



Government of Canada

**Guidance for Recognizing
Marine Other Effective
Area-Based Conservation
Measures**

2022



Government
of Canada

Gouvernement
du Canada

Canada



Published by:
Fisheries and Oceans Canada
Ottawa, Ontario
K1A 0E6

Également disponible en français.

Cat. No. Fs23-698/2022E-PDF
ISBN 978-0-660-46272-1

© His Majesty the King in Right of Canada, as represented by the Minister of the Department of Fisheries and Oceans, 2022

CONTENTS

- EXECUTIVE SUMMARY1
- 1 INTRODUCTION3
- 2 PURPOSE5
 - 2.1 Context for practitioners6
- 3 KEY CONCEPTS7
 - 3.1 Key Concept #1: Biodiversity conservation benefits (BCBs)7
 - 3.2 Key Concept #2: Effectively avoiding or mitigating risks to BCBs8
 - 3.3 Key Concept #3: Lead relevant governing authority (RGA)8
 - 3.4 Key Concept #4: OECM governance and management system9
- 4 SCOPE 12
 - 4.1 Where must this Guidance be applied? 12
 - 4.2 Who else may use this Guidance? 12
 - 4.3 What types of OECMs are possible? 12
 - 4.4 How do OECMs support Indigenous governments and communities? 14
 - 4.4.1 OECMs support Indigenous goals for marine conservation 14
 - 4.4.2 Indigenous governments as RGAs under this Guidance 14
 - 4.4.3 Participation by Indigenous communities in OECM recognition and management 15
 - 4.4.4 The importance of Indigenous knowledge in OECM decision making 15
- 5 OECM FRAMEWORK 16
 - 5.1 Guiding principles 16
 - 5.2 Criteria 19
- 6 RECOGNIZING OECMS 21
 - 6.1 Guidance on recognizing OECMs against criteria 22
 - 6.1.1 Criterion A: OECM status 22
 - 6.1.2 Criterion B: OECM boundaries and information 23
 - 6.1.3 Criterion C: OECM governance 25
 - 6.1.4 Criterion D: OECM management 26
 - 6.1.5 Criterion E: OECM governance and management provide BCBs and address risks 27

7	REPORTING OECMS.....	29
7.1	Terrestrial or freshwater OECMs that support marine conservation.....	30
	GLOSSARY	31
	ANNEX 1: Alignment of 2022 Marine OECM Guidance with 2016 CSAS science advice	36
	ANNEX 2: Preliminary screening tool to identify a marine area for further consideration by an RGA	38
	ANNEX 3: The 2018 CBD definition applied in a Canadian marine context.....	40
	ANNEX 4: Disko Fan marine refuge case study.....	42
	REFERENCES	44

LIST OF BOXES, FIGURES, AND TABLES

Box 1:	Comparing Government of Canada MPAs and OECMs.....	11
Box 2:	Jurisdiction in Canada's maritime zones.....	13
Box 3:	OECMs and the protection of culturally important areas and resources.....	14
Box 4:	All about BCBs.....	24
Box 5:	Ecosystem functions and services.....	24
Box 6:	Removal of OECM status	29
Box 7:	Pathway to Target 1.....	30
Figure 1:	OECM governance and management system.....	10
Table 1:	OECM guiding principles.....	16
Table 2:	OECM criteria.....	20

ACRONYMS

BCB	Biodiversity Conservation Benefit(s)
CBD	Convention on Biological Diversity
CPCAD	Canadian Protected and Conserved Areas Database
CSAS	Canadian Science Advisory Secretariat
DFO	Fisheries and Oceans Canada
ECCC	Environment and Climate Change Canada
IUCN	International Union for the Conservation of Nature
MCT	Marine Conservation Target(s)
MPA	Marine Protected Area
OECM	Other Effective Area-Based Conservation Measure
PCA	Parks Canada Agency
RGA	Relevant governing authority

General notes for readers

The term “OECM” as used in this Guidance refers to marine OECMs, unless otherwise specified.

References to the Minister of Fisheries, Oceans, and the Canadian Coast Guard may refer to the Department, acting on the Minister’s behalf and under his/her authority.



EXECUTIVE SUMMARY

The *Government of Canada Guidance for Recognizing Marine Other Effective Area-Based Conservation Measures* (Guidance) follows adoption of international voluntary guidance, including a formal OECM definition, by Parties to the Convention on Biological Diversity (CBD) in 2018. The CBD's definition contains six interrelated concepts (in bold) that are meant to apply to both terrestrial/freshwater and marine other effective area-based conservation measures (OECMs):

A geographically defined area other than a Protected Area, which is **governed and managed** in ways that **achieve positive and sustained long-term outcomes** for the **in situ conservation of biodiversity** with associated **ecosystem functions and services** and **where applicable, cultural, spiritual, socio-economic, and other locally relevant values**.

This Guidance interprets these CBD concepts in the Canadian context in order to provide a science-based, domestic operational policy framework with supporting guiding principles and assessment criteria for recognizing marine OECMs.

The purpose of an OECM is to protect marine biodiversity through the provision of long-term biodiversity conservation benefits (BCBs).

The Introduction and Purpose chapters lay out the background for marine OECMs in Canada together with a detailed rationale for this Guidance. The chapter on Key Concepts defines four important elements that are critical to understanding how OECMs are to be assessed. The Scope chapter establishes where this Guidance must be used, what types of marine OECMs are possible, and how Indigenous governments and communities may be involved in these conserved areas.

This Guidance must be applied by all federal departments and agencies. It may be applied by other legal jurisdictions, where there is interest.

Chapter 5 sets out the 10 guiding principles and five criteria that comprise the Marine OECM Framework, while chapter 6 provides specific guidance on the application of the criteria. The criteria are interrelated and work together to ensure that OECMs address risks posed by all existing and foreseeable activities in ways that provide a net positive change in biodiversity or prevent its loss. Chapter 7 provides information on how OECMs that meet the criteria can be reported and counted toward meeting Canada's marine conservation targets.

This Guidance must be applied to all marine OECMs currently recognized by federal departments or agencies, as well as to any future OECMs they may recognize in the marine environment.

All criteria must be met for a candidate OECM being assessed by federal authorities under this Guidance to be recognized as a marine OECM.

While respecting jurisdictional authorities, recognized OECMs may have a wide range of primary objectives. The CBD's outcome focus on provision of biodiversity conservation benefits makes OECMs different from marine protected areas (MPAs), but both are designed to be effective marine conservation instruments. If Canada's oceans are to have a secure and sustainable future, both MPAs and OECMs are necessary.



1 INTRODUCTION

OECMs are critically important sites in marine conservation. They support biodiversity values and ecosystem functions and services. They protect important species, habitats, and ecosystems. They promote cultural, community, and other important values. OECMs may be used to protect areas important for carbon sequestration and provide other adaptation and mitigation benefits as part of a nature-based solution to climate-change impacts.

OECMs add to the marine conservation toolkit and are complementary to MPAs. OECMs and MPAs work together to conserve and protect important areas in Canada's oceans, both in themselves and as part of conservation networks where OECMs support ecological connectivity. Both are governed and managed in ways that contribute to the *in situ*¹ conservation of biodiversity by providing long-term biodiversity conservation benefits (BCBs). Where MPAs have a primary conservation objective, OECMs provide BCBs, regardless of the primary objective for which the area-based measure was initially established.

Recognition of OECMs as a category of marine conservation tools occurred in 2010, at the 10th meeting of the Conference of the Parties to the United Nations Convention on Biological Diversity (CBD) in Aichi, Japan. As a signatory to the CBD, Canada agreed to meet 20 global biodiversity targets by 2020, as articulated in the CBD's *Strategic Plan for Biodiversity, 2011-2020*. Aichi Target 11 states:

By 2020, at least 17 per cent of terrestrial and inland water areas and 10 per cent of coastal and marine areas, especially areas of particular importance to biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and **other effective area-based conservation measures**, and integrated into the wider landscape and seascape.

Aichi Target 11 included OECMs as a way for Parties to achieve 10 per cent marine and coastal protection but did not provide a definition or guidance on how Parties could recognize OECMs. At that time (in 2010), the CBD also did not indicate how OECMs differed from MPAs.

¹ *In situ* is an important concept in the CBD definition of an OECM as it reflects the importance of conserving the natural habitats and ecosystems necessary for biodiversity conservation.

In 2016, to advance Canada's progress toward meeting the 10 per cent marine conservation target by 2020, the Canadian Science Advisory Secretariat (CSAS) provided science advice² on a suite of characteristics that could be used to determine which marine area-based measures would be likely to provide BCBs, thereby allowing them to be recognized as OECMs. Fisheries and Oceans Canada (DFO) followed the CSAS science advice in developing its 2016 *Operational Guidance for Identifying OECMs in Canada's Marine Environment*. This interim Guidance was used to identify OECMs from an inventory of more than 1,000 fisheries-area closures. Approximately 30 of these existing closures were recognized as marine refuges by the Minister of Fisheries, Oceans and the Canadian Coast Guard due to their OECM status under the interim Guidance.

In 2018, CBD Parties adopted *Decision 14/8 Protected areas and other effective area-based conservation measures*. This decision contained an OECM definition and voluntary guidance on how to recognize OECMs, both agreed to by the Parties to the CBD. The CBD's definition³ contains six interrelated concepts (in bold) that are meant to apply to both terrestrial/freshwater and marine other effective area-based conservation measures (OECMs):

A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values.

Having already developed interim guidance on OECMs, the Government of Canada was uniquely positioned to assist in developing this CBD definition and voluntary guidance.

By 2019, additional new fisheries-area closures had been established, met the requirements under the interim Guidance, and were recognized as marine refuges. By the end of the Aichi Targets decade (December 2020), the total marine territory protected by DFO's marine refuges was nearly 5 per cent of the 13.9 per cent national marine conservation achievement.

2 Guidance on identifying "Other Effective Area-Based Conservation Measures" in Canadian Coastal and Marine Waters. Science Advisory Report 2016/002.
https://www.dfo-mpo.gc.ca/csas-sccs/Publications/SAR-AS/2016/2016_002-eng.html

3 The table in Annex 3 presents the CBD definition with an explanation of its application in the Canadian marine context.



2 PURPOSE

A marine OECM is a policy-based status granted to an area-based measure established in law by an appropriate jurisdiction in the Pacific, Arctic, or Atlantic⁴ ocean, that meets the science-based criteria and applies the principles outlined in this Guidance. The purpose of this Guidance is to provide a science-based, domestic operational policy framework, including supporting guiding principles and assessment criteria, for recognizing marine OECMs.

This Guidance updates and replaces the 2016 interim Guidance, *Operational Guidance for Identifying OECMs in Canada's Marine Environment*. In doing so, it:

1. translates the international 2018 OECM definition and voluntary guidance⁵, developed through the CBD and accepted by Canada, into an accessible and clear document for use by OECM practitioners in their collaboration and engagement with partners and stakeholders
2. reflects the Canadian context, including:
 - current policies and practices⁶ in marine conservation, such as the Government of Canada's 2019 protection standard⁷ for marine OECMs, and
 - the future possibility of new types of marine OECMs
3. sets out a consistent approach to recognizing federal marine OECMs that continues alignment with the 2016 CSAS science advice on marine OECMs, as described in Annex 1.



