

HISTORY OF THE YUKON LAND CLAIMS PROCESS and the SPIRIT AND INTENT OF THE AGREEMENTS



Contact Periods

- Early Russian contact with coastal Tlingit and interior trade with Yukon First Nations (1700s);
- Early fur traders in the mid 1850s;
- Gold seekers in the late 1800s with the Gold rush of 1898 (influx of 30 to 40,000);
- The construction of the Alaska Highway in 1941 (30,000 soldiers and construction workers);

Treaty Negotiations in Canada

- Peace and Friendship Treaties on the east coast between 1500's to 1763;
- Royal Proclamation of 1763;
- Southern Part of Colonies Treaties (1815 to 1825);
- Robinson Treaties (1850's);
- Douglas Treaties (1860's);
- Numbered Treaties 1-11 (1871 to 1921);
- Modern Treaties (1975 to 2006);

Yukon Land Claims

- First request by Chief Jim Boss in 1902;
- Push to organize in the 50's and 60's;
- Tlingit/Haida case in 1965;
- Canada announces White Paper Policy (1969);
- YNB formed (1969);
- YANSI (1970);
- Alaskan Settlement (1971);
- Together Today for Our Children Tomorrow (1973);



Negotiation Periods

- Early negotiations (1973 to 1975); Acquaintance period; 4 YFN negotiators;
- 1975 to 1976 (Watson Lake pilot project);
- 1976 to 1978 (Co-operative Negotiations);
- 1979 (Proposal for Settlement) with Renewable Resource Jurisdiction;
- 1980 Amalgamation of YNB, YANSI and CYI;
- 1980 to 1984 push for AIP; (Section 35, 1982);
- 1984 rejection due to extinguishment and lack of Self government;
- 1985 to 1991 new federal mandate and ratification of UFA; (UFA negotiations);
- 1991 to 1993 First Four Agreements signed;
- February 14, 1995 Final Agreement and SGAs given effect;

Final Agreements and SGAs

- 14 YFNs of whom 11 have FAs and SGAs;
- The Final Agreements are created from one Umbrella Final Agreement (UFA) with common terms that apply to all YFNs with FAs;
- Every YFN has the right to negotiate “specific terms” for its FA where permitted in the UFA;
- YFNs then ratify the FAs and SGAs in a manner as determined by them;
- 28 Chapters in FAs; and up to 30 Sections in SGAs;
- FA is a treaty under Section 35(3) and enabled under Federal and Territorial law;
- SGAs are not treaties but enabled under Sec. 91(24) and the Yukon Act;

Chapter 1-Definitions

- There are common definitions and unique definitions for each FA;
- Important as it informs the substantive rights under the FAs;

Chapter 2-General Provisions

- Contains the release clauses to land and water in traditional territories of YFNs with FAs;
- Aboriginal title is retained on 16,060 sq. miles of treaty lands;
- Non-derogation clauses to the inherent right and to other “constitutional rights”;
- Current common law applies the “honour of the Crown” to YFNs with treaties;
- Amendment provision allows for amendment of the UFA by the three parties;
- Specific Provisions are amendable by YFN, Canada and Yukon;
- Contains ratification provisions, overlap resolution provisions and Board provisions;

Chapter 3-Eligibility and Enrollment

- Sets out the objective eligibility criteria and the establishment of the Enrollment Commission;
- Enrollment Commission determines eligibility (quasi judicial tribunal);
- Appeal to the Yukon Supreme Court;
- Costs of the Enrollment Commission is covered by Canada and operates for 10 years and after the dissolution then every YFN has control of its own enrollment processes;

Chapter 4-Reserves and Land Set Aside

- Can retain reserves as 91(24) reserves and Indian Act continues to apply; or
- Can transfer existing reserves to Settlement Land; or
- Can retain reserves as 91(24) lands with SGA powers applying to those reserves;
- Specific Claims continue to exist for old reserves;

