



Overview of Concerns Raised by Tribal Governments to the Native Farm Bill Coalition on the Wild Rice Specialty Crop Act

Background on the Wild Rice Specialty Crop Act: At the request of the California Wild Rice Growers Association, Rep. John Garamendi (D-CA) is seeking feedback on draft language that would make wild rice a specialty crop. This would make wild rice eligible for various U.S. Department of Agriculture funding sources related to research, marketing, trade promotion, and more.

Concerns Raised by Tribal Leaders: The Native Farm Bill Coalition has been conducting outreach and holding listening sessions with Tribal governments that would be impacted by the proposed legislation. Below is a summary of the concerns raised.

- 1. Wild Rice is a Sacred Food.** Several Tribal governments in the Great Lakes region have migration stories, which told them to move west until they found a place where food grew on water – wild rice. As a result, wild rice is very much an integral part of their lives, both as a nutritionally valuable food for thousands of years and as a niche market product. Tribally produced niche products like wild rice can command high price points in the marketplace, but inequitable opportunities for Tribal producers to research, market, and trade these foods will damage Tribal economies.
- 2. Tribal Governments Possess Inherent Rights to Wild Rice Recognized in Treaties and Supreme Court Precedent.** While the significance of wild rice dates back to the Anishinaabe's migration story, which brought them to the Great Lakes region, the U.S. Federal government recognized their inherent usufructuary right to wild rice in at least one treaty. On July 29, 1837 at the confluence of the St. Peters and Mississippi rivers, representatives from **eleven Bands**¹ signed the Treaty with the Chippewa (also known as the White Pine Treaty or the 1837 Treaty) ceding land in Minnesota and Wisconsin to the U.S. Federal government.² Of importance to the Bands was article five, which guaranteed their continued right to continue harvesting wild rice.

*Article 5. The privilege of hunting, fishing, and **gathering the wild rice**, upon the lands, the rivers and the lakes included in the territory ceded, **is guaranteed to the Indians**, during the pleasure of the President of the United States.*

¹ The representatives from eleven Bands that signed the Treaty were from Leech Lake, Gull Lake and Swan River, St. Croix River, Lake Courteville, Lac De Flambeau. La Pointe (Lake Superior), Mille Lacs, Sandy Lake, Fond Du Lac, and Red Lake.

² Treaty with the Chippewa, 7 Stat., 536 (Jul. 29, 1837), available at https://www.dnr.state.mn.us/aboutdnr/laws_treaties/1837/index.html.





Over time, representatives of these Bands signed additional treaties and the U.S. Federal government continued to implement policies governing its relationship with Native Americans. Despite all of these efforts, the Seventh Circuit,³ Eighth Circuit,⁴ and the Supreme Court⁵ have all held that the subsequent treaties signed by the Bands did not extinguish their usufructuary right to gather wild rice pursuant to the 1837 Treaty nor was the right extinguished by an 1850 Executive Order issued by President Zachary Taylor. The Executive Order attempted to revoke article five of the 1837 Treaty. The Court held that President Taylor lacked authority and further found that the provision was not severable.

- 3. Tribal Governments are Concerned About the Genetic Integrity of Ancestral Seed Strains.** Spurred by efforts of the University of Minnesota (University) in 2002 to map the DNA sequence of wild rice, Minnesota Tribal governments became concerned about the possible impacts of DNA manipulation to ancestral wild rice strains. Unable to reach an agreement with the University, Tribal governments worked with the Minnesota state legislature to implement protections for wild rice. On May 8, 2007, Governor Pawlenty signed into law the Omnibus Environment and Natural Finance Bill, which required a study of the environmental threats to natural wild rice stands including development pressure, water levels, pollution, invasive species, and genetic strains. The legislation further required that an environmental impact statement be conducted in advance of open-air tests of genetically engineered wild rice and put the matter under the authority of the Environmental Quality Board, which is required to notify the state's wild rice industry, the Legislature, and Minnesota Tribal governments if a permit to release genetically engineered wild rice was issued anywhere in the United States. In May 2018, Governor Mark Dayton called for the formation of the Governor's Task Force on Wild Rice and charged it with finding creative ways to address the regulatory, economic, and scientific challenges associated with protecting wild rice. In response to the proposed legislation, Tribal governments raised concerns that opening wild rice to new research efforts could undermine the work of Tribes to protect this sacred food in the State of Minnesota.
- 4. Tribal Governments Cannot Administer the Specialty Crop Block Grant Program.** Currently, Tribal governments are not eligible for the Specialty Crop Block Grant Program (SCBGP) – only States, the

³ [Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt](#), F.2d 341 (7th Cir. 1983) (finding that the Band's usufructuary rights established by the 1837 and 1842 treaties were never terminated or extinguished).

