

Report on Summary of Information on How REDD+ Safeguards are Addressed and Respected



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MALAYSIA



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A Publication by the
MINISTRY OF NATURAL RESOURCES AND ENVIRONMENT MALAYSIA
Wisma Sumber Asli, No. 25 Persiaran Perdana, Presint 4
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1.0 BACKGROUND

The Warsaw Framework for REDD+ (Decisions 9-15 / CP.19) provides the international rules and procedures for REDD+ actions by developing countries to be recognized by the UNFCCC for payments for performance. These decisions present methodological guidance on reference levels, national forest monitoring systems and results-based financing amongst others.

Paragraph 72, decision 1/ CP.16 requests developing country Parties, when developing and implementing their national REDD+ strategies, to address the safeguards detailed in Appendix I, paragraph 2 of decision 1/ CP.16, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities.

Paragraph 2 in the Appendix I states that developing countries should promote and support the following safeguards during the implementation of the activities referred to in paragraph 70 decision 1/ CP. 16:

- (a) That actions complement or are consistent with the objectives of national forest programs and relevant international conventions and agreements;
- (b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
- (c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
- (d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;
- (e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;
- (f) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;

- (g) Actions to address the risks of reversals; and
- (h) Actions to reduce displacement of emissions.

Decision 1/ CP 16 also requests, developing country Parties aiming to undertake REDD+ activities, in the context of the provision of adequate and predictable support, to develop a system for providing information on how the safeguards referred to in appendix I to this decision are being addressed and respected throughout the implementation of these activities.

The development of safeguards information system takes into account national circumstances and the respective capabilities at the sub national. It also considered the national circumstances, gender and the relevant international obligations and agreements.

Decision 12 / CP.17 states that the national safeguards information systems should [3]:

- (a) *Be consistent with the guidance identified in decision 1/CP.16, appendix I, paragraph 1;*
- (b) *Provide transparent and consistent information that is accessible by all relevant stakeholders and updated on a regular basis;*
- (c) *Be transparent and flexible to allow for improvements over time;*
- (d) *Provide information on how all of the safeguards referred to in appendix I to decision 1/CP.16 are being addressed and respected;*
- (e) *Be country-driven and implemented at the national level; and*
- (f) *Build upon existing systems, as appropriate.*

The communication from developing country Parties to the UNFCCC on how the safeguards of REDD+ are addressed and respected throughout the implementation of REDD+ will be presented as a summary of information, which will be part of the National Communication or may be submitted voluntarily by the country via the REDD+ platform on the UNFCCC website. This submission is a requirement for obtaining results-based payments, as per decision 9 / CP.19, paragraph 4.

2.0 COUNTRY APPROACH

Malaysia's Safeguards Information System (SIS) will be built upon existing systems.

The three systems that place are as follows:

- (a) Malaysia's Criteria and Indicators for Sustainable Management of Forest -implemented since 1997;

- (b) Criteria and Indicators for progress of Aichi Biodiversity Targets under the Convention on Biological diversity. This will be implemented from 2016-2025; and
- (c) State Forest Management Plans.

In the context of the developing the SIS, Malaysia understands that:

‘Addressed’ refers to law, regulations or policy that will ensure REDD+ safeguards are considered; while

‘Respected’ refers to how these safeguards are applied when REDD+ activities are implemented.

For Malaysia, the REDD+ activities and safeguards are complementary. The REDD+ safeguards are divided into three broad categories as follows:

- (a) Governance – National and Sub national responsibilities
- (b) Social – Sub national obligation with monitoring at National level
- (c) Environmental – National and Sub national responsibilities

2.1 FOREST GOVERNANCE IN MALAYSIA

The land administration structure in Malaysia demarcates the power to manage land to the State Authority, as land is a State matter pursuant to the Federal Constitution of Malaysia.

Land administration and land law practices are based on the Torrens system introduced by the British. Under the Torrens System, a system of land registration, in which a register of land holdings is maintained by the state. Hence, the legal entity of a forest is through the State gazette.

The National Forestry Act (NFA) allows State Authority, by notification in the Gazette, to declare any area as Permanent Reserved Forest. It defines the Permanent Reserved Forest (PRF) as any land constituted or deemed to have been constituted a permanent forest reserve under this Act. It also allows PRF to be classified into any of the twelve (12) functional classes to promote sustainable forest management taking into account the multiple roles/uses of forest. Out of the 12 functional classes, only the production forest will be subjected to harvest.

The State Forestry Department is also responsible for the administration and regulation of forest harvesting, forest revenue collection and development of the state forest resources. The Department also plans and coordinates the development of wood-based industries.

2.2 LEGAL PREPAREDNESS FOR REDD+ IMPLEMENTATION

An enabling legal and institutional framework is a prerequisite for the implementation of REDD+ mechanism. Legal preparedness must involve a cross-sectoral and multi-jurisdictional approach that considers the extensive legal and institutional issues that could incorporate and have potential to influence REDD+ implementation.

Legal preparedness may include the analysis and reform of existing laws as well as establishment of new legal instruments that would ensure REDD+ implementation. This will also allow clarity and coherence across the legal system to result based actions and payment.

2.3 GOVERNANCE IN THE CONTEXT OF REDD+

1. Permission/prohibition to implement REDD+ activities

Malaysia's Federal Constitution, forest laws and land laws do not contain prohibitions of this nature; indeed, none of these laws refer expressly to the concepts of environmental services or avoided deforestation.

The forest laws deal primarily with the establishment of protected forests (through the establishment of Permanent Reserved Forest and Protected Area) and the issuance of licenses for carrying out certain activities, such as the gathering of forest produce, but do not expressly prohibit (nor do expressly permit) the issuance of licenses for the forest conservation activities.

The laws on protected areas deal with the establishment of national parks and the issuance of leases and/or permit to carry out specified activities in national parks; once again, most of the activities are prescribed covers and/or relates to REDD+ activities.

An extensive assessment of existing policies, laws and regulations relevant to REDD+ was conducted in 2011-12. It was concluded that Malaysia's Federal Constitution, forest laws and land laws do not contain prohibitions that hinders REDD+ implementation. Thus there is no need to repeal or amend any legal provision to enable REDD+ implementation.

In 2013-14, additional consultations were conducted to seek inputs for a need to develop a REDD+ policy or amend the existing National Forestry Policy. Recommendations from the consultations were as follows:

- (a) A REDD+ implementation framework, to form the basis for State governments to implement REDD+. In addition, the roles and functions of the various stakeholders are identified. A paper was presented at the National Land Council meeting in 2014.
- (b) A National REDD+ Strategy outlining the goal, actions and benefits. A draft national REDD+ Strategy is available and the final consultations will be completed by middle 2017.

2. Clear and secured land and forest tenure rights

The Federal Constitution, stipulates that the forest reserves are within the jurisdiction of the State government. Section 7 of the National Forestry Act 1984 states that the State Authority may constitute any land a Permanent Reserved Forest by publishing in the Gazette a notification by

- (a) specifying the condition and extent of such land; and
- (b) declaring that such land shall be a permanent reserved forest from a date fixed by the notification.

From date so fixed, such land shall be a permanent reserved forest.

3. Full and effective stakeholder participation and consultation processes

At the national level, full and effective stakeholder participation and consultation processes occur during the development of a policy or law or development plan. Additionally, there are consultations between the federal and state governments on the annual cutting cycle and improved forest management.

At the sub national level, consultative committees at the village, *Mukim* and district levels enable public participation in forest management.

A guideline has been developed at national level for a full and effective stakeholder consultation process in the form of Free Prior Informed Consent (FPIC).

FPIC shall be obtained from the affected stakeholders. The FPIC process may be translated to the local language if necessary. In addition, States do have their own FPIC requirements and guidelines based on their circumstances.

A feedback mechanism is being developed. It will take into account the level of education of the stakeholders and their literacy level. The feedback mechanism may include both web based platform or periodic survey especially if indigenous and local communities are involved.

4. Equitable REDD+ benefit sharing mechanism

A federal-state level benefit sharing mechanism will be formulated. In designing an effective, inclusive and transparent benefit distribution system for REDD+ incentives, the following factors need to be taken into consideration:

- (i) the stakeholders eligible to participate in benefit-sharing;
- (ii) the types of benefits to be shared; and
- (iii) mechanisms for benefit-sharing.

Certain provisions of Malaysia's forest laws do establish mechanisms that could be adapted to carry out the distribution of benefits arising from REDD+ incentives. The National Forestry Act requires a forest development cess to be paid in respect of specified types of forest produce removed from any permanent reserved land, State land, reserved land, mining land or alienated land.

