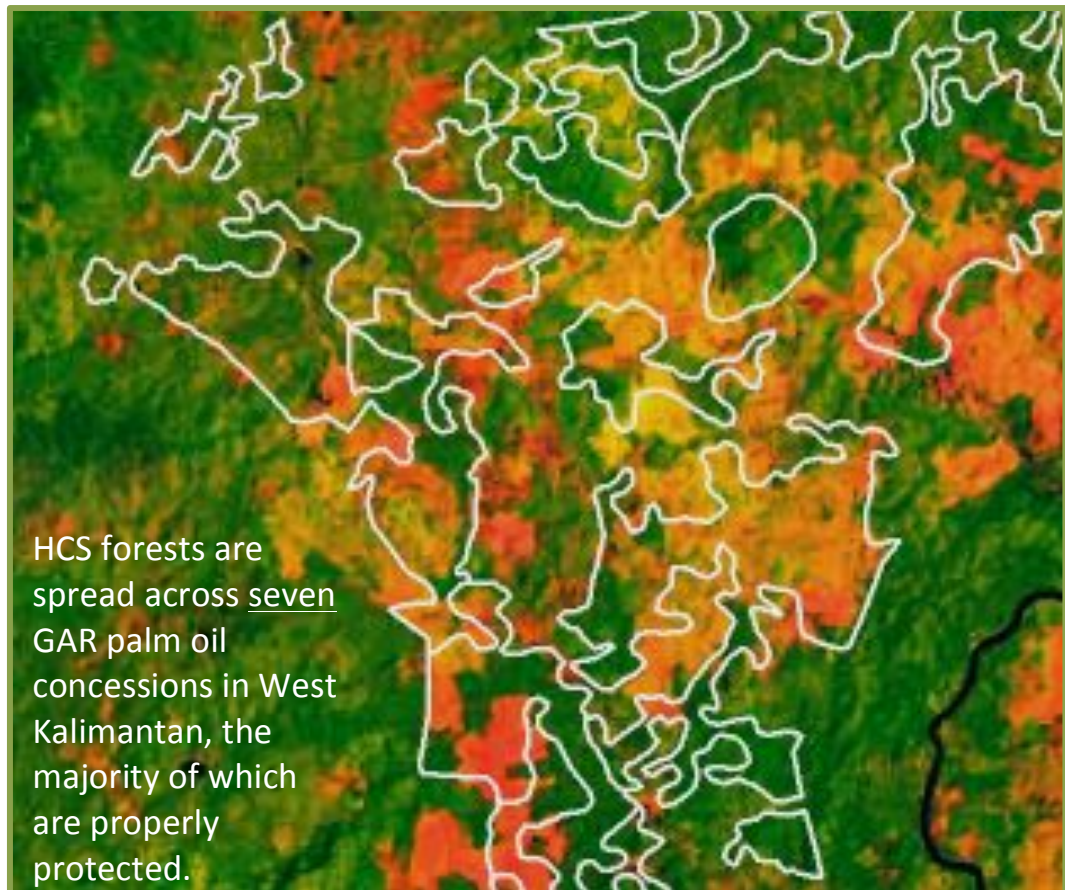




**Golden Agri  
demonstrates  
real commitment  
to HCS forest  
conservation but  
legal threat lies  
ahead**

21 October 2014

- ❑ *The new Plantation Act has the potential to completely undermine efforts to maintain HCS forests over the long term*
- ❑ *New Indonesian government has opportunity, albeit it not a straightforward one, to legally support the conservation of HCS forests in palm oil plantation concessions*



However, in one GAR palm oil concession in Central Kalimantan, the bulk of the HCS forest on the concession is not being properly protected.

## Background

**This Greenomics Indonesia report is the latest in a series of reports that have been published by Greenomics Indonesia (downloadable at [www.greenomics.org](http://www.greenomics.org)) as part of its monitoring efforts on the implementation of the Forest Conservation Policy (FCP) launched by Golden-Agri Resources (GAR) on 9 February 2011, and the associated "No Deforestation Policy" that the company pursues in the development of its palm oil plantations. The No Deforestation Policy forms an integral and inseparable part of the FCP.**

The two previous reports published by Greenomics Indonesia – which monitored implementation of the FCP in the first and second years respectively – revealed that GAR had been successful in significantly reducing deforestation in the development of its palm oil plantations in West Kalimantan during the two consecutive years following the announcement of the FCP.

This was evidenced by a significant decline in the amount of deforestation payments made by GAR oil-palm subsidiaries to the state treasury compared with the period prior to the introduction of the FCP. From the spatial perspective, the improvement was also apparent from a time-series.

In June 2012, GAR - in collaboration with The Forest Trust (TFT) and Greenpeace - published its "High Carbon Stock Forest Study Report," which explained the methodology for determining high carbon stock (HCS) forests through the use of case studies on three GAR palm oil concessions in West Kalimantan and one concession in Central Kalimantan.

Based on this report, on 13 March 2013 GAR announced the conservation of HCS forests through a pilot project on the PT KPC concession in West Kalimantan. In its press release, GAR attached Powerpoint slides titled "HCS forest conservation pilot project," stating in one of the slides that "GAR is conserving HCS forests in eight concessions, with new plantings in West and Central Kalimantan".

Of the said eight GAR concessions, 7 are in West Kalimantan and one in Central Kalimantan. They cover a total of 127,847 hectares, with 102,280 of these being plantable. Of the plantable area, 38,308 hectares - or more than 37% - have been planted to date, while the area that has yet to be planted extends to 63,971 hectares, or 62% of the total plantable area.

This report is intended to highlight the extent of GAR's commitment to the implementation of the FCP in connection with the conservation of more than 31,000 hectares of HCS forests, including almost 12,000 hectares of HCV areas with HCS forest cover, that are spread across the eight GAR oil-palm concessions.

Although the area of the HCS forests only amounts to about 4% of the total area that was deforested in Indonesia in 2012 (840,000 hectares, Margono, et al, 2014), it is nevertheless important to monitor GAR's commitment to protecting these HCS forests so that business groups in the palm oil sector can derive valuable lessons learned for the making of new commitments and/or implementing existing commitments related to the protection of HCS forests during palm oil plantation development.

In addition, the report provides important input for policy-makers in the new Indonesian government so as to encourage them to design a new legal framework that ensures the protection of HCS forests in palm oil concessions over the long term.

**The report also describes the level of compliance with the successful pilot criteria established by GAR's HCS forest conservation project. As regards concern for retaining HCS forests over the long term – whether on land that has been or will be allocated to palm oil plantation companies – the report discusses the legal obstacles and legal opportunities presented by the new Plantation Act, which was passed by the House of Representatives (DPR) on 29 September 2014. The report concludes with a number of conclusions and recommendations.**

## Methodology

The report applies a legal and spatial approach. Observations on HCS forests were conducted spatially in eight GAR concessions so as to identify the extent of the change in HCS forest land cover since announced on 13 March 2013.

Landsat 8 satellite images downloaded from the USGS website were used as the principal basis for conducting time-series observations of land-cover changes. Google Earth was also used to monitor HCS land cover visually.

