



## The Vermont Legislative Research Service

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### Forest Management Practices

The policies of New York, New Hampshire, Massachusetts, Maine, and Rhode Island for timber theft, forms for harvest, and trip tickets present a diverse array of forest management practices. The states employ different strategies to maintain their forests, clearly exhibiting different priorities.

### Timber Theft

#### Civil Proceedings

Rhode Island requires timber theft offenders to pay the owner of the tree twice the value of any tree cut and three times the value of wood or underwood garnered from the tree.<sup>1</sup> In addition to any other applicable civil or criminal penalty allowed by law, New Hampshire requires a penalty of no less than three or more than ten times the market value of every tree.<sup>2</sup> Massachusetts punishes offenders in civil court by imprisonment of not more than six months or a fine up to \$500; however, if the offense is committed on a Sunday, in disguise, or secretly during the night, the imprisonment is not more than five days and the fine is not less than \$5.<sup>3</sup>

Maine enables the owner to recover either the value of the lost trees or the diminution value of the real estate that the violation occurred on, depending upon which is greater.<sup>4</sup> In areas that are residential, the owner of the lost trees has the option of claiming the costs of cleanup from the damage and the costs of replacing, replanting, and restoring trees or the forfeiture amounts determined in Title 17, section 2510 (criminal proceedings) in addition to the two

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<sup>1</sup> 34 R.I. Gen. Laws § 34-20-1 (1965), <http://webserver.rilin.state.ri.us/Statutes/TITLE34/34-20/34-20-1.HTM>.

<sup>2</sup> N.H. Rev. Stat. § 227-J:8 (1999), <http://www.gencourt.state.nh.us/rsa/html/xix-a/227-j/227-j-8.htm>.

<sup>3</sup> Mass. Gen. Laws ch. 266 § 113 (2016), <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter266/Section113>.

<sup>4</sup> Me. Stat. tit. 14, § 7552 (1997), <http://legislature.maine.gov/legis/statutes/14/title14sec7552.html>.

aforementioned choices.<sup>5</sup> In all other areas, owners can choose the value of the trees, the value of the real estate, the amount in Title 17, section 2510 or, if the trees are ornamental or fruit trees, the costs of cleanup and replacing, replanting, and restoring the trees.<sup>6</sup>

### **Criminal Proceedings**

In a Rhode Island criminal court, timber theft is considered a misdemeanor that is fined no less than \$100 but no more than \$500.<sup>7</sup> New Hampshire regards timber theft as a class B felony if the loss is greater than \$1,000; for any loss under that value, the violation is considered a misdemeanor.<sup>8</sup> Offenders in Massachusetts are liable to the owner of the tree three times the amount of the damage.<sup>9</sup>

Maine prescribes monetary forfeitures ranging from \$25 to \$150 in relation to the diameter of the tree.<sup>10</sup> “Diameter” is determined by the diameter of the stump remaining or the diameter of the stump at 4.5 feet from the ground if the stump is taller than that height.<sup>11</sup> A person commits a violation, even if they did not personally cut or fell the tree, if they are legally accountable for the conduct of the person that did.<sup>12</sup>

### **New York**

New York does not clearly define if and when timber theft is prosecuted in a civil versus criminal court. The penalty against timber theft is the stumpage value of the tree or timber, \$250 per tree, or both. “Stumpage value” is defined as “the current fair market value of a tree as it stands prior to the time of sale, cutting, or removal.” The offender may also be assessed for any damage caused to the land or improvements required as a result of the violation.<sup>13</sup>

## **Forms for Harvest**

### **Public Land**

Table 1 compares variables of five state systems for contracted logging on state lands.

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<sup>5</sup> Me. Stat. tit. 14, § 7552 (2015), <http://legislature.maine.gov/legis/statutes/14/title14sec7552.html>.

<sup>6</sup> Me. Stat. tit. 14, § 7552 (2015), <http://legislature.maine.gov/legis/statutes/14/title14sec7552.html>.

