

## **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.

#### **Specific Provision**

- 16.3.2.1 Conservation measures in respect of the Southern Lakes Caribou Herd are set out in Schedule B - Southern Lakes Caribou Herd Conservation Measures, attached to this chapter.
- 16.3.2.2 A committee in respect of the Southern Lakes Area shall be established and the specific provisions in respect thereof are set out in Schedule E - Southern Lakes Wildlife Coordinating Committee, attached to this chapter.

- 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 Traps;

- 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.

<b>Specific Provision</b>	
16.6.1.1	The Renewable Resources Council for the Traditional Territory of the Carcross/Tagish First Nation shall be named the Carcross/Tagish Renewable Resources Council.

**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.

**Specific Provision**

- 16.6.2.1 The Carcross/Tagish First Nation and the Minister may each nominate one additional member as an alternate member to the Council.
- 16.6.2.2 Subject to 16.6.2.3, an alternate member may participate in the work of the Council.
- 16.6.2.3 An alternate member shall only receive remuneration and travel expenses and may only vote in the absence of a member nominated by the party which nominated the alternate.

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.

**Specific Provision**

- 16.6.4.1 All nominees to the Council shall have resided in the Traditional Territory of the Carcross/Tagish First Nation for at least one year immediately prior to their appointment and shall have long term familiarity with renewable resources in the Traditional Territory of the Carcross/Tagish First Nation.
- 16.6.4.2 For the purpose of 16.6.4.1, a temporary absence from the Traditional Territory of the Carcross/Tagish First Nation, including an absence for the purpose of study or training, does not constitute an interruption of residency.
- 16.6.4.3 Prior to any appointments being made to the Council, the Minister and the Carcross/Tagish First Nation shall make reasonable attempts to reach a consensus as to the individuals which each party nominates to the Council.

16.6.4.4 In attempting to reach consensus under 16.6.4.3, the Minister and the Carcross/Tagish First Nation shall consider:

- (a) any prospective nominee's familiarity with and sensitivity to the culture and aspirations of the Carcross/Tagish First Nation;
- (b) any prospective nominee's familiarity with renewable resource issues and, in particular, with the harvesting of renewable resources;
- (c) the compatibility of proposed nominees; and
- (d) any other matters to which the Minister and the Carcross/Tagish First Nation agree.

16.6.4.5 If after having made the reasonable attempts required by 16.6.4.3, the Minister and the Carcross/Tagish First Nation are unable to reach a consensus, either party may give written notice to the other setting out the names of the proposed nominees which it intends to designate to the Council and 14 days thereafter may so designate those proposed nominees.

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.

#### **Specific Provision**

16.6.5.1 All appointments to the Council shall be for a three year term, except for the initial appointments. For the initial appointments, one nominee of the Carcross/Tagish First Nation and one nominee of the Minister shall be appointed for one year, one nominee of the Carcross/Tagish First Nation and one nominee of the Minister shall be appointed for two years, and one nominee of the Carcross/Tagish First Nation and one nominee of the Minister shall be appointed for three years.

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.

**Specific Provision**

- 16.9.1.3 In the event that a Total Allowable Harvest is established for moose for all or part of the Traditional Territory of the Carcross/Tagish First Nation, Government shall allocate to the Carcross/Tagish First Nation either:
- (a) the percentage of the Total Allowable Harvest determined in accordance with Schedule C - Allocation of Total Allowable Harvest for Moose, attached to this chapter; or
  - (b) the number of moose required to satisfy the Subsistence needs of Carcross/Tagish People,
- whichever is less.
- 16.9.1.4 In the event that a Total Allowable Harvest is established for woodland caribou for all or part of the Traditional Territory of the Carcross/Tagish First Nation, Government shall allocate to the Carcross/Tagish First Nation either:
- (a) 75% of the Total Allowable Harvest; or
  - (b) the number of woodland caribou required to satisfy the Subsistence needs of Carcross/Tagish People,
- whichever is less.
- 16.9.1.5 If Government proposes, after Consultation with the Carcross/Tagish First Nation and the Council, to allocate a portion of a Total Allowable Harvest for moose or woodland caribou in accordance with 16.9.1.3(b) or 16.9.1.4(b), the following shall apply:

- (a) the Carcross/Tagish First Nation shall provide to Government and the Council its assessment of the number of moose or woodland caribou required to satisfy the Subsistence needs of Carcross/Tagish People;
- (b) if Government disagrees with the assessment of the Carcross/Tagish First Nation pursuant to (a), Government and the Carcross/ Tagish First Nation shall attempt to agree upon the number of moose or woodland caribou required to satisfy the Subsistence needs of Carcross/Tagish People, failing which either Government or the Carcross/Tagish First Nation may refer the matter to the dispute resolution process under 26.3.0;
- (c) the following matters shall be included in determining the Subsistence needs of Carcross/Tagish People for the purposes of 16.9.1.5:
  - (i) the health and nutritional needs of Carcross/Tagish People;
  - (ii) recent and current harvests of the species by Carcross/Tagish People;
  - (iii) the harvest patterns of Carcross/Tagish People and changes to those patterns;
  - (iv) current personal consumption estimates of the species by Carcross/Tagish People; and
  - (v) such other factors as agreed upon by Government and the Carcross/Tagish First Nation.

16.9.1.6 For greater certainty, if a Total Allowable Harvest is established in all or part of the Traditional Territory of the Carcross/Tagish First Nation for any species of Fish and Wildlife other than moose or woodland caribou, it shall be allocated in accordance with 16.9.1.1.

16.9.1.7 If Government proposes, after Consultation with the Carcross/Tagish First Nation and the Council, to allocate a portion of a Total Allowable Harvest in accordance with 16.9.1.1, the following shall apply:



- (a) the Carcross/Tagish First Nation shall provide to Government and the Council its assessment of the Subsistence needs of Carcross/Tagish People for the species which is the subject of the Total Allowable Harvest (the "Species");
- (b) if Government disagrees with the assessment of the Carcross/Tagish First Nation pursuant to (a), Government and the Carcross/Tagish First Nation shall attempt to agree on the determination of the Subsistence needs of Carcross/Tagish People for the Species, failing which either Government or the Carcross/Tagish First Nation may refer the matter to the dispute resolution process under 26.3.0;
- (c) the following matters shall be included in determining the Subsistence needs of Carcross/Tagish People for the purposes of an allocation pursuant to 16.9.1.1:
  - (i) the health and nutritional needs of Carcross/Tagish People;
  - (ii) recent and current harvests of the Species by Carcross/Tagish People;
  - (iii) the harvest patterns of Carcross/Tagish People and changes to those patterns;
  - (iv) current personal consumption estimates of the Species by Carcross/Tagish People; and
  - (v) such other factors as agreed upon by Government and the Carcross/Tagish First Nation.

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.

#### **Specific Provision**

16.9.5.1 Carcross/Tagish People shall have priority in Harvesting of Fish and Wildlife in accordance with this Agreement.

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.

**Specific Provision**

16.9.10.1 The special Harvesting rights for the Carcross/Tagish People for food Freshwater Fish are as follows:

- (a) Government shall ensure that the use of food Freshwater Fish by the Carcross/Tagish People receives primary consideration in the allocation of Freshwater Fish resources;
- (b) Government shall take into account the special importance to Carcross/Tagish People of:
  - Snafu Lake
  - Tarfu Lake
  - Little Atlin Lake
  - Tagish Lake
  - Nares Lake
  - Bennett Lake

in the allocation of food Freshwater Fish between Carcross/Tagish People and other users. This list may be changed by amendment to this Agreement once the overlapping claims, rights, titles and interests of other Yukon First Nations within the Traditional Territory of the Carcross/Tagish First Nation are resolved pursuant to 2.9.3.1.

