC, subject to Tribal Council approval where necessary under the LTBB Constitution.

(WOS 2008-12, October 5, 2008, Section VII)

4.1108 PERSONS AUTHORIZED TO FISH, HUNT, TRAP AND GATHER

A. Tribal Citizens may exercise fishing, hunting, trapping and gathering rights within the Reservation and Ceded Territory subject to LTBB natural resource related regulations and laws.

B. Non-member Indians and non-Indians may exercise the privilege to fish, hunt, trap and gather on the LTBB Reservation pursuant to LTBB regulations, statutes and law in accordance with the following provisions:

1. Non-member Indians must have a properly issued and valid LTBB license and/or accompanying permit in order to take or attempt to take any wildlife, fish or plant species from lands within the LTBB Reservation.

2. Non-member Indians and non-Indians must have a properly issued and valid LTBB license and/or accompanying permit in order to take or attempt to take any wildlife, fish or plant species from Reservation Trust Properties. Failure to secure a proper permit or license may subject the violator to civil prosecution in tribal court and/or federal prosecution.

(WOS 2008-12, October 5, 2008, Section VIII)

4.1109 SCIENTIFIC RESEARCH AND STUDY, NUISANCE ANIMALS

A. The Director may authorize the Department's staff, its agents or contractors to conduct biological monitoring, research, and enhancement activities of wildlife or plants.

B. Scientific Collectors Permit

1. In accordance with this section and any terms and conditions that may be established pursuant to the administrative procedures developed in accordance with this Statute, a scientific collectors permit issued by the Department is required and shall entitle a Tribal employee to take, possess, inspect, sample, measure, count or collect data on fish, wildlife, plant or invertebrate for scientific, management and/or enhancement purposes within the LTBB Reservation and/or throughout the 1836 Ceded Territory. This section shall further apply to any person intending to conduct data collection or sampling within any LTBB Reservation trust properties.

2. Failure to obtain a permit or any sampling or data collection activity conducted in violation of the procedures established by the Department shall constitute a violation. Violations may result in revocation of issued permits and/or penalties set out in LTBB statutes or regulations.

3. The Director may suspend the permit of any person if he or she reasonably believes that at any time such person is in violation of this section or his or her actions threaten the fish and wildlife resources of the Tribe and that immediate action is necessary to protect such resources.

C. Nuisance Animals- The Director may issue special use permits on such terms and conditions as he or she deems necessary or appropriate to take wild animals subject to regulated harvest that are damaging or about to damage property owned by the Tribe or a Tribal Citizen. The permit shall require the Citizen to report the outcome of the permitted action.

(WOS 2008-12, October 5, 2008, Section IX)

4.1110 ENFORCEMENT

A. Officers and other tribal, state and federal law enforcement agencies or personnel as

authorized through Tribal Council approved deputization agreements, memoranda of understanding, court order, or compacts are authorized to enforce provisions of this and other LTBB natural resource statutes, laws or regulations.

B. Civil Infractions - Regulations promulgated in accordance with this Statute and WAGANAKISING ODAWAK STATUTE 2001-04 are civil in nature. Violations may be punished by suspension or revocation of the fishing, hunting, trapping license or any permit(s) of the violator, assessment of a fine of not less than \$50.00 or no more than \$1,000.00, assessment of community service hours, forfeitures as set forth below, restitution as set forth below or by any combination thereof and any other applicable penalty provided for by the laws of the Tribe.

C. Increased Penalties. Penalties may be increased up to three times the amount of the penalty of offense if:

1. The violator is found liable for the second or any subsequent violation of the same provision; or
2. The violator issues a check in payment of a penalty imposed under this Statute and/or any other natural resource regulations or laws of the Tribe knowing there are insufficient funds on deposit with the bank to ensure payment of the check on its presentation.

D. Contempt - To compel compliance with a lawful court order, all defendants to actions brought under this Statute, other natural resource regulations or laws of the Tribe, whether Member, Nonmember or Non-Indian, shall be subject to the contempt power of the Little Traverse Bay Bands of Odawa Indians Tribal Court, and may be sanctioned by any means provided for by LTBB law or Court Rule including, but not limited to, imprisonment or other fines or penalties.

E. Restitution.

1. Any person convicted of any violation of this Statute and/or any other natural resource regulations or laws of the Tribe may, at the Court's discretion, be charged the

cost of providing equitable restitution to the Tribe for the damage caused by each violation in addition to any other fines or penalties imposed by the Tribal Court.

2. The Commission shall prepare, annually and, as necessary, revise a schedule of damages calculated to closely approximate the cost of providing equitable restitution to the Tribe for the damage which would be caused by violations of this Statute and/or any other natural resource regulations or laws of the Tribe. The schedule of damages may be used as a guideline by the Tribal Court and may not be all inclusive. In calculating these damages the Commission may consider, in addition to any other factors reasonably deemed relevant:

- a.** The cost to the Tribe of producing and/or protecting the resource;
- b.** The cost of replacing or restoring the resource;
- c.** The costs of enforcement including the general overall costs and costs particularized to individual violations where appropriate;
- d.** The loss to the Tribe of license revenue;
- e.** Damages for trespass.

3. The Department shall publish the schedule of damages and cause it to be made available to the public at all permit outlets.

4. Since in most instances the exact amount of damages caused to the Tribe by a particular violation will be difficult or impossible to determine, it may be presumed by the court adjudicating a complaint for violation that the amount fixed by the schedule of damages represents the damages owed to the Tribe as restitution if the defendant is found to be liable. This presumption may be rebutted by evidence which shows by clear and convincing evidence that the amount indicated by the schedule of damages is so excessive in a particular case as to be punitive or so inadequate in a particular case as to result in a gross deprivation of adequate restitution. In any case in which the

presumption is successfully rebutted, the parties may introduce evidence to prove the actual damages as in any other civil case.

5. All persons shall be deemed to have consented to the restitution provisions of this Statute by their entry onto the Reservation, and where applicable, by their signature on Tribal licenses or permits.

F. Forfeiture.

1. Officers may detain, in accordance with Section ~~***~~(m) any person(s) committing an offense and may seize or confiscate any fish, game, furbearers, wild animals, their parts or hides and/or any vehicles, vessels, firearms, bow, traps, nets, lines or any other associated paraphernalia used in committing the offense. All seized or confiscated material taken under this part shall be held as evidence according to applicable tribal law enforcement policies or agreements.

2. After adjudicating the underlying complaints for the illegal possession or use, the Court shall dictate the disposal of the seized resource or property.

a. Return of the property: If the accused is found not guilty or charges have been dismissed according court action, all seized non-perishable property shall be returned to the owner in the condition it was received. Persons who have had perishable items seized such as game or fish shall be compensated according to the developed damages schedule.

b. Forfeiture: Any person convicted of any violation of this Statute and/or any other natural resource regulations or laws of the Tribe may, at the Court's discretion, have any property or resources seized permanently confiscated in lieu of fines or in addition to fines or other penalties.

c. All confiscated property shall be disposed of according to regulations developed by the Commission which may include destruction of property, sale, retention, use by the Department or donation to a food bank.

d. The Department shall prepare a report of all game, fish and property seized by the Officers showing a description of the items, the persons from whom they were seized, if known, and the disposition of the items. This report shall be prepared annually and kept by the Department.

H. Collection of Money Penalties. Enforcement of the money penalties imposed pursuant to this Statute may be had through the collection of penalties from funds of the violator held by the Tribe if otherwise legally permissible, 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.

I. Schedule of Money Penalties. The NRC may adopt a schedule of fines and/or forfeitures that may be imposed by the Court upon the receipt of an admission of guilt or plea of no contest for violations committed. This schedule shall not apply as to penalties assessed by the court after adjudicating a violation where the defendant has entered a plea of not guilty.

J. State Jurisdiction Preempted. It shall not be a defense to any infraction under this Statute or any LTBB natural resource regulation or law that the alleged activity may be lawful under state law.

K. Federal Prosecution. Nothing in this Statute shall be deemed to preclude federal prosecution under applicable federal law. Federal prosecution may be pursued in addition to or in lieu of other enforcement procedures provided by this Statute.

(WOS 2008-12, October 5, 2008, Section X)

4.1111 ENHANCEMENT AND EDUCATIONAL ACTIVITIES

A. The annual Department budget shall include a line item to enhance tribal treaty harvest opportunities, to provide harvest based assistance and educational programs and to fund the NRC's annual "Public Information Meeting" as established in Section III.B of the Waganakising Odawak Statute 2001-04.

B. All fees resulting from the sale of licenses, registrations permits or tags by the Department and its agents, and all fines, costs, monies, penalties, damages or revenue from the sale of confiscated property collected for violation of this Statute and/or any other natural resource regulations or laws of the Tribe shall be deposited into the General Fund.

C. Each Tribal judge or clerk of the Court shall, within twenty (20) days after judgment has been rendered under the provisions of this Statute, remit to the Tribal Chief Financial Officer (CFO) all fines, forfeitures, damages or penalties collected to be deposited into the General Fund.

D. Any revenue derived from the sale of tribally owned natural resources shall be collected and deposited into the General Fund.

E. Any royalties derived from leases established to remove and provide for sale natural resources or minerals from LTBB owned properties shall be collected and deposited into the General Fund.

(WOS 2008-12, October 5, 2008, Section XI)

4.1112 SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

(WOS 2008-12, October 5, 2008, Section XIII)

4.1113 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of

the veto.

(WOS 2008-12, October 5, 2008, Section XIV)

Chapter 12. Nibiish Naagdownen “The Care of Water”: Clean Water Act

4.1201 TITLE

This Act may be cited as the Little Traverse Bay Bands Clean Water Act (“LTBB CWA”).

