

# WHITE PAPER

## Conversion and the Forest Stewardship Council (FSC)

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Analysis, Reflections & Recommendations  
Related to Ownership Loopholes

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## ACRONYMS

AFi	Accountability Framework initiative
AML	Anti-Money Laundering
ANR	Assisted Natural Regeneration
COP	Conference of the Parties
DFI	Direct Foreign Investor (e.g., banks, investment funds, investor, or investor groups)
ESG	Environment & Social Governance
EU	European Union
F2F	Face to Face (e.g., meeting, instead of “virtual”)
FAO	Food and Agriculture Organization (of the United Nations)
FSC	Forest Stewardship Council
FSC IC	FSC International Center
GHG	Greenhouse Gas
GRO	Global Restoration Observatory
HCSA	High Carbon Stocks Association (also sometimes used as acronym for HCS Approach)
IGI	International Generic Indicator (of FSC)
IPCC	Inter-Governmental Panel on Climate Change
IRMA	Initiative for Responsible Mining Assurance
ISEAL	International Social and Environmental Accreditation and Labelling [Alliance]
NFSS	National Forest Stewardship Standards (of FSC)
NGO	Non-Governmental Organization
P&C	Principles and Criteria
PfA	Policy for Association
RSPO	Roundtable on Responsible Palm Oil
RTRS	Roundtable on Responsible Soy Association
SDG	Standards Development Group (in FSC system)
TNC	The Nature Conservancy
TWG	Technical Working Group
UN	United Nations
WG	Working Group
WRI	World Resources Institute

## EXECUTIVE SUMMARY

As a follow-up to the September 2020 Green Paper on Conversion and related issues in the Forest Stewardship Council (FSC) system, the author was tasked to produce a “white paper” on how the FSC system could better assess and address issues around “ownership loopholes” in the FSC policy sphere. The author was asked to:

- Examine the ownership loopholes identified in the September 2020 Green Paper,
- Interviews FSC staff and members around the globe and outside experts, focusing on individuals who may have relevant experience or information related to ownership loopholes, certification systems and due diligence processes, compensation, remediation, or restitution,
- Examine other initiatives (certification systems, etc.) that may or may not have related ownership loophole experience globally, and,
- Use ongoing FSC activities (e.g., revision of the Policy for Association or PFA, work of the FSC Conversion Policy and multiple Chamber-balanced and Technical Working Groups).

The Green Paper provided no recommendations, just options and perspectives. This White Paper provides more perspectives, but as requested by FSC, also specific recommendations.

White Paper research included online research, and interviews with and/or written submissions from 84 individuals including 9 FSC Network staff, 53 FSC members in all chambers (economic, environmental, and social) and related sub-chambers in each chamber (global North & global South) and 22 non-FSC members. No observations from this research are attributed to specific individuals. Some of the information (provided in References) is in the public domain; some information remains confidential (available only to the author). Two individuals (both non-FSC members) requested complete anonymity in their contributions and identity. The research conducted was wide-ranging. Each interview started with the author soliciting the interviewees perspectives on issues around ownership loopholes (all had received a copy of the September 2020 Green Paper beforehand) and conversion. The author started each interview asking the interviewee to share any perspective they wished to on the topic, without limits. The author asked specific questions based on each interviewee’s activities or perspectives on the topics and asking for references that would be useful. Some interviewees were interviewed more than once and often brought up new information or evidence in subsequent interviews. Without exception, interviewees were forthcoming with their views and the author is extremely thankful to all individuals for their honest inputs.

Though more interviews and research could certainly be done, the author has used the available time (20 person-days of effort) and approximately 30 years of experience with the FSC system (as an original FSC system designer, Founding Member, former head of an FSC-accredited certification program and now individual member and independent forest advisor in 55+ countries in tropical, temperate and boreal forest ecosystems) as the basis for the following independent observations and recommendations. The information provided is not official FSC policy. Though some interviewees believe there is very complete and longstanding information on conversion and ownership loopholes, and related topics like beneficial ownership, the author found the situations that FSC faces on these issues to be extremely dynamic and evolving. Certainly, issues around beneficial ownership, corporate corruption, ownership dynamics, forest ecosystem conversion and related supply chain dynamics are receiving increased attention by non-governmental organizations (NGOs), banks and investment organizations, brands, and retailers, and both forest producers and companies in the supply chains (including some with chain of custody or COC certification). There are both longstanding due diligence initiatives or organizations operating in both the governmental and non-governmental spheres, including private efforts that are specifically targeted on bringing increased transparency and due diligence on these issues in the forest sector. This includes organizations and individuals with longstanding or newly developing competency in forensic auditing, anti-money laundering (AML) or environmental and social governance (ESG) due diligence and conflict

mediation or conflict negotiation. This report provides a non-definitive list of some of the organizations with relevant experience, which can be built upon by FSC to expand its resources and abilities to address related issues.

Following are the author's summary observations and recommendations. They are numbered for reference's sake, not in order of priority (priority may depend on the role you play in the FSC system, and the realities faced in your region or sector). These summary thoughts are provided to the author's terms of reference (TOR), which asked for:

1. The realities and implications of the various ownership loopholes identified in the Green Paper.
2. Implications in terms of 2021-2026 Global Strategy commitments.
3. Content and process implications related to the FSC Policy for Association (PfA).
4. The relationship between various factors and the level of remedy to be required, including:
  - a. Known or unknown ownership related to a specific conversion,
  - b. When the conversion occurred,
  - c. Degrees of environmental or social harm in the converted area, including impact on livelihoods, land grabbing, violation of workers' rights, violations of free, prior and informed consent (FPIC) or other rights (lands, uses, water access, etc.)
  - d. Remedy proposed or being taken, ranging from ecological restoration to subsistence agroforestry to social restitution to commercial development.

### Summary Observations

1. **Realities & Implications of the Loopholes** – Clearly there are loopholes. The 51% ownership loophole, per current FSC policy, has outlived its usefulness. The emphasis should be on assessing “control” whether that happens through majority or minority ownership by companies or individuals. FSC needs to upgrade its skills and resources to investigate ownership dynamics and all loopholes more effectively, using professional forensic auditing. Yes, there are some longstanding organizations and initiatives that FSC has not engaged with and perhaps should have. But it should also be noted that corruption, anti-money laundering (AML) and questionable environmental and social governance dynamics ALL are at all-time highs in terms of increasing due diligence by international organizations, national governments, financial institutions, investment groups, and individual companies and NGOs.
2. **Implications per FSC 2021-26 Global Strategy** – The Strategy has many elements. Important amongst them is the explicit desire for FSC to seek “bottoms up” or “decentralized” solutions. Interaction with FSC members during this white paper research reinforced that desire and direction. Included in the recommendations below are suggestions on how to implement that for the challenge of conversion, remedy, and ownership loophole dynamics.
3. **Content & Process Implications related to FSC PfA** – Five actions were identified by the author:
  - **FSC blended global, regional, and national team** should initiate and manage the situations created by conversion, ownership, or Remedy challenges,
  - **Independent Panels** managed by the FSC's blended team should be used to reach recommendations to resolve ownership/control issues and Remedy concepts,
  - **Professional forensic auditing** should be used to clarify control issues around ownership as necessary to identify responsibility for Remedy and if a questionable Organization wishes to become part of the FSC system,
  - **Professional mediation** should help in reaching decisions at multiple levels during these processes, whether related to assigning responsibility for conversion or Remedy,
  - **FSC staff need training on mediation or conflict negotiation** to be in a better position for reaching satisfactory solutions, and,
  - **Restoration** must become a key part of the FSC system, not just for Remedy but also separately as a forest management tool that FSC supports globally.

4. **Relationship between Various Factors & Level of Remedy Required** – Key factors affecting remedy, and related to ownership loopholes, that have been mentioned include:
- scale of operation (simplistically large-scale versus smallholders as just one example),
  - negotiating power of local communities and indigenous peoples versus large corporate entities,
  - relative condition of the “natural forest” being converted (e.g., intact forest versus highly degraded forest),
  - amount of social (or socioeconomic) harm incurred along with conversion (e.g., loss of resources or economic opportunities), and,
  - time (when the conversion happened).

All these factors have implications. The author suggests that, related to ownership loopholes, the first examination should be on the relative degree of control by the target entity over the conversions and harms caused. Following determination of such control (using forensic auditing), using these factors to identify fair remedy (for directly affected stakeholders and rights holders and the target entity) is the next challenge. Both challenges – control and remedy – are provocative for people inside and outside the FSC system and no solution is likely to be accepted by all.

### **Summary Recommendations**

1. **Take the Time to Build Robust FSC Process & Solutions to Ownership Loopholes, But Recognize the Need for Continuous Improvement** – Design, test, improve, and re-test. Use the upcoming FSC General Assembly activities (virtual and face-to-face) to discuss whatever approaches FSC is using, or considering using, and capitalize on those discussions and interaction to continually improve.
2. **Upgrade FSC Network Resources & Staff Skills on Forensic Auditing & Conflict Mediation at the International and Regional Levels** – FSC IC and Regional staff should reach out to establish or enhance contact with global, regional, and national entities (governmental or non-governmental) that have expertise and experience in forensic auditing and conflict mediation that can contribute to addressing FSC’s challenges. Future FSC hiring should consider emphasizing gaining such skills as part of the FSC Network team. Separately FSC should consider training some FSC staff (global and regional) at reputable organizations or programs providing training on forensic auditing and conflict mediation.
3. **Use High Quality Forensic Auditing to Clarify Ownership Control and Address Loopholes, Recognizing the Dynamic Nature of PFA Issues and Corporate Ownership** – Some organizations suggest the FSC path is clear – any hint of beneficial ownership by questionable actors should preclude legal operations they are involved with (no matter their level of “control”) from contractual engagement in the FSC system. The reality is far more complicated. Any FSC solutions will be imperfect. There are now examples of forest products or forest management companies going on their second or third cycle of FSC certification (for FM or COC) being bought by entities with individual or corporate beneficial ownership that do not reflect positively on FSC values. However, that beneficial ownership may not be “controlling” performance in meeting FSC requirements at the field level has not changed the on-the-ground performance of either FM or COC certificate holders, some of them longstanding. Based on above recommendations related to forensic auditing, the author recommends that FSC’s approach should remain true to the author’s interpretation of its founding principles – the FSC system was created to recognize good (or well-managed) actors and performance based on the FSC P&C. Thus, due diligence should always focus first and foremost on examining to what extent actual documented performance that mirrors FSC values at the FM or COC level. Where forensic auditing determines that such performance remains equal to FSC’s FM and COC requirements, FSC should continue formal engagement (as certificate holders, trademark agreement users, membership, etc.). IF forensic auditing (i.e., evidence) demonstrates that organizations or individuals found to be contravening FSC values and requirements have controlling interest in X

organization, that organization should not be allowed to officially engage with FSC in any way. “Controlling” interest should not be limited to 51% ownership. FSC may wish to further clarify specific language, with input from lawyers (the author is not a lawyer), but “controlling” does not just mean some percentage of “beneficial ownership”. It should mean that the non-aligned party (someone undermining FSC values and requirements) is determined through forensic auditing to control the decision-making processes of a legal entity either by their direct action or through “nominated agents” (individuals they help or support to put in place in a corporate position to act in the non-aligned party’s interests).

4. **General Remedy Procedure When Ownership Loophole Dynamics Exist** – FSC International, FSC Region Offices and (where they exist) FSC national offices or representatives should jointly work together to create remedy solutions on individual cases. After determination of “control” per the above recommendation, initial due diligence should be done by a joint FSC team (FSC IC, FSC Region, FSC national – 1 person each) based on information or proposals provided voluntarily by the target entity and inputs from directly affected stakeholders and rights holders. IF remedy cannot be determined by the FSC team, FSC should use a combination of professional forensic auditing, a high-quality independent panel and professional conflict mediation to arrive at remedy.
5. **Proposed Remedy Framework in the Face of Challenging Ownership Loophole Dynamics** – Building on the above processes and results, it is recommended that FSC use the following framework for addressing remedy. Though ownership realities, and FSC rules related to ownership need updating and improvement, remedy should be tuned to time and tied to the land – owners (even new ones) should accept liability for past environmental and socioeconomic harm caused by conversion, but to be fair, the author suggests this be done on a sliding time-based scale:
  - *Harm prior to November 1994* – FSC should not change certificate holder (CH) requirements. That said, FSC may wish to work with FSC Regions, FSC country entities and CHs to examine how the FSC system can foster support to remedy longstanding harm dynamics on a case-by-case basis, perhaps as a new subset of the “Focus Forests” initiative or something similar.
  - *Harm happened December 1994-December 2009* - 50% remedy
  - *Harm happened January 2010-December 2014* - 75% remedy
  - *Harm from January 2016 – present* – 100% remedy or 1:1 environmental compensation on a hectare (or acre) basis (*in situ* or *ex situ*).
  - *Social remedy in all cases after November 1994* should be determined based on negotiations between the target entity and directly affected stakeholders and rights holders, using professional conflict mediation where necessary.
6. **Global action is necessary; stronger regional leadership & resources for action are also critical.** The failure to arrive at near-term practical solutions on ownership loopholes continues to confound FSC achieving its Global Strategy and mission. It also undermines support from various FSC members. There are no perfect solutions, and member expectations are often unrealistic. What is key is that the FSC system be perceived as sensitive to FSC member concerns, clearly understanding of regional and country dynamics, and taking positive steps to resolve key issues around conversion, ownership loopholes, “control” (corporate or otherwise), and remedy that support communities, forests and FSC’s mission. The FSC needs global clarity, but just as importantly country or region-specific actions. There is a glaring need for FSC to provide stronger support and resources for FSC Regional Offices to provide stronger leadership for regional and national stakeholder dialogue on these issues. Such work will include alignment of National Forest Stewardship Standards (NFSS) to future Conversion Policy changes, addressing the special challenge of smallholders (who may be organized in unique ways in each country or region), addressing government policies that foster conversion or limit solutions (e.g., the potential for “enclaves” in government-owned concessions) or partnering with other organizations that are already attempting to find solutions. Global consistency is necessary, but so is making sure that solutions imbed regional perspectives and realities.



## 1. METHODOLOGY

At the request of the FSC International (FSC IC) Executive Director, after completing a Green Paper on conversion, restoration and related issues, the author was tasked to do a follow up analysis (this White Paper) on ownership loophole aspects of the FSC conversion policy. This White Paper<sup>1</sup>:

- Examines the ownership loopholes identified in the September 2020 Green Paper by this author,
- Included interviews with FSC staff and members around the globe, plus outside experts, focusing on individuals who may have relevant experience or information related to ownership loopholes, certification systems and due diligence processes, compensation, remediation, or restitution,
- Examined other initiatives (certification systems, etc.) that may or may not have related ownership loophole experience globally, and,
- Builds on other ongoing FSC activities (e.g., revision of the Policy for Association or PFA, work of the FSC Conversion Policy and multiple Chamber-balanced and Technical Working Groups).

As distinct from the Green Paper, in this White Paper<sup>1</sup> the author was asked to provide recommendations. The analysis is based on interviews and written submissions, online research, and the author's personal experience.

The White Paper was developed in the following steps.

**Interviews & Data Collection** - The author interviewed or corresponded with 84 organizations and individuals, including FSC members, FSC WG members, FSC board members, certification programs, social and environmental NGOs, mediators and conflict negotiators, forensic auditors or organizations involved in similar due diligence, Direct Forest Investors (DFIs) including private and public banks, investment groups, timber investment management organizations or TIMOs, and FSC-certified and non-certified forest management operations<sup>2</sup>. Interviews typically lasted between 30-60 minutes (the author put a time limit of 60 minutes for all). Some interviewees requested more interviews and also provided new information or evidence in follow up calls. The interviews included:

- Clarification by the author that everyone interviewed would be listed by name in this report and that no attribution of any comment would be made to a specific individual,
- At the start, an open question was made as to whether they had seen the Green Paper,
- Broad opening questions on whether they had general observations on the Green Paper and specifically on the ownership loophole observations made in the Green Paper or any other related comments,
- Gathering their specific observations, evidence, and recommendations on the various types of ownership loopholes (particularly when ownership is unclear), forensic auditing, remedy for social or environmental harm, and related aspects of the FSC system, and,
- Their recommendations on other sources of information, including documents or people that the author should reach out to.

