

December 3, 2021

To: Tyler Kuhn and Amy Law, Government of Yukon, Department of Environment

Re: Comments on the Draft Policy for the Stewardship of Yukon's Wetlands

The Yukon Chapter of the Canadian Parks and Wilderness Society (CPAWS Yukon) advocates for the territory's most valuable and priceless resource: our abundant wilderness. Our mission is to conserve the land, water and wildlife of the Yukon for current and future generations. As a conservation organization, we carry a responsibility to ground our actions within a commitment to reconciliation, and we recognize that the lands and waters we advocate for are also the Traditional Territories of Yukon First Nations, the Inuvialuit, and transboundary First Nations in British Columbia, the Northwest Territories, and Alaska.

We participated in the Government of Yukon's wetlands roundtable meetings and were part of the working group that drafted earlier versions of this policy before the Government of Yukon took over policy development. We thank the Government of Yukon and the policy development team for the opportunity. The collaborative approach was commendable and brought together people with a wide diversity of perspectives and values, including representatives from First Nations, mining, oil and gas, forestry, different government departments, conservation organizations, Renewable Resource Councils, and municipalities. We wish the collaborative approach had continued and believe it is a good model for the development of other policies in the territory, as long as it is conducted alongside robust public and community consultation.

CPAWS Yukon felt it was important to participate in the development of this policy, given the immense ecological, social, cultural and intrinsic value that wetlands hold. The absence of a territorial wetland policy has made it impossible to sustain these values or manage development in wetlands in a consistent way, and we are pleased that the Government of Yukon has taken steps to develop a draft policy.

Unfortunately, we feel this draft has not addressed the issues that necessitated its creation. As we explain in more detail in our submission, this policy will continue to permit the loss and degradation of wetlands in the territory, does not address the issue of wetland ecosystems approaching ecological or cultural tipping points, and does not provide predictability for proponents, governments, or the public.

Policy Goal

The policy goal in the draft policy reads, "the Government of Yukon will work to ensure the benefits of Yukon's wetlands are sustained for all." CPAWS Yukon had initially interpreted the word "sustain" to mean "maintain", and we were confused why the policy goal appeared to

suggest this policy is a no net loss policy, when it actually allows for the permanent loss of wetland benefits and only states that this loss should be minimized.

It was clarified at the November 2021 roundtable meeting that the Government of Yukon is using the word “sustain” in a very loose way, and not to mean that wetland benefits will be fully maintained through reclamation or offsetting. We feel this is not the common understanding of the word sustain and, were the policy to remain largely the same, we would suggest clarifying the policy goal.

However, our broader and more important point is that the goal of the policy should be changed from one that allows loss to one that emphasizes wetland protection and strives for no net loss of wetland benefits where development is permitted (unless thresholds of acceptable loss are set through land use planning or a similar government to government process). We suggest this policy goal could be captured by the wording, “the Government of Yukon will work to ensure the benefits of Yukon’s wetlands are maintained for all”.

A no net loss goal is a common feature in wetland policies in Canada and around the world, and it does not imply a total halt on development. Instead, in wetlands where development may be permitted, no net loss policies use the mitigation hierarchy, as this draft policy does, but they offer much clearer guidance on the role of reclamation and offsetting in balancing out impacts to wetlands. We contrast this with the goal of the current draft policy – to minimize loss – which does not offer clarity on how much loss is acceptable and to what extent wetland benefits must be brought back through reclamation and offsetting. We feel that regulators, project proponents, governments, and the public will struggle to interpret this goal consistently, leading to inconsistent implementation of the policy.

Commitment to no net loss provides a concrete benchmark to measure the adequacy of mitigation measures on a project by project basis, and to evaluate the effectiveness of the policy as a whole. The vagueness of the draft policy’s goal — to minimize loss — does not provide accountability and makes it impossible to determine if the policy is working as intended.

Since the beginning of the process to develop a wetland policy, CPAWS Yukon has advocated for a protection and no net loss approach where development is permitted to managing wetlands. In addition to offering clarity, we feel this approach best recognizes the importance of sustaining the ecological, cultural, social, and intrinsic values of wetlands for current and future generations.

As appropriate, co-management processes such as land use planning or government to government agreements could then be used to agree to deviations from the no net loss policy. We believe that this is the best way to balance the important values that wetlands offer with a respect for the principle of free, prior, and informed consent of First Nations and transboundary Indigenous groups, as well as Aboriginal and treaty rights.

Key Recommendation: The policy should emphasize wetland protection and adopt a no net loss goal for wetlands where development is permitted.

