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**STATE OF MAINE
121st LEGISLATURE
FIRST REGULAR SESSION**

**Final Report
of the**

**COMMITTEE TO STUDY NEW PAYMENT MODELS
FOR THE LOGGING INDUSTRY**

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EXECUTIVE SUMMARY

House Paper 724 - Joint Order Directing the Joint Standing Committee on Agriculture, Conservation and Forestry to Study New Payment Models for the Logging Industry, initiated this study. The joint order identified 3 areas for study: 1) current payment methods and new payment models for loggers; 2) public policies relating to forest practices and the resulting incentives and disincentives for improved forest management; and 3) state labor policies and training and apprenticeship programs for loggers.

The scope of this report is more limited than that envisioned in the study order. Data and people knowledgeable of the logging industry consistently report a downward trend in terms of both the number of jobs and earnings for woods workers. This has been occurring at the same time productivity per worker and equipment investments have increased. With a limited number of meetings, the committee decided to focus on logger payments with an emphasis on contracts for logging services between major landowners and loggers. This report provides information basic to an understanding of the logging industry, the changes that have caused particular concern over the past few years, and the more recent indications of a decline in logging capacity.

Logging contractors operating in areas of the state with a concentration of forestland owned or managed in large tracts have few opportunities to purchase stumpage. Contractors compete with each other to secure contracts for logging services with a small number of landowners. Contractors have little negotiating power in a region dominated by one large landowner. Subsequently they may have little profit to disburse among their employees in the form of higher wages or piece rates. In April of 2004, legislation that addresses the issue of loggers' negotiating power is pending enactment in the Maine Legislature. LD 1318, An Act to Promote the Public Interest by Providing for Reasonable Rates of Compensation for Forest Products Harvesting and Hauling Services, authorizes forest products haulers and harvesters to organize and collectively negotiate with a forest landowner who owns more than 400,000 acres within a labor market area.

In northern and western Maine, proximity to Quebec provides access to a Canadian work force with a strong tradition of woods work. Availability of Canadian loggers has had an adverse impact on Maine workers in the St John Valley. This impact was acknowledged in a 1999 study funded by the U.S. and Maine Departments of Labor (MDOL). Recommended changes to the federal H-2 bonded labor program have not been implemented. MDOL does not routinely collect and compile information on the actual number of H-2 bonded laborers employed, the geographic areas in which they work, or the equipment used by them. A better understanding of the use of bonded laborers, the number working as employees and the number coming in with their own equipment to work as independent contractors or subcontractors would be helpful in assessing the program's potential impact on Maine workers.

In the winter of 2003-04, Maine mills reported low wood inventories and difficulty getting wood. Changes in landownership, mill inventory patterns and the availability of loggers and logging equipment to respond to surges in wood demand are factors discussed in this report as contributing to the shortage. Of particular interest to this study is diminished logging capacity. The number of idle machines and operators that in the past responded to open gates and calls for more wood are

apparently no longer available. With the magnitude of investment needed, people cannot enter or expand a logging business quickly to take advantage of what could be a short-term increase in demand and pay rates.

Of perhaps more importance in the long run are survey results indicating that loggers are not encouraging their children to enter logging professions. This should be a wake-up call to the mills that depend on a supply of wood. In a global economy, it is everyone's interest to keep Maine mills competitive. To do this, loggers must be recognized as stakeholders in the forest products industry and paid rates commensurate with the skills and capital investment required by their profession.

I. INTRODUCTION

This study was initiated by House Paper 724 - Joint Order Directing the Joint Standing Committee on Agriculture, Conservation and Forestry to Study New Payment Models for the Logging Industry. Representative Troy Jackson was the primary sponsor of the study order.

Joint Study Order H.P. 724 was referred to the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF Committee) and had a public hearing before the committee on March 19, 2003. The committee endorsed passage of the study order as submitted. Three areas were identified for study: 1) current payment methods and new payment models for loggers; 2) public policies relating to forest practices and the resulting incentives and disincentives for improved forest management; and 3) state labor policies and training and apprenticeship programs for loggers.

The study order received the approval of the Legislative Council with a recommended amendment to specify that the committee would conduct the study during the authorized interim committee meetings and report to the Legislature no later than December 3, 2003. The Joint Study Order H.P. 724 was amended by Senate Amendment A, S-263 and enacted on June 11, 2003. (See Appendix A.)

Legislative policy committees were authorized to meet 4 times during the 121st legislative interim. Prior to adjournment the ACF committee met and discussed its priorities for the study. Members believed that it was essential to hear from loggers. They also decided that with a limited number of meetings, the group would focus on logger payments.

The first meeting was held on September 12th at the University of Maine in Fort Kent to facilitate participation by loggers in the St. John River Valley. This area was chosen because of an acknowledged imperfect market, which has kept logger wages low (Pan Atlantic, 1999). The second meeting was held in Augusta on October 24th. At that meeting the decision was made to request an extension to allow the committee to continue its work in January after the convening of the Second Session of the 121st Legislature.

Over the course of this study, testimony and discussions with people knowledgeable of the industry have consistently recognized a downward trend in terms of both number of jobs and earnings for woods workers. This report presents our understanding of contractual relationships between landowners and loggers and factors affecting logger pay. The emphasis of the study is decidedly on contracts for logging services between major landowners and loggers. Although the scope of this report is more limited than that envisioned in the study order, we hope that the report will contribute to policy makers' understanding of the logging industry, the changes that have caused particular concern over the past few years, and the more recent indications of a decline in logging capacity.

II. BACKGROUND

Several recent studies relating to forest management and the forest products industry in Maine have touched on trends in the number of woods jobs and rates of pay. A 1999 study focused specifically on the impact of the bonded labor program on Maine woods workers. The Joint Standing Committee on Agriculture, Conservation and Forestry reviewed the most recent studies as it began its deliberations. We offer brief comments on 2 studies and a summary of recent legislative action in this part of our report. We also provide information basic to understanding the logging industry under Section C.

A. Recent Studies

The Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry was established by the 119th Legislature (Resolve 1999, chapter 124 with an effective date of May 8, 2000). The Round Table met during 2000 and 2001 and submitted its report to the Legislature in December of 2001.

Members of the Round Table presented their report to both the Agriculture, Conservation and Forestry Committee and the Labor Committee. The Round Table found that “logging in Maine is under pressure from complex global and statewide forces that impact all aspects of the forest industry from mills and landowners to logging contractors and their employees” (Round Table, 2001). The Round Table further reported that the decline in real wages in the 1980’s and 1990’s “occurred despite major increases in productivity over the same period and in conjunction with a logger labor shortage in some regions of the state that allowed importation of foreign workers through the federal H-2 Bonded Labor program.”

In 1999 a study was performed by Pan Atlantic Consultants and the Irland Group, under contract with the Maine Department of Labor and funded by the United States Department of Labor. The PAC/TIG study was conducted to help the state and federal Departments of Labor (1) understand the wages and working conditions of logging professionals in Maine; and (2) determine whether the wages being paid to H-2 visa loggers in Maine were having an adverse effect on the wages and working conditions of similarly employed U.S. workers.

A brief summary of the PAC/TIG report, Maine Logging Industry and the Bonded Labor Program: An Economic Analysis, is found in Appendix B. This committee has drawn on the data presented in that report but disagrees with its conclusion that a labor shortage of U.S. logging workers exists and raising wages would not attract sufficient workers. This conclusion contradicts the basic economic relationship of supply and demand. The validity of this conclusion is discussed in Part III of this report.

B. Actions During the First Session of the 121st Legislature Relating to Logger Payment

In addition to passing Joint Study Order H.P. 724 , the Maine Legislature adopted a Joint Resolution requesting that Congress direct the U.S. Department of Labor to establish reimbursement rates for heavy equipment operation under the H-2 program and examine the methodology for calculating wage rates in the annual woods wage survey. The joint resolution

also requests Maine's Congressional delegation to submit and support legislation to clarify provisions in federal law pertaining to independent contractor status. The directives in the Joint Resolution are consistent with recommendations in the PAC/TIG study. (See Appendix C for a copy of the Joint Resolution).

LD 1318, An Act to Provide Collective Bargaining Rights to Certain Forest Products Workers, was introduced in the 1st Session of the 121st Legislature and referred to the Joint Standing Committee on Labor. After carrying the bill over, the Labor Committee sent a divided report to the full Legislature. As of April 9, 2004, Committee Amendment "C" (the majority report) has been adopted and engrossed in both the House and Senate. The Minority Report was "Ought Not to Pass". The engrossed version of LD 1318 alleviates anti-trust concerns by establishing a state rate-setting board in order to conform to the "state action immunity" doctrine under federal anti-trust law. The bill as amended is entitled "An Act to Promote the Public Interest by Providing for Reasonable Rates of Compensation for Forest Products Harvesting and Hauling Services." The bill summary reads:

"This amendment is based on a legislative finding that a forest landowner with economic control of more than 400,000 acres in a labor market area possesses market power sufficient to prevent the market for forest products hauling and harvesting services from functioning normally. The amendment establishes a mechanism to displace existing market forces by authorizing administrative ratesetting for forest products haulers and harvesters providing services to landowners who control such acreage.

The amendment authorizes forest products haulers and harvesters to organize associations and to negotiate collectively with certain landowners, provided their activities are preparatory to and for the purpose of an authorized rate-setting proceeding. To the extent that their collective activities are directed toward implementing authorized ratesetting, forest products haulers and harvesters have immunity from federal antitrust liability."

See Appendix D for a copy of the LD 1318 as amended and engrossed.

C. Basics for Understanding the Logging Industry in Maine.

The 2-person crew of a chain saw operator and a skidder operator prevalent 30 years ago continues to harvest throughout Maine but is no longer the norm in the industrial forest. Feller bunchers, cut-to-length processors and forwarders account for 90% or more of production on large land ownerships.

Heavier reliance on mechanical harvesting has resulted in:

- A safer work environment for machine operators;
- Less damage to residual stand and less disruption of soils;
- Significantly greater equipment cost to enter the logging business as a contractor half a million dollars for one piece of equipment is not uncommon); and
- A higher degree of training needed to operate equipment

Logging crews working as company employees for large landowners and company operated logging camps have disappeared. Wood is harvested on a contractual basis on both large and small

ownerships. A logger's status as an "independent logging contractor" or an employee of a logging contractor determines the benefits and OSHA standards that apply.

1. Contracts between landowners and loggers. In general, wood is harvested under one of 2 basic arrangements.

Purchase of stumpage – A logger buys standing timber from a landowner. The contract between the landowner and logger states the prices the logger will pay the landowner for wood cut. Prices are usually specified by unit (cords, weight or board feet) by product (pulpwood, sawlogs, boltwood). The logging contractor markets and coordinates trucking of the wood. The logger provides the landowner with copies of scale slips stating the volume or weight of each load of wood coming off the parcel under contract.

Contract for logging services (CLS) – The landowner enters into an agreement with a logging contractor to harvest wood on that landowner's property. The contract specifies the payment the logging contractor will receive for cutting and yarding the wood and other specified services. Other services generally include delimbing, cutting to product length, and sorting by product. Trucking may be provided by a trucking company under a separate contract or by the logging contractor under the CLS. Under CLS, the landowner retains ownership of the wood after it is cut and markets the wood. The wood may be delivered to a mill or mills owned by that landowner or marketed to a variety of mills.

Large landowners typically contract for logging services rather than selling stumpage. Private non-industrial landowners with small or dispersed ownerships are more likely to sell stumpage.

Wood is harvested under several variations on these 2 arrangements. For example, a landowner may put out a bid package to sell stumpage. A party with wood processing facilities may buy the stumpage and then contract for logging services to have the wood harvested. The CLS may specify that the party owning the stumpage receives all wood of a certain product class at facilities owned by that party and the contractor gets to market the rest of the wood.

2. Negotiating prices, estimating logging costs. Stumpage contracts and contracts for logging services specify the trees to be harvested, the products to be separated and any road construction or road maintenance to be done under the contract. Prior to negotiating prices to be paid to the landowner in stumpage sales or to be received from the landowner under a CLS, a logging contractor typically walks the parcel to be harvested and assesses the following:

- Quality and volume of wood to be harvested
- Terrain – slope, soils, ledge, wet areas, riparian zones
- Access – condition of roads, need to extend roads, skidding or forwarding distances

In addition, knowledge of current product markets is essential for the contractor buying stumpage. Prices paid at the mill and an estimate of logging costs will determine how much the contractor can pay the landowner for stumpage. A contractor with lower production costs can bid higher for stumpage. Estimating logging costs is key to negotiating prices and being profitable under both stumpage contracts and contracts for logging services.

Computer models have been developed to calculate per unit costs of production when fixed costs and variable costs are plugged in. The model generates a cost per ton or cubic meter of wood produced under different scenarios. Some key factors in determining cost are finance amounts and rates on equipment, productive machine hours, operator wages, insurance rates, maintenance costs, fuel consumption and fuel price. This degree of sophistication in estimating logging costs can benefit both the landowner and logging contractor in improving productivity and reducing costs. Its usefulness in negotiating rates, however, depends on the accuracy of and access to the information.

A logging contractor cannot operate indefinitely under a CLS at piece rates that do not cover costs. There are situations in which a logging contractor might sign a CLS with payment rates that are below that contractor's estimated logging cost. For example, this might occur if:

- The contractor is competing with other contractors who have lower costs;
- There is a scarcity of land to work on; and
- The contractor wants to keep crews working during a slow season, or the contractor has equipment payments to make and cannot afford to let the equipment sit idle

3. Measurement of Wood. Measurement of wood in commercial transactions must comply with state laws and the wood measurement rules adopted by the Division of Quality Assurance within the Maine Department of Agriculture, Food and Rural Resources. The rules detail 11 methods of measuring wood and the authorized use of each method (Maine DAFRR, Wood Measurement Rules, Chapter 382, Section 6; <<http://www.maine.gov/agriculture/qar/wtsmeas-regs.html#Wood%20Rules>>). Weight scale has largely replaced all other methods of measurement at the mill for pulpwood. It has also become the standard form of measure for softwood logs in northern Maine and Quebec. Weight scale may be used to measure wood in any production form when the contracting parties agree on this method.

Log scale is still the predominant form of measure for hardwood sawlogs. A log rule uses a standard table that estimates in board feet the amount of lumber that can be sawn from a log based on the diameter and length of the log. The International 1/4 Inch Rule is the State standard for measurement of log-length wood. Parties may agree to the use of one of 3 other authorized log rules: the Bangor Rule, the Maine Rule also known as the Holland rule, or the International 1/8 rule. No log rule gives the actual number of board feet that will be sawn from the log. Log rules simply provide a uniform standard of measure.

4. Payment methods. Logging payments are 2-fold under contracts for logging services. First the landowner pays the logging contractor and then the contractor pays the loggers working as employees of or subcontractors to that contractor. Some basic points relating to payment methods are made below.

Piece rate by product and grade - Logging contractors working under a CLS are generally paid on a piece rate system. They are usually paid weekly based on the volume or weight of wood produced. For example, a logging contractor might be paid \$50 per ton of softwood pulpwood cut

and delivered to a mill. If a contractor does not provide trucking, the dollar figure per ton would be lower but payment is still likely to be based on weight scale at the mill.

Requiring wood to be sorted at the landing or yard into a variety of products - such as pulpwood, spruce sawlogs, pine sawlogs, and hardwood logs by species - adds considerably to the cost of production. The landowner realizes a greater return on the resource by marketing wood for its highest value use. A logging contractor generally receives higher piece rates for higher valued products, compensating the contractor and subsequently the logging crews for the additional time required to cut the wood to appropriate lengths and sort for trucking to different destinations.

Theoretically, the piece rates negotiated in a contract would cover logging costs and allow a reasonable profit for the contractor and the contractor's employees. The employees might be paid on a production basis or an hourly wage. Payment on an hourly rate is common for operators of mechanical harvesters.

Factors affecting rate of pay and payment methods - A landowner is more likely to enter into a contract with generous piece rates, bonuses or some other payment structure when the landowner's harvest objective goes beyond supplying a mill owned by the landowner or maximizing revenue from that harvest. The landowner is willing to compensate loggers for the extra time required to minimize damage to the trees left or as an incentive to attract or retain logging contractors known to do a good job. In addition to paying premium rates, long-term contracts are an incentive for loggers.

Some examples of situations in which a landowner might pay in excess of the normal piece rate are:

- The landowner has a long-term management goal and is conducting a harvest to improve the stand. Although some commercial wood is being cut, the volume and/or quality of the wood will not provide fair compensation to the logger at normal piece rates.
- A logging contractor has a good reputation and the right equipment for working in a particular stand. Perhaps the site is environmentally sensitive. Perhaps, the products harvested are of high value and extra care is needed in bucking and sorting for the landowner to realize maximum value. The landowner is willing to pay more to get the services of this particular contractor.

Each parcel of land to be harvested comes with a set of variables affecting logging costs. In addition, there are regional differences in the number of landowners who manage for timber production and the number of logging contractors available. It is reasonable to expect that differing methods of payment and rates of pay would be used to compensate loggers.

III. Logging in Northern Maine

This section of the report focuses on logging in northern Maine. Northern and western Maine differ from the rest of the state in 2 aspects of particular importance for this study:

1. Proximity to Quebec and a Canadian work force with a strong tradition of woods work;
and
2. A high percentage of forestland in large ownerships.