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<sup>1</sup> There are multiple situations when the term "white paper" has specific meaning or implications, e.g., in the European Union, other international organizations, etc. FSC staff chose that term for this policy analysis and the author agreed. As described elsewhere in the document, this White Paper does provide recommendations by the author, and not just observations or reflections.

<sup>2</sup> It was suggested to the author that the FSC, and specifically those involved in PfA deliberations, should explicitly reach out to the U.S. government's Financial Crimes Enforcement Network (FinCEN), Interpol, United Nations Office on Drugs and Crime (UNODC), Financial Transparency Coalition, etc. to explore related issues or access specialists to assist during FSC due diligence. Other organizations that were mentioned include the Financial Action Task Force (on Money Laundering) (FATF), also known by its [French](#) name, *Groupe d'action financière* (GAFI), Tax Justice Network, Transparency International or UN panels on beneficial ownership, though the author did review some of the relevant available information on the Internet. The author conducted many interviews (exceeding the number stipulated in the Terms of Reference), but undoubtedly there are gaps.

**Analysis** – The author examined many documents including but not limited to public references and confidential submissions to the author. Public references are provided in Appendix 2 References. All confidential submissions will remain so. FSC will not have access to those submissions unless the authors of those documents choose to provide them separately to FSC. This includes confidential emails. Specifically, the author sought any evidence on actual or purported ownership loophole cases.

Draft 1 of the report included analysis of the related issues, including the author’s detailed input into the most recent Conversion Policy and Remedy Procedure proposal (at the time; soon to be out for FSC member review and comment). For Draft 2 those observations have been changed to only summary (not detailed) observations. In Draft 3 the author sought to reduce attention on other issues that contacts made that may relate broadly to conversion but not the ownership loopholes. This was done in order to sharpen the focus of this report on the ownership loopholes per the requests of FSC International Center (FSC IC), and comments received on Draft 2 that there were too many observations or analysis on other conversion issues, detracting from the ownership loophole analysis of or potential solutions. It is notable that ownership loophole issues continue to provoke sometimes tense and emotional responses from FSC members and outside observers from virtually all angles. This contributes to the challenge of coming to robust solutions.

Draft 1 was reviewed by senior FSC IC staff, the board liaisons to the Conversion Policy and Technical Working Groups (WGs) and the WGs’ technical advisor.

Draft 2 was reviewed by FSC IC staff, board liaisons to the WGs, key staff in FSC Regional Offices, members of the Conversion Policy Technical and Policy WGs, and the Policy for Association (PFA) WG. Board member representatives providing comment included 1 from social south, 1 from social north, 2 from environment north, 1 from economic north, and 1 from economic south. In addition, the author, at his own initiative, requested and received FSC permission to seek individual confidential FSC member review of Draft 2 by seven individuals - each person being an individual or part of an organizational member of an FSC sub chamber and knowledgeable on the issues. The reviewers were chosen by the author, though he did get input from senior FSC IC staff. All were FSC members. The reviewers’ names will not be made public, but included 2 from social south, 3 from environment north, 1 from environment south and 1 from economic south. All reviewers (mentioned in this paragraph) were active in providing both interviews and emails on the ownership loopholes.

The third and final report is to be provided to all FSC members. It can be used at the discretion of FSC IC and members, and various WGs, for considering solutions as part of the evolving Conversion Policy and procedures discussions. Of particular importance is to find proposed solution for what FSC should do when ownership dynamics are unclear. A presentation of the report and key findings may be given in one or more webinars for FSC members.

Key issues that the author was asked to examine as part of this analysis<sup>3</sup> were:

5. The realities and implications of the various ownership loopholes identified in the Green Paper.
6. Implications in terms of 2021-2026 Global Strategy commitments.
7. Content and process implications related to the FSC PFA.
8. The relationship between various factors and the level of remedy to be required, including:
  - a. Known or unknown ownership related to a specific conversion,

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<sup>3</sup> The full Terms of Reference is provided in Appendix 3. Also, during review of Draft 2, one reviewer suggested that it is key for the FSC to assign clear responsibility when it comes to ownership issues in the FSC systems and procedure, what is the respective role of FSC staff vs. Certification Bodies (CBs, also known as CAB or Certification Assurance Bodies), etc. The author attempts to do this in Recommendations.

- b. When the conversion occurred,
- c. Degrees of environmental or social harm in the converted area, including impact on livelihoods, land grabbing, violation of workers' rights, violations of free, prior and informed consent (FPIC) or other rights (lands, uses, water access, etc.)
- d. Remedy proposed or being taken, ranging from ecological restoration to subsistence agroforestry to social restitution to commercial development.

Appendix A provides References and Appendix B a list of persons contacted. A total of 93 people were contacted and engaged with, with 86 interviewed (some more than once, 2 interviewed requested complete anonymity) and 7 providing written inputs. All interviews were "virtual", using Zoom, Skype or WhatsApp. Interviews were with FSC staff, FSC members, and outside specialists at various national and international organizations, including other certification systems.

This White Paper is **not** official FSC policy. No comments are attributed to specific individuals other than the author. As noted elsewhere and distinct from the Green Paper, this White Paper does provide specific options and recommendations. All options and recommendations provided at the end of the analysis are the sole responsibility of the author, as are any errors. Any confidential information received during the analysis from either FSC staff or other individuals will remain confidential, unless the source explicitly wished to have the information transmitted to FSC.

## **2. INTERNAL FSC CONSISTENCY**

Members expect solutions on conversion, by extension the ownership loopholes, to be made consistent for the FSC system through the ongoing processes. Any failure to deliver on consistency will be seen as a system failure. Key FSC policies, standards or procedures affected will include at least:

- Policy for Association (PFA),
- Principles and Criteria, International Generic Indicators (IGIs), national forest stewardship standards (NFSS) including Controlled Wood Standard 30-010,
- Chain of custody Controlled Wood Standard 40-005,
- Policy for Excision, and,
- (new) Policy for Conversion.

### **Relevance to 2021-2026 Global Strategy**

The new Global Strategy has been approved by the global FSC Board of Directors and made public. This strategy is at least one of the driving forces for aspects of this White Paper, with important implications.

First, the Strategy clearly indicates that FSC sees restoration as part of forest stewardship engagement. It reinforces FSC's desire to contribute on restoration as a complement to UN Sustainable Development Goals, the Paris Agreement and the post-2020 Biodiversity Framework. This includes specific mention of restoration under Goal 1.4 and an intended action with restoration standards. Goal 3.2 mentions work with governments on their NDCs (nationally determined contributions) of which restoration is a key one for many countries, and 3.2 suggests working with the finance sector to strengthen forest restoration (and conservation).

Second, the Strategy implies working from the bottom up as a working philosophy. This author takes this as a message to work more closely with national and regional FSC management and government structures and staff to achieve positive results. In this case the author sees this as applicable to resolving issues around conversion and ownership loophole issues. This is reflected in some of the author's recommendations which focus on enhancing the role of FSC Regional Offices and staff from National Offices or initiatives, and empowering FSC members to remain/increase engagement through country-

specific Standards Working Groups, etc. It is done with the intention of potentially achieving stronger regional and national FSC member and stakeholder support for the solutions that FSC is offering.

### **Relevance to Policy for Association (PFA) & FM/COC Certification**

The PFA Policy and Procedures continue to undergo evolution. A PFA Technical Working Group (TWG) continues to work with FSC to reach closure on a revised policy and related procedures. As finalization of the Conversion Policy and procedures related to the ownership loophole are completed, the author would expect related policies, standards, and procedures to be revised to reflect any necessary changes.

It is particularly important that there be alignment between PFA definitions and procedures (including generic roadmap) and those imbedding within the IGI, and all of the applicable Standards, Advice Notes or normative procedures used for FM/COC certification, including Controlled Wood.

### **3. STATE OF KNOWLEDGE ON THE OWNERSHIP LOOPHOLES**

The Green Paper identified four types of ownership loopholes. Feedback from those interviewed during this White Paper outreach confirmed the accuracy of the four types, with one possible exception.

One possible new loophole was mentioned – that the establishment of November 1994 as a cut-off date for conversion constitutes a kind of loophole, because the social, environmental, or economic harms caused by any pre-1994 conversions are not addressed. This is challenging because, according to some observers, international law does not put a statute of limitations on such harms and FSC might be seen to be ignoring them. That said, the FSC is a voluntary non-governmental system, and 1994 cut-off date was supported by the vast majority of FSC members interviewed during this research. Because it was a clear decision made by FSC members, if changed, it would not be fair for to FSC system participants to require a retrospective remedy prior to the establishment date of FSC (October 1993)<sup>4</sup>. Strictly speaking, for these reasons, the author does not regard this as a loophole, but rather an explicit decision taken by membership. After internal deliberations after the Founding Assembly, the FSC put in place the one-year grace period after the dates of the GA to ensure that stakeholders were aware of and would be able to respond to the “cut-off date”, November 1994. The conversion cut-off date was the first of its kind in certification systems or other accountability efforts related to deforestation, conversion, etc.

For the above reasons, this analysis does not consider any new loophole and focuses on the four loopholes identified during Green Paper research, with a special emphasis on loopholes where ownership dynamics are complicated, vague, or difficult to resolve. This section repeats some of the loophole descriptions from the Green Paper below so that readers have context.

#### **Description of Scenario 1 – The traditional FSC “ownership loophole”**

This loophole occurs when X company would intentionally seek out and purchase a piece of land converted by another party, perhaps put in a tree plantation and seek FSC forest management (FM) certification. Per FSC rules, if they did not have controlling interest in the land or the organization owning the land when conversion happened under prior ownership, defined as “51% or above” ownership, they are not considered to be responsible for the conversion. Thus, once they took over the ownership of the land or operation, they could apply for full FSC FM certification for plantations or other forest management on that land.

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<sup>4</sup> During review, it was observed that if a pre-1994 conversion contravened national law, such a situation might be addressed when audited against Principle 1 and the relevant IGIs. It was also observed that if there are lasting negative repercussions due to pre-1994 conversions, Principle 4 requirements would apply and must be resolved. Though both situations above are perhaps possible, the author is not aware of any situations where these constructs have been applied. This likely contributes to continued challenges and controversy associated with pre-1994 conversions in some locations.

The key part of this loophole is how FSC has defined control (including now) – the 51% ownership threshold. There are multiple criticisms of this.

First that to “control” a company, “control” might be possible as the largest or most influential shareholder, even if under 51%.

Second, it has been purported that multiple offending companies, as minority owners, either sold the land or worked with other parties to convert land, and then did one of three things: a) purchased the land back as the majority or controlling owner, b) put in place a new tree plantation on the converted land, or c) purchased fiber from the plantation that was established on converted land. In other words, the whole process of conversion was planned out and supported by X company, with X company hiding behind the 51% rule to avoid responsibility. The main example of a company exploiting the 51% ownership loophole is PT Korintiga Hutani in Indonesia, involving both Korindo and Oji Holdings.

### **Description of Scenario 2 – The “Shell” Company Loophole.**

This happens when X company creates a “shell” company (with near or distant family members or other business collaborators as owners) under a different name or distinct legal ownership. Under this scenario per current FSC rules, X company might not be held responsible for the conversion actions of the shell company, either for the purposes of converting and putting a tree plantation on distinct lands or procuring wood from said conversion or plantation.

Multiple individuals and organizations have either provided reports or continue searching for data related to this loophole related to forestry and forest products. To date the most obvious example of a Scenario 2 allegation has been related to Asia Pulp and Paper (APP) in Indonesia, which has been described in the Auriga et. al. report of 2018 entitled “Removing the Corporate Mask”. The same dynamic has also been reported (like the APP case) for other companies in Indonesia such as Korindo and Asia Pacific Resources International Limited (APRIL), Ratah Timber Company, Tirta Mahakam Resources, PT Kemakmuran Berkah Timber and PT Wapoga Mutiara Industries (including PT Wapoga Mutiara Timber) – all in Indonesia – and Paper Excellence (a relatively new company with Wijaya family connections), which is operating (and expanding) in Canada, USA and elsewhere. The Paper Excellence case is particularly challenging as the company has purchased several companies (FM and COC) that have had FSC certificates for several years (beyond 1 certification cycle of 5 years) and on-the-ground performance does not appear to have been negatively affected, so far. There is also some evidence that, for example, Korindo restructured at least one corporate entity to reduce control below the FSC’s imposed threshold of 51% to qualify for FSC certification. There is also a report by TUK reflecting on the role of family tycoons involved in the pulp and paper and oil palm sectors<sup>5</sup> - demonstrating again the challenging nature of corporate and family ownership dynamics.

### **Scenario 3 – The Smallholder (or Community) Loophole**

This happens when groups of smallholders are collectively creating conversion, but because of their scale (individual properties under X hectares) under current (or future) FSC rules they are not held responsible for their individual or collective conversions. There are situations associated with oil palm, rubber, or other tree crops (for fuel or fiber) where smallholders do individually and collectively convert natural forest to other land uses. Most certification systems do not require a conversion remedy for smallholders. Though in theory FSC Criteria 6.9 and 6.10 apply “equally” to smallholders and big companies, in practice implementing them with smallholders has proven challenging. Initiatives like the GPSNR for rubber (over 80% of the world’s natural rubber supply comes from smallholders), High Carbon Stock Approach (HCSA) and RSPO are experimenting with HCV and HCS approaches to address the smallholder challenge, as are both the FSC Policy and Technical WGs. They are not only looking at how

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<sup>5</sup> See see [https://www.tuk.or.id/wp-content/uploads/2019/03/Tycoons-in-the-Indonesian-palm-oil-sector\\_compressed.pdf](https://www.tuk.or.id/wp-content/uploads/2019/03/Tycoons-in-the-Indonesian-palm-oil-sector_compressed.pdf).

to stop conversion in these cases, but also how incentives or even “remedy” might be given to foster smallholder support for maintaining forests.

In general, FSC members understand that gaining smallholder engagement in FSC has been challenging. Many are concerned about adding rigorous requirements around smallholder conversion to the FSC system, for fear it will undermine smallholder engagement and their livelihoods.

At least three types of smallholder conversion might happen. First is when small landowners, typically owning or controlled land under 10 hectares, convert part of their holding to subsistence or cash crops<sup>6</sup>. Second, is when they do this, but in doing so may be subsidized by other actors, and the crop of choice is timber or oil palm with the intent to trade or sell the product to a company. Third is when a company or government might push village leaders to deforest or sign over control of family-owned or controlled parcels with the intent of taking them over for commercial supply. Though smallholders do have conversion impact in some regions through subsistence farming, the aspect most FSC members is the second example – members are concerned with how companies intentionally foster conversion by smallholders to meet their supply needs and at the same time avoid accountability for the conversions that happen as a result. This scenario could, in theory, potentially involve many smallholders and affect larger amounts of forest. The third example above has been cited to occur when “Saudi/Korean/Taiwanese/Chinese companies” have exerted pressure to control smallholder lands for agricultural expansion in various countries, taking advantage of potentially corrupt village leaders.

FSC members expect that, if the smallholder conversion issue is high risk in X country or region, the FSC Standards Development Groups (SDGs) should address the related issues during development of National Forest Stewardship Standards (NFSS). As will be discussed below, the author does not see how complicated issues around smallholder conversion can be addressed satisfactorily without input from national and regional FSC staff, or without further guidance from FSC to ensure SDGs, applicant CHs, CBs and organizations involved with smallholders are all “on the same page” with the issues and solutions.

Though this issue likely has wider geographic implications, specific evidence of this loophole is confined to Indonesia. One reviewer explicitly singled out conversion through a Community Forest permit given to Koto Inuok Cooperative to supply PT Nusa Prima Manunggal (part of the APRIL Group) in Pulau Padang, Sumatra, Indonesia (though the author is aware that APRIL has also been providing some support for conservation/restoration on Pulau Padang in addition to support for economic development through ecotourism). The point here is that there is a broader risk in Indonesia and potentially elsewhere of companies attempting to “use” smallholders or local communities as agents for forest conversion for multiple reasons.

