

Timber Legality Risk Assessment United States

Version 1.2 | August 2017



COUNTRY RISK
ASSESSMENTS



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The original document of FSC can be accessed here <https://ic.fsc.org/en/document-center>.

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NEPCon originally published the Timber Legality Risk Assessment for the United States in August 2017. No changes to the risk assessment have been made since then.

The FSC CNRA differs from this NEPCon risk assessment in the risk conclusions for two indicators. In the NEPCon assessment, indicator 1.12 is specified risk for all source types, and indicator 1.16 is specified risk for private forests. In the FSC version, all indicators for category 1 are low risk.

Overview of legality risks

Timber Risk Score: 93 / 100 in 2017

This report contains an evaluation of the risk of illegality in the United States for five categories and 21 sub-categories of law. We found:

- **Specified risk for 2 sub-categories.**
- **Low risk for 18 sub-categories.**
- **No legal requirements for 1 sub-category.**

The Timber Risk Score for the United States is 93 out of 100. The key legality risks identified in this report relate to timber harvesting activities and trade and transport.

For **Timber harvesting activities**, there is a risk that labour laws are violated when immigrant labour is used (Sub-category 1.12)

For **Trade and Transport**, there is a risk that kinds, quantities and value of timber harvested from private land is not recorded or reported correctly (1.16).

Timber source types and risks

There are two timber source types found in the United States. Knowing the “source type” that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all source types and found the risks differ between them.

Public forest	Timber from production forest on public land.
Private forest	Timber from production forest on private land.

This matrix summarises the findings of the timber legality risk assessment set out in this report.

Legal Category	Sub-Category	Risk conclusion	
		Public forest	Private forest
Legal rights to harvest	1.1 Land tenure and management rights	Low	Low
	1.2 Concession licenses	Low	Low
	1.3 Management and harvesting planning	Low	Low
	1.4 Harvesting permits	Low	Low
Taxes and fees	1.5 Payment of royalties and harvesting fees	Low	Low
	1.6 Value added taxes and other sales taxes	Low	Low
	1.7 Income and profit taxes	Low	Low
Timber harvesting activities	1.8 Timber harvesting regulations	Low	Low
	1.9 Protected sites and species	Low	Low
	1.10 Environmental requirements	Low	Low
	1.11 Health and safety	Low	Low
	1.12 Legal employment	Specified	Specified
Third parties' rights	1.13 Customary rights	Low	Low
	1.14 Free prior and informed consent	N/A	N/A
	1.15 Indigenous/traditional peoples' rights	Low	Low
Trade and transport	1.16 Classification of species, quantities, qualities	Low	Specified
	1.17 Trade and transport	Low	Low
	1.18 Offshore trading and transfer pricing	Low	Low
	1.19 Custom regulations	Low	Low
	1.20 CITES	Low	Low
	1.21 Legislation requiring due diligence/due care procedures	Low	Low

B. Overview of the forest sector in United States

The property laws of the United States are largely an outgrowth of British common law (although the state of Louisiana has a French-based civil law system and the property laws in some south-western states bear influences of Mexican law). This means that trees growing on land are considered real property. Although rights over trees are severable from rights to the underlying land, usually the purchaser of land acquires ownership of the trees on the land.

According to the 2012 Statistical Abstract of the United States (Table 884, <http://www.census.gov/compendia/statab/2012/tables/12s0884.pdf>), as of 2007, the country had roughly 303 million hectares of forestland. About 174 million hectares were in private ownership. Government, mainly the federal government, owned about 128 million hectares of forest.

The U.S. Forest Service defines a forested area as "forest land" if it is at least 1 acre in size and at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use. (Examples of nonforest uses include areas for crops, improved pasture, residential areas, and other similar areas.) Forest land includes transition zones, such as areas between heavily forested and nonforested lands that are at least 10 percent stocked with forest trees, and forest areas adjacent to urban and built-up lands. The United States has about 751.2 million acres of forest land (U.S. Census Bureau, Statistical Abstract of the United States: 2012; 2007 data). Of that land, approximately 249.1 million acres (33.8 percent) are owned by the Federal Government. The remaining 487.6 million acres are owned by nonfederal entities, such as State or local governments, private citizens, or companies.

The majority of Federal forest land is managed as the national forest system (NFS). The NFS includes:

- National Forests reserved from the U.S. public domain,
- National Forests acquired through purchase, exchange, donation, or other means,
- National grasslands,
- Other lands, waters, or interests administered by the U.S. Forest Service (FS) or designated for administration through the FS as part of the system.

The NFS manages 155 national forests and 20 national grasslands and contains 193 million acres, (193/112) or 77 percent, of Federal forest lands. The NFS is contained in 44 States, Puerto Rico, and the Virgin Islands and employs 30,000 people. Of the remaining nonfederal forests, privately held commercial forest lands make up the largest portion, accounting for 347 million acres (71 percent). (National Forest Service)

Eastern forests cover about 384 million acres (1,550,000 km²) and are predominantly broadleaf (74%), with the exception of extensive coniferous forests and plantations in the southern coastal region. These are largely in private ownership (83%). By contrast, about 363 million acres (1,470,000 km²) of western forests are predominantly coniferous (78%) and in public ownership (57%). Nearly ten million private individuals own about 422 million acres (1,710,000 km²) of forest and other wooded land.

Seven-Tenths of U.S. forest lands, or 514.2 million acres of the total 751.2 million acres of forest land, are classified as timberlands. Timberlands are defined as forest lands used for the production of commercial wood products. Commercial timberland can be used for repeated growing and harvesting.

Of the 514.2 million acres of timberland, Federal, State, and local governments own 112.7 million acres (22 percent) and non-industrial private entities own 401.5 million acres (78 percent). Private timberlands are mostly on small tracts of forest land. (U.S. Census Bureau, Statistical Abstract of the United States: 2012; 2007 data)

State and Private Forestry includes private landowners, state agencies, tribes, and community resource managers who help sustain the United States' urban and rural forests and to protect communities and the environment from wildland fires, insects, disease, and invasive plants.

There are some 31 other federal entities that interact directly with the U.S. Forest Service in planning and managing federal forest lands, and many others that have a more indirect linkage (Ellefson and Moulton 2000). In addition to the federal level, many agencies at the state level also have influence on how forests are administered. An estimated 1,453 state agencies (cabinet level, sub-cabinet level, and governing advisory bodies) were responsible for programs influencing the use, management and protection of nonfederal forests in 2000 (Ellefson et al., 2002).

Proliferation of state agencies responsible for forest governance in northern states of the USA state agencies affecting forest conditions are located in virtually all sectors (horizontally) and levels (vertically) of state government, with some states having an especially rich assortment of forestry affecting agencies.

Native American tribes are considered to be Sovereign Nations and accorded rights to independently manage their land and affairs. Out of a total of 556 federally recognized tribes, 48 have significant timberland resources in 21 of the hardwood-producing states. While some tribes have sawmill and other production facilities, they account for only a very small share of US hardwood production (estimated at less than 1%).

The list of sources provided in FSC-PRO-60-002a, section 3.3.3 has been reviewed in regards to the national legality risk assessment for the USA. The following sources have been used; World Bank "Worldwide Governance Indicators" and the Transparency International "Corruption Perceptions Index", and are referred to under "sources of Information" for each applicable sub-category. The remaining sources were found not to be relevant for the legality risk assessment for USA.

On a range from -2.5 to +2.5, USA has a score of 1.54 in relation to "Rule of law" and on control of corruption a score of 1.28 on the World Banks Worldwide Governance Indicators. According to Transparency International USA has a Corruption Perception Index of 73 (2013).

C. Legality Risk Assessment

LEGAL RIGHTS TO HARVEST

1.1. Land tenure and management rights

Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.

1.1.1. Applicable laws and regulations

- Public lands are managed by associated agencies at either the federal or state level. Most federally owned land available for commercial timber is managed by the US Forest Service (Dept. of Agriculture).
- The property clause of the US Constitution is in Article 4, Section 3. The guarantees of due process and just compensation are in Amendments 5 and 14.
- Generally, the federal statutes concerning federal lands are codified in Title 16 (conservation) and Title 43 (public lands) of the US Code (USC). The provisions concerning military reservations are in Title 10.
- Many federal agency regulations concerning federal lands are in Title 36 (parks, forests, and public property) and Title 43 (Public lands: Interior) of the Code of Federal Regulations (CFR), although other titles have applicable rules. For example, presidential “executive orders” reserving lands would be codified in Title 3 of the CFR, and Title 50 contains rules of the Fish and Wildlife Service.
- The internal rules of procedure of agencies are not all codified in the CFR. Important sources of information on US Forest Service procedures and standards are the Forest Service Manual and the Forest Service Handbook.
- The organization of state and local land management agencies varies, e.g. in Alabama, the state Forestry Commission manages a few thousand hectares of state forests. One state forest includes a wildlife area managed in conjunction with the state’s Department of Conservation and Natural Resources.
- For privately owned lands, state and local laws and institutions largely govern tenure. State laws govern the sale or transfer of rights to land, the rights of property owners and occupants, and the recording of interests and rights to land. Most states do not have a “Torrens” system where title results from registration. Rather, land rights transfer from person to person based on the issuance of deeds, mortgages, and other granting instruments, and recording of these instruments provides possible purchasers with notice of claims to the land. Private companies called title insurers will search the records and issue limited guarantees stating that a particular seller has rights to convey. State (and in some cases federal) courts will resolve disputes over tenure rights.

- It is possible (but unusual) to gain rights to land through “adverse possession.” If a person exercises a right to land in an open manner, hostile to the rights of the owner, continuously, for a period of time set in statute (typically whatever the state’s statute of limitations is for trespass), that person gains rights to the land. These rights could be outright ownership or something less, such as an easement (sometimes called a prescriptive easement). This is why an inspection of the land, along with inspection of the land records, is necessary to verify title. Adverse possession applies only to privately owned lands; a person cannot claim adverse possession against the government.
- State laws also control business organization (e.g., incorporation or creation of other legal persons capable of holding property rights). Licensing to conduct business may be under state or local control or both, depending on the state and the kind of business. Some states require additional specific professional licenses or registration for those in the business of logging or those in the business of giving forest management advice.
- The federal government requires individuals and businesses earning income or paying employees to register for tax purposes.
- Governments at all levels hold the power of eminent domain (i.e., the power to acquire title to private lands without the owner’s consent), but the U.S. Constitution requires that owners receive due process of law (governments must bring a lawsuit to acquire land if the owner is unwilling to sell it) and just compensation.
- State and local laws govern the classification and management of lands held by state and local governments (about 18 million hectares of potential timberlands). Typically, state or local land management agencies, such as forestry commissions or parks departments, manage these lands.
- The US Constitution gives the federal Congress power to “dispose of and make all needful Rules and Regulations respecting the Territory or other property of the United States.” The Congress has delegated federal land management authority to several agencies (the next cell in this row lists the major ones). Each agency, and in some cases each individual park or reserve, is subject to statutes (written by Congress) and regulations (written by agencies) that govern management. In addition, Congress has established some “systems” with management restrictions (e.g., the Wilderness system, the Wild and Scenic Rivers system, the National Trails system). These systems include lands from multiple agencies, and in some cases non-federal lands. Congress has also given the President authority to designate lands as national monuments, to protect features of historic or scientific interest.

1.1.2. Legal authority

- Local governments keep land tenure records. In some states, the courts keep the records. In some, the recorder is an administrative office of a local government. Local or state governments handle business registration, and state governments handle creation of corporations and other legal persons. A business incorporated in one state but operating in several states may have to register as a “foreign” corporation and designate a local agent in each state.
- In some states, businesses must also register with the state taxing authority.

- The federal Internal Revenue Service issues employer identification numbers, required of most businesses, used for tracking tax-related payments and obligations. The Social Security Administration issues social security numbers to individuals, used for tracking individual income and tax payments.
- The organization of state and local land management agencies varies. E.g. in Alabama, the state Forestry Commission manages a few thousand hectares of state forests. One state forest includes a wildlife area managed in conjunction with the state's Department of Conservation and Natural Resources. The Division of State Parks in that department manages the state parks.

For federal lands, the five largest land management agencies in terms of total area managed are:

- The Bureau of Land Management, managing the "public lands" (100 million hectares, mostly not forested land, but including the commercially valuable forests of the O & C lands in western Oregon)
- The US Forest Service, managing the national forests and grasslands and some special reserved lands; by far the largest seller of legal timber from federal lands (78 million hectares, including non-forest lands and lands reserved from commercial harvest)
- The US Fish and Wildlife Service, managing the national wildlife refuges (35 million hectares, with the largest of its holdings in Alaska)
- The National Park Service, managing national parks, monuments, historic sites, etc. (32 million hectares, also with the majority of its holdings in Alaska)
- The Department of Defense, managing military reservations (7 million hectares)

In addition, other agencies have notable rural land holdings, including:

- The Department of Energy, managing nuclear weapons production facilities and surrounding buffer zones
- The Bureau of Reclamation, managing lands under and adjacent to water development facilities such as dams
- The Tennessee Valley Authority, managing lands incidental to energy production, river development, and recreation in the mid-South.
- The Bureau of Indian Affairs oversees about 23 million hectares of federal land held in trust for Native American tribes.

1.1.3. Legally required documents or records

- The most reliable way to determine land ownership is through search of the local property records, coupled with physical survey and inspection of the property for signs of actively used easements or incursions. The tenure rights to land are typically conveyed through deeds and similar documents. The local governments record copies of these documents. In some cases, as with conservation easements, the documents will convey management rights but not possession or full ownership.
- Local governments will also have records of who has been paying the property taxes for private lands, although the payer is not always the owner.

- Private owners can convey management rights by lease or contract. In the case of long-term rights that might not be apparent from inspection of the land, a rights holder would be wise to record the document in the property records to provide notice to any potential land purchasers, but generally this is not a legal requirement.
- State and federal ownership should be apparent from the land records, though it may be from the lack of records of any ownership transfer away from the government.
- Federal, state, and local laws classify publicly owned lands and designate management authority. The laws often identify the land through a legal description (metes and bounds, or by reference to a standard land survey), so these laws can be sources of ownership documentation. However, governments sometimes create reservations that include private "inholdings," and it is still possible on some federal lands to gain a private patent following discovery of a commercially valuable mineral deposit, so in the end the texts of the laws can't be relied upon completely as indicators of ownership. Managing agencies usually have accurate maps of their lands indicating boundaries and inholdings, and sometimes laws incorporate these maps by reference, but usually the maps do not carry legal weight.
- Businesses will often have a business license from the local government. Businesses with offices in urban areas will often have a certificate of occupancy or occupation permit attesting to compliance with zoning laws, although that certificate may be held by the landlord if the business is renting office or industrial space.
- Corporations and other legal persons may have a certificate of incorporation or other paperwork from the state attesting to their valid organization.
- Most businesses must have an employer identification number issued by the federal Internal Revenue Service. Sole proprietors may have a social security number, issued by the federal Social Security Administration, instead.

1.1.4. Sources of information

Government sources

- fs.fed.us (2011). *National Report on Sustainable Forests - 2010*. [online]. United States Department of Agriculture Forest Service. Available at: <http://www.fs.fed.us/research/sustain/national-report.php>.
- The websites of the various agencies provide statistics on their land ownership.

Non-Government sources

- Goetzl, A. et al. (2008). Assessment of Lawful Harvesting & Sustainability of US Hardwood Exports. [online]. Seneca Creek Associates, LLC. Available at: <https://www.illegal-logging.info/sites/files/chlogging/uploads/AHECRISKASSESSMENT.pdf>
- Hardy Vincent, C. et al. (2012). *Federal Land Ownership: Overview and Data*. [online]. Congressional Research Service. Available at: fas.org/sgp/crs/misc/R42346.pdf
- Onsrud, Harlan J. (1989). The Land Tenure System of the United States. undes der Offentlich Bestellten Vermessungsingenieure, Jan. 1989. <http://www.spatial.maine.edu/~onsrud/pubs/landtenure07.pdonsrud>

1.1.5. Risk determination

Description of risk

Land records in the United States are highly reliable. Banks routinely issue mortgages based on them. Large property transactions routinely proceed when the records show clear title.

In its report to the Montreal Process Working Group on the Conservation and Management of Temperate and Boreal Forests, in scoring an indicator relating to land tenure, the US government concluded that, "All forest land owners, public and private, exercise their forest tenure rights to achieve their forest land management goals [A]lthough complex, clear title is usually sufficient [to allow forest management] in the United States. In cases where disagreements about land rights occur, courts provide a means to settle those conflicts." US Department of Agriculture. 2011. National Report on Sustainable Forests—2010, p 111.

Compliance with business and tax registration is probably high, but no figures seem readily available. Governments have strong incentive to enforce registration, as it leads to tax revenue. Large businesses, occupying a good deal of commercial or industrial space, are easy for compliance officials to find. With smaller businesses and businesses that cross over from neighboring jurisdictions to do limited tasks, the risk of non-compliance is slightly higher.

"There can be high confidence that rights of timber ownership are well-established and respected. Approximately 92% of hardwood produced in the US is sourced from private lands. The vast majority of private landowners own small family forests that average less than 10 hectares in size. Numerous legal processes are available to landowners to resolve disputes involving proper title and/or the unauthorized taking or sale of timber property." Seneca Creek Report 2008, p ii.

"Comparisons of international governance indicators, such as those compiled by the World Bank, strongly indicate that the US is perceived as a country with a high regard for the rule of law, an effective environmental, labor and public welfare regulatory environment, and a low level of corruption." Seneca Creek Report 2008, p iii.

Of the World Bank Governance Indicators that measure government effectiveness, regulatory quality and rule of law, the US ranks in the top 10% of all countries. Indicators measuring the Rule of Law are perhaps the most relevant in terms of a risk assessment for illegal behavior in the U.S. The U.S. ranks just below the 92nd percentile amongst 212 countries, meaning that the rule of law is believed by independent observers around the world to be respected by its citizens and business enterprises" Seneca Creek Report 2008, p 43. Note that these three quotes only relate to hardwood.

Risk Conclusion

Based on the available information, the risk is assessed as low.

1.1.6. Risk designation and specification

Low risk

1.1.7. Control measures and verifiers

N/A

1.2. Concession licenses

Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.

