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## The Grand Traverse Band of Ottawa and Chippewa Indians

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November 13, 2006

### VIA FAX AND ELECTRONIC SUBMISSION

Attn: Commander  
Ninth Coast Guard District  
1240 E. 9<sup>th</sup> Street  
Room 2069  
Cleveland, OH 44199

Docket Management Facility (USCG-2006-25767) -618  
U.S. Dept of Transportation  
Room PL-401  
400 Seventh Street, SW  
Washington, DC 20590-0001

**Attn: Docket ID No. USCG-2006-25767**

**Re: Comments on the Proposed Rulemaking on "Safety Zones; U.S. Coast Guard Water Training Areas, Great Lakes" 71 Fed. Reg. 43402 (August 1, 2006).**

To: Commander, Ninth Coast Guard District

The Grand Traverse Band of Ottawa and Chippewa Indians (GTB) is opposed to the current US Coast Guard proposal for the creation of 34 permanent firing zones in the Great Lakes. The Great Lakes have played a critical role in the history and culture of our people and continue to be considered sacred by Native people to this day. Following are GTB's concerns regarding the US Coast Guard's proposal.

### **The Need for Government-to-Government Dialogue**

The Grand Traverse Band is a federally recognized Tribe and one that signed the Treaty of Washington of 1836 that reserved the Tribe's hunting and fishing rights. There have been Court rulings that the Tribes maintained the right to fish on waters of the Great Lakes within the ceded territory. The Grand Traverse Band is also a signatory Tribe of the Chippewa and Ottawa Resource Authority (CORA). We are one of five tribes that have active Tribal commercial fishermen, who are licensed and regulated by Tribal governments. There are ten zones that are within the Treaty Ceded territory and this will impact Tribal commercial fisherman, charters, recreational boaters, Tribal and non-tribal users.

Docket ID No. USCG-2006-25767

November 13, 2006

Page 2 of 3

It should be noted that GTB does not consider the US Coast Guard's public meetings or the submission of comments such as these from Tribes as constituting a government-to-government dialogue with Tribes. The US Coast Guard should initiate government-to-government discussions with Tribes outside the context of this public comment process. Because of the unique relationship established in the US Constitution and in treaties between Tribal governments and the federal government, Tribes should not be treated simply as members of the public.

In addition to the concern over contamination of water and fish, we also have serious concern about the potential safety hazard posed to both Tribal and non-Tribal fishermen. Disruptions to commercial fishing operations, caused by the need to avoid firing zones during live-fire exercises, would also have a serious negative economic impact on Tribal fishing operations.

Federal actions which impair, impede or limit the exercise of treaty-protected rights are subject to legal challenge by the Tribes. Federal courts have prohibited such actions when they are not expressly authorized by Congress.

### **Contamination of Water and Fish Resources**

GTB is concerned about the long-term impacts to fish. Lead bio-accumulates in the food chain. Bottom-feeding species, such as the round goby, may ingest lead and other metals that have leached from spent ammunition. Round gobies are prey fish for several species such as Lake Trout, Whitefish, and Sturgeon. These species have significant cultural and historical importance to Native people in this region. Lake Trout and Whitefish are also key species in Tribal commercial fishing operations.

The US EPA has stated "lead shot entering a water body substantially increases the potential risk of contaminating surface and groundwater which, in turn, threatens human health and the environment." ("Best Management Practices for Lead at Outdoor Shooting Ranges," US EPA, June 2005, page 1-11).

### **A Full Environmental Impact Statement Should be Conducted**

The US Coast Guard's January, 2006 environmental study is based on assumptions and conceptual models and only evaluates the impacts of the firing zones for an assumed five-year period. However, the US Coast Guard's proposal is to establish permanent firing zones where the impacts would continue for much longer than five years.

The National Environmental Policy Act (NEPA) requires that major federal actions comply with procedures to examine alternatives to the action, including a no-action alternative. The US Coast Guard is making an incorrect assertion that this proposal qualifies as a Categorical Exclusion under NEPA. The US Coast Guard's own regulations for the implementation of NEPA, incorporated in Commandant Instruction M16475.1D, sets forth several factors under which a full Environmental Impact Statement would be required. The US Coast Guard's firing

Docket ID No. USCG-2006-25767

November 13, 2006

Page 3 of 3

zone proposal meets several of those factors. We call on the US Coast Guard to comply with NEPA, conduct a full Environmental Impact Statement, adequately examine all alternatives including a no-action alternative, and hold additional public hearings on this proposal.

### **Compliance is Required Under Other Environmental Laws**

The Clean Water Act prohibits "the discharge of any pollutant by any person" into waters of the United States without a National Pollution Discharge Elimination System (NPDES) permit.

In a lawsuit called *Long Island Soundkeeper Fund vs. New York Athletic Club*, involving water contamination from a shooting range, a federal court found that shooting into water constitutes a discharge under the Clean Water Act, and that lead shot constitutes a form of "solid waste" subject to regulation under the act as a "pollutant" Based on these determinations, the court supported EPA's contention that the ranges were discharging pollutants from a point source without a permit, in violation of the CWA.

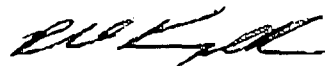
In another case, *Connecticut Coastal Fishermen vs. Remington Arms Company*, the court found violations of the Resource Conservation and Recovery Act (RCRA). The court concluded that lead shot meets the statutory definition of solid waste because these materials were "discarded (i.e., abandoned)" and "left to accumulate long after they have served their intended purpose." More alarmingly, the court concluded that based upon toxicity testing and evidence of lead contamination, the lead shot was a hazardous waste subject to RCRA.

Other lawsuits have concluded that the Comprehensive Environmental Response, Compensation, and Liability Act (a.k.a.; "Superfund") also applies to shooting ranges where lead shot has caused contamination.

### **Conclusion**

GTB is very concerned about the US Coast Guard's firing zone proposal. The above comments should not be considered a substitute for substantive government-to-government discussions with GTB. We look forward to beginning those discussions with the US Coast Guard. Please contact myself at 231.534.7750 or Suzanne McSawby, Natural Resources Department Manager at 231.534.7500. Thank you.

Sincerely



Robert Kewaygoshkum  
Tribal Chairman