

RSPO Remediation and Compensation Procedures Related to Land Clearance without Prior HCV Assessment

Explanatory note – context to the development of this document

In accordance with the RSPO Principles & Criteria (P&C), RSPO palm oil producer members are required to have completed HCV assessments of their land holdings for new plantings from November 2005. The intention is that areas of land under the control of RSPO member growers which contain or support HCVs is not cleared for planting after this date. Some tolerance was initially given for RSPO producer members for plantings done between end November 2005 and end November 2007, due to an array of factors (notably the initial field trial period for the P&C which lasted until 2007, the requirements of National Interpretations of the P&C that had been developed, the rudimentary nature of HCV assessment guidance at that time, the near-absence of qualified HCV assessors, purchase of plantations from non-members, and communication problems). Even after 2007, for various reasons including those outlined above, some RSPO members growers continued to clear land for planting in the absence of any HCV assessment. To help ensure that RSPO producer members would not continue land-clearing without prior HCV assessment, however, the New Planting Procedure (NPP) was implemented starting 01 January 2010, prior to any further expansion of oil palm planting.

There are three main options to deal with this form of breach of RSPO member requirements : either (a) expel the member, or (b) suspend their RSPO membership pending some form of ad hoc remedial or compensatory action, or (c) provide an agreed clear, formal and transparent procedure to remediate and compensate. Given that RSPO wishes to improve environmental and social standards in the palm oil industry globally, and is committed to continuous improvement, and does not want to divide the palm oil world into “us and them”, option (a) is the least beneficial. Option (b) suffers from being ad hoc, and not addressing the issue for the longer term. Option (c) is considered to be the best option.

This paper outlines the details of the proposed option (c).

On March 6th 2014 the Board of Governors of the RSPO accepted the recommendations of the Compensation Task Force to start a staged implementation of the Remediation and Compensation Procedures Related to Land Clearance Without Prior HCV Assessment outlined in this document. This staged implementation requires all RSPO members who own and/or manage land for oil palm production to comply, from March 6th 2014, with all sections of this document up to and including section 7. Calculating conservation liability.

The staged implementation period is designed to allow further information and experience to be gathered in order to develop a complete procedure. Until the staged implementation period ends all members are encouraged to also comply with the remainder of this document.

Important Notes:

1. The adoption of this Remediation and Compensation Procedures is only meant to encourage preservation of biodiversity, environmental and socio-cultural services and values and safeguard the areas necessary to maintain them in the context of expansion of oil palm cultivation. The RSPO proposes to do so by encouraging compliance by members of standards expected by RSPO as defined in its Principles and Criteria (P&C).
2. The P&C and Procedures set out below are a set of private standards which RSPO expects of its members and are not a reflection of any law or any requirement under any law of any country in which any of the members operate.
3. The term “breach” does not mean an admission of or imply any wrong doing by RSPO member under any law of any jurisdiction nor any wrong committed against any third party, whether an individual, company, organization or other legal entity but only non-compliance by a member of the set of principles and standards imposed by RSPO.
4. Any compensation (in the form of projects or conservation funds) by member under these standards are not (nor are they meant as) damages for any wrong doing by the said member under any law of the jurisdiction in which the compensation is executed (in the form of projects or conservation funds) and is only meant to meet the privately imposed RSPO standards and criteria for the purposes of securing certification by RSPO. Equally, the execution of a compensation under these Remediation and Compensation Procedures does not absolve any member from any wrong doing (if any) under any law of any country nor suggestion that the laws of any country in which a member operates, need not be observed.
5. These Remediation and Compensation Procedures are also not meant to encourage a member not to comply with the laws of a country.

1. Preamble

The RSPO's standards for sustainable palm oil production, as defined in its Principles and Criteria (P&C) identify the potential loss of primary forest or High Conservation Values (HCV)¹ arising from new planting development as a key issue to be addressed.

The first version of the P&C in 2007 (RSPO's Principles, Criteria and associated mandatory Indicators) stated that:

Criterion 7.3 New plantings since November 2005, have not replaced primary forest or any area required to maintain or enhance one or more High Conservation Values.

- *An HCV assessment, including stakeholder consultation, is conducted prior to any conversion.*
- *Dates of land preparation and commencement are recorded.*

These provisions in the RSPO standard are intended to preserve important biodiversity, environmental and socio-cultural services and values, and safeguard the areas necessary to maintain them in the context of expansion of oil palm cultivation. As such they constitute core elements of the RSPO system.

Strictly interpreted, these requirements, in combination with the RSPO provisions against partial certification², effectively exclude growers in control of areas cleared for expansion without prior HCV assessment after November 2005 from RSPO certification.

Aware that the understanding and implementation of these requirements had been gradual and that non-adherence has been due to a wide range of causes, particularly on land that had not yet been certified, the RSPO Executive Board (EB) approved the New Plantings Procedure (NPP), effective from January 1, 2010. This procedure requires all RSPO members involved in the production of palm oil to demonstrate, as verified by an RSPO accredited certification body, that they have conducted independent, comprehensive and participatory social and environmental impact assessments – including identification of any primary forest areas required to maintain HCVs, areas of peat soils and local peoples' lands – prior to any clearing of new areas.

The P&C was subsequently revised in 2013, and the main difference between the 2007 and 2013 versions relating to criterion 7.3 is in terms of how the grower is asked to demonstrate that there has been no clearance of HCV areas since 2005. If the land clearing occurred between 2005 and 2013, there is no requirement for compensation if the grower can prove that they had conducted an HCV assessment prior to conversion and that no HCV or primary forest has been cleared. However, if the land clearing occurred after the 2013 version of the P&C is published, the grower will have to show that an HCV assessment with a land use change (LUC) analysis was conducted prior to clearance.

The 2013 RSPO Principles, Criteria and associated mandatory Indicators state that:

¹ HCVs are defined in the generic HCV toolkit and national interpretations (where available). Updated information on toolkits and HCV definitions are available from the HCV Resource Network website at www.hcvnetwork.org/

² Clause 4.2.4 of the Certification Systems requires that growers commit to a timetable for certifying *all* lands under their control

(Criterion 7.3) *New plantings since November 2005, have not replaced primary forest or any area required to maintain or enhance one or more High Conservation Values.*

7.3.1 There shall be evidence that no new plantings have replaced primary forest, or any area required to maintain or enhance one or more High Conservation Values (HCVs), since November 2005. New plantings shall be planned and managed to best ensure the HCVs identified are maintained and/or enhanced (see Criterion 5.2).

