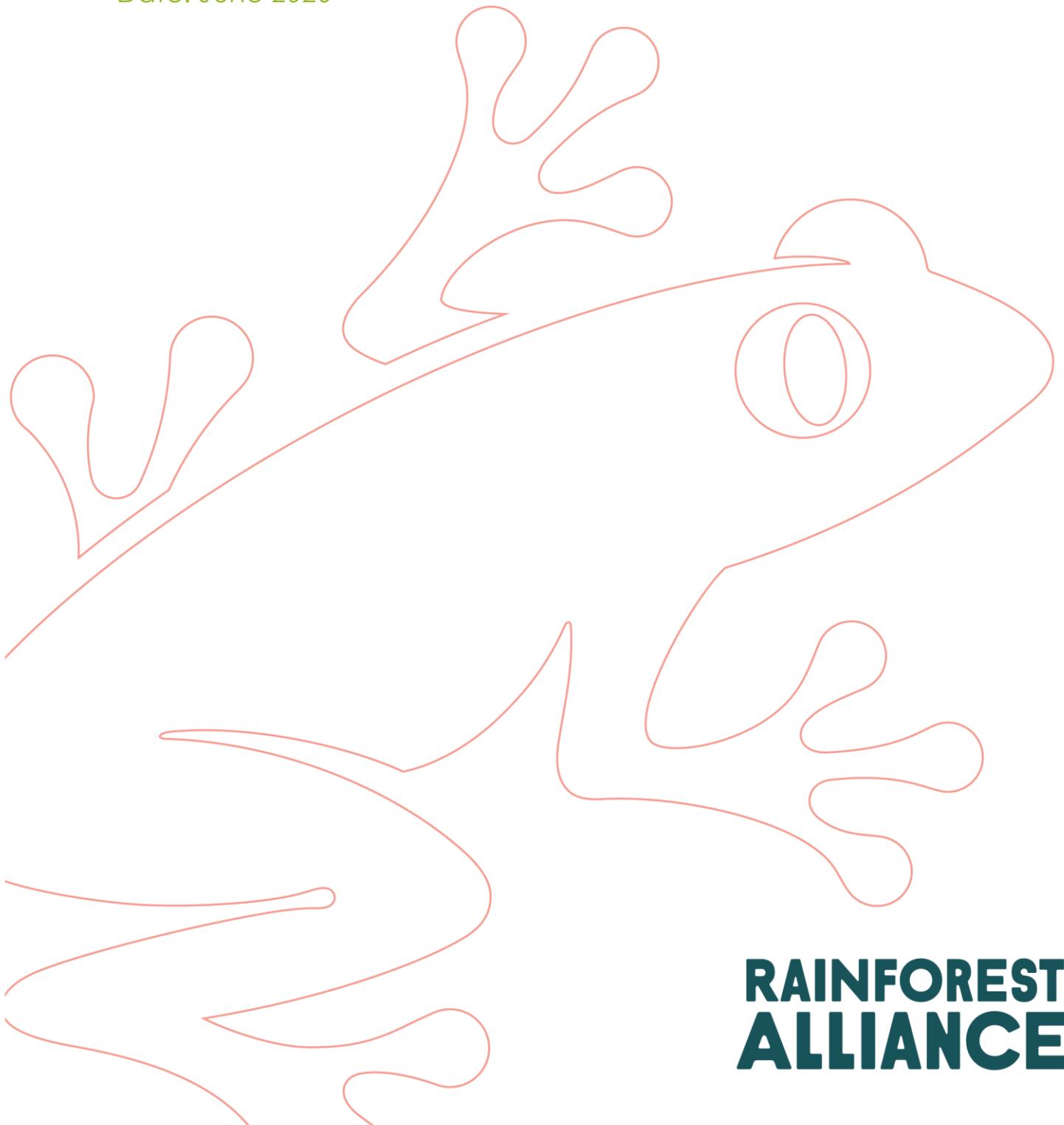


ANNEX 11

FREE, PRIOR AND INFORMED CONSENT (FPIC) PROCESSES

Version 1

Date: June 2020



**RAINFOREST
ALLIANCE**



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More information?

