

## CHAPTER P: PLANT HARVESTING

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### P.1.0 GENERAL

P.1.1 The Dehcho Government owns the Plants<sup>1</sup> located in Dehcho Ndehe.

P.1.2 Subject to P.6.0, this chapter applies throughout the area shown as Appendix BP.<sup>2</sup>

P.1.3 Dehcho Citizens have the right to harvest Plants throughout the area shown in Appendix BP at all seasons of the year for:

- a) the making of handicrafts and art by Dehcho Citizens;
- b) food, medicinal, traditional or cultural purposes; or
- c) purposes ancillary to Wildlife Harvesting under W.1.1

for Subsistence or Personal Use.<sup>3</sup>

P.1.4 The right provided for in P.1.3 may be limited or restricted:

- a) by provisions of the Dehcho Agreement; or
- b) for purposes necessary for :
  - i) Conservation;
  - ii) public health;

<sup>1</sup> Definition of Plants to include "Fungi".

<sup>2</sup> Dehcho want to have this discussion in conjunction with the discussion regarding jurisdiction over Dehcho Ndehe.

<sup>3</sup> Dehcho prefers dropping the references to a), b) and c). GNWT will review the clause in conjunction with the definition of "Subsistence or Personal Use".

- iii) public safety;
- iv) land management within Community boundaries; and
- v) protection of the Environment from significant damage.<sup>4</sup>

**P.1.5** The Minister has the authority to manage and conserve Plants and Plant habitat and will exercise that authority in a manner that is consistent with the Dehcho Agreement.<sup>5</sup>

**P.1.6** Subject to P.1.7, Government will Consult the Dehcho Government prior to imposing a limitation or restriction under P.1.4 (b).

**P.1.7** In the event of an Emergency, Government may impose an interim limitation or restriction under P.1.4(b). As soon as possible thereafter, Government will notify the Dehcho Government and provide reasons for the decision. Government will Consult the Dehcho Government with respect to any ongoing terms and conditions which may result from the event.<sup>6</sup>

**P.1.8** Nothing in the Dehcho Agreement will be construed to:

- a) recognize a right to harvest Plants for commercial purposes or sale;<sup>7</sup>
- b) confer rights of ownership in Plants, subject to P.1.1;
- c) guarantee the supply of Plants;
- d) entitle Dehcho Citizens to any compensation for damage to or loss of Plants or Plant Harvesting opportunities within the Dehcho Settlement Area<sup>8</sup>;

<sup>4</sup> DFN proposes to delete either or both of (iv) and (v)

<sup>5</sup> Government is examining "...and will exercise that authority in a manner that is consistent with the Dehcho Agreement." Dehcho prefers negotiating jurisdiction and management rather than deferring it. These provisions differ among the various harvesting chapters depending on which Party has drafted the chapter – these differences reveal unresolved issues between or among the Parties.

<sup>6</sup> Dehcho is concerned about the lack of a reciprocal jurisdiction. Chapter needs to be reviewed after larger jurisdictional issues are settled.

<sup>7</sup> Dehcho notes that P.1.8.(a) does not appear in the Tlicho agreement and so should be dropped.

<sup>8</sup> Note: this is linked to an ongoing issue in the Harvester's Compensation Chapter.

- e) preclude individuals who are not Dehcho Citizens from Harvesting Plants, except that they may be precluded from doing so by Legislation or a Land Use Plan.<sup>9</sup>

**P.1.9** Dehcho Citizens will not be subject to any tax,<sup>10</sup> fee, or requirement for a licence for the Harvesting of Plants pursuant to P.1.3.

**P.1.10** Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest, possess and transport Plants as set out in the Dehcho Agreement.

**P.1.11** Dehcho Citizens have the right to use any method, and to possess and use any equipment, for the purpose of the Harvesting of Plants pursuant to P.1.3.

**P.1.12** Dehcho Citizens have the right to possess and transport anywhere in Canada<sup>11</sup> the Edible and Non-Edible Parts of Plants harvested pursuant to P.1.3, subject to any identification requirements related to the identification of Plants agreed to by the Parties.<sup>12</sup> When exercising this right, Dehcho Citizens will not be required to obtain a licence from Government<sup>13</sup>, nor be subject to any fee.

## **P.2.0 GIFTING AND TRADING**

**P.2.1** Dehcho Citizens have the right to Gift Plants harvested under P.1.3 to any individual for Subsistence<sup>14</sup> or Personal Use.

