

INTRODUCTION TO U.S. FORESTRY REGULATION

Rupert Oliver - January/2020



American Hardwood Export Council
20-22 Vestry Street
London N1 7RE

europe@americanhardwood.org
+44 (0) 207 626 4111

americanhardwood.org

INTRODUCTION TO U.S. FORESTRY REGULATION

SUMMARY

It is increasingly important for buyers and users of forest products to understand the regulatory framework governing forest management in the countries from where timber is sourced. Laws like the EU Timber Regulation and U.S. Lacey Act require that traders and manufacturers demonstrate this knowledge to regulators so they are assured of a negligible risk of illegal harvest. Customers are also conscious of the potential damage to reputation if they fail to provide adequate assurance that timber is derived from well regulated forests. There is a well-founded perception that U.S. forests are well regulated - based both on the nation's reputation for good governance and rule of law and on independent research commissioned by AHEC which demonstrates that the risk of American hardwood being derived from illegal source is less than 1% (Assessment of Lawful Harvesting and Sustainability of US Hardwood Exports, Seneca Creek, 2008 updated 2017, available on the [AHEC website](#))

But while this confidence exists, it is also true that perceptions of the U.S.' approach to forest 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 regulation together.

This report is designed to help clarify the situation by providing a short introduction to the U.S. forest regulatory system. The report highlights key aspects of the U.S. approach to forest regulation including: national level forest resource monitoring and oversight of landscape level issues such as endangered species and watershed protection; secure private property rights; an emphasis on individual responsibility and positive incentives; wide-ranging extension and educational programmes; and the transparency associated with freedom of speech and an independent media.



KEY FEATURES UNDERPINNING U.S. FORESTRY REGULATION

Four 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, the management of inland lakes and rivers, plant health, trade in illegally harvested timber, and emissions of greenhouse gases and other pollutants.

- 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.

- 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



Much of the responsibility for forest regulation lies at State level

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 U.S. 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



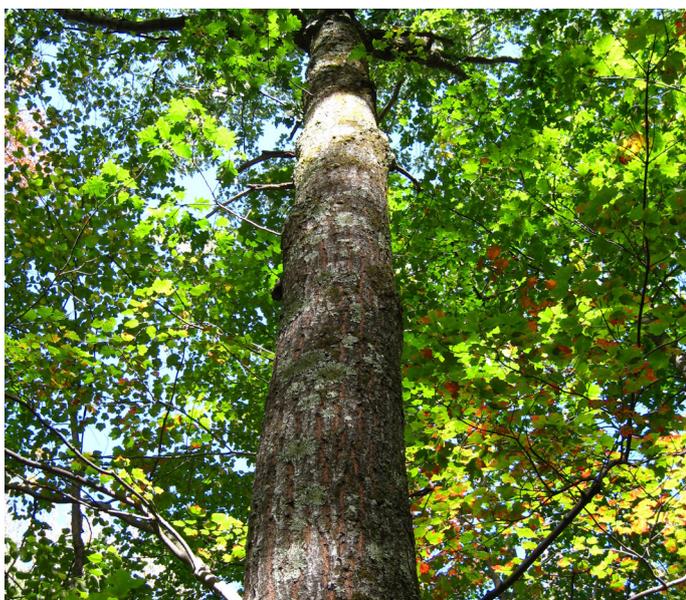
Certain Federal agencies have powers to enforce general environmental legislation on all forest lands

seek out and act on the views of the U.S. public.

FEDERAL 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. Four items 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



An Act of Congress from 1891 authorised the establishment of a system of National Forests





The 1972 Clean Water Act required states to develop programs aimed at reducing water pollution

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.

- The 2000 Plant Protection Act consolidated ten existing U.S. plant health laws into one comprehensive law. The Act gives the U.S. Department of Agriculture the authority to



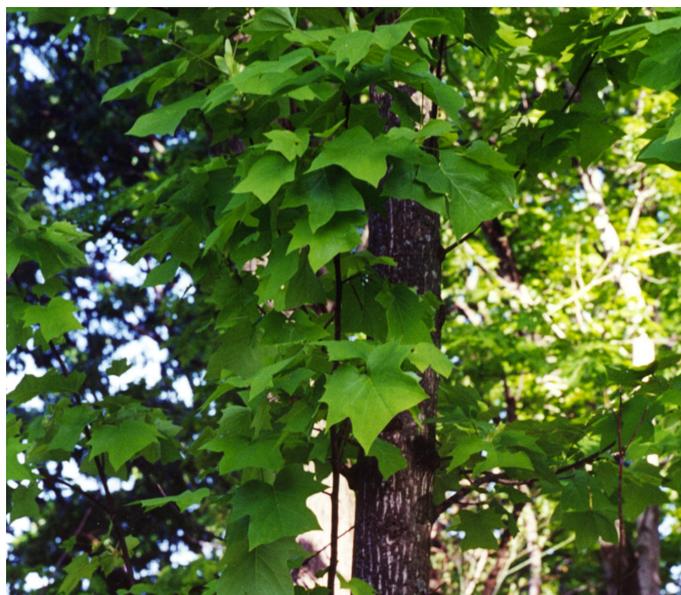
The 2000 Plant Protection Act regulates the import, export and interstate movement of plants and plant products



