



Yukon Wetlands Policy Roundtable #2

June 19, 2018

Kwanlin Dün Cultural Centre, Whitehorse

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Executive Summary

The Government of Yukon convened the second roundtable for wetland policy development on June 19, 2019. Attendees included representatives from First Nations, federal government, and municipalities as well as representatives from relevant industry organisations, boards, councils, environmental non-governmental organizations, and Government of Yukon departments.

The agenda for the second roundtable was based on requests made by partners at or following the first roundtable. Generally, requests were to provide:

1. Further process clarity in the form of a draft terms of reference;
2. More supporting information on key topics (wetland functions, development practices, First Nations rights and traditional use);
3. A draft policy outline as a starting point for discussion.

Draft Terms of Reference

A draft terms of reference was presented and discussed, with several changes and additions noted.

Supporting Information

There were four presentations to provide information that may inform future discussions on policy elements: wetland functions in permafrost zones (Ducks Unlimited), Indigenous rights and values (Champagne and Aishihik First Nations), and current industry practices for mining and forestry (Chamber of Mines and Wood Products Association). Based on these presentations, partners indicated that the policy will need to provide vision for the future and management clarity, consider matters such as climate change, and include diverse knowledge from scientific, traditional and local sources.

Draft Policy Outline

As requested in the first roundtable meeting, a draft policy outline developed by volunteers from nine organisations was provided to support discussions about policy contents. The draft outline included sections on:

- Policy statement
- Policy scope
- Indigenous context
- Background/context
- Definitions/glossary
- Governance structure
- Policy actions
- Implementation
- Policy review

Partners provided feedback on what they liked and what they would prefer to see changed or added. This evolving draft outline will continue to inform further policy work at future roundtables.

Action Items

The following items were requested to be completed for the third roundtable meeting:

- Please provide any further feedback on the revised draft terms of reference, attached.
- Complete a draft background and context section for the policy.
- Complete a description of the current Government of Yukon governance structure for management of activities in wetlands, including legislation.

1. Context and Agenda

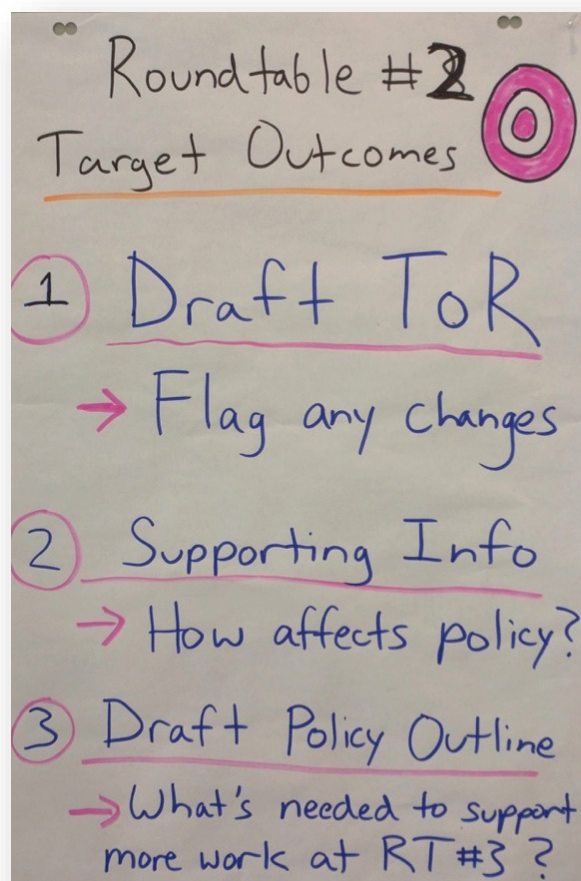
The Government of Yukon is undertaking an inclusive “Roundtable” (RT) process facilitated by public engagement specialists to develop a wetlands policy. This report summarizes the second roundtable on wetland policy development. A more complete description of the overall context for developing the policy can be found in the report for the first roundtable, which is available upon request from Amy.Law@gov.yk.ca or Tyler.Kuhn@gov.yk.ca.

RT#2 focused on three areas, based on feedback and requests heard at and following RT#1:

- **Terms of Reference** - review of a draft developed following RT#1 discussion
- **Supporting Information** - further details on wetland functions (including permafrost zones), Indigenous rights and values, and industry practices (placer mining and forestry) related to wetlands
- **Draft Policy Outline** - review work of the sub-group tasked at RT#1

RT#2 can be understood as a “bridge” between the first roundtable (which launched the whole policy process) and the third one, anticipated for October 2018, which will involve more in-depth work on policy sections.