The map in Figure 1 indicates the holding of landowners and managers with over 100,000 acres.

Testimony on logging issues before the Joint Standing Committee on Agriculture, Conservation and Forestry had emphasized the impact of the above 2 factors on loggers in the St. John Valley and the committee chose to hold its public hearing in Fort Kent. Additional hearings in other areas of the state were not possible due to time and budget constraints. Although quantitative data is presented on a statewide or regional basis as indicated in the tables and figures provided, this part (Part III) of the report also presents information specific to the St John Valley. The reader must continue to be aware both in this section and throughout this report of the geographic areas to which the discussion applies.

The proximity to a Canadian work force is discussed below in the context of the federal H-2 Bonded Labor program, a program administered on a regional basis but with local impacts of differing magnitude. The contractual relationship between large land ownerships and logging contractors is discussed under the heading “Concentration of land and negotiating power” with emphasis on the practices of Irving Woodlands.

A. Bonded Labor Program (H-2 Program).

The federal H-2 bonded labor program allows U.S. employers to hire Canadian loggers if the H-2 program criteria are met. An employer anticipating a shortage of U.S. workers must apply to the Maine Department of Labor (MDOL) a minimum of 80 days prior to bringing in foreign labor. An applicant must advertise the position and contact former employees. The employer is certified to hire foreign labor only if there is a shortfall of U.S. workers applying for the advertised positions. Appendix E contains information prepared by the Maine Department of Labor in response to questions from the committee.

MDOL administers the program for the Northeastern region, consisting of Maine, New Hampshire, Vermont and New York. Prevailing wage rates are set for the region based on the annual Northeast Regional Woods Wage Survey. The new prevailing wage rate becomes effective May 1st of each year. A person who employs woods workers under the H 2 program must pay bonded workers and any U.S. workers hired by that employer at least the established prevailing rate for the type of work performed.

The prevailing rate at its simplest is “a rate of pay which accounts for the wages paid to 40 percent or more of those employed in a given activity.” If no single rate accounts for 40 percent of workers covered by the survey, then the prevailing rate is determined by adding the number of workers, starting with the number at the lowest rate of pay until 51 percent of the workers covered in the survey are included. Employers applying to hire H2 bonds must advertise at and pay a rate equal or greater than the prevailing rate.

Evaluating the methodology for establishing the prevailing wage and understanding the impact of the H2 program on local labor markets is complicated. The 1999 PAC/TIG study concluded that 1) a shortage of U.S. logging workers exists in Maine and raising wages would not attract sufficient workers and 2) the H-2 program does not depress wages statewide but it is likely that the H-2 bonded labor program has a slightly negative effect on incomes for Northern Maine, primarily the St. John Valley. The study criticized the methods used in the wage survey and questioned the justification for the regional boundaries. The report suggested establishing the Saint John Valley, northern and western most Maine as a region to better reflect labor market conditions divergent from the rest of the larger region currently used to determine prevailing wage (PAC/TIG, p. 224).

Several people who addressed the committee in Ft Kent disputed the conclusion of a shortage of U.S. loggers in Northern Maine. This committee agrees and contends that the establishment of prevailing rates by USDOL and the availability of bonded labor in certain areas of Maine is a significant factor in keeping wages for woods work artificially low. Tables and graphs presenting prevailing hourly wage rates from 1988 to 2003 are found in Appendix F. In a perfect market, a labor shortage would result in wage increases attracting enough Maine workers to meet the annual demand for wood. Recent trends towards increased mechanization and worker productivity also would lead one to expect an abundance of labor.

Loggers in the St. John Valley understand that some contractors seek bonded labor because they cannot afford to pay a living wage for U.S. workers. The contractor’s profit margin simply does not allow it. Canadian workers can afford to work for less because of their Canadian health care coverage and the exchange rate. For example on 4/8/04, the exchange rate of US to Canadian dollar was \$1.326; wages of \$500 paid in U.S. dollars would translate to \$663 in Canadian dollars.

Members of this committee were frustrated in attempts to get the number of H2 bonded workers actually working in Maine and a break down of numbers by region within Maine. MDOL responded, “It is difficult to tell what area the H-2 workers are working in because they are certified for the State of Maine, and not a specific location.” Table 1 presents the number of H-2 bonded workers for the period 1998 to 2003. The committee understands based on communication with MDOL that the numbers represent requests for bonds that were, in fact filled. The numbers do not include any emergency authorization for additional workers.

TABLE 1
H-2 Bonded Woods Workers in Maine

Year	# Companies with H-2 Workers	# H-2 Workers	% Change from previous Year
1998	41	670	
1999	44	482	- 28%
2000	42	416	-14%
2001	47	490	+18%
2002	50	573	+17%
2003	52	644	+12%

The committee had questions that remained unanswered regarding types and ownership of equipment used by the H-2 workers. The PAC/TIG report had recommended that MDOL request additional information at the end of each operating year. Quoting from the report “at the close of each operating year (probably each April or May, during “mud season”) MDOL should request the actual number of bonds employed from every H-2 employer. This is a basic starting point for continuing to monitor the impact of the H-2 program on the State. Also in keeping with efforts to monitor the state of mechanization and equipment ownership, it would be advisable to require a list of machines by contractor, listed according to equipment ownership (i.e., firm, employees, other” (PAC/TIG, page 226).

Although Maine’s Department of Labor administers the H-2 program for the Northeast Region, federal law and regulation govern the program. Neither the Maine Legislature nor MDOL can change the criteria or process for approving requests for bonds. Recognizing this limitation, in May of 2003, the Legislature adopted a Joint Resolution requesting the members of Maine’s Congressional delegation to:

1. Submit and support legislation requiring USDOL to establish reimbursement rates for heavy equipment operation under the H-2 program;
2. Urge the USDOL to examine the current methodology for calculating various rates in the annual Woods Wage Survey for the H-2 program, particularly for calculating hourly rates and to specifically examine the Woods Wage Survey methodology for accuracy, rigor and types of workers included;
3. Submit and support legislation to clarify and increase consistency in definitions, applications and criteria for independent contractors in federal law; and
4. Review Section 530 of the Federal Revenue Act of 1978 pertaining to independent contractor status and exemptions from labor law requirements relating to worker health and safety.

MDOL certainly does have the authority to monitor use of the H-2 program. This committee recommends that MDOL collect and compile information annually on the *actual* number of H-2 bonded laborers employed, the geographic areas in which they work, or the equipment used by them. A better understanding of the use of bonded laborers, the number working as employees

and the number coming in with their own equipment to work as independent contractors or subcontractors would be helpful in assessing the program's potential impact on Maine workers. This committee has sent a letter to Commissioner Fortman stating this recommendation and requesting a response to this committee and the Joint Standing Committee on Labor during the First Session of the 122nd Legislature. (see Appendix M for a copy of the letter)

B. Concentration of land and negotiating power. One of the primary market conditions affecting woods workers in northern Maine is the concentration of land under a few large ownerships. In 1999, Irving Woodlands bought 1, 015,565 acres of land from Bowater, land previously owned by Great Northern Paper Co. With this purchase Irving catapulted ahead of other forest products companies, nonindustrial landowners and investor groups to become Maine's largest landowner. Irving has sold some parcels since 1999 but remains Maine's largest landowner with approximately 1.1 million acres. Irving has expanded its presence in Maine at a time when other forest products companies have been selling their land holdings. In addition to buying land, Irving has acquired manufacturing facilities in Maine: including a hardwood lumber mill in Strong, a pine mill in Dixfield and a softwood dimension lumber mill just north of Ashland.

Throughout the last century, a handful of forest products and land management companies owned vast tracts of forestland in Northern Aroostook. Many employed their own logging and road crews, operating from camps in remote areas. Although landowners have changed, the pattern of ownership and commercial use remain fairly stable. The transition away from company logging crews has been to contracts for logging services (CLS), not to stumpage sales. There are few landowners in the area who sell stumpage.

Has the emergence of Irving Woodlands as the dominant industrial landowner had an impact on logging businesses in Northern Maine? Loggers and truckers who work for Irving testified that they are working longer hours, incurring higher equipment costs and watching their financial gains decrease. Appendix G summarizes testimony heard and issues raised at the study meeting in Fort Kent on September 12, 2003.

In December of 2003, truckers, whose contracts with Irving were due to expire on December 31st, met and agreed to make demands for higher rates than were being offered by the company. A work stoppage by the truckers began Monday, January 5th. Several logging contractors cutting on Irving land joined the stoppage to demonstrate solidarity with the truckers and seek rate increases in logging contracts, which expire in the spring. On January 23rd, the loggers and truckers met and agreed to return to work for Irving. They also agreed to continue working together as the International Loggers Association to assist one another and to lobby state lawmakers on issues of importance to them collectively. During the period of the work stoppage the company had agreed to increase rates but not by the percent sought by the truckers and loggers. It was reported that some truckers had signed new contracts and some had found work for other landowners during the stoppage. (Bangor Daily News articles relating to the stoppage are found in Appendix H.)

At the time this report is being written, loggers and truckers are anxiously awaiting the disposition of LD 1318 An Act to Promote the Public Interest by Providing for Reasonable Rates of Compensation for Forest Products Harvesting and Hauling Services (see page 3 for a description

of the bill's provisions). Proponents for enactment of this legislation contend that allowing a group of loggers or truckers to petition the state for a rate setting action is necessary because the owner of a trucking or logging business has virtually no bargaining power when negotiating a contract with Irving.

Again, the logging and trucking companies who work on Irving land are independent contractors and operate subject to the terms and rates established in a contract signed each year. Information provided to the committee by Irving for 2002 & 2003 indicated that 31 logging contractors were working on Irving land. The largest of these had 10 machines and 10 employees, the average number of employees was 4.5 and the most prevalent size of operation was 5 employees. With relatively small operations, no one contractor cuts or hauls a large percentage of Irving's harvest. Irving is described as offering "take it or leave it contracts." Those who want to remain in the St. John Valley have few other landowners to approach for work.

Payment rates are not the only source of discontent in Irving contracts. Provisions, which allow Irving to change rates at any time, to terminate a contract for any reason and to take possession of the contractor's equipment to finish a job, are items mentioned as particularly offensive. People knowledgeable of the forest products industry recognize the need for a degree of flexibility within a logging or trucking contract. Weather, ground and road conditions as well as markets can change fairly rapidly. It is often necessary to move equipment or change delivery destinations with short notice. We do not know if other landowners' contracts contain provisions similar to Irving's. Members of the committee have not, however, heard complaints against any other major landowner that remotely approach the number and vehemence of the complaints against Irving. Whether or not more hearings in different regions of the State would have elicited complaints regarding other landowners, we do not know. We know of no other major landowner who has been the subject of a work stoppage by loggers and haulers during the course of this study.

At the committee's October meeting, Irving provided information on Irving's Logger Productivity Program (See Appendix I). This program began as a pilot program in July of 2003 with volunteer contractors participating. The stated goal of the program is to increase the earnings and financial performance of logging and trucking businesses in Maine without increasing the costs of wood to manufacturing facilities.

Some people knowledgeable of the logging industry are skeptical of the final outcome. They suggest that monitoring production and identifying ways to improve productivity may result in the independent contractors being pressured to increase efficiency by purchasing new equipment or operating 2 shifts a day. These may not be business decisions that a truly independent contractor would make, however, once these actions are identified as lowering the cost of production, the next round of contracts may contain lower rates to reflect the new lower costs of production. Whether or not contractors will actually realize an increase in net earnings as a result of the productivity project remains an unanswered question.

In a global economy, it is everyone's interest to keep production costs low and keep Maine mills competitive. Irving is recognized as a company that invests in its mills to improve efficiency and maintain profitability. Likewise Irving Woodlands are recognized as managed for long-term yield of primary forest products. Ultimately the market will decide the success of Irving's model. Only

the company knows what it truly can afford to pay for logging services and what it must pay to harvest at the level it has determined optimal for supplying its own mills and other mills in the region.

Irving is a privately held company and not compelled to report quarterly earnings to stockholders. With forestland and forest products manufacturing facilities in Nova Scotia, New Brunswick and Maine, factors influencing Irving's business decisions on ownership and management of timberlands understandably differ somewhat from factors affecting U.S. forest products companies with mills in other regions of the U.S. and the world, and land management companies without manufacturing facilities.

It appears that Irving Woodlands will continue to be a strong presence in northern Maine with a direct or indirect impact on wood supply throughout the state. It would be interesting to compare the number of jobs and compensation for jobs associated with harvesting on Irving lands with the number of jobs and compensation associated with other large ownerships. Likewise it would be interesting to compare jobs at forest products mills owned by Irving with jobs at forest products mills owned by other companies. This information, however, is not readily available and perhaps not very useful from a policy standpoint. Suffice it to say that Irving has come to the attention of this committee as a company that uses the full force of its technical expertise and negotiating power to keep costs as low as possible.

IV. Changes in Wood Supply Systems and Logging Production Capacity in Maine

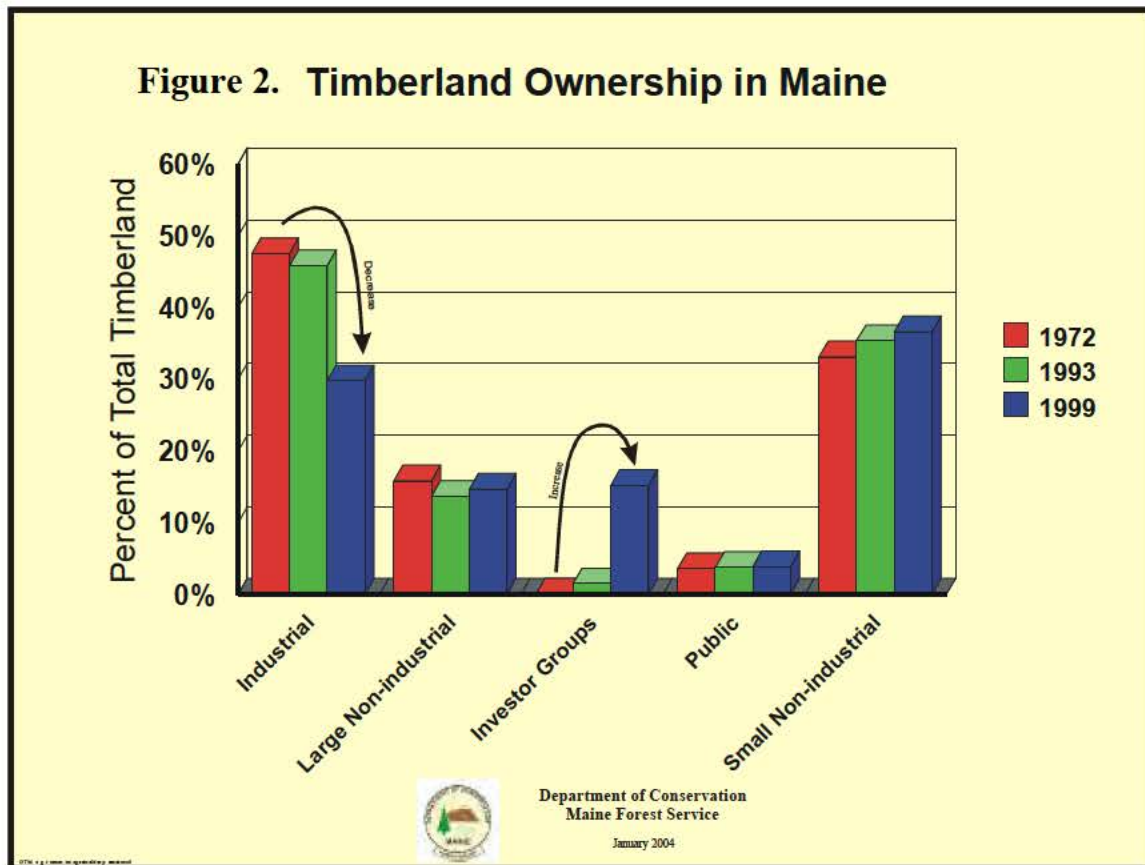
The Fourth Annual Inventory Report on Maine's Forest characterizes Maine's forest inventory as improved from 7 years ago. Presentations by the Maine Forest Service to the Joint Standing Committee on Agriculture, Conservation and Forestry have indicated the timber resource is adequate to meet current and anticipated demand for wood. With this understanding, discussion in this report is confined to wood supply rather than timber supply, that is getting wood from the stump to the mills rather than the volume of timber growing and available for harvest.

An understanding of the wood supply systems within a region and wood as an input cost for a mill are important for understanding how loggers fit into the larger forest products industry. This section of the report touches on these dynamic forces in the context of logging production capacity and the experience of Maine mills in the winter of 2003-2004.

The wood supply system, defined, as "a mechanism charged with the long-term responsibility for supplying wood from a large set of tracts to a large set of mills", is incredibly complex (Laestadius, 1990). Conditions change with ripple effects throughout the system. Total demand for wood changes as mills respond to markets for their products and their competitive positions within those markets change. Wood supply is impacted by a myriad of factors including landowner objectives, prices paid by mills, and the availability of loggers and truckers, but also by the favorability of weather, and ground and road conditions for harvesting and hauling. The degree of control a mill or logging contractor has over these factors obviously vary. A few factors considered important in understanding recent changes in Maine's wood supply system are discussed in this section.

