



**Facilitating Projects
on Crown and Public Land
in Canada's Greenhouse Gas
Offset Credit System**



Environment and
Climate Change Canada

Environnement et
Changement climatique Canada

Canada 

Cat. No.: En4-735/2024E-PDF
ISBN: 978-0-660-72691-5
EC24060

Unless otherwise specified, you may not reproduce materials in this publication, in whole or in part, for the purposes of commercial redistribution without prior written permission from Environment and Climate Change Canada's copyright administrator. To obtain permission to reproduce Government of Canada materials for commercial purposes, apply for Crown Copyright Clearance by contacting:

Environment and Climate Change Canada
Public Information Centre
Place Vincent Massey building
351 St-Joseph boulevard
Gatineau Quebec K1A 0H3
Toll free: 1-800-668-6767
Email: enviroinfo@ec.gc.ca

Cover photo: © Getty Images

© His Majesty the King in Right of Canada, represented
by the Minister of Environment and Climate Change, 2024

Aussi disponible en français

Purpose

The purpose of this paper is to gather feedback on preliminary considerations for projects in Canada's Greenhouse Gas (GHG) Offset Credit System on provincial Crown land or public land administered by territorial governments ("Crown or public land").¹ Environment and Climate Change Canada (ECCC) welcomes comments on all elements outlined in this paper.

Context

Canada's Greenhouse Gas Offset Credit System

The Government of Canada launched [Canada's GHG Offset Credit System](#) (the federal Offset System) in June 2022. The federal Offset System encourages cost-effective, voluntary GHG reductions in Canada from activities that are not covered by carbon pollution pricing and that go beyond legal requirements and business-as-usual practices. The financial incentive provided by the ability to generate and sell offset credits is intended to drive activities to reduce GHG emissions and increase GHG removals (collectively GHG reductions) that would not have taken place without this incentive.

The federal Offset System consists of three main elements:

- the [Canadian Greenhouse Gas Offset Credit System Regulations](#) (the Regulations) made under the [Greenhouse Gas Pollution Pricing Act](#) to establish the federal Offset System, implement the operational aspects and set the general requirements applicable to all project types;
- federal offset protocols, included in the [Compendium of Federal Offset Protocols](#) (the Compendium), each containing requirements for project implementation and methods for quantifying GHG reductions or removals for a given project type;
- a credit and tracking system (CATS) to register offset projects, issue and track offset credits, and share key information through a public registry.

An offset protocol for a given project type sets out the requirements that a project proponent must follow for an offset project to generate credits in the federal Offset System. Protocols describe how a project must quantify GHG emission reductions and removals in both the baseline and the project case, and outline monitoring, reporting, and verification requirements. Only projects following a federal offset protocol included in the Compendium and meeting all requirements outlined in the Regulations can generate offset credits under the Regulations. Information on the current status of protocols available and under development can be found on [Canada's Greenhouse Gas Offset Credit System - Protocols webpage](#).

¹ Provincial "Crown land" is land that is owned by the provincial government. "Public land" is land in the Territories that is owned by the federal government, but the administration and control of which has been transferred to the territorial government.

Commitment to Indigenous Participation and Engagement

Consistent with the United Nations Paris Agreement on Climate Change's call to respect, promote, and consider Indigenous rights when taking action on climate change, the Government of Canada is committed to renewed nation-to-nation, Inuit-Crown, and government-to-government relationships with First Nations, Inuit, and Métis Peoples, based on the recognition of rights, respect, cooperation, and partnership. The Government of Canada also supports the [United Nations Declaration on the Rights of Indigenous Peoples](#) (the UN Declaration) and acknowledges that Indigenous Knowledge systems and ways of doing must be a cornerstone of Canadian climate policy. While more work needs to be done to ensure that Indigenous climate leadership is fully integrated into Canada's climate action, Canada has an ongoing commitment to take effective measures to achieve the objectives of the UN Declaration in its policies and programming and to work with Indigenous partners to better support their climate priorities.

In 2021, Canada passed the [United Nations Declaration on the Rights of Indigenous Peoples Act](#) (UN Declaration Act), which provides a roadmap for the Government of Canada and First Nations, Inuit and Métis to work together to implement the UN Declaration based on lasting reconciliation, healing, and cooperative relations. On June 21, 2023, Canada released the UN Declaration Act Action Plan, which has a goal to ensure a Canada where:

- Indigenous peoples enjoy the right to a healthy natural environment with Indigenous ways of knowing incorporated into the protection and stewardship of lands, waters, plants and animals;
- Indigenous peoples play a central role in biodiversity conservation, water and environmental conservation, and climate change action planning, policy development and decision-making;
- self-determined climate action is supported as critical to advancing Canada's reconciliation with Indigenous peoples.

