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

Northwest Territories First Nations Settlement Areas



Canada

Book One

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

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Northwest Territories First Nations Settlement Areas

Land Management Division,

Northern Affairs Program

November 13, 1997

Preface

The Federal Government through the Minister of Indian Affairs and Northern Development is responsible for administering territorial lands and its resources in the Yukon Territory and the Northwest Territories through various Acts, including the *Territorial Lands Act, and Regulations, Yukon Waters Act, Canada Petroleum Resources Act, Yukon Placer Mining Act, Yukon Quartz Mining Act*, etc. Through the Land Claim process, jurisdictional responsibility over certain lands, resources and land uses has been transferred to various First Nations and to Aboriginal groups across the North.

In order to provide a clearer understanding of the jurisdictional framework that is evolving in the Yukon Territory and Northwest Territories, this set of guidelines has been prepared by the Land Management Division concerning “Jurisdictional Responsibilities for Land, Resources, Land Use and Development in the Yukon and Northwest Territories”. These guidelines consist of eight (8) chapters, each chapter describes the jurisdictional regime of a particular geographic region and provides the answers as to which governing bodies should be consulted when making application for specific surface and sub-surface leases, permits, licences, or claims, etc.

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

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

Dedication

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

Regional Managers of Lands

Yukon Region

Tom Rettallack

Hiram Beaubier

Richard Spencer

Bob Freisen

Angus Robertson

Jack Nichols

Jennifer Guscott

Mark Zrum

Chiefs, Land Management

Headquarters

Bob Goudie

David Gee

Gord Evans

Ian Petrie

Chris Cuddy

Ian Sneddon

Regional Managers of Lands

Northwest Territories Region

Norm Adams

Joe Ganske

Will Dunlop

Floyd Adlem

Jim Umpherson

Howard Madill

Annette McRobert

Important Note to Users

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

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Introduction

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

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

Jurisdictions will further change as these initiatives continue.

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

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

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

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

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

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

1. Settlement Lands to which the First Nations received title under their Land Claim Settlement Agreements;
2. Reserves under the *Indian Act*; and
3. Federal lands.

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

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

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

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

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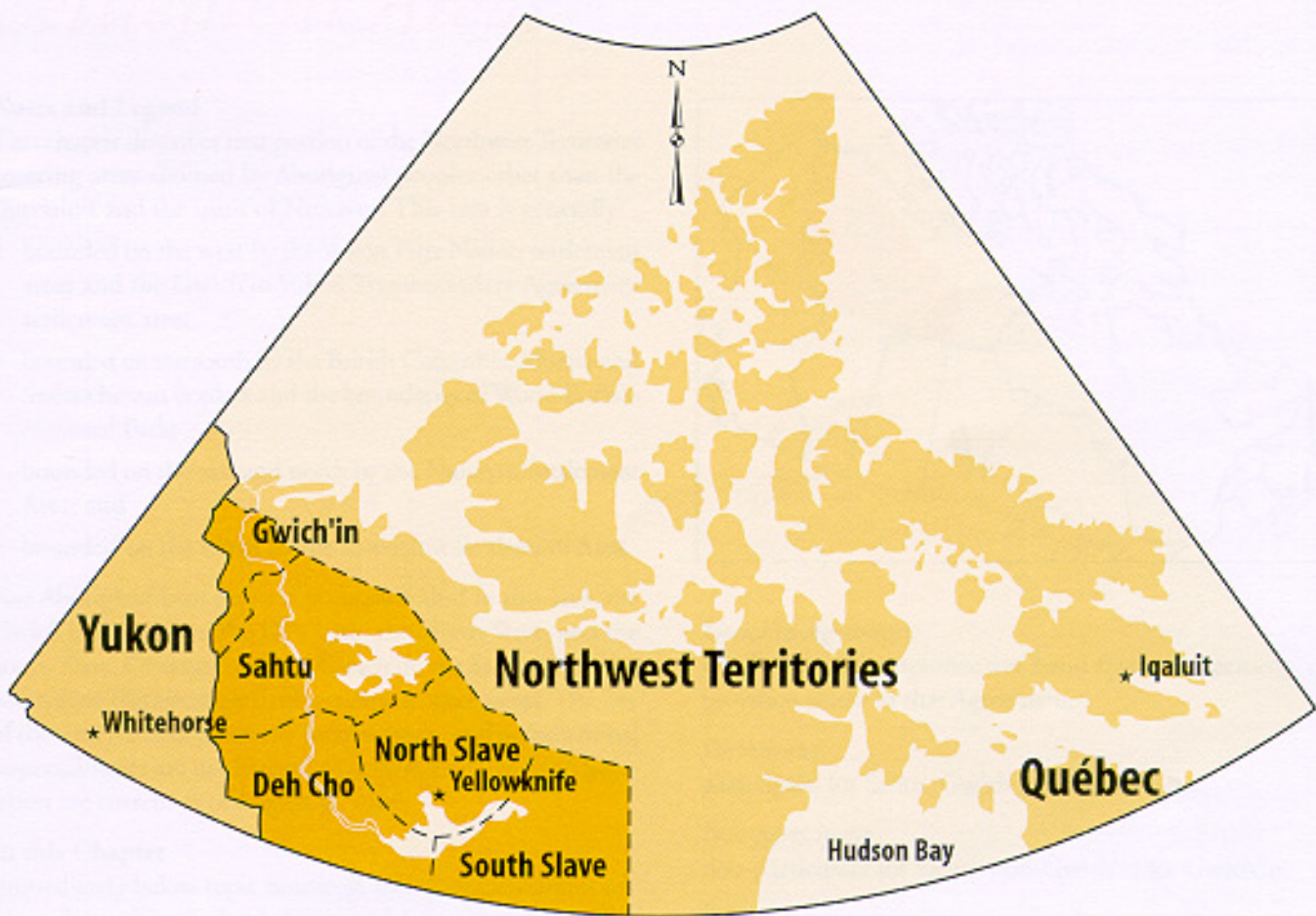
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Northwest Territories First Nations Settlement Areas

Book one

Northwest Territories First Nations Settlement Areas

Notes and Legend

This chapter describes that portion of the Northwest Territories covering areas claimed by Aboriginal peoples other than the Inuvialuit and the Inuit of Nunavut. This area is generally:

- ! bounded on the west by the Yukon First Nation settlement areas and the Gwich'in Yukon Transboundary Agreement settlement area;
- ! bounded on the south by the British Columbia, Alberta and Saskatchewan borders and the boundaries of Wood Buffalo National Park;
- ! bounded on the east and north by the Nunavut Settlement Area; and
- ! bounded on the north by the Inuvialuit Settlement Area.

Five Aboriginal land claim regions are found in this area: the Gwich'in, the Sahtu, the Deh Cho, the North Slave, and the South Slave. Of these, only the Gwich'in, the Sahtu Dene and Métis First Nations have final settlement agreements. The rest of the area remains primarily federal lands, and jurisdictional responsibilities are unchanged to date. Agreements and legislation are current as of August 31, 1996.

