

Roundtable on Sustainable Palm Oil  
(RSPO)

Remediation and Compensation Procedure (RaCP)  
Related to Land Clearance  
Without Prior High Conservation Value (HCV)  
Assessment

Approved by  
Consensus of Compensation Task Force  
on November 12<sup>th</sup>, 2015

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## 1. Introduction

### 1.1. Purpose and Scope of the Procedure

In accordance with the RSPO Principles & Criteria (P&C), RSPO growers<sup>1</sup> are required to have completed HCV assessments of their land holdings for new plantings from November 2005. The intention is that areas of land under the control of RSPO growers that contain or support High Conservation Values (HCV) are not cleared for planting after this date.

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

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

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

However, there has been land clearance without prior HCV assessment since November 2005, and the RSPO recognises the importance of restoring or compensating for the potential HCV losses.

It is also acknowledged that such land clearance may have been the result of a wide range of causes (including unfamiliarity with RSPO's requirements at the time, activities by previous owners, mistakes, or poorly implemented operational procedures). Therefore, rather than insisting on requirements that would forever bar certain growers from certification and even RSPO membership, the RSPO has developed a clear, formal, and transparent procedure to remediate and compensate for land clearance without prior HCV assessment since November 2005.

The use of this Remediation and Compensation Procedure is primarily intended to encourage preservation of biodiversity, environmental, and socio-cultural HCVs, and safeguard the areas necessary to maintain them in the context of oil palm expansion. The procedure also supports compliance of RSPO standards as defined in its P&C.

Growers should also note that with the introduction of the New Planting Procedure (NPP) from 1 Jan. 2010, HCV assessments shall be conducted by HCV assessors approved by the RSPO (after 1 Jan 2015 under the HCV Assessor Licensing Scheme (ALS)<sup>2</sup>). New requirements under the criterion 7.3 as stated in the 2013 P&C will not apply retrospectively on past HCV assessments.

Failure to meet the requirements under this procedure will be considered as a complaint and reported to the Complaints Panel.

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<sup>1</sup> Grower is defined by the RSPO as the person or entity that owns and/or manages a palm oil development, irrespective of their membership category.

<sup>2</sup> <http://www.rspo.org/news-and-events/news/what-you-need-to-know-about-the-hcv-assessor-licensing-scheme>

## 1.2. To Whom this Procedure Applies

The Remediation and Compensation Procedure applies globally for RSPO members, both certified and non-certified. The procedure also applies in regions where RSPO is not yet active and to growers who may seek RSPO membership and/or apply for RSPO certification in the future.

Remediation and compensation is required for any clearance since 2005 without prior HCV assessment on land under the top asset owning and/or managing agency company and all its majority owned and/or managed subsidiaries that produce oil palm, regardless of whether clearing occurred before the land was acquired or leased. As stated in the RSPO's Certification System Document 2007, majority shareholding is defined as the largest shareholding. Where the largest shareholdings are equal (e.g. 50/50), the procedure applies to the organisation that has management control<sup>3</sup>. The Remediation and Compensation Procedure also applies to land leased or acquired by an RSPO member, and to which the majority shareholding rule still applies.

The Remediation and Compensation Procedure also applies to associated (including schemed) smallholders<sup>4</sup> and all other exclusively contracted out growers of fresh fruit bunch (FFB) being supplied to all units of the member whether they are smallholders or not, since these are defined by the RSPO as part of the supply base of a unit of certification.

The Remediation and Compensation Procedure as outlined in this document does not apply to independent smallholders seeking certification<sup>5</sup>.

## 1.3. Guiding Principles

The Remediation and Compensation Procedure reflects the following guiding principles:

- i. Early cases of clearance without HCV assessment carry less compensation liability than more recent cases. Thus, the procedure distinguishes between non-compliant clearance carried out (see Section 4.4):
  - From November 2005 to November 2007 (when the RSPO P&C were being trialled);
  - From November 2007 to 31 December 2009;
  - From 1 January 2010 (when the NPP was introduced) to 9 May 2014;
  - Since 9 May 2014, the compensation procedure bans current members from clearing without HCV assessments and aims to prevent 'clear and pay' by non-members. However, it does allow for new members to join the RSPO in the future and existing RSPO members to acquire holdings from non-members and still progress towards certification.
  
- ii. Non-compliant clearance by RSPO members at the time of clearance since November 2007 carries a higher compensation liability than such clearance by non-RSPO members. This is

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<sup>3</sup> Section 4.2.4 in the Certification System Document.

<sup>4</sup> As defined in the Certification Systems Document.

<sup>5</sup> The BHCV WG is working with the Smallholder Working Group of the RSPO to explore issues related to land clearance by independent smallholders carried out since 2005 without a prior HCV assessment. The Working Groups aim to propose a practical remediation and compensation procedure for independent smallholders seeking certification and/or selling FFB to certified RSPO members.

because members are formally committed to RSPO and are expected to be better informed about RSPO's requirements than non-members.

- iii. The procedures are designed to allow growers flexibility in how they fulfil their compensation liability and encourage conservation measures that maximise conservation outcomes in relation to allocated resources.
- iv. Whilst the RSPO is seeking to ensure that members practise due diligence in acquiring land for oil palm, it is also recognised that companies cannot be held responsible for all clearance of land since 2005 prior to coming under their management. In particular, the RSPO encourages members to expand onto appropriate land, which may have been cleared by individuals or other groups for their own use. Therefore, in several cases, the Remediation and Compensation Procedure distinguishes between corporate and non-corporate land clearance (see Glossary for definitions), whereby growers are not required to compensate for land, which they can demonstrate, was due to non-corporate clearance.

## 1.4. Cases Relevant to this Procedure

The Compensation and Remediation Procedure was developed to address the specific problem of the failure to conduct HCV assessments prior to land clearance since November 2005. It has not been designed to address all possible failures by members to protect, manage, and enhance HCVs as is required under the P&Cs.

