

SCHEDULE C

TAGISH RIVER HABITAT PROTECTION AREA

1.0 Definitions

1.1 In this schedule, the following definitions shall apply.

"Approved Management Plan" means the management plan in respect of which a consensus has been reached under 6.2 or decided by the Minister under 6.3 of this schedule.

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

"Board" means the Water Board established for the Yukon pursuant to Laws of General Application.

"Forest Resources" has the same meaning as in Chapter 17 - Forest Resources.

"Habitat Protection Area" means the Tagish River Habitat Protection Area established by the Yukon pursuant to the Wildlife Act, R.S.Y. 2002, c. 229, in respect of a portion of the Area, in accordance with this schedule.

"YEC" means the Yukon Energy Corporation and its successors and assigns.

1.2 In this schedule, "mines and minerals" and the "right to work" the mines and minerals shall have their meanings according to Laws of General Application and not as defined in Chapter 1 - Definitions.

2.0 Objectives

2.1 The objectives of this schedule are as follows:

2.1.1 to establish a habitat protection area in the Tagish River area;

2.1.2 to conserve nationally and locally important Fish and Wildlife and Fish and Wildlife habitat in the Habitat Protection Area for the benefit of all people;

- 2.1.3 to recognize the traditional use of the Area by the Carcross/Tagish First Nation;
- 2.1.4 to recognize the current use of the Area by the Carcross/Tagish First Nation, Carcross/Tagish People and other Yukon residents;
- 2.1.5 to conserve the full diversity of Fish and Wildlife populations and their habitats from activities that could reduce the capability of the Area to support Fish and Wildlife;
- 2.1.6 to recognize and honour the history, heritage and culture of the Carcross/Tagish First Nation in the Area through the establishment and operation of the Habitat Protection Area;
- 2.1.7 to encourage public awareness, appreciation and enjoyment for the natural resources of the Habitat Protection Area;
- 2.1.8 to recognise the Habitat Protection Area as a multi-use area including uses for recreation and for the storage, use and management of water for hydro electric production for the benefit of all Yukon people;
- 2.1.9 to provide a process to develop a management plan for the Habitat Protection Area;
- 2.1.10 to provide economic opportunities to the Carcross/Tagish First Nation and People to participate in the development, operation and management of the Habitat Protection Area in the manner set out in this schedule.

3.0 Establishment

- 3.1 As soon as practicable after the Effective Date, if Canada has not already done so, Canada shall transfer to the Commissioner of the Yukon the administration and control of the Crown Land within the Area, excluding the mines and minerals and the right to work the mines and minerals, in, on or under the Crown Land.
- 3.2 Except as provided in 3.3, as soon as practicable after the Effective Date and following the transfer referred to in 3.1, the Yukon shall designate the Area as a habitat protection area pursuant to the Wildlife Act, R.S.Y. 2002, c. 229, to be known as the Tagish River Habitat Protection Area.

3.3 The Habitat Protection Area shall not include:

- 3.3.1 the mines and minerals, in, on or under the Area and the right to work the mines and minerals;
- 3.3.2 any land which is Settlement Land as of the Effective Date of this Agreement;
- 3.3.3 any land in respect of which a title is registered in the Land Titles Office as of the Effective Date of this Agreement to a Person who is not a party to this Agreement;
- 3.3.4 any Crown Land that is subject to an agreement for sale or a lease containing an option to purchase, issued by Government on or before the Effective Date of this Agreement;
- 3.3.5 the unnamed island in Tagish River as shown on Map Sheet Tagish River Habitat Protection Area in Appendix B - Maps, which forms a separate volume to this Agreement.

3.4 The designation as a habitat protection area shall not be removed from any part of the Habitat Protection Area without the agreement of the Yukon, the Carcross/Tagish First Nation and Canada.

3.5 Subject to 3.8 and 3.9, Government shall, no later than the Effective Date:

- 3.5.1 prohibit entry on the Area for the purpose of locating, prospecting or mining under the Quartz Mining Act, S.Y. 2003, c. 14, and the Placer Mining Act, S.Y. 2003, c. 13; and
- 3.5.2 withdraw the mines and minerals, in, on or under the Area from disposal under the Territorial Lands (Yukon) Act, S.Y. 2003, c. 17.