In this Chapter

Immediately below topic headings, this document notes relevant chapters in the land claims settlement agreements. You will find exceptions described in the text.

FA:

the final agreement of the Sahtu Dene and Métis Comprehensive Land Claim Agreement, and the Gwich'in Comprehensive Land Claim Agreement.

First Nation:

Sahtu or Gwich'in, as the case may be.

First Nation organization:

the Sahtu Secretariat Inc., or the Gwich'in Tribal Council.

Gwich'in Agreement:

the Gwich'in Comprehensive Land Claim Agreement, or a provision solely in that Agreement.

Participant:

participant for Sahtu, Gwich'in for Gwich'in.

Non-participant:

non-participant for Sahtu; non-Gwich'in for Gwich'in.

NWT:

the Northwest Territories.

SDM Agreement:

the Sahtu Dene and Métis Comprehensive Land Claim Agreement, or a provision solely in that Agreement.

Settlement legislation:

the Gwich'in Land Claim Settlement Act or the Sahtu Dene and Métis Land Claim Settlement Act.

A reference to Sahtu lands, Gwich'in lands, or First Nation lands refers to both settlement lands and municipal lands.

1.1 Settlement Agreements

1.1.1 General Notes

1.1.1.1 Finalized Agreements

The two final land claim settlement agreements in this area are the Gwich'in Comprehensive Land Claim Agreement, and the Sahtu Dene and Métis Comprehensive Land Claim Agreement. The federal statutes authorizing the land claim settlements are:

! *the Gwich'in Land Claim Settlement Act* (S.C. 1992, c.53, Act in force December 22, 1992). A summary of its provisions follows:

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

- ! *the Sahtu Dene and Métis Land Claim Settlement Act* (S.C. 1994, c.27, Act in force June 23, 1994). A summary of its provisions follows:
- S Agreement means the Sahtu Dene and Métis Comprehensive Land Claim Agreement.
 - S The Act binds the federal and provincial Crowns. (This includes the territorial government.)
 - S The Act approves and declares valid the Agreement.
 - S Title to lands vests in the Sahtu Secretariat Inc., as set out in the Agreement.
 - S If there is a conflict or inconsistency between this Act or the Agreement and any other Act, this Act or the Agreement prevails.

1.1.1.2 General Provisions

(SDM and Gwich'in Agreements: Chapter 3)

FAs are land claim agreements within section 35 of Constitution Act. The Sahtu Dene and Métis, and the Gwich'in release the Aboriginal and Treaty rights listed in the FA. An FA may be amended by consent of the Governor in Council and the First Nation. The rights of the Gwich'in in the Yukon Territory are set out in the Yukon Transboundary agreement, Appendix C of the FA. (Gwich'in Agreement: Chapter 27)

1.1.2 Definitions

(SDM and Gwich'in Agreements: Chapter 2)

The FA uses the following definitions.

Designated Sahtu Organization:

This means an organization designated under the FA, including the Sahtu Tribal Council. This organization is generally the Sahtu Secretariat Inc. (SDM Agreement)

Developer:

This means any person engaged in development activity.

Development activity:

This refers to any private or government undertaking on land or water.

Development proposal:

This refers to proposed development activity outside local government boundaries. It also includes such activities within government boundaries which are likely to have significant effect on air, water or renewable resources.

Government:

This means either federal or NWT Government, or both.

Gwich'in community:

The communities of Inuvik, Aklavik, Arctic Red River or Fort McPherson. (Gwich'in Agreement)

Gwich'in lands:

This means Gwich'in municipal lands and settlement lands. (Gwich'in Agreement)

Gwich'in municipal lands:

This means Gwich'in lands within local government boundaries under the FA. (Gwich'in Agreement)

Heritage resources:

These include archaeological sites, historic places and sites, and burial sites. (Gwich'in Agreement)

Local Government:

This means all those listed in the FAs and any subsequent designations. It includes the NWT Government when acting in stead of local government.

Minerals:

This term includes coal, and oil and gas.

Mackenzie Valley:

Refers to the area within the NWT bounded on the north by the Western Arctic Region (Inuvialuit Settlement Region in NWT), on the east by Nunavut, on the south by the 60th parallel (excluding Wood Buffalo National Park), and on the west by the Yukon Territory.

Norman Wells Proven Area:

This refers to the area in Schedule A to the Canada-Imperial Oil 1944 Agreement, as amended. (Gwich'in Agreement)

Participant:

A person enrolled in the Enrollment Register. (SDM Agreement)

Settlement area:

This means the areas in the NWT described in the FAs.

Settlement lands:

This refers to:

- ! Sahtu lands (outside local government boundaries) granted under the FA, within or outside the settlement area, as set out in the FA (SDM Agreement);

- ! Gwich'in lands (outside local government boundaries) granted under the FA. (Gwich'in Agreement).

Sahtu community:

The community of participants in Fort Good Hope, Colville Lake, Fort Norman, Déline or Norman Wells. (SDM Agreement)

Sahtu lands:

Refers to Sahtu municipal lands and settlement lands. (SDM Agreement)

Sahtu municipal lands:

These are Sahtu lands within local government boundaries under the FA. (SDM Agreement)

Specified substances:

These substances include carving stone, soil, sand, gravel, peat, limestone and other substances listed in the FA.

Specific sites:

This means settlement lands selected under an appendix to the FA. (SDM Agreement)

Timber licence:

This includes a timber permit and a forest management agreement.

Waterfront lands:

This refers to lands from the ordinary high-water mark to 30.48 metres (approximately 100 feet) inland.

1.1.3 Administrative Bodies

1.1.3.1 Planning Board

(SDM Agreement: Chapter 25; Gwich'in Agreement: Chapter 24)

Planning boards will be established under legislation. Please see 1.1.3.9 for a discussion of the proposed legislation (*the Mackenzie Valley Resource Management Act*).

The Gwich'in Interim Planning Board has been set up for the period between the settlement legislation and the planning board legislation. The Board follows existing guidelines for land use planning. (Gwich'in Agreement)

1.1.3.2 Environmental Impact Review Board

(SDM Agreement: Chapter 25; Gwich'in Agreement: Chapter 24)

The FAs discuss the Mackenzie Valley Environmental Impact Review Board to be established under legislation. Please see 1.1.3.9 for a discussion of the proposed legislation (*the Mackenzie Valley Resource Management Act*).

Interim measures in the Sahtu FA call for a Sahtu Tribal Council nominee to sit on any panel reviewing applications in the Sahtu region, and for consultations to be held. All development activities on Sahtu lands are subject to the governmental environmental impact and assessment and review process, until the Review Board is established. The Sahtu Tribal Council will be entitled to nominate a member for the Regional Environmental Review Committee. (SDM Agreement)

Under interim measures in the Gwich'in FA, a Gwich'in nominee must sit on any panel reviewing applications in the Gwich'in region. As well, consultations must be held with the Gwich'in and anyone else with an interest. (Gwich'in Agreement)

1.1.3.3 Land and Water Board

(SDM Agreement: Chapter 25; Gwich'in Agreement: Chapter 24)

The FAs discuss land and water boards that legislation will establish in the settlement area. Please see 1.1.3.9 for a discussion of the proposed legislation (*the Mackenzie Valley Resource Management Act*).

