

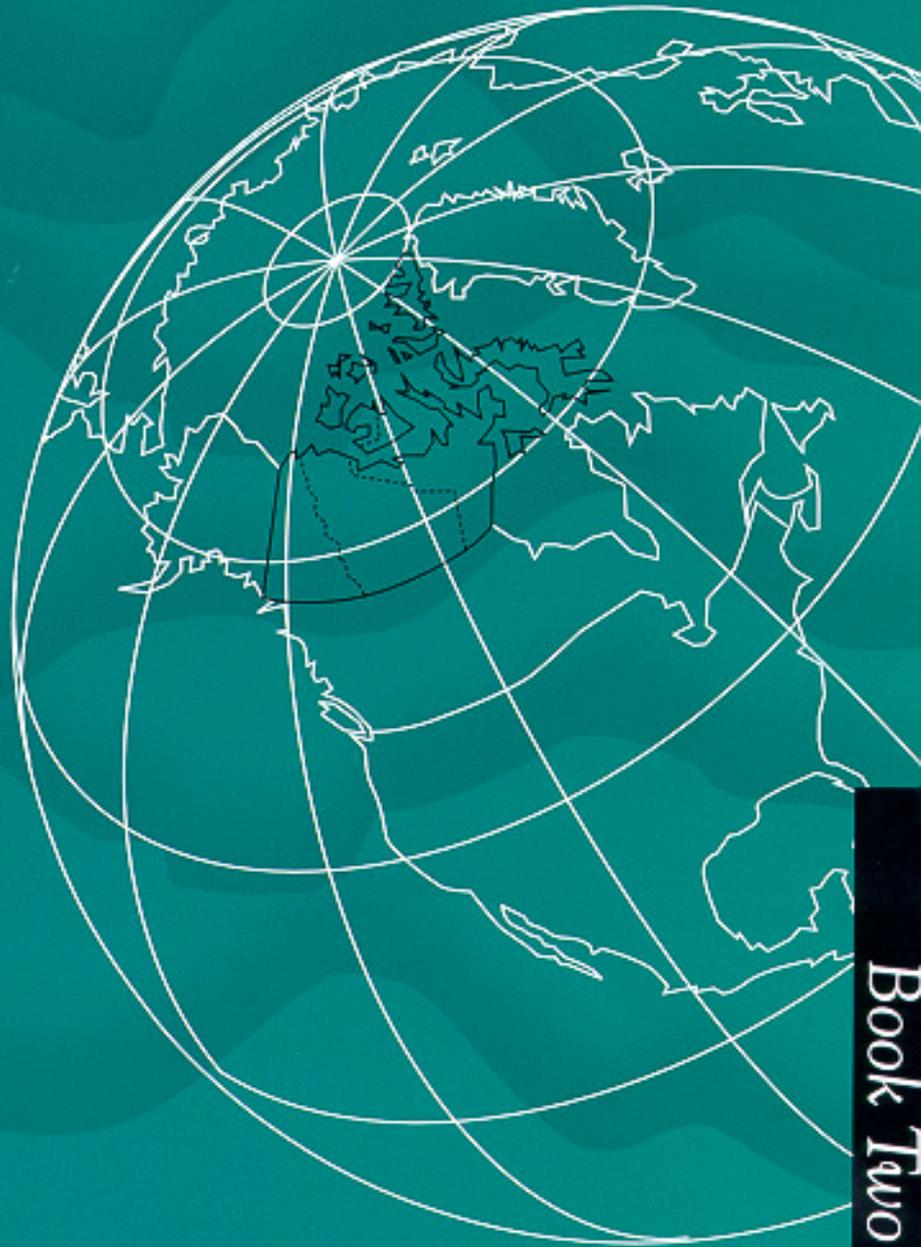


Indian and Northern
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et du Nord Canada

Jurisdictional Responsibilities for Land Resources, Land Use and
Development in the Yukon Territory and Northwest Territories

Yukon Transboundary Agreement Lands



Canada

Book Two

Jurisdictional Responsibilities
for Land Resources, Land Use
and Development in the Yukon
Territory and Northwest
Territories

Book two
Yukon Transboundary Agreement Lands

Land Management Division,
Northern Affairs Program

November 13, 1997

Preface

The Federal Government through the Minister of Indian Affairs and Northern Development is responsible for administering territorial lands and its resources in the Yukon Territory and the Northwest Territories through various Acts, including the Territorial Lands Act, and Regulations, Yukon Waters Act, Canada Petroleum Resources Act, Yukon Placer Mining Act, Yukon Quartz Mining Act, etc. Through the Land Claim process, jurisdictional responsibility over certain lands, resources and land uses has been transferred to various First Nations and to Aboriginal groups across the North. In order to provide a clearer understanding of the jurisdictional framework that is evolving in the Yukon Territory and Northwest Territories, this set of guidelines has been prepared by the Land Management Division concerning “Jurisdictional Responsibilities for Land, Resources, Land Use and Development in the Yukon and Northwest Territories”. These guidelines consist of eight (8) chapters, each chapter describes the jurisdictional regime of a particular geographic region and provides the answers as to which governing bodies should be consulted when making application for specific surface and sub-surface leases, permits, licences, or claims, etc.

Michael Fish, Head of Land Transactions, directed and coordinated the compilation of the guidelines which were written by Bill Biggs and edited by Allan Macartney. Bill Biggs is a lawyer having worked as a Director, Treasury Board Secretariat, implementing federal government policies, legislation and reform in the area of real property management. Allen Macartney is a professional writer and editor having over eighteen years of research and writing experience.

Ian Sneddon
Chief, Land Management Division
Environment and Renewable Resources Directorate
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DIAND

Dedication

This document recognizes the former managers of land resources in both territories and Ottawa, and their staffs, who contributed so much towards the solid framework for land resource management that exists in the North. Their names follow:

Regional Managers of Lands Yukon Region

Tom Rettallack
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Important Note to Users

This document has been prepared for convenient reference only. It has no official sanction. For all purposes of interpreting and applying the law, and the land claims agreements, consult the Acts passed by Parliament and the land claim agreements themselves.

