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## Examining the Ethics of Environmental Offsets: A Response to Biocentric Objections to Biodiversity Offsetting

*Meredyth Merrow\**

Biodiversity is the totality of all inherited variation in the life forms of Earth, of which we are one species. We study and save it to our great benefit. We ignore and degrade it to our great peril.

- E. O. Wilson

### I. Introduction

Over the last two decades, biodiversity offsetting has become a popular (and controversial) policy tool, designed to combat the destruction of ecosystems for development projects by counterbalancing losses of biodiversity in one place and generating equivalent biodiversity benefits in another.<sup>1</sup> As offset schemes become increasingly acceptable around the world, environmental ethicists—particularly biocentrists—have raised concerns about the moral implications of these programs. They maintain that monetizing biodiversity, and thereby treating it as a tradable commodity, leads to an erosion of ethical barriers, to the detriment of the environment.<sup>2</sup>

In this paper, I critically examine the existing literature on the ethics of environmental offsets and address two specific biocentric critiques of biodiversity offsetting raised by Maron, Monbiot, Walker, Ives and Bekessy. First, I address the argument that nature is not fungible, and consider the challenges arising from assigning value to biodiversity. Next, I assess the claim that biodiversity offsetting represents a shift in our ethical approach to conservation, which may lead to a diminished sense of moral duty and exacerbate environmental harm.<sup>3</sup>

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\* I would like to thank David Takacs for his infinite wisdom and unwavering support on a subject that is near and dear to his heart. I would also like to thank Elizabeth Lockwood for her keen insights and for the countless hours she spent discussing this topic with me.

1. Martine Maron, Christopher Ives, et al., *Taming a Wicked Problem: Resolving Controversies in Biodiversity Offsetting*, 66 *BIOSCI.* 6, 489 (2016), <https://perma.cc/Y9TG-YVLA>.

2. See generally, Christopher Ives & Sarah Bekessy, *The Ethics of Offsetting Nature*, 13 *FRONTIERS IN ECOLOGY & THE ENV'T*, 568 (2015); Maron et al., *supra* note 1.

3. Ives & Bekessy, *supra*, note 2, at 568.

I conclude that, instead of examining biodiversity offsetting as a means of “conservation,”<sup>4</sup> we should instead treat offsets within the context of “development.” By evaluating the usefulness and appropriateness of biodiversity offsets in the context of development, I resolve that biodiversity offsetting does not facilitate the *unraveling* of our ethical obligations to the natural world, but rather, *cultivates* a new responsibility to the environment by imparting a previously-unrealized obligation to preserve biodiversity in the context of development. By fostering this obligation in development practices world-wide, we proliferate the ethic that man does indeed have responsibilities to nature. If we are to accommodate an estimated human population of eleven billion by 2100, there is no getting around the need for additional development.<sup>5</sup> We can either meet this reality by implementing all the tools we have available to us now, or we can resist and perish. By framing offsetting as a development ethic, I believe we can channel our energies into making these programs work more equitably for the human and nonhuman world.

## II. The Rise of Biodiversity Offsetting in Practice

Since the implementation of wetland mitigation banking under the Clean Water Act in the United States in 1980,<sup>6</sup> offset schemes have expanded to account for impacts to a variety of environmental concerns, including trades for habitat, species, and carbon.<sup>7</sup> Biodiversity offsets are defined as “conservation actions intended to compensate for the residual, unavoidable harm to biodiversity caused by development projects, so as to ensure *no net loss* of biodiversity.”<sup>8</sup> As the impacts of climate change and human pollution continue to degrade global ecosystems at an alarming rate, the use of offsets to mitigate biodiversity losses has proliferated in recent

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4. To the furor of environmental purists.

5. United Nations Dep’t of Econ. and Soc. Aff., *Growing at a Slower Pace, World Population is Expected to Reach 9.7 Billion in 2050 and Could Peak at Nearly 11 Billion Around 2100* (June 17, 2019), <https://perma.cc/K8ZJ-4699>.

