

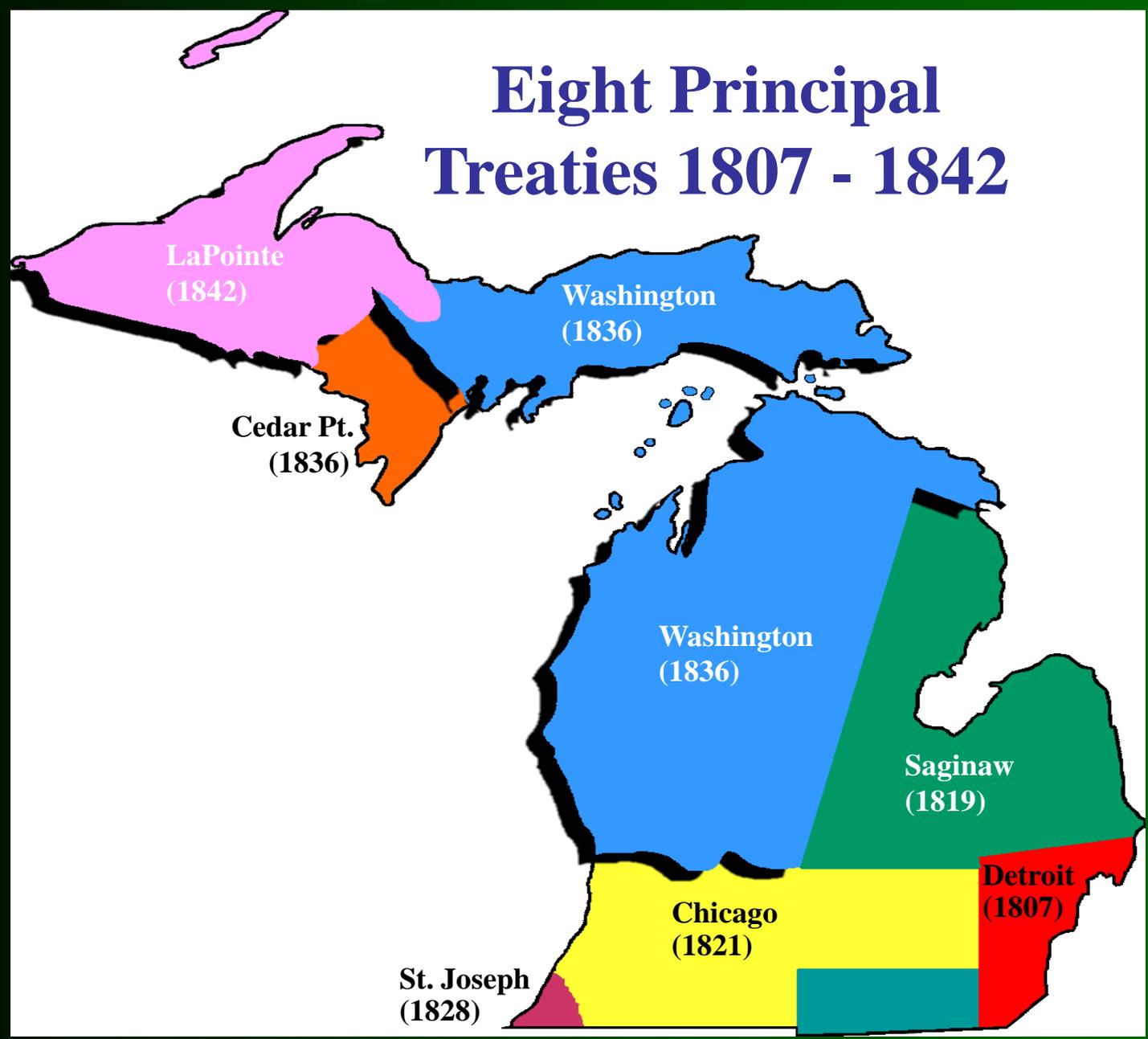
# State & Tribal Affairs: Facilitating Relationships



