

FSC RESPONSES TO STAKEHOLDER QUESTIONS: FSC REMEDY FRAMEWORK WEBINAR SERIES

April 2022

This document captures the answers provided by FSC to the questions raised by stakeholders during the webinars hosted by FSC on the 5 and 6 April 2022 on the topic of “Revised FSC Policy for Association and Policy to Address Conversion: informational session”.

A) Stakeholder questions about the FSC Policy for Association (Draft 5-0, V3-0)

- 1. Can you please confirm if the new PfA V3-0 will be applied to these organizations if approved: Asia Pulp and Paper, APRIL, Korindo and Roda Mas Group? Please explain every option in the Public Consultation part of 3.6 Applying revised Policy for Association for new applicants for association. Not understandable.**

The application scope of the revised Policy for Association (PfA) (V3-0) is part of the ongoing consultation. The consultation Question 3.6 lays out three options for the application of the PfA V3-0:

- 1) Apply revised PfA from effective date forward;
- 2) Apply revised PfA for past activities of organizations that are not associated with FSC on effective date (new joiners) and for already associated organizations from effective date forward; and
- 3) Apply revised conversion definition and triggers together with the revised corporate group definition for past activities of organizations that are not associated with FSC on effective date (new joiners) and for already associated organizations from effective date forward.

The options 2) and 3) would mean that the PfA V3-0 would be either fully (option 2) or partly (option 3) applied to past activities of organizations that are not associated with FSC on the effective date. The list referenced in the question includes both organizations that are and that are not associated with FSC currently. The decisive point would be the association status of an organization on the effective date.

The [FSC consultation platform](#) includes further assessment of these options.

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2. Concerns were raised on the use of the significant conversion threshold. Why did the Policy for Association technical working group not revise the Policy for Association to align with the new definition of conversion?

The Policy for Association technical working group adopted the definition of conversion used in the FSC Policy to Address Conversion, and the Policy for Association includes now an identical definition for the activity. This meant for example combining previously two separate unacceptable activities (forest conversion and High Conservation Value destruction) into one, to align with the Policy to Address Conversion.

The Policy for Association operates on a corporate level and the activities and consequences are always considered applicable for the entire corporate group. The most severe outcome of the violation of the Policy for Association is a disassociation from FSC, which would impact all entities in the group. The technical working group considered reasonable that a system that operates on a wider scope and with such severe consequences, should not operate on the same thresholds as decisions to certify defined operations. However, the triggers to investigate are set so that they are not excessively different from certification requirements to avoid any conversion of extensive scale. They were also considerably tightened and tied to forest management units instead of corporate group holdings alone, again to align with the Policy to Address Conversion.

This aspect is part of consultation (Question 3.5.) in the [FSC consultation platform](#).

3. Why max 10.000 ha of conversion is still allowed in this day and age?

10.000 hectares is used as one of the triggers for investigating significant conversion in violation of the Policy for Association. It represents the accumulated total of hectares converted by all the organizations in the corporate group. It should be considered in relation to other triggers, particularly that of the 10% limit within a forest management unit. The total is intended and used to prevent smaller conversion activities across several forest management units under corporate's control over time that by themselves would not trigger an investigation, but as a whole, add up to a large, converted area a corporate group is responsible for. On the other hand, it could theoretically provide a cap for issues with considerably large units where the percentage figure might not be sufficient alone. It should be noted also that the timeframe has been removed from the trigger, so it represents accumulating total instead of a total within certain timeframe (e.g. 5 years) which is the case currently. There are also thresholds other than scale of the conversion, such as existence of high conservation values, or other impacts of the activity which would not be tied to hectares or percentages.

This aspect is part of consultation (Question 3.5.) in the [FSC consultation platform](#).

4. Why do disclosure requirements for association not require proof of ownership for all operating and holding companies? Isn't this basic due diligence?

Disclosure requirements require disclosure of corporate group structure. The information provided will go through automated screening rather than inspection of each document. If risks are identified, FSC would raise further questions or launch an investigation where needed. The level of detail of the information requested will be determined in a follow up project focusing on development of the system to run the automated screening.

