RETURNING THE RICE TO THE WILD: REVITALIZING WILD RICE IN THE GREAT LAKES REGION THROUGH INDIGENOUS KNOWLEDGE GOVERNANCE AND ESTABLISHING A GEOGRAPHICAL INDICATION

Sara Desmarais

CONTENTS

This season—the Anishinaabeg wild rice moon Manoominike Giizis—is the season of a harvest, a ceremony, and a way of life … Far away, a combine is harvesting paddy-grown wild rice somewhere in California, some biopirates are hunting for genes, and consumers are eating a very different food. The Anishinaabeg would not trade. In the end, this rice tastes like a lake, and that taste cannot be replicated.[1]

—Winona LaDuke

I INTRODUCTION

Known as the State Grain of Minnesota,[2] it is worth noting that wild rice (*Zizania palustris*) is not technically a variety of rice; rather, it is an aquatic grass seed native to North America's Great Lakes region (GLR), naturally thriving in shallow water and small lake

* BA.H., J.D. Candidate 2019. Desmarais is a third year law student at the Bora Laskin Faculty of Law. She graduated from Trent University with a Ba.H in Environmental Studies and an Emphasis in Policy and Law. She is completing her Integrated Practice Curriculum placement with the Canadian Environmental Law Association.

1. W LaDuke, *Recovering the Sacred: The Power of Naming and Claiming* (Cambridge, MA: South End Press, 2005) at 190.

2. "State Grain, Wild Rice," (2018), online: Office of the Minnesota Secretary of State Steve Simon <https://www.sos.state.mn.us/about-minnesota/state-symbols/state-grain-wild-rice/>

systems. Also known as manoomin (the "good berry") in Ojibwe,[3] wild rice has served as a traditional staple food for the Anishinaabeg people residing in the region for centuries.[4] Wild rice also serves as an indicator of a healthy aquatic ecosystem and source of food for a variety of wildlife, revealing the significance of this aquatic grain to the GLR.

Traditionally thriving in what is now Ontario, Manitoba, Minnesota, and Wisconsin, the only indigenous grain in North America has since been conquered and domesticated. Today, most wild rice is cultivated not in natural watersheds of the Great Lakes basin but in flooded farm fields on the west coast in California. Interestingly, the California Wild Rice Advisory Board even acknowledges that this sacred grain has been "domesticated", noting that "although California has taken some of the 'wild' out of wild rice, California farmers have made it possible for millions of people to enjoy this once rare product."[5] Industrial pollution and urbanization have severely impacted this sacred seed's traditional habitat, and the seed itself has become a profitable crop in a region of the continent where it does not appear in the wild.

Despite wild rice's exploitation, many Anishinaabeg communities both within Canada and the United States are fighting to maintain the traditional habitat of wild rice and continue to harvest it traditionally, thus ensuring that manoomin remains wild. When comparing the "wild" rice from California to the grains grown naturally in the GLR, the quality and flavour of the cultivated crop pale in comparison to a wild crop.[6] Despite the difference in quality, as well as the impact on the environment through the cultivation process, the crops grown in California that have been hybridized and mechanically harvested continue to be presented to consumers as "wild" rice, when there is nothing wild about it.

Given the cultural and ecological significance of wild rice in the GLR, the protection of the roots of this sacred grain is essential, and this paper explores how Western intellectual property law can provide a solution to protect the legacy of wild rice. This paper argues that through the adoption of a geographical indication (GI) for wild rice in the GLR, combined with Indigenous Knowledge Governance of this grain, the legacy as well as the natural habitat of wild rice can be revitalized by recognizing the value of the grain's cultural and ecological origin.

To understand how wild rice would benefit from a GI, section II provides an overview of what makes this grain so unique by exploring the traditional practices surrounding wild rice and examining the process of domesticating the grain and how it became a crop in California. Section III discusses the concept of GIs and what the implementation of this intellectual property right would entail. With this background information provided, the paper will then, in section IV, apply the notion of GIs to wild rice, assessing the strengths and weaknesses of

---

3. Great Lakes Indian Fish and Wildlife Commission, "Manoomin ~ Wild Rice: The Good Berry," online: <http://www.glifwc.org/publications/pdf/Goodberry_Brochure.pdf>. Note: This paper focuses on the relationship between wild rice and Anishinaabeg peoples generally. I make reference to the Ojibwe within this paper, who are one of the distinct groups of people who make up the Anishinaabeg. It is important to note that not all Anishinaabeg groups who harvest wild rice identify as Ojibwe peoples—it is simply the case that many sources and discussions surrounding wild rice come from an Ojibwe perspective.

4. TA Steeves, "Wild Rice: Indian Food and a Modern Delicacy" (1952) 6:2 Economic Botany 107 at 117-118.

5. California Wild Rice Advisory Board, "The California Wild Rice Story" (2015), online: <http://cawildrice.com>

6. *Supra* note 1.

this approach, while also envisioning what this GI would look like when taking Traditional Knowledge surrounding wild rice into consideration.

