

HIGH CARBON STOCK APPROACH

High Forest Cover Landscape Legacy Case Application

Public Summary

May 2022

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 (FPIC) 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.

Legacy Task Force Terms of Reference

The Terms of Reference (ToR) for the Legacy Case Task Force was developed by the HFCL Working Group and then approved by the HCSA Executive Committee in April 2019. The ToR includes eligibility criteria for legacy case submissions, the due diligence process, and internal processing procedures for assessing and potentially approving a strictly limited number of ‘Legacy Cases.’ The Legacy Task Force ToR is available [here](#).

The HFCL Legacy Task Force was comprised of representatives from all member categories except the Smallholder caucus, which was not able to nominate a member. Throughout the HCSA Legacy Case Application Process there were changes in the representation from each caucus, due to resignation of certain representatives from their organisations and the withdrawal of an organisation as a HCSA Member. Table 1 lists the HFCL Co-Chairs and the Legacy Task Force Members.

High Forest Cover Landscapes (HFCL) Co-Chairs			
Name	Organisation	Active until	
Charlotte Opal (CO)	Earthworm Foundation	9 March 2022	
David Burns (DB)	National Wildlife Federation (NWF)	31 July 2021	
High Forest Cover Landscapes (HFCL) Legacy Task Force Members			
Caucus	Organisation	Representative Member	Replaced by
Plantation	Kuala Lumpur Kepong Berhad (KLK)	Jason Foong	NA
		Lee Kuan Yee (Alternate)	
	Musim Mas	Vivi Anita	NA
	Sime Darby Plantation (SDP)	Rashyid Reda Anwarudin	
Laszlo Mathe (Alternate)			
Smallholder	NA		
Commodity Users	Unilever	Petronella Meekers	Ingrid Richardson
Non-Governmental Organisations	Forest Peoples Programme	Patrick Anderson	NA
	Greenpeace	Maik Marahrens	Grant Rosoman
	Rainforest Action Network	Gemma Tillack	NA
	National Wildlife Federation	Kiryssa Kasprzyk (Alternate)	NA
Technical Support Organisations	Daemeter	Florian Vernaz	NA

Submission of Legacy Case Applications

The HCSA Secretariat published a call for Legacy Case applications on 13 May 2019 through its website and through email to HCSA Steering Group and RSPO members. Four applications in all were received: one from a rubber plantation company and three from oil palm plantation companies.

Information Gathering and Eligibility Criteria Determination

The HCSA Legacy Task Force reviewed all the applications against the eligibility criteria indicated in the Legacy Task Force ToR. Several meetings were held, physical and virtual, to determine if the applicants met the eligibility criteria. Where required, the applicants were asked to send in additional documentation as proof to meet the eligibility criteria.

At this stage, two applications were withdrawn, and one application was found by the Legacy Task Force not to have met the eligibility criteria.

Due Diligence Procedure

The initial vetting process demonstrated that one legacy case application met the minimum eligibility criteria and was selected for an in-depth Due Diligence Process. Upon confirmation of eligibility for the Due Diligence Process, the company holding the legacy case concession committed in writing to the terms and conditions of the process as stated in the Legacy Task Force ToR.

A local consultant was tasked to conduct a desk review as well as a field visit and verification. The consultant had no known conflict of interest with the applicant company; the cost of their work and expenses were shared by the HCSA Steering Group and the applicant company.

The results of the desk review and field visit were discussed with the consultant in a Legacy Task Force meeting, and the applicant company was asked for further information.

Conclusion and Legacy Task Force Decision

The Legacy Task Force met in a virtual meeting in September 2021 to discuss the final set of feedback and documents from the applicant company. The Task Force found that the application that went through the due diligence procedure was not approved for further processing due to the following reasons:

- The applicant has not respected its moratorium on forest clearing since 2015.
- No evidence was presented regarding the economic viability of the project and why the applicant company needed to clear the proposed area.
- There was not sufficient documentation of the procedures used to obtain the Free, Prior, and Informed Consent of Indigenous People and local communities for any development on lands to which they hold legal, communal, or customary rights as decided through their own freely chosen representative institutions. The agreements provided were not sufficient to demonstrate the Legacy Case requirement that consent was given prior to commencement of the development and that it remained in place with all communities affected by proposed developments.
- It appears that some of the communities had not received the benefits that the company promised to deliver to them, which calls into question the capacity of the company to adequately implement the eventual outcomes of the Legacy Case Task Force decisions.
- Full information on the land status, maps, and spatial information was not provided as requested by the Legacy Task Force.

As a recommendation to the applicant company, the HCSA Legacy Task Force proposed that the applicant change its plan for this area from an industrial scale to a small-scale plantation, which will not involve forest clearing and will help in its implementation of its commitment to No Deforestation. This different model of development could be complemented by supporting communities to have their own small-scale plots on their farms or nearby degraded land.

Next steps and lessons learnt

The procedure agreed to by the Executive Committee of the HCSA Steering Group only allowed for one round of applications and review of Legacy Cases. The completion of the case review ends the work of the HCSA Legacy Task Force, which was disbanded by the HCSA EC on 9 March 2022. HCSA discussions of agricultural development in High Forest Cover Landscapes are now limited to our participation in the No Deforestation Joint Steering Group of the Roundtable on Sustainable Palm Oil (RSPO), which advises the RSPO on how to implement No Deforestation in its system.

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 using 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 '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 seeks to harmonise HCSA and RSPO approaches to legacy cases located in HFCL within High Forest Cover Countries, as defined by the RSPO. While HCSA's work on legacy cases has now ended, we hope that this document can serve as a useful summary of the process and learnings achieved by the HCSA Legacy Case Task Force over our two years of activities.