

## OFF-RESERVATION NATIONAL FOREST GATHERING CODE OF THE BAY MILLS INDIAN COMMUNITY

### CHAPTER 1 - INTRODUCTION

- 1.01 **Title.** This Code shall be known as the Off-Reservation National Forest Gathering Code of the Bay Mills Indian Community.
- 1.02 **Authority.** This Code is enacted pursuant to Article VI, Section 1 of the Constitution and Bylaws of the Bay Mills Indian Community.
- 1.03 **Purpose.** It is the purpose of this Code to:
1. Provide an orderly and effective system for tribal control and regulation of treaty-reserved gathering activities applicable to the National Forests located in the ceded territory.
  2. Supplement the Tribal Conservation Code for the purposes of regulating the exercise of treaty-reserved off-reservation gathering rights applicable to National Forests located in the ceded territory.
  3. Implement the provisions of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaties of 1836, 1837, and 1842 (MOU)*, as it may be amended from time to time, which has been ratified by the Tribe and which is incorporated by reference herein as if set forth in its entirety.
- 1.04 **Effective Date.** This Code shall be effective on the date adopted by the Executive Council.
- 1.05 **Interpretation.** The provisions of this Code:
1. Shall be interpreted and applied as minimum requirements governing the exercise of treaty -reserved gathering rights applicable to National Forests located in the ceded territory;
  2. Shall be liberally construed in favor of the Tribe;
  3. Shall be construed consistent with the purposes and provisions of the MOU, as it may from time to time be amended, which has been ratified by the Tribe and which is incorporated by reference herein as it set forth in its entirety; and
  4. Shall not be deemed a limitation or repeal of any other tribal power or authority.
- 1.06 **Severability and Non-Liability.** If any section, provision or portion of this Code is adjudged unconstitutional or invalid by a court of

competent jurisdiction, the remainder of this Code shall not be affected thereby. The Tribe further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this ordinance.

1.07

**Relationship to Tribal Conservation Code and other Tribal Ordinances.**

1. All other ordinances and resolutions that solely govern treaty-reserved ceded territory gathering rights applicable to National Forests located in the ceded territory are hereby repealed.
2. (a) This Code is not intended to repeal or replace any provision of the Tribe's Conservation Code. It is intended to supplement that Code for the purposes of authorizing or governing the exercise of treaty-reserved wild plant gathering rights applicable to National Forests. It is not intended to apply to the exercise of any other treaty-reserved ceded territory right that is authorized or governed by the Tribe's Conservation Code and implementing regulations.  
  
(b) Unless otherwise specifically indicated in this Code, it is the intent of this Code that the provisions of the Tribe's Conservation Code that generally govern the conduct of tribal members exercising treaty rights applicable in the ceded territory shall apply to tribal members exercising treaty-reserved off-reservation gathering rights applicable to National Forests pursuant to this Code, including but not limited to regulations pertaining to the gathering of wild rice. Such provisions of the Tribe's Conservation Code are hereby declared, and shall be construed, to govern tribal members engaged in the exercise of treaty-reserved gathering rights applicable to National Forests.

1.08

**Religious or Ceremonial Use of Natural Resources.**

1. Nothing in this Code shall prohibit the harvest or use of natural resources in a manner otherwise prohibited by this Code which is harvested, taken or otherwise obtained in a National Forest within the ceded territory for religious or ceremonial purposes in accordance with the traditions and customs of the Tribe and with the consent of the Executive Council, or its designee.
2. In reviewing and taking action on any request for religious or ceremonial harvest, the Executive Council, or its designee, shall take into account the biological impact of the harvest, shall ensure that the harvest takes place in a manner that does not cause biological harm, and shall consult with the local National Forest District office if the requested gathering is to take place in a National Forest Research Natural Area (see, Section 3.06(1)).
3. No member shall fail to comply with the terms and conditions of any permit issued pursuant to this Section, or to otherwise comply with the requirements imposed by the Tribe regarding



religious or ceremonial harvest of wild plants in National Forests in the ceded territory.

