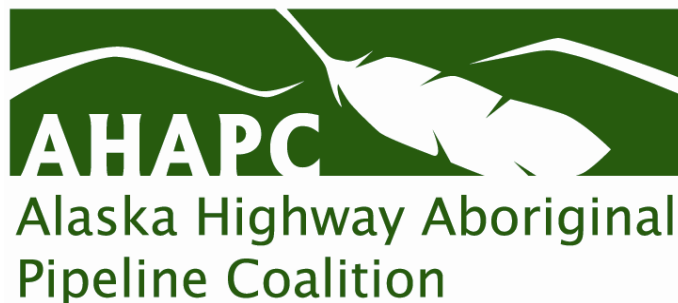


First Nations and the Yukon Environmental and Socio-economic Assessment Act

AHAPC Discussion Paper #1

APC 2.212; APC5.111; APC 8.350



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Introduction

This document represents a series of discussion and background papers that the Alaska Highway Aboriginal Pipeline Coalition (AHAPC) will produce over the year. It is based on past and new information on the proposed Alaska Highway gas pipeline project, and highlights the issues of interest to AHAPC First Nation members. This and other documents are available on the AHAPC website at: www.ahapc.ca.

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Alaska Highway Aboriginal Pipeline Coalition, 1 May 2008. First Nations and the Yukon Environmental and Socio-economic Assessment Act: AHAPC Discussion Paper 1, [5 p.]

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Origins of the *Yukon Environmental and Socio-economic Assessment Act*

The federal Yukon Environmental and Socio-economic Assessment Act was developed in partnership by the Government of Canada, the Government of the Yukon, and the Council of Yukon First Nations. The legislation received Royal Assent in May, 2003 and, by covering all land in the Yukon, provides consistency in assessment.

Its enactment met the Umbrella Final Agreement's obligation to create a process for considering development activities' likely effects. One of the stated goals of the process, then, is to "protect and promote the well-being of Yukon Indian persons and their societies" (Section 5.2) and the guarantee of First Nation input, knowledge and experiences into the assessment process. For projects located wholly or partly on settlement land (7.2), self-governing First Nations are explicitly recognized as the decision-making body to which assessments are presented. If the First Nation is not self-governing, the Government of Canada or the Government of Yukon must consult with it prior to the project proceeding. The definition of First Nation traditional territory is imported from the Umbrella Final Agreement (7.2). As well, the Umbrella Final Agreement supersedes YESAA in case of conflict. YESAA specifically meets this obligation for collaborative assessment through the creation and operation of the Yukon Environmental and Socio-economic Assessment Board.

Composition of the Board

The Act establishes the structure of YESAB, and First Nations figure prominently in the Board's composition and evolution. First Nations are represented jointly by the successor to the Council for Yukon Indians, the Council of Yukon First Nations. Should CYFN not represent a First Nation, that First Nation is be directly consulted (7.2). This is the case for Kwanlin Dün, Liard, and Ross River First Nations. The Act establishes YESAB firstly as an executive committee of three persons, one appointed on the nomination of the Council of Yukon First Nations. This executive committee includes the Chairperson, who is nominated by the Minister of Northern and Indian Affairs after consultation with CYFN and the Yukon Government representative (8.3). There are then four other members, two of which are appointed on CYFN's nomination (8.4). Additional board members may then be appointed, with one-half of those members nominated by CYFN and one-half by consultation between the federal and territorial representatives (8.5). This means that should YESAB consist of, say, twelve persons, six would be nominated directly by CYFN and a seventh, the Chairperson, would be nominated after consultation with CYFN. These provisions guarantee a strong voice for First Nations at YESAB's highest levels.

Members of the Board may also be removed from office. This is permissible for cause or if a change in the Board member's residency results in the majority of the Board being non-residents of the Yukon (11.1, 11.2). However, removal of a CYFN-nominated member may not take place without prior consultation with CYFN, again securing First Nations influence on the Board.

Designated Offices and Involvement of Specific First Nations

The Act establishes YESAB as being based in Whitehorse, but also provides for more direct assessment throughout the Yukon. The Board operates via six assessment districts and designated offices (20.1), and these designated offices begin the assessment process for any projects falling within their jurisdictions. The immediacy of these offices allows for greater First Nations input, and this input is safeguarded by regulations determining their operations.