1.2.1. Applicable laws and regulations

- For US Forest Service: FSH 2409.18, Ch. 50 § 53
- State lands have similar regulations based at the state level.
- One statutory authorization for Forest Service timber sales is 16 U.S. Code § 472a.
- The basic regulations are in 36 CFR part 223, subpart B.
- The internal procedures can be found in the Forest Service Manual. FSM 2400, covers timber resource management, including commercial timber sales (Chapter 2430) and timber sale contract administration (Chapter 2450).
- The basic rules for Bureau of Land Management timber sales are 43 CFR Chapter II, subchapter E, parts 5000 to 5510.
- The statutory provisions allowing forest management and timber sales on lands held by the Bureau of Indian Affairs are in 25 USC §§ 406, 407, and 466. The rules are in 25 CFR part 163.
- The US Fish and Wildlife Service can issue a permit for timber harvest on national wildlife refuges if that is compatible with the refuge's purpose. See 50 CFR § 29.1. On refuges in Alaska, subsistence (i.e., non-commercial) harvests are allowable, and some require a special use permit from the refuge manager. 50 CFR § 36.15.
- The general authorization for sales of land interests for timber production or sales of forest products from military lands is 10 USC §2665. The Department of Defense and the individual services have regulations concerning timber sales.
- The federal government has laws that debar or suspend persons with a history of bad actions from participating in federal contracts, and the government maintains lists of such persons. The Forest Service's rules for debarment because of actions relating to timber sales are in 36 CFR part 223, subpart C. Other agencies can debar persons for violations of their laws, and these listings may have government-wide effect, stopping new contracts and grants. The US General Services Administration keeps a government-wide list of debarred persons, the Excluded Parties List System. A new website, sam.gov, provides access.
- On private lands, the general laws for contracts and property transactions govern most transfers of rights to manage and harvest. These are largely state laws. A private

landowner will typically enter into a contract with a logger allowing the logger to harvest timber.

- Private lands may be leased long-term for timber production, but it's actually more common for private landowners to lease their lands for hunting and recreation, reserving for themselves the right to sell or harvest timber.
- Another form of long-term management control over land is the conservation easement. These are becoming more common in the United States. The private owner grants a third party (typically a government or a non-governmental conservation organization) the right to block uses of the land. The easement may require the land to be kept in a natural state, or it may allow some commercial use if it is consistent with the purpose of the easement. For example, an easement to protect the views of land around an historic village might allow farming or forestry to continue but would prohibit construction of modern roads or structures. Conservation easements are transfers of rights that bind subsequent owners of the land, and as such the easements are usually recorded in the land records. In return for the easement, the land owner may get a purchase payment, may enjoy lower property taxes due to the reduced market value of land subject to the easement, or may get a one-time deduction for income tax purposes reflecting the value of a donated easement.
- Forest Service Handbook 2409.18. [online]. Chapter 50, Section 53. Available at: <http://www.fs.fed.us/forestmanagement/products/contracts.shtml>
- 16 U.S. Code § 472a Timber sales on National Forest System lands. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/472a>
- 36 CFR Part 223 [online]. Subpart B - Timber Sale Contracts. Available at: <http://www.law.cornell.edu/cfr/text/36/part-223/subpart-B>
- Forest Service Manual FSM 2400 [online]. Available at: http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsm?2400
- 43 CFR, Chapter II. [online]. Subchapter E, Parts: 5000 to 5510 – Forest management. Available at: <http://www.law.cornell.edu/cfr/text/43/chapter-II/subchapter-E>
- 25 US Code, Chapter 12, §§ 406, 407 Lease, sale, or surrender of allotted or unallotted lands and §466 Transferred. [online]. Available at: <http://www.law.cornell.edu/uscode/text/25/chapter-12> and <http://www.law.cornell.edu/uscode/text/25/466>
- 25 CFR Part 163 [online]. General forestry regulations. Available at: <http://www.law.cornell.edu/cfr/text/25/part-163>
- 50 CFR § 29.1 May we allow economic uses on national wildlife refuges? [online]. Available at: <http://www.law.cornell.edu/cfr/text/50/29.1>
- 50 CFR § 36.15 Subsistence uses of timber and plant material [online]. Available at: <http://www.law.cornell.edu/cfr/text/50/36.15>
- 10 US Code §2665 Sales of certain interests in land; logs. [online]. Available at: <http://www.law.cornell.edu/uscode/text/10/2665>
- 36 CFR Part 223 Subpart C Suspension and Department of Timber Purchaser [online]. Available at: <http://www.law.cornell.edu/cfr/text/36/part-223/subpart-C>

1.2.2. Legal authority

For federal lands, see the federal land management agencies in the box above.

For state and local lands, the legal authority is the state or local land management agency. Below is a list of the main forestry agencies in the fifty states. In many states, universities have forestry extension programs, and in some states these have a role in management of state lands.

- US Forest Service
- Alabama Forestry Commission
- Alaska Division of Forestry
- Arizona State Land Department
- Arkansas Forestry Commission
- California Department of Forestry and Fire Protection
- Colorado State Forest Service
- Delaware Department of Agriculture Forest Service
- Florida Division of Forestry
- Georgia Forestry Commission
- Hawaii Division of Forestry and Wildlife
- Idaho Department of Lands
- Illinois Division of Forest Resources
- Indiana Division of Forestry
- Iowa Dept. of Natural Resources - Forestry Division
- Kansas Forest Service
- Kentucky Division of Forestry
- Louisiana Department of Agriculture and Forestry - Office of Forestry
- Maine Forest Service
- Maryland Forest Service
- Massachusetts Division of Forests & Parks - Bureau of Forestry
- Michigan Forest Management Division
- Minnesota Dept. of Natural Resources - Division of Forestry
- Mississippi Forestry Commission
- Missouri Department of Conservation
- Montana Dept. of Natural Resources and Conservation - Forestry Division
- Nebraska Forest Service
- Nevada Division of Forestry

- New Hampshire Division of Forests & Lands
- New Jersey Division of Parks & Forestry
- New Mexico Forestry Division
- New York Division of Lands & Forests
- North Carolina Division of Forest Resources
- North Dakota Forest Service
- Ohio Department of Natural Resources - Forestry
- Oklahoma Forestry Services
- Oregon Department of Forestry
- Pennsylvania Bureau of Forestry
- Rhode Island Division of Forest Environment
- South Carolina Forestry Commission
- South Dakota Division of Resource Conservation & Forestry
- Tennessee Division of Forestry
- Texas Forest Service
- Utah Division of Forestry, Fire, and State Lands
- Vermont Department of Forestry, Parks & Recreation
- Virginia Department of Forestry
- Washington Department of Natural Resources
- West Virginia Division of Forestry
- Wisconsin Department of Natural Resources Forestry Program
- Wyoming State Forestry Division

1.2.3. Legally required documents or records

- A written Timber Sale Contract (US Forest Service) - A Forest Service contract usually requires advance payment and the posting of a performance bond. There should be documentation of deposit of funds or establishment of a surety by a third party.
- Other agencies and states will have their own requirements, but government sales contracts are probably universally captured in writing, and the payment and bonding requirements will probably be similar to those of the US Forest Service.
- On private lands, timber sale contracts are usually written documents, but some landowners and loggers have been known to work based on oral understandings.
- Conservation easements and long-term leases must be in writing to be enforceable.

1.2.4. Sources of information

Government sources

- The US General Services Administration keeps a government-wide list of debarred persons, the Excluded Parties List System. Available at: <https://www.sam.gov>
- scforestry.org (N.Y.). *Official website of South Carolina Forestry Association, SCFA*. [online]. Available at: <http://www.scforestry.org/>
- state.sc.us (N.Y.). *Don't Be A Victim Of Timber Transaction Crime Information For Forest Landowners in South Carolina*. [online]. Web page of State Forestry Commission South Carolina. Available at: <http://www.state.sc.us/forest/timberval.htm>
- whistleblower.org (N.Y.). *Field Guide to Timber Theft: Understanding Timber Sales, the Contract, and the Law*. [online]. Government Accountability Project. Available at: http://www.bark-out.org/sites/default/files/bark-docs/Field_Guide_toTimber_Theft.pdf

Non-Government sources

- Goetzl, A. et al. (2008). *Assessment of Lawful Harvesting & Sustainability of US Hardwood Exports*. [online]. Seneca Creek Associates, LLC. Available at: <https://www.illegal-logging.info/sites/files/chlogging/uploads/AHECRISKASSESSMENT.pdf>
- Gray, J. A. (2002). *Forest Concession Policies and Revenue Systems: Country Experiences and Policy Changes for Sustainable Tropical Forestry*. [online]. World Bank Technical Papers No. 522. Available at: <http://elibrary.worldbank.org/doi/abs/10.1596/0-8213-5170-2>

1.2.5. Risk determination

Overview of Legal Requirements

Most timber harvest in the United States occurs on private land (fee simple), where Concession Licenses are not required. Public forests in the US are managed either at the state / local level, or by the US Forest Service. In many cases a harvesting permit, which acts like a concession license is required. In the United States, the term “concession” is usually understood to mean transfer of a long-term license to manage and enjoy the fruits of a resource. In that sense, the federal government rarely issues concessions for timber production. That goes also for state and private ownership. A study of worldwide concession practices for the World Bank found that, “Few, if any, concession-type forest tenures remain in the United States.” John A. Gray, 2002, *Forest Concession Policies and Revenue Systems: Country Experiences and Policy Changes for Sustainable Tropical Forestry*, at p. 8. Instead, the typical practice is for the landowner to retain management authority over the forest and grant short-term permission to harvest timber. On public lands, this means that the managing agency holds timber sales. Each agency has its own laws and rules for conducting sales. On public lands (mainly those managed at the federal level by the US Forest Service) a Timber Sale Contract is required that specifies environmental compliance and a fee based on an evaluation of the timber value. State natural resource agencies have similar requirements.

Description of risk

On public lands, the process of contracting tends to be highly transparent. Opportunities to purchase timber are announced publicly, the bidding process is subject to public scrutiny, and

the contracts themselves are public records. Even in anecdotal reports, there does not seem to be much evidence of corruption by public officials in the award of timber sales.

A separate issue is the possibility of collusion among bidders. There is no available evidence of this.

A third issue is the possibility of people evading the debarment laws. There is no available evidence of this.

On private lands, the transaction is rooted in contract. Fraud is a concern. A buyer could misrepresent its logging skills or its intent to follow forest practice laws. A buyer or seller could mislead the other about the value of the standing timber. A buyer could use threats or intimidation to induce a landowner to sell timber. Of these, the greatest risk seems to be the logger or buyer fraudulently misleading the landowner about the value of the timber. Some state forestry agency websites and publications warn about this problem. See, e.g., <http://www.state.sc.us/forest/timberval.htm>. This site estimates the loss from timber theft and fraud (two different crimes) in South Carolina at \$10 million annually. The annual "delivered value" of timber in the state is over \$783 million (<http://www.scforestry.org/>), so the estimated loss is about 1.3% (assuming that the estimated loss is also in terms of "delivered value").

Risk conclusion

On the whole, the risk of illegality in entering into contracts, public or private, is real, but is considered low.

1.2.6. Risk designation and specification

Low risk

1.2.7. Control measures and verifiers

N/A

1.3. Management and harvesting planning

Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.

1.3.1. Applicable laws and regulations

- National Forest Management Policy Act of 1976 (US Forest Service lands)
- Bureau of Land Management: BLM planning is governed by the Federal Land Policy and Management Act.
- Federal business practices Law.
- Business & forest practices laws (for all states)
- US Forest Service

Planning requirements in statute:

- 16 USC § 1601 National renewable resource assessment. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/1601>
- 16 USC § 1602 Renewable resource program. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/1602>
- 16 USC § 1603 Inventory. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/1603>
- 16 USC § 1604 Land and resource management plans. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/1604>

Planning requirements in the Code of Federal Regulations

- 36 CFR pt. 219 Planning generally. [online]. Available at: <http://www.law.cornell.edu/cfr/text/36/part-219>
- 36 CFR pt. 220 Environmental impact assessment. [online]. Available at: <http://www.law.cornell.edu/cfr/text/36/part-220>
- CFR pt. 221 Timber management planning. Available at: <http://www.law.cornell.edu/cfr/text/36/part-221>

Planning requirements in the Forest Service Manual

- FSM 1910 National resource planning. [online]. Available at: <http://www.fs.fed.us/im/directives/fsm/1900/1910.txt>
- FSM 1920 Land and resource management planning. [online]. Available at: <http://www.fs.fed.us/im/directives/fsm/1900/1920.doc>
- FSM 2410 Timber management planning. [online]. Available at: <http://www.fs.fed.us/im/directives/fsm/2400/2410.doc>

Bureau of Land Management. Planning requirements in statute

- 43 USC § 1711 Inventory. [online]. Available at: <http://www.law.cornell.edu/uscode/text/43/1711>.
- 43 USC § 1712 Land use planning. [online]. Available at: <http://www.law.cornell.edu/uscode/text/43/1712>
- & C Lands Act (management directives for the O & C lands) 43 U.S. Code Chapter 28. Available at: <http://www.law.cornell.edu/uscode/text/43/chapter-28/subchapter-V>.
- 43 CFR part 1600, subpart 1610 Resource management planning. [online]. Available at: <http://www.law.cornell.edu/cfr/text/43/part-1600/subpart-1610>
- 43 CFR § 5410.0-6 Annual timber plans. [online]. Available at: <http://www.law.cornell.edu/cfr/text/43/5410.0-6>

Bureau of Indian Affairs

- 25 USC Chapter 33 Statutory provisions on forest management. [online]. Available at: <http://www.law.cornell.edu/uscode/text/25/chapter-33>
- 25 CFR part 163 Rules regarding forest management, including management planning. [online]. Available at: <http://www.law.cornell.edu/cfr/text/25/part-163>

Federal environmental impact assessment (all federal agencies)

- 42 USC EIA requirement § 4332 National Environmental Policy Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/42/4332>
- 40 CFR EIA regulations. Parts 1500-1508. [online]. Available at: <http://www.law.cornell.edu/cfr/text/40/chapter-V>
- State forestry law generally (not just planning laws): Defenders of Wildlife. 2000. [online]. State Forestry Laws. Available at: www.defenders.org/publications/state_forestry_laws.pdf
- Not all states have forest practices laws requiring management and harvesting planning - 34% did not in 2004 and an additional 12% only when certain conditions exist). However, most states with significant state forests will have planning requirements in the law. A few examples are listed in the box in this row dealing with sources of information.

Private lands:

- The state of California requires private lands to submit a detailed timber harvest plan or a longer term non-industrial timber management plan before the state will grant a harvest permit. A registered professional forester must prepare these plans.
- The state of Oregon requires a harvest plan for harvests needing a waiver from forest practices rules, harvests near certain streams or wetlands, and harvests affecting endangered species.
- Some states require landowners to submit a timber management plan before the state will classify land as timber land or forest land, reducing the property tax rate. Most states, though, do not require management plans from private owners.
- Some voluntary programs require private planning in order to become eligible for government benefits or assistance. Under the national Forest Stewardship Program, the US Forest Service in cooperation with state forest agencies will help non-industrial private forest owners write forest stewardship management plans, but participation in the program is voluntary. Under conservation programs in the federal Farm Bill, administered by the federal Natural Resources Conservation Service, landowners who adopt management plans and put certain sensitive lands under conservation management are eligible for financial incentives.

Sample state forest planning law :

- Michigan: Part 525 Sustainable Forestry on State Forestlands, of the Natural Resources and Environmental Protection Act, Section 52503 (codified at Michigan Compiled Laws §324.52503). [online]. Available at: [http://www.legislature.mi.gov/\(S\(bjn2yd45nya4kxjuhc5t4vrn\)\)/mileg.aspx?page=shortlinkdisplay&docname=mcl-324-52503](http://www.legislature.mi.gov/(S(bjn2yd45nya4kxjuhc5t4vrn))/mileg.aspx?page=shortlinkdisplay&docname=mcl-324-52503)

Sample state laws regarding private land planning:

- California's Z'berg-Nejedly Forest Practices Act of 1973 Requires private timber harvest or management planning
- California Public Resources Code §§ 4581 to 4592 (timber harvesting) and §§ 4593 to 4594.7 (non-industrial timber management plans). [online]. Available at:

http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=4.&title=&part=2.&chapter=8.&article=7.

- Oregon: Oregon Administrative Rules 629-605-0100 and 629-605-0170. [online]. Available at: http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_629/629_605.html
- The state of Washington: Revised Code of Washington Chapter 84.34, particularly § 84.34.041(4). [online]. Available at: <http://app.leg.wa.gov/rcw/default.aspx?cite=84.34>

1.3.2. Legal authority

- For public (federal) forests: US Forest Service
- For the federal and state lands and state regulation of private lands, see the agencies listed in the box above in this column. However, most of the state agencies listed do not require management plans from private lands.
- State revenue departments and local government revenue and assessor offices administer property tax requirements.

1.3.3. Legally required documents or records

- Timber Sale Contract (US Forest Service)
- All federal land management plans are public documents. (It is possible that plans for military bases might have portions redacted for national security purposes.) Under the environmental assessment laws, the federal agencies must publish a notice of their intent to begin planning, publish a draft plan, take public comment, revise the plan, and publish a final plan.
- Every US state has some form of freedom of information or open records law. Most management plans for state and local forests are probably public documents.
- Whether private management plans, if submitted to the government, are public documents, depends on state laws. Many freedom of information act laws have provision for protecting confidential business information in documents held by the government. In Maine, for example, management plans are apparently not public documents.

1.3.4. Sources of information

Government sources

- Ellefson, P. V. et al. (2004). Regulation of forestry practices on private land in the United States: Assessment of state agency responsibilities and program effectiveness. [online]. STAFF PAPER SERIES NUMBER 176, Department of Forest Resources, College of Natural Resources and Agricultural Experiment Station, University of Minnesota. Available at: <http://conservancy.umn.edu/bitstream/handle/11299/37646/1/Staffpaper176.pdf>
- fs.fed.us (N.Y.). *Official website of US Forest Service*. [online]. Available at: <https://www.fs.fed.us/>

Non-Government sources

- bangordailynews.com (2012). *Georgetown selectmen to investigate potential Tree Growth Tax Fraud*. [online]. Posted by Darren Fishell in Bangor Daily News. Available at:

<http://bangordailynews.com/2012/02/16/news/midcoast/georgetown-selectmen-to-investigate-potential-tree-growth-tax-fraud/>

- Miner, A. M.A. et al. (2014). *Twenty Years of Forest Service Land Management Litigation*. J. Forestry. Vol 112, Issue 1, p.32-40. [online]. Available at: https://www.eenews.net/assets/2014/03/11/document_gw_04.pdf

1.3.5. Risk determination

Overview of Legal Requirements

Federal lands

US Forest Service: The Forest Service does inventory and plans on many scales, from national to the individual timber sale. On the national level, the Forest and Rangelands Renewable Resources Planning Act requires the Forest Service to prepare a national assessment of the demand and supply of renewable resources in the country and a renewable resource program, which includes goals for Forest Service outputs of timber. The nine regions of the Forest Service prepare regional guides addressing regional planning issues. Then, under the National Forest Management Act, each of the over 100 units of the Forest Service prepares a land and resource management plan, which, among other things, identifies areas open to harvest. The law requires the Forest Service to involve the public in planning, and for each plan the Forest Service must prepare an environmental impact statement satisfying the requirements of the National Environmental Policy Act. The Forest Service then draws up separate timber management plans. These cover smaller areas and shorter timeframes than the land and resource management plans. These plans are also subject to environmental assessment.

