

# NATURE COMES OF AGE : HOW GLOBAL AGREEMENTS, NATURE MARKETS AND CORPORATE DISCLOSURE CAN HELP PROTECT AND ENHANCE THE NATURAL WORLD

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Articles

In the past few months, there has been an unprecedented global action to protect and preserve the natural environment and address the climate crisis. The UN Biodiversity Conference and the resulting Global Biodiversity Framework has been followed by the High Seas Treaty, and the publication of a version of the Taskforce on Nature-Related Financial Disclosure reporting framework.

In this article Gowling WLG's Environmental lawyers in Canada and the UK offer insights on how recent global agreements, new legislation and enhanced corporate disclosure on nature is changing the business landscape.

## COP15 and the Global Biodiversity Framework

At the close of 2022, the [15th UN Biodiversity Conference \(COP 15\)](#) took place in Montreal, Canada. Governments came together to agree on a set of global goals to achieve by 2030 that would halt and reverse nature loss. The conference was chaired by China and hosted by Canada, and had representatives of 188 governments present.

After some challenging negotiations, [COP 15](#) ended with a landmark biodiversity agreement known as "[the Kunming-Montreal Global Biodiversity Framework](#)" (the "Global Biodiversity Framework"). The Global Biodiversity Framework encompasses a series of agreements with four major goals and 23 targets to achieve by 2030.

The Framework [goals](#) include maintaining ecosystem integrity, substantially increasing the area of natural ecosystems by 2050, halting human induced extinction of known threatened species and reducing the extinction rate tenfold.

The Global Biodiversity Framework's more specific [targets](#) include:

- Conserving and restoring habitat (Targets 2 and 3);
- Protecting threatened species (Target 4);
- Creating sustainable food systems (Target 10);
- Biodiversity inclusive urban planning, policies and regulations (Targets 12 and 14);
- Disclosing business risks, dependencies and impacts on biodiversity (Target 15); and
- Financing biodiversity (Target 19), among others. See our Appendix for further details.

These overarching goals and targets included an agreement to establish a [multilateral fund for the equitable sharing of benefits for parties contributing to the Digital Sequence information on genetic resources](#), which could have mass benefits in pharmaceutical development, improved crop breeding, taxonomy, and monitoring invasive species. This multilateral fund will be finalized at [COP16](#) in Turkey in 2024.

Additionally, at [COP 15](#), 23 countries and organisations launched an [Accelerator Partnership](#) to help countries track and implement their National Biodiversity Strategies and Action Plans.

## High Seas Treaty

Following hot on the heels of the agreement of the Global Biodiversity Framework, on 4 March 2023 UN member states agreed the text of a historic legal framework, the draft agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction ("the High Seas Treaty"), to protect the international waters (or "high seas"), being those parts of

the ocean that are outside national boundaries.

The High Seas Treaty has been a long time coming. The UN General Assembly adopted, by consensus, a resolution to convene an intergovernmental conference and undertake formal negotiations on a new treaty. What followed was five years of negotiations before the High Seas Treaty was eventually adopted at the UN headquarters in New York.

All countries have a right to fish, ship and do research in international waters, which presents risks to the biodiversity contained within them. This is the first time that the high seas have been protected by such a treaty. The treaty aims to protect a third of the sea by 2030, in line with targets agreed in the Global Biodiversity Framework.

The key elements of the High Seas Treaty are:

- Establishing a conference of the parties ("COP") which will meet periodically, similar to the COP to the convention on biological diversity and the COP to the UN Framework Convention on Climate Change;
- Creating Marine Protected Areas which will prevent the loss of wildlife and ensure that resources are equally distributed between nations. The exploitation of resources in these protected areas will be limited to where it will not damage marine life. In practice this will limit fishing activities, shipping routes and exploration activities such as deep-sea mining. It will be up to the UN member states to propose areas to be protected, which will then be voted on by the COP;
- Making arrangements for sharing marine genetic resources (i.e. biological material from plants and animals in the ocean which can be used in food and pharmaceuticals); and
- Establishing requirements for Environmental Impact Assessments for deep sea activities like mining.

There are still some concerns about the operation of the arrangements established in the High Seas Treaty. For example, it will be down to each member state as to how Environmental Impact Assessments will be conducted and assessed. This could lead to wide discrepancies in the practice of member states. However, the treaty establishes a mechanism for member states to register their concerns regarding the practice of another member state with a monitoring body.

