

Timber Theft in New York

Findings from Questionnaires and Suggested Further Actions

OVERVIEW:

The illegal harvesting of trees in New York is a serious issue. Returns from a questionnaire distributed by the partnering organization listed below and informal interviews underscore the continuing landowner and societal damage wrought by timber thieves. Landowners are damaged, the majority of loggers are tarnished by the few, sawmills are at risk of accepting stolen goods, and the forest resource of New York suffers from unplanned harvests which ignore prudent management, sustainability, and environmental safeguards.

In examining timber trespass and theft, it is clear that thieves often enter a victim's property by way of a neighbor's land, target absentee owners, and cut only the best trees, diminishing the productivity of the woodlot for generations to come. Others may offer a vague contract to an owner, but then cut more trees than agreed upon, pay less than agreed, or in some cases, not pay at all.

Victims report that they are rarely made whole following a theft. Law enforcement is inconsistent and often ineffective, despite the efforts of enforcement agencies and the courts. The identity of the thief may never be known, and even if caught, brought to trial and found guilty, may well be "judgment' proof" with no assets for the court to attach for fines or restitution.

Suggestions are offered to seriously limit timber thefts, some involving regulation, several pointing to increased education and understanding. No single action is seen as a panacea, nor is only one party at fault. Landowners, timber buyers and harvesters, enforcement and judicial personnel, foresters, lawyers and surveyors, as well as government and non-government organizations must play a role in arresting timber theft.

NEW YORK SOCIETY OF AMERICAN FORESTERS NEW YORK FOREST OWNERS ASSOCIATION
AUDUBON NEW YORK NEW YORK STATE TIMBER PRODUCERS ASSOCIATION
EMPIRE STATE FOREST PRODUCTS ASSOCIATION CATSKILL LANDOWNERS ASSOCIATION
NY INSTITUTE OF CONSULTING FORESTERS WATERSHED AGRICULTURAL COUNCIL
CATSKILL FOREST ASSOCIATION TUG HILL RESOURCES INVESTMENT FOR THE FUTURE
ADIRONDACK LANDOWNERS ASSOCIATION NORTHEASTERN LOGGERS ASSOCIATION
NEW YORK FARM BUREAU NYS LEGISLATIVE COMMISSION ON RURAL RESOURCES
NEW YORK TREE FARM SYSTEM NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BACKGROUND:

Timber theft has long been a problem in New York and elsewhere in the United States. Until recently, New York State did not focus much attention on this crime. However legislation in 1966 made clear that cutting any trees without permission was illegal under the Environmental Conservation Law, whereas the previous law had applied only to evergreens. The new law also authorized environmental conservation officers to investigate timber theft on private lands where previously they could only investigate fish and wildlife violations.

In 2000 the New York State Legislative Commission on Rural Resources appointed a task force to study timber theft and recommend new legislation. Based on victims' testimonies and evidence of theft as reported by consulting foresters, state agencies, timber harvesters and others, legislation was passed in 2003 increasing penalties and authorizing landowner education and training for judicial and law enforcement personnel.

It became apparent, however, that further steps were needed to curb timber theft.

QUESTIONNAIRES DISTRIBUTED, INTERVIEWS CONDUCTED:

A survey questionnaire was prepared for use by partnering organizations to collect information on cases of timber theft. For this study, timber theft was defined as the cutting of trees without the explicit permission of the owner or failure to pay for timber harvested whether or not a contract existed. This approach encompassed three categories of crime: theft of timber, trespass for the purposes of illegal cutting of trees, and breach of contract. All three parts constitute the illegal taking of trees and in the eyes of forest landowners are considered theft.

In addition to the questionnaires, informal interviews have been held with both active and retired foresters and environmental conservation officers of the Department of Environmental Conservation, New York State troopers, attorneys and judges familiar with timber theft, and with loggers and log buyers. These interviews were without attribution or identification, and were intended to better understand the process and the views of those directly involved.

RESPONSES AND FINDINGS:

Through the partnering organizations' newsletters and magazines, the questionnaire and notice of its availability were to be distributed to its members.

The seventy-three questionnaires returned provide useful insights into the details of how the thefts occurred, what actions were taken by owners and their agents, and the outcome of the cases. Among responses beyond the written questionnaires, one consultant advised of knowing of "probably 300 cases of timber theft in the last three years".

About one-third of the reported cases came directly from the affected landowners, one-third from consulting foresters who mainly had been called in to estimate damages, and the remainder reported by Department of Environmental Conservation foresters, forest rangers or environmental conservation officers.

1. Timber Theft Occurs Across the State:

Questionnaires were returned from the Hudson Valley, the Capital region, central and western New York, the Adirondacks, and the Tug Hill region. The reports showed that thefts occurred mainly on privately owned forest land. This might be expected since approximately 85% of the forest land in New York is in private ownerships: individuals, families and other non-industrial ownerships.