Before delving into the discussion of wild rice and the potential of establishing a GI to protect its ecological and cultural integrity, it is essential to explain the concept of Traditional Knowledge.[7] Traditional Knowledge is a collectively held knowledge that "is embedded in the local culture of an indigenous community. This knowledge constitutes crucial elements of the holistic approach towards both the natural and man-made livelihood of these principles."[8] Unlike Western knowledge, this knowledge is not written down; it is shared and learned orally and through practice.[9] Being spiritual in origin, "this knowledge might come to us from relationships, experiences, story-telling, dreaming, participating in ceremonies, from the Elders, the oral tradition, experimentation, observation, from our children, or from teachers in the plant and animal world."[10]

Although this knowledge is grounded in "tradition" and is passed from one generation to another, Traditional Knowledge is not stagnant: "Traditional Knowledge systems extend into the present, and are alive and constantly adapted in order to remain relevant to contemporary indigenous life."[11] Simpson emphasizes that Traditional Knowledge becomes a valuable tool for Indigenous communities when dealing with contemporary issues:

> As more and more Aboriginal Peoples look to their traditions and to their knowledge for the strength and courage to meet the demands of contemporary society, the process of cultural revitalization will be recorded in our oral traditions and will become part of our Indigenous knowledge, just as our experiences with the process of colonization, assimilation, and colonialism is part of our body of knowledge.[12]

With Traditional Knowledge being community based, it is a distinct, evolving knowledge that is unique to every community—there is no one-size-fits-all Traditional Knowledge

---

7. Note: Throughout this paper, I use the term "Traditional Knowledge"; however, there are other commonly used terms/forms of knowledge, such as "Indigenous Knowledge." Conversely, when I use the term "Indigenous Knowledge Governance" it is referring to a discussion of how Indigenous communities have the right to determine and govern how their Traditional Knowledge is shared and used.

8. HM Haugen, "Traditional Knowledge and Human Rights" (2005) 8:5 Journal of World Intellectual Property 663 at 665.

9. *Ibid.*

10. L Simpson, "Aboriginal Peoples and Knowledge: Decolonizing Our Processes" (2001) 21:1 Canadian Journal of Native Studies 137 at 142.

11. E Simon et al., "Traditional Knowledge" (2016) at 1, online: Simon Fraser University <https://www.sfu.ca/ipinch/sites/default/files/resources/fact_sheets/ipinch_tk_factsheet_march2016_final_revised.pdf>. See this source generally for a further explanation of Traditional Knowledge and some of the challenges with using and protecting Traditional Knowledge.

12. Simpson, *supra* note 10 at 143–144.

blanketing over all Indigenous communities. Therefore, the utilization and governance of this Traditional Knowledge is community specific.[13]

By exploring the potential of GIs and their utility in protecting agricultural products, this paper will explore how intellectual property regimes and Traditional Knowledge can co-exist in the protection and recognition of one of North America's most significant plant species.

II WILD RICE

As mentioned previously, wild rice is an aquatic grass native to North America. Specifically, there are three North American species of wild rice: *Z. palustris* (which is found in the GLR in Canada and the United States and is harvested for food), *Z. aquatica* (which grows in the St. Lawrence River and the eastern and southeastern regions of the United States in coastal areas and is not harvested for food), *and Z. texana* (which grows in a small region of Texas and is not harvested for food).[14] For the purposes of this paper, "wild rice" refers to *Z. palustris* since this is the variety of wild rice that is actually harvested as food for people and is native to the GLR.

This annual plant thrives in rivers and lakes with soft organic bottoms and an optimum depth ranging from 0.3 to 0.6 metres deep.[15] Wild rice has a key role within its ecosystem: "wild rice provides important feeding and resting areas for waterfowl on their seasonal migration and is utilized by a variety of mammals, fish and invertebrates."[16] Furthermore, wild rice helps stabilize loose soils, serves as a natural windbreak, and improves water quality by countering "the effects of nutrient loading and the potential increases in algal growth and lake turbidity."[17] As a keystone species, the presence of wild rice plants in a lake or shallow water system speaks volumes of that water system's health.[18]

However, the benefits of wild rice are not limited to its ecological significance; wild rice has a long history of benefiting human beings as well. Wild rice has served as a staple food for the

---

13. J de Beer & D Dylan, "Traditional Knowledge Governance Challenges in Canada" in M. Rimmer, ed, *Research Handbook on Indigenous Intellectual Property* (Edward Elgar, 2015) 1 at 18: ("traditional knowledge governance *is* an inherently local and culturally specific matter. The locality and specificity, however, is to the Aboriginal community concerned and *not* to the province or territory in which the People happen to reside").

14. EA Oelke, "Wild Rice: Domestication of a Native North American Genus," in J Janick and JE Simon eds, *New crops* (Wiley, New York: Purdue University, 1993) <https://hort.purdue.edu/newcrop/proceedings1993/V2-235.html>

15. AD Drewes & J Silbernagel, "Uncovering the Spatial Dynamics of Wild Rice Lakes, Harvesters and Management across Great Lakes Landscapes for Shared Regional Conservation," (2012) 229 Ecological Modelling 97 at 98.

16. *Ibid.*

17. Minnesota Department of Natural Resources, "Natural Wild Rice in Minnesota: A Wild Rice Study Document Submitted to the Minnesota Legislature by the Minnesota Department of Natural Resources February 15, 2008" (2008) at 9–10, online: Minnesota Department of Natural Resources <http://files.dnr.state.mn.us/fish_wildlife/wildlife/shallowlakes/natural-wild-rice-in-minnesota.pdf> [MDNR].

18. See J Kimball, "Ecological Importance of Wild Rice" (2018), online: University of Minnesota <http://wildricebreedingandgenetics.umn.edu/education-outreach/ecological-importance-wild-rice>: "[T]he overall health of many Great Lakes ecosystems can be gauged by the health of the northern wild rice populations in them."