#### **Scenario 4 – The Inconsistent FSC Policy & Definitions Loophole**

This loophole is, in theory, the easiest one to address. It was identified as a challenge that FSC is not consistent in the ways it approaches ownership loophole issues across PfA process, FM and COC certification (including Controlled Wood), or approval of License agreements. In theory FSC should be able to address any inconsistencies through the ongoing Conversion Policy and Technical WGs, PfA Technical WG processes and other FSC staff efforts. As a matter of good practice, FSC staff should be able to work with those WGs (particularly with help from members of the Conversion Policy Technical Working Group) to identify any inconsistencies and address them. For example, in FSC-STD-30-010, the Controlled Wood FM standard in general refers to “violation of civil and human rights” whilst the PfA

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<sup>6</sup> HCSA has developed more detailed definitions which readers can review on their website. Though there are some definitions proposed for certain countries, some are global. Most are recent and being tested.

refers to “violation of traditional and human rights”. There are also other cases where definitions are not consistent in FSC standard, such as wording related to HCVs or illegal logging.<sup>7</sup>

### **State of Knowledge on the Ownership Loopholes**

FSC members continue to be hungry for data and there is both a lot of conjecture on the real scope and impacts of the ownership loopholes. There are documents on specific cases, not just conjecture. Per the Green Paper, FSC has a data collection and intelligence unit that is ramping up data gathering. This could be a future source for analysis on these issues. FSC is also doing case studies as part of the Conversion policy process and deliberations. Those will be provided to FSC members over the next couple of months.

Good data on some ownership loopholes continues to be challenging. The most solid information provided cases are one related to Loophole 1, the 51% ownership loophole, multiple cases related to Loophole 2, the “shell company” loophole, and one alleged case for Loophole 3 – the “smallholder” loophole. The author has been searching for information on cases throughout the work of both the Motion 12 and Motion 7 WGs) in the forestry sector, the Green Paper, and this White Paper research. Yes, there are examples. The broader question is how to balance the relatively small number of impactful cases, mostly in Indonesia, with how much time and resources the FSC devotes to resolving them. Clearly, for Indonesia and to some extent globally, the issues are compelling. But as described elsewhere in this report, the scale of the issues FSC is confronting at this time do not compare with what other systems are facing (e.g., RSPO).

As described below, using the 51% rule to determine control certainly is complicated at best and in practice not useful. “Control” can happen when shareholders own less than 51% and in family-owned companies even perhaps “minor” shareholders seem to have the ability to influence decision making. Clearly the FSC policy on “control” needs to change, so that if someone controls less than 51%, but they were the largest shareholder, or somehow definitively assessed to be the most “controlling” shareholder even with minority share (their own shares or those of “nominated agents” who are shareholders, i.e., individuals buying or using shares in their interests), enough to constitute “control” and thus be held accountable.

As noted above, multiple cases of the “shell company” loophole have been noted. There is a high degree of frustration, particularly amongst NGOs and other observers, that multiple highly visible companies are using vague ownership to avoid responsibility in Indonesia.

Overall, counterbalancing the above, a somewhat unpopular perspective is that some FSC members and outside observers point out that it is unfair to treat FSC too harshly any on the ownership loophole challenges. Why? Foremost, because these are challenging and difficult to resolve. Vague ownership is not uncommon in some regions and countries and globally multiple government and business systems (including stock exchanges) struggle to definitively address related issues. Also, no other certification systems have dealt with these issues in a practical fashion. To date no other system has a PfA (so far). However, things may be changing. Recently the High Carbon Stocks Association (HCSA) has developed a new Grievance Procedure that may be of value for FSC to examine (see analysis below). Also, the NGO-led Accountability Framework initiative (AFi) has provided applicable guidance that the FSC has indicated it is considering adopting. Finally, in May 2021 as this report was being finalized, one NGO contributed confidential ideas to FSC on how to potentially untangle issues around group ownership, subsidiaries, family issues and related beneficial ownership dynamics. This should serve as a precautionary note that there can and will be significant continuing innovation on how to deal with these challenging issues.

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<sup>7</sup> The author is an economic north member of the chamber balanced WG that, as of late April 2021, has just started working on the next version of FSC STD 30-010.

Following are some summary observations on each of the loopholes.

<b>Table 1 Summary Observations on Ownership Loopholes</b>
<p align="center"><b>Loophole 1 – Exploiting the FSC 51% ownership threshold rule to foster conversion by other parties</b></p> <ul style="list-style-type: none"> <li>• Evidence provided that indicates it has happened in Asia-Pacific (examples cited Korindo in the forestry/forest products sector, also Bumitama/IOI example in the palm oil sector).</li> <li>• Alleged to happen, but no evidence available outside of Indonesia-related business interests.</li> <li>• Clearly perceived as a current &amp; future risk by some FSC members.</li> <li>• Perceived to potentially be fostered by timber investment management organizations (TIMOs), forest investment or other business sectors, but there is no evidence to support this.</li> <li>• Indirect support for conversion by companies, and in some cases group entities, per this loophole is widely perceived as an unacceptable activity and is increasingly focused on during due diligence by Direct Forest Investor (DFI) sector, using either their own staff and/or other specialists to investigate.</li> <li>• Government land use and concession management policies can play a critical role in opening up opportunities for this kind of negative activity.</li> <li>• Could be resolved primarily through a sharpened definition of control, followed by better professional due diligence on specific cases <u>and</u> ensuring consistency across all related FSC policies and procedures, particularly the conversion policy and FM &amp; COC certification processes, including Controlled Wood, and the PfA.</li> <li>• If cases occur or are found, they are seen as damaging to FSC brand, particularly by social and environmental NGOs and some FSC members, so more robust FSC procedures are seen as important, and continued monitoring and scrutiny needed to avoid such instances is critical.</li> </ul>
<p align="center"><b>Loophole 2 – Shell Company</b></p> <ul style="list-style-type: none"> <li>• Not uncommon where “beneficial ownership” is vague or opaque and collusion possible</li> <li>• Suggestion came forward to call this the “hidden control” loophole.</li> <li>• Evidence for occurrence was provided for Indonesia related to APP, APRIL, Paper Excellence, PT Korintiga Hutani, PT Wapoga Mutiara Timber, PT Wapoga Mutiara Industries, and both PT Kemakmuran Berkah Timber (KBT) and Ratah Timber Company (RTC) of the Roda Mas Group, including some cases already considered by FSC and not deemed to be resolved in a satisfactory manner.</li> <li>• Can occur through family members, in private companies, or private groups with private subsidiaries, and other corporate structures; may happen with publicly traded companies but less likely.</li> <li>• Expected to be addressed by FSC through PfA policy and procedural improvements, including both past and present cases (if not, inconsistencies could be detrimental to the FSC system)</li> <li>• Certification bodies (CBs) expect FSC to implement controls through the PfA procedure based either on cases identified by CBs or by non-CB “whistleblowers”.</li> <li>• Stock exchanges are increasingly sensitive to these dynamics and increasingly requiring disclosure of beneficial ownerships during due diligence for IPOs (initial public [share] offerings or other investment strategies).</li> <li>• Based on the author’s research, clearly seems that it will require voluntary submissions by companies plus forensic auditing to definitively determine – which will require specific resources to implement - but even then, it may be difficult to uncover due to cultural/political dynamics, national or international laws/rules &amp; government policy.</li> <li>• The cases documented so far have been limited to Indonesia but seen as damaging to FSC brand globally.</li> </ul>



### **Loophole 3 – Smallholders & Communities**

- *Perceived as occurring in southeast Asia (one specific alleged case in Sumatra, Indonesia) & Africa with no cases identified in the Americas related to any current or future FSC certifications (so far).*
- *Important to distinguish between smallholders with typically less than 10 hectares that are clearing for subsistence, versus entrepreneurs purchasing and clearing land for selling for development, as has happened in some locations (usually decipherable with local research), or companies fostering smallholder conversion to enhance their fiber supply.*
- *Highly diffuse & hard to track or assign responsibility for accountability and/or remedy*
- *Not widely understood & no perceived FSC brand issues at this time.*
- *Often supported directly or indirectly by government policies & some corporate actors who are perceived to subsidize conversion by smallholders or communities (including Indigenous Peoples) to grow & supply oil palm, rubber or commercial timber.*
- *Difficult to hold smallholders or communities accountable due to their lack of resources and fairness questions.*
- *Consistent question of whether it is fair to focus on with smallholders and communities due to livelihoods and other pressures on them.*
- *Expected by most FSC members to be resolved primarily through improved definitions or clarity around the different types of smallholder situation (capitalizing on the HCSA work in this area), the new Conversion Policy and FM certification processes, particularly through the work of national/regional Standards Development Groups (SDGs) and National Forest Stewardship Standards (NFSS).*

### **Loophole 4 – Inconsistent FSC Policies**

- *Identified primarily as the inconsistency of definitions or policy/procedure implementation through Pfa, FM/COC certification, or trademark license approval.*
- *Expected to be addressed through Conversion Policy WG & TWG and Pfa TWG deliberations, with FSC IC staff expected to take clear responsibility to fix, with support from the FSC Board.*
- *Focus is needed to ensure consistency between FM and COC standards, including Controlled Wood standard 30-010, and the Pfa.*
- *Expectation that the Conversion Policy TWG & the Pfa TWG efforts are well-coordinated to address actual or potential inconsistencies, and, after resolution, the results are well communicated so that the FSC Network, FSC members, CBs and ASI are all aligned.*
- *Once policies and procedures are clear, FSC should implement actions to ensure consistent understanding of requirements between FSC Global Network (IC, Regional & National Offices), ASI and CBs (what this author refers to as “calibration”).*
- *Failure to systematically address undermines confidence in the FSC management system*
- *This is a consistency issue that reflects negatively on FSC brand and perceived lack of professionalism (by FSC staff & members).*

#### **4. RELATED EXPERIENCES OF OTHER ORGANIZATIONS**

The following are initiatives/resources that are relevant as FSC deliberates on the ownership loopholes. Some were covered more broadly in the Green Paper. Analysis here focuses on relevant to the ownership loopholes, and particularly on issues, policies or process that might help resolve cases of unclear ownership.

##### **Accountability Framework Initiative (AFi)**

Created in 2017, AFi is a coalition of 10 NGOs and 2 independent experts in its Steering Group and 12 Partners who are collaborating to provide guidance to companies and other organizations that are eliminating deforestation and conversion and related social and environmental issues in supply chains.

For more information, see [www.accountability-framework.org](http://www.accountability-framework.org)<sup>8</sup>. AFi guidance is divided between Core Principles, Operational Guidance documents and other key documents. Core Principles provide “a high-level framework for setting, implementing, and monitoring effective supply chain commitments”. AFi documents most directly relevant to FSC issues around the ownership loophole include:

- Principles
  - Protection of forests and other natural ecosystems,
  - Respect for human rights,
  - Access to remedy and environmental restoration, and
  - Monitoring and verification.
- Operation Guidance documents:
  - Applying the Definitions Related to Deforestation, Conversion, and Protection of Ecosystems,
  - Cutoff Dates,
  - Environmental Restoration and Compensation,
  - Remediation and Access to Remedy, and,
  - Respecting the Rights of Indigenous Peoples and Local Communities.
- Terms and Definitions

The “ownership loophole” issue is specifically addressed under AFi Core Principles document (Section 9.4) that states “Companies purchasing or acquiring interests in commodity-producing properties assume responsibility to remediate past harms, unless this responsibility is explicitly [underline emphasis by this author] and legally transferred to or retained by another party”. This implies there is no statute of limitations on harms. FSC (through the PfA and Conversion efforts), HCSA, the Initiative for Responsible Mining Assurance (IRMA) and the Roundtable for Responsible Soy (RTRS) are examining AFi operational recommendations, but to date the author is not aware that another certification system has adopted the above-mentioned guidance. A number of NGOs are pushing FSC to adopt AFi definitions.

### **Better Aquaculture Practices (BAP)**

Information on BAP is at <https://www.bapcertification.org/WhatWeDo/ProgramIntegrity> and more background is provided in the Green Paper.

Related to ownership loophole challenges, and recommendations by this author in this report, BAP’s system uses regional staff and contacts to manage the certification system and ensure policy consistency. Though the BAP system is far smaller than FSC, the fact that regional management plays a key role in certification processes, and appears to be working well so far, is of significance. This is compared to the FSC system, where interviews indicate that Regional Offices have far less of a role and authority for decision-making in day-to-day management of certification issues, including on the ownership loopholes. BAP does not appear to be addressing ownership loopholes, but the system’s emphasis on more regional “ownership” of certification processes seems valuable. That said, if in the case of FSC either Regional or National Offices are to play more of a direct or leading role on these issues, this will require clear guidance at the global level.

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<sup>8</sup> As valuable as the AFi effort is for clarifying NGO perspectives on many related deforestation issues, there is a perspective noted by some observers that it is an NGO-driven effort. AFi governance does not include companies or numerous other stakeholders. Its value, in part, is that it provides a more united front for NGOs to jointly provide perspectives on deforestation-related issues related to supply chains and other initiatives. Note: the author originally developed the accountability framework idea (as an RA staff member at the time), but RA since then has evolved in the concept and approach in major positive ways. Though the author has provided review of some AFi tools, the initiative has evolved significantly and positively from the author’s original skeleton ideas.

## Direct Foreign Investors (DFIs)

DFIs include banks, multilateral or bilateral finance organizations, or other investors, typically banks. However, “TIMOs” or timberland investment management organizations could also be regarded as DFIs. Increasingly DFIs indicated that they are considering invest not just in “timber”, but also agroforestry, restoration, and increasingly ecosystem services (for climate, water or others), etc. Some have specific funds created to support small and medium enterprises. Sometimes these investments have government involvement. Sometimes are “equity” investors (taking a “share” in the profits from a specific investment, typically pro-rated by percentage of ownership share). Sometimes they provide loan money or “loan or capital guarantees” (a kind of investment insurance), e.g., the CDC Group based out of the UK, the International Finance Corporation (IFC), the Overseas Private Investment Corporation (OPIC), and regional development banks in the Americas, Asia, Africa, Europe, etc.

Based on VERY preliminary data and interviews, the following table presents a general picture of the opportunity or deal flow that came through interviews and confidential information provided to the author. Why is this important in the ownership loophole dynamic? First, DFIs do face situations where vague ownership, or the legacy of past social or environmental harms, require due diligence prior to their making an investment.

Second, when asked about dynamics around ownership loopholes and their experience, the DFIs (and separately many FSC members) ask a question on balance. What is the scale of area affected by the loopholes, as best can be estimated, as compared to the area that could be positively affected through DFI or FSC engagement through improved forest management or restoration?

From the author’s perspective, this is not just a numbers game, i.e., it is not just about maximizing hectares certified by FSC. It is a question of impact. DFIs do use FSC’s system and certifications as part of their due diligence. Also, it is a question of process. In theory, if FSC can resolve ownership loophole issues, FSC would allow remedy for conversions between 1994 and 2020 and make such areas available for either full or Controlled Wood FSC FM certification. For the sake of perspective, and trying to weigh the balance, the following are observations (based on inexact information gleaned through interviews) on the “deal flow” occurring through DFIs – i.e., participants and forest area that might be positively affected in the tropics and subtropics where conversion dynamics and the ownership loophole dilemmas seem to create a barrier to more FSC forest engagement. This analysis does not focus on regions where degradation is the prime driver of conversion, e.g., Russia, CIS countries in Europe, etc. – it focuses on conversion. All numbers are indicative only, not definitive and were based on confidential interviews with specialists in the investment sector.

