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Province of
British Columbia

NEWS RELEASE

Ministry of Environment, Lands and Parks

For Immediate Release

1993:ELP037

March 17, 1993

PROVINCE INTRODUCES NEW INTERIM GUIDELINES ON ABORIGINAL USE OF FISH AND WILDLIFE

VICTORIA — The B.C. government has unveiled new interim guidelines to ensure fair allocation and sound management of the province's fish and wildlife populations, Environment, Lands and Parks Minister John Cashore announced today.

Aboriginal Affairs Minister Andrew Petter joined Cashore at the announcement.

The Interim Guidelines on Aboriginal Use of Fish and Wildlife will be in effect while consultations leading to final guidelines are carried out.

"The interim guidelines respect aboriginal rights and interests while reflecting our first priority — protecting fish and wildlife populations and habitats," said Cashore. "These guidelines represent a balanced interim approach, aimed at ensuring fairness for both aboriginal and non-aboriginal people."

Recent Constitutional provisions and court decisions require that the province take into account aboriginal rights and interests when developing new ways of administering land, resources and allocations of fish and wildlife. The interim guidelines will meet these requirements while ensuring fair access to the resource for all British Columbians.

"The government of British Columbia recognizes the historic and continuing importance of fish and wildlife to aboriginal peoples for sustenance and cultural purposes," said Petter.

Cashore said the guidelines will be enforced to meet conservation goals, and added: "They will give conservation officers clearer direction and authority to carry out investigations."

- more -

Said / Lili
FY

I will
be getting a
copy of the
guidelines?

Cashore / Lili

① This is
important stuff!
According to
item #5 we
must consult
with respondents
for drilling,
seismic
(and more?)

② Also get a
copy of the
guidelines 1993

③ Prepare
briefing note
for Peter O.

(help from Denise
& Anne Corne?)

... impacts on our
business
... we should be
involved in consultation
(also industry).

Whe-

Province Introduces Interim Guidelines.../2

"These interim guidelines will provide a basis for consultation that will lead to permanent policies to balance the interests of all user groups in the management of our fish and wildlife," said Petter.

Consultations with First Nations and key stakeholders will begin in April. Final guidelines for aboriginal use of fish and wildlife will be implemented in January 1994.

Copies of the interim guidelines are available through the regional offices of BC Environment.

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BACKGROUNDER
ABORIGINAL USE OF FISH AND WILDLIFE
March 1993

Recent Constitutional provisions and court decisions require that the Ministry of Environment, Lands and Parks develop new ways of administering lands and resources and allocating fish and wildlife, which take into account aboriginal rights and interests in these resources.

- | | |
|---|---|
| <p>1. What is aboriginal sustenance hunting?</p> <ul style="list-style-type: none">• For the purposes of the Interim Guidelines, it is hunting for food and other domestic and cultural purposes on Crown land within the traditional territory of a particular First Nation. It represents a continuing interest in the land exercisable by the ancestors of the country's original inhabitants. | <p>3. Is aboriginal sustenance hunting being regulated right now by provincial conservation officers under the <i>Wildlife Act</i> ?</p> <ul style="list-style-type: none">• The courts have told us that some priority should be given to sustenance hunting, after conservation needs are met. Whenever conservation objectives are at risk, the province is taking action to protect the resource, including laying charges where warranted. |
| <p>2. Does sustenance hunting include sale of meat or animal parts?</p> <ul style="list-style-type: none">• No. Commercial sale of meat is illegal, except as authorized by a treaty, licence or permit. Sale is only possible for those parts of an animal which can be legally sold by any legitimate owner, like fur or hides. | <p>4. What changes in law and policy have occurred?</p> <ul style="list-style-type: none">• Aboriginal interests and rights in hunting and fishing have been confirmed in several recent court decisions. After conservation needs are met, the Crown is expected to provide some priority to the reasonable sustenance needs of First Nations when making harvest allocation decisions.• BC is committed to increased cooperation with, and participation by First Nations in management of lands and resources on their traditional territories. |

5. What sort of changes are we talking about?

- Wherever a resource development activity, such as logging or mining, is proposed that may affect the aboriginal use of resources like fish and wildlife on Crown land, government will consult with the First Nations affected.
- Where there are seasonal restrictions or allocation limits on the harvest of fish or game animals, aboriginal use will be given priority in any allocation decisions by the Fisheries and Wildlife Branches.

6. Will conservation of fish and wildlife resources be affected?

- No. The long term sustainability of species remains the most important consideration in managing fish and wildlife. Only where animals are sufficiently abundant is any harvest allowed.
- Consistent consultation with First Nations will lead to better understanding of aboriginal needs and resource uses — and, in turn, an improved ability to manage fish and wildlife resources for all British Columbians.
- Aboriginal people have always harvested fish and game. Deer, moose and elk have been the most commonly used wildlife species. In the long run, total aboriginal harvest is not expected to increase greatly, nor is harvest generally.

