

AG Kaul, DNR Secretary Cole: Remind Wisconsiners of Tribal Right to Spearfish, Consequences for Interfering

Posted on Thursday, Apr 1, 2021

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Contact: DOJCommunications@doj.state.wi.us

MADISON, Wis. – Attorney General Josh Kaul and Department of Natural Resources (DNR) Secretary Preston Cole are reminding Wisconsinites of the tribal right to spearfish in certain Wisconsin waterways and the legal consequences they could face if found interfering with that right.

“Tribal members have the clear right to hunt, fish, and gather in the Ceded Territories, and attempts to interfere with that right are illegal,” said Attorney General Kaul. “If you are subject to or witness harassment of tribal members while they are exercising these rights, please call local law enforcement and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC).”

“We fully support Ojibwa sovereignty and treaty rights and have zero tolerance for harassment of tribal members who are exercising their treaty rights,” said Department of Natural Resources Secretary Preston D. Cole. “We will continue to do what we can to make any spearfishing season safe and enjoyable. The DNR’s Conservation Wardens are actively engaged with tribal law enforcement officers not only for the upcoming season but for generations to come.”

Tribal Rights

In the mid-1800s, the Lake Superior Chippewa Tribes ceded more than 22,000 square miles (all or parts of 30 counties) of tribal territory across Northern Wisconsin through a series of treaties with the United States federal government.

While the Ojibwe ceded lands to the federal government, they reserved their off-reservation hunting, fishing and gathering rights within the Ceded Territory.

After Wisconsin became a state, however, state and local officials frequently assumed statehood superseded Ojibwe treaty rights and regulated or prohibited off-reservation hunting, fishing, and gathering by tribal members within the Ceded Territory.

In 1983, the U.S. Circuit Court of Appeals for the Seventh Circuit ruled – in what is commonly known as the Voigt Decision – that the 19th-century treaties had retained off-reservation hunting, fishing, and gathering rights for the Ojibwe in the Ceded Territory, including the right to catch fish by spearing and netting.

These treaties and court decisions remain in place today, ensuring the Ojibwe retain their right to hunt, fish and gather off-reservation in the Ceded Territory. To assist in regulating those activities, eleven Ojibwe bands have formed the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), which provides fully trained wardens who patrol the Ceded Territory to make sure tribal members are following applicable conservation laws. GLIFWC wardens who satisfy the state criteria for certification of law enforcement officers are recognized as peace officers by the State of Wisconsin. See Wis. Stat. §§ 175.41 and 939.22(5) and (22). Ojibwe spearing and netting are carefully monitored and regulated by staff from both GLIFWC and the Wisconsin DNR.

Interfering with Tribal Rights

It is illegal to interfere or attempt to interfere with tribal exercise of treaty rights. Examples of this prohibited conduct include, but are not limited to, stalking, obstructing access to lakes, recklessly operating watercraft, creating hazardous wakes, threatening violence and committing acts of violence.

Those violating tribal rights could be charged under numerous provisions of Wisconsin law, which could result in forfeitures, fines or criminal prosecution. Interfering or attempting to interfere with lawful hunting, fishing or trapping with the intent to prevent the taking of a wild animal violates Wisconsin law, Wis. Stat. §§ 29.971(11r)(a)–(am), and is punishable with a fine up to \$10,000 and imprisonment up to 9 months.

In addition, a person who is adversely affected by interference with lawful hunting, fishing or trapping may bring a civil action in circuit court for an injunction and/or damages, including punitive damages. Wis. Stat. § 29.083(4). Courts are also generally authorized to issue restraining orders and injunctions against harassment, which includes, among other things, striking, shoving, kicking, or otherwise subjecting another person to physical contact, and engaging in a course of conduct which harasses or intimidates another person and serves no legitimate purpose. Wis. Stat. § 813.125.

Wisconsin’s Hate Crime Provisions

Wisconsin law includes hate crime penalty enhancements for many crimes if they are committed, at least in part, based on a “belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of” the victim. Wis. Stat. § 939.645. For example, when a hate crime penalty enhancement applies to a felony, the maximum fine can be increased by up to an additional \$5,000 and the maximum term of imprisonment can be increased by up to an additional 5 years.

How to Report Tribal Rights Infringement

If you have witnessed or been subject to infringement of tribal rights to hunt, fish and gather that is active and involves physical harassment or a verbal threat of physical harm, report that to local law enforcement immediately by **calling 911**. If the threat has passed, please contact local law enforcement at the non-emergency number, or the confidential DNR tip hotline at 1-800-TIP-WDNR, as soon as possible to make a report of the event.

The Great Lakes Indian Fish & Wildlife Commission also recommends reporting any instances of infringement in order to maintain a record and provide appropriate follow up. Call GLIFWC Enforcement at 715-685-2113 to document an incident.

Press release: <https://www.doj.state.wi.us/news-releases/ag-kaul-dnr-secretary-cole-remind-wisconsinites-tribal-right-spearfish-consequences>