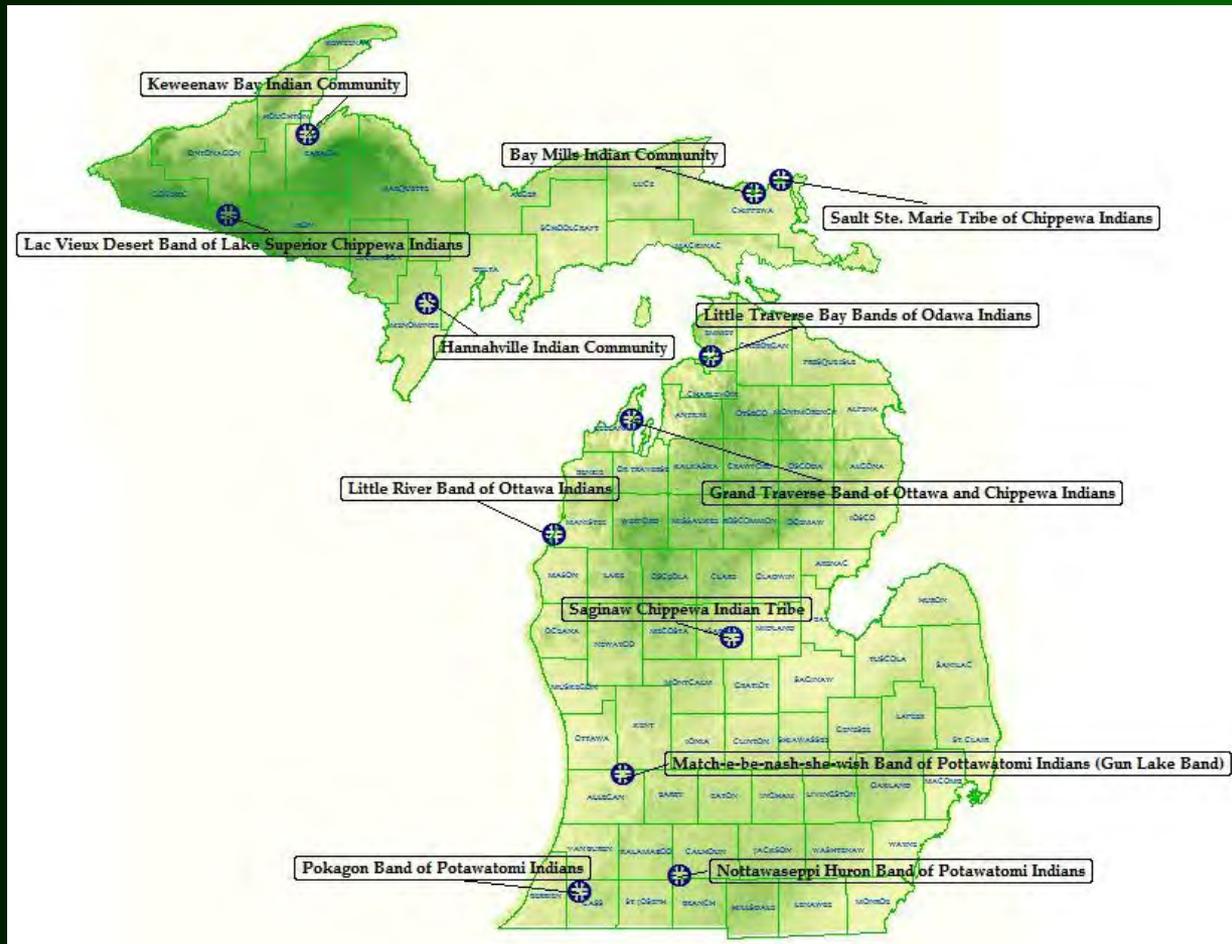
Dennis Knapp, DNR Tribal Coordinator

June 23, 2014

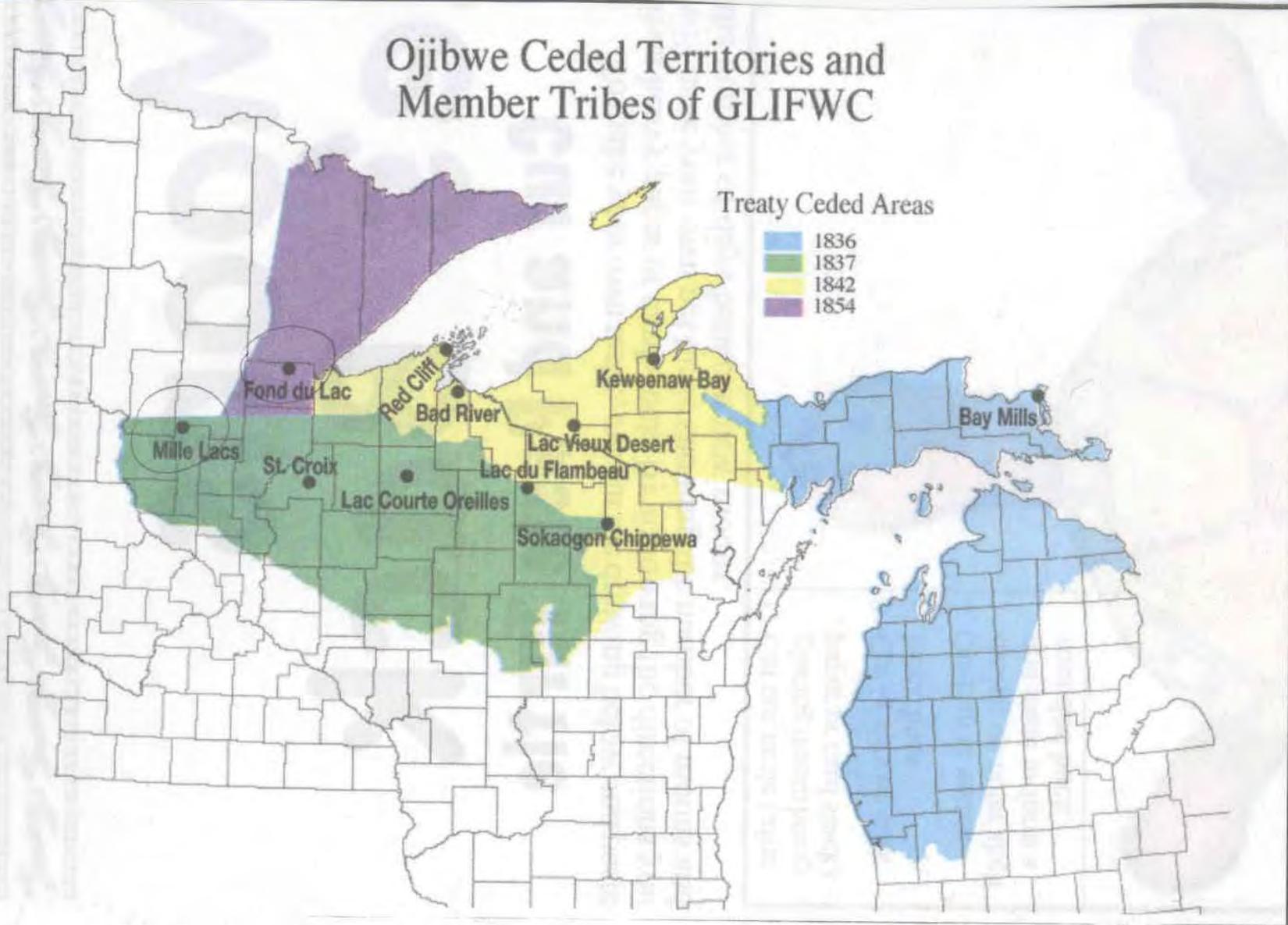
# Eight Principal Treaties 1807 - 1842



# Map of 12 Federally Recognized Tribal Governments in Michigan



# Ojibwe Ceded Territories and Member Tribes of GLIFWC



# Key Legal Concepts

- Treaties are the “supreme” law of the land
- Federal government has unique obligations toward Tribes based on trust responsibility, treaty provisions, and statutory mandates
- Sovereignty: Tribes are governments
- “Ceded Territory” refers to land transferred through treaty
- Reserved Rights



