
15 SEPTEMBER 2022

National Biodiversity Market

Submission to the Department of Climate Change, Energy, the Environment and Water 

Introduction

Thank you for the opportunity to comment on the proposed legislative framework to establish a voluntary national biodiversity market.

Adequate investment is essential to improve the state of biodiversity in Australia. ACF supports, in principle, the intention to provide financial incentives to landholders for biodiversity stewardship, and to facilitate private investment in biodiversity protection and restoration. We also welcome the extension of the regime to all landholders, rather than just the agricultural sector, which was the focus of the previous government's proposed biodiversity market legislation.

However, the proposed biodiversity market scheme should be supported and complemented by regulatory reform and appropriate public investment in biodiversity protection and restoration. It must be carefully designed so it delivers genuine outcomes for nature and avoids the integrity issues that have weakened and undermined many similar carbon credit and biodiversity offset market schemes. The proposed scheme should have strong integrity and governance arrangements to ensure it provides transparent, genuine, verifiable environmental outcomes and delivers a net-gain for biodiversity.

Summary of key recommendations

- 1. ACF recommends that the proposed biodiversity market scheme be supported and complemented by regulatory reform and appropriate public investment in biodiversity protection and restoration.**
- 2. ACF recommends that the proposed biodiversity market scheme have an overall objective, which should be to achieve a net gain in biodiversity across Australia which has long term security both in terms of protection and management.**
- 3. ACF recommends that the proposed scheme has strong integrity and governance arrangements to ensure it provides genuine, transparent, verifiable environmental outcomes and delivers a net-gain for biodiversity. The scheme must be carefully designed so it delivers genuine outcomes for nature and avoids the integrity issues that have plagued many similar carbon credit and biodiversity offset market schemes. In particular:**



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- a. the outcomes and recommendations from the current independent review of the integrity of Australian Carbon Credit Units (ACCUs) under the Emissions Reduction Fund should be incorporated into the design of this proposed scheme.
 - b. ACF does not support any integration of this proposed scheme with biodiversity offsets schemes at this stage. Biodiversity certificates should be about stewardship and not offsets. Offsetting schemes have been highly problematic and are in urgent need of reform.
 - c. the scheme must be based on strong tools and methodologies for measuring and verifying biodiversity gains, such as the [Accounting for Nature Framework](#).
 - d. the governance and implementation of the scheme should be robust and supported by appropriate resourcing and biodiversity expertise, including for monitoring and verification. The Clean Energy Regulator, as currently constituted, is not the appropriate body to administer a biodiversity scheme.

Key issues

Framework Integrity

ACF is concerned that the proposed biodiversity market framework appears to be heavily based on the carbon crediting framework for the Emissions Reduction Fund (ERF) under the *Carbon Credits (Carbon Farming Initiative) Act 2011* – which is currently [under review](#) due to serious integrity concerns.¹ The timeframe for development of this biodiversity market legislative framework should ensure that the outcomes and recommendations from that review are incorporated into the design of this scheme.

In addition, while we understand that the government is currently consulting on the scheme's 'foundational elements', there is currently minimal detail about important aspects of the scheme, which will be crucial to the integrity of the regime. In particular, the proposed protocols, biodiversity integrity standards and the composition and expertise of the proposed Advisory Committee, will be important safeguards under the system and must be robust in terms of the quality of the standards and the expertise of the committee. In particular, it will be important to ensure the proposed market protects and enhances biodiversity beyond that required by laws and policies and excludes activities that could reasonably be expected to occur anyway (that is, the scheme avoids additionality).

The fact sheet does not address the content of the "standards for biodiversity integrity". ACF suggests the Act should contain key aspects of the standards and there be provision for additional standards via regulation. The fact sheet states that *'the Minister would make the biodiversity protocols, with the advice of an independent expert advisory*

¹ See also eg https://www.acf.org.au/questionable_integrity
<https://law.anu.edu.au/research/publications?text=&theme=622&year%5Bvalue%5D%5Byear%5D=&nid=&author=All>



committee. The Minister would also 'have regard to' the consistency of a protocol with a set of biodiversity integrity standards'. The fact sheet compares this to methodologies under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (CFI Act). However, for the Minister to merely 'have regard' to the consistency of a protocol with a set of biodiversity integrity standards is not sufficient: the legislation should require the protocols to be consistent with the standards.² The CFI Act requires consideration of whether a methodology "complies" with relevant standards. ACF submits for this legislation, the Minister must be satisfied of compliance/consistency, not merely consider it (see CFI section 106(4)(a)).