Published under the authority of the
Minister of Indian Affairs and
Northern Development
Ottawa, 1998

QS-8574-001-EE-A1
Catalogue No. R34-7/2-1998E
ISBN 0-662-26950-0

© Minister of Public Works and Government Services Canada

Cette publication peut aussi être obtenue en français sous le titre:

Partage des compétences en matière de ressources foncières et d'utilisation et d'aménagement des terres au Yukon et dans les Territoires du Nord-Ouest – Terres visées par l'Accord-cadre transfrontalier du Yukon – Publication no. deux

Introduction

Dramatic changes have occurred over the past fifteen years in the jurisdictional framework for land resources, land use and development in the Yukon Territory and the Northwest Territories. These changes are primarily a result of:

- ! federal legislation revisions;
- ! the impending creation of Nunavut;
- ! the finalization of Aboriginal land claim agreements; and
- ! the devolution of responsibilities from the federal to the territorial governments.

Jurisdictions will further change as these initiatives continue.

Jurisdictional responsibilities are described in this document as of August 31, 1996 for land resources, land use and development within the territories concerning:

- ! federal lands; and
- ! lands confirmed for Aboriginal groups under land claim agreement settlement legislation.

These responsibilities differ in some respects between the territories. Within each territory the responsibilities vary based on the particular land claim agreements involved. These variations are considered through the chapters of this document.

In each chapter, the jurisdictional regime for a particular geographic region are described, based on territory, then on the land claim agreements. For convenience, this document combines similar land claim agreements in the chapters relating to the Yukon First Nations and the Northwest Territories First Nations. Differences between the individual land claim agreements are noted where appropriate.

Each chapter dealing with land claim settlement areas, begins with a section on the settlement agreement. This section also describes the roles of administrative bodies (such as surface rights boards) established through the settlement agreements.

The second section of each chapter provides an overview of the region's general jurisdictional categories based on federal and Aboriginal land ownership. For example, there are three categories of land in the Yukon First Nation settlement areas in the Yukon Territory:

1. Settlement Lands to which the First Nations received title under their Land Claim Settlement Agreements;

2. Reserves under the *Indian Act*; and
3. Federal lands.

The remainder of each chapter analyses each region's land ownership categories. For the categories relating to settlement lands and federal lands, the jurisdictional regime is discussed under the following headings:

- ! Land Ownership;
- ! Land Use;
- ! General Access Rights;
- ! Non-Renewable Resources;
- ! Forestry and Plants;
- ! Water Use and Waste Deposit;
- ! Fish and Wildlife;
- ! Environmental Assessment; and
- ! Economic Development.

Note: Discussion of lands on reserves under the *Indian Act* is minimal. This text does not specifically examine lands administered by the territorial commissioners, nor does it discuss privately owned lands, or lands acquired by First Nations outside of the land claim settlement process.

Appendix A lists the legislation and the finalized land claim agreements examined in the preparation of this text. Legislation and land claim agreements are current as of August 31, 1996.

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Yukon Transboundary Agreement Lands

Book two

Yukon Transboundary Agreement Lands

Notes and Legend

This chapter describes the jurisdictional regime in that portion of the Yukon Territory subject to the Yukon Transboundary Agreement. The agreement sets out the rights of the Gwich'in in that territory. This area is generally bounded:

- ! on the west, south and north by the Yukon First Nation settlement areas; and
- ! on the east and north by the Northwest Territories.

The Yukon Transboundary Agreement came into effect on December 22, 1992. (Note: June 8, 1992 is used for a particular purpose in the *Yukon Surface Rights Board Act*.) Agreements and legislation are current as of August 31, 1996.

In this Chapter

Immediately below topic headings, this document notes relevant chapters of the Yukon Transboundary Agreement. You will find exceptions described in the text.

Definitions

EARP: the Environmental Assessment and Review Process.

TGY Land: Tetlit Gwich'in Yukon Land.

Umbrella Final Agreement: the Umbrella Final Agreement entered into by the Council of Yukon Indians.

YTA: the Yukon Transboundary Agreement.

2.1 Yukon Transboundary Agreement

2.1.1 General Notes

2.1.1.1 Finalized Agreement

The rights of the Gwich'in in the Yukon Territory are set out in the Yukon Transboundary Agreement, Appendix C to the Gwich'in Comprehensive Land Claim Agreement. The federal statute authorizing this land claim settlement is the *Gwich'in Land Claim Settlement Act* (S.C. 1992, c.53, Act in force December 22, 1992). Here is a summary of

its provisions:

- ! Agreement means the Gwich'in Comprehensive Land Claim Agreement.
- ! The Act binds the federal and provincial Crowns (this includes the territorial government).
- ! The Act approves and declares valid the Agreement.
- ! Title to lands vests in the Gwich'in Tribal Council, as set out in the Agreement.
- ! If there is a conflict or inconsistency between this Act or the Agreement and any other Act, this Act or the Agreement prevails.

The Yukon Transboundary Agreement builds on the provisions of an agreement entered into February 11, 1990. The 1990 agreement dealt with interests of the Tetlit Gwich'in in the Fort McPherson Group Trapping Area of the Yukon (primary use area) and in the adjacent area (Secondary Use Area). The parties to that agreement were the Tetlit Gwich'in and three Yukon First Nations:

- ! the Vuntut Gwitchin First Nation;
- ! the Dawson First Nation; and
- ! the First Nation of Nacho Nyak Dun.

2.1.1.2 General Provisions

(Yukon Transboundary Agreement: Chapter 2)

The YTA may be amended by consent of the parties which signed the YTA. Another First Nation will be consulted if the amendment affects that other First Nation.

If there is a conflict between the YTA and another comprehensive land claim agreement:

- ! relating to primary use area provisions, the YTA prevails;
- ! relating to lands other than primary use area, the other agreement prevails.

Once the dispute resolution process described in the Umbrella Final Agreement comes into effect, any dispute arising from the YTA may be referred to that process. Until the process in the Umbrella Final Agreement comes into effect, the Yukon Arbitration Act applies to any arbitration under the YTA. (Chapter 18)

2.1.2 Definitions

(Yukon Transboundary Agreement: Chapter 1)

The Yukon Transboundary Agreement defines these words:

Agreement:

This refers to the Gwich'in Comprehensive Land Claim Agreement.

Appendix:

This means the Yukon Transboundary Agreement, Appendix C to the Gwich'in Comprehensive Land Claim Agreement.

Crown land:

This includes both Commissioner's and other federal Crown land. It does not include TGY Land.

