Maine Forest Service
Department of Agriculture, Conservation and Forestry

REPORT REGARDING AUTHORITY OF MUNICIPALITIES TO REGULATE TIMBER HARVESTING
[Resolves 2021, Chapter 70]

MAINE DEPARTMENT OF AGRICULTURE CONSERVATION & FORESTRY

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Introduction

In June 2020, the Legislature passed "Resolve, Regarding Authority of Municipalities To Regulate Timber Harvesting" (Resolves 2021, Chapter 70). The resolve required "That the Director of the Maine Forest Service within the Department of Agriculture, Conservation and Forestry shall convene a group of stakeholders, including, but not limited to, organizations representing municipalities, family woodland owners, logging contractors, farmers, outdoor recreation and environmental interests and consulting foresters who work in multiple municipalities, to review and assess the law in the Maine Revised Statutes, Title 12, section 8869, subsection 8 and the corresponding process relating to a municipal proposal to adopt or amend a timber harvesting ordinance. The director shall report the findings and recommendations of the stakeholder group, including suggested legislation, to the Joint Standing Committee on Agriculture, Conservation and Forestry by December 15, 2021. The joint standing committee may submit a bill to the 130th Legislature relating to the subject matter of the report." This report fulfills the mandate.

The following members of the stakeholder group convened four times over the next several months. The recommendations in this report were reached by general consensus from the group after discussion and input from the public.

Stakeholder Group Membership

Patty Cormier, Director, Maine Forest Service, Chair

Bob and Mary Burr, Tree Farmers and Woodland Owners

Will Cole, Logging Contractor

Tom Doak, Maine Woodland Owners Association

Dana Doran, Professional Logging Contractors of Maine

Gregory Foster, Consulting Forester, Association of Consulting Foresters, Maine Chapter

Rebecca Graham, Maine Municipal Association

Don Kleiner, Maine Professional Guides Association

Jonathan Labonte, Maine TREE Foundation

Paul Larrivee, Consulting Forester

Mike St. Peter, Certified Logging Professional Program

Nancy Sferra, The Nature Conservancy

Pat Sirois, Maine Sustainable Forestry Initiative

Heather Spalding, Maine Organic Farmers and Gardeners Association

Patrick Strauch, Maine Forest Products Council

Rep. Nathan Wadsworth, State Representative and Forestry Business Owner

Donald Mansius, Maine Forest Service, Staff

The stakeholder group met four times in 2021: August 31, September 23, October 26, and November 30. Meetings were virtual, with one being hybrid, and were advertised in advance. Meetings were open to the public; the last portion of each meeting was dedicated to public comments.

The report makes several recommendations. Some statutory changes are recommended. Background information is provided below and in the appendixes.

The Maine Forest Service recognizes and appreciates the contributions of time and effort made by the stakeholders in support of this effort.

Note: The regulation of pesticides is not in MFS's purview. Maine's Board of Pesticides Control regulates pesticides. Therefore, this report does not address the application of pesticides or fertilizers to forest land.

Background Information

This resolve is the outcome of a broader discussion in the Agriculture, Conservation and Forestry (ACF) Committee during the first session of the 130th Legislature. Nationwide, numerous states have adopted "Right to Practice Forestry" laws; a similar bill, L.D. 1407 – Resolve, Regarding Authority of Municipalities to Regulate Timber Harvesting, was proposed to the ACF Committee. There are multiple reasons why these states have done so. For Maine, increasing population density and/or in-migration of community members to areas where ideals may not align with existing forest management practices can be cause for complaints about harvesting activities, including changes to the viewshed, noise during harvest, etc. One of the reasons for LD 1407 in the first place was that these conflicts, especially in areas where there is increasing development, is a driver for municipal ordinance changes that aren't forestry friendly. A suggested avenue towards resolution from the ACF Committee was the desire to explore expanding outreach and clarification of existing laws and other relevant issues to address this. After incorporating stakeholder input, this report responds to the Committee's intention.

The law regarding the process required for adoption or amendment of municipal forestry ordinances was enacted in 1999 as part of the reform of the Forest Practices Act (12 M.R.S. §8869 (8)). The process is summarized as follows:

- A licensed forester must participate in the development or amendment of the ordinance.
- The Maine Forest Service (MFS) must be consulted during the development or amendment of the ordinance.
- The municipality must hold a public hearing, and MFS must be accorded the opportunity to speak.
- Landowners must be notified of the proposed ordinance or amendment.