- 5. Why do the definition of corporate group and examples of control not take a firm position? They raise the right issue but give no thresholds for determination. / AFi definitions and indicators for control must be integrated in full. The proposed revised definitions and case examples in the policies are not sufficient.**

The intention of a policy is to define the general principles rather than specifying detailed indicators or methodologies. The policy has adapted the corporate group definition and high-level parameters to determine a controlling relationship by Accountability Framework Initiative (AFI). The methodologies will be developed in collaboration with experts in the field, in line with the note included in the policy.

- 6. 'The definition and factors...will be applied and evaluated on a case-by-case basis.' Will this lead to yet more de facto policymaking by the Secretariat?**

Policy making has taken place in the process of developing the Policy for Association, led by the technical working group with assistance of several rounds of public consultation and related discussions. Determining corporate group structures is an area of special expertise. It is acknowledged that this is a new area but not specific or unique for FSC and FSC will seek to utilize experts in the field for any case processing needs.

B) Stakeholder questions about the Policy to Address Conversion (PAC)

- 1. Are there major changes made to the definitions between this draft 5-4 and the earlier one?**

There are no major changes in the definitions in the Policy to Address Conversion. Draft 3 was open for public consultation. Draft 4 was developed by the Working Group incorporating the feedback of the consultation and the major changes to that draft shared with stakeholders. Draft 5 incorporates the proposal for partial remedy in policy elements 3 and 7 based on input from external research and the Board of Directors. Moreover, some explanatory notes have incorporated to improve clarity.

- 2. What is the justification for the continued use of 5% as the definition for 'very limited portion'? What are examples of cases that would be acceptable as a very limited portion?**

The PAC specifies that the very limited portion of conversion accepted in a management unit must produce long-term conservation and social benefits in the management unit, and not threaten High Conservation Values, nor any sites or resources necessary to maintain or enhance those High Conservation Values. The overarching idea was to not create obstacles for developing communities who may need to convert for socially and environmentally beneficial reasons.

The minimal conversion question was debated extensively in the PAC Working Group (WG) and previously consulted in past drafts. The policy elements in the PAC currently part of this consultation package is a result of that process. Through WG discussion and stakeholder feedback, it was agreed upon that some conversion may be necessary for any number of reasons, from communities developing on their lands, organizations setting aside areas for community use, and organizations having other land use within the management unit (MU).

There are a few additional safeguards to ensure that the concept of permitting a very limited portion of conversion is not abused. First, national standards can choose to set even stronger

requirements if a very limited portion of conversion would be accepted or not. In addition, the Policy to Address Conversion (PfA) works to cap the 5%. The very limited portion can never exceed 10,000 hectares because of the definition of significant conversion defined in the PfA.

It is important to note that Policy to Address Conversion is working to strengthen FSC's status quo normative framework on the very limited portion. Currently, a 5% allowance is made, but it is not clear if this is permitted before certification, after certification, or both (Please see criteria 6.9 and 6.10 in FSC-STD-01-001 *FSC Principles and Criteria*). The change in the PAC means that it is clearly defined that a very limited portion of 5% can be converted in total and as a maximum, when providing social and environmental benefits and not threatening high conservation value (HCV) areas.

One such example for which FSC has made provisions is for the allowance of wind turbines in forest management units ([see here for the original directive](#)). Windmills have been deemed to provide strong enough environmental and social benefits to make a very limited portion of conversion permissible. Other examples might include conversion to restore other natural habitats, such as swamps and the establishment of projects such as a health clinic.

3. For partial environmental remedy why is this number 10%? In FSC certification, there is a requirement to protect and enhance high conservation value areas (HCV). Why not restore HCV?

To begin with, Principle 9 of the FSC Principles and Criteria requires organizations to mitigate damages to HCVs. That will not change because of the new Policy to Address Conversion, which further strengthen FSC definition of conversion by including HCV areas. The Policy to Address Conversion sets the requirement for partial remedy for organizations who were not involved in the conversion but acquired lands with conversion between 1994-31 December 2020. The PAC does not set a threshold.

