

Policy Proposals for Biodiversity Conservation

September 2010

Study Group for the Development of Biodiversity Conservation Policies

Preface

Friends of the Earth (FoE) Japan set up the Study Group for the Development of Biodiversity Conservation Policies in June 2009 in cooperation with the Global Environment Information Center (GEIC) with an aim of discussing and formulating biodiversity conservation policies in Japan.

Participants of the Study Group were Masahiro MIYAZAKI (Chair), Naoki ADACHI, Hirotsugu DAISHIMA, Mutai HASHIMOTO, Takemichi HATAKEYAMA, Kiichiro HAYASHI, Tooru HATTORI, Yasushi HIBI, Noritaka ICHIDA, Kazuyuki KAMEI, Mamiko KAWANO, Kazushige KIDO, Kazuyuki KISHI, Mari MOMII, Fumiaki NAGAISHI, Ayumi ONUMA, Kyoji OKAMOTO, Yuki SAKAMOTO, Kenichi SATO, Tomoko SHIMURA, Katsuo SUZUKI, Takeshi SEKI, Akira TANAKA, Masatsugu TANIGUCHI, Miyuki TOMARI, Keisuke UEDA, Yoriyuki YAMADA.

The Study Group held meetings monthly and its draft report was made public on website of FoE Japan for public comments in February 2010, and was also discussed in a symposium organized in the 57th Annual Meeting of the Ecological Society of Japan held at Tokyo University on 19 March 2010. The final report was concluded after considering comments from the public submitted through those procedures.

This report was formed on a consensus of the study group members, but it is not official opinions of organizations that these members belong to.

The policy proposals developed by the Study Group are primarily for policy-makers of the Japanese government. However, they are also intended to serve as proposals by Japanese citizens to the international audience attending the 10th Conference of the Parties (COP10) of CBD.

We do hope that the Government of Japan and international attendants in COP10 will consider practical policies and measures based on these proposals.

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Summary

This document proposes that the Parties to CBD agree to set a goal to make the loss of the world's biodiversity zero by 2020 at COP10. At the same time, the document also makes the following six proposals specifically for the Government of Japan, in order for Japan to achieve the above goal both domestically and internationally.

Proposal 1 Introduction of a “No Net Loss” Policy

Proposal 2 Making a Strategic Environmental Assessment a Legal Requirement

Proposal 3 Amendments to Existing Laws and Schemes for Biodiversity Conservation

Proposal 4 Citizens Participation in the Policy-Making Process

Proposal 5 Biodiversity Conservation in Overseas Development Projects

Proposal 6 Sustainable Procurement of Resources for Biodiversity

The largest cause for the loss of biodiversity is the reduction and degradation of wildlife habitat due to development activities such as land conversion for agricultural use. This means that it is vital to control the effect of such development activities in a more effective way. Currently, Japan does not have a “no net loss” policy, unlike Europe, the US, and many other countries that have already introduced it as a legal requirement for development activities. Japan should consider the introduction of a “no net loss” policy.

The meaningful implementation of a “no net loss” policy must be accompanied by adequate assessment of the development impact, through a strategic environmental assessment. This should also be made a legal requirement.

There are many loopholes in the current Japanese legislation, which is failing to halt the loss of the biodiversity within the country. Adequate amendments should be made to existing laws and schemes, such as Species Conservation Law, so that threatened species can be protected more sufficiently.

Biodiversity is a common asset to humankind. In this sense, the civil society is an important stakeholder and their participation in the policy-making process with regard to biodiversity conservation should be ensured. The Government of Japan must provide opportunities for their participation in the relevant process, and it should be secured by a legal scheme.

Japan also has many overseas development projects, which have destroyed the natural

environment particularly in many developing countries. Developers of overseas projects must ensure that the projects do not destroy high conservation value ecosystems. The application of a “no net loss” policy should be considered for these projects, although the introduction of such policy should be considered carefully in relation to existing policies and legislation.