The cess will then be paid into the Forest Development Fund established by the State Authority. It is used for

- The preparation, implementation and review of forest management and reforestation plans,
- the preparation and implementation of programs relating to amenity forests, and
- any expenses incurred by the State Authority in carrying a reforestation plan into effect.

State governments are responsible for administration, management and issuing licenses and right to use. It is therefore recommended that State governments to design their own benefit sharing system. They will need to carefully consider the potential risks and impacts of different approaches for defining the eligibility to receive REDD+ benefits. In addition, they will need to consider how to enable certain actors with restricted tenure eligibility to access REDD+ benefits.

5. Institutional coordination and policy coherence across sectors that affects forest

Effective implementation of REDD+ actions requires capacity and coordination across the government both at national and state levels. Clause (5) of Article 91 of Federal Constitution indicated that National Land Council has been mandated to coordinate the implementation of forestry and other related policies between federal and state governments.

6. Institution coordination across levels of government managing forest

The Forestry Department Peninsular Malaysia, is responsible for overall forest-sector planning, forest management, forest development and operational studies, the provision of technical advice and services, and staff training in Peninsular Malaysia. The state forestry departments in Peninsular Malaysia and Sabah are responsible for the administration, management and development of forest resources, the regulation of forest harvesting, the collection of forest revenue, and the planning and coordination of the development of wood-based industries in their respective states.

In Sarawak, these functions are carried out by the Sarawak Forestry Corporation, while the Sarawak Forest Department is entrusted with regulatory functions. Apart from the forestry departments, there are a number of specialized institutions, including the Forest Research Institute Malaysia, the Malaysian Timber Industry Board (MTIB) and forestry faculties at a number of public universities.

Additionally, the government agencies are supported by independent organisations such as the Malaysian Timber Council and the Malaysian Timber Certification Council (MTCC) to promote the development of a sustainable timber industry and the implementation of a national timber certification scheme, respectively.

The implementation of the National Forest Policy, the National Policy on Biological Diversity 2016-2025 and matters relating to the upstream activities of the forest sector are under the jurisdiction of the Ministry of Natural Resources and Environment. This Ministry is also the focal point for climate change policy. Timber and other downstream activities of the sector, including processing, manufacturing, marketing, trade, export and international cooperation are under the responsibility of the Ministry of Plantation Industries and Commodities.

7. Effective conflict resolution mechanism

A system for conflict resolution or grievance redress is an important tool for handling potential conflicts, complaints and unintended harm caused by REDD+ activities. It may perhaps be most effective for Malaysia to adopt a layered dispute resolution process, which escalates claims through different dispute settlement mechanisms at different stages as earlier described by reference to Convention on Biological Diversity's dispute settlement procedures and Malaysia's Industrial relations Act.

The parties might first be required to attempt informal discussion/negotiations and amicable settlement in order to resolve a dispute; should that fail, they might then advance the dispute to a third party for mediation or conciliation, and finally to arbitration or the courts or a specialist tribunal for adjudication. The national forest certification scheme has also incorporated conflict resolution within its mechanism.

2.4 FREE, PRIOR AND INFORMED CONSENT (FPIC)

A national guidance on FPIC was developed for adoption of the States and is attached as Appendix 1.

Requirement to obtain FPIC

1. If the proposed REDD+ activity is intended to take place on land to which one or more indigenous and local communities has a right, an FPIC shall be required to obtain the FPIC of, and enter into a benefit-sharing agreement with, the relevant indigenous and local community or communities or identified stakeholders.

Process for obtaining FPIC

2. The FPIC of indigenous and local communities shall be obtained in accordance with the indigenous and local communities' customary laws, community protocols and procedures, as appropriate.

Timeline for obtaining FPIC

3. The timeline for determining the outcome of an application for FPIC shall be decided by the relevant indigenous and local community in accordance with the community's customary laws, community protocols and procedures. There should be sufficient time for the

relevant community to understand, access, analyse and discuss information pertaining to the proposed REDD+ project.

Entity from whom FPIC sought

4. The FPIC of indigenous and local communities shall be obtained from, and the benefit-sharing agreement entered into with, the representative or institution identified, in accordance with the customary laws, community protocols and procedures of the relevant community, as the entity with the authority to give such consent and to enter into such benefit-sharing agreement.

3.0 FOREST MANAGEMENT

The management of all types of forests is enshrined under the National Forestry Policy 1978 (revised 1992) (NFP). This policy provided for greater uniformity in the implementation strategies for the achievement of forest conservation, management as well as social and educational needs. It represents an important legislation, which is unequivocal in maintaining that forest management must fulfil environmental, social and conservation needs besides meeting rational economic production goals.

It provides guidelines and a strong emphasis on the necessity for sound management, conservation, utilization, development and protection of the forests. This commitment is duly recognized and given specific attention by the National Forestry Act in its 1993 revision.

The key objective of the forest management in Malaysia has been to ensure the continuity of product flow while conserving complex ecosystems rich and varied in the flora and fauna. The annual felling rates (coupe) are monitored as of 1996 through the Seventh Malaysian Development Plan. Logging activities are conducted during the dry season. Malaysia is moving from managing forests for its commodity to managing forest for its natural resource.

Malaysia has implemented a selective harvesting system, which is a technique providing openings in forest cover, to ensure the natural regeneration of seedlings. In addition, a set of principles, criteria and indicators are used as a yardstick to assess sustainable forest management started in 1994 based on the ITTO Criteria and Indicators for Sustainable Forest Management. There are nine principles, 47 criteria and 97 indicators and 307 verifiers under the Malaysian Criteria (MC&I) and indicators for forest management certification.

Malaysia started the project based forest certification in 1997. The Malaysian Timber Certification Council was established in October 1998 as an independent organisation to develop and operate the Malaysian Timber Certification Scheme (MTCS). The MTCS provides for third-party assessment of forest management practices conducted by independent certification bodies, to ensure the sustainable management of Malaysia's natural forest as well as the responsible supply chain of certified timber products. In addition, a peer reviewer is responsible for providing a second independent expert opinion on the level of compliance of the forest management unit by assessing the reports prepared by a certification body against the requirements of the standard. The independence and robustness of the scheme is further assured through the requirement for accreditation of the independent certification bodies by the Department of Standards Malaysia.

3.1 REDD+ ACTIVITY IN MALAYSIA

Malaysia applied a step-wise approach in implementing REDD+. It builds upon existing systems and national priorities while considering a cost effective implementation. Sustainable management of forest is the activity considered where it transitions from managing forest for its resources to managing forest for its natural capital. This transition will consider the following:

- (a) Landscape management to reduce fragmentation and potential long-term forest degradation;
- (b) Valuing the natural capital; and
- (c) Sustainable forest financing mechanism, which over time will include the public-private partnership.

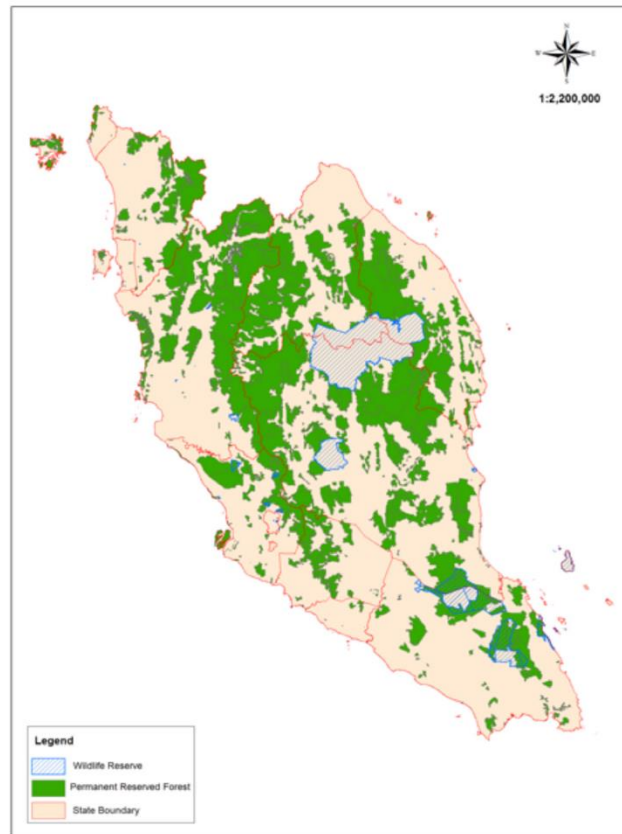
In the construction of the forest reference level, Malaysia considered the whole of the Production forest within the Permanent Reserved Forest (PRF). The changes in forest reserves are shown in Figure 1. This area undergoes on site human induced management activities while the remaining PRF is for conservation.

