

No Deforestation Task Force (NDTF)

Call 9 (24<sup>th</sup> June 2020)

Meeting notes

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Name	Organisation
<p>Lee Kuan Yee (LKY) Jenny Walther-Thoss (JWT) Anne Rosenbarger Gan Lian Tiong (GLT) Gwendelynne Bulan Tanil (GT) Lee Kuan-Chun Lim Sian Choo (LSC) Michelle Desilets (MD)</p> <p><b>Invited experts</b> Charlotte Opal (CO) Ruth Silva (RS)</p> <p><b>Secretariat</b> Amir Afham (AAF)</p>	<p>KLK WWF WRI Musim Mas Genting Plantations P&amp;G Bumitama OLT</p> <p>Earthworm HCVRN</p> <p>RSPO secretariat</p>
<p><b>Absent with apologies:</b></p> <p>Emily Kunen (EK) Geetha Govindan (GG) Olivier Tichit (OT)</p>	<p>Nestle PT ANJ Musim Mas</p>

No	Item	Action/Decision points
1	<p><b>NPP – HCSA requirement Gap analysis findings</b></p> <ul style="list-style-type: none"> <li>• The NDTF reviewed the 18 findings from the latest gap analysis document draft and discussed any additional comments that the NDTF should provide for the specific identified gaps</li> <li>• Comments from the NDTF for each specific finding is found in <b>Attachment 1</b>.</li> <li>• It was noted that some contents of the report may have been due to misunderstanding on the connection between the NPP document and P&amp;C 2018. <ul style="list-style-type: none"> <li>○ The NPP lays the foundation/building blocks for a new development to be able to proceed towards full P&amp;C certifications and does not automatically qualify a development to meet all P&amp;C requirements as there are multiple post development activities that the company should implement before moving towards certification.</li> <li>○ Secretariat to provide a table indicating the P&amp;C indicators which link to the NPP process for clarity of the consultant.</li> </ul> </li> <li>• The NDTF also mentioned the need for the consultant to provide recommendations on how to bridge the gaps identified.</li> <li>• It was also proposed for the draft gap analysis be shared with Patrick Anderson of the Forest Peoples Program (FPP). As he is the chair of the HCSA Social WG and FPP is a member of both RSPO &amp; HCSA, he would be in the ideal position to clarify the gaps identified on the social aspects in the document.</li> </ul>	<p><b>Action point:</b> Secretariat to update the comments and additional sources provided by the NDTF (<b>refer attachment 1</b>) &amp; also highlight the areas where more discussion is required to the consultant. The highlighted areas shall then be discussed in more detail by the NDTF for a decision and/or provide recommendations to applicable SC/WG/TF (if any).</p> <p><b>Action point:</b> Secretariat to develop table and provide to consultant.</p> <p><b>Action point:</b> Secretariat to obtain approval of NDTF and share a copy of the draft gap analysis to the Patrick Anderson from FPP.</p>
2	<p><b>Process flow: NPP – ICLUP – IMP</b></p> <ul style="list-style-type: none"> <li>• The NDTF was briefed on the possible process flows linking the existing NPP process, ICLUP by HCSA, and the IMP; a requirement introduced in the P&amp;C 2018</li> </ul>	

