

FRAMEWORK FOR IDENTIFYING,  
ESTABLISHING, AND MANAGING  
**ECOLOGICALLY  
SIGNIFICANT  
AREAS**



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# 1.0 FRAMEWORK DEVELOPMENT

**T**he *Framework for Identifying, Establishing, and Managing Ecologically Significant Areas* (the Framework) was developed following an engagement process in which concepts were presented on how Ecologically Significant Areas (ESAs) could be identified, established, and managed using ecological criteria and prioritization considerations. The main objective of the Framework is to provide transparency to Indigenous Peoples, provinces and territories, and stakeholders on how Fisheries and Oceans Canada (DFO) proposes to apply the ESA provisions of the *Fisheries Act*.

In early 2022, DFO developed and presented a technical presentation, fact sheet, and questions and answers sheet on the [Talk Fish Habitat](#) platform to engage on ESA concepts. Engagement included a national meeting with several hundred participants, a national meeting with Indigenous groups and several bilateral and multi-lateral meetings with Indigenous groups, several regional meetings, and an online platform with information about ESAs, including surveys that requested feedback on the proposed Framework concepts and on participation in ESA implementation.

In the fall of 2022, DFO published a draft version of this framework for comment by Indigenous Peoples, provinces and territories and stakeholders. This was followed by two national meetings, one for all participants and one for Indigenous-only participants as well as regional meetings. DFO presented the feedback received in early 2022, and invited submissions and comments on its draft framework. All submissions were read, analyzed and considered.

# 2.0 INTRODUCTION

The ESA provisions were added to *Fisheries Act* in 2013 to provide an approach to identify areas of fish habitat that are ecologically important to the sustainability and ongoing productivity of fisheries. The ESA provisions provided limited authority and clarity to establish and protect fish and fish habitat. In 2015, the Prime Minister mandated the Minister of Fisheries, Oceans, and the Canadian Coast Guard to review the 2012 changes to the *Fisheries Act*, including the ESA provisions. As a result, the *Fisheries Act* was updated in 2019 to enhance the regulatory framework for the conservation and protection of fish and fish habitat. The ESA provisions under the *Fisheries Act* were amended to make them clearer, stronger, and easier to implement. ESAs are designated by Governor in Council regulations to support the conservation and protection of fish and fish habitat.

No ESAs are currently established in Canada, but the Department is evaluating ESA case studies to determine if certain areas are suitable for advancement as candidates for establishment in ESA regulations. The purpose of this Framework is to provide national guidance on how ESAs will be identified, established, and managed. The Framework also provides clarity on the role ESAs are intended to play in relation to other spatial conservation and protection tools, and describes how they provide greater conservation and protection compared to other fish and fish habitat protection provisions under the *Fisheries Act*. ESA implementation will adhere to the guiding principles detailed in Appendix 1.

## 2.1 WHAT IS AN ESA?

An ESA is an area-based conservation tool established in regulations with defined geographic boundaries. ESAs may include zones with varying levels of fish and fish habitat protection.

ESAs are a proactive tool that conserve and protect key areas of fish and fish habitat over the long term. Through establishment in regulations, ESAs will provide transparency and certainty on what projects are prohibited and what will be required in order for a non-prohibited project to occur in an ESA. ESA establishment will adhere to the Ecologically Significant Area provisions of *Fisheries Act* (Section 35.2).

The purpose of ESAs is to provide long-term enhanced conservation and protection of key areas for fish and fish habitat that are **highly productive, sensitive, rare, and/or unique** and to ensure effective restoration of these areas when restoration is needed. These ecological criteria (sensitive, highly productive, rare, or unique) are defined in Section 3.0.

ESAs have a high standard for conservation and protection and a low risk tolerance based upon site-specific conservation and protection objectives (CPOs) for each ESA (Section 4.0). The risk tolerance for projects in ESAs will be inherently lower than under the regular fish and fish habitat protection provisions of the *Fisheries Act*. The CPOs, developed with input from Indigenous Peoples, provinces and territories and stakeholders, are referred to in regulation and guide the way that works, undertakings, and activities (hereafter “projects”) in and near water will be regulated in an ESA. Table 1 describes the different categories of projects and how they can be regulated under ESA provisions (*Fisheries Act* s. 35.2).

**Table 1.** Categories of Projects and Requirements in an ESA

Category of projects within an ESA	Characteristics	Requirements for issuance of authorization
<p>Prohibited project or class (<i>Fisheries Act</i> s. 35.2 (10d))</p>	<p>Will not be authorized or otherwise allowable within the ESA.</p> <p>Prohibited projects or classes are those of moderate to high risk that are likely to result in residual impacts (following avoidance and mitigation) that would adversely impact CPOs.</p>	<p>Not applicable. No authorization will be issued for prohibited projects or classes.</p>
<p>Prescribed project or class (<i>Fisheries Act</i> s. 35.2 (10a))</p>	<p>Will always require an application for an ESA-specific authorization under s. 35.2(7) of the <i>Fisheries Act</i>.</p> <p>Prescribed projects or classes will generally be of low risk and less likely to adversely impact CPOs when standard avoidance and mitigations measures are implemented.</p>	<p>The application must include mitigation and avoidance measures so that the proposed project does not adversely impact the ESA's CPOs. DFO will not consider an authorization if the offsetting of negative impacts to fish habitat is required.</p>
<p>Project or class that is neither prohibited nor prescribed under the ESA</p>	<p>Will fall under the standard regulatory review process (i.e., request for review or an application for authorization under paragraphs 34.4(2)(b) and 35(2)(b) of the <i>Fisheries Act</i>), if projects are likely to result in a harmful alteration, disruption, or destruction (HADD) of fish habitat and/or death of fish (DOF) by means other than fishing, and don't adversely impact the ESA's CPOs.</p>	<p>Within an ESA, paragraphs 34.4(2)(b) and 35(2)(b) <i>Fisheries Act</i> authorizations would only be issued if, in the consideration of factors (per s. 34.1 of the <i>Fisheries Act</i>), proposed projects and offsetting are deemed unlikely to adversely impact ESA CPOs.</p>

## 2.2 THE ROLE OF ESAS IN CANADA

ESAs apply in all Canadian waters (marine, estuarine, and freshwater – including riparian zones) and are DFO’s only spatial regulatory tool applicable to freshwater and intertidal areas. The intent of ESAs is to focus on regulating projects and not fishing. If fishing is the primary pressure of concern in an area, other management tools may be considered instead of, or in combination with, an ESA.

