

**UMBRELLA FINAL AGREEMENT**

between

**THE GOVERNMENT OF CANADA,  
THE COUNCIL FOR YUKON INDIANS**

and

**THE GOVERNMENT OF THE YUKON**



**AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

**AMONG:**

Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development (hereinafter referred to as "Canada");

**AND**

The Government of the Yukon as represented by the Government Leader of the Yukon on behalf of the Yukon (hereinafter referred to as "the Yukon");

**AND**

The Yukon First Nations as represented by the Chairperson of the Council for Yukon Indians (hereinafter referred to as "Yukon First Nations")

being the parties to this Umbrella Final Agreement.

**WHEREAS:**

The Yukon First Nations assert aboriginal rights, titles and interests with respect to their Traditional Territories;

the Yukon First Nations wish to retain, subject to Settlement Agreements, the aboriginal rights, titles and interests they assert with respect to Settlement Land;

the parties to the Umbrella Final Agreement wish to recognize and protect a way of life that is based on an economic and spiritual relationship between Yukon Indian People and the land;

the parties to the Umbrella Final Agreement wish to encourage and protect the cultural distinctiveness and social well-being of Yukon Indian People;

the parties to the Umbrella Final Agreement recognize the significant contributions of Yukon Indian People and Yukon First Nations to the history and culture of the Yukon and Canada;

the parties to the Umbrella Final Agreement wish to enhance the ability of Yukon First Nations and Yukon Indian People to participate fully in all aspects of the economy of the Yukon;

the Constitution Act, 1982 recognizes and affirms the existing aboriginal rights and treaty rights of the aboriginal peoples of Canada, and treaty rights include rights acquired by way of land claims agreements;

the parties to the Umbrella Final Agreement wish to achieve certainty with respect to the ownership and use of lands and other resources of the Yukon;

the parties to the Umbrella Final Agreement wish to achieve certainty with respect to their relationships with each other;

the parties to the Umbrella Final Agreement intend to negotiate land claims agreements securing for Yukon First Nations and Yukon Indian People the rights and benefits set out therein;

the Yukon First Nations, Canada and the Yukon have authorized their representatives to sign this land claims agreement;

**NOW THEREFORE,**

in consideration of the terms, exchange of promises, conditions and provisos contained herein, the parties to the Umbrella Final Agreement agree to the following.

Signed at \_\_\_\_\_, Yukon, the \_\_\_\_\_ day of \_\_\_\_\_ 1993

\_\_\_\_\_  
Judy Gingell  
Chair  
Council for Yukon Indians

\_\_\_\_\_  
Witness

\_\_\_\_\_  
The Honourable Tom Siddon  
Minister of Indian Affairs and  
Northern Development

\_\_\_\_\_  
Witness

\_\_\_\_\_  
John Ostashek  
Government Leader of the Yukon

\_\_\_\_\_  
Witness



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## CHAPTER 1 - DEFINITIONS

In the Umbrella Final Agreement, the following definitions shall apply unless otherwise provided in a particular chapter.

"Act" includes ordinance.

"Bed" of a body of water means the land covered so long by water as to mark it from vegetation, or as to mark a distinct character upon the vegetation where it extends into the water or upon the soil itself.

"Category A Settlement Land" means land which has been identified pursuant to 5.3.1, declared pursuant to 5.12.1.1, or designated pursuant to 7.5.2.8 (a) to be Category A Settlement Land and which has not ceased to be Settlement Land in accordance with 5.11.0.

"Category B Settlement Land" means land which has been identified pursuant to 5.3.1, declared pursuant to 5.12.1.2, or designated pursuant to 7.5.2.8 (b) to be Category B Settlement Land and which has not ceased to be Settlement Land in accordance with 5.11.0.

"Community Boundary" means:

- (a) for a municipality or hamlet designated under the Municipal Act, R.S.Y. 1986, c. 119, the boundary as set out in that Act; and
- (b) for a community not so designated, until such time as the community is designated a municipality or hamlet pursuant to the Municipal Act, R.S.Y. 1986, c. 119, the boundary as set out in the Yukon First Nation Final Agreement of that Yukon First Nation in whose Traditional Territory the community is located.

"Conservation" means the management of Fish and Wildlife populations and habitats and the regulation of users to ensure the quality, diversity and Long Term Optimum Productivity of Fish and Wildlife populations, with the primary goal of ensuring a sustainable harvest and its proper utilization.

"Construction Materials" includes rock, gravel, sand, marl, clay, earth, silt, pumice, volcanic ash, and materials derived therefrom or occurring as a constituent part thereof used in the construction and maintenance of public roads and other public works.

"Consult" or "Consultation" means to provide:

- (a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- (b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and
- (c) full and fair consideration by the party obliged to consult of any views presented.

"Council for Yukon Indians" includes any successor to the Council for Yukon Indians and, in the absence of any successor, the Yukon First Nations.

"Crown Land" means land vested from time to time in Her Majesty in Right of Canada, whether the administration and control thereof is appropriated to the Commissioner of the Yukon or not, but does not include Settlement Land.

"Decision Body" means the Government, a Yukon First Nation or both as determined by applying the same test set out in 12.13.0 for determination of the requirement to issue a Decision Document.

"Decision Document" means the document issued by the Decision Body pursuant to 12.6.3 or 12.12.1.

"Designated Heritage Site" means a Heritage Site designated as such pursuant to Laws of General Application.

"Developed Settlement Land" means any Parcel of Settlement Land designated as Developed Settlement Land in a Yukon First Nation Final Agreement or pursuant to 6.1.8 or 7.5.2.9.

"Documentary Heritage Resources" means Public Records or Non-Public Records, regardless of physical form or characteristics, that are of heritage significance, including correspondence, memoranda, books, plans, maps, drawings, diagrams, pictorial or graphic works, photographs, films, microforms, sound recordings, videotapes, machine-readable records, and any copy thereof.

"Effective Date" means the date on which a Yukon First Nation's Final Agreement takes effect.

"Encumbering Right" means every licence, permit or other right, and every right, title or interest described in 5.4.2.

"Existing Mineral Right" means a Mineral Right, other than a right to locate a claim or an unrecorded right to explore for Minerals other than Petroleum, existing at the date the affected land became Settlement Land and includes any renewal or replacement of such a Mineral Right or a new right described in 5.4.2.4.

"Exotic Species" means a vertebrate animal of any species or subspecies that is not indigenous to the Yukon.

"Fee Simple Settlement Land" means land which has been identified pursuant to 5.3.1, declared pursuant to 5.12.1.3, or designated pursuant to 7.5.2.8 (b) to be Fee Simple Settlement Land and which has not ceased to be Settlement Land in accordance with 5.11.0.

"Fish" includes:

- (a) portions of fish;
- (b) shellfish, crustaceans, marine animals, marine plants and portions thereof;
- (c) the eggs, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals; and
- (d) such fish products and by-products as are prescribed pursuant to section 34 of the Fisheries Act, R.S.C. 1985, c. F-14.

"Flooding Right" means the right to expropriate, provided by Laws of General Application and the Umbrella Final Agreement, for constructing, maintaining and operating a hydro-electric or water storage facility.

"Freshwater Fish" means all Fish found in the Yukon other than Salmon, but does not include Exotic Species or Transplanted Population, unless otherwise agreed by the parties to a Yukon First Nation Final Agreement.

"Gas" means natural gas and includes all substances other than Oil that are produced in association with natural gas.

"Government" means Canada or the Yukon, or both, depending upon which government or governments have responsibility, from time to time, for the matter in question.

"Harvesting" means gathering, hunting, trapping or fishing in accordance with a Settlement Agreement.

"Heritage Resources" includes Moveable Heritage Resources, Heritage Sites and Documentary Heritage Resources.

"Heritage Site" means an area of land which contains Moveable Heritage Resources, or which is of value for aesthetic or cultural reasons.

"Land Set Aside" means land in the Yukon reserved or set aside by notation in the property records of the Northern Affairs Program, Department of Indian Affairs and Northern Development, for the use of the Indian and Inuit Program for Yukon Indian People.

"Law" includes common law.

"Laws of General Application" means laws of general application as defined by common law.

"Legislation" includes Acts, Regulations, orders-in-council and bylaws.

"Legislative Assembly" means the Council of the Yukon Territory as defined in the Yukon Act, R.S.C. 1985, c. Y-2.

"Local Government Services" means those services generally supplied by local government, including but not limited to recreational facilities, water, sewage, waste disposal, and road maintenance.

"Long Term Optimum Productivity" means the productivity required to ensure the long term continuation of a species or population while providing for the needs of Yukon Indian People and other harvesters and non-consumptive users of Fish and Wildlife in the short term.

"Major Highway" means a highway listed in Schedule A of Chapter 15 - Definitions of Boundaries and Measurement of Areas of Settlement Land.

"Migratory Game Birds" has the same meaning as in the Migratory Birds Convention Act, R.S.C. 1985, c. M-7.

"Mineral Right" means any licence, permit or other right to explore for, locate, develop, produce or transport any Minerals other than Specified Substances and to enter on land for those purposes.

"Minerals" means precious and base metals and other non-living, naturally occurring substances, whether solid, liquid or gaseous, and includes coal, Petroleum and Specified Substances.

"Mines" means mines, opened and unopened.

"Minister" means the Minister or Ministers of Government charged by Legislation with the responsibility, from time to time, for the exercise of powers in relation to the matter in question.

"Moveable Heritage Resources" means moveable non-documentary works or assemblies of works of people or of nature that are of scientific or cultural value for their archaeological, palaeontological, ethnological, prehistoric, historic or aesthetic features, including moveable structures and objects.

"National Park" means land described in the schedules to the National Parks Act, R.S.C. 1985, c. N-14 within the Yukon.

"Natural Boundary" means a boundary, at any instant, corresponding to the position of a designated natural feature as it exists at that instant and the boundary position changes with the natural movements of the feature, so long as those movements are gradual and imperceptible from moment to moment.

"Navigable Water" means a stream, river, lake, sea or other body of water, used or capable of being used by the public for navigation by boats, kayaks, canoes, rafts or other small craft, or log booms on a continuous or seasonal basis, and includes any parts thereof interrupted by occasional natural obstructions or bypassed by portages.

"New Mineral Right" means any Mineral Right other than an Existing Mineral Right.

"Non-Settlement Land" means all land and water in the Yukon other than Settlement Land and includes Mines and Minerals in Category B Settlement Land and Fee Simple Settlement Land, other than Specified Substances.

"Oil" means crude oil, regardless of gravity, produced at a well head in liquid form, and any other hydrocarbons except coal and Gas and, without limiting the generality of the foregoing, includes hydrocarbons that may be extracted or recovered from deposits of oil sand, bituminous sand, oil shale or from any other type of deposits on the surface or subsurface.

"Parcel" means any particular portion of Settlement Land.

"Person" means any natural person or artificial entity capable of having rights or obligations and includes Government.

"Petroleum" means Oil or Gas.

"Property Taxes" means all municipal tax and tax on real property but, for greater certainty, does not include income tax, tax on goods and services, sales tax, or tax on transfer of real property.

"Proposed Site Specific Settlement Land" means a parcel of land identified by the notation "S" and a number on maps appended to each Yukon First Nation Final Agreement.

"Public Access for Wildlife Harvesting" means a public right of access set out in 16.12.3.

"Quarry" means a pit, excavation, or other place made by any means for the purpose of removing Construction Materials or a site identified for such purposes, and includes works, machinery, plants, and buildings below or above ground belonging to or used in connection with a Quarry.

"Regulation" includes a regulation or any instrument made in the execution of a power or authority conferred by an Act.

"Reserve" means a Reserve as defined in the Indian Act, R.S.C. 1985, c. I-5.

"Right to Work" includes the right to enter on, use and occupy the land or as much thereof and to such extent as may be necessary for the purpose of the working and extraction of Minerals.

"Road" means a territorial highway designated in section 8(2) of the Highways Regulations O.I.C 1979/79 as amended by O.I.C. 1987/100 and having a prescribed right-of-way width not exceeding 60 metres.

"Salmon" means Pacific Salmon of the species Oncorhynchus nerka including sockeye; Oncorhynchus kisutch including coho; Oncorhynchus gorbuscha including pink; Oncorhynchus keta including chum; and Oncorhynchus tshawytscha including chinook; anadromous whitefish and cisco (Coregonidae spp.); and anadromous Arctic char (Salvelinus alpinus).

"Settlement Agreement" means a Yukon First Nation Final Agreement or a Transboundary Agreement.

"Settlement Corporation" means a corporation as referred to in 20.4.2.

"Settlement Land" means Category A Settlement Land, Category B Settlement Land or Fee Simple Settlement Land.

"Settlement Legislation" means the Act of Parliament and the Act of the Yukon Legislative Assembly described in 2.4.2.

"Site Specific Settlement Land" means a Parcel of Proposed Site Specific Settlement Land which is described as Site Specific Settlement Land in a plan of survey confirmed in accordance with Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land.

"Specified Substances" means any of carving stone, flint, limestone, marble, gypsum, shale, slate, clay, sand, gravel, construction stone, sodium chloride, volcanic ash, earth, soil, diatomaceous earth, ochre, marl and peat.

"Specified Substances Right" means the right of a Yukon First Nation to take and use, without payment of any royalty, a Specified Substance.

"Surface Rights Board" means the Board established pursuant to 8.1.1.

"Sustainable Development" means beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent.

"Traditional Territory" means, subject to a Yukon First Nation Final Agreement, with respect to each Yukon First Nation and each Yukon Indian Person enrolled in that Yukon First Nation's Final Agreement, the geographic area within the Yukon identified as that Yukon First Nation's Traditional Territory on the map referred to in 2.9.0.

"Transboundary Agreement" means a land claims agreement with respect to:

- (a) any aboriginal claims in a Yukon First Nation's Traditional Territory by the Kaska Dena Council, Tahltan Tribal Council or Taku River Tlingits of British Columbia and the Dene/Metis of the Northwest Territories; and
- (b) any aboriginal claims in the Northwest Territories or British Columbia by Yukon Indian People.

"Transplanted Population" means, except as otherwise agreed by the parties to a Yukon First Nation Final Agreement, a population of Freshwater Fish or Wildlife that is intentionally introduced by Government or by an entity other than a Yukon First Nation, anywhere in the Yukon as part of a Freshwater Fish or Wildlife management program.

"Undeveloped Settlement Land" means all Settlement Land not designated Developed Settlement Land and any Settlement Land designated as Undeveloped Settlement Land pursuant to 6.1.8 or 7.5.2.9.

"Waterfront Right-of-Way" means the public right-of-way along Navigable Water described in 5.15.0.

"Wildlife" means a vertebrate animal of any species or sub-species that is wild in the Yukon, but does not include Fish, and does not include Exotic Species or Transplanted Population, unless otherwise agreed by the parties to a Yukon First Nation Final Agreement.

"Yukon First Nation" means one of the following:

Carcross/Tagish First Nation;  
Champagne and Aishihik First Nations;  
Dawson First Nation;  
Kluane First Nation;  
Kwanlin Dun First Nation;  
Liard First Nation;  
Little Salmon/Carmacks First Nation;  
First Nation of Nacho Nyak Dun;  
Ross River Dena Council;  
Selkirk First Nation;  
Ta'an Kwach'an Council;  
Teslin Tlingit Council;  
Vuntut Gwitchin First Nation; or  
White River First Nation.

"Yukon First Nations" means all of the Yukon First Nations defined as a Yukon First Nation.

"Yukon First Nation Burial Site" means a place outside a recognized cemetery where the remains of a cultural ancestor of a Yukon Indian Person have been interred, cremated or otherwise placed.

"Yukon First Nation Final Agreement" means a land claims agreement for a Yukon First Nation that includes provisions specific to that Yukon First Nation and incorporates the provisions of the Umbrella Final Agreement.



"Yukon Indian People" means more than one Yukon Indian Person.

"Yukon Indian Person" means a person enrolled under one of the Yukon First Nation Final Agreements in accordance with criteria established in Chapter 3 - Eligibility and Enrollment.



## **CHAPTER 2 - GENERAL PROVISIONS**

### **2.1.0 The Umbrella Final Agreement**

2.1.1 Ratification of the Umbrella Final Agreement by the Yukon First Nations, through the Council for Yukon Indians, and by Canada and the Yukon signifies their mutual intention to negotiate Yukon First Nation Final Agreements in accordance with the Umbrella Final Agreement.

2.1.2 The Umbrella Final Agreement does not create or affect any legal rights.

2.1.3 A Yukon First Nation Final Agreement shall include the provisions of the Umbrella Final Agreement and the specific provisions applicable to that Yukon First Nation.

### **2.2.0 Settlement Agreements**

2.2.1 Settlement Agreements shall be land claims agreements within the meaning of section 35 of the Constitution Act, 1982.

2.2.2 Nothing in a Yukon First Nation Final Agreement shall affect any aboriginal claim, right, title or interest of a Yukon First Nation claimed in British Columbia or the Northwest Territories.

2.2.3 Settlement Agreements shall not affect the identity of aboriginal people of the Yukon as aboriginal people of Canada.

2.2.4 Subject to 2.5.0, 5.9.0, 5.10.1 and 25.2.0, Settlement Agreements shall not affect the ability of aboriginal people of the Yukon to exercise, or benefit from, any existing or future constitutional rights for aboriginal people that may be applicable to them.

2.2.5 Settlement Agreements shall not affect the rights of Yukon Indian People as Canadian citizens and their entitlement to all of the rights, benefits and protection of other citizens applicable from time to time.

- 2.2.6 Nothing in Settlement Agreements shall affect the ability of Yukon First Nations or Yukon Indian People to participate in and benefit from, Government programs for status Indians, non-status Indians or native people, as the case may be. Benefits under such programs shall be determined by the general criteria for such programs established from time to time. Programs which apply to Yukon Indian People residing on a Reserve or on Land Set Aside shall not cease only by reason of the fact the land becomes Settlement Land pursuant to a Yukon First Nation Final Agreement.
- 2.2.7 Except as provided in Chapter 4 - Reserves and Lands Set Aside and Chapter 20 - Taxation, nothing in Settlement Agreements shall affect any rights or benefits Yukon First Nations or Yukon Indian People may have or be entitled to under the Indian Act, R.S.C. 1985, c. I-5.
- 2.2.8 The parties to the Umbrella Final Agreement shall negotiate the processes for ratification of the Umbrella Final Agreement and the ratification of those processes shall be sought at the same time as ratification of the Umbrella Final Agreement.
- 2.2.9 Each Yukon First Nation and Government shall negotiate the processes for ratification of that Yukon First Nation's Final Agreement and the ratification of those processes shall be sought prior to or at the same time as ratification of the Yukon First Nation Final Agreement.
- 2.2.10 The parties to a Transboundary Agreement shall negotiate the processes for ratification of that Transboundary Agreement and the ratification of those processes shall be sought prior to or at the same time as ratification of the Transboundary Agreement.
- 2.2.11 The enactment of Settlement Legislation shall be a condition precedent to the validity of Settlement Agreements which are ratified at the same time the Umbrella Final Agreement is ratified.
- 2.2.12 The passing of an order-in-council shall be a condition precedent to the validity of Yukon First Nation Final Agreements which are ratified subsequent to those Settlement Agreements referred to in 2.2.11.

- 2.2.13 Except as provided in Transboundary Agreements, nothing in Settlement Agreements shall be construed to affect, recognize or provide any rights under section 35 of the Constitution Act, 1982 for any aboriginal peoples other than Yukon Indian People.
- 2.2.14 Subject to 2.2.13, no right provided in Settlement Agreements for the benefit of any Person who is not a Yukon Indian Person or a Yukon First Nation shall be construed as a right within the meaning of section 35 of the Constitution Act, 1982.
- 2.2.15 Settlement Agreements shall be the entire agreement between the parties thereto and there shall be no representation, warranty, collateral agreement or condition affecting those Agreements except as expressed in them.

### **2.3.0 Amendment**

- 2.3.1 Except where expressly provided in the Umbrella Final Agreement, the provisions of the Umbrella Final Agreement may only be amended with the consent of the parties to the Umbrella Final Agreement.
- 2.3.2 Consent to any amendment pursuant to 2.3.1 may only be given on the part of:
- 2.3.2.1 Canada, by the Governor in Council;
  - 2.3.2.2 the Yukon, by the Commissioner in Executive Council; and
  - 2.3.2.3 Yukon First Nations by the following process,
    - (a) the Council for Yukon Indians shall Consult on all proposed amendments with all Yukon First Nations and shall provide the result of those Consultations to all Yukon First Nations,
    - (b) an amendment shall only be considered approved by the Yukon First Nations if it is approved by two thirds of the Yukon First Nations which have Yukon First Nation Final Agreements in effect and which represent at least 50 percent of all Yukon Indian People, and

- (c) the Council for Yukon Indians shall provide Government with a certified copy of a resolution stating that (a) and (b) have been complied with, and Government shall be entitled to rely on that resolution as conclusive evidence of compliance with (a) and (b).
- 2.3.3 A Yukon First Nation shall approve an amendment to the provisions of the Umbrella Final Agreement in the same way that it approves amendments to the specific provisions of its Yukon First Nation Final Agreement.
- 2.3.4 Except where expressly provided in a Yukon First Nation Final Agreement, a specific provision applicable to that Yukon First Nation may only be amended by the parties to that Yukon First Nation Final Agreement.
- 2.3.5 Consent to any amendment pursuant to 2.3.4 may only be given on the part of:
  - 2.3.5.1 Canada, by the Governor in Council, except where expressly provided in a Yukon First Nation Final Agreement;
  - 2.3.5.2 the Yukon, by the Commissioner in Executive Council, except where expressly provided in a Yukon First Nation Final Agreement; and
  - 2.3.5.3 a Yukon First Nation by a process set out in that Yukon First Nation Final Agreement.
- 2.3.6 Amendments to a Yukon First Nation Final Agreement shall be published in the Canada Gazette, the Yukon Gazette and the Yukon First Nation registry of laws established pursuant to that Yukon First Nation's self-government agreement.
- 2.4.0 Settlement Legislation**
- 2.4.1 Upon ratification of the Umbrella Final Agreement, and upon ratification of a Yukon First Nation Final Agreement, Canada shall recommend to Parliament, and the Yukon shall recommend to the Legislative Assembly, Settlement Legislation.

2.4.2 Prior to ratification of the Umbrella Final Agreement, the parties to the Umbrella Final Agreement shall negotiate guidelines for drafting the Act that Canada will recommend to Parliament and the Act that the Yukon will recommend to the Yukon Legislative Assembly, which shall, among other things:

2.4.2.1 approve, give effect to and declare valid those Settlement Agreements which have been ratified at the same time as the Umbrella Final Agreement and enable subsequently ratified Settlement Agreements to be approved, given effect and declared valid by order-in-council;

2.4.2.2 acknowledge that a Settlement Agreement is a land claims agreement within the meaning of section 35 of the Constitution Act, 1982;

2.4.2.3 provide that a Settlement Agreement is binding on third parties; and

2.4.2.4 provide that where there is any doubt in the meaning of Settlement Legislation, any Settlement Agreement may be examined as an aid to interpretation.

2.4.3 Government shall Consult the Council for Yukon Indians during the drafting of Settlement Legislation.

## **2.5.0 Certainty**

2.5.1 In consideration of the promises, terms, conditions and provisos in a Yukon First Nation's Final Agreement:

2.5.1.1 subject to 5.14.0, that Yukon First Nation and all persons who are eligible to be Yukon Indian People it represents, as of the Effective Date of that Yukon First Nation's Final Agreement, cede, release and surrender to Her Majesty the Queen in Right of Canada, all their aboriginal claims, rights, titles, and interests, in and to,

(a) Non-Settlement Land and all other land and water including the Mines and Minerals within the sovereignty or jurisdiction of Canada, except the Northwest Territories, British Columbia and Settlement Land,

(b) the Mines and Minerals within all Settlement Land, and

(c) Fee Simple Settlement Land;

- 2.5.1.2 that Yukon First Nation and all persons eligible to be Yukon Indian People it represents, as of the Effective Date of that Yukon First Nation's Final Agreement, cede, release and surrender to Her Majesty the Queen in Right of Canada all their aboriginal claims, rights, titles and interests in and to Category A and Category B Settlement Land and waters therein, to the extent that those claims, rights, titles and interests are inconsistent or in conflict with any provision of a Settlement Agreement;
- 2.5.1.3 that Yukon First Nation and all persons eligible to be Yukon Indian People it represents, as of the Effective Date of that Yukon First Nation's Final Agreement, cede, release and surrender to Her Majesty the Queen in Right of Canada any claims, rights or causes of action which they may ever have had, may now have or may have hereafter, under, or arising out of Treaty 11; and
- 2.5.1.4 neither that Yukon First Nation nor any person eligible to be a Yukon Indian Person it represents, their heirs, descendants and successors, shall, after the Effective Date of that Yukon First Nation's Final Agreement, assert any cause of action, action for declaration, claim or demand of whatever kind or nature, which they ever had, now have, or may hereafter have against Her Majesty the Queen in Right of Canada, the Government of any Territory or Province, or any person based on,
- (a) any aboriginal claim, right, title or interest ceded, released or surrendered pursuant to 2.5.1.1 and 2.5.1.2,
  - (b) any aboriginal claim, right, title or interest in and to Settlement Land, lost or surrendered in the past, present or future, or
  - (c) any claim, right or cause of action described in 2.5.1.3.
- 2.5.2 Nothing in a Settlement Agreement shall be construed as an admission or assertion by that Yukon First Nation or Yukon Indian People that Treaty 11 has any application to or effect on Yukon First Nations or Yukon Indian People.



2.5.3 Government undertakes not to assert that Treaty 11 had or has any effect with respect to the rights, titles or interests of a Yukon First Nation or a Yukon Indian Person on Settlement Land.

**2.6.0 Interpretation of Settlement Agreements and Application of Law**

2.6.1 The provisions of the Umbrella Final Agreement, the specific provisions of the Yukon First Nation Final Agreement and Transboundary Agreement applicable to each Yukon First Nation shall be read together.

2.6.2 Settlement Legislation shall provide that:

2.6.2.1 subject to 2.6.2.2 to 2.6.2.5, all federal, territorial and municipal Law shall apply to Yukon Indian People, Yukon First Nations and Settlement Land;

2.6.2.2 where there is any inconsistency or conflict between any federal, territorial or municipal Law and a Settlement Agreement, the Settlement Agreement shall prevail to the extent of the inconsistency or conflict;

2.6.2.3 where there is any inconsistency or conflict between the provisions of the Umbrella Final Agreement and the specific provisions applicable to a Yukon First Nation, the provisions of the Umbrella Final Agreement shall prevail to the extent of the inconsistency or conflict;

2.6.2.4 where there is any inconsistency or conflict between Settlement Legislation and any other Legislation, the Settlement Legislation shall prevail to the extent of the inconsistency or conflict; and

2.6.2.5 where there is any inconsistency or conflict between the Inuvialuit Final Agreement in effect on the date of ratification of the Umbrella Final Agreement by Yukon First Nations and a Settlement Agreement, the Inuvialuit Final Agreement shall prevail to the extent of the inconsistency or conflict.

- 2.6.3 There shall not be any presumption that doubtful expressions in a Settlement Agreement be resolved in favour of any party to a Settlement Agreement or any beneficiary of a Settlement Agreement.
- 2.6.4 Nothing in any Settlement Agreement shall be construed as an admission by Government that Yukon First Nations or Yukon Indian People have any aboriginal rights, title or interests anywhere within the sovereignty or jurisdiction of Canada.
- 2.6.5 Nothing in a Settlement Agreement shall be construed to preclude any party from advocating before the courts any position on the existence, nature or scope of any fiduciary or other relationship between the Crown and the Yukon First Nations.
- 2.6.6 Settlement Agreements shall be interpreted according to the Interpretation Act, R.S.C. 1985, c. I-21, with such modifications as the circumstances require.
- 2.6.7 Objectives in Settlement Agreements are statements of the intentions of the parties to a Settlement Agreement and shall be used to assist in the interpretation of doubtful or ambiguous expressions.
- 2.6.8 Capitalized words or phrases shall have the meaning assigned in the Umbrella Final Agreement.
- 2.7.0 Access to Information and Privacy**
- 2.7.1 Notwithstanding any other provision of the Settlement Agreements, Government shall not be required to disclose any information that it is required or entitled to withhold under any Legislation relating to access to information or privacy. Where Government has a discretion to disclose any information, it shall take into account the objectives of the Settlement Agreements in exercising that discretion.
- 2.8.0 Remedies**
- 2.8.1 Neither Government, the Council for Yukon Indians, a Yukon First Nation, nor any Yukon Indian Person shall have a claim or cause of action in the event any provision of a Settlement Agreement or Settlement Legislation is found to be invalid by a court of competent jurisdiction.

2.8.2 Neither Government, the Council for Yukon Indians, a Yukon First Nation, nor any Yukon Indian Person shall challenge the validity of any provision of a Settlement Agreement or Settlement Legislation.

2.8.3 If any provision of a Settlement Agreement or Settlement Legislation is found by a court of competent jurisdiction to be invalid, the parties thereto shall make best efforts to amend that Agreement or the Settlement Legislation to remedy the invalidity or replace the invalid provision.

#### **2.9.0 Internal Overlap and Transboundary Agreements**

2.9.1 Subject to 2.9.2, each Yukon First Nation has provided to Government a map at a scale no smaller than 1:500,000 delineating its Traditional Territory within the Yukon as shown in each Yukon First Nation Final Agreement.

2.9.2 Prior to the ratification of the Umbrella Final Agreement by the Yukon First Nations, the Kluane First Nation and the White River First Nation shall provide maps, at a scale no smaller than 1:500,000, of their Traditional Territories, which Traditional Territories shall be delineated within the Traditional Territory map provided by the Kluane First Nation pursuant to 2.9.1.

2.9.3 Prior to the ratification of a Yukon First Nation Final Agreement by the Yukon First Nation, any overlapping claim, right, title and interest, of other Yukon First Nations within its Traditional Territory as delineated pursuant to 2.9.1 or 2.9.2 shall be resolved to the satisfaction of the parties to that Yukon First Nation Final Agreement.

#### **2.10.0 Representation and Warranty**

2.10.1 Each Yukon First Nation hereby represents and warrants to Government that it represents all Yukon Indian People who may have any aboriginal claims, rights, titles or interests in or to its Traditional Territory.

2.10.2 Each Yukon First Nation hereby indemnifies and forever saves harmless Her Majesty the Queen in Right of Canada from and against all suits and actions, causes of action, claims, demands, and damages, whether known or unknown, by any person eligible to be a Yukon Indian Person represented by the Yukon First Nation referred to in 2.10.1, which that person ever had, now has or may hereafter have against Canada or the Yukon relating to or in any way arising from the claims, rights, titles and interests described in 2.5.0, 5.9.0 and 5.10.1.

**2.11.0 General**

2.11.1 Except as expressly provided otherwise, any reference in a Settlement Agreement to Legislation, an Act or a provision of an Act includes:

2.11.1.1 that Legislation, Act or provision of an Act, and any Regulations made thereunder, as amended from time to time; and

2.11.1.2 any successor Legislation, Act or provision of an Act.

2.11.2 Successor Legislation includes territorial Legislation which replaces federal Legislation as a consequence of devolution of authority or responsibility from Canada to the Yukon.

2.11.3 For purposes of the application of provisions of the Umbrella Final Agreement to a Yukon First Nation, the then existing name of each Yukon First Nation is substituted for the term "Yukon First Nation" wherever it appears in 2.5.0, 2.10.1, 4.4.0, 5.9.0 and 5.10.1 of the Umbrella Final Agreement.

2.11.4 Except as provided in 2.11.3, for purposes of the application of the provisions of the Umbrella Final Agreement to a Yukon First Nation, each Yukon First Nation Final Agreement and each Transboundary Agreement shall name which of that Yukon First Nation's then existing legal entities is to be substituted for the term "Yukon First Nation" wherever the context requires.

- 2.11.5 Any legal entity described in 2.11.4 must have all the capacities, rights, powers and privileges of a natural person, subject to such special provisions as may be set out in that Transboundary Agreement or Yukon First Nation Final Agreement.
- 2.11.6 The act of acquiring or the holding of any rights, liabilities or obligations by any entity described in 2.11.4, shall not be construed to affect any aboriginal right, title or interest of that Yukon First Nation or any person eligible to be a Yukon Indian Person it represents.
- 2.11.7 Yukon First Nation Final Agreements may provide for that Yukon First Nation to alter from time to time which of its legal entities shall hold rights, liabilities or obligations pursuant to 2.11.4.
- 2.11.8 Government may determine, from time to time, how and by whom any power or authority of Government or a Minister set out in a Settlement Agreement, other than the power to consent to an amendment pursuant to 2.3.0, shall be exercised.
- 2.11.9 The Supreme Court of the Yukon shall have jurisdiction in respect of any action or proceeding arising out of Settlement Legislation or a Settlement Agreement.
- 2.11.10 Nothing in a Settlement Agreement shall be construed to limit any jurisdiction the Federal Court of Canada may have from time to time.
- 2.12.0 Boards**
- 2.12.1 The provisions of 2.12.2 apply to the:
- Enrollment Commission;
  - Yukon Land Use Planning Council;
  - Regional Land Use Planning Commissions;
  - Yukon Development Assessment Board;
  - Yukon Heritage Resources Board;
  - Yukon Geographical Place Names Board;
  - Yukon Water Board;

Fish and Wildlife Management Board, including the Salmon Sub-Committee;

Renewable Resources Councils;

Dispute Resolution Board;

Surface Rights Board;

Kluane National Park Management Board; and

any other entity agreed to in a Yukon First Nation Final Agreement.

2.12.2 Unless otherwise provided in a Settlement Agreement, the following provisions shall apply to a Board:

- 2.12.2.1 a majority of the members nominated by Yukon First Nations or the Council for Yukon Indians, as the case may be, and a majority of the members nominated by Government shall be residents of the Yukon;
- 2.12.2.2 the Council for Yukon Indians or Yukon First Nations, as the case may be, and Government, shall put forward their nominees within 60 days of a request by the Minister;
- 2.12.2.3 appointments of Government nominees shall be made by the Minister as soon as practicable;
- 2.12.2.4 the Minister shall appoint as soon as practicable those persons nominated by Yukon First Nations or the Council for Yukon Indians, as the case may be;
- 2.12.2.5 in the event of a vacancy, the Board may discharge its duties with such members as have been nominated and appointed;
- 2.12.2.6 a member shall not be deemed to be in a position of conflict of interest solely by virtue of being a Yukon Indian Person;
- 2.12.2.7 members may only be removed for cause, provided however that, in addition to the grounds for removal for cause recognized generally in Law, a Board, may specify additional grounds in its procedures;

- 2.12.2.8 each Board shall prepare an annual budget for review and approval by Government and the approved expenses of the Board shall be a charge on Government;
- 2.12.2.9 each Board shall consider including in its annual budget funding to allow the Board to provide its members with cross cultural orientation and education, and other training directed to improving its members' ability to carry out their responsibilities, as well as funding for facilities to allow board members to carry out their responsibilities in their traditional languages;
- 2.12.2.10 each Board may adopt bylaws for its internal management and may make rules governing its procedures consistent with the Umbrella Final Agreement and with any Legislation establishing the Board;
- 2.12.2.11 appointments to a Board shall be for a three year term except that the term of initial appointments to a Board may, in the discretion of the nominating party, be less than but not exceed three years and any appointment replacing a member whose term has not expired shall only be for the unexpired portion of that term; and
- 2.12.2.12 members of Boards shall not be delegates of the parties who nominate or appoint them.





## **CHAPTER 3 - ELIGIBILITY AND ENROLLMENT**

### **3.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Adopted Child" means a Person who, while a Minor, is adopted pursuant to Law relating to adoption recognized in Canada or pursuant to aboriginal customs.

"Descendant" means direct descendant by either maternal or paternal line, notwithstanding any intervening adoption and independent of whether any child of the line was born within or outside a marriage.

"Dispute Resolution Board" means the Board established pursuant to 26.5.0.

"Enrollment Commission" means the commission established pursuant to 3.6.0.

"Enrollment Committee" means a committee established pursuant to 3.5.0.

"Minor" means a Person who has not yet reached the age of majority as determined from time to time by the Laws of the Yukon.

"Ordinarily Resident" means a Person who lived or has lived the majority of his life in the Yukon. In making such determination, temporary absences from the Yukon for reasons such as travel, education, medical treatment, military service, or incarceration, shall be considered periods of residence provided the Person was Ordinarily Resident prior to such temporary absences.

"Person" means a natural person.

### **3.2.0 Eligibility Criteria**

3.2.1 Eligibility for enrollment under a Yukon First Nation Final Agreement shall be determined by the process set out in this chapter.

3.2.2 A Person is eligible for enrollment as a Yukon Indian Person under one of the Yukon First Nation Final Agreements if that Person is a Canadian citizen, and:

- 3.2.2.1 establishes that he is of 25 percent or more Indian ancestry and was Ordinarily Resident in the Yukon between January 1, 1800 and January 1, 1940;
- 3.2.2.2 establishes that he is a Descendant of a Person living or deceased eligible under 3.2.2.1;
- 3.2.2.3 establishes that he is an Adopted Child of a Person living or deceased eligible under 3.2.2.1 or 3.2.2.2; or
- 3.2.2.4 upon application within two years of the Effective Date of a Yukon First Nation Final Agreement to the Enrollment Commission by that Yukon First Nation, is determined by the Enrollment Commission in its discretion, and upon consideration of all relevant circumstances, to have a sufficient affiliation with that Yukon First Nation so as to justify enrollment.
- 3.2.3 Notwithstanding the requirement for Canadian citizenship in 3.2.2, a Person who is not a Canadian citizen is eligible for enrollment as a Yukon Indian Person under one of the Yukon First Nation Final Agreements if that Person meets one of the criteria set out in 3.2.2.1 to 3.2.2.4.
- 3.2.4 Enrollment of a Person under 3.2.3 shall not confer on that Person any rights or benefits under the Indian Act, R.S.C. 1985, c. I-5, rights of entry into Canada or of Canadian citizenship.
- 3.2.5 Any Person eligible for enrollment as a Yukon Indian Person pursuant to 3.2.2 or 3.2.3 is entitled to be enrolled under one, and no more than one, Yukon First Nation Final Agreement.
- 3.2.6 Where a Person applying for enrollment is eligible for enrollment under more than one Yukon First Nation Final Agreement, the Enrollment Commission shall take into account the wishes of that Person and any affected Yukon First Nation in deciding under which Yukon First Nation Final Agreement that Person will be enrolled.
- 3.2.7 Membership in a Yukon Indian Band under the Indian Act, R.S.C. 1985, c. I-5 does not necessarily result in eligibility for enrollment under a Yukon First Nation Final Agreement.
- 3.2.8 A Minor may apply on his own behalf to an Enrollment Committee for enrollment under a Yukon First Nation Final Agreement.

### **3.3.0 Applications on behalf of Another Person**

- 3.3.1 The Government, Yukon First Nations and Enrollment Committees shall work together to ensure that adoptive parents or legal guardians of Minors eligible for enrollment as a Yukon Indian Person under a Yukon First Nation Final Agreement are made aware of the Minor's eligibility.
- 3.3.2 Any adult Person may apply to an Enrollment Committee to enroll a Minor under a Yukon First Nation Final Agreement.
- 3.3.3 Any Person who, by order of a court, aboriginal custom in Canada or pursuant to Legislation, has been vested with the authority to manage the affairs of an adult incapable of managing his own affairs, may apply to an Enrollment Committee to enroll that adult under a Yukon First Nation Final Agreement.

### **3.4.0 Other Settlements**

- 3.4.1 Subject to 3.4.2, a Person who is enrolled in any other aboriginal land claims settlement in Canada shall not be enrolled as a Yukon Indian Person under any Yukon First Nation Final Agreement.
- 3.4.2 Any Person who is enrolled as a Yukon Indian Person under a Yukon First Nation Final Agreement and who is also enrolled under another aboriginal land claims settlement in Canada, shall have 60 days to elect between the two settlement agreements following notice in writing from a Yukon First Nation or the Enrollment Commission. If that Person elects to remain enrolled in the other settlement agreement, then that Person shall cease to be enrolled under the Yukon First Nation Final Agreement.
- 3.4.3 A Person who is enrolled under another aboriginal land claims settlement in Canada is entitled to apply to be enrolled under a Yukon First Nation Final Agreement on the condition that, if accepted for enrollment, that Person shall cease to be enrolled under that other settlement.

3.4.4 Notwithstanding 3.4.1 and 3.4.2, a Minor who is enrolled under any other aboriginal land claims settlement in Canada, and who is eligible for enrollment as a Yukon Indian Person, may elect to be enrolled as a Yukon Indian Person provided such election takes place within two years of the Minor attaining the age of majority, whereupon the Minor ceases to be enrolled under the other settlement.

### **3.5.0 Enrollment Committees**

3.5.1 Each Yukon First Nation shall establish an Enrollment Committee composed of no more than five members of that Yukon First Nation. Each Yukon First Nation shall notify the Enrollment Commission of the composition of its Enrollment Committee and of any changes made in it from time to time.

3.5.2 A Yukon First Nation may join with one or more Yukon First Nations to establish a joint Enrollment Committee to be composed of no more than five members of those Yukon First Nations. The affected Yukon First Nations shall notify the Enrollment Commission of the composition of the joint Enrollment Committee and any changes made in it from time to time.

3.5.3 Each Enrollment Committee shall:

3.5.3.1 establish its own procedures;

3.5.3.2 publish its own procedures;

3.5.3.3 publicize and provide information in respect of the enrollment process to members of the Yukon First Nation;

3.5.3.4 review, update and amend existing Yukon First Nation enrollment lists of that Yukon First Nation;

3.5.3.5 supply application forms to any Person wishing to apply for enrollment and to any Person wishing to make an application pursuant to 3.3.0;

3.5.3.6 decide promptly, upon receiving an application for enrollment, whether such applicant is entitled to be enrolled in accordance with 3.2.0 or 3.4.0;

- 3.5.3.7 prepare an initial list of all Persons who, in its opinion, are entitled to be enrolled in accordance with 3.2.0 or 3.4.0;
- 3.5.3.8 prepare a list of all applicants who have been refused inclusion on the list of Persons prepared pursuant to 3.5.3.7;
- 3.5.3.9 provide to the Enrollment Commission the lists prepared pursuant to 3.5.3.7 and 3.5.3.8 together with relevant information and documentation within a reasonable time period established by the Enrollment Commission;
- 3.5.3.10 provide to the Enrollment Commission amendments to the lists prepared pursuant to 3.5.3.7 and 3.5.3.8 within a reasonable time period established by the Enrollment Commission;
- 3.5.3.11 notify promptly each applicant, in writing, of the Enrollment Committee's decision respecting his application; and
- 3.5.3.12 forward to the Enrollment Commission applications which, in its opinion, should be considered by another Enrollment Committee.
- 3.5.4 If a Yukon First Nation is not represented on an Enrollment Committee or does not establish an Enrollment Committee within three months of a request to do so from the Enrollment Commission, or an Enrollment Committee has not carried out its responsibilities as set out in 3.5.3 within a reasonable time period established by the Enrollment Commission, the Enrollment Commission may exercise any or all of the responsibilities of the Enrollment Committee.
- 3.5.5 The Enrollment Commission shall not exercise the responsibilities of an Enrollment Committee unless the Enrollment Commission has attempted to assist the Enrollment Committee in the performance of its responsibilities. The Enrollment Commission shall relinquish such responsibilities when the Enrollment Committee demonstrates to the reasonable satisfaction of the Enrollment Commission that it is ready, willing and able to perform its responsibilities.

3.5.6 The Enrollment Commission, in accordance with standards set by it, shall reimburse each Enrollment Committee for its reasonable out-of-pocket expenses incurred over the period of three years from the date of each Enrollment Committee's inception. Each Enrollment Committee shall prepare a budget and submit it for approval to the Enrollment Commission when requested to do so by it.

3.5.7 Where an Enrollment Committee fails or neglects to make a decision in respect of an application for enrollment within 120 days, then that application shall be deemed to have been rejected and a right of appeal lies to the Enrollment Commission.

### **3.6.0 Enrollment Commission**

3.6.1 The Enrollment Commission was established by the parties to the Umbrella Final Agreement on July 1, 1989.

3.6.2 Settlement Legislation shall:

3.6.2.1 give the Enrollment Commission and the Enrollment Committees the powers required to carry out their responsibilities;

3.6.2.2 deem the Enrollment Commission to have had, as of July 1, 1989, the jurisdiction, power and authority provided under the Umbrella Final Agreement, other than those set out in 3.6.2.4;

3.6.2.3 provide for the enforcement after the effective date of Settlement Legislation of any order or decision of the Enrollment Commission in a like manner as an order of the Supreme Court of the Yukon; and

3.6.2.4 provide the Enrollment Commission with the power to direct and compel the production of documents and the attendance of witnesses, with the exception of Ministers of Government, as provided to a Board of Inquiry under the Public Inquiries Act, R.S.Y. 1986, c. 137.

3.6.3 The Enrollment Commission shall be comprised of:

3.6.3.1 one Person nominated by the Council for Yukon Indians and an alternate to act in the absence of the Person so nominated;

- 3.6.3.2 one Person nominated jointly by Canada and the Yukon and an alternate to act in the absence of the Person so nominated; and
- 3.6.3.3 one Person and an alternate to act in the absence of that Person, each nominated by the two members nominated under 3.6.3.1 and 3.6.3.2. If the two members are unable to agree on a third member of the Commission, or an alternate, then either may refer the matter of appointment to the dispute resolution process under 26.3.0, or, in the absence of that process, to the Supreme Court of the Yukon.
- 3.6.4 The Minister shall appoint all Persons nominated pursuant to 3.6.3. In the event of a vacancy, the appropriate party shall promptly make a new nomination, and the Minister shall appoint the new nominee.
- 3.6.5 The Enrollment Commission:
  - 3.6.5.1 shall establish and publish its own procedures including procedures in respect of appeals from decisions of Enrollment Committees;
  - 3.6.5.2 shall only spend funds allocated to it for the carrying out of its functions and responsibilities in accordance with its approved budget;
  - 3.6.5.3 shall assist Enrollment Committees in carrying out their responsibilities;
  - 3.6.5.4 shall prepare and provide such information and forms as may be necessary to facilitate enrollment through Enrollment Committees;
  - 3.6.5.5 shall refer to the appropriate Enrollment Committee those applications for enrollment which are submitted by Persons directly to the Enrollment Commission and those applications which appear to have been made to an inappropriate Enrollment Committee;
  - 3.6.5.6 shall prepare, certify, publish and advertise the initial official enrollment list for each Yukon First Nation;

- 3.6.5.7 shall enter on the initial official enrollment lists the name of each Person who, in the opinion of an Enrollment Committee, is entitled to be enrolled as a Yukon Indian Person, provided the Enrollment Commission is satisfied all Persons named are in fact eligible for enrollment in accordance with 3.2.0 or 3.4.0;
- 3.6.5.8 where it appears to the Enrollment Commission that an applicant recommended by an Enrollment Committee pursuant to 3.5.3.7 is not entitled to be enrolled, the Commission may, on its own motion, institute an appeal pursuant to 3.6.5.9 in respect of that Person's application;
- 3.6.5.9 shall hear and determine any appeal initiated on its own motion or by an applicant, a Yukon First Nation, the Council for Yukon Indians or Government, arising from any decision of an Enrollment Committee with respect to enrollment and to provide such remedy or remedies as the Enrollment Commission in its absolute discretion deems appropriate;
- 3.6.5.10 shall hear and determine matters before it in accordance with the principles of natural justice; and
- 3.6.5.11 shall notify the applicant, Government, Council for Yukon Indians, any affected Yukon First Nation and affected Enrollment Committees of additions to or deletions from official enrollment lists as a result of decisions made by the Enrollment Commission pursuant to 3.6.5.8 and 3.6.5.9.
- 3.6.6 The Enrollment Commission shall be an independent body, operating at arm's length from the parties to the Settlement Agreements.
- 3.6.7 Where the Enrollment Commission fails or neglects to make a decision in respect of an appeal pursuant to 3.6.5.9, then that appeal shall be deemed to have been rejected and a right of appeal shall lie to the Supreme Court of the Yukon. The Supreme Court may give direction to the Enrollment Commission and refer the matter back to the Enrollment Commission.



3.6.8 All Persons on the official enrollment list for a Yukon First Nation as of the Effective Date of that Yukon First Nation Final Agreement shall be deemed to be enrolled under that Yukon First Nation Final Agreement, subject to 3.7.0, without further action being required.

### **3.7.0 Judicial Review**

3.7.1 All decisions and orders of the Enrollment Commission shall be final and binding and not subject to appeal or judicial review in any court provided, however, that an application for judicial review by an applicant, a Yukon First Nation, the Council for Yukon Indians or Government, shall lie to the Supreme Court of the Yukon upon the grounds that the Enrollment Commission:

3.7.1.1 failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

3.7.1.2 erred in law in making its decision or order, whether or not the error appears on the face of the record; or

3.7.1.3 based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

3.7.2 The application for a judicial review by an applicant pursuant to 3.7.1 shall be made:

3.7.2.1 in the case of a decision made prior to the Effective Date of the affected Yukon First Nation's Final Agreement, within 60 days of that Yukon First Nation's Final Agreement coming into effect; or

3.7.2.2 in the case of a decision made after the Effective Date of the affected Yukon First Nation's Final Agreement, within 60 days of the decision being made.

### **3.8.0 Budget**

- 3.8.1 The Enrollment Commission shall prepare an annual budget in respect of its operations and in respect of the operations of the Enrollment Committees and shall submit the proposed annual budget to Canada for approval. Canada shall pay the approved expenses.