(Source: WOS 2016-008, September 15, 2016, Section I)

1.1202 PURPOSE

A. Goals and Objectives

Discharges of pollutants into LTBB Waters from point and non-point sources, introduction of pollutants by industrial users into publicly owned treatment works, damage to wetlands, improper management of sewage sludge, and other activities that degrade tribal waters are threats to the political integrity, economic security, and health, welfare and environment of the Reservation and its residents. It is the purpose of this Act to address these threats by providing authorities to prevent, abate, and control pollution of LTBB waters; to research and plan the development and use (including restoration, preservation, and enhancement) of land and water resources within the Reservation; and to ensure that degradation of LTBB waters is minimized and economic growth occurs in a manner consistent with the preservation of existing clean LTBB water resources. To carry out these purposes, this Act provides for:

- 1.** in Part 2 of this Act:
 - a. the establishment of water quality standards to protect fish and wildlife and the domestic, cultural, ceremonial, agricultural and recreational uses of LTBB waters (Subpart A);
 - b. water quality monitoring, planning and management activities to achieve those standards (Subpart B); and
 - c. review and certification of federal permits for discharges into LTBB waters to ensure that permitted discharges will meet tribal water quality standards;

- 2.** in Part 3 of this Act:
 - a. the requirement that every point source (unless specifically exempted) discharging pollutants into LTBB waters have a valid permit ensuring that present

and future point source discharges comply with applicable effluent limitations within a specified timeframe (Subpart A); and

b. the establishment of pretreatment standards to control the introduction of pollutants by industrial users into publicly owned treatment works (Subpart B);

3. in Part 4 of this Act, assessment, monitoring and protection of wetlands;
4. in Part 5 of this Act, regulation of the use, disposal, storage, and transportation of sewage sludge;
5. in Part 6 of this Act, procedures for issuing, renewing, revoking, and denying permits for discharges into LTBB waters;
6. in Part 7 of this Act, the development of a program to control pollution of LTBB waters from non-point sources;
7. in Part 8 of this Act, the development of a program to restore water quality in Reservation lakes;
8. in Part 9 of this Act, the development of a program to protect LTBB waters on a watershed basis;
9. in Part 10 of this Act, provisions for enforcement of this Act, including regulations, permits, citations, and other requirements issued pursuant to this Act, and for issuance of emergency citations in the event of an imminent and substantial endangerment to public health or welfare or the environment caused by point or non-point source discharges; and
10. in Part 11 of this Act, procedures for promulgating regulations to implement this Act and obtaining review in Tribal Court of final actions taken by the Program pursuant to this Act.

B. Statutory Construction

1. In general. The provisions of this Act shall be liberally construed to fulfill the intent and purpose of this Act and so as not to conflict with the applicable laws of the LTBB and the United States. Nothing contained in this Act shall be construed to abridge or alter rights of action or remedies in equity under treaties, the common law or statutory law, nor shall any provisions of this LTBB CWA or any action taken by virtue thereof be construed as preventing the LTBB or individuals from the exercise of their rights under treaties, the common law or statutory law to suppress nuisances or to abate pollution.

2. Water Quantity Rights. The right of the LTBB to certain quantities of water and the authority of the LTBB to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act.

(Source: WOS 2016-008, September 15, 2016, Section II)

4.1203 DEFINITIONS

A. For the purposes of this Act –

1. “Administrator” means the Administrator of the U.S. Environmental Protection Agency.

2. “Applicant” means any person or entity applying for a permit or license under this Act.

3. “Best management practice” or “BMP” means methods, measures or practices undertaken to prevent or reduce the pollution of LTBB Waters, including to control, restrict, or diminish non-point sources of pollution, that are consistent with these Standards. BMPs include, but are not limited to, structural and nonstructural controls, treatment requirements, operation and maintenance procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage, and can be applied before, during, or after pollution-producing activities to reduce or eliminate the introduction of pollutants into LTBB waters.

4. “Biological monitoring” means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to impacts from point and non-point sources of pollution: (a) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain/web appropriate to the waterbody under study, and (b) at appropriate frequencies and locations.
5. “Clean Water Act” or “CWA” means the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. §§ 1251 - 1387.
6. “Compliance schedule” means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.
7. “Conservation Enforcement Officer” means a Tribal Conservation or Law Enforcement officer authorized by Tribal law to enforce Tribal conservation regulations; or a federal enforcement agent, including a Special Agent of the U.S. Fish and Wildlife Service.
8. “Discharge,” when used without qualification, means a discharge of pollutant(s).
9. “Discharge of pollutant(s)” means any addition of any pollutant to LTBB waters from any point source.
10. “Domestic septage” means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receive only domestic sewage. Domestic septage does not include material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant or other commercial facility.
11. “Domestic sewage” means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

12. “Effluent limitation” means any restriction, requirement, or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources, and includes schedules of compliance.
13. “Floristic Quality Assessment” means a vegetation-based ecological assessment approach that is used for wetlands quality monitoring and assessment.
14. “Fundamentally different factors variance” means a variance from otherwise applicable technology-based effluent limitations under CWA § 301(b)(1)(A), (b)(2)(A) & (E), & 301(n).
15. “High quality wetlands” means those wetlands determined to have exceptional ecological resources by scientifically accepted methods, such as a Floristic Quality Assessment, or determined to be a closely connected resource to the Odawa culture.
16. “Hydric Soils” means soils that are formed under conditions of saturation, flooding, or ponding that develop an anaerobic condition after a period of time in the upper 40 inches (1meter) of the soil layer.
17. “Industrial user” means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category “Division D Manufacturing,” and such other classes of significant waste products as, by regulation, the Administrator deems appropriate.
18. “LTBB” means the Little Traverse Bay Bands of Odawa Indians.
19. “LTBB Waters” means all groundwater and surface waters that are within or border the Reservation. Surface waters include but are not limited to all or portions of rivers, streams, creeks (including perennial, intermittent and ephemeral streams and their tributaries), lakes, ponds, dry washes, marshes, waterways, wetlands of all types, mudflats, sandflats, sloughs, prairie potholes, wet meadows, impoundments, riparian areas, springs, and all other bodies or accumulations of surface water, natural or artificial, public or private, including those dry during part of the year. Consistent with federal

requirements, the Program may exclude from LTBB waters certain waste treatment systems not constructed or located in what would otherwise be LTBB Waters.

20. “Load allocation” means the portion of a receiving water’s loading capability that is attributed either to one of its existing or future non-point sources of pollution or to natural background sources.

21. “Medical waste” means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and such additional medical items as the Program may prescribe by regulation.

22. “National Pollutant Discharge Elimination System” or “NPDES” means the regulatory program operated under CWA §§ 307, 318, 402, & 405 (including pretreatment and sludge management) or under Parts 3, 5, and 6 of this Act.

23. “National pretreatment standard” means any regulation promulgated by the Administrator in accordance with CWA § 307(b) & (c) that applies to industrial users, including prohibited discharges.

24. “New source” means any source (a building, structure, facility, or installation from which there is or may be a discharge of pollutants), the construction of which is commenced after publication by the Administrator of proposed regulations prescribing a standard of performance under CWA § 306 that will be applicable to such sources, if such a standard is thereafter promulgated in accordance with CWA § 306.

25. “New source performance standard” means a standard promulgated by the Administrator or the Program that is applicable to a category of new sources.

26. “Non-point source” means any source of water pollution that is not a point source, including airborne deposition of pollutants.

27. “Person” means any individual, partnership, association, or other entity; public or private corporation or other business entity, including a tribal entity or enterprise; federal,

tribal (including LTBB), state or local government or any agency or political subdivision thereof; or interstate or intertribal body or commission, and includes any officer or governing or managing body of any such entity.

28. “Point source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, landfill leachate collection system, container, rolling stock (except to the extent excluded from the NPDES program by section 601 of the National and Community Service Act of 1990, P.L. 101-610, 104 Stat. 3185), concentrated animal feeding operation (“CAFO”), or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges (except from CAFOs) or return flows from irrigated agriculture.

29. “Pollutant” means any type of contaminant discharged into water, including but not limited to toxic substances, hazardous substances, dredge spoil, garbage, solid waste, industrial, municipal, and agricultural waste, sewage and sewage sludge, manure, chemicals, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended), pesticides, herbicides, fungicides, rodenticides, fertilizers, incinerator residue, munitions, discarded equipment, rock, sand, soil, sediment, filter backwash, heat, and oil, regardless of whether in liquid, solid, or gaseous form. This term does not mean (A) “sewage from vessels” within the meaning of CWA § 312; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes, is approved by authority of the LTBB, and the LTBB determines that such injection or disposal will not result in the degradation of ground or surface water resources.

30. “Pollution” means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the environment.

31. “Pretreatment program” means a program operated by the LTBB Natural Resources Department or by a publicly owned treatment works (whose program has been approved either by the Department or the Administrator) to implement national

pretreatment standards to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works or which may contaminate sewage sludge.

32. “Program” means the LTBB Environmental Services Program, within the Natural Resources Department.

33. “Publicly owned treatment works” or “POTW” means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the LTBB, its entities, or a state, municipality, or other tribe; this term does not include such a facility owned or operated by the United States or a federal agency.

34. “Reservation” means all lands (including submerged lands and banks of lands that may be dry for part of the year) and waters within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621; all lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491 in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation; and all lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of the Interior or are taken into trust for the Little Traverse Bay Bands of Odawa Indians, all notwithstanding the issuance of any patent and including rights-of-way running through such lands and waters, and notwithstanding the presence of manmade items like dams, piers, abandoned boom piers, abandoned logs, bridge supports, or other facilities, structures or objects that may exist on or in such lands and waters.

35. “Section 404 permit” means a permit issued by the U.S. Army Corps of Engineers under CWA § 404 or a permit issued by a tribe or state that is authorized by the U.S. Environmental Protection Agency to issue Section 404 permits.

36. “Sewerage system” means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting

wastes to a point of ultimate disposal.

37. “Sewage sludge” means solid, semi-solid, or liquid residues generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solid removed in primary, secondary, or advanced wastewater treatment processes, and a material derived from sewage sludge. Sewage sludge does not include ash generated during firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

38. “Storm water” means rain water runoff, snow melt runoff, and surface runoff and drainage.

39. “Total maximum daily load” or “TMDL” means the sum of the individual wasteload allocations for point sources and load allocations for non-point sources and natural background.

40. “Toxic pollutant” means those pollutants, or combinations of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring.

41. “Treatment works” means any device, system, plant, disposal field, lagoon, dam, pumping station, incinerator, or other works subject to this Act used for the purpose of recycling, reclaiming, treating, stabilizing, or holding wastes.

42. “Treatment works treating domestic sewage” means a POTW or any other sewage sludge or waste water treatment device or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For the purposes of this

definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. The Program may designate any person subject to the standards for sewage sludge use and disposal established by the Administrator as a “treatment works treating domestic sewage.”

43. “Underground injection” means the subsurface emplacement of fluids by well injection.