## CHAPTER 2 - DEFINITIONS

### 2.01 Definitions.

1. Except for specific terms defined in subsection (2), terms in this Code shall have the same definitions as provided in the Tribe's Conservation Code.
2. The following terms, whenever used in this Code, shall be construed as follows:
  - (a) **Ceded Territory** means those off-reservation lands ceded by the Tribe or another signatory tribe to the United States of America in the Treaty of 1836, (7 Stat. 491); the Treaty of 1837 (7 Stat. 536); or the Treaty of 1842 (7 Stat. 591).
  - (b) **Bark** means the tough outer covering of the woody stems and roots of trees, shrubs, and other woody plants. It includes all tissues outside the vascular cambium.
  - (c) **Birch Lodgepole** means a lodgepole of a paper birch tree (*wiigwasi-mitig/Betula papyrifera*) or yellow birch tree (*wiinzik/Betula alleghaniensis*).
  - (d) **Bough** means any branch of a tree less than two (2) inches in diameter.
  - (e) **Domestic Purpose** means the use of timber or salvage timber, harvested for the construction of any structure, building or appenditia to be used for community or residential domestic purposes.
  - (f) **Firewood** means any dead tree or part thereof, either standing or downed, which is harvested for and is to be used for fuel.
  - (g) **Forest Service** means the United States Department of Agriculture, Forest Service.
  - (h) **Forest Service Salvage Timber Stand** means any stand of trees where the Forest Service has notified the Tribe of the decision to solicit bids for a Forest Service salvage timber sale contract.
  - (i) **Gather** or **Gathering** means to take or acquire, or attempt to take or acquire, possession of any wild plant, or part thereof.
  - (j) **Gathering Products** means all products of miscellaneous forest products other than non-timber products such as branchlets, roots, berries, fruits, nuts, and seeds.

(k) **Lodgepoles** means any tree that is less than five (5) inches diameter at breast height (DBH).

(l) **Miscellaneous Forest Products** means any wild plant, including: non-timber forest products; wild plants that are not trees, such as herbaceous plants and shrubs; gathering products; endangered or threatened plant species; and species of special concern, but for purposes of this Code, excludes timber.

(m) **National Forest** means those lands located within the ceded territory owned by the United States of America and part of the Chequamegon-Nicolet National Forest, the Hiawatha National Forest, the Huron-Manistee National Forest, or the Ottawa National Forest.

(n) **Non-Commercial Traditional and Cultural Purpose** means the use of timber harvested with respect to a definable use, area, or practice, identified by an Indian tribe as traditional or cultural because of the long established significance or ceremonial nature of the use, area, or practice of the Indian tribe, and is not for commercial purposes.

(o) **Non-Timber Forest Products** means any of the following miscellaneous forest products: bark; boughs; firewood; lodgepoles; and sap as further defined in this Section.

(p) **Salvage Timber** means any tree in a Forest Service salvage timber stand, whether alive, dead, down or standing, having a diameter of four inches (4") or greater.

(q) **Sap** means the watery fluid that circulates through a tree or plant, carrying food and other substances to the various tissues.

(r) **Shrub** means a woody perennial plant usually branched several times at or near the base, giving it a bushy appearance, and is usually less than five (5) meters tall.

(s) **Signatory Tribe** means an Indian Tribe which is a signatory to the Treaty of 1836 (7 Stat. 491), the Treaty of 1836 (7 Stat. 536), or the Treaty of 1842 (7 Stat. 591), or such tribe's successor in interest.

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

(u) **Timber** means any tree that is not a lodgepole, as defined in Section 2.01(2)(i) of this Code, or is not firewood, as defined in Section 2.01(2)(d) of this Code.

(v) **Tree** means a woody, perennial plant with a single trunk that is typically unbranched at or near the base, and is usually greater than five (5) meters tall.