3.6 Subject to 3.8 and 3.9, the Yukon shall, no later than the Effective Date, withdraw the Area from disposition under the Oil and Gas Act, R.S.Y. 2002, c. 162.

3.7 Subject to 3.8 and 3.9, no one may explore for coal in, on or under the Area.

3.8 For greater certainty, the provisions of 3.5, 3.6 and 3.7 shall not apply in respect of:

- 3.8.1 mineral claims and leases recorded or continued under the Quartz Mining Act, S.Y. 2003, c. 14 and placer mining claims and leases to prospect recorded or continued under the Placer Mining Act, S.Y. 2003, c. 13, existing on the Effective Date;
- 3.8.2 oil and gas dispositions under the Oil and Gas Act, R.S.Y. 2002, c. 162 existing on the Effective Date, which for greater certainty, includes federal dispositions;
- 3.8.3 rights granted or continued under section 6 of the Territorial Lands (Yukon) Act, S.Y. 2003, c. 17, existing on the Effective Date; and
- 3.8.4 any successor or replacement rights and any new leases, licenses, permits or other rights which may be granted in respect of an interest described in 3.8.1, 3.8.2 or 3.8.3.
- 3.9 The provisions of 3.5, 3.6 and 3.7 shall not prohibit the granting of rights to mines and minerals underlying the Area which may be accessed directionally from a location outside the Area, and the right to work such mines and minerals, provided that the granting of such rights and the working of those rights do not require access to the surface of the Area or would result in a reasonable likelihood of disturbing the surface of the Area.
- 4.0 Steering Committee**
- 4.1 A steering committee (the "Steering Committee") shall be established as soon as practicable after the Effective Date to prepare and recommend a management plan for the Habitat Protection Area.
- 4.2 The Steering Committee shall be comprised of six members, of whom three shall be designated by the Carcross/Tagish First Nation, two shall be designated by the Yukon and one shall be designated by Canada.
- 4.3 Members of the Steering Committee shall have knowledge and expertise with respect to management of habitat protection areas and shall be delegates of the parties who designated them.
- 4.4 The Steering Committee may make its own operating procedures and shall, to the greatest extent possible, work on a consensus basis.

5.0 Management Plan

- 5.1 The Steering Committee shall endeavour to recommend a management plan to the Yukon, the Carcross/Tagish First Nation and Canada within 24 months of the establishment of the Steering Committee.
- 5.2 The management plan shall be consistent with the objectives set out in 2.1.2 to 2.1.10 of this schedule and with the Wildlife Act, R.S.Y. 2002, c. 229.
- 5.3 The Steering Committee shall consider and the management plan may address all matters pertaining to the management of the Habitat Protection Area including:
 - 5.3.1 Fish and Wildlife management and protection;
 - 5.3.2 habitat management and protection;
 - 5.3.3 land use;
 - 5.3.4 recreational use;
 - 5.3.5 access to and use of the Habitat Protection Area for commercial purposes;
 - 5.3.6 scientific research;
 - 5.3.7 traditional knowledge, customs and cultures of Carcross/Tagish People in connection with the Area;
 - 5.3.8 the role and views of Carcross/Tagish First Nation elders in the development of the management plan;
 - 5.3.9 the traditional use of the Area by the Carcross/Tagish First Nation and Carcross/Tagish People;
 - 5.3.10 the past and current use of the Area by the Carcross/Tagish First Nation, Carcross/Tagish People and other Yukon residents;
 - 5.3.11 measures to enhance public awareness and appreciation of the Habitat Protection Area; and

5.3.12 such other matters as Government and the Carcross/Tagish First Nation may jointly request the Steering Committee to consider.

5.4 The preparation of the management plan shall include a process for public consultation.

5.5 Prior to approval of the management plan, the Steering Committee may refer the management plan to the Carcross/Tagish Renewable Resources Council for their review and recommendations.

5.6 In preparing a management plan to recommend pursuant to 5.1, if the members of the Steering Committee are unable to reach a consensus as to the matters to be included in a management plan, any member of the Steering Committee may, upon direction from the body that designated them, refer the matter to dispute resolution under 26.4.0.

