Are All Forest Certification Systems Equal?

An Opinion on Indigenous Engagement in the Forest Stewardship Council and the Sustainable Forestry Initiative

By

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INTRODUCTION

Forest certification is a private, non-governmental, market-based mechanism voluntarily adopted by a forest company and audited by an independent third party against a set of forest management standards. Certification to these standards results in the company receiving an eco-label that is used on its products to indicate to consumers that the product they are purchasing was harvested from a sustainably managed forest.

Aboriginal[1] peoples in Canada are engaging in the growing and rapidly changing global forest industry. Forest certification is a tool that has helped and, for some, hindered this engagement (Collier et al. 2002). Why should Indigenous communities pay attention to forest certification? And why should they critically evaluate the certification systems in use on their traditional territories?

> *Why should Indigenous peoples critically evaluate the forest certification systems in use on their traditional lands?*

Indigenous communities have various reasons for engaging with certification systems, whether it be as land users and rights holders, as governments or as business owners. Through land use, Indigenous peoples exercise their rights (Aboriginal and treaty rights) based on historic land use and occupancy. As land users, Indigenous peoples are concerned about access and protection of sites of cultural significance, including hunting and fishing grounds, food gathering places and sacred sites. As Indigenous governments, communities enter into negotiations and government-to-government agreements to protect their rights through sustainable resource management. They pursue economic development, negotiate with companies and enter into treaties, protocols and co-management agreements with other governments. Indigenous business owners and contractors are interested in gaining access to markets, developing new markets for value-added forest products, carrying out sustainable forest management operations and maintaining accountability within their communities.

This discussion paper, written with the interests of Indigenous forest businesses and the rights of Indigenous peoples in mind, provides a closer look at the evolution of two forest certification systems—the Forest Stewardship Council (FSC) and the Sustainable Forestry Initiative (SFI)[2]—focusing on their relationships with Indigenous peoples. Why? Because forest certification is becoming increasingly significant in both the marketplace and government policy, and Indigenous peoples must determine for themselves the most

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[1] Aboriginal peoples, as defined in Canada's Constitution Act, 1982, includes Indian, Inuit and Métis. Indigenous is a term used at the international level, but is becoming much more widely used in Canada. We use the term Aboriginal or Indigenous to be inclusive. We use the term First Nations (defined as "Bands" under the Indian Act) if the issue is specific to them.

[2] Although there are three forest certification systems in Canada, including the Canadian Standards Association Z808-809 standard, we have chosen to restrict our comparison to the two systems with the largest forest area certified.

appropriate certification system for their needs. The aim of this paper is to encourage all potential and existing Indigenous participants in forest management to critically evaluate these systems and to suggest ways to improve each system's response to Indigenous rights and interests.

The information presented in this paper is not original research. In other words, no new interviews were conducted or primary data collected. The authors have gathered publicly available documents from each certification system, including documented perspectives shared during numerous Indigenous forestry conferences and meetings hosted by the National Aboriginal Forestry Association (NAFA) focused on forest certification. This paper does not represent an exhaustive search, nor does it claim to represent the points of view of all Indigenous people involved in or considering involvement in forest certification.

Several criteria of importance to Indigenous peoples will be explored comparing FSC and SFI. These criteria are:

- **History of Indigenous engagement**: How has each certification system involved Indigenous peoples and how has their engagement evolved over time?

- **Recognition of Indigenous rights**: Do the certification standards acknowledge Indigenous rights and provide adequate guidance for how to protect those rights in forest management?

- **Institutional capital**: Are the mechanisms for engagement of Indigenous Peoples effective?

- **Audit effectiveness**: Do the certification system's audits provide for an adequate assessment of meeting Indigenous involvement requirements in the standard? Are the audits transparent? Is there an effective dispute resolution process when Indigenous peoples feel a certificate holder has not effectively addressed the standards?

- **Cost of certification**: Is the cost of certifying a barrier to the certification of Indigenous-owned forestry businesses? Are there mechanisms available to Indigenous forest companies who may not be able to afford certification?

Brief History of Certification

One outcome of the United Nations Conference on the Environment and Development in Rio in 1992 was a Statement of Forest Principles that formed the basis for international discussions among nation states about the meaning of "sustainable forest management" (SFM). Among those principles was the recognition of Indigenous peoples' rights. The principle stated:

National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for the sustainable management of forests.[3]

With this international commitment, Indigenous rights began to be seen by nation states, including Canada, as an essential component of SFM.

While nation states carried on international discussions to come to agreement about the meaning of SFM, citizens were expressing concern about the pace of change of government regulations to ensure SFM. For example, Cashore

> *Indigenous rights are an essential component of sustainable forest management.*

et al.[4] described the origins of forest certification with bagpipe craftsman Hubert Kwisthout, who faced a moral dilemma that the wood he was using for his instruments was coming from tropical rainforests where logging practices were often illegal or environmentally degrading. After setting up a trading company to ensure his wood was coming from sustainably managed areas, he realized that he would need to have some form of verification of his sources. The idea of setting up independent, non-governmental standards that companies would voluntarily follow and whose practices would then be third-party audited became the core of the first forest certification system in the world—the Forest Stewardship Council (FSC) formed at a founding meeting in Toronto in 1993.

FSC developed a set of standards based on ten principles and criteria that embraced social, economic and environmental aspects of forest management. FSC responded to Indigenous people's concerns and followed international commitments to recognize Indigenous rights in forest management by including Principle 3, Indigenous Peoples' Rights. FSC developed regional structures, usually country-based, that adapted the international standards to their region. The FSC Canada National Working Group was formed in 1996. Between 1998–2004, four different regional standards in Canada were developed—the British Columbia standard in 2005, the Maritime Standard in 2008, the Boreal Standard in 2004 and the Great Lakes-St. Lawrence Draft Standard first drafted in 2002 with a draft 4 submitted to FSC International in 2011. In 2015 FSC revised their principles and criteria and is now going through a worldwide process to bring their regional standards in line with the new principles.

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[3] Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, United Nations http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm.

[4] Cashore, B. G. Auld and D. Newsom. 2004. Governing Through Markets: Forest Certification and the Emergence of Non-State Authority. Yale University Press, New Haven and London.

Immediately following the founding of FSC, private sector companies expressed concern that FSC's standards were too stringent and therefore unachievable. Soon organizations representing industrial interests coordinated efforts to develop competing standards. In Canada, the Pulp and Paper Association of Canada (the Forest Products Association of Canada as of 2001), worked with the Canadian Standards Association to convene a multi-stakeholder group to develop the CAN/CSA-Z809-08 (R2013) Sustainable Forest Management Standard, first published in 1996 and currently in its third version. In the United States, the American Forest and Paper Association, representing the world's largest forest companies, launched the Sustainable Forestry Initiative (SFI). The SFI national standard was completed in 1998. The standards are now administered by SFI Inc., an independent, non-profit organization.

In North America, there are three competing forest certification systems—FSC, SFI and, in Canada only, CSA. When certification began in the early 1990s, some thought it was a passing fad, but time has shown that while systems may come and go, the system of forest certification is here to stay. Recognizing this permanence, in 2002 the Forest Products Association of Canada made the commitment that all of its member companies would be certified to one system or another, with some companies achieving certification under all three systems. As of the end of 2016, Canada had 168 million hectares of certified forest land. That represents 37% of all certified forests worldwide, the largest area of third-party-certified forests in any country.

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FSC Background

FSC was established to prevent deforestation globally, with an initial focus on tropical forests. FSC's mission is to "promote environmentally sound, socially beneficial and economically prosperous management of the world's forests". FSC's vision is that "we can meet our current needs for forest products without compromising the health of the world's forests for future generations." The intention of FSC founders was to assist timber producers in avoiding environmental boycotts and meeting consumer demands for wood products created from timber grown in an environmentally and socially sound way. Over time, however, it was the large forest companies in North America rather than those in tropical forests who were more likely to pursue and achieve FSC certification.

The first FSC Secretariat office was opened in Oaxaca, Mexico in 1994, relocating to Bonn, Germany in 2003. FSC is a membership-based organization, including both individuals and organizations, with over 800 members from a

> *FSC states that "the organization is structured so that every member has an equal say in shaping its work."*

range of interested parties, including environmental non-governmental organizations, community-based groups, private companies, Indigenous peoples and educational institutions. Members apply to belong to one of three "chambers"—economic, environmental and social—each with a north and south representative appointment to the Board of Directors. Decision making occurs at three levels: general assemblies, the Board of Directors and the Executive Director. FSC states that "the organization is structured so that every member has an equal say in shaping its work."[5]

As of 2014, FSC is a self-funding organization. By the end of 2015, FSC International had a budget of approximately 31 million Euros, mostly derived from annual administration fees levied on all certificates. Additional funding is secured through donations and membership fees.

FSC's standards are based on its principles and criteria (P&Cs). Its original P&Cs, developed in 1994 and amended several times, were replaced by a new set of P&Cs approved in 2014 (Appendix A)[6] and a new set of International Generic Indicators (IGIs) was completed in 2015.[7]

SFI Background

Shortly after FSC's founding in 1993, the American Forest and Paper Association (AF&PA) began to develop its own set of forest management standards under its Sustainable Forestry Initiative (SFI). In 1996 the AF&PA required its 250 members to abide by SFI Principles and Implementation Guidelines[8], but without a requirement for third party auditing. In 1998, after facing criticism from environmental groups, SFI introduced third party auditing. The AF&PA became a member of the Programme for the Endorsement of Forest Certification (PEFC), based in Europe, that had developed a mutual recognition program. To address its lack of a chain-of-custody method (ensuring any product can be traced back to a sustainably managed forest), SFI in 2002 instituted verification of procurement procedures.

SFI became independent from the AF&PA in 2007 with the establishment of SFI Inc., a non-profit, registered charitable organization. It has since attempted to support itself financially. SFI Inc. has moved away from receiving funding from commercial interests, now generating 90% of its funding from program participants and 10% from annual conference revenues, service agreements, income investments and miscellaneous sources (p. 60).[9]

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[5] FSC International. 2015. Become an FSC Member. https://ic.fsc.org/become-a-member.63.htm.

[6] FSC International. 2014. FSC Principles and Criteria for Forest Stewardship. FSC-STD-01-001 V5-1 EN. https://ic.fsc.org/the-revised-pc.191.htm. Each principle has a number of criteria that provide further direction to the Organization.

[7] FSC International. 2015. International Generic. FSC-STD-60-004 V1-0 EN. http://igi.fsc.org/approved-documents.60.htm.

[8] Cashore et al., ibid, p. 102-121.

[9] SFI. 2017. Forests: A Way of Life: 2017 SFI Progress Report. http://www.sfiprogram.org/files/pdf/2017-sfi-progress-report/.

In terms of governance, the AF&PA SFI initiative went from a member-dominated board in 1993 to an interest-based structure in 2002 with economic, social and environmental sectors with six members in each sector. The 18-member voluntary Board assumes full responsibility for the SFI program, including the setting and implementation of the

> *In 2012, the first Indigenous representative was elected to the SFI Board as a representative of the economic sector.*

forest certification standard. The environmental sector includes non-profit environmental or conservation organizations; the social sector includes community or social interest groups such as universities, labor, family forest owners or government agencies; and the economic sector includes the forest, paper and wood products industry or other for-profit forest ownership or management entities.[10] In 2012, the first Indigenous representative was elected to the SFI Board: Chief David Walkem, President of Stuwix Resources Joint Venture, joined the economic sector.

SFI originally had one standard that was used for all SFI-certified land in North America that was revised every five years (Appendix B). With the latest revisions for 2015–2019, SFI now has three stand-alone standards: one on forest management, another on fiber sourcing, and one on chain-of-custody.[11] To broaden its reach and credibility, SFI established a volunteer External Review Panel to help with continual improvement of its program and monitor the SFI Standard review process. As well, SFI extends its reach through 35 SFI Implementation Committees. Promoted as a "unique grassroots network" involving "private landowners, independent loggers, forestry professionals, local government agencies, academics, scientists, and conservationists",[12] the Implementation Committees help with promoting the SFI program.

