

# ESS1 and ESS6 Guidance Notes – Comments from Biodiversity Expert Group

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## General Comments

The Bank's new Environmental and Social Framework appropriately assigns significantly increased responsibility for implementation to Borrowers, consistent with best development finance practice<sup>i</sup>. In alignment with other multilateral finance institutions, the ESF has also broadened considerably the scope of issues covered compared to prior Bank safeguards.

Given this context, clear and comprehensive Guidance Notes are essential to ensure full and consistent implementation of the ESSs. The current draft GNs for ESSs 1 and 6 appear insufficient to achieve this goal or to guide Borrowers, especially those with limited experience or capacity, across the full range of requirements in ESSs 1 and 6. As the GNs are not mandatory, Borrowers will be more empowered if provided GNs that are clear, detailed, and actionable in definitions, explanations, and expectations. Example: how would a borrower "estimate of the extent of the impacts" (ESS6, GN11.1g) under potential project-related risks and impacts? The rigor of methods and evidence used to make such estimates is unclear, as thus is the accuracy of any estimate of impacts and subsequent implementation of ESSs in practice.

Beyond the shortfall in substance, institutional structures and their uses for implementing the ESSs are not addressed, nor is the likely need of Borrowers for experts/dedicated staff in environment and biodiversity. Such staff are needed both for assessments and for quality assurance (e.g., to oversee Biodiversity Management Plans and ESCPs).

Finally, the value of a more strategic approach in Environmental and Social Assessment merits emphasis, especially for the Bank's public sector Borrowers who have responsibility for management of natural resources. GNs should underscore the uses and benefits of strategic, sectoral, and cumulative impact assessments, along with early scoping/risk screening, to inform project design (in ESS1 and ESS6, para. 10).<sup>ii</sup> Where relevant (as in agriculture or forestry projects), the value of a landscape (or seascape, for fisheries/coastal areas) approach should be explained in both impact assessment and mitigation. To communicate these and related concepts more effectively, GNs should provide a flowchart which outlines types/levels of risks, relevant assessments and decision support tools, and a timeline for the process.

**ESS1 GN Key Issues** [with significance for biodiversity conservation and sustainable management of living natural resources; other standards may present additional issues]:

1. "Material consistency with objectives:" This is a key criterion for ESS1 requirements, repeated in multiple places (para. 5, 9 12, 13), but is not defined. It needs to be defined so it is clear that such consistency results in objectives being achieved in all essential respects, including specific *components* of the ESS objectives which should be included to ensure 'material consistency' is achieved. These could include, e.g. use of the mitigation hierarchy (ESS6 paras. 9 & 15), goals of no net loss/net gain (ESS6 para. 16), etc.<sup>iii</sup> If so defined, "material consistency" should be added as the minimum standard for acceptability of common approaches (ESS1 para. 9).

2. Mitigation Hierarchy (para. 6, Objectives; para. 27): Technical and financial feasibility is a new and broad exception to the mitigation hierarchy requirement to compensate or offset residual impacts, so Borrowers need guidance on how this exception is to be applied, and to understand the consequences if it is. Documenting such issues and seeking input represents basic

good project management practice, so we recommend GNs include this. Further, given the mitigation hierarchy's importance and potential complexity, more clarity is needed on its steps and their application.

3. Decision Support Tools: Screening tools such as the Integrated Biodiversity Assessment Tool (IBAT), National Red Lists, and national Key Biodiversity Area (KBA) assessments are valuable and should be noted in GNs (15.1a, 24, 25, 28.2, and Annex 1, para. 13d). Also, a clear mechanism needs to be put into place so that Borrowers with limited capacity/budgets are able to access tools that are standard in screening of projects.

4. Associated Facilities (paras. 10 & 32): The ESS states that "*Associated Facilities will meet the requirements of the ESSs, to the extent that the Borrower has control or influence over such Associated Facilities,*" but apart from providing reasons for the lack of control, Guidance Notes do not require other documentation or efforts that should be made in a situation of limited influence. Guidance is needed since to meet the objective of the ESS in such a situation still requires the Borrower's assessment, communication, and best efforts (i.e. to the extent of influence) to avoid, minimize, and mitigate risks and impacts of Associated Facilities.

5. Requirements/Exclusions (para. 14, 26): Including an exclusion list provides useful guidance to Borrowers at the beginning of the assessment process, so that resources are not wasted on more detailed assessment if any of the excluded activities are part of the proposed project. This should be broader than/additional to the IFC Exclusion List, since public sector responsibilities are generally broader than private. Complementary to this, listing international treaties and conventions which Borrowers are expected to observe would help Borrowers and the Bank avoid missteps, reputational risk, and even potentially illegal acts under international law.

6. Material Risks/Threats [para. 28(a) (iv) and (v)]: Since para. 28 is intended to inform Borrowers of potential risks and impacts, Guidance Notes should highlight practices/activities and sectors with likely material risks and threats that Borrowers should avoid. This information can be organized by the type of threat, by sector/industry where such threats occur, or both, as we have suggested, since the perspectives are complementary.

