



Rethinking Forest Practice Regulations: Overview and Introduction

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Outline

- Regulations: Problems, causes, history
- Emerging new approaches and “principles”
- Why Montana?
- This Workshop: Objectives, Methods and Guiding Questions

Primary sources: Hans Gregersen and Arnaldo Contreras, “Rethinking Forest Regulations”, RRI, 2010.

Why “Rethink” Regulations?

- ❖ Forestry’s record, in many places, is very disappointing, and clear that existing regulations are part of cause:
 - Continuing deforestation and degradation
 - Widespread illegal logging and trade of illegal products
 - Fostering corruption, ignoring local land rights, undermining governance and development
 - Unintended effects
 - Social: e.g. rewarding large, penalizing the small – large/wealthy able to benefit **despite, or because of** regulations
 - Diminishing respect for law and judicial systems
- ❖ Forestry is also one of the most regulated; and some would say “over” regulated sectors:
 - Harvest regulations tend to be highly prescriptive
 - Management plans – detailed, difficult to implement

What do we mean by “Regulation”?

- A legal term
- In general:

specific rules to enable implementation and enforcement of a law, has legal weight

- Not laws (sometimes laws are passed and new regulations not developed)
- Not policies (sometimes policies are announced, and treated as if laws or regulations – but they are not)
- So: “rethinking regulations” largely about how to best use the powers of the state to achieve publicly beneficial outcomes (e.g. sustainable forestry, jobs, etc.)

Indications of Failure

- Logging bans (e.g. Asia)
- FLEGT – unusual diplomatic attention to forestry
- REDD – global effort to stop deforestation
- Latest ITTO Report: < 10% tropical forest managed sustainably – after 25 years of effort and hundreds of millions of dollars
- Social unrest, protest and violent conflict
- * *Of course, regulations (or the lack of them) in other sectors negatively affect forests (e.g. agriculture, mining)*

Common Causes of Failure

- ❖ Contradictions or inconsistencies between different laws, or between laws, policies and regulations.
- ❖ Some regulations **cannot** be followed by forest owners, managers:
 - **Unrealistic** regulations, too cumbersome (costly)
 - Regulatory **confusion, conflicting** regulations
- ❖ Sometimes use regulations to raise revenue for government - undermining SFM
- ❖ “**Unjust**” regulations (*e.g. ignoring traditional land and use rights – leads to resistance*)
- * **Focus on “enforcement” often misplaced**

Problems in the Design

- ❖ Regulations sometimes inconsistent with legal framework (not designed with property rights in mind):
 - Public land (and different types of public land)
 - Private land
 - Indigenous peoples/ community land
- ❖ Governments often don't have the capacity to monitor and enforce
- ❖ Often consider only the role of government and emphasize “command and control”

Historical Premises to Conventional Approach

1. Forest land ownership:

- Public, usually by the **central government** (king, crown, country)

→ increasingly owned or administered by **private and communities**

2. Governance authority:

- Central **government** all powerful (and expert)

→ increasingly **decentralized to local government authorities and devolved to civil and private** sectors

3. Forest people/ communities:

- **limited rights**, voice and political power

→ **increasing rights, voice** and capacity – with democratization

How This Has Played Out in the “Developed” World?

Phases (Meidinger 2005):

1. **16th – 19th century:** state, industrial control of public and private forests
 - *Degradation, “elite capture”, corruption – economic growth*
2. **20’s - ‘70’s:** focus on “enforcement” command and control – prescriptive regulations and management plans
 - *Gradual strengthening of civil society and rule of law*
3. **80’s – now:**
 - *Public participation in governance (e.g. British Columbia)*
 - *Simpler rules, limited use of state power (e.g. Montana)*
 - *Market-based approaches (e.g. certification)*
 - *Continued tension, revision and reform, courts often the venue for setting direction*

How This Has Played Out in the “Developing” World?

