



**Aboriginal Affairs and
Northern Development Canada**

**Affaires autochtones et
Développement du Nord Canada**



Overview of Existing Modern Treaties

**Natalie Neville, Director
Aboriginal Affairs and Northern Development Canada**

Modern Treaty Training Workshop for Federal Employees

February 26, 2014



Overview of Modern Treaties

- There are 26 comprehensive land claims and self-government agreements in Canada that have been implemented since the announcement of the Government of Canada's Comprehensive Land Claims policy in 1973 and the establishment of the BC Treaty Process in 1992. The modern treaties cover over 40% of Canadian land mass.
- Modern treaties provide ownership, use and management over lands and natural resources for Aboriginal groups for a clearly defined package of rights and benefits agreed to in the settlement Agreement. These rights and benefits are legally protected under Section 35 of the *Constitution Act, 1982*.
- Common goals of comprehensive land claims and self-government agreements in Canada are to:
 - Promote strong and self reliant Aboriginal communities;
 - Establish certainty and clarity re. ownership and management of lands and resources;
 - Contribute to creating a positive environment for investment and the development of Aboriginal businesses (Airlines, Commercial leasing, fisheries, Construction, etc);
 - Enable Aboriginal groups to position themselves to take advantage of resource development (economic measures such as impact and benefit agreements, training and procurement provisions);
 - Ensure a meaningful, effective voice in land and resource management decision making (land use plans, heritage co-management, parks co-management, etc);
 - Contribute to the protection of the cultures of Aboriginal signatories.

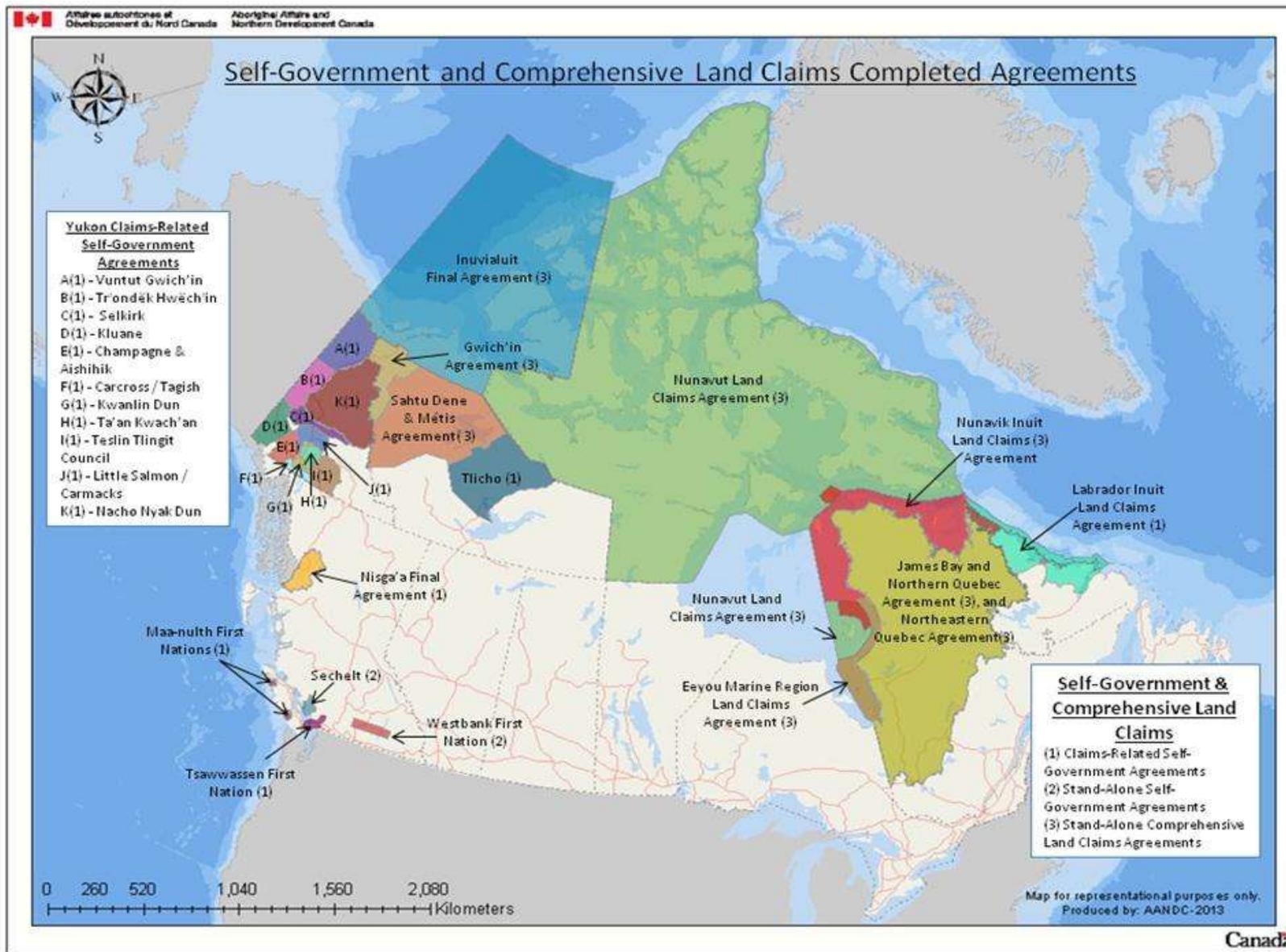


Overview of Modern Treaties Continued

- The signatories to a modern treaty include the Aboriginal group, the federal government and the relevant province/territory. The James Bay and Northern Quebec Agreement is an exception to this because there are seven signatories on the Agreement.
- Each modern treaty covers a multitude of subjects and touches on the jurisdictions of three levels of government. Each brings different views, perspectives and priorities to the table.
- Within the federal government modern treaties impact the mandates of multiple departments and agencies, taking a whole-of-government-approach to implementation.



