

GUIDE

Draft

YUKON ENVIRONMENTAL AND SOCIO-ECONOMIC ASSESSMENT ACT and REGULATIONS

For reference purposes only
Public Consultation 2001

Government of Canada
Development Assessment Process Directorate
Department of Indian Affairs and Northern Development
345-300 Main Street
Whitehorse, Yukon
Y1A 2B5
Phone: (867) 667-3868
Fax: (867) 667-3861

Yukon Government
Development Assessment Process Unit
(Main Building)
Box 2703
Whitehorse, Yukon
Y1A 2C6
Phone: (867) 393-6433
Fax: (867) 393-6438

Council of Yukon First Nations
DAP Office
11 Nisutlin Drive
Whitehorse, Yukon
Y1A 3S4
Phone: (867) 393-9231
Fax: (867) 668-6577

or the toll free inquiry line
1-888-654-4444

or visit the development assessment process website
<http://dapyukon.yk.net>

DISCLAIMER

This guide is not a legal document. For detailed information about the proposed development assessment process please refer to the draft legislation.

Published under the authority of the Minister of Indian Affairs and Northern Development Ottawa, 2001. www.ainc-inac.gc.ca QS-Y165-030-EE-A1 Catalogue No. R2-165/2001-4E ISBN 0-662-30900-6 © Minister of Public Works and Government Services Canada Cette publication peut aussi être obtenue en français sous le numéro: QS-Y165-030-FF-A1

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A. INTRODUCTION

Background

In 1984, the Government of Canada adopted the *Environmental Assessment and Review Process Guidelines Order* (EARPGO) that applied throughout Canada to ensure that any potential environmental impacts of developments were considered before certain developments were undertaken. In 1995 the *Canadian Environmental Assessment Act* (CEAA) replaced EARPGO.

Chapter 12 of the Yukon First Nations Final Agreements established the framework for an assessment process that would apply throughout the Yukon. The Council of Yukon First Nations and the Yukon Territorial Government agreed to work with the Government of Canada to jointly develop legislation that establishes a unique development assessment process for the Yukon. This federal legislation will functionally replace CEAA and apply to all lands in the Yukon.

First Nations, stakeholders and the public were consulted on an early draft of the federal development assessment legislation in 1998. Their comments were considered during the development of the new draft of the Yukon Environmental and Socio-economic Assessment Act (YESAA), which is commonly known as the development assessment process. This draft legislation is now being presented for public review before its introduction into the federal legislative process.

How to use this Guide

The Yukon development assessment process will be established by federal legislation, called the Yukon Environmental and Socio-Economic Assessment Act (YESAA) and Regulations.

Implementation deals with all the things necessary to make a piece of legislation work - for example rules and timelines.

This guide provides a brief summary of the draft bill and the regulations that are part of the public consultation package. This guide will assist you in finding specific sections. Sections of the draft Act are discussed in the order they appear in the Act.

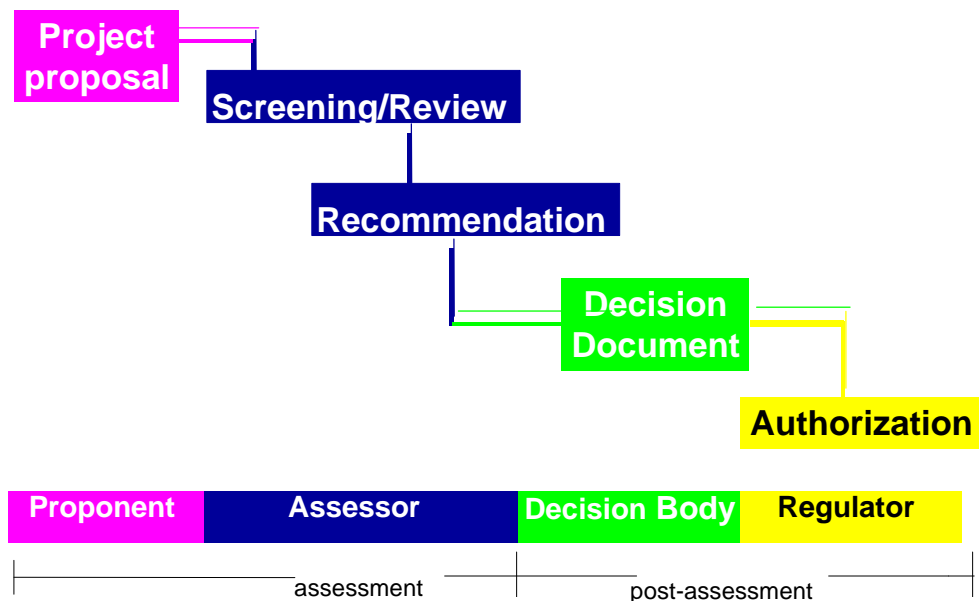
The sidebars provide you with the **main headings** and **section titles**, **section numbers**, **examples** and **implementation** matters. *Explanatory comments* are added throughout the text.