ESA provisions can be applied in conjunction with other applicable legislation to provide a stronger approach to conserving and protecting fish and fish habitat for the long-term sustainability of aquatic resources. ESAs can enhance conservation across Canada by complementing other existing conservation and management tools including federal, provincial, or territorial protected areas<sup>1</sup> as well as Indigenous Protected and Conserved Areas, land trusts, and other effective area-based conservation measures (OECMs)<sup>2</sup>. A more detailed comparison of ESAs and other conservation tools is presented in Appendix II.

As signatory to the Convention on Biological Diversity (CBD)<sup>3</sup>, Canada agreed to goals for planning and managing Canada’s lands and waters using an ecosystem approach to support biodiversity conservation and to reduce pressures from cumulative effects. ESAs may contribute to marine, coastal, inland water, and terrestrial (riparian zone) conservation, supporting Canada’s commitment to conserve and protect 30% of lands and waters by 2030 under the Kunming-Montreal Global Biodiversity Framework<sup>4</sup>. ESAs can also provide enhanced protections for aquatic species at risk<sup>5</sup>, contribute to nature-based climate solutions and carbon sink protection (e.g., eelgrass beds, wetlands, vegetation in riparian zones), decrease habitat fragmentation, enhance ecosystem connectivity and support climate change resiliency.

ESAs are intended to provide a stronger level of protection compared to the other fish and fish habitat protection provisions in the *Fisheries Act* (s. 34 - 35):

- ESAs have defined conservation and protection objectives that will be known in advance of a project being proposed, with protective mechanisms clearly written into regulations;
- Low-risk projects that don’t normally require a review by DFO may require a review and an authorization to proceed in an ESA; and,
- Harmful Alteration, Disruption, and Destruction (HADD) and Death of Fish (DOF) are not expected to be compatible with an ESAs CPOs, with the exception of the control of aquatic invasive species per the Aquatic Invasive Species Regulations.


<sup>1</sup> This Framework adopts the 2008 IUCN definition of protected area adopted by Canada: *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*. CBD. 2018. Online: <https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf>

<sup>2</sup> This Framework adopts the 2018 Convention on Biological Diversity (CBD) definition of OECMs adopted by Canada: *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. Online: <https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf>. The Government of Canada is currently developing Marine OECM Guidance that will reflect the CBD OECM definition in a Canadian marine context (e.g., reflecting the [2019 federal marine OECM protection standard](#); continuing to align with the 2016 Canadian Science Advisory Secretariat science advice that underpinned [DFO’s interim 2016 Marine OECM Guidance](#)).

<sup>3</sup> Convention on Biological Diversity (CBD). 2009. Azores scientific criteria and guidance for identifying ecologically or biologically significant marine areas and designing representative networks of marine protected areas in open ocean waters and deep sea habitats. Online: <https://www.cbd.int/doc/meetings/mar/ebaws-2014-01/other/ebaws-2014-01-azores-brochure-en.pdf>.

<sup>4</sup> Convention on Biological Diversity (CBD). 2022. Kunming-Montreal Global Biodiversity Framework. Online: <https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf>

<sup>5</sup> In this Framework, species at risk refers to species listed under the *Species at Risk Act* and species assessed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) as special concern, threatened, or endangered.



# 3.0 ESA ECOLOGICAL CRITERIA

## DEFINITIONS AND CONSIDERATIONS

Photo: Fisheries and Oceans Canada

**ESA** candidates should contain fish or fish habitat that fulfils at least one of the following three ESA ecological criteria: (1) **sensitive**, (2) **highly productive**, and/or (3) **rare** or **unique**.

The definitions for these criteria are based on the definitions used for Ecologically and Biologically Significant Areas (EBSAs)<sup>6,7</sup>. EBSAs are a non-regulatory tool intended to “draw attention to an area that has particularly high ecological or biological significance, to facilitate provision of a greater-than usual degree of risk aversion in management of activities in such areas”<sup>8</sup>. Fish species and habitats of cultural importance to Indigenous Peoples may be considered for ESA establishment when they align with one of the ecological criteria below.

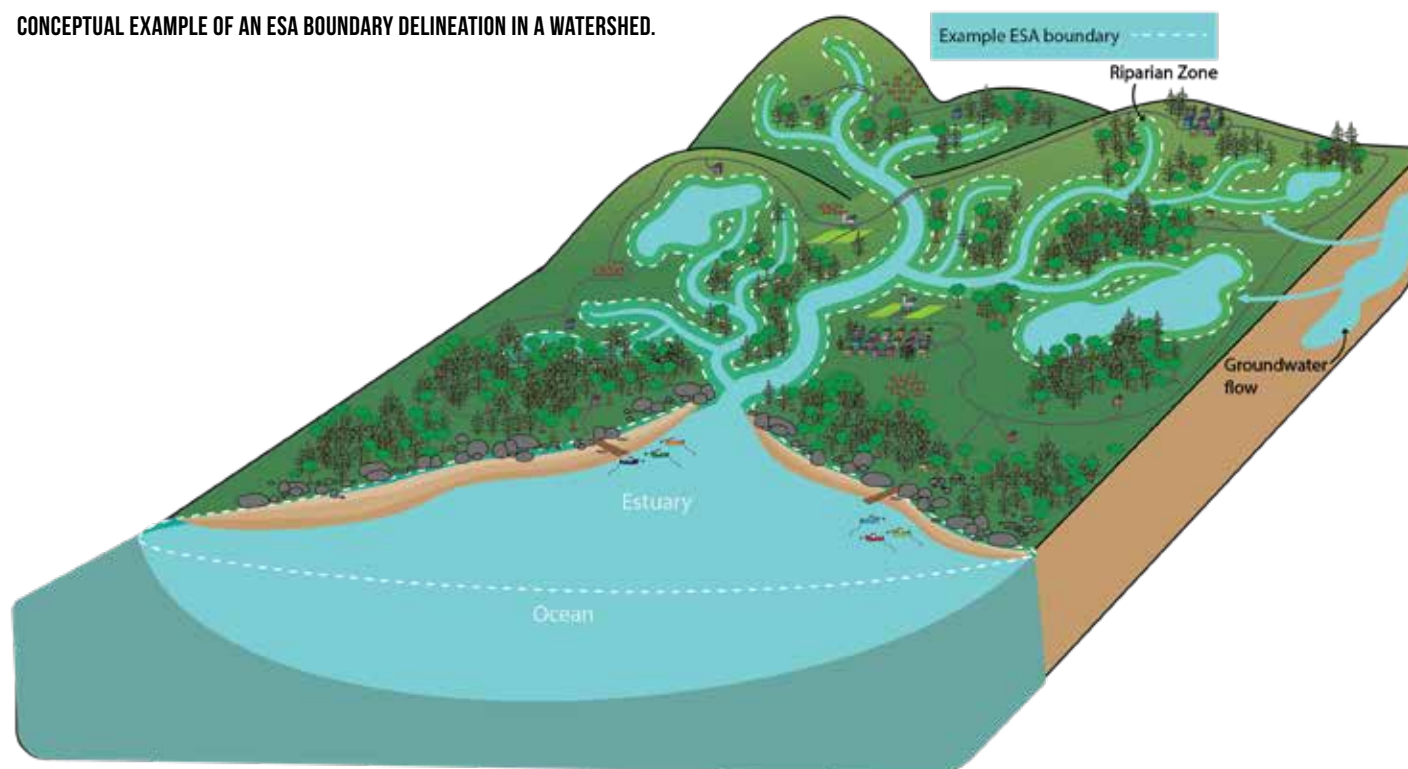
The three ESA ecological criteria are defined as follows:

**1) SENSITIVE: AN AREA CONTAINING FISH AND/OR FISH HABITAT THAT IS EASILY AND ADVERSELY AFFECTED BY HUMAN ACTIVITY OR NATURAL EVENTS:**

- where recovery of the fish species and/or habitat is only achieved after a prolonged period with or without human intervention (e.g. low resilience or recoverability);
- that includes one or more endangered, threatened, special concern fish species or species in decline, or habitat(s) that are important to these species; and/or,
- that has special importance for a life stage of a priority fish species<sup>9</sup>.



## CONCEPTUAL EXAMPLE OF AN ESA BOUNDARY DELINEATION IN A WATERSHED.



### 2) HIGHLY PRODUCTIVE: AN AREA, RELATIVE TO OTHER AREAS IN THE REGION, THAT CONTAINS HIGHER/GREATER:

- aggregations and/or abundance of fish species, populations, communities, habitats, structural features, or ecological processes used for some important function in their life history;
- aquatic biological or genetic diversity; and/or,
- ecosystem functions that supports regional priority fish species.

### 3) RARE OR UNIQUE: AN AREA THAT:

- has unique or rare fish species, populations or communities;
- has unique, rare, or distinct fish habitats or ecosystems, especially limiting habitats for regional priority species;
- has unique or unusual features (e.g., geomorphological, oceanographic, or hydrological) that support fish species, populations or communities;
- has a relatively higher degree of naturalness and supports regional priority species; and/or
- is unique for other ecological reasons that supports one or more fish populations (e.g., a habitat feature important for a life cycle stage located in a critical area).

Additional important ecological considerations for ESA identification include connectivity, naturalness, and climate change resiliency. These considerations may help prioritize ESAs for establishment (Section 5.2.5), inform whether a site is feasible for ESA designation, and assist with boundary delineation.

<sup>6</sup> Fisheries and Oceans Canada (DFO). 2004. Identification of Ecologically and Biologically Significant Areas. DFO Can. Sci. Advis. Sec. Ecosystem Status Rep. 2004/006. <https://waves-vagues.dfo-mpo.gc.ca/Library/314806.pdf>.

<sup>7</sup> Convention on Biological Diversity (CBD). 2009. Azores scientific criteria and guidance for identifying ecologically or biologically significant marine areas and designing representative networks of marine protected areas in open ocean waters and deep sea habitats. <https://www.cbd.int/doc/meetings/mar/ebaws-2014-01/other/ebaws-2014-01-azores-brochure-en.pdf>.

<sup>8</sup> Fisheries and Oceans Canada (DFO). 2004. Identification of Ecologically and Biologically Significant Areas. DFO Can. Sci. Advis. Sec. Ecosystem Status Rep. 2004/006. <https://waves-vagues.dfo-mpo.gc.ca/Library/314806.pdf>.

<sup>9</sup> DFO. 2006. Identification of Ecologically Significant Species and Community Properties. Fisheries and Oceans Canada (DFO) Can. Sci. Advis. Sec. Sci. Advis. Rep. 2006/041. <https://waves-vagues.dfo-mpo.gc.ca/Library/326968.pdf>



# 4.0 CONSERVATION AND PROTECTION OBJECTIVES

**A** CPO is an evidence-based objective, with a desired and measurable state, intended to protect an ecosystem from risks. Conservation priorities, upon which CPOs are ideally based, are the fish species, habitat(s), and/or biophysical features necessary for ecosystem functions that the ESA is intended to protect. CPOs will be written into each ESA regulation, and projects in the ESA that affect fish or fish habitat will be prescribed or prohibited in the ESA regulations, to ensure that CPOs are not adversely impacted. An ESA can have multiple conservation priorities (Section 5.2.3) and multiple CPOs.

CPOs should:

- be developed collaboratively with Indigenous Peoples, provinces and territories, stakeholders, non-governmental organizations and community groups;
- be clear and easy to understand;
- link to the ESA's conservation priorities;
- be written with pressures in mind, so that risk assessments of projects against the objectives can be easily determined;
- consider and, where possible, align other conservation management priorities and objectives (e.g., Indigenous habitat management priorities, fisheries management objectives, species at risk recovery objectives); and,
- be SMART (specific, measurable, achievable, realistic, time-bound), whenever possible.

Initial consideration of CPOs should begin in the ESA Identification phase, while final CPOs will be developed in the ESA Establishment phase, using external feedback and input. ESA regulations could describe high-level CPOs, whereas sub-objectives and indicators could be described in an ESA management plan that would provide more flexibility and more scope for adaptive management if changes to CPOs or indicators are needed. Example CPOs can be found in Appendix III.

