Comments on the 2\textsuperscript{nd} draft of the World Bank Environmental and Social Framework (ESF)

Context
The following organisations are the contributing authors of this paper.

- Birdlife International
- Fauna and Flora International (FFI)
- Royal Society for the Protection of Birds (RSPB)
- Wildlife Conservation Society (WCS)
- Zoological Society of London (ZSL)

These organisations, among others, have been working together as a community of conservation and sustainable development practitioners. Some of us have already provided responses to the ESF in other joint submissions led by (1) the Secretariat of the Business and Biodiversity Offsets Programme (BBOP), covering issues relating to the mitigation hierarchy in more detail, and (2) the Bank Information Centre (BIC), covering forests-related issues in more detail and (3) the IUCN led Biodiversity Expert Group, to which we urge you also to refer.

The comments refer primarily to Environmental and Social Standard 6 (ESS6), but also cover ESS1, some aspects of ESS8, the Environmental and Social Policy (ESP) and the introductory sections to the ESF in this context. Sections marked ‘*’ include aspects of outstanding issues of concern raised by CODE.

General comments on the ESF

1. The ESF does not cover a large proportion of World Bank financing
   - The ESF only covers Investment Project Financing. Crucially it does not cover Development Policy Financing which, in some years, can account for almost half of the Bank’s business.
   - Current safeguards applying to these policies lack the same level of risk assessment, due diligence and transparency of the ESF.
   - Whilst it is understood that it might be harder to apply the same level of upfront safeguards to other areas of Bank finance, such transactions can still have major environmental and social impacts.
   - Recommendation:
     i. *The Bank should apply the ESF to Development Policy Financing.*

2. The ambition of the Framework does not set an appropriate minimum level of performance
   - It is recognised that safeguards are minimum standards that need to set a balance between ambition and practicality.
• The World Bank holds a unique position in global finance because of its global reach and development-focused goals, its safeguards will therefore be seen as the global standard against which other safeguards will be compared and influenced. (See the number of institutions and companies voluntarily applying IFC performance standards as an example.)

• We encourage the World Bank to incorporate leading best practices in their safeguards that could also be used as a benchmark for other financial institutions.

• Recommendations:
  i. Replace the intangible aspirations in the vision statement and objectives for each ESS with SMART targets aligned to the Bank’s own policies and global agreements such as the Sustainable Development Goals (SDGs). This is particularly important for the ESS objectives given that these are potentially the only reference points against which borrower frameworks will be compared with to be materially consistent with before application.
  ii. Address the various inconsistencies in the ESF which may undermine its implementation. These include various undefined terms (e.g. ‘precautionary approach’, ‘material consistency’), inconsistent use of terms (see notes on the use of the mitigation hierarchy below and Annex 1 of ESS1 which introduces ten methods and tools for an ESA, some of which are then covered again later in the Annex but presented as important steps), caveat phrases (such as ‘when technically or financially feasible’).

3. *The Implementation of the reliance on Borrower’s own standards is insufficiently clear*

• There is a concern that the Borrower frameworks will not meet the ESS requirements as the ESF only requires Borrowers to meet a “material consistency” with the objectives, a concept that has been heavily used without a clear description.

• It is recognised that much of the emphasis of the third consultation phase has been on ‘implementability’ and addressing the balance of a Framework that is sufficiently rigorous whilst remaining practical / competitive for the Borrower. However, these draft Safeguards place excessive emphasis on meeting the Borrower’s own standards, a point simply illustrated by comparing the short 13-page Bank Policy with the more detailed and longer 106-page Borrower standards.

• There is a concern that in the instance where there are limited resources and/or capacity of potential Borrowers, including low compliance, it will lead to an adoption and implementation of a weaker set of standards compared to a scenario where clear, best practice standards would set an upfront precedent for borrowers.

• Recommendation:
  i. The ESS must act as mandatory minimum standards for financing decisions: borrower frameworks should not be used unless they fully comply with and/or exceed the requirements set out in the ESS. This should not be implied but specified in the ESF to remove ambiguity on this point.
  ii. To reduce the risk of environmental and social harm, the ESF should:
• provide clear and detailed criteria for assessing whether the relevant borrower framework meets or exceeds the requirements set out in the ESS;
• establish a participatory and transparent process for determining whether to rely upon a borrower framework, including opportunity for input by civil society organisations and affected communities;
• Establish a monitoring, complaint and inspection mechanism for ensuring that borrower frameworks are applied appropriately to prevent environmental and social harm.

