



Defending the Gray Wolf: Tribal Treaty Rights and Conservation

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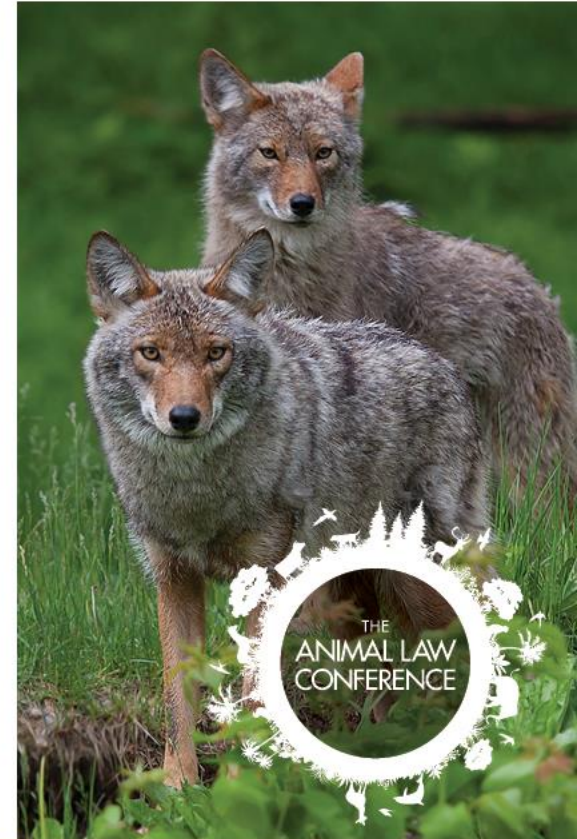
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Brief Overview of Federal Indian Law

Federal Indian law governs the relationship between the U.S. government and tribal governments.

- Tribes are political bodies with inherent sovereignty
- Tribal sovereignty is limited by the Federal government and tribes are generally subject to Federal laws and Congressional authority
- States have limited jurisdiction in Indian country, but tribal jurisdiction also has been limited
- The Federal government has a basic fiduciary duty of care and loyalty to tribes and for tribal assets held in trust – this is the Federal trust responsibility



Tribal Treaty Rights

- Tribal treaties are on par with Constitution and federal laws as the highest law of the land
- Treaties reserved existing tribal rights – did not grant rights to tribes
- Anything not explicitly ceded is reserved
- 1837 & 1842 treaties protect tribes' rights to natural resources in the ceded territory