4.0 DEVELOPING THE REDD+ SAFEGUARD INFORMATION SYSTEM (SIS)

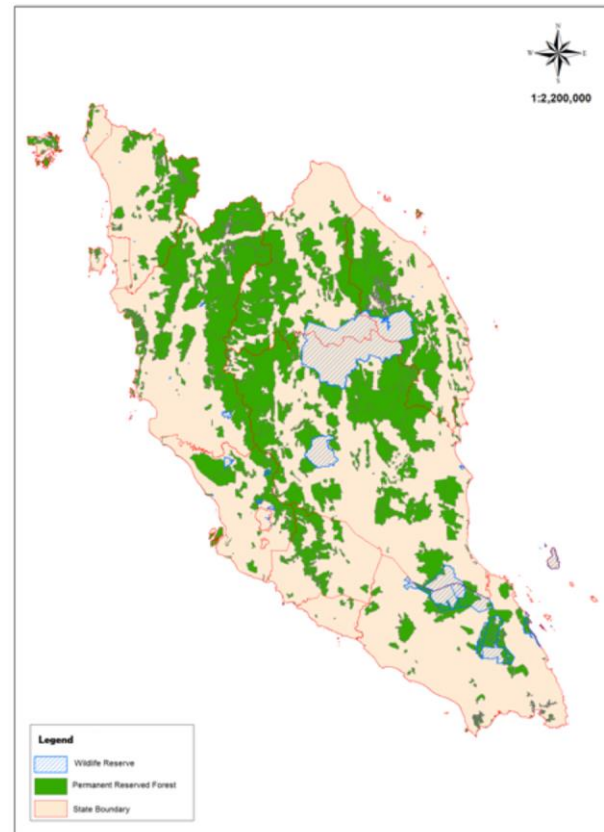
The approach used to develop the REDD+ SIS was a practical method, where we understood the complexity of forest issues and their jurisdiction. In addition, assessment was conducted on related forestry, biodiversity, environmental, climate change and other related laws and policies. There are 20 Federal laws

Changes in forest Areas in Malaysia

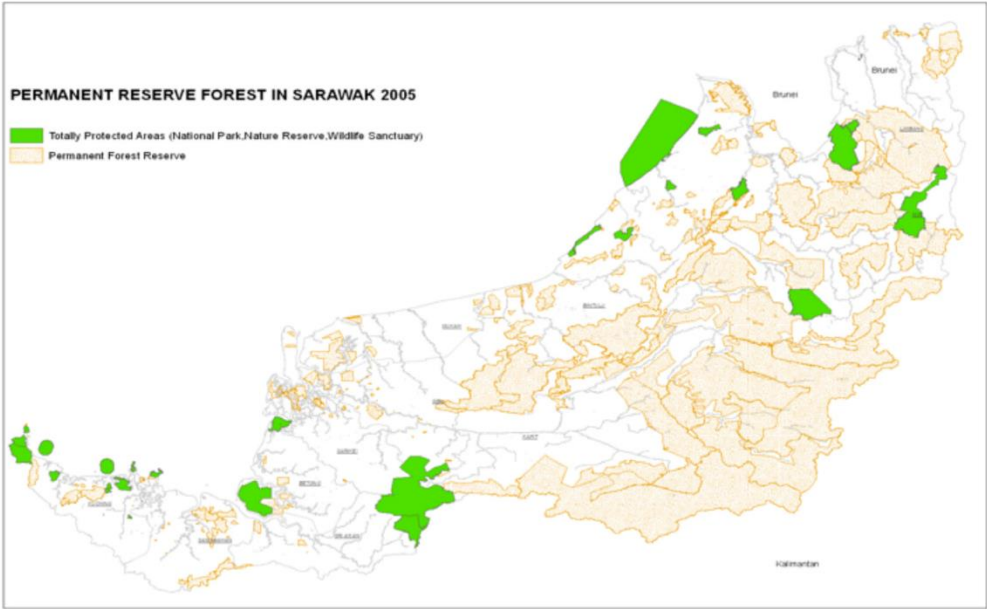
MAP OF PERMANENT RESERVED FOREST NATIONAL
PARK AND WILDLIFE RESERVE FOR YEAR 2005



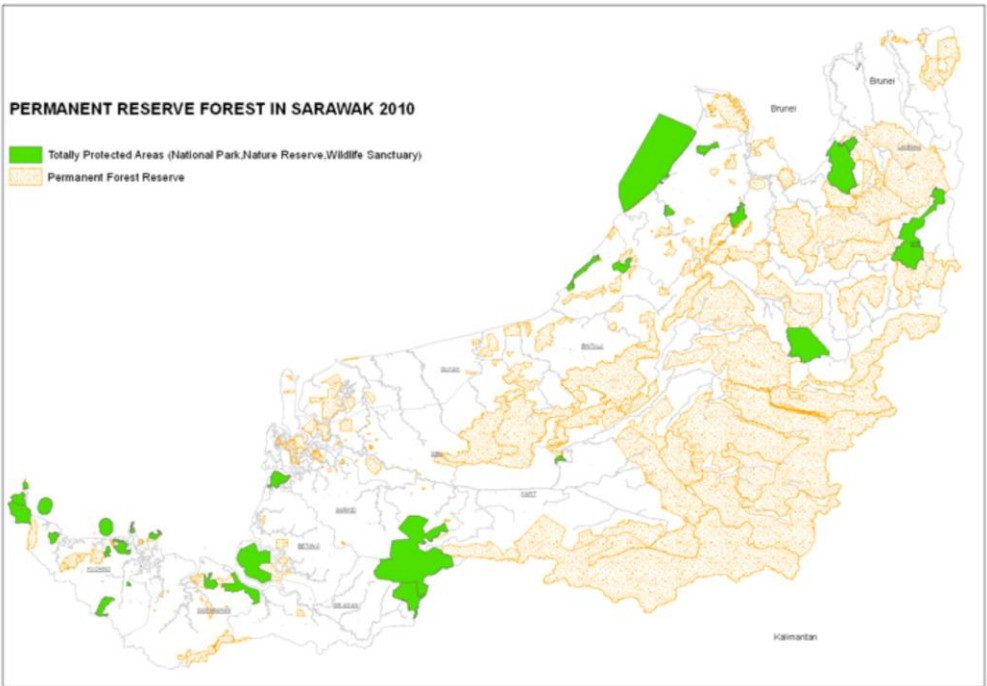
MAP OF PERMANENT RESERVED FOREST NATIONAL
PARK AND WILDLIFE RESERVE FOR YEAR 2010



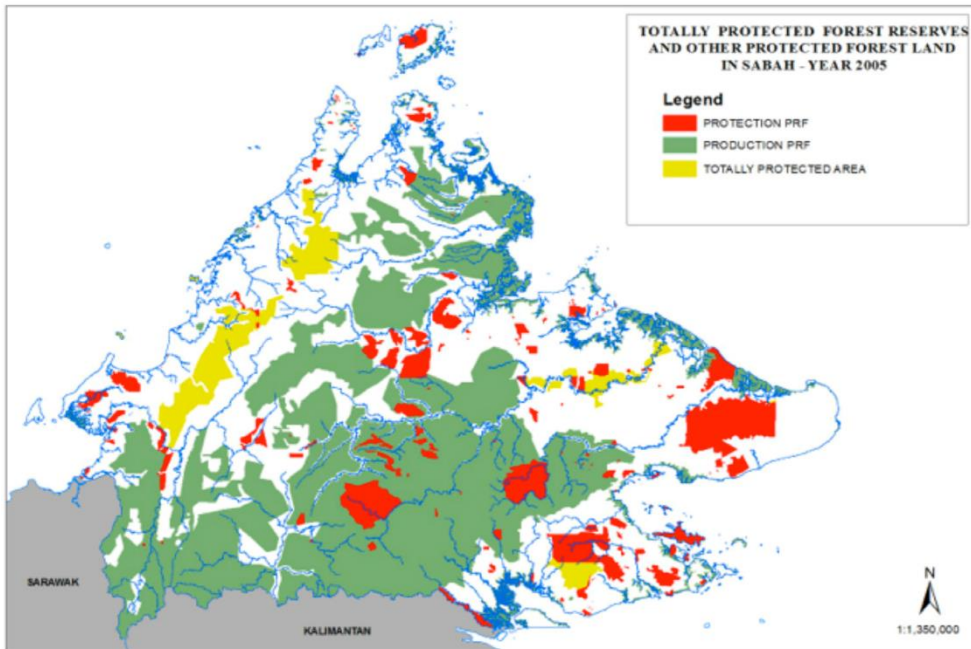
Permanent Reserve Forest in Sarawak 2005



