

18. Extent to which the legal and institutional structure supports the sustainable management of forests

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18.1 Types of forest management standards by category

Standards – constitutional provisions, federal and state statutes, local ordinances, case law, policies, guidelines, international law, certification standards, and others – are the rules society has agreed to follow with respect to all of the various facets of sustainably managed forests. Whether voluntary or regulatory, a standard indicates there is a structure in place to guide an aspect of forestry, and that society places a value on the specific resource issues associated with the law, policy or guideline. Existence of a standard does not presuppose its efficacy under current conditions.

There are many laws and policies that govern forestry in Wisconsin. They normally address a specific, focused program or forestry related goal, but the body of all laws and policies should be comprehensive as a whole. Evaluating the legal and institutional structure in Wisconsin can determine if there are areas of sustainable forestry not being addressed. Gaps identified here can be used to corroborate needs identified elsewhere in this report. Ideally, and potentially in the future, the existing laws/policies will be analyzed to determine their effectiveness.

Data collected for this indicator, available separately as Table 18.1a - Summary of Legal and Institutional Structures, shows that Wisconsin has at least 250 legal and institutional structures developed over the past 100 years in response to the unique challenges presented by the history of forestry in Wisconsin. These include specific federal and state constitutional provisions, laws, administrative codes, handbook provisions, guidelines, as well as international standards and laws that address specific metrics related to sustainable forestry. These legal and institutional structures have had remarkable success in developing the sustainable forest resource from the Cutover period in the late 19th century to the vibrant economic, ecological and recreational resource that exists today. There are, however, ongoing and emerging challenges identified below that may not be adequately addressed.

Table 18.1a¹ includes nine categories that broadly address sustainable forestry: silviculture, water/soil, wildlife/biodiversity, land laws, tenure and use rights of indigenous peoples, public involvement and education, planning and assessment, conservation of special environmental values, and taxation and fiscal incentives. Many topics are addressed in several categories. The Council on Forestry's 'Wisconsin's Sustainability Framework,' determined these categories are a good, across the board representation of the types of criteria found in other national and international forestry assessments and certification standards for determining forest sustainability.

Each category in Table 18.1a is subdivided into two columns. The first column states if the specific legal or institutional structure is mandatory or voluntary. The second column notes if the Standard identified has an associated monitoring component. Presence of a monitoring component means there is some mechanism, either implicit or explicit, in place to verify or review the implementation of the Standard. In addition to the nine categories, Table 18.1a contains 80 individual columns for indicators used in this assessment. Each standard is ranked

¹ For complete table, please see end of Criterion 7.

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according to its relative impact on the indicator to which it is cross referenced if there is a correlation between the two. The numbering system in the table is as follows: 1=of high influence, 2=moderate influence and 3=some influence. Each of the identified standards and indicators in the data table could be expanded to consider thousands of code provisions, cases and policy interpretations, but the analysis was limited to a broad overview for practical reasons.

	Silviculture		Water/Soil		Wildlife / Biodiversity		Land/ Property Laws	
Statute:	Mandatory or Voluntary	Monitoring Component?	Mandatory or Voluntary	Monitoring Component?	Mandatory or Voluntary	Monitoring Component?	Mandatory or Voluntary	Monitoring Component?
WSS Ch. 77; Subch. VI Managed Forest Land	M	Y	V	Y	M	N	M	Y

	Criterion 6, Indicator 13 – Wood & Wood Products Consumption, Production and Trade	
Statute:	13.1 Value of wood related products	13.2 Production of Roundwood
WSS Ch. 71 Income and Franchise Taxes	3	3
WSS Ch. 77; Subch. I Taxation of Forest Croplands		2
WSS Ch. 77; Subch. VI Managed Forest Land		2
WSS Ch. 82 Town Highways	3	3

An overall analysis of the data provided in the Summary of Legal and Institutional Structures table helps identify issues that involve Wisconsin's legal and institutional structures. Applicable questions include:

- Is the issue currently a focus or concern for the general public or a widespread concern in the forestry and forest products communities?
- Does the issue have the potential to significantly affect all areas related to forestry?
- Is there a gap in current Standards or are the Standards not fully developed with relation to the identified issue?

Criterion 7: Legal and institutional framework for forest conservation and sustainable management

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Brief summaries of a dozen outstanding issues apparent in the analysis:

1) Bioenergy and Biomass

While both the Federal government and the Wisconsin legislature have taken initial steps to address the use of bioenergy/biofuels in the context of broader national and state energy plans, there is a gap in the availability of current legal and institutional structures. Biofuels and biomass continue to be a focus of concern with the general public and the forestry community (see Criterion 7, Indicator 19), and both have the potential to dramatically effect the ecological and economic landscape of forestry. The underlying authority for the administration and implementation of these standards needs to be clarified on the national and state levels. The jurisdiction to implement biofuel and biomass standards in Wisconsin is divided between the state Department of Commerce (DOC) and Department of Natural Resources (DNR), with overlapping jurisdiction from the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Public Service Commission (PSC). Without identifying Wisconsin's biofuels and biomass factors, the state may not be able to take full advantage of standards being developed on the national or international level. Another dimension of the biomass issue relates to the volume of wood waste going to Wisconsin landfills and structural changes to further restrict that practice.

