

Class 1 Mining Land Use:
Comments on the Yukon Territorial Government's Discussion Paper
June 2013

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31 July 2013



SUMMARY

Wildlife Conservation Society Canada (WCS Canada) is concerned about the mineral exploration regime in Yukon because there is considerable evidence that the recent exploration boom has adversely affected the behaviour and population health of various mountain ungulates, and because exploration activities in general have the potential to disturb many species causing them to avoid or abandon key habitats. We welcome the Yukon Territorial Government's review of Class 1 Activities. Although the review is largely the result of the recent Yukon Court of Appeal decision, and therefore speaks to adequate notification, consultation and accommodation of First Nations' interests, the interests of WCS Canada fit well with those of many Yukon First Nations who are also seeking adequate wildlife conservation measures in a mineral exploration management regime.

With respect to the Discussion Paper presented for public review, WCS Canada believes that the scope of the issue is much more than just Class 1 Activities. A new mineral exploration management regime needs to deal with the contemplation of mineral exploration, the prospecting stages leading to staking, staking itself, the tenure of mineral rights, and then Class 1 Activities. The Yukon Court of Appeal decision came to the same conclusion, but the Discussion Paper only deals with a small portion of that decision.

The particular wildlife conservation problems that need to be addressed in the Class 1 exploration stage are also common problems in prospecting and staking stages. These can be summed up as disturbance of wildlife in critical or sensitive habitats and times of the year such that they avoid or abandon these habitats. Wildlife is disturbed by helicopter and fixed-wing aircraft, ground vehicles (including off-road vehicles), poorly-located camps, and personnel on the ground. Significant disturbance results from excessive and repeated noise, visual distractions, close human presence, and sometimes direct contact with wildlife. Because these risks are part to all stages of mineral exploration (prospecting, staking and Class 1), a single management regime is necessary and, WCS Canada believes, is possible.

WCS Canada proposes a regime based on Consultation, Identified Areas and revised Standard Operating Conditions for all stages of mineral exploration. We support the Discussion Paper's proposal to establish a notification process regarding, at least, Class 1 Activities, but recommend that adequate notification and consultation with all governments needs to start when mineral exploration is being contemplated. Early notification is essential to acquire social licence, and to outline the management regime which would apply throughout mineral exploration. We strongly support the Discussion Paper's idea of Identified Areas (critical or sensitive habitats for which certain prohibitions on access need to be enforced) as a key component of a management regime. The general idea is excellent, but there are numerous issues to be resolved in making it work. We outline a few of the outstanding issues. We support the Discussion Paper's view that the management regime can continue based on application of Standard Operating Conditions which is the current approach to defining limits to acceptable Class 1 Activities. However, we recommend that new Standard Operation Conditions be drawn up to deal with the timing windows and spatial buffers around Identified Areas and sensitive habitats. Timing windows and spatial buffers are the key tools for reducing and mitigating disturbance to wildlife caused by

mineral exploration. These new Standard Operating Conditions need to apply to all stages of early mineral exploration from initial prospecting through Class 1 exploration.

INTRODUCTION

This document is in response to the Yukon Territorial Government's request for public input regarding a review of Class 1 Mining Land Use under the *Quartz Mining Act* and the *Placer Mining Act*, and specifically to the Discussion Paper (June 2013) on this topic. Wildlife Conservation Society (WCS) Canada thanks the Yukon Territorial Government for the opportunity to provide a response to the Discussion Paper, and so we are submitting this written response for the record. We start with a short synopsis of our interests in this topic, and why we find it an important issue. We follow with an Assessment of the various sections of the Discussion Paper, following the structure of that Paper, but focussing on the process outlined in the Paper. We end with an outline and discussion of what we consider to be a useful set of information and regulatory tools that could be applied by all governments (Territorial and First Nations) in managing the issues at hand. We provide specific Recommendations in italics.

WHY IS WILDLIFE CONSERVATION SOCIETY CANADA INTERESTED?

WCS Canada's mission is to conserve wildlife and wild lands by improving our understanding of, and seeking solutions to, critical problems that threaten key species and large wild ecosystems throughout Canada. WCS Canada is independently managed, but closely linked to other WCS programs in more than 55 nations, including an integrated North America Program. The Wildlife Conservation Society has been a recognized global leader in conservation for more than a century.

