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Introduction

Two major shifts in institutional authority mark the current decade of environmental policy. First, numerous local, often watershed-based, multi-interest planning groups have sprung up and taken on governance roles traditionally reserved to governmental bodies. Second, major international movements to establish consistent worldwide standards for natural resource management have emerged in response to growing market and political demands for greater certainty in preserving forests, wildlife, biodiversity, and other environmental values. While several of the papers for this Colloquium discuss emerging local governance institutions, none address the parallel global developments. Since the two movements are related and interdependent, this paper tills in the picture by describing two major global environmental standard-setting efforts, one under the aegis of the Forest Stewardship Council and another through the framework of the International Standards Organization.

Global Environmental Standard-Setting Systems

The *Forest Stewardship Council* (FSC) was founded in 1993 as part of an effort to establish a global system for certifying that products come from properly managed forests. The generative force was the World Wide Fund for Nature (WWF), although it built up a multinational coalition of environmental groups, timber traders, indigenous peoples, foresters, and community forestry groups before formally launching the FSC. In a parallel effort, the WWF worked to organize "buyers groups" of retailers and other wood products purchasers to institutionalize demand for certified forest products. A comparable, hut less advanced effort is now underway for ocean resources.

The FSC performs two key functions. One is to establish on-the-ground standards that can he used to certify forests as well-managed anywhere in the world. Though developed by nationally based working groups, these standards must be approved by the FSC as a whole. The FSC's other function, which has proceeded in advance of the completion of actual standards, is to "certify the certifiers" of well-managed forests. Thus the FSC does not itself certify forests, but rather sets standards for, accredits, and monitors the work of independent certifiers (who must also he independent of the enterprises they evaluate). Products from certified forests are entitled to cany the FSC logo — a large check mark merging into the outline of a tree with the initials FSC below it.

The FSC's guiding principles are that forest management must he "environmentally appropriate, socially beneficial, and economically viable" (Forest Stewardship Council 1994). These are further defined to require compliance with all applicable national and international laws, clear and documented tenure and use rights, respect for indigenous peoples' rights, maintaining or enhancing long term social and economic well-being of forest workers and local communities, efficient economic operation, conservation of biological diversity and ecological integrity, detailed and updated management plans, and appropriate monitoring and assessment activities (Upton and Bass 1996). Voting power in the FSC's governing body, the General Assembly, is carefully distributed among "social, environmental, and commercial" chambers, each of which controls one-third of the total votes. Decisions are made by two-thirds vote (Upton and Bass 1996). Given this stmcture, making any decision requires building broad agreement among a wide array of stakeholders.

To establish on-the-ground management standards that (1) fulfill the FSC's governing principles, (2) win broad acceptance from its members, (3) cover the enormous variety of the world's tropical, temperate, and boreal forests, and (4) facilitate effective enforcement, is an extremely ambitious undertaking. Several aspects of the effort are especially noteworthy for policy scholars. First, it seeks to establish highly localized, yet globally consistent standards. Once set, they are likely to have a powerful influence on future debates in local and national forums, and effectively to link those debates. Second, the strength of the FSC rests on changing consumer demand, which in turn is tied to changing knowledge and values. Its prospects depend heavily on related efforts to create strong "buyers groups" and other mechanisms for institutionalizing green consumer demand, perhaps the most important current example of which is the "95 Plus Buyer's Group" in Britain (Knight 1996). Third, the FSC assumes that the ultimate effectiveness of its standards will be based on creating highly credible shared understandings about how to manage natural resources. The usual government legal and policy-making institutions have been largely irrelevant to formulating the FSC standards. Rather, the FSC assumes that effective standards are best crafted by a tailor-made, global, non-governmental organization combining stakeholder representation, activist commitment, and expertise. Again, however, some usual sources of expertise, academic foresters, have played little role in the FSC. One Ph.D. forester who is a central participant explained it as: "Academic foresters like to grow beards and walk around

in the woods. They don't have the stomach for tangling with difficult social and economic problems" (pers. comm. 1996). Another knowledgeable observer suggests two additional reasons, however: academic and professional foresters will be unable to control the definition of good forestry generated by the FSC process, and many are deeply committed to retaining site-specific decisional authority in professional foresters, rather than conceding it to rules (Dellert 1997).

If the FSC represents a new institutional system for global environmental standard-setting, the *International Standards Organization* (ISO) is both its most important predecessor and its competitor. Founded after World War II to develop consistent standards for internationally traded products, the ISO is a federation of over 100 nationally based standard-setting bodies, operating through a phalanx of technical committees, working groups, national technical advisory groups, and the like. Until the 1980s, the ISO focused largely on product design and engineering specifications. In the mid-1980s its focus expanded to include entire production cycles, as well as internal management systems for ensuring quality and consideration of environmental, health, safety, and other factors, through its "ISO 9000" series of standards.

The soon-to-be-adopted "ISO 14000" environmental standards focus almost entirely on management systems, requiring companies to "install a system" for setting environmental policy, defining environmental goals, meeting the goals in both day-to-day and emergency situations, monitoring progress, taking corrective actions, and *so on* (Auchincloss and Davis 1995). Like the FSC, the ISO 14000 system will rely on certifying companies, probably by third-party certifiers . Unlike the FSC, however, ISO 14000 involves few "on-the-ground" environmental standards beyond applicable laws, and has almost no role for indigenous or community participation (Hutchins 1996). On the whole, the ISO 14000 process enjoys more industrial and commercial favor than does the FSC, although many American business interests have resisted it and some European business interests, especially retailers, argue that the broader political legitimacy of the FSC and its more stringent standards are necessary to achieve truly effective and legitimate certification.

