



SUMMARY OF PUBLIC CONSULTATION MATERIALS

PUBLIC CONSULTATION ON THE THIRD DRAFT OF THE FSC POLICY ON CONVERSION (FSC-POL-01-007 VERSION 1-0)

The purpose of this document is to provide an overview on the public consultation materials. Please provide your feedback on the third draft of the FSC-POL-01-007 Policy on Conversion through the FSC online consultation platform [here](#).

INTRODUCTION TO THE CONSULTATION

Welcome to the Public Consultation for the FSC-POL-01-007 Policy on Conversion Version 1-0 Draft 3-0

This is the 3rd public consultation for the Policy on Conversion Version 1-0, and it is open for 60 days between 7th September to 6th November 2020. The consultation will be used to collect stakeholders' feedback on policy principles 3 and 4 related to the conversion cut-off rule and principle 7.2 regarding independent assessor for the identification of social harm, for which the Motion 7 Working Group is in the process of seeking full consensus.

FSC encourages all interested stakeholders to participate and provide their input during this period, as input is critical to the finalization of FSC Policy on Conversion.

You can save current progress and edit your responses right up until you submit the survey for analysis. It is possible to edit your responses until the close of the consultation period. The estimated time to complete all question items is 20 mins.

Please take the opportunity to share your opinions and suggestions.

Opening date: 7th September 2020 00:00:00 CET

Closing date: 6th November 2020 23:59:59 CET

Thank you in advance for your participation.
Please contact Yan li at y.li@fsc.org for questions



Please help us understand more about your background and interests by filling the 5 questions below:

1. Please select the option(s) that you identify yourself as to help us understand more about your background and interests.

- Social NGO
- Environmental NGO
- Academic
- Smallholder
- Community member
- Government
- Certificate holder (FM)
- Certificate holder (CoC)
- Indigenous peoples
- CB
- Others

2. Are you an FSC member?

- Yes
- No

3. Are you a member in the Motion 7 Policy on Conversion Consultative forum?

- Yes
- No

4. Would you like to give your consent for being contacted by the consultation organizer or technical working group members via email?

- Yes
- No

5. Will the FSC Policy on Conversion and Conversion Remedy Procedure affect you directly?

- Yes
- No



PART 1. BACKGROUND INTRODUCTION ON MOTION 7 AND ITS IMPLEMENTATION

Background introduction on Motion 7

At the General Assembly 2017 in Vancouver, Canada, the FSC membership approved Motion 7. Please see Motion 7 mandate below:

Motion 7 Mandate

The membership recognizes the strategic importance of addressing the issues around conversion of natural forest-related ecosystems to plantations and the need for alignment of the diverse ways in which conversion is treated in different parts of the FSC normative framework. The membership requests that FSC puts in place a mechanism, building upon previous work, which will develop a holistic policy and appropriate treatment at Principle, Criterion and Indicator levels with guidance to national Standards Development Groups, considering compensation for past conversion, in terms of:

- a) restoration and/or conservation for environmental values; and
- b) restitution for socio-economic values.

To address Motion 7, FSC has established two processes:

- 1) a chamber balanced Working Group (WG) to develop a holistic Policy on Conversion, and
- 2) a Technical Working Group (TWG) to focus on the implementation of the Policy.

1. Motion 7 Working Group: development of FSC Policy on Conversion

The scope and key policy areas of the Policy on Conversion was approved by the Board of Directors on 16 July 2018, please refer to [WG Terms of references \(ToR\)](#) for further details. The WG was established in August 2018 following a call for candidates process and this sub-chamber balanced WG comprising the following six members:

M7 Working Group Members			
Name	Organization	Sub-chamber	Country
Justin Mercer	New Forests	Economic-North	United States
<i>Note: Justin Mercer replaces Amanda Naismith in the WG since September 2020 (Amanda Naismith replaced Marthe Tollenaar for the role of Economic- North member in the WG since February 2020 and until August 2020.)</i>			
Francisco Javier Rodriguez Aspillaga	CMPC celulosa	Economic-South	Chile



Annika Terrana	WWF	Environmental - North	United States
Michal Zrust	Individual	Environmental - South	Indonesia
Marcus Colchester	Individual	Social - North	United Kingdom
<i>Note: Marcus Colchester replaces Linda Fienberg for the role of Social- North member in the WG since January 2020.</i>			
Verma Dharam Pal Singh	Individual	Social - South	India

The Motion 7 WG is in the process of developing the FSC Policy on Conversion, this holistic policy consists the following key elements:

- 1) 1994 cut-off date: To retain, remove or change the rules to address past conversion,
- 2) Principles for compensation on past conversion, in terms of:
 - a) restoration and/or conservation of environmental values;
 - b) restitution of socio-economic values;
- 3) The concept of acceptable conversion as defined under current FSC rules.

So far, the chamber-balanced Motion 7 WG has developed three drafts of the FSC Policy on Conversion, and FSC has completed two public consultations to collect comments on the policy drafts, which have been considered in the development of the subsequent draft. This third and final consultation was not included in the original WG plan and has been approved by the Policy Steering Group on 11 August 2020. It focuses on the outstanding issues for which the WG has not reached full consensus. After this consultation, the WG will develop a final draft and submit it to the FSC Policy and Standards Committee (PSC) and Board of Directors for review and approval. Further information of the development process can be found on the FSC Policy on Conversion webpage [here](#).