(w) **Wild Plant** means any undomesticated species, or part



thereof, of the plant and fungi kingdoms occurring in both the forested and non-forested natural ecosystem, but for the purposes of this Code, excludes wild rice.

### CHAPTER 3 - GENERAL REGULATIONS

#### 3.01 Regulatory Authority.

1. The Tribe asserts the legal authority to regulate the exercise of the Tribe's treaty -reserved ceded territory gathering rights applicable to wild plants found in National Forests.
2. Any person authorized to enforce this Code may seize forthwith wherever found:
  - (a) Any wild plant taken or reduced to possession in violation of this Code; or
  - (b) Any wild plant lawfully taken or reduced to possession under this Code, upon violation of any provision of this Code relating to the possession, use, giving, sale, barter or transportation of such wild plant.

#### 3.02 Permits and Identification--General.

1. No member shall gather any wild plant off-reservation in a National Forest without possessing a valid off-reservation harvesting permit approved by the Tribe, which may be the member's identification card required by subsection (2), or such other permit as this Code may require validated for the particular type of activity to be engaged in for the particular season in question, as follows:

(a) *Generally.* Except as provided in subsection (b), no member shall gather any miscellaneous forest products without possessing a valid general gathering permit issued by the Tribe's Conservation Law Enforcement Department while harvesting off-reservation in a National Forest.

(b) *Non-Timber Forest Product and Ginseng Gathering Permits.*

(i) No member shall harvest or gather non-timber forest products or ginseng pursuant to this Code without possessing a valid gathering permit issued by the Conservation Law Enforcement Department as follows:

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

- A) Bark----Twenty (20) trees
- B) Boughs---Two (2) tons

C) Firewood---Ten (10) cords

D) Lodgepoles---Seventy-five (75) of which up to five (5) may be birch lodgepoles

E) Birch lodgepoles--Five (5)

2) *Large-scale harvest activity.* For large scale activity, a tribal member may harvest non-timber forest products while possessing a valid large scale harvest activity gathering permit above the limits established for a small scale harvest activity as follows:

A) No member shall gather non-timber forest products on a large scale without a valid large scale harvest activity gathering permit valid for a designated area established by the Natural Resources Department in consultation with the Forest Service.

B) "Designated Area" means a specific site identified and established by the Natural Resources Department, in consultation with the Forest Service, for which a species harvestable surplus has been determined and for which the appropriate number of large scale harvest activity permits are available for the designated area.

C) The Natural Resources Department may issue a large scale harvest activity permit to one or more members, based upon the determined species harvestable surplus and may impose such terms and conditions as it deems necessary or appropriate.

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

(ii) No gathering permit is required of helpers of a permittee who participate only in the collection of the resource once it has been reduced to possession by a permittee.

(iii) The Natural Resources Department may impose such other terms and conditions as it deems necessary or appropriate, including biological monitoring requirements in addition to those contained in Section 3.04 of this Code.

2. No member shall gather any wild plant off-reservation in a National Forest except while carrying a valid picture identification card issued by the Tribe, or other form of identification approved by the Tribe for such gathering activities.
3. No member shall refuse to display his or her identification documents upon request of any tribal, Great Lakes Indian Fish and Wildlife Commission, federal, state or local law enforcement officer.
4. No member shall fail to comply with the terms, conditions, and location restrictions of a permit issued pursuant to this Code.
5. The Natural Resources Department is authorized to issue to members all permits required by this Code and to impose such terms, conditions and location restrictions in those permits as it deems necessary or appropriate. Except as otherwise required by this Code, the form of such permits shall be left to the discretion of the Natural Resources Department, provided that such form shall require the name, address and member's tribal identification number.
6. The Natural Resources Department may issue such harvesting permits to members of a signatory Tribe, provided that such other Tribe has enacted an ordinance governing gathering in National Forests that is at least as restrictive as this Code.

