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From: Malory Weston <mwe@nepcon.net>
Sent: Friday, 15 January, 2016 5:00 PM
To: cheah@mtcc.com.my
Subject: Feedback on the Malaysian Criteria and Indicators for Forest Management Certification (Natural Forest)
Attachments: MTCS Feedback-form-First-public-comment_Dec2015-NEPCon_15Jan2016.pdf

Dear Mr Cheah

Please find attached some comments on the Malaysian Criteria and Indicators for Forest Management Certification (Natural Forest), provided by Nature Ecology and People Consult Sdn Bhd as part of MTCC's First Public Comment process.

We appreciate the opportunity to provide feedback on the Criteria and Indicators, and look forward to further involvement in the future, should that be appropriate.

Sincerely

Malory

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for Nature Ecology and People Consult Sdn Bhd

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First Public Comment
(Please submit by 15 January 2016)

Feedback Form

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Dear Mr Cheah,

**Review of the Malaysian Criteria and Indicators for Forest Management Certification (Natural Forest):
First Public Comment (16 November 2015 – 15 January 2016)**

With reference to your letter dated 16 November 2015, we would like to provide the following comments on the MC&I(Natural Forest) on behalf of Nature Ecology and People Consult Sdn Bhd. We appreciate the opportunity to provide input and feedback on the Criteria and Indicators.

1) General Comments:

It is not clear from the definition of verifiers in Appendix III whether or not they are mandatory.

In several indicators, the phrase is missing a verb, so the requirement is not clear and different interpretations are therefore possible.

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2) Specific Comments:

Principle / Criterion / Indicator / Verifier	Proposal for amendment / deletion / addition	Reasons for proposed amendment / deletion / addition
1.1	Change "Forest management shall comply with all applicable federal, state and local laws and administrative requirements" to "The Organization shall comply with all applicable federal, state and local laws and administrative requirements"	Given it is the Organization that is undertaking forest management actions, it seems reasonable to change the wording to reflect this. However, it is helpful to stipulate the focus on forest management: reading Indicator 1.1.1, where it says "(...) in particular those, related to forest management", it seems that the condition is that all legal requirements are complied with; which makes sense because it is not clear if activities – such as (for example) having legal contracts for workers or paying taxes on timber – are considered part of forest management.
1.1.1	Change "Records and availability of up-to-date applicable federal, state and local laws, and regulations and policies, in particular those related to forest	'Compliance' is a key component of the Criterion but is not included in any of the indicators.

	management” to “Demonstration of a record of compliance with up-to-date applicable federal, state and local laws, and regulations and policies, in particular those related to forest management”.	
1.1.3 (general comment)	Change “Record of violations and actions taken to address them” to “Record of violations and actions taken to address them shall be maintained”	In several indicators, the phrase is missing a verb, so the requirement is not clear and there can therefore be different interpretations, e.g. between the certificate holder and the certifier. At the very minimum the wording shall be consistent (see e.g. 1.1.2 or 1.2.2 vs 1.1.1 or 1.1.3).
1.4.2	Change “Forest managers are willing to participate in any process to resolve such conflicts that may arise with the affected parties” to “Forest managers are actively participating in any process to resolve such conflicts that may arise with the affected parties”.	‘Willingness’ is difficult to audit objectively.
1.5.2	Change “Control of encroachment, illegal harvesting, hunting, and settlement, and other unauthorised activities in the FMU” to “FMUs shall be protected from encroachment, illegal harvesting, hunting, and settlement, and other unauthorised activities”.	The Criterion specifies that the FMUs are to be protected from the specific activities – whereas as currently written the activities may be controlled to some degree, however the FMU may not be (completely) protected.
1.6.2	Change “Policies or statements are communicated throughout the organisation and contractors, and are made available to the public” to “Policies or statements are communicated throughout the organisation and to contractors, and are made available to the public”.	Meaning is clearer with addition of ‘to’.
2.2.2	Change “Forest managers shall recognise, respect and collaborate with holders of duly recognised legal or customary tenure or use rights within relevant federal, state and local laws, in activities that may affect such rights” to “With respect to activities that may affect such rights, forest managers shall recognise, respect and collaborate with holders of duly recognised legal or customary tenure or use rights within relevant federal, state and local legal jurisdictions”.	Subject is split within sentence and the meaning is difficult to follow as written.
2.1.1, 2.2.1, 3.3.1	Refer 2.2.2 above.	Similar wording is included in these indicators which may be more readily understood if modified (i.e. inclusion of “... legal jurisdictions of the FMU...”).
2.1.2 (or new Indicator 2.1.3)	Change “Forest managers shall support legally recognised mechanisms for resolving land claims” to “Forest managers	Criterion 2.1 mentions customary rights, and these are not always included in the legally recognized