The boards are licensing bodies which regulate land and water use throughout the settlement area, including First Nation lands. The FAs allow for a land and water board to cover a larger area, including the settlement area boards.

Interim Measures

Between the effective date of the settlement legislation and the enactment of the land and water board legislation, government cannot issue a permit, licence, or other authorization for land or water use in a settlement area without 30 days notice (shorter if legislated) to the First Nations.

Prior to the establishment of land and water boards:

- ! settlement lands remain subject to the Territorial Land Use Regulations, notwithstanding the definition of territorial lands under the *Territorial Lands Act*, except that no application for a land use permit respecting Sahtu lands shall be accepted by government, without:

- consent of the Sahtu Tribal Council;
- order of the Surface Rights Board (or a decision of the Arbitration Panel) related to access rights;
- nominees of the Sahtu Tribal Council (and the Gwich'in Tribal Council where appropriate) form half the members of the Department of Indian and Northern Development's Lands Advisory Committee; and
- a nominee of the Sahtu Tribal Council shall be appointed to the body established to advise the NWT Water Board. (SDM Agreement)

1.1.3.4 Surface Rights Board

(SDM Agreement: Chapter 27; Gwich'in Agreement: Chapter 26)

The FAs discuss the Surface Rights Board to be established by legislation.

In the interim period, any matter that the Surface Rights Board would settle will be determined by arbitration under the FAs. However, mineral legislation in the Territorial Lands Act addresses ways to resolve matters regarding exploration, development and production of minerals.

1.1.3.5 Renewable Resources Councils

(SDM Agreement: Chapter 13; Gwich'in Agreement: 12)

The FAs set out the composition, powers and duties of the Renewable Resources Councils relating to wildlife and forestry resource management.

Renewable Resources Councils for each settlement region may grant certain rights to non-participants to harvest wildlife on First Nation lands, in special management areas, and in the settlement areas. People may appeal this permission to the parent Renewable Resources Board.

The Renewable Resources Council must consent before government issues a new licence for commercial tree harvesting in a settlement area where there is a significant effect on participants' harvesting of wildlife. The Renewable Resources Board can overrule the Council's decision and permit the tree harvesting.

The FAs set out the rules for licensing by government, and permitting by Renewable Resources Councils, for commercial harvesting of wildlife. The First Nations have certain first rights of refusal to new licences and permits.

1.1.3.6 Renewable Resources Board

(SDM Agreement: Chapter 13; Gwich'in Agreement: Chapter 12)

The FAs set out the composition, powers and duties of the Renewable Resources Board, relating to wildlife and forestry resource management. The Renewable Resources Board can set policies and propose regulations in relation to forestry harvesting. The FAs set out the rules for licensing by government, and permitting by Renewable Resources Boards for commercial harvesting of wildlife. The First Nations have certain first rights of refusal to new licences and permits.

1.1.3.7 Joint Government-Sahtu Heritage Working Group

(SDM Agreement: Chapter 26)

The Sahtu FA establishes a joint government-Sahtu Dene and Métis working group to make recommendations relating to various listed Sahtu heritage places and sites. (SDM Agreement)

1.1.3.8 Norman Wells Proven Area Committee

(SDM Agreement: Chapter 9)

The Sahtu FA calls for a Joint Committee to be set up between government and the Sahtu Tribal Council in relation to this area. (SDM Agreement)

1.1.3.9 Mackenzie Valley Resource Management Act

Note: The *Mackenzie Valley Resource Management Act* (proposed) will be introduced in the fall 1997 session of the new Parliament.

This proposed statute would apply to the Mackenzie Valley in the Northwest Territories, unless otherwise specified. The Mackenzie Valley is bounded on the south by 60 degrees latitude (but not including Wood Buffalo National Park), on the north by the Inuvialuit Settlement Region, on the west by the Yukon Territory, and on the east by Nunavut.

Land Use Planning

Part II of the Bill contains provisions relating to land use planning. These provisions would not generally apply to:

- ! national parks;
- ! lands acquired for an historic site or monument; or
- ! lands within local government boundaries.

The Bill establishes the Gwich'in Land Use Planning Board for the Gwich'in settlement area and the Sahtu Land Use Planning Board for the Sahtu settlement area. These Boards establish land use plans that become effective upon approval by the First Nation and government. A land use plan would bind First Nations, federal and territorial governments and anyone else issuing licences or other authorizations relating to the use of land or waters, or the deposit of waste. This includes the establishment of national parks and the acquisition of historic sites or monuments. On request, a planning board would determine whether an activity conforms to a land use plan. This decision would be subject only to judicial review by the Northwest Territories Supreme Court.

Land and Water Regulations

Parts III and IV of the Bill deal with land and water regulations. These provisions would not generally apply to:

- ! the use of land or waters; or
- ! the deposit of waste within national parks or lands acquired for an historic site or monument. However, authorities within these excepted areas would consult with land and water boards, and vice versa.

The land provisions would also not apply within local government boundaries, to the extent local government regulates the use of land.

The Bill establishes the Mackenzie Valley Land and Water Board for the Mackenzie Valley. It also establishes two permanent regional panels:

- ! the Gwich'in Land and Water Board for the Gwich'in settlement area; and
- ! the Sahtu Land and Water Board for the Sahtu settlement area.

Other regional panels may be established as required. The regional panels' jurisdiction would be generally limited to uses of land and waters and deposits of waste likely to have an effect only within the settlement area.

These Land and Water Boards would regulate use of land and waters for the optimum benefit of area residents and all Canadians. The Boards would have jurisdiction over all uses of water and deposits of waste for which a licence is required under the *Northwest Territories Waters Act*. The Boards take the place of the Northwest Territories Water Board. The provisions of the *Northwest Territories Waters Act* continue (as amended by the legislation) to incorporate features of the land claims.

The Boards would have the right to require compensation when a use of water or deposit of waste (from inside or outside of the region) in a national park or on an historic site or monument lands, would substantially affect water in, or adjacent to, settlement areas. All licences or other authorizations issued by a Board would be subject to the provisions

of an approved land use plan, and the environmental review process. Decisions of a Board would generally be final and binding.

A provision in Part III would grant the public and government a conditional right of access to construction materials situated on settlement lands, or municipal lands in settlement areas. Part III also contains provisions granting certain Aboriginal water rights.

Environmental Assessment

Part V of the Bill would set up a process for reviewing proposals for development in the Mackenzie Valley. This would include:

- ! preliminary screening;
- ! an environmental assessment; and
- ! an environmental impact review.

Proposals relating to Indian reserves, settlement lands, the establishment of national parks and the acquisition of lands for historic sites or monuments would all submit to this process. The Part V process would mainly replace the application of the *Canadian Environmental Assessment Act in the Mackenzie Valley*, except under specific circumstances such as transboundary or “national interest” applications.

