

Improving the Implementation of the Mitigation Hierarchy through Policy: Benchmark for Review of Policy Measures



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About this Document

This Benchmark was prepared for the Business and Biodiversity Offsets Programme (BBOP) by Forest Trends.¹ BBOP ran from 2004-2018 to help developers, conservation groups, communities, governments and financial institutions develop and apply best practice towards achieving no net loss and preferably a net gain of biodiversity through the thorough application of the mitigation hierarchy (avoid, minimise, rehabilitate/restore, offset). The Principles, Standard and Handbooks published by BBOP were developed and tested by members of the BBOP Secretariat and Advisory Group and all the BBOP documents have benefited from contributions and suggestions from many people who registered on the BBOP consultation website and numerous others who joined us for discussions in meetings and webinars.

All BBOP Advisory Group members support the Principles, and many companies and governments have integrated them into their own commitments and also use the Standard and other tools. We commend the full set of BBOP materials to readers as a source of guidance on which to draw when considering, designing and implementing projects as well as policies that aim for the best outcomes for biodiversity in the context of development.

BBOP has now concluded its work but best practice in this area is still developing. We hope the legacy of BBOP is that its materials continue to be used and the concepts and methodologies presented here are refined over time based on practical experience, research and broad debate within society. All those involved in BBOP are grateful to the companies who volunteered pilot projects, the members that developed and applied draft versions of the Standard and other tools as they were developed, and the donors who enabled us to prepare these documents.

To learn more, see: <https://www.forest-trends.org/bbop/>

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Improving the Implementation of the Mitigation Hierarchy through Policy: Benchmark for Review of Policy Measures

Part 1: Criteria

The intention is for this benchmark to be used to review governments' systems for mitigation. It concerns policy and governance arrangements established by each government at the national, state or local government level to mitigate the impacts of development projects on biodiversity. The framework for review is a set of criteria describing particular aspects of policy. For each criterion, indicative descriptions have been provided to indicate what would constitute 'low', 'medium' and 'high' standards, allowing individual policies to be benchmarked against best practice. The criteria are listed under two headings: 'Process' by which policy is developed and implemented; and 'Content' of the policy. The main purpose is to allow the user to assess a particular policy and system of governance against all the relevant criteria. This may reveal gaps that could be filled, for example by clearer statements of policy, further regulation, accompanying guidelines, improved systems of governance and coordination between government departments, and/or by capacity building and training. It is possible that the benchmark can also facilitate comparison between different governments' approaches at a point in time, and also comparison between the approach of the same government at different stages in development and implementation of policy. It is not intended that the benchmark would be applied to assess individual development projects and their respective mitigation measures.

The following list of criteria offers a summary of the issues covered by the benchmark. In Part 2, the benchmark defines characteristics for each criterion according to 'low', 'medium' or 'high' performance.

A. PROCESS

Process of development of policy:

- Participatory
- Roadmap²

Process of implementation of policy:

- Stakeholder involvement
- FPIC of indigenous peoples respected
- Expert review/independent review
- Clarity on who can implement the mitigation measures
- Proportionate processes
- Transparency on mitigation design by developer
- Transparency on success of mitigation implementation by developer
- Transparency on offset design by offset provider
- Transparency on implementation by offset provider
- M&E by government of effectiveness of policy
- Enforcement
- Level of application of policy by key users (e.g. government, developers, EIA practitioners.)
- Capacity for applying the policy

B. CONTENT

Goal

- Clear policy objective (e.g., Biodiversity Net Gain relative to an explicit, plausible reference scenario)
- Clear principles
- Feasibility of goal and appropriate reference scenario

Scope

- Regulated entities (sector, public/private)
- Relevance to conservation challenges
- Nature of biodiversity covered
- Coverage and treatment of ecosystem services
- Upper and lower limits of impacts, and implications

² Experience in many countries is that governments often start with a basic approach establishing the essential elements of a system for mitigation of impacts on biodiversity, and then develop and improve it over time. These systems involve law, policy, scientific and technical guidelines and data, relationships with a variety of stakeholders, and coordination and capacity building in government. The system will need institutions and tools to help developers apply the mitigation hierarchy, concentrate on effective avoidance measures and find and secure for the long term any biodiversity offsets they may need. The system can build on suitable elements that may already exist in the country concerned, but where there are gaps, mechanisms will need to be established, and this will take a period of years. A 'roadmap' is a plan with key milestones typically over a 5-10 year period to enable an effective No Net Loss/Biodiversity Net Gain programme to be put into practice in a sequential and orderly manner. The roadmap can guide the development of key parts of the system, such as rules and guidelines, data gathering and capacity building, pilot approaches and (if desired) market mechanisms.