Although there is still work to do, ECCC has incorporated these commitments into the federal Offset System through measures that include:

- establishing a Protocol Focus Group to inform the development of the [Improved Forest Management on Private Land](#) protocol. This protocol applies to projects taking place on private land and land where Indigenous Peoples have the right to exclusive use and occupation. The protocol also includes incentive measures to support participation by Indigenous peoples for aspects such as leading projects, risk management and project monitoring
- building capacity for Indigenous peoples to be able to participate in offset projects:
 - creating a toolkit of key reference materials about carbon markets and GHG offset projects which is available in three Indigenous languages on the federal Offset System webpage
 - delivering workshops developed for Indigenous participants to provide information on how offset systems work and how Indigenous peoples can participate.

In May 2022 ECCC released a discussion paper entitled [Carbon Pollution Pricing: Considerations for facilitating Indigenous participation in the Federal Greenhouse Gas Offset System](#) seeking feedback on how to promote Indigenous participation in the federal Offset System. That paper set out a number of proposals including on involving Indigenous peoples to reduce the risk of reversals from nature-based projects, enabling forest-based projects on Crown land, entitlement to offset credits, and social safeguards measures.

The comments ECCC received on the May 2022 discussion paper provided valuable insight into key issues related to facilitating Indigenous participation in offset projects. The submissions highlighted that:

- The federal government must adhere to the UN Declaration and the principle of Free, Prior, and Informed Consent (FPIC).
- Indigenous peoples need capacity support in order to participate in offset projects.
- The federal government must demonstrate leadership to resolve challenges related to entitlement to offset credits from forest offset projects on provincial Crown land.
- Measures to ensure that offset projects do not have adverse social impacts (i.e. social safeguards) need to be designed to reflect Indigenous rights.

Potential GHG Reduction Activities on Crown or Public Land

There are various activities that reduce GHGs that could potentially be undertaken on Crown or public land. One example is nature-based carbon dioxide (CO₂) removals.

Nature-based CO₂ removal projects (sometimes called nature-based climate solutions) remove CO₂ from the atmosphere and store it in trees, plants, or soils. Nature-based CO₂ removal projects might include activities related to improved forest management, afforestation, reforestation, avoided deforestation, agriculture practices for increased carbon sequestration, and avoided conversion or restoration of other ecosystem types.

Nature-based CO₂ removal projects can contribute to addressing climate change while also contributing to biodiversity conservation and providing benefits to local communities and Indigenous peoples. ECCC has heard from numerous Indigenous organizations and individuals that nature-based CO₂ removal projects represent a promising opportunity for Indigenous peoples, given their relationship to their territories.

Key Considerations for GHG Offset Projects on Crown or Public Land

Key considerations to facilitate federal offset projects on Crown or public land include:

- aligning with the principle of recognizing and upholding Indigenous rights.
- acknowledging the role of provinces and territories in authorizing land use activities.
- demonstrating entitlement to claim offset credits issued for GHG reductions from projects on Crown and public land.

Aligning with the principle of recognizing and upholding Indigenous rights

In ECCC's engagement to date with Indigenous peoples about the federal Offset System, many Indigenous participants expressed the view that projects on Crown or public land should only proceed

with Indigenous FPIC, and/or that the projects should be Indigenous-led. Indigenous participants also indicated that the preferred manner for expressing consent may vary.

The requirements for offset projects in the federal Offset System will be guided by the UN Declaration and the principle of recognition of Indigenous rights. In keeping with those principles, ECCC is proposing that projects on Crown or public land must have, as a matter of policy, the consent of Indigenous peoples holding asserted or established Aboriginal or Treaty rights in the project area before they can be registered in the federal Offset System.

Indigenous peoples may each have their own preferred approaches to engaging with project proponents and providing consent. For the purposes of the federal Offset System, the consent must be documented and must reflect support of the rights-holding group in a manner that they deem fit. Depending on the Indigenous nation or community, this could take the form of a Band Council Resolution, Memorandum of Understanding or letter of support from the leadership, or a benefit-sharing agreement. If an Indigenous nation or community is the proponent, then consent of the members may not need to be demonstrated.

Indigenous leadership of, or partnership in, offset projects can contribute towards economic reconciliation and support Indigenous self-determination. Indigenous nations, communities or governments are best placed to determine their preferred process to grant consent. Thus, the need for consent replaces the 'social safeguards measures' that ECCC proposed in the May 2022 discussion paper.

More than one Indigenous nation or community may hold asserted or established Aboriginal or treaty rights in a project area. In order to obtain Indigenous consent, the project proponent would need to identify the Indigenous rights-holders in the project area. This identification of rights-holder may already take place through existing provincial or territorial land use management decision processes. Offset project proponents may also be able to use guidance previously provided by federal, provincial, or territorial governments and agencies on which Indigenous nations or communities need to be consulted to proceed with other types of projects (such as mines) in the project area.

Indigenous consent represents a higher-level requirement than satisfying a set of social safeguards, and if an Indigenous nation or community grants its consent then it has determined for itself the acceptable conditions for a project to proceed. This approach also eliminates the need for third party verification bodies to assess whether adequate Indigenous consultation has taken place since they may not have this expertise.

The proposal to require Indigenous consent for offset projects does not grant Indigenous communities any new rights related to land management. The requirement for Indigenous consent would only relate to the registration of the activities as an offset project in the federal Offset System. Provincial and territorial land management decisions would continue to follow provincial and territorial processes to fulfill the duty to consult.

