



GAP ANALYSIS

***LAWS AND POLICIES FOR MAINSTREAMING
BIODIVERSITY IN LIBERIA***

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Objective of the Study

- **Three Main Objectives**
 - Existing (or draft) **provisions in law and policy** that can support and form part of the framework for NNL/NG through implementation of the mitigation hierarchy;
 - **Gaps where new provisions may be needed** to require and encourage the use of the mitigation hierarchy to reach NNL/NG planning and outcomes; and
 - Existing provisions that may need to be **repealed or amended**.



NO Net Loss; Net Gain (NNL/NG)

- **Considered as:**
 - *“...goal for a development project, policy, plan or activity in which the impacts on biodiversity it causes are balanced or outweighed by measures taken to avoid and minimize the impacts, to restore affected areas and finally to offset the residual impacts, so that no loss remains. Where the gain exceeds the loss, the term ‘Net Gain’ may be used instead.”*



NNL/NG Key Concepts

■ Mitigation Hierarchy

- “**First avoid**, then **minimize**, then **restore**, and finally as a last resort **offset** any significant residual negative environmental impacts.”

- *Source: A National Biodiversity Offset Scheme: A Road Map for Liberia’s Mining Sector, World Bank, 2015*

■ Offset Programs

- Programmatically, one of the most attractive and widely acceptable ways of achieving NNL/NG is through biodiversity offset programs.
- Offset programs are “***measurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development after appropriate prevention and mitigation measures have been taken***” BBOP (Business and Biodiversity Offsets Programme) 2009.

- *Source: http://www.foresttrends.org/documents/files/doc_3125.pdf.*

Regulatory Landscape

- Hierarchy of Laws
 - **Constitution of Liberia**
 - *Maximum feasible participation of all citizens in the management of natural resources (Art. 7)*
 - **Statutes**
 - EPML
 - EPA Act
 - NFRL
 - NWL
 - etc
 - **Administrative Laws/Regulations**
 - *ESIA procedural Guidelines*

Triggers for NNL/NG

- **EPML, through ESIA procedural guidelines provides best triggers.**
 - Not direct
 - *In case of offset program by developer*
- ESIA guideline **does not explicitly contain provisions** appertaining to NNL as an outcome for biodiversity but mandate developers to:
 - ***“identify impacts to biodiversity and critical habitat where appropriate.”*** *Section 2 (4) (e), ESIA Procedural Guidelines, 2016*
- **Other Laws reference the EPML and the ESIA process**
 - ***“No provision of this Law limits the requirements or coverage of the environmental impact assessment laws of the Republic.”*** *Section 8.1 (e), National Forestry Reform Law of Liberia, 2006*

Triggers for NNL/NG

- **No mention of mitigation hierarchy but there is a requirement that:**
 - *“mitigation and impact management action shall be taken to establish the measures that are necessary to **avoid, minimize or offset** predicted adverse impacts and, where appropriate, to incorporate these into an environmental management plan or system”* [Section 1.2, ESIA Procedural Guidelines, 2016](#)
 - **holder of a mineral right**
 - *“shall take reasonable **preventative, corrective, and restorative measures** to limit the pollution or the contamination of, or damage to, streams, water bodies, dry land surfaces, or atmosphere as a result of exploration or mining.”* [Section 8.1, Minerals and Mining Law, 2000](#)
 - *“**restore the terrain** of any land disturbed by exploration or mining to its prior state”* [Section 8.2, Minerals and Mining Law, 2000](#)
 - *“ensure that water polluted by its exploration or mining is **restored to its prior state.**”* [Section 8.3, Minerals and Mining Law, 2000](#)

Requirement for NNL/NG Outcome for Biodiversity

- **No requirement for NNL/NG outcome in any legal or policy document**
- However, ESIA guideline provides that:
 - *“the developer or project proponent, shall provide an **environmental mitigation plan**”* Section 15 (1), Environmental Protection and Management Law of Liberia, 2002
 - *The purpose of the mitigation plan is “to establish the measures that are necessary to avoid, minimize or offset predicted adverse impacts and, where appropriate to incorporate these into an environmental management plan or system.”* Section 1.2, ESIA Procedural Guidelines, 2016
 - *“mitigation measures are required for all potential impacts identified including those identified on biodiversity.”* Section 2 (5), ESIA Procedural Guidelines, 2016
- Adoption of the **principle of sustainable development, polluter pays principle**, and the **precaution principle**. Section 4 (a)(b)(c), Environmental Protection and Management Law of Liberia, 2002

Requirement for Offset and/or Compensation

- **No specific requirement for offset program**
- But a requirement for mitigation and impact management which means
 - *“to establish the measures that are necessary to avoid, minimize **or offset predicted adverse impacts** and, where appropriate to incorporate these into an environmental management plan or system.”* [Section 1.2, ESIA Procedural Guidelines, 2016](#)
- EPML requires that:
 - *“**Forest utilization agreements** shall incorporate measures for rehabilitation and restoration requirements for:*
 - *a) Afforestation and reforestation;*
 - *b) **Deposit bonds** paid before the issuance of the exploitation licenses to ensure compliance with any conditions or performance of obligations for rehabilitation and restoration;”* [Section 77 \(6\)\(a\)\(b\), Environmental Protection and Management Law of Liberia, 2002](#)