# 5.0 ESA IMPLEMENTATION

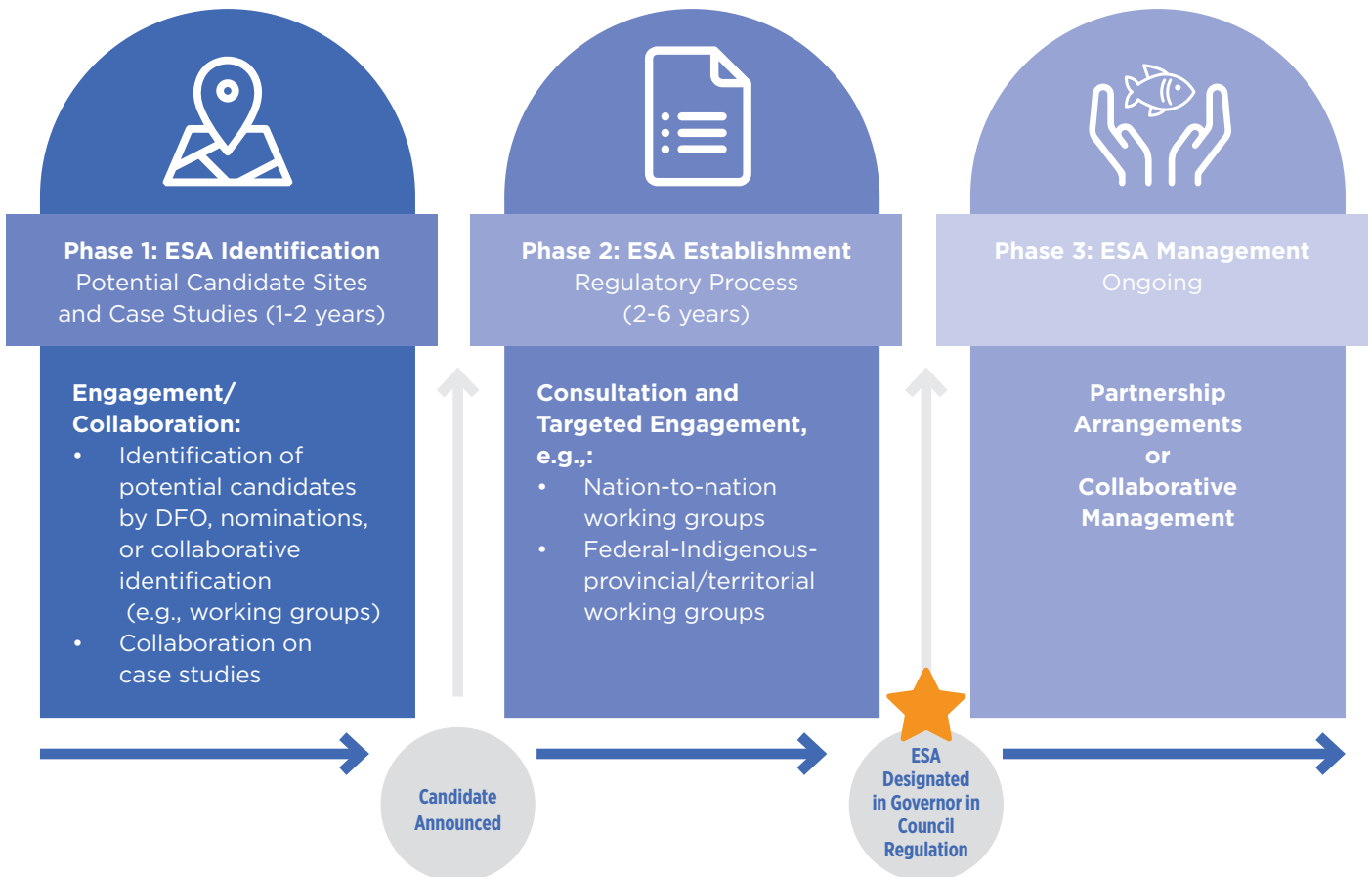
The ESA Implementation process includes three distinct phase: Phase 1) ESA Identification, Phase 2) ESA Establishment, and Phase 3) ESA Management (Figure 1).

**Phase 1 - ESA Identification:** The objective of the first phase is to gather information to substantiate the selection of one or more ESA candidates in a region.

**Phase 2 - ESA Establishment:** is the phase when additional information is collected and regulations are developed. This phase results in the publication of proposed ESA regulations in *Canada Gazette, Part I* for review and comment by all Canadians before an ESA is designated in final regulations in *Canada Gazette, Part II*.

**Phase 3 - ESA Management:** is defined by the implementation of a management and monitoring plan to ensure CPOs are continuously met over the long-term.

## Process for Regional ESA Implementation



All phases involve engagement and/or consultation with Indigenous Peoples, provinces and territories, and stakeholders. Engagement, collaboration and partnerships with Indigenous Peoples and provinces and territories will be especially important to the success of an ESA. Engagement with Indigenous Peoples will start early, be continuous throughout the implementation process and will follow the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

## 5.1 INDIGENOUS KNOWLEDGE

The Minister must consider, when making decisions related to the fish and fish habitat protection provisions of the *Fisheries Act*, the Indigenous Knowledge that has been provided by Indigenous Peoples. This includes decisions pertaining to the identification of ESAs and their establishment in regulations.

The approach to considering Indigenous Knowledge within ESA implementation will be guided by Indigenous Peoples that provided the knowledge and determined through a meaningful engagement process. Engagement with Indigenous Peoples will be guided by the principles and best practices in the Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions<sup>10</sup> and any available program guidance.

## 5.2 PHASE 1: ESA IDENTIFICATION

The first phase of ESA implementation is ESA candidate identification. The process will be inclusive and collaborative, involving engagement with Indigenous Peoples, provinces and territories, and stakeholders. This phase will help determine if an ESA is the best tool for the candidate site. Case studies may be developed in certain sites of interest, to help gather information about the site and aid in understanding its suitability as a potential ESA.

The final outcome of this phase is the selection of one or more candidate ESAs to move on to the ESA Establishment Phase, with the intent to designate as an ESA(s) under Governor in Council Regulation (s. 35.2(2) of the *Fisheries Act*).

The main steps in the ESA identification process are described in the following sections.

### 5.2.1 SELECTION OF POTENTIAL ESA CANDIDATES

Potential ESA candidates can be identified by DFO, Indigenous Peoples, provinces and territories, and stakeholders by nominations to DFO or through collaborative processes. A combination of these approaches could be applied depending on the regional circumstances.

Previously identified EBSAs or new and existing planning processes such as watershed planning initiatives, marine spatial planning, and marine conservation network development may be helpful in identifying potential ESA candidates.

