

CMSI Consultation Response

Respondent Details

NAME

Hugo Costa

COUNTRY

Portugal

PERMISSION

Yes, CMSI can disclose my feedback, name, and organisation.

STAKEHOLDER

Non-governmental organisation (NGO) / civil society organization (CSO)

ORGANISATION

Wildlife Conservation Society

COMMENTS & QUESTIONS BY DOCUMENT

QUESTION 1

Overall does the revised version of the Consolidated Standard system (including Standard, Assurance Process, Governance Model* and Claims Policy) meet your expectations for improvement relative to the original public consultation version?

Response: No Response

QUESTION 2

From your perspective, does the updated Consolidated Standard system, including Standard, Assurance Process, Governance Model* and Claims Policy meet expectations for driving performance improvement across the industry at a global scale?

Response: No Response

Document:
Assurance

QUESTION 1

From your perspective, does the Assurance Process meet your expectations of a robust, credible, replicable and transparent approach?

Response: 3: Meets expectations

Document:
Standard

Performance Area 01: Corporate Requirements

SECTION: 1.4 Risk Assessment, Leading Practice, 1

COMMENT:

We suggest editing 1 to: "Engage external stakeholders and rights-holders in the risk assessment process, particularly Indigenous Peoples and Local Communities".

Performance Area 04: New Projects, Expansions and Resettlement

SECTION: Applicability

COMMENT:

Performance Area 4 should look at both the corporate and facility levels, especially as decisions during negotiations over mining concessions may be made at the corporate/executive with governments. Performance Areas 4 and 5 can also feed into the Enterprise Risk Management system identified at the corporate level in Performance Area 1.

Several international conventions and declarations recognize the rights of Indigenous Peoples and those of peasants to their lands. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) requires States "to consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (art. 19)." Under Article 10 of UNDRIP "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."

States and businesses must have consent as the objective of consultation before undertaking projects that affect Indigenous Peoples' rights to land, territory and resources (art. 32). The International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) also provides for the rights of ownership and possession by Indigenous People over the lands which they traditionally occupy (art. 14) and includes consent requirements (art. 6). The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas specifies their right to land and adequate housing, their right to just and fair compensation and their right to return. These human rights instruments cover traditional communities who are not Indigenous Peoples such as Afro-descendants under ILO 169 in Latin America. The UN Declaration on Peasants covers other types of local communities that may be impacted by a project, where consultation and aspects of free, prior, and informed consent become important.

Performance Area 4 should take the above into consideration in the sub-section on Leading Practice. Moving towards good practice should also take the above articles into consideration in accordance with international human rights law and the UN Guiding Principles on Business and Human Rights. Performance Area 4 should link to human rights risk assessments referenced under Performance Area 5 and also make references to Performance Area 16 on Indigenous Peoples. Human rights impact assessments can be further referenced under 4.1.2 of moving towards good practice.

Performance Area 05: Human Rights

SECTION: 5.1 Human Rights, Good Practice, 2

COMMENT:

5.1.2 under "Good Practice" can reference the enhancement of the Grievance Redress Mechanism in collaboration with and input from communities who may be adversely impacted by mining operations.

SECTION: 5.1 Human Rights, Towards Good Practice, 1

COMMENT:

In Performance Area 5 section 5.1.1. to publicly disclose a human rights policy aligned with the UN Guiding Principles on Business and Human Rights, it is important to recognize that these Principles derive from core international human rights instruments as their basis, hence reference these as well.

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SECTION: 5.1 Human Rights, Towards Good Practice, 4

COMMENT:

5.1.4 under "Towards Good Practice". Human rights training and mentoring should not be limited to employees responsible for managing human rights or community relations but also employees and managers who make decisions on the operations of a facility more broadly.

Performance Area 08: Diversity, Equity, and Inclusion

SECTION: 8.1 Governance of Diversity, Equity, and Inclusion (Corporate Level), Good Practice, 1

COMMENT:

Performance Area 8 should also make explicit reference to gender representation as part of DEI under 8.1.1 of Good Practice. This should also include Indigenous Peoples and other communities both at the corporate and facilities levels.

Performance Area 14: Indigenous Peoples

SECTION: 14.1 Indigenous Peoples, Good Practice, 3

COMMENT:

Under 14.1.3 of Good Practice when referencing Indigenous Peoples in Voluntary Isolation the principle of no contact should be followed strictly and contact can be made with Indigenous Peoples adjacent to such communities who may be playing a protective role. Buffer areas should also be established. <https://www.pbs.org/wnet/nature/blog/the-original-guardians-of-nature-are-doing-their-part-are-the-rest-of-us/>.

Special attention should also be paid to Indigenous women and girls who can be in heightened situations of vulnerability and risk of exploitation and violence in and around mining facilities.