For more information about the Rainforest Alliance, visit www.rainforest-alliance.org or contact info@ra.org

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June 30, 2020	July 1, 2021	Until further notice
Developed by:		Approved by:
Rainforest Alliance Department Standards & Assurance		Chief Supply Chain Officer
Linked to (code and name of documents, if applicable):		
SA-S-SD-1-V1 Rainforest Alliance 2020 Sustainable Agriculture Standard, Farm requirements		
Replaces:		
Not applicable		
Clause or requirement number and text (if applicable):		
5.8.1, 5.8.2		
Applicable to:		
Farm certificate holders		
Country/Regions:		
All		
Crops:	Type of organizations:	
Tree crops (such as coffee, cocoa), tea, fruits (such as bananas, coconuts and pineapples), nuts (such as hazelnuts) and cut flowers. Vegetables and palm: subject to confirmation	Large and individual certified farms	



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OBJECTIVE

This Rainforest Alliance Annex aims to provide Certificate Holders with additional detailed information on how to reach and maintain compliance with requirements under topic "5.8 Communities" in the Rainforest Alliance Sustainable Agriculture Standard.

SCOPE

Core criterion 5.8.1 of the 2020 Rainforest Alliance Standard requires that Farm management respects legal and customary rights of indigenous peoples and local communities. Activities diminishing the land or resource use rights or collective interests of indigenous peoples and local communities, including High Conservation Values (HCVs) 5 or 6, are conducted only after having received free, prior and informed consent (FPIC) following the Rainforest Alliance FPIC annex.

The FPIC process includes:

- Negotiated compensation for the loss of use
- Documentation of the process including, maps that indicate the location, boundaries, and planned uses of lands and other resources over which communities have legal, customary, or user rights

AUDIENCE

This annex is directed to Rainforest Alliance authorized auditors and farm administrator representatives that will implement core criterion 5.8.1 of the medium and large farms standard, it describes:

- a) The cases where an FPIC process is required
- b) The steps required in the FPIC process, in cases where an FPIC process is necessary

1. FPIC DEFINITION AUDIENCE

All Peoples have the right to self-determination. It is a fundamental principle in international law, embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The standard, Free, Prior and Informed Consent (FPIC), as well as Indigenous Peoples' rights to lands, territories and natural resources are embedded within the universal right to self-determination. The normative framework for FPIC consists of a series of international legal instruments including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organization Convention 169 (ILO 169), and the Convention on Biological Diversity (CBD), among many others, as well as national laws.

FPIC is a specific right that pertains to Indigenous Peoples and local communities and is recognized in the UNDRIP. It allows them to give or withhold consent to a project that may affect them or their territories. Once they have given their consent, they can withdraw it at any stage. Furthermore, FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated. FPIC is not just a result of a process to obtain consent to a particular project, it is also a process in itself, and one by which Indigenous Peoples are able to conduct their own independent and collective discussions and decision-making. They do so in an environment where they do not feel intimidated, and where they have sufficient time to discuss in their own language, and in a culturally appropriate way, on matters affecting their rights, lands, natural resources, territories, livelihoods, knowledge, social fabric, traditions, governance systems, and culture or heritage (tangible and intangible). Lastly, it is also important to underline that the FPIC process does not guarantee consent as a result. The result of an FPIC process can be any of



the following outcomes: consent from the Indigenous Peoples' community on the proposed activity; consent after negotiation and change of the conditions under which the project will be planned, implemented, monitored and evaluated; or the withholding of consent. It is also important to bear in mind that consent, once given, can also be withdrawn at any stage.