Existing mineral right:

This means a mineral right or an unrecorded right to explore for minerals other than petroleum, which existed at the date the land became TGY Land. This includes any renewal or replacement of such a right or certain new rights described in the YTA. It does not include a right to locate a claim.

Government:

Government means the Canadian or Yukon Territorial Government, or both.

New mineral right:

This is any mineral right other than an existing mineral right.

Primary use area:

This area is the Fort McPherson Group Trapping Area, as described in the YTA.

Secondary use area:

This refers to certain lands described in the YTA.

Site-Specific TGY Land:

This refers to small parcels of land which have been surveyed and confirmed as Tetlit Gwich'in Yukon Land under the YTA.

Tetlit Gwich'in Yukon Land:

These are lands to which the Tetlit Gwich'in received title under the Yukon Transboundary Agreement.

Traditional Territory:

This is an area identified as a First Nation's traditional territory, on a map referred to in the Umbrella Final Agreement or as amended in a Yukon First Nation Final Agreement.

2.1.3 Administrative Bodies

2.1.3.1 Surface Rights Board

(Yukon Transboundary Agreement: Chapter 6)

The Yukon Surface Rights Board Act came into force on February 14, 1995. It establishes a Board to:

- ! set (on request) terms and conditions (including an entry fee and compensation) for persons to exercise an access right on TGY Land – where access requires consent of the Tetlit Gwich'in;
- ! impose (on request of the Tetlit Gwich'in) terms and conditions for persons who exercise an access right on TGY Land – where access does not require consent of the Tetlit Gwich'in – where the terms and conditions are in addition to those already set out in the YTA and the Act;
- ! resolve (on request) disputes over certain access rights on TGY Land, including access over the waterfront right-of-way, where access does not require consent of the Tetlit Gwich'in;
- ! resolve (on request) certain conflicts between the Tetlit Gwich'in as holders of specified substances rights and the holders of mineral rights on TGY Land;
- ! resolve (on request) certain disputes between government and the Tetlit Gwich'in relating to government quarries on TGY Land;
- ! fix (on request) compensation for certain expropriations of TGY Land;
- ! fix (on request) compensation for the continuation of government-authorized use of certain TGY Land;
- ! exercise any powers given to it by regulations under the Act relating to a specific parcel of TGY Land; and
- ! interpret (on request) certain statutory access rights relating to the exercise of mineral rights – where a dispute has arisen between the holder of surface rights and the holder of mineral rights in non-TGY Land.

Special provisions in the Act concern the way the Act applies to the Tetlit Gwich'in and TGY Land. Some provisions in the Act do not apply to TGY Land.

2.1.3.2 Peel River Watershed Advisory Committee

(Yukon Transboundary Agreement: Chapter 7)

The Peel River Watershed Advisory Committee makes recommendations relating to:

- ! a water management agreement;
- ! establishment of a regional land use planning commission; and
- ! the need for Special Management Areas or protected areas in the Peel River watershed.

2.1.3.3 Yukon Development Assessment Board

(Yukon Transboundary Agreement: Chapter 8)

The development assessment process (as set out in the Umbrella Final Agreement) will apply to TGY Land and the Tetlit Gwich'in. The YTA describes legislation implementing this process. That legislation has not yet been introduced in Parliament.

TGY Land is considered "settlement land" for the purposes of determining the membership of any Yukon Development Assessment Board panel reviewing a project.

The YTA authorizes Tetlit Gwich'in to issue a decision document in situations:

- ! where a project is located wholly or partially on TGY Land; and
- ! where a Yukon First Nation would be so authorized (under its Final Agreement) for settlement land.

The Tetlit Gwich'in are bound by this decision document in same manner as the Nacho Nyak Dun First Nation is bound under its Final Agreement.

Interim Measure

An interim measure takes effect from December 22, 1992, until the Yukon development assessment process is established (as provided in the Umbrella Final Agreement). During this time, any project in the primary use area (or which significantly affects lands and waters within the primary use area) will be subject to the following conditions.

- ! Prior to authorizing any development or activity having a significant effect on the renewable resources of the primary use area, government will obtain consent of the Tetlit Gwich'in, or failing that, approval of the Minister for Indian Affairs and Northern Development.
- ! The Minister will resolve any dispute regarding whether an effect is "significant."

- ! The Environmental Assessment and Review Process (EARP), as amended, shall apply to any development or activity having significant effect in the primary use area.
- ! The Tetlit Gwich'in are to be consulted during the assessment of any development proposal in the primary use area.
- ! The Tetlit Gwich'in have the right to nominate two members to any EARP public review panel that reviews developments or activities having a significant effect in the primary use area.

2.1.3.4 Renewable Resources Council

(Yukon Transboundary Agreement: Chapter 14)

The Tetlit Gwich'in have the right to participate in any renewable resources management regime in the Yukon which has jurisdiction in the primary use area. The Tetlit Gwich'in participate in the Mayo District Renewable Resources Council, and this fulfills the YTA's requirement.

Under the YTA, any powers of the Mayo District Renewable Resources Council (pursuant to a comprehensive land claim agreement) within the traditional territory of the Nacho Nyak Dun First Nation, also apply within the primary use area. These powers relate generally to forestry, fish and wildlife management. Chapter 1 of this document, "Yukon First Nation Settlement Areas," contains further information.

2.1.3.5 Yukon Water Board

The Yukon Territory Water Board (established under the Yukon Waters Act and the Yukon Waters Regulations) regulates the conservation, development and use of waters, and the deposit of waste in the Yukon Territory. The Board's jurisdiction applies to TGY Land and Crown land.

Licences are required for certain activities. Persons may also need to apply to the Board for permission to conduct certain activities. The YTA identifies these cases.

2.1.3.6 Fish and Wildlife Management Board

(Yukon Transboundary Agreement: Chapter 12)

The YTA gives certain powers over fish and wildlife harvesting reporting requirements to the Fish and Wildlife Management Board, established under the Umbrella Final Agreement.

2.2 Jurisdictional Categories

Two jurisdictional categories of land exist in the Yukon Territory under the Yukon Transboundary Agreement:

1. Tetlit Gwich'in Yukon land. The Tetlit Gwich'in have a fee simple title in the lands, excluding mines and minerals. They also have the right to specified substances, including sand and gravel. These surface lands are not federal lands, and any federal jurisdiction over the surface lands or the specified substances derives from the Yukon Transboundary Agreement. The federal government has the fee simple equivalent title to mines and minerals other than specified substances, and retains jurisdiction over them subject to the Yukon Transboundary Agreement.
2. Federal lands. The federal government has jurisdiction over these, subject to the Yukon First Nation Settlement Agreements and the Yukon Transboundary Agreement.

