

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
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THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

**COMPETING MEASURE RESOLUTION OF THE STATE OF MAINE
AS PASSED AT
THE SECOND SPECIAL SESSION OF THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE
1995**

CHAPTER 1

H.P. 1390 - L.D. 1892

**RESOLUTION, Proposing a
Competing Measure under the
Constitution of Maine to Implement
the Compact for Maine's Forests**

RESOLVED: That, pursuant to the Constitution of Maine, Article IV, Part Third, Section 18, subsection 2, the Legislature intends that the following be submitted to the electors of the State as a competing measure to Initiated Bill 4, Legislative Document 1819 of the 117th Legislature, "An Act to Promote Forest Rehabilitation and Eliminate Clearcutting."

Sec. 1. 5 MRSA §12004-G, sub-§12-A is enacted to read:

<u>12-A.</u> <u>Environ-</u> <u>ment/Natural</u> <u>Resources</u>	<u>Sustainable</u> <u>Forest</u> <u>Manage-</u> <u>ment Audit</u> <u>Board</u>	<u>Not</u> <u>Authorized</u>	<u>12 MRSA</u> <u>§8870-C</u>
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This subsection is repealed 90 days after the adjournment of the Second Regular Session of the 120th Legislature.

Sec. 2. 12 MRSA §8611, sub-§2, as amended by PL 1989, c. 700, Pt. A, §40, is further amended to read:

2. Natural resource educator. The director shall employ a natural resource educator to develop and coordinate natural resource education, workshops and training opportunities for the general public, school-age children, forest landowners, forest products harvesters and forest managers. By February 15, 1997, the director shall convene a natural resource education advisory committee to include, but not be limited to, members that represent forest landowners, forest products harvesters, forest managers and environmental education organizations. The committee shall serve in an advisory capacity to the natural resource educator. Specifically, this person shall:

A. Work with the Department of Education and organizations to integrate forestry and forest science programs into the science curricula in public and private schools; ~~and~~

B. Establish a program for continuing education courses in timber harvesting equipment operation, safety and basic forest management skills; and

C. Work in partnership with the private sector and nongovernmental organizations, including, but not limited to, associations whose members own small woodlands in the State, to develop new natural resource education initiatives for the general public. By September 1, 1997, the natural resource educator shall submit to the director and to the natural resource education advisory committee a plan including a description of those initiatives and any possible financial resources that have been identified or pledged.

Sec. 3. 12 MRSA §8866 is enacted to read:

§8866. Purpose

The Legislature finds that forest management, when practiced in accordance with environmentally sound silvicultural principles, constitutes a beneficial and desirable use of the State's forest resource and makes vital contributions to the economy, environment and aesthetic features of the State. The tradition of using the forest resource for the production of forest products and related commercial activities, for recreation and for sustenance of the State's fisheries and wildlife is essential to the favorable quality of life in the State.

The Legislature finds that timber harvesting is a traditional and legitimate use of the State's lands. The Legislature finds further that it is vital to the welfare of the State that any law, rule or ordinance enacted to regulate this activity seek a lawful balance between the constitutional rights of all private property owners affected by the regulation or activity and the interests of the citizens of the State to protect public health, safety and welfare.

Sec. 4. 12 MRSA §8867, as amended by PL 1991, c. 722, §4, is repealed.

Sec. 5. 12 MRSA §8867-A is enacted to read:

§8867-A. Rulemaking

No later than May 1, 1997, the Commissioner of Conservation shall provisionally adopt rules in accordance with Title 5, chapter 375 to implement this subchapter. Rules adopted pursuant to this subchapter

are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

The Commissioner of Conservation shall consult with the Commissioner of Environmental Protection and the Commissioner of Inland Fisheries and Wildlife to ensure that bureau rules are consistent with wildlife habitat and environmental protection.

Sec. 6. 12 MRSA §8868, as enacted by PL 1989, c. 555, §10, is repealed.

Sec. 7. 12 MRSA §8868-A is enacted to read:

§8868-A. Definitions

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

1. Acceptable growing stock. "Acceptable growing stock" means live trees of commercially valuable species classified as sawtimber or pole-timber, that are not culls, or saplings or seedlings capable of developing into trees suitable for producing merchantable products.

2. Affiliated interest. "Affiliated interest" means:

A. Any corporate or other legal entity in which a landowner possesses a controlling ownership interest; or

B. Any corporate or other legal entity that possesses a controlling ownership interest in a landowner.

The commissioner by rule shall define what constitutes a controlling ownership interest. Rules adopted by the commissioner pursuant to this subsection are major substantive rules.

3. Certified wildlife professional. "Certified wildlife professional" means a person who meets the education and experience requirements of a certified wildlife biologist as defined by a professional organization that certifies wildlife professionals.

4. Clear-cut. "Clear-cut" means any timber harvesting on a forested site greater than 5 acres in size that results in a residual stand that does not meet either of the following conditions:

A. The average residual basal area of acceptable growing stock trees 4.5 inches and over in diameter measured at 4 1/2 feet above the ground is 45 square feet per acre or more; or

B. The site has a well-distributed stand of acceptable growing stock trees of at least 5 feet in

height that meets the regeneration standards defined under section 8869-A, subsection 7.

5. Forest lands owned by a landowner. "Forest lands owned by a landowner" means any forest land in which a landowner or any affiliated interest possesses a dominant ownership interest with respect to timber harvesting. The commissioner by rule shall define what indicia of ownership constitutes a dominant ownership interest. Rules adopted by the commissioner pursuant to this subsection are major substantive rules.

