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THE LEGAL FRAMEWORK FOR PROTECTED AREAS IN THE YUKON

For

**YUKON PROTECTED AREAS STRATEGY
WORKSHOP, February 5-7, 1998**

Whitehorse, Yukon

DRAFT

*** This is a work in progress for information and review purposes. It requires additional information and submission for review from the responsible agencies**

EXISTING OBLIGATIONS FOR THE PROTECTION OF AREAS IN THE YUKON

Land Claims Agreements

Yukon Umbrella Final Agreement
Inuvialuit Final Agreement

Legislation

Yukon Parks Act
Yukon Wildlife Act
Yukon Environment Act
Yukon Heritage Resources Act
Yukon Historic Sites and Monuments Act
Yukon Area Development Act
Yukon Municipal Act

National Parks Act
Canada Wildlife Act
Migratory Birds Convention Act
Endangered Species Act
Fisheries Act
Canada Oceans Act

Government Policies, Plans, Strategies

The National Parks System Plan
The Federal Policy on Wetland Conservation
The Yukon Parks System Plan
Federal Marine Conservation Strategy
Fisheries Habitat Policies
Porcupine Caribou Herd Management Plan

Land Claims Agreements

YUKON UMBRELLA FINAL AGREEMENT (UFA)	
OBJECTIVE	To maintain important features of the Yukon's natural or cultural environment for the benefit of Yukon residents and all Canadians while respecting the rights of Yukon Indian People and Yukon First Nations
COMMITMENTS	<ol style="list-style-type: none"> 1. SPECIAL MANAGMENT AREAS <ul style="list-style-type: none"> • Exploration and development of non-renewable resources shall not be permitted in SMAs, included in a National Park, its extensions or a national park reserve • Protection and preservation of Yukon FN burial sites or places of religious and ceremonial significance • Access by a Yukon Indian Person to an SMA for harvesting fish or wildlife can only be limited for reasons of conservation, public health or public safety 2. HERITAGE MANAGEMENT <ul style="list-style-type: none"> • Manage Heritage resources according to the values of Yukon Indian people 3. LAND USE PLANNING <ul style="list-style-type: none"> • SMAs will be established within the framework of Land Use Planning
PROCESS	<ul style="list-style-type: none"> • Special Management Areas may be established pursuant to a Yukon First Nation Final Agreement or pursuant to Laws of general application • Proposed SMAs shall be referred to affected Renewable Resource Council (RRCs) or Heritage Resources Board. • Where an SMA will adversely affect the rights of a Yukon FN, an agreement will be negotiated to establish any rights, interests and benefits for the FN and to mitigate any adverse effect • SMAs shall be consistent with Land Use Plans • Management bodies include 50% Yukon FN represented • Unless otherwise agreed, Government will be the managing authority on non-settlement lands
TOOLS	Special Management Areas

	THE INUVIALUIT FINAL AGREEMENT
PRINCIPLES	
COMMITMENTS	Protect and preserve the Arctic wildlife, environment and biological productivity [1 c)]
PROCESS	* Information yet to be included
TOOLS	

