



Yukon Wetlands Policy Roundtable #3

October 10-11, 2018

Best Western Gold Rush Inn, Whitehorse

Workshop Report

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Executive Summary

The Government of Yukon convened the third roundtable (RT) on wetland policy development on October 10 and 11, 2018. The agenda for the RT was based on requests made by partners at or following the second RT in June 2018.

Terms of Reference

RT participants supported minor changes to the Terms of Reference, including clarified terminology around decision-making and roles of drafting groups.

Policy Statement and Goals

A new drafting group was created, which includes representation from Indigenous, federal and Yukon governments, as well as environmental and industry organizations. This group will draft a policy statement based on the RT discussions, which included themes of:

- Recognize the value of wetlands;
- Provide increased clarity on conservation and development goals?;
- Recognize and align with First Nations rights;
- Provide for increased information and knowledge; and
- Provide direction for effective implementation.

The drafting group may also explore the following topics, with the intent to further inform the RT:

- No net loss;
- Acceptable thresholds of impacts to wetlands;
- Territorially important wetlands; and
- Management framework for decision making (Avoid, Minimize, Offset).

Indigenous context

Based on advice from an Indigenous break-out session, the draft policy outline will be revised to:

- Improve overall document tone – including Indigenous perspectives throughout the policy;
- Acknowledge local and regional processes for wetland management decisions; and
- Acknowledge Final Agreement water provisions.

Future RT work should consider exploring guiding principles for the policy. These guiding principles will help inform management direction.

Draft Background and Governance sections

Participants reviewed the draft policy Background and Governance sections created as an outcome of the second RT. Feedback on these sections included:

- Strengthen tone around Indigenous values and move to more prominent place in the draft policy;
- Keep these sections of the policy high-level and brief; put necessary details in appendices;
- Governance should focus on describing the roles of agencies involved in decision-making;
- Provide greater detail about the Yukon context, and use more positive tone;
- Clarify what exists and what is needed for an inventory; and
- Provide further ecological detail.

Table of Contents

| | |
|---|-----------|
| 1. Context and Workshop Opening | 3 |
| Opening Prayers and Remarks | 3 |
| “Our North Star” | 4 |
| Overall Process Review | 4 |
| Policy Drafting Process | 4 |
| Dialogue vs. Debate | 5 |
| Policy Benefits | 5 |
| 2. Terms of Reference Revisions | 6 |
| 3. Policy Statement/Goals | 7 |
| Participant Brainstorming Summary | 7 |
| Discussion Summary | 8 |
| Application of Policy | 8 |
| No Net Loss | 8 |
| Impact Thresholds, Acceptable Loss | 9 |
| Territorially Important Wetlands | 9 |
| Management Framework | 10 |
| 4. Indigenous Context | 11 |
| 5. Review of Draft Sections - Background, Governance | 12 |
| 6. Looking ahead to Roundtable #4 | 13 |
| 7. Reviewing the ‘Process Scorecard’ | 14 |
| 8. Closing | 15 |
| Appendix A - List of Participants | 16 |

1. Context and Workshop Opening

The Government of Yukon is undertaking an inclusive roundtable (RT) process facilitated by engagement specialists to develop a wetlands policy. This report summarizes the third RT on wetland policy development. A complete list of participants for RT#3 can be found in Appendix A of this report. A more complete description of the overall context for developing the policy can be found in the reports for the first and second RTs, which are available at: <https://online.engageyukon.ca/project/yukon-wetlands>

This RT focused on four areas, based on feedback and requests from participants:

- Refining the process Terms of Reference;
- Exploring and advancing the Policy Statement and Goals;
- Exploring and advancing an Indigenous context; and
- Reviewing the draft Background and Governance sections.

Opening Prayers and Remarks

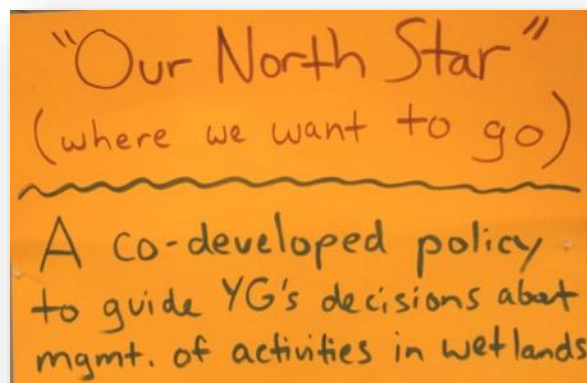
Ta'an Kwäch'än Council Elder Bill Bruton provided inspiration and guidance to help participants navigate important conversations including consideration for the past and future generations.