A. Control Of Land Base

Although acres of forested land in Maine have remained stable, the patterns of ownership have changed substantially in the last decade. Acreage owned by forest industry has decreased with a sharp increase in acres owned by investor groups. Figure 2 provides a graphic illustration of changes. The reduction in wood control by the mills is not however as great as might be anticipated.



Recent sales of large tracts of land previously owned by forest products companies have included long-term agreements for delivery of wood to the companies' mills. These agreements offer a degree of assurance to the mills that their demand for wood will be met. These agreements, however, do represent a significant change or potentially significant change in control of wood supply. Prices in the contract typically are specified as effective for a much shorter period of time than the agreement (Libbey, 2000). After the designated period, prices are renegotiated. If the parties cannot agree on wood delivery schedules and prices, they may take unresolved issues to arbitration. The impact of changes in land ownership on the wood supply system may increase as supply contracts entered into as part of sales agreements expire. Due to the huge volumes of wood consumed by the pulp and paper producers, they will continue to be major players in the regional wood supply system, drawing low quality wood away from pallet mills and other users by raising prices when necessary to meet demand.

International Paper Company is the only company owning paper mills in Maine that continues to own in excess of 250,000 acres of forestland in Maine. Generally speaking, pulp and paper mills no longer have the option of increasing the harvest on company lands to supply their mills when the price of wood rises. On the market side for paper products, mills face unprecedented global competition. Maine mills are essentially price takers with prices for grades of printing and writing paper produced in Maine very close to the cost of production. An increase in raw material cannot be passed on to buyers. Appendix J provides a graphic illustration of falling prices.

B. Logging Production Capacity

Regardless of whose land is being harvested, a workforce is needed to get the wood from the stump to the mill. Several surveys conducted in 2000 and 2001, documented an overcapacity in the logging industry (Greene et al., Forest Resources Association 2001, Egan, 2004). Simply put, there have been more than enough loggers and logging equipment and truckers and trucking equipment to cut and deliver the amount of wood demanded by mills in Maine and other regions of the eastern United States. Logging production data collected in the Southern United States and Maine between April of 2000 and December of 2001 found the wood supply system in the region to be using 65% of its capacity (Greene et al., 2003). A majority (77%) of Maine logging businesses participating in the study reported unused capacity.

This overcapacity was documented at a time when the workforce in Maine had been steadily shrinking. Figures 3 and 4 below illustrate the decline in the number of loggers, the total timber harvest and the average production per logger. The increase in productivity as mentioned previously is in part due to mechanical harvesting. The causes of and potential solutions to unused capacity vary by region and locale within a region. Regardless of the causes, the existence of significant unused capacity indicates inefficiency and higher costs in a region's wood supply system (Laestadius, 1990). A look at wood inventory patterns in Maine helps understand the causes of overcapacity and who bears the costs associated with it.

After a look at inventory patterns, the wood shortages reported in December of 2003 are discussed in Section IV of this report.

C. Wood Inventory Patterns

Again assuming that the timber supply is adequate, this section looks at where the wood is held prior to being consumed by a mill. Inventory patterns for pulp and paper mills changed radically with the end of the river drives and the advent of an extensive road network within the industrial forest. A less dramatic change has occurred over the past 5-7 years with mills typically keeping less inventory in their wood yards.

In the early to mid-1990's an inventory of wood equivalent to 40-50 days consumption was common for a pulp and paper mill. Now it is common for inventories to build to that level only in February and March in anticipation of mud season. An average of 15-20 days supply in the wood yard is the norm during the summer and fall. (Rice, 2004) People who watch the industry speak of "just in time deliveries" and acknowledge that smaller inventories have cost advantages for mills. The tempo of "just in time" deliveries have long been the norm in the Southern U.S.

Mills impose quotas to keep inventories low. This works for the mills as long as idle logging production capacity exists to respond to an increase in demand for the manufactured product or to rebuild inventory if deliveries are curtailed by adverse weather or other conditions beyond the mill's control. Having the idle capacity to respond to surges in demand does, however, carry costs for the logging industry. Maine logging businesses participating in the Greene study attributed an average cost of \$40, 257 per year to unused capacity. The Greene manuscript notes that this is an average with individual cost figures varying widely among contractors.

To generalize, a cadre of independent contractors with a surplus of production capacity helps keep wood costs down for mills. The contractors compete with one another to deliver wood. The contractors bear the costs associated with unused capacity, including equipment payments on idle machinery. Regardless of the causes, the existence of significant unused capacity indicates inefficiency and higher costs within a region's wood supply system. Over the past decade in Maine, it appears that independent loggers and logging contractors in Maine have borne the brunt of costs associated with unused capacity.

D. Logging Capacity in the Winter of 2003-2004.

In December of 2004, Louisiana-Pacific Corporation announced that its oriented strand board (OSB) mill in Baileyville, Maine would shut down temporarily because it could not get enough wood. Other mills reported low wood inventories and difficulty getting wood. These reports were prior to the work stoppage by truckers and loggers working for Irving (see Appendix K for news articles). What was happening? Among the conditions contributing to the reported shortage in supply of wood in the winter of 2003-2004 were:

- High demand for wood. NexFor Fraser purchased and reopened the Brown Mill in Berlin, New Hampshire in 2003 adding significantly to the regional demand for pulpwood.
- Weather and ground conditions in the fall of 2003 and into January of 2004 were not favorable for harvesting and hauling. These are the months when mills typically begin to build inventory in anticipation of the spring thaw.
- Inventory patterns for pulp and paper mills have changed. Mills have not had an inventory cushion in the wood yard to see them comfortably through periods of uncharacteristically low production due to weather and ground conditions.
- When pulp and paper mills lift quotas and/or raise prices for delivered wood, low quality sawlogs are diverted from other mills. Hardwood destined for OSB mills also becomes pulpwood.
- The ability of the logging industry to respond to surges in demand has diminished. The idle machines and operators that in the past responded to open gates and calls for more wood are no longer available.

- With the magnitude of investment needed, people cannot enter or expand a logging business quickly to take advantage of what could be a short-term increase in demand and pay rates.

The last 2 bullets above are of particular importance to this study. These observations are made by people knowledgeable of the logging industry and attempting to explain the experience of 2003-2004. No surveys of loggers and people who have recently exited the logging business have been conducted to confirm these statements.

V. The Future Supply of Loggers

A comprehensive survey of loggers in 2001 provides demographic information on loggers in Maine as well as their perceptions on their profession. The average age of the Maine logger is 44.4 years with 22 years of logging experience. Respondents to the survey reported that they worked as loggers “because they enjoyed working outdoors and the sense of independence, accomplishment and challenge that they associated with logging” (Egan and Taggart, 2004). Survey respondents indicated that the public does not have a good understanding of the logging profession and that the profession lacks prestige among the general public. Sixty nine percent of the Maine loggers responding to the survey indicated that they would not encourage their children to become a logger.

In analyzing the survey results, Egan and Taggart write: “Our results imply that success in retaining current loggers and recruiting future loggers will have less to do with perceptions of logging’s occupational prestige (although these perceptions are not unimportant) and more to do with better wages, prices for wood, and employment benefits” (Egan and Taggart, 2004).

In 1995, loggers initiated a trade association, Professional Logging Contractors of Maine (PLC) to represent the interests and concerns of the logging industry. PLC’s stated mission is to promote professional conduct among loggers, provide a forum for the resolution of issues of concern to professional logging contractors and promote compliance with forestry and harvesting practices, which maintain sustainable forestry (<http://www.maine-loggers.org>). Sandy Brawders, Executive Director of PLC, envisions the group also working to increase the public’s understanding of the profession with a resulting boost in prestige and ability to attract young people into the profession.

The Certified Logging Professional program began in 1991 to improve safety within the logging industry. With certification conventional loggers can reduce their worker’s compensation rates by as much as 38%. It has evolved “to train and certify loggers in safe, efficient, and environmentally sound logging practices” (www.moosehead.net/clp). Initial training and certification under CLP costs \$500 with an annual \$125 renewal fee. Wood procurement policies at some mills require that the wood be harvested by Certified Logging Professionals. Stipulating in wood contracts that the wood must be harvested by CLPs offers assurance that the loggers have been trained in the use of best management practices (BMPs) and are familiar with environmental regulations. This requirement may become more prevalent as more mills participate in the Sustainable Forestry Initiative. SFI endorses and encourages wood suppliers to participate in the CLP program

Although CLP training promises to improve the perception and prestige of the profession, some loggers object to the acceptance of this program as a criterion for wood deliveries. The time commitment and cost of training are substantial and although the potential for reductions in workers comp rates is an incentive, other financial incentives have been lacking. Some loggers object philosophically to a policy that requires them to be trained for a job that they have been performing for many years. The number of loggers who have been forced out of business financially because they could not get contracts from major purchasers is unknown. Some familiar with the industry believe the diminished “surge” capacity observed last year when mills lifted quotas in the spring was, in part, due to an exodus of these loggers.

The Governor’s Advisory Council on the Sustainability of the Forest Products Industry in Maine was created by Executive Order in January of 2004. One of 8 directives to the council is to examine “issues relating to the recruitment and retention of loggers, as well as other labor force needs.” The Advisory Council is to submit recommendations to the governor by August 31, 2004. (See Appendix L for a copy of Executive Order 9 FY04/05)

VI. Concluding Thoughts

For decades reports on both the management of Maine’s forest resource and on the health of Maine’s forest products industry have expressed concerns for the logging labor force. More than one report specifically cites logger issues as worthy of study and debate in a public policy arena. (MCFM, 1996; Round Table 2001). This committee in attempting to carry the study of logger payment one step further has developed a keen appreciation for the long hours a logger works, the skill needed to harvest trees responsibly, and the business acuity essential to survive in an extremely competitive industry. We have also developed an appreciation for the complex market forces at work in the wood supply system.

Inadequate payment and looming shortage of loggers are problems, which one would expect the market to correct. Intense competition among logging contractors and pressure from consuming mills to keep the cost of wood down have kept logger payment rates from increasing as the degree of skill and equipment investments have grown. Has logging production capacity now diminished to the point where this dynamic will change? Will wood prices rise substantially and be reflected in higher wages or piece rates for loggers? Will mills and landowners enter into long-term contracts encouraging investment in equipment? Can Maine mills pay more for wood and remain competitive? Will only mills operating efficiently with updated machinery be able to afford the raw material? These are all questions, which we as policymakers cannot answer and in only limited ways attempt to influence.

Those within the wood system – receiving mills, landowners, wood dealers and logging contractors, can control many factors affecting the wood supply system. We endorse the statement “Effective partnerships between stakeholders will be the key to efficiency improvements in the raw material supply chain for the forest products industry.” (Greene et al., 2004) Loggers must be recognized as stakeholders and included as partners to realize improvements and savings throughout the wood supply system. Failure to pay rates that cover logging costs and allow a profit margin commensurate with the required skills and capital investment to enter or remain in

the logging business is short sighted for an industry that plans to continue as a major economic force in this State.

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APPENDIX A

**Authorizing Legislation
Joint Study Order, House Paper 724**

JOINT STUDY ORDER
H.P. 724
Passed June 11, 2003

ORDERED, the Senate concurring, that:

1. The Joint Standing Committee on Agriculture, Conservation and Forestry shall conduct a study of new payment models for the logging industry. The committee shall conduct the study during authorized interim committee meetings.

2. The committee shall:

A. Examine how logging contractors and their employees are paid;

B. Explore new models of payment;

C. Examine public policies for forests that promote better forestry practices or protect wildlife habitat and how the policies affect landowners;

D. Examine whether there are forest policies that give incentives for mismanagement or disincentives for improved management;

E. Examine state labor and educational policies that govern the creation of apprenticeship programs;

F. Identify the opportunities for and barriers to creating logger apprenticeship programs; and

G. Consult with interested parties affected by the forest industry.

3. The committee shall submit a report, together with any necessary implementing legislation, to the Legislature no later than December 3, 2003.'

APPENDIX B

Brief Summary of Maine Logging Industry and the Bonded Labor Program: An Economic Analysis, Pan Atlantic Consultants and the Irland Group, 1999

**Summary of the Pan Atlantic Study
The Maine Logging Industry and the Bonded Labor (H-2) Program**

- The study was performed by Pan Atlantic Consultants, under contract with the Maine Department of Labor and funded by the United States Department of Labor. The study was conducted to help the state and federal Department of Labor (1) understand the wages and working conditions of logging professionals in Maine; and (2) determine whether the wages being paid to H-2 visa loggers in Maine were having an adverse effect on the wages and working conditions of similarly employed U.S. workers.
- It is important to understand the impact of H-2 loggers on U.S. loggers because, under the federal law that grants H-2 visas to loggers from Canada, the following 2 conditions must be met for issuance of a visa. The employer must show that:
 1. There are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition; and
 2. The employment of the H-2 workers in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.
- If employment of H-2 workers had an adverse effect on wages and working conditions of U.S. workers, employers would be required to pay a higher wage to both U.S. workers and any H-2 workers they hired. Employers can generally pay the “prevailing wage” for services, but if it is shown that employment of H-2 workers has had an adverse impact on those wages, then federal law requires the employer to pay a higher rate (known as the “adverse effect” wage rate) to both H-2 loggers and U.S. loggers.
- The Pan Atlantic study concluded that:
 1. Of the 3,600 loggers in Maine in the 1998-99 season, 76% were U.S. citizens and 24% were Canadian citizens (half the Canadian citizens had permanent visas, and the other half – approx. 450 – had temporary H-2 visas).
 2. Imperfect markets exist in the logging industry in Maine, especially in northernmost Maine. Geography is the primary reason for the imperfection.
 3. A labor shortage of U.S. logging workers does exist, but raising wages would not attract sufficient workers.
 4. The H-2 visa program does not depress wages on a statewide basis, although it is likely that it has a slightly negative effect on incomes for Northern Maine, primarily in the St. John Valley.
 5. Several short-term changes to the bond program would be helpful to workers and contractors (e.g. changing the woods wage survey, establishing heavy equipment rates and conducting field inspections).

According to the Maine DOL, attempts to change the survey or establish heavy equipment rates were rejected by the federal Department of Labor.

APPENDIX C

Joint Resolution Memorializing the Congress of the United States

State of Maine

In the Year of Our Lord Two Thousand and Three

JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO REQUIRE THE UNITED STATES DEPARTMENT OF LABOR TO EXAMINE ITS METHODOLOGY FOR CALCULATING RATES IN THE WOODS WAGE SURVEY, TO ESTABLISH HEAVY EQUIPMENT OPERATIONAL RATES AND TO REMOVE BARRIERS TO THE HEALTH AND SAFETY OF PERSONS HARVESTING FOREST PRODUCTS

~~WE~~, your Memorialists, the Members of the One Hundred and Twenty-first Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the Congress of the United States as follows:

~~WHEREAS~~, the United States Department of Labor H-2 Bonded Labor Program is still used to employ loggers by timber harvesting companies that operate in the forests of Maine; and

~~WHEREAS~~, a 1999 United States Department of Labor-sponsored study of the H-2 program and the Maine logging industry recommended a number of changes in the H-2 program; and

~~WHEREAS~~, piece and equipment rates established annually for the H-2 program essentially represent piece and equipment rates not only for Canadian bonds but also United States loggers who work in Maine timber harvesting operations; and

~~WHEREAS~~, the timber harvesting segment of the Maine forest products industry is characterized by greater use of mechanized equipment to harvest the trees in the Maine woods and the rates of operational reimbursement for that equipment have not changed in 30 years; and

~~WHEREAS~~, the 1999 bonded labor study found that "changes to the annual Woods Wage Survey and the establishment of heavy equipment reimbursement rates will make the H-2 program more efficient in ensuring its goals"; and

~~WHEREAS~~, the varying and conflicting definitions of, criteria for and application of independent contractor status by federal agencies also represent a significant challenge to the forest products industry and other industries; and

~~WHEREAS~~, these varying and conflicting definitions and applications of independent contractor status make it difficult for members of the forest products industry and other industries to efficiently operate their businesses in compliance with these laws, which are intended to define and characterize the employer-employee relationship; and

~~WHEREAS~~, some of these varying and conflicting definitions and applications of independent contractor status, particularly Section 530 of the federal Revenue Act of 1978, as amended, encourage and enable some industry members to use these laws to gain a competitive advantage over those industry members struggling to obey both the letter and the spirit of these laws; and

~~WHEREAS~~, these varying and conflicting definitions and applications of independent contractor status have made it difficult, if not impossible, for federal agencies to successfully prosecute individuals and businesses who willfully violate the letter and spirit of these laws; now, therefore, be it

RESOLVED: That We, your Memorialists, for the continued viability of the timber harvesting industry in Maine, respectfully recommend, urge and request the Members of the Maine Congressional Delegation to:

1. Submit and support legislation requiring the United States Department of Labor to establish reimbursement rates for heavy equipment operation under the H-2 program:

2. Urge the United States Department of Labor to conduct a thorough examination of the current methodology for calculating the various rates reflected in the annual Woods Wage Survey for the H-2 program, particularly the methodology for calculating hourly wage rates, and specifically urge the department to examine the methodology for its Woods Wage Survey accuracy, rigor and types of workers included in the survey's universe; .