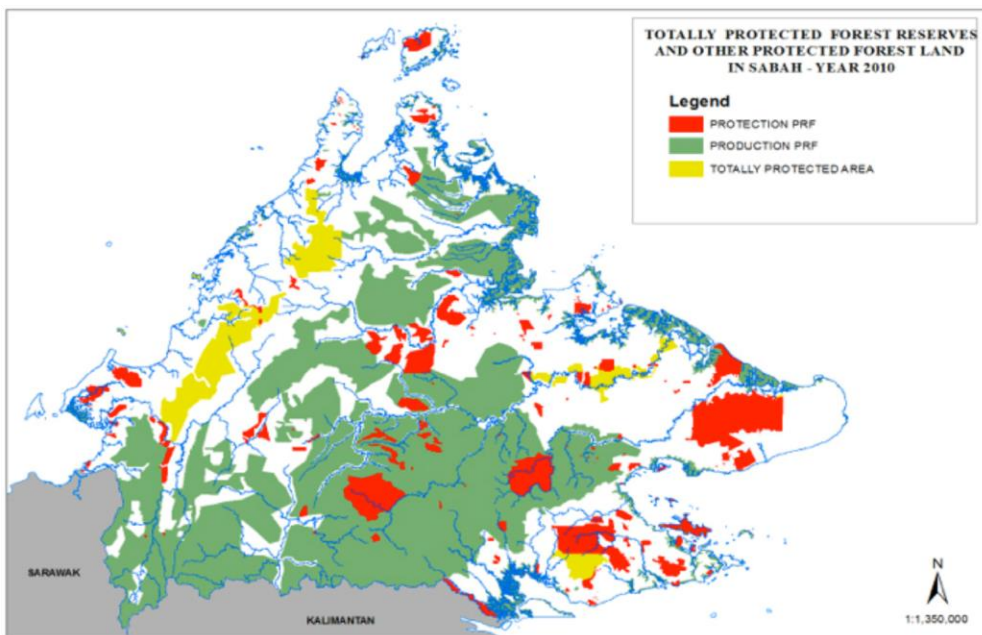
Permanent Reserve Forest in Sarawak 2010



**Totally Protected Forest Reserves and Other Protected Forest Land
in Sabah – Year 2005**



**Totally Protected Forest Reserves and Other Protected Forest Land
in Sabah – Year 2010**



and about 30 States laws covering environmental, trade of endangered species, social and well being of workers. We then matched these with the requirements for REDD+ SIS and tried to fill the gaps.

The purpose of the SIS is primarily to ensure the sustainable management of Malaysia's natural forest. This is done through independent assessment of forest management practices for certification and as well to measure the effectiveness of forest management practice.

Malaysia had stakeholder consultations on the content of the Safeguard Information System. It was agreed that the Malaysian Criteria and Indicators for Forest Management Certification (MC&I) is a good basis to demonstrate how REDD+ safeguards are addressed and respected.

Furthermore, other State regulations and forest management plans were used to assess how these safeguards were addressed and respected. The Convention on Biological Diversity's Aichi Target also viewed by stakeholders to support the REDD+ Safeguards implementation.

The features of the SIS are:

- Transparent and reliable information.
 - The SIS will aim over time to have a completely verified set of information.
 - This will be done by comparing the SIS report with the National Forest Monitoring System.
- Cost effective, by building upon existing system.
 - The SIS is builds upon the MC&I for forest certification and the Aichi Targets' indicators
- On-line data entry
 - State governments will report their progress on how safeguards are addressed and respected and also a platform for feedback from stakeholders.
 - It will also take into account sub national SIS as appropriate.
- Consistent reporting against the REDD+ actions

4.1 MALAYSIAN CRITERIA AND INDICATORS FOR FOREST MANAGEMENT CERTIFICATION (MC&I)

Malaysian Criteria and Indicators for Forest Management Certification (MC&I) consists of 9 principles, 47 criteria, 97 indicators and 307 verifiers. Certified

Forest Management Units (FMUs) are subjected to recertification audits by independent auditors once every three years with an annual surveillance audit conducted to ensure continued compliance with the requirements of the certification standard. Of these, seven principles are directly related to the REDD+ safeguards, i.e. Principles 1, 2, 3, 5, 6, 8 and 9. The nine principles of the MC&I are as follows:

Principle 1: Compliance with Laws and Principles

Forest management shall comply with all applicable laws of Malaysia and respect international treaties and agreements to which Malaysia is a signatory, and comply with all the Principles and Criteria contained in this standard.

Principle 2: Tenure and Use Rights and Responsibilities

Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.

Principle 3: Indigenous Peoples' Rights

The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognised and respected within the context of a forest management unit.

Principle 4: Community Relations and Worker's Rights

Forest management operations shall maintain or enhance the long-term social and economic well-being of local communities and forest workers.

Principle 5: Benefits from the forest

Forest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits.

Principle 6: Environmental Impact

Forest management shall conserve biological diversity and its associated values, water resources, soils and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.

Principle 7: Management Plan

A management plan – appropriate to the tenure, scale and intensity of the operations – shall be prepared, approved, implemented and kept up-to-date. The long term objectives of management, and the means of achieving them, shall be clearly stated.

Principle 8: Monitoring and Assessment

Monitoring shall be conducted – appropriate to the scale and intensity of forest management – to assess the condition of the forest, yields of forest products, chain of custody, management activities and their social and environmental impacts.

Principle 9: Maintenance of High Conservation Value Forests

Management activities in high conservation value forests shall maintain or enhance the attributes which define such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach.

4.2 CONVENTION ON BIOLOGICAL DIVERSITY'S AICHI TARGETS

Malaysia has updated its National Policy on Biological Diversity to be implemented from 2016-2025. There are five overarching goals that are geared towards realizing the policy statement and closely mirroring the Convention on Biological Diversity (CBD) Strategic Plan for Biodiversity 2011-2020.

They encompass reducing pressure on biodiversity, safeguarding ecosystems, species and genetic diversity, ensuring equitable sharing of benefits from the utilization of biodiversity and building the capacity of all stakeholders.

The five goals are as follows:

- (a) We have empowered and harnessed the commitment of all stakeholders to conserve biodiversity;
- (b) We have significantly reduced the direct and indirect pressures on biodiversity;
- (c) We have safeguarded all our key ecosystems, species and genetic diversity;
- (d) We have ensured that the benefits from utilization of biodiversity are shared equitably; and
- (e) We have improved the capacity, knowledge and skills of all stakeholders to conserve biodiversity.

Each goal has several targets that provide focus on specific areas. There are 17 targets to be achieved by 2025. The 17 national biodiversity targets encompass all the all the elements of the 20 Aichi Biodiversity Targets adopted under CBD. Each target is accompanied by a set of actions that spell out the steps to be taken to achieve them and the ultimately the goals. There are 57 actions with

measurable key indicators that will enable the monitoring of progress.

The progress will also be used in the future reporting. In addition, the achievement of Aichi Target no 3,4,5,7,11,12,14 and 15 will also address the risk of reversals and displacement.

4.3 STAKEHOLDER PARTICIPATION

4.3.1 The Process for Developing the Malaysian Criteria and Indicators (MC&I) for Forest Management Certification

A multi-stakeholder consultation process is the framework adopted in developing certification standard for forest management certification under the Malaysian Timber Certification Scheme (MTCS) operated by the Malaysian Timber Certification Council (MTCC).

The standard development/review process is spearheaded by a Standards Development/Review Committee comprising members who are representatives nominated by their respective stakeholder groups i.e. the social (indigenous peoples and workers' union), environmental and economic interest groups, and the relevant government agencies, from the three regions of Malaysia, i.e. Sabah, Sarawak and Peninsular Malaysia.

Additionally, enquiry drafts prepared are subjected to further stakeholder consultations through public comments and three regional consultations.

The MC&I (2002) standard which was a result of the collaboration between MTCC and the Forest Stewardship Council (FSC) was used as the standard for certification under the MTCS in October 2005.

In line with international practice and the standard setting process for the development of timber certification standards under the MTCS, the MC&I (2002) was subjected to a review process in April 2009.

The review process resulted in a revised forest management standard, i.e. the MC&I (Natural Forest) which was finalized and adopted by the Standards Review Committee in September 2011, and came into force in July 2012.

4.3.2 Malaysian Criteria and Indicators for Aichi Targets

A total of 29 stakeholder consultations were conducted from April 2014 to September 2015. They were a multi-stakeholder consultation process covering public, NGOs, CSOs and academia. The consultations included:

- (a) Setting of targets and key indicators;
- (b) Harmonization between different initiatives; and
- (c) Revision of National Policy on Biological Diversity.

NRE, coordinates and monitors the progress which will be deliberated by the NSC-NPBD and the National Biodiversity Council. The actions of this Policy will be reviewed by NRE at the end of each implementation phase.