The member states will meet again later this year to formally adopt the High Seas Treaty, but Rena Lee, the UN Ambassador for Oceans, who chaired the negotiations, made it clear that the text will not be amended. Once the High Seas Treaty is signed, member states will then be required to enact legislation in their jurisdictions in order to bring the measures

contained in the treaty into effect. There is currently no timeframe for implementation of the High Seas Treaty, once ratified, but the European Union have pledged €40m to facilitate the ratification and early implementation of the High Seas Treaty.

## Moving from protecting to enhancing nature through supply chain due diligence, disclosure and nature markets

### The status quo

When it comes to biodiversity, legislation in the UK and Canada has historically focused on protecting the natural world, as opposed to enhancing impaired habitats. In the UK, legislation such as the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017 dictate what cannot be done to habitats and species. Similarly, in Canada, the federal Species at Risk Act, provincial endangered species acts and municipal by-laws tend to protect key species and their habitats.

### New legislation and approaches to enhance biodiversity

The focus is shifting now towards restoring or enhancing our biodiversity, a trend that the Global Biodiversity Framework highlights.

The UK has enacted the Environment Act 2021, which (among many other provisions) will require developers to deliver a 10% biodiversity net gain on all developments from November 2023 and will require companies to carry out extensive due diligence on the sustainability and sourcing of commodities such as soy, palm oil, leather, and rubber which are typically produced in areas of significant rainforest loss and will make it illegal for large businesses operating in the UK to use these key forest risk commodities if they were produced as a result of illegal deforestation.

The Australian Government is also proposing to establish a "Nature Repair Market" through the Nature Repair Market Bill. While the Nature Repair Market lacks the mandatory biodiversity net gain requirements of the UK approach, it harnesses economic incentives by enabling landowners to create schemes to protect or enhance biodiversity and obtain a tradeable certificate from the Government. These certificates can then be sold to businesses, organisations, governments and individuals. The market is designed to operate in parallel with carbon markets, so landowners can get certificates from carbon projects that

create biodiversity.

While in Canada, the focus is still on carbon markets, as opposed to "nature" markets, many are looking towards voluntary initiatives to fill the gaps. On the disclosure side, where biodiversity loss is a material risk to a Canadian public company, they should already be disclosing those risks and opportunities similar to other material risks.

In fact, a recent report by the [Commonwealth Climate and Law Initiative](#) found that the risk of biodiversity loss can present "foreseeable and material financial risks and opportunities to individual companies and the wider economic and financial systems." Thus, the Report recommends that directors consider their company's impacts on biodiversity when assessing risks and opportunities. (See our earlier [article](#) for details.)

## The taskforce on nature-related financial disclosures

That being said, many businesses in Canada, the UK and elsewhere, are grappling with exactly how to report on the specific, material biodiversity risks facing their organisations. This is where the [Taskforce on Nature-related Financial Disclosures](#) ("TNFD") comes in.

At the end of March 2023, the TNFD published the fourth and final beta version of its framework for nature-related risk management and disclosure due to be fully completed in September 2023. The TNFD builds and complements the model developed by the Taskforce on Climate-related Financial Disclosures ("TNCD"). It provides a framework for how organisations can address nature-related risks and opportunities and is designed to allow organisations to report on their alignment with global goals, including Global Biodiversity Framework.

## A call to arms to business

Biodiversity is a critical part of earth's survival and nature is central for most, if not all, businesses to function at their best. Thus, it is time for businesses to think beyond carbon emissions. Nature needs to be a top consideration alongside climate change impacts, and net-zero emissions.

Fortunately, key stakeholders are taking nature seriously and it is an issue of growing importance worldwide. There is more to be done though, and businesses can take the lead by:

- Assessing their organisation's foreseeable dependencies and impacts on biodiversity,

both directly and indirectly in their supply chain;

- Disclosing the company's material dependencies and impacts on biodiversity in corporate reports;
- Creating a corporate-level strategic biodiversity plan, based on identified dependencies and impacts specific to the company; and
- Assigning responsibility for following and applying frameworks like the TNFD and TCFD, and building the company's expertise and readiness to implement these frameworks.<sup>[1]</sup>