Therefore, only cases where no HCV assessment was conducted prior to land clearance since November 2005 will be accepted as potential Compensation Cases under this procedure. In contrast, cases where HCV assessments were conducted prior to land clearance since November 2005 and where known and identified HCVs and/or HCVAs were subsequently damaged by the member during land clearance and any subsequent operations will be treated as complaints and will not be accepted as potential Compensation Cases.

The following cases may lead to complaints and not automatically be treated as Compensation Cases:

- a. Cases where HCV assessments were conducted prior to land clearance since November 2005 and where known and identified HCVs and/or HCVAs were subsequently damaged because the member failed to adequately protect and/or manage the identified HCVs and/or HCVAs.
- b. Cases where there is doubt over the adequacy or quality of an HCV assessment conducted prior to land being cleared since November 2005 and where subsequently there may have been damage of HCVs and/or HCVAs. This could include cases of HCVs not identified as part of the HCV assessment but which were encountered and cleared during operations.

Some element of compensation may be required as part of the resolution of the complaints above. In such cases, the RSPO reserves the right to vary the calculation of the compensation liability as well as the requirements to compensate for that liability depending on the merits of each case.

## 1.5. Notes on Legal Implications

Important notes related to the application of this Remediation and Compensation Procedure, particularly related to potential legal implications, include:

1. The RSPO P&C and Remediation and Compensation Procedure set out below are a set of private standards which RSPO expects of its members and are not a reflection of any law or any requirement under any law of any country in which any of the members operate.
2. The term “breach” does not mean an admission of or imply any wrong doing by an RSPO member under any law of any jurisdiction nor any wrong committed against any third party, whether an individual, company, organization or other legal entity, but only non-compliance by a member of the set of principles and standards imposed by RSPO.
3. Any compensation (in the form of projects or conservation funds) by member under these standards are not (nor are they meant as) damages for any wrong doing by the said member under any law of the jurisdiction in which the compensation is executed (in the form of projects or conservation funds) and is only meant to meet the privately imposed RSPO standards and criteria for the purposes of securing certification by RSPO. Equally, the execution of a compensation under these Remediation and Compensation Procedures does not absolve any member from any wrong doing (if any) under any law of any country nor suggestion that the laws of any country in which a member operates, need not be observed.
4. These Remediation and Compensation Procedure is also not meant to encourage a member not to comply with the laws of a country.

## 1.6. Compensation Panel

A compensation panel will be assigned by the co-chairs of the Biodiversity HCV Working Group (BHCV WG) to each case, after the disclosure of non-compliant land clearance. The panel will comprise of four members of the RSPO, preferably members of the BHCV WG, with balanced representation of different stakeholder categories and expertise appropriate to biodiversity conservation and social impacts, and one member of the RSPO secretariat. The panel could be supported by extra capacity as needed, including non-RSPO members<sup>6</sup>.

Selection of members of a Compensation Panel should aim to include at least one member who has local knowledge and can investigate locally, while maintaining independence. The role of the invited resource persons is limited to informing the decisions of the Compensation Panel.

Selected members of a Compensation Panel and any invited resource persons must, at the time of nomination, disclose any conflict of interest. Any objection of conflict of interest shall be raised within five working days after the Compensation Panel is assigned. The co-chairs of the BHCV WG will review all conflicts of interest and replace member(s) as necessary for achieving balance and expertise.

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<sup>6</sup> All Compensation Panel members and non-RSPO invited resource persons shall sign a Confidentiality Agreement and the BHCV WG’s Code of Conduct.