7.3.2 A comprehensive HCV assessment, including stakeholder consultation, shall be conducted prior to any conversion or new planting. This shall include a land use change analysis to determine changes to the vegetation since November 2005. This analysis shall be used, with proxies, to indicate changes to HCV status.

7.3.3 Dates of land preparation and commencement shall be recorded.

Specific Guidance for 7.3.1: *Where land has been cleared since November 2005, and without a prior and adequate HCV assessment, it will be excluded from the RSPO certification programme until an adequate HCV compensation plan has been developed and accepted by the RSPO.*

Grower members should also note that HCV assessments carried out under the New Plantings Procedure (NPP) shall use RSPO-approved HCV assessors, and any HCV assessments shall be conducted according to the National HCV toolkit, where one exists. New requirements under the criterion 7.3 as stated in the 2013 P&C will not apply retrospectively on past HCV assessments.

However, recognising that land clearance without prior HCV assessment may have been the result of a wide range of causes (including unfamiliarity with RSPO's requirements at the time, activities by previous owners, mistakes or poorly implemented operational procedures), the EB, rather than insisting on requirements that would forever bar certain growers from certification and even RSPO membership, opted for RSPO to develop Remediation and Compensation Procedures.

Compensation is required for any clearance after 2005 without prior HCV assessment on land under the parent organisation or its majority owned and/or managed subsidiaries that are registered as RSPO members, regardless of whether clearing occurred before the land was acquired or leased. As defined in the RSPO's Certification System Document 2007, majority shareholding is defined as the largest shareholding. Where the largest shareholdings are equal (e.g. 50/50) this applies to the organisation that has management control. The Remediation and Compensation Procedures also applies to land leased or acquired by an RSPO member, and towards which the rule majority shareholding still applies.

The Remediation and Compensation Procedures presented below enable certification applicants in control of areas non-compliant with 7.3 and/or the NPP to apply for certification (or maintain their certified status) provided that:

- i. they demonstrate changes to their standard operating procedures,
- ii. agree on remediation/compensation for any loss of HCV 4, 5 and 6 with affected communities, and
- iii. implement biodiversity conservation measures as set out in these Remediation and Compensation Procedures.

This approach serves a dual purpose:

- It enables the RSPO to better pursue its mission *to advance the production, procurement, finance and use of sustainable palm oil products* by engaging a wider range of committed growers;
- It enables responsible growers to correct for operations which have resulted in past non-conformities so that they can apply for or maintain certification as means of demonstrating their commitment to sustainability.

2. Introduction

This document sets out RSPO Remediation and Compensation Procedures that apply to non-compliance with any of the provisions of RSPO Principle 7.3 and/or the New Plantings Procedure. It is based on the work and recommendations of the Compensation Task Force (CTF), a sub-unit of the Biodiversity and HCV Working Group (BHCW WG) of the RSPO established in 2011, which in turn built on earlier work by the Executive Board, ideas developed by the HCV RSPO Indonesian working group (HCV RIWG), and the outcomes of a workshop held with members at the 8th RSPO Roundtable (RT8) in Jakarta in November 2010.

The procedures have also drawn on experience from two initial grievance cases. These cases conclusively demonstrated that attempts to assess real loss of HCV through retrospective, historical HCV analysis were difficult, time-consuming and yielded far from acceptable results. The Compensation Task Force also concluded that restoring extensive areas of natural ecosystems on lands already planted with oil palm may often be less effective than conservation measures implemented outside plantations. The Remediation and Compensation Procedures take account of these lessons learned, setting out a proxy-based approach for calculating compensation liability based on satellite imagery of past vegetation cover on areas which have since been cleared, with implementation of acceptable conservation measures on or off site.

Whilst elements of this document may be revised as more experience accumulates, compensation plans are assumed to be based on the version of the document valid at the time of opening a formal compensation process, subject to subsequent change only if mutually consented to by the grower and RSPO.

In the event of disputes related to the content or interpretation of the Remediation and Compensation Procedures, the ultimate decisions rest with the RSPO Complaints Panel.

3. Key Requirements and Guiding Principles

3.1 The Remediation and Compensation Procedures include a number of key requirements (see also summary flow chart in Annex 1):

- i. Disclosure (sections 4 and 5 below)
 - Disclosure of non-conformant land clearings
 - Development of standard operating procedures (SOPs) designed to avoid any new non-compliant land clearing
- ii. Land use change analysis and liability assessment (sections 6 and 7 below)
 - Analysis and report on land use change
 - Identification of areas where planting oil palm is prohibited by the RSPO P&Cs (e.g. riparian zones and steep areas)
 - Calculating the additional compensation liability
- iii. Development of Remediation and Compensation Plan (sections 8 – 13 below)
 - The evaluation of each compensation case by a Compensation Panel
 - Remediation of areas where planting oil palm is prohibited by the RSPO P&Cs (e.g. riparian zones and steep areas)
 - Remediating/compensating affected stakeholders for loss of social HCVs (HCV 4,5 &6)
 - Overall compensation package can encompass national legal requirements for compensation on a hectare for hectare basis if these requirements are in line with RSPO objectives. The Compensation Panel shall decide on the applicability of compensation activities undertaken for legal compliance on case by case basis, and monitor the fulfilment of legal requirement.
 - Planning conservation projects
 - Implementing conservation projects and monitoring outcomes

3.2 The Remediation and Compensation Procedures reflect certain guiding principles:

- i. Early cases of clearance without HCV assessment carry less compensation liability than more recent cases. Thus, the procedures distinguish between non-compliant clearance carried out
 - after *November 2005* to *November 2007* (when the RSPO P&C were being trialled);
 - between *November 2007* and *December 31, 2009*;
 - such clearance carried out from *January 1, 2010* (when the NPP was introduced) to the *May 9, 2014*,
 - as to any non-compliant clearance in the future, compensation liabilities are designed so as to effectively discourage 'clear and pay'. However it does allow for new members to join the RSPO in the future and existing RSPO members to acquire holdings from non-members and still progress towards certification.

