

**WAGANAKISING ODAWAK STATUTE 2004-02**  
**Commercial Fishing Vessel Safety**

**SECTION I. INTRODUCTION/ PURPOSE**

In order to protect members engaged in commercial fishing pursuant to the rights reserved in the Treaty of 1836 and in accordance with the Memorandum of Understanding with the United States Coast Guard (USCG), the Little Traverse Bay Bands of Odawa Indians (LTBB) hereby enacts this Statute in an attempt to decrease the potential of death, personnel injury, and or property damage that may be associated with the high risk activity of commercial fishing. Any duly licensed LTBB commercial fisherman shall ensure that he and any vessel he may operate are in full compliance with the following safety provisions. Failure to comply with the following safety provisions could result in fines, suspension or revocation of fishing license

**SECTION II. DEFINITIONS**

- A. Auxiliary Craft:** a vessel that is carried onboard a commercial fishing vessel and is normally used to support fishing operations.
- B. Buoyant Apparatus:** a buoyant apparatus approved by the Commandant.
- C. Coast Guard:** a commissioned, warrant, or petty officer of the U.S. Coast Guard Boarding Officer having authority to board any vessel under the Act of August 4, 1949, 63 Stat. 502, as amended (14 U.S.C. 89).
- D. Cold Waters:** water where the monthly mean low water temperature is normally 59° F (15° C) or less.
- E. Commandant:** the Commandant of the U.S. Coast Guard or an authorized representative of the Commandant of the U.S. Coast Guard.
- F. Commercial Fishing:** a fishing activity engaged in for the purpose of sale of fish or parts of fish.
- G. Enforcement Officer:** any Tribal, Federal or State officer authorized under this Statute, the 2000 Great Lakes Consent Decree or the LTBB/USCG MOU to enforce LTBB fishing rules and regulations.
- H. Fishing Vessel:** a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking or harvesting of fish.
- I. Inflatable Buoyant Apparatus:** an inflatable buoyant apparatus approved by the

Commandant.

**J.** Traditional Craft: a vessel such as a dugout canoe, cedar strip or birch bark canoe, that is hand made and is not powered by anything other than hand paddles and the elements of nature.

**K.** USCG: means the United States Coast Guard.

**L.** Warm Waters: water where the monthly mean low water temperature is normally above 59° F (15° C).

### **SECTION III. EQUIPMENT**

#### **A. Lights**

1. Vessels 39.4 feet and less are required to have the following:
  - a. Side lights: Sidelights that are visible from dead ahead to 22 ½ degrees abaft the beam (red port light and green starboard light).
  - b. Masthead and/or stern light: An all around white light.
2. Vessels over 39.4 feet are required to have the following:
  - a. Side lights: Sidelights that are visible from dead ahead to 22 ½ degrees abaft the beam (red port light and green starboard light).
  - b. Masthead and/or stern light: A stern light and a masthead light that shows dead ahead to 22 ½ degrees abaft the beam on either side.

#### **B. Distress Signals**

1. Visual:
  - a. Vessels that operate within three miles of the Coastline of the Great Lakes are required to have the following:
    - I. Night visual distress signals: One electric distress light or 3 approved flares; and
    - ii. Day visual distress signals: One distress flag, or 3 approved flares, or 3 approved smoke signals.
  - b. Vessels that operate more than three miles from the Coastline of the Great Lakes are required to have the following:

- I. 3 parachute flares, 6 handheld flares, and 3 smoke signals.
2. Sound:
  - a. Vessels 39.4 feet and less are required to have the following:
    - I. A means of making an efficient sound signal audible within one nautical mile of the vessel.
  - b. Vessels over 39.4 feet are required to have the following:
    - ii. Whistle and bell.
3. Emergency Position Indicating Radiobeacon (EPIRB):
  - a. Vessels less than 36 feet in length that operate more than three miles from the coastline of the Great Lakes are required to have the following:
    - I. A manually activated Category 2 406 MHz EPIRB. This EPIRB shall be installed in a readily accessible location at or near the principle steering station; or
    - ii. A float free automatically activated Category 1 406 MHz EPIRB. This EPIRB shall be stowed in a manner so that it will float-free if the vessel sinks, or
    - iii. Personal Category 2, 406 MHz EPIRB.
  - b. Vessels 36 feet or more in length that operate more than three miles from the coastline of the Great Lakes are required to have the following:
    - I. A float free automatically activated Category 1 406 MHz EPIRB. This EPIRB shall be stowed in a manner so that it will float-free if the vessel sinks.
  - c. Servicing/Maintenance: The captain or individual in charge of the vessel must ensure that each EPIRB on board is in good working order and that it is tested and serviced as required by this section.
    - I. The EPIRB must be tested immediately after installation and at least once each month thereafter. The test shall be conducted in accordance with the manufactures instructions, using the visual

or audio indicator on the EPIRB. Each test shall be recorded on a log to be kept on the vessel.

