

Métis Nation of Ontario

Understanding the *Métis Nation of Ontario-Ministry of Natural Resources and Forestry Framework Agreement on Métis Harvesting in Ontario*

On April 30, 2018, Métis Nation of Ontario (“MNO”) President Margaret Froh and Ontario’s Minister of Natural Resources and Forestry (“MNR”) Nathalie Des Rosiers signed a new framework agreement on Métis harvesting in Ontario (the “*Agreement*”). A copy of the *Agreement* is available on the MNO’s website at: www.metisnation.org.

This document was developed by the MNO in order to explain the *Agreement* in greater detail. The first section of this document sets out the background and historic context of the *Agreement*. The second section highlights key aspects of the *Agreement*. The third section provides an overview of what happens next in relation to the implementation of the *Agreement* as well as Frequently Asked Questions (“FAQs”).

The *Agreement* is an important step forward in the MNO’s ongoing journey to have Métis harvesting rights fully recognized in Ontario. The *Agreement* provides that MNO Harvesters Card holders (which means the same thing as an MNO Harvesters Certificate holder) are able to exercise their Métis harvesting rights—within the MNO’s identified Harvesting Areas—consistent with Métis laws and traditions as expressed in the MNO Harvesting Policy. The MNO Harvesting Policy promotes conservation, sustainability, safety and responsible harvesting practices in order to protect natural resources for the generations to come.

The *Agreement* consolidates the progress that the MNO has made with Ontario over the last decade, including the identification of seven historic Métis communities within Ontario as well as the completion of an independent review of the MNO’s Harvesters Card system in order to verify that it is a reliable system for the identification of Métis rights-holders (the “Independent Review”). Based on this work and the commitments in the *Agreement*, the previous “cap” on the number of MNO Harvesters Cards that could be issued under the previous MNO-MNR 2004 agreement with the MNR has been eliminated in this new *Agreement*.

Equally important, the *Agreement* sets out a forward-looking, positive working relationship with the MNR that further advances reconciliation. As a part of this relationship, the *Agreement* commits the MNO to sharing data about the Métis harvest with the MNR in order to facilitate better provincial resource management and planning in the future. This commitment—to regularly share data from the Métis harvest—is one of the ‘first-of-its-kind’ between the MNR and an Indigenous group in Ontario. It is grounded on the MNO’s recognition that with rights come responsibilities.

The *Agreement* also sets out an orderly process for future engagement and negotiations between the MNO and MNR on outstanding Métis harvesting rights issues, including dealing with mobility, identifying activities that are incidental to the Métis harvest and arriving at a longer-term harvesting agreement.

The History and Context of the Agreement

The MNO was created in 1993 to represent the rights and interests of its citizens and rights-bearing Métis communities throughout Ontario. The MNO has always identified the advancement and recognition of Métis rights in Ontario as its highest priority.

As a part of its Métis rights agenda, the MNO has developed and implemented a Harvesting Policy. This policy is a codification of Métis law and traditions around harvesting—including conservation, sustainability, safety and responsibility. Based on this policy, the MNO issues Harvesters Cards to verified Métis rights-holders and regulates the Métis harvest.

In the early 1990s, Ontario denied the very existence of Métis harvesting rights in the province. From 1995 to 2003, the MNO advanced a Métis harvesting rights “test case”—*R. v. Powley* (“*Powley*”)—all the way to the Supreme Court of Canada. Ultimately, *Powley* confirmed that the Métis community in the Sault Ste. Marie region has a Métis right to harvest for food protected by section 35(1) of the *Constitution Act, 1982*.

Powley also set out a legal framework for other Métis communities to establish their harvesting rights. Based on this framework, the MNO asserted that it represents additional rights-bearing Métis communities within Ontario. In 2004, the MNO and the MNRF entered into an agreement that recognized—on an interim basis—a limited number of MNO Harvesters Cards until “an independent evaluation of the system ... based on mutually agreeable terms of reference” could be performed.

