

Roundtable on Sustainable Palm Oil (RSPO)
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Attn: RSPO Complaints Panel

Re: Response to May 2014 developments in our October 2012 case against member company PT Sisirau

30 May 2014

RSPO Overview (with a focus on the environment)

The stated (RSPO 2012d) goal of the RSPO is (with our emphases made in **bold** throughout this document) “**to promote the growth and use of sustainable palm oil through co-operation within the supply chain and open dialogue between its stakeholders.**”

Sustainable palm oil, per an RSPO FAQ document (RSPO 2012b), is defined as that being:

‘produced according to a set of environmental and social criteria defined by the Roundtable on Sustainable Palm Oil (RSPO). These 8 principles and 39 practical criteria have been in place since 2008 and define the sustainable production of palm oil. They ensure that fundamental rights of previous land owners, local communities, plantation workers, small farmers and their families are respected and fully taken into account, that no new primary forests or high conservation value areas have been cleared for palm oil production since November 2005, and that mills and plantation owners minimize their environmental footprint. When properly applied, these criteria help to minimize the negative consequences associated with conventional palm oil cultivation.’

The RSPO’s Overview Fact Sheet (RSPO 2013a) states as its organizational objective:

‘The Roundtable promotes palm oil production practices that help reduce deforestation, preserve biodiversity, and respect the livelihoods of rural communities in oil-producing countries. It ensures that no new primary forest or other high conservation value areas are sacrificed for palm oil plantations, that plantations apply accepted best practices and that the basic rights and living conditions of millions of plantation workers, smallholders and indigenous people are wholly respected.’

The RSPO speaks about the need for certification (RSPO 2012d), with specific mention of the RSPO brand serving as a guarantee of a sustainably harvested product that has not harmed the environment:

‘There is an ever-urgent need and growing global concern that products (agricultural as well as non-agricultural) are produced without undue harm to the environment or society. Obviously, the concerned consumer cannot verify himself whether any product on the supermarket shelf is responsibly produced. In gist, RSPO Certification is a seal of approval that the palm oil used in the product is indeed so produced and volumes are traceable. Producers are certified through strict verification of the production process, to the stringent RSPO P&C, by accredited certifying agencies and may be withdrawn at any time on infringement of the rules and standards. The certified sustainable palm oil (RSPO Oil) is traceable through the supply chain by certification of each facility along the supply chain that processes or uses the certified oil.’

With there also being mentioned (RSPO 2012d), the multiple values of said certification, and an explanation as to what is meant to make the RSPO different and better able to be trusted:

‘By and large, any one or anybody can certify anything, there being little legal restrictions on that, and, indeed, there are already a plethora of certificates and standards being awarded these days. The crux of the matter is the credibility and usefulness of the certification – basically, who will believe or use it. RSPO’s current members comprise

organisations, companies and individuals whose reputation decides their standing as global citizens. They produce about 40% of the world's palm oil and are processors or users of more than 30%. Key social and environmental NGOs lend their sighting to the processes for greater transparency and credibility. As all the members are bound to accept RSPO certification on each other, the value of the status is quite universal.'

'There are no guaranteed benefits to be had apart from the satisfaction of a job well done and that of being a responsible world citizen. **But there are environmentally and socially responsible buyers willing to pay a premium for responsibly produced products. Some of them have even foresworn dealing in non-certified products and only sourcing through traceable supply chains.** In short, any benefit would be for the mill or facility to accrue itself – as a responsible palm oil producer or supplier verified by RSPO.'

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'The Roundtable has set up two certification systems based on the RSPO P&C: one to ensure that palm oil is produced sustainably; and one to ensure the integrity of the trade in sustainable palm oil, **i.e. that palm oil sold as sustainable indeed corresponds with oil produced at certified plantations.** Both systems involve third-party certification bodies. Thanks to such rigorous certification systems, **oil processors and consumers can be sure that their products indeed contain or support sustainable palm oil.**'

The RSPO thus uses as arguably its most important guiding document, the Principles and Criteria for Sustainable Palm Oil Production (RSPO P&C), which consists of 8 principles and 39 practical criteria to define the sustainable production of the crop. The RSPO P&C are intended to (RSPO 2013a):

'ensure that fundamental rights of previous land owners, local communities, plantation workers, small farmers and their families are respected and fully taken into account, **that no new primary forests or high conservation value areas have been cleared for palm oil production since November 2005, and that mills and plantation owners minimize their environmental footprint.**'

