

Note from the Biodiversity and HCV Working Group to the RSPO Complaints Panel:

In accordance with the RSPO Principles & Criteria (P&C), RSPO palm oil producer members are required to have completed HCV assessments of their land holdings prior to any land clearance after November 2005. The intention is that areas of land under the control of RSPO member growers which contain or support HCVs is not, or has not been, cleared for planting after this date.

The Certification Systems rules of the RSPO require proof of compliance with this across all land holdings that a member manages and/or is linked to by a majority holding. (Refer to Certification Systems Document clause 4.2.4)

Failure to have conducted an HCV assessment prior to land clearing on any such land is potentially therefore a barrier to certification and ultimately a barrier to continuing RSPO membership.

Due to the problems associated with the introduction of the HCV framework and a lack of capacity to assess HCVs there is a possible widespread non-compliance with this requirement. In light of this the RSPO has decided that cases of a failure to conduct an HCV prior to land clearance after November 2005 will be open to review by the RSPO and the possibility of compensation by the member. If members voluntarily disclose such cases to the RSPO and are willing to enter into compensation then it is the view of the BHCVWG that such cases should not be treated as complaints. It may also be possible that such cases are raised with the Complaints Panel of the RSPO in which case they can be referred to the BHCVWG. If a compensation proposal is then accepted by the RSPO and proves to be successful in delivering the planned conservation and social benefits then the BHCVWG will recommend to the Complaints Panel that such cases can be considered as 'closed for monitoring' in relation to the identified issues.

To help the Complaints Panel to decide how to deal with such cases the BHCVWG has developed the following note:

The decision to develop Compensation and Remediation procedures was taken to address a very specific problem of the failure to conduct HCV assessments prior to land clearance after November 2005. It has not been designed to address all the possible failures by members to protect, manage and enhance HCVs as is required under the P&Cs. Therefore the BHCVWG would like to communicate to the Complaints Panel which complaints to the Complaints Panel involving potential and/or actual losses of HCV it intends to accept as potential Compensation Cases and which it will not.

1. Cases where no HCV assessment was conducted prior to land clearance after November 2005 will be accepted as potential Compensation Cases. These will include:
 - a. Land cleared after November 2005 which was or is under the control and/or management of RSPO members at the time when it was cleared;
 - b. Land cleared after November 2005 which was or is under the control and/or management of non-members at the time who are wishing to join the RSPO;
 - c. Land cleared after November 2005 under the control and/or management of non-members at the time and being or having been acquired by RSPO members.

2. Cases where HCV assessments were conducted prior to land clearance after November 2005 and where known and identified HCVs and/or HCVAs were subsequently damaged by the member during land clearance and any subsequent operations will NOT be accepted as potential Compensation Cases.

The following cases will not automatically be accepted as potential Compensation cases but may be treated as such under certain circumstances and the Complaints Panel should raise them with the BHCVWG on a case-by-case basis:

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

In cases 3 and 4 may not be treated as per the current Compensation procedures and the BHCVWG reserves the right to vary the calculation of the compensation liability as well as the requirements to compensate for that liability depending on the merits of each case.