Mitigation hierarchy

- Projects must follow the mitigation hierarchy and this explicitly includes avoid, minimize, restore and offset residual impacts (or very similar wording with the same intent)
- No go situations
- Avoidance and consideration of alternatives
- Guidance on the mitigation hierarchy

Baselines, counterfactuals, additionality and gain

- Defensible basis against which losses and gains of biodiversity are established

Limits to what can be offset

- Defensible basis established for defining which impacts cannot be offset

Exchange rules clear

- Exchange rules deal with 1. Type (Like for like or better), 2.Space/location, and 3. Timing

Metrics clear

- Methods for quantifying loss and gain clear and explicit

Information systems

- Information on biodiversity and development is available to guide decision-making

Socioeconomic aspects clear

- Application of policy to people's cultural and economic values of biodiversity is clear

Implementation clear

- The manner in which the policy is to be implemented (including security of long-term mitigation measures) is clear.

Part 2: Draft benchmark for assessing policy measures on mitigation of impacts on biodiversity, including biodiversity offsets				
Major heading	Heading	Low	Medium	High
PROCESS				
Process of development of policy	Participatory	No consultation	Limited consultation and opportunity of affected groups' opinions to be reflected in revised policy, marginalized and vulnerable groups not consulted.	Highly consultative drafting process: relevant government departments /agencies, civil society (including marginalized and vulnerable groups) involved
	Roadmap	No clear process for development, preparing readiness for implementation, evolution of system over time	Some information on milestones and steps in development, implementation and improvement over time	Clear roadmap ¹ covering development and implementation of policy
Process of implementation of policy	Stakeholder involvement	No opportunity for stakeholders to influence the implementation of the policy	Limited opportunity for stakeholders to influence the implementation of the policy	Highly consultative implementation process: mitigation measures shaped by consultation with stakeholders including hard to reach marginalized or vulnerable groups.
	FPIC of indigenous peoples respected	No reference to FPIC of indigenous peoples	Some reference to FPIC but unclear or partial	FPIC of indigenous peoples unambiguously incorporated into policy
	Expert review/independent review	No requirement for developer to hire qualified experts to design and review proposed mitigation measures	Some quality standards for those designing and reviewing proposed mitigation measures	Clear quality standards and/or qualifications needed for those designing proposed mitigation measures. Provisions for expert review (independent of government) of projects with most significant impacts.
	Clarity on who can implement the mitigation measures	Options for which organisations may implement mitigation measures left unclear	Brief reference to the different options for implementation.	Clear guidance for developers on the different options for implementation (e.g. developer, partners/agents of the developer, in lieu fee, purchase of conservation credits)
	Proportionate processes	The policy offers no basis for differentiating between projects with significant impacts on	The policy differentiates between projects with significant impacts on biodiversity and those with much	The policy offers clear guidance that distinguishes between the methods to be applied to clearly defined projects

		biodiversity and those with much smaller impacts, and transaction costs for smaller projects could therefore be unmanageable.	smaller impacts but does not offer a sufficiently clear distinction in the procedures to be followed to define and implement appropriate mitigation measures.	with very significant impacts on biodiversity and those with much smaller impacts, enabling proportionate approaches in each case and reasonable transaction costs.
	Transparency on mitigation design by developer	No requirement for public disclosure by the developer on the manner in which its mitigation measures were designed	Some requirement for public disclosure and reporting by the developer on the design of its mitigation measures, but no clear guidance on what is to be disclosed and/or only basic or partial disclosure needed.	Policy contains clear and explicit requirements for public disclosure by the developer on the manner in which it has designed its mitigation measures (including alternatives assessment, avoidance, minimization, restoration and finally offset measures, including how exchange rules and metrics were applied).
	Transparency on success of mitigation implementation by developer	No requirement for public disclosure by the developer on success or failure of the implementation of its mitigation measures	Some requirement for public disclosure and reporting by the developer on the implementation of its mitigation measures, but no clear guidance on what is to be disclosed (e.g. indicators of success of implementation) and/or only basic or partial disclosure needed.	Policy contains explicit requirements for public disclosure by the developer on the progress (in terms of success and failure) of the implementation of its mitigation measures, against clear indicators.
	Transparency on offset design by offset provider	No requirement for public disclosure by the offset provider on the manner in which its mitigation measures were designed	Some requirement for public disclosure and reporting by the provider of offsets on the design of its offset measures, but no clear guidance on what is to be disclosed and/or only basic or partial disclosure needed.	Policy contains clear and explicit requirements for public disclosure by each provider of offsets on the manner in which it has designed the offsets (including how exchange rules and metrics were applied, additionality satisfied, permanence secured).
	Transparency on implementation by offset provider	No requirement for public disclosure by the offset provider on the success or failure of the implementation of its offsets	Some requirement for public disclosure and reporting by the offset provider on the implementation of its offsets, but no clear guidance on what is to be disclosed (e.g. indicators of success	Policy contains clear and explicit requirements for public disclosure by the each provider of offsets on progress to date (including level of success and failure against clear indicators) of offset implementation.