1. Lots of laws, few regulations

2. Regulation - mostly of public forests

Industrial concessions—characterized by:

- *Degradation, “elite capture”, corruption – some economic growth*

3. 90’s – now: some innovation:

- *Independent certification (e.g. all over, but limited)*
- *Independent monitoring and transparency – (GFW – Cameroon)*
- *New policy regulatory approaches:*
 - *Of private: community lands (Brazil, China, Mexico)*
 - *Of access to public land (Indonesia, Brazil)*

* *Yet, in many places, still focus on **enforcement** (FLEGT)*

Rethinking Regulations: Emerging Principles

1. Recognize ***land tenure*** and design different systems for each type
2. Carefully ***identify priority problems*** and then ***prioritize*** action
3. Governments only do what no other entity can do
4. Create ***favorable conditions*** for key rights holders and stakeholders to promote best practice and compliance

1. Recognize tenure and design different regulation systems

Must examine:

- Constitution, land laws, forest laws
- Laws and treaties regarding Indigenous Peoples and other special groups
- Other sector laws (mining, transport, environment) (for overlaps)
- International commitments (e.g. ILO 169 UNDRIP)

2. Prioritize and Focus

Concentrate on:

- most important values/resources
- most important and critical locations and habitats; demonstration effect considered
- most relevant operators – those with potential to cause most damage

3. Governments Do What Only Governments Can Do...

1. Catalyze and facilitate process to identify priority problems and new standards
2. Ensure transparent processes -- encourage action by civil society and private sector
3. Ensure respect of property and civil rights,
4. Limit, and judiciously use coercion (regulations)
5. Facilitate processes to compensate for “market failures” (e.g. ecosystems)
6. Ensure education of standards, costs, benefits,

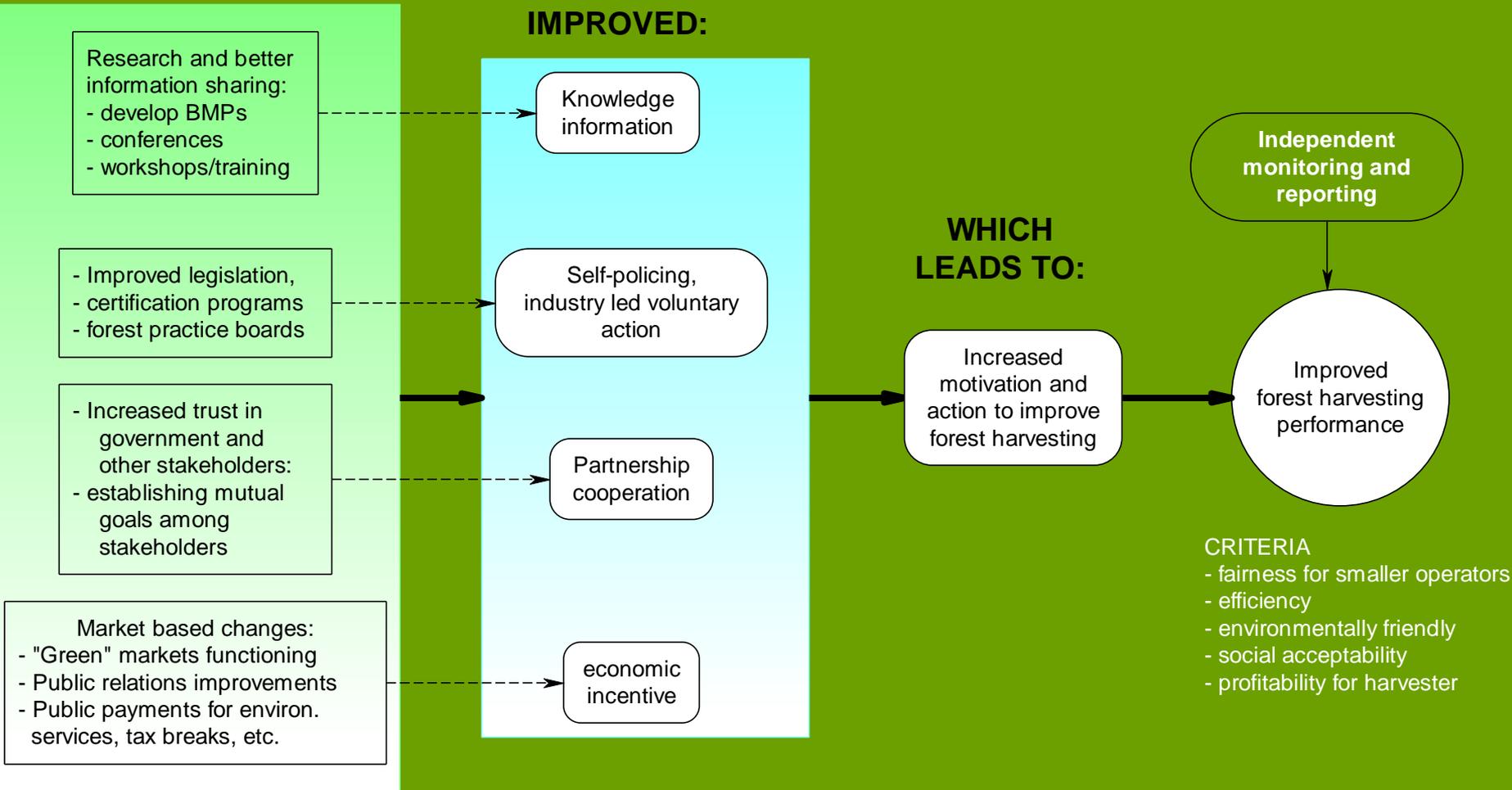
Don't have to “DO” all of these things, just need to make sure that they are done.