### **3.9.0 Dissolution of Enrollment Committees**

- 3.9.1 The responsibilities of each Yukon First Nation's Enrollment Committee shall cease, except with respect to matters pending before it, two years after the day on which the Yukon First Nation's Final Agreement comes into effect. Upon dissolution, each Enrollment Committee shall deliver all its documents and records to the affected Yukon First Nation.
- 3.9.2 A joint Enrollment Committee shall deliver to a Yukon First Nation documents and records relating to applications for enrollment under that Yukon First Nation's Final Agreement.
- 3.9.3 Upon dissolution of an Enrollment Committee the Yukon First Nation shall have the powers and responsibilities to:
- 3.9.3.1 maintain, update and amend the official enrollment list for that Yukon First Nation after the initial official enrollment list has been published by the Enrollment Commission;
  - 3.9.3.2 deliver to the Yukon the official enrollment list on each anniversary of the dissolution of the Enrollment Committee;
  - 3.9.3.3 decide promptly upon all applications received, and advise all Persons in writing of the Enrollment Commission or the Dispute Resolution Panel's disposition of their application;
  - 3.9.3.4 supply application forms to any Person wishing to apply for enrollment;
  - 3.9.3.5 establish its own procedures;
  - 3.9.3.6 publish its own procedures; and
  - 3.9.3.7 publicize and provide information in respect of the enrollment process to members of the Yukon First Nation.

### **3.10.0 Continuation of Enrollment**

- 3.10.1 After the dissolution of an Enrollment Committee, a Person seeking enrollment as a Yukon Indian Person, and a Person making application pursuant to 3.3.2 or 3.3.3 shall apply to the appropriate Yukon First Nation which shall determine, according to this chapter, whether such Person or the Person on whose behalf the application is being made, is entitled to be enrolled under its Yukon First Nation Final Agreement.
- 3.10.2 If the Yukon First Nation rejects the application or fails or refuses to make a decision within 120 days, then an appeal shall lie to either:
- 3.10.2.1 the Enrollment Commission, if it has not been dissolved pursuant to 3.10.4; or
  - 3.10.2.2 a single arbitrator appointed by the chairperson of the Dispute Resolution Board.
- 3.10.3 Upon a decision to enroll a Person under 3.10.1, the Yukon First Nation shall provide written notice to Government. Such enrollment shall not come into effect until 30 days following Government's receipt of such notice or, in the event of a dispute, until a determination has been made pursuant to 3.11.0.
- 3.10.4 The responsibilities of the Enrollment Commission shall cease, except with respect to matters pending before it, on the day two years after the Effective Date of the last Yukon First Nation Final Agreement or 10 years after the effective date of Settlement Legislation, whichever comes first. Upon dissolution, the Enrollment Commission shall deliver all its documents and records to the Dispute Resolution Board.

### **3.11.0 Dispute Resolution**

- 3.11.1 The Dispute Resolution Board shall maintain the confidentiality of the documents and records delivered to it by the Enrollment Commission pursuant to 3.10.4.
- 3.11.2 Upon the dissolution of the Enrollment Commission, the Dispute Resolution Board, in addition to its powers and duties under Chapter 26 - Dispute Resolution, shall have the following powers and duties:

- 3.11.2.1 to establish and publish its own procedures, including procedures in respect of appeals from decisions of a Yukon First Nation respecting eligibility and enrollment under this chapter;
- 3.11.2.2 the chairperson of the Dispute Resolution Board shall appoint a single arbitrator to hear and determine an appeal from any decision of a Yukon First Nation with respect to enrollment and to provide such remedy or remedies as the arbitrator in his discretion deems appropriate;
- 3.11.2.3 to direct and compel the production of documents and the attendance of witnesses with the exception of Ministers of Government, as provided to a Board of Inquiry under the Public Inquiries Act, R.S.Y. 1986, c. 137;
- 3.11.2.4 to hear and determine matters before it arising under this chapter in accordance with the principles of natural justice;
- 3.11.2.5 powers necessarily incidental to the discharge of the arbitrator's duties in considering matters under this chapter;
- 3.11.2.6 to notify the applicant, Government, the Council for Yukon Indians and the affected Yukon First Nations of additions to or deletions from official enrollment lists as a result of decisions made by the arbitrator; and
- 3.11.2.7 to carry out any other responsibilities assigned to the Enrollment Commission under this chapter.
- 3.11.3 Any affected Yukon First Nation, Government, and any other affected Person shall be entitled to be a party in respect of an appeal or application for judicial review under this chapter.
- 3.11.4 Any decision or order of the arbitrator shall be enforceable in a like manner as an order of the Supreme Court of the Yukon.
- 3.11.5 All decisions of the arbitrator shall be subject to judicial review in the same manner as provided in 3.7.0.

**3.12.0      Public Access**

- 3.12.1      Any Person may examine the official enrollment list maintained by an Enrollment Committee or Yukon First Nation during its usual business hours.



## **CHAPTER 4 - RESERVES AND LAND SET ASIDE**

### **4.1.0 Reserves**

4.1.1 Yukon First Nation Final Agreements shall set out whether a Reserve is to be:

4.1.1.1 retained as a Reserve to which all the provisions of the Indian Act, R.S.C. 1985, c. I-5 shall continue to apply, unless otherwise provided in the Legislation giving effect to that Yukon First Nation's self-government agreement, and except as provided in Chapter 2 - General Provisions and Chapter 20 - Taxation; or

4.1.1.2 selected as Settlement Land and cease to be a Reserve.

4.1.2 Settlement Legislation shall provide that the Indian Act, R.S.C. 1985, c. I-5 shall cease to apply to any Reserve identified pursuant to 4.1.1.2 as of the Effective Date of the Yukon First Nation Final Agreement of the Yukon First Nation for which the land had been set apart as a Reserve.

### **4.2.0 Land Set Aside**

4.2.1 Government shall make best efforts to identify all Land Set Aside and to disclose to the Yukon First Nations before ratification of the Umbrella Final Agreement by the Yukon First Nations all information, maps and documents that Government has in its possession respecting Land Set Aside.

4.2.2 Unless otherwise agreed in a Yukon First Nation Final Agreement, Yukon First Nations shall select Land Set Aside containing improvements as Settlement Land, and may select any other Land Set Aside as Settlement Land.

4.2.3 The reservation or notation with respect to all Land Set Aside selected pursuant to 4.2.2 shall be cancelled by the Department of Indian Affairs and Northern Development.

4.2.4 Subject to 4.2.2, reservations or notations with respect to Land Set Aside which is not selected by a Yukon First Nation shall be cancelled by the Department of Indian Affairs and Northern Development whether or not the Land Set Aside was identified under 4.2.1.

#### **4.3.0 Selection of Additional Land**

4.3.1 Before a final land selection is signed by the negotiators for a Yukon First Nation Final Agreement, the parties thereto shall identify:

4.3.1.1 all Reserves which are to become Settlement Land;

4.3.1.2 all Reserves to be retained by any Yukon First Nation; and

4.3.1.3 all Land Set Aside to be selected as Settlement Land by any Yukon First Nation, which shall be selected in accordance with 9.5.0.

4.3.2 Yukon First Nations may select as Settlement Land, in accordance with 4.3.3, additional land so that the total of the land identified under 4.3.1 and of the additional land equals 60 square miles (155.40 square kilometres).

4.3.3 The additional land under 4.3.2 shall be:

4.3.3.1 selected in accordance with 9.4.0 and 9.5.0; and

4.3.3.2 primarily allocated to the Yukon First Nations which do not retain Reserves or obtain Settlement Land under 4.1.1 or 4.2.2.

4.3.4 The Umbrella Final Agreement as initialled by the negotiators March 31, 1990, contemplated that the Yukon First Nations and Government would agree on the allocation of the land identified under 4.3.2 prior to ratification of the Umbrella Final Agreement by the Yukon First Nations.

4.3.5 The Yukon First Nations and Government have agreed to the allocation of the 60 square miles (155.40 square kilometres) referred to in 4.3.2, and the allocation of that amount among the Yukon First Nations is set out in Schedule A - Allocation of Settlement Land Amount attached to Chapter 9 - Settlement Land Amount.

4.3.6 Notwithstanding 4.3.2, a Yukon First Nation Final Agreement may identify other Reserves which Government and the Yukon First Nation agree exist in that Yukon First Nation's Traditional Territory.

4.3.7 A Reserve described in 4.3.6 shall be retained as a Reserve subject to 4.1.1.1, or selected as Settlement Land.



#### **4.4.0 Release**

4.4.1 In the event that after the Effective Date of a Yukon First Nation's Final Agreement there is determined to be a Reserve set aside for that Yukon First Nation other than a Reserve identified pursuant to 4.3.1 or 4.3.6, the Yukon First Nation for which that Reserve was set aside agrees to surrender all its interest absolutely and unconditionally to Her Majesty in Right of Canada.

4.4.2 Unless otherwise agreed in a Yukon First Nation Final Agreement, each Yukon First Nation and all persons eligible to be Yukon Indian People it represents, their heirs, descendants and successors, release Government as of the Effective Date of that Yukon First Nation's Final Agreement, from any and all suits, actions, causes of actions, claims, demands and charges, whether known or unknown, which the Yukon First Nation and all persons eligible to be Yukon Indian People it represents, their heirs, descendants and successors ever had, now have or may hereafter have against Government relating to or in any way arising out of:

4.4.2.1 any Reserve described in 4.4.1; and

4.4.2.2 any Land Set Aside not identified pursuant to 4.2.1.



**5.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Land Titles Office" means the Land Titles Office for the Yukon Land Registration District or its successor.

"Royalty" means any amount, paid in money or in kind, in respect of Mines and Minerals produced by a Person holding an Existing Mineral Right, but not including any payment made for a service, for the creation of special purposes funds, for the issuance of a right or interest or for the granting of an approval or authorization, any payment required regardless of the ownership of the Mines and Minerals, or any payment for incentives.

**5.2.0 General**

5.2.1 Nothing in Settlement Agreements shall be construed as affecting any aboriginal claim, right, title or interest in and to Settlement Land, except to the extent that they are inconsistent with the Settlement Agreements.

5.2.2 Nothing in this chapter constitutes an admission by Government that an aboriginal claim, right, title or interest can co-exist with the rights described in 5.4.1.1(a) and 5.4.1.2, or with a treaty.

5.2.3 Each Yukon First Nation shall register in the Land Titles Office as soon as practicable its title to Fee Simple Settlement Land and its fee simple title in the Mines and Minerals in and under Category A Settlement Land.

5.2.4 No fee or charge shall be payable in respect of the initial registration by a Yukon First Nation of its title to Fee Simple Settlement Land and its fee simple title in the Mines and Minerals in and under Category A Settlement Land.

5.2.5 Nothing in this chapter shall be construed to preclude a Yukon First Nation or Yukon Indian People from acquiring or holding interests in Non-Settlement Land.

- 5.2.6 Settlement Land shall be deemed not to be lands reserved for Indians within the meaning of section 91(24) of the Constitution Act, 1867, nor a Reserve.
- 5.2.7 Government shall have no obligation or liability in respect of Settlement Land, or in respect of any dealings with Settlement Land by any Person, by virtue of any property interest Government may have as a result of the regime of tenure established under 5.4.1.1(a) and 5.4.1.2.
- 5.3.0 Maps and Descriptions**
- 5.3.1 Maps, and legal descriptions where available, of Settlement Land for each Yukon First Nation, and descriptions setting out any reservations, exceptions, restrictions, easements, rights-of-way or special conditions that the parties to a Yukon First Nation Final Agreement agree apply to a Parcel of Settlement Land shall be annexed to and form part of that Yukon First Nation Final Agreement, and shall identify the Category A, Category B, Fee Simple Settlement Land and Proposed Site Specific Settlement Land of that Yukon First Nation.
- 5.3.2 The boundaries of the Settlement Land of a Yukon First Nation shall be defined pursuant to Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land.
- 5.3.3 Plans of survey confirmed in accordance with Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land shall be deposited in the Land Titles Office and any system established under 5.5.1.4 applicable to the Settlement Land dealt with in the survey.
- 5.3.4 Plans of survey confirmed under Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land replace for all purposes any prior map or description of a Parcel of Settlement Land dealt with by the survey.
- 5.3.5 The deposition of a plan of survey under 5.3.3 shall not be construed to affect any aboriginal right, title or interest of a Yukon First Nation or any person eligible to be a Yukon Indian Person it represents.
- 5.3.6 The designation of a Parcel of Settlement Land by the letters "C", "S" and "R" is for convenience only and has no legal effect.

#### 5.4.0 Settlement Land

5.4.1 A Yukon First Nation shall have by virtue of this chapter:

5.4.1.1 for Category A Settlement Land,

- (a) the rights, obligations and liabilities equivalent to fee simple excepting the Mines and Minerals and the Right to Work the Mines and Minerals, and
- (b) fee simple title in the Mines and Minerals, and the Right to Work the Mines and Minerals;

5.4.1.2 for Category B Settlement Land the rights, obligations and liabilities equivalent to fee simple reserving therefrom the Mines and Minerals and the Right to Work the Mines and Minerals but including the Specified Substances Right; and

5.4.1.3 for Fee Simple Settlement Land, fee simple title reserving therefrom the Mines and Minerals and the Right to Work the Mines and Minerals but including the Specified Substances Right.

5.4.2 The rights and titles described in 5.4.1 of a Yukon First Nation in Settlement Land are subject to the following exceptions and reservations:

5.4.2.1 any right, title or interest less than the entire fee simple therein existing at the date the land became Settlement Land;

5.4.2.2 any licence, permit and other right issued by Government for the use of land or other resources existing at the date the land became Settlement Land;

5.4.2.3 any renewal or replacement of a right, title or interest described in 5.4.2.1 or a licence, permit or other right described in 5.4.2.2;

5.4.2.4 any new licence, permit or other right in respect of,

- (a) Petroleum which may be granted as of right to a Person holding a right, title or interest described in 5.4.2.1, 5.4.2.2 or 5.4.2.3, and

(b) Mines and Minerals which may be granted pursuant to the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 or the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3 to a Person holding a right, title or interest described in 5.4.2.1, 5.4.2.2 or 5.4.2.3;

- 5.4.2.5 any right-of-way, easement, reservation, exception, restriction, or special condition agreed to by the parties to a Yukon First Nation Final Agreement and set out therein pursuant to 5.3.1;
- 5.4.2.6 the Public Access for Wildlife Harvesting;
- 5.4.2.7 any Waterfront Right-of-Way;
- 5.4.2.8 the Flooding Right identified pursuant to 7.8.0;
- 5.4.2.9 the rights granted to Government in a Quarry identified pursuant to 18.2.0; and
- 5.4.2.10 any reservation agreed to pursuant to 5.7.4.2.

#### **5.5.0 Yukon First Nation Management Powers**

5.5.1 Subject to its Settlement Agreement, each Yukon First Nation, as owner of Settlement Land, may exercise the following powers of management in relation to its Settlement Land:

- 5.5.1.1 to enact bylaws for the use of and occupation of its Settlement Land;
- 5.5.1.2 to develop and administer land management programs related to its Settlement Land;
- 5.5.1.3 to charge rent or other fees for the use and occupation of its Settlement Land; and
- 5.5.1.4 to establish a system to record interests in its Settlement Land.

#### **5.6.0 Administration by Government**

5.6.1 For the purposes of 5.6.0, "Encumbering Right" means every licence, permit or other right, and every right, title or interest described in 5.4.2.

- 5.6.2 Subject to 6.3.6, Government shall continue to administer every Encumbering Right including granting renewals or replacements described in 5.4.2.3 and new rights described in 5.4.2.4 in the public interest and in accordance with the Legislation which would apply if Settlement Land were Crown Land.
- 5.6.3 Where Category A Settlement Land is subject to an Existing Mineral Right or to a surface lease, existing at the date the affected land became Settlement Land, held by a Mineral Right holder, Government shall account for and pay to the affected Yukon First Nation as soon as practicable from time to time:
- 5.6.3.1 any Royalty received by Government for production after the date the land became Settlement Land in respect of that Existing Mineral Right; and
  - 5.6.3.2 any non-refunded rents received by Government which were payable after the date the land became Settlement Land in respect of that Existing Mineral Right and of any surface lease, existing at the date the affected land became Settlement Land, held by a Mineral Right holder.
- 5.6.4 Where Category B Settlement Land or Fee Simple Settlement Land is subject to a surface lease, existing at the date the affected land became Settlement Land, held by a Mineral Right holder, Government shall account for and pay to the affected Yukon First Nation as soon as practicable from time to time, any non-refunded rents received by Government which were payable after the date the land became Settlement Land in respect of that existing surface lease held by the Mineral Right holder.
- 5.6.5 Subject to 5.6.3, 5.6.4 and 5.6.6, Government shall retain for its own benefit any fees, charges or other payments received in respect of any Encumbering Right.
- 5.6.6 Where Settlement Land is subject to a timber harvesting agreement existing at the date the land becomes Settlement Land, Government may agree in the Yukon First Nation Final Agreement to account for and pay to the affected Yukon First Nation any stumpage fee in respect of that timber harvesting agreement received by Government which is payable after the date the land becomes Settlement Land.

- 5.6.7 Government shall not have any fiduciary obligation to a Yukon First Nation for the exercise of any discretionary or other power in relation to the administration of any Encumbering Right.
- 5.6.8 Government shall indemnify and forever save harmless the Yukon First Nations from and against all suits and actions, causes of action, claims, demands, and damages by any Person arising from the continuing administration of the Encumbering Right by Government.
- 5.6.9 Government shall Consult with the affected Yukon First Nation before exercising any discretion to renew or replace an Encumbering Right, to issue a new Encumbering Right, or to set any Royalty, rent or fee described in 5.6.3, 5.6.4 and 5.6.6.
- 5.6.10 If Legislation is amended to authorize Government to increase the term permitted for an Encumbering Right, Government shall not increase the term of that Encumbering Right pursuant to that amendment without the prior consent of the affected Yukon First Nation.
- 5.6.11 Subject to the consent of the Minister, a Yukon First Nation and the holder of an Encumbering Right may agree that the right be cancelled and replaced by an interest provided by the Yukon First Nation.
- 5.6.12 The Minister may only refuse to consent under 5.6.11 if:
- 5.6.12.1 the holder of the Encumbering Right is in default of any obligation to Government or has outstanding unsatisfied liabilities to Government pursuant to the interest;
  - 5.6.12.2 the Encumbering Right was granted under the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and there is no "Certificate of Improvements" issued thereunder or equivalent certificate issued under any successor Legislation;
  - 5.6.12.3 the Encumbering Right is a claim granted under the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3 and there is no plan of survey of the claim approved in accordance with that Act or equivalent approval under successor Legislation; or
  - 5.6.12.4 there is a Person claiming an interest in the Encumbering Right.



**5.7.0 Disclosure of Government Interests in Settlement Land**

5.7.1 Government shall make best efforts to disclose to each Yukon First Nation, before its final land selections are signed by the negotiators for its Yukon First Nation Final Agreement, which, if any, of those lands are:

5.7.1.1 under the management, charge and direction of any department of Government listed in Schedule I of the Financial Administration Act, R.S.C. 1985, c. F-11, other than the Department of Indian Affairs and Northern Development, or of any entity in Schedule II or III of that Act;

5.7.1.2 subject to reservations made in the land records of the Northern Affairs Program, Department of Indian Affairs and Northern Development;

5.7.1.3 under the administration and control of the Commissioner and,

(a) under the management, charge and direction of any department of the Yukon as defined in the Financial Administration Act, R.S.Y. 1986, c. 65,

(b) subject to a reservation and notation made in the land records of the Lands Branch, Department of Community and Transportation Services, or

(c) occupied by any department of the Yukon as defined in the Financial Administration Act, R.S.Y. 1986, c. 65; or

5.7.1.4 any other land occupied by any department of the Yukon as defined in the Financial Administration Act, R.S.Y. 1986, c. 65.

5.7.2 For the purpose of 5.7.1 and 5.7.4, "disclose" means to provide Territorial Resource Base Maps at a scale of 1:20,000 or 1:30,000 or Community Reference Plans indicating thereon the land described in 5.7.1 and accompanied by a list describing:

5.7.2.1 the department or entity having management, charge or direction of the land in 5.7.1.1;

5.7.2.2 the nature of the reservation in 5.7.1.2; and

- 5.7.2.3 the department having management, charge and direction of, or occupying, the land in 5.7.1.3(a) or (c), or 5.7.1.4 or the nature of the reservation in 5.7.1.3(b).
- 5.7.3 The obligation set out in 5.7.1 does not apply where the information described in 5.7.1 is publicly available in the Land Titles Office.
- 5.7.4 If Government or a Yukon First Nation becomes aware of any information described in 5.7.1 which has not been disclosed prior to that Yukon First Nation ratifying its Yukon First Nation Final Agreement and which is not publicly available in the Land Titles Office, that party shall provide the other with the information, whereupon Government shall declare
- 5.7.4.1 that:
- (a) the department or entity does not have the management, charge or direction of the land,
  - (b) the reservation is cancelled, or
  - (c) the Commissioner does not have administration and control of the land,
- as the case may be, and, as of the date of the declaration, the Settlement Land shall not be subject to such management, charge or direction, reservation or administration and control and no compensation shall be payable to the Yukon First Nation; or
- 5.7.4.2 in the cases of 5.7.1.2 or 5.7.1.3(b), that, with the agreement of the affected Yukon First Nation, the land described in 5.7.1.2 or 5.7.1.3(b) remains Settlement Land subject to the reservation and, as of the date of the declaration, Government shall provide compensation as determined pursuant to 7.5.0 to the Yukon First Nation for any diminution in the value of the Settlement Land resulting from the continuation of the reservation after the date of the declaration, and the Settlement Land shall be subject to the reservation.
- 5.7.5 For the purposes of 5.7.1 and 5.7.4:
- 5.7.5.1 Government in 5.7.1.1 means Canada;

5.7.5.2 Government in 5.7.1.2 means the Government for whose benefit the reservation was made; and

5.7.5.3 Government in 5.7.1.3 means the Yukon.

#### **5.8.0 Beds of Waterbodies**

5.8.1 Unless otherwise provided in the description referred to in 5.3.1, the portions of the Bed of a lake, river or other waterbody within the boundaries of a Parcel of Settlement Land shall be Settlement Land.

5.8.2 Unless otherwise provided in the description referred to in 5.3.1, the Bed of a lake, river or other waterbody which is contiguous with a boundary of a Parcel of Settlement Land shall not be Settlement Land.

#### **5.9.0 Interests in Settlement Land - Less than Entire Interest in 5.4.1**

5.9.1 Upon and subsequent to the happening of any of the following events:

5.9.1.1 the registration in the Land Titles Office of any interest in a Parcel of Settlement Land, less than the entire interest set out in 5.4.1.1(a) or 5.4.1.2;

5.9.1.2 the expropriation of any interest in a Parcel of Settlement Land, less than the entire interest set out in 5.4.1.1(a) or 5.4.1.2;

5.9.1.3 the granting of any interest in a Parcel of Settlement Land less than the entire interest in 5.4.1.1(a) or 5.4.1.2 to any Person not enrolled under that Yukon First Nation Final Agreement; or

5.9.1.4 the declaration of a reservation in a Parcel by Government pursuant to 5.7.4.2,

the interest registered, expropriated or granted or the reservation declared, as the case may be, shall take priority for all purposes over:

5.9.1.5 any aboriginal claims, rights, titles and interests of the Yukon First Nation and all persons eligible to be Yukon Indian People it represents, their heirs, descendants and successors; and

- 5.9.1.6 the right to harvest described in 16.4.2,  
in or to the Parcel referred to in 5.9.1.1, 5.9.1.2,  
5.9.1.3 and 5.9.1.4, as the case may be.
- 5.9.2 Each Yukon First Nation and all persons who are  
eligible to be Yukon Indian People it represents, their  
heirs, descendants and successors undertake not to  
exercise or assert:
- 5.9.2.1 any aboriginal claim, right, title or interest; or
- 5.9.2.2 any right to harvest described in 16.4.2,  
in or to any Parcel referred to in 5.9.1.1, 5.9.1.2,  
5.9.1.3 and 5.9.1.4 which aboriginal claim, right,  
title or interest or right to harvest described in  
16.4.2 is in conflict or inconsistent with the interest  
described in 5.9.1.1, 5.9.1.2 and 5.9.1.3, or the  
reservation declared in 5.9.1.4, as the case may be.
- 5.10.0 Interests in Settlement Land - Entire Interest**
- 5.10.1 Each Yukon First Nation and all persons eligible to be  
Yukon Indian People it represents, shall be deemed to  
have ceded, released and surrendered to Her Majesty the  
Queen in Right of Canada all their aboriginal claims,  
rights, titles and interests, in and to the Parcels  
described hereunder and waters therein upon the  
happening of any of the following events:
- 5.10.1.1 the registration in the Land Titles Office of the  
fee simple title in that Parcel of Settlement  
Land;
- 5.10.1.2 the expropriation of the fee simple title in that  
Parcel of Settlement Land; or
- 5.10.1.3 the granting of the fee simple interest in that  
Parcel of Settlement Land.
- 5.10.2 A Yukon First Nation shall be deemed to have been  
granted immediately before the happening of an event  
described in 5.10.1.1, 5.10.1.2 or 5.10.1.3 for that  
Parcel:

- 5.10.2.1 if Category A Settlement Land, fee simple title excepting the Mines and Minerals and the Right to Work the Mines and Minerals, subject to,
- (a) the reservations and exceptions set out in 5.4.2, other than 5.4.2.6, and
  - (b) the reservations to the Crown and exceptions which apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7 other than the reservations set out in paragraphs 13(a) and (b) and 15(a) of that Act; and
- 5.10.2.2 if Category B Settlement Land, fee simple title reserving to the Crown therefrom the Mines and Minerals and the Right to Work the Mines and Minerals but including the Specified Substances Right, subject to,
- (a) the reservations and exceptions set out in 5.4.2, and
  - (b) the reservations to the Crown and exceptions which apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7 other than the reservations set out in paragraphs 13(a) and (b) and 15(a) of that Act.
- 5.10.3 The interest in Fee Simple Settlement Land set out in 5.4.1.3 shall be deemed to be subject to the reservations to the Crown and exceptions which would apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7, other than the reservations set out in paragraphs 13(a) and (b) and 15(a) of that Act, upon the happening of either of the following events:
- 5.10.3.1 the expropriation of the fee simple title in a Parcel of Settlement Land; or
  - 5.10.3.2 the granting by a Yukon First Nation of its fee simple title in that Parcel of Settlement Land.

#### **5.11.0 Land Ceasing to be Settlement Land**

- 5.11.1 Except for purposes of Chapter 23 - Resource Royalty Sharing, where a Yukon First Nation becomes divested, either voluntarily or involuntarily, of all its interest in land set out in 5.4.1.1(a) in a Parcel of Category A Settlement Land, but retains some or all of its interest in the Mines and Minerals in that Parcel, that Parcel and the retained interest in the Mines and Minerals in that Parcel shall cease to be Settlement Land.
- 5.11.2 Where a Yukon First Nation becomes divested, either voluntarily or involuntarily, of all its interest in land set out in 5.4.1.1(a), 5.4.1.2 or 5.4.1.3 in a Parcel of Settlement Land, that Parcel shall cease to be Settlement Land.

#### **5.12.0 Reacquisition**

- 5.12.1 Where land which is or was subject to the operation of 5.10.0 is reacquired by a Yukon First Nation in fee simple, whether including or excluding the Mines and Minerals, that Yukon First Nation may declare the land to be Settlement Land and thereafter the land shall be Settlement Land of the following category:
- 5.12.1.1 Category A Settlement Land when Mines and Minerals are included and the land had previously been Category A Settlement Land;
- 5.12.1.2 Category B Settlement Land when Mines and Minerals other than Specified Substances are not included and the land had previously been Category B Settlement Land; or
- 5.12.1.3 Fee Simple Settlement Land when Mines and Minerals other than Specified Substances are not included and the land had previously been Fee Simple or Category A Settlement Land,
- except that the cession, release and surrender of any aboriginal claim, right, title or interest in respect of the land shall not be affected.

### **5.13.0 Deregistration**

5.13.1 A Yukon First Nation may deregister a Parcel of Category A Settlement Land which is registered in the Land Titles Office and is free and clear of any interest in land recognized in Law, other than:

5.13.1.1 the reservations and exceptions set out in 5.4.2; and

5.13.1.2 the reservations to the Crown and exceptions which apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7 other than the reservations set out in paragraphs 13(a) and (b) or 15(a) of that Act.

5.13.2 A Yukon First Nation may deregister a Parcel of Category B Settlement Land which is registered in the Land Titles Office and is free and clear of any interest in land recognized in Law other than:

5.13.2.1 the reservations and exceptions set out in 5.4.2; and

5.13.2.2 the reservations to the Crown and exceptions which apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7.

5.13.3 Deregistration pursuant to 5.13.1 and 5.13.2 shall not affect the cession, release and surrender of any aboriginal claim, right, title or interest in respect of that Parcel.

### **5.14.0 Proposed Site Specific Settlement Land**

5.14.1 Subject to 5.14.2, the provisions of 2.5.0 and 5.4.1 shall not apply to Proposed Site Specific Settlement Land, and Proposed Site Specific Settlement Land shall not be considered Settlement Land for any purpose.

5.14.2 Subject to 5.14.3, the provisions of 2.5.0 shall apply to Proposed Site Specific Settlement Land and 5.4.1 shall apply to Site Specific Settlement Land on the same date the plan of survey is confirmed in accordance with Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land, and the Site Specific Settlement Land shall thereupon be Settlement Land for all purposes.

- 5.14.3 Where there is more than one Parcel of Site Specific Settlement Land to be selected in one or more Parcels of Proposed Site Specific Settlement Land bearing the same "S" number, 5.14.2 shall not apply until the plan of the last Parcel of Site Specific Settlement Land in the last Parcel of Proposed Site Specific Settlement Land bearing the same "S" number has been confirmed in accordance with Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land.
- 5.14.4 Any orders made under the Territorial Lands Act, R.S.C. 1985, c. T-7, the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4, the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3 or the Lands Act, R.S.Y. 1986, c. 99 withdrawing Proposed Site Specific Settlement Land on the Effective Date of the Yukon First Nation's Final Agreement shall be continued until the provisions of 2.5.0 apply to that land.

#### **5.15.0 Waterfront Right-of-Way**

- 5.15.1 Unless otherwise agreed in a Yukon First Nation Final Agreement on a case by case basis, there shall be a Waterfront Right-of-Way 30 metres in width measured landward from the Natural Boundaries within Settlement Land of all Navigable Waters which abut or are within Settlement Land.
- 5.15.2 The uses allowed upon and the width of the Waterfront Right-of-Way may be varied in a Yukon First Nation Final Agreement to accommodate special circumstances.
- 5.15.3 Subject to 6.1.6, any Person has a right of access without the consent of the affected Yukon First Nation to use a Waterfront Right-of-Way for travel and for non-commercial recreation including camping and sport fishing, and to use standing dead or deadfall firewood incidental to such use.
- 5.15.4 Except for hunting Migratory Game Birds if permitted by and in accordance with Law, the right of access in 5.15.3 shall not be construed to permit Harvesting Wildlife at any time on Category A or Fee Simple Settlement Land.
- 5.15.5 Any Person has a right of access to use a Waterfront Right-of-Way for commercial recreation purposes with the consent of the affected Yukon First Nation or failing consent, with an order of the Surface Rights Board setting out the terms and conditions of the access.



- 5.15.6 The Surface Rights Board shall not make an order under 5.15.5 unless the Person seeking access satisfies the Board that:
- 5.15.6.1 such access is reasonably required; and
  - 5.15.6.2 such access is not also practicable and reasonable across Crown Land.
- 5.15.7 Subject to 5.15.8, no Person shall establish any permanent camp or structure on a Waterfront Right-of-Way without the consent of Government and the affected Yukon First Nation.
- 5.15.8 A Yukon First Nation has a right to establish a permanent camp or structure on a Waterfront Right-of-Way on its Settlement Land, provided that:
- 5.15.8.1 the permanent camp or structure does not substantially alter the public right of access under 5.15.3; or
  - 5.15.8.2 there is a reasonable alternate public right of access for the purposes set out in 5.15.3.
- 5.15.9 Any dispute as to whether the conditions set out in 5.15.8.1 and 5.15.8.2 are met may be referred to the Surface Rights Board by Government or the affected Yukon First Nation.
- 5.15.10 For purposes of 5.15.9, the Surface Rights Board shall have all the powers of an arbitrator under 26.7.3.
- 5.16.0 Notations for Hydro-electric and Water Storage Projects**
- 5.16.1 Government shall identify to Yukon First Nations, before final land selections are signed by the negotiators for all parties to a Yukon First Nation Final Agreement, those areas proposed for future hydro-electric and water storage projects.
- 5.16.2 When land identified pursuant to 5.16.1 forms part of Settlement Land, a notation shall be made in the description of that land pursuant to 5.3.1 that such land is proposed for hydro-electric and water storage projects.
- 5.16.3 If any Parcel of Settlement Land bearing the notation referred to in 5.16.2 is registered in the Yukon Land Titles Office, the notation shall be noted on the title by way of caveat.

5.16.4 Chapter 7 - Expropriation shall apply to the expropriation of any land bearing such notation or caveat.

## CHAPTER 6 - ACCESS

### **6.1.0 General**

- 6.1.1 Laws of General Application in respect of access to and use incidental thereto, of privately held land shall apply to Settlement Land, except as altered by a Settlement Agreement.
- 6.1.2 Government and a Yukon First Nation may agree in a Yukon First Nation Final Agreement or from time to time after the Effective Date of a Yukon First Nation Final Agreement to amend, revoke or reinstate a right of access provided by a Settlement Agreement to address special circumstances in respect of a specific Parcel of Settlement Land.
- 6.1.3 A Yukon First Nation owes the same duty of care to a Person exercising a right of access on Undeveloped Settlement Land pursuant to Settlement Agreements as the Crown owes to a Person on unoccupied Crown Land.
- 6.1.4 Nothing in this chapter imposes an obligation on a Yukon First Nation or Government to manage or maintain any trail or other route of access.
- 6.1.5 Any Person may enter upon Settlement Land in an emergency but when damage is caused, the Person shall report to the affected Yukon First Nation the location thereof as soon as practicable thereafter and shall be liable for significant damage to Settlement Land or to any improvement on Settlement Land as a result of the entry.
- 6.1.6 A right of access provided by 5.15.3, 6.3.1 and 6.3.2 is subject to the conditions that there shall be no:
  - 6.1.6.1 significant damage to Settlement Land or to improvements on Settlement Land;
  - 6.1.6.2 mischief committed on Settlement Land;
  - 6.1.6.3 significant interference with the use and peaceful enjoyment of Settlement Land by the Yukon First Nation;
  - 6.1.6.4 fee or charge payable to the affected Yukon First Nation; or
  - 6.1.6.5 compensation for damage other than for significant damage.

- 6.1.7 A Person who fails to comply with the conditions in 6.1.6.1, 6.1.6.2, or 6.1.6.3 shall be considered a trespasser with respect to that incident of access.
- 6.1.8 Government and a Yukon First Nation may agree from time to time to designate Undeveloped Settlement Land to be Developed Settlement Land and Developed Settlement Land to be Undeveloped Settlement Land.
- 6.1.9 Subject to Chapter 7 - Expropriation, unless the affected Yukon First Nation otherwise agrees, any route of access on Settlement Land which may be established or improved after the Effective Date of the affected Yukon First Nation's Final Agreement shall remain Settlement Land and shall not be designated by operation of law or otherwise, as a highway or public road, notwithstanding that the route is established or improved:
- 6.1.9.1 for the benefit of any Person; or
  - 6.1.9.2 using funds or other resources provided directly or indirectly by Government for the establishment or improvement of such route.
- 6.2.0 Access to Crown Land**
- 6.2.1 A Yukon Indian Person has and a Yukon First Nation has a right of access without the consent of Government to enter, cross and stay on Crown Land and to use Crown Land incidental to such access for a reasonable period of time for all non-commercial purposes if:
- 6.2.1.1 the access is of a casual and insignificant nature; or
  - 6.2.1.2 the access is for the purpose of Harvesting Fish and Wildlife in accordance with Chapter 16 - Fish and Wildlife.
- 6.2.2 A Yukon Indian Person has and a Yukon First Nation has a right of access without the consent of Government to cross and make necessary stops on Crown Land to reach adjacent Settlement Land for commercial purposes if:
- 6.2.2.1 the access is of a casual and insignificant nature; or

- 6.2.2.2 the route used is a traditional route of Yukon Indian People or of a Yukon First Nation or is generally recognized and is being used for access on a regular basis, whether year round or intermittently, and the exercise of the right of access does not result in a significant alteration in the use being made of that route.
- 6.2.3 A right of access in 6.2.1 or 6.2.2 does not apply to Crown Land:
- 6.2.3.1 which is subject to an agreement for sale or a surface licence or lease except,
- (a) to the extent the surface licence or lease permits public access, or
  - (b) where the holder of the interest allows access; or
- 6.2.3.2 where access or use by the public is limited or prohibited.
- 6.2.4 A right of access provided by 6.2.1 or 6.2.2 shall be subject to the conditions that there shall be no:
- 6.2.4.1 significant damage to the land or to improvements on the land;
  - 6.2.4.2 mischief committed on the land;
  - 6.2.4.3 significant interference with the use and peaceful enjoyment of the land by other Persons;
  - 6.2.4.4 fee or charge payable to Government; or
  - 6.2.4.5 compensation for damage other than significant damage.
- 6.2.5 A Yukon Indian Person or Yukon First Nation who fails to comply with the conditions in 6.2.4.1, 6.2.4.2 or 6.2.4.3 shall forfeit the rights provided in 6.2.1 or 6.2.2, as the case may be, with respect to that incident of access.
- 6.2.6 A Yukon First Nation or any Person to whom rights have been granted by a Yukon First Nation in respect of the exploration or development of Mines and Minerals in Category A Settlement Land shall have the same rights of access to Non-Settlement Land and the use thereof incidental to such access as any other Person has for the same purpose.

6.2.7 Government shall not alienate Crown Land abutting any block of Settlement Land so as to deprive that block of Settlement Land of access from adjacent Crown Land or from a highway or public road.

6.2.8 Nothing in this chapter shall be construed so as to deprive Yukon Indian People or a Yukon First Nation of the rights or privileges of access to Crown Land available to the public.

### **6.3.0 General Access**

6.3.1 A Person has a right of access, without the consent of the affected Yukon First Nation, to enter, cross and make necessary stops on Undeveloped Settlement Land to reach adjacent Non-Settlement Land for commercial and non-commercial purposes if:

6.3.1.1 the access is of a casual and insignificant nature; or

6.3.1.2 the route used is generally recognized and was being used for access on a regular basis, whether year round or intermittently, either,

(a) prior to public notification of the final land selection for that Yukon First Nation's Final Agreement, or

(b) where the land becomes Settlement Land after the Effective Date of the Yukon First Nation Final Agreement, on the date the land became Settlement Land,

on the condition that the exercise of the right of access does not result in a significant alteration being made of that route.

6.3.2 A Person has a right of access without the consent of the affected Yukon First Nation to enter, cross and stay on Undeveloped Settlement Land for a reasonable period of time for all non-commercial recreational purposes.

- 6.3.3 Where no right of access is provided by a Settlement Agreement, a Person has a right of access to enter, cross and make necessary stops on Undeveloped Settlement Land to reach adjacent land for commercial and non-commercial purposes with the consent of the Yukon First Nation or, failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.
- 6.3.4 The Surface Rights Board shall not make an order under 6.3.3 unless the Person seeking access satisfies the Board that:
- 6.3.4.1 such access is reasonably required; and
  - 6.3.4.2 such access is not also practicable and reasonable across Crown Land.
- 6.3.5 Subject to 6.3.6 and 5.6.0, the holder of a licence, permit or other right of access to or across Settlement Land for commercial or non-commercial purposes, which was in existence either:
- 6.3.5.1 on the Effective Date of the Yukon First Nation's Final Agreement; or
  - 6.3.5.2 where the land becomes Settlement Land after the Effective Date of a Yukon First Nation's Final Agreement, on the date the land became Settlement Land,  
  
shall be entitled to exercise the rights granted by the licence, permit or other right of access including those granted by a renewal or replacement thereof as if the land had not become Settlement Land.
- 6.3.6 Any change in the terms or conditions relating to access of a licence, permit or other right of access described in 6.3.5, other than a renewal or replacement thereof shall require the consent of the affected Yukon First Nation or, failing consent, an order of the Surface Rights Board setting out the terms and conditions of access.
- 6.3.7 A Yukon First Nation or any Person may refer a dispute concerning the interpretation, application or alleged violation of 6.3.1, 6.3.2 or of any condition established pursuant to 6.6.0 affecting 6.3.1 or 6.3.2 to the Surface Rights Board for resolution.

- 6.3.8 The parties to a Yukon First Nation Final Agreement may agree therein to limit the application of 6.3.1.2 in respect of any particular route.
- 6.3.9 Nothing in this chapter shall be construed to provide a right to harvest Fish and Wildlife.
- 6.4.0 Government Access**
- 6.4.1 Government, its agents and contractors shall have a right of access to enter, cross and stay on Undeveloped Settlement Land and use natural resources incidental to such access to deliver, manage and maintain Government programs and projects, including but not limited to the necessary alterations of land and watercourses by earthmoving equipment for routine and emergency maintenance of transportation corridors.
- 6.4.2 A Person authorized by Law to provide utilities for public purposes including electricity, telecommunications and municipal services shall have a right of access to enter, cross and stay on Undeveloped Settlement Land to carry out site investigations, assessments, surveys and studies in relation to proposed services after Consultation with the affected Yukon First Nation prior to exercising such access.
- 6.4.3 The right of access provided in 6.4.1 and 6.4.2 shall be subject to the conditions that there shall be no:
- 6.4.3.1 mischief committed on the Settlement Land;
  - 6.4.3.2 fee or charge payable to the affected Yukon First Nation; or
  - 6.4.3.3 unnecessary interference with the use and peaceful enjoyment of its Settlement Land by the Yukon First Nation.
- 6.4.4 Any Person exercising a right of access pursuant to 6.4.1 and 6.4.2 shall be liable only for significant damage to Settlement Land and any improvements on Settlement Land caused by the exercise of such right of access. Significant damage does not include necessary alteration of Settlement Land or watercourses required to maintain transportation corridors referred to in 6.4.1.



- 6.4.5 The right of access provided in 6.4.1 and 6.4.2 may be exercised:
- 6.4.5.1 for a period of no more than 120 consecutive days for any single program or project without the consent of the affected Yukon First Nation except that notice, where reasonable, shall be given; and
  - 6.4.5.2 for a period of more than 120 consecutive days with the consent of the affected Yukon First Nation or, failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.
- 6.4.6 The Surface Rights Board shall not make an order under 6.4.5.2 unless the Person seeking access satisfies the Board that:
- 6.4.6.1 such access is reasonably required; and
  - 6.4.6.2 such access is not also practicable and reasonable across Crown Land.
- 6.4.7 Nothing in this chapter shall be construed to limit the lawful authority of Government to carry out inspections and enforce Law on Settlement Land.

#### **6.5.0 Military Access**

- 6.5.1 In addition to the right of access provided by 6.4.1, the Department of National Defence has a right of access to Undeveloped Settlement Land for military manoeuvres with the consent of the affected Yukon First Nation with respect to contact persons, areas, timing, environmental protection, protection of Wildlife and habitat, land use rent, and compensation for damage caused to Settlement Land and improvements and personal property thereon, or, failing consent, with an order of the Surface Rights Board as to terms and conditions with respect to such matters.
- 6.5.2 Nothing in 6.5.1 shall be construed to limit the authority of the Department of National Defence to enter, cross, stay on or use Undeveloped Settlement Land in accordance with the National Defence Act, R.S.C. 1985, c. N-5.
- 6.5.3 Government shall give reasonable advance notice of military exercises or operations to inhabitants of any area to be affected.

#### **6.6.0 Conditions of Access**

6.6.1 If a Yukon First Nation wishes to establish terms and conditions for the exercise of a right of access provided:

6.6.1.1 by 5.15.3, 6.3.1, 6.3.2, 16.11.12, 18.3.1, 18.4.1 or 18.4.2; or

6.6.1.2 by 6.4.1 or 6.4.2 where the right of access is for a period of no more than 120 consecutive days,  
  
the Yukon First Nation and Government shall attempt to negotiate the terms and conditions.

6.6.2 Failing agreement pursuant to 6.6.1, the Yukon First Nation may refer the matter to the Surface Rights Board. The Surface Rights Board may establish terms and conditions only for the exercise of a right of access which specify seasons, times, locations, method or manner of access.

6.6.3 Unless Government and the affected Yukon First Nation otherwise agree, a condition established pursuant to 6.6.2 affecting the exercise of a right of access shall be established only to:

6.6.3.1 protect the environment;

6.6.3.2 protect Fish and Wildlife or their habitat;

6.6.3.3 reduce conflicts with traditional and cultural uses of Settlement Land by the Yukon First Nation or a Yukon Indian Person; or

6.6.3.4 protect the use and peaceful enjoyment of land used for communities and residences.

6.6.4 A condition established pursuant to 6.6.2 affecting the exercise of a right of access shall not:

6.6.4.1 restrict law enforcement or any inspection authorized by Law;

6.6.4.2 impose a fee or charge for the exercise of that right of access; or

6.6.4.3 unreasonably restrict that right of access.

## **CHAPTER 7 - EXPROPRIATION**

### **7.1.0 Objective**

- 7.1.1 The objective of this chapter is, in recognition of the fundamental importance of maintaining the geographic integrity of Settlement Land, to ensure that development requiring expropriation shall avoid Settlement Land where possible and practicable.

### **7.2.0 Definitions**

In this chapter, the following definitions shall apply.

"Affected Yukon First Nation" means the Yukon First Nation whose Settlement Land is being acquired or expropriated by an Authority pursuant to this chapter.

"Authority" means Government or any other entity authorized by Legislation to expropriate Land.

"Cost of Construction" for a proponent in respect of a hydro-electric or water storage project means the cost of construction of civil structures; cost of reservoir and site clearing; cost of construction of access; electrical and mechanical costs; cost of construction of transmission to grid; design, including the cost of socio-economic and environmental studies required for the project application; and, engineering and construction management costs.

"Land" includes any interest in land recognized in Law.

"Settlement Land" includes any interest in Settlement Land recognized in Law.

### **7.3.0 General**

- 7.3.1 This chapter applies only to the expropriation of an interest in Settlement Land recognized in Law and held by a Yukon First Nation.

### **7.4.0 Procedures for Expropriation**

- 7.4.1 An Authority shall negotiate with the Affected Yukon First Nation the location and extent of Settlement Land to be acquired or expropriated.

- 7.4.2 Subject to this chapter, an Authority may expropriate Settlement Land in accordance with Laws of General Application.
- 7.4.3 When agreement of the Affected Yukon First Nation pursuant to 7.4.1 is not obtained, the following procedures shall apply:
- 7.4.3.1 any expropriation of Settlement Land shall require the approval of the Governor in Council or the Commissioner in Executive Council as the case may be;
  - 7.4.3.2 notice of the intention of any Authority to seek approval under 7.4.3.1 shall be given to the Affected Yukon First Nation by the Authority; and
  - 7.4.3.3 notice of the intention shall not be given until the public hearing process under 7.6.0 or the public hearing in accordance with Legislation has been completed.

#### **7.5.0 Procedures for Compensation**

- 7.5.1 An Authority shall negotiate with the Affected Yukon First Nation compensation for Settlement Land being expropriated or acquired, pursuant to this chapter.
- 7.5.2 When the agreement of the Affected Yukon First Nation pursuant to 7.5.1 is not obtained, the following provisions shall apply:
- 7.5.2.1 the Surface Rights Board shall determine any dispute over compensation upon an application by either the Authority or Affected Yukon First Nation, except where the expropriation is pursuant to the National Energy Board Act, R.S.C. 1985, c. N-7;
  - 7.5.2.2 compensation ordered by the Surface Rights Board may be,
    - (a) upon request by the Affected Yukon First Nation, and, if available and identified by the Affected Yukon First Nation, Land of the Authority within the Traditional Territory of the Affected Yukon First Nation,

- (b) money,
- (c) other forms of compensation, or
- (d) any combination of above;

7.5.2.3 when the Affected Yukon First Nation requests Land to be all or part of the compensation, the Surface Rights Board shall,

- (a) determine whether the Authority holds Land identified by the Affected Yukon First Nation which is within its Traditional Territory and whether that Land is available,
- (b) determine the value, in accordance with 7.5.2.7, of the Authority's Land which is available,
- (c) order the Authority to transfer to the Affected Yukon First Nation the amount of available Land necessary to provide compensation, and
- (d) subject to 7.5.2.4, where Land transferred to the Affected Yukon First Nation pursuant to 7.5.2.3(c) and 7.5.2.4(c) is not sufficient to provide compensation in Land as requested, order the balance of compensation to be in the form of 7.5.2.2(b), or (c), or both;

7.5.2.4 if the expropriating Authority is not Government and the Surface Rights Board has determined there is not sufficient available Land for the purposes of 7.5.2.3,

- (a) the Board shall so notify Government and thereafter Government shall be a party to the proceedings,
- (b) the Board shall determine whether Government holds available Land which is contiguous to the Settlement Land and within the Affected Yukon First Nation's Traditional Territory, whether that Land is available and if so the value of that available Land in accordance with 7.5.2.7,

- (c) the Board shall order Government to transfer to the Affected Yukon First Nation available Land up to the value, which in addition to the value of Land provided under 7.5.2.3, is necessary to provide compensation in Land as requested by the Affected Yukon First Nation under 7.5.2.3, and
  - (d) the Authority shall pay to Government the value of the Land provided under 7.5.2.4 (c) and all costs of Government associated with the transfer;
- 7.5.2.5 the Surface Rights Board shall consider the matters set out in 8.4.1 when assessing the value of expropriated Settlement Land;
- 7.5.2.6 Land is not available for the purposes of 7.5.2.3 or 7.5.2.4, if it is,
  - (a) Land subject to an agreement for sale or a lease containing an option to purchase, unless both Government and the Person holding such an interest in the Land consent,
  - (b) Land subject to a lease, unless both Government and the lessee consent,
  - (c) a highway or highway right-of-way,
  - (d) Land within 30 metres of the boundary line between the Yukon and Alaska, the Yukon and Northwest Territories, and the Yukon and British Columbia,
  - (e) Land determined by the Surface Rights Board to be occupied or used by the expropriating Authority, any federal or territorial department or agency, or by a municipal government except with the consent of that expropriating Authority, department, agency or municipal government,
  - (f) Land determined by the Surface Rights Board to be required for future use by the expropriating Authority, any federal or territorial department or agency, or by a municipal government except with the consent of that expropriating

- Authority, department, agency or municipal government,
- (g) Land which the Surface Rights Board determines would, if provided to a Yukon First Nation, unreasonably limit the expansion of Yukon communities,
  - (h) Land which the Surface Rights Board determines would, if provided to a Yukon First Nation, unreasonably limit access for any Person to Navigable Water or highways, or
  - (i) such other Land as the Surface Rights Board in its discretion determines is not available;

7.5.2.7 in determining the value of the Land to be provided by an Authority, the Surface Rights Board shall consider, in addition to the market value of the Land,

- (a) the value of Fish and Wildlife Harvesting and of gathering to the Affected Yukon First Nation,
- (b) any potential effect of the Land to be provided by an Authority upon other Settlement Land of the Affected Yukon First Nation,
- (c) any cultural or other special value of the Land to the Affected Yukon First Nation, and
- (d) such other factors as may be permitted by the Legislation establishing the Board;

7.5.2.8 Land provided or ordered as compensation under this chapter, which is within the Traditional Territory of the Affected Yukon First Nation, shall be transferred to the Affected Yukon First Nation in fee simple and shall, in accordance with 7.5.2.9, be designated as,

- (a) Category A Settlement Land when Mines and Minerals are included, or
- (b) Category B Settlement Land or Fee Simple Settlement Land when Mines and Minerals are not included;

7.5.2.9 prior to making an order under 7.5.2.3(c) or 7.5.2.4(c), the designation of Land under 7.5.2.8(b), and the designation of the acquired Land as Developed Settlement Land or Undeveloped Settlement Land shall be determined,

(a) by agreement between the Affected Yukon First Nation and Government, or

(b) failing agreement, by the Surface Rights Board; and

7.5.2.10 the designation of Land provided as compensation shall not affect any surrender in respect of such Land.