REVIEWING FSC AND SFI

The focus of this opinion paper is the review of two forest certification systems—FSC and SFI—against important social criteria the authors have deemed important considerations for Indigenous people participating, or exploring options, in forest certification schemes. Appendix C provides a summary of important discussion points presented in detail in the next section.

The review criteria should be considered in two contexts: 1) Indigenous community interests, particularly the protection of Indigenous rights, and 2) Indigenous-owned forest businesses. The Recognition of Indigenous Rights criterion covered below will be of interest to both

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[10] SFI. n.d. SFI Board members. http://www.sfiprogram.org/about-us/sfi-governance/sfi-board-members/
[11] SFI. 2015. SFI works to ensure the health and future of our forests with the launch of the new SFI 2015-2019 standards and rules. http://www.sfiprogram.org/files/pdf/sfi-2015-2019-standards-and-rules-at-a-glance/.
[12] SFI. n.d. SFI Implementation Committees. http://www.sfiprogram.org/community-conservation/sfi-implementation-committees/.

groups, while the financial Costs of Certification would be of more interest to an Indigenous forest business considering certification.

Indigenous Business Involvement in Certification

Although this report does not cover Indigenous business involvement in the forest sector in detail, it is worth noting the reasons why an Indigenous business would pay attention to certification schemes. With changes in forest tenure and land claim and treaty settlements, there is an increasing number of Indigenous forest businesses in Canada.[13] These businesses operate within the established forest sector regulatory framework and are thus subject to the same market forces as large, multinational forest companies to which they supply wood. Certification holds the promise of improving market access, of providing higher prices for certified wood, of improving forest management practices, and of delivering a social license to a company to harvest wood. For those businesses supplying wood to larger companies that are certified, certification systems require a Chain of Custody certificate from all suppliers along the supply chain, including those doing the timber harvesting and providing forest management services. Table 4 shows the Indigenous-owned businesses in Canada and the United States certified to either FSC or SFI.

Table 1: Indigenous businesses and certification involvement

System	Canada	United States
FSC	Pictou Landing First Nation, NS, 2000 Eel Ground First Nation, NB, 2005 Mistik Management Ltd, SK, 2007, 2012 Taan Forest, Haida, BC, 2011	Menominee Tribal Enterprises, WS, 1996 Hoopa Valley Tribe, CA, 1999, CA Confederated Tribes of Warm Springs, OR, 2003 White Mountain Apache Tribe, AZ, 2004 Coquille Indian Tribe, OR, 2011
SFI	Capacity Forest Management Ltd, BC, 2010 (9 First Nations) Miitigoog Limited Partner, ON, 2010 (7 First Nations) Montreal Lake Business Ventures Ltd. (Montreal Lake Cree Nation), SK, 2014 Obishikookaang Resources Corporation (Lac Seul First Nation), ON, 2017 Stuwix Resources Joint Venture, BC, 2011 (8 First Nations)	Hancock Forest Management (Muckleshoot Tribe), WA, 2015 Yakama Nation, WA, 2013

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[13] NAFA has been tracking the number and type of Aboriginal-held forest tenures in Canada, since its first report in 2003. The third report was published in 2015. See http://www.nafaforestry.org/pdf/2015/First%20Nation-Held%20Forest%20Tenure%20Report%202015.pdf.

History of Indigenous Engagement

How has each certification system involved Indigenous peoples and how has their engagement evolved over time?

Table 2: History of Indigenous engagement

Criteria	FSC	SFI
History of Indigenous Engagement[14]	FSC Canada established an additional fourth chamber, the Aboriginal Chamber, in 1993[15]	In 2008, SFI partnered with Habitat for Humanities with one of their goals being to "encourage collaborative solutions to support Indigenous housing in Canada."[16] In 2012, the president of an Indigenous-owned forest company was appointed to the Economic Sector of the BoD May 2014 SFI partnered with Canadian Council of Aboriginal Business (CCAB) Progressive Aboriginal Relations (PAR) program—a verification program—to complement objectives related to Indigenous peoples' engagement

Decisions made in the FSC must be approved by the chambers, and each chamber has equal voting and veto power. Indigenous Peoples are members of the Social Chamber internationally, and within Canada may also choose to be members of the Aboriginal Chamber. FSC Canada has supported the establishment of an international committee to address Indigenous rights in land management. This group, known as the Permanent Indigenous Peoples Committee (PIPC), held its first meeting in October 2013 as a result of Motion 19, spearheaded by the Canadian Aboriginal Chamber and passed at the FSC Annual General Assembly in 2011.

The Aboriginal Chamber represents Indigenous rights and interests in forest management with equal voting and veto power as the other chambers. This was supported by ENGOs such as Greenpeace and the World Wildlife Fund that also aim to improve standards of living and enforce fairness and equality for communities over large organizations in developed and developing nations. The FSC made it a point to ensure that Indigenous voices were heard throughout the development and implementation of its standards.

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[14] Table 6 in Appendix I is a summary of all of comparison criteria addressed in this paper.

[15] Canada was the only FSC National Working Group to have an Aboriginal Chamber, in addition to the Economic, Social and Environmental Chambers, until 2001 when the New Zealand Working Group was established with an Indigenous Chamber.

[16] See SFI, Habitat for Humanities http://www.sfiprogram.org/community/habitat-for-humanity/

FSC Canada supports Indigenous working groups, workshops and a full-time Coordinator of Aboriginal Initiatives. Internationally, FSC has also been active in addressing Indigenous rights in regions such as Indonesia and New Zealand and promotes the use of traditional ecological knowledge (TEK) in forest management and wildlife conservation (e.g. protection of the Amur

> *FSC Canada created a fourth chamber, the Aboriginal Chamber, that represents Indigenous rights and interests in forest management with the equal voting and veto power as the other chambers.*

tiger in Russia and the rights of traditional Taiga Indigenous people and the Saami reindeer herders in Russia and Scandinavia). These voices are heard at the international level through the Social Chamber, as well as the Environmental and Economic chambers. Workers' rights, cultural protection, animal habitat, protection and monitoring are issues of importance to these chambers and all relate to Indigenous rights in forest land management.

SFI is more focused on industry with few initiatives to include Indigenous communities in a meaningful way as distinct peoples with a particular and unique set of rights. In the SFI system, Indigenous peoples fall under the category of stakeholders with a limited window to voice their opinions in management planning. Stakeholder input can be collected during an 18-month public review process with two public comment periods. Ultimately, this input must be approved by the board of directors who have the ultimate say in whether or not the stakeholder input is incorporated. Often times, smaller actions are done to appease Indigenous communities and organizations, environmental organizations or communities, but such actions have no real impact on incorporating rights and desires into management planning or standards development.

SFI supports a number of Indigenous-run forestry operations. There are currently seven Indigenous operations with SFI certification.[17] SFI also has Indigenous representation on its board that has business ties with SFI. Because of industrial influence and less strict standards and policies, Indigenous people have less voice and support when addressing concerns about their rights or recommending alternatives to current management practices.

Recognition of Indigenous Rights

Do the certification standards acknowledge Indigenous rights and provide adequate guidance for how to protect those rights in forest management?

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[17] SFI. n.d. Indigenous Communities. http://www.sfiprogram.org/community-conservation/indigenous-communities/

Table 3: Recognition of Indigenous rights

Criteria	FSC	SFI
Recognition of Indigenous Rights in Standards	On ALL lands: Principle 3, Indigenous Peoples' Rights - The organization shall identify and uphold Indigenous peoples legal and customary rights of ownership, use and management of land, territories and resources affected by management activities 1994–)	On PUBLIC Lands: Prior to 2015, SFI Standards included provisions for Indigenous peoples' rights to be addressed in company policy as part of management on public lands. Private lands were not subject to these performance measures.
	Includes free, prior and informed consent, as stipulated in UNDRIP, as an integral part of recognizing the rights of Indigenous peoples (2014)	Objective 11, Legal and Regulatory Compliance: Performance Measure 11.2—requirement for written policy addressing local social laws, including IP rights (2005)
	P3 also includes provisions for: • Developing mutually agreed to culturally appropriate engagement process for determining and documenting rights • addressing affected rights of Indigenous people both within and outside of the management unit • engagement at both strategic and operational planning levels • modifying management activities when rights will be affected • support for capacity to participate • upholding rights • correction, mitigation or compensation when rights are infringed • application of UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169	Objective 18, Public Land Management Responsibilities: PM 18.2—program participants to confer with affected Indigenous peoples (2010) On ALL Lands: SFI recognizes and claims to adopt the principles outlined in UNDRIP but makes no specific mention of any of the articles in UNDRIP or how they might be applied, including FPIC P 11, Community Involvement and Social Responsibility— To broaden the practice of sustainable forestry on all lands through community involvement, socially responsible practices, and through *recognition and respect of Indigenous Peoples' rights and traditional forest-related knowledge* (2015)

Criteria	FSC	SFI

	• protection of sites of special cultural, ecological, economic, religious or spiritual significance
	• monitoring by Indigenous peoples
	• protection of and compensation for traditional knowledge and intellectual property
	• dispute resolution
	
	P3 indicators require specific actions, such as binding agreements, on the part of "Organizations"
	
	FSC releases Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (2012)
		Performance measures are limited to policy and communication, rather than specific actions
		
		Objective 8, Recognize and Respect Indigenous Peoples' Rights—To respect Indigenous Peoples' rights and traditional knowledge. PMs 8.1–8.3:
		• written policy commitment to recognize and respect the rights of Indigenous peoples
		• on public lands communicating with affected Indigenous peoples to:
		  • understand and respect traditional forest-related knowledge
		  • identify and protect spiritually, historically, or culturally important sites
		  • address use of non-timber forest products of value to Indigenous Peoples
		  • respond to Indigenous Peoples' inquiries and concerns
		• on private lands program participants are encouraged to communicate with Indigenous peoples to demonstrate an awareness of traditional knowledge and to respond to concerns
		
		Objective 12, Community Involvement and Landowner Outreach includes recognition of Indigenous Peoples

There are a number of ways to assess the protection of Indigenous rights in forest certification systems. This paper explores how the nature of Indigenous rights is determined, what engagement processes with Indigenous communities are in place, if and how agreement or consent by Indigenous peoples is reached, how and whether Indigenous peoples are provided support for their participation in the system, and how traditional knowledge and intellectual property are addressed.

Nature of Indigenous Rights

Indigenous rights have been defined in Canada following their inclusion in section 35 of the Constitution Act, 1982. Since that time, the Supreme Court of Canada (SCC) has, through its decisions, developed guidance on what these rights are and the resulting responsibility to uphold these rights through the "duty to consult and accommodate". These rights have been limited to the right to continued use and occupancy of land based on pre-contact historic use, rights that must be asserted and then proven in a court of law. Aboriginal title, a unique form of land ownership, has been recognized, but only one community has proven its title claim in court—the Tsilhqot'in Nation in 2014. The SCC in *Haida Nation vs BC, 2004*, clarified that the duty to consult to avoid or minimize infringement of Aboriginal and treaty rights rests with the Crown. But the SCC also allowed the Crown to delegate "procedural aspects" of consultation to the private sector. This has led to some confusion about the responsibilities of the Crown and public sector. If the Crown has failed to recognize and uphold Indigenous peoples' rights, can the private sector be held responsible? Certification systems have to deal with this dilemma and provide guidance to the companies seeking to be certified.]

If the Crown has failed to recognize and uphold Indigenous peoples' rights, can the private sector be held responsible?

At the international level, there is an evolving international legal regime addressing Indigenous rights. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO 169, as well as a number of other international instruments, have provided guidance on the nature and protection of Indigenous rights. For example, Article 32 of UNDRIP acknowledges that "Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources" and stipulates that nation states "shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources" as well as providing "effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."