Legislation

YUKON PARKS ACT					
PRINCIPLES	To maintain important features of the Yukon's natural or cultural environment for the benefit of Yukon residents and all Canadians while respecting the rights of Yukon Indian People and Yukon First Nations.				
COMMITMENTS	<p>The Commissioner in Executive Council may establish a system of parks to protect unique natural and historic features and provide parks for comprehensive outdoor recreation opportunities</p> <p>Land development will be limited in each park to such development as is consistent with the purpose for which the park was established and is reasonably necessary to provide for public use and enjoyment of the park or the preservation of the park and its facilities. to protect unique natural and historic features and to provide for comprehensive outdoor recreational opportunities</p> <p>The Commissioner in Executive Council may designate areas within parks as land use zones and classify any zone as: a) primitive zone; b) natural zone; c) recreation Zone; d) multiple use; e) an historic zone; or such other zone as may be necessary.</p> <p>Further to the Act, cabinet approved the "Parks and Outdoor Recreation Policy" (1991), the "Parks System Plan" (1992) and the "Canadian Heritage Rivers System Plan", (1992) which refined the direction and focus from protecting unique natural features to protecting portions of the land that are representative of the ecological diversity of the Yukon.</p>				
PROCESS	<ul style="list-style-type: none"> • Public meetings or hearings for the purpose of obtaining public participation on proposals to establish a park may be arranged • Representatives of those persons residing in or near the location of a proposed park may be consulted. 				
TOOLS	<p>Territorial Parks classified as:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Natural Environment park</td> <td style="width: 50%;">Recreation sites</td> </tr> <tr> <td>Ecological Reserves</td> <td>Historic parks</td> </tr> </table>	Natural Environment park	Recreation sites	Ecological Reserves	Historic parks
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	YUKON WILDLIFE ACT
PRINCIPLES	<p>New amendments to the Yukon Wildlife Act will give the Government some powers to manage activities damaging wildlife habitat; to recover costs for damages to habitat caused by unauthorized activities; to enhance habitat; to establish Habitat Protection Areas; to designate and purchase private land for habitat protection; to establish a habitat protection trust; and to declare a population of wildlife endangered or needing protection.</p>
COMMITMENTS	<ul style="list-style-type: none"> • Where it appears that development may damage habitat the Commissioner may take such action as is necessary to avert damage to habitat. • The Fish and Wildlife Management Board will be established to make recommendations to the Minister and to Yukon First Nations respecting all matters related to fish and wildlife management legislation, research, policies and programs • The Commissioner in Executive Council, may by regulation, designate an area to be a Habitat Protection Area where it is necessary to do so because of the sensitivity of the area to disturbance, the likelihood of disturbance and the importance of the area as a habitat for any population, species or type of wildlife. • The Commissioner may establish a habitat protection fund to protect, enhance and restore wildlife habitat in the Yukon • The Commissioner in Executive Council may make regulations declaring any population, species or type of wildlife to be specially protected wildlife, and the regulations may prescribe prohibitions, restrictions or measures to be observed or implemented for the protection or survival of the species or type.
TOOLS	<p>Fish and Wildlife Management Board Habitat Protection Areas Habitat Protection Fund</p>

YUKON HISTORIC RESOURCES ACT	
PRINCIPLES	<ul style="list-style-type: none"> • The purpose of this act is to promote appreciation of the Yukon's historic resources and to provide for the protection and preservation, the orderly development and the study and interpretation of those resources • The expression "historic resources agreement" means an agreement that is intended to be a covenant running with the land and that provides for the maintenance, preservation, or protection of a site and the historic resources or human remains at that site.
COMMITMENTS	No person shall carry out an activity that will alter the historic character of a site
PROCESS	<ul style="list-style-type: none"> • The Minister, or any other person, may make a historic resources agreement with the owner of any site. • The minister may designate any site as a historic site when satisfied that the site is, whether in itself or by reason of historic resources or human remains discovered or believed to be at the site, an important illustration of (a) the historic or pre-historic development of the Territory or a specific locality within the Territory, or of the peoples of the Territory or locality and their respective cultures, or (b) the natural history of the Territory or a specific locality within the Territory • The Minister may require the owner or leasee of a historic site to take measures for the repair, maintenance, preservation, protection, or restoration of the site • A site that has no inherent historic significance may be included in a historic site where its inclusion is advisable for the protection or enhancement of the historic site.

	YUKON HISTORIC SITES AND MONUMENTS ACT
COMMITMENTS	<p>Historic places shall be located within the geographical boundaries of the Yukon</p> <p>Any site or structure shall be closely associated or identified with events which have shaped Yukon or Canadian history in a prominent way, or illustrate effectively the broad cultural, social, political, economic or military patterns of history.</p> <p>The Historic Sites and Monuments Board will prepare a long range Territorial program under which region and thematic priorities will be established and a comprehensive program laid down for the marking, preservation and development of historic sites throughout the Territory. All recommendations shall indicate priorities of development.</p> <p>Historic sites shall be clearly marked by plaques.</p> <p>Any development of historic sites will take place only after complete documentary, architectural and archeological research has been carried out</p>
CRITERIA	<ul style="list-style-type: none"> • Prominently associated with the life of a great Yukon personage • Prominently associated with an important movement in Yukon or Canadian history • Shed light on/illustrate effectively the culture of a prehistoric or indigenous people • Be associated with important archeological discoveries which have affected ideas and concepts to a major degree • Embody the distinguishing characteristics of an architectural type exceptionally valuable for the study of the style or method of construction of its period • Notable example of the work of an early master builder, designer or architect