On 40 percent of the cases discovery was immediate. However, for the remaining 60 percent, discovery ranged from a few weeks to months and in some cases to over a year. These cases were usually on lands held by owners who were unable to inspect their properties due to living a great distance from the land, being physically limited, or owning several parcels in remote areas.

About one-third of the reported thefts occurred on lands owned by seasonal or absentee owners. The cases reported span several years; most occurred within the last five years, but some date back to the 1990s.

2. Substantial Amounts Stolen and Forests Damaged:

Estimates of the amount of timber reported stolen range from less than one thousand board feet (probably just a few trees) to well over 50,000 board feet (perhaps as many as 400 trees) with an average of 16,738 board feet. The estimated market value of the illegally removed trees (the amount an owner might receive for the trees when they are still standing) ranged from less than one thousand dollars to \$70,000 with an average value of \$10,650. This amount, given the volume of timber taken, may be higher than some might expect, but it points to the fact that thieves only remove the highest value trees - a practice often referred to as "highgrading."

Illegal cutting does not follow good management and harvesting practices. Cutting only the trees with a high market price whether mature or not fully grown, means the owner is losing not only mature trees, but also those trees that would become increasingly valuable if allowed to grow another ten or twenty years. Highgrading also removes from the woodlot the seed sources and genetic strains best suited for that site, leading to losses that may take generations to overcome.

Many cases reported damages to streams, rutted logging roads, and incorrect disposal of tops and other residues. Beyond the financial loss and environmental damage, there is the emotional loss that occurs with any invasion of one's property and a theft. A thief does not take any extra care when committing a crime, does not worry about best management practices, erosion control, or an owner's feelings or legacy.

3. Several Factors Contribute to Thefts:

Lack of identifiable property boundaries was often brought up as a reason for timber theft. However, in almost two-thirds of the reported cases the property boundaries were reported as being "clearly marked". It is apparent, however, that either the boundary line was ignored or was not self-evident to the harvester, underscoring the need to physically review boundaries with the harvester before work begins.

On 40 percent of the cases, trees on the boundary line were cut.

In over two-thirds of the reported thefts the neighboring property was used for access and to remove the stolen timber. On half of those reported cases, the neighboring owner had a contract with a timber harvester. Apparently, however, those contracts did not protect the neighbor from becoming a victim of theft, nor protect the owner from possible responsibility for dishonest activity by the logger.

In 20 percent of the reported cases losses occurred because the person removing the trees failed to pay for all the timber removed, even though the landowner had a contract with the harvester. While technically a breach of contract, for the injured landowners it constituted a theft. A sound contract that would stand up in court might have precluded losses of this kind.

In other cases harvesters removed trees in addition to those designated for the harvest with paint, even when a forester had helped to plan and execute the sale. These situations accounted for 5 to 8 percent of the reported theft cases. Careful monitoring of these harvests either by the landowners or their agents might have prevented loss of the extra trees.

4. Thief's Identity Often Unknown:

On only one-third of the reported cases was the identity of the persons doing the cutting readily known. On most of those cases the landowners or their agents contacted the responsible persons, and on 11 percent of the cases a satisfactory resolution was reached. For the others, law enforcement intervention was needed. It can be argued that law enforcement intervention should be enlisted on all complaints as a means to discourage repeated illegal activity.

For those cases for which the identity of the perpetrator was not readily known, the opportunity for timely follow-up and effective prosecution was very limited and often impossible.

Theft cases were reported to either the Department of Environmental Conservation (DEC) Forest Ranger (38%), DEC Conservation Officer (38%), other DEC persons (26%), county sheriff's department (22%), or state police (15%). On 30 percent of the cases the owners sought advice from an attorney and on 42 percent they sought advice from a consulting forester.

Monetary damages were sought on some cases and judgments obtained against the perpetrators. For other victims, it appeared too costly to pursue monetary damages or they believed it highly unlikely that the case would be successfully completed. Reasons cited included legal fees, time required to pursue a claim, and even if successful in court, difficulty in obtaining payment due to the "judgment proof" character of the thief.

On 22 percent of the cases the District Attorney brought criminal charges against the thieves.

On 16 percent of all cases reported, the person reporting the case felt that timber theft as a crime is not taken seriously. However, it may be that in some instances District Attorneys do not pursue a case because there is insufficient evidence to warrant criminal charges. Many victims might not understand what it takes to prove a criminal case.

5. Insightful Comments from Questionnaires:

Some of the additional comments offered by those completing the survey are useful to note as shown below. They are grouped by category:

Owner issues

The owner could have more closely monitored the sale and stopped progress until paid.

Owner's absentee neighbor was having a harvest; logger crossed to victim's land.

Success in finding out theft due to neighbor who noticed cutting.

Neighbor claimed trees were on his property, survey showed they were on mine.