- ii. Non-compliant clearing by RSPO members at the time of clearing, and especially RSPO certified growers, carries a higher compensation liability than such clearing by non-RSPO members. This is because members are formally committed to RSPO and are expected to be better informed about RSPO's requirements than non-members. Note that the Remediation and Compensation Procedures apply everywhere in the world, including to growers in regions where RSPO is not yet active and who may seek RSPO membership and/or apply for RSPO certification in the future.
- iii. The procedures are designed to allow growers flexibility in how they fulfil their compensation liability and encourage conservation measures that maximise conservation outcomes in relation to allocated resources.
- iv. Whilst the RSPO is seeking to ensure that members practise due diligence in acquiring land for oil palm it is also recognised that companies cannot be held responsible for all clearance of land since 2005 prior to coming under their management. In particular, the RSPO encourages members to expand onto appropriate land and this is often land that has already been cleared by individual households for their own use. Therefore in several cases the Remediation and Compensation Procedures distinguish between land cleared commercially and non-commercially (see glossary for definitions), whereby growers are not required to compensate for land which they can demonstrate was non-commercially cleared.

THE FOLLOWING SECTIONS ARE REQUIRED DURING THE STAGED IMPLEMENTATION:

4. Disclosure of Non-Compliant Land Clearance

- *Grower³ members of the RSPO* shall disclose to the RSPO Technical Director any clearance for expansion after 2005 without prior HCV assessment on land managed and/or under their control, or else state in writing that no such clearing exists, and enter into compensation processes for all non-compliant clearance identified.
- *Growers applying for RSPO membership* shall disclose to the RSPO Technical Director any clearance for expansion after 2005 without prior HCV assessment on land under their control, or else state in writing that no such clearing exists, prior to the two-week public comment on membership applications period on the RSPO website. To be eligible for RSPO membership, growers must enter into compensation processes for all non-compliant land clearance.
- *RSPO certified growers or growers entering certification* shall disclose to an accredited Certification Body and to the RSPO Technical Director any clearance for expansion after 2005 without prior HCV assessment on land under their control (owned, managed, leased or acquired), or else state in writing that no such clearance exists. Conformity with this requirement shall be audited by the Certification Body, reporting any non-disclosure to the Complaints Panel. To be eligible for the first certification in any area without compensation liability, growers must enter into the compensation process for all non-compliant clearance. The principle here is that growers shall make full disclosure on all their land at the time they enter first certification.

³ Grower is defined by the RSPO as the person or entity that owns and/or manages a palm oil development.

The Remediation and Compensation Procedures will apply to growers who voluntarily disclose non-compliant clearance to the RSPO Technical Director within the stipulated timeframes. Once the compensation plan has been approved and started, the certification process in other operation units where no compensation case exists can be continued.

Non-compliances that are exposed through Certification Body audits, or brought to light by other stakeholders at a later stage will be reported to the Complaints Panel. Such cases may lead to suspension or withdrawal of certificates and/or termination of RSPO membership.

5. Approved Changes of SOPs

The members shall submit their SOP (approved by the company top management), to demonstrate they have incorporated appropriate measures to avoid new non-compliant land clearing.

6. Land Use Change Analysis

Growers who enter into compensation processes have the options of: a) compensate the total cleared area using a coefficient of 1 (see below) without conducting a Land Use Change (LUC) analysis; b) conduct a LUC analysis relating to all individual cases of land clearance after November 1, 2005, without prior HCV assessment.

6.1. Any compensation liability due to loss of HCV 4-6 shall be identified and assessed through dialogue with affected stakeholders and communities as described in section 9.

6.2. Areas where clearing vegetation and planting of oil palm is prohibited by the P&Cs (e.g. riparian zones and steep areas) shall be identified and remediated.

6.3 For the purpose of compensating potential loss of HCV 1-3, all clearance that occurred prior to HCV assessment (including areas identified for remediation in 7.2) shall be enumerated and categorised as occurring:

- Between November 2005 and November 2007
- Between November 2007 and December 31, 2009;
- Between January 1, 2010 and **May 9, 2014**
- After **May 9, 2014**

The analysis shall also assess whether lands were:

- Commercially cleared (by members or non-members) as defined in the glossary below
- Non-commercially cleared as defined in the glossary.

Areas cleared without prior HCV assessment (including areas identified for remediation in 6.2) shall be classified into four categories as in Table 1 below through analysis of remote sensing data of vegetation status in November 2005 (or as close to this year as possible - see Annex 2, Remote Sensing Guide). Each of the four vegetation categories is assigned a multiplication coefficient as a proxy for their value as habitat for biodiversity, ranging from 1 (Structurally complex forest including primary forest, regenerating, selectively logged forests with elements of high canopy) to zero (Monoculture tree and non-tree plantations; other permanently cultivated, developed or open degraded land).

In some cases, challenges to the remote sensing data and land use change analysis may come from the grower, the compensation panel or other stakeholders. In such cases, the compensation panel can require the grower to provide additional information to be incorporated into the analysis, or accept additional information from the grower, such as environmental impact assessment reports, historical land use maps, interviews with local community members, etc.⁴ The final decision on the coefficients is made by the compensation panel.

Table 1: Categories of land areas cleared without prior HCV assessment

Coefficient 1.0: Structurally complex forest (including primary forest), regenerating, selectively logged forests with elements of high canopy.
Coefficient 0.7: Structurally degraded but ecologically functional natural forest.*
Coefficient 0.4: Multi-species agroforestry.
Coefficient 0: Monoculture tree and non-tree plantations; other permanently cultivated, developed or open degraded land
<i>*Includes other degraded but still functional low-canopy secondary forest and pioneer-dominated, heavily and/or repeatedly logged or previously burned forest and regenerating forest.</i>
<i>Note: interpretation of these coefficients should make reference to the HCV toolkit applicable at that time of land clearance. E.g. Wetland ecosystems including peat swamp (especially swamp that is still forested), freshwater swamp, mangrove forest, lakes, and grass swamps are identified as HCVA in Indonesia in 2008. [stated as HCV 4.1 in the Indonesian HCV Toolkit 2008]</i>

Growers shall submit a report on the findings of the LUC analysis to the Compensation Panel within 60 working days of entering the process (*extensions can be granted by the Compensation Panel*). The report shall include confirmation that standard operating procedures have been amended/or new ones implemented so as to avoid future non-compliance.

