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AFGA Position on Métis Hunting and Fishing Rights in Alberta

The Alberta government recently signed an Interim Métis Harvesting Agreement (September 28, 2004) with the Métis organizations in Alberta that extends to their membership similar hunting and fishing rights that are currently possessed by Treaty Indians.

The AFGA and other stakeholders were not involved in any consultation on this issue prior to the development of the Interim Agreement. The AFGA has had recent discussions with the government, after the fact, and have been informed that written concerns should be directed to the Minister of Sustainable Resource Development who will represent the concerns of the AFGA members with regard to the AFGA concerns with the Interim Agreement.

The AFGA believes that conservation of the fish and wildlife resource is the primary concern, along with effective population management and enhancement of the resources.

The AFGA presents this position on the Interim Métis Harvesting Agreement with the perspective that this is a major concern to the future conservation and shared use of the fish and wildlife resources of this province. **The affect of the current Interim Métis Harvesting Agreement will clearly impact and influence fish and wildlife conservation and the allocation of these resources to all hunters and anglers and others who use these resources. It will reduce the opportunities of non-Métis Albertans to use fish and wildlife.**

The AFGA expects that changes will be necessary to ensure that the fish and wildlife resources are conserved for future generations and that non-Métis hunting and fishing opportunities are maintained or extended. The objectives of this AFGA document are:

- (a) to identify the issues associated with the Interim Métis Harvesting Agreement and
- (b) to identify solutions to the issues or concerns.

The Alberta Fish and Game Association has a number of issues surrounding this development.

The Issues

1. Expansion of Rights beyond the Supreme Court of Canada Decision

The government of Alberta clearly expanded who may claim Métis hunting and fishing rights over what was required by the Supreme Court of Canada (SCC) decisions.

Internal government documents indicate that the government is "...satisfied that the membership criteria of the Métis organizations are consistent with ... the test". In other words, if one is a card-carrying member of the Métis Settlements General Council or the Métis Nation of Alberta, that is all the government of Alberta requires, even though the SCC had placed the specific requirements.

Why has the government of Alberta not used the much more narrow requirements of the SCC in negotiating an agreement? Politicians must answer this one. The result is that the Interim Agreements ONLY require membership in one of the two Métis organizations, and do not include meeting the other tests that the Supreme Court laid down.

The interim agreements broaden the scope of what the SCC determined. The SCC in their written decision said the following (emphasis added)

31 First, the claimant must self-identify as a member of a Métis community. This self-identification **should not be of recent vintage**: While an individual's self-identification need not be static or monolithic, claims that are made belatedly in order to benefit from an s. 35 right will not satisfy the self-identification requirement.

32 Second, the claimant must present evidence of an ancestral connection to a historic Métis community. This objective requirement ensures that beneficiaries of s. 35 rights have a real link to the historic community whose practices ground the right being claimed. We would not require a minimum "blood quantum", but we would require some proof that the claimant's ancestors belonged to the historic Métis community by birth, adoption, or other means. Like the trial judge, we would abstain from further defining this requirement in the absence of more extensive argument by the parties in a case where this issue is determinative. In this case, the Powleys' Métis ancestry is not disputed.

33 Third, the claimant must demonstrate that he or she is accepted by the modern community whose continuity with the historic community provides the legal foundation for the right being claimed. Membership in a Métis political organization may be relevant to the question of community acceptance, but it is not sufficient in the absence of a contextual understanding of the membership requirements of the organization and its role in the Métis community. The core of community acceptance is past and ongoing participation in a shared culture, in the customs and traditions that constitute a Métis community's identity and distinguish it from other groups. This is what the community membership criterion is all about. Other indicia of community acceptance might include evidence of participation in community activities and testimony from other members about the claimant's connection to the community and its culture. The range of acceptable forms of evidence does not attenuate the need for an objective demonstration of a solid bond of past and present mutual identification and recognition of common belonging between the claimant and other members of the rights-bearing community.

34 **It is important to remember that, no matter how a contemporary community defines membership, only those members with a demonstrable ancestral connection to the historic community can claim an s. 35 right.** Verifying membership is crucial, since individuals are only entitled to exercise Métis aboriginal rights by virtue of their ancestral connection to and current membership in a Métis community.

2. Reduced Fishing Opportunities

The Interim Agreement also applies to fishing rights. Métis people will be able to obtain Métis Domestic Licenses to harvest fish with the use of gill nets in many new lakes to which they were not permitted to use previously. The Métis will be able to net fish under rules similar to those currently issued to Treaty Indian peoples. The number of Métis in Alberta is approximately 75,000 and with an unknown number that may choose to

exercise these new opportunities and with increasing aboriginal populations in the future, the fishing opportunities for non-Métis Albertans will be less.

With existing restrictions on non-Métis Albertans, the increased use by Métis will further diminish angling opportunities of non-Métis Albertans. It is likely that there will be reduced opportunities and greater restrictions on non-Métis angler harvest.

