

**Reviewed by Main Table April 14-16, 2010**

**CHAPTER W: WILDLIFE HARVESTING**

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**W.1.0 GENERAL**

W.1.1 <sup>1</sup>Dehcho Citizens have <sup>2</sup> the right to Harvest all species of Wildlife<sup>3</sup>, including Furbearers, throughout the area shown in the map attached as Appendix A at all times of the year.<sup>4</sup>

W.1.2 Dehcho Citizens have the exclusive right to harvest Furbearers in Dehcho Ndehe and Dehcho community lands at all times of the year. This right does not preclude the right of others to harvest Furbearers in Dehcho Ndehe or Dehcho community lands with the consent of the Dehcho Government.

W.1.3 Subject to W.1.5 and W.1.6, the right recognized in W.1.1 may be limited or restricted<sup>5</sup>:

- a) by provisions of the Dehcho Agreement; or
- b) in Legislation, for purposes demonstrably<sup>6</sup> necessary for conservation, public health and public safety.

W.1.4 Outside of Dehcho Ndehe, and subject to the terms of the Dehcho Agreement, the Minister will have the authority to manage and conserve Wildlife. This authority is subject to the concurrent jurisdiction of the

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<sup>1</sup> Canada proposes “Subject to the provisions of the Dehcho Agreement, Dehcho Citizens have the right...”

<sup>2</sup> Everywhere the chapter uses “Dehcho Citizens have the right” Canada prefers “The Dehcho Agreement will recognize that Dehcho Citizens have the right...”.

<sup>3</sup> Wildlife to be defined to include eggs of non-migratory birds.

<sup>4</sup> The map will not include NNPR as harvesting in the Park Reserve will be addressed in the Parks chapter of this AIP.

<sup>5</sup> DFN: Dehcho Citizens will have exclusive jurisdiction to limit or restrict harvesting in Dehcho Ndehe and on Dehcho community lands. This entire clause (W.1.4 may be moved to after W.1.6 for clarity in interpretation).

<sup>6</sup> Canada and GNWT object to “demonstrably”.: prefer “for purposes related to...”

Dehcho Government to manage Wildlife and Wildlife habitat in the Dehcho Settlement Area, as set out in the Dehcho Agreement.<sup>7</sup>

W.1.5 Within Dehcho Ndehe the Dehcho Government retains the authority to manage and conserve Wildlife and will exercise that authority in a manner that is consistent with the Dehcho Agreement. On Dehcho community lands, local Dehcho community governments retain these authorities.<sup>8</sup>

W.1.6 In the event of an Emergency, the Dehcho Government, Canada or the Government of the Northwest Territories, as applicable, may impose an interim limitation or restriction pursuant to W.1.4 and W.1.5 without prior Consultation but will Consult<sup>9</sup> the relevant other Dehehe Government as soon as possible thereafter, demonstrating<sup>10</sup> the necessity of the action taken, and addressing the terms and conditions to be attached to any limitation or restriction imposed.<sup>11</sup>

W.1.7 Nothing in the Dehcho Agreement<sup>12</sup> will be construed to:

- a) confer rights of ownership in Wildlife;
- b) guarantee the supply of Wildlife; or
- c) recognize a right to commercial harvest of Wildlife.

W.1.8 Dehcho Citizens will not be subject to any tax<sup>13</sup>, fee or requirement for license for the harvesting of Wildlife in the area shown in the map attached as Appendix A.

<sup>7</sup> GNWT: W.1.5, W.1.6, W.2.4, and W.4.3, ~~W.5.2 and W.5.3~~ are related in these ways: 1) they relate to management harvesting issues whereas the focus of the chapter is on the harvesting of wildlife for subsistence purposes. DFN response: they relate to jurisdiction, not management, of wildlife harvesting. Management is to be developed. 2) GNWT: these do not reflect the GNWT position that the Minister has jurisdiction over wildlife on a regional basis because of the nature of the resource. That jurisdiction is informed by a regional resource management board comprised of all stakeholders on the Dehcho region. DFN response: the DCRMA will manage and administer wildlife management.

<sup>8</sup> GNWT prefers co-management throughout the Dehcho Settlement Area.

<sup>9</sup> Canada and GNWT uncomfortable with 'consult'.

<sup>10</sup> Canada and GNWT prefer "regarding" instead of "demonstrating".