3. Submit and support legislation to clarify and make more consistent the definitions, applications and criteria for independent contractors in federal law; and

4. Review Section 530 of the federal Revenue Act of 1978, as amended, with the Internal Revenue Service to ensure that its current application does not represent a barrier to the health and safety of those who work in the forest products industry and that, if warranted, the delegation submit and support legislation that will clarify the application of Section 530 of the federal Revenue Act of 1978, as amended; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the Secretary of the United States Department of Labor, to the Commissioner of the United States Internal Revenue Service and to each Member of the Maine Congressional Delegation.

House of Representatives

Read and Referred to the Committee on Labor

March 12, 2003

Sent for Concurrence

Ordered Sent Forthwith

Joint Resolution Adopted

May 12, 2003

Sent for Concurrence

Ordered Sent Forthwith

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk of the House

949

TEST: *Patrick Colwell*
PATRICK COLWELL
Speaker of the House of Representatives

Sponsored By:

Rep. Troy D. Jackson
of Fort Kent

Sponsored By:

Sen. Steven S. Stanley
of Penobscot County

Rep. Roderick W. Carr
of Lincoln

Rep. Kenneth C. Fletcher
of Winslow

Rep. Paul R. Hatch
of Skowhegan

Rep. John L. Patrick
of Rumford

Rep. William J. Smith
of Van Buren

Rep. Russell P. Treadwell
of Carmel

Rep. Thomas R. Watson
of Bath

Sen. Betheda G. Edmonds
of Cumberland County

In Senate Chamber

Read and Referred to the Committee on Labor

March 13, 2003

In Concurrence

Joint Resolution Adopted

May 14, 2003

In Concurrence

Joy J. O'Brien

JOY J. O'BRIEN
Secretary of the Senate

ATTEST: *Beverly C. Daggett*
BEVERLY C. DAGGETT
President of the Senate



In Testimony Whereof, I have caused the seal of the State to be hereunto affixed. GIVEN under my hand at Augusta, this nineteenth day of May, in the year two thousand and three

Dan A. Gwadosky

DAN A. GWADOSKY
Secretary of State

APPENDIX D

**LD 1318 as engrossed April 8, 2004,
"An Act to Promote the Public Interest by
Providing for Reasonable Rates of Compensation for
Forest Products Harvesting and Hauling Services"**

APPENDIX D

As Engrossed April 8, 2004

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FOUR

H.P. 972 - L.D. 1318

**An Act To Promote the Public Interest by Providing for
Reasonable Rates of Compensation for Forest Products
Harvesting and Hauling Services**

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

Sec. 1. 26 MRSA §931, first ¶, as amended by PL 1991, c. 798, §3, is further amended to read:

The State Board of Arbitration and Conciliation, in this subchapter called the "board," consists of 3 members appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. One member must be an employer of labor or selected from some association representing employers of labor, and another must be an employee or selected from some bona fide trade or labor union. The 3rd member must represent the public interests of the State and serves as chair. Vacancies occurring during a term must be filled for the unexpired term. Members of the board are entitled to receive \$75 a day for their services for the time actually employed in the discharge of their official duties. They are entitled to receive their traveling and all other necessary expenses. The costs for services rendered and expenses incurred by the State Board of Arbitration and Conciliation and any state allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by the State Board of Arbitration and Conciliation is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for

services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. The executive director shall, annually, on or before July 1st, make a report of the activities of the State Board of Arbitration and Conciliation to the Governor. The board shall from time to time adopt rules of procedure as it determines necessary, including rules of procedure for proceedings under chapter 18. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 26 MRSA §931-B is enacted to read:

§931-B. Forestry rate proceedings panel

1. Membership of forestry rate proceedings panel. There is established, under the authority of the board, a forestry rate proceedings panel, referred to in this section as "the panel," to conduct proceedings under chapter 18. The panel consists of the following 3 members:

A. One member representing forest products harvesters and forest products haulers, as defined in section 1352;

B. One member representing forest landowners, as defined in section 1352; and

C. One member representing the public interests of the State.

2. Appointment of members and alternates; terms. Members serve for terms of 3 years or until their successors are appointed. A vacancy occurring during a term must be filled for

the unexpired portion of the term. Members are appointed as follows.

A. The member representing the public interests of the State must be the person appointed under section 931 to represent the public interests of the State. The member representing forest products harvesters and forest products haulers must be appointed from a list provided by the International Loggers Association or a successor organization. The member representing the forest landowners must be appointed from a list provided by the Maine Forest Products Council or a successor organization. If an organization named in this subsection ceases to exist and does not have a successor, the Governor shall solicit names from similar organizations and may appoint any person the Governor considers appropriate to represent the appropriate interests.

B. The Governor shall appoint 2 alternate members to represent each interest set forth in subsection 1, paragraphs A and B. Alternates representing the public interests of the State appointed under section 931 serve as alternate members to represent the interests set forth in subsection 1, paragraph C. Alternate members serve for the same terms, have the same responsibilities and duties and are entitled to the same privileges and emoluments as members. When for any reason a member of the panel does not serve in a particular case, an alternate member having the same qualifications shall act as a member of the panel in that case.

C. Members and alternates are subject to restrictions on participating in proceedings in which they have a financial interest, as provided in section 1358.

3. Costs of proceedings. The parties to a proceeding brought under chapter 18 shall share equally in the cost of the services rendered and expenses incurred, in the same manner as provided in section 931. Notwithstanding Title 5, section 12004-B, subsection 1, the member of the panel representing the public interests of the State is entitled to \$750 a day and the other 2 members of the panel are entitled to \$250 a day for services for the time actually employed in the discharge of duties under chapter 18. All panel members are entitled to travel and other expenses, in the same manner as for board members under section 931.

4. Appeal of decisions. Decisions by the panel under chapter 18 constitute final agency action and are subject to judicial review pursuant to Title 5, chapter 375, subchapter 7.

5. Applicability of general board provisions. The provisions of section 931 that are not inconsistent with this section, and the provisions of sections 932 and 939, apply to panel proceedings under this section and chapter 18. Section 931-A does not apply to such panel proceedings.

Sec. 3. 26 MRSA c. 18 is enacted to read:

CHAPTER 18

RATES OF COMPENSATION FOR FOREST PRODUCTS HARVESTING AND HAULING SERVICES

§1351. Legislative findings

The Legislature finds that Maine's forest products industry is a vital component of Maine's economy and has a direct relationship to the economic health and welfare of workers, communities and businesses. Central to the viability of the forest products industry is a stable workforce of loggers and wood haulers available to harvest wood from Maine's forests and bring the wood to mills and other wood-using industry. The erosion of the logger and wood hauler infrastructure in any major region of the State can have a serious negative effect on wood products manufacturing throughout the State. The Legislature further finds that, based upon patterns and configurations of forest landownership, the harvesting and hauling of forest products are performed by numerous loggers and truckers who, in many cases, are not able individually to bargain effectively with forest landowners who possess overwhelming market power. The Legislature finds that such market power exists whenever a forest landowner owns, possesses or acquires economic control over more than 400,000 acres in a labor market area. Accordingly, the Legislature finds it necessary, in the absence of sufficiently vigorous competitive market forces, to displace competition as provided in this chapter. The inequity of power in determining compensation and the lack of opportunity to join together in bargaining over compensation can result in unfair contract rates for the services of loggers and wood haulers. The Legislature finds evidence of unfairness in the fact that contract rates for harvesting and hauling services are considerably lower on the land of such owners. The Legislature finds that it is in the public interest to ensure a reasonable rate of compensation for harvesting and hauling services and therefore creates in this chapter a process whereby the State displaces existing market forces and, upon request, sets the rates of compensation for such services.

§1352. Definitions

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

1. **Affiliated person.** "Affiliated person" means a person in the same corporate system as a parent or member organization by virtue of common ownership, control, operation or management.

2. **Association.** "Association" includes an incorporated or unincorporated entity.

3. **Economic control.** "Economic control" means the legal right, whether through ownership, contract or otherwise, to make or influence decisions regarding the harvesting of trees and disposition in general of forest products on subject land.

4. **Forest land.** "Forest land" means land used primarily for growth of trees to be harvested for commercial use.

5. **Forest landowner.** "Forest landowner" means:

A. A person that owns directly or through affiliated persons, or possesses economic control over, more than 400,000 acres in a labor market area; or

B. An agent or subsidiary of a person described in paragraph A if that agent or subsidiary is involved in contracting or negotiating contracts or other arrangements, written or oral, with forest products harvesters or forest products haulers.

6. **Forest products harvester.** "Forest products harvester" or "harvester" means a person having a place of business in this State who is engaged in harvesting trees from forest land in the State under a contract or subcontract, directly or indirectly, for a forest landowner.

7. **Forest products hauler.** "Forest products hauler" or "hauler" means a person having a place of business in this State who is engaged in hauling harvested trees to mills under a contract or subcontract, directly or indirectly, for a forest landowner.

8. **Labor market area.** "Labor market area" means an area designated as such by the United States Department of Labor, Bureau of Labor Statistics for purposes of implementing a comprehensive labor market information system.

9. Panel. "Panel" means the forestry rate proceedings panel, constituted under the State Board of Arbitration and Conciliation pursuant to section 931-B.

10. Person. "Person" includes one or more individuals, partnerships, corporations and associations.

§1353. State role in determining rates of compensation; panel powers and duties

1. Rate determinations. The panel, upon petition made pursuant to section 1357 and in accordance with the procedures and standards set forth in this chapter, shall determine reasonable rates of compensation to be paid by a forest landowner for forest products hauling services and forest products harvesting services in a specified area of the State.

2. Panel powers and duties. For the purposes of carrying out its responsibilities under this chapter, the panel has the powers of the State Board of Arbitration and Conciliation as set forth in chapter 9, subchapter 2-A. The State Board of Arbitration and Conciliation as established pursuant to section 931 may adopt rules to implement this chapter, including rules specifying what information held by the panel is confidential and not subject to public disclosure. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Compensation; costs of rate determination proceeding. Members of the panel are entitled to the compensation provided for in section 931-B for their services under this chapter. Costs incurred by the panel in making a rate determination under this chapter must be borne equally by the parties to the rate determination proceeding and may be collected by the Maine Labor Relations Board pursuant to section 931.

§1354. Participation of harvesters and haulers in rate determination process

For the purpose of effectively representing their interests in contemplated or pending rate determination proceedings under this chapter, 2 or more harvesters or haulers may join together and form an association to meet, confer, share information and take other collective action as may support their participation in rate determination proceedings.

§1355. Negotiations preceding rate determination

One or more harvesters or haulers may meet and negotiate with a forest landowner on the issue of determining reasonable

rates to be paid for harvesting services and hauling services in the State, as long as any agreement reached by the parties regarding rates of compensation is made contingent upon review and approval by the panel.

§1356. Activities are not restraint of trade

The provisions of this chapter are intended to displace existing market forces based on a legislative finding that such forces are insufficient to permit the affected market to function normally. Activities carried out pursuant to this chapter do not constitute a conspiracy, or a combination in restraint of trade or an illegal monopoly, nor are they carried out for the purposes of lessening competition or fixing prices arbitrarily, as long as the activities are carried out for the purpose of preparing, initiating or participating in a rate determination proceeding under this chapter. A contract or agreement entered into pursuant to negotiations between a forest landowner and a group of harvesters or haulers is not an unlawful restraint in trade or part of a conspiracy or combination to accomplish an improper or illegal purpose or act, as long as the contract or agreement is approved by the panel as provided in section 1358.

§1357. Rate determination petition

1. Who may file petition. A forest landowner or a person representing at least 3 harvesters or haulers may file a petition with the panel to initiate a proceeding to determine reasonable rates of compensation to be paid for harvesting or hauling services.

2. Required contents of petition. The petition under subsection 1 must include the following information:

A. The service for which the rate is to be determined;

B. The identity of the forest landowner who owns or possesses economic control over the land on which the rates are to apply and the geographic area in which the rates are to apply;

C. The rate, if any, proposed by the filing party, including any rate agreed to in negotiations between forest landowners and harvesters or haulers;

D. Information relevant to the factors set forth in section 1358, subsection 4 needed for the panel to make a decision;

E. A summary of any negotiations between harvesters and haulers and forest landowners; and

F. Any other information the panel specifically requests.

§1358. Rate determination proceedings

1. Public notice. Upon receipt of a properly filed petition, the panel shall publish notice in newspapers of general circulation in the areas of the State affected by the petition filing. The panel shall also provide notice to any person who has requested to be notified of filings. Notice must be provided at least 30 days before any hearing to be held, and at least 30 days before the close of a comment period on the filing, unless the panel determines that a shorter notice period is required by extraordinary circumstances.

2. Written comment; hearing. The panel shall solicit written comment from persons interested in the rates of compensation for harvesting and hauling services. The panel may also hold a public hearing to collect information and shall hold a public hearing if requested by any party to the proceeding.

3. Panel decision. After the close of the comment period and completion of any public hearing on the petition, the panel shall issue a decision determining reasonable rates to be paid by a forest landowner for services that are the subject of the petition and reasonable geographic applicability for the rates, as the panel determines appropriate. The panel's decision is a final agency action for purposes of Title 5, chapter 375, subchapter 7 and may be appealed pursuant to that subchapter. Rates determined by the panel are not stayed pending the appeal.

4. Standard for determining reasonable rate. In determining a reasonable rate to be paid by a forest landowner for harvesting or hauling services, the panel shall consider, to the extent relevant, the following factors:

A. Prices or projected prices for the harvesting services or hauling services currently paid by forest landowners in the State and in other states;

B. The quantity of forest products available in the market area or competing areas;

C. The relationship between the quantity produced and the quantity handled by the forest landowner;

D. The harvester's or hauler's costs, including, but not limited to, wages, overhead, fuel, insurance and the cost of replacing equipment;

E. Environmental and highway laws or rules;

F. The impact of the rate determination on the competitive position of the landowner in the market area or competing market areas;

G. A fair return on investment;

H. The species of tree, type of machinery and method of tree harvesting involved;

I. The extent to which hauling is conducted on private or public roads;

J. Safety considerations;

K. Prior agreements of the parties; and

L. Any factors that are normally or traditionally taken into consideration when determining prices for the services involved.

5. Interested panel members may not participate. A member or alternate member of the panel who has a financial interest in a rate determination proceeding brought before the panel, or in any party to the rate determination proceeding, may not participate in the proceeding affecting that financial interest.

6. Limitation on petitions. Unless the panel's rate determination decision specifies an earlier time, a person may not file a petition to change the rate set by that decision until one year after the rate determination decision was issued.

§1359. Violation

1. Violation. A forest landowner violates this chapter if that forest landowner:

A. Pays a rate for harvesting or hauling services in the State other than the applicable panel-determined rate, if any, for that service in that geographic area; or

B. Discriminates against any person for initiating or participating in a rate determination proceeding under this chapter.

2. Maine Unfair Trade Practices Act. Violation of this chapter constitutes a violation of the Maine Unfair Trade Practices Act.

§1360. Other agreements not precluded

This chapter does not prohibit the negotiation and execution of a contract between a forest landowner and an individual harvester or hauler that provides for the payment of compensation rates other than those determined under this chapter, as long as there is no panel-determined rate applicable to the service being provided and as long as there is no properly filed rate determination petition that would apply to the service pending before the panel at the time the contract is entered into.

Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

LABOR, DEPARTMENT OF

Labor Relations Board 0160

Initiative: Provides funds for the per diem and related costs of the State Board of Arbitration and Conciliation associated with the rate determination process for forest products hauling and harvesting services.

General Fund	2003-04	2004-05
Personal Services	\$0	\$900
All Other	0	3,300
General Fund Total	<hr/> \$0	<hr/> \$4,200
Other Special Revenue Funds	2003-04	2004-05
Personal Services	\$0	\$12,500
All Other	0	5,860
Other Special Revenue Funds Total	<hr/> \$0	<hr/> \$18,360

APPENDIX E

Maine Department of Labor Response Regarding the H-2 Bonded Labor Program

**Maine Department of Labor
Information Requested Regarding the H-2 Program
Prepared for the Agriculture, Conservation, and Forestry Committee
Friday, October 24, 2003.**

1. Explain the H-2 approval process and the Department's role in it.

At least 80 days before the date of need an employer who anticipates a shortfall of U.S. workers needs to apply to the Maine Department of Labor if they wish to bring in foreign labor for logging positions. The application is reviewed and if it is acceptable, a job order is written , which is viewable in all Career Centers in Maine, it is then forwarded to the Regional office in Boston. Boston reviews and if acceptable an acceptance letter is sent to the employer (agent), instructing the employer to advertise the position, contact former employees, and display "Help Wanted " Poster. At the end of the 60 day recruitment period, the employer (agent) submits directly to Boston the results of recruitment. The newspaper advertising is sent to the State. If the employer has a shortfall of U.S. workers a certification for the shortfall is sent to the employer with a copy to the State. The job order remains open for 50% of the contract period and U.S. workers can apply for the positions.

Where do employers advertise positions?

The employer is required to place at least 2 advertisements in local newspapers of general circulation, according to the acceptance letter. In Maine we have the employer do 2 other ads, in the Bangor Daily News.

Do the applications specify where the workers will be used?

No, the certification is for the State. Most employers in the application tell us and show us on a map in the packet that they submit. However, if they get an additional contract they are not required to inform us of a change in location.

2. Do you have information on how many bond positions are actually filled, or do you only have information on the number requested and approved?