	shall actively engage in solving land claims and support legally recognised mechanisms for resolving land claims”	mechanisms; so the forest manager may need to go beyond that (this approach would also be more consistent with 2.2.1 and 2.2.2).
2.3.1 (or add new Indicator). Applicable also to others, please check (e.g. 3.1.3, 3.3.1, 3.3.2, 3.4.1, 3.4.2, 4.1.4, 4.2.2, 4.3.4, 5.4.1, 7.2.2...)	Change “Availability of appropriate mechanisms to resolve disputes over tenure and use rights” to “Availability and records/ demonstration of use of appropriate mechanisms to resolve disputes over tenure and use rights”	Having the system does not imply that it is used: the Criterion says “...employed”. Otherwise all can be responded to with documentation, but not be followed by actual implementation.
4.1.1 (and other as 6.1.1, 8.1.1, 8.1.2, etc.) and Appendix III		Define scale and intensity for a more objective audit.
5.1.1	Indicator reads “Investments and reinvestments are made in forest management, including for forest administration, research, human resource development, protection, economic, conservation, environmental and social aspects, consistent with the tenure of the FMU.”	Presumably ‘protection’ refers to the forest/ FMU but it is ambiguous as written.
5.2.1 (Similar issue for 5.4.1)	Change “Quantity of timber and non-timber forest products extracted” (verifier) to “Quantity and types of timber and non-timber forest products extracted”.	In this context, suggest that product types/ diversity are also relevant.
5.3.3	Change “Regular training shall be conducted for the staff on techniques of reduced-impact logging” to “Regular training shall be conducted for the staff on techniques of reduced-impact logging and waste minimisation”.	The Criterion focuses on waste minimisation as well as damage avoidance.
5.5.1	Add reference to water catchments/ watersheds to Indicator: “Implementation of guidelines and/or procedures to identify and demarcate sensitive areas for the protection of soil and water, watercourses and wetlands”.	Suggest also that verifiers may not include the requirements of the Indicator, e.g. Forest Management Plans may not include guidelines and/or procedures to identify and demarcate sensitive areas for the protection of soil and water etc.
6.1.1	Change “Environmental impact assessments are carried out, including landscape level considerations, as well as the impacts of on-site processing facilities, appropriate to the scale and intensity of forest management, prior to commencement of forest operations in the FMU” to “Environmental impact assessments are carried out, including landscape level considerations, as well as the impacts of on-site processing facilities, appropriate to the scale and intensity of forest management and uniqueness of the affected resources, prior to commencement of forest operations in the FMU”.	This aspect of the Criterion has not been included in any of the indicators.

6.2.1	Change “Availability and implementation of guidelines to identify and protect endangered, rare and threatened species of forest flora and fauna, including features of special biological interest such as seed trees, salt licks, nesting and feeding areas in the FMU” to “Availability and implementation of guidelines to identify and protect endangered, rare and threatened species of forest flora and fauna and their habitats, including features of special biological interest such as seed trees, salt licks, nesting and feeding areas in the FMU”.	Criterion mentions flora and fauna <i>and their habitats</i> – not included in any of the indicators.
6.2.3	Change “Existence of cooperation between forest managers, and conservation organizations and regulatory authorities in implementing conservation and management activities” to “Existence of cooperation between forest managers, conservation organizations, communities and regulatory authorities in implementing conservation and management activities”.	Community members and community groups are often important partners in conservation and management activities.
6.2.4	Add ‘trapping’ to Indicator.	Criterion includes ‘trapping’ as an activity that shall be controlled; yet it is not included in any of the indicators.
6.2.5	Add training records to verifiers	Given forest workers shall be aware of RTEs, forest organizations will presumably be carrying out training activities; and training records should therefore be a good verifier.
6.3	Includes reference to <i>natural cycles</i> in indicators.	The Criterion includes <i>natural cycles</i> as one of three functions and values to be maintained, enhanced or restored; yet it is not mentioned in any of the indicators. Also, for Sabah, permanent sample plot records are mentioned as a verifier. These are not included for either PM or Sarawak (yet these jurisdictions apparently have PSPs as they are listed as verifiers for Indicator 8.2.1); suggest they could be included as verifiers for 6.3 for the other two jurisdictions.
6.4	Modify wording of Indicator to include requirement for recording of information on maps.	The Criterion specifies that representative samples of existing ecosystems ... shall be protected ... and <i>recorded on maps</i> ; yet none of the Indicators includes this requirement.
6.5	Modify wording of indicator(s) to include reference to control of erosion, and “all other mechanical disturbances”.	Criterion specifies these requirements; yet none of the indicators includes them (at least