The indirect impact that Japan is making in overseas countries through purchasing resources is substantial. Sustainable procurement of overseas resources should be promoted through obligating the labeling of the country of origin and disclosure of the purchasing history. Credible certification schemes should be established through re-organizing numerous existing schemes.

1. Introduction

As shown in the United Nations' *Millennium Ecosystem Assessment*, published in 2005, human society is facing the loss of biological diversity, something vital to the survival of humanity itself. The current rate of biodiversity loss clearly shows that the Parties to the Convention on Biological Diversity (CBD) have failed to achieve the target they set in 2002; to achieve a "significant reduction of the current rate of biodiversity loss by 2010".

The causes of biodiversity loss due to human activities include (1) reduction and degradation of habitats for wild plants and animals; (2) unsustainable utilization of natural resources; (3) introduction of invasive species; and (4) global warming.

However, the largest cause is the reduction and degradation of wildlife habitat due to development activities such as land conversion for agricultural use. Therefore, the biggest challenge for us in the area of biodiversity conservation is to effectively control the effect of such development activities.

The Red List book, issued by the Ministry of the Environment, Japan, currently lists 3,155 species as endangered. Although population recovery has been acknowledged for some species, most others are facing a higher risk of extinction than ever before. Although less large-scale public works are being carried out in Japan, some public works are still being planned and implemented despite ongoing concerns with the adverse impact of these works on Japan's biodiversity and local communities.

Japan is also responsible for the loss of biodiversity abroad. It imports a vast amount of various types of resources from overseas. Many of these resources, including agricultural products and minerals, have been procured in a manner that negatively affects the local biodiversity or communities in producing countries. In order to reduce these negative effects, Japan must prioritize procuring sustainable resources obtained in a manner sensitive to the local biodiversity and communities.

FoE Japan and the Global Environment Information Center (GEIC)¹ established "Study Group for the Development of Biodiversity Conservation Policies" (Biodiversity Study Group) in June 2009, in order to develop policy proposals for the Japanese government. Headed by Professor Masahiro Miyazaki from Atomi University, the group consisted of volunteers from various sectors such as the general public, NGOs, the private sector, and academia.

The policy proposals developed by Biodiversity Study Group are for policy-makers of the Japanese government. However, they are also intended to serve as proposals by Japanese citizens to the international audience attending the 10th Conference of the Parties of CBD.

¹ GEIC is currently renamed to Global Environment Outreach Centre (GEOC).

2. Our approach to the post-2010 target

At COP10, Parties are expected to establish the post-2010 target and a subsequent strategic plan. The current rate of biodiversity loss requires extremely urgent measures. The interim report of *The Economy of Ecosystems and Biodiversity* (TEEB) warns its readers that “the impacts of cumulative pressures on ecosystems may not be felt for many years, until some tipping points are reached leading to rapid non-linear changes”². Based on these conditions, the Biodiversity Study Group proposes the following targets:

- Halt the loss of biodiversity by 2020 (using an index that measures the condition of biodiversity)
- Restore the condition of biodiversity to the current level (the level of the latest year used in the index evaluated in GBO3) or better (using an index that measures the condition of biodiversity) by 2050.

The Biodiversity Study Group hopes that the targets above will be included in discussions at COP10 and shared with the international community. It is our opinion that the Government of Japan must show leadership in achieving the above targets as well.

3. Biodiversity conservation within Japan

Proposal 1 Introduction of a “No Net Loss” Policy

As mentioned earlier, the biggest cause of biodiversity loss is development activities. Therefore, a “no net loss” policy should be considered, with the objective to make the net loss of biodiversity from development activities zero. Implementing this policy would mean making the following process a legal requirement: (1) The impact on biodiversity must first be avoided, and minimized if cannot be avoided, and (2), the remaining loss must be compensated after the minimization effort. Discussions on the introduction of this policy must begin now and be concluded within three years. As part of the discussions, establishment of a supplementary scheme to the mitigation process to create economic incentives for the conservation of *satoyama* landscape, green areas in proximity to urban areas, and the restoration of the environment, must also be considered.

