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The Dene/Metis Land Claim

Information Package

Produced by the Dene/Metis Negotiations Secretariat



Introduction

This Information Package has been produced by the Dene/Metis Negotiations Secretariat on instructions from the Joint Leadership Group. It is intended to inform the members of the Dene Nation and the Metis Association, who will be eligible as beneficiaries of the Dene/Metis Land Claim, of the progress that has been made on the claim and what the next steps in the negotiations process are. It describes the background to the claim, how negotiations are conducted, what the framework of the claim is, what positions have been negotiated, what work there is to be done, and what decisions and directions are necessary from the membership.

In conjunction with this Information Package the Secretariat will also be producing a series of video tapes, based on the contents of the Information Package, in English and the native languages of the Mackenzie Valley.

The Information Package and the video tapes will be distributed free of charge to eligible beneficiaries and to the communities of the settlement area. Other interested groups or individuals should refer to the "Order Information" in the back of this workbook.

Updates of the information contained in the workbook will be provided as progress is made.

Your comments, suggestions, criticisms, and questions are welcome. Please address them to:

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Background To The Dene/Metis Claim

The Dene and their defendants have lived in the area covered by the claim for thousands of years using the land and the animals on the land. About five hundred years ago the Europeans started to come to North America bringing with them their concepts of land ownership and government. The explorers who arrived in America often claimed the land that they discovered for the Kings and Queens of Europe who had provided the financial backing to pay for their trips to America. Europeans were looking for new sources of riches to support their activities at home.

By the seventeen hundreds (1700's) the British had clearly established their dominance in North America. Parties of explorers roamed far and wide over the continent coming into contact with the native peoples of the land and getting assistance from them in their travels. The British started to make deals with the Indians for using their lands and, in 1763, the Queen of England issued a proclamation which we now know as the Royal Proclamation of 1763. This proclamation said that the British people were not allowed to use the land or disrupt the lives of the Indians on the land without first making a deal between the Indians and the Queen (represented by her government). These deals between the government and the Indian people are what we now know as Treaties.

As the Europeans became more and more populous in the country, and moved further and further west, they made treaties with the various Indian tribes that lived on the land that they were starting to use. These treaties took many forms. They granted to the Indians certain specific areas of land for their use, which have become reserves, and payments in money and materials from the government to the Indians for the use of their land. The reserves were not based on a hunting and trapping economy but were based on an agricultural economy, by and large, and so do not reflect the traditional lifestyle of most Indian people.

The first treaty signed with the Dene who lived in the Mackenzie Basin was Treaty Number 8. In 1898 gold had been discovered in the Yukon and many people were making their way west and north to the Yukon to look for gold. The government decided that a treaty was necessary with the Indian people through whose lands many people were traveling to get to the Yukon. Therefore, a treaty party was sent out and signed with the people in 1899. At the same time scrip payments were made to Metis people. These were to be one time only payments in recognition of the

Metis peoples aboriginal background.

The next major development was the issuance of oil exploration and production leases in the area around Norman Wells. The white people thought of the north and the Mackenzie River valley as having a great potential for agricultural development and saw that the economic development that might come about as a result of oil production would bring many people into the Mackenzie Valley. Therefore, the treaty parties set out once again and in 1921 signed a treaty, Treaty Number 11, with the Dene in the Mackenzie Valley. Again scrip payments were made to the Metis people at the same time that the Treaty was signed.

In the two treaties the government promised the Dene many things. They promised that they would give them land, they promised that they would not interfere with their hunting and trapping lifestyle, they promised that they would give them other things like nets and shells and farming tools and money every year. When the treaty parties made these deals with the Dene they travelled very quickly through the land and explained the treaties to the people in short meetings. The people that were interpreting for the treaty parties often had a difficult time explaining to the people what it was the government was trying to do. While there are things that are written in the treaty which say that the Dene are giving up their land to the government, many Dene did not understand what these written words said or meant. Therefore, the two different parties to the treaty had different understandings of what they had become involved in.

In 1969 the Dene started to organize and formed the Indian Brotherhood of the Northwest Territories, which is now the Dene Nation. Through their organization, and because of things like the Mackenzie Valley Pipeline Inquiry, the Dene became more and more aware of what was happening to them and what the treaties said. They began to push for more and more rights.

At the same time Indians all across the country were organizing and pushing for more rights. In James Bay people were faced with a massive hydro electric development which would flood their land and so began negotiations with the government. In British Columbia the Nishga people were pushing for land rights and took their case to court. The case, known as the Calder Case, stimulated the Government of Canada to develop a lands claim policy. This policy said that they would negotiate land claims

with those people with whom the government had not made treaty or with whom they had not fulfilled the obligations of their treaty.

In 1973, the Dene went to court to say they had an interest in the four hundred fifty thousand square miles that they had traditionally used and occupied and that this interest in the land should be dealt with before the land was given away to other people to be used. The judge ruled that the Dene, in fact, did have an interest in the land. This case is known as the caveat or 'In Re: Paulette'.

Finally in 1974, the Indian Brotherhood and the Metis Association held an historic Joint Assembly in Fort Good Hope. At that Assembly they agreed to a joint claim for the Dene and the Metis people living in the Mackenzie Valley and claimed title to the four hundred fifty thousand square miles which they had traditionally used and occupied. In 1975, at their Assembly, the Dene Declaration was approved which, again, pushed for the Dene to own the four hundred fifty thousand square miles. It also said that the Dene should have their own government covering that land within the Canadian government structure. The government rejected this claim saying that they could not set up separate governments for Indian people in the country.

At this time a division developed between the Dene and the Metis over who would be eligible for the claim and what form the claim should take. For a number of years both organizations tried to work out some compromise which would see the two parties coming together and presenting a claim to the government. At the same time the government continued to push for a single claim settlement in the Mackenzie Valley covering all the people. But in the mean time, they continued to allow mining and oil and gas development and other kinds of industrial development to occur on Dene land.

Finally in 1980, under the leadership of George Erasmus and Jim Bourque, the two organizations again started working together and the government appointed David Osborn to negotiate the Dene/Metis claim. In 1983, the Dene/Metis Negotiations Secretariat was established with the responsibility to develop positions and negotiate those positions on behalf of the Dene/Metis. This Secretariat is responsible to the membership of both organizations through the executives of their organizations who make up the joint leadership group.

The Secretariat is responsible for developing a claims position

Background to the Dene/Metis Claim

based as much as possible on the Agreement-in-Principle that the Dene presented to the government in 1976 and the claims statement presented by the Metis in 1977 ("Our Land, Our Culture, Our Future"). The development of a claims position also has to take into account what the government's position is on claims as outlined in their booklet "In All Fairness", and the other processes that are going on. The most important of the other processes that are going on are the discussions on constitutional and political development in the Northwest Territories that the Constitutional Alliance and the Western Constitutional Forum (WCF) are undertaking and the national constitutional discussions on Indian self-government. While there is a separation amongst the processes, the end result should be to give the Dene land and economic and political rights within the Canadian Confederation.

Framework of the Dene/Metis Claim

Introduction

In 1984 the Assemblies of the Metis Association and the Dene Nation approved a Framework for the comprehensive claim which had been developed by the Dene/Metis Negotiations Secretariat. The Framework outlines the elements of the claims package that the Dene/Metis want to see as a final claims settlement. It simply outlines the broad areas of the claim and is then used as a guideline in developing a more detailed claims submissions.

Scope

The claim that is being negotiated is a 'Land Claim' or a 'Land and Resources Claim' and not really a 'Comprehensive Claim' as the government calls it. That means that we are negotiating for certain specific land and resource rights instead of a broad based political package. These land and resource rights will give the Dene/Metis ownership of certain areas of land, participation in land management, rights to wildlife harvesting and management, money to offset things that happened in the past and the right to set up institutions to manage what comes out of the claim. It does not include broad based political rights at the Territorial or the National level. These rights will be negotiated in forums like the Western Constitutional Forum and the First Ministers Conferences on Aboriginal Self-Government.

We have certain aboriginal land rights. The negotiations cover these aboriginal land rights and will specify what these land rights are. We also have aboriginal political rights. The other negotiations will cover these rights and, hopefully, will define what these rights are.

Framework

The Framework is based on a number of things including; the 1976 Agreement-in-Principle proposed by the Dene Nation, the Dene Declaration, the 1977 Metis Association proposal for a claims settlement entitled "Our Land, Our Culture, Our Future" and direction provided to the Secretariat by the Joint Leadership Group and the members of the Dene Nation and the Metis Association through their leadership. It also takes into account the governments comprehensive claims policy. This

Framework

comprehensive claims policy states that a comprehensive claims settlement with the Dene will include some land ownership, some wildlife and wildlife related rights, monetary compensation and some other elements. This means that some of the things proposed in the Dene/Metis documents and positions are being negotiated in other forums like the Western Constitutional Forum and the national constitutional process discussing Indian Self Government rather than in the claims forum.

The framework consists of seven major areas:

1. Eligibility
2. Wildlife
3. Lands and Resources
4. Cash Compensation
5. Institutions
6. Political and Cultural Rights
7. Extinguishment

The following is an outline of the major thrust of each of these areas.

1. Eligibility

The eligibility agreement sets out who is eligible for the Dene/Metis claim, how it will be determined that these people are eligible and sets up a process for accepting other aboriginal people into the Dene/Metis claim. Essentially, to be eligible for the Dene/Metis claim you have to be a descendant of one of the five major tribes who live in the settlement area.

2. Wildlife

This agreement sets out clearly the rights that the Dene/Metis will have to wildlife in the settlement area. It also sets out how wildlife will be managed with Dene/Metis participation.

3. Lands and Resources

This part of the overall agreement will set out what the settlement area is - that being the 450,000 square miles that the Dene/Metis live in. It also sets out that the Dene/Metis will own a percentage of all the non-renewable natural resources in the 450,000 square miles. The

Dene/Metis as a result of this agreement will also get ownership of certain specific areas that are of great importance to them. Under this agreement the Dene/Metis will also have input into how land in the 450,000 square miles settlement area is used. It also talks about Dene/Metis involvement in establishing parks and conservation areas. Further it talks about Dene/Metis involvement in resource development projects. A share of the governments interests in the Norman Wells oil field also makes up a part of the Lands and Resources agreement.

Some of the communities that the Dene/Metis live in now are new communities that were set up by the government for one reason or another.

People were moved from traditional places to these new communities. In other areas people may not like the place that they are living in now if some kind of development comes along to disturb the present lifestyle. In cases like these people may decide that they want to move back to their traditional community or that they want to set up a new community. We will be negotiating to try to make this possible.

4. Monetary Compensation

This agreement will set out how much money the Dene/Metis will get in payment for the use of, and the taking of resources from, Dene/Metis land without their permission.

5. Institutions

Most of the negotiations on setting up institutions will not require negotiation with government. What it will require is negotiation among the Dene/Metis as to what kind of institutions they will want to set up and what will be the responsibilities of the various levels of institutions. We will need a way of managing the land that comes out of the land claims settlement. We will also need a way of managing the money that we get from a land claims settlement. Therefore, we will have to set up some kind of institution or body like a band council, or a Metis local, or a development corporation which will look after the money and the land that comes out of the settlement. We will also have to work out how the money and the land that we get, and the money that will be made from economic development projects in the future, will be shared amongst the Dene and Metis in the various regions and communities.

Lands and Resources, Monetary Compensation and Institutions are

things that, in the long run, will be subject to forms of taxation. As part of the claims package we will be negotiating what forms of exemptions from taxes there can be for the Dene/Metis similar to the exemptions that apply to the reserves in the south.

6. Political and Cultural Rights

We will try to get certain political rights in the land claims settlement. The level of political rights that we get is limited by the government claim policy which says it will only negotiate local level political type rights. There are some other political type rights that we will be getting in the claims settlement, for instance rights to game management and rights to land use management which can be thought of as political rights. There may be some political rights in establishing institutions at the local level. For example, integration of band and settlement councils in the smaller communities. What we will also be seeking is a commitment by the government to continue negotiations on broader political rights at the territorial and national level in forums such as the Western Constitutional Forum and the national constitutional discussions. As both of these forums are presently active we do not anticipate that there will be any problems in continuing those discussions.

7. Extinguishment

The government policy at the present time is to try to extinguish aboriginal rights through a land claims settlement. This means that once we get claims settlement we will not be able to go back to the government and ask them for more things. What they want is for the settlement to be final so that they won't be involved in negotiations forever and ever. What we are saying is that we are going to exchange aboriginal land rights, which are undefined at the present time, for a clearly defined set of land related and land based rights. We are saying further that we will not extinguish our aboriginal political rights through a claims settlement and that these aboriginal political rights must continue to be negotiated in other forums.

programs

As you can see there are no programs involved in the claims settlement.

Framework

There is no provision for health care, there is no provision for establishing a native police force, there is no provision for a housing program, there is no provision for a social services program and other related types of programs. What we are saying is that the government is delivering these programs at the present time and that we want them to continue to deliver those programs. Their claims policy states that a land claims settlement will not take away from any of the programs that are presently being delivered either under the Treaty or under the Indian Act or under other policies. We think that it would not be beneficial to the people to set up another bureaucracy which would be responsible for delivering these kinds of programs to the people when there already is a bureaucracy in place. We will have the ability through our institutions, using the claims settlement funds, to set up special programs if we feel that they are necessary. For instance, some discussion and research has taken place on a trappers income support program.

Conclusion

These are the major elements of the claim. To date we have negotiated some of these elements and they will be explained under separate sections for each of the elements.

As you can see land ownership does not play as important a role in the present Framework as in the original 450,000 square mile position adopted by the Assembly in 1974. This is because it has been seen that land ownership alone does not give the kind of control that the Dene/Metis are looking for from a land claim. Even if you own the land the government can still make laws about how the land is used and who can use it. Therefore, we are approaching the claim from the position of being able to hunt and trap on all the land in the settlement area, being able to have some say on how the land is used in the settlement area through the Land Use Planning system, getting a share of all the developments that occur in the settlement area. At the same time we are trying to get political influence and control through other forums like the Western Constitutional Forum and the national constitutional discussions on Indian Self Government.

Negotiations Process

Introduction

There is now a process by which negotiations proceed, by which the framework was developed, by which positions are developed, by which positions are negotiated, and by which the membership approves positions that have been negotiated on their behalf. This paper will try to outline all of the steps in the negotiations process and the way we will arrive at a final land claims settlement.

Negotiations

Negotiations is the process whereby agreements are arrived at between the two parties at the table; the Government of Canada represented by their Chief Negotiator, and the Dene/Metis represented by their Chief Negotiator. The Government of the Northwest Territories [GNWT] is also represented at the negotiations table as part of the Government of Canada's team. While they are not considered to be a third party to the negotiations they play an important role, especially in areas such as wildlife where they have the responsibility for that particular area.

Each side has a position on a particular topic or issue that is being negotiated, for instance, Wildlife. Each side presents their position and then the two parties look at the different positions and talk about them and try to arrive at some middle ground between the two positions that is agreeable to both sides. A similar situation is when a guy comes in from the bush with a load of furs. He will take the furs to the Bay and see what the Bay manager is offering. He may not like the price that he is offered and so he says that he wants a higher price. The Bay man may say, "No, I can't give you that price but I know that you need a new boat and kicker this year. The boat and kicker I have is worth so much, so what I will do is give you so many dollars and the boat and kicker."

So the trapper thinks about this for awhile and comes back to the Bay with another offer. He may say, "O.K., I need that boat and motor but, if you give me that, I want this much money (more than what the Bay man offered) plus I want a new toboggan for next winter. "

Pretty soon the two guys come to some deal and the trapper gets

something, probably a little less than what he first asked for, and the Bay man pays the trapper, probably more than what he offered in the first place. This is what negotiations are.

The Dene/Metis might have a position that says, "We want to be the only ones who can hunt moose and we want to do it all year round." The government starts with a position that the Dene/Metis can only hunt moose in certain areas and at certain times of the year the same as everybody else. So the Dene/Metis say, "O.K., the other guys can hunt moose but only in the fall." The government comes back and says, "Well that's good, we think that we can agree to the Dene/Metis hunting year round but if there is a total allowable harvest that has to come in if there aren't enough moose, you have to agree to let the others have so many out of the total."

So the two parties go back and forth like that trading some things off for other things, sometimes making some compromises in one area to get something that they want more in another area until an agreement is arrived at that the two sides agree to. In the end the agreement arrived at is something less than what each side started out asking for but it is still something that they feel that they can accept.

Agreements-in-Principle

Framework

The first step in arriving at an Agreement-in-Principle is to establish a framework for that Agreement-in-Principle. The framework is intended to set out the broad principles and give a general tone and direction for the claim. It does not speak to specific details of those principles but gives broad direction. The Framework was developed by the Negotiations Secretariat in 1984 and presented to the Assemblies of the Metis Association and the Dene Nation where it was approved. Once the Framework was approved the Secretariat then moved to the second stage; development of specific positions based on the framework.

Negotiation Positions

Looking at the Wildlife Agreement as an example, we can see that the positions are developed in significant detail based on the principles in

the Framework. This is essentially translating what is the political will of the leadership and the membership into specific programs and proposals.

Position development is done by the staff of the Secretariat with assistance from the parent organizations. As well outside researchers are contracted to provide input into the development of these positions. Research papers provided by outside contractors on specific issues are used in developing negotiating positions.

Close contact is also kept with other groups who are negotiating claims or who have recently settled; notably TFN, COPE, CYI and James Bay. This is done to take advantage of their experience and to compare positions and approaches.

