Rainforest Action Network submission to the TNFD on its draft financial sector guidance, March 2024

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1. Introduction

In February 2023, Rainforest Action Network (RAN) included detailed feedback on the draft financial sector guidance as part of its submission to the TNFD on its draft framework. This section related to financial sector guidance followed on from an earlier section on the importance of transparency, experience from those working on biodiversity issues and corporate accountability and options on transparency in TNFD's framework.[1]

This section on the financial sector guidance began by framing: a) What are the key objectives of what the guidance must achieve to be credible - including the importance of disclosing what companies or projects they finance; b) Outlined the evolution of financial sector disclosure initiatives over the last 15 years; and c) Included specific examples of available tools for financial institutions to name the projects and companies they finance.

Since February 2023, TNFD has not reached out to RAN with any further questions, clarifications or technical discussions regarding the submission and the current version of the financial sector guidance appears to have ignored the feedback provided. Similarly, TNFD does not appear to have engaged with any of the policy, evidence or research reports and recommendations compiled by either communities, or those working closely with communities, on cases that involve financial sector financing linked to biodiversity harms and related human rights abuses. This is a critical step to taking an evidence-based approach to recommendations.

This submission shares analysis, research and recommendations on TNFD's current draft financial sector guidance. Further examples, evidence or resources are referenced in the footnotes. We also note that there are likely additional concerns and areas pertinent to the guidance that was beyond our capacity to examine or analyze at this time, so this submission should not be taken as exhaustive. While we note that there was a long lead-in time to provide feedback on the guidance which was appreciated, and additional time allowed, our capacity to respond was hampered by: a) a lack of practical examples of what a TNFD report would look like for a financial institution; and b) the irregularities in the TNFD approach (such as its failure to differentiate between financial sectors made cross-comparison with existing initiatives for high-risk sectors difficult).

More broadly RAN and civil society groups, Indigenous Peoples, environmental defenders and networks representing over 370 groups in more than 85 countries have raised concerns about the TNFD.[2] This is on a process level – regarding concerns of TNFD's model, governance and decision-making process; its framework recommendations – including concerns regarding their capacity to facilitate greenwashing or other misleading information; and TNFD's reluctance to publicly state that as an initiative written by corporations, for corporations it is an inappropriate

[1] https://forestsandfinance.org/wp-content/uploads/2023/03/20Feb2023-RAN-submission-to-TNFD-.pdf
[2] See in particular: https://forestsandfinance.org/wp-content/uploads/2023/08/Joint-CSO-letter-to-the-TNFD.pdf

starting point for regulatory discussions. The vast majority of these concerns have not been addressed. We do not revisit these concerns specifically in this submission but they provide broader context for understanding RAN's structural concerns regarding the TNFD. A full list of civil society statements, previous RAN submissions and other resources related to concerns can be found at: https://forestsandfinance.org/tnfd/#1-5

For any further questions or clarifications regarding this submission please contact Shona Hawkes at RAN: shona@ran.org

Summary of recommendations:

Recommendation i: TNFD should remove any reference to 'aligning with' the Kunming-Montreal Global Biodiversity Framework as TNFD doesn't currently align with core aspects of the framework.

Recommendation ii: The financial sector guidance should explicitly state that TNFD recommends that financial institutions should undertake project-name or company-name disclosure in high-risk sectors.

Recommendation iii: Remove any text that oversimplifies data issues, such as wholly attributing this so-called 'lack of data' to companies – rather than acknowledging the role that financial institutions themselves play if failing to require data necessary to basic legal due diligence, as well as analysis of environmental and human rights risk.

Recommendation iv: At absolute minimum, require disaggregated data that differentiates between positive or negative impacts on biodiversity.

Recommendation v: Respect the widely documented science and evidence that show that 'credits' or 'offsets' or similar approaches legitimize and drive biodiversity destruction - not negate or neutralize it.

Recommendation vi**:** Remove metrics or similar recommendations that may promote the financialization or commodification of biodiversity.

Recommendation vii: Independent analysis is needed to understand if TNFD's model is likely to punish Global South and biodiversity-rich countries – for example by affecting their credit ratings.

Recommendation viii: At minimum, on reporting TNFD should recommend that businesses disclose their impacts on nature, irrespective of financial materiality.

Recommendation ix: Given the unworkability of TNFD's current definition, it must urgently adopt 'double materiality' or risk the use of TNFD framework for greenwashing.

Recommendation x: Explicitly state that companies – including financial institutions - should report a grievance list.

Recommendation xi: In its financial sector guidance TNFD should – at minimum – include additional measures to ensure that it aligns with, and doesn't undercut existing long-standing financial guidance. This includes the Equator Principles, IFC Performance Standards, OECD Responsible Business Conduct due diligence guidance for the finance sector and the articulation of financial institutions' international human rights responsibilities.

Recommendation xii: Amend the language of 2.2 to recommend that financial institutions disclose their transition plans – not just 'describe' any transition plans that may be in place.

Recommendation xiii: Guidance under D of the Strategy Pillar should amend language to apply to disclose the locations in their operations [not their 'direct operations'] and ensure that all communities, not just those in so-called 'priority locations' have the right to know of the financial institution's involvement in their local area.

Recommendation xiv: At minimum, TNFD should recommend that financial institutions should report in a way that data can be independently verified by the public.

Recommendation xv: TNFD should explicitly state what will occur in the event that a financial institution, or other company, is using TNFD reporting to greenwash and share blatantly false or misleading information.

2. The Kunming-Montreal Global Biodiversity Framework: Responsibilities for financial institutions and financial flows

Recommendation i: TNFD should remove any reference to 'aligning with' the Kunming-Montreal Global Biodiversity Framework as TNFD doesn't currently align with core aspects of the framework.

While TNFD's current framework cannot be amended to comply with the Kunming-Montreal Global Biodiversity Framework – TNFD does have an opportunity to adopt recommendations that would at least bring it closer to respecting the framework.

This section seeks to briefly rearticulate the responsibilities for financial institutions and financial flows encompassed in the spirit of the Kunming-Montreal Global Biodiversity Framework.[3] While concerns and recommendations raised in this submission are not limited to the Global Biodiversity Framework but also international human rights law or other contexts, this section seeks to briefly summarize how recommendations can be considered in the context of the agreement.

[3] https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf

We also note that RAN, alongside Bank Information Center, BankTrack and Friends of the Earth US have explored financier obligations regarding the Kunming-Montreal Global Biodiversity Framework in the June 2023 briefing paper: *How should financiers align with the Global Biodiversity Framework? Five key principles*.[4] The paper is endorsed by 74 civil society organizations. Ongoing analytical work is continuing in this area.

In the Kunming-Montreal Global Biodiversity Framework, **Target 15** specifically refers to the need for financial institutions (and companies more broadly) to:

*"(a) Regularly monitor, assess, and **transparently disclose** their risks, dependencies and **impacts** on biodiversity, including with requirements for all large as well as transnational companies and financial institutions along their operations, supply and value chains and **portfolios**;*
*(b) Provide **information needed to consumers** to promote sustainable consumption patterns;"*

While Target 15 is articulated in terms of the responsibilities of the state to define obligations for business – and TNFD as an initiative written by corporations, for corporations does not have a mandate to be a blueprint for future regulations – it is pertinent for businesses to show where they are aligned to recommendations made regarding what businesses should do.

In RAN's understanding, to 'transparently disclose' refers to forms of disclosure that allow claims to be independently verified and fact-checked against realities on the ground. This is also a basic provision to protect against greenwashing. "Disclosure" that does not even allow the people affected by a company's operations, supply chains or financing to identify a financial institution's involvement and cannot be considered transparency. This would also not align with the 'right to know' of affected peoples and communities, and the Kunming-Montreal Global Biodiversity Framework specifically calls for the need for a human rights-based approach to its implementation and a right to know is also incorporated in various international human rights law as well as other fora. This issue is explored further in the sections of this submission related to project-name and company-name reporting. Similarly, grievance lists should be considered a basic requirement of 'transparent disclosure' – as knowing if a financial institution is facing credible allegations or complaints about its links to environmental or social harms is highly salient, not only to investors but also to Indigenous Peoples' rights of being 'informed' under Free, Prior and Informed Consent. 'Transparent disclosure' should embody accurate information that does not exclude information that a financial institution may perceive as negative, but which is necessary to understand it's actual exposures. Otherwise, it risks facilitating greenwashing.

Additionally, project-name and company-name disclosure should be considered as necessary 'information needed to consumers' – particularly in light of the likely tens of millions, if not hundreds of millions, of emails that consumers and citizens have sent to banks, investors and

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[4] https://banksandbiodiversity.org/six-months-after-the-un-biodiversity-conference-74-civil-society-organizations-call-on-financial-institutions-to-protect-biodiversity-and-take-action-in-implementing-the-global-biodiversity-framework/

insurers over the last decades seeking to clarify if the financial institution is linked to a particular project or company, or responding to concerns raised about its impacts. Consumers have a right to understand their own risks and exposures through financial products they consume – even if they are not the 'primary user' of company reports.

Similarly, greenwashing – via forms of disclosure that allow financial institutions to make certain environmental claims which cannot be verified or which omit critical information – are incongruous with providing information 'needed to consumers'. Equally critical to this is the need to, at absolute minimum, differentiate a financial institution's adverse impacts on the environment – by not using 'net' data approaches that invisibilize actual impacts.

Similarly, the Kunming-Montreal Global Biodiversity Framework is explicit that this 'transparent disclosure' should focus on impacts. TNFD still has the option to adopt a baseline of double materiality and failing to do so, will continue to expose it to allegations it is facilitating greenwashing.

This is one of the most obvious, clear ways that TNFD has explicitly taken decisions in contradiction of the very clearly articulated GBF text and which TNFD has discussed, at length, with various parties over months, and in RAN's case, years. In this context, it is extremely concerning that TNFD is using topline messaging about 'alignment' with the GBF.

Additionally, Target 14 – directed at governments – is key in emphasizing the need to redirect financial flows away from harmful activities. Civil society organizations have recommended that to 'halt and reverse biodiversity loss by 2030' financial institutions should 'prohibit financing of activities and sectors that are driving nature destruction and therefore do not align with the targets of the Framework. These include, but are not limited, the fossil fuel industry, large hydropower, industrial logging, industrial livestock harming and industrial monoculture plantations'.[5] TNFD's approach is not aligned to this position.

However, TNFD should note that any disclosure approaches that appear to legitimize biodiversity destruction should be taken as violations against the spirit of Target 14 as well as more generally the stewardship modelled by Indigenous Peoples.[6] As Sustainable Finance and Indigenous Rights Specialist Emil Siren Gualinga has pointed out, while Target 19 allows for 'innovative financing schemes' – it does not determine what those schemes should be, and should not be seen to endorse schemes that have failed to respect Indigenous Peoples' rights or biodiversity. Instead, Indigenous Peoples' themselves should have the rights to lead such innovative financing.[7]

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[5] https://foe.org/wp-content/uploads/2023/06/GBF_Briefer_final_062623.pdf p.3
[6] For example, a series of widely reported scandals have affirmed what biodiversity scientists have already identified – that biodiversity includes specific, irreplaceable and irreversible
[7] https://www.linkedin.com/posts/activity-7181613999317229568-5hzB?utm_source=share&utm_medium=member_desktop

3. Disclosure without transparency?: The sizeable evidence base behind the importance of a communities right to know / company-name disclosure in driving shifts in financial institutions corporate environmental and human rights practices

Recommendation ii: The financial sector guidance should explicitly state that TNFD recommends that financial institutions should undertake project-name or company names disclosure in high-risk sectors.

Note: As the TNFD framework provides a grace period for TNFD reporters to improve reporting over time and does not require reporting against all 14 recommendations at once - this would provide financial institutions ample time to phase in such reporting.

In RAN's February 2023 submission to TNFD we explicitly raised the issue of disaggregated disclosures – such as project-name or company-name disclosures. This has not been addressed or further clarification sought. Given the critical importance of this issue - and the sizable evidence base behind it in shifting corporate behavior and being key to credible reporting – in this lengthy section we seek to walk the reader through the issue step-by-step to reiterate its importance and hopefully foster further understanding why it should be addressed by TNFD.

It has already been established that knowing what a financial institution finances is material – given recognition in far-reaching initiatives like the Equator Principles, requirements under the IFC financial intermediaries program and the significant number of public campaigns sending hundreds of thousands, if not millions, of emails from financial institution customers seeking to know if a financial institution is financing, or has ruled out, financing to companies or projects they believe are harmful to biodiversity, human rights, climate change or other interrelated issues.

TNFD's failure to recommend project-name or company-name disclosures (such as in its Box 3 – Core Metric 1 and 2 on p.14) undermines years, if not decades, of efforts to increasingly normalize such disclosure. In terms of actionable, decision important information – it is clear that precise information about who, or what, a financial institution finances, advises, insures or invests is the most important for investors, consumers and citizens to understanding if they are exposed to companies that have persistently been linked to biodiversity and human rights harms. If TNFD does not even provide the public basic information to understand if their bank, insurer or fund manager is driving biodiversity loss – it is difficult to understand how it is assessing it threshold of impact.

Noting also that the TNFD framework is an opt-in structure with companies choosing which recommendations they seek to adopt or not, and it has no verification or penalty processes – allowing companies to report against their recommendations in whichever way they choose. In this context, it is hard to understand why TNFD would fail to even recommend project-name or company-name disclosure – given that its structure enables companies to simply not adopt this recommendation should they choose but that in forwarding the importance of project- and company-name disclosure TNFD could reinforce existing recommendations and findings of the importance of transparency, and at minimum, ensure that it is not actively undermining pre-existing work.

The issue of toxic secrecy in the financial sector and a community's 'right to know' is typically framed in financial sector debates in the language of 'disclosure'. This section will begin briefly by framing it from the perspective of those whose rights will be most affected - a community's right to know. It will then examine what is often termed as project-name or company-name disclosure, and what could be similarly termed for applicable sectors 'investee-name' or 'insuree-name' disclosure. A bank acknowledging the name of its client in high-risk sectors is a necessary precursor for basic due diligence or responding to community-level concerns or grievances. This is often based on a minimum transaction threshold.

A community's right to know

All communities have a right to know which companies are operating in, and profiting from, activities in their local area. This includes financial institutions and also covers supply chains. Communities also have a right to know about any environmental or social commitments that claim to protect their rights or safeguard against environmental or human rights harms. This is important to all communities but particularly those in high-risk jurisdictions or sectors for environmental and human rights harms. Communities also have rights to pursue remedy and redress from financial institutions that may cause or contribute to human rights abuses as defined under the UN Guiding Principles on Business and Human Rights, and articulated in further material.[8] Indigenous peoples also have sovereign rights to be the ultimate decision-makers over their traditional lands and territories using their own Indigenous jurisprudence or related governance processes. This is recognized under local Indigenous jurisprudence as well as in international law instruments such as the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the 1989 International Labor Organization Indigenous and Tribal People's Convention No. 169 etc. Arguably, Indigenous Peoples cannot exercise their right to Free, Prior and Informed Consent if they are not 'informed' of who is or will be financing companies or activities - and denied the ability to do further due diligence, such as to understand the financial institution's policies on biodiversity and human rights or their track record in responding to community grievances. The question also arises - how are communities expected to exercise their rights - especially in the face of serious environmental harms and human rights abuses - if they don't even know the name of the bank or the investor or the insurer involved? What is the purpose of financial sector biodiversity and human rights policies if those most impacted aren't even aware of them?

[8] For example, as articulated by the Office of the High Commissioner on Human Rights at the request of BankTrack.

Similarly, everyday people who are the customers of banks and asset managers - or the citizens whose collective wealth backs state-owned financial institutions - should also have a right to know if their money is being used to fuel environmental or social harms. The issue of toxic secrecy in the financial sector is so extreme that even legislators can be unaware that their own pension savings are being used to fuel the very harms they are trying to regulate. As Kerry McCarthy, Member of Parliament (MP) for Bristol East in England noted in May 2021 on viewing Feedback Global research released during UK Environment Act debates: *"I am shocked to learn that MPs' own pensions are funding companies which have been repeatedly linked to not only deforestation—legal and illegal—but also to terrible working conditions on Brazilian beef farms."*[9]

As BankTrack observes, many financial institutions are very willing to broadly advertise their clients working in fields like renewable energy or regenerative agriculture.[10] Toxic secrecy gives the impression that financial institutions do not wish to be publicly associated with their high-risk clients, particularly those with a concerning track record regarding allegations of links to deforestation, land clearing or fossil fuels.

The evidence base behind project-name, company-name and similar disclosures

Financial institutions (or their ESG auditors) rarely self-disclose their links to specific cases of severe environmental and human rights harms - it is difficult to recall a single example. It is typically third parties - such as communities, NGOs or journalists - that link a financial institution publicly to a severe environmental or human rights harm.[11] Additionally, when presented with extensive evidence of harms a significant portion of financial institutions will simply say that they are unable to confirm if they have a connection with their client, investee or insuree company.[12] This is not only morally problematic - it is also greenwashing, by omitting critical information that would allow the public, including investors, to gain an accurate understanding of the financial institution's impacts.

Over the last two decades, the importance of company-, project-, investee- or insuree-name disclosures has been emphatically established and debated. There is an extensive body of evidence that shows that financial institutions will continue to finance problematic companies even after adopting new policies that should exclude them.[13] This has led, for example, to

[9] Jessica Sinclair, "Why parliamentary pensions investments in JBS matter for regulatory due diligence on deforestation", Feedback Global, 21 May 2021. https://feedbackglobal.org/why-parliamentary-pensions-investments-in-jbs-matter-for-regulatory-due-diligence-on-deforestation/

[10] https://www.banktrack.org/download/we_are_unable_to_comment_on_specific_clients/191105weareunabletocomment.pdf

[11] Controversies databases tracking ESG issues rely heavily on community-level concerns.

[12] For example, see BankTrack.

[13] For example, see years of reports by Oxfam, Recourse, Inclusive Development International and others following Development Finance Institutions 'financial intermediaries'. This showed that the lack of disclosure had dire impacts for projects where communities were unable to access their rights under DFI environmental and social safeguard policies. https://accountability.medium.com/financial-intermediary-subproject-data-exposed-for-the-first-time-7fbd62d47cd0

project-name disclosure requirements for banks under the Equator Principles and for financial institutions that receive funding via the International Finance Corporation (IFC). A financial institution showing who it finances - particularly in high-risk sectors - is far more likely to indicate its actual approach to environmental and human rights issues.

