

# **Trapline Holders' Compensation**

## **A Report of Discussions Towards the Implementation of a Yukon Umbrella Final Agreement Provision (16.11.13)**

“Yukon Indian People holding traplines whose Furbearer Harvesting opportunities will be diminished due to other resource development activities shall be compensated.

Government shall establish a process following the Effective Date of the Yukon First Nation's Final Agreement for compensation, including designation of the Persons responsible for compensation.”

- Provision 16.11.13 Umbrella Final Agreement

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**Canada**



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

## Preface

### The Provision

Section 16.11.13 of the Yukon Umbrella Final Agreement and Yukon First Nations' Final Agreements establishes that:

Yukon Indian People holding traplines whose Furbearer Harvesting opportunities will be diminished due to other resource development activities shall be compensated. Government shall establish a process following the Effective Date of the Yukon First Nation's Final Agreement for compensation, including designation of the Persons responsible for compensation.

### Purpose of the Discussions

Canada and Yukon have an obligation to implement 16.11.13 of the Yukon Umbrella Final Agreement and Yukon First Nations' Final Agreements - a provision that will establish a compensation process for Yukon Indian People holding traplines. In approaching the implementation of the provision and in preparing for the work of designing a compensation process with the Yukon, as a first step, several DIAND representatives met with Yukon First Nations, Renewable Resources Councils and other groups in facilitated discussions. The purpose of the meetings was to hold preliminary discussions that would allow the participants to freely share ideas and perspectives about the meaning and practical effect of the 16.11.13 provision.

Between April 2000 and March 2001, DIAND held more than 25 meetings with Yukon First Nations, Renewable Resources Councils and other select groups. The discussions identified a broad range of ideas, issues and expectations concerning 16.11.13 and its implementation. Part One of this report summarizes the main ones. Part Two of this report is a compilation of the detailed comments as discussed.

## **Participants in the Discussions**

The governments and organizations listed below participated in the preliminary discussions concerning 16.11.13.

### **DIAND**

Renewable Resources Directorate  
Lands Branch

### **Yukon First Nations**

Selkirk First Nation  
Little Salmon - Carmacks First Nation  
Teslin Tlingit Council  
Vuntut Gwitchin First Nation  
Champagne and Aishihik First Nations  
Tr'on dek Hwech'in First Nation  
First Nation of Nacho Nyak Dun  
Kwanlin Dun First Nation  
White River First Nation  
Kluane First Nation  
Ta'an Kwach'an Council  
Carcross-Tagish First Nation  
Ross River Dena Council, Liard First Nation, Kaska Dena Council (side meeting)

### **Renewable Resources Councils**

Selkirk Renewable Resources Council  
North Yukon Resources Council  
Asek Renewable Resources Council  
Dawson Resources Council  
Mayo District Resources Council  
Teslin Renewable Resources Council

### **Other Organizations and Groups**

Yukon Trappers Association  
Dispute Resolution Board  
Little Salmon – Carmacks First Nation Elders and trappers  
Champagne and Aishihik First Nations Elders and trappers  
Teslin Tlingit Council Elders and trappers

## Proviso on Consultation

From the outset and throughout the discussions, it was clearly stated by DIAND representatives that the meetings were not and should *not* be construed as any form of consultation by Government with the First Nations and other organizations. DIAND representatives indicated that the department had not developed any formal proposal for a compensation process in fulfillment of 16.11.13 at the time that would necessitate the formal consultation requirements established in the UFA and First Nation Final Agreements. The preliminary discussions held with Yukon First Nations and Renewable Resources Councils (RRC's) over the last year were presented by DIAND as precursors to a consultation process that will be initiated when Government has prepared and proposed a compensation process for review.

## Approach

The approach to the discussions with Yukon First Nations, RRC's, and several other organizations was informal. The meetings were arranged by the facilitators of the discussions. In addition to providing background information about the initiative towards implementing 16.11.13, the discussion was organized around three basic questions:

- What is your understanding of the meaning of Section 16.11.13?
- What is your interest in the provision?
- What are the issues in your area that are affected by the provision?

The meetings were typically held in the communities where the First Nations and Renewable Resources Council offices were located. Participants usually included the facilitators of the discussions, two DIAND personnel dedicated to the discussions, and various First Nations' representatives including elected officials and staff, members and staff of Renewable Resources Councils and boards, and some local trappers. Workshops were held in some communities when a First Nation requested preliminary discussions be held directly with Yukon First Nations trappers in the area.

The discussion of 16.11.13 raised a number of other issues and concerns of importance to trappers. Although a number of these were outside the scope of 16.11.13, and this was acknowledged at the time of the discussion, these matters were discussed and recorded. In some cases, they provide an important sense of context for the consideration of 16.11.13. In others, they raise important related policy questions for Government, quite apart from Government's obligations under 16.11.13. In still others, they provide ideas outside of the provision that may facilitate the implementation of 16.11.13 itself.

Facilitators drafted meeting records from each and every discussion. The facilitators circulated the draft meeting records to representatives of the participants for review. The facilitators revised the meeting records as requested by the reviewers and then returned them as a final meeting report. The distribution of the meeting records has been with the consent of those representing the meeting participants.

## **Organization of the Report**

This report is organized into two parts: Part One - the Issues Scan is a summary of the meeting discussions over the last year. It identifies, from our perspective, some of the key issues that emerged and a brief description of them. They are not analyzed, but simply presented for consideration. Part Two is a compilation of the full records of meetings held between DIAND and Yukon First Nations, Renewable Resources Councils and several other organizations.

## **Acknowledgements**

We would like to recognize the effort and support of Sylvia Neschokat, Land Claims Implementation Advisor, Renewable Resources, DIAND and Mike Draper, Lands Specialist, Land Resources, DIAND. They participated extensively in the discussions and meetings with Yukon First Nations, Renewable Resources Councils and other organizations across the Yukon. They proved to be exceptional road warriors, a good indicator of their commitment to this work. We would also like to extend our thanks to the many people who participated in our discussions and gave so freely of their time and ideas in communities across the Yukon.

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## **PART ONE**

### **Trapline Holders' Compensation – Issues Scan**

#### **Introduction**

The Issues Scan is a summary of the discussions between representatives of DIAND, Yukon First Nations, Renewable Resources Councils, and other organizations and individuals concerning chapter 16.11.13 of the Yukon Umbrella Final Agreement and Yukon First Nations' Final Agreements and its implementation – namely, a process for compensating Yukon Indian People holding traplines whose opportunities for harvesting Fur Bearers will be diminished due to other resource development activities. Its purpose is to identify key issues raised over the course of the many discussions.

The issues are presented largely as they have been raised by the representatives of Yukon First Nations, Renewable Resources Councils and other organizations. Comments by DIAND representatives are not included in the scan. Accordingly, it is important to note that the issues as presented do not reflect any form of qualification, correction or comment by DIAND. We have made no interpretation or judgment of the issues other than what is involved in selecting the “key” issues for this summary from the many that we heard. If we have excluded certain issues to which certain individuals or organizations attached significance or importance, we extend our regrets. Summaries are just that. They are not a substitute for the issues and comments documented in the meeting records in Part Two.

## Organization of Issues

The discussions raised a diverse range of issues that the participants viewed as related to those more narrowly and directly associated with the establishment of a compensation process for Yukon Indian People holding traplines. These broader issues are recognized as contributing information and concerns that may inform the broader policy context and management circumstance in which a future trappers' compensation process will be designed and ultimately situated.

The key issues from the discussion that are identified in this scan are organized into four categories:

**General Situation** – the general circumstance of Yukon First Nations trappers today

**Inside the “Box”** – issues directly tied to the language and requirements of 16.11.13

**Outside the “Box”** – issues external to the language and requirements of 16.11.13, but linked

**Process** – issues related to consultation and implementation of the provision

## General Situation

### 1. Standing of Trappers

Widespread concern was expressed that trappers and their interests have been forgotten by governments in managing and permitting development activities across the Yukon. Trappers hold the perception that their interests and activities are of secondary consideration to government in favour of developments that can generate greater economic activity, and greater revenues and royalties for government.

### 2. Consultation on Proposed Resource Development Activities

Representatives of Yukon First Nations and Renewable Resources Councils frequently stated that the Yukon Umbrella Final Agreement established a high standard and an extensive obligation for consultation on the part of the federal and territorial governments. Much can and should be done to improve consultation with Yukon First Nations and Renewable Resources Councils on resource development activities that affect the management of wildlife and habitat.

In a related vein, the point was strongly and repeatedly made that trappers needed to be better notified and consulted by developers and government permitting agencies about the potential effects of proposed development activities at the earliest stages of project planning. There was a widespread sentiment expressed that too often trappers were the

last to be informed about plans and approvals for new resource developments that would directly affect their trapping activities.

### **3. Existing Trappers' Compensation Regimes**

The meeting participants expressed general concern about the inadequacy of existing trappers' compensation regimes. The *Yukon Waters Act* provides for the compensation of preexisting water users when they are adversely affected by new water uses and the *Yukon Wildlife Act* mentions common law remedies that may be available to Yukon residents who harvest wildlife for food and are affected by resource developments. However, it was the compensation process for trappers established under the *Yukon Wildlife Act* and the Yukon government's *Policy for Trapper and Outfitter Compensation* that most referred to, explicitly or implicitly.

The concerns focused on the limited application of the process as it applies to trappers (both First Nations and non-First Nations trappers): it is limited to compensation for the harvest of furbearers and not all wildlife harvested for food; it is limited to activities that are regulated or controlled by the Yukon government (excluding resource developments authorized or regulated by the federal government); and, it is cash-based and excludes non-cash forms of compensation. Concerns were also raised that the compensation process placed an excessive burden of proof on trappers to demonstrate loss of livelihood from a reduction of resources that result from development activities; that it placed an administrative burden on trappers to provide the appropriate annual fur records in filing a claim; and that the criteria for determining and calculating compensation were unclear.

### **4. Development Impacts on Trappers**

A range of development activities were cited as affecting trapping across the Yukon, with several specific to certain regions, reflecting historic settlement patterns and resource development. The activities and issues most frequently mentioned are listed below:

- Inadequate management and mitigation of cumulative effects and downstream effects from mining operations have resulted in the loss of fur, medicines and big game.
- Poor post-development environmental clean-up from mining and other activities (abandoned loaders, sluice boxes, drums of fuel) have resulted in contamination of water and habitat. This situation has placed the burden on trappers to clean-up after other resource users.
- Unregulated tourism activity is resulting in disturbances to wildlife and habitat, and interference with trapping activities.
- Identification of proposed Timber Harvest Planning Areas attracts forest industry interest and raises expectations before the interests of trappers are considered or before trappers are consulted. This places a burden on trappers to inform themselves about proposed developments that could negatively affect them and requires them to spend considerable time pursuing this information within government.

- Traplines are increasingly affected by residential development. Harvesting rights cannot be exercised within 1 mile of a residence. First Nation land selections (s-sites) are posing some difficulty for trappers given the hunting restrictions that apply in the area of residential dwellings. Site-specific developments can affect concentrations of furbearers in specific areas.
- Agricultural development and grazing leases often lead to the fencing of grazing areas that block wildlife movement corridors, diverting wildlife to other areas.
- Increasing recreational activity and noise, and smoke from wild fires over large areas of bush are pushing animals away from the areas that trappers have traditionally known and worked. Recreational impacts on the big waterways have created a mess in the bush and have disturbed wildlife along the rivers.
- Mining and forestry land use applications are of particular concern.
- Highway and road developments have disturbed wildlife and habitat in important trapping areas.
- Fire resulting from resource development activities has displaced wildlife and burned up traplines and cabins.
- The prospect of gas pipeline developments is raising concerns for trappers who operate in the vicinity of a possible Alaska Highway pipeline. Concern focuses on the loss of habitat and the increased level of human activity disturbing wildlife during construction.
- Some development impacts have been positive for trappers when the trapper has had input into the planning of the development. For instance, some resource roads have avoided sensitive trapping areas, while providing trappers with improved access in the vicinity.

## **Implementation of the Provision**

### **1. Timing**

There is concern and frustration over the time taken to implement the trappers' compensation provision of the Final Agreement (16.11.13). It was suggested that in the absence of the provision, some trappers have experienced damages and diminishment of trapping opportunities without remedy. Different perspectives between the Parties in interpreting the provision were cited as contributing to delays in implementation.

### **2. Future Consultation Requirements and Timing**

In future discussions and consultation, many issues associated with the development of a trappers' compensation process should be addressed directly to the trappers themselves. A number of suggestions were made that it would be helpful to conduct these meetings in larger group settings so First Nations and community representatives can benefit from the comments of one another.

The process of implementing 16.11.13 should be timely, but not rushed simply because five years have transpired since the Effective Date of the first four First Nation Final Agreements. Efforts should be made to build the best compensation process possible, with provision for a review period to introduce changes as desired. A number of First Nations generally indicated they will not abandon what they consider essential to a compensation regime simply to have a compensation process established by an earlier date.

### **3. Role of Governments and First Nations**

It was stressed that “Government” in the Final Agreement (FA) means both YTG and Canada. Currently, Yukon has jurisdiction and responsibilities for wildlife, and oil and gas development. Post-devolution, Yukon will have responsibilities for forestry, mining and land use, and will assume a lead role in permitting and planning development activities. Yukon participation will be critical in implementing the 16.11.13 provision to establish a trappers' compensation process. Yukon representatives must be directly involved in future discussions with First Nations and Renewable Resources Councils. The obligations associated with Consultation as established in the Yukon Umbrella Final Agreement require the participation of Yukon in any future meetings to review a proposed compensation process.

The reference to Yukon Indian People in 16.11.13 implicates all Yukon First Nations in the provision regardless of whether they have signed Final Agreements. Yukon First Nations without Final Agreements should not be excluded from discussions and consultations to develop a compensation process simply because they have not signed Final Agreements.

### **Inside the “Box” (16.11.13)**

Yukon Indian People holding traplines whose Furbearer Harvesting opportunities will be diminished due to other resource development activities shall be compensated. Government shall establish a process following the Effective Date of the Yukon First Nation’s Final Agreement for compensation, including designation of the Persons responsible for compensation.

## 1. One or More Compensation Processes

It was suggested by some that existing multiple arrangements for trappers compensation should be consolidated into one process that includes the provisions of 16.11.13. Others commented that the different legislative bases (e.g. *Yukon Waters Act*) for different compensation arrangements would make such a consolidation difficult and further complicate and burden the implementation of 16.11.13. In addition, it was suggested that a compensation process established pursuant to 16.11.13 should be all-inclusive to the extent that it included both First Nation and non-First Nation trapline holders and thereby avoid the administrative confusion, duplication and burden of separate processes.

## 2. Area of Application

A broad range of comments, views and concerns were expressed with regard to the geographic area over which a trappers' compensation process should apply. They are summarized in the following list:

- The provision applies to Crown and Commissioner's lands in the Yukon.
- The area of application is defined according to the jurisdiction of the government responsible for issuing the relevant development permit.
- The 16.11.13 provision does not limit the geographical scope of a compensation process. It was suggested by many people that it applies to all lands where traplines are held by Yukon Indian People. This broad application of compensation is important in order to address impacts on Category B Settlement Land where Yukon First Nations (YFN's) have no control over subsurface development.
- While not explicit, 16.11.13 can be viewed as applying to both Crown Land and Settlement Land. If this is so, YFNs must be fully involved in the development of the compensation process. If the provision applies to Settlement Land, YFNs should be involved as full partners in implementation.
- At the same time, comments were made that it doesn't make sense that a 16.11.13-based process would apply to Settlement Land if Government alone was designing it. If Settlement Lands are to be excluded from the application of the provision, then YFN's will want to know that. It is critical to address the question of what lands the provision applies to.
- One interpretation of 16.11.13 suggests that since traplines extend across both Settlement and Non-Settlement (Crown) land, Settlement land is not excluded from the provision. Practically speaking, given that traplines cross different lands, it may be preferable to have one regime that applies on Settlement and Crown lands.
- Questions were raised as to whether the compensation process would be a Yukon-wide umbrella regime in scope and implemented on a First Nation by First Nation basis over time.
- Trappers' interests extend throughout an area larger than the one they are currently active in. Cyclical declines in the population levels of one species may mean moving to other species in other areas of the trapping concession.

### **3. Who is Eligible**

It was clearly recognized that trappers' compensation under 16.11.13 applies to Yukon Indian People who are holders of registered traplines in the Yukon and who are also enrolled as beneficiaries of a Yukon First Nation Final Agreement. Many questions and comments were made as to whether a Yukon First Nation would be or should be eligible for compensation if it was the holder of a trapline. First Nations without Final Agreements raised questions about the eligibility of their trappers for compensation prior to the settlement of their land claims, when a process for compensation had been established previously under 16.11.13.

### **4. Liable “Resource Development” Activities**

The meaning of “resource development activities” in 16.11.13 was questioned. It was suggested by some that the term “resource development activities” in 16.11.13 may apply to any activity other than trapping. Some groups interpreted 16.11.13 as an expansion of the conventional notion of “resource development activities” (mining, forestry, oil and gas and related activities). They suggested it could also include wilderness tourism, outfitting activities, and some unregulated activities like recreational snowmobiling.

### **5. Extent of Trapping Rights: What is Eligible for Compensation**

Many participants recognized that historically, trappers' compensation has been limited by provable losses directly related to the harvest of furbearers. Lifestyle and other wildlife impacts have not been eligible for compensation. Many suggested that an approach focusing on fur sales alone would be narrow and restrictive, particularly in light of the fact that with low fur prices, fur sales are low. In spite of low fur prices, many trappers have continued to invest in their traplines, by maintaining trails, cabins and equipment. These people felt that compensation should reflect the full value of the trapline to the trapper and the investment that has been made in the line.

Many First Nations participants spoke of Yukon First Nations' traditional relationship to habitat and the use of that habitat in their Traditional Territories. They repeatedly made the point that the right to trap is more than a permit for an activity; it is a right to the traditional use of the land. Compensation for trapping is also linked to management and protection of harvesting rights and should reflect the full range of wildlife harvest impacts on trappers. Compensation for the loss of First Nations' traditions that occur as a result of lost or diminished trapping opportunities will never be adequate in replacing what is lost. There was general concern that the focus of compensation should be less on the dollars in fur that is lost, and more on the loss of a way of life, and the impacts on cultural and traditional values associated with the loss of traditional use of resources (e.g. medicines, berries, etc.): As one participant said: “Can't compare this with money. It's a part of my life. That's where I live. That's my home.”

Many participants commented that the trapline holder is both a commercial user and a person involved in a way of life. Many trappers view the trapping licence as more than a licence for a commercial activity, but as permitting a way of life.

When habitat is destroyed and lost, and furbearer populations displaced, trappers can't simply go to another place in someone else's territory and start again. Relocation and reassignment are rarely possible, given that all lines are taken. Participants commented that compensation provisions should reflect this reality.

## **6. Liability and Who Pays?**

Many people supported the principles of "proponent pays" and proponent responsibility for compensation arrangements. The question of whether there would be any underlying liability for Government in the event that a developer failed to compensate (due to dispute of the compensation claim or agreement, inability to pay, or project abandonment) was also raised. It was suggested by some that there should be an underlying liability on federal, territorial and First Nations governments where they assumed responsibility for issuing a permit to a developer.

## **7. Forms of Compensation**

Wide-ranging comments suggested that compensation should not be limited to cash payouts, and could take a wide variety of non-cash forms as well. These different types of compensation included: financial, habitat restoration, and in-kind contributions, and services such as a developer providing trail development, equipment, fuel, transportation, logs for cabin construction, etc.

A very large number of participants indicated that cash compensation alone is not adequate: "you can't bring everything back with money." However, given the life-long association with and investment in maintaining a trapline, there is an expectation that cash compensation may involve large payouts in some cases.

## **8. Criteria for Determining Compensation**

Discussion about methods, criteria and formulae for determining the level of compensation that is appropriate to a situation produced no single model. One point, however, on which many participants were of a common view was that cash income is the worst criterion to use in determining cash compensation levels. Many made the point that trappers don't necessarily trap for the money alone. The greatest impacts on trappers may not be loss of cash, but loss of a healthy lifestyle. The point was made by many that the social impacts of trapping (the loss of self-esteem, social and economic purpose, cultural traditions, household well-being, the value of traditional knowledge, and participation by youth in traditional activities) may outweigh the monetary impacts. There is a need to recognize the social impacts and benefits of trapping. Other important factors in considering the adequacy and appropriateness of various forms and levels of compensation included the following suggestions:

- The method for calculating compensation should be variable to fit the situation.
- Traplines often support more than one individual; they support a family and this should be considered in determining compensation.
- Any formula for compensation should consider the amount of area affected.
- Economic value alone is too limiting and the full significance of domestic value should be considered. Diminishing an opportunity isn't simply about less furbearers and less cash. It's also about the loss of opportunity to exercise and pursue a way of life (implicating cultural and spiritual values). In this context, some First Nations commented that the general loss of 16.4.2 harvesting rights should be considered.
- Traplines have a value whether or not they were used. The value of a trapline was actual and potential. Fur return figures alone, as a criteria for determining cash compensation, don't take into account the value of cabins, equipment, improvements, etc.
- In establishing compensation claims, where and how the burden of proof falls will need to be addressed: What kinds of evidence and proof will be acceptable? What will the standing of scientific information and traditional knowledge be? On who should the burden of proof fall? The proponent or the trapline holder?
- Proponents should carry the burden of proof to establish that there has been no diminishment of harvesting opportunity.

## 9. Retroactivity

The issue of retroactive compensation was raised by a number of participants. Questions were raised as to whether compensation would be retroactive as of the Effective Date or whether the trigger for giving effect to compensation as provided for in 16.11.13 was the date on which the compensation process referred to in the provision was established. Retroactive compensation to the Effective Date was tied to the view that there have been significant negative impacts on Yukon First Nations trappers in the last five years since the first four Yukon First Nations ratified their Final Agreements. Other participants commented that the 16.11.13.1 provision of the First Nations Final Agreements indicated that until such time as a compensation process pursuant to 16.11.13 is established by Government, Yukon Indian People have the right to any compensation measures that may be available in common law.

In another vein, retroactive compensation was raised by some participants in the context of whether trappers who had acquired traplines that had been negatively affected by resource development activities previous to their acquisition, could claim compensation. Others commented that lines are acquired on an as-is where-is basis meaning that in acquiring a line, the trapline holder accepts its condition at that time.

## 10. Regulation-based or Policy-based Compensation Process

Participants spoke repeatedly about the need for a process that is fair, accessible, practical, and timely. They spoke of the need for a process that is consistent in its treatment of compensation issues while allowing some flexibility in the remedies appropriate to individual circumstances (from trapper to trapper). Many emphasized the need for compensation agreements and arrangements that are enforceable, and not dependent upon voluntary compliance. Participants also commented on the desirability of a compensation process that can be modified over time in response to periodic evaluations of the performance and effectiveness of the process for developers and trappers alike.

Mindful of these desired features of a compensation process, there was considerable discussion by participants as to whether they were best achieved and served through a compensation process that is legislated or one that is based in government policy. Although there was no consensus among participants, some of the key points from these discussions are as follows:

- The current *Yukon Wildlife Act* and *Policy for Trapper and Outfitter Compensation* would make some of the desired features of a compensation process difficult to implement.
- A compensation process that takes the form of guidelines and protocols could provide the flexibility to change the compensation arrangements over time and in response to unique circumstances. Compensation guidelines could provide general direction for specific protocol agreements between a developer and a trapper.
- Legislating a trappers' compensation process would run contrary to an interest in a process that is flexible and adaptive. Legislative amendments to address changing circumstances would be time consuming, awkward and possibly frustrating.
- Developers and trappers require the certainty that their interests will be protected and addressed in a timely manner. If a compensation process takes the form of a policy, whose policy will it be? Federal, territorial or First Nation governments?
- A policy-based process may be desirable initially, with a legislated process following at a later date. YTG has indicated its willingness in devolution discussions to consult with YFN's on major legislative amendments post-devolution. A policy-based process could provide a more timely introduction of compensation measures, provide an approach that fits with regulators, and provide better flexibility to make adjustments as required. However, a review period should be specified to evaluate how well the process is working.
- The greatest benefit of a legislative-based process is the strict enforceability of compensation agreements and arrangements that it could provide.

## **11. Dispute Resolution**

Participants identified two types of disputes over compensation: disputes about a compensation agreement and disputes about an award. In the event that trappers and developers cannot agree on acceptable arrangements or disagree over the effect of a compensation agreement, it was suggested that some form of dispute resolution body would be required. Some suggested that a review body should be established to consider specific cases, and periodically review compensation agreements generally to determine their fairness and adequacy. Many people suggested that no new bodies should be established to hear disputes between trappers and proponents. The Dispute Resolution Board, the Outfitters Compensation and Review Board, and the Surface Rights Board were cited as candidates for independent bodies performing a dispute resolution function.

### **Outside the “Box” (16.11.13)**

#### **1. Eligibility**

Many Renewable Resources Councils and some First Nations recognized that 16.11.13 applies only to Yukon Indian People holding traplines. However, they also expressed the concern that if the compensation process established under 16.11.13 was not extended to provide coverage to non-First Nation trappers, the result would be unequal treatment and a double standard for trappers across the Yukon. Some raised the concern that the exclusion of non-First Nations trappers from a 16.11.13- based process would have the effect of deflecting resource developers into the trapping areas of non-First Nations trappers.

A number of Yukon First Nations' representatives commented that Yukon First Nations as entities should be entitled to compensation for traplines that they hold on behalf of their beneficiaries. They also raised questions about the eligibility of non-Yukon First Nations trapline holders with trapping rights in the Yukon for compensation in overlap and transboundary areas (e.g. Inuvialuit, Tetlit Gwich'in, Kaska, Tlingit).

While recognizing that Assistant Trappers are not trapline holders and are excluded from compensation under 16.11.13, some suggested that they too should be eligible for compensation where they were actively working a trapline.

#### **2. Links to Other First Nation Final Agreement Provisions**

Many questions were raised as to how a trappers' compensation process that was established pursuant to 16.11.13 would affect or be affected by other processes:

- The Development Assessment Process (DAP) provides a conceptual link to compensation whereby environmental screening and review will identify impacts that could negatively affect wildlife, habitat and trappers. It was also suggested that there could be linkages to other mechanisms such as Impacts and Benefits Agreements (IBA's).
- The point was frequently made that locating the 16.11.13 provision in the broader Yukon-wide context of other compensation provisions and processes (inside and outside of the UFA and Final Agreements) is important when designing a new trappers compensation process. The compensation provisions of the *Yukon Waters Act* and Chapter 14 (Water Management) of the First Nation Final Agreements as they affect the Yukon Territory Water Board and trappers, the general harvesting provisions of Chapter 16 (Wildlife) as it affects First Nations trappers, and the mandate of the Yukon Surface Rights Board as it affects access orders should be carefully considered in the development of the compensation process required by 16.11.13.
- In clearly establishing the overall context for the application of 16.11.13, the implementation of the provision could establish generic criteria and arrangements for compensation that could contribute to and inform these other processes. In other words, the compensation criteria and mechanisms developed to implement the requirements of 16.11.13 for a trappers' compensation process, may benefit other processes and hearings that are faced with addressing trappers issues and concerns (e.g. Water Board, Development Assessment Process, Canadian Environmental Assessment Act, Impacts and Benefits Agreements).

### 3. Mitigation and Prevention of Impacts

Perhaps the most important issue that emerged from all of the discussions on 16.11.13 was a point largely external to the provision itself: Compensation is regarded as a measure of last resort and no one wants to go there. It is an indicator of failure and loss, and ultimately there are no winners when compensation claims are made and awarded – whatever the outcome. Repeatedly, participant after participant emphasized that mitigation of the adverse effects of development on trappers and trapping is key. Trappers made the point that if they simply wanted financial compensation, many of them would have abandoned trapping a long time ago, given the current challenges of making a decent income from trapping. Most trappers pursue it for lifestyle reasons, not for the money.

Efforts by territorial and federal government permitting agencies to engage trappers from the outset of development planning and the design of development proposals are critical to addressing the concerns of trappers. It was suggested by many participants that the improved participation of trappers in resource development planning (eg. forest management planning) is critical. Effective consultation and adequate resolution of trappers' concerns by proponents prior to (indeed, as some suggested, prerequisite to) the issuance of permits would go a long way to reducing the likelihood of compensation and trappers' expectations and fears concerning compensation.

There was a widespread view that trappers are typically the last to know about developments that may affect their interests. Many seek to reverse this situation. Trappers, for example, could become more involved in protecting their interests by accompanying the Resource Management Officer on pre-inspection site visits. Proponents preparing project proposals for environmental assessment and permitting could be required to first consult with affected trappers and identify any concerns that are raised.

These ideas were consistent with the general theme of the discussions that trappers require greater recognition if their interests are to be protected. Focusing on compensation alone perpetuates in the minds of many, the second class status of trappers alongside other resource users. There is a fear that some proponents of development regard trappers' compensation as the cost of doing business. For this and other reasons, many participants felt compensation alone was not enough to protect their interests and their future.



## PART TWO

### Trapline Holders' Compensation – Meeting Reports

#### Meetings with First Nations

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## Meeting Notes from Discussion on Trapline Holders' Compensation

**Selkirk First Nation  
May 11, 2000**

### Selkirk First Nation Offices

#### Participants

Don Trudeau, Assistant Director, Lands and Resources, SFN  
 Jerry Alfred, Mapper, Lands and Resources, SFN  
 Fred Green, Director, Self-Government Operations, SFN  
 Dean Gill, Trainee, Environmental Officer, Lands and Resources, SFN  
 Danny Joe, SFN, SRRC  
 Sylvia Neschokat, Executive Services, Claims Implementation, DIAND  
 Mike Draper, Lands Specialist, Land Resources, DIAND  
 Albert Peter, Consultant  
 Lindsay Staples, Consultant

#### Points of Discussion

Selkirk First Nation representatives raised the following points:

- In response to questions about the status of the CIRL discussion papers, DIAND indicated that the documents should be treated as reference material only and were not the opinion of government, and were not a proposal by government.
- Future consultation to address proposals for trapline holders compensation policy or guidelines should be in a larger group setting so that First Nations and community representatives can benefit from the comments of one another.
- There is concern over the time that it has taken to implement the trappers' compensation provision of the Final Agreement (16.11.13). It was suggested that in the absence of the provision, some trappers have experienced damages and diminishment of trapping opportunities without remedy. DIAND representatives commented that 16.11.13.1 was available to provide any remedy that existed in common law until such time as 16.11.13 was implemented.
- Questions were raised as to whether compensation would be retroactive as of the effective date or whether the trigger for giving effect to compensation as provided for in 16.11.13 was the date on which the compensation process referred to in the provision was established. Retroactive compensation to the Effective Date was stated as a major concern and was tied to the view that there have been significant negative impacts on SFN trappers in the last 5 years.
- Concern was expressed about the short response time (10 days) for comment on mining land use applications; often, SFN does not have adequate information

available to provide informed comment; contacting the trapper affected is often difficult (both for SFN and the proponent). Some how DIAND must deliver the land use application to the affected trapper, so that the trapper can respond to the proposal.

