**FSC Comment Form**

**Motion 12 Document – First Draft for Public Consultation 22 March 2016**

Comments shall be submitted to: [motion12.comments@fsc.org](mailto:motion12.comments@fsc.org) before 11 July 2016

**Comments provided by:**

Name:

Organization:

Phone:

Email:

Date:

**Please choose one of the categories below, best reflecting your background:**

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| **Category** | **Tick the right one** | **Economic**  **North** | **Economic South** |
| 1. Certificate holder |  |  |  |
| 1. Certificate applicant |  |  |  |
| 1. Organization not meeting the current conversion rules |  |  |  |
| 1. FSC’s Key account |  |  |  |
| 1. Affected community member |  |  |  |
| 1. Indigenous People |  |  |  |
| 1. Non-governmental organization – social interest |  |  |  |
| 1. Non-governmental organization – environmental interest |  |  |  |
| 1. Academic research institution |  |  |  |
| 1. Network Partner |  |  |  |
| 1. Standard Development Group |  |  |  |
| 1. Certification Body |  |  |  |
| 1. Other: specify which |  |  |  |
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| **Reference** | **Comment** |
| --- | --- |
| Preamble  The passing of FSC General Assembly Motions 18 (2011) and 12 (2014) testify to a desire within all FSC chambers to revise and clarify FSC’s position on conversion. Rather than helping to curb global deforestation, FSC’s requirements act as barriers that effectively exclude most organisations, communities and smallholders that have converted forests after 1994 from certification.  Over the years, references to conversion in various FSC documents has resulted in a patchwork of partly contradicting formulations on:   * What is conversion, * What kind of vegetation may or may not be converted, * What maximum proportion of a MU may be converted over what time.   The motion 12 Working group has been set up to “*consider challenges and opportunities related to restoration and conversion”. This explicitly includes “addressing the “ownership loophole” in Criterion 6.10”, ”what an organization that has converted post 1994 need to do to be able to be certified” and “how to deal with subsistence conversion by communities”. To meet these objectives, the WG seeks to* develop a clear, consistent and coherent framework that clarifies the specific grounds and circumstances under which converted lands may be certified, and that allows FSC to more effectively respond to current challenges[[1]](#footnote-1). Members of the WG expect that this framework will:   1. Decrease barriers to certification and encourage spread of responsible management, 2. Help slow deforestation through raising the relative value of forest and plantation management, 3. Help reinforcing community tenure rights, 4. Help meet demands for forest products without jeopardising critical environmental services or biodiversity, 5. Help steer expansion of plantations to already degraded lands, 6. Encourage conservation of biodiversity, maintenance of ecosystem values and provision of social benefits on plantations that have been established on converted lands, 7. Create a more level playing field for different organisations including communities and smallholders, 8. Close the ‘ownership loophole’ by allowing organisations to compensate for conversion after 1994 on equal terms regardless of who was responsible for the conversion, 9. Rationalise the various references to conversion within the FSC system.   Main components to be developed:   1. A single FSC definition of conversion to be inserted in the FSC standard Glossary [FSC-STD-01-002], 2. A proposal for extending the conditions under which lands converted after November 1994 may be eligible for certification and for amending criterion/criteria 6.9 and 6.10 and associated IGI’s accordingly, 3. A process-based mechanism for implementing the policy, including guidance on setting baselines, compensation measures for conversion post November 1994, adaptation to scale and intensity, and proposals for evaluation, approval and monitoring. |  |
| **1. Draft definition of conversion**  ***Conversion:*** A lasting[[2]](#footnote-2) change of vegetation cover or composition of forests or other ecosystems caused by human intervention, characterised by major loss of species diversity, habitat diversity, structural complexity or ecosystem functionality*.* |  |
| Intent box 1: Draft definition of conversion.  The definition focuses on the magnitude of transformation, and addresses also accumulated changes resulting from activities that take place over longer periods of time, i.e. result from gradual degradation rather than rapid transformation (see also 4.2.4 below).  The word “lasting” is used to clarify that temporary changes of forest vegetation cover or structure, e.g. logging followed by regeneration in accordance with P&C 10.1, is not considered as conversion.  The reference to “human intervention” serves to distinguish conversion from dramatic changes due to natural calamities like wind, fire or volcanic eruptions.  The reference to “forests or other ecosystems” reflects that, while FSC focuses on forests, the organisation also acknowledges the biodiversity values, social benefits and environmental services associated with other ecosystems like grasslands and wetlands (a shift mirrored also in the change of emphasis of Principle 9 from High Conservation Value Forests, to the current, more inclusive concept of High Conservation Values). |  |
| **2. Conditions for certification of lands converted in the future**  2.1. FSC’s current Criterion 6.9 (FSC P&C V.5):  The Organization shall not convert natural forest to plantations nor natural forests or plantations on  sites directly converted from natural forest to non-forest land use, except when the conversion:  a) affects a very limited portion of the area of the Management Unit, and  b) will produce clear, substantial, additional, secure long-term conservation benefits in the Management Unit, and  c) does not damage or threaten High Conservation Values, nor any sites or resources necessary to maintain or enhance those High Conservation Values. |  |
