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### Introduction

The Rainforest Alliance SmartWood Program (hereafter SmartWood) has developed a Generic Standard for Verification of Legal Origin (VLO) that shall be used to assess and verify that timber or non-timber forest producers have a documented legal right to harvest under the laws and regulations of the applicable jurisdiction and that all points along the defined supply chain utilizing the forest product maintain systems to document and control the chain of custody. Audits to the standard shall verify on-site that the forest source has obtained the license to harvest, acquired planning approvals and permits, paid the required taxes, royalties and/or harvesting fees and maintained a chain of custody system. The standard does not evaluate complete legal compliance. This standard is generic in nature and shall be adapted to incorporate the laws, regulations, acts and decrees of each country (or sub-national jurisdiction) where the standard is applied.

With the growing recognition of the scale, extent and adverse impacts of illegal logging throughout the world, practical solutions are needed for companies to demonstrate that illegally harvested forest products are not in their supply chain. Verifying legal origin is one means to realize that objective. SmartWood anticipates that companies would verify legal origin as a first step towards full legal compliance and sustainable forest management. To reinforce that objective, SmartWood shall provide verification of legal origin as a stand alone service for only 3 – 5 years, depending on the situation, for any single entity within a defined supply chain. After that, companies should be enrolled in a stepwise program leading to certification, such as SmartStep, or certified to FSC Controlled Wood standards or full FSC certification.

### Public Comment

This draft is open to a period of 60 days of stakeholder consultation and staff review, after which it will become the basis for country or region specific Verification of Legal Origin services offered by SmartWood. Prior to finalization, SmartWood may implement field tests of the standard.

Organizations or individuals are encouraged to submit their concerns or comments regarding this standard to SmartWood (contact information above).

### **Note on the use of this standard**

All aspects of this standard are considered to be normative, including the scope, standard effective date, references, terms and definitions, tables and annexes, unless otherwise stated.

### **Other notes**

Background research and information from SmartWood explaining the rationale for providing legality verification is provided in Annex 1.

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## **A Scope**

This standard shall be applicable to traders, producers and suppliers of forest products within a defined supply chain under evaluation. Forest management enterprises (FMEs) shall be evaluated to all 4 principles of the standard. In addition to the forest source of origin, companies within the supply chain under evaluation that purchased, manufactured, handled, and/or sold forest products from VLO forest sources shall have documented and controlled chain of custody systems in place linking VLO material to the forest of origin.

In verifying the existence of credible chain of custody systems, this standard incorporates the *SmartWood Generic Standard for Chain of Custody June 2006*. The first 3 principles of the VLO standard pertain to establishing legal license and approval to harvest, while the fourth principle is for COC<sup>1</sup>.

## **B Standard effective date**

This standard shall be effective from the date of the approved final version. The standard will be updated annually, replacing outdated versions as revised. All verified operations shall be required to comply with a national or regional adaptation of this standard within 6 months of updates.

## **C References**

VL-02 SmartWood Generic Standard for Verification of Legal Compliance (VLC), Version 2  
COC-36 SmartWood Generic Chain of Custody Standard, 23 June 2006  
FSC-STD-30-010 V2-0 EN Controlled Wood Standard for Forest Management Enterprises  
FSC-STD-40-005 V2-0 EN Standard for Company Evaluation of Controlled Wood

Additional references used as background to standard are presented in Annex 3.

## **D Terms and definitions**

**CW:** Controlled Wood  
**FMEs:** Forest Management Enterprises  
**RA:** Rainforest Alliance  
**SW:** SmartWood Program  
**VLC:** Verification of Legal Compliance  
**VLO:** Verification of Legal Origin

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<sup>1</sup> COC – Chain of Custody, as used in this standard, does not refer to FSC COC. It refers to the process and systems used to trace timber from point to point.

## **E Standards and Requirements**

### **Part I: Principles and Criteria for Verification of Legal Origin**

In the standard, each principle of legal origin and its associated criteria is stated, along with generic indicators. All the indicators shall be audited in every verification audit, unless certain criteria or indicators are not applicable for the jurisdiction or the operation under evaluation.