Once a position has been developed, and prior to it being negotiated with the Federal Government, it is taken to the Joint Leadership Group for their approval. Once it has received approval from the Joint Leadership Group, it is taken to the Joint Chiefs and Metis Board. When approval from that body is received, the position is given to the Chief Negotiator for him to take to the table.

The Chief Negotiator takes the approved position and begins negotiations with the Chief Government Negotiator. Depending on the position under negotiation, various other representatives from the National, Regional and Local level of the Dene Nation and Metis Association attend and participate in Negotiations.

If major changes are required to the position during the process of negotiation, approval and direction is sought from the Joint Leadership Group. The Joint Leadership Group are continually updated on the status of Negotiations and in fact participate as members of the Dene/Metis Negotiations team and therefore, always know about developments or changes as negotiations go on.

The membership of both organizations are kept informed of the positions that are being negotiated, or that have been developed, through community workshops. These community workshops are intended to inform the members of the two organizations what is being done on their behalf. This paper is part of an information package that is being used to tell people what is going on. Other parts of the package talk about the background and about the details of positions that have been negotiated, for instance Wildlife. This information package is always being updated to

take into account changes that are going on. For instance we had some workshops where we were telling people about the Land and Resources Agreement that was going to be negotiated. Now that agreement has been initialed it is a bit different from the original position, so changes have been made to our information package.

Initialing

When the Chief Negotiators are satisfied that they have a document that they can agree upon, and that they feel that they can take to their clients, they then initial the agreement. This initialing is meant to signify that the negotiators are satisfied with the agreement as it is drafted and that they are recommending to their client that they accept the agreement. [Bob Overvold's clients being the Dene/Metis and David Osborn's clients being the Federal Government].

Therefore, once a particular document or agreement has been initialed, it will come back to the Joint Leadership Group for their review. Once it has been reviewed by the Joint Leadership Group, it is also presented to the Joint Chiefs and Metis Board. At the same time outside researchers and experts may be asked to review the document to provide an outside opinion about what the agreement might mean. This is because if you are working on something every day you sometimes don't see things that someone who has not been as close might see. The criticisms and critiques provided by outside negotiators, the questions asked by the Chiefs and Metis Board and the Joint Leadership Group all form part of the evaluation of an agreement.

Finalizing Agreements-in-Principle

If changes are required to the document, the Chief Negotiator is then instructed to take the document back to the negotiations table and to try arrive at some compromise with the Chief Negotiator from the other side. When they have again reached a point where they are satisfied with the document and are prepared to recommend the document to their client, the document comes back to the Joint Leadership Group and then to the Joint Chiefs and Executive for their approval.

If the document receives approval from the Joint Leadership Group,

it may be recommended to a Joint Assembly of the Dene Nation and the Metis Association for their approval. The only Agreement that has reached this stage to date is the Eligibility Agreement. It is, of course, intended that the Lands and Resources Mini-Agreement should be presented to the Joint Meeting of the Dene Nation and the Metis Association originally scheduled for late fall, 1985, but which is more likely to occur in spring, 1986.

Signing Agreements-in-Principle

Once an agreement has been initial led and approved, it is set aside and not signed u nt i l al l of the other component parts of the comprehensive package, as outlined in the framework, are negotiated to the same stage, The process that has been outlined so far is the same process that each of the Agreements in Principle which make up the overall Agreement in Principle, go through.

Once all of the component parts of the Agreement-in-Principle have been negotiated, then the Joint Leadership Group and the Joint Chiefs and Executive review the Agreements-in-Principle as part of the overall package. Because of the inter-connection between the various packages, and the fact that each is a negotiated somewhat in isolation from the others, there are likely to be a number of changes necessary to ensure consistency among and between parts of the overall Agreement-in-Principle. Therefore, it would be expected that a final negotiation session would be necessary to ensure al l the linkages necessary are in place and that there are no inconsistencies between or among various parts of the Agreement-in-Principle. Once this has been completed, the Joint Leadership Group and the Joint Chiefs and Executive w i l l once again review and i f they approve, w i l l then recommend the package to the membership.

Ratification

Ratification is the process by which the people who w i l l benefit from the claim say whether or not they accept the package negotiated for them. Different processes for ratification of the Agreement-in-Principle have been used by different claimant groups.

One possibility is a vote by all eligible Dene/Metis on a negotiated package. If this was to happen then at least sixty percent (60%) of the Dene/Metis who are eligible for the claim, and who are of voting age, would have to come out and vote. Then, once the votes were counted, at least sixty percent (60%) of the people who voted would have to be in favour of accepting the claim.'

Alternatively, a vote could be held at the local level and each band and each Metis local would vote on acceptance or rejection of the claim. A formula for determining how many locals and bands must accept the claim for it to be deemed to be accepted by the membership would have to be worked out. In the Yukon, when four of fourteen bands rejected the claim, or the Agreement-in-Principle offered by the CYI executive, it was deemed to be inadequate and the Agreement-in-Principle was therefore, not accepted. It may be that we would say that all bands and locals would have to accept the claim, or it may be that we could say that if 90% or 80% of the bands and locals accepted it would be deemed to be ratification of the claim.

Final Agreement

If the claim is ratified (accepted) by the membership in some form of ratification vote, then the Chief Negotiators for both parties and the political leadership for both parties would sign the Agreement-in-Principle. Once the Agreement-in-Principle is signed, then each party would review it, and come back to the table to negotiate a Final Agreement based on that Agreement-in-Principle. The negotiation of the Final Agreement would include final land selection, costing of the claim, insuring that the linkages among the items are there and establishing mechanisms to fulfill the obligations of the claim. Once that Final Agreement has been reached and agreed upon by the negotiators, it again goes back to the leaders and the government for their approval. It is probable that another ratification vote will have to be carried out amongst the membership to determine whether or not they would accept the claim as recommended. If the membership accepts the package that is presented to them as the final agreement, the political leaders from the government and the Dene/Metis would sign the Final Agreement.

It may be possible that the process outlined above maybe shortened

by going from the stage of signing the various Agreements-in-Principle to the drafting of the Final Agreement. This would then involve a different process for ratification which would have to be determined at that time.

Legislation

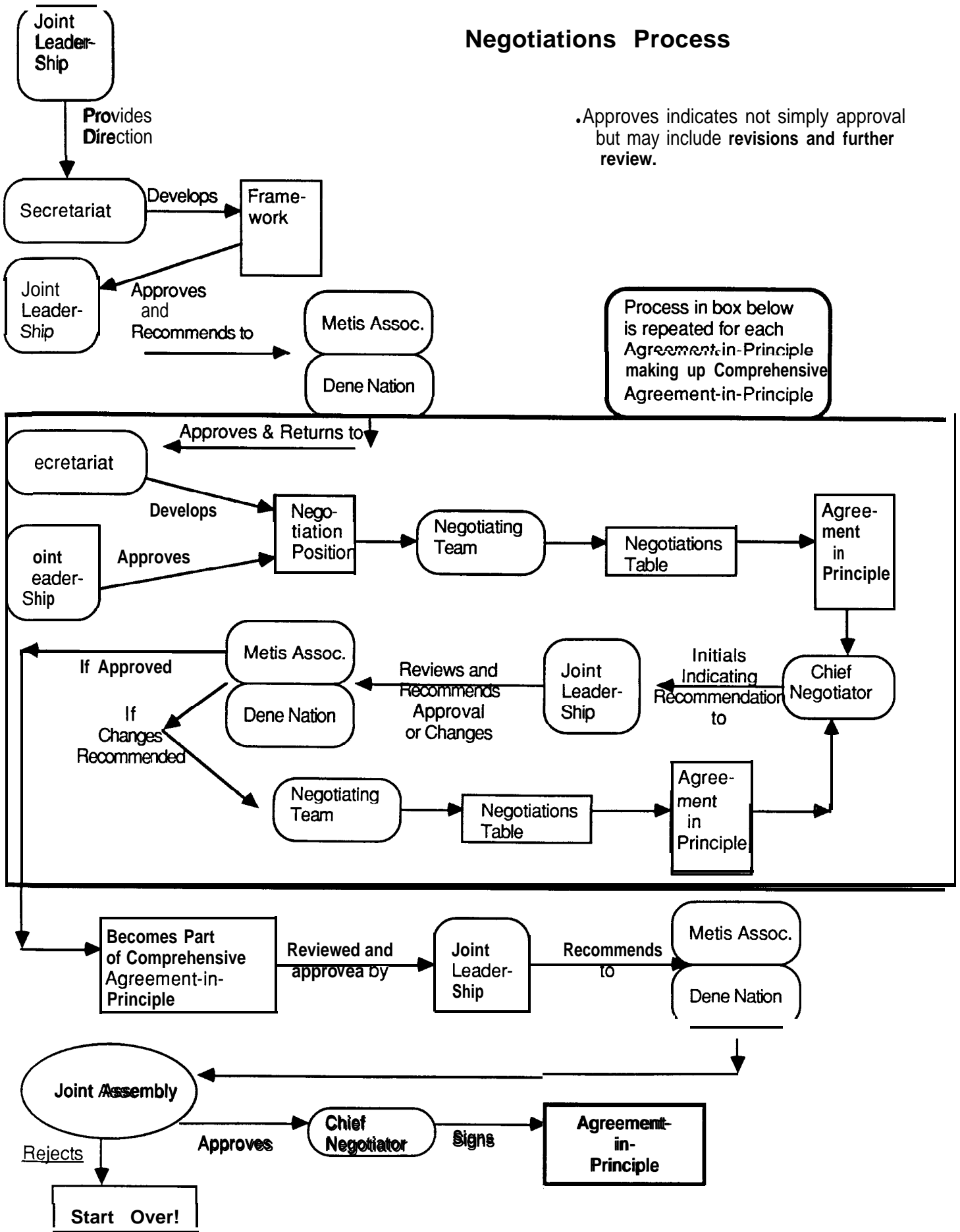
The final step in the process would be for the Government of Canada and the Parliament of Canada to draft legislation and have it passed into law. When the legislation is passed into law, it becomes part of the constitution of Canada, and therefore cannot be amended except under the amending formula as outlined in the new 'Canada Act' .

Other Considerations

During the process of developing positions, negotiating Agreements-in-Principle, re-negotiating those agreements as part of an overall Agreement-in-Principle, and signing of an Agreement-in-Principle, community workshops will continue in an effort to familiarize the membership with the elements of the claim package. This is to ensure that the negotiations team have the support of the membership and that the membership are aware of what the negotiations team are negotiating on their behalf. We are anxious to ensure that if we do arrive at an Agreement-in-Principle it is not rejected by the membership, as it was in the Yukon, because of the membership was not aware of the elements that were being negotiated on their behalf.

Negotiations Process

.Approves indicates not simply approval but may include revisions and further review.



The Eligibility Agreement

Introduction

The Eligibility Agreement or the "Interim Agreement on Eligibility and Enrollment", signed in March of 1984, is the first agreement that was arrived at in the Comprehensive Package. This agreement determines who will be eligible to benefit from the Dene/Metis Comprehensive Claim. As the comprehensive claim is based on aboriginal rights and the traditional use of occupancy of land, the persons who are eligible for the Dene/Metis claim must be descendants of the tribes who inhabited the Mackenzie Basin. These tribes include the Loucheaux, the Slavey, the Dogrib, the Chipewyan, the Hare, and Cree people. Anyone who is descended from any of these tribes is eligible.

Process

The process of arriving at an agreement on eligibility was different from the process that is used for the other parts of the package. At the time that the eligibility agreement was negotiated the Dene/Metis Negotiations Secretariat had yet to be established. Eligibility has always been one of the major problems in Dene/Metis claim and has been one of the reasons why the two organizations have had so much difficulty in working together on a comprehensive claims package. It was therefore, crucial to the claims settlement to resolve the question of eligibility and determine who would benefit from the claim. Once it was determined who would benefit from the claim, then it became easier to discuss the various elements of the proposed package and get agreement on these elements. The eligibility agreement was therefore, negotiated, initialed, signed and ratified by the Assemblies. Other agreements go through a different process as outlined in another section of this information package.

The Agreement

The Agreement on Eligibility has eleven sections:

1. Definition

Eligibility

2. Eligibility
3. Rights and Benefits
4. Nature of Eligibility
5. Other Settlements
6. Enumeration and Voting
7. Central Enrolment Board
8. Local Enrolment Committees
9. Citizenship Rights
10. costs
11. Other Provisions

Eligibility

This section is the main part of the agreement and states who will be eligible for the Dene/Metis claim. Put simply, to be eligible you must be a Canadian Citizen living in the settlement area and be a Dene or Metis descended from the Chipewyan, Slavey, Loucheaux, Dogrib, Hare, or Cree people who lived in the area before the year of the treaty, that is 1921. This means that anyone whose ancestors are Dene and whose ancestors were in the Mackenzie Basin before the treaty was signed can benefit from the claim; this is the group we know as the 1921 group.

The eligibility agreement also outlines another group of people who we know as the 1953 group. These are people who were eligible for a General Hunting License. A person who is a native person, who resided in the Mackenzie Basin, was a member of a family or group of Chipewyan, Slavey, Loucheaux, Dogrib, Hare or Cree people that prior to August 1, 1953 hunted in the Mackenzie Basin as a means of livelihood was eligible for a GHL

One of main disputes between the two organizations, and between people who were members of the organizations, was the question of who would be eligible. Would only the 1921 group be eligible for the claim or would both the 1921 and 1953 groups be eligible? The Eligibility Agreement, in an effort to resolve this dispute, called for a vote of all of the people who made up the 1921 group to determine if the 1953 group should be included in the claim. This vote was held in June of 1984 under the direction of the Central Enumeration Committee. The people who were voting were members of the 1921 group. The question asked was,

Eligibility

whether or not the 1953 group should be included as beneficiaries of the claim.

There were 5826 people enrolled as 1921 people. Of that number, 4026 person voted. Of the 4026 people who voted, 2039 said that the 1953 group should not be included, 1696 said that they should be. Therefore, those people who make up the 1953 group are not eligible for benefits from the Dene/Metis claim.

There is a third provision for acceptance into the Dene/Metis claim which is known as the community acceptance vote. A person, who is an aboriginal person, can get an eligible Dene/Metis claimant to sponsor them in a community acceptance vote. Once this person is sponsored, a vote is held in the community by those people who are eligible for the Dene/Metis claim. These people can state whether or not the sponsored person should be included in the Dene/Metis claim. The people who vote must be residents of the particular community where this person is applying for inclusion. There must be a majority of eligible claimants in the community voting in favour of the person for that person to be included as an eligible claimant.

The enumeration committee has been sponsoring a series of community acceptance votes over the pasts ix months in the various communities. These votes have recently been concluded and have determined who may be eligible for the claim. However, the vote that has recently been held is not a definitive vote on community acceptance. We will not start a procedure for enrollment in the claim until a final claims settlement has been arrived at. Once the enrolment begins then another community acceptance vote w i l l have to be held to determine i f the people in the community acceptance group w i l l be accepted into the claim. Meanwhile, the vote that has been held is a good indication of what is likely to happen when enrollment commences.

Other Provisions

The agreement sets out some other provisions relating to eligibility. Eligible claimants may enroll in the claim as a Dene or as a Metis. This is because there may be different institutions set up by the two organizations to manage their share of benefits. A person can declare themselves as Dene or Metis and squire their benefits through the Dene or

Eligibility

Metis institutions. The number of people enrolling as Dene or Metis will determine the level of benefits which will be managed by the Dene or the Metis institutions.

The eligibility agreement also says that you cannot be a party to more than one comprehensive claim settlement. There have been other comprehensive claims settlements in Canada and there will, in the future, doubtless, be others. A person who is descended from perhaps, a mother who is from the Yukon and a father who is from the N.W.T. can then choose to be a beneficiary of the CYI claim or the Dene/Metis claim. However, this person cannot benefit from both claims.

The eligibility agreement also outlines the procedures whereby people will be enrolled as beneficiaries. A Central Enrollment Board, as well as Local Enrollment Committees, will be established. The agreement details the powers and responsibilities of both these bodies and how they will operate in enrolling people in the claim.

The final section of the eligibility agreement states that costs for enumeration, voting, and enrollment will be paid for by the Government of Canada.

The Wildlife Agreement

Introduction

This agreement was negotiated during 1984 and 1985 with the Government of Canada. At the present time negotiations have finished but the government has some problems with the agreement and so has told its negotiator not to initial it. The Chief Negotiator for the Dene/Metis Claim has been prepared to initial this agreement for some time but cannot until the government is ready. We have had some meetings with the government and the Minister of Indian and Northern Affairs to try and resolve the government's concerns but with no success. We will continue to lobby with the government for them to give direction to the Chief Negotiator to initial this agreement.

The Agreement

The "Interim Agreement on Wildlife Harvesting and Management" (Wildlife Agreement) is a long and detailed agreement which sets out what rights the Dene/Metis have to Wildlife and how Wildlife will be managed. It also talks about what things will happen between the time of negotiating the agreement and the time when the agreement is signed.

There are twelve (12) sections to the Wildlife Agreement:

1. Objectives
2. Definitions
3. General Provisions
4. Harvesting
5. Limitation of the Harvest
6. Management of Migratory Species
7. National Parks
8. Wood Buffalo National Park
9. Commercial and Economic Activities Relating to Wildlife
10. Management Boards
11. Dene/Metis Wildlife Management Councils
12. Other Provisions

Harvesting

The Wildlife Agreement

Under the terms of this agreement the Dene/Metis will have the right to hunt and trap everywhere within the 450,000 square miles that will make up the settlement area. There will be some restrictions on hunting and trapping but these restrictions are mostly the kind of things that are put in to ensure peoples safety. For instance, you won't be able to shoot moose across the highway. Another example is that you won't be able to hunt in downtown Yellowknife or downtown Fort Good Hope. But these are just common sense rules to ensure that nobody gets hurt.