6. *Section 404 of the Clean Water Act*, U.S. EPA. (Apr. 2019), <https://perma.cc/6CRV-8BEP>; *see also, Wetlands Protection and Restoration*, U.S. EPA. (Aug. 2018), <https://perma.cc/5FDQ-AFU3>.

7. William Latimer & David Hill, *Mitigation Banking: Securing No Net Loss to Biodiversity?*, FOREST TRENDS ASS’N. (date unknown), <https://perma.cc/B92T-HCKC>.

8. *Biodiversity Offsets*, INT’L UNION FOR CONSERVATION OF NATURE (Sept. 2016), <https://perma.cc/M9UZ-UD59> (emphasis added).

years.<sup>9</sup> As of 2015, “[a]t least fifty nations are currently implementing biodiversity offsetting or have plans to do so.”<sup>10</sup>

Proponents of biodiversity offsets praise the programs for providing a much needed balance between development and conservation, and for offering a workable middle ground to appease governments, environmentalists, developers, and policy-makers. They argue that implementing biodiversity offsets as measures of “last resort” for “unavoidable losses” of biodiversity can achieve “measurable conservation outcomes.”<sup>11</sup> Empirical evidence supports the fact that “in many cases, even low-quality, incomplete, impermanent, poorly implemented biodiversity offset approaches ... provide more positive outcomes for biodiversity than the status quo,” in which compensation for residual losses of biodiversity is usually absent or inadequate.<sup>12</sup>

The goal of biodiversity offsetting is to achieve a “no net loss,” or preferably, a “net gain,” of biodiversity “with respect to species composition, habitat structure, ecosystem function and people’s use and cultural values associated with biodiversity.”<sup>13</sup> While national, regional, and local practices vary in their implementation of biodiversity offsetting programs, “one point is clear: offsetting is an increasingly important mechanism for conservation as more companies use them to mitigate their biodiversity impacts.”<sup>14</sup>

The uptake in international support and implementation of biodiversity offsetting programs has raised some alarm for a number of environmentalists. They argue that allowing developers to degrade biodiversity in one place, in exchange for paying to protect biodiversity elsewhere, creates an unethical conservation framework wherein nature can be bought, bartered, and sold.<sup>15</sup> Critics of biodiversity offsetting argue that once the principle of commodifying nature is established, nature will

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9. Ives & Bekessy, *supra* note 2, at 568.

10. David Takacs, *Are Koalas Fungible? Biodiversity Offsetting and the Law*, 26 N.Y.U. ENVTL. L.J. 2, 165–66 (2018), <https://perma.cc/7JAK-4HMQ>.

11. Jonathan Ekstrom et al., *Independent Report on Biodiversity Offsets*, INT’L COUNCIL ON MINING & METALS (Jan. 7, 2013), <https://perma.cc/KT2D-CDMD>.

12. *Technical Conditions for Positive Outcomes from Biodiversity Offsets*, INT’L UNION FOR CONSERVATION OF NATURE (2014), <https://perma.cc/SF54-EZ5E>.

13. Ekstrom et al., *supra* note 11.

14. Carlos Ferreira, *Biodiversity Offsets As Corporate Responsibility: Opportunity or Paradox?*, ECOSYSTEM MARKETPLACE (Dec. 2, 2014), <https://perma.cc/6Y46-GH9U>.

15. See generally Ives & Bekessy, *supra* note 2, at 568; Susan Walker, Ann Brower, R.T. Theo Stephens & William G. Lee, *Why Bartering Biodiversity Fails*, 2 CONSERVATION LETTERS 149, 150 (2009), <https://perma.cc/VS9S-TMD8>; George Monbiot, *Putting a Price on Rivers and Rain Diminishes Us All*, THE GUARDIAN (Aug. 6, 2012), <https://perma.cc/DAT8-8MJ6>.

become as “fungible as everything else.”<sup>16</sup> Further, they raise concerns that the adoption of biodiversity offsetting represents an ethical shift away from traditional regulatory approaches to conservation, which prohibit certain actions according to clearly defined statutes, to a lawless free-for-all, where developers can devastate remarkable places with impunity and absolution, as long as they offset the harm somewhere else.<sup>17</sup>