2. Motion 7 Technical Working Group: development of the Operationalization Mechanism for FSC Policy on Conversion

The TWG’s ToR was approved by the Steering Committee in June 2019, please refer to the TWG [webpage here](#) for further details. The TWG was established in November 2019 following a call for candidates during July – August 2019 and comprises the following 4 members:

Name	Background	Country
Caitlin Clarke	Senior Fellow, Supply Chains, The Nature Conservancy	United States
<i>Note: Caitlin Clarke replaces Jamie Lawrence in the TWG since September 2020.</i>		
Karen Kirkman	Independent Consultant	South Africa
Michael Allen Brady	Principal Scientist & Team Leader, Value Chains, Finance and Investment	Indonesia
Vera Lex Engel	Associate Professor, São Paulo State University-UNESP	Brazil

The Motion 7 TWG is tasked to develop a mechanism to translate the FSC Policy on Conversion into operational practices, including the following outputs:



- 1) Criteria, indicators and thresholds for conversion across the normative framework, including Policy for Association, Principles and Criteria, International Generic Indicators (IGI), Controlled Wood Standards and others as needed. This includes instructions for Standard Developers to address any revised IGIs on conversion in National Forest Stewardship Standards and Interim National Standards.
- 2) Develop a remedy procedure for:
 - a) Organizations that want to be associated with FSC.
 - b) Certification applicants to address their historical conversion after 1994 and prior to 2020.
 - c) Members, certificate holders, and suppliers of forest products into the FSC supply chain that have been suspended because of violation of conversion rules.
- 3) Draft text for a possible motion to the 2020 General Assembly to reword FSC Forest Management Principles & Criteria and to align the International Generic Indicators (IGIs), National Forest Stewardship Standards, Policy for Association and Controlled Wood standards and Ecosystem Service Procedure with the Policy on Conversion.

Among the deliverables from the TWG, the first draft of FSC Conversion Remedy Procedure went through its first public consultation during April and June 2020. For further information on the procedure and other TWG related information, please visit the FSC webpage [here](#).

3. Motion 7 Working Group and Technical Working Group: operating in parallel

The two Motion 7 Working Groups - the Policy WG and the TWG, have been scheduled to run in parallel for a period of time to enable engagement between these two groups.

The WG's objective is to develop a holistic Policy on Conversion that furthers the Mission of FSC in compliance with request contained in Motion 7/2017. The TWG is to establish a remedy procedure considering environmental and social harm caused by conversion, and to develop criteria, indicators and thresholds across FSC normative framework which will translate the Policy into operational practices to allow its implementation.

The WG started its work in August 2018 and after the development of the second Policy draft, the TWG was established in November 2019 and started performing their task to operationalize the Policy by developing the Conversion Remedy Procedure.

This overlap between WG and TWG's workplans is to ensure that the TWG is able to maintain a good understanding of the intent of the WG, while allowing the TWG to provide feedback to the WG on the practical implementation of the Policy before the final draft of the Policy is completed.

Following this final public consultation, the WG will analyze consultation results and finalize the Policy. The TWG will continue to develop the operationalization mechanism for the Policy by completing a second draft Conversion Remedy Procedure and identifying FSC normative documents in which alignment with the Policy principles will be needed.

PART 2. THE 3RD PUBLIC CONSULTATION AND SUPPORTING DOCUMENT/MEASURE

1. Why a 3rd public consultation for the Policy on Conversion?

Following the public consultation for Policy on Conversion Version 1-0 Draft 2-0 which was completed in February 2020, the WG members held 16 virtual discussion sessions from March to June 2020, to review and discuss feedbacks from FSC members and other stakeholders. Among all comments collected, some FSC members and stakeholders raised concerns about the proposed conversion cut-off rule and requested that the Policy links the remedy liability with the Management Unit where conversion has occurred, instead of with organizations directly or indirectly involved in conversion. The WG members discussed various options for the cut-off rule in order to address FSC membership and stakeholders’ aspirations and concerns and developed a revised draft - Policy on Conversion Version 1-0 Draft 3-0, which includes different cut-off rule proposals.

To provide FSC members and stakeholders with the opportunity to review these proposals and seek their valuable feedback, the Policy Steering Group (PSG) at the FSC secretariat approved adding a 3rd public consultation to the WG original workplan. The consultation results will be used to develop the final draft of FSC Policy on Conversion which will then be submitted to the FSC Policy and Standards Committee (PSC) and the Board of Directors (BoD) for decision making in March 2021. As principle 3 and 4 of the Policy represent a change to the existing criterion 6.10 of the FSC Principles and Criteria (FSC-STD-01-001), the FSC membership will need to agree on these changes for the Policy to be implementable, with the most appropriate place being at the General Assembly in 2021. In line with these requirements, the WG will be developing a Motion for presentation at the GA in 2021.

It is extremely important that FSC members of all chambers and sub-chambers actively respond, including those in favor, neutral or negative about options proposed, so that the consultation results can represent the true breadth of FSC membership’s perspectives on conversion.