Anishinaabeg in the GLR (both in the United States and Canada) for centuries, providing an abundance of nutrients: "wild rice is a centerpiece of our community's sustenance … [it] offers amino acids, vitamins, fiber, and other essential elements, making it one of the most nutritious grains known to exist."[19] In addition to its nutritional value, wild rice has a long history of cultural, spiritual, and even economic significance for Anishinaabeg people, being hand harvested in the GLR for over 2,000 years.[20]

According to the oral histories of the Anishinaabeg, wild rice, or the "good berry," is what led them to settle in the region surrounding the Great Lakes:

> Their Migration Story describes how they undertook a westward migration from the eastern coast of North America. Tribal prophets had foretold that this migration would continue until the Ojibwe people found "the food that grows on water." That food was wild rice, known as manoomin, and is revered to this day by the Ojibwe as a special gift from the Creator.[21]

Winona LaDuke notes the legacy of her ancestors seeking the food that grows on water: "The Anishinaabeg moved over rivers, streams, and lakes to the GLR, where today a hundred or more reservations and reserves on both sides of the US–Canada border mark *Anishinaabe Akiing*, the land of the people."[22]

The traditional harvesting of wild rice in the fall is a sacred practice for the Anishinaabeg and is still practised by many Anishinaabeg communities.[23] Kyle Whyte, who identifies as Potawatomi (another group of Anishinaabeg peoples), notes that the harvesting of wild rice is an important responsibility for the Anishinaabeg to uphold:

> Today, stewarding and guarding manoomin involves many responsibilities. There are responsibilities for teaching younger people capacities to respect, care for, harvest, understand, and prepare manoomin; responsibilities on the part of younger people to learn the skills and teachings regarding the plant and to participate actively in family life; responsibilities associated with conducting and participating (appropriately) in ceremonies that honor the close connections between manoomin and Anishinaabe society; responsibilities of committees, such as "ricing committees," that are accountable to the community for maintaining flourishing subsistence economies.[24]

The responsibility that Whyte speaks of is reciprocal—the wild rice has a responsibility to care for the Anishinaabeg as well: "Manoomin is responsible for nourishing humans. Manoomin is … one of the sources that bring people together into the relationships of family, friendships, trust and so on. Manoomin motivates these things, which is why Anishinaabe

---

19. LaDuke, *supra* note 1 at 168.

20. MDNR, *supra* note 17 at 7.

21. *Ibid.*

22. LaDuke, *supra* note 1 at 168.

23. KP Whyte, "Conveners of Responsibilities," online: Center for Humans and Nature <https://www.humansandnature.org/earth-ethic-kyle-powys-whyte>

24. *Ibid.*

people respect it as a living being with a spiritual character."[25] This relationship of co-stewardship makes the harvesting of wild rice crucial to ensure that wild rice is able to renew itself every year in the GLR.

James Whetung of Curve Lake First Nation has spent a considerable amount of time revitalizing wild rice in Pigeon Lake, near Peterborough, Ontario. He re-seeds and harvests the lake, and through his company, Black Duck Wild Rice, he educates people—members of the Indigenous community, schools, and other community organizations—on the traditional method of harvesting wild rice, sharing teachings and Traditional Knowledge of the land and the water.[26] The traditional method of collecting wild rice involves using canoes (although today a variety of boats are used) being navigated through the wild rice stands so that the ripe rice seeds could be knocked off their stalks into the boat with a stick. Of course, this results in some rice falling into the water. Not collecting every seed is significant, as this ensures that the stock of wild rice will replenish itself with the seeds that germinate on the lake bottom for the next harvesting season.[27] Failure to follow this practice of sustainable harvesting and taking the entire seed supply would result in disciplinary action: "Individuals who did not follow the guidance of the elders in regards to where and when to harvest were likely to have their canoes taken from them and any rice they had gathered, dumped on the lake bottom."[28]

The process of harvesting the wild rice does not end with the canoes gliding through the shallow waters. Once the gathered rice is brought to shore, the rice then needs to dry in the sun and further dry over a slow fire in a kettle before being winnowed to separate the rice seeds from their hulls.[29] While at this point the rice is ready to be cooked and consumed, acknowledging its sacredness through ceremony and a feast in thanksgiving concludes the traditional harvesting of wild rice.[30]

Despite the tedious process to gather wild rice, the harvesting season is a special time for the community to come together, even though the number of ricers in Anishinaabeg communities has diminished over time due to a plethora of reasons (i.e., job obligations in today's society or economic pressures).[31] Today, the harvesting of wild rice can help provide a profit for Anishinaabeg ricers, however, this profit is not what drives community members to continue ricing: "Whether they're processing for sale, for tribal members in schools and other community programs, or for their own consumption, for these men and many others in the community, locally processed, lake-harvested, Native rice is about doing it right, about community pride and the essence of being Anishinaabeg."[32]

---

25. *Ibid*.

26. "Indian & Cowboy," online podcast, *Stories from the Land: James Whetung* (May 8, 2017), online: <http://indianandcowboy.ca/podcasts/stories-from-the-land-james-whetung/> at 00:20:25: "[W]e all own [wild rice], and we are all responsible for it." See generally N Matsumoto, "Food Politics: How Wild Rice Is helping This Native American Tribe Restore its Health—and Heritage" (October 7, 2017), online: Nancy Matsumoto, Writer and Editor (blog) <https://nancymatsumoto.com/articles/2017/10/23/food-politics-how-wild-rice-is-helping-this-native-american-tribe-restore-its-healthand-its-heritage>

27. Oelke, *supra* note 14 at 100.

28. *Ibid*.

29. B Coleman, "The Ojibwa and the Wild Rice Problem" (1953) 26:3 Anthropological Quarterly 79 at 80–81.

30. *Ibid* at 81.