This guide is not a legal document. For detailed information about the proposed development assessment process please refer to the draft legislation.

What is the Development Assessment Process?

The development assessment process is a requirement of the Yukon First Nation Final Agreements that will look at potential impacts of proposed activities in the Yukon.

Here is a general overview of the basic process:



A project may be made up of more than one 'activity'.

A Decision Body is either the Government of Canada, the Yukon Territorial Government or any First Nation with a Final Agreement.

In the Decision Document, the Decision Body either accepts, rejects or varies the recommendation of the assessor with written reasons.

1. The proponent submits a **project proposal** to the assessor.
2. The project is **assessed** (screened and/or reviewed).
3. The assessor issues a **recommendation** to the Decision Body.
4. Post-assessment: The Decision Body responds to the recommendation in a **Decision Document**.
5. Following approval of the project, any **authorization** issued by the regulators must be consistent with the Decision Document.

What Will the Development Assessment Process Mean?

This Yukon-made assessment process offers several benefits for project proponents and for all Yukoners.

- It will be a **neutral** assessment process that works at "arm's length" from the regulatory process of the Government of Canada, the Yukon Territorial Government and First Nations. Currently, the regulator issuing the authorization assesses the project.
- It will offer a **single assessment process** for all proposed projects in the Yukon. Currently, projects may be assessed by more than one decision maker.
- It will provide greater **certainty** through clearly stated information requirements and timelines.
- It will provide everyone with the opportunity to **participate** in and be **informed** about assessments.
- It will offer all interested groups and the public a high level of **transparency** by requiring assessors and decision makers to provide public written reasons for assessment recommendations and decisions.
- It is designed to be **accessible** to all Yukoners. Local Designated Offices will assess projects in or near the communities that are most likely to be affected by the project.

B. OVERVIEW OF THE DRAFT LEGISLATION

Definitions

Definitions
section 2 of the Act

*Example:
"socio-economic effects" includes effects on economies, health, culture, traditions, lifestyles or heritage resources.*

This is the first major section of the draft legislation. It sets out definitions for the terms used in the legislation and information to assist in interpreting the legislation.

Some definitions have been taken straight from the Yukon First Nation Final Agreements while others have been developed separately.

General

Purposes of Act
s. 6

This section provides guidance to people working with or interpreting the legislation. The section sets out the purposes of the Act which include:

- to provide an assessment process that will be conducted in a neutral way,
- to provide an assessment process that will consider environmental and socio-economic effects,
- to protect and promote the well-being of Yukon First Nations people, Yukon residents and other Canadians, and
- to provide opportunities for the public to participate in the assessment process.

Canadian
Environmental
Assessment Act
s. 7

For almost all projects in the Yukon, the development assessment process will be the only assessment process that will apply. This section describes the relationship between the development assessment process and the *Canadian Environmental Assessment Act* (CEAA). If the proposed project is a project under both assessment acts, only the development assessment process will apply – there will be no parallel CEAA assessment and therefore no duplication. At the panel level of assessment, the Minister of Environment may become involved in selecting the type of panel and setting its terms of reference. This section also enables the Minister of Environment to rely upon CEAA to carry out these functions.