Comments specifically related to environmental issues covered in ESS1 and ESS6

4. * There needs to be clearer explanation as to how the ESF relates to other standards, agreements and guidelines

• The World Bank has used the IFC Performance Standards as guidance in developing the ESF, however it has not adapted the same language which has now been accepted by developers as best practice (e.g. see point 10 below on the mitigation hierarchy), and should arguably exceed these private sector standards.
• This may create a level of confusion for Borrowers and governments that are more familiar with IFC Performance Standards and thus threaten the World Bank aspiration to improve ‘implementability’.
• The Framework has many overlaps with other safeguards however the current ESSs are weaker or less specific than some of the other leading multi-lateral development bank (MDB) safeguards (e.g. for the example of World Heritage (WH), when compared against the equivalent policies/safeguards of the ADB, AfDB, EBRD and IDB, the draft ESF stands alone in not referring either to the need to protect WH sites or to comply with either the WH Convention specifically or international conventions in general).
• This may create an added burden or slow down the co-investment process for the other MDBs that excel in quality and rigour of their safeguards.
• It is therefore appropriate that the World Bank maintain at the least consistency in language and aspiration of the IFC and leading MDBs.
• Recommendation:
  i. Language and content should be made consistent with that of the IFC and other leading development banks, and the need to comply with the principles of key international conventions – whether or not the Borrower is a signatory - should be included in the ESF.
5. *The ESF and ESS6 should provide clear protection for critical habitats and protected areas.*
- The draft ESF does not include a ‘no project’ alternative where a project will not go ahead if impacts are considered too significant and mitigation measures inadequate.1
- A ‘no project’ alternative should be considered if requirements are not met or the capacity building of Borrowers is not met. Otherwise it leaves the impression that all impacts to people, environment and biodiversity, regardless of significance, will always be subject to mitigation measures regardless of adequacy.
- This sets a dangerous precedent and weakens the most important mitigation measure option, avoidance of significant impacts by no Bank involvement.
- The current draft of ESS6 makes offsets available to address impacts to virtually any site, including in critical habitat, and for IUCN protected area categories I-IV, which is inconsistent with best practice.2
  - **Recommendation**
    1. *ESS6 should clearly state that finance will not be provided for projects that will negatively impact critical habitats or protected areas, including World Heritage Sites.*
    2. *To support implementation the World Bank should develop guidance on areas which would be off-limits to particular types of project activities.*

6. **Detail on the ESF guidance, including how and when it will be developed and what it will cover, is urgently needed**
- The guidance for implementation forms an essential part of any set of standards.
- It is recognised that the Bank is unwilling to focus on the production of any guidance until the Framework has been formally approved by the Board.
- However, it is the guidance notes that determine the effectiveness of many of the standards. Without knowing what the guidance notes cover, and how, it is very difficult to judge whether the standards are adequate or not.
  - **Recommendation:**
    1. *The Bank is urged to produce or share the intended draft guidelines for implementing the ESF as soon as possible.*
    3. *Recognising that a formal consultation process on the guidelines is unlikely, the signatories to this letter would nevertheless like to offer their services in the development of the guidelines wherever possible.*

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1 See for example ‘no project’ alternative in ADB safeguard policy statement. June 2009. Safeguard Requirements 1: Environment Appendix 1, D.1.4, p.16.
7. The ESF Vision and Policy should explain how the different standards are connected

- As mentioned in Point 1, the introductory language of the Vision and Objectives appears to treat environmental, social and economic objectives as separate and even antagonistic goals.
- We see each as being irrevocably related, with natural and social capital underpinning the creation of any other forms of capital. To present them as rival forces is an outdated and dangerous approach.
- Not only is economic development presented as separate from environmental and social considerations, but environmental and social considerations are also approached in relative isolation. Attempts are made to recognise the relationships between people and ecosystem services, but these relationships need to be acknowledged more clearly. For example, ADB’s safeguard policy demonstrates that the incorporation of community areas within “critical habitats” is international best practice, by including “areas having biodiversity of significant social, economic, or cultural importance to local communities.”
- **Recommendation:**
  
  *i.* There should be clearer cross-referencing, and consistent wording, between the different ESSs. We recommend the inclusion of wording consistent with that of the ADB (as above) regarding the incorporation of community areas within critical habitats.
  
  *ii.* Relevant stakeholders need to be clearly involved in the environmental assessment process, including identifying species, habitats and ecosystem services and providing input on the proposed mitigation measures and monitoring and evaluation of project impacts.