4.3.3 The Process for Developing SIS and Summary of Information on How REDD+ Safeguards are Addressed and Respected

A series of regional consultations were conducted between 2012 -2014 on the design and content of SIS. In 2016, three regional consultations were conducted on the draft summary safeguards report. Feedbacks were obtained during the consultations and also post consultation.

4.3.4 Institutional Arrangement

NRE will be responsible to host and manage the SIS. The State governments will report on the progress on how REDD+ safeguards are addressed and respected during the implementation of REDD+ activities through an on-line portal.

The SIS obtains information from forest certification programme. For forest areas that have yet to be certified, information was obtained from the management plan. The assessment of information together with quality control and assessment is conducted by the Ministry of Natural Resources and Environment (NRE).

5.0 KEY LESSONS FROM MALAYSIA TO BE SHARED WITH OTHER COUNTRIES:

- (a) Managing expectations of various stakeholders while not encroaching into their jurisdiction.
 - Understanding the expectations of stakeholders in the context of REDD+ implementation, where it is a step-wise approaches
 - Ensure key features and elements are addressed and not carried away by perception.
 - Building confidence amongst stakeholders

- (b) Translating the REDD+ safeguards to national circumstances
 - What does each safeguard mean at national level?
 - Are there relevant information, process or policy or law available to address and respect each safeguard
 - What are the enablers?
- (c) Information assemblage for transparent, consistent and comprehensive manner
 - This is the most important part of the SIS.
 - Collate, analyses and presentation of information is important
 - Good IT consultants can help develop SIS in an organised manner

STAKEHOLDER CONSULTATIONS



STAKEHOLDER CONSULTATIONS



6.0 SUMMARY OF INFORMATION ON HOW REDD+ SAFEGUARDS ARE ADDRESSED AND RESPECTED

Safeguard	Description	Addressed	Respected	Remarks
a. That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements	Sustainable Forest Management is one of the component of the 9 th Malaysian Development Plan. National Forest Programmes are developed based on National Development Plan and developed for a period of five years and is approved by the Parliament.	All progress in the implementation of sustainable forest management is monitored by the National Land Council. The National Land Council is a Council established under Malaysia's Constitution Where relevant, provisions related to forest management of the following international agreements are respected in forest management: • United Nations Convention on Biological Diversity, 1992 – Articles 1-19 ◦ Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 2000 • Convention on Wetlands of International Importance Especially as Waterfowl Habitat, 1971 – Articles 1-6 • International Tropical Timber Agreement, 1994 – Chapters I and VII • United Nations Framework Convention on Climate Change, 1992 – Articles 1-6 • United Nations Declaration on Rights of Indigenous Peoples, 2007 – Articles 8, 12, 24, 26, 28 and 29 • Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 – Articles I-X	All development projects are monitored by Prime Minister's Department and sub national authorities. Funds are only allocated based on the progress achieved.	Malaysia has ensured that the consistency between the REDD+ action with the national programmes as REDD+ actions are built upon existing systems and addressing national interest.

Safeguard	Description	Addressed	Respected	Remarks
b. Transparent and effective national forest governance structures, taking into account national legislation and sovereignty	Forest Management shall comply with all applicable federal, state and local laws and administrative requirements. Federal regulations will be supplemented by State Laws and regulations.	Federal Laws • Federal constitution • Town and Country Planning Act 1976 (Act172) • Aboriginal Peoples Act, 1954 including relevant decisions of the Civil Courts • Environmental Quality Act, 1974 ◦ Environmental Quality (Scheduled Wastes) Regulations, 2005 ◦ Environmental Quality (Prescribed Premises) (Scheduled Wastes Treatment and Disposal Facilities) Regulations, 1989 ◦ Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order, 1987 • Human Rights Commission of Malaysia Act, 1999 • International Trade in Endangered Species Act, 2008 • Land Conservation Act, 1960 • National Forestry Act, 1984 • National Land Code, 1965 • National Parks Act, 1980 • Waters Act, 1920 • Wildlife Conservation Act, 2010 Sub national Laws <u>Peninsular Malaysia</u> • State Forest Enactments • State Forest Rules <u>Sabah</u> • Sabah State Constitution • Biodiversity Enactment, 2000 • Environment Protection Enactment, 2002 ◦ Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order, 2005 • Forest Enactment, 1968 ◦ Forest Rules, 1969 • Interpretation (Definition of Native) Ordinance, 1952 • Land Ordinance, 1930 (Sabah Cap. 68)	Record and availability of up-to-date applicable federal, state and local laws, and regulations and policies, in particular those related to forest management and the compliance against these laws are checked Forest managers are aware and/ or knowledgeable of the applicable federal, state and local laws, as well as the regulatory framework for forest management. Record of violations and actions taken to address them. The provisions of all binding international agreements applicable to forest management shall be respected. Forest Management areas shall be protected from illegal harvesting, settlement and other unauthorised activities.	The National Forestry Policy is being updated. The National Biodiversity Policy has been updated and will be implemented between 2016-2025. It underwent a series of consultation from 2014-2016. National Biodiversity Planning to Support the Implementation of the Convention on Biological Diversity 2011-2020 Strategic Plan in Malaysia (NBSAP)

Safeguard	Description	Addressed	Respected	Remarks
		• Native Court Enactment, 1992 ◦ Native Court (Native Customary Laws) Rules, 1995 • Sabah Parks Ordinance, 1962 • State Cultural Heritage (Conservation) Enactment, 1997 • Wildlife Conservation Enactment, 1997 • Water Resources Enactment, 1998 • All <i>adat</i> recognised and enforceable by the Native Courts, including relevant decisions of the Civil Courts <u>Sarawak</u> • Sarawak State Constitution Forests Ordinance (Cap.126) ◦ Forest Rules, 1962 • Land Code (Cap. 81) • National Parks and Nature Reserves Ordinance, 1998 • Native Courts Ordinance, 1992 ◦ Native Courts Rules, 1993 • Native Customs (Declaration) Ordinance, 1996 • Natural Resources and Environment Ordinance (Cap. 84) ◦ Natural Resources and Environment (Prescribed Activities) Order, 1994 • Sarawak Biodiversity Centre Ordinance, 1997 ◦ Sarawak Biodiversity Regulations, 2004 ◦ Sarawak Biodiversity (Fees) Notifications, 2003		

Safeguard	Description	Addressed	Respected	Remarks
		• Sarawak Cultural Heritage Ordinance, 1993 • Sarawak Forestry Corporation Ordinance, 1995 • Sarawak Rivers Ordinance, 1993 (Cap. 4) and Regulations • Water Ordinance, 1994 and Regulations • Wild Life Protection Ordinance, 1998 (Cap. 26) ◦ Wild Life Protection Rules, 1998 • All <i>adat</i> codified under the Native Customs (Declaration) Ordinance, 1996 and any other <i>adat</i> recognised and enforceable by the Native Courts under the Native Court Ordinance, 1992 and the Native Courts Rules, 1993 • Decisions of the Civil Courts pertaining to legal or customary tenure or use rights <u>Policies</u> • State Forest Policy, 1954 <u>National Policy</u> • National Physical Plan 3, 2016 • National Forestry Policy, 1978 (revised 1992) • National Physical Plan – 2, 2010 • National Policy on Biological Diversity, 1998 • National Policy on Biological Diversity (2016-2025) • National Policy on Environment, 2002 • National Tiger Conservation Action Plan, 2008-2020 • National Timber Industry Policy, 2009-2020 • National Action Plan for Peatlands • National Wetlands Policy, 2004 • National Action Plan on Peatlands, 2011 (NAP)		