Note!

This document does not provide guidance on establishing area-based measures that could then be considered for OECM status. Every jurisdiction will have its own laws for establishing these measures, and depending on the requirements and objectives for the area, such measures may or may not meet all the criteria to be recognized as a marine OECM. ***This Guidance comes into play only after an area-based measure is in place.***

⁴ Including in the Gulf of St. Lawrence, St. Lawrence Estuary and the Saguenay Fjord.

⁵ CBD (2018). Voluntary guidance on the integration of protected areas and other effective area-based conservation measures into wider land- and seascapes and mainstreaming across sectors to contribute, inter alia, to the Sustainable Development Goals. <https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf>

⁶ This Guidance follows Government of Canada policy relating to the application of precaution in science-based decision making (2003), the Canadian Biodiversity Strategy (1995), and the Government of Canada's various instructions on regulatory development. This Guidance considers the International Union for the Conservation of Nature's (IUCN) Guidelines on the application of the CBD OECM definition.

⁷ Protection Standards to better conserve our oceans:
<https://www.dfo-mpo.gc.ca/oceans/mpa-zpm/standards-normes-eng.html>

2.1 Context for practitioners

This Guidance cannot envision every possible scenario in which an OECM may be proposed or recognized. As a result, this Guidance is not prescriptive as to methodologies developed for applying the criteria when considering a candidate OECM. This document may be reviewed and amended over time to better address particular scenarios and incorporate lessons learned during implementation.

Operational guidance will follow on a range of topics that are outside the scope of this document to guide practitioners following the recognition of an OECM. This operational guidance may include further considerations for area-based measures as potential OECMs, as well as approaches for monitoring and management to evaluate ongoing OECM effectiveness.



What is a 'candidate OECM'?

A candidate OECM is an area in marine waters established by a jurisdiction using its legal authorities that may be assessed according to the criteria in this Guidance in order to be recognized as an OECM. For example, DFO establishes fisheries-area closures using authorities under the *Fisheries Act*. A number of these closures were assessed to determine whether they met the criteria of this Guidance. Those that did, became OECMs, referred to as marine refuges.

All OECMs are area-based measures before being recognized as an OECM.



3 KEY CONCEPTS

This chapter provides information on the OECM definition and its inherent concepts that will enable the reader to understand the guiding principles and how to use the criteria when assessing candidate OECMs for recognition.

Below are the four key concepts derived from the CBD definition that are foundational to this Guidance: BCBs, effectively avoiding or mitigating risks to BCBs, relevant governing authorities (RGAs), and the OECM governance and management system.

3.1 Key Concept #1: Biodiversity conservation benefits (BCBs)

BCBs are the defining concept in this Guidance and are the means by which OECMs contribute to the *in situ* conservation of biodiversity.

The purpose of an OECM is to protect marine biodiversity through the provision of long-term BCBs.

This concept reflects the focus of the CBD Guidance on biodiversity outcomes, and is also aligned with the 2016 CSAS document, *Guidance on Identifying “Other Effective Area-Based Conservation Measures” in Canadian Coastal and Marine Waters*.

A BCB is the net positive change in biodiversity or prevention of its loss, resulting from the governance decisions and management actions within an area.⁸

BCBs are most likely to be *directly provided* when an OECM has a stated biodiversity conservation objective designed to protect species, habitats, or other components of the OECM’s ecosystem. *Indirect BCBs* may be provided by OECMs that do not have explicit biodiversity conservation objectives. For example, fisheries-area closures may be established to protect coral and sponge concentrations in areas identified through DFO’s *Policy for Managing the Impacts of Fishing on Sensitive Benthic Areas*. These fisheries-area closures may provide indirect benefits for the species that use this habitat, as well as direct BCBs to the coral and sponge concentrations themselves.



Note!

Generally speaking, the provision of BCBs in an OECM is analogous to meeting conservation objectives in an MPA – recognizing that MPAs can provide BCBs and OECMs can have conservation objectives.

⁸ The term BCB and its definition are consistent with the 2016 CSAS science advice and the CBD’s OECM definition.

For OECMs that are designed for non-biodiversity reasons (e.g. protection of a cultural site such as a shipwreck), BCBs may *indirectly result* from governance decisions and management actions.

Criterion B2 (section 5.2) sets minimum requirements for the number and type of BCBs that must be present in an OECM. Criteria B3 and E2 (chapter 6) provide further instructions.

3.2 Key Concept #2: Effectively avoiding or mitigating risks to BCBs

On April 25, 2019, in response to recommendations from the National Advisory Panel on Marine Protected Area Standards, the Government of Canada announced a new protection standard for federal OECMs, including marine refuges. This standard requires that:

Existing or foreseeable activities in federal marine OECMs will continue to be assessed on a case-by-case basis to ensure that the risks to the BCBs have been avoided or mitigated effectively.

Criterion E1, described in section 6.1.5, provides the basis for implementing this standard in the Guidance.

3.3 Key Concept #3: Lead relevant governing authority (RGA)

OECM recognition and implementation of its governance and management system are led by a “lead relevant governing authority” (lead RGA).

The lead RGA is the one with the jurisdiction and laws governing the achievement of the primary objective for which the area-based measure being recognized as an OECM is established. The lead RGA has the authority to prohibit, limit, or allow activity(ies), as well as to manage and enforce these governance decisions.

Note!

The Minister of the lead RGA decides whether to recognize an existing area-based measure as an OECM. The Minister may also make key governance decisions, according to the laws which that Minister uses in the OECM. A decision to remove OECM status from an area, following failure to meet the criteria despite best efforts, would also be made by the Minister.

In some places, there may be more than one RGA with the jurisdiction and laws required to prohibit, limit, or allow activities. The lead and other RGAs apply their own legal framework(s) when determining which activities may take place inside an OECM and which activities are prohibited.

In meeting the criteria, the lead RGA must, among other responsibilities:

- lead the screening of candidate OECMs,
- coordinate ongoing governance and management of the OECM with other RGAs operating in the area, according to the risks posed by existing or foreseeable activities governed by those authorities,
- ensure that BCBs are existing or anticipated following achievement of OECM status,
- intend that the OECM remain in place for the long term (i.e. with no end date),
- involve rights holders and stakeholders to ensure an inclusive and transparent process,
- ensure the OECM meets all the criteria contained in this Guidance, and
- report the OECM through Environment and Climate Change Canada's Canadian Protected and Conserved Areas Database (CPCAD).⁹

Once a lead RGA recognizes an area-based measure as an OECM, that RGA is responsible for ensuring that the OECM's purpose is achieved by protecting biodiversity through the provision of long-term BCBs.

Further guidance for the lead RGA is provided under each criterion.

Section 4.4 provides information on how Indigenous governments may be RGAs.

3.4 Key Concept #4: OECM governance and management system

An OECM typically achieves its status through the combined use of laws and non-legal tools. In cases where there is more than one RGA present in an area, an effective and adaptive governance and management system is needed to coordinate efforts to ensure that the risks posed to BCBs are avoided or mitigated effectively. This result is achieved by the totality of both governance decisions and management actions.

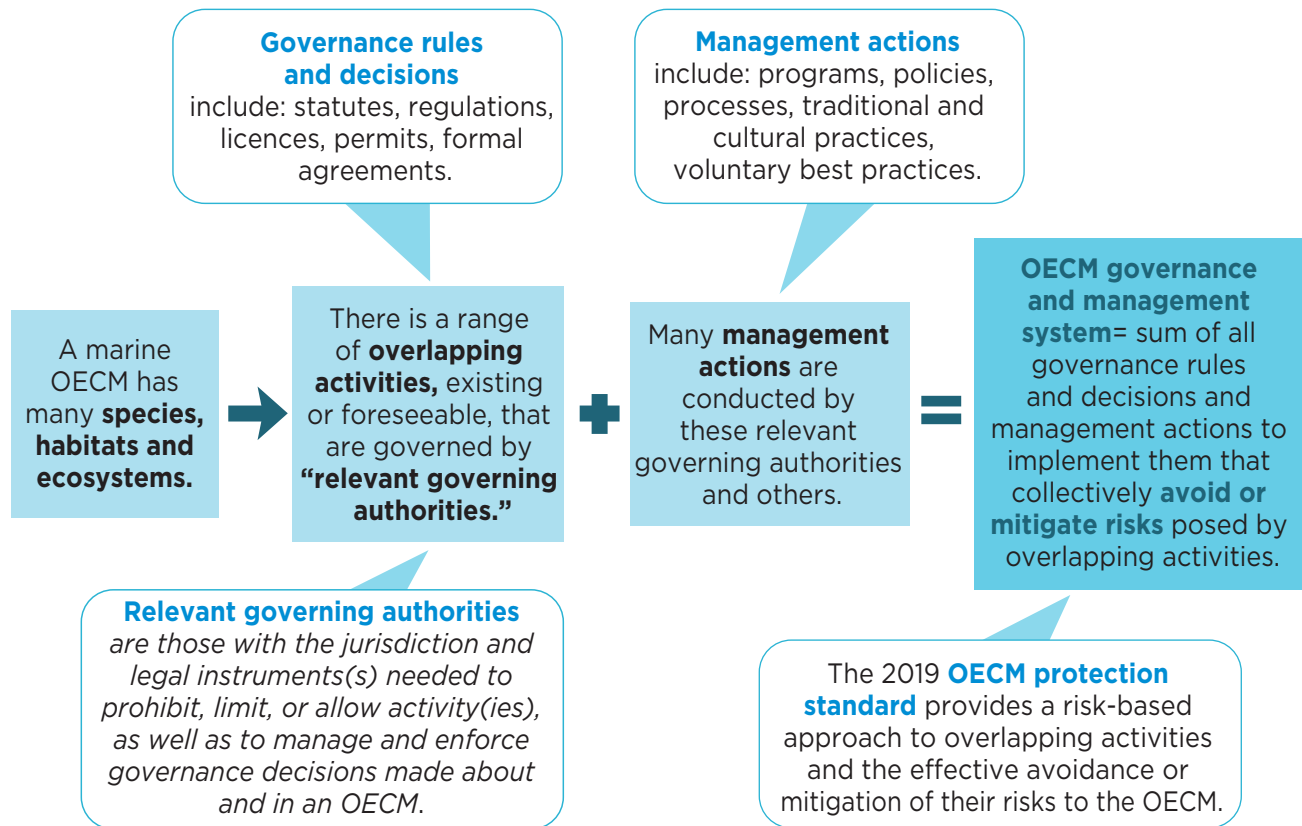
⁹ Canadian Protected and Conserved Areas Database: <https://www.canada.ca/en/environment-climate-change/services/national-wildlife-areas/protected-conserved-areas-database.html>

Figure 1: OECM governance and management system

An area recognized as a OECM provides **biodiversity conservation benefits** which at a minimum include:

1. a benefit for an important species, AND
2. a benefit for an important habitat, AND
3. an additional benefit.