Principle 5 regards 'Environmental responsibility and conservation of natural resources and biodiversity', with in terms of environmental stewardship in a plantation environment, the key issue being the conservation of any High Conservation Value (HCV) areas located within each concession. The RSPO uses as its definition of HCV (RSPO 2012a):

'natural habitats where these values are considered to be of outstanding significance or critical importance'; or 'simply the area (e.g. a forest, a grassland, a watershed, or a landscape-level ecosystem) **where these values are found, or, more precisely, the area that needs to be appropriately managed in order to maintain or enhance the identified values.** Identifying the areas where these values occur is therefore the essential first step in developing appropriate management for them.'

With there being 6 recognised categories of HCV (RSPO 2012a) that must be protected in any RSPO member plantation concession:

'HCV1: areas containing globally, regionally or nationally significant concentrations of biodiversity values (e.g., endemism, endangered species)

HCV2: areas containing globally, regionally or nationally significant large landscape natural habitats, contained within, or containing, the management unit, where viable populations of most if not all naturally occurring species exist in natural patterns of distribution and abundance.

HCV3: areas that are in or contain rare, threatened or endangered ecosystems.

HCV4: areas that provide basic services of nature in critical situations (e.g., watershed protection, erosion control).

HCV5: areas fundamental to meeting basic needs of local communities (e.g., subsistence, health).

HCV6: areas critical to local communities' traditional cultural identity (areas of cultural, ecological, economic or religious significance identified in co-operation with such local communities).'

The RSPO has prominently stated (RSPO 2012c) that it **'is committed to the conservation of primary forests and high conservation values (HCV) within the context of sustainably managed landscape'**, and cites these two criteria in support:

'Criterion 5.2

The status of rare, threatened or endangered species and high conservation value habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified and their conservation taken into account in management plans and operations.

Criterion 7.3

New plantings since November 2005, have not replaced primary forest or any area required to maintain or enhance one or more high conservation values.'

The RSPO acknowledges (RSPO 2014a; RSPO 2012b) that some in the oil palm industry have been irresponsible and caused destruction to the environment:

'In some regions, oil palm cultivation has caused – and continues to cause – deforestation. This means that land, which was once predominantly covered by primary forest (forest that has never been touched by man) or which housed protected species and biodiversity, was cleared in order to be converted into palm oil plantations.'

But goes on to state that:

'Despite widely-reported malpractices in the industry, a growing number of players in the palm oil industry have committed to adopting more sustainable practices. The result of this gradual transition is an increasing amount of palm oil in our products that has been produced and sourced in a sustainable manner.'

Thus suggesting that the reader associate the RSPO brand only with sustainably produced, well- and rigidly- defined, responsible palm oil.

Complaint case overview

On 29 October 2012, the Sumatran Orangutan Society (SOS) submitted a complaint (RSPO 2014b; SOS 2012) to the RSPO against member company PT Sisirau (RSPO 2014d), alleging that the latter, an oil palm plantation located in Aceh Tamiang, Sumatra, Indonesia, had (RSPO 2013b):

1. Cleared High Conservation Value (HCV) forest which was orangutan habitat within their concession area;
2. Continued forest clearance activities in the full knowledge that there were orangutans residing within the concession;
3. Failed to make their High Conservation Value assessment available for inspection, in contravention of RSPO Criterion 1.2;
4. Failed to comply with Criterion 5.1 and 5.2 by failing to do an HCV assessment prior to land clearing.'

PT Sisirau responded to our complaint with statements of denial, with the company having said this to the press (Mongabay.com 2012):

'When orangutans were first spotted on the plantation the company halted all clearing work until the orangutans could be safely and humanely be taken from the plantation.'

...

'Combined with the earlier sections of the story the clear implication of your article is that PT Sisirau do not follow sustainability guidelines in regards to endangered wildlife and in particular orangutans. This is certainly not the case and it should be pointed out that the company has an unblemished record on sustainability and corporate responsibility.'

...

'PT Sisirau are requesting that you amend or remove the offending article as soon as possible on the basis of the points made above. Also it should be pointed out that at no point were PT Sisirau offered a right to reply to this story and they reserve all rights to legal action.'

They also stated to the RSPO, in their response to an undated 2012 PT Sisirau document entitled "RSPO 8 point questionnaire on PT Sisirau-orangutan relocation":

'As soon as it was made aware to the company that there were orangutans on the plantation the company halted all field preparation work'

...