A complete list of attendees for RT#2 can be found in Appendix A.



2. Terms of Reference

During RT#1 in April, participants¹ discussed important process elements, such as the meaning of partnership and consensus. Following this discussion, several people asked for a written terms of reference to provide more clarity and certainty. To this end, the facilitators created a draft terms of reference, which covers:

1. **Background** - reasons for a policy and for creating it through a partnership approach
2. **Intended Outcomes**
3. **Roundtable Structure** - participants, roles and responsibilities
4. **Decision-Making** - partnership, consensus, green/yellow card system at decision points
5. **Public Engagement & Intergovernmental Consultations** - how and when these happen
6. **Process Stages and Timelines**

RT#2 participants discussed the draft ToR and requested several changes and additions, including:

- Policy actually guides management of human activities that affect wetlands
- Need to indicate participants' role in contributing to decisions about the policy contents under Roles & Responsibilities
- Participants also guide decisions about which topics should be in the policy
- Need to clarify policy drafting process
- ToR should reference how policy will fit into overall Yukon framework for wetlands

ACTION: an email will be sent to all invited partner-organizations asking for further input on the draft ToR. This input will be compiled and a revised draft ToR presented at RT#3 in October 2018, with the intention to seek the endorsement of the group to proceed with collaborative work based on this ToR.

¹ The term 'partner' refers to all RT process partner organizations while the term 'participant' generally refers to partners who were present at a given RT.

3. Supporting Information

Following RT#1 in April 2018, several participating organizations requested an opportunity to present information that may support further roundtable discussion about policy elements:

- **Wetland Functions** - further detail about wetland functions and ecological values, including differences between areas with and without permafrost.
- **First Nations Rights and Values** – perspectives on responsibilities to protect and respect water, how that intersects with Chapter 14 of the Final Agreement.
- **Development Practices** - further details about how the development practices of placer mining and forestry interact with wetland disturbance.

The following notes include presentation key points as well as participants' questions, answers and comments.

Wetland Functions

Jamie Kenyon of Ducks Unlimited Canada presented on this topic. Key points include:

- As discussed at RT#1, there are five distinct types of wetlands, and they all perform certain valuable functions.
- Much of Yukon north of Whitehorse has either continuous or discontinuous permafrost, which interact with wetlands. Changes in permafrost affect wetlands and vice versa. There are many examples (e.g. Zelma Lake draining because of permafrost thaw), but not yet a lot of scientific research on this topic.
- Wetlands have biodiversity and carbon storage functions in both permafrost and non-permafrost zones, though the magnitude may change (e.g. higher carbon storage in permafrost zones). Wetlands appear to be particularly sensitive in permafrost zones.
- Elder Jimmy Johnny shared a story about a packhorse falling into a hole in the trail caused by melting permafrost in the Mayo area in 2002 to illustrate how the landscape is changing because of climate change.



First Nation Rights and Values

Roger Brown of Champagne & Aishihik First Nations (CAFN) presented on this topic. Key points include:

- Wetlands are highly productive, and there is no coincidence that First Nations people often establish camps at places near wetlands (e.g. Kloo village, Hutchi, Aishihik, Chemia, Klukshu).
- CAFN working to re-invigorate *dän k'e* (“our way”). Water is a living thing, it has power, it is medicine.
- The Final Agreements reinforce that First Nations have a special relationship with the land, including in the preamble.
- Chapter 14 affirms Traditional Use rights of Yukon First Nation people regarding water - trapping and non-commercial harvesting, traditional heritage, cultural and spiritual purposes. Overall purpose of Chapter 14 is to “maintain water in a natural state”.
- “Waters” is defined in Yukon’s *Waters Act* (2003) as “any inland water, whether in a liquid or frozen state, on or below the surface of the land.” Yukon’s *Waters Act* is mirror legislation adopted from the federal government upon devolution in the early 2000s, and is in many ways not consistent with the Final Agreements. There was a commitment to successor resource legislation, which should be acted upon in regards to water legislation.
- The United Nations Declaration on rights of Indigenous Peoples speaks to Indigenous peoples’ distinctive spiritual relationship with land and water; Canada is a signatory-nation.
- It is inevitable that First Nations governments will develop and amend their own legislation for managing activities around water, and it would benefit everyone if all Yukoners take a collaborative approach.
- Challenge of dealing with the notion of “substantially unaltered,” and how to deal with compensation in the event of loss.



