



Balancing ESG Mitigation Strategies

ESG Legal Summit

October 27, 2021

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Agenda

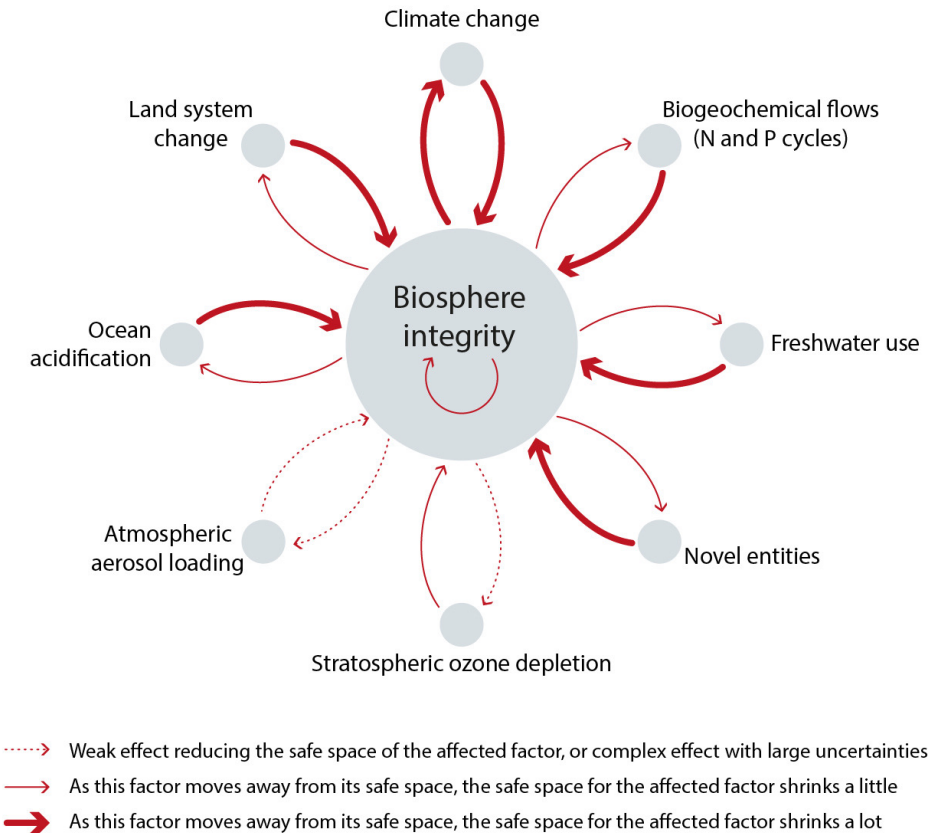
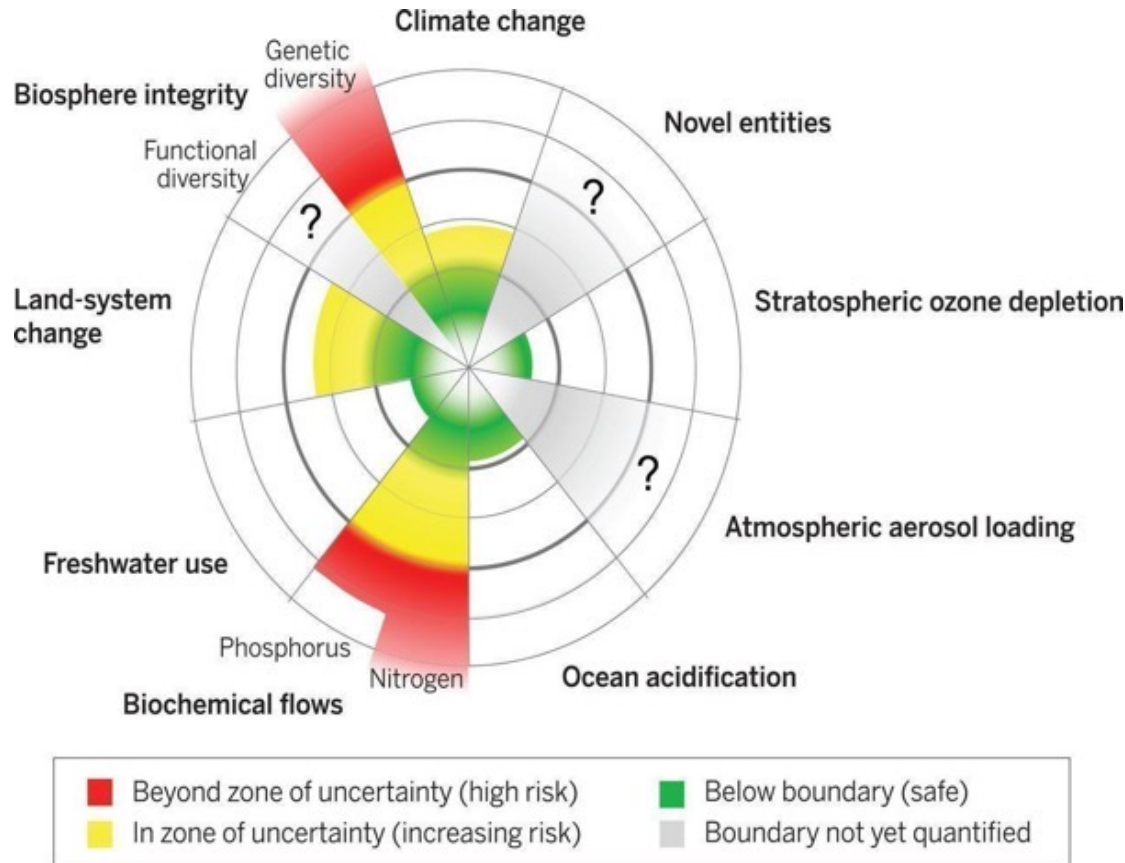
- 1) Coupling carbon and natural capital ESG efforts
- 2) Litigation risk rising
- 3) How businesses can prepare



