

LAWS GOVERNING FORESTRY

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Summary

Forestry is the management of forest lands for traditional commodities, such as timber, and for more modern, conservation uses, such as recreation and ecosystem services. International agreements, national law, and local regulation all play roles in governing forestry. Typically, publicly owned forests are managed under more restrictive legal requirements than privately owned forests.

International law relevant to forestry generally focuses on habitat conservation, climate change, development, and trade. National laws are more detailed and enforceable than international law. National laws governing public forest administration are concerned with both substantive management criteria and decision-making procedures. Private forest regulation may address actual forestry practices, such as clearcutting, or it may focus on the protection of water, wetlands, species, or other targets of environmental concern. Local governments usually specify land use restrictions.

Positive incentives to spur better forestry are at the forefront of legal developments. Tax benefits, regulatory relief, direct payments, and technical assistance are all important avenues for inducing better forest management. Third-party certification of forest products produced sustainably should increase in importance and play a key role in shaping both supply and demand.

1. Introduction: Ownership and Jurisdiction

This article explores the legal regimes that govern forestry.

It is dangerous to make generalizations about laws governing forestry around the world because nations differ so greatly in how they treat ownership of and jurisdiction over forest resources. Although some international treaties establish global frameworks for guiding forest management, nations themselves vary widely in the number of conventions to which they are a party, the manner in which their national legislation implements treaty commitments, and the vigor of enforcement.

Another barrier to generalization is variation in the meaning of the term forestry. Traditionally, forestry focused on the production timber resources. Today, however, forestry encompasses management to achieve a broader range of goals, including biodiversity, recreation, and useable water. Increasingly, laws governing forestry address the non-timber dimensions of forest services.

Ownership of forests defies generalization in two ways. First, of course, national rules of property vary. Also, though, in many countries ownership of trees (usually considered part of the real estate) is subject to different rules from ownership of other forest resources, such as water and wildlife. This fragmentation of control means that, for many nations, private property rights provide a legal basis for acting with respect to some elements of a forest but not for others.

Jurisdiction for managing or regulating forestry also varies considerably around the world. Not only is property law important in defining what resources are subject to private control (and the extent of that control), but the degree of centralization of national power will also have a strong influence in the applicability of law. In a decentralized, federal nation, provinces or states may exert relatively more power over forest management decisions than in centralized, unitary nations.

The following sections address, respectively, international law, national law, and market certification.

2. International Law

Because there are so few international agreements that directly control natural resources management within the borders of sovereign nations, domestic law is far more important in shaping incentives that affect forestry. However, because forests play a wide variety of roles in natural and economic systems, international agreements that affect those systems are relevant to understanding forest management throughout the world. First, forests provide habitat. Therefore, international agreements that relate to biological protection (such as the Ramsar Convention on Wetlands of International Importance) may be relevant to forestry. Second, forests serve as sources (if burned) and sinks (if growing) for greenhouse gases. Therefore, the Climate Change Convention may be relevant to forestry. Third, forests provide fuel, food, construction material, water quality improvement, erosion/flood control, and other services for local residents. Therefore, international development agreements that seek to improve the quality of life in developing countries may have policies relevant to forestry. Sustainable development, now the watchword of international policy, requires maintenance of forests. Fourth, forests provide export commodities, most importantly, lumber. Therefore, international trade agreements may be relevant to forestry.

Most international agreements require national implementing legislation. Therefore, a survey of a country's national law will encompass the statutes that give effect to the international agreements. Because international environmental enforcement mechanisms are weak, at best, the greatest contribution international law makes to forest protection is whatever national legislation it instigates.

2.1. Habitat Conservation

2.1.1 Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES]

The 1973 CITES seeks to ensure that international trade in wildlife, and wildlife parts, does not threaten the conservation status of declining and/or threatened species. Species protected under CITES are listed in one of three appendices. Appendix I lists the most vulnerable species, for which trade requires both export and import permits. Appendix II lists species that could become threatened with extinction unless certain restrictions on trade are imposed. CITES prohibits trade in Appendix II species without an export permit. Appendix III species may be designated unilaterally by any party to the Convention. Trade in Appendix III species requires an export permit only if the exporting nation is responsible for listing the species. Permits may not be issued if doing so will be detrimental to the survival to species. CITES is widely considered one of the most effective international environmental treaties.

