

The Accountability Framework

Operational Guidance on Environmental Restoration and Compensation

DRAFT FOR WORKSHOPPING
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The Accountability Framework initiative (AFi) is developing a common framework to guide the setting, implementation, and monitoring of supply chain commitments. As part of the Accountability Framework, this draft document represents a working consensus of the AFi partners as well as input from prior consultations involving stakeholders from the private sector, civil society, and government. The partners are sharing this draft publicly and inviting feedback from all interested parties to further build and refine the Framework in a way that reflects the needs and perspectives of those working to bring about responsible supply chains and positive outcomes for people and nature. Based on this consultative process, version 1.0 of the Accountability Framework will be published in early 2019.

For more information, or to provide input during the present workshopping process, please visit <https://accountability-framework.org> or send an email to contact@accountability-framework.org

DISCLAIMER: This work product is intended to be advisory only and is not intended to serve as a legal opinion or legal advice on the matters treated. The reader is encouraged to engage counsel to the extent required.

PURPOSE & SUMMARY

This Operational Guidance elaborates on the Accountability Framework's [Core Principle 6](#) to describe how companies should address environmental restoration and compensation related to their deforestation-free and conversion-free commitments.

This document addresses the following topics:

1. Company responsibility to provide environmental restoration or compensation
2. Determining when environmental restoration or compensation are needed
3. Parameters for effective environmental restoration or compensation

This document relates closely to the *Operational Guidance on Remediation and Access to Remedy*, which addresses remediation in the context of human rights (including when deforestation or conversion result in co-harms to human rights) and provides guidance on effective grievance mechanisms. It also links closely to the *Operational Guidance on Supply Chain Management*, which outlines how companies should identify and manage instances of non-compliance, some of which may require restoration.

1. Company responsibility to provide environmental restoration or compensation

As stated in [Core Principle 6.2](#), companies are expected to provide for or cooperate in providing fair and just remedy in the case of adverse impacts to human rights or the environment. In the case of deforestation, conversion, and loss of associated conservation values as a result of commodity production, fair and just remedy requires taking effective action to restore the given ecosystem or values to their prior condition or providing suitable compensatory restoration or conservation of similar ecosystems or values.

While this Operational Guidance focuses on what should be done in the event that restoration or compensation is required, companies must prioritize avoiding destruction or degradation in the first place, as specified in [Core Principle A](#). Especially in the tropics, restoring natural ecosystems to a condition approximating the one that existed prior to conversion or large-scale clearance or degradation is generally not possible given the timescale associated with restoring high levels of biodiversity and the slowness of natural succession processes. Nor does compensation provide full remedy for the lost values associated with conversion. Therefore, the expectation to provide effective remedy for environmental harms should not be considered as an alternative to taking a preventive and precautionary approach. The primacy of ecosystem protection over restoration or compensation (i.e., the mitigation hierarchy) is a well-accepted principle of environmental management.

Given the scope of the Accountability Framework, this section focuses on restoration or compensation due to deforestation, conversion of other natural ecosystems, and similar impacts (e.g., conversion or severe degradation of areas harboring High Conservation Value [HCVs]). The guidance does not directly address remedy for other environmental harms, such as those related to pollution, except insofar as they are consequences of deforestation or conversion. In the case of environmental harms that also result in adverse impacts to human rights, requirements for remedy of human rights impacts also must be followed, as described in the *Operational Guidance on Remediation and Access to Remedy*.

Remedy for deforestation or conversion may take several different forms, including on-site restoration of the ecosystem that was destroyed or severely damaged or off-site restoration or compensation for the lost/damaged ecosystem and its associated values.

2. Determining when restoration or compensation are needed

In some situations, the requirements for restoration or compensation are clearly specified through legal or voluntary frameworks, for instance:

- When the responsibility to remedy environmental harm is required under an applicable law, the company must, at a minimum, follow the defined requirements and practices specified in that law.
- When the company participates in a voluntary initiative or system that specifies policies and procedures for restoration or compensation (e.g., the RSPO Remediation and Compensation Procedure), the company should comply in good faith with the stated requirements.

In situations where there is not an applicable legal or voluntary framework governing the scope and scale of the required restoration or compensation activities, companies are expected to conduct or support restoration or compensation when the following four conditions exist:

1. deforestation or conversion has occurred, in violation of the company's supply chain commitment, and
2. the deforestation or conversion is more than a trivial amount, and
3. the deforestation or conversion took place after the applicable cutoff date (see *Operational Guidance on Cutoff Dates*), and
4. the company caused or contributed to the deforestation or conversion (including through its supply chain), or assumed responsibility to restore or compensate for such deforestation or conversion from the prior owner or manager in accordance with [Core Principle 6.4](#).

