

Safeguards Policy Review Team  
The World Bank  
1818 H Street, NW  
Washington, DC 20433  
United States of America

26 February 2015

Dear World Bank Safeguards Review Team,

I would like to respond to the World Bank's call for comments on the first draft Framework of its revised Safeguard Policies on behalf of Forest Trends, the Wildlife Conservation Society, and a number of members<sup>1</sup> of the Business and Biodiversity Offsets Programme (BBOP). Our response, focused on the Environmental and Social Standards (ESS) 1 and 6, is set out below.

We hope that you find our comments and suggestions useful in revising the draft Safeguard Policies. We are ready to discuss any of the issues further if that would be helpful.

Yours sincerely,



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<sup>1</sup> This submission is made on behalf of the **BBOP Secretariat** (hosted by Forest Trends and WCS), the following **BBOP Advisory Group members** representing their respective organisations: Fabien Quétier, Biotope; David Álvarez García, ECOACSA; Jo Treweek, eCountability Ltd; David Hill, Environment Bank; Pippa Howard, Fauna and Flora International (FFI); Kevin Erwin, Kevin L. Erwin Consulting Ecologist, Pete Lowry, Director-Africa and Madagascar Program, Missouri Botanical Gardens; Jessica Nordin, Sveaskog; Susie Brownlie; Michael Crowe; and the Zoological Society of London; as well as the following individuals in their personal capacities and as members of the **BBOP Executive Committee**: Ernani Pilla, Sophie Le Pennec, Jessica Nordin, Preston Hardison, Liz Clarke, Steve Edwards and Michael Jenkins.

Please note that this submission may not have been read by the entire BBOP Advisory Group ([http://bbop.forest-trends.org/pages/advisory\\_group](http://bbop.forest-trends.org/pages/advisory_group)), who may not share the opinions expressed here.

## Documents reviewed:

We reviewed and focus mainly on the following parts of the ESS Framework (dated 30 July 2014):

- **ESS6** (Environmental and Social Standard 6. Biodiversity Conservation and Sustainable Management of Living Natural Resources) and
- **ESS1** (Environmental and Social Standard 1. Assessment and Management of Environmental and Social Risks and Impacts).

In addition, we also looked at:

- World Bank **Environmental and Social Policy**
  - **Information Note (IN):** Environmental and Social Risk Classification
  - **ESS7** (Environmental and Social Standard 7. Indigenous Peoples)
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## The following is a summary of our comments:

A set of overarching comments is listed first (A.), followed by and expanded upon in Section B with mostly ESS6-specific comments:

### A. Overarching comments

1. [Comprehensive guidance notes are essential for all of the ESS.](#) ESS6 requirements, amongst others, can only be adequately interpreted and assessed in terms of their quality with the support of good GNs (see for example GNs provided for IFC PS, 2012).
2. [More specific, clear and consistently applied language is required](#) – at present much of the language is too vague and discretionary. In addition, [key terms must be defined](#), as interpretation of these terms may vary and to ensure that the relevant requirements are well-understood. Just a few examples:
  - The terms ‘material’ and ‘materially’ are used throughout the Policy and ESS1 (e.g. Policy #4a, #9, #12, #16 etc.) without being defined.
  - Use of the terms mitigation hierarchy and ‘mitigation’ needs to be consistent and they need to be defined. Currently, ESS1, for example does not set out steps in the mitigation hierarchy in a consistent way, and uses ‘to mitigate’ in various ways.
  - In the ‘Vision for Sustainable Development’, #5, the Bank seeks to ‘conserve or rehabilitate biodiversity and natural habitats’. As stated in #5 these appear as options (either/or), so better wording would be ‘conserve, and where feasible, rehabilitate...’
3. [Closer alignment with other similar E&S Standards is strongly recommended, in particular with the IFC’s Performance Standards](#) (e.g. PS6), to enable greater consistency and limit confusion.

