“Rethinking” Forest Regulations?

Why is it needed?

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2013
Outline

1) Regulations: Problems, causes, history
2) Emerging New Approaches and “Principles”
3) The Example of Montana
4) Challenges and Opportunities

Primary sources:
WHAT DO WE MEAN BY "REGULATION"?

• A legal term: “Specific rules to enable implementation and enforcement of a law. Regulations have legal weight”

• Regulations differ from:
  o Laws: Passed by a representative body like a legislature. Sometimes laws are passed and new regulations are not developed.
  o Policies: Policies may be announced and treated as if they are a law or regulation – but they do not have legal weight

→ The process of “Rethinking regulations” is largely about how to best use the powers of the state to achieve publicly beneficial outcomes (e.g. sustainable forestry, jobs, etc.)
Forestry’s record, in many places, is very disappointing, and it is 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
  - Forestry is also one of the most socially regressive: 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 and still fail in significant areas:

- Harvest regulations tend to be highly prescriptive
- Management plans – detailed, difficult to implement
- Local communities are uninformed about their rights
- Often forestry is more regulated than other sectors, such as agriculture and mining, making it easier to convert land in places than to manage sustainably for forestry.
Examples of Problems & Failures

- Logging bans (e.g. Asia) "simple, ineffectual solutions" to attempt to solve problems like illegal logging

- **FLEGT** (EU’s Forest Law Enforcement Governance and Trade): Using trade to improve forest governance

- **REDD** (Reduced Emissions from Deforestation/Degradation): Global effort to stop deforestation

- **ITTO** (International Tropical Timber Organization): Report: Less than 10% of tropical forests are managed sustainably – after 25 years of effort and hundreds of millions of dollars spent

- Social unrest, protest and violent conflict

➤ Of course, regulations (or the lack of them) in other sectors negatively affect forests (e.g. agriculture, mining, investment)
Why do we consider these Failures?

1) There are contradictions or **inconsistencies** between different laws, policies and regulations.

2) Some regulations **cannot** be followed by forest owners, managers; **unrealistic**, too complex, cumbersome and costly

3) Sometimes real purpose is to raise revenue for government which can undermine sustainable forest management (SFM)

4) some are simply **“unjust”** (e.g. ignore traditional land and use rights – leads to resistance)
Why do we consider these Failures?

5) Regulations are sometimes inconsistent with property rights:
   - Public land (and different types of public land)
   - Private land
   - Indigenous peoples'/community land

6) Governments often don’t have the capacity to monitor and enforce AND the Focus on enforcement often misplaced

7) Regulations often consider only the role of government and emphasize “command and control” (i.e. do not recognize, and take advantage of the rights, interests and incentives of each actor).
Emerging New Approaches

THE FOUR PRINCIPLES

1. Recognize **land rights** and design different systems for each type

2. Carefully **identify priority problems** and then **prioritize** action

3. Create **favorable conditions** for key rights holders and stakeholders to promote best practice and compliance

4. Governments only do what no other entity can do, and judiciously use power
1. Recognize tenure and design different regulation systems

Must examine:

- Constitution, land laws, forest laws, customary rights
- 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

Focus 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. Creation of Favorable Conditions

- Build systems that reflect and take advantage of stakeholder rights, interests and incentives
- Establish political will by continual pressure and interest
- Develop an inclusive process that will involve all stakeholders in decision making, encourage adaptation and learning
- Ensure transparency, so stakeholders can monitor each other’s behavior and encourage progress
- Find the adequate mix between regulations and voluntary guidelines
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 including community monitoring of projects
- 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
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. ecosystem services)

6. Ensure education of all key stakeholders (on standards, costs, benefits)

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

FOREST BEST MANAGEMENT PRACTICES (BMPS)

Why it happened: 1989 - Forestry at a Crossroads:

• Potential of Federal Enforcement: Clean Air Act, Water Act, Threatened Species

• Other States Building Intense/Complex Forest Regulations: Oregon, Washington, California

• Pressure for Forest Practices Act/Regulations in Montana—politicians fearful
Montana Developed an Alternative, Non-Regulatory approach chosen focused on:

- **A Best Management Practices (BMP) Law**: Emphasis on road construction, timber harvesting, stream crossings, hazardous substances, streamside management zones. Compliance to BMPs is now 97%!

- **Landowner Education**: creation of a Forest Stewardship Program, individual on-site advice

- **Logger Education**: creation of an Accredited Logger Professional Program and a Stewardship Education for Loggers

- **Monitoring**: field audits every 2 years, report to state legislature, additional regulation when justified by audits
Voluntary approach to regulate Private Lands

- Reason for success: credible threat of imposition of high-cost, enforced regulations
- But after a set of audit failures around voluntary water BMPS, the State legislature passed a specific law on Water: Establishment of mandatory Water Quality Best Management Practices for Montana Forests with specific guidelines related to road construction, timber harvesting, steam crossings, hazardous substances use, etc.
- Proved the credible threat of regulation was real
Some Challenges and Opportunities

How to muster 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 (persistent myth that environmental regulation = environmental protection)

How to make use of current global attention to “illegal logging” and REDD?
Questions

1. What does the next generation of forest regulations look like? What factors must be included for success? What is affordable and sustainable?

2. How can you bring community groups and conservation communities to this new approach?

3. What problems/issues do you identify or foresee?
Finally...

What is the most important thing your organization should do to improve your regulatory framework?