The only people who will be allowed to trap fur bearing animals within the settlement area will be Dene/Metis. This is what is known as an exclusive right to fur bearers. If somebody who is not an eligible Dene/Metis wants to trap in the settlement area, he must ask for and receive permission from the Dene/Metis. The only kind of fur bearer that other people will be allowed to take will be wolves and they will be only be able to shoot wolves; they will not be able to trap them.

The Dene/Metis will be allowed to hunt any kind of animal anywhere in the settlement area as long as their activities are safe. The only thing that they will not be able to hunt year round will be migratory birds and the government has agreed that it will do everything it can to make it possible for Dene/Metis to hunt migratory birds. The reason that they will not allow it now is because they have an agreement with the United States and Mexico which says that those birds will be only hunted in the fall.

People who are not beneficiaries, that is who are not part of the Dene/Metis claims settlement, will be able to hunt and fish in the settlement area, but their hunting and fishing will be restricted by things like seasons and catch limits. As well, people who are not beneficiaries will not be able to hunt on Dene/Metis lands.

There will also be certain areas of the settlement area selected as special Dene/Metis harvesting areas which will give the Dene/Metis exclusive right to harvest specific species of wildlife in those areas. For example, an area could be designated as a Dene/Metis moose harvesting area. There may be rules negotiated which could give non-beneficiaries harvesting rights under certain conditions in these areas.

We will also be able to select certain lakes as Special Harvesting Areas for fishing. These fish lakes will be selected in addition to the lakes that are in Dene/Metis lands.

If, for some reason in the future, certain kinds of animals become

scarce, and there are not enough of them around to support unrestricted hunting, there will be a Total Allowable Harvest set. This Total Allowable Harvest (TAH) will be set with input from the Dene/Metis. If the TAH has been set, the Dene/Metis will have the first call on the number of animals available. The Dene/Metis first chance at these animals will be based on a Dene/Metis Needs Level. This Dene/Metis Needs Level will be determined by a formula which is in the agreement and which is meant to reflect traditional consumption patterns of the Dene/Metis.

There will be some special rules for certain kinds of animals like woodland caribou, muskox and buffalo. These special rules will be in place because there are not enough of these animals available now for unrestricted hunting. If in the future there are more of these animals, these rules may change. There is also the special rule for migratory birds that they can only be hunted in the fall. This, as was stated before, is because of the international agreement with the United States and Mexico.

Commercial Opportunities

There are certain kinds of commercial opportunities available relating to wildlife. Examples of commercial opportunities are: commercial fishing, hunting lodges, fishing lodges, and, perhaps some time in the future, ranches for fur bearers or for meat animals like caribou or reindeer.

The Dene/Metis will have a right of first refusal for the sale of existing operations or for the establishment of new operations. This right of first refusal means that if somebody is going to sell an existing hunting lodge or fishing lodge or commercial fishing license, or if the government opens up an area for a hunting lodge or fishing lodge or things like that, that they will first have to ask the Dene/Metis if they want the license. In certain cases the Dene/Metis will have to buy the existing operation at a reasonable and fair price. In other cases, they will simply be able to take up the license. If they say no and don't take the license, then it can go to somebody else. This is what is meant by first refusal.

If a commercial activity hasn't been carried out in a certain area for some time, then the Dene/Metis will have the right to say whether or not it can go ahead there. This applies to all commercial activities including ranching.

Parks

This Wildlife Agreement will prevail in all new parks that are set up after the land claims agreement is signed. This means that all of the rights and privileges contained in the Wildlife Agreement will continue to apply even though a new park is set up.

Wood Buffalo National Park is a different case. There we will have to negotiate a special appendix to the Wildlife Agreement which will set out what rights Dene/Metis will have in the park. This appendix has yet to be negotiated with the government and the people in the Fort Smith region are working on developing a Dene/Metis position.

Management

Management of wildlife and wildlife habitat is now done by the Department of Renewable Resources of the Government of the Northwest Territories. Other government departments, like the Canadian Wildlife Service, which is part of the Department of the Environment, and the Department of Fisheries and Oceans, also have some input into the management of wildlife, in particular fish and birds. When these departments make their rules and regulations about wildlife, they sometimes consult with the Dene/Metis, but often this consultation is not very detailed and many times it does not appear as if the departments take into account anything that the Dene/Metis tell them. After the signing of the claims agreement, the Dene/Metis will have guaranteed input into the management of wildlife through a Wildlife Management Board.

This Wildlife Management Board will be set up after the agreement is completed and will consist of equal numbers of Dene/Metis representatives and government representatives. These people will then get together to appoint an acceptable independent chairman. The Board will have the authority to make decisions on certain things, including; Total Allowable Harvest (TAH), the Dene/Metis Needs Level, the distribution of the Total Allowable Harvest, the establishment of policies for harvesting by the Dene/Metis and non-Dene/Metis, determination of whether or not commercial harvesting should take place and the regulation

of such harvesting, also for guiding and outfitting, the regulation of hunting, fishing and naturalists camps, approval of plans and policies for the management of wildlife species (including endangered species), wildlife habitat, conservation areas and national parks (except Wood Buffalo National Park), approval of the establishment of conservation areas and approval of all regulations relating to the above. In other areas, where other jurisdictions or departments are involved, the Wildlife Management Board must be consulted by government before a decision is made. For example, all legislation affecting wildlife and wildlife habitat, land use policies which may affect wildlife, international or interprovincial wildlife and wildlife management agreements, the establishment of new national parks, wildlife management in Wood Buffalo National Park, public education on wildlife, wildlife research, and Dene/Metis training in wildlife related occupations.

Any decision of the Board in its management responsibilities prevails unless the Minister reverses such a decision. Before reversing a decision the Minister must refer the matter back to the Board for comment and if the Minister decides to exercise his veto he must give written public reasons for his decision.

As well as the Wildlife Management Board at the Territorial level, there will be established Wildlife Councils at the local and or regional level. These local councils will have certain authorities, particularly with respect to the distribution of quotas. They also have other authorities and powers delegated to them by the Wildlife Management Board. This is one of the things that the Dene/Metis should be talking about; how they want to distribute the powers from the Territorial Board to regional and local Wildlife Management Councils.

General

The government will not be able to do anything that goes against the terms of the Wildlife Agreement once the final claim has been settled. This is because the claim settlement will become part of the Canadian Constitution which is a higher form of law than the laws passed by the Territorial Government. This will ensure that if a government comes in, in the future, which is not sympathetic to the Dene/Metis, they cannot simply make laws against them.

The Wildlife Agreement

The government will, in some special cases, be able to pass regulations or laws without consulting with the Wildlife Management Board. This, however, will only be allowed in special urgent cases when it would be too time consuming and difficult to get a meeting of the Wildlife Management Board together.

There are other agreements which are being negotiated or have been negotiated which will be included as part of the Wildlife Agreement in the final claims settlement. Agreements of this nature include the Porcupine Caribou Agreement and the Beverly Kaminuriak Caribou Agreement.

Between now and when the agreement is finally signed, the government has agreed to consult the Dene/Metis on any changes to the laws or the regulations relating to Wildlife.

What's Next

There are still some details to finalize in the Wildlife Agreement which will be outlined in this section.

The Wildlife Agreement says that Special Harvesting Areas (SHA's) will be set aside for Dene/Metis use. These Special Harvesting Areas will be designated for particular species, for example, there may be special moose harvesting areas or special migratory bird harvesting areas. There will also be certain lakes set aside as Dene/Metis fish lakes. We will have to identify these Special Harvesting Areas prior to the final agreement. We intend to begin the work in identifying these areas as part of our Land Identification Project and then set out these areas in an appendix to the Wildlife Agreement which will be Appendix B. Non-beneficiaries may be allowed in the Special Harvesting Areas under terms and conditions which will have to be negotiated prior to the final Agreement.

Section 5.6 of the Wildlife Agreement says that there will be a Mackenzie Basin Harvest Study and that the terms of reference for this harvest study will be set out in an appendix to the Agreement; Appendix C. The Department of Renewable Resources of the Government of the Northwest Territories is proposing that a harvest study begin in the near future. The Secretariat has had numerous discussions with officials of the Department of Renewable Resources on the details of this Harvest Study. At a recent meeting the Joint Leadership Group gave the go ahead

to work out the details under which the Dene/Metis might participate in this harvest study. There will be a community consultation process to discuss the proposed harvest study and the terms and conditions under which the Dene/Metis might participate in the study. We expect that the consultation process on the harvest study will start fairly soon and that a harvest study will begin in 1986. The experience gained in participating in the Department of Renewable Resources' proposed harvest study will be used by the Secretariat to negotiate the terms of reference for the study called for in the Wildlife Agreement. These terms of reference will then be set out in Appendix C.

If, at some point in the future, there needs to be Total Allowable Harvest level set for a particular species, the Dene/Metis allocation of that Total Allowable Harvest will be determined by establishing a Dene/Metis Needs Level. The data collected in the harvest study will be used to establish this Dene/Metis Needs Level. There are however, two special cases where a Needs Level will have to be negotiated. These two special cases are for sheep and for woodland caribou. We will have to collect some information on the Dene/Metis harvest of these two species at present and then negotiate a Needs Level for these two species.

A couple of years ago, a management agreement for the Beverly Kaminuriak Caribou Herds was negotiated and a Caribou Management Board was established. Recently, negotiations for a Management Board for the Porcupine Caribou Herd were also finalized. We will probably want to establish similar boards for the Bluenose and Bathurst Caribou Herds and these agreements will be included in the final Wildlife Agreement.

The establishment of National Parks has caused concern for the Dene/Metis especially in the South Slave area where the people from Fort Smith have been greatly affected by the Wood Buffalo National Park. The Wildlife Agreement talks about parks in general and says that the provisions of the Wildlife Agreement will apply in any new parks that are established after the final agreement. It also says that employment for Dene/Metis in the Parks will be maximized. To ensure that this happens, training programs will have to be established. These training programs are to be negotiated prior to the final agreement.

Wood Buffalo National Park, as the only established National Park in the settlement area, is a special case. Harvesting rights in the Park are restricted. We will have to negotiate harvesting rights for Wood Buffalo

The Wildlife Agreement

National Park and these will be set out in an appendix - Appendix E- to the Agreement. People in the South Slave area are very concerned about this and are, in consultation with the Secretariat, working on land use and harvesting rights in Wood Buffalo National Park.

As a final note, the harvesting rights of other native people, especially the Chipewyan people from Saskatchewan and Manitoba, will have to be negotiated between the Dene/Metis and those affected parties and then spelled out in the final agreement.

The Lands and Resources Agreement

The Mini Agreement-In-Principle on Lands and Resources, or "The Interim Agreement on Key Elements of Lands and Resources", was initial led by the two parties on July 9, 1985. We are calling it a Mini Agreement-In-Principle, or a Mini Agreement, because it only outlines the major principles that will make up a more detailed Lands and Resources position. As an example, the Mini Agreement talks about system for reviewing the impact of major developments. It states in part, "The exact form and jurisdiction of the agency will be negotiated prior to a final settlement." By comparison, the Wildlife Agreement is a much more detailed agreement. When it talks about a Wildlife Management Board, it states specifically that the Management Board will consist of fifty percent Dene/ Metis representation and it details the exact powers and responsibilities of that Board. We did, however, take a different approach with the Lands and Resources Agreement than we took with the Wildlife Agreement.

One of the reasons we decided on a Mini Agreement, which only outlines the key principles of lands and resources, is that we were anxious to make progress in our claims negotiations. The Minister of Indian and Northern Affairs had been talking about a review of the government's Comprehensive Claims Policy and said that he would be appointing a task force to do this. We were concerned about what the government's policy with respect to native peoples was in general and, at the mention of a review of claims policy, became concerned that this review would hold up the process. We therefore, felt it necessary to get agreement on certain basic aspects of a land and resources position prior to any review. This would insure that the government could not go back on any agreements that we negotiated and that we could tell the government that we were making progress on negotiations. Therefore, they would not suspend our negotiations during the time that they were reviewing the claims policy. So the Mini Agreement was drafted to set out the main principles or, as the agreement says, "...a framework for the resolution of key elements of lands and resources."

General

The agreement has eleven sections:

1. Introduction
2. Objectives
3. Definitions
4. Land and Land Selection
5. General and Transitional Provisions Relating to Land
6. Land Use Planning
7. Impact Assessment and Review
8. Land and Water Management
9. Post Settlement Third Party Interests
10. Benefits from Future Development of Sub-Surface Resources
11. Preservation of Dene/Metis Heritage.

Objectives

The Lands and Resources Agreement has a number of objectives. One of the primary purposes is to define the settlement area. We must have an agreement with the government on what area the claim covers. That is, the 450,000 square miles that the Dene/Metis claim as being their area of traditional use and occupancy. The other of the objectives of this agreement are to provide the Dene/Metis with lands in the settlement area which they will own. It is also to insure that the Dene/Metis have some guaranteed say in land use and land use planning. It has a further objective to provide a measure of environmental protection for the land in the settlement area. The final objective is to provide economic benefits from resource development in the settlement area to the Dene/Metis.

Land

After the claim settlement there will be a number of different categories of land. It is important for us to look at these different categories and to understand what they mean.

Primary amongst all of the land we talk about is the **settlement area**. The settlement area will be defined in the agreement and sets out

the area of land to which provisions in the claims agreement will apply. We are talking essentially about the 450,000 square miles that the Dene/Metis have traditionally used and occupied.

The settlement area will be clearly defined by its borders. In the east we are, at the present time, negotiating with the TFN, that is the Eskimos, on where the settlement area line should be. These negotiations are proceeding and we believe that we can arrive at some agreement with them by the end of the year.

In the south, the border has yet to be determined. Members and beneficiaries of the Dene/Metis claim who live in the South Slave area are advocating that we should be able to make land selections in Alberta. This is one of the things that we are presenting to the Ministers Task Force which is reviewing Comprehensive Claims. We will attempt to get the government to agree to allow land selection south of the 60th parallel.

The western border of the Dene/Metis settlement area will be, primarily, the Yukon border. There may be some areas of our settlement area which will fall into the Yukon. The two most likely places this will happen will be the Fort McPherson group trapping area which extends into the Yukon along the Dempster highway. The other is in the south western corner of the settlement area where the people from Fort Liard use land in the Yukon.

The northern border of the claim area will be the Cope settlement area. This, of course, has taken into account that the Aklavik Lands Selection is within the COPE settlement area.

The second important category of land will be Dene/Metis lands with **surface title**. We will be negotiating with the government ownership of specific areas of land. The first category of ownership of land will be land where the Dene/Metis only own the **surface** of the land. They will not, in this category of land, own any of the resources that are underneath the surface of the land. If one owns only the surface it means you can set rules for who can come on the land, when they can come on, how they should come on, where they should travel on the land and, if they are going to stay on the land for any length of time, what rents should be paid for using the land. We must remember however, that if an individual or company has squired rights to the minerals below the surface, they must be allowed on the land to be able to get in and get the resources from beneath the ground. While it is required that these companies or

individuals be allowed on the land, it will be up to the owner of the land, that is the Dene/Metis, to set the rules for how these people do it. If the two parties cannot reach an agreement on the rules for coming on the land and using it, then there will be some way that the two parties can go to another party and work out acceptable rules for both sides. This is a form of arbitration. While we have an agreement that the Dene/Metis will own surface lands, we still do not know how much this will be.

The third important category is land which the Dene/Metis will have **surface and sub-surface title** to. That is, they will own the surface and everything that is below the surface. If the Dene/Metis own the sub-surface, as well as the surface, then there will be no worry about anybody else coming in and disturbing the land.

In addition to commercial access rights, government employees will have access to Dene/Metis lands to carry out surveys and other government functions. The general public will have limited access to cross over Dene/Metis lands to exercise rights on adjacent lands and to use navigable rivers and lakes on Dene/Metis lands for travel and recreation. The general public have no right to hunt or fish on Dene/Metis lands unless special rights are negotiated in the course of local land selections or other negotiations.

There are a number of reasons why the Dene/Metis will want to own areas of land with surface and sub-surface title. **One** of the primary reasons is that it protects against any resource development company coming in and trying to develop the resources in a particular area. Therefore, if you want to protect burial grounds, religious sites, important cultural sites, important harbours, land for new communities or things like this, selecting land with surface and sub-surface title will ensure those things. Another reason would be to get economic benefit from the land. If, for instance, a particular community knew that there was an area near their community which had promising minerals or oil wells, then they could select that land for sub-surface as well as surface ownership and then extract the resources and get the economic benefit from them.

The fourth category of land, and it's not really a category of land but it relates to ownership, is the **blanket interest**. We have been talking for some time about the idea of a blanket interest. This means that the Dene/Metis will own a percentage of all the resources that are underneath

the ground at the present time. Then if a company comes along and starts to develop the resources under the land, the Dene/Metis will be guaranteed a percentage of anything that is developed. The exact percentage has yet to be negotiated with the government and we have yet to decide how we will collect our share of those resources. There are a number of possibilities for collecting our share, and that is something that the Dene/Metis should discuss amongst themselves.

The reason for trying to own a blanket share is that we can guarantee that we will get some benefit from sub-surface resources. If we try to go around and select all the land that has high potential for resource development now, we may find that those areas of land are really not that good. We also will not be able to tell whether or not something that is valuable today may not be so valuable in the future and something that is not valuable today may become more valuable in the future. This way, by owning a blanket interest, we will always be sure of getting our piece of anything that is developed in the settlement area.

