

Draft Recommended Changes to the *Forest Resources Act* and *Regulation*

About this Document

This is a summary of the draft Recommended Changes to the *Forest Resources Act* and *Regulation* that has been prepared by the *Forest Resources Act* review working group.

A working group was identified as the preferred method to review the Act, based upon discussions with First Nations and the Government of Yukon. Through engagement in 2018 and 2019, parties self-identified to participate on the working group; and members are from Teslin Tlingit Council, Tr'ondëk Hwëch'in, Kluane First Nation, Kwanlin Dün First Nation, Acho Dene Koe First Nation and the Government of Yukon. Other parties were welcomed and attended working group meetings periodically based upon request. Discussions were collaborative and all changes are recommended based on the consensus of the working group members.

Forest Resources Act discussion items:

Section	Current wording	Proposed change	Rationale for change
Preamble – Pg. 1		Revise to acknowledge transboundary Aboriginal groups.	Transboundary Aboriginal groups are not acknowledged within the Act. Doing so provides clarity for consultation purposes.
1 – Definitions Pg. 2	“forest resource harvesting” means the cutting or removal, or both, of any forest resource;	Provide clarification for the terms “use” and “harvest”.	Will provide security against the unauthorized destruction of forest resources.

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1 – Definitions Transboundary	n/a	Add the definition of transboundary.	Currently, transboundary Aboriginal groups are not acknowledged within the Act. Providing this acknowledgement clarifies who should be consulted with, although consulting with transboundary Aboriginal groups already occurs in practice.
4 – Final agreements prevail Pg. 4	This Act is governed by an Act Approving Yukon Land Claims Final Agreements.	Review to make sure the language is standard.	Will keep the language in this section current.
5 – Application Pg. 4	Parts 1, 2, 4 and 5 of this Act apply throughout Yukon and Part 3 applies to public land in Yukon. S.Y. 2008, c.15, s.5	Review parts of the Act to ensure the application of 'public land' and 'land throughout Yukon' are in the correct sections.	Certain parts of the Act apply to "public land", while other sections apply to "land throughout Yukon". By reviewing the parts of the Act and that the application to land type is correct ensures appropriate management can occur.
15(2) – Prohibition on harvesting Pg. 12	(b) a person harvesting timber under the authority of the Quartz Mining Act, the Placer Mining Act, the Territorial Lands (Yukon) Act, or the Lands Act;	Add exemption for the Highways Act.	The Forest Resources Act should ensure there is no duplication in regulating activities. The primary regulator can apply management direction through one permit reducing the administrative process.
15(2) – Prohibition on harvesting Pg. 12	(d) a Yukon First Nation person exercising his or her forest resources harvesting rights under 17.3.1.1, or 17.3.1.3 of his or her First Nation Final Agreement.	Update this provision to include First Nations without Final Agreements and transboundary Aboriginal groups.	Inclusive of other groups that have rights in Yukon.
18(1) – Notice of harvesting licence applications Pg. 13	n/a	Revise provisions related to consultation with First Nations to better meet the needs of Yukon and First Nations governments including: - Removing the words "of the application" allows notification to occur earlier in the process.	Notifications are provided for areas (timber harvest planning areas) that have already undergone consultation. It is expected that there will be licence applications within approved planning areas. Activities could be planned and notified on before receiving an application and would provide the opportunity for input earlier in the process and