7.5.3 Nothing in this chapter prevents the Authority and the Affected Yukon First Nation from agreeing that Land outside of the Traditional Territory of the Affected Yukon First Nation be part of compensation for expropriation. Land outside the Affected Yukon First Nation's Traditional Territory shall not become Settlement Land, unless otherwise agreed to by Government, the Affected Yukon First Nation and the Yukon First Nation in whose Traditional Territory the Land is located.

#### **7.6.0 Public Hearings**

7.6.1 Where an Affected Yukon First Nation objects to an expropriation, there shall be a public hearing in respect of the location and extent of the Land to be acquired. The procedure for the public hearing shall include the following:

7.6.1.1 notice to the Affected Yukon First Nation and the public;

7.6.1.2 an opportunity for the Affected Yukon First Nation and the public to be heard;

7.6.1.3 discretion in the holder of the hearing to award costs, including interim costs, to the Affected Yukon First Nation; and

7.6.1.4 the preparation and submission of a report by the hearing panel to the Minister.

7.6.2 Nothing in this chapter shall be construed to eliminate or duplicate any legislative requirement for a public hearing in respect of expropriation.



**7.7.0        Expropriation pursuant to the National Energy Board Act**

7.7.1        Where Settlement Land is expropriated pursuant to the National Energy Board Act, R.S.C. 1985, c. N-7, this chapter applies except that the powers of the Surface Rights Board shall be exercised by the board, committee, panel or other body authorized by the National Energy Board Act, R.S.C. 1985, c. N-7 to settle disputes in respect of expropriation.

7.7.2        The board, committee, panel or other body referred to under 7.7.1 shall include at least one nominee of the Affected Yukon First Nation.

**7.8.0        Expropriation for Hydro-electric and Water Storage Projects**

7.8.1        Government may identify on maps described in 5.3.1 no more than 10 sites for a hydro-electric or water storage project in the Yukon.

7.8.2        Sites shall be identified pursuant to 7.8.1 in a Yukon First Nation's Traditional Territory before that Yukon First Nation's final land selection is signed by the negotiators to that Yukon First Nation's Final Agreement.

7.8.3        An Authority exercising a Flooding Right over Settlement Land identified pursuant to 7.8.1 and 7.8.2 shall pay compensation to the Affected Yukon First Nation for improvements only, provided the sum of such compensation to all Affected Yukon First Nations for that hydro-electric or water storage project shall not exceed three percent of the Cost of Construction of the project.

7.8.4        An Authority exercising a Flooding Right over Settlement Land, other than for those sites identified pursuant to 7.8.1 and 7.8.2, shall pay compensation pursuant to this chapter except that in assessing compensation for Land and improvements, the Surface Rights Board shall not consider 8.4.1.8 or 7.5.2.7(c) and the sum of such compensation to all Affected Yukon First Nations for all improvements shall not exceed three percent of the Cost of Construction of that hydro-electric or water storage project.



## CHAPTER 8 - SURFACE RIGHTS BOARD

### **8.1.0 General**

- 8.1.1 A Surface Rights Board ("the Board") shall be established pursuant to Legislation enacted no later than the effective date of Settlement Legislation.
- 8.1.2 The Minister shall appoint an even number of persons, no greater than 10, to the Board, one-half of which shall be nominees of the Council for Yukon Indians.
- 8.1.3 In addition to the persons appointed pursuant to 8.1.2, the Minister shall appoint, upon the recommendation of the Board, an additional person as a member of the Board who shall serve as chairperson.
- 8.1.4 The Surface Rights Board Legislation shall provide that:
- 8.1.4.1 applications to the Board shall be heard and decided by panels of three members of the Board;
  - 8.1.4.2 where an application is in respect of Settlement Land, one member of the panel shall be a member nominated to the Board by the Council for Yukon Indians;
  - 8.1.4.3 notwithstanding 8.1.4.1 and 8.1.4.2, any dispute may be heard and decided by one member of the Board, with the consent of the parties to the dispute; and
  - 8.1.4.4 any order of a panel referred to in 8.1.4.1 or of one member referred to in 8.1.4.3 shall be considered an order of the Board.
- 8.1.5 To the extent an order of the Board is in conflict with:
- 8.1.5.1 a Decision Document that the Decision Body is empowered to implement; or
  - 8.1.5.2 any requirement imposed pursuant to any Legislation regulating the activity for which the access is obtained, but not the access itself,
- the Decision Document or the requirement shall prevail to the extent of that conflict whether the order was issued before or after the Decision Document or requirement.

- 8.1.6 Amendments to the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3 shall be made to conform with the provisions of this chapter.
- 8.1.7 An order of the Board shall be enforceable in the same manner as if it were an order of the Supreme Court of the Yukon.
- 8.1.8 A right of access to Settlement Land under an interim order shall not be exercised until the Person relying upon the interim order has paid to the affected Yukon First Nation, and to any affected interest holder designated by the Board, an entry fee, plus any interim compensation ordered by the Board.
- 8.1.9 Before any matter is referred to the Board, the parties to any proceeding pursuant to 8.2.1 shall first attempt to negotiate an agreement.

#### **8.2.0 Jurisdiction of the Board**

- 8.2.1 The Board shall have jurisdiction to hear and determine:
- 8.2.1.1 any matter referred to the Board by a Settlement Agreement;
  - 8.2.1.2 on Non-Settlement Land, a dispute between a Person, other than Government, with an interest or right in the surface and a Person, other than Government, with a right of access to or interest in the Mines and Minerals therein and thereunder; and
  - 8.2.1.3 such other matters as may be set out in the Legislation establishing the Board.

#### **8.3.0 Powers and Responsibilities of the Board**

- 8.3.1 In any proceeding before the Board pursuant to 8.2.1, it shall have the following powers and responsibilities:
- 8.3.1.1 to establish the terms and conditions of a right of access or use referred to the Board, whether or not compensation is included;

- 8.3.1.2 to award compensation for the exercise of a right of access or use of the surface, and for damage resulting from access or use of the surface, and from the activities of the Person having the interest in the Mines and Minerals and to specify the time and method of payment thereof subject to exceptions, limitations and restrictions set out in a Settlement Agreement, and to determine the amount of such compensation;
- 8.3.1.3 to determine compensation for Settlement Land expropriated and to carry out the responsibilities set out in Chapter 7 - Expropriation;
- 8.3.1.4 to determine, where required by a Settlement Agreement, whether access is reasonably required and whether that access is not also practicable and reasonable across Crown Land;
- 8.3.1.5 to designate the route of access on Settlement Land determined least harmful to the interest of the affected Yukon First Nation while being reasonably suitable to the Person wishing access;
- 8.3.1.6 to award costs, including interim costs;
- 8.3.1.7 to grant an interim order in respect of any matter in 8.3.1.1, 8.3.1.2, 8.3.1.3 or 8.3.1.5 where the Board has not heard all the evidence or completed its deliberation in respect of that matter;
- 8.3.1.8 except for a matter in respect of expropriation or acquisition of Settlement Land under Chapter 7 - Expropriation, to review periodically, any order of the Board, upon application by any party to the proceedings, where there has been a material change since the Board made the order;
- 8.3.1.9 after a review is completed under 8.3.1.8, to affirm, amend or terminate any order of the Board;
- 8.3.1.10 to prescribe rules and procedures to govern any negotiations required before a matter is referred to the Board; and
- 8.3.1.11 such additional powers and responsibilities as may be set out in the Legislation establishing the Board.

8.3.2 An order of the Board may include:

- 8.3.2.1 the hours, days and times of the year during which access or use of the surface may be exercised;
- 8.3.2.2 notice requirements;
- 8.3.2.3 limitations on the location of use and the route of access;
- 8.3.2.4 limitations on equipment;
- 8.3.2.5 abandonment requirements and restoration work;
- 8.3.2.6 a requirement to provide security in the form of a letter of credit, guarantee or indemnity bond, insurance or any other form of security satisfactory to the Board;
- 8.3.2.7 rights of inspection or verification;
- 8.3.2.8 a requirement to pay the entry fee payable to the affected Yukon First Nation;
- 8.3.2.9 a requirement to pay to the affected Yukon First Nation the compensation determined;
- 8.3.2.10 limitations on the number of Persons and on the activities which may be carried out by Persons; and
- 8.3.2.11 such other terms and conditions as may be permitted by the Legislation establishing the Board.

**8.4.0 Compensation**

- 8.4.1 In determining the amount of compensation for the affected Yukon First Nation for access to, use of, or expropriation of Settlement Land, the Board shall consider:
  - 8.4.1.1 the market value of the interest in the Settlement Land;
  - 8.4.1.2 any loss of use, loss of opportunity, or interference with the use of the Settlement Land;
  - 8.4.1.3 any impact on Fish and Wildlife Harvesting within Settlement Land;

- 8.4.1.4 any impact on Fish and Wildlife and their habitat within Settlement Land;
  - 8.4.1.5 any impact upon other Settlement Land;
  - 8.4.1.6 any damage which may be caused to the Settlement Land;
  - 8.4.1.7 any nuisance, inconvenience, and noise;
  - 8.4.1.8 any cultural or other special value of the Settlement Land to the affected Yukon First Nation;
  - 8.4.1.9 the expense associated with the implementation of any order of the Board; and
  - 8.4.1.10 such other factors as may be permitted by the Legislation establishing the Board,
- but shall not:
- 8.4.1.11 decrease the compensation on account of any reversionary interest remaining in the Yukon First Nation or any entry fee payable;
  - 8.4.1.12 increase the compensation on account of any aboriginal claim, right, title or interest; or
  - 8.4.1.13 increase the compensation by taking into account the value of Mines and Minerals on or under Category B or Fee Simple Settlement Land.
- 8.4.2 The Surface Rights Board Legislation shall set out the authority of the Board to establish the entry fee and shall set out the parameters for establishment of the entry fee.
- 8.4.3 If an interim order for access is granted before all matters have been determined, a hearing in respect of all these outstanding matters shall be commenced no later than 30 days from the date of the interim order as the case may be.

#### **8.5.0 Legislation**

- 8.5.1 The parties to the Umbrella Final Agreement shall negotiate guidelines for drafting Surface Rights Board Legislation and these drafting guidelines shall be consistent with the provisions of this chapter.

8.5.2      Failing agreement on guidelines, Government shall Consult with the Council for Yukon Indians and with Yukon First Nations during the drafting of the Surface Rights Board Legislation.



## **CHAPTER 9 - SETTLEMENT LAND AMOUNT**

### **9.1.0 Objective**

- 9.1.1 The objective of this chapter is to recognize the fundamental importance of land in protecting and enhancing a Yukon First Nation's cultural identity, traditional values and life style, and in providing a foundation for a Yukon First Nation's self-government arrangements.

### **9.2.0 Yukon Settlement Land Amount**

- 9.2.1 Subject to the Umbrella Final Agreement, the total amount of Settlement Land for the requirements of all Yukon First Nations shall not exceed 16,000 square miles (41,439.81 square kilometres).
- 9.2.2 The total amount shall contain no more than 10,000 square miles (25,899.88 square kilometres) of Category A Settlement Land.

### **9.3.0 Yukon First Nations' Settlement Land Amount**

- 9.3.1 The amount of Settlement Land to be allocated to each Yukon First Nation has been determined in the context of the overall package of benefits in the Umbrella Final Agreement.
- 9.3.2 The Umbrella Final Agreement as initialled by the negotiators on March 31, 1990, contemplated that the Yukon First Nations and Government would agree to the allocation of Settlement Land amounts described in 9.2.0 for each Yukon First Nation by May 31, 1990, and in the absence of such agreement, Government, after consultation with the Council for Yukon Indians, would determine that allocation.
- 9.3.3 In the absence of the agreement referred to in 9.3.2, Government, after consultation with the Council for Yukon Indians, has determined the allocation of Settlement Land among the Yukon First Nations and that allocation is set out in Schedule A - Allocation of Settlement Land Amount attached to this chapter.
- 9.3.4 The land allocation determined under 9.3.3 for Yukon First Nations which do not have a Yukon First Nation Final Agreement may be varied by agreement in writing of all affected Yukon First Nations and Government.

- 9.3.5 Negotiation of final Settlement Land selections for a Yukon First Nation shall not commence until the allocation pursuant to 9.3.2 or 9.3.3 is determined.
- 9.3.6 A Yukon First Nation Final Agreement shall identify and describe Settlement Land for that Yukon First Nation.

**9.4.0 Land Negotiation Restrictions**

- 9.4.1 Privately owned land, land subject to an agreement for sale or land subject to a lease containing an option to purchase is not available for selection as Settlement Land, unless the Person holding such an interest in the land consents.
- 9.4.2 Unless otherwise agreed to in a Yukon First Nation Final Agreement, the following land is not available for selection as Settlement Land:
- 9.4.2.1 except as provided in 9.4.1, land under lease, subject to the lease-holder's interest;
  - 9.4.2.2 land occupied by or transferred to any department or agency of the federal, territorial or municipal government;
  - 9.4.2.3 land reserved in the property records of Northern Program, Department of Indian Affairs and Northern Development, except land reserved for that Department's Indian and Inuit Program, in favour of a Yukon First Nation or a Yukon Indian Person;
  - 9.4.2.4 a highway or highway right-of-way as defined in the Highways Act, S.Y. 1991, c. 7, but in no case shall a highway right-of-way have a width greater than 100 metres; and
  - 9.4.2.5 the border reserve constituting any land within 30 metres of the boundary line between the Yukon and Alaska, the Yukon and Northwest Territories, and the Yukon and British Columbia.

#### **9.5.0       Balanced Selection**

- 9.5.1       To establish a balanced allocation of land resource values, the land selected as Settlement Land shall be representative of the nature of the land, the geography and the resource potential within each Yukon First Nation's Traditional Territory, and the balance may vary among Yukon First Nations' selections in order to address their particular needs.
- 9.5.2       The selection of Site Specific Settlement Land shall not be restricted solely to traditional use and occupancy, but may also address other needs of Yukon First Nations.
- 9.5.3       The sizes of Site Specific Settlement Land may vary depending on the geography and needs of individual Yukon First Nations.
- 9.5.4       Except as otherwise agreed on a case by case basis, Settlement Land may only be selected by a Yukon First Nation within its Traditional Territory.
- 9.5.5       Land selections shall allow for reasonable expansion by Yukon First Nations and other Yukon communities.
- 9.5.6       Land selections on both sides of a major waterway or Major Highway should be avoided, but may be considered with each Yukon First Nation on a case by case basis to ensure final land selections provide a balanced selection and reasonable access for all users.
- 9.5.7       A Yukon First Nation may select land to address needs including, but not limited to the following:
  - 9.5.7.1       hunting areas;
  - 9.5.7.2       fishing areas;
  - 9.5.7.3       trapping areas;
  - 9.5.7.4       habitat areas and protected areas;
  - 9.5.7.5       gathering areas;
  - 9.5.7.6       historical, archaeological or spiritual areas;
  - 9.5.7.7       areas of residence or occupancy;
  - 9.5.7.8       access to waterbodies and use of waterbodies;

- 9.5.7.9 agriculture or forestry areas;
  - 9.5.7.10 areas of economic development potential; and
  - 9.5.7.11 wilderness areas.
- 9.5.8 Settlement Land may abut a right-of-way of a highway or road.
- 9.5.9 Settlement Land may abut Navigable Water and non-Navigable Water notwithstanding any Waterfront Right-of-Way that may be identified pursuant to Chapter 5 - Tenure and Management of Settlement Land.
- 9.6.0 Crown and Settlement Land Exchange**
- 9.6.1 A Yukon First Nation and Government may agree to exchange Crown Land for Settlement Land and may agree that Crown Land exchanged for Settlement Land will be Settlement Land provided that any such agreement shall not affect the cession, release and surrender of any aboriginal claim, right, title or interest in respect of that Crown Land.

SCHEDULE A

ALLOCATION OF SETTLEMENT LAND AMOUNT

	Cat. A		Fee Simple & Cat. B		Total		Allocation under 4.3.4	
	Sq. Miles	Sq. Km*	Sq. Miles	Sq. Km*	Sq. Miles	Sq. Km*	Sq. Miles	Sq. Km*
Carcross/Tagish First Nation	400	1036.00	200	518.00	600	1553.99	2.90	7.51
Champagne and Aishihik First Nations	475	1230.24	450	1165.49	925	2395.74	12.17	31.52
Dawson First Nation	600	1553.99	400	1036.00	1000	2589.99	3.29	8.52
Kluane First Nation	250	647.50	100	259.00	350	906.50	2.63	6.81
Kwanlin Dun First Nation	250	647.50	150	388.50	400	1036.00	2.62	6.79
Liard First Nation	930	2408.69	900	2330.99	1830	4739.68	2.63	6.81
Little Salmon/Carmacks First Nation	600	1553.99	400	1036.00	1000	2589.99	3.27	8.47
First Nation of Nacho Nyak Dun	930	2408.69	900	2330.99	1830	4739.68	3.58	9.27
Ross River Dena Council	920	2382.79	900	2330.99	1820	4713.78	2.75	7.12
Selkirk First Nation	930	2408.69	900	2330.99	1830	4739.68	2.62	6.79
Ta'an Kwach'an Council	150	388.50	150	388.50	300	777.00	3.21	8.31
Teslin Tlingit Council	475	1230.24	450	1165.49	925	2395.74	12.88	33.36
Vuntut Gwitchin First Nation	2990	7744.06	-	-	2990	7744.06	2.74	7.10
White River First Nation	100	259.00	100	259.00	200	518.00	2.72	7.04
TOTAL	10000	25899.88	6000	15539.93	16000	41439.81	60.00	155.40

\* Conversion to square kilometres is approximate



## **CHAPTER 10 - SPECIAL MANAGEMENT AREAS**

### **10.1.0 Objective**

- 10.1.1 The objective of this chapter is to maintain important features of the Yukon's natural or cultural environment for the benefit of Yukon residents and all Canadians while respecting the rights of Yukon Indian People and Yukon First Nations.

### **10.2.0 Definitions**

In this chapter, the following definition shall apply.

"Special Management Area" means an area identified and established within a Traditional Territory pursuant to this chapter and may include:

- (a) national wildlife areas;
- (b) National Parks, territorial parks, or national park reserves, and extensions thereof, and national historic sites;
- (c) special Wildlife or Fish management areas;
- (d) migratory bird sanctuaries or a wildlife sanctuary;
- (e) Designated Heritage Sites;
- (f) watershed protection areas; and
- (g) such other areas as a Yukon First Nation and Government agree from time to time.

### **10.3.0 Establishment of Special Management Areas**

- 10.3.1 Provisions in respect of an existing Special Management Area may be set out in a Yukon First Nation Final Agreement.
- 10.3.2 Special Management Areas may be established in accordance with the terms of this chapter pursuant to a Yukon First Nation Final Agreement or pursuant to Laws of General Application.

- 10.3.3 Except as provided in a Yukon First Nation Final Agreement, where Government proposes to establish a Special Management Area, Government shall refer the proposal to the affected Renewable Resources Council for its review and recommendations.
- 10.3.4 Government may refer proposals to establish historic territorial parks, national historic sites administered by the Canadian Parks Service or to designate Heritage Sites as Designated Heritage Sites to the Heritage Resources Board established pursuant to 13.5.0 instead of the affected Renewable Resources Council for its review and recommendations.
- 10.3.5 A Special Management Area may not include Settlement Land without the consent of the affected Yukon First Nation.
- 10.4.0 Rights and Interests of Yukon First Nations**
- 10.4.1 Where a Special Management Area is proposed to be established which will adversely affect rights of a Yukon First Nation under a Settlement Agreement, Government and the affected Yukon First Nation shall, at the request of either party, negotiate an agreement to:
- 10.4.1.1 establish any rights, interests and benefits of the affected Yukon First Nation in the establishment, use, planning, management and administration of the Special Management Area; and
  - 10.4.1.2 mitigate adverse effects of the establishment of the Special Management Area on the affected Yukon First Nation.
- 10.4.2 Agreements negotiated pursuant to 10.4.1:
- 10.4.2.1 shall address the rights Yukon Indian People have for Harvesting Fish and Wildlife within the Special Management Area;
  - 10.4.2.2 may address the economic and employment opportunities and benefits for the affected Yukon First Nation;
  - 10.4.2.3 may address whether, and on what terms, including provisions on management, Settlement Land may be included in the Special Management Area; and



- 10.4.2.4 may include such other provisions as Government and the affected Yukon First Nation may agree.
- 10.4.3 Where Government and the affected Yukon First Nation do not agree on the terms of an agreement pursuant to 10.4.1, the parties may refer the outstanding issues to the dispute resolution process under 26.4.0. 10.4.4 Where mediation under 10.4.3 does not result in agreement, the Government may establish the Special Management Area.
- 10.4.5 Notwithstanding 6.2.3.2, access by a Yukon Indian Person to a Special Management Area established pursuant to 10.4.4 for Harvesting Fish or Wildlife pursuant to a Settlement Agreement may be limited or prohibited only for reasons of Conservation, public health or public safety.
- 10.4.6 Government and the affected Yukon First Nation may, at any time after the establishment of a Special Management Area pursuant to 10.4.4, negotiate an agreement pursuant to 10.4.1 in respect of that Special Management Area, in which case 10.4.5 shall no longer apply to that Special Management Area.
- 10.4.7 Nothing in this chapter shall be construed to derogate from any provision respecting National Parks in the Yukon First Nation Final Agreements for the Champagne and Aishihik First Nations, the Kluane First Nation, the White River First Nation or the Vuntut Gwitchin First Nation.
- 10.4.8 Any agreement concluded between Government and the affected Yukon First Nation pursuant to 10.4.1 may be amended according to the terms set out in that agreement.
- 10.4.9 Any agreement concluded between Government and the affected Yukon First Nation pursuant to 10.4.1 may be appended to and form part of that Yukon First Nation's Final Agreement if Government and the Yukon First Nation agree.
- 10.5.0 Management of Future Special Management Areas**
- 10.5.1 Unless Government otherwise agrees, Government shall be the management authority for Special Management Areas on Non-Settlement Land.

- 10.5.2 Government shall prepare, or have prepared, a management plan for each Special Management Area established pursuant to a Yukon First Nation Final Agreement after the Effective Date of that Yukon First Nation Final Agreement.
- 10.5.3 Government shall make best efforts to complete the management plan within five years of the establishment of the Special Management Area.
- 10.5.4 Government shall review each management plan at least once every 10 years.
- 10.5.5 The management plan and any proposed amendments thereto shall be referred before approval to the relevant Renewable Resources Council or to the Yukon Heritage Resources Board, as the case may be, for its review and recommendations.
- 10.5.6 The provisions of 16.8.0 shall apply in respect of the implementation of any recommendations made pursuant to 10.5.5.
- 10.5.7 Should a management advisory body other than a body referred to in 10.5.5 be established by Government for the purpose of 10.3.3, 10.3.4 or 10.5.5, Yukon First Nation representation shall be 50 percent on any such body unless Government and the affected Yukon First Nation agree otherwise. Any such management advisory body shall have the responsibilities of a Renewable Resource Council or the Heritage Resources Board set out in this chapter.
- 10.5.8 Except as provided otherwise in this chapter, or in a Yukon First Nation Final Agreement, all National Parks and extensions, national park reserves and extensions and national historic parks and sites shall be planned, established and managed pursuant to the National Parks Act, R.S.C. 1985, c. N-14, other Legislation, the Canadian Parks Service policy and park management plans in effect from time to time.
- 10.5.9 Where a Special Management Area includes a National Park or its extension or national park reserve or its extension, exploration and development of non-renewable resources shall not be permitted, except in respect of the removal of sand, stone and gravel for construction purposes within the National Park or national park reserve.

10.5.10 Where a Special Management Area includes Yukon First Nation Burial Sites or places of religious and ceremonial significance to a Yukon First Nation, the management plan shall be consistent with the provisions of Chapter 13 - Heritage and shall provide for the protection and preservation of the sites or places.

**10.6.0 Relationship to the Land Use Planning and Development Assessment Processes**

10.6.1 Special Management Areas established after the effective date of Settlement Legislation shall be:

10.6.1.1 consistent with land use plans approved in accordance with Chapter 11 - Land Use Planning; and

10.6.1.2 subject to the provisions of Chapter 12 - Development Assessment.

**10.7.0 Fish and Wildlife Management**

10.7.1 Fish and Wildlife within Special Management Areas shall be managed in accordance with Chapter 16 - Fish and Wildlife.



## **CHAPTER 11 - LAND USE PLANNING**

### **11.1.0 Objectives**

11.1.1 The objectives of this chapter are as follows:

- 11.1.1.1 to encourage the development of a common Yukon land use planning process outside community boundaries;
- 11.1.1.2 to minimize actual or potential land use conflicts both within Settlement Land and Non-Settlement Land and between Settlement Land and Non-Settlement Land;
- 11.1.1.3 to recognize and promote the cultural values of Yukon Indian People;
- 11.1.1.4 to utilize the knowledge and experience of Yukon Indian People in order to achieve effective land use planning;
- 11.1.1.5 to recognize Yukon First Nations' responsibilities pursuant to Settlement Agreements for the use and management of Settlement Land; and
- 11.1.1.6 to ensure that social, cultural, economic and environmental policies are applied to the management, protection and use of land, water and resources in an integrated and coordinated manner so as to ensure Sustainable Development.

### **11.2.0 Land Use Planning Process**

11.2.1 Any regional land use planning process in the Yukon shall:

- 11.2.1.1 subject to 11.2.2, apply to both Settlement and Non-Settlement Land throughout the Yukon;
- 11.2.1.2 be linked to all other land and water planning and management processes established by Government and Yukon First Nations minimizing where practicable any overlap or redundancy between the land use planning process and those other processes;
- 11.2.1.3 provide for monitoring of compliance with approved regional land use plans;

- 11.2.1.4 provide for periodic review of regional land use plans;
  - 11.2.1.5 provide for procedures to amend regional land use plans;
  - 11.2.1.6 provide for non-conforming uses and variance from approved regional land use plans in accordance with 12.17.0;
  - 11.2.1.7 establish time limits for the carrying out of each stage of the process;
  - 11.2.1.8 provide for public participation in the development of land use plans;
  - 11.2.1.9 allow for the development of sub-regional and district land use plans;
  - 11.2.1.10 provide for planning regions which, to the extent practicable, shall conform to the boundaries of Traditional Territories;
  - 11.2.1.11 provide, to the extent practicable, for decisions of the Yukon Land Use Planning Council and the Regional Land Use Planning Commissions to be made by consensus; and
  - 11.2.1.12 apply to the process of establishing or extending National Parks and national historic parks and commemorating new national historic sites.
- 11.2.2 This chapter shall not apply to:
- 11.2.2.1 national park reserves established or national historic sites commemorated prior to Settlement Legislation, National Parks or national historic parks once established, or national historic sites once commemorated;
  - 11.2.2.2 subdivision planning or local area planning outside of a Community Boundary; or
  - 11.2.2.3 subject to 11.2.3, land within a Community Boundary.
- 11.2.3 In the event a Community Boundary is altered so as to include within a Community Boundary any land subject to an approved regional land use plan, the regional land use plan shall continue to apply to such land until

such time as a community plan is approved for such land.

#### **11.3.0 Yukon Land Use Planning Council**

11.3.1 The Land Use Planning Policy Advisory Committee established by the "Agreement on Land Use Planning in Yukon", dated October 22, 1987, shall be terminated as of the effective date of Settlement Legislation and replaced by the Yukon Land Use Planning Council on the same date.

11.3.2 The Yukon Land Use Planning Council shall be made up of one nominee of the Council for Yukon Indians and two nominees of Government. The Minister shall appoint the nominees.

11.3.3 The Yukon Land Use Planning Council shall make recommendations to Government and each affected Yukon First Nation on the following:

11.3.3.1 land use planning, including policies, goals and priorities, in the Yukon;

11.3.3.2 the identification of planning regions and priorities for the preparation of regional land use plans;

11.3.3.3 the general terms of reference, including timeframes, for each Regional Land Use Planning Commission;

11.3.3.4 the boundary of each planning region; and

11.3.3.5 such other matters as Government and each affected Yukon First Nation may agree.

11.3.4 The Yukon Land Use Planning Council may establish a secretariat to assist the Yukon Land Use Planning Council and Regional Land Use Planning Commissions in carrying out their functions under this chapter.

11.3.5 The Yukon Land Use Planning Council shall convene an annual meeting with the chairpersons of all Regional Land Use Planning Commissions to discuss land use planning in the Yukon.

#### **11.4.0 Regional Land Use Planning Commissions**

- 11.4.1 Government and any affected Yukon First Nation may agree to establish a Regional Land Use Planning Commission to develop a regional land use plan.
- 11.4.2 Settlement Agreements shall provide for regionally based Regional Land Use Planning Commissions with one third representation by nominees of Yukon First Nations, one third representation by nominees of Government, and one third representation based on the demographic ratio of Yukon Indian People to the total population in a planning region.
- 11.4.3 The majority of nominees of Yukon First Nations and the majority of nominees of Government on a Regional Land Use Planning Commission shall be Yukon residents with a long term familiarity with the region or regions being planned.
- 11.4.4 Each Regional Land Use Planning Commission shall prepare and recommend to Government and the affected Yukon First Nation a regional land use plan within a timeframe established by Government and each affected Yukon First Nation.
- 11.4.5 In developing a regional land use plan, a Regional Land Use Planning Commission:
  - 11.4.5.1 within its approved budget, may engage and contract technical or special experts for assistance and may establish a secretariat to assist it in carrying out its functions under this chapter;
  - 11.4.5.2 may provide precise terms of reference and detailed instructions necessary for identifying regional land use planning issues, for conducting data collection, for performing analyses, for the production of maps and other materials, and for preparing the draft and final land use plan documents;
  - 11.4.5.3 shall ensure adequate opportunity for public participation;
  - 11.4.5.4 shall recommend measures to minimize actual and potential land use conflicts throughout the planning region;
  - 11.4.5.5 shall use the knowledge and traditional experience of Yukon Indian People, and the knowledge and



experience of other residents of the planning region;

- 11.4.5.6 shall take into account oral forms of communication and traditional land management practices of Yukon Indian People;
- 11.4.5.7 shall promote the well-being of Yukon Indian People, other residents of the planning region, the communities, and the Yukon as a whole, while having regard to the interests of other Canadians;
- 11.4.5.8 shall take into account that the management of land, water and resources, including Fish, Wildlife and their habitats, is to be integrated;
- 11.4.5.9 shall promote Sustainable Development; and
- 11.4.5.10 may monitor the implementation of the approved regional land use plan, in order to monitor compliance with the plan and to assess the need for amendment of the plan.

#### **11.5.0 Regional Land Use Plans**

- 11.5.1 Regional land use plans shall include recommendations for the use of land, water and other renewable and non-renewable resources in the planning region in a manner determined by the Regional Land Use Planning Commission.

#### **11.6.0 Approval Process for Land Use Plans**

- 11.6.1 A Regional Land Use Planning Commission shall forward its recommended regional land use plan to Government and each affected Yukon First Nation.
- 11.6.2 Government, after Consultation with any affected Yukon First Nation and any affected Yukon community, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying on Non-Settlement Land.
- 11.6.3 If Government rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons, or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:

- 11.6.3.1 the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to Government, with written reasons; and
- 11.6.3.2 Government shall then approve, reject or modify that part of the plan recommended under 11.6.3.1 applying on Non-Settlement Land, after Consultation with any affected Yukon First Nation and any affected Yukon community.
- 11.6.4 Each affected Yukon First Nation, after Consultation with Government, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying to the Settlement Land of that Yukon First Nation.
- 11.6.5 If an affected Yukon First Nation rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:
  - 11.6.5.1 the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to that affected Yukon First Nation, with written reasons; and
  - 11.6.5.2 the affected Yukon First Nation shall then approve, reject or modify the plan recommended under 11.6.5.1, after Consultation with Government.
- 11.7.0 Implementation**
  - 11.7.1 Subject to 12.17.0, Government shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by Government under 11.6.2 or 11.6.3.
  - 11.7.2 Subject to 12.17.0, a Yukon First Nation shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by that Yukon First Nation under 11.6.4 or 11.6.5.

- 11.7.3 Nothing in 11.7.1 shall be construed to require Government to enact or amend Legislation to implement a land use plan or to grant an interest in, or authorize the use of, land, water or other resources.
- 11.7.4 Nothing in 11.7.2 shall be construed to require a Yukon First Nation to enact or amend laws passed pursuant to self-government Legislation to implement a land use plan or to grant an interest in, or authorize the use of, land, water or other resources.
- 11.8.0 Sub-Regional and District Land Use Plans**
- 11.8.1 Sub-regional and district land use plans developed in a region which has an approved regional land use plan shall conform to the approved regional land use plan.
- 11.8.2 The provisions of an approved regional land use plan shall prevail over any existing sub-regional or district land use plan to the extent of any inconsistency.
- 11.8.3 Subject to 11.8.4 and 11.8.5, a Yukon First Nation may develop a sub-regional or district land use plan for Settlement Land and Government may develop a sub-regional or district land use plan for Non-Settlement Land.
- 11.8.4 If Government and a Yukon First Nation agree to develop a sub-regional or district land use plan jointly, the plan shall be developed in accordance with the provisions of this chapter.
- 11.8.5 If Government and a Yukon First Nation do not agree to develop a sub-regional or district land use plan jointly, only 11.8.1 and 11.8.2 of this chapter shall apply to the development of the plan.
- 11.9.0 Funding**
- 11.9.1 Each Regional Land Use Planning Commission, after Consultation with each affected Yukon First Nation, shall prepare a budget for the preparation of the regional land use plan and for carrying out its functions under this chapter and shall submit that budget to the Yukon Land Use Planning Council.

- 11.9.2      The Yukon Land Use Planning Council shall, on an annual basis, review all budgets submitted under 11.9.1 and, after Consultation with each affected Regional Land Use Planning Commission, propose a budget to Government for the development of regional land use plans in the Yukon and for its own administrative expenses.
- 11.9.3      Government shall review the budget submitted under 11.9.2 and shall pay those expenses which it approves.
- 11.9.4      If Government initiates the development of a sub-regional or district land use plan by a planning body, the planning body established to prepare that plan shall prepare a budget for the preparation of the plan which shall be subject to review by Government, and Government shall pay those expenses which it approves.

## CHAPTER 12 - DEVELOPMENT ASSESSMENT

### **12.1.0 Objective**

- 12.1.1 The objective of this chapter is to provide for a development assessment process that:
- 12.1.1.1 recognizes and enhances, to the extent practicable, the traditional economy of Yukon Indian People and their special relationship with the wilderness Environment;
  - 12.1.1.2 provides for guaranteed participation by Yukon Indian People and utilizes the knowledge and experience of Yukon Indian People in the development assessment process;
  - 12.1.1.3 protects and promotes the well-being of Yukon Indian People and of their communities and of other Yukon residents and the interests of other Canadians;
  - 12.1.1.4 protects and maintains environmental quality and ensures that Projects are undertaken consistent with the principle of Sustainable Development;
  - 12.1.1.5 protects and maintains Heritage Resources;
  - 12.1.1.6 provides for a comprehensive and timely review of the environmental and socio-economic effects of any Project before the approval of the Project;
  - 12.1.1.7 avoids duplication in the review process for Projects and, to the greatest extent practicable, provides certainty to all affected parties and Project proponents with respect to procedures, information requirements, time requirements and costs; and
  - 12.1.1.8 requires Project proponents to consider the environmental and socio-economic effects of Projects and Project alternatives and to incorporate appropriate mitigative measures in the design of Projects.

## 12.2.0 Definitions

In this chapter, the following definitions shall apply.

"Designated Office" means a community or regional office of Government, an office of a Yukon First Nation or another office identified pursuant to the Development Assessment Legislation in accordance with Yukon First Nation Final Agreements and for the purposes set out in 12.6.0.

"Development Assessment Legislation" means Legislation enacted to implement the development assessment process set out in this chapter.

"Environment" means the components of the Earth and includes:

- (a) air, land and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in (a), (b) and (c).

"Existing Project" means an enterprise or activity or class of enterprises or activities which has been undertaken or completed in the Yukon which is not exempt from screening and review.

"Independent Regulatory Agency" means an agency established by Government that is identified in the Development Assessment Legislation which issues a licence, permit or other authorization, the terms and conditions of which are not subject to variation by Government.

"Plan" means a plan, program, policy or a proposal that is not a Project.

"Project" means an enterprise or activity or class of enterprises or activities to be undertaken in the Yukon which is not exempt from screening and review.

"YDAB" means the Yukon Development Assessment Board established pursuant to Development Assessment Legislation.

### **12.3.0 Development Assessment Legislation**

- 12.3.1 Government shall implement a development assessment process consistent with this chapter by Legislation.
- 12.3.2 The parties to the Umbrella Final Agreement shall negotiate guidelines for drafting Development Assessment Legislation and these drafting guidelines shall be consistent with the provisions of this chapter.
- 12.3.3 Failing agreement on guidelines, Government shall Consult with the Council for Yukon Indians and with Yukon First Nations during the drafting of the Development Assessment Legislation.
- 12.3.4 Government shall recommend to Parliament or the Legislative Assembly, as the case may be, the Development Assessment Legislation consistent with this chapter as soon as practicable and in any event no later than two years after the effective date of Settlement Legislation.
- 12.3.5 Canada shall recommend to Parliament necessary amendments to existing Legislation including, but not limited to, the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4, Yukon Placer Mining Act, R.S.C. 1985, c. Y-3, Territorial Lands Act, R.S.C. 1985, c. T-7 and Northern Inland Waters Act, R.S.C. 1985, c. N-25, to ensure its conformity with the Development Assessment Legislation.
- 12.3.6 Prior to the enactment of Development Assessment Legislation, the parties to the Umbrella Final Agreement shall make best efforts to develop and incorporate in the implementation plan provided for in 12.19.1, interim measures for assessing a Project which shall be consistent with the spirit of this chapter and within the existing framework of Law and regulatory agencies.

### **12.4.0 Scope**

- 12.4.1 Subject to this chapter, the following matters are subject to the development assessment process:
- 12.4.1.1 Projects and significant changes to Existing Projects; and
- 12.4.1.2 in accordance with 12.8.0,

- (a) a proposed enterprise or activity located outside the Yukon with significant adverse environmental or socio-economic effects in the Yukon,
- (b) temporary shutdown, abandonment or decommissioning of an Existing Project,
- (c) Plans,
- (d) Existing Projects,
- (e) development assessment research, or
- (f) studies of environmental or socio-economic effects that are cumulative regionally or over time.

12.4.2 YDAB and each Designated Office shall consider the following matters when carrying out their functions:

- 12.4.2.1 the need to protect the special relationship between Yukon Indian People and the Yukon wilderness Environment;
- 12.4.2.2 the need to protect the cultures, traditions, health and lifestyles of Yukon Indian People and of other residents of the Yukon;
- 12.4.2.3 the need to protect the rights of Yukon Indian People pursuant to the provisions of Settlement Agreements;
- 12.4.2.4 the interests of Yukon residents and Canadians outside the Yukon;
- 12.4.2.5 alternatives to the Project or alternative ways of carrying out the Project that avoid or minimize significant adverse environmental or socio-economic effects;
- 12.4.2.6 measures for mitigation of and compensation for significant adverse environmental and socio-economic effects;
- 12.4.2.7 any significant adverse effect on Heritage Resources;



- 12.4.2.8 the need for a timely review of the Project;
- 12.4.2.9 the need to avoid duplication and, to the greatest extent practicable, provide certainty to all affected parties and Project proponents with respect to procedures, information requirements, time requirements, and costs; and
- 12.4.2.10 any other matters provided for in the Development Assessment Legislation.

#### **12.5.0 Entry Point**

- 12.5.1 Development Assessment Legislation shall provide criteria for classification of Projects and Existing Projects for determining their entry point to the development assessment process and further criteria for identifying exemptions from the process.
- 12.5.2 The entry point shall be either a Designated Office or YDAB.

#### **12.6.0 Designated Office**

- 12.6.1 In accordance with the Development Assessment Legislation, a Designated Office:
  - 12.6.1.1 shall screen and may review Projects;
  - 12.6.1.2 shall establish information requirements for Project proponents;
  - 12.6.1.3 shall ensure that interested parties have the opportunity to participate in the assessment process;
  - 12.6.1.4 shall make written recommendations to a Decision Body that a Project that has not been referred to YDAB be allowed to proceed, be allowed to proceed subject to any terms and conditions, or not be allowed to proceed;
  - 12.6.1.5 may refer a Project to YDAB;
  - 12.6.1.6 may determine the type of screening or review of a Project by that Designated Office;
  - 12.6.1.7 may establish procedures pursuant to which a screening or review shall be conducted by that Designated Office;

- 12.6.1.8        may make written recommendations to a Decision Body that a Project audit or monitoring of effects be undertaken; and
- 12.6.1.9        may exercise any other powers and shall carry out any other duties provided for in the Development Assessment Legislation.
- 12.6.2        A Designated Office shall maintain a public registry in accordance with the Development Assessment Legislation.
- 12.6.3        Subject to 12.13.4.2, upon receipt of a recommendation from a Designated Office, a Decision Body shall, in a Decision Document, accept, vary, or reject the recommendations of that Designated Office.
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- 12.7.0        Yukon Development Assessment Board**
- 12.7.1        A Yukon Development Assessment Board shall be established pursuant to the Development Assessment Legislation.
- 12.7.2        YDAB shall be composed of an Executive Committee and an additional number of members determined in the Development Assessment Legislation.
- 12.7.3        The Executive Committee shall be composed of one member nominated by the Council for Yukon Indians, one member nominated by Government, and the chairperson of YDAB.
- 12.7.4        The Minister shall, after Consultation with the other members of the Executive Committee, appoint the chairperson of YDAB.
- 12.7.5        The Minister shall appoint the additional number of persons to YDAB, so that in total, excluding the chairperson, one half the members of YDAB are nominees of the Council for Yukon Indians and one half the members of YDAB are nominees of Government.
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- 12.8.0        YDAB Powers and Responsibilities**
- 12.8.1        In accordance with the Development Assessment Legislation, YDAB:
  - 12.8.1.1        shall establish rules for its procedures;

- 12.8.1.2 shall in accordance with 12.9.0 and 12.10.0 ensure that a mandatory screening or review of a Project and a screening or review of a Project referred to it pursuant to this chapter are conducted and that written recommendations are made to a Decision Body concerning any significant adverse environmental or socio-economic effects of the Project;
- 12.8.1.3 may make written recommendations to a Decision Body that Project audits or effects monitoring be undertaken;
- 12.8.1.4 shall upon request by Government, or with the consent of Government, upon request from a Yukon First Nation,
- (a) conduct a review,
  - (b) review a temporary shut down, abandonment, decommissioning or significant change,
  - (c) conduct an audit, or
  - (d) monitor effects,
- of a Project or an Existing Project, as the case may be;
- 12.8.1.5 may review Plans which may have significant adverse environmental or socio-economic effects in the Yukon, upon request of Government or, with the consent of Government, upon request by a Yukon First Nation;
- 12.8.1.6 shall notify Designated Offices and other relevant review bodies and agencies of a Project and of any decision to conduct a review of the Project;
- 12.8.1.7 may in accordance with 12.9.0 and 12.10.0 hold joint reviews with other bodies;
- 12.8.1.8 may upon request by Government or, with the consent of Government, upon request by a Yukon First Nation, undertake studies of environmental or socio-economic effects that are cumulative regionally or over time, or undertake development assessment research;

- 12.8.1.9 may upon request by Government or, with the consent of Government, upon request by a Yukon First Nation, review an enterprise or activity located outside of the Yukon which has significant adverse environmental or socio-economic effects on the Yukon;
- 12.8.1.10 may agree to review upon request by a Yukon First Nation and at the expense of that Yukon First Nation, any activity set out in 12.8.1.5, 12.8.1.8, and 12.8.1.9, without the consent of Government; and
- 12.8.1.11 may exercise any other powers and shall carry out any other duties set out in the Development Assessment Legislation.
- 12.8.2 YDAB shall establish structures and procedures to carry out its administrative functions.
- 12.8.3 YDAB shall maintain a public registry in accordance with the Development Assessment Legislation.
- 12.9.0 Executive Committee Powers**
- 12.9.1 In accordance with the Development Assessment Legislation, the Executive Committee:
- 12.9.1.1 shall, before exercising any of its functions relating to the screening or review of a Project, satisfy itself that the Project proponent has,
- (a) Consulted with affected communities,
  - (b) taken into consideration the matters identified in 12.4.2, and
  - (c) adhered to the procedural rules established by YDAB;
- 12.9.1.2 subject to 12.9.2, shall determine that a Project will be reviewed by a panel of YDAB or shall recommend to a Decision Body in writing with reasons that a Project not be reviewed by a panel;
- 12.9.1.3 shall, where it has recommended that a Project not be reviewed by a panel, make written recommendations to the Decision Body that the Project be allowed to proceed, be allowed to proceed subject to any terms and conditions, or not be allowed to proceed;

- 12.9.1.4 shall, where a review of a Project is to be conducted by a panel, determine whether the significant adverse environmental or socio-economic effects of the Project will be,
  - (a) primarily on Settlement Land,
  - (b) primarily on Non-Settlement Land, or
  - (c) on both Settlement Land and Non-Settlement Land but not primarily on either Settlement Land or Non-Settlement Land;
- 12.9.1.5 where a review of a Project is to be conducted by a panel, establish terms of reference for the panel, and appoint a chairperson for the panel;
- 12.9.1.6 shall issue an annual report; and
- 12.9.1.7 may exercise any other power and shall carry out any other duty set out in the Development Assessment Legislation.
- 12.9.2 Subject to 12.9.4, the Executive Committee shall establish a panel to conduct a public review of a Project if:
  - 12.9.2.1 it determines that the Project may have significant adverse environmental or socio-economic effects in the Yukon or outside the Yukon;
  - 12.9.2.2 it determines that the Project causes or is likely to cause significant public concern in the Yukon;
  - 12.9.2.3 it determines that the Project involves technology which is controversial in the Yukon or for which the effects are unknown; or
  - 12.9.2.4 it determines that the Project, while not generating significant adverse environmental or socio-economic effects by itself, may contribute significantly to cumulative adverse environmental or socio-economic effects in the Yukon.
- 12.9.3 Subject to 12.9.4, the Executive Committee shall establish a panel to conduct:
  - 12.9.3.1 a public review of a Project, subject to 12.9.3.2, where a Decision Body rejects the Executive Committee's recommendation that the Project not be publicly reviewed by a panel; or

- 12.9.3.2 a public review or other form of review as Government or a Yukon First Nation may require, where Government or a Yukon First Nation requests a review pursuant to 12.8.0.
- 12.9.4 The Development Assessment Legislation shall provide for the avoidance of duplication of any public review by a federal environmental assessment panel and YDAB, or by the Inuvialuit Environmental Impact Review Board and YDAB, either by requiring a public review only by one of those bodies or a public review by a joint body.
- 12.9.5 Where it is proposed by Government in accordance with 12.9.4 that a Project be reviewed publicly by a federal environmental assessment panel instead of by YDAB, consent of the affected Yukon First Nation shall be required before the federal environmental assessment panel is established.
- 12.9.6 If the consent pursuant to 12.9.5 is not provided within 30 days of a request from the Minister responsible for the federal environmental assessment panel, that Minister may require the Project be reviewed publicly by the federal environmental assessment panel instead of YDAB provided that:
- 12.9.6.1 that Minister shall appoint members to a panel in accordance with that Minister's practice and at least one quarter of the panel members shall be appointed from a list of nominees given to that Minister by the Council for Yukon Indians and at least one quarter from a list of nominees given to that Minister by the Yukon. Members of YDAB are eligible to be appointed to the panel; and
- 12.9.6.2 the recommendations made by the panel to that Minister shall be deemed to be written recommendations of YDAB within the meaning of 12.12.0. Such recommendations shall be referred to the Decision Body, to be dealt with in accordance with 12.12.0, 12.13.0 and 12.14.0 as if they were recommendations of YDAB, except that 12.12.1.2 does not apply.