'We can provide signed statements from PT Sisirau staff to confirm that all work was halted pending the rescue of the orangutans.'

We provided photographic and video evidence to the RSPO in support of our claim. Amongst other materials, a video shot in April 2012, can be seen here: <http://news.mongabay.com/2012/1129-orangutans-sisirau-rspo-complaint.html>, with the next subsequent rescue in PT Sisirau conducted in May 2012, which clearly demonstrates that dangerous clearing was continuing in the plantation. These clearly showed that the response from PT Sisirau only constituted untrue statements of denial that were in contravention of the evidence presented of the reality of what had taken place in the plantation.

The RSPO Complaints Panel subsequently deliberated on the complaint and concluded (RSPO 2013b) **‘that there has been a non-compliance with the RSPO Principles and Criteria by PT Sisirau** namely that:

1. **PT Sisirau has clearly continued land clearance despite the discovery of Orangutans on the land.**
2. **PT Sisirau as a responsible member must have taken cognizance of Criteria 5.1 and 5.2 of the RSPO Principles and Criteria and implemented the same before proceeding to clear the land.’**

This was followed up in a publicly available RSPO document (RSPO 2014c)¹, stating that the RSPO Complaints Panel finds that:

- ‘1. There is enough evidence in the MEC [RSPO approved third party HCV assessor] report to conclude that **there was indeed secondary forest within the concession that supported a transient² group of orang utans.**
2. **PT Sisirau knew of this population of orang utans and failed to take the corrective actions i.e.**
 - i. **Failed to stop all land clearing immediately upon the discovery of the orang utans.**
 - ii. **Despite repeatedly encountering the orang utans; did not undertake a HCV assessment of the concession area to verify and ascertain the population of the orang utans before resuming land clearing work.**

PT Sisirau as a responsible member failed to take cognizance of Criteria 5.1 and 5.2 of the RSPO Principle and Criteria and therefore have breached the same.’

The Sumatran orangutan (*Pongo abelii*) (Singleton et al. 2013) is listed as a Critically Endangered (CR) species by the International Union for Conservation of Nature (IUCN) – the most trusted source for assessing the conservation status of biodiversity worldwide. According to the Guidelines for the Identification of High Conservation Values in Indonesia (HCV Toolkit Indonesia) (Consortium to Revise the HCV Toolkit for Indonesia 2008), an official document cited by the RSPO³, we submit the following:

‘HCV 1.2 Critically Endangered Species

The purpose of HCV 1.2 is to **identify Critically Endangered species** that are **present in a MU [Management Unit] or nearby and likely to be affected by off-site impacts of the MU. Management action must be undertaken by the MU to protect each individual of such species.**

Only species included on the IUCN Red List as Critically Endangered (CR) or that meet the criteria are considered under HCV 1.2. **For such taxa, each individual is extremely important as a potential founder/progenitor of future generations, and for this reason the persistence of each individual is a shared societal responsibility.** It should be stressed that **HCV 1.2 management aims to guarantee (to the maximum extent possible) the survival of each individual of a CR species**, whereas that of HCV 1.3 (see below) aims to ensure the persistence of viable populations through habitat protection.’

(p. 17)

‘HCV 1.3 Areas that Contain Habitat for Viable Populations of Endangered, Restricted Range or Protected Species

HCV 1.3 aims to identify habitat in or near a MU whose protection is required for maintaining viable populations of endangered, restricted range or protected species. **Populations of species that must be considered in HCV 1.3 include all species identified under HCV 1.2 (Critically Endangered),** as well as species considered endangered or vulnerable by IUCN, restricted range (occurring on one island or part thereof, as appropriate) or protected by the Indonesian government.

The management aim of HCV 1.3 differs from that of HCV 1.2, in that the focus of 1.3 is to identify and manage viable populations, **whereas that of 1.2 considers all individuals of CR species without reference to the associated population and its viability.**

The viability of a population can be assessed based on knowledge of the number of individuals present in an assessment area, or by drawing inference given the potential carrying capacity of available habitat in the landscape of which the assessment area forms a part. **The assessment of HCV 1.3 must be done with great caution to avoid concluding that a population is non-viable when in fact it is viable. If one or more individuals of HCV 1.3 species are known to occur in the assessment area, the population is assumed to be viable until analysis of field data demonstrates that the number of individuals and/or total extent or condition of habitat render the population non-viable.’**

(p. 17-18)

¹ Available for download from: http://www.rspo.org/file/Letter_to_PTSSR_14_Apr_2014_Final_Dec.pdf

² SOS and other orangutan experts dispute the claim that the population was ‘transient’; regardless the matter is irrelevant to consider, since according to the above cited RSPO’s guiding documents and statements, the presence of even one individual of a CR species in a plantation, even if on a temporary basis, automatically affords both the land and the species protection.