2.3 Tetlit Gwich'in Yukon Land

The Gwich'in land claim settlement legislation took effect on December 22, 1992.

2.3.1 Land Ownership

2.3.1.1 Administrative Bodies

The Yukon Surface Rights Board has certain powers and responsibilities relating to the expropriation of TGY Land. Please see 2.1.3 for further information.

2.3.1.2 Title

(Yukon Transboundary Agreement: Chapter 3)

Under the YTA, the Tetlit Gwich'in received title to 1,554 square kilometres (approximately 600 square miles) of land, called the Tetlit Gwich'in Yukon Land (TGY Land) in the Agreement. The title to these lands is vested in the Gwich'in Tribal Council, and the land is held as a collective.

TGY Land is not deemed to be land reserved for Indians, nor is it deemed reserves (Yukon Transboundary Agreement: Chapter 2). TGY Land is also not settlement land under the Gwich'in Comprehensive Land Claim Agreement.

Title to site specific TGY Land vests in the Gwich'in Tribal Council on the date its survey is deposited in the land titles office. Title to TGY Land (other than site specific TGY Land) vested in the Gwich'in Tribal Council on December 22, 1992. The Gwich'in Tribal Council agreed to register title to TGY Land with the Land Titles Office as soon as

practicable.

The Tetlit Gwich'in hold fee simple title to TGY Land, excluding mines and minerals and the right to work them. However, the fee simple title includes a right to specified substances such as sand and gravel. The YTA lists certain exceptions to the Gwich'in Tribal Council title to TGY Land. These generally relate to:

- ! rights existing on the date the land became TGY land;
- ! renewals of those rights;
- ! certain government rights; and
- ! certain public access rights.

Government continues to administer these excepted rights in TGY Land, including granting renewals, replacements and new rights, as though TGY Land were Crown land. However, changes to existing access rights, other than renewal or replacement, require Tetlit Gwich'in consent, or failing that, a Surface Rights Board order. Government agrees to consult with the Gwich'in Tribal Council before:

- ! renewing rights;
- ! replacing rights;
- ! issuing new rights; and
- ! setting royalties, rents or fees.

If legislation is amended to allow a longer term for a right, government needs the consent of the Gwich'in Tribal Council prior to increasing the term.

The right holder and the Gwich'in Tribal Council can agree to replace the government-issued right with an interest from the Gwich'in Tribal Council. The Minister has to consent, but the YTA limits the circumstances under which the Minister can withhold this consent.

Where TGY Land is subject to an existing surface lease held by a mineral right holder, government will pay to Gwich'in Tribal Council any non-refundable surface rent payable after the land became TGY Land. Government retains any other fees or payments concerning the rights.

TGY Land may not be conveyed to anyone except:

- ! to government as exchange;

- ! to a designated Gwich'in organization; or
- ! as leases and licences to others to use or occupy TGY Land.

TGY Land cannot be mortgaged, charged, or given as security. Possessory title (squatters' rights) cannot be gained on TGY Land.

Nothing in the YTA precludes the Tetlit Gwich'in from acquiring or holding interests in lands other than TGY Land.

Portions of beds of water bodies within boundaries of a TGY Land parcel are TGY Land. Beds of water bodies along side the boundary of a TGY Land parcel are not TGY Land.

Natural boundaries of TGY Land along water are at ordinary high water mark. Land descriptions in the YTA note any exceptions to these rules (Yukon Transboundary Agreement: Chapter 11).

2.3.1.3 Expropriation

(Yukon Transboundary Agreement: Chapter 5)

TGY Land can be expropriated by government under the rules set out in the YTA. Land outside the primary use area can form part of the compensation for expropriation, but such land can only be TGY Land if these parties all agree:

- ! the Tetlit Gwich'in;
- ! government; and
- ! the First Nation in whose traditional territory the land is located.

2.3.2 Land Use

2.3.2.1 Administrative Bodies

The Yukon Surface Rights Board holds certain powers to regulate access and surface rights over TGY Land. Please see 2.1.3 for further information.

The Peel River Watershed Advisory Committee will make recommendations on land uses in the Peel River watershed. Please see 2.1.3 for further information.

The Yukon Development Assessment Board (when established) will have certain regulatory powers over projects in the primary use area, or which significantly affect lands and waters within the primary use area. The YTA sets the process for assessing such projects before the Board is established. Please see 2.1.3 for further information.

The Yukon Territory Water Board is established under the *Yukon Waters Act* and the Yukon Waters Regulations to regulate the conservation, development and utilization of waters and the deposit of waste in the Yukon Territory. The jurisdiction of the Board applies to TGY Land and Crown land. Please see 2.1.3 for further information.

2.3.2.2 General

(Yukon Transboundary Agreement: Chapter 3)

The Tetlit Gwich'in manage and control use of TGY Land, including

- ! developing and administering land management programs and policies; and
- ! charging rents or other fees for the use and occupation of TGY Land.

2.3.2.3 Heritage Resources

(Yukon Transboundary Agreement: Chapter 9)

The Tetlit Gwich'in own and manage non-moveable heritage resources found on TGY Land, and on beds of water bodies owned by the Tetlit Gwich'in. Someone may accidentally discover heritage resources on TGY Land. The YTA sets a process to deal with such cases. Depending on circumstances, a person may need to obtain Tetlit Gwich'in consent (or failing that, a Surface Rights Board order) before continuing activity on the land.

Any access right to public, third parties or government on TGY Land does not take away Tetlit Gwich'in ownership or management of heritage resources on TGY Land. Ownership of TGY Land is not affected by reason of land being a designated heritage site.

Whenever government identifies land, in the primary use or secondary use area, as a proposed "designated heritage site," government will advise the Tetlit Gwich'in. Government will also consult with the Tetlit Gwich'in before establishing site management plans for designated heritage sites in the primary use area, and for such sites in the secondary use area that are related to Tetlit Gwich'in heritage.

Government and the Tetlit Gwich'in will each establish procedures to manage and protect Tetlit Gwich'in burial sites.