- General concerns were raised regarding the implementation of governments' obligation to "consult" with SFN pursuant to the Final Agreement: these concerns affect how the SFN and SFN trappers are consulted on development applications.
- There is a perception that government favours those developments that generate immediate revenues; the interests of trappers have been forgotten.
- A range of negative environmental effects that affect trappers were identified by the SFN representatives:
  - Concerns over negative effects on trappers focused on contaminants and poor post-development environmental clean-up from mining and other activities (cats, sluice boxes, drums of fuel); this situation placed the burden on trappers to clean-up after other resource users.
  - Cumulative effects are the biggest concern for SFN: inadequate management and mitigation of cumulative effects and downstream effects from mining operations have resulted in the loss of fur, medicines and big game.

Concern was expressed over the encroachments on trappers that have occurred since the Effective Date of the Final Agreement; the loss of the productive capacity of the land is noticeable and this has had an effect on wolves, lynx, ecosystems, etc.

- to the Effective Date was stated as a major concern and was tied to the view that there have been significant negative impacts on SFN trappers in the last 5 years.
- Concern was expressed about the short response time (10 days) for comment on mining land use applications; often, SFN does not have adequate information available to provide informed comment; contacting the trapper affected is often difficult (both for SFN and the proponent). Some how DIAND must deliver the land use application to the affected trapper, so that the trapper can respond to the proposal.
- General concerns were raised regarding the implementation of governments' obligation to "consult" with SFN pursuant to the Final Agreement: these concerns affect how the SFN and SFN trappers are consulted on development applications.
- There is a perception that government favours those developments that generate immediate revenues; the interests of trappers have been forgotten.
- A range of negative environmental effects that affect trappers were identified by the SFN representatives:
  - Concerns over negative effects on trappers focused on contaminants and poor post-development environmental clean-up from mining and other activities (cats, sluice boxes, drums of fuel); this situation placed the burden on trappers to clean-up after other resource users.
  - Cumulative effects are the biggest concern for SFN: inadequate management and mitigation of cumulative effects and downstream effects from mining operations have resulted in the loss of fur, medicines and big game.
  - Concern was expressed over the encroachments on trappers that have occurred since the Effective Date of the Final Agreement; the loss of the productive capacity of the land is noticeable and this has had an effect on wolves, lynx, ecosystems, etc.

- In the case of the Pelly burn, SFN believes inadequate fire control makes government responsible for the effects of the fire on traplines and resulting damages, including the effect of windfall and the thousands of dollars of fur that were burnt up. Caribou and caribou moss have been lost: it may be 50 years before either return.
- Restrictions that limit trappers from trapping within a mile of any development are an issue that continually undermines the activity of trappers over time.
- Potential hydro development and flooding of Granite Canyon.
- Unregulated tourism activity and resulting garbage and waste (e.g. river travelers). A user fee should be considered to cover the costs of clean-up.
- Identification of proposed Timber Harvest Planning Areas attracts forest industry interest and raises expectation before the interests of trappers are considered or trappers are consulted. This places a burden on trappers to inform themselves about proposed developments that could negatively affect them and requires them to spend considerable time pursuing this information within government.
- SFN has a traditional relationship to habitat and the use of that habitat in its Traditional Territory. The right to trap is more than a permit for an activity. It is a right to the traditional use of the land. “We’re out there because we’re out there looking after it [the land] at the same time [as we’re trapping].”
- SFN trappers want respect; their rights as trappers exceed their concession rights.
- SFN on its own lands takes a preventative approach to compensation: the focus is on project planning and mitigation of negative effects.
- Up until now, we have been learning too slowly; we need to learn from past experience. SFN, federal and territorial government departments should begin working together, on a government-to-government basis, and learning together.
- It was suggested that to talk of compensation is to talk of failure – failure to avoid damages and loss. Compensation for the loss of FN traditions will never be adequate in replacing what is lost. This requires the FN to act proactively and assume responsibility for and stewardship of the land and resources.
- It was suggested that compensation could take different forms: financial, habitat restoration, in-kind contributions (developer provides trail development, equipment, log for cabin construction on the basis of stand-alone agreements with individual trappers, etc.).
- It was suggested that trappers could become more involved in protecting their interests by accompanying the RMO on pre-inspection site visits.
- Traplines support more than one individual; they support a family and this should be considered in determining compensation.
- General concern was expressed over the lack of awareness and understanding regarding the provisions of the UFA and Final Agreements; it was suggested that efforts should be made to improve cooperation and collaboration in the implementation of the UFA’s general provisions.

**Follow-up Actions**

- DIAND will send CIRL discussion documents on compensation in the Yukon to Don Trudeau of the SFN.
- Consultant to provide meeting notes for review by SFN and the summary of all external discussions.
- DIAND to advise Don Trudeau about next steps.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Little Salmon – Carmacks First Nation**

**May 12, 2000**

### **Little Salmon – Carmacks First Nation Offices**

#### **Participants**

Johnny Sam, Lands and Resources, LSCFN

Clyde Blackjack, LSCFN

Joe Bellmore, LSCFN

Sylvia Neschokat, Executive Services, Claims Implementation, DIAND

Mike Draper, Lands Specialist, Land Resources, DIAND

Albert Peter, Consultant

Lindsay Staples, Consultant

Doug Van Bibber

#### **Points of Discussion**

Little Salmon – Carmacks First Nation representatives raised the following points:

- The voice of trappers must be heard. Trappers in the bush need to be involved in the discussions to develop compensation arrangements in the implementation of 16.11.13 and satisfied that the process can work for them.
- A facilitated workshop should be arranged to engage trappers in the discussion of compensation and to establish the basic principles for compensation.
- DIAND representatives suggested that YTG representatives should be involved as well.
- Concerns over a range of negative impacts on trappers were expressed:
  - Negative impacts on traplines not only affect harvesting, but the tourism opportunities that many trappers associate with their traplines as they attempt to develop the economic potential of their lines and way of life.
  - Traplines are everywhere and are increasingly affected by residential development. Pursuant to the UFA, harvesting rights cannot be exercised within 1 mile of a residence.
  - Grazing leases lead to the fencing of grazing areas that block wildlife movement corridors, diverting wildlife to other areas; they eliminate the opportunity for trappers to build cabins in the areas of grazing leases.

- Increasing recreational activity and noise, and smoke from wild fires over large areas of bush are pushing animals away from the areas that trappers have traditionally known and worked.
- The Yukon Quest has brought too much commotion into trapline areas.
- Trappers often don't know who the person is that they have a conflict with and have a difficult time getting that information. Unable to contact or speak to the developer, and unable to hunt or trap within 1 mile of the development, trappers are forced to move their activity to another spot – one that they may not be familiar with or have knowledge of wildlife in the area. Site-specific developments can affect concentrations of furbearers in specific locations (e.g. marten) with no guarantee that displaced wildlife will return.
- Mining and forestry land use applications are of particular concern. Is there anything from these developments that can benefit trappers over the long term? Some trappers have lines on both sides of a creek or lake making them vulnerable to development impacts.
- Recreational impacts on the big water ways have created a mess in the bush and have disturbed wildlife along the rivers.
- A trapline is money in the bank that can be used to pay your bills.
- There is a long tradition of use associated with traplines for many people; Roddy Blackjack, for instance, has been a trapline holder since 1954. Native trappers hold the line for the long term. They work to “keep the land alive.” They work to “keep the animals coming back.” They have worked for many years to manage the land for the animals. Johnny Sam indicated that he has used the same trail that his father and his brother used. Animals follow the line and he has learned to move his line in mid-winter. The trapping trail is also a hunting trail. Compensation for trapping is also linked to management and protection of harvesting rights.
- At hunting time, many people rely on their trapping area for game. The trapline area is your harvesting area. For First Nations there is no separation between trapping rights and harvesting rights.
- Cash compensation alone is not adequate: you can't bring everything back with money. But given the life-long association and investment in maintaining a trapline, there is an expectation that cash compensation may involve large payouts in some cases.
- The Waswanipi Model Forest is a Cree model forest program in Quebec that demonstrates how industry and trappers can work together by involving trappers at the outset of development planning. This information is available on a video.
- There would be a significant transition time for trappers to adjust to relocation of their line or their area as a result of disturbance to wildlife and trapping activities. Animals also go through an adjustment period to new habitat when they have been displaced from traditional habitat.
- Following the Minto fire, in one instance, it has taken 3 years to make a new line for 30-40 traps, with one km. still requiring work.
- Young people want to help open up traplines.
- DIAND representatives indicated that 16.11.13 is limited in what it can address, and that a number of issues and cases will fall outside of the provision.

- The compensation concerns related to fire are specific to those instances where trappers are of the view that a bad decision was made in fire suppression; there is no expectation that trappers would be compensated for the impacts resulting from all fires.
- The trapline value is there whether you use it or not; the value is actual and potential. Fur return figures don't take into the value of cabins, equipment, improvements, etc.
- One area that needs to be explored is the distinction between the liability of the developer and the liability of the government as the permitting agency.
- LSCFN has considered ways of calculating compensation; their concern is less the dollars in fur that is lost, and more the loss of a way of life, and the impacts on cultural and traditional values associated with the loss of traditional use of resources (e.g. medicines, berries, etc.). "Can't compare this with money. It 's a part of my life. That's where I live. That's my home."
- The trapline holder is both a commercial user and a person involved in a way of life. Unlike government, First Nation trappers view the license as not a license for a commercial activity, but for a way of life. Trappers can't simply go to another place in someone else's territory and start-again. Relocation and reassignment are not possible, given that all lines are taken.
- Development should consider the worst case scenario in evaluating the merits of a project and the potential compensation that could be required. In the LSCFN Traditional Territory, timber growing in permafrost is slow to mature (e.g. 600 years cited – south side of hills is a little faster; north side a little slower).
- The method for calculating compensation should be variable to fit the situation.
- The question of how far government should be involved in compensation issues needs to be discussed further.
- Compensation could also involve remediation and restoration of habitat.
- Arrangement for seeking compensation must be workable; questions were raised about the potential involvement of the Surface Rights Board, and it was suggested by LCSFN that it is not the appropriate body for addressing disputes of this nature.
- The rights of trappers alongside the rights of other land and resource users should be better understood.
- Any previous compensation policy is viewed as unworkable; the 16.11.13 provision should be used as a foundation for building a workable compensation process.
- FN land selections (s-sites) were posing some difficulty for trappers - often the trapper didn't know the people living on the s-site. The LSCFN needs a policy that would apply for site-specific blocks. At this time the LSCFN has not developed any policies to address land use conflicts.
- Developers proposing activities on Settlement Lands should consult directly with trappers.
- Trappers should be consulted on all activities that may affect their interests.
- DIAND asked who is the best person to talk to/contact the trapper? Could the FN play a role in this?
- Doug Van Bibber commented on the link between trapline holder compensation and sustainable development (in terms of maintaining land values).

- Not all young people are trapping, but there is a renewed interest in trapping. Funding is needed to support trappers who take young people out in the bush to teach them. Many young people already know how to trap, but low fur prices have discouraged their participation.
- An Elders trapline exists within a 5 mile radius of Carmacks.

### **Follow-up Actions**

- DIAND will send CIRL discussion documents on compensation in the Yukon to Johnny Sam, LSFN.
- The consultants will provide meeting notes for review by SFN and the summary of all external discussions.
- The consultants will work with Johnny Sam and LSFN to organize a one day workshop with trappers in June to review questions about the implementation of 16.11.13, to identify trappers concerns, and to identify basic principles that LSCFN trappers recommend to guide the development of a trapper compensation process. Lindsay Staples and Albert Peter will facilitate the workshop. LSCFN, with financial support from DIAND, will organize the workshop and arrange for notification, meeting space and lunch.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Teslin Tlingit Council**

**July 11, 2000**

### **TTC Lands and Resources Office**

#### **Participants**

Blanche Warrington, Acting Director, Lands and Resources, TTC  
Lorraine Porter, Interim Secretary, Lands and Resources, TTC  
Sheryl Grieve, GIS Mentor/Data Administrator, Lands and Resources, TTC  
Hugh Taylor, Contractor, TTC  
Dorothy Thom, Trapper  
Sylvia Neschokat, Executive Services, Claims Implementation, DIAND  
Mike Draper, Lands Specialist, Land Resources, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

#### **Points of Discussion**

TTC and DIAND representatives raised the following points:

- TTC trappers will want input into the discussions to develop compensation arrangements in the implementation of 16.11.13 and be satisfied that the process can work for them.
- A facilitated workshop should be arranged by DIAND, TTC and TTC RRC to engage TTC trappers in the discussion of compensation and to establish the basic principles for compensation.
- TTC representatives indicated that they would contact their trappers to determine their interest in attending.
- DIAND representatives suggested that YTG officials should be involved as well.
- DIAND representatives indicated the importance of distinguishing between the requirements and limits of compensation as established in 16.11.13 of the UFA, and other concerns and considerations that fall outside of that provision. The former are legal obligations of government under land claims legislation; the latter are matters of public policy.
- Questions about who should be involved in future discussions and consultations were raised. DIAND representatives indicated that the focus of the preliminary meetings were initially on those First Nations with Final Agreements and those communities with established RRCs.

- DIAND representatives suggested that initial discussion has focused on the application of 16.11.13 on Crown lands, the role of governments in this application, and the interest that YFNs may have in applying the same compensation process on Settlement Lands.
- TTC representatives suggested that 16.11.13 does not limit the geographical scope of a compensation process, and suggested that it applies to all lands where traplines are held by Yukon Indian People. This broad application of compensation is important in addressing impacts on Category B Settlement Land where YFNs have no control over subsurface development. How compensation would be provided to trapline holders whose traplines fell in overlap or transboundary areas was also raised as an issue.
- DIAND representatives suggested that their focus to date has been less on the status of the land (Crown, Settlement, Commissioner's, etc.) and more on the mechanism that triggers the application of compensation provisions: for example, the issuance of a land use permit is one possible trigger.
- TTC representatives raised the issues of who pays and the criteria for determining who pays. DIAND representatives suggested that the compensation process could specify who pays in what circumstances through compensation agreements that are established between developers and trappers prior to development (and impacts) occurring; these agreements could be flexible and amended over time to fit the circumstance. Government may be less concerned about what's in compensation agreements, and more interested that compensation agreements have been established that are mutually satisfactory to the trapper and the developer.
- The linkage between the compensation provision in 16.11.13 and other provisions of the UFA will also need to be addressed in future discussions. For example, the Development Assessment Process (DAP) provides a conceptual link to compensation whereby environmental screening and review will identify impacts that could negatively affect wildlife, habitat and trappers. It was also suggested that there could be linkages to other mechanisms such as Impacts and Benefits Agreements (IBAs).
- TTC representatives raised the issue of enforceability of compensation agreements and questioned whether there would be any protection of compensation agreements through regulation. The question of whether there would be any underlying liability for government in the event that a developer failed to compensate was also raised.
- There was discussion about two types of disputes: disputes about the agreement and disputes about the award.
- DIAND representatives suggested that attempting to implement 16.11.13 through a specific piece of legislation could prove extremely difficult to achieve and that there may be other ways to meet the interest in enforcement that is associated with legislation.
- TTC representatives questioned where the responsibility for overseeing a compensation process or regime would be assigned. It was suggested that the Surface Rights Board was probably not appropriate in that there is a distinction between right of access and consent for access, with the mandate of the SRB confined to the latter. (Can terms of access and consent include compensation?) One option may be to assign the responsibility to the office issuing the permit. Questions were raised as to whether the officials issuing the land use permit could enforce compensation provisions associated with it. There was discussion about administering the

compensation process outside of government that suggested little appetite in creating another board and the observation was made that existing boards may be limited by their mandates in assuming this type of responsibility.

- TTC representatives raised the question of whether the compensation process would be a Yukon-wide umbrella regime in scope and implemented on a First Nation by First Nation-basis over time.
- TTC representatives suggested that the term “resource development activities” in 16.11.13 may apply to any activity other than trapping. DIAND representatives suggested that some activities, like recreational activities (e.g. hiking and snowmobiling), in their view, do not fall with the notion of resource development.
- DIAND’s mandate extends only to those activities which are permitted/regulated.
- DIAND representatives inquired as to whether TTC had an established policy concerning how the TTC as the proponent (developer) would address potential impacts affecting TTC trappers.
- TTC representatives raised questions regarding how cash compensation would be determined, who would conduct the assessment of claims for compensation, and what information for determining compensation would be required. Reference was made to a study on compensation associated with the Foothills Pipeline Project (Alaska Highway) prepared by Phil Eby for CYI in 1979.
- DIAND representatives indicated that a major feature of any compensation process should be certainty: a process that ensures that all affected people are dealt with as early as possible in any development proposal; and compensation agreements that provide certainty to the developer and the affected trapper.
- TTC representatives raised the issue of whether the establishment of the compensation process would be retroactive in its application to the Effective Date of the Final Agreement. They suggested that if retroactive application is not accepted, then in the interim and until such time as a compensation process was established, TTC trappers were unprotected and this should bring greater urgency in implementing 16.11.13. DIAND representatives suggested that 16.11.13.1 recognized this circumstance and that compensation could be pursued through existing common law remedies in the interim.
- TTC representatives suggested that a compensation process that took the form of guidelines and protocols could provide the flexibility to change the compensation arrangements over time and in response to unique circumstances. Compensation guidelines could provide general direction for specific protocol agreements between a developer and a trapper. It was recognized that legislating the compensation process would run contrary to an interest in a process that was flexible and adaptive. Legislative amendments to address changing circumstances would be time consuming, awkward and probably frustrating. Developers and trappers require the certainty that their interests will be protected and addressed in a timely manner. If a compensation process takes the form of a policy, whose policy will it be? Federal , territorial, First Nation governments?

- TTC representatives indicated that the roles of the TTC with respect to its citizenry and its trappers must be distinguished and understood. The TTC wants to ensure that its trappers are well represented in any compensation process. TTC trappers should be asked how they want to be represented in a compensation process: by the TTC or directly by themselves? They need to know where they go to make a claim for compensation: the First Nation? Developer? Federal Lands? YTG?
- It was suggested that at minimum a compensation process established pursuant to 16.11.13 will have the benefit of: (a) getting trappers and developers to sit down with one another and discuss their respective interests and concerns, and (b) improving efforts to mitigate negative impacts by introducing a more formalized process for mitigating impacts on trappers specifically. Any compensation process should address the question: where and how will trappers concerns be addressed? Involving trappers in site inspections was suggested as a means for improving the identification of practical mitigation measures.
- TTC representatives suggested that Yukon Wildlife Act should be amended to better address compensation issues that face FN trappers today.
- DIAND representatives suggested that in determining the scope of compensation damages to trappers as well as habitat remediation and restoration will need to be considered.
- In establishing compensation claims, where and how the burden of proof falls will need to be addressed: What kinds of evidence/proof will be acceptable? Science? Traditional knowledge? Government? Trapline holder? Developer?
- DIAND representatives reiterated the need to distinguish in any discussion of trappers' compensation between the obligation on government that flow from 16.11.13 of the Final Agreement, and broader public policy considerations. This point was made during a discussion about furbearer harvesting v. other losses (e.g. traditional medicines).
- Albert Peter observed that the obligation may be a minimum - more could be contemplated, and there are other measures, IBA's etc. which may address other concerns.
- Dorothy Thom as a Kaska asked whether any compensation was available for traplines that were currently ruined from logging damages. She indicated that current forestry practices were having negative effects on hunting and trapping. She indicated her unwillingness to sign any consent form that would provide her permission for logging activities around her trapline area until her questions and concerns were addressed.

**Follow-up Actions**

- The consultants will provide meeting draft notes for review to the TTC and the summary of all external discussions. When finalized the meeting notes may be circulated internally with YTG officials.
- The consultants will work with the TTC to organize a one day workshop with TTC trappers in late September/October with the following objectives:
  - For Government to convey its understanding about the scope and meaning of 16.11.13;
  - To review questions about the implementation of 16.11.13;
  - To identify trappers concerns;
  - To identify basic principles that TTC trappers recommend to guide the development of a trapper compensation process.

Lindsay Staples and Albert Peter will facilitate the workshop. Blanche Warrington will follow-up with the Teslin RRC regarding the RRC's interest in the workshop. DIAND will follow up with YTG about their participation at a fall workshop.

- DIAND will follow-up with its Forestry officials about the specific concern raised by Dorothy Thom (with copies of correspondence to Lloyd Roberts and Blanche Warrington).

**Meeting Notes from Discussion on  
Trapline Holders' Compensation**

**Vuntut Gwitchin First Nation  
North Yukon Renewable Resources Council**

**August 1, 2000**

**VGFN Administrative Building**

**Participants**

William Josie, Director, Natural Resources, VGFN  
Stephen Mills, VGFN  
Darius Kassi, VGFN  
Greg Charlie, VGFN  
Roger Kay, VGFN  
Vicky Josie, NYRRC  
Dennis Frost Sr., NYRRC  
Isaac Anderton, NYRRC  
Sylvia Neschokat, Executive Services, Claims Implementation, DIAND  
Mike Draper, Lands Specialist, Land Resources, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

**Points of Discussion**

VGFN, NYRRC and DIAND representatives raised the following points:

- The VGFN raised concerns about the current situation of trappers regarding access to compensation. The current YTG compensation policy and process were viewed as weak in addressing the needs and concerns of trappers and did not include the VGFN group trap line as the existing process only covered settlement land. The non-implementation of 16.11.13 by Government was also frustrating. Different perspectives between the Parties in interpreting the provision were cited as contributing to delays in implementation: issues of who pays? the role of the Outfitters Compensation and Review Board (OCRB) and burden of proof were suggested as difficult issues arising from past discussions. In the past YTG has suggested that the provision could be implemented through the application of the existing OCRB with YTG paying compensation.

- VGFN raised concerns over YTG absence from the meeting, given YTG jurisdiction for wildlife and oil and gas development, and given that post-devolution YTG will assume a lead role in permitting and planning development activities. The question of YTG's role in the current exercise to implement the provision was raised with DIAND.
- DIAND recognized that the issue of implementation of the provision is an outstanding one. DIAND indicated that in 1997 YTG and DIAND established a working group to look at the issue of compensation. Subsequently DIAND/Renewable Resources commissioned a study by the Canadian Institute for Resources Law to analyze current compensation provisions and arrangements that apply in the Yukon. The file was transferred from DIAND Renewable Resources to Executive Services who assumed the federal lead in DIAND's regional office for facilitating implementation of the UFA provision (16.11.13). In 1999, DIAND arranged meetings with YTG to discuss and collaborate on the implementation of 16.11.13. In recent months, 4 – 5 meetings were held with YTG to clarify Government's understandings of what's provided for in 16.11.13. YTG has been invited to participate in the current implementation process and in all meetings with YFNs, RRCs and stakeholders. DIAND is well aware that YTG is significantly implicated in the implementation of the provision.
- VGFN commented that "Government" in the Final Agreement (FA) means both YTG and Canada. YTG participation will be critical in implementing the provision, otherwise there's no point to proceeding. YTG failure to participate in the process of community and YFN meetings will not meet the obligation for Consultation under the UFA.
- DIAND indicated that YTG participation in the process of implementing 16.11.13 was a shared responsibility of YTG, Canada and YFNs.
- VGFN indicated that they would be contacting YTG directly regarding YTG participation in the implementation of 16.11.13.
- VGFN expressed an interest in knowing which federal agencies and departments were consulted about the implementation of the provision. While DIAND has the lead in implementation, "Canada" has a legal obligation under the provision. How will "Canada's" interests be articulated? For example, what is the effect of the provision on the National Energy Board?
- VGFN commented that, while not explicit, 16.11.13 can be viewed as applying to both Crown Land and Settlement Land. If this is so, YFNs must be fully involved in the development of the compensation process. If the provision applies to Settlement Land, YFNs should be involved as full partners in implementation. It doesn't make sense that a 16.11.13-based process would apply to Settlement Land if Government alone was designing it. If Settlement Lands are to be excluded from the application of the provision, then YFNs will want to know that. It is critical to address the question of what lands the provision applies to, and, related to this point, who pays. One interpretation of 16.11.13 suggests that since traplines are on both Settlement and Non-Settlement (Crown) land, Settlement land is not excluded from the provision. Practically speaking, given that traplines cross different lands, it may be preferable to have one regime that applied on Settlement and Crown lands.

- Albert Peter mentioned that a concern had been raised in a discussion with another YFN over the application of the provision to Category B lands: since Canada can issue permits for development on these lands, it would place trappers in a difficult position if compensation provisions were not available to them.
- VGFN commented that existing encumbrances on Category A Lands may still produce problems and impacts for VGFN trappers.
- VGFN raised the concern that the cost (associated with any uncertainty) in determining compensation, may be more expensive than paying it. VGFN repeatedly made the point that locating 16.11.13 in the broader Yukon-wide context of other compensation provisions and processes (inside and outside of the UFA and Final Agreements) is important – consider the Yukon Waters Act as it affects the Water Board and trappers, chapter 14 (Water Management) of the FA; the Surface Rights Board as it affects access orders, etc. In clearly establishing the overall context for the application of 16.11.13, the implementation of the provision could establish generic criteria and considerations for compensation that could serve as an umbrella process or general reference that could inform these other processes. If compensation issues are first addressed through 16.11.13 – based on criteria and mechanisms, this could reduce the burden on other processes and hearings (Water Board, DAP, CEAA, Impact and Benefits Agreements) to manage compensation issues. There is a need to be clear about how the compensation process is linked to other regulatory processes and other forms of addressing compensation.
- Generally, any compensation provisions should address issues of cost (excessive process), timing (unreasonable delays) and flexibility (uniqueness of individual circumstances), and avoid any prospect of double claims and duplication. A compensation process should be user-friendly, informal, responsive and expeditious. Information requirements should be clear. Typically proponents are well-armed in such processes; trappers are “out-gunned” and also carry onerous burden-of-proof requirements.
- VGFN wants clarity and legal advice on the terms “potential,” “actual,” and “provable” loss. There is an interest in the assessment of potential (future) compensation and actual (after the fact) compensation. Some compensation regimes are based on provable losses and others are based on potential loss. This makes the task of developing this regime more complicated.
- DIAND indicated that an informal process would be more easily achieved than one requiring legislative changes. The latter would be extremely time-consuming. The department has an interest in a process that is implemented prior to devolution.
- VGFN suggested that compensation provisions could be established in federal legislation prior to devolution and then mirrored in territorial legislation until such time as the YTG passed its own unique legislative provisions. They also suggested that compensation provisions may need to be legislated in order to ensure that government pays compensation.

- DIAND indicated that under 16.11.13 government can designate who pays compensation. The question of how you enforce compensation provisions is another matter. Some mechanism is required to ensure that compensation agreements occur and that they are honoured. Enforcement is a difficult issue.
- VGFN commented that a system of “checks and balances” should be incorporated
- DIAND also indicated that concerns have been expressed regarding who’s covered by compensation and who isn’t; when are compensation agreements required? What is the level of readiness to implement 16.11.13 across the Yukon? Is one compensation regime or multiple regimes desirable?
- VGFN suggested that the reference to Yukon Indian People in 16.11.13 implicates all YFNs in the provision regardless of whether they have signed FAs or not. YFNs without FAs should not be left out of the compensation process simply because they have not signed. The difference is that the VGFN is issuing rights and permits on its lands.
- Old Crow has one trapline – a group line area in which all citizens have the right to trap. Each FN member is registered at birth as a member of the group trapline. While there are family areas within the group line area, the VGFN doesn’t distinguish between interests of individuals.
- DIAND commented that government is compelled to be clear on what’s provided for in 16.11.13 (what’s inside the “box”) and what is not (what’s outside the “box”). Clearly Yukon Indian People fall within the provision; non-First Nations trappers do not. Whether non-First Nations trappers should be included is not a land claims question; it is a question of public policy and administration.
- VGFN indicated that in the case of Old Crow, all VGFN citizens hold the group line collectively and should be considered to fall within the term “Yukon Indian People.” In managing the group line on behalf of its citizens, the VGFN must also be sensitive to issues raised by individuals.
- DIAND commented that it was important for Government to ensure that anyone who was covered by 16.11.13 not be left out of the general process or of specific compensation agreements to which they were entitled some measure of protection. Government needs to know who they should be dealing with.
- VGFN indicated that the interests of its citizens on the group line could be dealt with through whatever administrative arrangements the VGFN and its citizens considered to be appropriate. This is a matter internal to the VGFN that government need not concern itself with.
- DIAND indicated that across the Yukon some measure of flexibility will be required to provide different arrangements for different groups.
- The RRC suggested that under the Overlap Agreement with the Tetlit Gwich’in, the Tetlit are captured by the term “Yukon Indian People.”
- VGFN indicated its preferred interest in pursuing a collective approach to compensation, including the right to represent individuals in any compensation process and to allocate awards.

