

The language of negotiations

Asserted Traditional Territory or Asserted Rights:

Terms used to refer to the territory or rights an Aboriginal group believes it has.

Claims: This catch-all term is commonly used to describe negotiations over lands, resources and self-government. These negotiations are typically based on Aboriginal and treaty rights that are “claimed” or “asserted” by an Aboriginal group, or on existing rights where there remains disagreement about these rights. Also a term used to describe negotiations that arise from a legal “claim” made before a court. The term “comprehensive claim” comes from the policy the Government of Canada uses as a basis for negotiating land and resources agreements.

Parties: The participants in a negotiation who will sign the agreement. Unless otherwise specified, the parties to the negotiations described in this edition of Plain Talk are the Government of Canada, the Government of the Northwest Territories and the governing organizations of the Aboriginal group(s).

Framework Agreement: An agreement reached by the parties at the beginning of negotiations that sets out the process and “ground rules” for negotiations, including objectives, subjects, timetables and funding issues.

Interim Measures Agreement (IMA): An agreement that clarifies how Canada and the Government of the Northwest Territories will work with an Aboriginal group during negotiations on decisions that may affect the Aboriginal group’s interests in lands and resources before a final agreement is reached (eg. parks, forest management, land use permits, water licenses, tourism).

Interim Land Withdrawal: An agreement by the parties to temporarily ensure certain areas of land are protected from new land sales, leases or certain other new land rights that could interfere with the ability of the parties to negotiate. Existing interests on withdrawn lands such as recorded mineral claims, cottages or other leases, and land use permits are not be affected by the withdrawal.

Land Use Plan: A plan that provides for the conservation, development and sustainable use of land, waters and other resources. Regional land use planning in the NWT flows from settled land claims or interim measures agreements to which Canada is a signatory.

Agreement-in-Principle (AIP): An agreement that provides most of the basic parts of an eventual final agreement, but without some of the technical and legal detail. An AIP helps the parties decide whether to continue to complete a Final Agreement. It is not legally binding.

Final Agreement or Settlement: Names for a successfully completed land claim or self-government agreement. Such an agreement may include land ownership, management of resources, financial benefits and self-government arrangements. This agreement must be “ratified” (approved) by all parties. Such an agreement may receive constitutional protection as a Treaty under Section 35 of the Canadian Constitution. It includes terms such as “settlement area” (the area covered by an agreement) and “settlement lands” (lands an Aboriginal group owns as a result of the agreement).

Implementation: The process that happens after a final agreement is signed to make the agreement a reality. Implementation of an agreement follows a multi-year plan agreed to by the parties. It creates many ongoing relationships and responsibilities for all parties.

Overlap: Refers to situations where more than one Aboriginal group has asserted or established rights, such as harvesting, in the same area.

Out-of-court settlement discussions: Discussions which take place between parties that are already involved in “litigation” (a court case) to try to resolve their disagreement outside of court. The parties must agree before the judge to put the litigation “in abeyance” or “adjournment” (on hold). These negotiations usually remain confidential and are “without prejudice” (not to be held against the parties if the court case goes forward). If agreement is reached, the parties can ask for a “discontinuance” which puts an end the court action. 🐾



Land and Resource Negotiations Update

Most people in the Northwest Territories (NWT) have heard about what are commonly called “claims negotiations” between governments and Aboriginal people to resolve disagreement about land, resource and self-government issues. What may not be clear, though, is how negotiations work and what progress is being made. There are many reasons for this:

- negotiations like these normally take many years to complete;
- the parties at the negotiation table have to deal with a wide range of complex issues that take time to understand and resolve;
- some negotiations are subject to confidentiality requirements;
- not all agreements are the same because they must reflect the unique circumstances of each people and situation and respond to changes in the world around us.

To reach an agreement that will work now and in the future, all parties must negotiate carefully and thoughtfully, taking into consideration each other’s specific interests, aspirations and bottom lines.

Right now in the NWT, Canada is negotiating land, resources and governance matters with three regional Aboriginal groups: Dehcho First Nations, Akaitcho Dene First Nations and the Northwest Territory Métis Nation. It is also involved in a community-based negotiation with the Dene and Métis in the Fort Liard area. In addition, Canada is negotiating with three Aboriginal groups who reside in other provinces and territories, but who have claims that overlap into the NWT: the Athabasca Denesuline (Saskatchewan), the Manitoba Denesuline and the First Nation of Nacho Nyak Dun (Yukon).

This issue of Plain Talk will bring readers up-to-date on these negotiations.

Note: The Government of Canada has concluded land and resource negotiations with the Gwich’in, the Inuvialuit and the Sahtu Dene and Métis, all of whom are now involved in self-government negotiations. 🐾



The Government of Canada believes that negotiating land, resource and self-government agreements creates more stable and predictable communities and economies in the Northwest Territories

Got something to tell us?

