

21 April 2023



Environmental  
Defenders Office

Protected and Conserved Areas Policy Section  
Department of Climate Change, Energy, the Environment and Water

**Submitted via:** [DCCEEW Consultation Hub](#)

Dear Protected and Conserved Areas Policy Team,

**Consultation on draft principles to guide recognition of other effective area-based conservation measures in Australia**

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission in response to the consultation paper on draft principles to guide recognition of other effective area-based conservation measures (**OECMs**) in Australia.

EDO supports the adoption of a framework to identify OECMs in Australia and makes several recommendations to improve the draft principles. Rules for recording, reporting and monitoring of OECMs will also be important, and EDO understands the Government will undertake further consultation on these processes as the framework and site assessment tool are developed.

**1. The OECM framework should reflect international best practice**

The Australian Government's commitment to protecting 30% of our land and 30% of our oceans by 2030 (**30 by 30 target**) reflects national obligations under the Convention on Biological Diversity (**CBD**) and in particular the *Kunming-Montreal Global Biodiversity Framework* adopted in 2022.<sup>1</sup> The implementation of a consistent, legally sound national framework to recognise OECMs can assist Australia in reaching this 30 by 30 target by recognising conservation efforts in areas where classification as a protected area is not feasible.

OECMs were introduced in Aichi Target 11 of the CBD Strategic Plan for Biodiversity 2011-2020, and are defined by *Decision 14/8: Protected areas and other effective area-based conservation measures* as:<sup>2</sup>

*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*

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<sup>1</sup> Target 3, [Kunming-Montreal Global Biodiversity Framework](#). These targets also reflect Australia's ongoing involvement in international conservation efforts including through the High Ambition Coalition for Nature and People, the Glasgow Leaders' Declaration on Forests and Land Use, and the Leaders Pledge for Nature.

<sup>2</sup> *Decision 14/8 Protected areas and other effective area-based conservation measures* (30 November 2018) available at <https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf>.

*of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values.*

The IUCN-WCPA Task Force on OECMs provides further guidance, definitions and criteria for determining, monitoring, and reporting on OECMs (**IUCN Guidelines**),<sup>3</sup> and EDO's comments are informed by these Guidelines. As a first step, robust and legally sound principles are critical for consistent identification of OECMs, as well as ensuring that where recognised, OECM classification results in real biodiversity outcomes.

## **2. Principles relating to consent and governance must be clear and appropriate**

EDO generally supports the proposed principles relating to consent and governance, and makes the following specific comments:

- EDO supports **principle 4.1.1** relating to the principle of free, prior and informed consent (**FPIC**) for potential OECMs governed by First Nations Peoples. FPIC, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), is the right of Indigenous Peoples to give or withhold consent to any project that may affect them or their lands, and to negotiate conditions for the design, implementation and monitoring of projects. Implementation of FPIC is critical and the OECM framework must be consistent with the range of relevant rights identified in UNDRIP.
- For the purposes of consent to OECM assessment and designation under **principle 4.1**, EDO **recommends** the principles clarify that landholder consent must be sought. While **principle 4.5** indicates that OECMs may apply on all forms of land tenure in Australia including private land, the definition of governance authority under **principle 4.6** does not explicitly include landholders. Where an area is subject to, for example, a conservation agreement or biodiversity certificate (see discussion of Nature Repair Market below), it is not clear that landholder consent would be sought.
- Additionally, where OECMs are recognised on leasehold land, **principle 4.5** requires conservation to 'be compatible' with lease conditions. EDO **recommends** that the guidelines require a higher standard than compatibility, and that lease terms should ensure conservation can be achieved in the long term.

## **3. OECMs must secure real biodiversity conservation outcomes**

The use of OECMs to achieve the national target of 30 by 30 is not an end in itself, but a means to incentivise and achieve positive conservation outcomes. To be classified as an OECM, an area should clearly demonstrate 'important biodiversity values' according to a clear and measurable

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<sup>3</sup> IUCN-WCPA Task Force on OECMs, (2019) 'Recognising and reporting other effective area-based conservation measures', available at <https://portals.iucn.org/library/sites/library/files/documents/PATRS-003-En.pdf> (IUCN Guidelines).

definition. Important biodiversity values as described by **principle 4.2** should be defined according to the OECMs Site-Level Assessment Tool,<sup>4</sup> consistent with IUCN Guidelines.<sup>5</sup> The identification of important biodiversity values must be transparent and evidence based. EDO **recommends** the draft principle reflect these elements.

As noted in **principle 4.2**, biodiversity values must be maintained in the long term. It is critical that OECMs deliver sustained outcomes for the conservation of biodiversity – which includes the management of existing and anticipated threats.<sup>6</sup> Threat management is integral to site management and ensuring long term conservation. EDO **recommends** the principles be amended to ensure OECMs are equipped to manage emerging and ongoing threats.

Prioritisation of high value or at-risk biodiversity areas is appropriate, and EDO supports the identification of areas of particular importance for biodiversity as a priority for assessment (as both OECMs and protected areas). Notes for **principle 4.2.1** refer to the definition of ‘areas of particular importance for biodiversity’ as explained in the *Aichi Target 11 Quick Guide*. While this is a good early indication of the areas for prioritisation, clearly defined criteria and methodologies for identifying areas of particular importance are needed.