PART 1: YUKON ENVIRONMENTAL AND SOCIO-ECONOMIC ASSESSMENT BOARD AND DESIGNATED OFFICES

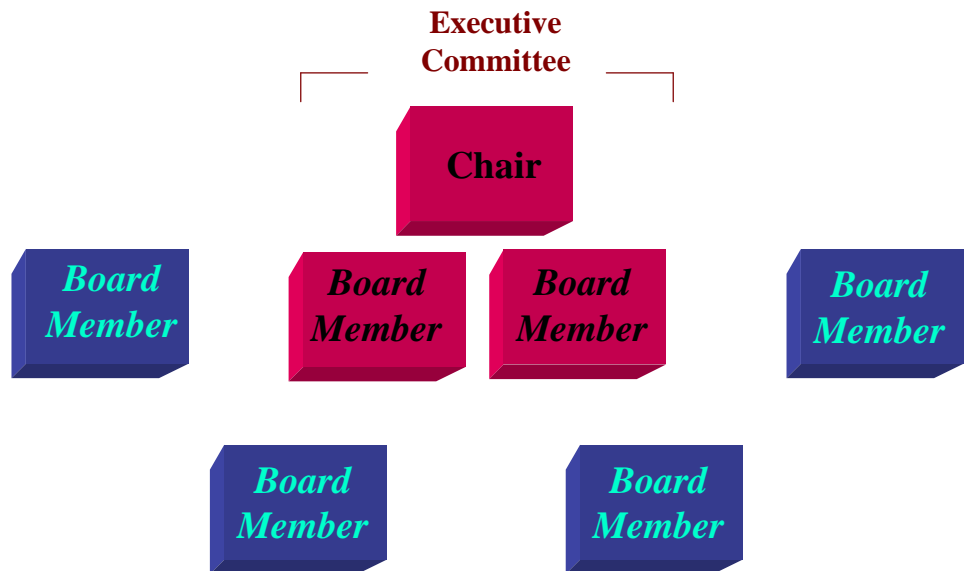
s. 8 - 36

Part 1 of the legislation creates the assessment bodies that will carry out assessments: the **Yukon Environmental and Socio-economic Assessment Board** (which includes the **Executive Committee**), and the **Designated Offices**.

Yukon Environmental and Socio-economic Assessment Board

Yukon Environmental and Socio-economic Assessment Board
s. 8 - 19

The Board will function as the administrative centre for the assessment process – it will hire the staff that will work for the Board as well as the staff of the Designated Offices in the communities. It will prepare an annual budget, develop rules and procedures and will set up a main office in Whitehorse.



The Board will consist of seven members, three of which will form the **Executive Committee**. The three members of the Executive Committee will be nominated as follows:

- the Council of Yukon First Nations (CYFN) nominates one member to the Executive Committee,
- the Government of Canada, after consultation with the Yukon Territorial Government, appoints one member, and

- following consultation with these two members, the Minister of Indian Affairs and Northern Development (DIAND) then appoints a Chair.

The remaining four members are similarly appointed by the Minister of DIAND. Two are CYFN nominees, one Yukon Territorial Government nominee and one Minister of DIAND nominee. The Chair and the majority of the Board members must be residents of the Yukon.

Two of the most important functions of the Executive Committee will be to perform screenings (assessment) of projects and to establish panels of the Board. These responsibilities are discussed in more detail in Part 2 of this guide.

Assessment Districts and Designated Offices (DOs)

s. 20 - 29

There will be six assessment districts covering the Yukon. Within each of these districts, there will be a **Designated Office**.

The Designated Offices will assess the majority of projects in the Yukon. They report directly to the Board on administrative matters. For example, they submit their budgets to the Board and their staff are hired by the Board.

Rules and By-laws

s. 30 - 37

One of the first tasks of the Board and Designated Offices is to develop their common “rules of business”. For example:

- what a project proposal should contain;
- how to determine what is part of the project (scope);
- how to best provide interested parties and the public with the opportunity to participate;
- how scientific information, traditional knowledge, and other information will be integrated into assessments;
- how certain confidential information will be identified and handled;
- how a project that involves more than one Designated Office will be assessed; and
- how much time will be allowed for various tasks within an assessment.

Implementation

The Board will consult with Yukoners on timelines for assessments, including timelines for public input.

