



photo by Jay Lackey, Vermont Dept. of Forests, Parks & Recreation.

The Ice Storm of '98 left millions of acres of danger trees in its wake.

The Danger Tree Dilemma

by Edward G. Wright*

There is a situation lurking in the forest products industry that goes far beyond the boundaries of the forests from which it originates. And given the recent severe weather patterns across the Northeast, perhaps courtesy of El Niño, the problem is likely to become much worse before it gets better.

Of all the countless hazards they face in the woods each day, danger trees, a.k.a. "killer trees," pose the single most serious threat to loggers today. Standing dead snags, hung trees and "widow maker" branches account for a major share of the fatalities and serious injuries experienced by loggers each year.

According to the New York Lumbermen's Insurance Trust Fund (NYLITF), in any given year more than 20 percent of reported injuries for logging are caused by falling trees or limbs. Working in the wake of blowdowns, windstorms and ice storms only exacerbates the problem, requiring even greater caution on the part of logging contractors and their employees making their living in the woods.

As if the wicked trees themselves are not deadly enough, the whole situation is fur-

ther complicated and aggravated by the often conflicting and occasionally downright contradictory positions held by the various interests concerned.

Landowners, government agencies, wildlife managers, foresters, and finally, timber harvesters each harbor widely differing views on what to do with danger trees.

The Landowner Perspective

Landowners, depending on their personal goals, may look at the danger tree in a variety of different ways. First, they realize dead and likely rotted trees are of little economic value and therefore hardly worth the expense of felling.

Some of the more environmentally conscious landowners may be aware of the wildlife concern, since snags provide a natural habitat for numerous species. Other landowners may actually request that the snags be removed to clean up and help regenerate their forests.

Still others may be concerned—and legitimately so—over the danger snags present to the loggers and the potential liability, which could result to the owner in the event of an injury.

Landowner and New York Forest Owners Association (NYFOA) member David Colligan says he would often rather girdle a tree to create wildlife habitat than to fell it under conditions that could damage sur-

rounding trees in the process. Colligan, who also happens to be an attorney, says he is not aware of any liability cases brought against a landowner and settled in favor of a feller injured by a snag.

Governmental Interests

The government agency charged with assuring a safe work environment for all workers, the Occupational Safety and Health Administration (OSHA), defines "danger trees" as follows:

"Danger tree"—a standing tree that presents a hazard to employees due to conditions such as, but not limited to, deterioration or physical damage to the root system, trunk, stem or limbs, and the direction and lean of the tree.

Those who cut trees for a living have been quick to point out that this definition can apply to any tree in the woods. OSHA further defines "snags" as:

"Any standing dead tree or portion thereof."

In its remarkably comprehensive standard 1910.266 for logging operations, OSHA requires:

(vi) "Each danger tree shall be felled, removed or avoided. Each danger tree.

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including lodged trees and snags, shall be felled or removed using mechanical or other techniques that minimize employee exposure before work is commenced in the area of the danger tree. If the danger tree is not felled or removed, it shall be marked and no work shall be conducted within two tree lengths of the danger tree unless the employer demonstrates that a shorter distance will not create a hazard for an employee."

According to timber harvesters, there are several practical problems with the OSHA standard. First, the option of using "mechanical or other techniques" to remove a snag may not be as easy as it sounds. While some snags are severely weakened and can be easily toppled by a skidder or other mechanical device, others are far sturdier and bulldozing them is not likely to work very well. The idea of avoiding dead trees by marking them and not working within two tree lengths, is also of questionable value.

Clayton Grove, wildlife biologist with the Green Mountain and Fingerlakes National Forest, recently cited a study done by the US Forest Service in Vermont, indicating that in any given stand, there may be as many as 18 danger trees per acre. Lay the two-tree-length rule over that statistic and you've effectively closed the forest for harvesting altogether.

While both the US Fish and Wildlife Service and the Forest Service recommend five to seven wildlife trees per acre, many observers say that as few as two snags per acre could prevent logging under the OSHA rules.

The final option stated in the OSHA regulation is that the logger must prove that the tree in question is not a hazard. Of course, OSHA rarely becomes involved on a jobsite unless there has been a serious injury or fatality, in which case this latter option would be negated by definition.

The plain old-fashioned felling of a snag presents its own set of challenges as well. Imagine the danger inherent in brittle dead limbs intertwined in the forest canopy, and the significant potential for the stem itself to snap. As one risk manager astutely points out, "they don't call them widow makers because one guy got hit in the head one time."

Obviously, the use of a well-caged mechanized feller would be a good option for snag removal. However, due to its rather steep cost and somewhat limited use on rough terrain, mechanized felling equipment is not available on many jobs in the Northeast.