#### **12.10.0 Panels of YDAB**

- 12.10.1 Where the Executive Committee determines that the primary significant adverse environmental or socio-economic effects of a Project are on Settlement Land, two thirds of the members of a panel shall be members nominated to YDAB by the Council for Yukon Indians and one third of the members of the panel shall be members nominated to YDAB by Government.
- 12.10.2 Where the Executive Committee determines that the primary significant adverse environmental or socio-economic effects of a Project are on Non-Settlement Land, two thirds of the members of a panel shall be members nominated to YDAB by Government and one third of the members of the panel shall be members nominated to YDAB by the Council for Yukon Indians.
- 12.10.3 Where the Executive Committee determines that the significant adverse environmental or socio-economic effects of a Project are on both Settlement Land and Non-Settlement Land but not primarily on either Settlement Land or Non-Settlement Land, apart from the chairperson, one half of the members of the panel shall be members nominated to YDAB by the Council for Yukon Indians and one half of the members of the panel shall be members nominated to YDAB by Government.
- 12.10.4 For the purposes of 12.10.0, "Settlement Land" may, if so provided in a Transboundary Agreement, include land in the Yukon held by that transboundary claimant group pursuant to its Transboundary Agreement.

#### **12.11.0 Panel Powers**

- 12.11.1 In accordance with the Development Assessment Legislation, a panel established pursuant to 12.10.0 to review a Project:
  - 12.11.1.1 shall determine the information required from the Project proponent, the manner in which the review shall be conducted, a review schedule, and Yukon First Nation, public and local, territorial and federal government involvement in the review and such other matters as the panel considers appropriate;
  - 12.11.1.2 shall make written recommendations to a Decision Body that a Project be allowed to proceed subject to terms and conditions or not be allowed to proceed;

- 12.11.1.3 may make written recommendations to a Decision Body that Project audits or effects monitoring be undertaken; and
  - 12.11.1.4 may exercise any power and shall carry out any other responsibility set out in the Development Assessment Legislation.
- 12.11.2 Written recommendations and reports of a panel shall be deemed to be written recommendations and reports of YDAB.

#### **12.12.0 YDAB Recommendations**

- 12.12.1 Upon receipt of written recommendations and reports from YDAB a Decision Body shall:
- 12.12.1.1 accept the recommendations in their entirety in writing in a Decision Document;
  - 12.12.1.2 refer the recommendations back to YDAB for further consideration; or
  - 12.12.1.3 subject to 12.13.4.2, subsequent to the reconsideration by YDAB, accept the recommendations, vary the recommendations, or reject the recommendations in writing in a Decision Document.
- 12.12.2 Where a Decision Body rejects or varies the recommendations of YDAB, the Decision Body shall provide written reasons to YDAB which shall be available to the public.

#### **12.13.0 Determination of the Decision Body**

- 12.13.1 Where a Project is located wholly or partially on Settlement Land, a Decision Document is required from:
- 12.13.1.1 a Yukon First Nation, where the Yukon First Nation is empowered by Yukon First Nation self-government Legislation or Settlement Agreements to require its approval or other authorization, other than for access to Settlement Land as provided in Settlement Agreements; or
  - 12.13.1.2 a Yukon First Nation, where the Project does not require a Decision Document from Government; and



- 12.13.1.3 Government, where the Project involves the Right to Work Mines and Minerals on Category B or Fee Simple Settlement Land, or where the Project requires an approval or other authorization from Government.
- 12.13.2 Where a Project is located wholly or partially on Non-Settlement Land, a Decision Document is required from Government.
- 12.13.3 Government and the Yukon First Nation shall Consult with each other before issuing a Decision Document for a Project where Decision Documents for the Project are required from both Decision Bodies.
- 12.13.4 Where a Decision Document is required from both Decision Bodies and the Project involves the Right to Work Mines and Minerals on Category B or Fee Simple Settlement Land:
- 12.13.4.1 the Decision Bodies shall endeavour to make the terms and conditions of their Decision Document conform;
- 12.13.4.2 notwithstanding 12.6.3 and 12.12.1.3, the Decision Bodies may only reject or vary the terms and conditions contained in the recommendations of YDAB or a Designated Office on the grounds that, to accomplish the objectives of this chapter, any of the terms and conditions are,
- (a) insufficient to achieve an acceptable level of environmental and socio-economic impacts in the Yukon,
- (b) more onerous than necessary to achieve an acceptable level of environmental and socio-economic impact in the Yukon, or
- (c) so onerous as to undermine the economic viability of a Project; and
- 12.13.4.3 where the terms and conditions of the Decision Documents conflict, Government and the Yukon First Nation shall, subject to 12.14.8, exercise any discretion in granting an interest in, or authorizing the use of land, water, or other resources, in conformity with the terms and conditions of the Decision Document issued by Government.

## **12.14.0 Implementation of Decision Document**

### **12.14.1 Government shall:**

12.14.1.1 subject to 12.14.8, exercise any discretion in granting an interest in, or authorizing the use of land, water, or other resources in conformity with the terms and conditions of a Decision Document issued by Government; and

12.14.1.2 not issue any approval, authorization or, subject to Development Assessment Legislation under 12.19.2.14, provide financial assistance to a proponent with respect to a Project prior to issuing a Decision Document.

12.14.2 Nothing in 12.13.4.3 or 12.14.1.1 shall be construed to require Government to enact or amend Legislation to implement a Decision Document issued by Government or to require Government to grant an interest in or authorize the use of land, water or other resources.

### **12.14.3 A Yukon First Nation shall:**

12.14.3.1 subject to 12.13.4.3 and 12.14.8, exercise any discretion in granting an interest in, or authorizing the use of, land, water, or other resources in conformity with the terms and conditions of a Decision Document issued by the Yukon First Nation; and

12.14.3.2 not issue any approval, authorization or, subject to Development Assessment Legislation under 12.19.2.14, provide financial assistance to a proponent with respect to a Project prior to issuing a Decision Document.

12.14.4 Nothing in 12.13.4.3 or 12.14.3.1 shall be construed to require a Yukon First Nation to enact or amend laws passed pursuant to self-government Legislation to implement a Decision Document issued by the Yukon First Nation or as requiring the Yukon First Nation to grant an interest in or authorize the use of land, water or other resources.

12.14.5 Where the Project proponent requires a licence, permit, or other authorization from the National Energy Board or other Independent Regulatory Agency identified in the Development Assessment Legislation under 12.19.2.13, the Decision Body shall send the Decision Document to the National Energy Board or other Independent Regulatory Agency.

- 12.14.6 An Independent Regulatory Agency other than the National Energy Board, in issuing a licence, permit or other authorization for a Project shall endeavour to make the terms and conditions of such authorization conform, to the extent practicable, with the terms and conditions of a Decision Document issued by Government for the Project.
- 12.14.7 The National Energy Board, in issuing a licence, permit or other authorization for a Project, shall take into consideration the terms and conditions of a Decision Document issued by Government for the Project.
- 12.14.8 Where there is a conflict between the terms and conditions of a Decision Document for a Project and the terms and conditions of a licence, permit, or other authorization for the Project issued by the National Energy Board or other Independent Regulatory Agency, the terms and conditions of the licence, permit, or other authorization for the Project issued by the National Energy Board or other Independent Regulatory Agency, as the case may be, shall prevail to the extent of the conflict.
- 12.14.9 Where the terms and conditions of a licence, permit or other authorization for a Project issued by the National Energy Board or other Independent Regulatory Agency vary from those in a Decision Document issued by Government, that agency shall provide written reasons for such variance to the Decision Body.
- 12.15.0 Monitoring and Enforcement**
- 12.15.1 Nothing in this chapter shall be construed to affect Government's responsibility for the compliance monitoring of Projects.
- 12.15.2 YDAB may make recommendations under 12.9.1.3 to a Decision Body that Project audits or effects monitoring be undertaken.
- 12.15.3 Upon request by YDAB, a Decision Body shall provide to YDAB information obtained through effects monitoring undertaken after the acceptance by the Decision Body of a recommendation made pursuant to 12.15.2.
- 12.15.4 YDAB may issue reports, including recommendations to a Decision Body, based on the review of the results of effects monitoring studies.

- 12.15.5 The Development Assessment Legislation may provide for the enforcement of Decision Documents.
- 12.15.6 YDAB may recommend to a Decision Body that YDAB or any other body hold a public hearing if YDAB determines that the terms and conditions of a Decision Document issued by that Decision Body may have been violated.
- 12.15.7 If the recommendation of YDAB pursuant to 12.15.6 is accepted by the Decision Body, then YDAB or the other body shall hold a public hearing.
- 12.15.8 After a body holds a public hearing under 12.15.7, the body may make recommendations to the Decision Body in respect of the disposition of the matter.
- 12.16.0 Transboundary Impacts**
- 12.16.1 Government shall make best efforts to negotiate with other relevant jurisdictions, in Consultation with affected Yukon First Nations, agreements or cooperative arrangements that provide for development assessments equivalent to the screening and review requirements in the Yukon for enterprises or activities located outside the Yukon that may have significant adverse environmental or socio-economic effects on the Yukon.
- 12.16.2 The representation of transboundary claimant groups on the YDAB shall be as established in Transboundary Agreements and, in any case, the proportion of Government nominees on a panel shall be as provided in this chapter.
- 12.16.3 Prior to the enactment of Settlement Legislation, the parties to the Umbrella Final Agreement shall make best efforts to resolve any conflict and avoid any duplication in North Yukon between the development assessment process provided pursuant to this chapter and the environmental impact screening and review process provided pursuant to the Inuvialuit Final Agreement.

## **12.17.0 Relationship to Land Use Planning**

- 12.17.1 Where YDAB or a Designated Office receives a Project application in a region where a regional land use plan is in effect, YDAB or the Designated Office, as the case may be, shall request that the Regional Land Use Planning Commission for the planning region determine whether or not the Project is in conformity with the approved regional land use plan.
- 12.17.2 Where a Regional Land Use Planning Commission is preparing a regional land use plan, YDAB or a Designated Office, as the case may be, shall provide the Regional Land Use Planning Commission with the information it has on any Project in the planning region for which a review is pending and shall invite the Regional Land Use Planning Commission to make representations to the panel or the Designated Office.
- 12.17.3 Where a panel is reviewing a Project and a Regional Land Use Planning Commission has determined pursuant to 12.17.1 that the Project does not conform with an approved regional land use plan, the panel shall consider the regional land use plan in its review, invite the relevant Regional Land Use Planning Commission to make representations to the panel and make recommendations to the Decision Body that conform so far as possible to the approved regional plan.
- 12.17.4 Where a Decision Document states that a non-conforming Project may proceed, the Project proponent may proceed with the Project if permitted by and in accordance with Law.
- 12.17.5 The Development Assessment Legislation shall set out the relationship between the issuance of a Decision Document for a Project that has not been assessed by YDAB and the grant of a variance from a regional land use plan or the amendment of the land use plan.

## **12.18.0 Funding**

- 12.18.1 Each Designated Office, after Consultation with the affected Yukon First Nation, shall prepare a budget respecting its responsibilities under the Development Assessment Legislation and this chapter and shall submit that budget to YDAB or to Government, whichever is designated by Government from time to time.

12.18.2 YDAB shall, on an annual basis, review all budgets submitted to it under 12.18.1 and shall prepare an annual budget for its responsibilities and for those of each Designated Office under the Development Assessment Legislation and this chapter for review and approval by Government. The approved expenses of YDAB and the Designated Offices shall be a charge on Government.

#### **12.19.0 Implementation**

12.19.1 Government, in Consultation with the Yukon First Nations, shall prepare a detailed plan:

12.19.1.1 providing for the planning and implementation of the Development Assessment Legislation which addresses the involvement of Yukon First Nations; and

12.19.1.2 providing for the application of the Development Assessment Legislation until Yukon First Nation Final Agreements have been negotiated.

12.19.2 Development Assessment Legislation may provide the following:

12.19.2.1 criteria for classification of Projects for the determination of the entry point to the development assessment process;

12.19.2.2 classification of Projects for which screening and review by YDAB is mandatory;

12.19.2.3 criteria to determine the significance of adverse environmental or socio-economic effects;

12.19.2.4 the type of Plan which YDAB may review without a request by Government or Yukon First Nations;

12.19.2.5 criteria for the classes of enterprises or activities which are exempt from screening and review;

12.19.2.6 the role of YDAB, Yukon First Nations, Government, Project proponents or other participants in the provision of participant funding in reviews of Projects;

12.19.2.7 the ability of the Minister to identify a Designated Office for a type of Project;

- 12.19.2.8 the manner in which a Designated Office conducts a review;
  - 12.19.2.9 time limits for activities or functions of YDAB, Designated Offices, the Minister and Yukon First Nations;
  - 12.19.2.10 procedural requirements for Project proponents and other participants;
  - 12.19.2.11 public participation in the review of Projects;
  - 12.19.2.12 the process for joint reviews by YDAB and other bodies;
  - 12.19.2.13 a listing of Independent Regulatory Agencies;
  - 12.19.2.14 conditions respecting the provision of financial assistance to a proponent prior to assessment of a Project; and
  - 12.19.2.15 any other matter required to implement the development assessment process.
- 12.19.3 A comprehensive review of the development assessment process by the parties to the Umbrella Final Agreement shall be completed five years after the enactment of Development Assessment Legislation.
- 12.19.4 Nothing in this chapter shall be construed to prevent Government, in Consultation with Yukon First Nations, from acting to improve or enhance socio-economic or environmental procedures in the Yukon in the absence of any approved detailed design of the development assessment process.
- 12.19.5 Nothing in this chapter shall be construed to affect any existing development assessment process in the Yukon prior to the Development Assessment Legislation coming into effect.





## CHAPTER 13 - HERITAGE

### **13.1.0 Objectives**

13.1.1 The objectives of this chapter are as follows:

- 13.1.1.1 to promote public awareness, appreciation and understanding of all aspects of culture and heritage in the Yukon and, in particular, to respect and foster the culture and heritage of Yukon Indian People;
- 13.1.1.2 to promote the recording and preservation of traditional languages, beliefs, oral histories including legends, and cultural knowledge of Yukon Indian People for the benefit of future generations;
- 13.1.1.3 to involve equitably Yukon First Nations and Government, in the manner set out in this chapter, in the management of the Heritage Resources of the Yukon, consistent with a respect for Yukon Indian values and culture;
- 13.1.1.4 to promote the use of generally accepted standards of Heritage Resources management, in order to ensure the protection and conservation of Heritage Resources;
- 13.1.1.5 to manage Heritage Resources owned by, or in the custody of, Yukon First Nations and related to the culture and history of Yukon Indian People in a manner consistent with the values of Yukon Indian People, and, where appropriate, to adopt the standards of international, national and territorial Heritage Resources collections and programs;
- 13.1.1.6 to manage Heritage Resources owned by, or in the custody of, Government and related to the culture and history of Yukon Indian People, with respect for Yukon Indian values and culture and the maintenance of the integrity of national and territorial Heritage Resources collections and programs;
- 13.1.1.7 to facilitate reasonable public access, except where the nature of the Heritage Resource or other special circumstances warrant otherwise;

- 13.1.1.8 to identify and mitigate the impact of development upon Heritage Resources through integrated resource management including land use planning and development assessment processes;
- 13.1.1.9 to facilitate research into, and the management of, Heritage Resources of special interest to Yukon First Nations;
- 13.1.1.10 to incorporate, where practicable, the related traditional knowledge of a Yukon First Nation in Government research reports and displays which concern Heritage Resources of that Yukon First Nation;
- 13.1.1.11 to recognize that oral history is a valid and relevant form of research for establishing the historical significance of Heritage Sites and Moveable Heritage Resources directly related to the history of Yukon Indian People; and
- 13.1.1.12 to recognize the interest of Yukon Indian People in the interpretation of aboriginal Place Names and Heritage Resources directly related to the culture of Yukon Indian People.

## **13.2.0 Definitions**

In this chapter, the following definitions shall apply.

"Non-Public Records" means all Documentary Heritage Resources other than Public Records.

"Place Names" includes Yukon Indian place names.

"Public Records" means records held by any department or agency or public office of any level of Government, and records which were formerly held by any such department, agency or public office.

## **13.3.0 Ownership and Management**

- 13.3.1 Each Yukon First Nation shall own and manage Moveable Heritage Resources and non-Moveable Heritage Resources and Non-Public Records, other than records which are the private property of any Person, found on its Settlement Land and on those Beds of waterbodies owned by that Yukon First Nation.

- 13.3.2 Subject to 13.3.5 to 13.3.7, each Yukon First Nation shall own and manage ethnographic Moveable Heritage Resources and Documentary Heritage Resources that are not Public Records and that are not the private property of any Person, that are found in its respective Traditional Territory and that are directly related to the culture and history of Yukon Indian People.
- 13.3.2.1 If more than one Yukon First Nation asserts ownership of a Heritage Resource pursuant to 13.3.2, they shall attempt to resolve the matter among themselves, and, failing resolution, any one of them may refer the matter to the Yukon Heritage Resources Board which shall determine ownership of the Heritage Resource in dispute.
- 13.3.3 Subject to 13.3.5 to 13.3.7, Moveable Heritage Resources and Documentary Heritage Resources which are not ethnographic resources directly related to the culture and history of Yukon Indian People and which are found on Non-Settlement Land shall be owned by Government.
- 13.3.4 Public Records, wherever they are found, shall be owned and managed by the Government by which they were created or held.
- 13.3.5 In the event that a Moveable Heritage Resource found on Non-Settlement Land in a Traditional Territory cannot be readily identified as an ethnographic object directly related to the culture and history of Yukon Indian People, that object shall be held in custody by Government until the nature of the object has been determined.
- 13.3.6 If the object in 13.3.5 is determined by the Yukon Heritage Resources Board to be:
- 13.3.6.1 an ethnographic object directly related to the culture and history of Yukon Indian People, it shall be owned and managed by the Yukon First Nation in whose Traditional Territory it was found; or
- 13.3.6.2 an ethnographic object not directly related to the culture and history of Yukon Indian People, or to be a palaeontological or an archaeological object, it shall be owned and managed by Government.

- 13.3.7 Where the Board is unable to reach a majority decision under 13.3.6, the issue of whether the ethnographic object is directly related to the culture and history of the Yukon Indian People shall be referred to the dispute resolution process under 26.3.0.
- 13.3.8 Agreements may be entered into by Government and Yukon First Nations with respect to the ownership, custody or management of Heritage Resources.
- 13.4.0 General**
- 13.4.1 As the Heritage Resources of Yukon Indian People are underdeveloped relative to non-Indian Heritage Resources, priority in the allocation of Government program resources available from time to time for Yukon Heritage Resources development and management shall, where practicable, be given to the development and management of Heritage Resources of Yukon Indian People, until an equitable distribution of program resources is achieved.
- 13.4.2 Once an equitable distribution of program resources is achieved, Heritage Resources of Yukon Indian People shall continue to be allocated an equitable portion of Government program resources allocated from time to time for Yukon Heritage Resources development and management.
- 13.4.3 Government, where practicable, shall assist Yukon First Nations to develop programs, staff and facilities to enable the repatriation of Moveable and Documentary Heritage Resources relating to the culture and history of Yukon Indian People which have been removed from the Yukon, or are retained at present in the Yukon, where this is consistent with the maintenance of the integrity of national or territorial collections.
- 13.4.4 A Yukon First Nation or a Yukon Indian Person who is an owner of a Heritage Resource may transfer the ownership or custody of the Heritage Resource to another Yukon First Nation or to another aboriginal person.
- 13.4.5 Government shall Consult Yukon First Nations in the formulation of Legislation and related Government policies on Heritage Resources in the Yukon.

- 13.4.6 Yukon First Nation Final Agreements may include provisions in respect of territorial heritage parks or sites, heritage rivers, heritage routes, heritage buildings, special management areas for Heritage Resources, for other sites or areas of unique cultural or heritage significance, or for other such heritage matters.
- 13.4.7 Any granting of access to the public, third parties or Government to Settlement Land shall not divest the Yukon First Nation of the ownership or management of Heritage Resources on Settlement Land.
- 13.4.8 In accordance with Government procedures on access to and duplication of records, and subject to access to information, protection of privacy and copyright Legislation and to any agreements respecting records or the information contained in them, Government, within existing budgets, shall facilitate the preparation of an inventory of Moveable Heritage Resources and Heritage Sites which relate to Yukon First Nations.
- 13.5.0 Yukon Heritage Resources Board**
- 13.5.1 A Yukon Heritage Resources Board, comprised of 10 members and composed of equal numbers of appointees nominated by the Council for Yukon Indians, and of appointees nominated by Government, shall be established to make recommendations respecting the management of Moveable Heritage Resources and Heritage Sites to the Minister and to Yukon First Nations.
- 13.5.2 The Board shall operate in the public interest.
- 13.5.3 The Board may make recommendations to the Minister and to Yukon First Nations on:
- 13.5.3.1 the management of non-documentary Heritage Resources;
  - 13.5.3.2 means by which the traditional knowledge of Yukon Indian Elders may be considered in the management of Moveable Heritage Resources and Heritage Sites in the Yukon;
  - 13.5.3.3 means by which the traditional languages of Yukon First Nations can be recorded and preserved;

- 13.5.3.4 the review, approval, amendment or repeal of regulations pursuant to heritage Legislation pertaining to Moveable Heritage Resources and Heritage Sites in the Yukon;
  - 13.5.3.5 the development and revision of a strategic plan for the preservation and management of Moveable Heritage Resources and Heritage Sites in the Yukon;
  - 13.5.3.6 the development, revision and updating of a manual including definitions of ethnographic, archaeological, palaeontological and historic resources, to facilitate the management and interpretation of these resources by Government and Yukon First Nations, such manual to be developed by Yukon First Nations and Government;
  - 13.5.3.7 the development, revision and updating of the inventory of Yukon Indian Heritage Resources provided for in 13.4.8;
  - 13.5.3.8 means by which public awareness and appreciation of Moveable Heritage Resources and Heritage Sites may be fostered;
  - 13.5.3.9 designation of Heritage Sites as Designated Heritage Sites; and
  - 13.5.3.10 any other matter related to Heritage Resources of the Yukon.
- 13.5.4 In modifying or rejecting recommendations of the Board, Government or Yukon First Nations shall provide the Board with one opportunity to resubmit recommendations for the approval of Government or Yukon First Nations.
- 13.6.0 National Parks and National Historic Sites**
- 13.6.1 The management of Heritage Resources in National Parks, in Kluane National Park Reserve and in national historic sites administered by the Canadian Parks Service shall be as set out in the relevant Yukon First Nation Final Agreement.

### **13.7.0 Research**

- 13.7.1 Research or interpretative reports produced by Government or its agents regarding Yukon Heritage Resources shall be made available to the affected Yukon First Nation.
- 13.7.2 Where feasible, research reports in 13.7.1 or portions thereof, shall be made available to the public, recognizing that some reports may be restricted due to the sensitive nature of the information contained therein.

### **13.8.0 Heritage Sites**

- 13.8.1 Ownership and management of Heritage Sites in a Yukon First Nation's Traditional Territory shall be addressed in that Yukon First Nation Final Agreement.
- 13.8.2 Government and the affected Yukon First Nation shall consider the land use activities of other resource users in the management of interpretive and research activities at Heritage Sites.
- 13.8.3 Government and the affected Yukon First Nation shall institute a permit system for research at any site which may contain Moveable Heritage Resources.
- 13.8.4 Access to Designated Heritage Sites shall be controlled in accordance with the terms of site management plans which have been reviewed by the Board, and approved and implemented by Government or the affected Yukon First Nation.
- 13.8.5 Government and the affected Yukon First Nation, when controlling access to Designated Heritage Sites, shall consider:
  - 13.8.5.1 the interests of permitted researchers;
  - 13.8.5.2 the interest of the general public; and
  - 13.8.5.3 the requirements of special events and traditional activities.
- 13.8.6 Except as otherwise provided in this chapter, the protection of Heritage Resources in or discovered on Non-Settlement Land, either by accident or otherwise, during construction or excavation shall be provided for in Laws of General Application.

13.8.7 Procedures to deal with the accidental discovery of Heritage Resources on Settlement Land shall be provided in each Yukon First Nation's Final Agreement.

**13.9.0 Yukon First Nation Burial Sites**

13.9.1 Government and Yukon First Nations shall each establish procedures to manage and protect Yukon First Nation Burial Sites which shall:

13.9.1.1 restrict access to Yukon First Nation Burial Sites to preserve the dignity of the Yukon First Nation Burial Sites;

13.9.1.2 where the Yukon First Nation Burial Site is on Non-Settlement Land, require the joint approval of Government and the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located for any management plans for the Yukon First Nation Burial Site; and

13.9.1.3 provide that, subject to 13.9.2, where a Yukon First Nation Burial Site is discovered, the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located shall be informed, and the Yukon First Nation Burial Site shall not be further disturbed.

13.9.2 Where a Person discovers a Yukon First Nation Burial Site in the course of carrying on an activity authorized by Government or a Yukon First Nation, as the case may be, that Person may carry on the activity with the agreement of the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located.

13.9.3 In the absence of agreement under 13.9.2, the Person may refer the dispute to arbitration under 26.7.0 for a determination of the terms and conditions upon which the Yukon First Nation Burial Site may be further disturbed.

13.9.4 Any exhumation, examination, and reburial of human remains from a Yukon First Nation Burial Site ordered by an arbitrator under 13.9.3 shall be done by, or under the supervision of, that Yukon First Nation.

13.9.5 Except as provided in 13.9.2 to 13.9.4, any exhumation, scientific examination and reburial of remains from Yukon First Nation Burial Sites shall be at the discretion of the affected Yukon First Nation.



13.9.6 The management of burial sites of a transboundary claimant group in the Yukon shall be addressed in that Transboundary Agreement.

**13.10.0 Documentary Heritage Resources**

13.10.1 Public Records shall be managed in accordance with Laws of General Application.

13.10.2 In accordance with Government policies and procedures on access to and duplication of records, and subject to access to information, protection of privacy and copyright Legislation and to agreements respecting the records, Government shall make available to a Yukon First Nation, for copying, Documentary Heritage Resources in Government custody relating to that Yukon First Nation.

13.10.3 Yukon First Nations shall be Consulted in the formulation of any Legislation and related Government policy on Documentary Heritage Resources in the Yukon relating to Yukon Indian People.

13.10.4 Government shall, where practicable, Consult and cooperate with the affected Yukon First Nations on the management of Documentary Heritage Resources in the Yukon relating to Yukon Indian People.

13.10.5 Government shall Consult and cooperate with Yukon First Nations in the preparation of displays and inventories of Documentary Heritage Resources in the Yukon relating to the Yukon Indian People.

13.10.6 Provisions for Consultation and cooperation between Government and Yukon First Nations on the management of Documentary Heritage Resources by Yukon First Nations may be included in a Yukon First Nation Final Agreement.

13.10.7 Government and Yukon First Nations may work cooperatively with Yukon Indian Elders on the interpretation of Documentary Heritage Resources relating to Yukon Indian People.

13.10.8 Yukon First Nations shall own all Documentary Heritage Resources found on Settlement Land other than Public Records or records which are the private property of any Person.

**13.11.0 Place Names**

- 13.11.1 There shall be a Yukon Geographical Place Names Board consisting of six people and composed of equal numbers of appointees nominated by the Council for Yukon Indians and appointees nominated by Government.
- 13.11.2 When considering the naming or renaming of places or features located within the Traditional Territory of a Yukon First Nation, or when acting with a federal agency where joint jurisdiction over the naming of the place or feature exists, the Yukon Geographical Place Names Board shall Consult with that Yukon First Nation.
- 13.11.3 A Yukon First Nation may name or rename places or geographical features on Settlement Land and such place names shall be deemed to be approved by the Yukon Geographical Place Names Board.
- 13.11.4 Traditional aboriginal place names shall be included, to the extent practicable and in accordance with map production specifications of Canada, on revised maps of the National Topographic Series.

**13.12.0 Economic Opportunities**

- 13.12.1 Economic opportunities, including training, employment and contract opportunities for Yukon Indian People at Designated Heritage Sites and other facilities related to Heritage Resources, shall be considered in Yukon First Nation Final Agreements.

## CHAPTER 14 - WATER MANAGEMENT

### 14.1.0 Objective

- 14.1.1 The objective of this chapter is to maintain the Water of the Yukon in a natural condition while providing for its sustainable use.

### 14.2.0 Definitions

In this chapter, the following definitions shall apply.

"Board" means the Water Board established for the Yukon pursuant to Laws of General Application.

"Domestic Use" has the same meaning as in the Northern Inland Waters Act, R.S.C. 1985, c. N-25.

"Licence" means a licence issued pursuant to the Northern Inland Waters Act, R.S.C. 1985, c. N-25.

"Traditional Use" means the Use of Water, without substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, by a Yukon Indian Person for trapping and non-commercial Harvesting, including transportation relating to such trapping and Harvesting or for traditional heritage, cultural and spiritual purposes.

"Use" includes the deposit of Waste into Water.

"Waste" has the same meaning as in the Northern Inland Waters Act, R.S.C. 1985, c. N-25.

"Water" has the same meaning as "waters" in the Northern Inland Waters Act, R.S.C. 1985, c. N-25.

### 14.3.0 General

- 14.3.1 The property in Water in the Yukon shall be determined by Laws of General Application.

- 14.3.2 Nothing in this chapter shall derogate from the ability of any Person to use Water for a Domestic Use in accordance with Laws of General Application.

**14.4.0 Water Board**

- 14.4.1 The Council for Yukon Indians shall nominate one-third of the members of the Board.
- 14.4.2 The Minister, in Consultation with the Board, shall appoint a chairperson and vice-chairperson from among the Board's members.

**14.5.0 Water Rights of Yukon First Nations**

- 14.5.1 Subject to Laws of General Application, a Yukon Indian Person shall have the right to use Water for a Traditional Use in the Yukon.
- 14.5.2 Notwithstanding Laws of General Application and 14.5.5, no Licence, fee or charge shall be required for a Traditional Use in the Yukon.
- 14.5.3 Nothing in 14.5.1 shall be construed to grant a priority of Use or a right to compensation.
- 14.5.4 Notwithstanding 14.3.1, and subject to the provisions of the Umbrella Final Agreement, a Yukon First Nation shall have the exclusive right to use Water which is on or flowing through its Settlement Land when such Water is on or flowing through its Settlement Land.
- 14.5.5 A Yukon First Nation's Use of Water under 14.5.4 is subject to Laws of General Application, provided that the Board shall not:
  - 14.5.5.1 refuse to issue a Licence for a Use by the Yukon First Nation; or
  - 14.5.5.2 impose terms and conditions in a Licence that are inconsistent with any terms and conditions of a Yukon First Nation assignment pursuant to 14.5.7, unless the Board is satisfied that such Water Use will:
    - 14.5.5.3 substantially alter the quantity, quality or rate of flow, including seasonal rate of flow, of Water; or
    - 14.5.5.4 result in a deposit of Waste prohibited by the Northern Inland Waters Act, R.S.C. 1985, c. N-25.

- 14.5.6 Unless otherwise authorized by Law, a Yukon First Nation's Use of Water under 14.5.1 to 14.5.4 shall be subject to:
- 14.5.6.1 public navigation and passage on Water;
  - 14.5.6.2 the Use of Water for emergency purposes;
  - 14.5.6.3 any hunting, trapping or fishing by the public;  
and
  - 14.5.6.4 any right of access set out in a Settlement Agreement.
- 14.5.7 A Yukon First Nation may assign in whole or in part a right to use Water set out in 14.5.4 and an assignee's Use of Water shall be subject to 14.5.5 and 14.5.6.
- 14.5.8 Nothing in this chapter shall be construed to derogate from a Yukon First Nation's or a Yukon Indian Person's Use of Water on Non-Settlement Land in accordance with Law.
- 14.6.0 Government's Management Powers**
- 14.6.1 Notwithstanding a Yukon First Nation's ownership of certain Beds of waterbodies, Government has the right to protect and manage Water and Beds of waterbodies, and to use Water incidental to that right, throughout the Yukon for:
- 14.6.1.1 management, protection and research in respect of Fish and Wildlife and their habitats;
  - 14.6.1.2 protection and management of navigation and transportation, establishment of navigation aids and devices, and dredging of the Beds of Navigable Waters;
  - 14.6.1.3 protection of Water supplies from contamination and degradation;
  - 14.6.1.4 emergency purposes, including fighting fires and flood and icing control;
  - 14.6.1.5 research and sampling of Water quality and quantity; and
  - 14.6.1.6 other such Government public purposes.

**14.7.0 Water Rights of Other Parties on Settlement Land**

- 14.7.1 Subject to 14.12.0, any Person who has a right or interest in Settlement Land, except an interest in land granted by the Yukon First Nation, has the right to use Water incidental to the exercise of that right or interest in Settlement Land, if permitted by and in accordance with Laws of General Application.
- 14.7.2 Where the Board licenses a Water Use to a Person referred to in 14.7.1, the term of that Licence shall not extend beyond the term of the right or interest in Settlement Land.
- 14.7.3 A Person holding a Licence pursuant to the Northern Inland Waters Act, R.S.C. 1985, c. N-25 or a licence pursuant to the Dominion Water Power Act, R.S.C. 1985, c. W-4 for Water on or flowing through Settlement Land when such Water is on or flowing through Settlement Land, which licence was in existence on the date the land became Settlement Land, shall retain the rights thereunder as if the land had not become Settlement Land.
- 14.7.4 Where the term of a licence described in 14.7.3 is five years or more, the licensee shall have the right to apply to the Board for a renewal or replacement of the licence. The Board shall require that written notice of the application be given, in a form satisfactory to the Board, to the affected Yukon First Nation, and shall provide the affected Yukon First Nation an opportunity to be heard concerning terms and conditions to be attached to the renewal or replacement for the protection of the interest of the Yukon First Nation.
- 14.7.5 Unless a Person has a right of access without the consent of the affected Yukon First Nation, a Person requiring the use of Settlement Land other than the Parcel covered by that Person's interest under 14.7.1 in order to exercise a right to use Water under 14.7.1 and 14.7.3 has a right of access to use that Settlement Land with the consent of the affected Yukon First Nation or, failing consent, an order of the Surface Rights Board setting out terms and conditions of access.
- 14.7.6 The Surface Rights Board shall not make an order under 14.7.5 unless the Person seeking access satisfies the Surface Rights Board that:

- 14.7.6.1 such access is reasonably required; and
- 14.7.6.2 such access is not also practicable and reasonable across Crown Land.
- 14.7.7 Nothing in this chapter shall be construed to limit the Board's ability to refuse to issue a Licence to a Person referred to in 14.7.0.
- 14.7.8 After three years from the Effective Date of a Yukon First Nation Final Agreement and only in respect to the term following the expiry of that three year period, a Person holding a Licence described in 14.7.3 shall be liable to pay compensation under the provisions of this chapter to the Yukon First Nation in respect of the exercise of such Licence, and shall be subject to the provisions of 14.11.0 and 14.12.0.
- 14.8.0 Protection of Quantity, Quality and Rate of Flow of Water**
- 14.8.1 Subject to the rights of Water users authorized in accordance with this chapter and Laws of General Application, a Yukon First Nation has the right to have Water which is on or flowing through or adjacent to its Settlement Land remain substantially unaltered as to quantity, quality and rate of flow, including seasonal rate of flow.
- 14.8.2 A Yukon First Nation shall not use Water which is on or flowing through or adjacent to its Settlement Land so as to substantially alter the quantity, quality or rate of flow, including seasonal rate of flow, except to the extent that such Water Use is authorized in accordance with 14.5.5 and is in conformity with the terms and conditions of any Water Licence granted to the Yukon First Nation.
- 14.8.3 The Board shall not grant a Licence that interferes with the rights provided in favour of a Yukon First Nation in 14.8.1 unless:
  - 14.8.3.1 notice, in a form prescribed by the Board, of receipt of an application has been given to the affected Yukon First Nation; and
  - 14.8.3.2 the Board is satisfied that,
    - (a) there is no alternative which could reasonably satisfy the requirements of the applicant, and

(b) there are no reasonable measures whereby the applicant could avoid the interference.

14.8.4 In deciding whether to grant a Licence that interferes with the rights provided in favour of a Yukon First Nation in 14.8.1, the Board shall consider:

14.8.4.1 the effect of the Water Use on Fish, Wildlife and their habitats;

14.8.4.2 the effect of the Water Use on the Yukon First Nation or on a Yukon Indian Person enrolled pursuant to that Yukon First Nation Final Agreement; and

14.8.4.3 means of mitigating the interference.

14.8.5 If the Board grants a Licence that interferes with the rights provided in favour of a Yukon First Nation in 14.8.1, the Board shall order the licensee to pay compensation for loss or damage to the affected Yukon First Nation in accordance with 14.12.0.

14.8.6 A Yukon First Nation may apply to the Board to obtain an order for compensation from any Person not licensed by the Board and using Water in a manner not contrary to Laws of General Application, and the Board may order that compensation be paid where such Use substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of Water which is on or flowing through or is adjacent to its Settlement Land.

14.8.7 In deciding whether to issue a Licence, and in setting the terms and conditions of any Licence issued, the decision of the Board shall not conflict with a Decision Document that a Decision Body is empowered to implement.

14.8.8 A Yukon First Nation has a cause of action against any Person in respect of any Use of Water in violation of the terms and conditions of a Licence to use Water or contrary to Laws of General Application, which violation or contrary Use substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of Water which is on or flowing through or is adjacent to its Settlement Land, with such remedies as if the Yukon First Nation had riparian rights.



- 14.8.9 A Yukon First Nation shall have standing at all times in a court of competent jurisdiction in the Yukon to seek a declaration as to whether any Person substantially altering the quantity, quality or rate of flow, including seasonal rate of flow, of Water in that Yukon First Nation's Traditional Territory has lawful authority to do so.
- 14.8.10 In any civil court proceeding pursuant to 14.8.8 or 14.8.9, if the Yukon First Nation proves that the defendant who is in violation of a Water Licence is substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at the place in the body of Water where the defendant's Use of Water is taking place, then the onus shall rest on the defendant to prove that such Use of Water is not substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at any place downstream where the Yukon First Nation has the exclusive right to Use Water pursuant to 14.5.4 and the Yukon First Nation alleges there is a substantial alteration to the quality, quantity or rate of flow, including seasonal rate of flow of the Water.
- 14.8.11 In any civil court proceeding brought by a Person using Water in accordance with Laws of General Application against a Yukon First Nation on grounds that the Yukon First Nation is using Water contrary to this chapter or Laws of General Application, if the Person proves that the Yukon First Nation in violation of a Water Licence is substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at the place in the body of Water where the Yukon First Nation's Use of Water is taking place, then the onus shall rest on the Yukon First Nation to prove that such Use of Water is not substantially altering the quality, quantity or the rate of flow, including seasonal rate of flow, at any place downstream where the Person is using Water and that Person alleges there is a substantial alteration of the quality, quantity or rate of flow, including seasonal rate of flow of the Water.
- 14.9.0 Protection of Yukon First Nation Traditional Uses on Non-Settlement Land**
- 14.9.1 Before granting a Licence in any drainage basin in the Yukon that causes substantial alteration in the quality, quantity or rate of flow, including seasonal rate of flow, of Water so as to adversely affect a Traditional Use by a Yukon Indian Person in that Yukon Indian Person's Traditional Territory, the Board shall:

- 14.9.1.1 give notice, in a form prescribed by the Board, of receipt of an application to the affected Yukon First Nation; and
- 14.9.1.2 upon request of the affected Yukon First Nation, consider whether,
- (a) there is an alternative which could reasonably satisfy the requirements of the applicant while avoiding any adverse effect on the Traditional Use, and
  - (b) there are reasonable measures whereby the applicant could avoid the adverse effect.
- 14.9.2 A licensee who substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of Water in violation of a Licence or contrary to Law in a manner which causes loss or damage arising from an interference with a Traditional Use by a Yukon Indian Person within that Yukon Indian Person's Traditional Territory shall be liable to pay compensation pursuant to 14.12.0 for such loss or damage thereby caused to that Yukon Indian Person.
- 14.10.0 Interjurisdictional Agreements**
- 14.10.1 Government shall make best efforts to negotiate Water management agreements with other jurisdictions which share drainage basins with the Yukon.
- 14.10.2 Government shall Consult with affected Yukon First Nations with respect to the formulation of Government positions on the management of Water in a shared drainage basin within those Yukon First Nations' Traditional Territories in negotiating an agreement pursuant to 14.10.1.
- 14.11.0 Water Use Disputes**
- 14.11.1 A Yukon First Nation may apply to the Board to determine whether:
- 14.11.1.1 there is an alternative that will reasonably satisfy the requirements of a licensee without interfering with the right of the Yukon First Nation to have Water which is on or flowing through or adjacent to its Settlement Land remain substantially unaltered as to quantity, quality or rate of flow, including seasonal rate of flow;

- 14.11.1.2 measures can be taken to avoid interference with Water rights referred to in 14.11.1.1 and Uses of Water of the Yukon First Nation;
  - 14.11.1.3 the Water licensee is in compliance with the terms and conditions of a Licence;
  - 14.11.1.4 the terms and conditions of a Licence need to be reviewed due to unforeseen impacts on the Yukon First Nation; or
  - 14.11.1.5 the Yukon First Nation is entitled to compensation under the provisions of this chapter.
- 14.11.2 In addition to any other powers available to the Board, on application being made to the Board under 14.11.1, the Board may make an order amending, suspending or cancelling the Licence, or deciding that the Yukon First Nation is entitled to compensation by the licensee, or a combination of the foregoing.
- 14.11.3 Where an application under 14.11.1 is being considered by the Board and prior to the Board's decision thereon, the Board may make an interim order restraining the Water licensee from exercising such rights with respect to Water as are specified in the interim order and containing such terms and conditions as the Board may determine including the payment of interim compensation.
- 14.11.4 The Board may require a Water licensee to provide evidence of financial responsibility in a form satisfactory to the Board, including cash deposit, letter of credit, performance bond or other form of financial instrument conditioned on due performance by the Water licensee of the provisions of the Licence, including provisions, terms and conditions and orders of the Board relating to abandonment, reclamation and restoration of the environment.
- 14.11.5 A Yukon Indian Person may apply to the Board to determine whether he is entitled to compensation pursuant to 14.9.2.
- 14.11.6 Where the Board pursuant to 14.11.5 determines that a Yukon Indian Person is entitled to compensation, the Board may exercise the powers set out in 14.11.2, 14.11.3 and 14.11.4.

#### **14.12.0 Compensation**

- 14.12.1 Compensation to be paid to a Yukon First Nation or a Yukon Indian Person pursuant to this chapter shall only be for provable loss or damage to the Yukon First Nation or Yukon Indian Person.
- 14.12.2 The amount and terms of compensation set out in 14.12.1 shall be determined by the Board.
- 14.12.3 When determining the amount and terms of compensation to be paid to a Yukon First Nation pursuant to this chapter, the Board shall consider:
  - 14.12.3.1 the effect of the Water Use on the Yukon First Nation's Use of Water on or adjacent to its Settlement Land;
  - 14.12.3.2 the effect of the Water Use on the Yukon First Nation's Settlement Land, taking into account any cultural or special value of the land to the Yukon First Nation;
  - 14.12.3.3 the nuisance, inconvenience and noise caused by the Water Use to the Yukon First Nation on Settlement Land;
  - 14.12.3.4 the increment of the Water alteration caused by the Water Use;
  - 14.12.3.5 the cost of mitigation and restoration of the Settlement Land;
  - 14.12.3.6 the duration of any of the above; and
  - 14.12.3.7 any other factors set out in the Northern Inland Waters Act, R.S.C. 1985, c. N-25.
- 14.12.4 In a determination, pursuant to 14.12.3, of compensation payable to a Yukon First Nation, the loss or damage suffered by the Yukon First Nation for activity contrary to 14.8.1 shall include the loss or damage suffered by a Yukon Indian Person enrolled under that Yukon First Nation Final Agreement, but shall not include loss or damage compensable pursuant to 14.9.2.
- 14.12.5 In determining loss or damage suffered by a Yukon Indian Person under 14.12.4, the Board shall consider:
  - 14.12.5.1 the effect of the Water Use on the Yukon Indian Person's Use of Water on or adjacent to the affected Yukon First Nation's Settlement Land;

- 14.12.5.2 the effect of the Water Use on Fish and Wildlife Harvesting by the Yukon Indian Person enrolled under that Yukon First Nation Final Agreement;
  - 14.12.5.3 the increment of the Water alteration caused by the Water Use;
  - 14.12.5.4 the duration of any of the above; and
  - 14.12.5.5 any other factors set out in the Northern Inland Waters Act, R.S.C. 1985, c. N-25.
- 14.12.6 When determining the amount and terms of compensation to be paid to a Yukon Indian Person pursuant to 14.9.2, the Board shall consider:
- 14.12.6.1 subject to 14.12.6.2, the effect of the unlawful Use of Water on the Yukon Indian Person's Traditional Use of Water in that Yukon Indian Person's Traditional Territory;
  - 14.12.6.2 the effect of the unlawful Use of Water on a Yukon Indian Person's Traditional Use in relation to traditional heritage, culture and spiritual purposes, but only on or adjacent to the Settlement Land of the Yukon First Nation under whose Yukon First Nation Final Agreement that Yukon Indian Person is enrolled;
  - 14.12.6.3 the incremental effect of the unlawful Use of Water on the Yukon Indian Person's Traditional Use;
  - 14.12.6.4 the cost to the Yukon Indian Person of mitigation of damage caused to Settlement Land and restoration of Settlement Land for the Traditional Use;
  - 14.12.6.5 the duration of any of the above; and
  - 14.12.6.6 any other factors set out in the Northern Inland Waters Act, R.S.C. 1985, c. N-25.
- 14.12.7 The Board may order periodic or lump sum compensation or both.
- 14.12.8 The Board may, on application, review and amend a compensation order from time to time to take into account changing circumstances.

- 14.12.9 The Board may award costs including interim costs and such costs may exceed costs which a court could award in a legal proceeding.
- 14.12.10 An order of the Board for compensation or for costs pursuant to 14.12.0 shall be enforceable as if it were an order of the Supreme Court of the Yukon.

**CHAPTER 15 - DEFINITION OF BOUNDARIES AND MEASUREMENT  
OF AREAS OF SETTLEMENT LAND**

**15.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Artificial Boundary" means a boundary formed by a straight line or curve of prescribed radius joining points established on the ground by Monuments.

"Monument" means any device authorized by the Surveyor General to mark a boundary in a legal survey executed under some statutory authority.

"Offset Natural Boundary" means a sinuous boundary parallel to the sinuosities of a Natural Boundary at a prescribed perpendicular distance from the Natural Boundary.

"Ordinary High Water Mark" of a body of water means the limit or edge of its bed and in the case of non-tidal waters it may be called "the bank" or "the limit of the bank".

"Rural Settlement Land" means the lands identified by the notation "R" on maps appended to each Yukon First Nation Final Agreement.

"Settlement Land Committee" means a committee described in 15.3.0.

"Special Management Area" means a Special Management Area as defined in 10.2.0.

"Surveyor General" means the Surveyor General of Canada Land appointed in the manner authorized by Law or a person authorized by the Minister of Energy, Mines and Resources to carry out any or all of the duties of the Surveyor General.

"UTM Grid" means the Universal Transverse Mercator projection system grid lines shown on map sheets of the National Topographic Series published by the Surveys, Mapping and Remote Sensing Sector of the Department of Energy, Mines and Resources. For greater certainty, the UTM Grid datum shall be the reference datum existing at the time of compilation of each particular map sheet.

**15.2.0 Administration of Surveys of Settlement Land**

- 15.2.1 The boundaries of Settlement Land shall be surveyed in accordance with the instructions of the Surveyor General and dealt with by an official plan confirmed pursuant to the Canada Lands Surveys Act, R.S.C. 1985, c. L-6.
- 15.2.2 The boundaries of Special Management Areas may be shown on an administrative or explanatory plan authorized and approved by the Surveyor General pursuant to the Canada Lands Surveys Act, R.S.C. 1985, c. L-6, without a full survey of the boundaries.
- 15.2.3 Standards of accuracy, techniques and specifications for the survey of Settlement Land shall be in accordance with the Manual of Instructions for the Survey of Canada Lands and other general or specific instructions issued by the Surveyor General from time to time.
- 15.2.4 The Surveyor General shall have the discretion to adjust boundaries of Settlement Land in order to reduce survey costs, subject to agreement of the Settlement Land Committee.
- 15.2.5 The Surveyor General has statutory responsibility for and control over all legal surveys arising out of Settlement Agreements.
- 15.2.6 Canada may establish, as necessary, either prior to or in conjunction with Settlement Legislation, control survey monuments along unsurveyed Major Highways and in the vicinity of Settlement Land in order to expedite the efficient survey of Settlement Land. The method of establishment of and specifications for density and accuracy of control survey monuments shall be decided by the Surveys, Mapping and Remote Sensing Sector, Department of Energy, Mines and Resources.
- 15.2.7 Subject to 15.6.7, Canada shall pay the full cost of surveying all Settlement Land pursuant to 15.2.1, and pay the full cost of describing and depicting Special Management Areas as necessary.
- 15.2.8 The cost of subsequent surveys of Settlement Land shall be the responsibility of the Yukon First Nation.



15.2.9 Final decisions and ultimate responsibility concerning survey of Settlement Land rests with Canada and such decisions shall be taken in Consultation with the Yukon and the Council for Yukon Indians.

15.2.10 Surveys of Settlement Land shall be effected as soon as resources will allow.

### **15.3.0 Settlement Land Committees**

15.3.1 There shall be established with each Yukon First Nation, no later than one month after the signing of its Yukon First Nation Final Agreement, a Settlement Land Committee, comprised of one representative appointed by the Surveyor General to be chairperson, no more than two representatives appointed by Government and no more than two representatives appointed by the Yukon First Nation.

15.3.2 Subject to 15.3.1, where interests in Parcels of Settlement Land are currently under the administration and control of Canada, the Minister of Indian Affairs and Northern Development shall appoint a Government representative.

15.3.3 Subject to 15.3.1, where interests in Parcels of Settlement Land are currently under the administration and control of the Yukon, the Yukon shall appoint a Government representative.

15.3.4 Each Settlement Land Committee shall, in accordance with the principles described in 15.3.5, be responsible for:

15.3.4.1 the identification and selection of Site Specific Settlement Land out of Proposed Site Specific Settlement Land;

15.3.4.2 determining priorities for the survey of all Settlement Land; and

15.3.4.3 indication to the Surveyor General of portions of boundaries, if any, of those Special Management Areas which should be considered for definition by survey in order to better serve the mutual interests of the Yukon First Nation and the public.