(Reasons for this proposal)

The Government of Japan proposes to develop a “society that co-exists with nature”, in order to fight against the crisis of biodiversity loss. To this end, the following 2050 goals have

² The Economics of Ecosystems and Biodiversity Interim Report (2008) p.15

been raised in *National Biodiversity Strategy 2010*: (1) materialize a society that co-exists with nature at a national and regional level, (2) recover biodiversity richer than the current level, and (3) continuously increase the benefits that human beings can enjoy from ecosystem services.

At present, under the Environmental Impact Assessment Law of 1997, an environmental impact assessment is a legal requirement in Japan, but only for large-scale projects that may have a substantial impact on the environment and require government permissions etc. Under this law, a project developer has to prioritize “avoiding” and “minimizing” the effect of the development on the environment. If environmental impacts remain after minimization, the project developer has to consider “compensating ” it by creating the same type of environmental components. However, since the implementation of such compensation is *not* a requirement, there is almost always a remaining effect. Therefore, even if the effect of each development was small, accumulation of these effects may well become substantial in time.

In order to change this situation fundamentally, a strategic environmental assessment at the stage of planning development projects should be made a legal requirement (See Proposal 2). At the same time, the introduction of a no net loss policy should be considered, by compensating the remaining effect on biodiversity after avoiding and minimizing such effect.

Although a no net loss policy has already been introduced into the US and Europe, these countries have different conditions from Japan: It would be critical to develop a scheme that is suitable for Japanese conditions. It would be particularly desirable to develop a scheme that provides economic incentives for the conservation activities described below in introducing a no net loss policy, since the following have been identified as major challenges of biodiversity conservation in Japan:

(1) Restoration of *satoyama* landscape

At present, *satoyama* landscape (traditional rural landscape of Japan) have been significantly degraded due to decreased forest-thinning operations, agriculture and other human activities. This has caused many species that are traditionally found in these places to face the risk of extinction. In order to restore these *satoyama* landscape, the general public, NGOs and private corporations are carrying out voluntary activities, however, such effort is limited at present.

(2) Nature restoration

Operations to restore the natural environment, which has been lost due to past development, are being implemented across the country on a voluntary basis. However, there are projects hindered due to various reasons such as a lack of necessary funds, not being able to secure consent from land owners where it concerns private lands, etc.

(3) Conservation of green areas existing in proximity to urban areas

Green areas existing in proximity to urban areas are rapidly disappearing, even though they have significance from the perspectives of biodiversity and landscape conservation. The main reason for this is thought to be that farmers are often forced to sell off the small forests that they own to developers when they inherit them, in order to pay inheritance tax.

Proposal 2 Making a Strategic Environmental Assessment a Legal Requirement

A strategic environmental assessment (SEA) is an effective measure for the adequate implementation of a no net loss policy. It will help ensure that the priority order of avoidance, minimization and compensation of the negative impact is followed. However, at present, there are only guidelines for SEA set by the government with no legal requirement. This is far from sufficient. An SEA should be made a legal requirement so that the Ministry of the Environment will be able to check, as a third party, whether the priority order described above is adequately followed by developers, as well as to guarantee sufficient citizen participation into the relevant process.

(Reasons for this proposal)

In a no net loss policy, avoiding and minimizing the impact must be the first priorities, in order to prevent the policy from being used as an excuse for carrying out development projects that are undesirable from an environmental perspective. For this purpose, it is vital for project developers to consider alternative plans, disclose such information and allow for participation from residents and general public starting at the early stage of project planning. Making an SEA a legal requirement is vital to this end.

Proposal 3 Amendments to Existing Laws and Schemes for Biodiversity Conservation

(1) Species Conservation Law

All species listed as endangered in the Red List, issued by the Ministry of the Environment, should be given legal protection. Based on this, a legal scheme should be provided which designates all species listed in Red List as “domestic endangered species of wild fauna and flora”. Also, areas where endangered species are found or where rare environmental features remain should be designated as a “protected habitat etc.” wherever possible.