2. Supporting document and planned activities on conversion

To support FSC membership and stakeholder participation in the consultation and to prepare for the conversion discussion at the FSC General Assembly (GA) 2021, FSC developed supporting document and planned research and engagement activities related to conversion prior to the GA 2021, please see details below:

Supporting document/activity	Description	Note
1. Green paper on conversion	FSC has developed a green paper on conversion, and it provides an overview of:	Please see full version of the green paper under



	<ol style="list-style-type: none"> 1) The history of conversion discussions in FSC, 2) Relevant initiatives outside FSC related to conversion, restoration and conservation, and 3) Tensions inside FSC related to conversion. 	<p>supporting document in this consultation.</p>
<p>2. FSC Conversion dialogues</p>	<p>FSC will host virtual conversion dialogues during this consultation period and until the GA. These are to:</p> <ol style="list-style-type: none"> 1) support FSC membership and stakeholders in developing understanding of the facts, opinions, opportunities and challenges of a change in the FSC Conversion rule, 2) introduce possible solutions and their impact for acceptance, conditions, safeguards, equality of forest management in different regions that are acceptable for FSC members and certificate holders, and 3) provide transparency on the effects of a possible change of the conversion rule in FSC, as well as transparency on the effects if the conversion rule remains. 	<p>Please see details of the conversion dialogues schedule at the end of the consultation.</p>
<p>3. Data gathering and case studies on conversion</p>	<p>FSC aims to collect data to gain further insight in the potential for FSC certification of plantations on land converted since 1994 via case studies - and concurrent remedy opportunities, this will help to answer the following questions:</p> <ol style="list-style-type: none"> 1) What potential for certification*/ remedy/ outcomes could be achieved in case revised conversion requirements come to force? 2) How would potential certification influence the rapidly growing demand for and availability of wood originating from these regions? 	<p>Currently under request for proposal.</p>



PART 3. INTRODUCTION ON THE PUBLIC CONSULTATION STRUCTURE

In this section you will find an overview of the four public consultation questions, including:

Policy principle 3 related to past conversion

Question 1: For conversion that occurred after November 1994 and before October 2020, the Working Group presents two options for defining how an organization may become eligible for FSC forest management certification. Please indicate which option you would prefer the FSC system to adopt and provide your rationale for supporting the selected option.

Policy principle 4 related to conversion after the effective date of the policy

Question 2: For conversion beyond October 2020, the Working Group presents three options for defining how an organization may become eligible for FSC forest management certification. Please indicate which option you would prefer the FSC system to adopt and provide your rationale for supporting the selected option/s.

Policy principle 7 related to remedy procedure

Question 3: Do you agree that an independent assessor shall be required for the identification of social harm for affected stakeholders? Please provide detail to support your answer.

General question

Question 4: Do you have further comments for the finalization of Policy on Conversion?



PART 4. POLICY PRINCIPLE 3 RELATED TO PAST CONVERSION – CONVERSION THAT OCCURRED AFTER NOVEMBER 1994 AND BEFORE OCTOBER 2020

Principle 3 in Policy on Conversion draft 2-0 and its consultation results

The second draft of FSC Policy on Conversion proposed the following principle 3:

Principle 3. FSC aims to incentivize and advance the restoration and conservation of natural forest* and High Conservation Value* areas and restitution of social harm caused by conversion. For that purpose:

a) Organizations that were directly or indirectly involved* in conversion* on the Management Unit* after November 1994 and before October 2020 are eligible for FSC forest management certification of that Management Unit* upon demonstrated compliance with the FSC Compensation Procedure.

b) Organizations that were directly or indirectly involved* in conversion* after November 1994 are eligible to associate with FSC upon demonstrated compliance with the FSC Compensation Procedure.

Note: “October 2020” is a temporary placeholder; the final cut-off date will be the date of the approval of this Policy.

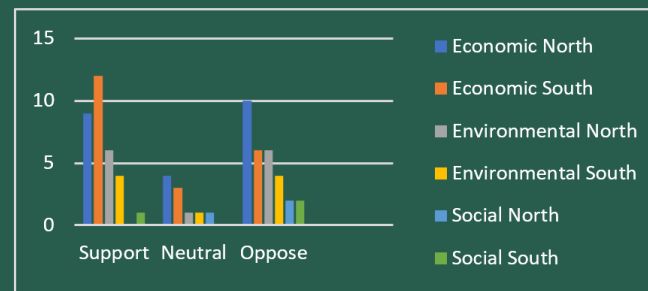
In the second public consultation held between December 2019 to February 2020, 104 stakeholders provided feedback to question 5 “Do you support the proposed principle 3 on cut-off rules?” The consultation results for this question were:

Quantitative results overview

In total, 104 out of 140 participants voted on this question, and 72 participants are FSC members. General quantitative results are as below:

Support: 45
Oppose: 44
Neutral: 15

Quantitively results _ FSC membership



Question 1:

For conversion that occurred after November 1994 and before October 2020, the Working group presents two options for defining how an organization may become eligible for FSC forest management certification. Please indicate which option you would prefer the FSC system to adopt and provide your rationale for supporting the selected option.

- Option 1 (No restriction)
- Option 2 (Remedy for social harm)

Please briefly explain the rationale



Around 30 stakeholders and members opposing the principle 3 in the second draft policy requested that principle 3 should link the remedy liability with the management unit where conversion occurred, instead of with the organization directly or indirectly involved in conversion. After reviewing all consultation results, the WG did not reach consensus on Principle 3 related to the remedy of harm caused by past conversion and proposed the following two options instead:

Option 1 (Same as in policy draft 2-0, supported by the 2 WG members):

3. FSC aims to incentivize and advance the restoration* and conservation of natural forest* and restitution of social harms associated with conversion. For that purpose:
 - a) Organizations that were directly or indirectly involved* in conversion* on the Management Unit* after November 1994 and before October 2020 are eligible for FSC forest management certification of that Management Unit* upon demonstrated conformance with the FSC Remedy Procedure.
 - b) Organizations that were directly or indirectly involved* in significant conversion* after November 1994 are eligible to associate with FSC upon demonstrated conformance with the FSC Remedy Procedure.