- 15.3.5 In determining priorities for the identification and selection of Site Specific Settlement Land and for the survey of all Settlement Land, the Settlement Land Committee shall have regard to the following principles:
- 15.3.5.1 the priorities of the Yukon First Nation;
  - 15.3.5.2 efficiency and economy; and
  - 15.3.5.3 the necessity to clarify boundaries because of imminent public or private development on adjacent lands.
- 15.3.6 To the extent practicable, between the Effective Date of each Yukon First Nation Final Agreement and the date of confirmation of a plan of survey of any particular Parcel of Settlement Land or Site Specific Settlement Land, Yukon Indian People shall not be precluded from the interim use and enjoyment of that Parcel by reason only that a plan of survey of that Parcel has not been confirmed.
- 15.3.7 During the period described in 15.3.6:
- 15.3.7.1 each Settlement Land Committee shall receive requests relating to the use and enjoyment of Proposed Site Specific Settlement Land by Yukon Indian People;
  - 15.3.7.2 each Settlement Land Committee shall determine whether it is practicable to give effect to such requests and shall recommend to Canada or the Yukon, as the case may be, that it take such steps as the Committee considers appropriate; and
  - 15.3.7.3 Government undertakes to take such steps as it considers practicable to give effect to the recommendations of the Settlement Land Committee.
- 15.3.8 Where a Settlement Land Committee does not reach agreement under 15.3.4.1 or 15.3.4.2, Government, the affected Yukon First Nation or the Committee may refer the matter to the dispute resolution process under 26.3.0.
- 15.3.9 Where the dispute arises under 15.3.4.1, the arbitrator shall select either the final position proposed by Government or the final position proposed by the affected Yukon First Nation.

#### **15.4.0 Selection of Boundaries of Settlement Land**

##### **15.4.1 Boundaries of Settlement Land or Special Management Areas shall be:**

15.4.1.1 Artificial Boundaries;

15.4.1.2 Natural Boundaries, including but not limited to the Ordinary High Water Mark of Water, and well-defined heights of land; or

15.4.1.3 a combination of 15.4.1.1 and 15.4.1.2.

##### **15.4.2 Where Natural Boundaries are used, the following provisions shall apply:**

15.4.2.1 except as agreed to by the parties to a Yukon First Nation Final Agreement, Natural Boundaries of Settlement Land along Navigable Water and non-Navigable Water shall be located on the Ordinary High Water Mark;

15.4.2.2 Natural Boundaries, except Natural Boundaries of bodies of water as set out in 15.4.3, shall move with the various natural processes of erosion and accretion, and where an offset Natural Boundary is prescribed, it is also deemed to move and vary according to this natural movement of the Natural Boundary; and

15.4.2.3 where a Natural Boundary of Settlement Land involves a height of land which, in the opinion of the Surveyor General, is not well defined and where there is a requirement to establish all or part of that boundary by field survey, the Surveyor General shall have the authority to replace the sinuosities of the height of land by a series of monumented Artificial Boundaries closely approximating its mean position.

##### **15.4.3 Where alteration of a natural river or lake is proposed for hydro-electric or other development purposes and such alteration affects a boundary or boundaries, any resurveys required for the proper redefinition of Settlement Land shall be undertaken at the cost of the proponent of the development.**

##### **15.4.4 At the time of field survey of boundaries of Settlement Land, recognition shall be given to the map features and grid lines as shown on maps comprising an Appendix to each Yukon First Nation's Final Agreement.**

- 15.4.4.1 Notwithstanding any subsequently discovered inaccuracies in the plotting of features or improvements from which the location of Proposed Site Specific Settlement Land was determined, for the purposes of 5.14.0, the actual location of the Proposed Site Specific Settlement Land shall be determined by its actual proximity or relationship to this feature or improvement.
- 15.4.5 Each Settlement Land Committee shall indicate and identify any critical features intended to be enclosed in Settlement Land.
- 15.5.0 **Monumentation of Boundaries of Settlement Land**
- 15.5.1 The boundaries of Settlement Land shall be defined by Monuments placed in accordance with applicable regulations and instructions of the Surveyor General and in particular at the following locations:
  - 15.5.1.1 all points of deflection of Artificial Boundaries and at intervals to be specified by the Surveyor General;
  - 15.5.1.2 all terminal points where an Artificial Boundary intersects an Artificial Boundary or Natural Boundary and, in the case of intersection with a Natural Boundary of a body of water, the Monuments shall be set back from the Natural Boundary on the Artificial Boundary at a reasonable and safe distance from the said Natural Boundary; and
  - 15.5.1.3 all intersections of Artificial Boundaries with the prescribed limits of a surveyed or unsurveyed Major Highway, a Road or other right-of-way, established on each side of the Major Highway, Road or right-of-way.
- 15.6.0 **Measurement of Areas of Settlement Land**
- 15.6.1 The Surveyor General shall have the discretion to adjust the boundaries agreed to in each Yukon First Nation's Final Agreement in order to achieve the total land area agreed upon in such Yukon First Nation Final Agreement in accordance with 15.6.2.

- 15.6.2 The calculation of the total area of Settlement Land for each Yukon First Nation shall commence with Settlement Land within a Community Boundary and proceed in increasing Parcel size to the Site Specific Settlement Land and Rural Settlement Land. Any adjustment of boundaries of Settlement Land required shall be to the boundary or to those boundaries as agreed upon in the Yukon First Nation Final Agreement.
- 15.6.3 The areas of surveyed Settlement Land shall be calculated using plane surveying methods.
- 15.6.4 The areas of larger Special Management Areas shall be computed using UTM Grid lines or lines between coordinate points as boundaries. The areas shall be computed on the map projection plane for the area and shall be transformed by calculation to the mean ground elevation for each parcel. The maps utilized shall be the most accurate maps available in the opinion of the Surveyor General.
- 15.6.5 The area of larger Parcels of Rural Settlement Land having numerous Natural Boundaries shall be determined by ground survey techniques or by utilizing the most accurate maps or aerial photographs available, or by any combination of the foregoing which, in the opinion of the Surveyor General, will give satisfactory accuracy. The areas calculated by plane survey or graphical methods or a combination of the two shall be calculated at mean ground elevation for the Parcel concerned.
- 15.6.6 Prior to the confirmation of an official plan by the Surveyor General or the approval of an administrative or explanatory plan, written approval from the Yukon First Nation shall be obtained by the Settlement Land Committee to ensure that the Yukon First Nation is satisfied that the Parcel as surveyed conforms either to the area originally selected or as modified by the Surveyor General pursuant to 15.2.4 and 15.6.1. The plan and a copy of the surveyor's report shall be reviewed by the Settlement Land Committee for conformance with the original land selection before recommending it to the Yukon First Nation.

- 15.6.7 If the Yukon First Nation rejects the recommendation by the Settlement Land Committee, the disagreement shall be referred to the dispute resolution process under 26.3.0, and the Surveyor General or his representative shall have standing as a party to the dispute. The resulting decision may direct that the costs of a resurvey be borne by one or more of the parties to the dispute.
- 15.6.8 After resolution of any disagreement pursuant to 15.6.7, the plan shall be returned directly to the Surveyor General for confirmation.
- 15.6.9 The determination and delineation of a Yukon First Nation's total land area pursuant to 15.6.0 shall be final and shall be governed by the Artificial and Natural Boundaries thereby established, notwithstanding:
- 15.6.9.1 any discrepancy subsequently discovered between computed areas and areas enclosed by those boundaries; or
  - 15.6.9.2 any changes to the areas of Settlement Land caused by the gradual and imperceptible movements of Natural Boundaries.
- 15.7.0 Employment and Economic Opportunities**
- 15.7.1 Where employment in surveying of Settlement Land is generated as a direct consequence of a Yukon First Nation Final Agreement, the parties to the Yukon First Nation Final Agreement shall negotiate as part of that Yukon First Nation Final Agreement, the participation of Yukon Indian People who have appropriate qualifications or experience, in such employment, and the determination of such qualifications and experience.

15.7.2 Where economic opportunities and benefits are associated with the survey of Settlement Land, Yukon First Nations shall have access to these opportunities and benefits. Any contract issued for the survey of Settlement Land shall contain the condition that Yukon Indian People and Yukon First Nation businesses with the necessary qualifications and experience shall be given first consideration in providing technical and support services associated with the contract. A list of Yukon First Nation businesses and Yukon Indian People interested in providing such services to potential contractors for such surveys of a Yukon First Nation's Settlement Land shall be included with all requests for proposals, and documentary proof the Yukon First Nation's businesses and Yukon Indian People were given first consideration shall form part of a contractor's proposal.

**SCHEDULE A - MAJOR HIGHWAYS**

Yukon Highway # 1	Alaska Highway
Yukon Highway # 2	Klondike Highway
Yukon Highway # 3	Haines Road
Yukon Highway # 4	Campbell Highway
Yukon Highway # 5	Dempster Highway
Yukon Highway # 6	Canol Road
Yukon Highway # 7	Atlin Road
Yukon Highway # 8	Tagish Road
Yukon Highway # 9	Top of the World Highway (Dawson - Boundary Road)
Yukon Highway # 10	Nahanni Range Road
Yukon Highway # 11	Silver Trail
Yukon Highway # 37	Cassiar Road



## CHAPTER 16 – FISH AND WILDLIFE

### **16.1.0 Objectives**

16.1.1 The objectives of this chapter are as follows:

- 16.1.1.1 to ensure Conservation in the management of all Fish and Wildlife resources and their habitats;
- 16.1.1.2 to preserve and enhance the renewable resources economy;
- 16.1.1.3 to preserve and enhance the culture, identity and values of Yukon Indian People;
- 16.1.1.4 to ensure the equal participation of Yukon Indian People with other Yukon residents in Fish and Wildlife management processes and decisions;
- 16.1.1.5 to guarantee the rights of Yukon Indian People to harvest and the rights of Yukon First Nations to manage renewable resources on Settlement Land;
- 16.1.1.6 to integrate the management of all renewable resources;
- 16.1.1.7 to integrate the relevant knowledge and experience both of Yukon Indian People and of the scientific communities in order to achieve Conservation;
- 16.1.1.8 to develop responsibilities for renewable resource management at the community level;
- 16.1.1.9 to honour the Harvesting and Fish and Wildlife management customs of Yukon Indian People and to provide for the Yukon Indian People's ongoing needs for Fish and Wildlife;
- 16.1.1.10 to deal fairly with all Yukon residents who use Fish and Wildlife resources in the Yukon; and
- 16.1.1.11 to enhance and promote the full participation of Yukon Indian People in renewable resources management.

## 16.2.0 Definitions

In this chapter, the following definitions shall apply.

"Basic Needs Level" means the number of harvestable animals of a species negotiated in a Yukon First Nation Final Agreement as a harvest allocation to a Yukon First Nation in its Traditional Territory in accordance with 16.9.0.

"Board" means the Fish and Wildlife Management Board established pursuant to 16.7.0.

"Category 1 Trapline" means a trapline so designated pursuant to 16.11.0.

"Category 2 Trapline" means a trapline not designated as a Category 1 Trapline.

"Council" means a Renewable Resources Council established pursuant to 16.6.0.

"Edible Fish or Wildlife Product" means the flesh or organs of Fish or Wildlife that are used for food by people or domestic animals.

"Furbearer" means any of the following species native to the Yukon: Castor including beaver; Alopex including white fox or arctic fox; Lutra including otter; Lynx including lynx; Martes including martens and fishers; Mustela including weasel and mink; Ondatra including muskrat; Vulpes including red, cross, black and silver fox; Gulo including wolverine; Canis including wolves and coyotes; Marmota including marmots; Tamiasciurus including red squirrel; and Spermophilus including ground squirrels.

"Non-Consumptive Use" means a Use of Fish and Wildlife that does not involve Harvesting.

"Non-Edible By-Product" means the fur, hide, skin, antlers, horns, skeleton or other portions of Fish or Wildlife not used for food but used for other purposes including but not limited to clothing, medicine, domestic or personal decoration, or art.

"Sub-Committee" means the Salmon Sub-Committee established pursuant to 16.7.17.

"Subsistence" means:

- (a) the use of Edible Fish or Wildlife Products by a Yukon Indian Person for sustenance and for food for traditional ceremonial purposes including potlatches; and
- (b) the use by a Yukon Indian Person of Non-Edible By-Products of harvests under (a) for such domestic purposes as clothing, shelter or medicine, and for domestic, spiritual and cultural purposes; but
- (c) except for traditional production of handicrafts and implements by a Yukon Indian Person, does not include commercial uses of Edible Fish or Wildlife Products or Non-Edible By-Products.

"Total Allowable Catch" means the total number of Salmon of a particular species and in a particular drainage basin which return to Canadian waters and which, in the manner established by this chapter, are deemed not to be required for Conservation.

"Total Allowable Harvest" means the total number of animals of a Freshwater Fish or Wildlife species which, in the manner established by this chapter, are deemed not to be required for Conservation.

"Use" includes both Harvesting and non-consumptive activities.

### **16.3.0 General**

16.3.1 This chapter sets out powers and responsibilities of Government and Yukon First Nations for the management of Fish and Wildlife and their habitats, while, subject to 16.5.1.1, 16.5.1.2 and 16.5.1.3, respecting the Minister's ultimate jurisdiction, consistent with this chapter, for the management of Fish and Wildlife and their habitats.

16.3.2 The management and Harvesting of Fish, Wildlife and their habitats shall be governed by the principle of Conservation.

- 16.3.3 The exercise of rights under this chapter is subject to limitations provided for elsewhere in Settlement Agreements and to limitations provided in Legislation enacted for purposes of Conservation, public health or public safety.
- 16.3.3.1 Any limitation provided for in Legislation pursuant to 16.3.3 must be consistent with this chapter, reasonably required to achieve those purposes and may only limit those rights to the extent necessary to achieve those purposes.
- 16.3.3.2 Government shall Consult with the affected Yukon First Nation before imposing a limitation pursuant to 16.3.3.
- 16.3.4 Nothing in this or any other chapter is intended to confer rights of ownership in any Fish or Wildlife.
- 16.3.5 Canada shall make reasonable efforts to ensure that when issues involving Fish and Wildlife management arise in international negotiations, the interests of affected Yukon First Nations are represented.
- 16.3.6 Except as provided in this chapter and in Yukon First Nation Final Agreements, nothing shall prevent Yukon residents and others from Harvesting Fish and Wildlife in accordance with Legislation.
- 16.3.7 Government shall make best efforts to amend the Game Export Act, R.S.C. 1985, c. G-1 to enable the transport of Wildlife products for traditional non-commercial purposes across borders with Alaska, British Columbia and the Northwest Territories.
- 16.3.8 No tax, duty or such other fees or royalties shall be imposed by Government in respect of the export of Wildlife products under 16.3.7.
- 16.3.9 Nothing in the Umbrella Final Agreement shall be construed as an admission by Government that the Migratory Birds Convention Act, R.S.C. 1985, c. M-7 does not satisfy the terms of 16.3.3.
- 16.3.10 For the purposes of application of 16.3.3 to Harvesting rights of Yukon Indian People for migratory birds, Conservation includes considerations related to conservation of Migratory Game Birds indigenous to the Yukon while those Migratory Game Birds are in other jurisdictions.

- 16.3.11 Notwithstanding anything in this chapter, where there is a conflict between this chapter and the 1987 Canada-USA Agreement on the Conservation of the Porcupine Caribou Herd, the 1985 Porcupine Caribou Management Agreement, or the Treaty between the Government of Canada and the Government of the United States of America concerning Pacific Salmon, those agreements and the Treaty shall prevail to the extent of the conflict. Any amendments to those agreements or the Treaty shall not be construed to diminish or adversely affect the rights of Yukon First Nations or Yukon Indian People under this chapter and Yukon First Nation Final Agreements.
- 16.3.12 Nothing in this chapter shall be construed to grant Yukon Indian People any right to buy, sell, or offer for sale any Migratory Game Bird, Migratory Game Bird's egg or parts thereof not authorized for sale by Legislation.
- 16.3.13 Nothing in this chapter shall be construed to prevent any person from killing Fish and Wildlife for survival in an emergency. Any such kill shall be reported according to requirements established by the Board and shall be without prejudice to any Basic Needs Level or adjusted Basic Needs Level that may be in force from time to time.
- 16.3.14 Subject to 10.4.0, and except as provided in the Inuvialuit Final Agreement and in the specific provisions for National Parks in the Yukon First Nation Final Agreements for the Vuntut Gwitchin First Nation, the Champagne and Aishihik First Nations, the Kluane First Nation and the White River First Nation, Harvesting and management of Fish and Wildlife within National Parks shall be in accordance with the National Parks Act, R.S.C. 1985, c. N-14.
- 16.3.14.1 The responsible agencies, the Board and the Councils shall make best efforts to coordinate the management of Fish and Wildlife populations which cross a boundary of a National Park.
- 16.3.15 It is intended that there not be any duplication in the public management of Fish and Wildlife.
- 16.3.16 Except as otherwise provided in Laws of General Application, no Person shall waste Edible Fish or Wildlife Products.

16.3.17 In the management of Fish and Wildlife and the harvest allocation of Fish and Wildlife, Non-Consumptive Uses of the resources shall be taken into account.

#### **16.4.0 Yukon Indian People**

16.4.1 Subject to a Yukon First Nation Final Agreement, nothing in this chapter affects any right, entitlement or qualification of Yukon Indian People to harvest Fish and Wildlife outside the Yukon. In addition, nothing in this chapter shall preclude negotiations between a Yukon First Nation and Canada, the Government of British Columbia or the Government of the Northwest Territories for rights to harvest Fish and Wildlife within the Yukon First Nation's traditional territory in British Columbia or the Northwest Territories.

16.4.2 Yukon Indian People shall have the right to harvest for Subsistence within their Traditional Territory, and with the consent of another Yukon First Nation in that Yukon First Nation's Traditional Territory, all species of Fish and Wildlife for themselves and their families at all seasons of the year and in any numbers on Settlement Land and on Crown Land to which they have a right of access pursuant to 6.2.0, subject only to limitations prescribed pursuant to Settlement Agreements.

16.4.3 Yukon Indian People shall have the right to employ within their Traditional Territories traditional and current methods of and equipment for Harvesting pursuant to 16.4.2, or limited pursuant to a Basic Needs Level allocation or pursuant to a basic needs allocation of Salmon, subject to limitations prescribed pursuant to Settlement Agreements.

16.4.4 Yukon Indian People shall have the right to give, trade, barter or sell among themselves and with beneficiaries of adjacent Transboundary Agreements in Canada all Edible Fish or Wildlife Products harvested by them pursuant to 16.4.2, or limited pursuant to a Basic Needs Level allocation or pursuant to a basic needs allocation of Salmon, in order to maintain traditional sharing among Yukon Indian People and with beneficiaries of adjacent Transboundary Agreements for domestic purposes but not for commercial purposes.

- 16.4.4.1 Subject to Schedule A - Determination of Basic Needs Allocation for the Drainage Basin of the Yukon River, attached to this chapter, at the request of the Council for Yukon Indians, Government shall enter into negotiations with the Yukon First Nations with a view to amending 16.4.4 and other relevant provisions of the Umbrella Final Agreement as they apply to the commercial trade, barter and sale of Salmon, provided Government has enacted regulations under the Fisheries Act, R.S.C. 1985, c. F-14, or entered into an agreement with an aboriginal people of British Columbia, which regulations or agreement provide for the trade, barter or sale of Salmon, other than in a test fishery, with fewer restrictions than are set out in 16.4.4.
- 16.4.5 Subject to Laws of General Application, unless otherwise specified in a Yukon First Nation Final Agreement, or as may be agreed to by the parties to the Umbrella Final Agreement, Yukon Indian People shall have the right to give, trade, barter or sell to any person any Non-Edible By-Product of Fish and Wildlife that is obtained from the Harvesting of Furbearers or incidental to Harvesting pursuant to 16.4.2, or limited pursuant to a Basic Needs Level allocation or pursuant to a basic needs allocation of Salmon.
- 16.4.6 The right to harvest pursuant to 16.4.2, or limited pursuant to a Basic Needs Level allocation or pursuant to a basic needs allocation of Salmon includes the right to possess and transport Fish and Wildlife parts and products in the Yukon and in other areas where provided for in Transboundary Agreements.
- 16.4.7 A Yukon First Nation shall provide to a Yukon Indian Person proof that the Yukon Indian Person is enrolled in that Yukon First Nation's Final Agreement, has been given consent under 16.4.2 or has been allocated a Harvesting opportunity pursuant to a Basic Needs Level allocation for Wildlife or a basic needs allocation of Salmon, as the case may be.
- 16.4.8 Subject to 16.4.9, a Yukon Indian Person may be required to show proof of any of the matters listed in 16.4.7.

- 16.4.9 A Yukon Indian Person who is 55 years of age or older at the Effective Date of the Yukon First Nation Final Agreement under which that Yukon Indian Person is enrolled shall not be required to show proof of enrollment under 16.4.7 but shall be required to identify himself or herself where necessary.
- 16.4.10 Government shall not impose any fee or tax on Yukon Indian People in respect of any permit or license to harvest Fish or Wildlife pursuant to 16.4.2, 16.9.0 or 16.10.1.
- 16.4.11 Subject to Yukon First Nation Final Agreements, Yukon Indian People shall comply with Laws of General Application when participating in resident or commercial harvesting.
- 16.4.11.1 Yukon Indian People shall have the right to use leg-hold drowning sets for Furbearer Harvesting unless the Minister, upon recommendation of the Board, determines that such sets are inhumane.

**16.5.0 Yukon First Nations**

- 16.5.1 Each Yukon First Nation shall have the following powers and responsibilities. Subject to the terms of each Yukon First Nation's Final Agreement, each Yukon First Nation:
- 16.5.1.1 may manage, administer, allocate or otherwise regulate the exercise of the rights of Yukon Indian People under 16.4.0 within the geographical jurisdiction of the Council established for that Yukon First Nation's Traditional Territory by,
- (a) Yukon Indian People enrolled pursuant to that Yukon First Nation Final Agreement,
- (b) other Yukon Indian People who are exercising rights pursuant to 16.4.2, and



(c) except as otherwise provided in a Transboundary Agreement, members of a transboundary claimant group who are Harvesting pursuant to that Transboundary Agreement in that Yukon First Nation's Traditional Territory,

where not inconsistent with the regulation of those rights by Government in accordance with 16.3.3 and other provisions of this chapter;

- 16.5.1.2 shall have the final allocation authority for that Yukon First Nation's Category 1 Traplines;
- 16.5.1.3 may align, realign or group Category 1 Traplines where such alignments, realignments or groupings do not affect Category 2 Traplines;
- 16.5.1.4 shall work with the Board and the Council to establish methods to administer Basic Needs Level harvests, including the issuance of permits, licences or tags and the setting of fees;
- 16.5.1.5 may identify and propose from time to time an adjusted Basic Needs Level for the Yukon First Nation for consideration by the Board;
- 16.5.1.6 may distribute to Yukon Indian People, or other Yukon residents, any portion of that Yukon First Nation's Basic Needs Level allocation, subject to 16.5.1.7;
- 16.5.1.7 shall not charge a fee to persons other than Yukon Indian People for Harvesting any of that Yukon First Nation's Basic Needs Level allocation;
- 16.5.1.8 may manage local populations of Fish and Wildlife within Settlement Land, to the extent coordination with other Fish and Wildlife management programs is not considered necessary by the Board;
- 16.5.1.9 may participate in management of Fish and Wildlife within the Yukon in the manner set out in this chapter;
- 16.5.1.10 may make recommendations to the Council on applications for Fish and Wildlife survey and research permits for Government surveys and research within that Yukon First Nation's Settlement Land;

- 16.5.1.11 shall screen and may approve applications for Fish and Wildlife surveys and research permits for private surveys and research within that Yukon First Nation's Settlement Land;
- 16.5.1.12 at the request of the Board, the Sub-Committee or the Council, shall provide harvest information either to the Council, the Sub-Committee or the Board or to an officer with lawful authority, as the case may be, including provision of data necessary for verification and in-season management;
- 16.5.1.13 subject to Chapter 5 – Tenure and Management of Settlement Land and 16.12.0, may charge a fee or obtain a benefit for granting access to its Category A Settlement Land to a Yukon resident or for services other than guiding provided to that Yukon resident in connection with Harvesting Fish and Wildlife on its Category A Settlement Land;
- 16.5.1.14 subject to Chapter 5 – Tenure and Management of Settlement Land and 16.12.0, may charge a fee or obtain a benefit for granting access to its Settlement Land to a Yukon big game outfitter operating within its big game outfitting area or for services provided to a Yukon big game outfitter in connection with Harvesting of Fish and Wildlife on its Settlement Land; and
- 16.5.1.15 may delegate or contract the performance of its responsibilities in whole or part to another Yukon First Nation, the Council, Board or Government, provided that the delegate consents.
- 16.5.2 Nothing in 16.5.1 shall be construed to limit the exercise, consistent with this chapter, of any power of a Yukon First Nation pursuant to that Yukon First Nation's self-government agreement.
- 16.5.3 A Yukon First Nation shall have standing as an interested party to participate in public proceedings of any agency, board or commission on matters that affect the management and Conservation of Fish, Wildlife and their habitat in its Traditional Territory.

- 16.5.4 Government shall Consult with a Yukon First Nation prior to taking action on Fish or Wildlife matters which may affect the Yukon First Nation's management responsibilities or the exercise of Harvesting rights under a Settlement Agreement of Yukon Indian People enrolled under that Yukon First Nation Final Agreement.

**16.6.0 Renewable Resources Councils**

- 16.6.1 In each Yukon First Nation's Traditional Territory, a Renewable Resources Council shall be established as a primary instrument for local renewable resources management in that Traditional Territory as set out in a Settlement Agreement.

**Composition of Councils**

- 16.6.2 Subject to Transboundary Agreements and Yukon First Nation Final Agreements, each Council shall be comprised of six members consisting of three nominees of the Yukon First Nation and three nominees of the Minister.
- 16.6.3 Each Council shall determine its own procedures for selecting its chairperson from its membership. The Minister shall appoint the chairperson selected by the Council.
- 16.6.3.1 In the event that a Council fails to select a chairperson within 30 days of the position being vacant, the Minister shall appoint a chairperson from the membership of the Council after Consultation with the Council.
- 16.6.4 Unless otherwise provided in a Yukon First Nation Final Agreement, Council members shall be resident within that Traditional Territory.
- 16.6.5 Unless otherwise provided in a Yukon First Nation Final Agreement, appointments to a Council shall be for a five year term, except for the initial appointments. One third of the initial appointments shall be made for three years, one third for four years, and one third for five years. Thereafter, the appointments shall be for five years. All appointments to the Council shall be during good behaviour.
- 16.6.6 Each Council shall make provisions for public involvement in the development of its decisions and its recommendations.

16.6.7 Each Council shall prepare an annual budget, subject to review and approval by Government. The budget shall be in accordance with Government guidelines and may include:

16.6.7.1 remuneration and travel expenses for attendance of Council members at Council meetings;

16.6.7.2 the costs of public hearings and meetings;

16.6.7.3 a budget for research review, public information and other activities; and

16.6.7.4 other items as the Council and Government agree on; and

the approved budget of the Council shall be a charge on Government.

16.6.8 The first annual budget for a Council and a multi-year financial forecast of its operation shall be set out in the implementation plan for that Yukon First Nation Final Agreement.

#### **Powers and Responsibilities of Councils**

16.6.9 Each Council, acting in the public interest and consistent with this chapter, may make recommendations to the Minister, the affected Yukon First Nation, the Board and the Sub-Committee on any matter related to Conservation of Fish and Wildlife.

16.6.10 Subject to Yukon First Nation Final Agreements, and without restricting 16.6.9, each Council:

16.6.10.1 may make recommendations to the Minister on the need for and the content and timing of Freshwater Fish and Wildlife management plans, including Harvesting plans, Total Allowable Harvests and the allocation of the remaining Total Allowable Harvest, for species other than the species referred to in 16.7.12.2;

16.6.10.2 may make recommendations to the Board regarding local management concerns for the species referred to in 16.7.12.2;

16.6.10.3 may make recommendations to the Salmon Sub-Committee on allocation of commercial and other uses of Salmon and on other matters designated in 16.7.17.12;

- 16.6.10.4 may identify and recommend to the Board harvest requirements, including harvest requirements within the adjusted Basic Needs Level, within guidelines established in Yukon First Nation Final Agreements;
  - 16.6.10.5 may make recommendations to the Sub-Committee on the need for and the content and timing of Salmon management plans;
  - 16.6.10.6 may establish bylaws under the Wildlife Act, R.S.Y. 1986, c. 178, in accordance with 16.11.0, for the management of Furbearers;
  - 16.6.10.7 may make recommendations to the Minister and affected Yukon First Nation on the management of Furbearers;
  - 16.6.10.8 may make recommendations to the Minister and affected Yukon First Nation, in accordance with 16.11.0, on the use of traplines and the reassignment of all new, vacant and under-utilized traplines;
  - 16.6.10.9 may make recommendations to the Minister on priorities and policies related to enforcement of Legislation and on alternatives to penal sanctions with respect to Fish and Wildlife;
  - 16.6.10.10 may review and make recommendations to the Minister on allocation of and terms and conditions for commercial uses of Wildlife and Fish other than Salmon;
  - 16.6.10.11 may review and make recommendations to the Minister on applications for research permits granted by Government for Fish and Wildlife management-related research activities within the relevant Traditional Territory; and
  - 16.6.10.12 may make recommendations to the affected Yukon First Nation regarding the Yukon First Nation's management of Fish and Wildlife on its Settlement Land pursuant to 16.5.1.8.
- 16.6.11 Each Council shall be granted status as an interested party to participate in public proceedings of any agency, board or commission on matters that affect the management and Conservation of Fish and Wildlife and their habitats within the relevant Traditional Territory for which that Council was established.

- 16.6.12 With the consent of the Minister and the affected Yukon First Nations, a Council may merge with other Councils to establish a regional Council with the same powers and responsibilities as a Council.
- 16.6.13 The Minister shall recommend to the Yukon Legislative Assembly an amendment to the Wildlife Act, R.S.Y. 1986, c. 178 to enable the Council to establish bylaws under the Wildlife Act, R.S.Y. 1986, c. 178 pursuant to 16.6.10.6.
- 16.6.14 Where the Minister proposes to implement a Total Allowable Harvest which would require the implementation of Basic Needs Level provisions for a species or population in a Traditional Territory in accordance with this chapter, the affected Council may make recommendations to the Minister on alternative measures that could be considered in the place of implementing the Basic Needs Level provisions.
- 16.6.15 Government shall provide Councils with the results of research under 16.6.10.11.
- 16.6.16 Where a Council does not carry out one of its responsibilities, the Minister, after giving notice to the Council, may undertake to fulfill that responsibility directly or delegate that responsibility to the Board.
- 16.6.17 Upon request by the Council, the Minister and the affected Yukon First Nation shall make available to the Council information in their possession reasonably required for the Council to carry out its functions under this chapter.

#### **16.7.0 Fish and Wildlife Management Board**

- 16.7.1 A Fish and Wildlife Management Board shall be established as the primary instrument of Fish and Wildlife management in the Yukon.

##### **Composition of the Board**

- 16.7.2 The Board shall be comprised of six nominees of Yukon First Nations and six nominees of Government.
- 16.7.3 The Board shall determine its own procedures for selecting its chairperson from its membership. The Minister shall appoint the chairperson selected by the Board.

- 16.7.3.1 In the event that the Board fails to select a chairperson within 60 days of the position being vacant, the Minister shall appoint a chairperson from the membership of the Board after Consultation with the Board.
- 16.7.4 The majority of representatives of Government and the majority of representatives of Yukon First Nations shall be Yukon residents.
- 16.7.5 Appointments to the Board shall be for a five year term, except for the initial appointments. One third of the initial appointments shall be made for three years, one third for four years, and one third for five years. Thereafter, the appointments shall be for five years. All appointments to the Board shall be during good behaviour.
- 16.7.6 The Board shall make provisions for public involvement in the development of its decisions and its recommendations.
- 16.7.7 The Board may establish an executive secretariat to provide administrative support to the Board.
  - 16.7.7.1 The administrator of the secretariat shall be the executive secretary, who shall report to the Board and shall provide administrative and other support to the Board and maintain liaison with the Renewable Resources Councils.
  - 16.7.7.2 The Director of Fish and Wildlife for the Yukon shall serve as an advisor to the Board and shall ensure that technical support is provided to the Board.
- 16.7.8 The Board shall be accountable to Government for its expenditures.
- 16.7.9 The Board shall prepare an annual budget, subject to review and approval by Government. Such budget shall be in accordance with Government guidelines and may include:
  - 16.7.9.1 remuneration and travel expenses for attendance of Board members at Board and Sub-Committee meetings;
  - 16.7.9.2 the costs of public hearings and meetings;
  - 16.7.9.3 a budget for research review, public information and other activities;

- 16.7.9.4 the costs of staff and of the operation and maintenance of the office; and
- 16.7.9.5 other items as the Board and Government agree upon; and

the approved budget of the Board and the Sub-Committee shall be a charge on Government.

- 16.7.10 The first annual budget for the Board and Sub-Committee and a multi-year financial forecast of the Board's and the Sub-Committee's operation shall be set out in the implementation plan for the Umbrella Final Agreement.

#### **Powers and Responsibilities of the Board**

- 16.7.11 The Board, acting in the public interest and consistent with this chapter and taking into consideration all relevant factors including recommendations of the Councils, may make recommendations to the Minister, to Yukon First Nations and to the Councils, on all matters related to Fish and Wildlife management, Legislation, research, policies, and programs.
- 16.7.12 Without restricting 16.7.11, the Board:
  - 16.7.12.1 may recommend to the Minister policies for the management of Fish and Wildlife and their habitats;
  - 16.7.12.2 may make recommendations to the Minister on the need for and the content and timing of all Yukon Fish and Wildlife management plans for species included in international agreements, threatened species or populations, species or populations declared by the Minister as being of a territorial, national or international interest, and Transplanted Populations and Exotic Species;
  - 16.7.12.3 may review and make recommendations to the Minister and to Yukon First Nations on management plans recommended by the Councils, specifically the population goals and the management options contained within those plans;
  - 16.7.12.4 may, where required by species or population management plans, recommend to the Minister a Total Allowable Harvest for a species listed in 16.7.12.2 in accordance with 16.9.0;



- 16.7.12.5 may review and recommend to the Minister adjustments to Basic Needs Levels in accordance with 16.9.8;
- 16.7.12.6 may make recommendations to the Minister on the need for, and on positions on, interjurisdictional agreements that affect the Conservation and Use of Fish and Wildlife resources in the Yukon;
- 16.7.12.7 after Consultation with the affected Councils, may recommend to the Minister restrictions on methods and practices of harvest for reasons of Conservation, public health, public safety and, in exceptional circumstances, for protection of the renewable resources economy associated with the Use of Fish or Wildlife resources;
- 16.7.12.8 may, at the request of the Council, assist a Council in the performance of its duties;
- 16.7.12.9 may, subject to approval of the Minister and the Council, delegate the performance of its responsibilities to a Council; and
- 16.7.12.10 may, in Consultation with the Councils and subject to Yukon First Nation Final Agreements, identify new opportunities and recommend to the Minister management measures for commercial Uses of Fish and Wildlife.
- 16.7.13 The Board shall have standing as an interested party to participate in the public proceedings of any agency, board or commission dealing with matters that affect the management and Conservation of Fish and Wildlife and their habitat in the Yukon.
- 16.7.14 The Board shall communicate to the Councils its recommendations and decisions approved in accordance with 16.8.0 within a reasonable time.
- 16.7.15 The Board shall meet not less than annually with the chairpersons of the Councils.
- 16.7.16 Before the amendment or introduction of Legislation for Fish and Wildlife in the Yukon, the Minister shall Consult with the Board on the matters to be addressed in that Legislation.

### **Salmon Sub-Committee**

- 16.7.17 A Sub-Committee of the Board shall be established as the main instrument of Salmon management in the Yukon.
- 16.7.17.1 The Board shall assign from its membership one appointee of Yukon First Nations and one appointee of Government to the Sub-Committee.
- 16.7.17.2 The Minister shall nominate two additional members to the Sub-Committee.
- 16.7.17.3 For the Yukon River drainage basin, the affected Yukon First Nation shall nominate two members to the Sub-Committee who shall sit on the Sub-Committee when it deals with matters affecting Salmon in the Yukon River drainage basin only.
- 16.7.17.4 For the Alsek River drainage basin, the affected Yukon First Nation shall nominate two members to the Sub-Committee who shall sit on the Sub-Committee when it deals with matters affecting Salmon in the Alsek River drainage basin only.
- 16.7.17.5 For the Porcupine River drainage basin, the affected Yukon First Nation shall nominate two members to the Sub-Committee who shall sit on the Sub-Committee when it deals with matters affecting Salmon in the Porcupine River drainage basin only.
- 16.7.17.6 When the Sub-Committee is dealing with matters affecting more than one of the drainage basins identified in 16.7.17.3 to 16.7.17.5, the members appointed to represent those basins may sit on the Sub-Committee, provided that the total number of votes to be exercised by those members shall not exceed two.
- 16.7.17.7 Appointments to the Sub-Committee by the Board shall be for the term held by that appointee on the Board.
- 16.7.17.8 The additional appointments to the Sub-Committee by the Minister and by Yukon First Nations shall be for five years. All appointments to the Sub-Committee shall be during good behaviour.

- 16.7.17.9 The Board shall appoint a chairperson from the membership of the Sub-Committee. In the event the Board fails to select a chairperson within 60 days of the position being vacant, the Minister shall appoint a chairperson from the membership of the Sub-Committee after Consultation with the Sub-Committee.
- 16.7.17.10 The Department of Fisheries and Oceans shall provide technical and administrative support to the Sub-Committee as required to determine appropriate plans for Salmon management, and a senior official of the department in the Yukon shall serve the Sub-Committee as Executive Secretary.
- 16.7.17.11 The Sub-Committee, acting in the public interest and consistent with this chapter and taking into account all relevant factors including recommendations of the Councils, may make recommendations to the Minister and to Yukon First Nations on all matters related to Salmon, their habitats and management, including Legislation, research, policies and programs.
- 16.7.17.12 Without restricting 16.7.17.11, the Sub-Committee:
- (a) may recommend to the Minister policies for the management of Salmon and their habitats;
  - (b) may make recommendations to the Minister on the need for, and on the content and timing of Salmon Harvesting and management plans in accordance with the terms of this chapter;
  - (c) may make recommendations to the Minister on the need for, and on a position on, interjurisdictional agreements affecting the Use of Yukon Salmon resources;
  - (d) may seek, from a Council or the public, input on specific aspects of a Salmon management plan;
  - (e) subject to Yukon First Nation Final Agreements, may make recommendations to the Minister on new opportunities and proposed management measures for commercial Uses of Salmon;

- (f) after Consultation with affected Yukon First Nations, shall make recommendations to the Minister on allocation, in amount and by area, of Salmon to users, in accordance with this chapter; and
  - (g) may make recommendations on management measures required to best ensure that the basic needs allocation of a Yukon First Nation is met, recognizing that resources available for fisheries management may be limited.
- 16.7.17.13 Representatives from the Sub-Committee shall form the majority of the Canadian representatives to any Yukon River panel established pursuant to the Treaty between the Government of Canada and the Government of the United States of America concerning Pacific Salmon.
- 16.7.17.14 The Sub-Committee shall be granted standing as an interested party to participate in the public proceedings of any agency, board or commission dealing with matters that affect the management and Conservation of Salmon or their habitat in the Yukon.
- 16.7.17.15 The Sub-Committee shall communicate its recommendations and decisions to the Board, and to the Minister in accordance with the provisions of 16.8.0.
- 16.7.18 Where the Board or the Sub-Committee does not carry out a responsibility, the Minister, after giving notice to the Board or the Sub-Committee as appropriate, may carry out that responsibility.
- 16.7.19 The Minister shall Consult with and obtain a recommendation of the Board before declaring a species or population to be of territorial, national or international interest under 16.7.12.2.
- 16.7.20 Upon request by the Board or the Sub-Committee, the Minister and the affected Yukon First Nation shall make available to the Board or the Sub-Committee information in their possession reasonably required for the Board or the Sub-Committee to carry out its functions under this chapter.

## **16.8.0      Role of Ministers and Yukon First Nations**

### **Implementation of Council, Board and Sub-Committee Decisions**

- 16.8.1      The provisions of 16.8.2 to 16.8.8 apply to decisions and recommendations of the Councils, the Board and the Sub-Committee made to the Minister pursuant only to 10.5.5, 16.3.13, 16.5.1.8, 16.6.10, 16.6.14, 16.7.12, 16.7.17.12, 16.7.19, 16.8.12, 16.9.2, 16.9.8, 16.10.1, 16.10.12, 16.11.10, 17.4.1.2, 17.4.1.3, 17.4.1.5 and 17.4.1.6 and to those recommendations and decisions of the Board, the Councils or the Sub-Committee which may be referred to 16.8.0 in a Yukon First Nation Final Agreement.
- 16.8.1.1      In 16.8.2 to 16.8.7, Board means the Board, Councils and Sub-Committee.
- 16.8.2      Unless the Minister directs otherwise, the Board shall forward its recommendations and decisions pursuant to 16.8.1 to the Minister, accompanied by draft regulations where appropriate.
- 16.8.3      Unless the Minister directs otherwise, all recommendations and decisions of the Board shall be kept confidential until the process in 16.8.4 to 16.8.6 has been completed or the time for the process has expired.
- 16.8.4      The Minister, within 60 days of the receipt of a recommendation or decision under 16.8.2, may accept, vary, set aside or replace the recommendation or decision. Any proposed variation, replacement or setting aside shall be sent back to the Board by the Minister with written reasons. The Minister may consider information and matters of public interest not considered by the Board.
- 16.8.4.1      The Minister may extend the time provided in 16.8.4 by 30 days.
- 16.8.4.2      Nothing in 16.8.4 shall be construed as limiting the application of 16.3.3.
- 16.8.5      The Board, within 30 days of the receipt of a variation, replacement or setting aside by the Minister pursuant to 16.8.4, shall make a final recommendation or decision and forward it to the Minister with written reasons.

- 16.8.5.1 The Minister may extend the time provided under 16.8.5.
- 16.8.6 The Minister, within 45 days of receipt of a final recommendation or decision, may accept or vary it, or set it aside and replace it.
- 16.8.6.1 In the event that the Minister proposes to vary or to set aside and replace a recommendation of the Board with respect to the determination of a Total Allowable Harvest, the Minister shall make reasonable efforts to reach a consensus with the affected Yukon First Nation on the variation or setting aside and replacement of the recommendation.
- 16.8.6.2 In the event that the Minister and the affected Yukon First Nation are unable to reach a consensus under 16.8.6.1, the Minister may proceed to vary or set aside and replace the recommendation of the Board with respect to the determination of the Total Allowable Harvest, provided that the Minister is satisfied that the variation or replacement is consistent with the principle of Conservation.
- 16.8.6.3 The process for seeking consensus with the affected Yukon First Nation shall give due consideration to timing of any statutory or regulatory changes required and to the timing of Harvesting activities.
- 16.8.6.4 The Minister may extend the time provided in 16.8.6 in order to carry out the requirements of 16.8.6.1 and 16.8.6.2.
- 16.8.6.5 The Minister shall provide the Board with notice of the Minister's final decision under 16.8.6.
- 16.8.7 Government shall, as soon as practicable, implement:
- 16.8.7.1 all recommendations and decisions of the Board that are accepted by the Minister under 16.8.4;
- 16.8.7.2 all decisions of the Minister under 16.8.6; and
- 16.8.7.3 subject to 16.8.7.1 and 16.8.7.2, all recommendations or decisions of the Board after the expiry of the time provided in the process set out in 16.8.4 and 16.8.6.

- 16.8.8 The Minister may refer any matter described in 16.8.1 to the dispute resolution process under 26.4.0 once the procedure set out in 16.8.1 to 16.8.4 has been completed.

#### **Judicial Review of Decisions**

- 16.8.9 All final decisions of the Board, Sub-Committee and Council pursuant to 16.6.10.6 and 16.10.14 shall be final and binding and not subject to appeal or review in any court provided however that an application for judicial review by a Yukon First Nation, Government or any affected Person, shall lie to the Supreme Court of the Yukon upon the grounds that the Board, Sub-Committee or Council:
- 16.8.9.1 failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
  - 16.8.9.2 erred in law in making its decision, whether or not the error appears on the face of the record; or
  - 16.8.9.3 based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
- 16.8.10 An application for judicial review shall be made within 60 days of the decision.

#### **Emergency Action by the Minister**

- 16.8.11 Where it appears to the Minister that there is an emergency which affects the well-being of Fish and Wildlife or their habitat, and where time does not permit Consultation with the Board, Sub-Committee or affected Council, the Minister may take such action as is necessary before Consulting with the Board, Sub-Committee or the affected Council.
- 16.8.12 Where emergency action has been taken pursuant to 16.8.11, the Minister shall within seven days inform the Board, Sub-Committee or Council and solicit their continuing advice. The Board, Sub-Committee or Council may recommend to the Minister that the emergency action be terminated pending their consideration of the issue.

- 16.8.13 Notwithstanding 16.3.2, Government may allow a catch of Salmon greater than the Total Allowable Catch in exceptional circumstances.

#### **Referral of Matters by the Minister**

- 16.8.14 The Minister may request that a Council, the Board or the Sub-Committee exercise a Council, Board or Sub-Committee power or responsibility under a Settlement Agreement, as appropriate, and the Council, the Board or the Sub-Committee shall comply with the request within such reasonable time as the Minister requires.

#### **16.9.0 Fish and Wildlife Harvests**

- 16.9.1 Each Yukon First Nation Final Agreement shall set out the manner in which the Total Allowable Harvest shall be shared between Yukon Indian People and other harvesters.
- 16.9.1.1 When opportunities to harvest Freshwater Fish or Wildlife are limited for Conservation, public health or public safety, the Total Allowable Harvest shall be allocated to give priority to the Subsistence needs of Yukon Indian People while providing for the reasonable needs of other harvesters.
- 16.9.1.2 The priority in 16.9.1.1 is subject to provisions set out in Yukon First Nation Final Agreements pursuant to 16.9.1 or 16.9.10 and to provisions negotiated subsequently pursuant to 16.9.13.
- 16.9.2 The Board, pursuant to 16.7.12.4, and the Council, pursuant to 16.6.10.1, may establish, modify or remove Total Allowable Harvests for Freshwater Fish or Wildlife populations from time to time in the Yukon but shall only do so if:
- 16.9.2.1 required for Conservation, public health or public safety;
- 16.9.2.2 required due to the inability of various Fish and Wildlife species and populations to meet sustainable yield requirements as determined by scientific research and surveys and the special knowledge of Yukon Indian People; or



16.9.2.3 required to achieve the goals and objectives identified by species and population management plans; and

only to the extent reasonably necessary to achieve those ends.

16.9.3 Where, in any year:

16.9.3.1 the maximum harvest allocation for a species of Wildlife negotiated for a Yukon First Nation pursuant to 16.9.1 or 16.9.13 is greater than that Yukon First Nation's Basic Needs Level or its needs, as the case may be; and

16.9.3.2 the maximum harvest allocation to another Yukon First Nation pursuant to its Yukon First Nation Final Agreement is less than that Yukon First Nation's Basic Needs Level or its needs, as the case may be, for that species of Wildlife,

Government, upon the request of the Yukon First Nation described in 16.9.3.1, shall allocate some or all of the maximum harvest allocation as determined by that Yukon First Nation which is surplus to the Basic Needs Level or needs of that Yukon First Nation to the Yukon First Nation described in 16.9.3.2 in the Traditional Territory of the Yukon First Nation described in 16.9.3.1 up to the Basic Needs Level or needs, as the case may be, of the Yukon First Nation described in 16.9.3.2.

16.9.4 The Board, pursuant to 16.7.12.4, or the Council, pursuant to 16.6.10.1, shall recommend to the Minister the allocation of that portion of the Total Allowable Harvest which is not allocated to a Yukon First Nation to satisfy its Basic Needs Level or adjusted Basic Needs Level.

#### **Basic Needs Levels**

16.9.5 Each Yukon First Nation Final Agreement shall set out Basic Needs Levels or special Harvesting opportunities for key Freshwater Fish and Wildlife species.

- 16.9.6 When determining a Basic Needs Level or special Harvesting opportunities for each Yukon First Nation, Government and Yukon First Nations may consider the following:
- 16.9.6.1 recent and current harvests of the species or population by Yukon Indian People enrolled under that Yukon First Nation Final Agreement;
  - 16.9.6.2 recent and current harvests within the Yukon First Nation's Traditional Territory by other harvesters;
  - 16.9.6.3 current personal consumption estimates of the species or population by Yukon Indian People enrolled under that Yukon First Nation Final Agreement for food;
  - 16.9.6.4 the ability of the species or population to satisfy the Harvesting needs of Yukon Indian People enrolled under that Yukon First Nation Final Agreement as well as other users; and
  - 16.9.6.5 such other factors as the parties may agree.
- 16.9.7 Government and a Yukon First Nation may agree to conduct a study to define more clearly the factors listed in 16.9.6.