YUKON ENVIRONMENT ACT	
PRINCIPLE	<p>Wilderness is recognised as a natural resource with intrinsic ecological as well as economic value and shall be considered as such.</p> <p>... the way of life of the people of the Yukon is founded on an economic, cultural, aesthetic and spiritual relationship with the environment and that this relationship is dependent on respect for and protection of the resources of the Yukon. (p.3)</p> <p>... the resources of the Yukon are the common heritage of the people of the Yukon including generation yet to come (p. 3)</p> <p>... the global ecosystem is an indivisible whole of which the Yukon environment is an integral part (p. 3)</p> <p>... comprehensive, integrated and open decision-making processes are essential to the efficient and fair discharge of the environmental responsibilities of the Government of the Yukon (p. 3)</p> <p>...the people in the Yukon have the right to a healthful natural environment (p. 9)</p>
COMMITMENTS	<p>Ensure the maintenance of essential ecological processes and the preservation of biological diversity (Yukon Environment Act, p. 8)</p> <p>Utilise fully the knowledge and experience of Yukon residents in formulating public policy on the environment (Yukon Environment Act, p. 8)</p> <p>Facilitate effective participation by Yukon residents in the making of decision that will affect the environment (Yukon Environment Act, p. 9)</p> <p>The government of the Yukon must ensure that public policy reflects its responsibility for the protection of the global ecosystem (Yukon Environment Act, p. 9)</p> <p>The people of the Yukon have the right to a healthful natural environment (Yukon Environment Act, p. 9)</p>

	<p>The Commissioner in Executive Council may make agreements with other jurisdictions or organisations on cooperation concerning</p> <ul style="list-style-type: none"> • Implementation of Canada's international environmental obligations within the jurisdiction of the Government of the Yukon • Joint action on solving global or circumpolar environmental or pollution problems, managing trans-boundary resources, the protection of circumpolar biodiversity, environment emergency response, environmental monitoring and research, trans-boundary environment impact assessment, or the implementation of a resource management plan. (Yukon Environment Act, p. 29) <p>The Government is responsible for the protection of the collective interest of the people of the Yukon in the quality and protection of the natural environment for the benefit of present and future generations (Yukon Environment Act, p. 9/12)</p> <p>Ensure maintenance of essential ecological processes and the preservation of biological diversity (Yukon Environment Act, p. 14)</p> <p>Wilderness is recognised as a natural resource with intrinsic ecological as well as economic value and shall be recognised as such in the establishment and implementation of a resource management plan (Yukon Environment Act,, p. 44)</p>
<p>TOOLS</p>	<p>Wilderness Management Areas</p> <p>The Commissioner in Executive Council may establish, amend or revoke wilderness management areas for the purposes of preserving the wilderness resource in the Yukon (Yukon Environment Act, p. 38)</p> <p>Prior to the establishment of a wilderness management area, the Minister shall prepare and submit to the Commissioner in Executive Council a wilderness management plan containing a) a statement of purpose; b) an inventory and detailed description of the natural environment; c) a land use designation; d) an environmental impact statement; e) a management policy; f) a budget estimate (Environment Act p. 38)</p>

	<p>The Commissioner in Executive Council may establish, amend or revoke a wilderness management plan for a wilderness management area and for that purpose shall consult, where appropriate with a Yukon First Nation, the Government of Canada, a municipality and the public. (Environment Act, p. 39)</p> <p>Conservation Easements “Conservation easement” means an interest in real property which imposes restriction or positive obligations for a) retaining or protecting natural, scenic or open-space values; b) assuring natural resources are available for recreational or open-space uses; c) conserving or enhancing natural resources, the land in its natural state, wildlife habitat, plant habitat or migratory routes of birds and animals; or d) conserving or enhancing soil, air or water quality</p> <p>An owner in fee simple of real property may grant a conservation easement to Government in the same manner as any other interest in land. (p. 40)</p>
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13	YUKON AREA DEVELOPMENT ACT
COMMITMENTS	<p>The Minister may designate as a development area any area in the Yukon where he considers that it will be necessary in the public interest to regulate the development</p> <p>The Commissioner in Executive Council may make regulations for the orderly development of a development area respecting:</p> <ul style="list-style-type: none"> • Zoning of the area, including the allocation of land in the area for agricultural, residential, business, industrial, educational, public or other purposes • The regulation or prohibition of the erection, maintenance, alteration, repair or removal of buildings; • Streets, roads, sidewalks, parks, etc....

