

Mazina'igan Supplement

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Mille Lacs Lake: Managing a shared fishery assures treaty and sport opportunities in the future

Mille Lacs Lake is a resource long cherished by the Ojibwe people for its abundance of life-sustaining food. Non-Indian residents who moved into the Minnesota territories in the 1800s also relied on its resources, especially its notable walleye fishery. Today, people come from far and wide to enjoy the lake and the fishing pleasures it still presents. While the lake still maintains an abundant fishery, the human pressure on its resources continues to grow, not only in numbers of fishermen, but as a result of habitat changes from continuing development.

Consequently, effective and visionary resource management must be undertaken to guarantee that resource for future generations. For this reason, careful, cooperative decisions regarding the lake's management must be based on accurate data and reflect a commitment to a healthy habitat and an ongoing fishery. This supplement explores the history of the treaty rights in relation to Mille Lacs Lake and also the substantial tribal, fishery management effort that is committed to the welfare of the resource as well as to the continuing opportunity for all to share in the harvest.



Scene after fishing at Mille Lacs Lake. (Minnesota Historical Society photograph collection, ca. 1925)



Ben Sam, a young fisherman from the Mille Lacs Band, lifts a net he set during the 2004 spring treaty season on Mille Lacs Lake. Ben has been taught a traditional respect for both the fish and his net. (Photo by Sue Erickson)

The treaty fishery: How it came to be

The Ojibwe people had long lived in the upper Great Lakes region by the time European explorers first entered the area. Ojibwe communities dotted the shoreline of Lake Superior on both the Canadian and United States sides and were scattered south across the northern third of Minnesota, Michigan and Wisconsin.

When first contacted by European explorers in the 18th century, the Ojibwe lived a semi-nomadic lifestyle, moving from camp to camp to harvest vital foods, such as maple sap, fish, venison, and wild rice, according to the seasons.

As more and more settlers pushed into the Lake Superior region in search of timber and minerals, the United States government bought land from the Ojibwe through cession treaties. In these treaties, vast quantities of land were exchanged for promises of small amounts of money, schooling, equipment, and the like.

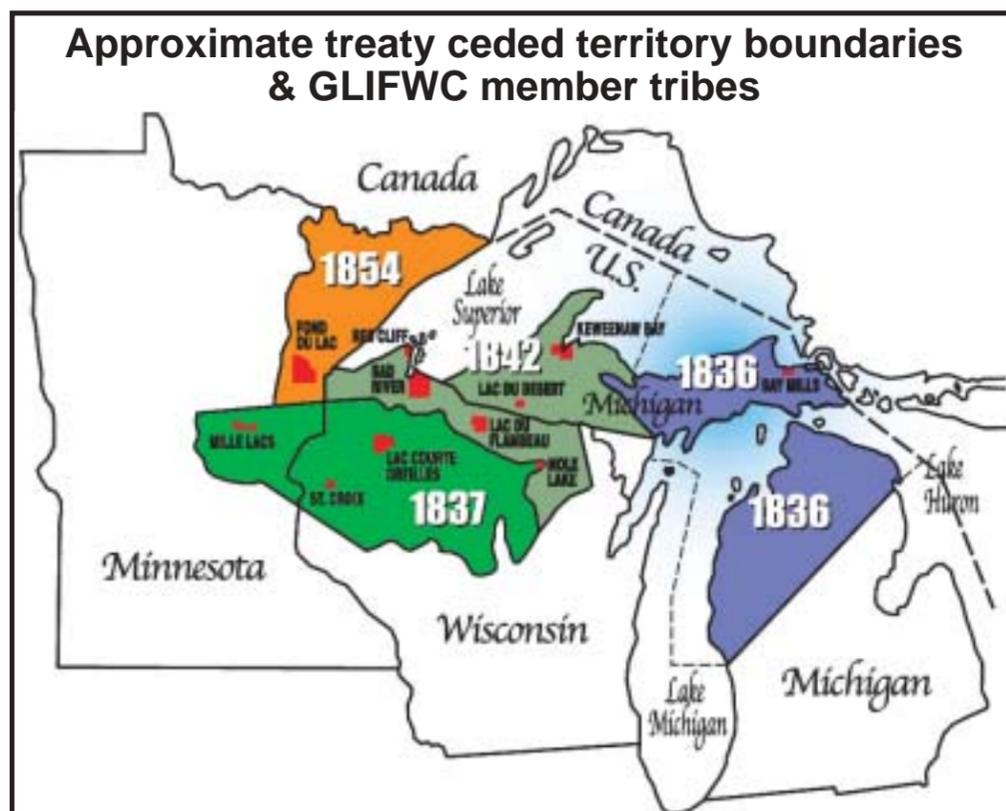
However, in many of these treaties, the Ojibwe leaders kept the right to hunt, fish and gather on lands they sold to the U.S. government in the mid 1800s. This would ensure that future generations would be able to survive and always have access to the foods important to their people.

Due to the foresight of those leaders, their descendants can exercise court-affirmed treaty rights in the ceded territories today. Ojibwe bands retaining treaty rights and now members of the Great Lakes Indian Fish & Wildlife Commission (GLIFWC) include: the Bay Mills Indian Community, the Keweenaw Bay Indian Community, and the Lac Vieux Desert Band of Chippewa in Michigan; the Mole Lake/Sokaogon, Lac du Flambeau, Lac Courte Oreilles, St. Croix, Bad River, and Red Cliff Bands in Wisconsin, and the Fond du Lac and Mille Lacs Bands in Minnesota.

The agreements made between the Ojibwe bands and the United States are called treaties. Treaties are legally binding agreements made between nations.

Within the United States Constitution treaties are defined as the "supreme law of the land." They are legally binding agreements and have always been respected within the framework of U.S. federal law. Today, the rights kept by the Ojibwe bands to hunt, fish and gather on land they sold are referred to as treaty rights.

(See **Treaties guaranteed**, page 2)



Treaties guaranteed Ojibwe hunting, fishing and gathering rights

(Continued from page 1)

Most treaties were signed prior to the formation of the states of Michigan, Wisconsin and Minnesota. At the time there were no state regulations over hunting, fishing and gathering activities.

As the territories became states and populations grew, the states passed laws governing hunting, fishing and gathering activities and enforced them against the Ojibwe people, irregardless of their treaty rights. Tribal members exercising off-reservation treaty rights were often cited into state courts for violations of state conservation laws.

By the mid-1900s, tribes began to challenge in court the right of a state to enforce state law on off-reservation hunting, fishing and gathering activities in the ceded territories. These legal challenges gave rise to the many federal and state court decisions which reaffirm Ojibwe treaty rights today.

Treaty rights were reserved in a series of cession treaties, including the Treaty of 1836, ceding land in Michigan's Upper and Lower Peninsulas and parts of the Great Lakes; the Treaty of 1837, ceding land in north central Wisconsin and east central Minnesota; the Treaty of 1842, ceding land in northern Michigan and Wisconsin and the western part of Lake Superior; and the Treaty of 1854, ceding land in northeastern Minnesota and creating reservations for many Ojibwe bands.