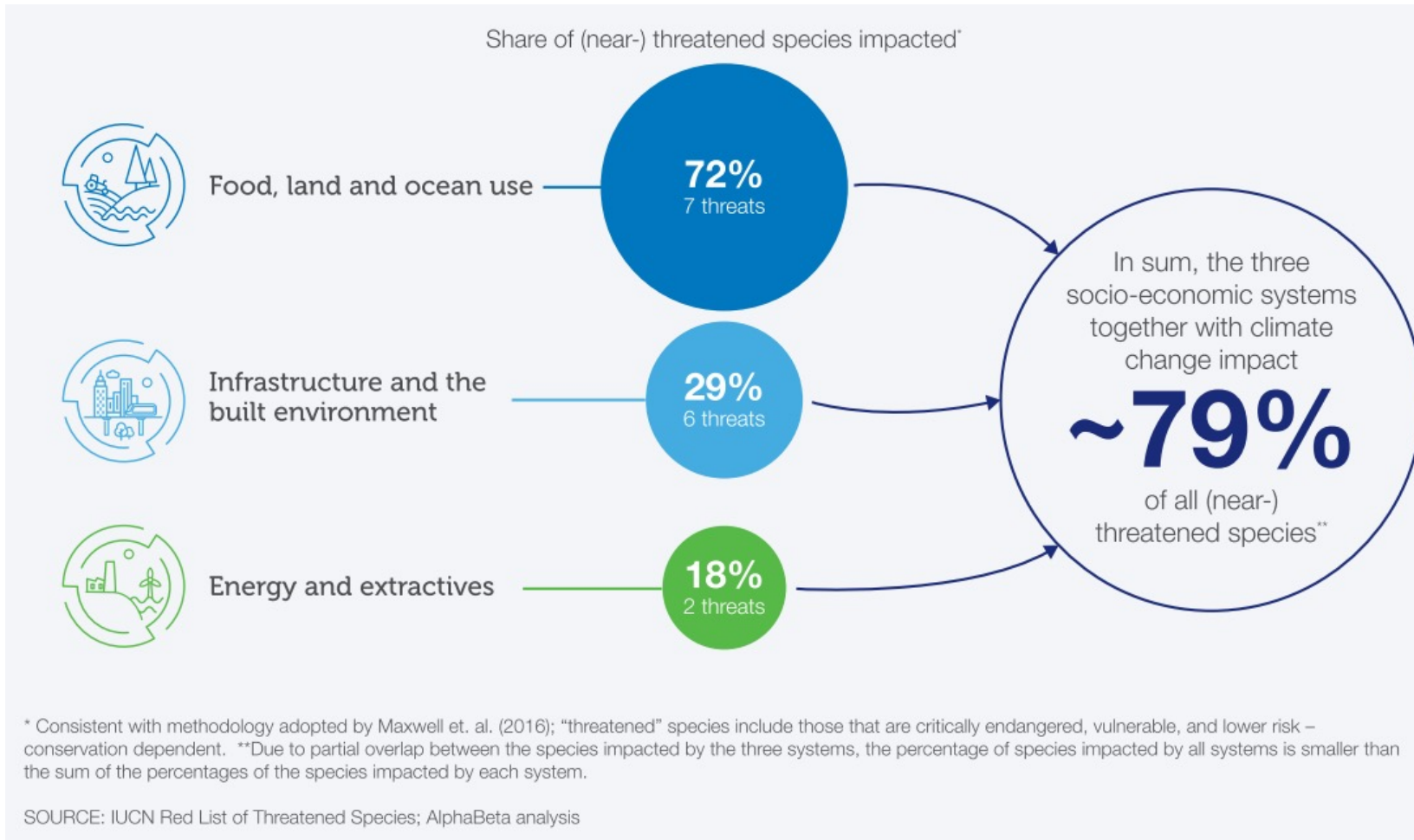
Coupling carbon and natural capital ESG efforts