In addition to compensating for all HCVs lost as a result of clearing land prior to conducting an HCV assessment, growers are also required to remediate areas where planting oil palm is prohibited by the RSPO P&C. Such areas may include riparian zones and steep terrain. Remediation should aim to restore as effectively as possible the ecological functions that would be provided if the natural vegetation were conserved in these areas e.g. erosion control and watershed protection. Such actions must be taken in addition to meeting any compensation liability identified. The management of such areas shall be to the standard set out in the guidance of the relevant P&Cs.

⁴ This should be included in TOR of the compensation panel

7. Calculating conservation liability

In addition to compensating communities for loss of HCV 4-6 (see section 9 below), growers in control of areas cleared without prior HCV assessment after 2005 are required to make additional contribution(s) to biodiversity conservation on site or off site. The total conservation liability depends on when lands were cleared, by whom and for what purpose and is calculated using the data from the LUC analysis. The liability, expressed in numbers of hectares set aside or managed primarily to conserve biodiversity, is calculated using Table 2 below.

Table 2: Determining conservation liability

	Land controlled by a non-member at time of clearance.	Land controlled by a RSPO member with no certified management unit(s) at the time of clearance. <i>Including land acquired from RSPO members with no certified management unit(s) at the time of clearance. (cross reference to 4.2.4)</i>	Land controlled by a grower with RSPO-certified management unit(s) at the time of clearance. <i>Including land acquired from other growers with RSPO-certified management unit(s) at the time of clearance. (cross reference to 4.2.4)</i>
Land cleared after November, 2005 – November, 2007 ⁵	Remediation and/or compensation required only for Social HCVs (HCV 4, 5& 6) if there is insufficient proof (e.g. SEIA) of appropriate negotiation process and/or outcomes.	Remediation and/or compensation is required only for Social HCVs (HCV 4, 5 &-6), if there is insufficient proof (e.g. SEIA) of appropriate negotiation process and/or outcomes.	n.a. [no certified areas in existence yet]
Land cleared between December, 2007 - December 31, 2009	Remediation and/or compensation is required only for Social HCVs (HCV 4, 5& 6) if there is insufficient proof (e.g. SEIA) of appropriate negotiation process and/or outcomes.]	Sum of: all areas cleared commercially without prior HCV assessment X their vegetation coefficient(s) in Nov 2005	Sum of: all areas cleared without prior HCV assessment X their vegetation coefficient(s) in Nov 2005
Land cleared between January 1, 2010 – May 9, 2014	Sum of: all areas cleared commercially without prior HCV assessment X their vegetation coefficient(s) in Nov 2005.	Sum of: all areas cleared without prior HCV assessment X their vegetation coefficient(s) in Nov 2005	Twice the sum of: all areas cleared without prior HCV assessment x their vegetation coefficient(s) in Nov 2005

⁵ P&C were introduced for a 2 year 'trial' period from Nov 2005-Nov 2007

<p>Future land clearing after May 9, 2014.</p>	<ol style="list-style-type: none"> 1. Sum of all areas cleared without prior HCV assessment X their Nov 2005 vegetation coefficient(s). 2. All cleared land owned by members shall be managed in full accordance with the RSPO standard and certified as soon as possible. 3. When land cleared is certified, palm products from areas with a vegetation coefficient < 0.4 in Nov 2005 may be sold as certified. 4. Palm products from land cleared with vegetation coefficients > 0.4 in Nov 2005 may not be claimed as RSPO-certified even though the management unit is certified (must be either part of mass balance or kept out by physical segregation). 5. RSPO members acquiring new areas of land after May 9, 2014 shall commit in writing not to instigate, encourage or support, directly or indirectly, any land clearing without prior HCV assessment. 6. Expulsion* of member or application of membership rejected if all requirements above are not met. 	<p>Expel from RSPO*</p>	<p>Expel from RSPO*</p>
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*The RSPO BHCV-CP may review exceptional cases of accidental and limited land clearing without prior HCV assessment

**THE FOLLOWING SECTIONS ARE VOLUNTARY DURING THE STAGED IMPLEMENTATION PERIOD
ALTHOUGH MEMBERS ARE ENCOURAGED TO COMPLY WITH THEM:**

8. Compensation Panel

Each compensation case will be dealt with by a Compensation Panel. For each case, the co-chairs of the BHCV WG will appoint a Compensation Panel made up of four members of the RSPO, preferably members of the BHCV WG with balanced representation of different stakeholder categories, with expertise appropriate to biodiversity conservation projects and one member of the RSPO secretariat, supported by extra capacity as needed, by no later than 20 working days after notification of the compensation case. The co-chairs of the BHCV WG will inform the BHCV WG on the establishment of the Compensation Panel and any objection shall be raised within five working days. The Compensation Panel will report to the BHCV WG on the decision of the compensation case.

Selected members of a Compensation Panel must, at the time of nomination, disclose any conflict of interest. The co-chairs of the BHCV WG will review all conflicts of interest before each case and the member(s) of the Compensation Panel through the co-chairs will invite replacing member(s) as necessary for achieving balance and expertise. Selection of expert members should aim to include at least one member who has local knowledge and must be based close to the ground action where they can move in to investigate further, while maintaining independence.

9. Remediation and Compensation for the Social Impacts of the loss of HCVs 4, 5 & 6

Potential loss of HCV 4-6 shall be assessed, either through existing evidence or a new process. Evidence includes, but is not limited to, formal documentation of past compensation processes or any information presented within a complaint to the RSPO. This analysis should determine whether negative social impacts related to the loss of HCVs 4-6 occurred and whether or not these impacts have already been sufficiently remediated and/or compensated. Identified impacts of loss of HCVs 4-6 shall be adequately remediated and/or compensated through a transparent, participatory and documented process.

Remediation measures include restoring, substituting, or financially compensating for the provision of and/or the access to natural resources. As communities may undergo shifts in their dependence on resources due to changes in the socio-economic environment, consultations shall identify the best current options for restoration or replacement of lost values and/or functions. In cases where monetary compensation is agreed upon, the parties may consider several instalments over time, rather than 'one-off' payments. Growers should refer to free, prior and informed consent (FPIC) guidance on consultation with affected stakeholders and communities (refer to RSPO FPIC guidance).

For the overall steps, refer to the Annex 1(flow chart).