State and federal courts have upheld the treaty rights of tribes in many significant court decisions across the nation. Several of those cases have affirmed the treaty rights of the Ojibwe bands in the last several decades, including: the 1971 *Jondreau* decision, Michigan State Court; the 1972 *Gurnoe* decision, Wisconsin State Court; and the 1981 *U.S. vs. Michigan* decision, U.S. Federal District Court. All affirm tribal rights to fish in areas of the Great Lakes.

Decisions affirming inland hunting, fishing and gathering rights include the 1983 *Voigt* decision in Wisconsin, the 1997 *Mille Lacs and Fond du Lac* decisions relating to Minnesota's 1837 ceded territory, and the 1999 U.S. Supreme Court decision in favor of the Mille Lacs Band.



In 1850 United States President Zachary Taylor and Indian Sub-agent John Watrous informed band members from Michigan, Minnesota and Wisconsin that the treaty annuity distribution site had been changed from La Pointe, Wisconsin to Sandy Lake, Minnesota, some 285 canoe miles to the west. The change of site and late date was part of a scheme to move the Ojibwe into the Minnesota Territory. It was hoped the Ojibwe would be unable to return home. More than 5,500 Ojibwe journeyed to Sandy Lake in the autumn of 1850. Supplies were delayed for over six-weeks as harsh winter conditions set in. More than 150 Ojibwe died at Sandy Lake. A partial payment was made on December 2nd, and the Ojibwe broke camp and started to travel home. Another 250 died on that bitter trail, but the people were resolved to return to their homes. (Photo by Charlie Otto Rasmussen)



Annual payments of money and goods, called annuities, were distributed to tribal members at distribution sites specified by the U.S. government agents. These payments were a result of treaty agreements signed by the United States and tribal representatives which ceded tribal lands but retained the tribes' right to hunt, fish and gather on those lands.



A "tow" heading for pike grounds, Mille Lacs Lake. (Minnesota Historical Society photograph collection. ca. 1925)

Treaty history

In 1825 the Ojibwe participated in a treaty that defined the boundaries of the "Great Chippewa Nation" and the "Great Sioux Nation." In the 1825 Treaty, the United States recognized that the Ojibwe owned vast acres of what is now Minnesota, Wisconsin and Michigan.

The United States encouraged the signing of the 1825 Treaty in order to end continuing land disputes between the Ojibwe and the Sioux and secure a "peaceful frontier" for settlers. The treaty set down definite boundaries of land ownership for the Ojibwe.

Later, non-Indian interest in the mineral and timber resources in the Midwest pushed the United States to enter into more treaties with the Ojibwe, such as the 1837 Treaty, in order to secure land for mining and logging. In 1842 the Ojibwe ceded land north of the 1837 cession line in what is now northern Wisconsin and Michigan's western Upper Peninsula.

Provisions of these treaties did not indicate that the Ojibwe were to abandon their homelands. Instead, the government agreed that the Ojibwe could continue to "hunt, fish, and gather" in the ceded territories.

Around 1850, political scheming led to demands for the removal of the Ojibwe from their ceded lands. A disastrous effort at removal was orchestrated in 1850 when President Zachary Taylor issued a Presidential Removal Order. Ojibwe residing in Wisconsin and Michigan were lured to the Minnesota Territory to receive annuity payments late in the fall. The hope was that they would be unable to return and would have to remain in the Minnesota Territory. The people arrived at Sandy Lake, Minnesota in late October to receive their annuities and were left waiting there with wholly inadequate and largely spoiled rations as bitter winter weather approached. Hundreds died at Sandy Lake and later en route home. Despite the hardship, the people rejected removal.

Concerned about talk of removal, a delegation of Ojibwe leaders traveled to Washington, D.C. in 1852 to petition Congress and President Fillmore for permanent homelands.

The removal effort was abandoned in 1852 in the face of widespread protests from Indians and non-Indians alike. Federal courts have since found the Removal Order to be invalid.

In the 1854 Treaty, more Ojibwe land was ceded, this time in northeastern Minnesota. Reservations were also established in the 1837, 1842 and 1854 ceded territories where the Indian people would be free from non-Indian intrusions and further threats of removal. The Mille Lacs reservation was established in the 1855 Treaty of "Peace and Friendship."

Courts affirm tribes' right to regulated treaty fishing

Minnesota 1837 Treaty cases

Mille Lacs Band v. State of Minnesota and Fond du Lac v. Carlson

The Mille Lacs and Fond du Lac Bands each filed a lawsuit seeking affirmation of their 1837 Treaty rights in Minnesota. Mille Lacs filed its suit on August 13, 1990, and Fond du Lac filed its suit on September 30, 1992. The Fond du Lac lawsuit also involved the tribe's 1854 Treaty claims.

These two lawsuits traveled parallel paths through the federal courts, having been assigned to different judges; however, they were eventually consolidated on certain issues.

Both sought a judgment declaring that the 1837 ceded territory rights continued to exist, defining the nature and scope of the rights, and defining the permissible scope, if any, of state regulation of the treaty harvest.

They also sought a court order prohibiting enforcement of state fish and game laws against band members, except as specified by the court.

In terms of timing, the Mille Lacs case proceeded through the court first and drew the majority of public attention. In 1993, the Eighth Circuit Court of Appeals allowed nine Minnesota counties and six individuals to join in the case against the Band.

In 1993, after many months of negotiations, an attempted effort to resolve the Mille Lacs case through an out-of-court settlement failed. The proposed agreement was approved by the Mille Lacs Band, but was rejected by the State Legislature. The agreement would have ended the Mille Lacs case. With its rejection, the litigation proceeded, with decisions ultimately being rendered in the Band's favor.

The case was divided into two phases. Phase I was to determine whether the rights continued to exist, the general nature of the rights, and where the rights could be exercised. If the rights were found to continue, Phase II would address issues of resource allocation between treaty and nontreaty harvests and the validity of particular measures affecting the exercise of the rights.

A 1994 ruling in Phase I of the Mille Lacs case by Judge Diana Murphy affirmed the 1837 Treaty rights and found that the rights included the taking of resources for commercial purpose; were not limited to any particular methods,



Leonard Sam, Mille Lacs tribal member, nets through the ice on Mille Lacs Lake during the winter. (Photo by Sue Erickson)



Mille Lacs' attorney Marc Slonim addresses reporters following the Supreme Court hearing in *Minnesota v. Mille Lacs*. (Photo by Charlie Otto Rasmussen)

techniques or gear; and were subject to state regulation only to the extent reasonable and necessary for conservation, public health or public safety purposes.

The court also ruled that the Band could prevent state regulation if it enacted its own regulations that met conservation, public health and public safety concerns. The court limited the exercise of treaty harvest on private lands to those lands open to public hunting by state law, such as tree growth tax lands. This ruling set the stage for Phase II of the Mille Lacs case.