Examples of Companies Involved (April 2021)	Potential # of deals &/or hectares affected	Comments
<b>Africa</b>		
<ul style="list-style-type: none"> <li>• <i>Althelia/Mirova</i></li> <li>• <i>Criterion Africa</i></li> <li>• <i>Global Env. Fund Inc.</i></li> <li>• <i>Green Resources</i></li> <li>• <i>International Woodlands Company</i></li> <li>• <i>Miro Forestry &amp; Timber</i></li> <li>• <i>Moringa Fund</i></li> <li>• <i>New Forests Company</i></li> </ul>	<p>One estimate by a specialist in the sector is that up to 5 million hectares could be FSC-certifiable over the next 10 years across the continent. Others suggest this is too large a number, but at least includes between 500,000 to 1 million hectares.</p>	<p>Highly dynamic. Stability of national governance is key. DFIs play a major role. Heavy deal flow in sub-Sahara, Congo Basin &amp; Southern/Central Africa, including Cote d’Ivoire, Ghana, Mozambique, Sierra Leone, South Africa, Tanzania, Uganda &amp; Zambia.</p>
<b>Asia-Pacific</b>		

<ul style="list-style-type: none"> <li>• <i>Althelia/Mirova</i></li> <li>• <i>Global Env. Fund Inc.</i></li> <li>• <i>Green Resources</i></li> <li>• <i>Hancock Timber Resources Group</i></li> <li>• <i>IKEA</i></li> <li>• <i>International Woodlands Company</i></li> <li>• <i>Moringa Fund</i></li> <li>• <i>New Forests</i></li> </ul>	<p>Sources indicate that at any one point in time there may be as many as 40 “deals” being done, covering approximate 75,000 hectares per deal, which if correct would mean total of 3 million hectares, typically spread over 3–5-year time periods.</p>	<p>Highly dynamic. Stability of national governance is key. DFIs play a major role. Active countries &amp; regions include Indonesia, Malaysia, Vietnam, Mekong Basin (Cambodia, Myanmar, Thailand, Laos).</p>
<b>Central &amp; South America</b>		
<ul style="list-style-type: none"> <li>• <i>12 Tree Finance</i></li> <li>• <i>Althelia/Mirova</i></li> <li>• <i>Amata</i></li> <li>• <i>Arbaro Advisors</i></li> <li>• <i>Astarte Fund/Silvipar</i></li> <li>• <i>EcoEnterprises Fund</i></li> <li>• <i>Forestry &amp; Climate Change Fund</i></li> <li>• <i>Global Env. Fund Inc.</i></li> <li>• <i>Global Forest Partners</i></li> <li>• <i>International Woodlands Company</i></li> <li>• <i>Moringa Fund</i></li> <li>• <i>New Forests</i></li> <li>• <i>Permian Global</i></li> <li>• <i>South Pole</i></li> <li>• <i>Terra Bella Fund</i></li> <li>• <i>The Forestland Group</i></li> <li>• <i>Timberland Investment Group/BTC Pactual</i></li> <li>• <i>Urapi Sustainable Land Use</i></li> </ul>	<p>No numbers on deal flow available.</p>	<p>Highly dynamic. Stability of national governance is key. DFIs play a major role. Active countries include: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay and Uruguay.</p>

A couple of other related observations:

- *Overall investment conditions are dynamic and depend a lot on the stability of national governance in each country.* It is particularly important to note that the role and place of national government for rules around corporate governance often affects clarity around ownership loopholes.
- *The European Development Finance Institution (EDFI) Coalition* – It has developed a “Harmonized EDFI Exclusion List” that EDFI members have mutually agreed on. These match well with some FSC requirements. It includes prohibitions for investment where there is forced labor, child labor and destruction of HCV areas. Destruction means “the (1) elimination or severe diminution of the integrity of an area caused by a major, long-term change in land or water use or (2) modification of a habitat in such a way that the area’s ability to maintain its role is lost”.
- *DFIs and the Loopholes* - Conversations with some DFIs indicates some concerns regarding ownership loophole scenarios and companies engaged with DFIs indicate FSC’s lack of clarity on conversion creates challenges for DFI investment. Loophole 1 would concern DFIs if it occurred, but they didn’t have evidence of it being a consistent issue in forestry. In practice, most concerns were mentioned centered around Loophole 2, particularly for Indonesia and the broader Asia Pacific

region. Loophole 2 has also become an issue in some countries in Africa (e.g., Congo Basin, Mozambique) and Americas (including Brazil, Canada, Peru, USA, etc.) where recently more Asia (and specifically Chinese) investment actions have occurred, with cloudy ownership dynamics sometimes present. To the extent FSC can resolve its treatment of all loopholes, DFIs see that as positive<sup>9</sup>.

- *FSC standards already play a key role for many DFIs* – IFC, CDC Group, FinnFund, banks (like Bank of America, Citigroup, or others) or regional development banks either require FSC certification or at least use FSC standards as a reference for their due diligence. DFIs often ask for 2<sup>nd</sup> or 3<sup>rd</sup> party assessments of potential or actual investments using the FSC standards as a basis for due diligence reporting (prior to investment and sometimes annual) but may not require FSC certification. However, they indicate general interest in keeping up with FSC on the conversion policy going forward, and its treatment of ownership loopholes. Some if not most banks have their own internal “anti-money laundering” (AML) units that typically conduct pre-investment due diligence. Issues around corruption, shell companies, money laundering, human rights, climate change and sustainability are all consistently gaining increased emphasis in their due diligence and as potential investment risks or opportunities. AML units are also sometimes moving beyond their original remit and expanding to cover environmental and social governance (ESG) issues. The same organizations may also have ESG units that monitor related issues after a deal has been done.
- *Europe-based “Open Ownership Initiative”* - <https://register.openownership.org/> is an initiative advocating for and providing free and transparent information on beneficial ownership. Corporations can register on the website and make their beneficial ownership information public. As of July 2021, there are over 6 million voluntary disclosures on the website in 200+ jurisdictions around the globe. For more information on the history of “beneficial ownership” and related initiatives see [https://en.wikipedia.org/wiki/Beneficial\\_ownership](https://en.wikipedia.org/wiki/Beneficial_ownership).

### **Global Gap**

This agriculture-focused certification system is currently revising its global standards. Global Gap does not have a PfA and has historically not been concerned about ownership loophole issues. It is revising its standards now to address conversion issues with a proposed cut-off date and restoration requirements. These are currently in draft and undergoing further review.

### **High Carbon Stock Approach (HCSA)**

The HCSA has been in place since 2014 and its toolkit has been developed for use in the tropics (see <http://highcarbonstock.org/>). In January 2021 HCSA published a new Grievance Mechanism related to companies that convert natural forests to other land uses, e.g., soy, oil palm, tree plantations, etc. The global HCSA coordinator is based in Amsterdam and will manage the new procedure with other staff and advisors. It is now going through its first case – related to oil palm, Golden Viroleum Liberia (a company related to Golden Agri Resources of Indonesia through the “Verdant Fund LP”, a private equity fund that owns GVL and has GAR investment participation). Restoration requirements are currently being negotiated.

The HCSA Grievance Mechanism was written by lawyers and is extremely detailed (31 pages) with exacting timelines. So far HCSA has not ratcheted up requirements to address business group versus individual company requirements, though some NGOs are pressuring them to do so (along the lines of FSC’s PfA approach and what AFi is currently suggesting should be done).

A couple of other observations on the HCSA:

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<sup>9</sup> Some DFIs said that, though they realize it is imperfect, the RSPO approach on conversion and remedy is providing value to DFIs for investment management purposes. This does not relate so much to the ownership loophole dynamics, but is instructive, nonetheless.

- a) FSC should examine the new HCSA Grievance Mechanism, how their newly established Grievance Unit and the planned Grievance Panel are operating.
- b) The grievance mechanism involves the potential use of either or both independent Panels and third-party mediators (though HCSA also uses the term “facilitator”) along the lines of what this consultant has suggested FSC consider for its Conversion Policy and Procedure, with the goal of reaching a “Facilitated Settlement Agreement” with a “time bound Remediation Plan”.
- c) The Mechanism initially relies on voluntary self-reporting by Organizations in terms of their beneficial ownerships.<sup>10</sup>

A potential key benefit HCSA that could assist FSC with, and some parties indicate they have been proposing for several years with FSC, is that HCSA use its land cover classification mapping ability and forest identification as a tool for FSC to identify past conversion of forest and loss of HCV values (Values 1-4). They believe this could be highly useful for implementation of the policy on conversion and PfA. Also, another option might be for FSC to explore how HCSA guidance on specific pending conversion and potential ownership loophole cases, given their new Grievance Mechanism approach. Some NGOs perceive the HCSA efforts to be robust and credible (though still very early in their history).

### **Initiative for Responsible Mining Assurance (IRMA)**

IRMA is a certification system for mining that has had active engagement with FSC over the years. Currently IRMA is considering establishing its own PfA. It seems clear that IRMA sees FSC as a being a leader in the certification world related to issues around conversion, addressing the complicated area of companies/groups and ownership dynamics, etc. IRMA is already examining beneficial ownership dynamics and corporate dynamics within its certification system. Its standards include requirements around resettlement, reclamation, and stakeholder engagement throughout such processes. IRMA also requires that “un-remediated issues” for specific mines need to be addressed by the mine operator at the time of application for IRMA certification. At the time of this report, IRMA had 36 mines registered in its system and was conducting its first audits. It looks forward to interaction with FSC on these issues.

### **ISEAL**

ISEAL (International Social & Environmental Accreditation & Labelling Alliance) was described in the Green Paper. In terms of conversion and the ownership loopholes, ISEAL does not have specific guidance or instructions, though this may change as an increasing number of certification systems consider issues around conversion, remedy and restoration, and issues around corporate responsibility. ISEAL is very focused on examining and reporting impacts. RSPO is the only full ISEAL member to have implemented a conversion remedy procedure based on land use changes inflicted on the land and related social impacts.

### **Profundo**

This organization implements financial flows research, financial institution policy assessments, and targeted report writing on financial issues, tax avoidance or ESG issues on specific companies or financial groups. Separately it is also part of various initiatives, include Chain Reaction Research (CRR) coalition and the Forests & Finance coalition, working with several other NGOs on a case-by-case basis. Profundo has multiple internal teams working on these issues, include one that is specifically focused on finance of DFIs and financial and beneficial ownership linkages throughout the private sector and government. Profundo is also focused on key commodities (forest products, oil palm, soy, cocoa) and in key countries (Argentina, Brazil, Indonesia, Mozambique, Paraguay, etc.). Profundo headquarters is in the Netherlands,

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<sup>10</sup> As mentioned in the Green Paper, the HCS approach (including assessment and monitoring) could be used by FSC to identify and protect HCS forests that may be under conversion pressure from natural forest to agriculture or another land use. It might also help identify when conversion has happened. HCS assessment could also be considered as a tool for Controlled Wood FM certification (the work of the FSC sub-chamber balanced WG is just starting as of late April 2021). HCSA is also testing smallholder HCSA model.

but they have links to advisors and NGO collaborators around the globe through CRR and Forests & Finance and also separately from these coalitions.

### **Rainforest Alliance (RA) Sustainable Agriculture Standard Certification (SAS)**

Though RA coordinates the “backbone team” (i.e., a kind of secretariat) for the AFi, RA itself has not implemented the AFi guidance yet and does not have a PFA, nor specific instructions related to ownership loopholes.

### **Responsible Steel Initiative**

This steel industry certification initiative participates in ISEAL, and its vision is to “maximize steel’s contribution to a sustainable society”. It provides a multi-stakeholder forum to “build trust and achieve consensus”, develops standards, certification and other tools, and drives “positive change through the recognition and use of responsible steel”. This Initiative has not yet issued its first certification. The system is attempted to address responsible sourcing (of materials for making steel) and control of emissions (including GHGs) at production facilities. Draft Version 2.0 of its sourcing requirements is out for consultation as of April 19, 2021. FSC is specifically referenced in its draft standard for the use of charcoal “as a reducing agent in pig iron and steel production”. The initiative also collaborates with numerous other certification systems, including IRMA. Staff at the Initiative formerly worked for FSC. The Initiative asks that parent companies indicate support for and be “compliant with the Paris Climate Accords”. The approach also refers to disputes or complaints as topics needing “issues resolution” and is developing processes to address these. One of the interesting perspectives provided is that for such resolution, in line with EU policy, it is suggested that subsidiarity be a guiding principle, i.e., issues should get resolved at the lowest local levels possible – which would seem to reinforce the FSC idea of building parts of its system from “the bottom up”. See <https://www.responsiblesteel.org/resources/>.

### **Roundtable on Responsible Soy (RTRS)**

RTRS is focused on the certification of farms producing soybeans around the globe, primarily in Brazil, China and India (and previously in Mozambique). RTRS is a voluntary system and takes a farm-by-farm approach. To date it hasn’t placed requirements on the ownership groups that may own the farms. RTRS has a forest conversion cutoff date of 2009 and in 2016 updated that to disallow conversion of native grasslands. Conversion or deforestation that was permitted by government and happened before 2009 is allowed for certified farms. RTRS is developing new standards and is interacting with AFi on new standards related to conversion, restoration, and related topics.

### **Roundtable Sustainable Palm Oil Certification (RSPO)**

As described in the Green Paper, the RSPO certification system has the most detailed approach for addressing conversion, remediation, and restoration to date, though questions on its effectiveness exist. Initially launched in 2015, at the urging of RSPO members, that approach is broadly entitled the Remediation and Compensation Procedure (RaCP). Members of the FSC Conversion Policy and Technical WGs and FSC IC staff have examined the RSPO approach. Recently RSPO contracted an independent review of the RaCP by Helen Newing. The RSPO Biodiversity and High Conservation Values WG, a multistakeholder committee, responded and is following up on the work of Compensation Panels to provide oversight of company implementation of the RaCP.

As part of the initial RaCP approach, RSPO reached out to all RSPO-certified palm operations and asked them to what degree those operations believe they have had a legacy of either environmental or social harm, with an emphasis on lack of HCV assessment prior to any conversions occurring. They divided this analysis between operations that implemented the RSPO “New Planting Procedure” or operations that got RSPO certification prior to existence of that procedure. There were 2,500 disclosures, 880 cases of non-compliant practices, and 200 cases with “Final Compensation Liability” (or FCL) concepts

submitted. There are 20 cases where final FCL has been reached and plans approved for implementation, and it appears 4 ongoing remedy cases are currently being monitored for progress.

RSPO is implementing two options for conservation remedy: a) an area of land equal to the conservation liability is managed by the Organization or a third party either inside or outside the MU, or b) funding equal to the per hectare liability is invested in conservation ex-situ<sup>11</sup>. Both options are currently being considered. According to one observer, RSPO has only addressed about 1/7<sup>th</sup> of the land converted without HCV assessment, indicating concern that robust application of the RSPO tool has not occurred.

As can be seen by the numbers above, the scale of remedy instances faced by RSPO is quite different from FSC. It does not seem wise that FSC mirror all aspects of the RSPO system. But change is important, given that the UN Guiding Principles for Business and Human Rights already exist and, if FSC is to be a leadership standard, strong alignment would be wise. Here are some of the learnings either emphasized by RSPO staff or visible in the WG response to the Newing report:

1. FSC should not underemphasize the need for human capacity to manage the process, including both staff and independent advisors to be budgeted for.
2. RSPO's "compensation panel" members were not paid, and this should not be repeated – depending on the individual "unpaid" could translate into not being the highest priority, less than optimal timing of feedback, slowdown of process and some of the most qualified individuals just wouldn't be willing to do it.
3. Each step in the process needs time monitoring and financial resources – establishing more definitive timelines and careful monitoring thereof is needed to keep processes moving.
4. Periodically review any new processes to find and remove bottlenecks.
5. Though the RaCP procedure has strengths, there is significant opportunity to streamline the various steps of disclosure, Concept Note, Remedy Plan finalization and approval, etc.
6. Ex-situ conservation efforts are expected in more than 50% of the Remedy Plans and medium-term monitoring of their effectiveness will be important.
7. RSPO initially established a US\$2,500/hectare liability rate - it looks like there may be significant per hectare savings particularly for environmental remedy that may occur at scale.
8. The picture on social remedy is not as clear, and in general liability rates will need review and revision after a few more years of implementation.

Multiple aspects of the RaCP approach are during change based on the Newing report and related follow up. Periodic check-ins are appropriate and RSPO staff welcome such interaction.

### **Satelligence**

Satelligence is an organization that uses remote sensing and other tools to conduct deforestation monitoring, contribute to NDPE policies and research, and assess supply chains. It is also conducting carbon monitoring related to "Forest Positive" commitments of some companies. It has also worked or interacted with NGOs in Asia, the Americas, Europe, and Africa when appropriate to the research it is focused on. Core staff are based primarily in Europe (headquarters and Netherlands) and the USA.

### **WWF Targeting Natural Resources Corruption Initiative**

WWF is leading a project funded by USAID to focus on natural resources corruption around the globe. Specifically, the website states that the project is to "improve biodiversity outcomes by helping practitioners to address the threats posed by corruption to wildlife, fisheries, and forests". The author

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<sup>11</sup> The RaCP is considering different per hectare dollar values for Remedy. During this research, one question asked was whether such a per hectare number can or should be a global, one-size-fits-all approach, or should it be adjusted per location and national considerations. The author does not believe a one-size-fits-all approach dollar/hectare number will be a durable answer. Fairness suggests values should be adjusted per jurisdiction, and that remedy solutions should seek the most effective balance of conservation and livelihood value.



participated in a virtual seminar on the initiative that was led by WWF US, the CMI (Norway) Anti-Corruption Center and TRAFFIC. This initiative is addressing general issues around corruption, the special role women might play in decreasing corruption, definitions around corruption, the role of government, and how to bridge between conservation organizations and the Anti-Money Laundering (AML) community, among other things. See <https://www.worldwildlife.org/pages/tnrc-targeting-natural-resource-corruption>. Liaising with the various organizations involved may provide FSC with more expertise and perspective for dealing with Loopholes 1 and 2.