4. Consistency amongst the ESS needs to be improved, to ensure consistent application and, not least, to strengthen the safeguard requirements. Two particularly important issues in this regard:
  - The interdependency of natural and social systems needs to be recognised and they need to be considered in an integrated way. Addressing the intrinsic/ technical/ scientific aspects of 'biodiversity' in ESS6 and the social benefits of, and dependence on, biodiversity in ESS7 ignores that interdependence. Ideally, planning appropriate mitigation should ensure close cooperation and integration of social and biodiversity studies. *Alignment and synergies between ESS6 and ESS7 should be made clearer.*
  - Compensation / offsets for residual impacts are qualified in ESS1 (#25) as applicable whenever technically and financially feasible. This is unacceptable and risks compensation / offset requirements being dismissed quite easily, regardless of the project and significance of impacts. It is also inconsistent with firm requirements in ESS6 for biodiversity offsets, where these apply, to achieve No Net Loss or a Net Gain (#15, 16, 17). The safeguards in ESS6 should apply at minimum, and ESS1 should be aligned accordingly.
5. There must be greater clarity on limits and 'No Go' impacts/ projects, i.e. what types of projects and impacts would the Bank not finance. At present, the ESS remain vague and in fact contradictory on this critical issue (see comment under ESS6 below).
6. The precise scope of application of the ESS as well as the risk classification of projects and sub-projects needs to be clarified. Sub-projects are currently not adequately covered, any variation in the expectations and requirements of different types of projects should be made more explicit (e.g. relating to projects in different risk categories), and requirements for 'substantial risk' projects need to be augmented.
  - The Policy (#8) notes that the ESS apply to all projects supported by the Bank through Investment Project Financing. Yet there is significant variation in the requirements for projects with different risk levels and it is currently difficult to decipher exactly what the relative requirements for high risk vs substantial risk vs moderate vs low risk projects are. In fact, most of the focus is on 'high risk' projects, while even substantial risk projects appear to have no explicit, stringent requirements associated with them.
  - 'Projects' are said to include new facilities and activities and the preparation of 'sub-projects' (Policy # 8, ESS1). What is regarded as a new facility and how this is to be addressed is set out in ESS1, but this is not the case for 'sub-projects'. This is a significant gap; 'sub-projects' need to be defined and should equally be recognised as part of the 'project' and subject to the ESS. Instead, the Policy provides for sub-projects to be classified by the Borrower into risk categories, and only 'high risk' sub-projects appear to be subject to the ESS (Policy #34, 35). Other 'sub-projects' are to be carried out 'in accordance with national law' (ESS1 #29, ESS9 # 14 d, ESS9 #13). This could lead to unacceptable projects being financed, for example as a 'substantial risk' sub-project.
  - Despite the more recent Information Note on risk (IN, 7-10-2014), the risk classification of projects, how this is determined remains, and the associated requirements remain quite vague. Issues include:
    - The risk levels are broadly described in the Information Note. For the ESS to be clear, more precision is needed on how risk levels will be determined, e.g. how the different 'criteria' (listed in IN #6) would be assessed and ranked/combined to derive

an overall risk score (e.g. is risk allocated according to the 'highest risk factor, which would be correct, or according to an 'average'?).

- It is uncertain whether in practice the difference between projects or sub-projects defined / identified as high risk versus substantial risk is meaningful. Confidently drawing a distinction between the two levels is likely to be difficult in reality. Especially as things change over time, the difference may well be quite limited, both in terms of the level of risk a project poses and with respect to the appropriate management approach to address these risks.
- Given this, and the fact that specific requirements for 'substantial risk' projects appear to be lacking, it is recommended that all projects that are of more than moderate risk (i.e. those of substantial and high risk) should be treated equally stringently.
- How do the risk ratings in the Information Note relate to the biodiversity classification currently used in ESS6 (i.e. 'Critical Habitat' and 'Priority Biodiversity Features')? The link should be made very clear; currently the Information Note uses different (more general) terminology than ESS6 and there is no cross-reference.