10. Options for implementation of compensation

Table 2 above and data from the LUC analysis generates the compensation liability expressed in hectares.

Over and above remediation, there are two options for compensation available to growers in order to meet this compensation liability. They are presented in no order of priority and can be used in combination with each other:

Option1: numbers of hectares to be set aside or managed primarily to conserve biodiversity by the company and/or by a third party, within or outside the management unit. Examples of the costs of restoration can be found in the ERE report⁶.

Option 2: non-hectare basis by the company and/or by a third party for projects or programmes contributing to achieving conservation objectives, within or outside the management unit. An indicative figure of USD 2,500-3,000/ha of liability is put forward for consideration during year 1 of the staged implementation as the projected cost of such projects or programmes. A final figure will be determined after the review of the procedure at the end of year 1.

A Compensation Plan concept note is to be submitted to the Compensation Panel, including a clear but brief assessment of both options and a more detailed justification for choice of option(s). *The RSPO needs more input from stakeholders during year 1 of the staged implementation in order to make an informed decision about the monetary value.*

In all options the grower remains responsible to demonstrate delivery of outcomes as per compensation package chosen, taking any issues that are beyond the control of growers, such as zoning, population pressure, etc. into consideration.

In cases where conservation projects entail economic support over prolonged periods of time, e.g. annual instalments during several years, the growers should demonstrate that they are making corresponding resources available. As an example, accounts supervised by legally-constituted trustees or other similar mechanisms in the country where the compensation plan is implemented can be set up to ensure long-term project implementation. It should be noted that the grower will remain responsible for managing the funds involved, and that RSPO will not become directly involved in funding mechanisms.

11. Designing compensatory biodiversity projects

Compensatory biodiversity projects should be planned and implemented so as to maximise conservation benefits and outcomes in relation to invested resources, accounting for landscape contexts, regional conservation priorities and institutional/legislative frameworks. Project activities may be allocated within or outside management units, or both, additional to remediation (e.g. of riparian zones) as required by the P&Cs. Measures within units may include e.g. restoration of native

⁶ Study on Restoration Cost and Returns from the Oil Palm Industry prepared by ERE Consulting Group Sdn Bhd.

vegetation on affected sites and activities which remove the underlying causes of loss and degradation of biodiversity including restoration and averted risk activities in areas newly allocated, and/or allocating additional areas for conservation of biodiversity.

However, in many cases, an effective conservation option will be for growers to finance, or contribute to, conservation projects on a non hectare per hectare basis initiated or run by external professionals, NGOs or conservation authorities. Measures outside units under the control of the grower may entail e.g.:

- Participation in/support for habitat restoration, improved management and control of protected areas, protection of rare, threatened or endangered species when appropriate
- Direct monetary contributions for conservation activities/programs run by third party organisations including bio-banks⁷
- Investments in capacity building amongst other parties including communities to encourage biodiversity conservation.

Projects should be adequately resourced, have clearly defined goals, timeframes and responsibilities, and be designed to deliver outcomes that are:

Additional – adding to conservation efforts already planned or executed by other parties and to any measures required anyway by legislation or provisions in the RSPO standard;

Long-lasting – through secure, long-term tenure agreements with authorities, land owners or leaseholders and with effective monitoring, review and evaluation of results that inform adaptive management;

Equitable – through engaging and involving affected stakeholders in project planning, decision-making and implementation, fair and balanced sharing of responsibilities and rewards, and through respect for legal and customary arrangements; and

Knowledge-based – based on sound scientific and/or traditional knowledge with results widely disseminated and communicated to stakeholders and partners in a transparent and timely manner. Compensation packages can encompass compensation requirements for hectare per hectare forest restoration as per national legal requirements. These will be evaluated on a case by case basis for fulfilment of RSPO Compensation Mechanism's objectives and will be monitored and evaluated within the Compensation Mechanism in addition to other evaluation activities by third parties.

⁷ Bio-bank in the context of biodiversity conservation is an emerging concept whereby funds could be channelled to conservation projects in a specific land area, and certificates or other formal documentation is provided by the manager of that area to allow for verification and monitoring. An example is the Malua BioBank (see www.maluabank.com/).

12. Approval of Remediation and Compensation Plans

The Compensation Panel will review growers' Remediation and Compensation Plans and verify that these meet the full requirements of these Remediation and Compensation Procedures and in particular:

- On-site remediation ensures land is managed in accordance to BMPs as per RSPO P&C
- provide adequate compensation for loss of HCV 4-6; and
- meet the additional biodiversity conservation requirements and quality criteria set out in the Remediation and Compensation Procedures.

As part of this process, the Compensation Panel may submit the whole or part of the compensation plan to peer review at the expense of the grower.

Compensation plans considered unsatisfactory may be handed back to the grower for amendment and re-submission within 20 working days.

Once compensation plans are approved by the Compensation Panel, any temporary suspensions will be lifted by the RSPO Complaints Panel allowing growers to proceed with applications for membership and/or certification.

A summary of the compensation plan will be made publically available on the RSPO website if the compensation case is initiated through the Complaints Procedure.

13. Monitoring of implementation

Growers implementing the Remediation and Compensation Procedures shall provide an annual progress report, for approval by the BHCV WG.

Reports considered unsatisfactory may be handed back to the grower for amendment and re-submission within 20 working days. Any revised compensation plan based on annual progress report shall be approved by the BHCV WG (if applicable).

Failure to implement compensation measures as approved by the Compensation Panel will be considered as a grievance and reported to the Complaints Panel.