The final land related benefit that makes up part of the lands and resources agreement is the Norman Wells Oil Field position. We have negotiated this agreement with the government to a certain extent but, it is still on the table for future negotiations. The government has said that the Dene/Metis will get a percentage of the Norman Wells Oil Field but, we still have to work out what that exact percentage is.

With the blanket interest the sub-surface and surface lands, surface lands, and the Norman Wells oil field, we have yet to negotiate exact numbers. Each is obviously connected up to the other and so, in negotiations, we may trade off parts of one area for greater benefits in another area. That is all part of the process of negotiations. As well, the quantum, that is the amount of land, that we get is linked to the amount of compensation we will get. In some claims, the claimant groups got more monetary compensation and less land. In other claims they were more interested in taking more land and less money.

The other claims give us some idea of how much we might get. For instance, in COPE each community got 700 square miles of surface and sub-surface land and about 5000 square miles of surface land. They did not, however, get any blanket interest. While this gives us something to compare to, the actual amount that we will get will be negotiated.

All of the lands that are selected by the Dene/Metis will be held for

them by Dene/Metis institutions. We will have to decide amongst ourselves the exact form of these institutions and the division of responsibility amongst the local level, the regional level, and the territorial level for each of these institutions.

Land Selection

land will be selected in each community by a process of negotiations. Each community may end up with a different amount of land depending on their different needs. Some communities may want a lot of sub-surface land and not much surface land, other communities may not want any sub-surface land and will then get more surface land. Each community will have a different set of criteria and we will have to decide how much land the individual communities will get.

There will be some restrictions on the selection of land, for instance, we will not be able to select land that is owned by another party. Also, if we select land where there is already an existing third party interest, for instance, a lease or an exploration agreement, we will have to accept the existing terms of that lease or exploration agreement until the terms expire. At that point we can negotiate a new regime with the holder of the rights.

Land Use

There will be a set of rules, some of which are already in the agreement and some of which have yet to be negotiated, which will govern the use of Dene/Metis land by outside parties. There will also be rules which will be negotiated on a case by case basis with specific individuals or corporations who want to come in and use Dene/Metis land.

On the rest of the 450,000 square miles there will be a land use planning system which the Dene/Metis will participate in. There have been, in the past four years, negotiations on establishing a land use planning system for the Northwest Territories. The Dene/Metis have participated in these negotiations and have agreed to participate in this system that has been established. If however, the Dene/Metis decide that they would like to see some changes in that system, they maybe able to negotiate those changes as part of the land claims agreement, prior to a

final settlement.

This Land Use Planning system has been set up with fifty per cent native participation. This fifty per cent native participation may not simply be Dene/Metis participation because the system may be set up to cover all of the N.W.T. If so there will have to be Inuit participation as well as Dene/Metis participation. However, the level of aboriginal participation will never be less than fifty per cent. Under the land use planning system there also may be regional structures set up to bring the planning process closer to the people.

The land use planning system will try to develop a comprehensive plan for land use in the N.W.T. If a developer then wants to use the land for something, he will have to ensure that that land use is agreeable to the land use plan.

If there are proposed major resource development projects these projects can be referred to an impact assessment and review process. This impact assessment and review will look at what might happen to the land from the development that is proposed and make recommendations to the land use planning system as to whether or not this development should proceed. As with the land use planning system, the impact assessment and review body will consist of fifty percent native representation. This body may decide to hold public hearings if they feel that they are necessary.

Land and Water Management

At the present time there are lots of rules, laws, boards, departments and agencies set up to govern land and water management. If somebody wants to go out on the land and use it for a particular purpose, they often become so confused by the number of different groups and agencies there are that they don't know where they should go next to get a permit. As well, this means that some groups are issuing permits to certain parties and not properly informing all of the other parties who should be informed. In the Lands and Resources Agreement we have agreed with the government to negotiate some way to simplify this system. The government has agreed that we will put this aside and look at it later, but that some simplification is necessary.

Resource Development

If a development is going to proceed on Dene/Metis land, once lands have been selected, the developer will have to make arrangements with the Dene/Metis. If the development is going to proceed under a permit or agreement which existed prior to the Dene/Metis selecting the land, then the holder has the right to use the land but must pay some form of compensation and rent to the Dene/Metis. If the Dene/Metis select land and later on the government gives out an exploration permit to a person or company, (you will recall that owning the surface cannot restrict somebody else from coming in and taking the resources from underneath the surface) the Dene/Metis must work out some agreement with the person who holds the permit. These agreements will include how the holder of the permit will come on the land, what rent he must pay, what compensation he must pay in the case of damage, and what environmental rules he must follow. These agreements may also contain provisions for jobs, contracts and benefits for Dene/Metis in the surrounding area. It could even go as far as including equity participation in the project by the Dene/Metis.

If there are new projects that are not on Dene/Metis land, but still in the settlement area, they must take into account Dene/Metis traditional activities. Developers should negotiate a project agreement with the Dene/Metis who live in the area of a project. These project agreements will include such things as jobs, contracts and other benefits as well as environmental terms and conditions.

Dene Heritage

The Lands and Resources agreement states that the Dene/Metis should be involved in the conservation and management of heritage resources. By heritage resources we are talking about such things as archeological sites, artifacts, records and other things of that nature. At the present time the Government of Canada and the Government of the N.W.T. are looking at new institutions and rules for managing archeological and heritage resources. They have agreed that the Dene/Metis will be involved in any discussions about new regulations, laws, or institutions. We are trying to ensure that the Dene/Metis will have a clear say in the

way any of these heritage resources are used and protected.

The Dene/Metis have always referred to certain parts of the country by Dene/Metis names. It is a part of the agreement that names in the settlement area will be reviewed and, if appropriate, changed to reflect Dene/Metis heritage.

What's Next

The Lands and Resources Agreement, because it is only an agreement on key elements of Lands and Resources, has a number of things that are left to be negotiated. The most crucial part left is, how much land will the Dene/Metis get, in other words, the Land Quantum. We need to know how much land the Dene/Metis will get in the claims agreement before we can start our land selection. On October 2, 1985, representatives of the Dene/Metis met with the Minister of Indian and Northern Affairs, David Crombie, who agreed to discussions beginning between the Chief Government negotiator and the Dene/Metis on the sub-surface interest and on land quantum. When land quantum has been determined then land selections can begin. These land selections will be done through a process of negotiation in each community. The process for these community negotiations will be discussed at the same time as the question of land quantum is being negotiated. Connected to the question of land quantum and land selection is the definition of the settlement area. We will have to define what our settlement area is so that we know the limits of where we can select land.

While negotiations on land quantum and sub-surface interests are proceeding, the Secretariat will be commencing a Land Identification Project (LIP). This LIP will identify land that is of importance to the communities in the settlement area. Once land has been identified that is important to the communities, we will try to prioritize the important areas. That is, we will try to outline which lands are most important and which lands are of lesser importance. We will also try to identify why the land is important, for example, an area might be important for berry picking or for moose hunting. Once the Land Identification has been done then people will be prepared for land selection negotiations when the quantum of land has been negotiated. The LIP is very important to insuring that negotiations on land selections proceeds smoothly. The leadership has

been informed of the establishment of this project and workshops are planned for each region and community.

Land that is selected by the Dene/Metis will be held for them by Dene/Metis institutions. We will have to discuss among ourselves what the form of these institutions will be and what authorities these institutions will have at the national, regional and local levels. Once we have decided ourselves how these institutions will be set up, we will have to sit down with the government to include the institutions and the framework for those institutions in the final agreement.

The Dene/Metis will own the land that they have selected after the final settlement and the rules for how that land is used are clear once there is a final settlement. But, in the meantime, between the selection of the land and the final settlement, we will have to determine what will happen to that land. We will therefore, have to negotiate interim measures with the government to protect land that has been selected between the time of the selection and the final settlement.

The question of access to Dene/Metis land by non-beneficiaries is a very difficult one. There are a number of different reasons for giving non-beneficiaries access to land and each will have to be looked at separately. One access question is, the ability of communities to go on Dene/Metis land to get sand and gravel and other construction materials. We will have to negotiate this type of access prior to a final settlement. The other question relates to Dene/Metis land and to Dene/Metis special harvesting areas. We will have to negotiate access for non-beneficiaries to allow them to hunt in special harvesting areas and we will also have to negotiate rules by which non-beneficiaries may have access to Dene/Metis lands to hunt migratory birds and to fish. All of these rules and regulations will have to be set out in the final agreement.

There will be a number of agencies and boards set up under the land and resources agreement, for example, the Land Use Planning process and the Wildlife Management Board. As well as an in pact assessment and review mechanism is to be established however, the exact terms of that process have to be defined prior to a final settlement. Rules for protected areas have to be negotiated prior to a final settlement to ensure that the rights of the Dene/Metis are protected in these areas. We also need to look at the co-ordination of new agencies established under the claims agreement and existing agencies, how they might work together and the

inter-connections between and among the agencies. At present, the system for permits and regulating land and resources is quite complex. We will have to look at not only the inter-connection of agencies but, also, the possibility of streamlining and making the process of permits less complicated and cumbersome.

We have negotiated an agreement on the Norman Wells oil field, however, this agreement is not finalized. This is the one exception to the rule that existing projects will not be subject to the Dene/Metis claims settlement. It will form an important part of the claim settlement and must be negotiated prior to a final agreement.

In the past people associated with museums have come to the north and taken artifacts and put them on display in southern museums. The Europeans have also given non-Dene/Metis names to different parts of the settlement area. These artifacts and these names are all part of the history and culture of the Dene/Metis and area necessary part of preserving that history and culture. We will be looking at the rules and regulations for heritage resources and trying to develop appropriate provisions to protect and enhance Dene/Metis involvement in these heritage resources. We will also, prior to the final agreement, develop a process to review place names.

Ft. Liard Lands

The Fort Liard Dene Band applied, under the terms of Treaty 11, to create a reserve at Fort Liard in the early 1980's. This application had been submitted to the Government of Canada and, while some progress was made on the application, the government did not take all the necessary steps to create the reserve. This was due to the fact that the land claims negotiations were under way at the time and the government was unwilling to create a reserve because it might disrupt the claims negotiation process. Nevertheless, the government, under the terms of Treaty 11, were obliged to deal with the bands application because of the entitlement provisions in the treaty.

In 1985 the Fort Liard Band again raised the question of the reserve. The Chief Government Negotiator raised the matter at the claims table and three options to deal with the matter were brought forward. The first option was to continue to stall on the application and effectively do nothing. The second option was to proceed with the application that had been submitted and eventually create a reserve. The third option was to start discussions on the identification of the land which might make up the reserve and have that land withdrawn according to the formula in the treaty. This land would not be turned into a reserve but would be withdrawn pending the final claims settlement and would make up part of the Fort Liard Band's land selection. The options were discussed with the Chief of the Fort Liard Band and it was agreed that the third option would be pursued.

This third option has a number of advantages for the band in Fort Liard. The land is protected once it has been identified and withdrawn and, therefore, the band will have some measure of control over what happens to that land. The land will also become part of the Fort Liard Land Selection when the claim is finalized and through using this option they can protect a portion of that selected land at this time. Another advantage to this option is that if the claims process breaks down and no settlement is arrived at, the band then can proceed with the creation of a reserve which would take in all of the land withdrawn. It also provides some certainty for the people who are living in Fort Liard and, in particular, people who might want to proceed with development projects in the area now know what the status of the land around the community is.

The government discussed the reaction of the Fort Liard Band with the Dene/Metis and agreed to proceed with the third option. The Dene/Metis Negotiations Secretariat then contracted Rick Hardy to represent the Fort Liard Band in negotiations between the Government of Canada and Fort Liard. A number of negotiations sessions were held starting in the spring of 1985 and, in October of that year, an interim agreement on Fort Liard's Lands was arrived at.

In the course of negotiations the government agreed to include all Dene and Metis in the calculation of how much land would be withdrawn. Treaty 11 only applies to Status Indians, however, the land claim agreement will apply to everybody who is eligible according to the Eligibility Agreement. Therefore, the government agreed to include anybody who would be eligible for enrolment in the claim, rather than simply Status Indians, when calculating the benefits in land for Fort Liard.

According to this calculation there are four hundred Dene and Metis who are eligible for the Dene/Metis Land Claim. The final amount of land works out to be eighty square miles. Under the agreement, the lands identified will be withdrawn for the eventual settlement of the claims. In the course of identifying the lands, certain exceptions were negotiated to ensure that third party interests in the area were protected.

There are some details yet to be negotiated regarding certain specific lots within the community which are owned by the federal and territorial governments and which will be transferred to the band. There are also certain details to be finalized with regard to the specific regime to be used to protect the land before the final settlement.

Overlap

Introduction

While the Dene/Metis were the only people to occupy most of the settlement area, they did come into contact with other groups of people, and shared the land with these other groups, around the edges of the settlement area. In the north, the Dene and the Inuvialuit and the Inuit had areas of land that they both used. In the east, there were Inuit and other Dene, notably the Chipewyan. In the south, there were the Chipewyan and the Cree people. In the west there were the Loucheaux in the Yukon, and the Kaska Dene in the Yukon and British Columbia.

The settlement area will be defined by the traditional use and occupancy of the land by the beneficiaries of the Dene/Metis claim. But, if an area of land had been traditionally used and occupied by more than one group, we have a problem which we refer to as overlap.

The other question, which is related to overlap, are the territorial and provincial borders that now exist. In some cases Dene/Metis traditional use and occupancy overlaps into provinces or other territories, notably Alberta and the Yukon. The Federal Government policy does not allow for land selection outside of the territories.

We must be able to define our settlement area, (see Lands and Resources for "settlement area") to know where our rights will apply. Therefore, we will have to resolve our overlap with the other parties. To date we have had three major sets of overlap discussions. These are with the Council for Yukon Indians to the west, with the Committee for Original Peoples Entitlement (COPE) to the north and with the Tungavik Federation of Nunavut (TFN) to the east. We are also preparing information relating to Dene/Metis traditional use and occupancy south of the 60th parallel.

CYI

Dene/Metis land use extends into the Yukon all along the NWT/Yukon border. In some places this land use overlaps with use by native people in the Yukon and so an overlap agreement will be necessary with the Council for Yukon Indians (CYI).

In 1983 and 1984 the Dene/Metis held discussions with the CYI about overlap of people from the Delta region into the northern Yukon. In April of 1984 the negotiators for each side signed an agreement which defined

Overlap

the areas of primary use and areas of shared use in the Yukon, set out the rights of each party in those areas and talked about starting negotiations to develop overlap agreements which would be part of each parties final agreement. There were futher negotiations towards finalizing the overlap agreements and a tentative agreement was reached in 1984. While the Chief Negotiator for the Dene/Metis signed the tentative agreement the CYI representative did not. At that time the CYI were very actively negotiating their own Agreement-in-Principle with the Government of Canada which included a section on overlap which was unacceptable to the Dene/Metis. The CYI, in the course of rejecting their Agreement-in-Principle, have rejected the overlap agreement that they had with the Government which means that we must start all over with them.

We have, at the present time, no arrangements for meetings with the Council for Yukon Indians. They are attempting to resolve internal difficulties that they are having and attempting to prepare once again for negotiations with the Government of Canada. When they have commenced negotiations with the Government of Canada, the Dene/Metis Negotiations Secretariat w i l l arrange meetings with the CYI to discuss the overlap.

The question of claims outside of the territory comes into play when we are talking about overlap with the Yukon. The precedent has been set with COPE having rights in the Yukon and therefore, we believe that the Dene/Metis should have equivalent, or better, rights in the Yukon. The presentation to the Task Force on Review of Comprehensive Claims addresses the question of extra territorial claims.

TFN

In December of 1984, after of series of meetings between the TFN and Dene/Metis representatives, the Chief Negotiator for the Dene/Metis claim and the Chief Negotiator for the TFN claim signed a Memorandum of Understanding on a process to resolve overlapping claims between the TFN and the Dene/Metis. This agreement on process says that we w i l l agree upon a single line between the two parties to define each parties settlement area. Subsequent meetings have been held with a working group and community representatives to try to arrive at that line. Trade offs w i l l have to be made by each party before a line is agreed to.

Overlap

We also have been discussing use by either party of land within the other parties settlement area. We have a draft agreement between the two parties on management and use of lands in the overlap area. We have agreed that each party will be able to continue to travel and hunt as they have traditionally even though the land that is being used is defined as being in the other parties settlement area. We are also attempting to ensure thoughtful joint management mechanisms that both sides are involved in any decisions upon wildlife, water, land, land use and other such matters in the overlap area. We haven't concluded our agreements with the TFN, however, further meetings are scheduled. The target date for arriving at agreement is December 31, 1985. We believe that this target date can be reached. Once an agreement is arrived at between the working groups it will then be presented to the communities for their ratification.

Chipewyan

The areas south and east of Great Slave Lake are traditionally used by the Chipewyan people. Some of these people live in the Northwest Territories, at Snowdrift, Fort Resolution, and Fort Smith, but some of them come from the provinces of Manitoba, Saskatchewan, and Alberta. The area that the Chipewyans from the provinces use is in the land that is under discussion with the TFN. We are trying to ensure that the area that is traditionally used and occupied by the provincial Chipewyans is included in the Dene/Metis settlement area. This is to protect the rights of these people to use the land as they have in the past.

COPE

COPE arrived at an Agreement-in-Principle with the Government of Canada on their Comprehensive Claims settlement in 1978. The settlement area that they had defined in their Agreement-in-Principle included much Dene/Metis territory. Negotiations on finalizing the COPE agreement were suspended for some time. When they resumed the government insisted upon a reduction of their settlement area.