Under the Bill (and aside from emergencies) environmental review requirements would have to be met prior to:

- ! the issuing of a permit, licence or other authorization under federal or territorial law; or
- ! the taking by a First Nation or a government of any irrevocable action relating to a development not requiring such an authorization.

Part VI of the Bill deals with impact monitoring and environmental audits.

Part VII of the Bill contains various transitional provisions relating to permits and licences (issued previously under the *Territorial Lands Act* and the *Northwest Territories Waters Act*), and to environmental reviews already in progress.

1.1.4 Other Aboriginal Peoples

(SDM Agreement: Chapter 28; Gwich'in Agreement: Chapter 27)

1.1.4.1 The Inuvialuit

Under the Sahtu Dene and Métis Agreement:

- ! the Inuvialuit retain traditional harvest rights within the SDM settlement area, subject to legislation and the parts of the FA applicable to participant harvesters; and
- ! participants and the Inuvialuit can share wildlife resources and enter into harvesting and wildlife management agreements under 14(15) of the Inuvialuit FA. (SDM Agreement)

Under the Gwich'in Agreement:

- ! the Gwich'in Tribal Council can exchange lands with the Inuvialuit. Any Inuvialuit lands received in exchange shall be deemed to be Gwich'in lands under the FA;
- ! the Gwich'in right to harvest wildlife on Gwich'in lands, applies to Gwich'in lands in the Western Arctic Region and any overlying waters. Wildlife management provisions in the Inuvialuit Final Agreement apply to such lands and waters;
- ! the Inuvialuit retain traditional harvest rights within the Gwich'in settlement area, subject to legislation applicable to Gwich'in harvesters, including the FA; and
- ! the provisions of the Gwich'in FA apply to Gwich'in lands in the Western Arctic Region, except certain provisions relating to administrative bodies. (Gwich'in Agreement)

1.1.4.2 The Inuit of the Nunavut Settlement Area

Under the Sahtu Dene and Métis Agreement:

- ! participants have a right to traditional wildlife harvests (in their traditional harvest areas) within the Nunavut Settlement Area. This is on the same basis and on the same conditions as apply to the Inuit;
- ! the Inuit retain traditional harvest rights within the SDM settlement area, subject to legislation and the parts of the FA applicable to participant harvesters, on the same basis and on the same conditions as apply to participants; and

- ! these rights may be limited by agreement between the Sahtu Secretariat Inc. and the designated Inuit organization.

1.1.4.3 Other Comprehensive Land Claim or Other Agreements

The Sahtu Secretariat Inc. can enter into agreements with adjacent Aboriginal groups to share wildlife harvesting and management rights under the FA, but with no adverse effects to rights of non-participants under the FA. (SDM Agreement)

The Gwich'in Tribal Council can enter into agreements with other land claim bodies to share wildlife harvesting and management rights under the FA, but with no adverse effects to rights of non-participants under the FA. (Gwich'in Agreement)

Nothing in the Gwich'in FA is intended to affect traditional wildlife harvest rights of the Dene or Métis of Colville Lake or Fort Good Hope, in the Gwich'in settlement area. (Gwich'in Agreement)

1.2 Jurisdictional Categories

Two basic jurisdictional categories of land exist in the First Nation settlement areas in the Northwest Territories:

1. *Settlement Lands and Municipal Lands* under the First Nation Land Claim Settlement Agreements. These lands are held by First Nations in the following four manners:
 - a. *Settlement lands* in which the First Nation has a fee simple title in the lands, as well as subsurface title to all mines and minerals. The First Nation is the private landowner. The lands are not federal lands, although regulatory jurisdiction over the lands derives from the FAs.
 - b. *Settlement lands* in which the First Nation has a fee simple title in the lands, excluding mines and minerals. The First Nation also has the right to specified substances, including sand and gravel. The surface lands are not federal lands, although regulatory jurisdiction over the surface lands or the specified substances derives from the FAs. The federal government retains subsurface title to mines and minerals (other than specified substances), and retains jurisdiction over them subject to the FAs.
 - c. *Settlement lands* in which the First Nation has a subsurface title only in the mines and minerals underlying the lands. The federal government retains title to the surface lands subject to the regulatory provisions of the FAs.
 - d. *Municipal lands* in which the First Nation has a fee simple (or fee simple equivalent title) in the lands, excluding mines and minerals. The federal

government retains subsurface title to the mines and minerals, and retains jurisdiction over them subject to the regulatory provisions of the FAs.

2. *Federal (Crown) Lands*. The federal government has jurisdiction over them subject to the FAs.

Note: This document does not discuss reserves under the *Indian Act* and Commissioner's lands; neither does it discuss local government areas, which are administered by the community or municipality, or the territorial government acting in its stead.

1.3 Settlement and Municipal Lands

Note: A reference to Sahtu, Gwich'in, or First Nation lands refers to both settlement lands and municipal lands. The Gwich'in land claim settlement legislation takes effect on December 22, 1992. The Sahtu Dene and Métis land claim settlement legislation takes effect on June 23, 1994.

1.3.1 Land Ownership

1.3.1.1 General

(SDM and Gwich'in Agreements: Chapter 3)

First Nation lands are not deemed to be lands reserved for Indians under the *Indian Act*.

1.3.1.2 Title – Settlement Lands

(SDM Agreement: Chapter 19; Gwich'in Agreement: Chapter 18)

Sahtu title to settlement lands is as follows:

- 19.1.2(a) - fee simple title to 39,624 square kilometres of lands. This excludes title to mines and minerals in, on or under the lands, and the right to work the minerals (subject to any rights and interests existing on June 23, 1994);
 - right to the specified substances and the right to work the specified substances.
- 19.1.2(b) - fee simple title to 1,813 square kilometres of land. This *includes* mines and minerals in, on or under the lands, subject to any rights and interests existing on June 23, 1994. (SDM Agreement)

Gwich'in title to settlement lands is as follows:

- 18.1.2(a) - fee simple title to 16,264 square kilometres (approximately 6,280 square miles) of lands. This *excludes* title to mines and minerals in, on or under the lands, and the right to work the minerals (subject to any rights and interests existing on December 22, 1992).
- (18.2.1).
- 18.1.2(b) - the right to specified substances and the right to work them
- 18.1.2(b) - fee simple title to 4,299 square kilometres (approximately 1,660 square miles) of lands. This *includes* mines and minerals in, on or under the lands (subject to any rights and interests existing on December 22, 1992).
- 18.1.2(c) Aklavik Lands
 - (i) fee simple title to 1,766 square kilometres (approximately 682 square miles) of lands. This includes mines and minerals in, on or under the lands (subject to any rights and interests existing on December 22, 1992).
 - (ii) fee simple title to 93 square kilometres (approximately 36 square miles) of lands. Here title is limited to the mines and minerals underlying the lands only, not to the surface.
(Gwich'in Agreement)

Settlement lands may not be conveyed to anyone except as follows:

- ! to government as part of a land exchange;
- ! the Gwich'in Tribal Council can exchange lands with Inuvialuit. Any Inuvialuit lands received in exchange shall be deemed to be Gwich'in lands under the FA (Gwich'in Agreement);
- ! to a designated Sahtu or Gwich'in organization; and
- ! the First Nation may grant leases and licences to others to use or occupy First Nation lands.

