

## ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEM

### ESS 8: CULTURAL HERITAGE

CULTURAL HERITAGE



MAR FUND'S ESMS

## ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEM

# ESS 8: CULTURAL HERITAGE

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“ESS 8: Cultural Heritage” is part of MAR Fund’s Environmental and Social Management System (ESMS). Therefore, ESS 1 should be read and understood in conjunction with the other 9 Safeguards and the other documents that are part of the ESMS.

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## GLOSSARY

AFD	Agence Française de Développement <sup>1</sup>
BMZ	Bundesministerium für Wirtschaftliche Zusammenarbeit und Entwicklung <sup>2</sup>
EbA	Ecosystem-based Adaptation
CAPEX	Capital Expenditure
CSO	Civil Society Organization
CTF	Conservation Trust Fund
Due Diligence	Environmental and Social Due Diligence
EIA	Environmental Impact Assessment
ERP	Emergency Response Plans
ESAP	Environmental and Social Commitment Plan
Escazú Agreement	Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean
ES	Environmental and Social
ESDD	Environmental and Social Due Diligence
ESIA	Environmental and Social Impact Assessment
ESMF	Environmental and Social Management Framework
ESMP	Environmental and Social Management Plan
ESMS	Environmental and Social Management System
ESPF	Environmental and Social Performance Framework
ESSQ	Environmental and Social (ES) Screening Questionnaire
ESS	Environmental and Social Safeguards
FB	Fundación Biosfera
FCG	Fundación para la Conservación de los Recursos Naturales y Ambiente en Guatemala

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<sup>1</sup> French Development Agency

<sup>2</sup> Federal Ministry for Economic Cooperation and Development of the Federal Republic of Germany.

FC–Measures	Financial Cooperation Measures
FFEM	Fonds français pour l’environnement Mondial <sup>3</sup>
FI	Financial Intermediary
FMCN	Fondo Mexicano para la Conservación de la Naturaleza
FPIC	Free, Prior, and Informed Consent
GCF	Green Climate Fund
GEF	Global Environment Facility
GHG	Greenhouse gas
GMO	Genetically Modified Organism
H&S	Health & Safety
IDB	Inter–American Development Bank
IFC	International Financial Corporation
ILO	International Labour Organisation
ISPM	International Standard for Phytosanitary Measures
IUCN	International Union for Conservation of Nature
JMP	WHO/UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene
KfW	Kreditanstalt für Wiederaufbau <sup>4</sup>
LGBTQ+	Lesbian, gay, bisexual, transgender, queer (or sometimes questioning) and others. + represents other sexual identities including pansexual and Two–Spirit.
MAR	Mesoamerican Reef
MAR Fund	Mesoamerican Reef Fund
NAP	National Adaptation Plans
NDC	National Determined Contributions
NGO	Non–Governmental Organization
OH&S	Occupational Health & Safety
PACT	Protected Areas Conservation Trust

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<sup>3</sup> French Facility for Global Environment.

<sup>4</sup> Reconstruction and Credit Corporation of the Federal Republic of Germany.

PPE	Personal Protective Equipment
PS	Performance Standards
RfP	Request for Proposals
SEA	Sexual Exploitation and Abuse
SECF	Stakeholder Engagement and Communication Framework
SECP	Stakeholder Engagement and Communication Plan
SGBV	Sexual and Gender-Based Violence
SIA	Social Impact Assessment
The Policy	MAR Fund's Environmental and Social Policy
ToR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UN Protocol	United Nations Protocol on Allegations of Sexual Exploitation and Abuse Involving Implementing Partners
WASH	Water, Sanitation, and Hygiene

## 1 ESS 8: CULTURAL HERITAGE



### 1.1 INTRODUCTION

1. The “ESS 8: Cultural Heritage” (ESS 8) is part of MAR Fund’s Environmental and Social Management System (ESMS), which includes the Environmental and Social Management Policy and Exclusion List, nine Environmental and Social Safeguards other than this, an Environmental and Social Screening Questionnaire and formats for several plans and instruments.
2. This Safeguard is consistent with the World Bank’s ESS 8: Cultural Heritage and the IFC’s PS 8 Cultural Heritage. This Safeguard reflects various elements from the IUCN’s Standard on Cultural Heritage.