**3.03 Sale of Miscellaneous Forest Products Authorized.**

1. Nothing contained in this Code shall be construed to prohibit members from selling any miscellaneous forest products, or parts thereof, lawfully harvested pursuant to this Chapter.
2. With respect to the sale of any miscellaneous forest products, or part thereof, which is lawfully harvested pursuant to this Code in a National Forest, any requirement for maintaining records of commercial transactions contained in the Tribe's Conservation Code shall not apply.

**3.04 Harvest Monitoring.**

1. *Generally.* No member to whom any permit has been issued under this Code shall fail or refuse to provide harvest information when requested by the tribal conservation department, any person authorized to enforce this Code, or the Great Lakes Indian Fish and Wildlife Commission.
2. *Records of Ginseng Transactions.*
  - (a) Unless otherwise required under the provisions of the Tribe's and Great Lakes Indian Fish and Wildlife Commission's approved CITES export program, no member shall sell any ginseng harvested pursuant to this Code to any person unless the member maintains a written



records of all transactions on forms prescribed by the Natural Resources Department, indicating the amount of ginseng involved, the parties to the transaction, the date of the transaction, and the National Forest in which the harvest occurred.

- (b) Records maintained pursuant to this section shall be forwarded annually to the Natural Resources Department.
- (c) No member shall fail to comply with the reporting requirements of this section.
- (d) With respect to ginseng gathered in a National Forest, this section supersedes any requirement for maintaining records of commercial transactions contained in the Conservation Code.

### 3.05 **Emergency Closures.**

1. Notwithstanding any other provision of this Code, the Director of the Biological Services Division of the Great Lakes Indian Fish and Wildlife Commission or the Tribe's Natural Resources Department may order the closure of the harvest activity of any wild plant in a National Forest generally or, with respect to a particular location, whenever the continuation of the harvest is likely to cause biological harm to the species involved.
2. Every reasonable effort shall be made to consult with and obtain approval of the Tribe prior to ordering an emergency closure, but such closure may be ordered without consultation or approval if circumstances require.
3. An emergency closure shall become effective immediately upon issuance, or at such time or date as the closure order may direct. Such closure shall be communicated to the Tribe by the best and swiftest practical method.
4. No member shall violate the terms, conditions or restriction of an emergency closure order issued pursuant to this section.

### 3.06 **Harvest and Other Location Restrictions.**

1. *Tribal Wilderness, Research Natural Areas, and Special Use Areas Established.* The following Great Lakes Indian Fish and Wildlife Commission document, as it may be amended from time to time, is hereby adopted and incorporated in this Code as if fully set forth herein, and no member shall fail to comply with the closures and other restrictions established in this document: Version 1: August 1998, Tribal Wildernesses, Tribal Research Natural Areas, and Tribal Vehicle Permit Areas on National Forests.
2. *Forest Service Administrative Sites.* No member shall gather wild plants under the authority of this Code on a Forest Service

administrative site. For this purposes of this Code, "Forest Service administrative site" means a specific site where an office, storage or other building or structure is located and maintained by the Forest Service as part of its operation and management of a National Forest. It is the member's responsibility to be certain about a Forest Service administrative site. Any uncertainty should be resolved by contacting the Tribe's Conservation Law Enforcement Department, the Great Lakes Indian Fish and Wildlife Commission, or the local National Forest District Office.

3. *National Forest Campgrounds.*

(a) *Gathering in Developed Campgrounds.*

(i) Except as provided in subsection (ii), no member shall gather wild plants under authority of this Code on any land located within a developed National Forest Campground. For the purposes of this Code, a "developed National Forest Campground" means a location that is clearly marked and identified as a campground by the Forest Service and on which improvements clearly have been made to develop and maintain the site as a campground. It is the member's responsibility to be certain about a developed National Forest Campground. Any uncertainty should be resolved by contacting the Conservation Law Enforcement Department, the Great Lakes Indian Fish and Wildlife Commission, or the local National Forest District office.