Settlement lands cannot be mortgaged, charged, or given as security. Possessory title or squatter's rights cannot be gained on settlement lands.

1.3.1.3 Title - Municipal Lands

(SDM Agreement: Chapter 23; Gwich'in Agreement: Chapter 22)

First Nation municipal lands are identified in the FA. The lands are held in fee simple excluding mines and minerals, subject to rights existing at the effective date of the settlement legislation.

First Nation municipal lands may be conveyed to anyone, but cease to be First Nation lands.

The FA discusses:

- ! real property taxation on municipal lands;
- ! changes in municipal boundaries;
- ! changes in status; and
- ! new local governments.

Local governments listed in the FA are:

SDM:

- ! Town of Norman Wells;
- ! Hamlet of Déline;
- ! Hamlet of Fort Norman;
- ! Settlement of Fort Good Hope; and
- ! Settlement of Colville Lake.

Gwich'in:

- ! Town of Inuvik;
- ! Hamlet of Aklavik;
- ! Settlement Corporation of Arctic Red River; and
- ! Hamlet of Fort McPherson.

1.3.1.4 Title - General

(SDM Agreement: Chapter 19; Gwich'in Agreement: Chapter 18)

The title to Sahtu lands vests in one or more designated Sahtu organizations on June 23, 1994 (SDM Agreement). Title to Gwich'in lands vested in the Gwich'in Tribal Council on December 22, 1992, except for Gwich'in municipal lands (other than those acquired from government). These municipal lands vested in the Tribal Council upon their conveyance. (Gwich'in Agreement)

Title to Sahtu lands was to be registered in the NWT Land Titles Office as soon as possible:

- ! after June 23, 1994, for certain lands and upon surveying, for certain other lands set out in the FA (SDM Agreement).
- ! title to Gwich'in lands is registered in the NWT Land Titles Office (Gwich'in Agreement).

Unless otherwise described in the specific land descriptions, First Nation title includes title to portions of beds of lakes, rivers and other water bodies within boundaries of First Nation lands. This doesn't apply where the water body is described as a boundary to the First Nation lands.

Lands selected (and the location of specific sites) are described in the FAs. Identified hazardous waste sites not vested in the First Nation are also set out in the FAs.

1.3.1.5 Expropriation

(SDM Agreement: Chapter 24; Gwich'in Agreement: Chapter 23)

Government can expropriate settlement lands. Lands expropriated are no longer settlement lands; lands acquired in exchange shall be settlement lands. Where expropriated lands are no longer required, the First Nation organization has the right of first refusal at the lowest price offered. Reacquired land is not settlement land, unless government agrees that it shall be.

The FAs discuss the acquisition of First Nation municipal land for public purposes. (SDM Agreement: Chapter 23; Gwich'in Agreement: Chapter 22)

1.3.1.6 Taxation

(SDM and Gwich'in Agreements: Chapter 11)

Settlement lands leased or occupied by a non-participant are subject to real property taxation under applicable legislation.

1.3.2 Land Use

1.3.2.1 Administrative Bodies

A Committee exists relating to the Norman Wells Proven Area. Please see 1.1.3 for more information.

The Sahtu FA establishes a joint government-Sahtu Tribal Council Working Group to make recommendations relating to various listed Sahtu heritage places and sites. (SDM Agreement) Please see 1.1.3 for more information.

The Mackenzie Valley Resource Management Bill contains a proposed land and water regulatory regime for the settlement regions. Please see 1.1.3 for more information.

1.3.2.2 General

All federal, territorial and local government laws apply to Sahtu Dene and Métis lands (SDM Agreement) and to First Nation lands unless the laws are inconsistent, or in conflict, with the FA or the settlement legislation. (SDM and Gwich'in Agreements: Chapter 3)

Subject to the FAs and any legislation, participants manage and control the use of First Nation lands, including:

- ! developing and administering land management programs and policies; and
- ! charging rents or other fees for the use and occupation of First Nation lands. (SDM Agreement: Chapter 19; Gwich'in Agreement: Chapter 18)

1.3.2.3 Norman Wells Proven Area

(SDM Agreement: Chapter 9)

The Sahtu FA sets out special consultations and establishes a Joint Committee between government and Sahtu Tribal Council for this area. (SDM Agreement)

1.3.2.4 Harvesting Compensation

(SDM Agreement: Chapter 18; Gwich'in Agreement: Chapter 17)

A developer undertaking a development activity in the settlement area is absolutely liable for damages suffered by a participant in relation to:

- ! wildlife harvesting loss of income;
- ! future loss of wildlife; and
- ! damage to property and equipment.

Disputes can be resolved by arbitration under the FAs.

Developers and participants can negotiate the terms of compensation. Government can enact legislation limiting a developer's liability for compensation.

1.3.2.5 Land and Water Regulation

(SDM Agreement: Chapter 25; Gwich'in Agreement: Chapter 24)

The FAs set out the land and water regulatory regime to be put into legislation, such as the Mackenzie Valley Resource Management Bill introduced in Parliament in the fall of 1997. Please see 1.1.3.9 for more information.

1.3.2.6 Heritage Resources

(SDM Agreement: Chapter 26; Gwich'in Agreement: Chapter 25)

Sahtu heritage resources in NWT, including such sites and places within national parks, will be protected and preserved pursuant to legislation and policies. (SDM Agreement)
A Sahtu burial site in the settlement area shall not be disturbed except after consultation with the Sahtu Tribal Council, and after appropriate measures have been taken to respect the dignity of the site. (SDM Agreement)

People applying for land use permits need to send their applications to the First Nation Tribal Council and appropriate government agencies for advice on:

- ! the presence of heritage resources on the lands; and
- ! any conditions to be attached to the land use permit.

The Gwich'in settlement agreement states that the Land and Water Board shall consider that advice in reaching its decision on a land use application.

Government will consult the Sahtu Tribal Council before issuing archaeologist permits concerning Sahtu heritage resources. These permits will specify certain procedures. Government will not issue such permits for resources on Sahtu lands without the consent of the Sahtu Tribal Council. (SDM Agreement)

Legislation protects Gwich'in historic, archaeological and burial sites. The Gwich'in will provide to government a list of sites of interest. (Gwich'in Agreement)

When government issues archaeological site permits or historic resource permits concerning Gwich'in heritage resources (pursuant to legislation), the permits shall specify certain procedures. (Gwich'in Agreement)

1.3.3 General Access Rights

(SDM Agreement: Chapter 21; Gwich'in Agreement: Chapter 20)

1.3.3.1 Administrative Bodies

When legislated, the Surface Rights Board will have a role in access rights on First Nation lands. Please see 1.1.3 for more information.

