



AN HONEST ACCOUNTING: IMPROVING BC'S APPROACH TO CLAIMING OTHER CONSERVED AREAS

TABLE OF CONTENTS

Executive Summary	3
Introduction	5
Evaluating OECMs: The Decision Support Tool	6
Case Study: OGMAs	10
Case Study: WHAs	14
Case Study: Wildland Zones	18
Conclusion	22

Report authors

Tori Ball, *Senior Campaigner*, Canadian Parks and Wilderness Society, British Columbia
Sean Nixon, *Barrister & Solicitor*, Ecojustice Canada



February 2022

EXECUTIVE SUMMARY

Problem

It is critical that BC and other jurisdictions apply rigorous standards in their accounting of protected areas and other effective conservation measures (OECMs) to ensure these

areas legitimately promote in-situ (i.e. “in place”) biodiversity conservation. As detailed in this report, BC is not following Canadian and international standards in its accounting of OECMs.

Purpose

Canada has committed to protecting 25% of its lands and waters by 2025 as a milestone to protecting 30% by 2030. It will take collaborative efforts from all levels of government— Indigenous Nations, community partners and experts—to create meaningful, effective protected and conserved areas that conserve ecological and cultural values.

“Other conserved” areas were initially conceived as a tool to make

protected area creation more inclusive, recognizing Indigenous and community conserved areas. Unfortunately, BC has abused this tool to falsely inflate their progress towards protected area targets. This report was created to take a deep dive into the three designations—Old Growth Management Areas (OGMAs), Wildlife Habitat Areas (WHAs), and Wildland Zones—that make up more than 97%, by size, of BC’s claimed “other conserved” areas.

Results

The three reviewed designations do not meet international or Canadian standards, as set out in the Canadian Decision Support Tool. Key criteria for assessing legitimate conserved areas

include: clearly defined boundaries, long-term protections that are hard to reverse, and the prohibition of activities that are incompatible with biodiversity conservation.

In applying these and other criteria to the three conservation designations that make up the vast majority of BC’s claimed “other conserved” areas, this is what we found:

OGMA_s (OLD GROWTH MANAGEMENT AREAS)	WHAs (WILDLIFE HABITAT AREAS)	WILDLAND ZONES
		
Areas set aside in an old-growth order to protect trees, based on age and type. May also protect wildlife and culturally modified trees.	Areas designated to conserve habitats for species that require special management, including some at-risk species.	Areas set aside for their value to First Nations culture, wildlife, backcountry recreation values, and wilderness characteristics.
<ul style="list-style-type: none">✗ Boundaries shift✗ Logging, oil, gas, road-building allowed; limits are vague✗ Protection isn't long-term✓ Protection is year-round	<ul style="list-style-type: none">✓ Clear boundaries✗ Logging, oil, gas, road-building allowed✗ Easy to reverse✓ Protection is year-round	<ul style="list-style-type: none">✓ Clear boundaries✗ Mining, oil, gas, road-building allowed⚠ Likely to be long-term✓ Protection is year-round

Recommendations

To uphold the rigorously-designed and agreed-upon protection standards set out in Canada’s Decision Support Tool, all of the analyzed designations should be removed from BC’s claimed “other conserved” areas, or upgraded to meet the standards set out in the Canadian Decision Support Tool.

Upgrading BC’s “other conserved” areas to stronger measures—such as provincial protected areas or conservancies, or Indigenous Protected and Conserved

Areas (IPCAs)—is necessary to conserve biodiversity. It also provides a great opportunity to deliver on multiple priorities including conserving old growth forests, supporting reconciliation with First Nations and fostering healthy wildlife populations.

At the time of writing, the BC government has not provided an update to the authors regarding the status of the cross-ministry analytical team established to evaluate BC’s claimed OECMs.

INTRODUCTION

There is a global movement to protect significant portions of lands and oceans with the aim of stemming the severe biodiversity decline that has been recorded across the world, throughout Canada, and here at home in BC. The Government of Canada has committed to protect 25% of Canada's lands and oceans by 2025 as a key milestone towards protecting 30% by 2030.

BC is the most biologically-diverse province or territory in Canada and over 90% of its landbase is in publicly owned and managed lands. This gives the province an opportunity to take national and international leadership in protecting nature to safeguard wildlife, ecosystems, and the human cultures and economies that depend on them. However, despite having more at-risk species and ecosystems than any other jurisdiction in Canada, and in spite of calls from Indigenous groups to set aside lands for biodiversity conservation and Indigenous governance, BC has not made any public commitments to increasing its network of protected and conserved areas.