Option 2: (new proposal, supported by the 4 WG members)

3. FSC aims to incentivize and advance the restoration* and conservation of natural forest* and restitution of social harms associated with conversion. For that purpose:
 - a) Organizations that were directly or indirectly involved* in conversion* on the Management Unit* after November 1994 and before October 2020 are eligible for FSC forest management certification of that Management Unit* upon demonstrated conformance with the FSC Remedy Procedure.
 - b) Organizations that have acquired Management Units* where conversion has occurred after November 1994 and before October 2020 are eligible for FSC forest management certification of that Management Unit* upon demonstrated conformance with the FSC Remedy Procedure for social harms*.
 - c) Organizations that were directly or indirectly involved* in significant conversion* after November 1994 are eligible to associate with FSC upon demonstrated conformance with the FSC Remedy Procedure.

Note: This Policy does not apply to: (1) conversion that took place prior to 1994, and (2) any area that was under FSC Forest Management certification at the time of this Policy becoming effective.



The difference between these 2 options lays with organizations not involved in conversion but acquired land where conversion has occurred between November 1994 and October 2020 and is highlighted in red in the tables below. Introduction and rationale for proposing various cut-off rules are provided under the comparison table.

Principle 3 related to conversion occurred between Nov 1994 and Oct 2020			
Purpose	Organization	Natural forests	HCV areas
FM Certification of MU	Organizations involved in conversion in the MU	Remedy	Not applicable
	Organizations not involved in conversion in the MU	Option 1: No restriction Option 2: Remedy for social harm	Not applicable
Association with FSC	Organizations involved in conversion within their group of affiliated organizations	Remedy	

Introduction and rationale for option 1:

1. Introduction

Option 1 implies that organizations which were not directly or indirectly involved in conversion on the Management Unit after November 1994 and before October 2020 are eligible for FSC forest management certification of that Management Unit and they are not required to comply with FSC Conversion Remedy Procedure. Option 1 remains the same as principle 3 in the second draft of the Policy.

The public consultation for the second draft Policy contained the question: “Do you support the proposed principle 3 on past conversion? 44 of 140 respondents (of which 65% were FSC members) expressed opposition to principle 3 while 45 are supportive of the proposals. Of these 44, 30 respondents (18 are from the same country) requested FSC to consider linking conversion to the land area where the conversion occurred due to the concerns around “ownership loophole” (Please see FSC Green paper on conversion for detailed description of “ownership loophole”).

Considering the statistical analysis of the responses, the 2 WG members supporting option 1 believe that there is enough evidence of support for principle 3 in the Policy draft 2-0. Besides, these 2 WG



members believe that the issue of “ownership loophole” can be more appropriately addressed through the Policy for Association and other associated normative documents. The 2 WG members shared the concern that changing the way how FSC views responsibility for both past harm and future management of forests could have serious consequences on the ability of FSC to attract voluntary compliance with FSC’s set of international forest standards. These concerns were shared across chambers and included non-members and international investment funds investing in restoration and afforestation projects.

2. Rationale

Responsible forest management creates many shared benefits including climate resilience, biodiversity, empowering local communities through supporting individual, community and national development objectives. FSC should aim to incentivize companies to access the system in order to bring positive change worldwide, rather than adding additional barriers for achieving FSC forest management certification. As option 1 links the remedy liability with the organizations instead of with the Management Unit/land, it would allow organizations committed to responsible forest management to enter FSC system.

The 2 WG members supporting option 1 also believe that through principle 2 in the third draft of the Policy – *“FSC requires associating organizations to demonstrate that they are not converting natural forests* and/or High Conservation Value* areas to plantations* or other land uses. The associating organizations are expected to demonstrate their conservation* and restoration* efforts through conformance with requirements in the FSC normative framework.”*, relevant safeguards are provided in terms of addressing past conversion.

Option 2 requires organizations that were not directly or indirectly involved in conversion to remedy for social harm caused by other organizations. Organizations that acquired land which was converted by others would need great amount of resources and support to implement remedy projects before gaining the eligibility to enter the FSC system. For organizations unable to allocate such resources, they are likely to seek alternatives to FSC or will be outcompeted by companies that are not committing to responsible forest management. 2 WG members supporting option 1 are concerned that option 2 may discourage future investment in restoration by placing unnecessary requirements. The proposed wording in option 2 penalizes companies committed to responsible forest management by making FSC more cost-prohibitive and potentially unobtainable. This contradicts FSC’s mission to increase the forests under responsible management globally.

Furthermore, there are forest organizations that have acquired land and already certified parts of these landholdings as they continue with the development of their business plans. The proposed



option 2 requires these organizations to conform with additional remedy requirements. Similarly, organizations that have purchased land, and prepared these areas for the development of plantations and certification to FSC forest management certification under current rules - but have not yet undertaken their audits - would now have additional requirements placed on them that were not considered in their current business plans, economic viability studies or return on investment projections.

Lastly, 2 WG members supporting option 1 expressed concerns that option 2 appears to have inconsistencies with several international norms, including but not limited to: [The United Nations \(UN\) Guiding Principles on Business and Human Rights](#)¹, [UN definition for environmental responsibility/accountability](#)², and [WWF Deforestation-Free Supply Chains Concepts and Implications](#)³'s definition for forest and zero deforestation, etc. These international norms and best practices imply that organizations which are not involved in conversion of natural forests of ecological importance, that take over and responsibly management plantations are contributing to global commitments on responsible forest management, conservation and restoration. Thus, certification of such forest management practices should be promoted by FSC.

