

Intergovernmental YESAA Oversight Group

Terms of Reference

Updated as of September 11, 2019

1. Context

- 1.1 Establishment of the YESAA Oversight Group (the "Oversight Group") was agreed to in the *Yukon Environmental and Socio-economic Assessment Act Reset MOU*, dated December 2017 (the "Reset MOU"), by all self-governing Yukon First Nations, the Council of Yukon First Nations, the Government of Canada, and the Government of Yukon (collectively, the "Parties").

2. Respect for Autonomy and Existing Legislative Roles and Obligations

- 2.1 Nothing in these Terms of Reference will delegate, transfer or otherwise affect any legal power, duty, discretion or responsibility of any Party.

3. Purpose

- 3.1 The Oversight Group's purpose is to oversee the development assessment process in Yukon and promote the ongoing improvement of the development assessment process.

4. Consensus

- 4.1 The Oversight Group will conduct its business and make its recommendations by consensus. If consensus cannot be reached, the Oversight Group may refer the issue to their respective principals who will resolve the issue or return the issue to the Oversight Group with guidance and direction for resolution.

5. Representatives

- 5.1 The Oversight Group will consist of four representatives: two representatives appointed by the Yukon First Nations, one representative appointed by the Government of Canada and one representative appointed by the Government of Yukon.
- 5.2 The Parties may each appoint, in writing, an alternate to participate in the absence of its representative.
- 5.3 The representatives and alternates will have authority to provide guidance, recommendations or direction, as the case may be, on the matters listed in section 6.
- 5.4 The Parties will each appoint their representatives and alternates, and notify the other Parties with contact details for each appointee, within fourteen (14) days of execution of these Terms of Reference.
- 5.5 The representatives and alternates of the Oversight Group will serve until the Party that appointed them advises them in writing that their term has ended. A Party will provide written

notice to other Parties of the end of the representative's or alternate's term and advise the appointment of any new representative or alternate.

6. Roles and Responsibilities

6.1 The Oversight Group is to provide a forum to discuss and jointly provide:

- a. guidance and/or recommendations to the Parties about the development assessment process and changes to the *Yukon Environmental and Socio-economic Assessment Act* ("YESAA"), including regulations and policies made in respect of YESAA;
- b. direction to the YESAA Forum and any technical working groups established by the Oversight Group;
- c. direction and/or guidance with respect to the conduct and outcomes of, and follow-up from, any reviews of YESAA or the YESAA process, including implementation of the YESAA Five-year Review recommendations agreed to by the Parties;
- d. guidance, recommendations and/or direction about any other specific YESAA-related matter as agreed to by the Parties.
- e. a solutions-driven dialogue that includes consideration of the views and, where appropriate, the participation of the Yukon Environmental and Socio-economic Assessment Board and other groups who are not party to the Reset MOU;
- f. transparency of its meetings activities and outcomes;
- g. follow up on the implementation of recommendations or guidance made by the Oversight Group; and
- h. an annual report back to the Parties.

7. Recommendations

7.1 The Oversight Group will provide its written recommendation to the Parties for their review and if approved by the Party or Parties having jurisdiction over the matter, implementation.

7.2 Upon the request of the Parties, the Oversight Group will meet with representatives of the Parties to present the recommendations and, if appropriate, discuss options and means to implement the recommendations.

8. Meetings

8.1 The Oversight Group will meet no less than twice annually. Meetings may occur more frequently, upon the agreement of the Oversight Group.

8.2 The representatives will rotate the responsibility to chair meetings of the Oversight Group on an annual basis, or as otherwise agreed to by the Oversight Group. The Chair will be responsible to ensure that the meetings are carried out in a respectful and constructive manner.

9. Technical Working Groups

- 9.1 The Oversight Group may establish technical working groups to address specific issues.
- 9.2 Technical working groups will report to the Oversight Group.
- 9.3 The Oversight Group will determine membership of the technical working groups
- 9.4 The Oversight Group will approve specific terms of reference to give direction and guidance to a technical working group, including timelines and budget for it to carry out its work. The responsibility for these costs will be determined at that time.
- 9.5 The technical working groups will not duplicate work already ongoing as part of the YESAA Forum or the Oversight Group.

10. Future Legislative and Regulatory Change to YESAA

- 10.1 In accordance with the Reset MOU, Canada, Yukon and Yukon First Nations agree to work collaboratively with the aim of reaching consensus on:
 - a. guidelines for any legislation that will give effect to any contemplated amendments to the YESAA to the extent that the proposed legislation deals with the YESAA;
 - b. the text of the proposed final consultation draft of any amending legislation before it is introduced in Parliament to the extent that the proposed legislation deals with the YESAA;
 - c. guidelines for any new or amended regulation to be made under the YESAA; and
 - d. the text of any proposed final consultation draft of the regulation before it is presented to the Governor in Council.