> *UNDRIP Article 32:*
>
> *1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
>
> *2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*
>
> *3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*

Just as important as the provisions in place within nation states or in international agreements like UNDRIP, Indigenous peoples have their own customary legal and management systems that may not always coincide with western systems. Indigenous peoples' customary systems go far beyond the simple use and occupancy provisions protected by the Supreme Court of Canada, broadly covering "self-determination". Self-determination is the ability of Indigenous peoples to determine their future, including how they look after their lands. How do certification systems address the differences between customary laws and western laws?

FSC recognizes both the "legal" and "customary" rights of Indigenous peoples. FSC defines legal rights as those recognized in primary legislation (national or local laws) or secondary legislation (subsidiary regulations, decrees, orders, etc.). "Legal" also includes rule-based decisions made by legally competent agencies where such decisions flow directly and logically from the laws and regulations. FSC defines customary rights as "those resulting from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit").[18]

SFI has no explicit recognition of customary rights, although SFI has recently acknowledged UNDRIP in its standards and UNDRIP acknowledges customary rights. However, no guidance is provided in the SFI Standard to companies about addressing customary rights.

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[18] FSC Principles and Criteria for Forest Stewardship. 2015. FSC-STD-01-001 V5-2 EN: p. 22.

Engagement with Indigenous Peoples

Engagement can be as simple as the company informing an Indigenous community of proposed actions that may affect their rights all the way through to joint decision making. The Supreme Court of Canada has limited the Crown's duty to consult based on the strength

While certification systems are bound by the laws of the land, there is nothing to prevent these voluntary systems from setting higher standards than government regulations.

of the community's asserted right or claim. Although it is enough to assert a claim to trigger the duty to consult, the strength of claim is much higher if it has been proven in Court. While certification systems are bound by the laws of the land, there is nothing to prevent these voluntary systems from setting higher standards than government regulations. The question is whether FSC and SFI set a higher standard for engagement with Indigenous peoples than the laws of the land.

The key difference between the two systems is that FSC requires that there be a mutually agreed on, culturally appropriate engagement process that is reflected in a binding agreement between the company and the Indigenous people. All the SFI Standard requires is proof of communication or "conferring" with Indigenous peoples. This performance measure applies only on public lands. On private lands, companies are "encouraged to communicate" "to demonstrate an awareness" of traditional knowledge and respond to concerns. SFI sits on the "informing" end of engagement, while FSC's indicators are on the decision-making end, requiring a mutually agreed to engagement process.

Seeking Agreement

How FSC and SFI determine the level of decision making for Indigenous communities can be assessed through their consultation and consent requirements. The courts have outlined that the duty to consult is triggered when there is any potential infringement of Aboriginal and treaty rights. But this duty to

How FSC and SFI determine the level of decision making for Indigenous communities can be assessed through their consultation and consent requirements.

consult, according to the courts, leads to a requirement for consent only when the potential infringement is high. For FSC, any Indigenous community that will be affected by forest management activities becomes part of the process to decide the nature of their involvement and provide free, prior and informed consent (FPIC) through binding agreements. FSC standards go so far as to require that forest operations cease when sites of significance are discovered until protection agreements negotiated with the Indigenous people can be put in place.

Until the 2015–2019 SFI Standards, participants were required to only "confer" with Indigenous peoples when reviewing forest management on public lands. Furthermore, the public consultation with Indigenous people does not require incorporating knowledge into

management planning. The aim of the SFI objectives is to protect important sites or to implement sustainable forest management on public lands; neither particularly addresses Indigenous rights. Rights are limited to those on public lands with the inference that only rights that are legally recognized need to be protected. SFI has no requirement for agreement/consent to be reached with Indigenous communities and no mention of the need to modify management practices to protect rights. In the new SFI 2015–2019 standard there is the additional requirement for written policy acknowledging a company's commitment to recognize and respect Indigenous rights on public lands, but no direction is provided on the actions required to do this. The provision for private lands is simply "encouraging" communication to demonstrate awareness. The most striking difference between SFI and FSC is FSC's new requirement to seek the free, prior and informed consent of Indigenous communities. FSC is also struggling to address the application of Indigenous rights on private lands.

Traditional Knowledge and Intellectual Property

SFI has included an indicator on understanding and respecting traditional forest-related knowledge on both public and private lands in its 2015–2019 standard. FSC's Principle 3 goes further than simply understanding and respecting to ensuring that Indigenous peoples share their traditional knowledge through FPIC formalized through a binding agreement.

Capacity

The engagement of Indigenous peoples can be meaningless if they do not have the capacity to participate in planning activities. While some Indigenous communities do have the capacity to participate, many do not. For example, in British

> *The engagement of Indigenous peoples is meaningless if they do not have the capacity to participate in planning activities.*

Columbia, the capacity of Indigenous people to participate in forest management planning may be the result of a treaty or lack of it. Some BC First Nations may have an Interim Measures or Strategic Engagement agreement in place that provide financial support for engagement in natural resource development, while some First Nations have no such agreements. A few First Nations in BC have settled modern day treaties that provide them with funds from forestry harvesting, while most BC First Nations have not yet negotiated such agreements. This means that if a company wants to engage an Indigenous community in the planning process, they may have to provide support for their participation. Although not mentioned in FSC's new International Generic Indicators, the National Boreal Standard (NBS) (2004) in Canada did address the capacity issue. An indicator in the NBS stipulated that the company seeking certification would participate in and/or support the efforts of Indigenous communities to develop the "financial, technical and logistical capacity to enable them to participate in all aspects of forest management and development."

Summary

FSC is a much stronger standard on all aspects of Indigenous rights—determining the nature of the rights, establishing effective engagement process, seeking free, prior and informed consent through binding agreements, considering traditional knowledge and supporting the capacity of Indigenous people to participate in the planning process. FSC has maintained its commitment to upholding Indigenous rights since its first standard was developed in 1994. SFI did not recognize Indigenous rights in its standard until 2005 with minor modifications in its 2015 revised standard. These change in the SFI standard were more likely a response to the evolving recognition of these rights in the legal system, rather than as an organizational commitment to the principle of upholding Indigenous rights.

However, there are challenges in recognizing Indigenous rights in North America that are faced by both certification systems. That challenge is the reluctance on the part of both the Canadian and U.S. governments to acknowledge the sovereignty of Indigenous peoples. This reluctance was illustrated in the delay on the part of both governments in endorsing UNDRIP, with the US and Canada not signing on until 2010. The tendency by provincial governments responsible for the regulation of forest management in Canada to minimize Indigenous rights is another illustration of government reluctance. Given that both certification systems require compliance with legislative and regulatory regimes, recognizing Indigenous rights may be limited to how the state addresses those rights. If a nation state does not acknowledge Indigenous rights, what is the role of the private sector in protecting those rights?

The challenge in recognizing Indigenous rights in North America is the reluctance on the part of both the Canadian and U.S. governments to acknowledge the sovereignty of Indigenous peoples.]

In Canada, although there is constitutional protection of Aboriginal and treaty rights, there is still conflict, played out in the Courts, over how these rights should be protected in forest management. FSC's strong language on Indigenous rights as spelled out in Principle 3 raised expectations that this private, voluntary standard would help to raise the bar with provincial governments and the way provinces treat Indigenous rights. However, it is more likely that it has been Supreme Court of Canada decisions that have moved the bar. One thing FSC has done is to encourage the companies it certifies to establish best practices with Indigenous communities, including binding agreements covering different aspects of their involvement in forest management, from engagement agreements to agreements for the protection of cultural and spiritual sites. It is difficult to assess how SFI has addressed these rights given its more recent requirements on Indigenous rights in its standards and lack of any specific actions required, other than developing policy and communicating.

Institutional Capital

Are there mechanisms in place to facilitate the engagement of Indigenous Peoples? Are they effective?

Criteria	FSC	SFI
Institutional Capital See CIFOR (Cerutti et al.: pp. vii-viii)[19] for references to institutional capital	Early Indigenous presence on FSC International Board, i.e. Social Chamber North has been represented by an Indigenous person at different times Governance: FSC Canada has 2 Aboriginal Board members (out of 8); FSC Canada has 4th, Aboriginal Chamber, in addition to the Social, Economic & Environmental Chambers. At least one member from each Chamber constitutes quorum; to pass decisions must be supported by at least one member of each Chamber Standard Revision: Technical Expert Panel on Principle 3; Aboriginal reps on Standards Development Group; field test for FPIC in Canada FSC Int'l - Permanent Indigenous Peoples Committee (PIPC) was established in 2013	Governance: 1 Indigenous Director currently on Board (out of 18) (in Economic Chamber); VP Conservation & Indigenous Relations since 2013 Standard Revision: Board members are responsible for development and implementation of standards; External Review Panel SFI-CCAB PAR (Progressive Aboriginal Relations) Partnership

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[19] Cerutti P.O, Lescuyer G, Tsanga R, Kassa S.N, Mapangou P.R, Mendoula, E.E, Missamba-Lola, A.P, Nasi R, Eckebil P.P.T and Yembe R.Y. 2014. Social impacts of the Forest Stewardship Council certification: An assessment in the Congo basin. Occasional Paper 103. CIFOR, Bogor, Indonesia. http://www.cifor.org/publications/pdf_files/OccPapers/OP-103.pdf.

The previous section outlines some of the engagement efforts of the FSC and SFI certification programs. This section focuses on the rules or mechanisms that facilitate that engagement with Indigenous peoples. We have chosen to review formal institutions such as governance structures and standards revision processes because these rules are published, enforceable and function as incentive (or disincentive) for economic activity.[20] There are, however, informal institutions or rules that are not written down (e.g. trust, cultural protocols and value systems) that play a significant role in supporting the development of institutional capital. These informal institutions will not be discussed in detail, but their relevance is noted.

Governance

As not-for-profit charitable organizations, both the FSC and SFI must observe legally mandated governance requirements; however, the structure, composition and functions of their boards of directors, both historically and today, differ significantly.

> *The structure, composition and functions of FSC & SFI boards of directors, both historically and today, differ significantly.*

Since 1993, decision making within FSC has been held at the member level. Membership is equally represented by economic, environmental and social interests organized into chambers (i.e. Economic Chamber, Environmental Chamber and Social Chamber) with equal voting power. Board governance of both FSC International and FSC Canada reflect this same equal representation among chambers. FSC Canada, however, has an additional Aboriginal Chamber. The intention of the chamber structure is to maintain the balance of voting power between different interests. Two members from each chamber are elected by FSC members to the international Board of Directors for a two-year term. FSC Canada has eight Board members, two of which represent Aboriginal interests (25% of the total members).

Initially SFI was the creation of the American Forest and Pulp Association (AF&PA), gradually becoming an independent not-for-profit in 2007 with control over all aspects of governance. In 2002 the SFI Board stipulated equal representation from the environmental, economic and social "sectors". The SFI Board of Directors has 18 members, with six members from each sector. Currently, there is one Indigenous person sitting on the SFI Board as a representative of the economic sector representing 5.5% of the Board vote. Board actions must be approved by a minimum of 66% of those present, which must include at least two representatives from each sector. There is no provision within the SFI Inc. bylaws requiring Indigenous peoples' representation on the Board or its committees.

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[20] Platje, J. 2008. An institutional capital approach to sustainable development. Management of Environmental Quality: An International Journal 19(2):222–233.

Standards Revision

Both the FSC and SFI organize their standards in a hierarchical structure. FSC uses a three-tiered system: the first tier is Principles, the second is Criteria and the third is Indicators. The SFI utilize a four-tiered system: the first being Principles, the second Objectives, the third Performance Measures (PM) and the fourth is Indicators. Any semblance of similarity between program standards ends at the tiered structure.