Furthermore, with regard to “domestic endangered species of wild fauna and flora” and a “protected habitat etc.”, citizens should be given rights to make proposals for the designation of species or habitats. The decision-making process of the designation should be transparent, and it should be regulated by law. The “right of citizen suit” should also be provided in order

to allow citizens to directly protect rare species or local populations, whilst the creation of a “suit subsidiary scheme” by the administration should also be considered.

(2) Natural Parks Law

The application of a no net loss policy in ordinary areas within national parks should be considered. For instance, water or land reclamation in ordinary areas can currently be implemented by notifying the administration. It should be subject to an additional condition: “project realizes a no net loss by providing compensatory mitigation measures”.

(3) Wildlife Protection and Hunting Law

The upper limit of the designation period for wildlife protection area (currently up to 20 years) should be removed.

(4) Modification of the tax scheme (inheritance tax)

In order to protect green areas existing in proximity to urban areas, the tax scheme should be modified so that the deadline for the payment for inheritance tax for forests owned by farmers may be extended (This already applies to farmlands).

(Reasons for this proposal)

Existing laws aimed at protecting biodiversity have serious flaws as described below. In order to realize the principles of the Basic Law on Biodiversity, which was established in 2008, amendments should be made swiftly to existing laws and schemes.

(1) Law for the Conservation of Endangered Species of Wild Fauna and Flora (Species Conservation Law)

The Red List, issued by the Ministry of the Environment, lists 3,155 species as endangered. However, only 81 species have been designated as “domestic endangered wild fauna and flora” under the Species Conservation Law, where capture etc. of these species are prohibited. Further, although habitat protection is vital for the conservation of endangered species, “protected habitat etc.” only covers seven species and nine areas (885ha) under the above law. This is less than 1% (0.002%) of total national land.

Utilizing local citizens and NGOs is also necessary in order to facilitate local biodiversity conservation, since they have expertise in protecting populations, endangered species and ecosystems in that area. Local citizens and NGOs must be utilized to the maximum extent, however, under the current Japanese law, their participation in the policy-making process in the area of biodiversity conservation is not guaranteed as an established scheme.

(2) Natural Parks Law

Approximately 14% of the land in Japan is designated as a natural park. This includes “ordinary areas”, which are subject to extremely relaxed regulations where development activities are allowed to be conducted with written notification to the administration. Ordinary areas should be meant to function as a buffer zone, however, only development activities smaller than a certain scale are subject to the notification. This means that their original functions as a buffer zone are not guaranteed by law.

(3) Wildlife Protection and Hunting Law

Currently, the period of designation for the wildlife protection area under the Wildlife Protection and Hunting Law is 20 years at maximum. This designation is usually extended in practice, but the law does not provide for permanent protection.

(4) Tax Scheme

One of the reasons why green areas existing in proximity to urban areas are decreasing is because farmers are forced to sell off their forests to developers in order to pay inheritance tax. This is because the payment for this tax cannot be delayed (whereas their farmlands are subject to an extension).

Proposal 4 Citizens Participation in the Policy-Making Process

The following measures should be provided in order to allow citizens and NGOs to more actively participate in the decision-making process of biodiversity conservation policies in Japan.

- ① Information provision and disclosure by the government (including public education)**
- ② Provision of opportunities for citizen participation in the decision-making process (e.g. committees)**
- ③ Provision for the legal basis of a citizen participation process in policy development**
- ④ Consideration of the provision of statutory rights for civil groups to institute a lawsuit against actions that may harm biodiversity**

(Reasons for this proposal)

Since biodiversity is a common asset for human society, the role played not only by the government and the private sector, but by citizens and NGOs is significant in developing relevant policies. They are important stakeholders, and should be entitled to participate in

the decision-making process. Nevertheless, their rights are not clearly recognized by the current Japanese legislation.