In response to the 2019 federal call for potential projects for nature funding under the Pathway to Canada Target 1 initiative¹, First Nations, conservation groups and local communities in BC submitted dozens of proposals. These proposals are confidential, but government officials have confirmed that there were over 60, with the vast majority being Indigenous-led. There are many Indigenous-led conservation projects that could make a meaningful contribution to the ecology, economies and well-being of BC, yet lack support from the provincial government.

Committing as a province to achieve the global and federal biodiversity targets for land and water protection provides an opportunity for BC to deliver on its commitments to reconciliation with First Nations, support sustainable livelihoods in rural and remote communities, and prepare our landscapes to adapt to climate change while safeguarding the province's wildlife and natural habitats.

¹ <https://www.conservation2020canada.ca/home>



EVALUATING OECMs IN BC: THE DECISION SUPPORT TOOL

It is critical that BC and other jurisdictions apply rigorous standards in their accounting of protected areas and other effective conservation measures (OECMs) to ensure these areas legitimately promote in-situ (i.e. “in place”) biodiversity conservation. As detailed in this report, BC is not following Canadian and international standards in its accounting of OECMs.

BC’s most recent report to the Canada-wide protected and conserved areas database (CPCAD) claimed that 19.5% of the province is covered by protected areas and OECMs.

Table 1: Overview of BC’s claimed protected areas and OECMs

<p>Protected areas (15.5%)</p>	<p>Including provincial parks, national parks and private land conservation designations. These areas are specifically legislated and managed to promote in-situ biodiversity conservation.</p>
<p>Other effective conservation measures (4%)</p>	<p>These areas cover a variety of designations which vary in their primary purpose and claim to preserve biodiversity as a secondary benefit. Canadian and international standards for OECM accounting require the province to follow strict selection criteria, including that each area is intended to be protected for the long-term and that management of the area effectively promotes in-situ biodiversity conservation.</p>

BC is the only province in Canada to claim a significant area as OECMs. As shown in the case studies below—which collectively cover more than 97% of the ~4% of the province BC claims as OECMs—most of the provincial designations related to BC’s claims do not meet Canadian and international standards.

It is important that all governments are aligned on the standard of our protected and

conserved areas, and that the progress BC makes towards these global goals reflects legitimate efforts which its citizens can trust and stand behind. **If BC or any other province take a lax approach to applying standards for OECMs, this threatens to undermine all other Canadian jurisdictions’ approaches to protected and conserved areas accounting.**

Table 2: BC’s claimed other effective conservation measures (from CPCAD)

Area	Hectares	% of BC (94 473 500 ha)
Old Growth Management Areas (Mapped Legal)	1 482 536	1.57%
Wildlife Habitat Areas	1 084 468	1.15%
Muskwa-Kechika Special Wildland Area	891 716	0.94%
Sea To Sky Wildland Zones	255 357	0.27%
Flathead Watershed Area	86 275	0.09%
Other claimed OECMs	181	0.0002%

Historical and International Context for OECM Criteria

In 2012, the IUCN World Conservation Congress adopted a resolution to develop criteria for “effective area-based conservation measures”, which included Indigenous Peoples’ Conserved Territories and Areas Conserved by Indigenous Peoples and Local Communities.²

In October 2013, a scientific and technical advisory committee identified the “recognition and/or integration of indigenous and community conserved areas and private reserves in national protected areas systems” as a gap in implementing the biodiversity targets established under the Convention on Biological Diversity.³

These targets are known internationally as Aichi Target 11 and in Canada as Target 1. In 2015, the IUCN World Commission on Protected Areas (WCPA) set up a Task Force to develop guidance to define “other effective area-based

conservation measures” for IUCN members and CBD Parties.⁴

Canadian experts have played an important role in developing the criteria for OECMs. The third IUCN-WCPA Task Force workshop was hosted by CPAWS in February 2017 in Vancouver, BC, which brought together experts from across Canada and the world.⁵ [A final draft of the guidelines](#) to recognize and report OECMs was released in August 2019.⁶

Canada progressed in lockstep with the international community, putting forward [its own overview of accounting for protected and other conserved areas](#) in July 2019. As co-chair of the national Pathway steering committee, BC has played a leading role in the development of the made-in Canada accounting framework for OECMs and the Decision Support Tool described below.

Evaluation Criteria for OECMs in Canada

The crux of Canada’s accounting framework is called the [Decision Support Tool](#). This Tool outlines the various criteria which are necessary to meet Canadian and international standards for protected areas or OECMs. These are the criteria used in this report to evaluate the OECMs that BC has claimed in its report to the Canadian Protected and Conserved Areas Database (CPCAD) to contribute to the Pathway to Target 1 process.

As set out in the Decision Support Tool, the main difference between an OECM and a protected area is in the objectives for the relevant area. Protected areas are designated with biodiversity conservation as a primary objective. OECMs deliver in-situ conservation of biodiversity as a by-product of management, but generally have a primary objective which is not conservation-focused. Table 3 shows the key criteria that must be met for an area to be considered a protected area or OECM.