This figure shows how this goal is achieved through the OECM's governance and management system.



OECM governance comprises all the rules or decisions made by RGAs, each with jurisdiction and associated legal instruments (e.g. regulations, closures, licences, permits) that co-exist in a given OECM to prohibit, limit, allow, or manage activities. These rules and decisions may be adapted over time.

OECM management comprises the combination of actions, undertaken by RGAs and their partners, that co-exist within a given OECM. These authorities may work together informally or through more formalized collaborative arrangements and agreements. The management actions may be adapted over time and can include one or more of the following: compliance and enforcement programs, implementation policies, monitoring processes and collaborative agreements, and traditional and cultural practices.

Once an area is recognized as an OECM, the lead RGA continues its lead coordination role with other RGAs as they continue to use their own laws and other tools. The nature of risks to the BCBs, examined on a case-by-case basis, will determine the design of this coordination (i.e. the management and governance system) among RGAs, ensuring that their measure(s) continue to provide the OECM's BCBs over the long term.

There may be cases where only one RGA is present in an area (i.e. the lead RGA). In such cases, adaptive governance and management would be conducted by that RGA to ensure that the risks posed to BCBs are avoided or mitigated effectively.

Box 1: Comparing Government of Canada MPAs and OECMs

MPAs and OECMs are similar in that they are both categories of area-based measures and both contribute to biodiversity conservation by prohibiting, or otherwise managing, human activities. While both are key components of conservation network development, each may also function outside of such networks.

In Canada, there are key distinctions between MPAs and OECMs:

- 1. Government of Canada protection standards for MPAs and OECMs:** Following the protection standards announced by the Government of Canada in 2019, all new federal MPAs will prohibit oil and gas exploration and exploitation, mining, dumping, and bottom trawling. In addition to prohibiting these four categories of activities, additional activities may be prohibited or allowed to occur based on the risks they pose to achieving the MPA's conservation objectives. By contrast, under the OECM protection standard, all existing and foreseeable activities in an OECM are assessed on a case-by-case basis to ensure that the risks they pose to the BCBs are effectively avoided or mitigated. This OECM standard helps to ensure that the OECM provides long-term BCBs.
- 2. Purpose of an MPA or an OECM:** The prohibitions or management actions specified for an MPA are based on its stated conservation objectives. By contrast, OECMs may initially be established for a variety of reasons but are managed in ways that provide BCBs over the long term which leads to their OECM status. BCBs may either be a direct result of the OECM's area-based measures, or an indirect benefit provided by an area-based measure established for another purpose. For example, a site that is established to protect a shipwreck for its historical and cultural value may provide indirect BCBs and therefore may be recognized as an OECM under this Guidance. While OECMs must meet this Guidance, in some cases they may also need to meet other policies or guidance relevant to their original objective.
- 3. Establishing an MPA or recognizing an OECM:** An MPA is established and its status is always achieved using a single MPA law (i.e. the Act and its regulations or schedule). By contrast, an OECM's status is a policy and science-based status granted to an area-based measure, established by law by a lead RGA, that meets the criteria in this Guidance.
 - For example, fisheries-area closures are established under the *Fisheries Act* by the Minister of Fisheries, Oceans and the Canadian Coast Guard. Subsequently, OECM (marine refuge) status is granted to a given fisheries-area closure as the result of assessment under this Guidance. Annex 4 illustrates the process whereby a fisheries-area closure becomes a marine refuge.

Also by contrast to an MPA, additional laws and other tools would typically be used by RGAs and others to achieve and maintain OECM status. This combination of laws and non-legal tools to govern and manage the risks that existing and foreseeable activities pose to the long-term provision of BCBs, comprise the OECM governance and management system (see section 3.4).



4 SCOPE

This chapter sets the parameters for the Guidance.

4.1 Where must this Guidance be applied?

This Guidance *must* be applied to all OECMs recognized currently or to be recognized in the marine environment by any federal department or agency.

In order to be recognized as an OECM, the candidate area must (within the proposed boundaries):

- meet the CBD definition as presented through the key concepts in chapter 3,
- align with the 10 guiding principles presented in section 5.1, and
- meet all criteria presented in section 5.2 and chapter 6.

4.2 Who else may use this Guidance?

This Guidance *may* be applied by other RGAs within their jurisdictions and using their legal instruments to pursue OECM recognition.

Additionally, anyone can use the preliminary screening tool in Annex 2 to propose a marine area to the lead RGA for its consideration and possible full screening against all criteria in this Guidance.

4.3 What types of OECMs are possible?

OECMs could potentially include a variety of area types established in the marine environment. Examples of areas that could be recognized as an OECM may include, but are not limited to:

- protected historic sites, such as shipwrecks, that conserve the surrounding marine environment,
- application of a *Species at Risk Act* (SARA) critical habitat prohibition by ministerial order,
- fisheries-area closures,
- marine mammal management areas,
- Indigenous-led protection or conservation of marine areas, and
- sacred natural sites or important ecological components with high biodiversity value that may be conserved via a long-term area-based measure.

Box 2: Jurisdiction in Canada's maritime zones¹⁰

Federal government:

- The federal government has jurisdiction over the water column from the baseline¹¹ (e.g. generally the low-water mark) to the 200-mile limit of the Exclusive Economic Zone (EEZ) and has jurisdiction over the seabed from the baseline to the edge of the continental shelf.
- On the seaward side of this baseline, the RGA would be a department or agency within the federal government.
- The federal government has jurisdiction over certain activities regardless of where they take place. Shipping, navigation, and aquatic environmental protection are examples of such activities. Federal and provincial governments may also agree to manage activities jointly.

Provincial and territorial governments:

- Marine areas generally considered to be within provincial or territorial jurisdiction are the following although some exceptions may occur (e.g. in the Estuary and Gulf of St. Lawrence):
 - areas of the foreshore (i.e. the intertidal zone between the low-water mark and the high-water mark), and
 - marine waters, such as bays, so closely associated with the land that they are considered to be almost landlocked.

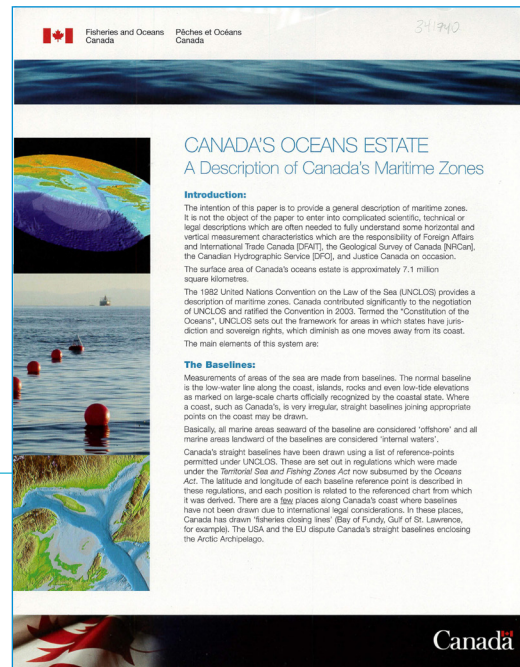
The federal and provincial governments jointly manage resources under the Canada-Newfoundland and Labrador and Canada-Nova Scotia Offshore Petroleum Boards.

Indigenous governments

- Indigenous governments may have rights over hunting, fishing and land usage, as per treaties and self-government agreements.

Local governments

- Local governments (e.g. regional or municipal) plan and regulate land use within their respective jurisdictions which may extend over nearshore areas (e.g. for construction of docks and marinas).



¹⁰ For more information on Canada's maritime zones:
https://publications.gc.ca/collections/collection_2012/mpo-dfo/Fs23-571-2011-eng.pdf

¹¹ For more information on baselines:
<https://www.dfo-mpo.gc.ca/science/hydrography-hydrographie/canada-territorial-waters-eng.html>

4.4 How do OECMs support Indigenous governments and communities?

4.4.1 OECMs support Indigenous goals for marine conservation

Section 35 of the *Constitution Act*, 1982, recognizes and affirms existing Aboriginal and treaty rights. Courts have determined that these rights include a right to fish for food, social, and ceremonial purposes (FSC) and may include a right to fish commercially. OECMs must recognize and respect these constitutionally protected Aboriginal and treaty rights.

The Supreme Court decision in *R. v. Sparrow* (1990) held that once conservation objectives have been met and where there is an Aboriginal right to fish for FSC purposes, Indigenous groups have priority over other uses of the resource. Any infringement on the right to harvest and sell fish to obtain a moderate livelihood would need to be justified in accordance with the *Sparrow* decision.

Many treaty and self-government agreements specify circumstances under which protected and conserved areas (such as OECMs) may be recognized, governed, and managed. OECM recognition, governance, and management must respect these specifications which may vary according to each RGA's legal framework.

It is intended that OECMs support reconciliation with Indigenous peoples in a manner consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In this way, OECMs may provide opportunities for meeting Indigenous objectives and aspirations, and respect areas that have spiritual, cultural, or historical importance.

4.4.2 Indigenous governments as RGAs under this Guidance

An Indigenous government may be a lead RGA where it holds the jurisdiction, as set out in treaties and self-government agreements, and has the authority to make laws and enforce decisions about what activities (e.g. FSC) may occur and how they occur in an OECM. An Indigenous RGA meeting

Box 3: OECMs and the protection of culturally important areas and resources

A federal department or agency could support the conservation of areas and resources that are culturally important to Indigenous peoples through recognized OECMs. This federal support may be provided either as the lead RGA or through partnership with Indigenous governments in the OECM's governance and in collaboration with Indigenous communities in OECM management.

For example, there may be cases where an Indigenous government or community wishes to protect an important ecological or cultural component and seeks collaboration with a federal department or agency to ensure its protection through establishment of an area-based measure that may be recognized as an OECM.

In this scenario, the proposed OECM would need to meet all the criteria in this Guidance, including managing existing and foreseeable activities, to ensure that risks to the BCBs provided by the OECM are effectively avoided or mitigated.



Reminder!

Section 3.3 lays out the responsibilities of the lead RGA. All decisions made by RGAs, taken together, must result in the effective avoidance or mitigation of all risks to the OECM's BCBs in order to obtain OECM status and maintain that status over the long term.

these requirements may lead or co-lead an OECM with another RGA. Indigenous governments may also participate in an OECM's governance and management system where another RGA has the lead.

4.4.3 Participation by Indigenous communities in OECM recognition and management

OECM processes provide equitable opportunities for participation by RGAs, rights holders, and stakeholders.

Various collaboration or governance arrangements may be designed to support participation by Indigenous communities and by Indigenous governments that are RGAs under this Guidance. These arrangements may be designed on a case-by-case basis to support participation in OECM processes.

Users of this Guidance should consult their departments and agencies to obtain and follow any available guidance on collaborating with Indigenous communities and supporting Indigenous participation in processes.



