

**EARTHWORKS Comments on  
the Draft Documents of the  
Business and Biodiversity Offsets Programme (BBOP)**

**September, 2008**

**EARTHWORKS**

**SUMMARY**

Extractive industry often has a devastating impact on the environment and represents a threat to biodiversity conservation. Industry efforts to contribute to biodiversity conservation are laudable, but industry contributions should not serve to facilitate access to areas where impacts will be severe. The Business and Biodiversity Offsets Programme (BBOP) needs to account for the following problems with the existing framework:

- the current framework allows projects that would not be approved in the absence of an offset project to be approved because of the inclusion of an offset project (offsets should not be proposed prior to project approval; at least two pilot planned projects had unacceptable impacts);
- the free, prior, and informed consent of affected indigenous peoples must be obtained for the offset project (and for the extraction project, for both indigenous peoples and other affected communities)
- governance of BBOP, and how an offsets certification project would relate to initiatives such as the Initiative for Responsible Mining Assurance (IRMA) for mining, remain unclear.

We presented specific comments and recommendations on the individual BBOP documents.

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**PRINCIPLES DOCUMENT**

Some of the most important components that are lacking from the current principles and overall BBOP framework are 1) provisions to ensure that projects that would not be approved in the absence of a proposed offset would not be approved because of a proposed offset, 2) provisions to ensure the free, prior, and informed consent of affected communities, and 3) provisions for governance of BBOP and how a potential certification would relate to initiatives such as the Initiative for Responsible Mining Assurance (IRMA) for mining.

More emphasis and explanation should be placed on the explanatory note about additionality. If an offset is a not a new and additional effort (i.e. an “offset” that protects an area that is not being degraded anyway or that cannot be saved is not an offset; see Gibbons & Lindenmayer, 2007).

Also, a change in IUCN threat level for a species is not sufficiently concrete a definition of “no net loss” because much habitat can be lost before a change in status occurs and accepting increased risk up to the point just before a status change would be called for is insufficient protection; in some cases data are unavailable to definitively establish the status of a species (a precautionary approach is needed, see question 10 below; and formal status evaluations are infrequent); and concern for more than just individual species is needed (populations, ecosystem processes, etc.).

Further definition of the governance of what it means for a project to be an acceptable offset is needed. Defining what impacts cannot be acceptably offset should also be its own principle (Norton 2008). Further definition of when the avoidance step has been fully adopted is needed. Certain proposed offsets should not be considered “legitimate offsets” if they have “unacceptable” biodiversity impacts and avoidance would dictate that those projects do not occur. If the project does not have “unacceptable” impacts and is permitted and proceeds, then avoidance should still occur within the permitted project area (a project may end up working in an area of important forest but then avoid destroying the main forest tracts on the permitted property).

Projects that would not be allowed to proceed in the absence of an offset proposal should not be allowed to proceed because they have proposed an offset and “avoidance” must account for this principle (see question 10 below).

The principles need to guarantee free, prior, and informed consent of local communities and indigenous peoples and it does not expressly do so as currently written.

The "equity" principle could be perceived as implying that project companies and local communities would have equal rights and responsibilities, risks and rewards. The companies cannot be granted the same rights as local communities, who must have their right to free, prior, and informed consent respected. Similarly, the community is not responsible for cleaning up a project's pollution or for assuming any of the project's risks. This statement ought to be re-phrased to clarify this.

“Sustained outcomes” is insufficiently defined. Offsets should last be planned and managed to last “in perpetuity,” or at the very least for the duration of project impacts.

The explanatory notes as currently written could be suggesting that offset management must account for additional pressures that may arise (which is a good stipulation), or they could be suggesting that offset management that is unable to deal with additional pressures like climate change can be excused. This should be clarified in favor of the former perception.

In addition, the principle ought to embrace definite guarantees of long-term success, including company bonding to guarantee sufficient financing for offset success (Norton 2008). The risks of offset failure should be underwritten, and have guaranteed long-term financing mechanisms that are able to withstand changes in economic conditions and project divestment or closure (Burgin 2008). The project should begin only once the

offset project is making acceptable progress towards the desired ecological state and management arrangements are legally secure.

Additional principles needed:

**IMPARTIAL PERMITTING/APPROVAL (or NON-PREJUDICED PERMITTING/APPROVAL):** a project that would not proceed in the absence of a proposed offset should not proceed because of a proposed offset. As part of the requirements under this principle, offsets should only be proposed after project approval by the government and community. This principle applies more to voluntary or optional offset programs than cases where offsets are required of all projects by a governmental authority. [This principle is critically important yet at least one pilot BBOP project, the Akyem mine in Ghana, is in violation of this principle.]

**PRECAUTIONARY APPROACH:** assessment of project and offset negative impacts, of offset success likelihood, and other offset-related assessments should adopt a precautionary approach with respect to biodiversity. The precautionary principle is recognized in Convention on Biological Diversity and Ramsar Convention documents.