Introduction and rationale for option 2:

1. Introduction

During the public consultation for the second draft of FSC Policy on Conversion, some FSC members and stakeholders requested that the Policy on Conversion should address the potential abuse of FSC system through what has been known as the 'ownership loophole'. The proposal from these FSC members is to link the remedy liability with the Management Unit/land instead of with the organization. To answer to their request, 4 WG members proposed option 2 which indicates that

¹**Principle 11** Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

Principle 13 The responsibility to respect human rights requires that business enterprises:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

² **UN definition for accountability** - responsibility for the deterioration of the natural environment, implying the allocation of environmental costs to the economic activities that cause such deterioration. See also polluter-pays principle and user-pays principle.

Polluter Pays Principle - principle according to which the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution.

User Pays Principle - variation of the polluter-pays principle that calls upon the user of a natural resource to bear the cost of running down natural capital. (Note that organisations taking over degraded or converted land did not use the natural resources or run down the natural capital).

³ **Zero deforestation** (also: deforestation-free or no-deforestation) is the broadest and most widely used concept -when no natural forests of ecological importance are cleared or converted into other land uses at a management unit or company level.

A forest is "land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10%, or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural or urban land use."



for organizations that acquired Management Units where conversion has occurred between November 1994 and October 2020 (organizations are not directly or indirectly involved in this conversion), they are eligible for FSC forest management certification of that Management Unit upon demonstrated conformance with the FSC Remedy Procedure for social harms.

2. Rationale:

Under international law, violation of human rights gives rise to a right to remedy. Such remedy may be through restitution, rehabilitation, compensation, satisfaction and/or guarantees of non-repetition. The right to remedy is a general right of all legal persons, including peoples. The UN Guiding Principles on Business and Human Rights pay particular attention to the need for businesses to respect rights and provide remedy for violations. In line with the Respect, Protect and Remedy principles set out by these Guiding Principles, rightsholders should also be provided with access to non-judicial remedy procedures. Specifically, in the case of indigenous peoples, under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which the FSC upholds, such remedy is explicitly linked to Free, Prior and Informed Consent. With respect to land, the provisions of UNDRIP are even clearer⁴.

The 4 WG members supporting option 2 reviewed FSC normative documents' requirement on social restitution and believe that provisions in the FSC Principles & Criteria (P&C) and International Generic Indicators (IGIs) for the remedy of past and ongoing social harms are absent, weak or ambiguous. A good faith or progressive reading of the P&C & IGIs does encourage companies to make remedy for past and ongoing social harms consistent with international law, but there are so many opt outs and exceptions that a bad faith or minimalist reading allows companies to evade these human rights obligations and still get certified. Furthermore, for organizations applying for association with FSC, these WG members feel that the FSC Policy for Association is not explicit on the need for remedy for past harms but strongly implies that ongoing human rights violations must be addressed. The effectiveness of the Policy depends on how rigorously the due diligence is carried out by FSC. The 4 WG members are concerned that the current due diligence, the FSC dispute resolution system, is extremely overloaded. Moreover, it is not clear how this dispute resolution system applies as the deforesting company – not being certified – will neither be subject to Certification Body verification nor to Assurance Services International (ASI) oversight and since by definition it is not yet associated, it cannot be challenged under the Policy of Association.

⁴ Article 28: 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent; 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.



The 4 WG members believe through option 2, organizations need to implement appropriate remedy for social harm associated with past conversion and the affected parties will be given the right to remedy (the detailed process for identifying, assessing and addressing social harm can then be elaborated in the FSC Conversion Remedy Procedure). A draft list of relevant social harms might include: land grabbing, resource destruction including high conservation values (HCV) 5 & 6, land conflicts, associated human rights abuses, criminalization of human rights defenders, violations of labour rights and laws, violations of women's rights, loss of livelihoods, loss of local food security, loss of employment opportunities, land concentration.

The options above for principle 3 of the Policy represent a change to the existing criterion 6.10 of the FSC Principles and Criteria (FSC-STD-01-001 V5-2). The FSC membership will need to agree on these changes to be implementable, with the most appropriate place being at the General Assembly in 2021. In line with these requirements, the WG will be developing a Motion for presentation at the GA in 2021.

FSC will organize the 2nd Conversion Dialogue in May 2021 to initiate discussions on the Motion to gain a wide understanding of the proposal and support for the change.

PART 5. POLICY PRINCIPLE 4 RELATED TO FUTURE CONVERSION - CONVERSION THAT OCCURRED BEYOND OCTOBER 2020

Principle 4 in Policy on Conversion draft 2-0 and its consultation results

The second draft of FSC Policy on Conversion proposed the following principle 4:

***Principle 4.** Organizations that are directly or indirectly involved* in conversion* on the Management Unit* after October 2020⁵ are not eligible for FSC forest management certification of that Management Unit*.*

Note: "October 2020" is a temporary placeholder; the final cut-off date will be the date of the approval of this Policy.

22% of respondents from the second public consultation of the Policy requested that the Policy links the remedy liability with the land instead of with the organizations directly or indirectly involved in conversion. The WG did not reach consensus on Principle 4 and proposed the following three options.

Option 1 (Same as policy draft 2-0, supported by 2 WG members):

4. Organizations that are directly or indirectly involved* in conversion* on the Management Unit* after October 2020 are not eligible for FSC forest management certification of that Management Unit*.