The purpose of the “independent evaluation” (known as the “Independent Review”) was to validate that MNO Harvesters Card holders meet the requirements set out in *Powley* (*i.e.*, they self-identify as Métis, ancestrally connect to a historic Métis community, and are accepted by the modern day Métis community). In order for the Independent Review to be objective, the MNO and Ontario first needed to identify “where” there were historic Métis communities in Ontario and then “who” was a part of those communities (*i.e.*, the identification of “Métis Root Ancestors” as a part of “Métis Family Lines”).

Once agreement on these preliminary issues was achieved, an independent third party could objectively verify that the MNO Registry files for Harvesters Card holders document that these individuals ancestrally connect to historic Métis communities and meet the requirements of *Powley*.

On August 21, 2017, after many years of collaborative efforts, the MNO and Ontario announced the identification of six historic Métis communities in Ontario in addition to the community recognized in *Powley*. At the same time, the MNO publicly released Métis Root Ancestors documents that identify some of the Métis Family Lines who made up these identified historic Métis communities. In order to be issued a Harvesters Card, a MNO citizen must demonstrate an ancestral connection to the historic Métis community where they want to exercise their collectively-held Métis harvesting rights today.

Based on the work set out above, an Independent Review of the MNO Harvesters Card system was conducted by a firm selected through a public tendering process. On January 12, 2018, this Independent Review confirmed that the MNO has a reliable system for identifying Métis rights-holders with 100% of all of the Harvesters Card files that were randomly sampled meeting the criteria set out in *Powley*.

The history, background and work set out above is the foundation for this new *Agreement*.

Key Elements of the Agreement

Recognition of MNO Harvesting Policy, Harvesters Cards and Harvesting Areas

The Agreement recognizes the legitimacy of the MNO Harvesting Policy and Harvesters Cards, all of which were developed for—and by—the MNO in consultation with its citizens and harvesters. These Métis-created laws and systems continue to be under the complete control of the MNO. Subject to the MNO meeting the conditions in the *Agreement*, the MNRF will rely on MNO Harvesters Cards for the identification of Métis rights-holders exercising their rights within the MNO’s identified Harvesting Areas.

MNO Harvester Card Holders Will be Treated the Same as First Nations Harvesters

The Agreement requires the MNRF treat MNO Harvesters Card holders in same way as First Nations harvesters for the purposes of enforcement. This means that valid MNO Harvesters Card holders who are harvesting in compliance with the MNO Harvesting Policy and within their identified MNO Harvesting Area will just need to show their card to MNRF enforcement staff, in the same way that First Nations show their “status Indian” cards. This provides certainty to MNO Harvesters Card Holders as to how they will be treated by the MNRF and ensures equal respect for Métis harvesting rights. Of course, MNO Harvester Card holders will need to respect all applicable safety and conservation restrictions.

The “Cap” on the Number of MNO Harvesters Cards is Removed

The Agreement removes the “cap” on the number of MNO Harvesters Cards the MNO can issue. This was able to be successfully negotiated because the MNO has proven the credibility and integrity of its Harvesters Card system through its perfect score in the Independent Review, and is based on the MNO’s commitment that it will only issue Harvesters Cards to MNO citizens who self-identify as Métis, ancestrally connect to an identified historic Métis community, and who are accepted by the modern day rights-bearing Métis community.

Verification of Additional Métis Root Ancestors and Family Lines

During the Independent Review of the MNO Harvesters Card system, 88 Métis Family Lines were verified as being a part of the seven identified historic Métis communities. These 88 Métis Family Lines include Métis Root Ancestors who meet the requirements of *Powley*. While these 88 Métis Family Lines represent a significant percentage of the Métis Family Lines who make up these historic Métis communities, they are not comprehensive in scope. **The Agreement contemplates additional Métis Family Lines being “verified” by a mutually agreeable process established by the MNO and the MNRF based on the *Powley* criteria and as set out in the Independent Review.** This means that the MNO is **not** limited to only issuing Harvesters Cards to citizens who ancestrally connect to the 88 Métis Family Lines that were part of the Independent Review.