regulate and prohibit or restrict the importation, exportation, and the interstate movement of plants, plant products, certain biological control organisms, noxious weeds, and plant pests. The U.S. Animal and Plant Health Inspection Service (APHIS) is the lead agency with responsibility for monitoring and mitigating the threats posed by pests to the nation's forests. Where a pest of concern is detected, APHIS will implement emergency protocols and longer term programs in partnership with affected States to manage or eradicate the outbreak. Strategies to manage individual pests vary but include biological control, survey, and regulatory activities, combined with public outreach and education initiatives to promote program support and compliance. Depending on the threat, APHIS may be empowered to designate quarantine areas within the U.S. and to control movement of forest products out of these areas. APHIS is also empowered to control imports of forest products that are potential vehicles for pests threatening U.S. forests. In response to needs expressed by the American people and Congress, APHIS' mission has expanded over the years to include protection of natural resources identified as vulnerable to invasive pests and pathogens and regulation of genetically engineered crops.

- The 1900 Lacey Act is a U.S. law that bans trafficking in illegal wildlife. In 2008, the Act was amended to include plant-based products such as timber and paper. The Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant in violation of the laws of the United States, a state, an Indian tribe, or any foreign law that protects plants. This landmark legislation was the world's first ban on trade in illegally sourced wood products. The Lacey Act is a fact-based statute with strict liability, which means that only actual legality counts (no third-party certification or verification schemes can be used to "prove" legality under the Act) and that violators of the law can face criminal and civil sanctions even if they did not know that they were dealing with an illegally harvested product. Penalties for violating

the Lacey Act vary in severity based on the violator's level of knowledge about the product: penalties are higher for those who knew they were trading in illegally harvested materials.



Voluntary private sector initiatives form a major component of the United States regulatory framework

For those who did not know, penalties vary based on whether the individual or company in question did everything possible to determine that the product was legal. In the U.S. system, this is called "due care," and is a legal concept designed to encourage flexibility and innovation in the implementation of the law.

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.

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 U.S. 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 34 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

Recognising the key role of private landowners and private sector initiatives in U.S. forest regulation and management, the federal government and state agencies have evolved far-reaching programs to enhance public-private sector co-operation.

The Forest Stewardship Program, authorized by the 1990 Farm Bill and managed by the U.S. Forest Service, is the most extensive private



The federal government and state agencies have evolved far-reaching programs to enhance public-private sector co-operation

forest owner assistance program in the U.S., both in reach and scope. The program provides landowners with professional planning and technical assistance to keep their land in a productive and healthy condition. The program focuses on forest owners new to, or in the early stages of managing their land in a way that embodies multi-resource stewardship principles. To date it has provided more than 350,000 comprehensive management plans covering more than 16 million hectares nationwide. In addition to the direct support provided to forest owners, the program has successfully created and now sustains a vast, effective network of forestry technical assistance providers throughout the U.S. Assistance offered through the program also provides landowners with enhanced access to other U.S. government conservation programs, forest certification programs, and forest product and ecosystem service markets.

RESPONDING TO NEW CHALLENGES

More recently, U.S. government authorities have been working to refine and more effectively target their engagement with the private sector to improve forest management and to adapt to new challenges and opportunities.





Forest ownership is in flux due to divestiture of forest industry lands and intergenerational transfer of family forests

While the total volume of trees standing in U.S. forests has continued to rise, urbanization and development are leading to forest loss and fragmentation in some areas. Forest quality has declined and pest outbreaks have become more widespread and damaging in many areas due to a combination of factors including years of strategic fire suppression and environmental restrictions on logging in forests owned and managed by the Federal and state governments, a decline in active forest management by non-industrial private owners, climate change, and invasive pests imported in wood packaging and other forest products.