Implementation

The Board will publish the draft rules and invite comments from the public.

PART 2: ASSESSMENT PROCESS AND DECISION DOCUMENTS

Part 2 introduces the key elements of the assessment process:

- what gets assessed as a project
- the Project List Regulation (the list of activities that require assessment or are exempt),
- the recommendation at the end of an assessment, and
- the decision by the Government of Canada, the Yukon Territorial Government, and any Yukon First Nation with a Final Agreement.

Activities Subject to Assessment

s. 38

If you want to find out whether an activity requires an assessment, ask yourself the following:

- 1) Do I need an authorization or a grant of interest in land from the Government of Canada, the Yukon Territorial Government, and/or any Yukon First Nation? Or
- 2) Do I need funding from the Government of Canada?

If the answer to either 1) or 2) is 'yes' then:

- 3) Is my activity on the list of projects (and not exempted)?

The Project List Regulations are available for review. See the contact information on page 2.

If the answer to question 3 is also 'yes', your activity requires an assessment under this process. Certain activities carried out by the Government of Canada, the Yukon Territorial Government or a First Nation will also be subject to assessment. *For details on specific activities, please refer to the Project List Regulations.*

Declarations
s. 39

Example:

Cutting less than 1000 m³ of timber is exempt from assessment. A company proposes to harvest 500 m³ of timber. A government is concerned that the activity may threaten an endangered species. If all involved decision bodies consent, the activity can be declared a project and assessed.

Under very limited circumstances, an activity on the project list that would normally be exempt could be assessed. These are the possible reasons for declaring such an activity to be a project:

- the location of the activity contains a heritage resource that is protected,
- the activity is in a special management area established under a final agreement,
- the activity is in an area that forms the habitat of any rare, threatened or endangered species,
- the activity might have significant adverse environmental or socio-economic effects, or
- the activity might contribute significantly to cumulative effects.

In all cases, all involved Decision Bodies have to consent to the declaration.

Emergencies
Excepted
s. 40

Emergencies can happen. For example, a flood or fire may require emergency road building. Although this activity usually requires an assessment, in an emergency it would go ahead without an assessment. As soon as the emergency situation has been stabilized, a report of the incident must be filed with the local Designated Office. This report must describe the nature, extent and duration of the activity and what needs to be done to restore the affected area.

Assessments general

Matters to be Considered
s. 43

There is a list of matters that every assessor has to consider for all projects:

Additional matters to be considered by the Executive Committee or a review panel:

- *the need for effects monitoring, and*
- *the capacity of renewable resources to meet present and future needs (sustainable development).*

- a) the purpose of the project;
- b) how significant any environmental and socio-economic effects of the project might be;
- c) whether this project, together with other projects, might cause additional negative impacts (cumulative effects);
- d) alternatives to the project or how the project is being carried out;
- e) how any negative effects of the project could be minimized (mitigation);
- f) the need to protect Yukon First Nations people's rights and their special relationship with the Yukon wilderness;
- g) the interests of Yukoners and other Canadians;
- h) any matter that a Decision Body asks to be considered; and
- i) anything that has been specified in the regulations.

The assessors must give full and fair consideration to all scientific information, traditional knowledge and other information that is provided during the assessment.

Regional Land Use
Plans
s. 46 - 47

The development assessment process and the regional land use planning process will work together. If a regional land use plan is in effect or being developed, the assessor must involve the land use planning commission in the assessment.

Proposals for Projects

Submission of Proposals
s. 49 - 52

Proponents will submit their project proposal either to a Designated Office or to the Executive Committee of the Board. Proposals for projects listed in column three of the Project List Regulations will be submitted to the Executive Committee. Proposals for all other projects will be submitted to the appropriate Designated Office.

The Act requires proponents to consider in their project proposals many of the same matters that assessors must consider (see page 12), as well as mitigation measures.

