

Criterion 7

Legal, Institutional, and Economic Framework for Forest Conservation and Sustainable Management

What is this criterion and why is it important?

Criterion 7 of the Montréal Process Criteria and Indicators (MP C&I) addresses the social framework within which we manage forests for sustainability. Because of the challenges inherent in addressing this criterion, we have developed a different overall approach than that used for the other indicators. This approach is described in greater detail in the section immediately following the Criterion 7 indicator list presented below.

What has changed since 2003?

Our approach—The approach taken in 2003 treated each indicator separately, providing available data in the context of separate narratives. For the 2010 report we have use a more integrated approach, analyzing each indicator within the context of a common framework. This approach is described in detail in the section immediately following the Criterion 7 indicator table below.

The data—The data for Criterion 7 comes from a variety of sources and are addressed on an indicator-by-indicator basis in the indicator briefs.

The indicators—The 2010 Montréal Process indicators for Criterion 7 are unchanged relative to 2003. Addressing the legal, institutional, and economic dimensions of forest sustainability in general, and these indicators in particular, has proven to be a considerable challenge for all of the countries involved. To address this challenge, the Montréal Process Working Group completely revamped the Criterion 7 indicators for the next round of the reporting process, reducing the total number of indicators to 10 and greatly simplifying the language of each. As a result, this will be the last U.S. report to use the Criterion 7 indicators as they currently stand. The new set of indicators can be found in the latest addition of the MP C&I handbook (Montréal Process Working Group 2009).

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2003 Reference	2003 (and 2010) Indicator	Revision Action	2010 Reference
Extent to which the legal framework (laws, regulations, guidelines) supports the conservation and sustainable management of forests, including the extent to which it:			
48	—Clarifies property rights, provides for appropriate land tenure arrangements, recognizes customary and traditional rights of indigenous people, and provides a means of resolving property disputes by due process	No change	7.45
49	—Provides for periodic forest-related planning, assessment, and policy review that recognizes the range of forest values, including coordination with relevant sectors	No change	7.46
50	—Provides opportunities for public participation in public policy and decisionmaking related to forests and public access to information	No change	7.47
51	—Encourages best practice codes for forest management	No change	7.48
52	—Provides for the management of forests to conserve special environmental, cultural, social, and scientific values	No change	7.49
Extent to which the institutional framework supports the conservation and sustainable management of forests			
53	—Including the capacity to provide for public involvement activities and public education, awareness, and extension programs, and make available forest-related information	No change	7.50
54	—Including the capacity to undertake and implement periodic forest-related planning, assessment, and policy review, including cross-sectoral planning coordination	No change	7.51
55	—Including the capacity to develop and maintain human resource skills across relevant disciplines	No change	7.52
56	—Including the capacity to develop and maintain efficient physical infrastructure to facilitate the supply of forest products and services and to support forest management	No change	7.53
57	—Including the capacity to enforce laws, regulations, and guidelines	No change	7.54

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2003 Reference	2003 (and 2010) Indicator	Revision Action	2010 Reference
Extent to which the economic framework (economic policies and measures) supports the conservation and sustainable management of forests			
58	—Through investment and taxation policies and a regulatory environment that recognizes the long-term nature of investments and permits the flow of capital in and out of the forest sector in response to market signals, nonmarket economic valuations, and public policy decisions to meet long-term demands for forest products and services	No change	7.55
59	—Through investment and taxation policies and a regulatory environment that recognizes the long-term nature of investments and permits nondiscriminatory trade policies for forest products	No change	7.56
Capacity to measure and monitor changes in the conservation and sustainable management of forests			
60	—Including availability and extent of up-to-date data, statistics, and other information important to measuring or describing indicators	No change	7.57
61	—Including scope, frequency, and statistical reliability of forest inventories, assessments, monitoring and other relevant information	No change	7.58
62	—Including compatibility with other countries in measuring, monitoring, and reporting on indicators member countries	No change	7.59
Capacity to conduct and apply research and development aimed at improving forest management and delivery of forest goods and services			
63	—Including development of scientific understanding of forest ecosystem characteristics and functions	No change	7.60
64	—And development of methodologies to measure and integrate environmental and social costs and benefits into markets and public policies, and to reflect forest-related resource depletion or replenishment in national accounting systems	No change	7.61
65	—And new technologies and the capacity to assess the socioeconomic consequences associated with the introduction of new technologies	No change	7.62
66	—And enhancement of the ability to predict impacts of human intervention on forests	No change	7.63
67	—And the ability to predict impacts on forests of possible climate change	No change	7.64

An integrated approach to addressing Criterion 7**Overall strategy**

Efforts by the United States to address the components of Criterion 7 have been complicated by the lack of information sources to provide quantifiable data to establish baselines. Other Montréal Process Working Group Countries have had similar results with their efforts, resulting in the Working Group's current effort to revise the Criterion 7 indicators. Accordingly, this iteration of the U.S. report is an opportunity to bridge between past, current, and future indicators. To achieve this, we have drawn on the thorough Criterion 7 analysis performed for the *National Report on Sustainable Forests—2003* (Ellefson et al., 2005—see supporting data report for citations referenced in this section), and then developed a new Forest Policy and Governance Matrix as a means to classify the relevant policies and levels of governance addressed in Criterion 7. These two approaches combine the detailed data analyses and summaries from the 2003 report with a theory-based forest policy model to provide better inferences about the indicators.

