



## SeaBlue Feedback on Canada's OECM Guidance

This document provides feedback from SeaBlue Canada, a coalition of environmental non-governmental organizations with extensive experience in the establishment and management of marine protected areas (MPAs) and other effective area-based conservation measures (OECMs). SeaBlue Canada appreciates the opportunity to comment on Fisheries and Oceans Canada (DFO)'s draft Marine OECM Guidance, and is pleased to see that work continues to strengthen OECMs in Canada. This feedback follows from our letter to DFO in April 2020 and from the SeaBlue Canada Report "A Technical Review of Canada's Other Effective Area-Based Conservation Measures: Alignment with DFO Guidance, IUCN-WCPA Guidance and CBD SBSTTA Guidance," published in January 2019. In both of these, we have provided clear text-based recommendations to bring Canada's OECM guidance in line with that of the Convention on Biological Diversity (CBD) guidance. In our 2019 report we also made recommendations specific to a number of individual OECMs, with the goal of ensuring that they met the criteria agreed to by Canada and the CBD.

### General Comments

Overall, the updated OECM guidance aligns with the CBD guidance. Here we assess in more detail the proposed amendments based on the recommendations presented in our 2019 report (see Appendix 1). Most of the gaps that were in the original Canadian guidance have been addressed by revised language under each criteria. Specifically, we are pleased to see the following:

- Addition and clarification of guiding principles, which are helpful and will contribute to accountability during the implementation of new OECMs and review of existing OECMs;
- Inclusion of *in situ* conservation of biodiversity;
- Long-term protection that is effectively achieved through new regulatory powers under the *Fisheries Act*;
- Inclusion of adaptive management and identification of future threats, which are both important for future biodiversity outcomes as well as for being able to respond to new scientific information;
- Consideration of cultural sites and recognition of Indigenous governments; and,
- Process for Indigenous governments and non-government entities to propose areas, which is beneficial and will help counter the criticisms of a top-down approach to spatial conservation.

The effectiveness and strength of this proposed guidance will be illustrated in its implementation. Below we provide several recommendations for its implementation for new and existing OECMs:

- Many of the existing OECMs are focused on protecting benthic ecosystems. We would like clarification as to how depth (as proposed in the new guidance) will be integrated into the three-dimensional nature of some OECMs. For example, in some of the larger OECMs in the Atlantic and Eastern Arctic, there may be significant biomass of mesopelagic species. New fisheries in these areas should not be permitted until a full ecosystem assessment is completed.
- Clarity is needed regarding how oil and gas will be addressed in OECMs. We have collectively and separately expressed our concern about oil and gas exploratory drilling within OECMs. Since its designation in 2017, the Northeast Newfoundland Slope marine refuge has had three exploration licenses for offshore oil and gas exploratory drilling permitted. We recommend that the boundaries of this OECM be adjusted based on these leases and that more collaboration between government agencies occurs so that this particular situation does not arise in other OECMs. Where possible, proactive efforts with the oil and gas industry to relinquish licenses should be undertaken.
- Clarity is needed regarding when and how monitoring will occur to ensure OECMs are achieving the intended biodiversity outcomes. As OECMs are predicated on their effectiveness in lieu of legal protection, long-term monitoring should be a requirement and not an “intention”. OECM monitoring should be consistent with that of MPAs so that threat mitigation and biodiversity outcomes across spatial protection tools allow for data aggregation. Effective and robust monitoring plans will also be key to adaptive management.
- With regards to monitoring mechanisms and guidance, we are aware of the Canadian Science Advisory Secretariat (CSAS) processes on bottom trawl surveys in areas with conservation objectives for corals and sponges and the December 1-3, 2020 CSAS process for specifically monitoring corals and sponges within OECMs. We look forward to the results of these processes and have made recommendations that research trawling be avoided and monitoring be undertaken through non-destructive means. Where sets cannot be moved, impacts should be minimized and new protocols adopted to maximize data collection.
- The revised guidance states that DFO will “consider” OECMs proposed by Indigenous governments and communities. However, clarity is needed about how cultural, spiritual, socioeconomic and other locally relevant values of areas will be upheld and respected when establishing and managing OECMs. We recommend that DFO enter into co-governance agreements where an area is proposed as an OECM by an Indigenous nation or entity. We understand that some work is being done with the Assembly of First Nations that may help to clarify these considerations.
- We also recommend that, where necessary, DFO develop co-governance and management agreements with other government agencies to support consistent and comprehensive management of the OECM.
- The assessment should include the carbon sequestration potential of the area (in seafloor sediments and potential mesopelagic fisheries, for example), particularly as Canada expands its work on nature-based solutions to climate change in its marine conservation portfolio.