### III. Responding to Biocentric Critiques of Biodiversity Offsetting

Since the introduction of biodiversity offsetting as a regulatory incentive mechanism, environmental ethicists have grappled with its implications. According to research ecologists Martine Maron and Christopher Ives (“Maron, et al.”), most ethical objections to offsetting are born from a biocentric view of the world.<sup>18</sup> Biocentrists maintain that all living things have *intrinsic* value, apart from any *instrumental* value they might have to humans. Unlike the ethic of anthropocentrism, which holds that human beings are the primary holders of moral standing, biocentrism extends moral status to all living things. Thus, for biocentrists, biodiversity offsetting’s “reduc[ti]on of] nature to exchangeable units is a fundamental violation of its intrinsic value.”<sup>19</sup>

Due to the extensive commentary that flows from the ethical implications of offset schemes, I will address only two such critiques. First, I examine the biocentric contention that nature is not fungible, and thus, that biodiversity offsetting is immoral; and second, I address the claim that the increased implementation of biodiversity offsetting will lead to a decreased sense of moral duty to nature.<sup>20</sup>

#### 1. Nature as Fungible

Biocentrists argue that biodiversity offsetting represents a “dangerous” “license to destroy;” in that they commodify the natural world and allow for the trashing of precious places to accommodate the construction of unremarkable projects that could be built elsewhere.<sup>21</sup> According to *The Guardian* columnist George Monbiot, biodiversity offsetting

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16. Monbiot, *supra* note 15.

17. Ives & Bekessy, *supra* note 2, at 570; Monbiot, *supra* note 15.

18. Maron et al., *supra* note 1, at 491.

19. *Id.*

20. *See generally*, Ives & Bekessy, *supra* note 2.

21. Monbiot, *supra* note 15.

makes nature as fungible as everything else. No place is valued as a place: it is broken down into a list of habitats and animals and plants, which could, in theory, be shifted somewhere else. It subjects our landscape and wildlife to the same process of commodification that has blighted everything else the corporate economy touches...<sup>22</sup>

Monbiot maintains that by accepting the principle of biodiversity offsetting, “you accept the idea that place means nothing. That nowhere is to be valued in its own right ... that everything is exchangeable for everything else, and nothing can be allowed to stand in the way of the graders and degraders.”<sup>23</sup> To Monbiot—and to many environmental advocates—this idea is not easy to “swallow.”<sup>24</sup>

These arguments reflect a fundamental aversion to market-based conservation schemes because they “are incongruous with nature’s intrinsic value.”<sup>25</sup> In a sense, I also concede to this view. The underlying notion of trading, or “bartering,” nature is, to me, personally and fundamentally objectionable. There is a holiness in the quiet forest floor of the Great North Woods. I stand in awe beneath the towering trees in the Redwood National and State Parks. I hold tight to cherished memories of swimming in the chilly waters of the Androscoggin River on a hot summer’s day. There is intangible, and arguably incalculable, value in a place simply as a place—just as there is value in home, in family, or in love. Despite the inexpressible sense of wonder I derive from the natural world and the significance of these places in my own life, I am under no illusions that these places are not also external commodities. The reality is that, “[n]ature really may not be fungible—but if large chunks of nonhuman nature and functioning ecosystems are to survive, we likely must pretend it is.”<sup>26</sup>

Nature has been monetized, prioritized, and commodified since man first “confused [his] human uniqueness with superiority,” and declared nature as under his dominion.<sup>27</sup> When mankind entered into societal contracts with other humans, everything was assigned a price—either in money or in value. Men traded seeds for cattle, traded cattle for food, sold food for coin, which could then be exchanged again for any number of goods. William Cronon illustrates the commodification of nature,