² Task Force on Other Effective Area-Based Conservation Measures, Jonas, H. & MacKinnon, K. Discussion Paper: Framing the Issues, Dec 2015. URL: <https://www.iucn.org/sites/dev/files/content/documents/oecmsframing.pdf>

³ *Ibid.*

⁴ *Ibid.*

⁵ Jonas H., K. MacKinnon (Editors) 2016. Using Case Studies to Enhance Guidance on Other Effective Area-based Conservation Measures: Report of the Third Meeting of the IUCN-WCPA Task Force on Other Effective Area-based Conservation Measures. IUCN: Gland, Switzerland URL: https://www.iucn.org/sites/dev/files/content/documents/task_force_on_oecms_-_vancouver_meeting_-_february_2017_-_a4.pdf

⁶ IUCN-WCPA, 2019. Recognising and Reporting Other Effective Area-based Conservation Measures. Technical Report. IUCN, Switzerland. URL: https://www.iucn.org/sites/dev/files/content/documents/recognising_and_reporting_oecms_-_iucn_technical_report_-_august_2019.pdf

Table 3: Criteria and standards for OECMs

Criteria	Standard
Geographical space	Clearly defined with agreed-upon borders
Effective means	The mechanisms for protecting the area prevent activities that are incompatible with in-situ biodiversity conservation, and manage all other activities within the area
Long-term	The mechanism(s) are intended to be in place for the long term and are not easily reversed
Timing	The mechanisms are in effect year-round

There are several criteria that do not overlap between OECM and protected areas. These are outlined and defined in the Decision Support Tool as:

Scope of Objectives: Objectives have sufficient scope to result in the in-situ conservation of biodiversity.

Primacy of Objectives: Objectives result in the in-situ conservation of biodiversity.

Governing Authorities: The in-situ conservation of biodiversity is not jeopardized by relevant governing authorities.

Biodiversity Conservation Outcomes: Biodiversity is conserved in-situ.

According to provincial government officials, the areas BC claims as OECMs only include “areas that do not have overlapping tenures for industrial activities such as oil and gas or

mineral development. If such tenures were to be issued, those areas would be removed in subsequent updates” to the Canadian database for protected and conserved areas.⁷

That approach is not consistent with Canadian and international guidance set out in the Decision Support Tool. If the areas in question were legitimate OECMs, the province would not be able to easily issue industrial tenures that overlap with them. If the only substantive test for an OECM was whether it overlaps with an active industrial tenure, any jurisdiction could claim as OECMs all public lands with no current tenures on them, and then remove areas as tenures are granted. That has never been the intent of the OECM category—hence the requirement that OECMs provide long-term protection against all activities incompatible with biodiversity conservation.⁸

⁷ May 14, 2021 e-mail from Kevin Jardine, Deputy Minister, BC Ministry of Environment and Climate Change Strategy, to Ecojustice, CPAWS-BC and others.

⁸ Decision Support Tool at pp 6, 10-13 and 20-21.



CASE STUDY: OGMA_s

BC claims that almost 1.5 million hectares of “legal” Old Growth Management Areas (OGMAs) should be counted as OECMs. This is the largest category in its OECM accounting, covering roughly 1.6% of BC’s landbase (i.e. about 40% of the area it claims as OECMs).

A legal OGMA is one that has been declared to be of legal effect under a BC *Land Act* old-growth order. These orders and any amendments are made by the BC forest

minister, or by any BC government employee the minister chooses as a delegate.⁹ Legal OGMAs are distinguished from draft or “non-legal” OGMAs, which have not yet been finalized in an order.

Multiple independent reports have criticized the province’s approach to establishing and managing OGMAs, including legal OGMAs, for biodiversity conservation.

⁹ BC *Land Act*, RSBC 1996 c 245, ss 93.4-93.8. Note under s. 93.6 that s. 93.4 orders establishing or significantly amending an objective under the *Forest and Range Practices Act* are generally subject to public review and comment.

