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Nets and frames, losses and gains: Value struggles in engagements with biodiversity offsetting policy in England

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ABSTRACT

Biodiversity offsetting (BDO) is presented as capable of mitigating development-related harm to populations of species while simultaneously enhancing economic development. The technique involves constructing such harm as a result of market failures, which can be resolved through market solutions. BDO is contentious, attracting outspoken proponents and opponents in equal measure. We examine competing perspectives of interested non-governmental actors through a structured discourse analysis, using qualitative data coding, of 24 written evidence submissions to the UK Parliament's Environmental Audit Committee's 2013 Inquiry into Biodiversity Offsetting in England. Nuanced positions and areas of agreement notwithstanding, we find that there is a discernible oppositional pattern producing core polarities between organisations favouring and resisting BDO. In interpreting these oppositional dynamics we observe that it is unlikely that this *impasse* can be resolved since although the debate is framed in terms of differences of view regarding the effectiveness or desirability of specific technical aspects of BDO policy, these differences arise from fundamentally divergent value framings. Struggles over offsetting involve irresolvable value struggles, and negotiations over the assumed (ir)rationality of biodiversity offsetting are thus located firmly within political and ideological arenas.

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'Nature will not suffer herself to be taken by Nets spun out of the Brain.' (James Keill, 1738).

1. Introducing biodiversity offsetting¹

Biodiversity offsetting (BDO²) is proposed as a mitigation technique for managing development-related harm to habitats and associated populations. It requires investment in conservation

in one or more locations, distinct from the development site, in such a way as to measurably produce 'no net loss', or even a net gain, of biodiversity in a wider area, and over a specified period of time stretching into the future (BBOP, 2009: 3; also see ten Kate, 2003; ten Kate et al., 2004, 9–10; BBOP, 2012).

BDO involves (1) the use of standardised calculative frameworks for quantifying harm to populations of species caused by changes in infrastructure and industrial developments, and (2) the exchanging or trading of this calculated harm through payment for an equivalent or higher calculated increase in biodiversity value (an 'offset') in a different location and over a specified time period. This strategy is claimed to facilitate multiple-win environment and development scenarios. 'Biodiversity' is seen to be vested with new economic values that both honour its increasing scarcity due to human impacts and valorise sites of its conservation and flourishing, making it more likely that such sites will be sustained and enhanced. Economic development is boosted both by creating a new technique whereby development-related harm can be more easily compensated for, and by constructing biodiversity conservation itself as a commodity that might be traded in entrepreneurial markets. 'Offsets,' including biodiversity offsets, are presented as an extension of the mitigation hierarchy deployed for some decades in Environmental Impact Assessment (cf. Carroll and Turpin, 2009). They are increasingly significant as a 'last resort' mitigation tool due to their apparent ability to compensate for residual biodiversity losses arising from developments considered as 'unavoidable'.

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¹ An earlier version of this paper was presented by Sian Sullivan as 'Value struggles in the construction of biodiversity offsetting in England' at a December 2013 Leverhulme Centre for the Study of Value research workshop, University of Manchester (www.studyofvalue.org).

² Abbreviations used in the text: AONB – Area of Outstanding Natural Beauty; BDO – Biodiversity Offsetting; CBD – Convention on Biological Diversity; DCLG – Department for Communities and Local Government; DEFRA – UK's Department for Environment, Food and Rural Affairs; EAC – UK Parliamentary Environmental Audit Committee; EMTF – Ecosystem Markets Task Force; IUCN – International Union for the Conservation of Nature; LPAs – Local Planning Authorities; MBIs – Market-Based Instruments; NNL – No Net Loss; NPPF – National Planning Policy Framework; SSSIs – Sites of Special Scientific Interest; UK BAP – United Kingdom Biodiversity Action Plan; UN CBD – United Nations Convention on Biodiversity. Table 1 lists the abbreviations used for organisations on whose written evidence submissions to the EAC our analysis is based.

International collaboration favouring BDO solutions to biodiversity loss has been fostered by the Business and Biodiversity Offsets Programme (BBOP) of the market-oriented Forest Trends group, a consortium of representatives from companies, financial institutions, governments and non-governmental organizations (NGOs).³ Under the directorship of lawyer and consultant Kerry ten Kate, BBOP has developed global principles and standards for biodiversity offsets, supported by an array of technical papers and guidelines.⁴ By calculating apparent commensurability and substitutability between units of species, sites and habitats under inalienable property designations, such technical guidelines create and support the possibility of trade in these units between locations chosen for 'unavoidable' harm due to development, and locations chosen for investment in conservation.

A growing number of states are drawing up national policies for the enabling and regulation of BDO, accompanied by nascent regional policy such as the European Union's No Net Loss initiative.⁵ This combination of emergent national and regional policy frameworks with the participation, via BBOP, of multinational corporate and financial institutions in BDO guidelines and design, is placing BDO centre stage as a conservation technology with the potential to stimulate 'green growth' on a global scale.