Modern Treaties in Canada





Diverse Agreements, Diverse Signatories

- Many types of modern treaties have been negotiated to fit the wide variety of cultures, geographical contexts, and history of Aboriginal peoples across Canada.
- The different types of agreements highlights the unique needs, priorities and concerns of Aboriginal people across Canada. The languages, cultures and economic circumstances and economies of scale of Aboriginal groups differ greatly, and as a result, no two agreements are exactly the same.
- Modern treaties have been settled with a wide variety of First Nations, Inuit and Métis and differences exist between Agreements settled in the Northern territories and those settled in the Provinces in the South (jurisdictions differ, and different factors are at play such as devolution in the Northwest Territories).
- In some cases, agreements are with individual Aboriginal organizations (e.g. the Nunatsiavut Government formerly the Labrador Inuit Association), or aggregates such as the Yukon Umbrella Agreement which covers (11 First Nations).



Types of Agreements – Self-Government

1. Stand Alone Self-Government

- Set out arrangements for Aboriginal Governments to:
 - Govern their internal affairs;
 - Adopt greater responsibility and control over decision making;
 - Assume law-making authority over a comprehensive range of jurisdictions (including governance, social and economic development, education, health, lands and more);
 - They also involve Fiscal Financing Agreements (FFA) or Financial Transfer Agreements (FTA) that state which areas the Aboriginal Government can draw down program and service delivery from either the federal and/or provincial/territorial governments

EXAMPLES: *Nisga'a Final Agreement, Westbank First Nation Self-Government Agreement, Twassen, Maa-nulth Final Agreement*

2. Sectoral Self-Government

- Sectoral Self-Government Agreements allow Aboriginal groups to draw down only one or two areas of jurisdiction from the provincial/territorial level which provides them with greater autonomy over decision making

EXAMPLE: *An Agreement with Respect to Mi'kmaq Education in Nova Scotia*



Implementation Plan/Contract

- The Implementation Plan/Contract is an accompanying document to the settlement agreement.
- It acts as a 'how to guide' for implementing treaty obligations, identifying activities, timeframes, responsible parties, and resources that were agreed upon to give effect to the agreement.
- An Implementation Plan/Contract is typically effective for a 10-year period and in Year 8 of implementation, the Parties begin the process of reviewing the Plan/Contract and commencing the renewal for the subsequent planning period.
- Examples of current and upcoming Implementation Plan/Contract renewal processes include Gwich'in, Sahtu and Dene Métis, T'licho, and Labrador Inuit Land Claims Agreement.
- The Inuvialuit Final Agreement does not have an Implementation Plan, but it is currently undergoing discussions to renew funding for the treaty partners and the Boards.



Implementation Committee/Panel

- The Implementation Committee/Panel is mandated in the Agreement and consists of representatives from each signatory body.
- The Committee/Panel is used as a forum for relationship building, joint priority setting, overseeing the implementation of the treaty and is the first step in resolving disputes.
- Implementation Committees/Panels meet regularly 2-4 times a year.
- Yukon Umbrella Agreements are an exception because they do not have an Implementation Committee organized by the signatory Parties; rather, there is an informal Implementation Working Group.
- The Inuvialuit Final Agreement is also an exception, as the land claim predates the legal requirement for an Implementation Plan.



Funding Modern Treaties

- A key part of implementation includes providing grants and contribution funding to Aboriginal governments, treaty representatives, and implementing bodies. This varies according to the schedules negotiated in the Agreement and Implementation Plans.
- Some examples include:
 - Pre-Effective Date funding
 - The Anniversary Payment (Capital Transfer Payment)
 - One-Time Implementation Payments
 - Ongoing Implementation Payments
 - Fiscal Financing Agreement or Fiscal Transfer Agreement
 - Own Source Revenue



Boards

- Boards are set up as external stakeholders to provide advice and recommendations on specific topics related to the modern treaty.
- Boards address topics such as water, fisheries, wildlife/plants, environmental assessments, and land use planning, but the specific boards created under each treaty differ.
- The Nunavut Land Claims Agreement established five Institutions of Public Governance (IPGs) which oversee management of lands, water, wildlife, and review, evaluate and monitor development activities.
- The Nunavik Inuit Land Claims Agreement established three Institutions of Public Government which oversee management of lands, wildlife, as well as review, evaluate and monitor development activities in the Nunavik Marine Region.
- The Labrador Inuit Land Claims Agreement (LILCA) is unique because the funding for the Boards is tripartite based, meaning the Government of Canada, Government of Newfoundland and Labrador and the Nunatsiavut Government each provide 1/3 of the implementation funding.
- For a variety of reasons, in British Columbia, there are no boards.



Importance of Implementing Modern Treaties

- Modern treaties are an embodiment of the unique historic relationship between the Crown and Aboriginal peoples, fulfilling the Honour of the Crown and our ultimate goal of reconciliation with Aboriginal peoples.
- Treaties fulfill an important role in the economic development of Canada, in terms of ownership over lands and resource development and promoting economic and socio-economic opportunities in Aboriginal communities.
- Modern treaties provide the legal basis for Aboriginal groups to have power over resources and assets and the ability to use the lands and assets as economic levers to respond to socio-economic issues within their communities.
- While AANDC is the primary interface, it is important for federal departments to understand their specific obligations in Agreements and ensure those obligations are met in order to honour our commitments.
- One of the challenges of implementation is that the parties sometimes have different interpretations of treaty provisions. Strengthening our relationships, improving our communications and keeping the dialogue open are critical to avoiding and/or resolving disputes that may arise when implementing treaties.