The forest policy and governance matrix

To analyze the written or stated forest policy content of laws, regulations, and certification standards, we drew from theory and research on smart regulation (Gunningham, Grabosky, and Sinclair 1998), forest regulatory rigor (Cashore and McDermott

2004), analysis of policy instruments (Sterner 2003, Cubbage, Harou, and Sills 2007), and non-State governance in sustainable forestry (Cashore, Auld, and Newsom 2004). Based on this literature McGinley (2008) developed a model for analyzing the forest policy structure of government regulation and forest certification in Latin America. This structure was modified to analyze Criterion 7 indicators. A component was added to include the role of markets and market-based policy instruments in setting institutional policy, per Sterner (2003) and Cubbage, Harou, and Sills (2007). Scale of policy and program implementation was another consideration. The resulting two-sided classification schema became the matrix used to classify U.S. sustainable forest management institutions under Criterion 7 (table Criterion 7.1).

Using the matrix model

The first column of the model displayed in table Criterion 7-1, mechanism, identifies the means (that is, mandatory, voluntary) through which policies and programs are implemented. The second column denotes scale. The final four columns show the policy structure. Policy structure refers to the approach (prescriptive, process-based, performance-based, or private enterprise) that the policy employs. Each row in the mechanism column contains a code letter to add further detail to the approach columns, with the most prescriptive policies appearing in the upper left of the matrix and the most voluntary appearing

in the lower right. To some extent these are continuous scales, not categorical, but we used the categories to facilitate analysis and discussion.

The scale of the institutional responses—national (N), regional (R), State (S), or local (L)—is particularly relevant for Criterion 7 because wide variation exists among the 50 United States, not to mention the numerous local government jurisdictions. Furthermore, many U.S. approaches and institutions are actually determined by private markets, not government policies and programs. Finally, substantial variation exists in the level of compulsion (termed mechanism in the model), and the approach, by State, county or parish, and municipal Governments. The analysis formed by the policy and governance matrix, combined with the prior analyses performed for the 2003 report, provides the basis for the text summarizing each indicator. These will then be updated to analyze revisions in Criterion 7, and for assessing trends in a more systematic manner.

As illustrated in table Criterion 7-1, a *prescriptive policy* mandates a preventive action or prescribes an approved technology to be used in a specific situation. It generally allows little interpretation on part of the duty holder, offers administrative simplicity and ease of enforcement, and is most appropriate for problems where effective solutions are known and where alternative courses of action are undesirable.

A *process-based policy* identifies a particular process or series of steps to be followed in pursuit of a management goal. It typically promotes a more proactive, holistic approach than prescriptive-based policies.

Performance-based policy specifies the management outcome or level of performance that must be met, but does not prescribe the measures for attainment. It allows the duty holder to determine the means to comply, permits innovation, and accommodates changes in technology or organization.

Private enterprise relies on voluntary market exchange to allocate many of the forest resources in the world, both in private markets and for allocation of goods and services on public lands. Many new market-based conservation incentives are being developed as well.

Application

The summaries from the 2003 report and the Forest Policy and Governance Matrix are used as a framework to discuss each indicator in Criterion 7 and to make more general observations about the U.S. legal and institutional approach to sustainable forest management. The effectiveness of the MP C&I in achieving sustainable forest management does rely ultimately on normative measures about the effectiveness of policies and institutions. The proper framework can enhance the rigor and clarity of this discussion and analysis, help clarify gaps and weaknesses in our institutions, and identify opportunities for improvement in the pursuit of sustainable forest management. Note that the matrix and associated discussion are intended to summarize the institutional context, not to make policy recommendations. Other parts of this report and related subsequent implementation efforts, such as that by Sample et al. (2006), can provide appropriate means of considering policy responses.

Table Criterion 7-1. U.S. Forest Policy and Governance Matrix by Geographic Scale, Mechanism, and Approach (sample used for explanation).

Mechanism	Scale: National (N), Regional (R), State (S), Local (L)	Approach			
		Prescriptive	Process or Systems Based	Performance or Outcome Based	Private Enterprise

Nondiscretionary/mandatory^a

Informational/educational^b

Discretionary/voluntary^c

Fiscal/economic^d

Market based^e

^a Laws (L), Regulations or Rules (R), International Agreements (I), Government Ownership or Production (G).

^b Education (E), Technical Assistance (T), Research (R), Protection (P), Analysis and Planning (A).

^c Best Management Practices (B), Self-regulation (S).

^d Incentives (I), Subsidies (S), Taxes (T), Payments for Environmental Service (P).

^e Free enterprise, private market allocation of forest resources (M), or market based instruments and payments, including forest certification (C) wetland banks (W), cap-and-trade (T), conservation easement or transfer of development rights (E).