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Citizens' Advisory Commission on Federal Areas

June 22, 1990

250 Cushman St.
Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012
Fax: 456-2039

Dear Legislator:

Since its creation in 1981, the Citizens' Advisory Commission on Federal Areas has been engaged in the task of determining the impacts of the Alaska National Interest Lands Conservation Act (ANILCA) on the people of our state and making recommendations to both state and federal agencies in order to minimize conflicts. One of the most important, and unfortunately most contentious, provisions of this federal statute has been Title VIII- Subsistence Management and Use. As you know, ANILCA Title VIII requires the state to provide for a subsistence preference for rural residents in order to retain fish and wildlife management authority on federal lands. The McDowell decision, which found that the state's subsistence law granting such a preference violated the Alaska Constitution, means that the state is no longer in compliance with the provisions of ANILCA Title VIII. Consequently, on July 1, 1990 the Secretary of the Interior and the Secretary of the Agriculture will invoke their authority under ANILCA and assume management of subsistence activities on the federal lands in Alaska.

Earlier this year, during the regular legislative session, our Commission transmitted to your office a proposal for an amendment to the Alaska Constitution. We are once again asking you to consider our proposed amendment during the upcoming special session of the legislature.

The Commission's decision to support a constitutional amendment was not one that was easily reached. Extensive debate and public testimony on this issue have led us to the conclusion that the State of Alaska must take immediate action to prevent the federal land managing agencies from assuming the management of subsistence activities on the federal lands in this state. At the time the Commission developed this proposal we felt that a constitutional amendment was the only mechanism available that would prevent a federal takeover and ensure the legislature's authority to enact a subsistence statute that would both comply with ANILCA and withstand future legal challenges.

We believe that our position favoring a constitutional amendment is further supported by the June 20, 1990 superior court decision severing the unconstitutional rural preference provisions from the remainder of the state's subsistence statute. Superior Court Judge Beverly Cutler, in that decision, stated: "(T)he supreme court's

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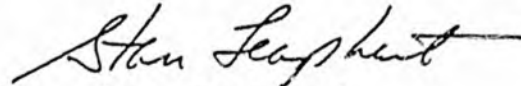
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ruling in McDowell renders compliance with ANILCA an impossibility without a constitutional amendment." Barring extensive amendments to ANILCA or a successful challenge to ANILCA Title VIII in federal court, neither of which this Commission views as likely or desirable, a constitutional amendment appears to be the state's only reasonable alternative.

Enclosed is a copy of our proposed amendment and an analysis which concludes that the people of Alaska should be the final arbiters of the subsistence question. We ask your careful consideration of our proposal. If you have any questions or if we may clarify any points, please contact our staff offices.

Sincerely,

Lew M. Williams, Jr., Chairman
CITIZENS' ADVISORY COMMISSION
ON FEDERAL AREAS



By: Stan Leaphart
Executive Director



Citizens' Advisory Commission on Federal Areas

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PROPOSAL TO AMEND THE ALASKA CONSTITUTION

"Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 19. USE OF FISH AND WILDLIFE RESOURCES FOR SUBSISTENCE. The Legislature may grant a preference in the use of fish and wildlife resources for subsistence based upon geographic, socioeconomic and cultural considerations."

ANALYSIS

Prior to the Alaska Supreme Court's decision in McDowell v. State of Alaska last December, it was widely presumed that the Alaska Legislature possessed the authority to grant a subsistence preference for rural residents in the use of Alaska's fish and game resources. The court's decision does not alter the fact that the people of Alaska, casting their votes on a 1982 state-wide ballot initiative proposing to repeal what was then Alaska's subsistence statute, overwhelmingly voted to retain the statute granting a subsistence preference in the use of Alaska's fish and game resources.

Implicit in the 1982 electoral decision is a clear public affirmation of the provisions of ANILCA Title VIII, including the term "rural". Additionally, the 1982 election affirmed the Legislature's authority to formulate a statute consistent with ANILCA. Despite the actions of the courts in McDowell and Madison, current public opinion polls demonstrate that if given the opportunity, the people of Alaska would again grant their consent to providing a preference to rural residents in the use of fish and game resources.

The constitutional amendment proposed by the Citizens' Advisory Commission on Federal Areas is intended to formally restore the Legislature's authority to grant a rural preference for subsistence. The proposed amendment does not directly grant the preference in and of itself but empowers the Legislature to do so, by statute, after considering what we have identified to be the essential relevant factors. Geographic, socioeconomic and cultural considerations are the essential relevant factors that must be weighed in defining what rural subsistence means in Alaska.

Recognizing geography as a relevant factor will allow Alaska law to say that people who live in a given location have their use of fish and game resources protected. "Rurality" cannot be defined without recognizing geography.

Recognizing socioeconomic conditions as a relevant factor allows Alaska law to say that granting a given community this protection has been done for a good public purpose based on the needs of the people who live there. It allows the Legislature to utilize socioeconomic data such as population size, employment, educational attainment, the availability of governmental services,

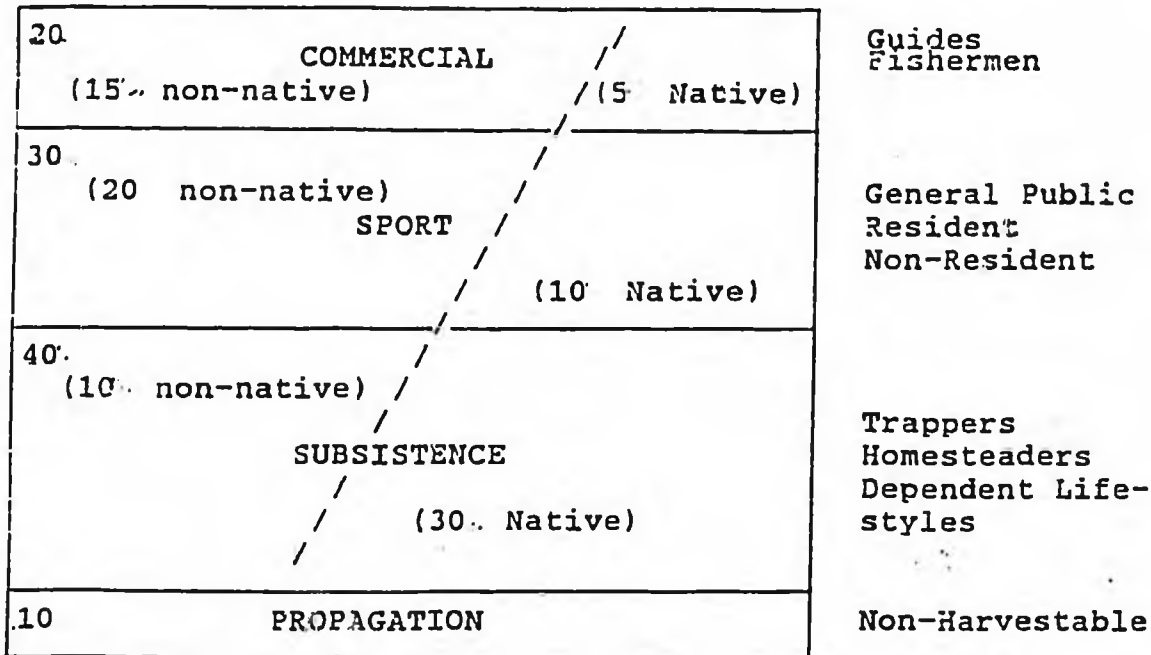
access to markets, etc. in assessing the "rurality" of a community. "Rurality" cannot be defined in geographic terms alone.