We only have the number requested and approved by the U.S. Department of Labor.

3. How long can a bonded worker stay in the U.S. ?

The bonded period of employment is up to 11 months. They can only work for 11 months.

4. Explain how the woods wage survey is performed.

The **Northeast Regional Woods Wage Survey** is the largest survey of its kind in the U.S. It is an annual study of wages, hours, and production in the Logging Camps and Logging Contractors Industry. The regional survey is administered by the Maine Department of Labor (MDOL), with the states of New Hampshire, Vermont, and New York participating. In December 2002, the number of firms in the region included 503 in Maine and over 200 in New Hampshire, Vermont, and New York combined. The 2003 survey will include approximately the same number of firms in the same four-state region.

The activities studied in this survey include all of the occupations involved in harvesting timber. The process begins with the felling of a tree and ends with the delivery of the timber to a yarding area for further transport or for processing at a lumber or paper mill. The current woods wage survey form is designed to collect information on 17 piece rate activities and 41 hourly and weekly paid activities. However, MDOL enumerators collect information for all logging activities found during the survey period, which typically lasts from the first of September to early December.

Survey Week: A week in late summer or early fall has traditionally been chosen as the period for which the wages are surveyed. Typically, favorable weather conditions prevail, peak timber harvesting activity occurs at this time, and representative data can be gathered. Weekly precipitation levels received from the National Weather Service are studied before choosing the survey week.

Sampling Information: In order to get an adequate percentage of workers in the activity for the number of occupations involved, it has been the practice to survey the universe of the firms with five or more employed. A smaller sample of firms with less than five workers is also surveyed and included in the survey results. The universe list of logging employers is drawn from MDOL's Covered Employment and Wages program, also known as the ES-202.

As per federal regulations, Maine takes a ten percent sample of all workers associated with the firms surveyed and personally interviews them to validate the information provided to the enumerators by the employers.

Data for the survey is collected by mail, telephone, fax and personal visits. Personal visits are made to many of the larger woods employers and those paying by piece rate. A personal visit to an employer for the woods wage survey involves the following steps:

- contact the appropriate person by telephone to arrange an appointment (frequently in the evenings or on Saturdays),
- conduct the employer interview which involves identifying the cutting activities, rates, wages, hours, and production, and identifying the proper occupations for each noncutting employee,
- compile the data by occupation by pay rate and enter on the appropriate line of the standardized survey form,
- complete the employee interview form for the ten percent sample of the firm's employees from the firm's records, and
- have the employer or employer's representative review and sign the survey form.

When the survey forms are completed they are data entered into a Progress computer software program designed specifically for the woods wage survey. After various edits of the data are performed to assure accuracy, the program is run a final time and a report is compiled. The report will array pay rates (piece, hourly, weekly) with corresponding

employment in descending order and indicate the prevailing wage finding for each logging activity found by the survey.

Prevailing Wage Rate Findings: A rate of pay which accounts for the wages paid to 40 percent or more of those employed in a given activity is determined to be the prevailing wage rate. If no single rate accounts for 40 percent, then the prevailing wage rate is determined by adding the number of workers, starting with the lowest in the array, until 51 percent of the workers covered in the survey are included.

Around the first of February the final report containing the prevailing wage findings is mailed to the National Office of Foreign Labor Certification for their review and approval. Each spring and the new prevailing wage rates become effective May 1st.

5. Have any changes in the woods wage survey been made in response to concerns expressed in the Pan Atlantic report?

At the request of the Maine Foreign Labor Certification Unit, the woods wage survey has in recent years added prevailing practice questions regarding the following:

- the number of firms employing hand loggers who use the Internal Revenue Service approved non-accountable chainsaw plan,
- the number of firms employing hand loggers that require a valid Certified Logging Professional (CLP) certification, and
- the number of firms paying a travel allowance to and from the job site and the amount paid.

In 2003, a new question is being asked regarding the number of firms that require a valid Certified Logging Professional (CLP) certification for mechanical logging equipment operators.

Since the woods wage survey is a regional effort, any changes affecting methodology would be expected to come through the Regional Office and National Office of the U.S. Department of Labor. Work performed on the annual woods wage survey is carried out in accordance with methods and procedures outlined in the Employment and Training Administration (ETA) Handbook 385.

6. Is there a process under federal regulations for a state agency to suggest changes in the program? E.g. asking for a smaller regional area for determining prevailing wage?

There is nothing in the federal regulations, that I know of, to allow for a state to request a different prevailing wage area. In the past, the state has written to the Secretary of Labor requesting a different area for prevailing wage determinations.

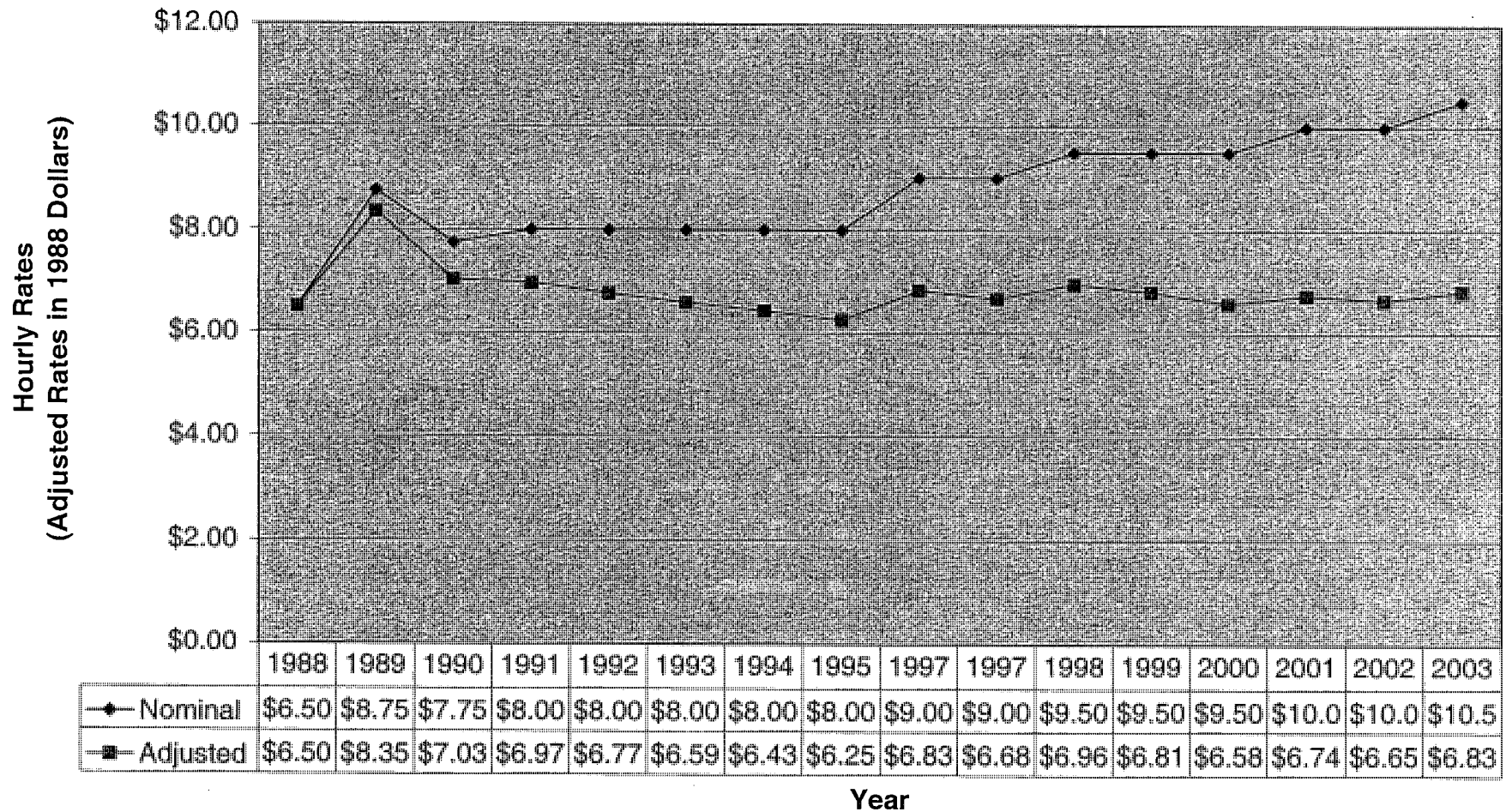
7. Who at U.S. DOL can give us more information?

Ray Lopez is the Certifying Officer at DOL in Boston (617) 788-0152
Ben Orono is the person who approves the wage survey (202) 693-2591

APPENDIX F

Prevailing Hourly Wage Rates for Grapple Skidders, Delimber Operators, and Slasher Operators

Grapple Skidder (51) **Prevailing Hourly Wage Rates, Nominal and Adjusted** **1988-2003**



Delimber Operator (57) **Prevailing Hourly Wage Rates, Nominal and Adjusted** **1988-2003**

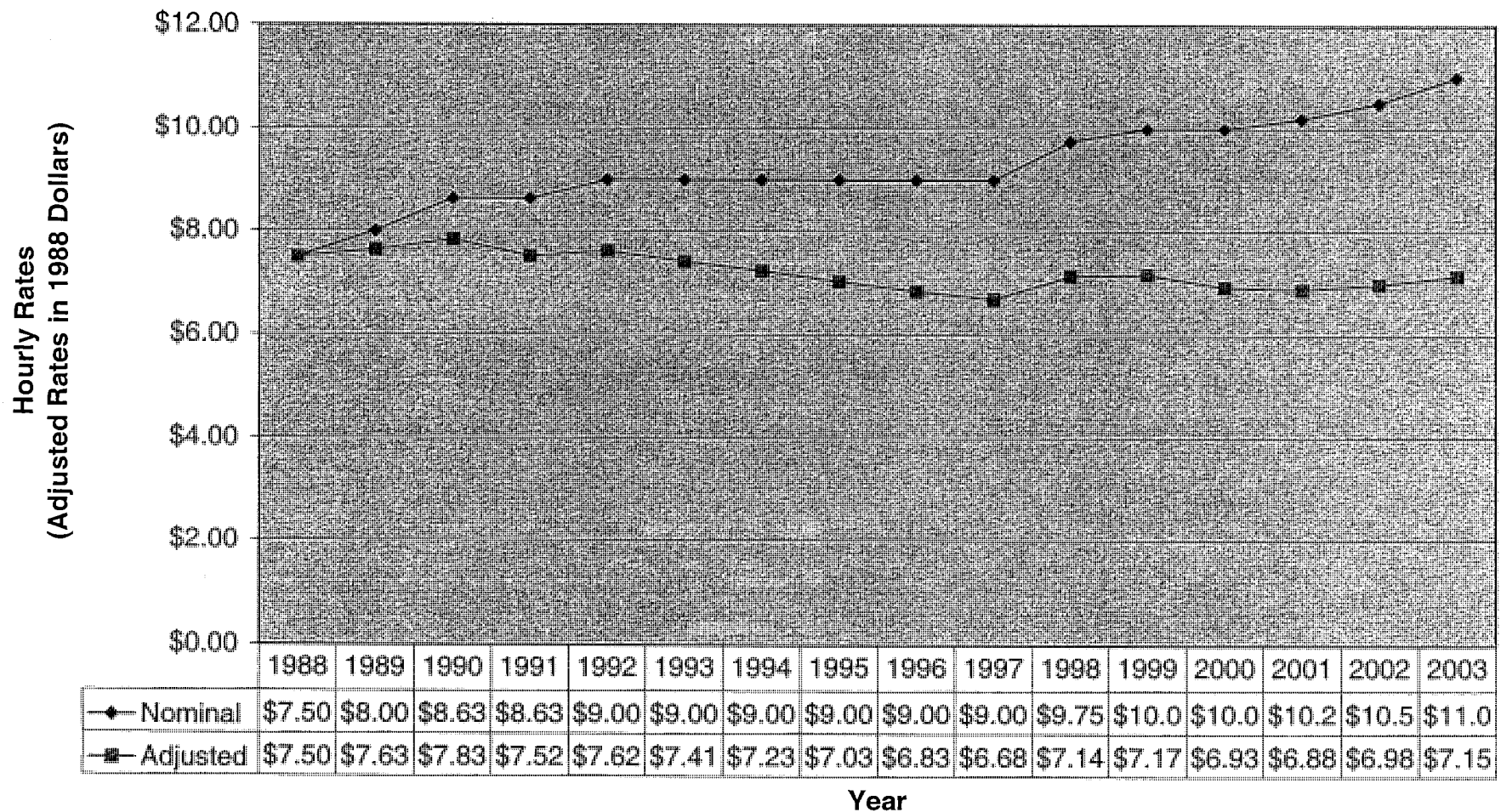
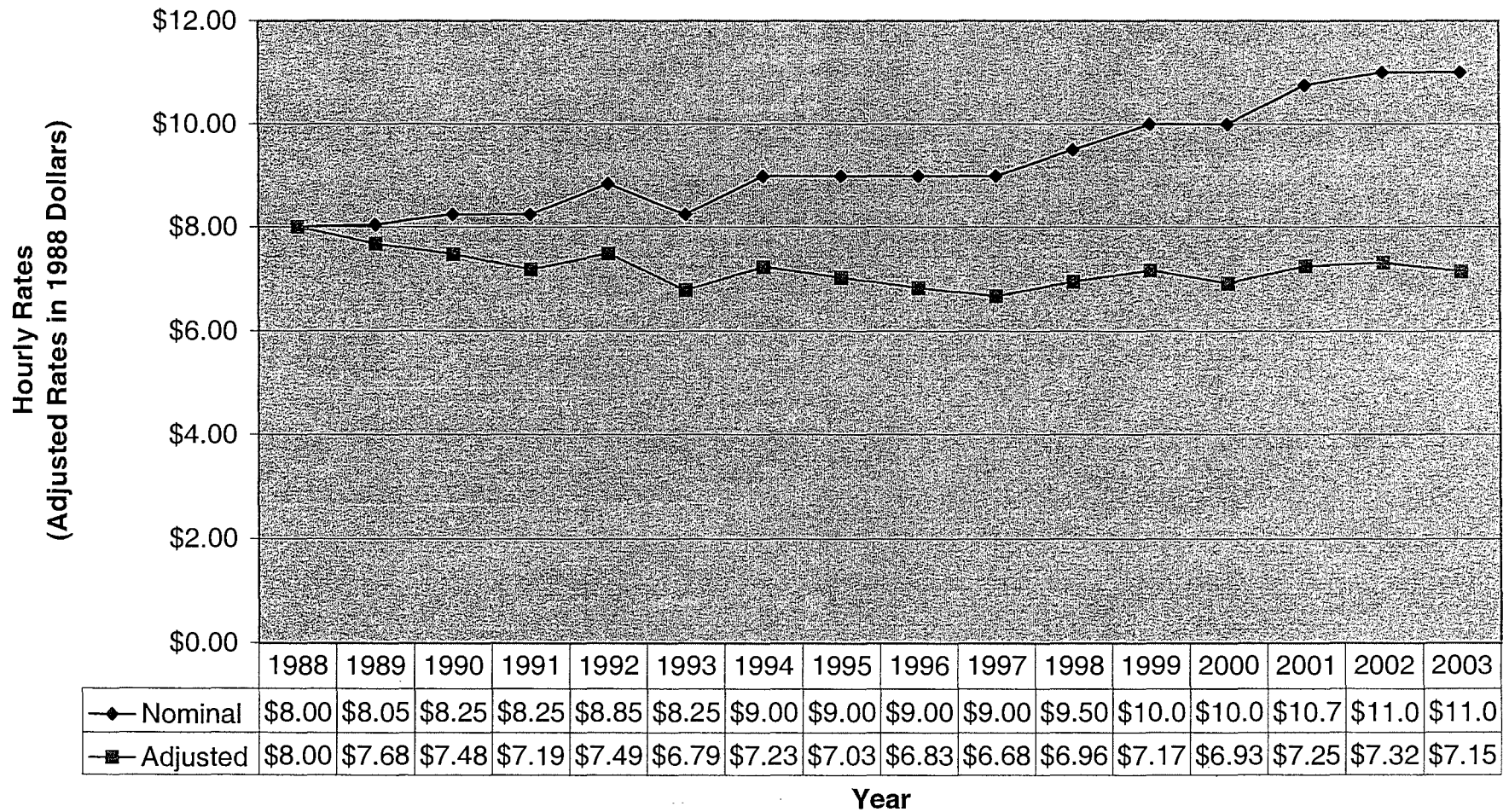


Chart produced by: Maine Department of Labor, Bureau of Labor Standards

Slasher Operator (59) **Prevailing Hourly Wage Rates, Nominal and Adjusted** **1988-2003**



APPENDIX G

Summary of Meeting in Fort Kent September 12, 2003

Joint Standing Committee on Agriculture, Conservation & Forestry Logging Payment Study

Follow-up to Meeting #1 September 12, 2003 University of Maine at Fort Kent

This summary provides an overview of issues raised and information received at the September 12th meeting. It includes answers to some of the questions raised at that meeting. The boxed text outlines the committee requests for additional information.

1. Trucking rates and commercial vehicle regulation.

Truckers testified that their costs have increased as their gross income and personal wages have decreased. Truckers hauling forest products in Northern Maine are essentially price takers. They do not have the power to negotiate with the landowner. Truckers, as well as loggers, stated that they have purchased equipment and taken other measures to maximize their efficiency. To increase their income, they are compelled to drive faster, work longer hours, and load heavier.