For example, the methodology could allow for areas to be deemed as suitable for preliminary OECM status where a site would not qualify as a protected area, but has been identified under another conservation or protection scheme, such as sites listed on the critical habitat register under the *Environment Protection and Biodiversity Conservation Act (EPBC Act)* or as identified by national regional planning reforms as areas of high environmental value. EDO agrees further consultation and scientific input on these methodologies is necessary.

#### **4. Restoration of a potential OECM site must be effective and secured**

EDO **recommends** that restoration sites (**principle 4.2.2**) should not be assessed as OECMs until restoration is completed and biodiversity outcomes secured. There is a risk that site restoration will not proceed as planned, and that categorisation as an OECM will precede outcomes being achieved. This is particularly relevant where climate change is a relevant factor in degradation of a particular site.

The IUCN Guideline criteria for assessing and designating areas undergoing restoration are significantly stricter than the draft principles.<sup>7</sup> The Guidelines require: demonstrable and significant biodiversity outcomes; restoration in an ecosystem of high biodiversity value; and restoration efforts which address the cause of degradation, show successful ecosystem recovery based on principles of ecological restoration, and which contribute to long-term maintenance of a

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<sup>4</sup> IUCN World Commission on Protected Areas (May 2022) ‘Site-level tool for identifying other effective area-based conservation measures (OECMs)’, available at <https://www.iucn.org/sites/default/files/2023-02/iucn-wcpa-oecm-assessment-tool-2.0.pdf>, 4, 11.

<sup>5</sup> IUCN Guidelines, 7.

<sup>6</sup> IUCN Guidelines, 5.

<sup>7</sup> See IUCN Guidelines, box 7, 12.

resilient and evolving ecosystem. The restoration must also demonstrate active or natural regeneration of a type and scale that is expected to regain and maintain ecological integrity and a full complement of species.

If restoration sites are to be included in the draft principles, EDO **recommends** these additional, mandatory factors be adopted in full.

### **5. Biodiversity values must have long term protection**

**Principle 4.7** requires management objectives and activities to ‘not be incompatible’ with biodiversity conservation. This is particularly relevant for OECMs in which biodiversity is an ancillary outcome of site management. The IUCN Guidelines state there must be a clear association between the management and biodiversity outcomes, with mechanisms in place to address existing (and anticipated) threats.<sup>8</sup> As such, EDO is of the view the requirement in **principle 4.7** should be of a higher standard than ‘not incompatible’ to ensure that OECMs retain their biodiversity values even when not explicitly accounted for in the management activities. This could be expressed as a requirement that management activities and objectives ‘must maintain or improve’ biodiversity conservation.

In relation to **principle 4.8** (‘sustained long-term’), several terms require greater clarification. It is not clear what evidence would signify a ‘clear long-term intention’ for management arrangements which will deliver biodiversity conservation outcomes. Examples such as conservation agreements or biodiversity certificates may constitute this intention, but the principles should make clear that specific legal, policy, or management arrangements must be in place for an intention to be found. This would also provide guidance for determining the required commitment to a minimum timeframe for management arrangements, and evidence of an intention to maintain ownership/management of the site in a manner compatible with biodiversity conservation.

In addition, no guidance is provided as to what constitutes ‘long-term’. This is an essential component of biodiversity conservation which should be clearly defined prior to OECM status designation. EDO **recommends** ‘long-term’ in this context should be defined as at least 100 years.

### **6. Relation of OECMs to the Nature Repair Market should be clarified**

EDO notes that the 30 by 30 commitment is outlined in the Federal Government’s *Nature Positive Plan*. The *Nature Positive Plan* also includes the Government’s intention for ‘nature positive’ laws, outlines intended reform to the EPBC Act, as well as the intention to establish a nature repair market.

With the *Nature Repair Market Bill 2023* currently before the Senate Environment and Communications Legislation Committee, it is not clear how the new market will relate to OECMs, if at all. Understanding the interaction between the schemes is relevant in setting these principles,

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<sup>8</sup> IUCN Guidelines, 5.

and EDO would welcome further guidance on, for example, whether it is intended that the areas covered by biodiversity certificates issued through the nature repair market will be eligible for OECM status.

## **Conclusion**

The recommendations in this submission ensure a strong, transparent framework to consistently recognise and monitor OECMs. A robust framework will not only contribute to the 30 by 30 target, but should also incentivise positive conservation outcomes. EDO also acknowledges that environmental stewardship through OECMs complement a broader suite of reforms to Australia's environmental laws which protect biodiversity, natural ecosystems and landscapes. This submission should be read in the context of the broader need to modernise Australia's environmental laws, address the extinction and climate crises, and ultimately achieve the 30 by 30 goal in a way which results in real biodiversity conservation outcomes.

For further information, please contact [rachel.walmsley@edo.org.au](mailto:rachel.walmsley@edo.org.au) or (02) 9262 6989.

Yours sincerely,

**Environmental Defenders Office**

A handwritten signature in black ink, appearing to read 'R Walmsley', written in a cursive style.

**Rachel Walmsley**

Head of Policy and Law Reform