7. [Timeframes for responsibility and for assuring compliance with the ESS are inadequate:](#)

- The timeframe for compliance with the ESS appears indefinite, in all instances being referenced 'as acceptable to the Bank' or 'as specified by the Bank' (Policy ESS1 #13, #39, etc.). That leaves a potentially open-ended period for compliance, which means neither the Bank nor the Borrower can be clear on their responsibilities nor be held accountable. This should be addressed in a revised version of the ESS, ensuring the inclusion of time-bound requirements, and more thorough independent verification and/or civil society oversight. Transparent audits and disclosure are key in this regard (see also below, Point 9).
- Timeframes for responsibility (by Borrower and Bank) refer mostly to the assessment, management and monitoring of ES risks & impacts 'throughout the project lifecycle' or 'throughout the life of the project' (Overview #7d). This ignores pre- and post-project timeframes, which are important, for example in the case of project-related biodiversity offsets. Timeframes of responsibility need to be rephrased appropriately, linking the duration of responsibility to the duration of residual impacts, rather than the project itself.

8. [Disclosure requirements are currently inadequate and need to be revised and improved to remove ambiguity and ensure greater transparency and accountability.](#)

9. [Quality assurance, safeguards \(checks and balances\) and independent oversight need to be improved significantly throughout the ESS. At present the relevant provisions are too weak.](#)

- Significant reliance is placed on the Borrower's capacity and will to comply with the ESS. This fails to provide adequate mechanisms to encourage, incentivize or ensure compliance with the ESS and lacks adequate input and oversight not only by the Bank but especially by experts, independent assessors and stakeholders/civil society. The use of a country's national framework (e.g. as stated in the Policy # 23-25) can be extremely risky without excellent compliance monitoring and enforcement and adequate capacity, hence the need for strong oversight, independent review, and related safeguards.

- Similarly, there is heavy reliance on the ESIA process (a responsibility of the Borrower) in terms of determining risks, impacts and the applicability of the various ESS, including ESS6 (see ESS6 #4). Thus a reliable and sound ESIA is crucial. Given potential capacity constraints by Borrowers and other limitations that often hamper the production of good ESIA's, appropriate safeguard provisions must be strengthened. These should include quality assurance through independent professional review, including in situations where ESS6 or another of the ESS is deemed by the Borrower NOT to be applicable. In such cases, applying a 'burden of proof' concept should be considered, where the Borrower provides an explanation and justification for why an ESS is not applicable, which is independently reviewed.
- At present, additional checks only appear to come into play in the case of high risk projects (e.g. ESS1 #19), and even in these cases the relevant requirements are generally left discretionary (e.g. see ESS1 #23; #39, #41). Quality assurance, for example through an expert panel, appears to be required only for large dams (ESS4, Annex).

Independent peer review, verification and validation (e.g. of offset design) need to be systematically included and reinforced throughout the ESS. Oversight needs to be strengthened at least for high risk and substantial risk projects (and sub-projects). Furthermore, in situations where Critical Habitat, Priority Biodiversity Areas and/or Protected Areas would be negatively impacted, independent third party review by appropriately qualified people/ panel of experts, depending on severity of impacts/ risks, is needed.

- With reference to 'checks and balances' and timeframes, it should be made clear that the Borrower may not proceed with activities until specified deliverables are accepted by the Bank and its advisors. This also requires independent review and validation of the appropriateness and adequacy of such deliverables (e.g. with regards to the design of mitigation measures and offsets). This would need to be established ahead of time.

The Bank also needs to stipulate under what conditions the Borrower would not be allowed to proceed with a project, and on what plans and guarantees that decision would depend. The triggers are currently vague – e.g. ESS1 #36: what constitutes 'material or significant' adverse environmental risks? E.g. ESS1 #35, footnote 30 states that the ESMF will include, amongst others, 'actions already developed; actions that may be completed prior to approval by the Bank Board of Directors'.

- To facilitate oversight and transparency, it would be extremely helpful for the Bank to develop an evaluation framework for the ESS that would be used by independent assessors to assess and audit performance and compliance with the provisions in the ESS. This would go a long way towards improved rigour and accountability. Such a framework could build on other Standards and Frameworks and would, in fact, be an improvement on the IFC's Performance Standards.
- There is no discussion regarding how the Bank will support the development of capacity to ensure that countries can implement appropriate systems (related to ESIA, risk management, etc.) necessary to adequately address potential biodiversity impacts and ensure proper mitigation.
- To ensure the effective implementation of offsets, projects need to develop and apply appropriate financial guarantees to ensure that offsets are adequately financed to deliver the necessary long-term conservation outcomes. The revision of the ESS framework offers an opportunity to build in financial requirements so that the design and – importantly - implementation of offsets, as the last step in the impact mitigation hierarchy, is taken into account early in the project cycle and thus included in the financial planning for the project.