Department of Environment Assistant Deputy Minister Dennis Berry reminded participants that the Government of Yukon balances ecological, economic, and socio-cultural interests in making decisions that affect wetlands. By continuing to work together, the Yukon Wetland Policy will reflect our best collective effort at creating greater certainty for managing activities in wetlands. He recognized the challenges ahead, and thanked participants for their ongoing involvement.



"Our North Star"

The facilitators shared a conceptual "North Star" with the intended purpose of keeping the process focused on the desired outcome, based on the terms of reference and a co-developed process.



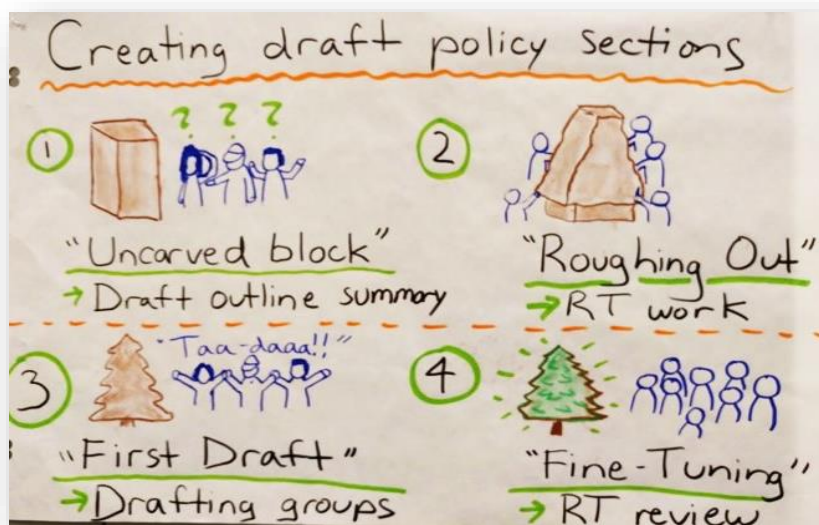
Overall Process Review

The facilitators reviewed the overall process stages and timelines, and where RT#3 fits on the road to a draft policy:



Policy Drafting Process

The facilitators clarified the process for how draft policy sections are developed, using the analogy of carving something from an unshaped block. The Roundtable discussions are intended to "rough out" the general shape of a draft section enough to enable a drafting group to develop a first draft between Roundtable workshops. These drafts would then be brought back to the next Roundtable for review and fine-tuning.



Dialogue vs. Debate

The facilitators discussed the distinction between dialogue and debate. In a collaborative process, the use of dialogue is more likely to lead to greater acceptance of the process and policy.

| Debate | Dialogue |
|---|--|
| <ul style="list-style-type: none"> ● Listen to respond ● Defend own interests ● Focus on winning | <ul style="list-style-type: none"> ● Listen to understand ● Consider all interests ● Focus on solutions |

Policy Benefits

RT participants were invited to explore the overall benefits of having a policy in the future in comparison to having no policy today. Participant responses identifying benefits are summarized as follows:

| |
|---|
| > More clarity and predictability |
| <ul style="list-style-type: none"> ● Defined expectations for managing wetlands ● Stable management approach ● How wetlands will be protected ● Guidance for development ● How values will be balanced |
| > Increased understanding amongst participants |
| <ul style="list-style-type: none"> ● Diversity of interests reflected |
| > Effectiveness in the Future |
| <ul style="list-style-type: none"> ● Support for policy implementation and future work |



2. Terms of Reference Revisions

At the request of some participants, a draft terms of reference was introduced at the second RT in June, 2018. This document clarifies the intended outcomes of the process, participation, decision-making, and anticipated timelines. It is an “evergreen” document that can be revised as needed.

Based on feedback, several changes to the terms of reference were proposed. No concerns were raised by participants regarding the following changes:

- Replace the term “consensus” with “decision-making” while keeping the overall approach to dialogue as written.
 - Addresses differing understandings of what “consensus” means.
- Clarify in the Background that this is a “policy to guide the management of activities in wetlands”
 - For rest of document, simply say “wetland policy” rather than “wetland management policy” (since we are actually talking about managing activities).
- Clarify under RT Structure that there may be Drafting Groups as well as Technical Working Groups, which are different.