Moreover, as the fact sheet acknowledges, biodiversity is a completely different, and more complex system, and is more difficult to measure, monitor and accredit, when compared to greenhouse gas emissions. In comparison to Australian Carbon Credit Units – which each represent one tonne of carbon dioxide equivalent stored or avoided by a project – each biodiversity certificate would be unique and, as noted in the fact sheet, 'not directly equivalent'. This proposed scheme must be based on robust tools and methodologies for measuring and verifying biodiversity gains, such as the [Accounting for Nature Framework](#). Even with these tools and methodologies, it is not clear how the value of a biodiversity certificate will be created, nor how biodiversity certificates relating to different components of biodiversity can be 'traded' on an open market when they are not directly equivalent.

There has also not been sufficient time to examine and evaluate the recent biodiversity pilots for Carbon+Biodiversity and for Enhancing Remnant Vegetation, which may provide important learnings for this proposed scheme. It would be useful to evaluate the results from these pilots, which have only recently been initiated, to ascertain whether they are achieving biodiversity outcomes and where improvements could be made.

The successes and failures of other biodiversity market schemes should also be taken into account in the design of this scheme. In particular, the recent NSW Auditor-General's report on the effectiveness of the Biodiversity Offsets Scheme cited significant integrity, transparency, and sustainability concerns. The NSW scheme has delivered minimal biodiversity benefits, with only 37 biodiversity stewardship agreements established over the five years since its commencement. The biodiversity credit market is significantly undersupplied; around 90% of demand cannot be matched to credit supply. Reasons include significant financial barriers to entry for landholders, lack of market information, complex scheme rules, tax considerations, and the lack of a complete public register of credits and their transaction history (despite this being a statutory requirement).

Overall objective of the scheme

The framework fact sheet states that biodiversity projects would need to 'enhance or protect native biodiversity'. ACF considers that the objective of the scheme should be to achieve a net gain in biodiversity across Australia which has long term security both in terms of protection and management.

² P Burnett, 'The Farm Biodiversity Stewardship Market Bill 2022 – Watch out for weasel words', *Sustainability Bites*, 23 March 2022, <<https://sustainabilitybites.home.blog/2022/03/23/the-farm-biodiversity-stewardship-market-bill-2022-watch-out-for-weasel-words/>>



As well as rules that ensure integrity and effective monitoring, verification and enforcement, the scheme should establish a clear SMART (Specific, Measurable, Achievable, Relevant, and Time-Bound) goal or overall objective for the scheme to achieve and be monitored against. In addition, the scheme should be aligned with the strong global goals that scientists tell us are needed under the proposed Post-2020 Global Biodiversity Framework under the Convention on Biological Diversity.³ This Framework proposes to set out goals and targets to protect and restore nature for the next decade and beyond so countries can, individually and collectively, achieve the overall vision of ‘living in harmony with nature’ by 2050.

To achieve a ‘Nature Positive’ world by 2030, Australia needs to halt and reverse nature loss measured from a baseline of 2020, through increasing the health, abundance, diversity and resilience of species, populations and ecosystems so that by 2030 nature is visibly and measurably on the path of recovery, with full recovery by 2050.⁴

In addition, while ACF supports the objective of encouraging private sector investment in biodiversity protection and restoration, the level and source of demand for the proposed scheme is currently unclear. The scheme proposes to have one certificate per project (rather than per unit), which may make it difficult for investors to ascertain the value of each certificate. This will require highly specialised biodiversity knowledge and financial expertise. As such, the complexity and expense involved may present a significant barrier to entry and involvement in the scheme.

Nature of Certificates

The fact sheet also does not go into detail on the nature of certificates. For instance, how the certificates will be linked (if at all) to land tenure, how successors in title are treated, how future promises inherent in the issuing of certificates are secured. It also does not address how purchasers of biodiversity certificates can be assured that the project is intact / providing true benefit to biodiversity. ACF suggests these elements should be the subject of consultation before legislation is prepared as they are key to whether the scheme is supportable.

Transparency

The registration of eligible offset projects and issuing of ACCUs under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) is opaque. For instance, in 2022 ACF sought reasons to explain why a particular eligible offset project was registered under an approved methodology. The Clean Energy Regulator (CER) has refused to provide reasons on the basis ACF does not have “standing”. It is not possible to independently verify whether a particular project meets the statutory requirements due to the CER not releasing site specific information or application information.

³ S. Diaz, N. Zafra-Calvo, A. Purvis, P. Verburg, D. Obura, P. Leadley, R. Chaplin-Kramer, L. De Meester, E. Dulloo, B. Martín-López, et al. ‘Set ambitious goals for biodiversity and sustainability’ *Science*, 370 (2020), pp. 411-413, <https://www.science.org/doi/abs/10.1126/science.abe1530>

⁴ See further: <https://www.naturepositive.org/>



The Fact Sheet indicates a public register will exist however the focus of disclosure appears to be on buyers and sellers and not transparency generally. The location of projects and of specific biodiversity areas should be published together with the application for registration of projects, decision on project and reasons and details of the issuing of certificates. Details of monitoring, verification and enforcement should also be made public with usual limits around disclosing law enforcement activities.