Key Recommendation: The policy goal should state, “the Government of Yukon will work to ensure the benefits of Yukon’s wetlands are maintained for all”.

Guiding Principles

CPAWS Yukon supports the policy’s guiding principles and believes they provide a strong framework for making decisions about the stewardship of Yukon’s wetlands. However, we do not feel the draft is fully consistent with the principles that were brought forward by First Nations and transboundary Indigenous groups: taking a holistic approach, respecting the land, and reciprocity. Specifically, a policy that allows the loss of wetland benefits does not seem to align with the concept of reciprocity, but rather one of taking more than you give. In addition, the policy’s assumption that wetlands are open for development, unless nominated as a Wetland of Special Importance or until thresholds are set through future land use planning, leads to a project-by-project approach to managing development in wetlands that is not holistic.

Key Recommendation: Adopt a no net loss goal, until other thresholds are set through land use planning or similar process, to better align the policy with its guiding principles.

Building Knowledge

Wetland Inventory

CPAWS Yukon supports the Government of Yukon’s commitment to create a broad-scale, territory-wide wetland inventory in collaboration with First Nations and transboundary Indigenous groups. We appreciate that the five-year timeline to complete the inventory indicates this action is a priority, but the time frame may not be met. It would be helpful for the policy to clarify that, in the absence of an adequate inventory, project proponents are responsible for undertaking project-scale inventories in the interim. Lines 162 through 164 note that “The Government of Yukon will work with proponents to ensure that wetland inventory conducted at a project scale is collected pursuant to approved methodologies and standards,” but we do not see an explicit statement in the policy that proponents must undertake project scale inventories prior to project assessment.

Guidance to proponents for conducting wetland inventories is a critical part of implementing this policy and it must be a priority action. Without this guidance, we are uncertain how a proponent or YESAB could determine if a project scale inventory has been sufficiently conducted.

Given the outsize importance of peatlands for sequestering carbon and mitigating climate change, we recommend that the wetland inventory include methods for estimating or measuring carbon storage.

Key Recommendation: Clarify in the policy that, in the absence of an adequate inventory, project proponents are responsible for undertaking project-scale inventories in the interim.

Key Recommendation: The wetland inventory should include estimations or measurements of wetland carbon storage.

Research on northern wetlands

CPAWS Yukon agrees that there are gaps in our collective knowledge on wetlands, and we feel that the long list of research priorities indicates this policy should take more of a precautionary approach than it currently does. For example, the policy allows the loss of wetland benefits when the ecological resilience of northern wetlands is unknown.

Key Recommendation: Adopt the precautionary principle as a guiding principle.

Key Recommendation: We strongly recommend the Government of Yukon develop a program to monitor the effectiveness of mitigation actions associated with development in wetlands. This program could include pilot projects, such as peatland restoration techniques (which we note are currently unproven and expensive, but may hold future promise).

Protection of Wetlands of Special Importance

CPAWS Yukon has a number of concerns with this section of the policy. Assuming all wetlands are open for development, unless first nominated by an eligible group as a Wetland of Special Importance and then accepted by the Government of Yukon, is a burdensome and uncertain process and fails to offer meaningful protection to scores of valuable wetlands.

The nomination process places the burden of protection on governments, boards, and councils. These groups may have capacity and resource constraints, particularly if the process involves the hiring of experts or consultants, which could result in candidate wetlands not being nominated. We are also concerned that some of the groups eligible to nominate a Wetland of Special Importance may not even know it is an available option, particularly as these groups experience membership or staff turnover.

Our currently limited knowledge about wetlands across the territory means many wetlands that fit the description will likely not be considered for this designation until development activities are proposed in them. It is highly likely that YESAB review of a wetland will trigger the recognition that a wetland is a candidate as a Wetland of Special Importance. While it was suggested at the November 2021 roundtable meeting that the YESAB stage would be too late to nominate a wetland, we feel that nominations should be considered at this stage. This approach would be equitable, recognizing capacity and resource constraints, and also the value of wetlands.

We are also concerned that the envisioned process for designating Wetlands of Special Importance situates the Government of Yukon as the decision-maker and does not include opportunities for public input and review. This process should be transparent and clear rationale should be provided if a wetland is not accepted as a Wetland of Special Importance. It is also unclear how the Government of Yukon will weigh “assessment of economic potential” against wetlands meeting the criteria, further pointing to the need for a transparent process.

