

Comments from BirdLife International on the World Bank's Draft Safeguard Policies ESS1 & ESS6, Phase II Consultation

ESS1 Assessment and Management of Environmental and Social Risks and Impacts

BirdLife International supports the overall approach to assessing, managing and monitoring environmental and social risks set out in draft ESS1. In particular we support the adoption of a mitigation hierarchy approach to project development and evaluation as set out in the objectives. We also support the adoption of an Environmental and Social Commitment Plan, and the project monitoring and reporting approach set out to ensure ongoing implementation of safeguard measures and adaptive management once projects are under construction and operational (para 34>).

Use of Borrower's Environmental Safeguards Framework

The approach of using the borrower's Environmental and Social framework to undertake Environmental and Social Assessment ('ESA') (para's 18-20) is fine in principle, but in reality, many countries have a poor framework in place, and even if the framework is good, sound implementation and enforcement is very often lacking. Potentially, this is a powerful mechanism to improve safeguard frameworks in borrower countries, but the bank should not underestimate the resource this approach will require if they are to bring the frameworks themselves and their implementation up to international standards. In addition, use of this approach will not negate the need for the World Bank to apply its own stringent due diligence processes to ensure that ESAs undertaken are indeed in line with International standards and in accordance with the Bank's policies – it should not rely on the efficacy of borrowers' ESA frameworks for individual project funding decisions, even if they seem adequate.

Our understanding is that the Bank has been working on use of borrowers frameworks for many years – the policy and subsequent guidance needs to reflect the reviews and previous public consultations on that work.

ESS6 Biodiversity Conservation and Sustainable Management of Living Natural Resources

BirdLife International supports many of the elements set out in the draft ESS6, including the use of adaptive management mechanisms and project monitoring (para 14). However, there are a number of elements which we believe the bank should change, add, or expand in the final document, as set out below.

Definition of ‘Critical Habitat’

We re-iterate the comments of other environment civil society responses, that the revised safeguards should be aiming to converge the policies and definitions used by different international lenders. We feel that the differences between, for example, habitat definitions in the IFC’s PS6 and draft ESS6 are unhelpful. In this regard we wish to see wording identical to PS6 in ESS6, and any weakening of the wording in relation to technical application would not be acceptable. BirdLife feels that this point emerged clearly from the consultations with the Expert Focus Group Discussion on ESS6 in October.

Competent Biodiversity Expertise

We support the requirement for the use of competent biodiversity expertise to be used by the borrower to conduct ESAs (para’ 9). This is a significant issue in ESA implementation globally. However, if this requirement is to have any effect and be enforceable, the bank needs to define or give guidance as to what this means in practice.

Ecosystem Services

As mentioned by many other environmental consultees, we believe that the lack of consideration of impacts of projects on ecosystem services is a significant omission from ESS6. Ecosystem services lie at the nexus of environmental and social impacts. Quantifying these services, and the potential effects, positive or negative from a project allows the borrower to address this nexus more effectively in project design and mitigation. These should be integrated into the ‘Assessment of Risks and Impacts’ section at the very least, and ideally ecosystem services should be integrated into ESS6 throughout its entirety, as have other institutions (for example the European Investment Bank).

Cumulative Effects

It is standard international practice for ESA to address cumulative impacts of a project on common receptors with other planned or under-construction projects. However, this is not explicitly mentioned in ESS6. We believe that this omission needs to be addressed and integrated into the ‘Assessments of Risks and Impacts’ section.

Mitigation Hierarchy

We fully support the adoption and implementation of the mitigation hierarchy within ESS6 (para’ 15). However, we believe there needs to be further guidance made available as to how these concepts should be applied in Bank-funded projects. This would include best practice and case examples of avoiding and mitigating impacts, as adopting an integrated planning approach, where environmental factors are considered at the earliest stages of project development has the most potential to avoid biodiversity loss. Guidance should emphasise that the mitigation hierarchy should be applied in a systematic and transparent way so that avoidance and mitigation is always applied and implemented before compensation or offsetting is considered. It should also include concepts such as the provision of operational compensation/offsets before

damage is done on the ground. BBOP technical manuals and CSBI guidance may be usefully referenced in this.

Priority Biodiversity Features and Projects

We believe that the criteria governing projects which may damage priority biodiversity features (Para' 16) should be strengthened. Criteria (a) rightly includes an assessment that there are no technically and financially feasible alternatives to the damaging project. WB guidance should make clear that this should include all alternatives that meet the project need, not just alternative locations for the project being assessed. Additionally, in our view there should be an additional criteria of assessment of project need. The need for the project should be such to outweigh the value of the features to be damaged. As such, if the priority biodiversity features are of international importance, then to damage them, the project need should also be internationally significant. Nationally important features should only be damaged by those projects with a nationally significant need.

Criteria (b) seems to muddle mitigation measures, whose purpose is to remove or reduce impacts, and compensation which applies afterwards to residual effects. In our view conservation of biodiversity of greater importance is not a mitigatory, but a compensatory measure, as it implies protection of different biodiversity features, potentially in a different location. In addition, the wording of 'the Borrower *will consider* the use of compensatory measures..' is also very weak. In light of the importance of priority biodiversity features, the wording should be amended to 'the Borrower *will implement* compensatory measures..', or the bank will have no leverage to ensure compensation occurs.

Critical Habitats and Projects

We have significant concerns with the current wording of Paragraph 17, which could significantly weaken the Bank's policy on critical habitats as set out in Paragraph 10. Although in rare circumstances it may be justifiable to fund projects that significantly impact on critical habitats, these conditions as currently set out, potentially open the door to the inappropriate justification of damaging projects.

Condition (a) – assessment of no alternatives is valid. However, our comments above relating to priority biodiversity features apply here also. The alternatives considered should include those that meet the project need (not just alternative locations), and the need for the project must clearly justify damaging a critical habitat. Without this assessment, short-term economic development projects that damage irreplaceable habitats could be justified under the Bank's policy.

Condition (b) – All projects should indeed comply with international obligations and national law. However, this principle should apply to all bank-funded projects, regardless of whether they might affect critical habitats. Having this wording here suggests that these key principles of governance and rule of law would not necessarily apply in other circumstances.

Condition (c) – By definition, if a critical habitat's 'ecological integrity or biodiversity importance' is to be compromised by a project, then it will impair its ability to function. This condition as currently worded is therefore contradictory.

Condition (d) – Without clear and strict guidance governing what will be allowable under 'net gains for critical biodiversity features', we fear this condition could be used to justify inappropriate and unjustifiable degradation to critical habitats. In our experience, re-creation, enhancement or management of critical habitats can often be untested, high risk or long-term in nature. Any measures proposed to justify a damaging project must be proven, low risk and restore the ecological integrity or biodiversity importance of the critical habitat in a reasonable time-period.

There is currently uncertainty in the draft policy as to under what circumstances the Bank would not fund a project. ESS6 or its associated guidance should set out clearly what criteria the Bank will use in its due diligence processes to assess whether a project will 'involve significant conversion or degradation of critical habitats'.

Invasive Alien Species

Under paragraph 23, we suggest that the 'measures taken to avoid the potential for accidental or unintended introductions' include a bio-security plan which will be implemented as part of the ESCP as a condition of funding.