



## Principles and Criteria Review

### Briefing Paper on Engagement

**Bonn, 28<sup>th</sup> October 2010**

This paper was produced by the P&C Review Working Group to explain its approach to engagement in the revised Principles and Criteria and to address stakeholder concerns raised in relation to this approach. The paper will also serve as a basis for further discussions at the P&C Review Workshop on the 15<sup>th</sup> and 16<sup>th</sup> of November 2010.

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#### **What is the issue?**

Draft 3-0 of the revised P&C included a new criterion (Criterion 7.6) which requires The Organization to engage affected and interested stakeholders in management planning and monitoring processes.

A number of interrelated concerns were raised by the Economic Chamber in relation to the proposed criterion. It was felt that the required engagement would negatively affect economic viability, conflict with ownership rights of The Organization in relation to decision making, increase the burden in general but especially in relation to administration and documentation, and open the door for unjustified claims and requests of stakeholders. Concerns were also raised in relation to the level of engagement required for interested stakeholders. However, there were also comments from other chambers requesting more engagement.

#### **What is the answer?**

One of the objectives of the P&C Review has been to analyze all issues identified in the past regarding the FSC Principles and Criteria and to propose, when necessary, revisions to the Principles and Criteria needed to solve the identified issues.

The Policy Working Group of the Plantations Review (PWG) concluded in its final report that the 'lack, or inadequacy of community consultation and engagement has been a major issue for many FSC stakeholders.' The PWG also concluded that



‘making the manager responsible will prevent local relations breaking down and, more positively, create opportunities for dialogue and debate that can lead to resolution.’

The P&C Review WG agreed to these conclusions and the proposed ‘prevention is better’ approach. The P&C Review WG also concluded that the possible costs of such a pro-active engagement process with affected stakeholders outweigh the costs of possible damage resulting from a lack of engagement, e.g. reputational damage, grievance resolution, compensation payments etc. In order for to be effective the whole engagement process must be transparent.

Hence, one of the cornerstones of the revised P&C has been to ensure Indigenous Peoples, local communities, affected stakeholders, and the public at large have an ability to be involved in a legitimate framework in the overall management planning strategies as well as to have assurance that proposed activities that could affect them have been properly accounted for.

However, the P&C Review WG also recognized that this involvement is not equal for all types of stakeholders and the P&C Review WG has agreed to clarify this differentiation in the revised Principles and Criteria. There are basically two types of stakeholders: interested and affected stakeholders. Unlike interested stakeholders, affected stakeholders may suffer from negative impacts from management activities. While the P&C Review WG recognizes that both types might have legitimate interests in being engaged the working group also recognizes that The Organization has higher responsibilities towards affected stakeholders, e.g. in respect to identifying them and proactively approaching them. Nevertheless, the revised P&C also recognize that organizations not directly affected themselves might act on behalf of affected stakeholders (e.g. social and environmental NGO’s, labor unions). Where it is clear that such organizations are the designated representatives of the directly affected stakeholders, they would then be considered affected stakeholders themselves.

Being involved in the process does not guarantee that all presented concerns and ideas are automatically incorporated by The Organization. However, The Organization must transparently deal with these concerns and ideas. Based on these concepts, our thinking around “engagement” as the means to demonstrate appropriate involvement is further explained below.

### Engagement

The term “engagement” was chosen rather than other potential terms such as consult, advertise, involve, inform etc. for a variety of reasons. Engagement, as it is being proposed here, requires The Organization to actively seek out appropriate levels of



input from the variety of individuals and groups outlined above, and ensure the input is properly evaluated before making its final decisions.

To be clear, The Organization is not being asked to automatically accept all suggestions that come in. However, the standard is requiring The Organization to demonstrate that appropriate levels of effort are made to (1) solicit this input, and (2) show how the input was considered in the making of the final decision.

Below is further clarification for the potential groups and individuals who may be affected by The Organization with proper consideration for publicly owned MU's and private land concessions.