Direct, Indirect and Cumulative Impacts

- **The EPML provides for direct, indirect and cumulative impacts to be assessed:**

- *“environmental impact of the proposed activity or project including its **direct, indirect, cumulative**, short-term and long-term effects on both the natural and built environments and on public health and safety.”* [Section 14, Environmental Protection and Management Law of Liberia, 2002](#)



- **The ESIA guidelines provides that**

- *“first, an exhaustive list of all impacts including **minor/major, short/long term, moderate, direct and indirect**, is drawn up.”* [Section 3.2.6, ESIA Procedural Guidelines, 2016](#)

Requirement for EIA & SEA

- **EPML provides:**

- “*an environment impact assessment license or permit shall be required prior to the commencement of **all projects and activities** specified in the Annex I to this Law*” [Section 6, Environmental Protection and Management Law of Liberia, 2002](#)

- **NFRL provides**

- “*the contract must require the Holder to **prepare all environmental impact assessments** required under the laws governing environmental protection.*” [Section 5.3 \(b\)\(iv\), National Forestry Reform Law of Liberia, 2006](#)
- “no Person shall waste Forest Resources, expose natural resources to damage, destroy the long-term productivity of Forest Land, or significantly harm the forest Environment unless the action has been approved under the environmental impact assessment laws of the Republic.”
- [Section 8.1 \(d\)\(ii\), National Forestry Reform Law of Liberia, 2006](#)

- **NO policy/legal requirement for SEA**

Requirement for Threatened/Protected Species

- The EPML provides:
 - “*all wild animals and birds and in particular, rare, threatened and endangered species and their habitats shall be **preserved and protected** in accordance with the guidelines and recommendations made by the Agency after consultation with the Line Ministry.*” [Section 80 \(1\), Environmental Protection and Management Law of Liberia, 2002](#)
 - EPA shall issue guidelines to “*determine which components of biological resources are endangered, rare or threatened with extinction.*” [Section 83\(1\)\(c\), Environmental Protection and Management Law of Liberia, 2002](#)



Requirement for Threatened/Protected Species

- **NWL provides:**
 - FDA shall “***protect, preserve and manage wildlife that are endemic, rare, threatened or endangered by extinction;***” [Article 2.2 \(4\)\(c\), National Wildlife Conservation and Protected Area Management Law, 2012](#)
 - FDA shall at least once every year conduct species classification to “***review the population, distribution, and status of Liberia's wildlife and identify categories of animals and plants that are threatened with or in danger of extinction;***” [Article 6.3 \(b\), National Wildlife Conservation and Protected Area Management Law, 2012](#)
 - FDA to promulgate regulations to “***establish a procedure and criteria for listing and delisting threatened and endangered species, including CITES Appendix I and II species.***” [Article 6.3 \(c\)\(ii\), National Wildlife Conservation and Protected Area Management Law, 2012](#)

Requirement for Environmental Planning

- **National Environmental Action Plan (NEAP)**
every five years.
 - The plan shall “*contain all matters affecting the environment and provide general guidelines for the management and protection of the environment and natural resources of Liberia as well as the strategies for preventing, controlling, or mitigating any deleterious effects;*” [Section 30\(2\)\(a\), Environmental Protection and Management Law of Liberia, 2002](#)
- FDA is required to:
 - “*prepare, and from time to time revise, a **National Forest Management Strategy** reflecting the Policy mandated under Section 4.3 of this Chapter and any national land, economic, or development plans in effect.*” [Section 4.4 \(d\), National Forestry Reform Law of Liberia, 2006](#)



Key Sectoral Policies underpinning NNL/NHG

- **National Petroleum Policy (preamble of chapter 9)**
 - *“petroleum exploration and exploitation is fraught with significant risks to health, safety, and the environment. It is the responsibility of licensed oil companies, their agents, and contractors, to **protect the environment** where they work or any areas in the country that could be impacted by their operations; the Government shall legislate, regulate and monitor compliance. If not properly regulated and safeguarded, the sector can **adversely impact** the health and safety of the country’s citizens and communities, customary land use patterns, and the long term social and **environmental sustainability** of the nation.”*

- **Fisheries and Aquaculture Policy and Strategy**
 - One of the significant interventions listed in the policy is to “**monitor aquatic biodiversity and key habitats** through periodic assessments so as to identify critical changes and their origin.” [Section 3.2.2, Fisheries and Aquaculture Policy and Strategy, 2014](#)

Key Sectoral Policies

■ Food and Agriculture Policy and Strategy (FAPS)