4. Creation of Favorable Conditions: Process

USE OF THESE TOOLS:

LEADS TO IMPROVED:

WHICH LEADS TO:



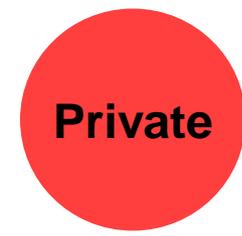
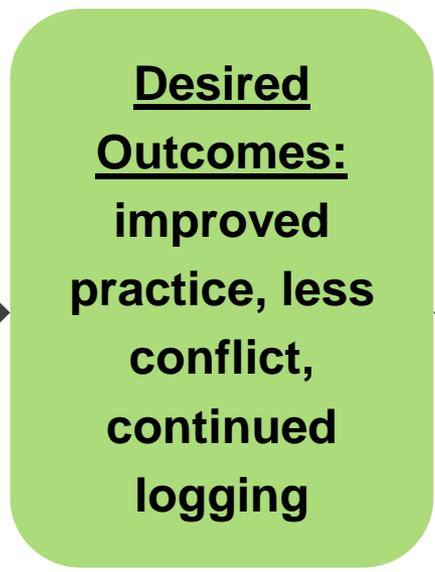
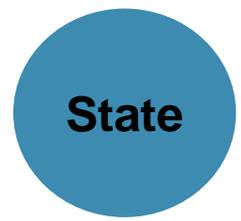
Emerging Tools

- Certification
- Voluntary “best management practices” (BMPs for timber harvesting and management).
- Independent, non-government monitoring and verification
- Transparency – of forest use, monitoring, impacts
- Education and dissemination of standards, positions, issues, impacts;
- Stakeholder interactions: conferences, committees, boards and other interactions to reach consensus.
- Corporate codes of conduct – self-policing
- Joint management and partnerships between government and non-governmental organizations

Example: Montana and Best Management Practices – Regulating Private and State Land Use

A “system to promote best practice and compliance”

Coordinates, facilitate participatory process to identify BMP’s, funds education, organizes monitoring, enforces “bad actor” law



Organizes education, adopt, self-police, set-up “logger certification” program



Volunteers, gets educated, participates in monitoring, “watchdog”

Montana: Interpretations

- ❖ **Reasons why it seems to work:**
 - respects private rights, reflects public responsibilities
 - simple, low cost to administer
 - transparent and inclusive;
 - focuses on most critical externalities (public goods),
 - empowering, minimal infringement on property rights
 - builds on individual incentives and interest for social inclusion,
 - state judiciously uses coercion “bad actor law”
 - a credible threat of imposition of high-cost, enforced, regulations – and the high costs of social conflict

- ❖ **Some reasons why it might not travel:**
 - “credible threat of regulation” often not present
 - clarity over land rights often not present
 - very strong civil society and court systems

Some Challenges and Opportunities

1. How must political will to revise regulations despite resistance and perceived risks?
 - Within agencies: Overcoming internal resistance/vested interests in current system
 - Across the government: developing constituencies for reform
 - Across stakeholder groups: building understanding and relationships
2. How to make use of current global attention to “illegal logging” and REDD?