Development Practices: Placer Mining

Randy Clarkson of the Yukon Chamber of Mines presented on this topic. Key points include:

- Gold-bearing gravel bed is located below organic layers, including wetland layers which means avoidance strategies used by other industries like forestry are not possible for placer mining.
- It is not possible to reclaim bogs and fens back to their original state, or only at exceptionally high costs.
- Industry reclamation practice, in general, is to reclaim disturbed wetlands to shallow open water wetlands with adjacent marshes.
- Post-mined areas will eventually become shallow open water wetlands through natural processes. Current Yukon placer mining practice is to try and enhance and speed up this process, and to create productive shallow open water with marshes adjacent.
- Looked at about 2500 other references when developing Yukon placer best practices.
- Q: Is there further data on comparison of biodiversity productivity between mined and post-mined website?
 - A; Study on songbird showed this, and is available on KPMA website.
- Q: Who is responsible for monitoring 10-15 years after mining?
 - A: Regulators, normally go after claim holders. Would like to see monitoring done by regulator who can have a big picture view.
 - A: While license is in effect, monitoring required by holder, though wetlands not specifically mentioned: Regulators can also try to, but nobody is currently tasked with monitoring anything that is not licensed.
- Q: How do you stop permafrost in area surrounding mined area from thawing?
 - A; They stay frozen, though the area where mined will not re-freeze. Non-permafrost areas do some things better than original peat land.
- Q: Have you considered accounting for carbon storage and loss?
 - A: All wetlands produce methane, which contributes to climate warming – this is all subject to a lot of debate.
- Q: Any chemistry research?
 - A: In 2015, went back to sound depths of ponds and did some water samples for pH and redox potential - did not do metal analysis.



Development Practices: Forestry

Myles Thorpe of the Yukon Wood Products Association presented on this topic. Key points include:

- History of Yukon forestry can be seen as three eras, plus one brief anomaly:
 - 1 Biomass steamboat era, 1902-1960;
 - 2 North American sawmill expansion to support baby-boom population expansion focussed in around Watson Lake; and
 - 3 Domestic energy supply-wood.
- Two main ways forestry overlaps with wetlands: Building roads beside and across wetlands, and placing cut blocks beside wetlands with some overlaps.
- Protection measures are addressed through three main approaches: land use planning, harvesting rights and responsibilities, and compliance/enforcement. These include requirements for engineered stream and wetland crossings, setbacks and machine free zones, decommissioning and replanting, seasonal limits on cutting, and in some cases “no-go” areas.
- The *Forest Resources Act* (2008) and regulations already have substantial measures for protecting wetlands that were developed collaboratively by the Government of Yukon and Yukon First Nations through the successor resource legislation process. Forestry industry would be concerned if a policy pointed towards great legislation changes.
- If policy is looking at all five types of wetlands, perhaps forestry practices should too. *(Report author’s note: wetland setbacks under regulations apply to marshes and shallow open waters, not bog, swamp or fen. For more information, please see: http://www.emr.gov.yk.ca/forestry/pdf/planning_standards_wetlands_riparian_management.pdf)*
- Reclaimed mined areas could actually be more productive for biomass timber growth down the road - would like to see these combined in some way.

Key Considerations for the Policy

Following the presentations, RT participants were asked for their views on what this supporting information means for policy; what will the policy need to include or address on account of this information presented? Participants identified the following themes (the order is alphabetical and does not imply any order of importance):



Climate Changes

- Policy should address climate change goals

Diverse Interests

- Recognize multiple values
- Possible application to all sectors equally; further discussion required
- Integration of environmental protection, community-based economic development, and socio-cultural interests
- Maximization of existing management tools across industries/sectors
- Rehabilitation and reclamation need to be highlighted as viable options
- Traditional use needs to be noted in areas under development

Knowledge Diversity and Application

- The policy needs to be evidence-based using science, local knowledge and Traditional Knowledge
- Policy needs to use the scientific method for determining wetland functions

Link to Legislation and Agreements

- Recognize implications from Umbrella Final Agreement, treaties, and other obligations (spirit and intent)
- Clarity on how current legislation will be affected by this policy
- Policy needs to be designed to influence future land use planning processes

Management Clarity

- Policy should guide 'acceptable change' through principle of adaptive management
- Function of original wetland should be defined so we can answer: does it make a difference to change from bog to shallow water wetlands?
- Wetlands can be reclaimed, and the focus should be biodiversity
- Clear definitions for terms such as 'sustainable' and 'compensation'
- Policy should differentiate between permafrost and non-permafrost regions
- Need to measure actual water quality (e.g. chemistry, settle-able solids)

Vision

- Policy needs to be forward thinking, flexible and sustainable
- Water and its inherent value needs to be a priority