- VGFN indicated that they interpreted 16.11.13 as an expansion of the conventional notion of “resource development activities”. It also includes renewable resources development such as wilderness tourism, outfitting, etc. “Fur harvesting activities” implicates other areas of activities that aren’t regulated as well.
- DIAND questioned how you capture non-regulated (non-permitted) activities in a compensation process. More discussion will be needed on this point and the list of what constitutes “resource development activities.” DIAND and YTG will work to compile a list of resource development activities that would be covered under 16.11.13.
- VGFN expressed the concern that in some areas, government could regulate activities, but has chosen not to. It is important to bring an open mind to this discussion. At the same time, there is no need to include activities with low level impacts.
- DIAND suggested that these distinctions are sometimes difficult to capture when considering concepts of cumulative effects, recreational use, small scale commercial wilderness operators, etc. Government should specify what’s included in the term “resource development activities” to ensure certainty in the provision.
- VGFN agreed that it is important to discuss what should be on the list of “resource development activities”; it is noteworthy that VGFN will be a developer.
- VGFN commented on the criteria that would be used to assign a value to a trapper’s diminished fur harvesting opportunity: concern was expressed that economic value alone was too limiting and that the full significance of domestic value should be considered. Diminishing an opportunity isn’t simply less furbearers and less cash; it’s also the loss of opportunity to exercise and pursue another way of life (implicating cultural and spiritual values). General loss of 16.4.2 harvesting rights should be considered. Review the Yukon Waters Act and the consideration of the overall opportunity that’s diminished. Under the FA, it’s an aboriginal right to trap that’s being diminished. VGFN trappers can’t exercise their rights if they are no furbearers to trap. What’s government’s interest in defining the criteria too narrowly? Why not provide guidelines that introduce a measure of flexibility? Government can place some burden on developers to conclude compensation agreements by withholding development permits until compensation agreements or arrangements are concluded with affected trappers.
- VGFN questioned whether all the criteria under the Yukon Waters Act would be picked up in the implementation of 16.11.13 because if it isn’t, the Water Board would be required to address compensation in its proceedings in order to fulfill its requirements.
- VGFN questioned the means for determining whether furbearer harvesting activities had been diminished. Proponent should carry the burden of proof to establish that there has been no diminishment of harvesting opportunity (assume that all resource development produces a negative effect on trappers).

- VGFN suggested that compensation could take non-cash forms. For instance, a decline in furbearer harvest could be compensated by the relocation of trails and cabins.
- VGFN suggested that Impact and Benefits Agreements may be another mechanism for addressing compensation. Whatever the mechanism, it is important to equip trappers and developers with the means to reach agreements. A neutral mediator is needed to resolve disputes between proponents and trappers.
- DIAND and VGFN suggested that some form of mediation services will likely be required from time to time; rights administrators and other bodies may serve a mediation role.
- DIAND suggested that the right issuers may provide an informal mediation role, but caution was required to ensure that such people were not compromised as rights issuers through their direct dealings with developers and trappers. Questions were raised by DIAND as to how YTG and YFNs as developers would function in this role.
- VGFN observed that the different capacities of various proponents needed to be considered when applying the compensation process. The ability or willingness of the developer to pay compensation would be a concern for many trappers. In some instances, the proponent may not be liable for payment where the issuance of permits (e.g. timber harvesting permits) were based on policy decisions of government. Questions were raised as to the financial liability of government as regulator (Canada, YTG, YFNs) or in the event that proponents defaulted on compensation payments. Proponent pay only works if there is a proponent to pay. Compensation funding could be built into land sales discussions in order to set aside a cash reserve for trappers at the outset of any development.
- Albert Peter inquired as to whether VGFN had considered developing their own compensation process.
- VGFN indicated that they would prefer to see the 16.11.13 process provide benefits, guidance through generic criteria and guidelines that could be applied in a variety of areas outside the narrow application of 16.11.13 itself. For example, compensation guidelines should list clear information requirements and compensation measures.
- VGFN commented that the process of implementing 16.11.13 should not be rushed simply because 5 years has transpired since the Effective Date of the FA. Efforts should be made to build the best compensation process possible, with provision for a review period to introduce changes as desired. The FN will not abandon what it consider essential to a compensation regime simply to have a compensation process established by an earlier date. A policy-based process may be desirable initially, with a legislated process following at a later date. YTG has indicated its willingness in devolution discussions to consult with YFNs on major legislative amendments post-devolution. A policy-based process could provide a more timely introduction of compensation measures, provide an approach that fits with regulators, and provide better flexibility to make adjustments as required; however, a review period should be specified to evaluate how well the process is working.

- VGFN indicated it is imperative to quickly get YTG into discussions with YFNs and communities.
- VGFN expressed an interest in the ideas and concerns held by other YFNs regarding the implementation of 16.11.13. Questions were raised regarding how the compensation process to be established would be “signed off.”
- Albert Peter suggested that pre-implementing some arrangements with regulators and developers prior to the formal establishment of the compensation regime may be desirable; for example, prior to the issuance of permits, a greater effort could be made by regulators to facilitate direct discussions between developers and trappers on preferred mitigation activities.
- The RRC indicated that trappers want more attention from regulators. It was also suggested that the discussion about compensation could be used to look at alternatives to it: improved mitigation, greater support for trappers. Trappers need certainty and want to avoid all forms of negative impacts on their activities. An improved process of consultation with trappers to focus on mitigation of effects before development occurs would be helpful. Establishing a process for early input by the trappers, identifying a point of contact, and dialogue with developers would be helpful.
- The RRC commented that there is an urgency to move forward with the work to develop a trappers compensation process. If it’s going to take several years to develop a good process, then trappers should know that, and the necessary time should be taken. In the mean time, however, effort should be made to implement a process for improved input from trappers into designing mitigation measures (above point).
- The RRC indicated that it requires resources to ensure their participation in the development of a compensation regime – most notably honoraria for meeting and workshop participation.
- DIAND indicated that it can provide some resources for workshop costs, but they do not include participation costs. It was also suggested that consultations with the RRC during regularly scheduled meetings of the RRC could reduce RRC participation costs.
- The RRC indicated that the entire Traditional Territory is the group trapline and that most RRC board members are trappers. This should have significant bearing on future meetings with the RRC.

### **Follow-up Actions**

- The consultants will provide meeting draft notes for review to the VGFN and NYRRC and the summary of all external discussions. When finalized the meeting notes may be circulated internally with YTG officials.
- DIAND will work with the YTG to compile a list of resource development activities that would be covered under 16.11.13 and provide them to the VGFN and RRC.
- The VGFN will provide written comments to DIAND regarding its interests in and views on the implementation of 16.11.13

- DIAND will report back to the RRC regarding funding for RRC participation in future compensation discussions.

**Meeting Notes from Discussion on  
Trapline Holders' Compensation  
Champagne and Aishihik First Nations  
August 31, 2000  
CAFN Offices  
Haines Junction**

**Participants**

Lawrence Joe, Director, Land and Resources, CAFN  
Michael Jim, CAFN  
Rose Kushniruk, Land and Resources, CAFN  
Millie Joe, Lands and Resources, CAFN  
Gord Allison, Lands and Resources, CAFN  
Harry Smith, CAFN  
Sylvia Neschokat, Executive Services, Claims Implementation, DIAND  
Mike Draper, Lands Specialist, Land Resources, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

**Points of Discussion**

CAFN and DIAND representatives raised the following points:

- CAFN indicated that the importance of trapping is more than the money and the lifestyle: it's about responsibility and ownership. There's a danger in treating trapping too narrowly. 16.11.13 is meant to empower the trapper within the community. The provision assumes that the Yukon Development Assessment Process (DAP) is working and meeting its objectives.
- CAFN indicated that the YTG compensation process is inadequate and does not work, and expressed concern about YTG's understanding of Government's obligations under the Final Agreement and YTG's understanding of First Nations' views of these obligations. CAFN expressed concern about YTG's absence from the meeting and the lack of YTG participation in the work to implement the provision.

- DIAND indicated that these preliminary discussions were not consultation, but an opportunity for DIAND and First Nations to inform each other of views and issues associated with the implementation of 16.11.13. DIAND indicated that exploratory discussions had been held with YTG, and that DIAND was waiting further indication from YTG regarding how the government would participate in the process to implement the provision.
- DIAND indicated that a regulation-based compensation process would require the introduction of new legislation and would be more time consuming and complex to implement, and is complicated by devolution. Alternatively, a policy-based process could make enforcement of compensation arrangements more difficult while providing greater flexibility. DIAND suggested that it may be useful to consider how mitigation measures could be improved to reduce the likelihood of trappers requiring compensation.
- CAFN commented that compensation guidelines should be consistent, clear and fair.
- CAFN commented that the trapper should be able to influence decisions and terms and conditions pertaining to the issuance of resource development permits.
- CAFN indicated that 16.11.13 is contingent on other provisions (claims-based and non-claims-based) , such as DAP, Surface Rights Board, land use planning, and processes such as FTLAC being effective. CAFN has written to DIAND expressing concern over the conduct of the FTLAC process. CAFN commented that trappers' lifestyle and social and cultural values must be considered in land use decisions and compensation arrangements that affect trappers. The principles of DAP (established in the FA) must be reflected in the compensation process.
- DIAND, on the subject of compensation agreements, suggested that Government's interests may be to ensure that compensation agreements between a trapper and a proponent are in place, rather than involving itself in the contents of these agreements.
- CAFN cautioned that Government should be sensitive to the burden that it may be placing on trappers and proponents to reach a compensation agreement.
- DIAND suggested that Government's role in a compensation process could be limited to facilitating agreements between trappers and proponents, by providing clear guidelines, template agreements, and providing a "tool box" of measures for trappers and proponent's to consider in establishing agreements with one another.
- CAFN expressed some concern on a compensation process that was based exclusively on "proponent-pay", suggesting that some residual responsibilities may fall to Government. CAFN also suggested that non-cash forms of compensation should also be considered.
- CAFN has held onto many traplines in its Traditional Territory, but some CAFN citizens have suffered negative effects in the past and been abandoned and not compensated for the loss of fur harvests. By way of example, Sue and Alex Van Bibber are active trappers who hold a trapline outside of Champagne. They grew-up on their line and are tied to the country by their trapline. They have watched their trapline being destroyed as a result of subdivision that was established in 1986 without consultation. Agricultural applications have inundated their area.

They have had no option to say “no” to this development or recourse for compensation, even though viewscapes are often treated by Government as constraining or overriding these types of developments. This raises questions about the standing of trappers’ rights in the issuance of rights to subsequent developments.

- The point to be emphasized here is that land use concerns raised by individual departments of the Yukon or federal governments often seem to be given credence, yet those expressed by another level of government (i.e. CAFN) are not. In the Van Bibber example, an agriculture application was rejected due to concerns raised by Tourism about possible viewscape impacts, while "larger" concerns raised by CAFN, including trapper issues, are ignored in the land review processes. It should be highlighted that **trappers' rights do not seem to be treated seriously enough in the land disposition processes.**
- CAFN commented that trappers must be more involved in development planning and have the opportunity to greater influence development decisions. A key issue to be addressed: how can trappers be empowered? There is a need to identify the resources (information, people, agencies and tools) available to reach an agreement between trappers and developers
- DIAND commented that the scope of the provision could constrain the compensation process that is developed. DIAND suggested that the process should clearly indicate who Government should talk to and how to do so effectively in order to ensure that the rights of trappers are respected.
- CAFN questioned how disputes between trappers and proponents would be addressed when they were unable to reach an agreement or settlement. The Dispute Resolution Board, the Surface Rights Board and the Outfitter Compensation and Review Board are candidates to be considered.
- CAFN suggested links between DAP and a compensation process with a DAP Decision Document providing the means for enforcing some compensation arrangements.
- CAFN commented that the Final Agreement should be treated as a dynamic document in implementing 16.11.13 and related provisions.
- DIAND questioned how the interests of individuals are addressed within a group line, and how traplines that extended across both settlement and non-settlement lands would be treated.
- CAFN indicated that there are outstanding compensation issues and obligations that predate the Effective Date of the CAFN Final Agreement. CAFN has been pursuing compensation with Yukon Energy (relating to damages associated with the Aishihik Lake Hydro-electric development). Seventy-five claimants have come forward and CAFN is providing assistance and legal advice to these individuals. This may provide a model for the role of the FN in the compensation process. CAFN represents both the collective and individual rights of their FN trappers. Compensation would be directed at both individuals in the form of financial contributions and the First Nation (collective rights) in the form of infrastructure (e.g. docks).
- CAFN has 6 group lines, 2 of which were purchased. Overall, there are 28 traplines in the CAFN Traditional Territory.

- In allocating Category 1 traplines, as a first principle, CAFN attempts to keep traplines in the family that has held it.
- CAFN commented that 16.11.13 does not diminish the rights of the First Nation to hold the trapline, nor is the obligation diminished by the FN holding the line.
- CAFN commented that the compensation process should consider and distinguish between short term resource development activities and short term effects from long term resource development activities and long term effects, as well as cumulative effects. The threshold for determining what resource development activities are affected by 16.11.13 will need to be considered.
- DIAND suggested that currently permitted resource development activities provide a threshold.

### **Follow-up Actions**

- The consultants will provide meeting draft notes for review to the CAFN and the summary of all external discussions. When finalized, the meeting notes may be circulated internally with YTG officials.
- CAFN requested that DIAND provide resources for a one day workshop with CAFN trappers in November to discuss issues and questions associated with the implementation of 16.11.13.
- It was agreed that, if DIAND can provide resources for the workshop, Lindsay Staples and Albert Peter could facilitate the workshop and work with CAFN to organize the event.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

**Tr'on dek Hwech'in First Nation**

**September 13, 2000**

**Tr'on dek Hwech'in First Nation Offices  
Dawson City**

### **Participants**

Ed Kormendy, Director, Land and Resources, THFN  
Sylvia Neschokat, Executive Services, Claims Implementation, DIAND  
Mike Draper, Lands Specialist, Land Resources, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

### **Points of Discussion**

THFN and DIAND representatives raised the following points:

- DIAND indicated that the meeting was a preliminary discussion only to share perspectives on the meaning of 16.11.13 and the expectations and issues associated with the implementation of the provision. The meeting is not to be construed as any form of consultation with the THFN.
- DIAND indicated that, in addition to compiling and transmitting a written record of the meeting to the THFN, the meeting records from all the community meetings will be compiled and circulated to the THFN and other First Nations and Renewable Resources Councils with whom meetings have been held. An Environmental Scan will be prepared summarizing the issues that have been raised over the course of the preliminary meetings and circulated also.
- DIAND indicated that in the short-term, a regulation-based approach could prove difficult to implement, given the complexities of initiating amendments to current legislation at a time when negotiations were occurring for the devolution of the Northern Affairs Program devolution. It was contemplated that devolution would occur before these types of legislated amendments could be completed. It was acknowledged that federal commitments to devolution requires Yukon consent if any legislative changes were introduced prior to devolution. Similarly, the federal government has obligations to consult with Yukon First Nations on any legislative amendments introduced prior to devolution. In this circumstance, over the near-term, a policy-based approach may provide more flexibility for the compensation process provided for under 16.11.13.

- While recognizing that the issues and interests associated with trappers compensation were diverse, DIAND indicated the development of a trappers compensation process was currently constrained in scope by the language of 16.11.13.
- THFN suggested that the design of a compensation process under 16.11.13 could serve as a template throughout the Yukon; however, it was emphasized that the implementation of 16.11.13 could be delayed by focusing on issues outside of the provision, and that attention should focus on the provision itself.
- DIAND indicated that its legal obligation arising from the Final Agreement is to the implementation of 16.11.13, and that is where its efforts are focused. YTG has obligations for the implementation of the provision as well, and meetings have been held with YTG to discuss that government's approach and involvement. Currently work has focused on developing an understanding of the requirements of the provisions itself: what is meant by "resource development activities," who is eligible for compensation, when are they eligible, who pays, what criteria are used for determining compensation, how are disputes resolved, etc.
- THFN commented that harvest-based criteria for determining compensation will create problems for trappers and should be cautiously considered.
- THFN commented that is important to remember in designing a compensation process that the people for whom the process is to serve – trappers - are people who are easily overwhelmed by "red tape", "paper," and an intimidating process. A process that is fair will also be difficult to achieve given the potential adversarial relationship between trappers and proponents. The goal of one party – trappers - entering the compensation process, is get as much as they can for the losses they have experienced, while the other party, the proponent of development, enters with the goal of giving up as little as possible. Discontent over any compensation process will be inevitable to some extent.
- DIAND suggested that, for this reason, it may be helpful to improve the management (mitigation) of negative impacts on trappers from resource development activities so as to reduce the overall likelihood of trappers requiring compensation at all.
- DIAND suggested that the challenge of implementing an effective process compensation process is that of making it work for trappers and proponents alike. Key to any compensation process is to clearly establish how trappers should be contacted and involved from the outset of a resource development application, who should be contacted, and who will represent the trapper(s) in a compensation process (the First Nation?) if they themselves are not direct participants.
- DIAND indicated that the environmental screening and land permitting process place constraints on the time available to contact trappers. And like trappers, some proponents are in difficult position and poorly equipped when it comes to approaching compensation-related issues and understanding how to address them. Both trappers and proponents could benefit from good information and an open door to those resources that would facilitate good communications between trappers and proponents. DIAND may not be in the best position to serve a facilitating role, given its role as regulator. Under 16.11.13, Government has a responsibility to implement compensation process.

There is nothing in 16.11.13 to suggest that a compensation process could not and should not be proponent-driven.

- In discussing payment of compensation could take, both cash and non-cash forms were discussed. Both DIAND and THFN commented that some flexibility in this area may be desirable in order to recognize the uniqueness of individual circumstances.
- THFN commented that mitigation is highly desirable, but a confusing term for many people; call it what it is: limiting the impacts of development on the trapline holder. More proactive and innovative efforts should be pursued in managing land use to limit impacts on trappers. Trappers aren't out there to get rich; they're trapping because they like to get out and do it as a desirable lifestyle.
- Albert Peter raised the question of who represents trappers in the circumstance of group traplines: the trapper directly affected? The First Nation? Who is compensated?
- DIAND suggested that implementing a compensation process for trappers was in part about honouring interests and balancing the interests of different rights holders. A challenge for all affected is what is to be done when people of different interests cannot agree.
- DIAND indicated that previous discussions with some First Nations have suggested that improved mitigation, improved communications between the proponents of resource development and trappers, and a policy-based compensation process that was subject to review periodically are areas that should be considered in implementing 16.11.13. At bottom, DIAND wants a practical, workable process that can be implemented within existing funding levels.
- THFN commented that the First Nation gave up 99% of its Traditional Territory in land claims negotiations in exchange for the expectation that 16.11.13 would be fully implemented.
- DIAND indicated that the preliminary discussions were designed to improve understandings between First Nations and DIAND regarding the scope and meaning of 16.11.13.
- THFN suggested that impacts on 7(1)(b) lands from those subsurface-related developments that the FN has no control over are an issue and that Government may have to play a role as mediator to address related-issues. THFN commented that the provision doesn't say that Government will pay compensation.
- THFN commented that in previous discussions YTG has indicated its nervousness about the implementation of 16.11.13 because it could be precedent-setting for non-First Nations trappers. The rights of beneficiaries should not be compromised by the political problems in dealing with non-First Nations expectations. 65% of the traplines in the Traditional Territory are held by non-First Nations people. THFN have negotiated in the Final Agreement to permit the THFN to acquire over time up to 70% of the traplines in the Traditional Territory.
- THFN commented that trappers want an up-front commitment, prior to the permitting of a development, that their concerns will be addressed; a backend, reactive approach will not work for them.

- DIAND commented that it will want to know that its dealing with the right people (those affected or their representatives) up front in the screening and permitting process (that no one is missed) and that the scope of issues is captured in any agreements that are reached up front.
- THFN commented that at some point trappers need to be approached directly in order to understand their concerns.
- THFN raised concerns about the operations of the Outfitter and Compensation Review Board: the approach is one of “cloak and dagger” and no new of outcomes are communicated to the First Nations.
- THFN suggested that the Surface Rights Board should be considered for the resolution of disputes between trappers and proponents.
- DIAND commented that the SRB addresses consent issues only where a developer needs consent to cross First Nations land; it is the consent requirements of the First Nation, not the trapper that are addressed.
- THFN indicated that the FN is working on a Lands and Resources Act to regulate activities on Settlement Lands. If a FN trapper is disadvantaged by a developer whose activities are permitted by the FN, the FN could have some obligations to the trapper.
- DIAND commented that in discussing the scope of 16.11.13 with First Nations, views have varied on the scope and application of the provision: some FNs have commented that 16.11.13 should apply on both Settlement and Crown lands; others have indicated that the provision is confined to Crown land. DIAND commented that the laws of general application apply on Settlement Lands until such time as FNs develop and apply their own laws.
- THFN indicated that trappers will need to be consulted directly on any proposed compensation process as they will be the ones directly affected by it.
- THFN suggested that any compensation process should avoid putting the trapper in a situation where he or she must “justify their existence.” Prior to developments occurring, provide the best information to trappers as early as possible so that they can consider how they will be affected, how the impacts that affect them can be mitigated, and, where required, compensation agreements can be reached. This would avoid a post-impact situation where trappers are interrogated and forced to carry the burden of proof in establishing how they have been negatively affected by a development.
- THFN indicated comfort with the process and direction for the development of a compensation process outlined by DIAND. While 16.11.13 speaks only to compensation, everything points to the need for improved mitigation.
- DIAND commented that if compensation process arrangements pull trappers into the process of rights issuance, it will be necessary to discuss mitigation.
- THFN commented that it would be worthwhile to be proactive and establish workable understandings and relationships between developers and trappers from the outset of development proposals; there’s nothing worse than an angry trapper. It should be recognized that everyone has rights and that the challenge of resource management is about balancing interests of different resource users.

- DIAND commented that they can't guarantee the outcome or agreements that result from discussions between trappers and proponents. Regardless DIAND still retains the right to issue rights that permit development activities; this means making development decisions even when agreements between trappers and proponents have not been reached.
- THFN reasserted that every effort should be made to address the issues up front before developments are permitted. Putting the burden on all affected parties to inform and educate one another will limit negative impacts and the need for compensation. Questions were raised about the extent of various resource rights: the trapper to trap; the miner to explore and work a claim.
- DIAND indicated that the right to trap is a right to harvest furbearers. It was also mentioned that the point was made in meetings with other FNs that right to trap was viewed as the right to a lifestyle, including the building of cabins, and extra moose each year, etc. Some FNs had suggested that trapping rights were linked to 16.4.2 rights.
- THFN commented that future discussions and papers should attempt to use plain language, given that many terms were "loaded" with hidden meaning and implications (e.g. "voluntary compliance"). Trappers are feeling squeezed from every side: government, regulators, developers, recreational users, etc.
- In closing, THFN repeated the need for trappers to be consulted directly in the development of a compensation process, and the expectation that YTG will be an active participant in the implementation of 16.11.13.

### **Follow-up Actions**

- The consultants will provide meeting draft notes for review to the THFN and the summary of all external discussions. When finalized, the meeting notes may be circulated internally with YTG officials.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Nacho Nyak Dun First Nation and Mayo Renewable Resources Council**

**September 26, 2000**

#### **Land and Resources Department Offices Nacho Nyak Dun First Nation Mayo**

##### **Participants**

Steven Buyck, NND Lands and Resources, Mayo RRC  
John Pattimore, NND Lands and Resources  
John Reid, Mayo RRC  
Sylvia Neschokat, Renewable Resources, Claims Implementation, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

##### **Points of Discussion**

NND, Mayo RRC and DIAND representatives raised the following points:

- DIAND indicated that the meeting was a preliminary discussion only to share perspectives on the meaning of 16.11.13 and the expectations and issues associated with the implementation of the provision. The meeting is not to be construed as any form of consultation with the NND and RRC.
- DIAND indicated that, in addition to compiling and transmitting a written record of the meeting to the FN and RRC, the meeting records from all the community meetings will be compiled and circulated to the NND and other First Nations and Renewable Resources Councils with whom meetings have been held. An Environmental Scan will be prepared summarizing the issues that have been raised over the course of the preliminary meetings and circulated also.
- DIAND indicated that earlier in the year the department had circulated reports prepared by the Canadian Institute of Resources Law to provide background information on existing resource compensation arrangements in the Yukon. The reports were prepared independent of DIAND, and represent the views of their authors alone, not those of the department.
- DIAND indicated that internal meetings have been held with the Yukon Government officials and DIAND officials to discuss the meaning of 16.11.13.

- NND/Mayo RRC commented that the Yukon has an important role in the implementation of 16.11.13 given YTG jurisdiction and responsibilities for trapping.
- NND/Mayo RRC commented that the compensation process in 16.11.13 should apply to everyone – both Yukon First Nation trappers and non-First Nations trappers.
- Lindsay Staples commented that 16.11.13 explicitly applies only to “Yukon Indian People” holding traplines. Extending compensation to all trapline holders is a public policy question for governments as it is beyond their specific legal obligations for the implementation of 16.11.13.
- NND/Mayo RRC commented that there should be some discussion with the Yukon Water Board as it is also working on a compensation process. Questions were raised about the relationship between the two processes. It was suggested that a one window compensation process covering all trappers would be desirable over a number of different compensation processes.
- Lindsay Staples commented that it would be difficult to roll-up different compensation processes under one umbrella given the different legal authorities that underpin each one. For example, the Water Board’s compensation process (under development) fall under the Yukon Waters Act. The Yukon Government’s current trapper compensation process falls under the Yukon Wildlife Act.
- NND/Mayo RRC suggested that the criteria for determining compensation (triggers, costs, etc.) should be common to the different processes.
- Lindsay Staples suggested that it is difficult at this point to know whether who is compensated, how they are compensated and what form of compensation is available will take across the different processes.
- DIAND suggested that in a circumstance where “proponent pays” a flexible approach (left to proponents and trappers to determine from a range of pre-determined options) as to the form that compensation arrangements could take may be worth exploring, given the many different circumstances that proponents of development and trappers find themselves in
- DIAND suggested that overburdening 16.11.13 with requirements to meet needs and expectations that fall outside the scope of 16.11.13 will make timely implementation of the provision difficult.
- Lindsay Staples indicated that it had been suggested in some of the previous meetings that improved mitigation measures and input by trappers into development decisions prior to the issuance of permits may be helpful in avoiding or reducing the need for compensation.
- NND/Mayo RRC suggested that Impact and Benefits Agreements (IBA) may also be linked to improved mitigation measures and may have some bearing on 16.11.13.
- Albert Peter asked who would represent the interests of a trapper or trappers in the negotiation of an IBA. If a FN signs an IBA, do they represent the interests of the trapper?
- DIAND commented that there must be complete certainty regarding who represents the interests of trappers affected by 16.11.13.

- The RRC indicated that if an individual trapper came to the RRC and asked for help in a compensation process, the RRC would likely assist them.
- The RRC indicated that some lines require formal designation: some Category 1 traplines are “open” and the paper work is required to register the lines. It was mentioned that to meet the 70/30 ratio for FN held traplines, NND may want to bring in some open lines as Category 1 lines.
- NND/RRC indicated that until the 70/30 ratio (for FN/non-FN ownership of traplines) is met under the NND Final Agreement, any individuals who to sell their lines must come to the First Nation.
- DIAND asked if the First Nation would assume responsibility for a group line.
- NND/RRC indicated that the NND holds 50% of the lines. There is no group line. There is a community line for elders and youth within a 5 mile radius of Mayo. On Category 1 lands there are 9 lines held by NND beneficiaries and 15 by other individuals. Some lines are held by Selkirk beneficiaries inside the NND Traditional Territory and on and off NND Settlement lands.
- DIAND indicated that in previous meetings the question of how traplines that overlap Settlement and non-Settlement lands, and Category 1 and 2 lands would be affected by 16.11.13. Views have varied with respect to the geographic scope of 16.11.13, but DIAND has approached the provision with the assumption that at a minimum it applied on Crown lands.
- NND/RRC asked how proponents would be required to pay.
- DIAND suggested that in a policy-based compensation process failure to pay may be difficult to enforce, if proponents and trappers have not entered into compensation agreements with a legal basis prior to development activities occurring.
- NND/RRC commented that one local trapping family has an agreement with New Millennium in place that they worked out with the mining company.
- NND commented that government has a fiduciary obligation to ensure rights under the Final Agreement are protected.
- Lindsay Staples asked if the cost of purchasing a concession could be used to establish cost and criteria for compensation awards.
- NND/RRC commented that the criteria for purchase is based on the value of the fixed assets and improvements, not on the “opportunity.”
- NND/RRC asked whether government had any residual liability for compensation if proponents for various reasons fail to meet their compensation obligations.
- The RRC suggested a security deposit or some indication of ability to meet compensation requirements prior to the development occurring could be helpful in avoiding such situations. The questions were asked: do these type of compensation arrangements become part of the permitting process? Whose responsible for accidents? Where do you go for disputes over agreements?
- NND/RRC asked if compensation could be retroactive.
- DIAND indicated that retroactivity would not be part of the compensation process to be established under 16.11.13 as 16.11.13.1 refers potential claimants to the existing compensation options until such time as 16.11.13 was implemented.
- NND/RRC asked what would trigger a compensation claim and qualified as a resource development activity.

- DIAND suggested that it would be difficult to use triggers that weren't currently associated with currently permitted resource development activities.
- The RRC raised concerns about potential long term impacts that would remain for many years after a developer had left the area.
- Lindsay Staples suggested that the question of flexible versus fixed compensation arrangements would need to be explored to determine what would be most workable and effective for both trappers and developers.
- NND/RRC suggested that it would be useful to develop some concrete scenarios (based on case studies, in some instances) that could be used to design and develop a compensation process (as opposed to doing so in the abstract). Such an approach could anticipate and develop different options available to trappers and proponents so that they could become the masters of their own agreements and responsible for them. Under this approach, government wouldn't dictate, it would identify the resources available to both trappers and developers to reach an agreement: 1) resources and models for negotiating an agreement; 2) options for mediation; 3) options for dispute resolution.
- There was a discussion here about using the question of Who will be responsible for compensating the trapper on the Lansing Heritage site as a practical example.)
- The point was made that if you keep the process between proponent and trapper, this will place the responsibility in the hands of the people who are directly responsible, and address the question of enforceability without legislation. Proponents would prefer to talk to the community/trapper directly: we have moved beyond the "old way of doing business" based on government acting as intermediary in all instances.
- DIAND indicated that a number of existing bodies had been suggested to resolve existing disputes, such as the Surface Rights Board and the Dispute Resolution Board, although no work has been done to date to evaluate the suitability of any of these.
- NND/RRC commented that if the process to implement 16.11.13 is a lengthy one, trappers should be made aware of the other options for compensation that were currently available to them. It can't be emphasized enough that there are people waiting for the implementation of 16.11.13. The process is long overdue. At the same time, the approach of meeting with people to talk about 16.11.13 is a good one, and everyone should be heard. Even if it takes two years, doing is a good job on the implementation of 16.11.13 is important.
- DIAND indicated that it would circulate the information from the community meetings this fall and a draft discussion document would be prepared in the new year.