5.7 The Steering Committee shall forward a proposed management plan to the Yukon, the Carcross/Tagish First Nation and Canada indicating what matters, if any, remain outstanding.

6.0 Review and Approval of the Management Plan

6.1 Within 90 days of receipt of the management plan from the Steering Committee, the Yukon, the Carcross/Tagish First Nation and Canada shall jointly review the provisions therein and any outstanding matters.

6.2 The Yukon, the Carcross/Tagish First Nation and Canada shall make reasonable efforts to reach a consensus as to the provisions to be included in the management plan.

6.3 If the Yukon, the Carcross/Tagish First Nation and Canada fail to reach a consensus under 6.2, within 180 days of receipt of the management plan from the Steering Committee, the Minister may accept, vary or set aside the provisions set out in the management plan from the Steering Committee.

6.4 The decision of the Minister under 6.3 as to the provisions to be included in the Approved Management Plan shall be forwarded to the Carcross/Tagish First Nation and Canada in writing.

7.0 Implementation of the Approved Management Plan

- 7.1 The Yukon shall manage the Habitat Protection Area in accordance with the Approved Management Plan and the Wildlife Act, R.S.Y. 2002, c. 229.
- 7.2 Prior to the implementation of the Approved Management Plan, the Yukon shall manage the Habitat Protection Area in accordance with the Wildlife Act, R.S.Y. 2002, c. 229 and to the extent practicable, in a manner consistent with the objectives set out at 2.1.2 to 2.1.10 inclusive of this schedule.
- 7.3 Government, the Fish and Wildlife Management Board and the Carcross/Tagish Renewable Resources Council shall make best efforts to coordinate the management of Fish and Wildlife populations which cross the boundary of the Habitat Protection Area.
- 7.4 Government shall manage the mines and minerals in, on or under the Area and the right to work the mines and minerals in accordance with Laws of General Application.
- 7.5 In managing the mines and minerals in, on or under the Area and the right to work the mines and minerals in accordance with Laws of General Application, Government shall, to the extent practicable, take into account the objectives set out in 2.1.2 to 2.1.10 inclusive of this schedule.

8.0 Review and Amendment of the Approved Management Plan

- 8.1 Unless they otherwise agree, the Yukon, the Carcross/Tagish First Nation and Canada shall review the Approved Management Plan no later than five years after its initial approval and at least every 10 years after the first review.
- 8.2 Review of the Approved Management Plan under 8.1 shall include a process for public consultation.
- 8.3 Recommendations for any proposed amendments arising from the reviews under 8.1 shall be forwarded to the Minister as soon as practicable following each review.
- 8.4 The Yukon, the Carcross/Tagish First Nation and Canada shall make reasonable efforts in the review under 8.1 to reach consensus as to any action to be taken as a result of the review of the Approved Management Plan.

8.5 The Minister shall determine what action, if any, shall result from the review of the Approved Management Plan and shall advise the Carcross/Tagish First Nation and Canada of any decision in writing.

8.6 Government and the Carcross/Tagish First Nation shall consider and may develop mechanisms or enter into agreements to facilitate co-operative implementation and monitoring of the Approved Management Plan.

9.0 Fish and Wildlife

9.1 For greater certainty, Carcross/Tagish People have the right to harvest Fish and Wildlife within their Traditional Territory within the Habitat Protection Area in accordance with Chapter 16 - Fish and Wildlife.

10.0 Forest Resources

10.1 The right of Carcross/Tagish People to harvest Forest Resources within their Traditional Territory within the Habitat Protection Area shall be pursuant to Chapter 17 - Forest Resources, but the rights pursuant to 17.3.1.2 shall be subject to the provisions of the Approved Management Plan.

11.0 Heritage

11.1 Tagish and Tlingit shall be included, where practicable, in any interpretive displays and signs regarding the history and culture of Carcross/Tagish People that may be erected in, or related to, the Habitat Protection Area.

11.2 When considering the naming or renaming of places or features in the Habitat Protection Area, the responsible agency shall Consult with the Carcross/Tagish First Nation.