#### **Adjusted Basic Needs Levels**

- 16.9.8 Once a Basic Needs Level has been set pursuant to a Yukon First Nation Final Agreement, the Board may, upon the recommendation of a Council or a Yukon First Nation, review and recommend to the Minister the adjustment of the Basic Needs Level. In reaching its decision about adjusting the Basic Needs Level, the Board shall, in addition to the factors listed in 16.9.6, take into consideration the following factors:
- 16.9.8.1 human population change within the Traditional Territory;
  - 16.9.8.2 changing patterns of consumption;
  - 16.9.8.3 the cultural and nutritional importance of Fish and Wildlife to Yukon Indian People;

- 16.9.8.4 the use and Harvesting of Fish and Wildlife for personal use by Yukon residents; and
- 16.9.8.5 the commercial consumptive and Non-Consumptive Use of Fish and Wildlife.
- 16.9.9 In any year the adjusted Basic Needs Level may vary upward or downward, but shall not fall below the Basic Needs Level established pursuant to a Yukon First Nation Final Agreement, unless the affected Yukon First Nation consents.
- 16.9.10 Yukon First Nation Final Agreements may provide for special Harvesting rights for Yukon Indian People for Freshwater Fish. The purpose of the special Harvesting rights shall be to maintain the priority for Yukon Indian People's food fish needs over other uses.
- 16.9.11 The special Harvesting rights for Freshwater Fish pursuant to 16.9.10 may include the designation of certain lakes as being primarily for food fishing by Yukon Indian People, or such other measures as the parties to a Yukon First Nation's Final Agreement may agree, in absence of any Basic Needs Level.
- 16.9.12 Where no special Harvesting rights for Freshwater Fish are negotiated pursuant to 16.9.10, Government shall ensure that the food Freshwater Fish needs of Yukon Indian People receive primary consideration in the allocation of Freshwater Fish resources.
- 16.9.13 Following a Yukon First Nation Final Agreement, a Yukon First Nation and Government may negotiate a Basic Needs Level for a species other than those species where Basic Needs Levels have already been negotiated.
- 16.9.14 Where a Basic Needs Level is established pursuant to 16.9.10 or 16.9.13, the provisions of 16.9.0 shall apply to the determination and allocation of the Total Allowable Harvest to Yukon First Nations and to other harvesters.
- 16.9.15 The Basic Needs Level established for a Yukon First Nation shall be without prejudice to the Basic Needs Level of any other Yukon First Nation.
- 16.9.16 In the event that the Total Allowable Harvest is less than a Basic Needs Level or an adjusted Basic Needs Level, Government, the Yukon First Nation, the Board and the affected Council shall endeavour to rehabilitate the population.

## **Edible Fish or Wildlife Product Usage**

- 16.9.17 Where the primary reason for Harvesting Wildlife is for purposes other than food, Government and Yukon First Nations shall explore methods of acquiring any edible meat which is a by-product of the harvest to assist in satisfying the needs of Yukon Indian People for food.

## **16.10.0 Allocation of Salmon Harvest**

### **Total Allowable Catch**

- 16.10.1 The Sub-Committee, pursuant to 16.7.17.12(b), may recommend to the Minister the establishment, modification or removal of the Total Allowable Catch for Salmon from time to time in a drainage basin, but shall do so only if required:
- 16.10.1.1 for Conservation, public health or public safety;
  - 16.10.1.2 due to the inability of various Salmon species and populations to meet sustainable yield requirements as determined by scientific research and surveys and the special knowledge of Yukon Indian People; or
  - 16.10.1.3 to achieve the goals and objectives identified for Salmon species and populations in Salmon Harvesting and management plans; and
- only to the extent reasonably necessary to achieve those ends.
- 16.10.2 The Sub-Committee, pursuant to 16.7.17.12(f), shall recommend to the Minister, for a drainage basin, the allocation of that portion of the Total Allowable Catch which remains after the basic needs allocations described in this chapter for Yukon First Nations have been made.

### **Basic Needs Allocation Considerations**

- 16.10.3 In negotiating a basic needs allocation, the affected Yukon First Nation and Government shall consider the following:
- 16.10.3.1 the historical uses and Harvesting patterns of Yukon Indian People and other aboriginal groups;

- 16.10.3.2 the Harvesting patterns of other residents of the Yukon;
- 16.10.3.3 changing patterns of consumption;
- 16.10.3.4 the statistics prepared by the Department of Fisheries and Oceans for the Indian food fishery within each drainage basin for the past five years;
- 16.10.3.5 the ability of Salmon stocks within a drainage basin to meet the demands of the Yukon First Nations whose Traditional Territories include that drainage basin; and
- 16.10.3.6 such other factors as the parties may agree.

**Basic Needs Allocation of Salmon Fishery to Yukon First Nations**

- 16.10.4 The total basic needs allocation for Yukon First Nations for each species of Salmon in the drainage basin of the Yukon River, and the allocation among the Yukon First Nations of that total basic needs allocation, is set out in Schedule A - Determination of Basic Needs Allocation for the Drainage Basin of the Yukon River, attached to this chapter.
- 16.10.5 The basic needs allocation among the Yukon First Nations of Salmon set out in Schedule A - Determination of Basic Needs Allocation for the Drainage Basin of the Yukon River, attached to this chapter, may be varied by agreement in writing of all affected Yukon First Nations and Government.
- 16.10.6 The basic needs allocation for the Champagne and Aishihik First Nations of each species of Salmon in the drainage basin of the Alsek River shall be set out in the Champagne and Aishihik First Nations Final Agreement.
- 16.10.7 The basic needs allocation for the Vuntut Gwitchin First Nation of each species of Salmon in the drainage basin of the Porcupine River shall be set out in the Vuntut Gwitchin First Nation Final Agreement.

- 16.10.8 Unless the affected Yukon First Nations otherwise agree, the basic needs allocation for a drainage basin shall have priority over all other fisheries in the allocation of the Total Allowable Catch. A basic needs allocation shall not be construed as a guarantee by Government that the allocation will actually be harvested by the Yukon First Nation.
- 16.10.9 Where the Total Allowable Catch is less than what is required to satisfy the basic needs allocations of Yukon First Nations within the Yukon River drainage basin, the Total Allowable Catch shall be distributed among the affected Yukon First Nations on a pro rata basis proportional to their share of the total basic needs allocation for that drainage basin.
- 16.10.10 Subject to 16.10.11, Government may adjust a Total Allowable Catch because of variations in the anticipated run size but only after Consultation with the Sub-Committee, and any such adjustment may be made in-season.
- 16.10.11 Where Government proposes to adjust the Total Allowable Catch under 16.10.10 and time does not permit Consultation with the Sub-Committee, Government may make the adjustment but it shall, within seven days, inform the Sub-Committee of the adjustment and solicit its continuing advice.
- 16.10.12 The Sub-Committee may recommend to the Minister that any adjustment made under 16.10.11 be varied or terminated pending the Sub-Committee's consideration of the issue.
- 16.10.13 Where:
- 16.10.13.1 a Total Allowable Catch is less than the total basic needs allocation in a season for the affected Yukon First Nations, and it is subsequently determined that the spawning escapement targets for Conservation were greater than was actually required for Conservation in that season; or

- 16.10.13.2 subject to an agreement entered into pursuant to 16.10.8, Government allocates Salmon to other fisheries which results in there being insufficient Salmon available to a Yukon First Nation to harvest its basic needs allocation for a drainage basin,

Government shall, in subsequent years, allocate additional Salmon to the affected Yukon First Nations, in proportion to their share of the total basic needs allocation, from any Salmon which are not required for Conservation for that drainage basin, so that, over a six year period, the Yukon First Nations are allocated, on average, their total basic needs allocation.

- 16.10.14 Where a downstream Yukon First Nation harvests Salmon in excess of its basic needs allocation with the result that an upstream Yukon First Nation does not have available to it sufficient Salmon to meet its basic needs allocation, the Sub-Committee may, in subsequent years, reallocate a portion of the basic needs allocation of the downstream Yukon First Nation to the upstream Yukon First Nation to compensate for the over-harvesting of the downstream Yukon First Nation.

**Allocation of Commercial Salmon Fishery to the Yukon First Nations**

- 16.10.15 In accordance with 16.10.16, upon ratification of the Umbrella Final Agreement, Government shall issue a number of new additional Yukon commercial Salmon fishing licences to Yukon First Nations whose Traditional Territories include part of the Yukon River drainage basin.
- 16.10.16 The number of licences to be issued pursuant to 16.10.15 shall be the number equivalent to 26 percent of the Yukon commercial Salmon fishing licences in effect for the Yukon River drainage basin on the day immediately preceding the date of ratification of the Umbrella Final Agreement.
- 16.10.16.1 Following ratification of the Umbrella Final Agreement, the Yukon First Nations of the Yukon River drainage basin shall notify Government how the licences to be issued pursuant to 16.10.15 are to be allocated between them.
- 16.10.16.2 Upon receipt of notification pursuant to 16.10.16.1, Government shall issue, without fee, the licences to the affected Yukon First Nations.

- 16.10.17 The licences issued pursuant to 16.10.15 are not transferable except to another Yukon First Nation whose Traditional Territory includes part of the Yukon River drainage basin.
- 16.10.18 The allocation of commercial Salmon fishing licences in the drainage basin of the Alsek River for the Champagne and Aishihik First Nations shall be set out in the Champagne and Aishihik First Nations Final Agreement.
- 16.10.19 The allocation of commercial Salmon fishing licences in the drainage basin of the Porcupine River for the Vuntut Gwitchin First Nation shall be set out in the Vuntut Gwitchin First Nation Final Agreement.
- 16.10.20 Nothing in a Settlement Agreement prevents a Yukon Indian Person or a Yukon First Nation from acquiring a commercial Salmon or commercial sport fishing licence through the normal regulatory process, including, where applicable, the payment of licence fees, and such licences shall not be considered to be part of the allocation allocated under 16.10.15 or 16.10.16.

#### **16.11.0 Trapline Management and Use**

- 16.11.1 Yukon First Nation Final Agreements shall set out the manner in which Government, Councils, the Board and Yukon First Nations participate in the regulation, management and Use of Furbearers, including the manner in which local bylaws approved by the Council will be implemented.

#### **General Guidelines for the Councils**

- 16.11.2 In establishing local criteria for the management and Use of Furbearers in accordance with 16.6.10.6 and 16.6.10.7, the Councils shall provide for:
- 16.11.2.1 the maintenance and enhancement of the Yukon's wild fur industry and the Conservation of the fur resource; and
  - 16.11.2.2 the maintenance of the integrity of the management system based upon individual trapline identity, including individual traplines within group trapping areas.



### **Trapline Allocation Formula**

- 16.11.3 Subject to 16.11.4, the overall allocation of traplines in each Yukon First Nation's Traditional Territory shall be approximately 70 percent held by Yukon Indian People and aboriginal people who are beneficiaries of Transboundary Agreements and approximately 30 percent held by other Yukon residents.
- 16.11.3.1 Subject to 16.11.3.2, 16.11.3.3 and 16.11.3.4, where the realization of the overall allocation in a Yukon First Nation's Traditional Territory pursuant to 16.11.3 would require that more traplines be allocated to Yukon Indian People, the acquisition of those additional traplines shall be completed within 25 years of the Effective Date of that Yukon First Nation's Final Agreement, unless the parties to the Yukon First Nation's Final Agreement otherwise agree.
- 16.11.3.2 Nothing in 16.11.3 shall be construed to require a person holding a trapline to sell or relinquish the trapline.
- 16.11.3.3 Nothing in 16.11.3 shall be construed to prevent a person holding a trapline, at the Effective Date of the Yukon First Nation Final Agreement of that Yukon First Nation in whose Traditional Territory the trapline is located, from transferring such trapline to a qualified member of the trapper's immediate family.
- 16.11.3.4 The Renewable Resources Council established for the Traditional Territory of a Yukon First Nation described in 16.11.3 shall establish additional criteria for the process by which the transition to the target set out in 16.11.3 is to be achieved, including transfers of traplines other than those pursuant to 16.11.3.3, which also may be permitted notwithstanding 16.11.3.1.
- 16.11.4 The Yukon First Nation Final Agreements for the Vuntut Gwitchin First Nation, the Champagne and Aishihik First Nations, the Teslin Tlingit Council, the Kluane First Nation, the Little Salmon/Carmacks First Nation and the Ross River Dena Council shall set out the overall allocation of traplines including their designation as Category 1 or Category 2 in those Yukon First Nations' Traditional Territories.

- 16.11.5 Except as provided in 16.11.4, where, in a Yukon First Nation's Traditional Territory, the overall percentage of traplines held by Yukon Indian People and aboriginal people who are beneficiaries of Transboundary Agreements is less than 70, that Yukon First Nation's Final Agreement shall set out the process by which the Yukon First Nation or a Yukon Indian Person enrolled under that Yukon First Nation's Final Agreement may acquire additional traplines in order to raise the overall percentage to 70.
- 16.11.6 Up to 70 percent of the traplines in the Traditional Territory of a Yukon First Nation may be designated as Category 1 Traplines.
- 16.11.7 Category 1 Traplines shall be identified in a schedule to the Yukon First Nation's Final Agreement.
- 16.11.8 A trapline shall be designated Category 1 only with the written consent of the registered holder of that trapline.
- 16.11.9 Where less than 70 percent of the traplines within a Yukon First Nation's Traditional Territory are designated as Category 1 pursuant to 16.11.7, that Yukon First Nation's Final Agreement shall set out the process by which additional traplines may be designated as Category 1 Traplines.

#### **Trapline Allocation Process**

- 16.11.10 The Council shall regularly review the use of traplines and make recommendations to the Minister and Yukon First Nations on the assignment and reassignment of all new, vacant and under-utilized traplines pursuant to criteria that it establishes in accordance with 16.6.10.6 and 16.6.10.7, as follows:
- 16.11.10.1 new and vacant traplines shall be assigned with regard to criteria established by the Council and, to the extent possible, in accordance with 16.11.3;
- 16.11.10.2 additional criteria for the allocation of Category 1 Traplines may be established by a Yukon First Nation;
- 16.11.10.3 Category 1 Traplines may be temporarily assigned to other qualified Yukon residents, but such assignment shall not alter the Category 1 status of the trapline;

- 16.11.10.4 upon mutual agreement between the trappers concerned, and with the approval of the Council, the Yukon First Nation and the Minister, a trade may be arranged between Category 1 and Category 2 Traplines, with consequent re-designation of the status of the traplines;
- 16.11.10.5 the Yukon and the Council shall maintain a register of Category 1 and Category 2 Traplines, and the Yukon First Nation shall also maintain a register of Category 1 Traplines;
- 16.11.10.6 for Category 1 Traplines, the final allocation authority shall rest with the Yukon First Nation;
- 16.11.10.7 for Category 2 Traplines, the final allocation authority shall rest with the Minister;
- 16.11.10.8 a Yukon First Nation, Government or any affected Person may refer any dispute arising out of 16.11.10 to the dispute resolution process under 26.4.0; and
- 16.11.10.9 a Yukon First Nation Final Agreement may set out additional provisions for trading Category 1 and Category 2 Traplines.

#### **Interim Protection**

- 16.11.11 The parties to the Umbrella Final Agreement agree not to reduce the number of traplines currently held by Yukon Indian People in a Yukon First Nation's Traditional Territory until the Effective Date of the Yukon First Nation Final Agreement, provided the Yukon First Nation Final Agreement is ratified before May 29, 1994 or within 24 months of commencement of negotiation of that Yukon First Nation Final Agreement, whichever comes sooner.

#### **Trapline Development**

- 16.11.12 Subject to 6.6.0 and Laws of General Application, holders, other than Yukon Indian People, of traplines on Settlement Land may construct and occupy, on Settlement Land, such cabins as are necessary for the reasonable use and enjoyment of traplines, and may cut necessary trails on their traplines.

## **Compensation**

16.11.13 Yukon Indian People holding traplines whose Furbearer Harvesting opportunities will be diminished due to other resource development activities shall be compensated. Government shall establish a process following the Effective Date of the Yukon First Nation's Final Agreement for compensation, including designation of the Persons responsible for compensation.

16.1113.1 Nothing in 16.11.13 shall be construed to affect a Yukon Indian Person's right to compensation pursuant to Law before the process in 16.11.13 is established.

## **Government Access**

16.11.14 The designation of a trapline as Category 1 shall not restrict access by Government, in accordance with the provisions of the Umbrella Final Agreement, to that trapline to handle or collect animals for scientific or management reasons.

## **16.12.0 Access for Wildlife Harvesting on Settlement Land**

16.12.1 Any trapper whose trapline is wholly or partially on Settlement Land shall continue to exercise all rights as a trapper to his or her existing trapline without fee in accordance with Settlement Agreements and Laws of General Application and bylaws established by the Council.

16.12.2 Where a Category 2 Trapline lies wholly or in part on Settlement Land, the holder of the trapline shall elect either to:

16.12.2.1 retain that portion of the trapline on Settlement Land and exercise the rights pursuant to 16.12.1;

16.12.2.2 make the trapline available for exchange for another trapline; or

16.12.2.3 sell that portion of the trapline on Settlement Land to the affected Yukon First Nation.

- 16.12.3 Subject to 16.12.4 and 16.12.10, any Person has a right of access to enter and stay on Undeveloped Category B Settlement Land without the consent of the affected Yukon First Nation for the purpose of non-commercial Harvesting of Fish and Wildlife, if permitted by, and in accordance with Laws which apply to lands under the administration and control of the Commissioner.
- 16.12.4 The Minister of the Yukon responsible for Fish and Wildlife may, on his own initiative or at the request of a person or entity holding title to any Parcel which is or was Category B Settlement Land from which the Public Access for Wildlife Harvesting is reserved, release and discharge the Public Access for Wildlife Harvesting in respect of that Parcel in whole or in part on such terms and conditions as he decides.
- 16.12.5 Subject to Settlement Agreements, and notwithstanding a Yukon First Nation's ownership of the Bed of waterbodies set out in Chapter 5 – Tenure and Management of Settlement Lands, Government reserves the right to manage the fishery and to determine who may fish in those waterbodies which are adjacent to a Waterfront Right-of-Way.
- 16.12.6 Where a Yukon First Nation owns the Bed of a waterbody and there is no adjacent Waterfront Right-of-Way, that Yukon First Nation has an exclusive right to fish in that portion of the Bed of the waterbody owned by the Yukon First Nation unless otherwise agreed in Settlement Agreements.
- 16.12.7 An outfitting concession holder has the right of access to cross and to make necessary stops on Settlement Land to reach that outfitting area without the consent of the affected Yukon First Nation. The outfitting concession holder's right of access shall include the right to erect temporary camps and to graze horses incidental to such access, and to travel over the land with employees and clients and their equipment but shall not include the right to hunt thereon or to erect any permanent camp thereon.
- 16.12.8 Yukon First Nations whose final land selections may adversely affect existing outfitting concessions shall negotiate with the outfitting concession holder to determine terms and conditions that can be established to mitigate any impact on the outfitting concession.

- 16.12.9 To the extent the impact of final land selections on existing outfitting concessions cannot be resolved through negotiations between the outfitting concession holder and a Yukon First Nation, Government will compensate the outfitting concession holder for provable loss caused by the concession holder's inability to use Settlement Land within that concession area for outfitting. Provable loss shall be defined prior to the enactment of Settlement Legislation.
- 16.12.10 The rights of access provided by 16.12.3 and 16.12.7 are subject to the conditions that there shall be no:
- 16.12.10.1 significant damage to Settlement Land or to improvements on Settlement Land;
  - 16.12.10.2 mischief committed on Settlement Land;
  - 16.12.10.3 significant interference with the use and peaceful enjoyment of its Settlement Land by the Yukon First Nation;
  - 16.12.10.4 fee or charge payable to the affected Yukon First Nation other than that provided for in 16.5.1.13 and 16.5.1.14; or
  - 16.12.10.5 compensation for damage other than significant damage.
- 16.12.11 A Person who fails to comply with the conditions in 16.12.10.1, 16.12.10.2 or 16.12.10.3 shall be considered a trespasser with respect to that incident of access.

#### **16.13.0 Training and Education**

- 16.13.1 The parties to the Umbrella Final Agreement shall immediately investigate the needs, opportunities and structures required to ensure the adequate development of human resources needed by Yukon First Nations and other Yukon residents in renewable resources management and related economic development opportunities. The parties to the Umbrella Final Agreement agree to design the structures necessary to develop these human resources.

- 16.13.2 The Yukon shall provide trapper training programs, designed in collaboration with Yukon First Nations and the Councils, for Yukon Indian People as required from time to time, to encourage effective involvement of trappers in the management and development of traplines. Unless the Yukon otherwise decides, these training programs shall be provided for 10 years from the enactment of Settlement Legislation.
- 16.13.3 Government and Yukon First Nations shall cooperate in providing cross-cultural orientation and education for Board, Sub-Committee and Council members.
- 16.14.0 Implementation Provisions**
- 16.14.1 Canada shall recommend to Parliament the repeal of section 19(3) of the Yukon Act, R.S.C. 1985, c. Y-2 upon the enactment of Settlement Legislation.
- 16.15.0 Harvest Support Program**
- 16.15.1 The parties to the Umbrella Final Agreement agree to complete a feasibility study on the design of a Harvesting support program in the Yukon prior to Settlement Legislation.

## SCHEDULE A

### DETERMINATION OF BASIC NEEDS ALLOCATION FOR THE DRAINAGE BASIN OF THE YUKON RIVER

#### **1.0 Definitions**

In this schedule, the following definitions shall apply.

"Contractor" means the contractor appointed pursuant to 3.7.

"Minister" means the Minister of Fisheries and Oceans.

"Study" means the Yukon River Drainage Basin Salmon Harvest Study.

"Yukon First Nation" and "Yukon First Nations" have the same meaning as in Chapter 1 - Definitions, but do not include the Liard First Nation.

#### **2.0 General**

2.1 A basic needs allocation required by 16.10.4 shall be determined for each Yukon First Nation in accordance with 3.0 or 4.0.

2.2 Harvesting of Salmon pursuant to 16.4.2 by Yukon Indian People enrolled under the Yukon First Nation Final Agreement of a Yukon First Nation for which a basic needs allocation for Salmon has been established shall thereafter be limited to the basic needs allocation.

2.3 The provisions of 16.4.4.1 shall not apply to a Yukon First Nation until every Yukon First Nation's basic needs allocation has been established.

#### **3.0 Yukon River Drainage Basin Salmon Harvest Study**

3.1 The Council for Yukon Indians and the Minister shall jointly cause the Study to be carried out.

3.2 The purpose of the Study is to determine for each Yukon First Nation, the arithmetic average of the actual annual harvest of all species of Salmon in the drainage basin of the Yukon River by persons eligible to be enrolled as Yukon Indian People under the Final Agreement of a Yukon First Nation.



- 3.3 Subject to 3.4, the actual annual harvest for the study shall be determined during a five year period.
- 3.4 If, during the Study, the exercise of the right under 16.4.2 to harvest Salmon for Subsistence is actually limited pursuant to 16.3.3, the Contractor will, at the request of the Salmon Sub-Committee, eliminate from the Study the year in which the limitation occurs and the Study will be extended by one year, provided that the Study shall be completed in no more than eight years regardless of the number of years which are eliminated under this provision.
- 3.5 The Council for Yukon Indians and the Minister shall negotiate terms of reference for the Study within six months after the effective date of Settlement Legislation, failing which, either party may refer any outstanding matter to the dispute resolution process under 26.3.0.
- 3.6 The terms of reference for the Study shall include:
- 3.6.1 an initial one year period during which the Contractor is to assist the Yukon First Nations, Government and other interested parties to prepare for the Study so as to best ensure the accuracy of the Study;
  - 3.6.2 a requirement that the Contractor consider how to balance the change over time in the population of a Yukon First Nation with the factors listed in 16.10.3 in a better way than is reflected in 3.9.1;
  - 3.6.3 the other requirements of this schedule; and
  - 3.6.4 such other provisions as the parties may agree.
- 3.7 The Council for Yukon Indians and the Minister shall, within four months after completing the terms of reference, jointly appoint an independent contractor to carry out the Study, and, failing agreement, either party may refer the matter of the appointment to arbitration under 26.7.0.
- 3.8 An arbitrator acting pursuant to 3.7 shall appoint an independent contractor in accordance with the terms of reference and any bidding criteria the parties have agreed to.

3.9 The basic needs allocation for Salmon for a Yukon First Nation shall be determined in accordance with 3.9.1 or 3.9.2.

3.9.1 The basic needs allocation for Salmon for a Yukon First Nation shall be the greater of:

3.9.1.1 the arithmetic average of the actual annual harvest of Salmon for the years of the Study which are not eliminated pursuant to 3.4, plus 10 percent of that number; and

3.9.1.2 the percentage of the Total Allowable Catch which is equal to the basic needs allocation determined under 3.9.1.1 divided by the Total Allowable Catch arithmetically averaged over the years of the Study which are not eliminated pursuant to 3.4.

3.9.2 If, within three months of the release of the results of the Study, a Yukon First Nation so requests, the Minister and the Yukon First Nation will negotiate with a view to agreeing to make changes to 3.9.1 to balance better the change over time in population of the Yukon First Nation with the factors listed 16.10.3, and each party will consider in negotiations the recommendations of the contractor referred to in 3.6.2 and the factors described in 16.10.3.

3.9.3 If, after one year following the request to negotiate, the parties have not reached agreement, either party may, within a further 30 days, refer any outstanding matter to the dispute resolution process under 26.4.0.

3.9.4 If no agreement is reached under 3.9.2, no reference to dispute resolution is made under 3.9.3, or no agreement is reached within four months following a reference to dispute resolution, the basic needs allocation for the Yukon First Nation shall be as set out in 3.9.1.

#### **4.0 Negotiation of a Basic Needs Allocation**

4.1 The Minister and a Yukon First Nation, at the request of the Yukon First Nation, may, at any time before the end of the second year of the Study, negotiate a basic needs allocation for Salmon for that Yukon First Nation in accordance with 16.10.3, and thereafter the Study shall no longer include that Yukon First Nation.

## **CHAPTER 17 - FOREST RESOURCES**

### **17.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Forest Resources Management" includes forest conservation, reforestation and silviculture.

"Forest Resources" includes all flora in a wild state.

"Tree" means a single-stemmed perennial woody plant in a wild state.

### **17.2.0 General**

17.2.1 Subject to its Settlement Agreement, each Yukon First Nation shall own, manage, allocate and protect the Forest Resources on its Settlement Land.

17.2.2 The Minister shall Consult with the affected Renewable Resources Councils:

17.2.2.1 prior to establishing a new policy likely to significantly affect Forest Resources Management, allocation or forestry practices; and

17.2.2.2 prior to recommending to Parliament or the Legislative Assembly, as the case may be, Legislation concerning Forest Resources in the Yukon.

17.2.3 Nothing in this chapter applies to a National Park, a national park reserve or a national historic site administered by the Canadian Parks Service.

### **17.3.0 Forest Resources Harvesting**

17.3.1 Subject to this chapter:

17.3.1.1 Yukon Indian People shall have the right, during all seasons of the year, to harvest Forest Resources on Crown Land for purposes incidental to the exercise of their traditional pursuits of hunting, fishing, trapping and gathering;

- 17.3.1.2 each Yukon First Nation shall have the right, during all seasons of the year, to harvest Trees on Crown Land to a maximum of 500 cubic metres per calendar year to provide for non-commercial community purposes; and
- 17.3.1.3 Yukon Indian People shall have the right during all seasons of the year to harvest Forest Resources on Crown Land incidental to the practice of their traditional customs, culture and religion or for the traditional production of handicrafts and implements.
- 17.3.2 The rights provided by 17.3.1 are subject to Legislation enacted for reasons of Forest Resources Management, land management, Conservation, protection of the environment, and for public health and public safety.
- 17.3.3 For the purposes of 17.3.1, where Legislation referred to in 17.3.2 requires the issuance of a permit or licence, such permit or licence issued to a Yukon Indian Person or a Yukon First Nation, as the case may be, shall be without fee.
- 17.3.4 The rights set out in 17.3.1 do not apply to Crown Land:
  - 17.3.4.1 where the exercise of a right conflicts with the carrying out of any activity authorized by Government;
  - 17.3.4.2 that is subject to a surface lease or an agreement for sale, unless the Person, other than Government, holding such interest consents; or
  - 17.3.4.3 where access by the public is limited or prohibited.
- 17.3.5 Yukon Indian People may dispose of Trees harvested pursuant to 17.3.1 by way of gift, trade, barter or sale to other Yukon Indian People and to aboriginal people who are beneficiaries of Transboundary Agreements for the purposes described in 17.3.1.
- 17.3.6 Nothing in 17.3.1 shall be construed to:
  - 17.3.6.1 confer a right of ownership of Forest Resources upon a Yukon Indian Person or a Yukon First Nation;

- 17.3.6.2 guarantee the supply of Forest Resources to a Yukon Indian Person or Yukon First Nation;
- 17.3.6.3 preclude any Person from harvesting Forest Resources on Crown Land if permitted by and in accordance with Laws of General Application; or
- 17.3.6.4 entitle Yukon Indian People or a Yukon First Nation to any priority of use, or right to any compensation for damage to, or loss of, Forest Resources or harvesting opportunities on Crown Land.

#### **17.4.0 Renewable Resources Councils**

- 17.4.1 A Renewable Resources Council may make recommendations to the Minister and the affected Yukon First Nation with respect to Forest Resources Management on Settlement Land and Non-Settlement Land within that Yukon First Nation's Traditional Territory, including:
  - 17.4.1.1 the coordination of Forest Resources Management throughout the Yukon and in the relevant Traditional Territory;
  - 17.4.1.2 the need for, and the content and timing of, Forest Resources inventories and management plans;
  - 17.4.1.3 the policies, programs and Legislation which affect Forest Resources;
  - 17.4.1.4 proposals for Forest Resources research;
  - 17.4.1.5 forest fire suppression plans, including the human, technical and financial resources required, the definition and establishment of priority zones for fire fighting and procedures for the monitoring, periodic review and amendment of the plans;
  - 17.4.1.6 the allocation and use of Forest Resources for commercial purposes, including the terms and conditions of tenure, standards of operation, rates of harvest and means of access to Forest Resources;
  - 17.4.1.7 employment opportunities and training requirements in Forest Resources Management and commercial Forest Resources harvesting;

- 17.4.1.8 measures for the control of forest pests and diseases; and
- 17.4.1.9 other matters relating to the protection and management of Forest Resources.
- 17.4.2 Upon request by a Renewable Resources Council, the Minister and a Yukon First Nation may make available to the Council information in their possession with respect to the following:
  - 17.4.2.1 Forest Resources inventories;
  - 17.4.2.2 Forest Resources Management plans;
  - 17.4.2.3 proposals for Forest Resources research; or
  - 17.4.2.4 information on policies and programs related to Forest Resources.
- 17.4.3 Renewable Resources Councils shall cooperate with each other and with Yukon First Nations in matters of common concern and shall explore means of coordinating their activities.
- 17.4.4 Yukon First Nations shall cooperate with each other and with Renewable Resources Councils in matters of common concern and shall explore means of coordinating their activities.
- 17.4.5 A Renewable Resources Council may submit a budget for costs of carrying out its responsibilities under this chapter as a part of the budget submitted under 16.6.7.
- 17.5.0 Forest Resources Management Plans**
- 17.5.1 The Minister may prepare, approve and implement plans for Forest Resources Management on Non-Settlement Land.
- 17.5.2 A Yukon First Nation may prepare, approve and implement plans for Forest Resources Management on its Settlement Land.
- 17.5.3 After Consultation with Yukon First Nations, the Minister shall establish the order in which plans for Forest Resources Management are to be developed. The Minister shall Consult with Yukon First Nations prior to changing the order established.

- 17.5.4 The timing for the development of Forest Resources Management plans for each Yukon First Nation's Traditional Territory shall be addressed in Yukon First Nation Final Agreements.
- 17.5.5 When developing Forest Resources Management plans, the Minister and the Yukon First Nations shall take into account the following:
  - 17.5.5.1 the principle of sustainable use of Forest Resources;
  - 17.5.5.2 the principle of an integrated and balanced approach to the management and protection of interests in and uses of Forest Resources in a watershed;
  - 17.5.5.3 the principle of integrated Forest Resources Management on Settlement Land and Non-Settlement Land;
  - 17.5.5.4 the Forest Resources harvesting and management customs of Yukon Indian People;
  - 17.5.5.5 Fish and Wildlife Harvesting rights and management plans as set out in Chapter 16 - Fish and Wildlife;
  - 17.5.5.6 the knowledge and experience both of the Yukon Indian People and scientific communities in Forest Resources Management and use; and
  - 17.5.5.7 the principle of implementing the plan on a watershed basis.
- 17.5.6 A Forest Resources Management plan may provide guidelines in respect of:
  - 17.5.6.1 Forest Resources pest and disease control;
  - 17.5.6.2 standards for the use of Forest Resources;
  - 17.5.6.3 terms, conditions and areas for the harvesting of Forest Resources; and
  - 17.5.6.4 such other matters as the Yukon First Nation or the Minister may request.
- 17.5.7 The Minister shall consider whether a management inventory of Trees is necessary on Non-Settlement Land for the preparation of a Forest Resources Management plan.

- 17.5.8 If the Minister considers that a management inventory pursuant to 17.5.7 is necessary, the Minister shall complete the inventory before the development of the Forest Resources Management plan.
- 17.5.9 The Minister shall make available to each Yukon First Nation, before its final land selections are signed by the negotiators for its Yukon First Nation Final Agreement, all information that Government possesses concerning any inventory of Trees on land available for selection by that Yukon First Nation.
- 17.6.0 Relationship between Forest Resources Management and Other Processes**
- 17.6.1 A Forest Resources Management plan and a forest fire management plan shall be consistent with any approved regional land use plans.
- 17.6.2 Yukon First Nations and Government shall manage, allocate and protect their respective Forest Resources in a manner consistent with any recommendations approved in accordance with Chapter 12 - Development Assessment.
- 17.7.0 Forest Resources Pest and Disease Control**
- 17.7.1 Where Forest Resources are threatened by pests or diseases a Yukon First Nation shall Consult the Minister before applying or permitting the application of pesticides and herbicides on Settlement Land.
- 17.7.2 Where Forest Resources are threatened by pests or diseases the Minister shall Consult the affected Yukon First Nation before applying pesticides and herbicides on Crown Land within that Yukon First Nation's Traditional Territory.
- 17.7.3 Where a pest or disease affects Forest Resources on Settlement Land, Government and the affected Yukon First Nation shall take such action as they may agree to control the problem.
- 17.7.4 The application of pesticides or herbicides pursuant to 17.7.1, 17.7.2, and 17.7.3 shall be subject to Chapter 12 - Development Assessment.



17.7.5 In emergency situations, nothing in 17.7.1 to 17.7.4 shall be construed to restrict the Minister's authority to control pests or diseases which threaten Forest Resources.

#### **17.8.0 Forest Resources Protection**

17.8.1 Nothing in this chapter shall be construed to obligate Government to fight forest fires.

17.8.2 Government shall Consult with each Yukon First Nation on general priorities for fighting forest fires on that Yukon First Nation's Settlement Land and on adjacent Non-Settlement Land.

17.8.3 For a period of five years after the Effective Date of a Yukon First Nation Final Agreement, Government shall continue to fight forest fires on that Yukon First Nation's Settlement Land:

17.8.3.1 in accordance with Government policy from time to time for fighting forest fires on Crown Land in the Yukon; and

17.8.3.2 within the financial and other resources available to Government from time to time for fighting forest fires on Crown Land in the Yukon.

17.8.4 Government may take any action it considers necessary on Settlement Land for control or extinguishment of forest fires. Where practicable, Government shall give notice to the affected Yukon First Nation prior to taking such action.

#### **17.9.0 Third Party Interests**

17.9.1 Unless otherwise agreed in a Yukon First Nation Final Agreement, where Settlement Land includes land to which a timber harvesting agreement applies:

17.9.1.1 on the Effective Date of a Yukon First Nation's Final Agreement; or

17.9.1.2 where the land becomes Settlement Land after the Effective Date of a Yukon First Nation's Final Agreement, on the date the land is transferred to the Yukon First Nation,

the holder of the agreement shall be entitled to exercise all rights granted by or pursuant thereto as if the land had not become Settlement Land.

**17.10.0 Access**

17.10.1 The holder of a commercial timber permit on Settlement Land which was in existence on the Effective Date of a Yukon First Nation Final Agreement shall have a right of access to use Settlement Land covered by the permit for purposes related to the commercial timber permit without the consent of the affected Yukon First Nation. The terms and conditions of the right of access shall be determined by the Minister as if that land had not become Settlement Land.

17.10.2 The holder of a commercial timber permit shall have a right of access to cross and make necessary stops on Settlement Land to reach adjacent land or to reach Settlement Land subject to that commercial timber permit with the consent of the affected Yukon First Nation or, failing consent, with an order of the Surface Rights Board setting out terms and conditions.

17.10.3 Where Settlement Land is subject to a timber harvesting agreement, the holder of the timber harvesting agreement shall have a right of access, including the right to construct new access, to use Settlement Land subject to the timber harvesting agreement for purposes related to that agreement without the consent of the affected Yukon First Nation. The terms and conditions of any right of access shall be determined by the Minister as if that land had not become Settlement Land.

17.10.4 The holder of a timber harvesting agreement shall have a right of access to cross and make necessary stops on Settlement Land to reach the adjacent land or to reach Settlement Land subject to the timber harvesting agreement with the consent of the affected Yukon First Nation, or failing consent, with an order of the Surface Rights Board setting out terms and conditions.

17.10.5 The Surface Rights Board shall not make an order for access pursuant to 17.10.2 and 17.10.4, unless the holder seeking access satisfies the Board that:

17.10.5.1 such access is reasonably required; and

17.10.5.2 such access is not also practicable and reasonable across Crown Land.

**17.11.0 Application of Access Rights on Developed Settlement Land**

17.11.1 Subject to 17.11.2, the provisions of 17.10.0 do not apply to Developed Settlement Land.

17.11.2 Where a commercial timber permit or the timber harvesting agreement described in 17.10.0 is on a Parcel of Developed Settlement Land, any right of access provided under 17.10.0 applies on that Parcel.

**17.12.0 Conditions of Access**

17.12.1 The rights of access provided by 17.10.1 and 17.10.3 are subject to the conditions that there shall be no:

17.12.1.1 unnecessary damage to Settlement Land or significant damage to improvements on Settlement Land;

17.12.1.2 mischief committed on Settlement Land;

17.12.1.3 unnecessary interference with the use and peaceful enjoyment by the Yukon First Nation of its Settlement Land;

17.12.1.4 fee or charge payable to the affected Yukon First Nation; or

17.12.1.5 compensation for damage other than unnecessary damage to Settlement Land or significant damage to improvements on Settlement Land.

17.12.2 A person who fails to comply with the conditions in 17.12.1.1, 17.12.1.2 and 17.12.1.3 shall be considered a trespasser with respect to that incident of access.

**17.13.0 Other Access Rights**

- 17.13.1 Nothing in this chapter shall be construed to prevent the holder of a commercial timber permit or timber harvesting agreement from exercising a right of access pursuant to a Settlement Agreement.

**17.14.0 Economic Opportunities**

- 17.14.1 Government shall, at the time it publicly invites tenders for Forest Resources Management or forest protection within a Yukon First Nation's Traditional Territory, provide a written notice of the tender to that Yukon First Nation.
- 17.14.2 When negotiating a Yukon First Nation Final Agreement, the parties to that Yukon First Nation Final Agreement shall address economic opportunities for the Yukon First Nation in the management, protection and harvesting of Forest Resources.

## CHAPTER 18 - NON-RENEWABLE RESOURCES

### **18.1.0 Specified Substances**

- 18.1.1 A Yukon First Nation having a Specified Substances Right and a Person having a Mineral Right shall exercise those rights so far as practicable in a manner that the exercise of one right does not interfere with the exercise of the other right.
- 18.1.2 In the event that there is conflict between the exercise of the Specified Substances Right and the exercise of the Mineral Right, either the Yukon First Nation or the Person having the Mineral Right may apply to the Surface Rights Board.
- 18.1.3 Subject to 18.1.4, on an application under 18.1.2, the Surface Rights Board shall make an order specifying the terms and conditions of exercising either the Specified Substances Right or the Mineral Right or both so as to reduce such interference as far as practicable and, to the extent that interference with the exercise of the Specified Substances Right cannot be avoided, the Board shall give priority to the Person having the Mineral Right subject only to the payment of compensation to the Yukon First Nation for:
- 18.1.3.1 interference with the exercise of the Specified Substances Right; and
  - 18.1.3.2 loss of opportunity to exercise the Specified Substances Right, taking into account the associated production cost incurred by the Person holding the Mineral Right.
- 18.1.4 The holder of an Existing Mineral Right is not required to pay compensation under 18.1.3.
- 18.1.5 Subject to any order of the Surface Rights Board issued pursuant to 18.1.3, any Person exercising a Mineral Right has a right to take, use, encounter, damage or destroy any Specified Substance incidental to the exercise of that Mineral Right without compensation to a Yukon First Nation.
- 18.1.6 Subject to 18.1.7, any Specified Substance taken, used, encountered, damaged or destroyed under 18.1.5 shall become the property of the Person exercising the Mineral Right.

- 18.1.7 A Person who has acquired a property interest in any Specified Substance pursuant to 18.1.6 is deemed to have forfeited all his proprietary rights therein upon expiry or termination of his Mineral Right, and thereafter the Yukon First Nation shall have the right to take and use that Specified Substance without compensation to that Person.
- 18.2.0 Quarries**
- 18.2.1 In 18.2.0, the following definition shall apply.
- "Government" includes the agents and contractors of Government.
- 18.2.2 Government shall endeavour to identify any Quarry required for public purposes within each Yukon First Nation's Traditional Territory before the final land selections for that Yukon First Nation have been signed by the negotiators to that Yukon First Nation Final Agreement.
- 18.2.3 Where reasonable and practicable to do so, Government shall endeavour to locate any Quarry on Non-Settlement Land.
- 18.2.4 Where reasonable and practicable to do so, Government shall endeavour to eliminate the use of Quarry sites on Settlement Land by locating an alternative Quarry on Non-Settlement Land.
- 18.2.5 Where Government has not identified adequate Quarries for public purposes before the final land selections have been signed by the negotiators to that Yukon First Nation Final Agreement, that Yukon First Nation Final Agreement shall set out:
- 18.2.5.1 a time period for further identification of any Quarry on Settlement Land which, unless the parties to that Yukon First Nation Final Agreement otherwise agree, shall be two years from the Effective Date of the Yukon First Nation Final Agreement;
  - 18.2.5.2 the area within the Traditional Territory that is subject to further identification of Quarries on Settlement Land; and
  - 18.2.5.3 a process for Consultation with the Yukon First Nation in the further identification of Quarries on Settlement Land.

- 18.2.6 Unless otherwise provided in a Yukon First Nation Final Agreement, the following terms and conditions respecting a Quarry on Settlement Land identified under 18.2.2 or 18.2.5 shall apply:
- 18.2.6.1 Government shall have the exclusive use of Quarries and the right to take any Construction Materials required from such Quarries without the agreement of or compensation for such use or taking to the affected Yukon First Nation;
  - 18.2.6.2 Government shall use a Quarry in accordance with commonly accepted land use standards and shall endeavour to minimize interference with other uses of the Settlement Land;
  - 18.2.6.3 on ending its use of a Quarry, Government shall, if required by the affected Yukon First Nation, restore the Quarry in accordance with commonly accepted land use standards including, as appropriate, clean-up, drainage, erosion control, re-contouring, overburden replacement, and replanting of vegetation so that the Quarry will blend in with the local landscape and vegetation; and
  - 18.2.6.4 where a dispute arises over the use or restoration of a Quarry by Government, either Government or the affected Yukon First Nation may refer the dispute to the Surface Rights Board.
- 18.2.7 Where Government needs a Quarry and no suitable alternative Quarry is available on Non-Settlement Land in the surrounding area, a Yukon First Nation shall allow Government to establish and work a Quarry on Settlement Land which has not been identified under 18.2.2 or 18.2.5 and take Construction Materials required for public purposes from the Quarry under such terms and conditions as may be agreed by Government and the affected Yukon First Nation including compensation to that Yukon First Nation for the Construction Materials taken.
- 18.2.8 If the Yukon First Nation and Government are unable to reach agreement on Government's need for a Quarry or on whether there is a suitable alternative Quarry or on the terms and conditions for Government's use of a Quarry under 18.2.7 within 30 days of Government's request for the use of the Quarry, Government or the affected Yukon First Nation may refer the dispute to the Surface Rights Board.

- 18.2.9 When the Surface Rights Board determines that Government does not need a Quarry on Settlement Land or that a suitable alternative on Non-Settlement Land is available, the Surface Rights Board shall deny Government the right to work the Quarry.
- 18.2.10 Unless Government and the affected Yukon First Nation otherwise agree, Government may use Construction Materials removed from a Quarry on Settlement Land only for public purposes either within the Yukon or no further than 30 kilometres beyond the boundaries of the Yukon.
- 18.3.0 Access to Settlement Land for an Existing Mineral Right**
- 18.3.1 Subject to 6.6.0, any Person having an Existing Mineral Right, whether on Settlement Land or on Non-Settlement Land, has a right of access, for purposes of exercising that right, to cross and make necessary stops on Settlement Land without the consent of the affected Yukon First Nation if:
- 18.3.1.1 the access is of a casual and insignificant nature; or
- 18.3.1.2 the route used is generally recognized and was being used for access on a regular basis, whether year round or intermittently, either,
- (a) prior to public notification of the final land selection for that Yukon First Nation's Final Agreement, or
- (b) where the land becomes Settlement Land after the Effective Date of the Yukon First Nation Final Agreement, on the date the land became Settlement Land,
- on the condition that the exercise of the right of access does not result in a significant alteration being made of that route.
- 18.3.2 Any Person having an Existing Mineral Right on Settlement Land has a right of access, for purposes of exercising that right, to use that Parcel of Settlement Land without the consent of the affected Yukon First Nation, where provided by Laws of General Application.



- 18.3.3 Any Person having an Existing Mineral Right on Settlement Land who does not have a right of access to Settlement Land under 18.3.1, or a right of access included in the right described in 5.4.2, has a right of access, for purposes of exercising that right, to cross and make necessary stops on Settlement Land with the consent of the affected Yukon First Nation or failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.
- 18.3.4 Any Person having an Existing Mineral Right on Non-Settlement Land who does not have a right of access to Settlement Land under 18.3.1, or a right of access included in the right described in 5.4.2, has a right of access, for purposes of exercising that right, to cross and make necessary stops on Settlement Land with the consent of the affected Yukon First Nation or failing consent, with an order of the Surface Rights Board setting out the terms and conditions.
- 18.3.5 The Surface Rights Board shall not make an order under 18.3.4 unless the Person seeking access satisfies the Board that:
- 18.3.5.1 the access is reasonably required; and
  - 18.3.5.2 such access is not also practicable and reasonable across Crown Land.
- 18.3.6 If the Surface Rights Board makes an order under 18.3.3 or 18.3.4, it may order compensation as a term or condition of access only if a private owner of land in similar circumstances would be entitled to compensation, and then only to the same extent.
- 18.4.0 Access to Settlement Land for a New Mineral Right**
- 18.4.1 Subject to 6.6.0, any Person having a New Mineral Right on Category B or Fee Simple Settlement Land or on Non-Settlement Land has a right of access, for purposes of exercising that New Mineral Right, to cross and make necessary stops on Settlement Land without the consent of the affected Yukon First Nation if:
- 18.4.1.1 the access is of a casual and insignificant nature; or
  - 18.4.1.2 the route used is generally recognized and was being used for access on a regular basis, whether year round or intermittently, either,
    - (a) prior to public notification of the final land selection for that Yukon First Nation's Final Agreement, or

(b) where the land becomes Settlement Land after the Effective Date of the Yukon First Nation Final Agreement, on the date the land became Settlement Land,

on the condition that the exercise of the right of access does not result in a significant alteration being made of that route.

18.4.2 Subject to 6.6.0, any Person having a New Mineral Right on Category B or Fee Simple Settlement Land has a right of access, for purposes of exercising that New Mineral Right, to use that Parcel of Settlement Land without the consent of the affected Yukon First Nation if the exercise of the right of access does not require the use of heavy equipment or methods more disruptive or damaging to the land than hand labour methods.

18.4.3 Any Person having a New Mineral Right on Category B or Fee Simple Settlement Land who does not have a right of access under 18.4.1 or 18.4.2, or a right of access included in the right described in 5.4.2, has a right of access, for purposes of exercising that New Mineral Right, to use, cross and make necessary stops on Settlement Land with the consent of the affected Yukon First Nation or failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

18.4.4 Any Person having a New Mineral Right on Non-Settlement Land who does not have a right of access under 18.4.1, or a right of access included in a right described in 5.4.2, has a right of access, for purposes of exercising that New Mineral Right, to cross and make necessary stops on Settlement Land with the consent of the affected Yukon First Nation or failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

18.4.5 The Board shall not make an order pursuant to 18.4.4 unless the Person seeking access satisfies the Board that:

18.4.5.1 the access is reasonably required; and

18.4.5.2 the access is not also practicable and reasonable across Crown Land.

**18.5.0      Application of Access Rights on Developed Settlement Land**

18.5.1      Subject to 18.5.2, the provisions of 18.3.0 and 18.4.0 do not apply to Developed Settlement Land.

18.5.2      Where the Mineral Right described in 18.3.0 or 18.4.0 is on a Parcel of Developed Settlement Land, any right of access provided under 18.3.0 or 18.4.0 applies on that Parcel.

**18.6.0      Conditions of Access**

18.6.1      The rights of access provided by 18.3.1. and 18.4.1 are subject to the conditions that there shall be no:

18.6.1.1      significant damage to the Settlement Land or to improvements on the Settlement Land;

18.6.1.2      mischief committed on the Settlement Land;

18.6.1.3      significant interference with the use and peaceful enjoyment of the Settlement Land by the Yukon First Nation;

18.6.1.4      permanent structure erected on the Settlement Land;

18.6.1.5      fee or charge payable to the affected Yukon First Nation; or

18.6.1.6      compensation for damage other than for significant damage.

18.6.2      The rights of access provided by 18.3.2 and 18.4.2 are subject to the conditions that there shall be no:

18.6.2.1      unnecessary damage to the Settlement Land or significant damage to improvements on the Settlement Land;

18.6.2.2      mischief committed on the Settlement Land;

18.6.2.3      unnecessary interference with the use and peaceful enjoyment of the Settlement Land by the Yukon First Nation;

18.6.2.4      fee or charge payable to the affected Yukon First Nation; or

18.6.2.5 compensation for damage other than unnecessary damage to the Settlement Land or for significant damage to improvements on the Settlement Land.

18.6.3 A Person who fails to comply with the conditions in 18.6.1.1, 18.6.1.2, 18.6.1.3, 18.6.1.4, 18.6.2.1, 18.6.2.2 or 18.6.2.3 shall be considered a trespasser with respect to that incident of access.

**18.7.0 Other Access Rights**

18.7.1 Nothing in this chapter shall be construed to prevent the holder of a Mineral Right from exercising a right of access pursuant to a Settlement Agreement.

## CHAPTER 19 - FINANCIAL COMPENSATION

### 19.1.0 Definitions

In this chapter, the following definitions shall apply.

"1989 Aggregate Value" means the amount set out in 19.2.1.

