

Legal Overview of Maine's Great Ponds and Landowner Liability Laws¹

I. Public Trust in Great Ponds

A. Colonial Ordinance of 1641-1647

Every inhabitant . . . shall have free fishing and fowling, in any Great Ponds, bays, coves and rivers so far as the sea ebbs and flows
Provided that no town shall appropriate to any particular person or persons, any Great Pond containing more than ten acres of land; and that no man shall come upon another's property without their leave otherwise than as hereafter expressed And for Great Ponds lying in common . . . it shall be free for any man to fish and fowl there, and may pass and repossess on foot through any man's property for that end, so they trespass not upon any man's corn or meadow.

B. Relevance of Colonial Ordinance in modern context

1. "corn or meadow"
2. "to fish and fowl"

C. Great Ponds Act

No person on foot shall be denied access or egress over unimproved land to a great pond The Attorney General shall . . . prosecute criminally or civilly any person who denies such right of access or egress. Any person may maintain an action . . . for declaratory and equitable relief and actual and punitive damages . . . for any violations of this section. Whoever violates this section shall be punished by a fine of not more than \$100 and by imprisonment for not more than 90 days.

D. Another source of public access: easements

1. Conservation easements
2. Prescriptive easements

¹ Amy B. Mills, AAG. The information and ideas contained herein are those of the author alone, do not constitute legal advice or a legal opinion of the Office of the Attorney General, and are intended for general interest only. Anyone seeking legal advice regarding property law should consult with a private lawyer.

II. Landowner Liability to Public Recreational Users

A. Landowner Liability Act

1. Encourages public access on private lands
2. Eliminates liability for outdoor recreational activities
3. Has few exceptions, generous with respect to landowners

B. Landowner Liability for Actions of Others

1. Legislation limits landowner liability
2. Specifically regarding environmental harm caused by others

III. Summary

A. Common law: provides for public access, subject to constitutional limitations

B. Legislative policy and statutory law: encourage public access on private lands