# 1836 Treaty Language

## 1836 Treaty, Article 13:

"The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement"



# Treaty Rights Litigation

- 1976 State of Michigan v. LeBlanc ruling held:
  - 1836 Tribes did reserve Great Lakes commercial and subsistence fishing rights in the 1836 Treaty
  - State may regulate Tribal fishing only when:
    - The regulation is necessary to preserve the fish
    - Application to the Tribe is necessary to preserve the fish
    - The regulation does not discriminate against the Tribe



# Treaty Rights Litigation

- United States v Michigan
  - Filed in 1973
  - Assigned to District Judge Noel Fox
  - Three tribes eventually intervene as Plaintiffs:
    - Bay Mills Indian Community
    - Sault Ste. Marie Tribe of Chippewa Indians
    - Grand Traverse Band of Ottawa and Chippewa Indians



# Treaty Rights Litigation

- 1979 Federal Court, Fox Decision
  - Tribes have a treaty right to fish in Great Lakes
  - State is without authority to regulate that right



# Treaty Rights Litigation

- U.S. Court of Appeals in 1981:
  - Affirms existence of Great Lakes Treaty fishing right
  - State may regulate Tribal fishing only upon a showing that the regulation:
    - Is a necessary conservation measure
    - Is the least restrictive alternative to preserve the fishery from irreparable harm
    - Does not discriminatorily harm Tribal anglers or favor other classes of anglers



# Case History: Great Lakes Fishing

- 1979 – Federal Court, Fox Decision
- 1985 – First Consent Decree, Great Lakes fishing
  - 15 year life span
- 1997 – Two additional Tribes Federally recognized; become part of the case
  - Little Traverse Bay Bands of Odawa Indians (Petoskey)
  - Little River Band of Ottawa Indians (Manistee)
- 2000 – Second Consent Decree, Great Lakes Fishing
  - 20 year life span
  - Deferred the inland issue until 2000 Great Lakes Consent Decree was finished



# US v. Michigan: Inland Litigation

- 2003 – State Initiates Inland Case in Federal Court
  - Necessary to resolve ongoing dispute of continued existence of the Tribes' Inland Article 13 rights
- 2003 – 2005
  - Trial preparation and discovery
- 2005 – 2007
  - Settlement negotiations



# 2007 Inland Consent Decree

## -a negotiated settlement

- Defines the extent of right to hunt, and the other usual privileges of occupancy, secured by the 1836 Treaty
- Establishes parameters that define where, when, and how the Tribes may exercise those rights
- No expiration date



# 2007 Consent Decree Structure

- Fishing
  - Species
  - Boundaries, closures
- Hunting
  - Species
  - Boundaries and Seasons
- Use of State Land
  - Gathering, access, structures



# 2007 Inland Consent Decree

- Restoration, Reclamation, & Enhancement Projects
- Assessment Activities
- Consultation & Information Sharing
- Dispute Resolution



# Consent Decree Management Agencies

- DNR
  - Tribal Coordinator – Executive
  - Law Enforcement Division
  - Fisheries Division
    - Tribal Coordination Unit
  - Forest Resources Division
  - Wildlife Division
  - Parks & Recreation Division
- Tribes
  - 5 Natural Resources Departments
  - Law Enforcement Departments
- US Fish and Wildlife and US Forest Service



# Inland Consent Decree Relationships

- Sovereign Governments
  - Should not be treated as stakeholders
  - Right to regulate themselves
- Consent Decree Language
  - Specific for certain activities
- Trust
  - History of strained relationship
  - Communication is key



# Building Trust

- Relationships
  - Make time to introduce yourself
  - Attempt to understand who does what and where authority exists
- Plan to discuss issues or proposed actions early
  - Consider neutral locations or offer to go to their office
- Listen and be patient; building trust takes time
- Be respectful of differing views and processes
- “How can we make this work for all of us?”



# Questions?