"Adjusted Final Share" means with respect to each Yukon First Nation,

- (i) if the Yukon First Nation's Final Agreement is signed within two years of the effective date of Settlement Legislation, the greater of A or B, where:

A equals that Yukon First Nation's Unadjusted Final Share multiplied by P multiplied by Q, where,

P equals  $(1.04)^N$ , where N is the number of years from August 15, 1989 to the most recent anniversary of August 15 prior to the date of signature of that Yukon First Nation's Final Agreement, and

Q equals 1.00 plus (0.04 multiplied by F and divided by 365), where F is the number of days from the most recent anniversary of August 15 prior to the date of signature of that Yukon First Nation's Final Agreement, to the date of signature of that Yukon First Nation's Final Agreement, and

B equals that Yukon First Nation's Unadjusted Final Share multiplied by the value of the Final Domestic Demand Implicit Price Index for the latest quarter prior to the signature of that Yukon First Nation's Final Agreement, and divided by the value of the Final Domestic Demand Implicit Price Index for the third quarter of 1989;

- (ii) if the Yukon First Nation's Final Agreement is signed later than two years after the effective date of Settlement Legislation, the greater of C or D, where:

C equals that Yukon First Nation's Unadjusted Final Share multiplied by R multiplied by S, where,

R equals  $(1.04)^M$ , where M is the number of years from August 15, 1989 to the most recent anniversary of August 15 prior to the second anniversary of the effective date of Settlement Legislation, and

S equals 1.00 plus  $(0.04 \text{ multiplied by } G \text{ and divided by } 365)$ , where G is the number of days from the most recent anniversary of August 15 prior to the second anniversary of the effective date of Settlement Legislation, to the second anniversary of the effective date of Settlement Legislation, and

D equals that Yukon First Nation's Unadjusted Final Share multiplied by the value of the Final Domestic Demand Implicit Price Index for the third quarter of the year of the second anniversary of the effective date of Settlement Legislation, and divided by the value of the Final Domestic Demand Implicit Price Index for the third quarter of 1989.

For the purposes of this definition, the value of the Final Domestic Demand Implicit Price Index for any quarter shall be deemed to be the latest published value, at the time of the Yukon First Nation's Final Agreement, of the Final Domestic Demand Implicit price Index for that quarter.

"Average Discount Rate" means the arithmetic mean of the 15-year amortized Consolidated Revenue Fund Lending Rates for each month for the period commencing on the first day of the month of the signing of the First Yukon First Nation Final Agreement, and ending on the second anniversary of such day (25 months).

"Consolidated Revenue Fund Lending Rate" means the rate of that name established from time to time by the Department of Finance, Canada.

"First Yukon First Nation Final Agreement" means the Yukon First Nation Final Agreement signed between Canada, the Yukon and a Yukon First Nation on a date prior to which no Yukon First Nation Final Agreement has been signed.

"Loans" means:

the loans made by Canada to the Council for Yukon Indians or to the Yukon First Nations for the purpose of providing grants to Yukon Indian Elders pursuant to the 1984 Agreement-in-Principle with respect to providing Interim Benefits to Yukon Indian Elders, and any interest that has accrued thereon; and

loans made by Canada to the Council for Yukon Indians or a Yukon First Nation for the purpose of negotiating all agreements-in-principle and Settlement Agreements, and any interest that has accrued thereon.

"Unadjusted Final Share" means, for each Yukon First Nation, that Yukon First Nation's share of the 1989 Aggregate Value, determined according to Schedule A - Apportionment of the 1989 Aggregate Value attached to this chapter.

#### **19.2.0 Financial Compensation**

19.2.1 The 1989 Aggregate Value shall be \$242.673 million. This amount is the financial compensation for all comprehensive claims in Canada by Yukon Indian People whether they are settled or not at the time of a Yukon First Nation Final Agreement.

19.2.2 Upon the Effective Date, each Yukon First Nation shall be entitled to its Adjusted Final Share payable as in 19.3.0 and 19.4.0.

#### **19.3.0 Schedule of Payments Prior to the Determination of the Average Discount Rate**

19.3.1 For each Yukon First Nation which signs a Yukon First Nation Final Agreement prior to the determination of the Average Discount Rate, a preliminary schedule of payments shall be appended to its Yukon First Nation Final Agreement and shall be calculated by Canada as follows:

- 19.3.1.1 the schedule shall consist of 15 consecutive equal annual payments which shall have a present value on the date of the signature of the Yukon First Nation Final Agreement equal to the Adjusted Final Share;
  - 19.3.1.2 the first payment of the schedule shall be on the date of the signature of the Yukon First Nation Final Agreement;
  - 19.3.1.3 following the first payment, there shall be 14 consecutive equal annual payments on the anniversary dates of the signature of the Yukon First Nation Final Agreement;
  - 19.3.1.4 for purposes of computing the present value of the payments to a Yukon First Nation under the preliminary schedule of payments, the discount rate shall be the arithmetic mean of the 15-year amortized Consolidated Revenue Fund Lending Rates for each month starting the month of the signature of the First Yukon First Nation Final Agreement and ending the month prior to the signature of that Yukon First Nation Final Agreement, or if that rate is not available, the latest available rate; and
  - 19.3.1.5 for purposes of computing the present value of the payments in the preliminary schedule of the First Yukon First Nation Final Agreement, the discount rate shall be the 15-year amortized Consolidated Revenue Fund Lending Rate for the month prior to the signature of that Yukon First Nation Final Agreement or if that rate is not available, the latest available rate.
- 19.3.2 For each Yukon First Nation to which 19.3.1 applies:
- 19.3.2.1 subject to 19.3.2.3 and 19.3.2.4, Canada shall make the first payment on the Effective Date, and the amount of the payment shall be as established in 19.3.1 adjusted from the date of signature of the Yukon First Nation Final Agreement, to the date of payment by using the rate, compounded annually, calculated in 19.3.1.4 or 19.3.1.5, as the case may be;



- 19.3.2.2 following the first payment and until the second anniversary of the date of signature of the First Yukon First Nation Final Agreement, Canada shall make the subsequent yearly payments at the dates and in the amounts set out in the preliminary schedule of payments for that Yukon First Nation;
- 19.3.2.3 a Yukon First Nation Final Agreement may provide for an advance on the first payment to be made to the Yukon First Nation on the date of signature of the Yukon First Nation's Final Agreement; and
- 19.3.2.4 where an advance payment has been made pursuant to 19.3.2.3, Canada shall pay any balance of the first payment to the Yukon First Nation adjusted from the date of signature of the Yukon First Nation Final Agreement, to the date of payment by using the rate, compounded annually, calculated in 19.3.1.4 or 19.3.1.5, as the case may be.
- 19.3.3 For each Yukon First Nation to which 19.3.1 applies, Canada shall make its annual payments after the second anniversary of the signature of the First Yukon First Nation Final Agreement in accordance with a final schedule of payments to be calculated by Canada in the following manner.
- 19.3.3.1 An interim schedule shall be calculated as follows:
- (a) the schedule shall consist of 15 consecutive equal annual payments commencing on the date of the signature of that Yukon First Nation's Final Agreement; and
  - (b) the payments in the schedule shall have a present value on the date of signature of the Yukon First Nation Final Agreement equal to the Adjusted Final Share, calculated using the Average Discount Rate.
- 19.3.3.2 If payments calculated under the interim schedule are greater than the corresponding payments in the preliminary schedule of payments, the final schedule of payments shall be calculated by Canada as follows:
- (a) the schedule shall consist of 15 consecutive equal annual payments commencing on the date of the signature of that Yukon First Nation's Final Agreement;

- (b) from the first payment until the most recent payment made prior to the calculation of the final schedule of payments, each payment in the final schedule shall be identical to the corresponding payment in the preliminary schedule;
- (c) except for the next annual payment following the calculation of the final schedule of payments, each subsequent payment shall be identical to the corresponding payment of the interim schedule; and
- (d) the amount of the next annual payment following calculation of the final schedule of payments shall be such that the present value of all payments in the final schedule of payments, calculated in the same manner as described in 19.3.3.1(b), shall equal the present value described in 19.3.3.1(b).

19.3.3.3 If payments calculated under the interim schedule defined in 19.3.3.1 are less than the corresponding payments in the preliminary schedule of payments, the final schedule of payments shall be calculated by Canada as follows:

- (a) the final schedule shall consist of 15 consecutive equal annual payments commencing on the date of the signature of that Yukon First Nation's Final Agreement;
- (b) from the first payment until the most recent payment actually made prior to the calculation of the final schedule of payments, each payment in the final schedule shall be identical to the corresponding payment in the preliminary schedule;

- (c) the amount of the next payment following the calculation of the final schedule shall be calculated by reducing the amount of the corresponding payment of the interim schedule by the amount necessary to satisfy 19.3.3.3(e). If the result of this calculation is 50 percent or more than the payment under the preliminary schedule of payments, the payment shall be that amount. If the result of this calculation is less than 50 percent of the payment under the preliminary schedule of payments, the payment shall be 50 percent of the preliminary schedule of payments and in this case, the same operation shall apply to the calculation of the amount of the next following payment and to any further payments, if necessary, until the condition in 19.3.3.3(e) is satisfied;
- (d) each payment subsequent to the payments in 19.3.3.3(c) shall be identical to the corresponding payment in the interim schedule; and
- (e) the present value of all payments in the final schedule of payments, calculated in the same manner as described in 19.3.3.1(b), shall equal the present value described in 19.3.3.1(b).

**19.4.0      Schedule of Payments After the Determination of the Average Discount Rate**

19.4.1      For each Yukon First Nation which signs a Yukon First Nation Final Agreement on or after the determination of the Average Discount Rate, Canada shall, subject to 19.4.2, make its annual payment in accordance with a final schedule of payments to be appended to its Yukon First Nation Final Agreement and calculated by Canada as follows:

19.4.1.1      the schedule shall consist of 15 consecutive equal annual payments which shall have a present value on the date of the signature of the Yukon First Nation Final Agreement equal to the Adjusted Final Share;

- 19.4.1.2 the first payment of the schedule shall be on the date of the signature of the Yukon First Nation Final Agreement;
  - 19.4.1.3 following the first payment, there shall be 14 consecutive equal annual payments on the anniversary dates of the signature of the Yukon First Nation Final Agreement; and
  - 19.4.1.4 for purposes of computing the present value of the payments in the schedule, the discount rate shall be the Average Discount Rate.
- 19.4.2 For each Yukon First Nation to which 19.4.1 applies:
- 19.4.2.1 subject to 19.4.2.3 and 19.4.2.4, Canada shall make the first payment on the Effective Date, and the amount of the payment shall be as established in 19.4.1 adjusted from the date of signature of the Yukon First Nation Final Agreement to the date of payment by using the Average Discount Rate compounded annually;
  - 19.4.2.2 following the first payment Canada shall make payments on the dates and in the amounts provided in 19.4.1;
  - 19.4.2.3 a Yukon First Nation Final Agreement may provide for an advance on the first payment to be made on the date of signature of the Yukon First Nation's Final Agreement; and
  - 19.4.2.4 where an advance payment has been made pursuant to 19.4.2.3, Canada shall pay any balance of the first payment to the Yukon First Nation adjusted from the date of signature of the Yukon First Nation Final Agreement, to the date of payment by using the Average Discount Rate, compounded annually.
- 19.4.3 If Canada is unable to make the second or the following payments on the date of the anniversary of the signature of the Yukon First Nation Final Agreement pursuant to 19.4.2.2, the second or the following payments shall be adjusted as in 19.4.2.1 so as to satisfy 19.4.1.1.

#### **19.5.0      Loans**

- 19.5.1      The Loans made to the Council for Yukon Indians prior to the date of signature of the First Yukon First Nation Final Agreement shall be prorated among the Yukon First Nations on the basis of Schedule A - Apportionment of the 1989 Aggregate Value attached to this chapter.
- 19.5.2      The Yukon First Nation which signs the First Yukon First Nation Final Agreement shall be liable only for its share of the Loans described in 19.5.1 and for Loans made directly to it, if any.
- 19.5.3      Loans made at any time after the date of signature of the First Yukon First Nation Final Agreement, shall be apportioned equally among the remaining Yukon First Nations that have not signed a Yukon First Nation Final Agreement.
- 19.5.4      A Yukon First Nation which signs its Yukon First Nation Final Agreement shall be liable for the following, unless otherwise agreed by Canada and that Yukon First Nation:
  - 19.5.4.1      its share under 19.5.1;
  - 19.5.4.2      the aggregate of its shares apportioned under 19.5.3; and
  - 19.5.4.3      any Loans made directly to it.
- 19.5.5      Each Yukon First Nation Final Agreement shall set out the outstanding amount for which that Yukon First Nation is liable and shall establish a schedule of repayments commencing at the date of signature of that Yukon First Nation Final Agreement.
- 19.5.6      The schedule of repayments of amounts due and payable by a Yukon First Nation of Loans and interest due and payable pursuant to 19.5.7 shall provide that:
  - 19.5.6.1      the amount of the first payment shall be 20 percent of the amount set out in 19.5.6.5;
  - 19.5.6.2      the amount of the second payment shall be 40 percent of the amount set out in 19.5.6.5;
  - 19.5.6.3      the amount of the third payment shall be 60 percent of the amount set out in 19.5.6.5;

- 19.5.6.4 the amount of the fourth payment shall equal 80 percent of the amount set out in 19.5.6.5;
- 19.5.6.5 the amount of the fifth to the eleventh payment shall be equal;
- 19.5.6.6 the amount of the twelfth payment shall equal 80 percent of amount set out in 19.5.6.5;
- 19.5.6.7 the amount of the thirteenth payment shall equal 60 percent of the amount set out in 19.5.6.5;
- 19.5.6.8 the amount of the fourteenth payment shall equal 40 percent of the amount set out in 19.5.6.5; and
- 19.5.6.9 the amount of the fifteenth payment shall equal 20 percent of the amount set out in 19.5.6.5.
- 19.5.7 The unpaid balance of the amounts of the Loans due and payable by a Yukon First Nation shall bear interest at the rate of six percent per annum calculated annually and not in advance from the date of the signature of that Yukon First Nation Final Agreement to the date of final repayment.
- 19.5.8 Canada shall set off against and deduct from each payment to be made to a Yukon First Nation pursuant to this chapter, the amount of repayment of the Loans to be made by that Yukon First Nation in accordance with the schedule of repayments referred in 19.5.6.
- 19.6.0 Loans Against Adjusted Final Share**
- 19.6.1 At any time after three years from the effective date of Settlement Legislation, a Yukon First Nation may request a loan from Canada against the then unpaid balance of its Adjusted Final Share.
- 19.6.2 The Minister of Finance may, at his discretion, negotiate with the Yukon First Nation the amount and terms and conditions of the requested loan.
- 19.7.0 Advance Against Final Compensation**
- 19.7.1 The Council for Yukon Indians acknowledges the receipt of \$1 Million on May 29, 1989 as an advance on the 1988 Aggregate Value established in the 1989 Agreement-in-Principle.

19.7.2 The 1989 Aggregate Value set out in 19.2.1 was calculated by multiplying the 1988 Aggregate Value set out in the 1989 Agreement-in-Principle with the Council for Yukon Indians, by 1.0504, and subtracting from that amount \$1 Million multiplied by 1.02.

SCHEDULE A

APPORTIONMENT OF THE 1989 AGGREGATE VALUE

The apportionment of the 1989 Aggregate Value among the Yukon First Nations is:

Carcross/Tagish First Nation	\$ 17,687,553
Champagne and Aishihik First Nations	27,523,936
	21,811,002
Dawson First Nation	10,016,557
Kluane First Nation	21,396,353
Kwanlin Dun First Nation	24,598,361
Liard First Nation	15,568,239
Little Salmon/Carmacks First Nation	14,554,654
First Nation of Nacho Nyak Dun	14,347,330
Ross River Dena Council	16,604,860
Selkirk First Nation	12,274,087
Ta'an Kwach'an Council	18,655,066
Teslin Tlingit Council	19,161,859
Vuntut Gwitchin First Nation	<u>8,473,143</u>
White River First Nation	<u>\$242,673,000</u>
1989 Aggregate Value	



## **CHAPTER 20 - TAXATION**

### **20.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Income Tax Act" means the federal Income Tax Act, S.C. 1970-71-72, c. 63 and the Income Tax Act, R.S.Y. 1986, c. 90, except as provided in 20.2.1, 20.4.11 and 20.4.18, 20.4.21, 7 of Schedule A and 1 of Schedule B.

"Minister" means the Minister of National Revenue or the Minister's delegate.

### **20.2.0 General**

20.2.1 Words and phrases used in this chapter shall be deemed to have the same meaning as in the federal Income Tax Act, S.C. 1970-71-72, c. 63.

20.2.2 Unless otherwise provided herein, the provisions of the Income Tax Act shall apply to the provisions of this chapter with such modifications as the circumstances require.

20.2.3 Unless otherwise provided herein, no provision in this chapter shall be construed to limit the application of the Income Tax Act.

20.2.4 The Income Tax Act shall be amended as required to provide for the implementation and enforcement of the provisions of this chapter.

### **20.3.0 Instalments of Compensation and Other Payments**

20.3.1 There shall be no federal, territorial or municipal tax or other similar charges exigible in respect of, or reduction to the capital cost or adjusted cost base of property acquired as a result of, the receipt by a Yukon First Nation, or the receipt by a Settlement Corporation that may be reasonably considered to be such a receipt, of the following amounts:

20.3.1.1 any payments made pursuant to 19.3.0 and 19.4.0;

20.3.1.2 any payments for property tax assistance made pursuant to 20.7.0;

- 20.3.1.3 any payments made pursuant to 20.6.5 and 20.6.6;  
and
- 20.3.1.4 any loan against the Adjusted Final Share  
described in 19.6.0.
- 20.3.2 Except as provided in 20.4.11 to 20.4.17 inclusive,  
there shall be no federal, territorial or municipal tax  
or other similar charges exigible from a Settlement  
Corporation.
- 20.3.3 Any income earned on an amount described in 20.3.1  
received by a Person other than a Settlement  
Corporation shall be subject to federal, territorial or  
municipal tax or other similar charges as exigible  
under Laws of General Application.

#### **20.4.0 Settlement Corporations**

- 20.4.1 Each Yukon First Nation, alone or together with one or  
more other Yukon First Nations may create one or more  
Settlement Corporations, the main purpose of which  
shall be to carry out permitted activities and make  
permitted investments in accordance with this chapter,  
on condition that the Yukon First Nation complies with  
notification requirements set out from time to time by  
the Minister.

##### **Description**

- 20.4.2 A Settlement Corporation shall be a corporation without  
share capital, shall have a fiduciary obligation  
towards each member of the Yukon First Nation or  
Nations for which it was created, and shall be created  
and operated such that all or substantially all of its  
activities are for the general benefit of its members.
- 20.4.3 No contributions shall be made to a Settlement  
Corporation other than contributions made by:
  - 20.4.3.1 a Yukon First Nation for which the Settlement  
Corporation was created; and
  - 20.4.3.2 another Settlement Corporation created for the  
Yukon First Nation.

- 20.4.4 The aggregate amount of property contributed by a Yukon First Nation to one or more Settlement Corporations shall not exceed the sum of the payments received by the Yukon First Nation as described in 20.3.1.1 and shall be contributed to the Settlement Corporations no later than five years after receipt of the last payment referred to in 20.3.1.1 by the Yukon First Nation.

#### **Disbursement Requirements**

- 20.4.5 A Settlement Corporation shall be subject to the disbursement rules, including the disbursement excess rules, applicable to public foundations under the Income Tax Act with such modifications as are required. Such rules shall not apply to a Settlement Corporation or its disbursements during the 15 years commencing on the date of payment by Canada of the first payment referred to in 19.3.0 to any of the Yukon First Nations for which that Settlement Corporation was created.
- 20.4.6 For the purposes of 20.4.5, the amount of any transfer or loan by a Settlement Corporation on activities permitted under Schedule A - Permitted Activities for Settlement Corporations attached to this chapter shall be considered to be a gift made to a qualified donee.

#### **Qualified Investments**

- 20.4.7 Subject to 20.4.8 and 20.4.9, a Settlement Corporation shall restrict its investments to those:
- 20.4.7.1 made in the course of carrying on the activities permitted in Schedule A - Permitted Activities for Settlement Corporations attached to this chapter; or
  - 20.4.7.2 described in Schedule B - Qualified Investments attached to this chapter, as that Schedule is amended from time to time by agreement among the Yukon First Nation, the Minister of Finance of Canada and the Yukon.

- 20.4.8 Notwithstanding 20.4.9, no Settlement Corporation, either alone or as part of a group that includes another Settlement Corporation or a Yukon First Nation, shall control directly or indirectly, in any manner whatever, a corporation or other entity which carries on a business or whose primary activity is the making of investments, except to realize on a security held by the Settlement Corporation, in which case its controlling interest shall be disposed of within a reasonable period not to exceed two years.
- 20.4.9 A Settlement Corporation shall not invest in a partnership or a trust other than a small business investment limited partnership, a small business investment trust or a trust that is described in Schedule B - Qualified Investments attached to this chapter.
- 20.4.10 A Settlement Corporation may borrow money from time to time to finance the acquisition of qualified investments or otherwise to enable it to carry out its operations and may repay the borrowed money and interest thereon.

#### **Taxation of Settlement Corporations**

- 20.4.11 In addition to 20.4.17, a Settlement Corporation shall be liable to pay the tax under Part XI of the federal Income Tax Act, S.C. 1970-71-72, c. 63 as if that Part were stated to be specifically applicable to Settlement Corporations.
- 20.4.12 For the purposes of the Income Tax Act, the taxable income of a Settlement Corporation for a taxation year shall be deemed to be an amount equal to the aggregate of the following amounts:
- 20.4.12.1 the amount of any income derived during the year by the Settlement Corporation from property, including any gain from the disposition of the property, other than property that is a qualified investment described in Schedule B - Qualified Investments attached to this chapter or that is acquired in the course of a carrying on a permitted activity under Schedule A - Permitted Activities for Settlement Corporations attached to this chapter;

- 20.4.12.2 any amounts contributed or otherwise paid to the Settlement Corporation during that year, other than amounts,
- (a) received from a Yukon First Nation or another Settlement Corporation as described in 20.3.1 and that are within the limitations contained in 20.4.3, or
  - (b) included in computing taxable income for the year under 20.4.12.1 or 20.4.12.3; and
- 20.4.12.3 any amounts described in 20.4.13, 20.4.14, 20.4.19 and 20.4.22.
- 20.4.13 For the purposes of 20.4.12, if a Settlement Corporation makes a transfer or loan as part of an activity that is not permitted by Schedule A - Permitted Activities for Settlement Corporations attached to this chapter and such transfer or loan is made after the time referred to in 20.4.16, an amount equal to the amount of the transfer or the loan, divided by (1-A), shall be an amount referred to in 20.4.12.3 for the taxation year in which the loan or the transfer was made, where A is the aggregate of the federal and the Yukon tax rates applicable to public Corporations for that year before deducting the Yukon territorial abatement and including any surtaxes.
- 20.4.14 For the purposes of 20.4.12, if any time before the time referred to in 20.4.16, a Settlement Corporation makes a transfer or loan as part of an activity that is not permitted by Schedule A - Permitted Activities for Settlement Corporations attached to this chapter, where the Minister is satisfied having regard to all the circumstances that the Settlement Corporation did not take reasonable steps to correct the situation within the six-month period from receipt of written notice from the Minister of the non-permitted activity, the amount of the transfer or loan shall be an amount referred to in 20.4.12.3 in the taxation year of the Settlement Corporation in which the six-month period ends.
- 20.4.15 Where an activity referred to in 20.4.14 cannot, in the opinion of the Minister, be corrected, the Minister may waive the necessity of correction.

- 20.4.16 The time referred to in 20.4.13 or 20.4.14 shall be the later of five years after the date of signature of the Yukon First Nation Final Agreement of the Yukon First Nation for which it was created or the Yukon First Nation that made the first contribution to the Settlement Corporation, if created for more than one Yukon First Nation (in 20.4.16 the "relevant Yukon First Nation") and the time of receipt at which the sum of the payments received by the relevant Yukon First Nation equals at least one-third of the sum of the payments which it is entitled to receive pursuant to 19.3.0 and 19.4.0.
- 20.4.17 The tax payable for a taxation year by a Settlement Corporation upon its taxable income deemed by 20.4.12 shall be that percentage of its taxable income that is the maximum federal and Yukon territorial tax rate applicable to a public corporation for the year, plus any surtaxes to which public corporations may be liable for the year, and shall be determined without any deduction.

#### **Revocation of Settlement Corporation Status**

- 20.4.18 Where the Minister is of the opinion that a Settlement Corporation has failed to comply with any provision in this chapter, the Minister may notify the Settlement Corporation in writing and if the Settlement Corporation does not address the default to the satisfaction of the Minister within 100 days after the registered mailing of such notice, the Minister may revoke the status of the corporation as a Settlement Corporation subject to the same right of appeal as that applicable in respect of a revocation of the registration of a registered charity as set out in the federal Income Tax Act, S.C. 1970-71-72, c. 63.
- 20.4.19 If the Minister revokes the status of a Settlement Corporation, the taxation year of the Settlement Corporation that would otherwise have included the time of revocation shall be deemed to end immediately before that time and the Settlement Corporation shall be deemed to have disposed of all its assets immediately before the time that is immediately before that time for proceeds of disposition equal to the fair market value thereof at that time and to have reacquired such assets at that time at a cost equal to such fair market value and, for the purposes of 20.4.12, an amount equal to the amount by which such fair market value exceeds the aggregate of:

- 20.4.19.1 amounts that may reasonably be considered to have been otherwise included in computing the taxable income of the Settlement Corporation in a taxation year under 20.4.12; and
- 20.4.19.2 amounts that may reasonably be considered to be a portion of the total amount of the payments to the relevant Yukon First Nation described in 20.3.1.1 that have been contributed to the Settlement Corporation by a Yukon First Nation or is deemed to be so contributed by virtue of 20.4.24,
- shall be an amount deemed to be an amount referred to in 20.4.12.3 for the year.
- 20.4.20 For the purposes of 20.4.18, the distribution of any amount that may reasonably be considered to be payments referred to in 20.3.1 by a Settlement Corporation to Yukon Indian People shall not be considered as a cause for the revocation of the status of a Settlement Corporation.
- 20.4.21 Where a Settlement Corporation (in 20.4.21, the "transferor") has made a transfer or loan of any of its property, directly or indirectly or by means of a trust or by any other means whatever, to one or more Settlement Corporations or any other Person or partnership (in 20.4.21, the "transferee") and the Minister in the circumstances is satisfied that the main reason for the transfer or loan, but for this provision, is to avoid the payment of tax under 20.4.11 to 20.4.17, the transferor and the transferee shall be subject to the rules in section 160 of the federal Income Tax Act, S.C. 1970-71-72, c. 63 with such modifications as are required, provided that the Minister gives notice to the transferor and the transferee of the Minister's intention to apply this provision to a particular loan or transfer within two years of the end of the taxation year in which the particular transfer or loan was made.

## **Winding-Up**

- 20.4.22 Where a Settlement Corporation commences to be wound-up or liquidated or commences proceedings to be granted articles of continuance or similar corporate constitutional documents in a jurisdiction outside Canada, the taxation year of the Settlement Corporation that would otherwise have included the time of such commencement shall be deemed to end immediately before that time and the Settlement Corporation shall be deemed to have disposed of all its assets immediately before the time that is immediately before that time for proceeds of disposition equal to the fair market value thereof at that time and to have reacquired such assets immediately after the time at a cost equal to such fair market value and, for the purposes of 20.4.12, an amount equal to the amount by which such fair market value exceeds the aggregate of:
- 20.4.22.1 amounts that may reasonably be considered to have been otherwise included in computing the taxable income of the Settlement Corporation in a taxation year under 20.4.12;
  - 20.4.22.2 amounts that may reasonably be considered to be a portion of the total amount of the payments to the relevant Yukon First Nation described in 20.3.1.1 that have been contributed to the Settlement Corporation by a Yukon First Nation or are deemed to be so contributed by virtue of 20.4.24; and
  - 20.4.22.3 amounts paid or transferred on activities permitted under Schedule A - Permitted Activities for Settlement Corporations attached to this chapter by the Settlement Corporation within 24 months of the end of the year, shall be deemed to be an amount that is referred to in 20.4.12.3 for the year.



## **Taxation of Yukon Indian People or Yukon Indian Organizations**

- 20.4.23 There shall be no federal, territorial or municipal tax or other similar charge payable by a Yukon Indian Person, a Yukon First Nation, or any corporation or entity controlled, directly or indirectly in any manner whatever, by one or more Yukon Indian People or Yukon First Nations (collectively the recipient), on amounts disbursed or distributed to a recipient in accordance with Schedule A - Permitted Activities for Settlement Corporations attached to this chapter, except for 11 and 12(e) of that Schedule, other than amounts disbursed or distributed to a recipient as consideration for value provided to the Settlement Corporation by that recipient.
- 20.4.24 For the purposes of this chapter, where a particular property is contributed by one Settlement Corporation (the "transferor" in 20.4.24) to one or more Settlement Corporations (the "transferee" in 20.4.24) the transferor and the transferee shall each file a copy of a joint designation with their tax returns for the year of the transfer designating an amount, if any, in respect of the property so transferred. After the time of the transfer, in applying the provisions of this chapter including, without limiting 20.4.24 to the transferor or any transferee, the designated amount shall be deemed to be a contribution received by the transferee from a Yukon First Nation and shall reduce the amount that would otherwise be the amount of contributions received by the transferor from the Yukon First Nation, provided that the designated amount shall not exceed:
- 20.4.24.1 the amount of contributions received by the transferor at any time before the transfer of the particular property from the Yukon First Nation; and
- 20.4.24.2 the amount of any deemed contributions received by the transferor from the Yukon First Nation by virtue of 20.4.24.

## **20.5.0 Acquisition and Disposition of Real Property**

20.5.1 The cost of acquisition to a Yukon Indian Person or to a Yukon First Nation of any real property, including Settlement Land, other than depreciable property, transferred to it by Canada pursuant to a Settlement Agreement shall, for the purposes of the Income Tax Act, be deemed to be an amount equal to the fair market value thereof at the earlier of the time at which title to such land or property or both is registered in the name of the Yukon Indian Person or the Yukon First Nation and the time at which any right or interest in such property is acquired by the Yukon Indian Person or Yukon First Nation.

20.5.2 Where any real property, including Settlement Land, acquired under the Settlement Agreement, other than depreciable property, is disposed of by a Yukon First Nation (in 20.5.2, the "transferor"):

20.5.2.1 to a Yukon Indian Person (in 20.5.2 the "transferee"), and such real property has not previously been disposed of by any organization to another Yukon Indian Person; or

20.5.2.2 within 10 years of the transfer of Settlement Land to the Yukon First Nation, to another Yukon First Nation (the transferee),

the real property shall, for the purposes of the Income Tax Act, be deemed to have been disposed of by the transferor for proceeds of disposition equal to the greater of the amount that would otherwise be the proceeds of disposition and the adjusted cost base to the transferor of the real property at that time and to have been acquired by the transferee at a cost equal to the amount at which it was deemed to have been disposed.

### **Depreciable Property**

20.5.3 The rules of 20.5.2 shall apply to depreciable property with such modifications as the circumstances require.

- 20.5.4 In the event that Yukon First Nations have income from, or proceeds from the disposition of, any Canadian resource property relating to Settlement Land, an amount of such income or proceeds equal to the amount if any, by which \$20 million exceeds the aggregate of amounts of such income or proceeds previously received by any Yukon First Nation, shall be exempt from all federal, territorial or municipal tax or other similar charge or levy.

#### **Taxes on Transfer of Settlement Land**

- 20.5.5 No federal, territorial or local government tax, or other similar charges shall be payable in respect of the transfer or registration of the initial title to Fee Simple Settlement Land and the title to the Mines and Minerals of Category A Settlement Land.
- 20.5.6 Registration pursuant to the Land Titles Act, R.S.C. 1985, c. L-5, of the initial title of Category A and Category B Settlement Land and subsequent registrations of all Settlement Land shall be subject to the schedule of fees or taxes under such Act.

#### **20.6.0 Taxation Principles**

- 20.6.1 As of the third anniversary of the effective date of Settlement Legislation, section 87 of the Indian Act, R.S.C. 1985, c. I-5, shall not apply to:
- 20.6.1.1 the interest in a Reserve or surrendered land in the Yukon of any Indian, Yukon First Nation or Band;
  - 20.6.1.2 the personal property situated on a Reserve in the Yukon of any Indian, Yukon First Nation or Band; and
  - 20.6.1.3 the personal property situated on a Reserve outside the Yukon of a Yukon First Nation or a Yukon Indian Person resident in the Yukon, and the residency shall be defined in the regulations established pursuant to 20.6.3.

- 20.6.2 For all purposes of section 87 of the Indian Act, R.S.C. 1985, c. I-5, all settlement benefits and proceeds arising from the use and disposition of settlement benefits and any income of a Yukon Indian Person or a Yukon First Nation attributable directly or indirectly thereto shall be deemed not to be situated on a Reserve.
- 20.6.3 Settlement Legislation shall provide that Government, after Consultation with the Council for Yukon Indians, may make such amendments to statutes or regulations as are necessary for the purpose of giving effect to and enforcing provisions of 20.6.1 and 20.6.2.
- 20.6.4 The provisions of 20.6.0 shall not be construed to affect the authority of Parliament to amend or repeal section 87 of the Indian Act, R.S.C. 1985, c. I-5.
- 20.6.5 In 20.6.5, the Adjusted Value means the greater of the amount calculated in (a) or (b) multiplied by the value of the Final Domestic Demand Implicit Price Index for the latest quarter prior to the third anniversary of the effective date of Settlement Legislation and divided by the value of the Final Domestic Demand Implicit Price Index for the second quarter of 1990:
- (a) \$12.6 million multiplied by 1.03,
  - (b) \$12.6 million multiplied by the value of the Final Domestic Demand Implicit Price Index for the second quarter of 1990 and divided by the value of the Final Domestic Demand Implicit Price Index for the third quarter of 1989.
- 20.6.5.1 As soon as practicable after the third anniversary of the effective date of Settlement Legislation, Canada shall pay to each Yukon First Nation its share of the Adjusted Value prorated on the same basis as in Schedule A - Apportionment of the 1989 Aggregate Value attached to Chapter 19 - Financial Compensation.
- 20.6.6 In 20.6.6, the Adjusted Value means the greater of the amount calculated in (a) or (b) multiplied by the value of the Final Domestic Demand Implicit Price Index for the latest quarter prior to the third anniversary of the effective date of Settlement Legislation and divided by the value of the Final Domestic Demand Implicit Price Index for the second quarter of 1990:
- (a) \$13.97 million multiplied by 1.03,

- (b) \$13.97 million multiplied by the value of the Final Domestic Demand Implicit Price Index for the second quarter of 1990 and divided by the value of the Final Domestic Implicit Price Index for the third quarter of 1989.
- 20.6.6.1 Upon the third anniversary of the effective date of Settlement Legislation, each Yukon First Nation shall be entitled to its share of the Adjusted Value as established pursuant to 20.6.7.
- 20.6.6.2 Canada shall make its annual payment in accordance with a schedule of payments to be calculated by Canada as follows,
  - (a) the schedule shall consist of 10 consecutive equal annual payments which shall have a present value on the third anniversary of the effective date of Settlement Legislation equal to each Yukon First Nation's share of the Adjusted Value as determined pursuant to 20.6.6.1,
  - (b) the first payment shall be on the third anniversary of the effective date of Settlement Legislation,
  - (c) following the first payment, there shall be nine consecutive equal annual payments on the anniversary date of the effective date of Settlement Legislation, and
  - (d) for purposes of computing the present value of the payments in the schedule, the discount rate shall be the nine-year amortized Consolidated Revenue Fund Lending Rate for the month prior to the third anniversary of the effective date of Settlement Legislation.
- 20.6.6.3 Canada shall make the first payment to each Yukon First Nation as soon as practicable after the third anniversary of the effective date of Settlement Legislation. The amount of the first payment shall be as established in 20.6.6.2 adjusted from the third anniversary of the effective date of Settlement Legislation to the date of payment by using the rate described in 20.6.6.2 (d), compounded annually.

- 20.6.7 The Council for Yukon Indians and the Yukon First Nations have agreed that the annual amount described in 20.6.6.2 is to be allocated among the Yukon First Nations on the same basis as the apportionment of the 1989 Aggregate Value described in Schedule A - Apportionment of the 1989 Aggregate Value attached to Chapter 19 - Financial Compensation.
- 20.6.8 The moratorium on collection of taxes shall be rescinded on the third anniversary of the effective date of Settlement Legislation.
- 20.6.9 There shall be remission orders sponsored by the Minister of Indian Affairs and Northern Development and by the Yukon eliminating liability for all taxes not collected under the moratorium on collection of taxes, on the third anniversary of the effective date of Settlement Legislation.

#### **20.7.0 Property Tax Assistance**

- 20.7.1 During a 10-year transitional period beginning with the year following the year in which a Yukon First Nation Final Agreement is signed, Canada shall assist that Yukon First Nation with the payment of Property Taxes on any Settlement Land of that Yukon First Nation that are subject to Property Taxes while owned by that Yukon First Nation, net of any homeowner's grants. The assistance shall be 100 percent in year one, decreasing by 10 percentage points per year, to 10 percent in year 10. During such time, Canada shall have the same rights in respect of any assessment of taxes as a property owner.

#### **20.8.0 Administration and Enforcement**

##### **Responsible Department**

- 20.8.1 The Minister shall be responsible for the administration and enforcement of the provisions of this chapter that relate to income taxation and to that end the Minister may seek the advice of the Minister of Indian Affairs and Northern Development and the Office of Superintendent of Financial Institutions with respect to any matter arising out of these provisions.

## **Report**

- 20.8.2 Every Settlement Corporation shall produce every year a report in a form acceptable to the Minister from a public accountant who has audited the Settlement Corporation providing the Minister with the information required to administer the provisions of this chapter.

## SCHEDULE A

### PERMITTED ACTIVITIES FOR SETTLEMENT CORPORATIONS

1. For the purposes of this schedule a low income person is a person whose total family income is less than 75 percent of the average of all households in the Yukon as published in the last available Statistics Canada Census publication.

#### **Program Funding and Administration**

2. Supplementing existing federally or territorially funded programs relating to child care, adoption, alcohol and drug abuse, hospital construction or upgrading, medical, dental and mental health care, justice and similar programs and initiating, funding and administering new programs in those areas.

#### **Housing and Municipal and Local Taxes Assistance**

3. Funding or providing:
  - a) low interest or no interest mortgages or other loans to low income people to enable them to acquire freehold or leasehold interests in residential properties in the Yukon;
  - b) grants or forgivable loans to low income people to enable them to make down payments on conventional purchases of residential properties in the Yukon;
  - c) funds for the construction, operation and administration of subsidized cooperative or communal housing for low income people in the Yukon;
  - d) funds for the renovation or repair of residential properties owned or leased by low income people in the Yukon; and
  - e) financial assistance to low income people to enable them to pay municipal or other local taxes on improved Settlement Land.

#### **Municipal Services Upgrading**

4. Funding and administering municipal services and utilities upgrading programs for the benefit of Yukon Indian People.



## **Yukon First Nation Assistance**

5. Funding to Yukon First Nations for reasonable management and personnel costs.

## **Education and Training**

6. Funding and providing:
  - a) courses for non-native and native teachers and other instructors to enable them to conduct courses in native culture, language and similar areas;
  - b) training for Yukon Indian elders to enable them to participate in the delivery of native culture and language instructional programs;
  - c) native studies, culture and language programs for "school age" and adult people;
  - d) scholarships and reimbursement of other expenses for juvenile and adult Yukon Indian People to enable them to attend conventional educational institutions within and outside the Yukon;
  - e) vocational training and similar programs and facilities for youth and adults within and outside the Yukon;
  - f) native language and cultural education teaching and research programs; and
  - g) training for justices of the peace and other persons employed in connection with the implementation of an Indian justice program.

## **Economic Development**

7. Providing loans at a rate of interest not to exceed the prescribed rate in effect at the time of the making of the loan for the purpose of computing employee benefits from low interest loans, under the federal Income Tax Act, S.C. 1970-71-72, c. 63, loan guarantees or minority equity investment to Persons or entities, other than a corporation which is controlled, directly or indirectly, by one or more Settlement Corporations, engaged in the promotion of economic development opportunities for Yukon Indian People within the Yukon provided that:

- a) the Persons or entities are unable to borrow at normal commercial rates from ordinary commercial lenders or government financial programs without guarantees provided by the Settlement Corporation; and
- b) the Settlement Corporation may not acquire a controlling equity interest in an entity except by way of realization of its security in which case its controlling interest in the entity shall be disposed of within a reasonable period, not to exceed two years, of its acquisition.

### **Commercial Fishing**

- 8. Providing loans or equity to Persons or entities for the creation and operation of fish enhancement programs and a fishing enterprise for the benefit of Yukon Indian People provided that such loans meet the requirements set out in Article 7 of this Schedule.

### **Traditional Harvesting and Cultural Activities**

- 9. Providing loans or equity to Persons or entities for traditional harvesting and cultural activities including manufacture of handicrafts, arts and crafts, hunting, fishing and trapping and like pursuits provided that:
  - a) the Person or entities are unable to borrow at normal commercial rates from ordinary commercial lenders without guarantees provided by the Settlement Corporation;
  - b) the Settlement Corporation may not acquire a controlling equity interest in any entity except by way of realization of its security in which case its controlling interest in the entity shall be disposed of within one year of its acquisition; and
  - c) the Settlement Corporation does not contract to receive a rate of return on any such loan greater than the normal commercial rate of return for similar investments.

### **Recreational Lands and Facilities**

- 10. Funding and administering parks and other recreational facilities such as skating rinks, arenas, libraries, assembly halls and similar municipal facilities that are not for commercial use.

## **Elders Assistance Program**

11. Providing funding to confer benefits on Yukon Indian People who are at least 65 years of age at the Effective Date of the Yukon First Nation Final Agreement or who turn 65 within the five years following the Effective Date of the Yukon First Nation Final Agreement, provided such benefits do not exceed \$3000 per individual per year in 1988 dollars indexed in the same manner as Canada old age security.

## **Other Permitted Costs and Disbursements by a Settlement Corporation**

12.
  - a) settlement costs;
  - b) costs to implement the Settlement Agreements;
  - c) payment of reasonable administrative costs not to exceed five percent of the assets of the Settlement Corporation annually for the first five years after the effective date of Settlement Legislation and three percent per year thereafter;
  - d) transfers to other Settlement Corporations or to registered charities;
  - e) transfers to a low income Yukon Indian Person; and
  - f) within the first 15 years of a Yukon First Nation Final Agreement, capital distributions to Yukon Indian People not exceeding a total of \$3,000 per person in 1988 dollars to be indexed by the Consumer Price Index.
13. A Settlement Corporation may borrow money from time to time to carry out activities under this Schedule and may repay the borrowed money and interest thereon.

SCHEDULE B

QUALIFIED INVESTMENTS

1. Qualified investments for a trust governed by a Registered Retirement Savings Plan within the meaning of section 146 (1)(g) of the federal Income Tax Act, S.C. 1970-71-72, c. 63.

## **CHAPTER 21 - TAXATION OF SETTLEMENT LAND**

### **21.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Improved Rural Settlement Land" means Settlement Land outside a Community Boundary which is used for commercial purposes or which contains a permanent structure other than a cabin, camp, tent frame, cache, fish rack, or other like improvement which is used primarily for trapping or non-commercial Wildlife Harvesting or other traditional purposes.

"Unimproved Rural Settlement Land" means Settlement Land outside a Community Boundary other than Improved Rural Settlement Land.

"Government" means local, territorial or federal government, as the case may be.

"Yukon First Nation Corporation" means a corporation owned or controlled by a Yukon First Nation.

### **21.2.0 Application of Certain Laws**

21.2.1 Fee Simple Settlement Land shall be subject to Laws of General Application respecting Property Taxes, and Government and a Yukon First Nation may agree in a self-government agreement negotiated pursuant to Chapter 24 - Yukon Indian Self-Government that Fee Simple Settlement Land is also subject to the power of the Yukon First Nation to levy and collect fees for the use or occupation of Settlement Land, including property taxes.

21.2.2 Any residence of a Yukon Indian Person which is occupied as a personal residence on Fee Simple Settlement Land, and which otherwise meets the criteria, shall be deemed to be owner-occupied for the purposes of any homeowner's grant programs available from time to time, notwithstanding that title to the lands on which the residence is situated, is held by a Yukon First Nation or Yukon First Nation Corporation.

21.2.3 Unimproved Rural Settlement Land is exempt from Property Taxes.

21.2.4 Unless the parties to a Yukon First Nation Final Agreement otherwise agree, in the event a Community Boundary is altered so as to encompass a Parcel of Unimproved Rural Settlement Land, the tax exempt status of the Parcel shall not change until an agreement with respect to Local Government Services has been entered into for that Parcel between the Yukon First Nation and Government.

21.2.5 Except as otherwise provided in a Yukon First Nation Final Agreement or in a self-government agreement negotiated pursuant to Chapter 24 - Yukon Indian Self-Government, all other Settlement Land shall be subject to Laws of General Application respecting Property Taxes as if such lands were equivalent private property.

### **21.3.0 Arrears**

21.3.1 Notwithstanding Laws of General Application, Settlement Land held by a Yukon First Nation or any Yukon First Nation Corporation shall not be subject to attachment, seizure or sale for non-payment of Property Taxes. If Property Taxes owing on such Settlement Land remain unpaid for more than two years, the taxing authority may withdraw the delivery of any or all services to such Settlement Land until the outstanding Property Taxes have been paid.

21.3.2 Unless the parties to a Yukon First Nation Final Agreement otherwise agree, if the Property Taxes remain unpaid on Settlement Land six months after the withdrawal of any Local Government Services under 21.3.1, the taxing authority may attach the assets of that Yukon First Nation or any Yukon First Nation Corporation of that Yukon First Nation in addition to all other remedies including the filing of a lien or other instrument against such Settlement Land.

21.3.3 Unless the parties to a Yukon First Nation Final Agreement otherwise agree, if arrears under any agreement negotiated between the Yukon First Nation and Government for the provision of Local Government Services on Settlement Land remain unpaid for a period of six months, Government may withdraw any or all such services to such land until the outstanding arrears have been paid.

21.3.4 Unless the parties to a Yukon First Nation Final Agreement otherwise agree, if the arrears remain unpaid six months after the withdrawal of services under 21.3.3, Government may, without the consent of the Yukon First Nation or any Yukon First Nation Corporation, refer the matter to the dispute resolution process under 26.3.0.

**21.4.0 Determination of Rates**

21.4.1 Yukon First Nation Final Agreements shall provide for Yukon First Nations or any Yukon First Nation Corporation to pay similar rates for user-pay Local Government Services as are paid by property owners in the same or similar communities.

**21.5.0 Grants in Lieu**

21.5.1 Notwithstanding Chapter 2 - General Provisions, Canada shall cease to make grants in lieu of taxes to the Yukon or Yukon municipalities in relation to a parcel of Land Set Aside upon the cancellation of the notation in respect of that parcel pursuant to 4.2.0.

**21.6.0 Outstanding Property Taxes**

21.6.1 Prior to the ratification of a Yukon First Nation Final Agreement, Government and the Yukon First Nation shall resolve the issue of outstanding Property Taxes on Settlement Land.

21.6.2 Notwithstanding 21.6.1, Government shall not collect Property Taxes on Unimproved Rural Settlement Land outstanding at the Effective Date of a Yukon First Nation Final Agreement.





## **CHAPTER 22 - ECONOMIC DEVELOPMENT MEASURES**

### **22.1.0 Objectives**

22.1.1 The objectives of this chapter are as follows:

- 22.1.1.1 to provide Yukon Indian People with opportunities to participate in the Yukon economy;
- 22.1.1.2 to develop economic self-reliance for Yukon Indian People; and
- 22.1.1.3 to ensure that Yukon Indian People obtain economic benefits that flow directly from the Settlement Agreements.

### **22.2.0 General**

- 22.2.1 Nothing in a Settlement Agreement shall be construed to prevent a Yukon First Nation or a Yukon Indian Person from accessing and making use of economic development programs of general application to a Yukon resident and a Canadian citizen.
- 22.2.2 Except as otherwise agreed in a Yukon First Nation Final Agreement, nothing in this chapter shall be construed to impose any financial obligation on Government.
- 22.2.3 Measures identified in this chapter shall take into consideration Government fiscal responsibility and economic objectives.

### **22.3.0 Yukon First Nation Final Agreements**

- 22.3.1 As soon as practicable after the completion of the implementation plan for a Yukon First Nation Final Agreement, the parties to each Yukon First Nation Final Agreement shall develop a plan for Yukon Indian People to take advantage of economic development opportunities generated by that Settlement Agreement, which plan may be completed either before or after a Yukon First Nation Final Agreement.

- 22.3.2 The plans shall include recommendations to:
- 22.3.2.1 maximize opportunities for training and identify the experience that Yukon Indian People will require to take advantage of the economic opportunities generated by Settlement Agreements;
  - 22.3.2.2 maximize the use of available financial and technical resources; and
  - 22.3.2.3 identify the funding requirements and measures necessary to stimulate community level economic activity.
- 22.3.3 Each Yukon First Nation Final Agreement shall provide for specific economic measures which shall address:
- 22.3.3.1 access to employment and contract opportunities for Yukon Indian People generated as a direct consequence of the Settlement Agreements;
  - 22.3.3.2 access to employment and contract opportunities for Yukon Indian People generated as a direct consequence of the land and resource management regime set out in the Umbrella Final Agreement;
  - 22.3.3.3 participation by Yukon Indian People in harvesting activities; and
  - 22.3.3.4 the interest of Yukon First Nations in strategic investments in areas such as transportation, culture, communication, agriculture, renewable resource services, energy resources, industry and tourism.
- 22.3.4 Unless otherwise agreed in a Yukon First Nation Final Agreement, participation of Yukon Indian People in contracts identified pursuant to 22.3.3.1 and 22.3.3.2 shall be on a competitive basis.
- 22.3.5 Unless otherwise agreed in a Yukon First Nation Final Agreement, participation of Yukon Indian People in employment opportunities pursuant to 22.3.3.1 and 22.3.3.2 shall be based on appropriate qualifications or experience.
- 22.3.6 Each Yukon First Nation Final Agreement shall set out a process for allocation to that Yukon First Nation of licences, permits or grants for outfitting, commercial fishing other than salmon fishing, or other uses of natural resources.