(ii) Except where firewood is provided at no cost by the campground, or where firewood will be used while camping in the campground, no member shall gather firewood in a developed National Forest campground.

(b) *Camping Fees and Length of Stay Restrictions.* The Tribe and the Forest Service have entered into a Memorandum of Understanding that will exempt members from certain camping fees and length of stay restrictions that the Forest Service requires of the general public in the National Forests. Once the Tribe and the Forest Service have entered into a campground fee and length of stay Exemption Agreement and accompanying Implementation Plan, and the Tribe has ratified the Agreement and Plan, no member shall fail to comply with the requirements and restrictions contained in the Agreement and Plan. Information about the Exemption Agreement and Implementation Plan can be obtained by contacting the Tribe's Conservation Law Enforcement Department, the Great Lakes Fish and Wildlife Commission, or the local National Forest District office.

4. *Non-National Forest Lands.* No member shall gather wild plants under authority of this Code on any land located within the boundaries of a National Forest which is not owned by the United States of America and part of a National Forest. This provision does not apply to or otherwise restrict any wild plant gathering on non-National Forest lands that is authorized by another tribal ordinance.

3.07

**Harvest of Trees Subject to a Timber Sale Contract or Located within a Forest Service Timber Sale Contract Area.**

1. No member shall gather any tree under the authority of this Code without a permit issued pursuant to subs. (4) that is subject to the harvest rights of another in a valid Forest Service timber sale contract. Sometimes these trees are marked with orange, green or yellow paint. However, it is the member's responsibility to be certain about trees that are subject to a valid Forest Service timber sale contract. Any uncertainty should be resolved by contacting the Conservation Law Enforcement Department, the Great Lakes Indian Fish and Wildlife Commission, or the local National Forest District Office.
2. Within an open Forest Service Timber Sale Contract Areas, as defined in subs. (3), no member shall undertake any of the following activities under authority of this Code, without a permit issued pursuant to subs. (4):
  - (a) Cut down any live tree;
  - (b) Remove the bark of any live tree;
  - (c) Trim or remove the branches from the top half of any live tree; or
  - (d) Trim or remove the branches or other parts, except cones, of any tree that has been cut down by another person.
3. For purposes of this Code, an "open Forest Service Timber Sale Contract Area" means a defined location of a National Forest which has been delineated by the Forest Service for the purposes of a timber sale offering and which a valid Forest Service timber sale contract has been executed. Typically, a Forest Service Timber Sale Contract Area is marked with blue paint on trees around the perimeter of the Area. It is the member's responsibility to be certain about an open Timber Sale Contract Area. Any uncertainty should be resolved by contacting the Conservation Law Enforcement Department, the Great Lakes Indian Fish & Wildlife Commission, or the local National Forest District office.
4. (a) The Natural Resources Department, after first consulting with the Forest Service, is authorized to issue permits under this section on such terms and conditions as it



deems necessary and appropriate.

- (b) No member shall fail to comply with the terms and conditions of a permit issued pursuant to this section.

3.08 **Harvest of Certain "Marked" Trees.**

- 1. No member shall cut down any tree that has been designated with any of the following markings, and no member shall remove, alter, or deface any of the following markings:
  - (a) *Blue paint.* Blue paint designates the boundaries of a payment unit within a Forest Service Timber Contract Sale Area;
  - (b) *Red paint.* Red paint indicates boundaries between National Forest land and other ownerships, or may designate a witness tree at a legal corner;
  - (c) *White paint stripes or other white bands.* White stripes or bands indicate a tree being used to collect cones or seeds for nursery stock; or
  - (d) *Metal or wood Forest Services signs.* These signs designate property or National Forest boundaries, indicate legal corners or other survey data, indicate nursery stock, or provide other similar information.

