



**ESKETEMC**



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# **AGREEMENT-IN-PRINCIPLE WILDLIFE CHAPTER**

**Public Release Chapter  
March 31, 2010**

*This public release document is for consultation purposes only. It is not necessarily representative of the final position which may be taken in respect of a matter, and is subject to change. It is without prejudice to the position of the parties in any proceeding before any court or in any other forum and will not be construed as an admission of fact or liability and will not be tendered or relied upon in any such proceedings.*

## WILDLIFE CHAPTER

### BACKGROUND

Canada, British Columbia and the Esketemc are engaged in treaty negotiations in the British Columbia Treaty Commission process. Our treaty negotiations include public consultation and internal review of documents under negotiation by the three Parties.

This document is part of a group of chapters under negotiation for the purposes of an Agreement-in-Principle.

### OBJECTIVE

The Parties are releasing this document as a sample for public information. However, it is intended that the Chapters in any future Esketemc Agreement-in-Principle would be read and understood in the context of the Agreement-in-Principle as a whole.

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## **WILDLIFE CHAPTER**

### **GENERAL**

1. Esketemc has the right to hunt which includes the right to trap Wildlife for Domestic Purposes in the Esketemc Territory throughout the year in accordance with the Final Agreement.
2. The Esketemc right to hunt Wildlife for Domestic Purposes is limited by measures necessary for conservation, public health and public safety.
3. The Esketemc right to hunt Wildlife is a right to hunt in a manner that is consistent with the communal nature of the Esketemc hunt for food, social and ceremonial purposes.
4. Except as otherwise provided under Esketemc Law, all Esketemc Citizens may exercise the Esketemc right to hunt Wildlife.
5. The Esketemc right to hunt Wildlife described in paragraph 1 cannot be exercised on land owned or in use by, or expropriated or otherwise acquired by Canada from time to time.
6. The Final Agreement will not preclude Esketemc from entering into an agreement with the Minister of National Defence on a case-by-case basis, which agreement provides for access and hunting in accordance with that agreement and Federal Laws and Provincial Laws.
7. Subject to paragraph 8, Canada and British Columbia will not impose fees, licenses, charges or royalties on the Esketemc Government or Citizens in respect of the hunting of Wildlife within the Esketemc Territory.
8. Nothing in the Final Agreement affects Canada's ability to require Esketemc Citizens to obtain licenses for the use and possession of firearms under Federal Laws.

### **HUNTING UNDER OTHER AGREEMENTS**

9. This Agreement does not preclude Esketemc Citizens from hunting Wildlife outside of the Esketemc Territory throughout Canada in accordance with:
  - a) Federal Law and Provincial Law;
  - b) any agreements, that are in accordance with Federal Law and Provincial Law, between Esketemc and other aboriginal people; or

- c) any arrangements between other aboriginal people and Canada or British Columbia.

## **JURISDICTION ON ESKETEMC LANDS**

10. The Esketemc Government may make laws, in respect of the Esketemc right to hunt Wildlife, that are consistent with the Final Agreement for:
  - a) the distribution of hunted Wildlife among Esketemc Citizens;
  - b) designating the Esketemc Citizens to hunt Wildlife;
  - c) the methods, timing and location of the hunt and individual allocations of Wildlife;
  - d) Trade and Barter of Wildlife under paragraph 16;
  - e) the collection of hunting, trapping and angling statistics; and
  - f) the field dressing of Wildlife in preparation for transport.
11. The Esketemc Government will make laws to require all Esketemc hunters to comply with any prescribed conservation measure.
12. The Esketemc Government will make laws to require all Esketemc Citizens who hunt under the Final Agreement, or transport Wildlife under the Final Agreement, to carry documentation issued by the Esketemc Government and produce that documentation on request by an authorized individual.
13. The Esketemc Government will make laws requiring all Esketemc Citizens to report the hunt of any species that are subject to a conservation measure.
14. An Esketemc Law under paragraph 10 prevails to the extent of a Conflict with Federal Law or Provincial Law.
15. Federal Law or Provincial Law prevails to the extent of a Conflict with an Esketemc Law under paragraphs 11, 12 and 13.

## **TRADE, BARTER AND SALE**

16. Esketemc may trade or barter Wildlife or Wildlife parts, including meat and furs hunted under the Esketemc right to hunt Wildlife:
  - a) among themselves;

- b) with other aboriginal peoples of Canada resident in British Columbia.
17. For greater certainty, trade and barter does not include sale.
18. Any sale of Wildlife, Wildlife parts, including meat and furs hunted under the Esketemc right to hunt Wildlife will be subject to any Federal Laws and Provincial Laws that permit sale.