31. LaDuke, *supra* note 1 at 168.

32. LaDuke, *supra* note 1 at 170.

Although the number of traditional ricers has declined, the consumption of wild rice is more popular than ever in North America. Wild rice is no longer wild, nor is it mainly found in natural waterways surrounding the Great Lakes; it has been commodified and exploited over the last 60 years: "Since about 1950, wild rice has been in the process of becoming a domesticated crop in the United States and is now being grown commercially in both the United States and Canada … In the United States, wild rice is being produced commercially as a 'domesticated' field crop in diked, flooded fields. Minnesota and California account for most of the hectarage …"[33]

These flooded fields, or "wild" rice paddies, drastically increased the amount of rice being produced and have permanently altered the market for traditional wild rice: "Like other small farmers faced with competition from agribusiness, lake-harvested rice could no longer effectively compete in price with the corporations' mass-manufactured paddy crop."[34] The state of California in particular has homed in on the exploitation and mass production of wild rice, out-producing Minnesota: "Starting from zero pounds in 1976, just 30 years later California harvested an estimated 11 million finished pounds with acreage expanding to over 16,000 acres—making California the largest producer of Wild Rice in the world."[35]

Wild rice has gone from naturally thriving in the plentiful lakes and rivers surrounding the Great Lakes to being mass produced in flooded fields within a state that frequently has water shortages and droughts.[36] Agribusinesses in California have taken manoomin out of the wild and have gone as far as to alter wild rice and patent it.[37] NorCal Wild Rice's patent number 5955648A essentially hybridizes wild rice seed so that the male rice seeds are sterile, which increases the yield of wild rice production, thus maximizing profits.[38]

The approach to cultivating and controlling wild rice is completely contrary to the Traditional Knowledge and practices of the Anishinaabeg surrounding wild rice: "While our communities for thousands of years have prayed each year for fruitfulness and given thanks for the bountiful harvests, genetic manipulations and the introduction of sterile seeds is the spiritual opposite."[39]

While traditional wild rice stands in the GLR are ecologically significant and provide not only human sustenance but sustenance for a variety of mammals, birds, and insects, the domesticated wild rice in California is a commodity and therefore too valuable to share with

---

33. Oelke, *supra* note 14. Oelke notes that the Canadian approach to commercialized wild rice production typically occurs on lakes leased from provincial governments.

34. LaDuke, *supra* note 1 at 172.

35. "The California Wild Rice Story," *supra* note 5 at para 5.

36. LaDuke, *supra* note 1 at 172.

37. "Hybrid Wild Rice Production Utilizing Cytoplasmic-Genetic Male Sterility System," US Patent No 5955648, September 21, 1999.

38. *Ibid.*

39. LaDuke, *supra* note 1 at 178.

non-humans.[40] An article from 1994 explored how farmers in California can "protect" their wild rice crop from hungry blackbirds.[41] Most of the farmers surveyed for the article reported a 1–10 per cent yield loss due to blackbird problems, and when asked what they would like to see researched in terms of blackbird problems, 86 per cent of the farmers "wanted research in the area of population control, including electrocution, biological pathogens, trapping, birth control, nest destruction, improved shot loads, and toxicants."[42] Desiring control methods that result in the deaths of hungry birds goes against the Anishinaabeg view of the good berry that is wild rice, and is, in fact, antithetical to the very notion of something with the word "wild" in its name.

The commodification and domestication of wild rice are not the only human-based factors that are compromising the well-being and good nature of wild rice. There are a number of human-influenced factors that are threatening the ecosystems where wild rice grows (whether it is actively being harvested or not), such as hydrology and water levels altered by human activities, introduction of invasive species, and climate change.[43] The draining of wetlands to make room for farmland and development, as well as the construction of hydroelectric dams, are contributing to the loss of Canadian and American wild rice stands: "In Canada, the Fort Alexander Indians at Lac DuBois near the mouth of the Winnipeg River must now paddle 50 miles upstream, portaging around hydroelectric dams, to get to rice beds. Stanjigoming Bay on Rainy Lake in Ontario was also a prime ricing location until the Fort Frances Dam was installed for the benefit of the lumber companies."[44]

Cottagers and settlers with waterfront properties on both sides of the border are also contributing to the loss of naturally occurring wild rice. For instance, the Department of Natural Resources in Minnesota "has seen a doubling of requests by shoreland owners for permits to remove wild rice. Increased development along shallow lakes, and increased motorized recreational use on lakes that harbour shallow bays of wild rice will continue to reduce wild rice habitat."[45] Ontario's Pigeon Lake, which is located near Curve Lake First Nation, has been the subject of controversy for several years. In 2014, a website call "Save Pigeon Lake" emerged—but just what did Pigeon Lake need saving from? The answer is the traditional harvesting of wild rice.[46] A number of cottagers have taken issue with the wild rice

---

40. Matsumoto, *supra* note 26. James Whetung discusses the importance of sharing the bounty of wild rice with the other species residing on the lake: "'This is a garden and we're all part of it,' he adds. 'If we don't pick the rice that family of muskrats will.' Coexisting with other wild rice eaters is to Whetung … just part of a shared life on his land's lakes and rivers." This co-existing and sharing of wild rice can be directly juxtaposed with the approach to cultivating wild rice in paddies. For instance, California farmers implement pest control mechanisms to prevent wildlife, such as birds, from enjoying the grains of wild rice. Pest control is implemented to maximize the amount of rice being cultivated purely for profit. Unlike locations like Pigeon Lake (where Whetung harvests wild rice), "non-human" consumers of wild rice (i.e., birds) are not welcome in the rice paddies of California.