This will include creating financial plans and establishing the necessary guarantees that will ensure long-term financing of the offset. This provision is lacking from IFC PS and past World Bank standards and needs to be addressed in the revised ESS.

## B. Specific comments on ESS6 (and selected other documents)

### 1. [ESS6 scope of application and requirements:](#)

- It appears that ESS6 applies to a wide range of projects (ESS6 #5). This is appropriate.
- However, it is not clear whether and how biodiversity (or 'natural habitat') not classified as 'Critical Habitat', 'Priority Biodiversity' or 'Legally Protected / Internationally Recognised' is in fact recognised and addressed by ESS6. This is in contrast to OP/BP 4.00, which states that 'All natural habitats have important biological, social, economic, and existence value.'

Given the threats of climate change and the growing recognition of the value of biodiversity in general and of ecosystem services specifically, and given the seriousness of cumulative effects on biodiversity even when individual impacts may not seem grave, the Bank needs to strengthen protections for all natural habitats, not just Critical Habitat, Priority Biodiversity Areas and Legally Protected and Internationally Recognised Habitat.

### 2. [Guidance notes are essential for ESS6. This is especially the case given the technical nature of the content.](#) GNs need to clarify the requirements, help with interpretation, provide definitions (e.g. 'precautionary approach') and offer technical information and additional information resources. At the moment numerous requirements and how to comply with them, and parts of the text in ESS6 are simply too vague and unclear. This presents a risk in terms of a) proper (effective and efficient) application of the procedures and b) evaluation of compliance. Furthermore, without GN and/or further clarification in the text, it is hard to comment adequately on the quality of many of the safeguard measures, as they currently stand.

- An important example is provided in ESS6 #10. This provision contains strong wording and requirements. Yet, given the rest of ESS6 (e.g. #17, # 30 of ESS6), this paragraph needs to be explained more precisely in the text and/or a GN to detail and reaffirm the commitments/ requirements in #10.

### 3. [The current language needs revision in numerous places to make it stronger and to ensure greater specificity and clarity.](#) At present there is too much discretionary and qualifying language for the ESS to be a clear and useful framework. The text also lacks explicit definitions. For instance:

- ESS6 #2 states: 'The objective of biodiversity conservation and sustainable management of living natural resources must be balanced with the potential for utilizing the multiple economic, social and cultural values of biodiversity and living natural resources in an 'optimised manner'. What does that mean? Important is *to ensure the conservation of biodiversity and sustainable utilisation as the foundation for sustaining multiple economic, social and cultural values*. As it stands in #2, the paragraph suggests that it is a question of either conservation or utilisation (i.e. trade-offs).
- ESS6 #8 'This process will consider threats to biodiversity...' – does that refer to project-related or general threats or both?

### 4. [The biodiversity categorisation](#) ('Critical Habitat', 'Priority Biodiversity Features', and presumably 'other biodiversity?') should be revised. This applies to the terms given to the different categories of biodiversity as well as what the designations cover. Alignment with, and improvement upon, PS6 is advisable.

