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| Home |  **Spearfishing Controversy** |      |

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| **Treaty Background**During the 1980s and early 1990s, there were many violent clashes in northern Wisconsin over the issue of Ojibwe spearfishing. Violent scenes at boat landings received national and even international attention. Sometimes thousands of White protesters showed up at boat landings as Ojibwe fishermen prepared to spearfish walleye and other species of fish. These crowds often shouted racial slurs, threw things at the fishermen, and even assaulted them. While this violence has receded in recent years, it has not disappeared.Causes of this violence go back more than a century. Ojibwe bands in Wisconsin signed three major treaties with the United States in which they ceded their lands to the federal government. The first was signed in 1837 and the second in 1842. These transferred the entire Ojibwe homeland in Wisconsin to the federal government. In these treaties, the Ojibwe retained the right to hunt, fish, and gather wild rice and maple sap on lands they ceded to the United States. The 1854 treaty transferred the last Minnesota Ojibwe lands to the U.S. and established land reservations for Ojibwe bands, thus ensuring their continued residence in northern Wisconsin. |
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| **Early Efforts to Reclaim Rights**Although these treaties guaranteed Ojibwe rights to hunt and fish on ceded lands, the state of Wisconsin believed it had the right to regulate hunting and fishing throughout the state and slowly began to curtail these rights after 1854. The state also curtailed Ojibwe rights to hunt and fish on their reservations as well. In 1901 John Blackbird, an Ojibwe, was arrested for illegally fishing on Lake Superior. A federal court heard Blackbird's case and determined that Wisconsin had no right to regulate fishing on Indian reservations since these were federal lands held in trust for the tribes. The court's decision in the Blackbird case did not state whether the Ojibwe had the right to hunt and fish off their reservations, but even as the decision stood, it had no impact on lawmakers in Wisconsin. In 1908, the Wisconsin Supreme Court ignored this precedent when it handed down its decision in the case of State v. Morrin. The Court stated that Ojibwe rights to hunt on and off their reservations could be regulated by the state because Wisconsin's entry into union gave it the power to suspend Ojibwe treaty rights.In 1933 and 1940, Thomas L. St. Germaine--an Ojibwe lawyer from Lac du Flambeau--argued before the Wisconsin Supreme Court that the Wisconsin Ojibwe had a right to hunt and fish unhindered both on and off their reservations. He gained only a partial victory, for the court decided that Indians could fish and hunt unhindered on their reservations, but only there. By this time, many reservations lands had been sold to non-Indians, and the Wisconsin Supreme Court stated that the Ojibwe were subject to state regulations on reservation lands owned by non-Indians. During the next forty years, the state of Wisconsin continued to prosecute Ojibwes who violated state laws on non-Indian lands both on and off their reservations. |
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| **"Reserved Rights"**After a series of disappointing legal decisions, the Ojibwe were finally able to exercise their off-reservation treaty rights in 1983, when a federal court--the U.S. Court of Appeals for the Seventh Circuit in Chicago--asserted that Wisconsin had no rights to regulate fishing on Ojibwe reservations and, more importantly, that the 1837 and 1842 treaties guaranteed Ojibwe rights to hunt and fish off their reservations without being bound by state regulations. This decision, commonly called the Voigt Decision, was upheld by the U.S. Supreme Court that same year.In the eight years after the Voigt Decision, Ojibwe bands and Wisconsin received guidelines from the federal court on the extent to which the Ojibwe could harvest resources off their ceded territory and how the state could regulate those activities. During this time, the Ojibwe began to spearfish off of their reservations. Whites in northern Wisconsin were stunned by the Voigt Decision mainly because they did not understand it. They believed the federal court had given the Ojibwe the right to hunt and fish on their ceded lands. In actuality, the Ojibwe never surrendered their rights to hunt and fish on the ceded territory. They possessed the land before they sold it to the U.S. and while they owned it they had the right to use it as they pleased. The United States acknowledged these rights in the treaties. /p> The Ojibwe sold these lands to the United States in the 1837 and 1842 treaties, but they retained their usufructuary rights, or the rights to hunt, fish, and gather on their ceded lands. These are called reserved rights because the Ojibwe reserved them even though they no longer possessed the lands on which they exercised these rights. Moreover, the United States agreed to these provisions when it made the two treaties. The federal court simply allowed the Ojibwe to exercise rights Wisconsin had wrongfully taken away. |