41. DB Marcum & WP Gorenzel, "Grower Practices for Blackbird Control in Wild Rice in California" (1994), Proceedings of the Sixteenth Vertebrate Pest Conference 243. This paper involved a survey of twenty-nine people, representing 71 per cent of California's wild rice growers in 1994.

42. *Ibid* at 245 and 247.

43. Oelke, *supra* note 14.

44. LaDuke, *supra* note 1 at 184–185.

45. Oelke, *supra* note 14.

46. "Wild Rice Concerns on Pigeon Lake" (2017), online: Save Pigeon Lake <http://savepigeonlake.com>

that has returned to the lake because it is impacting their recreational use of the lake. Some cottagers and homeowners have ripped up some of the wild rice, unbeknownst to the nearby First Nations community, who later came together in canoes to mourn the sacred seeds that were ripped out of Pigeon Lake.[47]

Events and Western perspectives within both Canada and the United States have taken a toll on the health of wild rice, and as a result the health of the connection between Anishinaabeg and manoomin has declined. Without action, the future of wild rice in the GLR is murky, like the waters where wild rice will not take root and grow.

III GEOGRAPHICAL INDICATIONS

One approach to addressing the threats to the integrity of wild rice is through intellectual property (IP) regimes. In particular, geographical indications, or GIs, could provide an interesting approach to protecting wild rice in the GLR. Before applying GIs to wild rice, it is essential to understand what GIs are and how they are approached in Canada and the United States, since the GLR falls across the border of these two countries.

Article 22(1) of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* defines GIs as "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin."[48] Therefore, GIs seek to protect goods that have certain characteristics or qualities associated with a specific region.

According to the World Intellectual Property Organization (WIPO), a GI is not the same as a trademark:

> [W]hereas a trademark identifies the enterprise which offers certain products or services on the market, a geographical indication identifies a geographical area in which one or several enterprises are located which produce the kind of product for which the geographical indication is used. Thus, there is no "owner" of a geographical indication in the sense that one person or enterprise can exclude other persons or enterprises from the use of a geographical indication, but each and every enterprise which is located in the area to which the geographical indication refers has the right to use the said indication for the products originating in the said area, but possibly subject to compliance with certain quality requirements …[49]

Essentially, by attaching a GI to a good, there is a reputation associated with a particular geographic region, and this indication prevents unauthorized users with a substandard

---

47. J Nyznik, "Prayers, Song for Wild Rice Pulled from Lake," *The Peterborough Examiner* (July 25, 2016), online: <http://www.thepeterboroughexaminer.com/2016/07/25/prayers-song-for-wild-rice-pulled-from-lake>

48. *Agreement on Trade-Related Aspects of Intellectual Property Rights*, April 15, 1994, 1869 UNTS 299: 33 ILM 1197 at Art 22 [TRIPS].

49. World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Policy, Law and Use*, 2nd ed (Switzerland: WIPO, 2008) at 121 [WIPO].

product from passing off that product under the premise that it shares that region's reputation of quality.

According to Teshager Dagne, "[t]he place-based nature of GIs rights allows Indigenous Peoples and Local Communities (ILCs) to establish collective rights over traditional resources in a defined geographical area, without a need to identify particular rights holders."[50] Additionally, GIs are "'publicly-oriented' rights that have particular relevance for preserving cultural heritage and conserving agricultural systems for multiple benefits."[51] The use of GIs has been popular in the European Union (EU) for quite some time, with the indications largely being associated with wine.[52]

Meanwhile, the United States views GIs differently from that of the EU and does not distinguish GIs as being separate from trademarks:

> It protects GIs through specific categories of the trademark regime: certification marks, collective marks and, in some cases, ordinary trademarks. GIs are protected through certification marks and collective marks in the United States as an exception to the general rule that individual trademarks must not be geographically descriptive without a showing of acquired distinctiveness.[53]

The United States Patent and Trademark Office defines a certification mark as

> [A]ny word, name, symbol, or device used by a party or parties other than the owner of the mark to certify some aspect of the third parties' goods/services. There are three types of certification marks used to indicate: 1) regional or other origin; 2) material, mode of manufacture, quality, accuracy or other characteristics of the goods/services; or 3) that the work or labor on the goods/services was performed by a member of a union or other organization.[54]

Meanwhile, collective marks are:

> [A] mark adopted by a "collective" (i.e., an association, union, cooperative, fraternal organization, or other organized collective group) for use only by its members, who in turn use the mark to identify their goods or services and distinguish them from those of non-members. The "collective" itself neither sells goods nor performs services under a collective trademark or collective service mark, but the collective may advertise or otherwise promote the goods or services sold or rendered by its members under the mark.[55]

---

50. TW Dagne, "The Identity of Geographical Indications and Their Relation to Traditional Knowledge in Intellectual Property Law" (2014) IDEA 54:2 255 at 264.

51. *Ibid* at 266–267.

52. TW Dagne, "Law and Policy on Intellectual Property, Traditional Knowledge and Development: Legally Protecting Creativity and Collective Rights in Traditional Knowledge Based Agricultural Products through Geographical Indications" (2010) 11:1 Estey Centre Journal of International Law and Trade Policy 68 at 79 [Dagne, "Law and Policy"].

53. *Ibid* at 81.

54. United States Patent and Trademark Office, "Geographical Indication Protection in the United States," online: <https://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi_system.pdf>

55. *Ibid*.