3. Policy Statement/Goals

Most wetland policies include an overall policy statement, goals, and/or strategies. These elements all address the overall question, “what are we trying to achieve with the policy?” and to some degree how this will be approached.¹

RT participants explored this question in the Yukon context, beginning with a brainstorming exercise, followed by more in-depth discussions, both of which are summarized below. The intention was to enable a drafting group to attempt a first draft of this section for review at the next RT meeting.

Participant Brainstorming Summary

Participants indicated they hope the wetland policy would accomplish the following:

Valuing Wetlands

- Recognize the values and benefits of the various types of wetlands in decision-making and planning processes
- Provide guidance to allow all Yukoners to work together for a sustainable future

Provide Increased Clarity on Conservation & Development

- Guidance on assessing acceptable levels of wetlands impact and loss
- Provisions how to identify wetlands of special importance/significance
- Guidance on how to avoid/mitigate/offset development effects on wetlands
- Balance regional wetlands interests with broader Yukon interests
- Allow room for responsible industry



¹ Among other policies, sometimes “goals” and “objectives” are used interchangeably. Policies also often have sections around policy tools or actions that address how policy goals/objectives will be achieved.

Recognize and Align with First Nations Rights

- Recognize and affirm treaty and constitutional rights
- Recognize spiritual and traditional values of Indigenous peoples in regards to wetlands
- Address land claims water chapters in regards to Indigenous usage rights and quality, quantity, and rate of flow

Provide for Increased Information & Knowledge

- Better understand the ecology of our water and wetlands
- Provide for inventory of Yukon wetlands
- Promote education and awareness about the value of wetlands
- Direction on how to collect and consider knowledge for shared decision-making

Provide Direction for Implementation

- Speak to how policy directions are implemented through various processes
- Be practical and flexible - direction without being overly prescriptive

Discussion Summary

Application of Policy

While a policy can provide overall guidance on how to address activities affecting wetlands, discussions about detailed management decisions often occur at regional levels. This can occur through various processes such as land use planning, project assessments, water licensing, and RRC recommendations. A policy must stay high-level enough so as not to limit these kinds of processes or infringe on the authorities of the various bodies involved in those processes.

Participants were uncertain of where the Government of Yukon's wetland policy would apply in Yukon. It was clarified that the policy will apply only to Government of Yukon managed lands, not on First Nations settlement land or federally managed lands.

No Net Loss

Participants discussed whether a "no net loss" approach would be viable in the Yukon context. This approach is stated in other wetland policies in various forms (Canadian Federal policy, Nova Scotia, New Brunswick) and additional information can be found on the Wetlands Policy website at [https://app.civicy.io/sites/default/files/WetlandsInfoNote %2303 NoNetLoss v06 sml.pdf](https://app.civicy.io/sites/default/files/WetlandsInfoNote_%2303_NoNetLoss_v06_sml.pdf)

Discussion items included:

- We have learned from other policies (for example, Canada's no net loss of fish habitat), that this approach is difficult to implement, especially in a northern context.
- Yukon's regional processes for land use planning and project approval may pose challenges for implementing no net loss – would compensation be required within a region or could it be anywhere in Yukon? Some regions have many opportunities for compensating wetland loss, and others do not.
- It may be difficult to assess and measure given a lack of data in Yukon as a whole.
- May not fit in Yukon context where there is relatively less impact on wetlands overall.

- There may be opportunity to focus on degraded wetlands in Yukon. This could be improving the function of wetlands that are impacted, but not removed, by development (e.g., culverts improved where highways cut across wetlands).

While the drafting group may provide further insight on this topic, overall the RT participants indicated that there may be better approaches.

Impact Thresholds, Acceptable Loss

A wetlands policy could include language about thresholds for the amount of acceptable loss of wetlands. These could be based on total areas, wetland functions or values, or representation of different types of wetlands. This could recognize cumulative effects in an area, and could be measured based as a departure from a baseline state of wetlands.

As discussed under Application of Policy above, decisions about thresholds would likely take place through regional (or other) planning processes with various levels of government and stakeholders.