6. Forest management plan. "Forest management plan" means a site-specific document signed by a licensed professional forester outlining proposed activities to ensure compliance with performance standards and regeneration requirements established pursuant to this subchapter.

7. Landowner. "Landowner" means a person, firm, association, organization, partnership, cotenant, joint tenant, trust, company, corporation, state agency or other legal entity or entities that possess a dominant ownership interest in land with respect to timber harvesting. The commissioner by rule shall define what indicia of ownership constitutes a dominant ownership interest. Rules adopted by the commissioner pursuant to this subsection are major substantive rules.

8. Licensed professional forester. "Licensed professional forester" means a person licensed pursuant to Title 32, chapter 75.

9. Parcel. "Parcel" means a contiguous tract or plot of forest land owned by a landowner. Multiple contiguous tracts, plots or parcels of forest land owned by the same landowner are considered a single parcel for the purposes of this subchapter.

10. Timber harvesting. "Timber harvesting" means the cutting or removal of at least 50 cords of timber for the primary purpose of selling or processing forest products.

Sec. 8. 12 MRSA §8869, as amended by PL 1995, c. 122, §1 and affected by §2, is repealed.

Sec. 9. 12 MRSA §§8869-A and 8870 are enacted to read:

§8869-A. Timber harvesting rules

Timber harvesting is regulated in this subchapter as follows.

1. Rule-making authority. The Commissioner of Conservation shall adopt rules to regulate timber harvesting pursuant to this subchapter in order to promote a healthy and sustainable forest that contains a balance of age classes necessary for a sustainable

timber supply and spatial and compositional diversity, to protect water quality, to minimize soil erosion and to address unreasonable adverse impacts on fisheries and wildlife habitat. Such rules must describe with specificity the class of activities covered by the rules and may establish standards of performance, design, regeneration or use as appropriate to balance the need to avoid unreasonable environmental impacts with the considerations of the practicality and costs of implementation and enforcement. Such rules must to the extent possible be developed in consideration of their practicality and costs of implementation and enforcement. Any such rules must require notification to the Commissioner of Conservation prior to the undertaking of the regulated activity. Rules must also include a streamlined notification process to the Commissioner of Conservation prior to the undertaking of any activity requiring certification. The Commissioner of Conservation may incorporate regional variations in developing performance standards that consider growing conditions, tree species and site quality. The Commissioner of Conservation may draw reasonable distinctions based upon total forest holdings as well as the size of parcels to be harvested in order to take into account the diminishing scale of impacts and the logistics of harvesting smaller parcels.

2. Silvicultural standards; permit by rule.

Except as provided under subsections 15 to 18 and notwithstanding the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapters IV and V, a landowner shall obtain a permit by rule from the Commissioner of Conservation prior to conducting a clear-cut. The Commissioner of Conservation shall adopt rules to implement a permit-by-rule process based upon streamlined notification and applicant certification of compliance with the standards of this section.

A. The Commissioner of Conservation shall grant a permit by rule to allow the use of clear-cuts in timber harvesting operations upon proper application and with any conditions necessary to fulfill the purposes of this subchapter when the Commissioner of Conservation finds that the applicant has demonstrated that the clear-cutting is conducted for one or more of the following purposes:

(1) Removal of poor-quality, intolerant, understocked, short-lived or mature overstories where the retention of the residual overstory trees is not justified for further increase in value, as a source of seed or for protection of the new stand;

(2) Ecologically appropriate improvement or creation of wildlife habitat, with accompanying prescription and justification from a certified wildlife professional;

(3) Removal of timber stands that, if partially harvested according to accepted silvicultural practice, are at high risk for windthrow due to factors such as soils, rooting depth, crown ratio or stem quality; or

(4) Harvesting of an existing plantation.

B. The Commissioner of Conservation shall process all permits under this subchapter under a permit-by-rule process. A permit-by-rule application must be processed as follows:

(1) The applicant shall notify the Bureau of Forestry at least 14 days prior to initiating a clear-cut;

(2) The applicant shall complete a form provided by the Bureau of Forestry requiring the following information:

(a) The size and number of the proposed clear-cuts and other harvest notification information required under section 8883, subsection 1;

(b) Which silvicultural purpose under paragraph A the proposed clear-cut fulfills;

(c) A certification signed by a licensed professional forester or, if required under this subsection, by a certified wildlife professional, attesting that the proposed clear-cuts meet one or more purposes under paragraph A;

(d) A certification by the applicant that the applicant will comply with the subchapter and all implementing rules as conditions of the permit; and

(e) Other information determined by rule to be necessary.

(3) The permit by rule takes effect 14 days after the Bureau of Forestry receives the notification form, unless the Commissioner of Conservation approves or denies the permit by rule prior to that date. The Commissioner of Conservation shall approve or deny the application after review of any reliable information on file with the application pertaining to the applicant's compliance with standards for issuance of the permit provided for in paragraph A, subparagraphs (1) to (4). During the 14-day period, the Commissioner of Conservation or the Commissioner of Conser-

vation's designee may contact the applicant verbally to notify the applicant of the need to submit additional information in order to complete the application, and the applicant and Commissioner of Conservation may mutually agree to extend the 14-day period in order to accommodate completion of the application. The permit by rule is effective for 2 years from the effective date of approval;

(4) If the Commissioner of Conservation denies the permit by rule, the Commissioner of Conservation shall state the reasons in writing and describe under what conditions a permit could be approved. The Commissioner of Conservation may provide verbal notice of a denial within the 14-day period as long as the Commissioner of Conservation immediately issues a written denial. The applicant may elect to accept a permit by rule with the proposed conditions or, alternatively, seek a variance under subsection 18; and

(5) An approval or denial of a permit by rule is considered final agency action for purposes of judicial appeal under Title 5, chapter 375, subchapter VII.

