

ALGONQUIN LAND CLAIM INPUT DOCUMENT

This document has been prepared as O.F.A.H. input to the negotiations related to the Algonquin Land Claim. It captures the key elements of policy as it relates to the Algonquin claim.

ALGONQUIN FIRST PRINCIPLES

Introduction

The primary goal of the O.F.A.H. and its membership is to ensure the conservation of Ontario's fish and wildlife resources, including the wise use and provision of optimum benefits from those resources. The O.F.A.H. believes that respect for and the desire to conserve our natural resources is also a fundamental underpinning of First Nation culture. We believe that hunting and fishing are a fundamental form of personal expression, protected by the Constitution, as a right of all Canadians.

While we often have a philosophical difficulty understanding or accepting that rights related to hunting and fishing may differ for different members of society:

- we accept and believe that hunting and fishing are fundamental rights, and a key part of the cultural heritage of Ontario's First Nations. The nature and extent of such rights may vary based upon specific provisions of treaties, or lack of treaties;
- we accept and believe that expression of those rights is essential to the well-being of participants;
- we recognize that special rights of First Nations and aboriginal peoples have been reaffirmed in the Constitution Act, 1982; and
- we recognize that special rights related to hunting and fishing, where they exist, have been upheld in the Supreme Court of Canada.

We believe that the rights guaranteed in the Constitution can not and should not be arbitrarily limited. There must be a valid legislative objective for any limitation of constitutional rights, and any limitation should represent the minimum restriction possible to meet that legislative objective. At the same time, we believe that those rights can not be unfettered; that is, limits on the exercise of rights may be appropriate and necessary.

The right to hunt and fish or to use any resources, either as a form of expression or as an aboriginal or treaty right, must be bound by the principles and practices of conservation and safety.

The rules (laws and regulations) that are established to achieve the principles of conservation can vary (e.g. different rules for commercial versus noncommercial use; subsistence/ceremonial uses versus sustenance uses), providing that the conservation remains paramount.

For each form of use (First Nation harvest, noncommercial harvest, and commercial harvest), appropriate rules and limits must be established and enforced with equal vigor to ensure that resource sustainability and conservation are not compromised (recognizing that enforcement priorities may vary to focus on activities with the greatest consequences/implications to conservation).

The exercise of rights brings with it a responsibility for sound stewardship and conservation, including the participation in management processes leading to rules governing the exercise of hunting and fishing rights (setting out and application of rules governing the exercising of those rights).

Except in very special circumstances (e.g. as explicitly set out in a treaty), there is no fundamental right to commercially harvest fish or wildlife.

Commercial harvest of fish and wildlife resources is a privilege, which must be governed by strict licensing and other controls to ensure conservation.

Access to the opportunities for permitted commercial activities should be equal for all Ontarians.

All decisions regarding the use of fish and wildlife must strive toward the conservation of the resource; the first allocation must always be to the resource, and this should never be compromised. The ability of the resource to maintain or regain a productive state should never be compromised.

The allocation of allowable harvest must first recognize the needs of resource renewal, including the achievement of objectives related to desired/optimal population size. The remainder of the allowable harvest should be allocated in a fair, equitable, and nonexclusive manner recognizing:

- rights of aboriginal and First Nation sustenance, ceremonial and traditional uses;
- rights of noncommercial, nonnative/nonaboriginal users; and
- rights of commercial users.

No use or right is, or should be, exclusionary; that is, no single form of use should have total and exclusive use of a resource.

CONSERVATION OF FISH AND WILDLIFE AND OTHER RESOURCES

Any Agreement in Principle (AIP) must include a definition, and principles of conservation similar to the following:

- “conservation” means the management and use of fish and wildlife to yield the greatest sustainable benefits to present generations, while maintaining their potential to meet the needs of future generations; and
- “conservation” includes maintenance, sustainable utilization, restoration (including rehabilitation, reintroduction and enhancement), and protection of fish and wildlife.

The fundamental principles of conservation include:

- sustainability of resource stocks;
- maintenance of ecosystem function and stability;
- optimum supply of benefits from the resource; and
- management of and provision for risk and uncertainty.

These fundamental principles can be further described:

- there is a limit to the amount of a resource that can be used if that resource is to be sustained;
- rare, threatened, endangered or vulnerable species require protection if they are to be sustained or increased;
- use of fish and wildlife stocks that are undergoing rehabilitation may delay or preclude full rehabilitation;
- harvesting fish and wildlife at times and in places where they are particularly vulnerable (e.g. spawning, nesting and winter yarding) entails more risk, and hence, requires more care if allowed (harvesting of breeding fish and wildlife may increase the risk to sustainability of those stocks);
- the sustainability of fish and wildlife requires protection of their habitat;
- harvesting techniques and unrestricted means of access can significantly affect sustainability by their impact on reproductive success or survival of remaining nonharvested animals or fish;
- the provision for risk and uncertainty must be a management consideration;
- ecosystem function and stability must be maintained; and
- harvests must be modified to reflect natural fluctuations and factors, such as introduction of exotics and habitat changes.