The Dene/Metis attempted many times to meet with COPE to discuss and resolve their overlapping claims but, never managed to arrive at any

substantial agreements. By late 1983, early 1984, COPE appeared to be approaching a final settlement in their negotiations with the government. Finally in February of 1984, the Government of Canada, COPE and the Dene/Metis signed a Memorandum of Understanding to resolve their overlap. The Memorandum of Understanding has two main areas. The first area is the Aklavik Land Selection, second area is Wildlife Harvesting and Management.

Aklavik Lands

The Memorandum of Agreement between COPE, the Dene/Metis and the government states that the Dene/Metis of Aklavik will be allowed to select land in the Inuvialuit Settlement Region (ISR). This land selection by the Dene/Metis of Aklavik in the ISR would be equivalent to the 7(1) a lands that the Inuvialuit from Aklavik had selected. 7(1) a lands, are lands that will be owned on the surface and the sub-surface by the Inuvialuit. Therefore, the Dene/Metis of Aklavik were allowed to select seven hundred (700) square miles to which they would hold surface and sub-surface title.

After the signing of the Memorandum of Agreement negotiations on Aklavik land selection proceeded. Land, in the amount of 700 square miles, to be set aside for the Dene/Metis of Aklavik, has been identified in the Inuvialuit Settlement Region and negotiations to a final agreement on those lands are proceeding. Lands that are selected by the Dene/Metis of Aklavik will become part of the Dene/Metis lands in the final settlement.

Wildlife Harvesting@ Management

The Memorandum of Agreement states that the Dene/Metis who traditionally harvested in the Inuvialuit settlement region will be allowed to continue this traditional activity. The same would apply to Inuvialuit who traditionally used the Dene/Metis settlement area for hunting, trapping and fishing.

Under the COPE settlement there will be established Hunters and Trappers Councils (HTC's). The overlap agreement makes the Dene/Metis, who traditionally hunted in the Inuvialuit Settlement Region, eligible to be members of these Inuvialuit HTCS or, if necessary, to set up their own

Overlap

HTC's under the Inuvialuit agreement.

There are also provisions for environmental management, project screening and review and such like terms. The Dene/Metis and the Inuvialuit, subsequent to the signing of the Memorandum of Understanding, have also arrived at an agreement identifying hunters, trappers, camps, etc. in each parties settlement area. They have also defined a working relationship between the two parties.

South of Sixty

The overlap question south of the 60th parallel, that is the N.W.T./ Alberta border, is more of a question of land selection and harvesting rights outside of the territory than of overlapping claims with other comprehensive claimant groups. The Dene/Metis in the South Slave have traditionally used and occupied land which is now south of the N.W.T. border. This includes land within Wood Buffalo National Park as well as outside of the boundaries of the Park. The present federal government claims policy is that where the parties traditionally used and occupied land outside of the territory, rather than allowing the parties to select land there, they will be provided with monetary compensation (money). This, at the present time, is not acceptable to Dene/Metis in the South Slave area. It is their contention that they have a legitimate claim to land that falls within the Wood Buffalo National Park and outside of the Park. The fact that land in the Park is Federal land should allow the Government to deal directly with those people and not involve the Province of Alberta. On land that falls outside of the Park boundaries, the Government of Alberta has already set a precedent with the establishment of Metis colonies within the province and so they should be willing to deal as fairly with beneficiaries of the Dene /Metis claim. With the assistance of the Secretariat, the Dene/Metis in the South Slave are preparing documentation of their traditional use and occupancy south of the 60th parallel. Evidence will be presented to the Task Force in an effort to allow for land selection outside of the Northwest Territories.

Conclusion

There may be overlapping claims in the south-west corner of the

Overlap

Dene/Metis settlement area. These overlapping claims would extend into the Yukon and into north-eastern B.C. The claimant groups involved would be the Council for Yukon Indians and the Kaska Dena Council. We have held preliminary discussions with the Kaska Dena, however, we have no formal agreement with them to resolve these overlaps.

What's Next

This section will summarize the things that have to be done before the claim is finalized and will repeat some of the stuff that is in the other sections of the information "package."

Wildlife

Briefly, the things left to be negotiated or set out in the wildlife agreement are listed below.

The primary thing is to get the government to give their negotiator a mandate to initiate the agreement.

Special Harvesting Areas (SHA'S) have to be identified and listed in Appendix B. Rules for harvesting by non-beneficiaries in SHAS will have to be negotiated.

Terms of reference for a Mackenzie Basin Harvest Study must be negotiated and listed in Appendix C.

Needs Levels for sheep and woodland caribou have to be identified and then negotiated with the government.

Management Agreements with respect to the Bluenose and Bathurst caribou herds may be negotiated for inclusion in the final agreement.

Training programs to insure maximum employment of Dene/Metis in national parks must be negotiated prior to the final agreement.

Harvesting rights in Wood Buffalo National Park will have to be negotiated and set out in Appendix E to the Wildlife Agreement.

Harvesting rights for native non-beneficiaries (particularly the Chipewyan people from the northern areas of the provinces) who traditionally harvest in the Dene/Metis settlement area must be negotiated and included in the final agreement.

Lands and Resources

The following is a brief summary of the items left to be completed as part of the Lands and Resources agreement.

Land quantum is to be negotiated.

Sub-surface interest is to be negotiated.

Settlement area is to be defined. This will occur primarily as a result of negotiations on overlap with groups like the TFN (Inuit).

Land Identification Project to identify lands of importance to the communities needs to be completed.

The land quantum for each community and/or region will have to be decided upon.

The manner of negotiating local land selection will have to be determined and then the local land selection negotiations will have to be completed.

The form and authorities of the Dene/Metis land holding institutions will have to be decided upon.

Interim arrangements to protect land between the time of land selection and the final agreement will have to be negotiated.

Access to Dene/Metis land and to SHAS by non-beneficiaries will have to be negotiated.

Co-ordination of new and existing agencies and review of existing permit system should be done prior to final settlement.

Norman Wells Oilfield Agreement must be finalized.

Review of the regulations for heritage resources must be carried out and a process for reviewing place names should be established.

While not included, at the present time, in the Lands and Resources Agreement, there will be certain site specific land selections both within and outside of communities. These site specific selections will be designed to select certain cabin sites and specific lots. The manner in which we identify, and then negotiate the selection of those lots, has to be addressed.

Eligibility

When the claim is finally settled those who are eligible for benefits must be enrolled to get those benefits. This will involve a process, much like the enumeration process, which will look at peoples ancestry, where they live, and such things, to see if they are eligible. If a person is determined to be eligible then they will be enrolled as a beneficiary.

The other part of enrollment will be the Community Acceptance Vote. While votes of this nature have been carried out in a number of communities already, they will have to be repeated as part of the enrollment process. This means that people who are not eligible under section 2 (a) of the eligibility agreement can apply to be enrolled if they

meet the requirements in section 2 (c). A community vote will then be held to determine if the people want to accept those persons who are nominated as beneficiaries of the claim for reasons of "community or family harmony".

Monetary Compensation

The claim will include a cash payment as outlined in the section on the Framework of the claim. The amount of money that we get is dependant upon a number of factors like how much land we get, both surface and subsurface, the amount of sub-surface interest that we get - if any - the amount of interest that we get in the Norman Wells Oilfield, and all the other elements of the claim. Therefore, the negotiation for cash compensation will be one of the last things to be negotiated.

Institutions

There will have to be institutions established to manage the benefits that we get from the claim. These will include; institutions to hold and manage land, institutions to hold and manage finances, and political/administrative institutions to manage all the other elements of the claims package. We will have to discuss the question of institutions at length to insure that we set up something that will act in the best interests of the beneficiaries. This will be discussed at greater length in the section "Questions for Discussion".

Questions for Discussion

There are a number of things that the Dene/Metis need to look at and resolve among themselves before we can have a final settlement. In some cases the negotiations with the government depend on the Dene/Metis making some decisions and giving direction to the negotiators. In others, the decisions will help in the implementation of the claim. If everybody can agree on some of these things before the final agreement, and if there are no misunderstandings about what will be done before the final agreement, then it will be easier to arrive at that final agreement.

Lands and Resources

There are many different ways to look at land and how land can be used to our best advantage. There are two main categories of land - in the communities and outside the communities. We should look at land generally but we also have to remember that the two main categories will have to be dealt with separately and probably differently.

One of them main questions is alienability. This is a big word which means simply "transferable to the ownership of another" or "able to be sold". **Are Dene/Metis lands expected to be owned by the Dene/Metis collectively or, do we want individual Dene/Metis beneficiaries to acquire title or to own a piece of the Dene/Metis land ?**

There may be people within communities who want to have a lot to build a house and be able to pass that house to their children in the future. If that person owns the lot he can do pretty much what he wants with it and can also go to the bank to borrow money against the value of the property.

The other case may be where there are particular cabin sites in the bush that a beneficiary would like to ensure remains with him or his family in the future, therefore, that individual beneficiary might want to somehow own that land.

This may be accomplished by actually selling the land; it maybe accomplished by providing a long term lease. Certain conditions could be attached at the time of sale or lease that would ensure that if the title-holder wanted to dispose of the land, then it must be disposed of to the Dene/Metis collective. There would have to be some method of

determining what form of compensation might be paid to that individual for the developments that might have been done to that property.

The other question is, do we want to be able to alienate - transfer the ownership of - Dene/Metis lands to non-beneficiaries in the future ? One of the advantages of alienable land is that the owner of the land can go to the bank and borrow money against the value of the land. In other words the land can be mortgaged. If the mortgage payments are not kept up then the bank will take ownership of the property or, seize it. However, this may also be accomplished through a leasing process. If the mortgage is not kept up when the land is leased, then the bank will take the land for the term of the lease. If the Dene/Metis lease the land to a Dene/Metis economic corporation, or to a non-beneficiary and either of those bodies don't keep up the required payments and the bank seizes the land, the bank can only hold the land for the duration of the lease.

The Alaska situation can provide us with an example of what might happen if land is alienable. By 1991, the ownership of land in Alaska can change. If the corporations that hold the land borrow money and cannot keep up the payments or, if they cannot pay the taxes on the land, that land can be seized. In this way, there is no land left for future generations. What the Dene/Metis have to address is how do you protect your land to ensure that future generations will have the benefit of that land and, at the same time, allow the Dene/Metis collective to get money based on the land to finance economic development or other projects ?

Land Selection

Some of the things that were mentioned in previous sections of this information package, particularly Land and Resources and Wildlife section, should be repeated.

In negotiations on Land and Resources, we will negotiate an overall land quantum, that is, an overall amount of land which will be granted to the Dene/Metis as part of the settlement. We expect that there will be one overall amount of land - the land quantum - rather than an amount of land for each community. This number may include so many square miles of surface area land and so many square miles of surface and sub-surface

land. The main question then is; **How will the overall quantum of land be divided up among the communities?**

There are a number of ways that the division of the land quantum might be accomplished. The land could be divided upon an equal basis, community to community, where each community would get an amount of land equal to that of another community. It may also be divided upon a per-capita basis. That is, based on the number of persons. We might say that each individual beneficiary in the community will count for a certain amount of land. Therefore, we will count up the number of beneficiaries, multiply by the amount that each is entitled to, and arrive at a number for that community. The third option might be that each community would get a certain base amount of land and then some more on top of that based on a per-capita formula.

There may also be different situations according to each region and community. It may be that in some areas, the community would like to have more sub-surface land and, therefore, would be entitled to less surface land. The alternative might also be true. It may be that a number of communities might get together and decide to do a regional land selection rather than do a community lands selection.

The Land Identification Project, which the Secretariat is undertaking, will help to deal with some of these questions by identifying the needs of all of the communities. It is quite certain that the lands identified during the land identification project as being needed by the community will be more than the amount that each community will become entitled to after the final settlement. However, if we have identified the land before we begin the land selection process, it might be easier for the communities to get as much as possible. It is a problem to ensure that each community is dealt with fairly and that the trade offs are made fairly for each community.

Institutions

Institutions is another big word that takes in a number of different things. There are some institutions that exist now that most people are familiar with. Examples are: the band council, the settlement council, the development corporations, the water board and the legislative assembly. These are all institutions. Hospitals and jails are another kind of

institutions. [n this section, we will be dealing with the first kind of institution.

In that kind of institution, there are appointed or elected representatives who have certain specific responsibilities. These appointed or elected people usually direct employees of the institution, who are then responsible for the administration of the decisions and responsibilities of that institution. Most people today understand what the responsibilities of a Band Councilor are but, perhaps, do not have as good of an idea about the responsibilities of other kinds of institutions, for example, a member of the board of a development corporation.

There are going to be a number of institutions established by the claims settlement including; the Wildlife Management Board, local Wildlife Management Committees, possibly regional Wildlife Management Committees, a Land Use Planning Agency which will have a board and an advisory committee as well as possibly regional advisory or planning boards, an impact assessment and review agency, a Dene/Metis land holding institution at the national level, and possibly at the regional and local levels, Dene/Metis economic development institutions, again with national regional and local components, and Dene/Metis financial institutions.

A number of questions come to mind because we are setting up these institutions. For instance, **what will be the method of appointing representatives to institutions?** As part of this question, we should look at things like who will appoint representatives, who will make recommendations for appointments, does there have to be some formula for ensuring regional representation, or Dene and Metis representation, what are the qualifications necessary for appointment, how are the appointees to be accountable to the beneficiaries they represent, and how can people be removed from these institutions.

Another question that comes to mind is; **what authorities will be held by the institutions at the various levels?** Some of the authorities that the institutions will have will be clearly defined in the course of negotiation, for instance the Wildlife Management Board. Other institutions will be established by ourselves and therefore, we will have to decide on how much responsibility and authority there should be for that institution and at the various levels of that institution. For instance, with a financial institution, there might be a single institution for the

settlement area with regional and local institutions at the regional and local levels. How much authority should there be at the various levels that are established?

Compensation

There will be a cash payment as part of the claims settlement. This will be for the Dene/Metis to use for programs, for economic development and for other things that they would like to use it for. There are different ways that different groups who have settled their claims have handled this money. In some cases the pay out is made directly to the beneficiaries on a per-capita basis. In other cases all of the money went to economic development institutions which were to provide job opportunities and benefits to the beneficiaries. In other cases, the money went to financial institutions who then managed the money by approving projects that the money might be spent on. The money may also be divided up from the national to the regional and to the local levels for their use. In other cases there may be a certain percentage of that money going into secure investments, to ensure that the claimants have money in future generations, and another percentage of the money would go into immediate economic development projects. This way you don't spend all the money at once and ensure that the future generations of beneficiaries have some benefit from the claim.

Conclusion

A number of questions have been raised in this section. We do not intend that people should try to answer these questions on their own, but we do intend that they should start to think a little bit about these questions. The Secretariat will, in the course of having workshops to explain the claim, also provide more detailed information on each of these questions to assist you in providing us with direction.

Appendix I

Chronology and Background of the Dene/Metis Claim

- 1763** Royal Proclamation issued by British Crown. Assumes that native people have an interest in the land which must be dealt with by purchase or treaty.
- 1899** Signing of **Treaty 8**. Half-breed scrip issued.
- 1921** Signing of **Treaty 11**. Half-breed scrip issued.
- 1942** Construction of Norman Wells Oilfield and Canol Pipeline.
- 1959** Nelson Commission established'' . ..to inquire into the unfulfilled promises of the Indian Treaties 8 and 11." Recommendations never dealt with.
- 1967** Territorial government moves to the NWT.
- 1969** "A Statement of the Government of Canada on Indian Policy" also known as the "White Paper" released by Government. **(Ott)** Indian Brotherhood of the NWT (IBNWT) formed to represent native people in the Mackenzie Basin of the NWT. Government refuses funding to an organization that represents more than Treaty or Status Indians. Lloyd Barber appointed Indian Claims Commissioner.
- 1970 Wah-Shee elected President of IBNWT, serves till **1975**.
- 1972 Metis and Non-Status Native Association of the NWT formed. Government begins to provide CORE funding to each organization.
- 1973** Caveat to 450,000 sq. miles considered to be Dene Territory filed with Territorial Land Titles office. (In Re: Paulette) .
Mr. Justice William Morrow rules that the'' . ..purported claim for aboriginal rights constitutes an interest in land which can be protected by caveat under the Land Titles Act."

- 1973** **Calder Case (Nishga's)** Supreme Court of Canada split decision on aboriginal rights prompts federal development of aboriginal claims policy.
- 1974** Indian Brotherhood and Metis Association of the NWT hold **joint** assembly in **Ft. Good Hope**, agree to single claim for both organizations claiming title to the 450,000 square miles covered by the caveat.
Berger appointed to inquire into Mackenzie Valley Gas Pipeline.
- 1975** **Dene Declaration adopted by joint assembly. Advocates "nation status within Confederation" and** Dene claim to title of 450,000 sq. miles.
(September) Minister of IAND rejects concept of "nation".
(Ott) Wah-Shee suspended from Presidency of Indian Brotherhood. Richard Nerysoo appointed interim President.
- 1976** (July) Georges Erasmus elected President. Dene and Metis Leaders meet and sign Memorandum of Understanding September 4 to develop joint claims submission by November 1.
Rift develops between Metis and Dene on development of claims position. IAND suspends funding.
(October) **Proposed Agreement-in-Principle presented by** the Dene to the Minister of IAND, Warren Allmand. Proposes self determination for Dene with a separate Dene Government within Confederation having powers of existing Federal and/or Territorial Governments
(December) IAND resumes claims funding separately to each organization.
- 1977** (April) Berger Report released. Recommends postponement of Canadian Arctic Gas Pipeline or similar industrial development for 10 years, pending settlement of land claims and establishment of development plan.
- 1977** Negotiations with Warren Allmand continue.
Federal Government rejects proposed Dene Government, Bud Drury appointed as Prime Ministers Special Representative for Constitutional Development.
Allmand replaced as Minister of Indian Affairs by J. Hugh Faulkner

Metis Association presents claim statement to Government.
"Our Land, Our Culture, Our Future".
Attempts are made to get the Dene and the Metis to work together on a single claim without success.