One trucker testified that his truck was designed to haul 135,000 pounds and can haul 170,000 pounds. He estimates that approximately \$17,000 of his revenue last year came from overweight hauling and with that \$17,000, he broke even and stayed in business.

Another trucker recalled a time when the truckers banded together and parked their trucks for 1 week resulting in a 40-cent per ton increase in the trucking rate. The next spring when the truckers came in to sign contracts, the landowner singled a trucker out and said he and his truck(s) were no longer needed. The speaker believed that this was a form of retaliation and a warning to the other truckers that they too could be cut.

The committee had several questions regarding regulations pertaining to hours of operation and the enforcement of truck weight laws.

The Bureau of State Police within the Department of Public Safety is charged with adopting rules and enforcing the statutes and rules to ensure the safe operation of commercial trucks. The Bureau has adopted by reference federal regulations governing the safe operation of motor carriers (49 Code of Federal Regulations, Parts 40, 382, 390, 391, 392, 393, 395, 396 and appendices B and G). The Bureau's rules exempt certain types of carriers from some of the federal regulations. Intrastate motor carriers operating less than 100 air miles from their regular place of business are exempt from federal regulations regarding the following:

- Qualifications of drivers including the requirement that drivers be at least 21 years of age. Maine rule does require an intrastate driver operating more than 100 miles from the driver's regular place of business to be at least 18 years old, Chapter 4, §4, ¶A (3) (b).

- Hours of service restrictions and record keeping requirements
- Record keeping requirements for maintenance and repair. Trucks are subject to annual state commercial vehicle inspection and inspection by authorized law enforcement. Maine has adopted the federal inspection criteria.

A commercial motor vehicle that operates between Maine and Canada is subject to federal regulations the same as a vehicle operating interstate. The exemption in state regulation for vehicles operating less than 100 miles from their regular place of business does not apply.

Table 1 presents a very simplified version of maximum weight limits. The actual applicable weight limits vary based on the number and configuration of a truck's axles or combination truck tractor and semitrailer axles. Title 29-A section 2357 provides weight tolerances for vehicles loaded with certain materials including sawdust, firewood, sawed lumber, dimension lumber, pulpwood, wood chips and logs. A vehicle that qualifies for the tolerance based on its load is not in violation of its gross vehicle weight unless it exceeds 110% of its maximum gross vehicle weight established in state law. However, there is no tolerance for gross vehicle weights in excess of 100,000 pounds.

Table 1
Maximum Weights for a Vehicle Configured to Operate with Highest Allowed Weight

	Maximum Gross Vehicle Weight ^{1.}
Interstate Highway System	80,000 pounds
Other public roads	100,000 pounds
Canadian highways	109,129 pounds ^{2.}
Private roads	No legal limit applies, Owner of road may impose a limit

1. "Gross vehicle weight" means the actual total weight of the vehicle and load.

2. New Brunswick and Quebec have a Memorandum of Understanding signed by the Provincial Transportation Ministers to harmonize sizes and weights for trucks that operate between the 2 provinces. The maximum weight for a 6-axle Tractor Semi-Trailer is 49,500 kg, which rounded to the nearest pound converts to 109,129 pounds. The memorandum sets higher maximum weights for double trailer configurations. A maximum weight of 62,500 kg or 137,789 pounds is allowed for a "B-Train Double" configuration with 2 trailers and a total of 8 axles.

2. Financing for Logging Equipment

At the meeting in Ft. Kent, the committee heard testimony indicating that in the last 5 years, it has become more difficult to obtain financing for logging equipment. After the meeting committee staff spoke with Richard Robertson and Fred Morton, loan officers with Maine Farm Credit,

regarding financing for logging equipment. Farm Credit has not changed its lending policies for loggers. Loggers' applications are reviewed under the same criteria as other applications for financing. Farm Credit has had positive experiences with loggers and continues to make loans for logging equipment and trucks. Contractors have operated under annual contracts for a long time. Farm Credit looks at historical profitability and does not require a logging contractor to have contracts in place for an extended period of time.

Mr. Robertson and Mr. Morton did make several observations regarding logging in Maine and the availability of financing. These observations are consistent with comments by others knowledgeable of the logging industry. There are fewer finance companies operating in Maine today than a few years ago. Those with less stringent lending criteria have suffered losses and exited the state. In the last 3 years, the profitability of logging has declined. Consequently, more loggers are leaving the business than are entering.

People knowledgeable of the industry see loggers responding to low profits in several ways. In southern Maine, contractors whose primary business had been logging have increasingly engaged their equipment in road construction and clearing land for development. Loggers with other work available and whose debts are not too high may leave their equipment idle hoping to go back to logging when rates improve. Others have sold their equipment and have no plans for re-entry. The consensus seems to be that loggers still in the business have made judicious equipment purchases and operate with maximum efficiency.

3. Sustainability Standards under 3rd Party Certification Systems

Several landowners and land managers in Maine have become certified as managing forestland sustainably. The most prevalent certification systems in Maine are those developed by the Forest Stewardship Council and the Sustainable Forestry Initiative. The Forest Stewardship Council (FSC) is an international independent, non-profit and non-governmental organization that promotes "environmentally responsible, socially beneficial and economically viable management of the world's forests" by establishing a worldwide standard of Principles of Forest Stewardship. FSC Principles and Criteria are currently used as baseline standards for FSC certification in the United States. The FSC-U.S. National Indicators articulate more specific standards to be used within the United States. Furthermore, a Forest Certification Standard for the Northeast has been developed based on the FSC-U.S. National Indicators.

Of the Northeast Regional Certification Standards, Principle #4 addresses community relations and workers' rights: "Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities." The complete language of the Principle #4 is found in **attachment 1**.

The Sustainable Forestry Initiative (SFI) program is a standard that sets forth measures by which interested parties may monitor and evaluate the commitment of Program Participants to practice sustainable forestry. The Sustainable Forestry Board, which is a multi-stakeholder group appointed by the American Forest & Paper Association (AF&PA), governs the SFI program. Sixty percent of the board is from outside interest groups. A Program Participant is either a

member of American Forest & Paper Association (AF&PA) or a licensee of the SFI program. Currently, the SFI program does not include standards pertaining to labor relations.

The pink sheet in Attachment #1 provides a listing from the Maine Forest Service website of landowners who have been certified under each system.

4. Contracts for Logging Services

Logging contractors and truckers testifying at the September 12th meeting referred to contracts with Irving Woodlands as being one-sided and not a negotiated contract. **Attachment #2** is a copy of a Qualified Independent Trucking Contract (QITC) used by Irving Woodlands LLC. Asterisks in the margin indicate provisions of concern to contractors regarding prices, rates, wood specifications and Irving's ability to terminate the contract.

The contract refers to a "Rate Schedule" attached to the contract as Exhibit B. Truckers testifying in Ft. Kent referred to rate sheets and later provided staff with several pages of rates sheets. (See green sheet in Attachment 2) The sheets have destinations across the top, land management block numbers in the left hand column, and rates per ton in the grid for hauling from a specific block to a specific destination. A map or listing of distances would be needed to calculate a rate per mile. This information may be provided in Exhibit B attached to the contract but was not provided to staff.

5. Scaling of wood, delays in hauling and payment

Weighing is one of 11 authorized methods of measuring wood for payment. Payment based on weight scale is common in Northern Maine for pulpwood and softwood sawlogs. The Division of Quality Assurance and Regulation within the Department of Agriculture Food and Rural Resources certifies the accuracy of truck scales at over 70 wood products mills and trucking company headquarters.

The accuracy of the truck scales is not an issue of concern. Concerns relate to the fact that the wood is not measured until it reaches a weight scale impacting payment as follows:

1. The logging service contractor may never receive payment for wood that is cut and yarded but never hauled and weighed.
2. Cut wood that sits in hot, dry weather before it is hauled loses weight. Consequently the logger receives less payment.

Last session LD 248, An Act to Amend the Laws Governing the Weighing of Wood proposed amending the wood measurement laws to compensate for weight loss in wood that is not weighed within 30 days of cutting during the summer months. The bill received a unanimous report of Ought Not to Pass.

Current law specifies, "all weight measurements shall be expressed on a green wood basis." It allows the person performing the services to require the wood to be measured by butt scale prior to

hauling if the wood will not be weighed within 15 days of felling (10 MRSA §2363-A, sub-§2 , ¶B). It also allows “other authorized method of measurement” for wood not weighed within 15 days of felling.

Under the “Green Wood rule,” adopted to implement this section, a person providing the harvesting service may:

1. Require that the wood be measured at the harvest site using the state standard for volume measurement when wood will not be weighed within 15 days of felling. In this case, the person providing the service must submit a notice in writing to the person responsible for measuring the wood.

The person responsible for measuring the wood must measure the wood within 15 days of receiving the notification.

Or

2. Agree to a delayed weight scale. For delayed weight scale, the parties must agree on the period within which the wood must be weighed and agree on a weight adjustment factor to compensate for the loss of moisture. The person responsible for measuring the wood must provide a written record of the wood to the person harvesting the wood within 20 days of the harvest.

The “Green Rule” appears to provide a means of addressing both failure to truck and pay for wood and delays in trucking with the subsequent loss in weight and payment. However, testimony at the September 12th meeting indicated that logging contractors are reluctant to invoke the “Green Rule.” They fear landowner reprisal in some form - perhaps a contract will not be issued the next year or they will be moved to a less desirable stand of wood.

Testimony indicated a similar reluctance in the past to ask for a State scaler to check the scale when stick scale and cords were the predominant methods of measure. With the land on which to operate controlled by a handful of landowners, loggers feared a complaint to the State over measure would be met with reprisal.

Senator Martin suggested requiring that wood be scaled at the landing if is not hauled within 30 days. Scaling would be automatic, not triggered by a request from logging contractor.

Another issue relating to delays in payment was raised. Payment for services may be delayed when wood is delivered to a mill that is owned by an entity other than the landowner. The truck is weighed and a scale slip received at the time of delivery. Testimony indicated that at least one landowner does not pay its contractors for these deliveries until after the landowner receives payment from the receiving mill. This business practice creates a cash flow problem for the contractor who needs to pay crews and other operating expenses.

The Division tests and licenses scalers who are employed primarily by mills that purchase wood. There are currently 1,614 licensed scalers in Maine and 77 apprentice scalers. A person may test for and be licensed to scale for 1, several or all of the 11 authorized methods of measure. The

Division of Quality Assurance and Regulation employs licensed scalers. Licensed scalers who are employed by the division do not scale wood for a wood buyer or mill on a regular basis. Rather they check scale and carry out other responsibilities within the division.

Questions: How many requests for check scaling does the Department of Agriculture Food and Rural Resources receive? How many check scales are routinely performed? How often is the “Green Wood Rule” used and what is the most common alternative method used?

The committee would also like a description of resources dedicated to wood measurement in relation to other commodity measurements and checks conducted by the Division of Quality Assurance and Regulation.

Resolve 1999, Chapter 125 appropriated \$10,000 to the Division of Quality Assurance and Regulation to determine the accuracy of wood measurements and to enforce the wood measurement laws. A copy of the Resolve and the report received in compliance with its directive was sent to the committee with the previous meeting notice.

6. Bonded Labor Program (H-2 Program)

The federal H-2 bonded labor program allows U.S. employers to hire Canadian loggers if the H-2 program criteria are met. The 1999 Pan Atlantic study of the Maine Logging Industry and the Bonded Labor Program concluded that 1) a shortage of U.S. logging workers exists in Maine and raising wages would not attract sufficient workers and; 2) the H-2 program does not depress wages statewide but it is likely that the H-2 bonded labor program has a slightly negative effect on incomes for Northern Maine, primarily the St. John Valley.

Several people who addressed the committee in Ft Kent disputed the conclusion of a labor shortage. With increased mechanization and worker productivity, one might expect a surplus of labor. People knowledgeable of the industry see loggers getting out of the business because the wages are not high enough. In a perfect market, a labor shortage would result in wage increases attracting loggers back into the business

The Pan Atlantic study noted an imperfect market in Northern Maine due to the concentration of land under a few large ownerships. Loggers testifying in Ft. Kent believe the ability to attract Canadian bonded labor is a factor in keeping wages low. The dominance of Irving with 1.1 million acres and the lack of stumpage in Northern Maine impair logging contractors’ ability to negotiate rates. Loggers and truckers testified that they are working longer hours, incurring higher equipment costs and receiving lower rates of pay.

Loggers in the St. John Valley understand that some contractors seek bonded labor because they cannot afford to pay a living wage for U.S. workers. The contractor’s profit margin simply does not allow it. Canadian workers can afford to work for less because of their Canadian health care coverage and the exchange rate. For example on 9/23/03, the exchange rate of US to Canadian dollar was \$1.36; wages of \$500 paid in U.S. dollars would translate to \$678.20 in Canadian dollars.

Senator Martin had requested figures from MDOL on the number of bonded labor positions approved in the logging industry. MDOL's response to this request dated September 9, 2003 indicated 649 bonds approved statewide.

In May 2003, the Legislature adopted a Joint Resolution requesting the members of Maine's Congressional delegation to:

1. Submit and support legislation requiring USDOL to establish reimbursement rates for heavy equipment operation under the H-2 program;
2. Urge the USDOL to examine the current methodology for calculating various rates in the annual Woods Wage Survey for the H-2 program, particularly for calculating hourly rates and to specifically examine the Woods Wage Survey methodology for accuracy, rigor and types of workers included;
3. Submit and support legislation to clarify and increase consistency in definitions, applications and criteria for independent contractors in federal law; and
4. Review Section 530 of the Federal Revenue Act of 1978 pertaining to independent contractor status and exemptions from labor law requirements relating to worker health and safety.

There were several questions regarding the H-2 approval process and MDOL's role in the process. The number of bonds authorized also generated questions. What is the break down by region for authorized H-2 bonded laborers? Have these approved positions been filled? Vanessa Duquette, Assistant to the Maine Commissioner of Labor, is coordinating MDOL's responses. Staff from MDOL will be providing information at the October 24th meeting.

G:\2003 Interim Studies\Logging Industry\Sept. 12 summary 10-16-03.doc(10/17/03 11:45 AM)

APPENDIX H

Bangor Daily News Articles Regarding Irving Work Stoppage

Bangor Daily News - Print this Article
By Diana Bowley, Of the NEWS Staff e-mail Diana
Last updated: Monday, December 22, 2003

Trucker: Irving offer falls far short

PORTAGE LAKE - Offers made by Irving Woodlands to its log-hauling truckers and woods workers Friday fell short of the demands made by these independently contracted workers. Mary Keith, spokeswoman for J.D. Irving Ltd. - northern Maine's largest landowner - reported Saturday each trucker and woods worker had been made an offer she described as "fair and reasonable." She declined to give any details. No other company official could be reached by telephone over the weekend.

The truckers, whose contracts with Irving expire Dec. 31, are seeking trucking rate increases of 25 percent to 30 percent, a surcharge payment when diesel fuel costs rise above \$1.45 a gallon and better woods roads.

Loggers, whose contracts end in the spring, are looking for increases of 25 percent to 30 percent in their cutting rates.

"The company's offer was not even close [to what the workers requested]," Dean Plourde, a former trucker who is on disability leave after surgery, said Saturday. At a Dec. 13 meeting at Portage Lake, contractors selected Plourde to make their demands to Irving.

About 65 truckers and woods workers gathered Saturday to hear a report from Plourde and to plot a course of action if their demands fell short. At the meeting held at Dean's Hotel, the truckers agreed to fulfill their contract with the company. After Dec. 31, however, a strike similar to one conducted by truckers three years ago is possible, according to Plourde.

The contractors also agreed to form an organization to conduct negotiations with Irving on behalf of the individual truckers. The move, Plourde said, would give the truckers a united voice so that everyone would be treated the same.

"The general consensus [among those participating Saturday] was that they accomplished a lot and felt good," Plourde said. "They were pretty united." He said the contractors want to have the issue taken care of through the proper channels.

Bangor Daily News - Print this Article
By Beurmond Banville, Of the NEWS Staff e-mail Beurmond
Last updated: Monday, January 5, 2004

Loggers, truckers vote to strike Irving

Planned work stoppage to protest compensation terms in new contract

PORTAGE LAKE - Loggers and truckers working for J.D. Irving's Maine Woodlands operations have agreed to begin a work stoppage this morning in an effort to push their employer into negotiating a new contract, according to a spokesman for the workers. The loggers and truckers voted 47-3 on Friday to form the International Loggers Association, and to park their equipment and not return to work until they and Irving can develop a new contract, said Dean Plourde, a disabled former trucker who spoke for the group on Saturday.

"The governor is aware of the situation and he is hopeful an agreement can be reached," a spokesman for Gov. John Baldacci said Sunday afternoon.

"Mills are already in short supply, and wood fiber is needed," said Lee Umphrey. "Any work stoppage would create more hardships."

A truckers contract expired on Dec. 31 and the workers have refused to sign a new one offered by the company, Plourde said. Most of the loggers, who usually negotiate new contracts in the spring, agreed to stop work in solidarity with the truckers, he said.

The loggers and truckers have scheduled a press conference for 11 a.m. today at Dean's Hotel at Portage Lake to explain their positions, Plourde said.