Bureau of Land Management: BLM planning is governed by the Federal Land Policy and Management Act. It too requires comprehensive management plans, but it has far less detailed planning requirements than the Forest Service laws. On BLM's most productive forest lands, the O & C lands, the O & C Lands Act sets the goals of management, but it does not have detailed planning requirements.

Bureau of Indian Affairs: If the Native American tribe is interested and engaged in forest management, the BIA acts to support them, but BIA imposes some basic standards. For example, BIA rules require the tribe to prepare appropriate management and operating plans.

State permits generally have a minimum threshold for acreage / board feet of harvest before they are required. They are also often required in ecologically sensitive areas.

For federal lands, the planning process is transparent and participatory, so flaws in planning regularly come to light but seldom go uncorrected. The agencies allow stakeholders to pursue informal administrative challenges to planning decisions and timber sale approvals. In addition, the courts have ruled that people who enjoy the federal lands for recreation or scenic value have the right to sue the managing agencies for failure to comply with planning or EIA laws. A 2014 study in the Journal of Forestry reported that the US Forest Service was taken to court 1125 times between 1989 and 2008 over land management issues. The Service won a bit more than half the cases, lost about a quarter and settled the remainder out of court. Miner, Amanda M.A., Robert W. Malmshemer, and Denise M. Keele. 2014.

Twenty Years of Forest Service Land Management Litigation. J. Forestry. Vol 112, Issue 1. pp. 32-40.

Description of Risk

State planning is similarly transparent. In some cases, citizens have challenged the adequacy of state plans, however the author has not found reports of widespread or systematic violation of planning rules.

Planning requirements for private lands are limited. The author has not been able to find indications of regular violations of these requirements.

Risk Conclusion

Based on the available information, the risk for this category has been assessed as low.

1.3.6. Risk designation and specification

Low risk

1.3.7. Control measures and verifiers

N/A

1.4. Harvesting permits

Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.

1.4.1. Applicable laws and regulations

- Forest Service Handbook 2409.18, chapter 50 On Forest Service and BLM lands. The timber sale contract procedural rules for the Forest Service. [online]. Available at: http://www.fs.fed.us/im/directives/fsh/2409.18/wo_2409.18_50.doc
- Forest Service Handbook 2409.18, part 54. The Forest Service and the Bureau of Land Management also grant permits for small removals of forest products, but these must have minor impact on the resources and total value of under \$1000. West of the 100th meridian, they may not include sawlogs.
- 43 CFR The BLM's Rules, pt 5400. [online]. Available at: <http://www.law.cornell.edu/cfr/text/43/part-5400>

- BLM Manual § 5400. [online]. Available at:
http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.94852.File.dat/5400_Sales_of_Forest_Products.pdf
- BLM Handbook 5400-2 to 5480-1. [online]. Available at:
http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.94852.File.dat/5400_Sales_of_Forest_Products.pdf
- Forest Service Handbook 2409.18, part 54 Permits for small removals of forest products. [online]. Available at:
http://www.fs.fed.us/im/directives/fsh/2409.18/wo_2409.18_50.doc
- The Forest Service may grant permits for harvests for “administrative uses.” These include for research purposes, disaster relief, or property improvement (removal of a diseased or infested tree, for example). These ordinarily should involve small volumes of wood; the preferred method for allowing harvest of merchantable timber is through a timber sale.
- Forest Service Handbook 2409.18, chapter 80. Permits for harvests for “administrative uses”. [online]. Available at:
http://www.fs.fed.us/im/directives/fsh/2409.18/2409.18_80.doc

Based on a small sample of state laws, the states appear to follow the federal practice. That is, they do not require a permit separate from the timber sale contract. On private lands, the required permit will vary from state to state, and in some states, from locality to locality. Western states tend to have more detailed and prescriptive forestry laws.

- California: Cal. Public Resources Code §§ 4570–4578. [online]. Available at:
<http://codes.lp.findlaw.com/cacode/PRC/1/d4/2/8/6> and Cal. Public Resources Code §§ 4581–4592. [online]. Available at: <http://codes.lp.findlaw.com/cacode/PRC/1/d4/2/8/7>
- Alaska: Alaska statutes § 41.17.090. [online]. Available at:
<http://codes.lp.findlaw.com/akstatutes/41/41.17./01./41.17.090>
- Virginia: Code of Virginia §10.1-1181.2(H). [online]. Available at:
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1181.2>
- New Hampshire: See University of New Hampshire Cooperative Extension (2014) "Guide to New Hampshire Timber Harvesting Laws", at p.7.
<http://www.nhdfi.org/library/pdf/Forest%20Protection/Guide%20to%20NH%20Timber%20Harvesting%20Laws%20rvs2012.pdf>

1.4.2. Legal authority

- US Forest Service (federal lands)
- State forestry agencies (private / state / county land).
- For the federal and state lands, the legal authority is the land management agency issuing the timber sale contract.
- For private lands, the legal authority is usually the state forestry agency, but as the New Hampshire example shows, it can be the state revenue agency or even a local government agency or official.

1.4.3. Legally required documents or records

- Timber Sale Contract (US Forest Service). For federal and state lands, the key document will be the timber sale contract.
- For private lands, it will vary from state to state. Where states require notice, the landowner or operation would be wise to keep evidence of sending the notice. This might be a copy of the notice and perhaps proof of mailing. In some states, like New Hampshire, the landowner or logger must post an acknowledgement that the notice was received.
- In states where some form of plan or post-activity report is required, the landowner or logger should have copies of these.

1.4.4. Sources of information

Government sources

- dof.virginia.gov (N.Y.). 2007 Locality Value and Volume. [online]. Virginia Department of Forestry. Available at: http://www.dof.virginia.gov/harvest/data/2007_Value-Volume_County.htm.
- fs.fed.us (2011). *National Report on Sustainable Forests - 2010*. [online]. United States Department of Agriculture Forest Service. Available at: <http://www.fs.fed.us/research/sustain/national-report.php>
- nysenate.gov (2008). *Timber Theft in New York: A Legislative Briefing*. [online]. NYS Legislative Commission on Rural Resources. Available at: <http://www.nysenate.gov/files/pdfs/timber08appdixCfix.pdf>

Non-Government sources

- Baker, S. (2003). *An Analysis of Timber Trespass and Theft Issues in the Southern Appalachian Region*. [online]. Thesis submitted to the Faculty of the Virginia Polytechnic Institute and State University. Available at: http://scholar.lib.vt.edu/theses/available/etd-05212003-153313/unrestricted/timb_theft_thesis.pdf
- foxnews.com (2014). *Redwood burl poaching spreads from national parks to national forests*. [online]. Available at: <http://www.foxnews.com/us/2014/06/13/redwood-burl-poaching-spreads-from-national-park-to-national-forests/>
- Kent, J. (2012). *Guest Viewpoint: The timber racket: A culture of corruption and political payoffs harms the land and ourselves*. Register-Guard Newspaper, reprinted copy [online]. Available at: <http://olympicforest.org/wp-content/uploads/2014/03/227.pdf>
- Morris, L. S. (2014). *New law to crack down on timber theft*. [online]. The Telegraph. Available at: <http://www.macon.com/news/business/article30144321.html>
- Transparency International (2013). *Corruption Perception Index*. [online]. Available at: <http://www.transparency.org/cpi2013/results>
- University of New Hampshire Cooperative Extension (2012). *Guide to New Hampshire Timber Harvesting Laws*. [online]. Available at: <http://www.nhdf.org/library/pdf/Forest%20Protection/Guide%20to%20NH%20Timber%20Harvesting%20Laws%20rvs2012.pdf>

- Usatoday.com (2003). *Thieves steal hundreds of millions of dollars worth of trees.* [online]. Available at: http://usatoday30.usatoday.com/news/nation/2003-05-18-timber-theft_x.htm

1.4.5. Risk determination

Overview of Legal Requirements

State permits generally have a minimum threshold for acreage / board feet of harvest before they are required. They are also often required in ecologically sensitive areas.

Description of Risk

Corruption associated with timber sales and harvest permits in the US is generally not an issue. The US also has a relatively good Corruption Perception Index (73), as measured by Transparency International.

Timber is real property and, in many states, is treated similarly as theft of other kinds of property. Additionally, some states have statutes that are specific to timber theft and trespass.

There are a few potential risks in this category, some of these might equally well fall under "tenure," "taxes," or another category.

(1) Harvest off public lands without contract or permit, for commercial purposes. It is easy to find anecdotal reports of small-scale tree theft from public lands. Especially when a slow economy puts rural people out of work, thieves "poach" or "rustle" individual trees for their wood. From the 1980s into the 2000s, in states of Washington and Oregon, old growth western red cedar (*Thuja plicata*) was valuable enough to poach. See, e.g. USA Today article, 18 May 2003. This article lumps individual tree timber theft with theft of firewood and other kinds of illegal activity, but it estimates that as many as one in ten trees cut on national forests is cut illegally. A current problem is theft of the valuable burl or figured wood found at the base of some coastal redwoods (*Sequoia sempervirens*). This happens on state and national park lands as well as on lands managed for timber. There are also reports of thefts of firewood, Christmas trees, and other non-timber forest products.

(2) Harvest off public lands in excess of what is permitted in the contract or permit. A newspaper opinion piece by a former federal prosecutor Jeffrey Kent, lists a variety of forest offenses he prosecuted in the 1980s and '90s, including cutting beyond the boundary of a timber sale. The article does not give a sense of how common this practice is now. Other sources suggest that firewood gatherers have been known to use a personal use permit to cover commercial collection. Of concern generally is that "pressure on Federal budgets ... may have reduced U.S. law enforcement capacity, but no empirical studies are available." US Department of Agriculture. 2011. National Report on Sustainable Forests—2010.

(3) Harvest off public lands in violation of environmental, labor, or similar conditions in the permit: covered below under environmental and labor issues.

(4) Harvests off public lands while defrauding about volumes, species, or quality: covered below under taxes and fees and under classification of species, quantities, and quality.

(5) Harvests off private land without permission of the owner: timber theft and trespass. This is a chronic, but low-level problem. An article reporting on a new law in the state of Georgia to boost timber theft enforcement reports that the neighboring states of Alabama and South

Carolina each investigate 100 to 150 reports of timber theft each year. The New York State Legislative Commission on Rural Resources produced a report on timber theft in 2008 recommending stronger laws and enforcement. A 2003 masters thesis from Virginia Polytechnic Institute and State University surveyed land owners, attorneys, and law enforcement officers in twenty counties in a four-state region of the southern Appalachian Mountains and estimated the losses from theft and trespass at \$300,000 per year. This is not a standard statistical region, so any comparisons with total harvest would be inexact. However harvest figures from the seven Virginia counties in the study were valued at over \$24,000,000 in 2007, according to the Virginia Department of Forestry. If the other thirteen counties have anything near that harvest rate, the loss to illegal activity is well below one percent of the total harvest value. Note, though, that the illegal activity probably focuses on high-value hardwood species, such as black cherry (*Prunus sylvatica*) and black walnut (*Juglans nigra*) and may account for a somewhat higher proportion of that harvest than these numbers suggest.

The Seneca Creek report states that the most commonly reported incidents of timber theft and trespass involve poorly marked or disputed boundary lines. The experience of states with the most detailed information allows an estimate that on the order of 800 to 1,000 significant timber theft cases occur annually in the hardwood region, involving an estimated 20,000 to 25,000 cubic meters (including both softwood and hardwood). Even if half or more were hardwood trees, stolen timber would represent a very small portion of total US hardwood production – very likely less than 1%.

There is potential that there are specified risks in this category at a sub-national level. Further assessment of this category at a sub-national level has been recommended by the Consultant. Based on consultation feedback (including from FSC US, low risk has been designated and eventual further verification will take place through the NRA process.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.4.6. Risk designation and specification

Low risk

1.4.7. Control measures and verifiers

N/A

TAXES AND FEES

1.5. Payment of royalties and harvesting fees

Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.

1.5.1. Applicable laws and regulations

- Federal and state tax policies
- On public lands, the timber sale contract will set the fees for commercial timber. The two most common types are scaled sales (the timber is measured or scaled after it has been cut) and tree measurement or lump-sum sales (the timber in the standing trees is estimated, and the payment specified in the contract is based on that estimate.) See Government Accountability Project (undated) cited above, at p. 11. US Forest Service contracts require an up-front payment, plus a performance bond to assure completion of any tasks required in the contract, such as road maintenance or disposal of logging wastes.
- On private lands, state and local laws will cover harvesting taxes and fees. As with other kinds of laws, the laws of the fifty states show variation, but there are some basic patterns.
- Most states charge an annual tax based on the value of real property. These “ad valorem” taxes tend to drive landowners to develop the land if the market value (and hence annual tax) rises. To combat this trend, some states will tax land based on its current value as forest land or based on a flat rate per unit of area, as long as the land remains in forest. To get these lower rates of taxation, the landowner may have to accept conditions that are linked to harvest, such as preparation of a management plan, payment of a yield tax when the timber is harvested, or even granting of a conservation easement limiting development of the land. Also, the landowner might be liable for back taxes based on market value if the land is ever converted to non-forest use.
- States may also levy taxes on the harvested timber itself. Eleven states have a yield tax based on the value of the timber, and twelve states have a severance tax, which is based on the volume of timber regardless of its market value. That means that the majority of states have no special harvest tax.
- New Hampshire presents an example of a yield tax. It levies a tax of ten percent of the stumpage value of timber harvested. New Hampshire Statutes, Chapter 79. This tax is payable to the town in which the harvested land sits. If the person harvesting the timber does not own the property, the town may require a payment bond before the timber is harvested.

1.5.2. Legal authority

- For public lands, US Forest Service.

- For the public lands, the land management agency generally collects the amounts due under timber contracts.
- For private lands, the property, yield, and severance taxes are usually collected by local governments or by the state agency concerned with revenue.

1.5.3. Legally required documents or records

- Timber Sale Contract (US Forest Service)
- For public lands, the timber contracts will show the amounts or rates due. For sales based on estimates of the timber volume, the documents inviting bids should indicate the volume. For sales based on scaled volumes after harvest, there should be paperwork from whoever has done the scaling, which might be a government official or a third party such as an independent scaler or the mill purchasing the raw logs. The government land management agency should have copies. The logger and the government should have records of payments made and bonds or sureties posted.
- On private lands, the local or state revenue agency will have records of the assessed values of land, the reported volumes of timber harvested, and the tax rates applied. They should also have records of the amounts of taxes paid.

1.5.4. Sources of information

Government sources

- fs.fed.us (2005). *Federal Income Tax on Timber - A Key to Your Most Frequently Asked Questions*. [online]. Forest Service: United States Department of Agriculture. Available at: <http://www.fs.fed.us/spf/coop/library/timbertax.pdf>
- gencourt.state.nh.us (N.Y.). *Title V Taxation - Chapter 79 - Forest Conservation and Taxation, Section 79:1*. [online]. The New Hampshire General Court. Available at: <http://www.gencourt.state.nh.us/rsa/html/v/79/79-mrg.htm>
- timbertax.org (N.Y.). *National Timber Tax Website*. [online]. Available at: <http://www.timbertax.org> (For a table of state timber tax approaches, see <http://www.timbertax.org/statetaxes/quickreference/>)
- See the sources of information on timber sale contracts for more detailed information on contract types, payments, and bonds.

Non-Government sources

- Fishell, D. (2012). *Georgetown selectmen to investigate potential Tree Growth Tax Fraud*. [online]. Bangor Daily News. Available at: <http://bangordailynews.com/2012/02/16/news/midcoast/georgetown-selectmen-to-investigate-potential-tree-growth-tax-fraud/>

1.5.5. Risk determination

Overview of Legal Requirements

Royalties and harvesting fees are generally only applicable to public lands, which are administered at either the county, state, or federal level. All states and federal agencies that hold land have well developed programs for regulating timber and timber harvest.

Description of Risk

Stumpage fees are very applicable to private timber harvest. There is no doubt that some timber contract holders have cheated the government out of timber payments, in some cases for millions of dollars - see the Jeffrey Kent opinion piece cited above and the Government Accountability Program guide to timber contracts cited above. One avenue of fraud has been collusion between loggers and scalers to under-report the volume or quality of timber harvested. Because of this, the US Forest Service has been moving away from scaled sales to lump-sum scales. The BLM tends to offer only lump-sum sales.

Kent declares that the problem is not corruption, but capture of the government agencies by the industries they regulate. There are no payments under the table. Lawful, transparent, but troublingly large contributions to political action committees and candidates keep legislators from instituting more burdensome controls and practices on industry. A culture in the agencies that views the industry as a partner in managing the land keeps the agency officials from acting as true watchdogs.

Kent's experience was in the 1980s and '90s. A drop-off of press reports about this kind of contract cheating suggests that after a flurry of bad publicity and Congressional oversight in the 1990s, the Forest Service may have brought the problem under control.

Studies or documentation of evasion of severance or yield taxes on private harvests have not been found. One news report questions the inclusion of land subject to a conservation easement in a property tax classification intended for lands with forests capable of commercial production.

True chain of custody marking of trees and tracking of volumes from harvest through milling to bulk sales should make it relatively easy to document tax or contract fraud based on misreporting of harvests.

There is potential that there are specified risks in this category at a sub-national level. Further assessment of this category at a sub-national level has been recommended by the Consultant. Based on consultation feedback (including from FSC US, low risk has been designated and eventual further verification will take place through the NRA process.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.5.6. Risk designation and specification

Low risk

1.5.7. Control measures and verifiers

N/A

1.6. Value added taxes and other sales taxes

Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.

1.6.1. Applicable laws and regulations

- The United States does not have a federal value added tax. None of the states currently have a value added tax, although Hawaii has a general excise tax on businesses, which each business can elect to pass on to customers by charging a “quasi sales tax”.
- The majority of US states and some local governments have sales taxes, levied on sales of goods and sometimes services, but there is usually an exemption for goods sold as raw materials for future processing and goods sold to buyers from out of state. States with sales taxes typically have use taxes, which apply to goods brought in from out of state for which no comparable sales tax has been paid.
- In most cases, because logs are being sold for further processing, their sale is not taxable.
- Note that many states and local governments levy an annual ad valorem tax on personal property (i.e., property other than real estate) used in business. The business typically must file an annual property inventory stating the original purchase dates, prices and current depreciated values of its personal property and then make a payment representing some percentage of the total property value.