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new clause		<ul style="list-style-type: none"> - Add a clause enabling in advance consultation that provides the ability to “batch” notifications (one notification communicating multiple anticipated licence applications). 	<p>would reduce the amount of time a client is waiting for their authorization.</p> <p>“Batch”, or group notifications provide the same amount of detail as individual notifications, reducing the administrative burden.</p>
20(2) – Restrictions on harvesting licences Pg. 14	Where a forest resources management plan has not been approved for the area where forest resource harvesting is proposed to occur, the Director may only authorize harvesting in a harvesting licence in an amount that is less than that prescribed by regulation for that area.	Revise s. 20(2) to clarify that the Director may only authorize harvesting in a cumulative volume of licences, in an amount that is equal to or less than that prescribed by regulation for that area.	<p>Clarify that amount is the cumulative volume of licences, not the volume of a single licence.</p> <p>It would make sense that the volume authorized for harvesting can be up to or equaling the amount that is prescribed by regulation, not less than.</p>
New section timber resources licence	Section 22 Timber Resources Licence; and Section 24 Fuel wood licence.	<p>Rewrite the timber resources licence and fuel wood licence sections to reflect the following:</p> <p>Change to one licence type, a timber resources licence.</p> <p>Under the timber resources licence, there will be two permits, green wood and dead/salvage permits.</p> <p>Allow for the new licence type to be assignable, subject to the agreement of the Director.</p> <p>Reforestation fees to be collected on new licence/permits for all timber types (i.e., green and dead timber).</p>	<p>Changing the current licensing regime from product-based, to timber type under one licence with different cutting permits under the licence will provide a clearer process for administrators and operators.</p> <p>Assigning an active licence can alleviate the wait time involved in applying for a new licence which may be a viable option for when a company has multiple larger licences or a company is sold.</p> <p>The majority of timber harvesting is currently through fuel wood licences, resulting in a lack of reforestation fees and limited silviculture funds.</p>

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23 – Woodlot licence Pgs.15-16	Woodlot licence s. 23(1)(2)(3)	Remove this section from the Act so there will be no provision for woodlots.	There are no woodlots in Yukon and long-term tenure as intended through woodlots is achieved through other authorizations.
25 – Termination or amendment of harvesting licence Pgs. 17-18		Add a provision to allow an operator to surrender authorizations with the condition that all payments are made, license conditions complied with, including reclamation/reforestation. The Director may order an inspection to ensure compliance. Director may refuse a surrender if conditions have not been met.	A licence or permit holder may want to voluntarily surrender an authorization should their circumstances change, rather than the Director initiating a termination.
29(4)and(6) – Forest resources permit Pgs. 21, 22	(4) Despite subsection (3), a forest resources permit must ... (a) establish a right to harvest forest resources other than timber for commercial purposes or establish a right to harvest timber for non-commercial purposes within the area specified in the permit; (b) be for a term not exceeding three years; ... (d) with respect to timber harvesting, (i) establish the amount of timber that may be harvested within the term of the permit,	- Authorize the commercial utilization of timber that has been cut or cleared for non-forestry purposes. - Have the maximum term of a forest resources permit be five years. - Have the ability to collect fees for commercial forest resources permits; include non-timber forest products (e.g., birch syrup operations); and personal, commercial and incidental salvage. - Exemption to s. 29 (4)(d)(ii): First Nation non-commercial community purposes up to 500 m ³ per year. - Allow forest resources permits to be renewed for one additional term.	A five-year permit term, with the option to renew for an additional term provides longer term security than the current three-year permit term and no option to renew. The forest resources permit needs to include harvesting activities where another commercial authorization may not be suitable. Examples include FireSmart activities, removal of timber for sale from a placer claim. The exemption to s. 29 (4)(d)(ii) for First Nation non-commercial community purposes provides clarity for implementing Final Agreement provisions.

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	<p>(ii) establish that unless the permit authorizes the harvesting of 25 m³ per year or less, harvesting may not be undertaken until a timber harvesting plan, prepared as prescribed by regulation, is approved by the Director, ...</p> <p>(6) A forest resources permit may not be renewed and is not assignable.</p>		
<p>Morel mushrooms new section</p>	<p>n/a</p>	<p>More tools are required to regulate and manage morel mushrooms including the following:</p> <ul style="list-style-type: none"> - Permit requirements. - Allow for the collection of fees for the commercial harvest of morel mushrooms at the time of application. - The fee should be a flat rate with resident and non-resident fees. - Additionally, impose a royalty for commercial export out of Yukon and have a reporting requirement as part of the permit. 	<p>Fees are not currently collected for the commercial harvest of morel mushrooms. It takes a significant amount of resources for the government to administer permits and monitor activities. There is also a loss of resources to Yukon by sending a valuable harvest out of the territory with no revenue generated for Yukoners, despite there being commercial gain. There should be a fee attached to this activity to benefit the Yukon public.</p>
<p>30(3) Community forests Pg. 22-23</p>	<p>(3) A community forest must be managed in accordance with a management plan developed for that forest as prescribed by regulation and which must...</p>	<p>Change from management plan to timber harvest plan.</p>	<p>This change will allow community forest timber harvest plans to be developed, rather than requiring the development of regulation and management plans under that regulation.</p>