4. Contribution to overseas biodiversity conservation

Proposal 5 Biodiversity Conservation in Overseas Development Projects

(1) When Japan is involved with large-scale overseas development projects, the project developer should ensure that the project does not affect any protected areas designated by local legislation and does not convert high conservation value ecosystems. Furthermore, the project developer should obtain free, prior and informed consent (FPIC) from local communities, particularly indigenous people, whose livelihood is dependent on biodiversity. Unless the above points are ensured, the Government of Japan or governmental institutions of Japan should not involve themselves with any projects in any way.

(2) An SEA or environmental and social assessment should be adequately implemented in development projects as well. Also, the priority order of avoidance and minimization of the effect on biodiversity and local communities should be followed, and compensating the remaining effect should be considered.

However, a no net loss policy should not be used as an excuse for the destruction of high conservation value ecosystems. Furthermore, when considering the compensatory mitigation measure, it should be noted that the biodiversity offset should not be allowed easily. Instead, the utmost care should be taken to ensure that avoidance and minimization of the effect was prioritized.

In order to achieve this, the following points must be ensured: (1) Offset (compensatory mitigation measures) should not be applied to high conservation value ecosystems; offset measures are only allowed when avoidance and minimization are truly impossible, and (2) Offset measures have been verified to be the “last resort” by a third party, through a transparent process with ensured citizens participation. If these conditions are not adequately verified, the involvement with the project itself should be avoided.

(3) Currently, many of the projects implemented by the Government of Japan as overseas development aid are large-scale infrastructure works that have substantial impact on the local environment and society. In these projects, the value of natural ecosystems that are being lost from these large-scale development works are not fully recognized, whilst more and more works are further implemented. Rather, the Government of Japan should follow its own

domestic policy of “from infrastructure to people”, and expand its aid in the areas of the development of “legal schemes” and “capacity building” that support adequate biodiversity conservation and sustainable management of natural resources in developing countries.

(Reasons for this proposal)

Multinational companies, including Japanese ones, invest in activities such as resource development in the developing countries. In these projects, they are responsible for the impact they may have on local biodiversity and communities.

International Finance Corporation (IFC)’s “Policy and Performance Standards on Social and Environmental Sustainability” seeks that for development projects that may convert or degrade natural habitats, any conversion or degradation should be adequately mitigated. It seeks for mitigation measures to be designed to achieve no net loss of biodiversity where feasible.

However, implementing a no net loss policy in developing countries involves various risks. For instance, if a country has already adopted the policy itself, development may be allowed by cancelling the legal designation of protected areas due to weak governance or a lack of understanding of the priority order of avoidance, minimization and compensation, which is the basis of a no net loss policy.

Therefore, in carrying out biodiversity offset in developing countries, a scheme should be considered to decide whether or not to introduce the offset. Such consideration should be carried out in relation to other policies such as SEA and land use plans, as well as where the policy should be positioned within the relevant country’s National Biodiversity Strategy. Japan should provide further financial and technical assistance as necessary in order to develop such scheme to developing countries.

Proposal 6 Sustainable Procurement of Resources for Biodiversity

(1) Labeling of the country of origin as well as reporting (or disclosing) purchase history should be made a legal requirement so that the Government of Japan, as well as Japanese companies, can more easily purchase resources (such as timber, palm oil, bio fuels) procured in a way that is legal, sustainable, and considerate of local biodiversity and communities.

(2) “Green purchase”, as provided by the Green Purchasing Law, should be further facilitated to include sustainable products in public procurement. Criteria for sustainable products should be clarified for public procurement, and such products should include minerals and energy resources as well as natural resources.

***This proposal applies to the domestic resource procurement.**

(3) The Government of Japan should call for other governments and public institutions to re-organize existing certification schemes so that credible certification schemes can be established .

(4) Development aid projects by the Government of Japan should increase works relating to the development of “legal systems” and “capacity building” in the area of sustainable resource management.

