

**Assessing risk of purchasing wood harvested in violation of traditional or civil rights
- Complying with the Annex 2 of the FSC Controlled Wood Standard FSC-STD-40-
005 for wood sourced in the United States**

Draft for Public Comment

Prepared for FSC-US by Gary Dodge and Phil Guillery

SUMMARY

This guidance paper was developed to help FSC certificate holders and other stakeholders in the U.S. understand the goals and methods of compliance with the new Controlled Wood Standard (FSC-STD-40-005). This paper addresses assessing the risk of inclusion of wood harvested in violation of traditional and civil rights and making risk assessments regarding these types of wood sources.

This paper is divided up into two sections.

1. The Introduction provides the interpretation of the goals of the standard and an overview of how risk can be assessed.
2. The second section provides guidance and tools for determining levels of risk associated with forest conversion.

The second section is divided into two parts: 1) the Criterion, as written in the standard; 2) the Essentials, a summary of the important components of the section.

1. INTRODUCTION

The FSC Controlled Wood standard is an international measure to ensure that wood used by an FSC-certified company does not include unwanted wood sources. From a perspective addressing issues surrounding the use of wood harvested in violation of traditional or civil rights, FSC certification ensures that the controlled components of a product avoids the use of wood from forest stands that violate these rights.

Compliance with the Standard is done by risk assessment. Wood that comes from areas where there is respect for traditional and civil rights in forest management can be designated as “low risk”. Wood that comes from areas where there is a lack of evidence in support of the indicators, then the areas are considered to be “high risk” and certificate holders must develop a verification program to demonstrate that their wood sources are “low risk”. This is accomplished by verifying that any harvests in a “high risk” area are from areas where there are no conflicts relating to land tenure or land use rights of traditional or indigenous peoples groups in the forest management units, and that there is no evidence of violation of International Labor Office Fundamental Principles and Rights at Work in the forest management unit nor of the International Labor Office Convention on Indigenous and Tribal Peoples. Details can be found in Annex 3 of FSC-STD-40-005.

FSC defines civil rights as “those rights that every person in a society has” and traditional rights as “those rights that result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of law”. In the U.S., there is a long history of efforts to assure civil rights to all members of society and violation of such rights can be successfully adjudicated within every state or district of origin in the U.S. Traditional rights are also well respected within the U.S. context with most traditional rights, as defined by FSC, often obtain the force of law through the common law system. FSC assumes that any risk determination will be based on an understanding of the global perspective of the level of significance around traditional and civil rights in determining what risk is acceptable and what is not.

2. DETERMINING RISK OF WOOD HARVESTED IN VIOLATION OF TRADITIONAL OR CIVIL RIGHTS IN FSC-LABELED PRODUCTS

The Standard:

Criterion 2. The district of origin may be considered low risk in relation to the violation of traditional and civil rights when all the following indicators are present:

- a) There is no UN Security Council ban on timber exports from the country concerned.
- b) The country or district is not designated a source of conflict timber (e.g., USAID Type 1 conflict timber).
- c) There is no evidence of child labor or violation of ILO Fundamental Principles and Rights at work taking place in forest areas in the district concerned.
- d) There is recognized and equitable processes in place to resolve conflicts of substantial magnitude pertaining to traditional rights including use rights, cultural interests or traditional cultural identity in the district concerned.
- e) This is evidence of no violation of the ILO Convention 169 taking place in the forest area in the district concerned.

The Essentials:

The COC certificate holder must demonstrate that they are avoiding the use of wood harvested in violation of traditional or civil rights. This is accomplished by demonstrating that the U.S. and the district of origin can be considered low risk for each of the criterion’s indicators.

In the U.S. there is no UN Security Council ban on timber exports, the country is not designated as a source of conflict timber, child labor does not occur systematically, and ILO Fundamental Principles and rights at work are respected. In addition, the U.S. has recognized and equitable processes in place to resolve conflicts of substantial magnitude pertaining to traditional rights including use rights, cultural interests or traditional cultural identity.

Background:

Determination of risk should be based on evidence that the wood does not originate from areas where there is a UN Security Council ban, where conflict timber is an issue, where there is evidence of prolific child or slave labor, where there is no equitable process of conflict resolution for issues surrounding traditional and cultural rights, and where there is no evidence of systematic violation of indigenous customary rights (as in ILO Convention 169).

As in legality, the determination of risk is subjective and contingent upon a global perspective of the issues in order to make a judgment based on the relative risk of these issues and their impacts on local culture and society. A key component of determining risk in the Criterion is assessing if a country or region has structures and processes for resolving traditional and cultural rights that are accepted by indigenous peoples, workers, communities and government.

In the U.S., Federal and State policies govern the harvest of wood from traditional use areas on state and federal lands, and the indigenous people govern harvest from their lands. In addition, Native Americans have an equitable process to resolve conflicts over land management within lands under treaty with the U.S. government. Through the U.S. court system, many Native American tribes have challenged, won decisions, and resolved issues concerning land management and use rights. There are many examples within the U.S. where tribes have successfully been able to exercise treaty rights through formal and informal conflict resolutions systems. In addition, Native American Tribes with a land base are recognized as Sovereign Nations and accorded rights to manage their land and affairs through treaties with the U.S. government.