16.9.10.2 Government and the Carcross/Tagish First Nation shall, as soon as practicable after the Effective Date of this Agreement, and at least every five years thereafter, jointly review the use of food Freshwater Fish by the Carcross/Tagish People and whether harvest demand and allocation priorities are being met, taking into account the following matters:

- (a) the Carcross/Tagish First Nation's assessment of the food Freshwater Fish use and harvest demand of the Carcross/Tagish People;

- (b) the harvest patterns of Carcross/Tagish People and changes to those patterns in respect of Freshwater Fish;
- (c) analysis of the current population and health of Freshwater Fish in the Traditional Territory of the Carcross/Tagish First Nation;
- (d) information regarding the matters set out in 16.9.6; and
- (e) any other available relevant information.

16.9.10.3 In conducting the joint review referred to in 16.9.10.2, Government and the Carcross/Tagish First Nation shall each provide to the other any available relevant information each has in its possession which would assist in reviewing whether the food Freshwater Fish needs of Carcross/Tagish People are being met.

16.9.10.4 If, as a result of the review referred to in 16.9.10.2, Government and the Carcross/Tagish First Nation determine that the harvest demand for food Freshwater Fish by the Carcross/Tagish First Nation and allocation priorities are not being met, Government and the Carcross/Tagish First Nation shall attempt to agree on how best to meet them.

16.9.10.5 If the Carcross/Tagish First Nation and Government are unable to reach agreement under 16.9.10.4, either the Carcross/Tagish First Nation or Government may refer the matter to the dispute resolution process under 26.4.0.

16.9.10.6 If the Carcross/Tagish First Nation and Government are unable to reach agreement following dispute resolution referred to in 16.9.10.5, the Minister shall make a decision and forward it to the Carcross/Tagish First Nation.

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.

### **Specific Provision**

- 16.11.1.1 The participation of Government, Councils, the Board and the Carcross/Tagish First Nation in the regulation, management and Use of Furbearers is set out in 16.5.1, 16.6.10, 16.7.12 and 16.11.0.

### **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.

**Specific Provision**

- 16.11.7.1 Category 1 Traplines in the Traditional Territory of the Carcross/Tagish First Nation are identified in Schedule D - Category 1 Traplines, attached to this chapter.

- 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.

**Specific Provision**

- 16.11.9.1 The process required by 16.11.9 is that the Carcross/Tagish First Nation shall provide Government with proof of the consent required by 16.11.8 and shall provide Government and the Council with notice that it has designated the trapline to be a Category 1 Trapline.

**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.

- 16.11.13.1 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 Settlement Legislation shall provide:
- 16.14.1.1 that on the Effective Date of a Yukon First Nation's Yukon First Nation Final Agreement, subsection 19(3) of the Yukon Act, R.S.C. 1985, c. Y-2 ceases to apply in respect of both:
- (a) persons eligible to be enrolled under that agreement; and
  - (b) the Traditional Territory of that Yukon First Nation; and
- 16.14.1.2 for the repeal of subsection 19(3) of the Yukon Act, R.S.C. 1985, c. Y-2 on the first day on which all Yukon First Nation Final Agreements have been given effect. \*

### **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.

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\* As amended. See note to 2.2.13.



## **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.

## **SCHEDULE B**

### **SOUTHERN LAKES CARIBOU HERD CONSERVATION MEASURES**

#### **1.0 Definitions**

1.1 In this schedule, the following definitions shall apply.

"Area" means the area shown as the Southern Lakes Caribou Herd Area on Map Sheet Southern Lakes Caribou Herd Area in Appendix B - Maps, which forms a separate volume to this Agreement.

"Herd" means the woodland caribou which range within the Area, and which are commonly known as the Southern Lakes Caribou Herd.

#### **2.0 Objective**

2.1 The objective of this schedule is to promote the awareness of and the Conservation of the Herd and its habitat in the Area for the benefit of Carcross/Tagish People and other Yukon residents and to promote the recovery of the Herd to a population which can sustain Harvesting in the Area.

#### **3.0 Implementation**

3.1 The Carcross/Tagish First Nation shall endeavour to voluntarily restrict Harvesting of the Herd by Carcross/Tagish People in the Area until it determines that the Herd can sustain Harvesting in the Area.