**P.2.2** Dehcho Citizens have the right to Trade<sup>15</sup> Plants harvested under P.1.3 with:

- a) other Dehcho Citizens; and

<sup>9</sup> DFN question whether a Land Use Planning reference is needed.

<sup>10</sup> Need for "tax" – under discussion.

<sup>11</sup> May need to be subject to provincial laws restricting transport. Review needed.

<sup>12</sup> Canada and the GNWT prefer to delete "agreed to by the Parties" and replace it with "set out in Legislation". Parties are also considering adding the phrase "...or in Dehcho Law" to mirror 10.4.1 of the Tlicho Agreement.

<sup>13</sup> DFN say "from Government" should be deleted.

<sup>14</sup> Canada suggests reviewing LIA definition.

<sup>15</sup> Canada wants "trade" to be defined in a way that makes it clear it is non-commercial.

- b) members of other Aboriginal groups<sup>16</sup> either with whom the Dehcho Dene have traditionally traded or within the Dehcho Traditional Trading Area<sup>17</sup>

for Subsistence or Personal Use.

### **P.3.0 OVERLAP AND SHARED USE AGREEMENTS**

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**P.3.1** The Dehcho First Nations or the Dehcho Government may formalize relationships for the Harvesting of Plants with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of all Parties, overlap agreement provisions pertaining to the Harvesting of Plants may be incorporated into the Dehcho Agreement.

### **P.4.0 ACCESS**

**P.4.1** <sup>18</sup>Subject to P.4.3 and subsidiary agreements addressing access for harvesting contemplated by the Dehcho Agreement, Dehcho Citizens have a right of access to all land and Water within the area shown in Appendix BP for the purpose of the Harvesting of Plants under **P.1.3**.

**P.4.2** Dehcho Citizens may establish and use Camps on Crown land within the area shown in Appendix “BP”, subject to limitations on access set out in P.4.3, provided such Camps are reasonably incidental to the Harvesting of Plants under P.1.3.

**P.4.3** This right of access does not apply :

- a) on Indian reserve lands<sup>19</sup>;
- b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease;<sup>20</sup>

<sup>16</sup> Reference to “other Aboriginal groups” is an issue for Dehcho.

<sup>17</sup> [New] Identification of the Aboriginal peoples in question may preclude the need for a reference to “Traditional Trading Area” or vice versa

<sup>18</sup> Canada prefers to begin this sentence with “Subject to P.4.3 and subsidiary agreements addressing access for harvesting contemplated by the Dehcho Agreement...”

<sup>19</sup> DFN questions the need for (a)

<sup>20</sup> DFN questions the inclusion of “lands subject to an agreement for sale or lands subject to a surface lease” and is considering language re “visible incompatibility”

- c) where it conflicts with any activity carried out under an authorization granted by Government such as a timber licence or permit, a forest management agreement or land use permit; and
- d) where lands are dedicated to military or national security purposes pursuant to Legislation, or to areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government.

**P.4.4** A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding the right to access lands described in P.4.2 for the purposes of the Harvesting of Plants under P.1.3.

#### **P.5.0 CONSULTATION**

**P.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 Plants as set out in the Dehcho Agreement.

**P.5.2** Government will Consult the Dehcho Government prior to:

- a) amending the terms of an existing commercial authorization to harvest Plants;
- b) authorizing a new commercial activity to harvest Plants; or
- c) permitting any commercial activity for the propagation or cultivation of a species of Plants,

that could adversely affect the exercise of the right to harvest Plants as set out in the Dehcho Agreement.<sup>21</sup>

#### **P.6.0 PLANT MANAGEMENT**

**P.6.1** Prior to concluding the Dehcho Agreement, the Parties will address:

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<sup>21</sup> Other land claim agreements only require governments to consult with respect to proposed activities within the Settlement Area.

- a) the manner in which Plants will be managed in the Dehcho Settlement Area;<sup>22</sup> and
- b) the participation of the Dehcho Government in the management of Plants in the Dehcho Settlement Area.<sup>23</sup>

if the harvesting rights recognized in this chapter could be affected.<sup>24</sup>

## **P.7.0 EMERGENCIES**

**P.7.1** Nothing in the Dehcho Agreement will prevent any individual from Harvesting Plants for survival in an Emergency.

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<sup>22</sup> Government wants “...managed within the Dehcho Settlement Area”

<sup>23</sup> Government wants “...managed within the Dehcho Settlement Area”

<sup>24</sup> Other land claim agreements only purport to include First Nations in management regimes wholly within respective Settlement Areas.