Where instances of violations of Indigenous Peoples rights have occurred, publicly disclose a summary of instances and how redress has been provided.

SECTION: Applicability

COMMENT:

Performance Area 14 has several important elements of recognition while utilizing UNDRIP and the UN Guiding Principles on Business and Human Rights as the guiding frameworks. It can spell out further some guidance on obtaining agreement with Indigenous Peoples at the initial stage of prospecting and obtaining concessions with government building out further the articles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which require States "to consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (art. 19)." And Article 10 of UNDRIP "Indigenous peoples shall not be forcibly removed from their lands or territories. No

relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

Performance Area 18: Water Stewardship

SECTION: 18.1 Water Management and Performance, Good Practice, 2

COMMENT:

The scope of studies should be determined at least at the watershed level.

SECTION: 18.1 Water Management and Performance, Good Practice, 3

COMMENT:

The hydrodynamic sustainability of the watershed in which the Facility is located should be assessed for different usage requirements and climate change scenarios. If the viability of critical habitats (Area 19) or the availability for local users and rights holders is compromised in the short, medium or long term, maximum effort should be made to minimize new water extraction and freshwater consumption, and it will be necessary to implement recirculation, reuse, and/or reinjection systems

COMMENT:

The scope of studies should be determined at least at the watershed level.

SECTION: 18.1 Water Management and Performance, Towards Good Practice, 5

COMMENT:

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SECTION: 18.1 Water Management and Performance, Towards Good Practice

COMMENT:

The scope of studies should be determined at least at the watershed level.

COMMENT:

With the exception of “efforts to avoid”, the standard generally lacks guidelines for the other levels of the mitigation hierarchy. It should be noted that the possibility of implementing offsetting measures for natural water resources depletion remains unclear. The World Economic Forum’s guide contains more directives on mitigating the impact on water. In this sense, recirculation technologies are moving from being optional to becoming a mandatory requirement.

Performance Area 19: Biodiversity, Ecosystem Services and Nature

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Good Practice, 1

COMMENT:

We suggest changing the text to the one below, making clear the types of impacts that should be assessed: "Engage communities that derive ecosystem services in the area of influence of the Facility to understand their use of, and assess potential risks and impacts (direct, indirect and cumulative) on, ecosystem services provision. Engage those whose use of ecosystem services can be adversely affected by the Facility in the identification of priority ecosystem services and development of mitigation measures to maintain or improve their provision or, where that is not possible, offer alternative provision of services in line with the mitigation hierarchy."

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Good Practice, 2

COMMENT:

Bullet a. is good but Key Biodiversity Areas, AZEs and ICCAs should also be referred to. We suggest changing the text to:

"Applying the mitigation hierarchy with an avoidance-first focus (in particular for natural habitats, critical habitats, natural forests, other high carbon stock habitats as well as for KBAs, AZEs and ICCAs) from the earliest feasible stage of exploration and continuing throughout the project lifecycle."

Bullet c. is missing natural forests and other high carbon stock habitats. However, c. proposes no net loss of biodiversity. If the goal is to move towards nature positive, then it is essential that the application of the mitigation hierarchy results in "net gain" and not just "not net loss". Therefore, we recommend replacing no net loss by net gain, meaning that c. and d. could be merged. In case there is any reason for not accepting net gain as the target, then c. should be changed to: "Commencing biodiversity offsets for significant residual adverse impacts on natural habitats as early as possible to achieve no net loss and preferably a net gain of biodiversity by completion of closure".

Bullet d. looks good but besides critical habitats, it should also include at least impacts on RAMSAR sites, KBAs and in high integrity natural forests. Therefore, it should read as: "For new operations and significant expansions, commencing biodiversity offsets for residual adverse impacts on critical habitats, RAMSAR sites, KBAs and high integrity natural forests as early as possible to achieve net gain of those biodiversity values for which the critical habitat or KBAs were designated by completion of closure". Nevertheless, we propose that net gain is the target to achieve for all the elements in c. and d.

We also suggest adding a new line e.: "If biodiversity offsets are insufficient to achieve no net loss or net gain for the identified priority biodiversity values, implement additional conservation actions to close the gap".

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Good Practice, 4

COMMENT:

We propose that number 4 reads as:

"Consult with and/or engage relevant stakeholders and rights-holders - particularly indigenous peoples and local communities - to help shape the development, support implementation, and update on progress of the biodiversity management plan".

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Leading Practice, 1

COMMENT:

We suggest adding a new line between b. and c. that reads: "To ensure a meaningful contribution to a nature-positive future, promote additional conservation actions that enhance the resilience of priority biodiversity and ecosystem services - both within the operational landscape and in the areas where offsets are implemented"

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Leading Practice, 2

COMMENT:

We suggest changing number 2 to:

“Integrate nature considerations into business decision-making tools and processes, including those relating to governance, strategy, risk and impact management, and into performance and incentive frameworks, including biodiversity-linked bonus structures”.

