

Terms of Reference – HCSA Legacy Task Force

Background

The High Carbon Stock (HCS) Approach is a methodology that distinguishes forest areas for protection from degraded lands with low carbon and biodiversity values that may be developed. The methodology was developed with the aim to ensure a practical, transparent, robust, and scientifically credible approach that is widely accepted to implement commitments to halt deforestation in the tropics, while ensuring the rights and livelihoods of local peoples are respected.

However, many agricultural development projects are slated for development in High Forest Cover Landscapes (HFCLs), defined by the HCS Approach as landscapes with over eighty percent forest cover. In these landscapes, there may be insufficient area or optimal arrangement of degraded land to support development of large-scale plantations via the HCS methodology and Decision Tree. In some cases, governments and local communities are anticipating the implementation of projects, including those where Free, Prior and Informed Consent has been obtained from rights holders. The HCS Approach created the HFCL Working Group to decide the best course of action for these cases.

After considerable discussion by the HFCL Working Group, it was decided that the HCSA methodology and Decision Tree will not be altered for application in HFCLs. However, it was also agreed by consensus that a limited number of HFCL legacy cases may merit special consideration by the HCSA to ensure that obligations to communities are met, while ensuring conservation outcomes are maximised. Thus, the HFCL Working Group proceeded to define the scope of a legacy case review process.

Applications for Legacy Cases may be submitted to the HCSA Secretariat during a sole submission period, after which a designated Legacy Task Force will review the case against predetermined eligibility criteria. Cases meeting these criteria will be subject to a due diligence procedure. For approved legacy cases, the Task Force will work with communities, companies and their partners in prioritising conservation outcomes and achieving a mutually-agreed way forward. This may include independent verification of the information submitted to the Task force for consideration.

Concurrent with the development of the HFCL Working Group and Legacy Task Force, the Principles and Criteria Review Task Force of the RSPO agreed to include new requirements to halt deforestation through the use of the HCSA in the revised standard, which were ultimately adopted by the RSPO General Assembly in November 2018. Subsequently, the RSPO and HCSA agreed to form a new 'No Deforestation Joint Steering Group' (NDJSG) to guide the development and implementation of the procedures, methodologies and guidance for RSPO Criterion 7.12. The NDJSG will, *inter alia*, seek to harmonise HCSA and RSPO P&C approaches to legacy cases located in HFCL within High Forest Cover Countries (HFCC), as defined by the RSPO.¹ It was determined that guidance and recommendations relating to HFCL within non-HFCC will refer to the HCSA Legacy Task Force Process, and that the NDJSG will follow this work and may make recommendations for including the outcomes from this process into the RSPO's standards and procedures.

This document details the outcomes of these processes as the Terms of Reference for the HFCL Legacy Review Task Force.

¹ See RSPO P&C 2018: "Countries defined as having >60% forest cover (based on recent, trusted REDD+ and national data); <1% oil palm cover; a deforestation trajectory that is historically low but increasing or constant; and a known frontier area for oil palm or where major areas have been allocated for development."

Objectives of the Legacy TF

- i. Develop procedures for receiving, processing, and vetting proposed legacy cases.
- ii. Assist communities, companies, and their partners working in existing concessions within HFCLs to prioritise conservation outcomes for approved legacy cases.

Scope of Implementation

Following application of the Toolkit and Decision Tree, the ICLUP process may include limited conversion of identified HCS forest in the YRF vegetation class only, and subject to maximum area thresholds defined by the HCSA Executive Committee (EC). Decision on limited conversion exceptions for YRF areas will be determined via a mutually agreed decision-making process with affected communities.

The Task Force will present a consensus-based² recommendation on all limited conversion exceptions for YRF areas to the Executive Committee of the HCSA, who will then inform their respective constituencies in the SG of the recommendation. If consensus cannot be achieved by the Task Force, the matter will be determined by the EC. During the mutually agreed decision-making process, local community representatives, freely chosen by the communities, will participate in field visits and future deliberations.

Task Force Structure

The Task Force will be chaired by the High Forest Cover Landscapes Working Group Co-Chairs. On a consensus basis, the Task Force may nominate a new Chair (or Co-Chairs) from among the HCSA Steering Group.

Task Force Members will consist of representatives from plantation companies (3 seats), NGOs (3 seats), TSOs (1 seat), Commodity Users (1 seat), and smallholder (1 seat)³. Should a Task Force member need to recuse themselves or be unable to participate in a Task Force meeting, an Alternate Task Force member will be nominated by the respective chamber to take their seat.

Task Force members must recuse themselves if they have any conflict of interest, as defined in the HCSA's Potential Conflict of Interest Disclosure Form. All Task Force Members and Alternate Members must sign the Potential Conflict of Interest Disclosure Form prior to participating in the Task Force and update the form when any potential conflict of interests arise.