Ensuring that all Indigenous rights-holding nations or communities in the project area provide consent could increase certainty and decrease the risk of legal challenges to the project, as well as supporting the sharing of project benefits in a manner that promotes a broad policy view of reconciliation with Indigenous peoples.

We are seeking comment on the following questions:

1. How should project proponents go about identifying the Indigenous nations or communities holding rights in the project area so that they can engage with them to obtain consent?
2. What documentation would be required to demonstrate confirmation of consent?
3. How should Indigenous consent obtained by the project proponent be confirmed?

Acknowledging the role of provinces and territories in authorizing project activities

As a condition for registering a project in the federal Offset System, the project proponent must have the necessary authorizations to carry out the project activities, and documentation to demonstrate this authorization.

For offset projects that are located in whole or in part on privately-owned land that is not owned by the project proponent, the owner of the land must sign a declaration that they authorize the use of their land for the project.

Recognizing that provinces and territories are responsible for the management of Crown and public land, authorization from the provincial or territorial authority would be required prior to undertaking a federal offset project.

Demonstrating entitlement for offset credits issued for GHG reductions from projects on Crown and public land

In the federal Offset System project proponents are required to attest that they have exclusive entitlement to claim the offset credits issued for the GHG reductions generated by their project. This is primarily to ensure that there is no double-counting of the same GHG reductions, but it also reduces uncertainty and potential disputes related to who gets the benefits from a project and clarifies who 'owns' the reductions and associated credits. Under the rules of the federal Offset System, there can only be one proponent of a project and ECCC deposits offset credits into the tracking system account of that proponent for GHG reductions generated by the project.

For projects taking place on Crown or public land, following a process to demonstrate entitlement will be critical in cases where a project proponent, the provincial or territorial government, and Indigenous nations or communities all might make a claim to credits arising from GHG reductions in the project area.

If a province or territory has rules to determine entitlement to offset credits, those rules would indicate the entitlement to credits issued for projects located on land administered by the provincial or territorial government. One example of how this may be done is through Atmospheric Benefit Agreements as have been used in British Columbia for forestry-related offset projects on Crown Land. These agreements, in combination with a Reconciliation Agreement and the use of a protocol in the British

Columbia Greenhouse Gas Emission Offset System, clarify First Nation entitlement to generate and sell offset credits.

If a province or territory has assigned entitlement to the project proponent, ECCC would issue federal offset credits to the project proponent, who would be responsible to transfer, if required, credits to the province or territory or other parties, according to the rules of the province or territory and any benefit sharing agreements. Sharing of offset credits or other benefits with Indigenous peoples would likely be agreed between a project proponent and an Indigenous nation or community in the process of securing their consent to the project. This would ensure clarity on offset credit entitlement on Crown or public land.

Clarifying who is entitled to the credits from an offset project on Crown or public land may be more challenging if a province or territory does not have existing rules --as is currently the case in most provinces and territories. ECCC recognizes that provinces or territories may wish to develop such rules, but this can take time and resources. Without such entitlement rules in place, it will be very challenging for project proponents to attest with certainty that they are entitled to claim the credits issued for GHG reductions achieved through the project.

One approach could be for a project proponent to come to an agreement with the province or territory on the allocation of offset credits from a project, on a project-by-project basis. This agreement could support the project proponent's assertion of exclusive entitlement to claim offset credits issued in the federal Offset System. The proponent would then be responsible to distribute offset credits to the province or territory and Indigenous nations or communities according to any agreements.

In situations where the province or territory is in the process of establishing broader rules for entitlement to claim credits, and the offset project activities have been authorized by the provincial or territorial government in an approved land management plan, entitlement to credits could be deemed to rest with the project proponent until there are provincial or territorial entitlement rules in place.

ECCC will work with interested provinces or territories on options for clarifying entitlement to federal offset credits.

We are seeking comment on the following questions:

1. Will the proposed approaches address the issue of assigning entitlement to claim offset credits issued for GHG reductions from offset projects on Crown or public land from a province or territory to a project proponent?
2. Are there other approaches that could address entitlement and ensure there is no potential double claiming of offset credits for federal offset projects on Crown or public land?

Path forward

ECCC is seeking comments from all interested parties on the proposals and considerations outlined in this discussion paper. Comments provided as well as ECCC's continued engagement with Indigenous peoples, provincial and territorial government officials and technical experts will inform development of requirements for projects on Crown and public land.

Indigenous nations, communities or organizations wishing to provide comments but requiring capacity funds to do so are invited to contact creditscompensatoires-offsets@ec.gc.ca by August 2, 2024.

Parties wishing to comment on any aspect of this paper are invited to provide written comments to Environment and Climate Change Canada, by November 12, 2024 at creditscompensatoires-offsets@ec.gc.ca.

Parties interested in receiving updates on the development of the Federal GHG Offset System are invited to send a request to creditscompensatoires-offsets@ec.gc.ca, including "distribution list" in the subject line.