44. “Waste” means “pollutant,” as that term is defined in this section.

45. “Wasteload allocation” or “WLA” means the portion of receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution.

46. “Wetlands” means land characterized by the presence of water at a frequency and duration sufficient to support, under natural conditions, aquatic vegetation and/or aquatic life, and which has hydric soils. This term includes, but is not limited to, swamps, marshes, bogs and fens, but does not include stormwater control features constructed to convey, treat, or store stormwater that are created on dry land.

(Source: WOS 2016-008, September 15, 2016, Section III)

4.1204 JURISDICTION

A. The provisions of this Act and of regulations promulgated under and orders, permits, and other requirements issued pursuant to this Act shall apply to all persons and all property within the jurisdiction of the LTBB, as defined in Article IV(B) of the Waganakising Odawa Constitution.

B. The provisions of this Act and of regulations promulgated under and citations, permits, and other requirements issued pursuant to this Act shall apply to any person, and to all property within the jurisdiction of the LTBB owned or operated by any such person who has submitted an application for and received a permit pursuant to this Act or has otherwise consented to be subject to the provisions of this Act.

(Source: WOS 2016-008, September 15, 2016, Section IV)

4.1205 AUTHORITIES AND DUTIES OF THE ENVIRONMENTAL SERVICES PROGRAM

A. General Provisions

1. Except as otherwise expressly provided in this Act, the Environmental Services Program shall be responsible for administering this Act.
2. In order to fulfill all obligations under this Act, the Program may:
 - a. encourage, participate in, or conduct studies, In order to fulfill all obligations under this Act, the Program may: investigations, research, and demonstrations relating to water pollution as necessary for the discharge of duties assigned under this Act;
 - b. hold hearings related to any aspect of or matters within the authorities of this Act and, in connection therewith, compel the attendance of witnesses and the production of records;
 - c. develop programs for the prevention, control, and abatement of new or existing pollution of LTBB Waters;
 - d. encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Act, including voluntary testing of actual or suspected sources of surface water pollution;
 - e. secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Act;
 - f. require, as specified in Section XLVIII of this Act, any person subject to the provisions of this Act to monitor, sample or perform other studies to quantify effects of pollutants and sewage sludge to the environment and to submit such plans, specifications, and other information deemed necessary by the Program to carry out the regulations adopted pursuant to this Act;
 - g. represent, consistent with the applicable requirements of tribal law and after appropriate consultation with appropriate authorities, LTBB in all matters pertaining to water pollution and its control, abatement, and prevention;

- h. cooperate with federal and state agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources; and
- i. perform such other activities as may be necessary and appropriate to carry out this Act.

B. Regulations

1. The Program is authorized to promulgate such regulations as are necessary to carry out all functions under this Act, pursuant to the provisions of Section LII of this Act, including, but not limited to, regulations concerning: water quality standards and planning; discharges of pollutants into LTBB Waters; management and protection of wetlands; introduction of pollutants by industrial users; disposal of sewage sludge; construction of new control facilities or any parts of them; modification of existing control facilities or any parts of them; adoption of other remedial measures to prevent, control or abate water pollution; clean lakes; non-point sources; and watershed protection.

2. In promulgating regulations, the Program shall give consideration to, but shall not be limited to, the relevant factors prescribed by the Clean Water Act and the regulations thereunder, except that the regulations prescribed by the Program shall be at least as stringent as those promulgated under the Clean Water Act if there is an applicable minimum standard established therein. In promulgating regulations, the Program shall also give consideration to, but shall not be limited to, the relevant factors prescribed by tribal law.

3. All regulations promulgated under this Act shall be subject to review and approval by the Natural Resources Commission and the Tribal Council, the latter as provided in the LTBB Administrative Procedures Act, before becoming effective.

C. Duties

1. In order to fulfill all obligations under this Act, the Program shall:

- a. enforce regulations that have been promulgated by the Program and have become effective pursuant to the provisions of this Act and the LTBB Administrative Procedures Act; and
- b. compile and make available to the public from time to time reports, data and statistics with respect to matters studied or investigated by or at the direction of the Program.

(Source: WOS 2016-008, September 15, 2016, Section V)

4.1206 NO WAIVER OF SOVEREIGN IMMUNITY

The Little Traverse Bay Bands of Odawa Indians retain all rights of sovereign immunity. Nothing in this Act waives the sovereign immunity of LTBB except for the limited waiver provided for judicial review of final actions of the Program pursuant to Section LIII of this Act.

(Source: WOS 2016-008, September 15, 2016, Section VI)

PART 2. LTBB WATER QUALITY STANDARDS

Subpart A. Water Quality Standards

4.1207 WATER QUALITY STANDARDS

A. Promulgation of Standards

Water quality standards are one type of regulation authorized under this Act and are subject to the rulemaking requirements in Section LII. The Program shall promulgate water quality standards that protect the public health or welfare, enhance the quality of water and generally serve the purposes of this Act, including by implementing the anti-degradation policy set forth in Section II(A) of this Act. The standards shall provide for the protection and propagation of fish, wildlife and livestock and shall protect agricultural, domestic and recreational uses of water, as well as cultural and ceremonial values and uses of water. The standards shall consist of the designated uses for LTBB waters and the water quality criteria for such waters based upon such uses, an anti-degradation policy, and implementation methods, and

shall be applicable to all LTBB Waters. The standards also shall include the methods and analyses to be used to determine compliance with such standards. The standards also may include provisions regarding compliance schedules, mixing zones, low flows, variances and such other matters as may be appropriate.

B. Designated Uses

The water quality standards shall establish designated uses for LTBB Waters, or segments thereof, taking into consideration the use and value of such waters for public water supplies, protection and propagation of fish and wildlife, recreational purposes, and agricultural (including livestock watering), commercial, industrial, and other purposes, and also taking into consideration their use and value for navigation and the cultural and ceremonial values and uses of the water. The Program may remove a designated use that is not an existing use consistent with the requirements of Section 303(c) of the Clean Water Act and associated federal regulations.

C. Criteria

The criteria established by the Program shall protect the designated uses, be based on sound scientific rationale (which may include criteria documents of the Administrator), and include sufficient parameters or constituents to protect the designated uses. For LTBB Waters with multiple uses, the criteria shall protect the most sensitive use. The Program may establish criteria specifically applicable to wildlife or sediment. The criteria shall include:

1. Narrative criteria to protect all LTBB Waters from: the discharge of toxics in toxic amounts; objectionable odors, tastes, color or turbidity in or on the water; detrimental effects on edible plant or animal life that reside in or on the water; bottom deposits; floating debris; and any other protections determined by the Program to be warranted under the goals of this Act.
2. Numerical criteria for pollutants or pollutant or other parameters, including toxic pollutants and a thermal component (consistent with the requirements of the Clean Water Act), the discharge or presence of which in LTBB Waters the Program has determined could reasonably be expected to interfere with designated uses promulgated by the Program. The numerical criteria shall support such designated uses. In setting numerical

criteria the Program may consider the effect of local conditions on water quality and may modify stream standards to reflect actual stream conditions when justified by sufficient data and need. When numerical criteria are not available and the Program determines it is appropriate to protect designated uses, the Program shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to CWA § 304(a)(8). Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

3. Any other criteria the Program determines are necessary to protect the designated uses of LTBB Waters.

D. Methods Used

The Program, in specifying the methods and analyses to be used to determine compliance with LTBB water quality standards, may include chemical analyses, physical properties, biological monitoring and toxicity testing.

E. Compliance Schedules

The Program may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five years, for a person subject to an NPDES permit to comply with a new or more restrictive water quality-based effluent limitation based upon a water quality standard. The Program may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five years, for any person subject to a mechanism, including a best management practice applicable to a non-point source, to comply with a new or more restrictive requirement which implements a water quality standard.

(Source: WOS 2016-008, September 15, 2016, Section VII)

4.1208 REVIEW OF WATER QUALITY STANDARDS

The Program shall from time to time (but at least once each three-year period beginning with the date of enactment of this Act) hold public hearings for the purpose of reviewing LTBB water quality standards and, as appropriate, revising and adopting standards. The results of such

review shall be provided to the Administrator. Whenever the Program revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator.

(Source: WOS 2016-008, September 15, 2016, Section VIII)

4.1209 IMPLEMENTATION OF WATER QUALITY STANDARDS

The water quality standards promulgated under this Act are implemented through issuance of permits under Part 6 of this Act, mechanisms provided under Part 7 of this Act for non-point source discharges, mechanisms provided under Part 8 of this Act for the clean lakes program, certification of federal licenses and permits (including permits issued by the U.S. Army Corps of Engineers pursuant to CWA § 404), as provided in Section XV of this Act, and participation as an affected tribe for discharges that may affect LTBB Waters (under CWA § 401(a)(2)). They also shall serve as clean-up standards for contaminated sites addressed under tribal or federal law.

(Source: WOS 2016-008, September 15, 2016, Section IX)

Subpart B. Water Quality Planning and Management

4.1210 COORDINATED WATER QUALITY PLANNING AND MANAGEMENT

The Program may conduct water quality planning and management activities within the Reservation in a coordinated fashion. Any such coordination shall be conducted consistent with this Act and the regulations promulgated hereunder and with applicable minimum federal requirements and may include, but is not limited to, identification of waters under Section XI of this Act, development of total maximum daily loads and wasteload allocations/load allocations under Section XII of this Act, and development of water quality monitoring, management plans and reports under Section XIII of this Act.

(Source: WOS 2016-008, September 15, 2016, Section X)

4.1211 IDENTIFICATION OF WATERS

A. Implementation

The Little Traverse Bay Bands of Odawa Indians is committed to identifying waters for which effluent limitations or controls on thermal discharges are not stringent enough to implement applicable water quality standards. The Program shall develop regulations to implement this section and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this section.

B. Effluent Limitations

The Program shall identify those LTBB Waters for which the effluent limitations required by CWA § 301(b)(1)(A) & (B) are not stringent enough to implement a water quality standard applicable to such waters. The Program shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

C. Thermal Discharges

The Program shall identify those LTBB Waters for which controls on thermal discharges under CWA § 301 are not stringent enough to assure protection and propagation of a balanced indigenous population of fish and wildlife.