## **TRANSPORT AND EXPORT**

19. Esketemc Citizens may, in accordance with:
- a) Federal Law and Provincial Law; and
  - b) Esketemc Law under paragraph 12,
- transport Wildlife or Wildlife parts, including meat, hunted under the Esketemc right to hunt Wildlife.
20. Any export of Wildlife or Wildlife parts, including meat or fur hunted under the Esketemc right to hunt Wildlife will be in accordance with Federal Law and Provincial Law.

## **DOCUMENTATION**

21. Esketemc will issue documentation to Esketemc Citizens to hunt or attempt to hunt Wildlife in accordance with the Final Agreement.
22. Documentation issued under paragraph 21 will:
- a. be in the English language, which version is authoritative, and at the discretion of the Esketemc, in Secwepemctsin;
  - b. include the name and address of the individual hunter; and
  - c. meet any other requirements as set out by the Esketemc Government.

## **INITIAL CONSERVATION MEASURES**

23. The Final Agreement will set out any initial conservation measures prescribed for a Wildlife species within the Esketemc Territory.

## CONSERVATION MEASURES OF A WILDLIFE SPECIES

24. The Provincial Government will Consult with the Esketemc regarding a conservation measure proposed by the Provincial Government or Esketemc, related to a Wildlife species within the Esketemc Territory.
25. For the purposes of paragraph 24, the following will be taken into consideration:
  - a) the conservation risk to the Wildlife species;
  - b) the population of the Wildlife species:
    - i. within the Esketemc Territory; and
    - ii. within its normal range or area of movement outside the Esketemc Territory;
  - c) the necessity for and the nature of, the proposed conservation measure; and
  - d) the Esketemc role in the development and implementation of the conservation measure.
26. For greater certainty, the Provincial Government obligation to Consult in respect of a proposed conservation measure includes providing the following, if requested by the Esketemc:
  - a) a copy of any approved conservation measure in respect of a Wildlife species within the Esketemc Territory; and
  - b) written reasons for the adoption of that conservation measure.
27. Prior to authorizing the implementation of a conservation measure which will affect the Esketemc Right to hunt, the Provincial Government will use reasonable efforts to minimize the impact of the conservation measure on the Esketemc Right to hunt.
28. Where the Provincial Government determines that establishing an Allocation for Esketemc is the necessary conservation measure, British Columbia and Esketemc will negotiate and attempt to reach agreement on that Allocation.
29. Where British Columbia and Esketemc fail to agree on an Allocation under paragraph 28 the dispute will be finally determined by arbitration under the Dispute Resolution Chapter.

30. In determining the Allocation under paragraph 28, the arbitrator must take into account all relevant information provided by Esketemc and British Columbia.

## **TRAPPING**

31. Trap lines that exist on the Effective Date, and that are located wholly or partially on Esketemc Lands will be set out in Appendix X to the Final Agreement. They will be retained by the persons who hold those interests and may be transferred or renewed in accordance with Provincial Law.
32. Esketemc will not unreasonably restrict access to persons who hold trap lines set out in the appendix to the Final Agreement, or any renewal or replacement of such trap lines, or to any person who has written permission from a registered trap line holder to trap within the registered trap line area for the purpose of carrying out trapping activities.
33. If a trap line set out in the appendix to the Final Agreement becomes vacant by reason of abandonment or operation of law, British Columbia will not grant registration to that portion of the trap line located on Esketemc Lands without the consent of Esketemc.
34. If the holder of a registered trap line set out in the appendix to the Final Agreement agrees to transfer the trap line to the Esketemc, British Columbia will consent to and register the transfer.

## **OUTSTANDING ISSUES:**

- The parties will develop a Guiding and Angling section for the Chapter once the land details are better understood.
- Esketemc prefers to state the substantive rights in each Chapter. Esketemc is not challenging the division of powers as set out in the *Constitution Act, 1982* however would prefer that the greater certainty statements around Federal and Provincial authorities be set out elsewhere in the treaty.
- Esketemc will work with Canada to establish administration and capacity for the use and possession of firearms.
- Esketemc is seeking language that will facilitate trade and barter with other aboriginal people in Canada that have agreements that are in accordance with Federal Law and Provincial Law.
- British Columbia has an interest in respecting existing Guide Outfitting tenures and Esketemc has an interest in a share of the Guide Outfitting opportunities within the Esketemc Territory.

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- The Parties are discussing advisory management processes that will address, among other things, wildlife in the Esketemc Territory.