

YESAB

Yukon Environmental and
Socio-economic Assessment Board

INFORMATION BULLETIN

CONSIDERATION OF CUMULATIVE EFFECTS IN YESAB ASSESSMENTS

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INTRODUCTION

This Information Bulletin (the Bulletin) provides Decision Bodies, First Nations, proponents, and other participants with information on how the Yukon Environmental and Socio-economic Assessment Board (YESAB) considers cumulative environmental and socio-economic effects in assessments conducted under the *Yukon Environmental and Socio-economic Assessment Act* (the Act). For the purposes of this Bulletin, cumulative effects are defined as changes to valued environmental and socio-economic components (valued components) caused by an activity (related to a project being assessed) in combination with other past, present, and likely future projects or activities.

The approach outlined in the Bulletin constitutes a change in YESAB's past practice of carrying out a separate and distinct determination of the significance of cumulative effects. The approach described in the Bulletin helps meet the important purposes of environmental and socio-economic assessment while also remaining faithful to the scheme and language of the Act.

Disclaimer

This Bulletin 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. Portions of the Act have been paraphrased in the Bulletin, and should not be relied upon for legal purposes. YESAB retains the discretion to deviate from the procedures described in this Bulletin where appropriate. YESAB disclaims liability in respect of anything done in reliance, in whole or in part, on the contents of this Bulletin.

Legislative Context

After careful consideration and analysis, YESAB has determined that there is sufficient rationale to support a change in how it takes cumulative effects into account during an assessment. Specifically, the Act sets out matters that must be *considered* in conducting an assessment of a project. Among these matters, the significance of any project effects and the significance of any cumulative effects are enumerated separately. The Act mandates YESAB to base an assessment outcome or recommendation on a *determination* of the significance of project effects. There is no additional power in the Act to make cumulative effects *determinations*, or to make recommendations to decision bodies based upon cumulative effects *determinations*. Rather, assessors are required to *consider* cumulative effects in their assessment of a project.

How and When Does YESAB Consider Cumulative Effects in the Assessment Process?

While YESAB cannot make a recommendation as to whether a project should or should not proceed or recommend additional terms and conditions directly on the basis of a separate determination of the significance of cumulative effects, YESAB does consider cumulative effects when determining the significance of likely adverse project effects.

Determining the Significance of Likely Adverse Project Effects

The outcome of any assessment conducted under the Act is either a recommendation from YESAB on whether a proposed project should proceed or, in the case of a Designated Office evaluation or screening by the Executive Committee, a decision to refer the proposed project to another level of assessment. Assessment outcomes are based on determining whether a proposed project will have or is likely to have significant adverse environmental or socio-economic effects.

An important part of any assessment is identifying important environmental and socio-economic features (valued components) that may be impacted by a proposed project and the condition or state of those valued components before a proposed project (or different phases of a proposed project) is undertaken. Project effects rarely occur in isolation of other human activities and natural processes that are impacting or have impacted valued components in a project area. It is important for YESAB to understand and describe the existing condition of a given valued component in conducting an assessment.

The condition of a valued component at the time of assessment will typically reflect the cumulative effects of all processes and activities affecting it. In some cases, the condition of a valued component will have surpassed or be nearing a significance threshold, providing YESAB with important context for determining the significance of likely adverse project effects. When making a significance determination of proposed project effects, YESAB must not only consider such things as the magnitude, duration, timing, likelihood, reversibility and spatial extent of project effects themselves, but also the context in which those effects may occur. The cumulative effects of other activities and processes, as noted above, can affect the existing condition of valued components and provide important context for making determinations about the significance of proposed projects and associated effects.

For example, if a valued component, such as a wildlife population or water quality is already impacted by other processes and activities, it may be less able to withstand the effects of a proposed new project. In other words, the condition of a valued component relative to a threshold for significant adverse effects can be influenced by the cumulative nature of the effects of all activities and processes impacting that valued component.

The Act directs YESAB to consider the cumulative effects that have occurred *or might occur* in connection with a project under assessment. This means considering the effects of the project being assessed in combination with the effects of other projects for which proposals have been submitted to YESAB or any activities that *have been carried out, are being carried out or are likely to be carried out*. These potential effects will provide important additional context for determining the significance of likely adverse project effects.

When determining whether an activity is “likely to be carried out” for the purposes of s.42(1)(d), YESAB assessors will consider whether any of the following criteria have been met:

- 1.The intent to carry out the future activity is announced (e.g. on websites, in the media, or to YESAB) by a company, government, etc.;
- 2.Notice of a submission for an environmental and socio-economic assessment or regulatory review of an activity has been provided to YESAB or the regulatory review has commenced; or
- 3.The completion of the project being assessed could facilitate or enable future activities.

This list is not exhaustive, and other criteria may be used where appropriate.