	YUKON MUNICIPAL ACT
COMMITMENTS	<p>Where an official community plan is adopted the council shall within one year adopt a zoning bylaw applicable to the land affected by the official community plan. (Municipal Act, p.100)</p> <p>The purposes of a zoning bylaw are a) to implement development control provisions; b) to provide for the amenity of the area within the council's jurisdiction; and c) to provide for the health, safety and general welfare of the inhabitants of the municipality (Municipal Act, p.101)</p> <p>A zoning of "Parks and Recreation" is to provide a zone for areas of public land for indoor and outdoor active and passive recreational uses and environmental protection where appropriate (Municipal Act)</p> <p>A zoning of "Environmental Protection" to provide a zone for the protection and preservation of significant natural areas</p>
COMMENTS	<p>Within Official Community Plans municipalities may develop specific policies providing protection measures. Within the City of Whitehorse Official Community Plan 1994, policies are in place for parks, recreation and open spaces, Historical and Archaeological Preservation, Physical, Environmental Consideration and the preservation conservation and responsible use of the natural environment in the City.</p>

	NATIONAL PARKS ACT
PRINCIPLES	<p>The National Parks of Canada are dedicated to the people of Canada for their benefit, education and enjoyment, subject to this Act and the regulations, and the National Parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations</p>
COMMITMENTS	<p>To Protect for all time representative natural areas of Canadian significance in a system of national parks and to leave it unimpaired for future generations.</p> <p>The Minister shall, within five years after the proclamation of a park, present a management plan for that park in respect of resource protection, zoning, visitor use and any other matter that the Minister considers appropriate.</p> <p>Maintenance of ecological integrity through the protection of natural resources shall be the first priority when considering park zoning and visitor use in a management plan.</p> <p>The Minister shall review the management plan of a park every five years</p> <p>The protection of natural areas of Canadian significance</p> <p>Commercial hunting and fishing are prohibited</p> <p>Non-renewable resource development is prohibited</p> <p>The national Parks act serves to protect natural features as well as important cultural and historic sites</p> <p>Where new national parks are established as part of a land claims process, an area may be set aside as a National Park Reserve while boundaries, harvesting rights and management roles are negotiated.</p>
PROCESS	<p>Specific land use controls are determined through joint planning processes</p> <p>The Minister shall, as appropriate, provide opportunities</p>

	<p>for public participation at the national, regional and local levels in the development of parks policy, management plans</p> <p>The Governor in Council may, by regulation, declare any region of a park that exists in a natural state or is capable of returning to a natural state to be a wilderness area. The Minister may not authorize any activity to be carried on in a wilderness area that is likely to impair the wilderness character of the area.</p>
TOOLS	<p>National Park National Park Reserve</p>

	MIGRATORY BIRDS CONVENTION ACT
PRINCIPLES	<p>Migratory birds are of great value as a source of food and in destroying insects which are injurious to forests and forage plants on the public domain, as well as to agricultural crops, in both Canada and the United States, but are nevertheless in danger of extermination through lack of adequate protection during the nesting season or while on their way to and from their breeding grounds</p>
COMMITMENTS	<p>Conserve the diversity of migratory birds in Canada by controlling and managing areas that are important for the protection of these birds, their nests and eggs</p>
PROCESS	<p>Management of Migratory Bird Sanctuaries is done in consultation with all interested parties.</p> <p>Permits can be issues for traditional harvesting activities, hunting migratory birds, and economic and industrial activities can be negotiated</p>
TOOLS	<p>Migratory Bird Sanctuary</p>

	CANADA WILDLIFE ACT
COMMITMENTS	<p>Where the Governor in Council is satisfied that any public lands are required for wildlife research, conservation or interpretation, the Governor in Council may assign the administration of those lands to the Minister. Minister may</p> <ul style="list-style-type: none"> • take charge of all wildlife research facilities operated on those lands; • provide advice relating to any wildlife research, conservation and interpretation being carried out on those lands; • subject to the regulations, carry out measures for the conservation of wildlife on those lands not inconsistent with any law respecting wildlife in the province in which the lands are situated; and • subject to regulations, establish facilities or construct, maintain and operate works for wildlife research, conservation and interpretation on those lands. <p>The Minister may, take measures for the protection of any species of wildlife in danger of extinction.</p> <p>The Governor in Council may authorize the Minister to purchase, acquire or lease any lands or interests therein for the purpose of research, conservation and interpretation in respect of migratory birds; or other wildlife.</p> <p>Provisions for establishing National Wildlife Areas to conserve nationally significant wildlife including migratory birds and their essential habitats; as well as rare plants and unusually diverse or genetically important habitats</p> <p>Provisions for establishing Marine Wildlife Areas, focusing primarily on protecting marine birds and associated wildlife and their habitats.</p>
PROCESS	<p>The Governor in Council may establish protected marine areas in any are of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada</p>
TOOLS	<p>Wildlife Management Area National Marine Area</p>

