

Biodiversity in the Balance: Key Takeaways from COP15

January 23, 2023

Background. Last month, delegates from more than 190 countries gathered in Montreal for the UN Conference on Biodiversity (“COP15”), ultimately agreeing on a “historic” package of measures aimed at halting and reversing global biodiversity loss over the coming decade.

Although climate change has dominated the conversation on environmental issues in recent years, experts have warned that the impacts of biodiversity loss will be equally dire if not effectively addressed. In the run-up to COP15, leading scientists from around the world emphasized that biodiversity loss presents “the most critical, complex, and challenging” dimension of anthropogenic global change our planet is facing.¹ To date, 50% of the world’s coral reefs and 85% of its wetlands have been lost, and the world loses an average of 10 million hectares of forests annually.² Over the last several decades, more than one million species have been threatened with extinction and populations of most major animal groups have declined by an average of 69%.³

This precipitous decline in global biodiversity presents significant financial and business risks:

- As of 2020, the World Economic Forum estimates that at least 50% of global GDP, or about \$44 trillion in economic value, is moderately or highly dependent on biodiversity.⁴
- In late 2022, Moody’s Investors Service identified nine sectors with almost \$1.9 trillion in rated debt that have “high” or “very high” inherent exposure to natural capital risks, including oil and gas exploration, coal and mineral mining, and

¹ Shahid Naeem, Yonglong Lu, et al., *Curtailing the collapse of the living world*, Science Advances (Dec. 7, 2022), <https://www.science.org/doi/10.1126/sciadv.adf9317>.

² IPBES (2019): Global Assessment Report on Biodiversity and Ecosystem Services, <https://ipbes.net/global-assessment>.

³ World Wildlife Fund, Living Planet Report 2022, <https://livingplanet.panda.org/en-US/>.

⁴ World Economic Forum, “New Nature Economy Report II: The Future of Nature and Business,” Jul. 14, 2020, <https://www.weforum.org/reports/new-nature-economy-report-ii-the-future-of-nature-and-business/>.

agriculture. It highlighted another 24 industries with \$9.6 trillion of debt that have “moderate exposure” to such risks.⁵

- The World Bank reported in 2021 that the collapse of key ecosystem services would shrink global GDP by 2.3% (or \$2.7 trillion) annually by 2030.⁶

On the other hand, the World Economic Forum predicts that transitioning to a “nature positive” economy presents significant upside, with the potential to generate \$10 trillion in annual business opportunities and 395 million jobs by 2030.⁷

Against this background, many called for COP15 to be a “Paris moment for biodiversity” (a reference to the Paris Agreement under the United Nations Framework Convention on Climate Change signed at COP21 in Paris in 2015), i.e., a new global framework setting biodiversity targets for the next decade.

COP15 Key Takeaways - The Kunming-Montreal Global Biodiversity Framework.

On December 19, 2022, nearly 200 countries agreed to the Kunming-Montreal Global Biodiversity Framework to address biodiversity and nature loss. While the Framework is not legally binding, countries committed to creating and reporting on national biodiversity strategies and action plans, including national targets, in order to implement the global Framework. The main commitments agreed to in the Framework are:

- **Protect 30% of the planet by 2030.** Countries collectively committed to ensuring that at least 30% of degraded terrestrial, inland water, and coastal and marine ecosystems are under effective restoration and that a further 30% of terrestrial, inland water, and coastal and marine areas are effectively conserved.
- **Reduce Pollution and Other Drivers of Biodiversity Loss.** Countries agreed to reduce pollution risks and negative impacts from all sources by 2030 to levels that are not harmful to biodiversity and ecosystem services. Countries are also

⁵ Bloomberg, “Moody’s Has a \$1.9 Trillion Warning Over Biodiversity,” September 28, 2022, <https://www.bloomberg.com/news/articles/2022-09-28/moody-s-1-9-trillion-warning-over-biodiversity-green-insight#:~:text=The%20Moody%60s%20report%20jibes%20with,species%20at%20risk%20of%20extinction?leadSource=verify%20wall?leadSource=verify%20wall>.

⁶ World Bank, “The Economic Case for Nature: A Global Earth-Economy Model to Assess Development Policy Pathways,” June 29, 2021, <http://hdl.handle.net/10986/35882>.