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Leading Practice, 3

COMMENT:

Considering that this section is leading practice and that the objective is to contribute to a nature-positive future, we suggest changing 3 to:

“Collaborate with stakeholders and rights-holders - particularly indigenous peoples and local communities - on the development and delivery of actions identified within the biodiversity management plan to:

- a. achieve net gain;*
 - b. monitor performance,*
 - c. apply adaptive management to improve outcomes, and;*
 - c. secure the long-term protection and effective management of areas of importance to achieving net gain.”*
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SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Towards Good Practice, 2

COMMENT:

We recommend that at the end of the paragraph, the text should be adjusted to: “...compatible with the value for which they were designated and with any existing management and/or zoning plan.”

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Towards Good Practice, 5

COMMENT:

In 5 we recommend adjusting the text to:

“Establish a biodiversity baseline in the area of influence to understand the extent of natural, modified or critical habitats, and the presence or proximity of legally designated protected areas (including Ramsar sites) and other areas of importance for biodiversity (such as Key Biodiversity Areas, Alliance for Zero Extinction sites, Indigenous and Community Conserved Areas (ICCAs), or any other conservation areas defined in National or Subnational Biodiversity Strategies and Action Plans), and identify significant biodiversity values as early as practicable to support and document the “avoidance” initial stage of the mitigation hierarchy, incorporating local and Indigenous Ecological Knowledge (IEK) where applicable”.

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Towards Good Practice, 6

COMMENT:

On 6 the type of impact should be specified. We suggest adjusting the paragraph to: “Using appropriate methodologies, assess risks and impacts (direct, indirect and cumulative) to biodiversity and potentially affected ecosystem services in the area of influence from the activities relating to the Facility, including the risks of introducing or creating conditions favourable for invasive alien species.”

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Towards Good Practice, 7

COMMENT:

On 7 we suggest changing the text to: "Develop and implement a biodiversity management plan that prioritises action to address impacts on significant biodiversity values (particularly avoidance and minimization) and includes Facility-level monitoring (with metrics informed by the pressure-state-response framework) within the area of influence and adaptive management in response to monitoring results."

SECTION: Glossary and Interpretive Guidance

COMMENT:

The definition of residual impact should be corrected to: "The effects on biodiversity that remain after efforts to avoid and minimise impacts on biodiversity and restore affected areas by the project have been implemented. Residual impacts are often addressed as a last resort through biodiversity offsets, which - when well-designed (additional, measurable, comparable, permanent, monitored and subject to adequate governance) - aim to compensate for unavoidable harm and contribute to no net loss or net gain outcomes."

COMMENT:

The definition of Rights-holders should be corrected to: "Rights-holders are individuals or social groups that have particular entitlements in relation to specific duty bearers (e.g., state or non-state actors that may have a particular obligation or responsibility to respect, protect and fulfil human rights and abstain from human rights violations). In certain contexts, there are often specific social groups whose human rights are not fully realised, respected or protected, such as Indigenous Peoples and Local Communities".

COMMENT:

We suggest adding the definition of RAMSAR sites.

SECTION: Intent

COMMENT:

According to the standard language, the mitigation hierarchy includes avoiding, minimising, restoring and offsetting. Therefore, "mitigate" is redundant when the mitigation hierarchy already includes avoid, minimise, restore, offset. "achieve at least no net loss or net gain" is also the purpose of applying the hierarchy, so stating it twice feels circular.

We propose replacing the intent by: "Apply the mitigation hierarchy - avoid, minimise, restore and offset - to address material risks and impacts to biodiversity and ecosystem services, with the objective of achieving at least No Net Loss and or a Net Gain of biodiversity, and contributing to a nature-positive future consistent with the Global Biodiversity Framework"

QUESTION 1

Does the scope, content, and narrative style of the consolidated standard meet your individual expectations for responsible production practices?

Response: **3: Meets expectations**

QUESTION 2

Do the requirements meet your expectations for being sufficiently clear to support consistent and practical

implementation and to achieve necessary performance improvement?

Response: 3: Meets expectations

QUESTION 3

From your perspective, does the three-level performance structure (Towards Good Practice, Good Practice, Leading Practice) of the consolidated Standard meet your expectations for providing an effective on ramp and clear articulation of good practice and effective path to continuous improvement?

Response: 3: Meets expectations

Document:
Claims

QUESTION 1

Does the level of transparency provided by the Claims Policy (i.e. through disclosing scores for each Performance Area, aggregated scores to indicate overall progress towards Good Practice, and Performance Claims) meet your expectations to incentivise continuous performance improvement?

Response: 3: Meets expectations