1.1. BDO policy in England

Together with the United States, Australia, South Africa and Germany, England is considered to be at the forefront of developing BDO as a market-based ecological compensation policy (cf. Koh et al., 2014).⁶ In the UK, biodiversity offsetting has been unambiguously endorsed at Ministerial level:

Our economy cannot afford planning processes that deal with biodiversity expensively and inefficiently or block the housing and infrastructure our economy needs to grow. Our environment cannot afford the wrong type of development which eats away at nature. [...] Fortunately, as the Ecosystems Market Task Force and Natural Capital Committee have set out, there is a way we can make our planning system even better for the environment and developers: biodiversity offsetting. (Ministerial Foreword, DEFRA *Biodiversity Offsetting in England Green Paper*, 2013)

Several key policy documents and reports paved the way for this 2013 DEFRA Green Paper. The 2010 Lawton Report *Making Space for Nature* suggested that BDO might become a source of new private sector funding for a much-needed consolidation and extension of currently under-funded conservation estate (Lawton et al., 2010: 86). Building on these recommendations, DEFRA's 2011 Natural Environment White Paper affirmed (at para 2.40) that 'biodiversity offsetting should be pursued in line with guiding principles, based on those set out in *Making Space for Nature*', and signalled the government's intention to set up pilot schemes as a first step towards a national policy. The 2012 National Planning Policy Framework (NPPF), while acknowledging that compensation remained a last resort under the mitigation hierarchy, nonetheless included new wording giving a clear signal to local authority planners that offsite compensation could potentially be

used to legitimise development whose biodiversity impacts would otherwise have rendered it impermissible:

if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. (DCLG, 2012 para. 118)

DEFRA duly set up pilot schemes, involving six local planning authorities and various private sector actors and running for two years from April 2012 to April 2014 (DEFRA, 2012a; for discussion see e.g. Carver, in press). At the time of writing the results are being assessed by a consultancy (Collingwood Environmental Planning), whose report will inform subsequent legislative moves towards a national policy. This policy is being developed alongside, and at times in tension with, a range of existing statutory guidelines, frameworks and policies for the multiscale protection of species, habitats and landscapes. These include listings of scarce and protected species, from IUCN's Red Lists of Threatened Species⁷ to Natural England's Biodiversity Action Plan⁸ and its local counterparts; obligations to conserve and enhance the natural beauty of the landscape (as set out in s.85 of the Countryside and Rights of Way Act 2000, and assisted by the IUCN's inclusion of AONBs as Category V Protected Landscapes); the UK's Post-2010 Biodiversity Framework as required by the United Nations Convention on Biological Diversity; the business-led Ecosystem Markets Task Force (EMTF) (Duke et al., 2012) report commissioned by government, which promotes BDO as a major economic opportunity; the Environmental Protection Act (EPA) 1990, which gives a legal definition of 'significant harm'⁹; and the 1992 European Commission Habitats Directive,¹⁰ which sets out requirements for provision of compensatory habitat.

1.2. A potent moment

BDO in England is attracting outspoken proponents and opponents in equal measure, from a wide spectrum of interest groups. Several recent events illustrate the liveliness of the debate. Between September and November 2013 DEFRA held a public consultation on its proposed policy, structured around 38 specific questions relating to its BDO Green Paper (DEFRA, 2013). Workshops were held in various locations as part of this consultation (we participated in one held in London on 27th October 2013), and on 22nd October the Royal Society hosted a policy discussion entitled 'Biodiversity Offsetting: can it work in England?' (which we also attended). Simultaneously, the UK Parliament's Environmental Audit Committee (EAC) conducted its own Inquiry into Biodiversity Offsetting in England,¹¹ following extensive questioning of the Head of the UK's Natural Capital Committee, Prof. Dieter Helm, on BDO in the context of an earlier Inquiry into Well-being.¹² We contributed submissions to both the DEFRA and EAC consultations, as academics with a research interest in BDO.

Alongside these interventions, October 2013 also saw publication of a strongly worded statement asserting 'No to Biodiversity

⁷ <http://www.iucnredlist.org/>.

⁸ <http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectedlandmanagement/prioritylist.aspx>.

⁹ <http://www.legislation.gov.uk/ukpga/1990/43/contents>.

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML>.

¹¹ See launch notice at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news/biodiversity-offsetting-launch/>.

¹² <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2010/well-being/>.

³ <http://bbop.forest-trends.org/>.

⁴ For the full range of BBOP resources see: <http://bbop.forest-trends.org/pages/guidelines>.

⁵ See http://ec.europa.eu/environment/nature/biodiversity/nnl/index_en.htm.

⁶ See <https://www.gov.uk/biodiversity-offsetting>. Biodiversity conservation policy in Scotland, Wales and Northern Ireland is handled by the devolved administrations. Voluntary biodiversity offsetting is also increasing internationally, particularly by extractive industries (see review by Benabou, 2014).

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