



ESG

# BIODIVERSITY COMES TO THE FORE: TOWARD NATURE-POSITIVE OUTCOMES



INFORMED INSURANCE  
SEPTEMBER 20**23**

**dgcb**  
**DAC BEACHCROFT**  
Member of **Legalign Global**

# Biodiversity Comes to the Fore: Toward Nature- Positive Outcomes

Biodiversity has been waiting in the wings of the ESG space for several years but now it has moved centre-stage as our understanding of the combined impacts of climate change, changes in land use and pollution have come into sharper focus.

Wholeheartedly embracing ESG may already seem a daunting prospect. The breadth of issues that need to be addressed, often requiring fundamental changes to an organisation's policies, operational practices and trading relationships, stretches boards and senior management. The huge challenges implicit in aligning with ESG objectives and related disclosure obligations seem to grow relentlessly.

On biodiversity, the spotlight is inevitably falling on the financial sector with the Taskforce on Nature-related Financial Disclosures (TNFD), launched in July 2020 and backed by eight major governments including the UK, and the United Nations expecting the sector to make a major contribution to protecting nature.

The TNFD has a simple mission: “To develop and deliver a risk management and disclosure framework for organisations to report and act on evolving nature-related risks, with the ultimate aim of supporting a shift in global financial flows away from nature-negative outcomes and toward nature-positive outcomes.”

It already numbers over 1000 institutional supporters in its consultative structure, together with 18 world-leading scientific organisations, and has some influential backing. The G7 Finance Ministers and G20 Sustainable Finance Roadmap have endorsed the TNFD. The G20 and G7 Environment and Climate Ministers have also recognised the establishment of the TNFD.

Biodiversity is firmly on the geopolitical radar.

## What is biodiversity?

Quite simply, it is nature. This includes all living matter, together with geology, water, climate and all other inanimate components that make up our planet. And it is in serious decline. Globally, there has been a 70% drop in global wildlife populations since 1970. In the UK, a quarter of mammals are at risk of extinction, with 84% of rivers in poor ecological health. The UK ranks in the bottom 10% of countries for biodiversity.

The insurance industry needs to engage with the myriad issues this raises, not least because biodiversity nurtures several potential litigation triggers, many for risks that may not be priced in to existing coverage.

“It fits alongside climate change risks but it is a separate risk and is much more about the direct harm we have caused our environment and nature. This substantially broadens the potential exposures,” says DAC Beachcroft partner Toby Vallance.

It will also heighten the connection between the different elements of environmental, social and governance risks, says his colleague, DAC Beachcroft partner Duncan Strachan:

“The very broad definition of biodiversity adopted by the United Nations includes the rights of indigenous peoples and recognises their contributions as stewards of nature. This potentially feeds into new risks around social unrest, maybe where their traditional lands are threatened, especially where there is a scarcity of water.”

The potential breadth of the impacts was underlined in a report published by the Association of British Insurers in July 2023, *A Guide to Action on Nature*.

The report points to the US\$44tn of global domestic product estimated by the TNFD that is dependent on nature. It highlights the threat to homes, business and people’s health through the deterioration of the natural environment.

The profile of biodiversity and the new urgency to address the complex mix of issues surrounding it was given further impetus when the 15th UN Conference of Parties (COP) on Biodiversity was finally held in Montreal last December. This was originally scheduled for Kunming in China but, after almost two years’ delay because of China’s zero tolerance of COVID-19, it was eventually switched to Canada. Its outcomes are officially referred to as the Kunming-Montreal Biodiversity Framework (see box).

COP15 may have been delayed but it did not lack ambition when it comes to setting timetables for its objectives. 2030 features frequently and prominently in the action framework. This is not just about halting the damage and destruction of nature by 2030 but also about making a significant impact on reversing the damage already done.

“The [ABI] report points to the US\$44tn of global domestic product ...that is dependent on nature. It highlights the threat to homes, business and people’s health through the deterioration of the natural environment.”

**ENVIRONMENT**  
INSURANCE  
COMMUNITY  
STEWARDSHIP  
WATER  
POLLUTION  
GEOLOGY  
HOMES  
MOTHER EARTH  
LITIGATION  
REGENERATION  
TNFD  
HEALTH  
SOCIAL UNREST  
EXTINCTION

**BIODIVERSITY**

**NATURE**  
PLANT  
RISKS  
NATURAL ASSETS  
WILDLIFE  
LEGAL PERSONALITY  
ESG  
FUTURE  
GOVERNANCE  
ANIMAL  
REGULATION  
CLIMATE CHANGE  
OPPORTUNITY  
TRANSITION  
ECOLOGY  
CLIMATE  
LAND USE  
SOCIETY  
BUSINESS  
REPUTATION  
NATURE-POSITIVE  
PROTECTION  
PHYSICAL

## What does this mean for the insurance sector?

In addition to its intended direct impact on physical risks, the transition will require new laws and regulation, which always widen the scope for claims and litigation risks. But this is not just about the future. There are already real potential liability risks arising from mismanagement of the natural environment, says Vallance:

“Insurers need to look very hard at what environmental risks they are insuring against. Once it was just pollution but now it is going to be so much broader. It won’t be just about sudden and accidental pollution but the gradual deterioration of the natural environment and the damage consequential on that.”