Glossary

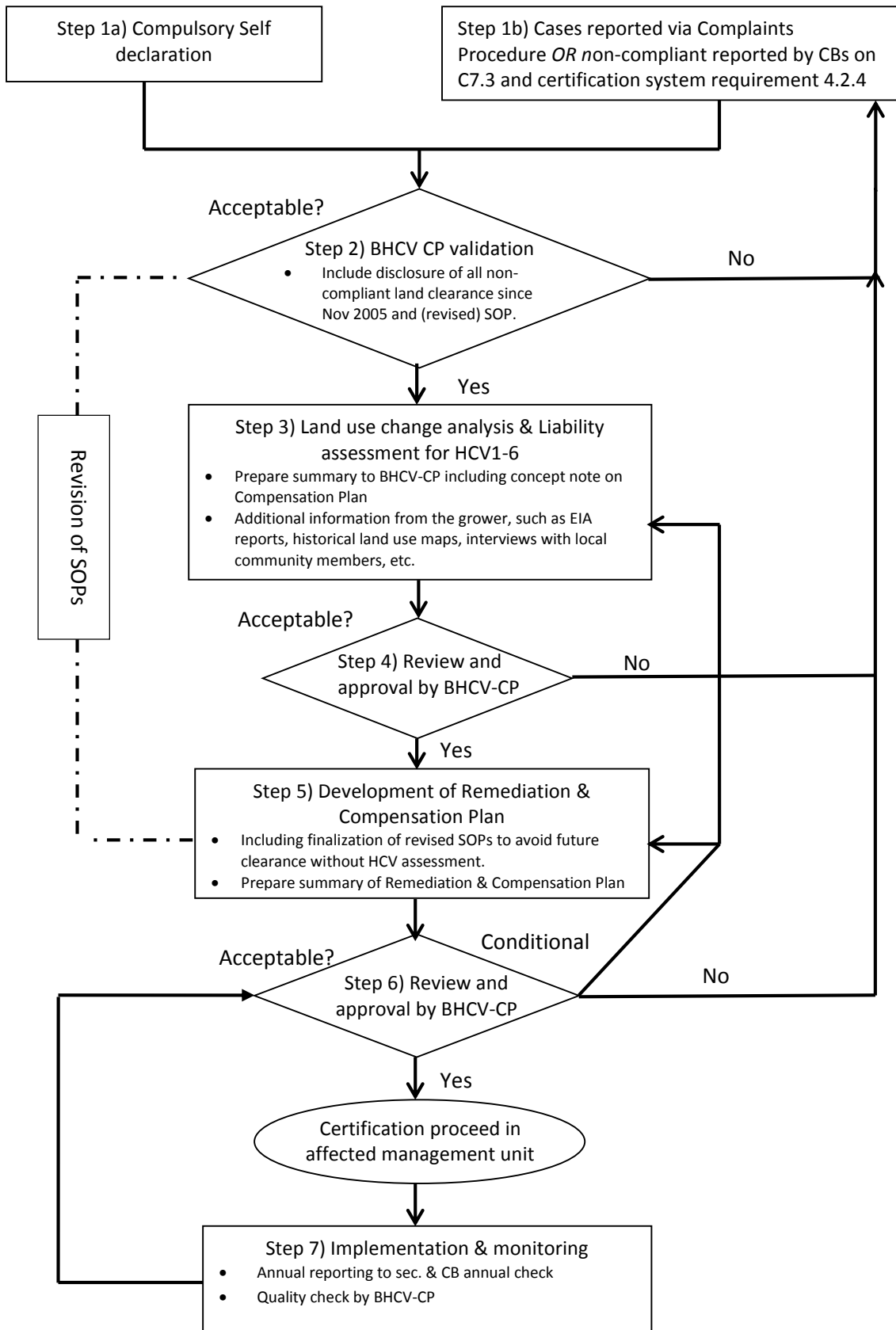
Non-commercial land clearance: clearance for other than commercial purposes, including for government projects that involve public works or other public interest facilities, or by members of local communities acting individually to support their livelihoods and with no funding by any institution and/or organisation.

Commercial land clearance: any land cleared for plantations or facilities built directly and exclusively to support plantations and their activities (as demonstrated by local master plans and/or other official documentation).

Remediation: Measures taken to help restore ecological functions in areas where planting of oil palm has been done, but where this is prohibited by the RSPO P&Cs (e.g. measures may include allowing or promoting of natural succession of vegetation or active re-planting on native plants on riparian zones, steep slopes and marginal or fragile soils).

Compensation: Demonstrable measures taken and/or funds made available to offset or compensate for clearing of land without prior HCV assessment. Compensation measures are over and beyond those taken for remediation (see above).

Annex 1: Flow Chart of Remediation and Compensation Procedures



Note: Yes/No above refers to decisions by the BHCV-CP

Step	Title	Ref.	Details
1a	Self-Declaration of Non-Compliant Land Clearance	5	<ul style="list-style-type: none"> • <i>Grower members of the RSPO shall, within six months of [the date of EB endorsement of these Remediation and Compensation Procedures], disclose to the RSPO Technical Director any clearance for expansion after 2005 without prior HCV assessment on land managed and/or under their control, or else state in writing that no such clearing exists, and enter into compensation processes for all non-compliant clearance identified.</i> • <i>Growers applying for RSPO membership shall disclose to the RSPO Technical Director any clearance for expansion after 2005 without prior HCV assessment on land under their control, or else state in writing that no such clearing exists, prior to the two week public comment on membership applications period on the RSPO website. To be eligible for RSPO membership, growers must enter into compensation processes for all non-compliant land clearance.</i> • <i>RSPO certified growers or growers entering certification shall disclose to an accredited Certification Body and to the RSPO Technical Director any clearance for expansion after 2005 without prior HCV assessment on land under their control (owned, managed, leased or acquired), or else state in writing that no such clearance exists. Conformity with this requirement shall be audited by the Certification Body, reporting any non-disclosure to the Complaints Panel. To be eligible for the first certification in any area without compensation liability, growers must enter into the compensation process for all non-compliant clearance. The principle here is that growers shall make full disclosure on all their land at the time they enter first certification.</i> <p>The Remediation and Compensation Procedures will apply to growers who voluntarily disclose non-compliant clearance to the RSPO Technical Director within the stipulated timeframes. The self-declaration should include:</p> <ul style="list-style-type: none"> - Total area of land cleared without HCV assessment, its location & time of clearance - Proof of legality of land (and/or use right) acquisition - Proof of legality of land clearance based on legal requirement applicable at that time - Approved (S)EIA where legally required <p>Compensation Panel to be appointed by the BHCV WG within 20 days after notification of the compensation case.</p>