Planetary boundary

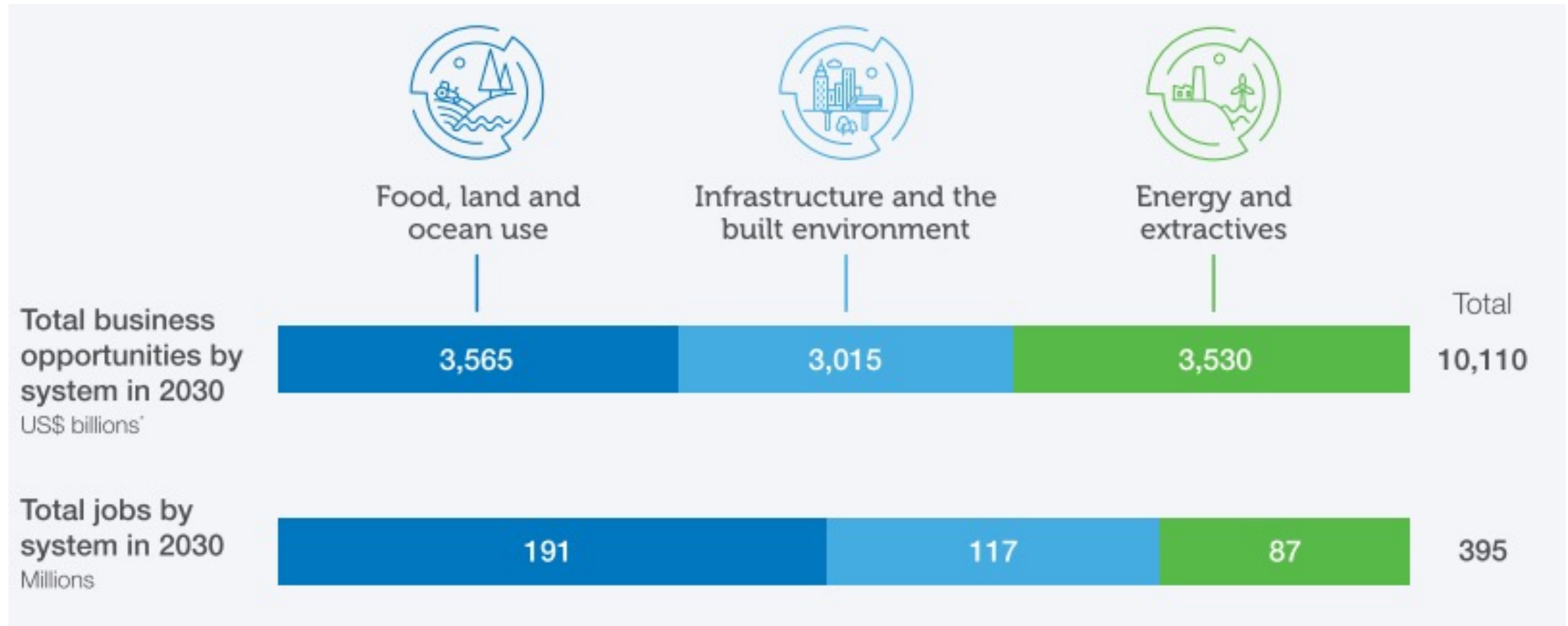
9 natural systems maintain a “safe operating space” for humanity