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31 – Processing facilities Pg.23	<p>(1) Unless otherwise prescribed by regulation, no person may construct, operate, increase the productive capacity of or convert a facility to another type of facility for the processing of the products of timber harvesting except with a timber resource processing permit issued as prescribed by regulation.</p> <p>(2) Issuance of a permit under subsection (1) does not guarantee a supply of timber products for the facility and does not require the Director to make timber resources available to the holder of the permit.</p>	<p>Additional detail and clarity (re: defining “processing facility” and development of a regulation describing the circumstances for a permit) is required to ensure the activity is managed.</p>	<p>Section 31 generally states that a permit is required in order to construct and operate a timber resource processing facility. There is no definition for a timber resources processing facility.</p>
32 (2) – Establishment of roads Pg. 24	<p>No person may clear any forest resources for the purpose of constructing a road or trail to assist with forest resource harvesting except as authorized by a cutting permit.</p>	<p>Clarify what the term clear means to be consistent with the other provisions of the Act that cut, remove or clear forest resources.</p>	<p>This section of the Act is the only place that the term “clear” is used. The link between clear and road construction and how it relates to harvesting is needed.</p>

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Part 5 Enforcement and compliance Pgs. 27-48		General review to see if the language of provisions should be updated or revised to be current.	Will ensure the responsibilities of a forest officer are consistent across the legislation that a natural resources officer is responsible for enforcing.
78 – Additional court orders Pg. 42	(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to a forest resource that resulted or may result from the commission of the offence; (c) directing the person to undertake any reforestation or remedial work to compensate for the harm to forest resources that resulted or may result from the commission of the offence;	Change the wording of “harm to forest resources” to “harm to the natural environment”.	The language of “harm to a forest resource” does not account for harm to the natural environment done by forest resource harvesting conducted improperly or illegally.
92 – Regulations New provision Pg. 48-49	n/a	Add a provision enabling the regulation of mushroom permits	Currently, forest resources permits for the commercial harvest of morel mushrooms are issued however, a separate, more robust authorization regime to manage the harvest of morel mushrooms could be of benefit.
94 – Appeal Pg. 50	Appeal provisions	Limit the appeal mechanism to include only tenures decisions, specifically, licences, permits and site plans.	Limiting to the licence, permit and site plan sections would ensure larger, broader decisions such as annual allowable cut determinations and apportionment (which have already gone through consultation) would not be eligible for appeal.

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95 – Review of the Act Pg.50	Within five years after this Act comes into force, the Minister shall establish a process for the review of this Act.	Require future reviews of the Act, no later than 10 years after the current review period ends.	Keeping the ability for future reviews of the Act is important to ensure the legislation remains modern.

Forest Resources Regulation discussion items:

Section	Current wording	Proposed change	Rationale for change
1 Definitions Pg. 2	“reforestation” means the re-establishment of forest resources by natural or artificial means, such as planting of seedlings and seeding;	Add site preparation to the definition.	Including site preparation in the definition ensures that all silviculture activities are captured.
1 Definitions Pg. 2	“motor vehicle” has the same meaning as in the Motor Vehicles Act;	Define motor vehicle under the <i>Forest Resources Act</i> to include all vehicles that may be involved in forest resource harvesting activities, including road construction and maintenance, such as off-road vehicles, snow machines, excavators, skidders and feller bunchers.	The current definition of motor vehicle does not capture all of the vehicles that may operate on a forest resources road.
8(1) Amendment to a timber harvest plan Pg. 8	The Director may approve an amendment to a timber harvest plan (a) to ensure consistency with an approved plan; or (b) if timber resources in the area to which the plan applies are adversely affected by unforeseen circumstances such as fire, insects or disease.	Allow amendments to timber harvest plans with the same or similar consultation process to that of new timber harvest plan development.	Timber harvest plans occasionally require simple changes for operational reasons or unforeseen circumstances (e.g., boundary modifications, seasonal restrictions). The limited circumstances provided for amending a plan results in the creation of new plans and overlapping plans which is time and labour intensive and can be administratively confusing.