⁴ [Mille Lacs Band of Chippewa Indians v. State of Minn.](#), 124 F.3d 904 (Eighth Cir. 1997) (finding that the Band's usufructuary rights established by the 1837 Treaty were not extinguished by subsequent treaties or the Executive Order of 1850).

⁵ [Minnesota v. Mille Lacs Band of Chippewa Indians](#), 119 S.Ct. 1187 (1999) (finding that the Band's usufructuary rights established by the 1837 Treaty were not terminated or extinguished by Executive Order of 1850, the Mille Lacs Band did not relinquish usufructuary rights when it entered into the 1855 Treaty, and Chippewa Indians' usufructuary rights were not extinguished when Minnesota was admitted to the Union).





District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands are eligible. Thus, while Tribal producers qualify for funding, they must apply through state governments who often lack understanding of the nuances of being a Tribal producer. As the SCBGP seeks to enhance the competitiveness of specialty crops, without amending the eligibility of the SCBGP to specifically make Tribal governments eligible to serve Tribal producers, the legislation as currently written would unfairly benefit non-Tribal producers with regard to this specific Program.

- 5. **Marketing Access Program Funding is Declining.** The Marketing Access Program (MAP) authorizes the Commodity Credit Corporation (CCC) to provide grants to eligible U.S. entities to conduct certain marketing and promotion activities aimed at developing, maintaining, or expanding commercial export markets for U.S. agricultural commodities. Currently, the Intertribal Agriculture Council (IAC) serves as the entity receiving funds to support Tribal producers. While Tribal producers have successfully utilized this program to promote the sale of wild rice domestically and abroad, the CCC has reduced IAC’s funding in recent years. As such, if the Wild Rice Specialty Crop Act increases funding for non-Tribal producers through the SCBGP and MAP funding continues to decline, non-Tribal producers will have a significant advantage over Tribal producers.

IAC’s MAP Funding for FY 2018-FY 2023

FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
\$733,553	\$730,285	\$716,965	\$677,594	\$366,909	\$363,349

- 6. **Threat to U.S. Department of Agriculture Procurement of Tribally-Produced Wild Rice for the Food Distribution on Indian Reservations.** Should non-Tribal producers be able to increase their production of wild rice, and arguably at a lower price, this legislation could undermine the efforts of Tribal governments to procure traditional, nutritionally-valuable, and Tribally-produced foods in U.S. Department of Agriculture (USDA) programs serving Indian Country. In particular, Tribal governments raised concerns about the procurement of wild rice for the Food Distribution Program on Indian Reservations (FDPIR). It is well known that it is difficult for Tribal producers to meet bid specifications from USDA for FDPIR food products because each vendor is typically required to meet national volume requirements, even for traditional or culturally significant foods. The only way a Native company could take advantage of this regulation as it stands is to seek out another Native company to contract with. While there is currently a partnership between White Earth and Leech Lake to provide wild rice for FDPIR, if non-Tribal producers can (1) meet national volume requirements, and





(2) provide wild rice at a lower cost, Tribal producers may lose the opportunity to put their wild rice in FDPIR packages.

7. **Food Fraud Has Consistently Stifled the Efforts of Tribal-Producers to Sell Their Products.** A long-standing issue for Tribal producers has been the marketing of non-Tribally produced products in a way that makes consumers assume the product is Tribally-produced. In the past, non-Tribal producers have claimed their products are “traditionally-harvested” or the imagery on the package suggests the product was produced by Tribal producers. As a result, this stifles the efforts of Tribal producers to sell their products on a level playing field.
8. **The Amendments to Title I Language could be Detrimental to Tribal Producers and Harvesters of Wild Rice.** The Wild Rice Specialty Crop Act attempts to change land acreage (Title I payments) that a specialty crop farmer can own. While these programs have not been paid out in recent years due to high commodity prices, they have been in the past. From 1985 to 1987, farmers were allowed to plant wild rice on their base acres, and still receive their base acre payment. This incentivized California wild rice producers to dump millions of pounds of wild rice into the marketplace, damaging the Tribal and non-Tribal wild rice market in the Great Lakes region. The price of wild rice plummeted, including hand-harvested wild rice, and Minnesota Tribes alone lost over half of their wild rice producers and harvesters. The industry has yet to fully recover. For this reason, the Minnesota Cultivated Wild Rice Council and Tribal governments have worked hard to keep the current language in place, so as not to repeat the market problems of the 1980s.
9. **Specialty Crop Funding to California Far Outweighs Other States.** Of the \$72.9 million made available for the SCBGP in 2022, USDA awarded over \$23.4 million to California compared to only \$1.3 million to Minnesota. While the SCBGP serves a large number of specialty crops, concerns were raised that this would provide more resources for California to flood the market with their wild rice.