Chapter 5-Tenure and Management of Settlement Land

- The 16,060 sq. miles of Settlement retains aboriginal title that is equivalent to “fee simple”;
- 10,000 sq. miles are retained with surface aboriginal title applying and fee simple to the subsurface;
- 6,060 have aboriginal title with the subsurface retained by the Crown;
- Entrenched provision to allow YFNs to pass bylaws over “use and occupation of its S. Lands”;
- If Settlement Land is conveyed to be “fee simple” then aboriginal title is deemed to be surrendered;
- YFNs can reacquire S. Lands that were converted to fee simple except no recovery of aboriginal title;
- Water front right of way exists for 100 m except where otherwise agreed;
- 10 hydro sites identified in Yukon for Settlement lands and this is a caveat on those lands;

Chapter 6-Access

- Laws of GA apply in that S. Lands are considered to be private land;
- YFN citizens have common rights of access to Crown lands for all non-commercial rights purposes;
- Persons have rights of access to Settlement Land for all non-commercial recreational purposes provided that there the access is “casual and of an insignificant nature for a reasonable period of time;
- Commercial access requires YFN consent or an order of the Surface Rights Board;
- Governments have a general right of access for “government programs and projects” up to 120 days and thereafter with consent of YFN or SRB;
- Limited military access to “undeveloped Settlement Land”;

Chapter 7-Expropriation

- Sets out the expropriation process for Settlement lands;
- the Authority must first negotiate;
- Failing agreement then the SRB would determine the amount of compensation except for NEB matters;
- Compensation may include “land of the authority”, money, other forms of compensation and/or any combination of the above;
- Land may converted to Settlement land status;
- Settlement land may be expropriated for hydro purposes and 3% cap on expropriation;

Chapter 8-Surface Rights Board

- Creation of Surfaces Rights Board with one half of Board being appointed by CYFN;
- SRB jurisdiction includes matters referred under: FAs; disputes on surface and subsurface matters in Yukon; and such other matters under enabling Legislation;
- Powers of SRB include: terms and conditions of access; compensation; reasonable access requirements; award costs; grant interim orders etc;
- Sets out factors to be included to assess compensation;
- Set out under Federal Law;

Chapter 9-Settlement Land Amount

- 16,060 sq. miles;
- 10,000 with subsurface rights;
- Aboriginal title retained;
- Conditional release to land and water to rest of land;
- Shared amongst YFNs;



Chapter 10-Special Management Areas

- Includes: national wildlife areas; national parks; territorial parks; special fish and wildlife areas; migratory bird sanctuaries; heritage sites; watershed areas and such other areas as may be agreed upon;
- YFNFAs have created national parks with harvesting rights; right to give, trade, barter or sell Edible Fish and Wildlife products and edible plant products;
- Non-edible by products subject to laws of GA;
- Can trap in Parks;
- Jointly managed with Canada through a management Board;
- Heritage resources are managed under similar terms under the Treaty;
- Provides for certain economic rights in the Park such as: exclusive horse riding operations; exclusive dog sledding; and first right of refusal on construction of trails or roads; public ground or boat transportation; etc;

Chapter 11-Land Use Planning

- Establishes the Yukon Land Use Planning Council with 1 person appointed by CYFN; to by Government;
- Regional Land Use Commissions have: 1/3 by YFN; 1/3 by Government; and 1/3 by demographic ratio;
- Recommends land use plans to YFNs and Government;
- Funding provided by Government;

Chapter 12-Development Assessment Process

- Set up under Federal law;
- Provides for comprehensive and timely review of impacts of a “Project” respecting the environmental and socio-economic effects of any Project;
- Project includes an “...enterprise or activity or class of enterprises or activities to be undertaken in the Yukon which is not exempt from screening and review”;
- Creates a Yukon Development Assessment Board in which one half of members are appointees of CYFN except for the Chairperson;
- If projects are to be reviewed by Panels of YDAB then if project is Settlement Land then 2/3 must be from appointees of CYFN;
- Makes written recommendations to Government or affect YFN;
- Must determine conformity with existing land use plans if any;