This is why the financial sector itself uses the expensive Refinitiv Eikon and Bloomberg databases to track the specific deals that companies, banks and investors are engaging in. It's why those with the most ethical reputation are transparent about what they finance: from Triodos publishing a database of every organization it lends to (established in 2009) and why some investors disclose their investment universe of companies.[14] It's why some development finance institutions now disclose potential client-names *before* they finalize financing - in recognition that this simple act can reveal holes in their due diligence, by allowing those closely following problems on the ground to report concerns. It's why civil society organizations have invested so much time and resources compiling databases that track specific financing such as Forests & Finance, Banking on Climate Chaos, the Early Warning System project, BankTrack Dodgy Deals, or similar work such as that done by the Center for Ecology Energy and Development in the Philippines, the Articulation of Indigenous Peoples of Brazil or the Follow the Money initiative.[15] It is why reports and media exposes drawing on this research frequently make frontpage news or receive hundreds of media hits because of widespread public interest in the money behind companies engaged in destructive behavior and/or because the facts so frequently contravene the imaginary of how financial institutions present themselves.

Similarly, it's also why some organizations have worked doggedly for years, half-decades or even whole-decades to demand project-, company-, investee- or increasingly insuree-name disclosures from financial sector initiatives or regulators. They point out that this is only a tiny fraction of the information that is needed - such as community access to environmental and social assessments, public disclosure of contracts that cover resources, lands or waters or land-holder agreements - or better still, public, participatory and community-led approaches to major industries or infrastructure operating in their area.[16]

Also, reports by Forest and Finance coalition members as well as many other civil society groups have exposed examples where financial institutions have financed companies that should have been excluded under their own policies.

[14] https://www.triodos.co.uk/know-where-your-money-goes
https://www.australianethical.com.au/portfolio-holdings/

[15] https://forestsandfinance.org/data/
https://ews.rightsindevelopment.org/
https://www.banktrack.org/dodgydeals
https://www.bankingonclimatechaos.org/
https://ceedphilippines.com/wp-content/uploads/2023/12/Confronting-a-Fossil-Future-2023.pdf
https://amazonwatch.org/assets/files/2020-complicity-in-destruction-3.pdf
https://www.inclusivedevelopment.net/following-the-money/

[16] Note, the importance of community access to environmental and social impact assessments is referenced in the 2022 OECD guidance on Responsible Business Conduct for project and asset finance.
https://www.oecd-ilibrary.org/docserver/952805e9-en.pdf?expires=1711845645&id=id&accname=guest&checksum=283EBDCE4718F892CB02AF32D702BCCB

It has been already widely established that such disclosure can be done legally and without serious commercial damage.

Debates with a financial sector advocate arguing against transparency often include a very routine format. Firstly, is how the issue is framed. It is not typically approached as a rights-based issue - as in arguing against a community's right to know. Instead, it is typically framed as a financial institution's choices on disclosure. Secondly, evidence for the importance of disclosure is often diminished. On the one side there is extensively documented evidence of the actual harms and consequences of toxic secrecy. This includes that it has hidden financial institutions' complicity in legitimizing, enabling, motivating or profiting from irreversible human rights abuses or egregious environmental harm - and actively prevented affected communities or individuals of alerting banks to risks early on, from claiming protections under banks' own policies and commitments or even creating external awareness that is often useful for those working within financial institutions to address concerns.[17] (This also makes it harder for staff themselves to effect change.) An advocate against transparency may then suggest that these serious, real-world harms are equal to a hypothetical risk of a financial institution breaching privacy law - despite there being years of public disclosures without any apparent incident of privacy law violations. Similarly, rather than listing the ways that such disclosure can occur legally in most jurisdictions - such as making it a standardized bank contract condition for high-risk sectors or in noting that no such privacy issue applies for investors naming companies they invest in; an advocate against transparency may fixate on illegal alternative ways to disclose. Rather than specifically state which jurisdiction they believe a legal option for disclosure couldn't be found - to enable others to cross-check legal options, they stay vague.

Additionally, despite the fact that financial institutions operate in a dizzying array of local contexts, sectors, risk profiles and regulatory contexts - with some of the most well-resourced legal teams on the planet - an advocate against transparency may suggest that this is a somehow insurmountable legal problem. They will typically omit the ways that similar disclosure already occurs, including in some cases within their own institutions.[18] (This may include Equator Principles project-name reporting, proxy voting disclosures that name investee companies where publicly listed or disclosing - with client permission - highly detailed financial information to Refinitiv or Bloomberg databases).

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[17] See further the aforementioned databases and data sources.

[18] For example, in 2018 Oxfam International's Open Books report was written in response to IFC claims about the intractability of disclosure by its financial intermediaries. The report compiled a series of ad hoc examples of how financial sector disclosures already occur and was written by staff who had never worked in the financial sector or in the legal sector. The IFC has subsequently shifted its policy. https://policy-practice.oxfam.org/resources/open-books-how-development-finance-institutions-can-be-transparent-in-their-fin-620559/

Lastly, an advocate against transparency may evoke a sense of 'financial sector exceptionalism' – i.e. that the financial sector case is so unique that an answer simply cannot be found.[19] This omits the simple fact that many industries have similarly fought efforts to resist very basic transparency. Today, it is taken for granted that clothing retailers can, and should, disclose the companies who manufacture their clothes; or that palm oil traders should list their suppliers; or that multinational soda companies should name who they buy their sugar from.[20] Despite hyperbolic or hysterical claims about hypothetical scenarios as they fought against consumer and advocate pressure for transparency, companies have not faced legal or commercial ruin. Most likely increased transparency has, over time, played a role in: catching problems early, an enhanced due diligence culture, dropping companies with intractable compliance issues and choosing to give their business to companies that have better environmental and human rights practices.

TNFD's decision-making structure – specifically the taskforce structure itself – and broader issues, do not instill faith that this issue has been considered in a sound, evidence-based way or even that there have been opportunities for civil society experts on financial sector transparency to debunk the common misrepresentations of transparency by advocates against it.[21] Nor to elaborate further information on the benefits of transparency, legal models for how it can occur and reassurance that similar issues have been raised, and disproven, in aspects of the financial sector where disaggregated disclosure is increasingly recognized. TNFD's current guidance undermines years of sustained efforts by civil society groups and communities to effect change in other initiatives – such as the Equator Principles, the IFC financial intermediary programs or to push for investor exclusion lists or other forms of transparency. This approach also works *against* stated central bank concerns regarding transition efforts to address macroeconomic and specific financial institutions risks – as it denies everyday people the right to know – and act upon – information that their money held in a bank or investment fund is being used to facilitate the actions of companies linked to biodiversity loss or, through this, diverted away from companies with a more sound reputation on biodiversity and human rights risks. Toxic secrecy prevents just transition.

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[19] For a broader discussion of financial sector exceptionalism see RAN's 2022 submission to the UN working group on the UN Guiding Principles on Business and Human Rights on the issue of Corporate Influence in the Political and Regulatory Sphere. https://www.ohchr.org/sites/default/files/2022-06/rainforest-action-network.pdf

[20] https://www.coca-colacompany.com/sustainability/sustainable-agriculture/ingredient-suppliers

[21] For example, on broader issues is that the TNFD does not maintain a public consultation process. It's TNFD Forum requires groups to first sign a form stating that they support TNFD's mission and agree to be named on TNFD website. Meaning that groups that do not support TNFD or who do not yet know enough to have formed an opinion are discouraged or actively prevented from taking part. This has led to the vast under-representation of civil society or community voices. For example, Rainforest Action Network has been one of the most active critics of TNFD and devoted hundreds of hours in analysing, researching and compiling evidence in efforts to shift what we view to be the most harmful impacts of its approach is excluded from this process. An additional point discussed elsewhere, is the TNFD's failure to provide plain language explanations and examples of its recommendations – actively prevents grassroots organizations with deep expertise on biodiversity – including the role and engagement (or lack therefor) of specific financiers in case studies they work on – from being active on the issue. Additional here is a lack of foreign language translation or cross-cultural work.

Case study: Examples of various forms of project-name and company-name disclosure

The previous section noted why disaggregated disclosure – such as the disclosure of project-name or company-name disclosures for financing or investing – is critical to truly understand a financial institution's practices on biodiversity and related human rights issues. This is critical for a community's 'right to know' – including understanding bank or investor environmental and human rights policies, as well as to their own deliberative processes such as Indigenous People's right to give, or withhold, their Free, Prior and Informed Consent. Similarly, disclosure is critical to the rights of customers to know what their own money is being invested in, and for citizens to similarly know where sovereign wealth funds or development banks are investing state money.

Below are just some of the ways that ex-ante and ex-post disclosure is occurring. If TNFD chooses to directly exclude a recommendation in support of disaggregated disclosure in its financial sector guidance it will be undermining years of work and dialogue between financial institutions, civil society groups and broader bodies, by failing to recognize that this is one of the most powerful tools for communicating a financial institution's real-world approach to biodiversity, human rights and other issues. It would redirect attention and focus away from project-name and company-name reporting, to forms of disclosure which evidence clearly shows have been less impactful in alerting the public, and investors, to a financial institutions actual practices.

In fact, despite the fact that legal cases against financial institutions over environmental and social governance issues remain exceedingly rare, there is at least one legal case before the courts that argues that a bank's failure to report "the list of fossil fuel companies and projects (coal, oil and gas) that benefit from financial support from [the bank], in particular projects with high GHG emissions and the companies that support them" has been part of a broader issue of disclosure that misrepresents its exposure to climate risks, and inter-related harms to biodiversity arising from climate change.[22]

<u>Ex-ante disclosure: Disclosing projects or companies under consideration</u>

Development banks

Since 2016, the Dutch development bank FMO has adopted 'ex-ante disclosure'. It discloses the names of its proposed clients 15-60 days before financial close.[23] The public or independent

[22] For example, see p.81 of the unofficial English translation of the 2022 summons in Notre Affair a Tous, Les Amis de la Terre and Oxfam France v. BNP Paribas available Global Climate Change Litigation database, Sabin Center for Climate Change Law. https://climatecasechart.com/non-us-case/notre-affaire-a-tous-les-amis-de-la-terre-and-oxfam-france-v-bnp-paribas/

[23] As described by FMO: "60 calendar days for E&S risk categories B+ and A (high-risk); 30 calendar days for E&S risk categories B and C (low risk); 15 calendar days for Venture Capital (VC) investments" See full policy here: https://www.fmo.nl/l/library/download/urn:uuid:29da2260-c6e1-4823-8e50-2d061045a8a8/customer%2Bdisclosure%2Bpolicy.pdf

third parties can contact FMO to raise concerns about any proposed clients or projects – which may lead the bank to decide not to finance a client. Today ex-ante disclosure is also used by other development finance institutions – such as billions in proposed financing by the Asian Infrastructure Investment Bank.[24]

Export credit agencies
Export finance agencies typically disclose a list of 'pending' projects where financial has not been finalized. For example, the Japan Bank for International Cooperation and the US Ex-Im Bank are just some examples of export finance agencies disclosing a project under consideration potentially years in advance of when final financing may occur.[25] (Export credit agencies are government agencies or independent bodies under government, but their transactions typically involve co-financing with commercial financial institutions and projects involving commercial companies.) This also includes disclosing Environmental and Social Impact Assessments providing opportunities for civil society groups to raise concerns, present evidence and make recommendations that projects require amendments before financing or that financing should not be provided.

This reflects that since at least 2007, the OECD common approaches has recommended for Category A projects (those involving high environmental that an export credit agency publicly disclose information about the review process "at least 30 calendar days before a final commitment to grant official support" and require that environmental and social impact information be made publicly available.[26] In 2016, the clause allowing for this to be bypassed in 'exceptional circumstances' was removed.[27]

Ad hoc commercial finance ex-ante exclusions
Commercial finance can take two approaches to exclusions. The first is ad hoc – described here, the second is systematic – explored next. Where a financial exclusion list is not yet systematized, there are certainly examples of banks, investors or insurers disclosing to civil society groups where a company or project may be under consideration, where it has failed to rule out financing or where it has ruled out financing.[28] This spans a wide variety of national

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See disclosures here: https://www.fmo.nl/world-map
[24] See AIIB database of proposed projects:
https://www.aiib.org/en/projects/list/year/All/member/All/sector/All/financing_type/All/status/Proposed
[25] https://www.jbic.go.jp/en/business-areas/environment/projects/project.html
https://www.exim.gov/policies/exim-bank-and-environment/pending-transactions

[26] https://one.oecd.org/document/TAD/ECG(2007)9/en/pdf

[27] https://one.oecd.org/document/TAD/ECG%282016%293/en/pdf
[28] For a general example, see the work of Market Forces, Reclaim Finance and BankTrack which may refer to various examples of a bank failing to rule out a company or project or it being 'under consideration'. This is most frequently referred to in email actions for the public or open letters urging the financial institution not to finance the company or project. Among the highest profile project-specific examples that include biodiversity concerns are the African campaign to Stop the East Africa Crude Oil Pipeline (EACOP) or the Wangan and Jagalingou campaign to Stop Adani.
For example: https://www.stopeacop.net/action-email-insurers

contexts – from South African banks ruling out financing the East Africa Crude Oil Pipeline, to US investors ruling out high-deforestation risk companies.[29] This shows again that disclosing who a bank won't finance – and who it still may consider financing – is possible in many, if not most jurisdictions.

Conversely, the impacts of a failure to disclose are also highly relevant. Some banks may state that for 'client confidentiality' reasons that they will not disclose if they are or not financing a company – despite that no obvious 'confidentiality' requirement exists for companies that are not clients.[30] Anecdotally, this is typically a position taken by companies more likely to finance controversial projects or companies. There are many examples of financial institutions disclosing that they will not finance, invest in or insure a particular project or company – usually in a context of communities and civil society organizations raising deep climate, biodiversity or human rights concerns.[31] For example, ANZ bank – the first commercial bank to announce its adoption of a grievance mechanism leaves it to their clients to decide if they would like to be named as a client of the bank – even after almost a decade of civil society organizations raising this issue.[32] Today, ANZ is hiding behind this clause to fail to disclose whether it will, or will not, consider financing the controversial Papua LNG project led by TotalEnergies.[33]

Arguably the greatest proponents of such disclosures are customers – who want to know if their financial institution is using their savings (such as in bank accounts or in retirement investments) to invest in harmful companies or projects; or similarly for sovereign wealth funds, citizens.[34]

Exclusion lists

Additionally, there is an extensive body of evidence that shows that financial institutions routinely continue to invest in or finance activities or companies that should be excluded as a result of their environmental, human rights or governance policies – or which the average investor or bank customer could easily perceive should be excluded.[35] In this context, a growing

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[29] For example, at least four South African banks have publicly ruled out financing to EACOP: https://www.stopeacop.net/our-news/standard-bank-isolated-as-other-south-african-banks-steer-clear-of-totals-eacop-oil-pipeline
See Deforestation Free Funds: https://deforestationfreefunds.org/

[30] Of course, as SOMO point out there are many examples of the abuse of client confidentiality as a concept so it is imaginable that a bank chooses to actively promote clauses into its contracts to even consider projects to justify such positions.

[31] For example, see: https://www.banktrack.org/article/new_eacop_finance_risk_briefing_highlights_numerous_risks_for_financiers_exposed_to_oil_pipeline

[32] See options on how ANZ could choose to disclosure have been communicated since at least 2015: https://www.oxfam.org.au/wp-content/uploads/2015/08/NoExcuseBriefingPaper.pdf
And likely the issue of disclosure in relation to specific case studies being raised extensively before this.

[33] As regularly communicated to groups such as Market Forces.

[34] For example, 4ZZZ community radio in Australia reporting in 2016 prior to a Banking Royal Commission pointed out that claims that the government was seeking to clamp down on Australia's Big Four banks appeared unlikely, as the government essentially had a $2 billion bet that the banks would be just fine – as the 'big four' banks made up 4 of the 5 top five holdings of the national sovereign wealth vehicle the Future Fund.

[35] A simple search would readily identify dozens of reports – but RAN is happy to provide examples or a summary on request.

number of investment vehicles have chosen to public a specific list of companies they will not invest in – called an exclusion list – usually due to very serious concerns regarding environmental, human rights or governance impacts.[36] These lists not only allow customers to know if their money is invested in companies facing serious allegations of harm or other concerns. They also play a role in signaling to the broader market that these companies have been rejected during due diligence processes by other financial institutions. In this way, they play an important amplifying role to the market.

In fact, several NGOs – including RAN – have invested in creating an 'Financial Exclusions Tracker' to compile these lists and to more easily identify which companies have been rejected by investors on these grounds.[37] NBIM provides detailed information about companies which have been excluded or which are on 'observer' lists – which could be escalated to an exclusion list, or de-escalated, if concerns are addressed.[38]

Noting also, exclusion lists can also allow central banks, financial regulators or academics to get a feel for issues of concern over time. The Financial Exclusions tracker uses data from 87 financial institutions to track 34,882 exclusions that together cover 4,532 companies excluded. Currently, the Financial Exclusions tracker website notes that 40% of exclusions relate to climate concerns, while only 7% relate to human rights concerns.[39] Biodiversity is not yet a stand-alone category, meaning that the promotion of exclusion lists – through disaggregated disclosures – could provide a sense of tracking if and how biodiversity may be becoming a greater issue of concern over time.

Investment universe
Some investors choose to report their investment universe. That is, a full list of companies that they are, or may consider, investing in. While an 'exclusion list' is a list of companies for which an investor will opt-out of, an investment universe is an 'opt-in'.[40] They are particularly favored by ethical investors.

Ex-post disclosure: Disclosing projects or companies currently or previously financed

Investor disclosures
Investment vehicles can take a variety of forms and a range of models for disclosure exist. In the US, SEC disclosures require a company to report a detailed list of companies in which it has holdings.[41] Sovereign wealth funds – a sizeable portion of global investment – will also disclose holdings – seen from Singapore's Temasek reporting its major investments, to Norway's pension fund.[42] Some commercial asset managers may disclose via a database or report of

[36] See https://financialexclusionstracker.org/ RAN also notes that some TNFD taskforce members maintain an exclusion list. Additionally, some TNFD companies themselves appear on exclusion lists.
[37] See https://financialexclusionstracker.org/
[38] https://www.nbim.no/en/responsible-investment/ethical-exclusions/exclusion-of-companies/
[39] https://financialexclusionstracker.org/
[40] https://www.australianethical.com.au/portfolio-holdings/
[41] Searchable via the EDGAR database: https://www.sec.gov/edgar/search-and-access
[42] https://www.temasek.com.sg/en/our-investments/our-portfolio#single-name

proxy voting records for listed companies – which allow a full or partial list of investments to be identified.[43]

The Equator Principles

For over a decade, the Equator Principles have acknowledged the importance of banks disclosing their clients as key to understanding, and addressing, their real-world environmental and social impacts. The EPs first required banks to request permission to disclose client names for high-risk projects back in 2013, and project-name disclosure has been a requirement since 2020. This applies to financing over USD $10 million. The EPs also recommend disclosure for sizeable project-related corporate finance. This reflects the risk that banks will shift from financing projects to financing companies, to side-step disclosure recommendations. The EPs have been adopted by over 130 financial institutions in 38 different countries across 6 continents. This includes client-name reporting from banks from countries as diverse as: Nigeria, Chile, Japan, Egypt, China, Colombia, Singapore, France, US, Australia, South Africa and many more, for projects in even more jurisdictions. Disclosing banks include several TNFD taskforce members. The EPs evolution, over decades, has determined that disclosure is a materiality issue for project finance and project-related corporate finance.[44] TNFD's failure to include project-name and company-name disclosures in its guidance would undermine this basic practice, that has already been determined by the sector as material.

