

YESAB Temporal Scoping Policy

YESAB
Yukon Environmental and
Socio-economic Assessment Board

Summary of Proposed Change

After careful consideration and analysis of the temporal scoping policy YESAB has determined that there is sufficient rationale to support a change in temporal scoping practice. YESAB suggests that its new approach to temporal scoping take into account the following factors:

1. the timeframe suggested in a project proposal;
2. the complexities and potential risks of a proposed project;
3. the quantity and quality of information needed to conduct an assessment of a proposed project; and
4. a consideration of all stages of a project.

This new approach to temporal scoping interconnects the legal framework set out in YESAA with accepted assessment practices and methodologies. It meets the important purposes of assessment (an aid to decision-making; an aid to the formulation of development actions; and an instrument for sustainable development) while also remaining faithful to the scheme and language of the Act. While this proposed change may result in increased information requirements and increased uncertainty for certain assessments, it is YESAB's view that these issues are less significant than the implications of continuing our current temporal scoping practice.

INTRODUCTION

This document provides a background on the Yukon Environmental and Socio-economic Assessment Board's (YESAB) current approach to temporal scoping and related issues and concerns. The document defines temporal scoping, provides information on the current approach, and the proposed changes to the current approach. It also outlines the considerations, analysis and implications of the proposed change. The document concludes with an explanation of the process and next steps for YESAB's consideration of input from the Parties on this proposed change.

YESAB's Current Approach to Temporal Scoping

The term "temporal scope" is not defined in YESAA. In order to set the temporal scope of projects, therefore, YESAB relied primarily on s.47 of YESAA to inform its approach.

Section 47 states that a project is subject to an assessment if the following three conditions are met:

- I. The project will be located in Yukon; **and**
- II. The project is an activity:
 - a. that is identified in the Regulations as subject to assessment and not excepted under the Regulations, (s.47); or
 - b. about which a declaration is made that the project is subject to assessment (s.48); or
 - c. that is not exempt from assessment due to an emergency (s.49); **and**
- III. One or more of the following circumstances are present:
 - a. The proponent has applied for financial assistance for the project to a federal agency or federal independent regulatory agency;
 - b. The proponent is a federal agency or federal independent regulatory agency;
 - c. The proponent is a First Nation, territorial agency, territorial independent agency or municipal government, and an authorization or grant of interest in land would be required for the project to be undertaken by a private individual;
 - d. The proponent requires an authorization or grant of interest in land from a government agency, an independent regulatory agency, a municipal government, a First Nation or the Governor-in-Council (effectively the federal Cabinet);

YESAB has interpreted the term "an authorization" in section 47 to include permit or license *renewals*. This interpretation has conformed with expectations of some regulators while others do not appear to apply this same interpretation.

YESAB recognized that projects with multiple authorizations did not fit in well with this approach. We resolved this difficulty by adopting the current approach which is to assess projects to the term of the longest authorization period for the activities identified in a proposal. Normally, projects under assessment have four primary phases that include construction, operation, decommissioning and closure. The temporal scope of a project will normally include all of these phases. In some cases, however, the temporal scope of a project is permanent. For example, a rural residential land application proposes to permanently change public land to private rural residential land use. Projects that request a grant of interest in land that result in a land disposition are considered to be a permanent change and the temporal scope includes the permanent change to land use.

Reconsideration of YESAB's Temporal Scoping Approach

YESAB's approach to temporal scoping has been questioned by some proponents and regulators. These proponents and regulators are opposed to YESAB's current approach of applying the longest term of an authorization as the temporal scope of a project. They maintain that projects must be assessed based upon the proposal submitted by the proponent without considering the term of any required authorizations and must include all stages of the project as proposed.

In addition to the concerns expressed by these proponents and some regulators, the YESAA Five-year Review Draft Report – Interim (March 31, 2012) contains two recommendations that support the view that YESAB should reconsider its temporal scoping practice. These recommendations were accepted by the Parties (Canada, Yukon, CYFN):

- Recommendation 15: YESAB should improve its scoping guidance to allow for more inclusive project scoping.
- Additional Recommendation 15(b): YESAB should revise its project scoping guidance to provide a more thorough description of policies and practices related to temporal scoping of projects.

The Report states the following as rationale for accepting these recommendations:

"For some projects, temporal scopes that are consistent with regulatory authorizations may be appropriate (e.g. for projects with environmental and socio-economic effects that are difficult to predict, or projects with changing adjacent land use conditions). In other cases, it may be appropriate to consider project scopes that exceed the duration of specific authorizations (e.g. activities and projects that require a series of short duration authorizations, activities and projects with well understood effects that are unlikely to change)."

Further, YESAB completed a survey of how temporal scoping for assessments is being done in other jurisdictions in Canada. In summary, no other jurisdiction explicitly uses the term of an authorization to determine the temporal scope. In many jurisdictions the assessment requires the consideration of the project's construction, operation, decommissioning and closure.

Based on these considerations YESAB is re-examining its approach to temporal scoping so that it conforms with the language in the Act, gives guidance to proponents, and provides informed, evidence-based recommendations to decision bodies.

Proposed approach

YESAB suggests that its new approach to temporal scoping take into account the following factors:

1. the timeframe suggested in a project proposal;
2. the complexities and potential risks of a proposed project;
3. the quantity and quality of information needed to conduct an assessment of a proposed project; and
4. a consideration of all stages of a project.

This new approach to temporal scoping interconnects the legal framework set out in YESAA with accepted assessment practices and methodologies. It helps meet the important purposes of assessment (an aid to decision-making; an aid to the formulation of development actions; and an instrument for sustainable development)¹ while also remaining faithful to the scheme and language of the Act.

There are numerous provisions within YESAA that inform this new approach to temporal scoping: s. 5(2), s. 40, s. 42, s. 47, s. 50, and s. 51.

Section 5(2), the purposes of the Act, speaks to the important purposes of assessment: (b) to require that, before projects are undertaken, their environmental and socio-economic effects be considered, (c) to protect and maintain environmental quality and heritage resources, (e) to ensure that projects are undertaken in accordance with principles that foster beneficial socio-economic change without undermining the ecological and social systems on which communities and their residents, and societies in general, depend. The new temporal scoping policy meets these purposes by taking into account and balancing the factors laid out above in order to arrive at a well-informed temporal scope. This new approach also meets the purpose set out in s.5(2)(i) by decreasing the possibility of duplication. This decrease in duplication will have a beneficial effect on proponents, YESAB and regulators.

In addition, given that proponents are required to consider all stages of the project in preparing their proposals (s.50(2)(a)) and that a DO, EC or a panel must also take all stages of a project into consideration in conducting an assessment of a project (s.42 (b)), both the timeframe suggested in a project proposal and the consideration of all stages of a project should be taken into account when determining the temporal scope of a project.

Moreover, this examination of the complexities and potential risks of a project allows assessors to tailor the temporal scope of a project using their expertise and professional judgement. This consideration combined with the consideration of the quantity and quality of information needed to conduct a specific assessment will result in well-informed, evidence-based assessments.

¹ Environmental impact assessment is, in its simplest form, a planning tool that is now generally regarded as an integral component of sound decision-making. Its fundamental purpose is summarized by R. Cotton and D.P. Emond in "Environmental Impact Assessment", in J. Swaigen, ed., *Environmental Rights in Canada* (1981), 245, at p. 247:

The basic concepts behind environmental assessment are simply stated: (1) early identification and evaluation of all potential environmental consequences of a proposed undertaking; (2) decision making that both guarantees the adequacy of this process and reconciles, to the greatest extent possible, the proponent's development desires with environmental protection and preservation.