<sup>7</sup> 2 R.I. Gen. Laws § 2-15-3 (1980), <http://webserver.rilin.state.ri.us/Statutes/TITLE2/2-15/2-15-3.HTM>.

<sup>8</sup> N.H. Rev. Stat. § 227-J:8-a (1999), <http://www.gencourt.state.nh.us/rsa/html/XIX-A/227-J/227-J-8-a.htm>.

<sup>9</sup> Mass. Gen. Laws ch. 242 § 7A (2016),

<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleIII/Chapter242/Section7A>.

<sup>10</sup> Me. Stat. tit. 17, § 2510 (1997; 1981), <http://www.mainelegislature.org/legis/statutes/17/title17sec2510.html>.

<sup>11</sup> Me. Stat. tit. 17, § 2510 (1981), <http://www.mainelegislature.org/legis/statutes/17/title17sec2510.html>.

<sup>12</sup> Me. Stat. tit. 17, § 2510 (1997), <http://www.mainelegislature.org/legis/statutes/17/title17sec2510.html>.

<sup>13</sup> N.Y. R.P.A. Art. 8 § 861 (2016), <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>

**Table 1: Forms of Harvest**

	NY <sup>14</sup>	NH <sup>15</sup>	MA <sup>16</sup>	ME <sup>17</sup>	RI
Who develops logging contracts?	State Foresters	State Foresters	State Foresters	State Foresters	State Foresters, but is considering allowing private contractors to develop sites <sup>18</sup>
Who reviews logging contracts?	2 part external review: FSC +SFI	Other State Departments e.g. Fish and Game, Parks and Recreations	Forestry department	Forestry + other department reviews	Rhode Island Fish and Wildlife <sup>19</sup>
Who can bid on logging contracts?	Anyone	Private Contractors	Private Contractors	Private Contractors	Only Registered Wood Operators <sup>20</sup>
Is there a mandated minimum accepted bid?	Yes	\$1,000 check accompanies bids	Yes	No	No <sup>21</sup>
Where do logging contract profits go?	Natural Resources Account (Self-maintaining account funding forestry)	Majority of funds go to general account, extra to Forest Management Account	Varies over the years Net revenue to forest management.	Return to develop forest infrastructure and pay for wildlife management	Retain timber receipts to fund land management <sup>22</sup>
Are there contractual BMP's?	Yes	Yes	Yes	Yes	Yes, including "scope of service" clause in contract <sup>23</sup>

<sup>14</sup> Justin Perry (Forester, New York), phone interview with Evan Leonard, February, 2016.

<sup>15</sup> William Guinn (Regional Forester, New Hampshire), phone interview with Evan Leonard, February, 2016.

<sup>16</sup> William Hill (Program Supervisor of Management Forestry, Massachusetts), phone interview with Evan Leonard, February, 2016.

<sup>17</sup> Vern Labbee (Regional Manager, Maine), phone interview with Evan Leonard, February, 2016.

<sup>18</sup> Catherine Sparks (Assistant Director Division of Forest Management, Rhode Island), phone interview with Evan Leonard, February, 2016.

<sup>19</sup> Jay Aron (State Lands Forester, Rhode Island), phone interview with Evan Leonard, February, 2016.

<sup>20</sup> Catherine Sparks (Assistant Director Division of Forest Management, Rhode Island), phone interview with Evan Leonard, February, 2016.

<sup>21</sup> Catherine Sparks (Assistant Director Division of Forest Management, Rhode Island), phone interview with Evan Leonard, February, 2016.

<sup>22</sup> Catherine Sparks (Assistant Director Division of Forest Management, Rhode Island), phone interview with Evan Leonard, February, 2016.

<sup>23</sup> Jay Aron (State Lands Forester, Rhode Island), phone interview with Evan Leonard, February, 2016.