The 2020 Rainforest Alliance standard, core criterion 5.8.1 provides more specific provisions for certificate holders to conduct an FPIC process with Indigenous Peoples and local communities in cases when these communities' land or resource use rights would be diminished by proposed activities of the farm or group administrator; and defines FPIC as follows:

The right of indigenous peoples and other local communities to make free and informed choices about the use or development of their lands and resources. FPIC is implemented through a participatory process involving all affected groups that is carried out prior to the finalization or implementation of any development plans. An FPIC process ensures that communities are not coerced or intimidated; that decisions are reached through the communities' own chosen institutions or representatives; that communities' consent is sought and freely given prior to the authorization or start of any activities; that communities have full information about the scope of any proposed development and its likely impacts on their lands, livelihoods and environment; and that ultimately their choices to give or withhold consent are respected.

All elements within FPIC are interlinked, and they should not be treated as separate elements. The first three elements (free, prior and informed) qualify and set the conditions of consent as a decision-making process. In short, consent should be sought before any project, plan or action takes place (prior), it should be independently decided upon (free) and based on accurate, timely and sufficient information provided in a culturally appropriate way (informed) for it to be considered a valid result or outcome of a collective decision-making process. The definitions below build on the elements of a common understanding of free, prior and informed consent endorsed by the United Nations Permanent Forum on Indigenous Issues (UNPFII) at its Fourth Session in 2005, and from the UNREDD Program Guidelines on Free, Prior and Informed Consent.

1.1 Free

Free refers to a consent given voluntarily and without coercion, intimidation or manipulation. It also refers to a process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed. More specifically:

- Rights-holders determine the process, timeline and decision-making structure
- Information is offered transparently and objectively at the request of the rights-holders
- The process is free from coercion, bias, conditions, bribery or rewards
- Meetings and decisions take place at locations and times and in languages and formats determined by the rights-holders
- All community members are free to participate regardless of gender, age or standing



1.2 Prior

Prior means that consent is sought sufficiently in advance of any authorization or commencement of activities, at the early stages of a development or investment plan, and not only when the need arises to obtain approval from the community. It should be noted that:

- Prior implies that time is provided to understand, access, and analyze information on the proposed activity. The amount of time required will depend on the decision-making processes of the rights-holders
- Information must be provided before activities can be initiated, at the beginning or initiation of an activity, process or phase of implementation, including conceptualization, design, proposal, information, execution, and following evaluation
- The decision-making timeline established by the rights-holders must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration in accordance with their own customs

1.3 Informed

Informed refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process. Information should be:

- Accessible, clear, consistent, accurate, and transparent
- Delivered in the local language and in a culturally appropriate format (including radio, traditional/local media, video, graphics, documentaries, photos, oral presentations, or new media)
- Objective, covering both the positive and negative potential of the proposed activities and consequences of giving or withholding consent
- Complete, including a preliminary assessment of the possible economic, social, cultural and environmental impacts, including potential risks and benefits
- Complete, including the nature, size, pace, duration, reversibility and scope of any proposed project, its purpose and the location of areas that will be affected
- Delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers
- Delivered with sufficient time to be understood and verified
- Accessible to the most remote, rural communities, including youth, women, the elderly and persons with disabilities, who are sometimes neglected
- Provided in an ongoing and continuous basis throughout the FPIC process, with a view to enhancing local communication and decision-making processes



1.4 Consent

Consent refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected Indigenous Peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community. Indigenous peoples and local communities must be able to participate through their own freely chosen representatives, while ensuring the participation of youth, women, the elderly and persons with disabilities as much as possible. In particular consent is:

- A freely given decision that may be a "Yes", a "No", or a "Yes with conditions", including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges
- A collective decision (e.g. through consensus or majority) determined by the affected peoples in accordance with their own customs and traditions
- The expression of rights (to self-determination, lands, resources and territories, culture)
- Given or withheld in phases, over specific periods of time for distinct stages or phases of the project activities. It is not a one-off process
-