3. Maximum area clear-cut limit; forest land ownerships equal to or greater than 100,000 acres. When forest lands owned by a landowner total 100,000 acres or more statewide, the maximum of that land area to be clear-cut in any year is limited to:

A. Not more than 0.25% of the landowner's total statewide land area ownership, plus any unused qualifying acres that may be carried over for up to 3 years; and

B. Not more than an additional 0.75% of the ownership's total statewide land area, as long as every acre clear-cut in excess of the 0.25% limit referenced in paragraph A is matched with an acre of land that was planted or precommercially thinned, mechanically or with nonchemical manual methods, in the previous year. During the period from January 1, 1997 to December 31, 1997, landowners may only exercise this option using the greatest number of acres that were planted or precommercially thinned, mechanically or with nonchemical manual methods, during any one of the calendar years 1994, 1995 or 1996, as reported to the Maine Forest Service under the reporting requirements of section 8885, subsection 2. Beginning January 1, 1998, unused qualifying acres may be carried over for up to 3 years.

4. Maximum area clear-cut limit; forest land ownerships less than 100,000 acres. When forest lands owned by a landowner total less than 100,000 acres statewide, the maximum of that land area to be clear-cut on a parcel in any year is limited to the greater of either 100 acres or 10% of the land area of any parcel. The total land area meeting the definition of a clear-cut under section 8868-A, subsection 4 must be calculated each year to ensure that clear-cuts do not occupy at any point in time more than 100 acres or 10% of the parcel, whichever is greater.

5. Maximum individual clear-cut size. An individual clear-cut may not exceed 75 acres in total area.

6. Clear-cut separation zones. For parcels of land over 100 acres, clear-cut harvest areas must be separated by a defined area equal to the area contained within the perimeter of the clear-cut. Each defined area must be identified with a specific clear-cut area. For parcels of land 100 acres or less, a clear-cut must be separated from any other clear-cut by at least 250 feet.

7. Standards for regeneration after harvests. The Commissioner of Conservation shall adopt rules to ensure adequate regeneration of commercially valuable tree species on a site within 5 years of completion of any timber harvest. Rules to implement this requirement must include identification of commercial tree species, minimum stocking standards and methods to mitigate inadequate regeneration. In developing regeneration standards, the Commissioner of Conservation shall take into consideration regional differences in forest types, tree species and physiographic conditions. If the regeneration on a harvested site or a portion of a harvest site is destroyed by fire, disease, insect infestation or other natural disaster, the regeneration requirement does not apply. Vegetative cover sufficient to prevent accelerated erosion must be established on the site.

8. Transfer or sale of property. Upon sale or other transfer of ownership of land that has been harvested, the transferee becomes responsible for the regeneration requirements on the site. The transferor shall disclose in writing to the transferee the regeneration requirements of this section at, or prior to, the time of sale or transfer. Failure of the transferor to comply with the disclosure requirement results in the transferor being responsible for the cost of compliance with the regeneration requirements of subsection 7.

9. Application. This section applies to all forest lands in the State, including land in municipal and state ownership. Only state-owned or state-operated research forests or industrially owned research forests certified by the Commissioner of Conservation are exempt from these requirements.

10. Relationship to municipal ordinances.

Except as provided in this subsection, this subchapter may not be construed to preempt or otherwise limit the existing authority of municipalities to regulate timber harvesting. Municipalities regulating timber harvesting shall adopt definitions for forestry terms used in their ordinances that are consistent with definitions in section 8868-A and with forestry terms adopted by the Commissioner of Conservation pursuant to this subchapter. Municipal timber harvesting ordinances adopted before September 1, 1990 and not amended subsequently must meet this standard of definitional compliance no later than January 1, 1999.

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

A. A licensed professional forester must participate in the development or amendment of the ordinance.

B. A face-to-face meeting must take place in the municipality during the development or amendment of the ordinance between representatives of the Department of Conservation and the municipal officers and other municipal officials involved in developing the ordinance. Discussion at the meeting must include, but is not limited to, the forest practices goals of the municipality. At this meeting and subsequently, the department must provide guidance to the municipality on how the municipality may use sound forestry practices to achieve the municipality's forest practices goals.

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

In addition, when a municipality proposes to adopt or amend a timber harvesting ordinance pursuant to its home rule authority as provided by Title 30-A, section 3001, the municipality shall mail notice of the hearing by first-class mail at least 14 days before the hearing to all landowners in the municipality at the last known address of the person on whom a property tax on each parcel is assessed. In the case of a timber harvesting ordinance or amendment that applies

only to certain zones or land use districts in the municipality, the municipality may meet the requirements of this subsection by mailing notice only to those landowners whose land is in a zone or land use district or immediately abutting the affected zone or land use district.

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

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

Any action challenging the validity of the adoption or amendment of a municipal timber harvesting ordinance based on the municipality's alleged failure to comply with the landowner notice requirement must be brought in Superior Court within 30 days after the adoption of the ordinance or amendment. The Superior Court may invalidate an ordinance or amendment only if the landowner demonstrates that the landowner was entitled to receive a notice under this section, that the municipality failed to send the notice as required, that the landowner had no knowledge of the proposed ordinance or amendment and that the landowner was materially harmed by that lack of knowledge.

D. The municipal clerk shall notify the department of the time, place and date of the public hearing and provide the department with a copy of the proposed ordinance that will be reviewed at the hearing at least 30 days before the date of the hearing.