3.09 **Permissible Conduct/ Assistance by Non-Members.**

- 1. Conduct which is not expressly prohibited, restricted or otherwise regulated by this Code shall be deemed permissible.
- 2. Except as provided in subs. (3) or as otherwise provided herein, nothing in this Code shall be construed to prohibit a member from gathering in a National Forest with any other person who is not a member of the Tribe, provided that such other person possesses a license or permit, or is otherwise not prohibited from engaging in the activity involved and complies with applicable laws.
- 3. No member shall allow any person who is not a member to assist, and no such person shall assist, in the activities authorized by this Code, except that persons of the member's immediate family, including but not limited to grandparents, parents, spouses, siblings, *wenh'enh*, and *doodem* may assist the member, provided that the member is present when the assistance is rendered.

**CHAPTER 4 - ENFORCEMENT**

4.01 **Enforcement by Deputized Conservation Wardens and Issuance of Citations.**

1. Any provision of this Code may be enforced by tribal conservation wardens or by conservation wardens of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby deputized by the Tribe as tribal conservation wardens for the purposes of enforcing this Code.
2. Such Tribal and Commission wardens may issue a citation on a form approved by the Tribe or the Tribal Court to any person whose conduct is regulated by the provisions of this Code, upon reasonable belief that such person has violated or breached a provision of this Code.

4.02

**Search and Seizure; When Authorized.** Tribal and Great Lakes Indian Fish and Wildlife Commission conservation wardens, and properly identified Forest Service law enforcement officers are empowered to:

1. Conduct a search of an object, place or person whose conduct is regulated by the provisions of this Code, and may seize things when the search is made:
  - (a) with consent;
  - (b) pursuant to a valid search warrant;
  - (c) with the authority and within the scope of a right of lawful inspection as provided in this section;
  - (d) incident to the issuance of a lawfully issued citation under this Code; or
  - (e) as otherwise authorized by law or by the provisions of this Code;
2. 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, trucks, motorcycles, bicycles, snowmobiles, off-highway vehicles, containers, packages and other receptacles contained therein, utilized by a person in a harvest activity authorized by this Code and of records of commercial transactions required under this Code which have not yet been forwarded to the Conservation Law Enforcement Department;
3. Execute and serve warrants and other process issued by the Tribal Court in accordance with applicable law;
4. Stop any automobile or other vehicle as part of a lawful inspection authorized by this section, or if the officer reasonably suspects that there is a violation or breach of this Code;
5. With or without a warrant, open, enter and examine vessels,

boats, wagons, trailers, automobiles, trucks, motorcycles, bicycles, snowmobiles, off-highway vehicles, and packages and other receptacles contained therein, in which the officer has probable cause to believe that contraband wild plants may be contained, or pursuant to a lawful inspection authorized by this Code; and

6. Seize and hold, subject to the order of the Tribal Court, any alleged contraband or property which the officer reasonably believes may be needed as evidence in connection with the institution of proceedings in Tribal Court, or any property otherwise authorized to be seized by the provisions of this Code.

4.03 **Seized Items.** Any wild plant which is seized in connection with cases referred to Tribal Court for prosecution shall be turned over to the Tribe. No seized wild plant shall be returned by the Tribal Court or tribal officials to a convicted violator, his or her immediate family or other member of the gathering party.

4.04 **Penalties.** Any person who, for himself or herself, or by his or her agent, servant, or employee, or as an agent, servant or employee of another, violates this Code, shall be liable as follows:

1. For any violation, a civil remedial forfeiture of not more than \$5,000.00;
2. For any violation, a revocation or suspension of off-reservation National Forest gathering privileges for a period of time within the discretion of the Court;
3. For any violation, the Court may order a natural resources assessment not exceed 75 % of the amount of the civil remedial forfeiture; and
4. For any violation, appropriate court costs within the discretion of the Court.

