



Response to UK Government Consultation on “Due diligence on forest risk commodities”

With reference to the UK Government’s proposal which can be accessed here: https://consult.defra.gov.uk/eu/due-diligence-on-forest-riskcommodities/supporting_documents/duediligenceconsultationdocument.pdf

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The Wildlife Conservation Society saves wildlife and wild places worldwide through science, conservation action, education, and inspiring people to value nature. Our mission is to conserve the world’s largest wild places in 14 priority regions, home to close to 50 percent of the world’s biodiversity and over 300 million of the world’s poorest and most vulnerable communities. We envision a world where wildlife thrives in healthy lands and seas, valued by societies that embrace and benefit from the diversity and integrity of life on earth.

WCS manages an extensive network of offices and field sites in nearly 60 countries and operates the largest system of wildlife parks in the United States, led by the flagship Bronx Zoo, that attracts over 4 million visitors each year. Throughout our global country programs, we build capacity and support through critical partnerships with Indigenous communities, local decision-makers, regional stakeholders, and governments to have a lasting impact. We remain committed to the planet’s most important, ecologically intact places with the greatest biodiversity and resilience to climate change. As the world’s premier wildlife conservation organization, WCS has a long track record of achieving innovative, impactful results at scale. We build on a unique foundation: our reach is global; we *discover* through best-in-class science; we *protect* through work on the ground with local and Indigenous Peoples; we *inspire* through our world-class zoos, aquarium, and education programs; and we *leverage* our resources through partnerships and powerful policy influence.

Summary

WCS welcomes and applauds the Government’s proposal to create legislation that requires businesses to consider and mitigate their global deforestation footprint. However, by focusing on legality alone, the current proposal falls short of what is required to make a substantive impact on reducing deforestation, and is unlikely to substantively reduce the deforestation risk within commodity supply chains. As written, WCS is also concerned that this legislation may in fact have negative impacts on the rights of indigenous peoples and local communities, particularly in tropical forest countries, and may have unintended consequences for forests. However, with revision, there is an opportunity for this legislation to set a new global best practice standard that can drive significant positive impact within supply chains and substantively reduce deforestation and forest degradation globally. Below we outline our responses to the consultation, followed by some recommendations.

Answers to Consultation questions:

1. **Should the Government introduce legislation designed to make forest risk commodities more sustainable?**

Yes.

2. **Should it be illegal for businesses to use forest risk commodities in the UK that have not been produced in accordance with relevant laws?**
Yes – see comments for further detail.
3. **Should businesses in the UK be obliged to have a system of due diligence in place to ensure that the forest risk commodities they use have been produced in accordance with relevant laws?**
Yes – but see comments for further detail.
4. **Should businesses be required to report publicly on their system of due diligence?**
Yes
5. **Should the Government be able to levy fines against businesses that use forest risk commodities that have not been produced in accordance with relevant laws?**
Yes
6. **Should the legislation apply to larger businesses, over an employee number and turnover threshold, that use forest risk commodities in production or trade?**
Yes
7. **If you responded 'Other' to Question 6, please expand.**
See further comments for detail.
8. **Large businesses have existing obligations to report on climate and environment issues including in relation to net zero. To what extent are there opportunities to align the proposal set out in this consultation with businesses' reporting under existing international frameworks [e.g. the recommendations of the Taskforce on Climate-Related Financial Disclosures (TCFD)]?**
With the current focus on legality there are few opportunities to align this proposal with existing frameworks. However, if the scope extends to include sustainability (See below), frameworks such as the Accountability Framework Initiative and the Science Based Targets Network are highly relevant. The TNFD framework alone is inadequate for other environmental risks and nature beyond climate.

9. Do you have any further information or comments you would like us to be aware of?

Legality alone is insufficient: A focus on legality as the driving principle within the intended legislation will not achieve the Global Resource Initiative Taskforce stated aim of ensuring that UK's global commodity supply chain footprint on land, natural resources and ecosystems is *sustainable*, avoids deforestation and other environmental degradation. A legality centred approach also potentially risks damaging unintended consequences for human rights, livelihoods and intact forests. Our key concerns can be summarised as follows.

- i. *Local laws can be weak, unclear and change over time:* National legal frameworks often lack the necessary provisions to protect forests and the people depending on them for their livelihoods. Forest and environmental laws are often superseded or are in conflict with laws governing other sectors, often to the detriment of the environment. Environmental laws and policies are often the victim of changing political will, and are most often weakened to allow increased resource extraction¹. As demands for forest risk commodities rise, pressure to degazette, downsize or degrade legally protected forests will inevitably increase in most countries. A focus on legality may also risk rewarding countries with limited or ineffective legal protection, as they may be able to offer their goods to UK businesses more cheaply or in greater quantities than other countries, potentially incentivising UK companies to source products from places with the weakest

¹ Kroner R, Qin, S. et al. (2019). 'The uncertain future of protected lands and waters' *Science* 31 May 2019: 881-886

protection. This places an extra responsibility on the UK to define the standard it wishes to set with respect to forest risk commodities and deforestation, and to work with producer countries to meet this standard. Existing precedent has already been set with respect to other legal positions held by the UK Government, for example with due diligence related to modern slavery or anti-money laundering laws.