Section	Current wording	Proposed change	Rationale for change
19 (1) Pg. 14	The holder of a harvesting licence must submit to the Director a site plan prior to submitting an application for a cutting permit under subsection 27(1) of the Act.	Change to reflect that a site plan must be approved before receiving a cutting permit rather than applying for one.	Standard practice for commercial harvesters is to submit applications for harvesting licences and cutting permits and the Forest Management Branch prepares the site plan after an application is received. The important part is to have the site plan approved before issuing the associated cutting permit, not applying for one.
20 Purpose of a site plan Pg. 14	The purpose of a site plan is to identify, in respect of the area to which it applies (a) the exact-location of timber; (b) the specific methods of timber harvesting to be used; and (c) the exact location of existing and proposed roads, including forest resources roads, that are necessary to facilitate timber harvesting and related construction and management strategies.	Remove the word “exact” in subsections (a) and (c).	Removing the word “exact” allows for the achievement of this requirement. Forestry is not an exact science.
22 (a) (b) and (e) Contents of a site plan Pg. 14-15	A site plan must include, in respect of the area to which it applies (a) a description of the exact locations of timber harvesting; (b) the exact-types and volumes of timber to be harvested; (e) a description of the exact routing of existing and	Remove the word “exact” in subsections (a), (b) and (e).	Removing the word “exact” allows for the achievement of this requirement. Forestry is not an exact science.

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	<p>proposed roads, including forest resources roads, that are necessary to facilitate timber harvesting;</p>		
<p>29(2) Variation in annual allowable cut Pg. 20</p>	<p>For the purposes of this section, a year is the period from June 1 in one calendar year to May 31 in the next calendar year.</p>	<p>Change from calendar year to fiscal year.</p>	<p>The change will better align with government business and administrative processes.</p>
<p>33(2) Refusal of an application Pg. 22</p>	<p>In exercising the Director's discretion under section 19 of the Act, the Director may refuse to issue a harvesting licence or forest resources permit to, among others, an applicant who, in the opinion of the Director</p> <p>(a) is in contravention of the Act, this Regulation or the term of a harvesting licence, cutting permit or forest resources permit issued under the Act, or a permit issued under the <i>Timber Regulation</i>, unless the applicant remedies the contravention to the satisfaction of the Director;</p>	<p>Remove reference to the <i>Timber Regulation</i>.</p>	<p>The <i>Timber Regulation</i> is obsolete and all of the permits issued under that Regulation have now expired.</p>
<p>39(f)</p>	<p>(f) require the holder of the permit to notify the forest officer responsible for the</p>	<p>Change from calendar year to fiscal year.</p>	<p>The change will better align with government business and administrative processes.</p>

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<p>Contents of a cutting permit</p> <p>Pg. 26</p>	<p>area where the cutting permit applies, at least 48 hours in advance, of the date the holder of the permit plans to begin timber harvesting in each calendar year during which the permit is valid;</p>		
<p>54(1) and (2)</p> <p>Pg. 32</p>	<p>A person applying to operate a scale site must submit an application to a forest officer in a form approved by the Director and provide the information specified on the form.</p> <p>(2) The forest officer may issue an authorization to operate a scale site subject to any terms and conditions the officer considers appropriate.</p>	<p>Change who can authorize a scale site from forest officer to Director.</p>	<p>This section is not consistent in who can authorize scalers and scale sites. The current process is for the Director of the Forest Management Branch, not a forest officer, to designate a scale site.</p>
<p>57(1), 58</p> <p>Silviculture treatments plans and silviculture treatment by the Director</p> <p>pg. 33, 34</p>	<p>57(1) No person may undertake a silviculture treatment except in accordance with a silviculture treatment plan that has been approved by the Director.</p> <p>58. The Director may undertake silviculture treatments to improve the quality or quantity of forest resources in an area and such treatments must be consistent with the objectives of any approved plan and any guidelines.</p>	<p>Include that director or staff or persons delegated by the director are exempt from the prohibition in s. 57(1).</p>	<p>A change may be required to ensure that Forest Management Branch staff are exempt from the prohibition in s.57, to ensure flexibility in operations.</p>