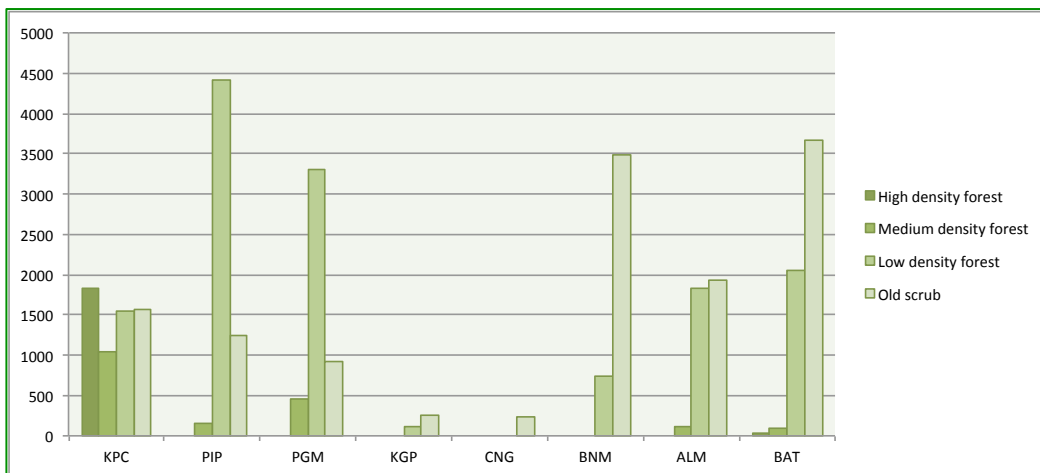
Spatial data provided by the latest version of the Ministry of Forestry's Moratorium Map on the issuance of new permits for primary forest and peatland was used to analyze the successful pilot criteria used in assessing GAR's HCS forest conservation pilot projects. The report also availed of other relevant spatial data from the Ministry of Forestry.

## Results of spatial observations on HCS forests in eight GAR palm oil concessions in Indonesian Borneo

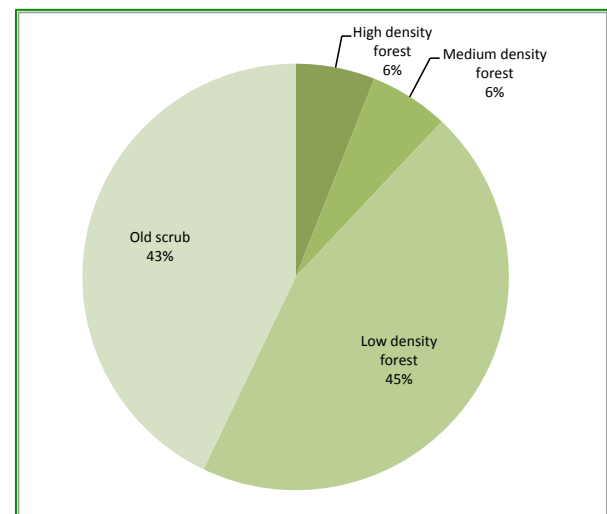
The report reveals the level of protection provided by GAR through its FCP for more than 31,000 hectares of HCS forests spread across eight GAR concessions (seven in West Kalimantan and one in Central Kalimantan). Of the more than 31,000 hectares of HCS forests, nearly 12,000 hectares are designated as HCV areas.

For the purposes of this report, in respect of the more than 31,000 hectares of HCS forests, including HCV areas with HCS forest cover, the observations that were conducted were entirely spatial in character. These areas are referred to in this report as HCS forests.

The HCS forests in the seven GAR concessions in West Kalimantan extend to more than 25,000 hectares, while the concession in Central Kalimantan consists of nearly 6,000 hectares of HCS forests. The two charts below show the composition of HCS forests in each concession based on a stratification of the HCS forests.



As will be seen from the charts, more than 45% of the HCS forests in the eight GAR concessions are low-density forests, while more than 42% consist of old scrub land cover. Based on these two stratifications, 88% of the HCS forests in the eight concessions consist of low-density forest and old scrub.



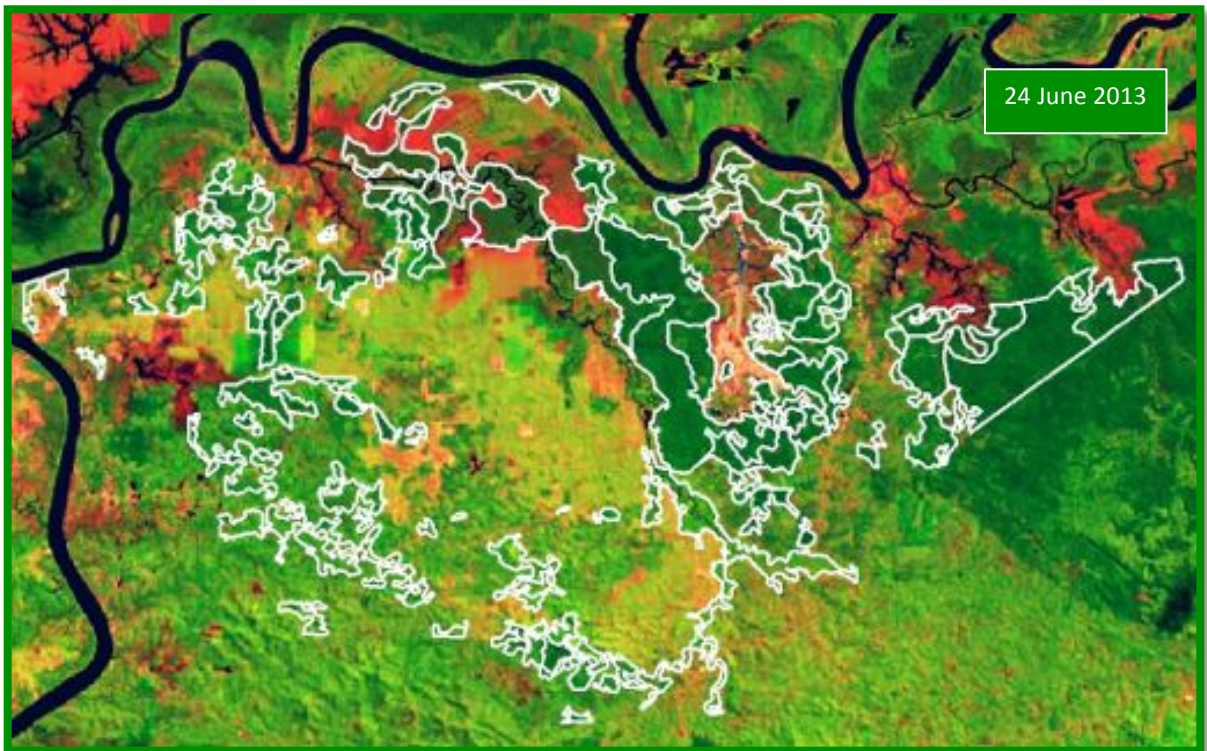


Meanwhile, HCS forests with medium density forest land cover in the eight GAR palm oil concessions only cover around 1,900 hectares, or 6% of the total stratified HCS forests in the eight GAR concessions. High-density forests cover an area of almost 1,900 hectares, the majority of which are found in the PT KPC concession in West Kalimantan.