For example, the BC Forest Practices Board reviewed the province's management of OGMA's in a 2012 report reviewing BC's approach to conserving old-growth forests.¹⁰ The Board found several major problems, including the following:

- Most orders establishing legal OGMA's include conditions that allow forest licensees to conduct some timber harvesting and road construction within the OGMA without first having to seek BC government approval through an amendment to the licensee's forest stewardship plan. This is a concern especially where OGMA's are meant to protect wildlife habitat.¹¹
 - The BC government has not maintained records of OGMA values in a consistent and uniform way accessible to forest licensees. As a result, forest licensees can inadvertently impact or compromise those values (including wildlife habitat values) by harvesting timber or constructing roads in locations that compromise those values (including by destroying key attributes of wildlife habitat).¹²
 - Orders for legal OGMA's usually include thresholds for the amount of timber harvesting and road building that is allowed in an OGMA (e.g. 10 percent of the OGMA). However, orders are generally poorly drafted and do not clearly specify whether these thresholds are for total, cumulative disturbance or for disturbance allowed within the term of a forest stewardship plan (if the latter interpretation applies, the area originally covered by an OGMA with a 10% threshold could conceivably be 100% logged within the terms of ten forest stewardship plans). Orders for legal OGMA's generally

lack enough detail to effectively keep timber harvesting or road construction within the specified thresholds or to prevent legal OGMA's from becoming heavily fragmented across the landscape.¹³

- Forest licensees are meant to replace areas they harvest in legal OGMA's with other areas having equal or better old-growth attributes. In many management areas, the government does not know the extent of OGMA incursions or whether licensees have replaced harvested areas appropriately.¹⁴
 - The BC government applies an inconsistent approach to preventing harvesting in legal OGMA's for non-forestry tenures and activities —many non-forestry tenure holders are not required to address old growth retention at all.¹⁵

The Forest Practices Board noted in a January 2020 submission to the BC Old Growth Strategic Review Panel that, “while [the BC government] has done some work and made progress in old growth management, the recommendations [from the 2012 Board report on old growth] have not been fully implemented and these gaps in management remain.”¹⁶

The 2020 Report from the Old Growth Strategic Review Panel also noted several ongoing problems with OGMA's, similar to those identified in the 2012 Forest Practices Board Report. The Review Panel found, for example, that “there has been no formal, consistent monitoring program to determine whether there is compliance with the current [OGMA] targets, or if they are achieving the intended results.”¹⁷

¹⁰ Forest Practices Board, *Conserving Old Growth Forests in BC*, FPB/SIR/36, June 2012. Found February 3, 2021 at: <https://www.bcfpb.ca/wp-content/uploads/2016/05/SIR36-OGMA's.pdf>.

¹¹ FPB 2012 - *Conserving Old Growth*, at pp 4, 17-18.

¹² FPB 2012 - *Conserving Old Growth*, at p 4.

¹³ FPB 2012 - *Conserving Old Growth*, at pp 17-18.

¹⁴ FPB 2012 - *Conserving Old Growth*, at p 30.

¹⁵ FPB 2012 - *Conserving Old Growth*, at pp 5, 28-30.

¹⁶ Forest Practices Board, *Submission to Old Growth Strategic Review Panel*, February 2020, at p. 1. Available online (accessed Feb. 11, 2021) at: <https://www.bcfpb.ca/wp-content/uploads/2020/02/Submission-to-Strategic-Review-Old-Growth-Mgmt-BC.pdf>

¹⁷ Old Growth Strategic Review Panel (Merkel & Gorley), *A New Future for Old Forests*, April 2020 (“2020 Old Growth Strategic Review Panel Report”), at pp 33-34.

The Review Panel also found that, although OGMA were nominally established to protect old-growth forest ecosystems and the wildlife dependent on them, “[m]any OGMA do not contain old forests and some contain forests less than 40 years old.”¹⁸ Finally, the Panel expressed strong concern about the results of scientific research on “edge effects” in OGMA next to roads and recent logging cut-blocks. The research showed that species dependent on old forests had disappeared up to 100 metres from the edge of the relevant opening.¹⁹

The Forest Practices Board’s and Old Growth Strategic Review Panel’s concerns about OGMA were confirmed and expanded upon in a recent BC Supreme Court case. In her July 2021 judgment in a treaty infringement case brought by the Blueberry River First Nations²⁰, Justice Burke found the following:

- OGMA are of low efficacy in protecting biodiversity, “as they apply only to forestry, oil and gas activity (and not other industrial activity), and because they allow discretionary destruction of habitat.”²¹
- If an OGMA is specifically designated under oil and gas laws, the province allows oil and gas activity to disturb 5-10% of the OGMA, depending on its size. Approvals for such disturbances do not consider the actual effect of the activity on wildlife, but only the activity’s physical footprint.²²
- If the province does not specifically designate an OGMA under oil and gas laws, oil and gas activities are not subject to this 5-10% limit.²³
- The province’s intent is to use at least some OGMA as “rotating reserves” rather than as areas that will be protected in the long-term. They are harvested, often continuously, on roughly an 80 year cycle, and are replaced by other OGMA.²⁴

Legal OGMA are far from meeting Canadian and international criteria for OECMs. In particular:

- **They do not have clear borders:** their location and outer boundaries change as industrial proponents harvest areas inside OGMA (often without any prior government approval). Further, it is up to licensees to decide how to replace areas they harvest in legal OGMA. Except in a few areas of the province, the BC government does not know how much has been removed from original OGMA, where licensees have added new OGMA, or whether newly-added OGMA have equal or better old-growth attributes than the areas they replaced.
- **Considerable industrial development incompatible with biodiversity conservation is still allowed inside legal OGMA:** this includes logging, road building, oil and gas activities, mining exploration and development, and other industrial activities.²⁵

Continued on next page >>

¹⁸ 2020 Old Growth Strategic Review Panel Report, at p 34.