#### Indigenous Peoples

Principle 3 describes the requirements The Organization when working in traditional territories of local Indigenous Peoples (IPs). In addition to the general requirement for engagement in management planning according to criterion 7.6 there is a need for a binding (written or otherwise) agreement between The Organization and the IPs, through a process of Free, Prior, and Informed Consent (FPIC) before plans are completed and management activities begin. In this case, there needs to be clear evidence of which IPs have legal or customary rights and/or title to all or part of the Management Unit (MU) or to other areas outside the MU that may be impacted by management activities inside the MU. This would address the case in some areas where there is the possibility of multiple IPs with potential claims of rights and/or title and where such claims are conflicting or contested.

For private land MU's, again it needs to be clear where customary or legal rights and/or Title for IP's exist both within and outside the MU where activities may have an impact. Where this evidence exists, the requirements of FPIC apply.

Under Principle 3 The Organizations is, furthermore, required to uphold IPs rights under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) and ILO Convention 169, which also include engagement rights. In short, "engaging" IPs is not enough to meet the test of the standard.

#### Affected Local Communities

Principle 4 describes the requirements for The Organizations with respect to local communities living or affected by management activities in the Management Unit. Requirements for engagement with affected local communities are similar to those for IPs, although UNDRIP, ILO 169 and the need for binding agreements do not apply. FPIC principles, however, do apply in cases where local communities hold customary or legal rights to areas within the Management Unit. It is quite possible that



management activities or plans in the management unit could affect communities that may be either inside or outside the management unit. In this case, engagement for The Organization means reasonable efforts are made to identify issues and seek feedback from communities to confirm and where needed, adjust and complete the list of issues that need to be addressed by The Organization. Criterion 4.4 requires The Organization to engage with local communities in identifying and taking actions in relation to negative impacts of management activities. It is virtually impossible to produce a generic list of these potential impacts or issues that are linked to these impacts, so engagement would mean that a “reasonableness test” together with the affected communities needs to be applied.

Engagement would require identification and appropriate solicitation and communication with community groups and individuals who could be affected by The Organization’s activities and plans in the MU, and outside activities related to the Management Unit (for example, building and maintenance of access routes, stockpiles and depots, processing facilities directly related to the MU).

#### Other affected Stakeholders

In this case stakeholders usually have a specific interest that may be affected (e.g. tourism operator, recreational user groups, those with water rights that may be affected, ENGOs managing habitats of migratory animals or linking biodiversity conservation areas including locations far from the MU).

The Organization is required to identify stakeholders potentially affected (again applying the reasonableness test) by its plans and activities in the management unit. The Organization needs to demonstrate pro-active efforts are made to engage with these stakeholders to find a “reasonable” solution to potential concerns. For example, in the case of a recreational user, a reasonable solution may be to conduct operations during certain parts of the year to minimize conflict.

Again, not all issues will pass the reasonableness test and The Organization should not be expected to prove evidence on these types of issues. However, transparency in decision making is crucial and must be verifiable by certification bodies.

#### Public at Large

It is not always possible to identify all stakeholders, especially those not affected by management activities, and affected groups or individuals. A public advertisement in a reasonable fashion in the local area might be an appropriate mechanism to give these a chance to get engaged.



Input that has been received from interested stakeholders needs to reflect specific items relevant to the MU or affected groups / individuals outside the MU for The Organization to have to properly consider this input and demonstrate how the input has been used.

#### Transparency

Transparency is a necessary tool for building trust and effective engagement. Therefore, The Organization needs to be able to demonstrate to stakeholders how input was accounted for in its plans and proposed management activities. It is the intention to find the right balance for efforts required from The Organization in relation to justified requests from affected and interested stakeholders.

This information is also needed to demonstrate to the Certification Body that due processes were applied for engagement with affected and interested stakeholders in compliance with the Principles and Criteria.

#### Sustained objections

Sustained objections and grievances, also in relation to how The Organization engages with stakeholders, are subject to grievance procedures that The Organization has to develop according to the Principles and Criteria (see criterion 2.5 and 4.7 of draft 3-0) or relevant FSC dispute resolution procedures.

#### Confidentiality Considerations

The proposed engagement process is an integral part of the planning and monitoring procedures of The Organization. The need to respect the privacy of confidential information in these processes is an integral principle of FSC certification. Accordingly there is no expectation for The Organization to produce information requested throughout the engagement process that is not related to potential or negative impacts from its plans or activities.