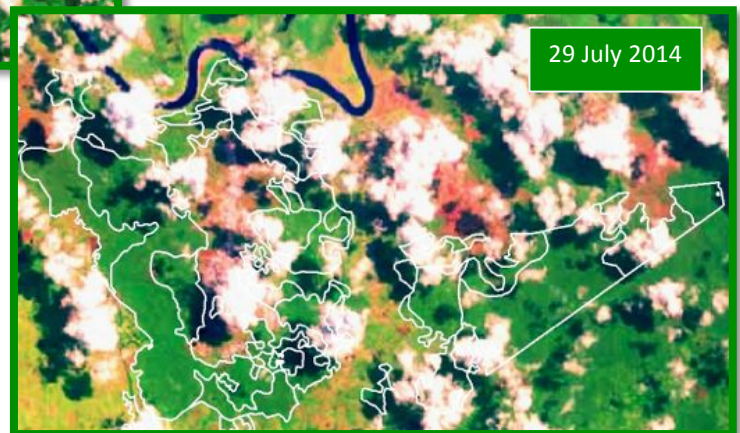
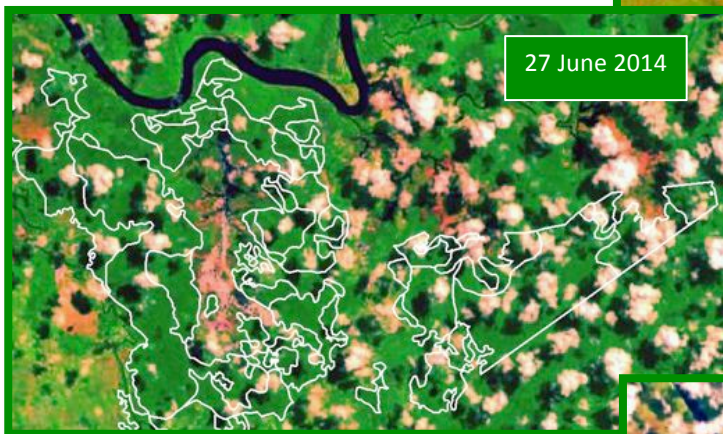
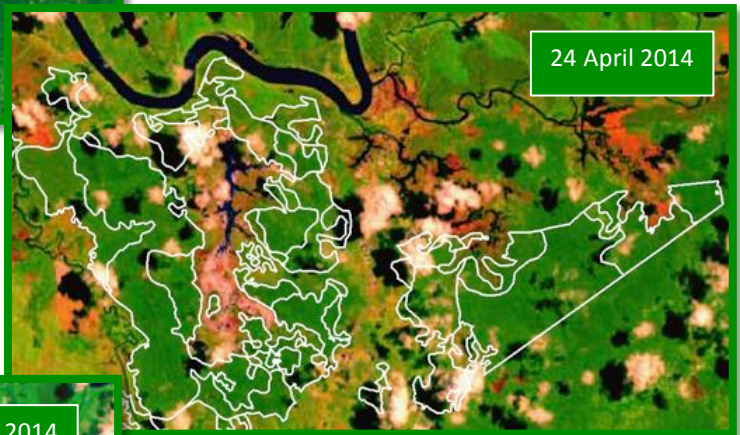
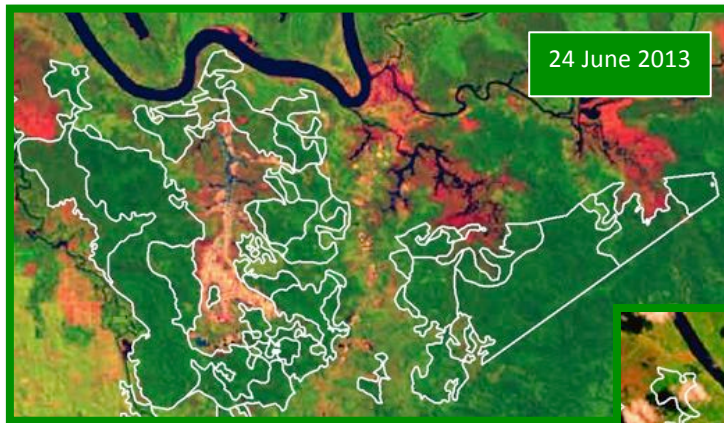
**We will now discuss the level of protection of HCS forests based on the extent of the changes that were observed in the HCS forest land cover in the eight GAR palm oil concessions subsequent to the announcement of GAR's HCS forest conservation pilot project on 13 March 2013.**

### ***PT KPC as GAR's HCS forest conservation pilot project***

The PT KPC palm oil concession, which covers 20,168 hectares, is located in West Kalimantan. Of the said area, HCS forests cover (*delineated in white*) nearly 6,000 hectares, or almost 30% of the total area of the KPC concession.



Based on Landsat 8 satellite images taken on 27 June 2014 and 29 July 2014, it can be confidently stated that no land-cover changes occurred in the HCS forests that are set aside by GAR for conservation, particularly in the HCS forests in the relatively large blocks.





So as to present a visual representation of the HCS forest land cover in the relatively large blocks in the PT KPC concession, the following map – prepared by importing the distribution of HCS forests into Google Earth (2013) – show how GAR's HCS forest conservation pilot project is protecting HCS forests.

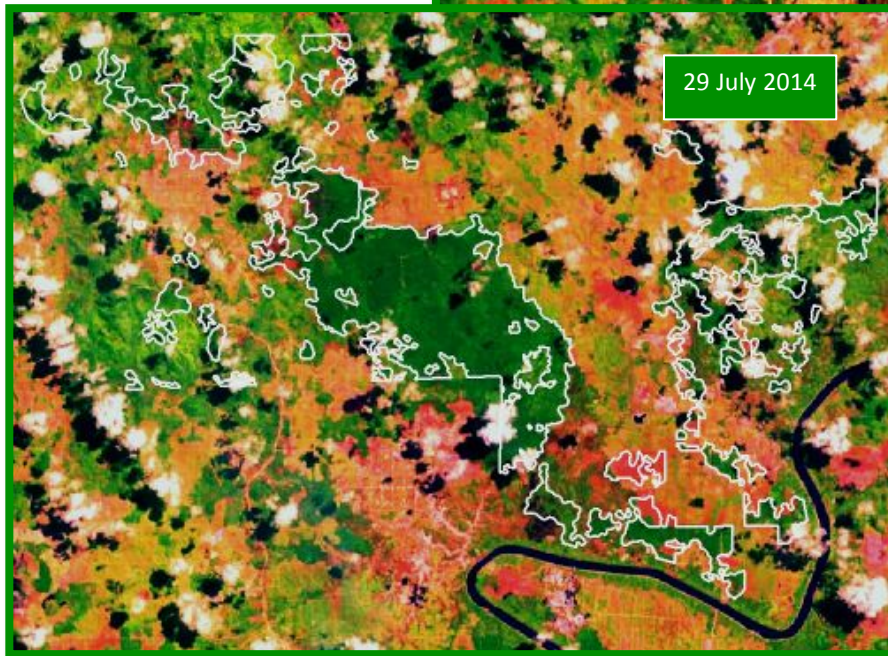
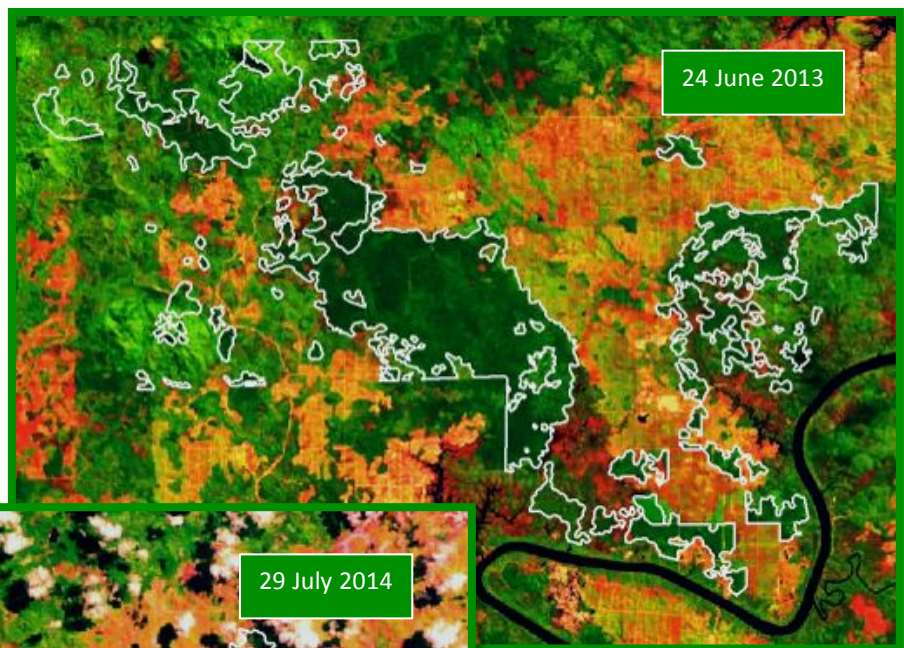