<ul style="list-style-type: none"> <li>• It was explained that essentially, the contents of the ICLUP were similar to that of the NPP as it contained the: <ul style="list-style-type: none"> <li>○ Final development map,</li> <li>○ Management &amp; monitoring plans (during &amp; post development)</li> <li>○ Agreements/contracts with indigenous peoples/local communities/affected communities</li> </ul> </li>   <li>• It was clarified that while the contents are similar, the processes and activities leading to development of the contents (from findings of the multiple assessments conducted by companies) are different, as the ICLUP emphasises that all activities are to be developed together with affected communities.</li>   <li>• Concern was raised by members of the group regarding the applicability of procedures/requirements post the adoption of the HCSA toolkit by RSPO. It was added that the RSPO revises the P&amp;C every 5 years, and adoption of new HCSA procedures/requirements introduced after adoption of the P&amp;C 2018 (e.g. HCSA Social requirements, ICLUP) means changing of the standards in between P&amp;C reviews for RSPO members.</li>   <li>• It was mentioned that the wording in the P&amp;C 2018 did not mention a specific version of the toolkit that was adopted, and thus it is clear that any changes would be applicable to RSPO members. However, the applicability of the procedures to be followed would be based on the prevailing requirements during the time.</li>   <li>• The group agreed that this issue would need to be discussed to the Standards Standing Committee (SSC) and/or Board of Governors (BoG) if necessary.</li>   <li>• It was noted by the NDTF that pending this decision, the current works on the HCS guidance may be delayed.</li> </ul>	<p><b>Decision Point:</b> The issue of applicability of HCSA requirements introduced post adoption of the HCSA toolkit in P&amp;C 2018 to be brought to the SSC.</p> <p><b>Action point:</b> Secretariat and NDTF co-chairs to work on slides for presentation to the SSC.</p>
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3	<p><b>Extension of the NDTF active period</b></p> <p>It was suggested that the NDTF be further extended for 6 -months due to:</p> <ul style="list-style-type: none"> <li>• Findings of the gap analysis (see attachment 1) showed the need for further issues/items for deliberation of the NDTF to provide sufficient clarity to RSPO members on how to meet the requirements of criteria 7.12.</li> <li>• Delays on completion of the remaining works from NDTF: <ul style="list-style-type: none"> <li>○ <b>HCS guidance:</b> Original completion date 31 August 2020. Possibly delayed pending RSPO’s official stand on the applicability of HCSA requirements introduced post P&amp;C 2018 adoption.</li> <li>○ <b>HCSA reviewer template review:</b> Extended call for interest period (additional 3 months) due to no submissions received.</li> </ul> </li> <li>• It was enquired on whether the decision to extend the active period was from the NDTF or the SSC. Secretariat clarified that the decision would be from the SSC, however NDTF members are required to agree to the proposal prior to bringing it to the SSC.</li> <li>• NDTF agreed that an email on the matter be circulated to all NDTF members for support/objections prior to</li> </ul>	<p><b>Action point:</b> Secretariat to circulate an email to all NDTF members on the proposal to extend the NDTF for another 6 months – i.e. until Dec’20.</p>
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**Attachment 1: Gap analysis findings: NDTF comments and additional notes**

No	Identified Gap	NDTF comments and notes
1	<p><b>Commitment to environmental and social safeguards</b></p> <ul style="list-style-type: none"> <li>• No requirement for the company to have any commitment to environmental and social safeguards.</li> <li>• It could be argued that principle 7 is relevant here. But HCVRN would never accept an intention to get the MU certified to RSPO standards as fulfilment of this DD criteria.</li> </ul>	<p>The commitment to get RSPO certified is considered sufficient to show commitment to both environmental and social safeguards if documented and publicly available</p>
2	<p><b>Moratorium on any land clearing or land preparation until the proposed Integrated Conservation and Land Use Plan (ICLUP) has been completed</b></p> <p>There is a requirement in the NPP documents (section 1.1) for the company to have had a moratorium on land clearing. Even in the HCSA requirements, there is an implication that the moratorium should have been in place for some time (e.g. in the Due Diligence section the assessor is required to review past satellite images). However, it is not specific about exactly how long the company should have stopped land clearing.</p>	<p>For the current NPP, development (i.e. land clearing) can only start once the NPP has passed the RSPO review and the 30-day public consultation period with either:</p> <ul style="list-style-type: none"> <li>• No comments raised; <b>or</b></li> <li>• Any raised comments resolved by the company and the commenter to their satisfaction.</li> </ul> <p>This is mentioned in the NPP main document Step 6 &amp; 7, (pg 18 &amp;19)</p>
3	<p><b>Demonstrated legal right over or permission to explore Area of Interest</b></p> <p>there is a legal review required for the NPP. Although it does not actually require a legal right or <u>permission to explore the AOI</u> before a survey can take place.</p>	<p><b>NPP 2015 section 2 (step 2) pg.11</b></p> <p>"On the basis of this stakeholder engagement process, the boundaries of the proposed new development may be modified prior to commencement of the various assessments (SEIA, HCV, etc.). Local communities should <u>grant permission for assessments to be conducted on land over which they have legal, customary and/or user rights</u>. The community engagement and FPIC process should continue during all steps of the NPP process, and local people should have free access to the results of the various assessments, studies and mapping exercises, which will inform their ultimate decision to grant or withhold consent for the planned development."</p> <p>Also refer to <b>section 2.2.2 in Draft 1 of the NPP 2020</b></p>