- Given that many of the existing OECMs are designated through fisheries management processes and that we expect the west coast Rockfish Conservation Areas to be designated in a similar manner, consideration of how the ecosystem approach will be applied to OECMs is unclear. We recommend that DFO do more work to link any spatial efforts included in single species management measures to marine conservation targets, including OECMs. These spatial measures may include:
  - Fisheries rebuilding plans under Section 6 of the *Fisheries Act*;
  - Work plans for species designated by the Committee on the Status of Wildlife in Canada but not listed under the Species at Risk Act (SARA) as per the Default Listing Policy; and,
  - Recovery plans for species listed under SARA, particularly those where critical habitat has been defined.

Environment and Climate Change Canada has undertaken such an approach with regards to prioritizing habitat protection for species at risk with Target 1 terrestrial protected area strategies.

- We recommend that DFO commit to a threat mitigation strategy that includes the mitigation hierarchy for current and future threats. This is consistent with advice from CSAS on oil and gas exploration in areas with defined benthic conservation objectives.

As with any policy guidance, the effectiveness of the policy is ultimately borne out in its implementation. The expected contribution of OECMs to the government's new targets of protecting 25% of its ocean and coastal spaces by 2025 and 30% by 2030 is unclear, but OECMs currently make up approximately one third of Canada's contribution to its marine conservation targets. We maintain our recommendations for individual OECMs captured in our 2019 report. As Canada makes progress towards its spatial targets, we hope that efforts will be made to also improve protection standards where necessary and transition some OECMs to protected areas under the *Oceans Act*, *Canada Wildlife Act* or *Canada National Marine Conservation Areas Act*.

### Outstanding Issues

As noted in our April 2020 letter, we would appreciate ongoing discussion with DFO staff to better understand how DFO is intending to use the regulatory making powers under Section 35.2(2) and Section 43.3(1) of the *Fisheries Act* relating to ecologically significant areas and biodiversity protection regulations, respectively.

We recommend that the Sensitive Benthic Areas Policy under the Sustainable Fisheries Framework continue to be used to protect nearshore and offshore areas from fishing activity, where concentrations of corals and sponges may occur.

Finally, we would appreciate insight into how DFO intends to apply section 43.3(1) of the *Fisheries Act* to regulate existing and future OECMs. As practitioners who work regularly with stakeholders and rightsholders, we may be able to recommend practical ways forward that do not further confuse the public in terms of tools available for protection of fish and fish habitat, as well as how those efforts link to the marine conservation targets.

## Appendix 1. Detailed review of 2018 CBD Guidance against the 2020 Canadian OECM Guidance

In the 2019 SeaBlue Canada report, we highlighted the key text in the CBD guidance that was missing from the first draft of the Canadian OECM guidance. Below we compare this with the proposed new guidance to assess alignment (Table 1). We have noted where the DFO criteria aligns with and/or satisfies the CBD criteria.

Table 1. Comparison and evaluation of 2018 Canadian OECM guidance and updated 2020 Canadian OECM Guidance.

CBD 2018 OECM Criteria	Proposed Updated DFO OECM Criteria	SeaBlue Assessment and Comments
A. Area is not currently recognized as a protected area		
<i>(i) Not a protected area</i>	- The area is not currently recognized or reported as a protected area or part of a protected area; it may have been established for another function.	A. The area is not already recognized or reported as an MPA.
Criteria is satisfied. Consideration should be given to non-DFO protections.		
B. Area is governed and managed		
<i>(i) Geographically defined space</i>	- Size and area are described, including in three dimensions where necessary. - Boundaries are geographically delineated.	B. The area is described, including by spatially defined: boundaries; size; and where necessary, depth.
Criteria is satisfied. However we have some concerns as to how depth and three-dimensional protections will be applied. We note that the IUCN has a strong presumption against vertical zoning due to the practical challenges it presents for monitoring and enforcement, as well the need to recognize ecological connectivity between pelagic and benthic environments.		