Mineral exploration can have dramatic effects on wildlife behaviour and ultimately population size. The recent mineral staking rush in Yukon provides some examples. In 2012, two big game outfitters complained to the Yukon Government because, in their view and based on long histories of observing thimhorn sheep, helicopter exploration flights had forced the sheep to abandon traditionally occupied ranges, with strong negative effects on these populations. The Dan Keyi Renewable Resources Council (DKRRC) received a letter of complaint describing how intense helicopter traffic caused sheep to abandon summer range in the Kluane Game Sanctuary. Air traffic is perhaps the most obvious way that wildlife are disturbed during mineral exploration, but ground-based activities can also cause animals to move away from preferred ranges, abandon nesting areas, and avoid key foraging habitats such as mineral licks and high intensity food patches.

WCS Canada believes that a review of the mineral exploration regime is timely in light of the clear problems that exist with uncontrolled access to public lands by industrial interests that can compromise other values on the land base, notably wildlife. We speak for the interests of wildlife. These fit well with, and are often the same as, the interests of First Nations in asserting their traditional rights and title to the land and water. The YTG Discussion Paper is a direct response to the recent Yukon Court of Appeal decision upholding the need for consultation with First Nations, in particular the Ross River Dena Council (RRDC). WCS Canada understands that the primary issue at hand is one of recognizing and accommodating aboriginal rights and title. Aboriginal interests include healthy wildlife populations, so we have searched for a process that would better secure the interests of wildlife within the need to notify, consult and accommodate aboriginal rights and title as part of a new approach to mineral exploration in the Yukon.

THE DISCUSSION PAPER

Our text in this section follows the structure of the Discussion Paper.

1.0 Introduction

The Discussion Paper outlines the role of the recent Yukon Court of Appeal decision in prompting this review of mineral exploration process. WCS Canada believes this Court case is pivotal, but that it is not fully represented and explained in the Discussion Paper. First, the wording of the Discussion Paper is somewhat misleading where it states that the Government of Yukon "...has a duty to notify and, where appropriate, consult with and accommodate the Ross River Dena Council before allowing any mining exploration activities to take place...". In fact, the Court decision is more comprehensive with respect to the need to consult, stating that

1) *"The Government of Yukon has a duty to consult with the plaintiff (Ross River Dena Council) in determining whether mineral rights on Crown lands within lands comprising the Ross River Area are to be made available to third parties under the provisions of the Quartz Mining Act"; and*

2) *"The Government of Yukon has a duty to notify and, where appropriate, consult with and accommodate the plaintiff (RRDC) before allowing any mining exploration activities to take place within the Ross River Area, to the extent that those activities may prejudicially affect Aboriginal rights claimed by the plaintiff (RRDC)."*

(Yukon Court of Appeal decision in Ross River Dena Council v. Government of Yukon. 27 December 2012, Clause 56: http://www.yukoncourts.ca/judgements/appeals/2007/2012_ykca_14_rrdc_v_yukon.pdf)

The Discussion Paper takes a narrow, and incomplete, view of the Court's decision. It ignores the need to consult **prior to any mineral rights being made available** (Court statement 1), relegates the duty to consult to a conditional statement following notification (addresses only Court statement 2), and therefore does not address the full scope of the Court decision. WCS Canada understands that the Yukon Territorial Government (YTG) has sought a 'leave to appeal' the first statement in the Yukon Court of Appeal's decision. However, by ignoring that statement in this Discussion Paper, the YTG appears to be downplaying its legal requirement to consult, and is putting forward a revised regulatory process that is incomplete in the light of the Court decision.

Recommendation 1: *The Yukon Territorial Government addresses the full meaning and import of the Yukon Court of Appeal decision in a revised regulatory process regarding mineral exploration. This revised regulatory process should require consultation with First Nations regarding any possible search for mineral resources in their traditional territories, including prospecting and staking, as well as Class 1 Activities.*

The critical outcome of the YTG's decision not to accept the first of the Yukon Court of Appeal's

statements (above) is that the present Discussion paper only addresses Class 1 exploration activities. It does not address those stages of mineral exploration that precede Class 1, namely prospecting, staking and allocation of mineral rights. Yet, prospecting and staking are the activities that have caused at least as much harm to wildlife and environmental interests as any Class 1 exploration activities, specifically through (i) the extensive and repeated use of helicopters to move crews around and lay out claim stakes which result in intense disturbance to numerous species, notably sheep, goats and caribou, and (ii) poor choice of sites for field camps that compromise high value wildlife habitats. Prospecting and staking are the stages in the search for mineral resources that have clearly ignored First Nations' rights and title, as determined by the Yukon Court of Appeal ruling.