1.3.3.2 General

For these provisions, “First Nation lands” means settlement lands and parcels of undeveloped First Nation municipal lands over four hectares (10 acres).

Non-participants can only enter, cross or stay on First Nation lands (and waters overlying them) with the agreement of the appropriate First Nation organization. The FAs note certain exceptions.

Laws of general application apply to non-participant access to:

- ! developed First Nation municipal lands;
- ! First Nation municipal lands equal to, or less than, four hectares; and
- ! waters overlying these lands.

Conditions apply to certain access rights provided under the FAs, unless otherwise agreed with the First Nation. Certain access rights provided under the FAs are without fee. The FAs apply restrictions on the ability of the First Nation to impose terms and conditions on certain access rights.

Access for the purpose of emergencies does not require prior notice.

Non-participant access rights are subject to legislation. The FAs discuss:

- ! a public right of access for:
 - travel by water,
 - recreation, fishing, migratory game bird hunting, or
 - exercising a right on adjacent lands or on lands surrounded by First Nation lands;
- ! a right of access by government and public utilities; and
- ! a right of access for commercial purposes.

When legislated, the Surface Rights Board will have the power to determine the need and compensation for access and entry onto First Nation lands, if the rights holder and the First Nation cannot agree.

1.3.4 Non-renewable Resources

1.3.4.1 Administrative Bodies

The Mackenzie Valley Resource Management Bill contains a proposed land and water regulatory regime for the settlement regions. Please see 1.1.3 for more information.

1.3.4.2 Existing Mineral Rights

(SDM Agreement: Chapter 19; Gwich'in Agreement: Chapter 18)

Two existing mineral rights receive mention:

- ! a mineral interest existing at June 23, 1994 in Sahtu 19.1.2(b) lands; and
- ! a mineral interest existing at December 22, 1992 in Gwich'in lands.

Until these cease, government shall continue to administer the interest, including granting renewals, replacements, extensions of term, and transfers, as if the interest were on Crown lands. Government agrees to notify the First Nation of any changes to the interest affecting the First Nation.

1.3.4.3 Specified Substances

(SDM Agreement: Chapter 19; Gwich'in Agreement: Chapter 18)

FAs discuss specified substances. The right to specified substances is subject to the rights of a mineral interest holder.

The First Nation shall provide supplies of, and permit access to, sand, gravel, and other construction materials where the Land and Water Board determines no reasonable alternative exists. Compensation is payable, and the Land and Water Board can set terms and conditions.

Government has a 20-year right to take sand and gravel from two specified sites.
(Gwich'in Agreement)

1.3.4.4 Subsurface Resources

(SDM Agreement: Chapter 22; Gwich'in Agreement: Chapter 21)

Government will notify the First Nation before opening any lands in the settlement area for the right to explore for oil and gas. A person:

- ! proposing to explore, develop or produce oil and gas, or
- ! proposing to explore for minerals (other than oil and gas) and who requires a land use permit or water licence, or
- ! who is proposing to develop or produce minerals, other than oil and gas, shall consult with the First Nation concerning certain matters before the exploration, development, or production takes place.

Government and/or the NWT will consult participants, or the Sahtu Tribal Council, about implementing the Northern Accord, or any new subsurface legislation applicable only to the NWT and the Yukon Territory. (SDM Agreement)

Government and/or the NWT will consult the Gwich'in Tribal Council about implementing the Northern Accord, or any new subsurface legislation applicable only to the NWT and the Yukon Territory, or any other agreement transferring jurisdiction over minerals from Canada to the NWT. (Gwich'in Agreement)

Prior to transferring jurisdiction over minerals from Canada to the NWT Government through the Northern Accord implementation or other agreement, any person who proposes to explore for, develop or produce oil and gas on 19.1.2(a) Sahtu lands (SDM Agreement) or 18.1.2(a) Gwich'in lands (Gwich'in Agreement) shall:

- ! submit a benefits plan to the Department of Indian Affairs and Northern Development for approval, in addition to any other obligations under the agreement. The department may require that the benefits plan ensures access to training/employment, and facilitate participation by First Nation participants in the supply of goods and services.
- ! consult the First Nation prior to the submission and during the implementation of the benefits plan.

These obligations remain in effect until the NWT enacts legislation concerning benefits from oil and gas activities on these lands. Government will consult the First Nation when preparing policies or legislation to implement this provision.

1.3.5 Forestry and Plants

(SDM Agreement: Chapters 14 and 15; Gwich'in Agreement: Chapters 13 and 14)

1.3.5.1 Administrative Bodies

The Renewable Resources Councils and the Renewable Resources Board have certain roles in forestry management in settlement regions. Please see 1.1.3 for more information.

1.3.5.2 General

Participants have a right to harvest trees and gather plants throughout the settlement area for certain uses. This right doesn't apply to:

- ! certain military and national security lands;
- ! lands held in fee simple by other private landowners, or where there is a surface lease;
- ! Crown lands where there is a conflict with an authorized activity (such as a timber licence or land use permit);
- ! national parks, except as provided in the FAs.

A new licence for commercial tree harvesting in settlement areas needs the consent of a Renewable Resources Council, if the activity might have a significant affect on the participants' harvesting of wildlife. The Renewable Resources Board can grant this permission also.

A Renewable Resources Board can set policies and propose regulations relating to forestry harvesting.

1.3.6 Water Use and Waste Deposit

1.3.6.1 Administrative Bodies

The Mackenzie Valley Resource Management Bill contains a proposed land and water regulatory regime for the settlement regions. Please see 1.1.3 for more information.

1.3.6.2 Water Rights and Management

(SDM Agreement: Chapter 20; Gwich'in Agreement: Chapter 19)

Participants have exclusive right to use waters on, or flowing through, First Nation lands. The participants' use of water is subject to legislation concerning water use.

Government and non-participants may require water in order to exercise a right or interest in First Nation lands. In this case, they have the right to use the water, subject to the FA and water use legislation.

Government retains the right to protect and manage water and beds of water bodies, notwithstanding participant ownership of beds of certain water bodies. Government can also use water in connection with that right throughout the settlement area for public purposes. This includes research, navigation protection, water supply protection, and fire and flood control.

Unless legislation states otherwise, a participant's right to use water shall not interfere with rights of navigation, emergency use of water, or any right of access for fishing or hunting migratory game birds.

Ownership of water is determined by laws of general application. Generally, the Crown retains ownership of the water, even when others hold title of shoreline and lake or river beds. FAs do not affect the ability of any person to use water domestically in accordance with laws of general application.

Subject to legislation:

- ! participants have the right to have waters on, or flowing through, or adjacent to, First Nation lands remain substantially unaltered as to quality, quantity and flow rate;
- ! participants shall not use water in a way that substantially alters its quality, quantity or flow rate; and
- ! the Land and Water Board can only grant licences, permits or other authorization interfering with this right if no reasonable alternative exists.

Participants have riparian rights, and a First Nation has court standing. Subject to legislation, participants have the right to use water without licence or permit for certain uses.