8. *Addressing environmental impacts at an appropriate geographical scale*

- CODE recognised that assessment and treatment of cumulative impacts and definition of project boundaries were two areas requiring further explanation.
- We would broaden these comments to suggest there is insufficient consideration of the wider landscape level impacts in general; for example, there is no mention of the mitigation hierarchy being applied on a landscape scale and no accounting for offset contribution to cumulative impacts on a landscape scale.
- While basic consideration of ecosystem services is made in the ESF, the World Bank should aspire to go beyond the idea of ‘do no harm’ to the ecosystem by the inclusion of enhancing ecosystem services as a policy. While we welcome that ecosystem services are included in the ESS6 as areas of importance to biodiversity/species, we believe that ecosystem services should also be valued in terms of wider economic, social and environmental benefits.
- The need for a more integrated and landscape approach to environmental assessment, mitigation and management of environmental impacts and socio-ecological impacts which includes definition of appropriate areas of influence that

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take into consideration direct and indirect impacts, cumulative impacts and implementing projects as part of a more joined up approach to planning is increasingly being recognised.

- Given that most of the Borrowers of Project Finance will be public bodies who have a responsibility and mandate to address development from an appropriate landscape scale, such as the Strategic Environmental and Social Assessment (SESA), it is particularly important to make this an explicit component of the Framework.

- Recommendations:
  
  i. Use IFC PS1 and the associated guidance notes as a starting point to establishing an appropriate area of influence and dealing with cumulative impacts. Include clear language in the Vision, ESS1 and ESS6 that underline the importance of considering development project impacts at a landscape scale.

  ii. Projects should support national level land use planning and ensure the integrity of critical habitats, legally protected areas and internationally recognised areas of biodiversity value⁴, with reference made to widely-accepted international conventions such as the World Heritage Convention and Ramsar Convention.

9. The World Bank should adequately safeguard primary forests and address forests within the context of climate change

- Regarding forest issues, we are concerned about the consistent dilutions in forest safeguards since the Bank’s landmark 1993 Forestry Policy, which for example clearly prohibited Bank financing of commercial logging in primary forests

- In light of the Paris Agreement, we would welcome recognition in the ESP and ESS6 of the importance of conserving and enhancing primary forests and other natural ecosystems for achieving both climate change adaptation and mitigation objectives.

- Taking into consideration that private sector and national governments are making ambitious pledges of zero deforestation and deforestation-free sourcing of commodities we would recommend that:

  i. Language and focus on forests should be reinstated from the current Bank OP 4.36 on Forest; for example, we suggest including the following wording in Paragraph 36 of ESS6: “…such projects will be designed to prevent and mitigate these potential threats to natural habitats and to protect intact landscapes. When the Borrower invests in production forestry in natural forests, these forests will be managed sustainably and projects will avoid primary forest.”

  ii. The Bank should remove the loophole that remains regarding land clearing and related salvage logging in Paragraph 38.

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⁴ For example: Key Biodiversity Areas (KBA), Important Bird and Biodiversity Areas (IBA), Alliance for Zero Extinction (AZE) Sites.
10. The weakened and inconsistent language around the mitigation hierarchy may undermine its credibility

- We fully support the use of the mitigation hierarchy concept but we are concerned about the way in which it is weakened throughout the ESF. For example, in ESS1, the mitigation hierarchy is accompanied by language such as “to acceptable levels”; “whenever appropriate” and “where technically and financially feasible”.
- Discretionary language might be interpreted in a variety of ways in practice which may undermine its integrity as an approach for mitigating impacts for biodiversity.
- The definition of the mitigation hierarchy in ESS1 deserves further elaboration as it provides few definitions and there is little indication of when the various steps in the mitigation hierarchy, and in particular “avoidance,” are deemed to be satisfied.
- The mitigation hierarchy is not referred to consistently throughout the ESF, for example: ESS1 paragraph A1: “identified, avoided, minimized, reduced or mitigated”; ESS1 para A5f: “to eliminate or offset adverse environmental and social impacts, or to reduce them”; ESS1 para A5g: “to reduce, mitigate and/or offset”; ESS1 para F18(F): “measures to avoid or mitigate”; ESS6 para A11: “will avoid adverse impacts on biodiversity. When avoidance of adverse impacts is not possible, the Borrower will implement measures to minimize adverse impacts and restore biodiversity”. This may undermine the implementability and use of mitigation measures for borrowers.
- The current ESS6 has a heavier emphasis on offsets with little guidance available.