Here’s who to contact:

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Plain Talk on Land and Self-government is produced by the Department of Indian Affairs and Northern Development in the NWT to help northerners understand these concepts, how they work, and what they mean in our day-to-day lives. It is not a legal document.

Our Vision

The NWT region of INAC is a respected partner in a strong and healthy Northwest Territories. We strive for:

- respectful, effective relationships with Aboriginal people;
- creating and enhancing opportunities for all Northerners;
- responsible resource development in healthy ecosystems;
- northern control over northern resources;
- responsive and accountable northern government as partners; and
- national initiatives that reflect the interests of all Northerners.

On the Web

Government of Canada programs and services
www.gc.ca

INAC - NWT Region
nwt.inac.gc.ca

Youthbuzz on the NWT
nwt-tno.inac-ainc.gc.ca/yb/yb-0-eng.asp

Agreements
nwt-tno.inac-ainc.gc.ca/atr/ent-agr-eng.asp

Plain Talk on the web
nwt-tno.inac-ainc.gc.ca/atr/fp-pt-eng.asp

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A short history of negotiations in the NWT

In much of Canada, there are historic treaties between Aboriginal people and the federal Crown. In the NWT, the Dene entered into Treaties 8 and 11 between 1899 and 1922. The Inuvialuit were never offered a treaty, and Métis individuals who did not participate in a treaty were offered “scrip” payments. Even where there are treaties, there remained disagreement between the Government of Canada and many Aboriginal people as to what the treaties said about their relationship with the government and their land rights. In addition, some provisions in the treaties, such as the creation of reserves, were never implemented.

In 1984, the Government of Canada settled these matters with the Inuvialuit in one of the first modern comprehensive land claims.

The same year, the Government of Canada entered into joint negotiations with the Dene and Métis of the entire Mackenzie Valley to deal with land and resource issues. A Dene/Métis comprehensive claim agreement-in-principle was reached in 1990, but was not ratified by the Aboriginal groups and the negotiations ended. After this, Canada entered into land and resource negotiations with regional Dene and Métis groups. This resulted in a Gwich’in Agreement in 1992, and a Sahtu Agreement in 1994.

Still, these agreements dealt only with land and resource issues and, while they provided for the possibility of negotiating self-government in the future, this did not happen until 1995, when Canada introduced the Inherent Right Policy. With this policy in place, the Inuvialuit, the Gwich’in and the Sahtu Dene and Métis were able to enter into self-government negotiations and these are still on-going.

In 2004, Canada, the Government of the NWT, and the Tlicho completed an agreement that included land, resources *and* self-government. Negotiations are continuing with other groups to reach agreement on land, resources and governance matters. 🐾

The purpose of our newsletter is to keep you informed on the progress of land and self government negotiations in the Northwest Territories, and to provide some answers to frequently asked questions. We also feature the people and communities involved in negotiations, celebrate milestones, and announce upcoming events. On behalf of Indian and Northern Affairs Canada (INAC), we hope you will find our newsletter informative and easy to read.

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Canada 🇨🇦

Land and Resource Negotiations

Transboundary Claim

Nacho Nyak Dun

First Nation (Yukon):

As a result of acceptance of their claim in the NWT and a commitment made to the First Nation of Nacho Nyak Dun in their Final Agreement, the Government of Canada is in initial discussions with this First Nation to address their transboundary claim in the Gwich'in and Sahtu regions of the NWT.