DFO will consider ESA nominations and evaluate nominated sites according to ESA ecological criteria while considering connectivity, naturalness, climate change resiliency, and other prioritization considerations (Section 5.2.5). Nominations will be considered on a case-by-case basis, and a nominated area may not be selected as an ESA candidate. Applicants of ESA nominations will be informed of decisions regarding nominations. DFO will continue to refine the ESA nominations process and will provide more information when it becomes available.

### 5.2.2 INITIAL SCREENING

Initial screening serves to determine if a potential ESA candidate meets ESAs ecological criteria. Preliminary information will be collected to determine how the area aligns with the ESA ecological criteria and if the potential ESA candidate should continue in the identification and feasibility assessment process. During any of the steps of identification described in sub-sections 5.2.2 to 5.2.6, the potential ESA candidate may be referred to as an ESA **case study**. However, once it is approved to advance to the ESA Establishment stage, it will be referred to as an ESA **candidate** throughout that regulatory development phase.

<sup>10</sup> Government of Canada. 2022. Indigenous Policy Framework for Project Reviews and Regulatory Decisions. Online: [Indigenous Knowledge Policy Framework - Canada.ca](https://www24.international.gc.ca/indigenous-peoples-territoires/indigenous-policy-framework-2022-2024/indigenous-policy-framework-2022-2024-eng.aspx)

### 5.2.3 IDENTIFY CONSERVATION PRIORITIES

Conservation priorities are the fish species, habitat(s), or biophysical features necessary for ecosystem functions that the ESA is intended to protect. These will be used to develop conservation and protection objectives (Section 4.0). Conservation priorities are the basis for identifying the site as a potential ESA candidate. For example, Wild Atlantic Salmon may be identified as a conservation priority within a potential ESA candidate.

Preliminary CPOs may be developed at this stage for the purpose of a feasibility analysis, but would not be finalized until the establishment phase in engagement with Indigenous Peoples, provinces and territories, and stakeholders (Section 4.0). For example, if Wild Atlantic Salmon were a conservation priority, then an example CPO might be “Conserve, protect and, where appropriate, restore populations and habitats for salmon in the ESA to a state that allows salmon to carry out all of their life processes”. For more detailed CPO examples, see Appendix III.

### 5.2.4 COLLECT INFORMATION

During the initial screening step, information was gathered to determine if the potential ESA site meets the ESA ecological criteria. More detailed information is now required to determine which prioritization considerations (Section 5.2.5) are met by the potential candidate ESA, and to answer the questions posed in the Feasibility Analysis step (Section 5.2.6). To achieve this, best available information will be collected to better inform prioritization considerations and/or feasibility. Information to be collected includes information on site ecology and physical features that support ecosystem functions, pressures (current and future), cultural considerations, socioeconomics, historical impacts and information to support the prioritization considerations (Section 5.2.5). More detailed information will be required in the establishment phase.

### 5.2.5 PRIORITIZATION CONSIDERATIONS

Since many areas may meet any one of the ESA criteria (sensitive, highly productive, rare and/or unique areas of fish and fish habitat), the following **prioritization considerations** may be used to help select a candidate(s). Across Canada these may be applied differently or given varying priority, based on discussions with Indigenous Peoples, provinces and territories, and stakeholders.

Ideal ESA candidates, in addition to containing habitat that meets the ecological criteria of containing habitat that is either **sensitive, highly productive, rare and/or unique**, would align with several of the following considerations:

- Are priority areas of conservation for Indigenous Peoples, including cultural, representative and/or spiritual areas of priority;
- Are supported by Indigenous, provincial, territorial or municipal governments and/or multiple stakeholder groups;
- Have current and/or foreseeable pressures on the CPOs;<sup>11</sup>
- Meet multiple ESA ecological criteria;
- Contain habitat for multiple aquatic species of ecological importance;
- Contain limiting habitats, especially for species at risk and other regionally important species;<sup>12</sup>
- Are highly natural relative to other areas;
- Support climate change resiliency;
- Have had partner or stakeholder investment in restoration;
- Are well studied relative to other areas and/or well recognized by communities for ecological importance;
- Have opportunities for partnering in ESA management activities; and/or,
- Contribute to other conservation initiatives or targets including marine conservation targets, freshwater targets, and terrestrial targets.

<sup>11</sup> A foreseeable pressure is one where there is demonstrated interest in pursuing the project that generates the pressure in the area within a 10 year time frame. This is alluded to in DFO's Framework for integrating socio-economic analysis in the Marine Protected Areas designation process: <https://www.dfo-mpo.gc.ca/ea-ae/economic-analysis/framework-analysis-mpa-designation-cadre-analyse-designation-zpm-eng.htm>

<sup>12</sup> Species of regional importance may include:

- Aquatic species of importance to Indigenous Peoples
- Species defined as an **ecologically significant species**, including keystone species
- Aquatic species at risk
- Aquatic species of high commercial importance within a region
- Aquatic species of high recreational importance within a region
- Other species of regional importance

### 5.2.6 FEASIBILITY ANALYSIS

This step considers how an ESA could regulate existing and foreseeable projects and evaluates alternative management options. This step explores the following elements:

- Regulatory gap analysis of existing aquatic habitat protection measures in the area and how potential ESA regulations may strengthen those measures (i.e., determine whether an ESA better enables the CPOs to be met compared to other regulations; determine if an ESA could be combined with other regulations to meet CPOs) and how they might interact;
- Operational feasibility, including compliance and enforcement considerations as well as DFO and partner capacity for site management and monitoring. This will include evaluation of funding options on a case-by-case basis;
- Legal considerations; and,
- Results of engagement or consultation, if available.

## 5.3 PHASE 2: ESA ESTABLISHMENT

Phase 2, ESA Establishment, uses the information gathered in Phase 1 as a basis to proceed to regulatory development and publication of the regulations. When a site enters the establishment phase, it officially becomes an ESA **candidate** instead of a potential candidate ESA or case study. ESAs will be established through Governor in Council (GIC) regulations, under subsection 35.2(2) of the *Fisheries Act*. The identification and early regulatory development of an ESA candidate does not provide immediate protection to that area. Legal protection begins as of the coming-into-force date specified in the final published ESA regulations. However, if the ESA candidate appears to be threatened while regulations are being developed, the Government of Canada or other levels of government may work together to provide interim protection to the area using existing mechanisms, to minimize negative impacts until the regulations are published.