11. Review of the Reset MOU

- 11.1 The Oversight Group will review the Reset MOU on an annual basis, or at the request of the Parties, to ensure that the commitments and obligations of the Reset MOU are being met.

12. Review of YESAA

- 12.1 At least once every ten years, determined from November 22, 2017, the Parties agree to undertake a review of the development assessment process as set out in YESAA, unless the Parties agree otherwise.
- 12.2 The Oversight Group will define the scope and approach for these future reviews, whose purpose will be to ensure that development assessment under YESAA is a timely, efficient and effective process that continues to achieve the objectives of Chapter 12 of the Yukon First Nation Final Agreements.

13. Review of these Terms of Reference

- 13.1 The Parties will review these Terms of Reference on an annual basis and make changes, as necessary. If any changes are contemplated, the Oversight Group will be provided notice of the proposed changes and an opportunity for the Oversight Group to provide comments to the Parties on the changes.

14. Work plan and Review of the Work plan

14.1 The Oversight Group will create a work plan within 90 days of the adoption of these Terms of Reference and review that plan annually and update it, as necessary.

15. Participation of non-Parties

15.1 The Oversight Group will make reasonable efforts to provide:

- a. Yukon First Nations (including transboundary First Nations) that are not a Party to the Reset MOU but are affected by YESAA;
- b. the Yukon Environmental and Socio-economic Assessment Board; and
- c. representatives of industry, environmental groups and others;

with an opportunity to provide to input to the Oversight Group about matters under consideration by the Oversight Group that may affect them. The Oversight Group will give consideration to such input and take it into account before it finalizes its determination on the matter.

15.2 The Oversight Group may invite representatives of these groups to participate in meetings or submit their views in writing.

16. Secretariat

16.1 Secretariat and administrative support to the Oversight Group will rotate with the Chair's representative organization. All associated costs will be borne by that respective organization.

16.2 The Oversight Group secretariat functions will include:

- a. maintaining a list of current representatives and alternates;
- b. support the rotating Chair through the following activities:
 - i. build and distribute agendas for each meeting based on previous discussions of the Oversight Group, its work plan and any issues raised by the Parties and others;
 - ii. build, distribute, and maintain a record of meeting notes, action items, and other related documents;
- c. prepare a draft annual report, and other notices and other communications materials, as appropriate, for approval of the Oversight Group;
- d. provide administrative support to any technical working groups established by the Oversight Group; and
- e. any other duties as requested by the Oversight Group.


17. Participation and Funding

17.1 Each Party will be responsible for funding their own cost of participation, and will provide the support needed by their representatives and alternatives, unless agreed otherwise.

Approval:



YFN Representative July 19, 2018
Date



YFN Representative July 19, 2018
Date



Canada Representative July 19 '18
Date



Yukon Representative July 19, 2018
Date

AMENDMENTS

In respect of the

INTERGOVERNMENTAL YESAA OVERSIGHT GROUP TERMS OF REFERENCE

- AMONG:** Government of Canada, as represented by Dionne Savill, Regional Director General, Yukon Region, Crown-Indigenous Relations and Northern Affairs Canada (herein called “Canada”);
- AND:** Government of Yukon, as represented by Brian MacDonald, Assistant Deputy Minister, Aboriginal Relations, Government of Yukon (herein called “Yukon”)
- AND:** Yukon First Nations, as represented by Emmie Fairclough and Daryn Leas (herein called Yukon First Nations Representatives”)

(herein called the “Parties”)

WHEREAS:

- A. Section 13.1 of the YESAA Oversight Group Terms of Reference directs the Parties to review the Terms of Reference on an annual basis and make changes, as necessary;
- B. The YESAA Oversight Group Terms of Reference were approved on July 19, 2018 and have yet to be reviewed; and
- C. At an Oversight Group Meeting held on May 9, 2019, the Parties discussed amending the Oversight Group Terms of Reference to clarify the duration of the Chair’s term and to have the secretariat function rotate with the Chair’s organization for ease of logistical support.

NOW THEREFORE, the Parties agree as follows:

1. To amend section 8.2 of the Oversight Group Terms Reference, to:
8.2 The representatives will rotate the responsibility to chair meetings of the Oversight Group on an annual basis, or as otherwise agreed to by the Oversight Group. The Chair will be responsible to ensure that the meetings are carried out in a respectful and constructive manner.
2. To amend section 16.1 of the Oversight Group Terms of Reference, to:
16.1 Secretariat and administrative support to the Oversight Group will rotate with the Chair’s representative organization. All associated costs will be borne by that respective organization.

The Parties endorsed the amendments at a meeting of the Oversight Group held on September 11, 2019.