

## CONSULTATION on IUCN's draft policy on biodiversity offsets<sup>i</sup>

The consultation is open **until 15 September 2015**. Please use the comment form and submit your comments via email to [rachel.asante-owusu@iucn.org](mailto:rachel.asante-owusu@iucn.org) and [steve.edwards@iucn.org](mailto:steve.edwards@iucn.org). In view of the expected number of comments, we may not be able to respond to each comment individually. Following the end of the public consultation period, we will make all comments publicly available from the IUCN website, [www.iucn.org/offsets](http://www.iucn.org/offsets).

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#	OVERARCHING COMMENTS ON THE DRAFT TEXT
1	Offsetting requires robust local enforcement and technical expertise. This will not be possible for a lot of countries due to different reasons. There is also scarce evidence to suggest that offsetting works. As stated in the Institute for European Environmental Policy (IEEP) report (Policy options for an EU No Net Loss Initiative) (Ch7.2.2) avoidance and reduction are the most important steps in the mitigation hierarchy. These steps are poorly implemented in practice and should be the key focus for the national authorities.
2	The experience from countries with existing compensation/ offsetting policies shows that having a mitigation hierarchy rarely helps to avoid damage in first place, being often simply replaced by compensatory measures. By focusing only on residual impacts such a policy detracts action from addressing the root causes of biodiversity loss.
3	Monitoring of efficiency of offsetting should be within the competence of the competent (local or national) authority and civil society should be able to monitor the success of projects. This public data could allow comparison of the performance in protecting important biodiversity.
4	Offset providers should be accredited, or some other system should exist to ensure that providers are competent to create new habitats and provide for their ongoing management.
5	Creation of new habitat should involve any necessary management until such time as the habitat is equivalent to that being lost. Any biodiversity offsetting framework must include mechanisms to support the new habitat in the longer term and ensure that is protected. An endowment or some other system should exist so that both the up-front costs of habitat creation and the continuing management costs are provided for. Also, there is a need for 'compensatory remediation' to compensate for the interim loss of natural resources and services pending recovery (from the date of damage occurring until biodiversity offset has achieved its full effect). This concept is used in the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (ELD) (Annex II).

Line no.	COMMENTS ON SPECIFIC SECTIONS
34	Offsets must only be used to compensate for genuinely unavoidable damage.
35	<p>Rephrase 'and when a full set of alternatives to the project have been considered' into: <b>'including consideration of a full set of alternatives to the project.'</b></p> <p>It has to be clear that pursuing alternatives (i.e. steps a and b in the mitigation hierarchy) is essential for proper application of the mitigation hierarchy. Application of the mitigation hierarchy cannot just be a theoretical exercise.</p>
36	After 'must' add: <b>'only be used to compensate for genuinely unavoidable damage and'.</b>
48 - 49	<p>The phrase 'to the extent feasible' does not require the previous steps to be fully addressed. It should be replaced by <b>'have been duly addressed'</b> .</p> <p>Alternatively, the second part of the sentence ('when all previous steps have been fulfilled to the extent feasible') should be replaced with: <b>'where the previous steps of the mitigation hierarchy have not addressed all of the predicted impacts of the project.'</b></p>
68	Add (after 'impacts'): <b>'of the project'</b> .
71	<p>Add at the beginning: <b>'If offsets are needed because the previous steps in the mitigation hierarchy cannot address all of the potential impacts then designing (...).'</b></p> <p>The current drafting creates the impression that there will be always a offset mechanism. This is not in line with the definition of the mitigation hierarchy which says that offset is created as a last resort, when all the other options are exhausted. There must be a system that makes it impossible to use offsetting if there is actually the possibility to use previous steps in hierarchy.</p>
95	There is a risk that local authorities do not have the resources to properly asses and manage offsetting projects. Therefore government should ensure that relevant local authorities have the capacity and ecological skills to negotiate and enforce biodiversity offsetting.
126	It should be specified: local or national or worldwide?
136	Correction: <b>causes</b>
208	In what scenarios will it be 'impossible'?
219	Monitoring of efficiency of offsetting should be within the competence of the competent authority (local or national) and civil society should be able to monitor the success of projects.
220 - 222	A proper monitoring system is extremely important and in this sub - paragraph the importance is not sufficiently underlined. A lot of biodiversity offset projects fail to monitor the outcome or to provide any evidence that they have been adequately monitored.
225	It should be strongly emphasized that the monitoring should be carried out by the independent entity, not a developer which could have a potential conflict of interest.
225 - 226	Results of existing monitoring of compensation/offsets should be made available for the public.
229 - 230	Rephrase/cut into 2 sentences for clarity: <b>'Legal, institutional and financial measures are needed to ensure that the biodiversity offset activities are successfully implemented for at least as long as the</b>