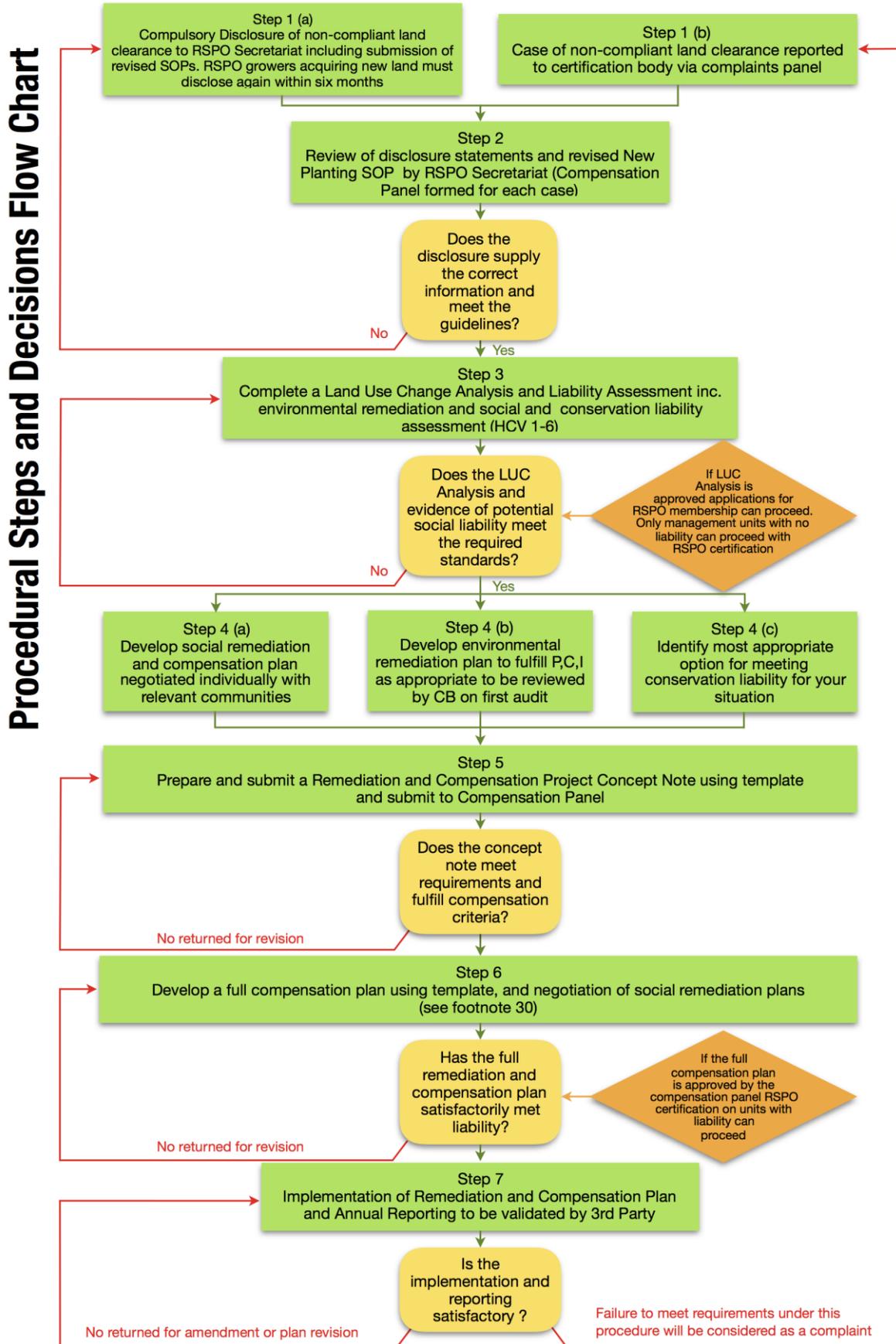
## 2. Procedures

### 2.1. Key Requirements

The Remediation and Compensation Procedure includes a number of key requirements:

- i. Disclosure**
  - Disclosure of non-compliant land clearance
  - Submission of evidence of standard operating procedures (SOPs) designed to avoid any new non-compliant land clearance
  - Land Use Change (LUC) analysis since November 2005
- ii. Liability assessment**
  - Identification of social compensation liability
  - Identification of areas requiring environmental remediation to comply with the RSPO P&C (e.g. riparian zones, steep areas, fragile soils, and peat areas)
  - Calculation of conservation compensation liability
- iii. Development and approval of Remediation and Compensation Plan**
  - Development of remediation and compensation concept note
  - The evaluation of concept note by a Compensation Panel
  - Development of remediation and compensation plan
  - The evaluation of plan by a Compensation Panel
- iv. Implementation and monitoring of Remediation and Compensation Plan**
  - Remediating and compensating affected stakeholders for loss of social HCVs (HCV 4,5 &6)
  - Remediation of areas to comply with the RSPO P&C (e.g. riparian zones, steep areas, fragile soils, and peat areas)
  - Implementing conservation projects and monitoring outcomes

## 2.2. Summary of Procedural Steps and Decisions



## 3. Disclosure and Land Use Change Analysis

### 3.1. Disclosure of Non-Compliant Land Clearance

All clearance without prior HCV assessment since November 2005 shall be disclosed as follows:

- *RSPO growers* shall disclose to the RSPO Secretariat any clearance for expansion after 2005 without prior HCV assessment on land managed and/or under their control (owned, managed, leased, or acquired), or else state in writing that no such clearing exists, and enter into compensation processes for all non-compliant clearance identified.
- *RSPO growers that acquire new land* after their initial disclosures shall disclose within six months to the RSPO Secretariat any clearance for expansion after 2005 without prior HCV assessment on that land, or else state in writing that no such clearance exists, and enter into compensation processes for all non-compliant clearance identified. RSPO members acquiring new areas of land that have been cleared since 9 May 2014 shall commit in writing that they had not directly instigated, encouraged, or supported any land clearance without prior HCV assessment.
- *Growers applying for RSPO membership* shall disclose to the RSPO Secretariat any clearance for expansion after 2005 without prior HCV assessment on land under their control, or else state in writing that no such clearance exists, prior to the two-week public comment period on membership applications. Applications for RSPO membership will be eligible for approval after the LUC analysis has been approved by the RSPO.

If a grower submits their non-compliant land clearance disclosure to the RSPO Secretariat themselves, it is treated as a compensation case. As a consequence:

- Management units with no remediation or final social or conservation liability can proceed with RSPO certification once the LUC analysis has been approved by the RSPO Compensation Panel.
- Management units with remediation and/or final social or conservation liability can only proceed with RSPO certification once an HCV compensation project plan has been developed and accepted by the RSPO Compensation Panel.

If the non-compliant land clearance is reported to the RSPO by anyone other than the RSPO member (e.g. a complaint is made to the complaints panel or it is brought to light by a Certification Body) then the compensation is part of a complaint and therefore the responsibility of the Complaints Panel. As a consequence:

- The grower may be required to follow this Remediation and Compensation Procedure as part of the resolution of the complaint.
- None of the management units belonging to that grower can proceed with new certification until the Complaints Panel declares the case closed.

### 3.2. Submission of SOPs

SOPs relevant to the NPP (approved by senior management) are required as evidence to demonstrate to the Compensation Panel that growers have taken appropriate measures to avoid further non-compliant land clearing. Growers have the option of submitting these SOPs to the RSPO for public

disclosure or submitting a declaration of SOP verification by an accredited Certification Body at the time of the disclosure of liability.

### 3.3. Land Use Change Analysis

Growers who enter into compensation processes have the options to:

1. Compensate the total cleared area using coefficient 1 (see Table 1) without conducting a LUC analysis; or
2. Conduct a LUC analysis relating to all individual cases of land clearance since November 2005 without prior HCV assessment.

The LUC analysis will help determine remediation needs and compensation liabilities for all land cleared without prior HCV assessment by identifying:

- Areas with potential loss of HCV 4-6 for affected communities;
- Areas where clearing vegetation and planting of oil palm is prohibited by the P&C (e.g. riparian zones, steep areas, fragile soils and peat areas); and
- Areas with potential loss of environmental HCVs (HCV 1-4).