Where a person discovers a First Nation burial site in the course of carrying out an activity authorized by government, a Yukon First Nation, or the Tetlit Gwich'in, the person may carry out the activity with the consent of:

- ! the Yukon First Nation in whose traditional territory the site is located; or

! the Tetlit Gwich'in, if the site is in the primary use area.

Arbitration will determine the terms and conditions of any disturbance where agreement cannot be reached.

The Tetlit Gwich'in or a Tetlit Gwich'in individual owning a heritage resource may transfer its ownership or custody to a Yukon First Nation or another Aboriginal person.

2.3.3 General Access Rights

2.3.3.1 Administrative Bodies

The Yukon Surface Rights Board has certain powers to regulate access and surface rights over TGY Land. Please see 2.1.3 for further information.

2.3.3.2 General

(Yukon Transboundary Agreement: Chapter 4)

Laws of general application for access apply in general to TGY Land just as they do for private lands. Access rights are subject to certain conditions set out in the YTA. These conditions preclude:

- ! damage;
- ! mischief;
- ! interference; or
- ! fees.

To address special circumstances, government and the Gwich'in Tribal Council may agree to amend, revoke, or reinstate a right of access. Any change to an access right must be registered in the Land Titles Office.

The Gwich'in Tribal Council has the same duty of care towards persons using an access right as government does for persons using access rights to unoccupied Crown land. Emergency entry on TGY Land is allowed. The Gwich'in Tribal Council must be notified soon after the entry, and there is liability for significant damage caused by the entry.

There is a general right of access for persons over TGY Land:

- ! for commercial or non-commercial purposes (if the access is casual or over a previous route) persons have a general right of access over TGY Land to reach adjacent land without consent of the Tetlit Gwich'in. The YTA can limit previous

routes;

- ! for non-commercial recreational purposes, persons have a general right of access over TGY Land without consent of the Tetlit Gwich'in;
- ! for other access to reach adjacent land for commercial or non-commercial purposes, persons require consent of the Tetlit Gwich'in, or failing that, a Surface Rights Board order (some exceptions may exist in the YTA);
- ! access is given (under certain conditions) without consent of the Tetlit Gwich'in, for government, public utility and military personnel; and
- ! access is given (under certain conditions) without consent of the Tetlit Gwich'in, for an outfitting concession holder to reach the holder's outfitting area.

In general, a thirty metre waterfront right-of-way is reserved from navigable waters abutting or within TGY Land for the public (under certain conditions) for:

- ! travel and non-commercial recreation, including camping and sport fishing; and
- ! commercial recreation purposes, with First Nation consent, or failing that, a Surface Rights Board order.

Land descriptions in the YTA contain any exceptions.

Holders of access rights across TGY Land for commercial or non-commercial purposes (as of December 22, 1992) retain these rights as if the lands were not TGY Land. This includes renewals or replacements. Any changes in terms (other than renewal or replacement) require Tetlit Gwich'in approval, or failing that, a Surface Rights Board order. In certain circumstances, government must consult with First Nations before renewing or replacing access rights.

The Tetlit Gwich'in and government, or the Surface Rights Board, can establish conditions on any right of access.

New access routes on TGY Land can only become "public roads" by government expropriation, or by agreement of the Gwich'in Tribal Council.

2.3.4 Non-renewable Resources

2.3.4.1 Administrative Bodies

The Yukon Surface Rights Board has certain powers to regulate access and surface rights over TGY Land. The Board can also award compensation for damage resulting from activities of persons having mineral rights. Please see 2.1.3 for further information.

2.3.4.2 General

(Yukon Transboundary Agreement: Chapter 15)

Where the Tetlit Gwich'in have a specified substances right and a person has a mineral right on TGY Land, they will exercise their rights as much as practicable without interfering with the other. If a conflict arises, either may apply to the Surface Rights Board for an order. Priority goes to the mineral right holder. Compensation may be payable, but not by a person holding a mineral right as of December 22, 1992.

Subject to a Surface Rights Board order, the mineral right holder may take, use or destroy any specified substance incidental to his or her exercise of the mineral right without compensating the Tetlit Gwich'in. Until the mineral right expires, any specified substance so found becomes the property of the mineral right holder.

The YTA discusses government quarries for public purposes on TGY Land.

The YTA grants certain rights of access over TGY Land to holders of mineral rights on TGY Land or non-TGY Land lands. In some circumstances, this access requires First Nation consent, or failing that, a Surface Rights Board order. The YTA sets conditions of such access.

2.3.5 Forestry and Plants

(Yukon Transboundary Agreement: Chapter 13)

2.3.5.1 Administrative Bodies

Under a comprehensive land claim agreement, the Mayo District Renewable Resources Council has certain powers within the traditional territory of the Nacho Nyak Dun First Nation. The YTA states that these powers will apply within the primary use area. These powers relate generally to forestry, fish and wildlife management. Please refer to 2.1.3 for further information.

2.3.5.2 General

The Tetlit Gwich'in own, manage and allocate forest resources on TGY Land (subject to the YTA). Their management must conform to any recommendations approved by:

- ! an “environmental impact assessment and review process;” or
- ! any development assessment process; and
- ! any approved land use plan.

2.3.6 Water Use and Waste Deposit

2.3.6.1 Administrative Bodies

The Yukon Territory Water Board (established under the Yukon Waters Act and the Yukon Waters Regulations) regulates the conservation, development and use of waters, and the deposit of waste in the Yukon Territory. The Board's jurisdiction applies to TGY Land and Crown land. Please refer to 2.1.3 for further information.

2.3.6.2 General

(Yukon Transboundary Agreement: Chapter 10)

Ownership of water in the Yukon is determined by laws of general application. Generally, the Crown retains ownership of the water, even when others hold title to shoreline and lake or river beds. The YTA does not remove a person's ability to use water for domestic purposes under the laws of general application.

A Tetlit Gwich'in person has the right to use water for traditional use in the primary and secondary use areas, without licence or charges. However, this does not grant the Tetlit Gwich'in a priority of use, or a right to compensation. The person's right is subject to laws of general application.

The Tetlit Gwich'in have exclusive right to use water on, or flowing through, TGY Land. This right is subject to laws of general application, the YTA and the Umbrella Final Agreement. Only in limited circumstances can the Yukon Water Board refuse a licence for use of water by a Tetlit Gwich'in person, or impose certain terms or conditions in a licence.