### **Follow-up Actions**

- The consultants will provide meeting draft notes for review to NND and the RRC and the summary of all external discussions. When finalized, the meeting notes may be circulated internally with YTG officials.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

**Ta'an Kwach'an Council  
November 7, 2000**

**Ta'an Kwach'an Offices**

### **Participants**

Gord Harvey, Ta'an Kwach'an Council

Joel Jacobs, Ta'an Kwach'an Council

Sylvia Neschokat, Renewable Resources, Land Claims Implementation Advisor, DIAND

Lindsay Staples, Consultant

### **Points of Discussion**

Ta'an Kwach'an Council (TKC) and Government are in the final stages of negotiating the Ta'an Kwach'an Final Agreement. In order not to prejudice these negotiations and their outcome, Ta'an Kwach'an has requested that the discussion between DIAND and TKC remain confidential between the two parties.

### **Follow-up Actions**

- DIAND will provide a copy of the three CIRL Reports to TKC.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Kwanlin Dun First Nation**

**November 20, 2000**

### **Kwanlin Dun First Nation Offices**

#### **Participants**

Darwin O'Brien, Acting Chief, Kwanlin Dun First Nation  
 Leslie Smith, Councilor, Kwanlin Dun First Nation  
 Malcolm Dawson, Councilor, Kwanlin Dun First Nation  
 Ronald Bill, Elder/Councilor, Kwanlin Dun First Nation  
 Louie Smith, Elder/Councilor, Kwanlin Dun First Nation  
 Leonard Gordon Sr., Elder/Councilor, Kwanlin Dun First Nation  
 Johnny Smith, Elder, Kwanlin Dun First Nation  
 Shawn Kitchen, Executive Assistance, Kwanlin Dun First Nation  
 Tom Beaudoin, Director, Land Claims Department, Kwanlin Dun First Nation  
 Sylvia Neschokat, Renewable Resources, Land Claims Implementation Advisor, DIAND  
 Mike Draper, Lands Specialist, Land Resources, DIAND  
 Albert Peter, Consultant

#### **Points of Discussion**

DIAND:

- This is not consultation and is without prejudice.
- Working since last year, and have held meetings with First Nations, RRCs and Yukon Trappers Association.
- Need to identify your interests and what is important.
- What are the key compensation process components: asking for advice and input; what works on the ground.
- Striving for a process that is simple, timely, fair; need to clarify government's role.
- Options for a compensation process: policy-based vs. regulatory-based which would be difficult to achieve.
- Obligation on both governments (Canada, Yukon) to implement the provision (16.11.13).
- DIAND is establishing a working relationship with YTG on the meaning of 16.11.13 (what's in, what's out).
- Need to consult trappers better.

- A meeting report will be prepared for review and amendment.
- A summary of all meetings and concerns will be prepared and circulated (January 2001).
- After the preliminary discussion stage, a draft process discussion paper will be developed for consultation.

**KDFN:**

- It was suggested the First Nation could draft a formal response to this meeting after consulting with trappers. Final direction was to arrange for a meeting with the KDFN Land Claims Department.
- Concerns were raised related to mining activities, subdivisions, and increased access that has restricted harvesting opportunities.
- Recreational activities such as dog teams, skiers, and snowmobiling have a negative impact on trappers.
- Increased numbers of trails and road networks have negatively impacted on trappers.
- There should be compensation for existing impacts such as mines, tailings, pollution and rural residential development as well as recreational activities, such as the Yukon Quest.
- Traditional lifestyle is becoming more and more difficult with increased restrictions and rising costs.
- We are not taking care of Mother Earth.
- We need to address issues for a healthier community.
- Telegraph wire from Mason Landing to Livingstone needs to be cleaned up; there have been moose and caribou caught.
- Animals are being depleted (habitat impacts, increased harvesting pressures).
- Trappers should have the opportunity to maintain campgrounds on their trapline.
- Local area planning and incompatible land uses are impacting trappers.
- There needs to be an agreement on when the compensation process kicks in and what the thresholds are.
- Negotiations should occur before development occurs.
- Trapline trails should be recognized and trappers provided with authority.
- YTG should be involved, as they are developers.
- Compensation is broader than money.
- Zoning, planning, subdivisions, and recreational activities all have an impact.

**DIAND:**

- Activities which are not permitted are not enforceable by Government.

**KDFN:**

- There should more done on mitigation and consultation at the front end of the development process (pre-approval).
- The First Nation takes a hands-on approach to assist the trappers.

- Problems identified should be referred to the right people.

**DIAND:**

- There needs to be certainty that the right people are involved and consulted.
- There are other provisions in the UFA that relate to compensation.
- The Governments must consider other questions that are outside 16.11.13 as matters of policy.

**KDFN:**

- We need to work together; training should be provided to take care of the land.
- Traplines were realigned and made smaller.
- Kwanlin Dun has been more impacted than any other community because of its urban location.

**Follow-up Actions**

- Prepare draft meeting notes.
- Arrange a meeting with the KDFN Land Claims Department.

## Meeting Notes from Discussion on Trapline Holders' Compensation

**White River First Nation  
November 21, 2000**

### White River First Nation Offices

#### Participants

David Johnny, Chief, White River First Nation  
Liliane Squinas, Executive Director, White River First Nation  
Louis Rainglis (sp ???), Member, White River First Nation  
Roland Peter, Member, White River First Nation  
Billy Blair, Elder, White River First Nation  
Charles Eikland, Councillor, White River First Nation  
Sylvia Neschokat, Renewable Resources, Land Claims Implementation Advisor, DIAND  
Mike Draper, Lands Specialist, Land Resources, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

#### Points of Discussion

WRFN and DIAND representatives raised the following points:

- Lindsay Staples provided an overview re. 16.11.13 and the work required to initiate implementation of the provision. He indicated that the purpose of the meeting was to share preliminary views with respect to the meaning and implementation of 16.11.13. The meeting should not be considered any form of consultation, but simply an opportunity to discuss issues and share ideas on trapline holders compensation as they relate to 16.11.13.
- DIAND representatives indicated that they had been working on the implementation of 16.11.13 for almost a year. The Department contracted the Canadian Institute for Resources Law to prepare three discussion papers on existing compensation regimes in the Yukon and issues across the country. The Department has met with YTG officials to discuss the meaning of 16.11.13 and possible approaches toward its implementation. YTG regulates trapping in the Yukon. DIAND will not pursue formal consultations on 16.11.13 until agreement on a draft process has been reached with YTG regarding implementation of 16.11.13.
- WRFN expressed concern about the overall situation facing their trappers today. In locating First Nations families in year-round communities trapping families were removed from the bush. Animal rights groups don't understand the bush and have created hardships for trappers.

There is a need to get people back in the bush, but this will require teaching young people how to cut wood for cabins, trail construction, how to set traps, etc. Training programs are needed to get young people back in the bush and to teach them how to be self-sufficient. A stronger local fur industry and local markets should be encouraged. Incentives should be provided to get people out in the bush for a month. A program to support trappers was needed in the community. Better fur prices would help get trappers out in the bush. Trapping is a good way of life; it creates a strong awareness of the environment and develops self-esteem. However, trapping also costs a lot of money. \$10,000 is a minimum cost to get set up with the necessary equipment. Costs are high when the price of snow machines, fuel, and equipment are considered and the distance that many trappers must travel. You need money to trap and cash is hard to come by for many people. For many years, trapping is all many people in the area had to make a living. In addition to harvesting furbearers, people fished, smoked meat, collected berries and harvested from the land when they were on their traplines. (“When you’ve got it in the freezer, you’ve always got something.”) Today the high cost of trapping prevents most people from going out. There are few opportunities in the area for people to earn cash income. The means to address them may be a long way off, since land claims may not be settled in the near future.

- WRFN indicated that more than 70% of the traplines in their Traditional Territory are held by the First Nation.
- WRFN raised concerns about mining related impacts on trapping. A road into the Moose Horn Range was built without any notice to the local trappers. Since it was developed, spur trails have also been constructed, crisscrossing the trapper’s trails. Mining pits, an airstrip at the mine site, road everywhere – these things have all hurt the trapper. The WRFN asked for compensation for the trapper, but was ignored. If the trail had been used for two years and left, it could have grown back. Now it’s a permanent access route. Another concern expressed was that there was no assessment of the area for impacts on wildlife breeding.
- WRFN raised concerns about the lack of recognition of trappers interests and rights by government and developers. The trapper is just a “pawn.” There is a need to work things out with trappers before developments occur.
- WRFN indicated that there is a need to change the old YTG system of compensation based on harvest records. There is no recognition of the effort that goes into building a line. Past harvest records do not reflect the true value of the line. A new approach is needed. Compensation in the past has “burned” people. There is a need to start with a brand new system of compensation (i.e. “no old stuff at the table”).
- WRFN indicated that situations and effects can differ greatly from one person and one area to the next. One person wasn’t trapping because of a decline in marten, lynx and wolverine over the last three years. Meanwhile, one valley over the situation was good. How do you set a rate for cash compensation when circumstances vary so much?
- DIAND indicated that 16.11.13 states that it is Yukon Indian People holding traplines who are eligible for compensation.

- WRFN stated that individuals and First Nations should be compensated, depending on how they choose to organize themselves in their Traditional Territory.
- Albert Peter suggested that 16.11.13 must be understood within the context of many other chapters and provisions of the Umbrella Final Agreement. Issues of access as provided for in the UFA should be considered.
- Lindsay Staples suggested that the discussion to this point had covered many issues of concern facing trappers. These issues could be organized into several categories: 1) support for trappers to help them make a living; 2) impact and benefit agreements that are negotiated between a First Nation and a developer to enable the FN to capture some benefits from the project and reduce or eliminate negative impacts; 3) mitigation of negative effects in the design and management development projects to better protect furbearers, habitat and trappers; and 4) compensation arrangements whose purpose it is to remediate or repair (in whole or in part) the losses experienced by a trapper.
- WRFN indicated that in the 1950s there were no mapped traplines. When the Yukon introduced registered traplines and imposed new boundaries over family areas, along with a policy of “use it or lose it”, First Nation trappers were overrun by a system of management that was foreign to them. Today the challenge for government and land claim agreements is to respect YFN traditional knowledge and indigenous management systems relating to wildlife and self-government.
- WRFN indicated that trappers compensation arrangements must be understood in the context of the bigger picture that WRFN trappers and the community find themselves in today. Most people have low education levels, poor employment prospects, and few wage jobs. Trapping, if it is supported, and complemented by a good compensation process, and a strong First Nation government, could contribute positively to rebuilding the community and the self-esteem of people in it.
- DIAND indicated that it was committed to implementing a compensation process under 16.11.13 that worked on the ground. Overloading it with other issues would make it difficult to deliver a practical and workable compensation process.
- DIAND indicated it may be best to leave compensation arrangements up to the trapper and the developer, with government supporting these arrangements, and providing guidelines/information to facilitate them (i.e. a compensation “took kit”).
- DIAND indicated that 16.11.13 does not focus on land, but on the diminishment of furbearer harvesting opportunities; on the trapline holder, not the assistant, and on resource development activities, not all activities that may affect trappers. DIAND is working to determine what 16.11.13 means and who it covers. YTG may not share DIAND’s views on 16.11.13 at this time. This also needs to be discussed between the two governments. Government may have a role in facilitating agreements, not in mediating them or resolving disputes about them. This raises the challenging issue of how compensation agreements between trappers and developers would be enforced if they are required by government policy and not legislation.

- Lindsay Staples remarked that compensation could take cash and non-cash forms depending on the situation. In some cases, non-cash forms of compensation may be far more preferable.
- DIAND suggested that a flexible approach to methods of compensation may provide more room for developers and trappers to find ground for agreement, as long as such an approach doesn't introduce more uncertainty for either party.
- WRFN suggested that farmers have been compensated by governments for their crop losses and that this may suggest a model for trappers. Any process must be fair. The difficulty is determining a fair measure for establishing cash compensation.
- WRFN suggested that compensation for cumulative effects from incremental developments could be very difficult to determine. The Scotty Creek Road was supposed to be a trail for a cat-train at one time; now it's being upgraded to a winter truck road without any consultation with the trapper and First Nation. The developer and the trapper should sit down at the outset and work things out.
- DIAND indicated that they have heard repeatedly on the need to establish good communications and closer links between trappers and the rights issuer (possibly reflected in terms and conditions in permits).
- WRFN suggested that it would be helpful to bring mining, land use, forestry and DAP officials together with the trapper, as the situation requires, to work things out.
- WRFN questioned how compensation arrangements would be enforced by government, if they were not legislated. A legislative option could seriously lengthen the time required to implement the provision. The issuance of the permit could possibly be used as a trigger to encourage the establishment of compensation arrangements between trappers and developers up front.
- DIAND indicated this is a difficult issue. Legislative solution will be time consuming and could seriously lengthen the time required to implement the provision. The issuance of the permit could possibly be used as a driver to encourage the establishment of compensation arrangements between trappers and developers where appropriate.
- WRFN questioned whether government would establish a trapper support program.
- Lindsay Staples suggested that there was no requirement in the UFA to establish a harvester support program, only an obligation to study the feasibility of such a program. This obligation has been fulfilled.
- WRFN emphasized that the health of their community was tied to the well-being of FN trappers. FNs have different values than the federal and Yukon governments, and these other governments should recognize this and act on it. Trapping isn't just about money. It's about a way of life that many people want to maintain because it is healthy for the community, healthy for the land and healthy for the people who depend on it. Capacity as it relates to funding and personnel is a big challenge for the First Nation when it comes to implementing their Final Agreement. They have similar concerns about their role in the implementation of 16.11.13.

- WRFN raised the question of whether a trapper could make subsequent claims for compensation, depending on whether the claims related to one project, multiple projects or different time frames. Questions were also raised as to how long after a trapper had been negatively affected by resource development activities could compensation claims be made.

### **Follow-up Actions**

- The consultants will provide meeting draft notes for review to the WRFN and the summary of all external discussions when they are completed. When finalized, the WRFN meeting notes may be included in the information package that includes meeting notes with other Yukon First Nations, RRCs and other groups.

## **Draft Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Kluane First Nation**

**November 22, 2000  
Kluane First Nation Offices**

#### **Participants**

Geraldine Pope, Kluane First Nation  
Robin Bradasch, Kluane First Nation  
Kirk Johnson, Kluane First Nation  
Sylvia Neschokat, Renewable Resources, Land Claims Implementation Advisor, DIAND  
Mike Draper, Lands Specialist, Land Resources, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

#### **Points of Discussion**

KFN and DIAND representatives raised the following points:

- KFN indicated that the Burwash group line (#404) was split with White River First Nation. Line #180 was a KFN Elders group line. Another group line was held in trust for the First Nation. 100% of the lines in the KFN Traditional Territory are held by KFN members. Recently KFN has purchased a line for about \$25,000.
- Albert Peter provided an overview re. 16.11.13 and the work required to initiate implementation of the provision. He indicated that the purpose of the meeting was to share preliminary views with respect to the meaning and implementation of 16.11.13. The meeting is not to be considered any form of consultation, but simply an opportunity to discuss issues and share ideas on trapline holders compensation as they relate to 16.11.13. Since May 2000, meetings have been held with most other Yukon First Nations, Renewable Resources Councils, and some other groups like the Dispute Resolution Board and the Yukon Trappers Association. These preliminary discussions will lead to the distribution of a compilation of all meeting notes from these meetings and a summary of the key issues.
- KFN tabled a document of comments that Joe Johnson (KFN trapline concession holder) had provided on the trapline compensation issue. He makes three points:
  - Use the Social Assistance funds for putting people back on the land.

- When you have a trapping concession, you purchase a license. In my view, a license should be stronger than a permit/lease but it is not, because on your trapping concession people can go and do what they want – any type of activity. But on a grazing lease, no one can do any type of activity.
- He suggested that there be an up front sum (e.g. \$10,000.00) and then sit down and discuss what type of compensation should be paid on top of that sum.
- DIAND representatives indicated that they have heard from many trappers of the need to involve the trapper prior to development in contributing to the design of mitigation of potential impacts from proposed development activities. They indicated that they have heard that communications and links need to be strengthened between the trappers and resource rights managers.
- KFN have held discussions with government and indicated that the existing trappers compensation process doesn't work. It is viewed as not responsive to the needs of trappers today. KFN has raised concerns about the impacts of gravel pits and spur roads on traplines, but there has been no effective response. Highway reconstruction has hurt Kirk Johnson's trapline for instance. There is no clear and concrete process for dealing with the concerns of trappers in the development application process. Contact with and the involvement of trappers is critical in the development application process.
- KFN indicated that the First Nation works closely with KFN trappers and makes efforts to support them in raising concerns and seeing these concerns addressed. There is a role for KFN in supporting trappers who are seeking compensation. At the same time KFN raised the concern that government doesn't offload their responsibilities for contacting trappers to the First Nation. The FN has limited financial resources. There is no long term funding commitment to Band Resource Officers funding. The KFN would require additional funding to assist government in fulfilling government's obligation to consult with trappers.
- Lindsay Staples suggested in response to Joe Johnson's written comments that 16.11.13 requires that a clear process for compensation process be established and that the type of resource development activities that may be subject to compensation should be clearly stated, and that various forms of compensation may be worth discussing, such as cash and non-cash forms of compensation, or some combination of the two. Various forms of non-cash compensation were mentioned, such as provision of logs, trail development, fuel, machine parts, flights, etc.
- DIAND suggested that the current YTG trappers compensation process provides an illustration of one approach to the calculation of cash compensation. It was observed that smaller operators may not have access to adequate cash resources for compensation, and that a flexible approach to the form that compensation could take may be desirable.

- DIAND indicated that the current mandate for discussing trappers compensation is limited to the provisions and constraints of 16.11.13. DIAND's focus is on fulfilling its obligation for the implementation of 16.11.13. There are implications for government in expanding arrangements for trappers compensation beyond what is provided for in 16.11.13.
- Albert Peter suggested that 16.11.13 can be viewed as a "box" that contains a specific range of issues and remedies. Discussions with First Nations, RRCs and other groups have raised a number of issues that fall outside of the "box." While they have been documented throughout the meetings, government considers them as a issues of public policy, not a specific obligation tied to the implementation of 16.11.13.
- DIAND commented that to date participants in the discussions had indicated their preference for a compensation process that was clear, simple and timely. Basing a compensation process on legislation and regulations could make it difficult to establish a process in a timely manner. While a regulation-based process would contribute to effective enforcement of compensation provisions, it is very rigid and may work against the kind of flexibility that a number of participants in the discussions have asked for.
- KFN reiterated concerns about the impacts of highway related developments on traplines in the area. In one instance, road construction caused the diversion of a creek that resulted in the flooding of a trapper's cabin. However, in another instance, good communications between the KFN and local highways personnel result in a good access road to a trappers cabin. KFN was taking the approach of submitting the names of all of its beneficiaries to the Yukon Government for registration of trappers on the group lines.
- Lindsay Staples suggested that a basic decision had to be made in the design of a trappers compensation process as to address compensation issues before or after development activities occurred.
- DIAND commented that the issue of who pays for compensation also must be addressed (e.g. the developer).
- KFN commented that new criteria for determining and assessing compensation must be developed. The criteria of the existing YTG trappers compensation process are outdated. Basing compensation on actual harvest has serious limitations to day, given low fur prices and depressed wildlife populations. Loss of future opportunity should be considered. Current measures for determining cash compensation undervalue the significance of trapping to KFN trappers and the community. There is a great deal of history and cultural meaning and significance associated with each KFN line. Lines may be held within a family for 3 and 4 generations.
- KFN commented that developers should be encouraged to meet with trappers prior to submitting development proposals, so that they can design their proposed developments with trappers needs in mind.

**Follow-up Actions**

- The consultants will provide meeting draft notes for review to the KFN and the summary of all external discussions when they are completed. When finalized, the KFN meeting notes may be included in the information package that includes meeting notes with other Yukon First Nations, RRCs and other groups.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Carcross – Tagish First Nation**

**March 1, 2001**

**Elijah Smith Building, Whitehorse**

#### **Participants**

Dan Cresswell, Director, Lands and Resources, CTFN

Sylvia Neschokat, Renewable Resources, Land Claims Implementation Advisor, DIAND

Mike Draper, Lands Specialist, Land Resources, DIAND

Lindsay Staples, Consultant

#### **Points of Discussion**

CTFN and DIAND representatives raised the following points:

- DIAND indicated that the meetings were not consultation on the implementation of 16.11.13. The meetings between DIAND and Yukon First Nations to discuss the provision were exploratory only and were an opportunity for Yukon First Nations, RRCs and others to explore perspectives on the requirements and meaning of 16.11.13.
- DIAND indicated that the preliminary meetings to discuss 16.11.13 were almost completed and that there was a desire to recognize CTFN's interest in the discussion. Work was underway to compile the meeting records from all discussions with YFNs, RRC and other organizations over the last year for distribution to the participants.
- DIAND indicated that participants in the discussions to date had emphasized the need for a compensation process that was accessible, practical and clear for everyone involved. There was extensive discussion about better and more direct communications with trappers by the proponent or through the rights issuance officer to reduce the likelihood of adverse effects from developments on trapping activities.
- DIAND indicated that comments from participants reflected diverse perspectives. Many comments applied directly to 16.11.13; others raised issues outside of the provision itself, but were important none the less. DIAND indicated that its specific legal obligations pertained to the implementation of 16.11.13; issues that fell outside of the provision could be considered from a broader policy perspective.

- DIAND indicated that the timing of compensation had been a topic of extensive discussion as well: two models had been explored: a compensation process that was triggered prior to development impacts, and a process that was triggered following development impacts.
- CTFN indicated that many years of low fur prices had reduced the number of active trappers working lines. The point was made that 16.11.13 and provision for trappers compensation should be viewed hand-in-hand with a harvester support program. Trappers need income and they couldn't generate an adequate income from trapping to cover the costs of marketing and trapping activities.
- CTFN commented that in the Traditional Territory, subdivision developments and snowmachines were a significant negative effect on local trappers. Along the Carcross Road were scattered incremental developments all of which contributed to substantial cumulative effects on trappers in the area. On top of these the impact of Site-Specific Settlement Lands will also have real impacts on trappers.
- DIAND commented that snowmobiling was an unlicensed and unregulated activity and controlling the effects of this type of activity was difficult.
- Lindsay Staples mentioned that the Yukon Fish and Wildlife Management Board has just issued a report documenting off-road vehicle impacts on wildlife and habitat.
- CTFN suggested that commercial licensing of wilderness activities may be one approach to addressing the issue. DIAND indicated that impacts from wilderness activities that didn't require a land use permit or were below the threshold for activities requiring land use permits were difficult to control.
- CTFN indicated that fire zones were sometimes mapped and designated without regard for traplines and their vulnerability to fire.
- CTFN indicated that half of the Traditional Territory was in British Columbia, and this would affect which CTFN trappers would be eligible for compensation. (More than a dozen lines could be affected.)
- CTFN trappers hold less than 70% of the lines in the Traditional Territory.
- CTFN also raised the question of who would get compensated on a Group Line, where some trappers were active and some were not. Concern was also raised about the standing of the First Nation government as a registered trapline concession holder and the entitlement of a First Nation to compensation.
- DIAND suggested that the compensation process should provide certainty and clarity on who is eligible, who can apply, and who is involved in the compensation process. In some circumstances could the First Nation government represent the interests of Yukon Indian People holding traplines in a compensation process?
- CTFN indicated that some people are signing over their lines to the First Nation.
- DIAND indicated that a number of traplines extend across Crown, Commissioners and Settlement lands producing an incentive to manage traplines and development activities in an integrated manner. Whoever is responsible for permitting development is implicated in the compensation process; consider the role of government as facilitator (of agreements between proponents and trapline holders) not necessarily as the body making payment.

- DIAND indicated that while a policy-based compensation process would be more difficult to enforce than one based in legislation, it also could provide more flexibility in accommodating diverse interests and needs between proponents and trappers.
- CTFN suggested that before Timber Harvest Agreements were issued, it could be expected that compensation agreements were in place. Concern was expressed about circumstances where the burden of enforcing compensation agreements would be on trappers and not on government. Many trappers will expect government to play an enforcement role. 16.11.13 indicates that the compensation process will include designation of the persons responsible for compensation; this should not be equated with who is responsible for enforcement.
- DIAND indicated that a compensation process should address enforceability. 16.11.13 stipulates that “Yukon Indian People holding traplines shall be compensated.” Government needs to develop a process that will do that.
- CTFN suggested that government could withdraw permits and exercise stop-word orders to ensure the compliance of proponents with compensation agreements.
- CTFN suggested that the First Nation’s Department of Lands and Resources could serve as a point of contact for facilitating communications between developers and trappers. Game guardians could also play an important communications role between proponents and trappers, since trappers are often difficult to reach.
- CTFN repeated that a Harvester Support Program is critical to the future of First Nation trappers. What happens to a trapline when it is no longer viable? and what happens if there is no HSP to help these trappers maintain some sort of a bush life style? Right now a trapper can't use his line and cabins for anything but trapping. With some regulations or guidelines in place, trappers should be allowed to take people out on their lines show them around and rent them a cabin. Right now you can't do that. Under the UFA the RRC's will have some say to the management and use of traplines but it's not clear about final say over category 1 traplines. Maybe there's something in the self government agreement's from the first seven First Nations that have signed off. There are conflicts with outfitters using trappers cabins for their commercial activities without permission or compensation and it sounds like more outfitters are taking out sight seers which could lead to year round activity. It seems like the outfitters role could be changing and so to should the trappers. First nation trappers are a part of the land; who better to be taking out sight seers and such.
- CTFN suggested that after DIAND distributes the report that compiles all the meetings records from these discussions, First Nations may want to discuss and comment on these issues further, prior to formal consultation on a proposed compensation process.

**Follow-up Actions**

- The consultant will provide meeting draft notes for review to the CTFN and the summary of all external discussions when they are completed. When finalized, the CTFN meeting notes may be included in the information package that includes meeting notes with other Yukon First Nations, RRCs and other groups.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Selkirk Renewable Resources Council**

**May 11, 2000**

### **Selkirk Renewable Resources Council Offices**

#### **Participants**

David Johnny, Co-chair, Selkirk RRC

Linch Curry, Member, Selkirk RRC

Gwen Franks, Secretariat, Selkirk RRC

Sylvia Neschokat, Executive Services, Claims Implementation, DIAND

Mike Draper, Lands Specialist, Land Resources, DIAND

Albert Peter, Consultant

Lindsay Staples, Consultant

#### **Points of Discussion**

Selkirk RRC representatives raised the following points:

- In response to questions about the status of the CIRL discussion papers, DIAND indicated that the documents should be treated as reference material only and were not the opinion of government, and were not a proposal by government.
- Some traplines are far away from the community, making it difficult for people to be active. The costs of traveling these distances and maintaining equipment, when combined with low fur prices, makes trapping difficult. It was suggested by the consultants, that subsidies for trappers (to assist in covering the costs of gas, equipment, etc.) were different from compensation (assistance in addressing damages and losses from other activities).
- It was suggested by DIAND representatives that it is their understanding that YTG considers an "active line" to be one that is in good standing when assessed (every 5 years) by the RRC the FN and the YTG Department of Renewable Resources. An active line is not limited to the harvesting of fur, but includes the improvements (trails, cabins, etc.) that are made to the line.
- In response to a question about how compensation would be paid, DIAND representatives referred to comments made in a morning meeting with the Selkirk FN where it was suggested by the SFN that compensation need not be limited to cash payments, but could include habitat restoration and contributions in kind (logs for building, trail development, etc.).

DIAND representatives indicated that they were interested in creating situations for trappers and proponents of development to get together at the earliest stages of planning and work to preventing any negative effects on trappers. The interest is an approach that is proactive, not reactive.

- In reference to accommodations that are made in the region to respect the interests of trappers, comment was made about the closure of logging roads to the public (from November -March) through verbal agreement with the CO and announced on the radio.
- A number of impacts that negatively affect local trappers were identified:
  - In a development associated with the Minto Mine, a road was constructed down a trapline trail where traps were placed.
  - At Ta'tla Mun Lake, a trapline trail was developed to become a 10 foot wide trail, creating many concerns about increased public access into the area and disturbance of wildlife.
  - Any future development of a hydroelectric dam at Granite Canyon would produce a massive flooding of land and have a greater effect than the other 9 hydroelectric sites listed in the UFA combined.
- Currently, there is no elders trapping around Pelly Crossing. The Selkirk RRC has written to the FN about this. Some of this area is currently assigned to one trapline concession holder. The trapline crosses Settlement Land, Crown Land and Commissioner's Land and will be challenging to sort out.

### **Follow-up Actions**

- The RRC will determine the priority it is prepared to attached to the future review of a proposal by government for a trapline holders' compensation process that applies to Yukon Indian people (as provided for in 16.11.13 of the UFA). This is of importance to the SRRC. The SRRC has included this issue with other priorities that it is dealing with this year. The SRRC has not at this time completed the Trapline Allocation guidelines for Selkirk RRC and will be starting the process over the next year.
- The RRC will advise DIAND on how the RRC wishes to be consulted and when. The SRRC would prefer to be consulted through meetings starting in the middle of Oct/00.
- The RRC will comment to DIAND on the proposed timelines described in the "Information Backgrounder" tabled for the meeting.
- DIAND will provide additional copies of the CIRL discussion papers on compensation in the Yukon to the RRC.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Vuntut Gwitchin First Nation North Yukon Renewable Resources Council**

**August 1, 2000**

#### **VGFN Administrative Building**

##### **Participants**

William Josie, Director, Natural Resources, VGFN  
Stephen Mills, VGFN  
Darius Kassi, VGFN  
Greg Charlie, VGFN  
Roger Kay, VGFN  
Vicky Josie, NYRRC  
Dennis Frost Sr., NYRRC  
Isaac Anderton, NYRRC  
Sylvia Neschokat, Executive Services, Claims Implementation, DIAND  
Mike Draper, Lands Specialist, Land Resources, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

##### **Points of Discussion**

VGFN, NYRRC and DIAND representatives raised the following points:

- The VGFN raised concerns about the current situation of trappers regarding access to compensation. The current YTG compensation policy and process were viewed as weak in addressing the needs and concerns of trappers and did not include the VGFN group trap line as the existing process only covered settlement land. The non-implementation of 16.11.13 by Government was also frustrating. Different perspectives between the Parties in interpreting the provision were cited as contributing to delays in implementation: issues of who pays? the role of the Outfitters Compensation and Review Board (OCRB) and burden of proof were suggested as difficult issues arising from past discussions. In the past YTG has suggested that the provision could be implemented through the application of the existing OCRB with YTG paying compensation.