The International Finance Corporation Financial Intermediaries disclosure

The IFC has determined that all financial intermediaries [such as banks] "that the IFC commits funds to from 1 July 2020 onwards are to disclose annually the name, location by city, and sector for Category A sub-projects committed after IFC's investment." In short, banks must provide extremely basic information on high-risk projects. This policy took years of public advocacy and campaigning to achieve - after showing that communities affected by IFC financing were denied access to their rights under its environmental and social commitments because they were not able to identify the IFC's involvement. Given that the IFC currently claims to be supporting over 800 financial institutions in over 100 countries through various programs the fact that it's adopted this policy for its financial intermediaries program signals that client-name disclosure is possible, legal and necessary.[45] The financial intermediaries program covers a host of commercial financial institutions and some state-owned enterprises.

TNFD's failure to include project-name and company-name disclosures in its guidance would undermine this basic practice that has already been determined as material to financial institutions in dozens of countries – by virtue that this is a precondition to receive IFC investment.

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[43] For example: https://www.blackrock.com/corporate/insights/investment-stewardship#vote-bulletins or http://vds.issproxy.com/SearchPage.php?CustomerID=10228

[44] https://equator-principles.com/signatories-epfis-reporting/epfi-reporting-database/

[45] https://www.ifc.org/en/what-we-do/sector-expertise/financial-institutions

Export finance agencies transaction list
Some export finance agencies will disclose a full list of transactions. This will cover high risk but also low risk categories of transactions. For example, see Export Finance Australia transaction list.[46] This includes export contract loans, export lines of credit and bonds or guarantees.

Investment universe
As noted previously, these lists can include potential future investments but also current investments.

Disclosure to financial sector databases
The Bloomberg and Refinitiv databases include information of financial deals – including client name, total in financing, type of financing (i.e. project finance, corporate loan, revolving credit facility), bond information and lists of shareholders etc. Some of this information is compiled from public sources, from reports provided to investors and for detail of financial deals – from banks themselves. Oxfam International, among others, have written further about these databases. It noted in 2019 that: "Information about deals—including client identity, project details, sector, and deal size—is provided to banking and finance industry databases, such as Thomson Reuters Eikon and Bloomberg, on a regular basis. Banks do this in order to market themselves and the scale of loans they deliver. This information is available to anyone who can afford a database subscription, which can cost from $20,000 to $50,000 a year. These databases are commonly used by the global banking and finance sector, as well as its clients, advisors, market research institutions, and even academics. Oftentimes, achieving client consent for such disclosure is simply part of the paperwork for financial deals. At the beginning of a new financial relationship between an investment bank and a corporate client, the investment bank will then draw up paperwork and submission forms for the client to sign—including a standard league table agreement. A league table is a table of information that is used by investment banks to showcase their investments to potential new clients. The league table agreement allows the bank to provide information about the financing to specific market databases. Consent can be as simple signing submission forms. The information in these databases is publicly available to anyone who can afford the subscription paywall, but not to the communities most likely to be adversely impacted by company activities."[47] (This was a part of Oxfam and broader civil society advocacy to the IFC, refuting arguments at the time that 'client confidentiality' would prevent financial intermediary disclosure – a policy that IFC has subsequently changed.)

Full public disclosure of lendee list of organizations
For a decade and a half, Triodos bank has publicly disclosed a full list of organizations that it lends to.[48] Today that list is 5163. Today Triodos has offices in the Netherlands, Belgium, the

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[46] https://exportfinancecdn.azureedge.net/media/zmfc4goc/2024-march-22-transaction-register.pdf
[47] https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620559/bp-financial-institutions-disclosure-161018-en.pdf p.21 (This section also includes further discussion of databases as well as references).
[48] https://www.triodos.com/en/know-where-your-money-goes

United Kingdom, Spain and Germany. This is a compelling example that hyperbolic claims about the legal or commercial risks of disclosure do not line up with reality.

(Noting also that in some national contexts, there are formal or informal practices that allow lenders to be identified. For example, in Malaysia and Singapore agribusiness companies disclose their ‘principal bankers’ as part of their annual reporting, and for several years the Papua New Guinea’s Investment Promotion Authority database included lender-name disclosures regarding satisfaction of charges or outstanding loans.[49] Similarly, in the US permit approvals for oil and gas projects also require provision of insurance certificates that while not public have been obtained via Freedom of Information – again showing that financial institution claims about the dangers of disclosure are, at best, overblown and most likely simply due to financial institution’s not wanting to be publicly associated with their clients operating in less desirable sectors or projects[50]).

Securing disclosure via standardized contract clauses
One simple example of how project-name or company-name disclosure can occur is by writing disclosure requirements into standard contracts prior to financing being issued. For example, at the point of client on-boarding. (Contracts should also include adherence to environmental, anti-corruption and social standards – and capacity to withdraw financing if FPIC is not secured). A company operating at scale in a high-risk sector that refuses to agree to be named as a client of the bank should be a red flag. The most recent OECD due diligence guidance for the financial sector also briefly acknowledges that in some cases, a failure to disclose can also prevent basic due diligence.[51]

Case study: Aggregated reporting can be helpful but can also be highly misleading without accompanying disaggregated disclosure

As a general observation, TNFD’s financial sector guidance appears to rely on aggregate reporting of metrics (‘where material’) or self-selected discussions of risks but with no requirement to specifically disclose who a bank is financing or who an investor is invested in. This case study seeks to highlight the limitations of aggregate approaches without accompanying disaggregated disclosures.

An additional point here, is that a brief overview of reports or advocacy materials by communities affected by threats to biodiversity and related human rights issues or those working closely with affected communities or potentially affected communities would find that such reports rarely, if ever, draw on financial institution’s aggregated disclosure. In terms of actionable information, it is disaggregated disclosures which are most key.

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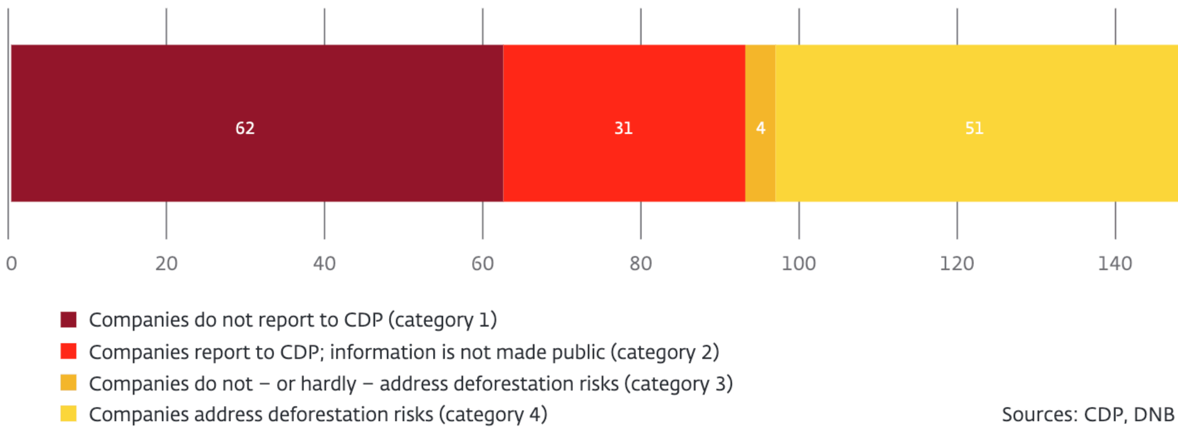
[49] For example, in 2022 Global Witness pointed to such examples from Olam, PPB group, various Rimbunan Hijau subsidiaries and Halcyon Agri. Referenced on p.8 https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf
[50] https://www.ran.org/risk-exposure-insurance-certificates/
[51] See OECD due diligence guidance on project and asset finance.

Note, on p.39 the section of the draft TNFD financial sector guidance on Transition risks references Figure 9 in De Nederlandsche Bank (DNB) (2021), 'Indebted to Nature' – specifically "Exposure of Dutch financial institutions to companies with products and activities related to deforestation, 2019."

Figure 9 Exposure of Dutch financial institutions to companies with products and activities related to deforestation, 2019-IV*

EUR billion



* The shareholdings and the large loans portfolio of Dutch financial institutions total EUR 1,030 billion. Of this, the exposure to companies from the CDP reporting standard is EUR 148 billion. Note that many companies for which we do not have reporting data do not have products and do not perform activities related to deforestation.

This figure as explained in the surrounding text notes that "category 3 consists of companies that report [to CDP] publicly but do not or hardly address deforestation risks. Companies with risky products or activities in their production processes and value chain that take measures to address deforestation risk, represent a managed reputational risk (category 4)."[52]

In several of its submissions throughout 2022 and 2023, RAN has referenced meatpacker JBS as a test case to examine if TNFD recommendations could enable greenwashing. This has included referencing JBS' self-reporting under CDP. Arguably, at best it's unclear where JBS would fall under this DNB definition. At worst, there's a concern that it could fall under a definition of 'category 4' as expressed in the DNB definition profiled by TNFD, for example by aligning with the CDP 'A-' score. JBS has extensive documents, presentations and explanations of the efforts that it states is addressing deforestation in its supply chain. However, JBS' stated efforts to address deforestation or climate issues have been the subject of sizeable controversy in various countries and internationally, as has its approach to disclosure. JBS appears on multiple investor exclusion lists and is the second most likely company to be excluded due to concerning business practices.[53] In fact, several NGOs have provided extensive details of concerns in a March 2023 public letter to CDP regarding JBS' A- rating – supported by 20 civil

[52] https://www.dnb.nl/media/4c3fqawd/indebted-to-nature.pdf
[53] https://financialexclusionstracker.org/

society groups.[54] (Noting, also another Brazilian meatpacker – Marfrig - appears at least once on the Financial Exclusions tracker list and incorporates CDP scores spanning A, A- and B; and another – Minerva – that scores a 'B' on CDP appears multiple times on the Financial Exclusions tracker list.[55])

A concurrent recommendation that best practice is for financial institutions to disclose company-names and investee names would enable the report user – and the public at large – to identify if JBS was included in a firm's portfolio or not. Aggregated reporting can play a role in allowing whole-of-portfolio analysis – but as seen in many long-term financial sector debates, such analysis will not tell the full story and cannot be independently verified or properly understood without knowing specific exposures to companies in high-risk sectors.

Similarly, it's unclear how other companies would are under the DNB proposed definition. For example, currently the mining company Vale has received an A- by CDP for its score on climate and water, with no score assigned to deforestation. As RAN wrote in 2023: "*In 2019, the collapse of a Vale mining tailings dam created an unprecedented environmental disaster, killing hundreds of people in Brazil. This followed a similar dam collapse by a Vale subsidiary in 2015.[56] The 2019 environmental disaster was so extreme as to justify homicide charges being filed against several Vale executives.[57] In 2022 concerns about other Vale tailings dams persisted and Indigenous Peoples continued to protest Vale over its harms to nature and people, and operating without their Free, Prior and Informed Consent. Vale appeared on the exclusion lists of investors in 9 countries and the SEC announced legal action against Vale alleging misleading reporting."*[58] Again, Vale is another company that RAN has raised several times with TNFD. In December 2022, the World Benchmarking Alliance (WBA) Nature Benchmark ranked Vale the fifth best performing company on nature of 400 companies.[59] While the WBA ranking is not a TNFD report, its seven-person expert review committee on nature for the report included staff from six organizations closely linked to TNFD, including the TNFD secretariat.[60] RAN has raised concerns of this example and separately noted that Vale has already signed on as an 'early adopter' of TNFD – which raises questions as to whether it sees TNFD reporting as a venue to talk up its environmental credentials as it appears to do with CDP.[61] There are many more similar examples we could draw on. However, at minimum, we

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[54] https://mightyearth.org/article/jbs-climate-rating/
https://www.theguardian.com/environment/2023/mar/30/brazilian-meatpackers-a--sustainability-rating-raises-grade-inflation-concerns
[55] https://www.cdp.net/en/responses/11349
https://www.cdp.net/en/responses?queries%5Bname%5D=minerva
https://financialexclusionstracker.org/
[56] https://amazonwatch.org/assets/files/2022-complicity-in-destruction-iv.pdf
[57] https://amazonwatch.org/assets/files/2022-complicity-in-destruction-iv.pdf
[58] https://amazonwatch.org/assets/files/2022-complicity-in-destruction-iv.pdf
https://amazonwatch.org/assets/files/2022-complicity-in-destruction-iv.pdf
https://financialexclusionstracker.org/
https://www.sec.gov/news/press-release/2022-72
[59] https://financialexclusionstracker.org/
[60] https://www.worldbenchmarkingalliance.org/nature-benchmark/
[61] https://forestsandfinance.org/news/key-questions-to-ask-of-tnfds-final-draft/

seek to highlight the limitations of aggregate self-reporting and the potential to provide misleading information or information without the accompanying check-and-balance of at least recommending disaggregated disclosures.

Case study: Insurance: Secretly propping up fossil fuels

As Insure our Future note: “The insurance industry seldom reveals which fossil fuel project or company is underwritten by a given insurance provider.” It took Freedom of Information requests to government to identify the insurers that were backing methane gas infrastructure in the US Gulf South.[62] A recent report based on the findings of the FOI requests and other document searches includes a quote pointing out the clear arms to nature, including people: “If built, Texas LNG, Rio Grande LNG, and their proposed Rio Bravo Pipeline would destroy our low-income Latine community’s way of life. Pollution from these mega LNG/methane export terminals would destroy the waterways where shrimp lay their eggs and our people fish to feed their families. We’re calling on these insurance companies to stop insuring LNG/methane terminals because it’s blatant environmental racism”, Bekah Hinojosa, South Texas Environmental Justice Network.[63]

The US FOI requests by Rainforest Action Network and Public Citizen noted that the list of insurers included: “Axis, Chubb, Swiss Re, and Sompo as backers, a surprising find as these companies earned better ratings [by Insure our Future] for their climate policies” as well as insurers with lower rating policies: “Liberty Mutual, AIG, The Hartford, Travelers, Berkshire Hathaway, and Lloyd’s of London.”[64] In short, knowing what an insurer is actually financing in high-risk sectors – what projects, how many, and how recently these deals were made – is vital to understanding an insurer’s actual exposure. A policy may state that a firm will exclude certain activities and allow others – but whether a firm is actually insuring activities or not allowable under its policies is key to assessing its actual exposures. A reasonable person may presume that an insurer serving on high-profile initiatives on biodiversity would preclude them from being involved in financing to methane gas in the Gulf South. This too could be seen to contribute to a greenwashing risk – by an insurer publicizing actions that claim to address biodiversity (such as sitting on a taskforce or advisory panel on biodiversity), while less favourable actions that could be perceived as undermining biodiversity are hidden.

In Australia, the offshore oil and gas regulator NOPSEMA has stated that the government doesn’t require insurance certificates as part of their permitting processes – meaning that a Freedom of Information request has failed to identify who is insuring offshore fossil gas

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https://forestsandfinance.org/news/companies-accused-of-biodiversity-or-human-rights-harms-adopt-tnfd-reporting/

[62] https://global.insure-our-future.com/risk-exposure-the-insurers-secretly-backing-the-methane-gas-boom-in-the-u-s-gulf-south/

[63] https://global.insure-our-future.com/risk-exposure-the-insurers-secretly-backing-the-methane-gas-boom-in-the-u-s-gulf-south/

[64] https://global.insure-our-future.com/risk-exposure-the-insurers-secretly-backing-the-methane-gas-boom-in-the-u-s-gulf-south/

projects.[65] In that context, not even an FOI would allow public interest groups to identify if an insurer is talking up their positive actions on biodiversity, while hiding their insuring of high-risk projects. Without insurer disclosures of their high-risk projects, it's extremely likely that TNFD reporting could lead to the public, including the market, being worse informed by a company's actual risks – rewarding companies that are more brazen in their biodiversity claims, knowing that this information cannot be independently verified.

This also has implications for information to consumers to make sustainability choices. For example, it is highly likely that some victims of climate-induced natural disasters – such as bushfire and wildfire victims in Australia or California – are using insurers that also insure controversial fossil fuel projects, and at minimum, a lack of disclosure denies consumers the right to be able to differentiate between insurers with similar climate policies but where one may have high exposure to fossil fuels and the other relatively lower exposure.[66]

The implications of a lack of transparency for insurance is less well understood than other parts of the financial system – such as banks, where project-name disclosure has been a heavily contested issue for decades. While we recommend that insurers too should disclose their insuree companies, and also support regulatory efforts to standardize this across the sector – at the very minimum, it should not be used to as justification to 'lower the bar' for TNFD in ways that undercut longstanding work on project-name and company-name disclosure by other parts of the financial sector.

4. Don't ask, don't tell: The problematic framing of a 'data problem'

Recommendation iii: Remove any text that oversimplifies data issues, such as wholly attributing this so-called 'lack of data' to companies – rather than acknowledging the role that financial institutions themselves play if failing to require data necessary to basic legal due diligence, as well as analysis of environmental and human rights risk.

On p. 23 of the draft financial sector guidance we note the text:

"The Taskforce recognises that...the lack of data currently provided by investees and clients adds complexity for financial institutions to the task of assessing and disclosing the dependencies and impacts on nature of their financed activities."

Elsewhere there are similar discussions of 'data limitations' (p.21) etc.

RAN's submission on the draft sector guidance for the Food and Agriculture sector discusses this issue in greater length. But just to note, that the most important form of data is to know where a company is

[65] As advised by Jubilee Australia.
[66] Noting that science has clearly delineated between naturally occurring patterns for bushfires and wildfires and the increasing severity and changing behaviours of fires as a result of climate change.

actually sourcing from – its geolocation data and supplier lists. This should also be seen as a basic legal requirement – as a company that doesn't know where its goods ultimately come from could be trading in illegally produced goods and due diligence is a basic legal requirement. In high-risk sectors and jurisdictions what emerges is a 'don't ask, don't tell' policy – where companies do not require this information as a contractual requirement because it is likely more convenient not to know.[67] In some sectors, such as food and agriculture, supply chain companies – and their financiers – regularly and routinely admit that they do not know where goods come from, even where companies are operating in contexts with high-risks of environmental crime, land grabs, violence and environmental destruction. In effect, this serves to legitimize environmental crime and other harmful practices, operating as a 'don't ask, don't tell' policy. Similarly, supply chain companies routinely refuse to disclose their supplier lists.