Umphrey said he thought someone from one of the northern offices of the state Department of Conservation would attend to monitor the situation.

Meanwhile, an Irving official said over the weekend that the company had put together a package with "significant increases."

"We understand contractors are struggling, the forest industry is struggling," said Chuck Gadzik, operations manager for J.D. Irving's Maine Woodlands. "We understand a number of contractors are pleased [with the contract that was offered] and will operate, while others are looking for other work."

According to Gadzik, Irving has 27 logging contractors and 40 to 50 trucking contractors in the Maine woods. He said the company is looking to keep its people, knowing there is a shortage of workers in the Maine

woods.

He said the company has offered a 10 percent increase in logging rates, a 12 percent increase in off-highway trucking rates and a 7 percent increase for highway trucking rates.

Friday's meeting was the third meeting loggers have held since mid-December, when Irving offered a new contract for 2004. Loggers and truckers have said they are seeking increases of 25 percent to 30 percent in logging and trucking rates, and surcharge payments to help cover the cost of diesel fuel, which has risen to more than \$1.45 per gallon.

"The vote was a secret ballot so there would not be any pressure on anyone," Plourde said. "We did not want a show of hands because that could have pressured some to vote like their friends wanted them to."

He said Friday's meeting and vote took about five hours and that the workers were "looking to get a new contract, one developed by them and the company, not just dictated by the company."

Gadzik would not say what kind of an impact a stoppage might have on the operation of Irving lumber mills in Maine, New Brunswick and Quebec.

He also would not comment on current wood supplies at the mills, saying only, "We will deal with it on a day-to-day basis."

The last time truckers went on strike against Irving was three years ago. Truckers stayed out of the woods for most of a week before returning to work with a renegotiated contract that gave them a rate increase.

Troy Jackson, an independent state representative from Fort Kent, said the current agreement proposed by Irving allows the company to end the contract at any time, change rates, and even use a contractor's equipment to finish a job, if the contractor walks off the job.

The workers "are trying to get the company to negotiate with them in good faith," said Jackson, a logger himself.

Jackson was one of the ringleaders involved in a well-publicized blockade of some woods roads and a border crossing four years ago.

Jackson has since been elected to the Legislature and has introduced several bills dealing with the logging industry.

"Legislation has been proposed in the last year to help loggers dealing with companies," he said over the weekend. "We will go back at it [the legislation] in the coming weeks and months."

Loggers and truckers "are small-business men, and it's time for the state to step up and help them," Jackson said. "Companies are trying to kill bills that would help them organize and negotiate."

Many of the truckers and loggers reached over the weekend said they would not be working Monday. But the men said they did not want to be quoted or named for fear of reprisals from the company.

Bangor Daily News - Print this Article
 By Beurmond Banville, Of the NEWS Staff e-mail [Beurmond](#)
 Last updated: Tuesday, January 6, 2004

Irving workers stay off the job, attend meeting

PORTAGE LAKE - Loggers and truckers working for J.D. Irving's Maine Woodlands operations stayed off the job Monday. For the second time in three years, they parked \$20 million worth of equipment because they want to negotiate a contract.



Nearly 100 loggers and truckers meet at Deanys Motor Lodge in Portage Lake instead of going to work for Irving Woodlands on Monday. They hope their work stoppage will persuade the company to negotiate a new contract with them. NEWS Photo by B. Banville

According to figures released Monday by the workers, 72 trucks were parked and 48 pieces of mechanical wood-harvesting equipment weren't operating. It was estimated on Monday alone that 8,500 tons of wood fiber, or about 210 truckloads, would not reach mills where Irving wood normally is transported.

Patrick McGowan, commissioner of the Maine Department of Conservation, met with loggers and truckers Monday afternoon at Dean's Motor Lodge at Portage Lake.

"I'm here gathering information for the governor," he said. "This is a fact-finding trip."

After spending nearly 90 minutes with workers, he said he was hoping to meet with Irving officials at a mill a few miles south on Route 11.

Loggers voted 47-3 last Friday to stop work after their contract with Irving ended on Dec. 31. They also formed the International Loggers Association.

Many truckers arrived Monday at the motor lodge in their trucks - some with trailers and some bobtail, or without trailers. They filled the parking lot and then parked along Route 11. At one point, there were 45 trucks parked there.

The truckers met from 9 a.m. until almost 4 p.m. They said they would stay out of work again today and meet at the same site Wednesday.

"This is not just a local issue, but one of statewide impact," McGowan said. "There is less than four or five days' [wood] fiber at Maine mills."

The commissioner said he wanted to know how to get the system back into operation. Pointing out that his job was to get people at the table to talk, he asked questions and listened, taking notes.

"Wood harvesters and truckers have reached the point where, for their economic survival, they have no choice but to reject the Irving contract," workers' spokesman Dean Plourde read from a prepared statement earlier in the day. "The contract offered by the Irving Company is not a contract that any businessman who intends to stay in business can accept.

"The first thing the people of Maine must understand is that there is no labor shortage in northern Maine," Plourde said. "There are plenty of people willing and able to harvest and truck wood if they are fairly paid."

Irving officials would not agree to meet with loggers' representatives, Sen. John L. Martin, D-Eagle Lake, said. Martin, who attended the meeting, said efforts were made at the state level all day Sunday and also by him.

"They [Irving] think they can wait them [loggers] out," Martin said. "This is different than it was three years ago. Look at the people here."

More than 95 workers attended Monday's session, saying they were willing to stay out indefinitely.

The workers said they want a voice in their future, a contract they have a say in and that allows them to make a living.

"We are prepared to do what we have to do," Tony Theriault, a trucker, said. "We are making less money today than we were five years ago."

"Even with a 25 percent increase, truckers would have a hard time to make a decent living while hauling legally, working 12 hours a day," Theriault said. "I figured two years ago that I was making \$8.75 an hour, with no benefits whatsoever."

To earn that, he said he was driving an investment worth \$150,000. Theriault said his truck was making \$500 a week less today than it was when he started in 1984.

Plourde said loggers and truckers are working 14 to 18 hours a day to make a living working for Irving.

"That's how we survived so long," he said. "We've worked a little longer day and loaded a little heavier load every time the prices go down."

Plourde said loggers and truckers make less and less money as they

become more efficient in their work.

"We are not planning to meet with the group," Chuck Gadzik, operations manager for J.D. Irving's Maine Woodlands, said Monday afternoon. "As always, our door is open to any contractor who wants to speak with us.

"We have had indirect talks with the governor's office, and we have clarified where we are," he said. "We put up what we believe is a very significant proposal, and we hope this will not be a waiting game between us and workers."

Gadzik said Irving has 27 logging contractors and 40 to 50 trucking contractors in the Maine woods.

He said the company had a good number of people cutting wood Monday, and some trucks were hauling.

Monday's meeting was the fourth meeting the loggers have held since mid-December when they started receiving contracts from Irving for the new year. Loggers and truckers have said they are seeking increases of 25 percent to 30 percent in logging and trucking rates, and surcharge payments when diesel fuel costs rise above \$1.45 per gallon.

Gadzik said the company has offered a 10 percent increase in logging rates, a 12 percent increase in off-highway trucking rates and a 7 percent increase for highway trucking rates.

The last time truckers went on strike against Irving was three years ago. Truckers stayed out of the woods, with their trucks parked in downtown Fort Kent, for most of a week while negotiations went on.

Bangor Daily News - Print this Article
By Beurmond Banville, Of the NEWS Staff [e-mail Beurmond](#)
Last updated: Thursday, January 22, 2004

Loggers vote to end work stoppage

PORTAGE LAKE - After more than three hours of discussion Wednesday night, loggers and truckers voted 25-7 to return to work for Irving Woodlands in the northern Maine woods, ending a 17-day work stoppage. They added two stipulations to their vote.

They want the company to agree that everyone who had a job with Irving before the work stoppage began still had a job and that Gov. John Baldacci would not veto LD 1318, if and when it is passed by the Legislature.

The bill would allow loggers to legally form associations to negotiate contracts with landowners. It would give loggers and truckers the same rights a similar bill gave to potato growers dealing with potato processors years ago.

The bill was passed in the House of Representatives last year and tabled by the Maine Senate. It is coming back to the House next week. The Legislature's Agriculture Committee has held several hearings on the bill.

The voting results and stipulations were told to Patrick McGowan, commissioner of the Maine Department of Conservation, by telephone after the vote.

McGowan was asked to call Baldacci and Irving for responses. No responses had been relayed to the workers as of press time. The truckers and loggers said they would not return to work until their stipulations were met.

The loggers and truckers plan to meet again at noon Friday.

The vote came after Irving Woodlands officials had turned up the pressure on truckers this week, telling them they needed to sign contracts with the company or look elsewhere for work.

Truckers and loggers called the action "an ultimatum," but a company official said the Canadian-based company just needed answers for its customers.

"It's not an ultimatum - we are asking them what their plans are," Chuck Gadzik, Maine operations manager for Irving Woodlands, said Wednesday before the vote. "We need trucks."

The communication from Irving went out to truckers starting Monday. Truckers had until noon Wednesday to sign the contract. The deadline was four hours before truckers and loggers met at a motel in Portage Lake.

There were reports that four trucking contractors had returned to the woods this week.

The 31 truckers and loggers at the meeting were told that some mills may close because of the lack of wood and that officials seem to blame loggers and truckers for the shortage.

Ninety minutes into their meeting, the truckers didn't know what they would be doing in response. Several said they had not signed the contract. They said they wanted to stay away from strong-arming anyone, but they wanted to continue forming an organization.

"Go in the woods tomorrow with your truck and they won't send you home, contract or not," one trucker said.

Before the meeting started, Dean Plourde, spokesman for the International Loggers Association, said, "Truckers were told that if they did not sign the contract by noon today, it meant they no longer wanted to work with Irving.

"It's surprising because three years ago the same ultimatum was given to workers on the fourth day of the work stoppage."

Plourde said he knew some truckers went to work on Tuesday, but he did not have a number or information on whether they signed the company contract.

"This has caused us some problems," Plourde said at the meeting. "I'm very disappointed because we talked about staying together from the start."

Gadzik would not say where the company planned to get truckers, if the northern Maine truckers balked, or the number of truckers who had returned to work this week.

The Irving official said the company's offer is the best it can do.

Gadzik said there is a lot of wood on the ground in the northern Maine woods. He said the company might have to curtail cutting operations, if truckers are not found to move the wood to mills.

"It's heavy-handed tactics," Rep. Troy Jackson, D-Fort Kent, said

Wednesday. "These woods workers need the legislation that is pending in Augusta."

The bill is sponsored and co-sponsored by several northern Maine legislators including Jackson and Rep. William Smith, D-Van Buren.

Loggers and truckers had voted 40-5 last Friday to continue the work stoppage after learning that Irving had offered some truckers a \$1 per ton premium to haul wood for them.

The conflict in the northern Maine woods began earlier this month when the workers, who formed the ILA on Dec. 26, walked off the job.

The truckers had refused to sign a new contract offered by Irving after their old one expired Dec. 31. Loggers, who usually negotiate new contracts in the spring, stopped work in solidarity with the truckers.

The workers were seeking 25 percent to 30 percent increases in logging and trucking rates and surcharge payments when diesel fuel costs rise above \$1.45 per gallon.

Irving initially offered a 10 percent increase in logging rates, a 12 percent increase in off-highway trucking rates and a 7 percent increase for highway trucking rates. The company offered a surcharge when diesel fuel reaches \$1.55 per gallon.

The company changed the offer last week, offering an additional 2 percent for every category if contractors agreed to participate in an efficiency-productivity program.

Irving Woodlands supplies wood fiber to about 30 mills. The company had 27 logging contractors and 40 to 50 trucking contractors before the work stoppage began.

Many of the loggers and truckers are working, but they are doing so for landowners other than Irving. Many cutters are working elsewhere and truckers are moving wood, they say privately.

Bangor Daily News - Print this Article
By Beurmond Banville, Of the NEWS Staff [e-mail Beurmond](#)
Last updated: Friday, January 23, 2004

Loggers' continued work stoppage blamed on Baldacci, Irving

FORT KENT - Northern Maine loggers and truckers participating in a work stoppage against Irving Woodlands didn't return to work Thursday because the company and Gov. John Baldacci wouldn't agree to stipulations sought by the workers on Wednesday night. Thursday was the 18th day that some of them had stayed away from work on Irving Woodlands.

Baldacci wouldn't agree to not veto a bill that would allow independent logging and trucking contractors to negotiate rates with landowners, Maine Commissioner of Conservation Patrick McGowan said Thursday.

Workers hadn't heard from Irving by Thursday afternoon about their stipulation that contractors who worked for the company before the stoppage should still have a job. "We haven't received any word from anyone," Dean Plourde, International Loggers Association spokesman, said Thursday. "I don't know why the company would not agree to use all the contractors that were involved [in the stoppage]."

"It's because they had no intention of hiring back everyone after this situation was done," Plourde said. "If mills are low on wood fiber, why won't they put everyone back to work?"

A company official looked at the issue differently.

"We are going to make every effort to get the operation back up to previous levels," Chuck Gadzik, Maine operations manager for Irving Woodlands, said Thursday afternoon. "Some contractors have moved on, and the nature of our operation changes from day to day. We are never in a position to make that sort of guarantee to anyone at anytime," Gadzik said.

He also said he had not been asked about the guarantee of jobs for contractors by anyone except people from the media.

The governor's office did not return telephone calls on the issue Thursday.

Plourde said association members will discuss the situation and make some decisions at a meeting Friday afternoon.

The conflict in the northern Maine woods began Jan. 5, when workers who had formed the International Loggers Association on Dec. 26 walked off the job.

The truckers had refused to sign a new contract offered by Irving after their old one expired Dec. 31. Loggers, who usually negotiate new contracts in the spring, stopped work in solidarity with the truckers.

The workers are seeking 25 to 30 percent increases in logging and trucking rates and surcharge payments when diesel fuel costs rise above \$1.45 per gallon.

Irving offered a 10 percent increase in logging rates, a 12 percent increase in off-highway trucking rates and a 7 percent increase for highway trucking rates. The company offered a surcharge when diesel fuel reaches \$1.55 per gallon.

The company changed the offer last week, offering an additional 2 percent for every category if contractors agreed to participate in an efficiency-productivity program.

Irving Woodlands supplies wood fiber to about 30 mills. The company had 27 logging contractors and 40 to 50 trucking contractors before the work stoppage began.

McGowan was asked Wednesday night to make the stipulations known to the governor and Irving.

"We have not agreed to any conditions," the commissioner said Thursday. "We cannot tell the company to take back all the contractors, but I believe they need everyone who has ability to bring wood to mills."

"The governor does like the way the bill they want is drafted," McGowan said. "It has statewide ramifications that would affect every landowner in Maine."

He said issues facing loggers and truckers will be raised before a recently organized Governor's Council on the Sustainability of the Forest Products Industry in Maine.

On Wednesday night at Portage Lake, loggers and truckers were frustrated that they were receiving little assistance from the state. Several said state officials were worried more about mill workers than loggers and truckers.

"Tell them we will go back to our \$4 an hour jobs to make sure that guys making \$20 and \$30 an hour in the mills are still working," trucker Tony

Therault said. "We will make that sacrifice."

Plourde and workers said they were frustrated that Irving and the state would not acknowledge their association. Several said they were "very disappointed."

Bangor Daily News - Print this Article
By Beurmond Banville, Of the NEWS Staff [e-mail Beurmond](#)
Last updated: Saturday, January 24, 2004

Loggers, truckers set to resume work

FORT KENT - Northern Maine loggers and truckers participating in a work stoppage against Irving Woodlands agreed Friday afternoon to return to work Monday. They had stopped work for about three weeks.

Whether they will get work remained a question. As of Friday evening, Irving had made no commitments.

During the nearly four hours of discussion at Dean's Motor Lodge, several workers balked at returning, but agreed with fellow workers to return to the job, not really knowing if they have work.

The workers also agreed to continue their fledgling International Loggers Association, formed last month. The organization will be used to assist loggers and truckers, and as a vehicle to lobby state lawmakers for legislation to help loggers and truckers.

They agreed to go to Augusta en masse when the Legislature debates and votes on a bill, LD 1318, that would allow logging contractors to form an association to negotiate rates with landowners.

"You are not failures," Dean Plourde, spokesman for the ILA, told them. "You have garnered a lot of support out there, and more will come.

"The company will not make any commitment on who will be working and who won't," Plourde said after speaking with a company official by telephone during the meeting. "As you all know, it's hard to get Irving to commit to anything."

He told the members of receiving a \$100 check in the mail this week. Many people have sent the association money since the work stoppage.

"We will work to get the operation back up to full speed as quickly as we can," Chuck Gadzik, Maine operations manager for Irving Woodlands, said when asked if workers will have jobs on Monday. "We will put the pieces together, and keep our contractors as busy as we can.

"Our business is changing, and we are looking at that," he said. "We have a lot of inventory in the woods, and we are prioritizing which mills that volume will be going to."

The conflict in the North Woods began Jan. 5 when the workers, who

formed the International Loggers Association on Dec. 26, walked off their jobs, seeking 25 percent to 30 percent increases in logging and trucking rates and surcharge payments when diesel fuel costs rise above \$1.45 per gallon.

