

CHAPTER HC: HARVESTER COMPENSATION¹

HC.1 DEFINITIONS

HC.1.1 The following definitions apply in this chapter.

“compensation” means a cash payment, either lump sum or a periodic payment, or non-monetary compensation such as replacement or substitution of damaged or lost land use², property or equipment, or relocation or transportation of Dehcho Citizens or equipment to a different harvesting locale or a combination of such elements.

“developer” means a Person or government engaged in a project, including a community, Aboriginal, territorial or federal government.

“project” does not include a wildlife harvesting or cultural activity.

“Person” means an individual, sole proprietorship, partnership, corporation, cooperative or a limited company.

“Traditional Activities Advocate” means a person, funded by the Parties³, to act as an independent advocate for the protection and enhancement of Dehcho Citizens’ ~~wildlife harvesting and defined cultural~~ activities.

“harvesting activities”⁴ means the following sustainable, traditional⁵, and renewable resource harvesting activities by Dehcho Citizens:

- a) hunting of mammals and birds;
- b) trapping of fur-bearing animals;
- c) fishing for freshwater and anadromous fish;
- d) gathering of traditional Dehcho Dene foods;
- e) gathering of plants, fish or wildlife used for medicinal or ceremonial purposes;⁶

¹ GNWT feels that the focus of the chapter is on wildlife harvesting and the difficulties proving damages etc. concerning that resource. Other matters such as damage to plants, cultural activities, etc. may still be pursued – but do not think they should enjoy the advantage of absolute liability. The chapter was designed to assist, for the most part, trappers in pursuit of their livelihood.

² Canada considers including land as compensation problematic and inconsistent with other agreements.

³ Canada and GNWT are not yet prepared to commit to funding for this position.

⁴ Canada asks whether the protection of sacred and cultural sites cannot be achieved through land selection and/or land use planning.

⁵ Canada suggests replacing “sustainable, traditional” with “Subsistence”.

⁶ Canada sees this as unacceptable.

- f) use or construction of shelter or facilities essential to the pursuit of the above activities, but not including Parks Canada operational facilities; or
- g) access to lands or waters for any of the above activities.⁷

HC.2 GENERAL

HC. 2.1 The purpose⁸ of this chapter is to provide for the protection and enhancement of ~~wildlife-harvesting and defined-cultural~~ activities by Dehcho Citizens, and to compensate persons who practice ~~wildlife-harvesting and defined-cultural~~ activities in circumstances where loss or damage has occurred in an area used for such activities as a result of actions or omissions by a Developer.

HC. 2.2 A Developer is liable absolutely, without proof of fault or negligence, for the following losses and damage, suffered by a Dehcho Citizens or a Dehcho First Nation community as a result of a project wholly or partly in the Dehcho Settlement Area in which that Developer is engaged:

- (a) loss or damage to personal property or equipment used in ~~wildlife-harvesting or defined-cultural~~ activities, or to wildlife harvested;
- (b) present and future loss of income from ~~wildlife-harvesting or defined-cultural~~ activities; and
- (c) present and future loss of ~~wildlife-harvesting⁹ or defined-cultural~~ activities.

HC. 2.3 Notwithstanding section H.2.2, a Developer is not liable where that Developer establishes that the loss or damage was wholly the result of an Act of God, war, hostilities, civil war or insurrection.

HC. 2.4 Dehcho Citizens, Regulatory Authorities¹⁰ and the Dehcho Government shall make reasonable efforts to mitigate any losses or damage referred to in XX.2.1.

HC. 2.5 A claim for compensation under this chapter shall be drafted by a Dehcho Citizen, who may request the assistance of the Traditional Activities Advocate.

HC. 2.6 If agreement has not been reached between a Developer and a Dehcho Citizen or the Dehcho Government with respect to a claim for compensation within 30 days of the submission of a claim in writing by the Dehcho Citizen or the Dehcho Government, either party may refer the dispute for resolution in accordance with chapter DR xx¹¹.

⁷ Is this dealt with in Access?

⁸ Canada prefers not to have 'purpose' sections in AiP chapters.

⁹ Canada suggests "harvested" instead of "harvesting".

¹⁰ Canada questions whether Regulatory Authorities should be included. They are not included in other agreements.

¹¹ Need to clarify whether a party could still litigate or whether DR is only option.

HC. 2.7 Following a reference under XX2.4, if an arbitrator is appointed under XXX, and that arbitrator determines the Developer is liable under HC.2.2, that arbitrator shall determine what compensation to award, and may also

- (a) provide for future review of the compensation award, if appropriate;
- (b) recommend that the Developer, the Dehcho Citizen or the Dehcho Government¹² take or refrain from taking certain action in order to mitigate further loss or damage; and
- (c) on review of a previous award, determine whether the Developer, the Dehcho Citizen or the Dehcho Government has adopted adequate mitigative recommendations made under that previous award.

HC. 2.8 A Dehcho Citizen or the Dehcho Government that refers a dispute respecting a claim for compensation under this chapter for resolution in accordance with chapter xxx, cannot exercise any right they might have otherwise had to resolve the dispute in a court.

HC. 2.9 The Dehcho Government and a Developer may enter into an agreement that replaces or modifies the Developer’s liabilities and obligations under this chapter. Any such agreement will be binding on Dehcho Citizens. Nothing in this chapter is intended to limit the ability of the Dehcho Government to negotiate with a Developer with respect to compensation for losses in relation to wildlife harvesting and cultural activities, including the process for settling and resolving claims. Any such agreement will be binding on Dehcho Citizens.

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HC. 2.10 A Developer will not be liable under HC. X for losses suffered by a Dehcho Citizen or the Dehcho Government as a result of the establishment of a National Park, National Park Reserve, or Protected Area or any lawful activity within the National Park or Protected Area, except for direct loss or damage to property or equipment in X (Wildlife Harvesting chapter) pursuant to the Final Agreement.

HC. 3 TRADITIONAL ACTIVITIES ADVOCATE

HC.3.1 In addition to the duties described in HC.2.4, the Traditional Activities Advocate will issue ~~periodic~~¹⁴ annual reports on the state of ~~wildlife~~ harvesting and traditional activities in the Dehcho Settlement Area. The reports will identify threats and potential threats to ~~wildlife~~ harvesting and traditional activities and will make recommendations to

¹² Note that Regulatory Authorities are not mentioned in this clause.

¹³ Canada wants to add: “Legislation may provide for limits of liability of Developers, the burden of proof on claimants, limitation periods for making claims and any other matters not inconsistent with the Final Agreement .”

¹⁴ Canada suggests changing “periodic” to “annual”.

Developers and the appropriate Governments for reducing, mitigating or eliminating such threats. The TAA will issue at least one such report per year.¹⁵

¹⁵ This clause may be more appropriate in a different chapter of the AiP.