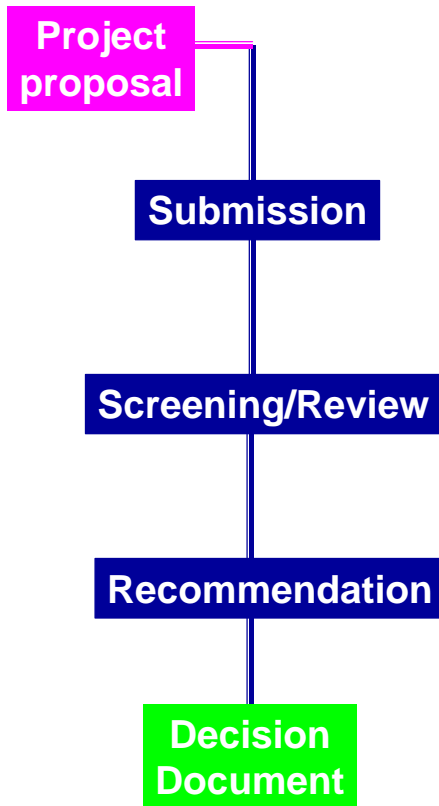
Assessments by Designated Offices and Executive Committee

s. 53 - 58

The assessment process has two types of assessment: a **screening** and a **review**. A screening is the basic type of assessment done by a Designated Office or the Executive Committee; a review is done either by a Designated Office or a panel of the Board.

The majority of projects will be assessed at the Designated Office level, which basically works as follows:

Assessments by the Designated Office



Project proposal: The proponent submits a proposal for the planned project. The requirements of the form and content of proposals will be established by the Board and the Designated Offices, in their rules.

Submission of proposal: The assessor determines when enough information has been provided to start the assessment and notifies the proponent that the assessment will begin. At this point, information about the project is placed on the Public Registry (see page 20).

Screening/Review: Following timelines set by the Board, the assessor screens the project by looking at the matters to be assessed (see page 12). In all assessments, the assessor will seek the views of government agencies, affected First Nations, Independent Regulatory Agencies and those First Nations that have indicated an interest in the project. Interested persons and the public may also provide input into the assessment.

If the assessor determines to review the project, he/she is obliged to inform the proponent and any Decision Body of the need for a review.

Recommendation: The assessor recommends to the Decision Bodies whether the project should proceed with or without terms and conditions, or not be allowed to proceed. The recommendation will be placed on the Public Registry.

Decision Document: The Decision Body will issue a Decision Document (available on the Public Registry) that accepts, rejects or varies the recommendation made to it by the assessor. The Decision Document has to be issued within the timelines prescribed by the Timelines/Decision Bodies Coordination Regulations and include written reasons for any variations or a rejection of an assessor's recommendation.

The "Timelines/Decision Bodies Coordination Regulations" are available for review. See the contact information on page 2.

Screenings by the Executive Committee

Example:

A proposed activity like the “Construction of a new bridge on the Yukon River” is listed in column three of the Project List Regulation and will therefore be assessed by the Executive Committee.

The Executive Committee screening follows the basic steps of a Designated Office assessment. Projects are assessed at the Executive Committee for one of two reasons: either they are listed in column three of the Project List Regulation and they automatically start the process at the Executive Committee level; or, the Designated Office refers the project to the Executive Committee for assessment.

Reasons for such a referral include:

- a. the project might have or might contribute to significant adverse environmental or socio-economic effects,
- b. the project might cause or might contribute to significant cumulative adverse environmental or socio-economic effects,
- c. the project might cause significant public concern,
- d. the project might use controversial technology, or
- e. other criteria established by Board rules.

Panel Reviews

s. 59 - 69

There will be three possible types of panel reviews under this Act:

- a review by a panel of the Board (Panels of the Board will be the most common type of panel under this process);
- a review by a panel appointed by the federal Minister of Environment; or
- a review by a joint panel made up of members from the Board and individuals appointed by the federal Minister of Environment.

This is how a panel of the Board will work:

- The Executive Committee provides written reasons for its decision to commence a panel review of a project to the proponent, any First Nation affected by the project, government agencies and the public registry.
- The Executive Committee will then appoint the panel based on the location of significant adverse effects of the project (for example, if the effects of the project are mainly on First Nation land, 2/3 of the members of the panel will be from the Board members nominated by CYFN, and 1/3 will be from the Board members nominated by the federal and/or territorial government). It will also set the terms of reference for the panel and publish them. The panel will hold public hearings in the affected communities.
- At the end of the assessment, the panel will recommend to the decision makers whether the project should be allowed to proceed with terms and conditions or not be allowed to proceed.