Before Phase II proceeded, the six Wisconsin Ojibwe bands were allowed to join the case in 1995. These are the same bands whose treaty rights were affirmed in the *Voigt* case for the Wisconsin 1837 ceded territory.

The Mille Lacs and Fond du Lac cases continued on separate tracks until the summer of 1996. At about the same time Phase II of Mille Lacs litigation was to begin, Judge Richard Kyle affirmed the Fond du Lac Band's 1837 Treaty rights.

Judge Kyle ruled that the Fond du Lac Band's rights in the 1837 ceded territory were the same as those that Judge Murphy found to exist for the Mille Lacs Band in her 1994 ruling. At the state's request, the court then joined the 1837 Treaty issues of the two cases for Phase II purposes and for these issues the cases proceeded on a consolidated basis.

In Phase II, the Mille Lacs, Fond du Lac and six Wisconsin bands cooperatively developed a proposed set of tribal regulations for the Minnesota ceded territory that was eventually approved by the court.

On January 29, 1997, Judge Michael Davis issued a ruling on Phase II issues and ordered that final judgment be entered in the Mille Lacs case. The court approved a stipulation between the bands and the state that set forth agreed-upon tribal regulations to govern the exercise of the rights, and, over the objection of the state, the court also approved two other regulations proposed by the tribes—one allowing deer hunting in December at night while shining over bait and another allowing the use of gill nets in several lakes under 1000 acres in size.

The court ruled that if the bands properly enact these regulations into tribal law and effectively enforce them, state laws do not apply. It also ruled that an allocation of natural resources between treaty and non-treaty harvests was unnecessary at the time.

Judge Davis also approved a dispute resolution process agreed to by the bands and state. This process called for the establishment of two committees, one for fishery issues and the other for wildlife and wild plant issues. These committees would be the primary cooperative management bodies where information would be exchanged, possible regulatory changes would be discussed, and issues would be resolved.

The tribes and state agreed to mediate any unresolved disputes. If mediation fails, either party may ask the court to resolve the matter. The court agreed to maintain continuing jurisdiction over these matters.

The state, counties and landowners all appealed Judge Murphy's and Judge Davis' decisions in the Mille Lacs case. In April 1997, the Eighth Circuit Court of Appeals suspended treaty harvest while the case was on appeal, except for limited ceremonial fishing for the Mille Lacs Band.

On August 26, 1997, the Appellate Court upheld the lower court decisions in their entirety and in October 1997 lifted the suspension on treaty harvest. In November 1997 the Eighth Circuit rejected requests by the state, counties and landowners to reconsider its ruling.

At Minnesota's request, the U.S Supreme Court agreed to review lower court rulings regarding the 1855 Treaty, the 1850 Removal Order, and the effect of Minnesota's statehood on the bands' treaty rights.

On March 24, 1999, the Supreme Court upheld the treaty rights of the Ojibwe in Minnesota's 1837 Treaty ceded territory. This ruling effectively ended all debate that the bands' treaty rights exist.

Implementation of Minnesota 1837 Treaty fishing rights

Based on the January 1997 District Court ruling, the following documents provide the basis for the Bands, as governments, to regulate the exercise of treaty fishing rights by their members.

1837 Treaty conservation code for the Minnesota ceded territory

The 1837 Treaty Conservation Code for the Minnesota Ceded Territory (Model Code) establishes the fishing regulations to be enforced by Band, State, and GLIFWC conservation officers. This Model Code was jointly developed with the State of Minnesota during an issue-narrowing process and has been individually adopted by each of the eight Bands. Methods of fishing allowed include gill-netting, fyke netting, spearing, and hook-and-line fishing. Seasons, bag limits, and size limits are defined by species and by harvest method.

Treaty Fisheries Management Plan

The Interim Treaty Fisheries Management Plan for the Years 1998-2002 set forth the management intent of the Bands. This initial five-year harvest manage-

ment plan provided for the gradual and orderly development of treaty fisheries in Minnesota and provided the State with ample opportunity to adjust its fisheries. For example, the plan established tribal walleye quotas for open-water spear and net fisheries in Mille Lacs Lake for a five year period that began with 40,000 pounds in 1998 and increased at a rate of 15,000 pounds each year up to a total of 100,000 pounds in 2002.

Based on knowledge acquired during this initial period, a second five-year plan was developed by the Bands and agreed to by the State. Under the Treaty Fisheries Management Plan for the Years 2003-2007, the annual quota for Mille Lacs Lake walleye was maintained at 100,000 pounds in 2003 and could increase to 115,000 pounds by 2007 if specific harvest criteria are met.

Protocols

A set of protocols were agreed to by the State of Minnesota and the Bands. These protocols lay out the terms and operational framework for the 1837 Minnesota Ceded Territory Fisheries Committee (Fisheries Committee), for the exchange of fisheries information, for calculating harvestable surplus levels, for coordinating scientific investigations, and for resolving disputes.

The shared walleye fishery in Mille Lacs Lake

Band fishing

Band fishing in Mille Lacs and other 1837 Minnesota ceded territory lakes began under Court reaffirmed treaty rights in spring 1998. Each year the tribal harvest of walleye and four other quota-regulated fish species are regulated by the Bands within established limits on Mille Lacs Lake and all other lakes through an intensive harvest management system that includes daily permits for spearing and netting, complete monitoring and daily reporting of the catch, and daily adjustments to quotas.

To provide insight into the amount of information and communication that is required to effectively manage harvest by eight Bands, the following describes some of the daily procedures during a typical spring day. Each day Band representatives contact GLIFWC around noon to notify them of the lakes that their Band plans to spear or net that night and the boat landing(s) to be used. At the same time, the updated quota balances for walleye and other species are reviewed and the number of permits that can be issued is determined.

Harvest monitoring teams are assigned to each lake or designated boat landing that may be speared or netted that night. All tribal spearers and netters must have a daily permit. All spearing and netting harvest is strictly monitored under the supervision of GLIFWC or Band biologists and conservation officers. At each lake or boat landing, all harvested fish are identified to species, counted, and weighed in the aggregate by species. Length and sex information are collected from a subsample of walleye and other species. Also, for some walleye a dorsal spine or otolith (inner ear) is collected for age determination.

All fishing effort and harvest totals for each Band, lake and boat landing are reported to GLIFWC each morning and used to update quota balances. During spring, GLIFWC provides this information to Minnesota DNR and tribal representatives on a daily basis.

The following statistics are provided as an example of the types of information collected by GLIFWC each year on tribal fishing. During the 1998-99 quota year, a total of 18,700 fish weighing approximately 36,000 pounds were harvested from

11 lakes. Walleye was the targeted species and made up approximately 90% of the catch. Most of the walleye harvest occurred in Mille Lacs Lake where 78% of the 40,000 pound quota was taken (Figure 1). Of these walleye, more were taken by gill netting (around 28,000 pounds) than by spearing (around 3,000 pounds). Also, a sample of walleye was measured and sex identified: average length was 17.5 inches; average weight was 1.9 pounds; and 96% of the sexable walleye were male with the remaining 4% female.