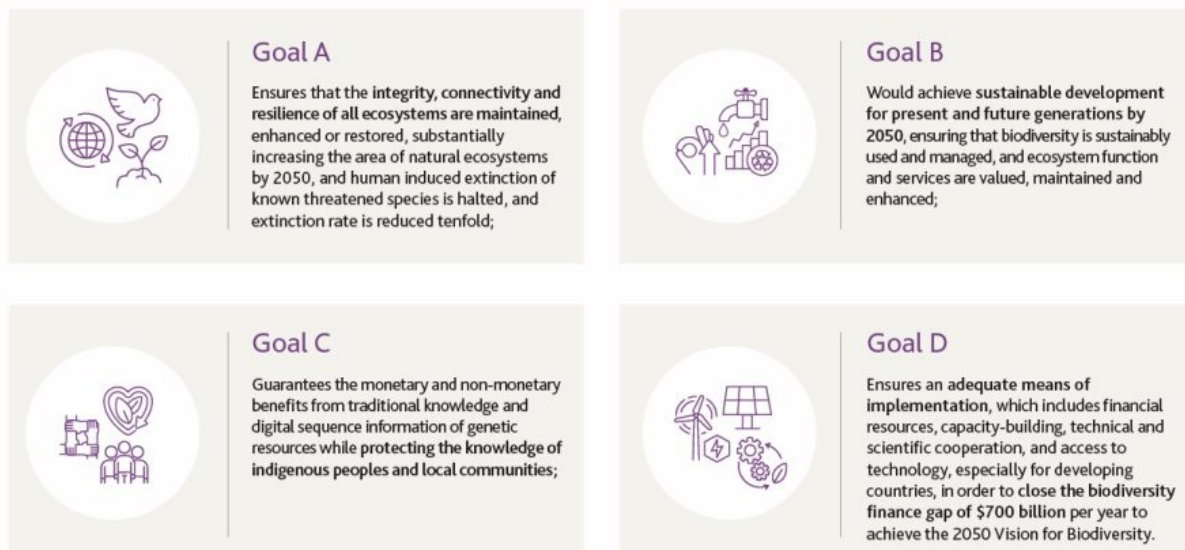
In future, we expect to see more legislative action to address biodiversity risks and investment opportunities in programs, such as nature credits and nature markets, to recognize the economic value of nature, and . hopefully- protect and enhance what is truly an invaluable resource.

## Appendix : The goals and targets of the Global Biodiversity Framework

The Global Biodiversity Framework encompasses a series of agreements with four major goals and 23 targets to achieve by 2030.

The four global goals are set out in Figure 1 below.

Figure 1: Goals of the Global Biodiversity Framework



The Global Biodiversity Framework also laid out 23 targets. Highlights are included in Table

1 below.

Table 1: Highlights of the Global Biodiversity Framework targets

Conserving and restoring habitat	Ensuring at least 30% of areas of degraded land, water, and coastal ecosystems are under effective restoration, and are effectively conserved and managed through equitably governed systems recognizing indigenous and traditional territories (Targets 2 and 3)
Protecting threatened species	Ensuring urgent management actions to halt extinction of threatened species and maintain genetic diversity within native, wild, and domesticated species (Target 4)
Reducing pollution	Reducing pollution risks by 2030 to levels that are not harmful to biodiversity, which include considering cumulative effects (with specific targets for excess nutrients and risks from pesticides, among others) (Target 7)
Creating sustainable food systems	Ensuring that areas under agriculture, aquaculture, fisheries, and forestry are managed sustainably through sustainable intensification, and agroecological and other innovative approaches to contribute to the resilience and efficiency of production systems for food security (Target 10)
Biodiversity inclusive urban planning, policies and regulations	Ensuring biodiversity inclusive urban planning and that policies, regulations, planning and development processes, poverty eradication strategies, environmental assessments, environmental impact assessments, and national accounting on the full of integration of biodiversity within the goals and targets of the framework (Targets 12 and 14)

<p>Disclosing business risks, dependencies and impacts on biodiversity</p>	<p>Encouraging or enabling businesses, specifically large and transnational companies, to regulate and disclose risks, dependencies, and impacts on biodiversity; provide information to consumers on sustainable consumption patterns; and report on compliance with access and benefit-sharing regulations (Target 15)</p>
<p>Financing biodiversity</p>	<p>Increasing the level of financial resources from all sources in accordance with Article 20 of the Convention by 2030 through mobilizing \$200 billion US per year, which includes increasing government financial funding, and leveraging private finance, promoting blended finance, and encouraging the private sector to invest in biodiversity through impact funds and other instruments (Target 19)</p>

**[1]** Recommendations inspired and adapted from the Commonwealth Climate and Law Initiative Report, Biodiversity Risk: Legal Implications for Companies and their Directors.

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