- 1978** Keith Penner, M.P., representing the Minister presents "Faulkner-Penner Proposals for Discussion" outlining government's proposals for Dene/Metis claims settlement. Indian Brotherhood renamed the Dene Nation. Membership opened to all people of aboriginal descent despite categories such as "treaty", "non-status", "Metis". Minister sets deadline for joint submission and then suspends funding when deadline missed due to continuing inability of Dene and Metis to work together.
- 1979** (May) Federal General Election.
Efforts continue to form one organization to represent all native people in the Mackenzie Basin.
(July) Dene Nation releases report stating that they will no longer pursue efforts to form a single organization, but that membership in the Dene Nation and local band council remains open for any descendants of the five Mackenzie Valley tribes.
(November) Metis propose that Dene Nation be responsible for negotiating claim settlement for all and that the claim include an equity portion of the Norman Wells Oilfield. Norman Wells Oilfield Expansion and Pipeline proposed.
- 1980** (February) Federal General Election.
Funding for claims position development resumed upon commitment to John Munro by both organizations to one claim for the Mackenzie Valley.
Dene Nation and Metis Association co-operate on preparing and presenting positions on the Norman Wells proposal.
- 1981** David Osborn appointed as Chief Government Negotiator for the Dene/Metis claim. Negotiations resume.
"Denendeh: Public Government for the People of the North" released as a discussion paper on political development by the Dene Nation and the Metis Association.

Georges Erasmus agrees to separation of **discussions on political** development from land claims negotiations. Norman Wells Project approved with two **year** delay in start of construction. Government agrees to provide funding for training, education, monitoring, infrastructure etc. related to project. Government also agrees to negotiation of share of government ownership for **Dene/Metis**.

- 1982** Negotiations continue despite continuing problems of co-ordination between the two organizations. outside negotiators hired by both organizations. Agreement on Principles and Process signed to govern negotiations process. Discussions continue. on internal working relationship. (December) Active negotiations begin on Eligibility.
- 1983** (March) Interim Agreement on Eligibility and Enrolment initialled. (April) Negotiations on Land Use Planning begin between the **Dene/Metis**, the Tungavik Federation of Nunavut, the Government of the N.W.T. and Canada resulting in agreement to experiment with July 83 proposal by Canada. (July) Government suspends claims funding and issues statement to the two organizations to establish single claims position and negotiations process. **(August) Joint meeting** of Board of Directors of the Metis Association and the Dene Nation accedes to Government ultimatum and approves structure of joint claims body - the Dene/Metis Negotiations Secretariat. Bob Overvold appointed Chief Negotiator for the Dene/Metis claim. Secretariat begins development of **Negotiations Framework. Negotiations on Interim Agreement on Wildlife Management begin.**
- 1984** **(February) Overlap Agreement reached with** COPE and the Federal Government. **(July) Assemblies** of Dene Nation and Metis Association approve Framework developed and presented by Secretariat. Negotiations on Wildlife continue.

(September) Federal General Election.

Work commences on Lands and Resources position.

(December) Memorandum of Understanding signed with the Tungavik Federation of Nunavut (TFN) on process to resolve overlapping claims.

1985 (January) Chief Negotiator for the Dene/Metis prepared to initial Wildlife Agreement; government directs Chief Government Negotiator to await instructions before initialing.

Negotiations continue with the TFN on overlap.

(April) Dene/Metis present a "Mini" Agreement-in-Principle on Land and resources. Negotiations result in initialled agreement by July. Agreement incorporates July '83 Land Use Planning document and principles.

(July) Assemblies of the Dene Nation and the Met. s Association agree to joint meeting prior to year end to **deal with claims related matters.**

(August) Porcupine Caribou Management Agreement nitialled by the Dene/Metis, COPE, Council for Yukon Indians, Yukon Government, N.W.T. Government and Canada.

Appendix 2

Background and Structure of the Dene/Metis Negotiations Secretariat

The Dene/Metis Negotiations Secretariat was established in 1983 after a joint meeting of the Board of Directors of the Metis Association of the Northwest Territories (the Metis) and the Dene Nation (the Dene). Since the formation of the Metis Association in 1972 the two organizations had had various measures of success in preparing and presenting a unified claims position to the Federal Government. While the Government had accepted that each organization had a valid claim their policy was, and continues to be, that there will be a single claims settlement which will include people equally. Differences between the two organizations, particularly over eligibility to be included as claimants and control and direction of the negotiations process, scuttled numerous efforts to unify the parties since breakdown of relations in 1976.

In March of 1980 the newly appointed Minister of Indian Affairs and Northern Development (IAND) met with Presidents of the two organizations and agreed to resume claims funding on the basis that the two organizations begin to work together on the development of a joint claim. While the Presidents gave the Minister their undertaking that this would happen there were significant differences evident during the period from 1980 to the spring of 1983. These differences soon made it impossible for progress to be made on negotiations. The Minister, therefore, told the organizations that claims funding would be suspended pending the formation of a single body to be responsible for claims negotiations.

The two organizations had been aware of the need for some form of co-ordinated approach prior to the Ministers statement and had prepared a proposal for single approach to aboriginal rights negotiations. This proposal was presented to a joint meeting of the Board of Directors of the Metis Association and the Chiefs of the Dene Nation in early August 1983 and approved by them.

Background and Structure

The joint structure, known as the **Dene/Metis Negotiations Secretariat**, was established with a mandate to develop and negotiate claims positions on behalf of the Dene and Metis. The Secretariat receives direction from the **Joint Leadership Group (JLG)** which consists of the executive of the Dene Nation (President and two Vice-Presidents), the executive of the Metis Association (President and two Vice-Presidents), and an appointee of each organization. (Total of eight persons). The JLG meets regularly to review the operations of the Secretariat and to provide direction to its staff.

The Secretariat, on instruction from the JLG, developed a proposed Framework for the **Dene/Metis** claim which was presented to the annual assemblies of the Dene Nation and the Metis Association in **1984**. The Framework was approved by the assemblies and now provides the basis for position development by the Secretariat.

The Secretariat develops detailed positions based on approved framework. This is done by the Chief Negotiator, members of the Negotiating Team, the Research Director and staff of the Secretariat.

When a detailed negotiations position is prepared by the Secretariat it is presented to the JLG for their approval prior to going to the negotiations table. If the JLG approve the position they may recommend that it be presented to the Joint Chiefs and Metis Board. The Metis Association Board of Directors (the Metis Board) consists of the Presidents of all the locals of the Metis Association. The Chiefs of the Dene Bands form an equivalent type of structure in the Dene Nation. Together they provide another level of accountability for the Secretariat in developing and negotiating positions.

When a position has been developed it is given to the Chief Negotiator to be taken to the negotiations table. The Chief Negotiator heads up a Negotiation Team which consists of himself,

Background and Structure

representatives from the Dene Nation and the Metis Association appointed by them, and the other negotiators who have been involved in developing the position.

While positions are being developed and negotiated and after they have been initialled the Secretariat conducts community workshops to insure that people at the community level are kept informed of developments. These community workshops are primarily concerned with insuring that the membership has an adequate level of knowledge about negotiated agreement to make decisions about those agreements at an assembly. Other workshops are also held to get the leadership's input into negotiations and information presentation.

After the Chief Negotiator is satisfied that the position that has been negotiated will meet with the approval of his principals he initials the agreement signifying that he is recommending that the position be approved. It then goes to the JLG for their approval who direct that it be brought to the membership for their review and approval.

This may take the form of going to the annual assembly of the organization or to a special joint assembly of both organizations. The Assembly(ies) may approve the position, reject the position or recommend changes to the position. If they recommend changes the Chief Negotiator is obliged to bring the document back to the negotiations table to try to work out a compromise with the Government. If the Assembly(ies) approve the position as an Agreement-in-Principle it is then set aside while the other component parts of the overall Agreement-in-Principle are negotiated.

When an overall Agreement-in-Principle has been negotiated it will again be reviewed by a joint assembly of the two organizations. If the Assembly is satisfied with the Agreement-in-Principle they will instruct the Chief Negotiator to sign the various component documents. This delay between

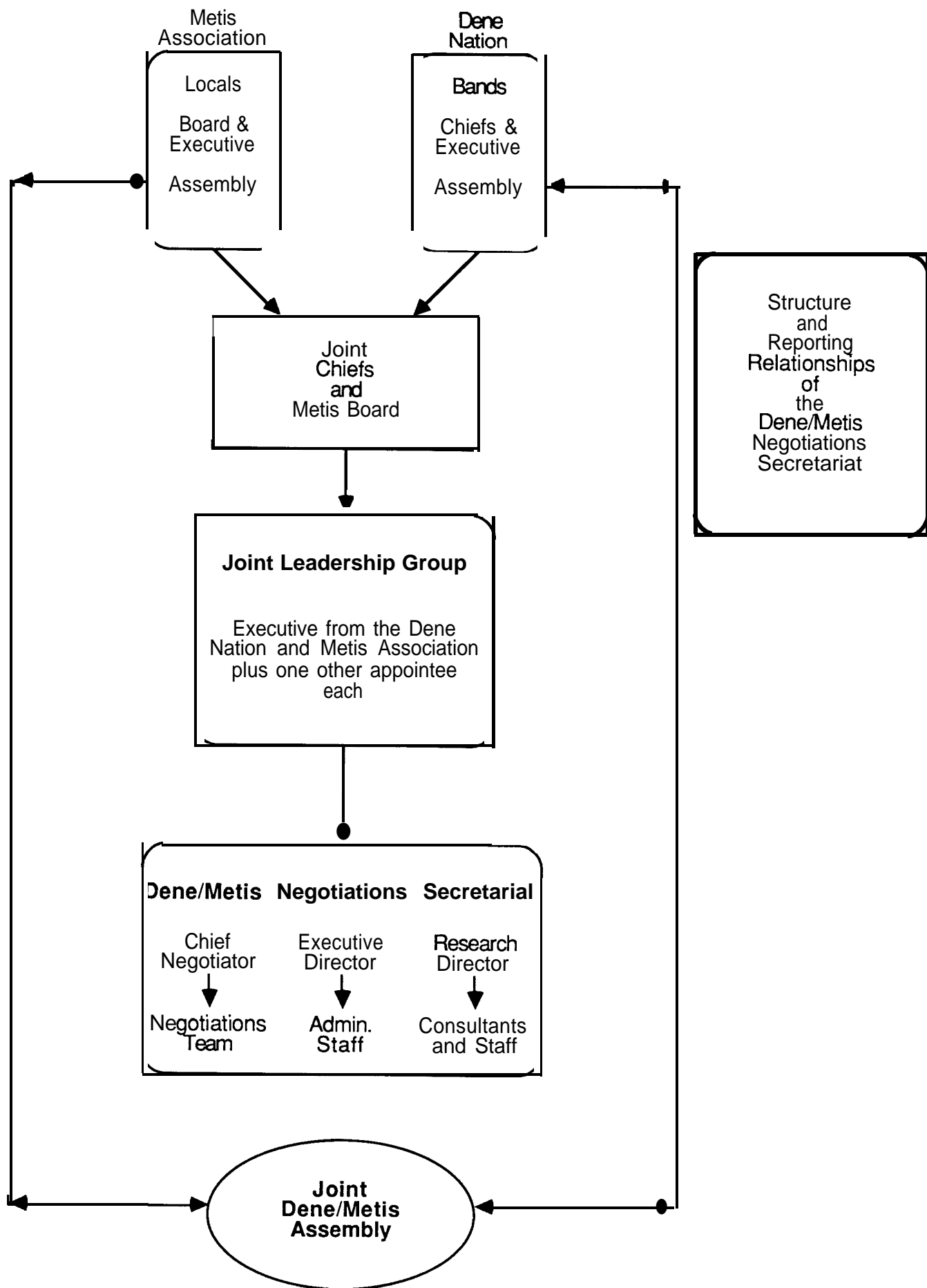
Background and Structure

initialing of discrete documents and the signing of these documents is to ensure that the necessary linkages between and among the component parts are in place. It also provides the membership with an opportunity to review a total package rather than isolated pieces of a package.

When an overall Agreement-in-Principle has been agreed to it will be put to the membership for their final approval. Whether this final approval will take the form of an universal vote, a community by community and band by band approval, or some other form has yet to be determined.

The day to day operations of the Secretariat are managed by an Executive Director who is responsible for the administration of the office including; administrative staff, purchasing, contracts, activity reports, etc.

The Secretariat is funded by the Government of Canada under its Comprehensive Claims Policy. Funding is divided among the Dene Nation, the Metis Association and the Secretariat with the bulk of the funding going to the Secretariat. Funds provided by the Government of Canada under this policy are considered to be loans which will be re-paid from the final compensation package.