3.2 The Yukon shall adopt Conservation measures in the Area including a restriction on Harvesting of the Herd by third parties, until, in Consultation with the Carcross/Tagish First Nation, it is determined that the Subsistence needs of Carcross/Tagish People are met with respect to the Herd. In the event the Yukon and the Carcross/Tagish First Nation cannot reach agreement on the Subsistence needs of the Carcross/Tagish First Nation with respect to the Herd, either party may refer the matter to mediation under 26.4.0.

3.2.1 For greater certainty nothing in this schedule:

(a) affects the priorities for the Subsistence needs of the Carcross/Tagish First Nation; or

(b) replaces the Total Allowable Harvest provisions set out in 16.9.1.4.

3.3 The Carcross/Tagish First Nation and Government shall cooperate to coordinate their respective land and resource management activities in a manner that identifies and protects critical habitat of the Herd through available mechanisms in this Agreement and through other existing regulatory processes.

3.4 The Carcross/Tagish First Nation and Government shall have regard to any previous or future work done or studies made regarding maintenance of habitat protection in the Area, including the Southern Lakes Caribou Recovery Program and any successor plan or program.

3.5 Government and the Carcross/Tagish First Nation shall make best efforts to encourage the Province of British Columbia to adopt measures similar or compatible with this schedule for the Herd within its range in British Columbia.

**SCHEDULE C**

**ALLOCATION OF TOTAL ALLOWABLE HARVEST FOR MOOSE**

**1.0 Allocation**

- 1.1 When the Total Allowable Harvest in the Traditional Territory is as set out in column 1 of the following table, Government shall allocate to the Carcross/Tagish First Nation that percentage of the Total Allowable Harvest established for moose for all or part of the Traditional Territory of the Carcross/Tagish First Nation set out in the corresponding row of column 2, which works out to the number of moose set out in column 3. The percentages in column 2 and numbers in column 3 are based on the following allocation to the Carcross/Tagish First Nation: 100% of the first five moose, 70% of the next 20 moose, and thereafter, 75% of the Total Allowable Harvest.
- 1.2 If the calculation using the percentage in Column 2 results in an allocation of moose to the Carcross/Tagish First Nation comprising a whole number and a fraction of ½ or less, that fraction shall be deducted from the Carcross/Tagish First Nation's allocation of moose.

Column 1	Column 2	Column 3
Total Allowable Harvest in the Traditional Territory	% Allocation of Total Allowable Harvest (Carcross/Tagish First Nation)	Carcross/Tagish First Nation Allocation: Number of Moose
26 or more	75%	75% of the Total Allowable Harvest rounded in accordance with 1.2
25	76%	19
24	76%	18
23	77%	18
22	77%	17
21	77%	16
20	77%	15

Total Allowable Harvest in the Traditional Territory	% Allocation of Total Allowable Harvest (Carcross/Tagish First Nation)	Carcross/Tagish First Nation Allocation: Number of Moose
19	78%	15
18	78%	14
17	79%	13
16	79%	13
15	80%	12
14	81%	11
13	82%	11
12	83%	10
11	84%	9
10	85%	8
9	87%	8
8	89%	7
7	91%	6
6	95%	6
to and including 5	100%	100% of the Total Allowable Harvest

**SCHEDULE D**

**CATEGORY 1 TRAPLINES**

- 1.0 List of Category 1 Traplines in the Traditional Territory of the Carcross/Tagish First Nation**
- 1.1 This schedule will be amended as trappers give consent to have their traplines designated as Category 1 traplines.



## **SCHEDULE E**

### **SOUTHERN LAKES WILDLIFE COORDINATING COMMITTEE**

#### **1.0 Definitions**

1.1 In this schedule, the following definitions shall apply.

"British Columbia" means the government of the Province of British Columbia.