The FSC and ISO are the main, but not the only actors in the non-governmental sustainable forest certification movement. A number of organizations work through the ISO framework while maintaining a semiautonomous stance. The Canadian Pulp and Paper Association (CPPA) and the Canadian Standards Association (CSA; the Canadian national ISO organization), for example, have worked together to try to make ISO standards consistent with the interests of the Canadian timber industry. This is a delicate process, however, because the Canadian timber industry's dependency on export markets makes it very sensitive to foreign consumer movements. The risk that Canadian standards might be perceived as too industry-oriented has prompted discussions on the possibility of "harmonizing" CSA/CPPA and FSC standards. Conceivably, this could mean standards that require both man-

agement systems and monitored on-the-ground performance (Elliott and Hackman 1996).

Meanwhile, the American Forest and Paper Association (AF&PA), perhaps concerned that Canadian industry will go too far in accepting restrictive environmental standards, is jockeying with both the ISO and the FSC **for** control of the North American standard-setting agenda. Through its "Sustainable Forestry Initiative" the AF&PA has adopted a series of principles requiring its members to commit to management programs that ensure prompt reforestation, protect water quality, enhance wildlife habitat, minimize visual impacts of harvesting, contribute to biodiversity, improve wood utilization, "continue prudent use of chemicals," etc. (AF&PA 1994). Enforcement is through self-reporting; CEOs of member companies submit yearly reports that either affirm their companies have programs meeting the standards or explain why not and when they will. The initiative has led to **loss** of some members; reported numbers vary from 16 to 50, with approximately 200 remaining in the Association. There is no research on how much industry behavior has changed in response to the Initiative.

In sum, the AF&PA has staked out a system in which whole companies are the subject of environmental certification and the self-audited management systems are the method. This is an ISO-style program, but without required third-party auditing. Nor does it include FSC concerns with sustaining local employment, protecting indigenous rights, or ensuring broad involvement in standard-setting. The CSA/CPPA approach is similar to the AF&PA, but includes third-party auditing and certification of particular forestry operations, not just of whole companies. Given its sensitivity to international trade, the Canadian approach may also be more amenable to on-the-ground environmental performance standards. At the other end of the spectrum, the FSC system relies on site-specific performance criteria, including social responsibility and indigenous rights, and requires third party auditing by certified, independent auditors. FSC certification applies both to particular forestry operations and to forest products, and thus also requires "chain-of-custody" mechanisms through which wood products can be traced to their origins. The AF&PA vigorously resists this requirement on grounds that it favors countries with vertically integrated industries and discriminates against American producers, where 60 % or more of forest lands are held by small, nonindustrial owners.

Conclusion

How well these various standard-setting efforts fare depends not only on their ability to shape standards in the short term, but also on their long-term ability to "sell" those standards to international consumers and corporate customers seeking supplies that are not vulnerable to charges of being environmentally or socially defective. Backers of the FSC are betting that other standards will not have the caché to out-compete their product. Even if the FSC prevails, however, groups like the CSA and AF&PA are likely to play a role both in shap-

ing those standards (none of which are fmal at this writing), and in helping their constituents implement them through educational and outreach functions.

Meanwhile, future winners and losers will be determined in two processes. The obvious one is the concrete process of defining and enforcing the new standards. The other is the effort to stimulate sufficient consumer demand for certified products to catalyze effective worldwide regulation of forest management. If this effort succeeds, there will likely be many new winners (primarily forest workers, communities, and environmentalists) and a few new losers (primarily forest products firms whose profit margins depend on substandard practices). If it fails, the winners and losers are likely to be the usual suspects. But even here, much depends on how govemments relate to FSC standards over time. If they incorporate them into their regulations and enforce them, the FSC standards may achieve widespread implementation without fabulous growth in green consumer demand.

Acknowledgements

Endnote

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References

American Forest and Paper Association. 1994. *Sustainable Forestry: Principles and Implementation Guides.* Washington, D.C. 1994.

Auchincloss, S. and A.N. Davis. 1995. ISO 14000: An International Environmental Management Standard. *New York Environmental Compliance Update* 1(11).

Dellert L. 1997. Comment on Earlier Draft. January 7

Elliott, C. and A. Hackman. 1996. *Current* Issues *in Forest Certification in Canada.* Toronto: World Wildlife Fund.

Forest Stewardship Council. 1994. *Forest Stewardship Council Statutes.* Ratified September 1994. (http://antequera.antequera.com/FSC/1-1.html)

Hutchins, J.L. 1996. ISO 14000 environmental management systems—current developments. *Illinois Environmental* Law *Letter.* 5(6):22-26.

Knight, P. 1996. Forests for life. Ecolabel The mark of good management. *The Observer (London)* (September): 16.

Upton, C. and S. Bass. 1996. *The Forest Certification Handbook* Delray Beach, FL: St. Lucie Press.