Step	Title	Ref.	Details
1b	Reporting of Non-Compliant Land Clearance through the Complaints Procedure	5	<p>Non-compliances that are exposed through Certification Body audits, or brought to light by other stakeholders at a later stage will be reported to the Complaints Panel (RSPO-CP). Such cases may lead to suspension or withdrawal of certificates and/or termination of RSPO membership. For the RSPO-CP to assess the complaint, the following annexes shall be submitted to substantiate the complaint/non-compliance:</p> <ul style="list-style-type: none"> - Evidence of non-compliance with P&C from CB, OR - Evidence of land clearance after November, 2005 without HCV assessment from complainant - Evidence of other RSPO P&C and Code of Conduct violations from complainant (for the RSPO-CP to be able to assess 'potential compensability') <p>All RSPO members, especially non-certified RSPO members, are requested to report on any land clearance without HCV assessment after November 2005.</p> <p>Assessment of complaint by RSPO-CP</p> <p>Based on the evidence presented by CB or stakeholder, the RSPO-CP may refer a complaint to Compensation Panel (BHCV-CP) to address the complaint through the Compensation Procedure.</p> <p>If the complaint is considered 'potentially compensatable', the complaint will be passed to the BHCV-CP for appraisal. The BHCV-CP will assess the complaint and contact the company alleged of land clearance without HCV assessment after November 2005 or in violation of criterion 7.3. If the company is willing to disclose the clearance and present the required documentation, the BHCV-CP may decide to offer access to the Remediation and Compensation Procedures to avoid entering the Complaints Procedure. If the BHCV-CP decides that the case is not 'compensatable' and/or the company fails to produce the requested documentation, the case is passed Complaints Panel who will feed it into the Complaints Procedure.</p> <p>Compensation Panel to be appointed by the BHCV WG within 20 days after notification of the compensation case.</p>
2	Validation of compensation case by Compensation Panel (BHCV-CP)	4	<p>After receiving the self-declaration or complaint, the RSPO Compensation Panel assesses the presented evidence and determines whether resolution through the Remediation and Compensation Procedure is appropriate. This shall require:</p> <p><i>In case of self-declaration</i></p>

Step	Title	Ref.	Details
			<p>a) proof from the company that minimal legal requirements have been met (see 5a); b) clearing has taken place after November 2005, and if so in which time window covered by the Remediation and Compensation Procedures; c) submit SOP (approved by the company top management), within 60 working days from entering the process, to demonstrate they have incorporated appropriate measures to avoid new non-compliant land clearing. <i>OR, in case the company was reported</i> a) absence of compelling evidence from complainant(s) that the company has performed illegal acts or grossly violated the RSPO P&C or Code of Conduct AND b) reported clearing has taken place after November 2005, and if so in which time window covered by the Remediation and Compensation Procedures AND c) willingness of the company to address the complaint. d) submit SOP (approved by the company top management) to demonstrate they have incorporated appropriate measures to avoid new non-compliant land clearing. In either case, the BHCV-CP may request additional information from the company, before deciding on entry in the Remediation and Compensation Procedures. In case the above conditions are (eventually) not met, the case is passed to the Complaints Panel.</p> <p>In case the above conditions <i>are</i> met, the case enters the Compensation Procedures. Based on the evidence presented, the BHCV-CP may suggest or require the company to engage a neutral intermediary or other third party to facilitate dealings with an affected community.</p>
3	Liability assessment and land use change analysis	7, 8, 9	<p>Refer to section 7 to section 9, pages 6-9 Growers shall submit a report on the findings of the LUC change analysis within 60 days of entering the process.</p>
4	Review/approval by the Compensation Panel	4	<p>Check inclusion of:</p> <ul style="list-style-type: none"> - Revision of Standard Operational Procedures to avoid future clearing of HCVs (including wetlands, savannahs and natural grasslands). - Assessment of compliance with FPIC and community engagement procedures (where applicable). - Concept note on the Remediation and Compensation Plan

Step	Title	Ref.	Details
			Remediation and Compensation plans considered unsatisfactory may be referred back to the grower for amendment and re-submission within 20 working days.
5	Development of Remediation and Compensation Plan	8, 11	<p>Refer to section 11, page 10 on Designing compensatory biodiversity project.</p> <p>In terms of development of the ‘HCV 4-5-6 remediation plan’, the ‘HCV 4-5-6 remediation plan’ is negotiated and agreed by the company and the affected communities and individuals, supported by their respective advisors.</p> <p>The integrated compensation and remediation plan is presented to the communities and individuals affected by its implementation, and to any complainants if the Remediation and Compensation Procedures was triggered by a stakeholder report (step 1b). (Note: this is especially relevant if the HCV1-3 compensation is realised through implementation in an area outside the concession of the company). After FPIC⁸ has been obtained, a compensation and remediation monitoring protocol is prepared. The integrated Remediation and Compensation Plan, FPIC documentation, monitoring protocol and a summary of the document are provided to the BHCV-CP within 60 working days after the entry into the Compensation Procedures. The BHCV-CP may extend this period with a maximum of two times 30 working days. Failing which, the BHCV-CP will file a complaint with the RSPO Complaints Panel.</p> <p>Revised SOPs that were developed during step 2 should be finalised and submitted to the BHCV-CP along with all the documents above.</p>
6	Review / approval by the Compensation Panel	12	Refer to section 12, page 9.
7	Monitoring of implementation	13	<p>Growers implementing the Remediation and Compensation Procedures shall provide an annual progress report, for approval by the BHCV WG.</p> <p>Reports considered unsatisfactory may be handed back to the grower for amendment and re-submission within 20 working days. Revised Remediation and Compensation Plan based on annual progress report shall be approved by the BHCV WG (if applicable).</p>

⁸ In accordance with the RSPO 2008 guidance on FPIC

RSPO

Roundtable on Sustainable Palm Oil

Step	Title	Ref.	Details
			<p>Failure to implement the Remediation and Compensation Procedures as approved by the Compensation Panel will be considered as a grievance and reported to the Complaints Panel.</p> <ul style="list-style-type: none">- If the land area concerned is an RSPO certified unit, CB should check implementation/progress- Summary reporting of implementation should be included in the Annual Communication of Progress (ACoP) to the RSPO Secretariat <p>BHCV-CP will review the quality of the implementation based on the annual progress report provided by the RSPO Secretariat and RSPO CBs.</p>
FINAL	Affected Management Unit can enter certification process	-	Upon BHCV-CP's decision that the Remediation and Compensation Plan is satisfactory, the affected management unit(s) can enter the certification process.