**Recommendation:**

i. Follow the recommendations outlined in the joint submission led by the BBOP Secretariat. Ensure the mitigation hierarchy is clearly defined in the Vision, ESS1 and ESS6 and is referred to in a consistent manner.

ii. Ensure that biodiversity offsets are clearly seen as a last resort that is only applicable in certain circumstances and ensure key elements of offsets (such as equivalence, additionality and permanence) are mentioned and defined.

iii. Specifically reference best practice documents for further details (such as those produced by BBOP).

11. Use of third party specialists

- The varied and inconsistent language used to refer to third party specialists and the circumstances under which they need to be brought in (e.g. sometimes for high risk projects, sometimes for projects with substantial risk) are examples of the unclear and inconsistent language.

**Recommendation:**

i. Adjust all references to third party specialists/ independent experts/ external experts/ technical experts/ qualified experts/ internationally known experts/ independent specialists to use consistent language when referring to the same thing with clear and consistent guidelines on when their presence is warranted and what constitutes an external and qualified expert.
12. *Operationalising requirements to consider suppliers’ impacts on biodiversity*

- We fully support the move to consider impacts further down the value chain but are concerned that such an important concept will be abandoned if not accompanied by clear and consistent guidance on how to achieve this.
- This may be provided by the guidance notes but until these are available this point remains a serious barrier to implementation.
- **Recommendation:**
  1. *Build on experience from the private sector on how the consideration of suppliers have been incorporated into cross-value chain assessments of impacts.*

**ANNEX**

**Detailed comments on Environmental and Social Standard 1:**

- Under objectives, d): if offsets are not technically or financially feasible and avoidance of impact is not possible, there needs to be some provision that triggers a consideration of not progressing with the development.
- Under 11, b): “materially consistent” needs to be defined to avoid inconsistency of activities.
- Paragraph 13: needs to refer to the duration of the project impacts (not just the project lifecycle).
- Paragraph 25: where offsets are not feasible, need to consider the no-project option
- Annex 1, A5, b) environmental and social audit should be a review of compliance with standards rather than an identification of areas of concern.
- Annex 1, D, refer to ecosystem services in addition to biodiversity.

**Detailed comments on Environmental and Social Standard 6:**

- Paragraph 9: should apply to ecosystem services also.
- Paragraph 10: should apply to ecosystem services also.
- Paragraph 11: should apply to ecosystem services also.
- Paragraph 17 should refer to nationally recognised areas of biodiversity value also.
- Paragraph 18: The following statement is made “Certain adverse residual impacts cannot be offset, particularly if the affected area is unique and irreplaceable from a biodiversity standpoint”. Further guidance on the impacts that cannot be offset needs to be given and the phrase “unique and irreplaceable from a biodiversity standpoint” should be defined.
- Paragraph 22: States “biodiversity of greater importance” – it is not clear what this refers to - greater importance than what? The line needs redrafting to make the meaning clearer.
- Paragraph 23: should state “biodiversity and ecosystem services”
- Paragraph 24, b): should be “and national law”, not “or national law”, “in and adjacent” should read “in, near or adjacent to”.
- Paragraph 24, e), footnote 9: should say “regional/national red lists”.
- Paragraph 24, f): forestry and agriculture are referred to; this should apply to any industry sector.
- Paragraph 24, f): this should read “critical habitat or primary forest, either on-site or in adjacent or downstream areas”
- Paragraph 24, g): the term “significant” needs to be defined – many would argue that no habitat defined as critical, by definition, is permissible to destroy...
- Paragraph 27, should refer to protected areas of national importance and to associated infrastructure, indirect, direct and cumulative impacts of development rather than just project impacts. It should also list “Such as World Heritage or Ramsar sites” in a footnote to “nationally, regionally or internationally recognized”.
- Paragraph 36 should be reworded to “…such projects will be designed to prevent and mitigate these potential threats to natural habitats and to protect intact landscapes. When the Borrower invests in production forestry in natural forests, these forests will be managed sustainably and projects will avoid primary forest.”
- Paragraph 41, c), the term “significant” is open to interpretation and needs defining and d) “within a timeframe agreed by the bank” should be added.

**Detailed comments on Environmental and Social Standard 8:**
- Paragraph 4: Include reference to “such as World Heritage sites” as a footnote to the word “sites”.
- Paragraph 5, b) and c): Include reference to “such as World Heritage sites” as a footnote to “legally protected area” and “recognized cultural heritage site”.