The Act describes the situations where a panel, other than a panel of the Board, may be established (for example, where there is a federal Decision Body for the project). When these situations arise, the statute describes in detail how the federal Minister of Environment and the Executive Committee will work together to determine what type of panel will be established.

Consideration of Recommendations and Issuance of Decision Documents

s. 70 - 78

Decision Bodies must issue their Decision Documents within prescribed timelines (*see Timelines/Decision Bodies Coordination Regulations*).

Copies of the Decision Document will be sent to:

- proponent
- assessor (*for posting on public registry*)
- other decision bodies
- federal Minister (*in case of a joint or a CEAA panel*)
- independent regulatory authority (*where applicable*)
- Yukon Surface Rights Board (*where applicable*)
- Yukon Territory Water Board (*where applicable*)
- anyone else who is required to act in conformity with the Decision Document.

Within the prescribed timelines, Decision Bodies must consider the recommendation, any term and condition included with the recommendation and any accompanying information (scientific information, traditional knowledge and other information). Also, Decision Bodies must consult with affected First Nations without a final agreement and with any other Decision Bodies for the project. The Decision Document must contain a written response to the recommendation and each term and condition. It must provide reasons where the decision differs from the recommendation.

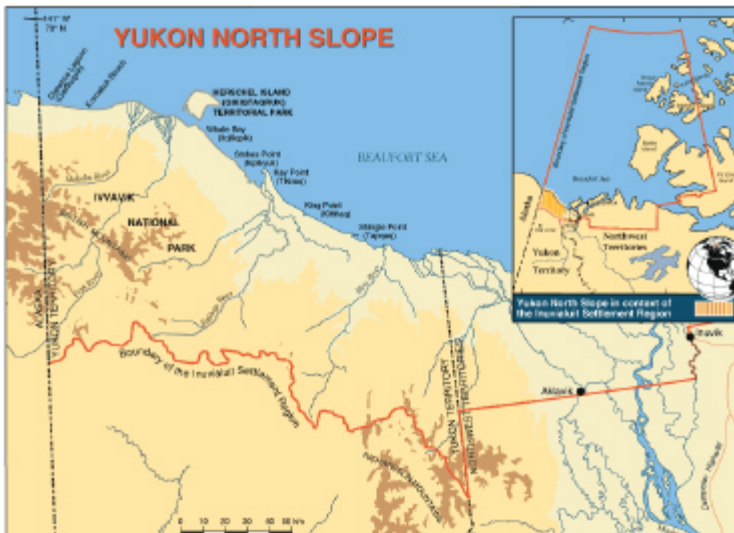
Once the Decision Document has been issued, it will be placed on the public registry.

Implementation of Decision Documents

s. 79 - 85

Regulatory agencies and First Nations must each conform with their own Decision Document when issuing authorizations. For example, if the Decision Document includes a condition that says “no activities can take place during the caribou calving period,” the authorization must conform to that condition.

Projects on Yukon North Slope



The North Slope of the Yukon falls within the Inuvialuit Settlement Region. Projects on the North Slope are subject to the Inuvialuit Final Agreement (IFA) which provides for a screening and review process separate from the development assessment process.

This section describes how the two processes (development assessment process and IFA) will work for projects on the North Slope to minimize duplication. For example, if the Environmental Impact Review Board, established under the IFA, is conducting a review of the project, any

assessment under the draft legislation will be discontinued.

Transboundary Effects

s. 87 - 88

A government or First Nation may be concerned about the effects in the Yukon of an activity that is or will be occurring in the Northwest Territories, British Columbia or Alaska. If so, they can ask the Executive Committee to assess the effects of that activity. The Act describes in detail the steps that need to be taken and what happens with the results of the assessment.

Existing Projects

s. 89 - 96

In specific circumstances, the Executive Committee can establish a panel of the Board to review an existing project. An “existing project” is defined as an activity that is on the Project List Regulation, is not exempted and has been undertaken or completed. Only the Government of Canada, the Yukon Territorial Government or Yukon First Nation that is the operator, or has the power to amend, suspend or revoke a permit, or has the power to assume the operation of or shut down an existing project can ask the Executive Committee to establish a panel of the Board to review it.

