



Canada

Ktunaxa Kinbasket
Treaty Council

**KTUNAXA KINBASKET TREATY COUNCIL
TREATY NEGOTIATIONS**

**WILDLIFE, FISH AND MIGRATORY BIRDS
SUB-AGREEMENT**

November 5, 2003
Working Draft #14

This document is tabled for discussion purposes only. It is not necessarily representative of the position any Party may take in treaty negotiations, it contains no admissions and is subject to change. It is without prejudice and will not be tendered or relied upon in any court proceedings.

WILDLIFE, FISH AND MIGRATORY BIRDS SUB-AGREEMENT

WORKING DRAFT #14
SUBJECT TO INTERNAL REVIEW

FOR DISCUSSION PURPOSES ONLY

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Treaty Council**

EXPLANATORY NOTE FOR READERS OF THIS SUB-AGREEMENT

Canada, British Columbia and the Ktunaxa Kinbasket Treaty Council are negotiating a treaty, which will include a chapter that sets out the Ktunaxa Nation’s treaty rights, law-making authorities and management responsibilities respecting wildlife, fish and migratory birds. Progress in negotiating these treaty provisions is recorded in a working draft sub-agreement. By utilizing the drafting conventions noted at the bottom of each page and the inclusion of notes in the sidebar, the parties are able to identify and show where they have and have not reached agreement.

As progress is made in negotiating each sub-agreement, the Chief Negotiators for each of the three parties may agree to release working drafts for public information and consultation purposes. A decision to release a working draft for public review does not mean that the parties have reached agreement on everything that is contained in the draft, nor does it mean that everything that will ultimately be included in a sub-agreement has been identified at this point.

Working drafts are works in progress and, as such, they are subject to change. Efforts are made to prepare working drafts in plain language. The focus of working drafts is on the substantive matters that the parties agree must be addressed in a treaty. Legal drafting will be undertaken only when the parties have reached agreement on all of the substantive matters.

Periodic release of working drafts is one method by which the parties endeavour to provide the public with information and to facilitate consultation on the treaty negotiation process.

FOR FURTHER INFORMATION CONTACT:

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Drafting conventions:

All Parties; *KKTC*; **British Columbia**; **Canada**; [not yet agreed]; (elaborations); additions; ~~deletions~~

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GENERAL

- 1 The Ktunaxa will be able to carry out any activities that are allowed under the law.
- 2 The Final Agreement will not alter federal and provincial laws respecting the proprietary interests in wildlife, fish, aquatic resources or migratory birds.

The Parties will review this clause in the context of the whole chapter.

HARVEST RIGHT

- 3 The Ktunaxa will have a treaty right to harvest wildlife, fish, aquatic resources and migratory birds for food, social and ceremonial purposes within the area identified in the Agreement-in-Principle, in accordance with the Final Agreement.
- 4 The Ktunaxa will be able to trade and barter wildlife, fish, aquatic resources and migratory birds harvested under the treaty [***among themselves or with other aboriginal people of Canada resident in British Columbia*** / *with non-aboriginal people and with aboriginal people in Canada and other countries*].
- 5 The treaty right to harvest wildlife, fish, aquatic resources and migratory birds will [*only*] be limited by measures that are necessary for conservation of designated species, public health or public safety.
- 6 Ktunaxa citizens will not be required to obtain a federal or provincial licence or to pay any fees, charges or royalties to Canada or British Columbia for exercising the treaty right to harvest wildlife, fish, aquatic resources or migratory birds.
- 7 [**In the event that Canada becomes responsible for fisheries management, the Ktunaxa Government and Canada may negotiate and attempt to reach agreement on a management mechanism.**]

The Parties have not reached agreement on whether the treaty right to harvest includes a right to sell the edible and/or inedible by-products of harvested wildlife, fish or migratory birds. The area where the right may be exercised is subject to discussion with Canada regarding the federal Parks.

Legal issue

The Parties have not reached agreement on the limitations that may apply to the ability to trade and barter fish and wildlife, etc.

Legal issue.

Legal issue.

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8 (Options for Chief Negotiator's discussion purposes)

Option 1:

[British Columbia and Canada will *only* be able to authorize the use or disposition of Crown land providing they do not deny the Ktunaxa Nation and [Ktunaxa Citizens] the reasonable opportunity to exercise the treaty right to harvest wildlife, fish, aquatic resources or migratory birds under the Final Agreement.]

Option 2:

[The treaty right to harvest wildlife, fish, aquatic resources or migratory birds will not be intended to interfere with the ability of British Columbia and Canada to authorize the use or disposition of Crown land, or the operations of authorized licensees and/or tenure holders.]

Legal issue.

The Ktunaxa role in determining the potential impacts of land use decisions on the treaty right to harvest wildlife is a significant issue that needs to be addressed.

MANAGEMENT RELATIONSHIP

9 [The Minister will retain the authority to manage and conserve wildlife, fish, aquatic resources and migratory birds, and their habitats in accordance with the Final Agreement and applicable federal and provincial laws.]