Finally for this paper, it is crucial to understand Canada's approach to implementing GIs. With Canada signing the Comprehensive Economic and Trade Agreement (CETA) in 2016, Canada's approach toward GIs will expand, considering that prior to CETA Canada's GI protections only extended to wines and spirits.[56] The signing of CETA has resulted in amendments to the *Trade-marks Act*, such as replacing the definition of geographical indication to read as follows:

> [G]eographical indication means an indication that identifies a wine or spirit, or an agricultural product or food of a category set out in the schedule, as originating in the territory of a WTO Member, or a region or locality of that territory, if a quality, reputation or other characteristic of the wine or spirit or the agricultural product or food is essentially attributable to its geographical origin.[57]

This alteration of the *Trade-marks Act* in Canada provides more opportunities for a variety of Canadian goods, such as wild rice, for example, to gain protection based on their quality, reputation, or other characteristic associated with its geographical origin. Despite the amendments to the *Trade-marks Act* that came into force on September 21, 2017,[58] there have not been any new Canadian GIs registered, so the existing GIs concern winery regions in Ontario and British Columbia and Canadian whiskey.[59] Interestingly, these amendments not only apply to the signing of CETA, but also to the *Canada–Korea Economic Growth and Prosperity Act*. Further, it raises "the possibility for any country to protect its GIs upon application to the designated minister. CETA itself opens the possibility for Canadian producers and associations to protect equivalent Canadian designations in Europe."[60] A GI for GLR wild rice would be appealing to many consumers, who are increasingly concerned about the origins of the food on their plate, because it would provide transparency about the region and harvesting practices for the wild rice.[61]

---

56. DGC Glover, T Qureshi, & J Johnson, "Cheese, Olives and Other Agricultural Products to Get Geographical Indication Protection under CETA," (November 11, 2016), online (blog): <https://www.canadiantechlawblog.com/2016/11/11/cheese-olives-and-other-agricultural-products-to-get-geographical-indication-protection-under-ceta/>.

57. Bill C-30, *An Act to implement the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States and to provide for certain other measures, 1st Sess, 42nd Parl, 2017* at para 60.

58. C Wilson, "Say 'Cheese' . . . but Not 'Taleggio Cheese': CETA's Impact on Geographical Indications in Canada" (October 2017), online: Norton Rose Fulbright (blog): <http://www.nortonrosefulbright.com/files/ca-say-cheesebut-not-taleggio-cheese-cetas-impact-on-geographical-indications-in-canada-157820.PDF>

59. Canadian Intellectual Property Office, "List of Geographical Indications" (August 12, 2016), online: Government of Canada <http://www.ic.gc.ca/cipo/listgiws.nsf/gimenu-eng?readform&sort=region&order=CA>

60. Wilson, *supra* note 58. See also *surpa* note 59, which shows that there is a registered GI for "Icheon Rice" from Korea, showing that there is opportunity to register a GI for wild "rice" (which, as previously noted, is technically a cereal grain and not a type of rice).

61. R Watkin, "Placing Canadian Geographical Indications on the Map" (2018) 30:2 IPJ 271 at 282. ("Interest in origin-specific foods has been motivated by a reaction against the standardization of food products brought about by globalization. Food initiatives, such as the '100-mile diet' and the 'slow food' and 'farm-to-fork' movements have increased the demand for locally produced agricultural products.")

For Anishinaabeg communities living in the GLR, obtaining a GI for naturally cultivated wild rice would protect it from being exploited by corporations (like NorCal) seeking to genetically engineer and further patent wild rice. This is essential to preserving the very nature of wild rice: "To change wild rice is to change the Ojibwe. It is an integral part of their culture, diet, and spirituality. Wild rice is a gift from the Creator, and the Ojibwe do not think that it should be tampered with; they believe that no one has the right to change the gift the Creator has given them."[62] Pursuing a GI for wild rice would allow the Anishinaabeg communities to determine what qualities are required for wild rice to use this GI.

However, the implementation of a GI is not without challenges. As I will discuss in section IV, there are a number of issues in terms of legal formalities and incompatibility with Indigenous perspectives.

IV APPLYING GEOGRAPHICAL INDICATORS TO WILD RICE

The fact that GIs protect goods like agricultural goods according to a quality, reputation, or other characteristic that is derived from its place of geographical origin makes this IP regime attractive for wild rice—especially when taking Traditional Knowledge and its ecological significance into account. By applying the principles within Article 22(1) of TRIPS, we can get a general idea of what a GI for wild rice could look like.

First, the GI would consist of wild rice (*Z. palustris*), which naturally grows in the GLR. Because this paper is examining how GIs could help revitalize wild rice ecosystems, it should be noted that by "naturally grows" I mean that it is not cultivated in a rice paddy. This distinction is important, since there are rice paddies in Minnesota, as mentioned previously. By having this requirement for it to be grown in a natural lake, river, or wetland, there is a definitive characteristic about the rice. By allowing it to grow in these environments, it is living up to its name of "wild" rice. Furthermore, wild rice is typically associated with the GLR, and it is something harvested from lakes—not farm fields.[63] When wild rice is harvested from a lake, it is *typically* harvested in a more traditional manner and in accordance with Anishinaabeg traditional practices.[64] The harvesting practices for rice paddies are not in line with an ecologically friendly process.[65] So, based on this break down, a GI for GLR wild rice would be identifiable by its quality, reputation, *and* characteristic (based on specific natural cultivation).

---

62. J Siebert & G Johnson, "Should We Genetically Engineer Wild Rice?" at 71, online: Minds at UW <https://minds.wisconsin.edu/bitstream/handle/1793/75918/Should%20We%20Genetically%20Engineer%20Wild%20Rice%20by%20Josef%20Siebert.pdf?sequence=10>

63. See LaDuke, *supra* note 1 at 173. See also the American case *Wabizii v Busch Agricultural Resources* from 1988 for a lawsuit filed against Busch Agricultural Resources for false and misleading advertising. Their California-grown paddy product, "Onamia Wild Rice," was disguised as "authentic" Minnesota lake rice.