D. Approval by Administrator

The Program shall submit to the Administrator from time to time for approval the identifications made under this section. If the Administrator approves any such identification, the Program shall incorporate it into the current plan under Section XIV of this Act. If the Administrator disapproves such identification and he or she identifies certain LTBB Waters for which the effluent limitations and controls on thermal discharges are not stringent enough to implement the water quality standards applicable to such waters, the Program shall incorporate this identification into the Program's current plan under Section XIV of this Act. These actions shall be taken in parallel with actions under Subsection XII(E) of this Act.

(Source: WOS 2016-008, September 15, 2016, Section XI)

4.1212 TOTAL MAXIMUM DAILY LOADS AND WASTELOAD ALLOCATIONS/LOAD

ALLOCATIONS

A. Implementation

The Little Traverse Bay Bands of Odawa Indians is committed to establishing total maximum daily loads for waters identified under Section XI. The Program shall develop regulations to implement this section and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this section.

B. Total Maximum Daily Load

The Program shall establish for the waters identified under Subsection XI(B) of this Act, and in accordance with the priority ranking, the total maximum daily load for those pollutants which the Administrator identifies under CWA § 304(a)(2) as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

C. Total Maximum Daily Thermal Load

The Program shall estimate for the waters identified in Subsection XI(C)) of this Act the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

D. Approval by Administrator

The Program shall submit to the Administrator from time to time for approval the loads established under this section. If the Administrator approves such loads, the Program shall incorporate them into the current plan under Section XIV of this Act. If the Administrator

disapproves such loads and himself establishes loads to implement the water quality standards applicable to such waters, upon such establishment the Program shall incorporate such loads into the Program's current plan under Section XIV of this Act. These actions shall be taken in parallel with actions under Subsection XI(D) of this Act.

E. Additional Identification

For the specific purpose of developing information, the Program shall identify all LTBB Waters that were not identified under Subsections XI(B) & (C) of this Act and estimate for such waters the total maximum daily load with seasonal variations and margins of safety for those pollutants which the Administrator identifies under CWA § 304(a)(2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish and wildlife.

(Source: WOS 2016-008, September 15, 2016, Section XII)

4.1213 WATER QUALITY MONITORING, MANAGEMENT PLANS AND REPORTS

A. Monitoring

The Program shall establish and provide for the operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition), the quality of LTBB Waters, including biological monitoring, and provide for periodic updating of such data and the submission of such data to the Administrator. The Program may provide for such monitoring through water quality management plans and through regulations promulgated pursuant to the rulemaking procedures in Section LII of this Act.

B. Management Plans

The Program may develop water quality management plans consistent with the requirements of CWA §§ 205(j), 208 and 303 and submit those plans to the Administrator; the Program may also periodically update those plans.

C. Reports

The Program may prepare water quality reports consistent with the requirements of CWA § 305(b) and submit those reports to the Administrator; the Program may also periodically update those reports.

(Source: WOS 2016-008, September 15, 2016, Section XIII)

4.1214 CONTINUING PLANNING PROCESS

A. Plan

The Program shall submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved) a proposed continuing planning process which is consistent with this Act and the Clean Water Act. The Program shall from time to time review the LTBB's approved planning process for the purpose of ensuring that such planning process is at all times consistent with this Act and the Clean Water Act.

B. Elements of Plan

The continuing planning process shall include, but not be limited to, the following:

- 1.** Effluent limitations and schedules of compliance at least as stringent as those required by Sections XIX and XX of this Act, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this Act and the Clean Water Act;
- 2.** All elements of any applicable area-wide waste management plans or applicable basin plans, established under CWA §§ 208 and 209, for which the LTBB has jurisdiction;
- 3.** Total maximum daily load for pollutants in accordance with Section XII of this Act;
- 4.** Procedures for revision;

5. Adequate authority for intergovernmental cooperation;
6. Adequate implementation, including schedules of compliance, for revised or new water quality standards, under Subpart A of this Part;
7. Controls over the disposition of all residual waste from any water treatment processing;
8. An inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of Section XIX of this Act.

(Source: WOS 2016-008, September 15, 2016, Section XIV)

Subpart C. Certificate of Compliance

4.1215 CERTIFICATION OF COMPLIANCE WITH FEDERAL WATER POLLUTION CONTROL REQUIREMENTS

A. Certification of Compliance

The Program may grant or deny certification that an applicant requesting federal license or permit necessary to conduct any activity, (including but not limited to the construction or operation of facilities), which may result in a discharge into LTBB Waters, must satisfactorily show that he or she will comply with CWA §§ 301, 302, 303, 306 & 307. If there is no applicable effluent limitation or other limitation under CWA §§ 301(b) & 302, and there is no applicable standard under CWA §§ 306 & 307, for the activity in question, the Program shall so certify. The Program shall submit the application and any certification issued under this section to the Administrator, pursuant to CWA § 401.

B. Rules for Grant or Denial of Certification

The Program shall promulgate regulations, consistent with the rulemaking provisions of Section LII of this Act, establishing the procedures that the Program will follow in granting or denying certifications under this section. Such rules shall require public notice of an application for certification, opportunity for public participation in the decision-making process on an

application for certification, and opportunity and procedures for public hearings on applications for certification. Such rules also shall require an applicant to provide the Program with notice of proposed changes in the construction or operation of the facility or other activity in question and with plans for the operation of the facility or conduct of the activity in question. Such rules may also include fees to be charged by the Program for the review of applications and issuance of certifications.

C. Limitations and Monitoring Requirements

In any certification issued under this section, the Program shall set forth effluent limitations, other limitations and monitoring requirements necessary to ensure that the applicant will comply with applicable effluent and other limitations under CWA § 301 or 302, standards of performance under CWA § 306, prohibitions, effluent standards or pretreatment standards under CWA § 307, and any other appropriate requirement of tribal law. These limitations and requirements shall become conditions on any permit subject to the provisions of CWA § 401.

(Source: WOS 2016-008, September 15, 2016, Section XV)

PART 3. SURFACE WATER DISCHARGE AND PRETREATMENT REQUIREMENTS

4.1216 IMPLEMENTATION

The Little Traverse Bay Bands of Odawa Indians is committed to developing surface water discharge and pretreatment requirements. The Program shall develop regulations to implement this Part and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part. Subsection XVIII(A) (“Prohibitions”) shall be in full force and effect immediately upon adoption of this Act.

(Source: WOS 2016-008, September 15, 2016, Section XVI)

4.1217 REGULATIONS REQUIRED

Any regulations developed for surface water discharges and pretreatment requirements shall meet the minimum criteria as set forth in this Part.

(Source: WOS 2016-008, September 15, 2016, Section XVII)

Subpart A. Surface Water Discharges

4.1218 PERMIT REQUIRED TO DISCHARGE INTO SURFACE WATER

A. Prohibitions

1. Except as provided in this Act or regulations promulgated hereunder, it is unlawful for any person to discharge a pollutant from a point source into LTBB Waters without a valid permit or to violate any term or condition of such permit. Any such action is a public nuisance, as well as being subject to enforcement under Part 10 of this Act.
2. A valid permit is one issued consistent with rules promulgated pursuant to this part and Part 6 of this Act or, if no such permit program has been established, by the Administrator under CWA § 402, for which the term has not expired.
3. It is unlawful for any person, without first securing a permit, to construct, install, modify, or operate any treatment works or part of any treatment works or any extension or addition to any treatment works, the operation of which could likely result in a discharge due to runoff, flow or usage.

B. Exemptions

The following discharges do not require NPDES permits:

1. Discharges into LTBB Waters of dredged or fill materials that are regulated under CWA § 404.
2. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 C.F.R. Part 300.

C. Grounds for Issuance of Permit

The Program may, after notice and opportunity for public hearing, issue a permit for the discharge of any waste, pollutant or combination of pollutants into LTBB Waters, for a period not to exceed five years, upon condition that such discharge meets or will meet, subject to authorized schedules of compliance, all applicable LTBB, affected tribe or state, and federal water quality standards and effluent standards and all other requirements of this Act and regulations promulgated under this Act.

D. Grounds for Denial of Permit

The Program shall deny a permit where:

1. The permit would authorize a discharge that would not meet the requirements specified in subsection C of this section;
2. The permit would authorize the discharge of any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste into LTBB Waters;
3. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any LTBB Waters;
4. The permit is objected to in writing by the Administrator pursuant to any right to object provided to the Administrator by CWA § 402(d);
5. The permit would authorize a discharge from a point source which is in conflict with a plan developed under Section XIV of this Act and approved by the Administrator under CWA § 208(b), and for which the submitting government entity had jurisdiction;
6. The issuance of the permit would otherwise be inconsistent with the applicable requirements of other LTBB statutes or regulations; or

7. The issuance of the permit would otherwise be inconsistent with applicable requirements of the Clean Water Act or regulations promulgated thereunder.

E. General Permit

The Program may issue a general permit within a geographical area to cover (1) storm water point sources, (2) a category of point sources, or (3) a category of treatment works treating domestic sewage. A facility covered by a general permit shall be subject to all provisions of this Act and regulations promulgated hereunder, except as otherwise provided by the Program by regulation in the case of certain application requirements.

(Source: WOS 2016-008, September 15, 2016, Section XVIII)

4.1219 EFFLUENT LIMITATIONS ENFORCED IN ISSUANCE OF PERMITS

A. Permit Conditions

The Program shall require as permit terms, limitations and conditions the achievement of:

1. Effluent limitations based upon the application of such levels of treatment, technology and processes as are required under the Clean Water Act for which the Administrator has promulgated regulations under CWA §§ 301, 304, 306 & 318 for industrial or municipal dischargers and aquaculture projects;
2. Effluent limitations, best management practices, requirements for cooling water intake structures, alternative limitations for coal re-mining under CWA § 301(p), and a determination of maximum extent practicable, based upon the application of best professional judgment, in the absence of formally promulgated standards and limitations by the Administrator under the Clean Water Act, based upon the appropriate criteria contained in CWA §§ 301, 304(e), 316(b) & 402(a)(1)(B);
3. Toxic pollutant effluent standards or prohibitions promulgated by the Administrator under CWA § 307(a), currently contained in 40 C.F.R. Part 129, within the time frame for compliance provided by the Administrator, as well as the authority to

modify existing permits to require compliance with such toxic pollutant effluent standards;

4. Effluent limitations, standards, or prohibitions on discharges from publicly owned treatment works and requirements of a pretreatment program based upon the requirements of CWA § 307 and the Administrator's implementing regulations;

5. For those treatment works treating domestic sewage and required to obtain a permit under Section XVIII of this Act, appropriate conditions that are required in order to comply with regulations for sludge use and disposal promulgated by the Administrator under CWA § 405;

6. Any more stringent effluent limitations necessary to meet water quality standards established pursuant to any LTBB, affected state or tribe, or federal law or regulation, including water quality-related effluent limitations established by the Administrator under CWA § 302; and

7. Any more stringent effluent limitations necessary to comply with the continuing planning process approved by the Administrator under CWA § 303(e).