All clearance that occurred prior to HCV assessment shall be categorised according to:

- Time of occurrence, i.e. from November 2005 to November 2007; from November 2007 to 31 December 2009; from 1 January 2010 to 9 May 2014; and after 9 May 2014;
- RSPO membership status of the party controlling the land and any changes to its status during the period of liability;
- Corporate and non-corporate clearance;
- Vegetation status in November 2005 (or as close to this year as possible -- see Annex 1: LUC Analysis Guidance); and
- Areas identified requiring environmental remediation.

The procedure has adopted a proxy-based approach for calculating conservation liability based on satellite imagery analysis of past vegetation cover on areas which have since been cleared. Areas cleared without prior HCV assessment shall be classified into four categories representing the forest/habitat types and other land uses that may be identified using satellite imagery. They represent a sliding scale of habitat quality, ecological and conservation value, which are assigned coefficients between 1 and 0 and are used as multipliers in the calculation of conservation liability (see Table 1).

**Table 1 Categories of land cleared without prior HCV assessment**

**Coefficient 1.0: Structurally complex forest with uneven or multi-layered canopy**

This category includes forest that has been subjected to low intensity selective logging and/or is at a late stage of recovery after long rotation shifting agriculture. Coefficient 1 also includes closed-canopy swamp, mangrove, and peatland forests with no signs of drainage.

**Coefficient 0.7: Structurally simplified or degraded forest with even or single-layered canopy**

This category includes forest regenerating after large-scale disturbance including intensive and/or recent logging, wind and/or fire damage (or some combination of these factors). Coefficient 0.7 also includes swamp, mangrove, and peatland forests regenerating after logging or other disturbance.

**Coefficient 0.4: Multi-species agroforestry**

This category includes agroforestry farms and plantations which comprise of a multi-species 'mosaic' largely dominated by mature tree crops and retaining some structural complexity.

**Coefficient 0: Highly modified and/or degraded areas retaining little or no natural, structurally intact vegetation**

This category includes monoculture plantations, permanent fields, pasture, open developed and/or degraded grass or shrub lands.

*Notes: Natural savannahs, cerrados and grasslands are not specifically addressed by the categories above. These areas only need to be compensated for when cleared after their date of classification as HCV according to the HCV toolkit. These should be categorised as 0.4 – 1.0 according to the national and/or regional context.*

*Interpretation of these coefficients should make reference to the HCV toolkit applicable at that time of land clearance. e.g. wetland ecosystems including peat swamp (especially swamp that is still forested), freshwater swamp, mangrove forest, lakes, and grass swamps are identified as HCVA in Indonesia in 2008 [stated as HCV 4.1 in the HCV Toolkit Indonesia 2008].*

Classification of the vegetation into the coefficient categories will be based on satellite imagery analysis and supplementary documentary evidence. Where such evidence is not available and the satellite imagery is not distinctive, the higher coefficient category is to be selected, in line with the precautionary principle. For more guidance on the satellite imagery interpretation, see Annex 3.

The Compensation Panel can require the grower to provide additional information to be incorporated into the analysis, or accept additional information from the grower, such as environmental impact assessment reports, historical land use maps, interviews with local community members, etc. The final decision on the vegetation classification and relevant coefficients is made by the Compensation Panel.

Growers shall submit a report on the findings of the LUC analysis and associated documents and maps to the RSPO Secretariat. The RSPO shall verify the LUC analysis, and the summary of the LUC analysis/verification report shall be part of the summary of the Compensation Plan, which will be made public (see Section 5.6). Information drawn from the LUC analysis may be required to inform the negotiation over social liability and the development of social remediation plan, and therefore should be made available for affected communities (see Section 5.1).

## 4. Liability Assessments

### 4.1. Summary of Total Liability for HCV Losses

Below is a summary of total liability for HCV losses, including social remediation to affected communities for the loss of HCVs 4-6, environmental remediation to comply with the RSPO P&C, and conservation liability to compensate for the additional loss of environmental HCVs 1-3.

Table 2 Summary of total liability for HCV losses

	<b>Land controlled by a non-member at time of clearance</b>	<b>Land controlled by a RSPO member at the time of clearance</b> Including land acquired from other RSPO members
<b>Land clearance after 9 May 2014</b>	<ul style="list-style-type: none"> <li>• Social remediation<sup>7</sup></li> <li>• Environmental remediation</li> <li>• Twice the sum of all corporate clearance<sup>8</sup> without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005</li> </ul>	<p>Expulsion from RSPO*</p> <p>If the areas are later acquired by another RSPO member and only if the seller was a member of RSPO before 9 May 2014, liability is as per "non-member"</p>
<b>Land cleared from 1 January 2010 to 9 May 2014</b>	<ul style="list-style-type: none"> <li>• Social remediation</li> <li>• Environmental remediation</li> <li>• The sum of all corporate clearance without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005</li> </ul>	<ul style="list-style-type: none"> <li>• Social remediation</li> <li>• Environmental remediation</li> <li>• Twice the sum of all corporate clearance without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005</li> </ul>
<b>Land cleared from December 2007 to 31 December 2009</b>	<ul style="list-style-type: none"> <li>• Social remediation</li> <li>• Environmental remediation</li> <li>• Half the sum of all corporate clearance without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005</li> </ul>	<ul style="list-style-type: none"> <li>• Social remediation</li> <li>• Environmental remediation</li> <li>• The sum of all corporate clearance without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005</li> </ul>
<b>Land cleared from November 2005 to November 2007</b>	<ul style="list-style-type: none"> <li>• Social remediation</li> <li>• Environmental remediation</li> </ul>	<ul style="list-style-type: none"> <li>• Social remediation</li> <li>• Environmental remediation</li> </ul>

\*The RSPO may review cases of non-corporate clearance on land without prior HCV assessment by parties other than the company.

<sup>7</sup> When there is insufficient proof of appropriate negotiation process and/or outcomes with affected communities (see Section 4.2).

<sup>8</sup> See Glossary for definition.

## 4.2. Identifying Social Liability For the Loss of HCVs 4, 5 & 6

RSPO members are reminded that there are six HCVs, which need to be considered concurrently.