"Carcross/Tagish First Nation" means the Carcross/Tagish First Nation once its self-government agreement is brought into effect pursuant to the Yukon First Nations Self-Government Act, S.C. 1993, c. 35 and prior to that time means the Carcross/Tagish First Nations Band.

"Effective Date" means the earlier of the Effective Dates of the Carcross/Tagish First Nation Final Agreement or the Kwanlin Dun First Nation Final Agreement.

"Final Agreement" means with respect to:

- (a) the Carcross/Tagish First Nation, the Carcross/Tagish First Nation Final Agreement among Canada, the Yukon and the Carcross/Tagish First Nation brought into effect pursuant to Settlement Legislation; and
- (b) the Kwanlin Dun First Nation, the Kwanlin Dun First Nation Final Agreement among Canada, the Yukon and the Kwanlin Dun First Nation brought into effect pursuant to Settlement Legislation.

"First Nations" means the Kwanlin Dun First Nation, the Carcross/Tagish First Nation, the Ta'an Kwach'an Council, the Taku River Tlingit First Nation Band, the Champagne and Aishihik First Nations and the Teslin Tlingit Council.

"Habitat" means the areas needed to sustain Southern Lakes caribou, moose, sheep and other Wildlife populations.

"Kwanlin Dun First Nation" means the Kwanlin Dun First Nation once its self-government agreement is brought into effect pursuant to the Yukon First Nations Self-Government Act, S.C. 1993, c. 35 and prior to that time means the Kwanlin Dun First Nation Band.

"Regional Wildlife Assessment" means the assessment to be prepared in accordance with 5.2.

"Southern Lakes Area" means the area shown as Southern Lakes Area on Map Sheet Southern Lakes Area in Appendix B - Maps, which forms a separate volume to this Agreement.

## **2.0 Establishment**

2.1 A Southern Lakes Wildlife Coordinating Committee (the "Coordinating Committee") shall be established as soon as practicable after the Effective Date.

## **3.0 Objectives**

3.1 The objectives of the Coordinating Committee are:

3.1.1 to coordinate management of caribou, moose, sheep and other Wildlife populations and their Habitats in the Southern Lakes Area to promote the recovery and Conservation of these populations, with consideration for the future subsistence needs of the First Nations in the Southern Lakes Area, as well as the future needs of other users, both consumptive and non-consumptive; and

3.1.2 to coordinate the involvement of and improve communications among the First Nations, Government, British Columbia and others with regard to all aspects of the recovery and management of caribou, moose, sheep and other Wildlife populations and their Habitats in the Southern Lakes Area.

## **4.0 Composition of the Coordinating Committee**

4.1 The Coordinating Committee shall be comprised of no less than three and no more than nine members of whom one member each shall be designated by Canada and the Yukon and at least one member shall be designated by either the Kwanlin Dun First Nation or the Carcross/Tagish First Nation. Members of the Coordinating Committee for the First Nations and British Columbia shall be designated as follows:

4.1.1 subject to 4.1.4, Government shall request the Kwanlin Dun First Nation and the Carcross/Tagish First Nation to each designate one member;

- 4.1.2 Government shall invite the Ta'an Kwach'an Council, the Taku River Tlingit First Nation Band, the Champagne and Aishihik First Nations, the Teslin Tlingit Council and British Columbia to each designate one member;
- 4.1.3 if any of the bodies requested or invited by Government to designate a member pursuant to 4.1.1 or 4.1.2 declines to designate a member within 90 days of being requested or invited by Government to do so, the Coordinating Committee shall be established without a designate from that body and may proceed without their participation;
- 4.1.4 if the Coordinating Committee is established prior to either the Kwanlin Dun First Nation Final Agreement or the Carcross/Tagish First Nation Final Agreement coming into effect and the predecessor Band of that First Nation declines to designate a member under 4.1.1 within 90 days of receiving the request to do so, that First Nation may, within 90 days after the Effective Date of its Final Agreement designate one member to the Coordinating Committee.
- 4.2 A member of the Coordinating Committee shall be a delegate of the body which designated the member.
- 4.3 The Coordinating Committee may invite other Persons to provide information to the Coordinating Committee or to participate in the work of the Coordinating Committee from time to time.
- 4.4 The Coordinating Committee may appoint a chairperson from its membership.
- 4.5 The Coordinating Committee shall to the greatest extent possible work on a consensus basis and may establish its own operating procedures.
- 5.0 Work of the Coordinating Committee**
- 5.1 The Coordinating Committee shall consider and may make recommendations to the Yukon, Canada, British Columbia and the First Nations on any matters affecting caribou, moose, sheep and other Wildlife populations and their Habitats in the Southern Lakes Area, including recommendations concerning legislation, policies, programs and measures respecting:
- 5.1.1 the coordination of the land and resource management activities of the First Nations;