Recommendation 2: *The Discussion Paper needs to put forward a comprehensive process to address the negative impacts of prospecting and staking on wildlife behaviour and populations, and should not be limited to addressing Class 1 exploration alone.*

The Addendum to the Discussion Paper, posted on the website, states that “No decision has been made that notification will be required before any Class 1 activities are undertaken;...”. This statement contradicts the second paragraph in the Introduction to the Discussion Paper which clearly acknowledges that the Yukon Court of Appeal decision states that notification is required, and this fact is a large reason for the existence of this Discussion Paper. If YTG adheres to its statement in the Addendum, then (i) the Discussion Paper is internally inconsistent, and (ii) YTG has not accepted the second statement (above) of the Yukon Court of Appeal. As a result, the Discussion Paper is too vague, and is misleading in what it is trying to accomplish.

Recommendation 3: *The Discussion paper needs to explicitly outline all the decisions of the Yukon Court of Appeal in this case, and specifically tell the reader which ones, if any, the YTG feels legally bound to address and which ones it is going to appeal or try to ignore.*

1.1 Issues of Concern to be addressed by Amendments

The Discussion Paper outlined the objectives of the proposed amendments. These include: (i) meeting the duty to consult with all Yukon First Nations; (ii) improving information sharing; (iii) providing enhanced environmental protection; (iv) managing multiple resource interests in areas of high value. WCS Canada strongly supports all these objectives and encourages the YTG to actively pursue them in revisions to the mineral exploration and extraction regime in Yukon. We are primarily interested in the third and fourth objectives, and believe that significant improvements can be made at this time.

2.0 Key Amendments Proposed

(1) Requirements for notification prior to commencement of a Class 1 program

The Discussion Paper proposes that any person contemplating class 1 activities must notify the government, something that previously was not required. WCS Canada supports this proposal. However,

we feel that notification, both to YTG and First Nations governments, should occur prior to prospecting and staking as well as prior to Class 1 Activities. The possible negative consequences to wildlife populations and environmental values of early stage mineral exploration apply to prospecting and staking as well as Class 1 Activities. This is because prospecting and staking now rely on intensive use of helicopters and other aircraft to move crews, establish camps and lay out stakes, and because all stages rely on field camps that can be poorly located.

Recommendation 4: *The duty to notify all governments (YTG and any First Nation with declared traditional territory) regarding intent to prospect and potentially stake claims would be fixed in Amendments to the Acts, as would the duty to notify with respect to Class 1 Activities.*

The Discussion Paper specifically acknowledges that the proposed changes would occur Yukon-wide, and with respect to all First Nations traditional territories, whether with or without settled land claims. WCS Canada strongly supports this approach.

Recommendation 5: *Establishing an updated regulatory regime that covers all Yukon and all First Nations traditional territories is essential and needs to be explicitly pursued in the Placer and Quartz Mining Act amendments.*

(2) Establishment of a Review Period

The Discussion Paper proposes a process wherein a proponent would notify the YTG (Chief of Mining) of a proposal to undertake Class 1 Activities in a specific area (set of staked claims). The Chief of Mining would then review the proposal with regard to potential negative environmental consequences and forward the notification to all affected First Nations for comment. The subsequent review and comment period would last 25 days, after which the Chief of Mining would have the power to authorize or reject the proposal.

WCS Canada supports the idea of a process wherein environmental (and specifically wildlife-related) concerns can be addressed, and supports the need for direct input from affected First Nations. However, we are concerned about the details of the process envisaged in the Discussion Paper.

