

Congress of the United States
House of Representatives
Washington, DC 20515–2201

January 17, 2024

The Honorable Gretchen Whitmer
Governor of Michigan
P.O. Box 30013
Lansing, Michigan 48909

Dear Governor Whitmer,

Since the approval of the 2023 Great Lakes Fishing Decree by the U.S. District Court for the Western District of Michigan, I have heard from many constituents of Michigan's First District – including local anglers, conservation groups, and small business owners – with concerns regarding the Decree's impact on fish populations and those who rely on them for their livelihoods.

I wholeheartedly recognize the importance of protecting Michigan Tribes' access to commercial and subsistence fishing under the 1836 Treaty and subsequent agreements. However, after reviewing the State's arguments before the court, as well as the rulings of Judge Maloney, there remain valid concerns and questions that must be addressed by the State of Michigan.

This issue is of the utmost importance to thousands of my constituents and the communities in which they live. As a party to the Decree, the State of Michigan has the obligation to represent the people and resources of the entire state – especially since the risk of any overfishing will lead to the devastation of local wildlife, businesses, and communities across Michigan.

I therefore request clarification on the State's opinions and specific plans related to the implementation and enforcement of the 2023 Great Lakes Decree.

I. Expanded use of gillnets

Under the 2023 Decree, Tribes are allowed to use gillnets in more fishing areas – including in popular recreational fishing zones – and more frequently throughout the year. This seems to be contradictory to the State's long-held stance that gillnets create excessive waste and pose a threat to nontargeted species, as well as the Michigan Department of Natural Resources Fisheries Division's active work to retire gillnets in the Great Lakes.

This work has included spending more than \$14 million in taxpayer funds following the 2000 Great Lakes Decree to help tribal fishers transition from gillnets to trap nets, which are more

selective. As recently as 2020, the State [touted the success of efforts to replace gillnets](#), including a reduction of nearly 30 million feet of gillnets compared to 1992-1998 baseline years.

Since the 2023 Decree allows for their expanded use after decades of effort contrary to this, **has the State changed their overall position on the harm of gillnets? If so, what scientific data did you rely on to make that decision? Please provide copies of any such data.**

I understand the State has contended that since total tribal harvest is limited, the manner in which the tribes catch the fish is irrelevant. However, without adequate tracking and enforcement of these limits, expanding the use of gillnets could have a devastating impact on fish populations throughout the region.

How many additional Conservation Officers have been or will be hired to observe net-lifts, weigh-in, and record entry for the new miles of gill nets? Will the State utilize observers and recorders at the eco-fertilizer facilities and pet food shipping locations to record weights not destined for the human consumption market?

II. Ambiguous enforcement provisions

As you are aware, the 2000 Decree included concrete mechanisms to address instances of overfishing, including automatic reductions of harvest limits in the case of overfishing the previous year. The 2023 Decree, however, does not. Instead, it merely relies on language stating that “the State and the Tribes shall manage their respective fishers to avoid exceeding their respective annual Harvest Limits”, and that “large deviations shall be rare and promptly addressed”.

Solely relying on self-policing without any tangible penalties for violating the provisions of the Decree is a recipe for abuse. This problem is compounded by the expanded allowable use of gillnets, as previously discussed. While the State has argued that the new information sharing system will prevent deviations from the allowed limits, this logic is flawed.

The ability to identify misconduct is useless if there aren’t clear penalties for parties that engage in that misconduct. **As a party to the Decree, what concrete actions will the State take if parties consistently fish above their harvest limits?**

III. Information sharing limitations

I appreciate the steps taken in the 2023 Decree to improve on information sharing and gathering, specifically as it relates to modernization, improving the frequency of data sharing, and reducing the likelihood of errors. However, questions remain on the implementation and validity of the information sharing system that must be addressed by the State – especially considering that this system has been argued by the State to be the linchpin for enforcing harvest limits and limiting the harm caused by gillnets.

First, the information sharing outlined in the 2023 Decree has very limited usefulness to assessing the damage done by gillnets to non-targeted species through bycatch. This is because the Decree only requires parties to report bycatch that is retained – not those that are simply dumped back by fishers. Additionally, I have heard reports of non-targeted edible gamefish being thrown into dumpsters on shore – which, if true, would be blatant “wanton waste” that is prohibited by fish and wildlife regulations in Michigan and across the country.

These factors mean the information sharing system will be functionally useless in assessing the selectivity and true impact of gillnetting, as well as in identifying where and when gillnetting is posing a severe threat to a fishery.

What steps will the State take, either individually or through its role on the Technical Fisheries Committee (TFC), to accurately track the effects of gillnetting beyond the simple information sharing system?

Secondly, there are potential concerns regarding the validity and accuracy of data as a whole under the Decree’s information sharing. The Decree states that the TFC shall “provide for review and continuous improvement of harvest estimating and reporting systems to assure that each Party is submitting valid harvest estimates or reports”. However, this language is extremely vague, and there are no imposed penalties if parties consistently or knowingly report inaccurate data.

An information sharing system can only be useful if the data provided to it can be trusted. **How specifically will the State, either individually or through the TFC, work to verify information reported by parties of the Decree? What concrete steps will the State take to uphold requirements of the Decree if data from a party is consistently shown to be inaccurate?**

IV. Consultation with local communities, constituents, and experts

The 2000 Decree allowed local governments and recreational fishing groups to request meetings with the Tribes to address issues of local concern. This provision was removed in the 2023 Decree, meaning the full responsibility of hearing and acting upon the concerns of local communities and individuals falls entirely upon the State of Michigan as a party to the Decree.

Will the State commit to regular consultation with local communities, angler groups, and other local organizations to receive input on the implementation of the Decree? How specifically will input from these groups be utilized by the State in setting and enforcing requirements of the Decree like harvest limits?

Finally, while the Decree references the work of the Great Lakes Fishery Commission (GLFC) in relation to sea lamprey control, I am concerned that the State may not have consulted with GLFC technical experts or properly considered its obligations under the GLFC’s [Joint Strategic Plan for Management of Great Lakes Fisheries](#) in negotiating the Decree.

One of the primary responsibilities of the GLFC is to study and recommend “measures which will permit the maximum sustained productivity of stocks of fish of common concern” between the Great Lakes states and Canadian provinces. Because agreements facilitated through the GLFC operate under consensus, unilaterally failing to uphold the State’s obligations could harm open collaboration and lead to retaliation from other parties to the agreements – jeopardizing the overall work and effectiveness of the GLFC.

Was the GLFC Board of Technical Experts, or any of the GLFC’s Lake Technical Committees consulted during the negotiation of the 2023 Decree?

To what extent will the State of Michigan, either individually or through the TFC, consult with GLFC experts and technical committees to ensure that it is properly protecting fisheries and meeting its obligations under GLFC agreements?

I respectfully request a detailed answer to each of my inquiries.

With the 2023 Great Lakes Fishing Decree currently in force and set to govern the allocation of resources for the next 24 years, it is essential that the State of Michigan has clear plans in place to address these areas of concern. Failure to do so could severely harm the health of Great Lakes fisheries and devastate the natural treasures, tourism, economies, and heritage of our local communities.

I appreciate your attention to this request. My staff and I stand ready to provide any assistance necessary to ensure the 2023 Decree fully protects all Michiganders’ access to these vital resources for generations to come.

Sincerely,



Jack Bergman
Member of Congress

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