E. At the public hearing, representatives of the Department of Conservation must be provided an opportunity to present and discuss for the municipality's information any reports, articles, treatises or similar materials published by acknowledged experts in the field of sound forestry

or silvicultural management to the extent such information might apply to the proposed ordinance or ordinance amendment.

The proposed ordinance or ordinance amendment may be revised after the public hearing. The ordinance or amendment must be submitted to the legislative body of the municipality in accordance with the procedures the municipality uses for adopting ordinances.

F. Municipal timber harvesting ordinances may not be unreasonable, arbitrary or capricious and must employ means appropriate to the protection of public health, safety and welfare.

G. All direct costs incurred by a municipality associated with landowner notification requirements and other required public notice must be paid to the municipality in accordance with a distribution schedule established under Title 30-A, section 5685, subsection 5. All direct costs incurred by a municipality associated with the amendment of ordinances adopted before September 1, 1990, and not subsequently amended, in order to comply with this section must be paid to the municipality in accordance with a distribution schedule established under Title 30-A, section 5685, subsection 5.

11. Centralized listing of municipal ordinances. The Bureau of Forestry shall maintain for informational purposes a statewide centralized listing of municipal ordinances that specifically apply to forest practices.

A. Within 30 days after the legislative body of the municipality votes on a timber harvesting ordinance developed according to the procedures of subsection 10, the clerk shall notify the Bureau of Forestry of the outcome and shall file a copy of the ordinance with the Bureau of Forestry.

12. Right of enforcement. Department of Conservation employees designated by the commissioner and any state, county or municipal law enforcement officer, including, but not limited to, Bureau of Forestry forest rangers and field foresters and Inland Fisheries and Wildlife wardens, are authorized to enforce this subchapter and implementing rules. The Director of the Bureau of Forestry is authorized to issue a stop-work order for up to 5 working days to a landowner, contractor or any other person conducting timber harvesting when there is probable cause to believe that a violation of this subchapter or implementing rules has occurred. Department employees designated by the commissioner are authorized to conduct inspections and to enforce this subchapter and implementing rules under the Maine Rules of Civil Procedure, Rules 80E and 80H.

13. Right of entry. Agents of the Bureau of Forestry have rights of access to all lands in the State to carry out their duties authorized by law. Entry into private property under this subsection is not a trespass. This subsection does not authorize entry into any building or structure.

14. Right of action. A landowner found in violation of this section and penalized under section 9701 as a result of actions of a harvester has a right of action to recover the penalty against the harvester who undertook the harvest operation found in violation. In addition to all other defenses permitted by law, it is a defense that the harvester operated under the landowner's instructions. For the purposes of this subsection, the terms "harvester" and "harvest operation" have the same meanings as in section 8881.

15. Exemption for compliance with the Sustainable Forest Management Audit Program. After receipt of any recommendations to exempt landowners who have demonstrated compliance with the audit criteria of section 8870-D from subsection 2, paragraph B, or subsection 3, 4, 5 or 6, the Commissioner of Conservation may adopt rules to exempt such qualifying landowners, in whole or part, from these provisions, but only if the Commissioner of Conservation determines that the purposes of section 8866 and this section will be fulfilled by the audit criteria approved by the Sustainable Forest Management Audit Board.

16. Exemption from permit-by-rule standards for clear-cut due to natural disturbance. Timber harvesting activities are exempt from the restrictions on clear-cut size, separation zones and maximum extent of clear-cutting and other requirements under subsection 2, 3, 4, 5 or 6 upon issuance of a natural disturbance exemption by the Commissioner of Conservation, as necessary to allow the salvage or presalvage of timber for which there is a high probability of substantial loss or damage from severe natural disturbances, which include, but are not limited to, fire, insect infestation, disease, ice and wind. A landowner may apply for, or the Commissioner of Conservation may declare in the absence of a landowner application, a natural disturbance exemption. If the Commissioner of Conservation declares a natural disturbance exemption, the Commissioner of Conservation shall identify the geographic areas to which the exemption applies. Both declarations and applications for exemptions must include a description of the natural disturbance, the areas impacted by the natural disturbance, the species or stand types affected, the duration of the exemption and the specific activities regulated under this section to which the exemption will apply. The application is automatically granted if not denied within 45 days of the department's receipt of the application by certified mail, return receipt requested. The Commissioner of

Conservation shall grant an application if, based on the best available scientific information, the Commissioner of Conservation finds that there is a high probability of substantial loss or damage from severe natural disturbance and that the proposed harvesting can not be reasonably undertaken under the conditions specified in subsection 2, 3, 4, 5 or 6. If the Commissioner of Conservation denies the exemption, the Commissioner of Conservation shall state the reasons in writing and describe what conditions would allow an exemption to be granted. The landowner may elect to accept a conditional approval or, alternatively, seek a variance under subsection 18.

17. Exemption from permit standards for clear-cuts less than 50 acres in total area. When forest lands owned by a landowner total less than 100,000 acres statewide, clear-cuts in those lands totaling less than 50 acres per year per parcel are exempt from the permit requirements of subsection 2, but must be conducted in accordance with all other applicable standards.

18. Variance. The Commissioner of Conservation may grant a variance from the standards in subsection 2, 3, 4, 5 or 6 when the Commissioner of Conservation finds that strict compliance with this section and implementing rules would cause unusual hardship or extraordinary difficulties because of topography, access, location, shape, size or other physical features of a site, that the proposed clear-cutting is in keeping with the general spirit and intent of this subchapter and that the public interest is otherwise protected. An applicant for a variance shall submit an application on a form provided by the Bureau of Forestry at least 60 days prior to the proposed clear-cut activity. The variance must be processed as provided under subsection 2, paragraph B, except that the Commissioner of Conservation shall issue a written decision granting the variance with any necessary conditions in order for the variance to become effective. The Commissioner of Conservation shall adopt rules and standards for clear-cut variances.