(ii) Legitimate governance authorities

- Governance has legitimate authority and is appropriate for achieving in situ conservation of biodiversity within the area;
- Governance by Indigenous peoples and local communities is self-identified in accordance with national legislation;
- Governance reflects the equity considerations adopted in the Convention.
- Governance may be by a single authority and/or organization or through collaboration among relevant authorities and provides the ability to address threats collectively.

C. One or more relevant authorities govern the area and they involve relevant parties.  
C.1 The area is governed in a way that respects Aboriginal and treaty rights and considers local communities.

Criteria is generally satisfied. However concerns remain regarding oil and gas activities and regulatory authority within OECMS.

While DFO has authority under section 34 of the *Fisheries Act* to withhold authorization for exploratory or production drilling, the recent regulations stemming from the Regional Assessment in Newfoundland and Labrador are expected to negate DFO's authority. There does not appear to be a clear DFO science process for the review of site surveys that are undertaken by the proponent. The Fish and Fish Habitat Protection Program's decision-making processes regarding site surveys and habitat authorizations are also unclear.

This criteria does not specifically allow for governance by Indigenous Peoples and Local Communities (IPLCs), only governance that respects Indigenous rights and considers local communities. It misses explicit equity considerations and co-governance opportunities.

<i>(iii) Managed</i>	<ul style="list-style-type: none"> <li>- Managed in ways that achieve positive and sustained outcomes for the conservation of biological diversity.</li> <li>- Relevant authorities and stakeholders are identified and involved in management.</li> <li>- A management system is in place that contributes to sustaining the in situ conservation of biodiversity.</li> <li>- Management is consistent with the ecosystem approach with the ability to adapt to achieve expected biodiversity conservation outcomes, including long-term outcomes, and including the ability to manage a new threat.</li> </ul>	<p>D. The area is managed for the long term.</p> <p>D.1 The management measures supporting biodiversity conservation benefits are long-term</p> <p>E. The area is effectively managed in ways to provide biodiversity conservation benefits</p> <p>E.2 The management system is effectively addressing existing and foreseeable threats to the benefits and is adaptive</p> <p>E.3 Relevant authorities, rights holders, other parties and stakeholders may participate</p>	<p>Criteria generally satisfied. However, there is no mention of the ecosystem approach for the management of OECMs. There also needs to be further clarifications on how and when adaptive management would occur/be operationalized. Adaptive management should be applied when new science information is available particularly for sensitive benthic areas closures. For adaptive management to be effective there need to be robust monitoring protocols in place. Governance and management agreements should be established with relevant authorities and rightsholders to ensure that OECM management is consistent with the objective of the site.</p>
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C. Achieves sustained and effective contribution to in situ conservation of biodiversity

<i>(i) Effective</i>	<ul style="list-style-type: none"> <li>- The area achieves, or is expected to achieve, positive and sustained outcomes for the in situ conservation of biodiversity.</li> <li>- Threats, existing or reasonably anticipated ones are addressed effectively by preventing, significantly reducing or eliminating them, and by restoring degraded ecosystems.</li> <li>- Mechanisms, such as policy frameworks and regulations, are in place to recognize and respond to new threats.</li> <li>- To the extent relevant and possible, management inside and outside the</li> </ul>	<p>E. The area is effectively managed in ways to provide biodiversity conservation benefits</p> <p>E.1 Biodiversity conservation benefits (including from an important habitat and species, and other benefits to the ecosystem) are existing or anticipated</p> <p>E.2 The management system effectively addressing existing and</p>	<p>Criteria generally satisfied. However it is unclear whether DFO has the ability to manage new threats that arise. In addition to this, further clarification is needed on how and when adaptive management would occur.</p> <p>Currently, management inside and outside of OECMs is not integrated. For example, some activities outside may impact areas inside an OECM (trawl plumes, oil and gas development) and conversely, some areas may benefit areas outside the boundaries. More work on monitoring and enforcement is needed to operationalize guidance in existing OECMS.</p>
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	other effective area-based conservation measure is integrated.	foreseeable threats to the benefits and is adaptive	
<i>(ii) Sustained over long term</i>	- The other effective area-based conservation measures are in place for the long term or are likely to be. - “Sustained” pertains to the continuity of governance and management and “long term” pertains to the biodiversity outcome.	D. The area is managed for the long term. D.1 The management measures supporting biodiversity conservation benefits are long-term	Criteria is satisfied through 2019 amendments to the <i>Fisheries Act</i> . Achieving this depends on the operationalization of the criteria.
<i>(iii) In situ conservation of biological diversity</i>	- Recognition of other effective area-based conservation measures is expected to include the identification of the range of biodiversity attributes for which the site is considered important (e.g. communities of rare, threatened or endangered species, representative natural ecosystems, range restricted species, key biodiversity areas, areas providing critical ecosystem functions and services, areas for ecological connectivity).	E. The area is effectively managed in ways to provide biodiversity conservation benefits	Criteria generally satisfied, however achieving this depends on the operationalization of the criteria. Since DFO shifted from evaluating sites based on their objective, to evaluating sites based on their outcomes/ biodiversity conservation benefits, this may lead to greater recognition of the range of biodiversity attributes for which a site is considered important. Connectivity within a spatial protection network, and between pelagic and benthic habitats, should also be considered.