Similarly, a deep concern of TNFD is that it appears to be reinvigorating discussion of a 'data problem' that has been significantly debunked elsewhere. The most decision-useful information is to know where a company's goods come from. From this basic information, third-party research and analysis can be made of local environmental and human rights issues on the ground, and also check with local communities. S

Asset managers and investors that individually manage hundreds of billions, if not trillions, in investment and financing can describe themselves as seemingly powerless to address the so-called 'data issue'. This occurs even in cases where an asset manager may be the single largest investor in an entire sector in a given high-risk jurisdiction – such as the Amazon. Similarly, financial institutions may appeal to a 'data problem' – while ignoring that their investee companies have knowingly, and repeatedly, faced serious, well-evidence allegations of being linked to environmental and human rights harms which would a basic google search would identify.[68] Similarly, banks routinely may not contractually require adherence with their own policies or the data necessary to undertake legal due diligence of supply chains of high-risk companies that they may be providing millions in financing to.

While asset managers and investors may *feel* powerless, they are not. When asset managers and investors do not take responsibility for their own investments – that is seeking to profit from the activities of companies and projects that they invest in – this adds to the burden of environmental human rights defenders, Indigenous Peoples and affected communities. When no-one takes responsibility for their role, this exacerbates the burden, weight and risks that fall to the most marginalized communities who are at greatest risk of facing land grabs, human rights violations and deep spiritual harm in seeking to prevent risks and harms to biodiversity and non-human kin.

Put simply, until investors and financial institutions demand the data as a condition of financing, outlining a clear course of action should this not occur by a specified date, the data will not be forthcoming. Especially for companies operating in high-risk sectors in high-risk jurisdictions where such data is likely to confirm that they are exposed to activities that violate or contravene their own biodiversity, environmental or human rights policies or their public marketing and image. Here too, it is relevant that

[67] This also applies to companies with concentrated global market power, see for example the Annex case studies here: https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

[68] For example, a cross-check of the Forest & Finance database and the Financial Exclusions tracker would identify the sheer number of deals done with companies whose conduct is considered so egregious as to have been placed on some investors public exclusion lists.
Additionally, see Global Witness' report Deforestation Dividends for the sheer volume of financial deals done by banks with 20 agribusiness companies facing persistent allegations of links to deforestation and human rights abuses. https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/

many of the financial institutions that sit on TNFD have actively failed to act on credible evidence of environmental and human rights abuses of lendee or investee companies presented by civil society organizations, media outlets or even government agencies. This creates a heightened risk that TNFD's position will be perceived as detracting from available options for securing data.

It is also vital that TNFD not conflate all data, without distinguishing that which is most important. In this case, TNFD could actually undermine and push backwards longstanding efforts to demand geolocation data for high-risk industries – if it encourages financial institutions to call for a focus on aggregated data on environmental outcomes (data that cannot be independently verified or cross-checked without geolocation data), rather than being able to verify the origin of a supply chain. Thereby diverting investee companies focus and resources to compiling complex, and often expensive, environmental data – without first requiring transparency of where goods come from.

RAN notes the value of environmental data – where it can be independently verified and cross-checked – and has campaigned for forest footprints and other data collection. However, in terms of identifying human rights, environmental or legal risks in supply chains it is geolocation data and disclosures which are the first, most vital step.

5. Legitimizing biodiversity destruction

Recommendation iv: At absolute minimum, require disaggregated data that differentiates between positive or negative impacts on biodiversity.

Recommendation v: Respect the widely documented science and evidence that show that 'credits' or 'offsets' or similar approaches legitimize and drive biodiversity destruction - not negate or neutralize it.

Recommendation vi: Remove metrics or similar recommendations that promote the financialization or commodification of biodiversity.

In initial civil society engagements with TNFD, several organizations were very strong in raising their opposition to any perception that TNFD could be used to create or enable biodiversity offset markets. At that time, our recollection is that the TNFD secretariat shared that TNFD would not recommend 'net' metrics. While TNFD's financial sector guidance includes some examples of reporting by investors that focuses solely on negative impacts rather than 'net impacts'– more broadly we are extremely concerned that TNFD will enable the use of biodiversity offsets (branded as credits, 'nature positive' or similar language). We would welcome explicit clarification from TNFD that this is not the case.

For example, see C1.1 - This metric and additional guidance referred to in the draft Financial Sector guidance appear to suggest a 'net' figure based on 'combining' negative impacts on biodiversity such as land conversion and the 'extent' of land, freshwater and ocean ecosystem 'conserved or restored'.

Additionally, we have recently recognized that several of the individuals, organizations or companies that set up or sit on TNFD are trying to promote biodiversity markets through various initiatives.[69] We note that these initiatives share similar concerns as TNFD – such as it being unclear who appointed members, the lack of an evidence-based approach, the environmental track record of companies on the taskforce and anti-democratic processes that favor corporations. For example, of the 24 members of the Independent Advisory Panel on Biodiversity Credits - the Co-Chair of TNFD sits on the Panel, as do two of the three key people heading the initial working group that set up TNFD.[70] (The latter two were also involved in the Taskforce on Nature Markets). Mirova, BNP Paribas, Axa and EY also serve on the IAPB. Additionally, there is overlap with the previous Taskforce on the Scaling up of Voluntary Carbon Markets. That taskforce had 55 members from corporations, compared to TNFD's 40. Both include members from the company groups: Axa, Bank of America, BlackRock, BNP Paribas, Bunge, Macquarie, Nestle, Rabobank, S&P, Tata and UBS.[71] Over 25% of TNFD's members overlap with a taskforce expressly set up to legitimize and expand carbon offsets. It's reported that Mirova has invested in a biodiversity credit developer, Macquarie Bank is known to have purchased agricultural properties with tradeable water licenses.[72]

Green Finance Observatory – an expert tracking biodiversity offset debates – has particularly expressed concern that TNFD is seen as a foundation to enable this market creation. Despite biodiversity scientists stating that it is the very dominance of 'market-based' approaches to biodiversity that have been driving the crisis and broader concerns expressed about the impacts on Indigenous peoples' rights.[73] Added to this are extensive reports of what could be perceived as large-scale fraudulent practices in carbon offset markets – from 90% of rainforest carbon offsets by the world's largest carbon offset certifier being described as 'worthless', to exposes featured in The New Yorker.[74] At the very least, TNFD does not have a mandate on this issue.

The Global Forest Coalition and the Green Finance Observatory are just two examples of organizations that have worked extensively on the issue of biodiversity credits and offsets. Issues are further addressed in a recent paper by Sustainable Finance and Indigenous Rights

[69] For example, there is cross-over between individuals or organizations involved in setting up, serving on or financing the Taskforce on Nature Markets, the Independent Advisory Panel on Biodiversity Credits and the Biodiversity Credits Alliance. For example, NatureFinance which set up the Taskforce on Nature Markets prior to this served on the initial working group that set up TNFD, as did the head of the UK Green Finance Institute which served on the Taskforce and now on the Independent Advisory Panel on Biodiversity Credits. A Co-Chair of TNFD sits on the Independent Advisory Panel on Biodiversity Credits.
[70] David Craig (Refinitiv), Rhian-Mari Thomas (UK Green Finance Institute) and Simon Zadek (Nature Finance). *Correction: Since submitting this feedback to TNFD we have recognised an error, in that version we also attributed an additional individual sitting on both TNFD and IAPB. However, this was incorrect due to two separate individuals with a shared first name so has been removed from this version.*
[71] https://www.iif.com/tsvcm
[72] https://carbon-pulse.com/244306/ See also academic work by Sarah Sippel and others.
[73] See 2022 IPBES Values report.
On Indigenous Peoples' rights see: https://www.savimbo.com/blog/moving-beyond-a-tokenistic-participation-of-indigenous-peoples-in-nature-financing
[74] https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe
https://www.newyorker.com/magazine/2023/10/23/the-great-cash-for-carbon-hustle

specialist Emil Siren Gualinga.[75] This paper also compiles public statements by Indigenous Peoples, by Indigenous Peoples' organizations and by broader civil society groups on their position on offsets and credits. Noting also, in their submission to TNFD in May 2024 - a joint open letter from three Goldman prize winners (the highest honour for environmental activism) and 62 organizations and networks representing 370+ organizations in 85 countries specifically raised concerns about biodiversity offsets.[19]

This clearly establishes a responsibility from TNFD to require – at absolute minimum – a distinction in reporting to delineate adverse environmental impacts.[76] And not to promote offset credits or offsets. This does not preclude financial institutions from choosing to add additional information in their own reporting beyond what is recommended under TNFD – but it should be clear that TNFD does not have an established mandate on 'net biodiversity' or similar approaches.

Annex A also includes a case study of biodiversity offset markets in NSW on the continent of Australia.

Additionally, one particularly egregious example of 'net biodiversity' approaches more generally is in oil and gas projects. For example, TotalEnergies claims that it's Papua LNG project will comply with the IFC Performance Standards 6 on biodiversity and lead to "net biodiversity". Put simply, this claim suggests that Papua New Guinea - one of the world's most highly biodiverse countries on the planet - will see biodiversity better off for the extraction of gas with an estimated 220 million tonnes of CO2 equivalent and a 320 kilometre pipeline. The project takes place in an area which – according to the project's upstream Environmental Impact Statement – includes 48 new-to-formal-science species of animals and plants, including a damselfly and a

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[75] https://www.linkedin.com/posts/activity-7181613999317229568-5hzB?utm_source=share&utm_medium=member_desktop

[76] Additionally, the International Indigenous Peoples Forum on Climate Change has called for a moratorium on offsets. This message is clear and explicit, as stated at COP 28: *"Carbon markets and offsets, geo-engineering, mal-adaptation technologies, "Net Zero" frameworks and "Nature-based solutions" do not cut emissions and instead create new forms of colonization, militarization, criminalization, and land loss. We call for a moratorium on such activities that violate our rights."* The Women and Gender Constituency on climate has also critiqued offsets as a false solution. The Global Forest Coalition (GFC) - an international coalition of 126 NGOs and Indigenous Peoples' Organizations defending social justice and the rights of forest peoples in forest policies - May 2022 briefing paper clearly outlines the history of biodiversity offsets, the failure to achieve their goals, the role of fossil fuel and mining companies in advancing biodiversity offsets and the opposition to offsets. This includes specific examples and case studies of the impacts on Indigenous Peoples and Local Communities of specific biodiversity offset programs in India, Uganda and Madagascar. Third World Network has also outlined why biodiversity offsets are problematic for biodiversity in a recent briefing paper. Among other issues they note that "biodiversity market-based mechanisms have been linked to continued dispossession and violations of the rights of Indigenous Peoples, as the Bribri Indigenous leader Levi Sucre Romero argues, and the case of the Cordillera Azul National Park illustrates." The CBD Alliance - the core working group convening civil society organizations in Global Biodiversity Framework discussions has also noted "The embrace of offsetting approaches…will not halt environmental damage and ecosystem loss. The promise to compensate for biodiversity loss, by protecting similar ecosystems elsewhere justifies continued biodiversity loss and allows business-as-usual, causing human rights violations and other injustices.

gecko. In essence, claiming that it is possible to mitigate risks against biodiversity that hasn't even been studied.[77]

Under TNFD's proposed reporting approach, RAN's understanding is that the company's data reporting on 'net biodiversity' would similarly register for the financial institutions that finance it as a biodiversity benefit. In short, their own statistics would register a *higher net biodiversity benefit* for having financed an oil and gas company.

6. Will TNFD penalize Global South and biodiversity-rich countries?

Recommendation vii: Independent analysis is needed to understand if TNFD's model is likely to punish Global South and biodiversity-rich countries – for example by affecting their credit ratings.

A prior concern raised by Third World Network and others is the potential of TNFD to be biased against Global South countries rich in biodiversity – potentially lowering their credit ratings, and biased in favor of Global North countries that have historically destroyed their biodiversity. It raises the question: will countries, such as Western Europe, with very little biodiversity today benefit, as their biodiversity improves over time, and conversely with countries with expansive biodiversity be penalized if, for example, it is depleted by the impacts of climate change they had little role in causing? RAN and others has repeatedly urged TNFD to identify independent research on this issue. Reading the financial sector guidance, we are no clearer on the implications of TNFD for the credit ratings or similar measures of Global South countries.

7. The need for an evidence-based approach: TNFD doesn't appear to have examined the evidence tracking the financing linked to biodiversity loss and human rights abuses

Despite being one of the most active civil society organizations tracking TNFD and working closely with civil society organizations that frequently advocate on financial sector policy, commitments and undertake related research – RAN itself is unclear who wrote the TNFD guidance, who was involved in this process and who was excluded. Since our February 2023 submission TNFD has not reached out to RAN with any further questions, clarifications or technical discussions regarding the submission. Additionally, it is unclear if TNFD has engaged the expertise of civil society groups who have deep expertise in tracking financial sector practices on environmental and human rights issues, including specific case studies, primarily

[77] For full references and further information see the Papua LNG case study on the BankTrack Dodgy Deals database. https://www.banktrack.org/project/papua_lng

from the position of working with potentially affected communities.[78] This expertise from understanding how problematic case studies unfold, how financial institutions respond, how practices align with existing ESG reporting and what works, and what doesn't, to shift behavior based on sometimes decades of expertise is a critical perspective on the financial sector. The financial sector guidance gives the impression of relying largely on information provided by financial institutions themselves, with potentially some additional information from civil society groups who may be expert in data technologies or various initiatives co-created with financial sector actors.

The list of references in the finance guidance do not include any databases or reports that compile evidence and data from the perspective of those who are working to defend biodiversity and human rights from harm – including asking financiers not to finance companies or projects that communities and their allies believe are harmful. This includes, for example, the BankTrack Dodgy Deal database, the OECDWatch case database, the Business and Human Rights Resource Centre, the World Bank Accountability Mechanism case centre database or the Sabin Center for Climate Change Law database of climate change law – all of which include case studies regarding financial institutions and biodiversity, and often related human rights harms.[79] This is a vital data source to study and understand this important aspect of financial sector behavior, including responses to concerns about environmental or social practices. Additionally, we would urge TNFD to follow collective civil society statements on key financial sector issues to understand what measure they propose for financial institutions to improve their practices.

Without this action, there risks being perception that TNFD is taking its lead from financial institutions themselves. A financial institution saying what will lead them to change is not objectively the same as undertaking fair, non-biased research and evidence gathering to determine what *actually* leads to a shift. Additionally, there is a moral issue in privileging the perspective of groups that may be more likely to profit from biodiversity harms – and sidelining the views of victim-survivors at community level.

8. Double materiality: The practical implications of TNFD's approach to materiality – lower capitalization in high-biodiversity risk sectors means they're unlikely to meet a minimum materiality threshold

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[78] For example, BankTrack has tracked arguments, practices and legal options surrounding financial sector transparency - particular banks - for decades. It has been involved in a host of initiatives - from advocacy on the Equator Principles to serving on advisory groups for the OECD due diligence guidance - that have shifted practices on transparency.

[79] https://www.inspectionpanel.org/panel-cases?search=IFC
https://www.banktrack.org/dodgy_deals_map
https://www.oecdwatch.org/complaints-database/
https://www.business-humanrights.org/en/
https://climatecasechart.com/

Recommendation viii: At minimum, on reporting TNFD should recommend that businesses disclose their impacts on nature, irrespective of financial materiality.

Recommendation ix: Given the clear unworkability of TNFD's current definition, it must urgently adopt 'double materiality' or risk the use of TNFD framework for greenwashing.

Previously, RAN and others have written extensively about the importance of TNFD adopting a double materiality approach. In this section we do not revisit these arguments, although we have attached our prior briefing paper on double materiality in Annex C first provided to TNFD in September 2022. This section seeks to briefly summarize the practical implications of TNFD's current approach to materiality noting that a minimum threshold of 'materiality' for biodiversity loss for many, if not most, financial institutions would likely fail to include reporting on a financial institutions' more severe exposures to biodiversity loss (such as extinction risk) - as these are unlikely to meet a basic materiality threshold.

The caveat to the metrics pillar of the TNFD framework is that financial institutions report metrics ***as material.*** Financial institutions will apply double materiality if they are legally required to in their jurisdiction or can choose to apply double materiality if they choose to - but this is not the minimum TNFD standard. The definition of 'materiality' under the 'enterprise value' approach taken by TNFD (as outlined in Annex B) is subjective, based on a 'general user' and therefore difficult to objectively establish whether a minimum standard for disclosure is met.[80]

Auditors often use a rule-of-thumb that a 10% impact on profits/assets is financially material. While impacts below this *may be considered* it is not clear-cut and impacts at 3% or below is non-material. While companies may choose to interpret 'materiality' more broadly, this 10% figure is likely to represent the lowest bar for which 'materiality' can be clearly established i.e. that a company has failed to disclose material information.[81] In many jurisdictions, companies already have a requirement to report on issues that are financially material to their business based on this 10% threshold. Meaning that while TNFD may capture some so far unindentified financial impacts from biodiversity loss – financial institutions and other companies would be in violation of standard financial disclosure practices if they hadn't been identifying these risks.

This raises the question how likely is biodiversity loss to be 'material' to financial institutions based on a minimum threshold of 10%?

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[80] Rainforest Action Network has provided various technical documents to TNFD outlining the evidence base showing that 'enterprise value' is unworkable for biodiversity and outlining the evidence in forms of case studies, academic research and policy points. This was provided in various documents to the TNFD secretariat such as an almost 100-page May 2022 submission on draft 1; A draft briefing paper on double materiality provided to TNFD in mid-2022; a joint September 2022 submission on draft 2; and a February 2023 submission on draft 3.

[81] Noting also that as a company doesn't have to report 'non-material' impacts contestations of materiality can't be examined if investors and others aren't even informed of what the risks are.

Already, it's identified that agribusiness is one of, if not the leading sector, driving biodiversity loss. Yet its capitalization is far smaller than energy or other sectors – put simply, there is a much bigger pool of global capital in energy commodities, than in agriculture.

For example, BNP Paribas – an investor based in a jurisdiction that requires double materiality - analysis finds that only 5% of its exposure to 'very high risk' biodiversity impacts is via its exposure to the sector it describes 'consumer staples'.[82] This would suggest that even if every company involved in this sector faced significant biodiversity harms *and* those translated to a financial impact to 100% of its operations for 100% of those companies, this alone wouldn't meet the definition of 'materiality'. (Similarly, RAN's analysis for feedback on the Food and Agriculture sector guidance found that many, if not most, of the world's major agribusiness traders in forest-risk commodities would not meet this 10% threshold).