2) Carbon Sequestration and Climate Change

While Table 18.1a identifies international standards related to carbon sequestration that are purely voluntary in the U.S., there will likely be movement on this issue based on the recent Environmental Protection Agency (EPA) decision to designate CO² as a threat to human health (May, 2009), Greenhouse gas reduction targets set by Governor Doyle's Global Warming Task Force (August, 2008) and the Midwest Governors Association's Energy and Climate Platform (December, 2008). Landowners in Wisconsin wanting to take advantage of ecosystem services including trading carbon offsets from forests are pushing for change, although the financial appeal of these offset markets could be lower than in other regions of the country (Brown et al, 2008)

Climate change mitigation options such as forest carbon offsetting are currently more developed and available than climate change adaptation measures. There is a great need for adaptation tools to assist in policy setting and decision making. Institutions such as the Wisconsin Climate Change Institute (WICCI) are facilitating the necessary synergy between the various science and governing bodies that can develop the necessary adaptation measures. Public land may play a predominate role in testing adaptation strategies. The Chequamegon Nicolet National Forest is evaluating how to minimize their own contribution to climate change and to offset actions of others. A model forest pilot project to research climate change effects on the forest and then develop management actions to adapt is being tested.

3) Wildfire Suppression and Emergency Response

Forest fire control is one of the earliest statutory mandates for DNR and its predecessor, the Wisconsin Conservation Department. As land use and technology change with time, however, so do demands related to fire control. In a Wildland Fire Management Program study that was initiated in 2009, recommendations for a number of issues were being formulated. The study included a fire risk assessment based on fire landscapes derived from Geographic Information

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System data (see Priority Landscapes and Issues section). An opportunity was identified to close the century-old Emergency Fire Warden program and replace it with a more effective Internet-based approach to burning permits. Other emerging issues that will call for change in institutional structures included expanded citation authority for Forest Rangers, stronger enforcement protocols for debris burning, a phase-out of burning barrels (being replaced by recycling programs), fire-related zoning regulations, and more.

4) Invasive Species

With the arrival of many invasive species harmful to forest health and sustainability, the general public and forestry community have responded with new standards aimed at addressing these threats (see Criterion 3). Overlapping jurisdiction, however, between the USDA Animal and Plant Health Inspection Service, U.S. Fish and Wildlife Service, the Wisconsin Department of Agriculture Trade and Consumer Protection, DNR and tribal governments on invasive species related to forest health, along with gaps in funding, may lead to a less than adequate landscape scale responses to these invasive threats.

5) Forest Tax Law and other Ecosystem Services Incentives

The Managed Forest Law (MFL) program combined with other private landowner grant and conservation easement programs advances sustainable forestry on private lands within the state. With over 44,000 orders of designation and 3 million acres, Wisconsin's MFL program is the strongest and largest private forestry incentive in the country. Controversy over property access, tax rates, revenue, use rights including leasing, contractual language and indigenous peoples' rights keeps the MFL program and other potential ecosystem services programs related to private forests in the forefront of the legislature and the minds of Wisconsin's citizens. Recent statutory changes prohibiting the recreational leasing of MFL lands "closed" to public access heightened some of these concerns. Additional pressure points include alleged unequal property tax impacts, perceptions regarding DNR inflexibility on mandatory timber harvests, applicability of best management practices for water quality and invasives, and allowing "green" uses or other structures with perceived public benefits (like wind turbines, solar arrays or radio towers) on MFL lands. There is also concern that existing private forestry standards are not coordinated to address overall landscape and forest fragmentation concerns (see Criterion 1).

6) Deer management

Managing the deer herd in Wisconsin carries with it tremendous economic, social, ecological and emotional considerations. Public disagreement after the 2008 season, including the State's management of the deer herd through the "earn a buck" program, highlights these concerns. Current deer population goals often result in deer population levels that negatively impact tree regeneration. Institutions external to the DNR, such as the Council on Forestry and the Wisconsin Conservation Congress, play an important role in keeping this issue in the forefront of the debate.

7) Certification

Wisconsin and neighboring Lakes States lead the rest of the country in adopting third-party forest certification standards such as SFI, FSC, Tree Farm, and others (see Criterion 6). Voluntary, broad commitments by the State of Wisconsin, Wisconsin County Forests and forest products industry to certification, place Wisconsin in a unique position to compete in the

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emerging certified products market. Realizing related social, economic and environmental benefits and expanding certification will rely on adaptive institutional structures in Wisconsin and at the federal level. (see Criterion 6).