Regarding the need to address wildlife conservation concerns, we are primarily concerned that the Chief of Mining, and staff, should have the tools necessary to adequately assess potential issues regarding an exploration program. At present, assessment of Class 1 activities is based on limits or thresholds (i.e. Standard Operating Conditions) for the extent, intensity and type of ground-based activity that can be undertaken (e.g., size and permanence of camp, extent of trenching)(Definitions of exploration Class criteria in the Quartz Mining Act:

http://www.gov.yk.ca/legislation/regs/oic2003_064.pdf). These conditions do not address the issue of sensitive habitats, whether at a landscape (e.g., sheep lambing ranges) or site (e.g., mineral lick; raptor nest) scale. Nor do they address the question of aircraft disturbance to wildlife on sensitive ranges, near to, or on access routes to, the site of Class 1 Activities. Some of these issues can be addressed under “Identified Areas”, as discussed below, but some will require revised operating conditions in amendments to the Acts. Overall, we conclude that many of the highly important and potentially

negative consequences of Class 1 Activities (notably aircraft disturbance, ground-base disturbance to sensitive habitats), are not addressed in the Acts or regulations, and that a process must be established for solving this problem.

Recommendation 6: *The Discussion Paper needs to address the particular wildlife conservation concerns associated with use of aircraft in mineral exploration and the existence of sensitive, site-specific habitats, by designing new Standard Operating Conditions, in regulations, for all the early stages of mineral exploration, including Class 1 Activities.*

The process outlined in the Discussion Paper provides no option for rejection of a set of Class 1 Activities, only for acceptance or acceptance under certain conditions. The process chart is therefore logically incomplete and should not fall to the assumption that any Class 1 exploration program should ultimately be approved in some form.

Recommendation 7: *The Proposed Process needs to include the option for rejection of a Class 1 proposal based on the merits of the proposal, and to the satisfaction of all the Yukon and affected First Nation governments involved that social and environmental licence is warranted.*

In the Discussion Paper, there is explicit mention of “mitigating” potential environmental issues, but no specific solutions for doing so within the 25-day notification period. This approach is not robust because it assumes that there would be time for the YTG staff and/or First Nations staff to research and propose mitigative measures in a very short time and in a situation where many separate notifications may have to be considered at the same time. We do not think that the 25-day time period would be adequate if each notification had to be considered in isolation. The current approach in the Quartz Mining Act lays out the limits and thresholds to Class 1 Activities. We believe that such a limit-based, or threshold, approach can be used to deal with potential negative effects of Class 1 Activities on sensitive habitats as a result of aircraft and ground-based operations. We outline this in our subsequent proposal of a new process, later in this document. This approach would solve many of the issues of short time period, and the need to search for project-specific mitigative measures, by laying out a standardized regulatory regime for all land users based on pre-defined and mapped land categories with prescribed no-go spatial buffers and permitted time periods of use.

Recommendation 8: *The suggested revisions to the operating conditions for Class 1 Activities should include specific time and distance thresholds to exploration activities, and to the access routes to exploration areas. The purpose is to reduce and minimize the disturbance to wildlife on sensitive ranges so that they do not avoid these habitats because of the human activity.*

Regarding the Discussion Paper’s proposed process of notifying First Nations, we conclude that the approach where an industrial interest proposes Class 1 Activities first to the YTG, which then notifies First Nations and allows only 25 days for consultation, to be insufficient with respect to the recent Yukon Court of Appeal decision (referenced above). First, the existence of unsettled rights and title (some First Nations) and proclaimed collaborative management of the land base (under individual settled claims) mean that the proponent should be dealing with First Nations and the YTG as co-managers of wildlife and habitats. The proposal should go directly to First Nations at the same time it goes to the YTG. Second, the whole question of whether mineral exploration activities should be considered on an

unsettled land claim at all (Yukon Court of Appeal decision 1) referenced above) requires a direct approach from industrial interests to the First Nation, and the application of a First Nation driven consultation and accommodation process. Other jurisdictions have realized the value and necessity of having industrial interests directly engage with First Nations in a program of consultation and accommodation prior to exploration (e.g., mandated Exploration Plans in Ontario).

Under the proposed new process, the Chief of Mining is given the power to discuss, with the proponent, any new or amended terms and conditions to the proposed Class 1 Activities. The process also provides for an extension to the 25-day time period for consultation and response to the proposed Class 1 Activities. The Chief of Mining would be granted the discretion of such an extension based on extent of mitigative measures and on need for further consultation with First Nations. There is no explicit mention of First Nations involvement in the resolution of issues during the 25-day period or during the extension period. However, the process is specifically being put forward, in large part, to address the need for adequate consultation and accommodation of First Nations interests. So, the First Nations' involvement in the negotiation regarding the resolution of issues, during the 25-day and any extension period, need to be explicitly outlined in the proposed process. At present the process is set up as a notification process only, with all power and discretion for mitigative measures resting with the Chief of Mining. It does not fully address a procedure for meaningful consultation and accommodation.