³ http://www.rspo.org/en/useful_links_and_references

'HCV 1.4 Areas that Contain Habitat of Temporary Use by Species or Congregations of Species

The purpose of HCV 1.4 is to identify keystone habitats in a landscape used temporarily by groups of individuals or species. A few examples of keystone habitats are (i) breeding or nesting areas such as caves or wetlands used by bird species, bats, or reptiles; (ii) **areas along important migration routes; or (iii) local wildlife corridors where individuals can move as needed among ecosystems as dictated by seasonal availability of food.** **Keystone habitats can also be refugia for particular species during long droughts, floods or fires. Habitats considered under HCV 1.4 share in common the trait that their disappearance would have a negative impact on wildlife populations in far greater proportion than expected given the extent of the habitat itself. If HCV 1.4 exists in a MU, management activities must guarantee that the function of these special habitats will persist and that access to these habitats will be maintained.'**

(p. 18)

Each of these guidelines clearly demonstrates that the land that PT Sisirau had recently cleared, on which Sumatran orangutans, a Critically Endangered species, depended on for their survival was indeed HCV land. This thus constitutes a major breach of the RSPO's stated goals and objectives.

Discussion

The RSPO Complaints Panel, in its deliberations on the matter, ordered via a third party RSPO approved HCV assessor (Malaysian Environmental Consultants (MEC)), a survey and report on the past and current state of PT Sisirau⁴. Given that many of the points of investigation detailed in this are entirely irrelevant to our complaint (e.g. the historical presence of orangutans within the concession), we ask that the focus of the case remains on the central facts - that **PT Sisirau continued clearance operations despite discovering a population of orangutans within their concession, and failed to undertake any assessment of the presence or absence of further individuals of this CR species in order that a suitable management plan could be developed with relevant stakeholders**⁵. Ultimately, the third party assessor's report does not refute these central points (which the RSPO Complaints Panel has itself concluded is the truth (RSPO 2014c)), does not provide sufficient evidence for PT Sisirau to be cleared of any of our allegations, and in fact identifies additional negative impacts on HCVs that were not identified in the original complaint.

The latest and seemingly 'final' requests from the RSPO Complaints Panel (RSPO 2014c)⁶, along with an unpublished 20 April 2014 response (which SOS received a copy of on 19 May 2014) complete with an action plan from the management group behind PT Sisirau, Ibris Palm (Ibris Palm 2014), invite the offending company/management body, SOS, the RSPO, and members of the public at large to forgive and forget that the bulldozing clearance of HCV habitat out from underneath individual Sumatran orangutans ever occurred in the plantation. These documents suggest that PT Sisirau's operations and output have the potential to be certified as sustainable in the future. We see this as being completely unacceptable, not only because the damage done to the orangutan population can not be undone, with the population already having been forced into evacuation; but also because of the irreparable damage that such inaction on behalf of the RSPO will cause to the credibility of the organization as a whole, and every constituent member in particular.

Given the above overview statements detailing the level of stated care and commitment to the protection and responsible management of HCV land in RSPO member concessions, we are at a loss in understanding how PT Sisirau is still being considered as a viable member of the organization.

⁴ A heavily redacted, 22 page public version of the 129 page full MEC report is available to view at: http://www.rspo.org/file/Review_and_Verification_of_PT_Sisirau-SummaryforWebsite.pdf

⁵ SOS acknowledges that the initial clearing actions **could** have been forgivable if PT Sisirau had ceased after the first encounter of an orangutan on their plantation; but rather than pausing to develop a proper management plan and consult with stakeholders, they instead chose to continue clearing the land that these individuals depended on for their survival.

⁶ An excerpt from this document, displaying the requests on PT Sisirau from the RSPO, is given in the Appendix. It should be noted that these requests are little more than a list of what they and every other grower company should have already been engaged in as responsible RSPO members.