Impacts on nature

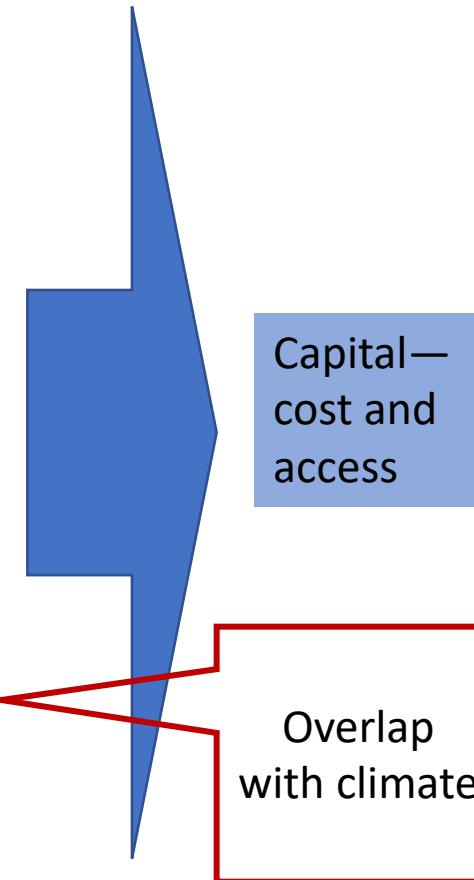


USD 10 trillion opportunity



Natural capital risks and opportunities

| Group | Sub group | Risk |
|------------|------------------|---|
| Transition | Policy and legal | <ul style="list-style-type: none"> • Extraction moratoria • Lower quotas • Fines, permit suspension or denial • Lawsuit |
| | Technology | <ul style="list-style-type: none"> • Substitution of products with a lower impact alternative • Unsuccessful investment in new technology |
| | Market | <ul style="list-style-type: none"> • Changes in customer preferences |
| | Reputational | <ul style="list-style-type: none"> • Damage to brand or image • Challenge to social license |
| Physical | Acute | <ul style="list-style-type: none"> • Temporary increased scarcity or cost of inputs • Disruption to business operations |
| | Chronic | <ul style="list-style-type: none"> • Gradual permanent increased scarcity or cost of inputs • Increasing number of disruptions to business operations |
| Systemic | | <ul style="list-style-type: none"> • Collapse of ecosystem function (e.g., soil formation, water cycling, storm protection) |

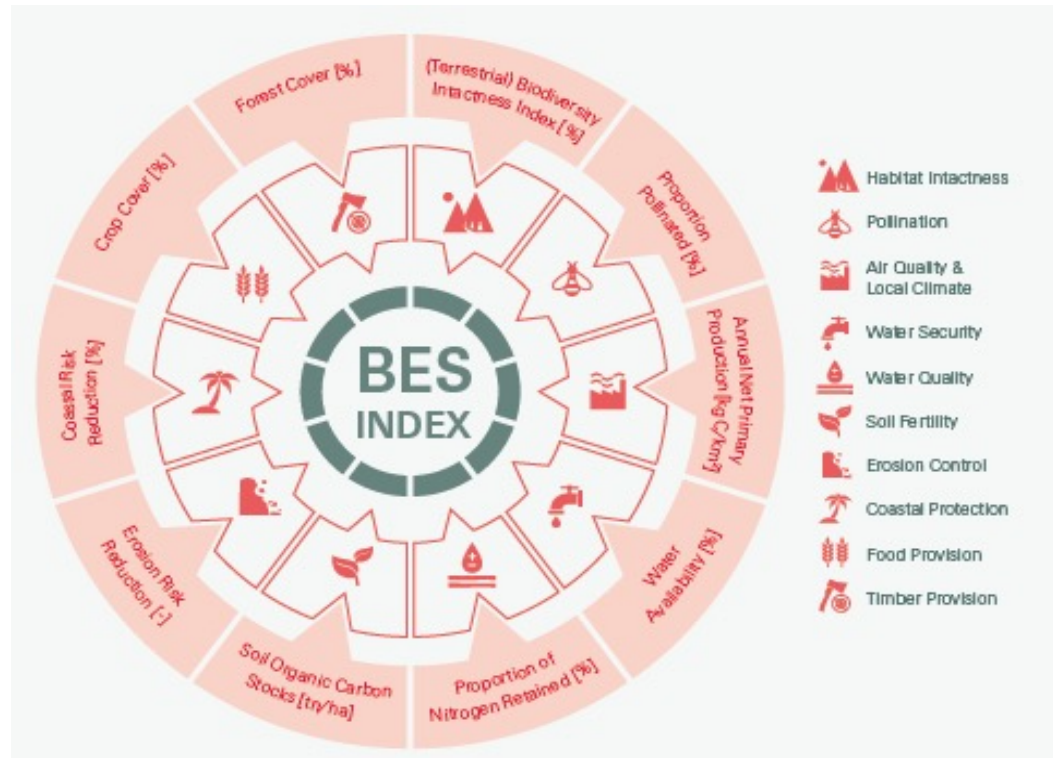


Systemic natural capital risk

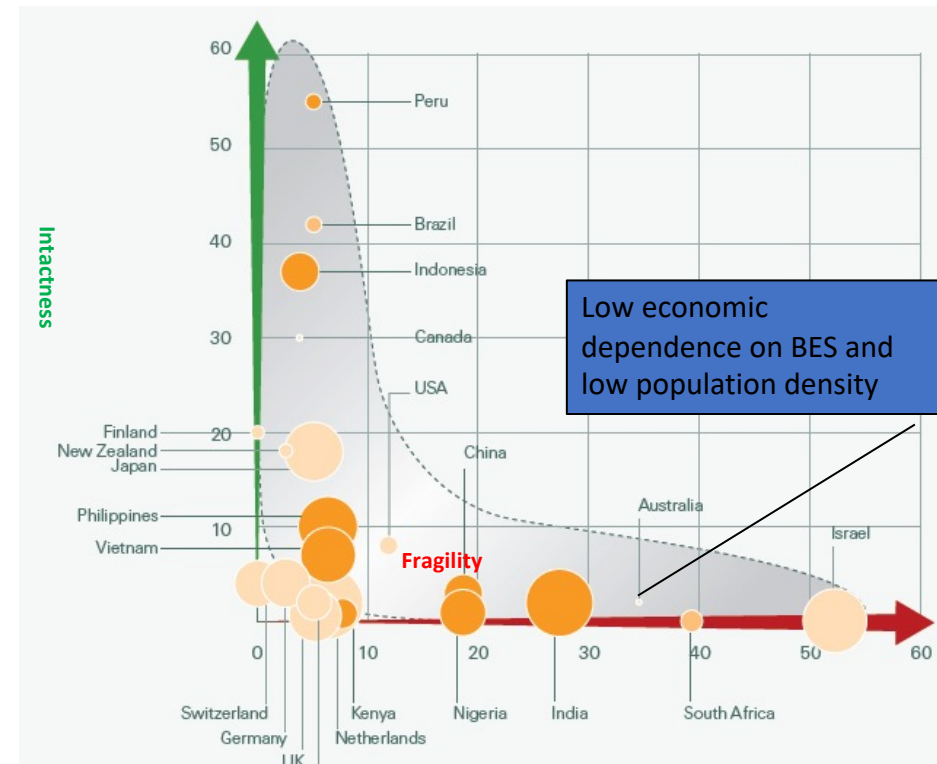
Even with an economy with low relative BES dependence and low population density