#### **Principle 1: Legal Right to Harvest**

*The legal status of the forest management unit shall be clearly defined and boundaries delineated. The forest management enterprise (FME) shall prove that it has validly obtained the legal right to operate and to harvest timber from within the defined forest management unit.*

- 1.1:** Clear, documented and unchallenged legal registration of FME with authorization for specific activities shall exist.
  - 1.1.1: FME shall have tax registration number/forms and valid business license to operate within the jurisdiction.
  - 1.1.2: Legal status of the operation and rights for conducting the established activity shall not be challenged in the courts or other legally-binding venue.
  - 1.1.3: If legal status and rights are being challenged, the operation is engaged in a legal process to resolve the challenges.
  
- 1.2:** FME shall have authorization to harvest in the forest management unit.
  - 1.2.1: FME shall have documented permission from resource owner, including those with rights held according to customary law, obtained with free and informed prior consent.
  - 1.2.2: There shall be evidence that a valid permit, license or similar instrument was issued pursuant to the laws and regulations governing the management and harvesting of forest resources.
  - 1.2.3: License, permit or similar instrument shall be issued by proper competent administrative authority, and, if legally required, through a transparent public procedure.
  
- 1.3:** Evidence shall exist that the forest management area is legally classified for the type of land-use or commercial activities conducted.
  - 1.3.1: The forest harvesting activities shall correspond to the legal land use classification for the forest management unit.
  - 1.3.2: The forest harvesting area shall be clearly indicated on a map at a scale to permit identification and boundaries do not conflict with land-use classifications for areas where timber harvesting is prohibited.

#### **Principle 2: Approved Planning Authorizations**

*The forest management enterprise shall have received the necessary approval for the basic and fundamental planning requirements legislated as necessary to enable forest management and are adhering to production restrictions and quotas within their permitted harvest rights.*

2.1: If legally required, a forest management plan shall be approved by the relevant authorities.

2.1.1: A forest management plan shall be approved by the relevant authorities.

2.1.2: Clear cartographic evidence shall confirm the forest management unit is within the management plan area.

2.1.3: Approved plans shall contain volumes of harvesting authorized.

2.2: Annual operating or harvest plans shall be approved by relevant authorities.

2.2.1: A current, approved operating or harvest plan shall exist.

2.2.2: The permitted annual allowable cut or production quotas shall be clearly documented in the plan.

2.2.3: Permission to harvest a CITES-listed species shall be documented.

2.3: If legally required, Environmental or Social Impact Assessments shall be prepared.

2.3.1: Social and environmental impact assessments shall be prepared and accepted by the competent authority.

### **Principle 3: Payment of Fees and Taxes Required to Maintain Rights**

*The forest management enterprise regularly fulfills all obligatory tax; fee and/or royalty payments associated with maintaining the legal right to harvest and permitted harvesting volumes.*

3.1: All applicable and legally prescribed fees, royalties, taxes and other charges shall be paid.

3.1.1: Clear and documented evidence shall exist that FME is current with payments.

3.1.2: Acknowledgement of receipt of royalties, fees and dues by beneficiaries shall exist.

### **Principle: Chain of Custody**

*Documented control of the chain of custody of forest products is a fundamental requirement in the traceability of forest products to ensure that separation is maintained between verified and non verified products.*

*Quality System Criteria:*

C.1 Company shall define CoC system responsibilities and appoint staff positions, including the following:

C.1.1 One overall responsible person shall be designated for the CoC control system;

C.1.2 Individual responsible persons shall be designated for each part of the CoC control system (purchasing, processing, final storage, marking, sales documents, recordkeeping, etc.).

C.2 Company shall develop and maintain up-to-date documented procedures and/or work instructions to ensure implementation of all applicable CoC standard requirements.

C.3 Company shall develop and implement procedures for addressing non-conformances (corrective action requests, observations) identified by auditors.

- C.4 Company shall develop and implement procedures for internal auditing of its systems as related to CoC requirements in this standard and includes the following:
- C.4.1 Documentation to show when audits take place and audit results;
  - C.4.2 Provision for review of internal audit results by senior management staff; and,
  - C.4.3 Provision for internal audits to occur at least annually.
- C.5 Company shall develop training requirements and implement training as follows:
- C.5.1 All applicable staff and workers shall be trained according to the CoC procedures.
  - C.5.2 Record shall be kept to demonstrate training has taken place.
- C.6 Company shall define and document the different claim category and product that will be tracked.
- C.7 Company shall develop and maintain records to document quantities of product per claim category for the following:
- C.7.1 Purchased as inputs/raw material;
  - C.7.2 Used in production;
  - C.7.3 Conversion factors;
  - C.7.4 Inputs and final products in stock; and,
  - C.7.5 Final products sold with and without a claim.