1.6.2. Legal authority

- State departments of revenue
- Sellers collect sales taxes from buyers, and state and local revenue agencies in turn collect sales taxes from sellers. State agencies generally collect use taxes from buyers.
- Business personal property taxes are usually paid to the revenue departments of local or state governments.

1.6.3. Legally required documents or records

Differs by state

- Sellers will have records of sales taxes collected from buyers and paid to the government. Governments will have records of payments collected and forwarded by sellers, although tax filings are usually not public documents.
- A conscientious buyer will have records of purchases made where a use tax is due, and records of tax forms indicating declaration and payment of use taxes. Governments will have records of use tax filings, which are often simply a few lines on the annual income tax forms, but these filings will not be public records.
- Businesses will have property inventories and records of filing and paying personal property taxes. Governments will have records of filings and payments, which may not be public records.

1.6.4. Sources of information

Government sources

- fairfaxcounty.gov (N.Y.). *Business Personal Property*. Personal property taxes for businesses in Fairfax County Virginia (example). Available at: http://www.fairfaxcounty.gov/dta/business_personalproperty.htm
- tax.ny.gov (N.Y.). *Recordkeeping Requirements for Sales Tax Vendors*. [online]. New York sales tax requirements (example). Available at: http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/record-keeping_requirements_for_sales_tax_vendors.htm

Non-Government sources

- Lemov, P. (2011). *States Look to Collect Internet Sales Taxes*. [online]. Governing the States and Localities. Available at: <http://www.governing.com/columns/public-finance/states-collect-internet-sales-taxes.html>
- salestaxinstitute.com (N.Y.). *State sales tax rates*. [online]. Website of Sales Tax Institute. <http://www.salestaxinstitute.com/resources/rates>

1.6.5. Risk determination

Description of Risk

Sales taxes are levied at the state level, with the tax rate varying by state from 0% to 7.5%. Ordinarily, harvest and sale of timber is not going to trigger sales or use tax obligations, however, a logger might be evading these taxes incidentally. For example, a logging company in Washington might be buying its chain saws across the Columbia River in Oregon, where there is no sales tax, to avoid paying tax in Washington. Use taxes are notoriously hard to enforce. One 2011 article estimated that states were losing \$23 billion per year in uncollected use taxes just from online sales. Such incidences are not considered within the scope of this indicator, as they do not apply to timber material being sold.

There is potential that there are specified risks in this category at a sub-national level. Further assessment of this category at a sub-national level has been recommended by the Consultant. Based on consultation feedback (including from FSC US, low risk has been designated and eventual further verification will take place through the NRA process.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.6.6. Risk designation and specification

Low risk

1.6.7. Control measures and verifiers

N/A

1.7. Income and profit taxes

Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.

1.7.1. Applicable laws and regulations

- Tax policies
- Internal Revenue Code
- U.S. federal tax law is complex. The statutes take up all of title 26 of the U.S. Code. The regulations take up all of title 26 of the Code of Federal Regulations. On top of these, there are formal rules and guidance from the Internal Revenue Service (IRS) and rulings of the courts on tax law.
- State laws tend to follow federal law in the definition of income, treatment of deductions from income, and so forth.
- Corporations with publicly traded stock are subject to regulation from the federal Securities and Exchange Commission, which requires annual public disclosures of basic financial information, including income, assets, and liabilities.

1.7.2. Legal authority

- Internal Revenue Service (federal agency)
- At the state and local levels, the revenue agencies have various names. The Internal Revenue Service offers the following page linking to business taxation web pages of the states: <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/State-Links-1>.

1.7.3. Legally required documents or records

- IRS Form 1040: Income taxes
- IRS Form 1099: Capital Gains taxes
- Income taxation is tied closely to recordkeeping. An individual or business should have full records of income, expenses, and associated tax filings for the past three years. For investments and depreciable assets, the records must go back longer, often to the acquisition of the investment or asset.
- Taxing authorities will have copies of income tax returns that individuals and businesses have filed, but these are generally not public documents.

1.7.4. Sources of information

Government sources

- irs.gov (N.Y.). *Forms and publications*. [online]. Web page of IRS. Available at: <http://www.irs.gov/Forms-&Pubs>
- irs.gov (N.Y.). *Tax Code, Regulations and Official Guidance*. [online]. Available at: <http://www.irs.gov/Tax-Professionals/Tax-Code>
- sec.gov (2013). *Report on Review of Disclosure Requirements in Regulation S-K as Required by Section 108 of the Jumpstart Our Business Startups Act*. [online]. U.S.

Securities and Exchange Commission Available at:

<http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf>

- timbertax.org (N.Y.). *Federal Income Taxes*. [online]. Available at: <http://www.timbertax.org/getstarted/>
- treasury.gov (2012). *2012 Taxpayer Attitude Survey*. [online]. IRS Oversight Board Available at: http://www.treasury.gov/IRSOB/reports/Documents/IRSOB_TAS%202012_FINAL.pdf

Non-Government sources

- Goetzl, A. et al. (2008). *Assessment of Lawful Harvesting & Sustainability of US Hardwood Exports*. [online]. Seneca Creek Associates, LLC. Available at: <https://www.illegal-logging.info/sites/files/chlogging/uploads/AHECRISKASSESSMENT.pdf>

1.7.5. Risk determination

Overview of Legal Requirements

Income and profit taxes are levied at the federal level, and administered by the Internal Revenue Service (IRS). Most states also leverage addition income and profit taxes, generally at a much lower rate than the federal level.

Every individual and every business organized to make profit is subject to annual federal taxation on net income. All but four states have annual corporate income taxes, and all but seven have annual individual income taxes. In timber sales, this means the landowner selling the timber and the logger cutting and selling the logs will have recordkeeping, reporting, and taxpaying obligations.

Tax filing tends to be annual, however businesses and individuals may have to make quarterly payments of their own estimated taxes. Employers may have to forward withheld amounts from employee salaries as often as every two weeks.

There is also a tax due upon inheritance, called the estate tax. At the risk of oversimplification, before property passes through inheritance, the estate of the deceased may have to pay estate taxes. If a large part of the value of the estate is in land, the estate may have to sell land or timber to raise money to pay the taxes. The timing of inheritance tax obligations seldom coincides with the ideal rotation age, so this can disrupt management plans. A financial advisor can help a sophisticated landowner anticipate and avoid inheritance taxes by structuring ownership through corporations or trusts. It is often the smaller landholdings, associated with family farms and woodlots, that are caught up in inheritance tax problems.

The US has an income tax that includes special provisions for certain kinds of timber income and expenses. For example, expenses for reforestation and conservation practices are treated favorably (with limits). The federal government also imposes an estate tax that can affect forest properties upon transfer to estate beneficiaries. In turn, the states have various forms of taxation that include income tax, estate and gift tax, property tax and severance or yield taxes. In many states, property taxes are adjusted so that forest properties are valued for current use while some states apply a tax at harvest in lieu of (and sometimes in addition to) annual assessments.

Compliance rates to both federal and state tax requirements in general are very high -- at least 84% for compliance to federal income taxes according to government studies. There are no data to suggest that failure to pay assessed taxes on hardwood timber income or property occurs to any significant extent in the US. IRS surveys show a very high proportion of taxpayers believe that cheating on taxes is unacceptable and that people who do cheat should be held accountable. Nonetheless, that result suggests that a small percentage of people do try to evade taxes to some degree.

Description of Risk

Businesses will often hire an outside service to handle payroll-associated taxes and will often hire professional assistance to fill out income tax forms. The use of outside professionals, such as certified public accountants, lowers the risk of noncompliance.

Some businesses, particularly large ones or ones whose stock is traded on public stock markets, will hire independent auditors to review records and payments. This also lowers the risk of noncompliance.

The risk is probably highest among small businesses and individuals. The IRS randomly audits a small percentage of tax returns, and this promotes compliance. If a business or individual knew that its tax filings would be audited or even might be audited as part of a forest certification program, that would almost certainly either raise compliance or discourage bad actors from seeking certification.

Risk Conclusion

Overall, based on the available information, the risk for this category has been assessed as low.

1.7.6. Risk designation and specification

Low risk

1.7.7. Control measures and verifiers

N/A

TIMBER HARVESTING ACTIVITIES

1.8. Timber harvesting regulations

Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.

1.8.1. Applicable laws and regulations

Requirements for timber harvesting on US Forest Service lands:

- 16 USC § 1604 - sets up the land and resource management planning system and requires permits, contracts, and resource use generally to be consistent with these plans. Available at: <http://www.law.cornell.edu/uscode/text/16/1604>
- CFR Title 36 - more specific regulations.
- CFR 36 § 221.3 Timber management plans must call for sustained yield, a non-declining flow of timber (i.e., the harvest level must be relatively constant from year to year), and multiple use (protecting the value of the land for fish, wildlife, water, recreation, and grazing if the land is so used). Available at: <http://www.law.cornell.edu/cfr/text/36/221.3>
- 36 CFR § 219.15(b), All management activities must be consistent with the larger land and resource management plans. Available at: <http://www.law.cornell.edu/cfr/text/36/219.15>
- 36 CFR § 219.8, Land and resource management plans must provide for ecological, social, and economic sustainability as detailed in. Available at: <http://www.law.cornell.edu/cfr/text/36/219.8>
- 36 CFR § 219.9. Must maintain a diversity of plant and animal communities, Available at: <http://www.law.cornell.edu/cfr/text/36/219.9>
- 36 CFR § 219.10 Must allow for multiple use, Available at: <http://www.law.cornell.edu/cfr/text/36/219.10>
- 36 CFR § 223.30, Timber contracts must reflect the requirements of "applicable land and resource management plans and environmental quality standards," Available at: <http://www.law.cornell.edu/cfr/text/36/223.30>

Federal -Bureau of Land Management

- 43 U.S.C. § 1712, The parallel planning system for the Bureau of Land Management is rooted in. <http://www.law.cornell.edu/uscode/text/43/1712>
- 43 CFR part 1600 The BLM planning and programming regulations are in. Available at: <http://www.law.cornell.edu/cfr/text/43/part-1600> Note that 43 CFR § 1610.3-2, requires

plans to be consistent with federal, state, and local programs and policies. Available at: <http://www.law.cornell.edu/cfr/text/43/1610.3-2>

- 43 U.S.C. § 1181a, On the BLM's most productive timber lands, the O & C lands, provides a general policy of sustainable harvests and protection of water and recreation. Available at: <http://www.law.cornell.edu/uscode/text/43/1181a>

On state and local lands, forest practice requirements are also rooted in management planning. E.g. the Oregon rules on state forest planning, which require identification of lands that require special practices because of riparian habitat, scenic value, and so forth.

- Oregon Administrative Rules 629 Division 35. [online]. Available at: http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_629/629_035.html
- OAR 629-029-0135(3) Rules on sale of forest products from lands owned or managed by the state board of forestry. [online]. Available at: http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_629/629_029.html
- Oregon Revised Statutes §§ 527.610 to 527.770, 527.990 (1) and 527.992) and rules (OAR 629 Divisions 600 to 670) that apply to harvests on state, local, and private lands.
- OAR 629 division 43. Fire prevention. [online]. Available at: http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_629/629_043.html
- On private lands, state and local laws may control forest practices. The states show three broad approaches to timber harvest regulation. Some states have detailed forest practice laws that prescribe things like stream buffers and rules for skidding and yarding logs. The Oregon laws mentioned above are an example. This regulatory approach is most common in western states.
- Some states have a few simple forest practice rules, perhaps combined with voluntary or mandatory "best management practices" to protect water and soils. Virginia, for example, has a law requiring landowners to retain seed trees to promote regeneration of pines, Code of Virginia §10.1-1164. In addition, Virginia limits the power of local governments to restrict forest activities beyond the requirements of following best management practices (BMPs), Code of Virginia § 10.1-1126.1. Like most southern states, Virginia has BMP guidelines to prevent water quality problems from silviculture, but these are voluntary except where the logging may affect the Chesapeake Bay (see the discussion of BMPs and Virginia laws under the coverage of environmental quality regulation, below). If an operation is causing pollution, the state forester has the power to order it to stop. Code of Virginia § 10.1-1181.2.
- Code of Virginia §10.1-1164. Pine trees to be left uncut for reseedling purposes. [online]. Available at: <http://law.lis.virginia.gov/vacode/10.1-1164>
- Code of Virginia § 10.1-1126.1. Silvicultural practices; local government authority limited. [online]. Available at: <http://law.lis.virginia.gov/vacode/10.1-1126.1>
- Code of Virginia § 10.1-1181.2. Conduct of silvicultural activities; issuance of special orders. [online]. Available at: <http://law.lis.virginia.gov/vacode/10.1-1181.2>
- Code of Virginia § 10.1-1145. Failure to properly maintain logging equipment and railroad locomotives. [online]. Available at: <http://law.lis.virginia.gov/vacode/10.1-1145>

- Some states have no forest practice laws. A few states defer to local regulation of forest practices.
- Many states require loggers to take steps to suppress sparks from equipment and to have basic fire-fighting equipment such as shovels and axes on site. For example, the Virginia law regarding spark suppression is Code of Virginia § 10.1-1145. Oregon's much more extensive fire prevention rules are at OAR 629 division 43.
- Forest Principles (UNCED) (Rio de Janeiro, Brazil, June 1992).
- International Tropical Timber Agreement (Geneva, Switzerland, 1994).
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)/Federal Environmental Pesticide Control Act (FEPCA) (1947, 1972).
- Federal Plant Pest Act (1957).
- Forest practices acts - Not all states have Forest Practices Acts and many have voluntary BMPS.
- Pollution Prevention Act (1990).
- Federal Insecticide Act (1910).
- Plant Quarantine Act (1912).
- Fire practices laws (for all states)
- On the federal lands, the federal government sets the timber harvesting rules, and federal land managers tend to meet or exceed the substance of state forest practices rules, although the federal government is not bound to follow state procedures.

1.8.2. Legal authority

- Regulated at the state level
- Mandatory BMPs (Best Management Practices)
- Not all states are mandatory with many southern states being voluntary. More information needed.
- In general, the federal authorities will be the land management agencies, and the state authorities will be the state forestry agencies, boards, and commissions. State cooperative extension services, chartered to help private landowners improve management practices, will have a role in educating landowners about requirements and giving them advice about compliance.

1.8.3. Legally required documents or records

- Timber sale contracts may include forest practice requirements or contain references to the applicable laws.
- If state or federal foresters have inspected a logging site, there may be paperwork records of the inspection.

1.8.4. Sources of Information

Government sources

The websites of state forestry agencies often contain descriptions or links to applicable forest practice requirements and laws. States often publish manuals or educational material for landowners explaining forest practice obligations. For example:

- Forestry.alabama.gov (N.Y.). *BMP Compliance Report*. [online]. Alabama Forestry Commission. Available at: <http://www.forestry.alabama.gov/bmpmon.aspx?bv=2&s=1>
- Obermeyer, W. and Shelly, A. (2012). *Forest Practices Compliance Monitoring Report 2010/2011*. [online]. Washington State Department of Natural Resources. Available at: http://www.dnr.wa.gov/Publications/fp_cm_biennial_report_10-11.pdf
- Sabin, G. (2012). *Compliance and Implementation Monitoring of Forestry Best Management Practices in South Carolina 2011-2012*. [online]. South Carolina Forestry Commission. Available at: <http://www.state.sc.us/forest/bmp12.pdf>
- Virginia.gov. <http://www.dof.virginia.gov/print/mgt/Timber-Sales.pdf> and Vermont, http://www.vtfpr.org/regulate/documents/timber_harvest09_web.pdf
- Weikel, J. et al. (2014). *Compliance with Leave Tree and Downed Wood Forest Practices Act Regulations - Oregon Department of Forestry Forest Practices Monitoring Section Technical Report #20*. Oregon Department of Forestry.

Non-Government sources

- defenders.org (2000). *State Forestry Laws*. Defenders of Wildlife. [online]. Available at: www.defenders.org/publications/state_forestry_laws.pdf

1.8.5. Risk determination

Description of Risk

Statics shows that it is not a common case to see harvesting volume above the allowed and only few cases are known on road construction not following the legislation. Thus a low risk. A recent study in Oregon looked at compliance with forest practice requirements regarding leaving behind snags, live trees, and downed logs for the benefit of wildlife. It found compliance rates of 97% ± 6%, and it noted that sites frequently exceeded the legal minimums.

A 2012 Washington state study of compliance with requirements for activities affecting riparian areas found rates of compliance ranging from 43% (commercial thinning rules in stream buffer zones, sample of seven sites) to 100% (management of debris in non-fish-bearing streams, 19 sites) (Obermeyer & Shelly, 2012). It concluded that while most of the observed violations were minor, compliance continues to be "a challenge".

In fiscal year 2012–2013, the Alabama Forestry Commission inspected 258 completed logging jobs for compliance with best management practice guidelines (which are voluntary in Alabama) and reported 97.75% compliance with only two significant violations.

A study of BMP compliance in South Carolina found overall 92% compliance with harvest and non-harvest BMPs. The lowest rates of compliance were associated with prescribed burning (60% compliance) and stream crossings (81% compliance). BMPs in South Carolina are voluntary guidelines. Guy Sabin. 2012. Compliance and Implementation Monitoring of

Forestry Best Management Practices in South Carolina 2011-2012. South Carolina Forestry Commission.

It's difficult to assess risk based on a few reports such as these, but generally it is known that there is good compliance with legal requirements. Caution should be taken where the requirements were expensive or required expert skills to implement, or where enforcement pressure was low. Low enforcement pressure can result from infrequent inspections, but it can also result from a forgiving attitude of inspectors, which in the US is more common in enforcement of environmental standards against agricultural operations than it is in enforcement against manufacturing operations. There may also be regional variations. In the state of Washington study, compliance rates appear to be higher in the eastern part of the state than in the west. Some of the reports track compliance trends, and it appears that compliance with standards tends to improve, perhaps as landowners and loggers become more familiar with what is necessary to comply.

Risk Conclusion

In the end, the risk needs to be evaluated locally. If there are no enforceable standards, there is obviously no risk. Risk may be moderate for complex standards, for poorly enforced standards, or for new standards.

There is potential that there are specified risks in this category at a sub-national level. Further assessment of this category at a sub-national level has been recommended by the Consultant. Based on consultation feedback (including from FSC US, low risk has been designated and eventual further verification will take place through the NRA process.

1.8.6. Risk designation and specification

Low risk

1.8.7. Control measures and verifiers

N/A

1.9. Protected sites and species

International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.