Specifically, any change to the number of districts must be preceded by consultation with CYFN and the territorial representative (21.2). Any change to the boundaries or choice of community for a designated office must be decided in consultation with CYFN and any affected First Nation, as well as the territorial government (22.2). As well, if a proposed activity is to take place or have significant effects in First Nation territory, the affected First Nation must be directly consulted before the designated office makes any recommendation on the project.

Budgets for these designated offices are also to be developed with First Nations input prior to being submitted to the Board (26). Overall YESAB budgets are then to be approved by the federal representative, after consultation with CYFN and Yukon (27.2). These budgets are encouraged to include funding for employment and services in traditional languages and cross-cultural training and orientation (27.3).

Assessment Process

The Act defines the matters to be considered under an assessment, and grants the Board the authority to determine which projects in general are subject to an assessment and when additional assessments may be undertaken.

YESAA defines the matters to be considered under an assessment as: the purpose of the project, the stages of the project, project alternatives and mitigating measures, possible environmental or socio-economic effects within and outside the Yukon, and the interests of Yukon and non-Yukon residents. It also asserts equal emphasis on the need to consider the “rights of Yukon Indian persons and the wilderness environment of the Yukon, and the cultures, traditions, health and lifestyles of Yukon Indian persons” (42.1). This goal is buttressed by the Act’s requirement for direct consultation between project proponents and Yukon First Nations. YESAB retains the right to mandate the manner in which proponents must consult with First Nations (30.2).

Additional First Nation Abilities in the Assessment Process

Although YESAA asserts a fundamental assessment process, it also recognizes that not all assessment needs may be met by the standard process. The Act allows for several additional avenues for research, assessment, and consultation.

Additional assessments or research may be requested. Aside from activities already subject to an assessment by the Board, the federal, territorial, or First Nations representatives may independently call for an assessment if they feel an activity may have adverse environmental or socio-economic effects (48.3) or would take place in a heritage area (48.4). As well, First Nations or the territorial representative may request the executive committee undertake further research for an assessment. If this request receives the consent of the federal minister, there is no cost to the requestor. However, should the federal minister not consent to the research request, the requestor may still have it undertaken, but at its own expense (112.1)

Information gathered for assessments or additional research is recognized as coming from differing perspectives. Traditional knowledge is to be accorded the same consideration as scientific or other information presented to YESAB (39). Traditional knowledge that is considered confidential is not be disclosed by any member of YESAB (121).

Finally, First Nations may proactively monitor projects submitted for assessment. This can be accomplished by registering subjects of interest with YESAB so that, should a project so identified be proposed, the First Nation would be notified, regardless of the location of the project.

Referral of Assessments and Structure of Review Panels

Not all assessments will be completed by a designated office. The referral process carries forward YESAA's commitment to First Nations' interests. Should a designated office be unable to render a recommendation, the proposal is forwarded to the executive committee for consideration. If the executive committee's preliminary screening does not provide sufficient basis for a recommendation (58.1) or if the project is likely to cause significant environmental or socio-economic effects or public concern (58.2), a review panel is established. If the effects are likely to occur primarily on settlement land, this panel is to be made up of two-thirds First Nations nominees (65.5). As well, public hearings are to be held in a community within the territory of each affected First Nation (70.3).

Post-Approval Monitoring

After a project is approved, First Nations, federal, and territorial representatives may jointly request that the project be audited or its affects be monitored. Existing projects may similarly be subject to a new assessment (95).

Consequences

The Yukon Environmental and Socio-economic Assessment Act firmly asserts Umbrella Final Agreement obligations as a foundation for assessment. YESAA establishes an assessment body with a prominent First Nation presence in the form of the Council of Yukon First Nations. It secures CYFN's position as a conduit for First Nation interests, and also asserts the need to involve individual First Nations in project assessments. As such, this Act, and the Board it engendered, can be used as powerful tools for Yukon First Nations to assert their influence on activities both within and outside their traditional territories.

Updates

YESAA is currently being subjected to a five year review, as required by the UFA and Final Agreements. This review is being jointly conducted by the Government of Canada, the Government of the Yukon, and the Council of Yukon First Nations. The parties have recently finished gathering public input on the Terms of Reference, and anticipate a broader public review in Winter 2008/2009.