## ***Protection of HCS forests in the other six GAR palm oil concessions in West Kalimantan***

### **PT PIP**

The PT PIP palm oil concession covers almost 20,000 hectares, of which 5,800 hectares consist of HCS forests. The Landsat 8 satellite image below, which is dated 24 June 2013, shows that the HCS forests are beginning to be opened up, especially in the case of the relatively small blocks, but only to a very insignificant extent. Thus, the majority of the HCS forests in this concession are being properly protected.



However, based on the Landsat 8 satellite image taken on 29 July 2014, it appears that some of the HCS forests in the smaller blocks have been opened up further. In addition, it also appears that some of the HCS forests have started to be opened up in the larger blocks, albeit on a very small scale. Consequently, it may be confidently stated that the majority of HCS forests in the PT PIP concession area can be categorized as being well protected.

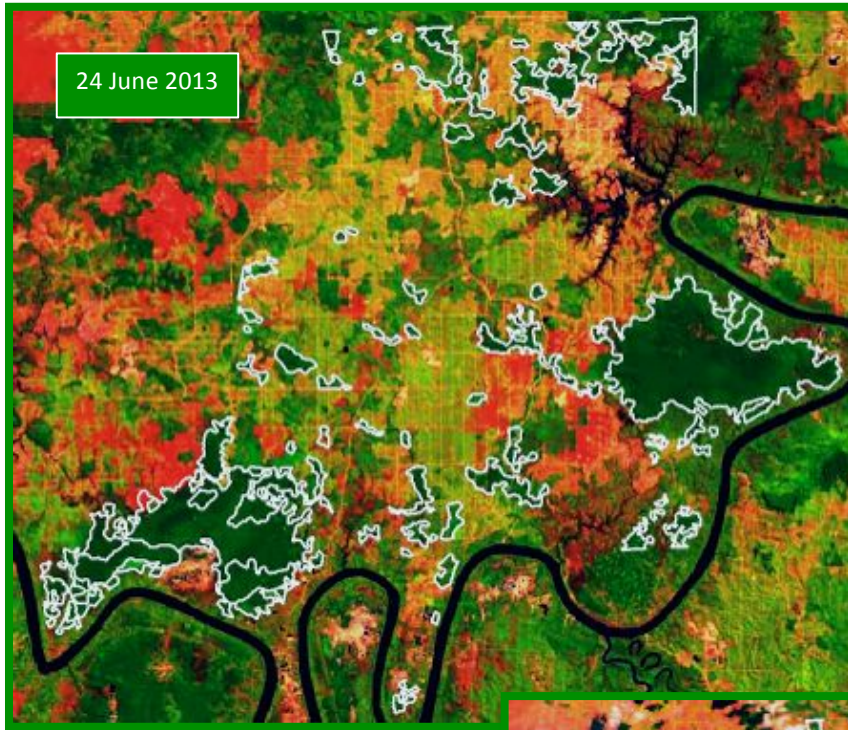
Visually, the map below shows that the majority of the HCS forests in the large blocks of the PT PIP concession -- overlaid with Google Earth (2013) - remain intact.





## PT PGM

The PT PGM concession, which covers more than 20,000 hectares, consists of HCS forests extending to nearly 4,700 hectares, or more than 23% of the total area of the concession.



Based on the Landsat 8 satellite image dated 24 June 2013, only very minor changes in land cover in the HCS forests had occurred, with the most obvious being in one relatively large block of HCS forest.

Based on the Landsat 8 satellite image of 29 July 2014, there are signs that the HCS forests are beginning to be opened up, although still on a very small scale. It should be underlined here that HCS forests in one relatively large block are beginning to be opened up.

Of course, this has the potential to disrupt the protection of HCS forests in the relatively large forest landscape in this concession. But overall, the HCS forests in the PT PGM concession may be described as well protected.



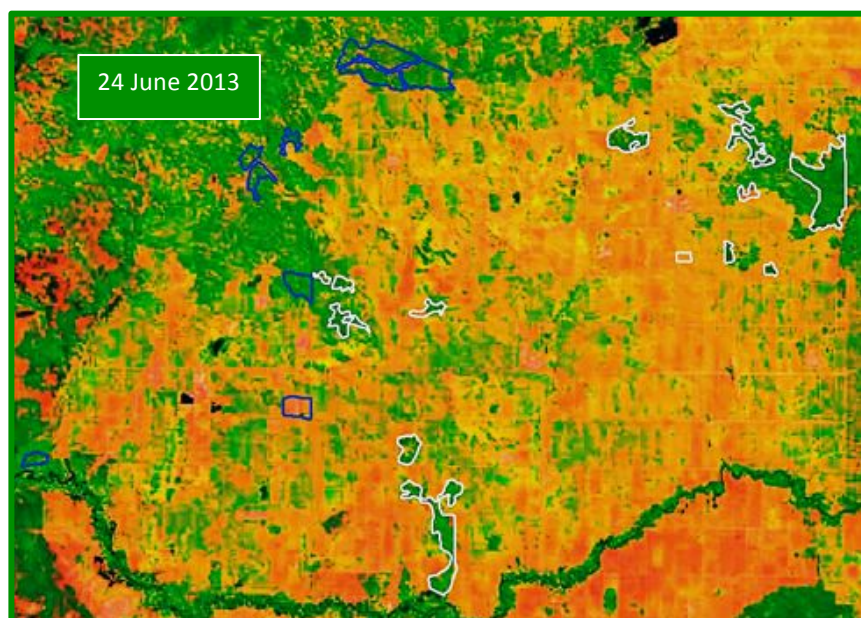


An overlay of HCS forest distribution and Google Earth (2013) visually shows two relatively large blocks of HCS forests, which are also shown on the following two maps, the majority of which may be categorized as still being properly protected.



