Rethinking Forest Regulations: Overview and Introduction

2015 Rethinking Forest Regulations Workshop

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Outline

1) Rethinking regulations in the world

2) Overview of tenure and regulations in the US

3) Why Montana?
1) Regulations: problems, causes, history

2) Emerging new approaches and “principles”
Regulations: Problems, causes, history

• **General definition**: “Specific rules to enable implementation and enforcement of a law, has legal weight”

• **Regulations differ from**:
  - **Laws**: sometimes laws are passed and new regulations not developed
  - **Policies**: policies may be announced and treated as if laws or regulations – but they are not

• **“Rethinking Regulations”**: How to best use the powers of the state to achieve publicly beneficial outcomes (e.g. sustainable forestry, water quality, etc.)?
Why “Rethink” Regulations?

1) 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, conflict, undermining governance and development*
   - *Unintended effects*
     - Forestry is also often socially regressive: e.g. elite capture, rewarding large holders and powerful interests, penalizing the small and weak
     - Diminishing respect for law and judicial systems

2) Many regulatory frameworks do not respect customary or statutory land, civil or political rights, are unjust and lead to resistance.
Direct & Indirect Reasons for Failure

1) Sometimes real purpose is to raise revenue or control land for government and vested interests – not to promote sustainable forest management

2) Many contradictions or inconsistencies exist between different laws, policies and regulations (mining, agriculture, forestry).

3) Regulations are often unrealistic, too cumbersome, costly, or difficult to implement

Focus on enforcement often misplaced
4) Regulations are often inconsistent with property rights:
   - Private, household land
   - Indigenous peoples/community land

5) Governments commonly don’t have the capacity to monitor and enforce

6) Too often regulations consider only the role of government and emphasize “command and control”, and do not recognize and take advantage of the rights, interests and incentives of each actor.
National & International Responses to Failure

• Logging bans (e.g. Asia)
• FLEGT – using trade to improve forest governance
• 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 expended

➡️ Of course, regulations (or the lack of them) in other sectors negatively affect forests (e.g. agriculture, mining, investment)
How This Has Played Out?

In the “Developed” World:
1. 16th – 19th century: state, industrial control of public and private forests
2. 20’s - ‘70’s: focus on “enforcement”, command and control, but gradual strengthening of civil society
3. 80’s – now: more public participation in governance, simpler rules/stakeholders education (e.g. MT), market-based approaches (e.g. certification)

Continued tension, learning, revision, courts often the venue for setting direction

In the “Developing” World:
1. Lots of laws, fewer regulations
2. Regulation - mostly of public forests, often industrial concessions
3. 90’s – now: some innovations: independent certifications, independent monitoring and transparency (e.g. Global Witness), new policy regulatory approaches (i.e. China, Brazil, Liberia)

Yet, in many places, still focus on enforcement of old, rather than rethinking for new
Evolution of tenure/rights

1. Forest land ownership:
   • Public, usually by the central government (king, crown, country)

2. Governance authority:
   • Central government all powerful (and expert)

3. Forest people/local communities:
   • limited rights, voice and political power

→ increasingly owned or administered by private households, communities or Indigenous Peoples

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

→ increasing rights, voice and capacity – with democratization
Forest Tenure in Transition: Lower & Middle Income Countries

Increase from 21% of forested lands in 2002 to more than 30% in 2013

- Administered by Government: 71.4% (2002), 61.3% (2013)
- Designated for IPs & Communities: 3.0% (2002), 6.1% (2013)
- Owned by IPs & Communities: 18.2% (2002), 24.0% (2013)
- Owned by Firms & Individuals: 7.4% (2002), 8.7% (2013)
1. Recognize land rights and then design different regulatory systems for each property type

   • Must examine current laws (on forests and other sectors to see if overlap), constitution, customary rights, international commitments (e.g. ILO 169 UNDRIP) and laws and treaties regarding Indigenous Peoples and other special groups

2. Identify and address the priority public problems:

   • Focus on most important public values/resources, habitats

3. Prioritize action against the most damaging actors

   • Focus on the operators with potential to cause most damage
Emerging “principles” (continued)

4. Focus on **desired outcomes and/or results**

   Likely more effective and cheaper than a prescriptive approach and explicit “how to” guidelines

5. Governments create **favorable conditions** for key rights holders and only do what no other entity can do

   1. **Catalyze and facilitate process** to identify priority problems and new standards.
   2. **Take a “systems” approach.** Think of, and design system that reflects and takes advantage of stakeholder rights, interests and incentives.
   3. **Find the adequate mix between regulations and voluntary guidelines.**
   4. **Develop an inclusive and transparent process, avoid capture by powerful vested interests.**
   5. **Ensure monitoring of outcomes, citizen learning, regularly adapting and updating regulations.**
Promising Emerging Tools