Recognizing cultural considerations as a relevant factor legitimizes the historical, customary, and traditional foundations of a community's use of fish and game resources for subsistence. "Rurality" cannot be defined in its Alaska subsistence context without recognizing the influence of culture on the landscape.

One important strength of this proposal is the relative simplicity of its language. This simplicity arises from the proposal's lack of specifics which are more appropriately addressed in a statute. A good constitution is a simple articulation of the principles by which a people purport to govern themselves. This proposal articulates the principle that the elected legislators of this state are endowed with the authority, granted by the people of Alaska, to make decisions, after appropriate consideration of the relevant factors, regarding the use of fish and game resources.

**SUGGESTED SOLUTION FOR
FISH & GAME ALLOCATION IN ALASKA**

The following is a graphic example of how Alaskans could resolve the conflicts which perennially occur in relation to fish and game allocations. This is primarily a rough outline of a system which is being considered in Yukon Territory and options for fine-tuning will most likely be necessary.



The above graphic depicts the basic philosophy of this particular proposal. If we were to enact legislation which gave basic direction to the Boards of Fish and Game, we would undoubtedly resolve many of the real or imagined allocation problems which Natives and non-natives feared under either of the systems Alaska used in the past, (no subsistence priority prior to 1978 and the rural priority post 1978). If we were to enact legislation which delineated the portions of wildlife resources which were to be allocated to each user group in times of shortages, we would have then resolved a lengthy controversy among peoples here in Alaska.

This proposal appears to be a reasonable compromise; however, it necessitates a willingness on all sides to agree to certain changes in philosophy. The anti-subsistence groups must recognize a portion of the resource pie will be allocated to Native interests. Native subsistence advocates will have to recognize the need for non-subsistence groups to partake in resource harvests at all levels. Both groups will need to join forces to request and obtain proper levels of funding from the legislature to carry out wildlife management programs which enhance target populations through habitat manipulation and the legitimate harvests of necessary levels of predator species. Also, both groups will have to come to terms on definitions of certain terms, i.e. dependent lifestyles.



Office of the Premier

P.O. Box 2703, Whitehorse, Yukon Y1A 2C6

FAX NUMBER (403) 667-3633

DATE: 20 March 1990TO: JERRY BERNETTEREPRESENTATIVE PHILLIPS OFFICE JUNEAUFAX #: 907 463-4867FROM: TONY PENIKETT'S OFFICENUMBER OF PAGES (INCLUDING COVER PAGE) 28

SPECIAL INSTRUCTIONS:

Jerry: Here, once again, is the fax I originally
attempted to send your office. Mr. Penikett has
chosen two particular sections from the agreement
which he feels would be of most importance to you.
As the entire document is 140 pages, I have mailed
the document to you. I trust these pages will be
of use. Please advise me if this fax does not
come through. But let's hope it does!! Thanks
so much for all your patience.

FAX SENT BY: Monica

SUB-AGREEMENT ON FISH AND WILDLIFE CONSERVATION AND USE

1.0 Objectives

- 1.1 To ensure Conservation is the basic principle governing the management of all Fish and Wildlife resources and their habitats.
- 1.2 To preserve and enhance the culture, identity and values of the Yukon Indian People.
- 1.3 To ensure the equal participation of Yukon Indian People with other Yukon residents in Fish and Wildlife management processes and decisions.
- 1.4 To guarantee the rights of Yukon Indian People to Harvest and to manage renewable resources on Settlement Lands.
- 1.5 To integrate the management of all renewable resources.
- 1.6 To preserve and enhance the renewable resources economy.
- 1.7 To fully integrate the relevant knowledge and experience of both the Yukon Indian People and the scientific communities in order to achieve Conservation.
- 1.8 To develop responsibilities for renewable resource management at the community level.
- 1.9 To honour the Harvesting and Wildlife management customs of the Yukon Indian People and provide for their ongoing needs for Wildlife.
- 1.10 To deal fairly and equitably with all Yukon residents who use Fish and Wildlife resources in the Settlement Area.

2.0 Definitions

- 2.1 "Big Game" means Alces alces including moose; Rangifer tarandus including caribou; Ovis spp. including sheep; Oreamnos americanus including goats; Ursus spp. including bear; Canis lupus including wolves; Gulo gulo including wolverines; Cervus elaphus including elk; Bison bison including bison and Odocoileus spp. including deer.

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- 2.2 "Board" means the Fish and Wildlife Management Board established pursuant to paragraph 4.1 of this Sub-Agreement.
- 2.3 "Category 1 Trapline" means a trapline designated as such pursuant to paragraph 11.2.
- 2.4 "Category 2 Trapline" means a trapline not designated as a Category 1 Trapline.

(Note: Commercial Use did not add anything to the definition of Use).

- 2.5 "Conservation" means the management of Fish and Wildlife populations and habitats to ensure their quality, diversity and long term optimum productivity, with the primary goal of ensuring a sustainable Harvest and its proper utilization.
- 2.6 "Conservation Area" means an area designated pursuant to a Yukon First Nation Final Agreement, or pursuant to the Laws of General Application, for the protection of Fish and Wildlife and their habitats. For greater certainty, Conservation Areas include existing or future protected areas such as national wildlife areas, territorial parks and special wildlife management areas, special fisheries management areas, national parks, national historic parks, international biological program (IBP) sites, biosphere reserves, migratory bird sanctuaries, and watershed protection areas.
- 2.7 "Council" means a Renewable Resources Council established pursuant to paragraph 5.1 of this Sub-Agreement.
- 2.8 "Edible Fish or Wildlife Product" means the flesh or organs of Fish or Wildlife that are used for food by people or domestic animals.
- 2.9 "Fish" has the same meaning as in the Fisheries Act (R.S.C. 1970, ch. F-14 s.2).
- 2.10 "Furbearers" means the following species native to the Settlement Area; 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; Spermophilus including ground squirrels.