## PT KGP and PT CNG

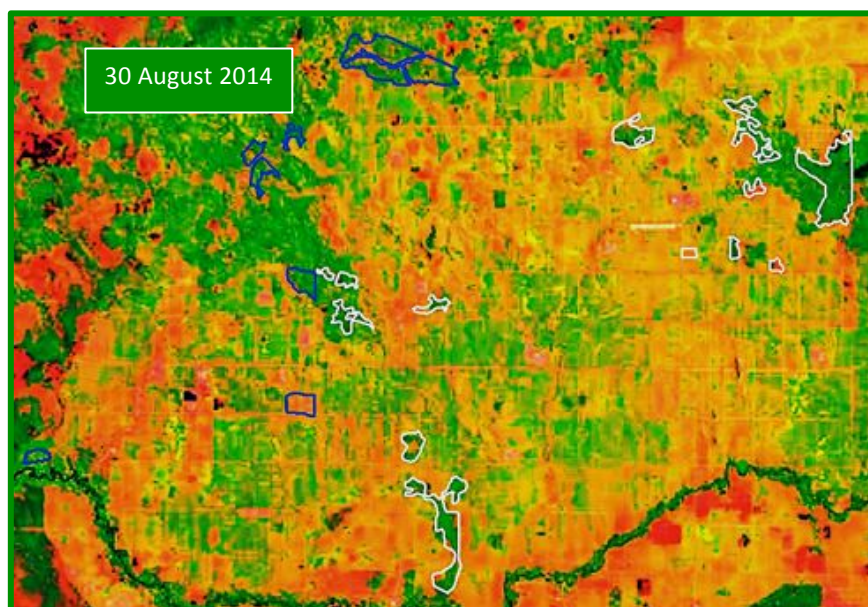
These two palm oil concessions extend to, respectively, 10,000 hectares and more than 4,600 hectares, and contain very small areas of HCS forests, namely, 373 hectares in the PT KGP concession (*delineated in white*) and 244 hectares in the PT CNG concession (*delineated in blue*). The majority of the land cover in the two concessions consists of open land.



There is one relatively large block (covering 116 hectares) with low-density forest land cover in the PT KGP concession.

Referring to the Landsat 8 satellite images taken on 24 June 2013 and 30 August 2014, it will be seen that the said HCS forests are still well protected.

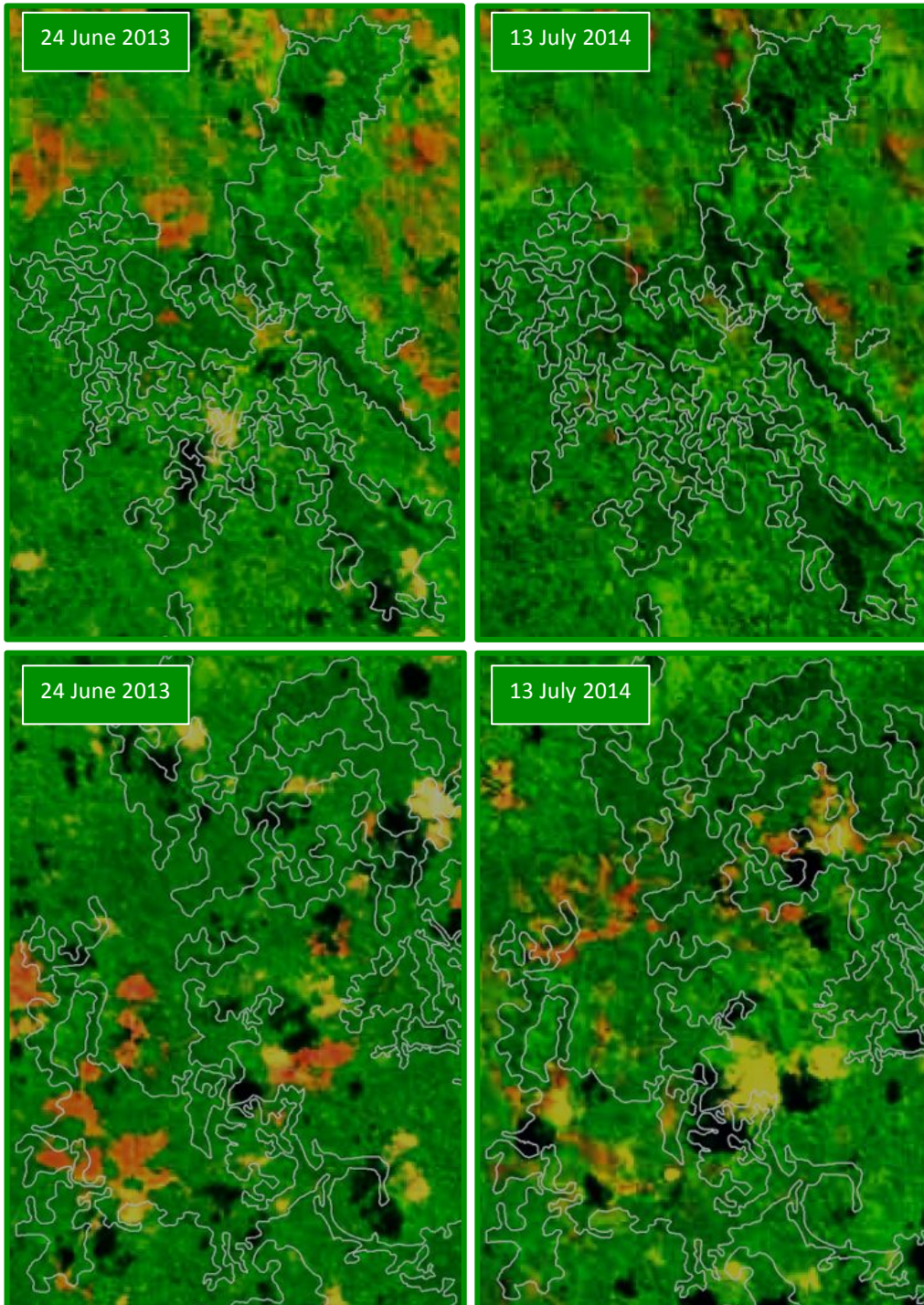
The HCS forests in the CNG concession all consist of old scrub.





## PT BNM

Of the PT BNM concession covering an area of 20,000 hectares, more than 21%, or more than 4,200 hectares, consists of HCS forests. The Landsat 8 satellite image dated 24 June 2013 shows that the HCS forest land cover has been opened up in HCS forests with old scrub land cover extending across a relatively large area. The bulk of the other HCS forests are still protected, although the land cover in some HCS forests has been opened up on a fairly small scale.