2. LEGITIMATE LAND USE RIGHTS

Certificate Holders to whom this requirement applies, that are currently certified or want to get certified after June 1st, 2021 based on the Rainforest Alliance 2020 Sustainable Agriculture Standard, have to comply with core criterion 5.8.2 on legitimate land use rights with no exception. The producer has legal and legitimate right to use the land. Upon request, this right is substantiated by ownership, leasehold, or other legal documents or by documentation of traditional or customary use rights. In the event that indigenous peoples and local communities, current or former local residents, or other stakeholders validly dispute the right to use the land – including in relation to past dispossession, forced abandonment, or illegal action – legitimate right may be demonstrated if a conflict resolution and remediation process have been documented, implemented and accepted by the affected parties, including relevant authorities in the case of past illegal action.

This core criterion always applies and assures that the certified land users produce crops on land legally owned by them or ceased for agriculture production use. Therefore, it procures the absence of land conflicts of those land portions forming part of the certificate scope of the farm or group administrator.

For large farms and individually certified farms it is important to note that if the dispute involves indigenous peoples and local communities, large farms and individually certified farms follow an FPIC process in accordance with this Annex to attain the required conflict resolution and remediation.

3. APPLICABILITY

3.1. Projects or Activities for which FPIC scoping is required

FPIC is required in the event that any of the following activities are proposed and could have detrimental effects on the rights, land, resources, territories, livelihoods, or food security of indigenous peoples or local communities:

1. The project or activity will convert non-agricultural land into crop.
2. The project or activity will convert smallholder crop land used primarily for subsistence or local consumption into land growing crops for trade and consumption outside the local area.
3. The project or activity will convert traditional grazing lands into other agriculture land uses that exclude or diminish the former grazing activities.



4. The project or activity will increase water withdrawal in a location and to a degree that may significantly reduce the availability of water for other nearby or downstream human users.
5. The project or activity will eliminate or diminish access of local peoples or communities to natural ecosystems or other areas currently used for hunting, fishing, or extraction of plants or their parts for food, fiber, fuel, medicines, or other products.
6. The project or activity takes place on or near areas used by local peoples for traditional cultural or religious activities or are classified as AVC type 5 and/or 6 according with the definition of AVC of the current Rainforest Alliance Standard.

3.2. Operations not proposing new projects, activities nor certificate scope expansions

Certified operations that held a valid Rainforest Alliance certificate as of June 1st, 2020 and **are not** planning to initiate any projects or activities, applicable for FPIC Scoping as identified in Section 3.1, or scope expansions after June 1st 2020, are considered to have complied with core criterion 5.8.1 of the 2020 Rainforest Alliance Standard, by virtue of having complied with core criterion 4.20 of the 2017 Rainforest Alliance, Sustainable Agriculture Standard. If operations were newly seeking certification from June 1st, 2017 onward, are not planning to initiate any projects or activities applicable for FPIC Scoping as identified in Section 3.1, then Core Criterion 5.8.1 on FPIC is **not applicable**.

3.3 Operations proposing new projects or activities

For all operations planning to initiate any projects or activities applicable for FPIC Scoping as identified in Section 3.1, shall apply Step 1 of Section 4 (conducting the FPIC):

1. As a result of this Step1: if the proposed projects or activities do not diminish the rights of indigenous peoples and local communities, the applicant is considered **compliant** with core criterion 5.8.1.
2. As a result of this Step 1 if the proposed projects or activities diminish the land or resource use rights or collective interests of indigenous peoples or local communities (including HCVs 5 or 6) the applicant **only is considered compliant** with core criterion 5.8.1, if steps 2 - 6 of Section 4 (conducting the FPIC) have been implemented.



4. CONDUCTING AN FPIC PROCESS

A Free Prior and Informed Consent (FPIC) process compliant with core criterion 5.8.1 and the applicable scenarios described above, should follow the six steps summarized below. For more detailed information about how to conduct FPIC processes, the technical guidance documents cited in the References section can be consulted.