| 2.2. Draft revised Criterion 6.9:  Management units containing plantations established on lands converted after XXXX[[3]](#footnote-3) shall qualify for certification only if the conversion and/or measures taken to mitigate negative impacts:  a) generate demonstrated, additional[[4]](#footnote-4) and long-term environmental and social net gains, and  b) comply with the full set of FSC P&C (including provisions related to legal compliance and free, prior and informed consent), and  c) safeguard areas necessary to maintain High Conservation Values, and areas that meet with emerging definitions of High Carbon Stock forests[[5]](#footnote-5),[[6]](#footnote-6)  once widely agreed and adopted by FSC.  National or regional Network Partners may designate additional forest types or ecosystems as off limits for conversion. |  |
| Intent box 2: Environmental and social net gains.  The WG is aware that the evaluation and interpretation of environmental and social gains is challenging and that it will require well-designed, transparent and consistent procedures as well as clearly articulated, auditable Indicators.  Associated guidance with reference to real or hypothetical examples may also be very useful, as may be accumulated ‘case law’ based on previously evaluated cases. |  |
| 2.3 Mitigation  2.3.1. Mitigation to achieve environmental net gains from future conversion shall give absolute priority to conservation and/or restoration measures within the management unit. |  |
| 2.3.2. Mitigation to achieve social net gains shall be identified, evaluated and agreed with affected stakeholders on a case-by-case basis, in line with all applicable FSC requirements. |  |
| **3. Conditions for certification of lands converted in the past**  3.1. FSC’s current Criterion 6.10 (FSC P&C V.5):  Management Units containing plantations that were established on areas converted from natural  forest after November 1994 shall not qualify for certification, except where:  a) clear and sufficient evidence is provided that The Organization was not directly or  indirectly responsible for the conversion, or  b) the conversion affected a very limited portion of the area of the Management Unit and is producing clear, substantial, additional, secure long term conservation benefits in the Management Unit. |  |
| 3.2. Draft revised Criterion 6.10:  Management units containing plantations established on lands converted between November 1994 and XXXX[[7]](#footnote-7) shall qualify for certification only if:  a) the conversion and/or measures taken to compensate negative impacts generate demonstrable, long-term environmental and social net gains, and  b) measures to compensate for negative impacts have the free, prior and informed consent of affected stakeholders. |  |
| **4. Compensation and mitigation**  Intent box 3: Compensation and mitigation in relation to scale, intensity and context.  Scale: the larger the area converted, the more compensation and/or mitigation is required to generate environmental and social net gains. This should serve to counteract excessive conversion without need to set rigid caps in terms of hectares, proportions or percentages.  Intensity: the higher the conservation value of the ecosystem prior to conversion, the more compensation and/or mitigation is required to generate environmental and social net gains. This means that conversion of areas in more natural state will need more compensation and/or mitigation than conversion of more degraded ecosystems.  Context: the higher the relative value (in a national or regional context) of forests and other ecosystems, the more compensation and/or mitigation is required to generate environmental and social net gains. This allows for differentiating between regions that still retain much of their original forest cover and regions where little original forest cover remains. |  |
| 4.1. General  4.1.1. Compensation measures shall be additional[[8]](#footnote-8) to measures required to comply with legal obligations and other FSC P&Cs. |  |
| 4.1.2. The full and continued responsibility for implementing environmental and social compensation and mitigation measures shall rest with the certified organisation/certification applicant[[9]](#footnote-9), even if some or all related activities are outsourced to other parties. |  |
| 4.1.3. Environmental compensation for past conversion may include, in order of priority:   * Protection of vulnerable ecosystems (e.g. prevention of further deforestation), preferably as close as possible to the converted site; * Restoration of natural ecosystems, preferably as close as possible to the converted site; * Other conservation projects if on- or off-site conservation or restoration is not feasible or less likely to deliver effective conservation outcomes. |  |
| 4.1.4. Social compensation for past conversion may include restoration of access to resources, provision of substitutes, compensation for loss of resources or opportunities and provision of other benefits. Measures should serve to improve livelihoods, empower recipients and promote long-term socio-economic development. [[10]](#footnote-10)  4.2. Setting baselines  4.2.1 Environmental and social baseline conditions shall be identified prior to any future conversion. Assessments shall be commensurate with scale, intensity and context. |  |
| 4.2.2. Social and Environmental Impact Assessments shall be conducted by qualified experts, include extensive stakeholder consultations, and take account of the national context. |  |