Similarly, a brief view of the New York Stock Exchange US 100 identifies no companies that are major traders in forest-risk commodities, and only 6 easily recognizable as associated with agriculture as a part of their business.[83] A similar trend can be viewed in the S&P 500. This similarly suggests that for any financial institution whose business model largely relies on indexes, one of the largest risk sectors for biodiversity loss - agribusiness and forest-risk commodities more specifically – would again not meet this 10% threshold (even if assuming that every company in the sector was 100% impacted). Yet this indexing approach is associated with the largest asset managers in the world such as Blackrock or Vanguard.[84] This potentially explains why investors so far have been slow to act on biodiversity risks in agribusiness – they are largely not financially material. If the world's largest and most influential financial institution are unlikely to see the world's most serious threats to biodiversity loss as financially material – it raises serious concern as to why TNFD has adopted this approach as a recommendation.

This is not to say that financial institutions will not choose to report on risks below this 10% materiality threshold or that there won't be some outliers whose exposures are so significant they will face a genuine materiality risk. However, it is exemplifying that the current exemption on the basis of materiality risks a chaotic, non-standardized approach to data and is also out of sink with existing legal models based on double materiality in some jurisdictions.

Further, while sector-specific biodiversity issues may not be material to the financial institution – a handful of investors or even just one – can have a sizeable materiality impact on a business, its operations or even an entire sector. A financial institution's exposure may not be material to itself, while the financial institution's approach to biodiversity issues can be highly material to its investee companies. For example, The Oakland Institute has reported that of the world's 8

[82] https://www.bnpparibas-am.com/en/blog/sustainable-by-nature-sequel-our-portfolio-biodiversity-footprint/
Note BNP Paribas is also in a jurisdiction that requires double materiality.
[83] As accessed March 2024: https://markets.businessinsider.com/index/nyse_us_100?p=2&
Companies include Bayer, Walgreens, McDonald's Corp, PepsiCo, Coca-Cola, Walmart.
[84] For example, one 2019 report found BlackRock to be in the top 3 shareholders in 25 of the world's largest forest-risk companies, based on data from 2014 -2018. https://amazonwatch.org/news/2019/0830-as-the-amazon-burns-blackrock-named-as-worlds-largest-investor-in-deforestation

major pesticide and fertilizer companies BlackRock *and* Vanguard are the top two shareholders of 6, and Vanguard the second top shareholder of another.[85]

Additionally, a significant risk from TNFD's current approach to materiality is that it will divert financial institutions away from their greatest biodiversity impacts. Assuming a 10% materiality threshold, cross-sector issues – such as water scarcity which can occur in a range of sectors – is more likely to score as the greatest risk on a financial materiality assessment, than more adverse biodiversity risks more tightly concentrated in one corner of one sector – for example the extinction risk of a single species in one part of an agribusiness supply chain.

This context likely helps to understand why one of the world's largest trading blocks – the EU – has already required double materiality in disclosures.[86] Additionally, mainland China has proposed regulations currently under consultation that would see disclosure rules for large listed companies based on double materiality – which would apply to the Shanghai, Shenzhen and Beijing exchanges.[87] As stated earlier, the Kunming-Montreal Global Biodiversity Framework Target 15 also explicitly highlights the importance of reporting on impacts. It is extremely unusual for a voluntary initiative to take a lower standard than that already required in law in a major trading block. In general, financial sector initiatives such as the IFC Performance Standards, the Equator Principles or the OECD due diligence guidelines have taken a position more ambitious than existing legal minimums. TNFD's approach risks a perception that TNFD is being positioned to undermine double materiality approaches, in effect, by pushing for a lower 'global bar' than legislation already in place that has been developed through more inclusive and diverse decision-making processes. In light of these fast-evolving developments and new analysis, we urge TNFD to reconsider its position on double materiality.

9. Grievance list disclosure

Recommendation x: Explicitly state that companies – including financial institutions - should report a grievance list.

The draft financial sector guidance reads on p.5 that:

"Financial institutions should also describe how they have worked with investee companies, counterparties or clients with whom they have financial relationships through advisory, investing, lending or insurance to help ensure they undertake outreach and engage relevant Indigenous Peoples, Local Communities and affected stakeholders in their assessment of, and response to, nature-related dependencies, impacts, risks and opportunities."

Under this definition – even when cross-checked against the TNFD guidance on engagement with Indigenous Peoples and Local Communities – there appears to be very little objective measure as to what a financial institution is recommended to report. It appears largely focused

[85] https://www.oaklandinstitute.org/blog/vanguard-blackrock-driving-destructive-industrial-agriculture-model
[86] https://www.ey.com/en_be/sustainability/5-pitfalls-in-the-double-materiality-assessment-process
[87] https://greencentralbanking.com/2024/02/23/china-stock-exchange-disclosure-rules/

on forms of project-level engagement – but most financial institution exposure to projects is extremely limited, for some banks it may comprise only 1-2% of lending and some asset managers may have little or no project-level exposures. There is a risk that financial institutions will claim to have met part of this guidance by discussing how they consult with Indigenous Peoples' organizations as part of their 'materiality assessments' or on the development of their policies. It does not speak to a community's right to know – but also, most critically, it doesn't recommend that a company, including financial institutions, transparently acknowledge specific grievances that communities and others have raised with them.

The span of companies undertaking grievance list reporting range from agribusiness firms Golden-Agri Resources to Louis Dreyfus Company to include the International Finance Corporation (and subsequently, likely hundreds of financial intermediaries that it works with).[27]

This has arisen in view that even where a company has a grievance mechanism, experience shows there is a tendency to speak in generalities of the effectiveness of the mechanism – without acknowledging what the specific grievances are and the company's response.

Arguably, grievance lists are one of the most material forms of information that can be provided to investors and the public, and one of the easiest to compile - as the financial institution should be tracking grievances and they involve either direct concerns raised to the financial institution, concerns picked up in its media monitoring or frequently direct requests for comment by journalists reporting on allegations.

It is hard to argue against why investors shouldn't be provided easy to access information about where a financial institution is facing allegations linked to environment or human rights harms sufficiently serious to be escalated to a risk officer or management level. As these are highly pertinent to how investors understand their biodiversity or human rights policies and practices. Additionally, the UN Guiding Principles on Business and Human Rights have clearly established that financial institutions have a responsibility to provide remedy or redress for adverse environmental impacts that they 'cause' or 'contribute' to, and that this should be considered for harms that they are 'directly linked' to via their business relationships. Human rights law specific to financial institutions is still evolving – yet at least some interpretations of the OECD Guidelines on Multinational Enterprises argue that a financial institution may escalate from being 'directly linked' to adverse human rights and environmental impacts to being seen to 'contribute' to them by, for example, repeatedly financing companies linked to adverse practices.[88] Ten years ago, even progressive financiers were arguing that financial institutions do not have responsibilities to address grievances. However, today there is a small, but growing, set of precedent-setting cases testing judicial and non-judicial responsibilities of banks in relation to adverse human rights or environmental practices. In turn, experience in other sectors suggests that this will also drive greater demand for understanding how financial institutions are addressing grievances, and the nature of those grievances.

RAN has further discussed grievance lists - their market role, basic requirements for effective grievance lists and why they are important in Annex 1 of our February 2023 submission to TNFD.[28] We can also facilitate access to technical experts on grievance lists.

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[88] For example, as argued in Milieudefensie et al. vs. ING bank. https://www.oecdwatch.org/complaint/milieudefensie-et-al-vs-ing/

At least two of the company groups featured in TNFD's draft financial sector guidance on impact metrics are the subject of a criminal complaint related to allegations of profiting from a company engaged in adverse environmental practices, or additionally, in one's case legal cases regarding financing linked to human rights abuses and environmental harm.[89] Another has been the subject of international campaigns over the last decade, and ultimately led to UN Women dropping a partnership with the financial institution in response to its profound environmental and social risks.[90] Additionally, another has recent been a subject of a RAN report examining insurers linked to fossil fuel projects in the Turtle Island/US Gulf South.

We do not emphasize this point to be contrarian but to highlight, at minimum, that providing the public or readers of company reports with a link to a list of current grievances allows them to be aware of grievances and to weigh how they consider information about the firm's exposure to biodiversity and human rights issues, its claims for leadership in its space and to its response to grievances.

This is particularly important at this moment for the financial sector, given that the long-held reluctance to adopt grievance mechanisms is slowly shifting in some jurisdictions. This is in response to concerted efforts by advocates but also in response to government guidance – such as China's green finance guidance that advises financial institutions to have grievance mechanisms.[91]

A financial institution publicly acknowledging a specific grievance and how it is responding to the grievance also helps to create a clear mandate for staff to work to address grievances, and where needed, provide remedy and redress. It also presents an opportunity for financial institutions which are genuinely seeking to respect biodiversity and human rights to show how they are acting to improve and evolve their approaches.

Clearly, across dozens of countries and all continents, the consumers of financial products have taken part in email actions and other activities in response to community grievances either about a financial institution's role in financing, insuring or investing in a specific company or project, or urging that financial institution to exclude such dealings until the grievance is resolved.

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[89] https://www.asso-sherpa.org/complaint-filed-against-french-banks-for-money-laundering-and-concealment-of-proceeds-from-illegal-deforestation-in-the-amazon

[90] https://blackrocksbigproblem.com/
https://womensmajorgroup.org/feminists-demand-end-of-un-womens-partnership-with-blackrock-inc/

[91] https://www.banktrack.org/blog/how_china_s_new_complaints_procedures_can_prevent_green_esg_investments_from_harming_local_communities

See also BankTrack's work generally on UN Guiding Principles and Business Rights, including through its benchmarking reports.

10. Aggregating financial sector guidance risks undercutting existing approaches that differentiate between financial sector actors

Recommendation xi: In its financial sector guidance should – at minimum – include additional measures to ensure that it aligns with, and doesn't undercut existing long-standing financial guidance. This includes the Equator Principles, IFC Performance Standards, OECD Responsible Business Conduct due diligence guidance for the finance sector and the articulation of financial institutions international human rights responsibilities.

The TNFD states that its guidance *'applies to banks, insurance companies, asset managers and owners,* and *development finance institutions'.* This approach appears to contravene evidence to how the financial sector works including hard-won learnings over several decades. The environmental and human rights expectations of Development Finance Institutions that receive government money and other explicitly operate with, at least on paper, a development mandate have evolved over several decades. By contrast, insurers have largely escaped scrutiny until very recently and have very poor, if any, environmental and social frameworks in place. Examining years of evidence, analysis, precedent and practical case studies – there is a significant risk in treating vastly different aspects of the financial sector, that operate completely differently, the same way. For example, *the OECD Guidance on Responsible Business Conduct and due diligence guidances for the financial sector* separates guidance between different aspects of the financial sector, such as project and asset finance, corporate lending and securities underwriting and institutional investing. *The Equator Principles* specifically focuses on guidance for project finance and project-related corporate loans. *Development Finance Institutions* and *export credit agencies* include a range of guidances for different facets of the financial sector.

TNFD's approach is for financial sector actors - including, presumably, individual projects, loans, bonds, insurers and asset managers to take a whole-of-portfolio aggregated approach. Yet many banking relationships - such as lines of credit, revolving credit facilities and loans - are relatively short-term, between 3-5 years. If a given company faces financial risks from its involvement in perpetuating environmentally harms which are not financially material today - but may be in 20 years or so - this will occur many years after a given loan has ended. Similarly, staff involved in the loan will have moved onto other roles or potentially left the bank itself. An additional issue is that if a bank is financing projects that may not start extracting or producing fossil fuels for years - emissions data if captured at all, will be years after financing was provided. The risks of different aspects of the financial sector are different, similar so are the tools that they can use to undertake due diligence, address challenges etc.

What the Forest and Finance coalition and others have found is that one of the most salient pieces of information is who is the financial institution financing? Knowing if a bank is financing ExxonMobil or JBS can give a far greater indicator of the seriousness of their environmental and human rights commitments than high-level aggregate reporting.

Case study: Floods of detail gives the impression of transparency without reporting the actual information that matters

Recommendation: TNFD should have a clear recommendation on grievance list reporting.
Recommendation: The financial sector guidance should include a clear recommendation on project-name and company-name name disclosure.

In its most recent TCFD report, Bank of America refers to a series of other reports and page numbers in cross-checked reports. There's pages and pages of information, tables, sub-references etc.[92] A related CDP report refers to the existence of staff KPIs for climate outcomes and also speaks extensively to the bank's sustainable finance investments. The most recent two CDP reports by Bank of America don't appear to be scored, but it's 2021 report scored an A-.[93] In the TCFD-related reporting there's also a host of tables that refer to the bank's formulations of transition, physical and other types of risks. There are various references to how the bank's processes have improved over time and there's an assurance statement from a group that the bank has used for almost a decade. There are various references to new coal commitments.

There's a lot of detail but not the most basic and intuitive information that is key to understanding the bank's climate impacts. Is it continuing to finance oil and gas companies and projects? Is it facing critique regarding its approach to transitioning out of fossil fuels?

Reading the Bank of America TCFD reports, one could not readily identify the bank has - for over a decade - faced allegations that it is one of the worst bankers of fossil fuels – ranking fourth in the 2022, 2021, 2020 and 2019 Banking on Climate Chaos reports.[94] In 2022 alone, BOCC reported that Bank of America provided an estimated USD$35.5 billion in fossil fuel finance.[95] It tracked the Bank of America as in the top 10 financiers in 2022 for respectively: oil and gas in the Amazon; oil and gas in the Arctic; tar sands oil; fracking oil and gas; offshore oil and gas; and LNG.[96]

It could easily be argued that a reader of the bank's TCFD report could be left with a misimpression of how the Bank of America is performing on fossil fuels. In fact, under the TCFD framework - like the TNFD framework, including the proposed guidance on finance - the bank does not even need to acknowledge these allegations. This is despite the Banking on Climate Chaos reports being endorsed by over 600 organizations in 75 countries and widely reported in hundreds of media outlets internationally.[97]

TNFD has an opportunity to learn from the existing evidence from TCFD and similar reporting models as to the importance of grievance list reporting. This is also critical to avoid perceptions

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[92] https://about.bankofamerica.com/content/dam/about/report-center/esg/2022/bofa-2022-cdp-climate-change-secured-vf.pdf p.3
[93] https://www.cdp.net/en/responses/1452
[94] https://www.bankingonclimatechaos.org/
[95] https://www.bankingonclimatechaos.org/
[96] For further details on results, datasets and methodologies see the report.
[97] See full list at: https://www.bankingonclimatechaos.org/

that TNFD facilitates greenwashing – in that it encourages financial institutions and others to talk up their green credentials, but does not recommend presenting more objective information, such as a grievance list, which can help to communicate if third parties are raising concerns regarding the financial institution's approach to biodiversity and human rights.

11. Additional points

This section includes some additional points based on our understanding of TNFD's position on these issues. We would welcome additional clarification if the concerns expressed have already been addressed in TNFD's framework.

Transition plans

Recommendation xii: Amend the language of 2.2 to recommend that financial institutions disclose their transition plans – not just 'describe' any transition plans that may be in place.

Location-based data

Recommendation xiii: Guidance under D of the Strategy Pillar should amend language to apply to disclose the locations in their operations [not their 'direct operations'] and ensure that all communities, not just those in so-called 'priority locations' have the right to know of the financial institution's involvement in their local area.

The current language of D under Strategy states:

Disclose the locations of assets and/or activities in the organisation's direct operations and, where possible, upstream and downstream value chain(s) that meet the criteria for priority locations.

This already includes several caveats such as 'where possible'. However, this definition would clearly apply to financial institutions – in that it relates to "activities" in the "**operations** which are **upstream or downstream** in **value chains** (including investment chains)."

Additionally, if TNFD were to limit this definition, it would be contravening the OECD Guidance which clearly applies to value chains, that has been in effect for decades.

However, the proposed language of TNFD is that "a financial institution should disclose the locations in their direct operations that meet the definition of priority locations in the guidance for all sectors".

The financial sector guidance does not include a glossary of relevant terms.

However, the definition of ‘direct operations’ in the TNFD glossary is: *All activities and sites (e.g. hydropower plants, buildings, mines, farms, stores) over which a company has operational or financial control.*[98]

There is no definition provided for ‘financial control’.

TNFD doesn’t appear to refer to any independent analysis to identify what portion of the market this definition is likely to cover, and which to exclude. It is most likely that ‘financial control’ will be interpreted as a majority stake in a given company or project. This applies to only a very small portion of the financial sector – and would effectively exclude, many, if not most, of the environmental and human rights issues documented in connection to individual or collective banks, investors, asset managers or advisors over the last decade.

This would mean, for example, that what single largest investor in deforestation-linked companies would not need to report this relationship to the Amazon – because as an asset manager it has holdings in companies, it is not part of its “direct operations.”

Similarly, this definition appears likely to exclude many, if not most, controversial fossil fuels projects – which are often financed via syndicate loans and other shared financing and provided via lending relationships, not ownership stakes.

Additionally, there is also an inherent justice issue in applying a ‘priority locations’ lens to this recommendation. Financial institutions impact communities in a diverse array of locations.

The terminology of ‘priority locations’ suggests that some communities have a right to know if a financial institution is financing activities in their local area; whereas others are denied this right. Noting also, that while many marginalized communities face human rights threats for trying to defend their biodiversity and human rights; many marginalized communities are also pushed to areas where biodiversity has already been destroyed – and their right to foster and generate biodiversity should also be respected, especially when at threat of financed supply chains or operations.

Publicly verifiable data

Recommendation xiv: At minimum, TNFD should recommend that financial institutions should report in a way that data can be independently verified by the public.

Elsewhere, RAN has written about the issues with sustainability auditing. This includes various auditing scandals.[99] More broadly, the issue with sustainability auditing is that unlike financial auditing, no independent and trusted professional standards exist. This means that a

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[98] https://tnfd.global/wp-content/uploads/2023/09/Glossary_of_key_terms_v1.pdf?v=1702506695
[99] Such as the International Centre for Investigative Journalism investigations in KPMG auditing of companies facing allegations of logging or Global Witness’ investigations into DNV-GL audits of JBS beef supply chains. Overlapping these are ‘accrediting’ scandals, the most recent being the damning reports of the operations of Verra.

sustainability auditing's firm essentially relies on attracting a sufficient level of commercial business from companies – who are unlikely to commission a sustainability auditor with a reputation for uncovering serious adverse environmental harms. Additionally, sustainability auditors typically rely on information from companies or from third-party databases, and often do not check with on-the-ground communities or others. For this reason, public data verification plays a critical role. This allows communities, journalists, interested academics or NGOs to cross-check a company's data sources against realities on the ground. This can also be a vital source of information for financial institutions that may genuinely be unaware of problems on the ground, and eager to act on concerns.