- VGFN raised concerns over YTG absence from the meeting, given YTG jurisdiction for wildlife and oil and gas development, and given that post-devolution YTG will assume a lead role in permitting and planning development activities. The question of YTG's role in the current exercise to implement the provision was raised with DIAND.
- DIAND recognized that the issue of implementation of the provision is an outstanding one. DIAND indicated that in 1997 YTG and DIAND established a working group to look at the issue of compensation. Subsequently DIAND/Renewable Resources commissioned a study by the Canadian Institute for Resources Law to analyze current compensation provisions and arrangements that apply in the Yukon. The file was transferred from DIAND Renewable Resources to Executive Services who assumed the federal lead in DIAND's regional office for facilitating implementation of the UFA provision (16.11.13). In 1999, DIAND arranged meetings with YTG to discuss and collaborate on the implementation of 16.11.13. In recent months, 4 – 5 meetings were held with YTG to clarify Government's understandings of what's provided for in 16.11.13. YTG has been invited to participate in the current implementation process and in all meetings with YFNs, RRCs and stakeholders. DIAND is well aware that YTG is significantly implicated in the implementation of the provision.
- VGFN commented that "Government" in the Final Agreement (FA) means both YTG and Canada. YTG participation will be critical in implementing the provision, otherwise there's no point to proceeding. YTG failure to participate in the process of community and YFN meetings will not meet the obligation for Consultation under the UFA.
- DIAND indicated that YTG participation in the process of implementing 16.11.13 was a shared responsibility of YTG, Canada and YFNs.
- VGFN indicated that they would be contacting YTG directly regarding YTG participation in the implementation of 16.11.13.
- VGFN expressed an interest in knowing which federal agencies and departments were consulted about the implementation of the provision. While DIAND has the lead in implementation, "Canada" has a legal obligation under the provision. How will "Canada's" interests be articulated? For example, what is the effect of the provision on the National Energy Board?
- VGFN commented that, while not explicit, 16.11.13 can be viewed as applying to both Crown Land and Settlement Land. If this is so, YFNs must be fully involved in the development of the compensation process. If the provision applies to Settlement Land, YFNs should be involved as full partners in implementation. It doesn't make sense that a 16.11.13-based process would apply to Settlement Land if Government alone was designing it. If Settlement Lands are to be excluded from the application of the provision, then YFNs will want to know that. It is critical to address the question of what lands the provision applies to, and, related to this point, who pays. One interpretation of 16.11.13 suggests that since traplines are on both Settlement and Non-Settlement (Crown) land, Settlement land is not excluded from the provision. Practically speaking, given that traplines cross different lands, it may be preferable to have one regime that applied on Settlement and Crown lands.

- Albert Peter mentioned that a concern had been raised in a discussion with another YFN over the application of the provision to Category B lands: since Canada can issue permits for development on these lands, it would place trappers in a difficult position if compensation provisions were not available to them.
- VGFN commented that existing encumbrances on Category A Lands may still produce problems and impacts for VGFN trappers.
- VGFN raised the concern that the cost (associated with any uncertainty) in determining compensation, may be more expensive than paying it. VGFN repeatedly made the point that locating 16.11.13 in the broader Yukon-wide context of other compensation provisions and processes (inside and outside of the UFA and Final Agreements) is important – consider the Yukon Waters Act as it affects the Water Board and trappers, chapter 14 (Water Management) of the FA; the Surface Rights Board as it affects access orders, etc. In clearly establishing the overall context for the application of 16.11.13, the implementation of the provision could establish generic criteria and considerations for compensation that could serve as an umbrella process or general reference that could inform these other processes. If compensation issues are first addressed through 16.11.13 – based on criteria and mechanisms, this could reduce the burden on other processes and hearings (Water Board, DAP, CEAA, Impact and Benefits Agreements) to manage compensation issues. There is a need to be clear about how the compensation process is linked to other regulatory processes and other forms of addressing compensation.
- Generally, any compensation provisions should address issues of cost (excessive process), timing (unreasonable delays) and flexibility (uniqueness of individual circumstances), and avoid any prospect of double claims and duplication. A compensation process should be user-friendly, informal, responsive and expeditious. Information requirements should be clear. Typically proponents are well-armed in such processes; trappers are “out-gunned” and also carry onerous burden-of-proof requirements.
- VGFN wants clarity and legal advice on the terms “potential,” “actual,” and “provable” loss. There is an interest in the assessment of potential (future) compensation and actual (after the fact) compensation. Some compensation regimes are based on provable losses and others are based on potential loss. This makes the task of developing this regime more complicated.
- DIAND indicated that an informal process would be more easily achieved than one requiring legislative changes. The latter would be extremely time-consuming. The department has an interest in a process that is implemented prior to devolution.
- VGFN suggested that compensation provisions could be established in federal legislation prior to devolution and then mirrored in territorial legislation until such time as the YTG passed its own unique legislative provisions. They also suggested that compensation provisions may need to be legislated in order to ensure that government pays compensation.

- DIAND indicated that under 16.11.13 government can designate who pays compensation. The question of how you enforce compensation provisions is another matter. Some mechanism is required to ensure that compensation agreements occur and that they are honoured. Enforcement is a difficult issue.
- VGFN commented that a system of “checks and balances” should be incorporated
- DIAND also indicated that concerns have been expressed regarding who’s covered by compensation and who isn’t; when are compensation agreements required? What is the level of readiness to implement 16.11.13 across the Yukon? Is one compensation regime or multiple regimes desirable?
- VGFN suggested that the reference to Yukon Indian People in 16.11.13 implicates all YFNs in the provision regardless of whether they have signed FAs or not. YFNs without FAs should not be left out of the compensation process simply because they have not signed. The difference is that the VGFN is issuing rights and permits on its lands.
- Old Crow has one trapline – a group line area in which all citizens have the right to trap. Each FN member is registered at birth as a member of the group trapline. While there are family areas within the group line area, the VGFN doesn’t distinguish between interests of individuals.
- DIAND commented that government is compelled to be clear on what’s provided for in 16.11.13 (what’s inside the “box”) and what is not (what’s outside the “box”). Clearly Yukon Indian People fall within the provision; non-First Nations trappers do not. Whether non-First Nations trappers should be included is not a land claims question; it is a question of public policy and administration.
- VGFN indicated that in the case of Old Crow, all VGFN citizens hold the group line collectively and should be considered to fall within the term “Yukon Indian People.” In managing the group line on behalf of its citizens, the VGFN must also be sensitive to issues raised by individuals.
- DIAND commented that it was important for Government to ensure that anyone who was covered by 16.11.13 not be left out of the general process or of specific compensation agreements to which they were entitled some measure of protection. Government needs to know who they should be dealing with.
- VGFN indicated that the interests of its citizens on the group line could be dealt with through whatever administrative arrangements the VGFN and its citizens considered to be appropriate. This is a matter internal to the VGFN that government need not concern itself with.
- DIAND indicated that across the Yukon some measure of flexibility will be required to provide different arrangements for different groups.
- The RRC suggested that under the Overlap Agreement with the Tetlit Gwich’in, the Tetlit are captured by the term “Yukon Indian People.”
- VGFN indicated its preferred interest in pursuing a collective approach to compensation, including the right to represent individuals in any compensation process and to allocate awards.

- VGFN indicated that they interpreted 16.11.13 as an expansion of the conventional notion of “resource development activities”. It also includes renewable resources development such as wilderness tourism, outfitting, etc. “Fur harvesting activities” implicates other areas of activities that aren’t regulated as well.
- DIAND questioned how you capture non-regulated (non-permitted) activities in a compensation process. More discussion will be needed on this point and the list of what constitutes “resource development activities.” DIAND and YTG will work to compile a list of resource development activities that would be covered under 16.11.13.
- VGFN expressed the concern that in some areas, government could regulate activities, but has chosen not to. It is important to bring an open mind to this discussion. At the same time, there is no need to include activities with low level impacts.
- DIAND suggested that these distinctions are sometimes difficult to capture when considering concepts of cumulative effects, recreational use, small scale commercial wilderness operators, etc. Government should specify what’s included in the term “resource development activities” to ensure certainty in the provision.
- VGFN agreed that it is important to discuss what should be on the list of “resource development activities”; it is noteworthy that VGFN will be a developer.
- VGFN commented on the criteria that would be used to assign a value to a trapper’s diminished fur harvesting opportunity: concern was expressed that economic value alone was too limiting and that the full significance of domestic value should be considered. Diminishing an opportunity isn’t simply less furbearers and less cash; it’s also the loss of opportunity to exercise and pursue another way of life (implicating cultural and spiritual values). General loss of 16.4.2 harvesting rights should be considered. Review the Yukon Waters Act and the consideration of the overall opportunity that’s diminished. Under the FA, it’s an aboriginal right to trap that’s being diminished. VGFN trappers can’t exercise their rights if they are no furbearers to trap. What’s government’s interest in defining the criteria too narrowly? Why not provide guidelines that introduce a measure of flexibility? Government can place some burden on developers to conclude compensation agreements by withholding development permits until compensation agreements or arrangements are concluded with affected trappers.
- VGFN questioned whether all the criteria under the Yukon Waters Act would be picked up in the implementation of 16.11.13 because if it isn’t, the Water Board would be required to address compensation in its proceedings in order to fulfill its requirements.
- VGFN questioned the means for determining whether furbearer harvesting activities had been diminished. Proponent should carry the burden of proof to establish that there has been no diminishment of harvesting opportunity (assume that all resource development produces a negative effect on trappers).

- VGFN suggested that compensation could take non-cash forms. For instance a decline in furbearer harvest could be compensated by the relocation of trails and cabins.
- VGFN suggested that Impact and Benefits Agreements may be another mechanism for addressing compensation. Whatever the mechanism, it is important to equip trappers and developers with the means to reach agreements. A neutral mediator is needed to resolve disputes between proponents and trappers.
- DIAND and VGFN suggested that some form of mediation services will likely be required from time to time; rights administrators and other bodies may serve a mediation role.
- DIAND suggested that the right issuers may provide an informal mediation role, but caution was required to ensure that such people were not compromised as rights issuers through their direct dealings with developers and trappers. Questions were raised by DIAND as to how YTG and YFNs as developers would function in this role.
- VGFN observed that the different capacities of various proponents needed to be considered when applying the compensation process. The ability or willingness of the developer to pay compensation would be a concern for many trappers. In some instances, the proponent may not be liable for payment where the issuance of permits (e.g. timber harvesting permits) were based on policy decisions of government. Questions were raised as to the financial liability of government as regulator (Canada, YTG, YFNs) or in the event that proponents defaulted on compensation payments. Proponent pay only works if there is a proponent to pay. Compensation funding could be built into land sales discussions in order to set aside a cash reserve for trappers at the outset of any development.
- Albert Peter inquired as to whether VGFN had considered developing their own compensation process.
- VGFN indicated that they would prefer to see the 16.11.13 process provide benefits, guidance through generic criteria and guidelines that could be applied in a variety of areas outside the narrow application of 16.11.13 itself. For example, compensation guidelines should list clear information requirements and compensation measures.
- VGFN commented that the process of implementing 16.11.13 should not be rushed simply because 5 years has transpired since the Effective Date of the FA. Efforts should be made to build the best compensation process possible, with provision for a review period to introduce changes as desired. The FN will not abandon what it consider essential to a compensation regime simply to have a compensation process established by an earlier date. A policy-based process may be desirable initially, with a legislated process following at a later date. YTG has indicated its willingness in devolution discussions to consult with YFNs on major legislative amendments post-devolution. A policy-based process could provide a more timely introduction of compensation measures, provide an approach that fits with regulators, and provide better flexibility to make adjustments as required; however, a review period should be specified to evaluate how well the process is working.

- VGFN indicated it is imperative to quickly get YTG into discussions with YFNs and communities.
- VGFN expressed an interest in the ideas and concerns held by other YFNs regarding the implementation of 16.11.13. Questions were raised regarding how the compensation process to be established would be “signed off.”
- Albert Peter suggested that pre-implementing some arrangements with regulators and developers prior to the formal establishment of the compensation regime may be desirable; for example, prior to the issuance of permits, a greater effort could be made by regulators to facilitate direct discussions between developers and trappers on preferred mitigation activities.
- The RRC indicated that trappers want more attention from regulators. It was also suggested that the discussion about compensation could be used to look at alternatives to it: improved mitigation, greater support for trappers. Trappers need certainty and want to avoid all forms of negative impacts on their activities. An improved process of consultation with trappers to focus on mitigation of effects before development occurs would be helpful. Establishing a process for early input by the trappers, identifying a point of contact, and dialogue with developers would be helpful.
- The RRC commented that there is an urgency to move forward with the work to develop a trappers compensation process. If it’s going to take several years to develop a good process, then trappers should know that, and the necessary time should be taken. In the mean time, however, effort should be made to implement a process for improved input from trappers into designing mitigation measures (above point).
- The RRC indicated that it requires resources to ensure their participation in the development of a compensation regime – most notably honoraria for meeting and workshop participation.
- DIAND indicated that it can provide some resources for workshop costs, but they do not include participation costs. It was also suggested that consultations with the RRC during regularly scheduled meetings of the RRC could reduce RRC participation costs.
- The RRC indicated that the entire Traditional Territory is the group trapline and that most RRC board members are trappers. This should have significant bearing on future meetings with the RRC.

**Follow-up Actions**

- The consultants will provide meeting draft notes for review to the VGFN and NYRRC and the summary of all external discussions. When finalized the meeting notes may be circulated internally with YTG officials.
- DIAND will work with the YTG to compile a list of resource development activities that would be covered under 16.11.13 and provide them to the VGFN and RRC.
- The VGFN will provide written comments to DIAND regarding its interests in and views on the implementation of 16.11.13
- DIAND will report back to the RRC regarding funding for RRC participation in future compensation discussions.

**Meeting Notes from Discussion on  
Trapline Holders' Compensation  
Alsek Renewable Resources Council  
August 31, 2000  
ARRC Office  
Haines Junction, Yukon**

**Participants**

Mike Crawshay, Chair, Alsek Renewable Resources Council  
Will Jones, Secretariat, Alsek Renewable Resources Council  
Sylvia Neschokat, Executive Services, Claims Implementation, DIAND  
Mike Draper, Lands Specialist, Land Resources, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

**Points of Discussion**

ARRC and DIAND representatives raised the following points:

- ARRC indicated that following its February letter to DIAND regarding trappers compensation, it had established a 3 person working group to follow the development of a compensation process.
- DIAND indicated that the scope of 16.11.13 constrains its application to Yukon Indian People holding traplines. Non-Indian people holding traplines fall outside of the provision.
- In response to questions about YTG involvement in the implementation of 16.11.13, DIAND indicated that YTG has been invited to participate in the preliminary discussions and that the Yukon is currently reviewing how it will participate in the implementation of the provision.
- DIAND commented that it circulated the discussion documents by the Canadian Institute for Resources Law to provide background information to interested individuals and organizations on the status of current compensation arrangements in the Yukon.
- DIAND indicated that a range of options exists for the implementation of 16.11.13: some are policy-based, others are regulation-based and require changes in legislation. Policy-based options, while raising questions about the enforceability of compensation arrangements, may provide greater flexibility in addressing a wide range of compensation issues, especially in an environment of uncertainty associated with devolution.

- ARRC commented on its work on trapper allocation guidelines and its attention to ensuring that traplines are held in good standing. Compensation is a big issue for the ARRC and trappers. Most traplines are owned by First Nations people. Lots are family-oriented. A number of large group traplines exist. As a result, most lines in the CAFN Traditional Territory will be affected by 16.11.13.
- The ARRC commented that whatever compensation arrangements are developed, they should apply fairly to all trapline holders. There shouldn't be two sets of rules: one for First Nations trapline holders and another set for non-First Nation trapline holders. There should be one set of compensation arrangements that apply to all traplines.
- The ARRC commented that impacts from development are both positive and negative (e.g. the relocation of the Shakwak road made a trapline area larger).
- Lindsay Staples suggested that a compensation process could resemble a "tool kit" – where guidelines, a range of measures, information, and template agreements provide the means for proponents and trappers to establish their own arrangements appropriate to their specific circumstances; this could be an alternative to a prescribed formula or standard for compensation.
- DIAND indicated its interest is in facilitating good relations between trapline holders and proponents of development.
- The ARRC suggested that cash forms of compensation carried many negatives: they could never replace or adequately compensate for the trapping lifestyle that may be lost; there was no adequate methodology for determining cash compensation that would prove acceptable to trappers and proponent alike. Non-cash forms of compensation may be more appropriate today. Trapping was a cash cow 20 years ago, when there was great potential to make a good living in the bush.
- DIAND indicated the importance for a compensation process to clearly identify who was involved and how to best deal with them.
- ARRC commented on current activities and developments that were negatively affecting trappers: the development of the YTG subdivision at Pine Lake placed restrictions on trappers due to the proximity of residences; the agricultural developments at Mendenhall removed large sections of land from a trapline; winter tourism and snowmachines are disturbing trappers trails; and forestry activities.
- ARRC recognized that a permit to harvest furbearers is not a title to land; at the same time the trapper has a special relationship to the land, even though the permit is limited to harvesting fur.
- ARRC raised the concern that many assistant trappers may be conducting most of the work on a trapline to maintain it in good standing, but as they are not the trapline holder, they would not be entitled to compensation. A line that is in good standing is a line on which work is being carried out, quite apart from whether fur is being harvested. While cash compensation may only benefit trapline holders (the distribution of cash to assistant trappers is at the discretion of the trapline holder), non-cash forms of compensation may have more direct benefit to assistant trappers.

- Although lifestyle may be viewed as incidental to trapping, it is an important feature of why people trap.
- ARRC suggested that a general fund could be created to compensate for lifestyle losses. Compensation should benefit society, rather than individual only.
- DIAND raised the question of who should resolve disputes.
- ARRC suggested that existing bodies should be considered for resolving disputes between trappers and proponents: examples include the Dispute Resolution Board, Outfitter Appeal Committee, the Outfitter Compensation and Review Board.
- Lindsay Staples suggested there were two types of disputes that may need to be resolved: disputes that preclude a compensation agreement; disputes regarding the application of an agreement (its standing and effect) after it has been signed.
- ARRC suggested that mitigation of non-permitted (unregulated) activities could be addressed through education and land use planning. This would require the participation of other groups and organizations, if these measures were to improve the situation of trappers.
- DIAND commented that any consultation with trappers should be conducted in a timely manner. The fiduciary obligation of DIAND to consult is to the individual and is not transferable. While the principle of consultation may be self-evident, operationally how to implement consultation is less so, and could vary from community to community. (Discussion of potential role for BRO's). DIAND must rely on using existing resources to conduct consultation. Avoidance of conflict and disputes between proponents and trappers could be improved through good communications between trapline holders, First Nations, rights managers and proponents.
- DIAND and ARRC agreed that how resources are utilized to facilitate an agreement or understanding between proponents and trappers is critical and is affected by the resources that are available. To some extent the burden of proof on trappers or developers to establish or disprove the diminishment of trapping opportunities is heavily influenced by the resources that are available for providing information or reaching compensation agreements.

### **Follow-up Actions**

- The consultants will provide meeting draft notes for review to the ARRC and the summary of all external discussions. When finalized the meeting notes may be circulated internally with YTG officials.
- The ARRC requested to be kept informed of government actions related to the development of a compensation process under 16.11.13.

**Meeting Notes from Discussion on  
Trapline Holders' Compensation**

**Dawson District Renewable Resources Council**

**September 13, 2000**

**Dawson District Renewable Resources Council Offices  
Dawson City, Yukon**

**Participants**

Bill Bowie, Chair  
Bruce Taylor, Vice-Chair  
Marcia Jordan, Councillor  
Peter Nagano, Councillor  
Jake Duncan, Councillor  
Jack Fraser, Councillor  
Gwen Shuttleworth, Executive Director  
Sylvia Neschokat, Executive Services, Claims Implementation, DIAND  
Mike Draper, Lands Specialist, Land Resources, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

**Points of Discussion**

DDRRC and DIAND representatives raised the following points:

- DIAND indicated that the meeting was a preliminary discussion only to share perspectives on the meaning of 16.11.13 and the expectations and issues associated with the implementation of the provision. The meeting is not to be construed as any form of consultation with the RRC.
- DIAND indicated that, in addition to compiling and transmitting a written record of the meeting to the DDRRC, the meeting records from all the community meetings will be compiled and circulated to the DDRRC, First Nations and other Renewable Resources Councils with whom meetings have been held. An Environmental Scan will be prepared summarizing the issues that have been raised over the course of the preliminary meetings and circulated also.
- While recognizing that the issues and interests associated with trappers compensation were diverse, DIAND indicated the development of a trappers compensation process was constrained in scope by the language of 16.11.13. It is important to be clear on what is and is not within the scope of 16.11.13.

- A DDRRC member indicated that it was important to spell out the basics in any proposed compensation regime for trappers.
- A DRRC member commented that Loki Gold had no negative effect on his trapline. He worked with the company to arrive at a mutually satisfactory undertaking to mitigate negative effects from the development. For example, no mine employees can hunt on the mine property. The result of these mitigative measures was no loss of fur and an unaffected marten population. There was no written agreement; the understanding was contained in the public record of meetings between the trapper and the company.
- A DDRRC member commented that mitigation is far preferable to compensation. Compensation is a negative because it is associated with losing something. In accepting compensation, you give up your right to have a say about how you will be affected by a development.
- A DDRRC member commented that rural residential activities are more disruptive than anything else. Wildlife declines around Whitehorse were cited as examples. Dawson has done well in comparison in that there has been virtually no residential development beyond Henderson Corners. Community development has been contained generally within the historic community of Dawson City. The unmitigated effects of rural residential developments have occurred largely as a result of federal block land transfers to the Yukon, and less as a result of YTG actions. YTG has been helpful in notifying trappers about YTG activities, providing trappers with an opportunity to respond to them. The biggest concern is with the federal government's processing of development applications.
- A DRRC member commented that trapper representation on the Klondike Valley Planning Committee has been helpful in limiting expansion.
- A DDRRC indicated concern over the proposed Mayo-Dawson grid extension project and the effects on furbearers and trappers with a road down one side of the valley, Loki operations on the other side and a power line down the middle of the valley. This was viewed as the "thin edge of the wedge" for rural residential development: the development would lead to increased access and demand for rural residential lands with power. Concern was also expressed about the impacts associated with fencing and acreages.
- A DDRRC member asked whether DAP would flag these issues so that they could be addressed. Another member asked whether government could play a role in mediating disputes between a developer and a trapper.
- DIAND commented that there may be a role for government in this capacity if it does not compromise or conflict with government's role as a regulator.
- A DDRRC member commented that a committee may be required to mediate disputes.
- DIAND indicated that some RRCs and FNs had expressed concerns about establishing another body as opposed to using an existing body.
- A DDRRC member questioned what would happen to the YTG trapper compensation process as a result of 16.11.13 and asked whether there would be two processes. The question was raised as whether the RRC could make a recommendation to YTG to review the current Yukon process and bring the two processes together.

- A DDRRC member commented that it would be helpful if trappers were treated in a more proactive manner by government prior to development activities.
- A DDRRC member questioned the scope of 16.11.13 as it affected the eligibility of non-First Nation trapline holders: the example was cited of a family group trapline that was jointly held by FA beneficiaries and a non-beneficiary.
- DIAND indicated that it was important for DIAND to know that it was dealing with the right people (those entitled to compensation or their representatives) in any compensation process.
- A DDRRC member questioned whether a non-First Nation trapper would be compensated for Category A lands that harmed non-First Nation trappers; the example was cited of a FN site selection on a trapline that would limit trapping when a residence was built on the site (no harvesting within 1 km. of the building).
- A DDRRC member raised concerns over the impact on trappers of four residential developments each surrounded by 1 km buffers spread a long a 16 km section of river valley.
- DIAND commented that this type of development would probably not fall under the definition of a resource development activity within the meaning of 16.11.13.
- A DDRRC member commented that there are many types of activities that are not regulated by DIAND, but have negative impacts on trappers; wildlife tours and recreational activities were cited as examples.
- A DDRRC member commented that trappers in the area have no complaints with miners due to the seasonal differences between the activities of miners (summer) and trappers (winter).
- A DDRRC member commented that if an activity may have a negative impact on furbearers it should be looked at.
- A DDRRC member commented that there are about 50 traplines in the Dawson area. The increasing level of (unregulated) recreational activities are of growing concern to trappers in the area.

### **Follow-up Actions**

- The consultants will provide meeting draft notes for review to the DDRRC and the summary of all external discussions. When finalized, the meeting notes may be circulated internally with YTG officials.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Nacho Nyak Dun First Nation and Mayo Renewable Resources Council**

**September 26, 2000**

#### **Land and Resources Department Offices Nacho Nyak Dun First Nation Mayo, Yukon**

##### **Participants**

Steven Buyck, NND Lands and Resources, Mayo RRC  
John Pattimore, NND Lands and Resources  
John Reid, Mayo RRC  
Sylvia Neschokat, Renewable Resources, Claims Implementation, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

##### **Points of Discussion**

NND, Mayo RRC and DIAND representatives raised the following points:

- DIAND indicated that the meeting was a preliminary discussion only to share perspectives on the meaning of 16.11.13 and the expectations and issues associated with the implementation of the provision. The meeting is not to be construed as any form of consultation with the NND and RRC.
- DIAND indicated that, in addition to compiling and transmitting a written record of the meeting to the FN and RRC, the meeting records from all the community meetings will be compiled and circulated to the NND and other First Nations and Renewable Resources Councils with whom meetings have been held. An Environmental Scan will be prepared summarizing the issues that have been raised over the course of the preliminary meetings and circulated also.
- DIAND indicated that earlier in the year the department had circulated reports prepared by the Canadian Institute of Resources Law to provide background information on existing resource compensation arrangements in the Yukon. The reports were prepared independent of DIAND, and represent the views of their authors alone, not those of the department.
- DIAND indicated that internal meetings have been held with the Yukon Government officials and DIAND officials to discuss the meaning of 16.11.13.

- NND/Mayo RRC commented that the Yukon has an important role in the implementation of 16.11.13 given YTG jurisdiction and responsibilities for trapping.
- NND/Mayo RRC commented that the compensation process in 16.11.13 should apply to everyone – both Yukon First Nation trappers and non-First Nations trappers.
- Lindsay Staples commented that 16.11.13 explicitly applies only to “Yukon Indian People” holding traplines. Extending compensation to all trapline holders is a public policy question for governments as it is beyond their specific legal obligations for the implementation of 16.11.13.
- NND/Mayo RRC commented that there should be some discussion with the Yukon Water Board as it is also working on a compensation process. Questions were raised about the relationship between the two processes. It was suggested that a one window compensation process covering all trappers would be desirable over a number of different compensation processes.
- Lindsay Staples commented that it would be difficult to roll-up different compensation processes under one umbrella given the different legal authorities that underpin each one. For example, the Water Board’s compensation process (under development) fall under the Yukon Waters Act. The Yukon Government’s current trapper compensation process falls under the Yukon Wildlife Act.
- NND/Mayo RRC suggested that the criteria for determining compensation (triggers, costs, etc.) should be common to the different processes.
- Lindsay Staples suggested that it is difficult at this point to know whether who is compensated, how they are compensated and what form of compensation is available will take across the different processes.
- DIAND suggested that in a circumstance where “proponent pays” a flexible approach (left to proponents and trappers to determine from a range of pre-determined options) as to the form that compensation arrangements could take may be worth exploring, given the many different circumstances that proponents of development and trappers find themselves in
- DIAND suggested that overburdening 16.11.13 with requirements to meet needs and expectations that fall outside the scope of 16.11.13 will make timely implementation of the provision difficult.
- Lindsay Staples indicated that it had been suggested in some of the previous meetings that improved mitigation measures and input by trappers into development decisions prior to the issuance of permits may be helpful in avoiding or reducing the need for compensation.
- NND/Mayo RRC suggested that Impact and Benefits Agreements (IBA) may also be linked to improved mitigation measures and may have some bearing on 16.11.13.
- Albert Peter asked who would represent the interests of a trapper or trappers in the negotiation of an IBA. If a FN signs an IBA, do they represent the interests of the trapper?
- DIAND commented that there must be complete certainty regarding who represents the interests of trappers affected by 16.11.13.

- The RRC indicated that if an individual trapper came to the RRC and asked for help in a compensation process, the RRC would likely assist them.
- The RRC indicated that some lines require formal designation: some Category 1 traplines are “open” and the paper work is required to register the lines. It was mentioned that to meet the 70/30 ratio for FN held traplines, NND may want to bring in some open lines as Category 1 lines.
- NND/RRC indicated that until the 70/30 ratio (for FN/non-FN ownership of traplines) is met under the NND Final Agreement, any individuals who to sell their lines must come to the First Nation.
- DIAND asked if the First Nation would assume responsibility for a group line.
- NND/RRC indicated that the NND holds 50% of the lines. There is no group line. There is a community line for elders and youth within a 5 mile radius of Mayo. On Category 1 lands there are 9 lines held by NND beneficiaries and 15 by other individuals. Some lines are held by Selkirk beneficiaries inside the NND Traditional Territory and on and off NND Settlement lands.
- DIAND indicated that in previous meetings the question of how traplines that overlap Settlement and non-Settlement lands, and Category 1 and 2 lands would be affected by 16.11.13. Views have varied with respect to the geographic scope of 16.11.13, but DIAND has approached the provision with the assumption that at a minimum it applied on Crown lands.
- NND/RRC asked how proponents would be required to pay.
- DIAND suggested that in a policy-based compensation process failure to pay may be difficult to enforce, if proponents and trappers have not entered into compensation agreements with a legal basis prior to development activities occurring.
- NND/RRC commented that one local trapping family has an agreement with New Millennium in place that they worked out with the mining company.
- NND commented that government has a fiduciary obligation to ensure rights under the Final Agreement are protected.
- Lindsay Staples asked if the cost of purchasing a concession could be used to establish cost and criteria for compensation awards.
- NND/RRC commented that the criteria for purchase is based on the value of the fixed assets and improvements, not on the “opportunity.”
- NND/RRC asked whether government had any residual liability for compensation if proponents for various reasons fail to meet their compensation obligations.
- The RRC suggested a security deposit or some indication of ability to meet compensation requirements prior to the development occurring could be helpful in avoiding such situations. The questions were asked: do these type of compensation arrangements become part of the permitting process? Whose responsible for accidents? Where do you go for disputes over agreements?
- NND/RRC asked if compensation could be retroactive.
- DIAND indicated that retroactivity would not be part of the compensation process to be established under 16.11.13 as 16.11.13.1 refers potential claimants to the existing compensation options until such time as 16.11.13 was implemented.
- NND/RRC asked what would trigger a compensation claim and qualified as a resource development activity.