64. It should be noted that airboats with skimmers can be used to collect wild rice; not everyone is going out in a canoe with a stick to knock the rice off its stalks.

65. DB Marcum, KM Klonsky, & P Livingstom, "Sample Costs to Establish and Produce Wild Rice" (2005) University of California-Cooperative Extension at 5. The harvesting practices in California typically involve the following: "Paddies are drained a few days to a week before harvest to allow soils to provide better footing for the combine. The wild rice is usually custom harvested because fields are small and harvesting equipment is costly."

However, implementing a GI for wild rice in the GLR is not this simple, because the wild rice is growing in Canada *and* the United States. While Bill C-30 will align Canada's approach to GIs with that of TRIPS, the United States does not have any such legislation in place. Having all wild rice within the GLR incorporated into a GI is important because it ensures that Anishinaabeg communities on either side of the border will benefit from having this grain protected. It will also protect aquatic ecosystems that are interconnected in the region—regardless of borders.

To address this multi-state issue, there are a couple of approaches that can be taken. One option is to establish a bilateral agreement between Canada and the United States. According to the WIPO:

> In general, such bilateral agreements consist of lists of geographical indications which were drawn up by the contracting parties and an undertaking to protect the geographical indications of the respective contracting parties. The agreement usually also specifies the kind of protection that is to be granted. Although in general useful, bilateral agreements cannot constitute an entirely adequate solution to the problem of the lack of international protection because of the multiplicity of negotiations required and, resulting therefrom, an inevitable diversity of standards.[66]

So, while this is appealing in the sense that it can provide clarity on what the protections under a wild rice GI would entail, there is still the issue of differing standards (i.e., Canada's amendments to the *Trade-marks Act* compared to no GIs in the United States).

One way to alleviate this is to have separate but similar GI protections that coordinate with each respective nation's IP laws. For example, Bill C-30 will allow wild rice to fall under GI protection as an agricultural product in Canada. Meanwhile, an option in the United States is to implement a certification mark to indicate region or other origin, material, mode of manufacture, *quality*, accuracy, or *other characteristics* of the goods/services. The implementation of this GI across two North American countries is definitely the largest hurdle to be met for wild rice.

Despite this challenge, Dagne notes the following:

> Even in cases where a good which is a likely candidate for GI protection is found across the territories of two or more states, the respective states have found ways to work together to allow joint registration of GI rights. The presence of a resource and the accompanying knowledge in two or more than two states that have a common interest to preserve these resources will not be a problem as such if they adopt GIs as part of an overall strategy to protect traditional knowledge.[67]

Preserving wild rice and its natural habitats, while also ensuring that traditional practices and Traditional Knowledge are not lost due to lost ties to the land, are goals that developed countries like Canada and the United States should be striving to achieve.

---

66. WIPO, *supra* note 49 at 129.

67. Dagne, "Law and Policy," *supra* note 52 at 95–96.

It is important to note that the use of GIs to protect wild rice may be viewed as problematic from an Indigenous perspective because the Western intellectual property law regime seeks to prevent "unauthorized commercial exploitation" and "is used in the West to organize markets, not suppress them."[68] Because Traditional Knowledge is essential to the revitalization of wild rice through sharing knowledge of how to care for the rice and the aquatic system, the concerns of implementing a Western intellectual property regime cannot be ignored.

As mentioned previously, Traditional Knowledge is a community-held knowledge and is unique for every Indigenous community. The experiences with the land and with each other develops that knowledge, meaning there is no pan-Traditional Knowledge for Anishinaabeg groups located across Canada and the United States. This leads to the first issue of determining who will establish the GI for wild rice, as there will be many multi-jurisdictional Anishinaabeg stakeholders with different values/interests. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) calls for a recognition of the rights of Indigenous peoples within a signatory's jurisdiction. In particular, Article 31.1 states the following:

> Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.[69]

With this in mind, communities need to be able to manage their resources in a manner that benefits them while also being able to uphold their Traditional Knowledge practices. Unless there is careful planning, conflict and dispute may arise from an attempt to place a Western intellectual property tool on a plant species that is widely held to be sacred and culturally significant. One possibility to avoid/resolve this conflict is for Indigenous communities interested in establishing a GI for wild rice to collaborate on determining the qualities and parameters of a wild rice GI.[70]

---

68. D Gervais, "Traditional Knowledge: Are We Closer to the Answer(s)? The Potential Role for Geographical Indications" (2009) 15:2 ILSA J Int'l & Comp L 551 at 555.

69. United Nations Declaration on the Rights of Indigenous Peoples, GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295, 46 ILM 1013 (2007) at Art 31.1. [UNDRIP]

70. This is not a revolutionary concept, as the Anishinaabeg have a history that spans centuries of building relationships through treaties. For example, there is the Dish with One Spoon Treaty between the Anishinaabeg and the Haudensaunee regarding a shared responsibility for the land. See VP Lytwyn, "A Dish with One Spoon: The Shared Hunting Grounds Agreement in the Great Lakes and St. Lawrence Valley Region," in *Papers of the Twenty-Eighth Algonquian Conference* (Winnipeg: University of Manitoba, 1997) at 210. See also S van der Porten, RC de Loë, & D McGregor, "Incorporating Indigenous Knowledge Systems into Collaborative Governance for Water: Challenges and Opportunities" (2016) 50:1 Journal of Canadian Studies 214. (In this article, the authors provide suggestions for reconciling collaborative approaches to water governance with Indigenous knowledge systems and the values and perspectives of Indigenous peoples, which is interesting to consider when developing an intellectual property governance model for wild rice.)