Biodiversity and Ecosystem Services Index
(1km² resolution)

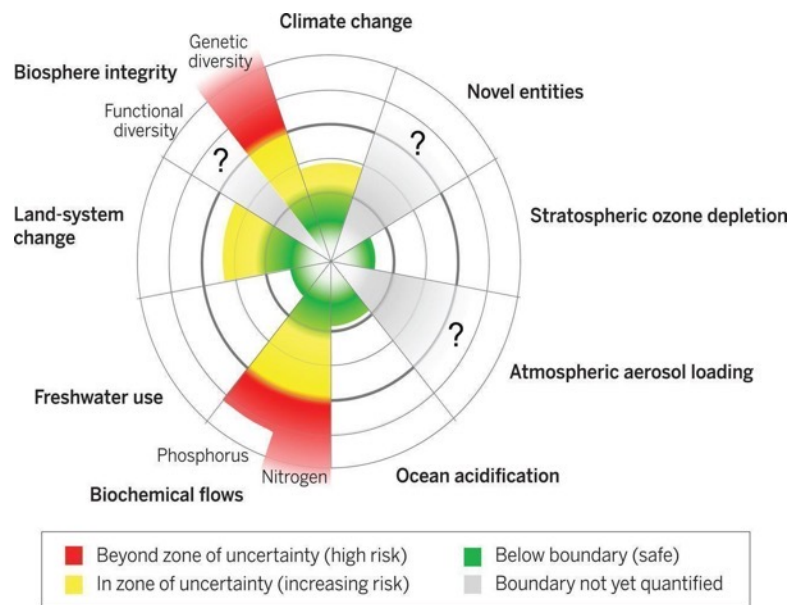


Fragile ecosystems vs intact

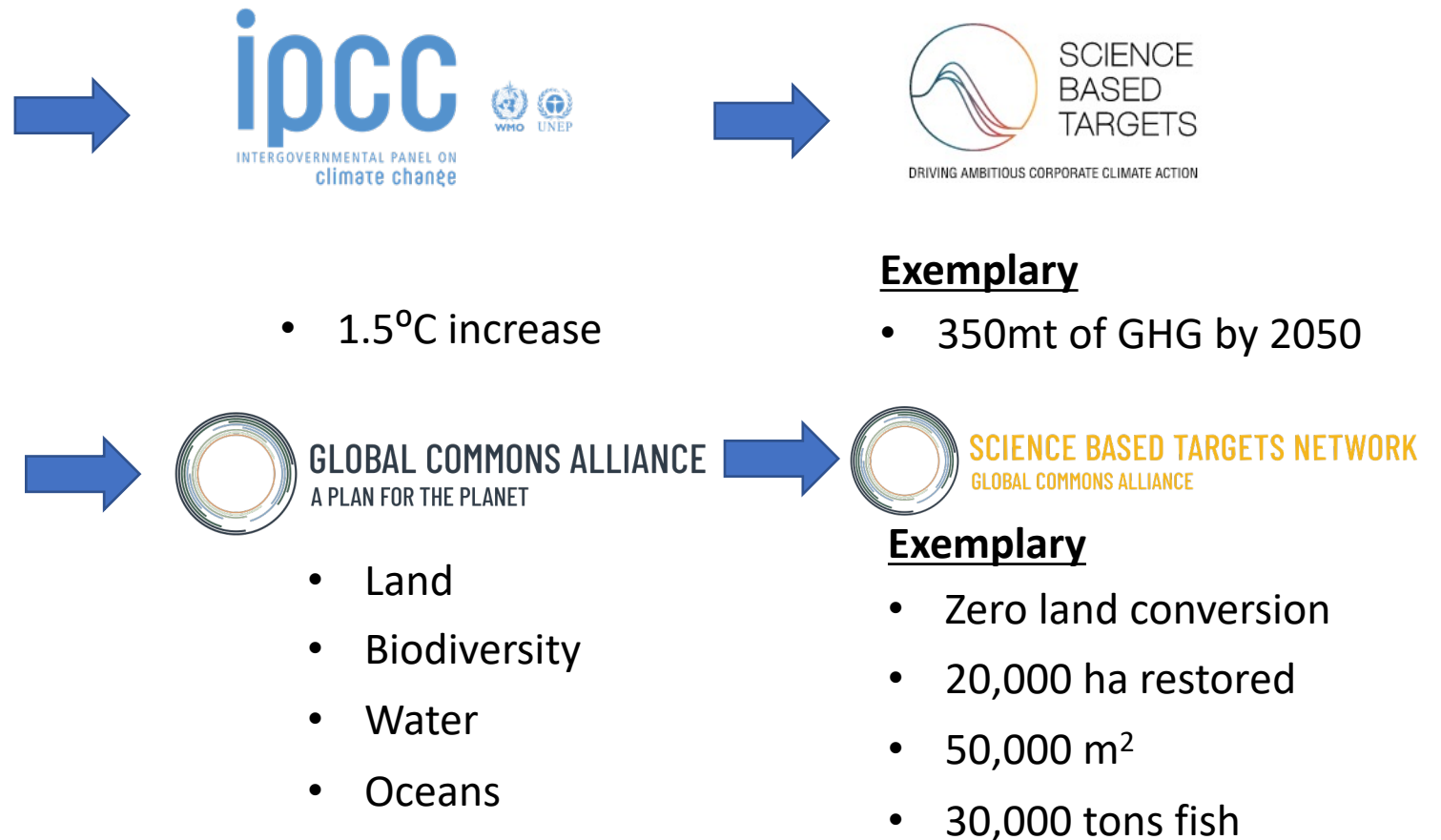


Corporate natural capital budgets are coming

Planetary boundaries

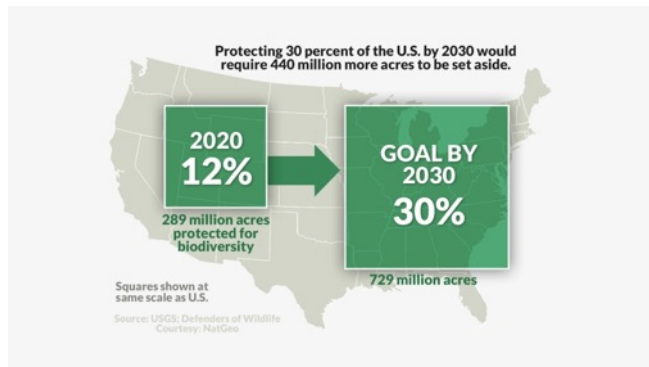


Steffen W, Richardson K, Rockström J, et. Al (2015) 'Planetary boundaries: Guiding human development on a changing planet' *Science* **347**,. doi:10.1126/science.1259855



Methods being released starting in early 2022

Target setting



<https://www.ksn.com/news/agriculture/breaking-down-bidens-30-x-30-plan-what-you-should-know-and-where-the-order-currently-stands/>

Geographically scalable methods



Corporate budgets



Risk assessments and disclosures





Litigation risk rising



Biodiversity Risk in Corporate ESG (Materiality)

- Failure to anticipate and manage biodiversity risks is disruptive and expensive
 - Operational and supply chain disruptions
 - Increased costs associated with regulatory requirements-compliance and non-compliance
 - Stakeholder, customer, investor, insurer preference



Litigation Risk

- Litigation risk
 - Growing number of climate-related cases
 - Risks
 - Financial
 - Reputational
 - Misrepresentation, greenwashing



Litigation Drivers

- Maturation of GHG emissions science
 - Causal connection climate change impacts
 - GHG emitters viewed as responsible
- Pressure to set net zero commitments
 - Accenture Report: Almost 1/3 of largest 1000 public European companies "aim" to reach net zero by 2050
 - Only 1 in 10 will meet net zero in their own operations by 2050
- Stakeholder expectations high-quality, transparent disclosures
 - Failure to cover entirety of operations
 - Interim targets
 - Offset details
- Sustainable investing
 - Transparency in sustainable investment product claims

Litigation Trends



- Royal Dutch Shell (RDS) (2021)
 - finding RDS's 2050 net zero commitment "intangible, undefined, and non-binding plans ..." and ordering RDS must reduce CO2 emissions by net 45% relative to 2019 by 2030)
- Massachusetts v. Exxon (2019)
 - Deceptive "greenwashing" claims are material, misled consumers and investors
- Earthworks v. Chevron (2021) (pending)
 - Federal Trade Commission Complaint alleging violation of Green Guidelines

Milieudefensie v. Royal Dutch Shell, PLC, Hague District Court, Decision of May 26, 2021 (appeal pending).