Safeguard	Description	Addressed	Respected	Remarks
c. Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous People	Indigenous people shall control forest management on their lands and territories unless they delegate control with free, prior and informed consent to the parties. Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with the such peoples, and recognised and protected by forest managers Indigenous peoples shall be acknowledged and compensated for the application of their traditional knowledge regarding the use of forest operations. This compensation shall be formally agreed upon with their free, prior and informed consent before forest operations commence.	<u>Peninsular Malaysia:</u> - Aboriginal Peoples Act, 1954 – Sections 2, 3, 6, 7, 8, 10, 11, 12 and 19 <u>Sabah</u> - Land Ordinance, 1930 (Sabah Cap. 68) - Established Native Customary Rights - State Cultural Heritage (Conservation) Enactment, 1997 - Native Court Enactment, 1992 - Native Court (Native Customary Laws) Rules, 1995 - All ‘adat’ recognised and enforceable by the Native Courts, including relevant decisions of the Civil Courts <u>Sarawak</u> - Land Code (Cap. 81) – Sections 5, 6,7,12,18,92,94,95 and 209 - Forest Ordinance (Cap. 126) – Sections 6,10,11,16,32(1),35,46 and 47 - Notifications in Sarawak Government Gazette (Second Schedule) - All ‘adat’ codified under the Native Customs (Declaration) Ordinance, 1996 and any other ‘adat’ recognised and enforceable by the Native Courts under the Native Courts Ordinance, 1992, and the Native Courts Rules, 1993 - Decisions of the Civil Courts pertaining to legal or customary tenure or use rights - Records of consultations with the natives - Sarawak Biodiversity Regulations, 2004 - Adat Iban 1993, Adat Bidayuh 1994, Adat Kayan-Kenyah 1994 - Native Courts Ordinance, 1992 - Native Courts Rules, 1993	Availability of documentation or evidence as appropriate of the customary rights of indigenous people’s lands within relevant federal, state and local laws, if any. Management and use of such lands and resources are controlled by indigenous peoples unless they delegate control with free, prior and informed consent to their parties. Availability of appropriate mechanisms to resolve any conflicts and grievances between parties involved Forest management practices in indigenous people’s lands recognised within relevant federal, state and local laws shall not threaten or diminish, either directly or indirectly, their resources or tenure rights. Actions shall be taken to prevent or mitigate adverse impacts Availability of appropriate procedures within current administrative processes for identifying and protecting such sites by indigenous peoples within relevant federal, state and local laws or by mutual agreement. Availability of documentation, if any, of traditional forest-related knowledge and practices of indigenous peoples in the use of forest species or management systems in forest operations.	Draft bill on Access to benefit sharing law is still undergoing consultation. All forest management units do have documentation that knowledge and rights of indigenous and members of local communities are respected. These documents have been considered during the forest certification process.

Safeguard	Description	Addressed	Respected	Remarks
d. The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision	Clear evidence of long-term forest use rights to the land (e.g. land title, customary rights, or lease agreements) shall be demonstrated. Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free, prior and informed consent to other parties. Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances and status of any outstanding disputes will be explicitly considered in the certification evaluation. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.	- Native Customs (Declaration) Ordinance, 1996 - Sarawak Cultural Heritage Ordinance, 1993 - All <i>adat</i> codified under the Native Customs (Declaration) Ordinance, 1996 and any other <i>adat</i> recognised and enforceable by the Native Courts under the Native Courts Ordinance, 1992 and the Native Courts Rules, 1993	Availability of documentation of legal status, and established forest use rights of the land or forest resources within the relevant federal, state and local laws in the FMU. Forest managers shall support legally recognised mechanisms for resolving land claims. Availability of documentation, if any, of legal or customary tenure or use rights of local communities within relevant federal, state and local laws in the FMU. Forest managers shall recognise, respect and collaborate with holders of duly recognised legal or customary tenure or use rights within relevant federal, state and local laws, in activities that may affect such rights. Availability of appropriate mechanisms to resolve disputes over tenure and use rights.	FPIC Guideline for REDD+ implementation is available for states to adapt. Ethnography studies to document the livelihood of the communities, culture and way of life All states do have requirement to conduct PIC in forest areas with indigenous peoples and local communities

Safeguard	Description	Addressed	Respected	Remarks
e. That actions are consistent with the conservation of natural forest and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits	Forest management shall strive toward economic viability, while taking into account the full environmental, social, and operational cost of production, and ensuring the investments necessary to maintain the ecological productivity of the forest. Forest management and operations shall encourage the optimal use and local processing of the forest's diversity of products. Forest management shall minimise waste associated with harvesting and on-site processing operations and avoid damage to other forest resources. Forest management shall strive to strengthen and diversify the local economy, avoiding dependence on a single forest product. Forest management operations shall recognise, maintain, and, where appropriate, enhance the value of forest services and resources such as watersheds and fisheries.	- International Trade in Endangered Species Act, 2008 Land Conservation Act, 1960 - National Forestry Act, 1984 - National Land Code, 1965 - National Parks Act, 1980 - State Forest Enactments - State Forest Rules <u>Sabah</u> - Forest Enactment, 1968 - Forest Rules, 1969 <u>Sarawak</u> - Forest Ordinance (Cap. 126) (1958 Edition) – Part II (Forest Reserves), Part III (Protected Forests) and Part IV (Communal Forests) <u>Policies</u> - National Forestry Policy, 1978 (revised 1992) - National Physical Plan – 2, 2010 - National Policy on Biological Diversity, 1998 - National Policy on Biological Diversity, 2016-2025 - National Policy on Environment, 2002 - National Tiger Conservation Action Plan, 2008-2020 - National Timber Industry Policy, 2009-2020 - National Action Plan for Peatlands	Investments and reinvestments are made in forest management, including for forest administration, research, human resource development, protection, economic, conservation, environmental and social aspects, consistent with the tenure of the FMU. Provisions and management prescriptions are made to maintain, restore or enhance the productive capacity and ecological integrity of the FMU to ensure its economic viability Forest management practices encourage the optimal use of forest resources. Forest operations encourage local processing and diversifying the mix of commercial products derived from the forest. Implementation of guidelines for reduced/low impact logging to minimise damage to residual stand. Log extraction operations to minimise product wastage, degradation and foregone revenue opportunities. Regular training shall be conducted for the staff on techniques of reduced-impact logging. Forest management strategy that encourages the production of a mix of commercial forest products, including the utilisation of non-timber forest product and services, particularly by local community enterprises, provided that such use does not compromise the ecological health of the forest.	Some FMU had some forest management prescriptions missing. Evidence was requested on how these prescriptions missing. Evidence was requested on how these prescriptions were monitored and the FMUs provided them. Between 2006-10, about 4.85 million ha of forest was certified with certification of area withdrawn in 2010 due to the failure of the FMU to undergo the Stage 2 audit within the stipulated time period. Malaysia aims to expand forest certification to all PRF by 2025.

Safeguard	Description	Addressed	Respected	Remarks
f. Actions to address the risks reversals	The rate of harvest of forest products shall not exceed levels which can be permanently sustained. Forest conversion to plantations or non-forest land uses shall not occur, except in circumstances where conversion: a) entails a very limited portion of the forest management unit; b) does not occur on high conservation value forest areas; c) will enable clear, substantial, additional, secure, long-term conservation, economic and social benefits across the forest management unit; d) does not allow on peatland areas with more than 3m peat depth; and e) entails to degraded peatland areas with proper/appropriate good management practices with reference to guidelines/ manual. The frequency and intensity of monitoring shall be determined by the scale and intensity of forest management operations as well as the relative complexity and fragility of the affected environment. Monitoring procedures shall be consistent and replicable over time to allow comparison of results and assessment of change.	Federal Laws • Federal Constitution • Aboriginal Peoples Act , 1954 including relevant decisions of the Civil Courts • Environmental Quality Act, 1974 - o Environmental Quality (Scheduled Wastes) Regulations, 2005 - o Environmental Quality (Prescribed Premises) (Scheduled Wastes Treatment and Disposal Facilities) Regulations, 1989 - o Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order, 1987 • Human Rights Commission of Malaysia Act, 1999 • International Trade in Endangered Species Act, 2008 • Land Conservation Act, 1960 • National Forestry Act, 1984 • National Land Code, 1965 • National Parks Act, 1980 • Waters Act, 1920 • Wildlife Conservation Act, 2010 Sub national Laws <i>Peninsular Malaysia</i> • State Forest Enactments • State Forest Rules	Implementation of guidelines and/ or procedures to identify and demarcate sensitive areas for the protection of soil and water, watercourses and wetlands. Implementation of management guidelines, where appropriate, to maintain and/ or enhance the value of forest services and resources. Rate of harvest shall not be greater than estimated re-growth of the residual stand based on permanent sample plots within a pre-defined cutting cycle. Records of quantity of timber and important non-timber forest products harvested shall be maintained, taking cognisance of their sustainability in the long term. The forest manager shall ensure that conversion from natural forest to forest plantations or non-forest use: a) Shall not include any High Conservation Value Forest areas; and b) Covers a very limited portion of the FMU and shall enable clear, substantial, additional, secure, long term conservation, economic and social benefits across the FMU.	The current trend in reduced annual allowable cut it still on-going until 2016-2020 period.