Unless otherwise authorized by law, Tetlit Gwich'in use of water shall be subject to:

- ! public navigation and passage on water;
- ! emergency use of water;
- ! any hunting, trapping or fishing by the public; and
- ! any right of access set out in the YTA.

The Tetlit Gwich'in may assign all or part of their right to use water. The assignee's use of water shall be subject to certain conditions.

Notwithstanding Tetlit Gwich'in ownership of beds of certain water bodies, government retains the right to protect and manage water, and beds of water bodies. Government can also use water in connection with that right, throughout the primary use area, for public

purposes.

Any person having a right or interest in TGY Land (except an interest granted by the Tetlit Gwich'in) has the right to use water incidental to the exercise of that right in TGY Land. This right is subject to compensation rights and laws of general application. Interests granted by the Tetlit Gwich'in generally do not include rights to use water. Certain people held licences as of December 22, 1992 (under the *Northern Inland Waters Act* or the *Dominion Water Power Act*) for water on, or flowing through, TGY Land. Those people retain their rights as if the land were not TGY Land. The license holder may have the right to apply to the Yukon Water Board for renewal or replacement. In certain circumstances, the licence holder may be liable for compensation to the Tetlit Gwich'in.

A person requiring the use of TGY Land to use water has a conditional right of access to that TGY Land, with the consent of the Tetlit Gwich'in. Failing that consent, the person requires a Surface Rights Board order. This does not apply to persons who have an access right not needing consent of the Tetlit Gwich'in.

Subject to the rights of water users under the YTA, and laws of general application:

! the Tetlit Gwich'in have the right to have waters on, flowing through, or adjacent to, TGY Land remain substantially unaltered as to:

- quality,
- quantity, and
- flow rate;

! the Tetlit Gwich'in shall not use such waters so as to substantially alter:

- quality,
- quantity, and
- flow rate.

Exceptions to this condition must be authorized under the YTA, and must conform to any water licence granted to the Tetlit Gwich'in; and

! the Yukon Water Board can only grant a licence, permit or other authorization interfering with this right if there is no reasonable alternative, notice has been given, and compensation is payable.

The Tetlit Gwich'in may apply to the Yukon Water Board for compensation from a person, not licensed by the Board, using waters under laws of general application. The Board may order compensation where the water use substantially alters quality, quantity or flow rate.

The Tetlit Gwich'in may bring certain water use disputes to the Yukon Water Board. The

Tetlit Gwich'in have court standing in water use disputes. (This means they have the right to testify at any hearing concerning water rights.)

If the Yukon Water Board wishes to grant a licence (in any drainage basin in the Yukon Territory) that would:

- ! substantially alter water quality, quantity or flow rate; and
- ! adversely affect a traditional use by Tetlit Gwich'in in the primary use area, the Board must give Tetlit Gwich'in notice, and consider alternatives.

A licensee who:

- ! substantially alters water quality, quantity or flow rate, in violation of the law; and
- ! causes loss or damage, arising from interference with a traditional use by the Tetlit Gwich'in in the primary use area, shall be liable to pay compensation.

The YTA sets out the compensation process.

2.3.7 Fish and Wildlife

2.3.7.1 Administrative Bodies

Under a comprehensive land claim agreement, the Mayo District Renewable Resources Council has certain powers within the traditional territory of the Nacho Nyak Dun First Nation. The YTA states that these powers apply within the primary use area. They relate generally to forestry, fish and wildlife management. Please refer to 2.1.3 for further information.

The YTA gives certain powers – over fish and wildlife harvesting reporting requirements – to the Fish and Wildlife Management Board, established under the Umbrella Final Agreement.

Please refer to 2.1.3 for further information.

2.3.7.2 General

(Yukon Transboundary Agreement: Chapter 12)

In general, Yukon residents and others can harvest fish and wildlife in accordance with legislation. Exceptions are set out in the YTA. The YTA does not prevent a person from harvesting fish and wildlife in an emergency.

No person shall waste edible fish or wildlife products, except as provided in laws of

general application.

Under the YTA the Tetlit Gwich'in generally have:

- ! exclusive right to harvest wildlife and fish on TGY Land, and in waters overlying that land, subject to the YTA;
- ! the right to harvest (for subsistence) fish and wildlife in the primary use and secondary use areas, and in certain areas of the Nacho Nyak Dun traditional territory, subject to the YTA. The right to harvest in any area other than the primary use area is subject to regulation by a Yukon First Nation under its Final Agreement;
- ! the exclusive right to trap furbearers and allocate trap lines in the primary use area. However, government still retains access (under the Umbrella Final Agreement) to trap lines in the primary use area, for scientific or management reasons;
- ! certain priority harvesting rights within the primary use area. Yukon Indian people of Yukon First Nations have a right to harvest (for subsistence) in the primary use area upon certain conditions and, in some cases, with a requirement for consent of the Tetlit Gwich'in; and
- ! an exclusive right to fish in a portion of a water body bed owned by the Tetlit Gwich'in, where there is no adjacent waterfront right-of-way.

Notwithstanding Tetlit Gwich'in ownership of the beds of certain water bodies, government reserves the right to manage the fishery, and determine who may fish in those water bodies adjacent to a waterfront right-of-way.

2.3.8 Environmental Assessment

The YTA contains no special provisions relating to environmental assessment, aside from provisions for development assessment. Therefore, TGY Land is treated like any other private property in the Yukon Territory.

2.3.9 Economic Development

The YTA discusses economic opportunities for Tetlit Gwich'in, in heritage resource management. (Yukon Transboundary Agreement: Chapter 9)

The Tetlit Gwich'in have a first right of refusal on fixed term contracts for silviculture (the care and development of forests) within the primary use area. Government agrees to include criteria for Tetlit Gwich'in employment in any silviculture contract opportunities in the primary use area. (Yukon Transboundary Agreement: Chapter 13)

The Umbrella Final Agreement with Yukon First Nations outlines certain government obligations relating to employment opportunities and contracting. Where federal public service employment opportunities exist in the primary use area, government agrees to treat the Tetlit Gwich'in on the same basis as a Yukon First Nation (Yukon Transboundary Agreement: Chapter 17).

2.4 Federal Lands

The jurisdictional regime is the same as under Chapter 4 of this document, "Other Yukon Territory Federal Lands," except as follows.