A representative of the RSPO will be invited to Task Force meetings as an observer. Task Force meetings will be closed to other non-members, unless a written invitation has been issued by the Chair (or Co-Chairs) or HCSA Secretariat. The Task Force may alter this arrangement by consensus decision.

Scope of Work of the Legacy Task Force

- i. Finalise eligibility criteria for proposed legacy cases (Annex 1).
- ii. Develop terms and conditions of the Due Diligence Procedure (Annex 2).
- iii. Develop an internal procedure for receiving proposed legacy cases and vetting them against finalised eligibility criteria.
- iv. Issue a public call for proposed legacy cases and develop intake procedures.
- v. Review and decide on the eligibility of the legacy cases submitted.
- vi. Process accepted cases according to the due diligence procedure agreed under (ii).
- vii. Suggest HCSA positions on HFCL and related communications, as needed.

² Consensus is defined as the lack of a sustained objection.

³ This composition is representative of HCSA SG's membership categories.

Outputs by the Task Force

- i. Eligibility criteria, due diligence procedures, and internal processing procedure finalised. Deadline: March 1, 2019.
- ii. Complete eligibility review of submitted legacy cases.
 - a. Companies submit a legacy case review application, with all supporting documentation for eligibility determination to the HCSA Secretariat by June 30, 2019.
 - b. The Task Force will review the applications and their supporting documentation for completeness on a rolling basis. This process may include feedback to the company about incomplete documentation, with an opportunity to resubmit documentation prior to the deadline. Deadline: August 31, 2019.
 - c. The Task Force will compile a list of complete legacy case applications that will be considered for eligibility determination at the Autumn HCSA SG meeting.
 - i. Should the Task Force require additional time to complete its review, it will issue a public statement with a revised date.
 - d. The Task Force will make a final determination on legacy case eligibility by the close of the autumn 2019 HCSA SG Meeting and notify applicants of the decision within no more than 30 days.
- iii. Complete review of eligible legacy cases according to the due diligence procedure. Deadline: September 30, 2020.
- iv. Summary of approved and/or rejected cases provided to HCSA SG and EC and published on HCSA website.

Prior to opening the call for Legacy Case applications, the HCSA Secretariat will establish a dedicated e-mail address to receive legacy case applications and supporting evidence, along with a corresponding SharePoint site to facilitate Task Force review and tracking of applications. A Task Force call schedule will be established.

If agreed by consensus, the Task Force may assign individuals or teams to review specific cases or develop Terms of References and requests for funding from the company and/or HCSA to enable the appointment of contractors, with relevant expertise and/or local translators, to assist in independent investigations that inform the due diligence process.

Annex 1: Eligibility Criteria

To qualify for the legacy case process, the company must provide written evidence to show that it complies with the eligibility criteria outlined in this section.

Scope:

- Eligible applicants are companies with rights to develop forested land for agricultural production. This includes HCSA Steering Group members, applicants to the HCSA SG, and third-party suppliers⁴.

Landscape:

- The case must be in a High Forest Cover Landscape. High Forest Cover Landscapes (HFCLs) are defined as landscapes⁵ with over eighty percent forest cover.
- *[Note that for RSPO members, the Principles and Criteria currently limit legacy cases to HFCL within High Forest Cover Countries, defined by the RSPO.⁶ For Legacy Cases in those countries, the recommendations made by the Legacy Case Task Force may thus not be recognised for RSPO certification, although the RSPO is following this work and may make recommendations for including the outcomes from this process into the RSPO's standards and procedures. Any changes to the RSPO P&Cs must follow the RSPO's procedures for standard-setting.]*

Company's current activities:

- For HCSA SG members and applicants, no clearing conducted by the company after the effective date of their No Deforestation policy. For RSPO members, no clearing conducted by the company after the effective date of their No Deforestation policy or the adoption of the 2018 P&C, whichever is earlier.
- The company has a signed agreement with the local community to begin development which is dated before April 2015 (the launch of the HCSA Toolkit).
- For third-party suppliers, if clearance of forests in areas designated for plantations as agreed with the local community began after the signed-agreement, then the company stopped clearing once advised of the HCSA member policies that apply to third-party suppliers, and has not resumed clearing at any time since agreeing to comply with the moratorium on the clearance of HCS forests.
- There is no evidence that active logging or clearance (including road building) of HCVs or HCS forest is currently taking place in the applicant's operations on a corporate group level, i.e. including outside of the concerned legacy concession(s) in either HFCL or fragmented landscapes.
- No significant disputes over tenure; use rights and benefit-sharing remain; and mutually agreed decision-making processes are in place with affected communities.⁷

⁴ Third party supplier is defined at the level of Corporate Group, under which multiple business entities are affiliated by means of significant ownership shares or financial stakes, or by commonality in directors or senior officers of the same individuals or family relatives. This includes subsidiaries or parent companies in the same sector. This definition encompasses all company ownership structures, including privately-held, publicly traded, and state-owned companies as well as companies in which states hold an interest.