The 1999 Forest Practices Act (12 M.R.S. §8869 (8) also required municipalities that had forestry ordinances at the time to ensure that definitions used in those ordinances were consistent with state law or rule by January 1, 2001.

The law regarding municipal forestry ordinances is different and separate from the law regarding the adoption and amendment of the provisions in municipal shoreland zoning ordinances governing timber harvesting activities. That law, (38 M.R.S. §438-B, 12 M.R.S. §8867-B, and MFS Chapter 21 Rule) and its implementing rules have worked very well since enactment. Over 300 municipalities have chosen either to repeal the timber harvesting provisions of their shoreland zoning ordinances and cede administrative and enforcement authority to MFS, or adopt the MFS standards into their shoreland zoning ordinances and co-administer the ordinance with MFS through a Memorandum of Understanding.

To date, very few municipalities have contacted MFS regarding the adoption or amendment of forestry ordinances, other than in the context of shoreland zoning. The record indicates that approximately 14 municipalities have consulted with MFS regarding forestry ordinances outside shoreland areas. Several of these consultations have resulted either in the municipality not pursuing additional regulation of timber harvesting activities or the repeal of existing ordinances.

Several years ago, MFS began to receive calls, mostly from consulting foresters, about municipalities that had enacted or were in the process of developing local forestry ordinances. When possible, MFS reached out to the towns to make them aware of the requirements of the law for enacting local forestry ordinances. In many cases, after beginning the process of engaging a licensed forester and consulting with MFS, the municipality would decide that it didn't need to adopt a forestry ordinance. In other cases, the municipality would follow the process and enact its ordinance.

However, as MFS began to research the existing body of municipal forestry ordinances, it learned of municipalities that had enacted forestry ordinances, often through reduced clearing sizes or percentage removal limits, but also through such methods as requiring permits, setback requirements, road permits, and so on.

The Maine Forest Service often finds that towns enact local forestry ordinances after a timber harvesting operation that creates a large clear-cut, results in a subdivision and/or change of land use, or otherwise creates local concerns. This approach generally does not affect the parties that generated the concerns in the first place; they have moved on. However, it creates inconvenience for the landowners and local land managers who face additional regulatory constraints.

When reviewing municipal comprehensive plans, the Maine Forest Service consistently objects to recommendations to enact land-use ordinances that regulate forestry on the grounds that it is redundant with existing state law:

- Performance standards within FPA, NRPA, and municipally adopted Shoreline Zoning Ordinances provide adequate protection of natural resources.
- Additional regulation could bring about duplication of effort, inconsistent and overlapping regulation, confusion for regulators and forest landowners, and serve as a disincentive to retain private forestland.
- The MFS does encourage municipalities to adopt Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas. Adoption strategies include a

reverse state mandate authorizing the Maine Forest Service as the sole enforcement agency for timber harvesting in shoreland areas.

The stakeholder group thoroughly discussed this background information and developed the following recommendations.

Note: The following information can be found in the appendixes:

- Current law regarding adoption of municipal ordinances regulating timber harvesting,12 M.R.S. §8869. Forest harvest regulations [excerpt].
- LD 1407, "An act to Provide That a Forestry Operation That Conforms to Accepted Practices May Not be Declared a Nuisance" as submitted by Senator Russell Black.

Recommendations

1. The MFS, Maine Municipal Association (MMA), and partner organizations should coordinate a regular and continued education and outreach effort designed to:
    a. Inform all municipalities of the current or amended law via newsletter.
    b. Offer outreach to municipalities known to have forestry ordinances, regardless of date of adoption, to:
        1. help municipalities comply with the legally mandated process;
        2. provide advice on whether an existing ordinance is consistent with the municipality's comprehensive plan; and,
        3. provide advice on amending an existing ordinance to help the municipality achieve its goals consistent with its comprehensive plan, and/or repeal the ordinance if it is found unnecessary after consultation.
    c. Continue to offer outreach to the public regarding:
        1. the value of sound forest management to forest ecosystem health including urban and rural economies; and,
        2. what timber harvests entail and what they look like.
    d. Regularly communicate with other state regulatory agencies to ensure consistent messaging, policies, and procedures regarding MFS authorities over timber harvesting activities.
2. Clarify in statute what constitutes a forestry ordinance that requires MFS review. This clarification would limit the review to "timber harvesting activities" as defined in statute.
3. Make a clearer distinction in statute between "timber harvesting activities" and clearing for development.
4. Establish in statute a process for either:
    a. Municipality to certify to MFS that it has followed the process; or,
    b. MFS to certify that a municipality has followed the process, and the ordinance is approved.