When logging on privately owned lands, states have slightly different regulations. In New York, “a state permit is not necessary for harvesting timber specifically, but a state permit is required when crossing certain classified streams, working in certain designated wetlands, or for clear-cuts over 25 acres in the Adirondack Park.”<sup>24</sup>

In New Hampshire, anyone logging must file a Forestry Notification Form with the Department of Environmental Services, along with a Notice of Intent to Cut with the township or municipality where logging occurs.<sup>25</sup> Additional forms are required if the harvest would remove more than 50% of the Basal Area in the harvest lot or if the timber lot may impact wetland areas.<sup>26</sup> Basal Area is a measure of tree density per acre, with higher Basal Area signifying a denser forest.

In Maine, the landowner must file a Forest Operations Notification with the Maine Forest Service for each township or municipality where logging will occur.<sup>27</sup> This form is required for all timber harvesting activities except single or small group “hazard tree removal, right of way and driveway clearance, and lot clearance for the construction of residential dwelling units” on residential land or where the landowner has a building permit, or when timber harvests are only for personal use by the landowner.<sup>28</sup>

In Massachusetts, the Forest Cutting Practices Act “regulates any commercial timber cutting of wood products greater than 25 thousand board feet or 50 cords on any parcel of land at any one time.”<sup>29</sup> All timber activities under this act must file a Forest Cutting Plan with the Department of Conservation and Recreation, and every “person, firm or corporation” involved must hold a timber harvesting license to ensure all loggers know the rules and regulations of Massachusetts.<sup>30</sup>

In Rhode Island, the first step for landowners who wish to sell or cut trees on their property “is to develop a comprehensive forest management plan that includes forestry BMPs.”<sup>31</sup> In order to cut, a state registered wood operator must file a Notification of Intent to Cut or Saw. If these

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<sup>24</sup> Timber Harvesting: Stewardship of Forest Land *New York State Department of Environmental Conservation*, 2016, <http://www.dec.ny.gov/lands/5242.html#Permit>.

<sup>25</sup> Forestry Notification Instructions and Required Attachments *State of New Hampshire Department of Environmental Services Land Resource Management* 2015, <http://des.nh.gov/organization/divisions/water/wetlands/documents/forestry-notify-inst.pdf>.

<sup>26</sup> Timber Harvesting *New Hampshire Division of Forest Lands* Accessed 2/11/16, <http://www.nhdf.org/fire-control-and-law-enforcement/timber-harvest.aspx>.

<sup>27</sup> Forest Harvest Notification *Maine Department of Agriculture, Conservation and Forestry*, 2013, [http://www.maine.gov/dacf/mfs/rules\\_regs/fons.html](http://www.maine.gov/dacf/mfs/rules_regs/fons.html).

<sup>28</sup> Forest Operation Standards *Maine Forest Service*, 2014, [http://www.maine.gov/dacf/mfs/publications/rules\\_and\\_regs/chap\\_26\\_rules.pdf](http://www.maine.gov/dacf/mfs/publications/rules_and_regs/chap_26_rules.pdf).

<sup>29</sup> Forest Cutting Practices Act *Massachusetts Energy and Environmental Affairs*, 2016, <http://www.mass.gov/eea/agencies/dcr/conservation/forestry-and-fire-control/chapter-132-ma-forest-cutting-practices-act.html>.

<sup>30</sup> Timber Harvesting Licenses *Massachusetts Energy and Environmental Affairs*, 2016, <http://www.mass.gov/eea/agencies/dcr/conservation/forestry-and-fire-control/timber-harvesting-licenses.html>.

