

Comments on the 1st draft of FSC’s procedures for addressing complaints and formal complaints in the FSC Accreditation Program (FSC-PRO-01-008 V1-0 and FSC-PRO-01-009 V1-0)

From	Item	Element	Comments	FSC Response
Gregory Weber	<u>PRO-01-008 V1-0 D1-0 EN</u> Summary of “Issue”	5.1.3.1 (c)	Suggest pluralizing “the issue” in phrase “summary of the issue.” There will likely be multiple issues	Modified in the final draft
Gregory Weber	Completeness of Complaint	5.1.3.1 (d)	Suggest adding “each element or aspect” after “evidence to support” and before “the complaint”; otherwise, a complainant may only supply evidence in support of part of a complaint and believe that it has complied with the filing requirements	Included in the final draft
Gregory Weber	Evidence to support the complaint	5.1.3.1 (d)	I assume that people are going to be able to include as “documents” video files, sound files, and image files, in addition to scanned documents and electronic documents. Developing these files will be a huge challenge in many parts of the developing world. Uploading these materials through a web site will also require bandwidth that is not generally available in many parts of the developing world. At a minimum, some provision should be given for allowing submission of “hard copies” in lieu of electronic copies of some materials.	Included in the final draft
Gregory Weber	Informal Resolution of the Complaint	5.1.5	Each staff member should be trained in listening, communications and interest-based or problem-solving mediation. They do not have to become mediators per se, but they need to have some training in facilitated problem solving.	Issue to be dealt with in the implementation of the procedure
Gregory Weber	<u>PRO-01-009 V1-0 D1-0 EN</u>	In general	5.1.9 of <u>PRO-01-008 V1-0 D1-0 EN</u> states that a dissatisfied claimant under that system can take an appeal under this document. Nothing within this document, however, makes that clear. I suggest amending the definition of “accreditation decisions” to include “decisions on complaints made in accordance with <u>PRO-01-008 V1-0 D1-0 EN</u> .”	Issue dealt with in the final draft
Gregory Weber	Comprehensiveness of list of “Accreditation Decisions”	“Note” to Definition of Appeal, 4 th Bullet (p.2)	Would not an “accreditation decision” ALSO include an action that impedes the “maintenance” of accreditation? Suggest amending the final bullet in the Note to read, “any other action that impedes the attainment <u>or maintenance</u> of accreditation.”	Issue dealt with in the final draft

From	Item	Element	Comments	FSC Response
Gregory Weber	Spelling of Appellant	Definition of Appellant (p. 2)	More common in US English to spell with two "L's": "Appellant."	Issue dealt with in the final draft
Gregory Weber	Ambiguity in a "legal representative"	5.3.1 (a)	Does "legal representative" mean the "lawyer" or the "person with legal authority to act on the organization's behalf"? I assume you mean the latter, but it makes it sound as if the former is required.	Issue clarified in the final draft
Gregory Weber	Relevant Documented Evidence	5.3.1(c)	I assume that people are going to be able to include as "documents" video files, sound files, and image files, in addition to scanned documents and electronic documents. Developing these files will be a huge challenge in many parts of the developing world. Uploading these materials through a web site will also require bandwidth that is not generally available in many parts of the developing world. At a minimum, some provision should be given for allowing submission of "hard copies" in lieu of electronic copies of some materials.	Included in the final draft
Gregory Weber	Summary of "Issue"	5.3.1(d)	Suggest pluralizing "the issue" in phrase "to resolve the issue." There will likely be multiple issues	Modified in the final draft
Gregory Weber	Role of ASI Director	5.4.2	The Director of the FSC Accreditation Program should not have ANY decisionmaking role in the appeals program other than as a party to the appeal. There is an inherent conflict of interest where it is his or her program's decision that is being reviewed.	Issue dealt with in the final draft
Gregory Weber	Composition of Appeals Panel	5.5	You MUST have an odd number of members because you <u>cannot</u> assume that there will always be consensus between the two appointed members. Add a third member, appointed by the FSC Director, who is "broadly knowledgeable of FSC principles, practices and operations" or the like. That way, you can avoid the whole time and expense of the UNCITRAL arbitration unless you can't get 2 out of 3 members to agree to a resolution.	Included in the final draft
Gregory Weber	Composition of the Panel.	5.5.4 & 5.5.5	The Director of the FSC Accreditation Program should not have ANY decisionmaking role in the appeals program other than as a party to the appeal. There is an inherent conflict of interest where it is his or her program's decision that is being reviewed. Perhaps have the Chair of the FSC Board rule on the composition of the panel.	Issue dealt with in the final draft
Gregory Weber	Secretary to the Appeals Panel	5.5.6	Same. Someone from outside ASI should do this.	Issue dealt with in the final draft