A potential value of a wetland policy could be defining wetland indicators that each region may consider for use in their regional land use planning exercises. It was noted that too much detail in this regard would not be a good fit for the Policy, and might be an implementation step. Area or site-specific responses to impacts on wetlands may be defined in government-to-government discussions.

Territorially Important Wetlands

The RT participants agreed that the Government of Yukon's wetlands policy should include guidance for identifying wetlands of special importance. The policy wouldn't include the specific wetlands that are important (a regional consideration), rather a process to be able to identify them. This could include social/cultural value, ecological values, representation of a certain wetland type within a region, economic values, etc.

Some discussion points included:

- First Nation words for wetlands should be used in the policy.
- Many wetlands in the Yukon have already been specified as Special Management Areas or Habitat Protection Areas through land claims and related processes; see Information Note on the Wetlands Policy website:
https://app.civicy.io/sites/default/files/WetlandsInfoNote_%2304_ProtectedAreas_v06_sml.pdf
- Identifying that a wetland could be important does not necessarily protect it, as this requires legislation. Some discussion of a potential legislation
- Existing mechanisms such as map notations are still useful, as they allow for clearer communication of perceived significance between stakeholders.
- The definition of Territorially important wetlands should be ever-evolving (i.e., adaptive to changing circumstances in the north due to a changing climate), but also clear.
- World-wide, wetlands are disappearing. In Yukon, we are lucky not to be in that situation, but we should consider our responsibilities in light of global scarcity.

Management Framework

The Government of Yukon's wetlands policy could include a hierarchy for decision-making about projects that may affect wetlands. This is a common policy component across many jurisdictions, such as Alberta, the federal policy, New Brunswick, and Nova Scotia. Usually, decision-making frameworks, or mitigation hierarchies, include the concepts of:

| Avoid | Minimize | Mitigate/Offset |
|---|--|--|
| Elimination of adverse effects by altering or moving the project site or design | Reduction or control of adverse effects through project modification or implementation under special conditions (e.g. only working when the ground is frozen). | Address impacts through measures such as <ul style="list-style-type: none"> ● Reclamation ● Restoration ● Replacement ● Compensation |

While potential approaches to mitigating and/or offsetting impacts on wetlands were discussed briefly, this matter requires significant attention at the next RT.

Some points that the drafting group may consider are:

- Focus on avoiding impacts.
- The policy could define the criteria that allow you to move into the next level of the mitigation hierarchy.
- The Umbrella Final Agreement discusses compensation in Chapter 14.12 The *Waters Act* also includes compensation to affected users.
- If there is an offset mechanism, should there be opportunity to restore or reclaim disturbances that aren't specific to wetlands?

Drafting Group for Policy Statement/Goals:

RT participants were invited to participate in a drafting team to support the articulation of the policy goals as discussed. In addition to Government of Yukon representatives, volunteers included:

- Kim Melton (Tr'ondëk Hwëch'in)
- Grant Allan/Chris Guppy (Yukon Prospectors Association)
- Nathalie Lowry (Canadian Wildlife Service)
- Bill Bruton (Ta'an Kwäch'än Council)
- Randy Clarkson (Yukon Chamber of Mines)
- Mike Walton (Yukon Conservation Society)
- Jonas Smith (Klondike Placer Miners' Association)
- Randi Newton (Canadian Parks and Wilderness Society)
- Jamie Kenyon (Ducks Unlimited)

4. Indigenous Context

In order to respect the feedback received from Indigenous governments after the second RT, time was provided for a breakout session for representatives of Indigenous governments and land claims boards, councils and committees to discuss the Indigenous context for the policy. The results of this discussion are summarized below.

Some of these matters need to be addressed throughout the policy document, and some may receive specific attention in the draft policy outline section currently entitled “Indigenous Context”. Bill Bruton (Ta’an Kwäch’än Council) and Kim Melton (Tr’ondëk Hwëch’in) volunteered to lead drafting of an Indigenous Context section. Both are also participating on the drafting group for the policy statement/goals, which can help ensure continuity and flow with those policy sections.

Document Tone

- Propose a protection-first approach (presumption of protection for wetlands) for the policy
- Would like to ensure that First Nation perspectives are represented throughout the document, not confined into a separate section (though having both is an option).
- Acknowledgement of treaty and Constitutional obligations and the importance of traditional knowledge in decisions about wetlands needs to be prominent in the policy document, not buried in a middle section somewhere.