## 5. REFLECTIONS

Overall, FSC member inputs have been consistent to the author. The first focus for environmental remedy appears to be on the forest and lands within candidate FMUs – something that matches with FSC’s historic primary focus. The first focus for social remedy appears to be on communities or workers directly engaged with the MU **and** rights holders (such as indigenous groups) within or immediately adjacent to the MU. The reinforced emphasis on “rights holders” in the Conversion Policy Draft 2 is perceived positively for the FSC system, particularly from a social perspective.

In addition to the above, FSC members generally agree with the following concepts:

- a) The 1994 cut-off date should remain,
- b) Despite concerns about pre-1994 social or environmental harm through conversions, current FM Certificate Holders or FSC License Holders should not be retrospectively affected,
- c) If the Organization is proven through forensic auditing to have had management control or beneficial ownership (i.e., it benefited) from a conversion that occurred between 1994 and 2020, there should be an inherited liability for remedy of social and environmental harm, and the Organization involved should have to meet FSC remedy requirements,
- d) Large-scale<sup>12</sup> conversions of natural forest or any conversion of HCVs after 2020<sup>13</sup> should not be eligible for full FSC FM certification; and,
- e) Organizations or individuals responsible for large-scale conversion of natural forest or any conversion of HCVs should not be FSC members, have trademark agreements, nor hold FSC certificates.

The author has focused in this White Paper on conversion and the ownership loopholes, and its implications for the FSC policies and procedures. Other key PfA or Controlled Wood topics, such as GMOs, illegality, etc. are not covered here (an approach confirmed by reviewers who focused on this).

### 1. The Limits of FSC’s Impact Related to Tenure & Government Policy

The FSC system faces major challenges at times when it comes to government policy, conversion, and land tenure. There are multiple countries where examples could be cited. In Indonesia the government has concession system for granting access to public land for managing forests and other crops (e.g., oil palm). This has resulted in legally permitted, government sanctioned conversion, and involved companies with vague ownership dynamics. Starting in 2004 the Indonesian government began an initiative to set up “restorasi” (restoration) concessions, with restoration of natural forest or ecosystems (e.g., peat) as an explicit goal. Some are managed by well-known NGOs. Separately, on both forest and farm concessions (whether they produce wood products, NTFPs, pulpwood, oil palm, etc.) there are also specific allocations of potential land to smallholders, local communities, or indigenous groups. In some cases,

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<sup>12</sup> The author suggests that FSC define “large-scale” both globally and subsequently more specifically, where needed, in NFSS.

<sup>13</sup> Ultimately FSC members will have to weigh in on what the exact date of application of the new Conversion Policy will be. Some have argued January 2020, others have argued January 2021 and others have argued for the date when the new Conversion Policy is approved and becomes effective. This will be up to either the FSC International Board of Directors or relevant motions approved by FSC members. A related issue is whether the same date threshold should also apply to Controlled Wood FM certification per FSC-STD-30-010 or COC certification per FSC-STD-40-005.

concession holders have supported such groups in the production of products to be used at mills run by concession holders. Though this might be seen as positive, in practice there are many challenges. Often these concessions are on land that may be subject to longstanding claims of customary rights (or use rights) by indigenous peoples. Also, though the government concession system may “allow” communities and their rights to farm and forests, such allowances are not perceived by most communities as the same as definitive long-term tenure or use rights. Depending on who you talk to - government officials, NGOs, the communities, or companies – they may indicate that they are appreciative of how local communities and indigenous peoples can positively contribute to sustainable forestry or farm management. But it is quite consistent for NGOs and communities to indicate that providing secure rights or use or tenure to communities and indigenous peoples is not a part of the concession system.

Some NGOs argue that the government and companies should change this, in part by establishing potentially permanent “enclaves” within concessions with secure rights or tenure. It would probably be expected that such enclaves might also be subject to provisions to ensure that around these enclaves the forests are protected and any harvesting of timber or non-timber forest products is done in a legal and sustainable fashion, whether by local communities or other actors. To be clear, such permanent enclaves are not currently part of the concession system, those some NGOs would like to see them be.<sup>14</sup> One observer notes that “enclaves” have been done in the past and assigned to communities in forest reserves in Africa, with mixed results – sometimes those enclaves have evolved to become centers of wider degradation or conversion within an area that was previously almost completely forested (experience cited in Nigeria and Ghana).

From an ownership perspective, candidate FSC operations could, in theory, argue for positive changes to tenure and access in such concession systems. Perhaps FSC could incentivize and support this, through NFSS or other country-specific actions and the FSC remedy process. The challenge is that as FSC forest management certification moves ahead with a candidate operation, whether it is natural forest management or tree plantations, facing up to the twin challenge of government concession policies and addressing more permanent rights and resource use by local and indigenous communities will both need to be addressed. Without having more flexibility, candidate operations and the FSC will forever be challenged to address issues of conversion in and around forests, at least in Indonesia if not elsewhere. As such, enclaves could be part of remedy solutions for FSC and certified or candidate operations. Perhaps as a start, candidate operations could informally support the creation of such enclaves and work with FSC allies to change government concession policy, while at the same time including agreements that will contribute to stopping conversion and maintaining or restoring forest around them.

## **2. Restoration**

As described in the Green Paper, restoration targets around the globe are aggressive. FSC members, particularly in the global South, continued to stress to the author during ownership loophole interviews for this White Paper their desire that FSC not just see restoration as a punitive measure, but as an opportunity for positive change for forests and communities. A perspective continually re-emphasized by some members is that FSC should come to closure on the Conversion Policy and address ownership loophole dynamics as quickly as possible because these issues likely affect less than a couple million hectares globally, as compared to the restoration opportunity for impact potentially reflecting FSC values on many more millions of hectares. Whatever the problems FSC faces on ownership loopholes, they want the FSC to have parallel tracks that will both effectively address relevant ownership loopholes and have FSC fully engage in a positive way to support FSC values-aligned restoration.

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<sup>14</sup> According to one reviewer, under the HCSA, an Integrated Conservation and Land Use Plan (ICLUP) requires community lands to be excised from development areas when affected communities refuse to give their consent to such development. The author wonders whether this will provide realistic, given that national laws that may make it difficult to implement.

Several organizations are attempting to bring more accountability to the fulfillment of restoration commitments. This includes Climate Focus and WRI through the Global Restoration Observatory (GRO) and GRO collaborators. WRI is also now developing a “Restoration Watch” in preparation for the November 2021 Climate Conference of the Parties (COP) on Climate in Glasgow.

This author would suggest that, like the impact of FSC on the DFI sector, it is not necessarily “certified forest area” numbers that define FSC impact. FSC potential standards on restoration and the precedents they could set related to FSC-aligned restoration, and related policies on conversion, remedy and ownership loopholes can send important messages. For example, when organizations engage on restoration, they must do so in a way that does not allow ownership loopholes to contribute to greenwashing or less than credible restoration.

## **6. DESIRED OUTCOMES FOR OWNERSHIP LOOPHOLES**

In the Green Paper the author identified potential desired outcomes for FSC in terms of conversion policy and related procedures. Following are potential desired outcomes specifically for the ownership loophole.

1. Policies close systemic FSC ownership loopholes and in doing so reaffirm FSC system and members commitments to recognized well-managed forest operations and stopping forest ecosystem conversion globally.
2. Policies are based on consistent set of definitions (formally incorporated into the FSC system’s global “glossary) that foster alignment between different FSC policies and procedures.
3. The FSC system engages the most professional organizations and individuals in the world to address ownership loophole issues whether they arise through the PfA or FM/COC certification parts of the system, including the use of forensic auditors and/or mediators.
4. Changes to ownership loophole policies do not adversely affect FM operations certified between 1994 and 2020.
5. Procedures for closing ownership loopholes are completed and FSC is free to support forest ecosystem restoration that is aligned with FSC values and requirements around the globe.

## **7. UNDERLYING TENSIONS PER OWNERSHIP LOOPHOLES**

Some underlying tensions were identified during Green Paper research and analysis. The whole list of them is not repeated here and readers are referred to the Green Paper, which is a public document available on the FSC website. Some members found the “underlying tension” analysis in the Green Paper useful and emphasized the value of re-reading them as a way to better understand the evolution of the FSC system on these issues.

The following more specific tensions continue to make the ownership loophole a challenge for FSC.

### **1. *Harms caused by pre-1994 conversions still cause angst***

Particularly in Southeast Asia and South America, issues of social or environmental harm due to pre-1994 conversion continue to cause concern. Some focus more on social harm, due to international principles that indicate social harm has no end date, no “statute of limitations”. Other FSC members believe that FSC should focus on pre-1994 social or environmental harm only where there are continuing conflicts today, i.e., particularly social that have deep or long roots extending earlier than 1994. Some suggest that not addressing long-lasting pre-1994 harm is another “loophole” (they did not say this during Green Paper research but say it now).

Others reflected that there are huge equity and development issues - the 1994 date prejudices against the newer developing economies and in favor of those more advanced in ecosystem conversion e.g., Australia, Brazil, Europe in general, New Zealand, South Africa and the US.

FSC members have weighed in and the vast majority in all chambers and sub-chambers indicate that the system should not attempt to redress the harms of pre-1994 conversions. Through deliberations, using the FSC multistakeholder approach, FSC has put in place a de facto statute of limitation of November 1994 – environmental and social harms prior to that date are not given weight in the FSC normative system. Is it a loophole? Or was it just a concerted decision by FSC members made at a time when virtually no organization was addressing the conversion issue as pointedly as FSC? Nor were the conversations around “do not harm” as widespread at the time. As mentioned elsewhere in this document, this author does not believe the 1994 cut-off date was/is a loophole. Rather, it was a concerted strategic decision by FSC to address conversion – at that time unique in the world of forestry, agriculture and supply chains.

## **2. *Lack of strong social expertise & balanced social solutions through Conversion Technical Working Group***

Though exposure to and concern for social issues is shared by all members of the TWG, input from a social expert has been seen as a shortcoming in the TWG. Communication with FSC indicates this has now been addressed by addition of two of the members from the Policy Working Group to the TWG as advisors. Though this is progress, it is still possible that any proposed solutions will fall short of the expectations of some in the social chamber (and to a lesser extent environmental chamber).

## **3. *Strong support for an FSC focus on restoration, but some members want conversion remedy process issues solved first***

Some FSC members conditionally tie support for restoration to a successful remedy solution, i.e., one cannot happen without the other. This may mean they also see restoration only in the context of remedy. Others do not, i.e., they see a broader opportunity for FSC to engage in restoration and want FSC action now. To some extent, as outlined in the Green Paper, this tension reflects global North-South dynamics which remain challenging for FSC, particularly on conversion and restoration. However necessary to resolve, numerous Global South members (and some in the Global North) believe that FSC should provide a clear public statement of support for restoration, working with other organizations to support restoration, and/or perhaps an FSC option to certify restoration that aligns with FSC values. White Paper research indicates that FSC-certified restoration (or an FSC articulation of what constitutes credible restoration) could also provide value to retailers, brands or investors who are supporting restoration. They may want FSC’s brand of 3<sup>rd</sup> party certification for restoration, or they might want to use the FSC’s statement of requirements for their own due diligence on restoration investments, whether using those requirements result in FSC certification or not. Though this author believes that restoration and remedy approaches at FSC should be complementary, the question is whether these must be part of one work stream. In other words, can there be a parallel track approach that addresses a) the conversion remedy process in one hand, and b) parallel development of FSC’s restoration approach, on the other?

## **4. *Smallholder realities are complex and defy solutions***

Based on interviews and the author’s personal experience, there seems to be little doubt that smallholders and communities have contributed to conversion in some situations. The realities are perplexing. There are countries where government concession rules require smallholder involvement as a formal part of concession permits (e.g., Indonesia for pulp and paper and oil palm). There are also situations where companies (or other entrepreneurs) have supported conversion by smallholders and in communities, with the intent of subsequently selling the land for profit, or having more production and supply come from those converted forested areas for their mills. Governments play a role through policies that foster conversion or deforestation, though most would probably deny they are doing so intentionally. But more broadly speaking there is consistent concern that smallholder livelihoods are also precarious enough that putting rigorous “anti-conversion” policies to address any smallholder loophole would be perceived as onerous, unfair, or impractical. That said, when forensic auditing can uncover situations where companies have purposely supported smallholder/community conversion, even when they benefit socioeconomically,

it seems logical that remedy of some kind be required of such companies. Also, perhaps those buyers, retailers or brands involved further down the chain can support activities to try and tackle this challenging dynamic in specific key landscapes or countries.

#### **5. *Tension between In-Situ versus Ex-Situ Restoration as Remedy***

From a punitive perspective, some members wish that offending converters be forced to remedy by returning (i.e., restoring) converted forests on their management units to natural forest ecosystems. Others point out that once conversion is done, the values lost, put in monetary terms for restoration, could have greater biodiversity or perhaps even socioeconomic value by using remedy resources to support conservation ex-situ (outside the management unit). A consistent perspective by NGOs is that restoration/remedy be “proximate” to where it occurred, within at least the nearby landscape or ecosystem. For example, in Indonesia some parties proposed supporting conservation or restoration in the province of Papua as compensation or remedy for conversion in Kalimantan on the separate island of Borneo. This would not be considered “proximate” or appropriate – something the author agrees with. RSPO is right now in the middle of a live test doing this and their experiment (author’s term, not theirs) is still playing out and still not conclusive (despite 2020 independent review of RSPO RaCP). One way or the other, FSC members are clear in expecting offending parties to feel the pain of punitive measures, but most members agree with the concept of getting the most conservation value out of each dollar/euro/local currency investment in remedy.

#### **6. *Some of the FSC traditional operating systems and the Global Strategy desire for decentralized or “bottom up” approach per FSC strategy remain at odds***

The 2021 Global Strategy includes words such as “bottoms up” or “decentralized”, which would seem to indicate a desire to move more decision-making and processes from the global level to either regional or national levels. When discussed during interviews, multiple perceptions play out:

- a) FSC may not have the regional or national staff in place with the necessary experience, training, or skills to take on more decision-making (or at least their inconsistency), and future hiring would need to reflect those skills if appropriate – these processes should have more credibility and practicality if they build on and use FSC capacity at the regional and national level,
- b) FSC’s leadership and staff seem to want to concentrate decision-making at the central level (though there are mixed perspectives on this by FSC staff and board members), and,
- c) Though FSC’s engagement at the regional and national levels demonstrates a strong desire to make the system regionally/nationally appropriate, FSC’s procedures (and staffing) have not been developed with strong decentralized management and decision-making models in mind<sup>15</sup>.

#### **7. *Concern that FSC is rushing the conversion policy processes to expand certification numbers at the expense of credibility***

During outreach on this White Paper various FSC members indicated that FSC’s leadership wants near-term solutions to ongoing PfA cases (e.g., Asia Pulp and Paper or APP), Asia Pacific Resources International Limited or APRIL) as part of an “obsession” to grow the FSC certification portfolio in terms of hectares certified. Other members (and apparently most FSC staff) disagree and point to the length of time and resources that have been devoted to these issues, including on the ownership loopholes, the generic roadmap for PfA, etc. Overall, the fundamental concern is that FSC not rush to judgement or ill-conceived short-term solutions but create lasting positive impact through robust processes that will be seen as durable and offering solid results (e.g., have a global “generic roadmap process for PfA in place before agreeing on roadmaps for specific situations or companies). The tensions are real and require objectivity, professionalism, and durability.

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<sup>15</sup> One observer mentioned an upcoming policy revision happening related to the FSC Network management. This may be an appropriate time for further exploration and improvements on this topic.