It should be recognized that resource use limits placed on a broad geographic scale could, nonetheless, result in systematic depletion of resources if other restrictions on use are not applied.

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For each form of use (First Nation harvest, noncommercial harvest, and commercial harvest), appropriate rules and limits must be established and enforced with equal vigor to ensure that resource sustainability and conservation are not compromised (recognizing that enforcement priorities may vary to focus on activities with the greatest consequences/implications to conservation).

The O.F.A.H. supports:

- the efforts of the governments of Canada and Ontario to resolve First Nation claims, and to redress equitably injustices that have been imposed on native peoples;
- the efforts by aboriginal peoples and First Nations to participate more fully in the province's economy and the provision of opportunities for improving local economies;
- the resolution of land claims through reasonable monetary settlements and economic development opportunities that will result in long-term economic stability, including, where necessary, associated limited scale Crown land transfers or private land purchases; and
- the development of shared management and stewardship agreements, where required, with all interested parties to ensure the conservation of natural resources.

Therefore, we recognize and support the need to negotiate with the Algonquins.

We believe that the courts' position quite clearly confirms that "rights" are tied to the community, not to individuals. Therefore, we further believe those who stay outside of the negotiating process (by choice or because the community does not accept them as members), are not eligible to share in the benefits or to exercise "rights" until such time as they choose to rejoin the community and are accepted by that community.

We believe that the statement of "Shared Objectives" is a reasonable starting point for the development of an AIP. We recognize that the negotiation includes the status Algonquins associated with the Pikwakanagan First Nation, as well as nonstatus Algonquins.

GOVERNMENT AS CUSTODIAN

The governments of Canada and the provinces have the responsibility to manage fish and wildlife resources on behalf of all Canadians, and must retain that responsibility in all negotiations. Natural resources, including fish and wildlife, represent an immensely valuable public trust. This natural resource trust belongs to the public of Ontario and Canada. The governments of Canada and Ontario act as the public custodian of this trust, a trust that is essential to the environmental, social, and economic well being of the people of the province. It is a trust that is essential to the wellness of individuals and society. It is the foundation of major sectors of the economy, of communities, and of ways of life for aboriginal and nonaboriginal people.

ALL SOCIETY MUST BENEFIT

All society must share, or have the opportunity to share, in the benefits accruing from this natural resource trust. Shared benefits include the environmental, economic and social returns from the resource. They also include less easily measured returns, including quality of life, peace of mind, and way of life.

We believe that no use or right is, or should be exclusionary.

Negotiation of unsettled claims and grievances must accept sharing of resources as a fundamental underpinning.

Resource sharing must recognize the degree to which First Nation members have integrated into society and benefit fully from the advantages of that society, including land ownership, business development, social, education, health, safety, and employment benefits. This is especially important in the Algonquin claim, where the size of the nonaboriginal population, the degree of development, and the long history of land and resource use sets it apart from northern claims.

Resource sharing must recognize the relative sizes of the aboriginal and nonaboriginal populations. In the area claimed by the Algonquins, there are over 1.4 million nonaboriginals. The most recent aboriginal population estimate is approximately 7,000 individuals.

Resource sharing must recognize that hunting and fishing, and other resource uses are an integral part of the heritage and traditions of nonaboriginal peoples in the claim area (some 7th generation). All Crown lands in the claim area have existing uses (forestry licenses, hunting camps, traplines, parks, etc.). Hunting and fishing are essential to the well being of all participants, regardless of ancestry or "rights."

Any agreement should enhance the value of the regional economy, rather than displacing existing enterprises or simply replacing their ownership with Algonquin ownership.

The application of “fair sharing” must include explicit recognition that the allocation to an individual First Nation is part of a larger whole, and that within the context of that larger whole, it has no special additional priority.

Fair Sharing

Resource sharing must recognize that hunting and fishing are extremely important activities for the spiritual recreation and sustenance of all participants – both native and nonnative. Hunting and fishing truly represent a fundamental form of expression, which is part of the shared cultural heritage of native and nonnative society in the area of the claim.

Resource sharing must reflect:

- a reasonable and limited consideration of social and ceremonial needs recognizing the evolution of native society, and the integration of First Nation members into the rest of society;
- traditional uses and the historic occupation of the land by native and nonnative people;
- that hunting and fishing are no longer a “subsistence” activity for many members of the Algonquin and Nipissing communities; rather, their activities are conducted in a similar manner, with a similar purpose of spiritual “recreation” and sustenance, and as part of a shared cultural heritage with other members of society;
- historic treaty processes, whereby the Crown negotiated in good faith with First Nations who claimed, and were recognized, to have the rights to the land and resources within the claim area;
- historic dealings with the Algonquins; and
- other First Nations and other aboriginal peoples who may have rights.