In Canada, a common venue for identifying and addressing Indigenous concerns and interests has been public participatory processes, such as the forest certification program standards revision process. Aboriginal participation falls within a spectrum of tokenism on one end to full veto authority on the other. The ability of the standards revisions process, through rules and/or mechanisms, to identify and address Aboriginal interests ought to be considered by Aboriginal program participants.

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FSC Canada

FSC International membership approved the first revision of the global Principles & Criteria (P&Cs) in February 2012. These P&Cs act as the guiding framework for developing regional forest management standards. FSC Canada began to engage stakeholders and Aboriginal peoples in revising and aligning the existing four regional Forest Management (FM) Standards[21] into one national standard with the revised P&Cs in August 2012. Elected members of the FSC Canada Board of Directors are responsible for providing guidance and approval over the standards revision process.

The standards revisions process involves three phases: Phase 1—Process Design, Research and Information Gathering; Phase 2—Standards Revision; and Phase 3—Field Testing and Standard Finalization with two public consultation periods. The Process Design phase involved a survey of Canadian stakeholders about the values important to them. Aboriginal peoples were engaged through key indicator discussions that resulted in direct input in all drafts of the standard.

The second phase of the standards revision process involved the establishment of an eight-person Standards Development Group (SDG) to support the development of a National Forest Management Standard. The SDG has representation across the four chambers (Aboriginal, Social, Environmental and Economic), with an equal number of people in each

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[21] National Boreal Standard (2004), Maritimes Standard (2008), BC Standard (2005) and Great Lakes-St. Lawrence draft Standard (2010)

chamber. Regional representation, gender balance and diversity of experience were also considered. The Aboriginal and Social Chamber seats have been accommodated for capacity issues with the use of alternates to allow for comfortable participation at the working group table.

FSC Canada also assembled Technical Expert Panels (TEPs) as part of phase two to assist with the development of standards in six key thematic areas. The TEPs provide technical guidance and recommendations to FSC Canada to be considered when developing normative measures such as indicators and supplementary materials. One TEP is dedicated solely to Principle 3 on Indigenous Rights, including FPIC.

An additional phase of the FSC standards development is worth noting. After the P&Cs were approved in 2012, FSC began working on the development of International Generic Indicators (IGIs) designed to provide guidance for the revision of all FSC standards. As an international standards organization, there are challenges associated with the application of P&Cs across variable geographical, political, cultural and economic landscapes. The purpose of the IGIs is to ensure consistent application of the global P&Cs so that their intent is shared across all countries. The IGI process is led by a consensus-based working group representing social, environmental and economic chambers of FSC's global north and south, supported by a Technical Expert group.

Most recently, Motion 83, titled "Development of a Forest Certification Standard adapted to the realities of Indigenous Peoples and Traditional Communities", was passed at the 2014 General Assembly. This policy motion, passed by the membership, directs FSC to define as a high priority in its strategic planning the development and implementation a new approach to certification addressing the current challenges faced by Indigenous groups and traditional forest communities.

SFI

SFI Inc.'s Board of Directors assumes complete responsibility for the SFI program, including the setting, revision and implementation of the forest certification standard. The Board updates the SFI standard every five years following a public review process and recommendations from volunteer, multistakeholder committees. The SFI Board is the only body that can modify the standard.

The SFI 2015–2019 Standard review process was launched in June 2013. Invitations to comment on the SFI 2010–2014 SFI Standard were sent to nearly 10,000 stakeholders. The stakeholder comments were used by the Standards Review task groups to develop the first draft of the SFI 2015-2019 Program Requirements. Comments received during the first 60-day public comment period were augmented by comments received at two workshops—one at the September 2013 SFI Annual Conference and one conducted in Washington, DC in November 2013.

During the final 60-day public comment period January 6–March 7, 2014, stakeholders were asked to submit comments on the draft SFI 2015–2019 Standard using an online survey tool on the SFI website. The final public comment period was supplemented by regional workshops and a webinar that allowed stakeholders to provide feedback on the draft SFI 2015-2019 Standard. The SFI Resources Committee had the primary responsibility for review and analysis of the public comments and development of the new SFI 2015–2019 program requirements.

At regular intervals during the SFI Standard review process, the draft requirements were reviewed by the SFI Board of Directors. The SFI External Review Panel, an independent panel drawn from academia, government agencies and conservation organizations, was struck to ensure the development and revision of the SFI Standard embodied an open, fair and inclusive process that addressed the ideas and concepts forwarded through comments. All comments submitted during the public review periods and workshops were reviewed by the External Review Panel to assess how comments were addressed.

The final draft of the SFI 2015–2019 Program Requirements was approved by the SFI Inc. Board of Directors and launched in January 2015. SFI-certified companies were given up to one year after the new standard was approved to implement all the new requirements. Companies were required to demonstrate conformance to the new requirements at their next surveillance audit following the implementation period.

Other Mechanisms

Both FSC and SFI have developed additional measures to address Indigenous engagement. The FSC established a Permanent Indigenous Peoples Committee (PIPC) in 2011 and in 2013 the SFI formed a partnership with the Canadian Council for Aboriginal Business.

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FSC Permanent Indigenous Peoples Committee

PIPC was created through Motion 19, adopted at the General Assembly in 2011. Eight Indigenous leaders were selected to represent previously defined regions within the FSC's global framework. The initial mission of the PIPC was to act as advisors to the FSC Board of Directors on issues of importance to Indigenous peoples. After working together for one year, the PIPC developed an action-oriented strategic vision that prioritized issues and processes most likely to meet the needs of Indigenous peoples. The PIPC supports important social processes within FSC such as field-testing the FSC FPIC Guidelines. PIPC members are developing a Global Strategic Plan based on Regional Strategic Plans each member is developing for the territory they represent. Two issues that the PIPC is beginning to discuss

are the "relations between certified companies and indigenous peoples that a have a history of conflict" and "cases of uncontacted indigenous groups who are being expelled from their territories."[22]

SFI Canadian Council for Aboriginal Business Partnership

In 2013, SFI signed a Memorandum of Understanding with the Canadian Council of Aboriginal Business (CCAB) to assist in growing SFI's relationships, engagement and outreach with Aboriginal communities. The CCAB's 21-member national, voluntary board of directors represents CCAB patrons, Aboriginal business members of CCAB and other senior industry leaders.[23] Since 1982, CCAB has worked to improve the economic self-reliance of Aboriginal communities by building skills and business capacity among Aboriginal peoples while assisting corporate business with programs such as their Progressive Aboriginal Relations (PAR) certification program. CCAB provides access to hundreds of forestry organizations in Canada and the United States. PAR is an online management and reporting program that supports progressive improvement in Aboriginal relations in four key performance areas: employment, community investment, business development and community engagement. The certification program confirms corporate performance in Aboriginal relations via a third-party qualified PAR verifier.

Summary

Capital is not just money, but the kind of human investments an organization makes in ensuring it has effective governance and is able to deliver on its commitments. FSC has built significant formal institutional capital in both how it governs itself and in its standards development. The chamber structure, with an Aboriginal Chamber in Canada, ensures that at least one representative from each chamber has to agree to proceed before a decision can be implemented. This interlocking veto forces a consensus decision more often than not. SFI's board structure is also based on "sectors" but no sector has a veto. With only one Indigenous representative currently on the SFI board, and no requirement that there be an Indigenous representative, the SFI structure guarantees that the Indigenous voice is in a minority.

FSC has a much more robust involvement of Indigenous peoples in its standard setting process, with Indigenous representation throughout standards development, from field testing the application of FPIC to technical experts to the Standards Development Group, to a sub-committee of the FSC Canada Board and, finally, guaranteed membership on the FSC Canada Board itself because of the Aboriginal Chamber. Although SFI does have requirements for representation from the economic, social and environmental "sectors", it

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[22] Zamora, J.C.O. 2014. The Permanent Indigenous Peoples' Committee: News from the PIPC. Prepared for FSC General Assembly, Sept. 7-14, 2014. http://ga2014.fsc.org/opinion-analysis-82.the-permanent-indigenous-peoples-committee-news-from-the-pipc.

[23] Canadian Council of Aboriginal Business. n.d. Governance. https://www.ccab.com/governance.

does not have any formal institutional requirements regarding Indigenous participation in governance or standards revision.

SFI does have a Conservation and Community Partnerships Grant Program that supports research to improve forest management. SFI claims it is "the only forest certification standard in North America that requires participants to support and engage in research activities to improve forest health, productivity and sustainable management of forest resources, and the environmental benefits and performance of forest products. Since 1995, SFI program participants have invested more than $1.3 billion in forest research activities." The Canadian Conservation Grants portion of the program has supported research by two First Nations in BC. Both the Heiltsuk and Tk'emlups te Secwepemc First Nations received grants for projects addressing cultural resources.[24]

Although there are no accurate dollar figures on the funding of ongoing Indigenous involvement, the extent of the commitments to institutional development gives some clue as to which certification system has put more resources into addressing Indigenous involvement. FSC Canada has paid Board member expenses, including the two representatives for the Aboriginal Chamber, as well as hired legal and technical experts to assist in standards development. Legal experts provided input into the development of the National Boreal Standard and in the current standards revision process resources were provided to seek further legal advice and to establish a Technical Expert Panel on Indigenous rights. At the international level, FSC has also covered the expenses of its Indigenous board members (in the Social Chamber), and more recently has provided resources for the Permanent Indigenous Peoples Committee. It is assumed that the SFI pays the expenses for its one Indigenous Board member and also has appointed a Vice President of Conservation and Indigenous Relations. It is obvious that FSC has made a significant financial commitment since its inception to ensure effective Indigenous engagement. SFI has been slow to incorporate Indigenous issues into its structure and standards, but has increased its commitment over time.

> *Although there are no accurate dollar figures on the funding of ongoing Indigenous involvement, the extent of the commitments to institutional development gives some clue as to which certification system has put more resources into addressing Indigenous involvement.*

FSC and SFI have employed very different mechanisms for engaging Indigenous peoples in their standards programs. The FSC PIPC is a formally constituted group with an action-based agenda focused on mutually beneficial goals of forest certification at the grassroots level (e.g. communicating with local Indigenous people about FSC opportunities and benefits). The SFI partnership with CCAB is focused on promoting an industry standard through an online survey system. The result of the former is an increase in informal institutional capital (e.g.

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[24] SFI. n.d. Canadian Conservation Grants. http://www.sfiprogram.org/community-conservation/conservation-community-partnerships-grant-program/canadian-conservation-grants/.

international networking among Indigenous Peoples) that goes a long way in supporting the formal institutions of FSC (e.g. Aboriginal Chamber). The SFI's partnership with the Canadian Council for Aboriginal Business builds very little institutional capital with direct impact on Indigenous peoples, but does provide an option for an additional focused evaluation for program participants should they decide to engage in the CCAB PAR program.

Overall, certification drives companies to set and abide by a schedule of events that engage local and Indigenous communities. Regular assessments and surveillance audits push companies to continually improve on social standards. The more institutional capital supporting engagement with Indigenous peoples within a certification program, the more likely policy will become practice on the ground.

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Audit Effectiveness

Do the certification systems' audits provide for an adequate assessment of meeting Indigenous involvement requirements in the standard? Are the audits transparent? Is there an appeal procedure if an Indigenous community feels the audit has not effectively addressed the standards?

Table 5: Audit effectiveness

Criteria	FSC	SFI
Audit Effectiveness[25] Rigour: Time spent/audit; composition of audit team; detail of reports Independence: Third party certifiers; peer review of reports Transparency: Robustness of data presented in report; response to public concern	Rigour: • Audit days = 3 • Audit team = 3.7 people • Length of report =8 Independence: •3rd party certification required for all 3 FSC certificates •92% of audits reviewed were peer reviewed •FSCs ASI accredit 3rd party certifying bodies	Rigour • Audit days = 1 • Audit team = 2.1 people • Length of report = 1 Independence: • 3rd party certification required • SFI audit reports are not peer reviewed • SCC or ANAB accredited 3rd party certifying bodies

[25] Based on Forest Ethics. 2014. "Peeling Back the Eco-Labels: A Comparison of FSC and SFI Forest Certification Program Audits in Canada". 17 Pages. Available at http://www.forestethics.org//sites/forestethics.huang.radicaldesigns.org/files/AuditComparisonReportv15%20 2015%201%209.pdf.