4	FPIC – In general, the RSPO FPIC guidance and the HCSA FPIC requirements are very similar. The main differences are that :	
(a)	The NPP requires the FPIC to be in place at the time of the initial audit, whereas HCSA requires FPIC to be initiated prior to HCSA due diligence or HCSA Preparation stage (depending on what HCSA document is being referenced).	Refer comment item 3
(b)	Mismatch of terminology - NPP uses the term “indigenous peoples” and “other local communities”, whereas HCSA uses the term “affected communities.” There are differences between the two terminologies.	<p>The definition of Indigenous People (IP) adopted by the P&amp;C is to recognise the identities of IPs and differentiate them from Local communities (LC). However, a combination of IP &amp; LC = affected communities.</p> <p>There is a need to standardize the use of terms throughout the document when referring to any HCSA requirements and use ‘affected community’ as opposed to ‘community’</p>
(c)	The RSPO FPIC document is titled as a guidance[1] whereas in HCSA, FPIC is a requirement. This implies that there is no absolute requirement to undertake FPIC according to the NPP. In contrast HCSA requires FPIC and if it is not properly carried out the assessment cannot continue. This again conflicts with the checklist provided by RSPO to Certification Bodies, which provides a number of FPIC checks. This implies that the RSPO requires rather than recommends FPIC.	<p>The FPIC guidance is a guide how FPIC should be conducted.</p> <p>However, the requirement of FPIC is clear in both the P&amp;C 2018 and the NPP main document. (see comment item 3)</p> <p><b>In draft 2 NPP revision document (section 1.3 page 3) is a table of indicators which are relevant to a company during the NPP stage.</b></p>
(d)	RSPO FPIC will accept implicit agreements with the community. HCSA approach requires explicit agreements with communities (e.g. how will communities be involved in FPIC processes – this needs to be documented).	<p>The NPP main document is clear that documented evidence is required for the FPIC process as such not considered implicit.</p> <p>However, there are differences of the level of evidence that may be a gap (eg. MOU vs legal contract). It needs to be clarified in the HCSA guidance at which point will a legally binding contract be required vs agreements, MoUs etc.</p>
5	Verification – HCSA requires that “the assessment team needs to verify that the communities have been informed of the proposed project” whereas the RSPO FPIC guidance does not have this requirement.	Not accurate. The NPP process includes CB verification prior to NPP submission -i.e. the appointed CB must verify that the assessment results, maps, evidences, processes mentioned in the NPP report are accurate.

		Field verification by the CB would depend on risk of the development. If no field verification is done by the CB, a field report by a local expert is still required  Refer <b>section 3 of Draft 2 revised NPP document</b>
6	<b>Social Background Study</b> – HCSA requires a social background study. The NPP requires a social survey. The social survey appears to be just to identify the local communities. The social background study is much more far reaching than simply identifying local communities.	Provide elaboration between the differences between social background study vs social survey.
7	<b>Land Tenure and Use Study</b> - HCSA requires a Land Tenure and Use Study, there is no requirement for such a study in NPP.	This is a Gap in the current NPP process.  It would help to explain more specifically what the gap is -i.e. Land Tenure and Use study emphasizes that the study be done in participation with affected communities
8	<b>Engagement procedures with communities</b> – HCS states :	
(a)	Developers engage with communities to agree procedures by which they will work together towards agreements	
(b)	Developers agree the mechanisms for interactions beyond the establishment and negotiation stages	
(c)	Developers agree and follow a procedure for sharing information with local communities and other stakeholders	
(d)	HCSA requires that these procedures be documented and signed-off by the communities, whereas NPP FPIC requires these be <b>notarised</b> also.	
9	<b>Community Participation in Management and Monitoring</b> – everything in HCSA must be done in a “participatory way,” whereas there is no requirement to do this in HCV. <b>E.g.</b> HCV does not require community participation in management and monitoring, but HCSA requires community participation. This will require SOPs and training for both company staff and communities. Particularly with the management and monitoring of conservation areas; management and monitoring is currently done by company staff but now HCSA requires this to be done in collaboration with third parties. The third parties (particularly the <b>community</b> ) must have the	Will not be an issue with adoption of HCSA, however it is a good point to highlight this as companies may not be aware of this.  HCV assessors provide recommendations, but it is incorrect to say participatory management and monitoring is not required in the HCV process. This comes further down the process.  Refer to comment 4(b) on standardizing usage of terms when referring to affected communities