Consistent with the preceding discussion related to fair sharing in the context of the Algonquin claim:

- certain species could be “allocated” – that is, a specific Algonquin allocation identified. Such species would be those for which there is a very specific management regime, such as the “moose tag allocation system” for nonnative use. Such an allocation might also be necessary for species that are otherwise vulnerable to pressure (e.g. brook trout); and
- for species which are defined as “allocated” – that is, species for which there is a specific share of the allowable catch allocated to a First Nation, the AIP must provide for, and the final agreement must include the requirement for the preparation by the First Nation, and approval by the Ministry of a harvest plan.

The agreement must include a process to develop allocations for presently “unallocated” resources in the future, should resources become limited/scarce or demands increase. Further, this should include an arbitration process.

A “priority allocation” for First Nation use can be established in a variety of ways within the context of the principles identified above. For example, for an “allocated species,” a priority allocation might take one of the following forms:

- if Algonquins represent 1% of the total population of the claim area, the Algonquin allocation might be 1.5% of the total available adult validation tags;
- Algonquins receive 1% of tags, but have an extended season providing a much greater opportunity for success; or
- some variation of the preceding, combined with the ability to harvest moose within Algonquin Park. This might take the form of an overall greater percentage allocation (e.g. 4%), with the clear understanding that the allocation must be taken wholly within Algonquin Park.

For example, for an “unallocated species,” a priority allocation might take one of the following forms:

- a larger “catch limit” than other members of society (e.g. if the catch limit is normally two fish, the Algonquin catch limit might be four);
- longer seasons;
- provision for different fishing techniques; and
- differing access.

For unallocated species, the agreement must, nonetheless, provide for shared harvest restrictions where the species, either as a result of a seasonal or a site-specific issue, requires additional protection, and should provide for shared renewal of benefits following rehabilitation.

Where it is necessary to limit harvest of species of fish and wildlife to sustain those populations, Algonquins and nonaboriginals will share the reduction in use.

Consistent with the preceding, discussions of fair sharing related to the Algonquins must recognize that the existing hunting agreement with the Algonquins is not, nor should it be, considered a benchmark document. It was a product of convenience intended to provide an interim solution related to the exercise of potential rights by the Algonquins.

In some situations, there are resources that are scarce and extremely vulnerable to exploitation. Brook trout within Algonquin Park represent such a resource. An allocation of the resource based upon simple percentages, unless allocated on an individual lake/pond basis (unenforceable and unmanageable) could still result in the systematic depletion of the entire resource.

In such circumstances, it may be necessary to:

- apply the same conservation rules and limits on all users; and
- seek a monetary settlement (“buy-out”) as part of an agreement not to exercise rights that may exist related to a specific fishery or other resource.

In fact, a monetary settlement may indeed be the simplest and least intrusive solution related to exercise of rights.

At the same time, as a means of providing alternatives to the preceding (i.e. sensitive resources) and meeting aboriginal and nonaboriginal needs, enhanced management of fisheries and wildlife should be considered in any negotiation of any fair sharing of resources.

COMPETING AND OVERLAPPING FIRST NATION AND MÉTIS CLAIMS AND FAIR SHARING

The claim area overlaps a number of existing treaties and consists completely, or almost completely, of areas for which existing First Nations have treaty rights to hunt and fish. Any allocation to the Algonquin First Nation impacts the use of resources by those First Nations. Further, despite interim agreements with the Métis Nation of Ontario, the Métis have grievances and believe they have rights within the area of the claim; therefore, it may be necessary to:

- establish an overarching and collective First Nation/Métis allocation and a nonnative allocation as a portion of allowable harvests (e.g. if First Nations and Métis comprise x % of this claim area; they may be allocated, for example, 1.5 x % of the total allowable harvest [TAC’s] of allocated species);
- negotiate specific community-based allocations within the total First Nation/Métis allocation; and
- share on a proportional basis by both (First Nation/Métis and nonaboriginal) communities, increases and decreases in the TAC’s/allocations.

STEWARDSHIP RESPONSIBILITY

The exercise of rights brings with it a responsibility for sound stewardship and conservation, including the participation in management processes leading to rules governing the exercise of hunting and fishing rights (setting out an application of rules governing the exercising of those rights).

Sound stewardship includes public accountability.

Any agreement must further explicitly confirm that as part of sharing of resources, there will be full disclosure, full sharing of information, “equivalent” enforcement, monitoring, and assessment. All of these elements and their implementation are essential.

All users should be responsible, in measure, for the costs of stewardship.

LAND

Crown land is a public resource and “trust” for which the government has a custodial responsibility. Crown land and other public land belong to all Ontarians.

