

CHAPTER 12: HARVESTING OF FISH¹

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Definitions for this chapter:

“Subsistence” means the consumption of Fish for food, social and ceremonial purposes and does not include commercial sale.

“Trade” *under review*

“Gift” *under review*

“Fish” *under review*

12.1 GENERAL

12.1.1 The Dehcho First Nations² has the right to harvest all species of Fish for Subsistence throughout the Dehcho Settlement Area at all times of the year in accordance with the Dehcho Agreement.

12.1.2 The right provided for in 12.1.1 may be limited or restricted by Government:

- a) through Legislation, subject to the provisions of the Dehcho Agreement; or
- b) for purposes related to:
 - i) Conservation;

¹ The purpose of this chapter is to start the discussion on Fish Harvesting. The chapter may be subject to further modifications by Canada

² The harvesting chapters in other agreements refer to the Aboriginal group holding the right, while our other harvesting chapters refer to Dehcho Citizens. Will need table discussion.

- ii) public health; or
- iii) public safety.

- 12.1.3 The Minister retains the authority for fisheries management and will exercise that authority in a manner that is consistent with the Dehcho Agreement.
- 12.1.4 To the extent reasonable, and subject to 12.1.5, Government will Consult the Dehcho Government prior to imposing a limitation or restriction pursuant to 12.1.2 b).
- 12.1.5 In the event of an emergency, Government may impose an interim limitation or restriction pursuant to 12.1.2 b) upon notice, where reasonable, to the Dehcho Government. As soon as possible thereafter, Government will provide reasons for the decision to the Dehcho Government. Government will Consult the Dehcho Government with respect to the terms and conditions.
- 12.1.6 Nothing in the Dehcho Agreement will be construed to:
- a) recognize a right to Harvest Fish for commercial purposes or sale;
 - b) confer rights of ownership in Fish; or
 - c) guarantee the supply of Fish.
- 12.1.7 The Dehcho First Nations will not be subject to any fee for the Harvesting of Fish pursuant to 12.1.1.
- 12.1.8 Prior to the Dehcho Agreement, the Parties will address:
- a) the issue of documentation or identification for Dehcho Citizens exercising their right to harvest Fish as set out in the Dehcho Agreement;
 - b) the monitoring of Fish Harvesting activities by Dehcho Citizens and the collection of data for reporting purposes; and
 - c) the conduct of Fish Harvesting studies and research.
- 12.1.9 The Dehcho First Nations has the right to utilize any method, and to possess and use any equipment, for the purpose of the Harvesting of Fish pursuant to 12.1.1 and subject to Legislation.
- 12.1.10 The Dehcho First Nations has the right to possess and transport, anywhere in Canada, Fish harvested pursuant to 12.1.1, subject to any requirements related to the possession or identification of Fish established by Legislation. When exercising this right, the Dehcho First Nation will not be required to obtain a

licence from nor be subject to any fee from Canada or the Government of the Northwest Territories.

12.2 GIFTING AND TRADING

12.2.1 The Dehcho First Nations will have the right to Gift Fish Harvested pursuant to 12.1.1 to any individual within Canada for the recipient's personal use or consumption.

12.2.2 Prior to the Dehcho Agreement, the Parties will discuss limitations to be placed on the Gifting of Fish Harvested pursuant to 12.1.1.

12.2.3 The Dehcho First Nations has the right to Trade Fish harvested pursuant to 12.1.1 with:

- a) other Dehcho Citizens; and
- b) members of other aboriginal groups in the Dehcho First Nation traditional trading area shown on a map attached as Appendix "X",

for the recipients' personal use or consumption.

12.3 OVERLAP AGREEMENTS

12.3.1 Prior to the Dehcho Agreement, the Dehcho First Nations may address reciprocal opportunities for the Harvesting of Fish with other aboriginal groups through the negotiation of overlap agreements. With the agreement of all Parties, overlap agreement provisions pertaining to the Harvesting of Fish may be incorporated into the Dehcho Agreement.

12.4 ACCESS

12.4.1 The Dehcho First Nations has a right of access to all land and Water within the Dehcho Settlement Area for the purpose of the Harvesting of Fish under 12.1.1.

12.4.2 The Dehcho First Nations may establish and use Camps on Crown Lands within the Dehcho Settlement Area, subject to limitations on access set out in 12.4.2, provided such Camps are reasonably incidental to the Harvesting of Fish under 12.1.1.

12.4.3 This right of access does not apply:

- a) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease:
 - i) within Community Boundaries;
 - ii) outside Community Boundaries where the land is less than ten (10) hectares in area and is fenced or otherwise identified;
 - iii) where the Harvesting of Fish would be visibly incompatible with the use of the land; or
- b) on lands or waters that are dedicated to military or national security purposes pursuant to legislation, or to areas temporarily being used for military exercises, from the time that notice has been given to the Dehcho Government until the temporary use is completed..

12.4.3 Unless otherwise agreed to by the holder of an interest in land set out in 12.4.3 a), and the Dehcho First Nations, a Dehcho Citizen who accesses land under 12.4.3 a) does so at his or her own risk and has no right of action against the holder of an interest in land for loss suffered or damage arising therefrom, except for death or injury to such Dehcho Citizen or for damage to the property of such Dehcho Citizen that results from a danger arising from the wilful or reckless conduct or by the negligent action of the holder of an interest in land.

12.4.5 Where the Dehcho First Nations has the right to access lands held in fee simple or lands subject to a surface lease for the purpose of the Harvesting of Fish under the Dehcho Agreement it will not:

- a) unreasonably interfere with an occupier's use and peaceable enjoyment of the land; or
- b) establish a Camp or any structure, or cut or use any wood, without the consent of the owner, lessee or Government, as the case may be.

12.4.6 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government owning or using lands, which agreement provides for access and Harvesting of Fish by Dehcho Citizens in accordance with applicable Laws.

12.5.0 CONSULTATION

- 12.5.1 Government will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Fish set out in the Dehcho Agreement.
- 12.5.2 Government will Consult the Dehcho Government prior to:
- a) amending the terms of an existing commercial authorization to harvest Fish;
 - b) authorizing a new commercial activity to harvest Fish; or
 - c) permitting any commercial activity for the propagation or cultivation of a species of Fish,
- within the Dehcho Settlement Area, that could adversely affect the exercise of the right to harvest Fish as set out in the Dehcho Agreement.
- 12.5.3 No new commercial activity for the Harvesting of Fish on Water bodies wholly contained within Dehcho Ndehe will be authorized by Government without the consent of the Dehcho Government.

12.6 FISHERIES MANAGEMENT

- 12.6.1 Prior to the Dehcho Agreement, the Parties will address other aspects of Fisheries management within the Dehcho Settlement Area.³

12.7 EMERGENCIES

- 12.7.1 Nothing in the Dehcho Agreement will prevent any individual from Harvesting Fish in the Dehcho Settlement Area for survival in an emergency.

³ The Dehcho Agreement will also need to address Total Allowable Harvest and Basic Needs level regimes.