1.9.1. Applicable laws and regulations

Federal laws:

- 16 USC §§ 1241–1251 National Trails System. Available at: <https://www.law.cornell.edu/uscode/text/16/chapter-27>
- 16 USC §§ 470–470x6 The National Historic Preservation Act. [online]. Available at: <https://www.law.cornell.edu/uscode/text/16/chapter-1C>
- 16 USC § 1132 Wilderness Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/1132>

- 16 USC § 1274 National Wild and Scenic Rivers Act and System. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/1274>
- 16 USC §§ 1241–1251 National Trails System. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/chapter-27>
- 16 USC §§ 470–470x6 The National Historic Preservation Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/chapter-1A/subchapter-II>
- 16 USC §§ 544–544p Columbia Gorge National Scenic Area Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/chapter-2/subchapter-II>
- 36 CFR 219.11 Administrative set-asides - e.g. designated areas that are not suitable for timber production. [online]. Available at: <http://www.law.cornell.edu/cfr/text/36/219.11>
Or for scientific and educational use as research natural areas. [online]. Available at: <http://www.fs.fed.us/rmrs/research-natural-areas/>
- 16 USC §§ 703–712 Migratory Bird Treaty Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/chapter-7/subchapter-II>
- 16 U.S.C. 668-668d The Bald and Golden Eagle Protection Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/chapter-5A/subchapter-II>
- National Bald Eagle Management Guidelines. [online]. U.S. Fish and Wildlife Service. Available at: <http://www.fws.gov/southdakotafieldoffice/NationalBaldEagleManagementGuidelines.pdf>
- 16 USC §§ 1531–1544 The Endangered Species Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/chapter-35>
- 16 USC §§ 703–712 The Migratory Bird Treaty Act prohibits the hunting, killing, capturing, or sale of most native birds without a permit. [online]. This Act does not appear to affect forest practices in a significant way. Available at: <https://www.law.cornell.edu/uscode/text/16/chapter-7/subchapter-II>
- 16 U.S.C. 668-668d The Bald and Golden Eagle Protection Act protects bald and golden eagles and their nests. [online]. Available at: <https://www.law.cornell.edu/uscode/text/16/chapter-5A/subchapter-II>
- The US Fish and Wildlife Service has published non-binding guidelines for avoiding harm to bald eagles and has stated that penalties against persons who unintentionally harm eagles will be mitigated if the persons were following the guidelines. The guidelines for forestry call for buffers of approximately 100 meters in radius around nests, extended to 200 meters during the breeding season. US Fish and Wildlife Service. 2007. National Bald Eagle Management Guidelines.
- 16 USC §§ 1531–1544 The Endangered Species Act is potentially the most important species protection law for forest management. [online]. Available at:
- 16 USC § 1538 Section 9 of the Act Makes it unlawful to “take” a species listed as threatened or endangered. [online]. Available at: <https://www.law.cornell.edu/uscode/text/16/1538> and 16 USC § 1532(19) The definition of “take” includes harassing or harming a protected species. [online]. Available at: <https://www.law.cornell.edu/uscode/text/16/1532>

- 16 USC §§ 544–544p Special overlays that Congress might have designated on an ad hoc basis. For example, some lands in the Mount Hood National Forest are also in the Columbia Gorge National Scenic Area and are subject to the management directives in the Columbia Gorge National Scenic Area Act. [online]. Available at: <https://www.law.cornell.edu/uscode/text/16/544>

- 36 CFR 219.11 Administrative set-asides. These should be clearly apparent in the management plans. [online].

To take the US Forest Service as an example, their land and resource management plans must designate areas that are not suitable for timber production, These include lands where slope or soil conditions make sustainable timber management impossible, and lands designated administratively for other uses (e.g., for scientific and educational use as research natural areas.

Note that federal and state rules protecting wetlands may limit silvicultural activities in those areas. These laws are rooted in water pollution laws, and are discussed below with the other pollution laws.

State:

- Each individual state will be different, but many states have analogues of the federal programs, such as state parks and state wild and scenic rivers, that set state lands in categories with no or limited opportunity for timber management. Again, the quick way to discover these is to consult the current plan that the state land management agency has prepared.
- As noted above under taxation, states may offer lower tax to lands that owners pledge to keep land as open space. In some states, those programs conceivably could limit the type of forest operations that the owner could perform on the land.
- Some state forest practice laws create de facto protected areas by requiring buffer strips around streams or roadways.
- Some states have state versions of the federal Endangered Species Act. The state and federal lists of protected species often overlap, but one list may have species that the other government has not yet reviewed for listing, and states may list species that are rare in the listing state but common elsewhere in the country. (Actually, the federal list also can limit listings to specific regions of the country, if the populations listed are biologically distinct.)

Private:

- Private lands may be subject to local zoning requirements, and requirements to protect scenic values. Also, private lands may lie within federal wild and scenic river corridors. In that case, the federal government typically seeks an agreement with state and local governments over restrictions in land use in the area, but leaves the authority to control land use in state and local hands. If private lands are used in ways that are consistent with state and local laws but inconsistent with the river's designation, the federal government as a last resort can condemn the private property, but this is a costly and rarely used tool.
- Private lands may also be subject to conservation easements that limit uses.

- State and private landowners also face the prohibition against taking listed species, except that the “take” prohibition does not apply to listed plants on private land, as these are considered the owner’s property. State and private owners do not have the requirement to consult with the listing agency before acting, however they may voluntarily agree to a conservation plan and get permission to take a small number of the protected individuals if they follow the plan.
- Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (Washington, DC, 1940).
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, Iran, 2 Feb 1971).
- Convention Concerning the Protection of the World Cultural and Natural Heritage; (Paris, France, 16 Nov 1972).
- International Plant Protection Convention (IPPC) (1979 Revised Text) (Rome, Italy, 1979).
- Endangered Species Act (1973, 1978, 1979, 1982). Forest landowners and managers cannot cause injury or death by direct harm or through habitat modification to a species listed as threatened or endangered.
- Clean Water Act (CWA): control activities in forested wetlands and requires states to have programs to control non-point source pollution, usually accomplished through Best Management Practices (BMPs).
- Clean Air Act (CAA): states must have programs to protect air quality and visibility, including controls on prescribed burning and the use of ozone-depleting chemicals. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA): regulates chemical use in forest stands, whether for insect control or for vegetation management.
- Resource Conservation & Recovery Act (RCRA) (1976, 1984).
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, commonly known as "Superfund") (1980, 1986).
- Withdrawn, Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto, Japan, 1997).
- Convention on Biological Diversity (UNCED) (Rio de Janeiro, Brazil, 5 Jun 1992).
- Framework Convention on Climate Change, (UNCED) (Rio de Janeiro, Brazil, 1992).
- Rio Declaration on Environment and Development (UNCED) (Rio de Janeiro, Brazil, 1992).
- Convention on the Conservation of Migratory Species of Wild Animals (Bonn, Germany, 23 Jun 1979).

1.9.2. Legal authority

- US Fish and Wildlife Service (ESA)
- National Marine Fisheries (ESA for anadromous fish, principally in the northwest US).
- State level laws are administered by state natural resource departments.

- The US Congress plays a major role in making protected area designations, for example, of national parks and additions to the national wilderness system. The President, under the Antiquities Act, can set aside federal land as national monuments by executive order.
- The federal and state land management agencies play a major role in administrative declarations of areas off-limits to commercial forestry. (Note that the laws often vest these powers in the hands of the Secretary of the cabinet department that contains the agency. Thus, the Secretary of Agriculture has powers to administer the national forests, which are assigned to the US Forest Service, and the Secretary of the Interior has powers to administer the national parks, national wildlife refuges, and the otherwise unreserved public lands, assigned to the National Park Service, the US Fish and Wildlife Service, and the Bureau of Land Management.)
- The National Park Service administers the National Register of Historic Places under the National Historic Preservation Act. Each state has designated a State Historic Preservation Office to inventory historic and archeological sites in the state, conduct planning, and propose sites for addition to the national listing.
- The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NOAA Fisheries) administer the federal Endangered Species Act. State wildlife agencies generally administer the state acts.

1.9.3. Legally required documents or records

- Land management agencies tend to have good maps of designated protected areas. These should be included in their land management plans.
- Federal agencies should have records of their consultation with the listing agencies over possible effects on listed species. If there is a possible effect, there should be a written biological opinion from the listing agency. If the management agency has permission to take some of the listed species, it should have an incidental take statement. A state or private owner that claims permission to take a listed species should have an approved conservation plan and an incidental take permit.

1.9.4. Sources of Information

Government sources

- The state or regional offices of The Nature Conservancy, an NGO, often can provide GIS information on areas critical to conservation.
- The Endangered Species Act listing agencies have range maps and maps of areas that are "critical habitat" for listed species. (For some endangered, collectable species, these are not public information!) Activity in these areas has the potential to take listed species or even jeopardize the continued existence of the species.

1.9.5. Risk determination

Overview of Legal Requirements

The US has a broad and comprehensive legal structure surrounding species protection and the protection of socially and ecologically important sites, administered at both the federal and state level. The quick way to find protected areas on a piece of public land is to look at

the official management plan prepared by the responsible agency. Due to the transparency of planning and the active participation of interested members of the public, it is highly likely that the plan accurately identifies protected sites.

The long way is to start first with the statute or executive order that assigned the land to a particular management agency. That may assign the land to a class of protected areas (e.g., national park, national monument, national historic landmark, etc.), may specify how it is to be managed or protected, and may specify areas within the land subject to special protections.

Description of Risk

The risks of non-compliance on public lands are generally low. The planning processes are open and transparent, with strong public participation. Conservation groups have shown a willingness to take agencies to court over protected area and Endangered Species Act issues. The Endangered Species Act has a citizen suit provision, 16 USC §1540(g), allowing any citizen to sue anyone, including the federal government, seeking an injunction to enforce the Act. As a result, the agencies are generally careful to follow the law on these matters.

Private lands may have more risk. Zoning violations are going to occur, but they are going to be hard to disguise, and people will risk local enforcement actions. Damage to historic or archaeological sites, especially if previously undiscovered, will be hard to detect, even for certification auditors. Damage to protected species may also be hard to detect, unless the auditor sees nests or individuals of the species near the site. However, violators of the Endangered Species Act face civil and criminal prosecution if caught, which is a strong deterrent.

Overall, the risk on private lands is still low, but attention should be paid to areas known to be important to listed species, such as forests in the Pacific Northwest with salmon spawning streams, or forests in the Southeast with red-cockaded woodpeckers.

There is potential that there are specified risks in this category at a sub-national level. Further assessment of this category at a sub-national level has been recommended by the Consultant. Based on consultation feedback (including from FSC US, low risk has been designated and eventual further verification will take place through the NRA process.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.9.6. Risk designation and specification

Low risk

1.9.7. Control measures and verifiers

N/A

1.10. Environmental requirements

National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.

1.10.1. Applicable laws and regulations

EIA:

- Federal agencies: National Environmental Policy Act (NEPA. Citations to the statute and its regulations are above under planning). Before taking on any action, unless the action falls under a predetermined "categorical exclusion" (a set of activities that never have significant effects), the agency has to determine if the action could have a significant environmental effect. This takes the form of an environmental assessment (EA). If there is no effect foreseen, the agency makes a formal finding of no significant impact (FONSI). If there is a possible significant effect that the agency can't prevent by modifying the project, the agency must prepare a full environmental impact statement (EIS) with an extensive process of public involvement. NEPA applies not only to projects that a federal agencies itself undertakes, but also to projects that it funds or approves. So, if a state or private person undertakes a project that requires a federal permit, that may trigger NEPA review.
- Some states have state environmental impact assessment laws (collectively called little NEPAs or SEPAs). These apply to state and sometimes private actions.
- 42 USC § 4332 National Environmental Policy Act EIA requirement. [online]. Available at: <http://www.law.cornell.edu/uscode/text/42/4332>
- 40 CFR parts 1500 to 1508 EIA regulations. [online]. Available at: <http://www.law.cornell.edu/cfr/text/40/chapter-V>

Environmental quality:

- Forest management can trigger requirements under several types of environmental laws. In rough order of importance, they are water quality, pesticide, air quality, solid waste, and hazardous waste remediation laws. In all these cases, it really does not matter who owns the land. The environmental laws apply to federal and state land management agencies in the same way that they apply to businesses and individuals.
- 33 USC §§ 1251–1387 Federal Water Pollution Control Act. [online]. Available at: <https://www.law.cornell.edu/uscode/text/33/chapter-26> (The application of the Act to forest operations has been controversial, but basically two aspects of the Act are likely to apply. Forest management leads to non-point pollution, which is pollution that is not coming from a discrete outfall, vehicle or other source. The Act addresses non-point pollution through voluntary best management practices (BMPs), with a fallback to stricter controls if there is actual deterioration of water quality below water quality standards).

- Forest management in wetlands can lead to movement of soil, which is considered dredging and filling of the wetlands, requiring a 42 USC §§ 7410–7671q Clean Air Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/42/chapter-85> (A clean air concern with forest management is often the smoke from prescribed burns. There are also concerns about pollution from vehicles. Also, states are beginning to write laws concerning carbon offsets from forests. As with water pollution control, the federal government encourages states to develop their own laws and agencies, and delegates authority to them if the state system is at least as strict as the federal system).
- Most states have parallel water quality laws. In fact, the federal government encourages states to develop laws that are at least as strict as the federal standards. If states do, the federal government can delegate to them the power to write permits and take the lead in enforcement. Some states stick with voluntary BMPs; some make part or all of the BMPs mandatory parts of the forest practice rules. Virginia is an example of a hybrid: it makes BMPs voluntary in most of the state, but mandatory in areas close to the Chesapeake Bay. See the Virginia handbook on BMPs.
- 7 USC §§ 121–136y Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). [online]. Available at: <http://www.law.cornell.edu/uscode/text/7/chapter-6> (The three basic requirements that apply to forest management are that (1) people can only sell and apply pesticides that have been approved by the federal government, (2) people can only use a pesticide in a manner consistent with the instructions on its label, and (3) people cannot obtain or apply especially dangerous pesticides unless they are licensed applicators. Plants that have been genetically modified to resist pests are considered plant-pesticides, subject to FIFRA regulation).
- States can enact their own pesticide laws if they do not interfere with the regulatory scheme of FIFRA. For example, states may set rules limiting aerial spraying near streams or property lines, or requiring pre-spray notice to neighbors. See, e.g., the standards discussed in this news story: Rob Davis, In Oregon, helicopters spray weed killers near people under West Coast's weakest protections.
- 42 USC §§ 6921–6939g Hazardous Waste Management. [online]. Available at: <http://www.law.cornell.edu/uscode/text/42/chapter-82/subchapter-III> (subtitle C of the Resource Conservation and Recovery Act, States may have their own versions and delegated authority).
- 42 USC §§ 9601–9675 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). [online]. Available at: <http://www.law.cornell.edu/uscode/text/42/chapter-103> (makes the land owner, site operator, and people who generated waste, arranged for its disposal at the site, or transported the waste all potentially liable for cleaning up the site. Some states have similar state liability and clean-up laws, which may give the state power to come in and abate hazards and collect the cost from responsible parties).
- Forests as carbon sinks: California has developed an accounting protocol for forest projects, for use in its cap-and-trade system: 17 Calif. Code of Regulations §§ 95801–96022. [online]. Available at: <http://www.arb.ca.gov/regact/2010/capandtrade10/copusforest.pdf> and <https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?q>

[uid=I34B7E5A0E67711E2960E9FD1BEAA332C&originationContext=documenttoc&transitionType=Default&contextData=%28sc.Default%29](https://www.oregonlegislature.gov/bills_laws/ors/ors526.html)

- Oregon's Forest Resource Trust, created through Oregon Revised Statutes (ORS) §§ 526.695–.775, can subsidize forestation of non-forest and under-stocked private lands in return for the carbon rights. ORS §§ 526.780–.783 allow the state forester to buy and resell carbon offsets from private landowners, acting as a broker: Oregon Revised Statutes (ORS) §§ 526.695–.775, ORS §§ 526.780–.783. [online]. Available at: https://www.oregonlegislature.gov/bills_laws/ors/ors526.html

1.10.2. Legal authority

- Environmental Protection Agency (NEPA)
- For EIA requirements, the land management agency will have responsibility for conducting the assessment. The federal Council on Environmental Quality (CEQ) writes the rules for federal assessments and oversees implementation. The federal Environmental Protection Agency (EPA) incidentally reviews every agency's environmental impact statements.
- For environmental requirements, the lead federal agency is the EPA. Every state has its own state environmental agency. In many states, the forestry agency is responsible for overseeing voluntary BMPs on private forest lands.
- The responsibility for dredge and fill regulation (§ 404) is shared between the US Army Corps of Engineers and the EPA. Very few states have been delegated responsibility for the § 404 program, and then only for certain classes of wetlands, but some states run parallel wetland programs without delegation (meaning a project may require separate federal and state approvals).
- Note that like the Endangered Species Act, the Clean Water, Clean Air, and Resource Conservation and Recovery Acts have citizen suit provisions allowing citizens to go to court to enforce the acts against individual polluters or the government.

1.10.3. Legally required documents or records

- Environmental Impact Statement (for NEPA)
- A federal environmental impact assessment, if there is no categorical exclusion, usually produces an EA and then either a FONSI or a notice of intent to prepare an EIS. (For an obviously significant proposed action, such as a long-term land and resource management plan, the agency may skip the EA and go right to the EIS.) The agency should invite public comments on the scope of the environmental review, prepare a draft EIS, collect public comments on the draft, publish a final EIS, and then issue a record of decision (ROD) on what action to take.
- Agencies can "tier" assessments. For example, a timber management plan, which might by itself involve significant impacts, can get by with just an EA if all the impacts were already discussed in the earlier land and resource management plan EIS. The timber plan EA tiers on the management plan EIS.
- States should have guidelines for BMPs. They may have different BMPs for different regions, forest types, or stream types. In the case of public lands, the timber contracts

may incorporate the BMPs by reference. This sometimes is done in private timber sale contracts, too.

- For operations in wetlands, the situation can get complex. Here, for example, is a link to guidance on compliance from North Carolina, a state that runs a wetlands regulation program in parallel with the federal program:
http://ncforestservice.gov/publications/WQ0107/BMP_chapter06.pdf.