ii. Batteries for the EPIRB shall be replaced after the EPIRB deployed for any purpose other than testing and before the expiration date of the battery.

iii. All non-functioning or damaged EPIRB's must be replaced with an operational EPIRB.

d. Exceptions:

I. A skiff/work boat or auxiliary craft is not required to carry an EPIRB if-

1. Its "mother ship" is required to carry an EPIRB and;

2. When not in use, the skiff/work boat or auxiliary craft is carried on board the mother ship.

**C. Communication Equipment:**

1. Each vessel must be equipped with an operational VHF FM handheld submersible ship to shore radio; or

2. An operational cell phone capable of communicating in the area fished.

**D. Life Preservers and Personal Floatation Devices:**

1. Types: Each vessel must be equipped with at least one immersion suit, exposure suit, or wearable personal flotation device (PFD) of the proper size for each individual on board and as specified below. Each life preserver or PFD must be stowed so that it is readily accessible to the individual for whom it is intended.

a. Lake Superior: Immersion Suit.

b. Lake Michigan and Lake Huron

I. Vessels 40 feet or more in Length: Type I, Type V commercial hybrid, immersion suit, or exposure suit.

ii. Vessels 40 feet or less in length: Type I, Type II, Type III, Type V commercial hybrid, immersion or exposure suit.

2. Markings: Each immersion suit, exposure suit or PFD must be marked with the name of either the vessel, the owner of the device, or the individual to whom it is assigned. The lettering used in marking must be in block capital letters.
3. Operation Readiness and Maintenance: The captain or individual in charge of the vessel must ensure that each immersion suits, exposure suits, or wearable PFD must be in good working order, ready for immediate use, and readily accessible before the vessel leaves port and at all times when the vessel is in operation.
4. Approved equipment/materials: All immersion suits, exposure suits, or wearable personal flotation devices must be equipped with a Coast Guard approved PFD light and have at least 31 square inches per side of retro-reflective material attached to the front and back.

**E. Throwable Flotation Device:**

1. Types: Each vessel as specified below must be equipped with a throwable flotation device or ring buoy and a proper corresponding length of line.
  - a. Vessels less than 16 feet: No throwable flotation devices are required.
  - b. Vessels 16 feet or more but less than 26 feet: One (1) throwable buoyant cushion or ring buoy equipped with a line at least 60 feet in length.
  - c. Vessels 26 feet or more but less than 65 feet: One (1) orange Coast Guard approved ring buoy at least 24 inches in size equipped with a line at least 60 feet in length.
  - d. Vessels 65 feet or more: Three (3) orange ring buoys at least 24 inches in size each equipped with a line at least 90 feet in length.
2. Markings: All throwable flotation devices and ring buoys must be marked with the name of the vessel. The lettering used in marking must be in block capital letters.
3. Operation Readiness and Maintenance: The captain or individual in charge of the vessel must ensure that each throwable flotation device and/or ring buoy be in good working order, ready for immediate use, and readily accessible before the vessel leaves port and at all times when the vessel is in operation.

4. Approved equipment/materials: All throwable flotation devices and ring buoys must be U.S. Coast Guard certified or approved.

**F. Survival Craft**

1. Warm Waters:

a. All vessels (regardless of length), which operate within three miles of the Great Lakes Coastline and have 3 or fewer people on board are not required to have a survival craft.

b. All vessels (regardless of length), which operate beyond three miles of the Great Lakes Coastline and have 3 or fewer people on board are required to have a buoyant apparatus.

2. Cold Waters:

a. Vessels less than 36 feet in length are required to have a buoyant apparatus.

b. Vessels 36 feet in length or more are required to have an inflatable buoyant apparatus.

3. Markings: Each inflatable life raft, inflatable buoyant apparatus or any auxiliary craft used in their place must be marked with the name of either the vessel or the owner of the device. The lettering used in marking must be in block capital letters.