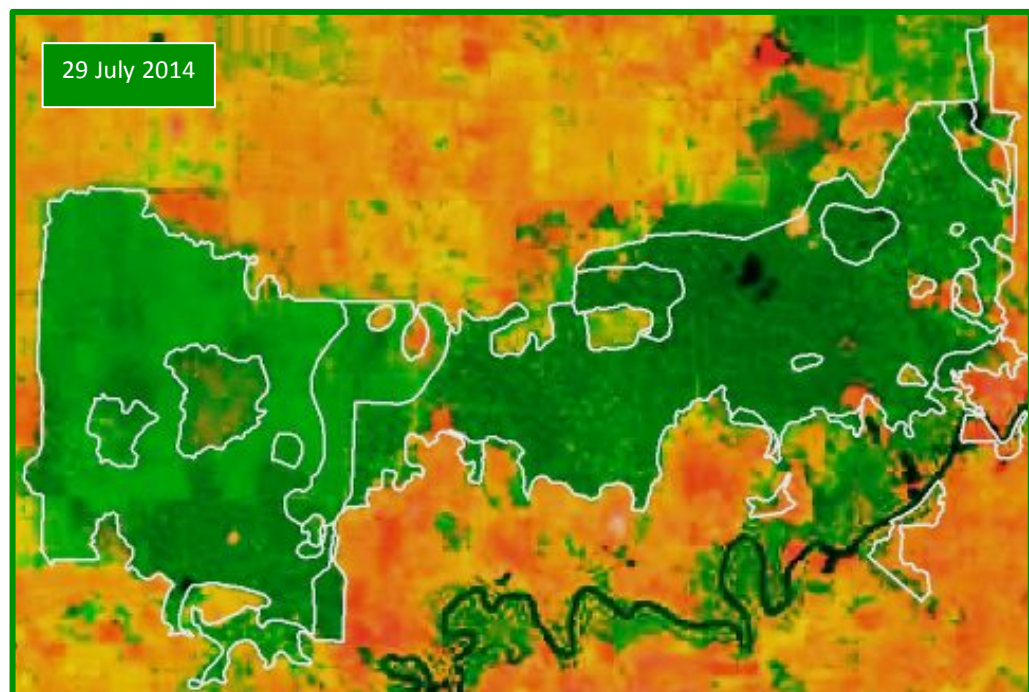
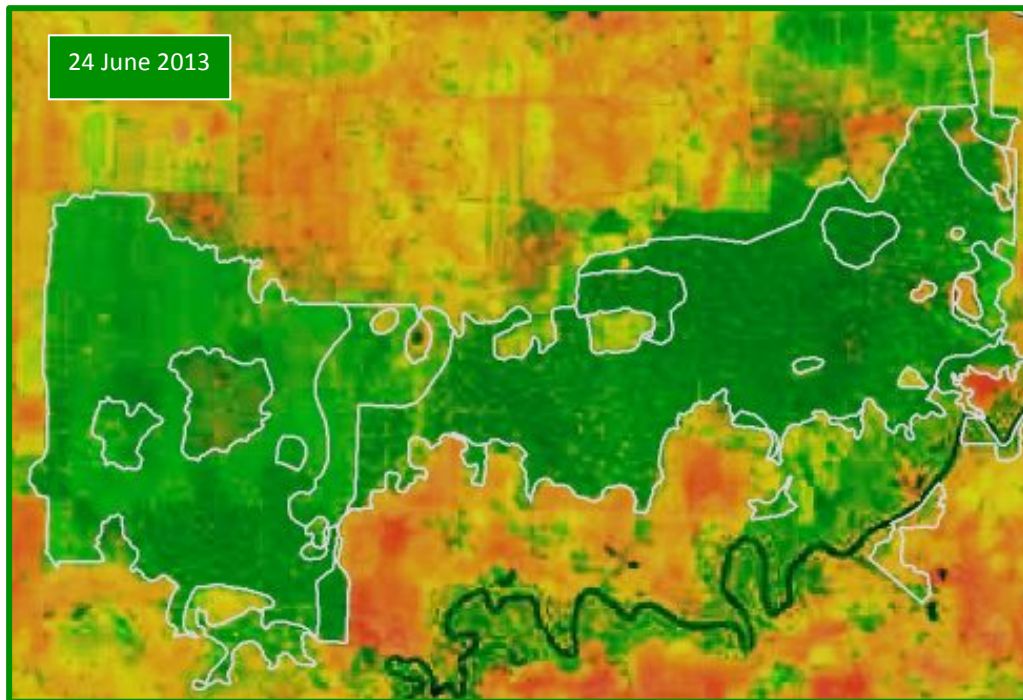


Meanwhile, the Landsat 8 satellite image from 13 July 2014 shows no change in the land cover in the relatively large HCS forests, as in the case of one block of HCS forest shown in the Landsat 8 satellite image of 24 June 2013. Thus, the bulk of the HCS forests in this concession have been well protected.



## PT ALM

The PT ALM palm oil concession extends to nearly 19,000 hectares, of which HCS forests account for more than 3,800 hectares, or more than 20% of the total concession area. The Landsat 8 satellite images of 24 June 2013 and 29 July 2014 show no change in the land cover of the HCS forests in the concession. Thus, it may be confidently stated that the HCS forests in this concession have been properly protected.



This palm oil concession provides protection to HCS forests that are in good condition and which form a relatively extensive landscape, as shown in Google Earth (2013) below.

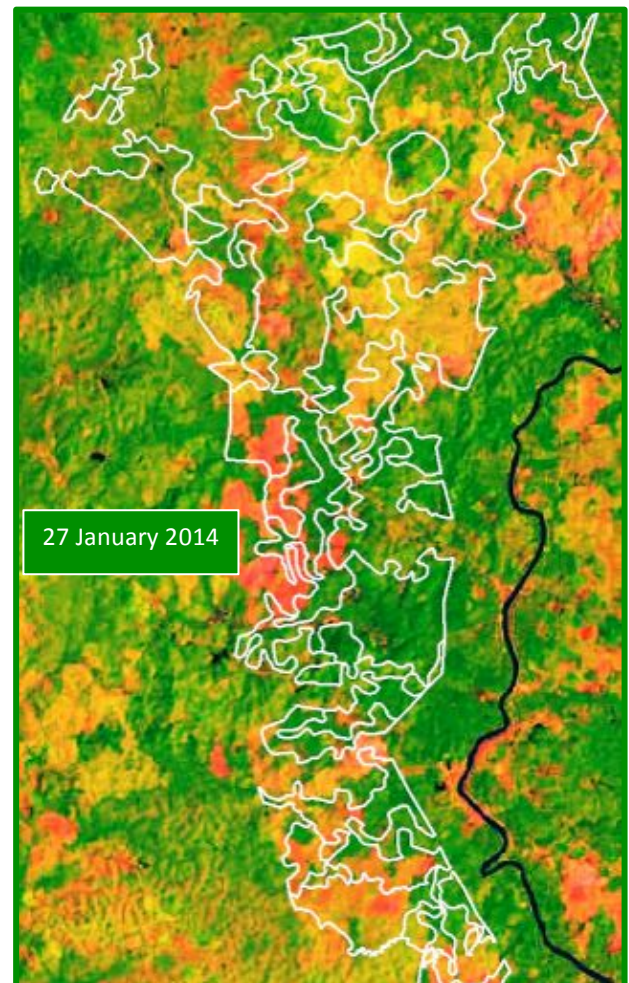




## ***Protection of HCS forests in one GAR palm oil concession in Central Kalimantan***

PT BAT – which operates one of GAR’s concessions in Central Kalimantan – occupies a concession area of nearly 14,000 hectares, of which more than 42%, or more than 5,800 hectares, consists of HCS forests.