<sup>11</sup> GNWT suggests: In the event of an emergency, Government may impose an interim limitation or restriction under T.1.3(b) upon notice 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 any ongoing terms and conditions.

<sup>12</sup> DFN suggest: "Nothing in this chapter will...", because DFN wish to have a chapter on commercial ~~wildlife~~ harvesting.

<sup>13</sup> DFN say "tax" is included to foreclose on the possibility of a future 'fee' in the form of a 'tax' on any aspect of Dehcho harvesting, or any attempt to levy income tax on the value of harvested meat. GNWT want assurance that any commercial harvest will be taxable.

- W.1.9 Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest Wildlife as set out in the Dehcho Agreement.
- W.1.10 Dehcho Citizens have the right to use any method, and to possess and use any equipment, for the purpose of Wildlife harvesting. The Dehcho Government retains the jurisdiction to impose restrictions on this right for reasons related to the humane harvesting of Wildlife.<sup>14</sup> The GNWT will have concurrent jurisdiction to impose restrictions necessarily related to the humane harvesting of Wildlife.<sup>15</sup>
- W.1.11 Dehcho Citizens have the right to possess and transport anywhere in Canada the Edible and Non-Edible Parts of Wildlife harvested pursuant to W.1.1<sup>16</sup>.
- W.1.12 When exercising a right pursuant to W.1.11, Dehcho Citizens will not be required to obtain a licence from the Government of Canada or the Government of the Northwest Territories, nor be subject to any tax or fee, but the Dehcho Agreement may provide for identification requirements to be developed and implemented jointly by the Parties.
- W.2.0 **GIFTING AND TRADING**
- W.2.1 Dehcho Citizens have the right to Gift:
- a) the Non-Edible Parts of Wildlife harvested to any individual for Subsistence or for ~~their~~ Personal Use<sup>17</sup>; and
  - b) the Edible Parts of Wildlife to any individual for Subsistence or for ~~their~~ Personal Use.
- W.2.2 Dehcho Citizens have the right to Trade:

<sup>14</sup> Canada has proposed this alternative wording to clarify that general laws of application respecting the humane harvesting of wildlife still apply: "The Dehcho Agreement will recognize that Dehcho Citizens have the right to utilize any method, and to possess and use any equipment, for the purpose of the Harvesting of Wildlife pursuant to W.1.1, subject to Legislation respecting the humane Harvesting of Wildlife and public safety. Subject to Legislation, the Dehcho Government may impose restrictions on (the right to utilize any method, and to possess and use any equipment, for the purpose of the Harvesting of Wildlife) OR (the right to Harvest by any means) for reasons necessary for the humane Harvesting of Wildlife." DFN noted that it may be redundant given that there will be a general clause on laws of general application.

<sup>15</sup> Canada proposes to move all text related to Dehcho jurisdiction to a separate chapter.

<sup>16</sup> Canada wants to add "subject to identification requirements established by legislation".

<sup>17</sup> Subsistence and Personal Use to be defined. The Parties will then revisit whether both terms will be used or whether one of them can be deleted as redundant.

- a) the Non-Edible Parts of Wildlife harvested by any individual for Subsistence or for ~~their~~ Personal Use; and
- b) the Edible Parts of Wildlife harvested with:
  - i) other Dehcho Citizens; and
  - ii) members of an Aboriginal group with whom the Dehcho Dene have traditionally traded.<sup>18</sup>

for Subsistence or for Personal Use.

W.2.3 The Dehcho First Nations or the Dehcho Government may formalize relationships for the harvesting of Wildlife with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of all Parties, overlap agreement provisions pertaining to Wildlife harvesting may be incorporated into the Dehcho Agreement.

W.2.4 The Dehcho Government retains jurisdiction to control and manage commercial trade in Wildlife and Wildlife harvesting on Dehcho Ndehe and in Dehcho community lands.<sup>19</sup>

W.2.5 The Dehcho Government has the jurisdiction to manage commercial trade in Wildlife and Wildlife harvesting in the Dehcho Settlement Area outside of Dehcho Ndehe, and will exercise that right as set out in the Dehcho Agreement.<sup>20</sup>

### **W.3.0 ACCESS**

W.3.1 Subject to W.3.3, Dehcho Citizens have a right of access to all land and Water within the area shown in the map attached as Appendix A for the purposes of Wildlife harvesting under W.1.1.