#### **ESS6 GN Key Issues:**

1. Tie-in with IFC PS6 (throughout): Given that ESS6 parallels IFC PS 6 in many places, and existing widespread use of PS6 (including by the Bank for its private sector Borrowers), Guidance Notes should adapt or explicitly reference PS6 GNs where these already provide complete definitions and descriptions of expected procedures. Where these are being updated, ESS6 GNs should use the updated IFC GNs (e.g. GN6 for defining Critical Habitat).

2. Offsets (paras. 16-17, 24): For offsets, PS6 GN29-33 provide further guidance that appears useful for ESS6 as well, including criteria and resources for determining, and examples of, uniqueness and irreplaceability [such that offsets are not possible], and of GIIP [when offsets are possible]. To achieve 'material consistency,' see endnote ii below.

3. Biodiversity Management Plans (paras. 17, 25) While Borrowers are required to develop a Biodiversity Management Plan (BMP) and agree to an Environmental and Social Commitment Plan (as part of the legal agreement) as part of a mitigation strategy (for residual impacts, e.g. on Critical Habitat; paras. 23-25), the description provided in GN17.1 is both misplaced (as para. 17 relates specifically to offsets) and inadequate, since many BMP parameters aren't specified or, as with the need for a financing plan, are mentioned briefly as options. A BMP should address institutional capacity, financial support, legal protection, and security, as well as conservation of biodiversity and habitats at the genetic, species, and ecosystem levels, to assure the sustainability of mitigation actions. Incorporating a financing plan that ensures sustainability of mitigation actions should be explicitly included as part of the BMP and ESCP.

4. Critical Habitat (paras. 23-25), Internationally Recognized Areas (para. 26): GNs should provide further explanation of criteria, as in PS6 GNs55-57. Key Biodiversity Areas (KBAs) should be specifically mentioned in such GN as they are the latest standard for internationally recognized areas and will have related business guidance.<sup>iv</sup> Borrowers could further benefit from GNs similar to PS6 on Critical Habitat gradients (GNs 58-62), assessment (GNs 63-97, including important information on assessment processes and criteria), and delineation (GN 101). To achieve 'no adverse impact' (para. 24c), we propose including text from IFC PS6 GN102, modified to include natural World Heritage Sites. For full treatment of Critical Habitat, we recommend that ESS6 Guidance Notes refer to or replicate PS6 GNs 26-28 and 37-118.<sup>v</sup>

5. Ecosystem Functionality and Productive Capacity (paras. 31-33): While GNs 31.1, 31.2, and 33.1 are helpful, a key element of sustainability/sustainable management of living natural resources (paras. 31-37) is the impacts of projects on ecosystems' functionality both for people and other species. ESS6 GN 11.1(c) requires assessment of "Ecosystem Services Affected" by a project, and para. 31 "overall sustainability" for projects involving primary production and harvesting of living natural resources. ESS6 Guidance Notes could thus logically address more specifically *maintaining of ecosystem integrity and ecosystem services* (or *ecosystem functionality*) in the context of such projects, and more broadly, parallel the guidance provided in PS6 GNs 126-142. Further, ESS6 GNs should also list "References to Ecosystem Services in Other [Performance] Standards," as done in PS6 Guidance Note Annex B.

Consistent with this, more clarity is needed in defining "productive capacity" (GN31.2). To adequately safeguard against long-term negative impacts, it should be clear that productive capacity refers to ecosystem integrity, not simply the degree to which a natural resource is producing a specific harvested product. A forest may continue to produce wood/paper while becoming too degraded to effectively regulate soil health or water quality; this should not qualify as 'productive.'

6. Certification (paras. 38-39): Not all certification systems can be assumed to be sufficient to assure compliance or material consistency with ESS objectives. The GN seems to state that any certification system would be adequate if it is compatible with internationally accepted principles. This is subjective; consensus on different certification systems' embodiment of and effectiveness against core principles of sustainable resource management varies widely. We propose specifying/ describing internationally agreed upon principles, as is done in PS6 and in the previous version of WB environmental safeguards, and/or citing specific internationally accepted certification systems, such as that of the Forest Stewardship Council.

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<sup>i</sup> See, inter alia, [Paris Declaration on Aid Effectiveness \(2005\)](#) and [Accra Agenda for Action \(2008\)](#): “Successful development depends to a large extent on a government’s capacity to implement its policies and manage public resources.” (AAA, para. 15)

<sup>ii</sup> See proposed additions at GNs 6, 8.1, 27.2 Step 1 and ESS6 GN 8.2.

<sup>iii</sup> Specifically, we propose as ESS1 GH 5.1:

“Material consistency exists if the ESS objectives are still achieved, predominantly or in all essential respects. The Borrower’s ES framework is materially consistent if it addresses all the risks and impacts of the project necessary to meet the objectives of the ESSs.”

Additionally, in reference to the mitigation hierarchy (ESS1, para 6 & ESS6 para 9),

“Material consistency with objectives in this context requires applying the mitigation hierarchy to avoid adverse impacts on biodiversity and habitats. When avoidance of adverse impacts is not possible, the Borrower will implement measures to minimize adverse impacts and restore biodiversity in accordance with the mitigation hierarchy.