	technical ability, willingness and time to undertake this role. HCSA assumes these criteria are guaranteed.	<b>** NDTF To discuss in more detail on this part.</b>
10	<b>Food Security</b> – this whole section is missing from the NPP guidance. Analysis of the food security situation is required by HCSA. The HCSA guidance is not clear on how the analysis should be carried out nor whether anything should be done if there are food security issues highlighted. Basically both NPP and HCSA are very weak on this requirement.	RSPO is part of a pilot on practical implementation on food security criteria. Final output of the project will be a list of criteria and what food security means for companies and CBs.  <b>Note:</b> Also to refer to 4.5.4 of P&C 2018. To look at HCSA announcement on food security.
11	<b>Developers do not accept lands expropriated by governments in the national interest</b> – there is nothing in the NPP requiring this. Although it is required in the RSPO P&C and this should be part of a company’s due diligence before it develops an area.	This is mentioned in both the RSPO P&C 2018 (indicator 4.5.7) and in section 2.2.1 of the Draft 1 of the NPP document (page 9)  <b>Indicator 4.5.7</b> New lands will not be acquired for plantations and mills after 15 November 2018 as a result of recent (2005 or later) expropriations in the national interest without consent (eminent domain), except in cases of smallholders benefitting from agrarian reform or anti-drug programmes.
12	<b>Incentives and Benefits</b> In HCSA the community determines their development priorities but in RSPO FPIC there is no requirement for the company to consult the community on development priorities. Furthermore it is stated in HCSA “Incentives and benefits must be additional to the existing commitments by companies related to legal requirements.” This is not addressed in the RSPO FPIC and is rather hard to quantify. <b>E.g.</b> companies in Indonesia are required to implement plasma schemes with local communities. This would not be seen as an incentive or benefit by HCSA but would definitely be seen as an incentive or benefit by the community.	<b>** NDTF to discuss in more detail</b>
13	<b>Legal</b> – the NPP legal review only requires compliance with in-country laws, regulations and legislations. There is no requirement to comply with international law. This contrasts with HCSA, which requires consistency with international agreements. Though it does not state	Partially accurate. The P&C 2018 lists specific international laws/conventions which RSPO members are required to comply to (refer to Annex 3 in P&C on international conventions)

	which takes precedence when the national and international laws conflict.	<p>For those not listed, the legal requirements a grower is required to comply to would depend on the country where the development is.</p> <p>If the country adopts or is signatory to an international law or agreement, then it would be relevant for the said company. HCSA also considers international laws which cannot be implemented in specific countries.</p> <p><b>** NDTF to discuss in more detail</b></p>
14	<b>Grievance Mechanisms</b> – whilst HCS requires the company to take action to resolve grievances, the FPIC guidance does not require this. Although the RaCP may take into account a subset of the grievances.	<p>While not a company grievance mechanism, section 6.2 of Draft 1 NPP document mentions that any complaint/grievance can be raised through the complaint procedure -i.e. there is a mechanism for complaints.</p>
15	15. <b>Labour Rights</b> : There is nothing in the NPP that requires adherence to labour rights, however, this is post development. There is a conflict between P&C 6.1.3 and SR11 (Where employment is agreed as a result of the negotiation, local community members are offered priority access for training and employment). Note that many Indonesian local government regulations require a percentage of the workforce to be from the local community. As a result, 6.1.3 may be impossible for a company to implement.	<p>There seems to be a confusion on the link of the P&amp;C and NPP document.</p> <p>The NPP lays the foundation/building blocks for a new development to be able to proceed towards full P&amp;C certifications and does not automatically qualify a development to meet all P&amp;C requirements. By following the NPP, a development will meet new planting related requirements within the P&amp;C 2018 while others will need activities post development.</p> <p><b>Note:</b> Secretariat to request a copy of the HCSA SR gap analysis conducted by the HCSA SRWG to share with group and consultant</p>
16	<b>Implementing the SRs when applying the HCSA to existing operations</b> – this is not relevant to an NPP as no NPP is required for existing operations.	<p><b>**NDTF to discuss in more detail</b></p>
17	<b>Implications for communities of HCS forest swaps</b> – Forest swaps is a mechanism particular to HCS. There is nothing in the NPP relating to this mechanism; though based on the experience of PT Hijau Daun forest swaps can seldom be applied.	

18	<b>Land Clearing</b> – RSPO allows land clearing to begin “once the NPP is deemed approved and communicated by RSPO Secretariat.” HCSA requires the ICLUP to be completed before land clearing takes place.	<b>**NDTF to discuss in more detail</b>
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