The Cabinet Directive on Regulation directs all stages of the regulatory life cycle to ensure that use of the government's regulatory power results in the greatest overall benefit to Canadians.<sup>13</sup>

### 5.3.1 CONSULTATION AND TARGETED ENGAGEMENT

DFO will engage with Indigenous Peoples, provinces and territories, and stakeholders on CPOs, boundaries, and the regulatory intent before the proposed ESA regulations are published in *Canada Gazette I*. These aspects of the ESA proposal will be informed by ecological, socio-economic, cultural overviews and assessments, and a risk assessment. This will make use of best available information, including information collected through engagement and consultation with Indigenous Peoples, provinces and territories, and stakeholders. Consultation and engagement prior to publication in *Canada Gazette I* could take several months. The creation of targeted engagement groups or the use of existing consultative processes may facilitate ESA establishment.

### 5.3.2 OVERVIEW AND ASSESSMENT

During the establishment phase (Phase 2), detailed information about the ESA candidate(s) is collected, building on the information collected in the ESA identification (Phase 1). Indigenous Knowledge, scientific information, and any other best available information is considered in this phase.

The overview and assessment of the ESA consists of a biophysical ecological overview, socio-economic overview, and risk assessment. The development of the overview and assessment documents is done by DFO, and provides essential information for the statement of regulatory intent, Regulatory Impact Analysis Statement (RIAS) and identifying associated engagement needs.

<sup>13</sup> Treasury Board of Canada Secretariat. 2018. Cabinet Directive on Regulation. Online: <https://www.canada.ca/en/government/system/laws/developing-improving-federal-regulations/requirements-developing-managing-reviewing-regulations/guidelines-tools/cabinet-directive-regulation.html>

### 5.3.3 STATEMENT OF REGULATORY INTENT

The Statement of Regulatory Intent is a document that will be shared with Indigenous Peoples, provinces and territories, and stakeholders, describing the regulatory measures and management approach that will be used to achieve the CPOs, including:

- The proposed ESA location and boundaries, with zoning if applicable;
- Prohibited projects within the ESA;
- Projects that require an authorization to proceed in the ESA (prescribed projects) and conditions for authorization;
- Other design considerations, including supporting non-regulatory management measures; and,
- Proposed surveillance and enforcement regimes and other relevant regulations.

### 5.3.4 REGULATORY IMPACT ANALYSIS STATEMENT

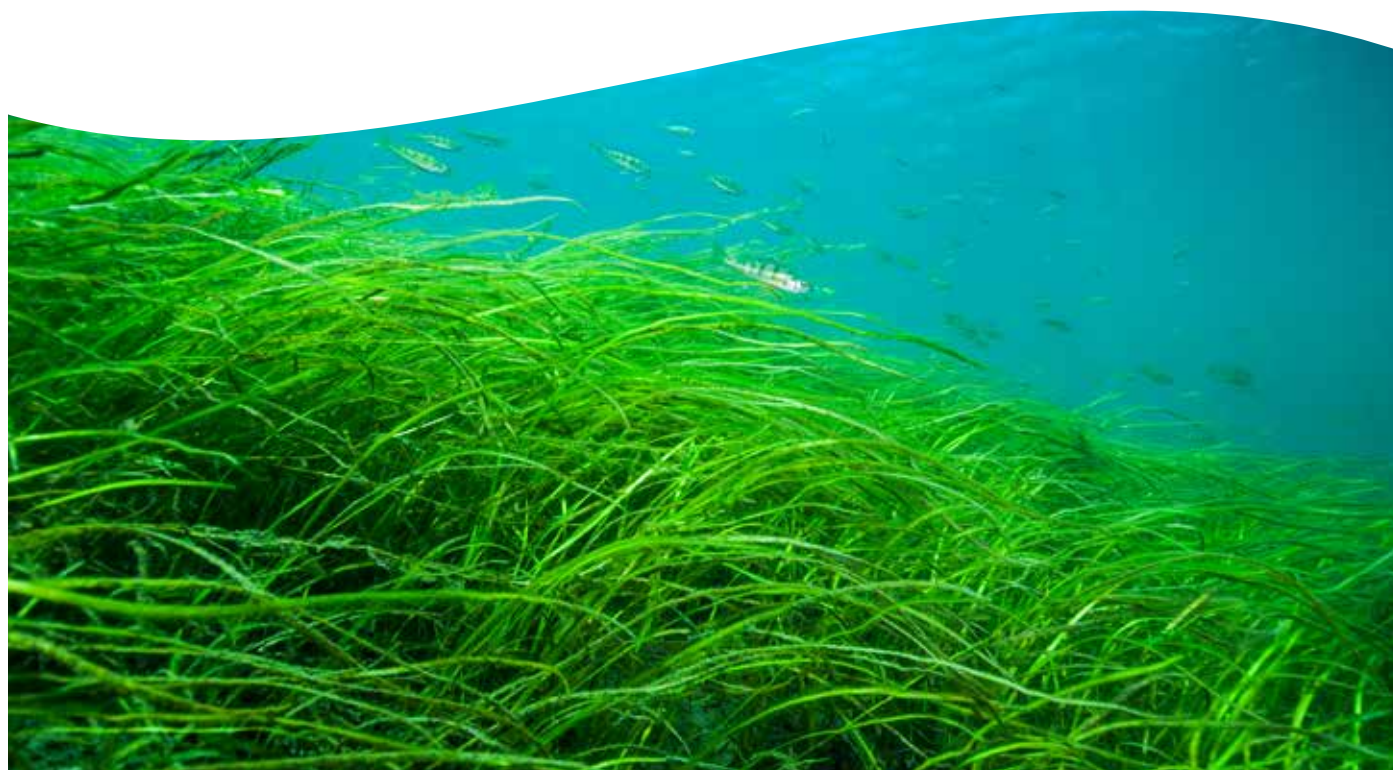
A RIAS is a statement justifying regulatory action and providing a public accounting of the rationale for regulations. It describes the government's intentions, benefits and estimated costs of implementing the ESA, and the method and results of consultations. It also addresses who will be affected, who was consulted, and how the government will evaluate the regulation's performance against its stated objectives.

Other documents required for regulatory development feed into the RIAS. More information can be found in the Treasury Board of Canada Secretariat Policy on Regulatory Development<sup>14</sup>. Once the Statement of Regulatory Intent and RIAS are finalized, the public will be consulted through *Canada Gazette I*, for a minimum period of 30 days, on:

- Proposed CPOs;
- Proposed ESA Boundaries; and,
- Proposed regulatory and management measures pertaining to projects in the ESA.