1. Certification
2. Voluntary “best management practices” (BMPs for timber harvesting and management)
3. Independent, non-government monitoring and verification
4. Transparency – of forest use, monitoring, impacts
5. Education and dissemination of standards, positions, issues, impacts
6. Fostering stakeholder understanding, consensus, ownership – e.g. via consultations, conferences, committees, boards
7. Corporate codes of conduct – self-policing
8. Joint management and partnerships between government and non-governmental organizations
9. Concessions to local communities, entities: e.g. Stewardship Contracting
Tenure and Regulations in the U.S. - Overview
Today in the US

Who Owns and How Much

Distribution of Forest Land Ownership in the United States, 2006

Public: 34%

Private: 66%

- Federal: 33%
- State: 9%
- Family: 36%
- Corporate: 18%
- Local: 1%
- Other Private*: 3%

*Includes nongovernmental conservation organizations, unincorporated partnerships, and Native American lands.
US Westward Expansion

- 1783
- 1803
- 1819
- 1845
- 1848
- 1846
Forest Land in US: 1620, 1850, 1920
For this week in Montana

Major Themes of US Tenure History

1. Tenure policy emerged from our history as a nation, has evolved over centuries.

2. A National Forest System (70 Mh) formed 100 years ago after removing American Indians, and from public outrage over land degradation; management from industrial to community model.

3. State forests formed to generate revenue for education/infrastructure; managed differently by each State’s unique regulations.

4. Private forests (170 Mh) have a produced wealth for the individuals and the nation. Each state in US has different regulations for private lands management.

5. Tribal forests today, while small, are generally well-managed, using innovative ideas, and are key sources of wealth for tribes and the country.
US - Private Forest Experience

- No federal law directs private forest management – that is left to State government—each with their own forest protection laws
- Private land owners have immense rights
- Results are overall very positive
  - Wealth was created for private owners and nation: Contribution to GDP: $277/per acre more than public lands ($318 vs $41).*
  - Provided important recreation, wildlife, and watershed resources to the nation.
Tribal Lands in the US
American Indian Rights and Tenure

- Sad history: Treaties signed and promises broken
- Reservations created and Indians re-located in 1800s
- Last 30 years: new assertion of Customary Rights for fishing, hunting, small enterprises from/on public lands
- Many American Indian Forest Lands are well-managed and make significant contributions to livelihoods of tribal members, the nation:

  “Striking a balance between quality wood products and ENVIRONMENTAL PRIDE” (Warm Springs Forest Products Industries)
Federal (National) Forests in the US

**Historical Approach**

*Large scale, long-term (30-50 yr)* 
timber concessions

*Purpose*: primarily timber production

*Primary product*: commercial timber

*Who benefits*: highest bidder in timber industry

*Methods*: Top-down agency prepares and executes

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**Today’s Approach**

*Small scale, often shorter-term* 
stewardship contracts

*Purpose*: forest restoration

*Primary products*: recreation, wildlife, wood for biomass, small diameter wood

*Who benefits*: communities, tribal groups, new restoration industries

*Methods*: collaboration with public.
Innovative experiences that embody the 5 Principles:

1. One regulatory system for each ownership type (federal, state, private, tribal)
2. “Systems” thinking that respond to rights, interests and incentives of each major stakeholder
3. Focus on mutual awareness, transparency, joint monitoring – voice in policy = social legitimacy
4. Focus on agreed outcomes, with “bad actor” law and credible threat of greater coercion if not effective
5. Federal and state governments created favorable conditions and incentives – and pro-actively collaborate with NGOs and communities
Land Ownership in Montana

In Montana:
- 59% of Private Land
- 29% of Federal Land
- 6% of State Land
- 5% of Tribal Land
- 1% of Water

In the US:
- 66% of Private Land
- 34% of Public Land (federal & state)
- 3% of Tribal Land

Big challenge: How to regulate all these different types of forest ownership – cheaply and effectively?
Montana’s voluntary approach to regulate private forests

- Set of voluntary “Best Management Practices” to minimize impacts to water, soil and other forest resources
- All major actors involved – with different roles, per their interest
- Focus on landowner and logger education programs – raise their professional interest
- Monitoring of the state through biannual field audits: a 97% compliance rate!
- (One) reason for success: credible threat of imposition of high-cost, enforced regulations
WHY MONTANA?

Innovative experiences that embody the 5 Principles:

1. One regulatory system for each ownership type (federal, state, private, tribal)
2. “Systems” thinking that respond to rights, interests and incentives of each major stakeholder
3. Focus on citizen education and participation on monitoring teams, transparency, – voice in policy = social legitimacy
4. Focus on agreed outcomes, with “bad actor” law and credible threat of greater coercion if not effective
5. Federal and state governments created favorable conditions and incentives – and pro-actively collaborate with NGOs and communities
QUESTIONS/COMMENTS?