

# MAINE STATE LEGISLATURE

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**Outcome-Based Forest Policy  
Report to the  
Joint Standing Committee on  
Agriculture, Conservation and Forestry  
of the  
123<sup>rd</sup> Maine Legislature,  
First Regular Session**



**02 January 2007**

**Submitted by**

**Maine Department of Conservation**

**Bureau of Forestry**

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*We help you make informed decisions about Maine's forests*

Public Law 2005, Chapter 550, Sec. 7, directed the Bureau of Forestry to report to the Joint Standing Committee on Agriculture, Conservation, and Forestry on the interest in and feasibility of establishing outcome-based experimental areas in accordance with Public Law 2001, chapter 339. This report fulfills those requirements.

## **Background**

During the ferment of the 1990's over forest policy, the Legislature enacted Public Law 2001, Chapter 339, An Act to Promote Outcome-based Forest Policy. This law called for MFS to engage with landowners and evaluate the feasibility of outcome-based forestry – that is, “a science-based, voluntary process to achieve agreed-upon economic, environmental and social outcomes in the state's forests, as an alternative to prescriptive regulation, demonstrating measurable progress towards achieving statewide sustainability goals and allowing landowners to use creativity and flexibility to achieve objectives, while providing for the conservation of public trust resources and the public values of forests”.

The following reports on progress since the second session of the 122<sup>nd</sup> Legislature. The Maine Forest Service report submitted to this committee on 06 February 2006 provides additional, important context. Copies are appended to this report.

## **Current situation**

The Maine Forest Service has entered into discussions with two major landowners in the state regarding their interest in negotiating an outcome-based forestry agreement.

The Maine Forest Service has discussed the issue with the first landowner over the past year. Discussions reached the stage of exchanging initial ideas about the content of an agreement; however, the landowner experienced the loss of a senior manager and had to curtail this project for several months. As of late December, 2006, the landowner continued to express interest in the project and stated that it would be one of their initiatives for 2007.

The second landowner was approached late in 2006. Initial discussions were positive, and additional discussions are planned during the next year.

The Maine Forest Service is optimistic that discussions with both landowners will eventually result in outcome-based forestry agreements.

In considering the future prospects for outcome-based forest policy, please bear in mind the following considerations:

1. Developing an agreement on outcome-based forest policy that serves both the public and private interests will require a significant investment of state staff and landowner resources.
2. It is important to get early agreements right, as they will set a precedent for those which follow.

## **Recommendation**

In consideration of the above, the Maine Forest Service makes the following recommendation to the 123<sup>rd</sup> Legislature:

The Maine Forest Service recommends that the Legislature extend the sunset deadline of the authorization for pilot projects to test outcome-based forestry from 01 July 2007 to 01 July 2010 with annual progress reports due on 02 January of every year. The committee is authorized to report out legislation regarding this extension.

**PUBLIC LAWS**  
**Second Regular Session of the 122nd**  
**CHAPTER 550**  
**H.P. 1474 - L.D. 2083**

**An Act To Implement the Recommendations of the Joint Standing Committee on  
Agriculture, Conservation and Forestry Relating to Review of the Department of  
Conservation**

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, statutes authorizing the Department of Conservation, Bureau of Forestry to study outcome-based forest policy as an alternative to prescriptive regulation will be repealed on July 1, 2006 unless action is taken by the Legislature; and

Whereas, an extension of this repeal date is necessary for further study by the bureau of this potentially beneficial policy; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 3 MRSA §959, sub-§1, ¶A, as amended by PL 2003, c. 578, §1 and c. 600, §1, is further amended to read:

A. The joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters shall use the following list as a guideline for scheduling reviews:

- (1) Baxter State Park Authority in 2009;
- (2) Department of Conservation in 2005 2011;
- (3) Blueberry Advisory Committee in 2005 2011;
- (4) Board of Pesticides Control in 2005 2011;
- (5) Wild Blueberry Commission of Maine in 2005 2011;
- (6) Seed Potato Board in 2005 2011;
- (7) Maine Dairy and Nutrition Council in 2007;
- (8) Maine Dairy Promotions Board in 2007;
- (9) Maine Milk Commission in 2007;
- (10) State Harness Racing Commission in 2007;
- (11) Maine Agricultural Bargaining Board in 2003 2009;
- (12) Department of Agriculture, Food and Rural Resources in 2009; and
- (14) Land for Maine's Future Board in 2007.