Did you know?

Several sections in the *Fisheries Act* provide direction on the inclusion of Indigenous knowledge in decision making which would apply to fisheries-area closures established under this Act and further recognized as marine refuges.

These provisions relate to, among others:

- consideration of Indigenous knowledge when making decisions under the Act, and
- how to protect the confidentiality of Indigenous knowledge.

4.4.4 The importance of Indigenous knowledge in OECM decision making

Complementary perspectives strengthen OECM recognition, management, and governance. Indigenous knowledge can offer unique insights and perspectives on the OECM's BCBs and ways to address risks to them.

Although there is no universal definition for Indigenous knowledge, information gathered from Indigenous knowledge-holders should be integrated with science, community and historical knowledge. How Indigenous information is obtained and its composition, use, and storage should be determined by Indigenous peoples themselves. Indigenous knowledge received to support OECM decision making should be conveyed in its original form to protect its integrity.

Users of this Guidance should consult the relevant Indigenous governments and organizations to obtain their guidance on the inclusion of Indigenous knowledge in OECM decision making. In addition, there are several guidance documents to follow that are developed or under development by federal departments and agencies that provide a range of mandatory and suggested approaches to including Indigenous knowledge in decision making.



5 OECM FRAMEWORK

5.1 Guiding principles

The 10 guiding principles in this Framework reflect various elements of the CBD voluntary guidance that are more abstract and do not translate into measurable assessment criteria.

These principles promote national consistency in important aspects of the Guidance, such as recognition and respect for Aboriginal and treaty rights, fairness of application, and transparency. The guiding principles interpret the CBD elements in Canada's marine context. These principles are ambitious, complex and interrelated, and should continue to be applied over time within the unique context of each OECM. Different RGAs may tailor the application of these principles to reflect their particular OECM contexts.

Table 1 shows how the CBD voluntary Guidance is integrated into the 10 Canadian guiding principles and applied to candidate OECMs, as well as to OECM governance and management over the long term.

Table 1: OECM guiding principles

1	OECMs are complementary to MPAs.	<ul style="list-style-type: none">• The flexible range of BCBs provided by OECMs is complementary to the conservation objectives met by MPAs.• Like MPAs, OECMs provide robust protection:<ul style="list-style-type: none">• The area-based measures recognized as OECMs and MPAs are both established and managed under law.• They are both effective in avoiding or mitigating risks from human activities.
2	OECMs contribute to conservation networks.	<ul style="list-style-type: none">• OECMs are important area-based conservation tools that may support the effectiveness of other network tools, including supporting MPA effectiveness.• Conversely, OECM effectiveness may be supported by other tools in a network.• OECMs can enhance connectivity between species and habitats across the network's ecosystems and may provide links to other networks.

Table 1: OECM guiding principles (*continued*)

3	OECM decision making recognizes, respects, and upholds constitutionally protected Aboriginal and treaty rights.	<ul style="list-style-type: none"> • OECM decision making respects UNDRIP which received Royal Assent on June 21, 2021, and came into force in Canada. This Act provides a roadmap to work with Indigenous peoples to implement the Declaration. • OECM decision making is conducted in a manner consistent with the Crown's obligations regarding modern treaties and land-claims agreements. • OECM decision making also takes into account treaty rights to fish in pursuit of a moderate livelihood. • OECM decision making respects the Supreme Court decision in <i>R. v. Sparrow</i> (1990) which held that once conservation objectives have been met and where there is an Aboriginal right to fish for FSC purposes, Indigenous groups have priority over other uses of the resource. • The impact of an OECM on existing or asserted Aboriginal and treaty rights is determined on a case-by-case basis. Potentially impacted Indigenous communities are consulted, and where appropriate, accommodated, prior to making decisions on OECMs. • OECMs enable and support a range of governance arrangements with Indigenous governments, designed to respond to each OECM's circumstances.
4	OECM decision making recognizes Indigenous and local knowledge and practices.	<ul style="list-style-type: none"> • OECM decision making recognizes the diversity of identities, knowledge, and practices of Indigenous and other communities that are local to an OECM, and others who may have an interest in or affiliation with the area. • Any relevant guidance developed in relation to obtaining, using, protecting, and conveying Indigenous knowledge will be followed. • OECM decision making identifies the role that protecting cultural or historical areas, important to Indigenous peoples and communities that are local to the OECM, may have in providing BCBs.
5	OECM decision making recognizes and takes into account ecological, social, cultural, and economic values.	<ul style="list-style-type: none"> • OECM decision making takes into account all interests that may be affected. This decision making occurs within the context of each OECM and in collaboration with RGAs, rights holders, and stakeholders in the area. • OECMs can be recognized to support a range of objectives, including ecological, social, cultural, and economic as long as BCBs are provided over the long term.
6	OECM decision making uses best-available knowledge and applies the precautionary approach.	<ul style="list-style-type: none"> • To the fullest extent possible, OECM decision making relies on best-available knowledge from a range of sources, including science, Indigenous knowledge, and knowledge provided by stakeholders and others. • When OECM decision making occurs in the absence of full scientific certainty, the precautionary approach is applied in accordance with any requirements set out under the law(s) used by the RGAs, as well as the Government of Canada's (2003) <i>Framework for the Application of Precaution in Science-based Decision Making</i>.¹²

¹² The Government of Canada's 2003 *Framework for the Application of Precaution in Science-based Decision Making* states: "The application of 'precaution,' 'the precautionary principle' or 'the precautionary approach' recognizes that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm."

Table 1: OECM guiding principles (*continued*)

7	OECM decision making ensures transparency and accountability.	<ul style="list-style-type: none"> • OECM decision making is transparent and provides timely information to RGAs, rights holders and stakeholders. Regular meetings, the Internet, and other forms of public communication are routinely used. • OECM decision making is accountable to the RGAs, rights holders, and stakeholders participating in those processes, by providing feedback on how OECM decisions were made and how their values and views were taken into account. • OECM reporting to Parliamentarians and the public reflects transparent information and accountable decision making and includes the results of ongoing assessments of OECM effectiveness.
8	OECM decision making takes into account equity.	<ul style="list-style-type: none"> • Under the CBD voluntary guidance, there are three equally important elements that enable equity: recognition, distribution, and procedure. • As partners in the OECM decision making, RGAs recognize the rights, knowledge, and values of rights holders and stakeholders. Principles 3, 4 and 5 provide further guidance on this CBD element of equity. • While equity in the distribution of costs and benefits is taken into account in OECM decision making, it may not be achievable in all cases as provision of a net conservation benefit is necessary to meet the criteria in this Guidance. <ul style="list-style-type: none"> • Area-based measures which are established and further recognized as OECMs by federal departments and agencies will align with the Government's <i>Cabinet Directive on Regulation</i>, the <i>Policy on Regulatory Development</i> and the <i>Policy on Cost-Benefit Analysis</i> (CBA). If the instrument chosen to recognize the OECM requires a CBA, one will be conducted; however, it may not be required in all cases. • OECM procedures provide opportunities for participation to RGAs, rights holders, and stakeholders that are or may be affected by OECM decision making. Principle 7 provides further guidance on this CBD element of equity. <ul style="list-style-type: none"> • Conflicts that may arise as part of OECM decision making (e.g. disagreement among knowledge sources or different groups holding irreconcilable perspectives) should be resolved on a case-by-case basis, considering the particular context, operating in good faith in the spirit of these principles, and consistent with Canadian law.
9	OECM decision making uses an integrated ecosystem approach.	<ul style="list-style-type: none"> • The complexity and interconnections within marine ecosystems, including the role that human uses play within them, are all taken into account. • The interactions between the OECM and the management area are taken into account during processes (e.g. conservation network development).

Table 1: OECM guiding principles (*continued*)

10	OECM decision making includes evaluation and adaptation.	<ul style="list-style-type: none"> • OECMs are regularly evaluated according to the management review cycle of each site to ensure that all OECMs continue to apply the principles and adhere to the criteria in this Guidance. OECM monitoring supports these evaluations. • Ongoing adjustments to OECM governance and management actions respond to and take into account new information (including, but not limited to, Indigenous knowledge, ecological and socio-economic data, and information about new technologies and climate change), in order to ensure that OECMs continue to provide BCBs over the long term. • Following evaluations and adjustments, if an OECM no longer meets all the criteria in this Guidance and further adaptive steps cannot be taken to re-align it, the site loses its OECM status. However, the site may continue to support other conservation network or sustainable resource-management objectives. • Reporting to Parliamentarians and the public include the results of OECM evaluations.
-----------	---	--

5.2 Criteria

The criteria in this Guidance, the guiding principles, and the CBD's OECM definition work together so that OECMs contribute to the *in situ* conservation of biodiversity to the same degree as MPAs.

Under this Guidance, every OECM recognized by federal authorities must meet all criteria and continue to do so over time in order to achieve and maintain OECM status.

All criteria work together to ensure that OECMs manage risks posed by all existing or foreseeable activities to a standard that provides a net positive change in biodiversity or prevents its loss. Criteria A to D provide the foundation for criterion E. Criterion E is fundamental to how the OECM provides protection that is complementary to an MPA and contributes to *in situ* biodiversity conservation. This criterion describes the interaction between the essential elements already introduced in this Guidance: BCBs, RGAs, OECM governance and management system, effective avoidance or mitigation or risks from all activities, and monitoring.

Table 2 presents a summary of the criteria, all of which are interrelated. Guidance on how to use them is presented in section 6.1.



Reminder!

Transparency (principle 7) is important for ensuring that users of the OECM understand the governance decisions and management actions in the area, and the public understands the importance of the OECM's BCBs.

Table 2: OECM criteria

A. The area-based measure being considered as a candidate OECM is in place for the long term. Its contribution to marine conservation coverage (i.e. meeting marine conservation targets) can only be included once, either as an OECM or as an MPA.

B. The candidate OECM is a spatially defined area and information on its BCBs is collected.

- B1. The boundaries, size, and depth, where necessary, are defined and documented.
- B2. Existing or anticipated BCBs within the candidate OECM's ecosystem are identified and documented. At a minimum, these must include:
 - 1. a benefit for an important species; AND
 - 2. a benefit for an important habitat; AND
 - 3. an additional benefit.
- B3. The governance decisions and management actions in the area that provide the BCBs are identified and documented.
- B4. Information on the ecosystem functions and services in the area is collected and documented.

C. The candidate OECM is governed for the long term by a lead RGA in coordination or co-led with other RGAs.

- C1. The RGAs have the jurisdiction to make and enforce long-term decisions with no end date.
- C2. The RGAs recognize and respect Aboriginal and treaty rights, and consult rights holders.
- C3. The RGAs take into account the views of local communities and stakeholders.
- C4. The governance approach is tailored to meet the candidate OECM's distinct needs and context.

D. The candidate OECM is managed for the long term by a lead RGA in coordination or co-led with other RGAs.

- D1. These authorities undertake long-term management actions that may be adapted, as necessary, over time.
- D2. Rights holders and stakeholders are encouraged to participate in the management actions.