The Land and Water Board can only authorize water use in a settlement area that would likely substantially alter quality, quantity and flow rate of waters on, flowing through, or adjacent to First Nation lands, if compensation is handled:

- ! through agreement between the applicant and the First Nation; or
- ! under a compensation order from the Board.

1.3.7 Fish and Wildlife

1.3.7.1 Administrative Bodies

The Renewable Resources Councils and the Renewable Resources Board have certain roles in wildlife management in the settlement regions. Please see 1.1.3 for more information.

1.3.7.2 Wildlife Harvesting and Management

(SDM Agreement: Chapter 13; Gwich'in Agreement: Chapter 12)

Government continues to have jurisdiction to enact legislation with respect to the settlement area consistent with the FAs.

The right to harvest wildlife doesn't extend to migratory non-game and migratory insectivorous birds under the *Migratory Birds Act*.

Participants have the right to harvest all species of wildlife within a settlement area subject to any limitations set out in the FAs. Participants have exclusive rights to harvest wildlife on First Nation lands, subject to the FAs. No other person may harvest wildlife, other than fish or migratory game birds as set out in the FAs, on or in waters overlying First Nation lands.

The FAs describe the rights for participants and others in special harvesting areas. Participants have the exclusive right to harvest furbearers throughout the settlement area. A Renewable Resources Council may grant permission to non-participants to have certain wildlife harvesting rights on First Nation lands, in special management areas or in a settlement area. The Council's decision is appealable to the Renewable Resources Board.

Participants' rights to fees are set out in the FAs.

Participants have a right of access to all lands in a settlement area to harvest wildlife, subject to various provisions. This right doesn't apply to:

- ! identified military and national security lands;
- ! lands held in fee simple, or under surface lease, at the date of settlement legislation;
- ! lands within municipal boundaries sold in fee simple, or under surface lease after the date the FA took effect;
- ! lands outside municipal boundaries (of 130 hectares or less) sold in fee simple, or under surface lease after the date the FA took effect; and
- ! where access is restricted under a certain section in the FAs.

Public notice must be given if government or a holder of an interest in land (other than First Nation lands) wants access restricted. This matter can be settled by arbitration.

The FAs set out rules for licensing by government and permitting by Renewable Resources Boards and Councils for commercial wildlife harvesting. The First Nations have first rights of refusal to new licences or permits.

1.3.7.3 Other Aboriginal Claims

(SDM Agreement: Chapter 28; Gwich'in Agreement: Chapter 27)

The FAs allow other Aboriginal peoples to have certain wildlife rights in settlement regions. Please see 1.1.4 for more information.

1.3.8 Environmental Assessment

1.3.8.1 Administrative Bodies

The Mackenzie Valley Resource Management Bill contains a proposed environmental assessment process for the settlement regions. Please see 1.1.3 for more information.

1.3.9 Economic Development

(SDM Agreement: Chapter 12; Gwich'in Agreement: Chapter 10)

When the federal government carries out activities on settlement land that may provide employment or economic opportunities, participants to the agreements will receive first rights for contracts. This applies only if the territorial government chooses not to put contracts out to public tender.

1.4 Federal Lands

The jurisdictional regime is the same as under Chapter 8, "Other Northwest Territories Federal Lands," except as follows.

1.4.1 Land Ownership

"Settlement area" means the area in the NWT described in the FAs.

1.4.2 Land Use

1.4.2.1 Administrative Bodies

A Committee has been set up relating to the Norman Wells Proven Area. Please see 1.1.3 for more information.

The Sahtu FA establishes a joint government-Sahtu Tribal Council working group that will make recommendations relating to various listed Sahtu heritage places and sites. (SDM Agreement) Please see 1.1.3 for more information.

The Mackenzie Valley Resource Management Bill contains a proposed land and water regulatory regime for settlement regions. Please see 1.1.3 for more information.

1.4.2.2 National Parks

(SDM Agreement: Chapter 16; Gwich'in Agreement: Chapter 15)

Participant wildlife harvesting rights apply in national parks within a settlement area, with some modifications.

1.4.2.3 Protected Areas

(SDM Agreement: Chapter 17; Gwich'in Agreement: Chapter 16)

The FAs set out special rules relating to protected areas and territorial parks.

A First Nation is to be given the first right of refusal on new licences for commercial wildlife activities in protected areas.

The Sahtu FA discusses Canol Trail and Dodo Canyon as a proposed territorial park. The Sahtu FA also designates Kelly Lake Protected Area as a protected area by the federal government. This area will be withdrawn from disposition of surface interests at a certain date (SDM Agreement).

The Gwich'in FA discusses the Campbell Hills/Lake proposed territorial park. (Gwich'in Agreement)

1.4.2.4 Harvesting Compensation

(SDM Agreement: Chapter 18; Gwich'in Agreement: Chapter 17)

A developer conducting activity in the settlement area is absolutely liable for damages suffered by a participant in relation to wildlife harvesting loss of income, future loss of wildlife, and damage to property or equipment. Disputes can be resolved by arbitration under the FAs.

Developers and participants can negotiate compensation terms. Government can enact legislation limiting a developer's liability for compensation.

1.4.2.5 Land and Water Regulation

(SDM Agreement: Chapter 25; Gwich'in Agreement: Chapter 24)

FAs set out the land and water regulatory regime to be put into legislation, such as the Mackenzie Valley Resource Management Bill (introduced in the fall 1997 Parliament). Please see 1.1.3 for more information.

The proposed jurisdiction covers the following.

- ! The process of establishing new national parks and national historic parks and sites will be subject to the land use planning, and environmental impact assessment and review provisions.
- ! Land use planning, and regulation of land and water use provisions will not apply to national parks, national historic parks and sites administered by the Canadian Parks Service.
- ! Environmental impact assessment and review provisions will apply to development proposals in national parks, national park reserves, and national historic parks and sites.

1.4.2.6 Heritage Resources

(SDM Agreement: Chapter 26; Gwich'in Agreement: Chapter 25)

Sahtu heritage resources in NWT, including such sites and places within national parks, will be protected and preserved pursuant to legislation and policies. (SDM Agreement)

A Sahtu burial site in the settlement area shall not be disturbed except after consultation with the Sahtu Tribal Council, and after appropriate measures have been taken concerning the dignity of the site. (SDM Agreement)

Applications for land use permits are to be sent to the First Nation and the appropriate government agency for advice on the presence of heritage resources on the lands, and on any conditions to be attached to the permit. The Gwich'in settlement agreement states that the Land and Water Board shall consider that advice when reaching its decision on a land use application.

Government will consult the Sahtu Tribal Council before issuing archaeologist permits that concern Sahtu heritage resources. Such permits shall specify certain procedures. No such permit will be issued for resources on Sahtu Lands without the Sahtu Tribal Council's consent. (SDM Agreement)

Gwich'in historic, archaeological and burial sites are to be protected and preserved pursuant to legislation. The Gwich'in will provide a list of sites of interest to government. (Gwich'in Agreement)

Archaeological site permits (or historic resource permits issued by government) that concern Gwich'in heritage resources pursuant to legislation shall specify certain procedures. (Gwich'in Agreement)

1.4.3 General Access Rights

There are no special access provisions for Crown lands in the FAs.