Safeguard	Description	Addressed	Respected	Remarks
	Forest management shall include the research and data collection needed to monitor, at a minimum, the following indicators: a) Yield of all forest products harvested; b) Growth rates, regeneration and condition of the forest; c) Composition and observed changes in the flora and fauna; d) Environmental and social impacts of harvesting and other operations; and e) Costs, productivity and efficiency of forest management.	<u>Sabah</u> • Sabah State Constitution • Biodiversity Enactment, 2000 • Environment Protection Enactment, 2002 - o Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order, 2005 • Forest Enactment, 1968 - o Forest Rules, 1969 • Interpretation (Definition of Native) Ordinance, 1952 • Land Ordinance, 1930 (Sabah Cap. 68) • Native Court Enactment, 1992 - o Native Court (Native Customary Laws) Rules, 1995 • Sabah Parks Ordinance, 1962 • State Cultural Heritage (Conservation) Enactment, 1997 • Wildlife Conservation Enactment, 1997 • Water Resources Enactment, 1998 • All adat recognised and enforceable by the Native Courts, including relevant decisions of the Civil Courts	c) A limited portion” is defined as: not more than 2.5% of the total area of the FMU in the first 3 years; • not more than 1.5% for the subsequent 2 years; and not more than 1% for the next subsequent 2 years. Implementation Forest managers shall comply with the regulatory monitoring procedures in accordance with the relevant federal and state guidelines of the Forestry Departments and other relevant agencies Forest managers shall identify and implement appropriate monitoring procedures, in accordance with the scale and intensity of the forest management operations, for assessing social, ecological, environmental and economic impacts. Forest managers shall gather the relevant information, appropriate to the scale and intensity of the forest management operations, needed to monitor the a to e	

Safeguard	Description	Addressed	Respected	Remarks
g. Actions to reduce displacement of emissions	Forest management shall include the research and data collection needed to monitor, at a minimum, the following indicators - Yield of all forest products harvested. - Growth rates, regeneration and condition of the forest. - Composition and observed changes in the flora and fauna. - Environmental and social impacts of harvesting and other operations - Costs, productivity and efficiency of forest management. The results of monitoring shall be incorporated into the implementation and revision of the management plan. Assessment to determine the presence of the attributes consistent with High Conservation Value Forests will be completed, appropriate to scale and intensity of forest management.	<u>Sarawak</u> - Sarawak State Constitution - Forests Ordinance (Cap. 126) - o Forest Rules, 1962 - Land Code (Cap. 81) - National Parks and Nature Reserves Ordinance, 1998 - Native Courts Ordinance, 1992 - o Native Courts Rules, 1993 - Native Customs (Declaration) Ordinance, 1996 - Natural Resources and Environment Ordinance (Cap. 84) - o Natural Resources and Environment (Prescribed Activities) Order, 1994 - Sarawak Biodiversity Centre Ordinance, 1997 - o Sarawak Biodiversity Regulations, 2004 - o Sarawak Biodiversity (Fees) Notification, 2003 - Sarawak Cultural Heritage Ordinance, 1993 - Sarawak Forestry Corporation Ordinance, 1995 - Sarawak Rivers Ordinance, 1993 (Cap. 4) and Regulations - Water Ordinance, 1994 and Regulations - Wild Life Protection Ordinance, 1998 (Cap. 26) - o Wild Life Protection Rules, 1998 - All <i>adat</i> codified under the Native Customs (Declaration) Ordinance, 1996 and any other <i>adat</i> recognised and enforceable by the Native Courts under the Native Courts Ordinance, 1992 and the Native Courts Rules, 1993 - Decisions of the Civil Courts pertaining to legal or customary tenure or use rights	Forest managers shall gather the relevant information, appropriate to the scale and intensity of the forest management operations, needed to monitor the items (a) to (e) Forest managers shall incorporate the results and findings of the monitoring activities into the implementation and revision of the forest management plan. Forest managers shall determine the presence of HCVF attributes in the FMU in accordance with relevant federal, state and local laws, appropriate to scale and intensity of forest management operations in the FMU, and in consultation with relevant stakeholders. Measures to demarcate, maintain and/or enhance the HCVF attributes are documented in the forest management plan and effectively implemented. These measures shall be included in the forest management plan summary made available to the public.	Selangor State has proposed a moratorium on logging from 2008 onwards. In addition, the current annual allowable cut is below the limit set and no incidence of increased incidence of illegal logging reported. There is no evidence of displacement of emissions as yet.

Safeguard	Description	Addressed	Respected	Remarks
	The management plan shall include and implement specific measures that ensure the maintenance and/or enhancement of the applicable conservation attributes consistent with the precautionary approach. These measures shall be specifically included in the publicly available management plan summary. Annual monitoring shall be conducted to assess the effectiveness of the measures employed to maintain or enhance the applicable conservation attributes.	c. Adat Iban 1993, Adat Bidayuh 1994, Adat Kayan-Kenyah 1994 Policies • State Forest Policy, 1954 National Policy • National Forestry Policy, 1978 (revised 1992) • National Physical Plan – 2,2010 • National Policy on Biological Diversity, 1998 • National Policy on Environment, 2002 • National Tiger Conservation Action Plan, 2008-2020 • National Timber Industry Policy, 2009-2020 • National Action Plan for Peatlands	Forest managers shall conduct, appropriate to scale and intensity of forest management operations, manual monitoring to assess the effectiveness of the measures in the management of the HCVPs in the FMU. Forest managers shall incorporate the results and findings of the HCVPs monitoring activities into the implementation and revision of the forest management plan.	

Appendix 1

FREE, PRIOR AND INFORMED CONSENT (FPIC) GUIDELINES FOR REDD+ ACTIVITY

Requirement to obtain FPIC

1. If the proposed REDD+ activity is intended to take place on land to which one or more indigenous and local communities has a right as established by law, the proponent of the REDD+ activity shall be required to obtain the FPIC of, and enter into a benefit-sharing agreement with, the relevant indigenous and local community or communities.

Process for obtaining FPIC

2. The FPIC of indigenous and local communities shall be obtained in accordance with the said indigenous and local communities' customary laws and practices, community protocols and procedures, as the case may be.

Timeline for obtaining FPIC

- 3.1 The outcome of an application for FPIC shall be decided by the indigenous and local community concerned in accordance with the community's requirements and practice, and within a reasonable period of time.
- 3.2 There should be sufficient time for the relevant indigenous and local community to access, understand, analyse and discuss information pertaining to the proposed REDD+ activity.

Entity from whom FPIC is sought

4. The FPIC of indigenous and local communities shall be obtained from the representative or institution identified as the entity with the authority to give such consent, in accordance with the customary laws and practices, community protocols and procedures, as the case may be.

Provision of information

- 5.1 The proponent of the REDD+ activity shall provide to the relevant indigenous and local community, information that is accurate, objective, clear and sufficient to allow the relevant community to arrive at an informed decision. The information should cover, but is not limited to, the following aspects:

- (a) the nature, size, reversibility and scope of the proposed activity;
- (b) the purpose of the proposed activity;
- (c) the duration of the proposed activity;
- (d) the areas that will be affected;
- (e) a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks;
- (f) a preliminary assessment of the potential fair and equitable benefit-sharing;
- (g) personnel likely to be involved in the proposed activity; and
- (h) procedures that the activity may entail.

5.2 The information provided under paragraph 5.1 should be -

- (a) objective, that is covering both the positive and negative potential of REDD+ activities and consequences of giving or withholding consent;
- (b) complete, that is covering the spectrum of potential social, financial, political, cultural, environmental impacts;
- (c) delivered in a manner that strengthens and does not erode indigenous or local cultures;
- (d) delivered in appropriate language and in a culturally appropriate format by culturally appropriate personnel, in culturally appropriate locations; and
- (e) provided on a continuous basis throughout the process of obtaining FPIC.

5.3 The information provided under paragraph 5.1 shall be presented by a person or organisation that is mutually trusted by both the proponent of the REDD+ activity and the relevant indigenous and local community, or alternatively in the presence of an agreed third-party observer who is entrusted with the role of ensuring that no relevant information is withheld.

Outcome of FPIC process

6. If the relevant indigenous and local community decides to give their consent to the proposed REDD+ activity, a Resolution of Consent or its equivalent shall be adopted and issued by the relevant community through the duly authorised representative or institution. Otherwise, the relevant community shall adopt and issue a Resolution of Non-Consent or its equivalent. All members of the community shall be informed of the outcome of the FPIC process by the relevant community.

The decision-making process shall address gender considerations.