*Purchasing and Receiving Criteria:*

- C.8 Company shall verify the validity of the supplier's certificate or claim.
- C.9 Company shall verify that material purchased and received is consistent with the claim category specified.
- C.10 Company shall store material for each claim category as separate, secure units.
- C.11 Company shall use a distinguishing mark to identify material for each claim category.

*Processing Criteria:*

- C.12 Company shall keep material physically separate for each claim category during all stages of processing.
- C.13 Company shall use a tracking system or production records to document production of material for each claim category.
- C.14 Company shall ensure that any off-site processing that takes place at a subcontracted facility follows CoC procedures and is covered by a signed outsourcing agreement.
- C.15 All material that cannot be identified as belonging into one of the claim categories defined according to C.6 shall be kept physically separate from all other material until documented evidence of the claim category is obtained.

*Shipping and Sales Criteria:*

C.16 Company shall store final products for each claim category as separate, secure units.

C.17 Company shall use a distinguishing mark to identify final products for each claim category.

C.18 Company shall include claim information on sales invoices and shipping documents, including the following:

C.18.1 A description of the product according to the claim category;

C.18.2 The quantity/volume for each product; and

C.18.3 The SmartWood certificate or verification code, if applicable.

*Claims and Public Information Criteria:*

C.19 All on-product and off-product/promotional claims made by the company shall be in compliance with the requirements for the specific SmartWood certification or verification program.

C.20 Company shall submit all on-product and off-product/promotional claims to SmartWood for review and approval prior to use.

## **Part II: Requirements for communications, reporting and auditing**

### **1. Communications**

Communications by companies pertaining to their verified status and made in association with the requirements of this standard shall be approved in writing by SmartWood prior to use.

Use of any certification seal or label on-product and in conjunction with this service shall not be permitted. Verified companies shall be allowed, however, to put a verification code number (e.g. SW-VLO-####) upon invoices and products to permit traceability, especially for the purpose of other companies' chain of custody.

SmartWood shall determine the limits of use to Rainforest Alliance and/or SmartWood names or logos in conjunction with this service for business to business and off-product communications.

SmartWood shall provide any company that has been successfully audited and compliant with these standards the opportunity to communicate that message by means of a Verification Statement that SmartWood shall issue. The Verification Statement shall be regulated similar to a certificate, with reference to scope, period of validity, and other required information.

The Verification Statement should include the following information:

- Company, seller, or representatives' name(s) and contact details;
- Forest products types;
- Location and jurisdiction of suppliers;
- Date of the initial verification report;
- Verification code number; and,
- Validity period of the statement.

## **2. Reporting**

SmartWood shall provide public summary reporting of information about the companies audited and those covered by an active verification statement. This public summary information shall be maintained up to date and posted on the SmartWood website and the verification statement shall be available upon request.

All legality verification shall be documented and supported by both a *SmartWood Verification Audit Report* and *Verification Statement*.

## **3. Auditing**

SmartWood shall determine the frequency and scope of surveillance audits for the application of this standard, with a maximum frequency of each 6 months. SmartWood shall provide further guidance on audit frequency and what entities need to be audited within the SmartWood verification evaluation procedures.

## **Annex 2: Background and Intent to Verification of Legality by SmartWood<sup>2</sup>**

### **1. Background**

The persistence of illegal logging throughout the world's forests is undermining initiatives positioned to promote social equity, environmental conservation, sustainable forest management, and sustainable economic growth in many nations (World Bank 2005). While the nature of illegal logging impedes accurate calculation of the magnitude of the problem, estimates in some countries indicate that illegally harvested timber exceeds that of legally harvested (FAO/ITTO 2005). At a global level, conservative estimates are that 10% of industrial roundwood production (approximately 4% of softwood and 15% of hardwood) is of questionable legality, making for unfair competition for legal producers (Seneca/WRI 2004). In developing countries alone, it has been suggested that illegal logging may result in lost assets and revenues in excess of US\$10 billion annually (World Bank 2006). The social impact of illegal logging is significant, contributing to poverty, resource inequity and negatively affecting rural livelihoods by jeopardizing the natural resources that many people rely on (Kaimowitz 2003; FAO/ ITTO 2005).