Commonwealth of Massachusetts v. Exxon,

- *Commonwealth v. Exxon Mobil Corp.*, Civil Action No. 1984-CV-03333-BLS1 (Mass. Super. Ct. filed June 5, 2020)

Earthworks v Chevron: <https://earthworks.org/media-releases/accountability-gropus-file-first-of-its-kind-ftc-complaint-against-chevron-for-misleading-consumers-on-climate-action/>.

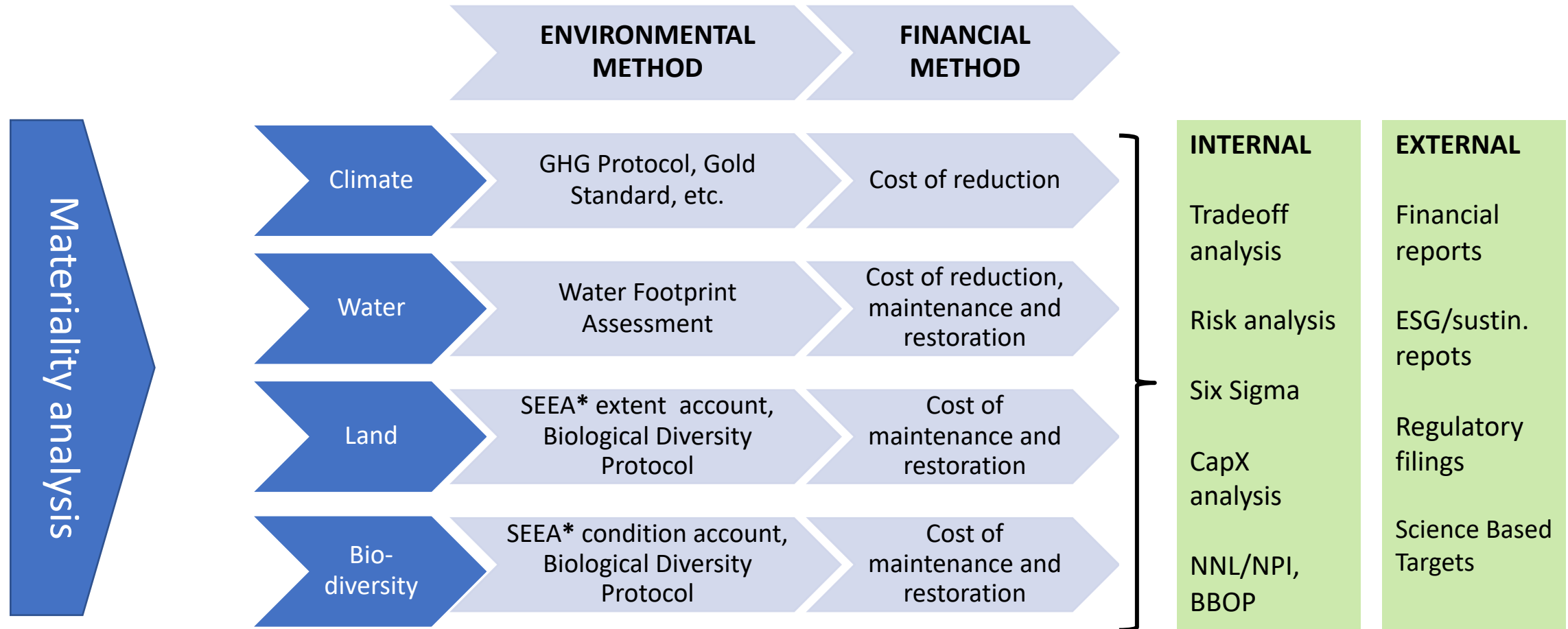


How business can prepare



Today's practices

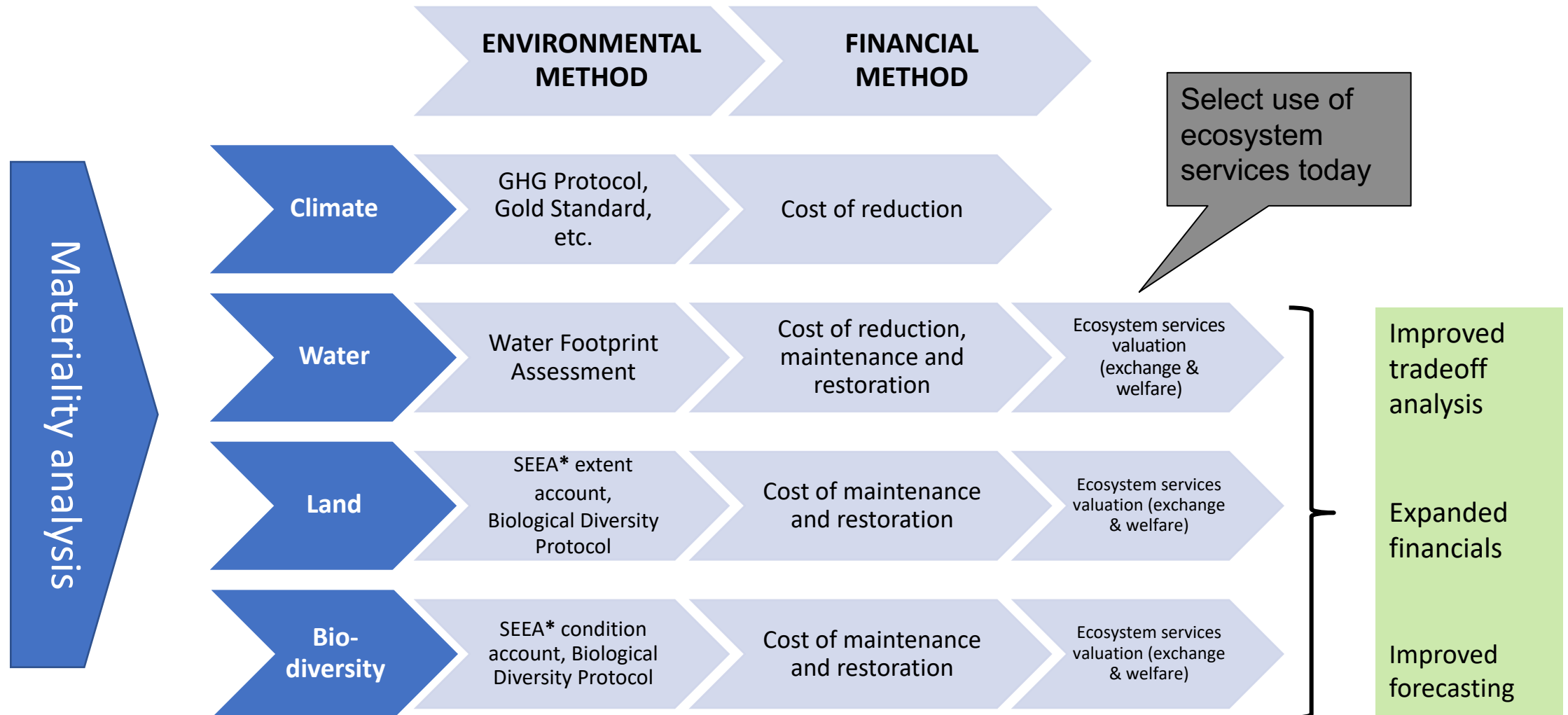
Pragmatic approaches to integrate environmental issues into financials and decision making



*Concepts from the UN System of Environmental-Economic Accounting (SEEA) form the basis of guidance such as the Accounting for Nature Standard, the Biological Diversity Protocol, the Capitals Coalition's papers and others. The most appropriate methods for a given company, geography and industry are often context specific.

Tomorrow's practices

Planning for future ecosystem services assessments while deploying them in specialized efforts



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Data Gathering Requires Careful Consideration & Work Product Protection



About Sustainable Flows

Sustainable Flows helps organizations improve financial and ecosystem services flows through mapping, modeling, valuation and natural capital accounting that improves strategies for managing risks and opportunities related to the natural environment.

Strategy | Assessments | Capacity Building

We work globally with the public and private sectors to advance best practices, while providing clients practical support on their material issues.

Environmental markets