7. Are these changes part of treaty or land claims negotiations?

- No. Treaty negotiations are viewed as a separate process. The policy changes outlined here address the question of ongoing aboriginal resource use, based on recent court decisions. However, the changes suggested here are felt to be consistent with the direction of future treaty negotiations.

8. What are the benefits for fish and wildlife management, and for non-aboriginal users?

- Conservation concerns are shared by both aboriginal and non-aboriginal people. This mutual interest in healthy and sustainable fish and wildlife populations, and the cooperation that can result, will be of greatest benefit to the resource.
- Cooperative management with First Nations will necessitate better reporting of harvests, which in turn will mean more reliable biological information, thus improving resource management generally.
- Wider appreciation of traditional aboriginal knowledge and understanding of fish and wildlife will also be of benefit.

9. Will non-aboriginal hunting and fishing opportunities be restricted as a result of management changes?

- Inventory information on fish and wildlife is not complete across the province, but current estimates of animals commonly used by First Nations and recreational users indicate that severe restrictions will not be required in most areas.
- In areas where animal populations are more limited, measures such as limited entry hunting and catch-release angling have been implemented. Here, meeting the sustenance needs of aboriginal people will be a factor in determining allocations to recreational users.

10. What changes are proposed for private land?

- The ministry guidelines do not affect rights associated with private property. The duty to consult with aboriginal people and the preferred allocation of fish and wildlife applies only on unoccupied Crown land.
- Permission to hunt and fish on private property will continue to be the responsibility of the land owner.

11. What are these Interim Guidelines on Aboriginal Use of Fish and Wildlife?

- The legal status of many aboriginal rights and interests remains to be defined and a number of cases are under appeal. However, certain facts are clear, including a basic interest in the continued use of fish and wildlife. The ministry has provided staff with interim guidelines on how to recognize and accommodate these interests. The guidelines also identify circumstances under which conservation may be an issue, and enforcement action appropriate.

12. What process will lead to establishing permanent guidelines?

- The ministry's interim guidelines will serve as the basis for detailed discussions over the next year between the ministry, First Nations and interest groups to develop a comprehensive process for sharing wildlife harvests between all users in a fair way. Decisions of the consultative process will be by consensus, and recommendations of wildlife will be forwarded to Cabinet.

Does this include the relationship of wildlife habitat?

13. Who will be included in the consultations? Will these be open meetings, or by invitation only? Will the media be present?

- The consultations will focus on developing a new process for sharing wildlife harvests. Participation will be by invitation, and will include, in addition to First Nations, all organizations which represent the interests of other consumptive users of wildlife, including resident hunters, trappers and guide outfitters. Consultative meetings will be open to the media.
- In addition to formal consultations, the ministry would like to hear the views of individual citizens. Please contact any of the ministry's regional offices, or write to Victoria.

14. Where will the meetings be held?

- Meetings will be held in locations most convenient to First Nations and wildlife organizations.

15. How enforceable are interim and permanent guidelines? Will this result in a law or regulation?

- The interim guidelines indicate those circumstances where enforcement action is appropriate for conservation and other valid reasons. The consultation process is intended to reach consensus among all parties on more workable harvest sharing processes. These could then be incorporated, through cooperative agreements, into various First Nations bylaws, and into ministry regulations.

16. What if the consultation process shows there is major opposition to the guidelines?

- The guidelines are interim, and are expected to change as a result of the consultation process and further clarification from the courts. However, certain principles are now firm in law, including the need to consult with First Nations on matters which affect aboriginal interests, and the requirement to provide some priority to aboriginal sustenance uses of wildlife.

17. What is the target date for implementing permanent guidelines?

- It is intended that the consultation process will be complete, and consensus recommendations available for Cabinet consideration by January, 1994.

*what about
groups
importing
habitat?*

16050-20/19



British Columbia
Handle with care

Interim Guidelines on Aboriginal Use of Fish and Wildlife

Discussion Paper

**Native Affairs Branch
Ministry of Environment, Lands and Parks**

March, 1993



Printed on recycled paper

PREAMBLE

This discussion paper is part of an interactive policy development process with several objectives:

- to provide the basis for meaningful consultation and participation in the development of permanent guidelines, by First Nations and other key stakeholders;*
- to provide essential interim guidance to ministry staff on aboriginal issues, such that the ministry's ability to ensure sound fish and wildlife management is not compromised;*
- to develop a wider appreciation and understanding for recent legal and policy developments in British Columbia, relative to aboriginal interests in the management of fish and wildlife resources.*

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PROPOSED DEFINITIONS

Conservation Purpose:

The maintenance of a locally discrete population of fish or wildlife, in numbers sufficient to ensure the long term viability of that population, consistent with the ecosystem's capability to sustain that species. Ministry policy is to maintain wild populations in natural habitats.