19. Penalty. A person who violates any requirement of this section, the condition or terms of any permit issued by the Commissioner of Conservation under this section or a provision of any rule or regulation adopted under this section commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged. Each day of a violation is considered a separate offense.

§8870. Evaluation and assessment

By January 1, 2000 and every 5 years thereafter, the Commissioner of Conservation shall report to the Legislature on the results of an evaluation and assessment of the impacts of this subchapter and the forest harvest rules adopted pursuant to it. At a

minimum, the evaluation and assessment must include research necessary to obtain:

1. Acreage harvest. The total acreage, the average acreage, the range of acreage and the geographic distribution of clear-cuts and other regeneration and nonregeneration harvests in the State;

2. Harvesting by landowners. The extent to which forest landowners are harvesting to the minimum standards adopted in the forest practices rules; and

3. Effect of timber harvesting. An understanding of how this subchapter and the forest harvest rules adopted pursuant to it have affected the sustainability of timber harvesting in the State.

Sec. 10. 12 MRSA c. 805, sub-c. III-B is enacted to read:

SUBCHAPTER III-B

VOLUNTARY SUSTAINABLE FOREST MANAGEMENT AUDITS

§8870-A. Sustainable Forest Management Audit Program

1. Findings. The Legislature finds that:

A. The forests of this State are critical for the economic and ecological health and quality of life in this State;

B. The forests of this State should be managed in a manner that ensures their sustainable ecological and economic health;

C. Landowners must be encouraged to manage their forests in a sustainable manner to meet the needs of current and future generations; and

D. Regulatory systems alone are insufficient to ensure sustainable forest management. Voluntary efforts by owners of forest lands that foster individual creativity and flexibility in meeting sustainability goals are encouraged.

2. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Benchmark" means a measurable forest management goal or guideline, but is not a regulatory standard.

B. "Bureau" means the Bureau of Forestry.

C. "Commissioner" means the Commissioner of Conservation.

D. "Director" means the Director of the Bureau of Forestry.

E. "Landowner" means an owner of forest lands or an authorized representative or agent of an owner of forest lands.

3. Program established; objectives. The Sustainable Forest Management Audit Program, referred to in this subchapter as the "program," is established within the Department of Conservation to encourage continuous improvement in forest management and to optimize both the long-term ecological and economic health of forests in this State. Two objectives guide the program:

A. The maintenance and enhancement of timber sustainability and economic viability of forest management; and

B. The maintenance and enhancement of the biodiversity of forests in this State, including viable populations of existing native species and viable representatives of existing native forest communities, well distributed across their native ranges.

§8870-B. Eligibility

Prior to January 1, 2002, any landowner who owns 100,000 or more acres of forest lands in the State is eligible to participate in the program. A landowner who owns less than 100,000 acres of forest lands in the State is eligible to participate in the program by mutual agreement of the director and the landowner. After January 1, 2002, any landowner is eligible to participate. Participation by a landowner in the program is voluntary.

§8870-C. Audit program administration

1. Board established; membership; termination. The Sustainable Forest Management Audit Board, referred to in this subchapter as the "board," is established within the Department of Conservation to develop the program and oversee its implementation by the bureau. The bureau shall provide staff assistance to the board within existing budgeted resources. The board has no regulatory authority. Meetings of the board are public meetings.

The board consists of 7 members who must be appointed no later than January 1, 1997 and shall serve until termination of the board in 2002. The Governor shall appoint each member, subject to review by the joint standing committee of the Legislature having jurisdiction over forestry matters and to confirmation by the Senate. The board shall select a chair from its membership.

The board must be composed of a balance of members who have expertise in forest management, timber harvesting, wildlife, and conservation and ecological principles, including landowners who are eligible to participate in the program and members of the general public.

A vacancy on the board must be filled as provided for initial appointees in this subsection. Board members are not entitled to compensation or reimbursement of expenses.

This subsection is repealed 90 days after adjournment of the Second Regular Session of the 120th Legislature.

2. Decision-making process. The board shall reach its decisions by the unanimous approval of its members. The board may convene working groups to assist it in areas requiring particular expertise or perspectives. The board shall provide ample opportunities for public input and discussion. The board shall convene a working group on cold water fisheries habitat issues. The cold water fisheries habitat working group must include, but is not limited to, a representative of the Department of Inland Fisheries and Wildlife having expertise in cold water fisheries management, a representative of a statewide association of sportsmen, a representative of any Maine organization engaged in the stocking, restoration or protection of cold water fisheries, a representative of the University of Maine System having expertise in aquatic ecology and a representative of the Maine Forest Products Council. The working group shall develop and recommend to the board voluntary best management practices that enhance existing protection for cold water fisheries habitat and can be integrated into audit programs certified under this subchapter.

This subsection is repealed 90 days after adjournment of the Second Regular Session of the 120th Legislature.