Sec. 2. 12 MRSA §8003, sub-§3, ¶Q, as enacted by PL 2001, c. 339, §1, is amended to read:

Q. The director, in cooperation with public and private landowners, shall actively pursue creating experimental areas on public and private land where the principles and applicability of outcome-based forest policy, as defined in section 8868, can be applied and tested. No more than 6 such areas may be designated, a single area may not exceed 100,000 acres and the total area under agreement may not exceed 200,000 acres. One area must be owned by a landowner holding fewer than 1,000 acres statewide. The director shall seek to designate areas representing differing forest types and conditions and from different geographic regions of the State. The term of initial agreements may not exceed 5 years. This paragraph is repealed July 1, 2006 2007.

Sec. 3. 12 MRSA §8868, sub-§2-B, as enacted by PL 2001, c. 339, §2, is amended to read:

2-B. Outcome-based forest policy. "Outcome-based forest policy" means a science-based, voluntary process to achieve agreed-upon economic, environmental and social outcomes in the State's forest, as an alternative to prescriptive regulation, demonstrating measurable progress towards achieving statewide sustainability goals and allowing landowners to use creativity and flexibility to achieve objectives, while providing for the conservation of public trust resources and the public values of forests. This subsection is repealed July 1, 2006 2007.

Sec. 4. 12 MRSA §8869, sub-§3-A, as enacted by PL 2001, c. 339, §3, is amended to read:

3-A. Plans for experimental areas. Practices applied on an experimental area created pursuant to section 8003, subsection 3, paragraph Q must provide at least the equivalent forest and environmental protection as provided by existing rules and any applicable local regulations. At a minimum, tests of outcome-based principles must address:

- A. Soil productivity;
- B. Water quality, wetlands and riparian zones;
- C. Timber supply and quality;
- D. Aesthetic impacts of timber harvesting;
- E. Biological diversity; and
- F. Public accountability.

The Governor shall appoint a panel of technical experts to work with the director to implement, monitor and assess tests of outcome-based forestry principles. In order to participate in the outcome-based forestry experiment, the landowner, director and technical panel must develop agreed-upon desired outcomes for the experimental area and develop a method for determining if the outcomes have been attained and a system for reporting results to the public. This subsection is repealed July 1, 2006 2007.

Sec. 5. 12 MRSA §8869, sub-§7-A, as enacted by PL 2001, c. 339, §5, is amended to read:

7-A. Exemption for outcome-based forest policy experimental areas. Outcome-based forest policy experimental areas designated under section 8003, subsection 3,

paragraph Q are exempt from the requirements of this subchapter and rules adopted pursuant to this subchapter. This subsection is repealed July 1, 2006 2007.

Sec. 6. 12 MRSA §8869, sub-§13, as enacted by PL 2001, c. 339, §6, is amended to read:

13. Confidential information. Information provided to the bureau voluntarily or to fulfill reporting requirements for the purposes of establishing and monitoring outcome-based forest policy experimental areas, as created pursuant to section 8003, subsection 3, paragraph Q, is designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A if the bureau has determined that failure to designate the information as confidential would provide competitors an opportunity to obtain business or competitive advantage over the person to whom the information belongs or pertains or would result in loss or other significant detriment to that person. The bureau, working with the landowner and the panel of technical experts appointed under subsection 3-A, may publish reports as long as those reports do not reveal confidential information. This subsection is repealed July 1, 2006 2007.

Sec. 7. Report to Legislature on outcome-based forestry. By January 2, 2007, the Director of the Bureau of Forestry within the Department of Conservation shall report to the joint standing committee of the Legislature having jurisdiction over forestry matters on the interest in and feasibility of establishing outcome-based experimental areas in accordance with Public Law 2001, chapter 339. The report must include a recommendation regarding continuing authorization for the bureau to pursue outcome-based forest policy. The committee may report out legislation to the 123rd Legislature regarding outcome-based forestry.