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- 2.11 "Harvesting" means gathering, hunting, trapping, capturing or fishing in accordance with this Sub-Agreement.
- (Note: "Minister" is defined in General Provisions)
- 2.12 "Migratory Game Birds" has the same meaning as in the Migratory Birds Convention Act (R.S.C. 1970, c. M-12).
- 2.13 "National Park" means lands described in the schedules to the National Parks Act (R.S.C. 1970, c. N-13) that lie within the Settlement Area.
- 2.14 "Non-Consumptive Use" means a use of Fish and Wildlife that does not involve Harvesting.
- 2.15 "Non-edible By-product" means the fur, hide, skin, antlers, horns, skeleton or other portions of Fish and Wildlife not used for food but used for other purposes including clothing, domestic or personal decoration or art.
- 2.16 "Salmon" means Pacific Salmon of the species Oncorhynchus nerka including sockeye and kokanee; Oncorhynchus kisutch including coho; Oncorhynchus gorbuscha including pink; Oncorhynchus keta including chum; and Oncorhynchus tshawytscha including chinook.
- 2.17 "Salmon Sub-committee" means a Sub-committee of the Fish and Wildlife Board established pursuant to paragraph 4.13 to deal with issues specifically related to Salmon.
- 2.18 "Sedentary Population" means a population of Fish or Wildlife that remain in the same geographic area all year, and that do not undertake regular migrations from one distinct geographic area to another.
- 2.19 "Settlement Area" means the entire Yukon Territory except to the extent precluded by the Inuvialuit Final Agreement.
- 2.20 "Total Allowable Catch" means the total number of Salmon of a particular species and in a particular river basin which return to Canadian waters and which in the manner established by this Sub-Agreement are deemed not to be required for Conservation as defined in paragraph 2.5 of this Sub-Agreement.
- 2.21 "Total Allowable Harvest" means the total number of animals of a Fish and/or Wildlife species which in the

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manner established by this Sub-Agreement are deemed not to be required for Conservation as defined in paragraph 2.5 of this Sub-Agreement.

2.22 "Transplanted Population" means a population of a vertebrate animal that is intentionally introduced anywhere in Yukon as part of a Fish or Wildlife management program.

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

2.24 "Wildlife" means a vertebrate animal of any species or type that is wild in the Yukon, but does not include fish.

3.0 General

3.1 This Sub-Agreement defines the responsibilities for the management of Fish and Wildlife and their habitats, while respecting the Ministers' ultimate responsibility for Fish and Wildlife and their habitats.

3.2 Where not inconsistent with this Sub-Agreement, Government shall continue to have the jurisdiction to initiate programs and to enact Legislation with respect to the Settlement Area.

3.3 The management and Harvesting of Fish, Wildlife and their habitat shall be governed by the principle of Conservation as defined in paragraph 2.5.

3.4 The exercise of the rights under this Sub-Agreement is subject to Legislation enacted for reasons of Conservation, public health or public safety, in addition to any other limitations provided for in this Sub-Agreement.

3.5 Nothing in this or any other Sub-Agreement is intended to confer rights of ownership in any Fish or Wildlife.

3.6 Recognizing the present restrictions of the Migratory Birds Convention Act, Government of Canada shall make its best efforts to achieve international agreement to permit Yukon Indian People to hunt Migratory Game Birds in the spring.

3.7 Government shall make best efforts to amend the Game Export Act to enable the transport of Wildlife products for traditional purposes across borders within the traditional Harvesting area of each Yukon First Nation.

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- 3.3 This Sub-Agreement is subject to the Migratory Birds Convention, the Porcupine Caribou Herd Management Agreement and the Pacific Salmon Treaty.
- 3.9 The rights established in Yukon First Nation Final Agreements shall not prevent Yukon residents and others from Harvesting in accordance with Legislation.
- 3.10 Nothing in this Sub-Agreement prevents any person from killing Fish and Wildlife for survival in an emergency. Any such Harvests under this paragraph shall be reported according to requirements established by the Board.
- 3.11 Nothing in this Sub-Agreement shall be construed as granting 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 law.
- 3.12 Conservation Areas may be established pursuant to the terms of a Yukon First Nation Final Agreement, or pursuant to the Laws of General Application.
- 3.13 Fish and Wildlife within National Parks shall be managed in accordance with the National Parks Act and regulations pursuant to that Act, and in accordance with the Old Crow, Kluane and Champagne-Aishihik Final Agreements, and the Inuvialuit Final Agreement. The responsible agencies shall coordinate the management of Fish and Wildlife populations which cross the boundaries of National Parks.
- 3.14 It is intended that there not be any duplication in the public management of Fish and Wildlife.

4.0 Fish and Wildlife Management Board

- 4.1 A Fish and Wildlife Management Board shall be established as the main instrument of Fish and Wildlife management in the Settlement Area.

Composition of the Board

- 4.2 The Board shall be comprised of six appointees of Yukon First Nations and six appointees of Government, plus a chairperson. The appointment of the Yukon First Nations' representatives shall be implemented by the Minister upon the recommendation of the Yukon First Nations. The Minister shall appoint the Government representatives within 60 days of a Government vacancy.

- 4.2.1 In the event that Yukon First Nations or Government fail to appoint their
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representatives within a reasonable time, the Board may discharge its duties with such members as have been appointed.

- 4.3 The Board shall determine its own procedures for selecting its chairperson and conducting its business. The Minister shall appoint the chairperson selected by the Board.
- 4.3.1 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 after consultation with the Board.
- 4.4 The majority of representatives of Government and the majority of representatives of Yukon First Nations shall be Yukon residents.
- 4.5 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 stand for the five year terms. Board members may only be removed for cause. The Board shall determine what constitutes cause.
- 4.6 The Board shall make provision for reasonable public involvement.
- 4.7 An executive secretary to the Board and the administrative and technical support for the Board shall be provided by Government.
- 4.8 The Board shall be accountable to Government for its expenditures.
- 4.9 The Board shall prepare an annual budget, subject to review and approval by Government. The approved expenses of the Board shall be a charge on Government. Such budget shall be in accordance with Government guidelines and may include:
- 4.9.1 remuneration and travel expenses for attendance of Board members at Board and committee meetings;
- 4.9.2 the expenses of public hearings and meetings;
- 4.9.3 a budget for research, public education and other programs as may be approved by Government from time to time; and
- 4.9.4 the expenses of staff and of the operation and maintenance of the office.