There are many underlying causes of illegal logging, such as poor governance, flawed policy and legal frameworks, lack of transparency, corruption, law enforcement capacity, insufficient data and monitoring, and high demand for cheap timber (FAO/ITTO 2005; Sizer 2005; Blaser et al. 2005; Seneca/WRI 2004). With the inherent complexity in devising and implementing effective solutions to such problems, initiatives are happening at many levels. To understand SmartWood's approach to legality verification and how this fits with other initiatives, it's important to recognize what is going on simultaneously at International and National levels, and from NGOs and the Private Sector<sup>3</sup>.

#### ***International Level Initiatives***

Since the 1990's, increasing international attention has focused on illegal logging, with many high-level meetings, statements and action plans made to address the issues (Kaimowitz 2003; Telepak/EIA 2005). For example, the G8 Action Programme on Forests (1998-2002) was instrumental in raising the profile of the issue and highlighting the shared role of producer and consumer countries in creating solutions (Brack 2005). The Forest Law Enforcement and Governance (FLEG) process further cultivated political acknowledgement and commitment towards addressing the problem, through regionally convening the governments in East Asia, Africa, Europe and North Asia. The European Commission's Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT) has focused on promoting the availability, utilization and trade in legally verified forest products coming into the European Union.

#### ***National Level (Mandatory) Initiatives***

National level initiatives have emerged in both timber consuming and producing countries. Some consumer countries have formulated procurement guidelines, requiring or specifying preference for importing legally verified or certified sustainable timber, to try and eliminate illegal timber<sup>4</sup>. Timber producing countries have placed focus on standard-setting processes to define

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<sup>2</sup> The information in this annex is not normative, but may describe SmartWood procedures or policies that will govern standard implementation.

<sup>3</sup> Comprehensive descriptions of current initiatives to combat illegal logging can be found in: World Bank 2006 or Chatham House ([www.illegal-logging.net](http://www.illegal-logging.net)).

<sup>4</sup> For example, governments of Germany, United Kingdom, Denmark, Netherlands and Japan produced guidelines or procurement policies expressing preference for legal or certified timber imports (World Bank 2006).

legality and create auditable indicators. Significant pressure is being placed on producer countries to enforce mandatory verification of legality on export timber production (Brown 2006). But developing national definitions for 'legal timber' and verification standards has proven to be a difficult process in many countries (Wells 2006). The process is often complicated by the presence of ambiguous requirements, contradictory laws, conflict between formal and informal laws, or a disjunction between legal and sustainable practices (Dykstra et al. 2002).

### ***NGO and Private Sector (Voluntary) Initiatives***

Voluntary verification schemes, independent forest monitoring, and purchasing policies are the private sector response from committed businesses and consumers to eliminate destructive and illegal forest products from supply chains. Some verification approaches are designed and maintained by the companies themselves<sup>5</sup>. Legality verification may take the form of partnerships between companies, organizations and/or alliances. For example, WWF's Global Forest and Trade Network (GFTN) produced guidelines for responsible purchasing among members, facilitated trade links between participants, and monitors progress. SmartWood's new SmartStep program, which participant requirements that begin with elements of legal compliance, is based on a stepwise approach to certification, which provides greater assurance that companies are making progressive steps towards FSC certification. To lend credibility to such voluntary initiatives, 3<sup>rd</sup> party auditing is critical. As such, organizations with verification credentials are developing principles and criteria to evaluate legal origin or legal compliance.

## **2. Purpose**

SmartWood has developed standards for verification of legality to respond a growing need for companies to provide assurances – to customers, owners, investors, or the general public – that answer questions about the legal status of timber sources.

Despite a rising interest in voluntary approaches to verify legality there are few developed standards for legal origin or full legal compliance. In preparing its standards, SmartWood researched and considered available protocols from Indonesia (DFID, LEI and TNC), from FORCOMS in Central Africa, as well as the Keurhout Protocol (Netherlands Timber Trade Association), and relevant material from SGS, ProForest, Eurocertifor, and WWF. FSC and ITTO criteria were also considered.