The latter approach is preferred, the principle difference between these two options is who the onus is on to certify that the statute has been followed; MFS or the municipality.

5. Establish a new deadline in statute for municipalities with current forestry ordinances, regardless of date of adoption and regardless of whether they have followed the process, to make all definitions consistent with definitions in law or MFS rule by a date certain (e.g., January 1, 2025), or the ordinance is void. Municipalities that have followed the process prescribed in statute would only need to provide documentation of that process. At this point MFS does not currently receive notification from all municipalities as directed in current statute.
6. Municipalities with current ordinances adopted on or after September 1,1990 that have not followed the process would have until June 30, 2023 to submit the ordinances to MFS for review and comment and otherwise follow the process prescribed in statute. The process must be completed by June 30, 2026. Ordinances will become void in municipalities that do not comply.
7. Establish in statute a requirement that any ordinance restricting timber harvesting activities must be consistent with policies adopted in a state-certified comprehensive plan where such plans exist, similar to the requirement for zoning ordinances specified in 30-A M.R.S. §4352.
8. Provide additional direction in statute for the MFS to maintain a list of local ordinances regulating timber harvesting activities in a manner similar to that described for municipal ordinances that apply to pesticide storage, distribution, or use under 22 M.R.S. §1471-U.

Other Issues

The issues listed below are outside the scope of the task force's charge; they were raised as having possible impacts on timber harvesting activities but there was either not enough time to discuss or general consensus was not reached. They may require further examination and discussion through a separate, broader stakeholder engagement process.

1. Unreasonable permit fees. 30-A M.R.S. §3702 requires that, "unless otherwise provided by law, any fee established by a municipality for any license or permit under this subpart must reasonably reflect the municipality's costs associated with the license or permit procedure and enforcement. MFS has been made aware of situations where municipalities charge significant fees for permits to harvest timber, even in salvage situations following a storm or insect outbreak. Such fees can render legitimate timber harvesting activities uneconomical.
2. Penalties for frivolous lawsuits against timber harvest activities conducted in compliance with all applicable laws and regulations. This issue has been raised as a potential problem, particularly with the potential for increased timber harvesting activities in southern and central Maine; however, MFS has not been informed of any such litigation.

3. Time of day issues. Timber harvesting activities must sometimes be conducted very early in the day or late at night to allow land managers to operate when conditions are suitable (e.g., cooler temperatures in summer; frozen roads in winter). This can result in conflicts, particularly in more densely populated areas.
4. Road issues. Unpredictable winter weather often leads to early, sometimes winter-long posting of local roads, which can hinder the efficient trucking of logs and other forest products to mills. The transition period between winter conditions and drier summer conditions poses the greatest challenge to log truckers and municipal regulators.

Definitions Used in this Report

Timber harvesting: The cutting or removal of trees or forest products that when cut or removed are transported to a roundwood processing operation, as defined in section 8881, subsection 10. "Timber harvesting" does not include reclaiming trees, logs or bark from timber harvesting or other operations, including but not limited to retrieving submerged timbers from log drives or bark from bark piles. 12 M.R.S. §8868 (4)

Timber harvesting activities: Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. 12 M.R.S. §8868 (5)

Land management road: A road constructed and used primarily for agricultural or forest management activities. 12 M.R.S. §8868 (7)

Appendix 1. Resolve, Chapter 70, Resolve, Regarding Authority of Municipalities to Regulate Timber Harvesting

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

S.P. 457 - L.D. 1407

Resolve, Regarding Authority of Municipalities To Regulate Timber Harvesting

Sec. 1. Stakeholder group regarding authority of municipalities to regulate timber harvesting. Resolved: That the Director of the Maine Forest Service within the Department of Agriculture, Conservation and Forestry shall convene a group of stakeholders, including, but not limited to, organizations representing municipalities, family woodland owners, logging contractors, farmers, outdoor recreation and environmental interests and consulting foresters who work in multiple municipalities, to review and assess the law in the Maine Revised Statutes, Title 12, section 8869, subsection 8 and the corresponding process relating to a municipal proposal to adopt or amend a timber harvesting ordinance. The director shall report the findings and recommendations of the stakeholder group, including suggested legislation, to the Joint Standing Committee on Agriculture, Conservation and Forestry by December 15, 2021. The joint standing committee may submit a bill to the 130th Legislature relating to the subject matter of the report.