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- 4.10 The annual budget of the Board in its first year of operation shall be set out in an implementation plan.

Powers and Responsibilities of the Board

- 4.11 The Board, acting in the public interest and taking into consideration all relevant factors including recommendations of the Councils, may make recommendations to the Minister and to Yukon First Nations on all matters related to Fish and Wildlife, their habitat and their management, including legislation, research, policies, and programs.
- 4.12 Without restricting the foregoing, the Board:
- 4.12.1 may recommend policies for the management of Fish and Wildlife and their habitats;
 - 4.12.2 may identify the need for, make recommendations on the content and timing of, and review and make recommendations on any Yukon Fish and Wildlife Harvesting and 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;
 - 4.12.3 may review and make recommendations to the Minister and to Yukon First Nations on population management plans recommended by the Councils, specifically the population goals and the management options contained within those plans;
 - 4.12.4 may, where required by species and/or population management plans, determine Total Allowable Harvest levels;
 - 4.12.5 may identify the need for, and recommend a position on, interjurisdictional agreements that affect the Conservation and Use of Yukon Fish and Wildlife resources;
 - 4.12.6 may recommend restrictions on methods of Harvesting for reasons of Conservation, public health, public safety and, in exceptional circumstances, for protection of an economic activity associated with the Use of Fish and/or Wildlife resources;
 - 4.12.7 may assist Councils in the performance of their duties;

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- 4.12.8 shall be granted status as an interested party in order to participate as a party or intervenor in the public proceeding of any agency, board or tribunal dealing with matters that affect the management and Conservation of Fish, Salmon, Wildlife and their habitat in the Yukon;
- 4.12.9 may, subject to approval of the Minister, delegate its responsibilities to a Council;
- 4.12.10 may, in consultation with the Councils and subject to Yukon First Nation Final Agreements, identify new opportunities and recommend management measures for commercial Uses of Fish and Wildlife.

Salmon Sub-Committee

- 4.13 A Sub-committee of the Board shall be established as the main instrument of Salmon management in the Settlement Area.
- 4.13.1 The Board shall assign from its membership two appointees of the Yukon First Nations and two appointees of Government to the Sub-committee;
- 4.13.2 The Minister of Fisheries and Oceans may appoint up to two additional members to the Sub-committee and, in that case, Yukon First Nations may appoint a similar number of additional members to the Sub-committee, provided that the number of Government appointees equals the number of Yukon First Nations appointees;
- 4.13.2.1 Appointments to the Sub-committee by the Board shall be for the term held by that appointee on the Board;
- 4.13.2.2 The additional appointments to the Sub-committee by the Minister of Fisheries and Oceans and by the Yukon First Nations shall be for five years;
- 4.13.3 The Salmon Sub-committee shall select a chairperson from the persons appointed to the Sub-committee;
- 4.13.3.1 In the event the Salmon Sub-committee fails to select a chairperson within 60 days of the position being vacant, the Minister of Fisheries and Oceans shall

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appoint a chairperson after consultation with the Sub-committee.

4.13.4 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;

4.13.5 In accordance with this Sub-Agreement, the Salmon Sub-committee, acting in the public interest 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. Without restricting the foregoing, the Salmon Sub-committee:

4.13.5.1 may recommend policies for the management of Salmon and their habitats;

4.13.5.2 may identify the need for, make recommendations on the content and timing of, and review and make recommendations on Salmon Harvesting and management plans in accordance with the terms of this Sub-Agreement;

4.13.5.3 may identify the need for, and recommend a position on, interjurisdictional agreements affecting the Use of Yukon Salmon resources;

4.13.5.4 may seek from a Council or local group input on specific aspects of a Salmon management plan;

4.13.5.5 subject to Yukon First Nation Final Agreements, may identify new opportunities and propose management measures for commercial (including commercial recreational) Use of Salmon;

4.13.5.6 shall allocate, in amount and by area, Salmon to users according to procedures to be developed by the parties;

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4.13.5.7 shall be granted status as an interested party in order to participate as an intervener or party in the public proceedings of any agency, board or tribunal dealing with matters that affect the management and Conservation of Salmon or their habitat in the Yukon.

4.13.6 The Sub-committee shall communicate its decisions to the Board, and to the Minister of Fisheries and Oceans under the process outlined in Article 6.

Board's Relationship with the Minister

4.14 Where the Board or the Salmon Sub-committee elects not to or does not carry out certain responsibilities, the Minister, and in the case of the Salmon Sub-committee the Minister of Fisheries and Oceans, may undertake to fulfill those responsibilities directly.

Renewable Resources Councils

5.1 In each Yukon First Nation's Traditional Territory, a Renewable Resources Council shall be established as a primary instrument for local Fish and Wildlife management.

Composition of the Council

5.2 The Council shall be comprised of up to ten members consisting of 50 percent appointees of the Yukon First Nation and 50 percent appointees of Government. The appointment of the Yukon First Nations' appointees shall be implemented by the Minister upon the recommendation of the Yukon First Nation. The Minister shall appoint Government representatives within 60 days of a Government vacancy on the Council.

5.3 Where a Traditional Territory is subject to the terms of a Transboundary Agreement, the representation of Yukon Indian People, members of the transboundary group and of Government, on the Council shall be as defined in the relevant Transboundary Agreement, and in any case the proportional representation of native groups and Government, not including the chairperson, shall be maintained.

5.4 The Council shall determine its own procedures for selecting its chairperson and conducting its business. The Minister shall appoint the chairperson selected by the Council.

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- 5.4.1 In the event that the Council fails to select a chairperson within 60 days of the position being vacant, the Minister shall appoint a chairperson after consultation with the Council.
- 5.5 Unless the parties otherwise agree, Council members shall be ordinarily resident within the traditional territory of that Council.
- 5.6 Appointments to the 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 stand for five year terms. Council members may only be removed for cause. The Council shall determine what constitutes cause.
- 5.7 The Council shall make provision for reasonable public involvement.
- 5.8 Government shall provide administrative and technical support to the Council.