(Reasons for this proposal)

Japan relies on overseas countries for many types of resources such as agricultural and fisheries products, minerals and energy. This means that Japan has significant influence over biodiversity and local communities in producing countries, particularly developing countries through purchasing these resources. Therefore, Japan should contribute to sustainable development in these countries by prioritizing the purchase of resources that are considerate of local biodiversity and communities.

As a result of the G8 Gleneagles Summit held in the UK in 2005, the Government of Japan decided to promote the public procurement of verified legal and sustainable wood products, based upon the “Law Concerning the Promotion of Procurement of Environmentally-Responsible Goods and Services by the State and Other Entities” (Green Purchasing Law). Although this effort by the Government is ongoing, the criteria for the sustainability of wood products is unclear.

Furthermore, although legality and sustainability are requirements for wood products in the public procurement, there is no regulation for the private sector: Companies can still import and trade in illegally-harvested wood and wood products. As efforts made by developing countries are far from sufficient to eliminate illegal logging, practical regulations, similar to the Forest Law Enforcement, Governance and Trade (FLEGT) developed by EU in 2003, or amended Lacey Act of the United States should be developed in Japan.

There are certification schemes in non-timber resources such as the Marine Stewardship Council (MSC) or the Roundtable on Sustainable Palm Oil (RSPO). These certification schemes are voluntary and the choices of whether or not to purchase certified products are left with companies and consumers. Under this condition, the cost of certifications becomes an obstacle for the promotion of them, particularly in developing countries.

The problem of cost also exists for companies in developed countries, due to the fact that competitiveness may be hindered from any additional cost of certifications. Many companies are still reluctant to opt for certified products, and the situation cannot be improved sufficiently until legality and sustainability becomes a legal requirement.

Given the above situation, it is necessary to reduce trade in illegal or unsustainable resources such as illegal timber, timber procured from land conversions (from pristine forests to agricultural lands), fishery products from unsustainable fisheries. However, since there is not enough volume of sustainable resources available, in reality, it is difficult to adopt regulative measures for trade in unsustainable products at this moment.

Given this, the only practical option appears to be voluntary efforts, whilst promoting sustainable natural resources. To facilitate the process, it should become a legal requirement to label the name of the country of origin (or harvesting country) for resources, so that consumers are able to choose sustainable resources. Furthermore, in order to facilitate the purchase of sustainable resources by companies, reporting (or disclosing) the purchase history of a purchaser should also be made a legal requirement.

Timber is the only natural resource covered by Japanese “green purchasing” in public procurement. This should be extended to other natural resources. Furthermore, although certification schemes are the only practical option available in ensuring biodiversity conservation, there are currently various schemes existing. Some of them have been established by the industries, and their independence may be questionable. These schemes need to be re-organized in order to establish credible schemes.

Meanwhile, since many of the producing countries of natural resources are developing countries, sustainable management of resources that take into consideration social and economic conditions of local communities as well as biodiversity conservation is difficult, both financially and technically. Japan should provide support in this area.

5. Conclusions

This document proposes that the Parties to CBD agree to set a goal to make the loss of the world’s biodiversity zero by 2020 at COP10. At the same time, the document also makes the following six proposals in order for Japan to achieve the above goal both domestically and internationally.

Proposal 1 Introduction of a “No Net Loss” Policy

Proposal 2 Making a Strategic Environmental Assessment a Legal Requirement

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We do hope that the Government of Japan will consider practical policies and measures in order to realize the above proposals. We also plan to make further recommendations to help the Government implement our proposals if necessary.

Furthermore, the following are points for future considerations. We plan to further examine these points and to submit them as policy proposals in the future.

- To check and review existing large-scale development projects
- To facilitate voluntary efforts by organizations
- To contribute to biodiversity conservation in developing countries

We, members of the study group, are going to continue our activities beyond 2010. We welcome any comments from who is interested in the relevant issues, whether from NGOs, academia, private sector, or government. Please feel free to send your comments to Dr. Masahiro MIYAZAKI: His e-mail address is “miyazaki@atomi.ac.jp”.

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