The threshold is set by the FSC Remedy Framework. FSC has decided to set a specific threshold for environmental remedy based on Board direction that the environmental remedy for not responsible companies should be fair and feasible. An economic feasibility study was carried out with case studies in Africa, Latin America, and Southeast Asia. The 10% threshold was proposed based on the results of this study.

Regarding HCV areas, the Environmental Baseline Assessment process outlined in section 10 of the FSC Remedy Framework takes HCV into account. Sections 16 and 17 set out further requirements on the selection of the environmental remedy site (10% of the management unit in the case of organizations that were not involved in conversion).

In general, the Technical Working Group tasked with setting the Core Requirements of the FSC Remedy Framework (formerly set out in the draft Conversion Remedy Procedure) assessed feedback about HCVs, including from the HCV Resource Network. They discussed the difficulty of assessing HCV damage in the past and the difficulty of restoring HCV areas to their previous state. They agreed that it is feasible to remedy areas back to conditions conducive for the natural return of the HCV. This discussion influenced the creation of the initial environmental remedy threshold which is defined in the current version of the FSC Remedy Framework.

4. How will changes to Principles and Criteria that are needed for the Policy to Address Conversion to become effective be reflected in National Standards?

FSC will develop the normative elements (E.g.: Advice Note) needed to implement the policy, should its key aspects be approved by FSC members voting on Motion 37 at the General

Assembly. The elements will take effect as soon as possible after the policy becomes effective. The next revision of the national standards will have to incorporate these changes.

C) Stakeholder questions about the draft FSC Remedy Framework (PRO-01-007 V1-0)

1. Why is FPIC not a mandatory part of the framework to decide on remedy? Does FPIC apply to workers or local peoples?

The principle of Free Prior and Informed Consent (FPIC) is a mandatory part of the FSC Remedy Framework and must be applied in all aspects of its application to cases where there are affected rights holders who have collectively held legal and/or customary rights (see the requirement at Chapter 3.3 of the [draft FSC Remedy Framework](#)). In the FSC Remedy Framework those rights holders for whom FPIC must be applied are referred to and defined as “affected customary rights holders”.

- The definition for *affected customary rightsholders* is repeated here for completeness: “Persons and groups, including Indigenous Peoples, traditional peoples and local communities with legal or customary rights whose free, prior and informed consent is required to determine management decisions. (Source: “Affected rights holders” definition in FSC- STD-60-004 V2-0)”

The principle of FPIC does not apply to workers in the context of the FSC Remedy Framework. It does however apply to local peoples who have collectively held legal rights and/or who have customary rights. Please see the [FSC Guidelines for the Implementation of FPIC \(FSC-GUI-30-003 V2.0\)](#) for more information about the application of the principles of FPIC in the context of FSC certification.

2. Is there an auditable standard or procedure for independent verification of FPIC at each stage where it is required from customary rightsholders?

Please see the [FSC Guidelines for the Implementation of FPIC \(FSC-GUI-30-003 V2.0\)](#) developed by FSC, where detailed guidance is provided on the application of FPIC.

FPIC is required throughout the application of every aspect of the FSC Remedy Framework where there are affected customary rights holders.

3. Is the FSC Remedy Framework related to Motion 37 which must be approved by members at the General Assembly? If the motion is not approved, what happens to the Remedy Framework?

The FSC Remedy Framework is not an explicit focus of Motion 37, however, the FSC Remedy Framework is related to Motion 37 because the motion concerns the changes that need to be made to the FSC Principles & Criteria (P&C) in order to introduce the Policy to Address Conversion (PAC). Specifically relevant to the FSC Remedy Framework, Motion 37 would revise Criterion 6.10 to reflect the PAC’s provision for remediation of conversion activities that took place between November 1994 and 31 December 2020. This is inherently connected to how the FSC Remedy Framework sets out to remedy harms resulting from the conversion described in the PAC. Motion 37 also proposes a new definition for conversion to apply after 2020 in Criterion 6.9 and a strict stance on no certification of lands that were converted after 2020 in a new Criterion 6.11. These changes to the two criteria are not linked to the FSC

Remedy Framework because the scope of these requirements covers the timeframe of 1994-2020.