Irving offered a 10 percent increase in logging rates, a 12 percent increase in off-highway trucking rates, and a 7 percent increase for highway trucking rates. The company offered a surcharge when diesel fuel reaches \$1.55 per gallon.

The company changed the offer last week, offering an additional 2 percent for every category if contractors agreed to participate in an efficiency-productivity program.

Irving Woodlands supplies wood fiber to about 30 mills. The company had 27 logging contractors and 40 to 50 trucking contractors before the work stoppage.

Throughout the afternoon Friday, workers vented their frustration about Irving, as well as fellow workers and especially truckers who left the group last week and returned to work.

Rep. Troy Jackson, D-Fort Kent and a logger himself, said support for the loggers and truckers has been growing up and down the state.

"I don't think it's right that some of you may not be allowed to work because you participated in the work stoppage," Jackson said.

"This work stoppage and what has been happening to you at the hands of the company makes an easy case as to why this legislation is needed," Jackson said. "You have to stay together and continue the work you have started."

Jackson urged the workers to be in Augusta when legislators debate and vote on LD 1318.

"If you are there it puts a face on the bill," he said. "Bring your family and other workers."

Many of the loggers and cutters, all but six at the meeting, have been cutting and hauling wood for other landowners since they have been off Irving lands.

Several of the workers said they had been with the company 15 to 25 years. They also insisted that the longevity means nothing to the company.

They urged help for each other.

"If you have a job and another one doesn't, give him a tip about job offers you receive from somewhere else," Plourde told his members.

Vern Pelletier of Allagash summed up the situation, saying, "The only way to find out who has a job with Irving is to show up to work on Monday and have them tell you."

APPENDIX I

Summary of Irving's Logger Productivity Program



Summary Of Irving's Logger Productivity Program

September 2003

Goal of Program:

- 1) To increase the earnings and financial performance of logging and trucking contractors business' in Maine.
- 2) To achieve these earnings without increasing the costs of wood to manufacturing facilities (increasing the non-competitiveness of Maine mills).

Method of Program:

- 1) Bring the tools that have been developed to improve efficiency in mills to the woods for logging and trucking operations.
 - Time studies
 - Data Collectors
 - New Work Techniques
 - Better Planning & Coordination
 - Reduce Down-Time by Half
- 2) Partnership between Irving and Contractors to meet measured results. Irving staff and contractors work together to implement the program. Many of the actions that can improve efficiency need to be taken by Irving staff (harvest areas, planning, mill specifications, etc.)

Start of the Program:

- 1) Began July 1 with a pilot project involving three volunteer contractors.
 - First Step: Contractors and Irving agree to specific targets of financial performance.
 - Second Step: An outside efficiency consulting firm is brought in to coordinate implementation of program.
 - Third Step: Weekly monitoring of results and actions taken to meet targets.
- 2) To-Date; have identified over 100 items that can help improve productivity and earnings of contractors, with implementation of 15.

Next Steps of Program:

- 1) Complete current pilot project (January 2004). Assess success of program with contractors.
- 2) Modify program based on experience of pilot project.
- 3) Offer the program to a new pool of volunteer contractors.

APPENDIX J

Paper Grades Important to Maine; and North American Printing and Writing Papers – Price Convergence

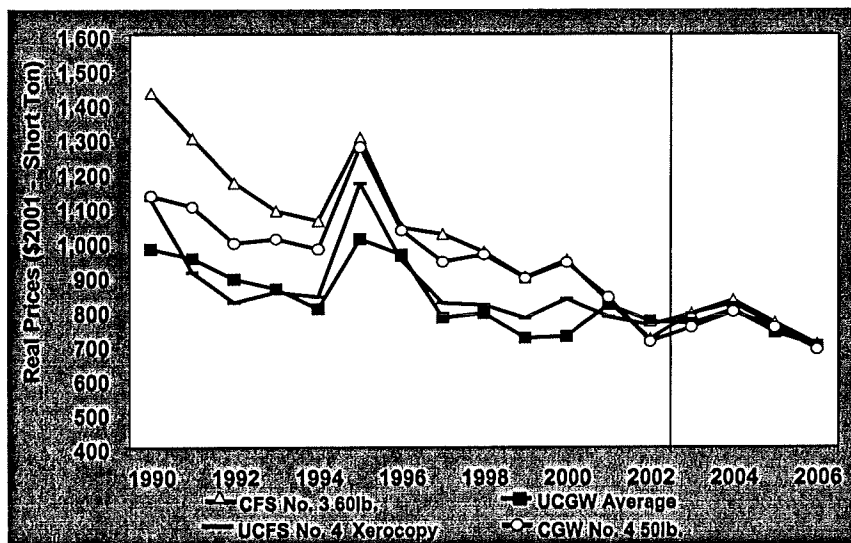
Decline in Paper Prices

Paper Grades Important to Maine

Grade/Category	Uses
Uncoated Groundwood (UCGW)	Newsprint, directory, catalog paper
Coated Paper (CFS or CFS/GW blend)	Printing papers, magazines, catalogs, etc
Uncoated Freesheet (UCFS)	Copy and writing paper
Tissue	Mostly Bath and Napkin
Miscellaneous	Some paperboard, molded papers, etc

Source: Rice, 2004.

North American Printing and Writing Papers-Price Convergence



Source: James McNutt, CPBIS

APPENDIX K

News Articles Regarding Lack of Wood Supply for Maine's Mills



Press Herald **ONLINE** NEWS

Monday, December 29, 2003

E-mail this story to a friend

HOME

CLASSIFIEDS

- Careers
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A scarcity of loggers

Associated Press

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BANGOR — Mill operators say a labor shortage exacerbated by an increase in new housing construction are chief among the reasons why Maine mills are suffering from a lack of supply. When Louisiana-Pacific shut down its mill in Baileyville in eastern Maine this month, many Mainers asked how a mill in a state thick with timber could be starved for logs.

Industry experts say one reason is the surge in new housing this year, which caused increased demand for Maine's timber and competition among the state's mills.

But when those mills called for more raw material, they found a reduced logging force and logging contractors unwilling to bulk up for a surge. Those in the industry say a long-standing reserve of part-time loggers, traditionally willing to shore up supply when markets got tight, was no longer answering the call.

The end result was too few strong backs available to

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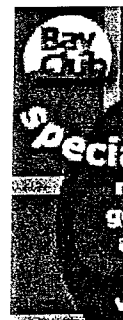


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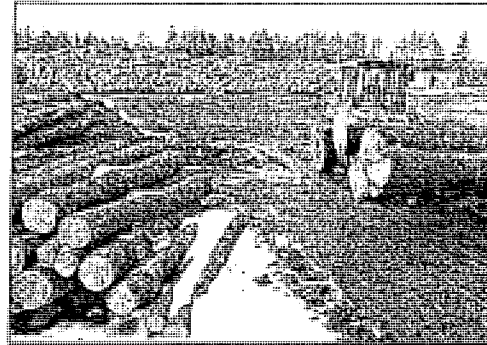
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harvest Maine's trees.

"The guy that is working one man and a skidder, a lot of those have parked the skidder and gone to work in construction and other things," said Carl Henderson, a land management forester with James W. Sewall Co. "There is enough logging capacity out there to keep the big landowners going at the level that they want to cut, but there is no surge capacity for when these mills need extra wood."



File photo

This file photo shows eastern white pine logs at Limington Lumber in Baldwin. Those in the industry say a long-standing reserve of part-time loggers is no longer available to shore up the supply of lumber.



Louisiana-Pacific this month announced it was laying off 99 people at its Baileyville mill near Calais, where the company made what is called oriented strand board, which is popular in home construction. Company officials blamed a shortage of logs for the shutdown.

A labor shortage is hard to grasp in parts of Maine where unemployment is typically among the highest in the state. But Labor Department figures show that logging industry jobs, including truckers, held steady at around 2,600 from 1993 through 2001, but fell to 2,400 last year.

Industry officials said the thin logging force was already committed to contracts with other mills, including the Fraser Paper mill in Berlin, N.H., which reopened last year.

A growing number of logs is also making its way to Canada for processing. Thirty-eight percent of saw logs cut in Maine in 2002 were shipped to Canada, up from 28 percent in 1999.

Daniel Dructor, executive vice president of the American Loggers Council, based in Texas, said the timber industry also suffers from global competition and rising insurance, equipment and fuel costs.

Dructor said 119 U.S. mills shut down between 1996 and 2002 - 56 of them in 2001 and 2002.

"It's just poor returns," Dructor said. "The average guy has a million and a half dollars invested, and why invest in a logging business that is only going to make you 10 grand when you can invest in a mutual fund, without all the headaches, and make \$90,000?"

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ALAN ELLIOTT, OF THE NEWS STAFF

Last updated: Saturday, December 27, 2003

Labor shortage behind state's lack of lumber

Loggers unwilling or unable to shoulder industry workload

When Louisiana-Pacific shut down its Baileyville mill earlier this month, everyone asked the same question: How could a mill in a state thick with harvestable timber claim to be starved for logs? Even seasoned pros in an industry ruled by vast equations of demand, weather, labor, tariffs, real estate deals and rates of harvest say there is no easy answer.

But a starting point is the explosion of new housing starts this year that whipped up demand and competition for timber among Maine's surviving mills. When those mills called for more raw material, they found a depleted logging force and hard-pressed contractors unwilling to bulk up for a surge. The end result was simply too few strong backs available to harvest Maine's trees.

"We're all competing out there for all the wood," a wood buyer for one large Maine mill operator said. "And we've got 80 percent of the necessary contractors to cut 100 percent of the wood we need, so we're already at a 20 percent shortfall."

A labor shortage is hard to grasp in areas so notoriously underemployed. But Labor Department figures show logging industry jobs, including truckers, held steady at around 2,600 from 1993 through 2001. In 2002, the numbers dropped to 2,400.

Those in the industry also say a long-standing reserve of part-time loggers, traditionally willing to shore up supply when markets got tight, were no longer answering the call.

"The guy that is working one man and a skidder, a lot of those have parked the skidder and gone to work in construction and other things," said Carl Henderson, a land management forester with James W. Sewall Co. "There is enough logging capacity out there to keep the big land owners going at the level that they want to cut, but there is no surge capacity for when these mills need extra wood."

Mills tend to call on that surge force prior to the fall and spring mud seasons that put much of the logging trade on hold. Those pre-mud season build-ups have become more intense over the past several years as, in many cases, mills have switched to just-in-time inventory management. A supply chain model meant to limit the amount of capital stalled in stored inventories, "just-in-time" became a textbook strategy

among high tech and manufacturing management during the 1990s.

But the attempt to drive down costs slipped in Maine this year, when almost three months of logging were curtailed by rain.

"Sometimes the people who actually make these decisions are far away and have no clue when their decision proves to be a poor one," Henderson said. "They are not the ones who take the heat."

The first ranks of those taking the real heat were the 99 workers sent home in Baileyville. The Louisiana-Pacific mill had restarted in June, after 10 months of downtime and after the wet spring stalled loggers and left mills hungry for pulp and sawlogs.

A thin-spread logging force was already strapped, committed to contracts with other mills, including the 600-plus-employee Fraser Paper mill in Berlin, N.H., that reopened last year. A deficit-weakened dollar helped ship 38 percent of saw logs cut in Maine in 2002 to Canada for processing, compared to 28 percent in 1999.

Louisiana-Pacific is now trying to work its way into the mix, and establish enough relationships to allow it to reopen in April.

Industry officials also said they were working to help interested contractors expand operations. But loggers like Randall Madden, who employs about 20 loggers at Randall Madden Trucking in Milford, said he has little interest in being spread more thin.

"I'm doing the best I can to try to maintain and keep what I have strong," Madden said. "And I am still using some equity in my equipment."

The root cause of the lumberjack exodus is an industry pinched between price pressure from global competition, increasing insurance, equipment and fuel costs and the disproportionate expense of competing with companies operating in less regulated countries. The pressure shut down 119 U.S. mills between 1996 and 2002 - 56 in 2001 and 2002 alone.

"It's just poor returns," said Daniel Dructor, executive vice president with the Texas-based American Loggers Council. "The average guy has a million and a half dollars invested, and why invest in a logging business that is only going to make you 10 grand when you can invest in a mutual fund, without all the headaches, and make \$90,000?"

Wages are an issue, contractors say, in attracting qualified workers. The average logger in Maine earned \$27,574 in 2002, versus \$24,646 in 1997. Scott Hannington's Hannington Timber Lands & Lumber employs 50 to 60 loggers out of Wytovitlock. He said the dearth of labor and disputes

such as the ongoing struggle between loggers and J.D. Irving Ltd. underscores the deepest weaknesses in Maine's forest products industry: a once romanticized and profitable profession has become a largely frowned upon job.

"I'm proud of what I do, but I'm getting to the point now where I don't tell people I'm a logger. I say I'm a businessman in the forest products industry," he said. "I'm tired of telling everybody I'm a logger and they look at me like I have two heads."

APPENDIX L

Executive Order 9FY04/05

**An Order Creating the Governor's Advisory Council on the
Sustainability of the Forest Products Industry in Maine**



OFFICE OF
THE GOVERNOR

NO. 9 FY 04/05
DATE January 8, 2004

**AN ORDER CREATING THE GOVERNOR'S ADVISORY COUNCIL ON THE
SUSTAINABILITY OF THE FOREST PRODUCTS INDUSTRY IN MAINE**

WHEREAS, Maine's economic health, traditional landscape and the welfare of its workers and communities is tied to the viability of the forest products industry; and

WHEREAS, the forest products industry is a mature industry facing intense competition from abroad; and

WHEREAS, the economic and public policy forces influencing continued investment are creating conditions that threaten the sustainability of Maine's forest products industry; and

WHEREAS, the circumstances confronting the Maine forest products industry, and the economic and social communities closely tied to it, require a collaborative process to develop policy recommendations intended to support and enhance the long-term sustainability of the forest products industry in Maine;

NOW, THEREFORE, I, John E. Baldacci, Governor of the State of Maine, do hereby establish the Governor's Advisory Council on the Sustainability of the Forest Products Industry in Maine (hereinafter "Advisory Council").

Purpose

The purpose of the Advisory Council is to develop recommendations to improve the competitiveness of Maine's forest products industry nationally and internationally. In conducting its work, the Advisory Council should:

1. Examine the state's tax policy and regulatory framework to identify factors that impede capital investment in new equipment and technology, including financing programs, environmental regulations and tax policies.
2. Consider strategies to improve the quality, productivity and accessibility of Maine's timber supply, including the capacity to assess the character and extent of Maine's forest

resources; efficient and cost effective transportation; and protection from new exotic pests.

3. Identify the major vulnerabilities facing the industry, together with the obstacles to continued growth.
4. Examine opportunities to brand Maine's forest products through promotion of sustainable forest management, such as green certification. This effort should include recommendations to expand the market for Maine's certified forest products, nationally and internationally, in order to demonstrate Maine's leadership role in sustainable forest management.
5. Identify strategies to increase the use of research and technology, focusing on the competitive advantages of Maine tree species to expand the development of forest products, including: commercialization of new technologies like wood composites; increased development of value-added wood products; and investigating the use of new by-product technologies.
6. Identify strategies to support the workforce infrastructure needed to maintain a vibrant forest products industry. This should include an examination of issues relating to the recruitment and retention of loggers, as well as other labor force needs.
7. Examine ways to develop creative partnerships between managed forests and outdoor recreation/tourism.
8. Examine ways to reduce energy costs, including utilizing existing energy resources, and investigating options for self-generation of power.

In conducting its work, the Advisory Council shall utilize information from businesses and business organizations, landowners, Indian tribal governments, and government agencies.

Membership

The Governor shall appoint eleven members to the Advisory Council, who will serve at the pleasure of the Governor. Four members shall represent the business community; one member shall be from organized labor; one member shall be an owner of forest land, or a designee; one member shall be an industrial energy rate expert; one member shall be the Commissioner of Conservation, or his designee; one member shall be the Commissioner of Environmental Protection, or her designee; one member shall be the Commissioner of Economic and Community Development, or his designee; and one member shall be the Chief Executive Officer of the Finance Authority of Maine, or his designee. The Commissioner of Economic & Community Development shall chair the Advisory Council. Members shall serve without compensation.

The Speaker of the House and President of the Senate may each appoint one member from his or her respective body; which member shall serve at the pleasure of the Speaker or the President, as applicable.

Staff

The Departments of Economic and Community Development and Conservation shall provide all necessary staff, from existing resources.

Timeline for Recommendations

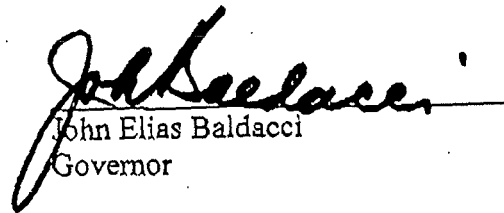
The Advisory Council shall submit its recommendations to the Governor no later than August 31, 2004, after which the Advisory Council will dissolve.

Meetings

The Advisory Council shall meet as often as necessary to complete the assigned duties. One meeting shall be scheduled to provide the Maine Forest Service's "Future Forest Project" an opportunity to present its work to the Advisory Council. All meetings shall be open to the public and held in locations determined by the Advisory Council.

Effective Date

The effective date of this Executive Order is January 8, 2004.


John Elias Baldacci
Governor