4.05 **Civil Damages.**

1. In addition to any other penalty allowed by this Code, the Tribal Court may award to the Tribe, or, in addition to an action to impose penalties, the Tribe may bring a civil action for recovery of damages against any person unlawfully gathering or having unlawfully in possession any wild plant taken from a National Forest. The sum assessed for damages for each wild plant shall not be less than the amount stated in this section:
  - (a) Any endangered or threatened species protected under this Code: *\$875.00.*
  - (b) Any wild plant for which a fair market value can be established: *the fair market value.*
  - (c) Any other wild plant: *\$17.50.*



2. Where the Forest Service or another person or entity has sustained damages as a result of unlawful harvest, the Court may, with the consent of the Tribe, award all or part of any civil damages obtained pursuant to this section to the Forest Service or to such person or entity.
- 4.06 **Enhancement of Forfeiture and Penalties.** Upon conviction of any member for a violation of this Code when such person has been convicted of a previous violation of this Code within a period of one (1) year, the Court may enhance the civil remedial forfeiture or other penalty as the Court deems appropriate.
- 4.07 **Collection of Money Penalties.** Enforcement of the money penalties imposed pursuant to this Code may be had through the collection of penalties from funds of the violator held by the Tribe, 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.
- 4.08 **Parties to a Violation.**
1. Whoever is concerned in the commission of a violation of this Code shall be deemed a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.
  2. A person is concerned in the commission of the violation if the person:
    - (a) directly commits the violation;
    - (b) aids or abets the commission of it; or
    - (c) is a party to a conspiracy with another to commit it, or advises, hires or counsels or otherwise procures another to commit it.
- 4.09 **Harvesting After Revocation or Suspension.** No person whose off-reservation National Forest wild plant gathering privileges have been revoked or suspended pursuant to Section 4.04(2) shall gather any wild plant in a National Forest when its harvest is regulated by this Code, during such revocation or suspension.
- 4.10 **Schedule of Money Penalties; No Contest.** The Tribal Court, in consultation with the Executive Council, may adopt a schedule of forfeitures to be imposed by the Court upon receipt of an admission that a violation of this Code has occurred, or a plea of no contest, which may be done either in person or in writing. This schedule shall not bind the Court as to forfeitures assessed by the Court after adjudicating a violation after the defendant has entered a plea of not guilty.

- 4.11 **Hearings in Tribal Court.** The Tribal Court shall adjudicate all matters arising under this Code pursuant to provisions of the Tribal Court Code.
- 4.12 **Members of Other Tribes; Tribal Court Adjudications.** The Tribal Court is authorized to adjudicate alleged violations by any member of a signatory tribe of any off-reservation National Forest gathering code of that Tribe, provided:
1. The relevant provisions of such ordinance are in essential conformance with the parallel provisions of this Code; and
  2. The other Tribe has authorized the adjudication.

## CHAPTER 5 - SPECIFIC HARVEST REGULATIONS

- 5.01 **Conifer Boughs.** No member shall:
1. Cut down a tree for the purpose of gathering conifer boughs;
  2. Remove boughs from the upper half of a tree; or
  3. Gather for subsequent sale northern white cedar or hemlock boughs.
- 5.02 **Princess Pine.** No member shall gather *Lycopodium* species except by cutting the vertical above ground stem.
- 5.03 **Sheet Moss.** No member shall harvest sheet moss except by harvesting no more than fifty per cent (50%) of a species in any particular harvest area, including leaving the edges of the patch.
- 5.04 **Lodgepoles.** No member shall harvest lodgepoles except by harvesting no more than fifty per cent (50%) of a species in any particular harvest area, unless the location is a "designated area" as defined in Section 3.02(1)(b)(i)(2)(B) of this Code.
- 5.05 **Firewood.**
1. No member shall cut any live tree or gather any salvage timber for firewood unless the tree is included within a National Forest "firewood sale", or in an other area designated for firewood either generally or on a case-by-case basis, or as permitted pursuant to a valid sugarbush site permit issued pursuant to Section 5.07.
  2. No member shall cut any standing dead tree more than 100 feet from the cleared edge of any road where it is legal for highway vehicles to travel.
  3. No member shall cut any standing dead tree within 200 feet of any pond, lake, stream or river.