Criteria	FSC	SFI
Dispute Resolution[26]	Transparency: • 100% of audit reports included complete data sets Dispute Resolution: • Detailed, complex Dispute Resolution System • Transparent process outlined in publically available procedure documents	Transparency: • 55% of SFI reports excluded data Dispute Resolution: • Public Inquiries and Complaints process outlined in Standards, no detailed process documents found

Certification's credibility and impact on forest management are established through third party auditing. To understand the role of audits in addressing the concerns of Indigenous communities and forest businesses, we have investigated four indicators of audit effectiveness: rigour, independence, transparency and dispute resolution.

FSC and SFI each have their own method of conducting audits, issuing certificates and resolving disputes related to the issuance of certificates. FSC is a performance-based auditing system where the specific outcomes are measured and compared to FSC standards, criteria and indicators. SFI auditing tends to favour a process-based system where the paperwork and reports are evaluated as opposed to actual on-the-ground action. However, both FSC and SFI audits require visits to field sites.

FSC requires an initial audit by an FSC-accredited certification body; surveillance audits are done annually to ensure continued compliance with certification requirements. Certificates are valid for five years before recertification is necessary. SFI requires certificate holders to undergo full recertification audits every three years with annual surveillance audits. Audits are available for public view and comment. Information and documents are required for SFI and FSC certification, as well as site audits and evaluations.

Rigour

The credibility of certification systems is judged, in part, by the rigour applied to the development of standards as well as auditing processes, the assumption being the more rigorous a system, the more accurate the information contained in certification audits and the more difficult it is to attain certification. ForestEthics, in a 2014 report,[27] used the

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[26] Based on the most recent certification system standards and procedural documents.

[27] ForestEthics. 2014. Peeling Back the Eco-Labels: A Comparison of FSC and SFI Forest Certification Program Audits in Canada. 17 pp.
http://www.Forestethics.Org//Sites/Forestethics.Huang.Radicaldesigns.Org/Files/Auditcomparisonreportv15%202015%201%209.pdf.

qualifications and composition of audit teams, the thoroughness of audit processes and transparency of publically available reports to evaluate the rigour of FSC and SFI. It is important to note that the audit data used by ForestEthics (2014) includes FSC US audit reports (not FSC Canada) and SFI in the US and Canada.

The overall findings of the ForestEthics report indicate that, based on the number of audit days, team composition and number of experts and length of reports, FSC had a more rigorous audit process. FSC spent on average three days auditing for every day SFI spent. The FSC audit teams were larger, had more social and ecological expertise and produced reports that were almost eight times longer than SFI audit reports.

Independence

Independence is another key element of credibility. The level of independence of each program is based on impartiality, peer review[28] of audit reports and the accreditation of auditors. Each program requires a third-party audit team that determines compliance with forest management standards. The auditing activities of FSC and SFI include both office and field visits to review documented and on-the-ground practices.

> *The auditing activities of FSC and SFI include both office and field visits to review documented and on-the-ground practices.*

The results of audits are documented in publically available audit report summaries for both FSC and SFI. The FSC's certifying bodies used to house audit reports on their websites, but FSC International has now set up an online centralized, searchable certificate database.[29] Upon review of the audit reports, ForestEthics found that the majority (92%) of FSC audit reports were peer reviewed whereas SFI reports were not peer reviewed. Peer review serves as an important quality control system for authors of audit reports.

The differing approaches of FSC and SFI to the accreditation of auditors have been contentious and the subject of public debate. Certification bodies that have been accredited through ANSI-ASQ National Accreditation Board (ANAB) or the Standards Council of Canada (SCC) can audit to SFI's Forest Management Standard. Certification bodies wishing to conduct audits to FSC's Forest Management Standard must be accredited by Accreditation Services International (ASI), which was founded by FSC in 2006. Because of the latter circumstance, SFI has asserted that FSC is not independent of the certification bodies that conduct audits to FSC Standards.[30] FSC, on the other hand, claims that by founding the accreditation body, they

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[28] Peer review is the process of subjecting an author's manuscript to the scrutiny of others who are experts in the same field, prior to the publication of the paper or report.

[29] FSC. Public Certificate Search. http://info.fsc.org/certificate.php

[30] SFI. 2012. The Facts on Responsible Forestry—Independent Third Party Certification. http://www.sfiprogram.org/files/pdf/messagesheetthirdpartycertificationpdf/.

are able to ensure certification bodies conduct audits competently and consistently throughout their global operations.[31]

Transparency

Both FSC and SFI have a commitment to transparency, a key factor affecting market confidence in a certificate holder. As a result, audits are public knowledge and can be commented on during a public review process. Recent audits are available on the FSC and SFI websites, though earlier audit reports may be difficult to find as both technology and process requirements have changed the digital location of the audit report.

Another measure of transparency is the robustness of data presented in audit reports. According to ForestEthic's assessment of the FSC and SFI auditing process, 100% of FSC audit reports examined included complete data sets. On the other hand, ForestEthics claimed 55% of the SFI audit reports excluded data such as total hectares assessed or number of auditor days required to complete an assessment. Our own assessment suggests this difference may be due to FSC publishing full audit reports and SFI publishing only audit summaries.

Dispute Resolution

FSC has a dispute resolution system where concerns about the FSC Board of Directors, the FSC and/or its affiliates, the ASI, FSC-accredited Certification Bodies or FSC Certificate Holders are addressed. Complaints are handled according to the nature of the dispute and the parties involved. There are three situations where a complaint might arise that would prompt action by FSC: 1) complaints about the FSC normative framework or the performance of FSC International, the FSC Network or the performance of the ASI; 2) complaints against organizations associated with FSC about their compliance with the FSC's Policy of the Association of Organizations with FSC; and 3) complaints against the performance of FSC-accredited CBs. Complaints against FSC-certified organizations about their compliance with the FSC certification requirements are dealt with by the CB that issued the certificate and these are processed according to the CB's own complaints procedures.[32]

Decisions made on FSC complaints can also be appealed, with one exception. Decisions made on Policy for Association complaints cannot be appealed because they are handled by the independent Complaints Panel with the final decision made by the FSC Board of Directors. Also, should a CB appeal an accreditation decision, the appeal is processed by Accreditation Services International (ASI) according to their procedures.[33]

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[31] ASI. 2012−2014. Accreditation. http://www.accreditation-services.com/about/accreditation.

[32] FSC. 2011. Processing Formal Complaints in the FSC Certification Scheme. FSC-PRO-01-008 (V2-0) EN. file:///C:/Users/user/Downloads/FSC-PRO-01-009_V2-0_Processing_Formal_Complaints.pdf.

[33] FSC. 2014. Processing Policy for Association Complaints in the FSC® Certification Scheme FSC-PRO-01-005 (V3-0) EN. https://ic.fsc.org/preview.fsc-pro-01-009-v3-0-en-processing-policy-for-association-complaints-in-the-fsc-certification-scheme.a-3416.pdf.

SFI addresses public inquiries and official complaints related to the SFI 2015–2019 Standard under the following circumstances: 1) claims about a program participant's individual practices that may not conform with the Standard; and 2) complaints regarding the validity of a certification to the Standard. In the first circumstance, the complainant would submit specific claims in writing directly to the Program Participant. The Program Participant then has 45 days to respond to the complainant in writing with a copy forwarded to their certification body. The CB would investigate the complaint and respond at the next scheduled surveillance audit. If the complainant is not satisfied with the response, they would then submit their documentation to the SFI Implementation Committee Inconsistent Practices Program. Again, an investigation would occur and a response including recommended actions would be provided within 45 days to both the Program Participant and its CB.

In the second circumstance, where there is a complaint regarding the validity of a certificate to SFI Standards, the complainant must submit a letter to the Program Participants CB. The CB is expected to investigate the issue according to its own official complaints procedures. If the complaint is found to be valid, the CB would issue a corrective action to the Program Participant, notifying the complainant that it has done so. However, if the findings of the CB do not satisfy the complainant, an appeal can be made to the accreditation body that accredited the CB. The accreditation body would then launch its own investigation into the complaint.

SFI does not have a formal dispute resolution process in its standards development process. In fact, SFI claims "it is neither the intent nor the responsibility of the SFI Inc. Interpretations Committee to resolve disputes arising through certification". As such, SFI has characterized "disputes" or "complaints" as matters related to interpretation. Therefore, issues related to the interpretation of standards and supporting documents are referred to the Interpretations Committee. The Committee has no obligation to resolve disputes, but will provide opinions and direction to assist parties in answering "interpretive questions" within 45 days of receiving the request. SFI is required to maintain a record of opinions and concerns and these are made available to program participants and certification bodies.

Summary

We have attempted to provide some commentary on the audit effectiveness of FSC and SFI for meeting Indigenous peoples' involvement requirements. Without examining audit reports, our final analysis is limited to an examination of factors that we felt would affect Indigenous participation and awareness of the certification processes. Four factors were examined: rigour, independence, transparency and dispute resolution.

FSC continues to be viewed as the most rigorous forest certification system.[34] More auditor resources (i.e. people and time) were invested in FSC audits and the results were more robust reports that were made available for public comment. When rigour is combined with detailed and prescriptive FSC Standards regarding the involvement of Indigenous

> *While both systems provide for continual improvement, it is the strength of the standard itself that will determine how effectively Indigenous rights are being upheld.*

peoples in the audit process, we believe the FSC audit process provides more opportunity to adequately assess Indigenous involvement. FSC audits result in Corrective Action Requests that require the certificate holder to address and demonstrate improvement in practices when a failure to meet the standard has been identified.[35] When a "major non-conformance" is found in an SFI audit, the certificate holder is required to develop a Corrective Action Plan designed to lead to an improvement in practice. While both systems provide for continual improvement, it is the strength of the standard itself that will determine how effectively Indigenous rights are being upheld.

Both the FSC and SFI commit to delivering transparent programs. For example, audit reports are available for public comment on both program websites. However, when considering the ability of an Indigenous group to launch an appeal if they question an audit's effectiveness at addressing the program standards, the "devil is in the details". In other words, determining if a standard is met requires unfettered access and full disclosure of audit information. Summary reports, such as those provided by SFI, are insufficient information sources.

The ultimate test of audit effectiveness is in the dispute resolution process. Both the FSC and SFI have detailed processes. They each distinguish between complaints regarding the program and those regarding the performance of CBs. However, SFI does not have a dispute resolution mechanism in the program standards development process. FSC Canada's Aboriginal Chamber ensures that all standards under development are subject to review and comment by experts in Indigenous peoples' rights and interests. Therefore, based on the criteria of audit effectiveness, the program most likely to adequately assess standards aimed at addressing Indigenous Peoples rights and interests is FSC.

Cost of Certification

Is the cost of certifying a barrier to the certification of Indigenous-owned forestry businesses? Is there any financial assistance available to Indigenous companies who may not be able to afford certification?

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[34] For example, see Appalachian Flooring http://www.appalachianflooring.com/environmental-policy-FSC.
[35] Teitelbaum describes how CARs improved the practices of three FSC certificate holders in the Canadian Boreal. Teitelbaum, S. 2009. Impacts of Forest Certification in the Canadian Boreal Forest: Exploring Partnerships between Forest Companies and Aboriginal Peoples. Prepared for Rainforest Alliance. https://ca.fsc.org/preview.impacts-of-fsc-certification-in-the-canadian-boreal-forest.a-244.pdf.