Since 1998, the tribal fishery has primarily targeted walleye in Mille Lacs Lake with gill nets and spears during spring. As tribal walleye quotas have gradually increased, so has tribal harvest (Figure 1). In spring 2004, approximately 75,000 pounds of walleye were taken out of the 100,000 pound tribal quota for Mille Lacs Lake.



All fish speared or netted by tribal members are counted and weighed by species. Above GLIFWC fisheries aides measure and record data on a Mille Lacs Lake northern pike. (Photo by Sue Erickson)

Mille Lacs Lake total tribal harvest and estimated state angler harvest of walleye 1998-2004 (through 12/1/04)

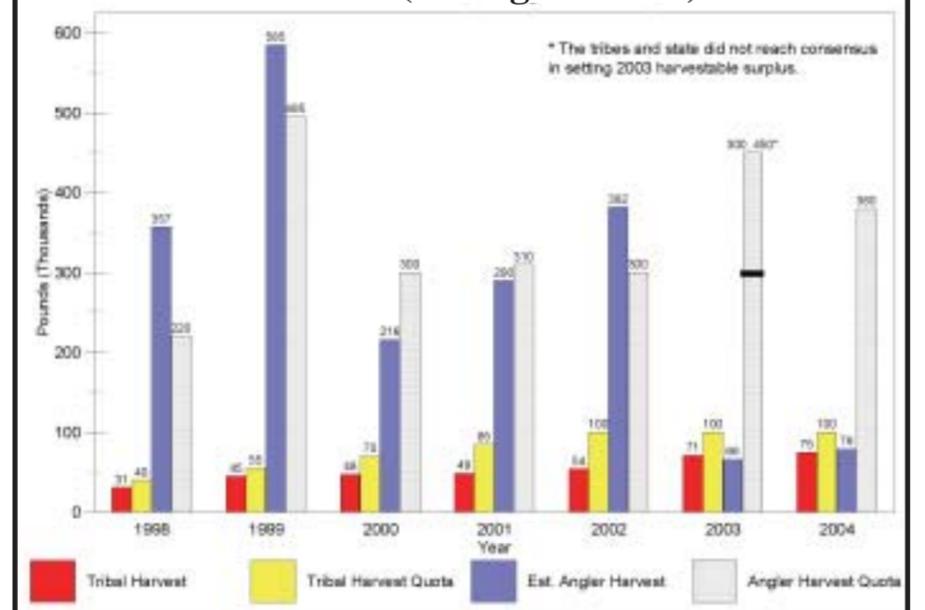


Figure 1. (Graph by Rick Madsen)

State fishing and development of a shared fishery

Prior to 1998, walleye angling in Mille Lacs Lake was regulated by the Minnesota Department of Natural Resources (MnDNR or State) primarily through season restrictions and bag limits. Since 1983 the State has annually conducted a creel survey of Mille Lacs Lake to estimate fishing effort and angler harvest of walleye and other species.

As stated in one of the protocols, the Bands and the State have agreed to manage their fisheries to stay within their respective shares of the harvestable surplus. Since the State had only limited experience using harvestable surplus calculations to manage its fisheries, it was agreed that there would be no prescribed penalties for State quota overruns during an initial three-year trial period (1998-2000). However, the Bands and the State also indicated they would seek agreement on a mechanism to address quota overruns thereafter.

Starting with the 1998 fishing year, the State began experimenting with various regulations intended to keep angler harvest within its share of the harvestable surplus level. In 1998 and 1999, the State exceeded its walleye quota for Mille Lacs Lake (Figure 1). In 2000 and 2001, stricter regulations kept State walleye harvest within its quota.

Overage plan

However, in 2002 estimated kill of walleye by State anglers through June was already at 343,000 pounds, and the Bands estimated that the State was on pace to exceed their 300,000 pound quota by over 100,000 pounds. The Bands requested that the State take steps to curtail its harvest during the remainder of the 2002 season, but an agreement on acceptable actions was not reached. Thus, to prevent (See Stock assessment, page 5)

Stock assessment models used to determine annual abundance of walleye

(Continued from page 4)

such large overharvests (or overages) in the future, the Bands invoked the dispute resolution process. Through this process, the Bands and the State eventually agreed on a five-year overage plan that allows some State overharvest from year to year, depending on the health of the stock, but requires the State to stay within its quota, on balance, over the five-year period 2003-2007. Since 2002, State harvest has been below its quota.

Walleye harvestable surplus in Mille Lacs Lake

Harvestable surplus is the term used to define how many walleye can be harvested in a year without jeopardizing the ability of the population to sustain itself. The State and Bands have agreed that the Fisheries Committee will determine the annual harvestable surplus level for walleye in Mille Lacs Lake. To do this, models are used to estimate the number and pounds of walleye in the entire population. Then the portion of the population is multiplied by 24% to calculate harvestable surplus.

For example, if the entire walleye population is estimated to weigh 2.5 million pounds and the portion of this that is "vulnerable" is 2.0 million pounds, then harvestable surplus would be 480,000 pounds (i.e. 2.0 million times 24%). After a harvestable surplus value has been agreed on, the State quota is simply determined by subtracting the Band quota from that number. In the above example, if the tribal quota is 100,000 pounds, then the State quota would be 380,000 pounds.

Walleye models

Since 1998, a number of different models have been used by the Bands and the State for determining annual harvestable surplus levels for walleye in Mille Lacs Lake.

Although GLIFWC and MnDNR staff have worked independently on their models, similar estimates of walleye abundance (number of fish) and biomass (pounds of fish) have been produced by the various models in recent years. However, Band and State biologists currently define "vulnerable" stock differently, which results in differences in estimates of harvestable surplus. Resolving this issue would likely result in more similar estimates of harvestable surplus.

Currently, there are two primary models being used. One is called a Virtual Population Analysis or VPA model, and the other is referred to as a Statistical Catch at Age or SCAA model. While different assumptions are used in these two models, both models rely on assessment survey and mortality information, which is broken down by age of fish. The following is a brief summary of where these data come from and how they are used in modeling.

Survey information

A variety of fisheries surveys have been conducted on Mille Lacs Lake, including assessment gill net surveys, electrofishing surveys, and trawl surveys. The survey that has been the most useful and reliable in walleye modeling is the standardized fall gill net survey that MnDNR has been conducting since 1983. This survey consists of 32 gill nets each having five different mesh sizes that are set in the same locations around the same date and water temperature every fall. A range of mesh sizes are used so that a variety of sizes and ages of walleye are caught. All of the walleye captured are aged and the number caught at each age provides an "index" of abundance. The model uses this "relative abundance" information (Figure 2) to estimate the absolute number of walleye of each age.