2.4.1 Land Ownership

(Yukon Transboundary Agreement: Chapter 3)

Nothing in the YTA precludes Tetlit Gwich'in from acquiring or holding interests in lands other than TGY Land.

Beds of water bodies along side the boundary of a TGY Land parcel are not TGY Land unless otherwise provided in the YTA.

Land outside the primary use area can be part of compensation for expropriation, but such land can only be TGY Land if the following parties all agree:

- ! the Tetlit Gwich'in;
- ! government; and
- ! the First Nation in whose traditional territory the land is located. (Yukon Transboundary Agreement: Chapter 5)

2.4.2 Land Use

2.4.2.1 Administrative Bodies

The Peel River Watershed Advisory Committee makes recommendations on land uses in the Peel River watershed. Please see 2.1.3 for further information.

The Yukon Development Assessment Board (when established) will have certain regulatory powers over projects in the primary use area, or projects which significantly affect lands and waters within the primary use area. The YTA sets out the process to be used for any such project before the Board is established. Please see 2.1.3 for further information.

The Yukon Territory Water Board (established under the *Yukon Waters Act* and the

Yukon Waters Regulations) regulates the conservation, development and use of waters, and the deposit of waste in the Yukon Territory. The Board's jurisdiction applies to Crown land. Please see 2.1.3 for further information.

2.4.2.2 Heritage Resources

(Yukon Transboundary Agreement: Chapter 9)

For lands in the primary use area that are not TGY Land, protection of heritage resources is subject to laws of general application, and certain exceptions noted in the YTA. This includes heritage resources in, or discovered on these lands, by accident or otherwise, during construction or excavation.

Government will advise the Tetlit Gwich'in when it identifies a proposed designated heritage site on land in the primary use or secondary use areas. Government will consult with the Tetlit Gwich'in before establishing site management plans for designated heritage sites in the primary use area, and for such sites in the secondary use area related to Tetlit Gwich'in heritage.

Government and the Tetlit Gwich'in will each establish procedures to manage and protect Tetlit Gwich'in burial sites, including:

- ! restricting access;
- ! if the site is outside the primary use area, requiring joint approval for the management plan by government and the Yukon First Nation in whose traditional territory the site is located;
- ! if the site is in the primary use area, but not on TGY Land, requiring joint approval of government and the Tetlit Gwich'in for the management plan;
- ! if a site is discovered, informing the Yukon First Nation in whose traditional territory the site is located, or the Tetlit Gwich'in (if the site is in the primary use area). In these cases, the site shall not be further disturbed unless otherwise permitted in the YTA.

Where a person discovers a First Nation burial site in the course of carrying out an activity authorized by:

- ! government,
- ! a Yukon First Nation, or
- ! the Tetlit Gwich'in,

the person may carry out the activity with consent of the Yukon First Nation in whose traditional territory the site is located, or the Tetlit Gwich'in (if the site is in the primary use area). In the absence of consent, arbitration will determine the terms and conditions of any disturbance.

The Tetlit Gwich'in or a Tetlit Gwich'in individual owning heritage resource may transfer its ownership or custody to a Yukon First Nation or to another Aboriginal person.

2.4.3 General Access Rights

(Yukon Transboundary Agreement: Chapter 4)

2.4.3.1 Administrative Bodies

Where a dispute arises between the holder of surface rights, and the holder of mineral rights in non-TGY Land, the Surface Rights Board may interpret (on request) certain statutory access rights relating to the exercise of mineral rights. Please see 2.1.3 for further information.

2.4.3.2 General

The Tetlit Gwich'in continue to have public access rights to Crown lands. The Tetlit Gwich'in or the designated Tetlit Gwich'in organization has access to Crown land without consent:

! for a reasonable time for non-commercial purposes if the access is:

- casual, or
- for the purpose of harvesting wildlife; and

! to cross to reach adjacent TGY Land for commercial purposes if the access:

- is casual and traditional use; or
- over a recognized route.

This access right doesn't apply to Crown lands:

! where the surface is leased or licensed (except to the extent the lease or licence permits public access, or the holder allows access); or

! where public access is limited or prohibited.

The right of access is subject to conditions relating to such issues as damage, mischief, interference, and fees.

Government must manage Crown land surrounding a block of TGY Land in a way that permits access to that TGY Land from adjacent Crown land or public road.

2.4.4 Non-renewable Resources

2.4.4.1 Administrative Bodies

Where a dispute arises between the holder of surface rights, and the holder of mineral rights in non-TGY Land, the Surface Rights Board may interpret (on request) certain statutory access rights relating to the exercise of mineral rights. Please see 2.1.3 for further information.

2.4.4.2 General

There are no specific provisions in the YTA relating to non-renewable resources on non-TGY Lands.

2.4.5 Forestry and Plants

(Yukon Transboundary Agreement: Chapter 13)

2.4.5.1 Administrative Bodies

Under a comprehensive land claim agreement, the Mayo District Renewable Resources Council has certain powers within the traditional territory of the Nacho Nyak Dun First Nation. The YTA states that these powers will apply within the primary use area. They relate generally to forestry, fish and wildlife management. Please refer to 2.1.3 for further information.

2.4.5.2 General

Subject to the YTA, as well as legislation concerning forest resources management, environment, public health and safety:

- ! Tetlit Gwich'in individuals have the right to harvest forest resources on Crown land (within the primary use and secondary use areas) for purposes related to traditional hunting, fishing, trapping or gathering;
- ! the Tetlit Gwich'in have the right to harvest up to 500 cubic metres of trees on Crown land in the primary use area, for non-commercial, community purposes;
- ! Tetlit Gwich'in individuals have the right to harvest forest resources on Crown land (within the primary use area) for purposes related to traditional customs, culture or religion.

The rights of the Tetlit Gwich'in to harvest forest resources on Crown land do not apply where:

- ! the exercise of the right conflicts with a government authorized activity;
- ! the land is subject to a surface lease or an agreement for sale (unless the interest holder consents); or
- ! public access is limited or prohibited on the land.

Nothing in the YTA precludes any person from harvesting forest resources on Crown land in accordance with laws of general application. The YTA does not give the Tetlit Gwich'in a priority or a right to compensation.

The YTA does not prevent the Tetlit Gwich'in from receiving a commercial timber permit on Crown land in the primary use area, or entering into a timber agreement with government, in accordance with laws of general application.