From	Item	Element	Comments	FSC Response
Gregory Weber	Timing of Appeals Panel Session	5.6.1	<p>The timing is tight here, and there's an ambiguity. In theory, after a complaint is "received," NOT "lodged," the Accreditation Director has 14 days to accept or reject it. The "hearing" is also supposed to be within 30 days of the appeal's "lodging." The parties to the appeal are also have to have 10 WORKING days notice of the hearing date.</p> <p>Even if you assume that the appeal is both "lodged" and "received" on the same date, AND that there are NO business holidays, only weekends, between the date of lodging and the required hearing date, then the Accreditation Director is going to have very little leeway in arranging for a hearing.</p> <p>Suggest eliminating the references to "lodged" and substituting "received," making sure you separately define "received" per comments made above re: STD-20-014 V1-0 D1-0 EN.</p> <p>Also suggest that you give the scheduler some leeway, either by extending the date beyond 30 days (e.g., make it 45) or admonish the scheduler to "wherever practicable, schedule the session within 30 days ... and in no event more than 45 days"</p>	Issue dealt with in the final draft
Gregory Weber	Missing Word	5.7.3	I will not repeat here my general objections to the FSC Accreditation Program director having any role in the appeals process. It does seem particularly inappropriate for the Director to have the power to decide whether to extend the appeals time.	Issue dealt with in the final draft
Gregory Weber	Content of "decision"	5.7.4	Nothing requires the Appeals Panel to explain its decision other than 5.4.4's simple reference to "report its evaluation" of the evidence. In a strictly business world, this is acceptable where commercial interests just want to know who wins and who loses. In the policy and political environment in which FSC operates, this is a mistake. Decisions must be explained. There should be a requirement that the Appeals Panel must explain its decision, addressing each "major point" raised in the appeal.	Included in the final draft
Gregory Weber	Awkward wording	5.8.2	<p>Suggest rewriting first sentence to read more smoothly:</p> <p>"The Appeals Panel shall decide whether the appellant has to"</p>	Modified in the final draft
John Palmer	General comments		the normal clarifications about status of a complaint or appeal (which I now realise are common in resolution of industrial disputes and which were suggested in Policy Motion 33 to the FSC General Assembly 2008) should be incorporated into these procedures as one of the moves to make the FSC system more evidently part of international quality assurance processes.	This issue will be dealt with through the implementation of the system

From	Item	Element	Comments	FSC Response
John Palmer			in each of these documents there should be a note that “Nothing in this FSC procedure overrides the legal rights of any party to submit formal complaints or appeals through civil courts in appropriate jurisdictions”.	Note included
John Palmer			Bill Mankin’s urging of informal resolution of disputes before invoking formal FSC procedures should be reiterated in each document.	This issue is already in the procedure for complaints and will be further highlighted in the introduction and guidance related to the use of the system
John Palmer			likewise, the stages at which a complaint or appeal can be withdrawn or modified should be clarified.	Included in the final draft
John Palmer			care should be taken to associate each step in each procedure with a timeline or deadline, and the procedure to be followed if the deadline is exceeded. This should be given more emphasis because one of the major NGO complaints is about the failure of justice when disputes are not settled rapidly.	The process have very clear timelines
John Palmer			wording should be harmonised between the four documents, so far as possible. For example, the section on Terms and definitions should be the same.	Documents harmonized as applicable
John Palmer			there should be clarification about the nature of acceptable “evidence” (see section on Accountability in FSC-DIS-01-018), because “evidence” may have very different meaning in indigenous societies compared with Western industrial enterprises and legal systems.	It was considered better to leave it as open as possible.
John Palmer			comparing between documents of a similar nature shows the importance of all FSC IC units adopting as standard practice the inclusion of running footers with the full FSC document code and page numbering.	Included in the final draft
John Palmer			these four documents are not as fluently and consistently written as should be normal for an international quality assurance system. Wording in FSC-PRO-01-009 such as “is obliged to” and “will be under obligation to” should be replaced in every case by the simple imperative “shall”.	New wording included
John Palmer			FSC-PRO-01-008 So far as possible, harmonise the requirements in section 5.1.3.1 with section 5.3.1 in FSC-PRO-01-009.	Documents harmonized as applicable
John Palmer			Section 5.1.3.1 (d) – reference to the evidence may be more practicable than submission of a full dossier at the beginning of a complaint.	The existence of evidence on which to base a complaint is considered of fundamental importance to allow the proper investigation of a complaint.