4. Operation Readiness and Maintenance: The captain or individual in charge of the vessel must ensure that each item of lifesaving equipment must be in good working order, ready for immediate use, and readily accessible before the vessel leaves port and at all times when the vessel is in operation.

**G. Fire Extinguisher**

1. Vessels under 16 feet in length:

a. Must either have a fixed Fire Extinguishing System in the machinery space; or

b. One (1) B-I hand portable U.S. Coast Guard approved fire extinguisher.

2. Vessels 16 feet or more but less than 26 feet in length:

- a. Must either have a fixed Fire Extinguishing System in the machinery space; or
  - b. One (1) B-I hand portable U.S. Coast Guard approved fire extinguisher.
3. Vessels 26 or more but less than 40 feet in length:
  - a. Must have a fixed Fire Extinguishing System in the machinery space and one (1) B-I hand portable U.S. Coast Guard approved fire extinguisher; or
  - b. Two (2) B-I hand portable U.S. Coast Guard approved fire extinguishers.
4. Vessels 40 feet or more but not over 65 feet in length:
  - a. Must have a fixed Fire Extinguishing System in the machinery space and two (2) B-I hand portable U.S. Coast Guard approved fire extinguishers; or
  - b. Three (3) B-I hand portable U.S. Coast Guard approved fire extinguishers.

#### **SECTION IV. ALCOHOL AND CONTROLLED SUBSTANCES**

- A.** Operation of Fishing Vessel Under the Influence: No member shall operate a fishing vessel on the waters of the Ceded Territory if either of the following applies:
1. The member is under the influence of intoxicating liquor or a controlled substance or combination thereof; or
  2. The member has an alcohol content of .90 percent or higher; or
  3. The intoxicant's effect on the member's manner, disposition, speech, muscular movement, general appearance, or behavior is apparent by observation.
- B.** Zero Tolerance Members under 21 Operating a Fishing Vessel Under the Influence: A member who is less than 21 years of age shall not operate a fishing vessel on the waters of the Ceded Territory if the member has any presence of alcohol within the member's body resulting from the consumption of intoxicating liquor.
- C.** Preliminary Chemical Breath Analysis: A duly authorized enforcement officer who has reasonable cause to believe that a member was operating a fishing vessel on the waters of the Ceded Territory and that by consumption of intoxicating liquor the member's ability to operate a vessel may have been affected or who has reasonable cause

to believe that a member under the age of 21 was operating a fishing vessel while having any bodily alcohol content, that officer may require the member to submit to a preliminary chemical breath analysis. The results of such analysis may be used as the basis to issue a citation or other discipline.

**D. Refusal to Submit Preliminary Chemical Breath Analysis:** A member who refuses to submit to a preliminary chemical breath analysis upon the request of an officer shall be subject to a civil remedial forfeiture action with a maximum fine of up to \$1,000.00.

## **SECTION V. DOCKSIDE INSPECTIONS**

**A.** Any vessel utilized for commercial fishing activities shall be inspected by duly authorized enforcement personnel at dockside every two (2) years. Proof of inspection shall be demonstrated by the affixing by enforcement personnel to the vessels outer hull a U.S. Coast Guard- approved Fishing Vessel Compliance decal.

## **SECTION VI. REQUIRED DECALS**

**A. Injury Placard:**

1. Each vessel must have posted in a highly visible location accessible to the crew a placard measuring at least 5 inches by 7 inches which reads:

Notice

Report of Injuries

United States law, 46 United States Code 100603, requires each seaman on a fishing vessel, fish processing vessel or fish tender vessel to notify the master (captain) or individual in charge of the vessel or other agent of the employer regarding any illness, disability, or injury suffered by the seaman when in service to the vessel not later than seven days after the date on which the illness, disability or injury arose.

**B. Discharge of Oil Prohibited:**

1. All vessels 26 feet and larger in length must have a placard of at least 5 by 8 inches, made of durable material affixed to a conspicuous place in each machinery space, or at the bilge and ballast pump control station which read the following:

Notice

Discharge of Oil Prohibited

The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the United States, or the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to or under the exclusive management authority of the United States, if such discharge causes a film or discoloration of the

surface of the water or causes a sludge or emulsion beneath the surface of the water. Violators are subject to substantial civil penalties and/or criminal sanctions including fines and imprisonment.