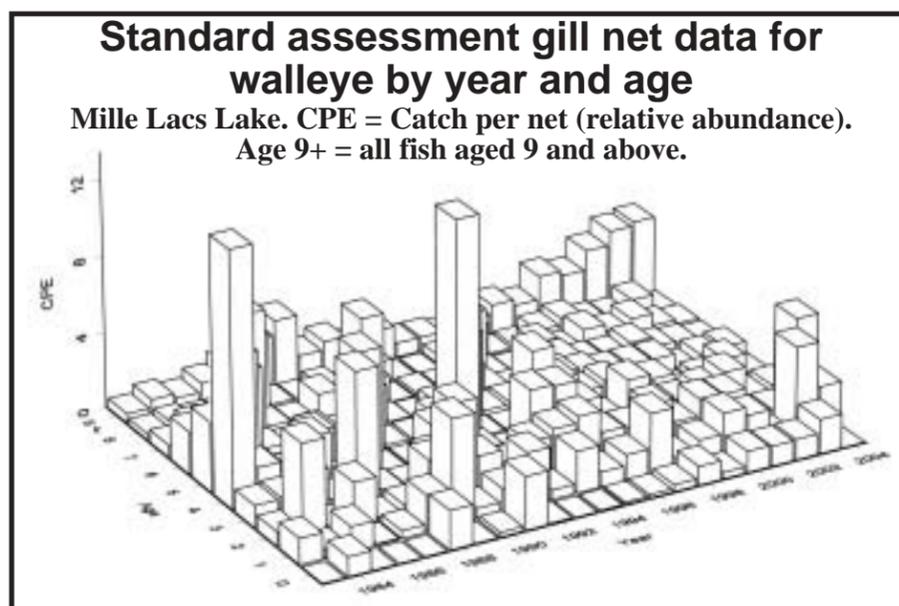


Figure 2. (Minnesota DNR fisheries data. Graph by Rick Madsen)

Mortality information

Walleye die in two ways: from fishing and naturally. Biologists refer to these two types of deaths as fishing mortality and natural mortality. Fishing mortality in Mille Lacs Lake is the combination of deaths from both tribal and state fishing. The number of walleye harvested by Band fishers is known precisely because all walleye are counted. The number of walleye harvested by State anglers is not known as precisely, but a creel survey is conducted annually which allows harvest to be estimated. In addition, State anglers release a large number of walleye each year so a value is used to estimate the number of released walleye that die from "hooking." A dorsal spine or otolith is collected from some of the walleye for aging, so that the age composition of both the Band and State harvest can be estimated.

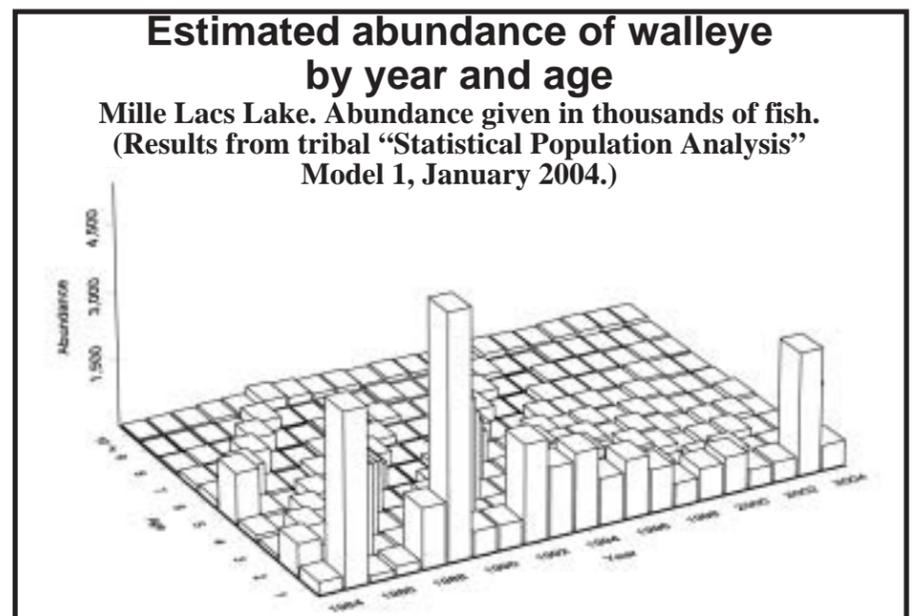


Figure 3. (Graph by Rick Madsen)

Natural mortality includes such things as deaths of walleye from old age, from disease, from being eaten by fish, birds, and mammals (predation), and from starvation, particularly of young walleye in poor health during winter. Because biologists aren't able to measure these deaths directly, certain assumptions must be made about natural mortality. For Mille Lacs Lake, values of natural mortality to be used in the models have been agreed on by State and Band modelers.

Models then use information from the surveys and from fishing mortality, along with the assumptions about natural mortality, to estimate the number of walleye in the entire population for each age (Figure 3).

Walleye tagging study: Calibrating the models

A walleye tagging study was conducted by Band and State biologists for three consecutive years (2002-2004) to develop estimates of walleye numbers by a different method than those used by the models. An independent expert was hired by the State and Bands to review the performance of the models being used and to recommend ways to incorporate results of the tagging study into the models. Results of this evaluation were presented and discussed at the January 2004 Fisheries Committee meeting. The report indicated that the VPA methods performed better than the SCAA models in some ways, but that the use of the population estimates from the tagging study greatly improved the performance and reliability of the SCAA models.

As mentioned earlier, most of the models currently being used for Mille Lacs Lake walleye are generating similar estimates of numbers and weight of walleye in the lake. This is largely because of the use of the population estimates from the walleye tagging study, which were used to compare and calibrate the models.

Northern pike modeling and tagging study

As tribal walleye harvest on Mille Lacs Lake has increased, harvest of northern pike has also increased (Figure 4). The annual allowable harvest of northern pike has been 23,000 pounds with the Bands and State each being allocated half (i.e. 11,500 pounds). Because tribal harvest has increased and because total harvest by both fisheries has exceeded or been close to the allowable harvest each year, an effort is being made to evaluate the status of this species. During the past year tribal biologists developed a "surplus production" model for northern pike tailored to the data available from Mille Lacs Lake. In addition, the Bands and the State are planning to conduct a tagging study in 2005 to develop current information about the number and ages of northern pike in the lake.