Chapter 13-Heritage

- Sets out the management and ownership of heritage resources;
- If Moveable Heritage resources are on Settlement Land then owned by affected YFN;
- YFNs own and can manage ethnographic Moveable Heritage Resources found within in its Traditional territory;
- Establishes a Yukon Heritage Resources Board that can make recommendations to Government and YFNs; (another 50/50 Board);
- Allows for the identification of Heritage Sites;
- Establishes process and procedures for access to YFN burial sites;
- Documentary Heritage Resources are under laws of GA;
- Establishes a Yukon Geographical Place Name Board (50/50) to use aboriginal place names on maps etc,;
- Economic opportunities for YFNs at Heritage Sites; and
- Addresses YFN language opportunities;

Chapter 14-Water Management

- The objective is to “maintain the Water of the Yukon in a natural condition while providing for its sustainable use”;
- Property in Water under laws of GA;
- YFNs have right to use water for “traditional purposes”;
- YFNs have the exclusive right to use “...Water that is on or flowing through its Settlement Land”;
- YFNs have the right to Water which is flowing through or adjacent to its Settlement Land to remain substantially unaltered as to quantity, quality and rate of flow;
- YFNs have a right of action against any Person that interferes with the “quality, quantity or rate of flow” and onus is on that Person;
- Reciprocal right to downstream users of Water against a YFN;
- Creation of Yukon Water Board with 1/3 of appointments from CYFN;
- Water Board assesses compensation to be paid to YFN or YFN citizen;

Chapter 15- Definition of Boundaries and Measurement of Areas of Settlement Land

- Settlement Land to be surveyed by Canada;
- YFNs have Settlement Land Committees to assist with survey matters;
- Addresses employment and economic opportunities for YFNs in Surveys;

Chapter 16-Fish and Wildlife

- Right to hunt year round subject to conservation, public health and public safety;
- Basic guarantees in the event of conservation needs (BNLs and BNAs);
- Co-operative management through YFWMB;



Chapter 16-Objectives

- To ensure conservation in the management of all F and W resources and their habitats;
- To preserve and enhance the renewable resource economies;
- To preserve and enhance the culture, identity and values of YIP;
- To guarantee the rights of YIP to harvest and the rights of YFNs to manage renewable resources on Settlement lands;
- To integrate the management of all renewable resources;
- To integrate the relevant knowledge and experience of both YIP and of the scientific communities in order to achieve Conservation;
- To develop responsibilities for renewable resource management at the community level;
- To honour the harvesting and Fish and Wildlife management customs of YIP and to provide for the YIP's ongoing needs for F and W;
- To deal fairly with all Yukon residents who use F and W in the Yukon;
- To enhance and promote the full participation of YIP in renewable resources management.

Interpretative Provisions

- 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 YFNs; (YCA-August 15, 2008-Little Salmon case)
- 2.6.6-Settlement Agreements shall be interpreted according to the Interpretation Act, with such modifications as the circumstances require. (Principles of Treaty interpretations in common law)
- 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.

YFWMB

- The *Yukon First Nations Land Claims Settlement Act* provides in Section 9 that: For the purposes of carrying out their objectives ...the Fish and Wildlife Management Board and its salmon subcommittee...each have the capacity, rights, powers and obligations of a natural person.
- The general powers and responsibilities of the Board are set out in 16.7.11 and include: 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 YFNs and to the Councils, on all matters related to Fish and Wildlife management, Legislation, research, policies and programs.