W.3.2 Subject to 3.3, within the area shown in the map attached as Appendix A, Dehcho Citizens may establish and use Camps, provided such Camps are reasonably incidental to Wildlife harvesting under W.1.1.

W.3.3 This right of access does not apply:

<sup>18</sup> Canada and GNWT want to list Aboriginal groups. GNWT has proposed alternative text in Plants and Trees.

<sup>19</sup> For reasons outlined above, Canada and GNWT do not agree with 2.4, and prefer that management issues be addressed in a separate chapter.

<sup>20</sup> For reasons outlined above, Canada and GNWT do not agree with 2.4, and prefer that management issues be addressed in a separate chapter.

- a) on lands held in fee simple<sup>21</sup> or lands subject to a surface lease outside of Dehcho Ndehe
  - i) within Community boundaries;
  - ii) outside Community boundaries where the land is less than ten (10) hectares<sup>22</sup> in area and ~~(or?)~~ is fenced or otherwise identifiable<sup>23</sup>; or
  - iii) where Wildlife harvesting would be wholly<sup>24</sup> incompatible with the use of the land.

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W.3.4 Where Dehcho Citizens have the right to access lands held in fee simple or lands subject to a surface lease for the purpose of Wildlife harvesting under the Final Agreement they will not:

- a) unreasonably interfere with an occupier's use and peaceable enjoyment of the land; or
- b) establish a Camp, Cabin or any structure, or cut or use any wood other than dead wood, without Consulting<sup>26</sup> with the owner, lessee or Government, as the case may be.

W.3.5 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 W.3.3 for the purpose of Wildlife harvesting under W.1.1.

#### W.4.0 **CONSULTATION**

W.4.1 Canada or the Government of the Northwest Territories, as applicable 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 Wildlife set out in the Dehcho Agreement.

W.4.2 Pursuant to W.1.5, Canada or the Government of the Northwest Territories, as applicable, will Consult the Dehcho Government prior to:

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<sup>21</sup> This is not intended to include Dehcho Ndehe, which may be fee simple lands.

<sup>22</sup> 10 hectares is a very large area. 200 metres x 500 metres (or 10,000 sq m.)

<sup>23</sup> Canada wants "...fenced or otherwise identifiable;"

<sup>24</sup> Canada may prefer "visibly" rather than "wholly". Other option: use neither wholly nor visibly; just "incompatible".

<sup>25</sup> Canada and the GNWT would also deny a right of access for harvesting on Indian Act reserves and lands used by the Canadian Armed Forces for imperialist war preparations.

<sup>26</sup> Other land claim agreements require Consent of owners.

- a) amending the terms of an existing commercial authorization to harvest Wildlife;
- b) subject to W.4.3, issuing a new commercial authorization to harvest Wildlife; or
- c) permitting any commercial activity for the husbandry of a species of Wildlife

that could adversely affect the exercise of the right to harvest Wildlife as set out in the Dehcho Agreement.<sup>27</sup>

W.4.3 No new commercial activity for the harvesting of Wildlife in the Dehcho Settlement Area will be authorized by Canada or the Government of the Northwest Territories without the consent of the Dehcho Government.<sup>28</sup>

#### W.5.0 **WILDLIFE MANAGEMENT**

W.5.1 Prior to Dehcho Agreement, the Parties will address Wildlife management within the Dehcho Settlement Area.

~~W.5.2 The Agreement will recognize the jurisdiction guaranteed right of the Dehcho Government to manage and conserve Wildlife and Wildlife habitat in the Dehcho Settlement Area outside Dehcho Ndehe.~~

~~W.5.3 The Agreement will recognize the guaranteed exclusive jurisdiction right of the Dehcho Government to manage and conserve Wildlife and Wildlife habitat in Dehcho Ndehe and community lands.~~

#### W.6.0 **EMERGENCIES**

W.6.1 Nothing in the Dehcho Agreement will prevent any individual from killing Wildlife in the Dehcho Settlement Area for survival in an emergency or to defend or protect persons or property.

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<sup>27</sup> Note that other Agreements restrict the duty to consult within Settlement Areas.

<sup>28</sup> GNWT okay with Dehcho consent on Dehcho Ndehe but not entire Settlement Area. GNWT wants co-management throughout Settlement Area. Canada agrees.