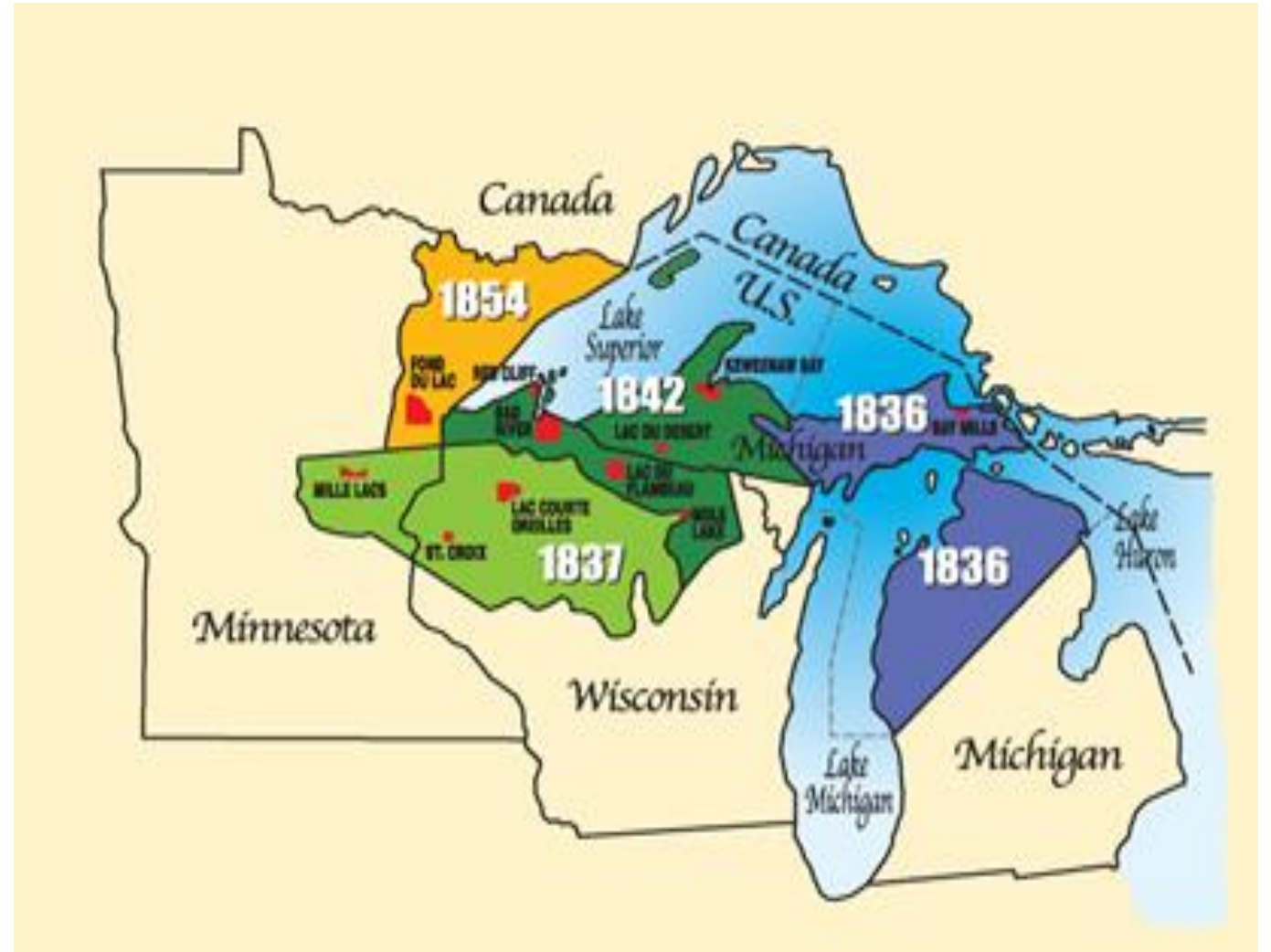


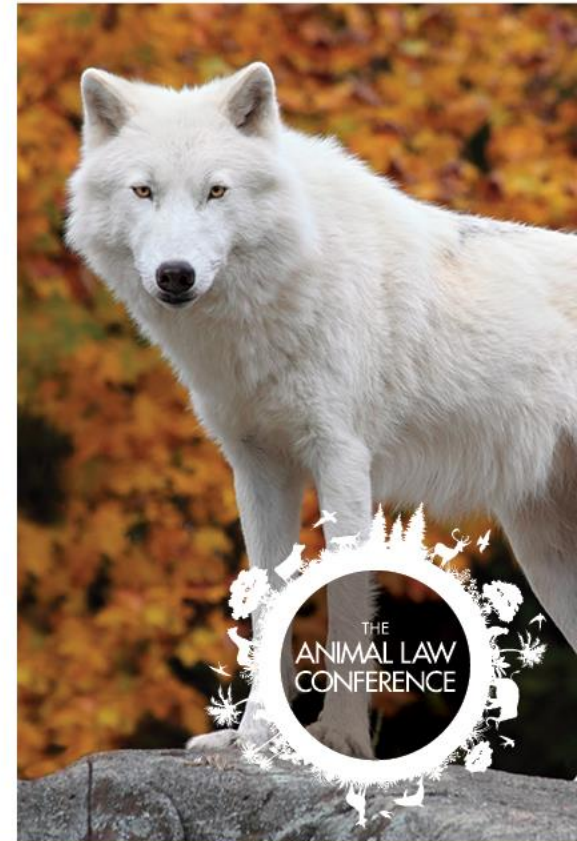
Image from the Great Lakes Indian Fish and Wildlife Commission www.glifwc.org