Overall management and regulatory control of activities on Crown land must remain with the government. The government’s responsibility is to ensure that Crown lands continue to provide benefits to all Ontarians. It is the responsibility of the Ontario government to manage Crown land for the use of all Ontarians, including aboriginal peoples.

Crown land must continue to be accessible to all Ontarians. Public use and access to Ontario Crown lands must be assured, and public access to all harvesting activities must be assured.

Where land is involved in the negotiations, this should be on the basis that land transfer is a negotiated solution, rather than an entitlement.

As part of the final settlement, any transfer of Crown land should be limited geographically, site-specific, localized, and related to specific economic or community development proposals. Crown land outside of Algonquin Park within the claim area is an endangered resource; therefore, as part of the final settlement, any transfer of Crown land outside of Algonquin Park should be limited geographically, site-specific, localized, and related to specific economic or community development proposals. It must further be recognized that there may be specific areas of Crown land that should not be transferred. Where any transfer occurs, existing tenure holders must be compensated.

Any expansion of the existing Pikwakanagan Reserve at Golden Lake should be of limited scale, and involve only contiguous lands.

Any land obtained by the Algonquins should be private land acquired on a willing seller/willing buyer basis. There must be no expropriations.

Where any transfer occurs, existing tenure holders must be compensated.

ALGONQUIN PARK

The Framework Agreement has identified that Algonquin Park will remain a provincial park for the use and enjoyment of all people of Ontario and Canada, and that the park should continue to be considered “lands taken up,” and not be available for transfer to the Algonquins.

Any management agreement related to the use of fish and wildlife resources within the park must recognize the general principles identified in the preceding pages. They must further recognize the special, sensitive nature of the brook trout fisheries and any other scarce resources; and, protection of fishing and hunting opportunities for nonaboriginal people.

CONSULTATION AND NEGOTIATION

The provincial and federal governments should involve/consult with non-First Nation citizens, including anglers and hunters, in all negotiations with potential impacts on achievement of conservation.

The government should use public input from residents within the claim area as a primary means of forming negotiation positions.

Fish and wildlife belong to all of the people of Ontario and Canada, and must not be treated as tradable commodities to settle economic or other disputes.

COOPERATIVE MANAGEMENT

The O.F.A.H. supports the development of cooperative management arrangements, where required, with all interested parties to achieve the conservation of natural resources. In any discussions, the term “cooperative management” should be used rather than the term “comanagement.” This is because the term “comanagement” can be interpreted to mean an equal partnership, or 50/50 sharing. This prejudices the final outcome of discussions regarding “fair sharing.” Equally, if not more importantly, it implies equally shared decision-making.

Overall, management control of harvesting activities on Crown and private lands must remain with the Minister of Natural Resources. Agreements must be based upon retention of government management authority. Ultimate decision-making authority, and management responsibility and accountability must remain with the governments of Ontario and Canada.

Cooperative management should remain simply an implementation tool designed to achieve key objectives – not an objective in and of itself. Cooperative management arrangements should only be established where it can be clearly shown to contribute to resource management and wise use of resources – they are not an end in themselves.

Remote region land claim settlement models are not applicable to the claim area. Consistent with this, the capability to establish cooperative management arrangements may be included in an AIP; however, a formal requirement to establish such structures, or the actual establishment of such structures, should not be part of the actual AIP or agreement.

Nonetheless, it is recognized that the Algonquins must have some form of internal management structure, but this does not necessarily translate into a cooperative management structure.

In this regard:

- the AIP should provide the potential for the establishment of an internal Algonquin fish and wildlife management authority to provide internal oversight and direction for internal allocation, harvest reporting, enforcement...for “designated species” in the specific geographic areas within which harvest of designated species is provided for in the agreement;
- this internal fish and wildlife management authority should be developed as “joint” board with representation from the MNR and appropriate federal departments;
- the internal management authority should have the responsibility and authority to develop, implement, and enforce a harvest management plan for Algonquin community members for designated species;
- the role of an management authority established under the agreement should be internal implementation of the agreement, and provision of information and advice to the Ministry;
- in developing overall TAC’s for designated species, the Ministry shall consult with the Algonquin management authority; and
- the management authority may have responsibility to develop fish and wildlife management plans for lands specifically associated with an Algonquin community (reserve or other land specifically designated as community lands).

If any administrative structure for fish and wildlife is ultimately established under the authority of an agreement or otherwise with the Algonquins, it should include the MNR, the O.F.A.H., and the Algonquins.

Development of “capacity” through training and other skills development must be a component of any agreement providing for stewardship.

Monies allocated by the government for fish and wildlife management, or the operation of any management authority provided for under the agreement, shall come from the Consolidated Revenue Fund. Monies for fish and wildlife management under this agreement should not come from the Special Purpose Account, established under the Fish and Wildlife Conservation Act.