From	Item	Element	Comments	FSC Response
John Palmer			Section 5.1.5 – keep written records of all oral conversations about a complaint or appeal.	Included
John Palmer			<p>Section 5.1.5.2 – some publicity may be desirable in order to assemble supporting evidence for/against a complaint.</p> <p>For disputes in UNECE countries, the Aarhus Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters may apply. At least the two main Aarhus websites should be referenced – to the main convention and to the clearing house. It would in any case be desirable for the principles of this Convention to be incorporated into the FSC system.</p>	<p>The procedure allows for this to happen while at the same time safeguarding the identity of the complainant</p> <p>The Aarhus Convention is applicable to governments. It is considered that its principles are reflected in the procedure</p>
John Palmer			<p>FSC-PRO-01-009</p> <p>So far as possible, harmonise the requirements in section 5.3.1 with section 5.1.3.1 in FSC-PRO-01-008.</p>	Requirements harmonized as appropriate
John Palmer			Section 5.5.1 – change “ongoing panel” to “standing panel”.	Modified in the final draft
John Palmer			Section 5.5.8 – indicate if office or field visits could be undertaken in the sessions/hearing of an appeal.to investo	This is already considered as the provision is written in a broad manner

From	Item	Element	Comments	FSC Response
Kevin O'Grady			<p>Whilst I am aware that there is a need for this I feel that the standards in draft are outlines only and much of the detail needed to run an effective disputes process is missing. Much is left to the judgement of the CBs or ASI without any guidance on important principles in handling disputes eg</p> <ul style="list-style-type: none"> a) The Principles of Natural Justice b) The standing of the complainant as an interested or affected party (a concept adopted by FSC in other areas) including the use of advocates or proxies. c) Definitions of frivolous or vexatious. d) A test of prior participation (has an attempt to resolve the dispute been made in good faith by the complainant) eg mediation. e) Conflicts of interest. f) Abandonment or frustration of a dispute as grounds for discontinuation of the process. <p>Having said this the draft is a big step in the right direction. I just feel it needs more guidance.</p> <p>I would also note that the FSC Australia web site has an NI approved disputes resolution framework that addresses the issues above and may assist in adding required directions to your draft.</p>	<p>FSC Response</p> <ul style="list-style-type: none"> a) The procedure includes several elements of natural justice. It is not clear from the comments what addition should be made in this regard. b) the complainant is considered automatically as a party to the complaint c) terms not used in the procedure d) This is a pre-condition of the process e) Issue dealt through provision 5.5.5 f) Included
Guilherme de Andrade Lopes Coordinator of the Cooperative Program on Forest Certification			<p>We believe that the documents submitted for consultation on Dispute Resolution is good and not interfere in a meaningful way with the progress of the certification procedures. We also believe that this is a good tool for the certified forest companies to monitor the process of Dispute Resolution in progress.</p> <p>We have only two considerations to be made: The first is that more needs to be clear what are the actions and responsibilities of CBs throughout this process. The second point is that in the two final stages of the process, within the FSC-IC, the first assessment is made by a designated technical and if the dispute is not resolved the assessment is made by a Committee of Appeal. This procedure is not made clear in the flow chart.</p> <p>We are answering the consultation on behalf of the 26 forest companies that participate in the Cooperative Program on Forest Certification of IPEF, who is a member of FSC-IC.</p>	<p>The requirements for certification bodies are outlined in more detail in the accreditation standards.</p> <p>The graph outlining the process will be corrected and additional information will be available as guidance to the system.</p>

From	Item	Element	Comments	FSC Response
Thomas Papp-Vary IMO			General comment: In both FSC-PRO-01-008 and FSC-PRO-01-009 a procedure is missing in case there is a complaint or appeal against the director of the FSC Accreditation Program.	The role of the Director has been limited and this issue is now covered in the final draft
Thomas Papp-Vary	PRO-01-009	2.1	Add: or to a formal response by the FSC Accreditation Program regarding a complaint.	Addressed in the final draft
Thomas Papp-Vary		5.1.2	Define the procedure for this exceptional decision by the Appeals Panel!	Additional wording included
Thomas Papp-Vary		5.1.3	The director should be replaced by another person since technical and formal aspects can hardly be distinguished in practice	The role of the director has been limited in the final draft
Thomas Papp-Vary		addition	Add new 5.1.4 and 5.1.5: 5.1.4 The person in charge (not the director) should be eligible for dealing with appeals regarding cases where the FSC Accreditation Program did not follow FSC-PRO-01-008 or FSC-PRO-01-009. 5.1.5 (Inserted according to FSC-STD-20-014, 1.1c): The FSC Accreditation Program shall demonstrate its commitment to effective and timely resolution of appeals through the provision of training to relevant staff throughout the organization.	The final draft covers this possibility. Included
Thomas Papp-Vary		5.2.2	If not possible online, the appeal should also be submitted via letter, fax or e-mail.	Included in the final draft
Thomas Papp-Vary		5.3.1 g)	(Replace g) by a procedure effective date and transition periods instead of replacing all FSC statutes etc.!)	Issue addressed in the final draft
Thomas Papp-Vary		5.4.2	Inserted according to FSC-PRO-01-008, 5.1.3) The notification shall include an explanation for the rejection and a recommendation to correctly address the appeal.	Included in the final draft
Thomas Papp-Vary		5.4.7	(5.4.7 Should have the same wording as FSC-PRO-01-008, 5.2) All incoming and outgoing correspondence, including the final decisions and follow-up actions, shall be filed in electronic and/or hard copy in the FSC Accreditation Program Complaints Register and maintained for a period of at least five (5) seven (7) years. (There is somewhere an FSC and/or ISO requirement – currently I do not have success – for storing 7 years.)	Addressed in the final draft
Thomas Papp-Vary		5.5.1	Clarify what “ongoing” is!	Modified to permanent
Thomas Papp-Vary		5.5.4	Clarify what “valid reasons” are!	Additional wording included