Lac Courte Oreilles v. Wisconsin

- Tribes with off-reservation treaty rights began seeking legal affirmation of those rights in the mid-1900's
- In 1983, the 7th Circuit ruled in favor of the Lac Courte Oreilles Band – recognizing tribal off-reservation rights under the Treaty of 1842 - *the Voigt Decision*. U.S. Supreme Court refused to hear an appeal.
- In 1999, Ojibwe off-reservation treaty rights under the Treaty of 1837 were affirmed by the U.S. Supreme Court *Mille Lacs Band of Ojibwe v. Minnesota*
- The LCO litigation had several iterations that judicially defined the scope of the Wisconsin Ojibwe bands' off-reservation treaty rights
- Tribal entitlement varies by species, but for many animals, tribal members are entitled to one-half of the take in the ceded territory

Endangered Species Act Listing History in Wisconsin

- 1959: Last wolf killed in Wisconsin
- 1970s: ESA protects wolves
- 2011-2014: Great Lakes wolves lose ESA protection
- 2012: WI enacts a statute mandating wolf hunts when not listed
- 2014: Great Lakes wolves regain ESA protection
- 2021 (January): Wolves lose ESA protection
- 2021 (February): WI implements wolf hunt



Wisconsin Hunters Kill Over 200 Wolves in Less Than 3 Days

The gray wolf lost Endangered Species Act protections last year, prompting a recent hunt that killed at least 216 wolves — far exceeding a quota set by state wildlife officials.



Pursuant to a lawsuit, *Hunter Nation v. DNR*, Wisconsin was forced to hold a wolf hunt immediately after wolves were delisted.

- Wisconsin DNR issued 200 wolf tags
- Ojibwe bands opposed the hunt, but claimed $\frac{1}{2}$ of quota of wolf tags
- Wisconsin hunters killed more than twice their quota of wolves in just three days
- The Ojibwe considered this to be a violation of their treaty-protected right to $\frac{1}{2}$ of the wolves

September 21, 2021

Wisconsin Tribes Sue the State for Treaty Violations Over Wolf Hunt

Six Ojibwe tribes challenge the planned November hunt

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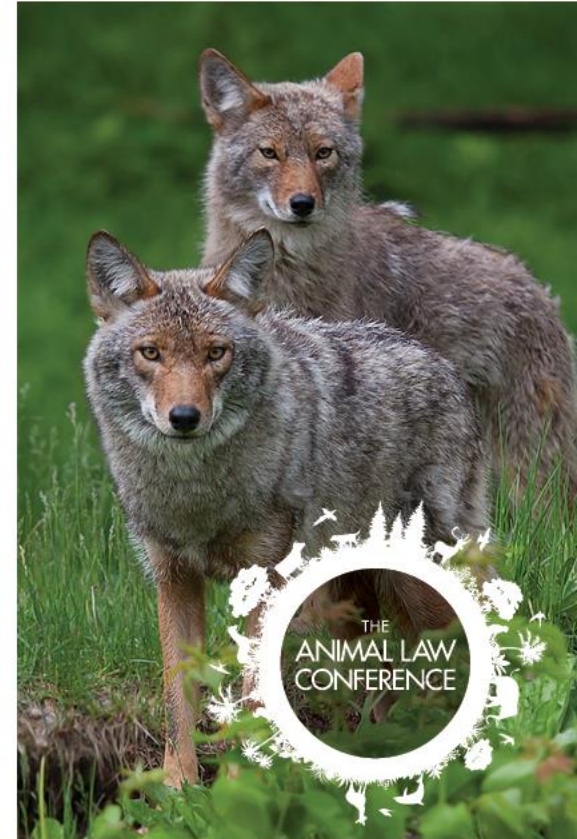
[↓ Legal document](#)

MADISON, WISC. — Six tribes filed a [lawsuit](#) today in the Western District of Wisconsin against the state for its planned November wolf hunt claiming the proposed hunt violates the tribes' treaty rights. Wisconsin's Natural Resource Board approved a quota of 300 wolves for the upcoming November hunt, more than double the quota of 130 proposed by the Department of Natural Resources — a recommendation that is also considered by experts to be too high and not supported by scientific data and analysis.