		not 'holistically' as described in the Criterion).
6.6	Change "Forest manager shall adopt, where possible, environmentally friendly non-chemical methods of pest management, and strive to avoid the use of chemical pesticides. World Health Organization Type 1A and 1B and chlorinated hydrocarbon pesticides; pesticides that are persistent, toxic or whose derivatives remain biologically active and accumulate in the food chain beyond their intended use; as well as any pesticides banned by international agreement, shall be prohibited. If chemicals are used, proper equipment and training shall be provided to minimise health and environmental risks" to "Forest manager shall adopt environmentally friendly non-chemical methods of pest management, and strive to avoid the use of chemical pesticides. World Health Organization Type 1A and 1B and chlorinated hydrocarbon pesticides; pesticides that are persistent, toxic or whose derivatives remain biologically active and accumulate in the food chain beyond their intended use; as well as any pesticides banned by international agreement, shall be prohibited. If chemicals are used, proper equipment and training shall be provided to minimise health and environmental risks".	"Where possible" is not objectively auditable.
6.6.2	Change "Availability and implementation of guidelines and/or procedures on the use of chemicals in the forest approved by relevant regulatory authorities" to "Availability and implementation of guidelines and/or procedures relating to the use in the forest of chemicals approved by relevant regulatory authorities – as well as proper equipment and training – to minimise health and environmental risks".	The added parts are from the Criterion but were not reflected in the indicators.
6.6.3	Add reference to personal protective equipment (PPE) in this Indicator; and possibly cross-reference to appropriate P4 indicators.	PPE is critical to use of (approved) chemicals in the forest.
6.6, new Indicator 6.6.4	Add 6.6.4 World Health Organization Type 1A and 1B and chlorinated hydrocarbon pesticides; pesticides that are persistent, toxic or whose derivatives remain biologically active and accumulate in the food chain beyond their intended use; as well as any pesticides banned by international agreement, shall be prohibited.	This part of the Criterion is not reflected in any of the indicators. Likewise, the Criterion requires that FMUs strive to avoid the use of chemical pesticides.

	Likewise, “strive to avoid the use of chemical pesticides” implies that forest management organisations will prepare a plan for reduction of chemical pesticide use and implement it over a period of time.	
6.7.1	Change “Oil, fuel, tyres, containers, liquid and solid nonorganic wastes, shall be disposed of in an environmentally appropriate and legal manner” to “Oil, fuel, tyres, containers, liquid and solid nonorganic wastes, shall be disposed of in an environmentally appropriate and legal manner at off-site locations”.	The Indicator does not include all the elements of the Criterion. It is also not clear to whom the requirement applies.
6.9.1	Change “Document, control and monitor on the use of exotic species to avoid adverse ecological impacts. Preference shall be given to native species in enrichment planting” to “Forest managers shall document, control and monitor the use of exotic species to avoid adverse ecological impacts. Preference shall be given to native species in enrichment planting”.	It is not clear as written to whom the requirement applies.
7.1.1	Change “Availability and implementation of Forest Management Plan“ to “Availability and implementation of Forest Management Plan that includes at least a) Management objectives. b) Description of the forest resources to be managed, environmental limitations, land use and ownership status, socio-economic conditions, and a profile of adjacent lands. c) Description of silvicultural and/or other management system, based on the ecology of the forest in question and information gathered through resource inventories. d) Rationale for rate of annual harvest and species selection. e) Provisions for monitoring of forest growth and dynamics. f) Environmental safeguards based on environmental assessments. g) Plans for the identification and protection of rare, threatened and endangered species. h) Maps describing the forest resource base including protected areas, planned management activities and land ownership. i) Description and justification of harvesting techniques and equipment to be used”.	The Indicator does not include all the requirements of the Criterion.
8.3.1	Modify wording of Indicator from “Forest managers shall provide relevant documents for identifying all forest products leaving the area to be certified so that their origin could be easily	To allow Chain of Custody requirements to include volume as well as source data.

	determined” to “Forest managers shall provide relevant documents such that all forest products leaving the certified area can be identified (including volumes and types) such that their origin may be readily confirmed”.	
9.3.1	Modify Indicator to include reference to precautionary approach.	Precautionary approach is specified in the Criterion yet this element is not included in the indicators.

Minor proposed changes

Table of Contents Compliance with Laws and Principle Indigenous People’s Rights Community Relations and Worker’s Rights Maintenance of High Conservation Value Forest	[To match section heading, and/or to correct as written] Compliance with Laws and Principles Indigenous Peoples’ Rights Community Relations and Workers’ Rights Maintenance of High Conservation Value Forests
4.1.1: wording	Suggest either delete ‘that’ or insert ‘are’, i.e. “social programmes commensurate...” or “... social programmes that are...”.
4.3.2: word appears to be missing	Suggest “Provisions for workers <i>include</i> the right...”
5.5.2: first verifier for PM	The wording “... where appropriate is implemented” – whereas the verifiers elsewhere in the document do not include these ‘action’ words.
5.6.1: third verifier	Word appears to be missing (should read “... to be...”)
6.1 Criterion	“integrate” should read “integrated”

Thank you.

Yours sincerely



Malory Weston

on behalf of Nature Ecology and People Consult Sdn Bhd

Date: 15 January 2016

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