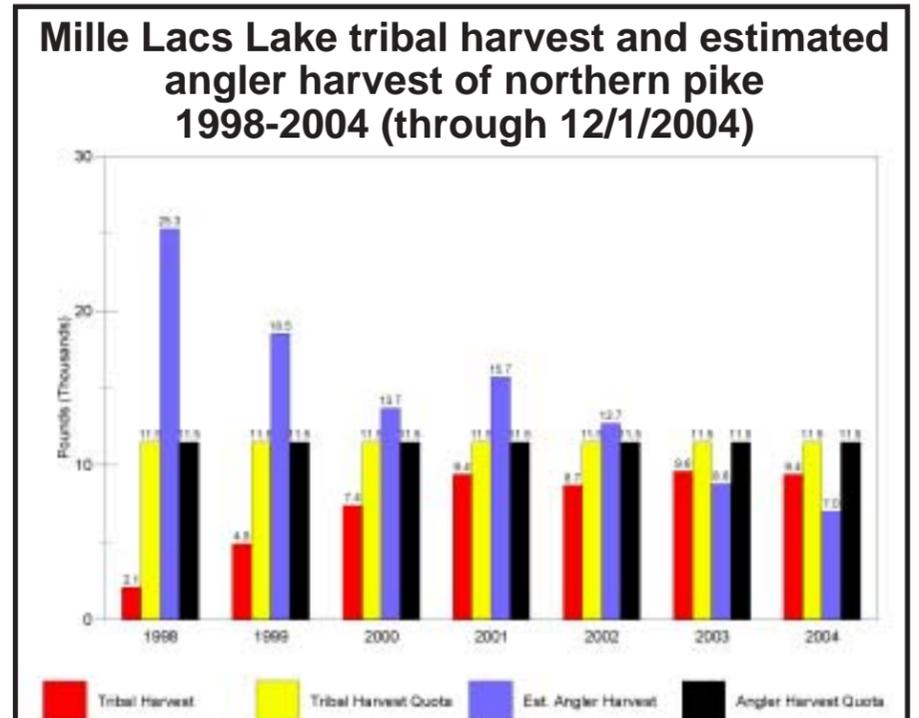


Figure 4. (Graph by Rick Madsen)

History of the Mille Lacs Band

According to oral traditions, the Ojibwe first lived on the Atlantic coast of North America. About 500 years ago, the ancestors of the Mille Lacs Band began migrating west. By the mid-1700s, the Ojibwe had established themselves in the region around Mille Lacs Lake in what is today Central Minnesota. They supported themselves by hunting deer, bear, moose, waterfowl, and small game; fishing the area's lakes and streams; gathering wild rice, maple sugar, and berries; and cultivating plants.

But it wasn't long before the Mille Lacs Ojibwe's self-sufficient way of life was affected by a new presence in their homeland. Europeans started arriving, and as their numbers grew, they began taking more and more of the Mille Lacs Band's land and natural resources in violation of treaties, statutes and agreements.

Because of new diseases and federal policies, by the end of the nineteenth century, only a few hundred Ojibwe remained on the Mille Lacs Reservation. Band members' religion was banned; the teaching of their language and culture was often forbidden; their right to govern themselves was virtually taken away, and their traditional means of making a living was made nearly impossible.

Over the next century, the Mille Lacs Band struggled with poverty and despair. Finally, in the early 1990s, the Band opened Grand Casino Mille Lacs and Grand Casino Hinckley. Since then, casino revenues have allowed the Mille Lacs Band to strengthen its cultural identity, return to economic self-sufficiency, rebuild its reservation, and increase the prosperity of the entire region.

Important events in Mille Lacs Band history

1640—The first written record of contact between Europeans (French fur traders) and Ojibwe occurs at what is now known as Sault Sainte Marie, Michigan.

1659—Daniel Duluth negotiates an agreement of peace between the Ojibwe living near the south shore of Lake Superior and the Dakota people who lived near Mille Lacs Lake. Under the terms of the agreement, the two nations agree to share hunting territory in the area that would eventually become Western Wisconsin and Eastern Minnesota. This agreement encourages the Ojibwe to continue their western migration.

1727–1745—Competition for trade with the French leads to conflicts and warfare between the Ojibwe and the Dakota.

1745–1750—The Ojibwe arrive in the area around Mille Lacs Lake and force the remaining Dakota, who have already begun migrating west and south, out of the area. The Ojibwe establish their permanent homeland on and around the shores of Mille Lacs Lake.

1783—The Treaty of Paris ends the American Revolution and establishes the boundary between Canada and the United States, placing the homeland of the Mille Lacs Ojibwe in American territory.

1825—A treaty council is held at Prairie du Chien, Wisconsin. More than 1,000 leaders representing Ojibwe, Dakota, Sauk, Fox, Menominee, Iowa, Winnebago and other tribes gather with Indian agents and commissioners to settle intertribal conflicts. Boundaries are established between the Dakota and Ojibwe, and treaty provisions give mineral exploration rights on some Ojibwe land to the U.S.

1837—With faulty maps and other misunderstandings of the geography involved, the Mille Lacs Band signs a treaty ceding its homeland to the U.S. government. The Treaty of 1837 protects the rights of the Mille Lacs Ojibwe to hunt, fish and gather on the ceded lands, but allows the land to be settled by non-Indians.

1855—The Mille Lacs Band signs a treaty that sets aside 61,000 acres as its reservation on and around the south end of Mille Lacs Lake, including the southern part of the lake and southern islands. The Treaty of 1855 also opens up land just north of the new Mille Lacs Reservation to the advancing timber crews.

1858—Minnesota joins the union.

1862—During the Dakota War, Mille Lacs Band warriors defend non-Indians from aggression by neighboring Ojibwe bands.

1864—In recognition of its "good conduct" during the Dakota War, the Mille Lacs Band receives a guarantee in a treaty with the U.S. government that Band members will not be forced to leave the Mille Lacs Reservation.

1879—Despite the Treaty of 1864, the U.S. Interior Department proclaims the Mille Lacs Reservation available for purchase by timber companies and others. Congress later reverses the proclamation, but not in time to prevent non-Indians from squatting on the reservation and stripping large areas of pine trees.



Canoe scene, south shore of Mille Lacs Lake. (Photo by John A. Jansen, Minnesota Historical Society photography collection, ca. 1919)



Don Wedll, formerly Mille Lacs Commissioner of Natural Resources, is interviewed by the press in St. Paul, Minnesota following a 1991 *Minnesota v. Mille Lacs* hearing before the U.S. Federal Court, Eighth District. (Photo by Sue Erickson)

1880s—The U.S. government adopts a policy of assimilation, declaring that Indians must conform to the lifestyles of non-Indians.

1884—The Band's leaders receive assurances that the presence of non-Indians on Mille Lacs Band land would be investigated and resolved.

1889—Congress passes the Nelson Act, which seeks to move Ojibwe populations to allotments of land on the White Earth Reservation in northern Minnesota, but also allows them to take allotments on their own reservations.

1902—Government representatives visit Mille Lacs to negotiate an agreement for damages done to Mille Lacs Band members by settlers. During this negotiation, Band members discovered that the promises made to them in 1889 have been broken. Many Band members abandon hope of fair treatment from the U.S. government and move to White Earth. Others are harassed into moving over the next few years as their property is sold out from under them. However, a small group of Band members led by Chief Migizi and Chief Wadena refuse to leave their land.

1911—The village of Chief Wadena is burned by a sheriff's posse and its residents are forcibly removed so that the land they live on can be claimed by a developer.