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The Ojibwe believe that the wolf is the brother to mankind – what happens to the wolf happens to us all.

- Wolves are central to Ojibwe cultural and spiritual beliefs.
- Several Ojibwe bands in Wisconsin have adopted wolf protection plans
- Wolves are wide-ranging and do not continuously stay in reservation areas where they are protected
- Wolves serve important ecological functions as an apex predator and foster biodiversity



Red Cliff v. Wisconsin

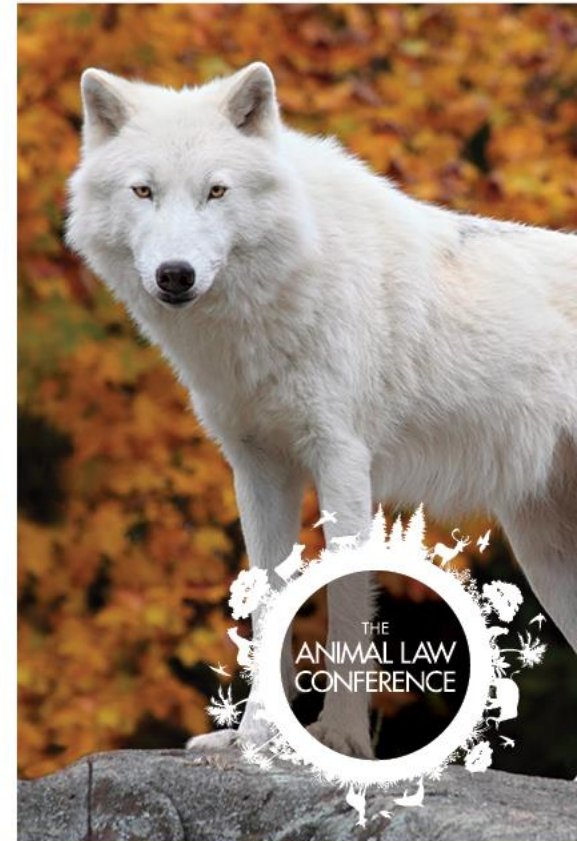
In anticipation of a second 2021 wolf hunt in Wisconsin, the Wisconsin Ojibwe bands sued the state.

- The tribes argued that a second hunt would violate their treaty rights
- Some Wisconsin officials sought to set an artificially high quota because they knew the tribes would not fill their share of the tags
- The tribes sought a ruling that the right to hunt also includes the right to conserve
- Hunt stopped on other grounds
- Wolves re-listed in 2022



What Happens Next?

- Restoration of wolves to the Endangered Species list has prevented further hunts from occurring
- FWS is likely to once again remove gray wolves from the Endangered Species list in 2024
- Multiple attempts to de-list gray wolves through legislation
- Wisconsin is moving forward with wolf management plans and seeking to rectify regulatory issues surrounding wolf hunt
- Wisconsin state senate voted this week to require a cap to be set on the number of wolves in Wisconsin
- Ojibwe bands continue to fight for a greater role in state conservation management and to apply Indigenous ecological knowledge





Thank you!

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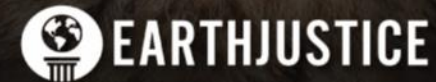
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WOLVES NEED LAWYERS TOO

WHEN ENDANGERED WOLVES ARE THREATENED BY INDISCRIMINATE KILLING,
EARTHJUSTICE COMES TO THEIR DEFENSE IN COURT—AND WE WIN.



BECAUSE THE EARTH NEEDS A GOOD LAWYER