3. Duties of the board. The board shall:

A. By January 1, 1999, through a public process and using the best scientific information and expertise available to it:

- (1) Establish specific, credible and practical benchmarks to achieve the objectives set forth in section 8870-A. The benchmarks must be developed in the categories set forth in section 8870-D. In establishing the benchmarks, the board must consider and incorporate, as appropriate, the work of past collaborative forest policy efforts, including the findings and recommendations set forth in the final report of the Maine Council on Sustainable Forest Management. In addition, the benchmarks estab-

lished must be practical yet sufficiently flexible to encourage participation in the program by landowners representing a range of ownership sizes and must ensure continuous improvement of the audit process;

(2) Establish the methodology by which the forest management programs of landowners participating in the program will be audited;

(3) Establish a process for certifying independent 3rd parties to perform program audits. Once established, the certification process must be administered by the bureau;

(4) Recommend to the commissioner incentives to encourage participation in the program by landowners. The incentives may include, but are not limited to, marketing opportunities, tax treatment and regulatory flexibility; and

(5) Recommend to the commissioner disincentives for failure to meet program benchmarks; and

B. By January 1, 2000, through a public process, review and recommend to the commissioner measures for providing regulatory flexibility and exemptions, in whole or in part, for participants in the program. The board may consider exemptions from provisions, including, but not limited to, the following:

(1) Section 8869-A, subsection 2, paragraph B relating to permit-by-rule requirements;

(2) Section 8869-A, subsections 3 and 4 relating to the clear-cut area limit;

(3) Section 8869-A, subsection 5 relating to clear-cut size limits; and

(4) Section 8869-A, subsection 6 relating to clear-cut separation zones.

4. Duties of the commissioner. The commissioner shall:

A. No later than January 1, 1999, after consultation with the board, develop and maintain a register of alternative accredited 3rd-party audit or certification programs that, in the commissioner's judgment, employ benchmarks and criteria that are substantially equivalent to those employed under this section and shall develop a process to add new alternative accredited 3rd-party audit or certification programs after consultation with the

board. In developing the register, the commissioner's criteria for registering programs must be sufficiently flexible to allow registration of existing accredited 3rd-party audit or certification programs that certify for sustainable forest practices, ecological health, socio-economic health and marketing of forest products in order to ensure continuity for landowners using such programs and minimize duplication of effort.

Notwithstanding any other provisions of this paragraph, a landowner is considered to be in compliance with the provisions of the program if the landowner submits to the commissioner documentation, as the commissioner may require, within 6 months of the effective date of this section, of the successful completion of an audit conducted prior to January 1, 1996 by an organization competent to conduct sustainable forestry audits that consider, at a minimum, sustainable forest practices, ecological health, socio-economic health and marketing of forest products. Landowners who have submitted documentation of such certification must continue to be considered in compliance with the alternative audit program so long as the documented certification is maintained and so long as the organization's certification program remains substantially unchanged;

B. Adopt rules establishing a procedure for a landowner to demonstrate compliance with the provisions of the program through submission of audit certification by an organization on the register. At the time of the adoption of rules, the commissioner shall review any organization deemed to be in compliance with the alternative audit program and shall authorize the continuation of this recognized status when the commissioner determines that the organization's audit program continues to employ benchmarks and criteria that are substantially equivalent to those employed under this section. In addition, the commissioner may adopt rules to certify independent 3rd-party auditors to carry out forest management audits conducted pursuant to this subchapter, following establishment of benchmarks and audit methods by the board. Pursuant to Title 5, chapter 375, subchapter II-A, the rules are major substantive rules; and

C. Assume any remaining duties of the board upon the board's termination in 2002.

5. Responsibility for program administration. The bureau shall administer the program, including benchmarks, methodologies and processes developed by the board.

6. Auditing program. The following govern the auditing program.

A. A landowner who participates in the program must first register with the director and then may select an auditor certified by the bureau who does not have a direct and substantial financial or other relationship with that landowner that may preclude the auditor's ability to conduct an independent, objective audit.

B. Upon selection of an auditor, a participating landowner shall submit to the bureau a timetable for conducting an audit of the management of the landowner's forest lands in the State and identification of the auditor selected. The auditor and participating landowner shall use their best efforts to ensure that the audit is conducted within 18 months after submission of the timetable or after establishment of benchmarks and audit methodology by the board, whichever is later. For timetables submitted by July 1, 1999, every effort must be made to complete the initial audits by December 31, 2000. The audit must be conducted in accordance with the benchmarks and criteria established by the board.

C. Upon completion of an audit, the auditor shall submit a report to the bureau and the board that indicates whether the landowner passed or failed the audit, along with a brief statement describing the basis for that determination.

D. An audit of the management of forest lands of a participating landowner must be conducted at least every 5 years in order for the landowner to continue to participate in the program.

7. Auditor's report; confidentiality. The report of the auditor that indicates whether a landowner passed or failed the audit and the statement describing the basis for that determination are public records. For purposes of Title 1, section 402, an auditor certified by the bureau is not an agency or public official of the State and materials held by the auditor in the course of an audit are not public records by virtue of being in the possession or custody of the auditor.

§8870-D. Audit program benchmarks

The board shall develop specific, credible and practical benchmarks in the following areas.

1. Sustained yield. Benchmarks must include measures to ensure sustained yield. These measures may include growth, harvest levels, rotation length, inventory levels, mix of species and landowners' forest management objectives, if these objectives are compatible with the objectives of the program. The

benchmarks must include appropriate flexibility for year-to-year variation.

2. Management according to silvicultural guidelines. The benchmarks must include appropriate use of established silvicultural guidelines, including standards to achieve improvement of the overall quality of the timber resource as a foundation for more value-added opportunities.