1914—Chief Migizi obtains a promise from Congress to purchase 40-acre home sites for the landless Band members. By the time the sites are distributed 12 years later, they have been reduced to 5 acres.

1915—Many Mille Lacs Band members join the U.S. Armed Forces to serve and defend America during World War I. Native American veterans of WWI are allowed to apply for U.S. citizenship.

1924—American Indians are recognized as U.S. citizens by an act of Congress.

1930s—Many Mille Lacs Band children are sent to government boarding schools where they are forbidden from speaking the Ojibwe language in an attempt to assimilate them into mainstream society.

1934—Congress passes the Indian Reorganization Act, which formally recognizes Indian self-government and is intended to restore Indian self-determination and tribal cultures. The Minnesota Chippewa Tribe is formed as a political union of six Ojibwe bands, including the Mille Lacs Band.

1941–45—More than 25 Mille Lacs Band members serve in the U.S. Armed Forces during World War II. Many Mille Lacs Band families move to large cities to work in war-related industries.

1946—Congress passes the Indian Claims Commission Act as part of an effort to resolve land claims between Indian tribes and the U.S. government.

1952—The U.S. government adopts the Indian Termination and Indian Relocation policies, which seriously erode the notion of Indian self-government. The idea of assimilating Indians into mainstream society is once again supported by government policy.

1960—Sam Yankee is elected chairman of the Mille Lacs Band's tribal government. Under his leadership, modern homes, public buildings, health services, educational opportunities, and social programs begin to appear on the reservation.

1972—Arthur Gahbow is elected chairman of the Mille Lacs Band's tribal government. Gahbow leads the Band toward self-determination by advancing economic development on the reservation, pursuing land claims to expand the reservation's land base, and overseeing a restructuring of the Band's government system. (See *Band committed*, page 7)

Band committed to self-determination

(Continued from page 6)

1975—Chairman Gahbow is instrumental in forming the Mille Lacs Band's Nay Ah Shing School following a walkout by reservation children from a public school in nearby Onamia.

1981—The Mille Lacs Band moves closer to self-governance by adopting a "separation of powers" form of government with executive, legislative and judicial branches. The move strengthens the Band's ability to deal with the U.S. on a government-to-government basis.

1988—Congress passes the Indian Gaming Regulatory Act which recognizes that Indian tribes have the right to own and operate casino gaming businesses on reservation lands.

1990—Mille Lacs filed suit against the State of Minnesota seeking a declaratory judgement that they (the Mille Lacs Band of Ojibwe) retained their usufructuary rights and an injunction to prevent the State's interference with those rights. The court divides the case into two Phases. Phase I will address whether the 1837 Treaty rights are valid. If yes, Phase II will address the scope of the rights, what is actually allowed by the tribe.

1991—The Mille Lacs Band opens Grand Casino Mille Lacs, fulfilling a dream of Chairman Gahbow, who was instrumental in its creation. The opening ushers in a new era of prosperity on the reservation and in the surrounding region.

1992—The Mille Lacs Band opens Grand Casino Hinckley.

1993—Mille Lacs offers Minnesota a Settlement Agreement to "compromise, settle, and resolve all issues and claims for relief in the Litigation" filed by the tribe in 1990. The tribe passes the Settlement Agreement after much negotiation. Under pressure from state sport fishing organizations, anti-treaty groups, and Mille Lacs Lake area land owners, the Minnesota legislature rejects it.

1994—The federal district court rules under Phase I that the rights reserved under the 1837 Treaty are valid. The State of Minnesota appeals to the 8th Circuit Court of Appeals.

1994—Based on the success the Mille Lacs Band and other tribes have shown in self-governance, President Bill Clinton signs legislation turning the Self-Governance Demonstration Project into a permanent project. Under the law, the Mille Lacs Band and other tribes sign compacts with several federal departments allowing an even greater degree of self-determination.

1996—Protocol #1 was established. This protocol between the State of Minnesota and the tribes signatory to the 1837 Treaty established the 1837 Ceded



Marge Anderson, former Chief Executive of the Mille Lacs Band, attends a ceremony the evening prior to the U.S. Supreme Court hearing on issues related to the Minnesota v. Mille Lacs Band case in 1998. The Court ultimately ruled in favor of Mille Lacs in a March 24, 1999 decision. (Photo by Sue Erickson)

Territory Fisheries Committee to facilitate free and open communications between the State and the Bands regarding natural resource management within the boundaries of the 1837 Ceded Territory.

1997—The courts complete Phase II of the 1837 Treaty rights case in Minnesota. Phase II addresses seasons, bag limits, methods, commercialization and other harvest issues. Though most of the issues are resolved by agreement between the Bands and the State, a few of them are resolved by the court. The 1837 Treaty Phase II conclusions apply to all harvest in the 1837 ceded territory by all Bands signatory to the 1837 Treaty, including Mille Lacs Band, Fond du Lac Band, Lac Courte Oreilles, St. Croix, Bad River, Red Cliff, Lac du Flambeau, and Mole Lake Sakaogon Bands of Lake Superior Chippewa.

1997—The 8th Circuit Court of Appeals affirms the decision of the lower court in the Mille Lacs case, finding that the 1837 Treaty harvest rights are valid. The State of Minnesota appeals to the U.S. Supreme Court.

1999—The United States Supreme Court rules that the Mille Lacs Band retains the right to hunt, fish and gather on lands it ceded to the federal government through the Treaty of 1837 under tribal regulations. This decision ends the Band's nine-year legal battle to have its 1837 Treaty rights recognized.

2004—The United States Eighth Circuit Court of Appeals finds that Mille Lacs County's lawsuit against the Mille Lacs Band failed to show that the Band's reservation boundaries have harmed the county. The court's dismissal of the lawsuit does not confirm or change the reservation's boundaries, but it does affirm that the county was "unable to point to any definite controversy that exists from the Band's purported expansion of tribal jurisdiction over the disputed portion of the reservation." The dismissal comes after a two-year legal battle that cost the county approximately \$1.2 million.

(Mille Lacs Band history has been reprinted with permission from the Mille Lacs Band of Ojibwe website: www.millelacsojibwe.org.)



GLIFWC biologists take a dorsal spine sample from a Mille Lacs Lake walleye to be used for ageing. (Photo by Sue Erickson)

Did you know?