E. The candidate OECM is governed and managed in ways that provide BCBs over the long term.

- E1. The OECM's governance and management system is adaptive and effectively avoids or mitigates risks from existing and foreseeable activities to the BCBs that the OECM provides.
- E2. Monitoring is underway or will take place over time to provide the information to determine the ongoing effectiveness of the governance and management system in providing BCBs.
- E3. The OECM governance and management system continues to take into account ecosystem functions and services and other relevant values as it adapts.



6 RECOGNIZING OECMS

Once the lead RGA, in collaboration with other RGAs (if they exist), has collected and validated all best-available information, it would be used to evaluate whether the candidate area:

- could be **recognized** for its OECM status because an area-based measure has already been established that adheres to the criteria under this Guidance through the existing governance decisions and management actions, or
- could be **established** as an area-based measure (and possibly further recognized as an OECM) through changes to the existing governance decisions and management actions and/or the addition of new measure(s), according to its site-specific context.

The lead RGA must use the following criteria to assess whether the area can be recognized as an OECM. Assessments must include an explanation of tools and methods designed and/or used together with their results to meet each criteria. The guiding principles outlined in section 5.1 are also applied during the assessment process and associated decision making.

The preliminary screening tool provided in Annex 2 supports participation by Canadians, including rights holders and stakeholders, in OECM decision making. It assists those wishing to propose a marine area for consideration. The screening tool is a very simple instrument with five “yes/no” questions that anyone may use to determine whether an area has the potential to be considered. If a proponent finds all five responses in the screening tool to be affirmative, the completed screening tool may be forwarded to the lead RGA for further consideration. A single negative response, however, indicates that the area would not be further considered.

Note!

Areas proposed may or may not already have area-based measures in place. If no such measure exists, one would need to be established in order for the area to be a candidate OECM and potentially recognized as an OECM.

RGAs may also wish to use the preliminary screening tool.

6.1 Guidance on recognizing OECMs against criteria

6.1.1 Criterion A: OECM status

The area-based measure being considered as a candidate OECM is in place for the long term. Its contribution to marine conservation coverage (i.e. meeting marine conservation targets) can only be included once, either as an OECM or as an MPA.	
Intent	Criterion A ensures that area-based measures recognized as OECMs are in place for the long term, and that the OECM status does not contravene the CBD’s OECM definition and the CPCAD reporting requirements.
Guidance	<p>To meet Criterion A, the lead RGA must ensure that:</p> <ol style="list-style-type: none">1. The candidate OECM is recognized for the long term. Area-based measures that are year-round with no end date may be recognized as OECMs even if the measures are subject to regular renewal. The long-term nature of the measure must be demonstrated through legal or regulatory means or through a public commitment. While short-term activities (e.g. research or monitoring) may be allowed in an OECM’s governance and management system, seasonal measures themselves (e.g. seasonal fisheries-area closures) would not be considered as candidate OECMs.2. The area is not already counted as an MPA in the CPCAD.3. There may be some cases where one RGA has recognized the area as an OECM and another has established an MPA within or overlapping the OECM’s boundaries. In such cases, both instruments may co-exist; the overlap may be described, but the area may only be counted once toward marine conservation targets.4. If a lead RGA has recognized an OECM that it later evolves into an MPA, the OECM’s status is removed to accommodate the new MPA status and its contribution to meeting marine conservation targets.5. If a lead RGA evolves an MPA into an OECM, the law establishing the MPA is repealed to accommodate the new OECM status and the OECM’s contribution to meeting marine conservation targets.

6.1.2 Criterion B: OECM boundaries and information

<p>The candidate OECM is a spatially defined area and information on its BCBs is collected.</p> <p>B1. The boundaries, size, and depth, where necessary, are defined and documented.</p> <p>B2. Existing or anticipated BCBs within the candidate OECM’s ecosystem are identified and documented. At a minimum, these must include:</p> <ul style="list-style-type: none"> • a benefit for an important species, AND • a benefit for an important habitat, AND • an additional benefit. <p>B3. The governance decisions and management actions in the area that provide the BCBs are identified and documented.</p> <p>B4. Information on the ecosystem functions and services in the area is collected and documented.</p>	
Intent	Criterion B ensures that the area is defined and comprehensive information is collected to support OECM assessment under Criteria C, D, and E.
Guidance	<p>To meet Criterion B, the lead RGA must ensure to:</p> <p>B1. Accurately map boundaries and clearly and comprehensively document them by identifying and describing:</p> <ul style="list-style-type: none"> • latitude and longitude boundaries, and • the depth to which restrictions extend, where necessary, in cases where there are different activity restrictions by vertical zone. <p>B2. Use best-available knowledge to identify and document:</p> <ul style="list-style-type: none"> • at a minimum, existing or anticipated BCBs (whether <i>direct</i> or <i>indirect</i>) for: <ol style="list-style-type: none"> (1) an important species, AND (2) an important habitat, AND (3) an additional benefit. • the BCBs’ location and ecological importance. <p>The presence of <u>existing</u> BCBs in the candidate OECM would be verified and demonstrated through existing knowledge, including from monitoring activities.</p> <p><u>Anticipated</u> BCBs in a candidate OECM could be identified and documented using best-available knowledge, and the information used to infer that governance decisions and management actions in the area would provide a net positive change in biodiversity or prevent its loss. Anticipated BCBs may take several years after the OECM has been recognized to be verified and documented through monitoring activities.</p> <p>When assessing a candidate OECM against B2, use best-available knowledge and take into account the following to understand the significance and strength of the BCBs:</p> <ul style="list-style-type: none"> • Are there rare, threatened, or endangered species and/or habitats in the proposed area, including those assessed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) or listed under SARA? • Does protecting the habitat provide benefits to numerous species? • What role does the protected species play in the ecosystem and food webs? • Does protecting the habitat or ecosystem support climate change adaptation or mitigation? • Does the area contribute to meeting a conservation network objective, for example, by providing for connectivity between sites?

Guidance <i>(continued)</i>	<p>B3. Collect and document the governance decisions and management actions that provide the BCBs.</p> <p>B4. Collect and document, using best-available knowledge, including scientific, Indigenous, local and community knowledge, where available:</p> <ul style="list-style-type: none"> • ecosystem functions, that may be associated with the BCBs and with the OECM more generally, and • ecosystem services, such as cultural, spiritual, social, economic, and other values associated with the area.
---------------------------------------	--

Box 4: All about BCBs

For more information on BCBs, refer to Section 3.1.

What is a BCB for an important species?

For Criterion B2, an important species is conserved. It may be:

- an ecologically significant species, including keystone species
- a depleted or rare species
- a species of social or cultural importance
- a species that is listed in conservation network objectives

What is a BCB for an important habitat?

For Criterion B2, an important habitat is conserved. It may:

- be unique and/or rare
- support climate change adaptation and mitigation, including carbon sequestration
- provide refuge for species affected by climate change
- have special importance for the life-cycle of a species
- have importance for threatened, endangered or declining species and/or habitat
- be vulnerable, fragile or slow to recover
- have comparatively higher biological productivity or diversity
- be in a highly natural state
- be listed in conservation network objectives

What types of benefits may be provided in addition to (i.e. not including) the BCBs for the important species and for the important habitat listed above?

For Criterion B2, additional benefits could include but are not limited to:

- increases in abundance and biomass of species, age/size composition, spawning stock biomass, spillover and larval supply, increased yield of target species
- increased habitat, community, species, or genetic diversity
- restoration of trophic guilds
- conservation of critical or preferred habitats for target species
- conservation of species and species assemblages
- conservation of areas key to the life cycle of a migratory species (e.g. North Atlantic right whales)

Box 5: Ecosystems functions and services

Ecosystem functions are the natural processes and characteristics (e.g. decomposition, production, nutrient cycling, and fluxes of nutrients and energy) that are critical to an ecosystem's capacity to maintain ecosystem services.

Ecosystem services are natural processes that provide benefits to humanity as a result of well functioning ecosystems. Benefits can be divided into provisioning services (e.g. food and water), regulating services (e.g. climate), and cultural services.

6.1.3 Criterion C: OECM governance

<p>The candidate OECM is governed for the long term by a lead RGA in coordination or co-led with other RGAs.</p> <p>C1. The RGAs have the jurisdiction to make and enforce long-term decisions with no end date.</p> <p>C2. The RGAs recognize and respect Aboriginal and treaty rights, and consult rights holders.</p> <p>C3. The RGAs take into account the views of local communities and stakeholders.</p> <p>C4. The governance approach is tailored to meet the candidate OECM's distinct needs and context.</p>	
Intent	<p>Criterion C ensures that the OECM is governed by authorities with the jurisdiction and legal instruments to make and enforce decisions that provide BCBs over the long term. In doing so, these authorities recognize and respect Aboriginal and treaty rights and UNDRIP, and involve others.</p>
Guidance	<p>To meet Criterion C, the lead RGA and other RGAs present in the area coordinate the use of their laws, as needed, to ensure to:</p> <p>C1. Make and enforce long-term governance decisions to prohibit, limit, or allow activity(ies), including through legal or regulatory means or through obvious long-term intent (e.g. through a public commitment), and provide public information about the decisions. While governance decisions are long term, they may adapt over time to respond to new science and other sources of information, thereby ensuring that the OECM continues to meet the criteria in this Guidance.</p> <p>C2. Recognize and respect Aboriginal and treaty rights when applying their jurisdiction and law, as well as consult rights holders when making governance decisions.</p> <p>C3. Engage local communities and stakeholders in order to take into account their views when making governance decisions.</p> <p>C4. Tailor the governance approach to reflect the candidate OECM's distinct needs and context.</p>

For Criterion C1:


The RGAs will vary depending on jurisdictional considerations, as described in Box 2 of this Guidance.

For Criterion C2:

Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult – March 2011, guides federal departments and agencies in determining when the duty to consult may arise and how it may be fulfilled.

For Criterion C4:

A wide range of governance approaches may be used, ranging from consultations to advisory bodies to formal frameworks or co-governance arrangements and agreements, according to each OECM's distinct needs and context.




Reminder!

This criterion links to the OECM's governance and management system which ensures the OECM's provision of BCBs over the long term. The distinction between governance and management is outlined in Section 3.4.

6.1.4 Criterion D: OECM management


<p>The candidate OECM is managed for the long term by a lead RGA in coordination or co-led with other RGAs.</p> <p>D1. These authorities undertake long-term management actions that may be adapted, as necessary, over time.</p> <p>D2. Rights holders and stakeholders are encouraged to participate in the management actions.</p>	
Intent	<p>Criterion D ensures that the RGAs undertake management actions that, in combination with the governance decisions, provide BCBs over the long term.</p> <p>OECM management is participatory and may support rights holders' and stakeholders' conservation priorities and other values.</p>
Guidance	<p>To meet Criterion D, the lead RGA, in coordination with other RGAs, must ensure to:</p> <p>D1. Design and implement management actions over the long term, in accordance with the governance decisions. While OECM management is long term, management actions may adapt over time to respond to new science and information, ensuring that the OECM continues to meet the criteria in this Guidance.</p> <p>D2. Seek the participation of rights holders and stakeholders in the design and implementation of management actions, where appropriate to the unique context of each OECM.</p> <ul style="list-style-type: none">• Management participation can take a variety of forms, ranging from participating in consultation and engagement sessions to direct actions that implement decisions made by RGAs. A wide variety of management and co-management arrangements are possible.