The Agreement Sets out Key Subject Matters for Future Negotiations

In the *Agreement*, section 16 sets out that the MNO and the MNRF have agreed to engage in future negotiations on many of the key issues MNO citizens and harvesters have identified as priorities in recent province-wide consultations. Some of these subject matters include:

- The MNO and the MNRF have agreed to get to a **new map showing where Métis communities represented by the MNO have harvesting rights in Ontario** within three years.

- The MNO and the MNRF have agreed to discuss the **kinds of activities included in Métis harvesting rights as well as incidental activities to Métis harvesting**, such as incidental cabins.
- The MNO and the MNRF have agreed that they will conduct further negotiations and try to come to an agreement on **mobility of Métis harvesters between MNO Harvesting Areas**.
- The MNO and the MNRF have also agreed to develop **collaborative enforcement mechanisms** that incorporate the MNO Captains of the Hunt.

Importantly, the *Agreement* contemplates that the MNO and the MNRF do not need to get to agreement on all of these subject matters at the same time. The parties may choose to “lock in” agreements on certain issues as they are reached, which means that MNO will be able to deliver results to citizens and harvesters more quickly on issues that are the most pressing.

Sharing Information on the Métis Harvest with MNRF

The MNO has always believed that with rights come responsibilities. One of the responsibilities associated with Métis harvesting rights is to do everything possible to ensure that resources are sustainably managed and protected for future generations. Sharing information about the Métis harvest is critical to this goal. To this end, **the MNO has committed to sharing harvesting data with the MNRF, in aggregate and on a confidential basis, and the MNRF has committed to share information with the MNO** in advance of harvesting seasons when possible, to identify areas of the province where conservation or sustainability concerns exist.

Commercial Rights and Licences of MNO Citizens are Not Impacted by the *Agreement*

The *Agreement* does not deal with commercial rights or existing commercial licenses that MNO citizens may have in their personal capacity. **The *Agreement* will not impact any commercial licenses or authorizations held by MNO Citizens.**

Regional Métis Communities May Engage MNRF on Specific Harvesting Issues

The *Agreement* contemplates that a specific regional Métis community and/or communities represented by the MNO may wish to engage or negotiate with the MNRF on regionally-specific matters that are relevant to that community’s geographic area within the province.

The *Agreement* Does Not Limit the Recognition of Métis Harvesting Rights in the Future

While the *Agreement* relies on the identification of the seven Historic Métis Communities, it also commits that the MNO and Ontario will consider additional historic evidence that may become available that could change or expand these Communities or identify new communities. In the same vein, the MNO Harvesting Areas map found at Schedule B of the *Agreement* will be used by the MNRF and the MNO until a new map is developed. The *Agreement* is clear that this map does not conclusively define Métis harvesting territories in Ontario. This map will change in the future, pending future negotiations by the MNO and the MNRF.

What Happens Next?

The *Agreement* came into force on April 30, 2018. The *Agreement* does not change anything on-the-ground for current MNO Harvesters Card holders. **All existing Harvesters Cards continue to be valid and MNO Harvesters Card holders may continue to exercise their Métis harvesting rights within their identified Harvesting Area as long as they are following the requirements of the MNO Harvesting Policy.**

MNO citizens who have held off on applying for a MNO Harvesters Card in the past because of the “cap” on the number of Harvesters Card the MNO could issue may now want to apply for a Harvesters Card. The application process and requirements for obtaining a MNO Harvesters Card are set out on the MNO website at www.metisnation.org. **In order to be covered by the *Agreement*, an MNO citizen must obtain a MNO Harvesters Card. The MNO will not support or defend MNO citizens who are harvesting without a valid MNO Harvesters Card.**

The MNO is working to develop the internal policies and procedures to support future negotiations under this *Agreement* and is starting to identify priority issues immediately. The MNO anticipates that further consultations will be undertaken with citizens and harvesters on these issues in order to develop internal processes to address these issues to advance the negotiation process.