1.4.4 Non-renewable Resources

1.4.4.1 Administrative Bodies

The Mackenzie Valley Resource Management Bill contains a proposed land and water regulatory regime for settlement regions. Please see 1.1.3 for more information.

1.4.4.2 National Parks

(SDM Agreement: Chapter 16; Gwich'in Agreement: Chapter 15)

Exploration for, and development of, minerals are not permitted within a national park.

1.4.4.3 Subsurface Resources

(SDM Agreement: Chapter 22; Gwich'in Agreement: Chapter 21)

Government will notify the First Nation before opening any lands in the settlement area for the right to explore for oil and gas. A person:

- ! proposing to explore, develop or produce oil and gas; or
- ! proposing to explore for minerals (other than oil and gas), and requiring a land use permit or water licence; or
- ! proposing to develop or produce minerals, other than oil and gas, shall consult with the First Nation before the exploration, development, or production takes place.

Government and/or the NWT will consult with participants or the Sahtu Tribal Council about implementing the Northern Accord, or any new subsurface legislation applicable only to the NWT and the Yukon Territory. (SDM Agreement)

Government and/or the NWT will consult with the Gwich'in Tribal Council about implementing:

- ! the Northern Accord; or
- ! any new subsurface legislation applicable only to the NWT and the Yukon Territory; or
- ! any other agreement transferring jurisdiction over minerals from Canada to the NWT. (Gwich'in Agreement)

1.4.5 Forestry and Plants

(SDM Agreement: Chapters 14 and 15; Gwich'in Agreement: Chapters 13 and 14)

1.4.5.1 Administrative Bodies

The Renewable Resources Councils and the Renewable Resources Board have certain forestry management roles in the settlement regions. Please see 1.1.3 for more information

1.4.5.2 General

Participants have a right to harvest trees and gather plants throughout the settlement area for certain uses. This right doesn't apply to:

- ! certain military and national security lands;
- ! lands held in fee simple (by other private landowners) or where there is a surface lease;
- ! Crown lands where there is a conflict with an authorized activity, such as a timber licence or land use permit; and
- ! national parks, except as provided in the FAs.

A new licence for commercial tree harvesting in the settlement area needs the consent of a Renewable Resources Council if the activity might have a significant affect on the participants' harvesting of wildlife. The Renewable Resources Board can also grant this permission.

A Renewable Resources Board can set policies and propose regulations in relation to forestry harvesting.

1.4.6 Water Use and Waste Deposit

1.4.6.1 Administrative Bodies

The Mackenzie Valley Resource Management Bill contains a proposed land and water regulatory regime for the settlement regions. Please see 1.1.3 for more information.

1.4.6.2 General

Government retains the right to protect and manage water, and beds of water bodies, notwithstanding participant ownership of beds of certain water bodies. Government can also use water in connection with that right (throughout the settlement area) for public purposes, including research, navigation protection, water supply protection, fire and flood control.

Unless legislation states otherwise, a participant's right to use water shall not interfere with rights of navigation, emergency use of water, or any right of access for fishing or hunting migratory game birds.

Legislation determines property in water in the settlement area.

Subject to legislation:

- ! participants have the right to have waters on, or flowing through, or adjacent to, First Nation lands, remain substantially unaltered as to quality, quantity and flow rate;
- ! participants shall not use waters so as to substantially alter quality, quantity and flow rate; and
- ! the Land and Water Board can only grant licence, permit or other authorization interfering with this right if no reasonable alternative exists.

Participants have riparian rights, and a First Nation has court standing.

Subject to legislation, participants have the right to use water without licence or permit for certain uses.

The Land and Water Board can only authorize water use in a settlement area that would likely substantially alter quality, quantity and flow rate of waters on, flowing through, or adjacent to First Nation lands, if compensation is handled:

- ! through agreement between the applicant and the First Nation; or
- ! under a compensation order from the Board.

A competent water authority can only authorize water use in the NWT outside settlement areas that would likely substantially alter quality, quantity and flow rate of waters on, flowing through, or adjacent to First Nation lands if compensation is handled:

- ! through agreement between the applicant and the First Nation; or
- ! under compensation order from the authority.

1.4.7 Fish and Wildlife

1.4.7.1 Administrative Bodies

The Renewable Resources Councils and the Renewable Resources Board have certain roles in wildlife management in the settlement regions. Please see 1.1.3 for more information.

1.4.7.2 Wildlife Harvesting and Management

(SDM Agreement: Chapter 13; Gwich'in Agreement: Chapter 12)

Government continues to have jurisdiction to enact legislation concerning the settlement area consistent with the FAs.

The right to harvest wildlife doesn't extend to migratory non-game, and migratory insectivorous birds under the Migratory Birds Act.

Participants have the right to harvest all species of wildlife within a settlement area, subject to any limitations set out in the FAs.

The FAs describe the rights for participants and others in special harvesting areas. Participants have the exclusive right to harvest furbearers throughout the settlement area. Others may hunt, but not trap, wolves, coyotes and wolverines on lands in the settlement area that are not First Nation lands, in accordance with legislation.

A Renewable Resources Council may grant permission to non-participants to have certain rights to harvest wildlife in special management areas, or in a settlement area. A person may appeal that Council's decision to the Renewable Resources Board. Participants' rights to fees are set out in the FAs.

Participants have a right of access to all lands in a settlement area to harvest wildlife, subject to various provisions. This right doesn't apply to:

- ! identified military and national security lands;
- ! lands held in fee simple, or under surface lease at the date the FA took effect;

- ! lands within municipal boundaries sold in fee simple, or under surface lease, after the date the FA took effect;
- ! lands outside municipal boundaries of 130 hectares or less sold in fee simple, or under surface lease after the date of the settlement legislation; or
- ! where access is restricted under a certain section in the FAs.

Public notice must be given if government or a holder of an interest in land (other than First Nation lands) wants access restricted. Disputes can be settled by arbitration.

The FAs set out rules for licensing by government and permitting by Renewable Resources Boards and Councils for commercial wildlife harvesting. The First Nations have first rights of refusal to new licences or permits.

1.4.7.3 National Parks

(SDM Agreement: Chapter 16; Gwich'in Agreement: Chapter 15)

Participant wildlife harvesting rights apply in national parks within the settlement area with some modifications.

1.4.7.4 Other Aboriginal Peoples

(SDM Agreement: Chapter 28; Gwich'in Agreement: Chapter 27)

The FAs provide for other Aboriginal peoples to have certain wildlife rights in settlement regions. Please see 1.1.4 for more information.

1.4.8 Environmental Assessment

1.4.8.1 Administrative Bodies

The Mackenzie Valley Resource Management Bill contains a proposed environmental assessment process for the settlement regions. Please refer to section 1.1.3 for more information.

1.4.9 Economic Development

The FAs contain no economic development provisions applying to federal lands in the settlement regions.