Recommendation 9: *The proposed process needs to explicitly outline the process whereby First Nations will be adequately consulted and accommodated, by both the proponent and the YTG, in meetings and proposal reviews, and throughout the process.*

(3) Establish the regulatory power for "Identified Areas".

The Discussion Paper proposes amendments to the legislation that would give the Minister of Energy, Mines and Resources power to establish "Identified Areas" which would be "...areas requiring a higher level of care as identified and approved through regional land use planning and zone designation". The Paper states that these could be sensitive habitats for various wildlife species (e.g., sheep lambing areas). WCS Canada strongly supports the establishment of Identified Areas and sites, and congratulates the YTG on this approach.

Recommendation 10: *The concept of Identified Areas needs to be pursued in amendments to legislation and regulations, with more attention paid to how to identify and map these areas, and make their existence well known to all involved.*

We have some particular concerns about the details of how this approach might be made to work. One concern is with the statement that such areas come forward for attention by being "...identified and approved through regional land use planning and zone designation". We agree that this is a very appropriate way for such areas to be identified and put forward. Ideally such land use planning would proceed quickly for the territory, and be comprehensive and detailed enough to do a thorough job of cataloguing Identified Areas, and produce a catalogue of Identified Areas agreed to by the YTG and First Nations governments. If that were the case, a considerable portion of the aboriginal rights and title issues requiring consultation and accommodation would be satisfied.

However, that is not the case. First, it will take many years before formal land use planning has been achieved throughout the Territory. In the interim, it is not appropriate that many regions be ignored in a process of establishing “Identified Areas” while other regions get improved management.

Second, the proposal is incomplete in its definition of what could be considered an Identified Area, relying on terms like “critical” and “at risk”. However, these terms can vary in meaning in different circumstances and jurisdictions. A working group would need to address a sufficient and functional set of criteria for classification of Identified Areas.

Third, the inventory of wildlife habitat use across the Territory is still incomplete, and many such sensitive habitats are not yet documented and mapped. Biologists and naturalists (government and non-government), First Nations members, and many land users (e.g. outfitters, trappers) may have detailed knowledge of these areas, but it is rare that this information is fully compiled and accessible. As an example, the Wildlife Key Areas database of Yukon Environment, which is an archive of mapped sensitive habitats for many species of management concern, is acknowledged to be far from complete and not detailed enough to be useful in determining “Identified Areas”. There would have to be a process for bringing forward new candidate Identified Areas in the future as information gathering increases and new information is acquired.

Fourth, strategic land use planning, as undertaken by Land Use Planning Commissions through the Land Use Planning Council (e.g., North Yukon and Peel Watershed), does not necessarily deal with planning and zonation at the level of detail required to put forward “Identified Areas” such as lambing and winter habitats, or sensitive feeding sites, or high value sites such as mineral licks and raptor nesting sites. Land use zones in these Plans have been much larger in scale, and have not worked at the detailed tactical and operational scales envisaged by the process in the Discussion Paper. It would require specific direction to land use planning processes to gather and map such information if the formal land use planning process in the territory is to do a reasonable job of satisfying this need. It is unlikely that resources will be available to Planning Commissions to do such inventory.

Recommendation 11: *The Ministry of Energy, Mines and Resources should work closely with the Yukon Land Use Planning Council, First Nations, Yukon Department of Environment and other concerned parties, in the development of a process for defining, proposing and formalising “Identified Areas”. Such a process should include strategic land use planning (through Commissions established by the Yukon Land Use Planning Council), and resource management planning undertaken by First Nations. However, it needs to include regions not yet subjected to land use planning, and needs to be flexible for updating as new inventory information becomes available, whether or not a land use plan has been formalised.*

SUGGESTED FRAMEWORK AND TOOLS FOR A REVISED REGULATORY REGIME

Context

The Yukon Court of Appeal decision, and the resulting Discussion Paper addressed here, focus on changes to the mineral exploration regulatory regime. The legal ruling finds that the historical regime does not address aboriginal rights and title, and the YTG acknowledges that the historical regime does not have sufficient environmental safeguards. WCS Canada is pursuing improved wildlife conservation provisions in a revised regulatory regime. Here we set out a framework and some key tools that would

improve wildlife conservation and, we believe, satisfy many of the aboriginal rights and title issues at the same time. We are currently developing various aspects of this framework, and we present an outline here for purposes of discussion.