Section	Current wording	Proposed change	Rationale for change
<p>62</p> <p>Security</p> <p>Pg. 36</p>	<p>(1) The Director may require the holder of a forest resources road permit to furnish and maintain with the Director security in an amount and form determined in accordance with subsections (2) and (3).</p> <p>(2) In fixing the amount of security under subsection (1), the Director must consider the cost to</p> <p>(a) restore the area that may be affected by the use of the forest resources road authorized by the forest resources road permit;</p> <p>(b) remedy or reduce any environmental impacts that may be associated with use of the forest resources road authorized by the forest resources road permit; and</p> <p>(c) implement any other remedial measures that may be identified as a term in the forest resources road permit.</p>	<p>Add exemption for the security requirement for First Nations that are utilizing a forest resources road for traditional pursuits such as trap line access.</p>	<p>Sometimes road use permits are issued to authorize use of a forest resources road for purposes that are not related to forestry (for example, mining, trapline access, First Nations monitoring etc.).</p> <p>The risk of damage to a forest resources road by accessing for traditional use is low and can be mitigated through road use permit terms and conditions (such as vehicle type, seasonal restrictions).</p>
<p>88</p> <p>Existing permits -Timber Regulation</p>	<p>All rights and duties accrued or accruing under a permit issued under the <i>Timber Regulation</i>, continue in effect</p>	<p>Delete.</p>	<p>All permits issued under the <i>Timber Regulation</i> have expired.</p>

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Pg. 46	until the date of expiry of the permit.		
Schedule 1 Timber Harvesting Areas Pg. 47	See map	Update map to be current.	Routine updates to the planning process.
Schedule 2 Fees Pg. 49	Application Fee - Forest Resources Permit – no fee	Add an application fee of \$50.00 specifically for the commercial harvest of morel mushrooms forest resources permit.	The Forest Management Branch invests a considerable amount of resources in managing the morel mushroom harvest concerning safety and environmental considerations.
Schedule 2 Fees Pg. 49	Application Fee Harvesting licence a. under 100m ³ -\$ 10.00 b. 100m ³ to 1000m ³ - \$50.00 c. over 1000m ³ -\$100.	a. under 100m ³ - \$ 50.00 b. 100m ³ to 1000m ³ - \$100.00 c. over 1000m ³ - \$150.00.	Increase application fees in a way that will not create a barrier to entry but reduces the number of nuisance applications.
Schedule 3 Stumpage rates Pg. 50	Fuel Wood Licence No fee Forest Resource Permit No fee	Apply reforestation fees across licence/permit and timber types (green and dead wood). <u>Exemption:</u> Forest resources permits for personal use fuel wood for 25m ³ or less as per 48(a).	Apply reforestation fees uniformly across timber types.
Schedule 3 Stumpage rates Pg. 51	ROAD USE FEE Charge Road Charge – applied where government spends moneyon road construction,	Correct typo from moneyon to money on.	The typo should be corrected.

Section	Current wording	Proposed change	Rationale for change
	maintenance and decommissioning.		
Schedule 3 Stumpage rates Pg. 51	ROAD USE FEE Fee, per m3 (\$) The approved construction, and expected maintenance ordecommissioning cost on a pro-rated basis per m3 of timber available.	Correct typo from ordecommissioning to or decommissioning.	The typo should be corrected.
Schedule 5 Annual allowable cut determinations Pg. 56		Update the annual allowable cut determination provisions to current and correct values.	To ensure current and correct information is listed.