Frequently Asked Questions

Q: Does the *Agreement* replace the 2004 Harvesting Points of Agreement?

A: Yes.

Q: Is this another interim agreement?

A: Yes, this is another interim agreement, however, it “locks in” the progress that has been achieved to date on Métis harvesting rights in Ontario in a legally binding agreement (*i.e.*, the identification of historic Métis communities, *etc.*). This *Agreement* also sets out a clear path to reaching a longer-term, substantive agreement while making significant advances over the 2004 Harvesting Points of Agreement, such as removing the “cap” on the number of MNO Harvesters Cards that can be issued.

Q: Why not just continue with the 2004 Harvesting Points of Agreement?

A: This *Agreement*, while still interim in nature, goes farther than the 2004 Harvesting Points of Agreement. It removes the cap on MNO Harvesters Cards. It recognizes and relies on the MNO Harvesting Policy. It sets out subject matters that the MNO and the MNRF will discuss, such as incidental cabins and mobility, in order to get to a longer-term harvesting agreement.

Q: If there is no longer a cap on Harvesters Cards, does that mean that I am automatically allowed to harvest because I have an MNO citizenship card?

A: No. In order to be covered by the *Agreement*, an MNO citizen must obtain a MNO Harvesters Card. The MNO will not support or defend MNO citizens who are harvesting without a valid MNO Harvesters Card.

Q: Why were the Kawartha Lakes and Ottawa River Harvesting Areas removed from the MNO Métis Harvesting Areas map?

A: Over the last 15 years, the MNO has not issued a single Harvesters Card for either of those two Harvesting Areas. This was because no MNO citizen has ever applied for a Harvesters Card based on being ancestrally connected to a historic Métis community exclusively in those areas. In addition, the Kawartha Harvesting Area was removed because the MNO and the MNRF did not have sufficient research to agree on the existence of a historic Métis community in that area. Ottawa River has also been removed because Mattawa/Lake Nipissing Harvesting Area now extends into the area that was Ottawa River through its extension south to Pembroke.

Q: Why was the Mattawa/Lake Nipissing Harvesting Area extended? Why not just keep the Ottawa River Harvesting Area?

A: The Mattawa/Lake Nipissing Harvesting Area has been extended south on the Ottawa River to around Pembroke to reflect the geographic area of the identified historic Métis community along the river from Mattawa to Lacs Des Allumettes. Research revealed that the historic Métis community extended to around Pembroke (Lac Des Allumettes) so the Mattawa/Lake Nipissing Harvesting Area was extended to reflect this research.

Q: Were any other Harvesting Areas changed on the Métis Harvesting Area map?

A: No. All of the other MNO Métis Harvesting Areas remain unchanged from the 2004 Métis Harvesting Areas Map.

Q: Now that the cap has been removed, how long will it take me to get a Harvesters Card?

A: In order to receive a MNO Harvesters Card, a citizen must apply and complete the process established under the MNO Harvesting Policy. An application is reviewed and approved based on its completeness, therefore, it is impossible to estimate how much time it will take for any individual to obtain a Harvesters Card.

Q: What is the Data-Sharing Protocol attached as Schedule D to the *Agreement*? Does this mean that the MNO is reporting on individual Harvesters Card holders to Ontario?

A: This Protocol will guide how the MNO and the MNRF share data and information. The MNRF has agreed in this Protocol that all information provided by the MNO is confidential and anonymous. This means that if information is shared by an MNO Harvesters Card holder about their harvest, the MNO will not give the name of that harvester to the MNRF nor indicate what information that harvester shared.

Q: Where can I get additional information or have other questions about the *Agreement* answered?

A: Please contact your regional Captain of the Hunt, Chief Captain of the Hunt, Deputy Chief Captain of the Hunt or PCMNO leadership for more information. You may also contact the MNO Chief Operating Officer or MNO Chief Strategic Officer with your questions.