Structure and Reporting Relationships of the Dene/Metis Negotiations Secretariat

AKLAVIK

INUVIK

FORT MCPHERSON

ARCTIC RED RIVER

FORT GOOD HOPE

COLVILLE LAKE

NORMAN WELLS

FORT NORMAN

FORT FRANKLIN

WRIGLEY

NAHANNI BUTTE

FORT SIMPSON

RAE LAKE

SNARE LAKE

LAC LA MARTRE

FORT LIARD

JEAN MARIE

RAE-EDZO

TROUT LAKE

FORT PROVIDENCE

YELLOWKNIFE
DETAH

KARISA

HAY RIVER

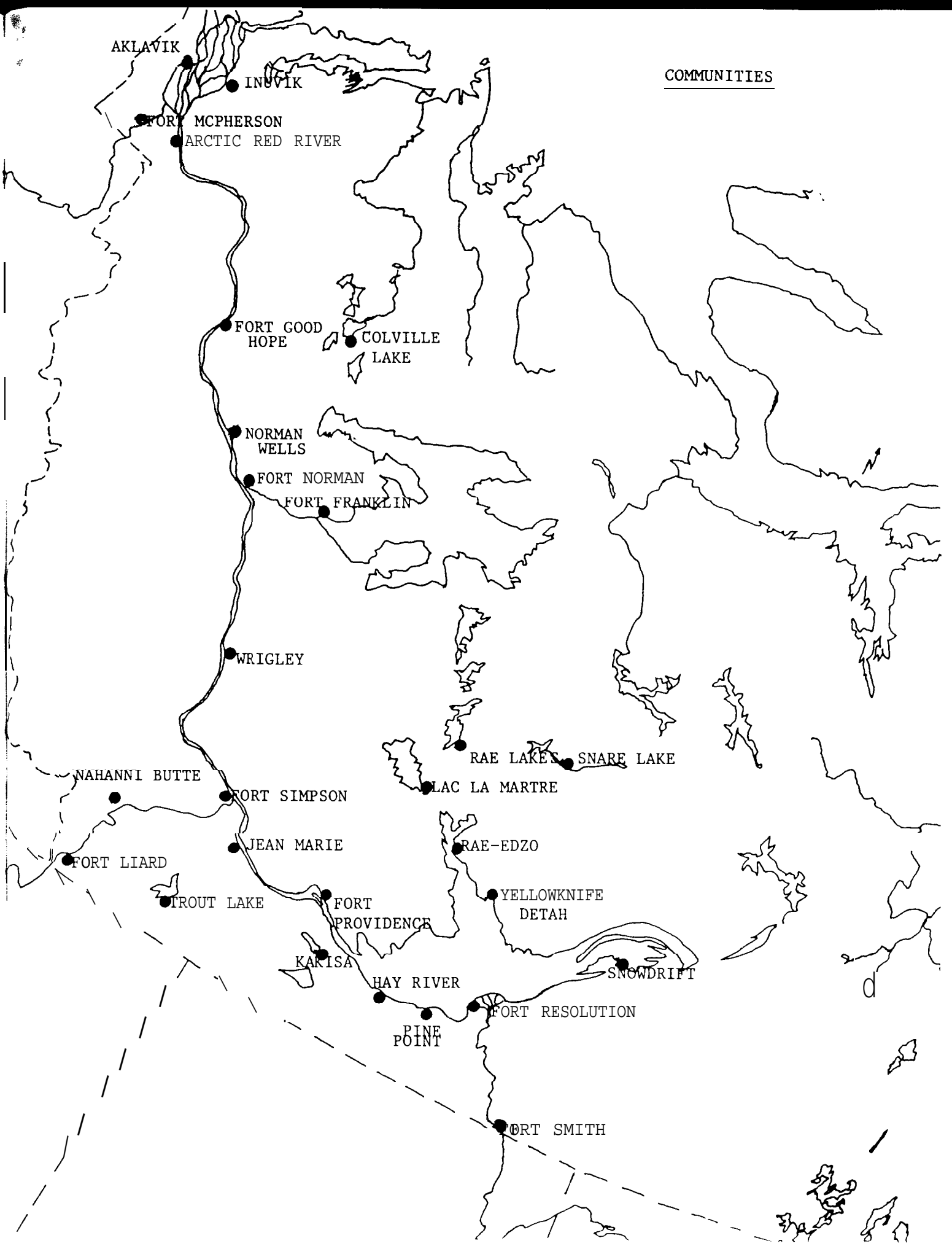
SNOWDRIFT

PINE POINT

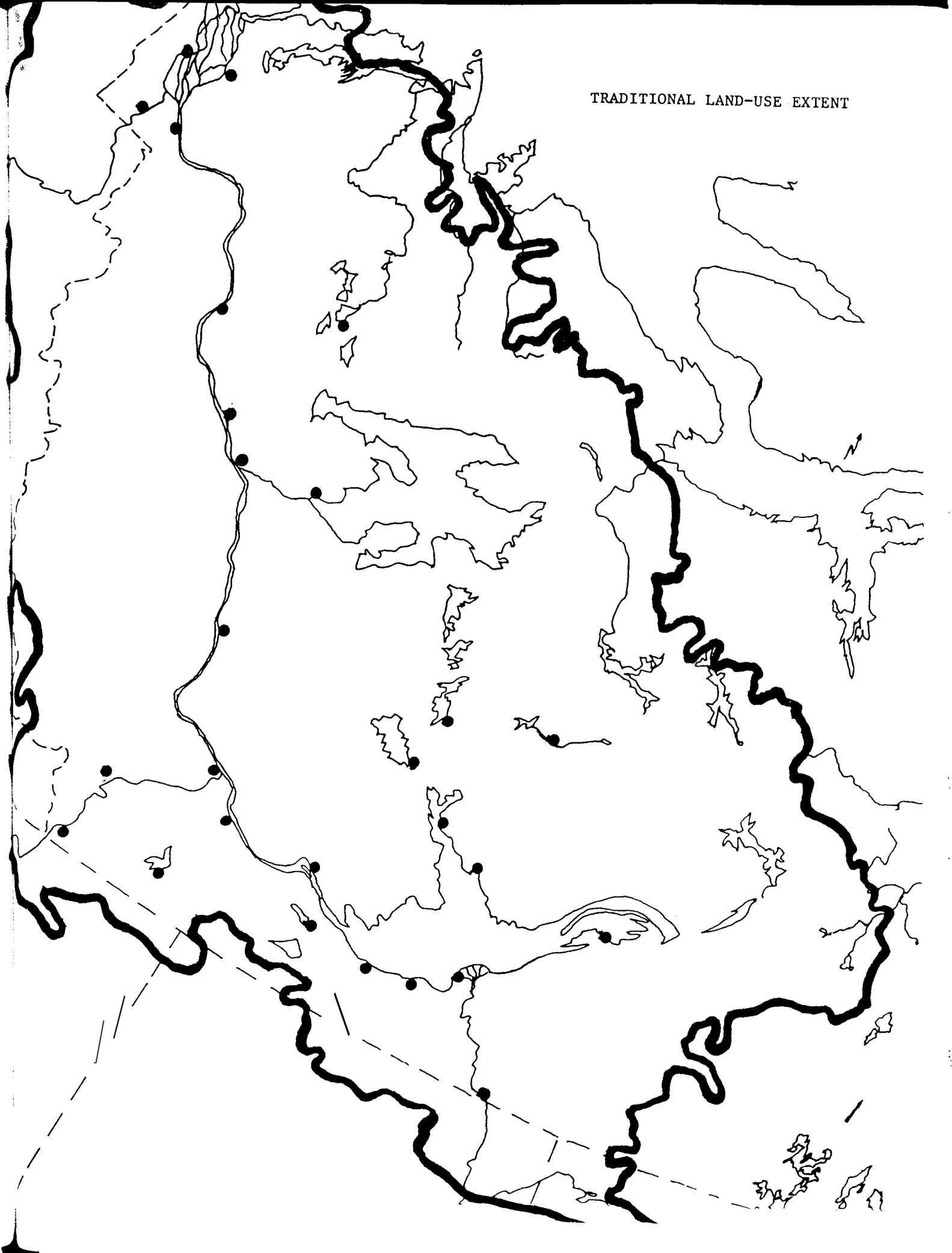
FORT RESOLUTION

FORT SMITH

COMMUNITIES

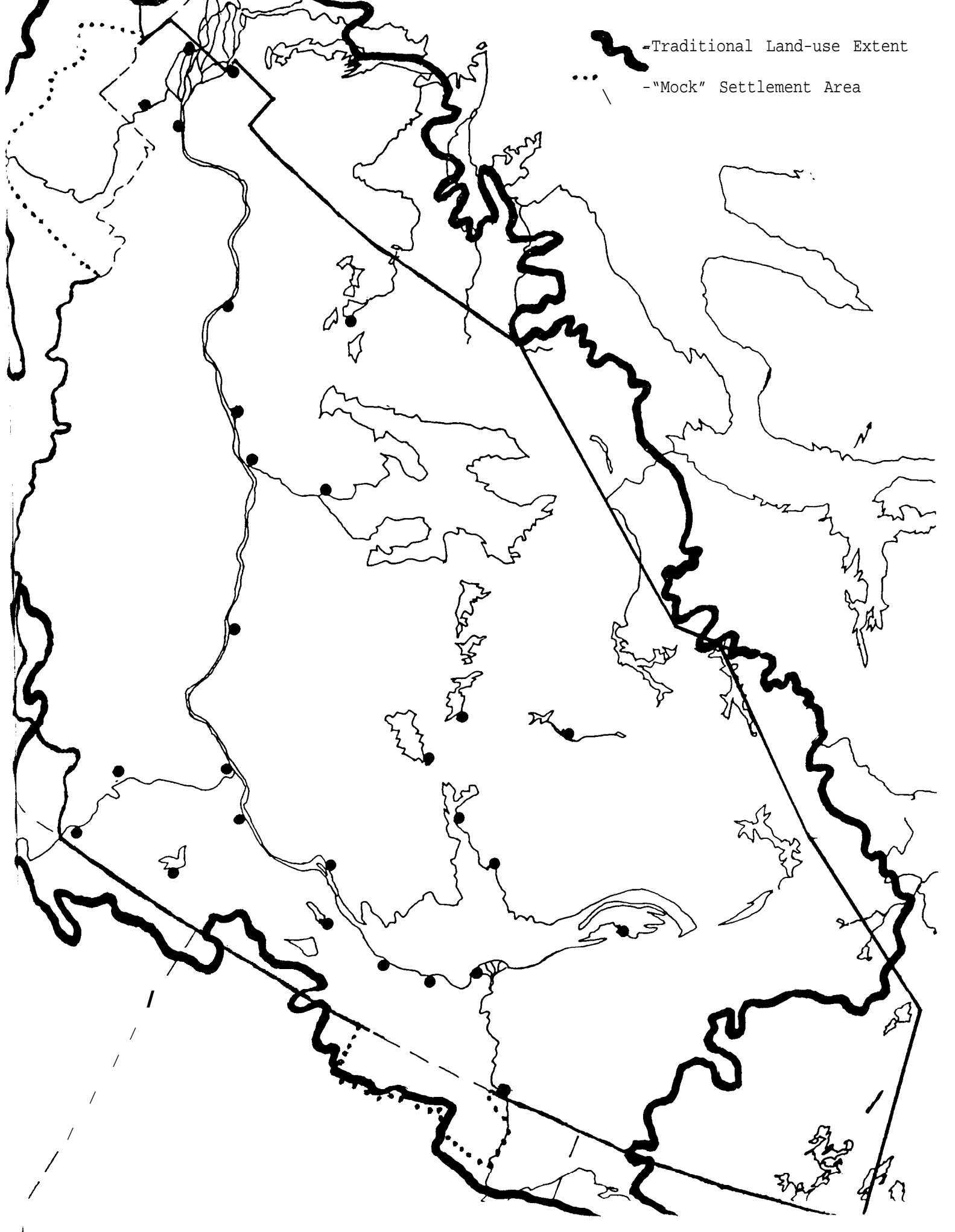


TRADITIONAL LAND-USE EXTENT

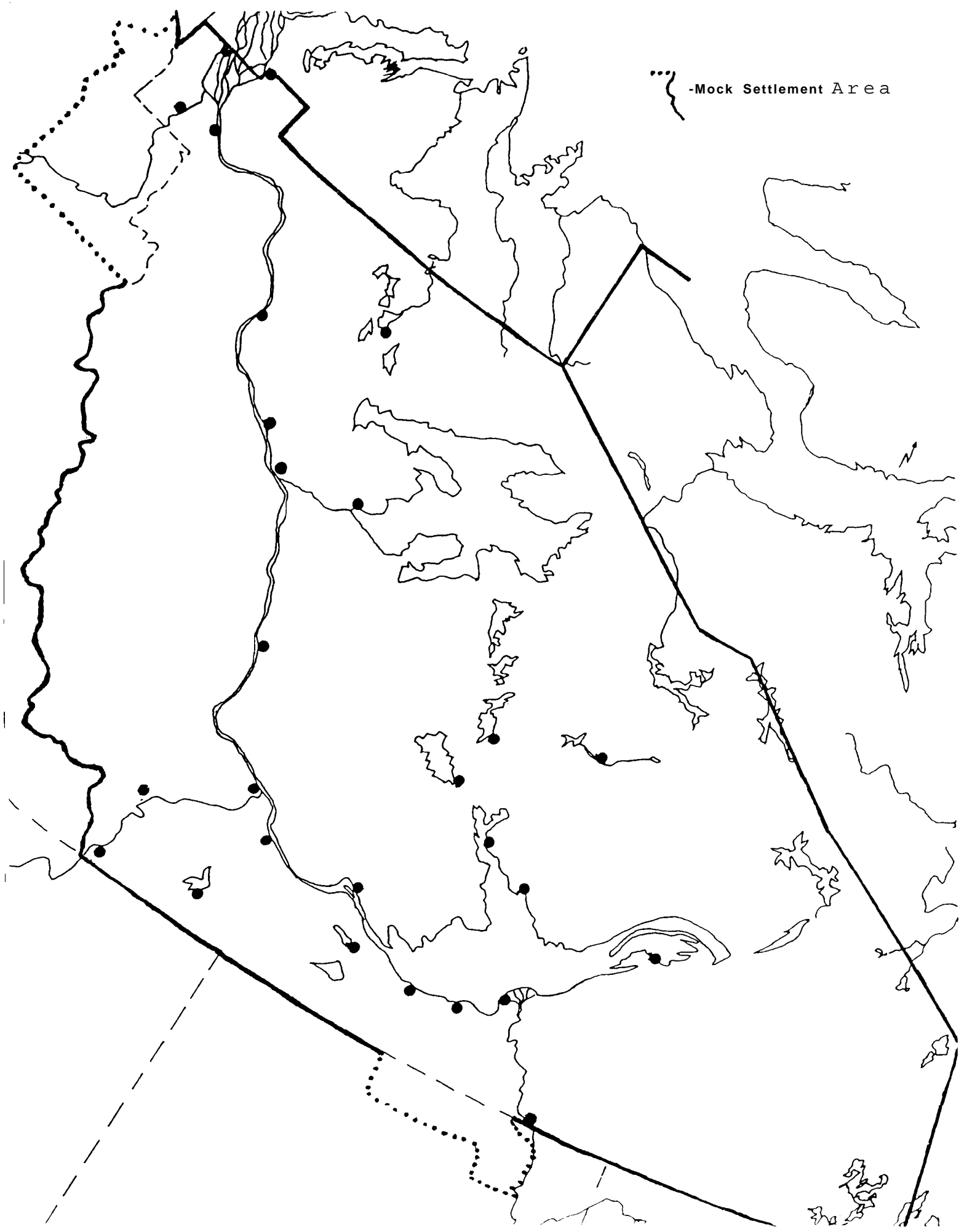


-Traditional Land-use Extent

-"Mock" Settlement Area



--- -Mock Settlement Area

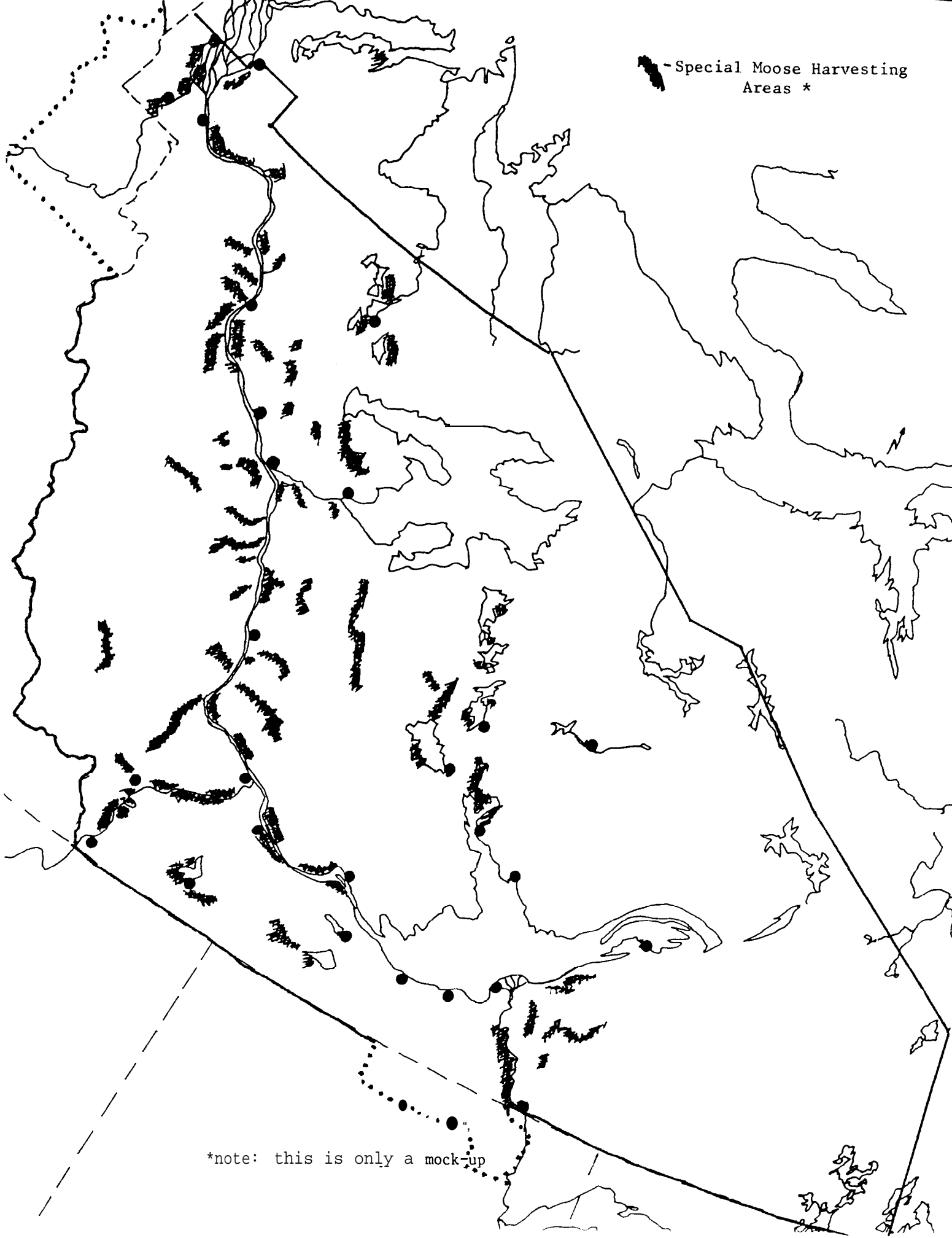


Preferential Dene-Metis
Wildlife Harvesting Areas



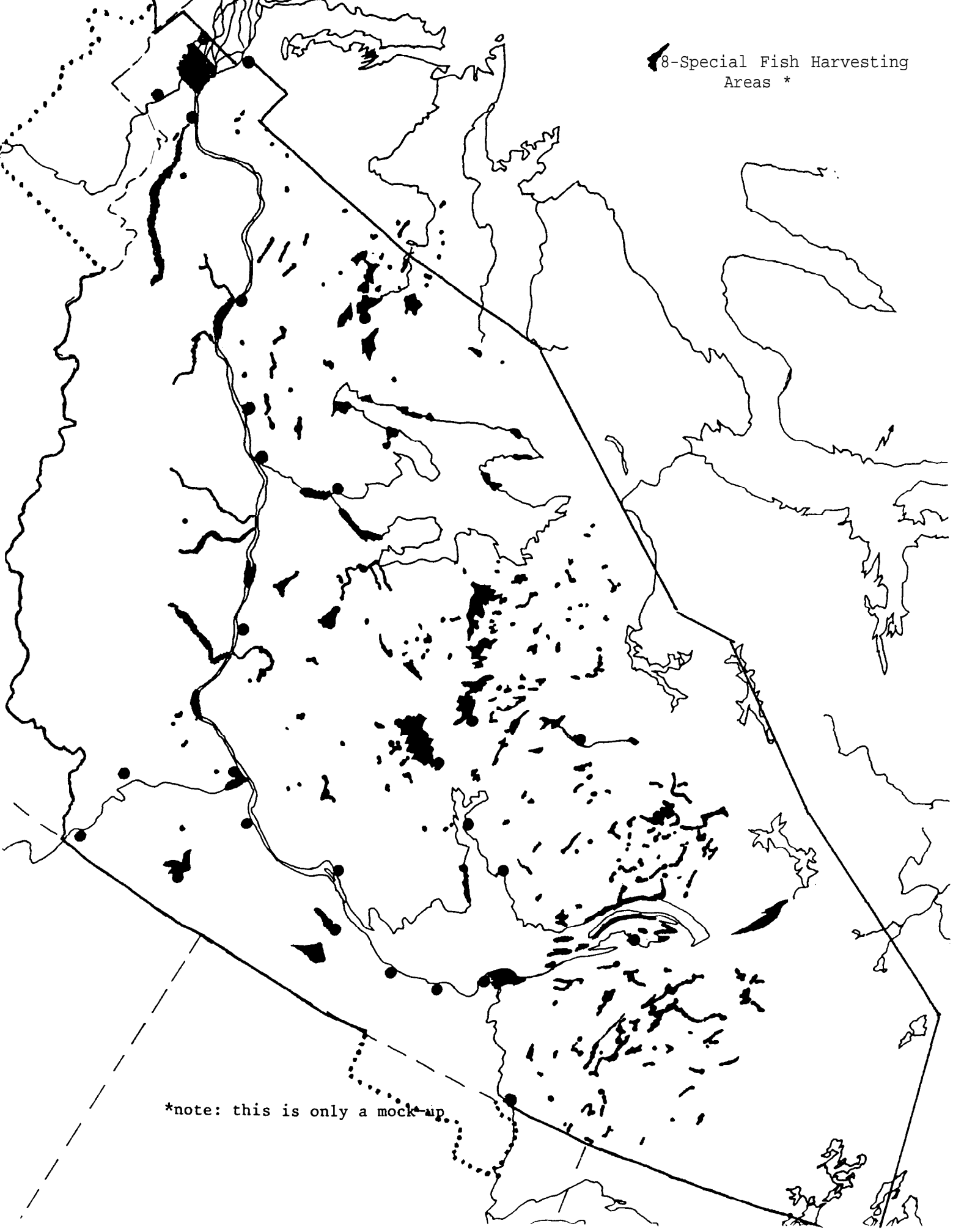


- Special Moose Harvesting Areas *



*note: this is only a mock-up

8-Special Fish Harvesting
Areas *



*note: this is only a mock-up.