Guidelines for effective restoration or compensation in these cases are outlined in the following section. . These guidelines should also be followed in the event that the company is subject to an existing law or standard that is weaker than the approach outlined here.

With respect to smallholder producers, companies should keep in mind that the ability of smallholders to restore or compensate past deforestation or conversion may be constrained by a variety of factors that are unique to, or more pronounced in, their situations. For instance, smallholders that depend for their livelihood on farms that are non-compliant with company deforestation-free commitments may face economic ruin if they are forced to abandon this land. On the other hand, partial restoration through planting native shade trees (e.g., in agroforestry systems) or diversifying production systems can benefit smallholder livelihoods while providing context-appropriate restoration for prior conversion. See the *Operational Guidance on Smallholder Inclusion in Ethical Supply Chains* for more information about assessment, management, and remediation for non-compliance in smallholder contexts.

3. Parameters for effective environmental restoration and compensation

Environmental restoration or compensation plans should be developed, implemented, and monitored using a process that is inclusive, participatory, and technically sound for the specific context in which they are being implemented. This will often require the involvement of technical experts (e.g., ecologists familiar with the ecosystems that need to be restored) as well as interested stakeholders (e.g., indigenous peoples and local communities familiar with the affected areas, as well as other interested parties). An effective restoration or compensation process typically includes the components outlined in the following four sub-sections.

3.1 Determining what needs to be restored or compensated

An assessment should be carried out to determine what was lost or damaged, considering the four conditions outlined in Section 2, above. This assessment should document both the quantity of the loss (e.g., hectares of

natural ecosystems lost or damaged) and the qualities and values that were lost (e.g., ecosystem values and functions, specific elements of biodiversity such as individual species or species assemblages, landscape connectivity, etc.).

Generally, at a minimum, the land area restored or compensated should be at least as large as the land area destroyed or severely damaged and the restoration or compensation activities should provide 'like-for-like' benefits as remedy for the lost or damaged environmental values. If the areas that were deforested or converted were of high conservation value and the available restoration or compensation areas would be of significantly lower conservation value in the near term, then a ratio of more than one unit of restoration/compensation area for each unit of converted area may be warranted. Some laws and standards also specify ratios of greater than 1:1; these should be followed where applicable.

3.2 Determining the most appropriate approach(es) for addressing environmental harm

Correcting for past environmental harm generally takes one of the three following forms:

1. **On-site restoration**, where actions are taken to restore the area that was deforested or converted or very similar nearby areas on the same site.
2. **Off-site restoration**, by means of a one-off project or arrangement in partnership with another company, organization, land owner/manager, or community, where actions are taken to restore or protect areas that are similar to and near the area that was deforested or converted. This should ideally take place very near to the area that was deforested or converted, or, if that is not feasible, then within the same landscape.
3. **Off-site compensation**, whereby the company supports an established conservation or restoration project that provides conservation benefits to compensate for those lost as a result of the deforestation or conversion.

Selection of the most appropriate approach(es) in each given case should be based on the ability to best ensure clear, secure, long-term protection of natural ecosystems and their associated conservation and human values. This will vary depending on the geographical, legal, social, and ecological contexts as well as the available options for the company and other parties to implement and manage restoration or compensation efforts. All these factors should be considered together when determining the most appropriate approach. For example, on-site restoration may lead to improved management on the company's own lands and may have the advantage of secure land tenure and a stable funding source from the company managing the site. On the other hand, if on-site restoration is likely to result in fragmented habitat patches of modest conservation value, then the same level of restoration investment might yield greater incremental benefit if directed toward an off-site compensation activity.

3.3 Designing and implementing the chosen approach(es)

The chosen approach(es) should be designed in accordance with good practices for restoration and compensation. There are numerous useful guidelines available that companies and their advisors can consult when planning and designing environmental restoration and compensation efforts. Following is a set of widely-applicable principles that should be applied in all cases:

1. Design needs to consider the **landscape** in which the restoration or compensation activities are to occur, targeting sites and activities that are conservation priorities while avoiding land conflicts and considering social and cultural values. The design should specifically address ecological, social, legal, and governance considerations.
2. Site selection, project design, and activities need to provide 'like-for-like' **equivalence**, where the lands and values that are restored or conserved are of a similar type and of equivalent or greater value to

what was lost. For instance, if peatland was converted then peatland should be rehabilitated, restored, or conserved to provide like-for-like remedy of the environmental harm.