From	Item	Element	Comments	FSC Response
Thomas Papp-Vary		5.5.4	A procedure is missing for the case that the FSC Accreditation Program will be a party involved in the appeal!	Issue solved in the new draft through a more limited role of the Director of the FSC Accreditation Program
Thomas Papp-Vary		5.5.5	Added according to the note of FSC-STD-20-014, following clause 3.2e) NOTE: Members of staff and the director of the FSC Accreditation Program, consultants involved in the accreditation process and affected stakeholders shall not be eligible to be part of the Appeals Panel.	Included in the final draft
Thomas Papp-Vary		5.5.6	Same concern as 5.1.3	Issue dealt with in final draft
Thomas Papp-Vary		5.6.1	According to 5.5.6 the director would inform himself if there was not a delegated person. Does it make sense?	Corrected in final draft
Thomas Papp-Vary		5.7.2	Contradiction to 5.7.4; see below	Not applicable to the final draft
Thomas Papp-Vary		5.7.2	One deciding vote and one abstention from voting will not put the panel's judgement – which will have extensive consequences for the parties – on a firm footing. Thus, at least two deciding votes should be eligible for any judgement.	Issue addressed in the final draft
Thomas Papp-Vary		5.7.4	Contradiction to 5.7.2. Make clear who will inform the parties: The Appeals Panel or the FSC Accreditation Program?	Clarified in the final draft
Thomas Papp-Vary		addition	The FSC Accreditation Program shall establish a monitoring system to periodically evaluate the appeals processed and assess if there are improvements needed in its system to prevent similar appeals.	Included in the final draft
Hubert de Bonafos - ASI			5.1.1: Delete „related“	Modified in the final draft
Hubert de Bonafos – ASI			5.1.3: Please clarify „interfere“. The procedure itself requires the director to be involved at every stage of the process, so I am not sure how interference could be avoided.	Issue dealt in new draft through more limited role of the director
Hubert de Bonafos – ASI			5.2.1: Please establish a clear timeframe for appeals to be launched; e.g. 15 days from the date of the decision which is the subject of the appeal.	Not considered as appropriate as the procedure now is limited to formal complaints, which should be possible to be made at any time

From	Item	Element	Comments	FSC Response
Hubert de Bonafos – ASI			5.3: Clearly indicates that the appeal is to FSC. I agree.	Clarified in the final draft
Hubert de Bonafos – ASI			5.4.4: CBs are provided with only 45 days. Need to ensure consistency.	The different roles do not make it necessary that the timelines be the same
Hubert de Bonafos – ASI			5.5: the whole section is unclear and needs to be reviewed. 5.5.1 indicates that Panel members are permanent, but 5.5.4 give the right to a party to object against the panel members???? 5.5.3 indicates that the director has to appoint the members, but he should do that without interfering??? 5.5.6 The director shall be the secretariat but without interfering??? 5.5.5 Panel members will be conflicted to deal with any appeal against ASI as they will be recruited, contracted, appointed and paid by ASI. Under these conditions they will be necessarily conflicted. 5.5.8: Not sure how all of this can be done within 45 or even 60 days??	5.5.1 This is considered possible and panel members can be substituted on an exceptional basis. 5.5.3/5.5.5/5.5.6 Dealt with in the final draft 5.5.8 The panel can request a time extension if necessary.
Hubert de Bonafos – ASI			5.6.2: Not sure about the 30 days timeline. Section above indicate 60 days???	The different timelines refer to different issues
Hubert de Bonafos – ASI			5.7.2: Not sure about these new 10 days. Appears that FSC has 70 days to respond while CBs have only 45? Not sure about the rationale. 5.7.3: Director is involved again??? Need for a clear framework to provide additional time. 5.7.5: If the decision is final why is there a need for 5.7.6. 5.7.6: Not clear why FSC AC as a Mexican accreditation body would go to arbitration court in Germany???	5.7.2 different roles do not require same timelines 5.7.3 Addressed in the final draft.
Hubert de Bonafos – ASI			5.8.3: Not sure how FSC will enforce this clause??	It is understood that the enforceability of this clause is not ideal