10 [The Parties will establish an ongoing government-to-government institutional mechanism (board or committee) to make recommendations and provide advice to statutory decision-makers for the purposes of:

- 10.1 coordinating the management of wildlife, fish, aquatic resources and migratory birds, and their habitats, including the exchange of relevant information;
- 10.2 determining whether a species is subject to a conservation concern and developing strategies to achieve conservation objectives for designated species;
- 10.3 identifying current or emerging threats to wildlife, fish and migratory bird populations and developing management strategies to

The Parties are currently engaged in non-committal exploratory discussions to identify approaches for addressing each Party's interests respecting the management of wildlife, fish and migratory bird populations.

A proposal to establish a government-to-government collaborative management relationship will be prepared by the Side Table for consideration and discussion by the Chief Negotiators.

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- 10.3 reduce or mitigate impacts of identified threats;
 - 10.4 reviewing and providing recommendations regarding each Party's harvest plan, prior to approval;
 - 10.5 developing recommendations for statutory decision-makers, including recommendations regarding any prescribed harvest limits for designated species and the Ktunaxa share of the harvest, where a limit is prescribed;
 - 10.6 developing agreements regarding the enforcement of relevant federal, provincial and Ktunaxa laws; and
 - 10.7 resolving disputes.]
- 11 [If a public regional fish and wildlife management process is established by British Columbia to provide recommendations to the Minister about the management of wildlife, fish, aquatic resources and migratory birds, and their habitats, the Ktunaxa government may participate in that process and, if it does, it will be recognized by British Columbia and Canada to be participating as a government.]

DESIGNATED SPECIES

12 Wildlife, fish and migratory bird populations that are subject to conservation concerns will be designated.

HARVEST PLANS

13 The Ktunaxa government will prepare a harvest plan for designated species and any other species the Parties agree to include in the plan.

14 A harvest plan will describe how the Ktunaxa government will contribute towards achieving conservation objectives for each of the designated species and any other species the Parties have agreed will be included in the plan.

15 [Designated species and any other species the Parties

The development of this plan will reflect the strategies developed through the management mechanisms established under the Management Relationship section.

The process for approval is to be developed.

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agree to include in the harvest plan may only be harvested under the treaty in accordance with a harvest plan.]

LAW MAKING

16 [To manage the treaty right to harvest wildlife, fish, aquatic resources and migratory birds, the Ktunaxa government must make and enforce laws that:

- 16.1 require Ktunaxa hunters and fishers to carry documentation that shows they are authorized by the Ktunaxa government to hunt and fish under the treaty;
- 16.2 require Ktunaxa hunters and fishers to comply with the approved harvest plan; and
- 16.3 require any wildlife, fish or migratory birds harvested under the treaty to be identified as such when it is in the possession of a person who is not Ktunaxa or it is a requirement for a designated species.]

17 [To manage the treaty right to harvest wildlife, fish, aquatic resources and migratory birds, the Ktunaxa government may make and enforce laws regarding:

- 17.1 the possession limits and distribution of harvested wildlife, fish, aquatic resources and migratory birds among Ktunaxa;
- 17.2 the utilization of wildlife, fish, aquatic resources and migratory birds by Ktunaxa;
- 17.3 hunting and fishing methods, timing, locations, numbers, sex and age;
- 17.4 trade and barter; and
- 17.5 other matters agreed to by the Parties.]

18 [The Ktunaxa government may make laws regarding the conservation and protection of wildlife, fish, aquatic resources, and migratory birds on Ktunaxa lands.]

19 [If the sale of wildlife, fish, aquatic resources or migratory birds is permitted by federal or provincial laws, the Ktunaxa government may make laws to regulate the sale of wildlife, fish, aquatic resources or migratory birds harvested by Ktunaxa citizens.]

The Parties have not reached agreement on the list of law making authorities the Ktunaxa government may be able to exercise.

The Ktunaxa seek a treaty right to fish for commercial purposes and law making authority respecting the identification and documentation of persons other than Ktunaxa who may

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20 [The treaty will specify which law prevails in the event of a conflict between a Ktunaxa law and a federal or provincial law.]

FISH AND FISH HABITAT RESTORATION AND MANAGEMENT

21 [Canada and British Columbia will support Ktunaxa efforts to restore salmon and other extirpated, endangered or threatened fish species by:

- 21.1 Formally and explicitly recognizing and acknowledging the traditional importance of salmon and other fish species-at-risk and the current and future importance of restoration of salmon and other fish species to the Ktunaxa Nation;
- 21.2 Contributing funding for restoration of salmon (and other fish) populations through appropriate fiscal relation mechanisms including resource revenue-sharing or establishment of a trust fund;
- 21.3 Incorporating within the mandate of the regional environmental governance process the following specific responsibilities:
 - 21.3.1 supervision of salmon restoration feasibility studies and development and implementation of restoration/recovery plans for salmon and other extirpated, endangered or threatened fish species;
 - 21.3.2 conservation, restoration and stewardship of fish habitat and aquatic ecosystems;
 - 21.3.3 developing necessary transboundary cooperation mechanisms with US

be authorized to conduct commercial harvesting under the Ktunaxa treaty right. The Parties have not reached agreement on this issue.

The Parties are attempting to address issues related to the loss of access to fish as a component of a separate Recognition and Reconciliation Agreement.

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governments and agencies.

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