4. No member shall use a farm tractor, rubber tired skidder, or similar vehicle for gathering firewood without written permission from the Tribe.
- 5.06 **Ginseng.** No member shall gather ginseng from November 1 through August 31.
- 5.07 **Maple Sap/ Sugarbushes.**
1. No member shall gather maple sap without a sugarbush site permit valid for a designated tribal sugarbush or for such other location approved by the Natural Resources Department in consultation with the Forest Service.
  2. "Designated tribal sugarbush" means a specific site identified and established by the Natural Resources Department, in consultation with the Forest Service, for which a site management plan has been developed and for which a sugarbush site permit has been issued.
  3. The Natural Resources Department may issue a sugarbush site permit to one or more members and may impose such terms and conditions as it deems necessary or appropriate.
  4. No member shall fail to comply with the terms and conditions of a sugarbush site permit.
- 5.08 **Unsustainable Harvest Activity.** Member compliance with tribal harvest guidelines (bmp) shall be considered sustainable harvest activity; otherwise, no member shall harvest any miscellaneous forest product in such a manner so as to impair the future viability and continued success of the miscellaneous forests product on the landscape or ecosystem from which the member is harvesting, based on the type of miscellaneous forest product, and the member must take reasonable precautions to prevent unsustainable harvest activity.
- 5.09 **Harvest of Timber and Salvage Timber.**
1. *Harvest for Sale as "Lumber" or Similar Wood Products.*
    - (a) No member or tribal entity shall cut down any timber or gather any salvage timber for the purpose of selling all or part of it, or any product derived from its wood as bolts, pulpwood or lumber.
    - (b) No member shall sell under authority of this Code all or part of any timber, or any product derived from its wood, as bolts, pulpwood or lumber.
  2. *Harvest for Domestic and Non-Commercial Traditional and Cultural Purposes.*
    - (a) No member or tribal entity shall cut down any timber or gather any salvage timber under authority of this Code for



domestic purposes, such as constructing a structure or dwelling, or for non-commercial traditional and cultural purposes, as those terms are defined in subs. (b), without a valid harvest permit issued pursuant to subs. (c).

(b) *Terms defined for this Section.*

(i) *Structure or dwelling* means a building or other larger structure to be used for residential, commercial or storage purposes and includes, for example, a home, cabin, garage, storage shed, store, office building, and manufacturing facility. The terms do not include smaller structures such as hunting blinds, fish houses or sugarbush shacks, that are used in the exercise of treaty-reserved hunting, fishing or gathering rights. It is the member's responsibility to verify that the intended construction use is not prohibited by this Code. Any uncertainty should be resolved by contacting the Conservation Law Enforcement Department or the Great Lakes Indian Fish and Wildlife Commission.

(ii) *Non-commercial traditional and cultural purpose* shall be defined by the Tribe issuing the harvest permit. Tribal officials on behalf of the Tribe issuing the harvest permit shall be prepared to help the Forest Service understand the request, if necessary, by explaining how the intended use is identifiable by the Tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use to the Tribe. It is the member's responsibility to verify that the intended use is not prohibited by this Code. Any uncertainty should be resolved by contacting the Conservation Law Enforcement Department or the Great Lakes Indian Fish and Wildlife Commission.

(iii) *Tribal entity* means an agency, business, partnership, corporation, committee, body or other entity, and the officers, employees and agents thereof, that is chartered, directed, controlled or majority owned by the Tribe.

(c) *Permit Issuance.*

(i) The Conservation Law Enforcement Department is authorized to issue harvest permits for domestic and non-commercial traditional and cultural purposes on such terms and conditions as set forth in the attached Tribal Timber Harvest Framework.

(ii) Prior to issuing a harvest permit for domestic or non-commercial traditional and cultural purposes,

the Conservation Law Enforcement Department must consult with and obtain the concurrence of the Forest Service.