⁷ World Economic Forum, “New Nature Economy Report II: The Future of Nature and Business,” July 14, 2020, <https://www.weforum.org/reports/new-nature-economy-report-ii-the-future-of-nature-and-business/>.

encouraged to establish policy, legislative, or regulatory frameworks to reduce the global footprint of consumption by 2030.

- **Scaling Up Financing for Biodiversity Commitments.** Developed countries committed to provide \$20 billion in annual funding to developing countries by 2025 and \$30 billion annually by 2030 through a new biodiversity fund under the Global Environment Facility. In total, countries aim to mobilize \$200 billion annually by 2030 from domestic, international, public, and private resources—including through green bonds and biodiversity offsets and credits—for biodiversity initiatives.
- **Business Reporting Requirements.** Countries agreed to take legal, administrative, and policy measures to ensure that companies and financial institutions monitor, assess, and transparently disclose nature-related risks, dependencies, and impacts across their operations, supply chains, and portfolios. Businesses and financial institutions are encouraged to progressively reduce negative impacts on biodiversity, increase positive impacts, reduce biodiversity-related risks to businesses and financial institutions, and promote actions to ensure sustainable patterns of production.
- **Eliminating Environmentally Harmful Subsidies.** Finally, countries committed to identifying incentives, including subsidies, that are harmful for biodiversity by 2025, and eliminating or phasing out those incentives by at least \$500 billion annually by 2030. Countries also agreed to scale up positive incentives for conservation and the sustainable use of biodiversity.

These commitments will give rise to numerous implications for businesses as they translate into political and legal action at the domestic level. Countries may take regulatory action to develop and implement reporting and disclosure frameworks, similar to the reporting requirements developed by the Task Force on Climate-Related Financial Disclosures.

Such potential disclosure requirements introduce challenging questions around how to gather biodiversity-related data, what metrics to use to measure biodiversity-related impacts, and what actions companies can take to reduce those impacts. Likewise, the global target to conserve 30% of nature by 2030 will necessitate domestic legislation expanding protected areas, which may in turn impact companies' operations. The commitment to reduce pollution risks and impacts may also catalyze domestic obligations on companies whose operations produce pollution or biodiversity-related externalities.

COP15 Key Takeaways – Business Initiatives and Announcements. More than 900 delegates to COP15 were corporate or finance representatives from more than 41 different companies and financial institutions—an unprecedented level of business

participation at a biodiversity COP.⁸ They agreed to a number of commitments, which may generate “soft” pressures on companies to take greater action on biodiversity and nature loss.

- **Financial institutions pledge to take action on biodiversity:** 126 financial institutions representing some €18.8 trillion in assets signed on to the Finance for Biodiversity Pledge, which called on world leaders to support effective measures to reverse nature loss at COP15, and committed each institution to setting science-based targets and publicly reporting on biodiversity impacts within their portfolios.⁹ Likewise, over 150 financial institutions managing \$24 trillion in assets called for an ambitious post-2020 global biodiversity framework, and committed to incorporating biodiversity into investment decision-making processes and seeking nature-related disclosures from investees.¹⁰
- **Developing biodiversity-related reporting and disclosure frameworks:** The Taskforce on Nature-related Financial Disclosures¹¹ (“TNFD”) launched in June 2021 to develop a biodiversity-focused risk management and disclosure framework for organizations, and, in 2023, the Science Based Targets Network¹² (“SBTN”) will start working with companies to set nature-related targets specific to each organization.
- **ISSB biodiversity standards:** Following strong feedback on the connection between climate, natural ecosystems, and a just transition, the International Sustainability Standards Board (“ISSB”) announced that it plans to build upon its forthcoming climate-related disclosure standard to include biodiversity disclosures. The ISSB will publish updated standards in 2023.¹³
- **GRI biodiversity standard:** Global Reporting Initiative (“GRI”) announced a proposed new Biodiversity Standard that is open for public comment until February 28, 2023. The proposed standard requires reporting on biodiversity impacts

⁸ Marisa Coulton, *Business is using COP15 to show it's serious about saving nature; environmentalists aren't so sure*, Financial Post (Dec. 17, 2022),

<https://financialpost.com/news/economy/businesses-advocacy-groups-odds-cop15>.