B. Time for Compliance

Effluent limitations prescribed under this section shall be achieved in the shortest reasonable period consistent with LTBB law and the Clean Water Act, and with any regulations or guidelines promulgated or issued thereunder.

C. Variances

1. The Program may grant or deny requests for variances from effluent limitations proposed for the control of thermal pollution, based on the criteria specified in CWA § 316(a). The Program may implement any alternative limitations, terms or conditions established in a final decision on such a variance request.

2. The Program may deny, forward to the Administrator with a written concurrence, or submit to the Administrator without a recommendation, completed requests for variances under CWA § 301(c), (g), or (n) (including fundamentally different factors variance requests from best practicable control technology currently available effluent limitations guidelines) or 302(b)(2). To the extent that the Program has forwarded a request to the Administrator with a written concurrence or without a recommendation, the Program may implement any alternative limitations, terms or conditions established by the Administrator in a final decision on such a variance request.

(Source: WOS 2016-008, September 15, 2016, Section XIX)

4.1220 COMPLIANCE SCHEDULES

The Program may set and revise compliance schedules and include such schedules within the terms and conditions of permits for discharge of wastes or pollutants or for sludge use and disposal, consistent with LTBB law, the Clean Water Act and implementing regulations. The Program may establish interim compliance schedules in such permits which are enforceable without showing a violation of an effluent limitation or harm to water quality.

(Source: WOS 2016-008, September 15, 2016, Section XX)

4.1221 EXTENSION OF TIME TO MEET WATER QUALITY AND EFFLUENT STANDARDS

A. Required Findings

The Program may issue a reasonable extension to a point source discharger, industrial user, or treatment works treating domestic sewage, which extension shall not conflict with the Clean Water Act, in which to meet water quality standards or other applicable effluent limitations or standards of the LTBB or an affected state or tribe (to the extent allowable under the state or tribal law or regulations), if the Program determines that:

1. The violation was the result of actions or conditions outside the control of the discharger;
2. The discharger, industrial user, or treatment works treating domestic sewage has acted in good faith;
3. The extension would not result in the imposition of any additional controls on any point or non-point source; and
4. Facilities necessary for compliance are under construction and will be completed at the earliest date possible.

B. No Excuse for Noncompliance

Any extension of time granted under this section will not compromise any right for enforcement available under Part 10 which exists before the extension is granted.

(Source: WOS 2016-008, September 15, 2016, Section XXI)

4.1222 RECORDING, REPORTING, AND INSPECTION CONDITIONS

The Program may prescribe terms and conditions for permits or other controls on industrial users to assure compliance with applicable LTBB, affected state or tribe, and federal effluent standards and water quality standards (as set forth in Section XIX of this Act), including, but not limited to, requirements concerning recording, reporting, monitoring, entry, and inspection (as provided in Section XLVIII of this Act).

(Source: WOS 2016-008, September 15, 2016, Section XXII)

4.1223 DISPOSAL OF POLLUTANTS INTO WELLS

The disposal of pollutants into wells shall be prohibited, unless the disposal is authorized by the federal underground injection control (“UIC”) program authorized under the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, or by any LTBB UIC program approved by the

Administrator. The Program shall regulate any such discharges that are subject to the NPDES program through NPDES permits that incorporate appropriate federal or LTBB UIC requirements.

(Source: WOS 2016-008, September 15, 2016, Section XXIII)

Subpart B. Pretreatment Requirements

4.1224 PRETREATMENT STANDARDS

The Program may promulgate rules specifying pretreatment standards to be applied to all industrial users of publicly owned treatment works for the introduction of pollutants into publicly owned treatment works, including pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works. Such standards shall not conflict with any pretreatment standard established under CWA § 307(b).

(Source: WOS 2016-008, September 15, 2016, Section XXIV)

4.1225 CONDITIONS IN PERMITS ISSUED FOR PUBLIC OWNED TREATMENT WORKS

A. Compliance with Clean Water Act

The Program or the owner or operator of a publicly owned treatment works (“POTWs”), if it has an approved pretreatment program, shall implement all provisions of CWA § 307, including issuing pretreatment industrial user permits or controlling discharges from significant industrial users by other appropriate means, such as discharge fees.

B. Other Conditions

The Program shall include the following requirements as conditions in permits for the discharge of pollutants from POTWs:

- 1.** The identification, in terms of character and volume of pollutants, of any significant source introducing into such POTWs pollutants subject to pretreatment

standards under CWA § 307(b);

2. A program to assure compliance by each such source with pretreatment standards promulgated under CWA § 307(b) and Section XXIV of this Act;
3. Adequate notice to the Program of:
 - a. New introductions into POTWs of pollutants from any source which would be a new source as defined in CWA § 306 if such source were discharging pollutants;
 - b. New introductions of pollutants into POTWs from a source which would be subject to CWA § 301 if it were discharging such pollutants; or
 - c. A substantial change in volume or character of pollutants being introduced into POTWs by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on the quality and quantity of effluent to be introduced into such POTWs and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such POTWs;

4. Compliance with any system of user charges required under LTBB law or the Clean Water Act or regulations promulgated thereunder; and
5. Compliance with recordkeeping, reporting, sampling, monitoring and inspection requirements under CWA § 308 and Section XLVIII of this Act.

(Source: WOS 2016-008, September 15, 2016, Section XXV)

4.1225 OTHER AUTHORITY OF PROGRAM REGARDING PUBLIC OWNED TREATMENT WORKS

In addition to other provisions specifically authorized in this Act, the Program shall have, but not be limited to, the following authority regarding POTWs:

1. Issue decisions on requests by POTWs for pretreatment program approval;
2. Act on requests for removal credits under CWA § 307(b);
3. Act on categorical determination requests;
4. Deny or make recommendations on requests for fundamentally different factors variances under CWA § 301(n);
5. Make decisions on compliance deadline extension requests based on innovative technology under CWA § 307(e); and
6. Join a POTW as a defendant in an enforcement action under this Act against an industrial user.

(Source: WOS 2016-008, September 15, 2016, Section XXVI)

PART 4. PROTECTION AND MANAGEMENT OF WETLANDS

4.1227 WETLANDS PROTECTION PROGRAM

A. Establishment of Wetlands Protection Program and Effective Date

The Little Traverse Bay Bands of Odawa Indians is committed to establishing a Wetlands Protection Program to monitor, assess and protect wetlands to ensure that their ecological services are maintained; to designate and protect High Quality Wetlands for Tribal uses; and to establish a permitting process for discharge of dredged or fill material into a wetlands or other alteration or modification of an existing wetlands. This Act shall repeal and replace Waganakising Odawak Statute (WOS) 2006-016 and any previous wetlands statute. The Program shall develop regulations to implement this Part, including wetlands permit regulations, and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part. Notwithstanding the preceding sentence, the Wetlands Protection

Program shall be effective immediately upon adoption of this Act on lands held in trust for LTBB by the Secretary of Interior.

B. Authorities and Duties of Program

The Program shall have the following authorities and duties under this Part:

1. Enforce regulations promulgated pursuant to this Act;
2. Issue wetlands permits and require monitoring of wetlands activities;
3. Serve as a liaison between Tribal, Federal, County, State and local units of government on wetlands protection issues;
4. Review and comment on CWA § 404 permits issued by U.S. Army Corps of Engineers or Part 303 permits issued by Michigan Department of Environmental Quality pursuant to the Michigan Natural Resources and Environmental Protection Act;
5. Encourage education and proper uses of wetlands to reduce over-harvesting of natural and cultural resources.
6. Coordinate with and support Tribal, State and Federal entities in the enforcement of any applicable Tribal, State, or Federal statutes, ordinances or regulations involving wetlands protection and enhancement.
7. Establish standards and procedures for monitoring permitted activities.
8. Issue citations for violations of this Act and recommend a schedule of fines that may be imposed by the Tribal Court.

(Source: WOS 2016-008, September 15, 2016, Section XXVII)

4.1228 APPLICABILITY

- A.** This Part applies to wetlands that meet any one of the following criteria:
1. Connected to one of the Great Lakes.
 2. Located within 1,000 feet of one of the Great Lakes.
 3. Connected to an inland lake, pond, river, or stream.
 4. Located within 500 feet of an inland lake, pond, river or stream.
 5. Not connected to one of the Great Lakes, or an inland lake, pond, stream, or river, but more than 5 acres in size, regardless of the size of the impacted area.
 6. Classified as a High Quality Wetlands, regardless of the size of the impacted area.
 7. At least 1/3 acre in size and within lands held in trust for LTBB by the Secretary of Interior, regardless of the size of the impacted area.
- B.** This Part does not apply to manmade structures designed for drainage or stormwater management. Consistent with federal requirements, the Program may exclude from LTBB waters certain waste treatment systems not constructed or located in what would otherwise be LTBB waters.

(Source: WOS 2016-008, September 15, 2016, Section XXVIII)

4.1229 WETLANDS VERIFICATION

The Environmental Services Program and Geographic Information System, along with any other departments or staff assigned by the Tribal Administrator, shall maintain a composite wetlands map and inventory of all wetlands to which this Act applies using United States Department of Agricultural Soil surveys; Wetlands Criteria as established by the Army Corps of Engineers; field inspections; topographical maps; aerial photography; and other similar resources. The inventory and map shall include and indicate the location of all High Quality Wetlands.

(Source: WOS 2016-008, September 15, 2016, Section XXIX)

4.1230 PERMIT REQUIREMENT

A. Wetland Modification

Anyone who wishes to alter or modify an existing wetlands covered by this Part, including but not limited to undertaking any activity involving the discharge of dredged or fill material into a wetlands, is required to apply for a permit pursuant to regulations promulgated under this Part, consistent with the rulemaking requirements in Section LII.