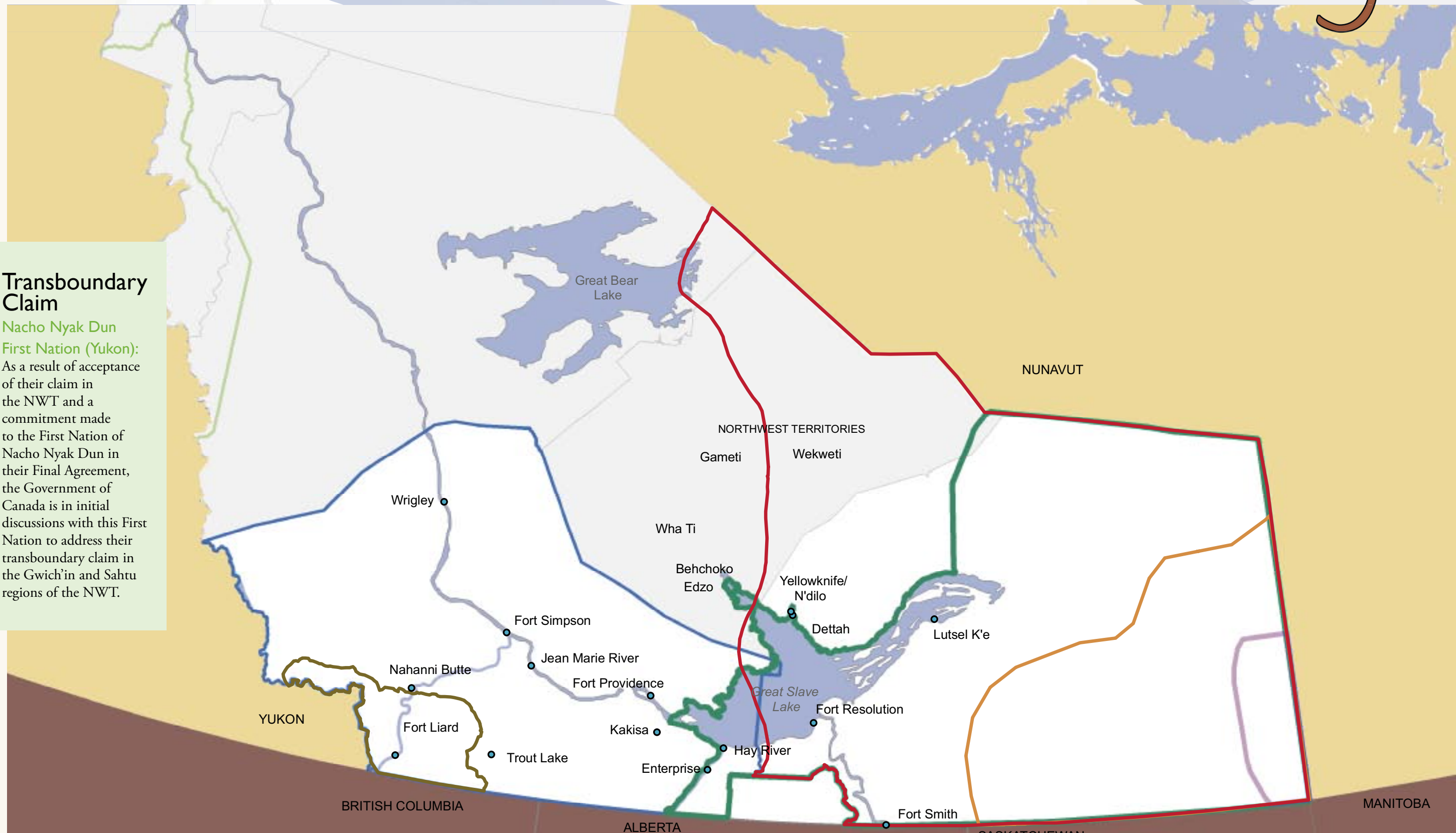
Resolving overlaps

There are many areas of the NWT where the claims of Aboriginal groups overlap. It is the Government of Canada's view that it is possible to solve overlapping claims if all parties work together.

WHAT'S NEW: Canada has appointed Robert Overvold as a Special Ministerial Representative tasked with exploring the possibility of resolving overlapping claims in the South Slave and Dehcho areas of the NWT.

Want to know more?

There is a lot more information available about land, resource and self-government negotiations and agreements in the Northwest Territories and across Canada on our website at ainc-inac.gc.ca. All editions of *Plain Talk* and a related series called "Plain Facts" are also available on the internet at <http://nwt-tno.inac-ainc.gc.ca/ATR/pub-eng.asp>. You can also call Indian and Northern Affairs Canada in Yellowknife at (867) 669-2576 to request information at any time.



Dehcho First Nations

WHO: For the purposes of the Dehcho Process Negotiations, the Dehcho First Nations (DFN) represents nine First Nations and two Métis Locals in the southwest corner of the Northwest Territories, commonly known as the Dehcho.

WHAT: Canada, the Dehcho First Nations and the Government of the Northwest Territories agreed to begin the Dehcho Process in 1999. Since 2001, the Parties have been exploring models for an Agreement-in-Principle.

MILESTONES: Framework Agreement (2001); Interim Measures Agreement (2001); Interim Resource Development Agreement (2003); Interim Land Withdrawal (2003); Out-of-Court Settlement Agreement related to litigation challenging the federal environmental assessment and regulatory review processes for the Mackenzie Gas Project (2005). On May 30, 2006 Canada made an offer to the Dehcho First Nations based on land selection. The Dehcho have been exploring this model, which is different from the shared ownership and jurisdiction model they had advocated.

RECENT PROGRESS: A significant number of Agreement-in-Principle chapters have been tabled by the Parties. The Dehcho Interim Land Withdrawal has also been renewed until October 2010. The Dehcho Land Use Planning Committee continues its work to develop a mutually acceptable Interim Land Use Plan under the auspices of the Interim Measures Agreement.

Acho Dene Koe First Nation and Fort Liard Métis

WHO: The Acho Dene Koe First Nation (ADK), located in Fort Liard, participated in the regional Dehcho Process negotiations. However, ADK had advocated for its own negotiations process with Canada and the territorial government for over 20 years. The Fort Liard Métis Local is also participating in these negotiations.

