

Report Spotlights Legal Risks of Biodiversity Loss in Agricultural, Seafood Industries

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On September 27, 2023, environmental law organization ClientEarth released a report highlighting the growing potential for legal risk associated with biodiversity loss in the agriculture and seafood sectors, the currently applicable legislation, and ways to help mitigate risk. **In a statement** released alongside the report, ClientEarth explained that legal risk in those sectors is a consequence of a dependence on ecosystem services, such as raw material, clean water, pollination and a regulated climate to produce goods and services.

According to the report, biodiversity loss in the seafood and agriculture sectors, biodiversity dependencies and negative impacts can lead to legal risks in various areas, including:

- **Deforestation-risk commodities regulations.** According to the report, the expansion of agriculture and aquaculture is the main driver of deforestation, forest degradation and biodiversity loss on land. Globally, deforestation and forest degradation are also the second largest source of greenhouse gas emissions. The **European Union Deforestation Regulation (EUDR)** prohibits the import, export and subsequent trade in the EU of palm oil, cattle, soy, coffee, cocoa, timber, and rubber, as well as derived products such as beef, furniture, and chocolate, to the extent tied to deforestation. The law took effect in June 2023, with companies required to comply starting December 30, 2024.

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- **Pollution negligence and nuisance claims.** Pollution, including from plastic, pesticides and waste, is a major driver of biodiversity loss and ecosystem degradation. Marine plastic pollution has increased tenfold since 1980, and plant and insect populations are dwindling as a result of dangerous, non-selective insecticides. Legal risks may arise in several ways, according to ClientEarth, including from, for example, the use of pesticides. Liability may arise under civil or local environmental laws when the use of pesticides causes alleged nuisance or harm to neighboring properties or the health of the local population or environment. The increasing regulation of pesticides may also increase companies' compliance costs.
 - **Misleading commercial practices.** The EU Unfair Commercial Practices Directive (UCPD) prohibits misleading business-to-consumer commercial practices containing false information or omissions that are likely to deceive the average consumer or prevent the consumer from making an informed buying decision. The UCPD, along with other EU-enacted or proposed laws (such as the [Empowering Consumers for the Green Transition Directive](#) and the [Green Claims Directive](#)), target alleged greenwashing by companies in their consumer communications.

To avoid or mitigate legal risks related to biodiversity loss, the report advises agriculture and seafood sector companies and their investors to conduct appropriate due diligence to identify and disclose their dependencies and negative impacts on biodiversity, and any actions taken, in accordance with recently adopted and upcoming legislation. Earlier this year, the European Parliament [adopted amendments](#) to the Corporate Sustainability Due Diligence Directive (CSDDD), which requires large companies to identify, prevent, mitigate or end negative impacts on pollution, biodiversity loss and environmental degradation, among other areas. The final text of the CSDDD is subject to ongoing negotiations, but in order to help companies mitigate the financial risks associated with biodiversity loss, due diligence obligations should explicitly include biodiversity impacts.

Taking the Temperature: [As we have noted](#) regularly, nature and biodiversity are increasingly the focus of sustainability discussions across industries and sectors, as governmental

agencies, **NGOs**, **investors** and industry participants recognize the risks that nature-related biodiversity loss and ecosystem degradation pose. Litigation over biodiversity loss on land and in the water is also an emerging area of climate-related litigation, as evidenced in suits filed by ClientEarth itself. In May, the organization **sued Cargill**, seeking disclosure of Cargill's due diligence policies and procedures with respect to its soy operations in Brazil. The organization and others also **sued French food-products company Danone** earlier this year under France's Corporate Duty of Vigilance Law. ClientEarth argues that Danone must develop an adequate plan to reduce its production of single-use plastic, including social and environmental due diligence measures across the company's entire supply chain.

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