Principles

WCS Canada believes the following general conditions or principles must be met in a revised regime:

1. Compliance and satisfaction of all aspects of the Yukon Court of Appeal (Dec 2012) ruling.
2. Open and transparent consultation and accommodation of First Nations interests, especially regarding wildlife and their habitats.
3. Wildlife's interest to be held in high regard as a common property resource which governments have a responsibility to steward, while permitting some other land uses.
4. Defensible in science and evidence.
5. Practical in operation.

Framework

A new regulatory regime would include, at least, the following components in its framework:

- Provision of environmental safeguards, dealing with wildlife interests, throughout all stages of early mineral exploration starting with notification of intent to prospect or search for minerals, and proceeding through the prospecting, staking and Class 1 Exploration stages.
- Inclusion of Tools (notably land use designations and operating conditions) that address temporal and spatial aspects of possible negative consequences to wildlife populations and their habitats.
- Engagement in the collection, archiving and transparent dissemination of site-specific information on wildlife populations and their sensitive habitats.
- Operating conditions that deal with aerial as well as ground-based disturbance to wildlife populations and habitats.

Tools

The key Tools that could satisfy most wildlife-related conservation issues in an improved regulatory regime can fit into the existing regulatory regime with relatively few additional components. They include some of the ideas presented in the Discussion Paper under review here.

Consultation: Adequate notification, consultation and accommodation of all governments' interests, whether First Nations or YTG, have been lacking in the historical regime. As a result, conflicts have arisen resulting in litigation, blockades, loss of livelihoods to some users of wildlife, and degradation of wildlife resources. Consultation needs to start at the stage of contemplating mineral exploration (as per the Yukon Court of Appeal decision), and needs to directly include First Nations governments and interests. Plans for exploration, including prospecting and potential staking, should be formally entered into prescribed consultation process(es), including such processes as are mandated by First Nations in their systems of governance. Industrial interests have fought against any "publicizing" of their intentions at the prospecting stage because they are afraid of losing priority access to an area and losing the privacy

of their information. However, a formalised consultation process, with dated Exploration Plans, could maintain priority access following the subsequent completion of adequate consultation, and authorization by all governments. All industrial interests would be subject to the same consultation process, on a first-come first-serve basis.

One of the key goals of consultation is the accommodation of First Nations interests, in the recognition of their rights and title, and the accommodation of territorial government interests in stewardship of common property resources. The following Tools are designed to satisfy most aspects of accommodation, at least for wildlife resources, by setting up general and repeatable rules and operating conditions. In this way, all consultation processes can point industrial interests to these Tools as a standard way of satisfying the need for accommodation.

Identified Areas: “Identified Areas”, as brought forward in the Discussion Paper, would satisfy many concerns regarding wildlife conservation. The displacement of wildlife from key habitats (lambing or calving grounds; repeatedly used nest sites; mineral licks) because of repeated harassment and noise is the principal conservation issue associated with mineral exploration activities. This issue has long been recognized by Yukon Department of Environment which has established its Wildlife Key Areas database as a source of mapped information on where such habitats exist. In the view of WCS Canada, Identified Areas would not be available for mineral prospecting, at least for certain portions of the year. They would be protected areas with clear spatial boundaries, and, in some cases, temporal boundaries. For example, it is possible that sheep winter ranges could be available for prospecting and staking during summer and fall, but unavailable during winter and spring.

There are a number of issues involved in making Identified Areas work:

1. *How would they be identified and ratified?* First Nations members, biologists and various knowledgeable individuals (e.g., outfitters) have sufficient knowledge to identify such areas. Some may be identified already in land use plans, though many are not. New land use plans could specify their locations, if these have been documented. A process needs to be set up to formalize their identification, definitions and mapping. This process needs to be open for new Areas, and editing of existing Areas. The process would have to specify the ratification process leading to formal designation.
2. *How would they be identified in Land Use Planning?* The Discussion Paper suggests Land Use Planning as the source for Identified Areas. This could be suitable, and in many ways would be ideal because such Plans are ratified by the various Parties to the Plan. However, clear direction, in the Terms of Reference to Planning Commissions, needs to be given if such planning processes are going to directly deal with this issue. To date, such Planning processes in Yukon have not dealt with such detailed land designations.
3. *What is the full scope of Identified Areas?* WCS Canada believes that Identified Areas should include the most sensitive habitats, and habitat-season combinations, for all wildlife species (including plants) that could be adversely impacted by mineral exploration activities. A comprehensive list would be very long. Spatially they range from small sites (with a few plants growing) to complete mountainsides in the case of some seasonal ranges. Once again a process needs to be established for outlining the scope of Areas that could be Identified, and the best

means of mapping them and bringing them to the notice of land users. For example, some may be mapped in land use plans; others may best be publicized as Land Notations.