| 4.2.3. HCV and HCS assessments shall be conducted by qualified assessors in line with recognised best practise. |  |
| 4.2.4. The baseline for assessing environmental and social compensation liabilities shall be the situation prior to the conversion. However, if the applicant can demonstrate that, at the time of conversion, there were no intentions[[11]](#footnote-11) to eventually establish tree plantations on the converted land, the situation at the time of plantation establishment may be used as the baseline for evaluating the amount of compensation needed to achieve environmental and social net gains. |  |
| Intent box 4: Baseline conditions addressed in 4.2.4.  The wording of 4.2.4 aims to clarify that, where lands were converted in the past without any intention to eventually establish tree plantations (regardless of who was responsible for the conversion at the time), the conditions at the (later) time of plantation establishment may be considered the baseline (rather than the status prior to the conversion). The burden of demonstrating ‘no intentions’ would fall on the applicant, the default being baselines that reflect the situation prior to the conversion.  The rationale is a wish to encourage rather than discourage location of new tree plantations and forest restoration on degraded lands. Examples discussed in the WG include cases where organisations want to establish plantations on (no longer economically viable) pasture or agriculture lands originally converted from forests, and establishment of plantations on lands where forests have been severely degraded by e.g. previous overgrazing or over-harvesting for charcoaling. In such situations the gains generated through plantation establishment may be measured against the degraded conditions at the time of planting, rather than against the original forest. |  |
| 4.3. Compensation liability for cases of conversion post 1994  4.3.1. Management units certified before XXXX in accordance with FSC’s requirements at the time of certification, may retain and renew their certificates without further compensation for converted lands under the scope of the certificate. |  |
| 4.3.2. Cases of past conversion for which the applicant can demonstrate generation of net gains may be certifiable without compensation. |  |
| 4.3.3. Cases of past conversion for which the applicant can demonstrate some generation of gains may be certifiable subject to implementation of compensation measures sufficient to generate net gains. |  |
| 4.3.4. Cases of past conversion for which the applicant cannot demonstrate generation of environmental gains (e.g. because baseline conditions prior to conversion were not properly documented) may be certifiable subject to restoration and/or protection of area(s) equal in size, and of comparable ecological value, to the total area converted after November 1994. |  |
| 4.3.5.Cases of past conversion for which the applicant cannot demonstrate generation of social gains (e.g. because baseline conditions prior to conversion were not properly documented) may be certifiable subject to implementation of compensation measures identified, evaluated and agreed with affected stakeholders on a case-by-case basis in line with all applicable FSC requirements. |  |
| 4.4. Smallholders and communities  Intent box 5: Adapting compensation and mitigation liabilities for smallholders and communities.  The terms under which converted lands may be certified as outlined in this document require demonstration that the conversion has generated, or will generate environmental and social net gains. While this may be a feasible conditionality for large and medium-sized organisations, it is possibly less so for communities and smallholders.  If FSC wants to encourage smallholders and communities who have converted lands in the past to get certified, it may not be realistic to demand ‘entrance fees’ over and beyond e.g. restoration of riparian areas and compliance with legal set aside requirements (where such exists) and FSC P&Cs.  FSC may also want to facilitate entry for smallholders and communities who will convert some of their lands in the future to improve their livelihoods, and avoid that they are excluded from supply chains as an unintended result of buyers’ commitment to purchase only certified materials.  However, FSC also needs to ensure that any ‘shortcuts’ are not abused or taken advantage of by larger organisations. Therefore it is proposed that all certified management units / applicants are granted a small compensation free ‘discount’ of e.g. a total of 10 hectares (an indicative figure subject to adaptation in national standards). This would provide an operational mechanism for allowing (many or even most) smallholders with a conversion legacy into the system without compensation, while in practise uphold (a revised) Criterion 6.10 as it would apply to larger enterprises.  A somewhat similar approach for future conversion may be to allow conversion of e.g. a total maximum of 10 hectares provided that an equal area is restored and/or set aside for conservation in the management unit. This would constitute a mechanism for default mitigation of small-scale conversion without requiring prior baseline assessments or demonstration of net gains. |  |
| 4.4.1 Management units containing lands converted between November 1994 and XXXX may deduct 10 ‘compensation free’ hectares[[12]](#footnote-12) from their total compensation liability. |  |
| 4.4.2. Management units may convert up to 10 hectares[[13]](#footnote-13),[[14]](#footnote-14) without prior baseline assessment, provided that an area equal to that converted is set aside for restoration and/or conservation of natural forests or other natural ecosystems within the management unit. |  |