Sec. 8. Review of submerged lands leasing program. The Director of the Bureau of Parks and Lands within the Department of Conservation shall review the rent structure for leases under the submerged lands leasing program administered by the bureau in accordance with the Maine Revised Statutes, Title 12, section 1862. The review must include an examination of fair market rental values, maximum rents established in statute and the potential to generate more revenue from submerged land leases. The director shall submit a report with findings and recommendations to the joint standing committee of the Legislature having jurisdiction over public lands by January 2, 2007. The report must include options for increasing lease revenue significantly and a description of potential risks or problems associated with each option. The department shall submit legislation necessary to implement the bureau's recommendations to the First Regular Session of the 123rd Legislature.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 6, 2006.

**Outcome-Based Forest Policy  
Report to the  
Joint Standing Committee on  
Agriculture, Conservation and Forestry  
of the  
122<sup>nd</sup> Maine Legislature,  
Second Regular Session**



February 6, 2006

**Submitted by**

**The Maine Department of Conservation**

**Bureau of Forestry**

**Forest Policy & Management Division**

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During the ferment of the 1990's over forest policy, the Legislature enacted Public Law 2001, Chapter 339, An Act to Promote Outcome-based Forest Policy. This law called for MFS to engage with landowners and evaluate the feasibility of outcome-based forestry - that is, "a science-based, voluntary process to achieve agreed-upon economic, environmental and social outcomes in the state's forests, as an alternative to prescriptive regulation, demonstrating measurable progress towards achieving statewide sustainability goals and allowing landowners to use creativity and flexibility to achieve objectives, while providing for the conservation of public trust resources and the public values of forests".

The following reports on progress to date. The essence of this report is that, notwithstanding resource limitations and the rapid turnover of forest land ownerships, particularly on the large ownerships once held by industrial owners (where outcome-based forest policy had the greatest chance of success), the Maine Forest Service attempted to achieve the legislative direction, but with little success.

The Maine Forest Service has twice entered into negotiations with large landowners to develop the specifications for a successful effort in this regard. On both occasions, the land involved was sold before the completion of negotiations. Since that time, the Maine Forest Service contacted a number of Maine's large landowners to assess their interest in pursuing outcome-based forestry. The answer has been "no" in all but one case. The Maine Forest Service has entered into discussions with this landowner. Those discussions may take several months or longer to complete.

In addition, the development of outcome-based forest policy was predicated on the development of the forest sustainability benchmarks identified by PL 1997, Chapter 720, An Act to Implement the Recommendations of the Majority of the Joint Standing Committee on Agriculture, Conservation and Forestry Regarding Enhancing Forest Resource Assessment. This legislation identified seven criteria of sustainability. The outcome-based forest policy legislation requires us to address six of them: soil productivity; water quality, wetlands and riparian zones; timber supply and quality; aesthetic impacts of timber harvesting; biological diversity; and public accountability. Again, due to resource constraints, we have just published the full suite of draft benchmarks (in the 2005 State of the Forest Report). It is now clear that these benchmarks, particularly those completed early in the process, need to be streamlined and simplified to be workable given today's constraints on staffing and funding levels. We anticipate a careful, deliberate public process to finalize the benchmarks; however, we cannot project a completion date, as this will require significant investment of staff time and resources. As our discussions with the interested landowner proceed, we need to keep the benchmarking process in mind, as there will and should be some crosswalk between the two processes.

Forest certification has emerged as a major force guiding landowner policies and actions across the nation. Maine continues to lead the country in terms of percentage of forest land certified and as the incubator for the Master Logger program. Regardless of program, forest certification has improved forest management on certified lands. Further, the major certification programs all require that landowners pay attention to the public values of forests enumerated in the statutory direction for outcome-based forest policy. Therefore, it is a legitimate question to ask, "Has the idea of outcome-based forest policy, on a track independent of these other factors, run its course?" The Maine Forest Service cannot answer that question yes or no at this time, but offers additional context for the Legislature's consideration.

Forest certification programs require compliance with state laws, including the Forest Practices Act, which sets up a chicken and egg situation. Landowners need to comply with both the Forest Practices Act and the requirements of their particular certification program. However, the specific requirements of the Forest Practices Act may come into conflict with other requirements of certification. Outcome-based forest policy could resolve this situation by providing certified landowners with a more flexible regulatory package that still protects the important public values and purposes which underlie the enabling statute.