4. *How would Identified Areas be integrated with Standard Operating Conditions in a management regime?* Identified Areas and Standard Operating Conditions applied to certain habitats or sites could overlap spatially. Both Tools refer to conditions placed on human activity in certain places. Therefore some sub-set of all sensitive habitats needs to be formally thought of as Identified Areas, with another sub-set being brought forward as areas or sites about which certain Standard Operating Conditions are applied.
5. *Where would the inventory of Identified Areas be housed, maintained and updated?*

Standard Operating Conditions: The current regulatory regime for Class 1 Activities details quantitative limits, or thresholds, for numerous activities characteristic of such exploration (e.g., numbers of camp person-days; size of clearings; length of trenching). WCS Canada believes that this same approach, which the Discussion Paper calls Standard Operating Conditions, could be used to deal with the issue of spatial buffers and timing windows around sensitive habitats. Buffers need to be specified because animals using sensitive habitats require that human activity (e.g., aerial flights by helicopters, noise of machines and camps) does not encroach within certain distances of those habitats. Timing windows need to be laid out because disturbance of habitats in certain seasons would be detrimental, but could be sustainable at other times (e.g., field camp using water from stream with fish spawning habitat; alienation of alpine bird nesting habitat during the short nesting season). The sensitive habitats themselves may be Identified Areas, in which case the buffers could conceivably be included directly into the Identified Area designation. However, many sensitive habitats and sites may not be Identified Areas but would still demand attention, so establishing buffers for these would be necessary (e.g., buffers around active nest sites and mineral licks, or around land use notations where rare plants exist). Aerial activities would have to be managed by applying horizontal and vertical buffers to the sensitive habitats within which aircraft should not fly (i.e. the idea of no-fly zones).

We note that this approach of Standard Operating Conditions fits within the existing regulatory regime, and is complementary by providing more environmental stewardship with respect to the wildlife conservation concerns that have previously been ignored. Standard Operating Conditions provide much more certainty for all concerned, and are far superior to Best Management Practices.

There are a number of issues in making these new Standard Operating Conditions work:

1. *What is the suite of habitats and sites subject to buffers and timing windows?* Some of these would be Identified Areas, and may be adequately dealt with using that Tool. That would depend on whether or not the Identified Area as mapped (e.g., in a land use plan) includes sufficient spatial buffer for its protection, and/or sufficient explicit direction regarding the time during which it is sensitive. Others habitats and sites would be identified spatially in various inventories of sensitive sites (e.g., Yukon Land Use Notations), or put forward during the consultation process.
2. *What size should spatial buffers be, and when should timing windows apply?* WCS Canada is currently gathering information from the scientific literature regarding size and scale of buffers and timing windows, to bring forward for better stewardship of these sites.

3. *How would these buffers and windows be monitored and enforced?* In principle they could be monitored and enforced within the existing enforcement and compliance regime for early exploration activities, though this regime would have to be expanded. The inventory of sensitive habitats and sites to be enforced would have to comprise existing ratified Identified Areas as well as sites put forward by First Nations, YTG (e.g., land notations), in established map inventories during consultation. The buffers have a clear spatial component which could be readily measured, using maps and work on the ground. The timing windows have clearly measurable limits that are easily identified during field visits. The most difficult issue is with flight paths. The British Columbia government has addressed this issue with regard to flights paths used by helicopters in back-country ski operations. They place a GPS on board the aircraft, and it logs the flight paths for subsequent scrutiny by compliance personnel (BC Government 2006. Wildlife Guidelines for Backcountry Tourism / Commercial Recreation in British Columbia. http://www.for.gov.bc.ca/mof/orv/wildlife_guidelines.pdf). This approach could be readily used in Yukon.