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22. *Id.*

23. *Id.*

24. *Id.*

25. Ives & Bekessy, *supra* note 2, at 568.

26. Tackacs, *supra* note 10, at 165-66.

27. Elizabeth Dodson Gray, *Come Inside the Circle of Creation: The Ethic of Attunement*, in *ETHICS AND ENVTL. POLICY: THEORY MEETS PRACTICE* 21, 22 (Frederick Ferré & Peter Hartel eds., 1994).

specifically of wilderness by the elite, in the decades following the Civil War, writing:

more and more of the nation's wealthiest citizens [sought] out wilderness for themselves. The elite passion for wild land took many forms: enormous estates in the Adirondacks and elsewhere...cattle ranches for would-be rough riders on the Great Plains, guided big-game hunting trips to the Rockies, and luxurious resort hotels wherever railroads pushed their way into sublime landscapes. Wilderness suddenly emerged as a landscape of choice for elite tourists, who brought with them strikingly urban ideas of the countryside through which they traveled. For them, wild land was not a site for productive labor and not a permanent home; rather, it was a place of recreation. *One went to the wilderness not as a producer but a consumer...*<sup>28</sup>

Ignoring the unpleasant reality that nature has been, and will continue to be, commodified, classified, and monetized, ultimately gets us nowhere.<sup>29</sup>

Furthermore, those who maintain that attaching an economic value to nature necessarily diminishes it, overlook the fact that assigning a numeric value to aspects of the natural world can also highlight their significance. Even the Convention on Biological Diversity (CBD)—the internationally binding treaty created to promote and conserve the sustainable use, and equitable sharing of biodiversity—quantifies and qualifies biodiversity's importance by noting that

at least 40 per cent of the world's economy, and 80 per cent of the needs of the poor, are derived from biological resources. In addition, the richer the diversity of life, the greater the opportunity for medical discoveries, economic development, and adaptive responses to such new challenges as climate change.<sup>30</sup>

Assigning a numeric attachment to the significance of biodiversity can also mobilize different sectors of the population that might otherwise be disinterested in its protection. For example, the pollination of food crops of bees and other insects is "a service worth as much as \$500 billion every

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28. WILLIAM CRONON, UNCOMMON GROUND: RETHINKING THE HUMAN PLACE IN NATURE 78 (1996).

29. If we didn't accept this premise to some extent, private property rights would not exist.

30. United Nations Convention on Biological Diversity, June 5, 1992, 31 I.L.M 818, 1760 U.N.T.S. 79, <https://perma.cc/S3FM-HFGN>.

year.”<sup>31</sup> The destruction of biodiversity has far-reaching implications on individuals, businesses, states, and the planet. In a perfect world, the loss of biodiversity as an intrinsically valuable entity in and of itself would be enough to garner unwavering support for its preservation; but, in reality, monetizing nature can help attract players that would otherwise ignore its significance.

### **a) Assigning Value to Biodiversity**

If we accept that—despite our own misgivings—nature must be treated as fungible if we hope to meet any conservation goals, the issue then becomes how we should evaluate the worth, or “value,” of biodiversity, so that it can be traded fairly and effectively in offsetting schemes. Biodiversity, unlike a single seed, animal, or object presents unique challenges for valuation because of its inherent complexity. Ecosystems specifically, are “place-specific and dynamic: each is unique and irreplaceable.”<sup>32</sup> Further, ecosystems (and the biodiversity within those ecosystems) contain interweaving functions, processes, and living beings, that coexist and operate symbiotically within the surrounding environment.

The considerable and obvious challenges of assigning a numerical value to such an intricate system cannot be ignored. Even determining how to break down such an interconnected system into a series of isolated and distinct components is problematic. When assessing the value of each individual component, we must first consider whose value assessments should factor into the equation. How do we weigh the values of contracting parties and the values of the public? How do we measure the immeasurable? How can we put a price on the priceless?<sup>33</sup>

### **b) Creating a Scientifically-Defensible Currency**

Those ethically or technically opposed to biodiversity offsets argue that “protecting biodiversity in trading is neither technically realistic nor administratively probable.”<sup>34</sup> They maintain that trading in a “complex, noninterchangeable and poorly measurable resource such as biodiversity” ensures “inadequate currency, exchange restrictions, and review, to the detriment of that resource.”<sup>35</sup>

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31. Brooke Jarvis, *The Insect Apocalypse Is Here*, N.Y. TIMES (Nov. 27, 2018), <https://perma.cc/XV24-6YPV>.