At present, TNFD's model of data reporting for the financial sector appears to suggest that a financial institution can publish whatever statistics they like – and these are virtually unverifiable. This could foster a system that is rampant for abuse, enables greenwashing and penalizes financial institutions that are genuinely acting on biodiversity and human rights issues.

Excluding actors with egregious practices

Recommendation xv: TNFD should explicitly state what will occur in the event that a financial institution, or other company, is using TNFD reporting to greenwash and share blatantly false or misleading information.

RAN's understanding is that currently TNFD is promoting companies and financial institutions which are 'early adopters' of the TNFD. However, conversely TNFD does not appear to have any process to exclude financial institutions, or other companies, that may be greenwashing or sharing false or misleading information.

Annex A: Case Study: Biodiversity offset markets in NSW, Australia

Another example is the biodiversity offsets market in the state of NSW on the continent of Australia. Efforts towards a biodiversity offsets market in NSW began in 2005 and the latest iteration took effect in 2017. Below is a sample of the NSW Biodiversity credit market sale dashboard, based on recent sales. This shows that it is cheaper to buy a biodiversity offset for a koala in NSW, than to buy a puppy from an animal shelter. A series of inquiries, investigations and critiques of the offset schemes shows that it has continued to fail biodiversity. NSW currently has 1000 plant and animal species and ecological communities at risk of extinction. In 2022, koalas were listed as 'endangered' in NSW with habitat loss being a key driver.

Despite a mass loss of forests and other biodiversity rich habitat due to the 2019/2020 fires in NSW, native forest logging continues. According to recent research, native forest logging by the Forestry Corporation of NSW is running at a loss and propped up by tens of millions of dollars in subsidies each year. It continues similar trends over the last decade. Native logging is already banned in the neighboring state of Victoria. Gumbaynggirr elders, and many other First Nations peoples, have opposed the threat of logging by the Forestry Corporation of NSW on their traditional territory. In 2023, the Forest Corporation of NSW defended its rights in court to log koala habitat including in an area proposed to be a future koala national park. Since 2005, the

Forestry Corporation of NSW has also traded carbon credits. The Forestry Corporation of NSW is a state-owned corporation.

Put simply, the biodiversity offsets scheme is such an abject failure that not even the NSW government itself which runs the scheme has internalized the ‘value’ of biodiversity and is continuing to destroy the habitat of endangered species at a financial loss. Dr Megan Evans, a senior lecturer in environmental policy, governance and economics at the University of NSW, who has advised government and business on environmental markets, noted that “offsets typically, at best, lock in existing environmental decline”. University of Melbourne ecologist Dr Yung En Chee added that “despite the lack of success anywhere in the world, so many governments seem determined to establish and defer to markets rather than exercise evidence-informed judgement and moral leadership”.

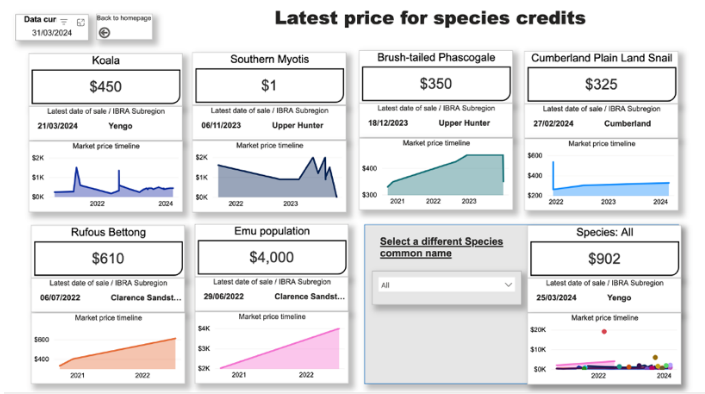

Image 1: Putting a price on the right to destroy biodiversity in NSW. Accessed March 2024.

Annex B: The detail behind TNFD's definition of materiality

This section seeks to outline in greater detail the basis of TNFD's definition on materiality. So as to support the arguments made earlier in this submission.

Figure 1: TNFD's recommended disclosures

Governance	Strategy	Risk & impact management	Metrics & targets
Disclose the organisation's governance of nature-related dependencies, impacts, risks and opportunities.	Disclose the effects of nature-related dependencies, impacts, risks and opportunities on the organisation's business model, strategy and financial planning where such information is material.	Describe the processes used by the organisation to identify, assess, prioritise and monitor nature-related dependencies, impacts, risks and opportunities.	Disclose the metrics and targets used to assess and manage material nature-related dependencies, impacts, risks and opportunities.
Recommended disclosures	**Recommended disclosures**	**Recommended disclosures**	**Recommended disclosures**
A. Describe the board's oversight of nature-related dependencies, impacts, risks and opportunities.	**A**. Describe the nature-related dependencies, impacts, risks and opportunities the organisation has identified over the short, medium and long term.	**A**(i) Describe the organisation's processes for identifying, assessing and prioritising nature-related dependencies, impacts, risks and opportunities in its direct operations.	**A**. Disclose the metrics used by the organisation to assess and manage material nature-related risks and opportunities in line with its strategy and risk management process.
B. Describe management's role in assessing and managing nature-related dependencies, impacts, risks and opportunities.	**B**. Describe the effect nature-related dependencies, impacts, risks and opportunities have had on the organisation's business model, value chain, strategy and financial planning, as well as any transition plans or analysis in place.	**A**(ii) Describe the organisation's processes for identifying, assessing and prioritising nature-related dependencies, impacts, risks and opportunities in its upstream and downstream value chain(s).	**B**. Disclose the metrics used by the organisation to assess and manage dependencies and impacts on nature.
C. Describe the organisation's human rights policies and engagement activities, and oversight by the board and management, with respect to Indigenous Peoples, Local Communities, affected and other stakeholders, in the organisation's assessment of, and response to, nature-related dependencies, impacts, risks and opportunities.	**C**. Describe the resilience of the organisation's strategy to nature-related risks and opportunities, taking into consideration different scenarios.	**B**. Describe the organisation's processes for managing nature-related dependencies, impacts, risks and opportunities.	**C**. Describe the targets and goals used by the organisation to manage nature-related dependencies, impacts, risks and opportunities and its performance against these.
	D. Disclose the locations of assets and/or activities in the organisation's direct operations and, where possible, upstream and downstream value chain(s) that meet the criteria for priority locations.	**C**. Describe how processes for identifying, assessing, prioritising and monitoring nature-related risks are integrated into and inform the organisation's overall risk management processes.	

Recommendations of the Taskforce on Nature-Related Financial Disclosures - September 2023, p.9.

On **Metrics & Targets** – the actual data – that a company discloses is related to the need for a company to assess and manage *"**material** nature-related risks and opportunities in line with its strategy and risk management process."* (emphasis added).

Similarly on **Strategy** the caveat is "**where such information is material**".

The Risk & Impact section doesn't reference materiality. However, this pillar essentially relates to the process of how an organization identifies risk – not the risk itself.

On Governance this doesn't reference materiality. Part A) and B) are process points - i.e. how the company approaches biodiversity, not its actual outcomes.

TNFD definition of Materiality
The below is from the TNFD glossary p.28

Materiality
Report preparers should use the definitional guidance regarding materiality provided by the regulatory authorities for their reporting jurisdiction(s).

In the absence of any such guidance, the TNFD recommends that organisations apply the ISSB's approach to identifying information that is material for users of general financial reports as a baseline. Report preparers who want or need to report to a different materiality approach may apply an impact materiality approach to identify information in addition to the ISSB's baseline. With respect to impact materiality, the TNFD has aligned its recommendations (and supporting additional guidance) with the language and approach of the GRI's Sustainability Reporting Standards.

Organisations seeking to align with Target 15 of the GBF [Global Biodiversity Framework] will want to consider the application of an impact materiality lens to identify information that is incremental to the global baseline. International Financial Reporting Standards (2023) IFRS S1: General Requirements for Disclosure of Sustainability-related Financial Information; GRI (2021) GRI 1: Foundation 2021, Section 2.2.

ISSB definition of materiality:
Recommendations of the Taskforce on Nature-Related Financial Disclosures - September 2023, p.41-42.

"The information that the ISSB requires an entity to provide to meet the needs of primary users of general purpose financial reports (sometimes referred to as 'financial materiality') is set out in its IFRS-S1 General Requirements (paragraphs 17–18) as follows:

An entity shall disclose material information about the sustainability-related risks and opportunities that could reasonably be expected to affect the entity's prospects. In the context of sustainability-related financial disclosures, information is material if omitting, misstating or obscuring that information could reasonably be expected to influence decisions that primary users of general purpose financial reports make on the basis of those reports, which include financial statements and sustainability-related financial disclosures and which provide information about a specific reporting entity.[100]*"*

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[100] See also the ISSB FAQ page which on materiality states:

"The IFRS Foundation's focus is on meeting the information needs of investors. A company is asked to disclose material information about the sustainability-related risks and opportunities that could reasonably be expected to affect its prospects. The definition of

Materiality: Lowering the bar
Currently, one of the world's largest markets - the EU - has already adopted a position of double materiality reporting. Similarly, a recent draft document suggests that China - again, one of the world's largest markets - may do the same. Bizarrely, what is presented as a 'global standard' by the TNFD has *already* in-built chaotic and non-comparable data by in-building non-comparable definitions of materiality. It is odd to see a voluntary standard that lowers the bar below the existing legal baseline.

As outlined above, the TNFD's baseline position is not double materiality - i.e. the reporting of impacts of nature on a business, and the impacts of business on nature. A company that is in a jurisdiction legally requiring double materiality should take this as its baseline and a company that chooses to go further can - but it is not the recommended baseline.

The ISSB standard is often referred to as an 'enterprise value' definition. However, what a hypothetical 'investor' may consider material is not tested because a company does not have to disclose impacts that it believes to be non-material - it denies investors information to formulate their own view. Note, this framing appears simply a reworking of what existing financial reporting standards are - which should cover all significant financially material aspects - whether the origins are related to biodiversity or any other measure.

The ISSB definitions makes it near impossible to objectively identify any obligations beyond this. As essentially it is open to a contest of definitions about *who* the hypothetical end-user is (and who this excludes, such as ethical funds), *what* information they would choose to care about and *how* they would treat this hypothetical information. Added to this, is the point made by UCL academics well before TNFD ever released a first draft - that it is extremely difficult for scientists to accurately predict biodiversity tipping points, in short how individual or cumulative activities will impact on biodiversity in future. In short, to understand what is 'financially material' this would require corporations to accurately predict biodiversity outcomes that scientists themselves are struggling to predict.

Annex C: Technical briefing paper: TNFD and double materiality: Reporting on harms to business linked to nature but also business harms to nature (& people)

Note: This briefing paper was provided to TNFD in September 2022 and included in Annex to TNFD's February 2023 submission on draft 3 of TNFD.

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material information is aligned with that used in IFRS Accounting Standards—that is, information is material if omitting, obscuring or misstating it could be reasonably expected to influence investor decisions."

This technical briefing paper outlines why TNFD needs to require businesses to report on business harms to nature and related human rights abuses, not just how nature impacts business i.e. double materiality; rather than its current approach where a business is only required to report on financial risks or opportunities - in this case any significant financial outcomes in the short, medium or long-term that arise from its relationship with nature (enterprise value).

NGOs and networks, as well as others, have already presented to TNFD various arguments and the evidence base for why double materiality is needed - further expanded in this technical briefing paper. The world's leading biodiversity scientists have also urged in the recent IPBES values report the importance of respecting the intrinsic value of nature - not just its marketized impacts - is critical to halt and reverse biodiversity loss. To date, TNFD doesn't appear to have acted on this evidence or undertaken parallel processes to address this evidence base. We believe that failing to take an evidence-led approach on various issues, including materiality, runs counter to TNFD's claims to be 'science-based' and that TNFD will continue to face vocal criticism on this point.

Our objectives from these meetings are:

- To ascertain if TNFD is prepared in any meaningful way to incorporate or address double materiality in its revisions for draft 3. This would include, for example, providing concrete proposals of language that could be incorporated.
- If TNFD has any existing analysis or research on double materiality and enterprise value approaches - we invite TNFD to provide these publicly otherwise we will assume that its position on this issue is not evidence-led.

This technical briefing paper outlines:

- Examples of how TNFD text could be adapted to address a double materiality approach (PART 1).
- The extensive evidence which shows why, using the enterprise value approach alone, it is virtually impossible for TNFD to make a significant dent in efforts to halt or reverse biodiversity loss by 2030 (PART 2).
- In brief the need not just to incorporate double materiality reporting, but to then examine what types of double materiality reporting are more effective (PART 3).
- It provides a series of case studies and examples that show the shortcomings of the enterprise value approach (PART 4).

PART I: Recommended changes to TNFD text

Below we outline some examples as to how language on double materiality could be adopted or amended to the draft TNFD framework.This relates to new disclosures and amended definitions, new language is in red text. Where this is amending existing TNFD text, the TNFD text has been placed in blue. Recommended cuts to existing text appear in blue strikethrough.

Risk Management

Recommended Disclosure X: Describe the organization's actual and potential adverse risks and impacts to nature and inter-related risks and impacts to people[101]

Nature-related risks: Potential threats posed to an organization AND to nature and people - linked to its and other organization's dependencies on nature and nature impacts and potential impacts. These can derive from physical, transition and systemic risks.

Strategy

Disclose the actual and potential impacts of nature-related risks and opportunities on the organisation's businesses, strategy ~~and~~ financial planning, and its actual and potential risks and impacts to nature and inter-related risks and impacts to people ~~, where such information is material.~~

Metrics and Targets

TNFD acknowledges that Beta v0.2 does not include language on disclosure metrics. We will at this time not provide recommendations on the Metrics and Target section.

Additional observations:

We also note asymmetry in current definitions. As outlined in the current definitions below, businesses do have double materiality for positive opportunities (by reporting positive outcomes for organizations and nature) but not for adverse impacts (only examining negative outcomes for the organization).

Current definition - *Nature-related risks: Potential threats posed to an organization linked to its and other organization's dependencies on nature and nature impacts. These can derive from physical, transition and systemic risks.*

Current definition - *Nature-related opportunities: Activities that create positive outcomes for organizations and nature by avoiding or reducing impact on nature or contributing to its restoration. Nature-related opportunities can occur i) when organizations mitigate the risk of natural capital and ecosystems services loss, ii) through strategic transformation of business models, products, services and investments that actively work to halt or reverse the loss of nature, including by implementing nature-based solutions (or support for them by financing or investments).*

PART 2: The evidence base on the need for double materiality and the flaws behind the 'enterprise value' approach

We find it hard to envisage that rightsholder groups - particularly the victims of corporate-led nature harms - would back TNFD's position

[101] *This would ensure that the governance and strategy sections are internally consistent - requiring reporting relevant both to the organization and to nature and people.*

We believe that those on the frontlines of the nature crisis, and those voices who have led international efforts to fight for nature to be intrinsically valued and respected in its own right, are extremely unlikely to support core tenants of TNFD's approach. This includes that TNFD's enterprise value approach condones ongoing harms to nature (and people) so long as they do not impact on profitability, and does not even require such harms to be reported. This arises from lived expertise and experience that highlights a core driver of the nature crisis is business impunity for harms against nature and people - in that businesses profiting off their complicity in environmental and human rights abuses continue to do so because they face few meaningful consequences for doing so, including their right to retain profits made off these activities. It is a community's ability to plan, control and resource their own future vision, as well as hold businesses' accountable, not merely business self-reporting that is most needed - but if TNFD is to focus on reporting it should at minimum ensure that it accurately represents a business' links to environmental and human rights risks and abuses, and allows those reading reports to access independent information brought forward by those making complaints.

Evidence from TCFD on the shortfalls of the 'enterprise value' only approach

As University College of London (UCL) researchers write "since the TCFD launched in 2017, climate risk disclosures have yet to materially affect investment decisions for the majority of financial institutions". They also observe that the underlying hypothesis that reporting on climate-related financial risks would drive effective change in financial flows in line with objectives such as those linked to the Paris Climate Agreement "is unsupported by either theory or evidence". Half a decade since TCFD was instituted TNFD should not ignore the evidence and learnings from TCFD from diverse quarters.

The OECD also drew on current research underway to note that "while the [Financial Stability Board's TCFD] has been instrumental in achieving a transition in thinking amongst investors, its focus on financial materiality of climate change may be insufficient to foster reallocation of capital to align with the low-carbon transition." A point underscored by four oil and gas companies alone posting a record $51 billion profit in the second quarter of 2022[102] and the continued expansion of oil and gas fields against the advice of even the International Energy Agency's definitive 2021 report.

The American Academy of Actuaries, drawing on the findings of different research projects, has emphasized the need for impact reporting under the International Sustainability Standards Board (ISSB) (TNFD's approach to materiality is drawn from ISSB - although ISSB is still in draft form). Observing, among other factors, that "relatively few companies are likely to provide robust responses" under TCFD.

Securities exchanges from Thailand and India have pointed out on ISSB that quantifying how adverse social or environmental impacts - which may not be financially detrimental today - will affect a businesses' financial value is challenging for enterprises or may lead to misleading disclosures. A similar observation has also been made by TCFD itself. The 2021 TCFD status report found that only 20% of consultation respondents report on how their climate-related risks

[102] See also the analysis of Market Forces of climate exposures of the ASX 300.

or opportunities affect their current financial performance. This drops to 14% for reporting on potential financial risks in future. An obvious point is that TNFD will stymy the process of seeing risks and harms to nature become a financial risk if it fails to require those harms to be publicly disclosed.

Tata Steel also pointed out to ISSB the data comparability issues that arise from the enterprise value only approach - noting that when presented with the same climate impacts, two companies may have vastly different interpretations of what they see as financially significant or not.

To date, TNFD doesn't appear to have engaged in any systematic way with evidence or analysis as to why TCFD has particularly failed to address deforestation and forest degradation. Forests account for approximately 80% of land-based biodiversity - meaning that if TNFD fails forests it fails its mission. Forest-risk industries can also impact a range of other natural ecosystems. The UK government Global Resources Initiative - a multi-stakeholder taskforce working over three years - has issued a May 2022 finance report which outlines why TCFD reporting is not well-suited to curb the financing behind deforestation (and argued on the need for regulation). A similar analysis appears here and here. Not only has deforestation and forest degradation continued since 2017, rates have sped up. As has been previously pointed out to TNFD, there are clear cases where credit ratings agencies are also endorsing the view that a business' links to climate-related harms today - such as the destruction of climate-critical forests - will not affect its short, medium or long-term financial health.

This is one of many examples of evidence of why the enterprise value approach is not sufficient.