3. Landscape goals. In the area of landscape goals, the benchmarks must include a requirement to gather and analyze data and to develop and implement a plan for distribution of age classes, species, habitats and structures to include mature and 2 or more layered stands, over a landowner's total statewide land area ownership. The benchmarks must include a definition of and benchmarks for "naturalistic forest management" to be applied on landscapes of high ecological, recreational or scenic value. Benchmarks must reflect the limitations and opportunities inherent in existing forest conditions and may need to achieve a desired result over a period of time.

4. Plantations. The benchmarks must include measures to ensure the appropriate establishment and distribution of plantations.

5. Visual impacts. In the area of visual impacts, the benchmarks must include actions at both the landing and landscape levels to minimize the potential adverse impacts of forest management within a landowner's total statewide land area ownership, including impacts on viewsheds with significant public use.

6. Wildlife and fisheries habitat. The benchmarks must include forest management that promotes wildlife and fisheries habitat diversity and conserves viable plant and animal populations.

7. Fragile or rare ecological sites. The benchmarks must include screening for and protection of fragile or rare ecological sites.

8. Insecticides and herbicides. The benchmarks must assure the prudent use of forest insecticides and herbicides and use integrated pest management techniques to minimize the need for insecticide and herbicide use.

9. Soil productivity and water quality. The benchmarks must include the protection of soil productivity and water quality.

The board may develop other benchmarks that it identifies as necessary to achieve the purposes of this subchapter.

§8870-E. Annual report

The director, after consultation with the board, shall publish a report annually on the condition of the forests of the State and on landowner performance within the program no later than December 31st of each year. The bureau shall analyze available United States Forestry Service inventory data to establish a baseline and trends in the sustainability and structure of the forest. A copy of the report must be submitted to the joint standing committee of the Legislature having jurisdiction over forestry matters.

Sec. 11. 14 MRSA §7552, sub-§3, ¶B, as enacted by PL 1995, c. 450, §2, is amended to read:

B. For lost trees, the owner may claim in lieu of market value the forfeiture amounts in Title 17, section 2510, subsection 2. In addition, the owner's damages may include the costs for regeneration of the stand in accordance with Title 12, section ~~8869~~ 8869-A.

Sec. 12. 38 MRSA §439-A, sub-§5, ¶C, as repealed and replaced by PL 1991, c. 66, Pt. A, §10, is amended to read:

C. Any site within a shoreland area zoned for resource protection abutting a great pond, beyond the 75-foot strip restricted in paragraph B, where timber is harvested must be reforested within 2 growing seasons after the completion of the harvest, according to guidelines adopted by the board. The board shall adopt guidelines consistent with minimum stocking standards established under Title 12, section ~~8869~~ 8869-A.

Sec. 13. 38 MRSA §480-Q, sub-§7-A, ¶A, as enacted by PL 1989, c. 838, §6, is amended to read:

A. The activity results in a forest stand that meets the minimum stocking requirements in rules adopted pursuant to Title 12, section ~~8869~~ 8869-A. This requirement takes effect when those rules are adopted;

Sec. 14. Ecological forest reserves. The Legislature endorses the Bureau of Parks and Lands' designation of ecological forest reserves on state-owned land to protect viable representatives of the State's natural community types and to provide a credible reference point for the scientific evaluation of potential ecological issues on commercially managed forest lands.

1. The Legislature endorses the Bureau of Parks and Lands' integrated resource management policies for such reserves, including to:

- A. Serve as reference points in studying the impact of forest management on the forest environment;
- B. Provide for a wide range of forest conditions;
- C. Preserve natural areas;
- D. Preserve old growth;
- E. Establish and maintain biological diversity;
- F. Sustain the health and vitality of the natural environment for the State's many species of wildlife; and
- G. Establish and maintain a broad array of habitat conditions for all indigenous species of wildlife, existing forest types and other plant associations.

2. The Legislature therefore directs that:

A. The Land and Water Resources Council, with support from the Department of Conservation and the Department of Inland Fisheries and Wildlife, shall determine which public and private nonprofit conservation lands have potential to meet the objectives of ecological forest reserves as described in subsection 1. The council shall also determine which of these lands are managed consistent with those objectives of ecological forest reserves and provide this information to the Department of Conservation by May 1, 1997. Using this information, the Department of Conservation shall provide an interim report to the committee of jurisdiction by June 1, 1997. In this report, the department shall identify ecological forest community types that exist on public lands managed by the Bureau of Parks and Lands that are not adequately represented by land managed on the effective date of this Resolution by public and private nonprofit conservation entities;

B. After soliciting public comment through public meetings, the Bureau of Parks and Lands may establish ecological forest reserves totaling between 8,000 and 10,000 acres on public lands that are primarily available for timber harvesting. These reserves must complement those lands already identified as being managed consistent with the objectives for ecological forest reserves. Timber harvesting is prohibited on the ecological forest reserves. Notwithstanding any other provision of this section, traditional recreation activities, including, but not limited to, hunting, trapping and fishing, must be allowed on ecological forest reserves created pursuant to this section to the same extent that such uses would be allowed on those lands had they not been

designated as ecological forest reserves. It is the intent of the Legislature that reserves established in accordance with this paragraph be established by October 1997; and

C. The Land and Water Resources Council, with support from the Department of Conservation and the Department of Inland Fisheries and Wildlife, shall assess the need for additional ecological forest reserves, if any, and the extent to which these can be accommodated on existing public lands. The council shall develop scientifically justified criteria for the identification and ranking of any ecological types that may merit inclusion in a reserve. The council shall also consider the fiscal impact of any additional reserves on the operations of the landowning public agencies. By January 1, 1998, the council shall submit its findings to the Governor and the Legislature. No additional public lands may be designated by the Bureau of Parks and Lands as ecological forest reserves prior to January 1, 1998.