¹⁹ 2020 Old Growth Strategic Review Panel Report, at p 33.

²⁰ *Yahey v British Columbia*, 2021 BCSC 1287 - available online (CanLII) at: <https://canlii.ca/t/jgpbbr> (“Blueberry River First Nations v BC”)

²¹ *Ibid* at paras 1659-60.

²² *Ibid* at para 1648. See general paras 1646-1651.

²³ *Ibid* at para 1651.

²⁴ *Ibid* at para 1641. See also para 1545, noting that all legal OGMA in the Dawson Creek Timber Supply Area—one of the TSAs relevant to that particular case—are designated as rotating.

²⁵ In the oil and gas context, the BC Oil and Gas Commission (OGC) takes OGMA into account in at least some timber supply areas. However, the OGC considers that there will be no “material adverse effect” on old forest values if oil and gas activities in an OGMA disturb or destroy less than 5-10% of the total area of the OGMA. It is unclear whether these oil and gas disturbance thresholds take into account disturbance already caused by other sectors, including industrial logging (see discussion above about Forest Practices Board findings that the BC government generally does not know the extent of OGMA incursions caused by industrial logging operations). See e.g. BC Oil and Gas Commission, Industry Bulletin 2018-3. In general, OGMA are not legally protected in relation to other industry sectors, including mining and power generation/transmission.

As noted in the Decision Support Tool, “Due to their typically negative impacts on the in-situ conservation of biodiversity, industrial activities and environmentally damaging infrastructure are not compatible with Protected Areas and OECMs.”²⁶

- **Protection is not intended to be in place for the long-term:** orders establishing legal OGMA can be amended or reversed relatively easily (by order of a minister or delegate)²⁷, and locations of legal OGMA are not intended to be permanent (proponents can change borders without government approval, and the province treats at least some OGMA as “rotating reserves” rather than as areas to be protected for the long-term).

Table 4: Criteria and standards for OGMA

Criteria	Standard
Geographical space	✘ Borders shift over time as forest licensees and others carry out industrial activities
Effective means	✘ Logging and road-building are still allowed in OGMA, up to specified thresholds, but thresholds are often vague and unenforceable. Oil and gas activities are also allowed up to specified thresholds. Other industrial activities are often not prohibited or managed
Long-term	✘ Orders establishing OGMA are easily reversed, and locations are not intended to be permanent (proponents can change borders without government approval, and the province treats at least some OGMA as “rotating reserves”)
Timing	✔ Protection in place year-round

Recommendations for OGMA

As set out above, OGMA are far from meeting Canadian and international standards for OECMs. These areas **should not be considered for inclusion as protected areas or OECMs** unless the subset of OGMA that remain intact

and contain primarily old trees are converted to other, stronger conservation designations (e.g. ecological reserves, provincial protected areas, or Indigenous Protected and Conserved Areas).

²⁶ Decision Support Tool, at pp 20-21.

²⁷ See note 8 above.



CASE STUDY: WHAs

BC claims that non-overlapping Wildlife Habitat Areas (WHAs) contribute nearly 1.1 million hectares to the province’s OECCMs. These areas cover roughly 1.15% of the province’s landbase, and almost 30% of the area BC claims as OECCMs.

WHAs are established by a minister or delegate under the *Forest and Range Practices Act* and its regulations; they are meant to protect some habitat for specific at-risk or regionally-important wildlife species.²⁸

The Government Actions Regulation allows the provincial environment minister or a delegated government employee to set objectives for WHAs or to establish “general wildlife measures” (essentially, rules of conduct) that apply in a specific area, including a WHA, or for a category of species at risk or other wildlife species.²⁹

²⁸ Government Actions Regulation, BC Reg 582/2004, ss 10(1) and (2). Note that WHAs may also be grand-parented from those established under the old BC *Forest Practices Code*. The minister who establishes or amends WHAs is the minister responsible for the BC *Wildlife Act*.

²⁹ Government Actions Regulation, ss 9 and 10. Under s 23 of the BC *Interpretation Act*, RSBC 1996 c 238, any power given to a minister under BC laws can be exercised by a deputy minister, an assistant deputy minister, or “some other official authorized by the minister.”