Annex 2: Land Use Change Analysis

Remote Sensing Background Information

Remote sensing generally refers to the acquiring, analysis, and interpretation of satellite imagery or aerial photographs. This information is typically in the form of electromagnetic radiation that has either been reflected or emitted from the earth surface. Remote sensing technology has proven especially important for obtaining information in remote, inaccessible, or very large areas and therefore has a long history of use for weather, oceanography, and land use issues.

Remote sensing technology is constantly developing. From its origins with black and white aerial photography at the end of 19th century, current technology can now utilize satellites that capture imagery of the earth with more than 20 spectral bands in coarse (around 1 km), medium (around few hundred meters), high (tens of meters) or very high resolution (few meters to less than a meter) modes covering hundreds of kilometers at a time. Using current multispectral high resolution imagery can provide accurate overviews of vegetation cover and over time can give estimates of change in vegetation cover.

Remote sensing imagery does show vegetation cover **but does not identify the specific type of vegetation** or land use (e.g. remote sensing can identify and give the extent of an arable land, when on the ground this land could be characterized as a corn field) . The type of cover that can be identified depends heavily on the interaction between resolution and spectral bands (e.g. MODIS 1 km resolution data has 20 spectral bands and is mainly used in forestry because of its coarse resolution to differentiate forest and non-forest; RapidEye 5 m resolution data has 6 spectral bands and can be used to detect different types of forest and different types of degradation; Ikonos 1 meter resolution data is only black and white, but is so detailed that spectral bands are not needed to identify species composition) . It is therefore important to choose the satellite that has the right combination of resolution and spectral bands for the intended purpose

In order to convert vegetation cover data to land use or on-the-ground specific vegetation or species information, analysis and interpretation using resolution and spectral bands is required. The interpretation of images is conducted via algorithms that use several spectral bands (e.g. green vegetation reflects most in the near infrared spectral area and differences in vegetation can therefore be easily detected in this spectral band) or via visual interpretation of the images.

Another issue with remote sensing is that imagery cannot always be found at the time that the interpreter would like or, especially in the wet tropics, clouds hinder the view of the earth.

Land Use Change Analysis for the RSPO Compensation Procedures

For the purposes of the RSPO Compensation Process, a land use change (LUC) analysis shall be conducted to determine vegetation status in November 2005 (or as close to this time as possible), based on interpretation of remote sensing data. This will serve as a proxy for the potential loss of HCV 1-3, and ecological aspects of HCV 4, in all areas cleared without prior HCV assessment after November 2005.

For this kind of analysis there are numerous satellites with the right combination of resolution and spectral bands available. This guidance does not dictate use of particular satellite or interpretation approach, other than a **minimum imagery requirement of 30 meter resolution**. However, to distinguish different types of forest, high resolution to very high resolution data will likely be necessary. Possible satellites include Landsat (30m), SPOT (10 m), or RapidEye (5m), among others. Given the potential variability of the images available for a specific location and time, this guidance highly recommends use of multiple data sources, (e.g. a combination of high and very high resolution imagery,) in order to facilitate the most accurate interpretation possible. It is also recommended that groundtruthing be used to further validate the image interpretation process.

In some cases, challenges to the remote sensing data and land use change analysis may come from the grower, the compensation panel or other stakeholders. In such cases, the Compensation Panel can require the grower to provide additional information to be incorporated into the analysis, or accept such additional information from the grower, such as environmental impact assessment reports, historical land use maps, interviews with local community members, etc.⁹ The final decision on the coefficients is taken by the compensation panel.

Vegetation Coefficients

Areas cleared without prior HCV assessment shall be classified into four categories. These are representative of the forest/habitat types and likely land uses present in areas suitable for the commercial cultivation of oil palms – and that, in most situations, can be readily identified using satellite imagery. The four categories essentially represent a sliding scale of habitat quality, ecological and conservation value – and will be used in the form of coefficients (i.e. a multiplier) in the calculation of compensation liability (please refer to the relevant section in the RSPO Compensation Procedures).

⁹ This should be included in TOR of the Compensation Panel

Coefficient 1¹⁰

Structurally complex forest (including primary forest), regenerating, selectively logged forests with elements of high canopy

This category relates to forest that is either in pristine condition, has been subject to only minimal disturbance and/or is at a late stage of recovery. It will comprise many of the features associated with primary forest including a high, mostly intact canopy. Ecological functioning, conservation values and biodiversity levels will be similarly intact.

Coefficient 0.7

Structurally degraded but ecologically functional natural forest (includes other degraded but still functional low-canopy secondary forest and pioneer-dominated, heavily and/or repeatedly logged or previously burned forest and regenerating forest)

Forests in this category will have been subject to considerable disturbance including, one or more rounds of heavy and/or recent industrial logging, severe edge effects, wind and/or fire damage (or some combination of these factors) and show limited regeneration. Such forest will have a generally low, pioneer tree dominated canopy often interspersed with more open areas (e.g. old log landing areas, skid tracks, roads) crowded with climbers, vines or herbaceous plants and/or grasses. However, in most cases these degraded forests would have retained considerable ecological value, functionality and biodiversity levels – and retain the potential for restoration.

Coefficient 0.4

Multi-species agroforestry

Agroforestry plantations, comprising a multi-species ‘mosaic’ largely dominated by mature tree crops which retain some complexity, elements of the ecological and conservation values associated with natural forests and that support levels of biodiversity greater than would be expected either in monocultures or on degraded, un-cropped open land.

Coefficient 0

Monoculture tree and non-tree plantations; other permanently cultivated, developed or open degraded land

¹⁰ This coefficient also includes other undisturbed or minimally disturbed natural habitats including natural wetlands, savannahs and other grasslands.

Highly modified and/or degraded areas retaining little or no natural, structurally intact vegetation and which support few or none of the ecological, biodiversity or other conservation values associated with natural systems or more structurally complex habitats.

It should be noted that natural savannahs, natural grasslands, and natural wetlands are not specifically addressed by the categories above. Such areas were not described in the original HCV toolkit, which focused primarily on forests; however, they were described in later versions (year 2006). Therefore, such areas must be identified and for any clearance occurring after 2006. Compensation for such areas will be determined on a case by case basis.

The resultant LUCC analysis shall be reported to the Compensation Panel for review. This panel will determine whether or not the analysis is sufficient. The results of the LUC analysis should also be incorporated into the separate analysis to determine loss of HCV 4-6.

Overall Flowchart for Land Cover Analysis Using Remote Sensing and Verification