Unlike the other international agreements discussed in this section (2.1), CITES focuses on trade, not habitat protection. However, implementing national legislation, such as the United States Endangered Species Act, may address habitat concerns. To the extent that CITES promotes sustainable trade in endangered species dependent on forest habitat, it might discourage deforestation by linking a stable market with a stable source of the species. One the other hand, as CITES can be used to prohibit trade in endangered

species dependent on forest habitat, it might remove the motivation to retain forest that could supply the species.

2.1.2 The Biodiversity Convention

Although the Convention on International Trade in Endangered Species (CITES) restricts trade in species threatened with extinction, it does little to preserve the habitats on which the species depend (e.g. forests). The Biodiversity Treaty seeks to address this habitat concern and to protect natural systems for their own sake. Biodiversity is a term that encompasses more than just species diversity. It also describes genetic diversity within a species, community diversity within larger ecosystems, and ecosystem diversity within larger regional landscapes.

Still, species are the fundamental building blocks and measuring sticks of biodiversity. A forest will more likely be protected due to international pressure to enforce a treaty obligation if there is a dependent species at risk of extinction. Even if the risk is not extinction, but just extirpation of particular populations (such as the monarch butterflies that migrate from forests in Mexico to the USA and Canada), then the Biodiversity Convention may affect implementation of forestry.

Opened for signatures at the 1992 United Nations Conference on Environment and Development (the Rio “Earth Summit”), the biodiversity convention commits nations to incorporate protection of species diversity in economic and social planning. Parties agree to develop strategies, protected areas, and monitoring programs. The convention calls for technology transfer and financial grants from rich nations to poor ones. The convention is rife with qualifying language, such as “as appropriate,” or “as far as possible.” These qualifiers will make it difficult to enforce the literal terms of the agreement. Still, signing the convention may be an important declaration of national policy which can direct forestry to be more protective of biodiversity.

2.1.3 Convention Concerning the Protection of the World Cultural and Natural Heritage

Each party to this 1972 Paris treaty has a duty to identify and protect the cultural and natural heritage which lies within its territory. Parties to the Convention agree to protect cultural monuments and natural sites that are of such outstanding values as to concern humanity as a whole. World Heritage sites tend to be popular destinations for tourists and so serve the dual function of providing tourism income as well as preserving humankind’s heritage.

Although the Convention addresses the world’s natural and cultural heritage, most sites on the World Heritage list are cultural. However, natural preserves do occur in forests ecosystems, such as the Redwoods National Park World Heritage site in the USA. In such areas, forestry is shaped by the terms of protective management under the convention. The World Heritage Fund makes grants to developing countries to assist nominations and management of listed sites. There are over 40 World Heritage tropical forests that can take advantage of this help.

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Biographical Sketch

Robert L. Fischman is Professor of Law at Indiana University School of Law–Bloomington. He has served as a visiting professor in the environmental law programs at both the Vermont Law School and the Lewis and Clark School of Law. Professor Fischman has also been a senior research scholar at Yale Law School. Before joining the Indiana faculty in 1992, he taught at the University of Wyoming College of Law, and served as Natural Resources Program Director and Staff Attorney at the Environmental Law Institute in Washington, D.C.

Professor Fischman holds an A.B. degree (geology) from Princeton University, an M.S. degree from the University of Michigan School of Natural Resources, and a J.D. degree from the University of Michigan Law School. He has published widely on issues related to public land management, endangered species recovery, biological diversity protection, environmental impact analysis, and sustainable forestry. His scholarship has received peer recognition as among the very best in environmental law.

Robert Fischman's most recent book, "The National Wildlife Refuges: Coordinating a Conservation System through Law," was published by Island Press in October, 2003.

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