Growers that have cleared lands in their licensed areas since 2005 without prior HCV assessments need to demonstrate they have not overlooked their obligation to maintain or enhance HCVs 4 (environmental services), 5 (basic needs), and 6 (cultural identity), where any lands of their licensed areas were or are owned, used, or occupied by indigenous peoples and local communities.

Growers need to provide evidence to demonstrate that they do not have outstanding social liability under the RSPO Remediation and Compensation Procedure. In such cases where they do have liability, growers need to provide remediation for HCVs 4-6, as set out in Section 5.1 of the procedure.

Growers should provide evidence that:

- Communities/users' livelihoods or uses in the permit area at the time of clearance were identified.
- Potential negative social impacts were identified in environmental and/or social impact assessments.
- Remediation was made for these impacts.
- There has not been clearing without remediation of areas required to:
  - maintain environmental services to communities;
  - meet communities' basic needs; and
  - protect areas that are crucial to communities' cultural identity.

Contributory evidence of adequate engagement with communities to address the above issues may include:

- Environmental and social impact assessments;
- Documentation of free, prior and informed consent (FPIC) processes;
- Land-use maps based on participatory exercise;
- Documentation of land acquisition process;
- Absence of unresolved land disputes;
- CSR activities that demonstrably maintain, enhance, or remediate for social HCVs; and
- Consultations with communities demonstrate no social liability.

Only if the compensation panel is satisfied that the evidence is sufficient to conclude that there is no social liability, then the grower is not required to further investigate the extent of social liability.

If a grower has determined that it does have social liability it should undertake the following additional procedures to establish the extent of remediation needed.

Drawing from the LUC analysis, growers should inform affected communities of the land use change that has been identified in their areas that were cleared without prior HCV assessment. This information serves as the basis for discussion with the communities to identify prior social values in lands that have been cleared.

In cases where participatory mapping was not carried out as part of the land acquisition process under P&C 2.2, 2.3, and 7.5, such mapping has to be carried out as a first step in establishing the extent of

community land and resources use and land claims. Participatory mapping must be carried out in conformity with the requirements of the relevant P&C and should take into consideration the corresponding Guidance and RSPO FPIC Guide (2015). On the basis of participatory maps, community meetings should be held to establish the extent of prior land uses that have been cleared, planted, or otherwise removed from community use and estimates made of the proportion of these areas that were providing communities with critical environmental services (HCV4), supplying basic needs (HCV5), and crucial to cultural identity (HCV6).

In cases where required land tenure assessments were not made in line with P&C 2.2, 2.3, and 7.5, community meetings must also be carried out to establish clearly which parties within the affected communities lost access to HCV 4, 5, and 6. Because impacts will not be uniform over the entire concession area, different communities, families, or persons, or even local enterprises, will be differently impacted. This needs to be known and agreed prior to the negotiation of remediation (see Section 5.1).

Where remediation is to be made for losses incurred a long time ago, growers will need to identify those who were present at the time of clearance, those who have been displaced from the area, and those who have entered the area since the time of clearance. Where possible, growers should refer to Environmental and Social Impact Assessments, or other comparable inventories, done prior to clearance to establish social baselines.

### **4.3. Identifying Areas Requiring Environmental Remediation**

The Remediation and Compensation Procedure requires that all land within any unit of certification where there has been land clearance without prior HCV assessment should be returned to compliance. This will involve management to at least the standard set out in the P&C 2013 and its associated guidance and best practices endorsed by the RSPO. In line with the principle of additionality, fulfilling the remediation requirements in this section is not part of meeting the conservation liability.

The RSPO P&C specify areas where oil palm establishment is prohibited (such as in riparian buffer zones and on excessive slopes) and other areas where careful management of any oil palm that is established is required to avoid environmental damage (such as on some steep slopes, on fragile and problem soils, and in peat areas).

In cases where riparian buffers were not retained, and/or steep slopes cleared and planted, remediation will be necessary (in most cases this will involve ending cultivation of palms and returning these areas to natural vegetation cover by under-planting with native tree species). Remediation and modifications to management practices might also be necessary within the body of the plantation in order to mitigate impacts on, for example, fragile or peat soils, or to re-establish important connectivity.

### **4.4. Calculating Conservation Liability**

In addition to remediating affected communities for loss of HCV 4-6 (see Section 4.2) and areas requiring environmental remediation (see Section 4.3), growers in control of areas cleared without prior HCV assessment after 2005 are required to make additional contribution(s) to biodiversity conservation on site or off site. The total conservation liability depends on when lands were cleared, by whom, and is calculated using the data from the LUC analysis. The liability, expressed in numbers of hectares to be set aside or managed primarily to conserve biodiversity, is calculated using Table 3.

**Table 3 Determining conservation liability**

	<b>Land controlled by a non-member at time of clearance</b>	<b>Land controlled by a RSPO member at the time of clearance</b> <i>Including land acquired from other RSPO members</i>
<b>Land clearance after 9 May 2014</b>	Twice the sum of all corporate clearance <sup>9</sup> without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005	Expulsion from RSPO* If the areas are later acquired by another RSPO member and only if the seller was a member of RSPO before 9 May 2014, liability is as per "non-member"
<b>Land cleared from 1 January 2010 to 9 May 2014</b>	The sum of all corporate clearance without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005	Twice the sum of all corporate clearance without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005.
<b>Land cleared from December 2007 to 31 December 2009</b>	Half the sum of all corporate clearance without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005	The sum of all corporate clearance without prior HCV assessment multiplied by their vegetation coefficient(s) in Nov. 2005
<b>Land cleared from November 2005 to November 2007<sup>10</sup></b>	No additional conservation liability	No additional conservation liability

\*The RSPO may review cases of non-corporate clearance on land without prior HCV assessment by parties other than the company.