| Intent box 6: Community land use plans.  An earlier version of FSC’s Policy of Excision[[15]](#footnote-15) exempted management units with a community endorsed land use plan from the current 6.9 restrictions of conversion to a ‘very limited’ portion of the unit. The WG has discussed pros and cons of that approach, recognising both the merits of local bottom up decision-making, and the risks associated with potential large scale conversion regulated by no other conditions or safeguards than the plan itself.  The WG wish to make clear that these discussions do not question the rights of people to use their lands as they see fit (within the boundaries of laws and regulations), but rather recognise FSC’s right to certify only such land use and practises that comply with FSC’s requirements.  The WG welcomes feedback and further suggestions on these issues in the consultation. |  |
| **5. Evaluation and monitoring**  5.1. Evaluation  5.1.1. The burden of demonstrating environmental and social net gains generated by conversion and associated compensation or mitigation measures shall rest with the applicant. |  |
| 5.1.2. The applicant shall pay for the evaluation of gains generated through conversion, compensation and mitigation. |  |
| Intent box 7: Procedures and processes for evaluating baselines and gains  The WG recognises that it will not be possible to foresee or prescribe in detail how to judge all potential cases of compensation and mitigation that may arise. The WG therefore sees a need for FSC to develop a complementary implementation process with robust procedures for evaluating baselines and gains generated through conversion, compensation and mitigation. This should include addressing roles and responsibilities of various actors and levels in the FSC system, process steps and components, timelines, consultations with stakeholders, dispute resolution etc.  More specifically, the work should consider:  - Options for CBs to collate baseline information during pre-assessments;  - Use of (CB-independent) evaluation panels that include FSC member representatives;  - A mechanism for documenting evaluated cases as a body of ‘case-law’ for later reference;  - Delegation of principal decision-making to the national, sub regional or regional level as capacity and resources allow for;  - How to ensure a high degree of transparency;  - The organising, resourcing and coordinating of evaluation processes by FSC IC;  - Options for sign off on national and regional decisions by the Standards and Policy Committee (or a similar body) in order to provide oversight and promote consistency. |  |
| 5.2. Monitoring and recognition  5.2.1. The provision of net gains shall be periodically evaluated and verified by an independent third party. |  |
| 5.2.2. Certification shall be contingent on demonstrated, timely implementation of compensation and mitigation commitments and verified, continued progress towards achieving net gains. |  |
| Intent box 8: FSC recognition of demonstrable progress  The WG is aware that, while hopefully clear in terms of intent, the formulation of 5.2.2 is too vague to be consistently audited in the absence of more detailed Indicators and Guidance. There is full consensus in the WG that FSC should not ‘certify promises’ but demonstrated, real progress. At the same time the WG recognises that some compensation and mitigation measures, particularly forest restoration, may need decades to reach their objectives, and that FSC therefore must be able to recognise progress that stem from such measures even before they have delivered the full intended result.  The challenge is to strike a balance that also allows for some flexibility depending on the character of compensation and mitigation measures and the associated time frame. The WG welcomes feedback and further suggestions on these issues in the consultation. |  |
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1. As outlined in the M12 Background paper [↑](#footnote-ref-1)
2. Long-term, with no intention to revert the land back to pre-conversion conditions. [↑](#footnote-ref-2)
3. The effective date of this revised criterion. [↑](#footnote-ref-3)
4. Exceptions may e.g. include situations where legal conservation requirements go far beyond what’s required to comply with FSC P 6 and 9 – the one potential example identified by the WG is (some regions in) Brazil. [↑](#footnote-ref-4)
5. The WG is aware that, until there is a widely agreed and FSC accepted definition, interim provisions may be needed to make this requirement operational and auditable. [↑](#footnote-ref-5)
6. The concept of High Carbon Stocks as here referred to does not apply to plantations. [↑](#footnote-ref-6)
7. The effective date of this revised criterion. [↑](#footnote-ref-7)
8. Exceptions may e.g. include situations where legal conservation requirements go far beyond what’s required to comply with FSC P 6 and 9 – the one potential example identified by the WG is (some regions in) Brazil. [↑](#footnote-ref-8)
9. This implies land ownership, secure land tenure or legally binding agreements. [↑](#footnote-ref-9)
10. In cases where monetary compensation is agreed upon, the parties may consider several instalments over time and the establishment of community funds, rather than ‘one-off’ payments. [↑](#footnote-ref-10)
11. Intentions refer to the ‘converting agent’ as well as to any other parties in whose interest the converting agent may have been acting at the time. [↑](#footnote-ref-11)
12. Subject to adaptation in national FSC standards [↑](#footnote-ref-12)
13. Subject to adaptation in national FSC standards [↑](#footnote-ref-13)
14. Any conversion in the management unit over and above a total of 10 hectares requires full compliance with (a revised) Criterion 6.9. [↑](#footnote-ref-14)
15. FSC-POL-20-003 (2004). The excision of areas from the scope of certification. [↑](#footnote-ref-15)