### 5.3.5 DRAFT AND FINAL REGULATIONS

DFO will take comments into consideration and make adjustments, if necessary, prior to moving forward with publication of the final regulations in *Canada Gazette*, Part II. Following the consultation period in *Canada Gazette*, Part I, Comments received will be considered by DFO before an ESA is designated in final regulations published in *Canada Gazette*, Part II, which officially designates the ESA, based upon the coming-into-force date set out in the regulations.



<sup>14</sup> Treasury Board of Canada Secretariat. 2018. Cabinet Directive on Regulation: Policy on Regulatory Development. Online: [Policy on Regulatory Development - Canada.ca](https://www.tbscc.gc.ca/pol/regdev)

## 5.4 PHASE 3: ESA MANAGEMENT

The ESA management phase (Phase 3) continues to build on the information gathered during the identification phase (Phase 1) and establishment phase (Phase 2). Management planning starts in the ESA establishment phase to inform CPO development and site feasibility. Collaboration and potentially co-management is an important component of this phase, which could involve Indigenous Peoples, provinces and territories, and stakeholders in monitoring, restoration, compliance, and enforcement. The outcome of this phase is a well-managed ESA that continues to meet its CPOs over the long term.

### DEVELOPING AND IMPLEMENTING THE MANAGEMENT PLAN

Management plans are documents outlining the ESA CPOs. They provide regulators, users, and interested parties with the short-term and long-term strategies that will be implemented to achieve the CPOs. Existing strategies and plans can also contribute to the development of ESA management plans, where applicable.

### MANAGEMENT PLANS DESCRIBE:

- ESA regulations;
- Non-regulatory management measures to be implemented (e.g., partner or co-management agreements, stewardship activities, educational awareness initiatives);
- SMART CPOs (see Section 4.0);
- Scientific monitoring strategies;
- Governance and/or cultural objectives and indicators;
- Requirements for reporting; and,
- Restoration plans, if required:
  - These will align with regional restoration plans and priorities.

Management plans will provide transparency and demonstrate the regulation's effectiveness by setting requirements for monitoring and reporting. Management plans allow for adaptive management and may be adjusted as necessary.



Photo : Nick Hawkins





Photo: Fisheries and Oceans Canada

# 6.0 GOVERNANCE

**G**overnance structures will vary across each ESA during ESA implementation. Under the *Fisheries Act*, the Governor in Council makes ESA regulations on the recommendation of the Minister of Fisheries and Oceans (s. 35.2[2]). The Minister has authority to authorize projects prescribed in ESA regulations (*Fisheries Act* s. 35.2[7]). DFO determines whether a project is allowed to occur, provided it meets all regulatory requirements, including that the project does not negatively impact the ESA's CPOs.



Photo: Scott Leslie

# 7.0 LOOKING AHEAD

**T**his Framework was developed to meet the diverse ecological, cultural, and socioeconomic contexts across Canada. Working with Indigenous Peoples, provinces and territories, and stakeholders is key to the successful identification, establishment and management of ESAs. Once established in regulations, ESAs will protect and conserve key areas of fish habitat, while allowing for sustainable use and enjoyment of these areas for generations to come.

# APPENDIX I

# GUIDING PRINCIPLES

The following guiding principles provide the foundation for ESA implementation but are not necessarily prescriptive. These implementation principles are designed to increase the chance of long-term success.

**1. ESAs contribute to the protection of biodiversity and climate change resiliency**

- ESAs contribute to the protection of biodiversity, the recovery of aquatic species at risk, the restoration of fish habitat, and/or climate change mitigation, resilience, and adaptation.

**2. ESAs endeavour to support existing conservation tools and initiatives**

- ESAs are identified, established and managed in collaboration with Indigenous Peoples, provinces and territories, and stakeholders, and are developed considering existing relevant government instruments within overlapping jurisdictions.

**3. ESA implementation recognizes, respects and upholds Aboriginal and treaty rights**

- ESA implementation respects the Aboriginal and treaty rights of Indigenous Peoples. Should the duty to consult and accommodation arise, consultation is conducted, and accommodations is explored with the potentially affected Indigenous group;
- ESAs recognize the diversity of identities, knowledge, and practices of Indigenous communities that have an interest to the ESA, and others who may have an interest in or affiliation with the area;
- ESA decision-making is conducted in a manner consistent with the Crown's obligations regarding modern treaties and land-claims agreements; and,
- ESAs provide an opportunity to strengthen the relationship between DFO and Indigenous Peoples, advance Canada's commitment to reconciliation, and uphold the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),<sup>15</sup> which Canada enshrined in law in 2021.

**4. ESA implementation applies an ecosystem-based approach**

- An ecosystem approach is applied that considers all components of an ecosystem and how they interact. This approach is fundamental to all conservation and protection efforts.

**5. ESA implementation applies the precautionary approach**

- When there is an absence of certainty, the precautionary approach is applied in accordance with its definition in the Government of Canada's (2003) *Framework for the Application of Precaution in Science-based Decision Making*.<sup>16</sup>

<sup>15</sup> United Nations Declaration on the Rights of Indigenous Peoples Act, Consolidation (2021, S.C. 2021, c. 14).

Online: <https://www.laws-lois.justice.gc.ca/eng/acts/u-2.2/page-1.html>

<sup>16</sup> Government of Canada (2003). *Framework for the Application of Precaution in Science-based Decision Making*.

Online: <https://publications.gc.ca/collections/Collection/CP22-70-2003E.pdf>

**6. ESAs maintain and restore connectivity between habitats and across ecosystems**

**7. ESA implementation is open, transparent, and collaborative**

- ESA implementation is conducted in an open, transparent, and collaborative manner with Indigenous Peoples, provinces and territories, and stakeholders; and,
- DFO recognizes and considers ecological, social, cultural, and economic values and interests potentially affected by ESA implementation.

**8. ESA implementation uses best-available knowledge and information**

- To the fullest extent possible, ESA implementation relies on best-available knowledge and information from a range of sources, including science, Indigenous Knowledge, and knowledge provided by stakeholders and others.
- To the fullest extent possible, ESA implementation considers cumulative effects by following existing and evolving DFO policies and guidelines.

**9. ESAs follow a high standard of adaptive management to meet conservation and protection objectives**

- Once established in regulation, ESAs are managed to ensure projects comply with its CPOs; and,
- Monitoring and management of ESAs uses SMART (specific, measurable, achievable, realistic, time-bound) objectives whenever possible to meet CPOs. If monitoring shows CPOs are not achieved, adaptive management is applied to ensure adequate measures are taken.