FIGURE 1: STEPS FOR THE FREE, PRIOR AND INFORMED CONSENT PROCESS



4.1 Step 1 – Scoping

- a) Identify indigenous peoples and local communities with potential interests in the land or resources that are proposed to be developed, appropriated, utilized, or impacted by the proposed activity, project, or expansion.
- b) Identify any rights or claims of these communities to land or resources (e.g., water rights, water access points, or rights to hunt or extract forest products) that overlap or are adjacent to the site(s) or area(s) of the proposed activity, project, or expansion.
- c) Identify whether the proposed activity, project, or expansion may diminish the rights, claims, or interests identified in Step 1 - b. This is the case in circumstances including, but not necessarily limited to, the following:
 - i. Land currently used by communities, or members of a community, for primary subsistence activities would no longer be available to these people for these activities. For instance, if smallholder farm plots growing mainly crops for family subsistence or local consumption are proposed to be converted to plantation agriculture, or if traditional pastoral grazing lands are proposed to be enclosed for intensified cattle production and made unavailable to their former pastoralist users.
 - ii. Communities, or members of a community, would cease to have access, or would have diminished access, to natural resources used for local consumption or subsistence. For instance, if:
 - Access to streams or other water bodies for communities' drinking water, washing, or livestock watering is to be eliminated or diminished
 - Access to traditional hunting or fishing areas is to be eliminated or diminished
 - Access to, or rights to extract, plants or plant parts such as firewood, medicinal plants, or fruits is eliminated or diminished
 - Statutory or customary allocation of resources, such as permissions to withdraw water from local rivers, would change in a way that diminishes communities' allocation or use of these resources
 - iii. Sites, resources, habitats and landscapes of global or national cultural, archaeological or historical significance, and/or of critical cultural, ecological, economic or religious/sacred importance for the traditional cultures of local communities or indigenous peoples, identified through engagement with these local communities or indigenous peoples.



4.2 Step 2 – Planning, research and assessment

- a) Conduct participatory mapping of land and natural resource use.
- b) Assess potential impacts (positive and negative) of the project.
- c) Involve independent parties to support the mapping and assessment process. Communities have the right to choose an independent party that can support them in the FPIC process. These independent parties could include local NGOs. Independent parties should also be involved in the FPIC process in order to act as an impartial verifier of the compliance with the steps and agreements of the FPIC process.

4.3 Step 3 – Consultation

- a) Re-define and revise the project, if necessary, to address potential impacts relative to rights of indigenous peoples and local communities.
- b) Provide community representatives with a description of project activities, benefits, and impacts, presented in a manner that is accessible and appropriate to community representatives' education levels and to the cultural context.
- c) Allow the community to consult internally regarding the acceptability of the proposed project.
- d) Consult if the community will still consider the project (STOP / GO decision).

4.4 Step 4 – Negotiation

- a) Facilitate access to legal advice for communities, if necessary. Legal advice and access to independent parties should be available to communities throughout the FPIC process, but especially in the negotiation phase.
- b) If the community is amenable to the project, negotiate terms of agreement for proceeding, including provision such as continued access to the affected lands and resources; just and fair compensation for loss of use of land and resources, commensurate with such loss; and/or an equitable share in the project benefits.
- c) Develop a plan for participatory monitoring and conflict resolution.

4.5 Step 5 – Agreement

- a) Consult the community representatives whether they will enter into the agreement (STOP / GO decision).
- b) Finalize the agreement and secure endorsement from the local authorities, as necessary.

4.6 Step 6 – Implementation

- a) Implement the agreement, including the agreed-upon forms of compensation, benefit sharing and/or continued access (as applicable).
- b) Implement the participatory monitoring and conflict resolution plan, including a mechanism for the community and its members to raise grievances and have these grievances duly considered and resolved.



REFERENCES

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