	<b>project's impacts last. These should be identified and put in place.'</b>
231	<p>What is the goal envisaged for a legal framework?</p> <p>A) make it mandatory for developers to engage in offsetting? OR B) acknowledge the option of biodiversity offsetting (as the last resort in the mitigation hierarchy) and then set out the minimum requirements for how offsetting should work and be carried out?</p> <p>Of these options, we can only support the second.</p> <p>Further, where Governments decide that offsetting is to be allowed as a possibility, they should put in place a legal framework, but also support this with guidance and facilitate exchanges of best practices.</p>
231	About 'simple requirements' : Clarify that these requirements would still be legal obligations.
233	This document does not suggest what the 'minimum legal requirements' should be. Will this be covered in the 'detailed guidance' which will follow?
244 - 245	About ' mandatory offsetting schemes incorporating at least the minimum legal requirements': What is meant here? Government accredited schemes that source offsetting opportunities for developers?
245	This document does not suggest what the 'minimum legal requirements' should be. Will this be covered in the 'detailed guidance' which will follow?
247	Please clarify whether 'mandatory requirements' means that any developer engaging in offsetting has to meet legal minimum standards. Or does it mean that developers must engage in offsetting?

*Please add rows as necessary.*

**GENERAL QUESTIONS:**

*(the answers to general questions will have no impact on the consideration of your comments above)*

1. Do you have experience in designing, implementing and/or monitoring of biodiversity offsets?

ClientEarth is a public interest European environmental law organisation. We aim to create practical solutions to key environmental challenges by supporting and promoting the development, implementation and enforcement of effective European Union (EU), and where appropriate international, regional, or local environmental law and policy. We are monitoring the development of policy and legal frameworks across the EU that could enable biodiversity offsets, with a view to ensuring that existing EU and national conservation legislation is not undermined.

2. What is your geographic and or thematic area of expertise within the area of biodiversity offsets?

ClientEarth has offices in London, Brussels and Warsaw, but we work on issues that have impact on a regional scale.

Previous activities relating to biodiversity offsetting include responding to the public consultation on the EU's No Net Loss Initiative (NNLI), engaging with the European Habitats Forum working group on the NNLI. We are also monitoring the development of the Natural Capital Financing Facility, a new financial instrument which will likely support offsetting schemes and projects in the EU.

3. Do you believe that biodiversity offsets have the potential to be an appropriate conservation tool?

Very concerned that would not contribute to conservation, therefore can only support their use in tightly controlled situations and only for projects where the possibility of alternative development sites or mitigating the extent of the loss have been exhaustively examined and all actions to avoid or mitigate have been taken.

4. What do you consider to be the main challenges to the effective implementation of biodiversity offsets?

- 'Slippery slope' i.e. where offsetting becomes 'the norm' and no efforts are made to avoid or mitigate impacts
- Resourcing of authorities to be able to assess and monitor whether the mitigation hierarchy has been respected.
- Where offsetting needs to be used, assessment of the 'equivalence' issue and monitoring of this.
- Protection of the offset projects in perpetuity

5. What, if any, should be the role of IUCN to facilitate the effective implementation of biodiversity offsets

Scientific evaluation of projects followed by circulation of information about both successful and unsuccessful offset projects – so that it is clear that offsetting is not a panacea.

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<sup>i</sup> It is envisaged that the final version of this policy will be presented to the members assembly for adoption at the World Conservation Congress Hawaii 2016