<i>(iv) Information and monitoring</i>	<ul style="list-style-type: none"> <li>- Identification of an other effective area-based conservation measure should, to the extent possible, document the known biodiversity attributes, as well as, where relevant, cultural and/or spiritual values, of the area and the governance and management in place as a baseline for assessing effectiveness.</li> <li>- A monitoring system informs management on the effectiveness of measures with respect to biodiversity, including the health of ecosystems.</li> <li>- Processes should be in place to evaluate the effectiveness of governance and management, including with respect to equity.</li> <li>- General data of the area such as boundaries, aim and governance are available information.</li> </ul>	<p>D.2 Monitoring takes place over time to evaluate governance, management effectiveness, and the presence of biodiversity conservation benefits.</p> <p>E.4 Ecosystem functions and services (including cultural, spiritual, social, economic and other relevant values associated with the area) are considered.</p>	<p>We recognize and support DFO's efforts to seek science advice through the CSAS process on monitoring. As OECCMs are defined by the efficacy of the management measures, robust and systematic monitoring is absolutely critical.</p>
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D. Associated ecosystem functions and services and cultural, spiritual socio-economic and other locally relevant values

<i>(i) Ecosystem services and functions</i>	<ul style="list-style-type: none"> <li>- Ecosystem functions and services are supported, including those of importance to indigenous peoples and local communities, for other effective area-based conservation measures concerning their territories, taking into account interactions and trade-offs among ecosystem functions and services, with a view to ensuring positive biodiversity outcomes and equity.</li> <li>- Management to enhance one particular ecosystem function and service does not impact negatively on the sites overall biological diversity.</li> </ul>	<p>E.1 Biodiversity conservation benefits (including for an important habitat and species, and other benefits to the ecosystem) are existing or anticipated</p> <p>E.4 Ecosystem functions and services (including cultural, spiritual, social, economic and other relevant values associated with the area) are considered.</p>	<p>Language is weak surrounding the inclusion of ecosystem functions and services with a view towards ensuring positive biodiversity outcomes and equity. Maintaining and supporting ecosystem function is integral to the very purpose of establishing OECCMs and as such should be more than just "considered".</p>
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<p><i>(ii) Cultural, spiritual, socioeconomic and other locally relevant values</i></p>	<ul style="list-style-type: none"> <li>- Governance and management measures identify, respect and uphold the cultural, spiritual, socioeconomic, and other locally relevant values of the area, where such values exist.</li> <li>- Governance and management measures respect and uphold the knowledge, practices and institutions that are fundamental for the in situ conservation of biodiversity.</li> </ul>	<p>C.1 The area is governed in a way that respects Aboriginal and treaty rights and considers local communities.</p> <p>E.4 Ecosystem functions and services (including cultural, spiritual, social, economic and other relevant values associated with the area) are considered.</p>	<p>Unclear how DFO's criteria can/will <i>respect and uphold</i> the cultural, spiritual, socioeconomic, and other locally relevant values of areas - besides that DFO will "consider" these values.</p>
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