Section 92 of the Forest Planning and Practices Regulation gives government decision-makers a broad, general power to grant an exemption to any general wildlife measure if “satisfied” that “compliance with that [measure] is not practicable, given the circumstances or conditions applicable to a particular area.” In considering whether to grant an exemption, there is no legal requirement that government take into account the potential effects of an exemption on biodiversity conservation or ecosystem health.

Existing, approved WHAs in the province are listed on a BC environment ministry website³⁰.

A review of several approved WHAs on Vancouver Island, for example, reveals that:

- Each contains a schedule listing general wildlife measures (GWMs) applicable in that WHA (there are some broad similarities, but GWMs are generally unique to each WHA).
- GWMs often include prohibitions on road construction and timber harvesting, but in many cases these prohibitions are subject to discretionary exemptions set out in the order establishing the WHA (e.g. where the BC environment ministry or a delegate is “satisfied that there is no other practicable option” to road construction in the WHA, or where an exemption is granted allowing salvage logging in the WHA). These exemptions are additional to, or overlap with, the broad exemption already set out in section 92 of the Forest Planning and Practices Regulation.
- GWMs do not generally cover all activities known to be incompatible with in situ biodiversity conservation (e.g. mining activities

or the clearing of land for power development), and are generally focussed on creating (discretionary) limits to industrial forestry and recreation³¹.

The effectiveness of a WHA in conserving biodiversity depends on the objectives and general wildlife measures applicable in that WHA, and on any available exemptions to those general wildlife measures. Accordingly, it is overbroad for the BC government to claim that all non-overlapping WHAs should be counted as OECMs. Each WHA must be assessed on its own merits to determine if its applicable objectives, general wildlife measures and exemptions provide meaningful and effective protection against all activities incompatible with in situ biodiversity conservation. However, even WHAs that appear to provide relatively strong protection remain subject to the broad exemption power in section 92 of the Forest Planning and Practices Regulation, and have limited effect outside of the industrial forestry context. Further, because WHAs are established to protect specific species, they do not protect the entire ecological community within the area (other than incidentally).

In *Blueberry River First Nations v BC*, Justice Burke of the BC Supreme Court found several problems with WHAs as tools to protect biodiversity, including the following:

- WHAs are of low to low/moderate efficacy in protecting biodiversity, given the high level of documented industrial incursions in these nominally “protected” areas, the weak and

³⁰ See <http://www.env.gov.bc.ca/wld/frpa/iwms/wha.html>.

³¹ Under BC forestry legislation, general wildlife measures (rules applicable in WHAs) only apply to “authorized persons” who carry out “primary forestry activities”. These defined terms generally apply only in the forestry context: Forest Planning and Practices Regulation, ss 1 and 69. In the oil and gas context, the *Oil and Gas Activities Act* and its regulations require the BC Oil and Gas Commission (OGC) to take over effective management of WHAs. The OGC can issue permits for oil and gas activities inside a WHA so long as it considers government objectives for wildlife and habitat: Environmental Protection and Management Regulation (EPMR), s 6. The OGC is not to issue a permit if it will “have a material adverse effect on the ability of the wildlife habitat within the wildlife habitat area to provide for the survival, within the wildlife habitat area, of the wildlife species for which the wildlife habitat area was established.” However, there is no requirement for the OGC to consider anything beyond the mere survival needs of the specific wildlife species for which the WHA was established (i.e. there is no requirement to consider other effects on in situ biodiversity conservation for the entire ecological community in the WHA, or to consider the recovery needs of the specific species for which the WHA was established): EPMR, s 6.

discretionary tests allowing exemptions to the protections in WHAs, and the limited subset of industrial activities to which the protections in WHAs apply.³²

- Industrial development is not prohibited in WHAs—exceptions to prohibitions are always available. For example, forestry roads can be

built even inside nominal “no harvest” zones in WHAs, and some oil and gas drilling is allowed in WHAs (oil and gas activity in WHAs is not managed at all unless the province specifically designates the relevant WHA under oil and gas laws).³³

While not falling as far short of Canadian and international standards as OGMA's do, under current laws WHAs do not meet standards for OECMs. In particular:

- **Considerable industrial development incompatible with biodiversity conservation is still allowed inside WHAs**, either expressly (e.g. because general wildlife measures in particular WHAs do not prohibit or apply to all industrial activities) or through the weak general exemption provision in s. 92 of the Forest Planning and Practices Regulation (which, if applied, could allow timber harvesting, salvage logging, road building, and other industrial activities inside the boundaries of the WHA). Oil and gas activities are allowed, and may not be managed at all.
- **WHAs and any protections in WHAs are easily reversed or amended:** orders establishing WHAs or general wildlife measures can be reversed or amended by order of a minister or delegate.³⁴

³² *Blueberry River First Nations v BC*, note 20 above, at paras 1659-60.