1.10.4. Sources of information

Government sources

General landowner guides from states:

- Davis, R. (2014). *In Oregon, helicopters spray weed killers near people under West Coast's weakest protections*. [online]. Available at:
http://www.oregonlive.com/environment/index.ssf/2014/10/in_oregon_helicopters_spray_we.html
- Kentucky: maced.org (N.Y.). Undated. *The Kentucky Forest Landowner's Handbook*. [online]. Mountain Association for Community Economic Development. Available at:
<http://www.maced.org/foi/landowners-handbook.htm>
- New Hampshire: University of New Hampshire Cooperative Extension (2014). *Guide to New Hampshire Timber Harvesting Laws*. [online]. Available at:
<http://www.nhdf.org/library/pdf/Forest%20Protection/Guide%20to%20NH%20Timber%20Harvesting%20Laws%20rvs2012.pdf>
- Oregon: Oregon Forest Resources Institute (N.Y.). *Oregon's Forest Protection Laws (revised 2d ed.)*. [online]. Available at:
http://oregonforests.org/sites/default/files/publications/pdf/OR_For_Protect_Laws_2011.pdf
- Virginia : Virginia.gov (2011). *Virginia's Forestry Best Management Practices for Water Quality Technical Manual (5th ed.)*. [online]. Virginia Department of Forestry. Available at: <http://www.dof.virginia.gov/print/water/BMP/Technical/BMP-Technical-Guide.pdf>

1.10.5. Risk determination

Overview of Legal Requirements

Environmental permits (NEPA) are required for projects on federal lands or those that apply federal funding. Water quality is regulated on both public and private lands via the Clean Water Act. There are also a host of environmental laws that regulate aspects of timber harvest at the state level.

Certain federal statutes govern federal land management directly (about 20% of US timberland but less than 1% of US hardwood supply). The most significant of these are: the National Forest Management Act (NFMA), Federal Land Policy and Management Act (FLMPA), the Wilderness Act, and the National Environmental Policy Act (NEPA). The latter mandates that federal agencies assess the environmental impacts of their activities on government-owned forest land. As result, all federal timber management activities require some form of environmental assessment or impact analysis. Hardwood management is mainly impacted in the national forests of the eastern US that contain significant inventory of hardwood species.

Planning and harvest activities on federal forest lands are frequently delayed, altered or cancelled pending completion of administrative or judicial reviews as a result of stakeholder group challenges.

Description of Risk

The risk of violation of federal EIA requirements is fairly low. The process is transparent. Citizens have a well-established right to sue to enforce the federal EIA laws, and that keeps agencies accountable.

The risk of violation of clean water and other environmental standards depends first on whether they are standards or just guidelines. Where they are standards, the risk on private lands is much the same as the risk of violation of forest practice rules generally. In fact, the discussion above of risk of violation of forest practice rules drew on studies that looked largely at rules to protect water quality. So there is some risk, especially where rules are complex and compliance is expensive, however this is not assessed to be at a low level.

This national level risk assessment has identified that there may be specified risks in this category at a sub-national level, but further assessment of this category at a sub-national level would be necessary to determine this.

There is potential that there are specified risks in this category at a sub-national level. Further assessment of this category at a sub-national level has been recommended by the Consultant. Based on consultation feedback (including from FSC US, low risk has been designated and eventual further verification will take place through the NRA process.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.10.6. Risk designation and specification

Low risk

1.10.7. Control measures and verifiers

N/A

1.11. Health and safety

Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.

1.11.1. Applicable laws and regulations

- National Environmental Policy Act (1969, 1975, 1982).
- 29 USC §§ 651–678 Occupational Health and Safety Act (OSH Act).

- Federal Water Pollution Control Act/Clean Water Act (1972, 1977).
- 29 CFR OSHA 1910.266 Logging-specific regulations [online]. Available at: <http://www.law.cornell.edu/cfr/text/29/1910.266>
- 29 CFR part 1910. [online]. Available at: <http://www.law.cornell.edu/cfr/text/29/part-1910>. general safety regulations, applying to all workplaces, covering things like protective equipment, storage of hazardous materials, welding, hand-held power tools, and so forth.
- 29 CFR 1910.1200. [online]. Available at: <http://www.law.cornell.edu/cfr/text/29/1910.1200> - The regulations for reporting to workers what toxic chemicals are onsite, applicable to all workplaces. These do not apply to pesticides bearing federally approved labels under the federal pesticide law (FIFRA), but safe handling of these pesticides is covered under FIFRA, as discussed below.
- 40 CFR part 170 The FIFRA Agricultural Worker Protection Standard. [online]. Available at: <http://www.law.cornell.edu/cfr/text/40/part-170> (applies to all pesticide use in forests as well as farms. It requires worker safety training, access to information, use of protective equipment, emergency preparedness, and so forth).
- 7 USC § 136i FIFRA requires people who apply especially toxic ("restricted use") pesticides to be certified or to work under supervision of a certified applicator. [online]. Available at: <http://www.law.cornell.edu/uscode/text/7/136i> (The federal government can certify applicators or it can delegate certification authority to a state that submits a satisfactory certification plan).

State:

- The OSH Act allows the federal government to delegate authority to administer workplace safety regulation to a state if a state has a program at least as strict as the federal program. About half the states have delegated authority.
- All states have workers compensation programs that pay benefits to employees injured on the job. Most employers are required to pay premiums to cover their employees. The federal government has a program that covers federal government employees.

1.11.2. Legal authority

- The federal agency concerned with worker safety is the Occupational Safety and Health Administration (OSHA), in the Department of Labor.
- This OSHA web page provides contact information and links to state occupational safety and health agencies:
- The federal Environmental Protection Agency administers FIFRA. Where EPA has delegated certification authority to a state, it is usually a state agriculture agency that is in charge of certification. State cooperative extension services may also play a role in training and testing applicators.

1.11.3. Legally required documents or records

- OSHA requires employers to keep records of serious job-related injuries.

- If there are hazardous chemicals other than pesticides at a worksite, there should be Material Safety Data Sheets for each chemical.
- If there are pesticides, the pesticide label should be available. Official pesticide labels can be several pages long and contain information about the lawful purposes of use (what pests, what crops or trees to protect) and the lawful manner of use.
- Certified pesticide applicators should have documentation of their certification, and should keep records of their use of restricted-use pesticides.

1.11.4. Sources of information

Government sources

- dol.gov (N.Y.). *Division of Federal Employees' Compensation (DFEC)*. [online]. United States Department of Labor. Available at: <http://www.dol.gov/owcp/dfec/regs/compliance/wc.htm>
- epa.gov (N.Y.). *Compliance Monitoring Programs*. [online]. Available at: <https://www.epa.gov/compliance/compliance-monitoring-programs>
- epa.gov (N.Y.). *Occupational Pesticide Safety and Health*. [online]. Index page for information on the FIFRA Agricultural Worker Protection Standard. Available at: <http://www.epa.gov/pesticides/health/worker.htm>
- OSHA's "eTool" for learning about logging site requirements: <https://www.OSHA.gov/SLTC/etools/logging/index.html>
- OSHA's information page on logging: <https://www.OSHA.gov/SLTC/logging/index.html>
- OSHA's user's guide and tutorial on logging workplace safety and health requirements: <https://www.OSHA.gov/SLTC/etools/logging/userguide.html>
- osha.gov (N.Y.). *Data and Statistics*. [online]. Available at: <https://www.osha.gov/oshstats/>
- osha.gov (N.Y.). Official web site of OSHA logging. [online]. Available at: <https://www.osha.gov/SLTC/etools/logging/> osha.gov (N.Y.). News Releases. [online]. Available at: <https://www.osha.gov/news/newsreleases>

1.11.5. Risk determination

Description of Risk

Logging is one of the most hazardous occupations in the United States. Health and safety is closely regulated by OSHA, which has specific provisions for logging.

A compendium of federal laws governs worker safety and health. For example, the Occupational Safety and Health Act (OSHA) protects forest workers by prescribing that specific safety measures be taken and safety equipment used while engaged in commercial forestry activity. Detailed records of accidents, injuries, and corrective measures must be maintained.

OSHA standards: Based on a search of OSHA's online database for inspections in standard industrial class (SIC) 2411 (logging), OSHA conducted 378 logging site inspections in 2013. Some were in response to reported accidents or complaints of violations, but most were

planned inspections. A cursory search of the resulting list of inspections makes it appear that inspectors found violations at more than half the sites. Although enough raw data is available to understand the severity and frequency of violations, the scope of this project did not allow for analysis of the data, and no summary of compliance in the logging industry was found. The OSHA published various media releases concerning its enforcement activities. Searching these with the terms "logging", "timber", "wood", and "forestry" yield approximately 15 articles describing violations and punishments related to forestry during 2014 - June 2017.

FIFRA agricultural worker protection: In 2013, EPA and the states inspected 3663 sites. These covered all agricultural users, and it's not clear if they included any forest operations. In those inspections, the inspectors issued warnings to 332 sites, administrative fines to 58 sites, took 40 to court (includes sites that contested the administrative enforcement), and took other action, such as issuing administrative orders to comply, at 267 sites.

It is not clear how many of these infractions were minor and how many major, but the warnings almost certainly cover minor infractions, the court cases are probably more serious infractions, and the administrative fines and orders could cover either kind of situation. It's possible that some sites had multiple inspections, and that inspections were designed to focus on sites of types most likely to have infractions. Still, only about one site in ten had a violation serious enough to merit something more than a warning. See EPA's web page on monitoring compliance with the standard. It is not currently clear from these statistics how many forest sites were inspected, or were found to be in breach of the requirements. This information does show that the compliance monitoring and enforcement of the legal requirements is carried out seriously by the authorities.

There is potential that there are specified risks in this category at a sub-national level. Further assessment of this category at a sub-national level has been recommended by the Consultant. Based on consultation feedback (including from FSC US, low risk has been designated and eventual further verification will take place through the NRA process.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.11.6. Risk designation and specification

Low risk

1.11.7. Control measures and verifiers

N/A

1.12. Legal employment

Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.

1.12.1. Applicable laws and regulations

- Fair Labor Standards Act Regulates minimum wage, medium age, overtime pay.
- Other laws administered by Department of Labor
- Civil Rights Act of 1964: outlawed hiring discrimination based on race, gender, religion, or national origin.
- More details, actual citations and examples from large timber producing states.
- In general, you will find both federal and state rule regarding legal employment.
- Employee tax payments and workers compensation: These laws have been covered above in other categories. The discussion of taxes covered the need to get an employer identification number, to withhold and forward employee tax payments, and to make employer payments to fund social benefit programs. The discussion of health and safety mentioned participation in workers compensation insurance programs.
- Unemployment Insurance: In the same vein as workers compensation insurance, states require employers to pay into a state unemployment insurance fund. The state programs are set up in compliance with federal law, but are run under state laws by state officials.
- Minimum Age Laws. [online]. Federal Department of Labor's pages on youth employment. Available at: <http://www.youthrules.dol.gov/know-the-limits/agriculture/index.htm> and <http://www.dol.gov/dol/topic/youthlabor/agerequirements.htm#lawregs> (Laws set minimum ages for employment generally, maximum hours for younger employees, and minimum ages for particularly dangerous jobs, including logging)
- Minimum wage laws. [online]. The federal Department of Labor. Available at: <http://www.dol.gov/whd/minwage/america.htm> (Federal laws set minimum wages, and state and local laws may set minimum wages. If they differ, the higher minimum applies. The general minimum wage may not apply to all jobs — for example, they might not apply to jobs where the employee normally receives a significant income from tips. The laws tend to set weekly hour thresholds of around 40 hours, and the pay for work beyond those hours must be at an increased rate).
- 8 U.S.C. 1324a Citizenship or lawful residency, Section 274A of the federal Immigration and Nationality Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/8/1324a> and <http://www.law.cornell.edu/cfr/text/8/part-274a/subpart-A> (makes it illegal to employ someone who is not a citizen, lawful permanent resident, or specially permitted immigrant).
- Discrimination, EEOC Regulations. [online]. U.S. Equal Employment Opportunity Commission. Available at: <http://www.eeoc.gov/laws/statutes/index.cfm> (Federal laws

prohibit discrimination based on race, color, religion, sex (including pregnancy), national origin, disability, genetic information, or age (over 40). Most laws apply only to businesses with a minimum number of employees, such as 15 or 20) and <http://www.eeoc.gov/laws/regulations/index.cfm> (this companion site lists the implementing regulations and ongoing rulemakings).

State

- Unemployment Insurance. [online]. U.S. Department of Labor. Available at: <http://workforcesecurity.doleta.gov/unemploy/laws.asp> (The state programs are set up in compliance with federal law, but are run under state laws by state officials. For information on laws, see this federal Department of Labor website)
- An index of state adverse possession laws. [online]. WindLaw. Available at: <http://statelaws.findlaw.com/property-and-real-estate-laws/adverse-possession.html>
- The Bureau of Land Management's web page on subsistence use in Alaska: <https://www.blm.gov/programs/natural-resources/subsistence>

1.12.2. Legal authority

- Department of Labor (DOL)
- The federal Internal Revenue Service and the state revenue departments enforce the tax laws.
- Unemployment insurance and workers compensation insurance are generally managed by state agencies.
- The Wage and Hour Division of the Department of Labor oversees minimum wage and age laws at the federal level.
- The US Citizenship and Immigration Services oversee compliance with the requirement that employers verify citizenship or lawful residency.
- The federal Equal Employment Opportunity Commission oversees compliance with federal anti-discrimination laws.

1.12.3. Legally required documents or records

- I-9 form required to demonstrate eligibility to work in the US
- W-4 form required to file for mandatory income taxes.
- As noted above, for taxes and other payments to the government, the employer should have business records and receipts. The employer should obtain a filled-out IRS W-4 form from each employee, so the employer can determine how much salary needs to be withheld to cover expected taxes. The employer should be giving employees and tax authorities annual W-2 forms reporting wages paid and withheld for the year. People retaining certain independent consultants must give the consultant and government a 1099 form reporting compensation for services.
- Some states may require work permits or recordkeeping for youths under a given age. For example, Oregon requires employers hiring minors to obtain an annual employment certificate from the state and to keep records of how they verified the youth's age. See

this state FAQ page on youth employment:

http://www.oregon.gov/boli/TA/pages/t_faq_taminors.aspx

- Employers must fill out and retain an I-9 form from the federal government verifying the legal status of each new employee. <http://www.uscis.gov/i-9-central>.

1.12.4. Sources of information

Government sources

- uscis.gov (N.Y.). *The Official Website of the Department of Homeland Security*. [online]. Available at: <http://www.uscis.gov/e-verify> (US Citizenship and Immigration Service "E-Verify" is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States. E-Verify is fast, free and easy to use – and it's the best way employers can ensure a legal workforce).

Non-Government sources

- Alliance of Forest Workers and Harvesters & The Labor Occupational Health Program, UC Berkeley. (2012). *Healthy Forests, Abused Workers - Safety, Health and Working Conditions among Forest Ecosystem Restoration Workers in Southern Oregon*. [online]. <https://firebasestorage.googleapis.com/v0/b/nwforestworkers-f633c.appspot.com/o/PDF%2Fsurveyreportcolor.pdf?alt=media&token=202e62a4-7751-4f8a-8ead-6f5e799bb8c6>
- Bernhardt, A. et al. (2009). *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*. [online]. National Employment Law Project. Available at: <http://www.nelp.org/BrokenLaws>
- Chichoni, H. (2011). *I-9 Compliance Crackdowns*. [online]. Society for Human Resource Management. Available at: <https://www.shrm.org/hr-today/news/hr-magazine/Pages/0211chichoni.aspx>
- Green, E. (2016). Timber's fallen: A three-part investigative series on Oregon's reforestation workers. StreetRootsNews [online]. Available at: <http://news.streetroots.org/2016/02/11/timber-s-fallen-enforcement-forest-labor-laws-spotty-lacks-bite>
- ice.gov (N.Y.). *Form I-9 Inspection Overview*. [online]. U.S. Immigration and Customs Enforcement. Available at: <https://www.ice.gov/factsheets/i9-inspection> (the enforcement options listed).
- Passel, J. S. et al. (2014). *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled*. [online]. Pew Research Hispanic Trends Project. Available at: <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/#>
- Sutto, T. (2012). *Out In Left Field: CA Needs H2-A Ag-Worker Overhaul*. [online]. Immigration Compliance Group. Available at: <http://www.immigrationcompliancegroup.com/immigration-compliance-blog/tag/california-agriculture/>
- Verite. (2010). Immigrant Workers in US Agriculture: the role of brokers in vulnerability to forced labor. Verite [online]. Available at: <https://www.verite.org/wp->

1.12.5. Risk determination

Overview of Legal Requirements

Most employment in the US is considered "at will," and can be terminated by either party or changed without prior notice. A written contract is not necessary; all employers are still subject to labor laws.

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. The US Department of Labor rigorously enforces labor and worker safety laws usually in cooperation with corresponding state agencies.

Worker's compensation liability insurance requirements are regulated at the state level. Most states require worker's comp insurance.

Timber harvesters (i.e. loggers) are registered or certified in nearly all states within the hardwood-producing region either through public or private programs (such as the Master Logger Program). Only New York and New Jersey have not yet established any kind of registration or certification program for timber harvesters. The licensing or registration of professional foresters occurs in 14 states within the hardwood-producing region.

Description of Risk

Most employment in the US is considered "at will," and can be terminated by either party or changed without prior notice. A written contract is not necessary; all employers are still subject to labor laws. Detailed records of accidents, injuries, and corrective measures must be maintained. The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. The US Department of Labor rigorously enforces labor and worker safety laws usually in cooperation with corresponding state agencies. Worker's compensation liability insurance requirements are regulated at the state level. Most states require worker's comp insurance.

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A compendium of federal laws also governs fair labor, worker safety and health. For example, the Occupational Safety and Health Act (OHSA) protects forest workers by prescribing that specific safety measures be taken and safety equipment used while engaged in commercial forestry activity.

Description of risk

The risk of non-compliance for tax laws was discussed above. Compliance is probably the rule, but there will be a small number of people trying to evade the law. Evidence of things

like use of outside bookkeeping or accounting services and external auditors will indicate a lower risk of non-compliance.

For wage and hour laws, a 2009 study of urban workers in traditionally low-paying occupations found about a quarter of workers reported experiencing violations of wage and hour laws. Results varied by industry, and in residential construction, the sector in the study most like logging, compliance was better than average with closer to an eighth of the workers reporting violations. Compliance was worse in smaller businesses. This suggests that there may be some risk of noncompliance in logging operations, particularly in smaller operations.

For citizenship or lawful residency laws, a 2011 article published on the website of the Society for Human Resource Management flatly stated that “most U.S. employers are not fully compliant.” The article then described many of the detailed things that can go wrong leading to technical non-compliance, such as failure to make sure the employee has filled out the I-9 form legibly, failure to make sure the form is signed, failure to get the form filled out on the first day of hire, failure to properly review proof of status documents and make sure the information matches that on the I-9 form, and so forth. The enforcement policy of the US Immigration and Customs Enforcement agency seems to reflect that most violations are technical in nature and do not merit more than a formal notice of non-compliance, advising the employer to make corrections.