Photo: Fisheries and Oceans Canada

## APPENDIX II

# COMPARISON OF ESAS AND OTHER CONSERVATION TOOLS

CONSERVATION TOOL	CHARACTERISTICS
<p><b>Standard Fish and Fish Habitat Protection Provisions</b></p>	<ul style="list-style-type: none"> <li>• ESAs have a lower risk tolerance for impacts from projects</li> <li>• Harmful Alteration, Disruption and Destruction (HADD) and Death of Fish (DoF) are not permitted in ESAs if they adversely impact the ESA's CPOs</li> <li>• ESA requirements for projects are proactively and transparently identified in advance of establishing the ESA in regulation</li> <li>• ESAs can prescribe and prohibit certain projects</li> <li>• Authorizations for projects under ESA provisions require avoidance and mitigation. As residual harm to the ecosystems is not permitted in an ESA, offsetting will not be permitted</li> </ul>
<p><b>Marine Protected Areas (MPAs) established under the <i>Oceans Act</i></b></p>	<ul style="list-style-type: none"> <li>• ESAs and MPAs are both made under Governor-in-Council Regulations</li> <li>• ESAs can offer protection in areas where MPAs cannot (intertidal, freshwater, riparian)</li> <li>• Unlike ESAs, federal MPAs established after 2019 are subject to a federal MPA Protection Standard.</li> <li>• In marine areas, ESAs may be considered instead of an MPA depending on the main threats to the conservation priorities (e.g., when fishing is not a threat; when enhanced regulation of works, undertakings or activities would conserve or protect the conservation priorities).</li> </ul> <p>* The <i>Oceans Act</i> also contains provisions for establishing Ministerial Order MPAs, which are not described in this table.</p>

CONSERVATION TOOL	CHARACTERISTICS
<b>OECMs (Other Effective Area-based Conservation Measures)</b>	<ul style="list-style-type: none"> <li>ESAs can overlap with existing OECMs (e.g., fisheries closures) and can regulate projects within the closure, to reduce damage to fish habitat that may be occurring due to certain projects.</li> <li>ESAs may be counted as OECMs, this will be determined on a case-by-case basis.</li> </ul>
<b>Species at Risk Act Critical Habitat</b>	<ul style="list-style-type: none"> <li>ESAs can protect the habitat of SARA species of special concern and species that don't have identified critical habitat (e.g. species for which a listing decision is pending, species where a decision has been made not to list, or species for which information is not available to identify critical habitat)</li> <li>ESAs can enhance Critical Habitat protection by preventing HADD and DoF.</li> </ul>
<b>Environment and Climate Change Canada (National Wildlife Areas and Migratory Bird Sanctuaries)</b>	<ul style="list-style-type: none"> <li>National Wildlife Areas are established under the <i>Canada Wildlife Act</i> to protect wildlife and wildlife habitat (in particular, migratory birds or species at risk) for the purpose of conservation, research, or interpretation. They are designated and managed through the <i>Wildlife Area Regulations</i> which include a list of prohibited activities that apply to all NWAs unless permitted or authorized if the proposed activities don't contravene the conservation objectives of the site. A management plan for each NWA is developed in consultation with partners and stakeholders.</li> <li>ESAs may complement NWAs by enhancing connectivity between NWAs and other conservation areas, and by regulating projects upstream of NWAs.</li> <li>The primary purpose of Migratory Bird Sanctuaries (MBS) is the protection of migratory birds including from the taking, injuring, destruction or molestation of the birds themselves or their nests or eggs and therefore offer no protection for fish and their habitat.</li> <li>Layering ESAs over existing MBSs can extend protection to fish and fish habitat.</li> </ul>
<b>Parks Canada</b>	<ul style="list-style-type: none"> <li>National Parks and National Marine Conservation Areas offer strong protection for terrestrial, marine, and freshwater habitats and species.</li> <li>ESAs would not likely strengthen protections within a National Park, but could be used to enhance connectivity between Parks and other areas of conservation.</li> </ul>
<b>Indigenous Protected and Conserved Areas (IPCAs)</b>	<ul style="list-style-type: none"> <li>DFO supports Indigenous-led marine conservation, including working with our Indigenous partners on their visions for indigenous protected and conserved areas. ESAs may provide one way in which a conserved space can be co-designated. Other conservation tools, such as Oceans Act MPAs and Fisheries Act marine refuges, may also be used for this purpose.</li> </ul>
<b>Provincial and Territorial Protected Areas</b>	<ul style="list-style-type: none"> <li>Provincial and territorial area-based protection tools are often focused on terrestrial protection. ESAs can complement these areas by protecting fish and fish habitat specifically, and by enhancing ecosystem connectivity.</li> </ul>

## APPENDIX III

# EXAMPLE CONSERVATION AND PROTECTION OBJECTIVES

### SALMON AS A CONSERVATION PRIORITY

The example below is based on one conservation priority (salmon), but note that it is likely that ESAs could have numerous conservation priorities and therefore more CPOs than what are presented here. Measurable thresholds and timelines are not identified in the example below although these should be specified in the ESA management plan based on best available information, using baseline conditions and considering the resources available to monitor and report within a reasonable time frame. For example, monitoring data may be collected every 1-2 years; however trends are assessed over longer time frames such as every 5-10 years (see management plan for more information).

#### **CPOs in regulation:**

1. *Conserve, protect and, where appropriate, restore populations and habitats for salmon in the ESA to a state that allows salmon to carry out all of their life processes.*
2. *Protect and conserve key hydrological, physical, and chemical processes and features to maintain ecosystem functioning.*

#### **SMART objectives for CPO #1 (in management plan):**

- Subobjective: Suitable habitat for salmon spawning is maintained
  - Indicator: # salmon redds remain stable or increase over time
  - Indicator: water temperature range required for egg incubation is maintained
- Subobjective: Conserve, protect, and restore fish passage
  - Indicator: watercourse crossings are passable (% passable)
  - Indicator: seasonal fluctuations in water depth allow continued passage (measured in areas where water withdrawals are occurring)

#### **SMART objectives for CPO #2 (in management plan):**

- Maintain or increase current pH levels
- Maintain heavy metal concentrations at or below current levels
- Maintain existing temperature throughout watershed:
  - Ensure cold water seepage/upwelling areas remain present and undisturbed
  - Riparian zone remains intact (intact to be defined)