Through the above we have shown:

in contravention of the organizational objective (RSPO 2013a), that PT Sisirau has sacrificed high conservation value areas in its plantation;

that any output from this plantation cannot possibly meet the RSPO given definition of ‘sustainable palm oil’ (RSPO 2012b), in that the plantation owner cleared HCV land, and instead of ‘minimizing their environmental footprint’, bulldozed an area with orangutans living in it;

that this company’s output can never be certified as having been ‘produced without undue harm to the environment’ (RSPO 2012d);

that PT Sisirau has been found guilty by the RSPO Complaints Panel of the same malpractice (RSPO 2014a) in the industry that the RSPO and its responsible members have worked for years to distinguish themselves from.

It therefore follows that were PT Sisirau allowed to remain a member, and per their latest action plan (Ibris Palm 2014), become RSPO certified by 2020:

producers and consumers will no longer be able to be certain that RSPO certified products contain or support sustainable palm oil;

the RSPO certification process and brand would lose all value, as all of the confidence that the RSPO has itself attempted to instill in these buyers and consumers would become worthless (‘The crux of the matter is the credibility and usefulness of the certification – basically, who will believe or use it’ (RSPO 2012d)), since it would have then sanctioned the passage of completely unsustainably produced oil palm as being RSPO certified sustainable palm oil;

the RSPO would have negated all premium incentives for those members that have gone through the certification process, as were PT Sisirau output to carry the same brand, no RSPO certified product could be confidently labeled as ‘sustainable’.

Conclusion

PT Sisirau has acted extremely poorly and with complete disregard for the founding principles and above stated commitments of the RSPO. This plantation can never honestly be said to be operating sustainably, as they have broken key tenets of this organization that is meant to go above and beyond the industry standards of sustainability; all of which are meant to instill consumer confidence in the RSPO brand.

In closing, we see zero merit in allowing the company to remain a member of the RSPO. They have contributed nothing to its progress, and through the irresponsible management of their plantation, they have only succeeded in sullyng the reputation of the organization and those members that are actually working towards implementing true sustainable development. We have demonstrated, repeatedly, through evidence from the field, and with the very words of the RSPO and its guiding documents that this member has acted in blatant disregard to both the guidelines and also its fellow members.

Our complaint against PT Sisirau is a shining opportunity for the RSPO to establish a clear dividing line between those companies that are actively pursuing sustainability within their operations and the industry at large, and those in the industry that continue business as usual without any regard for the established guidelines, and simply deny any wrongdoing upon these actions being uncovered (Mongabay.com 2012). It is now time for the RSPO to take decisive action, and remove from its membership roster this irresponsible, completely unsustainable, company.

Appendix

Excerpt from RSPO document “Letter_to_PTSSR_14_Apr_2014_Final_Dec.pdf” (RSPO 2014c), dated 14 April 2014:

- ‘1. Review all the Standard Operating Procedures based on the recommendations of the independent verification report on the conservation, discovery, rescue and relocation of orang utans and train the ground staff in the concession on the same.
2. Implement all recommendations contained in the MEC report on the conservation of forest to aid the transient orang utan population within the concession notably:
 - i. All remaining secondary forest and unplanted areas should be preserved as buffer/ allowing the orangutans the freedom of movement between the concession and other concessions in the area and the nearby the National park
 - ii. HCV 4 (steep area, river and stream buffer) should be established and enhanced to serve as refuge for transient orang utans.
 - iii. Socialization of these conservation areas with local community to prevent harm to any orang utan that may exist in the area.
3. Identify, evaluate, comply and implement national laws and regulations related to conservation and forest areas to ensure that all corrective actions are in line with principle 2 of RSPO P&C.
4. Demonstrate that all works undertaken within the concession is in compliance with the boundaries specified in its Hak Guna Usaha.
5. PT Sisirau to do a Land Use Change analysis and submit a compensation proposal to the Compensation Panel for review. Compensatory actions shall be agreed upon by RSPO, Complaints Panel and the complainant.
6. Engage with the complainant, Sumatran Orangutan Society (SOS) and consult them on the implementation of all the above.
7. PT Sisirau must submit an Annual Communication of Progress and a Time Bound Plan as required by Article 2.2 and 3.8 of the RSPO Code of Conduct within 4 weeks of the date of this letter.
8. Submit an action plan with timelines for the implementation of 1-6 above within 2 weeks of the date of this letter.’

References

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