It is intended that the standard can be the basis for application in all forest types; tropical, temperate, and boreal; in developing and developed countries, in plantations and natural forests, and for small, medium and large enterprises, either public or private. SmartWood international generic standards are intended to serve as the basis for the adaptation of nation-specific standards, which will be developed in every country where SmartWood offers this service.

These standards draw upon our understanding of global efforts of multiple organizations working to increase forest transparency through verification of legality and independent forest monitoring. SmartWood notes the important work in this arena by WWF, World Bank, Proforest, VERIFOR, EIA, Global Witness, WRI, TNC, SGS, Chatham House, EU, DFID, LEI, TRAFFIC, Forest Trends, and others. Wherever multi-stakeholder processes are developing national legal compliance frameworks (such as through Voluntary Partnership Agreements) SmartWood will

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<sup>5</sup> IKEA, Stora Enso and Metsallitto have been developing systems for verifying the legal origin of timber and maintaining tracking systems in their supply chain.

work closely with such efforts and it will be essential for SmartWood to follow their accepted definitions.

### **3. Difference between Legal Origin and Legal Compliance**

While verification of legal origin **and** legal compliance collectively result in a robust assurance of timber legality, it is important to distinguish the boundaries between the two, as SmartWood's approach expects these will be done in phases to two different standards.

**Legal origin** focuses on the auditing of timber from forest sources to verify a documented legal right to harvest pursuant to the laws and regulations of the government of jurisdiction and that those suppliers follow and maintain documented chain of custody systems. Legal origin criteria and indicators focus on the possession of mandatory approvals, permits, and documents required by the specific permitting framework of the country involved. Requirements focus on the FME's possession of permits, planning approvals, payment of taxes and royalties, and the maintenance of a chain of custody system.

**Legal compliance**, on the other hand, expands upon the basic component of legal origin, through verification that the timber was produced in a manner that complies with all applicable and relevant laws and regulations governing forest management and trade in the jurisdiction. Where VLO standards focus on the legitimacy within the permitting framework, VLC standards are comprehensive in evaluating all relevant laws concerning environmental protection, wildlife, water and soil conservation, harvesting rules and codes of practice, worker health and safety, and fairness to communities.

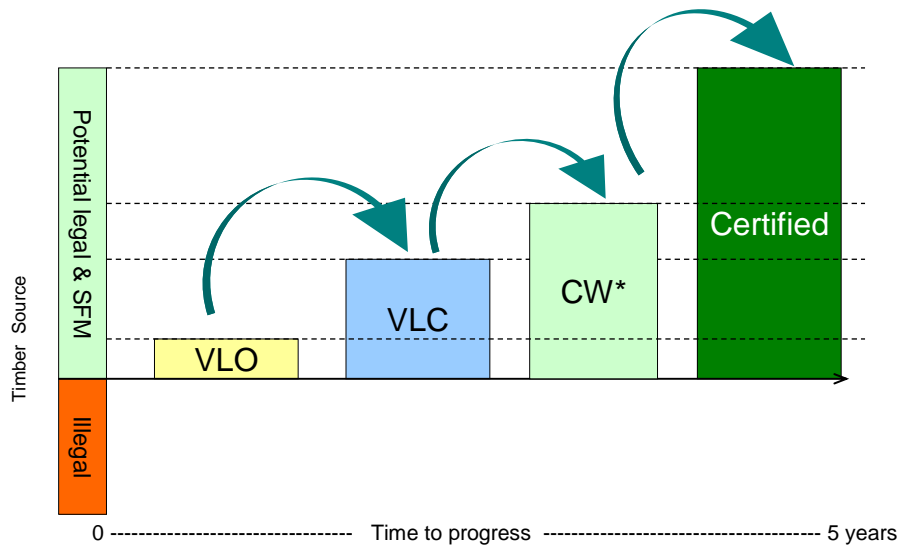
### **4. Linking legality to responsible forest management**

Recommending that companies "only buy FSC certified" isn't a complete answer for most, at least in the near-term. SmartWood always promotes FSC certification as a core element to a company purchasing policy. However, we recognize that for companies with extremely complex supply chains with multiple processing and handling steps from forest to distribution, it will take time to re-orient and "green up" their supply chain. Even the most committed certified manufacturer may be hard pressed to rapidly increase the volumes of certified, and particularly if they are committed to working in a region where there are higher risks (from social or environmental perspectives).