4. Draft Outline Review

At the end of RT#1, a sub-group was tasked with developing a draft policy outline (i.e. a draft table of contents) to support roundtable discussions about what should be in the policy. The sub-group included volunteer representatives from most of the main types of organizations involved in the roundtable process: Government of Yukon, First Nations governments, development industries, and ENGOs:

- Canadian Parks and Wilderness Society Yukon
- Chamber of Mines
- Ducks Unlimited Canada
- Government of Yukon
- Government of Canada
- Klondike Placer Miners Association
- Tr'ondëk Hwëch'in
- Yukon Conservation Society
- Yukon Prospectors Association

The sub-group went through a brainstorm exercise over two meetings, drawing on their own knowledge and looking at elements of other policies. The sub-group members shared the story and results of their experience, and noted the benefits of giving this diverse group time to have open and frank discussions. Tr'ondëk Hwëch'in contracted international wetland expert Dr. Lee Foote to participate in the sub-group, and some members noted the benefits of having this experience and knowledge at the table.

Note: this sub-group was tasked to only identify and scope element, which might be included in the policy. Development of actual policy content will happen at RT#3.

Additions And Changes Identified By Participants

RT participants discussed the draft outline in small breakout groups, in which they circulated amongst tables to 'cross-pollinate' ideas. The following summarizes the key additions and changes to the draft outline suggested by each table in themes. The order of themes is alphabetical and does not denote any order of importance:

Background/context

- All policy section should have examples
- Explain what actually happens to wetlands under different uses

Climate change and carbon cycle

- Add adaptation components to hierarchy
- Changes to wetlands and implications on climate change should be noted
- Recognition that climate change requires adaptability

Common values/principles

- List common values or principles that underpin the policy statement writ large

Definitions / glossary

- Define: substantial, sustainable, and adverse effects
- Differentiate wetlands which are natural, restored, and reclaimed
- Provide a baseline framework for defining what a wetland is
- Should be at front of document
- Terms definitions should be sourced
- Terms should be consistent with legislation, best management practices, etc.

Development activities

- Include wetland restoration in monitoring of site even after water license expires
- Should the policy speak to all activities that impact wetlands in the Yukon?
- Would 'reclaim' and 'offset' apply to all activities?

Governance / implementation

- Requires adequate time and resources
- Substantiate

Hierarchy

- Identify: avoid > mitigate > restore / reclaim > and offset as last resort
- 'Offset' can mean many different things, and therefore needs clarity

Indigenous context

- Describe Umbrella Final Agreement rights that relate to wetlands
- Indigenous context needs greater incorporation throughout policy

Policy statement

- Articulate desired outcome such as any protection goals
- Embedded indigenous context and knowledge
- Greater details and 'meat'
- Identify acceptable losses, if any, including functions and values
- Note climate change in the statement

Broader RT process suggestions

- Have expert(s) on wetlands as a resource
- Highlight draft policy areas lacking consensus
- More First Nation representation in drafting process
- More elder throughout RT process and recognize this will take time
- RT's should generally have more time

Water matters

- Need to add connection of wetlands to overall water values

Key Questions for the Policy to Address

Participants discussed the draft policy outline and assessed what works well for them and anything of concern. They were asked to identify *important questions that the policy will need to address, which need to be carried forwards to RT#3 for consideration*. The following questions were written and grouped thematically; the order is alphabetical and does not denote any order of hierarchy.


Definitions - Development/Conservation

- When is a wetland a wetland? (i.e. definition)
- Size restriction, pristine, impacted? What are the (Yukon) definitions of important terms & concepts: wise use, acceptable change, sustainable use, significant/important wetlands, functions, values, thresholds
- Definitions of a sustainable level of altering wetlands and of allowing adverse effects?
- How will we define what is significant, and what implications will the policy have on development activities based on the answer to that questions?
- How will the concept of offsets be applied considering the lack of disturbed wetlands in the Yukon?

Governance

- What space will this policy occupy in the decision-making process? How does it fit in with other legislation?
- Where does dispute resolution fit into the policy? i.e., *how to handle disputes about its application?*

Knowledge Sources

- 
- Where/when/how is Traditional Knowledge supplied?
 - There should be more Elders present. If we are asking for a sub-group on scientific knowledge, why not asking for a Traditional Knowledge working sub-group?
 - How to address the gaps in knowledge (science, Traditional Knowledge) to inform the policy?

Policy Statement

- What is the overall policy statement? Need a concrete idea to work with.
- Are we going forward with no net loss?
- What is the overall intent of the policy? Protection or management of development?

Timelines

- How are we going to do this in the time allotted?