The draft policy has put forward a number of criteria to assist with evaluating whether or not a wetland will be listed as a Wetland of Special Importance. We suggest that these criteria should be reframed from criteria that would allow a wetland to be listed as a Wetland of Special Importance to criteria where, if present, would protect wetlands from degradation. For example, instead of the policy specifying that rare or threatened wetland types in the Yukon can be nominated as Wetlands of Special Importance, it should specify that rare or threatened wetlands are protected from loss and degradation. In essence, we are suggesting that wetlands that meet the criteria for a Wetland of Special Importance should automatically qualify. At the very least, the Government of Yukon should endeavor to protect wetlands that meet the criteria.

This would shift the burden from having to show a wetland is special and should be nominated, to having to show it could be considered open to development. This approach is more equitable, reduces the chance that important wetlands will be lost to development, and better aligns with the guiding principle of having respect for the land.

Key Recommendation: The policy should specify that wetlands that align with the criteria for Wetlands of Special Importance should be protected from loss and degradation, shifting the framework from criteria that allow nomination to criteria that automatically grant protection.

Managing Human Impacts

CPAWS Yukon is deeply concerned that the policy's approach to managing human impacts will generally maintain the status quo with respect to development within wetlands and the continued loss of wetlands, while not adding regulatory certainty.

While we support the use of the mitigation hierarchy as a tool to evaluate development, without the ability to evaluate project effects and commitments against a concrete goal of no net loss, or even a threshold of allowable loss, we do not see how the draft policy's approach improves on or differs from the way projects are currently reviewed by YESAB.

For example, the policy states that the steps of the mitigation hierarchy "must be followed to minimize the loss and degradation of wetland benefits." We feel this statement does not provide clarity to proponents, regulators, governments, or the public on a number of points, including:

- The point at which point wetland loss or degradation becomes unacceptable;
- If projects are likely to be approved or denied;
- If avoidance and minimization efforts can be deemed sufficient;
- If reclamation commitments are sufficient; and,
- The values reclamation will be expected to restore and what values will be lost.

Without a goal of no net loss, we are uncertain what would trigger the last stage of the mitigation hierarchy, offsetting, since loss of benefits is considered acceptable under the policy. We feel the statement in the policy that "offsetting loss of wetland benefits may be required" when permanent loss of wetland benefits would result from a specific activity does not add certainty without further guidance.

CPAWS Yukon is supportive of many of the guiding principles in this section but feel the mitigation hierarchy will remain difficult to implement without a goal of no net loss.

CPAWS Yukon is also unclear how the policy will address unpredictable impacts of development and failed reclamation efforts. For an example scenario, during project review it might be predicted that a project would have a minimal impact on wetland hydrology. However, because hydrological connections between wetlands are complex and difficult to predict, the project might actually result in a significant impact on wetland hydrology, impacting even downstream wetlands outside of the project boundary. If this happens, will it be expected that the proponent shift their reclamation plan to account for this loss? Will there be an expectation for wetland offsets to be triggered? Or will these values simply be lost? We feel that the policy should include a mechanism to course correct if the loss of wetland benefits shifts from minimal to significant.

We can imagine similar issues in ensuring the success of promised reclamation measures, especially given the time lag between the end of proponent permits and knowing if reclamation measures have been successful. Some proportion of wetland reclamation is expected to fail over time and reclaimed wetlands are also unlikely to achieve the same level of function or benefit as natural wetlands. How will failed reclamation efforts be addressed if a proponent's licencing period is over? We are admittedly uncertain how to fully address this issue but can suggest two potential tools to partially address it. One may be to provide the option for proponents to pay a fee in lieu of conducting reclamation activities themselves. Instead, the Government of Yukon would use this fee to conduct reclamation activities directly or through a third party. This would ensure a party remains responsible for fulfilling reclamation commitments and provide a mechanism for adaptive management. It is our understanding this option is available in other jurisdictions, such as Alberta. Another tool, although one that is not possible to implement without a no net loss policy, is to require that reclamation and offsetting activities are designed to exceed the benefits that have been lost, knowing that these activities are actually unlikely to deliver the full magnitude of promised benefits.

Key Recommendation: Provide tools to address wetland benefits that have been unexpectedly lost due to unpredictable impacts or to failed reclamation efforts.

