



## U.S. forests: a model for the world

*Rupert Oliver [1] suggests that U.S. long experience of private-sector forestry initiatives offers lessons for the wider world*

One country is playing a critical role in the formulation of international policy relating to forests. The United States' economic and political power ensures significant influence around the negotiating table. The deep cultural links that continue to exist between US citizens and their forests, together with the nation's status as one of the world's largest timber trading nations, give it a real interest in forestry negotiations. Elements of the "U.S. model" of forestry regulation – notably its emphasis on free market economics and private sector involvement – are now being adopted in many areas of the world.

And yet, despite this influence, perceptions of the U.S.' own approach to forestry regulation are often confused. To an outsider, the U.S. presents a perplexing array of federal, state and private sector initiatives. From the numerous press articles and the conflicting reports of industry and environmentalists, it can be difficult to thread the various strands of U.S. forestry practice together. To dispel the confusion, this article provides an overview of the U.S. forest regulatory system. It then considers some of the broader implications of U.S. regulatory practice for the international forest products trade.

### Federalist structure

Four particular features of the U.S. forest sector underpin the nation's regulatory regime. First, the U.S. regime reflects the nation's federalist structure. Much of the responsibility for forest regulation lies at State level. Each state has its own government agency responsible for forestry administration whose role and powers will vary considerably depending upon state forest policy. The regulatory role of Federal Agencies focuses more on cross-border environmental issues, notably endangered species protection and the management of inland lakes and rivers.

Second, a very large proportion of commercial forest land is owned privately. Around 58% of U.S. commercial forest land (termed "timberland") is owned and managed by millions of private individuals and their families. Despite Hollywood-inspired images of a land of sprawling cities interspersed by vast prairies, there remains a direct link between the people of the United States and their extensive forest lands. Forest industry companies own only 13% of U.S. timberland, and are heavily dependent on non-industrial

owners for their wood supply. The Federal Government is a significant forest land owner – particularly in the West – accounting for 20% of forest land. The remaining 9% is in the hands of other public bodies, primarily the state governments and county or municipal authorities.

### Private ownership rights

Third, the degree to which government should exert control over the management of private lands is a major political issue in many states. The Fifth Amendment of the U.S. Constitution, known as the takings clause, states that private property shall not be taken for public use "without just compensation". The U.S. courts have determined that regulations that go too far in denying a landowner economic use of his or her property are essentially takings that require just compensation. As a result many states have chosen to introduce non-mandatory regulatory regimes encouraging good management through positive incentives and education rather than direct intervention and control.

Fourth, the U.S. regulatory regime places great emphasis on individual responsibility. In many other countries, for example throughout most of Europe, forestry laws tend to establish detailed rules and regulations with which forest owners must comply to avoid prosecution. The national or regional Forest Authority is given direct legal responsibility for ensuring rules are applied. By contrast, in the U.S., it is common practice for regulatory authorities to issue guidelines that forest owners may follow voluntarily to reduce the risk of being prosecuted. A forest owner's compliance with the guidelines may be considered in the event of a lawsuit, but there is no legal obligation for owners to follow the guidelines. Furthermore regulatory authorities tend not to shoulder sole responsibility for monitoring compliance with US laws. Any individual may file a citizen suit against another individual for an infringement.

### National forests

The first major move to introduce measures to encourage sound forest management throughout the United States came in 1891 with an Act of Congress authorising the establishment of a system of National Forests. This was followed by the Forest Service Organic Act of 1897 which established Federal authority to manage these lands according



to forestry principles. According to this law, National Forests were established “to furnish a continuous supply of timber for the use and necessities of citizens of the United States” and to improve and protect the forest.

The U.S. Federal Government, through the U.S. Forest Service, retains direct jurisdiction over National Forests to this day. Over 32 laws are considered in the planning of forest operations on Federal timberlands, most notably the Multiple Use and Sustained Yield Act (1960). By law the Forest Service can only harvest as much as has grown and all forests must be replanted or renewed naturally. Further laws establish requirements for a comprehensive forest planning process during the management of National forests, including systems to evaluate forest resources and monitor operations, and to seek out and act on the views of the U.S. public.

### **General environmental legislation**

In addition to the Federal Government’s direct jurisdiction over National Forests, certain Federal agencies have powers to enforce general environmental legislation on all forest lands. Two pieces of federal legislation are particularly relevant:

■The 1973 Endangered Species Act (ESA) is designed to conserve threatened or endangered species until they are out of danger. The Federal Fish and Wildlife Service (FWS) has the primary authority to decide if a species is endangered, although anyone can petition for a species to be listed. Listings are considered solely on the basis of best scientific evidence available. The economic consequences of a listing, such as loss of jobs, cannot be considered. A federal agency such as the Forest Service, must consult the FWS before undertaking any activity in a listed species habitat. The Act also places restrictions on the management of endangered species habitats located on private lands. The far reaching implications of the Endangered Species Act for the U.S. forest industry were made apparent following the listing of the northern spotted owl as an endangered species in 1990. The owl’s preferred habitat, the old growth forests of Oregon, Washington and Northern California, coincides with the major timber producing forests of western USA. The listing of the species precipitated a course of events leading to President Clinton’s 1993 “Forest Plan” involving a 75% reduction in the timber harvest of National Forests in the region.