32. Tackacs, *supra* note 10, at 189.

33. *Id.* at 221.

34. Walker et al., *supra* note 15, at 150.

35. *Id.*

According to Walker, Browner, Stephens and Lee (“Walker et al.”), “[v]iable biodiversity barter and meaningful biodiversity protection seem mutually exclusive.”<sup>36</sup> They maintain that the absence of credible solutions to the problems biodiversity offsetting raises presents a situation where “[w]e can achieve one or the other, but not both.”<sup>37</sup> Their arguments suggest that to create a workable, functioning exchange program, simple currencies are necessary, and biodiversity’s complexity cannot be quantified into a single unit.<sup>38</sup> Additionally, due to the uneven playing field between developer, government, and public interests, without a universal exchange policy, biodiversity offsetting will “be more vulnerable to the institutional failings that undermine environmental protection than simple...prohibitions.”<sup>39</sup>

Salzman and Ruhl noted that the test of a currency’s adequacy is whether it “can capture the significant values exchanged or [if] some important features remain external to the trades.”<sup>40</sup> Unlike other easily measured environmental offset schemes, such as carbon offsets, biodiversity’s intricate entanglement of functions, processes, ecosystems, and life forms, make effective value assessments uniquely puzzling. The goal is to create a scientifically defensible measurement that captures “what we care about.”<sup>41</sup>

To make biodiversity offsetting a viable trading program, “currencies must be simple, review cannot be onerous, and restrictions must be straightforward and few.”<sup>42</sup> This makes biodiversity offsetting additionally problematic, as creating a value currency to facilitate trade involves many (often competing) interests, value assessments, and scientific data. Furthermore, proposed project developers, who fund the scientific data in most biodiversity offset schemes, are more interested in seeing the project built than they are concerned about the loss of biodiversity associated with the project.

Walker, et al. note that, “if ‘what we care about’ is persistence of the full variety of life, contributions of different biodiversity elements are noninterchangeable.”<sup>43</sup> While I concede that the nontransferable quality of biodiversity makes it impossible to trade in the *exact* sense, formulating

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36. *Id.* at 155.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 151.

41. *Id.*

42. *Id.* at 153.

43. *Id.* at 150.

value assessments of ecosystems *is* possible, and should be fashioned, however imperfectly.

Determining the worth of something is usually personal and subjective. Indeed, sometimes we have trouble communicating our own value assessments to others or understanding the logic behind the values we hold. I acknowledge that, although offsets may never fully reflect the value of an ecosystem's biodiversity to all human and non-human entities, if we are to implement biodiversity offsetting in the most effective way possible, incorporating the value assessments of as many parties as possible is imperative. Because biodiversity trading affects interests beyond those of the direct participants, implementing offsets without public participation can (and will) erode the public's interest in public resources.<sup>44</sup> However, adopting biodiversity offsetting legislation at the regional, national, and international levels that contain clear guidelines, allowances, and restrictions will result in better conservation outcomes. Additionally, by mandating the incorporation of language that requires the participation of all affected parties in the negotiations of offsetting programs, it *is* possible to create a "rubric" for assessing the value of an ecosystem. I acknowledge that such a rubric will undoubtedly have its problems—especially at the implementation phase<sup>45</sup>—and will not adequately reflect some individuals' value assessments. However, the hope is that over time this rubric will morph into an equitable and workable measurement tool. The reality is, we will not know what works if we do not try.