Because GIs serve to protect products of a distinctive region and quality from unauthorized commercial exploitation, this reveals that a protected product is intended to be commercially exploited. With wild rice being viewed as a sacred seed by the Anishinaabeg, it seems problematic to implement a GI regime so that it can be commercially exploited. With Articles 31.1 and Article 32 of UNDRIP emphasizing that Indigenous peoples have the right to maintain, develop, and control their Traditional Knowledge and the development and use of their lands and territories and other resources,[71] certain Anishinaabeg groups within the GLR may strongly oppose placing a commercial value on manoomin, seeing it as an exploitation of the Creator's gift, which in turn could be viewed as exploiting their identity.[72] However, in communities like Curve Lake First Nation, James Whetung's business Black Duck Wild Rice has served as a means of reconnecting his community with the Traditional Knowledge of harvesting wild rice, while also selling the wild rice locally.[73] Therefore, only these Anishinaabeg communities are able to determine whether wild rice in their territory ought to be commercialized, and if a community wishes to use their Traditional Knowledge as a means of establishing a GI to introduce consumers to the authentic form of wild rice, then that community has the right to make that determination.

For a GI to be successful, the process of developing a wild rice GI needs to be in control of Anishinaabeg peoples so that they can determine how this Western legal concept will impact their relationship with the wild rice and how their Traditional Knowledges will apply. Furthermore, "the TRIPS Agreement does not prescribe a particular legal means to carry out the obligations. Thus, members are at their discretion to choose the particular legal means to provide for the protection of GIs."[74] Because there is no prescribed approach to carry out GI obligations, this brings forward an opportunity to have Indigenous Knowledge Governance shape the way wild rice is managed and harvested to comply with the GI.

While the initial establishment of an all-encompassing GI for the GLR is definitely a challenge, embracing this IP regime to protect wild rice would create several positive outcomes for the future of this grain and the people who depend on it. First, the most important promise GIs offer to Indigenous peoples and local communities relates to their potential to recognize and reward producers for their long-lived cultural contributions to livelihood, conservation, lateral learning, and social networking by adding premium value to their products.[75] By embracing a GI in the GLR, it would be acknowledging the Anishinaabeg, who are the original harvesters of wild rice, and it would be celebrating their harvesting practices, which are far superior in terms of being sustainable and ecologically mindful.

Additionally, "GIs signify added value and specific qualities of a product from a region by enabling producers to differentiate their products based on criteria attractive to consumers, such as the sustainability or traditional nature of production. Consumers are now looking for quality products … and they are influenced by their social conscience when choosing products."[76] While implementing a GI will not make wild rice paddies necessarily disappear, a GI would educate consumers about the difference in harvesting quality—in terms of being

---

71. UNDRIP, *supra* note 69 at Art 31–32.

72. Siebert & Johnson, *supra* note 62.

73. "Indian & Cowboy," *supra* note 26.

74. Dagne, "Law and Policy" *supra* note 52 at 78.

75. *Ibid* at 86.

76. *Ibid* at 88.

more sustainable and having a lower ecological impact—and would reveal that the GLR has a unique grain whose flourishing improves the ecosystem and the well-being of the region's First Nations communities. Through this education, it is also possible that disputes (like the one occurring at Pigeon Lake) could be resolved and community members would develop an appreciation for the highly nutritious wild rice that has been in the region for ages.

Furthermore, there are economic benefits for individuals and community groups who "subscribe to the traditional practices belonging to the culture of that community. In this regard, GIs serve as a factor of 'mobilisation' for local communities. It is a widely held view that the mobilisation of local communities is essential in achieving the sustainable management of local resources."[77] By embracing the traditional practices of harvesting wild rice, and promoting the use of healthy lakes and rivers, there can be a revitalization in the wild rice stock and, in turn, a revitalization in the harvesting of it.

V CONCLUSION

Wild rice should taste like a lake,[78] channelling the nutrients and healthy components from its environment. But not all wild rice grains are cultivated equally. Wild rice that is grown in natural lakes and rivers within the Great Lakes region is far superior to "wild" rice that is grown in a flooded field. True wild rice contributes to a healthy ecosystem, nurtures and encourages Anishinaabeg traditional practices, and tastes better. Through the adoption of a geographical indication for wild rice in the GLR, combined with the Indigenous knowledge governance of this grain, the legacy as well as the natural habitat of wild rice can be revitalized by recognizing the value of the grain's cultural and ecological origin. While implementing a GI may not be a flawless process, it provides an opportunity to celebrate and recognize the ecological and cultural elements that make the wild rice from the Great Lakes region so special.[79]

---

77. *Ibid* at 91.

78. LaDuke, *supra* note 1.

79. I want to acknowledge and thank James Whetung for first introducing me to the issues surrounding wild rice in the Great Lakes region during my undergraduate studies at Trent University. The sharing of his knowledge and experiences with revitalizing wild rice within the traditional territory of Curve Lake First Nation left me wondering about what it would take to make opposing cottagers recognize the ecological, cultural, and spiritual significance of this local delicacy. This issue drove me to explore how Western intellectual property, in the hands of Indigenous peoples, could strive to bring awareness to this distinctive grain and, in turn, protect it in its natural ecoregion. James Whetung: Keep on ricing, and keep giving the rice a voice.