#### 1.1.1 OBJECTIVES

3. The objectives of the ESS 8 are:
  - i.* To manage the risks and impacts of projects approved by MAR Fund on cultural heritage.
  - ii.* To establish a chance-finds procedure for projects approved by MAR Fund.
  - iii.* To promote equitable sharing of benefits derived from the use of cultural heritage

#### 1.1.2 SCOPE OF APPLICATION

4. As general rule, the ESS 8 will be triggered by any Area-based project that is going to be implemented in, or close by, a recognized cultural heritage site or sites of cultural significance. It also applies to projects that promote the conservation, management, and use of cultural heritage, including restricting access to natural sites of cultural, spiritual significance.
5. The ESS 8 also applies to projects that include movement of land related to minor infrastructure construction, use of natural living resources, or another type of Area-based activity that may cause a chance find.
6. The applicability of the ESS 8 is decided during the environmental and social due diligence, following the ESS 1, with the support of the ESSQ tool.
7. The ESS 8 must be applied in conjunction with the applicable national legislation of Mexico, Belize, Guatemala, or Honduras, as the case may be. This includes the countries’ obligations under international law. When the national law and this Safeguard have different views of the

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same issue, in accordance with MAR Fund’s *Most Stringent Policy Provision*<sup>1</sup>, the most stringent standard or provision must apply.

### 1.1.3 DEFINITIONS

8. For MAR Fund’s ESS 8, the terms presented in this section will have the following meaning. These definitions rely on the IUCN’s Standard on Cultural Heritage, the IFC Performance Standard 8 Cultural Heritage and the World Bank Environmental and Social Safeguard 8 Cultural Heritage, unless otherwise is explicitly indicated.

- Cultural Heritage includes tangible and intangible heritage.
- Tangible cultural heritage refers to:
  - i. movable or immovable objects, property, sites, structures, or groups of structures, paleontological, archaeological, historical, cultural, artistic, religious, spiritual, symbolic aesthetic, or other cultural significance value for a nation, People, or community; and
  - ii. natural features or tangible objects that embody cultural, religious, spiritual, or symbolic significance for a nation, People, or community.
- Tangible cultural heritage also includes *Underwater Cultural Heritage*, that is “all traces of human existence having a cultural, historical, or archeological character which have been partially or totally under water, periodically or continuously, for at least 100 years”.<sup>2</sup>
- Intangible cultural heritage refers to practices, representations, expressions, knowledge, skills, as well as the instruments, objects, artifacts, and cultural spaces associated therewith, that communities and groups recognize as part of their cultural heritage, as transmitted from generation to generation and constantly recreated by them in response to their environment, their interaction with nature and their history.
- Critical cultural heritage is defined as consisting of one or both of the following types of cultural heritage:
  - i. the internationally recognized heritage of communities who use or have used within living memory the cultural heritage for long-standing cultural purposes;

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<sup>1</sup> *Most Stringent ES Policy provision*: When MAR Fund’s environmental and social provisions are to be considered in parallel with the provisions of any of the Governments of Mexico, Belize, Guatemala, and Honduras, the most stringent environmental and social Policy provision should apply. MAR Fund’s Environmental and Social Policy (section 2 of this document).

<sup>2</sup> United Nations Convention Concerning the Protection of the World Cultural and Natural Heritage. This includes “(i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context; (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and (iii) objects of prehistoric character”. The text of the Convention explicitly says that “Pipelines and cables placed on the seabed shall not be considered as underwater cultural heritage” nor other type of installations placed on the seabed and still in use.



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ii. legally protected cultural heritage areas, including those proposed by host governments for such designation.

- *Replicable* cultural heritage is defined as the “tangible forms of cultural heritage that can themselves be moved to another location or that can be replaced by a similar structure or natural features to which the cultural values can be transferred by appropriate measures.”<sup>3</sup>
- *Natural* features with cultural significance are also considered as cultural heritage.<sup>4</sup>
- *Movable* cultural heritage is defined as a wide variety of historic or rare artifacts and objects highly vulnerable to theft, trafficking, or abuse.<sup>5</sup>

## 1.2 REQUIREMENTS

9. The grantees executing projects approved by MAR Fund will avoid risks and adverse impacts on cultural heritage.
10. While total avoidance is not feasible, grantees will minimize and mitigate these risks and impacts. Remaining risks and impacts will be managed by restoring the cultural heritage in situ, provided that the authenticity, integrity, and functionality of the resource is assured.
11. Mitigation measures should consider the specific characteristics of the cultural heritage and the different values attributed to it by the various stakeholders. In line with the mitigation hierarchy, it is best to protect immovable cultural heritage in its place of origin to avoid irreparable damage by its removal<sup>6</sup>.
12. If, after applying the mitigation hierarchy, there are residual risks and potential impacts, the last-resort measure is the re-localization of the cultural heritage. The re-localization shall be carefully assessed in terms of its community costs, the net conservation gains, and the functionality and integrity of the cultural asset.
13. Re-localisation of cultural heritage resources affecting Indigenous Peoples and Traditional Local Communities must have the Free, Prior, and Informed Consent, as established in MAR Fund’s ESS 7.

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<sup>3</sup> “Archeological or historical sites may be considered replicable where the particular eras and cultural values they represent are well represented by other sites and/or structures.” IFC PS 6.

<sup>4</sup> It refers to “sacred hills, mountains, landscapes, streams, rivers, waterfalls, caves and rocks, sacred trees or plants, groves and forests; carvings or paintings on exposed rock faces or in caves; and paleontological deposits of early human, animal or fossilized remains”. World Bank’s ESS 8 Cultural Heritage.