Option 2 (Supported by 4 WG members):

4. Organizations that take over converted land after October 2020 are eligible for FSC forest management certification of that Management Unit* upon demonstrated compliance with the FSC Remedy Procedure.

Option 3 (Supported by 4 WG members):

Question 2: For conversion beyond October 2020, the Working group presents three options for defining how an organization may become eligible for FSC forest management certification. Please indicate which option you would prefer the FSC system to adopt and provide your rationale for supporting the selected option/s.

- Option 1 (No restriction)
- Option 2 (Remedy)
- Option 3 (Not eligible)

Please briefly explain the rationale

⁵ "October 2020" is a temporary placeholder; the final cut-off date will be the date of the approval of this Policy.



4. Natural forests and High Conservation Value Areas that are converted after October 2020 are not eligible for FSC forest management certification.

Note #1: This Policy does not apply to: (1) conversion that took place prior to 1994, and (2) any area that was under FSC Forest Management certification at the time of this Policy becoming effective.

The difference between these three options lays with organizations not involved in conversion but taking over converted land and is highlighted in red in the tables below. Introduction and rationale for each option is provided under the comparison table.

Principle 4 related to conversion occurring beyond Oct 2020		
Purpose	Organization	Natural forests & HCV areas
FM Certification of MU	Organizations involved in conversion in the MU	Not eligible
	Organizations not involved in conversion in the MU	Option 1: No restriction Option 2: Remedy Option 3: Not eligible
Association with FSC	Organizations involved in conversion within their group of affiliated organizations	Remedy

Introduction and rationale for option 1:

1. Introduction

Option 1 implies that if an organization is not directly or indirectly involved in conversion on the Management Unit after October 2020, then the organization is eligible for FSC forest management certification of that Management Unit and will not be required to comply with the FSC Remedy Procedure.

2. Rationale

Further to the rationale described under option 1 for principle 3 (part 4 of the consultation material), FSC should consider international agreements on the rights of individuals,



communities and governments to develop and enable human development to lift people out of poverty. The primary document in this regard is the UN Declaration on the Right to Development, along with the UN Sustainable Development Goals linked to Human Rights, including: *“Goal 1 – No Poverty; Goal 2 - Zero Hunger; Goal 3 - Good Health and Well Being; Goal 8 – Decent Work and Economic Growth; Goal 9 – Industry, Innovation and Infrastructure; Goal 10 – Reduced Inequalities (consider the inequalities between developed areas across the global and undeveloped areas – not necessarily the simple north / south divide); Goal 11 – Sustainable Cities and Communities (in terms of forest product needs); Responsible Consumption and Production (of forest products); Goal 13 – Climate Action (and incentivizing restoration of degraded lands into the future); Goal 15 – Life on Land (specifically in regards to restoration into the future) and Goal 17 – Partnerships (specifically financing for development that is proven to be responsible and sustainable).”* Option 1 will continue allowing organizations committed to responsible forest management to enter the FSC system without additional cost-prohibitive barriers.

The 2 WG members supporting option 1 believe that option 2 and 3 fail to recognize the diverse challenges faced in certain parts of the world and ignore that the right to development is an inalienable human right. This right includes the right to self-determination and the right to full sovereignty over all their natural wealth and resources⁶. Further to this, as land degradation is not simply going to suddenly stop in 2020, the key questions to be considered by FSC are: what happens to lands that are degraded after 2020? How can FSC incentivize the restoration of lands degraded after 2020? How can FSC provide a pathway for responsible organizations taking over land converted after 2020 to enter the FSC system?

Introduction and rationale for option 2:

1. Introduction

Option 2 implies that organizations which are not directly or indirectly involved in conversion on the Management Unit after October 2020 are eligible for FSC forest

⁶ Article 1 of the UN Declaration on Right to Development. Furthermore, articles 2 and 3 specify the need for the human person to be central to development and assign the responsibility for national level develop to governments (Not international standards bodies), while Article 5 highlights the needs for “states” to work on policies and programs that consider international norms and acknowledge the needs of the developing countries. Article 9 covers that no group has a right to engage in an act that may violate the fundamental human rights that includes the right to development, which as explained above includes the right to use natural wealth and resources.



management certification of that Management Unit upon demonstrated compliance with the FSC Remedy Procedure.

2. Rationale

This option acknowledges the rationale expressed in option 1 for principle 4. Option 2 recognizes international agreements on development rights and allows a pathway for organizations taking over converted land to enter FSC system by implementing remedy projects to address environmental harm caused by conversion and social harm associated with the conversion.

Introduction and rationale for option 3:

1. Introduction

Option 2 and 3 are proposed by the same 4 WG members and they are flexible with both options. Option 3 implies that if there is conversion on a Management Unit after October 2020, this Management Unit will not be eligible for FSC forest management certification. In other words, for organizations taking over Management Unit converted after October 2020, regardless of their involvement in the conversion, they are not eligible to apply for forest management certification of this Management Unit.

2. Rationale

WG members supporting option 3 believe that if FSC does not prohibit the certification of land that has been converted after October 2020, it will not effectively facilitate the global commitment on zero deforestation and biodiversity protection. Furthermore, given the reality of trading forest land held as freehold, and considering the conversions led by arms-length contractors or sub-contractors, the 'ownership loophole' is an important factor to be rationalized.