If Motion 37 is passed, FSC will be able to implement the changes to the P&C needed to carry out this entire package of work. If Motion 37 is not passed, FSC would still be able to implement the FSC Remedy Framework for cases involving violations of the Policy for Association (PfA), but the scope of the FSC Remedy Framework would no longer apply to organizations who have lands converted between 1994 and 2020.

4. What is the rationale to differentiate restoration & conservation in the remedy elements?

From the perspective of the FSC PfA Remediation Framework and the previous drafts of this framework, the rationale for differentiating between restoration and conservation activities was to set up a process by which achieving remedy would be feasible and realistic.

In certain instances, restoration of the actual site where the harm took place may not be possible or may require an extraordinarily long timeframe for implementation. Incorporating the concept of conservation as one of the tools or methods for remedy, enables more adaptability of the framework in different contexts, while maintaining the overall objective of driving positive impacts in the world's forests. The on-the-ground situation and context of each case where the FSC Remedy Framework is implemented will be unique and providing flexibility in the tools used for achieving remedy will be needed.

General Stakeholder Questions

1. Why does the cut-off date not allow an organization that converts after 2020 to be certified but still allows association?

This is a question currently open for consultation and feedback is welcome. It is question 3. Please see the [consultation platform](#) or the offline version [here](#) for a full explanation of the options and the Policy for Association Technical Working thinking on this issue.

2. How would the new policies impact certification such as Controlled Wood, especially regarding the difference between past, present, and future conversion?

For the purpose of the Policy to Address Conversion, Forest Management certification refers to certification against a National Forest Stewardship Standard, Interim National Standard, or FSC-STD-30-010 Controlled Wood Standard for FM enterprises, so the Policy to Address Conversion would apply to controlled wood.

In terms of association, the rules are the same for all certificate holders, regardless of the type of certification. After a violation of the Policy for Association, an organization and their corporate group may be disassociated and required to remedy according to the FSC Remedy Framework.

FSC will develop the normative elements (E.g.: advice note) needed to implement the Policy to Address Conversion, should its key aspects be approved by voting on Motion 37 at the General Assembly. The elements will take effect directly after the policy becomes effective. The next revision of the CW standard will incorporate these changes.

3. Some key questions being asked during the consultation were presented. Will comments that do not fall within the scope of these questions still be considered?

The PAC and the PfA have been through extensive prior consultations and editing by a Working Group and Technical Working Group respectively and agreed on by consensus. Therefore, apart from the policy elements asked about in the current consultation, FSC is not inviting feedback on other aspects of the documents. For the FSC Remedy Framework, there are open comment boxes near the end of the consultation where feedback is requested on any aspects of the document. These comments will be analyzed and decided upon after the close of the consultation.

4. Will the final PfA & PAC policies and Remedy Framework being presented to the board for approval in August be shared with members in advance of the meeting?

Generally, FSC does not share final drafts of policies and procedures after they have been consulted before they are approved by the Board of Directors. Therefore, this is not part of the workplan.

5. How will FSC verify the legal structure and ownership of the smallholder concessions?

Principle 1 of FSC's Principles and Criteria: Compliance with Laws verifies legal tenure and land use rights. The Policy to Address Conversion defines dispensation criteria for small-scale smallholders with less than 50 hectares in order to incentivize certification and discourage speculative conversion. There is no exemption for small-scale smallholders in the Policy for Association.

6. Are both the Policy for Association and Policy to Address Conversion applied to all certificate holders and members? How will these be implemented by NGOs or retailers?

The Policy to Address Conversion and Policy for Association have different scopes. The Policy for Association applies to all certificate holders and members. The organizations could be for example companies, NGOs or retailers. The policy is applied to all of them, regardless of their organizational type. The Policy to Address Conversion applies to organizations who are trying to achieve certification of forest management units in relation to National Forest Stewardship Standard, Interim National Standard, or FSC-STD-30-010 Controlled Wood Standard for FM enterprises.