3. Reduced Hunting Opportunities

The Interim Agreement also applies to hunting rights. Métis people will be able to hunt on all public lands and private lands (with permission) during all seasons of the year on a similar basis to Treaty Indians (First Nations). The number of Métis in Alberta is approximately 75,000 and with an unknown number that may choose to exercise these new opportunities and with increasing aboriginal populations in the future the hunting opportunities for non-Métis Albertans will be less.

With existing restrictions on non-Métis Albertans, the increased use by Métis will further diminish hunting opportunities of non-Métis Albertans. For example, if a non-Métis currently receives a moose permit once every three years, it is likely to reduce his opportunities to less than that current opportunity.

4. Equality for All Albertans

The discrimination of non-Métis Albertans by removing existing opportunities through the re-allocation of fish and wildlife resources is another major concern of the AFGA. This action reduces the non-Métis Albertans rights for continued and equal use of the natural resources. An element of discrimination against the non-Métis Albertan appears to be evident.

5. Conservation of Fish and Wildlife Resources: Monitoring Resource Status

The determination of the status of the fish and wildlife resources through active monitoring has been a concern to the AFGA for many years. The ability of the government to assess the status of the fish and wildlife resources has been impaired by insufficient funding.

For example, currently the amount of money available for monitoring fish has been limited and in so doing, precautionary management has reduced opportunities with greater restrictions. With increased allocations to the Métis the inability to monitor will lead to jeopardizing the health of the fish and wildlife resources.

6. Conservation of Fish and Wildlife Resources: Enforcement

The enforcement of existing conservation laws has as well been limited by the size of the budgets. The ability of the government to enforce the fish and wildlife resource conservation and allocation laws has been impaired by insufficient funding.

Self-policing must be carefully reviewed. Some enforcement agencies do not believe that self-policing is an effective tool in dealing with fish and wildlife harvest legislation. The AFGA is also concerned with the level of enforcement in an environment of somewhat vague regulation. If self-policing actually worked then we would have no need for conservation officers, police, etc. to enforce laws.

7. Public Consultation

The AFGA was not involved in the development of this agreement. The government's perspective was that as it was "not a matter of policy", other stakeholders need not be considered. The AFGA only became aware of the government actions in early September of 2004, when the interim agreements were almost finalized. Meetings with Ministers did nothing to alleviate the AFGA's concerns. Further, the government suggested that as the Supreme Court ruling needed to be addressed, there was no need for other stakeholders, and in fact, internal documents say, "the agreements were negotiated between the proper parties"

As the AFGA is Alberta largest volunteer conservation organization and the organization that represents and speaks on behalf of licensed Alberta hunters and anglers this lack of consultation is a major issue with the AFGA.

The Solutions

1. No Expansion of SCC Métis Hunting and Fishing Rights

The existing definitions and decisions provided by and described by the SCC should be strictly adhered to and not expanded or extended.

2. Re-affirmation of Existing Settlement Areas

The AFGA would request that the community definition for hunting & fishing be aligned with existing Métis Settlement areas. Hunting and fishing should be permitted and re-affirmed in these settlement areas only.

3. Non-Settlement Métis Residents

Métis residents of urban and rural communities outside of Métis settlements or from other provinces must be prohibited from hunting and fishing in Alberta unless they have a proper resident or non-resident license or they are permitted to hunt or fish on settlement lands. Currently in Alberta there are approximately 8,000 Métis living on Métis settlements and approximately another 67,000 living in the rest of Alberta.

4. Fish and Wildlife Monitoring

There is a need for much more intensive monitoring of the fish and wildlife resources.

A resource monitoring plan should be developed to address current use and increased harvest of fish and wildlife resources.

A resource harvest inventory and monitoring plan should be developed to determine how many animals and fish are being harvested by Métis and the impact that harvest is having on the resource and on licensed non-Métis hunters and anglers.

5. Enforcement (Self-Policing)

The AFGA believes the notion of self-policing is not realistic and must be reviewed and carefully assessed. Appropriate limits, prohibitions and enforcement actions are recommended. The clarification of Métis definition and the identity of Métis as per the SCC ruling must be reviewed and followed so as to provide enforcement officers with greater clarity as to who qualifies for increased opportunities.

6. Review of the Allocation of Fish and Wildlife Resources in Alberta

A review of the allocation of big game resources and other fish and wildlife amongst aboriginal, commercial and non-Métis uses be initiated by the government with the participation of key stakeholders.

7. Equal Opportunities for all Albertans

The Alberta Government should develop policies that reflect equal use opportunities for all Albertans of publicly-owned natural resources. These policies should be reflected in the provincial legislation.

8. Public Consultation

The existing Alberta Government policies and principles surrounding fair governance and appropriate public involvement and consultation of stakeholders and concerned citizens must be maintained and improved in this situation. This is the essence of the democratic right.

The Alberta Fish and Game Association is a not-for-profit volunteer organization that has been active in habitat conservation since 1908 and has a province-wide membership of well over 14,000 individuals committed to maintaining Alberta's natural heritage.

AFGA
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