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| **Protests and Violence**These arguments failed to convince many non-Indians in Wisconsin. They believed the federal court had given the Ojibwe special privileges. Whites also complained that the Ojibwe were allowed to harvest fish using methods employed by their ancestors but which were illegal for other fishermen. For centuries, the Ojibwe used torches on the ends of their canoes to attract fish and then speared them. The Ojibwe continued to use this method but used flashlights, metal spears, and aluminum boats. White protesters protested Ojibwe spearfishing at boat landings, often shouting obscenities and throwing rocks and bottles. Out on the water, Whites often took large motor boats and tried to tip over Ojibwe spearfishers' boats by causing large wakes. In some cases, Ojibwe spearfishers were even shot at while exercising their treaty rights.The two groups that emerged to protest Indian spearfishing were Protect America's Rights and Resources (PARR) and Stop Treaty Rights Abuse (STA). Of the two, STA was the most militant and--under the leadership of a Minocqua, Wisconsin merchant named Dean Crist--organized some of the largest and most violent protests at boat landings. STA members argued that if they did not stop Indians from spearfishing, their livelihoods would be ruined because Indians would deplete the fish populations and hurt tourism in northern Wisconsin. In reality, the Ojibwe took only a small fraction of all fish taken from the lakes. Non-Indian sport fishermen took the vast majority of the "safe harvest," the total number of fish anyone was allowed to take out of the lakes each year without depleting fish populations. |
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| **Conservation and Restocking**Tommy Thompson was elected governor in 1986, and he ran on a platform of abrogating--or terminating--Ojibwe treaty rights. Under Thompson's administration, the Wisconsin Department of Justice tried, unsuccessfully, to appeal the Voigt Decision. When this did not work, the state offered the Mole Lake Ojibwe $10 million and the Lac du Flambeau Ojibwe $42 million if they would sign agreements with the state to end or at least suspend their rights to hunt and fish on the ceded territory. Both Ojibwe bands steadfastly refused these offers. At about the same time, Republican Congressman Frank J. Sensenbrenner introduced legislation in the United States Congress to abrogate all off-reservation hunting, fishing, and harvesting rights in Wisconsin. Neither Congress nor the President (George Bush) evinced any interest in pushing such legislation forward. The violence reached its peak in 1989, and Governor Thompson personally went to the federal court to plead for injunction to stop Ojibwe spearfishing and prevent further violence. Judge Barbara Crabb refused because the Ojibwe were doing nothing illegal. Crabb stated that it was non-Indian protesters, not the Indians, who were initiating the violence. The Ojibwe also took actions that demonstrated their determination to act responsibly in the exercise of their treaty rights. Although allowed to take up all of the safe harvest of fish, they have always taken far less. In 1987, for example, the Ojibwe declared that they would harvest about 82,000 walleye. In the end, all the Ojibwe bands of northern Wisconsin took only 21,321 walleye in 1987. Non-Indian sports fishermen, in comparison, took about 839,000 walleye from the lakes during that same year. Moreover, all six Ojibwe bands run their own fish hatcheries, and they all put more fish into the lakes every year than they take out by spearfishing.  |
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| **Permanent Injunction Against Violence**The violence at boat landings in northern Wisconsin has died down considerably since 1991. That year, Wisconsin stated that it would no longer appeal the Voigt Decision. That same year, Judge Crabb issued a temporary injunction against protesters who engaged in violent behavior at boat landings and on lakes where the Ojibwe fished. Crabb made this injunction permanent in 1992. The Ojibwe have continued to work with the state of Wisconsin to reduce tensions and manage fish populations in northern Wisconsin. In 1996, Wisconsin's six Ojibwe bands declared they would take 100% of the safe harvest of walleye on some lakes, which they were entitled by law to do. The state raised concerns that this would prohibit non-Indian sportsmen from fishing on 79 lakes since no more fish could be taken. The Ojibwe voluntarily lowered the number of walleye they would take from lakes that year so no lakes would be closed to sport fishing. |

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