22.3.7 The allocation of a licence, permit or grant provided under 22.3.6 shall be in accordance with the following conditions:

22.3.7.1 an existing licence, permit or grant shall continue in force for the present holder; and

22.3.7.2 renewals or assignments shall not be affected if the present holder is otherwise entitled to renew or assign.

#### **22.4.0 Employment Opportunities**

22.4.1 Where public service employment opportunities exist, Government shall assist in facilitating training and professional development of Yukon Indian People so that they will have access to such employment opportunities, with particular emphasis on increasing over a reasonable period of time the number of Yukon Indian People in technical, managerial and professional positions within the public service.

22.4.2 The Yukon and Yukon First Nations jointly shall explore ways to make apprenticeship programs more flexible, and to promote greater participation by Yukon Indian People in such programs, and shall examine other means of providing training for employment.

#### **22.5.0 Contracting**

22.5.1 The Yukon, at the time it publicly invites tenders, shall provide written notice to those Yukon First Nations who have indicated a wish to be advised of public tenders. Where bidders' lists or similar methods are used, the Yukon shall notify those Yukon First Nations who have indicated their interest in contracting and their ability to supply the tendered goods or services.

22.5.2 Any failure to provide notice pursuant to 22.5.1 shall not affect the public tender process or the contract awards resulting therefrom.

22.5.3 The Yukon shall provide information on a regular basis to Yukon First Nations on contracts awarded which were not advertised for public tender.

- 22.5.4 For contracts to be awarded in the Yukon, Canada undertakes to include on contract lists those qualified Yukon First Nations who have indicated an interest in contracting.
- 22.5.5 A Yukon First Nation may request information from a federal contracting authority on contracts awarded in the Yukon. Where such information is publicly available, the authority shall make all reasonable efforts to provide the requested information.
- 22.5.6 At the request of Yukon Indian People, Government shall provide information on how to access Government supply and services contracts and standing offers, and how to register on lists or inventories which Government uses for contracting.
- 22.5.7 Where practicable, provision of information in 22.5.6 shall be through seminars and workshops.
- 22.5.8 Government shall ensure that Yukon Indian People and Yukon First Nations' corporations are advised on how to access Government contracting, and that such individuals and businesses are given full opportunity to be registered on any lists or inventories Government uses for contracting purposes.
- 22.5.9 Any criteria for northern preference in contracting shall not exclude Yukon Indian People.
- 22.5.10 The Yukon shall, where reasonable, make best efforts to structure contracts, on both Settlement Land and Non-Settlement Land, so that they are of a size manageable by small businesses.
- 22.6.0 Public Corporations**
- 22.6.1 Subject to 22.2.0, Government shall assist Yukon Indian People to make investments in public corporations.
- 22.6.2 The Yukon shall ensure that the Board of Directors of the Yukon Development Corporation is generally representative of the Yukon population.
- 22.6.3 The Yukon shall make best efforts to structure the Board of Directors of the Yukon Energy Corporation so that at least one-quarter of the directors are Yukon Indian People.

- 22.6.4 Yukon First Nation corporations may participate with the Yukon Development Corporation in economic opportunities, and such participation may include, but is not limited to, joint ventures, partnerships and equity participation in subsidiary corporations.
- 22.6.5 Yukon First Nations shall be offered an opportunity to participate in all ventures where the Yukon Development Corporation seeks public participation in the acquisition or disposal of a business venture.
- 22.6.6 Government and Yukon First Nations shall establish, to the extent practicable, procedures for joint capital planning.

**22.7.0 Economic Planning**

- 22.7.1 The Yukon shall make best efforts to structure the Yukon Council on the Economy and the Environment so that at least one-quarter of its members are Yukon Indian People.
- 22.7.2 The Yukon shall ensure that at least one-quarter of the delegates invited to attend the annual review of the Yukon Economic Strategy are Yukon Indian People or their representatives.

**22.8.0 Financial Institutions**

- 22.8.1 The parties to the Umbrella Final Agreement shall examine the viability of a Yukon First Nation controlled trust company within two years of the enactment of Settlement Legislation.
- 22.8.2 If the concept of a Yukon First Nation trust company appears viable, Government shall take such measures as may be necessary and as are reasonable to enable Yukon First Nations to establish such an institution.

## **22.9.0 Implementation**

- 22.9.1 A full and complete review of the effectiveness of the provisions of this chapter shall be carried out in the year 2010 by Government and the Yukon First Nations. If, after the review, the parties to the Umbrella Final Agreement agree that the objectives of this chapter have been met, the obligations of Government under this chapter shall cease commencing January 1, 2011. So long as these obligations remain in effect, a like review shall be carried out every five years thereafter.

**23.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Crown Royalty" means any amount received by the Yukon, paid in money or in kind, in respect of a Resource produced by a Person from land where Government owns the Resource, but does not include any payment made for a service, for the creation of special purposes funds, for the issuance of a right or interest or for the granting of an approval or authorization, any payment required regardless of the ownership of the Resource, or any payment for incentives, less:

- (a) the reasonable costs incurred by the Yukon for the collection of the Crown Royalty; and
- (b) any deductions made by Canada from federal financial contributions to the Yukon by reason of the Yukon receiving revenues from a Resource.

"Resource" means Mines and Minerals, other than Specified Substances, found in, on or under the Yukon Territory.

"Yukon First Nation Royalty" means any sum which would be payable to the Yukon in respect of the production of a Resource on Category A Settlement Land as if that land were owned by Government, regardless of whether a Yukon First Nation actually receives a greater or lesser royalty when granting interests in a Resource on Category A Settlement Land, less the reasonable costs incurred by the Yukon First Nation for the collection of its royalty.

"Yukon Territory" means the Yukon Territory as defined in the Yukon Act, R.S.C. 1985, c. Y-2 as at December 15, 1988, notwithstanding any subsequent amendment to that Act.

### **23.2.0 Crown Royalty Sharing**

23.2.1 In the event that Canada transfers to the Yukon the authority to receive or to levy and collect royalties in respect of the production of a Resource, the following arrangements shall apply:

23.2.1.1 the Yukon shall, subject to 23.2.2, pay to the Yukon First Nations, annually, an amount equal to,

(a) 50 percent of the first two million dollars of any amount by which the Crown Royalty exceeds the Yukon First Nation Royalty, in respect of that year, and

(b) 10 percent of any additional amount by which the Crown Royalty exceeds the Yukon First Nation Royalty in respect of that year.

23.2.2 Subject to 23.2.5, the amount due to Yukon First Nations pursuant to 23.2.1 in any year shall not exceed the amount which, if distributed equally among all Yukon Indian People, would result in an average per capita income for Yukon Indian People equal to the Canadian average per capita income.

23.2.3 The Yukon shall Consult with a Yukon First Nation before granting a fee simple interest within that Yukon First Nation's Traditional Territory in any Resource.

23.2.4 The amounts due pursuant to 23.2.1 shall be prorated among Yukon First Nations on the same basis as Schedule A - Apportionment of the 1989 Aggregate Value, attached to Chapter 19 - Financial Compensation.

23.2.5 The amounts referred to in 23.2.4 shall, in each year, be payable only to those Yukon First Nations who have entered into a Yukon First Nation Final Agreement during or prior to that year. The amounts allocated to Yukon First Nations which have not entered into Yukon First Nation Final Agreements shall not be payable and shall remain vested in the Yukon.

23.2.6 In the event that, following payment, there is determined to have been an overpayment or underpayment to a Yukon First Nation in any year, such variance may be adjusted for in the payment in the following year.



- 23.2.7 While the parties to the Umbrella Final Agreement acknowledge that nothing in the Umbrella Final Agreement constitutes any commitment to shared management of the Resources between Government and Yukon First Nations, the Yukon shall Consult with Yukon First Nations before making changes to the fiscal regime which would change the Crown Royalty regime.
- 23.2.8 Any payments made by the Yukon to Yukon First Nations pursuant to 23.2.1 shall not be reimbursed to the Yukon, in whole or in part, by Canada.
- 23.3.0 Interim Provisions**
- 23.3.1 The parties to the Umbrella Final Agreement recognize that Canada and the Yukon are negotiating agreements with respect to the transfer of administration and management of Resources.
- 23.3.2 The Council for Yukon Indians may participate with the Yukon in the development of the Yukon's negotiating positions for negotiations pursuant to 23.3.1.
- 23.3.3 It is acknowledged the Yukon will represent the interests of all Yukon residents in negotiations pursuant to 23.3.1.
- 23.3.4 Any agreement as a result of negotiations pursuant to 23.3.1 shall be consistent with this chapter.



## CHAPTER 24 - YUKON INDIAN SELF-GOVERNMENT

### **24.1.0 General**

- 24.1.1 Government shall enter into negotiations with each Yukon First Nation which so requests with a view to concluding self-government agreements appropriate to the circumstances of the affected Yukon First Nation.
- 24.1.2 Subject to negotiation of an agreement pursuant to 24.1.1 and in conformity with the Constitution of Canada, the powers of a Yukon First Nation may include the powers to:
  - 24.1.2.1 enact laws and regulations of a local nature for the good government of its Settlement Land and the inhabitants of such land, and for the general welfare and development of the Yukon First Nation;
  - 24.1.2.2 develop and administer programs in areas of Yukon First Nation responsibility;
  - 24.1.2.3 appoint representatives to boards, councils, commissions and committees as provided for in the Settlement Agreements;
  - 24.1.2.4 allocate, administer and manage Settlement Land;
  - 24.1.2.5 contract with Persons or governments;
  - 24.1.2.6 form corporations and other legal entities;
  - 24.1.2.7 borrow money; and
  - 24.1.2.8 levy and collect fees for the use or occupation of Settlement Land including property taxes.
- 24.1.3 Self-government agreements shall not affect:
  - 24.1.3.1 the rights of Yukon Indian People as Canadian citizens; and
  - 24.1.3.2 unless otherwise provided pursuant to a self-government agreement or legislation enacted thereunder, their entitlement to all of the services, benefits and protections of other citizens applicable from time to time.

## **24.2.0 Subjects for Negotiation**

24.2.1 Negotiations respecting a self-government agreement for a Yukon First Nation may include the following subjects:

- 24.2.1.1 the Yukon First Nation constitution;
- 24.2.1.2 the Yukon First Nation's community infrastructure, public works, government services and Local Government Services;
- 24.2.1.3 community development and social programs;
- 24.2.1.4 education and training;
- 24.2.1.5 communications;
- 24.2.1.6 culture and aboriginal languages;
- 24.2.1.7 spiritual beliefs and practices;
- 24.2.1.8 health services;
- 24.2.1.9 personnel administration;
- 24.2.1.10 civil and family matters;
- 24.2.1.11 subject to federal tax Law, the raising of revenue for local purposes including direct taxation;
- 24.2.1.12 economic development;
- 24.2.1.13 the administration of justice and the maintenance of law and order;
- 24.2.1.14 relations with Canada, the Yukon and local governments;
- 24.2.1.15 financial transfer arrangements;
- 24.2.1.16 an implementation plan; and
- 24.2.1.17 all matters ancillary to the foregoing, or as may be otherwise agreed.

### **24.3.0 Devolution**

- 24.3.1 Government and a Yukon First Nation may negotiate the devolution of programs and services associated with the responsibilities of the Yukon First Nation as agreed in negotiations over matters enumerated in 24.2.1.
- 24.3.2 For greater certainty, pursuant to 24.2.1, Government and the Yukon First Nation may negotiate the devolution of programs and services dealing with the following:
- 24.3.2.1 Yukon First Nation authority for the design, delivery and management of Indian language and cultural curriculum;
  - 24.3.2.2 Yukon First Nation authority for the design, delivery and administration of tribal justice; and
  - 24.3.2.3 the division and sharing of Yukon First Nation and Government responsibility for the design, delivery and administration of programs relating to,

### **Education**

- (a) Indian student counselling,
- (b) cross cultural teacher/administrator orientation,
- (c) composition of teaching staff,
- (d) early childhood, special, and adult education curriculum,
- (e) kindergarten through grade 12 curriculum,
- (f) the evaluation of teachers, administrators and other employees,

### **Health and Social Services**

- (g) family and child welfare, including custom adoption,
- (h) substance abuse programs,
- (i) juvenile offender programs,
- (j) child development programs,

- (k) programs for the mentally, physically, emotionally or socially disabled,
- (l) other health and social services that the parties may agree to from time to time,

#### **Justice**

- (m) policing and enforcement of law,
- (n) corrections,
- (o) probation services,
- (p) community conflict resolution,

#### **Employment Opportunities**

- (q) increased employment opportunities for Yukon Indian People; and

24.3.2.4 such other programs and services as the parties may agree.

#### **24.4.0 Participation**

24.4.1 The parties to the Umbrella Final Agreement may negotiate guaranteed representation for Yukon First Nations on government commissions, councils, boards and committees in the Yukon established to deal with the following matters:

- 24.4.1.1 education;
- 24.4.1.2 health and social services;
- 24.4.1.3 justice and law enforcement; and
- 24.4.1.4 other matters as may be agreed.

#### **24.5.0 Yukon First Nation Constitutions**

24.5.1 Negotiations regarding a Yukon First Nation constitution may include the following:

- 24.5.1.1 composition, structure and powers of the Yukon First Nation government institutions;

- 24.5.1.2 membership;
- 24.5.1.3 election procedures;
- 24.5.1.4 meeting procedures;
- 24.5.1.5 financial management procedures;
- 24.5.1.6 composition and powers of all committees;
- 24.5.1.7 the rights of individual members of a Yukon First Nation with respect to the powers of the Yukon First Nation government institutions;
- 24.5.1.8 amending procedures;
- 24.5.1.9 internal management of the Yukon First Nation, including regional or district management structures; and
- 24.5.1.10 use, occupation and disposition of the Yukon First Nation's Settlement Land and resources.

#### **24.6.0 Financial Transfer Arrangements**

- 24.6.1 The intent of any financial transfer arrangement negotiated in accordance with 24.2.1.15 shall be to:
  - 24.6.1.1 specify a method for determining levels of Government financial transfers to the Yukon First Nation in question;
  - 24.6.1.2 specify obligations of all parties, including minimum program delivery standards for programs to be delivered by the Yukon First Nation; and
  - 24.6.1.3 specify accountability requirements with respect to transferred funds.
- 24.6.2 Such financial transfer arrangements shall address requirements for contributions from the Government towards the funding of Yukon First Nation institutions and programs.
- 24.6.3 Financial transfer arrangements may provide for the transfer of funds through a block-funding mechanism.
- 24.6.4 Financial transfer arrangements may be re-negotiable every five years.

#### **24.7.0 Regional or District Structures**

24.7.1 A Yukon First Nation, Canada, the Yukon and Yukon municipalities, may develop common administrative or planning structures within a community, region or district of the Yukon and these structures shall:

24.7.1.1 remain under the control of all Yukon residents within that district; and

24.7.1.2 include direct representation by the affected Yukon First Nations within that district.

#### **24.8.0 Status of Yukon First Nations under the Income Tax Act**

24.8.1 Agreements negotiated pursuant to 24.1.1 shall include provisions respecting the status of a Yukon First Nation as a municipality or public body performing the functions of government or a municipal corporation under the Income Tax Act, S.C. 1970-71-72, c. 63.

24.8.2 Unless the parties otherwise agree, an entity described in 24.8.1 shall be restricted by its enabling authority to the provision of government or other public services and, in particular, it shall not engage in commercial activities nor control any entity that carries on a commercial activity or is engaged in making investments.

#### **24.9.0 Legislation**

24.9.1 The parties to the Umbrella Final Agreement shall negotiate guidelines for drafting Legislation to bring into effect agreements negotiated pursuant to 24.1.1.

24.9.2 Subject to 24.9.1, the Yukon shall recommend to its Legislative Assembly, Legislation separate from the Settlement Legislation to bring into effect those agreements negotiated pursuant to 24.1.1 for which the Yukon has legislative authority.

24.9.3 Subject to 24.9.1, Canada shall recommend to Parliament Legislation separate from the Settlement Legislation to bring into effect those agreements negotiated pursuant to 24.1.1 for which Canada has legislative authority.



#### **24.10.0 Amendment**

- 24.10.1 Government shall consult with affected Yukon First Nations before recommending to Parliament or the Yukon Legislative Assembly, as the case may be, Legislation to amend or repeal Legislation enacted to give effect to those agreements negotiated pursuant to 24.1.1.
- 24.10.2 The manner of consultation in 24.10.1 shall be set out in each self-government agreement.
- 24.10.3 Yukon First Nations constitutions may be amended only by internal amending formulae or by amendment to the self-government Legislation.

#### **24.11.0 Process**

- 24.11.1 Prior to commencing substantive negotiations on self-government agreements, the parties to such negotiations shall agree on:
  - 24.11.1.1 the order in which the matters to be negotiated are to be addressed;
  - 24.11.1.2 the time frame within which negotiations will take place, which shall be concurrent with time frames established for the negotiation of Yukon First Nation Final Agreements; and
  - 24.11.1.3 such other matters as may be necessary or desirable to ensure that negotiations proceed in a logical and efficient manner.
- 24.11.2 Funding for negotiations shall be according to federal policy for self-government negotiations.

#### **24.12.0 Protection**

- 24.12.1 Agreements entered into pursuant to this chapter and any Legislation enacted to implement such agreements shall not be construed to be treaty rights within the meaning of section 35 of the Constitution Act, 1982.
- 24.12.2 Nothing in this chapter or in the Settlement Agreements shall preclude Yukon First Nations, if agreed to by the Yukon First Nations and Canada, from acquiring constitutional protection for self-government as provided in future constitutional amendments.

- 24.12.3 Any amendments to this chapter related to the constitutional protection for self-government in whole or in part shall be by agreement of Canada and the Yukon First Nations.
- 24.12.4 Nothing in 24.12.1, 24.12.2 or 24.12.3 shall be construed to affect the interpretation of aboriginal rights within the meaning of sections 25 or 35 of the Constitution Act, 1982.

## **CHAPTER 25 - TRANSBOUNDARY AGREEMENTS**

### **25.1.0 General**

- 25.1.1 Government, the Council for Yukon Indians and the affected Yukon First Nations shall cooperate in negotiating Transboundary Agreements.
- 25.1.2 Government, the Council for Yukon Indians and the affected Yukon First Nations shall endeavour to secure the cooperation of the Government of British Columbia, the Government of the Northwest Territories and transboundary aboriginal groups in negotiating Transboundary Agreements.

### **25.2.0 Transboundary Negotiations**

- 25.2.1 Government, the Council for Yukon Indians and Yukon First Nations whose Traditional Territories are affected by a transboundary aboriginal claim shall work together in respect of each transboundary aboriginal claim to negotiate a Transboundary Agreement.
- 25.2.2 Government, the Council for Yukon Indians and the affected Yukon First Nations shall make best efforts to settle the transboundary aboriginal claims of Yukon Indian People in the Northwest Territories and British Columbia based upon reciprocity for traditional use and occupancy.
- 25.2.3 Canada shall make adequate resources available for Yukon First Nations to negotiate Transboundary Agreements in accordance with federal comprehensive claims funding policies.
- 25.2.4 The negotiations shall be based on traditional use and occupancy.

### **25.3.0 Internal Relations**

- 25.3.1 Nothing in this chapter shall preclude a Yukon First Nation and a transboundary claimant group who are parties to a Transboundary Agreement from making agreements in respect of the sharing of their lands, resources and benefits or from developing their own forms of internal relations.

- 25.3.2 Transboundary claimant participation in land and resources management in the Yukon shall be provided for in Transboundary Agreements.
- 25.4.0 Amendment**
- 25.4.1 Except where expressly provided otherwise in a Transboundary Agreement, that Transboundary Agreement may only be amended with the consent of all parties to that Transboundary Agreement.
- 25.5.0 Yukon First Nation Final Agreements and Transboundary Agreements Conflicts**
- 25.5.1 For the purposes of 25.5.0, "Subsequent Transboundary Agreement" means:
- 25.5.1.1 a Transboundary Agreement entered into after the ratification of the Umbrella Final Agreement; and
  - 25.5.1.2 any amendment, after ratification of the Umbrella Final Agreement, to a Transboundary Agreement entered into prior to ratification of the Umbrella Final Agreement.
- 25.5.2 A Yukon First Nation Final Agreement shall contain provisions which, to the satisfaction of the parties to that Yukon First Nation Final Agreement:
- 25.5.2.1 resolve any inconsistencies or conflicts between that Yukon First Nation Final Agreement and any Subsequent Transboundary Agreement then in effect which has application in the Traditional Territory of the Yukon First Nation; and
  - 25.5.2.2 allow for the resolution of any inconsistencies or conflicts between that Yukon First Nation Final Agreement and a Subsequent Transboundary Agreement not then in effect but which, when in effect, might have application in the Traditional Territory of the Yukon First Nation.
- 25.5.3 Canada shall not agree in a Subsequent Transboundary Agreement to provisions:
- 25.5.3.1 which resolve conflicts or inconsistencies between that Subsequent Transboundary Agreement and a Yukon First Nation Final Agreement; or

- 25.5.3.2 which allow for the resolution of inconsistencies or conflicts between that Subsequent Transboundary Agreement and any Yukon First Nation Final Agreement not then in effect but which, when in effect, might have application in the same area of the Yukon as the Subsequent Transboundary Agreement,

without the consent of the Yukon First Nation in whose Traditional Territory the Subsequent Transboundary Agreement has, or, when in effect, might have application, and the consent of the Yukon.

- 25.5.4 The Yukon shall not agree in a Subsequent Transboundary Agreement to provisions:

- 25.5.4.1 which resolve conflicts or inconsistencies between that Subsequent Transboundary Agreement and a Yukon First Nation Final Agreement; or

- 25.5.4.2 which allow for the resolution of inconsistencies or conflicts between that Subsequent Transboundary Agreement and any Yukon First Nation Final Agreement not then in effect but which, when in effect, might have application in the same area of the Yukon as the Subsequent Transboundary Agreement,

without the consent of the Yukon First Nation in whose Traditional Territory the Subsequent Transboundary Agreement has, or, when in effect, might have application, and the consent of Canada.

- 25.5.5 Canada shall not agree to any provision in a Subsequent Transboundary Agreement which primarily affects a matter within the jurisdiction of the Yukon without the consent of the Yukon.



## **CHAPTER 26 - DISPUTE RESOLUTION**

### **26.1.0 Objectives**

26.1.1 The objectives of this chapter are as follows:

- 26.1.1.1 to establish a comprehensive dispute resolution process for resolving disputes which arise out of the interpretation, administration or implementation of Settlement Agreements or Settlement Legislation; and
- 26.1.1.2 to facilitate the out-of-court resolution of disputes under 26.1.1, in a non-adversarial and informal atmosphere.

### **26.2.0 Definitions**

In this chapter, the following definitions shall apply.

"Board" means the Dispute Resolution Board established pursuant to 26.5.1.

"Panel" means the Dispute Resolution Panel appointed pursuant to 26.5.3.

### **26.3.0 Specific Disputes**

26.3.1 A party to a Settlement Agreement may refer any of the following matters to mediation under 26.6.0:

- 26.3.1.1 any matter which the Umbrella Final Agreement refers to the dispute resolution process;
- 26.3.1.2 any matter which a Settlement Agreement, a Yukon First Nation self-government agreement or any other agreement between the parties to a Yukon First Nation Final Agreement refers to the dispute resolution process; and
- 26.3.1.3 any other matter which at any time all parties to a Settlement Agreement agree should be referred to the dispute resolution process whether or not related to a Settlement Agreement.

- 26.3.2 Each party to a Settlement Agreement has a right to be a party to a dispute described in 26.3.1 arising out of that Settlement Agreement.
- 26.3.3 Subject to 26.8.0, no party to a Settlement Agreement may apply to any court for relief in respect of any dispute which may be referred to mediation under 26.3.1 except for an application for interim or interlocutory relief where the Board has failed to appoint a mediator under 26.6.2 or an arbitrator under 26.7.2 within 60 days of application by any party to the dispute.
- 26.3.4 Any Person whose interests, in the opinion of the mediator, will be adversely affected by a dispute referred to mediation under 26.3.1 has a right to participate in the mediation on such terms as the mediator may establish.
- 26.3.5 A dispute described in 26.3.1 which is not resolved by mediation under 26.6.0 may be referred to arbitration under 26.7.0 by any party to the dispute.

#### **26.4.0 Other Disputes**

- 26.4.1 A party to a Settlement Agreement may refer any of the following matters to mediation under 26.6.0:
- 26.4.1.1 any matter which the Umbrella Final Agreement refers to mediation under the dispute resolution process;
  - 26.4.1.2 any matter which a Settlement Agreement, a Yukon First Nation self-government agreement or any other agreement between the parties to a Yukon First Nation Final Agreement refers to mediation under the dispute resolution process;
  - 26.4.1.3 any matter which at any time all the parties to a Settlement Agreement agree should be referred to mediation under the dispute resolution process, whether or not related to a Settlement Agreement;
  - 26.4.1.4 any matter which a board listed in 2.12.0 established pursuant to a Settlement Agreement, acting pursuant to its rules and procedures directs to mediation under the dispute resolution process; and



- 26.4.1.5 any matter arising out of the interpretation administration, or implementation of that Settlement Agreement, with the consent of all the other parties to that Settlement Agreement, whether the dispute is among the parties to the Settlement Agreement or not.
- 26.4.2 Each party to a Settlement Agreement has a right to be a party to any dispute referred to mediation under 26.6.0.
- 26.4.3 The parties to a dispute described in 26.4.1 which is not resolved by mediation under 26.6.0 may agree to refer the dispute to arbitration under 26.7.0.
- 26.4.4 Any Person whose interests, in the opinion of the arbitrator, will be adversely affected by a dispute referred to arbitration under 26.3.5 or 26.4.3 has a right to participate in the arbitration on such terms as the arbitrator may establish.
- 26.4.5 Subject to 26.8.0, no party to a Settlement Agreement may apply to any court for relief in respect of any dispute which has been referred to arbitration under 26.3.5 or 26.4.3, except for an application for interim or interlocutory relief where the Board has failed to appoint an arbitrator under 26.7.2 within 60 days of an application by any party to the dispute.
- 26.5.0 Dispute Resolution Board and Panel**
- 26.5.1 A Dispute Resolution Board shall be established comprising three persons appointed jointly by the Council for Yukon Indians and Government in accordance with 26.5.2.
- 26.5.2 If, upon 30 days notice by a party to the Umbrella Final Agreement of its readiness to establish the Board, the parties to the Umbrella Final Agreement do not jointly agree on the membership of the Board:
- 26.5.2.1 the Council for Yukon Indians shall appoint one member;
- 26.5.2.2 Canada and the Yukon shall jointly appoint one member;
- 26.5.2.3 the members appointed pursuant to 26.5.2.1 and 26.5.2.2 shall select jointly the third member who shall be the chairperson of the Board; and

- 26.5.2.4 if a chairperson has not been selected pursuant to 26.5.2.3 within 60 days of the appointment of the members pursuant to 26.5.2.1 and 26.5.2.2, the Senior Judge of the Supreme Court of the Yukon, or another Judge designated by the Senior Judge, shall appoint the chairperson upon application by one of the parties to the Umbrella Final Agreement.
- 26.5.3 The Board may, if, in its opinion, circumstances warrant, appoint persons including its own members to form the Dispute Resolution Panel provided that the total number of persons on the Panel, including members of the Board, does not exceed 15.
- 26.5.4 The Board appointed under 26.5.1 shall have the following responsibilities:
- 26.5.4.1 to ensure Panel members have or receive training in mediation and arbitration principles and techniques;
  - 26.5.4.2 to maintain a roster of mediators and a roster of arbitrators from those persons who are appointed members of the Panel;
  - 26.5.4.3 to appoint mediators and arbitrators;
  - 26.5.4.4 to set from time to time the fees to be charged for Panel members' services;
  - 26.5.4.5 to prepare annual budgets for administrative costs of the Board and Panel and to submit such budgets to Government for approval; and
  - 26.5.4.6 after Consultation with the parties to the Umbrella Final Agreement, to establish rules and procedures governing mediation and arbitration.
- 26.6.0 Mediation**
- 26.6.1 The parties to a dispute referred to mediation shall attempt to choose a mediator within 15 days of the dispute being referred to mediation.
- 26.6.2 If a dispute cannot be settled informally by the parties and the parties cannot agree on a mediator, the Board shall appoint a mediator from the Panel.

- 26.6.3 A mediator agreed upon by the parties or appointed by the Board shall promptly meet with the parties to assist them in the resolution of the dispute.
- 26.6.4 The mediation shall not extend beyond four hours unless the parties to the dispute and the mediator agree.
- 26.6.5 The mediator, at his own option, may provide a brief non-binding written recommendation to the parties.
- 26.6.6 The mediator, at the request of the parties to the mediation, shall provide a brief non-binding written recommendation to the parties.
- 26.6.7 The mediation and any recommendations of the mediator shall be confidential to the parties to the dispute unless the parties otherwise agree.
- 26.6.8 The costs of the mediator for the first four hours shall be borne by the Board. Thereafter, the costs of the mediator shall be borne equally by the parties to the mediation.
- 26.6.9 Notwithstanding 26.6.8, the Board shall determine who shall pay the costs of mediation pursuant to 26.4.1.4.
- 26.7.0 Arbitration**
- 26.7.1 The parties to a dispute referred to arbitration shall attempt to choose an arbitrator within 15 days of the dispute being referred to arbitration.
- 26.7.2 If the parties do not agree on an arbitrator under 26.7.1, the Board, on application of a party to the dispute, shall appoint an arbitrator from the Panel.
- 26.7.3 With respect to a dispute referred to arbitration under a Settlement Agreement, the arbitrator shall have the authority to resolve the dispute including the authority:
  - 26.7.3.1 to determine all questions of procedure including the method of giving evidence;
  - 26.7.3.2 to subpoena witnesses and documents;
  - 26.7.3.3 to administer oaths and solemn affirmations to the parties and witnesses;

- 26.7.3.4 to order a party to cease and desist from activity contrary to the provisions of a Settlement Agreement;
- 26.7.3.5 to order a party to comply with the terms and conditions of a Settlement Agreement;
- 26.7.3.6 to make an order determining the monetary value of a loss or injury suffered by a party as a result of contravention of a Settlement Agreement and directing a party to pay all or part of the amount of that monetary value;
- 26.7.3.7 to declare the rights and obligations of the parties to a dispute;
- 26.7.3.8 to make an order providing interim relief; and
- 26.7.3.9 to refer any question of Law to the Supreme Court of the Yukon.
- 26.7.4 The cost of the arbitration shall be borne equally among the parties to the dispute unless otherwise assigned by the arbitrator.
- 26.7.5 Subject to 26.8.0, a decision or order of an arbitrator shall be final and binding on the parties to the arbitration.
- 26.7.6 A party affected by a decision or order of an arbitrator may, after the expiration of 14 days from the date of the release of the decision or order or the date provided in the decision for compliance, whichever is later, file in the Registry of the Supreme Court of the Yukon a copy of the decision and the decision or order shall be entered as if it were a decision or order of the Court, and on being entered shall be deemed, for all purposes except for an appeal from it, to be an order of the Supreme Court of the Yukon and enforceable as such.
- 26.8.0 Judicial Review**
- 26.8.1 The decision or order of an arbitrator under 26.7.5 is not subject to appeal or to judicial review in any court except on the ground that the arbitrator failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise jurisdiction.

26.8.2 The Supreme Court of the Yukon shall have jurisdiction in respect of an appeal or judicial review pursuant to 26.8.1.

**26.9.0 Transitional**

26.9.1 Until the Board is appointed, the Arbitration Act, R.S.Y. 1986, c. 7 shall apply to any arbitration under 26.7.0.



## **CHAPTER 27 - YUKON FISH AND WILDLIFE ENHANCEMENT TRUST**

### **27.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Adjusted Contribution" means the greater of the amount calculated in (a) or (b), multiplied by the value of the Final Domestic Demand Implicit Price Index for the latest quarter prior to the effective date of Settlement Legislation and divided by the value of the Final Domestic Demand Implicit Price Index for the second quarter of 1990:

(a) \$1,050,400 x 1.03,

(b) \$1,050,400 multiplied by the value of the Final Domestic Demand Implicit Price Index for the second quarter of 1990 and divided by the value of the Final Domestic Demand Implicit Price Index for the third quarter of 1989.

"Trust" means the Yukon Fish and Wildlife Enhancement Trust.

### **27.2.0 Trust**

27.2.1 A Yukon Fish and Wildlife Enhancement Trust shall be established by the parties to the Umbrella Final Agreement having the objective set out in 27.4.0.

### **27.3.0 Trustees**

27.3.1 Members of the Fish and Wildlife Management Board shall serve as the trustees.

### **27.4.0 Trust Objective**

27.4.1 The objective of the Trust is to restore, enhance and protect Fish and Wildlife populations and their habitat in the Yukon so as to achieve the objectives of Chapter 16 - Fish and Wildlife.

27.4.2 The trustees may initiate, sponsor, fund, direct and carry out measures designed to achieve the objective in 27.4.1.

## **27.5.0 Initial Trust Capital**

27.5.1 The Yukon, Canada and the Yukon First Nations shall make contributions to the Trust as follows:

27.5.1.1 the contributions to the Trust by Canada shall consist of four equal annual payments, the sum of which shall equal the Adjusted Contribution;

27.5.1.2 the contribution to the Trust by the Yukon shall consist of four equal annual payments, the sum of which shall equal the Adjusted Contribution; and

27.5.1.3 the contribution to the Trust by the Yukon First Nations shall be,

(a) for the first annual payment, 10 percent of the Adjusted Contribution,

(b) for the second annual payment, 20 percent of the Adjusted Contribution, and

(c) for each of the third and the fourth annual payments, 35 percent of the Adjusted Contribution.

27.5.2 Canada, the Yukon and the Yukon First Nations shall make their first payments as soon as practicable after the effective date of Settlement Legislation.

27.5.3 Canada, the Yukon and the Yukon First Nations shall make the subsequent annual payments on the anniversary date of the effective date of Settlement Legislation.

## **27.6.0 General**

27.6.1 The Trust capital may be increased by gifts, donations, grants and other sources of funds.

27.6.2 No federal, territorial or municipal tax shall be paid by the Trust in respect of the payments received by the Trust under 27.5.0.



- 27.6.3 Subject to the terms of the agreement referred to in 27.6.7, no federal, territorial or municipal tax shall be paid by the Trust in respect of any income earned by the Trust.
- 27.6.4 Except for the reasonable costs of administering the Trust, all expenditures from the Trust shall be solely directed to the objectives of the Trust, and no monies for any other purpose shall be expended from the Trust capital.
- 27.6.5 Subject to the terms of the agreement referred to in 27.6.7, the Trust shall be deemed to be a charitable organization for purposes of granting receipts to Persons making gifts to the Trust.
- 27.6.6 Expenditures from the Trust are not intended to duplicate or replace Government expenditures on Fish or Wildlife management.
- 27.6.7 Prior to the effective date of Settlement Legislation, the parties to the Umbrella Final Agreement shall enter into an agreement to give effect to the Trust.



**CHAPTER 28 - IMPLEMENTATION AND TRAINING FOR  
SETTLEMENT IMPLEMENTATION**

**28.1.0 Objectives**

28.1.1 The objectives of this chapter are as follows:

- 28.1.1.1 to establish a process and fund for the implementation of Settlement Agreements;
- 28.1.1.2 to promote the participation of Yukon Indian People in the implementation of Settlement Agreements;
- 28.1.1.3 to establish timely and effective implementation of the Settlement Agreements to ensure that Yukon First Nations benefit from Settlement Legislation and Yukon First Nation Final Agreements;
- 28.1.1.4 to assist Yukon Indian People to take full advantage of the Settlement Agreements to strengthen their communities;
- 28.1.1.5 to establish implementation plans that foster the socio-economic development and prosperity of Yukon Indian People;
- 28.1.1.6 to ensure that Yukon Indian People receive training in order to participate effectively in opportunities arising from and associated with the implementation of Settlement Agreements; and
- 28.1.1.7 to provide a trust fund for training which may be directed towards meeting training priorities identified by Yukon First Nations and established in the training plan.

**28.2.0 Implementation Planning Fund**

- 28.2.1 Canada shall pay to the Council for Yukon Indians, as soon as practicable after the effective date of Settlement Legislation, \$0.5 Million (1990 dollars) to pay for the costs of Yukon First Nations in the development of implementation plans.
- 28.2.2 The indexation of the Implementation Planning Fund value from 1990 to the effective date of Settlement Legislation shall be based on the appropriate Treasury Board policy governing spending commitments.

### **28.3.0 Implementation Plans**

28.3.1 There shall be an implementation plan developed for the Umbrella Final Agreement by the parties to the Umbrella Final Agreement and an implementation plan for each Yukon First Nation Final Agreement developed by Government and that Yukon First Nation.

28.3.2 The Umbrella Final Agreement implementation plan and Yukon First Nation Final Agreement implementation plans shall identify:

28.3.2.1 the specific activities and projects required to implement the Settlement Agreements;

28.3.2.2 the economic opportunities for Yukon Indian People resulting from the Settlement Agreements;

28.3.2.3 the responsibility for specific activities and projects, the time frames, the costs and which party or parties will bear the costs;

28.3.2.4 an information strategy to enhance community and general public awareness of the Settlement Agreements and the implementation plans;

28.3.2.5 a process to monitor and evaluate implementation and to amend implementation plans; and

28.3.2.6 means by which the implementation of Yukon First Nation Final Agreements and the implementation of Yukon First Nation self-government agreements shall be coordinated.

28.3.3 The Umbrella Final Agreement implementation plan shall identify:

28.3.3.1 measures for dealing with the implementation interests of each Yukon First Nation which has yet to conclude negotiation of its Yukon First Nation Final Agreement;

28.3.3.2 implementation tasks that are common to all Yukon First Nation Final Agreements;

28.3.3.3 Legislation required to give effect to Settlement Agreements;

- 28.3.3.4 the impact of Settlement Agreements on all new or existing Government regulatory regimes;
- 28.3.3.5 Government programs which should be modified to assist in the implementation of the Settlement Agreements; and
- 28.3.3.6 resources and means, within the budgets existing from time to time, relating to effective, efficient and environmentally sound Salmon enhancement in the Yukon.
- 28.3.4 All implementation plans shall be governed by principles of accountability and economy.
- 28.3.5 The parties negotiating an implementation plan shall consider including in the implementation plan funding which allows each board listed in 2.12.1 to provide its members with:
  - 28.3.5.1 cross-cultural orientation and education;
  - 28.3.5.2 other training directed to improving members' ability to carry out their responsibilities; and
  - 28.3.5.3 facilities to allow board members to carry out their responsibilities in their traditional languages.
- 28.3.6 Notwithstanding 28.9.1, any funding included in an implementation plan pursuant to 28.3.5 shall be a charge on Government.
- 28.3.7 The parties negotiating an implementation plan shall consider including in the implementation plan provisions for jointly informing members of each board listed in 2.12.1 of the purposes of that board.

#### **Umbrella Final Agreement Implementation Plan**

- 28.3.8 The parties to the Umbrella Final Agreement implementation plan shall be Canada, the Yukon and the Council for Yukon Indians acting on its own behalf and on behalf of the Yukon First Nations.
- 28.3.9 The negotiators of the Umbrella Final Agreement implementation plan shall initial an agreement in principle for the implementation plan prior to ratification of the Umbrella Final Agreement by the Yukon First Nations.

- 28.3.10 The Umbrella Final Agreement implementation plan shall be approved by the Council for Yukon Indians before the approval of Government is sought.
- 28.3.10.1 Approval of the Umbrella Final Agreement implementation plan by Canada shall be sought at the same time as ratification of the Umbrella Final Agreement.
- 28.3.11 Each Yukon First Nation, upon the ratification of its Yukon First Nation Final Agreement, shall be deemed to have:
- 28.3.11.1 ratified the Umbrella Final Agreement implementation plan, and all actions taken or to be taken pursuant to that implementation plan by the Council for Yukon Indians on behalf of that Yukon First Nation, including but not limited to any acknowledgements or releases by the Council for Yukon Indians that Government has, or, upon the carrying out of certain tasks set out in the implementation plan, will have satisfied its particular obligations arising from the Umbrella Final Agreement to that Yukon First Nation or the Yukon Indian People enrolled in that Yukon First Nation's Final Agreement; or
- 28.3.11.2 if the Umbrella Final Agreement implementation plan has not then been completed, delegated authority to enter into the Umbrella Final Agreement implementation plan on its behalf to the Council for Yukon Indians, which may include acknowledgements or releases by the Council for Yukon Indians that Government has, or, upon the carrying out of certain tasks set-out in the implementation plan, will have satisfied its particular obligations arising from the Umbrella Final Agreement to that Yukon First Nation or the Yukon Indian People enrolled in that Yukon First Nation's Final Agreement; and
- 28.3.11.3 delegated to the Council for Yukon Indians the authority to provide subsequent acknowledgements or releases to Government in respect of obligations of Government arising from the Umbrella Final Agreement implementation plan to the Yukon First Nation and the Yukon Indian People enrolled in that Yukon First Nation's Final Agreement.

## **Yukon First Nation Final Agreement Implementation Plan**

- 28.3.12 The parties to a Yukon First Nation Final Agreement implementation plan shall be the Yukon First Nation, Canada and the Yukon.
- 28.3.13 Each Yukon First Nation, upon ratification of its Yukon First Nation Final Agreement, shall be deemed to have:
- 28.3.13.1 ratified its Yukon First Nation Final Agreement implementation plan, or if its Yukon First Nation Final Agreement implementation plan has not then been completed, delegated authority to enter into its Yukon First Nation Final Agreement implementation plan to a Yukon First Nation entity named in its Yukon First Nation Final Agreement; and
  - 28.3.13.2 delegated to a Yukon First Nation entity named in the Yukon First Nation Final Agreement the authority to provide acknowledgements or releases to Government in respect of the obligations of Government to the Yukon First Nation and the Yukon Indian People enrolled in that Yukon First Nation's Final Agreement arising from the Yukon First Nation Final Agreement.

### **28.4.0 Implementation Planning Working Groups**

- 28.4.1 Implementation plans shall be prepared by Implementation Planning Working Groups.
- 28.4.2 For the Umbrella Final Agreement implementation plan, there shall be an Implementation Planning Working Group which shall be established no later than June 1, 1990, consisting of one representative appointed by Canada, one representative appointed by the Yukon and two representatives appointed by Yukon First Nations.
- 28.4.3 For each Yukon First Nation implementation plan, there shall be an Implementation Planning Working Group which shall consist of one representative appointed by Canada, one representative appointed by the Yukon and two representatives of a Yukon First Nation, one of whom may be a Yukon First Nation representative from the Umbrella Final Agreement Implementation Planning Working Group.
- 28.4.4 The Implementation Planning Working Group members may retain the advice of other persons or technical expertise as required.

- 28.4.5 If the Implementation Planning Working Group is unable to reach agreement on a particular issue, that issue shall be referred to the parties nominating the representatives of that Implementation Planning Working Group for resolution.
- 28.4.6 To the extent practicable:
- 28.4.6.1 the work of the Umbrella Final Agreement Implementation Planning Working Group shall be carried out in the Yukon; and
  - 28.4.6.2 the work of each Implementation Planning Working Group for Yukon First Nation Final Agreements shall be carried out in the community of the affected Yukon First Nation.
- 28.4.7 Funding for Yukon First Nation administrative support and for participation of Yukon Indian People and Yukon First Nations in Implementation Planning Working Groups for the Umbrella Final Agreement and Yukon First Nation Final Agreements shall be provided by the Implementation Planning Fund.
- 28.4.8 Implementation plans shall be attached to but not form part of Settlement Agreements and they shall be a contract between the affected parties, except to the extent set out in the plan.
- 28.4.9 Upon initialling of the Umbrella Final Agreement, Government will investigate its ability to provide funding for the development of implementation plans for the period between initialling of the Umbrella Final Agreement and the establishment of the Implementation Planning Fund.
- 28.5.0 Yukon First Nation Implementation Fund**
- 28.5.1 The Council for Yukon Indians shall establish a Yukon First Nation Implementation Fund as soon as practicable after the effective date of Settlement Legislation.
- 28.5.2 The Yukon First Nation Implementation Fund shall be administered either as a charitable trust, a Settlement Corporation or other legal entity.
- 28.5.3 The objectives of the Yukon First Nation Implementation Fund shall be:



- 28.5.3.1 to support Yukon First Nations to establish the entities required for a Yukon First Nation to carry out its responsibilities in implementing the Umbrella Final Agreement and a Yukon First Nation Final Agreement; and
- 28.5.3.2 to support a Yukon First Nation and a Yukon Indian Person to take full advantage of the opportunities, including economic opportunities, arising from the Umbrella Final Agreement and a Yukon First Nation Final Agreement.
- 28.5.4 As soon as practicable after the effective date of Settlement Legislation, Canada shall provide \$4.0 Million (1990 dollars) to the Council for Yukon Indians, as initial capital for the establishment of the Yukon First Nation Implementation Fund.
- 28.5.5 No federal, territorial or municipal tax shall be paid by the Council for Yukon Indians in respect of the payments received by the Council for Yukon Indians under 28.5.4.
- 28.5.6 No federal, territorial or municipal tax shall be paid by the Yukon First Nation Implementation Fund in respect of the payments received by the Fund under 28.5.4.
- 28.5.7 The indexation of the Yukon First Nation Implementation Fund value from 1990 to the effective date of Settlement Legislation shall be based on the appropriate Treasury Board policy governing spending commitments.
- 28.6.0 Training Trust**
- 28.6.1 A Training Trust (the "Trust") having the objective set out in 28.6.4 shall be established by the parties to the Umbrella Final Agreement.
- 28.6.2 Prior to the effective date of Settlement Legislation, Canada, the Yukon and the Council for Yukon Indians shall enter into an agreement to give effect to the Trust.
- 28.6.3 The members of the Training Policy Committee or their designates shall serve as the trustees.
- 28.6.4 The objective of the Trust shall be to advance the training of Yukon Indian People in accordance with the training plan approved under 28.8.1.

- 28.6.5 As soon as practicable after the effective date of Settlement Legislation, Government shall contribute \$6.5 Million (1988 dollars) to the Trust as follows:
- 28.6.5.1 the Yukon \$3.25 Million; and
  - 28.6.5.2 Canada \$3.25 Million.
- 28.6.6 The indexation of the Trust value from November 1, 1988 to the effective date of Settlement Legislation shall be based on the appropriate Treasury Board policy governing spending commitments.
- 28.6.7 Except for reasonable costs associated with the administration of the Trust, all expenditures from the Trust shall be directed toward training of Yukon Indian People in accordance with the training plan approved under 28.8.1.
- 28.6.8 No federal, territorial or municipal tax shall be paid by the Trust in respect of the payments received by the Trust under 28.6.5.
- 28.6.9 Subject to the terms of the agreement referred to in 28.6.2, no federal, territorial or municipal tax shall be paid by the Trust in respect of any income earned by the Trust.
- 28.6.10 The Trust capital may be increased by a donation, grant and other source of funds.
- 28.6.11 Subject to the terms of the agreement referred to in 28.6.2, the Trust shall be deemed to be a charitable organization for purposes of granting a receipt to a Person making a gift to the Trust.
- 28.7.0 Training Policy Committee**
- 28.7.1 The Training Policy Committee ("the Committee") shall be established no later than July 1, 1990, consisting of five representatives, one representative nominated by Canada, one representative nominated by the Yukon, and three representatives nominated by the Council for Yukon Indians.
- 28.7.2 Government and the Council for Yukon Indians shall approve nominations for appointment to the Committee on or before the date of Government ratification of the Umbrella Final Agreement.

- 28.7.3 Government shall nominate representatives who are senior officials who have authority to represent Government in education and training matters.
- 28.7.4 The Committee shall:
- 28.7.4.1 establish training programs for Yukon Indian People;
  - 28.7.4.2 develop a training plan which addresses matters identified in the implementation plans;
  - 28.7.4.3 develop a work plan to be included in the Umbrella Final Agreement implementation plan;
  - 28.7.4.4 develop guidelines for expenditure of money from the Trust;
  - 28.7.4.5 expend the money in the Trust in accordance with the approved work plan;
  - 28.7.4.6 prepare an annual report to be delivered to the parties to the Umbrella Final Agreement; and
  - 28.7.4.7 establish consultative arrangements between Government and Yukon First Nations to ensure effective and economical integration of existing programs with new programs established by the training plan.

**28.8.0 Training for Settlement Implementation**

- 28.8.1 The training plan developed by the Committee shall be submitted to Government and the Council for Yukon Indians for their review and approval prior to the effective date of Settlement Legislation.
- 28.8.2 The training plan shall identify specific training activities intended to meet the objectives of this chapter.
- 28.8.3 The training plan shall identify existing Government training programs which are available for training Yukon Indian People and shall, within existing budgets, propose modifications to those programs required to make them more responsive to training requirements identified under 28.8.2.

- 28.8.4 The training plan, to the extent practicable, shall reflect the training priorities established for implementation by the Implementation Planning Working Groups.
- 28.8.5 Each party shall pay its own expenses for participation in the Committee.
- 28.9.0 General**
- 28.9.1 Except as provided pursuant to 2.12.2.9 and 28.6.5, and except as may be provided pursuant to 28.3.5, Government shall have no obligation pursuant to any Settlement Agreement to fund training for Yukon Indian People.
- 28.9.2 Nothing in 28.9.1 shall be construed to limit the application of existing or future training programs which may be available for training Yukon Indian People.
- 28.9.3 Prior to ratification of the Umbrella Final Agreement by Yukon First Nations, Government shall investigate and report to the Council for Yukon Indians on its ability to fund the Training Trust as soon as possible after the date of ratification.
- 28.9.4 Any contribution made to the Trust pursuant to 28.9.3 shall be deducted from the Government contribution described in 28.6.5.
- 28.9.5 Nothing in this chapter shall be construed to affect the ability of a Yukon Indian Person to participate in and benefit from Government training programs existing from time to time.