

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

and

BAY MILLS INDIAN COMMUNITY, SAULT
STE. MARIE TRIBE OF CHIPPEWA INDIANS,
GRAND TRAVERSE BAND OF OTTAWA AND
CHIPPEWA INDIANS, LITTLE RIVER BAND
OF OTTAWA INDIANS, and LITTLE
TRAVERSE BAY BANDS OF ODAWA
INDIANS,

Plaintiff-Intervenors,

and

STATE OF MICHIGAN, et al.,

Defendants.

Case No. 2:73-cv-26

HON. PAUL L. MALONEY

**THE COALITION TO PROTECT MICHIGAN RESOURCES' MOTION FOR LEAVE
TO FILE AN AMICUS CURIAE RESPONSE BRIEF OPPOSING THE SAULT TRIBE'S
MOTION TO VACATE AND TO DISMISS (ECF 2055)**

The Coalition to Protect Michigan Resources (“the Coalition”), by and through their attorneys, Fahey Schultz Burzych Rhodes PLC, hereby moves this Court to grant it leave to file an amicus curiae response brief opposing the Sault Ste. Marie Tribe of Chippewa Indians’ (“Sault Tribe”) Motion to Vacate Extension of the 2000 Consent Decree and to Dismiss for Lack of Subject Matter Jurisdiction and Violation of Constitutional Separation of Powers (ECF 2055). In support of its motion, the Coalition states as follows:

1. The Coalition is a nonprofit membership organization that represents numerous Michigan based sport fishing, boating, and conservancy groups.

2. As a representation of some or all of the organizations who are now members of the organization, the Coalition has been involved in this case since 1979. The Coalition itself has held amicus curiae status in this case since 2007.
3. This Court granted the Coalition amicus curiae status at the outset of the current case (ECF 1875).
4. The Coalition has an interest in this case, as it has since 1979, because the outcome determining the co-management and conservation of the Great Lakes fishery will have profound impacts on the Coalition and its members.
5. The United States of America, the State of Michigan, and four Tribes—Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, and Little Traverse Bay Bands of Odawa Indians—filed a Proposed Successor Decree to the 2000 Great Lakes Fishing Consent Decree on December 11, 2022 (ECF 2042). The Sault Tribe was the only party that did not consent to the entry of the Proposed Consent Decree (ECF 2045).
6. This Court has permitted the Coalition to file objections to the Proposed Consent Decree (ECF 2042).
7. However, on December 27, 2022, the Sault Tribe filed a Motion to Vacate Extension of the 2000 Consent Decree and to Dismiss for Lack of Subject Matter Jurisdiction and Violation of Constitutional Separation of Powers (ECF 2055). This motion threatens the status quo that has existed since 1985, raises issues never before litigated between the parties, and has the distinct potential to effectively nullify any new consent agreement between the remaining parties.

8. The Coalition has a substantial interest in the outcome of the Sault Tribe's Motion (ECF 2055) because, if granted, the result would almost certainly create irreparable harm to the Great Lakes fishery.
9. The Great Lakes fishery is essentially a single resource pursued by, at a minimum: commercial and subsistence fishers of five plaintiff tribes, tens of thousands of State-licensed recreational fishers, State-licensed commercial fishers, recreational and commercial fishers from states adjacent to Michigan, fishers from the province of Ontario, and sport fishers from around the world. Numerous sovereigns have interests that must be addressed. No one sovereign, including the Sault Tribe, may dictate how the Great Lakes fishery will be regulated; yet, from its motion, a claim of "self-regulation" presents significant and numerous issues of both fact and law. These issues include:
 - a. Does the Sault Tribe motion require this Court to first decide if the jointly held treaty right to fish free from State regulation gives to the Sault Tribe the right to manage and regulate on its own and without regard to the other parties with interests in the Great Lakes waters?
 - b. Does the self-regulation claimed by the Sault Tribe allow it to unilaterally decide what part of the fishery is available to take or that it needs? What is the extent of the right under Article 13 of the Treaty? If the Sault Tribe chooses or is allowed to self-regulate, to what extent is the resource or what part of the resource is its to allocate? Is the Sault Tribe limited to regulating and limited to only "roughly half of the resource" as has been the parties' agreement and understanding since a 1985

opinion of the District Court? Or are they entitled to pursue whatever they feel they need?

- c. If the Sault Tribe is only entitled to pursue roughly half of the fishery resource, how is that allocation between the Sault Tribe and the other four tribes to be determined? How is that allocation between the State of Michigan and the Tribes to be determined?
 - d. Who determines the allocation of the fishery? Is the Sault Tribe limited by an allocation determined by the Court?
 - e. Who determines what part of the fishery is subject to allocation (e.g., what part of the fishery is harvestable surplus and thus subject to allocation)? If the Sault Tribe determines as part of its self-regulation that a stock is subject to harvest, while the State or the United States or another tribe determines differently, how is that difference resolved? For example, if the Sault Tribe decides that it wants to harvest salmon or, say for example, brown trout, who decides how much they can harvest and where?
 - f. Can the Sault Tribe determine, in its sole discretion, where it wants to fish? What it wants to fish for? What gear it wants to use?
 - g. Does this situation not pose the risk of a “racehorse fishery” that Judge Enslen tried to avoid in his 1985 opinion approving the parties’ first Consent Decree?
10. The Coalition wishes to address the legal arguments presented by the Sault Tribe. The Coalition will be able to present a perspective on the matters that may assist the Court in deciding the Sault Tribe’s Motion (ECF 2055).

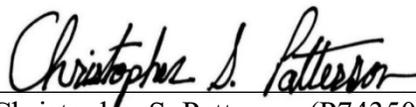
11. For these reasons, the Coalition requests this Court to grant it leave to file an amicus brief in accordance with Local Civil Rule 7.
12. The Coalition notes that it believes this motion is timely because this Court ordered responses to the Sault Tribe's Motion to Vacate and Dismiss for Lack of Subject Matter shall be filed on or before February 10, 2023 (ECF 2059). The Coalition also notes that an amicus curiae brief, according to the rules of Federal Rules of Appellate Procedure, to the extent these rules are applicable, provides an amicus curiae must file its brief no later than 7 days after the principal brief of the party being supported. See Fed. R. App. P. 29(a)(6).

WHEREFORE, the Coalition to Protect Michigan Resources asks this Court to grant it leave to file its amicus curiae response brief, attached as **Exhibit 1**.

Respectfully submitted,

Fahey Schultz Burzych Rhodes PLC
Attorneys for CPMR

Dated: January 27, 2023



Christopher S. Patterson (P74350)
Stephen O. Schultz (P29084)
David J. Szymanski (P86525)
4151 Okemos Road
Okemos, MI 48864
(517) 381-0100
cpatterson@fsbrlaw.com
sschultz@fsbrlaw.com
dszymanski@fsbrlaw.com

CERTIFICATE OF SERVICE

I, Kaylin J. Marshall, hereby certify that on the 27th day of January 2023, I electronically filed the foregoing document and any attachments with the ECF system which will send notification of such to all parties of record.

/s/ Kaylin J. Marshall
Kaylin J. Marshall