Summary

In conducting project assessments, the Act distinguishes between project effects and cumulative effects. It also directs YESAB to *determine* the significance of adverse project effects (significance determinations) while *considering* the cumulative effects of other projects or activities have been carried out, are being carried out or are likely to be carried out. This means that cumulative effects are considered early in the assessment process, helping to define the existing conditions of valued components identified in the assessment and informing project effects significance determinations.

While this approach may depart from past practice at YESAB and approaches employed in other assessment jurisdictions where a distinct determination as to the significance of cumulative effects is made, in most instances the ultimate assessment outcome will be similar.

For further information regarding how YESAB considers cumulative effects please contact YESAB www.yesab.ca

APPENDIX: EXPLANATION OF TERMS

This appendix provides some definitions of key terms, as used in this Bulletin.

Activities

Anthropogenic actions that alter the human or biophysical environment (where those alterations are observable/measurable/detectable).

Assessment

An evaluation of a proposed project by a Designated Office, a screening by the Executive Committee or a review by a Panel of the Board.

Consider (as in “consider a factor”)

Means take into account, but does not require a resolution or a determination of this specific factor.

Context

The particular environmental and/or socio-economic context within which the project occurs, including: applicable legislation; asserted and established Aboriginal and treaty rights; the cumulative effects of other past, present, and likely future projects or activities standards, plans and policies; ecological or social limits and thresholds; vulnerability and resiliency of social and/or ecological systems and components; political and cultural setting.

Cumulative Effects

Changes to a Valued Environmental and Socio – economic Component (VESEC) caused by an activity (related to a project being assessed) in combination with other past, present, and likely future projects or activities.

Determine

As in “determine if there are significant adverse effects” — make a finding, decide or resolve.

Project

An activity or interrelated group of activities, for which one of the activities requires an assessment under the Act.

Project Effect

A change in the condition of a value or valued environmental and socio-economic component caused either directly or indirectly by a project.

FREQUENTLY ASKED QUESTIONS

YESAB's Approach to Considering Cumulative Effects

1. *What is YESAB's role in cumulative effects management in Yukon?*

YESAB considers the cumulative effects of other projects or activities that have been carried out, are being carried out, or are likely to be carried out when determining the significance of effects associated with the project under assessment. Project assessment, alone, cannot fully account for cumulative effects, nor was it designed to do so. In addition to project assessment, planning, monitoring and adaptive management by responsible agencies (i.e. Federal, Territorial, Yukon First Nations, Municipal Governments, other Boards, Councils and Planning Commissions) are all important in assessing and managing cumulative effects.

2. *Will this change improve the way in which YESAB considers cumulative effects in its assessments?*

Yes. Consideration of cumulative effects from projects or activities that have been carried out, are being carried out, or are likely to be carried out are explicitly linked with the determination of the significance of proposed project effects. A clear articulation of our approach will help to ensure that cumulative effects are considered in a consistent manner from project to project. It will also help promote transparency and clarity in assessment recommendations and reasons.

3. *Will this change in practice affect assessment outcomes (i.e. the recommendations made by the assessors at the end of an assessment)?*

No, the change in practice is not expected to result in variations to either assessment recommendations or the terms and conditions included with those recommendations. While YESAB will no longer conduct a separate cumulative effects significance determination, YESAB will consider cumulative effects when determining the significance of likely adverse project effects and can make a recommendation as to whether a project should or should not proceed or recommend additional terms and conditions based on this consideration. The revised approach will enable assessors to consider cumulative effects in a more integrative manner during the project effects determination stage.

4. *How does YESAB consider likely future projects?*

The effects of projects that are likely to be carried out will provide context for making a determination on the significance of the effects of a project being assessed..

5. *What are YESAB's expectations of proponents for collecting baseline information?*

YESAB has always required baseline information to conduct an assessment and YESAB has always considered cumulative effects. The requirements for baseline information are the same and unlikely to change.

6. *How does YESAB's approach to considering cumulative effects differ from other assessment jurisdictions?*

YESAB's approach may differ somewhat from approaches employed elsewhere. For example, both the *Canadian Environmental Assessment Act, 2012* and the *Mackenzie Valley Resource Management Act*, expressly state that the environmental effects of the project include cumulative effects. YESAA, on the other hand, distinguishes between project and cumulative effects, and directs assessors to consider cumulative effects in making a determination about the significance of project effects. Consequently, YESAB needs to look at cumulative effects differently. The result, however, in most cases will be the same.

7. *What happens to projects currently under assessment by YESAB?*

All projects currently under assessment will be assessed using the revised approach. Proponents for projects currently under assessment, and participants in those assessments, have been notified of the change in approach through the YESAB On-line Registry.

8. *How can YESAA participant's best support YESAB in identifying the cumulative effects of past, present and future projects?*

Project proponents, First Nations, potentially affected parties, government agencies, and other experts can play an important role providing comments on the state of valued components, identifying how the effects of other activities can interact with the effects of the project being assessed and any relevant information regarding the cumulative effects of past, present, and likely future projects or activities.