#### Revised Criterion 7.6 on engagement

In line with the above the P&C Review Working Group is proposing the following revised version of Criterion 7.6.

**7.6 (new):** The Organization proportionate to scale intensity and risk of management activities shall proactively and transparently engage affected stakeholders its management planning and monitoring processes. The Organization shall respond transparently to requests from interested stakeholders for engagement in the planning and monitoring processes.

#### **Explanatory notes:**



1. Engaging or engagement (see also glossary) is the process by which The Organization communicates, consults and/or ensures the participation of interested and/or affected stakeholders ensuring that the concerns, desires, expectations, needs, rights and opportunities for the stakeholders are considered in the establishment, implementation and updating of the management plan.
2. 'Considered' in the context of engagement means that the Organization based on a review of the input and requests put forward by stakeholders determines the degree to which their concerns, desires, expectations, needs, rights and opportunities must be addressed in the management plan. The Organization is not necessarily required to respond positively to all requests being made by stakeholders.
3. There are two types of stakeholders: interested and affected stakeholders. While FSC recognizes that both types might have legitimate interests in being engaged FSC also recognizes that The Organization has higher responsibilities towards affected stakeholders. For example, unlike interested stakeholders, affected stakeholders may suffer from negative impacts from management activities.
4. Criterion 7.6 makes this clear by requiring the Organization to proactively engage affected stakeholders in planning and monitoring related to the management unit. Such proactive engagement is not required for interested stakeholders.
5. Proactively in this context means that the Organization has identified and reached out to the affected stakeholders and informed them about their rights according to the P&C, rather than waiting for them to approach the organization.
6. The different levels of responsibility also become clear from the definitions of interested and affected stakeholder. The definition of interested stakeholder makes clear that the effort required to identify these (they have already indicated an interest or are known to have an interest) is lower than the effort required to identify affected parties, which may not be known or have not made their interest known. It is assumed that interested parties make themselves known to The Organization.
7. Definition of affected stakeholder (see also glossary): Any person, group of persons or entity that may be subject to the effects of the activities of a management unit. These probably include, but are not restricted to (e.g. in the case of downstream landowners), persons, groups of persons or entities located in the neighborhood of the management unit.
8. Definition of interested stakeholder (see also glossary): Any person, group of persons, or entity that is not an affected party but has shown an interest, or is known to have an interest, in the activities of a management unit.
9. There will likely to be three forms of response to requests and input from interested and affected stakeholders:
  - Modification of the management plan based on full incorporation of requests or inputs.



- Modification of the management plan based on partial incorporation
  - No modification of the management plan based on rejection of requests or input.
10. Complaints arising from how The Organization responds to requests of affected stakeholders are subject to the mechanisms required according to Criterion 2.5 and 4.7. Complaints arising from how The Organization responds to requests of interested stakeholders are subject to the relevant FSC procedures.
11. The following are examples of affected stakeholders (for further examples see also FSC-STD-20-012 V1-1 Evaluation of FSC Controlled Wood in Forest Management Enterprises):
- local community,
  - indigenous peoples
  - employees,
  - forest dwellers
  - neighbours
  - downstream landowners
  - local processors
  - local businesses
  - tenure and use rights holders.
  - organizations authorized or known to act on behalf of affected stakeholders (e.g. social and environmental NGO's, labor unions).
12. The following are examples of interested stakeholders:
- conservation organizations (e.g. environmental NGO's)
  - labor (rights) organizations, e.g. unions
  - human rights organizations (e.g. social NGO's)
  - local development projects
  - local governments,
  - national government departments functioning in the region
  - FSC National Initiatives
  - experts on particular issues, e.g. HCV.
13. It is not always possible to clearly differentiate between affected and interested stakeholders. The same stakeholder may be an interested stakeholder in one situation and an affected stakeholder in the other.
14. In order to achieve transparency stakeholder input as well as decisions made in response to that input must be documented. Ideally, this could be in a separate schedule to the management plan to be able to demonstrate at a later date how input received was incorporated, or not, in the final plan.
15. In some cases free and prior informed consent is required (see for example Principle 3). In these cases this will be basis for decision making, engagement alone will not suffice.