

CHAPTER P: HARVESTING OF PLANTS

P.1.0 GENERAL

P.1.1 The Dehcho Government owns the Plants located in Dehcho N'dehe.

P.1.2 With the exception of provisions set out in subsection **P.5.0**, **this** chapter applies to the Dehcho Settlement Area excluding Dehcho N'dehe..

P.1.3 Dehcho Citizens have the right² to harvest Plants throughout the Dehcho Settlement Area 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 **personal use or consumption**⁴.

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 related to⁵:
 - i) Conservation;

² Canada prefers "The Dehcho Agreement will recognize that Dehcho Citizens have the right...".

⁴ Term "subsistence" is also being discussed by the Table

⁵ LTC will review various alternatives to this threshold: "related to", "necessary for" and others. Wording in Wildlife chapter reads "demonstrably necessary for..."

- ii) public health;
- iii) public safety;
- iv) land management within Community boundaries⁶;
and
- v) protection of the Environment from significant damage.

P.15 The Dehcho Agreement will recognize that the Minister has the authority to manage and conserve Plants and Plant habitat in the Dehcho Settlement Area and will exercise that authority in a manner that is consistent with the Dehcho Agreement.

P.1.6 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)** without prior Consultation.

P.1.8 In the event a limitation or restriction is imposed under P.1.7, and as soon as possible after the imposition, Government will:

- (a) confer⁷ with the Dehcho Government regarding the necessity of the action taken; and
- (b) Consult with the Dehcho Government regarding the ongoing terms and conditions to be attached to any limitation or restriction imposed.⁸

⁶ LTC will be considering the necessity of (iv)

⁷ LTC is discussing the term "confer" and alternatives. Issue is whether "consultation" is the proper concept when dealing with past rather than present or future actions.

⁸ LTC suggestion: *In the event of an emergency, Government may impose an interim limitation or restriction under P.1.4(b) upon notice to the Dehcho Government. As soon*

P.1.9 Nothing in the Dehcho Agreement⁹ will be construed to:

- a) recognize a right to harvest Plants for commercial purposes or sale;
- b) confer rights of ownership in Plants, other than 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 Area¹⁰;
- e) preclude individuals who are not Dehcho Citizens from Harvesting Plants, except that they may be precluded from doing so by Legislation.¹¹

P.1.10 Dehcho Citizens will not be subject to any fee¹² for the Harvesting of Plants pursuant to **P.1.3**.

P.1.11 Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest Plants as set out in the Dehcho Agreement.

as possible thereafter, Government will provide reasons for the decision to the Dehcho Government. Government will Consult the Dehcho Government with respect to any ongoing terms and conditions.

⁹ DFN suggest: "Nothing in this *chapter* will..."

¹⁰ LTC Note: this is linked to an ongoing issue in the Wildlife Compensation Chapter.

¹¹ LTC to consider whether a Land Use Planning reference is needed.

¹² Note: Wildlife chapter adds "tax" – under discussion

P.1.12 Dehcho Citizens will have the right to utilize any method, and to possess and use any equipment, for the purpose of the Harvesting of Plants pursuant to **P.1.3**.

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P.2.0 GIFTING AND TRADING¹⁴

P.2.1 Dehcho Citizens have the right to gift Plants harvested under **P.1.3** to any individual for **the recipient's personal use or consumption**.

P.2.2 Dehcho Citizens have the right to Trade Plants harvested under **P.1.3** with:

- a) other Dehcho Citizens; and
- b) members of other Aboriginal groups in **the Dehcho Traditional Trading Area**

for the recipient's personal use or consumption.

P.2.3¹⁵ Prior to Dehcho Agreement, the Dehcho First Nation may address reciprocal opportunities for the Harvesting of Plants with other Aboriginal groups through the negotiation of

¹³ LTC Suggestion: Dehcho Citizens will have the right to possess and transport anywhere in Canada plants harvested pursuant to P.1.3, subject to any identification requirements established by Legislation. When exercising this right, Dehcho Citizens will not be required to obtain a licence from Government, nor be subject to any fee charged by Government.

¹⁴ LTC Note [GNWT 02-11-10]: P.2.1 and P.2.2 now reflects GNWT mandate on gifting and trading of plants. .

¹⁵ LTC: Parties may wish to consider taking P.2.3 above and putting it in its own subsection – "Overlap Agreements" – or the like. – A questionable inclusion under this subheading.

overlap agreements. With the agreement of all Parties, overlap agreement provisions pertaining to the Harvesting of Plants may be incorporated into the Dehcho Agreement.

P.3.0 ACCESS

P.3.1 Dehcho Citizens have a right of access to all land and Water within the Dehcho Settlement Area for the purpose of the Harvesting of Plants under **P.1.3**.

P.3.2 This right of access does not apply:

- a) on Indian reserve lands¹⁶;
- b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease;
- 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.3.3 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.3.2** for the purposes of the Harvesting of Plants under **P.1.3**.

¹⁶ Table is discussing the need for (a)

P.4.0 CONSULTATION

P.4.1 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.4.2 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,

within the Dehcho Settlement Area that could adversely affect the exercise of the right to harvest Plants as set out in the Dehcho Agreement.

P.5.0 PLANT MANAGEMENT

P.5.1 Prior to the Dehcho Agreement, the Parties will address aspects of Plant management within the Dehcho Settlement Area.

P.6.0 EMERGENCIES

P.6.1 Nothing in the Dehcho Agreement will prevent any individual from Harvesting Plants for survival in an Emergency.