[Law Without Governor's Signature, June 17, 2021]

Appendix 2. Current Law Regarding Adoption of Municipal Ordinances Regulating Timber Harvesting

12 M.R.S. §8869. Forest harvest regulations [excerpt]

8. Relationship to municipal rules and regulations. Nothing in this subchapter may be construed to preempt or otherwise limit the existing authority of municipalities to regulate harvesting, except that municipalities regulating timber harvesting shall adopt definitions for forestry terms used in their ordinances that are consistent with definitions in section 8868 and with forestry terms adopted by the commissioner pursuant to this subchapter. Municipal timber harvesting ordinances adopted before September 1, 1990 must meet this standard of compliance with definitions no later than January 1, 2001.

A municipality may not adopt an ordinance that is less stringent than the minimum standards established in this section and in rules adopted by the commissioner to implement this section and section 8867-B. A municipality may not adopt or amend an ordinance that regulates timber harvesting unless the process set out in this subsection is followed in the development and review of the ordinance.

A. A licensed professional forester must participate in the development or amendment of the ordinance. [PL 1999, c. 263, §1 (AMD).]

B. A meeting must take place in the municipality during the development or amendment of the ordinance between representatives of the department and municipal officers and officials involved in developing the ordinance. Discussion at the meeting must include, but is not limited to, the forest practices goals of the municipality. At this meeting and subsequently, the department shall provide guidance to the municipality on how the municipality may use sound forestry practices to achieve the municipality's forest practices goals. [PL 1999, c. 263, §1 (AMD).]

C. The municipality shall hold a public hearing to review a proposed ordinance or ordinance amendment at least 45 days before a vote is held on the ordinance. The municipality shall post and publish public notice of the public hearing according to the same general requirements of posted and published notice for zoning ordinance public hearings as provided by Title 30-A, section 4352, subsection 9.

In addition, when a municipality proposes to adopt or amend a timber harvesting ordinance pursuant to its home rule authority as provided by Title 30-A, section 3001, the municipality shall mail notice of the hearing by first-class mail at least 14 days before the hearing to all landowners in the municipality at the last known address of the person on whom a property tax on each parcel is assessed. In the case of a timber harvesting ordinance or amendment that applies only to certain zones or land use districts in the municipality, the municipality may meet the requirements of this paragraph by mailing notice only to those landowners whose land is in a zone or land use district or immediately abutting the affected zone or land use district.

Mailed notice to individual landowners is not required under this subsection for any type of amendment to an existing local land use ordinance merely to conform that ordinance to the minimum timber harvesting guidelines required by Title 38, section 439-A, as those guidelines may be subsequently amended, or to conform any timber harvesting ordinance to the requirements of this section for conformity of definitions when the proposed amendments do not substantially change any previously established timber harvesting standards adopted pursuant to home rule authority.

The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those landowners to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. The certificate constitutes prima facie evidence that notice was sent to those landowners named in the certificate.

Any action challenging the validity of the adoption or amendment of a municipal timber harvesting ordinance based on the municipality's alleged failure to comply with the landowner notice requirement must be brought in Superior Court within 90 days after the adoption of the ordinance or amendment. The Superior Court may invalidate an ordinance or amendment only if the landowner demonstrates that the landowner was entitled to receive a notice under this section, that the municipality failed to send the notice as required, that the landowner had no knowledge of the proposed ordinance or amendment and that the landowner was materially harmed by that lack of knowledge. [PL 1999, c. 263, §1 (AMD).]

D. The municipal clerk shall notify the department of the time, place and date of the public hearing and provide the department with a copy of the proposed ordinance that will be reviewed at the hearing at least 30 days before the date of the hearing. [PL 1999, c. 263, §1 (AMD).]

E. At the public hearing, representatives of the department must be provided an opportunity to present and discuss for the municipality's information any reports, articles, treatises or similar materials published by acknowledged experts in the field of sound forestry or silvicultural management to the extent such information is relevant to the proposed ordinance or ordinance amendment.

The proposed ordinance or ordinance amendment may be revised after the public hearing. The ordinance or amendment must be submitted to the legislative body of the municipality in accordance with the procedures the municipality uses for adopting ordinances. [PL 1999, c. 263, §1 (NEW).]