The Landsat 8 satellite image dated 1 June 2013 shows that there are blocks of HCS forests whose land cover has been opened up. These blocks range from small to relatively large in area, and they are being opened up at an increasing rate, as shown by the Landsat 8 satellite image taken on 27 January 2014.



**In general, unlike the other GAR palm oil concessions in West Kalimantan, it can be said that the HCS forests in the BAT concession in Central Kalimantan are not being properly protected.**



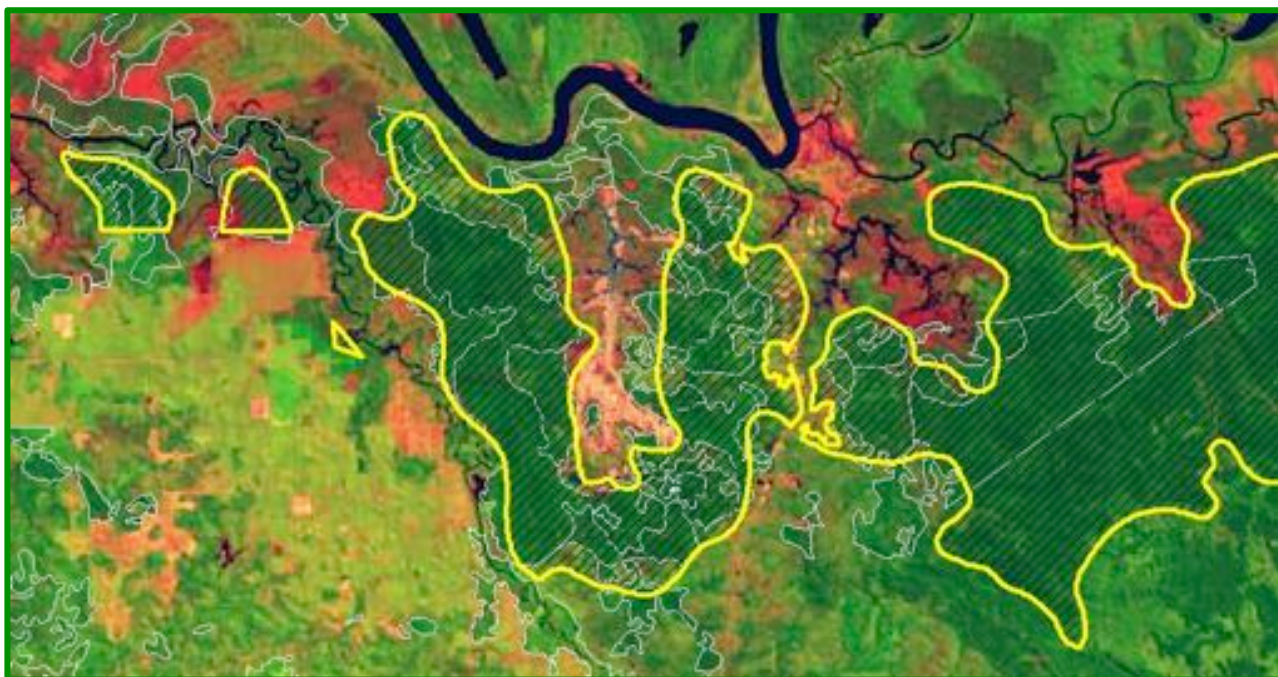
## What level of compliance with "successful pilot criteria" is needed to achieve government buy-in?

Since GAR's HCS forest conservation pilot project was launched on 13 March 2013, there have been no changes in the policy and legal framework so as to allow palm oil companies to conserve HCS forests in their concessions over the long term. If one looks at the "successful pilot criteria" established by GAR's HCS conservation pilot project – for the purposes of this report, only to see how "successful pilot criteria" are related to government buy-in to the concept of conserving HCS forests - it seems clear that GAR's HCS conservation pilot project has not managed to achieve government buy-in. The facts are as follows:

- 1) The government has not revised the regulations on neglected land, where HCS forests - because they are protected and cannot be developed as palm oil plantations – are categorized as neglected land so that they can be taken over by the state. According to the new Plantation Act, this can occur after six years of the granting of the HGU title if the land in question has not been developed as a palm oil plantation.
- 2) The land swap process continues to face various obstacles, technical complexities, and a lack of willingness on the part of policy makers at various levels of government. For the purposes of this report, we do not propose to discuss the land swap mechanism in detail as it has been widely discussed and tested by other observers. However, there are as yet no success stories that are worthy of replication.
- 3) Although the relatively large area of HCS forest in the PT KPC concession has been incorporated in the most recent version of the indicative moratorium map, this may nevertheless be characterized as legally misconceived given that the legal definition of the indicative moratorium map is not a map that shows areas where clearing of HCS forests has been suspended. Rather, the definition of the indicative moratorium map is a map that shows areas in respect of which the issuance of new permits has been suspended. The legal fact is that the areas of HCS forests that are found in the PT KPC concession constitute areas in respect of which palm oil plantation development permits have been issued on behalf of KPC.

The fact that these HCS forests are shown on the indicative moratorium map means that GAR has, in effect, unilaterally declared them to no longer be part of the PT KPC concession. In other words, GAR has unilaterally excluded them from the PT KPC concession. We can rest assured that this is not one of the goals that GAR wishes to achieve. Therefore, the "successful pilot criteria" for GAR's HCS forest conservation pilot project need to be corrected.

This map shows that extensive areas of HCS forests are already covered by the indicative moratorium map (*delineated in yellow*). However, the successful pilot criteria actually serve to relinquish these HCS forests to the state, notwithstanding the fact that they form part of GAR's commitment to long-term conservation.



## New government, new Plantation Act

On 29 September 2014, the DPR passed the new Plantation Act, which provides, among other things, that plantation companies are required to cultivate their concession lands based on the following deadlines:

- a. No later than three (3) years after the granting of the Hak Guna Usaha/HGU (Cultivation Right) title, the plantation company must cultivate at least 30% of the area covered by the HGU title.
- b. No later than 6 years after the granting of the HGU title, the company must cultivate all of the area covered by the HGU title that is capable of being planted.
- c. Should part of a plantation not be cultivated, it may be taken over by the state.
- d. A plantation company that breaches the above requirements is subject to administrative sanctions, including fines, suspension of commercial operations, and/or revocation of business licenses.

In the GAR case, sub-paragraph b above could in reality be availed of to conserve the HCS forests that have been set aside on its concessions provided that the forests in question can be brought within the definition of "land that technically cannot be planted."

However, in the GAR announcement of 13 March 2013 (see the slide titled "conservation of HCS forests"), GAR states that only an area of 25,567 hectares out of the 127,847 hectares being conserved is unplantable (because the land in question consists of HCV forest, peatland and areas that must be conserved under government regulations).

Meanwhile, **GAR has categorized a not-yet-planted area of 63,971 hectares as being plantable.** Thus, the HCS forests contained in this area cannot be categorized as "land that technically cannot be planted."