Powers and Responsibilities of Councils

- 5.9 The Council may make recommendations to the Board, and to the Salmon Sub-committee where appropriate, on Legislation, policies and programs related to Salmon, Fish and Wildlife management and habitat management.
- 5.10 Without restricting paragraph 5.9 above, the Council:
- 5.10.1 may identify the need for, make recommendations on the content and timing of, and review and make recommendations on management plans, including Harvesting plans for Fish and Wildlife species and populations;
- 5.10.2 may participate in the identification, planning and management of Conservation Areas;
- 5.10.3 may identify and recommend to the Board Harvest requirements, including Harvest requirements within the adjusted basic needs level, within guidelines established in Settlement Agreements;
- 5.10.4 may identify the need for, make recommendations on the content and timing of, and review and make recommendations on Fish and Wildlife species and population management plans for species other than the species referred to in sub-paragraph 4.12.2;
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- 5.10.5 may establish criteria and bylaws for the management of Furbearers, including reasonable levels of Use for submission to the Minister and the Yukon First Nation;
- 5.10.6 may provide local input to other resource management processes, including forest management, land, water and watershed management and land use planning;
- 5.10.7 may review and make recommendations to the Minister on allocation of commercial Fish and Wildlife outfitting opportunities;
- 5.10.8 may review applications for research permits granted by the Government agencies for Fish and Wildlife management-related research activities within the Traditional Territory. The Council shall be provided with the results of such research activities; and
- 5.10.9 shall be granted status as an interested party in order to participate as a party or intervenor in public proceedings of any agency, board or tribunal dealing with matters that effect the management and Conservation of Fish, Salmon, Wildlife and the habitat in the Yukon.

5.11 With the consent of the Minister, a Council may merge with other Councils to establish a Regional Council.

Council's Relationship with the Minister

5.12 Unless the Minister directs otherwise, the Council shall forward its decisions, accompanied by any proposed regulations, to the Board or to the Minister, as required by this Sub-Agreement. The procedure for Ministerial review and approval, variation, or replacement of decisions shall be as set out in Article 6 below. Where the Council forwards a decision, recommendation or plan to the Board, the Board shall take such decision, recommendation or plan into consideration in accordance with the requirements of Article 4.

5.13 Where a Council elects not to or does not carry out certain responsibilities, the Minister may undertake to fulfill those responsibilities directly or delegate those responsibilities to the Board.

6.0 Role of Ministers and Governments

Implementation of Board, Sub-Committee and Council Decisions

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- 6.1 All procedures set out in paragraphs 6.1 to 6.3 apply equally to decisions required by this Sub-Agreement to be forwarded to the Minister by the Board, Salmon Sub-committee and Councils.
- 6.2 Unless the Minister directs otherwise, the Board shall forward all its decisions to the Minister, accompanied by draft regulations where appropriate.
- 6.3 Unless the Minister directs otherwise, all decisions of the Board shall be kept confidential until the process in paragraph 6.4 below has been completed or the time for the process has expired.
- 6.4 The Minister may, within 60 days of the receipt of a decision under paragraphs 6.2 and 6.3 above, accept, vary, set aside or replace the 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 other information and matters of public interest.
- 6.5 The Minister may extend the time provided in paragraph 6.4 above by 30 days.
- 6.6 The Board shall within 30 days of the receipt of a variation, replacement or setting aside by the Minister pursuant to paragraph 6.4 above, make a final decision and forward it to the Minister with written reasons.
- 6.6.1 The Minister may extend the time provided under paragraph 6.6
- 6.7 The Minister may, within 30 days of receipt of a final decision, accept or vary it, or set it aside and replace it. Any proposed variation, replacement or setting aside shall be sent back to the Board by the Minister with written reasons. The Minister may consider other information and matters of public interest.
- 6.8 The Minister shall, as soon as practicable, implement:
- 6.8.1 all decisions of the Board that are accepted by the Minister under paragraph 6.4 above;
- 6.8.2 all decisions of the Minister under paragraph 6.7 above; and
- 6.8.3 subject to sub-paragraphs 6.8.1 and 6.8.2, all decisions of the Board after the expiry of the time provided in paragraphs 6.4 and 6.6.

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- 6.9 The Minister may refer any matter to the mediation process established under the Sub-Agreement on Dispute Resolution once the procedures set out in paragraphs 6.1 through 6.7 have been completed.

Judicial Review of Decisions

- 6.10 Decisions of the Board, Salmon Sub-committee and Councils shall not be subject to judicial review except pursuant to the Federal Court Act, provided that such proceedings may be taken before a Judge of the Supreme Court of the Yukon in the case of a proceeding that could be taken before the Federal Court Trial Division.

Emergency Action by the Minister

- 6.11 Where it appears to the Minister that an emergency situation has arisen which affects the well-being of Fish and Wildlife or their habitat, and where time does not permit consultation with the Board, the Minister may take such action as is necessary before consulting with the Board, Salmon Sub-Committee or the affected Council or Councils.
- 6.12 Where emergency action has been taken pursuant to paragraph 6.11 above, the Minister shall within seven days inform the Board, Salmon Sub-committee or Council and solicit their continuing advice. The Board, Salmon Sub-committee or Council may recommend to the Minister that the emergency action be terminated pending their consideration of the issue.
- 6.13 Where the Board, or in the case of Salmon where the Salmon Sub-committee agrees, the Minister may act notwithstanding paragraph 3.3.

7.0 Yukon First Nations

- 7.1 Subject to the terms of each Yukon First Nation's Final Agreement, each Yukon First Nation shall have the following powers and responsibilities to:
- 7.1.1 identify from time to time the adjusted basic needs level for the Yukon First Nation, for consideration by the Board;
 - 7.1.2 establish criteria for sub-allocation of their Harvesting quotas under sub-paragraph 7.1.3;
 - 7.1.3 sub-allocate to Yukon Indian People, or other Yukon residents, any portion of their quota for Fish and Wildlife Harvests;