These sections describe how a panel will be established, its terms of reference set and what will happen with the panel’s recommendations following its review.

s. 97 - 102

Matters to be considered in the assessment of Plans:

- environmental and socio-economic effects
- adverse cumulative environmental or socio-economic effects in combination with other activities and projects
- alternatives
- mitigative measures
- protection of the rights of Yukon Indian persons and other residents of the Yukon
- sustainability
- effects monitoring

Plans

A plan is defined as “any plan, program, policy or proposal that is not a project or an existing project” – for example, a wildlife management plan. A proposed plan can enter the assessment process at the request of the Government of Canada, the Yukon Territorial Government or First Nation which prepared the plan or for which the plan is prepared.

Such a request is made to the Executive Committee which then considers whether the plan, if put in place, could have significant adverse environmental or socio-economic effects in the Yukon. The Executive Committee may then establish a panel of the Board to assess the plan.

These sections describe how a panel will be established, its terms of reference set and what will happen with the recommendations following its review.

Audits and Effects Monitoring

s. 103 - 105

Assessors may recommend to a Decision Body that a project be audited or its effects monitored. Results of an audit or effects monitoring carried out by a Decision Body will be provided to the assessor that made the recommendation. Audits or effects monitoring of existing projects may also be carried out.

Studies and Research

s. 106 - 107

The Executive Committee may undertake cumulative effects studies or research at the request of the Government of Canada, the Yukon Territorial Government or First Nation. The Executive Committee will report the results to the requesting body, with any applicable recommendations.

Violation of Decision Documents

s. 108

If the Board determines that the terms and conditions of an authorization or of a Decision Document may have been violated, it can recommend to the Decision Body that a public hearing be held.

Judicial Proceedings

s. 109 - 110

At the request of any Designated Office, the Executive Committee, a panel of the Board or a joint panel, the Board may refer any questions of law or jurisdiction to the Supreme Court of the Yukon. The draft legislation also provides that any person directly affected by an action (or inaction) of an assessor or a Decision Body can apply to the Supreme Court for judicial review of the action (or inaction).

Maintenance of Records and Public Access

s. 111 - 115

The Designated Offices and the Board are required to establish and maintain public registries containing official records relating to every project assessment. These records must be readily accessible and anyone has the right to see them during normal business hours. *The Board may decide to establish an electronic website.*

The registers of the Designated Offices will include:

- every document in relation to projects that is produced, collected or received by it (see exception for confidential information described below), and
- records of every project, existing project and plan that is being or has been assessed in its assessment district.

The public registry of the Board will contain all the above information for all projects in the Yukon, as well as a record of any authorizations issued following an assessment under this process.

Information Held in
Confidence
s. 115

Certain confidential information, such as that covered under the *Access to Information Act* (for example, trade secrets) and traditional knowledge determined to be confidential, will not be disclosed to the public or other participants.

Regulations and Orders

s. 116-117

The draft Act is accompanied by two regulations, the Project List Regulations and the Timelines/Decision Bodies Coordination Regulations. There may be additional regulations in the future to implement the legislation.

PART 3: TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS AND COMING INTO FORCE

s. 118 - 126

This section lists amendments to other federal legislation that are required to make this process work. The Acts that have been identified are:

- *Access to Information Act*,
- *Privacy Act*, and
- *Yukon Surface Rights Board Act*

Coming into Force
s. 126

The Government of Canada, the Yukon Territorial Government and the Council of Yukon First Nations have negotiated a period of up to 18 months to have the Board appointed, the Designated Offices staffed and trained, and the rules and bylaws developed. After 18 months, or earlier if possible, the second part of the Act and the regulations will come into effect and the first assessments will be undertaken.

Schedule 1

This schedule provides a list of those Yukon First Nations that have final agreements in effect and are therefore Decision Bodies in this process.

Schedule 2

This schedule lists Independent Regulatory Agencies (IRA) that are referred to in the legislation. The only IRA that has been identified so far is the National Energy Board.