We also note that a guiding principle of the draft policy is to take “a holistic approach that considers wetlands as an integral part of an interconnected system”. However, the policy offers very little guidance for managing impacts at a regional or watershed scale, and instead focuses on mitigating impacts at a project scale. Determining ecological or management thresholds is mentioned as a research priority and is defined on page 6, but this issue receives no attention in the managing human impacts section. We feel this is an oversight, given that impacts to wetlands may only become significant at a watershed or regional level (e.g. as with placer mining in undisturbed wetlands in the Indian River Watershed). The policy also does not speak to the downstream impacts of development, which also impact wetlands. We suggest the policy provide guidance for managing impacts at broader scales and include the development of watershed-specific ecological thresholds as an action in Appendix A. These thresholds should of course be co-developed with First Nations and transboundary Indigenous groups. While

establishing these thresholds *may* be part of land use planning, the Government of Yukon should not rely on land use planning as the sole mechanism, given the years it will take for many of these planning processes to be initiated.

Key Recommendation: Include guidance for managing impacts at watershed or regional scales, and include the development of watershed-specific ecological thresholds as an action in Appendix A.

Accounting for and managing carbon release

The release of carbon when peat-rich wetlands are disturbed has the potential to be a significant source of greenhouse gas emissions in the Yukon. Unfortunately, the draft wetland policy does not give the issue adequate consideration. The Yukon remains in a state of climate emergency, and responding to this crisis needs to be a government-wide priority. There is a clear link between wetland degradation and carbon release, and limiting these emissions needs to be part of the fabric of the wetland policy.

Peatlands are formed over thousands of years. The acidity of boreal wetlands slows the decomposition of plants, and this organic matter slowly compresses into peat. In drier areas carbon is released as dying plants decompose, but in peatlands this carbon is trapped and stored. Peatlands in the northern regions hold between 270-450 gigatonnes of carbon.¹

Our actions can lead to carbon release from peatlands. For example, some industrial developments strip away peat that is 'overburden.' Once dug up, peat is exposed to oxygen which changes, accelerating decomposition and the release of carbon.² Human disturbances can alter water flows in peatlands and can result in the sinking of the water table. The loss of water in peatlands exposes peat to oxygen-driven decomposition, and leaves peatlands at greater risk of burning.³ The loss of peatlands to wildfire has the potential to release the greatest amount of carbon to the atmosphere. In 1997-98, fires in tropical Indonesian peatlands released 0.95 gigatonnes of carbon.⁴ The loss of permafrost to climate change, as well as the permafrost degradation caused by surface disturbances is another source of potential carbon loss from the Yukon's peatlands.

The Yukon needs a robust approach to understanding and limiting carbon release from peatlands. A nature-based approach to tackling climate change should be at the heart of the Yukon's climate change strategy, but there is a role that the Yukon's wetland policy can play in this.

¹ Yu, Z., Loisel, J., Brosseau, D. P., Beilman, D. W., & Hunt, S. J. (2010). Global peatland dynamics since the Last Glacial Maximum. *Geophysical research letters*, 37(13).

² Turetsky, M., Wieder, K., Halsey, L., & Vitt, D. (2002). Current disturbance and the diminishing peatland carbon sink. *Geophysical research letters*, 29(11), 21-1.

³ Turetsky, Merritt R., Brian Benscoter, Susan Page, Guillermo Rein, Guido R. Van Der Werf, and Adam Watts. "Global vulnerability of peatlands to fire and carbon loss." *Nature Geoscience* 8, no. 1 (2015): 11-14.

⁴ Turetsky, Merritt R., Brian Benscoter, Susan Page, Guillermo Rein, Guido R. Van Der Werf, and Adam Watts. "Global vulnerability of peatlands to fire and carbon loss." *Nature Geoscience* 8, no. 1 (2015): 11-14.

Our **key recommendations** include:

- Adding the maintenance of carbon sinks within the Yukon's wetlands as an objective of the wetland policy;
- Calling for YESAB to conduct a carbon analysis for projects proposed in peat-rich wetlands;
- Including an assessment of carbon stocks in the Yukon's wetlands, and a vulnerability assessment for carbon release from these wetlands within the Yukon wetland inventory;
- Including carbon storage as a criteria for determining a Wetland of Special Importance; and
- Adding carbon storage as a valued component within a "no-net loss" approach to the Yukon's wetlands.

Implementation and evaluation

We greatly appreciate that the policy includes the section Appendix A, which outlines implementation actions and the approach that will be taken in the interim, until the policy action is complete. Many policies fail to outline interim actions, making it very difficult to know how they should be implemented in the early days and years following policy approval.

In closing, thank you for the opportunity to provide feedback on the Draft Policy for the Stewardship of Yukon's Wetlands. We understand that our comments call for significant reframing of the policy and we hope they are helpful.

Sincerely,

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