First Nation:

An aboriginal community which has a traditional territory and a mandated executive which represents the community's interests.

Sustenance Resource:

Any product of land and water on unoccupied Crown land which is subject to an aboriginal sustenance right or interest, including but not restricted to:

- Fish, shellfish and derivative products such as shells and fish oils;
- Wildlife and derivative products such as hides, pelts, antlers, horns, teeth, feathers, hooves, claws, bones, quills and organs;

Sustenance Use:

Traditional, non-commercial hunting, fishing, gathering and trapping, and uses of the products of the land for spiritual, cultural and life sustaining purposes in a defined area, where such activities were practiced by the ancestors of current aboriginal users.

Traditional Territory:

The land and waters contained within the boundaries of an area historically used or occupied by a First Nation.

BACKGROUND

The use of fish and wildlife for sustenance purposes by aboriginal people has always been recognized by the government of British Columbia. However, as demands for the use of fish and wildlife populations increase and as human settlement and resource extraction place pressures on habitat, there is a need to assess continually the use and allocation of these resources, to ensure they reflect sound conservation and management principles. A continuing, compounding problem is inadequate inventory of fish and wildlife resources, which makes it difficult to determine with any accuracy where real conservation problems exist.

The question of wildlife use is further influenced by the fact that legal decisions on aboriginal sustenance use are unclear, and some important cases are still unresolved. Court decisions have affirmed an aboriginal right to fish for sustenance, subject to regulation for conservation or other justifiable objectives, with aboriginal uses given priority in harvesting. Regulations that affect the exercise of an aboriginal right must be preceded by meaningful consultation. Other recent decisions indicate that aboriginal people are permitted to use the unoccupied Crown land of the province for sustenance purposes. The Crown has a responsibility to give some priority, after reasonable conservation needs are met, to aboriginal sustenance use.

In the absence of clear direction from the Courts on how aboriginal priority use should be determined, provincial officials have had difficulty in assessing aboriginal sustenance needs and have been unable to establish clear enforcement

regulations. These interim guidelines are intended to reduce this uncertainty by providing clear guidance to provincial officials and all users of fish and wildlife resources.

The interim guidelines will form the basis for consultations, to allow the striking of an appropriate balance between conservation needs and legally recognized aboriginal rights and interests. They will also guide the activities of ministry staff until final guidelines are approved.

We are fortunate that the populations of fish and wildlife in British Columbia are healthy enough to support legitimate use by many different groups. However, government is committed to the principle that sharing among groups be worked out through negotiation, rather than through litigation.

These guidelines are presented as a starting point for discussions over the next year, with the aim of eventually achieving a policy that will be acceptable to all parties and which reflects the best principles of stewardship and conservation. The guidelines will not prejudice future negotiations concerning aboriginal rights, interests and treaties.

MINISTRY OF ENVIRONMENT, LANDS AND PARKS RESOURCE MANAGEMENT PRINCIPLES

1. A priority of the Ministry is to ensure the long-term conservation of fish and wildlife populations and their habitats.
2. The Ministry also recognizes a need to provide aboriginal peoples of British Columbia some priority, after conservation needs are met, in the use of fish and wildlife for sustenance, in traditional territories.
3. The Ministry recognizes an obligation to provide clean and abundant air and water, and continued opportunities for legitimate enjoyment of fish and wildlife.
4. Priority, but not exclusive, use of fish and wildlife is given to residents of the Province of British Columbia.
5. Any uses of wildlife will be ethical, humane and sustainable.
6. The sale or barter of wild species, in whole or in part, is not sanctioned, except as authorized by regulation, or where included in a treaty right.

BC ENVIRONMENT GUIDELINES

Fish and Wildlife Harvest Allocation

In allocating harvests of wildlife, some priority may be given to aboriginal sustenance uses in areas of unoccupied Crown land where shortages of the resource arise. When conflicts do arise, they must be resolved honourably and reasonably.

In allocating harvests of fish, priority will be given after necessary conservation measures, to aboriginal access to the food fishery where the group has an aboriginal right to fish.

Aboriginal interests in resources are to be treated as communal, rather than individual in nature, and to apply within the traditional territory of a First Nation. Harvest allocation discussions should be limited by the bounds of the traditional territory. First Nations may designate the individuals authorized to harvest resources on behalf of the community. Where several traditional territories overlap, it will be necessary to ensure discussions include all appropriate First Nations. A mutually satisfactory, self-administered permit system would expedite effective enforcement.

The following procedures for sharing harvests should be considered transition measures, to be replaced as soon as practical with more comprehensive and proactive processes which achieve aboriginal participation as early as possible in planning and management processes.