Science Based Targets for Nature (SBTN)



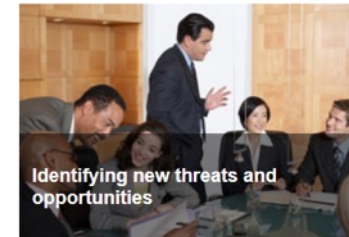
Natural capital valuation



Corporate Natural Capital Accounting (CNCA)



Water, ecosystem services, & adaptation to climate change



Landscape scale environmental management



Select clients



GeSI ENABLING
DIGITAL
SUSTAINABILITY



GREIF
PACKAGING SUCCESS TOGETHER™



GRUPO ARGOS

ABOUT LEWIS BRISBOIS

Sophisticated, Multi-Faceted & Well-Versed



Lewis Brisbois offers legal practice in more than 40 specialties, and a multitude of sub-specialties. Our attorneys have broad knowledge, experience, and sensitivity to our clients' unique needs.

Sustainability and Environmental, Social, and Governance (ESG) Practice

Companies throughout the United States and abroad are increasingly focusing on business risks and opportunities related to sustainability and environmental, social, and governance (ESG) factors, including climate change. While these issues are not new, they are receiving elevated C-suite attention due to multiple forces: intensifying compliance obligations, growing investor and supply chain pressures, and expanding significance in transactions. Businesses in the manufacturing, energy, mining, finance, and other sectors are prioritizing ESG considerations in the full range of their corporate dealings. Lewis Brisbois's Sustainability and ESG practice draws upon sophisticated expertise from a seasoned, multi-disciplinary complement of practitioners across the firm to provide clients with an integrated problem-solving team targeted to their specific opportunities and risk mitigation needs.

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