## 5. Remediating and Compensating for Liabilities

### 5.1. Negotiation and Agreement of a Social Remediation Plan

Remediation measures include restoring, substituting, or financially compensating for the provision of and/or access to natural resources. As communities may undergo shifts in their dependence on resources due to changes in their socio-economic environment, consultations shall identify the best current options for restoration or replacement of lost values and/or functions. In cases where monetary compensation is agreed upon, the parties may consider several instalments over time, rather than 'one-off' payments. Growers should follow the procedure set out in RSPO Guide to free, prior and informed consent (FPIC) (2015) for advice on consultation with affected stakeholders and communities.

Once the extent of losses of HCVs have been established and mutually agreed and there is clarity about whose cultural identity, livelihoods, and environmental services have been impacted, there should be

<sup>9</sup> See Glossary for definition.

<sup>10</sup> P&C were introduced for a two-year 'trial' period from Nov. 2005 to Nov. 2007.

iterative negotiations with self-chosen representatives of the affected parties (communities, families, and individuals or local enterprises) to agree on<sup>11</sup>:

- What kind of remediation (restoration, substitution or compensation) will be provided for which losses; and

*For example, if a hamlet within a concession has lost fresh-water supplies for bathing, drinking and fluvial transport (HCV4), it may agree to be remediated by forest restoration in an affected watershed, supply of piped water to the affected communities, or by cash compensation, or a combination of these measures.*

- To whom such remediation should be provided and on what terms;

*For example:*

- *If a single family impacted by forest clearance has lost a stand of fruit trees (HCV5), it may agree to remediation through replanting alternative food sources, or monetary compensation, or a combination of these.*
- *If a community has lost access to its ancestral hunting grounds (HCV5), it may agree to remediation through habitat restoration, provision of an alternative livestock rearing, or monetary compensation.*
- *If an individual's fruit trees (HCV 5) were cleared and planted with oil palm without her consent, she may agree to the restoration of another area with fruit trees and compensation for lost income in the interim.*
- *If a community's graveyard (HCV6) has been bulldozed to make way for plantations, the community may agree to the erection of a monument celebrating all those buried there and a compensation sum for damages.*

Usually the losses of HCV 4 and 6 will need to be agreed with whole villages, hamlets or other groups. This may also be the case where losses of HCV 5 affected whole groups. In such cases, it is especially important that community or group meetings are held to ensure broad consensus both about what remediations are being agreed and how these will be allocated. This is to ensure equitable outcomes (and avoid false claims). However, in many cases, separate agreements will be needed with each impacted sub-group whose particular livelihoods were impacted. Iterative engagement with communities will be needed to take account of those who directly experienced losses, including those displaced, and recent incomers. However, communities may choose to share remediation with newcomers to avoid resentment and maintain social harmony. Wherever possible, remediation agreements should be shared transparently with all members of affected groups to maintain consensus and accountability.

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<sup>11</sup> When no agreement can be reached, procedures envisaged under P&C 6.3 should apply. Where these are not suitable, the case should be passed to the Dispute Settlement Facility (DSF).

## Allocation of remediation or payment

Experiences worldwide show that compensation monies, even where openly agreed, are too often spent unwisely and/or are allocated inequitably. This can rapidly result in dissatisfaction, especially from those who feel cheated of a legitimate share of benefits. To mitigate this problem, agreements should be as inclusive and as transparent as possible, and measures should be negotiated and agreed to establish accountable bodies that will handle any compensation monies (where these are not being paid just to families or individuals).

Where substantial sums are to be allocated to compensate a community or a group of impacted persons, negotiators may suggest the establishment of a community development fund, subject to agreed oversight and decision-making procedures. Such a body can allocate funds to agreed community development projects of general benefit. The modalities of how such funds will operate should be part of the negotiated agreements.

## Monitoring of implementation

As part of the negotiated agreement, a plan for participatory monitoring of implementation should be agreed, as also set out in RSPO's FPIC Guide. In the case of monetary compensation, this may include independent audits of the payment and allocation of community funds (see Section 5.7).

### 5.2. Environmental Remediation Plan

The most straightforward way for a member to assure compliance is to conduct a full P&C audit and certification of the unit in question. The RSPO therefore encourages all members with known remediation and/or compensation liabilities to seek certification of those units as quickly as possible.

If certification of the management unit with the liability cannot be attained the member must – as a minimum requirement – demonstrate that the unit is in compliance with the P&C 2013, relevant guidance, and RSPO-endorsed BMPs to achieve the following:

- **Minimise and control erosion on steep slopes** (refer to indicator 4.3.2) through developing and implementing a plan of activities to end the cultivation of oil palm and restore natural vegetation on excessive slopes where planting is prohibited, and manage erosion on steep slopes where planting is allowed as per P&C and guidance;
- **Minimise the subsidence for all existing plantings on peat** (refer to indicator 4.3.4) through developing and implementing a water and ground cover management programme as specified in the RSPO Manual on best management practices (BMPs) for existing oil palm cultivation on peat (June 2012);
- **Prevent the degradation of fragile and problem soils** including sandy, low organic matter, and acid sulphate soils (refer to indicator 4.3.6); and
- **Maintain the quality and availability of surface and ground water and any habitat functions provided by riparian zones** (refer to indicator 4.4.2) through developing and implementing a plan of activities to end the cultivation of oil palm, restore natural vegetation, and maintain riparian zones following RSPO-endorsed BMPs.

To do so the remediation plan shall include for each of the above:

- The identification and mapping of all affected areas that do not meet the standard of the P&C and are therefore in need of remediation;
- The identification of the relevant P&C indicators, guidance, and RSPO-endorsed BMPs;
- A plan of activities to restore and manage the areas as per the P&C, guidance, and RSPO-endorsed BMPs;
- Identification of relevant stakeholders, including a description of the process of getting their FPIC for the planned activities;
- Identification of any project risks and assumptions;
- Budget for the work;
- Timeline with milestones; and
- Monitoring and verification plan, particularly for identified risks and assumptions.