<sup>31</sup> Rhode Island Conservation Management Practices Guide *Rhode Island Forest Conservator's Organization*, Accessed 2/11/16 <http://www.rifco.org/CMPG.pdf>.

forms state that harvesting will be “conducted according to Best Management Practices and Rule 6.02 (exempt activities) of DEM’s [Department of Environmental Management] regulations governing the Freshwater Wetlands Act,” the need for an additional wetlands permit is eliminated.<sup>32</sup>

### Trip Tickets

Trip tickets are uncommon in these five states; only Maine requires trip tickets for timber harvesting. Each truckload of wood transported must be accompanied by a trip ticket which contains the following: the date the wood is hauled, the name of the landowner, the town of origin, the name of the contractor, the name or names of the cutting crew, the name of the hauler, the destination of the wood (both town and customer), and the signature of the truck driver.<sup>33</sup> Additionally, the trip ticket must have the harvest notification form number, filed with the Bureau of Forestry in accordance with Title 12, section 8883-B.<sup>34</sup> Upon delivery, the truck driver must provide a copy of the trip ticket to the person accepting delivery.<sup>35</sup> A person who misrepresents information on a trip ticket commits a civil violation and is subject to penalties.<sup>36</sup>

Massachusetts<sup>37</sup> and Rhode Island<sup>38</sup> do not require the use of trip tickets. Neither New York<sup>39</sup> nor New Hampshire use trip tickets, but rather wood is ‘sold on the stump’; wood is sold by way of stumpage sales in which the value of the trees is given as they exist in the woods.<sup>40</sup> In New York, once the timber is cut, it is the property of the logger.<sup>41</sup> In New Hampshire, records of delivery are kept on mill scale slips. Scale slips are the only concrete evidence of the actual volume of timber removed; therefore, landowners who are conducting their own timber sale should request copies of mill scale slips.<sup>42</sup>

### Conclusion

As demonstrated, specific forest management practices vary across the examined states (New York, New Hampshire, Massachusetts, Maine, and Rhode Island). Four out of these five states prosecute timber theft in both civil and criminal courts; similarly, four out of five also do not

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<sup>32</sup> Rhode Island Conservation Management Practices Guide *Rhode Island Forest Conservator’s Organization*, Accessed 2/11/16 <http://www.rifco.org/CMPG.pdf>.

<sup>33</sup> Me. Stat. tit. 10, § 2364.B (1997), <http://www.mainelegislature.org/legis/statutes/10/title10sec2364-B.html>.

<sup>34</sup> Me. Stat. tit. 10, § 2364.B (2003), <http://www.mainelegislature.org/legis/statutes/10/title10sec2364-B.html>.

<sup>35</sup> Me. Stat. tit. 10, § 2364.B (1997), <http://www.mainelegislature.org/legis/statutes/10/title10sec2364-B.html>.

<sup>36</sup> Me. Stat. tit. 10, § 2364.B (2003), <http://www.mainelegislature.org/legis/statutes/10/title10sec2364-B.html>.

<sup>37</sup> William Hill (Program Supervisor of Management Forestry, Massachusetts), phone interview with Evan Leonard, February, 2016.

<sup>38</sup> Jay Aron (State Lands Forester, Rhode Island), phone interview with Evan Leonard, February, 2016.

<sup>39</sup> Justin Perry (Forester, New York), phone interview with Evan Leonard, February, 2016.

<sup>40</sup> Timber Sale Guidelines *University of New Hampshire Cooperative Extension*, 2005, <http://www.nhdf.org/library/pdf/Forest%20Protection/Timber%20Sale%20Guidelines.pdf>.

<sup>41</sup> Justin Perry (Forester, New York), phone interview with Evan Leonard, February, 2016.

<sup>42</sup> Timber Sale Guidelines *University of New Hampshire Cooperative Extension*, 2005, <http://www.nhdf.org/library/pdf/Forest%20Protection/Timber%20Sale%20Guidelines.pdf>.

require trip tickets. Each state surveyed has a highly individualized system for tree harvest on both public and private lands.

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This report was completed on February 11, 2016 by Laura Felone, Tracy Guion, and Evan Leonard under the supervision of Professors Jack Gierzynski, Robert Bartlett and Eileen Burgin in response to a request from Representative Kesha Ram and other members of the House Committee on Natural Resources and Energy.

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