Reasons for these outcomes from TCFD are varied. We fail to recall a single example of a community fighting against threats to their rights and nature arguing that business environmental harms should be able to proceed so long as they don't harm business profitability. Investors have also noted to UCL researchers that "given policy uncertainty, multiple trajectories/futures are possible as well as the risks that lie ahead - investors do not know which of such possible pathways is more likely to happen". And that "it may be perfectly economically rational for individual investors to ignore climate risks and continue to invest in carbon-intensive assets, if they judge and perceive that is how the market overall is behaving and will behave in the near future". Added to this is a narrative that investors are failing to shift capital because they are looking for investment opportunities and structures that directly mirror those in the harmful finance world - i.e. that they are unwilling to invest at scale in green finance because they are unprepared to adapt their expectations and processes. Or as UCL academics note: "the continued financing of environmentally-harmful activities enables damaging stakeholders, technologies, and infrastructures to retain a persistently dominant position in the economy, thus making the transition to more ecologically-sustainable alternatives more difficult and costly – i.e. 'lock-in' effects". Research by Inclusive Development International on ESG indexes and reporting also highlights how a lack of disclosures of social and environmental impacts is resulting in investors being invested in harmful companies or projects without their knowledge. Added to this is the fact that a vast majority of financing to harmful companies or activities is not through project-specific or asset-specific investments - but through shareholdings which are far more transferable, or through loans or bonds, which have a shorter time horizon.

The Forest and Finance database tracks deals to forest-risk companies. In the five years following the Paris Climate Agreement financial institutions made an estimated USD$1.74 billion from deals made to 20 agribusiness firms facing credible allegations of links to deforestation and human rights abuses. To the best of our knowledge, not a single cent of this USD$1.74 billion in gross profit is at risk - and there is little foundation to suggest that financial institutions would be left worse off for making these deals.

Whose enterprise value?: Nature loss effects all businesses - not just the company perpetrating harms

As previously stated, we believe that TNFD's approach should be informed by efforts to drive positive outcomes for people and nature - not merely enterprise value. However, even within the logics of the enterprise value approach TNFD's proposed approach is highly flawed.

BNP Paribas has written: "A company's impacts to nature, for example, will not always create foreseeable risk to that company, but may exacerbate the systemic risk of nature loss, which affects all companies. The complexity and severity of this systemic risk is entirely lost by placing enterprise value – as opposed to biosphere integrity - at the center of concern." (Campaigners against the East Africa Crude Oil Pipeline also make this point - arguing that it will undermine the local tourist economy, adversely impacting local economies and livelihoods. Effectively the impact of EACOP on the local tourist economy is an 'externality' to the oil companies involved). UCL researchers have also made this point noting "given that one firm's impact upon the environment may affect other firms' ability to operate, negative impacts may contribute to the emergence or accumulation of physical risks elsewhere, or at a systemic level." The 2022 Network for the Greening of the Financial System-INSPIRE group report on nature-related risks has similarly discussed this point, which it terms the 'endogeneity of risk'.

The HSBC Bank (UK) Pension Scheme also outlined: "Corporate practices that maximize enterprise value at the individual entity level can contribute to additional costs, or externalities, which can negatively impact the enterprise value of other firms in the portfolio. Universal owners seek more than just entity-level enterprise value to understand the value and risks faced by their total portfolio, including adopting a double materiality lens." Put another way, an investor may be reluctant to invest in a company that is harming nature - even if it does not impact the company's own value - because this harm will impact on other companies in its portfolio. The view that a long-term approach to enterprise value for the company involved would be compromised by these investor views is undermined if an investor is prevented from acting because they are denied the basic information to even know what the impacts are. In addition is the point that the financial sector itself is highly diverse - divestment commitments on climate, for example, come from educational institutions, philanthropic organizations, faith-based organizations, government or pension funds which are accountable to broader public interests than merely return on investment.

Accounting firm Deloitte supported ISSB reporting on impacts on people and the environment noting that “poor conduct by a company may not affect financial returns in the short, medium or even long term despite it being unacceptable in the realm of sustainable development. In fact, historical evidence of this is plentiful.”

The risk of cumulative, unreported impacts

When companies do not have to do comprehensive impact reporting and are allowed to report only on what they consider material (for their own company), this can create a systemic risk. Without detailed impact reporting, it becomes impossible to assess the totality of impacts a system is exposed to. The sum of a number of small, “non-material” impacts, can actually be a significant impact that can pose a significant risk to companies operating within a system.

Biodiversity loss is unprecedented in recorded human history - creating *“radical uncertainty”* where future outcomes are inherently unknowable

If the future outcomes of biodiversity loss are inherently unknowable - then it stands to reason that the financial risks related to this ‘unknowable’ process and how it relates to transition modeling is similarly unknowable. Researchers at University College of London have stressed the limitations of modeling in order to inform understandings of financial risk to business. They point out that “the current trajectories of both climate change and biodiversity loss are unprecedented within recorded human history (Barnosky et al., 2011), impeding the calculation of probabilities needed to estimate future outcomes in conventional financial models. For these reasons, environmental-financial risks cannot be easily conceptualized as *probabilistic risks*, which form the basis of traditional financial models, or even as forward-looking risks that would become precisely measurable through scenario-based risk modeling. Just as with climate change (Chenet et al., 2021), biodiversity loss and its socioeconomic consequences are subject to *radical uncertainty,* where future outcomes are inherently unknowable. No matter the quality of the input information, therefore, scenario-based modeling approaches cannot reliably quantify all of the possible future outcomes resulting from the dynamic interaction of multiple human and environmental variables (Chenet et al., 2021; Svartzman et al., 2021b).”

UCL researchers note the inherent complexity and highly localized nature of biodiversity, suggesting it is near impossible to imagine capturing all this granular environmental information. “Even if a sophisticated database of asset-level environmental information could be imagined, financial policymakers should be aware of the inherent limitations of financial risk modeling approaches to generate even broadly accurate estimations of environmental-financial risk exposure at the systemic level due to the presence of complex system dynamics.” They note that there is “no obvious carbon price equivalent for biodiversity loss, which complicates the design of ‘transition pathways’ for financial risk modeling”. In short, even if it were possible to know all the biodiversity risk involved, extrapolating what this means for financial risks in real-world terms with some level of accuracy is highly difficult.

They point to the importance of double materiality [noting that] "such an approach may be more achievable within the limited timeframes for remaining action, rather than the time-intensive evolution in disclosure and modeling required to fulfill market-led approaches." Put another way, allowing businesses to continue to hurt and harm nature and people under the guise that they should only be compelled to act if harms will hurt their financial health will merely justify inaction. The authors explicitly note that approaches that quantify financial risks "may be important in *exploring* environmental-financial risks and raising awareness among financial players, but these limitations mean that alone they are insufficient to ensure the effective risk *management*."

Recommended Disclosure D under 'strategy' is not double materiality

The language under Disclosure D currently reads:

"Strategy: Disclose the actual and potential impacts of nature-related risks and opportunities on the organisation's businesses, strategy and financial planning, where such information is material. [emphasis added]

Disclosure D: Describe the organisation's interactions with low integrity ecosystems, high importance ecosystems or areas of water stress.

Guidance for All Sectors

Organisations should provide a list and/or spatial map of the ecosystems deemed to be low integrity and/or high importance and water-stressed areas with which the organisation's assets and operations interact. This should include reference to the location of the ecosystem and the type of ecosystem (i.e. the biome).

A number of reference sources and indicators for defining low integrity ecosystems, high importance ecosystems and water-stressed areas are available and signposted in the LEAP approach on the TNFD interactive online platform. Others reference sources and indicators are in development.

The definitions and reference sources for this disclosure recommendation in subsequent beta versions will be established through further consultation with knowledge partners and market participants."

We have seen TNFD describe Disclosure D under Strategy as something akin to impact reporting. Below we outline the reasons why it is not.

Firstly, any reporting is subject to the overarching 'strategy' framing that this disclosure only needs to occur 'as material'. This is further hampered by TNFD failing to provide a glossary definition of the term 'material' but given its 'enterprise value' approach we believe that equates to its definition of materiality. This means that any business could simply opt not to report its connection to these ecosystems by arguing that this does not affect their profitability. This would be particularly salient for financial sector interests who could argue that their exposure to the biome is not 'financially material' and similarly for supply chain operations who do not own land or projects in the area.

Secondly, the language of ‘operations and assets’ is vague and based on the LEAP approach appears to then further exclude a vast majority of the financial sector, only applying to ownership of physical assets.

Thirdly, the ‘disclosure’ is just to acknowledge the ecosystem that a company is linked to. It doesn’t require a business to disclose its exposures within these ecosystems. If we take the Amazon forest for example, this is a vast area and there is a substantial difference between a company sourcing from an area which has been subject to recent clearances, and sourcing from long-established farms. Knowing simply what country or ecosystem a business operates in reveals little about their exposure to nature-related harms. It is also highly dangerous to legitmize businesses’ not knowing where the goods that they source or finance come from - a business cannot know if it is trading in illegal goods (or those produced in ways that harm the environment or people) if this is not known.

Fourthly, this definition does not take into account the vast learnings on issues with aggregated reporting processes. Where supply chain disclosures have taken place - they have shown in several high-profile cases, that companies which have previously reported little or no links to environmental harms have failed to identify or disclose these links, that have only been made public by third party investigations. The value of these disclosures is not in understanding a business’ links to a high-risk ecosystem - but to note the specifics of its supply chain, such as the geolocation. This also protects against businesses externalizing their impacts - for example, by moving from at risk ecosystems onto large-scale land grabs of community land, which force people from their homes and can require displaced communities to undertake land clearing to re-establish their communities.

Fifth, the ‘disclosure’ doesn’t require a business to explicitly state whether it has self-identified, or faced external complaints regarding, its links to harmful practices. It is only required to note its ‘interconnections’.

Under its proposed model we believe it is virtually impossible for TNFD to make any substantive headway to ‘halt and reverse biodiversity loss’ by 2030

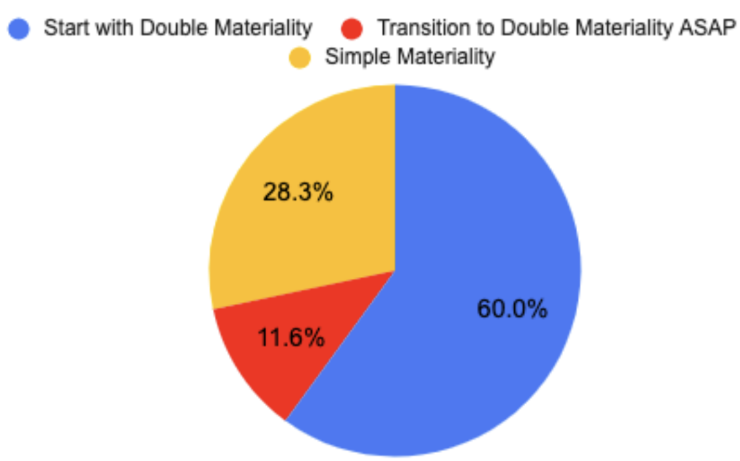
Currently TNFD is expected to conclude in September 2023. TNFD would then be adopted in 2024. It would then allow businesses 5 years to adopt full reporting in line with its recommendations. Meaning it is 2029 before full TNFD reporting, based on financial risks and opportunities are realized. This mimics the model of the TCFD, finalized in 2017.

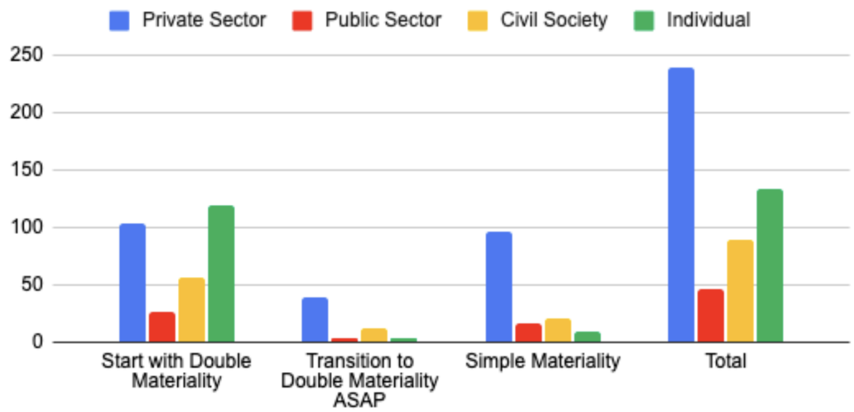
Firstly, it is extremely unlikely that TNFD would see businesses halting and reversing their contributions to biodiversity loss by 2030, if as of 2029 they are not even required to report what these impacts are. This also aligns with evidence we have from TCFD.

Secondly, as cited earlier, existing evidence from TCFD applied to TNFD suggests that by year 4 (2028) four in five companies (80%) will not be reporting on their current financial risks linked to nature, and almost seven in eight (86%) won't be reporting on future financial risks. This is without interrogating the accuracy or comparability of the entities that are self-reporting on financial risks or opportunities, and whether this is the form of reporting that is most likely to engender business action. Additionally, given that understandings of nature-related financial risks are far more nascent than similar work on climate this is a best case scenario.

More broadly we are skeptical about whether any reporting measures - detached from accountability or the requirement to surrender illegitimately acquired profits - will affect business change. The shortcomings of the enterprise value approach are particularly salient.
The ISSB definition TNFD relies on is still in draft form, ISSB itself faces allegations of undue process and lacks a mandate for an 'enterprise value' only approach

Re_Generation that has analyzed ISSB submissions maintains that: "Support for double materiality is far from a minority position [presented to the ISSB]. An enormous and growing contingent of influential voices from around the world is unanimous in calling for a double materiality approach. Of the 577 comment letters submitted to the IFRS Consultation Paper in 2020, a large majority explicitly called for a double materiality perspective–a fact which was noticeably absent from the feedback letter released by the IFRS as a summary of the comment letters. Our analysis demonstrates that, of the 508 respondents that answered Question 9 on materiality, 72% supported double materiality either being implemented immediately or as soon as possible, while only 28% explicitly supported the ISSB's stated approach. This group included a majority of private sector respondents (59%), as well as a vast majority of regulators, NGOs, and individuals (83%)."





Graphics from Re_Generation analysis of ISSB submissions in 2020 - as provided in their 2022 comment letter to the ISSB on its exposure drafts.

ISSB faces many similar due process challenges as TNFD, in that it has sidelined if not outright ignored the views of those who are most likely to have experienced corporate-led nature harms. Of its list of over 700 public submissions made to ISSB in 2022 there doesn't appear to be a single submission made by a rights holder organization.

Unlike ISSB, TNFD does not make survey responses, submissions or information about meetings public - making it virtually impossible to scrutinize how decisions are made. The transparency afforded by ISSB shows that within the narrow band of groups following ISSB, it is clear that there is no clear mandate for the 'enterprise value' approach. According to Regeneration's analysis ISSB has failed to respect that 72% of participant responses that called for double materiality in 2020. They highlight that while double materiality has particular support in the EU, Regeneration notes a range of groups beyond Europe pressing for a double materiality approach. This is even moreso when the raft of voices not represented or under-represented in the ISSB process is considered. Yet ISSB failed to address the double materiality issue in its exposure drafts.

On providing feedback to the ISSB in 2022, the International Capital Market Association, the European Central Bank, the Asia Securities Industry & Financial Markets Association and the Dutch Financial Markets Authority all raised concerns with its approach and advocated for double materiality. The Global Head of Sustainability Fitch - an arm of one of the world's largest credit ratings agencies - also spoke out on the need for double materiality. A joint submission by investor organizations the Capitals Coalition, the Predistribution Initiative and the Investor Alliance on Human Rights, as well as various NGOs and academic institutes, called for double materiality. They also urged ISSB to "adopt processes for standard-setting that ensure that those with first-hand knowledge of these risks can inform determinations of materiality" and "formaliz[e] engagement with civil society organizations."

We do know that some corporations have also publicly called for TNFD to adopt double materiality, as has a May 2022 letter by 28 NGOs and networks whose members include over 220 organizations across six continents. ISSB submissions now show that even several TNFD taskforce members have called for double materiality - including Mirova, Deloitte BNP Paribas and Moody's[103]. Tata Steel pointed out that the ISSB's enterprise value only approach "would likely not fully address the needs of the remaining key stakeholders (governments and regulators/ communities/civil societies)". TNFD co-founder WWF, as well as the OECD and CDP also called for double materiality.

Alarmingly, in its own submission to ISSB in July the TNFD Secretariat failed to acknowledge that concerns about double materiality had even been raised. This adds to our concern that TNFD's approach is not founded on evidence or due process.

The process by which TNFD came to the 'enterprise value' approach does not appear evidence based or transparent

It appears that TNFD's approach to materiality did not arise from engaging with the evidence base but the desire to align with ISSB or TCFD. We have significant concerns that TNFD's initial approach was oriented on double materiality - noting its four co-founders and other closely involved groups have supported double materiality but it has, through an untransparent process, shifted to adopt an 'enterprise value' approach. TNFD has never publicly asked whether its approach should be based on double materiality or enterprise value, and it has never engaged in a substantive public way with the evidence on double materiality and the poor outcomes arising from enterprise value approaches.

An obvious flaw of the 'alignment' argument is that even if this led to a widespread uptake of TNFD - the widespread uptake of an ineffective framework will have little impact on biodiversity, as outlined in the previous sections. For many, TNFD's stance on this issue is likely to be interpreted as an example of corporate capture - already TNFD's efficacy is limited in that it fails to hold businesses accountable for environmental harms or to challenge their rights to keep the profits they make off environmental abuses. If TNFD fails to even require businesses to report on their environmental harms to nature then what's the point?

In March 2021 Environmental Finance reported on the conference presentation of the co-chair of the TNFD Technical Expert Group who is also Global Canopy's programme and impact director who noted: "Nonetheless, there will be differences in the TNFD compared with the TCFD. Chambers indicated that the TNFD would actively look at 'double materiality'. The TCFD is currently focused solely on the financial materiality of climate-related impacts – put simply, the impact of climate change on a company or financial institution." This clearly delineated between discussion of 'double materiality' and the short, medium or long term enterprise value approach.

In February 2021, the Head of the UN Environment Programme Finance Initiative publicly stated that the TCFD view of materiality was no longer adequate at the Climate Risk and Green Finance Regulatory Forum. ESG investor reporting on the speech noted "Financial institutions will have on their radar screens the two materialities at hand; the classic materiality on how ESG will impact portfolios as well as the newer materiality of how portfolios will impact our planet and

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[103] Note Moody's pointed to the interoperability of ISSB - noting that impact reporting was needed, but this could be done through mechanisms that joined an impact report with an enterprise value report.

our society." ESG investor added 'Usher's call for a so-called double materiality approach comes also in reaction to the increasing urgency to tackle climate change...To this end, Usher called for standardized, comparable and forward-looking disclosure, covering all dimensions on materiality, including impact, and for TCFD targets to be science-based.' According to Regeneration's analysis the UN Development Programme's submission to the 2020 ISSB consultation also supported a double materiality approach and WWF's recent submission to ISSB has also called for a double materiality approach. This signals that each of TNFD's co-founders appear to be on the record for highlighting the importance of double materiality in TNFD-style structures - such as TCFD or ISSB. As does the OECD, who has been linked to TNFD from its early stages, as does CDP - one of the five standards 'consolidated' into the ISSB standardization system.