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- 7.1.4 manage local populations of Fish and Wildlife within Settlement Lands, to the extent coordination with other Fish and Wildlife management programs is not deemed necessary by the Board.
- 7.1.5 participate in coordinated management programs within the Traditional Territory of that Yukon First Nation;
- 7.1.6 make recommendations to the Council on applications for research permits for Government research within its Settlement Lands;
- 7.1.7 endorse applications for research permits for private studies within its Settlement Lands;
- 7.1.8 be granted status as an interested party in order to participate as a party or intervenor in public proceedings of any agency, board or tribunal dealing with matters that affect the management and Conservation of Fish, Wildlife and the habitat in its Traditional Territory.
- 7.1.9 at the request of the Board, provide Harvest information either to the Council or the Board or to an officer with lawful authority as appropriate, including provision of data necessary for verification and in-season management.
- 7.2 Subject to the Sub-Agreement on Access, Yukon First Nations may charge a fee or obtain a benefit for granting access to Category A Settlement Lands to a Yukon resident or Yukon outfitter for Harvesting on Category A Settlement Lands, or for services provided to the Yukon resident or Yukon outfitter in connection with Harvesting Fish and Wildlife on Category A Settlement Lands.
- 7.2.1 Notwithstanding paragraph 7.2, any existing trapper whose Trapline is wholly or partially on Settlement Lands shall continue to exercise all rights as a trapper to his or her existing trapline without fee.
- 7.3 Yukon First Nations shall not charge a fee to persons other than Yukon Indian People for Harvesting any of the Yukon First Nation's quota of Fish and Wildlife.
- 7.4 Yukon First Nations, with the consent of the Minister, may contract for their responsibilities in whole or

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part to be carried out by the Council, Board or Government.

8.0 Yukon Indian People

- 8.1 Subject to Yukon First Nation Final Agreements, nothing in this Sub-Agreement affects any rights, entitlements and qualifications of Yukon Indian People to Harvest outside the Yukon.
- 8.2 Subject to Yukon First Nation Final Agreements and to sub-paragraph 4.12.6, Yukon Indian People shall have the right to employ traditional and current methods of and equipment for, non-commercial Harvesting within their Traditional Territories.
- 8.3 Subject to Yukon First Nation Final Agreements, Yukon Indian People shall have the right to give, trade, barter or sell among themselves and with beneficiaries of other adjacent Transboundary Agreements in Canada all Edible Fish and Wildlife Products Harvested by them. This right is intended to maintain traditional sharing among individuals and communities for domestic but not for commercial purposes.
- 8.4 Unless otherwise specified in Yukon First Nation Final Agreements and/or the Laws of General Application, Yukon Indian People shall have the right to give, trade, barter or sell to any person any Non-edible By-products of Fish and Wildlife that are obtained from the Harvesting of Furbearers or incidental to the non-commercial Harvest for personal Use.
- 8.5 The right to Harvest includes the right to possess and transport Fish and Wildlife parts and products in the Yukon and in other areas where provided for in a Transboundary Agreement.
- 8.6 Yukon Indian People shall be required to show proof of enrollment as Yukon Indian People under the Sub-Agreement on Eligibility and Enrollment pursuant to terms established by the Board. The Board may require Yukon Indian People to obtain permits or licences for the purpose of regulating Harvesting, but Yukon Indian People shall not be required to pay any fee or tax for any non-commercial permit or licence.
- 8.7 Where Yukon Indian People participate in resident or commercial Harvests, they shall be required to comply with the Laws of General Application.

9.0 Fish and Wildlife Use Allocation

- 9.1 The Board shall allocate from the Total Allowable Harvest, in amount and by area, Fish (except Salmon)

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and Wildlife to Harvesters and other users according to the following procedures:

Category of Uses

Basic Needs Levels

- 9.2 The species subject to basic needs provisions shall be determined for each Yukon First Nation in its Final Agreement.
- 9.3 The basic needs levels for those species shall be identified and guaranteed in each Yukon First Nation's Final Agreement.
- 9.4 Subject to Conservation requirements established by the Board, until basic needs levels are set for a Yukon First Nation, Section 17(J) of the Yukon Act shall continue to apply to those Yukon Indian People who belong to that Yukon First Nation.

Adjusted Basic Needs Levels

- 9.5 The Board may, upon the recommendation of a Council, periodically review and adjust the basic needs level for a species. In reaching its decision about adjusting the basic needs level, the Board shall take into consideration the following factors among others:
- 9.5.1 population growth and demographic change on a community and/or regional basis, including the establishment of new communities;
 - 9.5.2 changing patterns of consumption;
 - 9.5.3 the cultural and nutritional importance of Fish and Wildlife to Yukon Indian People;
 - 9.5.4 Use and Harvesting of Fish and Wildlife for personal Use by Yukon residents, and others;
 - 9.5.5 the commercial Use of Fish and Wildlife.
- 9.6 In any year the adjusted basic needs level may float upward or downward, but shall not fall below the basic needs level, unless the Yukon First Nation involved consents.

Board Allocation of Harvest

- 9.7 The portion of the Total Allowable Harvest remaining after the allocation of the basic needs level or the adjusted basic needs level shall be deemed the remaining Total Allowable Harvest.

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- 9.8 The Board shall determine the allocation of the remaining Total Allowable Harvest and shall determine the allocation of any Harvest not exclusively reserved for Yukon Indian People in Yukon First Nation Final Agreements.

Determination of Total Allowable Harvests

- 9.9 The Board may, in accordance with the provisions of this Sub-Agreement, establish, modify or remove Total Allowable Harvest levels from time to time in the Settlement Area but shall do so only if required for Conservation, public health and/or public safety and to the extent necessary to achieve those ends.
- 9.10 In addition to its powers pursuant to paragraph 9.9, the Board may further limit the quantity of a Harvest, based on the following considerations:
- 9.10.1 ability 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;
 - 9.10.2 the goals and objectives identified by species and population management plans.
- 9.11 In the allocation of Fish and Wildlife Use, non-consumptive Uses of the resources shall be taken into account.
- 9.12 The Board shall determine geographic allocations of Harvests and seasons and methods of Harvests of Fish and Wildlife, within guidelines described in Settlement Agreements.

10.0 Allocation of Salmon Harvest

Basic Needs Allocation

- 10.1 Basic needs allocations, seasons and methods of Harvesting Salmon shall be established, within guidelines described in the Umbrella Final Agreement.
- 10.2 To the extent practical, adjustments to the basic needs allocations necessitated by revised Total Allowable Catch levels shall be made in-season. Shortfalls or surpluses existing after completion of the season shall be adjusted over a maximum of four years.

Commercial Salmon Fishery

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- 10.2 The overall allocation of commercial Salmon Harvesting licenses and opportunities in each Yukon River System to Yukon First Nations shall be set out in the Umbrella Final Agreement.
- 10.4 Commercial Salmon Harvesting opportunities for each Yukon First Nation shall be set out in each Yukon First Nation's Final Agreement.
- 10.5 Yukon residents north of 65° north latitude shall have the the right of first refusal to commercial licenses for any commercial fishing in the Porcupine River, or its tributaries.