Sec. 15. Timber liquidation. The Legislature finds that certain forest lands in the State have been subjected to the practice of timber liquidation harvesting.

The act of timber liquidation harvesting, defined as excessive timber harvesting on lands held for less than 10 years, is inconsistent with accepted silvicultural and forest stewardship principles shared by the State and its private forest landowners. Ensuring a sustainable forest resource for the State requires the objective of severely restricting timber liquidation activities in the State. While the regulatory changes introduced by this Resolution will impact and reduce timber liquidation in the State, additional policies will be required to achieve the objective of severely restricting this activity.

Therefore, the Legislature directs that:

1. Upon enactment of this Resolution, the Maine Forest Service, in consultation with faculty of the College of Forestry and Natural Resources at the University of Maine and other outside experts on timber liquidation and forest productivity, shall initiate and complete by March 1, 1997 an assessment of the expected impact of the provisions of this Resolution upon the practice of timber liquidation;

2. The Maine Forest Service, as part of the above assessment, shall estimate the amount and types of liquidation that are likely to occur in the State after implementation of this Resolution; and

3. By April 1, 1997, the Governor shall submit to the Legislature a legislative proposal designed to further restrict timber liquidation to ensure that, in

combination with the provisions of this Resolution, timber liquidation harvesting is severely restricted in the State.

Sec. 16. Review of regulatory restrictions. The Sustainable Forest Management Audit Board, established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 12-A, shall review the regulatory restrictions contained in the laws regulating forest practices in Title 12, chapter 805, subchapter III-A and make a report containing recommendations to the Legislature and the Commissioner of Conservation for regulatory flexibility to apply to the participants in the Sustainable Forest Management Audit Program who have successfully passed the audit program in Title 12, chapter 805, subchapter III-B, thus demonstrating sound forest management. The review and recommendations must include, but are not limited to, suggestions for regulatory flexibility regarding the following provisions of Title 12:

1. The provisions regarding permit by rule in section 8869-A, subsection 2, paragraph B;

2. The provisions regarding clear-cut area limits in section 8869-A, subsections 3 and 4;

3. The provisions regarding maximum clear-cut size in section 8869-A, subsection 5; and

4. The provisions regarding clear-cut separation zones in section 8869-A, subsection 6.

The report must also include recommendations for any necessary legislative changes to this Resolution and be submitted on or before January 1, 2000.

Sec. 17. Board report; termination.

1. The Sustainable Forest Management Audit Board, established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 12-A and referred to in this section as the "board," shall conclude its work by January 1, 2002. No later than this date, the board shall submit a report and any necessary implementing legislation to the Governor and the Legislature summarizing the board's work and recommending any improvements or changes to the Sustainable Forest Management Audit Program or this Resolution. The board may recommend any necessary revisions to the benchmarks to incorporate the best available scientific information. The report must include an evaluation and assessment of the program. The report must also include research necessary to determine:

A. The potential opportunities and barriers for landowners with less than 100,000 acres in total statewide land holdings to participate voluntarily in the program;

B. The number of landowners, the number of acres and the geographic distribution of lands certified as passing or failing the audit;

C. The extent to which landowners are participating in the program; and

D. The extent to which the benchmarks are being attained.

2. The board ceases to exist 90 days after the adjournment of the Second Regular Session of the 120th Legislature. The Commissioner of Conservation shall assume any remaining duties of the board.

Sec. 18. Intent of the Legislature; competing measure. It is the intent of the Legislature that this Resolution be interpreted as a competing measure within the meaning of the Constitution of Maine, Article IV, Part Third, Section 18, with Initiated Bill 4, Legislative Document 1819 of the 117th Legislature, "An Act to Promote Forest Rehabilitation and Eliminate Clearcutting." It is the further intent of the Legislature that this measure be subject to referendum as a competing measure with that bill.

Sec. 19. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Resolution.

1996-97

**CONSERVATION,
DEPARTMENT OF**

**Policy Planning and
Information**

All Other	\$30,000
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Provides funds to cover the cost of rulemaking.

Sec. 20. Statutory referendum procedure; submission at general election; form of question; effective date. This Resolution must be submitted to the legal voters of the State of Maine at the next general election in the month of November following passage of this Resolution as a competing measure with Initiated Bill 4, Legislative Document 1819 of the 117th Legislature, "An Act to Promote Forest Rehabilitation and Eliminate Clearcutting." The municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of this Resolution by voting on the following question:

"Do you want the Compact for Maine's Forests to become law to promote sustainable forest management practices throughout the State?"

The legal voters of each city, town and plantation shall vote by ballot on this question and the question established by the Secretary of State for Initiated Bill 4 and shall designate their choice by a cross or check mark placed in the corresponding square next to either the question relating to Initiated Bill 4, the question relating to the competing measure or an option of against both Initiated Bill 4 and the competing measure. The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal votes are cast in favor of the Resolution, the Governor shall proclaim that fact without delay, and the Resolution takes effect January 1, 1997, except that the following sections of this Resolution take effect 90 days after adjournment of the First Regular Session of the 118th Legislature: that section that repeals the Maine Revised Statutes, Title 12, section 8868; that section that enacts Title 12, section 8868-A; that section that repeals Title 12, section 8869; that section that enacts Title 12, sections 8869-A and 8870; that section that amends Title 14, section 7552, subsection 3, paragraph B; that section that amends Title 38, section 439-A, subsection 5, paragraph C; and that section that amends Title 38, section 480-Q, subsection 7-A, paragraph A.

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Resolution necessary to carry out the purpose of this referendum.

Effective pending referendum.