 **Note!**

If an RGA issues authorizations for monitoring, research, or educational activities, rights holders or stakeholders could participate in these activities.

6.1.5 Criterion E: OECM governance and management provide BCBs and address risks

<p>The candidate OECM is governed and managed in ways that provide BCBs over the long term.</p> <p>E1. The OECM’s governance and management system is adaptive and effectively avoids or mitigates risks from existing and foreseeable activities to the BCBs that the OECM provides.</p> <p>E2. Monitoring is underway or will take place over time to provide the information to determine the ongoing effectiveness of the governance and management system in providing BCBs.</p> <p>E3. The OECM governance and management system continues to take into account ecosystem functions and services and other relevant values as it adapts.</p>	
Intent	<p>Criterion E ensures that the OECM’s governance decisions and management actions provide long-term BCBs (under criterion B) by effectively avoiding or mitigating risks from existing or foreseeable activities in the area. It is through continual provision of BCBs over the long term (i.e. with no end date) that the OECM contributes to <i>in situ</i> biodiversity conservation.</p> <p>RGAs may make decisions that allow time-bound activities, such as monitoring, within the long-term OECM where these activities do not pose a risk to the provision of BCBs.</p> <p>Long-term monitoring of the OECM is needed to determine OECM effectiveness in providing BCBs and avoiding or mitigating risks. This monitoring should, where feasible, include changes caused by activities occurring outside of the OECM and impacts caused by climate change. BCBs may take many years to be provided. As a result, decisions and actions may need to adapt over time to respond to new science and information, including data gathered through monitoring as it becomes available.</p> <p>Ecosystem functions and services, such as cultural, spiritual, social, economic, and other relevant values associated with the area continue to inform governance decisions and management actions over time.</p>

 **Note!**

Criterion E builds on the foundation laid by criteria A to D and integrates the essential elements of this Guidance.

For Criterion E1:

This criterion implements the Government of Canada’s 2019 protection standard for OECMs, as described in section 3.2.

All RGAs in the OECM are required to work in ways that, taken together, effectively avoid or mitigate risks to the provision of BCBs over the long term. The nature of the risks will determine the extent of collaboration needed.

The existing or foreseeable activities that may pose a risk to the provision of BCBs will be determined on a case-by-case basis.

Guidance

To meet Criterion E, the lead RGA, in collaboration with all other RGAs, must ensure to:

- E1. Document how the risks to the provision of BCBs from all existing activities are effectively avoided or mitigated through governance decisions and management actions.
- Document how the risks (should they arise) to the provision of BCBs from activities foreseeable within the next decade will be effectively avoided or mitigated through adaptive governance and management.
- An activity may be foreseeable through the review of business plans or other evidence that a proponent is seeking to conduct an activity (e.g. through application for leases or permits).
- E2. Design and implement monitoring over time, and lead periodic review of the OECM's governance and management system.
- Monitoring may not always be in place at the time an OECM is recognized; however where it is in place, it may need to be adapted to monitor for BCBs.
 - For all recognized OECMs, monitoring for BCBs must be planned for and implemented as resources allow.
- E3. Incorporate the information on ecosystem functions and services associated with the area (from criterion B4) into OECM governance and management, including periodic review. Use the information to make adjustments to governance decisions and management actions to enhance these values where feasible, while continuing to ensure the provision of BCBs.



Note!

The *Fisheries Act* is an important tool to support meeting Criterion E1 and implementing the protection standard. Among other important elements, this Act includes the protection of fish and fish habitat and mechanisms to establish fisheries-area closures. Fisheries-area closures that meet the criteria in this Guidance may be granted the status of marine refuges by the Minister of Fisheries, Oceans and the Canadian Guard.



7 REPORTING OECMS

Environment and Climate Change Canada (ECCC) is responsible for reporting all of Canada's conserved area coverage to the CBD. To support this work, ECCC compiles and manages protected area and OECM data through CPCAD, in collaboration with federal, provincial, and territorial jurisdictions. CPCAD data are used for international reporting, as well as for domestic reporting through the Canadian Environmental Sustainability Indicator (CESI) on Conserved Areas.

CPCAD contains data on marine and terrestrial protected areas and OECMs in Canada, as reported by the authorities responsible for recognizing and reporting conserved areas within their jurisdictions. These include the governments of each province and territory, as well as the following federal departments and agencies: Crown-Indigenous Relations and Northern Affairs Canada, ECCC, the Parks Canada Agency, DFO, and the National Capital Commission. OECMs recognized by federal authorities must meet the criteria in this Guidance in order to be reported by federal reporting agencies.

Provinces and territories may also report protected or other conserved areas that are not under their direct control or management if the jurisdiction recognizes these areas as meeting the internationally agreed definitions of protected areas or other effective area-based conservation measures.

Each jurisdiction reports on the sites under its administrative control. Adherence to the voluntary CBD guidance (as interpreted by Parties in a flexible, case-by-case manner such as this Guidance document) is the recommended basis for reporting Canadian OECMs. For all other marine OECMs (e.g. marine components of larger areas that include land or OECMs not within federal jurisdiction), the RGA(s) in the area will coordinate with their corresponding jurisdiction to report their areas.

Box 6: Removal of OECM status

Should a scenario arise where the ability of an OECM to provide BCBs over the long term is in jeopardy, alternative instruments and options should be considered carefully. Where possible, alternatives should be pursued as part of adaptive management to continue effectively avoiding or mitigating risks to the provision of BCBs over the long term.

In cases where alternative governance decisions and management actions are not feasible, the Minister for the lead RGA may revoke the OECM status and remove its contribution to Canada's total reported OECM coverage through CPCAD.

7.1 Terrestrial or freshwater OECMs that support marine conservation

Portions of OECMs that are recognized in terrestrial and/or freshwater areas may extend into the marine environment. These portions may support marine conservation outcomes and provide BCBs; however, they do not need to be assessed separately under this Guidance if they meet national OECM guidance developed under the Pathway to Target 1. These areas may be reported as marine OECMs since the Pathway approach also complies with the CBD Guidance.

Box 7: Pathway to Target 1

Pathway to Target 1 is Canada's initiative to conserve 17 percent of its land and freshwater by 2020 (<https://www.conservation2020canada.ca/home>). OECMs recognized under this process follow the Pathway's OECM accounting and decision support tool (<https://www.conservation2020canada.ca/accounting>).



GLOSSARY

Adaptive management

Adaptive management is an ongoing and iterative process of improving management policies and practices through a cycle of applying new knowledge gained through learning based on monitoring and evaluation, as well as reflecting changes in policies and practices.

Area-Based Measure

Any spatially defined measure implemented to achieve one or more objectives. Not all area-based measures are necessarily MPAs or OECMs, but all MPAs and OECMs are area-based measures.

Biological diversity (Biodiversity)

Biodiversity is the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems. (CBD 1992)

Biodiversity conservation benefit (BCB)

A biodiversity conservation benefit may also be referred to as a biodiversity outcome under the CBD. A BCB is the net positive change in biodiversity or prevention of its loss resulting from the governance decisions and management actions within an area. One or more BCBs can directly result from implementing measures in an area to protect species, habitats, or other components of the ecosystem. Measures implemented for a different purpose may result in indirect BCBs. BCBs contribute to the *in situ* conservation of biodiversity. The term BCB and its definition are consistent with the 2016 CSAS science advice and the CBD's OECM definition.

Candidate OECM

A candidate OECM is an area-based measure established in marine waters by a lead RGA that may be assessed by the lead RGA according to the criteria in this Guidance in order to be recognized as an OECM. Guiding principles in this Guidance also apply to a candidate OECM.

Conserved areas

“Conserved areas” include areas that may satisfy the criteria for “other effective area-based conservation measures.” (IUCN Guidance, 2012, 2019)

Cultural and spiritual values

These include recreational, religious, aesthetic, historic, and social values related to tangible and intangible benefits that nature and natural features have for people of different cultures and societies. (IUCN Guidance, 2012, 2019)

Ecosystem

A dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit. (CBD 1992)

Ecosystem approach

A strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way. (CBD 2004; National Framework for Canada's Network of MPAs, 2011)

Ecosystem functions

An ecosystem function or process is an intrinsic ecosystem characteristic whereby an ecosystem maintains its integrity. Ecosystem functions include decomposition, production, nutrient cycling, and fluxes of nutrients and energy. Ecosystem functions are critical to the proper operation of the ecosystem.

Ecosystem services

Ecosystem services are processes occurring within an ecosystem that provide benefits to humanity. Ecosystem services can be divided into provisioning services, regulating services, and cultural services.

Important habitat

An important habitat is one that has biodiversity conservation value. Important habitats may:

- be unique and/or rare
- support climate change adaptation and mitigation, including carbon sequestration
- provide refuge for species affected by climate change
- have special importance for the life-cycle of a species
- have importance for threatened, endangered or declining species and/or habitat
- be vulnerable, fragile, or slow to recover
- have comparatively higher biological productivity or diversity
- be in a highly natural state
- be listed in conservation network objectives

Important species

Species may be considered important for a variety of resource or cultural reasons.

Important species include those that are:

- ecologically significant, including keystone species
- depleted or rare
- species of social or cultural importance
- listed in conservation network objectives

***In situ* conservation of biodiversity**

The conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings, and in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive characteristics. (CBD; *Canadian Biodiversity Strategy: Canada's Response to the UN CBD*, 1995)

Local

Related to the OECM by proximity, use, or affiliation. In this Guidance, “local” is used in the following ways:

Local communities: communities and/or stakeholders adjacent to (or within) the OECM, or others with an interest in and knowledge of the area.

Local governments: regional or municipal governments adjacent to (or within) the OECM that may be considered as RGAs and may participate in OECM governance and management.

Local knowledge: scientific, Indigenous, or anecdotal information or knowledge specific to the OECM held by communities and stakeholders with an interest in the area.

Locally relevant values: cultural, spiritual, socio-economic elements important and significant to local Indigenous communities, other communities, marine resource users, or others with an interest in the area. These values are often intangible.

Long term

Long term, relative to the establishment of an area-based measure recognized as an OECM as well as OECM governance and management, means that there is obvious intent (e.g. through legal or regulatory means or through a public commitment) to maintain the compliance with this Guidance and therefore OECM status year-round, with no end date.

Marine Protected Area (MPA)

A clearly defined geographical space recognized, dedicated, and managed through legal or other effective means to achieve the long-term conservation of nature with associated ecosystem services and cultural values. (IUCN Guidance, 2012, 2019; National Framework for Canada's Network of MPAs, 2011)

Marine refuge

A marine refuge is one type of OECM. In the Canadian context, it is a fisheries-area closure established under the *Fisheries Act* that meets the criteria in this Guidance and is recognized as an OECM by the Minister of Fisheries, Oceans and the Canadian Coast Guard.