- ii. *The rights of indigenous peoples and local communities must be considered:* WCS urges the UK Government to consider and quantify the impact of the intended due diligence legislation on the human and customary rights, and livelihoods, of the indigenous peoples and local communities who play a crucial role in forest protection² and who may be adversely affected by the design of this legislation and its implementation. National legal protections for the rights of indigenous peoples in producer countries may fall far short of the standard desired. There is little to be gained by a push for a reduction in deforestation leading to human rights abuses in producer countries.
- iii. *'Legal' deforestation is a significant concern within supply chains:* 'Legal' deforestation is also a considerable issue and, as demands continue to rise for forest risk commodities in tropical forest nations, will likely represent a significant future source of deforestation risk. In Indonesia alone, 3.58 million ha of natural forest (almost 23 times the size of London) is allocated inside oil palm plantation concessions. Notwithstanding the fact that permit allocation processes for plantations such as these are themselves regularly the subject of legal scrutiny, a push for only 'legal' deforestation will in no way address deforestation risk within supply chains.
- iv. *Risks unintended consequences for forests:* There is a considerable risk that producer countries perceive the UK efforts to legislate against deforestation as a de-facto threat to national sovereignty, via the potentially negative impact on exports and by extension on smallholder farmers within affected supply chains. For example, a focus on legality alone may encourage countries to drop their legal standards to the lowest possible level, as they try to compete for market share with other countries with lower standards. This is of particular concern in some tropical forest countries with low levels of governance and enforcement. Additional feedback from WCS programs highlights the risk of possible post-hoc legalization of formerly illegal forest clearance (and potentially legalizing and legitimizing future forest clearance) in order to maintain smallholder production and domestic and/or export trade flows. WCS is concerned that the UK government's proposed approach will not be robust enough to identify, and then disincentivise or penalise this kind of outcome.
- v. *Does not create a level playing field for businesses:* One of the stated purposes of the legislation was to create a more level playing field for UK businesses. WCS's concern is that a focus only on legality will actually perpetuate a situation where already committed companies do significantly more to address deforestation than the legislation requires, and other companies continue to work to the bare minimum standard.

General comments:

Scope of the legislation should extend beyond legality to encompass 'sustainability': Given the widely held concerns about a legality focused approach to the due diligence legislation, it is likely to be clearer for

² Fa, J.E. Watson, J. et al. (2020). 'Importance of Indigenous Peoples' lands for the conservation of Intact Forest Landscapes'. *Front Ecol Environ* 2020; 18(3): 135– 140, doi:10.1002/fee.2148

businesses and for producer countries to consider setting the standard for the due diligence legislation as a requirement for “deforestation-free”, rather than ‘legal’. In implementing a ‘legality’ only approach, companies would in any case first have to identify where their supply chains were likely to be connected to deforestation risk, and only then would the company have to determine the legality of this risk. So the requirement for legality may well represent a more onerous and complex step than is actually needed to achieve the UK’s stated goal of making forest risk commodities more sustainable. As tools that increase supply chain transparency become more widely available and cost efficient to access, determining potential exposure to deforestation risk is relatively easily determined.

Consider a risk based approach to identifying and tackling deforestation: WCS supports a “risk-based due diligence” alternative³ – requiring businesses to determine and quantify the deforestation risks in their supply chains, to publicly disclose the findings, and to then put in place approaches to remove or mitigate these risks⁴. There are a number of benefits to this approach - current evidence demonstrates that deforestation risk is highly centralised into a very small number of sub-national jurisdictions, and a risk based approach would de-facto target company efforts to address deforestation risk directly towards the forest frontiers at highest risk of conversion. A risk based approach would also encourage and enable companies to engage with their supply chain to improve practices, rather than switching suppliers, which would contribute a more systemic impact across sectors and avoid the emergence of ‘two tier supply chains’ (where commodities for UK markets are sourced from low deforestation risk areas, with higher risk/recently deforested areas supplying other consumer markets). Lessons can also be learnt from WCS’s ‘mitigation hierarchy’ approach, which has also been used to understand and mitigate environmental risk within extractive projects and could similarly be adapted to consider and mitigate deforestation risk from commodities.

Scope of the legislation should extend to other natural ecosystems and all ‘risk commodities’, or be scalable to allow such an approach: The legislation should be scalable – enabling additional commodities or harms, particularly those related to extractives and development infrastructure, and covering different ecosystem types, to be added to the due diligence framework, thus enabling the development over time of a coherent, navigable set of obligations for business. There is also considerable value in aligning with comparable due diligence initiatives in the EU, that have a more holistic view on ‘sustainability’ and are considering the impact of supply chains on different ecosystem types. This alignment is important to reduce the costs of compliance for companies operating in both economic zones, and increase the efficacy of implementation – working in concert both laws are likely to have a cumulative positive impact on producer countries.

Scope of the legislation should include all businesses and their global footprint, and consider the role of the finance sector: The scope of the legislation should include the global footprint of UK based businesses, and should apply to all businesses, irrespective of size/turnover. This would encourage UK businesses to operate to the highest standards on avoided deforestation and forest degradation, wherever around the world they work. Current WCS research indicates that the risk in line with GRI taskforce recommendations, this legislation should also take into account the role of the finance sector in supporting companies who provide debt or other finance to supply chain companies trading in forest risk commodities in the UK. Existing principles, such as the IFC Performance Standard 6 and the Equator Principles can act as examples of best practice that may be useful in this context.

³ Also supported by FFI

⁴ There are parallels here with the approach taken within the EU conflict minerals law

Compliance and reporting: Irrespective of its final structure, WCS would welcome a clearer understanding of the review mechanisms that will ensure that the legislation is effective and credible. Where fines are used as a sanction against non-compliance, these must be present a sufficient deterrent to both smaller and larger companies found to be in contravention of the legislation. WCS also believes that fines (preferably as a percentage of turnover) are likely to be most effective if used alongside other sanctions, e.g. the suspension of company directors. WCS country programs have expressed concern that the use of fines alone may not act a sufficient deterrent to larger companies. To avoid 'tick box' reporting within the review mechanisms in place, companies should be required to complete statements outlining the steps they have taken to avoid deforestation within their supply chains.

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