YESAB
Yukon Environmental and
Socio-economic Assessment Board

POLICY GUIDANCE

CONSIDERATION OF INDIGENOUS AND TREATY RIGHTS IN YESAB PROJECT ASSESSMENTS

- INTERIM -

The Board is committed to exploring this topic, and possible alternative methodologies, directly with Yukon First Nations. In the result, the guidance is made on an interim basis.

July 28, 2026

VERSION HISTORY

Version	Date	Modifications Made
V1	June 2018	New guidance
V2	23 / 07 / 2026	The purpose of the revisions was to more clearly and better explain the methodology, as set out in the 2018 bulletin. The revisions did not change the methodology, other than to clarify that impacts to rights may also be considered when identifying mitigations

Disclaimer: This document is not intended to provide legal advice or direction. It is for information purposes only and should not be used as a substitute for the Act or its associated regulations and rules. In the event of a discrepancy, the Act, regulations, and rules prevail. YESAB retains the discretion to deviate from the procedures described in this guidance where appropriate.

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PREFACE

Yukon Environmental and Socio-economic Assessment Act
and the *Umbrella Final Agreement*

This policy guidance includes references to the *Yukon Environmental and Socio-economic Assessment Act* (YESAA). Where applicable, the corresponding provisions of the Umbrella Final Agreement (UFA) are also identified.

YESAA was enacted to meet a commitment in the UFA between the Government of Canada, the Council of Yukon First Nations and the Government of Yukon.

The UFA, and Chapter 12 in particular, sets out an over-arching framework for a development assessment process in Yukon. The agreement required and contemplated that elements of this process would be further developed through legislation enacted by Canada or Yukon.

In 2003, ten years after the UFA was signed, YESAA was given Royal Assent. YESAA specifies that in the event of an inconsistency or conflict between a final agreement and YESAA, the agreement prevails to the extent of the inconsistency or conflict.

The Yukon Environmental and Socio-economic Assessment Board (YESAB) has a special relationship with the UFA and the unique environmental and socio-economic assessment legislation that it created. We recognize that we are one of many organizations with a role to play in meeting its spirit, intent and purpose.

We further acknowledge that the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) is also relevant to the interpretation and implementation of our mandate. As the Government of Canada works towards the implementation of the *United Nations Declaration of the Rights of Indigenous Peoples Act*, YESAB will continue to incorporate many of the principles underlying UNDRIP and the Truth and Reconciliation Commission's calls to action via YESAB rules and organizational initiatives. We will also consider UNDRIP, where applicable, when interpreting our statutory framework.

EXPLANATION OF TERMS

The following terms are used throughout this document.

Crown: Federal, territorial, or provincial governments and decision-makers. Does not include YESAB.

Consider (as in "consider a factor"): to take into account but does not require a resolution or a determination of this specific factor.

Determine (as in "determine if the project will have, or is likely to have, significant adverse effects"): to make a finding, decide, or resolve.

Decision Body: A decision maker as set out in s.2 of the *Yukon Environmental and Socio-economic Assessment Act*. Can be federal, territorial, and/or First Nation governments.

Indigenous government: Includes elected Indigenous governments as well as entities formally designated to represent individual rights-holders.

For the purposes of this policy guidance, the terms "Indigenous government", "Indigenous groups", and "Indigenous peoples" are used to include all Indigenous participants in the YESAB process, including Yukon First Nations, Inuvialuit, and transboundary Indigenous Nations.

Rights:

Indigenous rights: The collective rights which flow from the practices, traditions and customs of Indigenous peoples that were practiced prior to European contact. These rights, and specifically the manner in which they are exercised, can evolve over time. Indigenous rights cover a spectrum from land-based activities (e.g., the right to harvest) to non-land-based rights (e.g., the right to self-government).

Asserted Indigenous rights: Rights that are asserted by an Indigenous government or members of an Indigenous group. Indigenous governments in the Yukon that have not signed land claims agreements assert their rights and title to their unceded territories. While YESAB acknowledges the term "unceded" may be preferred by some, for the purposes of this bulletin the term "asserted" is used to ensure clarity and legal precision within the context of Canadian constitutional law and administrative practice.