Consequently, GAR is legally required to establish palm oil plantations in the not-yet-planted areas as they have been declared plantable and technically capable of being developed as palm oil plantations.

Thus, based on the new Plantation Act, GAR must develop palm oil plantations on all of the not-yet-planted (but plantable) area, including the HCS forests, within a time period of not more than six years after the granting of the relevant HGU title.

Should there be no change in the legal situation, then GAR will only be able to preserve the HCS forests it has designated for conservation for a period of six years from the date of issuance of the HGU titles for those concessions in which the said HCS forests are located. After this period of six years, GAR will have to relinquish such HCS forests to the state and face the prospect of various administrative sanctions.

**Is there any way in which GAR's HCS forests can be conserved based on the provisions of the new Plantation Act? The answer is yes.**

The new legislation contains a provision that "any person who opens up and manages land of a certain area for the purpose of cultivating Plantation Crops must apply procedures that can prevent environmental damage."

This provision provides an important legal opportunity for the conservation of HCS forests in palm oil plantation concessions under the new Plantation Act. Why? Because the new legislation mandates the issuance of a government regulation on "procedures to prevent environmental damage in land clearing operations."

If the Indonesian government and Kadin (the Indonesian Chamber of Commerce and Industry) really want to conserve HCS forests that are located in palm oil plantation concessions, then the relevant government regulation should incorporate a stipulation that the opening up of HCS forests for the development of plantations, including palm oil plantations, constitutes a form of environmental damage so that the conservation of HCS forests in palm oil plantation concessions represents an effort to prevent such environmental damage.



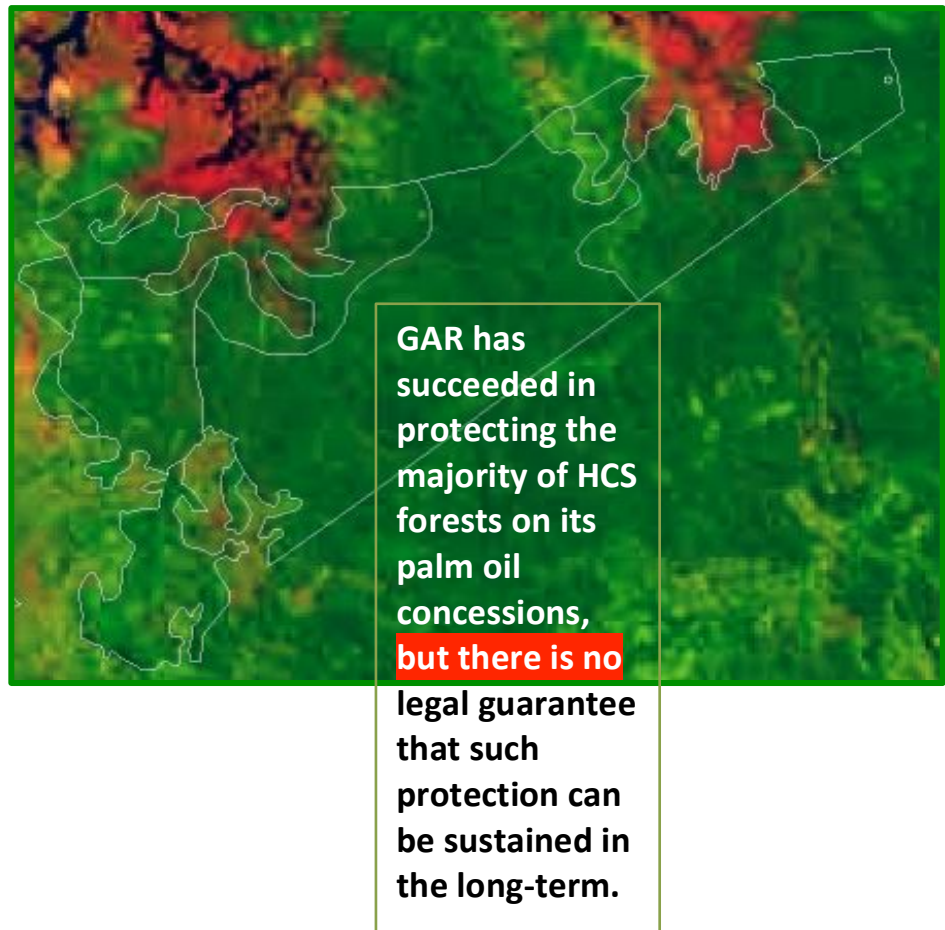
## Conclusions

<p><b>HCS forests are spread across seven GAR palm oil concessions in West Kalimantan, the majority of which are properly protected. However, in one GAR palm oil concession in Central Kalimantan, the bulk of the HCS forest on the concession is not being properly protected.</b></p>	<p><i>In the case of the bulk of these HCS forests, especially in West Kalimantan, GAR has successfully demonstrated its commitment to conserving the HCS forests in its palm oil plantations. However, in the long run these HCS forests are legally threatened because, by law, the land on which they stand must be used for the development of palm oil plantations.</i></p> <p><i>GAR has announced that nearly 20,000 hectares of the HCS forests that it has set aside are actually located on plantable land, which, under the terms of the new Plantation Act, must be developed as palm oil plantations by not later than six years after the issuance of the relevant HGU titles.</i></p>
<p><b>The "successful pilot criteria" for GAR's HCS forest conservation pilot project has failed to achieve government buy-in.</b></p>	<p><i>The incorporation of the HCS forests into the indicative moratorium map is not a legal solution that will ensure the long-term conservation of HCS forests in GAR's palm oil concessions.</i></p> <p><i>This is because the incorporation of such forests into the indicative moratorium map means that they are not subject to plantation development permits and thus do not come within GAR's legal responsibilities.</i></p>
<p><b>The new Plantation Act, which was passed by the DPR in late September 2014, could potentially eliminate the opportunity for conserving HCS forests in palm oil plantation concessions.</b></p>	<p><i>However, the new legislation also provides a significant legal opportunity in the form of the mandate provided by the Act for the issuance of a Government Regulation on procedures for the prevention of environmental damage in land clearance and cultivation.</i></p> <p><i>If the opening up of HCS forests can be categorized as an activity that causes environmental damage - meaning that the conservation of HCS forests constitutes an effort to prevent environmental damage - then the HCS forests that have and will be set aside by palm oil plantation companies will be capable of being conserved in the long-term as part of the overall effort to prevent environmental damage.</i></p>

## Recommendations

- GAR's success in demonstrating its commitment to conserving the bulk of the HCS forests located in seven of its concessions in West Kalimantan and the threats facing the long-term survival of such forests should serve as a lesson in policy for all concerned, especially the incoming Indonesian government, Kadin, the palm oil industry, civil society, and other relevant stakeholders.
- If the upcoming Government Regulation on procedures for the prevention of environmental damage in land clearing and cultivation operations fails to incorporate a provision stating that the opening up of HCS forests constitutes environmental damage, **at the very least the new Indonesian government needs to put in place an adequate legal basis for plantation companies that wish to conserve HCS forests during the development of their palm oil plantations.** In particular, the conservation of HCS forests must no longer be equated, from the legal perspective, with the neglect of land.
- GAR needs to develop new criteria for evaluating the success of its HCS forest conservation projects, including criteria for assessing success over the short, medium, and long-terms.





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