**OFFSET TYPES:** only the following types of offsets are acceptable: 1) restoration and protection of areas that are degraded, and 2) protection, including removal of threats such as invasive species or overharvest, of areas that are threatened with serious degradation or destruction that will most likely not receive protection from any other source (Norton 2008). Offsets should be “in-kind” and within the same area (including same ecosystem type and watershed) as the project impact. Offset banking and off-site offsets would most likely not account for community use needs and would be difficult to measure and manage. Defining what types of project cannot be offset (i.e. not described as acceptable offsets) should also be a listed principle (Norton 2008).

## **PHASE 2 DOCUMENT**

Deficiencies exist in the BBOP Principles (see separate comments) and particular care needs to be taken with pilot projects. A transparent means of incorporating comments on current BBOP documents is lacking.

One of the pilot projects, the Akyem open-pit gold mine that is planned for the Ajenjua Bepo Forest Reserve in Ghana, fails to respect the principle that offset proposals should be made after the project has received approval. Offsets have been proposed through BBOP and the proposed mine has not yet received government approval to proceed. Because of this, this project may well fail to respect the principle that a project that would not be permitted in the absence of a proposed offset should not receive approval because of the offset.

In addition, the Akyem project and the Ambatovy project qualify as projects that have unacceptable impacts and would violate the no net-loss principle. Reviews of the draft Environmental Impact Statement for the project (see <http://www.nodirtygold.org/pubs/Akyem-EIS-biological-review.pdf> and <http://www.nodirtygold.org/pubs/AKyem-EIS-technical-review.pdf>) indicate that

biodiversity impacts could well be unacceptable and the mitigation hierarchy not adequately followed. The Ambatovy project involves a slurry pipeline going through intact humid forest in Madagascar that served as an important forest corridor between major conservation areas and also impacts a Ramsar site and National Park. The mine itself is also located in humid forest. If those are not unacceptable impacts, it is unclear what would be.

## **COST-BENEFIT HANDBOOK DOCUMENT**

It is unacceptable for an offset project to be proposed before the original project has been approved (“where this [ESIA] information exists...” (p41)). Proposed extractive industry projects that would not proceed in the absence of an offsets proposal should not proceed because of a proposed biodiversity offset. This will be difficult to ensure but one criterion could be that at a minimum, offsets should not be proposed before a Go/No-Go decision is made.

Stakeholders would usually imply national government regulators and industry representatives as well, but these are not given as examples of stakeholders (p.4). There is good reason to exclude industry representatives at stages of a potential offset project and this needs to be explicitly stated. Offsets must necessarily involve local communities, not “generally involve [them]” (p. 8). Indeed community consent must be obtained (free, prior, and informed consent) for the project and the offset. Community consent procedures may not be compatible or amenable to the types of financial valuation process and cost benefit analysis in this document.

Similarly, insufficient details are given on governance of offsets. Who determines what is “offsetable” and not? If this is a third-party verified certification process it ought to relate to the Initiative for Responsible Mining Assurance.

The document needs a list of offset possibilities that are acceptable and those that are unacceptable and new ones to be assessed by governance X (step 2). Some acceptable offset options are presented but only late in the document (p.55) and unacceptable categories of offsets are not explored. Out-of-kind offsets would need to demonstrate definite potential for biodiversity outcomes and this is unlikely to be feasible.

“Formalize community land and resource tenure” as an offset option needs to be clarified (p.55). If this means privatization of communally-managed land then this is not only often culturally inappropriate but may be a violation of indigenous rights and represent a potential conservation problem since small privately-owned land areas can be more easily purchased and intruded upon by extractive industries than can some communal lands.

Offsets that “address threats to biodiversity without working with communities” do not seem like they could be appropriate. Expansion of protected areas should in most cases involve community-managed protected areas. Likewise, supporting park management activities without involving the community has the potential to lead to conflict. This

category could include similar items but involve communities and be described as protected area direct support.

Baseline data sourcing needs to be defined and verifiable. Companies are known to have misrepresented vegetation conversions and fragmentation rates at impact sites (to include mineral exploration road-building as background forest conversion) and could easily misrepresent (in the ESIA or in offset analysis) the degradation rate of offset sites to indicate that without the site becoming offset it will be converted from forest to agriculture (or to convince that harvest rate of NTFP is unsustainable).(p.54) ar what would be.

## **IMPACT ASSESSMENT DOCUMENT**

Offsets should be planned independently unless offsets are required by regulation or the EIA occurs after the project has already received official, regulatory approval and community consent. Incorporating the offset into the EIA would not only risk short-circuiting requirements for mitigation (and further complicate the EIA process), but also risk biasing the approval process that often occurs with submission of an EIA. This could result in approval of projects because of the presence of the proposed offset that would not have been approved in the absence of the offset. This is a fundamentally important concept that needs to be addressed.

The EIA, however, could be structured and include information necessary to facilitate a later offset analysis and this would still promote efficiency in the offset process.

Company involvement in the SEA risks biasing the SEA towards facilitating the company's desired activities, which has implications for the environment even beyond the project impact area. EIA should include assessment of cumulative impacts.

More evaluation of the risk of including offsets in the EIA, particularly the risk of biasing project approval, needs to be included.