- DIAND suggested that it would be difficult to use triggers that weren't currently associated with currently permitted resource development activities.
- The RRC raised concerns about potential long term impacts that would remain for many years after a developer had left the area.
- Lindsay Staples suggested that the question of flexible versus fixed compensation arrangements would need to be explored to determine what would be most workable and effective for both trappers and developers.
- NND/RRC suggested that it would be useful to develop some concrete scenarios (based on case studies, in some instances) that could be used to design and develop a compensation process (as opposed to doing so in the abstract). Such an approach could anticipate and develop different options available to trappers and proponents so that they could become the masters of their own agreements and responsible for them. Under this approach, government wouldn't dictate, it would identify the resources available to both trappers and developers to reach an agreement: 1) resources and models for negotiating an agreement; 2) options for mediation; 3) options for dispute resolution.
- There was a discussion here about using the question of Who will be responsible for compensating the trapper on the Lansing Heritage site as a practical example.)
- The point was made that if you keep the process between proponent and trapper, this will place the responsibility in the hands of the people who are directly responsible, and address the question of enforceability without legislation. Proponents would prefer to talk to the community/trapper directly: we have moved beyond the "old way of doing business" based on government acting as intermediary in all instances.
- DIAND indicated that a number of existing bodies had been suggested to resolve existing disputes, such as the Surface Rights Board and the Dispute Resolution Board, although no work has been done to date to evaluate the suitability of any of these.
- NND/RRC commented that if the process to implement 16.11.13 is a lengthy one, trappers should be made aware of the other options for compensation that were currently available to them. It can't be emphasized enough that there are people waiting for the implementation of 16.11.13. The process is long overdue. At the same time, the approach of meeting with people to talk about 16.11.13 is a good one, and everyone should be heard. Even if it takes two years, doing is a good job on the implementation of 16.11.13 is important.
- DIAND indicated that it would circulate the information from the community meetings this fall and a draft discussion document would be prepared in the new year.

### **Follow-up Actions**

- The consultants will provide meeting draft notes for review to NND and the RRC and the summary of all external discussions. When finalized, the meeting notes may be circulated internally with YTG officials.

## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Teslin Renewable Resources Council**

**November 27, 2000  
Teslin, Yukon**

#### **Participants**

Frank Johnston, Chair, Teslin Renewable Resources Council  
John Schonewille, Trapper  
Sylvia Neschokat, Renewable Resources, Land Claims Implementation Advisor, DIAND  
Albert Peter, Consultant  
Lindsay Staples, Consultant

#### **Points of Discussion**

Teslin RRC:

- First Nations and non-First Nations should have equal rights for trappers compensation.
- The level of trapping activity on the line should be a consideration in determining compensation. A line is considered by the RRC to be in good standing if it generates \$2,000 in revenue over 5 years and meets the criteria in the Teslin RRC's Trapline Allocation Guidelines.
- The compensation process should be reviewable every few years.
- There have been impacts on Teslin trappers: timber harvesting has affected marten populations; the proposal for a national park at Wolf Lake may have a negative effect on the ability of trappers to trap in the area; mining is not a big issue as it is seasonal and does not occur when and where trappers are active.
- Non cash forms of compensation should be investigated.
- The onus to reach agreement on compensation arrangements with trappers should be on the developer.
- Trappers are typically the first users of the land and this should be recognized by permitting agencies when authorizing new development activities.
- Special consideration should be made to distinguish the interests of long-term high activity trappers from a trapper whose activity is much lower.

DIAND:

- Non-cash forms of compensation may provide increased flexibility for trappers and developers to reach agreement. Cash compensation can prove difficult to calculate and may be difficult for smaller developers to afford.

- The issue of who pays compensation needs to be carefully considered. In the meetings to date, much of the discussion has focused on developer pay. IN 16.11.13, Government has the authority to designate the Persons responsible for compensation.
- Government's role in the compensation process needs to be clearly understood. Much of the discussion in meetings to date has focused on government playing a facilitating role.
- Attention will also need to be given to dispute resolution – in situations where a trapper and a developer cannot reach agreement on a mutually satisfactory compensation arrangement or where an agreement is in dispute.

#### Teslin RRC:

- There is a need for improved government consultation with trappers to improve mitigation of impacts potentially affecting trappers prior to development activities occurring.
- Non-First Nations trappers want the same rights in influencing mitigation as FN trappers.
- Trapping concerns far exceed simply getting cash compensation for loss of harvesting opportunities. (Those that don't trap seem to be the ones who talk the most about wanting cash compensation.) Overhunting, loss of wildlife and loss of habitat from road development is a serious concern.
- The larger objective that government should recognize and that any trappers compensation process should strongly consider is that of enhancing the renewable resource economy. Albert Peter commented 16.11.13 should be considered in the context of the other sections of the Final Agreements. For example, trapping could be linked to enhancing the renewable resource economy which is tied to the objectives in Chapter 16, particularly 16.1.1.2 – “to preserve and enhance the renewable resource economy.”
- The most accessible traplines are the ones first to be affected by logging operations.
- The method for determining cash compensation under the current trappers compensation system is not workable. Many old people don't keep records. For many reasons (access, high cost of fuel, low furbearer populations) harvest levels alone are an inadequate means for determining cash compensation. Consideration should also be given to what trappers have invested in their lines. There's more to trapping than harvesting furs. Subsistence, lifestyle, ecotourism and cabin rentals are part of holding a trapline. Trappers are the “watch dog” of the environment and should be supported in this role. They provide useful wildlife management information to government at no cost to government. The full significance of trapping to individuals, families and communities should be fully recognized and considered in the implementation of 16.11.13 and in the development of a compensation process that should meet the interests of all trappers.

- Many trappers would waive their right to cash compensation in exchange for a strong voice in determining how development activities occur ( e.g. how, where and when logging should occur). Trappers input into development permitting is critical and key to the future well-being of trapping.
- Cash compensation may prove difficult if it requires neighbours having to work out a settlement between them. Cash is divisive within the community. There should be a new and improved workable formula for determining cash compensation, but other forms of compensation may prove more satisfactory to both parties.
- Trapping incomes are not big, but its money that's spent in the community (unlike a lot of cash generated from logging that's spent outside the Yukon).
- Outfitter compensation agreements should be reviewed to determine if this approach has application to trappers.
- "Diminished opportunities" to harvest furbearers should include consideration of loss of wildlife and loss of habitat. Does compensation cover the full period over which furbearer harvest opportunities have been diminished?
- #1 recommendation: First Nations and non-First Nations trappers should be entitled to the same treatment in any trappers compensation process. There should be a level playing field; if there isn't, and the compensation process is limited to Yukon Indian people holding traplines, the process may drive resource users into the areas occupied by non-First Nation traplines.

### **Follow-up Actions**

- The consultants will provide meeting draft notes for review to the Teslin RRC and the summary of all external discussions when they are completed. When finalized, the Teslin RRC meeting notes may be included in the information package that includes meeting notes with other Yukon First Nations, RRCs and other groups.
- The RRC will provide DIAND with a copy of their Trapline Allocation Guidelines.



**Little Salmon-Carmacks First Nation  
Trappers Compensation Workshop:  
Implementation of UFA 16.11.13**

Carmacks, Yukon

September 27, 2000

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**Prepared by:**  
North\West Resources Consulting Group  
65 Logan Road  
Whitehorse, Yukon  
Y1A 3T2



**Little Salmon-Carmacks First Nation Trappers Compensation Workshop:  
Implementation of UFA 16.11.13**

**Carmacks, Yukon  
10:00 a.m. to 3:30 p.m.  
Wednesday, September 27, 2000**

**Workshop Report**

**Participants:**

Lindsay Staples	Consultant
Albert Peter	Consultant
Sylvia Neschokat	DIAND, Renewable Resources, Land Claims Implementation Advisor
Mike Draper	DIAND Land Resources
Laurel Jenkins	Rapporteur
Joe Bellmore	Little Salmon-Carmacks First Nation Lands Dept.
Darla Skookum	Little Salmon-Carmacks First Nation Lands Dept. Reception
Beverley Brown	Yukon Salmon Committee Habitat Steward
Clyde Blackjack	Fish and Wildlife Management Board, Yukon Salmon Committee
Johnny Sam	Little Salmon-Carmacks First Nation Field Researcher
Roddy Blackjack	Elder - Carmacks
Billy Peter Johnnie	Elder - Carmacks
Violet Johnnie	Elder - Carmacks
Kitty Charlie	Elder - Carmacks
Rosie Tom	Elder - Carmacks
Eva Billy	Elder - Carmacks
Bessie Blackjack	Elder - Carmacks

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*This report is a compilation of comments made by various individuals at the workshop. Statements do not reflect a consensus view, unless specifically referenced as such.*

# I **Agenda**

1. Introduction
  - The Workshop
  - The Process
  - UFA Chapter 16, Fish and Wildlife, 16.11.13 Compensation
2. Compensation Issues
3. Principles/Interests to Build a Compensation Process On
4. Next Steps

## II Introduction: The Workshop Purpose

The workshop held in Carmacks on September 27, 2000 relates to the Yukon Umbrella Final Agreement and the Little Salmon-Carmacks First Nation Final Agreement, Chapter 16.11.13 which states the following:

Yukon Indian People holding traplines whose Furbearer Harvesting opportunities will be diminished due to other resource development activities shall be compensated. Government shall establish a process following the Effective Date of the Yukon First Nation's Final Agreement for compensation, including designation of the Persons responsible for compensation.

The purpose of the workshop was to provide information, identify issues and identify what trappers' compensation should look like. Workshop information will aid in developing a process for implementation of 16.11.13.

The workshop conducted by facilitators Lindsay Staples and Albert Peter was done for the Department of Indian Affairs and Northern Development, Renewable Resources, Yukon Region. Workshop proceedings are the property of Little Salmon Carmacks First Nation.

The meeting in Carmacks was the first held to speak directly with trappers and identify their concerns. The meeting in Carmacks was held at the request of the Little Salmon Carmacks First Nation who requested that Government speak directly with trappers to identify their concerns. Previous meetings have been held with First Nation governments with signed land claim agreements and with Renewable Resources Councils.

Workshop participants were asked to identify their concerns, provide examples of their experience, and give input on what they think should go into the compensation regime.

Questions posed for consideration were:

- How important is trapping to you and your family today?
- Why do you think trapping needs to be protected?
- When should compensation be provided and what form should it take?

### III Compensation Issues

There have been impacts to Furbearer Harvesting opportunities as a result of resource development activities such as agricultural development, mining roads, pipelines, and forestry. Little Salmon-Carmacks First Nation Final Agreement 16.11.13 allows for compensation to Yukon Indians holding traplines who have experienced a decrease in their opportunity to harvest fur.

#### ISSUES AND CONCERNS EXPRESSED BY PARTICIPANTS

##### Johnny Sam

- Many trappers have grown up on the trapline and know the area along the trapline very well. The specific area surrounding the trapline means something to them.
- Trappers are raised to look after the area they are harvesting so the harvest will be self-sustaining.
- Most trappers have fish camps too.

"White people go to the supermarket, us, we go to trapline trails and see whatever we can get, moose, grouse..."

- An important value to trappers is being able to go out their back door and hunt or trap food, for example, grouse.
- Fur prices have been low for a long period of time. Trapping doesn't provide much income but trappers are still building the value of the traplines they don't wish to let go of.
- Other hunters with the monetary means to travel into many areas are crowding out trappers.
- With development of various kinds, the landscape and habitat used by trappers is changed.
- Roads tend to zigzag across traplines and wildlife trails, and can mar and obscure them.
- There are impacts from forestry.
- With approved land applications, land surrounding the development is also lost.
- If land is lost, the land is lost forever. The trapper's livelihood is also lost. Who is responsible for compensation - the government or the proponent?
- The UFA is a tri-party agreement but the Yukon Wildlife Act is used to overrule trappers' concerns whenever there's a disagreement. There should be an agreement amongst all parties on how to manage wildlife and trapping, and what the role of First Nations is.

- Conflicts between final agreements and the Yukon Wildlife Act need to be resolved. Lindsay Staples responded: The Yukon is planning to amend the Yukon Wildlife Act to reflect First Nation Final Agreements.
- There should be consultation with trappers as soon as a land application is received.
- Regarding the removal of beaver dams, the trapper should be consulted before anything is done.

### **Roddy Blackjack**

- Posed a question regarding the levels of protection on Category 1 and Category 2 land. Albert Peter offered the explanation that Category 1 traplines are allocated by First Nations. These Category 1 traplines were intended to be maintained as First Nations' traplines. Category 2 traplines are administered by the regional Renewable Resources Council and can be held by First Nation or non-First Nation people.
- Trapping is part of a harvesting lifestyle based on traditional knowledge. Traditional knowledge provides all you need to know on the trapline. It should be involved in every decision.
- Squirrels, lynx, and marten need trees.

"YTG (Yukon Territorial Government) should be involved right here to hear us. I disagree with YTG not being here. We need other levels of government to respect each other for future generations. We're talking about the future."

- There aren't enough elders present at the meeting to provide enough traditional knowledge.
- In 1946, the federal government issued the first traplines. Before that, First Nations people felt entitled to go wherever they chose to trap.
- Presently, any trappers' compensation paid out is insufficient.
- Trappers receive insufficient notification about development permits.
- On one hand is traditional knowledge, "my grandfather's law", and on the other is "the whiteman's law" which "stops us from practicing the traditional knowledge of my grandfather".
- More funding should be put toward supporting the fur business so young people can grow up on the land again.
- Traditional knowledge should be used regarding issues of timber harvesting, fishing and hunting. It gives guidance about habitat and where people should and should not do certain things. Traditional knowledge should be used to guide future activities and governments need to understand how First Nations use the land.
- Campers who are camping in areas without permission are pushing squirrels, marten, and lynx away from traplines.
- Contamination in Fish Lake is a concern. Fish there are dying off.
- There are impacts from fly-in fishing operations and catch and release fishing methods. There is a fly-in fishing operation that uses six to eight lakes in the region.
- There is a concern guided by traditional knowledge about how the land, water and animals are treated.

- The leg-hold trap used for marten, lynx, wolverine, and wolf were banned without first consulting First Nations who were trained to use that kind of trap. The government listened to animal welfare groups but didn't consult First Nations about it. This harmed trappers who had difficulty getting used to the conibear trap. Trappers should be consulted before laws like the ban of the leg-hold trap are passed.
- Posed a question about James Bay trappers' assistance and why that wasn't done in the Yukon. Lindsay Staples responded describing the income support program or harvester support program in which Hydro Quebec gave money directly to trapping families for 20 years to compensate them for damages and displacement of traplines due to hydro projects. UFA Chapter 16 examines the feasibility of a Harvester Support Program. The Council for Yukon Indians did a study five or six years ago to address issues surrounding a support program in the communities. The study is now sitting with the Council for Yukon First Nations. Funding such a program requires a large investment that grows over time. A support program is different from a compensation process.
- The impacts of past activities such as putting roads, power lines and airports over traplines need to be examined. Trappers were not informed nor compensated.

### **Billy Peter Johnnie**

- There should be more elders and YTG present.
- Fur populations and prices have declined. The price paid for a lynx is \$27. That is barely sustainable.
- Trappers were promised compensation when the Whitehorse-Aishihik-Faro power line was built but no compensation was ever received.
- Free ranging horses disturb traplines and contaminate water.
- When the Yukon Quest was routed through a trapline, the non-First Nation trapper who owned it was compensated. First Nations members were not.
- There's not enough communication with trappers.
- The trapping lifestyle is the lifestyle [First Nation trappers] choose.
- Traditional knowledge law tells us that cremated human remains should be kept in a glass container or buried in the ground. At Tatchun Creek, cremated ashes were spread around. "It's like breaking an arrow." Traditional knowledge laws have also been broken on the Freegold Road.

"We want to be able to trap squirrel, rabbit. We don't know how young people will make a living."

### **Sylvia Neschokat**

- YTG wanted a definition of the process regarding clause 16.11.13 before it participated in the discussions about implementation.
- If First Nations want to discuss the process first before it's written down, they may have to relay that to other governments.
- Governments don't yet have a final view about what clause 16.11.13 means. The meetings with FNs, RRCs and trapper workshops are intended to provide Government with an indication of their concerns, prior to developing the process required under 16.11.13.

### **Clyde Blackjack**

- There have been discussions by the Yukon Fish and Wildlife Management Board on the Yukon Wildlife Act but it's unclear where they're headed because they are dealing with an old policy.
- Joe Johnson's [of Kluane First Nation] concerns brought to the Yukon Government always come back with the same answer. The prices of furs are added up but the loss of land through, for example, agricultural and grazing leases, is not accounted for.
- With grazing leases, the leaseholder does not own the land but is allowed to fence areas restricting hunting and skidoo access. Trappers and hunters can't trespass on the lease and must cut a different trail around these areas with long-standing 20 to 30-year leases. A trapline owner may die before the end of a grazing lease causing the loss of the trapper's area within the lease.
- Timber cutting impacts on "white moss" which caribou depend on. "White moss" takes 300 years to grow back.
- First Nation and non-First Nation developments with impacts on traplines should pay compensation. For example, when the Little Salmon-Carmacks First Nation did timber cutting on Johnny Sam's trapline, the trapper was compensated.
- Land selections can have a negative effect on trappers.
- Habitat, not just wildlife, should be a concept considered when assessing the impacts on trappers. Lindsay Staples described the notion of trapper's habitat or Northern Tutchone habitat. People are part of the environment and this includes not only the trapline but also the range of activities on the land.
- When a food source is eliminated (e.g. when a fish stock is wiped out) due to development activities, the trapper needs to be compensated to purchase their own food.
- The First Nation needs to agree with size limitation fishing restrictions to bring a fish stock back. Some fish are 15 to 16 years old before they can spawn.

### **Sylvia Neschokat**

- Land selections are not development activities within the meaning of UFA 16.11.13. Land selections don't have an impact on the land, development activities do.

**Mike Draper**

- Compensation is considered the last-ditch effort to deal with a trapper's concerns.
- Better communication between the landowner or manager and the trapper in advance of a land use permit being issued or development occurring is preferable.

**Bessie Blackjack**

- "Doe Hoo Le" (*spelling is likely incorrect*) are the **laws that must not be broken** based on the traditional knowledge laws used for thousands of years.
- Cremation remains spread on a trapline is breaking the "Doe Hoo Le". There is only one place where cremation should occur. The remains should be put in a birch basket under a tree and a necklace of the deceased is hung in the tree with feathers. The remains are always put in one place on a sacred hill. This ceremony keeps the land the same. This law has been forgotten; there is disrespect for the land and water. Sport fishing at Tatchun Creek has occurred which shamed the land and now there's no fish coming up the creek.
- You can't repair the land with dollars. It is never the same again. It is lost forever.

**Rosie Tom**

- Fish and wildlife are diseased because of the way they are treated, for example, given needles. This disease is passed from animals to humans.

**Albert Peter**

- "Doe Hoo Le" includes respect for animals. You don't play around with your food. It's very important to look after the land and the animals. Traditional knowledge is based on our relationship to the land. It tells us where to go at what time of year for harvesting and what to harvest.

**Joe Bellmore**

- The Little Salmon-Carmacks First Nation procedure for handling permit applications involves determining who is affected first and taking permit applications to the trapper.
- Improved communication between land managers regarding the review process is needed.
- Trappers should receive benefits for land lost to development.

**Lindsay Staples** (summarizing)

- There needs to be greater recognition and use of traditional knowledge. Part of that involves talking to trapline holders.
- Impacts of development on trappers and the land need to be worked into the terms and conditions of development agreements.
- Problems need to be worked through early on before they're sitting in everyone's lap.
- Who can represent the trapper when they are in the bush? Can the First Nation's Lands Department represent them?

"From the trapper's perspective, the harvest of wildlife is very dependent on the health of habitat and wildlife."

- There is a conflict between traditional knowledge laws which include habitat and wildlife and the laws of the state which only deal with the trapper's right to harvest furbearers. State law operates very differently from the traditional knowledge laws that First Nations trappers follow.

**Sylvia Neschokat**

- First Nation final agreements speak to furbearer harvesting. All parties agreed to this.

**Joe Bellmore**

- DIAND Resource Management Officers and First Nations Lands Departments are operating from a different perspective.
- In Carmacks, it is helpful that the Resource Management Officer does joint inspections with the First Nation.

**Lindsay Staples** (summarizing)

- Governments need to resolve issues outside of or not directly related to the wording of 16.11.13. There's a difference between "what's inside the box" with the meaning of 16.11.13 and what is not.

**Johnny Sam**

- What is the option for a development permit that is a "no go"? Albert Peter responded: Time frames are required by regulations and help to address a "no go" permit application.

**Mike Draper**

- There should be a process to involve trappers before an application goes through the formal Development Assessment Process or to the Yukon Development Assessment Board.

**Lindsay Staples**

- The Inuvialuit Final Agreement requires that an environmental screening committee develop operating procedures. The operating procedures now developed require a proponent to meet with the local Hunters and Trappers Committee and the community before a proposal is submitted and before the clock has begun to tick with a review process. Once an application has been submitted, these groups have an opportunity to comment again.

**Roddy Blackjack**

- Compensation should be provided before development goes ahead. This would ensure the trapper is notified before a review or development process proceeds, and before a process is underway requiring the trapper's time.

## COMPENSATION ISSUES IDENTIFIED

- Hunters create competition for trappers.
- The full value of traplines and trapping should be recognized.
- The developer or proponent has the first impact on the land and has responsibilities for compensation.
- Trappers should be able to receive benefits for land lost.
- Trapline relocation is difficult because the wildlife and habitat along a trapline become well-known to a trapper. The remedy of picking up and moving to another area is unsatisfactory.
- Resource roads can hide or wipe out traditional trails that wildlife use and can drive wildlife away.
- Trappers are not included in communications about wildlife management and development activities. Trappers are not consulted when development decisions are made.
- Improved communication is needed between land managers, and during the review process.
- Traditional knowledge should be used in development decisions.
- YTG should participate in this process. Respect between governments requires YTG participation.
- Elders' knowledge should be used and understood in looking at how traplines and trappers are affected.
- Respecting and recognizing traditional knowledge is critical. It is tied to recognizing First Nation traditional law.
- Many trappers' issues are the result of conflicts between First Nation traditional laws and federal/territorial laws. Traditional knowledge laws were not written down in law so are not considered in the Yukon Wildlife Act and in wildlife management.
- There is a history of state government laws dominating First Nation laws.
- The value of traplines and the future of trapping should be understood and discussed by the three levels of government.
- Elders must be fully involved. The involvement of elders is important because they have a great body of traditional knowledge.
- Something is needed to replace the low value of fur. People have lived on traplines all their lives. It is difficult for trappers and their families to make a living.
- Furbearer populations have declined, fur prices have declined and there is no support from government for trappers.
- Cash income has declined making it difficult to stay on the trapline.
- Free ranging horses disturb traps and wildlife.
- More cooperation is needed amongst resource managers and governments. The role of First Nations needs to be clarified.
- The interests of the three levels of government should be balanced.
- Conflicts between Final Agreements and the Yukon Wildlife Act should be addressed by working together.

- Animal welfare groups have affected trappers' livelihoods, fur prices, and trapping techniques with the ban of leg-hold traps. These groups have successfully pushed government to pass laws that harm trappers. These people don't understand trappers. Many trappers do not know how to use the new ("humane") conibear traps. Conibear traps are difficult to become comfortable with and use.
- Fenced land leases limit or completely block access for trappers. Grazing leases can have a 20 to 30-year impact on traplines. Fencing disrupts trapper trails, access to trapper trails, and wildlife movement. The issue of grazing leases should be dealt with locally.
- Timber harvesting has a negative impact on "white moss" that caribou depend on.
- By allowing some developments, First Nation governments also negatively affect trappers. Some First Nation governments may also have to pay compensation for activities they have carried out such as timber cutting.
- Site selections can negatively affect trappers when buildings are constructed. Site selections have had negative impacts on trappers including First Nations site selections.
- There is a failed promise to compensate trappers when the Whitehorse-Aishihik-Faro power line was built.
- There are impacts from fly-in fishing.
- Impacts on habitat impact trappers. "We [humans] are part of the land."
- Trapping is part of a harvesting lifestyle based on traditional knowledge.
- Governments need to understand how First Nations people use the land.
- "Doe Hoo Le" (*spelling likely incorrect*) are laws that must not be broken. This is part of the importance of traditional knowledge and includes respect for the land and animals, and the importance of old stories which provide knowledge and guidance.
- Why don't Yukon trappers get trappers assistance (e.g. James Bay)?
- Compensation issues related to past activities (e.g. power line, roads, airport) should be looked at.
- What is on the list of resource development activities?
- How does the permit application process and trappers compensation relate to the Development Assessment Process?

## OTHER CONSIDERATIONS

- The mandate for UFA 16.11.13 specifies three components: resource development activities, identifying who pays compensation, and it applies to Yukon Indian People who hold traplines. Other considerations not specified by UFA 16.11.13 are:
  - improved communication between parties
  - First Nation government activities
  - activities not within the strict definition of resource development activities such as recreational and sport activities including snowmachine travel and dog sledding. The issue raised about trappers compensation due to the Yukon Quest Dog Sled Race route is an issue that needs direction.
  - How are issues involving other trappers who are not "Yukon Indian People who hold traplines" such as non-native trappers' assistants considered?
  - First Nation law
  - How is a First Nation without a land claim agreement considered?
  - Does UFA 16.11.13 apply to all land, Crown land, or only settlement land? There are differing views on this issue.

## **IV Principles and Interests to Build a Compensation Process on**

### **HOW A DEVELOPMENT PERMIT PROCESS COULD WORK**

1. It's best for a proponent to talk to the trapper before proceeding with a permit application.
2. When the application is assessed, communication should commence with the trapping rights holder, the First Nation and the community.
3. If there are negative effects as a result of an application approval for the trapper, then there are three considerations: compensation, mitigation, and dispute resolution.
4. With any of these three outcomes, they must be included in the terms and conditions of a permit if and when it is issued.
5. When the monitoring and enforcement of a permit is underway, compensation for unforeseen events may be required.

### **OUTCOMES OF THE DEVELOPMENT PERMIT REVIEW PROCESS**

- Mitigative measures
- Compensation component
- Consultation process detailed
- A permit with terms and conditions
- No permit

### **WHO SHOULD BE INVOLVED IN THE APPLICATION REVIEW AND DECISION-MAKING PROCESS**

- The three governments including the First Nation, the Government of Canada, and the Yukon Territorial Government.
- Trapper
- Proponent
- Renewable Resources Council
- Resource Management Officer
- First Nation Resource Officer

## KEY PARTS OF A COMPENSATION PROCESS

- Good communication is required including good communication between governments, and good communication between regulators and trappers.
- Regulators and managers should work closely together.
- Trappers should be notified up front of intentions to develop and development applications.
- Proponents should meet with the community first.
- Traditional knowledge should be incorporated into land management and permit assessment.
- The process should be fair and simple. Trappers should know who to go to with a concern.
- The trapping lifestyle includes broad traditional values not just economics. No amount of money can address those kinds of principles.
- Compensation agreements should be reached before development occurs.
- The actors should be clearly identified (e.g. trapper, developer, regulator)
- The timeframe should be clearly identified.
- Who is responsible for compensation should be clearly identified.
- The significance of the land, including sacred places, to the trapper and the whole community should be recognized.

## **V Next Steps**

There will be more meetings in the coming weeks regarding implementation of UFA 16.11.13 held with First Nations throughout the territory including First Nations without Final Agreements.

A report on the meetings will be distributed later this fall.

Acknowledging that there is not yet agreement from the Yukon Territorial Government on this process, governments will develop a document containing ideas and options for a process for implementation of UFA 16.11.13. The goal for distribution of that document is next spring.



**Teslin Tlingit Council  
Trappers Compensation Workshop:  
Implementation of UFA 16.11.13**

Teslin, Yukon

October 11, 2000

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**Prepared by:**  
NorthWest Resources Consulting Group  
65 Logan Road  
Whitehorse, Yukon  
Y1A 3T2

**Teslin Tlingit Council Trappers Compensation Workshop:  
Implementation of UFA 16.11.13**

**Teslin, Yukon  
7:00 p.m. to 9:40 p.m.  
Wednesday, October 11, 2000**

**Workshop Report**

**Participants:**

Lindsay Staples	Consultant
Albert Peter	Contractor
Sylvia Neschokat	DIAND, Renewable Resources, Land Claims Implementation Advisor
Mike Draper	DIAND, Renewable Resources, Land Resources
Laurel Jenkins	Rapporteur
Sandy Smarch	Trapper, Teslin Renewable Resources Council Vice- Chair
Mike Gergel	Trapper
Doug Smarch	Trapper
Juanita Sydney	Teslin Tlingit Council Fish and Wildlife Officer
Mary Rose Sydney	Trapper
George Sidney	Trapper
Harry Morris	Trapper
John Dewhurst	Trapper
Vines Geddes	Trapper
William Smarch	Trapper

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*This report is a compilation of comments made by various individuals at the workshop. Statements do not reflect a consensus view, unless specifically referenced as such. It does not verify the accuracy of individual statements.*

# I **Agenda**

1. Introduction
  - The Workshop
  - The Process
  - UFA Chapter 16, Fish and Wildlife, 16.11.13 Compensation
  - Background on Issues Heard at Previous Meetings
2. Compensation Issues
3. Principles/Interests to Build a Compensation Process On
4. Next Steps

## II Introduction: The Workshop Purpose

The workshop held in Teslin on October 11, 2000 relates to the Yukon Umbrella Final Agreement and the Teslin Tlingit Council Final Agreement, Chapter 16.11.13 that states the following:

Yukon Indian People holding traplines whose Furbearer Harvesting opportunities will be diminished due to other resource development activities shall be compensated. Government shall establish a process following the Effective Date of the Yukon First Nation's Final Agreement for compensation, including designation of the Persons responsible for compensation.