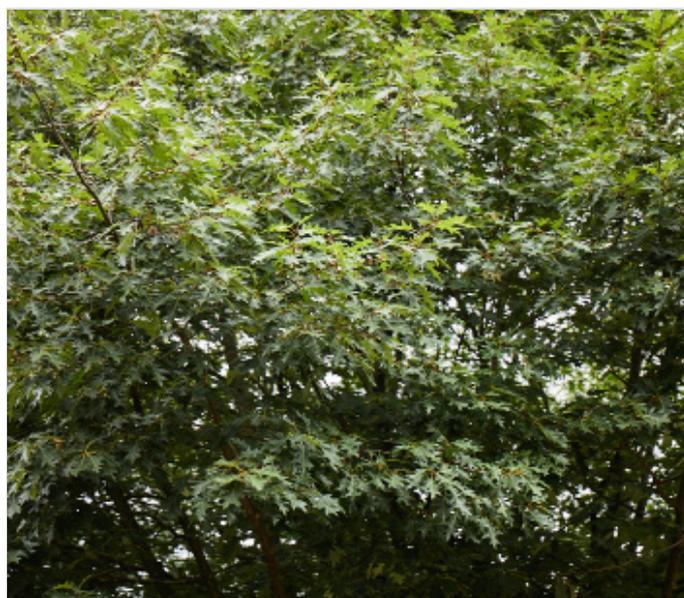
In addition, forest ownership is in flux due to divestiture of forest industry lands and intergenerational transfer of family forests. Economic incentives for landowners are affected by declines in traditional markets for timber products and uncertainty about emerging markets for bio-energy, carbon and certified wood products.

At the same time, new information and communication technologies are improving the quality and level of access to accurate data on the extent and condition of forests and

other ecosystems in the United States. There is a rising expectation that forest management should be participatory, adapted to the needs of all stakeholders, not just forest owners and managers but including all communities and interests impacted by forest operations within a region. These various technologies and concepts are now being integrated through the “landscape approach” to forest regulation and management which sets out to balance multiple types of ecosystems with the needs of multiple sets of actors who use them. In this approach, forests are not defined as isolated entities, but as integral components of dynamic, multi-functional landscapes.

STATE FOREST RESOURCE STRATEGIES

In response to these new challenges and opportunities, the Food, Conservation, and Energy Act of 2008, also known as the 2008 Farm Bill, required that every state must complete a statewide Assessment and Strategy for Forest Resources. The Assessments provide an analysis of forest conditions and trends in the state and delineate priority rural and urban forest landscape areas. The Resource Strategies provide long-term plans for investing state,



The Food, Conservation, and Energy Act of 2008 required that every state must complete a State-wide Assessment and Strategy for Forest Resources



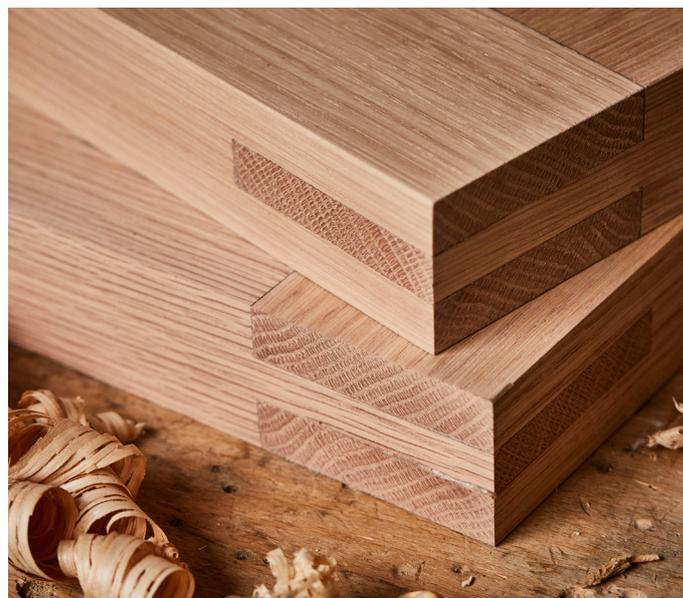
federal, and other resources to where it can most effectively stimulate or leverage desired action and engage multiple partners.

The approach for developing these strategies varied widely among the states, reflecting differences in the management styles, the number of existing resources, the priorities of states, and the differences in the challenges that face them. Some engaged in a wide-ranging stakeholder involvement process that, in some cases, included meetings, polls, surveys, and other outreach efforts to ascertain the priorities facing both the forests and the stakeholders of the forest—including state agencies, private landowners, tribes and indigenous peoples, and other user groups. Some largely consulted existing resources and included many existing plans and assessments in their plans as appendices.

Federal funds are made available every year to support implementation of the state strategies, with a rising proportion invested in projects selected through a competitive process. Only those projects are selected which are judged best able to deliver on the strategic objectives identified in the statewide strategies.

FURTHER READING

More comprehensive information on the U.S. forest regulatory system, together with an assessment of the risk of illegal and unsustainable harvest in the American hardwood sector, is contained in the Assessment of Lawful Harvesting & Sustainability of U.S. Hardwood Exports by Seneca Creek Associates which is published on the AHEC website.



For further reading, visit the [AHEC website](#)