However, the situation might be more severe in the logging sector. The Pew Research Center estimates that about 10.4 million adults in the US are unauthorized immigrants. Many of these people have come to the US looking for work, and agricultural and low-skill trades offer opportunities. A 2012 post in an immigration blog estimated that half the agricultural workers in the state of California were undocumented. The ‘Broken Laws’ study above noted that employers willing to hire undocumented workers can offer lower wages with less fear that their employees will make complaints to authorities about labor law compliance.

The federal government allows employers to participate in an electronic system to verify that a potential employee is allowed to work. The system is called eVerify. If an employer has taken the effort to qualify to use the system, and uses it regularly, it may be a “best management practice” indicating a lower risk of non-compliance.

Risk Conclusion

This national level risk assessment has identified that there may be specified risks in this category at a sub-national level, but further assessment of this category at a sub-national level would be necessary to determine this.

1.12.6. Risk designation and specification

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.12.7. Control measures and verifiers

The federal government allows employers to participate in an electronic system to verify that a potential employee is allowed to work. The system is called eVerify. If an employer has taken the effort to qualify to use the system, and uses it regularly, it may be a “best management practice” indicating a lower risk of non-compliance.

-
- Stakeholders shall confirm that forced or compulsory labour is not involved in harvesting activities.
 - All workers are employed according to the regulation and required contracts are in place
 - Persons involved in harvesting activities shall be covered by obligatory insurances.
 - Persons involved in harvesting activities shall hold required certificates of competence for the function they carry out.
 - At least the legally established minimum salaries shall be paid for personnel involved in harvesting activities.
 - Salaries shall be paid officially and declared by the employer according to requirements for personnel involved in harvesting activities.

THIRD PARTIES' RIGHTS

1.13 Customary rights

Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.

1.13.1. Applicable laws and regulations

- Customary rights are usually not important in US land tenure systems. By and large, the US states either have recognized long-standing customary rights and incorporated them into the system of formal rights, or they have extinguished them.
- There are a few limited exceptions. One is the law of adverse possession, described above under land tenure. It is important only for private lands.
- Another possible source of claims of customary rights is through treaties with Native American tribes, discussed below under indigenous peoples rights.
- In the state of Alaska, the federal Alaska Native Claims Settlement Act of 1971 settled most native claims to land. However, on some federal lands, Native Americans and rural residents have rights to use the land for subsistence purposes. These rights are recognized in the Alaska National Interest Lands Conservation Act:
- 16 USC §§ 3111–3126 Alaska National Interest Lands Conservation Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/chapter-51/subchapter-II>
- Rivers that have historically supported navigation are subject to a public right of way and use, but forests seldom grow in rivers. Historically, though, this aspect of law has been important in allowing rivers to be used to transport logs. In fact, one test of navigability has been whether the river can float a log.
- Paths that have been used continuously by humans "since time immemorial" may be subject to public rights of way. Again, this is not a widespread issue in forest land ownership.

1.13.2. Legal authority

- It is usually up to the courts to make findings of customary rights.
- On federal lands in Alaska, the federal land management agencies oversee exercises of subsistence rights.

1.13.3. Legally required documents or records

- By the time most adverse possession rights are reduced to paper, they have become formal rights. The only way to discover possible instances of adverse possession is to inspect the property and locate its boundaries in a survey.
- Documents relating to tribal claims include the treaties and court interpretations, discussed below under indigenous people's rights.

1.13.4. Sources of information

Government sources

- blm.gov (N.Y.). *Alaska federal subsistences*. [online]. The Bureau of Land Management's web page on subsistence use in Alaska. Available at: <https://www.blm.gov/programs/natural-resources/subsistence>
- findlaw.com (N.Y.). *An index of state adverse possession laws*. [online]. Available at: <http://statelaws.findlaw.com/property-and-real-estate-laws/adverse-possession.html>

1.13.5. Risk determination

Description of Risk

The risk of violating a right held through adverse possession is low. If the right is being held openly and exclusively, the potential violator should be able to discover it through inspection of the land.

Overall, customary rights being are not important in forest management, with the possible exception of Native American treaty rights.

Risk Conclusion

On balance the risk for this category is assessed as low.

1.13.6. Risk designation and specification

Low risk

1.13.7. Control measures and verifiers

N/A

1.14. Free prior and informed consent

Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.

1.14.1. Applicable laws and regulations

- There is no general law requiring the free and prior informed consent of indigenous peoples to actions affecting their lands. If indigenous people own the land or hold some rights to it, or if it is held in trust for them, they will have legal rights to control or affect the use of the land. Otherwise, their consent will not be required by law.
- There are also general requirements within US contract law that parties enter into contracts willingly, but these are not FPIC requirements in the traditional sense.

1.14.2. Legal authority

- The Bureau of Indian Affairs oversees lands held in trust by the federal government for Native Americans.

1.14.3. Legally required documents or records

- The federal statutes concerning Native Americans are in Title 25 of the USC and the regulations are in Title 25 of the CFR.

1.14.4. Sources of information

N/A

1.14.5. Risk determination

N/A

1.14.6. Risk designation and specification

N/A

1.14.7. Control measures and verifiers

N/A

1.15. Indigenous/traditional peoples' rights

Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.

1.15.1. Applicable laws and regulations

- The Indian Self Determination and Education Assistance Act of 1975
- Varied treaties with American Indian Nations, Tribes, and Bands in the United States.
- National Historic Preservation Act, including in relation to American Indian sites (1966)
- Cultural protection acts (for all states)
- Natural communities conservation acts (for all states)
- Tribes are considered Sovereign Nations (a rough legal equivalent to a US State) and have their own judicial systems.

1.15.2. Legal authority

- State and federal judicial systems.
- Generally, each federally recognized tribe has its own government.
- The BIA Division of Forestry and Wild land Fire Management oversees tribal forestry endeavors. <http://www.bia.gov/WhoWeAre/BIA/OTS/DFWFM/index.htm>

1.15.3. Legally required documents or records

N/A

1.15.4. Sources of information

Government sources

- fs.fed.us (N.Y.). *Tribal Relations*. [online]. U.S. Forest Service. Available at: <http://www.fs.fed.us/spf/tribalrelations/> (The US Forest Service has a tribal relations office).

- udall.gov (N.Y.). U.S. *Institute for Environmental Conflict Resolution*. [online]. Udall Foundation. Available at: <https://www.udall.gov/OurPrograms/Institute/ServiceAreaNativeAmerican.aspx> (The US Institute for Environmental Conflict Resolution, a federal agency promoting consensual settlement of disputes, has a branch devoted to Native American issues, and may have information on the frequency or number of such conflicts).
- United Nations General Assembly (2012). *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya - Addendum - The situation of indigenous peoples in the United States of America*. [online]. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47-Add1_en.pdf
- wdfw.wa.gov (N.Y.). *Tribal Hunting & Co-Management*. [online]. Washington Department of Fish and Wildlife. Available at: http://wdfw.wa.gov/hunting/tribal/treaty_history.html (This state of Washington website explains Stevens treaty tribal hunting and fishing rights)

1.15.5. Risk determination

Overview of Legal Requirements

The legal relationship between the federal government and the Native American tribes is multifaceted. Officially, the two deal with each other as sovereigns, and treaties signed between the federal government and the tribes outline tribal rights. Tribal members, though, are US citizens. Sometimes the federal government treats the tribes as coequal to the states. For example, the federal government delegates to some tribes the power to take the lead in enforcing environmental or workplace safety and health laws on tribal lands. Tribes have their own police forces and courts, and in some cases their own forestry or wildlife agencies. And sometimes the federal government treats the tribes as beneficiaries of federal trusts, as is often the case with tribal lands nominally owned by the federal government.

The situation becomes a bit different in the state of Alaska, where special laws apply. The Alaska Native Claims Settlement Act extinguished informal claims to land, chartered special corporations to hold native interests in land, and granted 40 million acres of land to those corporations. Alaskan tribal members own shares in these corporations, elect their boards, and enjoy dividends from them. In this way, the native peoples exercise ownership rights. As noted above under customary rights, native people also have rights to subsistence use of certain federal lands. Outside of Alaska, the Bureau of Indian Affairs oversees reservations set aside for particular tribes. Some of the land on these reservations is allotted to individuals and some to the tribe as a whole. The BIA and tribal government may conduct forest management on these lands. There are about 18 million acres of forested lands on these reservations.

The treaties that the federal government negotiated with the tribes in the 19th century sometimes guaranteed tribes rights outside of the lands reserved for them. In particular the so-called "Stevens treaties," negotiated by Territorial Governor Isaac Stevens with tribes in the Pacific Northwest, typically included language like this: The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all other citizens of the Territory, and of erecting temporary houses for the purpose of

curing them, together with the privileges of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands.

The tribes, states, and federal government have often been in court arguing over the meaning of this language. It is now well-settled that members of certain Northwest tribes have rights to fish and hunt outside their reservations, subject to tribal regulation but only subject to state and federal regulation if necessary to preserve a species. The national forests are considered "open and unclaimed lands." The national parks are not.

The Indian Self Determination and Education Assistance Act of 1975 greatly increased indigenous people's control of their own rights. *Description of Risk*

The UN Report of the Special Rapporteur on the rights of indigenous peoples, Addendum on the United States, lists 168 concerns that native peoples expressed to the special rapporteur about their human rights, treaty rights, and other legal rights during a 12-day fact finding mission. Some of these were intra-tribal. Many had nothing to do with natural resources. But some, like the Sioux claims to federal land in the Black Hills, involve forested lands.

The Black Hills claim offers one illustration of the nature of these issues. In 1980 the US Supreme Court affirmed a \$106 million judgment against the federal government for taking Native American land in the Black Hills of South Dakota. The Sioux Nation rejected the judgment, however. They did not want compensation. They wanted the land.

If there were a timber sale on that federal land today, the legal position would be clear: the land belongs to the federal government and the federal government can sell the trees. There is no violation of law. Nevertheless, talks between the federal government and the tribes on the future of the land are ongoing.

Risk Conclusion

There are disagreements and controversies over Native American rights, and there are concerns that the country could do more to meet the letter and spirit of the non-legally binding Declaration of the Rights of Indigenous Peoples. But there does not seem to be a great deal of clearly illegal activity regarding Native Americans and forests.

1.15.6. Risk designation and specification

Low risk

1.15.7. Control measures and verifiers

N/A

TRADE AND TRANSPORT

1.16. Classification of species, quantities, qualities

Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).

1.16.1. Applicable laws and regulations

- US state laws on the cutting of timber and required payment of taxes.
- The general laws against defrauding the United States are in 18 U.S. Code Chapter 47,
- The BLM regulation prohibiting timber theft and fraud: 43 CFR § 5462.2,
- The federal False Claims Act, 31 USC § 3729–3733 - allows the government to collect treble damages in a civil suit for making false claims on the government, and allows private citizens to prosecute such cases if the government fails to.
- Every state has laws against fraud.

1.16.2. Legal authority

- State and counties require documents, such as load tickets or reports providing this information.
- Generally, in fraud cases the key documents will be any contracts covering the sale of the timber, and any records about the volume, species, and quality of the timber sold.

1.16.3. Legally required documents or records

- State and counties require documents, such as load tickets or reports providing this information.
- Generally, in fraud cases the key documents will be any contracts covering the sale of the timber, and any records about the volume, species, and quality of the timber sold.

1.16.4. Sources of information

Government sources

- bark-out.org (N.Y.). *Field Guide to Timber Theft: Understanding Timber Sales, the Contract, and the Law*. [online]. Government Accountability Project. Available at: http://www.bark-out.org/sites/default/files/bark-docs/Field_Guide_toTimber_Theft.pdf
- Kent, J. (2012). *Guest Viewpoint: The timber racket: A culture of corruption and political payoffs harms the land and ourselves*. [online]. Register-Guard Newspaper, Reprinted. Available at: <http://olympicforest.org/wp-content/uploads/2014/03/227.pdf>

- state.sc.us (2010). *Don't Be A Victim Of Timber Transaction Crime Information For Forest Landowners in South Carolina*. [online]. Sourht Carolina Forestry Commission. Available at: <http://www.state.sc.us/forest/timberval.htm>

Non-Government sources

- Barry, J.E. (N.Y.). *Timber Theft... No Laughing Matter*. [online]. University of Arkansas. Available at: <https://www.uaex.edu/environment-nature/forestry/FSA-5018.pdf>
- daviesand.com (N.Y.). *Under-Your-Nose Timber Scams*. [online]. Published in Massachusetts Woodland Steward, 2000. Available at: http://daviesand.com/Services/Timber_Sales/Timber_Scams/index.html
- peer.org (1996). *Unindicted Co-conspirator: Timber Theft and the US Forest Service*. [online]. Available at: http://www.peer.org/assets/docs/whitepapers/1996_unindicted_co-conspirator.pdf
- peer.org (1997). *Bureau of Mismanagement: Timber Sale Maladministration*. [online]. Public Employees for Environmental Responsibility (PEER) White Paper.
- peer.org (2017). *Forest Service Scalped on Tongass Timber Sales*. [online]. <https://www.peer.org/news/news-releases/forest-service-scalped-on-tongass-timber-sales.html>

1.16.5. Risk determination

Overview of Legal Requirements

US state laws provide regulations for the cutting of timber and required payment of taxes. These requirements include a report showing the kinds, quantities and value of the harvested timber, and this information is required to be reported to the state/county.

US state laws provide regulations for the cutting of timber and required payment of taxes. These requirements include a report showing the kinds, quantities and value of the harvested timber, and this information is required to be reported to the state/county.

Description of Risk

The sources of information above paint a disturbing picture, but for the federal lands, the sources discuss fraud in the 1980s and '90s. The lack of more recent reports and the apparent closure of the Government Accountability Project's Forest Program give hope that the problems identified have been addressed, and it is assumed that this is the case.

On private lands, the problem is probably ongoing, especially for smaller and less sophisticated landowners.

It would seem prudent for buyers and sellers to take steps to prevent and detect fraud, such as having a third party verify timber cruises and scaling, and investigating the reputation of the firms involved in timber transactions.

Risk Conclusion

This indicator has been evaluated as low risk for public land. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

This indicator has been evaluated as specified risk for private land. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.16.6. Risk designation and specification

Public land: Low risk

Private land: Specified risk

1.16.7. Control measures and verifiers

- Products shall be correctly classified (species, quantities, qualities etc.) on sales documents, custom declarations and other legally required documents
- Evidence shall be provided upon request (photographs of labelling)
- Physical control where it should be verified that the present material equals what has been invoices and marked
- Contract of sale for timber harvest that specifies products harvested

1.17. Trade and transport

All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.

1.17.1. Applicable laws and regulations

- The US does not impose any form of export tax on exported goods, including US hardwood exports. The only significant export prohibition for wood products affects unprocessed logs harvested from state and federal lands west of the 100th meridian.
- Trade and transport laws only applying to international trade are discussed below under "Customs regulations."
- 16 USC § 3372 The Lacey Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/3372> (Makes it a federal offence to (1) import, export, transport, sell, receive, acquire, or purchase any plant taken in violation of tribal or federal law; (2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant:
 - taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—
 - the theft of plants;
 - the taking of plants from a park, forest reserve, or other officially protected area;
 - the taking of plants from an officially designated area; or
 - the taking of plants without, or contrary to, required authorization;

- taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or
- taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants).
- The states have varying requirements concerning timber transport, including rules aimed at discouraging timber theft or mislabelling in transport.
- Every state also has laws governing vehicle registration and safe operation, which may include special laws for logging and log transport vehicles. For example, there may be limits on vehicle length or requirements about securing loads that apply specifically to log trucks.
- Oregon: Oregon Revised Statutes (ORS) § 164.813, [online]. Available at: https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors164.html (Requires written permission from the landowner to transport larger volumes of certain special forest products including firewood), ORS § 164.825, Chapter 532 [online]. Available at: https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors532.html (deals with branding of forest products, in other words, the placing of marks identifying the source or owner of the products. Branding of forest products being shipped by road, rail, or water is mandatory in the western part of the state and voluntary in the eastern part. (The most commercially valuable forests are in the western part of the state.) The state maintains a registry of brands).
- Oregon Revised Statutes (ORS) § 164.813 ORS, § 164.825 makes it unlawful to cut or transport more than five coniferous trees without written permission from the landowner. The laws specify what information the written permission must contain.
- Vermont: 13 Vermont Statutes Annotated, Chapter 77 § 3609. [online]. Available at: <http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=13&Chapter=077> (Vermont requires a transporter to have a bill of sale or other written evidence of ownership. Vermont does not register brands, but does have penalties for defacing or stealing marked logs).
- Virginia: Code of Virginia §§ Title 59.1, Chapter 8. [online]. Available at: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC590100000080000000000000> (Virginia does not appear to require permits or permission to transport timber, but Virginia has a voluntary branding system intended for logs moved by water. Timber owners register their brands with the clerk of the state circuit court in their county).

1.17.2. Legal authority

- Regulated through Lacey Act and via state laws.
- State transport laws are probably going to be enforced largely by state and local police, in cooperation with forestry authorities.
- In states that have timber branding programs, the responsible offices will vary. In Virginia, for example, the clerks of the circuit courts keep the branding records. In Oregon, the Department of Forestry approves brands and keeps the records.

- Violations of the federal Lacey Act can be policed by state and local officials, and also by the enforcement arms of the federal land management agencies, wildlife agencies, or the Federal Bureau of Investigation. Civil and criminal prosecutions of the Act will most often be brought by the prosecutors in the federal Department of Justice.

1.17.3. Legally required documents or records

- State and counties require documents, such as load tickets or reports providing this information.
- Documentation will vary by state. In Oregon and Vermont, for example, there will be written permission statements or bills of sale from landowners.

1.17.4. Sources of information

N/A

1.17.5. Risk determination

Overview of Legal Requirements

International and interstate commerce is regulated through requirements within the Lacey Act. US state laws provide regulations for transport such as wood load tickets.

"The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of the laws of a U.S. State or any foreign law that protects plants."

There are other federal laws regulating interstate commerce.

Description of Risk

No indication was found that timber transport crimes are a serious concern of land owners or government.

Risk Conclusion

On balance, this category has been assessed as low risk.

1.17.6. Risk designation and specification

Low risk

1.17.7. Control measures and verifiers

N/A

1.18. Offshore trading and transfer pricing

Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.