			of implementation) and/or only basic or partial disclosure needed.	
	M&E by government of effectiveness of policy	No practice for government to gather evidence of compliance with policy	Some periodic review of effectiveness of policy, but the review does not enable a clear assessment of whether the policy objective (e.g. BNG or NNL against a clear baseline) has been achieved or is on track. Partial public disclosure.	Systematic and thorough periodic review of progress of implementation of the policy objective against a clear baseline, and public disclosure of results.
	Enforcement	No clarity on process or institutions responsible for enforcement. No enforcement.	Some procedures in place for holding accountable those breaching agreed mitigation measures, but enforcement not regular or complete.	Clearly outlined processes for and responsible institutions for enforcement. Breaches followed up and acted on.
	Level of application of policy by key users (e.g. government, developers, EIA practitioners.)	Little application of the policy by developers (in private or public sector) or their advisers such as EIA consultants.	Some compliance with policy by practitioners who are more aware and have greater capacity, but policy overlooked or not applied by others.	Relevant actors are familiar with the policy and are actively applying it.
	Government capacity for applying and administering the policy	Little staff time or skill in government for applying the policy. Little or no training.	Some, but inadequate, staff time for applying the policy. Some staff trained and capable of fulfilling government's policy and administrative function implementing the policy. Some but inadequate coordination between different departments and agencies of government.	Enough government staff time is made available to administer the policy and personnel are trained and competent. Clear mechanisms are in place to ensure effective coordination on implementation of this policy between different departments and agencies of government.
	Stakeholders' capacity for abiding by the policy	Developers and their advisers (e.g. consultants, NGOs) and potential providers of offsets (e.g. landowners, communities, protected area boards) are not clear on their roles and how to apply the policy.	Developers and their advisers and potential providers of offsets can access tools and training and have some understanding of how to abide by the policy and participate in its implementation.	Tools and training for both developers and their advisers and for potential providers of offsets are widely available and in use.

CONTENT				
Goal	Clear policy objective (e.g., Biodiversity Net Gain with an explicit reference scenario)	The intended, expected outcome of applying the policy (including the outcome expected from individual projects) is not clear. No explicit reference scenario.	Some ambiguity in the policy as to its overall intended outcome, and also the outcome expected of individual projects which must apply it.	The policy is clear about the overall intended goal (e.g. an aspiration to achieving a Net Gain of Biodiversity at a national level ³ relative to an explicit and plausible reference scenario) and it is also clear as to the expected outcome (e.g. Net Gain or No Net Loss or other) from individual projects falling under the policy.
	Clear principles	The principles upon which the policy is based are not set out or unclear.	There is some reference to principles within the policy, but they are unclear and/or not comprehensive.	The policy contains a clear and comprehensive articulation of the principles on which it is based and these principles are sound (e.g. BBOP Principles).
	Feasibility of goal and appropriate reference scenario	Not clear that the goal set is achievable in theory, given lack of robust and appropriate reference scenarios, metrics, etc.	Some evidence that the goal is achievable and the policy internally consistent (e.g. appropriate reference scenarios, exchange rules and metrics).	Clear policy documents showing that the goal established for the policy can (in theory) be attained, because the reference scenarios, metrics and other key policy design elements are robust, consistent and appropriate.