### **8. *Complexity of Assessing Social Harm as Compared to Environmental Harm***

Social harm for conversion inside the FMU, versus around or further beyond the FMU, remains a challenging discussion. The challenges of identifying social harm, and the corresponding need for remedy, are quite different from biophysical assessments of conversion. Whereas biophysical assessments may be able to count on remote sensing and ground truthing (for recent conversions), social assessments are not as easy. You cannot just “remote sense” them. They become even more challenging when the social harm assessment is extended to scope beyond the area of conversion to the “landscape”, or nearby communities, or for other topics like land grabbing, violation of workers’ rights, etc. Some certification systems (e.g., Global Gap and RTRS) seem to suggest as a voluntary system it is not fair to require this. Indeed, when FSC was founded, it was not with the idea of penalizing poor forest managers but to recognize well-managed forests. That said, good management means management tuned to improving livelihoods and conserving (and perhaps even restoring) forest. RSPO is attempting to address through its RaCP, but as some experts already know, it remains challenged in this regard – the Newing RaCP review report is clear in indicating that RSPO has not satisfactorily addressed social harm to date. Though complex, clearly FSC members believe issues of social and environmental harm must be addressed by FSC and multiple FSC board members are intent on this being accomplished in a fair and effective way.

### **9. *Scope of Harm & Who Deserves Remedy***

Despite positive changes proposed by the Policy and Technical WGs, there is still both tension about the scope and reach of FSC expectations regarding remedy. No one contacted during this White Paper research argued for remedy to apply to far off, downstream locales or to interest groups in urban areas far away from the forest. They argued for remedy clearly within and directly adjoining the management unit. They consistently suggested that if “ex-situ” remedy is allowed, FSC should ensure that it happen within the same nearby biological and human landscape. Some argued for an ecosystem or landscape approach, but with numerical distance limits applied, e.g., 10, 20 or 30 kilometers maximum. Auditors (including the author) indicate that language that is not precise will confound consistent auditing and expectations across the system. The term “indirectly involved”, whether for remedy or for having input, is consistently regarded as unhelpful and unclear not just for auditors, but by many CHs, FSC members and FSC staff. At the same time, “rights holders” hold an important position in terms of remedy when negatively affected, though the challenge is to balance the interests of those rights holders with other directly affected communities, families, and individuals (including workers).

### **10. *Role, or not, of FSC Accredited CBs***

It seems clear that most FSC members want the FSC CB roles to be limited to implementing FM and COC audits. They do not want CBs to be decision-makers on remedy. Members were inconsistent in whether they are comfortable or not with CBs auditing remedy progress. However, if remedy requirements or “corrective actions” are made clear and transparent (with timelines, indicators of progress, etc.), there is an effective and efficient role that CBs can play for monitoring and reporting on Remedy progress. A related question is whether some staff affiliated with CBs as individuals might play a role on Independent Panels because of their strong expertise and regional experience. Depending on the auditor and the country situation, auditors are respected across chambers and sub-chambers, and FSC might be wise to be open to using highly skilled individuals from CBs in some cases, with the clear precaution that they cannot be used subsequently as certification auditor for monitoring Remedy progress or certification audits of the Organization involved.

### **11. *Too many FSC structures?***

There is fatigue with the plethora of FSC committees, WGs, etc. There is concern that the FSC, if it creates roles for new committees or panels, is creating more unnecessary complexity – something FSC members believes happens too often. If new committees or independent panels are created, they should have operating procedures that will keep them accountable and make sure they perform a professional and timely effort. Elsewhere in this report, the author suggests timelines to consider. FSC staff, Independent

Panels and mediation experts all need to be accountable and timely, something the FSC system has not consistently achieved to date.

## 8. RECOMMENDATIONS

The author was also asked to consider some of the following factors to address the challenge, particularly for the 1994-2021 period, after ownership issues have been resolved:

1. If ownership is clear, and no responsibility for past conversion can be attributed to current owners, what liability should be assumed – whether driven by environmental or social harm?
2. Can the level of conversion responsibility be tailored to Scale, Intensity & Risk (SIR)?
3. Should the level of responsibility depend on the forestland (or FMU) purpose, i.e., would requirements be different if the FMU and the restoration is a commercial plantation, is focused purely on rewilding or ecological forest restoration, or perhaps a mix of agroforestry with timber or non-timber forest products intentions with communities or smallholders implying a mix of social, environmental, or other benefits?
4. If conversion happened years ago and natural regeneration is already happening on X% of forest, what should happen (if anything) where natural succession is already happening, and what should happen on the rest of the previous forest area where regeneration/succession is not happening?
5. How can FSC determine whether local and directly affected stakeholders are due remedy? Who and how to do? What does the RSPO RACP experience tell us?
6. What continuing staff expertise is needed at FSC to manage these situations, and where? Central office, regions? Staff, consultants, training?
7. What resources are available at FSC for throwing at the problem, or should be there, and for what? Ownership due diligence? Remedy identification/negotiation? Should new ideas like the idea of community “enclaves” be embraced, that would more permanently allocate tenure to communities or indigenous peoples, with FSC proactively working with government to resolve?

In response to the requests above, and other issues raised by stakeholders the author consulted with, the following are the author’s recommendations.

### **Recommendation 1 – Parallel Paths Should Continue on Conversion Policy & PfA Processes**

There has been criticism on the fact that the two Conversion WGs (Policy & Technical) and the one PfA WG have been working in parallel fashion. The criticism implies one needs to be done before the other, or vice versa. There is also a perception amongst some that full resolution of the Conversion Policy and related procedures should await the F2F 2022 GA. This is driven, in part, by dissatisfaction with the results of PfA related disputes in Indonesia – e.g., the Korindo, APP and APRIL cases - including threats to leave the FSC system as members by some NGOs and individuals if the FSC Policy on Conversion and PfA efforts do not result in the changes they are seeking.

This consultant agrees with all FSC members that there needs to be tight coordination and good communication between all 3 WGs and the FSC staff that are involved.

At the same time, the author also believes that parallel efforts to bring closure on the Conversion and the PfA policies (and related procedures) are acceptable and that these might be achieved before the F2F GA. The author does not believe it is healthy for the FSC system to remain in conflict on these issues, as some have characterized the situation. Further, if indeed this is conflict, perhaps (per other recommendations in this document) FSC should immediately seek the support of a conflict mediator or negotiator to get to solutions as soon as possible.

If positive results are achieved before the F2F GA, the GA sessions can be used to debrief members on the normative requirements and how to ensure consistent application of them in the FSC system with the intent to inform FSC members and gain further suggestions or recommendations on organizational,

technical or personnel related resources that can help for implementation of the related policies and procedures. This should include discussions on how regional FSC initiatives and Regional/National Offices can play a role on these issues in the future (see Recommendation 4). Calibration (i.e., consistent understanding) between the different FSC arms involved (FSC IC, CBs, ASI and the FSC Network), indeed even by FSC members, of the requirements is extremely important, challenging and almost always a work in progress.

Based on interviews, and across chambers and sub-chambers, most members would like these processes to be completed so that FSC can move on with other major priorities (e.g., enhancing the quality and credibility of FSC certification, expanding markets for FSC-certified products, urgent engagement on climate and restoration, etc.). As described above, to be clear, though FSC should use the F2F GA to gain further perspectives on both the PfA and Conversion policies/procedures, finalization of relevant policies/procedures does not have to wait for the F2F GA. The author believes all solutions will be imperfect, and that continuous improvement going forward will be needed, but resolution is needed now.

### **Recommendation 2 - Process Option for Addressing Remedy When Responsibility Is Clear**

Based on White Paper research and building off suggestions provided during the Motion 7 and Motion 12 processes described in the Green Paper and subsequent inputs from contacts made during this analysis, the following are the author’s suggestions for refinement of procedures when the Organization’s responsibility is clear. The author considered establishing a more detailed or refined approach based on Scale, Intensity or Risk (SIR), per FSC requests. The author did not find good examples of this and decided that such an approach would be too complicated to implement.

First, for **environmental harm**, the following framework could apply when ownership or control issues are clear, i.e., after beneficial ownership issues have been resolved. The time-based framework suggests that for Organizations that were not involved in conversion, the Organization should have some responsibility for restoration on the “commodity-producing” parts of the newly acquired properties where conversion previously occurred. The author suggests that ex-situ (offsite) restoration be acceptable. The general approach seems to align with the AFi Core Principles document wherein it states that “Companies purchasing or acquiring commodity-producing properties (underline emphasis by the author) assume responsibilities to remediate past harms, unless this responsibility is explicitly and legally transferred to or retained by another party”. The following time-based graduated approach recognizes the complexity of trying to definitive about past environmental harm and affected HCVs.

- Conversion happened during the last 5 years (2015-present) full 1:1 remedy
- Conversion happened 6-10 years ago (2010-2014) 75% remedy
- Conversion happened more than 10 years ago (1994-2009) 50% remedy

Per current FSC Conversion Policy deliberations, the author supports the consensus already reached by related WGs that no conversion after the date stipulated by the Conversion Policy is acceptable. The author supports whatever cut-off date is proposed by the Conversion Policy sub-chamber balanced WG.

The author would suggest the following as working rules for restoration as part of Remedy:

- a) Restoration standards should be developed separately by FSC (FSC is currently involved in separate discussions that may lead towards development of FSC’s own restoration standards as part of an international initiative involving other organizations, or on its own with restoration-related language inserted into the existing FSC IGIs, or perhaps a separate Principle on Restoration with related Criteria and IGIs).



- b) Restoration requirements should be a part of most, if not all, Remedy packages, based on inputs from directly affected communities and rights holders, and as stipulated in Remedy agreements established by the combination of FSC leadership, Independent Panels, or the results of mediations.
- c) FSC-approved restoration should always be designed to address the combination of environmental values at the species and landscape levels and respond to social and economic needs in a way that will facilitate strong support from local communities to ensure restoration is successful and durable. As such, whether as part of Remedy or not, restoration design may change from site to site, but shall always improve ecological/environmental conditions. Acceptable management objectives may include rewilding or ecological forest restoration, perhaps agroforestry with timber or non-timber forest products intentions with communities or smallholders implying a mix of social, environmental, or other benefits, or reforestation using a mix of native and exotic species as long as both environmental and socioeconomic objectives are being met. Pure exotic species plantations should not be used to meet restoration objectives except at a small-scale to meet community needs (typically less than 5-10 hectares).
- d) FSC-approved restoration should favor ANR as a technique and use of native tree species. In certain locale the use of tree planting (and potentially use of exotic species) could be acceptable if the local community is supportive (X species may have a history of minimal negative impact and positive impact for use as firewood or other basic human needs) and any negative consequence of such planting is controlled (e.g., invasiveness, negative impacts on water resources or wildlife, etc.).
- e) With the emphasis on ANR, if natural regeneration has already previously started to occur, prior to identifying Remedy, such regeneration should be built upon as part of the restoration/Remedy approach, i.e., it should be seen as an early start to restoration and not negatively affected.
- f) Restoration should support the recovery and affirmation of customary use and tenure rights of indigenous peoples in mutual agreement with other directly affected local communities (with mediation implemented if necessary to reach agreement).

Second, for **social harm**, the author suggests Remedy solutions be based on a process of “Discovery” (see related recommendation below) and social harms assessment, including interactions that balance the interests of communities and directly affected stakeholders and rights holders within the Organization’s FMU or immediately adjoining it<sup>16</sup>.

Where government regulations make the above difficult, the FSC should work with the Organization and other local organizations and NGOs to advocate for positive government policy change in support of local communities, restoration/remedy and the FSC mission.

### **Recommendation 2 – Process Option for Addressing Remedy When Responsibility Is Not Clear**

As FSC experience can already demonstrate, coming to clarity on ownership responsibility, and particularly Loopholes 1 and 2 (51% control and Shell Company), is challenging. The author sees NO substitute for FSC improving how it deals with these complicated issues. Improvement requires:

- Eliminating the 51% rule, recognizing that control/responsibility can happen when a shareholder has less than 51% control and the 51% rule can be used to avert due responsibility. “Control” is the key issue and determination of decision-making control is the key factor in assigning responsibility for Remedy.
- Putting in place clear rules on what the process is to for resolution of issues by FSC, CBs or CHs whether the conversion issues and responsibility comes up either before, during or after

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<sup>16</sup> Some have argued that Remedy must have the explicit and formal approval of directly affected communities, individuals and rights holders. Gaining full approval may prove unrealistic. As proposed by the author, final decisions would be made either by an Independent Panel or through professional mediation involving the various parties, informed by either existing or new legal precedents in the jurisdiction or country of focus.

certification processes. Below the author offers a stepwise approach for doing so, in this and other related recommendations in this document.

With the above in mind, the author suggests the following procedural steps.

1. If issues occur **prior to certification**, based on FSC staff, FSC member, CB or other “whistleblower” inputs, the case will immediately be referred to FSC IC before it can continue with certification processes, and FSC IC will coordinate globally to ensure that due diligence is done to resolve issues before any FSC certification can occur (see below).
2. If issues occur **after certification**, based on inputs from any stakeholder or part of the FSC system, FSC IC will immediately begin Discovery activities to examine the legitimacy of issues being brought up. Certificates currently in place may continue but no extension of certificates or re-certification can occur without resolution.
3. Discovery will inform the processes going forward, per other Recommendations below.

**Recommendation 3 - “Discovery” Process and Potential Appointment/Use of Independent Panel**  
Interactions with FSC members, DFIs and others indicate that “Discovery” is a better term for research or investigation during the early phases of PfA, trademark license approvals, or Conversion-related Ownership-Related Due Diligence (Loopholes 1 & 2) and Remedy processes. FSC should rename the early part of these process of examining ownership or conversion issues the “Discovery” phase, including coverage any of the identified loopholes.

Discovery will typically happen after either a CB identifies PfA-related ownership issues during certification processes, or a whistleblower complaint has been lodged related after either FM or COC certification or PfA processes.

The Discovery process should start with voluntary submissions by the Organization to attempt to address issues FSC articulates to them in writing, in this case related to ownership loopholes. The author suggests that a 3-person team of FSC staff or representatives – typically 1 member each from FSC IC or Global, and 1 each from the relevant FSC Regional Office and relevant FSC National Office – do the first review of voluntary submissions by the Organization. IF that information is clear and unequivocally meets FSC’s information needs to resolve the ownership/responsibility issues, per the judgement of the 3-person FSC team, and approved by the FSC Director General, certification or license agreement processes can proceed.

IF the voluntary information is NOT sufficient or is deemed worthy of more scrutiny and due diligence, the FSC 3-person team will recruit and appoint an Independent Panel to resolve the issues, using a combination of experts, forensic auditing and, if necessary, mediation/conflict resolution. It will be the role of the Independent Panel to decide whether voluntary submissions on the part of the Organization sufficiently address issues related to ownership or other issues. Recourse to other due diligence tools such as forensic auditing may also be necessary.<sup>17</sup> Going forward, the expectation is that all steps – from Discovery to forensic auditing to issues resolution, including Remedy if defined as necessary - will occur within 1 year of appointment of the Independent Panel.

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<sup>17</sup> During White Paper research, on May 16, 2021, Greenpeace’s Grant Rosoman (an individual northern environment chamber FSC member through FSC New Zealand) provided a draft “Methodology for implementing the AFI indicators for Group Control” and offered the option of the author sharing it confidentially with FSC, in its entirety. The author has done this. The draft provides a relatively detailed approach for due diligence on corporate group ownerships and dynamics around subsidiaries, beneficial ownership, “control” and families based on experience in Indonesia and elsewhere. For further information, contact [grosoman@greenpeace.org](mailto:grosoman@greenpeace.org).

#### **Recommendation 4 – Clarifying Ownership/Control**

Initial research on options for distinguishing known and unknown ownership should use the relatively new concept of “beneficial ownership”, where X Organization benefits are identified and may include owning shares of a company, earning revenue through a separate company, or other financial or business benefits. As outlined here, the steps towards resolution may involve the use of an Independent Panel, professional forensic auditing, mediation or conflict negotiation, and input from qualified technical specialists with country and region experience. This due diligence should also follow globally established procedures established by FSC.

FSC senior staff have indicated interest in accepting the AFi Operational Guidance and Terms and Definitions related to the topics of conversion and restoration. It should be noted that AFi itself has no specific experience or more detailed recommendations at this time for implementing the various Guidance and Terms/Definitions it has developed. AFi does recommend starting with voluntary reporting on beneficial ownership as a starting point. HCSA has also adopted this approach as a starting point. This approach is logical.

As described above, the author suggests that a 3-person FSC team (described above) and designated by the Director General (with support from other FSC senior staff) would start the process after receiving and reviewing beneficial ownership information. That information is to be voluntarily submitted by the Organization and treated as confidential information by the 3-person FSC team to either deem the issues resolved or require the establishment of the Independent Panel to get to closure.