In the meantime, such companies may have requirements (voluntary or set for them) to demonstrate progress in increasing the percentages of legal and sustainable forest products. There are many steps to this – phasing out unknown and uncertified; phasing in known, legal, or controlled wood (as per FSC standards); sourcing from those engaged in a stepwise program for certification, such as SmartStep or the WWF GFTN approach.

SmartWood recognizes that verifying legal origin is only a first step. It is critical to know where wood is coming from, especially if it could be coming from illegal logging. But it is not sufficient to stop there. In figure 1, below, we illustrate how VLO and VLC function as interim measures as a company moves on a pathway to responsible forestry or forest product procurement, with a rough approximation of how long progress would likely take on average. The illustration considers that any timber could come from a source that is potentially legal or potentially sustainable, or it could come from an illegal harvest. By working within the realm of sources that have the potential to be legal and sustainable, and by setting rules of engagement for how we offer such services, we can increase the amount of certified forests over the long run.

Figure 1. Stepwise progression over time from entry point to full certification



\*SmartWood notes that FSC CW legal standards will be less than VLC for some jurisdictions.

## Annex 2: Glossary of terms

**Chain-of-Custody (CoC):** CoC in the forest products industry refers to the path taken by raw materials from the forest to the consumer including all successive stages of processing, transformation, and distribution. For the purposes of this fundamental CoC standard, CoC refers to the tracking and handling systems in use from the point of purchase to the point of shipment and sale for the company being audited.

**Claim category:** The type of certification or verification scheme that applies to the material/product that is being tracked within the CoC control system.

**Controlled Wood:** Wood or wood fiber that has been determined to not be from one of the 5 excluded categories within the Forest Stewardship Council's (FSC) Controlled Wood standards. These categories are: forest areas where traditional or civil rights are violated; non FSC-certified forest areas having high conservation values which are threatened; genetically modified trees; illegally harvested wood; and natural forest areas converted to plantations or for non-forest use. FSC CoC certification requires that non-certified wood materials used in products with FSC claims must be controlled.

**Legality verification:** Verification of the source of raw material for compliance with legal issues, which could be Verification of Legally Harvested, Legally Traded, or Legal Right to Harvest.

### Legally Harvested:

- Raw material harvested pursuant to a legal right to harvest timber in the forest management unit in which the wood was grown; and,
- In compliance with national and sub-national laws governing the management and harvesting of forest resources.

**Legally Traded:** The wood, or products made from the wood, was:

- Exported in compliance with exporting country laws governing the export of wood and wood products, including payment of any export taxes, duties or levies; and,
- Imported in compliance with importing country laws governing the import of wood and wood products, including payment of any import taxes, duties or levies or not in contravention of exporting country laws governing the export of wood and wood products, including payment of any export taxes, duties or levies.
- Traded in compliance with legislation related to the Convention on International Trade in Endangered Species (CITES), where applicable.

**Legal Right to Harvest:** Authorization to harvest in the forest management unit has been granted:

- From the resource owner(s); and,
- Under a valid permit, license or similar instrument issued pursuant to the laws and regulations governing the management and harvesting of forest resources.

**Outsourcing:** Subcontracted manufacturing or other handling services of materials by an off-site operation.

**Resource Owner:** The holder(s) of property and usufruct rights over the land and/or trees within a forest management unit, including legally-recognized rights held according to customary law.

**SmartLogging:** The SmartWood certification program for loggers that includes evaluation for best practice logging standards, quality of harvesting activities, protection of high conservation values, and Controlled Wood requirements, as well as optional evaluation according to FSC CoC requirements and Sustainable Forestry Initiative (SFI) procurement requirements. The SmartLogging service is not accredited or recognized by either FSC or SFI (or PEFC) at this time, though steps are being taken to achieve this.

**SmartStep:** The SmartWood phased approach to FSC certification, designed to provide forest management operations with a clear path to achieving FSC certification while gaining access to potential market benefits before achieving certification. The SmartStep service, which is provided by the SmartWood Program, is not accredited or recognized by the FSC, though FSC is currently developing a system for accrediting “stepwise” approaches such as SmartStep.

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