Nature-based solutions (for climate change)

Actions to protect, conserve, restore, sustainably use and manage natural or modified terrestrial, freshwater, coastal and marine ecosystems, which address social, economic and environmental challenges effectively and adaptively, while simultaneously providing human well-being, ecosystem services, and resilience and biodiversity benefits. (UN Environment Assembly of the UN Environment Program, Resolution 5, adopted March 2022)

OECM governance and management system

The OECM governance and management system is the totality of governance rules and decisions (such as statutes, regulations, licences, permits, or formal agreements) and management actions (such as programs, policies, processes, traditional and cultural practices, and voluntary best practices) that co-exist within a given OECM. These decisions and actions prohibit, limit, allow, or manage activity(ies) in order to ensure that risks to the OECM's BCBs posed by those activities are effectively avoided or mitigated.

Other Effective Area-Based Conservation Measure (OECM)

A geographically defined area other than a Protected Area which is governed and managed in ways that achieve positive and sustained long-term outcomes for the *in situ* conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values. (CBD 2018)

Proponent(s)

Anyone proposing a marine area for consideration as either a candidate OECM (where an area-based measure is already in place) or as an area needing a measure to conserve biodiversity (which could then be considered for OECM recognition). Proponents could include federal, provincial or territorial governments; Indigenous governments, communities or individuals; local communities; industry associations, coastal landowners, or any interested stakeholder.

Protected area

A clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values. (IUCN 2008)

Rights holder

In this Guidance, "rights holder" generally refers to Indigenous peoples whose rights are laid out in s.35 of the *Constitution Act, 1982*, and further defined in the *Fisheries Act, 2019* (ss. 2.3, 2.4), and in other federal statutes.

Under the *Canada Petroleum Resources Act*, the *Canada-Newfoundland Atlantic Accord Implementation Act* and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, oil and gas licences may confer some rights to licence holders.

Coastal landowners may possess property rights which may need to be considered according to each candidate OECM's boundary.

Stakeholder

People and organizations who are involved in or affected by an action or policy and can be directly or indirectly included in the decision-making process. Stakeholders may be local [i.e. adjacent to (or within) the OECM] or have an economic, environmental, or social-cultural interest and knowledge of the area without physically residing there.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP is a comprehensive international human rights instrument on the rights of Indigenous peoples around the world. It affirms and sets out a broad range of collective and individual rights that constitute the minimum standards to protect the rights of Indigenous peoples and to contribute to their survival, dignity and well-being.

In Canada, UNDRIP received Royal Assent and came into force on June 21, 2021. This Act provides a roadmap for the Government of Canada and Indigenous peoples to work together to implement the Declaration based on lasting reconciliation, healing, and cooperative relations.

ANNEX 1: Alignment of 2022 Marine OECM Guidance with 2016 CSAS science advice

The 2016 science advice obtained through the Canadian Science Advisory Secretariat (CSAS) process is one of the key foundational elements for this Guidance. The advice notes that a candidate OECM’s contribution to the net positive change in biodiversity or prevention of its loss is likely stronger when there are more species, habitats and other ecosystem features that directly or indirectly benefit from the area-based measure(s) in place.

The advice states that when assessing a candidate OECM’s contribution to biodiversity conservation, first consideration should be given to whether the area has clearly defined boundaries and will be in place for the long term.

Other considerations include:

- the candidate OECM’s management objective, size, and level of protection,
- how risks in adjacent marine areas are managed,
- the degree to which important and diverse habitats are protected within the area, and
- the degree to which OECMs are “connected” to one another (e.g. protecting a species’ feeding habitat in one area, and protecting that same species’ breeding habitat in a different area).

The following comparison identifies the principal ways that this Guidance incorporates the CSAS advice.

CSAS Science Advice (2016)	OECM Guidance (2022)
<p>An OECM must:</p> <ol style="list-style-type: none"> 1. be a well-defined geographic location, and 2. remain in place for the foreseeable future. 	<p>These requirements are found in:</p> <ul style="list-style-type: none"> • Criterion B1: <i>The boundaries, size, and depth, where necessary, are defined and documented.</i> • Criterion A: <i>The area-based measure being considered for OECM recognition is in place for the long term.</i> <p>“Long term” means OECM governance and management demonstrate obvious long-term intent (e.g. through legal or regulatory means or through a public commitment) to maintain compliance with this Guidance and therefore OECM status year-round, with no end date.</p>
<p>BCBs are more likely if important habitats are conserved.</p>	<p>Criterion B2: <i>Existing or anticipated BCBs within the candidate OECM’s ecosystem are identified and documented. At a minimum, these must include:</i></p> <ul style="list-style-type: none"> • <i>a benefit for an important species, AND</i> • <i>a benefit for an important habitat, AND</i> • <i>an additional benefit.</i> <p>These requirements, the term “BCB,” and its definition are consistent with the CSAS advice and with the CBD voluntary guidance’s requirement for biodiversity outcomes.</p>

CSAS Science Advice (2016)	OECM Guidance (2022)
<p>BCBs are most likely when the OECM has a stated biodiversity conservation objective.</p> <p>However, the CSAS advice also recognizes that an OECM with other kinds of objectives can provide BCBs, when the area-based measure is in place for the long term and when its objectives are compatible with providing BCBs.</p>	<p>In order to align with the CBD voluntary guidance's broad requirements for biodiversity outcomes, this Guidance does not explicitly require stated biodiversity conservation objectives. The CBD and this Guidance require that the OECM remain in place, be governed and managed, and provide BCBs over the long term.</p> <ul style="list-style-type: none"> • Criterion C: <i>The candidate OECM is governed for the long term by a lead RGA in coordination or co-led with other RGAs.</i> • Criterion D: <i>The candidate OECM is managed for the long term by a lead RGA in coordination or co-led with other RGAs.</i>
<p>It is important to ensure that existing and foreseeable human activities permitted in the OECM do not undermine the provision of BCBs.</p>	<p>Criterion E1 ensures that the risks from existing and foreseeable activities are effectively avoided or mitigated, in alignment with the CSAS advice and the Government's OECM protection standard.</p> <p>Criterion E1: <i>The OECM's governance and management system is adaptive and effectively avoids or mitigates risks from existing and foreseeable activities to the BCBs that the OECM provides.</i></p>
<p>Two additional factors support the provision of BCBs: 'connectivity' and compatible 'adjacent management practices.'</p>	<p>Three guiding principles recognize these factors:</p> <ul style="list-style-type: none"> • OECMs are complementary to MPAs (principle 1) • OECMs are a tool in conservation network development (principle 2) • OECMs decision making uses an integrated ecosystem approach (principle 9) <p>Considerations related to connectivity and compatible adjacent management practices are also addressed through broader spatial management planning, such as conservation network development.</p>
<p>The CSAS advice recognizes that an OECM that only protects a single habitat type can still produce important BCBs if that habitat type is important. However, the CSAS advice also notes that greater diversity of protected habitats provides a greater increase in the OECM's likelihood of providing BCBs.</p>	<p>Case-by-case assessments of candidate OECMs take into account the diversity of habitats that would benefit from the OECM's governance and management.</p>
<p>Larger OECMs have a greater likelihood of providing BCBs.</p>	<p>Case-by-case assessments of candidate OECMs take into account the possible role of size in providing BCBs.</p>

ANNEX 2: Preliminary screening tool to identify a marine area for further consideration by an RGA

This tool provides a vehicle for proponents to document attributes related to a marine area proposed for further consideration as either a candidate OECM (where an area-based measure is already in place) or as an area needing an area-based measure to be established (which could then be considered for OECM recognition). Proponents are expected to use best-available information and knowledge in answering the five tests. ***The tool does not fulfill the requirement for the detailed assessment needed to determine whether all criteria in this Guidance are met.*** Lead RGAs would be responsible for developing a more detailed assessment tool that reflects the criteria, as well as the jurisdiction and law under which the area-based measure was established.

Tests	Intent	Result	Guidance
1. Is the proposed area available for further consideration? [This test relates to Criterion A.]	This test ensures that areas are not double-counted under CPCAD.	No – no further consideration Yes – continue to test #2	Proponents of an area are required to check the Canadian Protected and Conserved Areas Database (CPCAD) to ensure that the area proposed is not already recognized or reported. Proponents must also indicate whether there is an area-based measure in place in the proposed area and provide a link to the law establishing the measure. If there is no area-based measure in place, proponents may indicate a measure they feel would be appropriate, using best-available knowledge and information regarding the risks to the biodiversity of the area being proposed.
2. Can the proposed area be spatially defined? [This test relates to Criterion B.]	All area-based measures in the marine environment must be able to be mapped accurately to ensure that those in the area understand and respect the protections.	No – no further consideration Yes – continue to test #3	Proponents are required to provide basic boundary information, including latitude, longitude, and approximate size, where possible.

Tests	Intent	Result	Guidance
<p>3. Can information on the area's existing or anticipated BCBs be identified and collected?</p> <p><i>[This test relates to Criterion B and is explained under Key Concept #1.]</i></p>	<p>Proponents must be able to show that there will be a net positive change in biodiversity or prevention of its loss (the outcome) resulting from OECM recognition, or establishment of an area-based measure.</p>	<p>No – no further consideration</p> <p>Yes – continue to test #4</p>	<p>The proponent must be able to show that there is a strong likelihood that the area is already providing or is anticipated to provide, at a minimum:</p> <ul style="list-style-type: none"> • a benefit for an important species, AND • a benefit for an important habitat, AND • an additional benefit. <p>Box 4 contains examples of these benefits.</p> <p>The criteria are built to allow flexibility in how BCBs are identified. This flexibility permits a variety of circumstances, including those in which monitoring results are not yet available, to substantiate whether BCBs are already present in the area or can reasonably be anticipated.</p> <p>Proponents are required to provide a clearly documented rationale for how they determined that the BCBs exist or are anticipated in the proposed area. Information should be based on best-available scientific, Indigenous, local, and community knowledge.</p>
<p>4. Is the lead RGA identified? Are other RGAs (if they exist) also identified?</p> <p><i>[This test relates to Criterion C; Key Concepts 3 and 4.]</i></p>	<p>This test ensures that the appropriate RGAs are correctly identified.</p>	<p>No – no further consideration</p> <p>Yes – continue to test #5</p>	<p>Proponents should review chapter 4 (Scope) for information on how to identify the RGA(s) and determine which is the lead RGA for the area being proposed, using best-available information and knowledge.</p> <p>Proponents should identify all RGAs and explain the rationale for making these determinations.</p>
<p>5. The area is expected to be in place for the long term.</p> <p><i>[This test relates to Criteria A, C and D.]</i></p>	<p>This test reflects the importance of ensuring that OECMs are in place and governed and managed for the long term (i.e. with no end date).</p> <p>Note: While short-term activities (e.g. research or monitoring) may be allowed, seasonal measures themselves (e.g. seasonal fisheries-area closures) would not be considered as candidate OECMs.</p>	<p>No – no further consideration</p> <p>Yes – If all results are “Yes,” the proponent(s) may forward the completed screening tool and any other pertinent information to the RGA in whose jurisdiction the proposed area falls, according to Test 4 and criterion C.</p> <p>If any test results in “No,” then the area cannot be considered further.</p>	<p>Proponents should be able to demonstrate that there is a strong likelihood that the proposed area, if recognized, will be in place, governed, and managed over the long term to ensure provision of BCBs.</p> <p>A range of management or co-management options may be available (depending on jurisdiction and RGA) and could be proposed here.</p> <p>Information should be based on best-available scientific, Indigenous, community, and local knowledge.</p>

ANNEX 3: The 2018 CBD definition applied in a Canadian marine context

The following description outlines how the six elements of the CBD's OECM definition are applied through this Guidance, reflecting a Canadian marine context.