Still, OSHA's bottom line is: either take them down without somebody getting hurt

or stay away from them, otherwise you'll be hearing from us.

The Wildlife Component

Grove also cites statistics from a study done in Vermont indicating that more than 300 species make their homes in danger trees, with approximately one-third relying on that specific habitat. Little is known about the adaptability of these creatures should the danger trees disappear altogether.

The National Wildlife Federation and other environmental groups have put forth the notion that protection of this specific

habitat is essential to the long term well being of the species in question. However, as Grove points out, it is not as though the entire northeastern forest, along with its millions of snags, is going to be harvested simultaneously. Therefore, it can be assumed that at any point in time, very large numbers of danger trees will exist as wildlife habitat. Whether harvesting actually would get to the point of creating a bona fide shortage is a question yet to be answered.

In New York State, the situation is further complicated by the policy—apparently at least partially driven by concerns for wildlife

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DANGER TREE DILEMMA

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habitat—of the state Department of Environmental Conservation (DEC). In some cases, not only does the DEC suggest leaving the snags alone; the agency actually encourages the girdling of live, but perhaps defective trees, which leads to their ultimate demise and the creation of another snag.

Such requirements are often a normal part of state foresters' specifications for logging bids on state owned property. Furthermore, it is not uncommon for DEC foresters to call for the felling of healthy trees in the immediate area of a dead tree, which has been marked to be saved. The DEC is not unaware of this obvious conflict with OSHA regulations and discussions are expected to begin on this topic sometime in the future.

In still other cases, danger trees are marked for removal. Noteworthy in all of this is the fact that the timber harvester risks being in violation of either his contract with the state or OSHA in any given situation.

The DEC's stance: Depending on the goals for the stand in question, you may be required to remove snags, create new ones, leave them alone or cut other trees nearby.

Still another government agency also takes a position regarding danger trees. The friendly folks at the New York State Department of Taxation and Finance, under Act 480A, exempt certain timber producing properties from most local property taxes, if approved by the DEC. In order to gain approval, the landowner must implement a forest management program prepared by an independent professional forester.

Such plan may include the marking of danger trees for removal along with other trees inside of OSHA's two-tree-length requirement. While some flexibility is permitted, failure to remove the marked trees, dead and alive, may result in the landowner losing his/her tax break. This obviously negates the OSHA option of staying two tree lengths away. The Department of Taxation and Finance's position: take down the trees designated in the plan or risk losing your tax break; you're on your own with regard to OSHA.

Foresters' Concerns

Obviously, foresters have varying positions with regard to danger trees depending on the forest management plan appropriate for the job at hand. Furthermore, their outlook may be influenced depending on whether they work as consultants, procurement foresters or state service foresters. While their approaches are partially driven by whom they represent, they all share a common concern for not only the health of

the forest, but also that of those who work there.

Naturally, there is the significant question of liability and the responsibility of the forester with regard to marking or not marking danger trees, should a cutter or bystander be injured. If a snag marked for removal injures someone in the felling process, can the forester be held accountable? Is it the forester's responsibility to "flag" danger trees and insist no activity take place within OSHA's two-tree-length rule? Unfortunately, these are the kinds of questions which are ultimately answered in court rooms and to date there have been no clear examples of case law to provide direction.

The Logger

Finally, what of the logger? While all of the various perspectives swirl around, loggers remain at serious risk. In the past three years, the New York Lumbermen's Insurance Trust Fund, which provides workers' compensation coverage for the forest products industry in New York, has experienced ten fatalities, five of which were directly attributable to danger trees.

The Trust Fund, through its administrator, W.J. Cox Associates, Inc. is working diligently to provide formal training (including the well-regarded "Game of Logging" program), which specifically addresses the hazards associated with danger trees. But, there is a strong feeling that more needs to be done, beginning with a renewed awareness of the peril.

To that end, the Trust Fund and W. J. Cox Associates, along with the State University of New York College of Environmental Science and Forestry (SUNY-ESF) are preparing a series of onsite seminars across New York to discuss the danger tree issue. According to Dr. René Germain of SUNY-ESF, "In addition to increasing awareness of the issue, the upcoming workshops are designed to improve communications among the major players: landowner, forester and logger. We hope the interaction and discussion, particularly during the field component of the workshop, will generate some pragmatic management options that will work to meet the needs of the various interests."

Following this round of one-day seminars, it is hoped that a larger symposium can be pulled together, including the multitude of constituencies involved in an effort to eventually formulate a more uniform stance among all parties. The goal would be to satisfy the demand for safe and economic production of wood without jeopardizing wildlife habitat and overall forest health.

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