WHAT: After almost 10 years in the Dehcho Process, Canada and the Government of the Northwest Territories agreed to enter into negotiations with ADK that were more focused on its particular needs and interests. These negotiations are an example of Canada's commitment to a partnership approach to resolving outstanding land and resource issues. They are the first in the NWT to deal with a community-based comprehensive land claim agreement. The Fort Liard Métis Local is also participating in these community-based negotiations.

RECENT PROGRESS: The signing of a Framework Agreement (July 2008) marked the start of negotiations on a land and resource agreement. The agreement sets out how the three parties will engage in negotiations as well as how community governance will be addressed.

Akaiitcho Dene First Nation

WHO: Akaiitcho Dene First Nation members reside primarily in the southeastern part of the Northwest Territories in four communities around Great Slave Lake: Fort Resolution (Deninu Kue), Lutsel K'e, N'dilo and Dettah (adjacent to Yellowknife).

WHAT: The Akaiitcho Dene made Treaty 8 with the Crown on July 25, 1900, but there remains disagreement about implementation of the treaty. The Parties have agreed to resolve these and other land, resource and governance issues through negotiation.

MILESTONES: Framework Agreement (July 2000); Interim Measures Agreement (June 2001); Akaiitcho – Tlicho Boundary Agreement (November 2002); Land Withdrawals in City of Yellowknife (November 2006).

RECENT PROGRESS: An Interim Land Withdrawal was completed in 2007. About 62,000 sq km of federal Crown land has been withdrawn in the Akaiitcho asserted territory for five years (expires March 2012).

Northwest Territory Métis Nation

WHO: The Northwest Territory Métis Nation (NWTMN), formerly known as the South Slave Métis Tribal Council, represents Métis people in the South Slave area of the Northwest Territories. The NWTMN is the umbrella organization for the Fort Resolution Métis Council, the Hay River Métis Government Council and the Fort Smith Métis Council.

WHAT: The Métis of the Northwest Territories have been involved in negotiations since 1981 when they participated in the joint Dene/Métis claim. Elsewhere in the NWT, Dene and Métis groups have negotiated a single agreement. However, after the collapse of the territory-wide Dene/Métis negotiations, the Akaiitcho Dene First Nations initially decided to pursue a Treaty Land Entitlement negotiation that did not include Métis in the South Slave region. Canada and the Government of the Northwest Territories decided to negotiate a lands and resources agreement with NWTMN. The negotiations began in 1996 and are ongoing.

MILESTONES: Framework Agreement (1996); Interim Measures Agreement (2002).

RECENT PROGRESS: The parties are making steady progress on an Agreement-in-Principle.

Athabasca and Manitoba Denesuline

WHO: There are currently two negotiations based on out-of-court settlement discussions that affect parts of the southeastern NWT and parts of Nunavut with Aboriginal groups who do not live in these territories: one with the **Manitoba Denesuline** (Sayisi Dene First Nation and Northlands First Nation) and one with the **Athabasca Denesuline** of Saskatchewan (Fond du Lac First Nation, Hatchet Lake First Nation and Black Lake First Nation). The negotiations are confidential and without prejudice.

WHAT: The **Athabasca Denesuline Benoanie** court case and **Manitoba Denesuline Samuel** court case are court actions alleging treaty and/or Aboriginal rights to areas of Nunavut and the Northwest Territories. The Denesuline also claim that Canada breached its fiduciary obligation by negotiating and concluding an agreement with Nunavut Tunngavik Inc. (NTI), while excluding and ignoring their North of 60° Treaty interests. The Denesuline asserted areas overlap with the asserted territories of the Akaiitcho Dene First Nation, Northwest Territory Métis Nation and are within the boundaries of the settled claim areas of the Inuit of Nunavut (*Nunavut Land Claim Agreement*).

MILESTONES: The **Manitoba Denesuline** litigation was put in abeyance in June 1999 and the Manitoba Denesuline signed a Memorandum of Understanding (MOU) with Canada to begin discussions on an out-of-court settlement focused on harvesting and land rights on July 12, 1999. On August 5, 2004, Canada, the GNWT and the Manitoba Denesuline signed an Interim Measures Agreement. The **Athabasca Denesuline** litigation was put in abeyance in August 2000. In the fall of 2000, they signed an MOU with Canada to begin discussions on an out-of-court settlement. On May 26, 2004, Canada, the GNWT and the Athabasca Denesuline signed an Interim Measures Agreement.

RECENT PROGRESS: An Overlap Agreement among the **Manitoba Denesuline**, **Athabasca Denesuline** and the NTI/Kivalliq Inuit Association in Nunavut was reached on September 5, 2007, regarding matters of mutual interest North of 60. The agreement is confidential at this time.