- 5.1.2 recovery, Conservation and management plans;
  - 5.1.3 harvest management;
  - 5.1.4 the need for and the review of Wildlife management and research proposals and other management and research proposals as may relate to the objectives of the Coordinating Committee;
  - 5.1.5 actions necessary to achieve the objectives described in any Wildlife management plans applicable in the Southern Lakes Area having similar objectives to those set out in 3.0;
  - 5.1.6 specific projects, plans, and activities that may impede, delay, or disrupt movements, affect behavioural patterns or reduce productivity of caribou, moose, sheep and other Wildlife populations, or affect Habitat; and
  - 5.1.7 the identification of sensitive Habitat requiring special protection and the means for protecting that Habitat.
- 5.2 Within 24 months of its establishment, the Coordinating Committee shall endeavour to complete and submit to the Yukon, Canada, the First Nations and British Columbia a Regional Wildlife Assessment which shall take into account existing information and data in relation to the following:
- 5.2.1 the subsistence food needs of the First Nations;
  - 5.2.2 Wildlife harvest levels of all user groups in the Southern Lakes Area;
  - 5.2.3 Wildlife harvest patterns of all user groups in the Southern Lakes Area and changes to those patterns;
  - 5.2.4 the existing regulatory framework, programs, plans and policies pertaining to Wildlife in the Southern Lakes Area;
  - 5.2.5 any previous studies of Wildlife in the Southern Lakes Area;
  - 5.2.6 the relevant knowledge and experience of the First Nations, residents of the Southern Lakes Area, and the scientific communities in relation to Wildlife in the Southern Lakes Area;
  - 5.2.7 the present state of Wildlife populations and Habitat in the Southern Lakes Area; and

5.2.8 any other available relevant information.

5.3 For greater certainty, where the Coordinating Committee identifies additional or further studies in relation to any of the matters enumerated in 5.2 that may assist the Coordinating Committee in the completion of the Regional Wildlife Assessment, Government may, at its sole discretion, undertake such additional or further studies.

5.4 The Coordinating Committee shall provide information collected by it for the Regional Wildlife Assessment to Renewable Resources Councils within the Southern Lakes Area and to the Fish and Wildlife Management Board to assist in future Fish and Wildlife management.

5.5 The Coordinating Committee may provide advice to and seek input from Renewable Resources Councils within the Southern Lakes Area, the Fish and Wildlife Management Board, any Regional Land Use Planning Commission in the Southern Lakes Area, and other appropriate boards and government agencies on land use planning, land use activities and land management practices throughout the Southern Lakes Area.

5.6 In carrying out its work, the Coordinating Committee shall provide for public input, which may include public meetings to receive input and to report on its findings and recommendations.

## **6.0 Term of Steering Committee**

6.1 The mandate of the Coordinating Committee shall expire three years from the establishment of the Coordinating Committee unless otherwise agreed by the Yukon, Canada, and those of the Carcross/Tagish First Nation and the Kwanlin Dun First Nation who have a member on the Coordinating Committee.

## **7.0 Technical and Administrative Support**

7.1 The Yukon shall provide technical support to the Coordinating Committee and the First Nations and British Columbia may also provide technical support.

7.2 The Yukon shall provide administrative support to assist in meeting the administrative needs of the Coordinating Committee.