■The 1972 Clean Water Act (CWA) has had a major impact on the regulation of US forest practices at state level. The Act required states to develop programs aimed

at reducing water pollution, including “non point source” pollution derived from agriculture, forestry, and other land uses. Excessive timber harvesting and associated road construction may result in the discharge of “pollutants” into watercourses in the form of excess soil material. In states where forestry is a major land use, the state authorities were effectively required under the Act to develop and implement “Best Management Practices” (BMPs) for forestry operations. However, the content of forestry BMPs and the method of implementation were left entirely in the hands of the state authorities. Following introduction of the CWA, some states - such as Washington, Oregon, and California - introduced comprehensive forest practices acts making the implementation of state-approved BMPs compulsory for all land owners. These states publish extensive manuals describing rules and regulations and will aggressively police the program and take enforcement action against violators. However most states chose to rely on non-regulatory schemes encouraging voluntary adoption of state-approved BMPs. BMP implementation has been encouraged in several ways. For example, owners practising forest management are often rewarded with lower property taxes. The state forest service will usually provide advisory services and implement education and awareness schemes to encourage active management and timber production on private lands. The state forest service will also monitor private owner compliance with BMPs in order to improve the guidelines and the effectiveness of incentive schemes.

### **Private sector initiatives**

The high proportion of private ownership, coupled with the importance of private property rights and strong civil society, means that voluntary private sector initiatives form a major component of the United States regulatory framework. The U.S. plays host to the American Tree Farm System (ATFS) which, having been established as long ago as 1941, is by far the oldest voluntary forest certification scheme in the world. The Tree Farm System has also forged close links with the Sustainable Forestry Initiative (SFI), originally established in 1996 by the American Forest and Paper Association (AF&PA) as a self-regulatory programme for large industrial forest owners. Both the Tree Farm System and SFI have been adapted over the last decade to ensure full conformance to internationally recognised guidelines for development of sustainable forestry standards and independent auditing in line with the requirements of the Programme for Endorsement of Forest Certification (PEFC).

The United States has also proved fertile



ground for development and implementation of independent certification to the Forest Stewardship Council (FSC) standards. In June 2010, the U.S. played host to 13 million hectares of FSC certified land, the third largest area of any country (after Canada and Russia). Nearly 3700 FSC chain of custody certificates had also been issued, considerably more than any other country.

These certification processes go beyond just compliance with specific forestry standards on lands owned by participating organisations. Their evolution has gone hand-in-hand with the development of a network of alliances involving both state and private sector institutions actively involved in promoting sustainable practices through education, training and research programmes throughout the United States. For example, SFI has forged alliances with the US Department of Agriculture, the American Tree Farm System, the National Association of State Foresters, the National Woodland Owners Association, and various conservation organisations. It has also established 37 SFI Implementation Committees at the state, provincial or regional level. This grassroots network involves private landowners, independent loggers, forestry professionals, local government agencies, academics, scientists, and conservationists.

### **Linking private & public initiatives**

More recently, private sector involvement in forest regulation in the United States has been taken a step further. Some state authorities have recognised the potential for forest certification to effectively “privatise” aspects of forest regulation.

Not content with just promoting certification as an educational tool to raise awareness of sustainable forestry practice, some states now manage so-called “group” certification programs. For example, the State of Wisconsin, Department of Natural Resources has administered a group certification program since 2008. This has enrolled around 42,000 forest owners representing 2.2 million

hectares. The Wisconsin program utilizes an incentive of reduced taxes to encourage landowner participation. The state’s Managed Forest Law offers a reduction in property taxes when a landowner makes a commitment (25 or 50 years) to forest management. Group certification programs based on existing tax laws have also been established in Indiana and Massachusetts.

### **The “U.S. model”**

The U.S. approach to forest regulation is adapted to a national forest environment in which there is a well developed private industry sector, a very long history of private forest management, and a strong civil society.

Key aspects of the U.S. approach include: national level forest resource monitoring and oversight of landscape level issues such as endangered species and watershed protection; secure private property rights; individual responsibility; positive incentives; educational programmes; and the transparency associated with freedom of speech and an independent media.

While the “U.S. model” cannot be transferred wholesale to other nations where the forest and political environment may be very different, it does offer insights for policy makers looking for ways of maintaining competitiveness in global wood products markets while at the same time promoting sustainable practices and conserving other forest values. In the two decades prior to 2010, of all the world’s countries, only Canada has achieved higher wood export levels than the U.S. This is despite strong growth in U.S. domestic wood demand and has occurred against a background of continuing expansion of the wood resource.

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*[1] Rupert Oliver is an independent forest industry consultant based in the United Kingdom. For the last 20 years he has been heavily involved in the international policy debate surrounding sustainable forest management and certification*