The risks of impairing biodiversity and threatening animal, plant and insect species must now be factored in by every business, from major industrial concerns with polluting processes to developers looking to build on greenfield sites. In the UK, in line with the spirit of the Kunming-Montreal Framework, many local authorities are now looking to major developers to enhance biodiversity, which raises questions about how to measure and benchmark biodiversity. This will be driven hard by consumer pressure. In a UK Local Government Association survey in 2021, 94% of local residents polled wanted more local biodiversity.

## What are the opportunities for insurers?

However, where there is a threat, there should also be an opportunity. “It is quite possible that over the next few years we will see new covers emerge for biodiversity loss,” says Strachan.

It has the potential to get far more complicated.

Some jurisdictions are leading on recognising the rights and legal personality of natural assets such as rivers, enabling people to bring claims on their behalf.

## Nature as a legal person

The concept of environmental personhood has been around for several years, first emerging in a legislative context in the United States with a landmark judgment as long ago as 2006 when the borough of Tamaqua in Pennsylvania joined forces with a group campaigning for greater protection against the dumping of toxic sewage in the local ecosystem.

Since then many natural entities have been granted the rights and protections – and responsibilities – of a legal personality.

Rivers have been a particular focus of this movement with the Ganges and Yamuna rivers in India, the Whanganui in New Zealand and the Magpie in Quebec, Canada among the most prominent.

Latin America has been at the forefront of adopting this concept. Ecuador amended its constitution in 2008 to assert the rights of nature “to persist, maintain and regenerate its vital cycles”, with people and communities given the right to act as advocates on nature’s behalf. This provision was shown to be effective in 2011 when a government road building project was halted and the authorities forced to rehabilitate the areas already damaged. Again, a river was at the heart of the case.

Bolivia and Colombia have also made similar legislative and legal moves to protect nature. In Colombia in 2016, the Constitutional Court took the decision of the New Zealand government to declare the Whanganui River as a legal person as the basis for protecting the Atrato River basin.

“ Insurers need to look very hard at what environmental risks they are insuring against. Once it was just pollution but now it is going to be so much broader.”

## Unintended exposures

The need to protect and enhance nature by giving it a legal persona could expose some significant holes in cover, creating potentially unreserved exposures, as wordings that were never designed to cover such risks will leave insurers with new liabilities:

“General liability and pollution liability policies, such as environmental impairment liability insurance, could be exposed as they cover damage caused to third parties. I have never seen any express wording that would exclude a natural element, such as a river, as a third party,” says Strachan.

One common link between the New Zealand and Colombia examples is that the rights of indigenous people to act as the representatives of nature figure prominently, demonstrating the intimate connectivity between the environmental dimension of biodiversity and the social dimension. Put alongside that the legislative force being given to the Kunming-Montreal Framework and the need to view ESG as a series of interlinked issues becomes more apparent.

“The way some Latin American countries have codified Mother Earth rights in their constitutions shows how this idea of nature having a legal identity is taking shape,” says Strachan. Vallance agrees and adds: “The Montreal Framework on biodiversity gives force to that and we will see some major developments in the next few years. Not only is there an obvious legal and liability risk arising from ignoring this but the risk of reputational harm is really significant.”

## The Kunming-Montreal Biodiversity Framework

### The framework includes key global targets to:

- Restore 30% of degraded ecosystems globally (on land and sea) by 2030
- Conserve and manage 30% of areas (terrestrial, inland water, and coastal and marine) by 2030
- Stop the extinction of known species, and by 2050 reduce tenfold the extinction risk and rate of all species
- Reduce risk from pesticides by at least 50% by 2030
- Reduce nutrients lost to the environment by at least 50% by 2030
- Reduce pollution risks and negative impacts of pollution from all sources by 2030 to levels that are not harmful to biodiversity and ecosystems
- Reduce global footprint of consumption by 2030
- Sustainably manage areas under agriculture, aquaculture, fisheries and forestry and substantially increase agroecology and other biodiversity-friendly practices
- Tackle climate change through nature-based solutions
- Safeguard the rights of indigenous peoples and recognise their roles as stewards of nature
- Reduce the rate of introduction and establishment of invasive alien species by at least 50% by 2030
- Secure the safe, legal and sustainable use and trade of wild species by 2030
- Increase benefit sharing from the use of genetic resources to support biodiversity conservation and its sustainable use

**Contributors:**

**Duncan Strachan**

dstrachan@dacbeachcroft.com  
DAC Beachcroft, London

**Toby Vallance**

tvallance@dacbeachcroft.com  
DAC Beachcroft, London

**Click below to read our whole suite of new thought leadership:**

- [People, Planet, Profit: How to Marry Purpose and Value in the Pursuit of Sustainability](#)
- [Heat Rises on Climate Change Litigation Risk](#)
- [Geopolitical Risk in Latin America: Shock Disruptions, Political Blurring and a Multipolar World](#)
- [Cyber Risks and the Digital Revolution: A Shipping Perspective](#)