- Terms and concepts: In some instances, ESS6 is aligned with PS6 but in other cases it uses different terms and/or classifications from PS6, while also departing from OP4.04 For instance, 'Natural habitat' has been dropped and replaced with 'Priority Biodiversity Features'. These changes do not necessarily constitute an improvement; some descriptions are less scientifically rigorous or clear (e.g. ESS6 #7: use of 'sensitivity' and 'value' which seems to relate to the clearer 'vulnerability' and 'irreplaceability', used by PS6 and elsewhere). Language and terminology should be reviewed to establish whether it is scientifically meaningful and up to date, and for clarity and consistency (e.g. with PS6 and other safeguards to the extent feasible).
  - The current categories (Critical habitat and 'Priority Biodiversity Features') are predominantly species-focused and include highly threatened and threatened habitats, respectively. No reference is made to 'ecosystems' (unless 'habitat' is intended to cover ecosystems) and irreplaceable, rare and highly threatened ecosystems are inadequately catered for. Ecosystems (and particularly unique/rare ecosystems) should be explicitly included as part of the various biodiversity classifications in ESS6.
  - Reference to ecosystem services is made in ESS6, yet this is without using the term per se. Instead, ESS6 #8 makes reference to 'values attached to biodiversity by affected communities...' and 'Priority biodiversity features' include stakeholder-identified significant biodiversity features, which could include certain ecosystem services. ESS7 also covers ecosystem services. Not using the term 'ecosystem services' to explain how these are addressed is an omission which may cause much confusion, and departs from other best practice guidance. ESS6 (and/or a Guidance Note) should explain how 'ecosystem services' are defined and dealt with, and links should be provided to other ESS that deal more explicitly with ecosystem services.
  - Legally protected and internationally recognised areas of biodiversity value:
    - It is stated that the IUCN definition is recognised<sup>2</sup> and that, for the purpose of this ESS, this includes areas proposed by governments for such designation. This definition seems to exclude situations where traditional communities 'recognise, dedicate and manage, through...other effective means, to achieve the long-term conservation of nature...' (as per OP 4.00), which should also be included.
    - Clarity is needed on what is understood by 'internationally recognised' areas (#20). E.g. IFC PS6 has an explanatory footnote in this regard.
5. [The link between the biodiversity categorisation and project risk classification needs to be clarified.](#) It seems that only 'High Risk' projects currently merit additional safeguards, but what defines these projects and how biodiversity considerations are factored in lack explicit criteria.
- How 'Critical Habitat', 'Priority Biodiversity Areas' and 'Legally Protected / Internationally Recognised Areas' fit into the risk categories and on what basis this decision is made needs to be set out more clearly. (I.e. Does 'Priority Biodiversity' represent a High Risk? What about 'Protected Areas'?) What, for example, would be classified as a 'substantial' risk with respect to biodiversity, and why / how the distinction is made between 'high' and 'substantial' risk needs to be specified. More certainty on this is required in order to know what checks and balances would be appropriate in each case (e.g. see ESS1 #23).

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<sup>2</sup> "A clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values."

- High and substantial risk projects that are classified as such for reasons including significant biodiversity risks should be subject to the same stringent requirements with regards to biodiversity.
- Footnote 8 ESS6 suggests that 'trading up' may be acceptable if affected biodiversity is not a 'national or local priority'. This is confusing as it adds another biodiversity-related category. It should be explained how 'national and local priorities' relate to 'priority biodiversity features', or more consistent language should be used.

6. The [ESS6 requirements relating to biodiversity impacts and the mitigation hierarchy](#):

- Mention of the mitigation hierarchy and of the precautionary approach in several instances is welcomed. For example, see #14 in relation to potential impacts on biodiversity that could apply in any part of the landscape and thus the provision is not restricted to critical habitat or priority biodiversity. However, GNs should set out how this translates into practice.
- [The issue of limits \(what should not be impacted/ would not be funded by the World Bank\) and potential No-Go areas is not adequately addressed](#). This is despite reference in ESS6 #10 regarding projects & plantations that the WB would not fund (i.e. those that would involve any/significant conversion of critical habitats). While this provision appears reassuring, it lacks specificity and the implications should be clearly explained in the GNs or a footnote. Greater clarity is needed on projects that would not comply with ESS6, and particularly situations where residual impacts would be regarded as not capable of being offset. [c/f PS6: the provisions in PS6 could even be strengthened!]

In this regard, ESS6 #30 is also of significant concern. Currently it is very permissive and in contrast with #10: ...if land clearing and logging 'cannot follow internationally recognised certification schemes' then 'logging areas are kept to a minimum and justified by the project's technical requirements'. This provision must be strengthened; *currently it appears that logging could occur anywhere provided the technical requirements can be demonstrated*. [OP 4.00, by contrast, states: 'Do not finance natural forest harvesting or plantation development that would involve any conversion or degradation of critical forest areas or related critical natural habitats.']