⁵ See HCSA Toolkit Module 5: "Landscape is defined as a geographical mosaic composed of interacting ecosystems resulting from the influence of geological, topographical, soil, climatic, biotic and human interactions in a given area", based on the definition used by the International Union for Conservation of Nature (IUCN). See:

http://cmsdata.iucn.org/downloads/en_iucn_glossary_definitions.pdf (accessed 1 June 2018)

⁶ Additional guidance can be found in the [Principles and Criteria 2018](#)

⁷ This does not include any disputes or grievances arising from the legacy process itself, i.e. the breach of an agreement with local communities to develop a project in order to comply with a No-Deforestation policy or moratorium on development while the legacy issue is being adjudicated.

Land use rights:

- The company has a legally valid permit to develop a plantation in compliance with associated laws and regulations.
- Evidence of the procedures used for the legacy case to obtain the FPIC of Indigenous Peoples and local communities and users is documented for any development on lands to which they hold legal, communal or customary rights as decided by Indigenous Peoples and local communities through their own freely chosen representative institutions. A signed agreement is necessary.

Policies:

- Must have a published policy or statement that fulfills the terms of the HCSA Membership Requirements, including, *inter alia*, a public commitment to halt deforestation and implement the HCSA for development of all operations (i.e. plantations and mill sourcing) that includes no peat, no HCV areas, no HCS forest, and no exploitation.⁸

⁸ Publicly available means that the policy, statement, or commitment is available on a website, in English or locally appropriate language. Applicants who do not have a website may submit their policy, statement, or commitment to the HCSA Secretariat, to be hosted on the HCSA website.

FIGURE 1: COMPANY'S CURRENT ACTIVITIES



Annex 2: Due Diligence Process

Terms and Conditions of the Due Diligence Process

If an initial vetting process demonstrates that a given legacy case meets the minimum eligibility criteria, it may be selected for an in-depth Due Diligence Process. Upon confirmation of eligibility for the Due Diligence Process, the company holding the legacy case concession would also commit in writing to the following *terms and conditions* of the process:

- Maintenance of clearance moratoria while the Due Diligence is conducted;
- Consent to undergo independent investigation throughout the due diligence process. Investigators will be free from any Conflict of Interest. Costs will be agreed in advance and paid by the company.
- A public commitment to develop, publish, and resource management plans for the long-term protection of HCS forests and other set-asides in the concession and surrounding landscape, including applicable remediation, compensation, equitable incentives and benefit packages in accordance with the HCSA Social Requirements⁹, and informed by guidance from the HCSA Protection Working Group, and agreed by / in cooperation with local communities, other concession holders and forest users prior to any clearance and planting;
- An agreement to work with the HCSA member and Task Force toward prioritising conservation outcomes, and in mutually-agreed negotiations with rights-holders, establishment of an area threshold for maximum HCS forest clearance, which is to be a small proportion of plantation area, in the Young Regenerating Forest (YRF) forest quality class only;
- Agree to provide detailed information to the Task Force, including:
 - Detailed maps of forests and community areas inside and near the concession;
 - Results of HCV, HCS, ESIA, Community Needs Assessments, and other relevant studies;
 - Information about what community consultation about the project has already occurred.
 - Information about grievances previously raised by communities, and details of the process undertaken to resolve grievances, and actions taken to address concerns raised to the satisfaction of local communities.
 - Indications of how much YRF forest would need to be cleared to meet economic viability requirements, community expectations, etc.
 - Indications about alternative development models for the concerned area and their potential impacts that have been proposed by communities or discussed with communities in an effort to achieve a mutually agreed way forward that meets the community needs and maximises conservation outcomes.
- Agree to respond in a timely manner to additional questions and requests for information from the Task Force, including for instance:
 - Is there a need to establish a mill for economic viability? Will this trigger new clearing outside of the legacy concession for the commodity in question, or for other economic activities?
 - Will there be a need for a significant migrant labour force? Will this make forest communities marginal and minority in their own region? What other negative impacts might occur?

⁹ The HCSA Social Requirements are explained in Module 2 of the HCSA Toolkit: <http://highcarbonstock.org/wp-content/uploads/2017/11/HCSA-Toolkit-v2.0-Module-2-Social-Requirements-211117-web.pdf>. All of the draft social requirements presented in Section B have now been adopted and are required except for numbers 5, 11, and 13 which are still in draft format.