Even well-resourced specialist anti-fraud police forces and financial regulators struggle to identify links between frontline money launderers and those who organize the transactions and capture most of the benefits. FSC could contract specialist agencies to track and trace ownership and decision-making in land use changes, but it would be extremely challenging and expensive.



The Roundtable for Sustainable Palm Oil (RSPO) has been through similar challenges and decided to avoid that problem by shifting compensation responsibility from the enterprise to the land. This approach allows plausible verification of facts around conversion (e.g. conversion dates and areas, etc.) and assessment of remedy liabilities. It also aligns with the long-established legal principle of ‘caveat emptor’ (‘buyer beware’) which means that a buyer of land is assumed to have checked for and is willingly accepting the legal liabilities of the previous owner. If a previous owner contravened rules about land zoning or conversion and sells that land, then the new owner assumes liabilities to remedy the environmental and social harm caused by conversion.

Similar with the RSPO approach, option 3 links the remedy liability on the land where conversion of natural forests and HCV has occurred. This would simplify the FSC approach for conversion after October 2020 as any post-October 2020 converted land would not be considered eligible for forest management certification. Lastly, the 4 WG members believe that option 1 will create significant incentive for further conversion of natural forests and HCV to plantations beyond October 2020 as it allows certification of converted land as long as the organizations are not directly or indirectly involved in the conversion.

Same as for principle 3 of the Policy, the options for principle 4 require a change to the existing criterion 6.10 of the FSC Principles and Criteria (FSC-STD-01-001). The FSC membership will need to agree on these changes to be implementable, with the most appropriate place being at the General Assembly in 2021. In line with these requirements, the WG will be developing a Motion for presentation at the GA in 2021



PART 6. POLICY PRINCIPLE 7.2 RELATED TO INDEPENDENT ASSESSOR

Principle 7.2 in Policy on Conversion draft 2-0 and draft 3-0

During the development of draft 3-0, the WG reached voting-based consensus⁷ on the revision of principle 7.2, which requires an independent assessor to work with affected stakeholders for the identification of social harm.

1 WG member opposes the revision of 7.2 and proposes to maintain requirements in the policy draft 2-0, that the organization applying for association with FSC or certification of its management unit can carry out the identification of social harm without intervention from a third organization – independent assessor. Please see comparison of principle 7.2 in draft 2-0 and 3-0 and the rationales as below:

Principle 7.2 in draft 2-0 (Supported by 1 WG member)

7.2 Standardised process to determine overall conservation, restoration and restitution requirements based on:

b) Social impacts related to:

- i) Social, cultural values and livelihoods lost;*
- ii) Eco-system services;*
- iii) Human rights.*

Restitution requirements shall be based on the recognised social impacts incurred by the affected parties in consultation with them based on FPIC principles.

Principle 7.2 in draft 3-0 (Supported by 5 WG member)

7.2 Standardised process to determine overall conservation, restoration and restitution requirements based on:

b) Social harms related to:*

- i) Social, cultural values and livelihoods lost;*
- ii) Eco-system services;*
- iii) Human rights;*
- iv) Workers Rights.*

Question 3: Do you agree that an independent assessor shall be required for the identification of social harm for affected stakeholders?

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly disagree

Please briefly explain the rationale

⁷ In voting-based consensus, quorum is required and at least 4 votes in favor, including at least one supportive vote per chamber.



Social harms shall be determined in consultation with affected stakeholders conducted by independent assessors. Social remedy requirements shall be based on the recognised social harms incurred by the affected stakeholders” in consultation with them based on FPIC.*

Rationale for supporting principle 7.2 in draft 2-0

Principles 11, 13, 17 and 18 of The United Nations Guiding Principles for Business and Human Rights specifically place the onus of responsibility for determining rights violation on the organization responsible for these violations. While Principle 18 does give the organization the option of either using internal and/or independent external human rights expertise, this does not impede the overriding principle that it is up to the organization to decide who conducts the assessment.

FSC requires organizations to take responsibility for their forest management activities, and if FSC requires that social harm assessments are done by independent assessors, organizations’ may lack ownership for the assessments processes and results. Whereas when organizations are required to engage directly with the affected parties, this creates a direct link between the organization and the affected parties to enable future engagements.

Further to this, the latest Free, Prior and Informed Consent (FPIC) guidelines indicates that the intent of engagement between organizations and affected stakeholders is supposed to be a voluntary participatory process (although this would need to be considered in the light of meeting FSC principles, criterion and indicators) undertaken in good faith by all parties to develop trust. The enforcement of independent assessors into this process cannot enhance these goals.

Rationale for supporting principle 7.2 in draft 3-0

5 WG members supporting the revision of principle 7.2 in draft 3-0 believe that impacted and often severely marginalized communities may not be able to question or challenge powerful companies that have taken over their land or otherwise caused social harms, often with the connivance of state agencies, security forces or paramilitary groups.

It is unreasonable to expect that the staff of organizations - who may themselves be complicit in, or directly responsible for the social harms - to provide adequate guidance



to affected parties about their rights. Principle 7.2 in draft 2-0 is not practical in terms of expecting that organizations would become honest and fair assessors of these social harms when they may have been directly responsible for causing these harms.

Social impact assessments should be carried out by qualified independent assessors endorsed or selected by FSC and acceptable to affected parties. Consultations with affected parties must be carried out through procedures which protect the security and provide anonymity to spokespersons. Moreover, consultations must ensure that social harms to women, the elderly, children, migrant and informal workers, and marginal groups are given due consideration, where necessary, through targeted consultations.