	NATIONAL ENDANGERED SPECIES ACT
PRINCIPLES	<ul style="list-style-type: none"> • Canada's natural heritage is an integral part of our national identity and history • Wildlife, in all its forms, has value in and of itself and is valued by Canadians for aesthetic, cultural, spiritual, recreational, educational, historical, economic, medical, ecological and scientific reasons.
COMMITMENTS	<ol style="list-style-type: none"> 1. The Government of Canada is committed to conserving biological diversity and to the principle that, if there are threats of serious or irreversible damage to wildlife species, cost effective measures to prevent reduction or loss of the species should not be postponed for a lack of scientific certainty 2. When a species is listed, the enactment provides prohibitions against activities that harm individuals of the species or their nests or residences, subject to certain limited exceptions. 3. Mandatory recovery planning process to put in place measures addressing the identified threats that species face, including measures to protect habitat. Stiff penalties are provided for offences. The enactment establishes a public registry and provides the right for individuals to request investigations and take civil action.
PROCESS	<ul style="list-style-type: none"> • The enactment establishes the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) for the identification of species at risk and the id of threatening factors • The enactment contains provisions enabling emergency action, including habitat protection, when circumstances warrant. • The minister may enter into an agreement for the conservation of a species at risk, including the protection of their habitats. The agreement may be with one or more government of provinces or countries or organizations or person.

	CANADA OCEANS ACT
PRINCIPLES	To protect commercial and non-commercial fisheries resources, marine mammals and their habitats.
COMMITMENTS	<p>Provisions relating to the establishment of National Marine Conservation Areas</p> <p>Provides for the development of regulations to establish National Marine Protected Areas and to create special zones in which activities harmful to protected species or habitat could be prohibited.</p>
PROCESS	The process for creating Marine Protected Areas is intended to complement those in existences for Marine Wildlife Areas, under the Canada Wildlife Act and National Marine Conservation Areas under the National Parks Act.
TOOLS	<p>National Marine Conservation Areas</p> <p>Marine Protected Area</p>

	FISHERIES ACT
COMMITMENTS	<p>No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.</p> <p>The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and in particular, but without restricting the generality of the foregoing, may make regulations</p> <ul style="list-style-type: none"> • respecting the conservation and protection of fish • respecting the conservation and protection of spawning grounds <p>he Governor in Council may make regulations prohibiting, notwithstanding the conditions of any licence, the harvesting of marine plants or of any class of marine plants in any area or areas of the coastal waters of Canada for such period or periods as are specified in the regulations</p>
TOOLS	Marine Wildlife Area

	FISHERIES HABITAT POLICY
PRINCIPLES	
COMMITMENTS	* Information yet to be gathered
PROCESS	
TOOLS	

	NATIONAL PARKS SYSTEM PLAN
PRINCIPLES	
COMMITMENTS	To Protect for all time representative natural areas of Canadian significance in a system of national parks and to leave it unimpaired for future generations.
PROCESS	*information still to be gathered
TOOLS	National Park and National Park Reserve

	YUKON PARKS SYSTEM PLAN
PRINCIPLES	Mandate for developing a system of territorial parks in the Yukon.
COMMITMENTS	Ecological representation of all ecoregions in the Yukon by the year 2000 (p. 16, 18) Protection of portions of the land that are representative of the ecological diversity of the Yukon. Protection of rare species of plants and animals, unique landscape features and natural processes (p. 14)
PROCESS	Management plans will be created for each park in the system. Park zoning will be utilized within each of the park categories.

	A WILDLIFE POLICY FOR CANADA
COMMITMENTS	<p>Protection of habitats and ecosystems is the cheapest and most effective way of conserving wildlife and must always take precedence over other means. Moreover, restoring habitat is difficult, expensive and often impractical</p> <p>Government will complete and maintain comprehensive systems for protected areas through legislation and/or policy, that include representative ecological types and give priority to the protection of endangered or limited habitats. To allow species to change their local and regional distributions in response to climate change and other factors, the protected areas system must be designed to</p> <ul style="list-style-type: none"> • Protect the diversity of Canada's physical environment • Contain a range of environments within each protected area • Link protected areas by corridors of suitable habitat

	FEDERAL POLICY ON WETLAND CONSERVATION
COMMITMENTS	<p>Objectives of federal Government with respect to wetland conservation: "promote the conservation of Canada's wetlands to sustain their ecological and socio-economic functions, now and in the future"</p> <p>"Encourage and support provincial and territorial policies that promote wetland conservation and promote the development of other related strategies. Encourage recognition of wetlands in the development and implementation of provincial, territorial and regional conservation strategies".</p>