8) Forest economy

One of the main links to sustainable forestry is the forest products industry. How the industry operates and the various economic and social benefits that accrue from a healthy forest products industry highlight the importance of somewhat “dispersed” standards, such as sales tax, building codes, recycling and waste management, transportation regulations etc. Studies of the logging sector also forewarn of serious problems that include an aging workforce, lack of young people interested in logging and absence of basic health benefits that could severely constrain future supply lines. Additionally, the rise of ecosystem services presents a new element to the forest marketplace. While some ecosystem services like carbon sequestration have been in the limelight, others like preventing soil erosion and providing critical wildlife habitats are challenging to value, and so have not been adequately addressed.

9) Tribal relations

In 2004, Wisconsin Governor Jim Doyle issued Executive Order #39, which recognized the sovereignty of 11 tribal governments in Wisconsin and the unique government-to-government relationship that exists between the State and the tribes. Tribal relations with other governments remain important to sustainability of Wisconsin’s forests. Wisconsin’s consultation requirements and the Federal trust responsibility through BIA and Indian Trust Lands demand ongoing attention. Additional issues surround treaty rights in the “Ceded Territory” (approximately the northern 1/3 of Wisconsin) and tribes’ desires to consolidate reservation lands and add to their overall land base, will continue to present opportunities and challenges as both the tribes and other governmental bodies cooperate within current standards. The rise of national and international forest certification standards that require that indigenous peoples rights be recognized and respected has also emphasized the importance of tribal considerations.

10) Funding to Acquire Public Lands and Easements

The Wisconsin Legislature created the Knowles-Nelson Stewardship Program (Stewardship) in 1989 to preserve valuable natural areas and wildlife habitat, protect water quality and fisheries, and expand opportunities for outdoor recreation. Originally funded at \$60 million per year, the program protected about 477,000 acres between its inception and 2007. In 2008, the Wisconsin Legislature reauthorized the Stewardship Program after intense debate for 2010-2020 at a level of \$86 million per year. Controversy will likely continue in respect to how to prioritize lands to protect, maximize partnerships with land trusts and local governments, and to coordinate with long-range land use plans. Other federal and local land acquisition programs will also probably stir discussion.

11) Forest-Based Recreation

Demand for new ATV trails in Wisconsin is but one example of competing user groups demanding more access to the state’s forest resources. In 2007, meetings to consider new ATV routes on the Northern Highlands-American Legion State Forest drew 750 to 800 people and thousands of written comments. Although the State Natural Resources Board ultimately decided not to endorse any new trails there, other sites are continuously recommended or changes are

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requested in types and width of vehicles permitted, fees, and related issues. The same sorts of questions come up regularly for bicyclists, hikers, horseback riders, campers, motorists and other user groups.

12) Land use planning

Land use planning standards are identified throughout the data in Table 18.1a. While several address either natural resource or forestry related issues as part of the standard, many are more broadly related to the overall balancing that each constituency consider to ensure that the public and private interests are being met. Land use planning affects all aspects of people’s lives, and many standards are interdependent of each other. Although these standards are interdependent, they are not always effectively coordinated to balance resource needs against other societal interests and goals. As well, many of the local standards are not known. “Community Forestry Surveys” is a model to collate other local standards. The survey, run by DNR and UW – Stevens Point, track and share urban forest ordinances.

18.2 Statewide or regional statutory forest advisory committees

18.3 Statewide or regional forest-related organizations

Forest advisory committees and organizations are critical components of sustainable forestry, now, and in the future. These groups are influential at both local and statewide scales as they can influence the course of legislation and other policy. Noting the committees and organizations that exist provides the opportunity to assess whether there are forest issues with no representative body.

Table 18.a: Statewide or Regional Statutory Forest Advisory Committees and Mission

Statewide or Regional Statutory Forest Advisory Committees	
Name of Committee	Purpose or Mission
Wisconsin Council on Forestry	The Wisconsin Council on Forestry was created to advise the governor, legislature, Department of Natural Resources, Department of Commerce, and other state agencies on a host of forestry issues in the state, including: <ul style="list-style-type: none"> - Protection of forests from fire, insects, and disease - The practice of sustainable forestry, as defined in s. 28.04 (1) (e) - Reforestation and forestry genetics - Management and protection of urban forests - Public knowledge and awareness of forestry issues - Forestry research - Economic development and employment in the forestry industry - Marketing and use of forest products - Legislation affecting management of Wisconsin's forest lands - Staffing and funding needs for forestry programs conducted by the state
Wisconsin Natural Resources Board	The Wisconsin Natural Resources Board (NR Board) sets policy for the Department of Natural Resources and exercises authority and responsibility in accordance with governing statutory provisions.