## **IMPLEMENTATION HANDBOOK DOCUMENT**

The issues are relevant. The level of detail is generally appropriate. More emphasis should be placed on (a) the need to protect the financing mechanism from the risks of the financial market, (b) the need to keep certain aspects of the project management, such as monitoring and verification, independent from company influence, (c) the need for the company to be financially responsible for the offset, (d) for any trust fund investments to not be directed towards company stocks, and (e) the need for community free prior and informed consent on major decisions regarding the offset lands.

It should be noted that PES are a supplementary means of conserving areas. Offsets are intended to be funded by the company and, in the case of carbon PES for example, using

PES on offset areas may reduce PES capacity to protect other areas  
Yes, developer should finance the offset in perpetuity and with provisions for dealing with market fluctuations and additional pressures such as climate change impacts.

## **OFFSET MULTIPLIERS DOCUMENT**

Bonding/insurance and establishing offsets prior to project development should be used in combination with multipliers.

Ecologists should use theory and the precautionary principle to provide best estimates at appropriate rules for offsets.

The precautionary principle should be used for deciding this, and would most likely suggest that the maximum combined multiplier option is needed.

The discussion of additionality, end-game results, and tropical forest restoration are well informed. Additional published data are needed, and more technical discussion should back up more precise conclusions on multiplier guidelines developed with the precautionary principle and as published data become available.

## **SITE SELECTION DOCUMENT**

The principle of additionality, which is inadequately included in the overall offset principles, is particularly important for site selection. If an offset is not a new and additional effort then it cannot be called an offset. An “offset” that protects an area that is not being degraded anyway or that cannot be saved is not an offset (Gibbons & Lindenmayer 2007). This is insufficiently considered in this document.

The document suggests that if no appropriate offset is available then the mitigation hierarchy and the project approval ought to be revisited. This would suggest, however, that the project site is irreplaceable and this ought to have been considered in the EIA and the project stopped at that stage. That EIA stage should have already occurred because offsets should not be proposed at the EIA stage, where they could lead to acceptance of a project that would otherwise have been denied because of impacts. If the project was not stopped at the EIA phase, would it be realistically be stopped because no appropriate offset was available?

## **STAKEHOLDER PARTICIPATION DOCUMENT**

This document was well organized and easy to read. Referring to the Framework for Responsible Mining is helpful.

It is unacceptable for an offset project to be proposed before the original project has been

approved. Proposed extractive industry projects that would not proceed in the absence of an offsets proposal should not proceed because of a proposed biodiversity offset. This will be difficult to ensure but one criterion could be that at a minimum, offsets should not be proposed before a Go/No-Go decision is made. “In some cases, the appropriateness and need for a biodiversity offset may not have been established in the impact assessment, or the exact location of biodiversity of... “ (p. 20) implies that in some cases the offset would be proposed in an ESIA. Assuming that such an impact assessment is conducted before project approval, then the offset should not be part of that ESIA. This is the case for the proposed Akyem mine in Ghana, for which an offset is being proposed prior to the project receiving government approval.

## **THRESHOLDS DOCUMENT**

Having such thresholds is a good idea but it remains unclear what happens if a proposed project is not acceptable according to that threshold. The project does not have the right to be called “offset”? Also, the threshold levels are not adequate. 95% of known distribution of a species or biological community is too high; instead anything over 50% should not be called offsetting since persistence probability could not be improved for equivalent portion of global population.

The Alliance for Zero Extinction database remains insufficient for preventing extinction.

Regional and national input and adaptation are appropriate as long as the condition that regional/national input and adaptation lead to stricter (more precautionary for biodiversity), not more lax criteria.

These procedures are only acceptable if they are separated from the Go/No-Go decision. Since avoidance, the first level in the mitigation hierarchy, can mean a “No-Go” decision, separation of the offset thresholds from the Go/No-Go decision needs to be clarified in this document. The entire process is unacceptable if a Go/No-Go decision is influenced towards “Go” by a proposed offsets project. Proposed extractive industry projects that would not proceed in the absence of an offsets proposal should not proceed because of a proposed biodiversity offset. This will be difficult to ensure but one criterion could be that at a minimum, offsets should not be proposed before a Go/No-Go decision is made.

Offsets should not be raised in the Go/No-Go decision stage. BBOP is linked to this decision because an offset proposal could lead to approval of a project that otherwise would not have received approval for biodiversity or other reasons. Only projects that have received regulatory approval and confirmed community free prior and informed consent should be considered for offsetting.

Governance of BBOP offsets is not adequately explained: who decides if it is appropriate to call a project an “offset” and what does this mean for stakeholders? If this is a certification process, it needs to relate to other certification processes, ie the Initiative for Responsible Mining Assurance (IRMA) for mining.

## **REFERENCES**

Burgin, S. 2008. BioBanking: an environmental scientist's view of the role of biodiversity banking offsets in conservation. *Biodiversity and Conservation* 17:807-816.

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Norton, D.A. 2008. Biodiversity offsets: two New Zealand case studies and an assessment framework. *Environmental Management*. In Press.