Formalisation of consent

- 7.1 If a Resolution of Consent or its equivalent is adopted and issued by the relevant indigenous and local community, the proponent of the REDD+ activity and the relevant community shall proceed to formalise the terms and conditions on which the FPIC is given in an agreement or its equivalent.
- 7.2 The Agreement or its equivalent shall be drafted in accordance with the terms and conditions that have been agreed upon by the parties, and, if necessary, be translated into a language or dialect understood by the relevant indigenous and local community.
- 7.3 The final version of the Agreement or its equivalent shall be presented and explained to the duly authorised representative or institution of the relevant indigenous and local community for affirmation. Thereafter, the parties shall sign the Agreement or its equivalent.
- 7.4 The Agreement or its equivalent shall stipulate, among others, the following:
 - (a) the parties involved;
 - (b) the duration of the agreement;
 - (c) the benefits to be derived by the relevant indigenous and local community, indicating the type of benefits, specific target beneficiaries as to sector and number, the period covered, and other pertinent information;
 - (d) the responsibilities of each party;
 - (e) whether the relevant community requires further FPIC to be given where the proponent of the REDD+ activity becomes subject to a merger, reorganisation, transfer of rights, acquisition by another entity, or joint venture;
 - (f) remedies and/or sanctions for non-compliance or violation of terms;
 - (g) dispute settlement clause; and
 - (h) undertaking by the proponent of the REDD+ activity to indemnify the relevant community for any damage as a result of the proposed REDD+ activity.

Change of activity, etc

8. If a change occurs in the nature of the proposed REDD+ activity, or if new information pertaining to the activity emerges, either party may require the renegotiation of the existing Agreement or its equivalent or the negotiation of a new FPIC.

Documentation by third party observer

9. The FPIC process set out in the preceding paragraphs shall be observed and documented by an independent third-party observer, to be appointed by the parties to the Agreement or its equivalent. Such documentation shall be made publicly available.

Verification of FPIC

- 10.1 The validity of every FPIC outcome shall be verified either by a government agency or an independent third-party.
- 10.2 In considering whether the relevant indigenous and local community has given FPIC for the proposed REDD+ activity, the following matters should be considered:
 - (a) whether the relevant community had adequate knowledge of the laws and regulations governing REDD+;
 - (b) whether the relevant community was able to engage in reasonable negotiations with the proponent of the REDD+ activity;
 - (c) whether the relevant community was given adequate time:
 - (i) to consider the application for FPIC, including time to consult with the relevant people;
 - (ii) to negotiate the benefit-sharing agreement;
 - (d) whether the relevant community has received independent legal advice regarding the proposed REDD+ activity and the legal requirements for FPIC; and
 - (e) whether a benefit-sharing agreement was entered into upon fair and equitable terms.

Notification

11. The proponent of the REDD+ activity shall provide to the National Focal Point for UNFCCC the following:
 - (a) information on how the rights of the ILCs are addressed and respected, including the FPIC process;
 - (b) the documentation by an independent third-party observer referred to in paragraph 9;
 - (c) the verification report of the FPIC outcome referred to in paragraph 10; and
 - (d) the Agreement or its equivalent including the benefits agreed.

Applicability of Guidelines to Others

12. These Guidelines shall, in relation to REDD+ activity, apply *mutatis mutandis* to any person or entity having an interest or right in land including, but not limited to, concessionaires, licensees and permit holders.

7.0 DEFINITION

Adat: Adat means accepted norms and customs that govern the lives of indigenous communities, which include their way of life, basic values, systems of belief, codes of conduct, manners, conventions, agricultural and cultural practices according to which indigenous societies are ordered.

Biological control agents: Living organisms used to eliminate or regulate the population of other living organisms.

Biological corridor: Area of habitat connecting wildlife populations separated by human activities (such as roads, development or logging). This allows an exchange of individuals between populations, which may help prevent the negative effects of inbreeding and reduced genetic diversity (via genetic drift) that often occur within isolated populations. Corridors may also help facilitate the re-establishment of populations that have been reduced or eliminated due to random events (such as fires or disease). This may potentially moderate some of the worst effects of habitat fragmentation.

Biological diversity: The variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems.

Chain of custody: The channel through which products are distributed from their origin in the forest to their end-use.

Chemicals: The range of fertilisers, insecticides, fungicides, and hormones which are used in forest management.

Criterion (pl. Criteria): A means of judging whether or not a Principle (of forest stewardship) has been fulfilled.

Customary rights: Rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit.

Ecosystem: A community of all plants and animals and their physical environment, functioning together as an interdependent unit.

Encroachment: The act or action of using forest land contrary to the provisions provided for in forestry laws and regulations with regard to forest land uses.

Endangered species: Any species which is in danger of extinction throughout all or a significant portion of its range.

Exotic species: An introduced species not native or endemic to the area in question.

Forest management/manager: The people responsible for the operational management of the forest resource and of the enterprise, as well as the management system and structure, and the planning and field operations.

Forest management area: A forest management area refers to the clearly defined area which is under direct management of the company undertaking forest management assessment for the purpose of timber certification.

Forest management unit: A forest management unit (FMU) is a clearly defined forest area, managed to a set of explicit objectives and according to a long-term management plan.

Forest plantation: Forest stand in which trees have been established by planting or/and deliberate seeding or coppicing (where the coppicing is previously planted trees) with either native species or non-native species that meet all the following criteria, namely, one or two or few species, even-aged, and regular spacing.

Forest worker: An individual who is an employee of the FMU manager, a licensee, contractor or processor, or is an independent owner/operator performing one or more phases involved in the harvesting of timber from a licence, or delivery of timber to a processor.

Free, prior and informed consent: A decision-making process that does not involve coercion/undue influence/manipulation (free), is made before activities are undertaken (prior), is founded upon a clear understanding (informed), and involves granting or withholding consent (saying 'yes' or 'no') to an activity, programme or policy (consent).

Genetically modified organisms: Biological organisms which have been induced by various means to consist of genetic structural changes.

High conservation value forests: High Conservation Value Forests (HCVFs) are those that possess one or more of the following attributes:

- (a) forest areas containing globally, regionally or nationally significant concentrations of biodiversity values (e.g. endemism, endangered species, refugia); and/or large landscape level forests, 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.
 - (b) forest areas that are in or contain rare, threatened or endangered ecosystems.
 - (c) forest areas that provide basic services of nature in critical situations (e.g. watershed protection, erosion control).
 - (d) forest areas fundamental to meeting basic needs of local communities (e.g. subsistence, health) and/or critical to local communities' traditional cultural identity (areas of cultural, ecological, economic or religious significance identified in cooperation with such local communities).
- Indicator: A qualitative, quantitative or descriptive attribute that, when periodically measured or monitored, indicates the direction of change.

Indigenous peoples: The existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement, or other means reduced them to a non-dominant or colonial situation; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form a part, under state structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant.

In the context of this standard, indigenous peoples in Malaysia refer to Aborigines in Peninsular Malaysia, and Natives in Sabah and Sarawak.

Aborigines: Aborigines in Peninsular Malaysia are indigenous peoples as defined in the Federal Constitution Article 160(2), and the Aboriginal Peoples Act, 1954, Section 3.

Natives: Natives in Sabah are indigenous peoples as defined in the Federal Constitution Article 161(A), Clause 6 and the Interpretation (Definition of Native) Ordinance, 1952.

Natives in Sarawak are indigenous peoples as defined in the Federal Constitution Article 161(A), Clauses 6 and 7 and the Schedule to the Interpretation Ordinance, 2005 (Cap. 61).

Landscape: A geographical mosaic composed of interacting ecosystems resulting from the influence of geological, topographical, soil, climatic, biotic and human interactions in a given area.

Local communities: Permanent or stable human communities who rely on the forest resources and ecosystems, are having their own rules, cultural norms and expectations, are living in or adjacent to the FMU, and are affected by forest management operations conducted within the FMU.

Local laws: Includes all legal norms given by organisms of government whose jurisdiction is less than the national level, such as departmental, municipal and customary norms.

Long term: The time-scale of the forest owner or manager as manifested by the objectives of the management plan, the rate of harvesting, and the commitment to maintain permanent forest cover. The length of time involved will vary according to the context and ecological conditions, and will be a function of how long it takes a given ecosystem to recover its natural structure and composition following harvesting or disturbance, or to produce mature or primary conditions.

Natural cycles: Nutrient and mineral cycling as a result of interactions between soils, water, plants and animals in forest environments that affect the ecological productivity of a given site.

Natural forest: Forest areas where many of the principal characteristics and key elements of native ecosystems such as complexity, structure and diversity are present.

Non-forest land use: Land not primarily intended for growing or supporting a forest, including forest plantation.

Non-timber forest products: All forest products except timber, including other materials obtained from trees such as resins and leaves, as well as any other plant and animal products.

Permanent reserved forest: Any land constituted or deemed to have been constituted a permanent reserved forest under the National Forestry Act, 1984. Plantation: Forest areas lacking most of the principal characteristics and key elements of native ecosystems which result from the human activities of either planting, sowing or intensive silvicultural treatments. Precautionary approach: The essence of the precautionary approach is given in Principle 15 of the Rio Declaration, which states; “Where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

Principle: An essential rule or element of forest stewardship.