B. Delineation Requirement

Any applicant proposing activity within a wetlands covered by this Part must perform a wetland delineation. The delineation of wetlands shall be done in accordance with the Wetland Criteria as established by the United States Army Corps of Engineers. The delineation shall be a component of all Permit applications and shall be verified by the Environmental Services Program prior to permit approval.

(Source: WOS 2016-008, September 15, 2016, Section XXX)

4.1231 WETLAND MITIGATION

A. Mitigation

The Program can consider wetland mitigation as a condition of permit approval, such as the types of actions described in Subsection (B) of this section, only if all of the following conditions are met:

- 1.** The wetlands impacts are otherwise eligible for permits pursuant to regulations promulgated under this Part.
- 2.** No feasible and prudent alternative is available to avoid impacts on the wetlands.

3. An applicant has used all practical means to minimize the impact to the wetlands. This may include the permanent protection of wetlands on the site that are not directly impacted by the proposed activity.

B. Mitigation Determinations

The Program shall take into consideration the following when making wetlands mitigation determinations:

1. The ability to create or restore wetlands of equal or greater in size and of equal or greater quality.
2. The ability to create or restore other wetlands contiguous to existing wetlands
3. The ability to create or restore High Quality Wetlands.
4. The ability to create or restore other wetlands within the same United States Geological Survey Hydrologic Unit Code watershed (12-digit or greater) as the permitted activity.
5. Whether the wetlands mitigation project provides the same level of access to the area as was previously enjoyed by the public or Tribal Citizens.

(Source: WOS 2016-008, September 15, 2016, Section XXXI)

PART 5. SEWAGE SLUDGE

4.1232 REGULATION OF THE USE AND DISPOSAL OF SEWAGE SLUDGE

A. Establishment of Program

The Little Traverse Bay Bands of Odawa Indians is committed to establishing a program to regulate the use and disposal of sewage sludge. The Program shall develop regulations to implement this Part and submit them to the Natural Resources Commission and the Tribal

Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part.

B. Content of Regulations

In establishing a sewage sludge program, the Program shall:

1. Regulate all sludge use and disposal methods within the Reservation;
2. Regulate the transportation and storage of sewage sludge in the Reservation;
3. Ensure compliance with applicable sludge standards by all users or disposers of sewage sludge; and
4. Regulate the issuance of permits under Sections XVIII & XXXIV of this Act for the disposal of sewage sludge, which regulations shall require the application to sewage sludge disposal of each criterion, factor, procedure and requirement applicable to a permit issued under Section XVIII of this Act.

(Source: WOS 2016-008, September 15, 2016, Section XXXII)

4.1233 BLANK SECTION

4.1234 PERMITS

A. Permit Requirement

In any case where the disposal of sewage sludge resulting from the operation of a treatment works (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering LTBB Waters, such disposal is prohibited except in accordance with a permit issued under Section XVIII of this Act or, if no such permit program has been established, by the Administrator under CWA § 402.

B. Consistency With Sewage Sludge Regulations

Any permit issued under Section XVIII to a POTW or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations promulgated pursuant to Section XXXII of this Act.

C. Applicability to All Treatment Works

In the case of a POTW or other treatment works treating domestic sewage that is not subject to Section XVIII of this Act, the Program may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to Section XXXII of this Act. The Program shall establish procedures for issuing permits pursuant to this subsection.

(Source: WOS 2016-008, September 15, 2016, Section XXXIV)

4.1235 RECORDKEEPING, REPORTING, AND INSPECTIONS

Any treatment works treating domestic sewage is subject to applicable provisions of regulations issued by the Program regarding recordkeeping, reporting and inspections, including provisions of Section XLVIII of this Act. The Program may prescribe terms and conditions for permits issued under this Part to assure compliance with applicable LTBB and federal effluent, solid waste, and water quality standards, including requirements concerning recordkeeping, reporting, monitoring, entry and inspection, to the extent provided under this Act. The Program may establish regulations specifically establishing terms, limitations and conditions, including notification requirements, applicable to septage haulers.

(Source: WOS 2016-008, September 15, 2016, Section XXXV)

PART 6. PERMIT PROCEDURES

4.1236 IMPLEMENTATION

The Little Traverse Bay Bands of Odawa Indians is committed to developing requirements for issuance of permits under this Act. The Program shall promulgate regulations to implement this Part and submit them to the Natural Resources Commission and the Tribal Council for

approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part.

(Source: WOS 2016-008, September 15, 2016, Section XXXVI)

4.1237 CONDITIONS OF PERMITS

A. Submission of Implementation

The Program may, by issuing regulations and on a case-by-case basis, prescribe conditions for and require the submission of plans, specifications, and other information from a permittee, applicant, or person discharging without a permit, in connection with applications for or otherwise related to the issuance of permits, introduction of pollutants by an industrial user into a publicly owned treatment works, or activities of a treatment works treating domestic sewage.

B. Consent to Jurisdiction

All permit applications and permits, including general permits, as well as regulations or other mechanisms issued by the Program for direct implementation of requirements for industrial users and treatment works treating domestic sewage that are not otherwise required to apply for permits, shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit or coverage by direct implementation mechanism:

“Applicant hereby consents to the jurisdiction of the Little Traverse Bay Bands of Odawa Indians in connection with all activities conducted pursuant to, in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the LTBB Clean Water Act otherwise apply. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant.”

The applicant shall include the foregoing statement as a term and condition of any

contract or other agreement it executes for services to be performed or goods to be provided within the Reservation in connection with any permit issued under this Act, or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for “applicant” as appropriate and substituting the phrase “this agreement” in place of the phrase “any permit issued pursuant to this application.” Failure by the applicant to include such statement, or of any party to agree and subscribe to such statement, may result in denial of the permit and subject the applicant to civil penalty in accordance with this Act.

(Source: WOS 2016-008, September 15, 2016, Section XXXVII)

4.1238 TERMS OF PERMITS

A. Fixed Term

Each permit shall have a fixed term not exceeding five years. Upon expiration of a permit, a new permit may be issued by the Program after notice and opportunity for public hearing and upon condition that the discharge or disposal (including of sludge) meets or will meet, subject to authorized compliance schedules, all applicable requirements of this Act, including the conditions of any permit issued by the Program.

B. Renewals

When the permittee has made a timely and sufficient application for a renewal in accordance with rules promulgated under this Act, an existing permit for an activity of a continuing nature shall not expire until the application for renewal has been finally determined by the Program.

(Source: WOS 2016-008, September 15, 2016, Section XXXVIII)

4.1239 NOTICE OF ACTIONS

The Program shall issue and implement rules to ensure:

1. That the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive notice of each application for a permit; be provided an opportunity for public hearing and comment before ruling on each such application; and be provided an explanation in writing of the reasons why any recommendations submitted with regard to such application were not adopted;
2. That the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive appropriate notice of activities of the pretreatment program, when applicable, and be provided an opportunity for public hearing and comment before the Program rules on such activities, as provided by CWA § 307 and the Administrator's implementing regulations; and
3. That the Administrator receives notice and a copy of each application for a permit.

(Source: WOS 2016-008, September 15, 2016, Section XXXIX)

4.1240 ISSUANCE, REVOCATION, OR DENIAL OF PERMITS

A. Authority

The Program shall issue, suspend, revoke, modify, or deny permits consistent with provisions of this Part and with rules issued by the Program consistent with the provisions of this Act.

B. Grounds for Revocation, Modification or Suspension

Any permit issued under this Part may be revoked, modified, or suspended in whole or in part, during its term or upon request of the permit-holder or any interested person, for cause, including but not limited to the following:

1. Violation of any condition of the permit;

2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
3. Change in condition that requires either a temporary or permanent reduction or elimination of the permitted discharge or disposal operation, where “condition” does not include statutory or regulatory effluent limitations or standards enacted or adopted during the permit term, other than for toxic pollutants.

C. Notice and Hearing

The Program, applicant, permittee or any interested person may request that the Program hold a public hearing on a permit decision. If requested, or if required by the Program, a public hearing shall be held within 30 calendar days after receipt of written request or written notice issued by the Program, or as soon thereafter as reasonably practical.

D. Environmental Appeals Board Review

If the Program recommends issuance or denial of an application for a permit, or revokes, suspends, or modifies a permit, the Program shall give written notice of its decision to the applicant or permittee, any interested person who has requested to be notified, and other entities as provided by this Act. The applicant, permittee or any interested person may appeal the Program’s permit decision to the Environmental Appeals Board within 30 days of issuance of the decision. The EAB may affirm, modify or reverse the decision of the Program based upon the evidence presented at the hearing. Failure to appeal to the EAB will preclude judicial review of the permitting decision by the Tribal Court.

E. Effective Date

Issuance, modification, revocation, or suspension of a permit shall be effective 30 calendar days after issuance of the Program’s decision, unless a later date is specified. If the permit decision is appealed to the EAB, an order of modification, revocation or suspension shall be effective 60 calendar days after the issuance of the EAB’s decision.

F. Any additional duties and/or responsibilities of the EAB shall be delineated by statute.

(Source: WOS 2016-008, September 15, 2016, Section XL)

4.1241 CONFLICT OF INTEREST

A. No Program employee shall participate in a permit action that involves himself or herself, any discharger, industrial user or treatment works treating domestic sewage with which he or she is connected as a director, officer or employee, or in which he or she has a direct personal financial interest. Direct financial interest is defined as receiving, or having received during the previous two years, a significant portion of income directly or indirectly from permit holders or applicants for permits.

B. To the extent not prohibited by Subsection (A) of this section, no employee of the Program shall participate in any proceeding as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage, except to the extent otherwise allowed under LTBB law. In no case shall a Program employee participate as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage in any proceeding that was instituted or ongoing during the employee's tenure with the Program.

(Source: WOS 2016-008, September 15, 2016, Section XLI)

4.1242 FUNDING OF PERMIT PROGRAM

The Program may, by rulemaking pursuant to Section LII, charge fees for permit applications, renewals, and other permitting actions. Such fees shall be designed to cover administrative costs of implementing the permit program. The Little Traverse Bay Bands of Odawa Indians recognizes the importance of the permit program in implementing and enforcing the LTBB Water Quality Standards and, when funding programs under this Act, the Tribal Council will consider revenues collected by the Program through fees, penalties, and other sources, when making budgetary decisions.