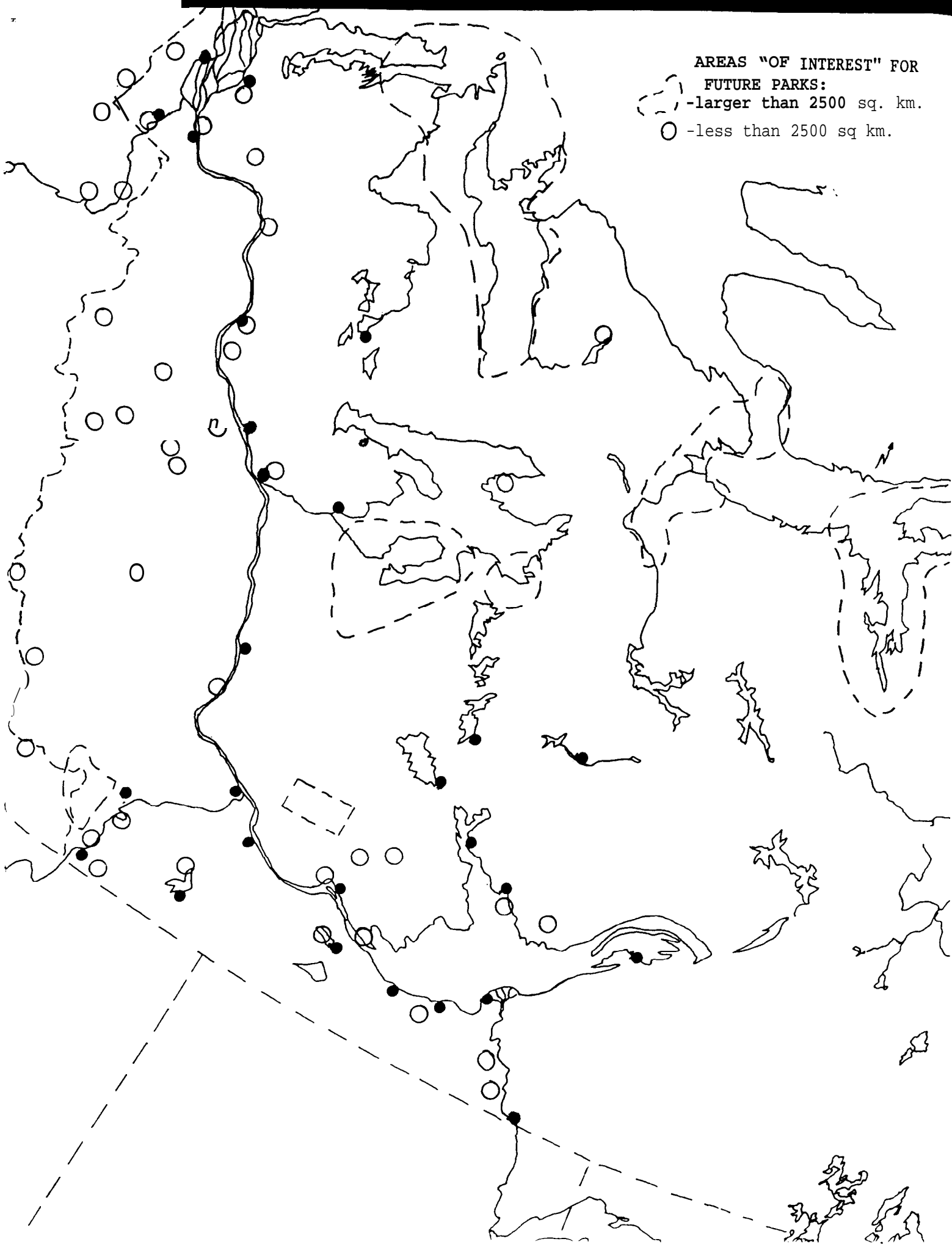


AREAS "OF INTEREST" FOR

FUTURE PARKS:

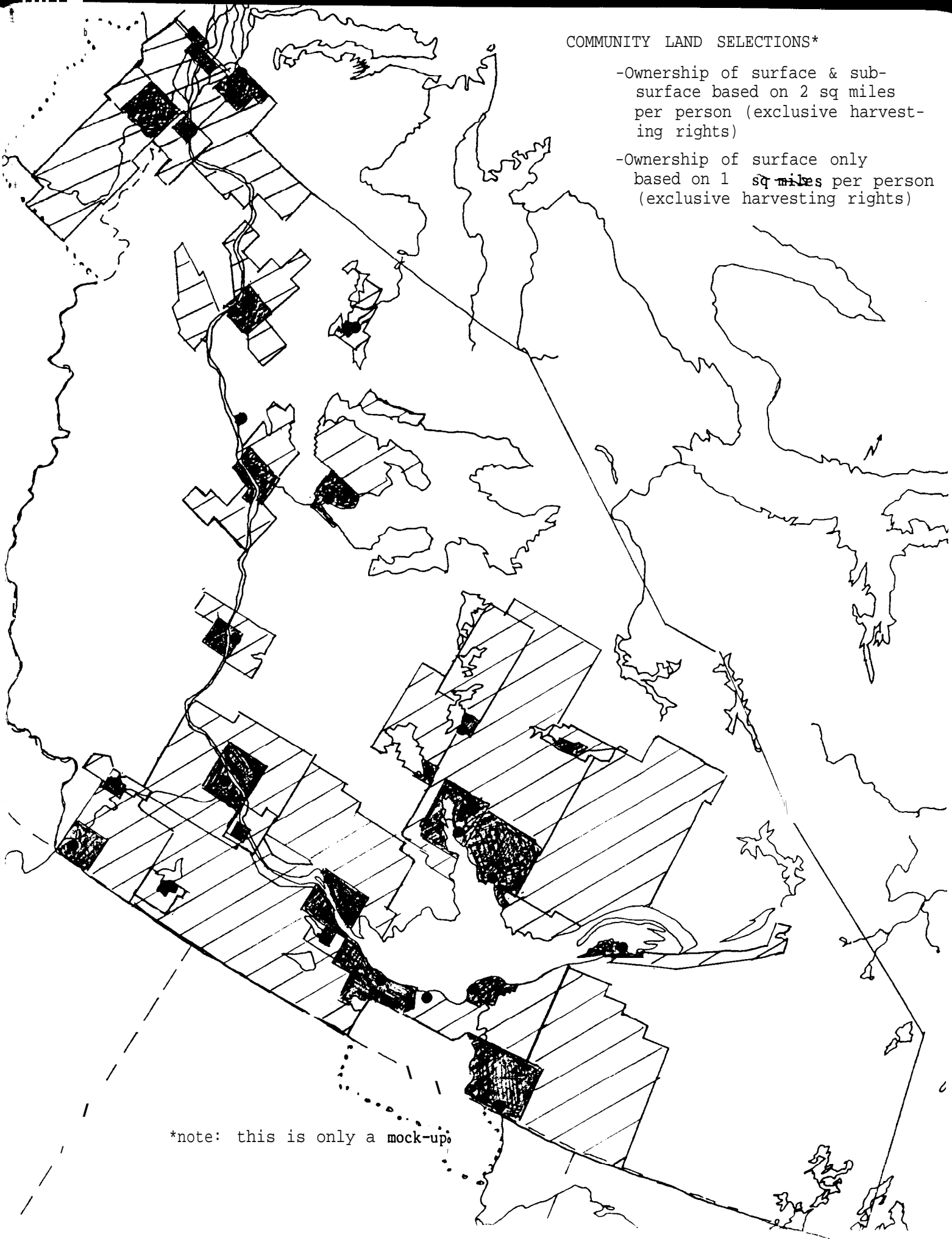
-larger than 2500 sq. km.

○ -less than 2500 sq km.



COMMUNITY LAND SELECTIONS*

- Ownership of surface & sub-surface based on 2 sq miles per person (exclusive harvesting rights)
- Ownership of surface only based on 1 sq miles per person (exclusive harvesting rights)

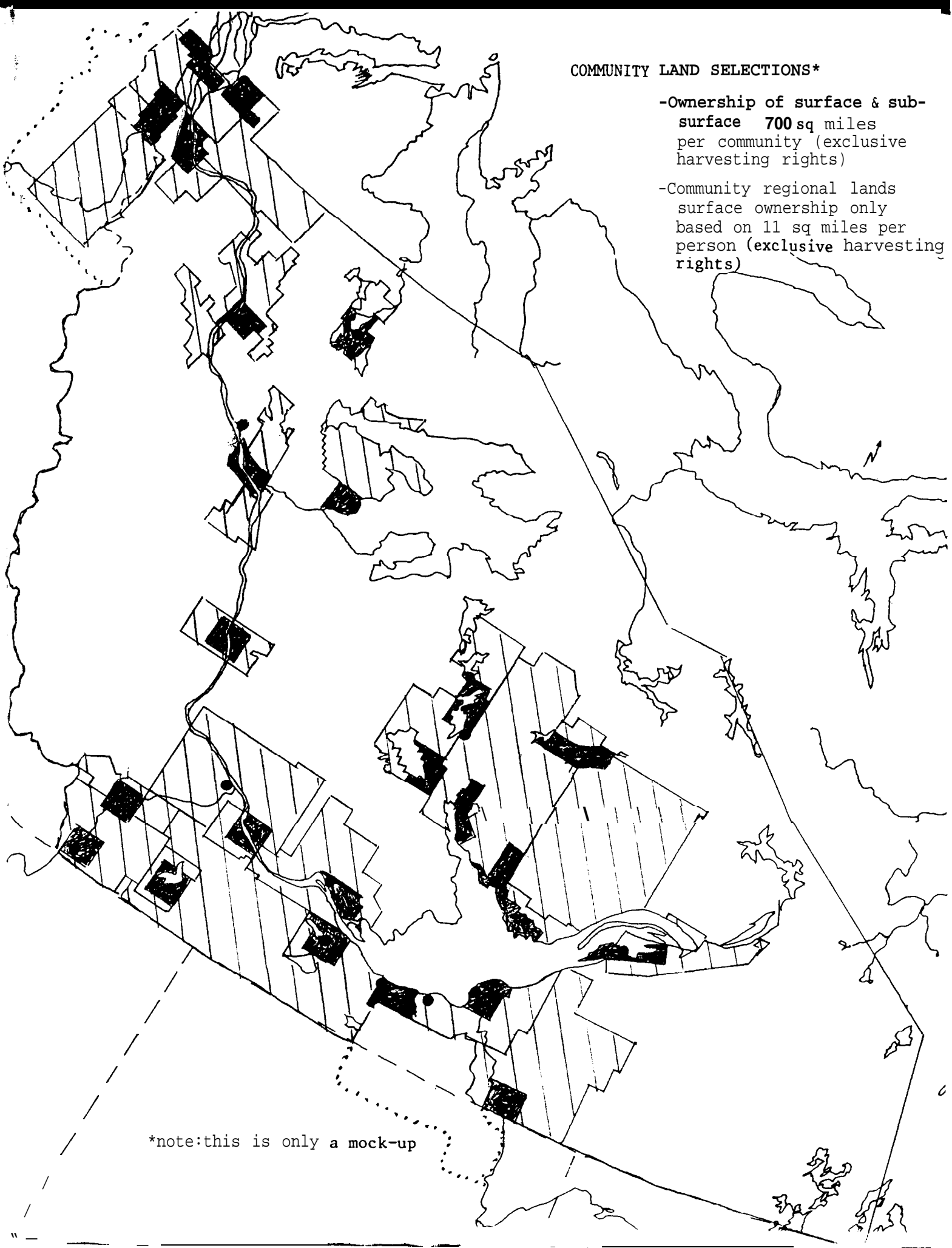


*note: this is only a mock-up

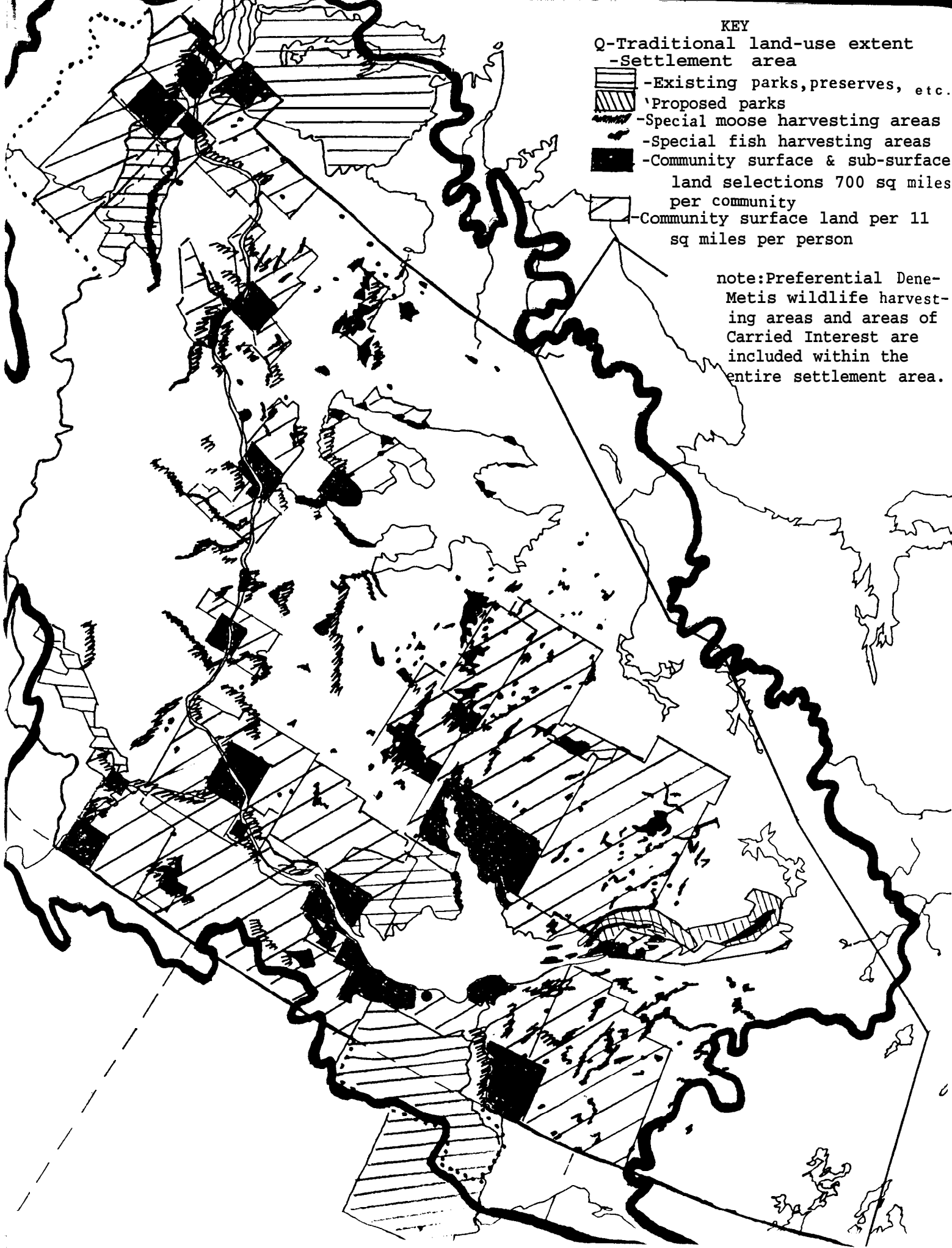
COMMUNITY LAND SELECTIONS*

-Ownership of surface & sub-surface 700 sq miles per community (exclusive harvesting rights)

-Community regional lands surface ownership only based on 11 sq miles per person (exclusive harvesting rights)



*note: this is only a mock-up



KEY

- Q-Traditional land-use extent
- Settlement area
- Existing parks,preserves, etc.
- 'Proposed parks
- Special moose harvesting areas
- Special fish harvesting areas
- Community surface & sub-surface land selections 700 sq miles per community
- Community surface land per 11 sq miles per person

note:Preferential Dene-Metis wildlife harvesting areas and areas of Carried Interest are included within the entire settlement area.

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