Overview, Objectives, Methods, and Expectations

Workshop Objectives

- 1) Learn, share experiences and ideas for progress in own countries
- 2) Understand why Montana works – what can travel and what cannot?
- 3) Identify/ develop some design principles
- 4) Identify what you will take home and do afterwards

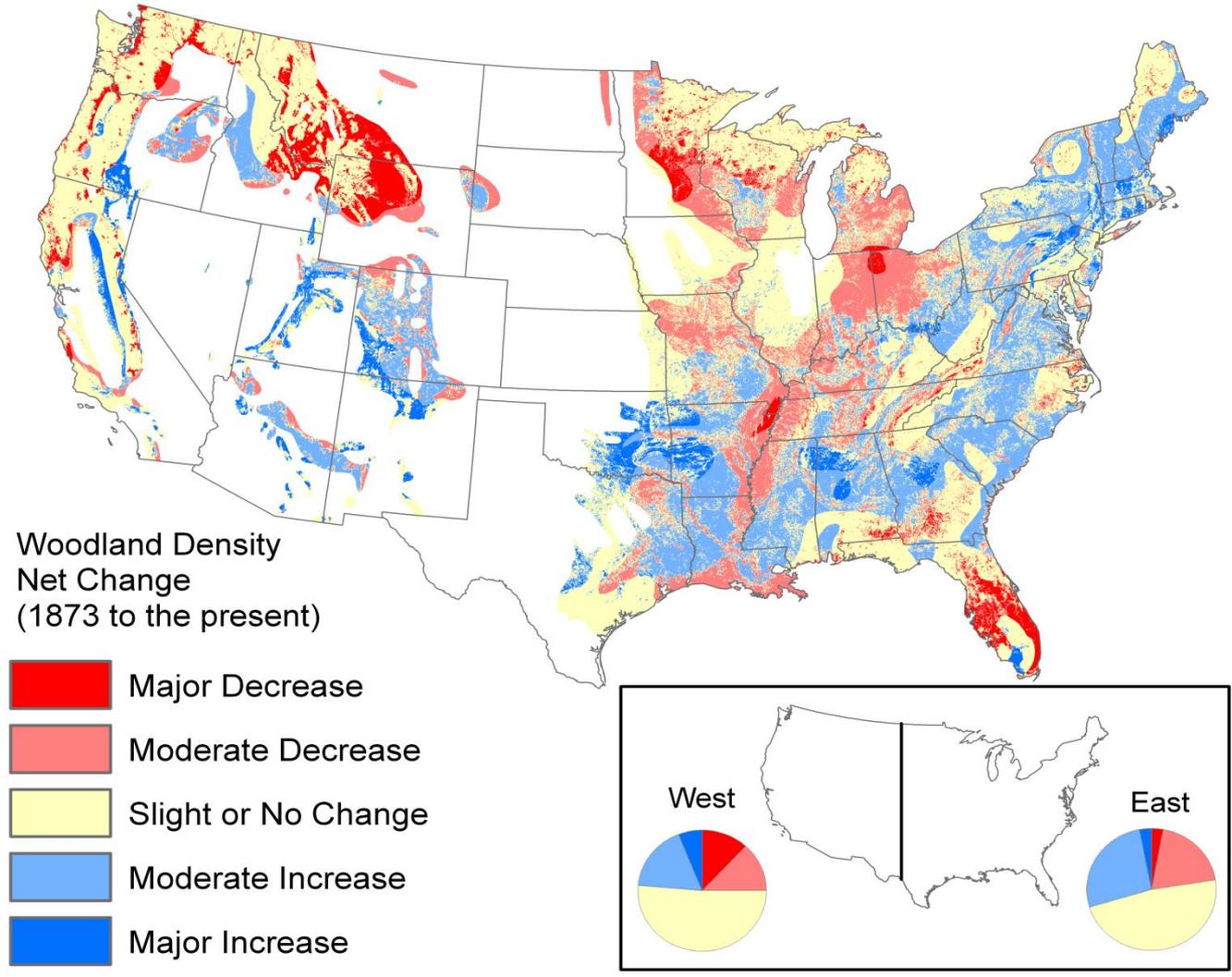
Proposed method

- 1) Background information on regulations and each of your countries
- 2) Field trips to 4 tenure types and 3 regulatory systems
- 3) Common questions, group discussion of each case
- 4) Review and discussion of your country situations
- 5) Identify what you take home/ do afterwards

Common Questions – for each type of tenure we visit

1. What laws, treaties and regulations are relevant – and what are the rights and obligations under those rules?
2. Who are the rightsholders and other stakeholders and how are they involved?
3. What might motivate them to work towards improved forest management?

Deforestation/Reforestation in the USA



US Forest Service, forthcoming

Thank you!

*Lots of opportunities to learn and share lessons
between countries – principles not blueprints*

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Questions

1. What is the distribution of ownership and the tenure situation in your country?
2. What regulatory framework do you have?
3. What opportunities and positive developments do you foresee?
4. What problems/issues do you identify or foresee?