³ Note: It is unlikely that an overall net gain in biodiversity at the national level can be achieved due to degrading processes that are not related to project activities for which net gain mitigation measures are planned (e.g. climate change), hence net gain at a national level is best phrased as an aspirational goal.

Scope	Regulated entities (sector, public/private)	No clarity as to whether policy applies to only some sectors (e.g. extractives), or all sectors.	Some description, but some ambiguity.	Clear scope of activities/sectors regulated
	Relevance to conservation challenges	The scope set by the policy means that large causes of loss of biodiversity are excluded and not mitigated.	The scope of the policy covers some activities that cause significant losses of biodiversity in the country but not all.	The policy is fairly comprehensive in covering economic activities that cause the most significant losses of biodiversity in the country.
	Nature of biodiversity covered	Only a small subset of biodiversity is covered by the policy (e.g. only threatened species).	A broad range of biodiversity components are covered by the scope of the policy, but other important ones are left out.	Key elements of biodiversity (e.g. representative and unusual components as well as those of high conservation value) are identified and included.
	Coverage and treatment of ecosystem services (the benefits people get from nature and functioning ecosystems)	Ecosystem services are not covered by the policy	Ecosystem services are considered by the policy but treatment is incomplete AND/OR limited consideration is given to who is gaining or losing access to ecosystem services AND/OR gain of ecosystem services can entail loss of biodiversity	Ecosystem services are addressed clearly in the policy with consideration given to who is gaining or losing access to ecosystem services and provisions such that access to ecosystem services should not entail loss of biodiversity
	Upper and lower limits of impacts, and implications	No limits are identified.	Lower limits are set out, but higher limits are not AND/OR Limits are overly permissive AND/OR No process defined (e.g. referral to higher level of government or independent panel of experts) for review of limits in particular cases.	Upper and lower limits for impacts are clear and robust, as are the implications relating to these (e.g. avoidance, offsetting, limits to what can be offset, etc.) AND/OR A process is defined for referring a decision on limits in a particular case to a higher level of government (e.g. to a head or department, or to national government from a local level, or to a Minister) or to an independent body or panel of experts.

Mitigation hierarchy	Projects must follow the mitigation hierarchy and this explicitly includes avoid, minimize, restore and offset residual impacts (or very similar wording with the same intent)	Policy is not clear that developers must follow the mitigation hierarchy, and/or the mitigation hierarchy is not clearly defined. It is not clear that biodiversity offsets are the last resort.	Some reference to the mitigation hierarchy, but ambiguity on its meaning and/or ambiguity as to the specific responsibilities of the developer.	Requirement for rigorous adherence to the mitigation hierarchy, i.e. to avoid, minimize, restore and offset as a last resort.
	No go situations	Policy does not make clear that some projects will not be consented because of their impacts on biodiversity and little or no clarity as to which activities/impacts/locations will be refused permission.	Policy states that some projects will not be consented because of their impacts on biodiversity but is not clear as to which activities/impacts/locations will not be given permission.	Policy states that some projects will not be consented because of their impacts on biodiversity and is clear as to which activities/impacts/locations will be refused permission for this reason.
	Avoidance and consideration of alternatives	Little or no clarity on the developer's responsibility to consider and communicate the review of alternatives to its proposed development (including different location and/or scale of project, and the no-go option).	Policy refers to the need for alternatives analysis and identification of areas/activities/impacts to avoid, but is not clear enough for developers to follow.	Policy sets out the requirements for alternatives analysis sufficiently clearly for developers to know how to present the alternatives analysis and which areas/activities/impacts to avoid.
	Guidance on the mitigation hierarchy	No guidance to help developers know how to follow the 'avoid, minimize, restore on-site, offset' sequence.	Some ambiguity as to how much effort developers must make with each step of the mitigation hierarchy before moving to the next one. Lack of clear guidance on the core standards for offsets (limits, exchange rules, metrics, site selection, gain, implementation).	Guidance accompanies the policy and sets out clearly how much effort developers must make with each step of the mitigation hierarchy before moving to the next one. Clear guidance sets out the standards for offsets on limits, exchange rules, metrics, site selection, gain, and implementation.