**C. Discharge of Plastics/Garbage Prohibited:**

1. All vessels 26 feet and larger in length must have a placard of at least 4 by 9 inches, made of durable material, with lettering at least 1/8 inch high and displayed in prominent locations and in sufficient numbers so that they can be read by the crew and passengers. The placard shall read as follows:

Notice

Discharge of Plastics/Garbage Prohibited (MARPOL):

The discharge of all garbage into the Great Lakes or their connecting or tributary waters is prohibited. A person who violates the above requirements is liable for civil penalty for each violation, and the criminal penalties of a class D felony.

**SECTION VII. ADDITIONAL PROVISIONS**

**A. It shall be criminal offense for any person to commit any of the following acts:**

1. Carry any firearms on the vessel.
2. Assault, resist, oppose, impede, threaten, bribe or attempt to bribe or interfere with an officer engaged in enforcing any provisions of regulations found within this Statute.
3. Violate any court order relating to the use of a vessel or fishing activity.
4. Violate sec.IV.A., IV.B. or IV.D.

**SECTION VIII. ENFORCEMENT**

**A. Boardings:**

1. To facilitate the boarding of vessels by the appropriate enforcement officer (U.S. Coast Guard or Tribal Conservation Enforcement Officer or State Officers) in the exercise of their authority, any vessel if underway and upon being hailed by the U. S. Coast Guard, Tribal Conservation Enforcement, or State Conservation Enforcement must stop immediately and lay to, or must maneuver in such a way to permit the boarding officer to come aboard. Failure to permit the Coast Guard or Tribal Conservation Enforcement Officer to board a vessel or refusal to comply will subject the operator or owner of the vessel to the penalties provided by law.

2. Coast Guard, Tribal, and State boarding vessels will be identified by their corresponding insignias and enforcement markings. The boarding officers from each agency will be dressed in the appropriate Coast Guard, Tribal or State uniforms. The boarding officer upon boarding the vessel will identify himself to the captain, owner or operator and explain his mission.

## **SECTION IX. PENALTIES**

**A.** Termination of Voyage: An Enforcement Officer may direct the captain, owner or operator of the vessel to immediately take reasonable steps necessary for the safety of individuals on board the vessel if the Enforcement Officer observes the vessel being operated in an unsafe manner and determines that an especially hazardous condition exists. The Enforcement Officer may terminate the voyage and instruct the captain, owner or operator of the vessel to return the vessel to a mooring, dock or shore until the hazardous condition is corrected. Hazardous conditions may include but are not limited to the following:

1. An insufficient type or number of lifesaving equipment onboard may include insufficient number of required PFD's, immersion suits, exposure suits or survival craft capacity.
2. Improperly maintained or non-operational PFD's, immersion suits, exposure suits or survival craft capacity.
3. An inoperable Emergency Position Indicating Radio Beacon (EPIRB).
4. Inoperable radio communication equipment (when required).
5. Inadequate fire fighting equipment on board.
6. Inoperable bilge system.
7. Intoxication of the captain (master) or individual in charge of the vessel.
8. A lack of adequate or operational navigation lights during periods of reduced visibility.
9. Flooding or uncontrolled leakage in any space.

**B.** Vessel Use Restriction: No vessel may be used for commercial fishing, which has been found to violate any provision of this Statute until its owner or operator provides proper documentation to Tribal Court that the violation has been remedied. The Tribal Court may request that the vessel pass a dockside inspection to confirm the correction.

**C. Penalties:**

1. Violation of any applicable provisions found in sec. III. *Equipment*- up to \$150.00. This monetary fine may be in addition the *Termination of Voyage* or any *Vessel Use Restrictions* that may be applied as stated above.
2. Failure to Display Required Decals- up to \$75.00 per decal.
3. Failure to Report an Injury- up to \$150.00
4. Discharge of oil- up to \$500.00
5. Discharge of Plastics/Garbage- up to \$500.00
6. Failure to permit the Coast Guard or Tribal Conservation Enforcement to board a vessel or refusal to comply with their directives - up to \$600.00
7. Alcohol/Controlled Substance Related Violations:
  - a. Operation of Fishing Vessel Under the Influence - Offender may be sentenced to a jail term not to exceed 180 days or to a fine not to exceed \$2,000.00 or suspension of his/her commercial fishing license or to all or a combination thereof.
  - b. Members under 21 Operating a Fishing Vessel Under the Influence - Members under the age 21 who have not exceed the alcohol percentage in sec.IV.A.2 may be sentenced to a jail term not to exceed 30 days or a fine not to exceed \$1,000.00 or suspension of his/her commercial fishing license or to all or a combination thereof.
  - c. Refusal to Submit Preliminary Chemical Breath Analysis- a maximum fine of up to \$1000.00.
8. Any other violations of this Statute not specifically mention in above- up to \$400.