11.3 Nothing in this schedule or the Approved Management Plan shall affect the ownership of Heritage Resources as provided in 13.3.0 of this Agreement.

12.0 Economic Opportunities

- 12.1 Government shall provide written notice to the Carcross/Tagish First Nation of any public tender for contracts associated with establishment of the Habitat Protection Area, construction of the Habitat Protection Area facilities or operation and maintenance of the Habitat Protection Area.
- 12.2 Government shall include the Carcross/Tagish First Nation in any invitational tender for contracts associated with establishment of the Habitat Protection Area, construction of the Habitat Protection Area facilities or operation and maintenance of the Habitat Protection Area.
- 12.3 The Carcross/Tagish First Nation shall have the first opportunity to accept any contract offered by Government, other than by public or invitational tender, associated with establishment of the Habitat Protection Area, construction of the Habitat Protection Area facilities or operation and maintenance of the Habitat Protection Area upon the same terms and conditions as would be offered to others. A first opportunity shall be offered in the following manner:
- 12.3.1 Government shall give notice in writing to the Carcross/Tagish First Nation specifying the terms and conditions of any such contract;
- 12.3.2 the Carcross/Tagish First Nation may exercise the first opportunity referred to in 12.3 by advising Government in writing, within 45 days of receipt of the notice referred to in 12.3.1, that it will be accepting such contract; and
- 12.3.3 if the Carcross/Tagish First Nation fails to advise Government within the time and in the manner specified in 12.3.2, it shall be deemed to have given notice that it will not be exercising the opportunity set out in 12.3.
- 12.4 Any failure to provide written notice pursuant to 12.1 shall not affect the public tender process or the contract awards resulting therefrom.
- 12.5 Any failure to include the Carcross/Tagish First Nation in any invitational tender for contracts pursuant to 12.2 shall not affect the invitational tender process or the contract awards resulting therefrom.
- 12.6 Any failure to provide a first opportunity pursuant to 12.3 shall not affect any contract entered into associated with establishment of the Habitat Protection Area, construction of the Habitat Protection Area facilities or operation and maintenance of the Habitat Protection Area.

12.7 Government shall include a criterion for employment of Carcross/Tagish People or engagement of Carcross/Tagish Firms in any contract opportunities associated with establishment of the Habitat Protection Area, construction of the Habitat Protection Area facilities or operation and maintenance of the Habitat Protection Area.

12.8 Nothing in 12.7 shall be construed to mean that a criterion for employment of Carcross/Tagish People or engagement of Carcross/Tagish Firms shall be the determining criterion in awarding any contract.

12.9 A failure to include a criterion for employment of Carcross/Tagish People or engagement of Carcross/Tagish Firms pursuant to 12.7 shall not affect any contract entered into associated with establishment of the Habitat Protection Area, construction of the Habitat Protection Area facilities or operation and maintenance of the Habitat Protection Area.

13.0 Development Assessment and Land Use Planning

13.1 In carrying out their functions under Chapter 12 - Development Assessment, the Yukon Development Assessment Board and a Designated Office shall consider the Approved Management Plan.

13.2 In developing a land use plan which includes all or part of the Habitat Protection Area, a Regional Land Use Planning Commission shall consider the Approved Management Plan.

14.0 Hydro-Electric Production

14.1 The establishment of the Habitat Protection Area is not intended to create a priority among the interests or uses referenced in the objectives set out in 2.0.

14.2 The establishment of the Habitat Protection Area and the development of an Approved Management Plan, and any amendment thereto, shall not affect the jurisdiction of the Board.

14.3 Notwithstanding this schedule, management of the Habitat Protection Area shall not affect the rights, privileges and obligations of YEC with respect to the storage, use and management of the water in the Area for hydro-electric production pursuant to;

14.3.1 Water License HY99-010;

14.3.2 the Northern Canada Power Commission Yukon Assets Disposal Authorization Act, S.C. 1987, c. 9 and agreement related thereto; and

14.3.3 any future licenses and authorizations issued to YEC in relation to waters in the Area, including a right to flood to the extent necessary and authorized by the Board.