While TNFD has often replicated the ISSB's shortfalls, one area it hasn't matched ISSB is in adopting a base level of transparency - meaning that it is virtually impossible to scrutinize how decisions are made. We do know that some corporations have also publicly called for TNFD to adopt double materiality, as has a May 2022 letter by 28 NGOs and networks whose members include over 220 organizations across six continents. RAN's 98-page submission to TNFD included extensive case studies, precedents and examples outlining why double materiality was needed. ISSB submissions show that even several TNFD taskforce members have called for double materiality - including Mirova, Deloitte BNP Paribas and Moody's[104]. Tata Steel pointed out that the ISSB's enterprise value only approach "would likely not fully address the needs of the remaining key stakeholders (governments and regulators/ communities/civil societies)".

Alarmingly, in its own submission to ISSB in July the TNFD Secretariat failed to acknowledge that concerns about double materiality had even been raised. This adds to our concern that TNFD's approach is not founded on evidence or due process.

PART 3: What types of double materiality reporting are most relevant and effective?

Before diving into the detail of measuring biodiversity - it is critical that first basic prerequisites are put in place. This includes disclosing such basic information as to ensure that local communities and the public in general know if a business is operating in, sourcing from or financing activities in their area - which is also a basic prerequisite to holding that business accountable to its own stated policies and communities and requirements under international and national law. This outlines the point that not only should TNFD respect the evidence on double materiality - it then needs to identify what form of double materiality reporting is most effective.

This process should ask very common sense questions such as:

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[104] Note Moody's pointed to the interoperability of ISSB - noting that impact reporting was needed, but this could be done through mechanisms that joined an impact report with an enterprise value report.

Does reporting take a form that allows local peoples to know whether a business is operating in, sourcing from or financing activities in their local area?
(to then check how this aligns with the business' purported policies and claims)

Does reporting allow readers to identify if a business is expanding its land use or 'capping and reducing' its land footprint?

Does reporting take a form that allows the public and/or independent outsiders to scrutinize whether the self-reported data is accurate or not?
(for example, by allowing a business' claims to be cross-checked against on-the-ground realities)

Does reporting alert the public (or others) to whether a business is involved in, or accused of, being linked to actual or potential risks and adverse impacts on nature and people?

Does reporting take a form that allows investors (including the public) or other businesses doing business with that company to know if they may be complicit in harms to nature and people?

Does reporting allow the public (and others) to assess whether a business' claims to act on nature-related harms are put into practice?
(for example, if it is lobbying against new environmental regulations or for exemptions from legal requirements)

Does reporting take a form that requires a business to transparency admit to continuing to be linked to actual or potential risks and harms to nature and people - on the basis that it is pursuing profitability against the public interest?

PART 4: Case studies and in practice examples
Below are a series of case studies and examples that show, in concrete terms, the reasoning behind our concerns of double materiality in an array of ways. We note that several of these examples have already been provided to TNFD by Rainforest Action Network.

A. TNFD's WoodNCo case study shows why impact reporting is needed

In its June 2022 documents, TNFD did not provide a single case study example of what a TNFD disclosure would look like. It provided one detailed case study based on a fictional company WoodNCo which discussed how a company could assess its dependencies and impacts on nature under the LEAP approach. Under TNFD, companies can use their own processes for identifying impacts or they can choose to use a tool called LEAP. This analysis and assessment remains private – it is not part of TNFD public reporting.

On reporting, the case study simply states that "Having evaluated its dependencies and impacts and assessed the risks and opportunities, WoodNCo prepared disclosures to share its findings with report users. WoodNCo disclosed its findings as part of its annual mainstream financial reporting, annual report and investor-specific communications. It disclosed its most material/relevant risks in detail, while providing transparency on how it determined its approach. The company disclosed metrics that it intends to use for subsequent assessments and monitoring, which could be useful for disclosure users, such as metrics that can be aggregated at an industry or user-portfolio level." In short, it's not exactly clear what WoodNCo would report. Under TNFD, a company only has to self-report on if its relationship with nature significantly affects the financial health of its business in the short, medium or long term. If it believes that some or all of these impacts or dependencies aren't financially significant, it doesn't have to report them at all. This has been strongly critiqued by many NGOs and others.

In addition, if WoodNCo's process for identifying its impacts and dependencies on nature is flawed, its analysis of 'risks and opportunities' to its business will also be flawed. Rainforest Action Network identified several key issues of concern (in blue). These have then been grouped into different categories of core issues with additional explanation provided, as well as broader reflections and commentary on TNFD (in black).

Key issues of concern

1. *Lack of sufficient data to make an informed assessment*

· Approach to assess impacts for companies that lack full traceability/known sources
· Acceptance of lack of geo-spatial data
· Acceptance of certification as a proxy for chain of custody
· Inadequate scope of assessment
· Baseline assessments

o Definitions and methods for assessing deforestation/conversion/degradation and thresholds for what constitutes degrading the condition of the forest and reducing land/ tree cover
o Lack of third party assessments
o Lack of reference to assessments for various time periods (historical, since cut-off dates, current)

Note: A company and its financiers cannot know its risks or impacts on nature and human rights if it doesn't know the origins of the products that it is buying, trading, selling or financing. Companies can choose to write chain of custody, traceability and transparency requirements into their contracts. This is also needed to ensure that the company is not trading in illegal or fraudulent products. This is particularly important where companies choose to operate in sectors or areas of high-risk for environmental harms and human rights abuses.

Similarly, the use of 'cut off dates' has long been written into various policies, standards and laws. This recognizes that the ability to profit off produce grown on cleared land is a key financial motivator for land clearing. Even if a company or individual is subject to a one-off fine for land clearing, it may still ultimately profit from using the land in years to come. Cut-off dates are used to state that a company will not buy or trade a product grown on a land that was forest (or other stated ecosystem) at a certain date – cutting off the market for products grown on cleared land. The cut-off date issue for TCFD and TNFD has been flagged since at least January 2021.

2. Legitimizing and condoning deforestation

· False view that logging (long-term sustainable harvesting yield) can maintain or increase intact forests

· Acceptance of zero net deforestation commitments for producers and net neutrality claims.

· Supplier assessments focus on overlap with illegal deforestation, not all deforestation/conversion/degradation

Note: This appears to be a significant step below the existing expectations of the private sector. For example, the various government, private sector and SDG commitments regarding halting or halving deforestation for the year 2020. As well as broader 'no deforestation, no peatlands, no exploitation' commitments. Shifting the goal posts from aiming for no deforestation or degradation of natural ecosystems, to allowing deforestation under a 'net' approach would see TNFD undermine existing discussions of these issues.

3. Issues regarding data quality such as the lack of verified or third party review of data and assessment

· Acceptance of certification as a proxy for a) sustainable management of forests b)chain of custody

· The lack of lack of third party assessments

Note: It is a basic tenant of ESG conversations, as well as in various national laws, that a company itself is responsible for its own due diligence - it cannot outsource its responsibilities to third parties such as certification schemes. Shortcoming of certification schemes have been extensively documented, for example in this report by Greenpeace and the current case against Bonsucro.

4. Unknown data and outcomes

The case study describes how WoodNCo thinks it's process works but appear to have few, if any, independent checks and balances.

For example:

· It is not known if there are any current complaints, grievances or litigation against WoodNCo.

· It is not known if WoodNCo operates in an area with high violence and threats against local people or other human rights dynamics.

· The report states that the company strategy is to 'transition activities/or suppliers' that do not currently align with the general direction of world leaders' commitments. But the lack of public traceability data, and the lack of company exit or exclusion lists means it is not known if this occurs in practice.

Overall comments:

· A key flaw of this case study is that while it explains WoodNCo's process of identifying dependencies and impacts – it doesn't show us what it would have reported under TNFD's framework.

· Traceability and geolocation – a significant issue for many sectors is that it appears to legitimize and condone companies failing to know the origin of goods that they are buying, trading, using or financing. This is incompatible with the most basic tenants of due diligence.

· Under TNFD reporting it's unlikely that WoodNCo would go into detail to explain what data it was using to assess its supply chain. Meaning that the data gaps and data quality issues identified wouldn't even be clearly communicated.

· Point 2 – 'Legitimizing and condoning deforestation' and the point on cut-off dates stress the importance of TNFD having strong sector and location-based guidance. RAN (and others) are extremely concerned that TNFD plans to rush out its sector guidance in a matter of a few months. This example shows the risk that TNFD will legitimize setting a lower standard than what is already outlined in multiple corporate initiatives and sector standards. This can already be seen in the mismatch between TCFD's Annex on Food, Agriculture and Forest Products and other sector initiatives.

· If TNFD is to present LEAP methodologies for businesses to assess dependencies and impacts it would be helpful to peg this to a higher, rather than a lower, standard. For example, the processes outlined in RAN's Forest Footprint methodology.

· A lack of focus: This case study reflects many of the challenges of TNFD's own processes particularly its skew to focus on complex and detailed datasets (numerous of which are named) before asking more fundamental questions. Such as: What would WoodNCo's *actual* TNFD report look like? Are there any current complaints against the company? Does the company know where its goods come from? Is there any independent verification or oversight of data and company claims?

· There is a need for many more case studies as these provide a concrete point of analysis.

B. Under the proposed model, businesses can be TNFD compliant while continuing to trade and finance illegally produced commodities

As identified by Forest Trends, a significant portion of forest-risk commodities produced in tropical regions, like beef, soy or palm oil, are produced in contravention of local laws and regulations (see also here). The problem is complex, but persists because of widespread impunity, high-profits and business' ability to structure out financial risk, for example, by buying commodities rather than owning plantations – meaning they are less impacted by highly local ecological harms. Agricultural traders, for example, have been able to profit during times of abundant, or scarce, production. This explains why global brands, banks and asset managers continue to be linked to allegations of deforestation and rights violations. Interpol has reported that environmental crime has skyrocketed in recent decades to become the world's fourth largest crime sector growing at 2-3 times the pace of the global economy.

Since the Paris Agreement and the introduction of TCFD reporting financial institutions have made literally thousands of deals with companies linked to deforestation and human rights abuses (see here and here). This signals that they do not see significant financial risk arising in relation to their role in these nature-related harms. This is also reinforced by credit ratings agencies. Under TNFD businesses would only be required to report on their ties to goods that were produced on illegally cleared land "if [the impacts] could reasonably be expected to affect the entity's future cash flows". Given widespread impunity for forest and land-clearing crimes, the structuring out of risk, and the fact that credit ratings agencies themselves are not stating that these risks are material – this suggests that a business could be TNFD compliant, without even having to report if it is linked to the sourcing or financing of companies or activities linked to illegally produced goods so long as these business activities made financial sense. This sets an extraordinarily low bar.

C.Case Study: What could JBS reporting look like under TNFD?

JBS is the world's largest meat packer. In 2020 various NGOs, media agencies, investors and even its own auditor raised concerns about JBS' environmental claims or brought forward allegations that it was sourcing cattle from tens of thousands of hectares of deforested land in the Brazilian Amazon. These concerns were put forward by Greenpeace Brasil, the Bureau of Investigative Journalism, Chain Reaction Research, DNV-GL, Amnesty International, Global Witness and Nordea. JBS has disputed many, if not most, of these claims. Credit ratings agencies also signaled that they do not believe deforestation to present a significant financial impact on JBS' business.

In JBS' most recent 2021 self-report on cattle products to the CDP Forest criteria JBS fails to mention these reports and received a favorable 'B' rating. Under the current TNFD proposal, its TNFD report would likely be in a similar vein. By contrast, if TNFD required JBS to publish a grievance list of complaints and to report on nature-related impacts (not just financial risks to business) this information would likely be captured or at least incongruencies more identifiable.

D. Case Study: The East Africa Crude Oil Pipeline – why focusing on environmental risk, not financial risk, is needed

French oil company TotalEnergies (also known as Total) and majority state-owned China National Offshore Oil Corporation (CNOOC) are planning to build the world's longest heated oil pipeline. The East Africa Crude Oil Pipeline (EACOP) will stretch for nearly 1,445 kilometres and is expected to extract in the vicinity 200,000 barrels of oil per day. According to the global Stop EACOP! campaign, now in its third year, the project threatens to displace thousands of families and farmers and poses significant risks to water resources and wetlands in both Uganda and Tanzania. The pipeline will pass through numerous sensitive biodiversity hotspots and risks degrading several natural reserves critical to preserve threatened elephant, lion and chimpanzee species. The project will transport oil that will generate over 34 million tons of carbon emissions each year. On the back of a large campaign, endorsed by 1 million people, 15 large lenders and 5 insurers have already committed to not supporting EACOP on the basis of climate, biodiversity or human rights concerns. In 2019, six non-profit organisations from France and Uganda launched legal action against Total over its failure to comply with France's Duty of Vigilance law in regards to EACOP.

Total's 2021 annual report, which encompasses its TCFD reporting, shows a reduction in GHG emissions in its Africa operations since 2015. While EACOP is discussed in several places in its annual report, under the TCFD section it's only reference is "The Tilenga and EACOP projects in Uganda were approved with a low technical cost of $11 per barrel and CO2 emissions significantly below those of the current portfolio (13 kg CO2 per barrel vs. 18kg CO2 per barrel)". In its CDP climate report, Total mentions EACOP only once, as part of a list of projects about which it writes "the sanctioned projects have a profitability above the internally defined threshold" – i.e. that Total has undertaken different scenario planning for different hydrocarbon price scenarios and still found EACOP to be profitable, even if markets change in future to lower prices. Total also writes, "The company assess the vulnerability of its facilities to climate hazards so that the consequences do not affect the integrity of the facilities..." and that "these internal studies have not identified any facilities that cannot withstand the consequences of climate change known."

This shows the inherent flaws of focusing on financial risk. As activists Vanessa Nakate and Landry Ninteretse show this also fails to take into account the project's impact on pre- existing, sustainable industries. They write "the pipeline clearly threatens one of the most ecologically diverse and wildlife-rich regions of the world. This is a region home to a number of unique, iconic and endangered animals which are been attracting thousands of tourists. What would happen to the local tourism industry, a source of livelihood to thousands in both countries? Will all of them be employed by the oil projects? What are the mitigation measures in place to address the strong potential loss of jobs in the tourism sector and the related local socio-economic sectors?"

While elsewhere in its annual report Total references a range of studies it has taken, civil society engagements at a general level, its support for civil freedoms and human rights defenders – it does not explicitly acknowledge that there is an active international campaign targeting the project's financing or insurance and other expressed concerns that would have been picked up by a credible grievance list. (Since this report publication, in May 2021 even the International Energy Agency itself has since called for "no new oil and gas field development approvals".) There are also salient concerns raised regarding what this means for TNFD. For example, Total describes the pipeline – which will drag across more than 1,400 kilometres, through two countries, affect over 100,000 people and run through an IUCN II area – as having 'net biodiversity gain'. Net reporting claims that appear to suggest nature will be *better off* because a pipeline has been erected are nonsensical.

This case study reiterates the importance of TNFD requiring business to report on its adverse risks and impacts to nature and people – as focusing on financial risk alone may actually serve to alleviate pressure on businesses if profitability is seen as the overriding important factor.

E. The TNFD proposal skews business to focus on 'neat' cases that fit its model, diverting attention from more high-risk exposures

The TNFD model appears to be particularly well-suited to a certain subset of environmental issues. These are not unimportant, but are less likely to be the most urgent in addressing the nature crisis. For example, a 'neat' TNFD scenario would be a factory that requires the use of water for its processing and manufacturing. TNFD reporting may allow the factory to highlight that while water is cheap today, rising water scarcity in the region means the cost of water is likely to go up in future. This empowers the factory to invest now in infrastructure such as water recycling or reducing water use that is financially beneficial in the long term, but not in the short term. Another 'neat' scenario is for a farm in an area with dramatically dropping biodiversity. This may allow a farm to identify that a continued drop-in pollinator species will lead to increased costs in future from having to hire pollination services. In this case, a farm may calculate that it is more financially beneficial to take land out of production to re-wild and create pollinator habitat, than to pay for pollination services in future. Another 'neat' scenario may be for a company group to focus on planned nature dependencies that are common across their activities – such as water use or soil management. The challenge of TNFD is that if its model steers businesses towards 'neat' cases - particularly through its exclusive focus on financial risk and benefit - it may actually detract from more destructive practices. This includes issues like peatland destruction in supply chains, one-off habitat destruction, rights violations, or water pollution events that may not be planned, reoccurring or even identified until after the fact.

F. Deep seabed mining: When nature-related risks and impacts are contested or unknown it is not possible to extrapolate a meaningful assessment of financial risk

A salient example of why it's important to focus on actual and potential risks and impacts – not solely financial dimensions, is for new industries. Opponents of deep seabed mining in the Pacific argue that the complexity of seabed ecosystems, the little known about creatures and communities there, and the interrelated nature of marine life makes it very difficult to reliably understand its risks and impacts. There are also concerns raised that the international law and regulatory space (for example under The Law of the Sea) has yet to be robustly outlined, given this is a completely new proposed industry. Additionally, the activity is outright opposed by some over cultural, and customary obligations to protect the common heritage of the sea. If the risks and impacts on nature of an entire industry have not been established in practice it is impossible to extrapolate a meaningful middle to long-term assessment of financial risk.

G. Few predicted the financial impact of the global pandemic: Why risks and impacts on nature and people, not only financial risk, are most salient to know

Few, if any businesses, predicted a global pandemic in 2021 and 2021 – let alone its differentiated financial dynamics on nature. The pandemic drew attention to the role of nature in protecting against zoonotic diseases amplifying EU efforts to ban deforestation- linked agribusiness commodities. However, it also led to record profits for some of the world's most environmentally-destructive pulp and paper businesses through new demand for surgical masks and other hygiene products. Similarly, no-one predicted that in 2016 Indigenous resistance to the Dakota Access Pipeline would catalyze a $4.4 billion divestment from the banks backing companies behind it. Nor did they foresee that the assassination of an Indigenous land and environmental defender in Honduras would lead to the Agua Zarca hydroelectric project being abandoned or that the Russian invasion of Ukraine would fundamentally shift policy discussions on oil and gas. Businesses cannot control or even know much of the political, financial and social environment which determines what adverse nature impacts will become financial risk – but they can control their own actions, exposures, accountabilities and operations to ensure that they are not contributing to nature-related harms.

RAN note: This version of the document has been slightly reformatted for consistency.