³³ *Ibid* at paras 1650-51.

³⁴ Government Actions Regulation, ss 9 and 10. Under s 4 of the regulation, public notice must be given of any such order, but the notice requirements are minimal, including that a copy or summary of the order can be “made publicly available at the regional office of the forest region to which the order relates.”

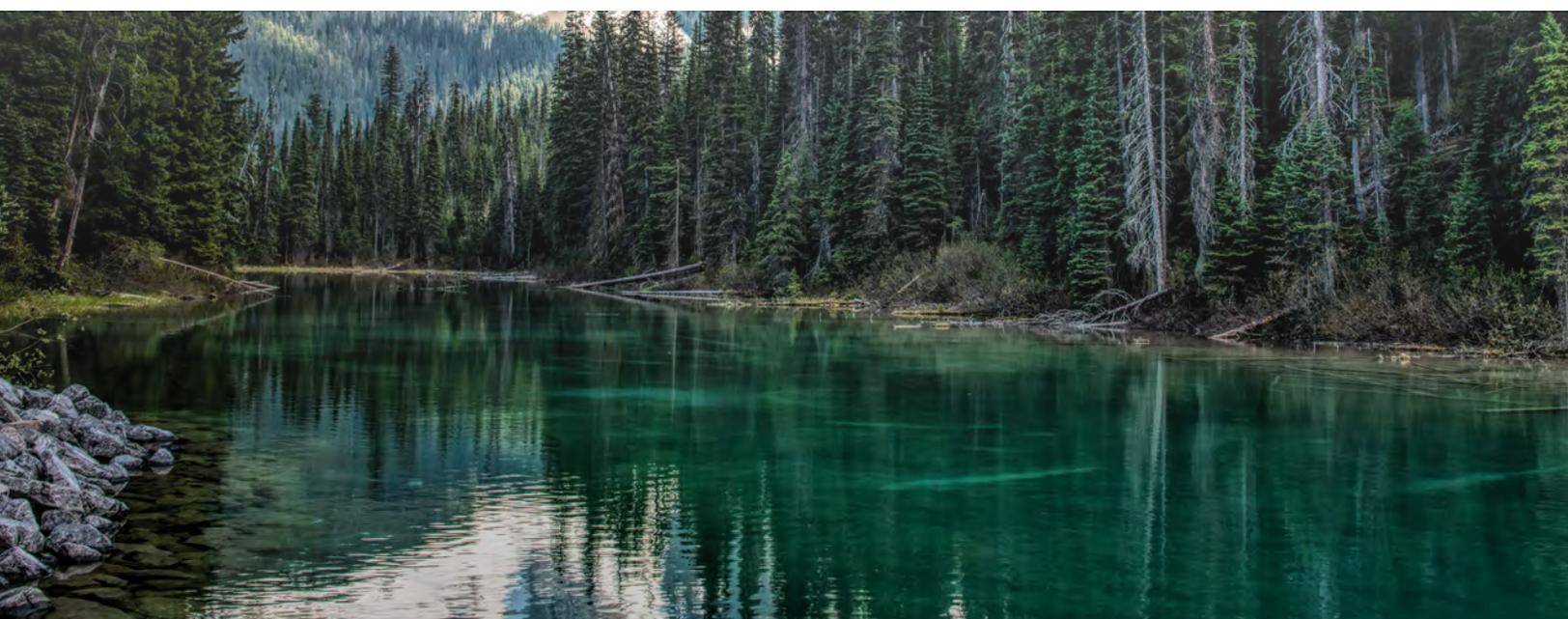




Table 5: Criteria and standards for WHAs

Criteria	Standard
Geographical space	✓ Clearly defined
Effective means	✗ Do not provide sufficient ability to prevent and/or manage activities within the area that are likely to have impacts on biodiversity (e.g. road building, timber harvesting and oil and gas activities are still allowed—other industrial activities are not generally prohibited or managed)
Long-term	✗ WHA orders and general wildlife measures are easily amended or repealed
Timing	✓ Protection in place year-round

Recommendations for WHAs

As set out above, several changes to legislation and to the orders establishing individual WHAs are required before most WHAs could be considered suitable for inclusion as OECMs.³⁵ Alternatively, WHAs should be converted to

stronger conservation designations that provide meaningful long-term protection against all activities incompatible with biodiversity conservation (e.g. ecological reserves, Indigenous Protected and Conserved Areas).