11.0 Trapline Management and Use

General Guidelines for the Councils

- 11.1 In establishing local criteria for the management and Use of Furbearers in accordance with sub-paragraph 5.9.5, the Councils shall provide for:
- 11.1.1 the maintenance and enhancement of the Yukon's wild fur industry and the Conservation of the fur resource; and
- 11.1.2 the maintenance of the integrity of the management system based upon individual trapline identity, including individual traplines within group trapping areas.

Traplines for Yukon Indian People

- 11.2 The Yukon First Nations shall have the sole right to trap on traplines designated in the future as belonging to Yukon First Nations as Category 1 Traplines, except as provided for in paragraph 11.5.
- 11.3 Paragraph 11.2 does not restrict access by Government to handle or collect animals for scientific or management reasons.

Trapline Allocation Formula

- 11.4 The minimum overall allocation of traplines in the Yukon shall be in the order of 70% held by Yukon Indian People and 30% held by other Yukon residents. The specific percentage allocation of traplines shall be negotiated with each Yukon First Nation.
- 11.4.1 Category 1 Traplines shall be designated by the parties during negotiations and shall be identified in a Schedule to the Yukon First Nation's Final Agreement.
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- 11.4.2 Where, in a Yukon First Nation's Traditional Territory, the overall percentage of traplines held by Yukon Indian People is less than the specific percentage allocation negotiated under paragraph 11.4 above, members of that Yukon First Nation shall have the preferential right to acquire new or vacant traplines within that Traditional Territory. Traplines acquired under this sub-paragraph may be designated as Category 1 Traplines.
- 11.4.3 Where, in a Yukon First Nation's Traditional Territory, the overall percentage of traplines held by Yukon Indian People is greater than the specific percentage allocation negotiated under paragraph 11.4 above, any additional traplines acquired by Yukon Indian People shall continue to be designated as Category 2 Traplines.

pline Allocation Process

- 11.5 The Council shall regularly review the Use of traplines and reassign all new, vacant and under-utilized traplines pursuant to criteria that it establishes in accordance with sub-paragraph 5.9.5, as follows:
- 11.5.1 new and vacant Category 2 Traplines shall be assigned with regard to criteria established by the Council;
- 11.5.2 new and vacant Category 1 Traplines shall be assigned to Yukon Indian People pursuant to criteria established by the Council and any additional criteria established by the Yukon First Nation;
- 11.5.3 Category 1 Traplines may be temporarily assigned to other Yukon residents but the Category 1 status of the trapline shall not change as a result;
- 11.5.4 Category 2 Traplines may be assigned to Yukon First Nations as Category 1 Traplines to attain the agreed-upon specific ratio, pursuant to the Yukon First Nation's Final Agreement. This transfer shall occur as Category 2 Traplines become available, and on financial terms agreeable to the existing holder of the trapline;
- 11.5.5 upon mutual agreement between the Yukon First Nation and the trappers concerned, and with the approval of the Council, a trade may be

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arranged between Category 1 Traplins and Category 2 Traplins, with consequent re-designation of the status of the traplins;

- 11.5.6 the parties to this Agreement-in-Principle shall agree on a process to designate Category 1 Traplins and Category 2 Traplins prior to the signing of the Umbrella Final Agreement and when a process is determined, these traplins shall be identified and described in a Schedule to the Yukon First Nation Final Agreements;
- 11.5.7 the Government of the Yukon and each Council shall maintain a register of Category 1 Traplins and Category 2 Traplins;
- 11.5.3 Paragraph 11.5 is subject to the dispute resolution process established pursuant to the Sub-Agreement on Dispute Resolution.

Compensation

- 11.6 Where a Category 2 Trapline lies wholly or in part on Settlement Lands, the holder of the trapline shall, elect either to:
- 11.6.1 retain that portion of the trapline on Settlement Lands and exercise his rights pursuant to sub-paragraph 7.2.1;
- 11.6.2 make the trapline available for transfer pursuant to sub-paragraph 11.5.4; or
- 11.6.3 surrender that portion of the trapline on Settlement Lands for compensation to be negotiated.
- 11.7 Compensation shall be provided to Yukon Indian Persons holding traplines whose Harvesting opportunities have been diminished due to other resource development activities. The Umbrella Final Agreement shall outline the process and general guidelines for compensation, including the parties responsible for compensation and consideration of any offset for benefits of that development received by the Yukon First Nation or individual Yukon Indian trappers.

Interim Protection

- 11.9 The parties agree not to reduce the number of traplines currently held by Yukon Indian People until the Yukon First Nation's Final Agreement is executed, provided the Final Agreement is attained within 36 months of the signing of this Agreement-in-Principle
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or within 24 months of commencement of negotiation of a Final Agreement with that Yukon First Nation, whichever comes sooner.

- 11.9 The trapline management program of the Government of the Yukon shall be complemented in each Traditional Territory by the bylaws and management program of the Council. The processes for the promulgation of Council bylaws shall be set out in each Yukon First Nation Final Agreement.

Trapline Development

- 11.10 Trapline holders may construct and occupy such cabins as are necessary for the reasonable use and enjoyment of traplines, and may cut necessary trails on their traplines.

Training

- 11.11 The Government of the Yukon shall provide trapper training programs for Yukon Indian People as required from time to time to encourage effective involvement of trappers in the management and development of traplines.

12.0 Conservation Areas

- 12.1 Areas not selected as Settlement Lands and possessing natural or ecological features which have significance because of their important resource values as indicated in paragraph 12.2, may be designated as Conservation Areas and subject to special management regimes.

- 12.2 Conservation Areas may be identified in Yukon First Nation Final Agreements and established by Legislation because of their:

12.2.1 critical habitat for flora and fauna;

12.2.2 aquatic and riparian values, including fish habitat and watershed significance;

12.2.3 inclusion of significant natural features and their overall Conservation values;

12.2.4 such other values or significance as may be agreed to by the parties.

- 12.3 Conservation Areas may include:

12.3.1 special wildlife and Fisheries management areas;

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- 12.3.2 territorial and national parks;
- 12.3.3 national wildlife areas;
- 12.3.4 International Biological Programme (IBP) sites;
- 12.3.5 biosphere reserves;
- 12.3.6 migratory birds sanctuaries;
- 12.3.7 watershed protection areas;
- 12.3.8 and other areas as may be agreed by the parties.