Powers of the Board (cont'd)

- May recommend to the Minister policies for the management of Fish and Wildlife and their habitat;
- May make recommendations to the Minister on the need for and the content and timing of all Yukon F and W management plans for species included in international agreements, threatened species or populations declared by the Minister as being of a territorial, national or international interest, and Transplanted Populations and Exotic Species;
- May review and make recommendations to the Minister and to YFNs on management plans recommended by the Councils, specifically the population goals and the management options contained within those plans;
- May, where required by species or population management plans, recommend to the Minister a TAH for a species listed in 16.7.12.2 in accordance with 16.9.0;
- May review and recommend to the Minister adjustments to BNLs in accordance with 16.9.8;
- May make recommendations to the Minister on the need for, and on positions on, interjurisdictional agreements that affect the Conservation and Use of F and W resources in the Yukon;
- 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 F and W resources;
- May, at the request of the Council, assist a Council in the performance of its duties;
- May, subject to approval of the Minister and the Council, delegate the performance of its responsibilities to a Council; and
- May, in Consultation with Councils and subject to YFNFAs, identify new opportunities and recommend to the Minister management measures for commercial Uses of F and W.

Other Powers of the Board

- The Board has “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 F and W and their habitat in the Yukon”.
- The Board is required to “communicate to the Councils its recommendations and decisions approved in accordance with 16.8.0 within a reasonable time”;
- Yukon is required to Consult with the Board “Before the amendment or introduction of Legislation for F and W in the Yukon...”

Board Process

- Board forwards recommendations to Minister and draft regulations where appropriate (s.16.8.2);
- Recommendations kept confidential unless directed otherwise by Minister (s. 16.8.3);
- Within 60 days (possible 30 more days) the Minister may accept, vary set aside or replace the recommendations with written reasons and may consider other information;
- Board has 30 days to make final recommendation on decision (16.8.5);
- Minister then has 45 days to accept, vary, set aside and replace recommendations;
- If recommended TAH is varied or set aside and replaced then reasonable efforts to reach consensus with YFN;
- If failure to reach consensus then Minister can proceed if satisfied on grounds of Conservation;
- Notice provided to the Board on Minister's decision;
- Yukon implements final recommendations;
- Can apply for court review;

Chapter 17-Forest Resources

- YFNs own, manage, allocate and protect Forest Resources on Settlement Land;
- YFNs have the right at all seasons of the year to harvest Forest Resources for the exercise of traditional pursuits of hunting, fishing, trapping and gathering;
- YFNs have up to 500 CM per year to trees for community purposes;
- YFNs have the right to harvest Forest Resources incidental to the practice of traditional customs, culture and religion or for the traditional production of handicrafts and implements;
- Addresses economic opportunities;

Chapter 18-Nonrenewable Resources

- Addresses the process of resolving conflicts between YFNs and subsurface owners in Category A or B lands;
- Identifies a process to allow Yukon to identify quarries on Settlement Land;
- Ensures rights of access for Existing Mineral Rights holders on Settlement Land;
- Identifies process for rights of access for new mineral holders;
- Rights of access do not apply on developed Settlement Land;
- Sets out conditions of access;

Chapter 19-Financial Compensation

- Sets out the payment of Financial Compensation of \$242.6 million(1989);
- Paid out over 15 years;
- equal payments except loan offset was more in middle years;
- Identifies the process for repayment of loans over 15 year period;
- YFN share was premised upon agreed upon formula of $\frac{1}{3}$ equally and $\frac{2}{3}$ per capita;

Chapter 20-Taxation

- Exempts capital amount and loan payments from any taxes;
- Allows the establishment of Settlement Corporations for tax exempt purposes;
- No initial land transfer taxes;
- Section 87 surrendered in the later of 1998 or when a YFN has a Final Agreement;
- Provides for approximately \$26 million for surrender of Section 87 to YFNs; (1989);
- Canada assists with Property tax assistance payments with 100% in first year etc;

Chapter 21-Taxation of Settlement Land

- Unimproved Rural Settlement Land is exempt from Property Taxes;
- Settlement Land is not subject to seizure and/or sale but allows for attachment procedures;
- Ensures YFNs pay similar rates for user pay local services;
- Outstanding property tax issues resolved before effective date;