**D. Arrest:**

1. A Conservation Enforcement Officer or any other duly authorized enforcement officer may arrest a member without a warrant when the officer has reasonable cause to believe the member was the operator of a fishing vessel at the time it was involved in an accident and that member was in violation of sec. IV, A or B.
2. A Conservation Enforcement Officer or any other duly authorized

enforcement officer may arrest a member without a warrant any person committing in his/her presence or view a violation of sec. VII.

## **SECTION X. EXEMPTIONS**

**A.** Exemption Procedure: Tribal members may request exemptions from these and the parallel U.S. Coast Guard commercial fishing safety rules and regulations by submitting a written request to the U. S. Coast Guard District Office or the Little Traverse Bay Bands of Odawa Indians Natural Resources Commission with joint authority in the waters where the vessel will be operating. The request must specify the reasons for the request in detail. Requests will be evaluated using the following criteria:

1. Good cause exists for granting the exemption; and
2. The safety of the vessel and those on board will not be adversely affected.

**B.** Exemption Denial or Approval Letter: The exemption request will be denied or approved in writing. Any copy of any exemption approved the Little Traverse Bay Bands of Odawa Indians shall be forwarded to the USCG. If approved, the member will receive an exemption letter specifying the terms and conditions of the exemption. This letter will then be required to be on the vessel to which the exemption applies at all times.

**C.** Types of Exemptions:

1. Specific Exemption: an exemption for an individual commercial fishing vessel.
2. Class Exemption: an exemption for a class or fleet of commercial fishing industry vessels.

**D.** Right of Appeal: Any person directly affected by a decision or action taken under this part may appeal in accordance with federal rules and regulations, or to LTBB Tribal Court in the event LTBB and the USCG enter into an agreement granting LTBB authority over such exemptions.

**E.** Rescinding of an Exemption Letter: Exemptions granted may be rescinded by the U.S. Coast Guard if it is subsequently determined that the safety of the vessel and those onboard is adversely affected.

**F.** Traditional Craft:

Traditional Craft shall be exempt from all provisions and requirements except personal flotation devices in this statute provided that the Traditional Craft is not used as a supplement for a powered vessel and the captain and every crewmember on board

during any commercial fishing operations have provided the Natural Resources Commission with signed and witnessed statements indicating the following: "I understand the inherent risk to life and limb while engaging in fishing operations and I have chosen of my own free will to fish from a Traditional Craft with no requirements for modern safety devices with the knowledge that these requirements were enacted in an attempt to decrease the potential of death, personal injury and or property damage that may be associated with the high risk activity of commercial fishing." This exemption requires no application and is effective upon receipt of the appropriate signed statements and cannot be revoked.

**SECTION XI. LIMITATIONS**

Nothing within this Statute shall be constructed to limit the authority of the Tribal Council from adopting more stringent commercial fishing vessel safety regulations than those set forth in this Statute.

**SECTION XII. SAVINGS CLAUSE**

In the event that any phrase, part, provision, paragraph, subsection or section of this Statute found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

**SECTION XIII. EFFECTIVE DATE**

This Statute shall take effect thirty (30) days from the day of its enactment by Tribal Council

**Certification**

As Tribal Chairman and Tribal Secretary, the undersigned certify that this Statute was duly enacted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on July 25, 2004 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 0 absent as recorded by this roll call.

	In Favor	Opposed	Abstained	Absent
Regina Gasco Bentley	<u>  x  </u>	_____	_____	_____
Frank Ettawageshik	<u>  x  </u>	_____	_____	_____
Frederick Harrington, Jr.	<u>  x  </u>	_____	_____	_____
Beatrice Law	<u>  x  </u>	_____	_____	_____
Dexter McNamara	<u>  x  </u>	_____	_____	_____
Rita Shananaquet	<u>  x  </u>	_____	_____	_____
Alice Yellowbank	<u>  x  </u>	_____	_____	_____

Date: July 25, 2004

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Frank Ettawageshik, Tribal Chairman

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Dexter McNamara, Tribal Secretary