## **2. The Increased Implementation of Biodiversity Offsetting Will Not Lead to a Decreased Sense of Moral Duty to Nature, Unless We Let it.**

Ives and Bekessy contend that biodiversity offsetting "represents a major shift in how nature is protected."<sup>46</sup> They claim that by focusing on the *outcomes* of certain acts, instead of the *acts* themselves, biodiversity offsetting diverges from the traditional justification for biodiversity legislation. They argue that traditional environmental legislation is most strongly supported by a *deontological* view of the world.<sup>47</sup> They frame

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44. *Id.* at 151 (citing Bo Gustafsson, *Scope and Limits of the Market Mechanism in Environmental Management*, 24 *ECOLOGICAL ECON.* 259 (1998); James Salzman & J. B. Ruhl, *Currencies and the Commodification of Environmental Law*, 53 *STAN. L. REV.* 607 (2000); Timm Kroeger & Frank A. Casey, *An Assessment of Market-Based Approaches to Providing Ecosystem Services on Agricultural Lands*, 64 *ECOLOGICAL ECON.* 321 (2007)).

45. Not to mention the challenges presented in an attempt to get such legislation passed.

46. Ives & Bekessy, *supra* note 2, at 568.

47. *Id.*

deontology as “the moral concept that people should not harm biodiversity, or the integrity of the environment should be upheld.”<sup>48</sup> Other environmental theorists, such as Maron et. al., allege that “offset exchanges seem to imply an acceptance of an anthropocentric philosophy and a focus on use or existence values” that are otherwise absent from traditional environmental legislation.<sup>49</sup>

While I accept that in its current structure biodiversity offsetting is less about statutory allowances or restrictions on specific conduct, I do not agree that this change reflects a departure from traditional ethical principles or that it will erode our sense of obligation to the natural world. In evaluating this position, I turn to the Endangered Species Act (ESA)—considered to be the most comprehensive environmental law in the world—which uses explicit statutory restrictions and allowances to achieve the ultimate goal of protecting endangered and threatened species. Ives and Bekessy consider the ESA an example of “traditional biodiversity legislation” because it clearly allows for certain actions and explicitly prohibits others (such as the “taking” of an endangered species).<sup>50</sup>

When Congress passed the ESA in 1973, it recognized that “species of fish, wildlife, and plants are of esthetic, ecological, educational, recreational, and scientific value to the Nation and its people.”<sup>51</sup> As noted by the Supreme Court in *Tennessee Valley Authority v. Hill*, the legislative proceedings of the ESA are “replete with expressions of concern over the risk that might lie in the loss of *any* endangered species.”<sup>52</sup> The legislature’s concern over the loss of species is best summarized by the legislative history leading up to the ESA’s passage in 1973,<sup>53</sup> which provides:

As we homogenize the habitats in which these plants and animals evolved, and as we increase the pressure for products that they are in a position to supply (usually unwillingly) we threaten their—and our own—genetic heritage. The value of this genetic heritage is, quite literally, incalculable.<sup>54</sup>

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48. *Id.*

49. Maron et al., *supra* note 1, at 491 (citing James Justus et al., *Buying into Conservation: Intrinsic Versus Instrumental Value*, 24 TRENDS IN ECOLOGY & EVOLUTION 187 (2009)).

50. Ives & Bekessy, *supra* note 2, at 569.

51. 16 U.S.C. § 1531(a)(3) (1973).

52. *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 177, (1978).

53. *Id.* at 177-78.

54. *Id.* at 178.

Although many consider the ESA to be the most “radical” environmental law in existence, it was born from a self-interested anthropocentric view of nature.<sup>55</sup> The legislature noted that genetic variations of plants, fish and wildlife are “potential resources” to human beings. “They are keys to puzzles which we cannot solve, and they may provide answers to questions which we have not yet learned to ask.”<sup>56</sup>

Who knows, or can say, what potential cures for cancer or other scourges, present or future, may lie locked up in the structures of plants which may yet be undiscovered, much less analyzed? . . . Sheer self-interest impels us to be cautious.<sup>57</sup>

All environmental laws, regardless of their effectiveness in protecting or conserving nature, are born from an anthropocentric self-interest. Similarly, any and all value assessments we place on the natural world are still human constructs. To argue that biodiversity offsets somehow alter this established paradigm ignores these established truths.