(Source: WOS 2016-008, September 15, 2016, Section XLII)

PART 7. NON-POINT SOURCE MANAGEMENT PROGRAM

4.1243 NON-POINT SOURCE ASSESSMENT REPORT

A. Content of Report

The Program shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved), a report which:

- 1.** Identifies those LTBB Waters which, without additional action to control non-point sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act or the Clean Water Act;
- 2.** Identifies those categories and subcategories of non-point sources or, where appropriate, particular non-point sources which add significant pollution to each portion of the LTBB Waters identified under Paragraph (A)(1) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;
- 3.** Describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of non-point sources and, where appropriate, particular non-point sources identified under Paragraph (A)(2) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and
- 4.** Identifies and describes LTBB and local programs for controlling pollution added from non-point sources to, and improving the quality of, each such portion of LTBB Waters, including but not limited to those programs which are receiving federal assistance under CWA § 319(h) & (i).

B. Basis for Report

In preparing the report required by this section, the Program may use all available information and applicable U.S. EPA guidance.

(Source: WOS 2016-008, September 15, 2016, Section XLIII)

4.1244 NON-POINT SOURCE MANAGEMENT PROGRAM

A. Program Submission

The Program shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program for controlling pollution added from non-point sources to LTBB Waters and improving the quality of such waters, which program the LTBB proposes to implement in the first four fiscal years beginning after the date of submission of the program. The Program may periodically revise the submission.

B. Program Contents

The management program proposed for implementation under this section shall address applicable guidance published by U.S. EPA and include the following:

1. An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular non-point source designated under Section XLIII(A)(2) of this Act, taking into account the impact of the practice on groundwater quality.
2. An identification of programs within the LTBB and affected tribes and states (including, as appropriate, non-regulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) designed to achieve implementation of the best management practices by the categories, subcategories, and particular non-point sources designated under Paragraph (B)(1) of this section.

3. A schedule containing annual milestones for (a) utilization of the program implementation methods identified in Paragraph (B)(2) of this section, and (b) implementation of the best management practices identified in Paragraph (B)(1) of this section by the categories, subcategories, or particular non-point sources designated under Section XLIII(A)(2) of this Act. Such schedule shall provide for utilization of the best management practices at the earliest practicable date, but no later than the time period provided in Section VII(E) of this Act.

4. Any other information required by CWA § 319(b) and regulations and guidance promulgated thereunder.

C. Utilization of Local and Private Experts

In developing and implementing a management program under this section, the Program shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of non-point sources of pollution.

D. Development on Watershed Basis

The Program shall, to the maximum extent practicable, develop and implement a management program under this Part on a watershed-by-watershed basis within the Reservation.

(Source: WOS 2016-008, September 15, 2016, Section XLIV)

PART 8. CLEAN LAKES PROGRAM

4.1245 BIENNIAL REPORT

A. The Program may initiate a Clean Lakes program under this Part. If the Program decides to develop a Clean Lakes program, the Program shall prepare and submit to the Administrator for approval a report containing the following information:

1. an identification and classification according to eutrophic condition of all lakes or portions of lakes within or adjacent to the Reservation;
2. a description of procedures, processes and methods (including land use requirements) to control sources of pollution of such lakes;
3. a description of methods and procedures, in conjunction with appropriate federal agencies, to restore the water quality of such lakes;
4. methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of such lakes and methods of removing from such lakes toxic metals and other toxic substances mobilized by high acidity;
5. a list and description of such lakes which are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and
6. an assessment of the status and trends of water quality in such lakes, including but not limited to the nature and extent of pollution loading from point and non-point sources and the extent to which the use of such lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

B. This report shall be updated and submitted to the Administrator every two years, for so long as the Program continues to operate a Clean Lakes program. Any Clean Lakes program developed under this Part shall be carried out in such a way that would not impede or interfere with the Great Lakes Protection Statute, Tribal Code Sections 4.601-4.606.

(Source: WOS 2016-008, September 15, 2016, Section XLV)

4.1246 CONTRACTS AND INTERAGENCY AGREEMENTS

The Program is authorized to enter into agreements with other public agencies and to contract with public and private agencies, organizations and individuals to develop and demonstrate new or improved methods for the prevention, removal, reduction and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation.

(Source: WOS 2016-008, September 15, 2016, Section XLVI)

PART 9. WATERSHED PROTECTION PROGRAM

4.1247 DEVELOPMENT OF PROGRAM

The Little Traverse Bay Bands of Odawa Indians is committed to developing a Watershed Protection program to protect surface and groundwater from pollution. The Environmental Services Program may conduct studies regarding watershed protection within the Reservation, develop guidelines and procedures to protect such watersheds, and develop regulations to implement this Part and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part. The Program may develop the Watershed Protection Program on a watershed basis, taking into account impacts on water quality from a variety of sources and considering cumulative impacts as well as discrete instances of contamination. In developing the Watershed Protection program, the Program shall consult with other LTBB agencies and departments and with state and federal agencies and other entities having authority over activities which may impact water quality within the Reservation (such as agriculture, livestock grazing, fisheries, mining and timber operations and business development).

(Source: WOS 2016-008, September 15, 2016, Section XLVII)

PART 10. ENFORCEMENT

4.1248 RECORDS, INSPECTIONS, MONITORING AND ENTRY

A. Recordkeeping, reporting and monitoring

In order to carry out the purposes of this Act, including but not limited to developing or enforcing any water quality standard, water quality management plan, continuing planning process or best management practice under this Act, issuing certifications, granting approvals, and issuing permits or otherwise regulating point sources, treatment works and industrial users of POTWs under this Act, the Program may require, as appropriate, any person subject to the requirements of this Act to:

1. Establish and maintain records;
2. Prepare and submit reports;
3. Install, calibrate, use and maintain monitoring equipment or methods, including, where appropriate, biological monitoring;
4. Sample effluents and receiving waters (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Program shall prescribe); and
5. Provide such other information as the Program may reasonably require.

B. Entry and Inspections

The Program or its authorized representative (including an authorized contractor acting as a representative of the Program), upon presentation of his/her credentials,

1. Shall have a right of entry to, upon, or through any premises necessary to implement and enforce the provisions of this Act and the regulations promulgated hereunder, and

2. Shall have access to and the right to copy any records, inspect any monitoring or sampling equipment or method under Subsection (A) above, inspect any treatment processes or equipment, sample any effluents which are being discharged into LTBB Waters or are required to be or are sampled under Subsection (A), and perform any other inspection necessary to ensure compliance with this Act and the regulations promulgated hereunder. Such access and inspections shall be conducted at reasonable times, with or without notice, and shall be completed with reasonable promptness. Such access and inspections may be made at any time if the Program determines there is a threat of endangerment to the environment or public health.

Any records, reports or information obtained under this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment or new source performance standards.

C. Availability of Information to Public

1. Trade secrets. Any records, reports or other information obtained under this section shall be available to the public, except that upon a showing satisfactory to the Program by any person that records, reports or other information or any particular part thereof (other than effluent data) to which the Program has access under this section would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Program shall consider such record, report or other information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the LTBB and of the United States concerned with carrying out this Act or when relevant to any proceeding under this Act. The Program shall deny claims of confidentiality for the name and address of any permit applicant or permittee; copies of permit applications and permits; inspection reports, and effluent data.

2. Culturally sensitive information. Any information as to the location of LTBB waters used for traditional cultural practices, or other

culturally sensitive information that LTBB or LTBB elders withhold from the general public for traditional or cultural reasons, shall be protected by the Program and shall not be made available to the public under any conditions, except that such information may be disclosed to other officers, employees or authorized representatives of the LTBB and of the United States concerned with carrying out this Act or when relevant to a proceeding under this Act, provided that such information continues to be protected from public disclosure.

D. Confidential Information

Any authorized representative of the Program (including an authorized contractor acting as a representative of the Program) who discloses confidential information, as defined in Paragraphs (C)(1) & (2) of this section or in other applicable tribal or federal statutes and regulations, including the LTBB Public Documents Statute and Regulations, in a manner contrary to those provisions and laws, may be subject to dismissal, suspension, or other adverse personnel action. Any authorized representative of the Program (including an authorized contractor acting as a representative of the Program) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information that is required to be considered confidential under this subsection and subsection (C) or is otherwise exempt from public disclosure under applicable tribal or federal law shall be fined not more than \$500. Nothing in this subsection shall prohibit the Program or an authorized representative of the Program (including any authorized contractor acting as a representative of the Program) from disclosing records, reports, or information to officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act; provided that such disclosure will be performed in compliance with the Tribal Public Documents Statute and applicable regulations. In any instance where the LTBB lacks jurisdiction over the person charged, the Program may refer the action to the appropriate U.S. EPA Regional Administrator and/or U.S. Department of Justice official.

(Source: WOS 2016-008, September 15, 2016, Section XLVIII)

4.1249 GENERAL ENFORCEMENT AUTHORITY

A. In General

Whenever, on the basis of any information available to the Program, the Program finds that any person (including the LTBB and any instrumentality of the LTBB, but only with regard to their role as a point or non-point source, industrial user of a publicly owned treatment works or a treatment works treating domestic sewage) has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, plans, programs or fees issued or developed pursuant to this Act, the Program may:

1. Issue and serve on such person a citation requiring such person to comply with such requirement or prohibition, including a citation requiring compliance on an emergency basis, pursuant to the provisions of this section;
2. Issue and serve on such person a citation imposing penalties, in accordance with this section and Section LI of this Act;
3. Request that the LTBB bring a civil action, including an action for injunctive relief, in accordance with Section L(A) of this Act; and/or
4. Request that the LTBB Prosecutor's Office bring a criminal action in accordance with Section L(B) of this Act, bring an action under the Clean Water Act, and/or refer any criminal enforcement action or portion of such action to the U.S. Environmental Protection Agency Regional Administrator for Region 5.

B. Requirements for Citations

1. A citation, including a penalty citation, issued under Paragraph (A)(1) or (2) of this section shall:
 - a. state with reasonable specificity the nature of the violation;
 - b. state that the alleged violator is entitled to a hearing in Tribal Court, if such hearing is requested in writing within 30 calendar days after the date of issuance of the citation; and

c. specify a time for compliance that the Program determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

2. The citation shall become effective immediately upon the expiration of 30 calendar days after the date of issuance of the citation if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Court, except as provided under Subsection (C) for emergency citations.

3. The citation may be conditional and require a person to refrain from particular acts unless certain conditions are met.