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<p>Wisconsin Urban Forestry Council</p>	<p>The purpose of the Wisconsin Urban Forestry Council is to advise the Wisconsin Department of Natural Resources on the best ways to preserve, protect, expand and improve Wisconsin's urban and community forest resources.</p> <p>The Council works to develop, implement, monitor and revise the state urban forestry plan. It also plans activities to further understanding, appreciation and practice of urban forestry in Wisconsin. The Council strives to assist all parties involved in urban forestry to coordinate activities with the ultimate goal of the betterment of the urban forests in Wisconsin.</p>
<p>State Forest Stewardship Coordinating Committee</p>	<p>The primary objective of the Wisconsin Forest Stewardship Program is to encourage non-industrial private forest landowners to consider all resources in the management of their forest lands. Secondary objectives are to:</p> <ul style="list-style-type: none"> - Encourage landowners to obtain a Forest Stewardship Plan to help meet their management objectives - Protect resources for future generations - Educate landowners and the general public on the importance of nonindustrial private (NIPF) lands.

There are four statutory forest advisory committees in the state (Table 18.a). Statutory is defined here as legislatively mandated. There are other advisory committees mandated by Natural Resource Rule or DNR Handbooks that include DNR representatives, tribes and stakeholders. These groups tend to be more specifically focused and cover a wide range of topics such as private lands management, BMP's for water quality, and Volunteer Fire Department wildfire assistance.

There are over 30 forest-related organizations represented in the state. Some of these are unique to Wisconsin (e.g. Wisconsin Family Forests) others are local units of a national group (e.g. The Nature Conservancy). As well, there are likely more than 30 organizations that don't have a forestry focused mission and yet without them, many forestry issues could not move forward. Often the use of forests is critical in achieving their mission (e.g. providing habitat for birds, or providing wooded trail riding experiences). Table 18.b lists some of these organizations in no priority order.

Table 18.b: Forestry organizations

Forestry Focused Organization	Forestry Partner Organization
Wisconsin Society of American Foresters	11 Native American Tribes
USDA Forest Products Lab and Northern Research Station	Great Lakes Indian Fish & Wildlife Commission
Forest Service (Region and Northeast Area)	Wisconsin Association of Land and Water Conservation Employees
Chequamegon Nicolet National Forest	Natural Resources Conservation Service

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Wisconsin County Forests Association	Fish and Wildlife Service
Greening Milwaukee	River County RC&D
Wisconsin Consulting Foresters	Golden Sands RC&D
Association of Consulting Foresters	Lumberjack RC&D
WI Arborist Association	Pri-Ru-Ta RC&D
Lake States Lumber Association	Glacierland RC&D
WI Paper Council	Southwest Badger RC&D
Great Lakes Timber Professionals Association	CLUE - UW Stevens Point
UW- Madison, Dept of Wildlife and Forest Ecology; UW – Steven’s Point, Dept of Natural Resources	WI Builders Association
Forest Industry Safety and Training Alliance, Inc.	Wisconsin State AFL-CIO
WI Nursery Association	Log Homes Builders Association
WI Family Forests	1000 Friends of WI
WI Tree Farm Committee	Gathering Waters
Great Lakes Forest Alliance	Izaak Walton League
Living Forest Cooperative	John Muir Chapter Sierra Club
Kickapoo Woods Cooperative	The Audubon Society - Madison
Hiawatha Sustainable Woods Cooperative	WI Assoc of Lakes
Partners in Forestry	National Wild Turkey Federation
Washington Island Timber Cooperative	Ruffed Grouse Society
Dovetail Partners	Wisconsin Deer Hunter Association
The Nature Conservancy	Whitetails Unlimited
Trees For Tomorrow	Wisconsin Trout Unlimited
Wisconsin Woodland Owners Association	WI Wildlife Federation
Walnut Council	Sigurd Olson Environmental Institute
Forest Products Society	UW-Extension (Basin Educators)
Aldo Leopold Foundation	Regional Planning Commissions
Forest Guild	Wisconsin Conservation Congress
	Wisconsin State Trails Council
Source: Organizations listed	

As internet access increases and web development services are more accessible and affordable, many citizen based organizations have greatly expanded their capacity to conduct outreach around the state and educate their members remotely. Forest-related organizations serve an important role in coalescing groups of individuals around topics of concern and bringing these forward for a public discussion. Whether they serve as watch-dog groups or advocate for a specific purpose, active groups keep forest issues in the public eye and provide a venue for the public to express their forest values.

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Statutorily created forest advisory committees play an important role in supporting the advancement of forest issues, often to the level of new legislation. The advisory committees are made up of representatives from a range of the forest-related organizations. These committees are tasked with advising government agencies and other law makers on what the public wants. At this level, many issues require collaborative solutions but can break down when groups pursue their own agenda rather than seeking consensus.