Logger issues

The logger was involved in other thefts and seemed judgment proof.

Logger had asked owner to sell timber, owner declined but then logger went ahead and stole timber.

Logger knew he cut wrong trees and paid right away.

Logger had a bad reputation, owner settled for just stumpage value.

Sawmill issues

Could not get restitution, logs already sawn by mill.

Thefts will not stop until liability for taking illegal trees is extended to sawmills.

Local loggers and sawmills very helpful in identifying thieves.

Enforcement issues

DA could have pursued case more aggressively.

Confusion over who was owner of land.

Case stalled in law enforcement hands.

CURBING TIMBER THEFT - SUGGESTED STEPS:

Many suggestions came from questionnaire participants and those interviewed in recent months regarding actions which could and should help curb timber theft. The common theme of many suggestions was that each party must fully accept responsibility for its actions. While many of the suggestions need to be more fully developed, all demonstrate a depth of concern and a willingness to think "out of the box" to find policies or approaches that realistically can be expected to help.

No single action is a panacea for eliminating timber theft. Several actions, some possibly involving regulation and others aimed at education will be needed to seriously limit the various forms of timber theft. Suggestions have been summarized under five headings: landowners, woods products industry, law enforcement, other professional support, and education. There is overlap and shared responsibilities among and between the parties.

Landowners:

1. Property boundaries and particularly boundaries of timber sale areas should be clearly marked. Make the landowner liable if a timber sale area is incorrectly delineated to encompass a neighboring property.
2. Landowners need to interact with owners of neighboring properties, especially when contemplating a timber harvest.
3. Timber harvests should always be planned, never decided on the spur of the moment. Trees for sale should be marked - in most cases best done by a consulting forester, in contrast to letting buyers select those trees they wish to cut.
4. Understand the role of attorneys in developing contracts. Key elements include payment terms, clean up and erosion control, bonding and insurance, and on-site acknowledging of boundaries.
5. Choose loggers carefully - in most cases with the help of a consulting forester. Check references; insist on a sound contract; provide for monitoring. Make harvesters liable for activity outside of the designated sale area.

Wood Products Industry:

1. Harvesters should work closely with landowners so terms and conditions of the harvest are mutually understood. Sale area boundaries should be walked with the owner and access and landings agreed upon.
2. Solid contracts should always be used to protect harvesters and their own interests, as well as those of the forest owner.
3. Adjoining owners should be notified before cutting begins. Some loggers do this now; it is good protection and a good business practice.
4. Harvesters and buyers should report illegal tree cutting or suspicious activity to DEC Environmental Conservation Officers or the State Police and alert the affected landowners.
5. Sawmills should know the source of purchased logs (often referred to as "gate wood") and refuse to deal with known timber thieves.

Law Enforcement:

1. State and local law enforcement personnel should be sufficiently familiar with wood products industry operations and the applicable laws.
2. Law enforcement should work with all parties from stump to mill on ways to demonstrate legality of the product being handled.
3. All provisions of law relating to timber trespass and theft should be consolidated into a single penal law section to aid enforcement and judicial personnel.
4. Enforcement personnel should be required to file a report on all timber theft inquires or actions as a public record. A pre printed complaint form would be helpful, as used in other areas of enforcement.
5. The Department of Environmental Conservation should make widely known that it provides victims contemplating criminal action an approximation of their loss, when requested by a law enforcement officer. This service can help landowners understand possible next steps.

Other Professional Support:

1. Foresters, surveyors and lawyers should clearly explain their role in serving and protecting forest owners and those in the wood products industry.
2. Ways should be found to provide all forest owners with (at least) a simple management plan so they better understand potential benefits and possible pitfalls of owning and managing their land.
3. Model contracts should be available in plain language, so that all key points are considered, even though circumstances may call for modifications.

Education and Outreach:

1. All parties of interest should share responsibility for a strong, ongoing forest landowner, wood products industry and law enforcement education program.
2. These organizations should provide outreach leadership: the New York Forest Owners Association, Empire State Forest Products Association, New York Society of American Foresters, New York State Timber Producers Association, Cornell Cooperative Extension, and State agencies such as the Consumer Protection Board and the Departments of Law, Agriculture and Markets, and Environmental Conservation.
3. Expanded relationships and programming should be developed by the SUNY College of Environmental Science and Forestry, Cornell University College of Agricultural and Life Sciences, and New York's county cooperative extension offices to deliver education and information on timber theft prevention and prosecution, drawing on the resources of the organizations named above.

THIS REPORT COMPILED BY DR. HUGH O. CANHAM, PROFESSOR EMERITUS SUNY COLLEGE OF ENVIRONMENTAL SCIENCE AND FORESTRY, AND RONALD W. PEDERSEN, PAST PRESIDENT, NEW YORK FOREST OWNERS ASSOCIATION. SEPTEMBER 2007