Established rights: Rights that have been recognized in historic and modern treaties, and Indigenous rights that have been recognized in court decisions.

Treaty rights: These rights derive from negotiated agreements set out in treaties and land claims agreements—the modern equivalent — between Indigenous peoples and the Crown. For example, the Final Agreements established pursuant to the Umbrella Final Agreement are modern treaties and Final Agreement rights are a type of Treaty rights.

As an example, the rights established under Yukon Final Agreements include but are not limited to:

- Title to settlement land
- Protection of access to settlement land
- Rights of access to Crown land
- Rights to harvest fish and wildlife
- Rights to harvest forest resources
- Economic development measures
- Provisions for negotiating self-government agreements
- Rights in respect of water use, quality and flow
- Potential for royalty sharing
- Special management areas
- Rights to representation and involvement in land use planning and resource management
- Ownership and management rights in respect of specified ethnographic moveable heritage resources and documentary heritage resources

Indigenous title: A sub-category of Indigenous rights specific to land. Indigenous title is derived from regular and exclusive use of land and confers exclusive decision-making rights in respect of the land, as well as the right to the benefits from the use of that land.

Valued environmental and socio-economic components (VESECs): Components of the physical and socio-economic environment that are viewed as important in the setting of a given project (such as for environmental, scientific, social, traditional, or cultural reasons) and are predicted to be adversely affected by the proposed project, warranting consideration in an assessment.

INTRODUCTION

This policy guidance (Guidance) provides Indigenous governments and groups, decision bodies, proponents, and other assessment participants with information on how YESAB considers asserted and established Indigenous rights in assessments conducted under the *Yukon Environmental and Socio-economic Assessment Act* (YESAA). This includes:

- what YESAB does and does not do when considering effects on Indigenous and Treaty rights
- how YESAB's process may connect with Crown consultation and the process after the assessment
- guidance for Indigenous governments, groups, and peoples when preparing comments for YESAB on project effects relating to Indigenous and Treaty rights
- guidance for proponents when planning a project and preparing a proposal

There are three levels of assessment described in YESAA: the Designated Office evaluation, the Executive Committee screening, and the Panel of the Board review. For the purposes of this document, the three levels will be referred to collectively as YESAB assessments. This Guidance applies to all three assessments except where indicated (i.e., consultation requirements for Executive Committee screenings).

For more information on YESAB's assessment methodology and steps, refer to YESAB's Environmental and Socio-economic Assessment Methodology Information Bulletin.

LEGAL CONTEXT

Origins, Purpose, and Interpretation

YESAA, which was borne out of and implements Chapter 12 of the Umbrella Final Agreement (UFA). The legislation and Chapter 12 set out the purposes of the development assessment process as a whole, which extends from assessment to the issuance and implementation of decision documents. These objectives emphasize the importance of Indigenous participation in the assessment process, value of the input and knowledge provided through such participation, and the importance of ensuring that the development assessment process, as a whole, protects and promotes the well-being of Indigenous peoples. YESAA is to be interpreted broadly and in accordance with its purposes, as set out in the statute and Chapter 12.

Statutory Obligations, Powers, and Limits

YESAB has the mandate and expertise to assess projects' socio-economic effects. These are defined in YESAA (s.2) as including effects on economies, health, culture, traditions, lifestyles and heritage resources.

Chapter 12 sets out the matters which the Yukon Development Assessment Board (now the YESAB) and the Designated Offices must consider when carrying out their functions, including the need to protect the cultures, traditions, health and lifestyles of Yukon First Nations, and the need to protect Final Agreement rights. These requirements are further elaborated upon in s.42 of YESAA, which identifies the factors which the Panel of the

Board, the Executive Committee, and the Designated Offices must take into account when conducting assessments. These factors include the interests of First Nations, as well as special relationship between Indigenous peoples and the wilderness environment, the cultures, traditions, health and lifestyles of Indigenous and other residents of Yukon, and the need to protect Treaty rights.

The Yukon Supreme Court has defined what is required to consider a matter in the context of s.42 of YESAA. Specifically, it means to take into account and does not require a resolution or a finding.