The main question being asked is whether beneficial ownership revelations indicate “control” at the time of conversion. Control may come through either majority ownership, being the largest shareholder or some other form of decision-making control by even a minority shareholder or family member. **Control is not limited to the 51% ownership threshold and the 51% ownership loophole should disappear.**

If the Independent Panel has questions whether the ownership information is complete and/or accurate, it could either ask for confidential independent peer review thereof or go straight to ask FSC to contract independent forensic auditing, at the cost of the Organization.

The results of forensic auditing would then be used this to clarify ownership. If ownership remains unclear in the judgement of the Independent Panel, engagement between the Organization and FSC on potential certifications or license agreements should not move forward until the Independent Panel is satisfied. If at some point the Panel does get satisfied on ownership/control issues, the Independent Panel can then move on to the next phase of developing the Remedy Concept in response to identified conversion dynamics. Approval of a Remedy Concept is a major responsibility of the Independent Panel. The Panel will require clear review and input from directly affected rights holders and stakeholders (including communities where applicable), with support from FSC staff. But this can only happen after resolution of ownership issues to the satisfaction of the Independent Panel.

#### **Recommendation 5 – Professionalize Forensic Auditing When Ownership Questions Exist**

Ownership questions typically arise (particularly Loopholes 1 & 2) as part of PfA processes, during or after FM/COC certification. Based on interviews and observation of recent interactions between FSC and CBs, increasingly CBs expect FSC to take the lead on PfA-related issues whenever they arise. Per discussions with NGOs, DFIs and investment organizations, forensic auditing on key sustainability issues is a growing trend across all of capitalism as a risk management tool.

Forensic auditing or due diligence on these issues is also increasing with stock exchanges around the world. Though there are exceptions, “publicly listed” companies are likely having to be more transparent on sustainability than in the past.

There are an increasing number of individuals and organizations focused on various aspects of forensic auditing, for “beneficial ownership”, restorative justice and other reasons. The author does not think it is likely the FSC system will deal with the number of cases RSPO is dealing with. But there are some large national and multinational corporations and family interests involved in both sectors, e.g., Sinar Mas Group/Paper Excellence, Royal Golden Eagle group, Korindo, etc.

Though external resources are available, the experience at RSPO and in the mining sector seems to indicate that FSC might need to consider improving its own staff capacity, through training and hiring, at least for managing these issues, both at the central and regional levels. Or, alternatively, when new hires for some relevant positions at the Global or Regional level happen, perhaps looking for relevant experience in this arena could be a part of position descriptions as valuable qualifications.

Following are organizations that have been mentioned as external resources<sup>18</sup>. The list is not all-inclusive and does not include the AML or ESG units that are a part of several well-known international banks or financial auditing organizations. Some DFIs also indicated they would welcome the opportunity to provide suggestions on forensic auditors they have found to be of high quality.

<b>Examples of Forensic Audit/Research Organizations<sup>19</sup></b>	<b>Comment</b>
Auriga	Has already conducted research on pulp and paper organizations in Indonesia, in collaboration with a number of other organizations. See <a href="https://auriga.or.id/wp-content/uploads/2018/05/Removing-the-corporate-mask.pdf">https://auriga.or.id/wp-content/uploads/2018/05/Removing-the-corporate-mask.pdf</a> .
BankTrack	Conducts research on the activities of financial institutions (i.e., banks), focusing on corruption. See <a href="https://www.banktrack.org/page/about_banktrack">https://www.banktrack.org/page/about_banktrack</a> .
CMI - Chr. Mikelsen Institute	Has already conducted research on pulp and paper organizations in Indonesia. See <a href="https://www.cmi.no/">https://www.cmi.no/</a> .
Chain Reaction Research (CRR)	Led by Aide Environment, Climate Advisors & Profundo (international). See <a href="https://chainreactionresearch.com">https://chainreactionresearch.com</a> .
Forests & Finance	Coalition including Profundo, RAN and multiple other organizations. See <a href="https://forestsandfinance.org/about/">https://forestsandfinance.org/about/</a> .
Profundo	Although part of both Forests & Finance and Trase coalitions, is able to do both quantitative and qualitative assessments on finance and ownership relationships. See <a href="https://www.profundo.nl">https://www.profundo.nl</a> .
Trase	Led by Stockholm Environmental Institute (SEI) and Global Canopy, plus “expert partners” such as Neural Alpha (international). See <a href="https://trase.finance">https://trase.finance</a> .

<sup>18</sup> Some FSC members indicate that some of names in the above list include organizations that are not independent, are linked to campaigning organizations, etc. When contracting such specialists, FSC will need to have language that, like the contracts with CBs, require that those involved (organizations or individuals) are free from conflict of interest and able to act in a confidential, independent and technically competent way.

<sup>19</sup> Again here, some observers point out that some organizations listed as mediation resources have their own agendas and are not always objective. It will be up to FSC staff (global, regional, and national) to seek input from stakeholders to ensure that mediators are professional and objective, and well-suited to the mediation challenge of each specific case. As mentioned elsewhere, this will require FSC staff to have the technical support and training necessary to aptly fulfill these functions.

### **Recommendation 6 – Professionalize Mediation/Dispute Resolution/Conflict Negotiation**

Though it not currently called conflict negotiation or mediation, this consultant believes FSC should accept that with PfA complaints (and certain FM/COC conversion certification situations), with or without ownership questions, are an actual “conflict”. It is entirely appropriate to accept conflict as reality and thus use professional mediators or conflict negotiators to resolve them.

As with forensic auditing, some observers point out that all too often FSC doesn’t engage professional mediators or conflict negotiators enough and it would be well served to do so. Also, it is perceived that sometimes FSC confuses good “facilitators” with the idea of mediators – people who are specifically trained to mediate, not just facilitate – they are two different things. Observers point out that FSC has, in at least one case, appointed a panel of independent specialists to assist that was perceived as high quality (original process on APP “roadmap”). However, the perception is that this has been an exception, not the rule, and FSC needs to “up its game”, using professional mediation where needed.

There are multiple resources available to do mediation. Specialists don’t necessarily have to come from an organization. Specialists should be independent, have demonstrable experience in the forest or forestry sector, including issues around corruption, restorative justice, remediation, but it is particularly key that they have region- or country-specific experience. Examples of organizations are provided below. Mention does not constitute endorsement. Due to time limitations, those listed should be seen as illustrative and not a complete listing of worldwide resources. FSC IC and FSC Regional offices could identify regional resources for implementing mediation. To expand resources, it is also recommended that FSC consider putting out a public note of interest seeking mediation organizations or individuals (and perhaps for forensic auditors as well) to build up FSC’s roster of available talent so that FSC is well-prepared when specific cases occur. This is another case where some DFIs have offered to provide recommendations.

As distinct from covering the costs of the Independent Panel, forensic auditing or Remedy Plan development, the author suggests FSC directly cover the costs of mediation, giving it the complete independence needed to achieve facilitation of a fair and professional result.

<b>Mediation Entities (examples only)</b>	<b>Comments</b>
Consensus Building Institute (Canada & US)	Has implemented mediation related to the mining sector and is familiar with forest and restoration issues. See <a href="https://www.cbi.org/who-we-are/">https://www.cbi.org/who-we-are/</a> .
Earthworm Foundation (Switzerland)	Has implemented some mediation for cases in Africa and is perceived to have performed well sometimes, notwithstanding the “anti-certification” bias that Earthworm often communicates.
Forest Peoples Programme (international)	Has implemented a role in “discovery” on social issues and mediation for an FSC PfA case in Africa and was perceived positively. Sometimes seen not as a mediator, but as an advocate for communities and indigenous groups and not objective.
Meridian Institute (US)	Has engaged in mediation as a leader of dialogues at multiple levels, related to deforestation and multiple sectors.
Resolve (US)	Has provided mediation and facilitation support for multiple initiatives involving national and international NGOs and companies. See <a href="https://www.resolve.ngo">https://www.resolve.ngo</a> .
Udall Foundation, University of Arizona (US)	Maintains a roster of Environmental Conflict Professionals who “mediate environmental disputes and support collaborative solutions to complex natural resource issues”. Also has staff with strong field experience around the globe (including Indonesia) and multi-language

fluency. See <a href="https://udall.gov/OurPrograms/Institute/FindMediatorFacilitator.aspx">https://udall.gov/OurPrograms/Institute/FindMediatorFacilitator.aspx</a> .
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### **Recommendation 7 – Reaching the Final Decision – Remedy & FSC Association**

The recommendations above suggest two tracks for reaching conclusion on ownership loopholes and the future of a particular Organization with FSC that may have had a role in forest conversion.

Track 1 is when ownership is clear. Here the author’s main inputs are to provide guidance on using professional mediation, with restoration as a component, to reach a satisfactory Remedy Concept or Plan. In addition, the author suggests CBs not be used for making Remedy decisions but can and should be used for monitoring Remedy implementation, assuming the Remedy Concept or plan includes sufficient details that will allow effective monitoring (timelines, indicators of progress, etc.). The author also suggests that only allowing certification or licensing agreements to occur when full or completed Remedy is in place is not realistic. Progress on Remedy must be demonstrated at the field level, aligned with the Remedy Concept or Plan, for the Organization to be certified, but expecting full Remedy is unrealistic.

Track 2 is when ownership is unclear. Based on examples and research, the author suggests that FSC use a combination of steps or tools to reach conclusion on ownership issues, conversion issues and Remedy. This includes:

- a) **FSC blended global, regional, and national team** to initiate and manage the situations created by conversion, ownership, or Remedy challenges,
- b) **Use of Independent Panels** managed by the FSC’s blended team to reach recommendations to resolve ownership/control issues and Remedy concepts,
- c) **Use of professional forensic auditing** to clarify control issues around ownership as necessary to identify responsibility for Remedy, should an Organization wish to become part of the FSC system,
- d) **Use of professional mediation** to assist in reaching decisions at multiple levels during these processes, whether related to assigning responsibility for conversion or Remedy,
- e) **The need for FSC staff training on mediation or conflict negotiation** to be in a better position for reaching satisfactory solutions, and,
- f) **Initial ideas on the role of restoration** as part of the FSC system, not just for Remedy but also separately as a forest management tool that FSC could support globally.

### **Recommendation 8 – Need for Clear FSC Global Statement Opposing Forest Conversion**

This may seem overly obvious. But several FSC members indicated their belief that FSC has not made a recent strong statement on the topic. Some members indicated that because it is publicly known that FSC is reconsidering its conversion policies (by announcing it is revisiting the 1994 rule and its conversion policies), some stakeholders may have the impression FSC is less committed to stopping conversion or deforestation. The suggestion is that FSC should unequivocally re-state publicly that large-scale conversion (with “large-scale” defined by FSC) is unacceptable by any FSC-associated organizations as of the formal cut-off date arrived at or proposed by the sub-chamber balanced Policy Working Group<sup>20</sup>. It should also state that any organization identified as responsible for large-scale conversion (per FSC processes and definitions) after the identified cut-off date shall be ineligible for FSC certification or membership at both the individual company and group levels.

### **Recommendation 9 – Need for Clear FSC Global Statement Supporting Restoration**

As discussed in the Green Paper, FSC has not been a major player in the restoration sector, and the conversion discussion meant that for many any discussions on restoration have been dominated by the harm and remedy discussions. Though some would say that this has little to do with issues around the

ownership loopholes, the continued dialectic (and lack of consensus) on ownership loopholes contributes to delays in this regard, and restoration will likely be a key part of most Remedy requirements affected by the ownership loopholes. A motion to support FSC engagement in restoration was not approved at the Vancouver General Assembly in 2017. Records indicate that the 2017 motion was approved by social and environmental chambers (large and smaller margin, respectively) but not by the economic chamber. However, restoration is explicitly mentioned in the new Global Strategy, with apparently the strong support of the FSC Board. Numerous members, particularly from the global south, continue to believe the FSC's absence as a leader in the restoration space undermines FSC's impact and FSC values. They remain concerned that some FSC members only see restoration as part of a continuing effort to "punish" egregious behavior by a few companies in the South. New interviews done during this White Paper continue to indicate concern that FSC's leadership absence in this sector may lead to restoration that contravenes FSC values, i.e., tree planting could result in forest clearance or conversion, contravene use and tenure rights of indigenous peoples and local communities, FPIC or HCV conservation. Given that the FSC team working on environmental services is already engaging externally to explore FSC's role in restoration, with support from the Board of Directors, FSC could state it is collaborating with multiple initiatives and organizations to explore a more active role in restoration, in line with FSC's mission and resources<sup>21</sup>. It could state that FSC is exploring ways to leverage support for restoration amongst its members, its portfolio of certificate holders and other supporters. Such statements will reinforce FSC's leadership position on forests and forestry, for stopping conversion and as an organization that intends to provide global leadership in support of restoration globally.

#### **A Final Observation on Consequences or Impacts of the Author's Recommendations**

FSC has requested that the author "assess the consequences of the proposed options" (or recommendations) outlined in this report. Identifying all the potential consequences of the proposed solutions or options is not, in the author's opinion, realistic.

What is clear is that failure to arrive at near-term practical solutions on ownership loopholes will continue to confound FSC achieving its Global Strategy and mission. It also undermines support from various FSC members. That said, it is clear there is no perfect solution, and the author would suggest that satisfying all member expectations is unrealistic. What is key is that the FSC system be perceived as sensitive to FSC member concerns and taking positive steps to resolve key issues around conversion, ownership loopholes, "control" (corporate or otherwise), and remedy that support communities, forests and FSC's mission. Such an effort will inevitably include not only global actions, but also country or region-specific actions. There is a glaring need for FSC to provide stronger support and resources for FSC Regional Offices to provide stronger leadership for regional and national stakeholder dialogue on these issues, resolving challenges and developing solutions and providing more realistic and effective leadership to achieve positive results. Such work will include alignment of National Forest Stewardship Standards (NFSS) to future Conversion Policy changes, addressing the special challenge of smallholders (who may be organized in unique ways in each country or region), addressing government policies that foster conversion or limit solutions (e.g., the potential for "enclaves" in government-owned concessions) or partnering with other organizations that are already attempting to find solutions. Global consistency is necessary, but so is making sure that solutions imbed regional perspectives and realities.

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<sup>21</sup> The author is aware of at least a couple examples where current certification holders are implementing restoration. Two operations already certified under FSC FM Group schemes in the USA – Suwanee University of the South and Berea College – have just been used for pilot testing of the Preferred by Nature Forest Ecosystem Restoration Draft 1.0.