- Under **Strategy 5** there is an intervention to “*support participatory Environmental Impact Assessment (EIA) in agricultural and forestry concessions;*” Under its cross-cutting issue of “**Agriculture and Environment**”, a policy has been designed to ensure “*Nationwide awareness and mainstreaming environmental considerations in all agricultural activities: production, processing, manufacturing, value addition and marketing*” with an attending strategy to “*support measures to subject all sector policies and plans to Strategic Environmental Assessments (SEAs) and projects to Environmental Impact Assessments (EIAs);*” [Section 2.3.5, Food and Agriculture Policy and Strategy of Liberia](#) & [Section 6.2.3, Section 2.3.5, Food and Agriculture Policy and Strategy of Liberia](#)

■ REDD+ Strategy

- **Strategic Priority 2:** commitment to “*ensure that all industrial logging is practiced to high conservation standards, so that **loss of forest and biodiversity is minimized.***” [Section 3.3, REDD+ Strategy, Republic of Liberia, 2016](#)
- **Strategic Priority 4:** commitment to “*ensure that mining result in zero-net deforestation, through mechanisms such as biodiversity offsets.*” [Section 3.3, REDD+ Strategy, Republic of Liberia, 2016](#)

Key Sectoral Policies

■ National Forest Policy

– Requires that the following activities be implemented:

- *“Collect and **analyze biological and socio-economic information** to determine the status of existing and **proposed protected areas** and finalize the establishment of an appropriate **protected areas network**; Increase community participation in wildlife management in all forest areas and, in particular, through collaborative management of protected areas; and Strengthen and improve alternative livelihood opportunities to reduce rural dependence on forests and wildlife.”*

Section 7.1, 7.2, & 7.4, National Forest Policy and Implementation Strategy, 2006

■ Mineral and Mining Policy

- *“no significant mineral operation will be permitted **without** an **environment and social impact assessment** having been conducted, evaluated and approved by the Liberia Government. Plans for managing environmental and social impacts must be incorporated into the assessment reports.”* *Section 7, Mineral Policy of Liberia, 2010*

■ National Biodiversity Strategy and Action Plan (NBSAP)

- *Biodiversity-focused*

Long-term commitment on Land

- Mining Exploitation Rights
 - *“the duration of an exclusive exploitation authorization shall be provided in the petroleum agreement for a maximum of twenty-five years from the date of issue of such authorization.”* [Section 21.4, New Petroleum \(Exploration and Production\) Reform Act, 2014](#)
- **Forest Concession**
 - FMC—25 years
- **Agricultural concession**
 - For customary land, the maximum time for executing a lease through agricultural concessions or other means is fifty (50) years. [Section 49 \(4\), Land Rights Act](#)
- **Community forest management agreement**
 - 15 years subject to unlimited extension

Decision for FPIC

- **Yes, FPIC is required.**

- *" The Republic shall... manage the national economy and the natural resources of Liberia in such manner as shall ensure the **maximum feasible participation of Liberian citizens** under conditions of equality as to advance the general welfare of the Liberian people and the economic development of Liberia"*. [Article 7, Constitution of Liberia, 1986](#)
- The EPML requires broad participation in the management and decision-making affecting natural resources. [Section 4\(2\)\(g\), Environmental Protection and Management Law of Liberia, 2003](#)
- FDA to establish a clear mechanism for informed community participation in forest decision-making. [Section 10.1\(b\)\(ii\), National Forestry Reform Law of Liberia, 2006](#)
- FDA to take actions to institutionalize community participation in forest-related development and management. [Section 5.1\(f\), National Forestry Reform Law of Liberia, 2006](#)
- Land Rights Act provides FPIC requirements for accessing customary land for development

Legal and Policy Gaps for NNL/NG

- Absence of specific reference in all sector-related laws to:
 - **Mitigation Hierarchy and NNL Outcomes**
- **NO biodiversity-specific regulation**
 - requiring developers to mainstream biodiversity and also mandating government agencies and other non-governmental organizations to take actions in promoting biodiversity conservation through NNL/NG.
- No regulations to set up and manage the **conservation and wildlife fund** as required by NWL of 2012
- **Absence of NNL/NG in NBSAP**
- *Show Gaps Table in the report*

Other environmental offsets (e.g. carbon, water, social issues) and Payments for Ecosystem Services

- **NO Law or Policy**
- **However:**
 - **The Environmental Policy**
 - Adopts the **polluter pay principle** as one of the underlying principles
 - mandates that **environmental costs or benefits foregone** as a result of environmental damage /degradation be included in public and private sector planning.
 - **Nationally Determined Contribution (NDC)**
 - provides policy guidance on incentivizing mitigation activities in agriculture and coastal zones (water). [Liberia's Revised National Determined Contribution](http://extwprlegs1.fao.org/docs/pdf/lbr206208.pdf), available @ <http://extwprlegs1.fao.org/docs/pdf/lbr206208.pdf>
 -

Requirement for Quantified Assessment

- There is **no established requirement** for quantified assessment of the effectiveness of mitigation and offsets implementation.
- **ESIA guidelines require that:**
 - “a detailed environmental monitoring programme/plan should be defined to identify the necessary monitoring activities to ensure proper process and performance efficiency of the project.” [3.2.12, ESIA Procedural Guidelines](#)
- **EPML provides that:**
 - “periodic environmental audit of all projects and activities”
[Section 24, Environmental Protection and Management Law of Liberia](#)