Criteria	FSC	SFI
Cost of Certification[36] Note: Data is based on research conducted in 2008 and cost/ha/yr data did not include FSC Canada, i.e. • FSC for US only • SFI combination of US and Canada *This data for illustration only*	Cost/ha: For larger land bases (>40,000 ha) the cost of FSC is greater than SFI • 4,000 and 40,000 ha: SFI cost $0.91/ha/yr and FSC cost $0.54/ha/yr • 40,000 and 400,000 ha: SFI cost $0.27/ha/yr and FSC cost $2.4/ha/yr 2004 SLIMF Group Certification & 2013 Small Holder Fund	Cost/ha: For small woodlots (<4,000 ha) the cost of SFI is significantly higher than FSC • < 4,000 ha: SFI cost $39.31/ha/yr and FSC cost $6.54/ha/yr Group Certification

It is difficult to compare certification costs for several reasons: a) auditing fees vary depending on the nature and size of the operation and the auditor; b) membership fees differ from one certification system to the other; and c) certification systems have different mechanisms to offset costs for small landowners/operators.

There is also a wide variation among Indigenous forest-based operations seeking certification, both in the size and nature of their businesses. Many Indigenous forestry businesses are smaller contractors who provide management services and timber to a larger company that owns a mill and may be the major forest licence holder. If the company the Indigenous business is supplying is certified to a system, it is likely that the Indigenous supplier will also have to be certified to that system. These smaller operators may also be challenged financially and will therefore seek the cheapest certification system, perhaps on the assumption that the market does not differentiate between systems and being certified to one system or another is

> *Many Indigenous forestry businesses are smaller contractors who provide management services and timber to a larger company that owns a mill and may be the major forest licence holder. If the company the Indigenous business is supplying is certified to a system, it is likely that the Indigenous supplier will also have to be certified to that system. These smaller operators may also be challenged financially and will therefore seek the cheapest certification system, perhaps on the assumption that the market does not differentiate between systems and being certified to one system or another is better than no certification.*

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[36] Based on Cubbage et al 2008. Impacts and Costs of Forest Certification: A Survey of SFI and FSC in North America

better than no certification. However, there are also larger Indigenous-owned businesses that may seek certification, most likely to secure market share or a premium price on their products.

The Meadow Lake Tribal Council in Saskatchewan, for example, owns NorSask Forest Products Ltd., one of the largest First Nation-owned sawmills in Canada. The management arm of the sawmill, Mistik Management Inc., sought and received FSC certification and, although Mistik has been challenged by the FSC process to improve community input into management planning (Teitelbaum 2009), they have made these improvements and continue to uphold their FSC certification in order to distinguish themselves in the marketplace. Miitigoog Limited Partnership, between Kenora area First Nations, forest companies and local contractors, is an example of a First Nation business choosing the SFI system because their major partner, Weyerhaeuser, is certified to that system.

Another way of improving market access is through businesses holding Chain of Custody certificates, in which suppliers and manufacturers along the chain from timber harvest to final product, are also required to uphold the standards of the certification system. FSC Chain of Custody certificates outnumber SFI certificates by four to one in North America (FSC-US n.d.),[37] giving FSC certificate holders more options to both sell and purchase certified products. However, there may also be a fee levied by producers holding a Chain of Custody certificate. For example, QuadGraphics, an international company based in Wisconsin, holds Chain of Custody certificates to supply paper certified to FSC, SFI and PEFC. The company charges a fee for customers seeking certified products to offset the high costs of maintaining their Chain of Custody certificate.[38]

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[37] FSC-US. n.d. Costs and Benefits of FSC Certification. Fact Sheet.
file:///C:/Users/owner/Downloads/3.%20Costs%20and%20Benefits%20of%20Forest%20Certification%20(1).pdf
[38] QuadGraphics
https://www.qg.com/services/color_printing/paper/pdf/forestry_certification/FSC_SFI_PEFC_Job_Requirements.pdf

There are both direct and indirect costs associated with certification (Figure 1). Direct costs paid to external auditors and consultants include paying for the preparation of audits, the initial evaluation audit and annual surveillance audits, and membership fees charged by the certification system and Chain of Custody fees charged by suppliers. Internal audit costs cover the company's participation in audits and any costs incurred from having to make changes to meet the certification standard. Indirect costs include the development of policies to address the standards and procedures to comply with the standard, including forest resource inventories, management planning, implementation, monitoring, record keeping and reporting.
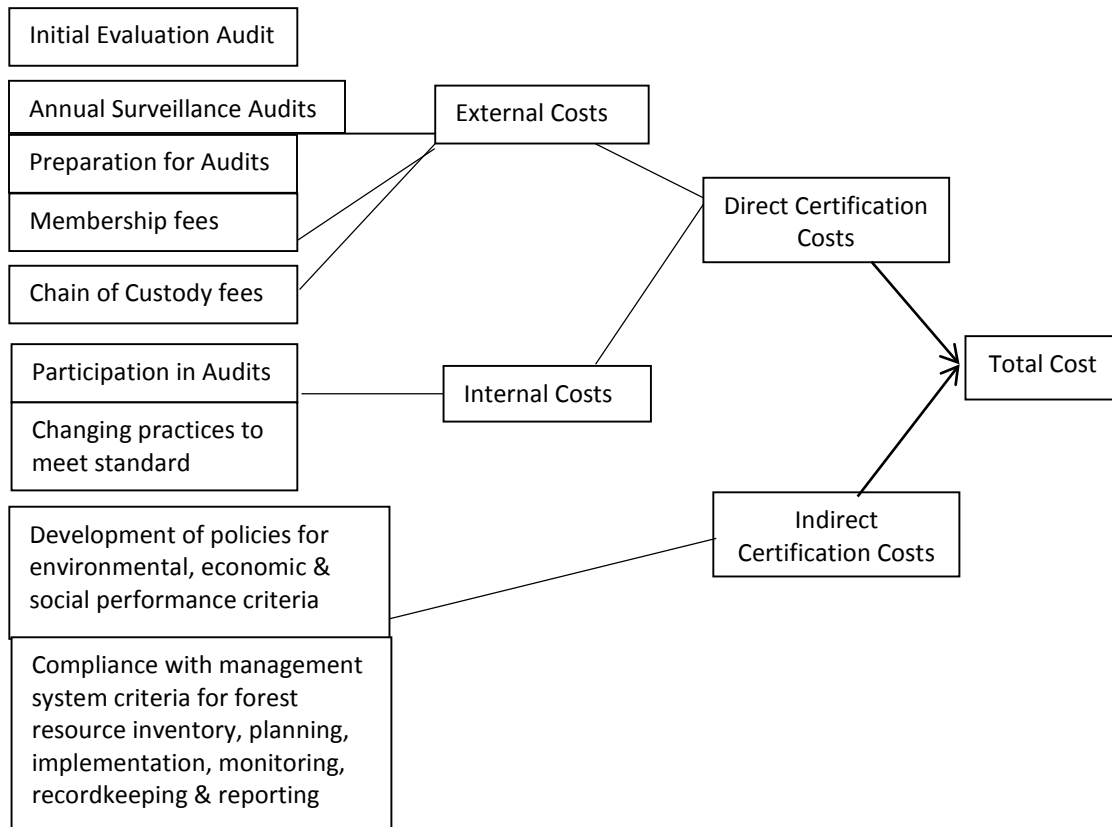
Figure 1: Indirect and direct costs of certification (modified from FSC-US n.d.)

So, given the difficulties in comparing the costs of the two systems, there are some comparisons, in particular those done by Cubbage,[39] that conclude, in most cases, that FSC is

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[39] Cubbage, F. et al. 2003. Forest certification of State and University lands in North Carolina, Journal of Forestry. December: 27-28.

Cubbage, F., S. Moore, T. Henderson and M. Araujo. 2010. Costs and benefits of forest certification in the Americas pp 1555-185 in Pauling, J. (ed.) Natural Resources: Management, Economic Development and Protection. Nova Publishers, New York.

Toppinen, A. F.W. Cubbage and S.E. Moore. 2010. The economics of forest certification and corporate social responsibility pp. 444-458 in Kant, S. and Alavalapati, J.R.R. (eds.) Handbook of Forest Resource Economics. Routledge, New York.

the more expensive system. Gan[40] estimated a cost increase of 5–40% for implementing FSC's more stringent forest management standard (cited in Cubbage et al. 2010). Toppinen et al.[41] surveyed companies about "total certification expenses, internal audit preparation fees or consultants, external audit fees, ongoing certification preparation costs, community education and support programs, management changes required to get/maintain certification and participation in implementation committees [SFI] or FSC promotion activities." As shown in Table 5, in North America the authors found that "costs decreased significantly with increasing tract size". Costs for operations >40,000 ha were less than $.50/ha. For the next smaller size <40,000 ha, costs were below $3.00/ha. In both cases, SFI proved to be the cheaper system. For smaller areas, <4,000 ha, costs were expensive with FSC averaging $6.45/ha and SFI $39.31/ha which the authors conclude "surely would deter adoption for small ownerships."

What about the prohibitive costs for woodlot owners with smaller land bases? Although SFI states that its certification is "open to any organization that owns or manages forestland in the United States or Canada . . . including industrial and family forest owners, universities, conservation groups, public agencies, timber investment management organizations and real estate investment trusts",[42] SFI also states that its standards are applied only to larger forest operations. For non-industrial forest owners, SFI encourages them to work with the American Tree Farm system that is recognized by the PEFC.[43]

FSC has undertaken several programs to support smaller players to offset costs. The first was the Small Low-Intensity Managed Forest (SLIMF) program in 2004 that provides for streamlined auditing procedures that reduce costs.[44] As well, FSC Canada is considering modifications for SLIMFs in the standards revision process to ensure that standards are appropriate to the size and scale of operations. Further support is provided through a Small Holders Fund that provides grants to smaller operations to encourage them to seek FSC certification.[45] FSC also enables group certification where a group of forest owners "join together under a single FSC certificate organized by a group manager",[46] sharing the costs and workload.

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[40] Gan, J.B. 2005. Forest certification costs and global forest products markets and trade: A general equilibrium analysis. Canadian Journal of Forest Research 35(7):1731-1743.
[41] See footnote 42.
[42] SFI. 2011. How to Certify to SFI Standards. http://www.sfiprogram.org/files/pdf/how-to-certifypdf/.
[43] SFI. 2015-2019 Standards and Rules. http://www.sfiprogram.org/files/pdf/2015-2019-standardsandrules-web-lr-pdf/
[44] FSC. SLIMF Certification. https://ic.fsc.org/slimf-certification.607.htm.
[45] FSC. Support. https://ic.fsc.org/support.621.htm.
[46] FSC. Group Certification. https://ic.fsc.org/group-certification.608.htm.

Table 7: Summary of average costs of FSC and SFI certification in North America by size class (Cubbage et al. 2010)

System/size class	Area (ha)		Cost ($/ha)	
	N[47]	Average	N	Average
<4,000 ha				
FSC U.S.	9	2,112	3	8.43
SFI N. America	3	1,967	2	39.31
4,001-40,000 ha				
FSC U.S.	16	14,663	7	2.05
SFI N. America	5	25,797	3	1.06
40,001-400,000 ha				
FSC U.S.	14	152,098	2	2.40
SFI N. America	15	144,465	6	.89
>400,000 ha				
FSC U.S.	6	1,488,275	2	.42
SFI N. America	12	2,785,867	7	.22
All responses				
FSC U.S.	45	251,392	14	3.24
SFI N. America	36	133,727	17	4.92

Although FSC is the more expensive certification system, there are still benefits to certificate holders. FSC certification is worth the investment, particularly for the larger, better resourced companies. For example, a study of a timber investment management organization (TIMO) in the U.S. found that the company profited even after paying for the expense of FSC certification.[48]

While a straight cost comparison is difficult, SFI does come out cheaper for the larger industrial players. However, there is more to consider than the bottom line.