3. Projects should provide **additionality**, meaning that they need to deliver conservation or restoration benefits that exceed the status quo or business-as-usual scenario. For instance, they must be additional to conservation efforts that are already planned, are required by law, or are likely to manifest as a result of usual expected processes of ecological succession. On the other hand, if natural ecosystems of conservation value are under imminent threat of destruction or degradation, then effective actions to protect these ecosystems may legitimately be considered to provide additionality.
4. Outcomes should be **long-lasting (and ideally permanent)**, through secure, long-term tenure agreements, financing, management arrangements, and monitoring.
5. Outcomes should be **equitable**, considering the effects both of the original deforestation or conversion and of the proposed activities on different groups of affected persons. The restoration or compensation activities should provide effective remedy to persons and groups whose rights have been harmed by the deforestation or conversion. To arrive at equitable outcomes, affected stakeholders need to be involved in the planning, design, implementation, and monitoring of the restoration/compensation efforts, and free, prior, and informed (FPIC) consent must be sought when required (see the *Operational Guidance on Remediation and Access to Remedy* as well as the *Operational Guidance on Free, Prior, and Informed Consent* and the *Operational Guidance on Respecting Rights of Indigenous Peoples and Local Communities*).
6. Efforts must assess and address any **human rights impacts (co-harms)** resulting from the environmental harm.
7. Restoration and compensation strategies and activities need to be **knowledge-based**, drawing on the knowledge of relevant technical experts, traditional knowledge, and stakeholder input.
8. Design and implementation should specify **effective management arrangements**, including who will implement the restoration/compensation effort, who will provide oversight, what kinds of legal approvals or instruments are needed, how and by whom the areas will be managed, the budget for implementation and long-term management and how these funds will be secured, and other elements necessary to ensure long-lasting benefits.

When off-site compensation approaches are used, in addition to the principles outlined above, appropriate social and environmental safeguards to protect human rights and key environmental value should be followed. Safeguards of these kinds are incorporated into some existing compensation schemes (e.g., requirements for sanctioned RSPO compensation projects¹).

When restoration approaches are used (whether on the site where deforestation/conversion occurred or a nearby site), in addition to the principles outlined above, the following factors should be considered:

- If possible, similar values to those that were lost or damaged should be restored (i.e., the like-for-like equivalence principle). This does not necessarily mean that the exact land areas that were converted or damaged are the ones that need to be restored: restoration plans can seek to achieve greater improvements in conservation value (e.g., through development of biological corridors) with potentially with lower opportunity costs (e.g., by restoring environmentally sensitive areas of marginal productivity).
- Restoration should use native species, seek to accelerate natural regeneration and succession as much as possible, and restore pre-existing hydrological conditions (i.e., water flow and quality) where these are essential to the restoration of ecosystems (such as peatlands and other wetlands).

¹ See <https://www.rspo.org/certification/remediation-and-compensation>.

- Climate change projections and impacts should be considered to help ensure that the values that are being restored are likely to remain viable in the long term in view of changing weather patterns, fire and moisture regimes, and other environmental factors. Designs should consider that larger and more ecologically intact sites are generally more resilient to climate change effects than areas that are smaller, more fragmented, and more degraded.

3.4 Documentation, monitoring, verification, and information disclosure

The design of the restoration or compensation activity should include a monitoring and reporting program that is implemented over the lifetime of the project. Specifically:

- During the project initiation phase, the company should clearly document and make publicly available its restoration/compensation plan, including information on:
 - description of the areas and values that were lost and the corresponding restoration/compensation needs (with boundaries and associated calculations) – as per Section 3.1 above
 - selection and justification of the restoration/compensation approach(es) chosen, including the quantity and scope of restoration/compensation to be provided by each approach – as per the principles listed in Sections 3.2 and 3.3 above
 - goals, objectives, scope, timeline, and responsibilities for the restoration/compensation activity
 - how the principles for effective restoration or compensation outlined in Section 3.3 were considered and addressed
 - detail on the planned restoration/compensation activities, including at least the elements listed in item 8 of Section 3.3 above
 - if the restoration or compensation activity required the free, prior and informed consent of indigenous peoples or local communities, documentation of this process, its outcome, and how the outcome is reflected in the restoration/compensation plan (see the *Operational Guidance on Remediation and Access to Remedy* and the *Operational Guideline on Free Prior, and Informed Consent*)
 - courses of action in the event that the restoration/compensation plan is not carried out as intended or the resulting restoration or compensation benefits are significantly less than those anticipated by the plan
- Independent monitoring of project implementation, outcomes, and impacts relative to the restoration/compensation plan should be conducted. Monitoring results should be made publicly accessible.

Invitation for input

The Afi partners welcome input on the draft approach to environmental restoration and compensation described above. Especially for companies and other organizations involved in restoration and compensation efforts related to past deforestation or conversion, feedback is sought in the following questions:

- What restoration or compensation practices, tools, and methods do you already use?
- Where are the key gaps in guidance and expectations regarding when and how companies need to correct for past deforestation, conversion, or other environmental harms (e.g., loss of or damage to HCVs)?
- What additional guidance on this topic, if any, would be most helpful for the Accountability Framework to include?