⁹ Finance for Biodiversity, “About the Pledge,”

<https://www.financeforbiodiversity.org/about-the-pledge/>.

¹⁰ “Moving Together on Nature: Statement from the Private Financial Sector to the Conference of the Parties to the Convention on Biological Diversity,” December 19, 2022, <https://www.unpri.org/download?ac=17383>.

¹¹ Task Force on Nature-related Financial Disclosures, “About,” <https://tnfd.global/about/>.

¹² Science Based Targets Network, “What are SBTs?,”

<https://sciencebasedtargetsnetwork.org/how-it-works/what-are-sbts/>.

¹³ IFRS, “ISSB Describes the Concept of Sustainability and Its Articulation with Financial Value Creation, and Announces Plans to Advance Work on Natural Ecosystems and Just Transition,” December 14, 2022, <https://www.ifrs.org/news-and-events/news/2022/12/issb-describes-the-concept-of-sustainability/>.

throughout the supply chain, disclosing drivers of biodiversity loss (e.g., overexploitation of resources, pollution, or ecosystem or habitat destruction), and including location-specific data to ensure businesses are transparent about the sites where their biodiversity impacts occur. The release of the revised Biodiversity Standard, incorporating public comments and further technical advice, is expected in Q2 of 2023.¹⁴

- **Nature Action 100:** Eleven investment firms launched the Nature Action 100 campaign focused on encouraging companies to take more ambitious actions to protect nature. The campaign, modeled after Climate Action 100+, will identify 100 companies in key sectors deemed to be systemically important to reversing nature and biodiversity loss by 2030, and work with those companies to reduce their nature-related impacts. The list of 100 companies will be published in 2023.¹⁵
- **Guidelines for nature-positive business:** The World Business Council for Sustainable Development (“WBCSD”) launched a set of guidelines for businesses looking to deliver a net-positive impact on nature. The guidelines were developed with the input of 60 firms with a combined value of more than \$2 trillion. They set out six actions businesses can take such as completing an up-to-date materiality assessment including nature impacts, setting science-based targets, aligning their lobbying and policy actions with their nature goals, and using credible metrics for nature-related disclosures.¹⁶

The landmark biodiversity commitments that emerged from COP15 are likely to give rise to new regulation, enforcement and litigation risk, and reputational pressures, mirroring the developments that have flowed from States’ climate commitments.

Responding to the increasing legal requirements and pressures in this area—and the related scrutiny from a wide range of stakeholders, including regulatory authorities, customers, environmental activist groups, and employees—should be informed by a comprehensive strategy that takes full account of the regulatory, enforcement, litigation, and reputational risks.

¹⁴ GRI, “Global Standard for Biodiversity Impacts One Step Closer,” December 5, 2022, <https://www.globalreporting.org/news/news-center/global-standard-for-biodiversity-impacts-one-step-closer/>.

¹⁵ Nature Action 100, <https://www.natureaction100.org/>.

¹⁶ WBCSD, “Roadmaps to Nature Positive: Guidelines to Accelerate Business Accountability, Ambition and Action for a Nature-Positive Future,” December 9, 2022, <https://www.wbcd.org/Programs/Food-and-Nature/Nature/Nature-Positive/Resources/Roadmaps-to-nature-positive>.

Debevoise works with in-house counsel, sustainability leaders and compliance departments to provide structured guidance on dealing with legal and financial risks arising out of environmental issues.

In particular, our environmental, social and governance (ESG) team brings together sophisticated, multidisciplinary and multinational teams who provide tailored and practical guidance across the evolving ESG and business integrity spectrum by counseling on trends and prudential issues, delivering concrete legal advice on evolving regulations and policies, and helping clients prepare for the legal, financial and reputational risks arising in this rapidly changing landscape.

Our Public International Law Group is also widely regarded as one of the world's best, handling matters of unmatched significance, complexity and diversity. Lawyers in the group have extensive experience in treaty interpretation and enforcement before international courts and tribunals. Debevoise is one of a select group of law firms that has prevailed in treaty cases before the International Court of Justice (ICJ) and has won several of the most prominent investment treaty awards on record. The team also has broad experience in litigating issues of public international law arising before domestic courts.

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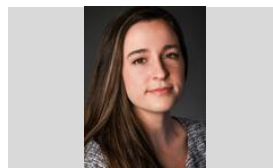
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