12.4 Access to Conservation Areas may be restricted subject to agreed upon management regimes.

12.5 Disputes over management regimes or the implementation of management plans shall be referred to the dispute resolution process established pursuant to the Sub-Agreement on Dispute Resolution.

12.6 Conservation Areas shall not be included in Settlement Lands.

12.7 Each Yukon First Nation shall participate in management regimes for those Conservation Areas identified in its Final Agreement in a manner to be negotiated and set out therein.

13.0 Training and Education

13.1 The parties 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 shall design the structures necessary to fulfill these needs for development of these human resources.

14.0 Implementation Provisions

14.1 The parties shall make best efforts to pre-implement the training, and management structure provisions of this Sub-Agreement at the time of Umbrella Final Agreement.

14.2 Subject to paragraph 9.4 of this Sub-Agreement, the Government of Canada shall recommend to Parliament the repeal of Section 17(3) of the Yukon Act upon the enactment of Settlement Legislation.

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- 14.3 If at any time Parliament enacts Legislation conferring upon Yukon Indian People rights similar in nature to those now contained in Section 17(3) of the Yukon Act, the provisions of the Yukon First Nation's Final Agreement with respect to the Conservation and Use of Fish and Wildlife in the Yukon shall be null and void if the Yukon First Nation exercises any such rights.

15.0 General

- 15.1 The respective Government financial and administrative responsibilities established by this Sub-Agreement shall be determined between the Government of Canada and the Government of the Yukon before the Umbrella Final Agreement.

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FINAL DRAFT #30
OCTOBER 5, 1988

SUB-AGREEMENT ON FORESTRY IN THE YUKON

1.0 Responsibility

- 1.1 The principles agreed to in this Sub-Agreement shall not be prejudiced by the devolution of responsibility for forest management.
- 1.2 Subject to the principles in this Sub-Agreement, Yukon First Nations shall:
 - 1.2.1 have the authority to manage, allocate and protect forest resources on Settlement Lands; and
 - 1.2.2 participate with Government in Government's management, allocation and protection processes for forest resources on Non-Settlement Lands within their Traditional Territories.

2.0 Management

- 2.1 The management of forest resources on Settlement Lands and Non-Settlement Lands excluding National Parks within each Yukon First Nation's Traditional Territory shall be coordinated.
- 2.2 Forest management shall be conducted on the basis of the following principles:
 - 2.2.1 use of forest resources shall protect essential ecological processes;
 - 2.2.2 plans and operations shall be carried out with regard for watershed areas and;
 - 2.2.3 long term sustainable use of forest resources shall be fostered, including, where feasible, silviculture and reforestation programs.
- 2.3 Management plans defined areas shall be developed by Government and the Yukon First Nation whose Traditional Territory is involved. For greater certainty, the following shall apply:
 - 2.3.1 a forest inventory is considered to be essential for the development of a thorough forest management plan;
 - 2.3.2 wherever possible, forest management plans shall be developed in accordance with regional or sub-regional land use plans and with

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reference to related renewable resources management plans; and

2.3.3 Government and the Yukon First Nation whose Traditional Territory is involved shall establish a time frame for the development of these management plans.

2.4 The process by which Yukon First Nations and Government share the management of forest resources in Traditional Territories shall be defined in Yukon First Nation Final Agreements.

Commercial Forest Harvesting

3.1 Subject to other relevant Sub-Agreements, commercial forest harvesting on Settlement and Non-Settlement Lands shall be managed to ensure:

3.1.1 the continuation of Fish and Wildlife Harvesting rights, including hunting, trapping, fishing and gathering; and

3.1.2 the protection of the environment, including habitat.

3.2 Yukon First Nations shall be involved in the allocation of commercial timber dispositions in a manner to be defined by Yukon First Nation Final Agreements.

3.3 Economic opportunities for Yukon First Nations in commercial timber operations shall be addressed in Yukon First Nation Final Agreements.

Forest Protection

4.1 Nothing in this Sub-Agreement shall obligate Government to fight forest fires on Settlement Lands, except as such obligations may be established from time to time by general policy.

4.2 Government may take such action as it deems appropriate on Settlement Lands to control or extinguish forest fires. Where time permits, consent of the affected Yukon First Nation shall first be obtained.

4.3 Yukon First Nations shall not be responsible for fighting forest fires on Undeveloped Rural Settlement Lands and shall not be liable for damages resulting from fires on such lands. This provision does not exempt persons who intentionally or negligently cause a forest fire from responsibility to fight that forest fire, or from liability for damages resulting from the forest fire.

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- 4.4 Following a Yukon First Nation Final Agreement, Government shall continue to consult with that Yukon First Nation on general priorities for fighting forest fires on its Settlement Lands and on Non-Settlement Lands adjacent thereto.
- 4.5 Before the application of pesticides or herbicides on Non-Settlement Lands in a Yukon First Nation's Traditional Territory, Government shall consult with that Yukon First Nation.
- 4.6 Yukon First Nations shall observe Laws of General Application regarding the use of pesticides and herbicides and shall consult with the appropriate Government agencies before the application of herbicides or pesticides on Settlement Lands.

5.0 Interim Measures

- 5.1 Government shall observe the following principles on an interim basis and for a reasonable period pending negotiation and ratification of Settlement Agreements:
 - 5.1.1 Government shall consult with each Yukon First Nation on general priorities for fighting forest fires in its Traditional Territory;
 - 5.1.2 no timber permits shall be issued on withdrawn lands without the consent of the Yukon First Nation whose Traditional Territory is affected;
 - 5.1.3 no new commercial timber permits or agreements for timber harvests on Crown lands in excess of 1000 cubic metres shall be issued without consultation with the Yukon First Nation whose Traditional Territory is affected;
 - 5.1.4 existing commercial timber dispositions may be renewed provided the terms and conditions of such dispositions have been met and provided the disposition meets the conditions in paragraphs 2.2, 2.3 and 3.1.
 - 5.1.5 Government shall address the immediate needs of Yukon Indian People for harvesting of fire-killed wood on Crown lands with those affected Yukon First Nations;
 - 5.1.6 Government shall consult with Yukon First Nations in the development of Legislation relating to forest resources.

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funding

6.1 Any public management boards or councils established pursuant to this Sub-Agreement shall prepare an annual budget, subject to review and approved by Government. The approved expenses of any such boards or councils, shall be a charge on Government. Such budgets shall be in accordance with Government funding guidelines.

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