Unlike some assessment entities, such as the Canadian Energy Regulator, YESAB does not hold the decision-making authority in respect of proposed projects. Rather, the assessment culminates in a recommendation to Decision Bodies, who undertake additional analysis and information-gathering following the receipt of a YESAB recommendation. YESAB also does not have the power to determine constitutional questions of law, including making findings as to the scope of Indigenous and Treaty rights.

CONSIDERING INDIGENOUS AND TREATY RIGHTS

While distinctions between asserted and established rights have implications for the Crown's constitutional duty to consult, YESAB is not the Crown and does not have a constitutional duty to consult. YESAB equally considers the asserted and established Indigenous and Treaty rights of all Indigenous peoples during the assessment process; this Guidance applies to all.

Note that YESAB applies the same methodology to asserted and established Indigenous and Treaty rights.

Proposed projects can affect Indigenous and Treaty rights (see the "Explanation of Terms" in this Guidance for more information on these terms). YESAB applies the same methodology when considering effects on asserted and established Indigenous and Treaty rights where they provide important information about community use, values, and well-being.

YESAB considers information on the ways a project may affect Indigenous and Treaty rights – including their exercise (e.g., the ability to harvest wildlife in a specific location), their elements (e.g., a specific wildlife species that would be harvested), as well as areas not linked to a specific right (e.g., sense of identity tied to place).

This information is used throughout the assessment, primarily in three ways: 1) the selection of the valued environmental and socio-economic components (VESECs) that will be assessed; 2) the significance determination; and 3) mitigations. All are critical aspects of assessment and are discussed below.

1. VESEC Selection

Most projects will affect some component of the physical or human environment. The assessment focuses on valued components that are likely to be adversely affected; these VESECs are valued for a variety of reasons, such as ecological integrity, social and cultural importance, scientific significance, economic value, or traditional use.

Comments describing potential effects on Indigenous and Treaty rights help YESAB understand what is valued in the project area and what may be adversely affected. When comments identify potential effects on rights– such as culturally important gathering areas, community well-being, or traditional practices – this information can contribute to identifying which VESECs will be affected, such as Indigenous way of life or traditional land use.

For example, if a project is likely to affect the local Indigenous people's ability to harvest fish

and wildlife in an area (a protected right), the assessment of effects to the related VESEC (e.g., traditional land use) would include consideration of the fact that the ability to harvest wildlife, which has occurred on that land for generations and is a protected right, will be adversely affected. It may also include consideration of other ways traditional land use will be adversely affected that relate to rights, such as the disruption to the continued use of a culturally important area.

2. Significance Determination

For each VESEC selected, YESAB assesses whether the adverse effects will be significant. See YESAB's Framework for Determining the Significance of Adverse Effects for more information on how this is done.

When determining whether adverse effects to an identified VESEC are significant, YESAB considers whether the VESEC implicates or relates to Indigenous and Treaty rights. Given their constitutional protection, effects to a VESEC which overlaps with Indigenous or Treaty right may increase the severity of effects to that VESEC.

To illustrate how this could operate in practice, an example has been provided in the blue text box, opposite.

In this example, YESAB did not make a determination on the impact on or infringement of the rights (to hunt, fish, etc.), but determined that, because of the use and importance of the area for these traditional activities, the effects on traditional land use would be significant. That these activities are a constitutionally protected right increased the severity of the effects, and in this case increased the significance.

EXAMPLE

A YESAB Designated Office receives a project proposal for a forestry project.

The Designated Office receives a comment from a First Nation (with or without a Final Agreement) describing the project site as an important area for members to exercise their Indigenous and/or Treaty rights – including fishing and hunting, collecting medicinal plants, ceremony, and passing on knowledge (among other activities).

The comment provides information that demonstrates the area is culturally important (historically and contemporarily), illustrating how the area has been and continues to be used, and how the proposed project will affect these uses. This information allows YESAB to understand the adverse effects to traditional land use in the area.