In its recently developed rule governing timber harvesting in shoreland areas, the Maine Forest Service specified an option for landowners to submit an outcome-based proposal to the bureau (for the bureau's approval) if the landowner felt that they could achieve equal or better protection of riparian forest and water resources by conducting a harvest differently than required by the rule. This option was well-received by the regulated community. Because a critical mass of Maine towns must opt into the program before the rule goes into effect, full implementation is still a few years away; however, this regulatory option could be used widely.

Partial harvesting has come to dominate Maine's forest landscape. Clearcutting now accounts for 5% or less of the acres harvested in the state on an annual basis. Many Maine landowners have adjusted their harvesting practices such that they no longer rely on clearcutting as a major proportion of their management. Therefore, most landowners are not constrained significantly by the requirements of Maine's Forest Practices Act, which was aimed at stopping large, rolling clearcuts.

Whether these changes are due to regulatory avoidance, changes in landowners' policies to rely more on natural regeneration through shelterwood and selection systems, or a combination of factors is a matter of speculation. The key point is that interest in outcome-based forest policy seems limited largely to landowners interested in clearcutting, as these landowners have the highest exposure to the requirements of the Forest Practices Act, and that the number of these landowners has diminished as the forest products industry has sold its lands.

In considering the future prospects for outcome-based forest policy, please bear in mind the following considerations:

3. Developing an agreement on outcome-based forest policy that serves both the public and private interests will require a significant investment of state staff and landowner resources.
4. It is important to get early agreements right, as they will set a precedent for those which follow.

In consideration of the above, the Maine Forest Service makes the following recommendation to the 122<sup>nd</sup> Legislature:

**RECOMMENDATION:** Because our discussions with an interested landowner are not yet complete, the Maine Forest Service recommends that the Legislature extend the deadline for sun-setting the authorization for pilot projects to test outcome-based forestry from 01 July 2006 to 01 July 2007 with an interim progress report due on 02 January 2007. For this interim progress report, we would address whether the current discussion has borne fruit. If it has, or if other circumstances argue for continuing the effort, the Legislature could further extend the deadline to assess whether this approach is working. If not, the legislation would sunset.

PUBLIC LAWS OF MAINE  
First Regular Session of the 120th

CHAPTER 339  
S.P. 544 - L.D. 1690

An Act to Promote Outcome-based Forest Policy

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

Sec. 1. 12 MRSA §8003, sub-§3, ¶Q is enacted to read:

Q. The director, in cooperation with public and private landowners, shall actively pursue creating experimental areas on public and private land where the principles and applicability of outcome-based forest policy, as defined in section 8868, can be applied and tested. No more than 6 such areas may be designated, a single area may not exceed 100,000 acres and the total area under agreement may not exceed 200,000 acres. One area must be owned by a landowner holding fewer than 1,000 acres statewide. The director shall seek to designate areas representing differing forest types and conditions and from different geographic regions of the State. The term of initial agreements may not exceed 5 years. This paragraph is repealed July 1, 2006.

Sec. 2. 12 MRSA §8868, sub-§2-B is enacted to read:

2-B. Outcome-based forest policy. "Outcome-based forest policy" means a science-based, voluntary process to achieve agreed-upon economic, environmental and social outcomes in the State's forest, as an alternative to prescriptive regulation, demonstrating measurable progress towards achieving statewide sustainability goals and allowing landowners to use creativity and flexibility to achieve objectives, while providing for the conservation of public trust resources and the public values of forests. This subsection is repealed July 1, 2006.

Sec. 3. 12 MRSA §8869, sub-§3-A is enacted to read:

3-A. Plans for experimental areas. Practices applied on an experimental area created pursuant to section 8003, subsection 3, paragraph Q must provide at least the equivalent forest and environmental protection as provided by existing rules and any applicable local regulations. At a minimum, tests of outcome-based principles must address:

- A. Soil productivity;
- B. Water quality, wetlands and riparian zones;
- C. Timber supply and quality;
- D. Aesthetic impacts of timber harvesting;
- E. Biological diversity; and
- F. Public accountability.