The purpose of the workshop was to provide information, identify issues and identify what trappers' compensation should like. Workshop information will aid in developing a process for implementation of 16.11.13.

The workshop conducted by facilitators Lindsay Staples and Albert Peter was done for the Lands and Resources Department of the Teslin Tlingit Council and supported by the Department of Indian Affairs and Northern Development, Yukon Region, Renewable Resources Directorate. Workshop proceedings are the property of the Teslin Tlingit Council.

The meeting in Teslin was the second held to speak directly with trappers and identify their concerns. The meeting was held at the request of Teslin Tlingit Council. Previous meetings have been held with Little Salmon-Carmacks trappers, First Nation governments with signed land claim agreements, and with Renewable Resources Councils. In August, a meeting was held with staff in the Lands Department of the Teslin Tlingit Council.

Follow-up meetings are planned with Renewable Resources Councils, First Nations without Final Agreements and other stakeholders.

Workshop participants were asked to identify their concerns, provide examples of their experience with development and compensation-related issues and give input on what they think should go into a trappers compensation regime.

Questions posed for consideration were:

- How important is trapping to you and your family today?
- Why do you think trapping needs to be protected?
- When should compensation be provided and what form should it take?

## **BACKGROUND ON ISSUES HEARD AT PREVIOUS MEETINGS**

Some questions for these workshops are determining what protection from negative impacts trappers are looking for and what is meant by “compensation.”

### **Albert Peter**

- The 16.11.13 provision refers only to "Yukon Indian People holding traplines" but we've heard some comments that the process should be opened up to all people holding traplines. Some people don't want to see a line drawn between people in the community.
- Compensation doesn't necessarily have to be in the form of cash. It could be in the form of logs for a cabin on the trapline or a fuel supply.
- There has been much discussion about whether there should be flexibility in how cash compensation is determined. For example, a good lynx trapline should be compensated fully.
- Trappers should be involved at the front end of the development permitting process to assist in preventing damage or determining mitigation. Trappers want a say about the development activity before a permit is issued and before work starts.
- There is a question about what falls under the definition of resource development activities in 16.11.13.
- There are questions relating to how 16.11.13 will apply on different land bases. For example, on Category B land, the First Nation owns the land but the federal government issues mining permits on that land. The territorial government owns a small land base but is responsible for fish and wildlife issues and certain types of development activities, such as agriculture and rural residential.
- There are examples of voluntary agreements signed between proponents and trappers including a Mayo area trapper who signed an agreement with the Dublin Gulch mine owners and a Dawson area trapper who signed an agreement with Loki Gold.

### **DIAND**

- First Nations and the Yukon Fish and Wildlife Management Board have written to the federal minister asking about progress on implementing 16.11.13.
- In 1998, DIAND contracted the Canadian Institute for Resources Law to produce three reports describing compensation issues in the Yukon and other compensation regimes in Canada. They were sent to Yukon First Nations and Renewable Resources Councils last December (1999).
- The Regional Director General of the Department of Indian Affairs and Northern Development (DIAND) instructed DIAND staff to initiate discussions with First Nations and RRCs on what a compensation regime in the Yukon might look like. These are not to be considered as formal consultation.
- DIAND has held preliminary meetings with the Yukon government (YTG) about the process of implementing 16.11.13.
- DIAND's job is to implement the 16.11.13 provision and will include determining how Yukon First Nations, RRCs and YTG understand this obligation.

### III Compensation Issues

There have been damages to Furbearer Harvesting opportunities as a result of resource development activities such as agricultural development, mining roads, pipelines, and forestry. The Teslin Tlingit Council Final Agreement 16.11.13 allows for compensation to Yukon Indians holding traplines who have experienced a decrease in their opportunity to harvest fur.

#### ISSUES AND CONCERNS EXPRESSED BY PARTICIPANTS

##### Sandy Smarch

- There's an atmosphere of mistrust (between trappers and the federal and territorial governments).
- Trappers need to be listened to. Trappers should be involved by talking to them first and throughout the meetings.

##### DIAND

- With respect to our efforts to hear trappers' concerns: We will meet with Champagne and Aishihik trappers in November and where it's been asked for by the First Nation we are holding meetings with trappers.
- Government can't come out with a product (i.e. draft process) until DIAND has completed discussions with YTG about what Government understands the meaning of the provision to be. We understand YTG would like DIAND to more clearly define the parameters of the provision before discussions with the public take place. DIAND has a slightly different approach. We are interested in hearing concerns now and work with YTG to develop a process for 16.11.13 based on public input. DIAND feels there is a better chance of making 16.11.13 work, if a process is implemented which is practical, accessible and clear to resources users on the ground.

##### Lindsay Staples

- The provision must respond practically to the interests of trappers. A Teslin Tlingit Council Lands Department staff person suggested DIAND should talk directly to people who work in the bush. The federal and territorial governments are to establish a process. To be effective, it has to involve First Nations and trappers.
- Tonight's meeting is your meeting. This is the meeting for trappers to speak.

##### Mike Gergel

- How long will this process take?

**Lindsay Staples**

- It may take about two years before we there is a process that will work across the Yukon. We have heard from people that there may be a need for some flexibility for different needs in different communities.

**Sandy Smarch**

- There's a three-day Renewable Resources Council (RRC) annual general meeting in Dawson City in late November, 2000. That would be a good opportunity to involve RRC's in the 16.11.13 implementation process.

**DIAND**

- Compensation could be considered the result of a failure of rights or a failure of dialogue to reach an agreement on the successful and effective management of negative impacts from resource development. In addition to considering compensation, DIAND recognizes we may also need to examine how Northern Affairs, and possibly YTG, could work better to incorporate trappers' concerns into the permitting process.
- How can we improve communications?
- How can we improve mitigation of an activity on the land and on the trapper?
- How can we deal with trappers' concerns before a situation reaches the compensation stage?

**Doug Smarch**

- There are concerns about national park compensation.

**Lindsay Staples**

- In northern Yukon national parks, aboriginal hunting and trapping rights are protected.

**DIAND**

- We understand that Parks Canada has grandfathered Yukon First Nations' hunting and trapping rights in national parks.

**Sandy Smarch**

- I had a good year last year including 160 marten, 17 lynx, and two wolves. How can a trapper be compensated for that?

### **Lindsay Staples**

- At minimum, you should know where you stand in black and white terms.

### **Sandy Smarch**

- Someone in Parks Canada said there's a possibility our trapping rights could be pulled away from you.

### **Lindsay Staples**

- That view is not consistent with the practice in Vuntut National Park and Ivvavik National Park or Kluane.
- Some people have said that cash compensation is not sufficient or too restrictive. In Pelly Crossing, it was suggested that some trappers may want logs in exchange for supporting logging rights on their traplines.
- Some people have said that through better involvement and discussion with the trapper at the outset of a development proposal, terms and conditions could be provided to better prevent negative effects on trappers from developments.

### **Mike Gergel**

- There has been damage to trappers because of lobby groups worldwide but there has been no assistance or compensation for that.

### **Sandy Smarch**

- Governments should recognize that we have registered traplines here. They are five-year concession licences plus a licence to harvest furbearers.
- There's a lack of recognition from government for trappers' rights.

### **Doug Smarch**

- The trapper is asked after development takes place if development is okay. It should be put on paper that to go on a trapline requires permission from the trapper first. No one should be allowed on a trapline until they get the trapper's permission first. Developers must contact trappers before the development occurs, not after.
- Developing trails is hard work and trails should be protected.
- There are many burdens on trappers including gas taxes and low fur prices but there's no monetary support for trappers. This year, with the price of gas, no one will trap.
- There's a road tax paid on traplines but there's too much paperwork to get it waived.

### **Lindsay Staples**

- If a trapper is not actively trapping, what does it take for the trapline to be in good standing? What traplines qualify for compensation?

**Sandy Smarch**

- Consider how far it is to the trapline, the cost of gas, and that it costs the trapper a lot of money to be there.

**Lindsay Staples**

- Trapper support is a different issue than lost trapping opportunities; it is the diminishment of trapping opportunities that result from resource development activities that the provision in the Final Agreement is attempting to address.

**DIAND**

- Government is restricted to talking about those resource development activities that are tied to the issuance of rights.

**Juanita Sydney**

- For something like placer claims on Red River or Caribou Creek, perhaps a letter of consent from the trapper should be required for that development.

**DIAND**

- There are some activities (e.g. staking a claim) where consultation is not required. Land use related to a placer claim does require consultation. DIAND is looking for ideas and suggestions on ways to further enhance the process on issues we do consultation on. It's been suggested by some that we can do a better job of listening to and addressing trappers' concerns at the front-end. Concerns are too often left to the back-end of development activities. We will also be recommending that DIAND look at ways we can do a better job as rights issuers at the front-end. We are discussing the concerns that have been raised by trappers with our colleagues in mining, forestry and land use.

**DIAND**

- It's been suggested by some that we can do a better job of listening to, and addressing trappers concerns on the front end. Concerns are too often shoved to the back end of development activities. When we go forward on this, we're looking at ways we can do a better job as rights issuers at the front end. We'll take those concerns to mining, forestry, and land use rights issuers.

**Juanita Sydney**

- Trappers want more recognition as land users. When there's mining or road permits, trappers are not given notification. It's a big problem. Trappers should be treated like the First Nation is.

### **Doug Smarch**

- A trapper should be notified six to seven months before a proponent goes into a trapping area. That gives the trapper and the developer time to plan.
- When certain critical habitat areas, where there's a concentration of animals, are damaged, there's nothing to trap in the surrounding area.
- It's my way of life to watch animals. I watch how long they stand there. I watch how long they feed. If you destroy the habitat of marten, they're not gone for one year, they're gone for 10 years. You can only take so much out of an area even when there's a heavy concentration of animals in one area.
- The length of time furbearers are affected by development varies from species to species.

### **Lindsay Staples**

- A key ingredient in any process is addressing the problem. With a cash-only solution, determining how much cash is adequate can be a difficult problem. Some trappers are not interested in a cash solution. They have suggested that a formula based on the last three years of fur sales may not reflect the reality of wildlife cycles and low fur prices. How can we come up with something that's workable for a trapper and other resource users?

### **DIAND**

- Clear guidelines and some flexibility in determining types of compensation may be useful in establishing a workable process.
- Governments will want to know clearly what compensation means and what their obligations vis a vis chapter 16.11.13 are. It has been suggested by First Nations trappers that there are components of lifestyle and aboriginal rights to consider. Individual situations vary so much from trapline to trapline that flexibility may be required for a trapper and proponent to come to an agreement that suits their situation.

### **Sandy Smarch**

- A road could be beneficial to a trapper depending on where it's put. It may replace the need to cut trails if it's located in the right place. However, a logger likes to cut big trees and marten habitat is in big trees so it's a Catch 22 situation.
- Loggers' fees should include trappers compensation. However, a small logging operation owner is often not able to provide compensation.
- The value of compensation will vary depending on the value of the opportunity that is lost.
- "For me, trapping is a hobby like some people go skiing. It's my hobby."

**DIAND**

- Situations arise where parties will not be able to reach agreement. The 16.11.13 provision does not include direction on how to deal with disputes. This will need to be addressed.
- Trapping rights do not convey land tenure rights.

**Lindsay Staples**

- If you've got a dispute, who can help sort it out? The trapper may want someone to represent them in developing an agreement.

**Doug Smarch**

- Clearcut logging takes away habitat of marten, lynx, and wolverines. When they move, they're absolutely gone. I've heard some big mining outfits say they can go into a place and leave it looking identical to what it was before. They can't. The animals are gone.
- Caribou habitat takes 40 years to recover.
- When you're looking for compensation, you're finished before you even start. Trappers should be able to tell the proponent where they can and can not go.

**DIAND**

- Trapping rights are not the same as land ownership.

**Mary Rose Sydney**

- A "cat" was left behind at Wolf Lake and there's also an abandoned camp there.
- There are a lot of people who would prefer to be out on the land but they can't afford it. "Wolf Lake is my home. I'd rather be out there than here. You can't put a value on that. Nothing can replace that. Elders were raised out there."

**Juanita Sydney**

- There's an issue in Teslin of a non-First Nation person on a group-held trapline. There are eight trapline holders in this area and two of the eight are non-First Nation.
- There are some examples of trappers who have already developed agreements and compensation arrangements with proponents. Until a compensation process in 16.11.13 is implemented, we need to make sure "Yukon Indian People" have a good process.

### Albert Peter

- RRC's, First Nations and the Yukon Fish and Wildlife Management Board can write to governments about issues surrounding the provision they think should be considered.

### DIAND

- We have heard concerns expressed that 16.11.13 shouldn't be burdened with additional provisions causing time delays. Some people have said the initial process should focus on "Yukon Indian People" and that "Yukon Indian People" shouldn't be penalized by delaying implementation in order to bring non-First Nation trapline holders into the 16.11.13 process.

## **ISSUES IDENTIFIED**

- Trappers should have a say in the design of the 16.11.13 process.
- Efforts should be directed to improving the trapper's voice in influencing development decisions.
- The rights of the trapper must be recognized and given full standing.
- There is a lack of recognition from government for trappers' rights especially in comparison with the rights of other resource users.
- Developers should contact trappers before the development occurs - not afterwards.
- Trappers not being notified about development activities that affect them is a big problem.
- There is uncertainty around trapping rights in the proposed national park at Wolf Lake.
- Developing trapping trails is hard work. Trails should be protected. It needs to be well understood that investment in the area goes beyond the cash value of what a building is worth.
- There are many burdens on trappers including the tax on gas, low fur prices, and no trapper support programs.
- People should require a trapper's permission before going on to a traplines (trails, etc.)
- Trappers should be notified six to seven months prior to a development. This gives the trapper and the developer time and flexibility to plan, mitigate to benefit trappers (for example, roads), and reach compensation agreements.
- The length of time furbearers are affected by development varies from species to species. For example, marten recovery can take a decade. The impacts can also vary.
- The value of compensation will vary depending on the value of the opportunity that is lost.
- Trapping rights are not land ownership rights.
- There are long-term impacts from logging clearcuts.
- A "cat" at Wolf Lake has been left behind.

- Abandoned resource development camps are a problem.
- It's not possible to determine the cash value of a lifestyle.
- The initial process should be focused on the obligation to "Yukon Indian People" and possibly phase-in others later.
- The 16.11.13 process should be developed sooner rather than later.
- Some trappers have already developed compensation arrangements with developers.

## OTHER CONSIDERATIONS

- **Albert Peter** flagged some other issues that have been raised by other First Nations trappers:
- The mandate for the Ch. 16.11.13 provision in the First Nation Final Agreements specifies three components: resource development activities, identifying who pays compensation, and it applies to Yukon Indian People who hold traplines. Other considerations not specified by 16.11.13 are:
  - Improved communication between parties
  - First Nation government activities
  - Activities not within the strict definition of resource development activities (e.g. recreational and sport activities, including snow machine travel and dog sledding. The issue raised about trappers compensation due to the Yukon Quest Dog Sled Race route is an issue that needs clarification.
  - How will issues involving other trappers who are not "Yukon Indian People who hold traplines" and non-native trappers' assistants be considered?
  - Does UFA 16.11.13 apply to all land, Crown land, or only settlement land? There are differing views on this issue.

## **IV Principles and Interests to Build a Compensation Process on**

Not discussed, but these should be informed by the issues that were raised by Teslin Tlingit trappers. Improved recognition and notification of and communications with trappers are key interests that were noted by workshop participants.

## **V Next Steps**

DIAND will be holding more meetings in the coming weeks regarding implementation of Ch. 16.11.13 with First Nations and RRCs First Nations without Final Agreements will also be included.

A report on the meetings will be distributed.

Acknowledging that there is not yet agreement from the Yukon Territorial Government on this process, both governments will need to work together to develop a document containing ideas and options for a process for implementation of Ch. 16.11.13. The goal for distribution of that document is Summer 2001.

**Champagne and Aishihik First Nations  
Trappers Compensation Workshop:  
Implementation of UFA 16.11.13**

Haines Junction, Yukon

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***December 4, 2000***

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**Prepared by:**  
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**Champagne-Aishihik First Nation Trappers Compensation Workshop:  
Implementation of UFA 16.11.13**

**Haines Junction, Yukon  
1:00 pm – 7:00 pm  
Monday, December 4, 2000**

**Workshop Report**

**Participants:**

Micheal Jim	CAFN Renewable Resources
Sue Van Bibber	Champagne, Trapline Holder
Alex Van Bibber	Champagne, Trapline Holder and Yukon Trappers Association
Harry Smith	CAFN Renewable Resources
Rachel Thompson	Champagne, Trapline holder
Stan Thompson	Champagne, Trapper
Thomas Joe	Haines Junction, Trapline holder
Agnes MacDonald	Haines Junction, Trapline holder
Sadie Brown	Haines Junction, Trapline holder
John Brown	Haines Junction, Trapline holder
Moose Jackson	Haines Junction, Trapline holder
Michael Draper	Lands Specialist, Land Resources, DIAND
Sylvia Neschokat	DIAND, Renewable Resources Directorate, Land Claims Implementation Advisor, DIAND
George Washington	Haines Junction, Trapline holder
Chuck Hume	Canyon, Trapline holder and Councillor, CAFN
Rosalie Washington	Haines Junction, Trapline holder
Marge Jackson	Haines Junction, Trapline holder
Rita Joe	Haines Junction, Trapper
Kathleen Van Bibber	Champagne and Councillor, CAFN
Jim Sutton	Haines Junction
George Darbyshire	Whitehorse, Trapline holder and Yukon Trappers Association
James Allen	Canyon, Trapline holder
Barb Allen	Canyon
John Kushniruk	Whitehorse, Trapline holder
Jackie Jackson	Haines Junction
Barb Hume	Canyon, Trapline holder
Suzie Hume	Canyon
Frances Joe	Haines Junction, Trapline holder
Rose Kushniruk	CAFN Lands
Lawrence Joe	CAFN Lands and Resources
Lindsay Staples	Consultant
Susie Ross	Rapporteur

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*This report is a compilation of comments made by various individuals at the workshop. Statements do not reflect a consensus view, unless specifically referenced as such.*

# I **Agenda**

1. Introduction
  - The Workshop
  - The Process
  - UFA Chapter 16, Fish and Wildlife, 16.11.13 Compensation
2. Compensation Issues
3. Principles/Interests to Build a Compensation Process On
4. Next Steps



## II Introduction: The Workshop Purpose

The workshop held in Haines Junction on December 4, 2000 relates to the Yukon Umbrella Final Agreement and the Champagne and Aishihik First Nations Final Agreement, Chapter 16.11.13 which states the following:

Yukon Indian people holding traplines whose Furbearer Harvesting opportunities will be diminished due to other resource development activities shall be compensated. Government shall establish a process following the Effective Date of the Yukon First Nation's Final Agreement for compensation including designation of the persons responsible for compensation.

The purpose of the workshop was to provide information, identify issues and identify what trappers' compensation should look like. Workshop information will aid in developing a process for implementation of 16.11.13.

The workshop conducted by facilitator Lindsay Staples was conducted for the Champagne and Aishihik First Nations and supported by the Department of Indian Affairs and Northern Development, Renewable Resources, Yukon Region. Workshop proceedings are the property of Champagne-Aishihik First Nation.

The meeting in Haines Junction was held at the request of the Champagne and Aishihik First Nations who requested that Government speak directly with trappers to identify their concerns. Previous meetings have been held with First Nation governments with signed land claim agreements and with Renewable Resources Councils.

Workshop participants were asked to identify their concerns, provide issues from their experience that may relate to compensation, and provide input on what they think should go into a trappers compensation regime.

Questions posed for consideration were:

- What is compensation?
- Who is affected by this clause (16.11.13)?
- What are the basic features you want to see in a compensation process?

## II Compensation Issues

There have been impacts to furbearer harvesting opportunities as a result of resource development activities such as agricultural development, mining, roads, pipelines, and forestry. Champagne and Aishihik First Nations Final Agreement 16.11.13 allows for compensation to Yukon Indians holding traplines who have experienced a decrease in their opportunity to harvest fur.

### Compensation Overview

#### Lindsay Staples

- Final Agreement- consider what it actually says about compensation.
  - 16.11.13 “Government” refers to Yukon & Canada.
  - 5 years since “Effective Date” of Umbrella Final Agreement (UFA).
  - Who is responsible for paying compensation?
- Who is affected by this clause ?
  - Yukon Indian people holding traplines.
  - Champagne-Aishihik people with traplines or on a group line.
- What does “harvesting is diminished” mean?
  - when harvest has gone down as a result of damages to habitat.
  - wildlife pushed away or directly affected,
  - or, reduction in trapped furbearer populations.
- What do we mean by compensation?
  - a process that does something for people who’ve been negatively affected by resource development.
  - “fixing” or trying to make things right; trying to fix situation you’ve been hurt by (e.g. a road into valley may bring vehicle traffic and increased human activity: the trapper finds animals have moved somewhere else).
- Range of Options/Types of Compensation:
  - 1) Cash: pay trapper some money to repair situation:
    - government, companies have tried this.
    - how do you figure out how much to pay?
  - 2) Non-cash:
    - e.g. fuel as a form of compensation if trappers have further to travel the active part of their area.
    - e.g. timber and logs for cabin construction.

- e.g. road, equipment for trail improvement.
- Once damage is done, how do we bring habitat back, and how quickly?
  - e.g. what if habitat is destroyed by fire?
- When are Trappers Compensated?
  - UFA in 16.11.13 limits compensation to impacts from “resource development activities”
    - is forest fire a resource development activity?
    - are the impacts from a power line fire caused by power company lines covered for compensation?
  - Do negative impacts from the following activities qualify:
    - timber harvesting?
    - roads?
    - subdivisions?
    - farming?

## ISSUES AND CONCERNS EXPRESSED BY PARTICIPANTS

### Chuck Hume

- Power line fire, caused by the power company. Lost my whole trapline. No compensation, as power company had a “wall of lawyers”.
- Where do you go after big forest fire? An experienced trapper wouldn’t go in burnt area.
- The traplines were broken into smaller areas by RCMP in 1958. People were asked if the line was large enough to sustain their family.
- Measured traplines according to places people can travel. Many traplines now, over mountain peaks, into national park, roads as boundary.
- People from Dalton Post trapped into BC, boundaries and roads forced families to leave Dalton Post. Also, buffalo were imported, and are having an impact on muskrats, trails, etc.
- Bison scare people off.
- If you put in trail, bison use it to move around. Bison have diminished trapping areas almost to zero.
- National Parks
  - need to follow a system to enter park, snowmobiles, cut trail, etc.
  - biggest loss to trappers:
    - took over 1/2 line
    - never compensated
    - negotiated small chunk of land

“First thing we should look at is the reality of the trapline. The original question between

1956/58 from the RCMP was, “Is this enough to sustain your family?” Where does this question leave us today?

### **Rosalie Washington**

- Bison have chased people, been unpredictable, have driven off people in Aishihik who used to hunt recreationally.
- Bison eat muskrat food. At the inlet where the village is, fish spawn, the muskrats are gone, the beaver are gone, the water level is a problem (dam).
- Then the buffalo knock fences down, bison get into wolf snares.
- 105 permits to hunt bison every year.

### **Rachel Thompson**

- Bison on trapline.

### **Sue Van Bibber**

- Mendenhall subdivision concerns her. Now, wood permits are for anywhere, and they cut on others' traplines.
- Government is making money.
- Took 1/3 of Sue's trapline, another 1/3 is bald mountains. On map, it looks like big trapline.
- She's working with compensations board. Lawrence Joe and Elaine Chambers are still talking to compensation board.

### **Chuck Hume**

- Old horse and foot trails gone since buffalo arrived. They affect wildlife. Recently saw caribou for the first time in a while, but buffalo are all around. In Aishihik, they used to use dog teams for trapping, but can't do it now, buffalo will charge. We don't know the impact of bison in Yukon. There are lots of feces. The bison may have many more impacts than thought.
- My trapping line is diminished. Logging cuts into trails. We need a 3 year forestry plan to avoid the need to cut trail every day. Loggers get forestry permits, and do a clear-cut.
- You can't trap within one km radius of subdivisions. The redrawn boundaries include many areas that were not productive or good for trapping.
- Other concerns include home construction (single dwelling) and recreational activities such as commercial dog sledding.

### Lindsay Staples (summarizing)

- **Key Impact Issues**
  - Introduction of bison – made new trails, huge impact
  - Aishihik Dam
  - Fire
  - National Park restrictions
  - Logging (short term impacts)
  - Mendenhall subdivision
    - home construction, single dwellings
    - no trapping within 1km of subdivision
  - Woodcutting- all over the place
  - Recreational activities - commercial dog sledding
  - Trapline boundaries redrawn- include many areas that were not productive or good for trapping
  - Road impacts
  - Mining (Division Mountain)
  - Pipeline
  - Goat farm (farm animals)
  - Poorly planned tourism (lodge development)

## **How do trappers prove they've been hurt?**

### Chuck Hume

- Developers move you off your trapline trail, you have to move everything, cut new trail, then they use it again and it belongs to government. Snow machines and four-wheelers also use the traplines. When trappers are moved off their trails, they need to cut new ones. These open up new access for others.
- Used to get 30 lynx in winter, but now it's down to 2-3. With these numbers, it's not even feasible for trappers to pay for gas. Snow machine noise disturbs lynx.
- Need 2 months in the year that belong only to trapper, such as Jan/Feb. at Christmas time; there is too much competition for trails.
- When a trapper has to relocate, there is a need to prove the new area to see if it's any good for trapping. Building a new line takes time; you need to know where to build it.
- Originally when traplines were issued, they had to be sustainable. They no longer are.

### DIAND

- We recognize that there are many impacts on the traplines, but not all activities are covered by 16.11.13: for e.g. recreational activities.

## **DIAND**

- Issue of mitigation: DIAND is trying to take preventative measures to reduce impacts and avoid the need for compensation (compensation as a last resort, not a first resort).

### **Lindsay Staples** (summarizing)

- Moved off your trails.
- Need to cut new trail, gives new access to others.
- Snow machine impacts –disturb wildlife, lynx.
- Leave bush alone for Jan/Feb.
- Building a new line takes time, need to know where to build it.
- Originally when traplines were issued, they had to be sustainable. They no longer are.

## **The Significance of Trapping Today**

### **Lindsay Staples**

- When they were issued, traplines had to sustain a family. Most people here were born on a trapline.
- The easement for the pipeline is along the highway. Companies have policies for compensating trappers. 25 years ago, when they first developed trapper compensation policies, compensation was based on the value of fur coming off a line. Today's fur prices are way down, which may have a significant impact on how trappers are compensated. At one point lines were sustainable. Today, they are not. Do we need to look at compensation today differently than 25 years ago?
- Question was posed, "What is the significance of trapping today if not money? It's obviously more than money". Everyone agreed, "Lifestyle."

### **Chuck Hume**

- People here were born on trapline, where they were taught to hunt, fish, trap to raise family. If activity is taken away, people move. For example, Camps on Aishihik are empty.
- Lifestyle. All elders sitting here raised their families on a trapline, on what the land gave them.
- 40 years back, a pipeline came through here. The pipeline killed game, introduced pesticides, Agent Orange, and people died of cancer here, which was unheard of. The government says they don't owe compensation.
- Trappers can't afford to hire lawyers. People are born and buried here.
- Trapping maintains ties to the land; otherwise people migrate to Whitehorse.
- Champagne-Aishihik lands are the most impacted in territory by different development because no one has a plan in place; permits are issued for developments that impact trappers. Trappers are forgotten, never got compensation, cannot get UI, and are sent back to their trapline empty handed.

### **Lindsay Staples**

- Is there a sense that trapping needs to be kept sustainable to keep families connected to the land?

### **Chuck Hume**

- Look at why people were moved off traplines in first place? It was because of residential schools. The healthy life was lost, and people now go back to their homeland for a visit.

### **Alec Van Bibber**

- In cases where a person tries to get compensation for traplines, they are asked how much they made. But trappers don't track prices.
- "Livelihood, can't put a price on it."
- Value of furs have dropped.
- "It's your habitat."

### **Chuck Hume**

- Trappers can't go back five years. Before, trappers could catch enough fur to keep them going. A trapper doesn't go back 5 years in their record-keeping. He looks at history. Now, he pays the price of gas, transportation -a huge price - but still wants to be out there.
- In terms of the value of the line, look at the money people continue to spend on equipment, gas, trail development, cabins. Look at the whole picture, not just fur returns.

"It's your home."

- Trappers have been moved around, invaded by many things. Their cabins are used by others, trappers come back to these places. You have to go back to Kloo Lake for a visit; no one lives there any more. What have we done wrong to prevent folks from going back to live in these beautiful places? Traplines are deep rooted, in their systems; people are rooted to that area, not to the price of furs. Children will go back, but they won't if dealt with wrong.

### **Lindsay Staples** (summarizing)

- Trapping isn't just about money. It's about a way of life. It's an important way to keep people on the land.
- Trapping maintains ties to the land and life in smaller communities. CAFN Traditional Territory is heavily impacted. There is a need for more resource development planning.
- Past impact of mission schools is related to moving people off traplines.

- Problem of proof. Trappers have had to keep a 5 year record. Can't just look at fur returns; have to look at peoples' trapline as "habitat" and the contribution of trappers to it. It's in people's system; they're rooted to an area.
- Initially the management priority was for trappers to run sustainable lines. Permitted developments and non-permitted activities and land uses are chipping away at the sustainability of the lines.

## **Who Pays for Compensation?**

### **Lindsay Staples**

- Around 1986/87 YTG established a compensation board to look at trappers' claims.