Principles

- Would like to see principles added in addition to a policy statement/goals.
- Concept of “reciprocity” may fit with the avoid/minimize/offset concept; what you take from the land you give back.

Local and Regional Context

- Recognition that management decisions around wetlands happen at a regional level
- Policy should include mechanisms that allow FNs & RRCs to identify regionally significant wetlands, for example through map notations (not suggesting a new designation) to flag attention during project assessments for example
- Affirmation that traditional knowledge is critical for good decisions, and is often place-specific; as such, the policy should have mechanisms for including it at the regional/local level.
- Local people and elders should have a way to influence this policy; hope to see community meetings during public engagement

Final Agreement Water Provisions

- Objectives and rights under Final Agreements should be affirmed. The policy should provide guidance for the Government of Yukon about how to uphold rights affected by activities in wetlands.
- There are three different land claim regimes that the policy must consider (Umbrella Final Agreement, Inuvialuit, and Tetlit Gwich’in), plus those First Nations without land claims.

Mechanisms for Implementation

- Not necessarily about new mechanisms, but about using and enhancing existing ones; policy should provide guidance to YESAA process in particular and encourage less variance of decisions by YG.
- This policy should dovetail with LUPs and other planning processes
- Would like to have ability for map identifications of important wetland areas that would flag the need for attention in project assessments (e.g. Hope for Mayo project by the RRC).
- We would like to see indigenous place names incorporated into these processes

5. Review of Draft Sections - Background, Governance

At the second RT in June 2018, a drafting group presented a draft outline (like a table of contents) for discussion. An outcome from the June RT was to further develop two sections:

1. Background - including elements like what wetlands are, description of the types of wetlands, description of their benefits. This section was drafted by Government of Yukon representatives and reviewed by a drafting group from the RT participants.
2. Governance - an overview of how decisions are made about activities in Yukon wetlands, including the legislation framework. This section was requested to be drafted by Government of Yukon.

These draft sections were reviewed at the third RT with the following feedback from participants. Overall, people felt that these sections should provide a more high-level summary, perhaps with reference to more detailed documents in appendices:

Background Section - Specific Feedback

- Could use more detail about Yukon context, start by showing our successes while also pointing to areas of improvement
- Inventory - there is some inventory in Yukon that can be described, but it is incomplete
- Ecology section needs more detail, could draw on some of the information notes (<https://app.civicly.io/project/yukon-wetlands/documents>)
- Value to Indigenous peoples - this section should move up front in the policy, remove “in addition to”
- Differences of opinion on some technical information:
 - Characteristics of wetlands in permafrost and non-permafrost terrain
 - Storage of carbon, release of methane gasses

Governance Section - Specific Feedback

- Change the focus of the governance section to describing the agencies involved in decision-making around wetlands and their roles and responsibilities.
 - Development assessment flow: how all agencies fit together, how the mechanisms operate together
 - Move list of legislation to background, if at all.

- Three-level table (Land use planning, Project Level, Protected Areas) - can be tricky to figure which legislation fits in which bin (e.g. *Migratory Bird Convention Act* and *Species at Risk Act* can also apply at project level) - not sure if this approach works.
- Q: Does this policy fall under a piece of legislation, or is it stand alone?
 - A: The wetland policy will tie a number of pieces of legislation together; many other wetland policies are similar in this regard.
- This section needs to clarify and affirm how the policy will be implemented through the various mechanisms/processes and by various agencies - how the policy is put into action.

6. Looking Ahead to Roundtable #4

RT participants made the following requests for the fourth RT in 2019:

- More conversation about ‘mitigation sequence’ with a focus on ‘offset’
- Greater clarity on an end goal of wetlands that are open to development
- Clarify utility of a ‘high-level’ policy document
- Ensure enough Indigenous voices and inclusion

RT participants provided the following direction to the Policy Drafting Team:

- Policy statement/goals - First draft of section (including approaches such as mitigation hierarchy and identification of significance)
- Indigenous Context - draw on other Yukon examples that did a good job on this front (e.g. Southern Lakes forest management plan)
- Governance section - refine
- Background section - refine

It is assumed that the fourth RT may give some initial attention to other matters.