5. Next steps

To conclude RT#2, participants discussed what is needed to move forward on key topics as we look ahead towards RT#3 in October 2018 (exact date TBC).

Traditional Knowledge: how should we work with it at RT #3?

- The Government of Yukon has directly reached out to First Nation partners to seek guidance on how best to include Traditional Knowledge in this process and the resulting policy. The facilitators will work with First Nation representatives and the Government of Yukon to design RT#3 agenda.
- There needs to be more time for elders to share Traditional Knowledge. We need to recognize the importance of different styles of meeting when including elders; it needs to be comfortable for them.

ToR: what is needed to endorse at RT#3?

- Some specific changes were noted, as well as some general questions and concerns.
- From the comments during the “taking the temperature exercise”, it is apparent that some people are feeling uneasy about the RT overall outcomes. The ToR may be okay, but some are uneasy about how the policy will affect their interests.
- Facilitators will complete a revised version for further feedback including changes identified at RT#2. Please email feedback to Amy.Law@gov.yk.ca and Tyler.Kuhn@gov.yk.ca who will compile and send on to facilitators. Facilitators, via YG, will circulate a revised version with more time to review before RT#3.

Policy contents: what do we need to move forward?

- Policy statement (i.e. goals of the policy) will be an essential foundation; to be worked on as a group at RT#3 in October.
- Access to expertise:
 - Consider having a neutral expert around the table to help with technical information.
- Draw upon other circumpolar experiences:
 - Look elsewhere in the circumpolar region, given the difference of North and South: Alaska Army Corps of Engineers, Arctic Council, Sweden.

- Further work on “framework” sections of policy:
 - Work on fleshing out definitions/glossary and background section (definition of wetland, description of functions, Yukon context). Initial sub-group members volunteered for this work.
- The Government of Yukon can work on fleshing out the section on wetland governance structure in Yukon to bring back to RT#3.



6. Appendix A – List of RT #2 attendees

Government / Group	Attendees
First Nations	
Champagne and Aishihik First Nations	Roger Brown and Michael Jim
Council of Yukon First Nations	James McDonald
Gwich'in Tribal Council	Leigh-Ann Williams-Jones
First Nation of Na-Cho Nyäk Dun	Maureen Huggard
Kluane First Nation	Geraldine Pope
Selkirk First Nation	Dean Gill
Ta'an Kwäch'än Council	Scott Paszkiewicz
Teslin Tlingit Council	Hannah Turner
Tetlit Gwich'in Council	Les Blake & David Krutko
Tr'ondek Hwëch'in	Kim Melton
Municipal / Federal	
Canadian Wildlife Service	Nathalie Lowry
Fisheries and Oceans Canada	Jennifer Harding
Village of Carmacks	Tracy Thomas
Village of Mayo	Blair Andre
Village of Teslin	Gord Curran
Industry Organisations	
Canadian Association of Petroleum Producers	Cindy Dickson
Chamber of Mines	Randy Clarkson
Klondike Placer Miners Association	Trish Hume
Yukon Energy	Travis Ritchie
Yukon Prospectors Association	Grant Allan & Mark Prins
Yukon Woods Products Association	Myles Thorp
Environmental Organisations	
Canadian Parks and Wilderness Society	Malkolm Boothroyd
Ducks Unlimited	Greg Bruce & Jamie Kenyon
Wildlife Conservation Society	Hilary Cooke
Yukon Conservation Society	Sebastian Jones & Mike Walton
Boards	
Yukon Fish and Wildlife Management Board	Tecla Van Bussel, Frank Thomas & Graham Van Tighem

Yukon Land Use Planning Commission	Sam Skinner
Yukon Water Board	Neil Salvin
Renewable Resources Councils	
Alsek Renewable Resources Council	Laura MacKinnon
Carmacks Renewable Resources Council	Douglas Billy & Vera Charlie
Dan Keyi Renewable Resources Council	Susanne Flumerfelt & Sandy Johnson
Dawson District Renewable Resources Council	Ian Fraser
Mayo District Renewable Resources Council	Jimmy Johnny & Frank Patterson
North Yukon Renewable Resources Council	Travis Frost & Jason Van Fleet
Selkirk Renewable Resources Council	Jerry Alfred & Jerry Kruse
Teslin Renewable Resources Council	Carolyn Allen & John Martychuk
Government of Yukon	
Department of Environment	Tyler Kuhn, Amy Law, Bruce McLean, Jennifer Meurer, Nicole Novodvorsky & Todd Powell
Department of Energy, Mines & Resources	Diane Brent, Jerome McIntyre & Juanita Power
Department of Highways & Public Works	Rob Smith