### **Chuck Hume**

- I was paid by Anvil Mines, they used my trapline for a price of \$25 thousand down, plus annual fees.

### **Lindsay Staples**

- Question posed: UFA- whose resource development activity is it? Who pays compensation?
  - the developer ?
  - industry?
  - government?

### **Kathleen Van Bibber**

- As part of development costs, put some proponent's money into a compensation fund, when they get the permit. As need, funds would be available to flow back to trappers, either as cash, materials, or equipment.

### **Alec Van Bibber**

- The Territorial government can sell or lease land for subdivisions that cover a trapline. Some of this money should be put aside for trappers compensation.
- "The noise drives animals away" (chainsaws, equipment, mining).

### **Chuck Hume**

- With logging, the government gets money from stumpage, woodcutter permits, so they are getting money from other resource use in the trapline area.
- Woodcutters and forestry stumpage could provide offset money for trappers who are forced to build trails elsewhere. \$3.5 million was taken off his trapping area in logging, and the logger offered 5 cords of wood in exchange.

## DIAND

- Funding compensation as development cost is one idea. If these agreements are between proponent and trapline holder, should government establish possible “rates for compensation” as guidelines to both parties?
- Should government provide a sample or template agreement, without specifics, as each case is different? Also, is it government’s business to know the details of a negotiation between proponent and trapline holders?
- Concern expressed over competition between and other land and resource users.

## Alec Van Bibber

- Mendenhall subdivision. We lost that area. Mining and forestry grow back. To put a value on whole trapline area, take off mountains, look at area, take off percentage of area that’s lost. Some losses are permanent, some temporary. Cabin, trails, lead to a value of \$25-30 thousand dollars. You’d have to sit with government to determine value.

## Lindsay Staples

- The figure of \$20-30 thousand for purchasing a trapline is a number that some trappers refer to. Is this a standard number?  
If government figures out a mechanism for ways to make a cash compensation calculation, would this figure have bearing on the calculation of compensation?

## Alec Van Bibber

- Cheapest recent purchase is a line bought by Champagne-Aishihik this summer for \$20K; most of the trapline area was a mountain with 1 cabin.

## Mike H.

- How would you do this (calculation) for agriculture?

## Lindsay Staples (summarizing)

- Who Pays?
  - developer
  - industry
  - government
- One option is that compensation could be funded as a development cost
- Some government resource revenues (e.g. stumpage) should go to compensation
- Another option is that government could establish possible “rates” for cash compensation (as guideline for both trappers and proponents), as well as a sample agreement, without specifics (as each case is different)

- Concern expressed over competition between trappers and other land and resource users.
- Concern over noise from forestry operations
- Problem of relocating trapping activities to new country
- Compensation should cover:
  - permanent loss
  - temporary loss
  - put value on the total productive area
    - calculate percentage lost
    - estimate value of trapline at \$20,000-30,000

## **Communication With Trappers**

### **Kathleen Van Bibber**

- Respect is lost; years ago you wouldn't go on anyone else's trapline. Now there is a lack of respect and recognition for trapper.
- Letter comes informing the trapper of a permit application, with time to respond, but you need to respond by a certain date, and if you do not respond in time, they go ahead anyway. Poor communication with trappers is a big issue.

### **Chuck Hume**

- Trappers have to respond to too many letters, development goes ahead anyways. The trappers' response has no effect.

### **Alec Van Bibber**

- Rachel and Stan- woodcutters have permit, cut along their own road. The government response is that wood permits can cut anywhere. They used to be only for one area, but now they are cutting along Alaska Highway. The government needs to talk to trappers before permits are issued.

### **DIAND**

- Unless the land is titled, it's a public road. Title could exclude road, "subject to."

### **Kathleen Van Bibber**

- Trappers need input, but should not let Band negotiate for them. The Band let Mendenhall Subdivision happen. Trapper should speak for themselves, with Champagne-Aishihik for support.

### **Alec Van Bibber**

- Trapper and who's involved should work out agreement.

### **DIAND**

- It is the person holding the trapline that 16.11.13 is targeting. When it is a group line, someone may represent the interest of the group line holders, but affected trappers would need to agree with this arrangement. Government needs to be sure everyone affected is involved at the front end of the proposed development activity.

### **Chuck Hume**

- To understand the “furbearer harvesting opportunity” you need to go back to the potential of the line when it was established. Rusty Martin, RCMP officer, went to each individual, asked if boundary was big enough to sustain their family. The trappers drew boundaries, yet YTG has arbitrarily adjusted them without consultation.

### **DIAND**

- Furbearer harvesting has a specific meaning in the UFA. Only furbearer harvesting opportunities are affected by 16.11.13; it does not refer explicitly to subsistence lifestyle. The question is, should it be looked at in the context of other clauses?
- It is the responsibility of government to figure this out; DIAND also needs to figure out with YTG what their respective responsibilities are. YTG issues permits and is constrained by the Wildlife Act. There is the existing YTG compensation process, but how will this work with 16.11.13?
- Issue of mitigation. Need to work on improving communication. Government needs to know who they are dealing with, and who to talk to, to ensure their 16.11.13 obligations are met.

### **Lindsay Staples** (summarizing)

- Trappers are discouraged, not given chance to respond or ignored in the early stages of development proposals.
- Concerns over road development; people say they are private, trails are seen as public
- Problem is trappers don't own the land; they sell the fur on the land.
- Future concerns:
  - YTG parks
  - Trappers needs should be recognized in park development and planning
  - Notify trappers about cottage lots and the construction of barriers to traditional harvesting areas
- To understand the “Furbearer Harvesting Opportunity” you need to go back to the potential of the line when it was established (late 1950's).

- What is the responsibility on government as the issuer of permits to protect trappers' interest? What responsibility or value has changed over time?
- Should trappers represent themselves in compensation discussions, or should the First Nation or Champagne-Aishihik Land Resources person?
- Letters from government are hard to understand; it is hard to reach trappers.
- Lack of respect and recognition for trappers in the permitting and development process.
- Poor communication with trapper by developers:
  - burden is put on trapper, to write letters, responding to government
  - response from trappers to development applications has no effect
- Concern over wood cutting permits that are not directing people to specific areas.
- Government needs to talk to trappers before permits are issued: ask the trapper first.
- Need to better understand the rights of trappers.
- Who should speak for trapper: first the trapper, then with CAFN. Who speaks for CAFN?
- What is the responsibility on government as the issuer of the permit to protect trappers' interests?

## Calculating the Value of a Trapline

### Chuck Hume

- 40 years ago, livelihood depended on trapping, now comparing to today, that lifestyle is gone, so what can you base the value of a trapline on? Compensating for forestry impacts, the changing value of money, changing lifestyle. How can you put value on a trapline which before allowed people to be self-reliant?

### Lindsay Staples

- The compensation process referred to in 16.11.13 involves the federal and Yukon governments. Yukon First Nations have to look at many of the same issues as they relate to development activities affecting trappers with lines on Settlement Lands.
- The First Nation in permitting development activities may need to consider a compensation process as YTG and DIAND is doing: whether it's the same or a different process is up to them.
- What do you base the value of the trapline on?
  - before the value was high
  - each trapline is different
- Other impacts affecting trapline values:
  - road development through trapline
  - spruce beetle impacts are big problem
  - road access and more development coming
  - researchers should have permission to come onto trapline
  - impacts of housing (e.g. Granite Lake)

## **ROUND TABLE ON ISSUES AND CONCERNS**

### **Harry Smith**

- Traplines are held in family for years. Some have been sold for a bottle of whiskey. How can you value these? What will you base it on?
- Inherited trapline but a big permanent road was built to access a gravel pit. He tried to stop it, using Champagne-Aishihik. The road is just for gravel, poor gravel. Why put in this road? He would like to see it moved, and the area put back to way it was. Because of the road, people are applying for grazing leases, etc.

### **Rosalie Washington**

- Bison are large concern. Beavers, muskrats, ducks, water level not stable, fish get trapped. These are affected by bison and the dam.
- Each trapline holder is different from me, I can't speak for all of them.
- Trappers need help from Champagne-Aishihik to read and write letters.

### **Rachel Thompson**

- Doesn't like buffalo, woodcutters.

### **Stan Thompson**

- Woodcutters are a big problem.

### **Thomas Joe**

- Muddy water is flowing into Kloo Lake.
- Road developments go right through traplines.
- Pollution is increasing.

### **Agnes MacDonald**

- Concerned with spruce beetle impacts. Bugs are travelling, squirrels are dead from no food.
- Road access, more development coming.
- Researchers should have permission to come on to a trapline.
- Her trapline is across from the national park.
- Government should come to trapper first, or go through Champagne- Aishihik office.

“Now I don't even want to go back there, it's like a ghost place. Don't even want to take my grand kids, to teach them to trap, it's not worth it no more.”

### **Marge Jackson**

- Concerned about the impacts of housing (Granite Lake)

### **Francis (??)**

- Concerned about goat farm and Division Mountain (mine), and the trail of her grandfather, now used by recreational users.

### **Sadie Brown**

- Concerned about fire, tourism lodge development, and poor communication between them and developers

### **Moose Jackson**

- Problem of cottage lot development. There is no notice given to the trapper, no respect from other users for trapper. Trapping is about total enjoyment and use of the bush. Trappers can teach others how to respect the land.
- Concerned about where kids will be, if they are not raised in the bush. Concerns over future of trapping tied to the future of young people. They can't enjoy life like before.

“Those kids are going to be lost.”

### **George Darbyshire**

- Champagne-Aishihik cut lines two years ago, will use as trail. Could Resource Councils be a “go-between”, between trappers and other users?
- Trappers on the line could get extra moose late in season (January) 10 years ago; now can't get one unless in a draw.
- Gravel pit impacts.

### **Chuck Hume**

- Concerned people are angry over the sale of land within trapline. A game outfitter sells land out from under a trapper.
- Logging is done by different companies, different government issues permits. It would take 175 years to grow, restore spruce.
- Their lifestyle is being reworked.
- We need all government to sit down, plan the area, and let him know what the five year plan is.
- Spot management routines and development keeps the trapper moving; trapper is cut out completely; government response is to give them another area that is not suitable for trapping.
- What gives the outfitter the right to sell hunting concessions, when the trapper has no rights?

- A lot of traplines near communities are gone. Here in Haines Junction, there was place for elders to trap; now anyone gets a development permit and the rest is lost to Parks.  
The proposed pipeline corridor runs over traplines; it will bring in others who are seeking work, strangers, job seekers who will stay to run pipeline.

### **Alec Van Bibber**

- Not bothered

### **James Allen**

- Rabbit people from the Arctic Institute catch and release animals and educating animals, making them harder to trap. They have never asked him or his dad about coming onto their trapline area.
- Buffalo, buffalo hunters.
- Radio collar rabbit predators are getting trap wise.
- Proposed pipeline right of way runs right through the middle of his trapline.

### **Lindsay Staples** (summarizing)

- Need trappers on healthy lines; they are keepers of land; they report environmental changes in ways that researchers may not know.
- Trappers can monitor the health of the land; watch, and try to prevent negative impacts from occurring.
- Trappers feel they are ignored and that their rights are poorly understood.
- Developers and government should ask the trapper first about proposed development activities.
- Is there a role for RRC, Champagne-Aishihik, to contribute to better communication between trappers and other users?
  - 1) rights of trappers-very poorly understood- were there first
  - 2) total lack of respect for trappers being first on the land
  - 3) communication
    - either none, or confusing
    - trapper gets to line, sees activities that have been approved
- Compensation: restoration of habitat.
- Concern over incremental development; trappers being squeezed .
- It's not the big impacts; it's a whole series of small ones leading to a constant erosion of trappers' resource base.
- Before compensation, how will trappers' rights be protected. e.g. Arctic Institute researchers.
- 20-25 years ago, trappers compensation policies were created for the pipeline:
  - are these policies acceptable 20-25 years later?
- Not only looking at revenue, but costs, contribution, etc. and fur prices are low.
- Range of \$20-30K just to acquire line.
- Impacts from outfitter concession developments.

- Trappers aren't eligible for unemployment insurance.
- Traplines near communities are hardest hit and impact on elders.

## **SUMMARY (After supper discussion)**

### **Lindsay Staples (Review)**

#### **Compensated Activities**

- As trappers, you feel responsibility for your area; when someone else comes in, it's upsetting, noisy
- Resource development includes:
  - roads
  - subdivisions
  - timber
  - agriculture
  - power
  - mining
  - tourism
  - fire from resource development
  - bison introduction
  - national/territorial parks
  - small scale activities

#### **Significance of trapping**

- It's not about money; it's about a way of life, culture, value, family, attachment to land.
- Trapping is a way of life that connects people to the land and their culture.

#### **Types of Compensation**

- Cash Money
  - looking at fur returns is not place to start
  - value of trapline, work, money, maintenance of line
- Non-cash
  - fuel
  - equipment
  - trail construction
  - cabins
  - restoration of habitat
- It's important for government to get creative in looking at the types of compensation that needs to be available to trappers: e.g. helicopter drop fuel at camp.
- Dealing with trappers after damage done doesn't work.

- Need to plan.
- Need better recognition of rights of trappers:
  - better info, communication
  - plug in, consult trappers before permits are issued
  - better process for trappers
- Need straightforward process, fair, easy in, easy out.
- Trappers shouldn't feel need for lawyers, otherwise it's not a process that will work for trappers.

### **Chuck Hume**

- If his trapline is of no value what's left for his kids, grandkids?
- If opportunity is lost for kids today, can't bring it back – it's lost forever. Elders' trapping areas closest to town are easy to get to and are most affected.

### **Rosalie Washington**

- YTG compensation process doesn't work.
- When does the federal Government think their process will be done?

### **DIAND**

- DIAND is having discussions with YTG regularly.
- Goal- late spring/early summer for consultation on draft process.
- The governments need to agree on what 16.11.13 means.
- The two governments have to reach common understanding.
- These meetings with trappers, First Nations and RRCs are coming to an end.
- Internally, DIAND must decide what's workable for trappers and proponents: a simple process, not a detailed, legal process, is the preferred approach.
- Haven't determined if this compensation process should be based in policy or legislation.
- DIAND may succeed better if it is policy, but haven't decided what will work best.
- These aren't formal consultations; a draft discussion paper outlining a proposed compensation process that fulfills the requirements of 16.11.13 of the UFA will be prepared and form the basis for formal consultation.
- Is there one compensation process or two? Need to have process everyone agrees on.

### **James Allen**

- Hard to compensate people for their peace of mind:
  - impacted by skidoos, buffalo hunters
- Relationship people have with land, out on the land:
  - how to compensate for these?
  - trapping is more than harvesting furbearers; its being on the land.
  - people behind desks can't see that value, can't understand.

### **George Washington**

- [a person] can live there on their trapline; it's home out there.

### **Chuck Hume**

- If there were no traplines in Yukon, would people be here? In the 1950's there was no welfare; we needed the trapline all year round.

### **Lindsay Staples**

- What are the consequences of no trapping?

### **George Darbyshire**

- An agriculture grid, barren of animals.

### **Alec Van Bibber**

- The trapper respects land more than miners, loggers, farmers (may respect the land, but they still have to clear land).

“ A trapper meets, not exceeds, her needs.”

### **Lindsay Staples**

- A workshop report will be drafted from today's discussion and provided in draft to CAFN. Once finalized, copies will be distributed to all participants.
- Hopefully you can use this report in other discussions you are involved in.
- Thanks for your participation and help.

## SUMMARY OF COMPENSATION ISSUES IDENTIFIED

### History

- Traplines were used to sustain family traditionally.
- When residential schools came in, people first left their traplines.

“Look at why people were moved off traplines in first place? It was because of residential schools. The healthy life was lost, and people now go back to their homeland for a visit.”

- In late 1950’s, traplines were assigned by RCMP

“First thing we should look at is the reality of the trapline. The original question between 1956/58 from the RCMP was, “Is this enough to sustain your family?”

### Value of Trapping

- Cultural- trapping maintains ties to the land, keeps animals on the land.
- Without trapping, we would have “Agriculture grid, barren of animals.”
- Trappers keep an eye on what is happening on the land.
- Trapping is about “lifestyle,” maintaining future generations.
- Financial- trappers spend their own money to maintain the lines, not the same financial gains as before, with low fur prices.

“ A trapper meets, not exceeds, her needs.”

### Current Situation

- Times have changed, traplines are no longer sustainable.
- It’s not the big impacts, it’s a whole series of small ones leading to a constant erosion of trappers’ resource base.

“Now I don’t even want to go back there, it’s like a ghost place. Don’t even want to take my grand kids, to teach them to trap, it’s not worth it no more.”

- Trappers don’t own the land, government does.
- Trappers are not respected, or taken into consideration during permit process.
- Government ignores that it costs trappers money to change their traplines when development permits are granted.
- Trapline boundaries are arbitrarily changed by government, but not necessarily given useful areas.
- Other industries run over trap lines, while trapper pays for this:

- e.g. power lines, subdivisions, woodcutting, imported bison
- Estimate of \$20,000-30,000 invested to purchase a trapline; then, there is the added cost of building cabins, clearing trail, gas, supplies, and other costs.
- Fur prices are low, no real financial gains from trapping any more.

“In terms of the value of the line, look at the money people continue to spend on equipment, gas, trail development, cabins. Look at the whole picture, not just fur returns.”

- No unemployment insurance for trappers.
- Trapline land is leased or sold for subdivisions by the government.
- Stumpage, woodcutting permits also generate revenue for government, while trapping does not.

“Woodcutters and forestry stumpage could provide offset money for trappers who are forced to build trails elsewhere. \$3.5 million was taken off my trapping area in logging, and the guy offered 5 cords of wood in exchange.”

- Traplines give access to other users, such as snowmobiles, bison hunters, who bring excessive noise and physical impacts that impact trapping on the line.
- Communication with trappers is large problem.
- Often communication is too complicated, too late, ineffective. Trappers do not believe they will be listened to.
- Developers have lawyers, trappers cannot compete with this.
- First Nations developments have also impacted their own trappers.
- Often, trappers will not know about permitted activity that impacts their line until they come across it themselves, after the fact.
- Onus is on trapper to prove they have been impacted/hurt by development:
  - not all trappers keep records.
  - different measurements of success exist between government and trappers.
  - while fur prices are down, it's hard to compare value year after year.

“Trappers can't go back five years (to document their fur returns). Before, trappers could catch enough fur to keep them going. A trapper doesn't go back 5 years, he looks at history. Now, he pays the price of gas, transportation, a huge price, but still wants to be out there.”

- 25 years ago, compensation policies were created for pipeline. Are these policies applicable today?
- Problem of lack of effective land and resource use planning on part of government; for example, wood cutting permits are issued at random, without directing them away from important trapping areas.

“Champagne-Aishihik lands most impacted in territory by different development because no one has a plan in place; government issues permits that impact trappers. Trappers are forgotten, never got compensation, cannot get UI, and are sent back to trapline.”

- Researchers display a lack of understanding or respect for what trappers do.
- Need to put youth and elders together to learn.
- The government needs to know who they are dealing with, who to talk to, and how to talk to them.

## **OTHER CONSIDERATIONS**

- Furbearer harvesting has a specific meaning in the UFA. Only Furbearer harvesting opportunities are affected by 16.11.13. It does not explicitly refer to subsistence lifestyle. Should it be looked at in the context of other clauses of the Final Agreement?
- It is the responsibility of government to figure this out, and to figure out with YTG what their responsibilities are. YTG has a process but how will this work with 16.11.13?
- Possible role for Renewable Resources Councils (RRC's) in communication and permits.

## **IV Principles and Interests to Build a Compensation Process On**

### **SELECT IDEAS FROM THE DISCUSSION ABOUT HOW A DEVELOPMENT PERMIT PROCESS COULD WORK FOR TRAPPERS (NOT A STATEMENT OF CONSENSUS)**

1. Identify the resource activity and who it will impact. Trapper and proponent should work together to reach an agreement. Everyone should be involved at the front end. Discussion with trapper should occur before permit is issued.
2. Trapper should be consulted directly, with support from CAFN. Support could mean access to lawyers, help reading and understanding government letters and documents, writing letters of response, ensuring that trappers are included in any permitting process. However, trappers should not feel the need to use lawyers, otherwise it's a process that is too complicated for trappers.
3. Put money into a fund when permit is issued. Money can flow back into trappers' compensation, in the form of cash, snowmobile parts, cabin materials, etc.
4. Money generated for government from sale/lease of land for subdivisions, and from forestry stumpage and woodcutting permits could be used to compensate trappers who are forced to build lines elsewhere.
5. Consult with trappers on an individual basis to determine value of each trapline. Value of trapline should be based on total productive area. Also, consider how the value is affected by permanent (subdivision) versus temporary (woodcutting) loss of trapping opportunities.
6. Governments need a good five year land and resource use plan that includes trapping.
7. Woodcutting permits should be directed to specific area, not random.
8. First Nations governments need to look at the same trapper compensation issues as they affect Settlement Lands, including trapper support, development permitting, and so on.
9. RRC's (Renewable Resources Councils) could have role as a liaison between trappers and other users, or in permitting process.
10. Trappers should have exclusive use of the bush for 2-3 months per year, to reduce impact from other users. e.g. January-March, no snowmobiles, no noise, no other users on trapline.
11. Include reference to trapper compensation requirements in the development permit.

## **OUTCOMES OF THE DEVELOPMENT PERMIT REVIEW PROCESS**

- Communication with trappers

## **WHO SHOULD BE INVOLVED IN THE APPLICATION REVIEW AND DECISION-MAKING PROCESS**

- Proponent
- Trapper, with First Nation support

## **KEY PARTS OF A COMPENSATION PROCESS**

- Communication between all parties involved.
- Respect for the value of the trapper and trapping as a lifestyle.
- Recognize rights of trappers.
- Make information available.
- Consult trappers before permits are issued .
- Make process easy for trappers, straightforward, fair, easy to get in and out of.
- Government must be creative in looking at types of compensation that needs to be available to trappers, beyond money.
- Dealing with trappers after damage is done doesn't work.
- Government needs better long term planning.
- Trappers shouldn't feel need for lawyers, otherwise it's not a process that will work for trappers.

## **V Next Steps**

A compilation report containing the reports from the meetings and workshops will be distributed early in 2001.

DIAND and Yukon will work to develop a discussion paper outlining a proposed compensation process that meets the requirements of 16.11.13. Target date for release of this document for discussion and formal consultation is Summer 2001.



## **Meeting Notes from Discussion on Trapline Holders' Compensation**

### **Yukon Trappers Association**

**April 25, 2000**

### **Yukon Trappers Association Offices Whitehorse, Yukon**

#### **Participants**

Guenther Mueller, Yukon Trappers Association (YTA)  
Andrea Fischer, YTA  
Ryan Seely, YTA  
Sylvia Neschokat, DIAND  
Mike Draper, DIAND  
Lindsay Staples, Facilitator

#### **Points of Discussion**

YTA representatives raised the following:

- Two or more compensation regimes in the Yukon would be unworkable; need one comprehensive process for all trappers – native and non-native. Need a process that is consistent in its treatment of compensation issues while allowing some flexibility in the remedies appropriate to individual circumstances (from trapper to trapper).
- How will the compensation process pursuant to 16.11.13 affect or impact other processes?
- Current YTG compensation policy is ineffective: limited application to YTG activities and lands; no third party liability; restricted to monetary evaluation; excludes most development activities.
- YTA concerns regarding the inadequacy of the YTG compensation process were raised recently with Minister of Renewable Resources, Eric Fairclough.
- Recognize that the CIRL discussion papers on compensation are not government policy; they contain useful ideas and are informative.
- Compensation is a measure of last resort; mitigation is key. If trappers simply wanted financial compensation, many would have opted out a long time ago, given the current challenges of making a decent income from trapping. Most trappers pursue it for lifestyle reasons, not for the money.
- Developers should be responsible for their activities and must be liable for damages that result from their activities; this means they should be liable for cash payment.

- Trappers and the rights of trappers are often neglected or forgotten by other resource users and by permitting agencies. The right to trap means something and should be respected. Should be remembered that all of the Yukon is covered by traplines.
- Efforts to engage the trapper from the outset is critical to addressing the concerns of trappers: consider the participation of trappers in planning (e.g. forest management planning), and consultation and adequate resolution of concerns by proponents with trappers as a prerequisite to the issuance of permits. Typically trappers are the last to know about developments that may affect their interests.
- Some of the biggest impacts today from development activities are: forestry, agriculture (especially cumulative effects), fencing of grazing leases (and need for corridors between fence lines), roads (construction, use and access issues), rural residential development.
- Concern over trappers trails being viewed by developers as “upgradable” to permit access by other resource users; concern that trails then become “public” through fares (e.g. mining outfit in the Mayo area wanted to upgrade a trail used to trap marten to an access road.)
- A trapline can be considered “active” by the fact that the line is in good-standing.
- Trapper’s interests extend throughout an area larger than the one they are currently active in; cyclical declines in the population levels of one species may mean moving to other species in other areas of the trapping concession.
- Cash income is the worst criterion to use in determining cash compensation levels; trappers don’t necessarily trap for the money. The greatest impacts may not be loss of cash, but loss of healthy lifestyle. The social impacts may outweigh the monetary impacts. Need to recognize the social impacts and benefits of trapping.
- Concern with YTG’s Trappers Compensation Policy rests on: its Impacts of greatest concern are on trails, habitat and wildlife.
- Burden of proof should not fall solely on the trapper; there’s a role for the trapper who should provide whatever information h/she has (historical evidence, trapping records and local and traditional knowledge; may be oral) along with government information and empirical studies.
- Any formula for compensation should consider the amount of area affected.
- Trappers want to be more involved in and have more input into assessments and mitigation measures. YTA sees a strong advocacy role for the Association in representing trappers in environmental assessments and in negotiating compensation agreements; however, currently YTA resources and capacity is limited. Currently YTA is funded through membership and project-specific funding.
- Proponents in preparing project proposals for environmental assessment and permitting could be required to first consult with affected trappers and identify any concerns that were raised.
- In the event that trappers and developers cannot agree on acceptable arrangements, some form of dispute resolution body will be required. This is something the YTA will think more about. A review body should consider: a) specific cases; and b) periodically review compensation agreements from time to time to determine their fairness and adequacy.
- Contacting individual trappers can be difficult. Using the YTA, newsletters, magazine, etc. should be considered to put questions to individual trappers.

- Concern over local governments and impacts associated with local area developments.
- YTA will consider the issue of eligibility of assistant trappers for compensation.
- Consider compensation as attached to the trapline; lines are acquired on an as is where is basis, meaning that in acquiring a line the trapline holder accepts the condition that it is in at that time; no claims for compensation could be made retroactively. Could go either way. This issue needs further discussion.
- Compensation agreements are with the trapline holder.
- Concerned that the Yukon Wildlife Act could constrain a good compensation process.
- Many issues associated with the development of a compensation process should be addressed to individual trappers; YTA could help.
- DIAND would like to hear from the YTA as to how it could facilitate consultation and information-sharing with individual trappers.

## Meeting Notes from Discussion on Trapline Holders' Compensation

### Dispute Resolution Board

April 28, 2000

Room 4C, Elijah Smith Building  
Whitehorse, Yukon

#### Participants

John Wright, Dispute Resolution Board (DRB)  
Tracy McPhee, DRB  
Sylvia Neschokat, DIAND  
Mike Draper, DIAND  
Lindsay Staples, Facilitator

#### Points of Discussion

- Until such time as a compensation process pursuant to 16.11.13.1 is established, 16.11.13.1 reaffirms the right of Yukon Indian People to any compensation measures that may be available in common law.
- Individuals (restricted to the parties or inclusive of proponents, corporations, etc.?) involved in the traplines holder's compensation process may use the mediation process set out in 26.6.0 and the arbitration process set out in 26.7.0, provided that:
  - With respect to "specific disputes" (the scope of which are defined in 26.3.0 and include both mediation and arbitration through explicit reference to the dispute resolution process):
    - the *parties* agree trapline holders compensation (16.11.13) to be an acceptable matter for referral to the DR process.
    - 26.3.1.3: any matters (not necessarily related to a Settlement Agreement) may be referred for mediation to the DR process if the parties (to a Settlement Agreement) are in agreement.
    - 26.3.5 disputes ("specific disputes") if not resolved by mediation can be referred by any *party* to arbitration.
  - With respect to "other disputes" (the scope of which are defined in 26.4.0 and explicitly reference mediation and *may include* arbitration if agreed to by the *parties*):
    - the *parties* agree trapline holders compensation (16.11.13) to be an acceptable matter for referral *for mediation* to the DR process.

- 26.3.1.3: any matters (not necessarily related to a Settlement Agreement) may be referred for mediation to the DR process if the parties (to a Settlement Agreement) are in agreement.
    - 26.4.3 disputes (“specific disputes”) if not resolved by mediation can be referred by the *parties* to arbitration.
  - An important distinction between a listing of trapline compensation under “specific disputes” (26.3.0) as opposed to “other disputes” (26.4.0) is that under 26.3.0, if mediation fails, the decision to go to arbitration may be made by any *party*; under 26.4.0 (“other disputes”) it is that of the *parties* together. *This is an important point that the DRB representatives wish to emphasize and one that should be considered carefully by individuals who may be inclined to refer disputes associated with trapline holders’ compensation to the processes established in chapter 26.0.*
- Two types of referrals to the DR process can be contemplated:
  - issues of interpretation, administration and implementation associated with 16.11.13. These issues are already included in the DR process as provided for in 26.4.1.5 (“other disputes”): the implication is that mediation can be sought by any party with a concern; arbitration of these issues as they apply to 16.11.13 would require the agreement of the parties.
  - issues related to compensation (e.g. the acceptability of compensation agreements, compensation awards). These issues are not explicitly referenced in current agreements, but could be addressed through 26.3.0 or 26.4.0 as discussed above.
- Chapter 26.0 encourages mediation as the preferred option for resolving disputes; arbitration is a measure of last resort.
  - 26.6.8 provides that DRB will bear the cost for the first 4 hours of mediation; then costs are shared by the parties to the mediation unless otherwise determined (26.6.9) by the DRB.
  - The costs of arbitration are shared by the parties unless otherwise determined (26.7.4) by the DRB.
- DRB is in the process of drafting operating bylaws and procedures pursuant to Chapter 26.5.4.6.
- Decisions of the arbitrator are enforceable.