7. Reviewing the 'Process Scorecard'

During the first RT in April 2018, participants developed a 'process scorecard'. During the third RT, participants rated both the process and themselves on each indicator. (The full *Process Scorecard* may be viewed in the first Roundtable Report). Participants 'voted with their feet' by moving along a 'happy-to-unhappy' spectrum for each indicator. More than 20 people took part in this exercise, but not all RT participants attended this scorecard activity.

Common Ground and Alignment are Created

- People distribution - mostly middle, a few happy, a few dissatisfied
- *We took some good steps towards more common ground, though we have not yet achieved alignment, and general expectation this will come*

Continued Engagement & Buy-In

- People distribution - everyone positive or middle
- *Good engagement by those that are here*

Diverse Views Are Heard and Understood

- People distribution - all happy/middle except one dissatisfied
- *Good discussions, people are heard and generally understood - though some limits on understanding based on people's ingrained perspectives*
- *One 'unhappy view - sense that Indigenous perspectives have not been fully heard and understood, or reflected in the draft policy document*

Effectiveness (of Process)

- People distribution - everyone positive or middle
- *Much better engagements and conversations in this RT*
- *Feeling better about process, and still see a long road to get towards effectiveness*
- *Lack of engagement by First Nations may compromise RT effectiveness*

First Nations Rights Are Recognized

- People distribution - even distribution, with some concerns raised
- *Need to do a better job acknowledging Rights even if they are a given*
- *Better acknowledge unceded rights and title for three First Nations without land claims*
- *Despite best efforts, do not yet have full and consistent Indigenous participation*



8. Closing

At the end of the second and final day of RT# 3, Ta'an Kwäch'an Council Elder Bill Bruton led participants in a closing ceremony. Participants stood in a circle hand-in-hand while Bill recited a closing prayer. Bill then passed this eagle feather around the circle and asked each participant to share one word with the feather in hand describing their perspective about this process at that time (“gratitude” and “optimistic” are examples of what was shared). The feather completed the circle, with the intention that it would be imbued with these thoughts and intentions, and will be carried forward to again be shared at future RTs.



Appendix A - List of Participants

Note: Some participants attended both days of the RT, while others attended one or part of the event.

| Yukon First Nations and Trans-boundary Aboriginal Groups | |
|--|---|
| Champagne and Aishihik First Nations | Michael Jim |
| Tr'ondëk Hwëch'in | Kim Melton |
| Ta'an Kwäch'än Council | Scott Paszkiewicz, Coralee Johns, and Bill Bruton |
| Kwanlin Dün First Nation | Jesse Hudson |
| Tetlit Gwich'in Council | David Krutko |
| Kluane First Nation | Geraldine Pope |
| Municipal and Federal Governments | |
| Village of Carmacks | Tracy Thomas |
| Village of Mayo | Blair Andre |
| Canadian Wildlife Service | Nathalie Lowry |
| Fisheries and Oceans Canada | Jeska Gagnon |
| Organizations | |
| Yukon Energy | Travis Ritchie |
| Yukon Woods Products Association | Myles Thorp |
| Yukon Prospectors Association | Grant Allan |
| Chamber of Mines | Randy Clarkson and Kathline Napier |
| Klondike Placer Miners Association | Jonas Smith |
| Wildlife Conservation Society | Hilary Cooke |
| Canadian Parks and Wilderness Society | Randi Newton |
| Ducks Unlimited | Jamie Kenyon |

| | |
|---|--|
| Yukon Conservation Society | Mike Walton & Sebastian Jones |
| Boards and Councils | |
| Yukon Water Board | Neil Salvin and Jon Bowen |
| Yukon Fish and Wildlife Management Board | Tecla Van Bussel and Carl Sydney |
| Yukon Land Use Planning Council | Sam Skinner |
| Alsek Renewable Resources Council | Laura MacKinnon |
| Carcross/Tagish Renewable Resources Council | Don Toews |
| Dan Keyi Renewable Resources Council | Sandra Johnson |
| Laberge Renewable Resources Council | Betsy Jackson |
| Mayo District Renewable Resources Council | Ed Johnson & Jimmy Johnny |
| Selkirk Renewable Resources Council | Jerry Kruse & Jerry Alfred |
| Teslin Renewable Resources Council | John Martychuk |
| Government of Yukon | |
| Department of Environment | Amy Law, Tyler Kuhn, Bruce McLean, Matthias Zinsli, Nicole Novodvorsky, Dennis Berry |
| Department of Energy, Mines, Resources | Briar Young & Jocelyn McDowell |