## **APPENDIX 1 INDIVIDUALS CONTACTED**

(Alphabetical by first name; verbal communication except \* means written inputs only)

1. Achim Droste, FSC IC
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3. Aimee Boulanger, Initiative for Responsible Mining Assurance (IRMA)
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5. Alan Kroeger, Satelligence
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7. Amy Clark Eagle, FSC US
8. Ana Andreani, Roundtable on Responsible Soy (RTRS)
9. Anna Jenkins, Ethical Change (and advisor for FSC member outreach in Europe for the upcoming FSC General Assembly)
10. Anders Lindhe, High Conservation Value Resource Network
11. Andy Tait, Gecko Project
12. Andrew Collins, Miro Forestry & Forest Products
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14. Annika Terrana, WWF US
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16. Anton Greeff, New Forests Company
17. Barbara Bramble, National Wildlife Federation
18. Bjorn Roberts, Earthworm Foundation\*
19. Candice Taylor, The New Forests Company (Africa)
20. Caitlin Clarke, TNC
21. Chris Barr, Woods & Wayside
22. Courtney Lowrance, Citigroup
23. Daniel Kazimierski, Roundtable on Responsible Soy (RTRS)
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25. Darron Lapp, The New Forests Company (Africa)
26. Ezgi Kiris, CDC Group
27. Gemma Boetkees, FSC IC\*
28. Gemma Tillack, Rainforest Action Network
29. Grant Rosoman, Greenpeace
30. Hans Lemm, Green Resources AS
31. Harold Gordillo, FinnFund
32. Harrison Kojwang, FSC Africa
33. Heiko Liedecker, independent\*
34. Helen Newing, independent (author of RSPO RACP independent review)
35. Hubertus (Berty) van Hensbergen, independent
36. Jamie Lawrence, Brainforest
37. Jeff Milder, Rainforest Alliance (AFi) \*
38. Jim Heyes, Criterion African Partners
39. John Earhart, Global Environment Fund Inc.
40. John Ehrmann, Meridian Institute
41. John Palmer, Forest Management Trust
42. Jon Jickling, Preferred by Nature
43. Judy Rodriguez, High Carbon Stocks Association (HCSA)
44. Justin Mercer, New Forests (Australia)
45. Kaj Jensen, Bank of America
46. Karen Kirkam, independent
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48. Keith Moore, independent
49. Kim Carstensen, FSC IC
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51. Linda Feinberg, independent
52. Lisa Sumi, Initiative for Responsible Mining Assurance (IRMA)
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56. Matteo Francesco Mascolo, FSC IC
57. Matthew Wenban-Smith, Responsible Steel Initiative
58. Michael Zrust, Lestari Capital and Daemeter
59. Nigel Sizer, formerly Rainforest Alliance and now an independent advisor
60. Nik Stone, CDC Group
61. Pasi Miettinen, FSC IC
62. Pia Thauer, Global Gap
63. Per Larsson, WWF Sweden
64. Peter Stein, Lyme Timber Company
65. Ralph Schmidt-Liemann, independent
66. Rene Capote, Global Gap
67. Rodion Sulyandziga, FSC Permanent Indigenous Peoples Committee (PIPC)
68. Robert Simeone, Sylvania Forestry
69. Ruth Nussbaum, ProForest
70. Salem Jones, FSC IC
71. Salma Moolji, CDC Group
72. Samantha Morrissey, Rainforest Alliance
73. Sarah Harris, independent
74. Sergio Baffoni, Environmental Paper Network
75. Stephanie Doig, Miro Forestry & Timber Products
76. Steve Ball, FSC Africa
77. Steve Fitch, Eden Projects
78. Stu Valentine, independent
79. Su Li King, RSPO\*
80. Ward Wamerdam, Profunda (also part of Chain Reaction Research or CRR coalition & Forest & Finance coalition)
81. Yan Li, FSC IC\*
82. Zandra Martinez, independent\*
83. Anonymous
84. Anonymous

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<sup>22</sup> During this White Paper development, several individuals referred to or provided confidential emails or other documents that cannot be cited here. Confidential information provided from FSC staff or representatives at the international, regional, or national levels, or non-FSC sources, will remain confidential (including not available to FSC).

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## APPENDIX 3 – TERMS OF REFERENCE

### 1. Specific Tasks

1.1. Develop an overview of all identified solutions for assigning responsibility and corresponding remediation requirements to organizations for conversion they were not involved in; based on the following:

1.1.1. Literature overview (provided by FSC) of discussions and proposals from the previous discussions on conversions in FSC, including: Motion 12 (GA 2014), and the report of the M12 working group, including their proposals and the report of discussion at the FSC GA in 2017; Motion 7 (2017), and the report of the M7 working group, including their proposals, and identifying what has not been solved and the suggestions discussed in the working group.

1.1.2. Other certification systems and the Accountability Framework Initiative to identify the definitions and the remedies they consider related to responsibility for conversion.

1.1.3. Options for including other dimensions of the project in question in the assessment of the remediation required, such as, what is the purpose of the organization for the land in question: commercial plantation, forest landscape restoration, a mix or other, and to what extent does the purpose include social benefits in the landscape?

1.2 Develop the matrix, considering, but not limiting to, the following questions:

1.2.1. Would it be an option to have the landowner proving to FSC that the conversion done is not their responsibility? What would be needed to prove this? If this could be indisputably proven, could FSC open possibilities to reconnect with the land without reputational risk?

1.2.2. Would there be different kinds of remediation possible in different situations or related to different plans with the converted land? How would these situations and categories of remediation classify, if so?

1.2.3. Is it possible to link levels of responsibility to scale, intensity and risk, when the current owner can prove that he/she is not responsible for the conversion? In other words: more damage done is higher level of remediation required?

1.2.4. Is it possible to link levels of responsibility on for a current owner not responsible for the conversion to when the conversion happened?

1.3 Consider pros and cons of the use of definitions as provided by other systems such as replacing 'indirect involvement' in the draft with definitions of the Accountability Framework on company and corporate group.

1.4 Develop a list of potential interviewees (max. 20), together with FSC Secretariat. This list contains to a minimum:

1.4.1. Members of the 3 chambers of the M12 working group

1.4.2. Members of the 3 chambers of the M7 working group

1.4.3. Board liaisons to the M12 and M7 working groups

1.4.4. FSC Secretariat staff working with these 2 working groups

1.4.5. Other identified people, including other certification schemes and Accountability Framework Initiative (AFI) with experience in addressing the consequences of conversion including, but not limited to remediation.

1.5 Based on the interviews and the general overview described in the specific task 1.1, develop a matrix showing:

1.5.1. A set of potential ways for assigning responsibility and corresponding remediation requirements to landowners for addressing consequences of conversion

1.5.2. Their consequences to other FSC processes and regulations, including the Policy for Association and ongoing and future processes to end disassociation

1.5.3. Their opportunities to create social and environmental improvement, forest landscape restoration, local economic development and/or increased FSC certification

1.5.4. Their challenges and risks for the same issues

1.5.5. Potential effects on social, environmental and economic viability for the (potential) certificate holder, social effects for communities, Indigenous Peoples and environmental effects for forests

1.6 Based on this matrix, identify a documented advice which potential ways of assigning responsibility and corresponding remediation requirements to landowners for addressing the consequences of conversion have the best potential for contributing to FSC's Mission and Global Strategy and for being supported by FSC and its members.

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## **APPENDIX 4 – AUTHOR’S INPUTS TO DRAFT CONVERSION POLICY & DRAFT REMEDY PROCEDURE**

The following are summaries of comments provided by the author to, at that time unreleased drafts, by the WGs on the Policy on Conversion and the related Procedure for Remedy. Though the author received comments on these inputs during review of Draft 2, the author has left the comments without change for the sake of accuracy at the time submitted.

### **1. Summary Reactions to pending Draft 4-0 Policy on Conversion**

The author was asked to focus specific on the ownership loophole related issues of Conversion Policy Draft 4-0 which is soon to be shared with FSC members. The author provided detailed comments. The summary reactions below are based on a combination of observations gained through the author’s research, interviews during this White Paper and personal experience.

- a) The proposed policy and procedure continue to present challenges from a consistency perspective, though this is understood given the dynamic nature of the process (i.e., many moving parts). Resolving consistency is key.
- b) From a structural perspective, it is positive that both policy and procedure make clear that they do not apply to conversion prior to 1994 or FMUs already certified prior to the new policy becoming effective. Numerous FSC members seem confused on these points.
- c) Per the proposed policy, the Organization is required to conduct what this author refers to as “Discovery” activities (baselines, harm identification, etc.)<sup>1</sup>. Based on initial review of the Discovery documents, the author suggests that perhaps an Independent Panel could be formed.
- d) FSC should organize Independent Panels with support from FSC’s Regional Office leadership (and support from FSC IC and national representatives or offices). The Independent Panel’s primary objective is to develop a recommended Remedy Concept. The Remedy Concept would be based on “Discovery” results (including baseline reports or other analyses, reports from forensic auditing where ownership issues exist, identification of harms, submissions by the Organization, etc.). An FSC staff person from either the Regional Office or National Office could serve as support person for the Independent Panel, as such providing support to ensure consistency with FSC’s global requirements and procedures. Another option is a mediator to play a role as well, on a consulting basis to foster/ensure smooth flow of the process.
- e) A 3-person Independent Panel could be convened including 1 person each approved by each Chamber (with support from the FSC Regional Office, Board members, regional sub-chamber members). Panel members would be paid. Panel members would be chosen with an emphasis on:
  - a. Clear commitment to FSC’s mission,
  - b. Technical expertise,
  - c. On the ground experience in the region (and preferably country) where the conversion occurred,
  - d. Ability to be objective,
  - e. Ability to work in consensus fashion with other panel members, and,
  - f. Agreement to follow written Independent Panel instructions that FSC IC and the FSC Regional Office agree upon.
- f) If Discovery work to date has not cleared up beneficial ownership issues (per the various loopholes), the IP can request that FSC conduct one of two options. Option A is to contract a forensic auditor to get to the bottom of such issues, possibly within a period not to exceed 3 months. Option B would be to request confidential independent peer review of existing (one part or all) Discovery information to gain more perspective.

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- g) For both examination of ownership issues and the overall IP process, FSC may wish to develop an instructions template for Independent Panel operation, with assistance of a professional mediator or conflict negotiator. This could also include template expectations on an expected generic timeline for the process. (Note: HCSA has done this for their Grievance Mechanism process, but this author finds the detailed timelines in that mechanism too restrictive and unrealistic. Perhaps there is a middle road on timelines that can be flexible, but also accountable and timebound, e.g., up to 1 year for Discover, up to 6 months for the Independent Panel to propose a Remedy Concept and up to 6 months for final approval of Remedy Plan by FSC and the Organization, with mediation if needed).
  - h) Prior to reaching agreement on the Remedy Plan, it is critical that directly affected parties (within or immediately adjacent to the MU, including rights holders) should be able to provide their perspectives on whether the Remedy Concept is fair or acceptable, through a process that is tuned to their cultural/social context, but also time bound (perhaps up to and not to exceed 90 days for their observations/comments to be provided).
  - i) The Remedy Concept proposed by the Independent Panel (which would work by consensus) would be submitted to both the Organization and FSC.
  - j) If immediate agreement on a Remedy Plan is not evident between the FSC and the Organization, FSC should use a professional mediator to negotiate agreement.
  - k) Once FSC and the Organization reach agreement on the final Remedy Plan (with conditions if necessary), the Independent Panel would be disbanded and follow up on the Remedy Plan be put in the hands of the Regional Office, with support from the National Office and IC as needed and based on annual performance monitoring by an FSC-accredited CB.
  - l) White Paper research suggests that because CBs already have clear roles in auditing according to FSC standards and Remedy Plans are perceived as more of a negotiated agreement (rather than an already agreed upon standard), FSC should not have CBs as third-Party verifiers of remedy “discovery” analyses (including baselines), approval of Remedy Plan or for forensic auditing on ownership issues. The author suggests they can and should play a role in auditing performance and conformance to finalized Remedy Plans.
  - m) Note that in the current draft there is continuing use of the term “indirect involvement”. In the author’s experience, generally the “indirect involvement” term is not auditable. That said, auditing experience indicates that “activities performed by subcontractors when acting on behalf of the organization” should constitute direct involvement.

## **2. Summary Reactions to Draft 1-11 Conversion Remedy Procedure**

- a) The Procedure seems to be moving in the right direction, though it does seem unnecessarily long and complicated. A specific review focused on streamlining and simplifying should be done by the TWG, **after** social expertise is added to that group. Much of the detail in the procedure is redundant with the policy. If the policy is normative, then the procedure should focus on the normative process elements for implementing the policy. Minimize redundancy. There may be significant parts of content in the procedure that might be eliminated if already covered sufficiently in the policy.
- b) White Paper submissions have indicated that FSC will need to define what is acceptable restoration. A submission from some social stakeholders proposes that FSC have, in essence, a combined “Remedy and restoration standard” with verifiable indicators. Other members separate the two and have separate tracks on them. This would build on ongoing work being done by FSC on restoration standards by the Ecosystem Services unit, including informal collaboration right now with WRI and Preferred by Nature. The author suggests having separate tracks on remedy and restoration is wise. Such an approach would also clearly indicate that restoration is not just a tool for punitive requirements related to conversion, but a broader valuable intervention that FSC is supportive of because of its mission. If done, this would allow the remedy procedure to avoid having to stipulate all the requirements for FSC-approved restoration and generally refer in the conversion procedures to

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“meet restoration requirements established by FSC”. This could simplify procedure. For developing the FSC restoration requirements, FSC has 3 options or avenues: a) collaboration with WRI, Preferred by Nature and other organizations on multi-stakeholder restoration standards it could support (it must have indicators), b) creating a separate restoration principle with relevant criteria, or c) implementing a process to review the existing P&C and IGLs and insert restoration terminology or requirements where needed. Perhaps the TWG can make a recommendation in this regard.

- c) Based on White Paper interviews, adoption of rights holders as a priority throughout the Remedy procedure should engender stronger support for the approach. This is a crucial improvement.
- d) As per observations on the latest draft Conversion Policy above, the continuing use of the term “indirectly affected” subverts auditability. Other terms also make scope of the standard and multiple requirements not auditable, such as “downstream”, “landscape”, etc.
- e) The term “baseline”, and particularly “historical baseline” (whether social or environmental) seems far more all-encompassing and theoretical than necessary. During White Paper interactions, lawyers, financial organizations, mediators, etc. seemed far more comfortable with the term “discovery” during the early phases of due diligence, and where necessary (e.g., for the ownership loophole) forensic auditing. Baseline implies a scientifically valid approach, and this is not a science project. It has scientific elements but is more focused than that. Discovery could include data on changes that have occurred over time that can be documented.
- f) If the Glossary is normative, the definitions are long and complicated. It alone should have a focused effort on streamlining and simplifying. Also, the author suggests the Glossary be a separate Appendix. Or perhaps part of an overall FSC Glossary that is used for all FSC policies and procedures, maintained up to date by FSC staff.
- g) The current draft implies all remedy must be achieved prior to “applying for certification”. This is unrealistic and perhaps even unfair. The author suggests language such as “applicant Organization(s) should be aware that evidence of remedy progress must be documented and/or observable in the field when applying for certification”.
- h) The author is somewhat surprised that current drafts do not refer to potential use of the High Carbon Stock Approach (HCSA) as a tool. Not even mentioning it as a tool (e.g., in the normative part of the document and as a footnote) seems like a lost opportunity. In January HCSA came up with a new, lawyer-written “Grievance Mechanism”. When HCSA rules and tools are available at the national level (to date HCSA has not covered all countries with the same level of detail), it may allow more precision for determining when a forest has been degraded to the point that establishing a plantation on it would be acceptable. Having HCSA as a potentially applicable tool to help with define conversion would also seem smart to take advantage of wherever more detailed country-specific guidance from HCSA is available.
- i) In various parts of the draft, language is used that the author does not believe is auditable. Examples include “their ability to deliver conservation outcomes and social benefits” or “impact on water resources to communities downstream of the conversion area”. The draft also often includes very far-reaching and perhaps unrealistic expectations, for example on the environmental side, is the following necessary or realistic: “ecosystem condition, use status, biodiversity, ecosystem attributes\*, environmental values\*, successional phase, level of degradation\* and degradation\* drivers”.
- j) The draft includes a definition of “longevity” (in the glossary) that far exceeds FSC’s ability to audit – 25 years. Work on the Preferred by Nature restoration standard and input received put 2 thresholds – 5 years for auditing near-term implementation and for the candidate operation to articulate expectations for target or desired future forest condition at 20 years. The FSC draft also requires contracts for 25 years. It is auditable, but likely not realistic. Perhaps the auditable requirement should be a formally written commitment of the Organization made available to FSC and auditors that states their intent to support restoration for 25 (or 20?) years.



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- k) Another example of overreach is when the draft suggests “solutions go beyond legal obligations and **address root cause**” (emphasis by the author). As a voluntary system, going beyond legal obligations can be appropriate. However, is addressing root causes realistic? If, per a) the conflict resolution processes are agreed upon by directly affected stakeholders and rights holders, what is the rationale for going beyond that? How would an auditor determine that “root causes” have been addressed? It would seem to open up the process to subjective perspectives and arguments between the Organization, affected rights holders and affected stakeholders, and potentially Independent Panel members (per recommendation on use of Independent Panel). Note that currently a) does not include directly affected stakeholders.
- l) In the draft, the Concept Note approach borrows significantly from RSPO. Note that equivalence definition requires “provision of the best means possible to ensure future community well-being”. Is this realistic? Rather, should not the focus be on remedy that meets reasonable rights holder and stakeholder desires and expectations? Nothing can guarantee future well-being.
- m) Based on the author’s research, the Society for Ecological Research (SER) standard for restoration was designed largely by scientists not practitioners. It provides great value but is not as efficient or written in auditable language.
- n) The author suggests more consistent and stronger input from FSC Regional and National Offices or representatives (something observers point out was considered important during one of the FSC governance reviews). In this particular case, when changes to a Remedy Plan are proposed by the Operation, the author suggests changes submitted to FSC be subject to Regional Office and National Office approval, with input requested from FSC IC where necessary. Also, perhaps Independent Panel members who originally made a recommendation on the Remedy Plan could be requested to provide input.