

INTERIM ENFORCEMENT POLICY

The Ontario Government, in consultation with the Government of Canada, is committed to negotiating arrangements as soon as it is possible with aboriginal people and to enacting appropriate legislation with respect to their harvest of wildlife and fish. In the interim, recognizing the impact of the Supreme Court of Canada decision in R. v. Sparrow and other judicial decisions, the Government of Ontario wishes to minimize the number of instances where aboriginal people are in conflict with the Government of Ontario in the application of the Game and Fish Act, the Fisheries Act, the Migratory Birds Convention Act and the regulations enacted pursuant to those Acts, consistent with public safety and conservation objectives. Within this framework of objectives and subject to any constitutional or other legal impediment, the following detailed guidelines are effective immediately.

APPLICATION OF POLICY

1. An aboriginal person who identifies himself or herself as such, harvesting or transporting wildlife or fish as food for personal consumption and for social and ceremonial purposes, shall not be subject to enforcement procedures except as set out below.

Throughout the province this policy applies to an aboriginal person harvesting wildlife or fish for personal consumption or social or ceremonial purposes in the area which was the subject of the treaty under which he or she is entitled to benefits. In addition, where First Nations have a tradition of harvest beyond the boundaries of such treaty areas or where treaties do not explicitly recognize traditional harvesting rights, this policy will apply within areas in which they have a tradition of such harvest. Boundaries of such traditional harvesting areas will be clarified through future negotiated agreements. In the interim, best efforts should be made to outline traditional harvesting areas, for the purposes of this policy only and without prejudice to future negotiations between First Nations and the provincial government, through discussions between the Provincial Government and representatives of Ontario First Nations. A model for these discussions might include the discussions occurring under the auspices of the Indian Commission of Ontario.

RESTRICTIONS ON APPLICATION OF POLICY

2. The policy set out above will not apply in the following circumstances:
- (a) Where an aboriginal person is hunting in an unsafe manner. The following examples of activities could be considered to be unsafe in certain circumstances:
 - (i) discharge of firearms from or across the traveled portion of a roadway, or in Southern Ontario, discharge of firearms from or across the right-of-way portion of a roadway;
 - (ii) possessing a loaded firearm in a vehicle or moving vessel;
 - (iii) discharge of a firearm from a vehicle or moving vessel;
 - (iv) hunting or possessing an unencased firearm at night, although not where expressly permitted under provincial and federal legislation and the regulations enacted pursuant to those Acts;
 - (v) careless hunting;
 - (vi) hunting within an unsafe distance from authorized forestry or mining operations while they are in progress.
 - (b) Where wildlife or fish are taken for commercial purposes. Wildlife or fish taken or transported by an aboriginal person solely for the purpose of personal consumption or social or ceremonial purposes, or for barter in kind of wildlife or fish within or among First Nations or aboriginal communities, will not be considered to be taken for commercial purposes.
 - (c) Where wildlife or fish are taken in a manner which will put conservation objectives at risk. The following examples of activities could be considered to put such objectives at risk:
 - (i) the destruction or harmful alteration of fish or wildlife habitat;
 - (ii) in certain circumstances, fishing in fish sanctuaries or waters which are closed at all times of the year, or hunting in waterfowl sanctuaries;

- (iii) the taking or possession of rare, threatened or endangered species as outlined in Appendix I;
 - (iv) the taking of wildlife or fish in quantities or in circumstances which will put conservation objectives at risk. Such circumstances might include the taking of spawning fish or the taking of wildlife while they are nursing their young;
 - (v) the wilful waste or spoilage of wildlife or fish.
- (d) Where hunting or fishing occur on privately owned or occupied land, which is so posted or fenced or is visibly occupied, without the express permission of the owner or occupier.

PERMISSION REQUIRED AND DECISIONS REGARDING ENFORCEMENT RELATING TO HARVEST OF WILDLIFE AND FISH FOR COMMERCIAL PURPOSES

3. (a) The written permission of the Assistant Deputy Minister (ADM) of the Field Services Division (FSD) will be required before planned enforcement procedures, including inspection of commercial establishments, search warrants and special investigations, are undertaken in respect of the harvest, transport, sale or exchange of game and fish for commercial purposes carried on by an aboriginal people. The existence of a right to harvest game and fish for commercial purposes will be a component of the determination of whether permission is given.

SCREENING PROCESS

- (b) Subject to the intervention of the Attorney General, the normal screening process of all alleged native persons violations will also continue to apply as outlined in Appendix II. Before a decision is made to proceed with charges, the Chief, or designate, of the affected First Nation shall be consulted in a timely fashion, and the appropriate Ontario aboriginal treaty and political organization will be notified.

PRELIMINARY CONSULTATION

- (c) MNR officials will contact the Chief, or designate, of a First Nation to discuss perceived concerns with respect to the harvesting of wildlife and fish as they start to emerge.

STRUCTURE AND MANDATE OF COMMITTEES

- (d) A First Nations/Ontario Conservation Committee, composed of representatives from Ontario, including the Deputy Minister of Natural Resources, as well as representatives from Ontario aboriginal treaty and political organizations, will be established immediately upon the adoption of this policy with the following mandate:
 - (i) to meet quarterly to discuss the decisions to proceed with charges of the past quarter of the Deputy Minister of Natural Resources, as referred to above, and
 - (ii) to review the effectiveness of this interim enforcement policy and recommend changes to this policy if deemed required.
- (e) First Nations/MNR Conservation Regional Committees, composed of representatives from MNR, including the Regional Director, as well as representatives from the regional aboriginal treaty and political organizations, will be established immediately upon adoption of this policy with the following mandate:
 - (i) to give direction on a regional basis as to which activities should be deemed to put conservation objectives and public safety at risk, which will involve the identification and discussion of conservation objectives, and to give direction where policy variation regarding public safety restriction are deemed to be required due to regional variation;
 - (ii) to discuss the necessity of existing and future fish sanctuaries and the closure of waters;
 - (iii) to discuss the rare, threatened and endangered species of the region;
 - (iv) to discuss those areas of lands, and related land values

within the region, which require special protection due to their nature (e.g. Areas of Natural and Scientific Interest and Nature Reserves).

PROVINCIAL PARKS

4. Provisions of provincial or federal legislation, or the provisions of a treaty, which concern the harvest of wildlife and fish by an aboriginal person in Provincial Parks shall continue to apply, unless otherwise provided for by a negotiated agreement between the Provincial Government and a First Nation. Where a First Nation has entered into negotiations with the Provincial Government, the written permission of the Assistant Deputy Minister (ADM) of the Field Services Division (FSD) will be required before planned enforcement procedures regarding the harvest of wildlife and fish by members of that First Nation in the Provincial Park under discussion will be taken.

FORCE OF THIS POLICY

5. This policy replaces the former Guidelines to Follow When Screening Native Person Violations with regard to hunting and fishing. This policy shall not be interpreted so as to make its application more restrictive on the harvesting of wildlife and fish by aboriginal people than was the case under former MNR policies and guidelines.

OPERATION OF THIS POLICY

6. This interim enforcement policy is to apply until it is superseded by changes to this policy arising from 3(d) (ii) and/or negotiated agreements and/or appropriate legislation.