The assessment finds that:

- adverse effects are likely to persist across multiple generations of First Nation citizens and may result in a compromised ability for youth and future generations to pursue their traditional and cultural activities;
- the way of life for the First Nation is squarely rooted in activities that need locations where cultural and traditional land use activities can be peacefully carried out (i.e., location is important); and
- the fact that harvesting (hunting and trapping) wildlife is a constitutionally protected right and the project will affect the First Nation's citizens' ability to exercise this right increases the severity of the adverse effects to traditional land use.

For these reasons, the assessor may conclude that adverse effects are significant.

The presence of an effect on an Indigenous or Treaty right does not automatically mean that the effect to the associated VESEC will be found to be significant, or that YESAB will recommend the project not proceed. The assessors' determination of the significance of an effect to a VESEC depends on:

a. Full context of assessment, including the nature and extent of the effect
b. the VESECs involved
c. Project design
d. Overall circumstances of the project.

3. Mitigations

Where possible, YESAB is required to recommend necessary mitigations to avoid, minimize, or eliminate significant adverse effects to VESECs. Through its process, YESAB can recommend mitigations for project effects that relate to Indigenous and Treaty rights (such as recommending a no-work buffer around an area of traditional use or measures to protect water quality or quantity, for example).

WHAT YESAB DOES NOT DO

YESAB is **not the Crown** and does not carry the Crown's legal responsibilities related to Indigenous consultation. The Crown – either Canada, Yukon, or both, depending on the situation – is responsible for consulting and, where appropriate, accommodating Indigenous groups when considering actions (such as issuing a permit) that may impact Indigenous and Treaty rights.

YESAB **does not have a constitutional duty to consult** on project's potential impacts on Indigenous and Treaty rights. This responsibility, including ensuring adequacy of consultation and accommodation, rests with the Crown. YESAB is part of a broader regulatory system under the UFA and YESAA. It is **not a decision-maker** and does not issue licences, permits, or authorizations. Rather, the assessment process ends in a recommendation to decision-bodies. Additionally, YESAB does not have the procedural and remedial authorities needed to conduct or implement such consultation.

YESAB **does not determine** the strength, scope or legal status, as applicable, of asserted or established Indigenous and Treaty rights. In some cases, the applicable rights may be well understood by all parties. In other instances, there may be uncertainty due to lack of information, differing interpretations of the Treaty, or other factors. The YESAB assessment process is not a rights determination process, nor does YESAB determine whether a project would infringe those rights. That determination is made by the Crown.

YESAB is also **not responsible for deciding how or whether the Crown relies on the assessment process** to fulfil its duty to consult. Those decisions – and related communication with rights-holders – are the responsibility of the Crown.

AFTER THE ASSESSMENT

Once YESAB provides its recommendation to the relevant Decision Bodies – explaining its recommendation on whether a project should be allowed to proceed and under what conditions – its role in the assessment process is complete.

Additional processes, including Crown consultation, are undertaken by the applicable Decision Bodies and the Crown following the assessment.

PREPARING EFFECTIVE COMMENTS

YESAB must determine the significance of adverse effects associated with proposed projects. Most projects will have some level of adverse effect; to understand these effects and

their significance, YESAB relies on information provided during assessments along with other information it collects. The most helpful comments are clear and specific. When Indigenous and Treaty rights are involved, comments should clearly describe how those rights relate to valued components and potential adverse effects.

Tips for preparing effective comments to help support YESAB's consideration of Indigenous and Treaty rights:

1. Identify valued components linked to Indigenous and Treaty rights.

Describe what is important in the project area and why it is valued (i.e., identify valued components), noting any connections to Indigenous and Treaty rights. Describe how Indigenous peoples use or interact with the project area (e.g., harvesting, travel routes, cultural practices, ceremony, teaching youth). Explain the cultural, social, ecological, or economic importance of these components to help YESAB determine which VESECs should be used to assess those impacts.

2. Explain how the project may cause adverse effects.

Describe how the project could adversely affect the identified valued components, including in connection to Indigenous and Treaty rights. Explain how specific project activities (e.g., construction, access, water use) may affect the ability to exercise Indigenous and Treaty rights or could degrade valued components associated with Indigenous and Treaty rights. Where applicable, describe how the project may disrupt ongoing use of culturally important areas or traditional practices, even if those uses are not tied to a single, clearly defined right. Include consideration of cumulative effects stemming from existing pressures on land, water, and wildlife, especially where existing or past land use has already affected Indigenous and Treaty rights.