General comments

Question 4: Do you have further comments for the finalization of Policy on Conversion?

Please provide your comments:



PART 7: WEBINAR AND CONVERSION DIALOGUES

1. Webinars on the third draft of FSC Policy on Conversion

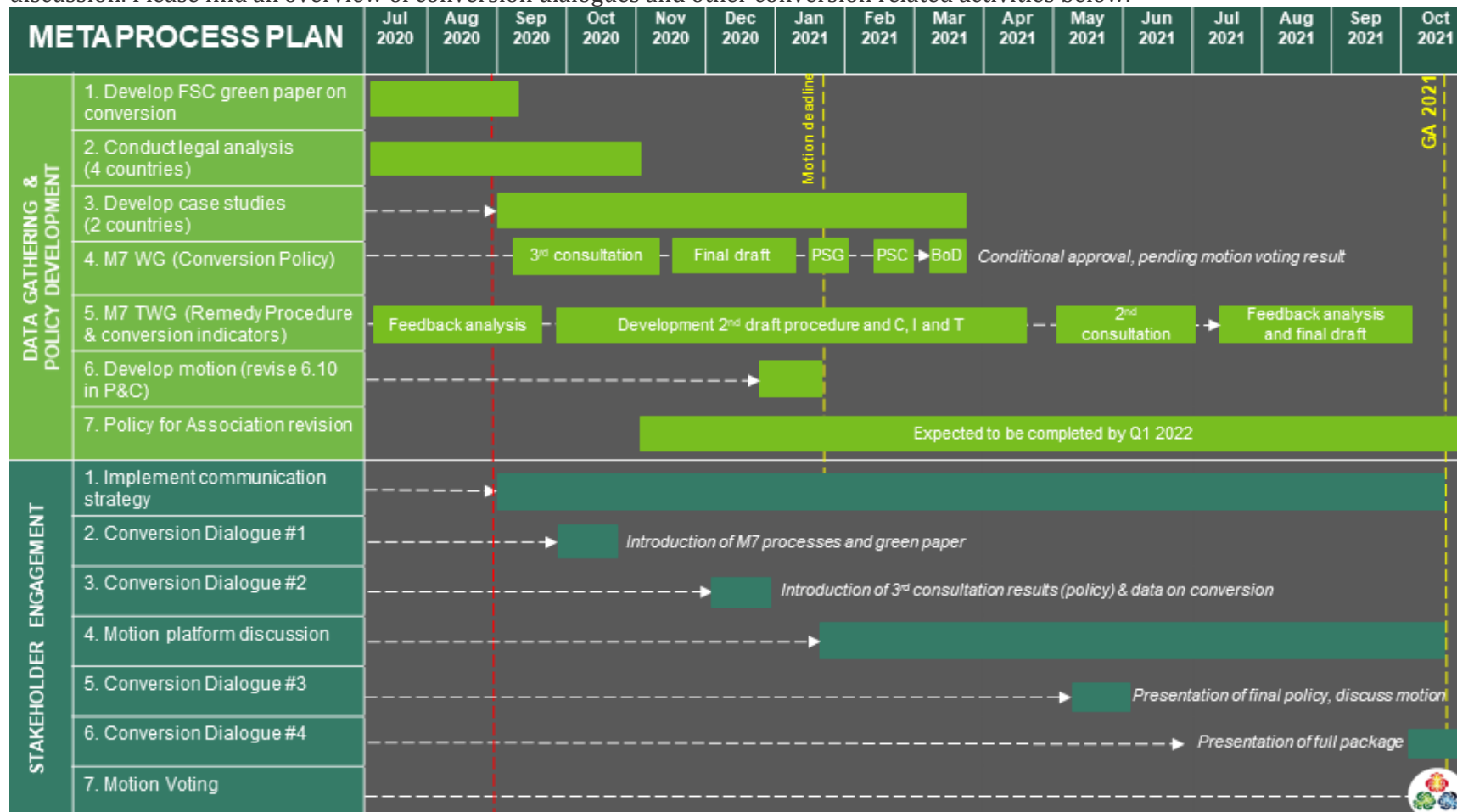
We plan to hold 2 webinars in English and 1 webinar in Spanish for different time zones during the consultation. These webinars are an opportunity to understand the development processes and the proposals in FSC-POL-01-007 *FSC Policy on Conversion Version 1-0 Draft 3-0*, and to ask questions to help you fill in the online consultation. The registration information for the two webinars is as below:

<i>Webinar information</i>	<i>Registration information</i>
Webinar 1 (EN) at 09:00AM – 10:00AM CET on 24 Sep 2020	https://attendee.gotowebinar.com/register/2860243569547911437
Webinar 2 (EN) at 17:00PM – 18:00PM CET on 24 Sep 2020	https://attendee.gotowebinar.com/register/5860400683912452624
Webinar 3 (ES) at 17:00PM – 18:00PM CET on 21 Oct 2020	https://attendee.gotowebinar.com/register/3727792328724669968



2. FSC Conversion dialogues

Apart from these webinars, FSC will host a series of virtual conversion dialogues to engage members and stakeholders on conversion discussion. Please find an overview of conversion dialogues and other conversion related activities below.



We will update the registration information for the #1 conversion dialogue here soon. For further information on the Development and finalization of the FSC Policy on Conversion, please visit the FSC webpage [here](#) dedicated to this process. On behalf of the Motion 7 Working Group and the FSC Forest Management Program, thank you very much for providing your feedback in this consultation. Stay healthy!