It could also be argued that the costs involved are paying for a more rigorous system that involves significant investment in addressing some complex forest-management related issues, including the application of Principle 3 on Indigenous Rights. So while a straight cost comparison is difficult, SFI does come out cheaper for the larger industrial players. However, there is more to consider than the bottom line.

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[47] Total number of replies and statistics are indicated in the area rows; total number of cost responses and statistics are indicated in the cost rows.

[48] Schreiber, J. 2012. A Cost Benefit Analysis of Forest Certification at The Forestland Group. Master's Project, Nicholas School of the Environment, Duke University, NC. http://dukespace.lib.duke.edu/dspace/handle/10161/6026.

CONCLUSIONS

Some of the key challenges of protecting Indigenous rights through certification systems will be summarized. Questions will then be asked about which is the stronger system—SFI or FSC—and what does the future hold for certification systems in relation to Indigenous rights. Finally, we provide some recommendations for further study.

Challenges

Under the FSC system, which is global in nature, to maintain global standards, there is a challenge in maintaining consistency across regions. Indigenous rights are treated very differently around the world. To apply Principle 3 across these jurisdictions on a level playing field is a challenge.

> *To apply a global certification system like FSC consistently and on a level playing field across so many differing jurisdictions is a challenge.*

Given the competition between SFI and FSC for market share, Indigenous peoples may become pawns in strategic decisions aimed at promoting a certification system rather than Indigenous peoples' rights. As the recognition for Indigenous rights grows, as evidenced by the international endorsement of the UN Declaration on the Rights of Indigenous Peoples and Supreme Court of Canada decisions nationally, there is more pressure on certification systems to effectively protect Indigenous rights. However, there is also a tendency for these systems, as with the governments that are also obligated to protect Indigenous rights, to downplay and minimize these rights.

> *There is a tendency for certification systems, as with governments, to downplay and minimize Indigenous rights.*

Additionally, there is also a battle for recognition of the FSC system by environmental non-governmental organizations (ENGOs). Given that some Indigenous forest businesses have chosen to be certified to SFI, ENGO campaigns to challenge SFI and promote FSC have the potential to undermine these Indigenous businesses.

Arguably the most difficult challenge is whether market-based voluntary certification systems can adequately address Indigenous rights when governments have failed to do so. In Canada, the Supreme Court has clearly laid the responsibility for protecting Aboriginal and treaty rights at the feet of the Crown. However, in practice, provincial governments are delegating much of their responsibility to the private sector with often inadequate support and guidance for companies to take up consultation. The question is whether certification systems can prescribe

> *Can certification systems prescribe how Indigenous rights should be protected in a way that goes above and beyond current government regulations and practices?*

how Indigenous rights should be protected in a way that goes above and beyond current provincial government practices.

Which is the Stronger System—SFI or FSC?

In all of the criteria we examined, except for cost of certification, where evaluation methods and access to information is difficult to obtain, FSC proves to be the stronger system. FSC, with its initial commitment to Principle 3 on Indigenous Rights, has had a longer history of engagement of Indigenous peoples. SFI has improved its engagement over time, but its standard limits the requirements for engagement to policy and communication, rather than actions on the ground. While FSC Canada has had an Aboriginal Chamber since its

> *In all of the criteria we examined, except for the cost of certification, where evaluation methods and access to information is difficult to obtain, FSC proves to be the stronger system.*

inception in 1993, it is only in 2014 that SFI partnered with the Canadian Council for Aboriginal Business to improve industry/Indigenous relationships. However, this MOU is very much focussed on business relationships, rather than Indigenous rights. SFI has obviously recognized the importance of Indigenous rights, going so far as to appoint a Vice President of Conservation and Indigenous Relations, but guidance for actions on the ground is lacking. For the recognition of Indigenous rights, FSC gives explicit direction about how to protect these rights, through seeking free, prior and informed consent in binding agreements. The FSC also provides guidance for addressing the rights of Indigenous peoples both within and outside the management unit, requiring the modification of management activities when rights will be affected, protecting sites of cultural, ecological, economic or spiritual significance, and providing for monitoring of forest management activities by Indigenous peoples, among others. While SFI acknowledges the UN Declaration on the Rights of Indigenous Peoples, there is no specific guidance on what this means and no mention of FPIC.

When it comes to institutional capital, the ability of Indigenous peoples to participate and be a part of decision making within a certification system, FSC has a much more robust structure. FSC's chamber governance structure with its requirement for at least one member from each chamber to support initiatives, and with the inclusion of the Aboriginal Chamber in Canada, ensures that Aboriginal peoples will have a significant voice in decision making. SFI has taken some important steps in inviting an Indigenous representative to sit on its 18-member board and instituting a Vice President of Conservation and Indigenous Relations, but these initiatives still do not ensure that Indigenous people will effectively influence SFI's policies. It was significant that FSC established the Permanent Indigenous Peoples Committee to advise and oversee FSC's performance with Indigenous communities around the world. SFI also took a step forward when it entered into an agreement with the Canadian Council for Aboriginal Business, but, again, this partnership is more focused on business relationships than it is on protecting Indigenous rights.

As for audit effectiveness, in all four of the areas we examined—rigour, independence, transparency and dispute resolution—FSC has stronger practices. FSC's more prescriptive standards lead to more rigorous audits and more effective corrective action requests (CARs). Although both systems have a measure of transparency, FSC provides access to full audit reports, while SFI reports lack complete data. In terms of independence, FSC is stronger in its requirement for peer review of audits. SFI claims its system is more independent because it requires its certifying bodies to be accredited by independent accreditation bodies, criticizing FSC for its "in-house" system, but there are no studies comparing the effectiveness of these two approaches. Although both systems have dispute resolution processes, FSC's system addresses standards development, ensuring strong Indigenous review in standard revision processes.

What Will the Future Bring?

On the surface, it seems that FSC and SFI are evolving into similar forms. But given FSC's more robust system and commitment to address Indigenous rights from the beginning, SFI has been playing catch up, responding reactively to the higher standards set by FSC. Whether SFI will ever catch up with FSC is doubtful. However, the competition between the two systems forces both systems to critically evaluate their involvement with Indigenous peoples. There is room for improvement in both systems, particularly in on-the-ground application, but more so for SFI that needs to explicitly address Indigenous rights. SFI also needs to improve its transparency in reporting. Both systems in North America still need to address the challenge of the failure of governments to adequately address Indigenous rights. The question about whether private voluntary certifications systems can overcome governmental failure to adequately address Indigenous rights is questionable and remains to be seen.

> *The competition between FSC and SFI forces both systems to critically evaluate their involvement with Indigenous peoples. There is room for improvement in both systems, particularly in on-the-ground application of standards.*

If existing certification systems fail to adequately address Indigenous rights and values in forest management, what are the possibilities for establishing an Indigenous certification system? With the increasing area and volume of tenure being allocated to Indigenous communities across Canada, the need to address what Indigenous forest management might look like as reflected in an Indigenous standard is growing. This discussion has been going on for some time, including the options of developing such a standard under the existing systems or developing an independent standard. Both FSC and

> *If existing certification systems fail to adequately address Indigenous rights and values in forest management, what are the possibilities for establishing an Indigenous certification system?*

SFI could do the work of developing an Indigenous system under their umbrella labels. However, FSC has a more developed framework, based on respect for Indigenous rights outlined in Principle 3. FSC would need an institutional commitment to address a need that has been defined by Indigenous communities for an Indigenous label. In fact, as mentioned earlier, FSC has a mandate, outlined in Motion 83, passed at the 2014 Annual General Assembly, to come up with a new approach to address the challenges faced by Indigenous and traditional forest communities. Although the focus of the motion is on the conservation of tropical forests, the reduction of deforestation and degradation and poverty alleviation, a new approach might well include the development of an Indigenous Forest Management Standard.

Recommendations for Future Study

- Analyze certified Indigenous-owned forest businesses to understand the advantages and disadvantages of each certification system

- Conduct case studies to illustrate practices on the ground for addressing Indigenous rights in certification systems

- Perform a comparison of the market opportunities for certified wood, including an analysis for an Indigenous forest certification label

APPENDIX A:

AVAILABILITY OF INFORMATION & AUTHOR BIAS: A NOTE FROM THE AUTHORS

A special note on the availability of program information is needed. As stated earlier in the document, the authors did not undertake any new research (e.g. interviews or surveys) during the writing of this discussion paper. All materials used were readily available on the internet (e.g. research papers, program websites, and national and regional news services). This was purposefully done to ensure a greater level of objectivity as both authors are more familiar with the FSC program.

The primary objective of this paper was to provide an opinion on each program based on a set of criteria and present this information for the benefit of Indigenous businesses and communities participating in forest certification programs or considering the investment in the near future. The criteria chosen are admittedly unique to the circumstance and interests of First Nations and Métis in Canada (and Indigenous peoples worldwide); however, the criteria can each be made to address the interests of program members and the greater society in general with the exchange of a few key words (e.g. replace Indigenous Peoples rights with "human rights").

Given the generality of the criteria used, the authors had difficulty finding information on SFI, in particular the historical and present involvement with Indigenous peoples.

The authors also wish to note their affiliation with the National Aboriginal Forestry Association and FSC. Dr. Peggy Smith has acted and continues to act as Senior Advisor with NAFA. She was active in standards development with both the Canadian Standards Association and FSC during her employment with NAFA from 1994–1997. She served as a member of the FSC Canada Board of Directors in the early 2000's and is currently on the FSC Standards Development Group for the revision of FSC standards in Canada. Dr. Smith continues to do research on forest certification systems as a Professor Emerita in Lakehead University's Faculty of Natural Resources Management. Pamela Perreault has a longstanding affiliation with NAFA as a researcher and advisor to First Nations on matters related to their involvement in forest management. She has a Master of Science in Forest Management from the University of British Columbia's Faculty of Forestry. She has been employed as a consultant by FSC in their current standards development process on the issues of Principle 3, indigenous Rights and FPIC.

APPENDIX B: PRINCIPLES OF FSC & SFI

Principles—FSC	Direction for "The Organization"*
Principle 1: Compliance with laws	The Organization shall comply with all applicable laws, regulations and nationally-ratified international treaties, conventions and agreements
Principle 2: Workers rights and employment conditions	The Organization shall maintain or enhance the social and economic well-being of workers
Principle 3: Indigenous peoples' rights	The Organization shall identify and uphold indigenous peoples' legal and customary rights of ownership, use and management of land, territories and resources affected by management activities
Principle 4: Community relations	The Organization shall contribute to maintaining or enhancing the social and economic well being of local communities
Principle 5: Benefits from the forest	The Organization shall efficiently manage the range of multiple products and services of the Management Unit to maintain or enhance long term economic viability and the range of environmental and social benefits
Principle 6: Environmental values and impacts	The Organization shall maintain, conserve and/or restore ecosystem services and environmental values of the Management Unit, and shall avoid, repair or mitigate negative environmental impacts
Principle 7: Management planning	The Organization shall have a management plan consistent with its policies and objectives and proportionate to scale, intensity and risks of its management activities. The management plan shall be implemented and kept up to date based on monitoring information in order to promote adaptive management. The associated planning and procedural documentation shall be sufficient to guide staff, inform affected stakeholders and interested stakeholders and to justify management decisions
Principle 8: Monitoring and assessment	The Organization shall demonstrate that, progress towards achieving the management objectives, the impacts of management activities and the condition of the Management Unit, are monitored and evaluated proportionate to the scale, intensity and risk of management activities, in order to implement adaptive management

Principles—FSC	Direction for "The Organization"*
Principle 9: High conservation values	The Organization shall maintain and/or enhance the High Conservation Values in the Management Unit through applying the precautionary approach
Principle 10: Implementation of management activities	Management activities conducted by or for The Organization for the Management Unit shall be selected and implemented consistent with The Organization's economic, environmental and social policies and objectives and in compliance with the Principles and Criteria collectively