- ✗ Tribal open-water hook and line fishing, open-water spearing and netting, and winter spearing and fishing are all regulated.
- ✗ Permits are required for all open-water spearing and netting.
- ✗ Open-water spearing and netting permits are valid for only one day.
- ✗ Only members of tribes that signed the 1837 Treaty may exercise treaty fishing rights in the 1837 Minnesota ceded territory including all of Mille Lacs Lake.
- ✗ Tribal spearing of northern pike and muskellunge is not allowed on Mille Lacs Lake.
- ✗ Muskellunge caught in nets must be released if capable of surviving; if not, they must be turned over to a tribal conservation officer.
- ✗ Each tribe designates specific boat landings or monitoring sites to be used by their members for all open-water spearing and netting.
- ✗ A monitoring crew must be present before tribal spearing can begin.
- ✗ All fish speared or netted by tribal members are counted and each species is weighed as a group.
- ✗ Tribal regulations are in place that limit the size of gill nets.
- ✗ A tribe must have declared a quota for a lake to be available for spearing or netting.
- ✗ Tribal regulations require that all aquatic vegetation be removed from boats and trailers before entering or when leaving ceded territory waters.

A boy, his teachings and his net

Mille Lacs, Minn.—If you are a Mille Lacs elder, you might have answered a knock on your door this spring and found Ben Sam with a neat package of cleaned fish for your dinner—a nice gift from a smiling nine-year old who has been taught to take care of his elders, among other things.

Like many young boys, Ben is a fishing enthusiast and has been setting a net since he was five years old. However, he was only allowed to net after attending a ceremony where he was taught about the Ojibwe values connected with netting and the taking of fish. Fishing isn't about getting the biggest one, or getting the most, or setting and lifting the fastest. It's about taking responsibility for your community, your family, your fishing gear, and the fish. To Ben, thanks to his mentors, it's all about respect.

That's why, when Ben headed out for his twelfth, and probably final, net set this spring, *asemaa* (tobacco) was offered to the Water Spirits and the Creator before heading out into the lake. This is something he has learned must be done each time he sets, acknowledging and thanking the water beings whom he depends on for food.

It was May 1 and the run of spawning fish was slowing down, but Ben was going to give it a try. Usually, he and his father, David, set their nets from a canoe, but on this day, they, accompanied by Ben's mother, Mary, and brother Keenan Weyaus, were headed to a spot further out into Mille Lacs Lake, so they launched their larger speedboat.

Keenan was along to learn and enjoy the expedition, but not to set a net, because he needs to go through the ceremony first and learn about his responsibilities and values associated with netting. Waiting didn't seem to bother Keenan at all, but he's looking forward to going through ceremonies this summer so he can set his own net this fall.

At age of nine, Ben already knows a lot about fishing Mille Lacs Lake, He does the majority of the work himself and is totally respectful of his gear and the fish he takes. He credits his parents, grandma and elders for all he has learned, both about the skill of fishing and the values that are part of the process.

He loaded his tubs along with his white, buoyant markers with his name and address boldly printed on each, and his net, which was carefully laid inside a tub. All the gear was clean and neat. He donned his life vest, and the crew set off across the lake.

Once at the site, Ben hooked a weight on the first float and then gently and carefully lowered his net off the bow of the boat, easing it out so nothing would become entangled. Once the entire 100 feet of net had reached the water, the second marker was attached and plopped into the water. The net was set for the night.

Everyone knew that there probably wouldn't be too many fish in that net come morning because the season was ending, but Ben's spirit stuck with the net throughout the evening. Every once in a while Ben would give a little jerk and he would utter a strange little "klunk." Asked about what was going on, he said he could feel a fish hitting the net. So even while on shore and at home, a part of Ben stayed with the net until morning.

He also angles during the summer and spears through the ice and in the open water, spending a good amount of time on the lake harvesting fish through a variety of means. He speared his first northern when he was 4 1/2 years old.

As a matter of fact, Ben is a young man of all seasons, participating year round with his family in the harvest of traditional foods—small game, deer, wild rice, berries and maple sap. Netting began just as the family finished the maple season, producing syrup and maple cakes from the sap they gathered this spring.

"Ben knows so many things already," states a proud grandmother, Betty Kegg. "He knows how to make birch bark baskets, fry bread, how to prepare basswood. He's always right there wanting to learn. He follows our traditions and culture. He will listen and do things correctly."

Once morning rolled around, Ben had to be ready to lift at 8:00 a.m.—a time established with Mille Lacs Conservation Officer Loyd Ligneel, who was present at the landing when Ben and his family arrived.

The morning air was crisp off the lake as the boat sped toward the net's site. As the boat approached the bobbing markers, Ben crawled to the peak of the bow, ready to lift his net. The marker came in first, then he started with the net, careful to pull it into the tub and not to let it drop. Several dark, silvery walleye appeared, then a good-sized northern, a couple of suckers—Ben looked pleased. The lift was better than anticipated. He continued pulling until the entire net plus fish were in the tub, and he lifted the last marker. It was



Ben and his mom, Mary, pick fish out of the net while brother Keenan, looks on. (Photo by Sue Erickson)

a respectable catch—about 40 pounds of fish.

His best lift this year had brought in 126.6 pounds of fish. Ben keeps things precise.

Several of his earlier sets had been for ceremonial purposes, when he set his net for fish just to be used at special feasts or funerals.

Once back on shore, the job wasn't over. Ben's fish had to be taken to Mille Lacs Band's creel station, where Ben could pick the fish from the net and have his catch weighed. At the creel station, Ben and Dave took the tub of fish to one of the tall tables made by his namesake, Leonard Sam especially for picking fish from nets. This way, nets do not have to touch the ground, Ben explains. "I was taught to treat my fish with care. I put my fish in buckets. We do not put them on the ground," he says. "I treat my net like it is really important to me—like my family. I never put it on the ground."

Patiently and carefully, Ben and Dave extracted the fish from Ben's net. The walleye and suckers came out fairly easily, but the two northern had made quite a tangle and took some time to undo.

Once the net was picked, it was taken in a tub to the truck, and the fish went to the creel clerk, where they were separated by species and weighed—28.8 pounds of walleye, 16 pounds of northern and 4 pounds of sucker—a nice catch!

Ben was happy. He always sets one net and says it's important "not to be greedy and not to take too much."

From the creel station, the boy, his net and his fish go home for the last segment of the harvest—cleaning the fish. But first, Ben and Keenan take the net to the back yard where they hang it to dry on a clothesline. Keeping it in the tub, they lift it and carefully hook it to the line, never letting the net touch the ground—back and forth across the length of the clothesline until the entire 100 feet of net is hung.

Then it's back to the fish. Cleaning is a small assembly line process at the back of the truck. The fish are at all times kept off the ground. It's an unspoken rule. Dave takes care of the filleting—defly removing walleye fillets and trimming the area most likely to harbor mercury. Once the fillets are removed, the fish goes to Ben, who removes the cheeks of each walleye—the especially, delicious morsels—which he places in a bowl. The fish is carried into the house to be washed and bagged. Finally, it is clean-up, and the job is done.

It's a lot of work, but the fish are good and fresh—the best there is. To Ben, the best part of fishing is eating the fish, but you can be sure that Ben Sam isn't going to be greedy—he will happily share his catch and be thankful to and for each fish that hit his net at night. He is also thankful to those who have taken the time to teach him, especially elders.



Ben Sam sets a net at Mille Lacs Lake. (Photo by Sue Erickson)

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