“Further, material consistency requires that offsets be considered as a last resort, only if significant residual adverse impacts remain after all technically and financially feasible avoidance, minimization, and restoration measures have been considered (ESS6 para. 15). A biodiversity offset will be designed and implemented to achieve measurable, additional, and long-term conservation outcomes that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity. In the case of an offset used as mitigation for residual adverse impacts on any area of critical habitat, a net gain is required. The design of a biodiversity offset will adhere to the “like-for-like or better” principle (ESS6 para. 16).

“Where a project is likely to have impacts that cannot be avoided, minimized, restored or offset, then in such cases, the Borrower will not undertake the project unless it is redesigned to avoid the need for such offset (ESS6 para 18).

“The Borrower will carry out an environmental and social assessment of the project to assess the environmental and social risks and impacts of the project throughout the project life cycle (ESS1, para 23).”

<sup>iv</sup> The definition provided in the Guidance Note annex on definitions defines Critical Habitat as below; pending coordination with IFC PS6 GNs, we would propose to add a new point (e), in bold below, to include KBAs specifically:

Critical habitat is defined as areas with high biodiversity importance or value, including: (a) habitat of significant importance to Critically Endangered or Endangered species, as listed on the International Union for the Conservation of Nature (IUCN) Red List of threatened species or equivalent national approaches; (b) habitat of significant importance to endemic or restricted-range species; (c) habitat supporting globally or nationally significant concentrations of migratory or congregatory species; (d) highly threatened or unique system; (e) **Key Biodiversity Areas, as defined in the global standard for their identification (IUCN, 2016: <https://portals.iucn.org/library/sites/library/files/documents/2016-048.pdf>)** and (e) ecological functions or characteristics that are needed to maintaining the viability of the biodiversity values described above in (a) to (e).

<sup>v</sup> Additionally, we propose adding:

**GN23.1** In general, internationally and/or nationally recognized areas of high biodiversity value will likely qualify as critical habitat; examples include the following:

- Areas that meet the criteria of the IUCN’s Protected Area Management Categories Ia, Ib and II, although areas that meet criteria for Management Categories III-VI may also qualify depending on the biodiversity values inherent to those sites.
- UNESCO Natural World Heritage Sites that are recognized for their Outstanding Universal Value.
- The majority of Key Biodiversity Areas (KBAs), which encompass inter alia Ramsar Sites, Important Bird Areas (IBA), Important Plant Areas (IPA) and Alliance for Zero Extinction Sites (AZE).

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- Areas determined to be irreplaceable or of high priority/significance based on systematic conservation planning techniques carried out at the landscape and/or regional scale by governmental bodies, recognized academic institutions and/or other relevant qualified organizations (including internationally-recognized NGOs).
  - Areas identified by the client as High Conservation Value (HCV) using internationally recognized standards, where criteria used to designate such areas is consistent with the high biodiversity values listed in paragraph 23.

**GN24.2.** The Borrower is responsible for demonstrating no measurable adverse impacts on the biodiversity values for which the critical habitat was designated [and on the ecological processes supporting such values]. This requirement explicitly focuses on the biodiversity values for which the critical habitat was designated as a means of emphasizing the importance of considering biodiversity values across an ecologically relevant scale, including the landscape/seascape scale. Similar requirements have been interpreted as no measurable adverse impacts in the project site itself, which, in ecological terms is almost always a meaningless entity. Hence, the intention behind the current language is to encourage projects to work with recognized external ecologists and species specialists in defining critical habitat based on the biodiversity values triggering that critical habitat designation, not based on an imposed artificial project boundary in a landscape/seascape (i.e., the project site/concession area). [This includes the ecological processes supporting those biodiversity values. The conservation of the ecological process necessary to maintain the critical habitat is clearly as important as the conservation of the individual values themselves. Furthermore, many biodiversity values are interdependent and cannot be conserved in isolation of one another]. For example the Outstanding Universal Value, for which a UNESCO Natural World Heritage Site was designated, should not be directly or indirectly impacted by a project within or outside of the boundary of the site.

For GN 26.1 concerning internationally recognized areas, we suggest including wording from IFC Guidance Note 6 GN113 to clarify internationally recognized areas and from IFC Guidance Note 7 (GN27) to clarify meeting national laws/having national approval:

**GN26.1** [after “more appropriate,” add:] Proposed projects within internationally recognized areas are expected to provide additional assurances beyond meeting applicable national laws. All regulations and plans applicable to the protected area should be respected in project design and execution. The assessment should identify and address these requirements. A process of information disclosure, informed consultation and participation with relevant stakeholders should be carried out, including with the appropriate conservation agencies responsible for the designation. Further, the project should contribute to the conservation of natural heritage, including the biodiversity or ecosystem processes that support that conservation.

Description of criteria for, and examples of, appropriate mitigation measures in Modified Habitat, as in PS6 GN41, is also valuable.