### 5.3. Options for Meeting Conservation Liability

Over and above remediation, there are two options for compensation available to growers in order to meet the final conservation liability, expressed in hectares, generated based on Table 3 and data from the LUC analysis. These options are presented in no order of priority and can be used in combination with each other to meet final conservation liability:

**Option 1:** An area of land equal to the final conservation liability is managed primarily to conserve biodiversity by the company and/or by a third party within or outside areas managed by the company.

**Option 2:** The company provides funding to a third party for projects or programmes contributing to achieving conservation objectives outside the areas managed by the company. The total amount of funding equals the final conservation liability in hectares multiplied by USD2,500.

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

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

## 5.4. Designing Compensatory Biodiversity Projects

Biodiversity compensation projects should be planned and implemented so as to maximise conservation benefits and outcomes in relation to invested resources, accounting for landscape contexts, regional conservation priorities, and institutional/legislative frameworks.

Compensation projects can be designed as stand-alone or as joint projects (using compensation Option 1 or 2 or a combination of both) contributed to by multiple members with liability or by individual members with multiple liabilities. Each member singularly compensates their own final conservation liability, however resources are pooled in a single project. Joint collaborative projects are encouraged as they are more likely to achieve improved social and conservation outcomes and economies of scale. For example, several members could provide financial support to a legally-recognised ecosystem restoration concession within the country of operation. Support can be provided as a long-term trust fund financial contribution, operational funding support, or restoration financing.

Project activities may be allocated within (in-situ) or outside (ex-situ) management units, or both, additional to remediation (e.g. of riparian zones) as required by the P&C. Measures within units may include restoration of native vegetation on affected sites combined with activities that remove the underlying causes of loss and degradation of biodiversity.

Table 4 presents a prioritisation of actions that could be taken for compensation purposes as, or within, a conservation programme to maximise ecological gain in a cost-effective way.

**Table 4 Prioritisation of actions for biodiversity compensation purposes**

Priority	Actions	Reasons and explanatory notes	Examples
Highest	Off-site avoided deforestation and/or avoided degradation of high quality habitats <sup>12</sup>	It is usually cheaper, quicker & more effective to save a natural habitat, even if highly degraded, than to try to recreate it. This action can deliver protection of currently unprotected forests. The chosen site(s) would be on a similar scale to that of forest lost to plantation, of a broadly similar type, and within the same geographic region.	Specific remaining forest areas (degraded or not) that have been allocated by government for non-forest use, where targeted interest and proposals from palm oil producers and/or NGOs provide the possibility to retain forest for ecosystem, biodiversity, or rare species conservation. (Indonesia) Licensed village forest (hutan desa) and community forests with management plan and management unit. Village forests and community forests are community-based forest management schemes regulated by Government Regulation No. 6/2007. The land allocation is designated by the Ministry of

<sup>12</sup> High quality habitats are defined as those with vegetation coefficients 1 and 0.7

Priority	Actions	Reasons and explanatory notes	Examples
			Environment and Forestry and the license issued by the Government based on District Government's recommendation.
	Off-site restoration of degraded forest on land with clear ownership and legal status to high quality habitats	As avoided deforestation projects will not always be available, the next best option is off-site restoration of existing but degraded protected forest within the same geographic region and with the compensation coefficient applied to determine the extent of restoration required to adequately address the compensation liability. Restoring degraded natural habitats can add greatly to their value and to incentives to retain them in the long term.	Ecosystem restoration concessions, degraded parts of national parks, protection forest reserves or wildlife conservation areas, where agreement between the relevant government institution (or land owner), palm oil producer, and other competent institution (e.g. NGO) can serve to restore and sustain areas that are either at risk and/or too degraded to perform their intended conservation function. (Indonesia) Licensed village forest (hutan desa) and community forests with management plan and management unit. Village forests and community forests are community-based forest management schemes regulated by Government Regulation No. 6/2007. The land allocation is designated by the Ministry of Environment and Forestry and the license issued by the Government based on District Government's recommendation.
	Off-site species-based conservation measures	If neither of the above options are possible or realistic, compensation liability could be addressed by the provision of funding for species-based conservation programs. This approach is usually less preferred because of difficulties likely in establishing whether the sums of money expended and conservation impact delivered are commensurate with the compensation liability.	New or ongoing programs operated by recognised NGOs, community groups, or other credible institutions. Rare or endangered species that were formerly present in the region now under oil palm that require specific sustained actions to boost births or sustain breeding populations.

Priority	Actions	Reasons and explanatory notes	Examples
Lowest	On-site forest/high quality habitat re-establishment <sup>13</sup>	Conversion from planted palms in order to recreate forests is often a less effective use of funds than the options above. This final option may be considered where re-establishing natural vegetation lost during the development of the plantation would perform a crucial environmental function.	Re-establishment of landscape connectivity.

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

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

**Long lasting** – projects should be adequately resourced, have clearly defined goals, timeframes, and responsibilities, and be designed to deliver specified outcomes that last at least 25 years (and preferably in perpetuity);

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

**Knowledge-based** – based on sound scientific and/or traditional knowledge with results widely disseminated and communicated to stakeholders and partners in a transparent and timely manner.

For detailed explanation on the criteria, see Annex 6.

## 5.5. Remediation and Compensation Project Concept Note

A Remediation and Compensation Project Concept Note is to be submitted to the Compensation Panel via the RSPO Secretariat, including on how it will meet the requirements outlined in Section 5.4. The Compensation Panel will provide feedback as to whether the company can proceed to develop a remediation and compensation plan. A template for the project concept note is provided in Annex 7.

<sup>13</sup> This applies to compensation, and excludes remediation, i.e. measures taken to help restore ecological functions in areas where planting of oil palm has been done, but where this is prohibited by the RSPO P&C.

## 5.6. Remediation and Compensation Plans

The Compensation Panel will review growers' remediation and compensation plans and approve that these meet the full requirements of the Remediation and Compensation Procedure and in particular:

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

As part of this process, the Compensation Panel will submit the compensation plan using the appropriate template (see Annex 8) to an independent evaluator selected by the RSPO Secretariat to advise the Compensation Panel on the acceptability of the plan at the expense of the grower.

