

The Yukon Environmental and Socio-economic Assessment Act (YESAA)

Five-year Review

Draft Terms of Reference

Background

Chapter 12 of the Umbrella Final Agreement (UFA) provides for the creation and implementation of a legislated development assessment process. The signatories to the UFA (Canada, the Council of Yukon First Nations and Yukon Government – hereinafter referred to as ‘the Parties’) addressed this requirement when the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) received Royal Assent on May 13, 2003. The purposes of the legislation include:

- Providing a comprehensive and neutrally conducted assessment process that considers environmental and socio-economic effects before projects begin;
- Protecting and maintaining environmental quality and heritage resources;
- Protecting and promoting the well-being of Yukon First Nation people, their societies and Yukon residents;
- Applying principles that foster beneficial socio-economic change without undermining the ecological and social systems;
- Recognizing and, where possible, enhancing the First Nation traditional economy;
- Guaranteeing opportunities for participation of First Nation people in the assessment process;
- Providing opportunities for public participation in a timely, efficient and effective assessment process; and
- Providing certainty about the assessment process.

On the basis of nominations from each of the parties, the Minister of Indian Affairs and Northern Development appointed the Yukon Environmental and Socio-economic Assessment Board (YESAB) in June 2004. In accordance with YESAA, the YESAB established its rules and procedures as well as six local Designated Offices. YESAB and the Designated Offices began assessing projects in November 2005 immediately after the YESAA regulations received approval.

The UFA requires completion of a comprehensive review of the development assessment process within five years of the legislation’s enactment. Soon after Royal Assent of the legislation, the parties signed a YESAA Implementation Plan. With respect to the five-year review, the Implementation Plan identifies that the parties will appoint representatives by May 2007. These representatives will begin their work on the review by developing a draft terms of reference for review by YESAA participants. Once these terms of reference are finalized, the representatives are responsible for completing the review including providing opportunities for the Yukon public to provide input. At the conclusion of the review, which is to be completed by May 2008, the representatives will provide a report to the Parties. Copies of the report will be made available to Yukon First Nations and the public.

Purpose of the Review

The Parties have initiated the YESAA five-year review, in accordance with section 12.19.3 of the UFA and section 11.0 of the YESAA Implementation Plan. The purpose of this comprehensive review is to examine Yukon’s development assessment process in its entirety and in the context of the objectives of the UFA. An outcome of the review may include recommendations for improvement to the development assessment process.

Scope of the Review

This review will examine all aspects of the Yukon development assessment process including:

1. YESAA and its regulations;
2. The implementation, assessment and decision making processes: the implementation plan; funding; opportunities for public participation in the process; phases and timelines; process performance expectations; and process documents such as rules, guides, forms, etc.
3. The YESAB, Decision Bodies and other participants: responsibilities, duties, functions, timelines, and documentation.

Methods of the Five-year Review

Methods for completion of the review may include:

1. Drafting the Terms of Reference
2. Communication Plan development and execution
3. Information inventory and collection
 - document reviews: YESAA, regulations, Board rules, written submissions;
 - interviews;
 - identification of participants' roles and responsibilities;
 - community visits;
 - meetings;
 - questionnaires; and
 - observations.
4. Information analysis
 - review of submissions and other information gathered;
 - best efforts to assess and characterize the impacts of YESAA implementation on communities, groups, industries, governments, First Nations, people, processes;
 - analysis of the development assessment process, including identification of strengths and weaknesses in meeting its objectives;
 - identification of areas for improvement with respect to meeting the objectives of the development assessment process and the expectations of various groups, agencies, First Nations and the public; and
 - development of recommendations indicating opportunities and challenges for improving the development assessment process in a practical manner.
5. Report writing
6. Report dissemination

Note: The representatives may seek the participation of independent experts to complete specific review tasks or to conduct components of the review.

Review Management

Several groups will have distinct roles in the completion of the review. Key groups and their roles are described below.

The Parties are responsible to:

- Appoint representatives and maintain, to the extent possible, consistent representation throughout the review process;
- Provide a response to the review report after giving full and fair consideration to the results and recommendations;
- Make best efforts to address the findings of the review report.

The Designated Representatives

The Designated Representatives are Gail Barnaby for Council of Yukon First Nations (CYFN), Jeff O'Farrell for Yukon Government and Ron Chambers for Canada. The representatives are responsible to:

- Make decisions related to the conduct of the review;
- Approve the Terms of Reference;
- Provide a report to the Parties (Premier of Yukon Government, Minister of Indian and Northern Development and Grand Chief of CYFN) that describes the findings and results of the review:
 - When providing the report the representatives will attempt to reach consensus about the report and will respectfully record non-consensus when there is disagreement;
- Work with the communications group to facilitate public and media communications that may be required throughout the progress of the review;
- Participate as part of the review working group.

The Review Working Group

The Review Working Group consists of Designated Representatives, their delegates and communication staff.

The Review Working Group is responsible for:

- The joint development of:
 - recommendations for consideration by the Designated Representatives regarding the conduct of the review;
 - documentation related to the review for consideration by the Designated Representatives (i.e. Draft and Final Terms of Reference, Scope of Work, Work Plans); and
- Meeting regularly during preparation for the review and conduct of the review to track progress and manage review time lines; and to
- Work cooperatively to problem solve and develop creative solutions to address issues.

Yukon Environmental and Socio-economic Assessment Board (YESAB)

YESAB will participate in the review as a resource to the Working Group, by:

- Providing comment on the Terms of Reference;
- Reviewing communications material;
- Where possible, attending public meetings in order to provide information or clarification;
- Reviewing comments submitted during the review and providing feedback to the Working Group;
- Acting as a resource when Working Group is creating solutions to issues and problems; and
- Providing comment on the draft report from the Working Group.

The Review Report will include:

- An executive summary;
- A description of the objectives and expectations for the development assessment process;
- A description of processes under the Yukon Environmental and Socio-economic Assessment Act;
- The purpose of the five-year review;
- A description of how the parties conducted the review;
- An analysis of YESAA and its implementation; process objectives, efficiencies, effectiveness;
- Identification of any constraints on the review; and
- Recommendations as warranted.

Principles of the Review

The designated representatives will undertake the review based on the following principles:

- Best efforts will be made to develop consensus recommendations and will respectfully record non-consensus recommendations when there is disagreement;
- All proceedings, discussions and findings are without prejudice;
- Conclusions and findings are not necessarily a reflection of any one party's positions;
- The parties will endeavour to respond collaboratively to the report, where appropriate; and
- Decisions on whether to accept recommendations and any action to be taken are to be made at the discretion of each party.

Appendix – Work/Meeting Schedule

<u>Topic</u>	<u>Completion Date</u>
Draft Terms of Reference <ul style="list-style-type: none">■ Designate Meetings 1–7■ Emails/finalization of Draft■ Communications prep	Summer 2007
Draft Terms of Reference: feedback and finalization <ul style="list-style-type: none">■ Communications prep■ Notification of ToR Review■ ToR Kick-off■ Feedback assimilation■ Designate meetings as required■ ToR finalization	Fall 2007
Public Review of YESAA <ul style="list-style-type: none">■ Communications prep■ Designate meetings as required■ Notification of Public Review■ Review Kick-off■ Document Review, Meetings, Interviews	Winter 2007
Submission Review Report Writing <ul style="list-style-type: none">■ Assimilating information■ Analysis■ Designate meeting – key findings■ Designate meeting – draft report review■ Designate meeting – report final	Spring 2008