F. Municipal timber harvesting ordinances may not be unreasonable, arbitrary or capricious and must employ means appropriate to the protection of public health, safety and welfare. [PL 1999, c. 263, §1 (NEW).]

G. All direct costs incurred by a municipality associated with landowner notification requirements and other required public notice must be paid to the municipality in accordance with a distribution schedule established under Title 30-A, section 5685, subsection 5. All direct costs incurred by a municipality in order to comply with this subsection for the amendment of ordinances adopted before September 1, 1990 must be paid to the municipality in accordance with a distribution schedule established under Title 30-A, section 5685, subsection 5. [PL 1999, c. 263, §1 (NEW).]

[PL 2003, c. 335, §3 (AMD).]

Appendix 3. LD 1407, An Act to Provide That a Forestry Operation That Conforms to Accepted Practices May Not Be Declared a Nuisance

130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document	No. 1407
S.P. 457	In Senate, April 12, 2021

An Act To Provide That a Forestry Operation That Conforms to Accepted Practices May Not Be Declared a Nuisance

Received by the Secretary of the Senate on April 8, 2021. Referred to the Committee on Agriculture, Conservation and Forestry pursuant to Joint Rule 308.2 and ordered printed.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BLACK of Franklin.

Printed on recycled paper

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA c. 810 is enacted to read:

CHAPTER 810

THE RIGHT TO PRACTICE FORESTRY ACT

§9801. Short title

This Act may be known and cited as "the Right To Practice Forestry Act."

§9802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Department. "Department" means the Department of Agriculture, Conservation and Forestry.

2. Forest. "Forest" means a parcel of land in which at least 80% of the parcel is producing or is capable of producing at least 20 cubic feet of merchantable timber per acre per year.

3. Forestry operation. "Forestry operation" means an operation that involves forest management activities for which generally accepted forest management practices have been established by the department by rule under section 9806.

4. Local unit of government. "Local unit of government" means a county, city or town located in the State.

§9803. Forestry operation not a nuisance

1. Generally accepted forest management practices. A forestry operation may not be considered a public or private nuisance under Title 17, chapter 91:

A. If the forestry operation alleged to be a nuisance is in compliance with generally accepted forest management practices established by the department by rule under section 9806. This paragraph does not apply if an activity associated with a forestry operation alleged to be a nuisance is found to be the result of negligence; or

B. Solely as a result of the occurrence of any of the following:

(1) Change in ownership or size of the forestry operation;

(2) Cessation or interruption of the forestry operation;

(3) Enrollment of all or part of the forestry operation in a governmental forestry or conservation program;

(4) Adoption of new forestry technology by the forestry operation;

(5) Visual change due to removal of timber or vegetation;

(6) Normal noise from forestry equipment;

(7) Application of pesticides in a manner consistent with rules for pesticide application adopted by the Board of Pesticides Control within the department; or

(8) Application of fertilizers in a manner consistent with applicable laws and rules.

§9804. Recovery of costs

In any court action in which a forestry operation is alleged to be a nuisance, if the person that was alleged to commit the nuisance prevails, the court may award that person the actual and necessary costs incurred by the action and reasonable attorney's fees.

§9805. Violation of ordinances

A local unit of government that allows a forestry operation to operate in that local unit of government may not regulate that forestry operation in a manner that limits or prohibits any generally accepted forest management practices established by the department by rule under section 9806.

§9806. Rules

The department shall by rule establish generally accepted forest management practices. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill enacts the Right To Practice Forestry Act. The bill provides that a local unit of government that allows a forestry operation to operate in that local unit of government may not regulate that forestry operation in a manner that limits or prohibits any generally accepted forest management practices, which the bill requires the Department of Agriculture, Conservation and Forestry to establish by rule.

About the Maine Forest Service

The Maine Forest Service was established in 1891 to ensure Maine's citizens the greatest economic and social benefits from the trees and forestlands of the state.

The primary responsibilities of the Maine Forest Service include:

- Developing a greater public awareness and appreciation of Maine's forests;
- Providing advice and assistance in forest management to woodland owners;
- Maintaining and improving the scenic beauty, wildlife habitat, and recreational values of Maine;
- Encouraging and promoting appropriate forest management practices;
- Protecting Maine's forests from fire, insects, diseases, and other natural enemies; and,
- Administering Maine's forestry laws and rules.