Procedures for Fish and Wildlife Harvest Allocation - General

In setting annual hunting and angling regulations, where an open hunting season or harvest of fish is recommended:

- (a) where no conservation concern exists, aboriginal sustenance hunting or fishing will not be seasonally restricted (see following policy on enforcement for conservation purposes);
- (b) where there is sustenance use, the Regional Fish and Wildlife Manager will ensure that harvest allocation calculations include reasonable provisions for aboriginal harvest;
- (c) the Wildlife or Fisheries Director, in cooperation with First Nations, will implement processes to gather information on aboriginal harvests, for conservation and management purposes.

Procedures for Fish and Wildlife Harvest Allocation - Restricted Harvests

Conservation measures, such as limited entry hunting seasons, angling catch/release or gear restrictions, are generally used in situations where insufficient animals are available to support general open hunting or angling seasons. These measures are a recognition of resource scarcity and in such cases the Regional Manager will:

- (a) notify local First Nations in writing that such a season or harvest restriction is contemplated and offer to meet. The First Nations will be advised of the time lines to complete regulation schedules, and requested to provide comments in a timely manner;
- (b) where there is sustenance use, ensure that harvest calculations take into account aboriginal priority, and make appropriate adjustments to non-aboriginal use by such variables as season length, overall number of authorizations, or size of quotas;
- (c) where there is sustenance use, issue permits to First Nations to support that use, including conditions to provide the Ministry with information essential for conservation and management purposes.

Enforcement for Conservation Purposes

The use of fish for sustenance purposes by those First Nations with an aboriginal right to fish within traditional territories, will be subject to regulation only for conservation measures or other compelling reasons, such as public safety.

Some priority access to wildlife on unoccupied Crown land, for aboriginal sustenance use, will be subject to enforcement measures where it is felt necessary for conservation purposes or other compelling reasons. Consistent with the preceding sections of this policy, consultation with individual First Nations is necessary to ascertain such factors as the nature, extent, timing and methods of

local harvesting activities, and traditional uses of various species of fish and wildlife.

The nature of sustenance use will be defined, to a large extent, by First Nations communities, based on local circumstances and traditional use patterns.

Aboriginal interests in resources are to be treated as communal, rather than individual in nature, and to apply within the traditional territory of a First Nation.

Where agreements are reached, First Nations will be responsible for authorizing individuals to harvest resources on behalf of the community.

An investigation in relation to aboriginal use of fish or wildlife may occur at any time, and will be initiated where:

- (a) animals are killed of a species designated by British Columbia under the Wildlife Act, as threatened or endangered;
- (b) animals of a particular species are harvested in an area where no open season exists for that species at any time of year (a closed season is recognition either that insufficient numbers exist to allow a harvest, or harvesting methods present a safety concern);
- (c) fish are taken where a seasonal angling closure is in place to protect vulnerable concentrations of spawning fish;
- (d) a species is killed which is not defined as "game" or a "fur bearing

animal" in the Wildlife Act, or where no traditional sustenance use of the species can be demonstrated;

- (e) public safety is threatened;
- (f) fish or wildlife is killed in excessive numbers, is abandoned or left to waste;
- (g) hunting or fishing is done for commercial purposes, unless authorized by a license or permit, or there is a treaty right to do so;
- (h) hunting or fishing, outside an established open season, is done outside of the traditional territory of the First Nation to which the harvesting individual belongs;
- (i) hunting or fishing violates conditions of a formal cooperative management agreement between the Ministry and the appropriate First Nation.

Procedures on Enforcement For Conservation Purposes

- (a) The Regional Enforcement Manager or Senior Conservation Officer will inform the appropriate First Nations government of an investigation involving an aboriginal person, unless such notification could jeopardize an ongoing investigation.
- (b) All investigations will be thoroughly documented.
- (c) Where prosecution is contemplated, the investigating Officer will refer the matter to the Regional Enforcement Manager, who will, in consultation with the Regional Director:
 - (i) evaluate whether an appropriate level of consultation on both the resource management objectives and the rationale behind the investigation has occurred with appropriate aboriginal authorities;
 - (ii) where charges are recommended, refer the matter, with covering report setting out any special considerations, to the Crown Counsel.
- (d) Crown Counsel will refer each file to the Executive Crown Counsel and charges will only proceed with that official's consent, in accordance with the policies of the Criminal Justice Branch.

CONCLUSION

These interim guidelines will provide direction to all staff while consultations on permanent guidelines occur. They are necessary to maintain effective resource management and will be enforced. Ultimately, through consultation and negotiation, First Nations will be involved as active participants in various cooperative resource management processes. In the interim, staff are encouraged to communicate these guidelines to First Nations and other resource users and to develop appropriate consultation arrangements.