*The Organization is the forest company holding the certificate

Principles--SFI	Direction
Principle 1: Sustainable forestry	To practice sustainable forestry to meet the needs of the present without compromising the ability of future generations to meet their own needs by practicing a land stewardship ethic that integrates reforestation and the managing, growing, nurturing and harvesting of trees for useful products and ecosystem services such as the conservation of soil, air and water quality, carbon, biological diversity, wildlife and aquatic habitats, recreation and aesthetics
Principle 2: Forest productivity & health	To provide for regeneration after harvest and maintain the productive capacity of the forestland base, and to protect and maintain long-term forest and soil productivity. In addition, to protect forests from economically or environmentally undesirable levels of wildfire, pests, diseases, invasive exotic plants and animals, and other damaging agents and thus maintain and improve long-term forest health and productivity
Principle 3: Protection of water resources	To protect water bodies and riparian areas, and to conform with forestry best management practices to protect water quality
Principle 4: Protection of biological diversity	To manage forests in ways that protect and promote biological diversity, including animal and plant species, wildlife habitats, and ecological or natural community types

Principles--SFI	Direction
Principle 5: Aesthetics & recreation	To manage the visual impacts of forest operations, and to provide recreational opportunities for the public
Principle 6: Protection of special sites	To manage lands that are ecologically, geologically or culturally important in a manner that takes into account their unique qualities
Principle 7: Responsible fiber sourcing practices in North America	To use and promote among other forest landowners sustainable forestry practices that are both scientifically credible and economically, environmentally and socially responsible
Principle 8: Legal compliance	To comply with applicable federal, provincial, state and local forestry and related environmental laws, statutes and regulations
Principle 9: Research	To support advances in sustainable forest management through forestry research, science and technology
Principle 10: Training & education	To improve the practice of sustainable forestry through training and education programs
Principle 11: Community involvement & social responsibility	To broaden the practice of sustainable forestry on all lands through community involvement, socially responsible practices, and through recognition and respect of Indigenous Peoples' rights and traditional forest-related knowledge
Principle 12: Transparency	To broaden the understanding of forest certification to the SFI 2015–2019 Forest Management Standard by documenting certification audits and making the findings publicly available
Principle 13: Continual improvement	To continually improve the practice of forest management, and to monitor, measure and report performance in achieving the commitment to sustainable forestry

APPENDIX C:

SUMMARY COMPARISON USING CRITERIA OF IMPORTANCE TO INDIGENOUS COMMUNITIES

Criteria	FSC	SFI
History of Indigenous Engagement	FSC Canada established an Aboriginal Chamber in 1993[49]	May 2014 SFI partnered with Canadian Council of Aboriginal Business (CCAB) Progressive Aboriginal Relations (PAR) program—a verification program—to complement objectives related to Indigenous peoples' engagement
Recognition of Indigenous Rights in Standards	On ALL lands: Principle 3, Indigenous Peoples' Rights: The organization shall identify and uphold Indigenous peoples legal and customary rights of ownership, use and management of land, territories and resources affected by management activities (1994–) Includes FPIC, as stipulated in UNDRIP, as an integral part of recognizing the rights of Indigenous peoples (2014–) P3 also includes provisions for: Developing mutually agreed to culturally appropriate engagement process for determining and documenting rights • addressing affected rights of Indigenous people both within and outside of the management unit • engagement at both strategic and operational planning levels • modifying management activities when rights will be affected	On PUBLIC Lands: Prior to 2015, SFI Standards included provisions for Indigenous peoples' rights to be addressed in company policy as part of management on public lands. Private lands not subject to these performance measures. Objective 11, Legal and Regulatory Compliance: Performance Measure (PM) 11.2—requirement for written policy addressing local social laws, including IP rights (2005) Objective 18, Public Land Management Responsibilities: PM 18.2—program participants to confer with affected Indigenous peoples (2010) On ALL Lands: SFI recognizes and claims to adopt the principles outlined in UNDRIP but makes no specific mention of any of UNDRIP articles or how they might be applied, including FPIC P 11, Community Involvement and Social Responsibility—To broaden the practice of sustainable forestry on all lands through community involvement,

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[49] Canada was the only FSC National Working Group to have an Aboriginal Chamber, in addition to the Economic, Social and Environmental Chambers, until 2001 when the New Zealand Working Group was established with an Indigenous Chamber.

Criteria	FSC	SFI

	• support for capacity to participate
	• upholding rights
	• correction, mitigation or compensation when rights are infringed
	• application of UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169
	• protection of sites of special cultural, ecological, economic, religious or spiritual significance
	• monitoring by Indigenous peoples
	• protection of and compensation for traditional knowledge and intellectual property
	• dispute resolution
	
	P3 indicators require specific actions, such as binding agreements, on the part of "Organizations"
	
	FSC releases Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (FPIC) (2012)
		socially responsible practices, and through *recognition and respect of Indigenous Peoples' rights and traditional forest-related knowledge* (2015)
		
		Objective 8, Recognize and Respect Indigenous Peoples' Rights—To respect Indigenous Peoples' rights and traditional knowledge. PMs 8.1–8.3:
		• written policy commitment to recognize and respect the rights of Indigenous peoples
		• on public lands communicating with affected Indigenous peoples to:
		  • understand and respect traditional forest-related knowledge
		  • identify and protect spiritually, historically, or culturally important sites
		  • address use of non-timber forest products of value to Indigenous Peoples
		  • respond to Indigenous Peoples' inquiries and concerns
		• on private lands program participants are encouraged to communicate with Indigenous peoples to demonstrate an awareness of traditional knowledge and to respond to concerns
		
		Objective 12, Community Involvement and Landowner Outreach includes recognition of Indigenous peoples

Institutional Capital See CIFOR 2014 (pg VII-VIII) for references to institutional capital	Early Indigenous presence on FSC International Board, i.e. Social Chamber North has been represented by an Indigenous person at different times (1993–) Governance: FSC Canada has 2 Aboriginal Board members (out of 8); FSC Canada has 4th,	Governance: 1 Indigenous Director currently on Board (out of 18) (in

Criteria	FSC	SFI
	Aboriginal Chamber, in addition to the Social, Economic & Environmental Chambers. At least one member from each Chamber constitutes quorum; to pass decisions must be supported by at least one member of each Chamber Standard Revision: Technical Expert Panel on Principle 3; Aboriginal reps on Standards Development Group; field test for FPIC in Canada Permanent Indigenous Peoples Committee (PIPC) by FSC International was established in 2013	Economic Chamber); VP Conservation & Indigenous Relations (2013–) Standard Revision: Board members are responsible for development and implementation of standards; External Review Panel SFI-CCAB PAR (Progressive Aboriginal Relations) Partnership
Audit Effectiveness[50] Rigour: Time spent/audit; composition of audit team; detail of reports Independence: third party certifiers; peer review of reports Transparency: Robustness of data presented in report; response to public concern Audit Results: request for changes by auditors	Rigour: • Audit days = 3 • Audit team = 3.7 people • Length of report =8 Independence: • 3rd party certification required for all 3 FSC certificates • 92% of audits reviewed were peer reviewed • FSC accredited 3rd party CBs Transparency: • 100% of audit reports included complete data sets Audit Results: • FSC major non-conformance audits = 4	Rigour • Audit days = 1 • Audit team = 2.1 people • Length of report = 1 Independence: • 3rd party certification required • SFI audit reports are not peer reviewed • SCC or ANAB accredited 3rd party CBs Transparency: • 55% of SFI reports excluded data Audit Results: • SFI non-conformance audits = 1

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[50] Based on Forest Ethics. 2014. "Peeling Back the Eco-Labels: A Comparison of FSC and SFI Forest Certification Program Audits in Canada". 17 Pages. Available at http://www.forestethics.org//sites/forestethics.huang.radicaldesigns.org/files/AuditComparisonReportv15%20 2015%201%209.pdf

Criteria	FSC	SFI
Dispute Resolution[51]	Dispute Resolution: • detailed, complex Dispute Resolution System • transparent process outlined in publicly available procedure documents	Dispute Resolution: • Public Inquiries and Complaints process outlined in Standards, no detailed process documents found
Cost of Certification[52] Note: Data is based on research conducted in 2008 and cost/ha/yr data did not include FSC Canada, i.e. • FSC for US only • SFI combination of US and Canada The authors present this data for illustrative purposes only	Cost/ha: For larger land bases (>40,000 ha) the cost of FSC is greater than SFI • 4,000 and 40,000 ha: SFI cost $0.91/ha/yr and FSC cost $0.54/ha/yr • 40,000 and 400,000 ha: SFI cost $0.27/ha/yr and FSC cost $2.4/ha/yr 2004 FSC introduces SLIMF Group Certification Small-Holder Fund	Cost/ha: For small woodlots (<4,000 ha) the cost of SFI is significantly higher than FSC • < 4,000 ha: SFI cost $39.31/ha/yr and FSC cost $6.54/ha/yr Group Certification allows small woodlot holders to

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[51] Based on the most recent certification system standards and procedural documents

[52] Based on Cubbage et al 2008. Impacts and Costs of Forest Certification: A Survey of SFI and FSC in North America

APPENDIX D: NAFA'S INVOLVEMENT WITH CERTIFICATION

The National Aboriginal Forestry Association (NAFA) has been involved with forest certification since the founding of FSC in 1993. NAFA is a non-profit organization directed by an Indigenous board of directors made up of regional representatives involved in the forest sector across Canada. NAFA representatives attended the FSC founding meeting in Toronto, Canada and were instrumental in ensuring the addition of an Aboriginal Chamber in Canada. Over the years NAFA has worked with FSC Canada and FSC International as board members, in standards development and, generally, in overcoming challenges to the effective participation of Indigenous peoples in FSC certification. NAFA is also a member of the FSC. In 2002, the NAFA Board passed a resolution stating that FSC was their preferred forest certification system. They followed this up by hiring a Certification Coordinator who worked with NAFA for a year.

NAFA was also involved with the development of the Canadian Standards Association Sustainable Forest Management Standard that was adopted in 1996. However, NAFA was of the opinion that the CSA standard did not adequately address Aboriginal and treaty rights in forest management and subsequently resigned from the CSA in 1997. In 2006–2007 NAFA, with Ecojustice, attempted to appeal eleven CSA certifications on the grounds that they did not adequately address Aboriginal and treaty rights, but was unsuccessful. NAFA was similarly critical of the failure of the SFI to address Indigenous rights, writing an open letter to SFI in 2002. In more recent years, the NAFA Board has recognized both SFI and FSC systems, but still remains more focused on FSC, with the expectation that FSC will take Indigenous engagement to the next level.

NAFA has published several documents on certification, including the 1996 Assessment of the Need for Aboriginal Compliance with Sustainable Forest Management and Forest Product Certification Systems and a community-focused report titled A Voice on the Land (Collier et al. 2002). NAFA has co-hosted a number of national conferences and workshops with FSC on Indigenous Peoples and Forest Certification between 2001 and 2017, including a workshop on the application of FPIC in forest management in 2016.

> *The National Aboriginal Forestry Association has been involved in promoting Indigenous rights in forest certification systems since the first certification system, FSC, began in 1993.*

At the international level, NAFA has been a member of the International Generic Indicators Working Group, designed to provide guidance to national working groups revising their standards to meet FSC's new principles and criteria. NAFA also worked with other FSC Indigenous members to establish the Permanent Indigenous Peoples Committee (PIPC) that was endorsed at the FSC Annual General Assembly in 2011; NAFA now sits as a member of and co-chairs the PIPC.

In 2013, NAFA partnered with FSC Canada and FSC International to address particular issues related to Principle 3 in Canada. These included the formation of a Quebec Transfer Team to explore the implications of Quebec assuming forest management responsibilities and piloting field tests on the application of the FPIC requirement (based on the UN Declaration on the Rights of Indigenous Peoples) in Principle 3.