The Governor shall appoint a panel of technical experts to work with the director to implement, monitor and assess tests of outcome-based forestry principles. In order to participate in the outcome-based forestry experiment, the landowner, director and technical panel must develop agreed-upon desired outcomes for the experimental area and develop a method for determining if the outcomes have been attained and a system for reporting results to the public. This subsection is repealed July 1, 2006.

**Sec. 4. 12 MRSA §8869, sub-§7**, as enacted by PL 1989, c. 555, §10, is amended to read:

**7. Application.** This section shall ~~apply~~ applies to all forest lands within the State, including land in municipal and state ownership. ~~Only~~ Except as provided in subsection 7-A, only state-owned or operated research forests or industrially owned research forests certified by the commissioner are exempt from these requirements.

**Sec. 5. 12 MRSA §8869, sub-§7-A** is enacted to read:

**7-A. Exemption for outcome-based forest policy experimental areas.** Outcome-based forest policy experimental areas designated under section 8003, subsection 3, paragraph Q are exempt from the requirements of this subchapter and rules adopted pursuant to this subchapter. This subsection is repealed July 1, 2006.

**Sec. 6. 12 MRSA §8869, sub-§13** is enacted to read:

**13. Confidential information.** Information provided to the bureau voluntarily or to fulfill reporting requirements for the purposes of establishing and monitoring outcome-based forest policy experimental areas, as created pursuant to section 8003, subsection 3, paragraph Q, is designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A if the bureau has determined that failure to designate the information as confidential would provide competitors an opportunity to obtain business or competitive advantage over the person to whom the information belongs or pertains or would result in loss or other significant detriment to that person. The bureau, working with the landowner and the panel of technical experts appointed under subsection 3-A, may publish reports as long as those reports do not reveal confidential information. This subsection is repealed July 1, 2006.

**Sec. 7. 12 MRSA §8879, sub-§1**, as enacted by PL 1997, c. 720, §13, is amended to read:

**1. Content.** The report must describe the condition of the State's forests based on historical information and information collected and analyzed by the bureau for the biennium. The report must provide an assessment at the state level of progress in achieving the standards developed pursuant to section 8876-A, including progress of the outcome-based forestry experiment authorized under section 8003, subsection 3, paragraph Q. The director shall also provide observations on differences in achieving standards by landowner class. The report must summarize importing and exporting of forest products for foreign and interstate activities. The director shall obtain public input during the preparation of the report through public hearings and other appropriate methods.

**Sec. 8. Report to the Legislature on outcome-based forestry.** By December 31, 2005, the Director of the Bureau of Forestry within the Department of Conservation, in consultation with the panel of technical experts established pursuant to the Maine Revised Statutes, Title 12, section 8869, subsection 3-A, shall submit a report to the 122nd Legislature on the feasibility of implementing outcome-based forestry as a basis for forest policy. The report must include the results of the experiment in outcome-based forestry, established in the Maine Revised Statutes, Title 12, section 8003, subsection 3, paragraph Q, and an assessment of the feasibility of this program as an effective means to improve forest management. If the director recommends outcome-based forestry as an effective and desirable means to attain forest policy goals, the report must also include:

1. Justification for establishing such a policy, based on the results of the experiment, including an analysis of the improvements in forest management likely under outcome-based forestry;
2. Steps needed to arrive at broadly supported outcomes, based on the principles of soil productivity; water quality, wetlands and riparian zones; timber supply and quality; aesthetic impacts of timber harvesting; biological diversity; and public accountability;
3. The conditions under which landowners would be allowed to participate in the program and be exempt from certain rules and regulations, such as bureau approval of outcome-based forestry plans;
4. The bureau's plan to assess compliance with outcome-based forestry plans and to determine thresholds for noncompliance;
5. A discussion of outcome-based forestry's potential to improve public accountability and confidence in forest management, including specific tools that can be used to improve accountability and public confidence in forestry; and
6. An overall implementation plan, including general recommendations, recommendations for statutory changes and regulatory changes and the estimated costs to implement such a plan.

Effective September 21, 2001, unless otherwise indicated.