2.4.6 Water Use and Waste Deposit

2.4.6.1 Administrative Bodies

The Yukon Territory Water Board, established under the Yukon Waters Act and the Yukon Waters Regulations, regulates the conservation, development and use of waters, and the deposit of waste in the Yukon Territory. The Board's jurisdiction applies to Crown land. Please refer to 2.1.3 for further information.

2.4.6.2 General

(Yukon Transboundary Agreement: Chapter 10)

Ownership of water in the Yukon is determined by laws of general application. Generally, the Crown retains ownership of the water, even when others hold title to shoreline and lake or river beds. The YTA does not affect a person's ability to use water for domestic purposes under laws of general application. Nor does it affect Tetlit Gwich'in use of water on non-TGY Land in accordance with law.

A Tetlit Gwich'in person has the right to use water for traditional use in the primary and secondary use areas, subject to laws of general application. No licence or charges apply for this use. This right does not grant a priority of use or a right to compensation.

Unless otherwise authorized by law, the Tetlit Gwich'in use of water is subject to:

- ! public navigation and passage on water;
- ! emergency use of water;
- ! any hunting, trapping or fishing by the public; and

! any right of access set out in the YTA.

The Tetlit Gwich'in may assign all or part of their right to use water. The assignee's use of water is subject to certain conditions.

Notwithstanding Tetlit Gwich'in ownership of beds of certain water bodies, government retains the right to protect and manage water and beds of water bodies. Government can also use water in connection with that right, throughout the primary use area, for public purposes.

Subject to the rights of water users under the YTA, and laws of general application:

! the Tetlit Gwich'in have the right to have waters on, or flowing through, or adjacent to TGY Land remain substantially unaltered as to:

- quality,
- quantity, and
- flow rate;

! the Tetlit Gwich'in shall not use such waters so as to substantially alter:

- quality,
- quantity, and
- flow rate.

Exceptions to this condition must be authorized under the YTA and must conform to any water licence granted to the Tetlit Gwich'in; and

! the Yukon Water Board can only grant a licence, permit or other authorization interfering with this right if there is no reasonable alternative, notice has been given, and compensation is payable.

The Tetlit Gwich'in may apply to the Yukon Water Board for compensation from a person, not licensed by the Board, using waters under laws of general application. The Board may order compensation where the water use substantially alters quality, quantity or flow rate.

The Tetlit Gwich'in may bring certain water use disputes to the Yukon Water Board. The Tetlit Gwich'in have court standing in water use disputes. (This means they may testify at any hearing concerning water rights.)

If the Yukon Water Board wishes to grant a licence (in any drainage basin in the Yukon Territory) that would:

! substantially alter water quality, quantity or flow rate; and

- ! adversely affect a traditional use by Tetlit Gwich'in in the primary use area, the Board must give Tetlit Gwich'in notice, and consider alternatives.

A licensee who:

- ! substantially alters water quality, quantity or flow rate, in violation of law; and
- ! causes loss or damage, arising from interference with a traditional use by the Tetlit Gwich'in in the primary use area, shall be liable to pay compensation.

The YTA sets out the compensation process.

2.4.7 Fish and Wildlife

2.4.7.1 Administrative Bodies

Under a comprehensive land claim agreement, the Mayo District Renewable Resources Council has certain powers within the traditional territory of the Nacho Nyak Dun First Nation. The YTA states that these powers apply within the primary use area. They relate generally to forestry, fish and wildlife management. Please refer to 2.1.3 for further information.

The YTA gives certain powers – over fish and wildlife harvesting reporting requirements – to the Fish and Wildlife Management Board, established under the Umbrella Final Agreement. Please refer to 2.1.3 for further information.

2.4.7.2 General

(Yukon Transboundary Agreement: Chapter 12)

Subject to the YTA, Yukon residents and others can harvest fish and wildlife in accordance with legislation. The YTA does not prevent a person from harvesting fish and wildlife in an emergency. The Fish and Wildlife Board (established under the Umbrella Final Agreement) may set reporting requirements.

No person shall waste edible fish or wildlife products, except as provided in laws of general application.

Under the YTA the Tetlit Gwich'in generally have:

- ! exclusive right to harvest wildlife and fish on TGY Land, and in waters overlying that land, subject to the YTA;
- ! the right to harvest (for subsistence) fish and wildlife in the primary use and

secondary use areas, and in certain areas of the Nacho Nyak Dun traditional territory, subject to the YTA. The right to harvest in any area other than the primary use area is subject to regulation by a Yukon First Nation under its Final Agreement;

- ! the exclusive right to trap furbearers and allocate trap lines in the primary use area. However, government still retains access (under the Umbrella Final Agreement) to trap lines in the primary use area, for scientific or management reasons;
- ! certain priority harvesting rights within the primary use area. Yukon Indian people of Yukon First Nations have a right to harvest (for subsistence) in the primary use area upon certain conditions and, in some cases, with a requirement for consent of the Tetlit Gwich'in; and
- ! an exclusive right to fish in a portion of a water body bed owned by the Tetlit Gwich'in, where there is no adjacent waterfront right-of-way. Notwithstanding Tetlit Gwich'in ownership of the beds of certain water bodies, government reserves the right to manage the fishery and determine who may fish in those water bodies adjacent to a waterfront right-of-way.

The Tetlit Gwich'in, with consent of the Vuntut Gwitchin First Nation, may trap in any part of the Old Crow Group Trapping Area that is in the secondary use area, subject to any limitations applying to the Vuntut Gwitchin First Nation.

2.4.8 Environmental Assessment

The YTA contains no special provisions relating to environmental assessment.

2.4.9 Economic Development

The YTA discusses economic opportunities for Gwich'in in heritage resource management (Yukon Transboundary Agreement: Chapter 9).

The Tetlit Gwich'in have a first right of refusal on fixed term contracts for silviculture (the care and management of forests) within the primary use area. Government will include criteria for Tetlit Gwich'in employment in any silviculture contract opportunities in the primary use area (Yukon Transboundary Agreement: Chapter 13).

The Umbrella Final Agreement with Yukon First Nations outlines certain government obligations relating to employment opportunities and contracting. Where federal public service employment opportunities exist in the primary use area, government agrees to treat the Tetlit Gwich'in on same basis as a Yukon First Nation, as outlined in the Umbrella Final Agreement (Yukon Transboundary Agreement: Chapter 17).