Baselines, counterfactuals, additionality and gain	Defensible basis against which losses and gains of biodiversity are established	Little clarity from the policy as to what are considered defensible baselines and counterfactuals, how additionality is to be established and the basis for gain.	Policy mentions baselines and counterfactuals, additionality and gain, but either it is not sufficiently clear for developers how to apply, or there is no defensible basis (set by the scientific community, based on evidence).	Baselines and counterfactuals against which losses and gains are assessed and rules on additionality and gain are clearly set out, are robust and based on consultation with the scientific community, and are regularly reviewed and updated.
Limits to what can be offset	Defensible basis established for defining which impacts cannot be offset	No guidance is offered for establishing which residual impacts cannot be offset, and/or the guidance is arbitrary and not established after consultation with the scientific community.	Some guidance is offered for establishing which residual impacts cannot be offset, but the guidance is not sufficiently clear for a developer to apply and/or there is some but insufficient scientific basis for the approach.	There is clear guidance, developed in collaboration with the scientific community, as to how to establish which residual impacts cannot be offset, and this guidance can be applied straightforwardly by developers.
Exchange rules for losses and gains	Exchange rules deal with 1. Type (Like for like or better), 2.Space/location, and 3. Timing	Exchange rules (what loss can be 'exchanged' for what gain – over space and time) are not clearly set out.	Exchange rules are addressed but only deal with a subset of issues.	Exchange rules are clearly set out and deal with type, location and timing.
Metrics clear and robust	Methods for quantifying loss and gain clear and explicit and in line with good practice	The metrics for quantifying loss and gain and the way to apply them are not clear.	There is information on how to select or develop metrics, or some metrics are provided, but how they are to be reviewed and applied is not clear. And/or the metrics provided are not adequate to quantify the losses and gains of biodiversity (e.g. only cover some but not all the biodiversity components within the scope; or are too coarse or not sufficient to address changes in area and condition of habitat and the population of species of conservation concern).	The policy provides the metrics to apply or sets out clear criteria that must be satisfied by developers if the policy allows them to develop their own metrics. The manner in which the metrics are to be applied is clear (e.g. from available guidance). The metrics are adequate to quantify the losses and gains of biodiversity within the scope of the policy. The metrics are adequate to address changes in area and condition of habitat and the population of species of conservation concern, and address landscape as well as site-based biodiversity values.

Information system available	Data and maps on biodiversity and development available to support decisions	No clear information system offering sources of data and maps on biodiversity and development available to developers (to help them with baselines, counterfactuals, limits, exchange rules and metrics), and no assistance available to developers to find the best information available.	Developers and other stakeholders can access some relevant information and maps on biodiversity and development to support the design of projects and their mitigation measures, but the information can be hard to source, is patchy, may not be up-to-date and inadequate help is available from government to find it.	A clear system of biodiversity information (including data and maps) is available to developers to help them define and apply baselines, counterfactuals, limits, exchange rules and metrics when designing their projects and associated mitigation measures. National, regional and local conservation priorities are clear. Government offers signposts or other assistance to help developers find the best information available.
Socioeconomic aspects clear	Application of policy to people's cultural and economic values of biodiversity is clear.	Policy is silent or ambiguous as to whether its objective (e.g. Biodiversity Net Gain) covers people's economic and cultural values associated with biodiversity. Unclear such losses and gains should be quantified and mitigated.	The policy either excludes people's economic and cultural values associated with biodiversity from its scope and does not explain how they will be addressed and losses compensated, or refers to their inclusion but does not offer clear guidelines with methods on how to design quantified mitigation measures to address them.	The policy explicitly includes people's economic and cultural values associated with biodiversity within its scope and sets out how they are to be covered in the design and implementation of mitigation measures (including metrics).
Implementation clear	The manner in which the policy is to be implemented (including security of long-term mitigation measures) is clear.	The policy does not define clearly how its objectives are to be implemented on the ground by developers or third parties. It does not clarify how mitigation measures (including biodiversity offsets) will be secured in legal, institutional and financial terms, for the long term.	The policy provides some information on options for implementation, but there is ambiguity as to some of the legal, institutional and financial measures that need to be in place, such as issues of duration, financial mechanism and management plans.	The policy sets out clearly exactly what options are available to developers for implementation, including whether third parties can provide offsets, in which case clear standards are rules for them are established. The policy sets out clear provisions and accompanying guidelines on the legal, institutional and financial measures needed to implement it, covering issues of 'permanence' such as duration, financial mechanism, management plans and review.



To learn more about BBOP, see:
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