<sup>5</sup> It includes “books and manuscripts; paintings drawings, sculptures, statuettes, and carvings modern or historic religious items; historic costumes, jewelry, and textiles; fragments of monuments or historic buildings; archaeological material; and natural history collections such as shells, flora, or minerals.” World Bank’s ESS 8 Cultural Heritage.

<sup>6</sup> World Bank’s Guidance Note 9.2 to the ESS 6.

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14. When the risks and adverse impacts on cultural heritage cannot be avoided, mitigated, or minimized and managed to an acceptable level, MAR Fund must not approve the proposed project.

### 1.2.1 SCOPING RISKS AND IMPACTS TO CULTURAL HERITAGE

15. Risks to cultural heritage are identified in the environmental and social due diligence. The ESSQ includes questions specific to cultural heritage.
16. The stakeholder engagement process and the meaningful consultations that are part of it are a valuable source of information about cultural heritage. Consultations include the local communities and local authorities, experts, traditional knowledge holders, sponsors of protected areas, and other organizations.
17. It is necessary to consider the impacts on cultural heritage that local communities recognize and value, even if it is not legally recognized or protected. Cultural heritage may be designated, protected, or managed by religious, tribal, ethnic, or other community authorities and thus recognized according to tradition and custom and not necessarily by formal regulations<sup>7</sup>.
18. Additional risks may be identified with an ESIA, an Environmental and Social Site Risk Assessment, or a similar study required by the project.

### 1.2.2 ACCESS RESTRICTIONS TO CULTURAL HERITAGE

19. The project may include temporary restrictions to access to cultural heritage sites. In that case, the grantee shall comply with the requirements set forth by the ESS 2. It may be the case of projects involving infrastructure construction, refurbishment, or decommissioning, whose Health and Safety (H&S) Plans make it necessary to impose such restrictions. These restrictions shall be clearly explained and openly discussed with stakeholders.
20. MAR Fund's strong preference is to avoid permanent restrictions to access to cultural sites. Nevertheless, when projects have risks of restricting access to cultural sites on a permanent basis, grantees shall fully comply with the requirements set forward in the ESS 5.

### 1.2.3 CHANCE FINDS PROCEDURE

21. A chance find is any unanticipated discovery or recognition of cultural heritage. It includes discovery of artifacts indicating a buried archaeological site, human remains, or other archaeological material.

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<sup>7</sup> World Bank's Guidance Note 6.3 to the ESS 6.

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22. A Chance Finds Procedure is a project-specific standard procedure for accidental findings of unknown cultural heritage. It includes the identification, notification, documentation, and management of chance finds in accordance with national laws and, where applicable, this Safeguard.
23. A Chance Finds Procedure shall be included in contracts and other procurement documents related to projects that involve infrastructure construction, refurbishment, or decommissioning. The convenience to include this type of procedure in contracts and other procurement documents related to projects that involve the use of natural living resources (agriculture, aquaculture, etc.) shall be determined on a case-by-case basis.
24. The Chance Finds Procedure shall include the following steps:
  - A. Ground disturbance activities monitoring, especially in places with a high probability of having a cultural heritage.
  - B. Measures to temporarily suspend work in the vicinity of the find.
  - C. Measures to protect chance finds from the impacts of any other activity.
  - D. Demarcation, documentation, and securing of the area of the find.
  - E. Establishment of the Chain of Custody of the find.
  - F. Notification to the competent authorities.
  - G. Resumption of operations after the investigation by relevant authorities (provided to the grantee with written permission to continue work).

### 1.2.4 COMMERCIAL USE OF CULTURAL HERITAGE

25. A project may include the use of cultural heritage for commercial purposes and other economic benefits. This includes tourism to cultural sites, knowledge, innovations, or practices of local communities for commercial purposes (such as the commercialization of traditional medicine knowledge, techniques for processing plants and fibers)<sup>8</sup>. In these cases, grantees shall satisfy the following requirements.
26. When the cultural heritage concerns Indigenous Peoples and Local Traditional Communities, the project must obtain their Free, Prior, and Informed Consent and satisfy all the requirements set forth in ESS 7.
27. As part of the stakeholder engagement and meaningful consultation processes required for the project, the grantee shall inform the stakeholders of the scope and nature of the project,

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<sup>8</sup> IFC PS 8.

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the intended use of the cultural heritage, their rights under the national law and the dispositions of this Safeguard, and the risks of endangering local communities.

28. A fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with the customs and traditions of the holders of the customary rights shall be agreed upon.
29. The mitigation measures included in sections 10.2.1, 10.2.2, and 10.2.3 of this Safeguard shall be implemented.

\*\* \*\* END OF ESS 8 \*\* \*\*

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<sup>5</sup> IFC PS 8.

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