Compensation plans considered unsatisfactory will be handed back to the grower for amendment and re-submission within 40 working days.

Approval of a compensation plan<sup>14</sup> by the Compensation Panel will result in:

- Temporary suspensions will be lifted; and
- Growers allowed to proceed with certification<sup>15</sup>.

A summary of the approved compensation plan will be made publically available on the RSPO website.

## 5.7. Monitoring of Implementation

### Annual reporting

Growers implementing remediation and compensation plans shall provide an annual progress report, following a standard reporting template (see Annex 9), to the RSPO Secretariat.

For certified units, annual audits by a Certification Body will be responsible for monitoring the progress of the implementation of on-site remediation and compensation plans and the achievement of its goals. For non-certified units, independent evaluators will be used for year one of the implementation and every five years subsequent to this until the end of the implementation of the remediation and compensation plans.

Implementation of off-site compensation plans shall be monitored on an annual basis (in the case of existing/ongoing projects, this can be done in line with existing reporting cycles) by either the company or by the third party implementing the Plan.

As outlined in Section 5.1, a plan for participatory monitoring of implementation of the negotiated agreement for social remediation is required. If monetary compensation is relevant, independent audits may also be necessary.

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<sup>14</sup> In exceptional cases where negotiations for addressing social liabilities are still ongoing, the Compensation Panel may still approve the compensation plan, pending approval of the monitoring plan for the social negotiations. This will allow environmental remediation and conservation compensation to proceed, thereby allowing certification process to proceed.

<sup>15</sup> Drafting and approval for a compensation plan may delay the certification of the management unit. Growers may revise their time-bound plans accordingly.

## Independent evaluations

Independent, third party, evaluations following the OECD guidelines<sup>16</sup> shall be conducted on all projects at the end of year one of implementation and every five years subsequent to this until the end of the implementation of the remediation and compensation plan. Independent evaluators, assigned by the RSPO, will have demonstrable experience of large conservation and development programme evaluation and, in addition to the above standard, are also required to:

- Analyse the achievement of progress towards the Compensation Procedure's four project criteria;
- Verify annual reports;
- Assess budget compliance and establish value for money; and
- Evaluate the project's exit strategy and sustainability beyond 25 years.

Reporting will be done directly to the RSPO BHCV WG following a template (see Annex 9).

If an off-site compensation project is subject to third party monitoring under an internationally recognised standard, for example the Climate, Community and Biodiversity Alliance (CCBA) standard for land management projects, additional independent evaluation may not be deemed necessary. The RSPO BHCV WG can request additional information on progress of implementation.

Growers wishing to use an alternative method of providing independent evaluation must provide detailed information about the monitoring and evaluation requirements of the alternative standard being proposed in their initial remediation and compensation plan and provide evidence of how it encompasses all of the aspects covered by Annex 9. The use of an alternative method of providing independent monitoring and evaluation will be subject to approval by their compensation panel.

Independent evaluators can be brought in at any time for spot checks at the behest of the company, the Compensation Panel, or the BHCV WG, if there is an indication that the project may not be achieving its objectives.

Costs for monitoring shall be borne by the company and are in addition to the value per hectare under Option 2.

## Deviation from remediation and compensation plan implementation

Changes to the work plan and project activities of the implementation of the remediation and compensation plan is permissible if it can be demonstrated that it is in the interest of improved project management. However, the achievement of the outcomes must remain the same.

Changes in overall resource allocation (including budget) to the project are not permissible, unless it can be demonstrated that the same conservation outcomes will be delivered<sup>17</sup>. However, it is acknowledged that shifts in budget and resource allocation on individual activities (under the hectare for hectare option) may sometimes be beneficial. Changes to resource and budget allocation are not permitted under Option 2.

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<sup>16</sup> [http://www.ipdet.org/files/Publication-The\\_OECD-DAC\\_Criteria\\_for\\_International.pdf](http://www.ipdet.org/files/Publication-The_OECD-DAC_Criteria_for_International.pdf)

<sup>17</sup> Co-financing can be accepted as long as it is additional to the compensation liability

All proposed changes to activities and work plans suggested within the annual reports must be approved by the Compensation Panel before implementation.

Where proposed changes may be seen to negatively affect the outcomes of the compensation plan, or where the report is considered incomplete, it may be handed back to the grower for amendment, re-submission and/or provision of additional justification within 20 working days.

Failure to implement the approved compensation plan will be considered as a complaint and reported to the Complaints Panel.

## 6. Glossary

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

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

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

*Social remediation:* Measures including restoring, substituting, or financially compensating for the provision of and/or access to natural resources. Growers should follow the procedure set out in RSPO Guide to FPIC (2015) for advice on consultation with affected stakeholders and communities.

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

## 7. List of Acronyms

ALS	HCV Assessor Licensing Scheme
BHCV WG	Biodiversity and HCV Working Group
BMP	Best management practices
BoG	Board of Governors of the RSPO
CB	Certification Body
CTF	Compensation Task Force
FFB	Fresh fruit bunch
FPIC	Free, prior, and informed consent
HCV	High Conservation Value
LUC	Land use change
LUCA	Land use change analysis
NPP	New Planting Procedure

P&C Principles and Criteria  
SOP Standard Operating Procedure

## 8. Annexes

- 8.1. Annex 1 History and Rationale of this Procedure
- 8.2. Annex 2 Reporting Template for Disclosure of Liability (in draft)
- 8.3. Annex 3 LUC Analysis Guidance (in draft)
- 8.4. Annex 4 Land Use Cover Reporting Checklist (in draft)
- 8.5. Annex 5 Reporting Template for Land Use Cover Change (in draft)
- 8.6. Annex 6 Project Criteria Guidance
- 8.7. Annex 7 Remediation and Compensation Concept Note Template
- 8.8. Annex 8 Remediation and Compensation Plan Template
- 8.9. Annex 9 Monitoring Report Template (in draft)