The scheme should start with maximum transparency. It is entirely new. Entrants into it will develop an expectation of transparency if that is how the legislation is drafted. The public that funds this scheme is entitled to be able to verify it is operating properly.

ACF appreciates some information is not appropriate to disclose. However, that should be the exception and only occur following application by the applicant and a decision of the receiving regulatory entity within strict parameters and under an objective of transparency.

Linkages with offset schemes

While ACF supports the concept of financial stewardship scheme which provides incentives for biodiversity protection and restoration, there are significant risks that the scheme will not achieve its aims or meet its potential if it is tied to biodiversity offsets schemes. The interaction of the proposed scheme with biodiversity offsets and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is unclear. The fact sheet does not refer to offsets however ACF considers it would be sensible in the legislative drafting and public consultation process for the government to make clear that biodiversity certificates are about stewardship and not offsets. Biodiversity certificates must not be used to offset environmental damage in the approval context (state or Federal). While the scheme could be broadly aligned with a reformed *EPBC Act*, ACF does not support any integration of this proposed scheme with biodiversity offsets schemes at this stage.

Offsetting schemes have been plagued with problems and need to be reformed - as revealed in the recent NSW Auditor-General's report, and the Samuel review of the *EPBC Act*. The operation of biodiversity offsetting schemes has been found to be deeply flawed and reform is required to ensure that offsets are a last resort and to reinstate a decision-making hierarchy of 'avoid, minimise, mitigate and offset'. The Samuel Review recommended immediate changes to the application of environmental offsets under the EPBC Act to ensure that offsets do not contribute to environmental decline (see Samuel Review, recommendation 27 and Box 28). Offsets must deliver a net gain and be a genuine last resort, and only considered after all possible measures have demonstrably been taken to avoid impacts, including refusal, and remaining impacts have been mitigated. Among other matters, a National Environmental Standard for restoration, including offsets, needs to be developed and implemented under the EPBC Act to ensure:

- genuine restoration is delivered in areas of highest priority using an ecosystems-based approach;
- offsets are ecologically feasible and achievable, with a high confidence of success;
- offsets can be achieved in a timeframe proportionate to address the impact to be mitigated; and
- offsets are identified and legally secured prior to commencement of the approved impact.



Until these problems are rectified, the proposed scheme should not be linked to biodiversity offsets schemes.

Moreover, given that biodiversity offsets are regularly required as a condition of approval under the EPBC Act, these offsets should be excluded from the scheme as they are already required by law. To provide otherwise could introduce a perverse incentive to destroy habitat and would interfere with the principle of additionality.

Administrative responsibility

The governance and implementation of the scheme should be supported by appropriate expertise. The fact sheet suggests that the Clean Energy Regulator would be responsible for administering many elements of the proposed framework. However, the Clean Energy Regulator, as currently constituted, is not the appropriate body to administer a biodiversity scheme. The Clean Energy Regulator is a regulator focussed on measuring, reducing and offsetting Australia's carbon emissions, including through the Renewable Energy Target and the Emissions Reduction Fund. As such, it currently does not have expertise in biodiversity measurement and management. It will be important to have mechanisms and safeguards to ensure that the administration of the scheme is supported by sufficient expertise in biodiversity. The governance arrangements should also ensure strong structural separation between the entities responsible for key decisions and functions, including developing biodiversity protocols, issuing biodiversity certificates, and compliance and monitoring.⁵

The legislation should also prescribe that the Advisory Committee must be well-resourced and have appropriate representation and expertise, including from the First Nations community, environmental advocacy organisations, academics/scientists, and industry groups likely to utilise certificates. Provisions must be included to avoid conflicts of interest and the involvement of individuals with close links to the likely beneficiaries of the regime.

Finally, the administration and regulation of the scheme should also be properly resourced with adequate funding and appropriately trained staff.

About ACF

ACF is Australia's national environmental organisation. We represent a community of more than 700,000 people who are committed to achieving a healthy environment for all Australians. For more than 50 years ACF has been a strong advocate for Australia's forests, rivers, people and wildlife. ACF is proudly independent, non-partisan and funded by donations from our community.

⁵ Noting that concerns have been raised about the structural separation of key functions within the Clean Energy Regulator, and similarly in the Murray-Darling Basin Authority: see eg Productivity Commission, 2018, *Murray-Darling Basin Plan: Five-year assessment*, Final Report no. 90, <https://www.pc.gov.au/inquiries/completed/basin-plan/report>