³⁵ For example, the government could make a general order applicable to all WHAs that prohibits all activities incompatible with biodiversity conservation in all WHAs. The province would also have to amend the Forest Planning and Practices Regulation (FPPR) and other legislation to ensure that WHA orders and general wildlife measures must be followed by all industrial sectors, and strengthen or eliminate the exemption in s. 92 of the FPPR. Further, the province would have to amend the Government Actions Regulation to ensure broad public notice and public comment before any WHA order, or any order establishing general wildlife measures for WHAs, is amended or repealed.



CASE STUDY: WILDLAND ZONES

BC claims that “wildland zones” in two areas (Muskwa-Kechika and Sea-to-Sky) contribute about 1.15 million hectares to the province’s OECMs. These areas cover roughly 1.2% of the province’s landbase and 30% of the area BC claims as OECMs.

Wildland zones were established through provincial land and resource management

plan (LRMP) processes. While these wildland zones are closer than either OGMAs or WHAs to meeting criteria for OECMs, they do not currently meet national and international standards because industrial and other activities incompatible with in-situ biodiversity conservation are still permitted.

Muskwa-Kechika Wildland Zones

The Muskwa-Kechika Management Area Resource Management Zones include a special category known as Wildland Zones. They contain a mix of forested valleys bottoms and large areas of unforested, high-elevation habitat with high wildlife values. These areas were designated through the Mackenzie LRMP process.

The Muskwa-Kechika Wildland Zones do not meet the criteria for inclusion as OECMs because they permit oil, gas, and mineral

extraction activities that are incompatible with in-situ biodiversity conservation.³⁶ Seismic lines, temporary roads, oil and gas right-of-ways, and other industrial uses are permitted within Wildland Zones so long as consideration is given to impacts on other resource values. Although Muskwa-Kechika Wildland Zones are managed with ecological conservation as a priority, competing objectives of resource extraction compromise the in-situ conservation of biodiversity.

Recommendations for Muskwa-Kechika Wildland Zones:

Prohibit activities incompatible with biodiversity conservation, including mining activities, oil and gas activities, road building, and other industrial activities. **With additional protections, the Muskwa-Kechika Wildland Zones could become suitable for inclusion as OECMs or protected areas.**

³⁶ Government of British Columbia. Mackenzie Land and Resource Management Plan. (2000). See also <https://www.muskwa-kechika.com/management-area/resource-management-zones> (noting that “mineral and oil and gas exploration is permitted, [although] non-roaded exploration is promoted” in Special Wildland Zones.)





Sea-to-Sky Wildland Zones

The Sea-to-Sky Wildland Zones are areas of high wildlife habitat value, First Nations cultural value, and remote, wilderness characteristics designated through the Sea-to-Sky LRMP process. They are largely located at or near the heads of valleys in areas that made little or no contribution to the timber harvesting landbase.

The Sea-to-Sky Wildland Zones do not meet the criteria for inclusion as an OECM because they permit industrial activities that are incompatible with in-situ biodiversity conservation.³⁷ Management direction within Sea-to-Sky Wildland Zones is focused on four primary resource values: Culture, Recreation,

Tourism, and Wildlife. Commercial timber harvesting and the development of independent power projects are prohibited. However, several activities are still permitted in these zones, including mining activities (exploration, acquisition of tenures and mine development), oil and gas activities, the construction of major transmission lines, and road building.

Although Sea-to-Sky Wildland Zones are managed with ecological conservation as a priority, competing industrial resource development objectives compromise the in-situ conservation of biodiversity.

Recommendations for Sea-to-Sky Wildland Zones

Prohibit mining activities, oil and gas activities, road building, and construction of major transmission lines in Wildland Zones with wildlife or culture resource values. **With additional protections, these sub-zones could become suitable for inclusion as OECMs or protected areas.**

³⁷ Government of British Columbia. Sea-to-Sky Land and Resource Management Plan. 251-252 (2008). See also: <https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/south-coast-region-plans/seatosky-lrmp> (accessed June 11, 2021).

Table 6: Criteria and standards for Wildland Zones

Criteria	Standard
Geographical space	✓ Clearly defined
Effective means	✗ Mechanisms governing wildlands do not prohibit mining activities, oil and gas activities, transmission lines, road building, or construction of commercial tourism lodges—all of which would impact biodiversity conservation if allowed
Long-term	⊖ May meet the OECM standard: likely to be in effect for the long term
Timing	✓ Protection in place year-round





CONCLUSION

Increasing protected and conserved areas in BC, in concert with other nature-based solutions to climate change, is a key requirement to ensure the long-term health of the province's wildlife, natural habitats, human cultures and economies. Without moving forward on global and national biodiversity and protected area targets, BC risks

losing its reputation as "Super Natural." The province has an opportunity to become a world leader in protecting the natural world, and in doing so ensuring BC's environment and great outdoor landscapes continue to support our way of life in urban centres and rural areas alike.