1.18.1. Applicable laws and regulations

- Transfer pricing is of concern to tax officials, as it lets companies shift profits to other jurisdictions. Because federal income tax rates are higher than state rates, the greatest concern is international transactions, but a company could also seek to reduce its state tax burden by shifting apparent profits within the US, from a high-tax state to a low- or no-tax state, or its local tax burden by shifting apparent profits to a low-tax local jurisdiction.
- 26 U.S. Code § 482 Allocation of income and deductions among taxpayers. [online]. Available at: <http://www.law.cornell.edu/uscode/text/26/482> (This is basic federal statutory provision dealing with transfer pricing. However, several other tax law provisions may be relevant. The regulations implementing § 482 are extensive. The outline of the regulations is presented in 26 CFR § 1.482-0)
- US Transfer Pricing Laws & Regulations [online]. Available at: <http://www.ustransferpricing.com/laws.html>
- 26 CFR § 1.482-0 Outline of regulations under section 482 [online]. Available at: <http://www.law.cornell.edu/cfr/text/26/1.482-0>

1.18.2. Legal authority

- The federal Internal Revenue Service implements and enforces US tax laws.
- State and local revenue agencies implement state and local laws.

1.18.3. Legally required documents or records

- Tax returns and financial records will be the primary evidence of profits made and taxes paid
- Independent audits of financial records or tax returns may shed light on possible transfer payment issues.
- Through the "APA" Program, a company in doubt about the transfer pricing laws can seek formal guidance from the IRS before the company files its taxes. In that case, there should be a written agreement signed with the IRS explaining how the laws apply to the company's transactions.

1.18.4. Sources of information

Government sources

- ibfd.org (N.Y.). *International Transfer Pricing Journal - All Articles*. [online]. IBFD – Your Portal to Cross-Boarder Tax Expertise. Available at: <http://www.ibfd.org/IBFD-Products/International-Transfer-Pricing-Journal-All-Articles> (find 'United States')
- irs.gov (1999). *Report on the Application and Administration of Section 482*. [online]. Internal Revenue Service (IRS). Available at: <http://www.irs.gov/pub/irs-pdf/p3218.pdf>
- irs.gov (2014). *IRS Transfer Pricing Audit Roadmap*. [online]. Internal Revenue Service (IRS). Available at: <http://www.irs.gov/pub/irs-utl/FinalTrfPrcRoadMap.pdf>

Non-Government sources

- eoi-tax.org (N.Y.). *Exchange of Tax Information Portal - United States*. [online]. Available at: <http://www.eoi-tax.org/jurisdictions/US#agreements>
- Phillis Erb, K. (2012). *IRS brings "A-Team" to crush Transfer Pricing Abuse*. [online]. Forbes. Available at: <http://www.forbes.com/sites/kellyphillipserb/2012/03/27/irs-brings-a-team-to-crush-transfer-pricing-abuse/>
- KPMG.com (2011). *United States: State tax implications of transfer pricing issues*. [online]. http://www.us.kpmg.com/microsite/taxnewsflash/tp/2011/TNFTP11_49US.html
- KPMG.com (2013). *Global Transfer Pricing Review - TAX - United States*. [online]. KPMS. Available at: <http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/global-transfer-pricing-review/Documents/united-states-v2.pdf>
- OECD.org (N.Y.). *United States - OECD Anti-Bribery Convention*. [online]. Available at: <http://www.oecd.org/daf/anti-bribery/unitedstates-oecdanti-briberyconvention.htm> (This page contains all information relating to implementation of the OECD Anti-Bribery Convention in the United States)
- transferpricing.com (N.Y.). *Web site of state transfer pricing links*. [online]. Transfer Pricing Network. Available at: <http://www.transferpricing.com/usstate.htm>

1.18.5. Risk determination

Overview of Legal Requirements

The international tax standard, developed by OECD and supported by the UN and the G20, provides for full exchange of information on request in all tax matters without regard to a domestic tax interest requirement or bank secrecy for tax purposes. Currently all 30 OECD member countries, including USA have endorsed and agreed to implement the international tax standard. Furthermore, all offshore financial centers accept the standard.

USA has exchange of information relationships with 84 jurisdictions through 61 DTCs and 31 TIEAs.

There is extensive regulation through the Internal Revenue Service (IRS) via the Internal Revenue code.

Description of Risk

The risk of transfer pricing is limited to multi-jurisdiction firms. This will eliminate from concern government land owners, small non-industrial land owners, and most small to medium enterprises involved in logging and processing. Only the larger firms are likely to have international or multi-state arms that would support the kinds of transactions needed for transfer pricing.

In a 1999 report to Congress, the IRS estimated the potential federal tax revenue gap from transfer pricing to be \$2.8 billion per year, of which it was detecting 61% through audits. IRS. 1999. Report on the Application and Administration of Section 482. Since then, the IRS has had some high-profile settlements with large multi-national corporations and has stepped up its enforcement efforts. Kelly Phillis Erb. 2012. According to that article, most of the abuse is thought to be in the high-tech and pharmaceutical sectors.

Risk Conclusion

The risk of illegal transfer pricing is low in most US forest operations, but when dealing with large companies with extensive international operations, some evidence of compliance, such as the report of a government or third-party auditor, would be reassuring.

1.18.6. Risk designation and specification

Low risk

1.18.7. Control measures and verifiers

N/A

1.19. Custom regulations

Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).

1.19.1. Applicable laws and regulations

- 16 USC § 3372 Lacey Act. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/3372> (prohibits the export of plants (including material from plants) that have been illegally harvested, transported, or sold).
- Customs regulations
- 16 USC §§ 620-620h Protection of timber, and depredations. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/chapter-4> (Federal government has a prohibition against export of unprocessed logs harvested from federal and non-federal public lands in the western US. It also prohibits "substitution," meaning companies can't buy public lands timber and ship unprocessed logs from their own lands overseas).
- The regulations implementing these bans are in 36 CFR, Part 223, Subparts D and F. [online]. Available at: <http://www.law.cornell.edu/cfr/text/36/part-223/subpart-D>, and <http://www.law.cornell.edu/cfr/text/36/part-223/subpart-F> (These regulations include requirements for marking of all logs reserved for domestic processing. They also include requirements for reporting the acquisition and processing of logs).
- 15 CFR § 754.4 Unprocessed western red cedar. [online]. Available at: <http://www.law.cornell.edu/cfr/text/15/754.4> (The federal Bureau of Industry and

Security, in the Department of Commerce, requires a license for the export of unprocessed western red cedar (*Thuja plicata*), because the wood is considered to be in short supply).

1.19.2. Legal authority

- US Customs and Border Protection, in the Department of Homeland Security, has primary responsibility for implementing and enforcing export laws. It coordinates with its sister investigative agency, Immigration and Customs Enforcement. Offices in the federal land management agencies and the Commerce Department also play a supporting role.
- The US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) issues phytosanitation certificates for unprocessed plant products. The US does not require these for exports, but some countries require them to allow import. In the process, APHIS may become aware of unlawful exports of unprocessed logs.

1.19.3. Legally required documents or records

- Customs declaration forms.
- There should be paperwork on the acquisition and processing of logs from federal land. The logs themselves, upon inspection, should bear "highway yellow" colored marks.
- There should be written licenses if western red cedar is exported.

1.19.4. Sources of information

Government sources

- cbp.gov (N.Y.). Customs & Border Patrol Import Guidelines
<http://www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/ius.ctt/ius.pdf>

1.19.5. Risk determination

Description of Risk

No reports of rates of compliance with the export bans or controls were found.

The emphasis with the Lacey Act has been on timber imports. No discussion of its effects on exports was found.

As long timber theft and trespass occur, there will be a risk of violating the Lacey Act with exports. Some of the exports are illegal. But there is no reliable estimate of the risk.

Risk Conclusion

On balance, the risk for this category has been assessed as low.

1.19.6. Risk designation and specification

Low risk

1.19.7. Control measures and verifiers

N/A

1.20. CITES

CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).

1.20.1. Applicable laws and regulations

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Washington DC, 1973)
- Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Art.XI) (Bonn, Germany, 23 Jun 1979)
- 16 U.S.C. 1537a Endangered Species Act § 8A. [online]. Available at: <http://www.law.cornell.edu/uscode/text/16/1537a> (This is the federal statute implementing CITES trade controls).
- 50 CFR, Part 23 Convention on international trade in endangered species of wild fauna and flora (CITES). [online]. Available at: <http://www.law.cornell.edu/cfr/text/50/part-23> (The implementing regulations).

1.20.2. Legal authority

- US Fish & Wildlife Service, Customs & Border Patrol, other federal enforcement agencies.
- The official implementing agencies for CITES in the US are the Division of Management Authority and the Division of Scientific Authority within the International Affairs Program of the US Fish and Wildlife Service.
- US Customs and Border Protection is generally charged with enforcing import and export laws.

1.20.3. Legally required documents or records

- CITES permit

1.20.4. Sources of information

N/A

1.20.5. Risk determination

Risk Conclusion

No North American tree with commercial timber value is listed in the CITES Appendices. The risk of US timber exports violating CITES is therefore low.

1.20.6. Risk designation and specification

Low risk

1.20.7. Control measures and verifiers

N/A

1.21. Legislation requiring due diligence/due care procedures

Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.

1.21.1. Applicable laws and regulations

- The Lacey Act amendment 2008, H.R.2419, Sec. 8204 Prevention of Illegal Logging Practices. [online]. Available at: http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf (the Food, Conservation, and Energy Act of 2008 expanded its protection to a broader range of plants and plant products).
- The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of the laws of a U.S. State or any foreign law that protects plants.
- Interim Final Rule Common Food Crop and Common Cultivar Definitions. Federal Register
- Implementation of Revised Lacey Act Provisions. [online]. Federal Register Vol.76, №126, 2011. Available at: http://www.aphis.usda.gov/plant_health/lacey_act/downloads/APHIS-2010-0129-0001.pdf (Advance Notice of Proposed Rulemaking).
- Implementation of Revised Lacey Act Provisions, 2011. [online]. Federal Register Vol.76, №30, 2011. Available at: http://www.aphis.usda.gov/plant_health/lacey_act/downloads/APHIS-2008-0119-0259.pdf
- Common Food Crops and Common Cultivars Definitions. [online]. Federal Register Vol.75, №149, 2010. Available at: http://www.aphis.usda.gov/plant_health/lacey_act/downloads/ProposedCC-Definition.pdf
- Implementation of Revised Lacey Act Provisions. [online]. Federal Register Federal Register Vol.74, №169, 2009. Available at: http://www.aphis.usda.gov/plant_health/lacey_act/downloads/2008-0119.pdf
- Implementation of Revised Lacey Act Provisions. [online]. Federal Register Vol.74, №21, 2009. Available at: http://www.aphis.usda.gov/plant_health/lacey_act/downloads/FederalRegister02-03-2009.pdf
- Implementation of Revised Lacey Act Provisions. [online]. Federal Register Vol.73, №196, 2008. Available at: http://www.aphis.usda.gov/plant_health/lacey_act/downloads/FederalRegisterNoticeLaceyActImplementationPlan.pdf

1.21.2. Legal authority

- United States Department of Agriculture
- Animal and Plant Health Inspection Service (APHIS)

1.21.3. Legally required documents or records

For imports:

- PPQ FORM 505: Plant and Plant Product Declaration Form
- PPQ FORM 505B: Plant and Plant Product Declaration Supplemental Form
- Schedule of Enforcement of the Plant and Plant Product Declaration
- Lacey Act Sample Form

1.21.4. Sources of information

Government sources

- Asner, M. and Ghilain, K. (2014). *The 2008 Lacey Act Amendments and the Fight Against Illegal Logging*. [online]. Web page of Bloomberg Bureau of National Affairs (BNA). Available at: <http://www.bna.com/the-2008-lacey-act-amendments-and-the-fight-against-illegal-logging/>
- Sheikh, P. A. (2012). *The Lacey Act: Compliance Issues Related to Importing Plants and Plant Products*. [online]. Congressional Research Service. Available at: http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/R42119_07242012.pdf
- US Department of Agriculture. (N.Y.). *Lacey Act: Frequently Asked Questions*. [online]. Available at: https://www.aphis.usda.gov/plant_health/lacey_act/downloads/Lacey-Act-Program-faq-11-23-2016.pdf

US Department of Justice. (2015). Mill Owner Pleads Guilty to Violating The Lacey Act With Purchases and Sales of Figured Maple from National Forest. [online]. Available at: <https://www.justice.gov/usao-wdwa/pr/mill-owner-pleads-guilty-violating-lacey-act-purchases-and-sales-figured-maple-national> Non-Government sources

- eia-global.org (2012). *Lacey Act has teeth: US gets serious about illegal logging – EIA*. [online]. Environmental Investigation Agency EIA. Available at: <http://eia-global.org/blog/lacey-act-has-teeth-us-gets-serious-about-illegal-logging>
- Gaworecki, M. (2016). *Mill owner in Washington gets prison time for trafficking in illegally harvested wood*. Mongabay. [online]. <https://news.mongabay.com/2016/04/mill-owner-washington-gets-jail-time-trafficking-illegally-harvested-wood/>

1.21.5. Risk determination

Overview of Legal Requirements

Under the Lacey Act, it is unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed, transported, or sold: 1) in violation of U.S. or Indian law, or 2) in interstate or foreign commerce involving any fish, wildlife, or plants taken possessed or sold in violation of State or foreign law. In 2008, the Lacey Act was amended to include a wider variety of prohibited plants and plant products, including products made from illegally logged woods, for import.

The Lacey Act prohibitions against illegal harvest, transport and trade can be prosecuted domestically in cases where covered timber and plants are illegally taken from Federal land, or illegally taken from State or private lands and then entered into interstate or foreign commerce. The Lacey Act also makes it unlawful to make or submit any false record or label with respect to any covered plant or plant product, including timber.

Cases of Lacey Act violations regarding domestic timber may include, but are not limited to, those involving the transportation, sale, receipt, acquisition or purchase of illegally taken plants, including timber. Illegally taken plants are those plants taken in violation of Federal, State or Tribal law, including State forest practice acts. Generally, Lacey Act violations are triggered when the illegally taken plants are entered into interstate or foreign commerce, or when such products are transported within or from Federal or Tribal lands. Therefore, if a tree is illegally harvested in a national park, Lacey Act charges may be brought against any person who exports, transports (even if the transport remains within the same Federal jurisdiction), sells, receives, or purchases that tree, timber from the tree, or any product thereof.

Although the Lacey Act requires an import declaration for plant and plant products being imported into the United States, it does not introduce any new documentation requirement for interstate transport of plants or plant products. However, if the product leaves the United States and is imported back at a later date, it would have to abide by the import requirements of the Act as well, including the declaration requirement.

Description of Risk

DECLARATION - Compliance with the declaration requirement is necessary to successfully import a timber product. It is currently unknown how well are people actually completing the declarations

DUE CARE - No comprehensive data on compliance levels available.

High profile Gibson Guitar Case - Even before the case was settled, the 2009 investigations of Gibson had a significant impact on sourcing practices within the music industry. Instrument makers essentially stopped buying Malagasy rosewood and ebony, which had been illegal to harvest in Madagascar since 2006, as a result of these visible enforcement actions. In addition, the spotlight the case placed on the illegal Malagasy rosewood and ebony trade also led to crackdowns in China on Chinese importers of this material.

The Amendments increasingly are leading companies to focus on monitoring their own supply chains and to adopt compliance programs to help ensure that their plant products come from legal sources.

Given the high profile nature of the Gibson Guitar Case, as well as the trade declaration requirement being mandatory, it is likely that there is a good level of knowledge of the Lacey Act requirements. Given the requirements are not proactive in the same way as those in Europe, it is also likely that levels of compliance are reasonably high for timber produced in the USA.

Regarding timber produced in the US, at least one case has been..... for the illegal harvest and trade of timber. The wood buyer and pled guilty to the charges and was sentenced to prison time and a fine of over US\$150 000.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.21.6. Risk designation and specification

Low risk

1.21.7. Control measures and verifiers

N/A

Annex I. Timber source types

The table **Timber Source Types in United States** identifies the different types of sources of timber it is possible to find in the country of origin.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- which forest types timber can be sourced from legally;
- what the legal requirements are for each source type, and
- if there are risks related to certain source types and not others.

Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- a) **Forest type** - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- b) **Spatial scale (Region/Area)** - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where that allows the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In case there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- c) **Legal land/forest classification** - refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail a number of different legal categories such as e.g. permanent production forest, farm land, protected areas, etc.
- d) **Ownership** - Ownership of land may differ in a country and could be state, private, communal etc. Ownership of land obviously have impacts on how land can be managed and controlled.
- e) **Management regime** - Independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- f) **License type** - Licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, harvest permit, community forestry permit etc.

TIMBER SOURCE TYPES IN UNITED STATES						
Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
	Nationwide	Production forest	State – public land	Harvest in accordance with contract, which conforms to the timber sale plans of the land management agency, which in turn conform to the agency's land management plans, and all in accord with governing statutes and regulations.*	Timber sale contract	<p>Forest on public land.</p> <p>The exact planning requirements vary by jurisdiction and managing agency.</p> <p>Also, some jurisdictions and agencies have different requirements for minor and subsistence harvests. These may require permits or notice.</p>
	Nationwide	Production forest	Private	Harvest with permission of land owner; in accordance with forest practices laws and any other laws that might apply (e.g., fire prevention); after any necessary planning submitted, permit obtained, or notice given to state.*	Permission of landowner plus state permit or notice given to state	<p>Private lands, in United States with forest practices laws</p> <p>States with forest practice laws are mostly in the western US. Requirements vary. In California, there must be a plan prepared by a licensed forester submitted and approved by the state. In Oregon, there is no plan or permit required, only a requirement for giving notice to the state.</p>

	Nationwide	Production forest	Private	No specific requirements; often voluntary best management practices for water quality (BMPs).*	Permission of landowner, perhaps with state notice or a permit	Private lands, in states without full forest practices acts but with some regulation.
	Nationwide	Production forest	Private	No specific requirements; often voluntary best management practices for water quality (BMPs).*	Permission of landowner	Private lands, states with no special forest harvest legislation

* *Harvests on all categories of land are subject to some federal regulations. For example, the Endangered Species Act prevents disturbance or harm to threatened or endangered species. The Clean Water Act regulates movement of soil (dredging and filling) in wetland areas.*



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This risk assessment has been developed with funding from FSC™. FSC is not otherwise associated with the project Supporting Legal Timber Trade. For risk assessment conducted according to the FSC-STD-40-005, ONLY entries (or information) that have been formally reviewed and approved by FSC and are marked as such (highlighted) can be considered conclusive and may be used by FSC candidate or certified companies in risk assessments and will meet the FSC standards without further verification. You can see the countries with approved risk assessment in the FSC document: FSC-PRO-60-002b V2-0 EN List of FSC-approved Controlled Wood documents 2015-11-04.

About

Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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