Six elements of the CBD's OECM Definition	Application through this Guidance
<i>A geographically defined area other than a Protected Area ...</i>	<p>The area is <u>not already</u> reported through CPCAD as an MPA. The OECM is described, including by its spatially defined boundaries and size. It may be described by depth, where necessary (e.g. situations in which there are different activity restrictions by vertical zone).</p> <p>Note: There may be some cases where one RGA has recognized the area as an OECM and another has established an MPA within or overlapping the OECM's boundaries. In such cases, both instruments may co-exist; the overlap may be described, and the area may only be counted once toward marine conservation targets.</p>
<i>... which is governed and managed ...</i>	<p>OECM governance and management recognize and respect Aboriginal and treaty rights and consider local communities.</p> <p>OECMs are <i>governed</i> by a lead RGA, in collaboration with other RGAs where each has the jurisdiction and legal instrument(s) needed to prohibit, limit, or allow activity(ies), as well as manage and enforce governance decisions made about and in an OECM. These RGAs implement their governing decisions in ways that ensure an OECM's ongoing performance against the criteria set out in this Guidance.</p> <ul style="list-style-type: none"> • RGAs will vary from area to area, depending on the location of each OECM and legal instrument(s) used. These authorities may include federal, provincial or territorial governments, Indigenous governments with modern treaties or land-claims agreements, as well as local governments (e.g. regional or municipal governments). • It is also possible that there is only one RGA in an area. <p>OECM <i>management</i> includes participation by rights holders and stakeholders.</p> <ul style="list-style-type: none"> • Rights holders and stakeholders contribute to management decisions made by RGAs in a variety of ways. In some cases, specific management arrangements may be developed, including for co-management agreements, or agreements where the OECM, or a portion thereof, falls within the authority of other jurisdictions.
<i>... in ways that achieve positive and sustained long-term outcomes ...</i>	<p>The OECM is designed and managed in ways that provide long-term biodiversity outcomes, or BCBs. These BCBs may be intentional and found in stated conservation objectives, or they may be the indirect result of the management actions taken to meet a different objective, such as the protection of a marine historical site.</p> <p>The OECM provides BCBs over the long term, without an end date. Management and monitoring take place over time to ensure that BCBs continue to be provided.</p>

Six elements of the CBD's OECM Definition	Application through this Guidance
<i>... for the in situ conservation of biodiversity ...</i>	<p>Biodiversity refers to the variability among living organisms from all sources and the ecological complexes of which they are part. This term includes diversity within and between species, habitats, and ecosystems.</p> <p>An OECM contributes to <i>in situ</i> conservation by providing existing or anticipated BCBs. At a minimum, these must include:</p> <ol style="list-style-type: none"> 1. a benefit for an important species, AND 2. a benefit for an important habitat, AND 3. an additional benefit. <p>As detailed through this Guidance, the federal OECM protection standard requires that the risks to the OECM's BCBs from existing or foreseeable activities are effectively avoided or mitigated. This broad, case-by-case approach to all activities ensures that BCBs are provided, thereby strengthening the OECM's contribution to <i>in situ</i> conservation. This protection standard is applied under Criterion E1.</p>
<i>... with associated ecosystem functions and services ...</i>	<p>Ecosystem functions and services are important contributors to an OECM's biodiversity.</p> <p>To the extent possible, ecosystem functions and services are taken into account when governing and managing an OECM, based on best-available scientific, Indigenous, local, and community knowledge. Ecosystem functions and services are also taken into account when making adjustments to governance decisions and management actions to enhance these values where feasible, while ensuring the continuing provision of BCBs and addressing risks.</p>
<i>... and where applicable, cultural, spiritual, socio-economic, and other locally relevant values.</i>	<p>Other locally relevant values (e.g. cultural, spiritual, socio-economic, or others) are taken into account to the extent possible and where applicable, in recognizing, governing, and managing OECMs.</p> <p>These values are identified in collaboration with rights holders and stakeholders.</p>

ANNEX 4: Disko Fan marine refuge case study

The following case study provides an overview of how the criteria in this Guidance are met by the Disko Fan Conservation Area (DFCA) marine refuge. This OECM occupies an area of 7,485 km² in southern Baffin Bay in Canada's Eastern Arctic, and was recognized as a marine refuge in 2017.

The area now known as the DFCA was originally established as a fisheries-area closure in 1998, via *Fisheries Act* licence conditions and Variation Orders (**Criterion B1**). The fisheries-area closure was designed to minimize impacts on the winter food source and overwintering habitat for narwhal by restricting certain forms of Greenland halibut fishing. After research surveys discovered coral concentrations in the area, DFO closed the area to all Greenland halibut fishing using bottom-contact gear in 2008.

In 2016, the fisheries-area closure was considered for potential OECM status under DFO's 2016 interim OECM criteria, at which time it was determined through a risk assessment that due to its use of bottom-contact gear types, northern shrimp fishing posed a risk to coral concentrations located at shallower depths. As a result, the fisheries-area closure was adjusted in 2017 to include a zone prohibiting northern shrimp fishing, and this zone (which prohibits all forms of bottom-contact fishing) was subsequently recognized by the Minister of Fisheries, Oceans and the Canadian Coast Guard as an OECM, known as the DFCA marine refuge.

The DFCA marine refuge is a fisheries-area closure established to support long-term conservation of narwhal overwintering habitat and winter food source, as well as provide protection for globally unique, high-density bamboo coral (*Keratoisis* sp.) forests (**Criterion A**). There are several anticipated BCBs provided by the DFCA marine refuge, including benefits for the three narwhal stocks that use the area in the winter and various coral concentrations.

Additional benefits are anticipated by promoting habitat complexity and the structural integrity of long-lived species (corals) and other species dependent upon this habitat. Conservation of sensitive benthic areas will support identified species at risk in the region (e.g. wolffish) as well as commercially important species (e.g. Greenland halibut and northern shrimp) and marine mammals which use the structural habitat for various life stages. (**Criterion B2**). The prohibition on bottom-contact gear use within the marine refuge prevents anthropogenic activities that pose a risk to the BCBs (**Criterion B3**).

By minimizing impacts of bottom-contact gear types on narwhal overwintering habitat and food, DFCA helps to support cultural values held by Inuit communities and organizations that rely on Baffin Bay narwhal for subsistence harvest. DFCA also provides ecosystem services by supporting the Greenland halibut and northern shrimp populations. Fishing for these species provides employment and royalty payments for several Nunavut communities (**Criterion B4**).

DFO is the lead RGA managing Canada's fisheries and has jurisdiction over fishing prohibitions in this OECM (**Criterion C1**). In the Eastern Arctic, commercial marine fisheries are managed as described in the *Nunavut Agreement* which sets out a co-management framework for wildlife and resource management within and outside the Nunavut Settlement Area (NSA). For example, the Nunavut Wildlife Management Board (NWMB) makes fisheries management decisions inside the NSA, and provides recommendations for decisions outside the NSA to the Minister of DFO. NWMB decisions and recommendations as accepted by the Minister, are incorporated into relevant Integrated Fisheries Management Plans (**Criteria C1 and C2**). Conservation measures that enhance the sustainability of narwhal stocks, such as DFCA, are also supported by Nunavummiut (**Criterion C3**). DFO worked closely with partners and stakeholders in the development of the DFCA, including through a Working Group established in 2017 under the Eastern Arctic Groundfish Stakeholder Advisory Committee (EAGSAC) (**Criterion C3**).

The DFCA has been evaluated for compliance, science and fishery management objectives, with plans for assessments to inform continued and adaptive management strategies for the long-term (**Criteria D1 and E2**). Stakeholder advisory committee meetings are held to share information, review management measures, and provide recommendations for future management and monitoring needs. Ongoing discussions and joint public outreach projects with DFO and stakeholders allow for further collaboration and promotion of the work accomplished on DFCA, as well as other marine refuges established in Baffin Bay, Davis Strait, and Hatton Basin (established jointly with DFO Newfoundland and Labrador region) (**Criterion D2**).

While it is too early to demonstrate the contributions of the DFCA marine refuge to providing BCBs, governance and management of the marine refuge have been successful in mitigating the primary risk in the region by prohibiting bottom-contact fishing activities within the boundaries of the marine refuge. At the same time, additional management strategies and a continuing review of all commercial and scientific licences within the area are ensuring that existing or foreseeable activities in the area, including vessel and tanker traffic, and research activities, do not pose a risk to the area's BCBs (**Criterion E1 and E2**). DFO is committed to ensuring that the DFCA marine refuge continues to meet domestic and international OECM standards, provide BCBs, and support the ecosystem services and cultural values associated with the aggregations of globally unique corals, sensitive benthic habitat, and narwhal overwintering habitat found within the boundaries of the area (**Criterion E3**).

REFERENCES

- Canadian Protected and Conserved Areas Database (2022).
<https://www.canada.ca/en/environment-climate-change/services/national-wildlife-areas/protected-conserved-areas-database.html>
- Canadian Science Advisory Secretariat (2016). Guidance on identifying “Other Effective Area-Based Conservation Measures” in Canadian coastal and marine waters (Report 2016/002).
https://www.dfo-mpo.gc.ca/csas-sccs/Publications/SAR-AS/2016/2016_002-eng.html
- CBD (2018). Voluntary guidance on the integration of protected areas and other effective area-based conservation measures into wider land- and seascapes and mainstreaming across sectors to contribute, *inter alia*, to the Sustainable Development Goals.
<https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf>
- Fisheries and Oceans Canada (2016). Operational guidance for identifying ‘other effective area-based conservation measures’ in Canada’s marine environment.
<https://waves-vagues.dfo-mpo.gc.ca/Library/4069060x.pdf>
- IUCN (2019). Recognizing and reporting other effective area-based conservation measures. Protected Area Technical Report No 3.
<https://portals.iucn.org/library/sites/library/files/documents/PATRS-003-En.pdf>
- National Advisory Panel on Marine Protected Area Standards (2018). Final Report.
<https://waves-vagues.dfo-mpo.gc.ca/Library/40727191.pdf>

