



## Summary of key NFSS Draft 1 issues

### Background to the Forest Stewardship Council (FSC) and the development of a National Forest Stewardship Standard (NFSS) for Malaysia

The Forest Stewardship Council A.C. (FSC) was established in 1993, as a follow-up to the United Nations Conference on Environment and Development (the Earth Summit at Rio de Janeiro, 1992) with the mission to promote environmentally appropriate, socially beneficial, and economically viable management of the world's forests. FSC is an international organization that provides a system for voluntary accreditation and independent third-party certification. This system allows certificate holders to market their products and services as the result of environmentally appropriate, socially beneficial and economically viable forest management. FSC also oversees the development and approval of FSC National Forest Stewardship Standards (NFSS), which are based on the FSC Principles and Criteria (FSC P&C).

Starting in 2002, efforts were made to embark upon an FSC National Initiative for Malaysia. In compliance with FSC requirements, a National Working Committee (NWC) was formed in 2007. The NWC became a legal entity following endorsement from the Malaysian Registrar of Companies, and was legally registered as Forest Stewardship (Malaysia) Sdn. Bhd., or FSM. Upon FSM's acceptance as a FSC National Office in 2014, FSC Malaysia was launched in Kuala Lumpur on 19 November 2014 to lead the development process for a NFSS to promote responsible management of forests in Malaysia.

The development of a NFSS for Malaysia officially began in June 2011 upon the approval of FSC. The Malaysian National Standards Development Group (NSDG) is an independent chamber-balanced group representing environmental, economic and social chambers consisting of individuals from the three regions in Malaysia (Sabah, Sarawak and Peninsular Malaysia). The objective of the NSDG is to develop and maintain the NFSS according to FSC's standards and procedures.

The NSDG is chaired by Anthony Sebastian of aonyx Consultancy and consists of the following 6 members:

<b>Economic chamber</b>
1. Edmund Gan, Sabah Forest Industries Sdn. Bhd.
2. Chin Tong Tan, Independent
<b>Environment chamber</b>
3. Yii Tan Chang, Independent
4. Kanitha Krishnasamy, TRAFFIC Southeast Asia
<b>Social chamber</b>
5. Thomas Jalong, Jaringan Orang Asal SeMalaysia (JOAS)
6. Si Siew Lim, Grassroots Consulting

## **Key issues identified during the development of NFSS Draft 1**

As the NFSS Draft 1 is being opened for public consultation and commenting, the SDG identified several key issues in its efforts to interpret the generic FSC P&C and develop national indicators. Any international standard for forest management needs to be adapted at the regional or national level to reflect the diverse legal, social and geographical conditions of forests in different parts of the world. The FSC P&C therefore require the development of indicators that are adapted to national conditions to be implemented at the Management Unit level.

The following are a summary of key NFSS Draft 1 issues for Malaysia as identified by the NSDG:

### **Scale, Intensity and Risk (SIR)**

The three factors 'Scale, Intensity and Risk' determine the likelihood that a management activity might have a negative impact on social, environmental or economic values associated with the Management Unit or The Organization. It applies all through the standard but is explicitly mentioned in Principles 7 & 8 and in the following Criteria: 1.7, 2.3, 4.3, 4.4, 4.5, 5.1, 5.4, 5.5, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 7.6, 8.5, 9.1, 9.3, 9.4, and 10.9. The NFSS was developed with a focus on applicability to most forest operations in Malaysia. Hence, there is a desire to maintain the least complex version of the standards. In addition, SIR was considered during the development of all indicators in this standard. SIR requirements will also be addressed as a priority during the next review and revision of this standard.

### **High Conservation Values (HCVs)**

To meet FSC P&C requirements on the identification of HCVs in Malaysia and setting of baseline values, the HCV Toolkit for Malaysia has been identified as a necessary reference for Management Unit-level HCV assessments. Specifically, the HCV Toolkit for Malaysia provides an overview of practical guidance available to forest managers and other stakeholders to identify, manage, and monitor HCVs in Malaysia as specified by various national and international standards for management of forests and other resources. There is an ongoing initiative to update the currently available High Conservation Value Forests (HCVF) Toolkit for Malaysia, First Edition (2009).

### **Indigenous Peoples' and local communities' land rights**

On the issue of land rights, Malaysian Court rulings over land claims have resulted in significant gains by indigenous land rights claimants to territories, gaining recognition that traditionally claimed lands could not be superseded by the State's interests unilaterally without due compensation or reparations. However, sustained challenges from the various government agencies on these claims still result in conflicts between authorities and communities who do not have land titles in the strictest sense. At a values-level, FSC Principles 3 (Indigenous Peoples' Rights) and 4 (Community Relations) clearly demands legal and customary rights as well as ownership be identified and upheld, and that may contradict or conflict with the prevailing policies and practices of State governments and rights given to Management Units across Malaysia.

### **ILO Core Labour Conventions**

The Malaysian economy is highly dependent upon foreign workers supplementing the local workforce. In forestry and plantation operations the employment of foreign workers does not deviate from national patterns, due to the nature of their labor-intensive production system. Some labor practices in Malaysia may be contravening the ILO Core Conventions.

### **Free, Prior and Informed Consent**

Requirements for consultation and attainment of consent from affected communities are critical for FSC certification. The definition, scope and requirements under FSC certification require recognition and protection of these rights by Management Units seeking certification. The FSC standards has an expansive approach in recognising these rights, including guidance on consultation and consent procedures, which may be further-reaching than standard practices in Malaysia. Thus, fulfilling relevant FSC criteria may be challenging for some Management Units. Current available guidelines (and ongoing initiatives) for the implementation of the right to FPIC may need to be consolidated for its application in the context of Malaysia.

### **Forest conversion and FSC's 1994 cut-off rule**

FSC Criteria 6.9 and 6.10 (on forest conversion) could be contradicting State policies on forest conversion resulting in the ineligibility of Management Units that were responsible for post-1994 conversions for FSC certification. National interpretation of these particular criteria has been challenging, limited by the fact that any changes at criterion-level require the approval of the FSC General Assembly (GA).

Globally, Motion 12, passed at the FSC GA 2014 asks FSC to: “fast-track the implementation of Motion 18 from FSC GA 2011 to create a chamber-balanced process to consider challenges and opportunities related to restoration and conversion. This will include: a) how to address the “ownership loophole” in Criterion 6.10, b) what does an organization that has converted post-1994 need to do to be able to be certified, and c) how to deal with subsistence conversion by communities.” The proposers of Motion 12 also found that “given growing pressure on land and the continuing expansion of plantations around the globe, particularly in developing countries, FSC faces a challenge.” Currently, the M12 Working group (WG) is working on proposing potential solutions to the question of “What does an organisation, that has established plantations on areas converted from natural forests between 1994 and the present, need to do to qualify for certification?” In addition, the M12 WG is also working on proposing conditions for certification of areas converted in the future.

Meanwhile during national FSC standards development, the NSDG continues to discuss this important issue amongst relevant stakeholders with the objective of finding practical solutions for Malaysia and providing stakeholder feedback to the ongoing M12 WG process.