Critics of biodiversity offsetting rightfully reject its label as a “conservation” tool when it should be treated as a new development ethic. For example, critics have noted the problems with the symbolic policy language of “no net loss” and “net gain”,<sup>58</sup> reasoning that, “while compensation and no net loss are worthy goals, and bartering biodiversity might appear more promising than simple and weakly enforced prohibitions . . . policies that enable biodiversity trading may perversely yield worse biodiversity outcomes.”<sup>59</sup>

Framing biodiversity offsets as a “conservation tool” is categorically misleading. Claiming that offsets result in “no net loss” or a “net gain” in biodiversity is similarly disingenuous—particularly because there is currently no effective means of measuring biodiversity’s value. Ives and Bekessy argue that “[a]llowing for the buying and selling of nature may counteract the development of respectful, positive societal attitudes toward nature.”<sup>60</sup> They claim that “[w]hile offsetting might make it economically less viable to destroy biodiversity, it rests on the assumption that there is

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55. The legislative history of the ESA specifically notes that “it is in the best interests of mankind to minimize the losses of genetic variations” because of the value such genetic variations potentially offer human beings. (quoting *Tenn. Valley Auth.*, 437 U.S. 153, at 178).

56. *See id.* (quoting H.R. 37).

57. *Id.* (citing H.R. REP. NO. 93-412, at 4-5 (1973)).

58. Walker et al., *supra* note 15, at 154-55.

59. *Id.* at 155.

60. Ives & Bekessy, *supra* note 2, at 572.

nothing wrong per se with the manipulation and trading of nature, and may therefore undermine [respect for nature as] a virtue.”<sup>61</sup>

Because I maintain, albeit regrettably, that man has already commodified nature since he entered into societal contracts, to frame biodiversity offsets in the language of development—rather than in the language of conservation—creates a new, previously unaccepted development ethic. Instead of simply destroying nature for the sake of development, as we have for millennia, the practice of biodiversity offsetting represents a shift toward fostering an ethic of obligation to consider and conserve ecosystems during development. Instead of demonizing the trading scheme as immoral, we should instead celebrate the genesis of this newly-minted obligation to the natural world. Rather than assuming that the implementation of offsetting diminishes humanity’s responsibilities to nature, we should champion the ethic that we are obligated to enhance nature whenever we destroy it.

“Rather than sink into a mire of despair,” seeing “biodiversity offsetting as one element of hopeful, sound, savvy planning [that could] carry humans and nonhumans with which we share the planet into the Anthropocene” seems, to me, the better option.<sup>62</sup> Incorporating biodiversity offsetting into the plans for development projects would help reinforce mankind’s obligations to nature. Additionally, focusing on incorporating nature into all development plans—such as building green spaces into development projects—would further nurture mankind’s connection and relationship to the natural world.<sup>63</sup> I do not pretend that the implementation of this practice will not come without many technical and social challenges. I also recognize the very real fundamental imbalance of power and interests in the marketplace which can provide “another transfer of power to corporations and the very rich,” if we let transfers go unchecked.<sup>64</sup> However, the rising popularity of biodiversity offsetting gives me hope. Although it arguably reinforces the idea that nature is fungible, it also codifies a renewed obligation and responsibility to the natural world that was altogether absent from the development practices of the modern world. If biodiversity truly is “the key to the maintenance of the world as we know it,”<sup>65</sup> by refocusing our energies and harnessing our collective power to progress change, biodiversity offsets are a beacon of light in an otherwise dark and dismal future.

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61. *Id.*

62. Takacs, *supra* note 10, at 198.

63. *See generally*, Holly Doremus, *Biodiversity and the Challenge of Saving the Ordinary*, 38 IDAHO L. REV. 325 (2002), <https://perma.cc/R67T-ZS9J>.

64. Monbiot, *supra* note 15.

65. EDWARD O. WILSON, *DIVERSITY OF LIFE*, 15 (1992).

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