- Thorough [integration of landscape context in ESS6](#) is missing. The only explicit reference is under #9 which requires project-related impacts to be considered 'across the potentially affected land/seascape' (as in PS6). Yet, in order to produce meaningful results, [the assessment and evaluation of all impacts and planning for mitigation measures should take the wider spatial context into account](#). This is to ensure that issues relating to biodiversity representation, persistence, scale, proportion of total distribution/ occupancy, connectivity/ landscape-scale processes are considered.
- Where biodiversity of significant concern is affected, independent review is crucial, and appropriate and adequate safeguards should be in place before any harm is done:
  - Currently there is insufficient provision in ESS1 and 6 for independent review of ESIA, ESCP, validation of offset proposals, monitoring and evaluation, auditing, verification. Much of this responsibility is given to the Borrower. Neither the term 'review' nor 'independent' is mentioned in ESS6.
  - For example, in the case of ESS6 #19, requiring the borrower to 'demonstrate through an assessment' that the significant residual impacts will be adequately mitigated requires independent professional review. Project activities should not

be permitted to commence until this independent peer review has been completed and assurance is provided that the predictions are reliable.

- ESS6 #11 could easily be misinterpreted as permitting projects in protected areas, indicating that there are no 'out of bounds' areas for projects. This point must be clarified. In addition, the following sentence '*The assessment undertaken by the Borrower will include consideration of potential risks to and impacts on the ecological integrity of the habitats, **independent of their protection status***' should be rephrased to say '*The assessment [...] integrity of habitats even for land that is not under protection.*
  - The provisions and wording under the section 'Biodiversity conservation' (which includes offsets for residual impacts on critical habitat and priority biodiversity features' are overall very similar to PS6. A Net gain is required for residual impacts on critical habitat (#15, 17) and>NNL/NG in the case of priority biodiversity (#16b: the wording here could be made clearer, e.g. in a GN). The>NNL requirement in #16 appears more stringent than in PS6, but assurance of this is needed given wording in ESS1 #25 which downscales commitment to offsetting/compensation significantly.
  - Assurance that an offset is feasible and will be provided is crucial before approval of project financing. Demonstrating that an offset is feasible is required in #19, as in the case of PS6, for Critical Habitat. This provision must be extended to include Priority Biodiversity (#16).
  - Offsets are expected to be planned as the last step in the mitigation hierarchy, after avoidance, minimisation and restoration measures have been applied (ESS6 #15). In this regard, the likelihood of restoration not being feasible or failing to achieve appropriate outcomes should be highlighted and this should be considered when determining residual negative impacts.
  - ESS6 #9 states that the Borrower will ensure the use of competent biodiversity expertise to conduct the environmental and social assessment, assist in applying mitigation hierarchy to comply with this ESS, and to verify the implementation of mitigation measures. Where appropriate, the Borrower will need to develop a Biodiversity Action Plan (BAP).
    - It needs to be clear who will decide when a BAP/ BMP needs to be prepared, and on what basis.
    - In cases where offsets or compensation will be required, it is recommended that proposals/ plans are verified and validated prior to project commencement, as well as implementation being verified in future.
    - The apparent contradiction with ESS6 #18 (stating 'Where a Borrower has satisfied the conditions set out in paragraph 17, the project's mitigation strategy will be described in a Biodiversity Action Plan'.) should be resolved to provide clarity that a Biodiversity Action Plan is a key requirement.
7. [More clarity is needed on 'appropriate' management tools](#), who decides which should be used and when and on what basis.
- Why is the ESMF singled out only for subprojects and not for projects?
  - ESS1 #45. 'The ESCP will identify the different management tools that the Borrower will use to develop and implement the measures and actions set out in the ESCP. These management tools will include, *as appropriate*, environmental and social management

plans, environmental and social management frameworks, operational policies, operational manuals, management systems, procedures, practices and capital investments. All management tools will apply the mitigation hierarchy, and incorporate measures so that the project will meet the requirements of applicable laws and regulations and the ESSs<sup>34</sup> in accordance with the ESCP for the duration of the project.’ What guidance will be provided to let the Borrower know which management tools are appropriate in the particular circumstances of its project?

- ESS1 #29. *Where deemed necessary by the Bank*<sup>24</sup> the Borrower will prepare an environmental and social management framework<sup>25</sup> to assist the Borrower in developing and implementing the subprojects. What guidance will spell out the conditions the Bank will use to determine where it is deemed necessary to prepare such a framework?