Chapter 22-Economic Development Measures

- Provides for a number of economic measures and rights to YFNs;
- ¼ of Public Corporations are to be YFN citizens;
- Employment in Yukon government should be representative of demographic ratio (ie. 25% of YG employees should be First Nations);
- Triggers mandatory requirements to negotiate project agreements where projects are on non-Settlement land which create 25 or more full time jobs in any one year;
- Terms of project agreements are then included in Decision documents of government;
- Same for capital projects of \$2 million or over that is constructed by Yukon;
- Third parties caught by common law of consultation and accommodation;
- Allowed to back in to “strategic investment projects” that include a non-renewable resource or hydro-electric project within the Traditional Territory of up to 25%;
- Right to acquire Yukon Government assets on a first right to acquire basis of assets worth \$10 million at original book value;
- Development of Regional Economic Development Plans;
- Creation of Strategic Economic Development Fund;

Chapter 23-Resource Royalty Sharing

- Right of YFNs to share in 50% of first 2 million and 10% thereafter in that year;
- Each YFN share is as per Financial Compensation entitlement;

Chapter 24-Self Government

- Allows YFNs to negotiate Self Government agreements;
- SGAs are not entrenched;
- Non-derogation of inherent right to self government;

Chapter 25-Transboundary Agreements

- YFNs retain aboriginal rights, titles and interests outside of Yukon;
- Once negotiated then may become a Settlement Agreement;

Chapter 26-Dispute Resolution

- Allows the Parties to resolve disputes by mediation and/or arbitration;
- Creates a Dispute Resolution Board and up to 15 persons on Dispute Resolution Panel;
- Attempts to employ expedited ADR processes;

Chapter 27-Yukon Fish and Wildlife Enhancement Trust

- Trust created with contributions by the parties (\$3 million);
- Trust used to restore, enhance and protect Fish and Wildlife;

Chapter 28-Implementation

- Implementation Fund created of approximately \$4.5 million (1990) for implementation;
- Provides for IP plans for UFA and YFNFAs;
- Established a Training Trust of \$6.5 million (1988);
- Training Trust has 5 trustees: 3 YFNs; 1 Yukon and 1 Canada;

Yukon First Nations' Jurisdiction

- Retain inherent right to self government under Section 35(1);
- May manage, administer, allocate or otherwise regulate the exercise of rights of YIP under 16.4.0 where not inconsistent with the regulation of those rights by Government;
- Final allocation of Cat 1 traplines;
- May align or re-align Cat 1 traplines;
- SGA rights under 13.1; 13.2; 13.3; and 14;
- FA rights under Chapter 5 (bylaws on land);

Spirit and Intent

- Ensure and enhance YFN culture, economy and lifestyle;
- Balanced power sharing;
- Mutual respect of people and rights;
- Non-litigious but consensus based;
- Rights not inherited but borrowed from future generations and must care in that fashion;
- Integration of simple resource management processes (ie. Water; land; air; fire;);
- Processes should bring people together;
- Rights should be easily understood and exercisable without fear of prosecution;
- Most progressive and forward thinking integration of management of resources and people in the world based on traditional and scientific knowledge;
- Evolutionary processes that grows as understanding, trust and respect grow;

Harvesting



Heritage and Culture

- Ownership of ethnographic resources;
- Protection of agreed upon heritage sites;
- Protection of burial grounds;
- Place names;
- Listing of heritage routes and trails;



Heritage and Culture



Current Issues

- Implementation of agreements;
- FTAs and PSTAs ongoing;
- Administration of Justice negotiations;
- 3 YFNs without Final Agreements;
- Work in co-operation with AFN on RIFNG and other initiatives;
- Push for entrenchment of SGAs;

Self Government

- Inherent right;
- SGA with paramount concurrent jurisdiction over citizens;
- Paramount concurrent over land matters;
- Concurrent on taxation;
- Laws of GA apply until occupation of field by YFNs;