3. Provide information relevant to determining the significance.

Try to structure comments so they help YESAB assess whether adverse effects may be significant. Where possible, describe your sense of the extent, duration, frequency, magnitude, and reversibility of the effects on the identified valued components. For example, indicate whether the effects would be short-term or long-lasting, how often they might happen and how many people could be affected, and describe whether the harm could be undone or if it could affect future generations. If a project could interfere with Indigenous and Treaty rights or important cultural practices, explain how and why that matters.

Note that identifying effects on Indigenous and Treaty rights does not automatically make effects significant, but this information may change the severity of effects.

4. Support comments with Indigenous knowledge and other types of evidence.

Provide information that helps YESAB understand the context, use, and importance of the area. Include Indigenous knowledge, oral histories, community observations, and descriptions of past and current use. Where available, provide supporting materials such as maps, land-use studies, or community plans. Provide information from your own effects assessment process if one exists. Explain how this information demonstrates the importance of the valued components and the nature of the adverse effects.

5. Recommend mitigation measures linked to adverse effects.

Propose mitigation measures that directly address the identified effects. Suggest measures to avoid, minimize, or reduce adverse effects (e.g., buffers, timing restrictions, protection of water quality) and explain why they would be effective. Suggested mitigations help YESAB determine whether significant adverse effects could be reduced or avoided. Proponents may

also voluntarily integrate mitigation measures recommended by Indigenous governments or groups.

You are not required to use technical language or legal terms. Clear explanations based on your experience and knowledge are often the most helpful.

Submitting Confidential Comments

There may be times when an individual would like to include confidential information in their comments on a project. There are provisions in the Yukon Environmental and Socio-economic Act (YESAA) to designate information confidential. The information can be submitted by a participant in relation to an assessment, or from a proponent as part of a project proposal. As for any YESAB comment submission, written, video or oral comments are possible. There are different applications to complete depending on whether the designation relates to Traditional Knowledge (YESAA 121(a)) or an Access to Information Exemption (YESAA 121(b))**.**

For further information see YESAB's guidance for submitting confidential information.

INFORMATION FOR PROPONENTS

For projects assessed at the Executive Committee level, proponents must consult First Nations and communities coming within the scope of 50(3) of YESAA. Additional guidance is available in the Consultation Guidance for Proponents – Executive Committee Screenings.

While not a requirement under YESAA at the Designated Office level, all proponents are encouraged to engage early, openly, and continuously with Indigenous governments and groups throughout all phases of project planning, development, and operations. Early collaboration helps identify potential adverse effects, supports the integration of the knowledge and perspectives of Indigenous peoples, and strengthens project design and decision-making. It may also result in a more efficient assessment process.

Effective engagement is grounded in respect, transparency, and relationship-building. Proponents should work with Indigenous governments and groups to understand community priorities, governance structures, and preferred approaches to consultation. This includes providing timely information, creating space for dialogue, and being responsive to concerns raised.

Engagement should be tailored to each Indigenous government and community context. In addition, proponents should be aware that some Indigenous governments have their own assessment processes with specific requirements.

CONCLUSION

This Guidance outlines how YESAB considers asserted and established Indigenous and Treaty rights throughout its assessment processes. By grounding assessments in the principles of the UFA, YESAA, and the broader context of reconciliation, YESAB aims to ensure that Indigenous knowledge, values, and perspectives meaningfully inform project assessments. Input from Indigenous governments, groups, and peoples plays a vital role in helping YESAB identify and consider potential effects. While YESAB's role is distinct from the Crown's duty to consult, the Crown can, potentially, rely on information generated through an assessment in the discharge of their duty to consult and support informed decision making. YESAB remains committed to a transparent, fair, and inclusive assessment process that helps protect Indigenous and Treaty rights, and Indigenous ways of life for present and future generations.

This document provides guidance only and should not be relied upon for legal advice.

For more information regarding YESAB, please contact YESAB or visit www.yesab.ca. All YESAB guidance referred to in this document is available on the website.

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