4. If appropriate, a copy of the citation shall be sent to U.S. EPA Region 5 and, if the citation is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation.

5. No citation issued under this section shall prevent the LTBB from assessing any penalties or otherwise affect or limit the LTBB's authority to enforce under other provisions of this Act, or affect any person's obligations to comply with any section of this Act or with a term or condition of any permit or other requirements promulgated or approved under this Act.

C. Emergency Situations

1. Notwithstanding any permit issued under this Act, if the Program determines that discharge of pollutants into LTBB Waters or into a POTW or a treatment works treating domestic sewage, or that pollution from a non-point source, or a combination of such sources, is presenting an imminent and substantial endangerment to public health or welfare or the environment and determines, in consultation with the General Counsel, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to Subsection (E) of this section, the Program may issue an emergency citation to protect public health or welfare or

the environment.

2. An emergency citation may prohibit, restrict or condition any and all activities that contribute or may contribute to the emergency, shall be effective immediately upon issuance and shall remain in effect for a period of not more than 60 calendar days, unless the Program brings an action pursuant to Subsection (E) of this section within the 60-day period. If the Program brings such an action, the citation shall remain in effect for an additional 14 calendar days or for such longer period as may be authorized by the court in which such action is brought.

3. Any person subject to an emergency citation may file with the Tribal Court, with a copy provided to the Program, a written request for a hearing on the citation within 30 calendar days of issuance of the citation. If a timely request for a hearing is not made the citation shall be final and not subject to judicial review. The request for a hearing may be combined with a request for a stay pending the outcome of the hearing. The Tribal Court shall grant or deny the request for a stay within five business days of receipt of the request.

D. Enforcement of Citations and Orders

Citations and orders, including emergency and penalty citations and orders, may be enforced by the LTBB Natural Resources Department Conservation Enforcement Division, the LTBB Prosecutors Office, and the Law Enforcement Division. Those authorized to enforce the Program's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:

- 1.** Entering upon any property or establishment believed to be violating the citation or order and demanding compliance; and
- 2.** Terminating operations at facilities not in compliance.

E. Injunction Relief

The Program may seek injunctive relief pursuant to Section L(A) of this Act to

restrain any person who causes or contributes to an imminent and substantial threat to the public health or welfare or environment due to a discharge or other activity affecting the quality of LTBB Waters.

(Source: WOS 2016-008, September 15, 2016, Section XLIX)

4.1250 JUDICIAL ENFORCEMENT

A. Civil Judicial Enforcement

The Program may request that the LTBB file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties of not less than \$500 and not more than \$25,000 per day per violation, in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act;
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or
3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Program shall request the LTBB to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in Paragraphs (1) & (2).

B. Criminal Penalties

Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted pursuant to this Act or a permit,

citation, or order issued pursuant to this Act;

2. Makes any false material statement, representation or certification in, or omits material from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required to be filed or maintained pursuant to this Act, regulations or plans adopted pursuant to this Act or a permit, citation, or order issued pursuant to this Act; or

3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Act, regulations or plans adopted pursuant to this Act or a permit, citation, or order issued pursuant to this Act;

shall, upon conviction, be punished by a fine of not less than \$500 and not more than \$5,000 per day of violation or imprisonment for not more than one year, or both, or such greater amounts and lengths of time as may be permissible under applicable law, or be subject to any other penalty imposed by the court that is available under LTBB law. In any instance where LTBB lacks jurisdiction over the person charged, or where the Program is limited in the amount of the fine that he may impose, the Program may refer the action to the U.S. EPA Regional Administrator for Region 5, pursuant to Section XLIX(A)(4) of this Act, for criminal prosecution in federal court. For the purpose of this subsection, the term “person” includes, in addition to the entities referred to in Section III(A)(27) of this Act, any responsible corporate officer.

C. Jurisdictional and Venue of Tribal Court

Any action under this section shall be brought in the LTBB Tribal Court, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this section, collect any fees or noncompliance penalties owed the LTBB under this Act, and award any other appropriate relief.

D. Calculation of Penalties

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section or Section LI, if the Program has notified the source in writing of the violation and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Tribal Court that alleges any violation described in Subsection (A) of this section.

2. In determining the amount of a penalty assessed under this section or Section LI, the following factors shall be considered: the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant.

3. In lieu of or in addition to a monetary penalty, the Program may impose or may request the LTBB to seek from the court a requirement to remediate the damage caused or to perform community service, or both.

E. Failure to Pay Penalty

If any person fails to pay a civil penalty, the Program shall request the LTBB to bring a civil action in the Tribal Court to enforce the penalty order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or the amount of the penalty shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under

this section shall be required to pay, in addition to such penalty and interest, the enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Program may by regulation establish higher penalties to take into account situations where the prime rate is higher.

F. Seizure of Property

Any officer authorized pursuant to Section XLIX(D) to enforce citations or orders under this Act may seize the property of any person who commits and is charged with a violation of any of the provisions of this Act, the regulations promulgated hereunder, and permits, citations and orders issued hereunder, if such property is located within the Reservation. Such property shall be seized as security for the payment of any civil or criminal penalties or damages and is subject to forfeiture to LTBB to accomplish such payment.

(Source: WOS 2016-008, September 15, 2016, Section L)

4.1251 ADMINISTRATIVE ASSESSMENT OF PENALTIES

A. Basis for Penalty Citation

The Program may issue against any person a penalty citation assessing a civil administrative penalty of up to \$10,000 per day per violation whenever the Program finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit, citation or order issued pursuant to this Act, or a fee assessed under this Act. The Program's authority under this subsection, combined with actions under Subsection (C), shall be limited to matters where the total penalty sought does not exceed \$100,000 and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Program and the General Counsel

jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged and shall not be subject to judicial review. The Program may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this section.

B. Hearing Requirement

The Program shall assess an administrative penalty under this section by issuing a citation pursuant to Section XLIX(B) of this Act. Before issuing a penalty citation, the Program shall give written notice of the proposed citation to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 calendar days of receipt of the notice.

C. Failure to Pay Penalty

If any person fails to comply with a penalty citation after the citation has become final, the Program shall request the LTBB to bring a civil action in the Tribal Court to enforce the citation or recover the amount ordered or assessed plus interest, from the date of the final citation or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the citation or penalty assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than 10 percent of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Program may by regulation establish higher penalties to take into account situations where the prime rate is higher.

D. Calculation of Penalty

In determining the amount of any penalty to be assessed under this section, the Program or the court, as appropriate, shall take into consideration the factors enumerated in Section L(D) of this Act.

(Source: WOS 2016-008, September 15, 2016, Section LI)

PART 11. RULEMAKING AND JUDICIAL REVIEW

4.1252 RULEMAKING

A. Public Notice and Comment

Notice of any proposed regulation shall be published in a newspaper of general circulation on the Reservation and shall be posted on the LTBB website for seven working days. The notice shall specify the period available for public comment, which must be at least 30 calendar days, and the date, time and place of any public hearing, and shall state how the public may review and obtain a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Program shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Program shall allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally at a public hearing, in Anishinaabemowin or English, their views, data or arguments; and shall keep the rulemaking record open for at least ten calendar days after the public hearing to provide an opportunity for submission of rebuttal and supplementary information.

B. Final Rule

The final regulation shall be based on the record of the rulemaking proceeding contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period. The final regulation shall become effective upon approval by the Natural Resources Commission and the Tribal Council, except that if the Tribal Council takes no action

within 30 days the regulation shall be deemed approved, pursuant to the LTBB Administrative Procedures Act. The final regulation, together with significant comments and the responses, shall be published on the LTBB website within seven working days after approval of the regulation, express or implied, by the Tribal Council.

(Source: WOS 2016-008, September 15, 2016, Section LII)

4.1253 REVIEW IN TRIBAL COURT

A. Petitions for Review of Final Actions of the Program

Anyone seeking to challenge a final action taken by the Program under this Act must file a petition for review of the action in Tribal Court. If the challenge is to a regulation, the petition shall be filed within 60 calendar days from the date of the regulation's approval by the Tribal Council, pursuant to Section LII(B). Challenges to a permit decision must be filed within 60 calendar days of the date of issuance of a final decision by the EAB. Permitting decisions that have not been appealed to the EAB will not be reviewed by the Tribal Court. For challenges to any other type of final action, the petition shall be filed within 60 calendar days from the date that notice of such final action is first published or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Act, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 calendar days after such grounds arise. The Tribal Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Program at the time of the final action from which the appeal is taken.

B. Review of Regulations

With respect to any regulations promulgated under this Act or other notice and comment actions taken pursuant to this Act, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Program that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review),

and if the objection is of central relevance to the outcome of the regulation or other action, the person may request the Program to reconsider the regulation or other notice-and-comment action and the Program may convene a proceeding for reconsideration of the regulation or other action and provide the same procedural rights as would have been afforded had the information been available at the time the regulation or other action was proposed. If the Program declines to convene such a proceeding, the person may seek review of such refusal in the Tribal Court. Such reconsideration shall not postpone the effectiveness of the regulation or other action, although its effectiveness may be stayed by the Program or the court for up to three months.

C. Other Limitations on Review

1. If judicial review of a final action of the Program could have been obtained under subsection (A) of this section that action shall not be subject to judicial review in judicial proceedings for enforcement.
2. Review of citations may be obtained only if a hearing was requested pursuant to Subsections XLIX(B) or (C) and LI(B). In that case a petition for review shall be brought in the Tribal Appellate Court.
3. Except as otherwise expressly allowed by LTBB law, no interlocutory appeals shall be permitted with regard to determinations made by the Program under this Act. In reviewing alleged procedural errors, the court may invalidate the regulation or other action only if the errors were so serious and related to matters of such central relevance to the regulation or permitting action that there is a substantial likelihood that the regulation or other action would have been significantly changed if such errors had not been made.

D. Standards for Review

In reviewing any final action of the Program or determination by the EAB undertaken pursuant to this Act, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
2. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;
3. Without observance of procedure required by law; o
4. Unsupported by substantial evidence.

E. Relief Available

In any action brought pursuant to the provisions of this section, relief shall be limited to declaratory relief and the Court shall have no jurisdiction to grant any other relief.

(Source: WOS 2016-008, September, 15, 2016, Section LIII)

4.1254 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2016-008, September, 15, 2016, Section LIV)

4.1255 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2016-006, September 15, 2016, Section LV)

